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10–25–99
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Contents

Federal Register
Vol. 64, No. 205
Monday, October 25, 1999

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
  Hanford Health Projects Inter-tribal Council et al., 57466–57467
  Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 57467

Agricultural Marketing Service
RULES
Tomatoes grown in—
  Florida, 57361–57363
PROPOSED RULES
Perishable Agricultural Commodities Act; implementation:
  Limited liability companies; recognition as legal entities, 57405–57408

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Rural Utilities Service

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
  Labeling and advertising; health claims and other health-related statements, 57413–57418

Army Department
See Engineers Corps

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 57438

Coast Guard
PROPOSED RULES
Ports and waterways safety:
  Hudson River, NY; safety zone, 57418–57419
  New York Harbor, NY; safety zone
    Correction, 57419

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
  Macau, 57440–57442

Commodity Credit Corporation
NOTICES
Agricultural commodities available for donation overseas; types and quantities, 57437

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
  Kansas City Board of Trade—
    Western natural gas, 57442
Meetings:
  Agricultural Advisory Committee, 57442–57443

Defense Department
See Engineers Corps

Education Department
RULES
Postsecondary education:
  Federal Perkins and Federal Family Education Loan Programs, 57527–57531
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 57443–57445
Postsecondary education:
  William D. Ford Federal Direct Loan Program and Federal Family Education Loan Program
    Interest rates, 57523–57526

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
  Environmental Management Site-Specific Advisory Board—
    Idaho National Engineering and Environmental Laboratory, ID, 57445

Energy Efficiency and Renewable Energy Office
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 57445–57446

Engineers Corps
NOTICES
Water resource development projects:
  Deauthorization lists; correction, 57515–57517

Environmental Protection Agency
RULES
Air programs; State authority delegations:
  Oklahoma, 57392–57393
PROPOSED RULES
Air programs:
  Ozone areas attaining 1-hour standard; identification of areas where standard will cease to apply
    Findings rescission, 57424–57430
Confidential business information; elimination of special treatment for certain category, 57421–57424
Water pollution control:
  Underground injection control program—
    Class V injection well study, 57430–57431
NOTICES
Environmental statements; availability, etc.:
  Agency statements—
    Comment availability, 57452
    Weekly receipts, 57451
Meetings:
  Environmental Economics Advisory Committee, 57452–57455

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 57409–57413

Federal Communications Commission
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 57455

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
California, 57455–57456
Connecticut, 57456
Florida, 57456–57457
Maryland, 57457
Pennsylvania, 57457
Virginia, 57457

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
Landowner notification, expanded categorical exclusions, and other environmental filing requirements, 57374–57392
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57446–57447
Meetings; Sunshine Act, 57449–57450
Applications, hearings, determinations, etc.:
Florida Gas Transmission Co., 57447–57448
Panhandle Eastern Pipe Line Co., 57448

Federal Reserve System
PROPOSED RULES
Equal credit opportunity, electronic fund transfers, consumer leasing, truth in lending, and truth in savings (Regulations B, E, M, Z, and DD):
Disclosure requirements; delivery by electronic communication, 57409
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 57457–57458
Permissible nonbanking activities, 57458
Permissible nonbanking activities; correction, 57458

Federal Trade Commission
RULES
Industry guides:
Dog and cat food industry, 57372–57374
NOTICES
Premerger notification waiting periods; early terminations, 57458–57465
Prohibited trade practices:
New England Tractor Trailer Training School of Massachusetts, Inc., et al., 57465–57466

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Plant and animal taxa that are candidates or proposed for listing, findings on recycled petitions, and description of progress on listing actions; review, 57533–57547

Food and Drug Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57467–57468
Submission for OMB review; comment request, 57468–57470
Meetings:
Biotechnology in year 2000 and beyond, 57470–57472
Dermatologic and Ophthalmic Drugs Advisory Committee, 57472
Gastrointestinal Drugs Advisory Committee, 57472–57473
Summary judgment and permanent injunction; final amended order
Appeal, 57473

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
RULES
Group health plans; access, portability, and renewability requirements; comment request, 57519–57521
PROPOSED RULES
Medicare:
Carrier determinations that supplier fails to meet requirements for Medicare billing privileges; appeals, 57431–57436
NOTICES
Meetings:
Competitive Pricing Advisory Committee—
Maricopa County, AZ, 57473–57474

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
RULES
Excise taxes:
Group health plans; access, portability, and renewability requirements; comment request, 57519–57521

International Trade Administration
NOTICES
Export trade certificates of review, 57438

International Trade Commission
NOTICES
Import investigations:
Industrial nitrocellulose from—
Various countries, 57483–57484
Steel rails from—
Canada, 57484

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Eastern Washington, 57479
Southwest, 57480
Upper Snake River Districts, 57479–57480

Minerals Management Service
NOTICES
Meetings:
Minerals Management Advisory Board, 57480–57481

National Aeronautics and Space Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Centennial of Flight Commission, 57484–57485
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Microelectronics & Computer Technology Corp., 57485

National Credit Union Administration
RULES
Credit unions:
Technical amendments, 57363–57365

National Highway Traffic Safety Administration
RULES
Insurer reporting requirements:
Insurers required to file reports; list, 57393–57397

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 57474
National Center for Research Resources, 57474
National Heart, Lung, and Blood Institute, 57474–57475
National Human Genome Research Institute, 57475–57476
National Institute of Allergy and Infectious Diseases, 57476
National Institute of Dental and Craniofacial Research, 57477
National Institute on Aging, 57476
National Library of Medicine, 57477
Scientific Review Center, 57477–57479

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Critical habitat designation—
Snake River spring/summer chinook salmon, 57399–57403
Sea turtle conservation; shrimp trawling requirements—
Matagorda Bay, TX, inshore waters; limited tow times use as alternative to turtle excluder devices, 57397–57399
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, 57403–57404
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Coastal migratory pelagic resources, 57436
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 57438–57439
New England Fishery Management Council, 57439–57440
South Atlantic Fishery Management Council, 57440

National Park Service
NOTICES
Environmental statements; notice of intent:
Big Cypress National Preserve, FL, 57481
Selma to Montgomery National Historic Trail, AL, 57481–57482
Meetings:
Manzanar National Historic Site Advisory Commission, 57482
National Capital Memorial Commission, 57482

Nuclear Regulatory Commission
PROPOSED RULES
Radioactive wastes, high-level; disposal in geologic repositories:
Yucca Mountain, NV
Defense in depth; round table discussion, 57409
NOTICES
Environmental statements; availability, etc.:
PECO Energy Co., 57486
Meetings:
Reactor Safeguards Advisory Committee, 57487
Memorandums of understanding:
Illinois; State Resident Engineers, 57487–57488
Applications, hearings, determinations, etc.:
Northeast Nuclear Energy Co., 57485–57486

Pension and Welfare Benefits Administration
RULES
Group health plans; access, portability, and renewability requirements; comment request, 57519–57521

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Nonautomation mail processing instructions and letter tray label revisions, 57419–57421

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See National Institutes of Health

Rural Utilities Service
NOTICES
Environmental statements; notice of intent:
Great River Energy, 57437–57438

Secret Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57514

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 57499
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 57499–57504
Chicago Stock Exchange, Inc., 57504–57505
Municipal Securities Rulemaking Board, 57505–57506
Applications, hearings, determinations, etc.:
Altos Hornos De Mexico, S.A., De C.V., 57488–57489
Great-West Life & Annuity Insurance Co. et al., 57489–57493
SEI Insurance Products Trust et al., 57493–57499

Small Business Administration
RULES
Government contracting programs:
Contract bundling and SBA's authority to appeal adverse decisions made by procuring agency, 57366–57372
NOTICES
Disaster loan areas:
Connecticut, 57506

Pennsylvania, 57506
Virginia, 57506

Social Security Administration

NOTICES

Social security benefits:
  Cost of living increase, SSI monthly benefit amounts increase, average of total wages, contribution and benefit base, etc., 57506–57512

State Department

NOTICES

Art objects; importation for exhibition:
  Berlin Metropolis: Jew and the New Culture (1890-1918), 57512

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency

See Agency for Toxic Substances and Disease Registry

Transportation Department

See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Transportation Statistics Bureau

Transportation Statistics Bureau

NOTICES

Motor carriers:
  Financial and operating information; public release of reports; exemption requests, 57512–57513

Treasury Department

See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
See Secret Service

NOTICES

Agency information collection activities:
  Submission for OMB review; comment request, 57513–57514
Meetings:
  International Financial Institution Advisory Commission, 57514

Separate Parts In This Issue

Part II
Department of Treaury, Internal Revenue Service, 57519–57521

Part III
Department of Education, 57523–57526

Part IV
Department of Education, 57527–57531

Part V
Department of Interior, Fish and Wildlife Service, 57533–57547

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
966.....57361
Proposed Rules:
46.....57405

10 CFR
Proposed Rules:
63.....57409

12 CFR
701.....57363
703.....57363
704.....57363
709.....57363
712.....57363
713.....57363
790.....57363
791.....57363
792.....57363
Proposed Rules:
202.....57409
205.....57409
213.....57409
226.....57409
230.....57409

14 CFR
Proposed Rules:
39.....57409

13 CFR
121.....57366
125.....57366

16 CFR
241.....57372

18 CFR
153.....57374
157.....57374
380.....57374

26 CFR
54.....57520

27 CFR
Proposed Rules:
4.....57413
5.....57413
7.....57413

29 CFR
2590.....57520

33 CFR
Proposed Rules:
165 (2 documents).....57418, 57419

34 CFR
674.....57528
682.....57528

39 CFR
Proposed Rules:
111.....57419

40 CFR
60.....57392
Proposed Rules:
2.....57421
50.....57424
144.....57430
146.....57430

42 CFR
Proposed Rules:
405.....57431

45 CFR
144.....57520
146.....57520

49 CFR
544.....57431

50 CFR
222.....57397
223.....57397
226.....57399
622.....57403
Proposed Rules:
17.....57534
622.....57436

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Rule

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AGENCY: A
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ACTION: In
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SUMMARY:
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Florida T
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Rules and Regulations

Federal Register
Vol. 64, No. 205
Monday, October 25, 1999

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV99–966–1 IFR]

Tomatoes Grown in Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Florida Tomato Committee (Committee) for the 1999–2000 and subsequent fiscal periods from $0.03 per 25-pound container to $0.025 per 25-pound container of tomatoes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: October 26, 1999. Comments received by December 27, 1999, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Florida tomatoes beginning August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule deceases the assessment rate established for the Florida Tomato Committee for the 1999–2000 and subsequent fiscal periods from $0.03 per 25-pound container to $0.025 per 25-pound container of tomatoes.

The Florida tomato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on September 10, 1999, and unanimously recommended 1999–2000 expenditures of $2,088,900 and an assessment rate of $0.025 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were $1,926,000. The assessment rate of $0.025 is $0.005 lower than the rate currently in effect. For the previous fiscal period, the Committee had planned to use funds from its authorized reserves to cover some of its approved expenses. The reserve fund was larger than the Committee believed it needed for program operations. However, there was a larger than expected supply of assessable tomatoes during 1998–99, and instead of the reduction, the amount in the reserve fund increased. In another effort to reduce the amount in the reserve fund, the Committee unanimously recommended reducing the assessment rate and using reserve funds to pay some of its operating expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $436,000 for salaries, $241,000 for research, $1,000,000 for education and promotion, and $150,000 for Market Access Program export promotion. Budgeted expenses for these items in 1998–99 were $364,000, $212,000, $900,000, and $200,000 respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50,000,000 25-pound containers which should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $1,879,557) will be kept within the maximum permitted by the order (§ 966.44; approximately one fiscal period's expenses).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 producers of tomatoes in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the industry and committee data for the 1998–99 season, the average annual f.o.b. price for fresh Florida tomatoes during the 1998–99 season was around $7.17 per 25-pound container, and total fresh shipments for the 1998–99 season are estimated at 56.7 million 25-pound containers of tomatoes. Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1998–99 season, and the 1998–99 season average price, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.03 per 25-pound container to $0.025 per 25-pound container of tomatoes. The Committee unanimously recommended 1999–2000 expenditures of $2,088,900 and an assessment rate of $0.025 per 25-pound container. The assessment rate of $0.025 is $0.005 lower than the 1998–99 rate. The quantity of assessable tomatoes for the 1999–2000 season is estimated at 50,000,000. Thus, the $0.025 rate should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 year include $436,000 for salaries, $241,000 for research, $1,000,000 for education and promotion, and $150,000 for Market Access Program export promotion. Budgeted expenses for these items in 1998–99 were $364,000, $212,000, $900,000 and $200,000, respectively.

For the 1998–99 fiscal period, the Committee decided to use reserve funds to cover some of its authorized expenses. The reserve fund was larger than the Committee believed it needed for program operations. However, there was a larger than expected supply of assessable tomatoes in 1998–99, and instead of the anticipated reduction, the amount in the reserve fund increased. In another effort to reduce the amount in the reserve fund, the Committee unanimously recommended reducing the assessment rate. The funds collected from assessments, along with money from the reserve fund will be adequate to cover the Committee's expenditures for the 1999–2000 fiscal year. Pursuant to § 966.44, the Committee is authorized to maintain an operating reserve not to exceed approximately one fiscal period's expenses.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $2,088,900 which included increases in salaries, research, and education and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.025 per 25-pound container of assessable tomatoes was then determined by dividing the total recommended budget by the quantity of assessable commodity, estimated at 50,000,000 25-pound containers for the 1999–2000 fiscal period. This is approximately $624,900 below the anticipated expenses, which the Committee determined to be acceptable as a means of reducing its operating reserves.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 1999–2000 season could range between $6.09 and

$9.70 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue could range between .26 and .41 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 10, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 fiscal period began on August 1, 1999, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable tomatoes beginning with the 1999–2000 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August 1, 1999, an assessment rate of $0.025 per 25-pound container is established for Florida tomatoes.

Dated: October 18, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–27742 Filed 10–22–99; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 703, 704, 709, 712, 713, 723, 790, 791 and 792

Credit Unions; Miscellaneous Technical Amendments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule.

SUMMARY: NCUA is correcting minor errors or omissions made in several rules. These amendments are technical rather than substantive.

DATES: This rule is effective October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: NCUA has issued final rules over several years that contain minor technical mistakes or omissions. Through various amendments, NCUA is correcting the errors found in the following rules.

12 CFR 701.2

NCUA is removing this section because it currently indicates that a publication entitled "Federal Credit Union Bylaws" is incorporated by reference into NCUA's regulations. However, NCUA does not have such a publication approved by the Office of the Federal Register.

12 CFR 701.21(a) and 12 CFR 703.20(c)

On March 5, 1998, § 701.27 was removed and incorporated into part 712, entitled "Credit Union Service Organizations (CUSOs)." 63 FR 10756. Therefore, NCUA is replacing references to § 701.27 with part 712 in these sections.

12 CFR 703.20(a) and 12 CFR 704.7(d)

Prior to September 29, 1998, member business loans were excluded from part 703 through § 701.21(h). On that date, NCUA issued an interim final rule that removed the member business loan provisions from § 701.21(h) and relocated them to part 723. 63 FR 51799. This change became final on May 27, 1999. 64 FR 28729. When part 723 was issued, NCUA unintentionally failed to amend § 703.20(a) to reflect the change. Similarly, NCUA is also replacing the reference to § 701.21(h) within § 704.7(d) to part 723.

12 CFR 709.5(e)

Section 709.5(e) refers to a list of claims found in paragraph (b) of this section. When paragraph (b)(9) was added to § 709.5(b), NCUA failed to amend paragraph (e) to reflect the change. 62 FR 12949, Mar. 19, 1997. Therefore, NCUA is now amending the last sentence of § 709.5(e).

12 CFR Part 712

Part 712 was adopted with the title to § 712.9 mislabeled in its table of contents. 63 FR 10756, Mar. 5, 1998. Therefore, NCUA is correcting the table of contents to represent the title of § 712.9 accurately.

12 CFR 712.3(a)

NCUA recently amended this section, but the amended language inadvertently repeated the first sentence of this paragraph. 64 FR 33187, June 22, 1999.

NCUA is removing the duplicative sentence.

12 CFR 713.2

NCUA recently adopted this section with a typographical error. 64 FR 28720, May 27, 1999. NCUA is replacing the word "potentials" with the word "potential."

12 CFR 723.1(b)(3)

NCUA is removing the word "or" from the phrase "amount equal to or less than $50,000" found in this paragraph. This language, relating to the definition of a member business loan, was adopted originally in an interim final rule and adopted in final form on May 27, 1999. 63 FR 51800, Sept. 29, 1998 and 64 FR 28730. NCUA is amending this rule to mirror the definition of member business rule found in the Federal Credit Union Act at 12 U.S.C. 1757a(c)(1)(B)(iii).

12 CFR 790.2(b)(7) and (b)(16)

NCUA changed the name of its Office of Information Systems to the Office of Technology and Information Systems. 59 FR 47072, Sept. 14, 1994. At the time the rule was amended, the name change was not reflected in paragraph (b)(7). Therefore, NCUA is correcting this omission. During the same rulemaking, NCUA created the Office of Corporate Credit Unions at § 790.2(b)(16). 59 FR 47072, Sept. 14, 1994. NCUA is changing a punctuation mark in this paragraph to distinguish clearly the duties listed for the office.

12 CFR 791.18(e)

Part 790 formerly consisted of rules regarding NCUA's structure and the disclosure of official records. NCUA restructured part 790 and moved the rules relating to the Freedom of Information Act to part 792. 54 FR 18476, May 1, 1989. The pertinent rules referenced in this section were redesignated to part 792, but NCUA did not amend this section to reflect the change. Therefore, NCUA is correcting the outdated citations with references to part 792.

12 CFR 792.54(b)

This paragraph refers to § 792.23. However, § 792.23 was redesignated to § 792.55. 63 FR 14338, March 25, 1998. Therefore the reference in § 792.54(b) will be changed to refer to § 792.55.

12 CFR 792.55(a) and 12 CFR 792.56(a)

Both of these sections refer to § 792.22. However, § 792.22 was redesignated to § 792.54. 63 FR 14338, March 25, 1998. Therefore, the references to § 792.22 will be changed to refer to § 792.54.

12 CFR 792.66(b)(2)

This section, formerly § 792.34(b)(2), was adopted with a typographical error by referring to System NCUA–4 rather than System NCUA–15. 54 FR 18476, May 1, 1989 and 60 FR 31912, Jun. 19, 1995. NCUA has consistently given notice that System NCUA–4 is the Verified Employee Mailing List and that System NCUA–15 contains investigative reports regarding criminal activity. Therefore, NCUA is amending the reference within § 792.66(b)(2) from System NCUA–4 to System NCUA–15. Additionally, the name of System NCUA–15 was changed from Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act to Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union, NCUA. 61 FR 8690, March 5, 1996. NCUA is amending this section to adopt the new name of System NCUA–15.

Regulatory Procedures

Final Rule Under the Administrative Procedure Act

The amendments to the final rule are technical rather than substantive. NCUA finds good cause that notice and public comment are unnecessary under sec. 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B).

Effective Date

NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under sec. 553(d)(3) of the APA. The rule is technical rather than substantive. The rule will, therefore, be effective immediately upon publication of this notice.

Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act is required only when an agency is required to publish a general notice of proposed rulemaking for any proposed rule. 5 U.S.C. 603. As noted previously, NCUA has determined that it is not necessary to publish a notice of proposed rulemaking for this rule. Accordingly, an initial regulatory analysis is not required. Moreover, since this final rule imposes no new requirements and makes only technical amendments, NCUA has determined and certifies that this rule will not have any significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets).

Small Business Regulatory Enforcement Fairness Act

Title II of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121) provides, generally, for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 it is not a major rule.

Paperwork Reduction Act

NCUA has determined that the final rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and regulations of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. A portion of this final rule will apply to all federally-insured credit unions. This final rule will not have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a significant regulatory action for purposes of the executive order.

List of Subjects

12 CFR Part 701

Credit unions, Incorporation by reference, Credit.

12 CFR Part 703

Credit unions, Investments, Credit.

12 CFR Part 704

Credit unions, Corporate credit unions, Credit.

12 CFR Part 709

Credit unions, Liquidation.

12 CFR Part 712

Credit unions, Credit union service organizations.

12 CFR Part 713

Credit unions, Fidelity bonds.

12 CFR Part 723

Credit Unions, Credit, Reporting and recordkeeping requirements.

12 CFR Part 790

Credit unions.

12 CFR Part 791

Credit unions, Sunshine Act, Reporting and recordkeeping requirements.

12 CFR Part 792

Administrative practice and procedure, Credit unions, Freedom of Information Act, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 12, 1999.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, NCUA amends 12 CFR chapter VII as set forth below:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 reads as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.2 [Removed and Reserved]

2. Remove and reserve § 701.2.

§ 701.21 [Amended]

3. In § 701.21(a), remove the word "§ 701.27" and add, in its place, the words "Part 712".

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

4. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.20 [Amended]

5. In § 703.20(a), remove the words "and 701.23" and add in their place, the words "701.23, and part 723"; and in § 703.20(c), remove the word "§ 701.27" and add, in its place, the words "part 712".

PART 704—CORPORATE CREDIT UNIONS

6. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

§ 704.7 [Amended]

7. In § 704.7(d), remove the word "§ 701.21(h)" and add, in its place, the words "part 723".

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

8. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1766; Pub. L. 101–73, 103 Stat. 183, 530 (1989) (12 U.S.C. 1787 *et seq.*).

§ 709.5 [Amended]

9. In § 709.5(e), remove "(b)(8)" and add, in its place "(b)(9)".

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

10. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1785, and 1786.

§ 712.3 [Amended]

11–12. In § 712.3(a), remove one sentence that reads "An FCU can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership."

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

13. The authority citation for part 713 continues to read as follows:

Authority: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

§ 713.2 [Amended]

14. In § 713.2, remove "potentials" and add, in its place "potential".

PART 723—MEMBER BUSINESS LOANS

15. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

§ 723.1 [Amended]

16. In § 723.1(b)(3), remove "to or less" and add, in its place, "to less".

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

17. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

§ 790.2 [Amended]

18. In § 790.2(b)(7), remove "Information Systems" and add, in its place, "Technology and Information Systems".

19. In § 790.2(b)(16), remove the comma after the word "manner" and add a semicolon in its place.

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

20. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 522b.

§ 791.18 [Amended]

21. In § 791.18(e), remove all the references to "790" and add, in their place, "792".

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

22. The authority citation for part 792 continues as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

§ 792.54 [Amended]

23. In § 792.54(b), remove "§ 792.23" and add, in its place, "§ 792.55".

§ 792.55 [Amended]

24. In § 792.55(a), remove "§ 792.22" and add, in its place, "§ 792.54".

§ 792.56 [Amended]

26. In § 792.56(a), remove "§ 792.22(a)" and add, in its place, "§ 792.54(a)".

§ 792.66 [Amended]

27. In § 792.66(b)(2), remove "NCUA–4" and add, in its place, "NCUA–15"; and remove the words "Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act" and add, in their place "Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union, NCUA".

[FR Doc. 99–27567 Filed 10–22–99; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

Government Contracting Programs

AGENCY: Small Business Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The Small Business Administration (SBA) is amending its regulations to address contract bundling due to changes set forth in the Small Business Reauthorization Act of 1997 (Pub. L. 105–135, 111 Stat. 2617). In addition, this rule restates SBA's current authority to appeal to the head of a procuring agency decisions made by the agency that SBA believes to adversely affect small businesses.

DATES: Effective Date: December 27, 1999.

Comment Date: Comments due on or before December 27, 1999.

ADDRESSES: Address comments to Linda G. Williams, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Anthony Robinson, Office of Government Contracting, (202) 205–6465.

SUPPLEMENTARY INFORMATION: Section 15(a) of the Small Business Act, 15 U.S.C. 644(a), authorizes SBA to appeal to the head of a procuring agency certain decisions made by the agency that SBA believes adversely affects small businesses. Section 413(b)(1) of Pub. L. 105–135 reinforced existing appeal rights and further defined section 15(a) of the Small Business Act for "an unnecessary or unjustified bundling of contract requirements." It left intact, however, SBA's current appeal rights. In this regard, the Joint Explanatory Statement of the bundling provisions contained in Public Law 105–135 as set forth in the Congressional Record specifically provided that "(n)othing in [the bundling amendments] is intended to amend or change in any way the existing obligations imposed on a procuring activity or the authority granted to the Small Business Administration under section 15(a) of the Small Business Act." 143 Cong. Rec. S11522, S11526 (daily ed. Oct. 31, 1997).

On January 13, 1999, SBA published a proposed rule in the **Federal Register** requesting public comments on implementation of sections 411–417 of the Small Business Reauthorization Act of 1997 (Pub. L. 105–135). *See* 64 FR 2153, Jan. 13, 1999. The statutory amendments recognize that the consolidation of contract requirements may be necessary and justified, in some cases. The rule requires that each Federal agency, to the maximum extent practicable, take steps to avoid unnecessary and unjustified bundling of contract requirements that preclude small business participation as prime contractors. The rule also requires each agency to eliminate obstacles to small business participation as prime contractors.

The comment period for 64 FR 2153 closed on March 15, 1999. SBA received 32 comments in response to the proposed rule. The comments are comprised of 11 (34 percent) from Government agencies, 11 (34 percent) from trade associations, 9 (28 percent) from small-businesses, and 1 (3 percent) from a large business.

SBA specifically requested comments on three difficult definitional areas: (1) What constitutes substantial bundling?; (2) what constitutes measurably substantial benefits as a justification for bundling?; and (3) what quantifiable test constitutes substantial if reduction of administrative or personnel costs is the sole basis for bundling? The comments and recommendations received by SBA to these questions and to other provisions of the proposed rule are discussed below in the section-by-section analysis.

SBA also identifies in the section-by-section analysis below the number of specific comments relating to particular provisions of the rule. Not all comments received addressed the issues contained in the proposed rule. For instance, several commenters identified a particular provision, but spoke of the problems caused by bundling generally, and not how the provision itself should be changed. Other commenters stated that they agreed with or disagreed with a particular provision without offering any reasoning or alternatives. Thus, SBA has not identified every comment that it received in response to a particular provision and responded to them.

Consistent with the statutory amendments, this rule defines "bundling," identifies the circumstances under which such "bundling" may be necessary and justified, and permits SBA to appeal bundling actions that it believes to be unnecessary and unjustified to the head of the procuring agency. It also authorizes two or more small businesses to form a contract team and for that team to be considered a small business for purposes of a bundled procurement requirement, provided that each small business partner to the teaming arrangement individually qualifies as a small business under the SIC code for the requirement. Finally, the rule restates SBA's current authority to appeal to the head of an agency other procurement decisions made by procuring activities that SBA believes will adversely affect small business.

The rule reorganizes and amends 13 CFR 125.2 to more clearly explain SBA's current rights under section 15(a) of the Small Business Act. The rule sets forth a procuring activity's current responsibilities to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely. It also requires a procuring activity to submit a proposed procurement to SBA for review where a proposed procurement for construction seeks to package or consolidate discrete construction projects. In addition, it authorizes SBA to appeal disagreements over the suitability of a particular acquisition for a small business set-aside first to the head of the contracting activity, and then to the head of the agency. This authority is currently granted to SBA by section 15(a) of the Small Business Act and was not affected by the addition of new rights regarding "bundling." This rule does not apply to contracts to be *awarded and performed* entirely outside of the United States.

In implementing the new statutory bundling provisions, the rule also requires a procuring activity to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work a "bundled" requirement, and authorizes SBA to appeal to the head of the contracting activity, and then to the head of the agency, "bundled" requirements that SBA believes are not necessary and justified. Whenever the procurement includes in its statement of work a "substantial bundling" of contract requirements, Section 15(a)(3) of the Small Business Act requires that the procuring activity document the benefits to be derived from the bundled contract and to justify its use.

The Small Business Act does not define "substantial bundling." The SBA defines substantial bundling in this interim rule.

The rule also defines what constitutes "measurably substantial benefits" for purposes of determining whether bundling is necessary and justified. The rule defines "measurably substantial benefits" to include, in any combination, or in the aggregate, cost savings; quality improvements that will save time, improve, or enhance performance or efficiency; reduction in acquisition cycle times; better terms and conditions; or any other benefits. In assessing whether benefits would be achieved through bundling, the analysis must compare the cost that was charged by small businesses for the work that they performed and, where available, the cost that could have been or could be charged by small businesses for the work not previously performed by small business. To proceed with a bundled procurement, a procuring activity must quantify the identified benefits as noted herein and explain how their impact would be measurably substantial.

The statute recognizes that in some circumstances bundling should be permitted because of the benefits that flow to the Government as a result of consolidation of requirements. Congress determined that those benefits may overcome any impact on small business in certain circumstances. The statutory language requires contracting officers to demonstrate "measurably substantial benefits" and the Joint Explanatory Statement calls for meaningful, enforceable controls to preclude unnecessary and unjustified bundling. Pursuant to the statute, there are two requirements that must be satisfied before items are bundled. The benefits to be derived by the Government must be "measurable" and they must be "substantial." In order to be "measurable," the benefits must be quantifiable. Pursuant to the statutory language, however, quantifiable benefits are not sufficient to justify bundling unless they are also "substantial." SBA developed objective, quantifiable criteria for determining when a consolidation of procurements will provide "measurably substantial benefits," and, thus, when bundling will be necessary and justified.

The proposed regulation (64 FR 2153) identified areas in which there may be "measurably substantial benefits," including cost savings or price reduction; quality improvements that will save time or improve or enhance performance or efficiency; reduction in acquisition cycle times; or better terms and conditions. The proposed rule also established specific criteria for measuring whether these benefits or improvements, which are to be derived, are "substantial." Those criteria are maintained in this interim rule.

The proposed regulation (64 FR 2153) also reiterated the statutory requirement that the reduction of administrative or personnel costs alone cannot be a justification for bundling unless the administrative or personnel costs are expected to be "substantial" in relation to the dollar value of the procurement (including options) to be consolidated. In determining whether the reduction of administrative or personnel costs are "substantial," the statute clearly required a comparison between the administrative or personnel costs without bundling to those anticipated with bundling. In response to public comment, this interim rule implements a quantifiable test, outlined below, for determining whether administrative or personnel cost savings are expected to be "substantial."

SBA is concerned that bundled contracts will render small business participation as prime contractors unlikely. Section 125.2(b)(5) of this interim rule authorizes SBA's Procurement Center Representatives (PCRs) to recommend alternative procurement methods to agencies to provide prime contract opportunities. These strategies include, under appropriate circumstances: (1) Breaking up the procurement into smaller discrete procurements to render them suitable for small business set-asides; (2) breaking out discrete components, where practicable, to be set aside for small business; or (3) when issuing multiple awards against a single solicitation, reserving one or more awards for small companies.

Section by Section Analysis

SBA received 10 comments concerning proposed § 121.103(f)(3). This section authorizes an exclusion from SBA's affiliation rules for a procurement that qualifies as a "bundled" requirement. Eight comments were in strong support of this section. One comment thought that this section should "address the implications of past performance." SBA believes that past performance should have no bearing on this regulatory provision for several reasons. Section 121.103(f)(3) is a *size* regulation. Past performance is more typically associated with responsibility, or a firm's ability to perform a specific contract opportunity. A firm's ability to perform a given contract, based on capacity, past performance, or other responsibility criteria, does not affect whether the concern is a small business or not. Moreover, this provision is a size rule for joint ventures or teaming relationships. A joint venture is normally a one-time association to perform a particular contract. There most likely is not any past performance history on the joint venture entity. In addition, one commenter suggested that the proposed rule reference a number of existing FAR provisions dealing with liability, consent to subcontracts, and performance and payment bonds. SBA believes existing Federal Acquisition Regulation (FAR) provisions are adequate for purposes of this rule and sees no need to amend this section.

SBA received two comments concerning § 125.2(a). One commenter thought that a literal reading of this section requires all awards to be made to small businesses. SBA first notes that the language contained in the regulations repeats almost verbatim the statutory language contained in section 15(a) of the Small Business Act. SBA does not agree that language requires what the commenter suggests. The statutory and regulatory language requires award to a small business only where "SBA and the procuring or disposal agency" determine one of four things to be present. If the procuring or disposal agency does not agree that one of those circumstances exists and SBA does not appeal that decision to the head of the agency, award need not be made to a small business. Another commenter suggested extending the rule to include nonprofit agencies contracting with the Government. SBA's size regulations have historically defined a "small business concern" to be a business entity organized for profit. This rule is not the appropriate vehicle to consider changes to that longstanding position, and SBA makes no changes in that regard.

SBA received no comments concerning § 125.2(b)(1), which generally discusses the duties of SBA PCRs. As such, § 125.2(b)(1) remains as proposed.

SBA received eight comments concerning § 125.2(b)(2), which requires the procuring agency to provide a copy of a proposed acquisition strategy to the PCR 30 days prior to issuance or to the Government Contracting Area Office if a PCR is not assigned to the buying activity. This section is consistent with FAR 19.202–1(e)(1) (Encouraging Small Business Participation). Most of the comments expressed concern about possible delays in SBA's response. The procedures and time frames for PCR response are set forth in FAR 19.402(c)(2) and FAR 19.505 (48 CFR 19.402 and 19.505) which SBA believes are adequate. Therefore, the interim rule remains as proposed.

SBA received four comments concerning § 125.2(b)(3) that requires the procuring agency to give the PCR a written statement of explanation and justification for bundling. The statement must explain why certain small business accommodations are not possible. One commenter thought this section would be burdensome and adds little value given the other criteria in the rule. Sections 411 through 417 of SBA's Reauthorization Act specifically require this written justification. As such, it remains as proposed in this interim rule.

SBA received one comment concerning § 125.2(b)(4), which requires PCRs to identify capable small businesses, including small business teams, for particular requirements on bundled contracts. The commenter suggested a 30-calendar-day requirement for such an identification process to avoid or limit acquisition delays. Timeframes regarding PCR actions are currently addressed in 48 CFR 19.5. This section remains as proposed.

Six commenters endorsed the proposed change to § 125.2(b)(5), which provides the SBA's PCRs with a number of alternatives to recommend to procurement officials who are considering the bundling of contracts into one larger contract. These commenters also recommended that proposed § 125.2(b)(5) be modified to include the following two additional alternatives: recommending the solicitation and resultant contract specifically state the small business subcontracting goals which are expected of the contractor awardee, and recommending that the small business subcontracting goals be based on contract dollars versus subcontract dollars. SBA finds that these suggestions have merit and have incorporated them in this interim rule.

One commenter suggested a time frame to develop alternatives to bundling. FAR 19.402(c)(2) already specifies the time frame.

SBA received three comments concerning § 125.2(b)(6), which authorizes a PCR to appeal to the head of the contracting activity and subsequently to the secretary of the department, or the head of the agency, in cases where there is disagreement between the PCR and the contracting officer. One commenter suggested that this section be clarified by stating that the appeal be initiated within 30 calendar days of following receipt of the contracting activity's acquisition strategy statement. SBA believes that existing provisions in FAR 19.505 adequately address this issue.

SBA received one comment concerning § 125.2(b)(7), which requires the PCR to work with the procuring activity's Small Disadvantaged Business Utilization Specialists (SADBUS). The commenter stated that term was changed to Small Business Specialist in 1997. This term was changed by the Federal Acquisition Streamlining Act (FASA) in 1995. Accordingly SBA will incorporate the recommended change.

SBA received one comment concerning § 125.2(d)(1), which defines certain identified terms used in these regulations. The comment related to the impact of the rule on simplified acquisitions and administrative lead-time. Since the interim rule establishes a dollar value standard for the determination of substantial bundling, this section need not be changed from the proposed rule.

SBA received no comments concerning § 125.2(d)(2), which restates the statutory mandates. This section is not changed in this interim rule.

SBA received 38 separate comments concerning § 125.2(d)(3) and its subsections. Paragraph (d)(3)(i) mandates market research to determine whether bundling is necessary and justified. We believe that the paragraph, as written, meets the congressional intent, and it will remain as proposed. The comments received concerning § 125.2(d)(3)(iii)(A) were diverse, but none offered definitive criteria from which to quantify measurably substantial benefits. SBA has reconsidered its original proposal and has formulated a two tiered approach to quantify measurably substantial benefits. In the first approach, depending upon the estimated dollar value of the procurement (including options), the contracting activity must quantify the identified benefits and explain how their impact would be measurably substantial. SBA has established percentages to quantify the benefits which must be met. In the second approach, where the benefits do not meet the thresholds established by SBA, the Assistant Secretaries with responsibility for acquisition matters (Service Acquisition Executives) or the Under Secretary of Defense for Acquisition and Technology (for other Defense Agencies) in the Department of Defense, and the Deputy Under Secretary or equivalent for civilian agencies can determine on a non-delegable basis, that the consolidated requirement is critical to the success of the agency's mission. The procedures in § 125.2(d)(3)(iii) (A) and (B) are not applicable to consolidated procurements that are subject to the cost comparisons conducted in accordance with OMB Circular A–76.

SBA received two comments concerning § 125.2(d)(4), which requires agencies, in cases of substantial bundling, to document their procurement strategies and to include a determination that the anticipated benefits justify the use of bundling. One commenter believed that the rule should state that SBA will assist the contracting officer in identifying less obvious obstacles to small business participation. Because this is implicitly stated elsewhere in the rule, SBA believes that re-statement here is unnecessary.

One commenter recommended deletion of § 125.2(d)(4)(iii), as its might be confusing. SBA believes that the provision is clear, and does not change it from the proposed rule.

SBA received six comments concerning proposed § 125.2(d)(5), which specified values for small business evaluation criteria. Some commenters believed that this proposal unduly involved the SBA in another agency's contractor selection process. SBA believes that its statutory mandate provides authority to require this evaluation criteria. Accordingly, this section remains unchanged in this interim rule.

SBA received eight comments on § 125.6(g). This section provides that when the small business members of a team submitting an offer are exempt from affiliation, the performance of work requirements shall apply to the cooperative effort of the team or joint venture, not its individual members. Seven commenters recommended that for services, this section should be strengthened to require that the cooperative effort of the team or joint venture perform at least 70 percent of the cost of the contract incurred for personnel. Changing the percentages of work required by small businesses is beyond the scope of this rule.

Another commenter suggested clarifying language regarding contractual obligations, similar to an earlier recommendation. SBA finds this change unnecessary.

Defining Substantial Bundling

The SBA sought comments on appropriate ways to define substantial bundling (for example, in terms of threshold contract value or a threshold number of geographic locations and Standard Industrial Classification (SIC) codes). Several commenters recommended that substantial bundling not be defined and to leave determinations of substantial bundling to the discretion of the contracting officer. The supporting rationale for this approach is that if the Congress wanted to define substantial bundling they would have done so in statute. The absence of a clear-cut definition of substantial bundling, however, creates a number of serious administrative issues, which, if unresolved, would defeat congressional intent. SBA's approach is to provide a clear and reasonable standard. For example, in evaluating the level of substantial bundling, the Congress directed that the Federal Procurement Data Center track bundling of contract awards at the five million-dollar level. While SBA believes that this level is too low for the purpose of defining "substantial bundling," it demonstrates that a single dollar standard for defining substantial bundling is consistent with congressional intent. Several other commenters supported an objective standard for determining what constitutes "substantial bundling."

Bundling is any contract consolidation that renders a contract likely to be unsuitable for award to a small business concern due to the aggregate dollar value of the anticipated award; the diversity, size, or specialized nature of the elements of the performance specified; the geographic dispersion of contract performance sites; or any combination of these three criteria. SBA determined that the aggregate dollar value of the anticipated award is the single most important criteria for determining substantial bundling. The other criteria, while significant, do not rise to the level of importance as the aggregate dollar value of anticipated award. In addition, the other criteria are generally correlated to high aggregate dollar levels.

As such, this interim rule defines substantial bundling as the aggregation of two or more contracts whose combined average annual value is at least $10 million. Typically, contracts are described in terms of their total value over the life of the contract. Thus, for example, a one-year contract with four one-year options with a value of $10 million for the base year and each option year, would be considered a $50 million contract. SBA determined that the $10 million substantial bundling threshold will meet the statutory mandate to avoid unnecessary and unjustified bundling of contract requirements that precludes small-business participation as prime contractors. Establishing the $10 million threshold will not unduly burden federal agencies with the administrative requirements of this regulation. Using the threshold, contracting officers and the public can easily determine whether a given consolidation of requirements constitutes substantial bundling. For example, a consolidation of two contracts each with an average value of $6 million into one contract with an average annual value of $12 million constitutes substantial bundling.

Defining Measurably Substantial Benefits

When a procuring activity intends to proceed with a "bundled" requirement, it must document that the bundling is necessary and justified. If it cannot do so, the procuring activity cannot go forward with the consolidation. In order for bundling to be necessary and justified, the consolidation must achieve "measurably substantial benefits." In its proposed rule, SBA specifically asked for comments on how SBA could best objectively define this term. SBA received 11 comments regarding how "measurable substantial benefits" should be defined. Of these eleven, four were from Federal Government agencies, six from trade associations, and one from a small business firm.

Several commenters suggested that "measurably substantial benefits" cannot be defined since the criteria set forth in the legislation are not directly comparable. SBA recognizes the lack of direct comparability in the criteria as commonly understood. However, to meet Congressional intent, SBA has determined that for purposes of this interim rule all anticipated benefits be expressed in dollars. This will permit computation of benefits as a percentage of the total anticipated contract award.

After considering all comments received, SBA concluded that measurably substantial benefits must be expressed as a percentage of the anticipated contract award value (including options). This is necessary in order to facilitate comparisons among the varying benefits to be derived. In other words, a reduction in cycle time must be converted to a dollar value in order to be compared to the other criteria such as cost savings. Without a common denominator such as dollars, or percent of dollars, the careful analysis and justification the law contemplates would not be possible. The inability to express the various competing criteria without a common denominator would, in effect, prevent evaluation. Several commenters offered a percentage savings. Two recommended 25 percent and one recommended 20 percent. One commenter advocated flexibility and did not propose a percentage. Even though the commenters recommended a higher percentage than those adopted by SBA in this interim rule, SBA believes that its approach provides an appropriate balance between the efficiencies of larger procurements and the socio-economic benefits derived through the use of small businesses.

SBA determined that measurably substantial benefits should be quantified using a two tiered approach: (1) Benefits equivalent to 10 percent if the contract value (including options) is $75 million or less; or (2) benefits equivalent to 5 percent if the contract value (including options) is over $75 million. The benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions and any other benefits that individually, in combination, or in the aggregate would lead to the above benefits. The rule also permits the Assistant Secretaries with responsibility for acquisition matters (Service Acquisition Executives) or the Under Secretary of Defense for Acquisition and Technology (for other Defense Agencies) in the Department of Defense, and the Deputy Secretary or equivalent for civilian agencies, on a non-delegable basis, to determine that a bundled contract is necessary and justified when: (1) There are benefits that do not meet the thresholds defined above but, in the aggregate, are critical to the agency's mission success; and (2) the procurement strategy provides for maximum practicable participation by small businesses.

The procedures described above do not apply to consolidated procurements that are subject to the cost comparisons conducted in accordance with OMB Circular A–76.

SBA believes that this approach takes into consideration the likelihood that savings will vary depending on the size of the contract. SBA has no historical data on cost savings associated with bundled contracts from which to determine a quantifiable measure. However, SBA does maintain records on the value of bundled contracts that we review. Based on data that SBA has collected over the past 4 years, it was determined that the majority of bundled contracts fell within a range between $50 million and $75 million. We believe that the highest percentage to quantify the benefits should be applied to contracts of $75 million or less. At levels above $75 million, benefits equivalent to 5 percent of the contract value (including options) would still equate to measurably substantial benefits.

Defining Measurably Substantial Administrative or Personnel Cost Savings

This interim rule reiterates the statutory requirement that the reduction of administrative or personnel costs alone cannot be a justification for bundling unless the administrative or personnel costs are expected to be "substantial" in relation to the dollar value of the procurement (including options) to be consolidated. In determining whether the reduction of administrative or personnel costs are "substantial," the statute clearly requires a comparison between the administrative or personnel costs without bundling to those anticipated with bundling. SBA is committed to implementing a quantifiable test for determining whether administrative or personnel cost savings are expected to be "substantial."

SBA specifically requested comments on how best to define "substantial" administrative or personnel cost savings. SBA received six comments regarding defining "measurably substantial administrative or personnel cost savings," two from Federal agencies, three from trade associations, and one from a small business concern. Several commenters offered specific percentages to define substantial administrative savings. Commenters suggested 10 percent, 20 percent and 25 percent. SBA determined that a saving of at least 10 percent of the anticipated contract award (including options) will be deemed substantial for purposes of this section.

Compliance With Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)

SBA certifies that this interim rule, if adopted in final form, would not be a significant rule within the meaning of Executive Order 12866. The rule does not impose costs upon the businesses, which may be affected by it. It is not likely to have an annual economic impact of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

SBA has determined that this interim rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612. The interim rule can potentially apply to all small businesses that are performing or may want to perform on the prime contract opportunities of the Federal Government. While there is no precise estimate of the number of small entities or the extent of the economic impact, SBA believes that a significant number of small businesses would be affected. SBA has submitted a complete Initial Regulatory Flexibility Analysis of this interim rule to the Chief Counsel for Advocacy of the Small Business Administration. For a copy of this analysis, please contact Anthony Robinson at (202) 205–6465.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required on the Government by law.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

For the reasons stated in the preamble, SBA amends 13 CFR part 121 and 125 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Section 121.103, revise paragraphs (f)(3)(i) to read as follows:

§ 121.103 What is affiliation?

* * * * *

(f) * * *

(3) * * *

(i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under paragraph (f) of this section so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(A) The procurement qualifies as a "bundled" requirement, at any dollar value, within the meaning of § 125.2(d)(1)(i) of this chapter; or

(B) The procurement is other than a "bundled" requirement within the meaning of § 125.2(d)(1)(i) of this chapter, and:

(*1*) For a procurement having a revenue-based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(*2*) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds $10 million.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

1. The authority citation for 13 CFR part 125 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701, 9702.

2. In § 125.2, redesignate paragraphs (a) and (b) as paragraphs (b) and (c), respectively, revise newly designated paragraph (b), and add new paragraphs (a) and (d) to read as follows:

§ 125.2 Prime contracting assistance.

(a) *General.* Small business concerns must receive any award or contract, or any contract for the sale of Government property, that SBA and the procuring or disposal agency determine to be in the interest of:

(1) Maintaining or mobilizing the Nation's full productive capacity;

(2) War or national defense programs;

(3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or

(4) Assuring that a fair proportion of the total sales of Government property is made to small business concerns.

(b) *PCR and procuring activity responsibilities.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set-aside for small businesses to determine whether a set-aside is appropriate.

(2) A procuring activity must provide a copy of a proposed acquisition strategy (e.g., Department of Defense Form 2579, or equivalent) to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance whenever a proposed acquisition strategy:

(i) Includes in its description goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely;

(ii) Seeks to package or consolidate discrete construction projects; or

(iii) Meets the definition of a bundled requirement as defined in paragraph (d)(1)(i) of this section.

(3) Whenever any of the circumstances identified in paragraph (b)(2) of this section exist, the procuring activity must also submit to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) a written statement explaining why:

(i) If the proposed acquisition strategy involves a bundled requirement, the procuring activity believes that the bundled requirement is necessary and justified under the analysis required by paragraph (d)(3)(iii) of this section; or

(ii) If the description of the requirement includes goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects:

(A) The proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement;

(B) Delivery schedules cannot be established on a basis that will encourage small business participation;

(C) The proposed acquisition cannot be offered so as to make small business participation likely; or

(D) Construction cannot be procured as separate discrete projects.

(4) In conjunction with their duties to promote the set-aside of procurements for small business, PCRs will identify small businesses that are capable of performing particular requirements, including teams of small business concerns for larger or bundled requirements (see § 121.103(f)(3) of this chapter).

(5)(i) If a PCR believes that a proposed procurement will render small business prime contract participation unlikely, or if a PCR does not believe a bundled requirement to be necessary and justified, the PCR shall recommend to the procurement activity alternative procurement methods which would increase small business prime contract participation. Such alternatives may include:

(A) Breaking up the procurement into smaller discrete procurements;

(B) Breaking out one or more discrete components, for which a small business set-aside may be appropriate; and

(C) Reserving one or more awards for small companies when issuing multiple awards under task order contracts.

(i) Where bundling is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small business prime contract participation to the maximum extent practicable.

(ii)The PCR will also work to ensure that small business participation is maximized through subcontracting opportunities. This may include:

(A) Recommending that the solicitation and resultant contract specifically state the small business subcontracting goals which are expected of the contractor awardee; and

(B) Recommending that the small business subcontracting goals be based on total contract dollars instead of subcontract dollars.

(6) In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, whether or not the acquisition is a bundled or substantially bundled requirement within the meaning of paragraph (d) of this section, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the secretary of the department or head of the agency. The time limits for such appeals are set forth in 19.505 of the Federal Acquisition Regulation (FAR) (48 CFR 19.505).

(7) PCRs will work with a procuring activity's Small Business Specialist (SBS) to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SBS and PCR will facilitate small business participation as subcontractors or suppliers.

* * * * *

(d) Contract bundling—(1) Definitions—(i) Bundled requirement or bundling. The term "bundled requirement or bundling" refers to the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to:

(A) The diversity, size, or specialized nature of the elements of the performance specified;

(B) The aggregate dollar value of the anticipated award;

(C) The geographical dispersion of the contract performance sites; or

(D) Any combination of the factors described in paragraphs (d)(1)(i) (A), (B), and (C).

(ii) *Separate smaller contract:* A separate smaller contract is a contract that has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.

(iii) *Substantial bundling:* Substantial bundling is any contract consolidation, which results in an award whose average annual value is $10 million or more.

(2) *Requirement to foster small business participation:* The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers in the contracting opportunities of the Government. To comply with this requirement, agency acquisition planners must:

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small disadvantaged, 8(a) and women-owned business concerns; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

(3) *Requirement for market research.* (i) In addition to the requirements of paragraph (b)(2) of this section and before proceeding with an acquisition strategy that could lead to a contract containing bundled or substantially bundled requirements, an agency must conduct market research to determine whether bundling of the requirements is necessary and justified. During the market research phase, the acquisition team should consult with the applicable PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(ii) The procuring activity must notify each small business which is performing a contract that it intends to consolidate that requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the bundled or substantially bundled requirement. The procuring activity, at that time, should also provide to the small business the name, phone number and address of the applicable SBA PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(iii) When the procuring activity intends to proceed with an acquisition involving bundled or substantially bundled procurement requirements, it must document the acquisition strategy to include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency's requirements through separate smaller contracts.

(A) The procuring activity may determine a consolidated requirement to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not consolidated, it would derive measurably substantial benefits. The procuring activity must quantify the identified benefits and explain how their impact would be measurably substantial. The benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits that individually, in combination, or in the aggregate would lead to:

(*1*) Benefits equivalent to 10 percent if the contract value (including options) is $75 million or less; or

(*2*) Benefits equivalent to 5 percent if the contract value (including options) is over $75 million.

(B) Notwithstanding paragraph (d)(3)(iii)(A) of this section, the Assistant Secretaries with responsibility for acquisition matters (Service Acquisition Executives) or the Under Secretary of Defense for Acquisition and Technology (for other Defense Agencies) in the Department of Defense and the Deputy Secretary or equivalent in civilian agencies may, on a non-delegable basis determine that a consolidated requirement is necessary and justified when:

(*1*) There are benefits that do not meet the thresholds set forth in paragraph (d)(3)(iii)(A) of this section but, in the aggregate, are critical to the agency's mission success; and

(*2*) Procurement strategy provides for maximum practicable participation by small business.

(C) Notwithstanding paragraph (d)(3)(iii)(A) and (B) of this section, a consolidated requirement is necessary and justified when it is subject to the cost comparison conducted in accordance with OMB Circular A–76.

(D) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the administrative or personnel cost savings are expected to be substantial, in relation to the dollar value of the procurement to be consolidated (including options). To be substantial, such cost savings must be at least 10 percent of the contract value (including options).

(E) In assessing whether cost savings and/or a price reduction would be achieved through bundling, the procuring activity and SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

(4) *Substantial bundling.* Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and must include, at a minimum:

(i) The analysis for bundled requirements set forth in paragraph (d)(3)(iii) of this section;

(ii) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(iii) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement; and

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

(5) *Significant subcontracting opportunity.* (i) Where a bundled or substantially bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in evaluating offers:

(A) A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and

(B) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(ii) Where the offeror for such a bundled contract qualifies as a small business concern, the procuring agency must give to the offeror the highest score possible for the evaluation factors identified in paragraph (d)(5)(i) of this section.

5. In § 125.6, add new paragraph (g) to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(g) Where an offeror is exempt from affiliation under § 121.103(f)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the team or joint venture, not its individual members.

Dated: October 19, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–27801 Filed 10–22–99; 8:45 am]

BILLING CODE 8025–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 241

Guides for the Dog and Cat Food Industry

AGENCY: Federal Trade Commission.

ACTION: Recession of the Guides for the Dog and Cat Food Industry; announcement of enforcement policy.

SUMMARY: On March 18, 1999, the Commission published a **Federal Register** document initiating the regulatory review of the Federal Trade Commission's ("Commission" or "FTC" Guides for the Dog and Cat Food Industry ("Dog and Cat Food Guides" or "Guides") and seeking public comment. The Commission has now completed its review, and this document announces the Commission's decision to rescind the Guides.

EFFECTIVE DATE: October 25, 1999.

ADDRESSES: Requests for copies of this document should be send to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The document is available on the Internet at the Commission's website. http://www.flc.gov.

FOR FURTHER INFORMATION CONTACT: Jock Chung, Attorney, Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Avenue NW, S–4302, Washington, DC 20580, (202) 326–2984, e-mail <jchung@flc.gov.>.

SUPPLEMENTARY INFORMATION: .

I. Introduction

The Dog and Cat Food Guides address claims about food for dogs or cats, including dry, semimost, frozen, canned, and other commercial foods manufactured or marketed for consumption by domesticated dogs or cats, as well as claims about special candy for dogs and cats, but not claims about animal medicines or remedies. The Guides apply to "industry members," defined as any person, firm, corporation, or organization engaged in the importation, manufacture, sale or distribution of dog or cat food. In summary, the Dog and Cat Food Guides advise against:

(1) Misrepresenting dog or cat food in any material respect; for example, misrepresenting the composition, form, suitability, quality, color, flavor of any dog or cat food; misrepresenting that any dog or cat food meets the dietary or nutritional needs of dogs and cats; or misrepresenting that any dog or cat food will provide medicinal or therapeutic benefits;

(2) Misrepresenting that any dog or cat food is fit for human consumption or has been made under the same sanitary conditions as food for humans;

(3) Misrepresenting the processing methods used in the manufacture or processing of any dog or cat food;

(4) Making false statements about the conduct of competitors or about the quality of competitors' products;

(5) Misrepresenting the length of time a dog or cat food company has been in business, its rank in the industry, or that it owns a laboratory or other testing facilities;

(6) Using deceptive endorsements or testimonials, or deceptively claiming that any dog or cat food has received an award;

(7) Offering for sale any dog or cat food when the offer is not a bona fide effort to sell the product so offered as advertised and at the advertised price; .

(8) Failing to include details, such as the manner in which the guarantor will perform and the identity of the guarantor, for all guarantees, or warranties offered for dog or cat food; and

(9) Misrepresenting the price at which any dog or cat food may be purchased.

As part of the Commission's ongoing review of all current Commission rules and guides, the Commission published a **Federal Register** notice on March 18, 1999, 64 FR 13368, seeking comments about the Guides' overall costs and benefits, and the continuing need for the Guides. The Commission received six comments in response.[1]

One comment, from the American Pet products Manufacturers Association, Inc., favors eliminating the Guides. It suggests that the Association of American Feed Control Officials ("AAFCO")[2] Model Pet Food Regulations (AAFCO Model Regulations) now act as "an authoritative guide for regulator to review labels." It further suggests that elimination of the guides will eliminate confusion, and notes that "dog and cat food manufacturers are compelled to conform to general truth in advertising standards set by FTC for all consumer goods."

The remaining five comments support retaining the Guides. In general, these comments suggest that the Guides are useful in providing guidance and setting standards for dog and cat food advertising, while the AAFCO Model Regulations, and the individual state regulations patterned after the AAFCO Model Regulations, are limited to setting standards for pet food labeling. These comments further generally suggest that the Guides impose minimal costs because they "are essentially similar to other regulations."

After carefully reviewing the comments and the Guides, the Commission has concluded that the Guides no longer are needed. The Commission, therefore, has determined to rescind the Dog and Cat Food Guides. In the following part of this notice, the Commission explains its decision o rescind the Guides, and provides guidance to industry members, who must continue to comply with the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41–58, when labeling and advertising dog and cat food.

II. Reasons for Rescission

The purpose of guides is to assist industry members in complying with the FTC Act, and especially with Section 5 of the FTC Act, 15 U.S.C. 45(a)(1), which prohibits "unfair or deceptive acts or practices in or affecting commerce." Guides are particularly useful when they resolve uncertainty over what claims are likely to be considered deceptive. The current Guides, however, in many sections only advise against making misrepresentations on various subjects and thus do not elaborate on the requirements of section 5 in a meaningful way. Except for topics also addressed by pet food model regulations drafted by AAFCO or animal food regulations issued by the Food and Drug Administration ("FDA"), the Guides do not provide substantial guidance regarding what specific claims the Commission is likely to find deceptive.

The AAFCO Model Regulations provide detailed requirements for labeling pet food, including dog and cat food.[3] For example, the Model Regulations contain detailed feeding protocols for proving growth claims for dog foods and for cat foods, and define various terms used to advertise pet food.[4] The FDA also has issued regulations covering animal food labeling, 21 CFR Part 501. These regulations contain detailed requirements for the labeling of packaged animal foods, including pet foods. Portions of these regulations can also provide guidance to industry members about, for example, the terminology to be used to identify pet foods,[5] to describe pet food ingredients,[6] or to describe flavoring.[7]

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[1] The Commission's request for public comment elicited six comments from industry, educational, and regulatory entities, and no comments from consumers or consumer groups: (1) American Feed Industry Association; (2) State of Delaware Department of Agriculture; (3) American Pet Products Manufacturers Association, Inc.; (4) Pet Food Institute; (5) University of Minnesota College of Veterinary Medicine; and (6) Division of Animal Feeds of the Food and Drug Administration's Center for Veterinary Medicine. These comments are on the public record in file number P994242 as document numbers B25346100001 through B25346100006, and are available for viewing in Room 130 at the Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, from 8:30 AM to 5 PM, Monday-Friday.

[2] AAFCO is an association open to officials or employees of any state, dominion, federal, or other governmental agency responsible for "regulating the production, labeling, distribution, or sale of animal feeds or livestock remedies." Among other things, AAFCO promotes uniform laws, regulations, and enforcement policies by creating model regulations, including Model Pet Food Regulations setting requirements for pet food labels. At present, AAFCO has representatives from agencies in all fifty states and Puerto Rico, as well as from Canada and federal agencies.

[3] The AAFCO Model Regulations specify labeling requirements for pet food (including food for dogs, cats, and other pets). The Model Regulations require that certain nutritional information appear on labels, and prohibit a variety of misrepresentations, e.g., Regulation PF2(f) prohibits graphics or pictures that misrepresent the contents of the package. The Model Regulations cover claims about nutrition, ingredients, and product characteristics, such as that a pet food controls tartar.

[4] For example, Regulation PF8(b)(1)a. requires that any dog food product labeled as being "lean" must contain no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture. Regulation PF8(b)(1)b. places similar requirements on any cat food product labeled as being "lean."

Several commentators stated that they do not consider the AAFCO Model Regulations to be sufficient to protect consumers, primarily because the AAFCO Model Regulations (and state regulations based on the AAFCO Model Regulations) do not cover advertising. By rescinding the Guides, however, the Commission is not relinquishing jurisdiction over the labeling and advertising of dog and cat food. In fact, pet food labeling and advertising, including labeling and advertising for foods for pets other than dogs and cats, must still comply with Section 5 of the FTC Act. In enforcing Section 5, however, the Commission will be unlikely to challenge advertising claims under the FTC Act that are consistent with labeling claims that satisfy the requirements of the AAFCO Model Regulations or the regulations issued by the FDA. As in any area of policy, the Commission strives to minimize regulatory burdens on industry by avoiding conflicts with other federal and state regulatory agencies.

For those topics not addressed by the AAFCO Model Regulations or by FDA's regulations, the Dog and Cat Food Guides provide only limited guidance, and do not resolve demonstrated uncertainty regarding what claims are likely to be deceptive. For example, §§ 241.3, 241.6, 241.7, and 241.11 of the Guides merely admonish industry members not to misrepresent various characteristics of dog or cat food.[8] The Commission does not believe that it is necessary to retain guides that simply admonish sellers not to misrepresent various items, especially when, as here, there is no evidence that sellers to not understand that such misrepresentations are illegal.

Further, there do not currently appear to be particular areas covered by the Guides where industry members would have difficulty in determining whether specific claims are likely to be deceptive. For example, the Commission believes that industry members should have little difficulty determining that a representation that a dog or cat food contains whole fresh milk is likely to be deceptive if it does not contain whole fresh milk (*see* 16 CFR 241.5(f)). In addition, industry members should know, without the Guides, that they should not disseminate advertising for dog or cat food that contradicts the labeling on the product (*see* 16 CFR 241.6(m)). Thus, the Dog and Cat Food Guides do not appear to clarify specific representations that likely will be considered deceptive.

Other sections of the Guides dealing with claims beyond dog and cat food content and nutrition are also unnecessary, for they do not provide guidance beyond that given in other Commission guides. For example, §§ 241.15, Bait advertising, and 241.16, Guarantees, warranties, etc., of the Guides do not give significant guidance beyond that already contained in the Commission's Guides Against Bait Advertising (16 CFR 238) and Guides for the Advertising of Warranties and Guarantees (16 CFR part 239).

For all of these reasons, the Commission has determined to rescind the Dog and Cat Food Guides.

III. Other Guidance

In rescinding the Guides, the Commission directs the industry's attention to the principles of law articulated in the FTC's Deception Statement[9] and pertinent Commission and court decisions on deception, both of which are generally applicable to all industries. As articulated in the Policy Statement on Deception, the Commission "will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, the consumer's detriment." In addition, industry members are required to possess substantiation for objective claims made about products.[10] That is, advertisers must have a reasonable basis for claims before they are disseminated.

Therefore, sellers must have competent and reliable evidence to substantiate objective claims about dog or cat food, such as claims that dog or cat food provides adequate nutrition or promotes health in dogs or cats. In this respect, the AAFCO Model Regulations and FDA's regulations on animal food labeling may provide industry members with useful guidance. Other tests, research, or information, however, also might be used by sellers to substantiate claims. Industry members bear the responsibility of ensuring that such information constitutes competent and reliable evidence in support of their claims. The Commission will evaluate the adequacy of substantiation on a case-by-case basis.

List of Subjects in 16 CFR Part 241

Advertising, Animal food, Foods, Labeling, Pets, Trade practices.

PART 241—[REMOVED]

The Commission, under the authority of Sections 5(a) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 46(g), amends chapter I of title 16 in the Code of Federal Regulations by removing part 241.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 99–27783 Filed 10–22–99; 8:45 am]

BILLING CODE 6750–01–M

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[5] For example, 21 CFR 501.3(e) requires that the term "imitation" be used to identify certain animal foods.

[6] For example, 21 CFR 501.4(b)(ii)(3) permits concentrated skim milk or reconstituted skim milk to be referred to as "skim milk" on labels.

[7] For example, 21 CFR 501.22(a)(3) sets requirements for using the terms "natural flavor" or "natural flavoring."

[8] Section 241.3, for example, advises industry members not to misrepresent dog or cat food "in any . . . material respect."

[9] Deception Statement, appended to Cliffdale Associates, Inc., et al., 103 F.T.C. 110, 175 (1984).

[10] Policy Statement Regarding Advertising Substantiation, 48 FR 10471 (Mar. 11, 1983), appended to Thompson Medical Co., 104 F.T.C. 648, 839 (1984).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153, 157, 380

[Docket No. RM98–17–000; Order No. 609]

Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements

Issued October 13, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Natural Gas Act (NGA) by adding certain early landowner notification requirements that will ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Commission also is amending certain areas of its regulations to provide pipelines with greater flexibility and to further expedite the certificate process, including expanding the list of activities categorically excluded from the need for an Environmental Assessment in § 380.4 of the Commission's regulations; and expanding the types of events that allow pipelines to rearrange facilities under their blanket construction certificates.

Finally, the Commission also is requiring that pipelines conduct an abbreviated consultation with the National Marine Fisheries Service concerning essential fish habitat as

required by regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act; and applying the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures to activities conducted under the pipelines' blanket construction certificates.

DATES: These regulations become effective November 24, 1999.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

John S. Leiss, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1106

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2246

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 8.0. User assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Natural Gas Act (NGA) by adding certain early landowner notification requirements that will ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Commission also is amending certain areas of its regulations to provide pipelines with greater flexibility and to further expedite the certificate process, including: (1) Expanding the list of activities categorically excluded from the need for an Environmental Assessment in § 380.4 of the Commission's regulations; and (2) expanding the types of events that allow pipelines to rearrange facilities under their blanket construction certificates.

Finally, the Commission also is: (1) Requiring that pipelines conduct abbreviated consultations with the National Marine Fisheries Service concerning essential fish habitat as required by regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act); and (2) applying the Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures) to activities conducted under the pipelines' blanket construction certificates.

II. Background

As part of an ongoing review of its regulations, the Commission continues to seek ways to make its certificate process more efficient and effective. Recently, it has become evident that landowners that may be affected by a pipeline's proposal to construct facilities want earlier and better notice of that pipeline's intent to construct pipeline facilities on or near their property.

Under the Commission's current practice, landowners with property on a proposed pipeline route, adjacent to compressor station or LNG plant sites, or adjacent to existing fee-owned rights-of-way which would be used for a proposed pipeline, are generally notified by the Commission as part of its environmental review of the proposed project. Generally, the Commission notifies the potentially affected landowners when it issues a Notice of Intent to Prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA) as required by the National Environmental Policy Act of 1969 (NEPA).[1] The Notice of Intent is mailed to the affected landowners after the Commission has begun to process the pipeline's application and after the Commission notices the application for the new facilities and, usually, after the intervention period has run.[2]

Recently, landowners and other citizens have expressed increasing interest in participating in the major pipeline projects, especially the greenfield pipelines and pipeline expansions in heavily populated areas.[3] On April 28, 1999, the Commission issued a Notice of Proposed Rulemaking (NOPR)[4] proposing that, among other things, applicants that file to construct pipeline facilities notify affected landowners within three days of filing the application.

The Final Rule adopts the Commission's landowner notification proposal with minor modifications. The Final Rule also adopts the Commission's proposals to: (1) Expand the list of activities categorically excluded from the need for an EA; (2) expand the authority to rearrange facilities under the blanket construction authority; (3) require that pipelines consider essential fish habitat under the Magnuson Act; and (4) require that the pipelines apply the Commission's Plan and Procedures to blanket construction activities.

The Final Rule also incorporates a number of changes from the proposals in the NOPR in response to the comments filed. Some of the changes in the Final Rule include: (1) Clarifying that the Commission expects that the pipelines would use a good faith effort to notify all affected landowners; (2) requiring, in addition to notification of individual landowners, that the pipelines publish notification of their applications in a local newspaper; (3) allowing for hand delivery of the notification; (4) establishing an exception to the notification requirement for abandonments by sale or transfer; (5) providing for notification of landowners with property that abuts the edge of a proposed right-of-way; (6) requiring that pipelines notify any landowner with property containing a residence within one-half a mile of proposed compressors, their enclosures, or LNG facilities; (7) clarifying that "property rights" includes all rights listed in the tax records, surface and subsurface, within the certificated boundaries of a storage field; (8) explaining that the Commission pamphlet "An interstate natural gas pipeline on my land? What do I need to know?" will be updated and modified consistent with this and other recent rulemakings; (9) adding additional requirements for the notice, including a general map of the applicant's proposal; (10) deleting the notification requirement for activities performed under § 2.55 of the Commission's regulations; and (11) creating several exemptions from landowner notification requirements for activities performed under the Commission's blanket certificate authorization.

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[1] Specifically, NEPA requires that federal agencies carefully weigh the potential environmental impact of all their decisions and consult with federal and state agencies and the public on serious environmental questions.

[2] Once the application is filed, the Commission issues a notice of the filing, which is published in the **Federal Register**. The notice appears approximately 10 days after the filing. The notice specifies an intervention period, usually extending 21 days from the notice date.

[3] Greenfield pipelines are pipeline proposals that will be located in a new pipeline right-of-way for most of their length.

[4] Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, 64 FR 27717 (May 21, 1999), IV FERC Stats. and Regs. ¶ 32,540, (Apr. 28, 1999)

III. Discussion

A. Pre-Filing Meetings

In the NOPR, the Commission stated that it was in the pipelines' best interest to attempt to involve the public early on in the construction process, specifically before an application is filed, by seeking public input before determining the exact route of a proposed pipeline. The Commission contended that earlier landowner participation could result in a more definitively defined route that would help alleviate some of the significant delays the Commission is presently experiencing in processing a certificate due to the time needed to address and resolve landowner concerns. The Commission stated that it wished to encourage pipelines to hold pre-filing meetings, but it did not believe it was necessary to mandate those meetings at this time. However, it solicited further comments concerning this issue.

Comments. Generally, the Interstate Natural Gas Association of America (INGAA), Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation (Algonquin), Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), Great Lakes Gas Transmission LP (Great Lakes) , El Paso Energy Corporation Interstate Pipelines (El Paso), Enron Interstate Pipelines (Enron), and the Process Gas Consumers Group, American Iron and Steel Institute and Georgia Industrial Group (Industrials) contend that the Commission should encourage, but not mandate, pre-filing meetings. They assert that the pipelines should continue to have the flexibility to determine the substance and scope of notification prior to filing an application based on the specifics of each individually proposed project. Additionally, they claim that such pre-filing procedures could seriously impair the efficiency of the current certificate process.

Conversely, several parties support the need for pre-filing meetings. The Iowa Utilities Board (Iowa Board) believes pre-filing information meetings are highly beneficial to landowners and should seriously be considered. However, it indicates that as long as the landowners are given sufficient time and opportunity to participate meaningfully, the proposed route is easily modified in response to landowner concerns, and landowner's rights are protected, post-filing notification may be acceptable.

GASP Coalition (GASP) contends that the Commission's proposal to have landowners notified when a application is filed does not cure what is wrong with the process and is too late. GASP urges that the Commission establish a structured pre-filing notification requirement and also require collaboration with potentially affected landowners from the inception of a project. GASP asserts that notification at the time of filing does not create a level playing field. It states that few landowners have the financial resources, the tenacity, the time, or the ability to participate. Alice and Peter Supa, property owners along the proposed Millennium Pipeline route, contend that landowner notification needs to be changed to require natural gas companies to communicate in good faith with each landowner, the public, municipalities, and public officials long before an application is filed. They argue that the Commission should require pipelines to purchase legal notices in local newspapers and penny savers and to conduct several local informational meetings.

Commission Response. We are unconvinced by the argument that prefiling notification would impair the certificate process to any significant degree. To the contrary, as stated, we believe that the more landowners and the local community know of the application before it is filed, the more expediently the Commission will be able to process that application. Therefore, although we do not intend to mandate pre-filing meetings at this time, we believe that there is a strong incentive for the applicant to conduct such meetings.

We also believe that notifying landowners at the beginning of the Commission's process, when the application is filed, will give landowners sufficient time and opportunity to become involved in the process and to have meaningful participation, as recommended by the Iowa Board. As part of its NEPA review process, the Commission studiously reviews all suggestions and recommendations concerning alternative sites before making a final decision. Many times the Commission adopts these suggestions and recommendations in approving the ultimate route for the pipeline.[5] It also considers all other concerns raised by all participants in the proceeding, including, among other things, safety, air quality, noise, and other issues as appropriate to each proceeding.

Further, we believe notification at the time the application is filed gives landowners fair and adequate access to the Commission's process. It provides them with notice of a proposed application at the same time, if not sooner, than other parties that monitor the Commission's issuances and the **Federal Register**. Further, it allows them to participate equally with other parties.

Finally, we note that the Commission is investigating other areas and is implementing other programs to facilitate the application and review process. These initiatives will foster more efficient and effective landowner participation. These initiatives include the *ex parte* rule in Docket No. RM98–1–000,[6] the complaint rule in Docket No. RM98–13–000,[7] the electronic service rule in Docket No. RM99–6–000,[8] and the collaborative process rule adopted in Docket No. RM98–16–000.[9] In the *ex parte* rule, the Commission exempts communications related to developing environmental documentation from the Commission's

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[5] *See* Vector Pipeline LP, 87 FERC ¶ 61,225, 61,892–94 (1999).

[6] Regulations Governing Off-the-Record Communications, Order No. 607, 64 FR 51222 (Sept. 22, 1999), III FERC Stats. and Regs. ¶ 31,079 (Sept. 15, 1999).

[7] Complaint Procedures, Order No. 602, 64 FR 17087, (Apr. 8, 1999), FERC Stats. and Regs. ¶ 31,070 (Mar. 31, 1999), *order on reh'g*, Order No. 602–A, 64 FR 43600, (Aug. 11, 1999), III FERC Stats. and Regs. ¶ 31,076 (July 28, 1999).

[8] Electronic Service of Documents, Order No. 604, 64 FR 31493 (June 11, 1999), III FERC Stats. and Regs. ¶ 31,074 (May 26, 1999).

[9] Collaborative Procedures for Energy Facility Applications, Order No. 608, 64 FR 51209 (Sept. 22, 1999), III FERC Stats. and Regs. ¶ 61,080, (Sept. 15, 1999).

ex parte rules. In the complaint rule, the Commission encourages and supports consensual resolution of complaints, and organizes complaint procedures so that all complaints are handled in a timely and fair manner. In the electronic service rule, the Commission stated that it would permit participants to a proceeding to voluntarily serve documents on one another by electronic means. Finally, in the collaborative process rule the Commission delineates a program under which it establishes an optional pre-filing consultation process for potential applicants to foster constructive dialog between the applicant and other interested parties to help resolve disputes among the participants before an application is filed with the Commission. The Commission believes that these initiatives will facilitate greater and more efficient and effective landowner participation in certificate matters.

At this time, we believe that the landowner notification requirement adopted here is adequate. However, the Commission continuously reviews its policies and procedures and updates them regularly with policy statements and subsequent rulemakings. If the Commission determines that its landowner notification policy needs subsequent revisions, it will make such modifications at a later date.

B. Notification Requirement

In the NOPR, the Commission proposed to require that all applicants proposing NGA section 7 projects notify all affected landowners of record from the most recent tax rolls by certified or first class mail within three (3) business days following the date they file the application with the Commission. The Commission also proposed to require that the pipeline make a good-faith effort to determine the correct address for any undeliverable notices and to send notices to the corrected addresses.

1. Good-Faith Effort To Notify

Comments. Columbia requests that the Commission clarify that the requirement to notify all landowners falls under the good faith effort concept. Columbia asserts that many of its facilities are in locations where property has been handed down from one generation to another over long periods of time resulting in diffused ownership spread over many heirs. It contends that the rigidity implied by the word "all" sets up an unrealistic and, in some cases, unachievably high standard. Therefore, it requests that the Commission extend the good faith effort concept to the landowner notification requirement.

The Industrials contend that the Commission should only require that the pipeline attempt to notify all affected landowners. They claim that some of the affected landowners will be difficult to identify, and in some cases there may not even be agreement as to who the landowners are (*e.g.* where there is a dispute among decedents or other land claimants). They state that the Commission should not create legal rights that could be used to block or delay pipeline construction.

The Iowa Board proposes several options to deal with landowners who may not get notification. First, it suggests that the Commission adopt a substantial compliance provision, which would provide that missed landowners would not negate the entire notification effort if the pipeline company can show a good faith effort to identify and notify all parties. Another option it recommends is that in addition to mailed notices, that a public notice should be published in newspapers along the pipeline route. It also recommends that landowners who did not receive the notice should be given an opportunity to file for late intervention or submit late-filed comments.

Commission Response. The Commission's intent behind the landowner notification requirement was that the applicant should make a good faith effort to serve all affected landowners. However, to clarify this we will modify § 157.6(d)(1) to specifically state that the applicant shall make a good faith effort to notify all affected landowners.

We will also modify § 157.6 by adding a requirement that the applicant also publish notice of the application in newspapers of general distribution in the project area within a week of the filing of the application. We will leave it to the applicant's discretion how many newspapers may be appropriate. However, a reasonable guideline, consistent with requirement in §§ 157.10(b) and (c) of the Commission's regulations concerning placing copies of the application in accessible central locations, would be one per county involved in the project unless a single newspaper fits the general distribution criterion in more than one county.

This newspaper notification will serve not only to embrace those individuals who may not have received notification along the proposed route, but also to give some advance notice to people in the general project area who might be affected by alternatives. Further, the Commission may subsequently decide, on a project-specific basis, what additional notification may be appropriate for other landowners potentially affected by alternatives.

To the extent some notices may be received by the affected landowner after the intervention deadline, § 385.101(e) of the Commission's regulations provides for waiver of the Commission's rules for good cause. Traditionally, the Commission has granted waivers of its intervention requirements and allowed late interventions when the party did not receive notice of a pending application until after the intervention deadline had passed. Further, §§ 157.10 and 380.10(a)(1)(i) allow parties to intervene in response to Commission action in its environmental documentation.[10]

2. Hand Delivery of Notices

Comments. Williston Basin Interstate Pipeline Company (Williston Basin) asserts that it continues to believe that the landowner notification requirement should be performance based and that the Commission should not impose the notification rules on all pipelines. It contends that the Commission should only require landowner notification if it receives valid complaints against a particular pipeline. Williston Basin believes the current policy, which allows each pipeline company flexibility in landowner notification and which takes into account the geographic and demographic characteristics of the areas in which the proposed construction will take place, is the most appropriate policy. In the alternative, it suggests that, at a minimum, the Commission should modify the regulations proposed in §§ 153.3, 157.6(d), and 157.103, to allow pipelines the option to hand-deliver this information to affected landowners. Williston Basin states that it should be allowed the opportunity to explain to the landowner that the contents of the notice are being provided in compliance with Federal regulations and not in anticipation of condemnation through an eminent domain proceeding.

Commission Response. The Commission does not believe it is appropriate to require notification only on a performance basis. First, the large greenfield pipeline project is most likely to be filed by a new pipeline trying to enter the market and who will have no track record of appropriate public relations. Given the considerable public outcry over the lack of notification for several such projects recently, we do not believe that a wait-and-see policy is justified.

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[10] *See* Southern Natural Gas Company, 79 FERC ¶ 61,280, 62,202 (1997).

Second, we believe it is discriminatory to require only some companies to provide the notification. In the worst case scenario, this would allow a company to potentially be a bad neighbor until some threshold was reached in terms of the number of complaints the Commission received. In the meantime, the landowners who have not been treated well may have irrevocably lost the opportunity to have early and complete involvement in the Commission's process.

Finally, we will modify §§ 153.3, 157.6(d), and 157.103 to allow the applicant to hand deliver the notification. However, we note that no matter how delivery is made, the applicant is required to deliver the notice to the landowner of record, which may not necessarily be the person occupying the property. Moreover, the contents of the notification must be the same regardless of the mechanism of delivery.

3. Docket Number

Comments. INGAA requests that the Commission assign the application a docket number at the time the filing is made. It contends that if the Commission assigns the application a docket number subsequent to when the application is filed, it will be difficult for the pipelines to meet the Commission's notice requirements in a timely matter. It proposes that the Commission revise § 157.6(d) and related sections to provide that the pipelines notify all affected landowners within three business days following the date the Commission assigns a docket number to the application. The Industrials, Algonquin, and El Paso make similar requests.

Columbia requests that the Commission clarify the requirement to notify all affected landowners within three days refers to the mailing date of the notice and not the date of receipt by the landowner. It contends that requiring that the notice be received by the landowners within three days of the filing of the application is unreasonably burdensome and not justified for the purpose of the new regulation.

Commission Response. While the Commission believes that it is rare that a filing is not docketed the day it is received, we will modify § 157.6(d) and require that the notice be sent within three-business days of the day the application is assigned a docket number. The three business day requirement applies to the date of mailing or the day the notice is hand delivered. In other words, the notification must be in the mail by the end of the third business day after the docket number is assigned, or, if the company chooses to deliver the notification by hand, then it must be so delivered within three business days of the date the filing is assigned a docket number.

4. Abandonments

Comments. National Fuel Gas Supply Corporation (National Fuel) contends that the Commission should clarify that the landowner notification requirement applies to activities involving construction and not to activities such as abandonments by transfer and customer name changes. It contends that facility transfers do not involve any disturbance of property. Therefore, it asserts there is no need to enlarge on whatever rights of notice or consent the landowners may have under applicable rights-of-way. Also, it requests that the Commission clarify that advance landowner notice can be waived by the landowner.

National Fuel also claims that there are abandonment situations when consultations with landowners would not be appropriate. For example, it cites instances where the abandoned pipeline may be utilized to cathodically protect another pipeline, or where the pipeline crosses under a roadway or stream and it is impractical to remove the pipeline. It requests the Commission clarify that its intent is to require the applicant to identify landowner consultations, or provide an explanation as to why particular consultations were not made.

INGAA contends that the requirement to notify landowners about abandonments impinges on binding easement agreements. It states that often the pipeline's easement document will specify whether a pipeline is permitted to abandon its pipeline in place. It claims that the Commission's requirement amounts to a unilateral renegotiation of the easement by allowing the landowner to request that the pipeline be removed. It also asserts that it may falsely lead landowners to believe they have rights contrary to their negotiated easement agreements. Further, it contends that implying that the landowner may request removal of the pipeline may create unnecessary landowner tension should environmental and other factors make it impractical to honor the landowner's request. Great Lakes makes a similar argument.

Algonquin contends that a requirement that the pipeline consult with landowners prior to abandoning facilities will raise expectations that facilities will be removed when there is no practical reason to do so and the cost of removing the facilities is excessive under the circumstances. In fact, it argues that unless there is a legitimate reason to remove the facilities, removal in virtually all cases will result in totally unnecessary environmental disturbances. Also, it claims that the pipeline's right-of-way agreement may specify whether a pipeline is to be abandoned in place or not. It asserts that the Commission has not identified any reason to interfere with such agreements.

Commission Response. First, we note that we agree that the notification discussed herein does not need to be done for name changes or other activities that do not affect the use of the easement. Therefore, in § 157.6(d)(1) we will exempt abandonments of facilities by sale or transfer. However, we do not agree that all abandonments should automatically be exempt from the notification requirements.

In a NGA section 7(b) abandonment proceeding, the Commission will review all the relevant factors concerning the abandonment and make a determination if it is in the public convenience and necessity to grant the abandonment. While it is possible, as some of the commenters allege, that easement agreements may specify the pipeline's responsibility under the agreement upon abandonment of the easement, that is not always true. Further, the presence of such a stipulation in the easement does not necessarily override the other considerations that the Commission must weigh in ruling on the abandonment.

In the case of abandonment by removal, the same individuals who would have been affected by construction of the facilities also may be affected by the removal. However, changed circumstances since the original construction of the facility could warrant that the existing landowner be notified.

The Commission is aware that in many cases the environmental impact of removal is unwarranted or that other considerations mentioned by the commenters, *e.g.*, cost, use of the abandoned pipeline for cathodic protection, presence of a road or railroad, may make it impractical or undesirable to remove the pipeline. The pipeline applying for abandonment may identify the reasons it believes its proposed disposition of the pipeline is appropriate. Those reasons may be economic, environmental, related to safety, or stem from the landowner's choice, but in order to make a reasoned decision on the effects of its approval of the abandonment, the Commission needs to have this information. If the Commission decides that it is in the public convenience and necessity to have the pipeline disposed of in a different manner than stipulated in the easement agreements, it will explain its reasons in the order granting the abandonment.

With respect to National Fuel's request for advance waiver of the right to notification, we see little advantage to the pipeline or to the Commission. These pipelines are in the ground for many years. Further, facts, circumstances, and the law change over time. The Commission believes it is important to review all the relevant factors in place at the time the pipeline is proposed to be abandoned. Therefore, we do not believe that a waiver of the notice requirement in these situations is appropriate.

5. Tax Records

Comments. Market Hub Partners LP (Market Hub) claims that the Commission's definition does not specify what county/city tax record the pipeline must examine in determining what landowner to notify. Specifically, it asks if the pipeline must only examine the annual tax rolls, or must it look at other property records, update its search quarterly, or obtain the most recent tax roll prior to sending out its notice. It also contends that the pipeline can "hide behind" the tax roll if it has reason to believe it is incomplete or incorrect. It requests that the Commission clarify that the applicant is required to examine the annual records as well as any quarterly updates and that it must provide notice to any other affected landowners it is aware of that do not appear on the public record.

Commission Response. The requirement to make a good faith effort implicitly involves using the most current source at the time of filing. It would include any independent material the applicant has in its possession concerning the landowners it must deal with to obtain property rights. Given the need to obtain those rights and to obtain permission to survey property for various environmental requirements in our regulations, we see very little reason or advantage for the applicant to avoid deriving a good faith list.

6. Route Changes

Comments. The Iowa Board points out that the route may change during the certificate process and the landowners on the alternative routes may not be included in the initial notice. It suggests that: (1) The landowners on any alternative routes also being considered by the applicant be included in the initial notification process; (2) the Commission require notice within a corridor wide enough to accommodate minor route shifts; and (3) landowners affected by a major route shift proposed during the certificate process should be given notice as soon as possible and provided the opportunity for late intervention or late-filed comments.

Commission Response. The Commission will not at this time require that the pipeline notify any landowners other than those potentially affected by the proposed route/facilities. The range of potential relocations of facilities is so broad that it would not be productive to require such notification. We will also not require that the pipelines notify all landowners along alternatives it looks at on its own. This would tend to be a real disincentive for the applicant to look at any alternatives until later in the process. We intend to rely on the Commission's staff to determine which additional individuals should be notified during the environmental analysis.

Nevertheless, we will point out to potential applicants that it is in their best interest to make sure a wide universe of landowners is aware of the project as early as possible to ensure input into the routing/location of facilities. In addition, waiting for the Commission's staff to determine who should receive notification may tend to lengthen the Commission's review process.

Also, as discussed, we are adding a requirement to § 157.6(d)(1), that the applicant publish notice of the application in local newspapers. We believe this is sufficient notice at this time.

C. Affected Landowner

In the NOPR, the Commission proposed to define affected landowners to include owners of: (1) Property directly affected by the proposed activity, including all property subject to the right-of-way and temporary work space; (2) property abutting an existing right-of-way (owned in fee by a utility) in which the facilities would be constructed; (3) property abutting a compressor or LNG facility; or (4) property over new storage fields or expansions of storage fields and any applicable buffer zones.

1. Property Directly Affected

Market Hub argues that the term "directly affected" introduces ambiguity into the definition of "affected landowner". It contends that the word "directly" does not add or delete any substance from the definition of "affected landowner". It states that it is uncertain whether the word "directly" is intended to impose an obligation to notify landowners who would not otherwise be notified. It requests that it be deleted.

Commission Response. The Commission deliberately used the term "directly" to indicate that the property would be physically used by, or for the construction of, a facility. The word was used to distinguish the properties which would be used in some way for the project from those properties which would simply be within view or earshot. However, we will add a parenthetical to § 157.6(d)(2)(i) clarifying our intent to mean those properties being used or crossed by construction activities.

2. Abutters

INGAA requests clarification that any pipeline that owns the right-of-way in fee is not considered a utility company and therefore is not required to notify affected landowners that abut its right-of-way. It claims that to impose such a condition could discourage construction along existing rights-of-way. Similarly, the Industrials question why notice should be legally required for landowners adjacent to property that is actually owned by the pipeline. They argue that when the pipeline owns the right-of-way in fee, it has a legal right to do what it wants in the right-of-way. Columbia also objects to the inclusion of abutters to existing rights-of-way in the list of affected landowners. It contends that abutting landowners will not have facilities on their property, will not be subject to condemnation and will not have restrictions on the use of their property.

Market Hub requests that the Commission clarify whose property abuts a right-of-way or facility site for the purpose of this rule. It states that a facility site should mean actual facilities that are a part of the operating facility, *i.e.*, the actual pipeline, or the actual compressors used for gas injection. In the alternative, it recommends that the Commission replace its proposed "abuts" rules with one that simply requires pipelines to give notice to all owners of property rights on or in parcels of property adjacent to the property and/or property rights that have been or will be acquired by the pipeline.

INGAA, Enron, and the Industrials generally question the usefulness of notifying a landowner that abuts a large block of land owned by a utility where the pipeline only acquires a right-of-way on a small piece of the property that is distant from the abutting landowner's property. INGAA and Enron request that the Commission clarify § 157.6(d)(2)(ii) to provide for notification where the pipeline is in an utility right-of-way and construction/disturbance is proposed within 50 feet of the adjacent property. The Industrials request that the Commission clarify that this provision, at most, requires notice only to those landowners whose abutting property is adjacent to that portion of the existing right-of-way or facility site that will be used for the proposed pipeline facility construction.

The Supas recommend that landowners within 150 feet of construction be notified and the Schavers, landowners who participated in the Vector Pipeline proceeding, recommend that all landowners who will be affected by pollution, accidents, noise, or visual obstructions be notified.

Commission Response. First, we will clarify that the requirement to notify abutters (in § 157.6(d)(2)(ii)) refers to *any* utility right-of-way owned in fee. We see no reason to distinguish between natural gas pipelines and other utilities. The important consideration is whether there is construction-related activity taking place in the area, not whether this utility or that owns the land. It is the abutting landowner's right to comment on the project work area that is of concern.

Further, we do not believe that this requirement will discourage the use of existing rights-of-way since there are many advantages of using them, not the least of which is the ability to potentially deal with only a single landowner (the utility) for the use of extensive lengths of right-of-way. The issue here is simply whether people get notified and comment on the project. The Commission's long-standing preference for such co-location will still encourage pipelines to propose using existing rights-of-way. A decision to do otherwise, will still need to be justified in the application.

We believe that requiring notice to the abutters of existing "in fee owned" right-of-way is appropriate. It is our experience, as borne out by comments from other governmental agencies and private citizens, that the more notification that is provided, the more useful relevant information that can be obtained from the local individuals who are likely to be most knowledgeable about the project area. Notification to just the landowner (the utility company) would not allow any significant public notice and would not stimulate much public input to the process. We think this consideration alone warrants the proposed notification to abutters. In addition, we are simply codifying our current practice.

In the case of a new natural gas pipeline across land not owned in fee or not previously encumbered by a right-of-way, we believe that notification of all abutters is equally appropriate to treat them in the same way as abutters to "in fee owned" right-of-way. In general, this requirement will not significantly increase the number of landowners who need to be notified since easements more commonly cross property than share property boundaries. In addition, these additional properties will be easy to identify along with those properties crossed. Therefore, we will modify § 157.6(d) and require that the pipeline provide notice to all landowners whose property abuts the right-of-way.

Finally, we believe that property owners with residences within sight or hearing of a compressor station or LNG facilities also deserve notification. The impact of such facilities extends beyond the localized potential for effect from a pipeline. For instance, the Schavers' suggestion that people who would be affected by noise or visual effects of projects be notified applies to these kinds of facilities, since they have the potential for long-term effects of this kind. Choosing an appropriate distance is difficult; however, our experience with the potential noise impact of compressors indicates that a reasonable distance is one-half mile. Within this range it is not uncommon for the noise restrictions we usually place on compressors to come into play. We also submit that within this range the existence of a new compressor station or LNG facility may also be apparent to the unaided eye.

3. Storage Areas

Market Hub contends that the Commission's landowner notification rules should take into account the various estates that exist in a single parcel of property, including separate rights to surface, subsurface, minerals, oil and gas extraction, and oil and gas storage estates. It requests that the Commission require pipelines to notify the owners of all estates and rights-of-way in the parcel of property at issue as they are identifiable based on public land records. Similarly, Mr. Edward Deming, a landowner with property on a CNG Transmission Corporation storage field, states that the Commission should require notification of all affected property owners in areas of storage facilities including owners of surface and subsurface rights. On the other hand, Enron requests that the Commission clarify that the phrase "owners" means surface owners only.

Columbia recommends that notification of owners of property rights within new storage fields be limited to the owners of properties on which facilities (above and below ground) will be constructed. It asserts that the focus should be on those surface landowners who will be directly affected by the construction proposals in contrast to others within the boundaries of new storage fields whose property will not be disturbed.

Market Hub states that the phrase "within the area of new storage fields or expansions of storage fields and any applicable buffer zone" is vague. It explains that storage operations sometimes involve drilling wells that reach several thousand feet below the surface, and involve the storage of gas in formations that cover large areas. It contends that various owners and various property interests may be affected by a proposal to build or modify a storage facility. Therefore, it asserts that the storage operator's notification obligation should apply to all owners of property rights within the existing certificated boundaries of the relevant storage field.

New York State Department of Environmental Conservation (NYSDEC) states that it is unclear that the rules as currently proposed will provide owners of property within the boundaries of proposed storage projects adequate information to meet the Commission's goal of ensuring affected landowners sufficient and timely opportunity to actively participate. It also asserts that the Commission's pamphlet "An interstate natural gas pipeline on my land? What do I need to know?" does not address property rights or environmental concerns as they relate to storage fields. For example, it points out that the pamphlet states that the right-of-way may be 75–100 feet wide, whereas a storage field may be hundreds of acres or several square miles in size. It states that property rights issues such as in-place resources of native gas or salt are unique to storage safety issues. Also, it contends that the pamphlet does not inform landowners that certain storage field expansions may be categorically excluded from the Commission's environmental review. It recommends that the contents of the notice for storage projects be expanded to include additional issues of concern that are unique to storage fields.

Commission Response. The Commission's intent in § 157.6(d)(2)(v) is to include all recorded property interests in the area within the entire certificated boundaries of the storage field. We believe this is appropriate because once a storage field is certificated, there may be future construction within the boundaries of the field for which no additional

Commission authorization will be required. For example, auxiliary facilities of many kinds may be installed subsequent to the Commission's initial authorization without any further Commission involvement. In addition, pipelines within a storage field may be relocated under blanket authority without any further Commission action. There may be landowners affected by this future construction that would not have been affected when the original proposal was approved. Therefore, we believe it is appropriate to notify all property interest owners that potentially could be affected within the storage field even if the facilities proposed in the current application would not directly affect them.

Additionally, the Commission's intent is for the applicant to notify all property interests noted in the tax records, surface and subsurface. As stated, the Commission believes that all owners of property interests that may be affected by the applicant's proposal have a right to know what the pipeline intends to do. Finally, we believe that surface landowners have a right to know that natural gas is proposed to be stored beneath their property and have the opportunity to have their views on the proposal heard even if the surface area of their property will not be disturbed as a result of the applicant's proposal.

While the current edition of the landowner pamphlet does not contain any information specific to the issues of interest for storage field projects, the Commission intends to update the information in the pamphlet consistent with the changes made in this and other recently issued rulemakings. It also will make appropriate modifications in the future as the need arises. Additionally, we note that the applicant may add any additional information that it deems necessary to its notice that would clarify or explain how the pamphlet pertains to its particular project.

4. Buffer Zones

Comments. Market Hub objects to the term "buffer zone" because it proposes to bestow upon pipelines rights to an amorphous zone for which the pipeline has not acquired some or all of the surface or sub-surface property rights. It argues that the Commission has failed to explain the basis for its legal authority under NGA section 7 to reach zones that are outside the certificated 7(c) boundary. If the Commission has authority over the buffer zone, it should explain the rights conveyed on an applicant that receives approval of a buffer zone. Additionally, it states that the owners of property within a buffer zone should be accorded all the same rights and notifications of those in the active zone of a proposed project. Finally, it asserts that the Commission should make clear what jurisdictional activities are permissible inside the buffer zone.

Commission Response. Since the delineation of the gas storage reservoir confinement cannot be precisely established for most fields, the Commission certificates a buffer zone or protective area beyond the estimated reservoir boundaries to assure continued reservoir integrity of the gas storage field. This practice is consistent with some state requirements. The buffer zone, which will vary in size based on the geologic and engineering data available to define the lateral boundaries of the storage field, identifies the area under which the company has the right to store natural gas in the specified formation as determined in the certificate authorization. It is the storage operator's responsibility to verify and define the storage boundary through the life of the storage operation as additional operational experience is obtained. If there is any migration from the certificated boundaries of the field, including the buffer zone, the operator is obligated to notify the Commission and apply for a new boundary to the field.

Section 157.6(d)(2)(v) expressly requires that all recorded owners of property interests in the applicable buffer zone should receive notification of the applicant's proposal for that area. We note that the Commission's certificate authority only gives the applicant the authority to construct, operate, and maintain the storage facilities within the certificated boundary. It does not bestow upon the applicant any specific property rights outside of that area. The company may only conduct jurisdictional activities expressly approved by the Commission in the certificate authorization.

D. Contents of Notice

In the NOPR, the Commission proposed that the notice should include: (1) The docket number of the filing; (2) a detailed description of the proposed facilities including specific details of their location, the purpose of the project, and the timing of the project; (3) a description of the applicant; (4) the name of specific contacts at the pipeline where the landowner can obtain additional information about the project; and (5) a location where the applicant has made copies of the application available.[11] Additionally, the notice should either include map(s) of the project or information where detailed map(s) of the project can be viewed or obtained. The pipeline contact should be knowledgeable about the project and should be able to answer specific questions concerning the project. The NOPR also proposed that the notice include a copy of the Commission's pamphlet "An interstate natural gas pipeline on my land? What do I need to know?".

Comments. National Fuel states that the requirement to include the Commission's pamphlet should only be required for landowners affected by pipeline construction. It contends that the pamphlet does not address other types of activities, such as compressor station construction or modification, storage field development or expansion, or pipeline abandonment and should not be required in those situations.

GASP claims that the Commission's pamphlet is not appropriate. It asserts that the pamphlet takes for granted the pipeline's right to take the landowner's property, and discourages landowner intervention in the process.

The Iowa Board suggests the following additions to the Commission's proposal: (1) The rule should specifically require the inclusion of a map showing the proposed route of the pipeline, it recommends two maps for larger projects, one showing the total project and another the local area (*i.e.* the county or township); (2) the notice should include a general, up-front statement that easements will be sought, and explaining the nature of the rights the pipeline will seek on those easements; and, (3) the Commission should require that the notice provide information concerning the legal rights of the landowners. It suggests that since easement acquisition, and usually condemnation, is a function of the laws of the individual state, the Attorney General of the affected state should be requested by the Commission to prepare and provide the summary of legal rights. Additionally, the Iowa Board states that the Commission may want to review the proposed notice before it is mailed.

Commission Response. The pamphlet was created specifically for pipeline facilities and has been adopted for this larger purpose at the suggestion of previous commenters including INGAA and other industry and Congressional representatives. As stated, the Commission intends to revise the current version of the pamphlet consistent with the action taken in this and other recent rulemakings. We expect to revise the pamphlet as needed to allow it to cover as many of the facility types as is reasonably feasible.[12] Further, as stated, the applicant is free to provide any additional information it deems necessary in its notice to further clarify or explain the Commission's process as it applies to the applicant's proposed project.

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[11] In new § 157.10, promulgated in RM98–9–000, the pipelines are required to make complete copies of the application available in central locations in each county in the project area.

As for GASP's claim that the pamphlet is inappropriate, we note that the purpose of the pamphlet is to explain the Commission's process and how the landowner may participate in that process. The pamphlet simply states the factual situation which is that once a certificate has been issued, the pipeline has the right to take property if it cannot negotiate an easement agreement with the landowner.

The Iowa Board makes some good suggestions for the contents of the notice. Accordingly, we find that requiring a map would not burden the applicant since maps are part of the application, including a map of the overall project. We also believe that the applicant can also easily include a generic description of what the applicant will need from the landowner if the project is approved and a brief description of the eminent domain rules in the relevant state. Finally, we do not believe it is necessary to impose upon the state attorneys general to provide a summary of their state's laws. We will modify § 157.6(d)(3) accordingly.

E. Landowner Notification Under §§ 2.55 and 157.202

In the NOPR, the Commission proposed to add a landowner notification requirement to §§ 2.55 and 157.202 that requires that pipelines notify the affected landowner 30 days prior to commencing construction under these sections. The notification would include: (1) A brief description of the facilities to be constructed/replaced and the effect the construction activity will have on the landowner's property; (2) the name and phone number of a company representative that is knowledgeable about the project; and (3) a description of the Commission's Enforcement Hotline procedures explained in § 1b.21 of the Commission's regulations and the Enforcement Hotline phone number.

Comments. Generally, many of commentors contend that the existing easement agreements should determine what type of landowner notification should be required for projects constructed under §§ 2.55 and 157.202 and that the proposed 30-day notice requirement is unnecessary. They contend that there is no substantial evidence of significant landowner concerns in the case of § 2.55 or 157.202 activities that would warrant any change in existing procedures.

1. Section 2.55

INGAA contends that formal notification under § 2.55 is not consistent with the type of work performed. Specifically, it states that § 2.55(b) involves existing lines with previously negotiated easements and established pipeline/landowner relationships. Additionally, it asserts that the work often requires completion in less than 30 days from the time it is identified or it involves a problem that must be corrected immediately, including situations that could not properly be characterized as emergencies, but nevertheless demand some action in a short period of time. INGAA contends that under these circumstances, the pipeline/landowner easement agreements should control how and when the pipelines provide landowner notification. Further, it notes that the 30-day waiting period may be in conflict with the requirements of the easement agreements as well as safety and environmental regulations. Algonquin, Columbia, El Paso, and Williston Basin raise similar arguments.

Commission Response. Upon reconsideration, we agree that there is no need for this Commission to require advance notification to landowners for replacement conducted under § 2.55. As the commentors point out, all of the activity involved with such a replacement is within existing right-of-way and subject to an existing easement agreement which dictates the pipeline's right to obtain access to maintain the facilities. However, we believe that prudence would dictate that the pipeline should give the landowner as much advance warning as is possible to avoid misunderstandings and ill-will.

2. Blanket Certificates

INGAA believes that the pipeline/landowner easement agreement should also control for routine construction for activities performed under the pipeline's automatic blanket certificate. It argues that to perform new construction under its blanket certificate, the pipeline must already have or have obtained the necessary right-of-way and, in the normal course of business, notify the resident prior to entering the property. Therefore, it contends that the Commission's notification requirement is unnecessary. Additionally, it claims that the Commission's requirement to notify all affected landowners of real property is too restrictive. It recommends that the Commission adopt the "good faith" language of the Commission's section 7(c) notification requirement.

Similarly, El Paso agues that the Commission's advance notification requirement for construction performed under the automatic authorization essentially nullifies those provisions. Further, it contends that the notification requirement is not necessary. For new construction in an area covered by an existing easement, El Paso asserts that advance notification is not necessary because the landowner previously granted the pipeline the property rights necessary to perform the construction. It states that the Commission should not interfere with the existing relationship between the pipeline and the landowner. As for construction in new rights-of-way, El Paso contends that it must obtain additional easement rights with the landowner before beginning construction and that this serves as adequate notice of the impending construction. It claims that an additional 30-day notification requirement would only unnecessarily delay construction.

For prior notice activities, INGAA asserts that the pipeline/landowner easement agreement should govern the type and timing of notice provided to landowners for activities performed under the prior notice provisions. It claims that as a condition precedent, a pipeline performing new construction under its blanket certificate would have had to negotiate with the landowners for right-of-way easements. Therefore, it states that the Commission's notification requirement duplicates what the pipeline already negotiated or provided with the landowner. Further, INGAA states that it is concerned that the requirement that the pipeline inform the landowner of its right to protest almost invites protests and may mislead landowners into believing that a protest is necessary to be a participant in the process. At a minimum, INGAA suggests that whether verbal or written, the notice describe the right to intervene or protest and also alert the landowner that the Director of the Office of Pipeline Regulation (OPR) has the authority to dismiss unsubstantiated protests.

The Industrials object to a notification requirement where the pipeline's filing indicates it has secured all rights-of-way and easements for the project in advance of the filing. They contend that there is little to be gained from imposing new filing notice burdens on this class of projects. They also state that if the Commission proceeds with imposition of the new landowner notice provision , it should at least amend the language to require that the pipeline only attempt to notify all directly affected landowners.

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[12] We note that the current version of the pamphlet is available for downloading off the Commission's Internet Home Page.

Columbia and Williston Basin believe that the Commission should build sufficient flexibility into this process and allow for a waiver of the waiting period when necessary for the pipeline to properly operate and maintain its system. National Fuel recommends that the Commission have an exception for replacement work necessitated by an immediate threat to public safety. Further, it claims that the Commission should clarify that the advance landowner notification requirement can be waived by the landowner. El Paso asserts that the proposed regulation would unduly delay prompt replacements of unsafe, deteriorated facilities. It contends that a 30-day delay under these circumstances would be untenable.

Similarly, Great Lakes contends that the pipelines may not be able to identify replacement projects conducted under § 157.203(d)(1) a full 30 days prior to the date on which the work should or will be done. It argues that the 30-day notice provision for replacement projects is unnecessary and burdensome. As an example, it explains that a pipeline may discover a defective mainline pipe section while working on installing a new loopline. It argues that under the Commission's proposal, the pipeline would have to wait 30 days to do this work. It contends that the delay would raise the cost of the project by requiring the trench to be re-opened and the necessary equipment returned to the site, and may increase the risk to the pipeline and the public during the waiting period.

Enron states that the 30-day landowner notification requirement will create conflicts with a pipeline's efforts to comply with the Department of Transportation (DOT) and environmental regulations. The Industrials request that the Commission, at a minimum, exempt from the proposed notice requirements automatically authorized construction of eligible facilities required to address unplanned or emergency repair or maintenance situations or other circumstances in which there are valid business reasons for proceeding without prior written notice.

National Fuel contends that the 30-day prior notice requirement should be shortened to 10 days. It asserts that a shorter notice period is appropriate because these projects promote public safety and only impact owners of properties already affected by pipeline construction and maintenance. Similarly, the Industrials request that if the Commission does impose a pre-construction notice requirement, it should be less than 30 days.

If the Commission declines to eliminate the 30-day notice requirement, INGAA suggests: (1) The notice period be eliminated for unplanned maintenance and replacements (e.g. line hits, equipment failures); (2) the notice time frame for planned work should be reduced from 30 days to three days or a time period provided for in the easement agreement or such period as agreed upon in writing by the landowner, *i.e.,* a waiver of notification rights; (3) the notice be limited to the immediate landowners affected by the construction activity (as compared to the broader definition of affected landowners for section 7(c) applications); and (4) that verbal notice be permitted as long as the pipeline maintains records of who was notified and provides the landowner with a company contact person and telephone number.

El Paso suggests that the Commission should, at a minimum, eliminate the requirement for projects which clearly have a *de minims* impact on landowners. For example, it refers to: (1) Construction which occurs within a fenced area, *e.g.* a compressor or meter station yard); (2) construction of above-ground facilities where no ground disturbance is involved; and (3) replacements performed for safety reasons.

Finally, Columbia is concerned that the Commission's notification requirement for blanket construction activities creates an open-ended process for which there appears to be no closure from a timing standpoint. It contends that the Commission's proposal is silent on the internal process that will be adopted in connection with administering the increased contacts that may result from the notification requirement

Commission Response. Unlike activities performed under § 2.55, the Commission believes that many of the activities performed under the pipeline's blanket construction certificate authorization require that the pipeline notify the affected landowners regardless of the terms of the easement agreements. While the Commission may not have seen specific expressions of concern regarding blanket projects, this could easily be a result of the fact that most people outside the natural gas industry are not familiar with the Commission or its programs. Nevertheless, we are trying to make sure that our regulations provide for similar protections for similar activities. Therefore, we find a need for advance notification of landowners for blanket certificate activities.

Additionally, we believe that the landowners deserve the opportunity to air their views and concerns regarding the activity proposed for their property. The Commission also wants the opportunity to act on those concerns if necessary. Whenever the pipeline conducts an activity subject to the Commission's jurisdiction, the Commission has the authority to impose conditions on that activity. However, in light of the comments received, we will make certain modifications to the notification requirements for blanket certificate activities as proposed in the NOPR.

First, we note that removing the notice requirement for activities performed under § 2.55 largely eliminates the concern raised by the commentors for replacements done for safety, DOT compliance, and unplanned maintenance reasons. However, there may still be certain situations that will require that these activities be performed under the pipeline's blanket certificate. Therefore, in § 157.203(d)(3)(i) we will exempt replacements that are being done for safety, DOT compliance, or unplanned maintenance reasons which the pipeline has not foreseen and which require immediate attention.

Additionally, we realize that there will be blanket-authorized projects that would have been done under § 2.55 except that they involve a change in the capacity of the facilities. To the extent that these activities involve only the existing right-of-way construction work area, we also find that advance landowner notification is not necessary. Therefore, we will also exempt these types of activities in § 157.203(d)(3)(i).

Finally, in § 157.203(d)(3)(ii), we will clarify that the notification requirement applies only to activities which involve the abandonment of facilities if the pipeline is intends to relinquish the right-of-way, and the facilities are not intended for continued use by the landowner or the future holder of the easement.

For all other activities under the blanket authorization, we will continue to require that the pipeline notify the landowner at least 30 days prior to commencing construction as proposed in the NOPR. However, we will clarify that the pipeline may deliver the notification by hand or by mail. Further, if the pipeline is negotiating for a new easement, it must deliver the notice either before or at the time it initiates easement negotiations. The 30-day notice period and the easement negotiations could run concurrently.

We do not believe it is appropriate to allow the pipeline to deliver the notice orally. First, several of the components of the required notice cannot be conveyed orally. Second, it is not fair to expect landowners, who may have no premonition that they are about to be approached with respect to the use of their land, to assimilate the details of the required notice without any written materials to study.

For activities under the prior notice procedure, we will allow pipelines to give the landowner notice before or after the application is filed. If the pipeline gets landowner approval for the proposed activity before it files the application, it should provide evidence of that approval with the application and no further notification will be required. If the pipeline needs to commence construction prior to the end of the 30 days, it should request a waiver of the requirement from the Director of OPR. We believe that for most of the activities not covered by the exceptions discussed above, the pipeline knows in advance of the thirty days that it intends to construct facilities.

3. Enforcement Hotline

Comments. National Fuel also opposes the inclusion of information about the Enforcement Hotline. It contends that it may be misleading to suggest that the Enforcement Hotline is the appropriate dispute resolution mechanism. It requests that if the Commission includes this requirement it should clearly describe the range of issues appropriate for bringing to the attention of the Enforcement Hotline.

INGAA asks that the Commission eliminate the reference in §§ 2.55(b)(1)(iv)(3) and 157.203(d)(1)(iii) to the Enforcement Hotline. It contends that it implies that the pipeline is acting unlawfully in some way and that some form of regulatory oversight is necessary for an activity which is generally handled through a self-implementing authorization. Further, it claims that the reference to the Enforcement Hotline encourages an escalation of landowner's concerns on what are likely to be routine maintenance activities. It states that calling the company representative identified on the notice would put the responsibility to address the landowner's concern where it belongs, on the company.

Columbia asserts that the pipelines need to be assured that adequate resources are available to resolve any Enforcement Hotline matters that may arise. It claims that a significant number of landowners will avail themselves of the opportunity to use the Enforcement Hotline regardless of whether they have a legitimate substantive problem, because they would prefer that the facility not be on their property. It also asserts that the Commission should not entertain issues of landowner allegations over the lease agreements. It states that the pipelines must have certainty that the issues will be resolved within the 30-day period and that they will be able to begin construction at the expiration of the 30-day period. It argues that to suggest that the work cannot begin until the Enforcement Hotline process is exhausted is impractical, burdensome, and provides landowners with a method to effectively undercut property rights they or their predecessors have already granted to the pipeline.

Algonquin asserts that the Commission's proposal invites protests or Enforcement Hotline calls regardless of the merit and could well convert what is now an expedited construction process into a traditional section 7 process and impair the pipeline's ability to construct minor facilities in a short time period.

Commission Response. We agree that the Commission 's Enforcement Hotline may not necessarily be the appropriate mechanism of first resort. We cannot force the landowner to take this approach, and we will not forego providing the landowner with information on how to contact the Commission.

Further, we do not believe that including a reference to the Enforcement Hotline implies the company is doing something unlawful. It would, of course, be possible to present this information in such a way that this was the implication. However, we have not specified how the company is to present the Enforcement Hotline number and we expect the companies will be able to present it as merely being a means to contact the Commission, which is in fact what it is.

Columbia states that the Commission must resolve protests quickly and limit the protests to issues properly before the Commission. It recommends that the form of notification include not only references to the landowner's right to protest but also to the Director of OPR's power to reject non-substantive protests. As stated, the pipeline is not foreclosed from further explaining the Commission's regulations in its notice. Further, the Commission does not envision that providing the landowners with information concerning the Commission and its processes would necessarily delay any of the pipeline's activities under its blanket certificate. The Commission will address any situations that may arise on a case-by-case basis.

E. Observation Wells

In the NOPR, the Commission stated that it was beyond the intent of the blanket certificate for pipelines to construct new injection and withdrawal wells. However, it proposed to allow pipelines to drill observation wells under their blanket certificate authorization.

Comments. NGAA contends that observation wells are drilled under § 2.55. Therefore, it states that they do not need to be codified under the blanket certificate regulations and should not be subject to the new advance landowner notification requirements. Williston Basin and Enron request that the Commission clarify that deteriorated wells can be replaced under § 2.55.

Market Hub contends that the Commission's proposal to allow drilling of observation wells will be used to circumvent the Commission's authority and to avoid obtaining advance site-specific approval for new storage/injection wells. It requests that the Commission require site-specific approval before a pipeline may drill or construct any and all wells. Specifically, it states that a pipeline might avoid obtaining approval for the drilling and construction of storage injection/withdrawal wells by calling all wells observation wells at the time they are drilled. Then, after drilling and completing a well a pipeline will seek approval to convert the observation well for use as an injection/withdrawal well. This, it argues, will diminish the Commission's ability to conduct a site-specific review of the new well and will eliminate the ability of affected landowners or other intervener to review and object to the drilling of such wells. Mr. Deming also asserts that the Commission should not allow storage companies to drill any wells without getting specific approval.

Market Hub also contends that the Commission's proposed rule favors storage facilities that have occasion to drill observation wells (*e.g.* depleted reservoir facilities) over storage facilities that generally do not (*e.g.* salt cavern storage facilities). Thereby, creating an unfair and discriminatory advantage by "handing additional loopholes to depleted reservoir facilities".[13]

In the alternative, Market Hub requests that the Commission adopt regulations that articulate standards distinguishing between legitimate observation wells and "convert" storage injection/withdrawal wells. For example, it recommends that the Commission: (1) Impose restrictions upon the diameter of the well bore because the well bore for observation wells is typically smaller than the well bore used for injection/withdrawal wells; (2) limit the area where the well can be drilled because observation wells normally are drilled either near the edges of an active storage field, or outside the confines of the storage field; (3) review the type of equipment and facilities used in or on the well.

On the other hand, INGAA also requests that the Commission revise § 157.202 to allow for replacement wells to be drilled under the pipeline's blanket certificate authority. Similarly, Williston Basin believes that the Commission should revise § 157.202 to allow storage related replacement wells under blanket certificates in order to provide pipelines with additional flexibility regarding such facilities. As far as landowner issues are concerned, it contends that most storage rights-of-way or easement agreements are in place for the entire storage field. It asserts that these agreements generally define the rights of storage field operators to construct replacement storage wells and detail the compensation due the property owners. If there is no agreement, it contends, then a new agreement will be entered into before any storage well replacement takes place. Therefore, Williston Basin concludes that the agreements will control what notice is required if the operator needs to install replacement facilities.

NYSDES requests that the Commission clarify that its proposal to allow observation wells to be drilled under a blanket certificate does not supersede applicable state well permitting requirements.

Commission Response. In *Natural Gas Pipeline of America,*[14] the Commission stated that "[o]bservation wells are not facilities within section 7(c) of the Natural Gas Act, and therefore do not require [a] certificate." As such, as the commentors point out, they can be constructed under § 2.55(a) of the Commission's regulations. Consequently, we will withdraw our proposal to include such wells within the ambit of the blanket certificate program.

We will also clarify that we fully intended § 2.55(b) to be available for the replacement of wells which fit the requirements of that section. Therefore, injection/withdrawal wells which meet the specifications of § 2.55(b)(1)(i and ii) may be replaced using this section of our regulations.

We reject the comment that just because the physical characteristics of the typical storage field using depleted oil or natural gas reservoirs, or aquifers make observation wells necessary whereas observation wells are unnecessary in conjunction with the salt cavern storage of natural gas, allowing companies that need such facilities to drill them is in any way discriminatory. The fact that some pipelines may not benefit from a particular Commission's regulations does not make that regulation discriminatory.

Further, we do not believe that site-specific approval is necessary before a pipeline can drill or construct any and all wells. As stated, the Commission currently allows pipelines to do minor construction on existing wells under § 2.55 of its regulations. The types of activities performed under this section are relatively minor ones that do not significantly disrupt the environment and do not warrant further Commission review. The Commission does not believe it is necessary to further restrict or add further standards to these activities at this time.

However, we do not believe that the Commission's blanket certificate authorization provides adequate oversight for the construction of new injection/withdrawal wells. As stated in the NOPR, and the rehearing order in Order No. 603–A, we do not intend for the change in this section to allow pipelines to drill additional injection/withdrawal wells under the blanket certificate because such wells may inherently alter the deliverability, capacity, or boundary of a reservoir. Drilling new injection/withdrawal wells in existing storage pools requires separate section 7(c) authorization.

Finally, in general, inclusion of facilities under the blanket certificate does not exempt them from obtaining any applicable permits required by any other jurisdiction. However, as the courts have ruled, no non-Federal jurisdiction may use its permitting authority under state or local statute to delay or counteract the execution of a Commission certificate.

F. Plan and Procedures

In the NOPR, the Commission proposed to apply the same erosion control procedures (the Plan) and stream and wetland crossing mitigation measures (the Procedures) to activities conducted under blanket certificate authorization as are routinely used in the regular certificate process.

Comments. Generally, INGAA, Williston Basin, Algonquin, and Enron request that the Commission clarify that the Plan and Procedures are guidelines which may or may not apply to a particular project and have not been adopted in this proceeding as requirements. INGAA asserts that if the Plan and Procedures continue as guidelines, its member pipelines would reflect in their annual report whether they have employed the guidelines or equivalent procedures. INGAA also requests that the Commission permit pipelines, independent of any specific project, to file and obtain approval for company procedures that they may intend to employ in lieu of the Plan and Procedures. INGAA and El Paso also state that pipelines should be allowed to obtain blanket waivers of the Plan and Procedures for construction in certain regions of the country where they do not fit local conditions. Enron and El Paso state that they should be permitted to establish their own Plans and Procedures adapted to fit different geographic regions.

National Fuel states that if the Commission intends to make the Plan and Procedures applicable to all blanket certificate projects, it should consider the specific comments National Fuel raised about the Plan and Procedures in RM98–9–000. Additionally, National Fuel requests that the Commission clarify that it intends to allow state permitting agencies and local land management agencies to grant variances to the Plan and Procedures. It contends that the clarification would avoid most of the conflicts between the requirements of permitting agencies and the Plan and Procedures. Finally, it asserts that the Commission should have clear procedures in place for efficiently processing requests for variances by the time the final rule in this proceeding takes effect.

The Iowa Board states that by making the Plan and Procedures mandatory, it is unclear whether the Commission intends to preempt the state standards or state agreements. It urges the Commission to continue, explicitly, to allow states to enforce state and local standards and agreements more stringent than the federal requirements, as long as the state and local standards and agreements are consistent with the federal requirements.

Commission Response. As part of its responsibility under NEPA, the

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[13] Market Hub's comments, at 17.

[14] 32 FERC 61,287 n.1 (1985)

Commission needs to ensure that pipelines employ proper erosion control and stream and wetland crossing mitigation measures for activities performed under their blanket certificate authorizations. In the NOPR, the Commission proposed to use the Plan and Procedures in the context of blanket certificate projects in a manner similar to the way they are employed in a traditional NGA section 7(c) filing.

In case-specific section 7 filings, the applicant has two choices regarding these mitigation measures: (1) Either use the Plan and Procedures as specified by the Commission; or (2) specify what alternative procedures it intends to use. In the latter case the Commission determines if the alternative methodology is acceptable. The requirements proposed here continue to give the certificate holder the same alternatives. However, since the Commission does not generally review blanket certificate construction activities in advance, we will allow pipelines to substitute the recommendations of the local state and Federal agencies in place of the Commission's Plan and Procedures.

If the certificate holder can obtain agreement from the appropriate agency(ies) to use a different set of procedures, then it may do so under the blanket certificate program. However, the agency must make a conscious decision to choose the alternative method and, therefore, must be provided with a copy of the Commission's Plan and/or Procedures, to use in its review process.

We will not allow certificate holders to come in with generic alternative plans for each section of the country for the Commission to review, as suggested by some commentors. We believe it would be a better use of Commission time and resources to review such requests on a case-by-case basis, as necessary, given the regional nature of this issue and the relatively minor nature of the projects constructed under the blanket certificate program.

Finally, as noted in the Final Rule in Docket No. RM98–9–000, we intend to revise the Plan and Procedures in light of the suggestions raised by National Fuel and as other needs arise. The Commission will issue notices when changes are made to alert pipelines of the specific modifications.

G. Magnuson Act

In the NOPR, the Commission stated that the pipelines should be contacting the National Marine Fisheries Service (NMFS) to determine what level of consultation is necessary for their projects for the appropriate consideration of "essential fish habitat" (EFH). It proposed regulations that would require that the pipelines consult with NMFS.

Comments. The Department of Commerce (Commerce) contends that the Commission's proposed rule may unnecessarily increase filing requirements for pipeline companies and makes the following recommendations. First, it recommends that the Commission provide a separate subsection dealing with compliance with the Magnuson Act similar to § 380.13 of the regulations for the Endangered Species Act (ESA). Second, it states that under the EFH regulations, a non-Federal representative can conduct an abbreviated consultation with the NMFS when an action does not have the potential to cause substantial adverse effects on EFH. However, it points out that an expanded consultation is required if the proposed action would result in substantial adverse effects on EFH, or if additional analysis is needed to accurately assess the effects of the proposed action. It states that the EFH regulations do not allow expanded consultations to be conducted by non-Federal representatives. It asserts that the Commission should clarify its proposed rule to state that pipeline companies could only be designated to conduct abbreviated consultations and EFH assessments.

Third, it contends that while the designated non-Federal representative may conduct certain activities, the EFH regulations require that the agency provided written notice of such designation to NMFS. It states that the Commission should modify its proposed rule to conform with the NMFS regulations regarding notice of designation of non-Federal representatives. Fourth, it states that under section 305(b)(4)(B) of the Magnuson Act, the Federal agency is required to provide certain information to the NMFS. It asserts that the Commission should revise its proposed rule to reflect the Commission's responsibility to respond to the EFH recommendations. Fifth, its states that the Commission should revise Resource Report 3 to prevent confusion with ESA consultations by removing references to EFH and adding the following: "Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of consultation with NMFS.

Finally, it recommends that the Commission consult with the NMFS to determine if certain categories of activities can be treated on a programmatic basis or in combination with other existing consultation processes.

INGAA and El Paso assert that the NMFS does not consult with individual companies or respond to the pipelines' consultation requests. Therefore, they contend that it may be difficult, if not impossible for pipelines to comply with the revised regulations. They suggest that the Commission consult with the NMFS regarding compliance with the Magnuson Act.

Commission Response. The Commission is presently working with Commerce on how to best address the requirements of the Magnuson Act in its regulations. However, in the interim, the purpose of the Commission's proposal in the NOPR was to preliminarily put pipelines on notice that they need to comply with the requirements of the Magnuson Act and to provide guidance on what the Commission expects. Accordingly, we will modify Resource Report 3 to reflect that the Commission will require that the applicant identify all federally listed EFH and to provide the results of any abbreviated consultations the applicant may have had with NMFS. If necessary, we will address Commerce's specific comments in a subsequent rulemaking to codify the more specific requirements of the Magnuson Act.

H. Categorical Exclusions

In the NOPR, the Commission proposed to add several new categories to the list of categorical exclusions, including, among others, abandonment, construction, or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), so long as it does not increase the noise or air emissions from the facility, as a whole.

Comments. INGAA, Columbia, and Enron request that the Commission replace the phrase "within an existing building" with "within the previously disturbed station yard" because not all compression is housed within a building.

Commission Response. The Commission specifically limited this categorical exclusion to "within an existing building" because such a change, combined with the other requirements, would not be detectable outside the property. In addition, it would have no potential to affect threatened or endangered species or cultural resources. Changes "within the previously disturbed station yard" would normally be detectable outside the property and, while there may be low potential for an effect on threatened or endangered species, cultural resources potentially could be affected. Accordingly, we will not extend the exclusion to include facilities outside of the existing building.

I. Intervention Status

Several landowner groups requested that the Commission change its intervention process to accommodate the small filer. In response, the Commission explained that its regulations allow for the waiver of a rule for good cause and stated that if parties were having difficulty participating in a proceeding, they should request a waiver of the Commission's service rule.

Comments. Market Hub agrees that landowners who arguably cannot afford to participate in a certificate proceeding may request appropriate waivers, but should not be given special status which would allow them to take advantage of reduced filing or service requirements as a matter of course. It contends that there is no reason for the Commission to adopt a new system to relieve administrative burdens on landowners on a global basis, because it could unfairly burden jurisdictional pipelines and prejudice other participants in the regulatory process.

Conversely, GASP contends that landowners should be able to participate in the process without having to spend thousands of dollars on copying and postage to protect their property rights. It recommends that the landowner be permitted to file pleadings and serve them on the applicant and any party that would be directly or adversely affected by what the landowner is proposing. It argues that the Commission should routinely grant landowners waivers of the Commission's rule requiring service of pleadings on all parties.

Commission Response. The Commission will consider the need for special filing or service requirements on a case-by-case basis. We do not believe it is necessary to create a special class of filers who automatically do not need to serve copies of their filings on everyone. This would not be fair to the rest of the universe of filers. Additionally, as stated, the Commission now permits participants to a proceeding to voluntarily serve documents on one another by electronic means.[15] This should help reduce some of the costs of participating in a Commission proceeding.

J. Construction Inspectors

In the NOPR, in response to comments, the Commission explained that as part of the environmental conditions imposed in a certificate proceeding, it requires that the pipelines hire environmental inspectors to make sure that the environmental conditions of the certificate are appropriately applied.

Comments. The Shavers ask why environmental inspectors are not assigned by the Commission. They contend that the pipelines should pay their salary but they should not be allowed to hire their own inspectors.

Commission Response. The Commission's staff and its contractors routinely inspect projects. In addition, there have been cases where the Commission has had the company pay for inspectors who are directly under the control of the Commission. We will continue to use these various methods of ensuring compliance as necessary, on a project-specific basis.

Further, we do not find any reason that would warrant a ban on pipelines hiring independent contract inspectors. The pipelines recognize it is in their best interest to meet the certificate conditions, so they are protecting themselves by hiring inspectors. In addition, these inspectors are usually professionals who have a vested interest in their credibility. They move from one project to another and their work becomes known within the industry and at the Commission. The independent contract inspectors are not only hired by the pipelines, they are occasionally hired by the Commission. It would be detrimental to their future employment interests if the Commission were to find that they are not being impartial in their inspections.

K. Need/Eminent Domain/ Compensation

GASP questions the Commission's current policy concerning the demonstration of public need for proposed facilities. It contends that the Commission is granting certificates based on private convenience and "corporate greed", and not public need. It claims that the Commission has strayed from its statutory mandate by substituting desires of the marketplace for demonstrated public need.

The Shavers argue that market demand cannot be twisted to mean the same thing as public need. They state that courts condemn the land for market value with no consideration for loss of use to the landowner. They argue that the courts assume the certificate means a critical shortage will exist for gas at the end of the pipeline. They question why the landowner should pay a higher price than the recipients of the gas, while the pipeline company profits. They also claim that public convenience and necessity can only be argued if new customers (who did not previously have gas service) or additional volumes of gas for existing customers is being provided. They argue that the Commission's policy of using contracts to determine need leaves more half-empty pipelines and is only convenient to pipelines, utilities, and shareholders.

Ms. Laurie Smith, a landowner that had participated in a Southern Natural Gas pipeline proceeding, contends that the Commission is misinterpreting and misusing the power of eminent domain granted in NGA section 7. She argues that this misuse has led to the violation of landowners' Fifth Amendment property rights. Ms. Smith states that proper notification and explanation does not justify violating landowners' constitutional rights. She states that the rights of eminent domain, as spelled out in the NGA, are not applicable in a deregulated, competitive natural gas industry and that "[i]t is time that the Commission recognizes what the real issues are and that their current stance on them only pits the landowner against the pipeline rather than forming a mutual beneficial business relationship."[16]

The Shavers question the Commission's statement that the pipeline's right to eminent domain is not optional. They contend that the Commission makes it optional when it allows pipelines to construct facilities under the optional certificate regulations. They argue that risk and actual necessity are two different things. Ms. Supa contends that the pipelines should pay a royalty to the landowner yearly for the use of their land.

The Iowa Board recommends that the Commission consider whether the record shows the pipeline company has made a good faith effort to obtain voluntary easements before granting a certificate that conveys the right of eminent domain.

Commission Response. First, we note that how the Commission determines the need for a pipeline and the right to eminent domain are not issues in this proceeding. The goal of this rulemaking is to implement landowner notification requirements, make minor changes to the Commission's regulations to help expedite the certificate process, and to implement additional environmental requirements.

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[15] *See* Electronic Service of Documents, Order No. 604, 64 FR 31493 (June 11, 1999), III FERC Stats. and Regs. ¶ 31,074 (May 26, 1999).

[16] Ms. Smith's letter filed June 21, 1999.

The Commission generally determines the need for a proposed pipeline on a case-by-case basis, based on the facts and circumstances in each proceeding. In addition, the Commission recently issued a policy statement to provide guidance as to how it will evaluate proposals for new construction. In the policy statement, we stated that our goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.[17] The Commission intends to apply this criteria on a case-by-case basis.

As stated in the NOPR, a pipeline's right to use eminent domain is a statutory right imposed by Congress. NGA section 7(h), confers the right to obtain property through the power of eminent domain if the certificate holder cannot otherwise reach an agreement with the property owner. The courts have uniformly held that the Commission has no authority to deny unilaterally that power to the certificate holder.[18] Further, a pipeline's right to use eminent domain to acquire the necessary property does not violate the landowner's constitutional rights. Issues of an unconstitutional taking arise only when the government acts in a way to deprive a citizen of its property without compensation. The Fifth Amendment does not proscribe the taking of property; it proscribes taking without compensation.[19]

Finally, compensation for rights-of-ways is determined by the laws of the state in which the condemnation proceeding takes place. The Commission has no jurisdiction over those issues.

L. Easement Documents

In the NOPR, in response to landowners' requests, the Commission stated it did not believe it was necessary to review every easement document negotiated by a pipeline or submitted for condemnation proceedings. However, we stated that we expected that pipelines would negotiate with landowners for easement rights fairly and in good faith, and that certain information would be provided to the landowner.

Comments. INGAA explains that a pipeline may enter into easement agreements prior to the time it files its certificate application or before the certificate has been granted. Therefore, it asserts that the pipeline would not have the exact right-of-way location at that time. It states that the pipeline will generally explain to the landowner the proposed route. It also contends that if the pipeline negotiates in good faith, it should not be prohibited from acquiring more land than is covered by the ultimate certificate.

Similarly, Questar Pipeline Company (Questar) asserts that the Commission's proposal to inform landowners of the proposed uses of their land ignores the practicalities of undertaking pipeline construction. It contends that many pipelines negotiate and secure right-of-way agreements prior to filing a certificate application. It states that the Commission's proposal would discourage any pre-filing efforts and thereby delay construction of the facilities. Questar claims that the Commission's proposal would allow property owners to object to the project or previously negotiated easement once the application is filed thus avoiding their side of the easement agreement. Further, it argues that the Commission has no authority to examine or require the alteration of easement agreements entered into prior to the Commission's granting the certificate.

Great Lakes requests that the Commission reconsider its intent to place easement conditions on certificates, and to clarify that such conditions will not affect existing pipeline easements, including those negotiated with landowners prior to receipt of a certificate. Additionally, Great Lakes is concerned that the Commission will require the pipeline to re-negotiate every easement agreement it holds with the landowners if the Commission conditions the certificate. It claims that this would create an enormous delay and aggravation for both the pipelines and landowners.

Columbia presents similar arguments and states that pipelines must be able to acquire property rights necessary for a project on timetables consistent with their present and long range project plans. It claims that there has been no showing of any need to regulate freely negotiated property rights transactions.

In contrast, GASP questions the Commission's statement that the pipeline will negotiate with landowners fairly and in good faith. It alleges that in that case the "landowners are being lied to, threatened, intimidated, and badgered to give up more than the certificate requires."

Further, INGAA states that easement agreements are long-term documents and that identifying company representatives and phone numbers in the document should not be required. Great Lakes questions the usefulness of such a requirement since the landowners know with whom they negotiated with and the description of the affected property will be set forth in the easement documents and the easements are subject to applicable state statutes on recording and legal descriptions that would render the Commission's requirements duplicative. It also asserts that requiring to put pipeline contacts and phone numbers in the easement documents is unlikely to provide up-to-date contact information to the landowner. Questar states that the Commission should not use its certificate authority to tinker with the form and substance of easement agreements. Specifically, it points out that as a practical matter, adding phone numbers and names to easement agreements does not make sense since the numbers and names will change long before the easements do. Enron makes similar arguments.

Commission Response. The Commission has received numerous complaints from landowners alleging that pipelines are not negotiating with landowners for easement rights. In essence, filings in recent proceedings allege that the pipelines are threatening landowners with a take-it or be-subject-to-condemnation deal in which the landowner is not allowed any meaningful negotiations. Additionally, they allege that the pipelines are representing to the landowners that the property they may need for their long range plans will be included in any condemnation proceeding. Landowners also claim that the pipelines are wrongly representing that the Commission's certificate will give them the authority to use the property for whatever use they deem necessary, including the placement of fiber optic cable. They also contend that the pipelines are representing that if landowners do not sign the agreement voluntarily, the pipeline will have the right to acquire the same rights in a condemnation proceeding.

The Commission understands that the pipelines would like to be able to acquire the property rights necessary for their present and long range plans. However, the pipelines should specifically explain to the landowner during negotiations what exactly they would have the right to in a condemnation proceeding, and what extras they are seeking in the negotiations for an easement agreement. Landowners should be compensated for such extras. We do not believe it is appropriate for the pipelines to take advantage of the landowners' lack of knowledge by negotiating an agreement using misrepresentation or the incomplete disclosure of all the relevant facts to the landowners.

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[17] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999).

[18] *See FPC* v. *Tuscarora Indian Nation*, 362 U.S. 99, 123–24 (1960); Columbia Gas Transmission Corp. v. Exclusive Natural Gas Storage Easement, 776 F.2d 125, 129 n.1 (6th Cir. 1985)(holding that issuance of a certificate authorizing a pipeline to operate any facility gives the pipeline the right to condemn the necessary easements).

[19] *See Williamson County Reg'l Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172, 194 (1985).

The Commission does not intend to change or challenge existing negotiated easement agreements. However, we note that to the extent the pipelines are acquiring rights through questionable tactics, the validity those agreements would be determined by applicable state law.

Finally, the Commission only intends to consider the imposition of conditions on a pipeline's easement agreements on a case-by-case basis in individual proceedings where the Commission deems such action to be necessary. Any objections to the specific details of such conditions may be raised in the individual proceedings.

IV. Information Collection Statement

The Office of Management of Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and record keeping requirements (collection of information) imposed by an agency. Upon approval of collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collection information related to the subject of the Final Rule falls under the Commission's FERC–537 [20] and FERC–577 [21] data collections. Specifically, the subject rule would require notification of all landowners whose land may be affected by proposed natural gas pipeline projects.

In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995,[22] the proposed data requirements in the subject rulemaking have been submitted to the Office of Management and Budget (OMB) for review.

The estimated reporting burden related to the notification requirements in the Final Rule is shown in the tables below. The estimates include an initial one-time start-up burden of 8,800 hours for the first year plus an on-going annual burden of 10,744 hours under FERC–577 and a decrease of 12,600 hours under FERC–537. The net change in total reporting burden under the data collections would be an estimated net increase of 6,944 hours for the first year. In subsequent years, there would be a net decrease of 1,856 hours.

The burden estimates for complying with the Final Rule are as follows: *Public Reporting Burden:* Estimated Annual Burden: The burden estimates for complying with this proposed rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–537	50	−50	252	−12,600
FERC–577	70	−20	[23] 13.9	[24] +19,544
Total	70	−70	[25] 4.1	+6,944

[23] The increase per response based on an estimated 1,160 responses per year. *Note:* Detail may not add to total because of rounding.

[24] Includes one-time initial start-up burden of 8,800 hours.

[25] Represents the increase per response (rounded) based on the net increase in total reporting burden (6,944 hours) divided by the total number of responses expected annually under both FERC–537 and FERC–577 (1,690 responses).

Total Annual Hours for Collections: Annual reporting burden (including one-time start-up burden during the first year of implementation) plus record keeping (if appropriate) = 6,944 hours.

Based on the Commission's experience with processing applications for construction and acquisition of pipeline facilities over the last three fiscal years (FY96–FY98), it is estimated that 1,690 filings/responses per year (under both data collections) will be made over the next three years. The average burden per filing would increase 4.1 hours. Following the first year of implementation, the reporting burden under FERC–577 would be reduced by 8,800 hours.

Information Collection costs: The average annualized cost for all respondents during the first year of implementation to be:

Data collection	Annualized capital/start-up costs	Annualized on-going costs (operations and maintenance)	Total annualized costs
FERC–537	....	−$665,674	−$665,674
FERC–577	$464,915	567,619	1,032,534
Total	464,915	−98,055	366,860

OMB regulations require its approval of certain information collection requirements imposed by agency rule.[26] Accordingly, pursuant to OMB regulations, the Commission has provided notice of its proposed information collections to OMB.

Title: FERC–537 "Gas Pipeline Certificate: Construction, Acquisition, and Abandonment." and FERC–577 "Environmental Impact Statement."

Action: Proposed Data Collections.

OMB Control No.: 1902–0060 (FERC–537); 1902–0128 (FERC–577).

Applicants shall not be penalized for failure to respond to these collections of information unless the collections of information display a valid OMB control number.

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[20] Gas Pipeline Certificates: Construction, Acquisition, and Abandonment.

[21] Gas Pipeline Certificates: Environmental Impact Statement.

[22] 44 U.S.C. 3507(d).

[26] 5 CFR 1320.11.

Respondents: Businesses or other for profit. (Interstate natural gas pipelines (Not applicable to small business))

Frequency of Responses: On occasion.

Necessity of Information: The Final Rule revises the Commission's regulations governing the filing of applications for the construction and operation of pipeline facilities to provide service or to abandon facilities or service under section 7 of the NGA. Section 7 of the NGA requires the Commission to issue certificates of public convenience and necessity for all interstate sales and transportation of natural gas, the construction and operation of natural gas facilities used for those interstate sales and transportation and prior Commission approval of abandonment of jurisdictional facilities or services. The Commission has determined that portions of its regulations need to be revised to reflect a recent increase in sensitivity of the public to pipeline construction, and a desire on the part of the public to receive more timely notification of pipeline construction proposals. Certain other changes are being made because of the Commission's experience in the processing of some applications for which an Environmental Assessment is unnecessary.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

For information on the requirements, submitting comments concerning the collection of information and the associated burden estimates, including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208–1415, fax: (202)273–0873, e-mail: mike.miller@ferc.fed.us]. In addition, comments on reducing the burden and/or improving the collections of information should also be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW, Washington, DC 20503, phone (202)395–3087, fax: (202)395–7285.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[27] The Commission is not required to make such analyses if a rule would not have such an effect.[28]

The Commission does not believe that this rule would have such an impact on small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VI. Environmental Statement

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[29] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[30] Generally, the actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[31] While the additions of the categorical exclusions in §§ 380.4(a)(31) through (36) include construction-type activities, the NOPR discussion of those sections explains why they do not have a significant effect on the environment. Accordingly, we do not believe that any further analysis is needed. Therefore, an Environmental Assessment is unnecessary and has not been prepared in this rulemaking.

VII. Effective Date

These regulations become effective November 24, 1999. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Parts 153, 157, and 380 Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR OF IMPORT NATURAL GAS

1. The authority citation for part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p.136. DOE Delegation Order No. 0204–112. 49 FR 6684 (February 22, 1984).

2. New § 153.3 is added to read as follows:

§ 153.3 Notice requirements.

All applications filed under this part are subject to the landowner notification requirements in § 157.6(d) of this chapter.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

4. In § 157.6, a new paragraph (d) is added to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

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[27] 5 U.S.C. 601–612.

[28] 5 U.S.C. 605(b).

[29] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990, ¶30,783 (Dec. 10, 1987).

[30] 18 CFR 380.4.

[31] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

(d) *Landowner notification.* (1) For all applications filed under this subpart which include construction of facilities or abandonment of facilities (except for abandonment by sale or transfer where the easement will continue to be used for transportation of natural gas), the applicant shall make a good faith effort to notify all affected landowners:

(i) By certified or first class mail, sent within 3 business days following the date that a docket number is assigned to its application; or

(ii) By hand, within the same time period; and

(iii) By including notice of the project in a newspaper(s) of general circulation in the project area within a week of such filing.

(2) All affected landowners includes owners of property interests, as noted in the most recent county/city tax records as receiving the tax notice, whose property:

(i) Is directly affected (*i.e.*, crossed or used) by the proposed activity, including all facility sites, rights-of-way, access roads, pipe and contractor yards, and temporary workspace;

(ii) Abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed right-of-way which runs along a property line in the area in which the facilities would be constructed;

(iii) Contains a residence within one-half mile of proposed compressors or their enclosures or LNG facilities; or

(iv) Is within the area of new storage fields or expansions of storage fields, including any applicable buffer zone.

(3) The notice shall include:

(i) The docket number of the filing;

(ii) The most recent edition of the Commission's pamphlet that explains the Commission's certificate process and addresses the basic concerns of landowners. Except: pipelines are not required to include the pamphlet in notifications of abandonments or in the published newspaper notice;

(iii) A description of the applicant and the proposed project, its location (including a general location map), its purpose, and the timing of the project;

(iv) A general description of what the applicant will need from the landowner if the project is approved, and how the landowner may contact the applicant, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project;

(v) A brief summary of what rights the landowner has at FERC and in proceedings under the eminent domain rules of the relevant state; and

(vi) Information on how the landowner can get a copy of the application from the company or the location(s) where a copy of the application may be found as specified in § 157.10.

(4) If the notice is returned as undeliverable, the applicant will make a reasonable attempt to find the correct address and notify the landowner.

(5) Within 30 days of the date the application was filed, applicant shall file an updated list of affected landowners, including information concerning notices that were returned as undeliverable.

5. In § 157.103, a new paragraph (k) is added to read as follows:

§ 157.103 Terms and conditions; other requirements.

* * * * *

(k) Applications filed under this section are subject to the landowner notification requirements described in § 157.6(d).

6. In § 157.202, paragraphs (b)(6)(ii) and (b)(11)(i) are revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) * * *

(6) * * *

(ii) When required by highway construction, dam construction, encroachment of residential, commercial, or industrial areas, erosion, or the expansion or change of course of rivers, streams or creeks, or

* * * * *

(11) *Sensitive environmental area* means:

(i) The habitats of species which have been identified as endangered or threatened under the Endangered Species Act (Pub. L. 93–205, as amended) and essential fish habitat as identified under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*);

* * * * *

7. In § 157.203, new paragraph (d) is added to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.*

(1) Except as identified in paragraph (d)(3) of this section, no activity described in paragraph (b) of this section is authorized unless the company makes a good faith effort to notify all affected landowners, as defined in § 157.6(d)(2), at least 30-days prior to commencing construction or at the time it initiates easement negotiations, whichever is earlier. The notification shall include at least:

(i) A brief description of the facilities to be constructed or replaced and the effect the construction activity will have on the landowner's property;

(ii) The name and phone number of a company representative who is knowledgeable about the project; and

(iii) An explanation of the Commission's Enforcement Hotline procedures, as codified in § 1b.21 of this chapter, and the Enforcement Hotline telephone number.

(2) For activities described in paragraph (c) of this section, the company shall make a good faith effort to notify all affected landowners, as defined in § 157.6(d)(2), within at least three business days of filing its application or at the time it initiates easement negotiations, whichever is earlier. The notice should include at least:

(i) A brief description of the facilities to be constructed or replaced and the effect the construction activity will have on the landowner's property;

(ii) The name and phone number of a company representative that is knowledgeable about the project;

(iii) The docket number (if assigned) for the company's application; and

(iv) The following paragraph: This project is being proposed under the prior notice requirements of the blanket certificate program administered by the Federal Energy Regulatory Commission. Under the Commission's regulations, you have the right to protest this project within 45 days of the date the Commission issues a notice of the pipeline's filing. If you file a protest, you should include the docket number listed in this letter and provide the specific reasons for your protest. The protest should be mailed to the Secretary of the Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426. A copy of the protest should be mailed to the pipeline at [pipeline address]. If you have any questions concerning these procedures you can call the Commission's Office of External Affairs at (202) 208–1088.

(3) *Exceptions.*

(i) No landowner notice is required for replacements which would have been done under § 2.55 of this chapter but for the fact that the replacement facilities are not of the same capacity and as long as they meet the location requirements of § 2.55(b)(1)(ii) of this chapter; or any replacement done for safety, DOT compliance, environmental, or unplanned maintenance reasons that are not foreseen and that require immediate attention by the certificate holder.

(ii) No landowner notice is required for abandonments which involve only the sale or transfer of the facilities, and the easement will continue to be used for transportation of natural gas.

8. In § 157.206, new paragraphs (b)(2)(xii) and (b)(3)(iv) are added to read as follows:

§ 157.206 Standard conditions.

* * * * *

(b) *Environmental compliance.* * * *

(2) * * *

(xii) Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*)

(3) * * *

(iv) Paragraphs (b)(2)(i) and (viii) of this section only if it adheres to Commission staff's current "Upland Erosion Control, Revegetation and Maintenance Plan" and "Wetland and Waterbody Construction and Mitigation Procedures" which are available on the Commission Internet home page or from the Commission staff, or gets written approval from the staff or the appropriate Federal or state agency for the use of project-specific alternatives to clearly identified portions of those documents.

* * * * *

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

9. The authority citation for Part 380 continues to read as follows:

Authority: 42 U.S.C. 4321–4370–a; 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

10. In § 380.4, new paragraphs (a)(31) through (a)(36) are added to read as follows:

§ 380.4 Projects or actions categorically excluded.

(a) * * *

(31) Abandonment of facilities by sale that involves only minor or no ground disturbance to disconnect the facilities from the system;

(32) Conversion of facilities from use under the NGPA to use under the NGA;

(33) Construction or abandonment of facilities constructed entirely in Federal offshore waters that has been approved by the Minerals Management Service and the Corps of Engineers, as necessary;

(34) Abandonment or construction of facilities on an existing offshore platform;

(35) Abandonment, construction or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), if it does not increase the noise or air emissions from the facility, as a whole; and

(36) Conversion of compression to standby use if the compressor is not moved, or abandonment of compression if the compressor station remains in operation.

* * * * *

11. In § 380.12, paragraphs (c)(5) and (c)(10) are revised; paragraphs (e)(6) and (e)(7) are redesignated (e)(7) and (e)(8); and new paragraph (e)(6) is added to read as follows:

§ 380.12 Environmental reports for Natural Gas Act applications.

* * * * *

(c) * * *

(5)(i) Identify facilities to be abandoned, and state how they would be abandoned, how the site would be restored, who would own the site or right-of-way after abandonment, and who would be responsible for any facilities abandoned in place.

(ii) When the right-of-way or the easement would be abandoned, identify whether landowners were given the opportunity to request that the facilities on their property, including foundations and below ground components, be removed. Identify any landowners whose preferences the company does not intend to honor, and the reasons therefore.

* * * * *

(10) Provide the names and mailing addresses of all affected landowners specified in § 157.6(d) and certify that all affected landowners will be notified as required in § 157.6(d).

* * * * *

(e) * * *

(6) Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project. Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments.

* * * * *

12. In Appendix A to Part 380, paragraph 8 in Resource Report 1 and paragraphs 7 and 8 of Resource Report 3 are revised to read as follows:

Appendix A to Part 380-Minimum Filing Requirements for Environmental Reports Under the Natural Gas Act

Resource Report 1—General Project Description

* * * * *

8. Provide the names and address of all affected landowners and certify that all affected landowners will be notified as required in § 157.6(d). (§§ 380.12(a)(4) and (c)(10))

* * * * *

Resource Report 3—Vegetation and Wildlife

* * * * *

7. Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments. (§ 380.12(e)(6))

8. Describe any significant biological resources that would be affected. Describe impact and any mitigation proposed to avoid or minimize that impact. (§§ 380.12(e)(4 & 7))

* * * * *

[FR Doc. 99–27782 Filed 10–22–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OK17–1–7410; FRL–6463–2]

Standards of Performance for New Stationary Sources (NSPS); Supplemental Delegation of Authority to the State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The purpose of this document is to inform the public that the EPA approved the updated delegation of authority to the State of Oklahoma for implementation and enforcement of NSPS. This action is in response to a request from the Oklahoma Department of Environmental Quality (ODEQ).

On November 2, 1998, the State of Oklahoma approved an emergency rule that incorporates by reference EPA's New Source Performance Standards in 40 CFR part 60. Both emergency and permanent rules incorporating by reference the NSPS were adopted by the Environmental Quality Board on September 15, 1998 and the permanent rules took effect June 1, 1999. The State adopted all of the NSPS except subpart AAA, New Residential Wood Heaters, and those sections that contain authorities reserved by the EPA.

EFFECTIVE DATE: The effective date of the delegation of authority is October 8, 1999.

ADDRESSES: The related materials in support of this action may be requested by writing to the following address: Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202, telephone: (214) 665–7259.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the Authority for delegation?
II. What was the existing delegation?
III. What is being delegated?
IV. What is not being delegated?
V. What about the NESHAP delegation agreement?
VI. Administrative requirements.

I. What is the Authority for Delegation?

Sections 110, 111(c)(1) and 301, of the Clean Air Act (ACT) as amended November 15, 1990, authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, NSPS.

II. What was the Existing Delegation?

The original delegation of NSPS authority to Oklahoma was granted by EPA on March 25, 1982. This delegation was granted based on the State incorporating the NSPS requirements into future permits; therefore, the delegation excluded the authority to enforce the standards against sources constructed or modified prior to the effective date of the delegation.

III. What is Being Delegated?

On November 2, 1998, under the State's "Emergency Rules" statute (75 Oklahoma Statue, supplement 1998, section 253, Statutes and Reports), the State adopted emergency rules that incorporated by reference the NSPS in 40 CFR part 60. Both emergency and permanent rules were adopted by the Oklahoma Environmental Quality Board on September 15, 1998, and both were signed by the Governor on November 2, 1998. While the emergency rules took effect on November 2, 1998, the Oklahoma legislature reviewed and approved the permanent rules that became effective on June 1, 1999.

After a thorough review of the newly adopted rule, the Regional Administrator has determined that this action was appropriate for all source categories constructed or modified prior to the effective date of this delegation. All sources subject to the requirements of 40 CFR part 60 will now be under the jurisdiction of the State as appropriate.

Since review of the pertinent laws, rules, and regulations for the State has down them to be adequate for implementation and enforcement authority, EPA hereby notifies the public that it has extended the delegation of authority to all sources upon the effective date of the Regional Administrator's letter. Based on ODEQ's additional authority, EPA has updated the delegation agreement. This delegation is based upon the State's incorporation by reference of NSPS which will apply regardless of date. It is also important to note that EPA retains concurrent enforcement authority.

IV. What is not Being Delegated?

It is important to note that no delegation authority is granted to the ODEQ for Indian lands. In 1983, the President established a Federal Indian Policy which emphasized the principle of Indian "self-government," and direct dealing with Indian Nations on a "government-to-government" basis. We have adopted this policy for administration of the environmental programs on Indian lands. Also, no authority is delegated to the State for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters.

V. What About the NESHAP Delegation Agreement?

This will not affect the 1982 delegation agreement with ODEQ for NESHAPs. Any changes with that agreement will be addressed separately in the future.

VI. Administrative Requirements

Under Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore, not subject to review by the Office of Management and Budget.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

Authority: This document is issued under the authority of sections 101, 110, 111, and 301 of the Act, as Amended (42 U.S.C. 7401, 7410, 7411, and 7601).

Dated: October 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–27796 Filed 10–22–99; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: 99–001; Notice 02]

RIN 2127–AH62

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: This final rule updates the lists in Appendices A, B, and C of Part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences, pursuant to 49 U.S.C. 33112. Each insurer listed must file a report for the 1996 calendar year not later than October 25, 1999.

DATES: This final rule is effective October 25, 1999.

Reporting Date: Insurers listed in the appendices are required to submit their reports on CY 1996 experience on or before October 25, 1999. Previously listed insurers whose names are removed by this notice need not submit reports for CY 1996. Insurers newly listed in this final rule must submit their reports for calendar year 1996 on or before October 25, 1999. Under part 544, as long as an insurer is listed, it must file reports each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report on the following October 25, and on each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The agency may not, however, exempt an insurer under this section if it is considered an insurer only because of section 33112(b)(1); that is, if it is a self-insurer. The term "small insurer" is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As provided in 49 CFR part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers that are required to report for particular States because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. In establishing part 544 (52 FR 59, January 2, 1987), the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, defined in 49 U.S.C. 33112(b)(1) as any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded those reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new Appendix C that consists of an annually updated list of the self-insurers that are subject to part 544.

Following the same approach, as in the case of Appendix A, NHTSA has included, in Appendix C, each of the relatively few self-insurers subjected to reporting instead of relatively numerous self-insurers exempted. NHTSA updated Appendix C based primarily on information from the publications, Automotive Fleet Magazine and Business Travel News.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On May 14, 1999, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (64 FR 26352). Based on the 1996 calendar year A.M. Best data for market shares, NHTSA proposed to amend the listing in Appendix A of insurers which must report because each had at least 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on December 18, 1998 (See 63 FR 70051). Three companies, Aetna Life & Casualty Group, Safeco Insurance Companies, and Travelers Insurance Group, were proposed to be removed from Appendix A. One company, Travelers PC Group, was proposed to be added.

Under part 544, each of the 18 insurers listed in Appendix A of the NPRM would have been required to file a report not later than October 25, 1999, setting forth the information required by Part 544 for each State in which it did business in the 1996 calendar year. As long as those 18 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B of the NPRM listed those insurers that would be required to report for particular States for calendar year 1996, because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. Based on the 1996 calendar year A.M. Best's data for market shares, it was proposed that Island Insurance Group, reporting on its activities in the State of Hawaii be removed from Appendix B.

Under part 544, each of the 11 insurers listed in Appendix B of the NPRM would have been required to report no later than October 25, 1999, on their calendar year 1996 activities in every state in which they had a 10 percent or greater market share, and set forth the information required by Part 544. As long as those 11 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Based on information in Automotive Fleet Magazine and Business Travel News for 1996, the most recent year for which data are available, NHTSA proposed one change in Appendix C. As indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, it proposed that one rental and leasing company, Citicorp Bankers Leasing Corporation, be removed from Appendix C.

Under part 544, each of the 19 companies (including franchisees and licensees) listed in Appendix C would have been required to file reports for calendar year 1996 no later than October 25, 1999, and set forth the information required by part 544. As long as those 19 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Public Comments on Final Determination

1. Insurers of Passenger Motor Vehicles

In response to the NPRM, the agency received two comments. Both commentors were companies listed in the May 1999 NPRM. Each commentor questioned the appropriateness of its inclusion in one of the appendices.

Travelers Property Casualty Corporation (Travelers) wrote to request that it not be included in Appendix A. As stated, NHTSA's proposal to include Travelers was based on market share data provided by A.M. Best. Travelers wrote that it was created following the purchase by Travelers of Aetna Life and Casualty's property casualty business on April 2, 1996. Since Traveler's acquisition of Aetna in 1996, the companies have integrated its auto insurance products, reentered some states from which each had previously withdrawn, and achieved solid growth under the Travelers Property Casualty Corporation banner. The insurer, Travelers, believes that because the business was not consolidated until 1999, compiling the data required for reporting for the years prior to CY 1999 would be extremely burdensome, and in some cases, it might not even be possible. .

The agency notes Travelers request for an exemption from the October 25, 1999, 2000 and 2001 insurer reporting requirements. However, the agency does not believe that Travelers meets any of the exemption requirements provided under U.S.C. 33112(e)(1) and (2). The agency does not believe that the cost of preparing and furnishing this report will be excessive in relation to the size of the insurer's business. Additionally, the agency believes that because Travelers' insurer information would contribute significally to the agency's statutory requirements, it should submit a report of its CY 1996 insurer information and adhere to the reporting requirements for any subsequent years it is required to report. Since Travelers does not meet the criteria for exemption, NHTSA determines that Travelers should remain listed on Appendix A. Additionally, the agency was subsequently notified that the GEICO Corporation Group, an insurance entity, became a wholly owned subsidiary of Berkshire Hathaway Inc. Therefore, both names will be listed on Appendix A, but the GEICO Corporation Group will continue to report for purposes pursuant to 49 U.S.C. 33112.

Nodak Mutual Insurance Company (Nodak) in North Dakota wrote to request that it not be listed in Appendix B. Nodak indicated that it is not the largest writer of automobiles in the state of North Dakota, although it is the largest property/casualty insurer in that state. The insurer stated that the subject report relates strictly to automobiles, and, therefore, it does not feel the company is in the best position to make comments on stolen vehicles. Nodak stated that it has few auto theft claims, and it does not have any great bearing on the statistics. For instance, in calendar years 1994 and 1995, Nodak reported 14 and 18 stolen vehicles respectively. It believes that the small amount of the vehicles stolen affecting its company would have no bearing on nationwide statistics. Further, Nodak feels that the efforts they would take to acquire statistics of this nature would be an undue hardship considering the lack of effect its information would have on the statistical data gathered nationwide. Finally, Nodak stated that it is a small company and is not in a position to take steps on a nationwide basis to promote programs that deter theft.

The agency notes Nodaks' rationale that its auto theft has declined over the past year and the undue hardship it believes it will endure to provide the required insurer information. The agency also notes Nodak's comment that it believes it is not in the best position to comment on stolen vehicles because while it is the largest property/casualty insurer in North Dakota, it is not the largest writer of automobiles in the state of North Dakota. Therefore, Nodak requests to be exempted from further insurer reporting requirements. However, the agency has determined that the exemption authority provided in section 33112(e)(1) and (2) should not be applied to this insurer. Nodak does not qualify as a "small insurer" because its *total premiums* written exceed 10 percent of the total written in North Dakota. As defined by 49 U.S.C. 33112(f)(1)(B), a small insurer means an insurer whose premiums for motor vehicle insurance account for *less* than 10 percent of the total premiums for *all* forms of motor vehicle insurance issued by the insurers in any State. Section 33112 provides that if an insurance company satisfies the section's definition of small insurer nationally, but accounts for 10 percent or more of the total premiums for *all forms* of motor vehicle insurance issued by insurers within a particular State, such insurer must report this information about its operation in that State. Additionally, the agency believes that the cost of preparing and furnishing this report would not be excessive in relation to the size of the insurers' business. The agency also notes that there have been several other companies similar in premium size for a given State who have experienced anywhere from none to a very few thefts and have continued to provide the required insurer information in a timely fashion. Therefore, because the agency believes that the submission of Nodaks' required information will not be excessive in relation to the size of its business, and that its report will contribute to carrying out the agency's statutory requirements, the agency has determined that the Nodak Mutual Insurance Company should remain on Appendix B.

After reviewing the public comments and in making the appropriate adjustment to Appendix B, NHTSA has determined that each of the 18 insurers listed in Appendix A, each of the 11 insurers in Appendix B, and each of the 19 insurers listed in Appendix C, are required to submit an insurer report under Part 544. Each listed insurer must report on its experience for calendar year 1996, and set forth the information required by 49 CFR part 544.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this final rule and has determined the action not to be "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the 1987 final regulatory evaluation, the agency estimates that the cost of compliance will be about $50,000 for any insurer added to Appendix A, about $20,000 for any insurer added to Appendix B, and about $5,770 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency would add one insurer and remove three insurers; for Appendix B, the agency would remove one insurer; and for Appendix C, the agency would remove one company. The agency therefore estimates that the net effect of this final rule will be a cost decrease to insurers, as a group of approximately $125,770.

2. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and was approved for use through July 31, 2000.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies included in Appendices A, B, or C would be construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law, 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 1999 would contain the required information for the 1996 calendar year).

* * * * *

3. Appendix A to part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American Financial Group
American International Group
California State Auto Association
CNA Insurance Group
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
GEICO Corporation Group
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
State Farm Group
Travelers PC Group[1]
USAA Group
Zurich Insurance Group-U.S.

4. Appendix B to Part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Allmerica P & C Companies (Michigan)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)
Associates Leasing Inc.
A T & T Automotive Services, Inc.
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
Penske Truck Leasing Company
PHH Vehicle Management Services

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[1] Indicates a newly listed company which must file a report beginning with the report due on October 25, 1999.

Ryder System, Inc. (Both rental and leasing operations)
U-Haul International, Inc. (Subsidiary of AMERCO)
USL Capial Fleet Services
Wheels Inc.

Issued on: October 15, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–27514 Filed 10–22–99; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.950427117–9276–11;I.D. 100899A]

RIN 0648–AN30

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS issues this temporary action to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel Mile Marker 54 (Lat. 28°33'38≥N, Long.96°30'50≥W) and thence to Sand Point (Lat. 28°34'08≥N, Long. 96°29'29≥W), including Carancahua and Tres Palacios Bays.

DATES: This action is effective from October 19, 1999 through November 18, 1999. Comments on this action are requested, and must be received by November 18, 1999.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 727–570–5312, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species as a result of shrimp trawling activities has been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. Existing sea turtle conservation regulations (50 CFR part 223, subpart B) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS approved TED installed in each net rigged for fishing, year-round.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206 (d)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (AA), may authorize compliance with tow time restrictions as an alternative to the TED requirement, if [she] determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow-time limits are authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

The Director of the Division of Coastal Fisheries, TPWD, stated in a September 22 letter to the NMFS Southeast Regional Administrator that the shrimp fishery in Matagorda Bay has been experiencing serious problems since early to mid-August caused by an unusual infestation of the bryozoan, *Bugula sp.* TPWD has received complaints from shrimp fishermen about unusually dense concentrations of what the fishermen called sauerkraut weed (later identified as a bryozoan, *Bugula sp.*) being caught in shrimp trawls and clogging their TEDs. TPWD has also observed this phenomenon in sample trawls made aboard cooperating shrimp vessels, and supplied NMFS with photographic documentation of the problem.

Drought conditions have produced salinities exceeding 30 parts per thousand in Matagorda Bay. Elevated salinities and water temperatures are believed to be responsible for the extraordinarily high concentrations of the bryozoan, *Bugula sp.* The dense, filamentous bryozoan becomes lodged in the TEDs after relatively short periods of towing, rendering the TEDs ineffective in expelling sea turtles as well as negatively impacting fishermen's catches.

The TPWD letter requested that NMFS use its authority to allow the use of limited tow times as an alternative to the use of TEDs in Matagorda Bay, bounded on the west by a line running from the Matagorda Jetties north along the Matagorda Ship Channel to Mile Marker 54 and east to Sand Point. Essentially, most of Matagorda Bay, excluding Lavaca Bay and the western edge of Matagorda Bay proper, is included in the exemption area requested by TPWD. According to TPWD personnel, the problematic concentrations of *Bugula sp.* are difficult to pinpoint or chart precisely, due to tidal and wind action which continuously moves and shifts the bryozoans from area to area. A NMFS gear specialist, working with Matagorda Bay shrimpers in early October, confirmed the severity and wide distribution of the bryozoan clogging problem. TPWD has asked NMFS to authorize the use of limited tow times for most of Matagorda Bay for a 30-day period.

NMFS and the Texas Parks and Wildlife Department (TPWD) will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether bryozoan concentrations continue to make TED use impracticable. The intent of this action is to relieve the economic hardship on Matagorda Bay shrimpers while ensuring adequate protection of threatened and endangered sea turtles.

Special Environmental Conditions

The AA finds that the impacts of the current drought conditions in southern Texas on Matagorda Bay have created special environmental conditions that may make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel

Mile Marker 54 (Lat. 28°33'38≥N, Long.96°30'50≥W) and thence to Sand Point (Lat. 28°34'08≥N, Long. 96°29'29≥W), including Carancahua and Tres Palacios Bays. TPWD is continuing to monitor the situation and will cooperate with NMFS in determining the ongoing extent of the bryozoan problem in Matagorda Bay. Moreover, the TPWD Director of Coastal Fisheries has stated that TPWD' game wardens would enforce the restricted tow times and commit additional effort to the task. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the TPWD Director of Coastal Fisheries to provide additional enforcement of the tow time restrictions is an important factor enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in Matagorda Bay, Texas, to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times. NMFS studies have shown that the problem of clogging by seagrass, algae or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows. NMFS observed large amounts of *Bugula sp.* in Matagorda Bay and noticed extremely heavy concentrations of cannonball jellyfish. Matagorda Bay shrimpers were generally using TEDs with a narrow bar spacing to eliminate these jellyfish. If fishermen remove their TEDs, they will have to contend with extremely heavy catches of cannonball jellyfish that will force them to use very short tows. NMFS intends to continuing working with local shrimpers to find a technical TED configuration that will exclude jellyfish while minimizing clogging from *Bugula*.

While working on a specific solution for this situation, NMFS' gear experts have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Even lower angles may be necessary to exclude the bulky bryozoan. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in inshore waters of Matagorda Bay, i.e., inshore of the 72 COLREGS demarcation line, who are not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation Area. This action does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel Mile Marker 54 (Lat. 28°33'38≥N, Long.96°30'50≥W) and thence to Sand Point (Lat. 28°34'08≥N, Long. 96°29'29≥W), including Carancahua and Tres Palacios Bays. This area excludes Lavaca Bay and the southwestern edge of Matagorda Bay. ''Inshore waters,'' as defined at 50 CFR 222.102, means the marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80. Instead of the required use of TEDs, shrimp trawlers may opt to comply with the sea turtle conservation regulations by using restricted tow times. Through October 31, 1999, a shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes, measured from the time trawl doors enter the water until they are retrieved from the water. From November 1, 1999 until November 18, 1999, tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may modify the alternative conservation measures through publication in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times, if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. The AA may also terminate this authorization for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. The AA may modify or terminate this authorization, as appropriate, at any time. A document will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in Texas inshore waters (Matagorda Bay). This authorization will expire automatically on November 18, 1999, unless it is explicitly extended through another notification published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. It is impracticable and contrary to the public interest to provide prior notice and opportunity for comment. The AA finds that unusually high densities of the bryozoan (*Bugula sp*) are creating special environmental conditions that may make trawling with TED-equipped nets impracticable. The AA has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and comment are contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing relief within the necessary time frame. The public was provided with notice and an opportunity to comment on 50 CFR 223.206(d)(3)(ii).

Pursuant to 5 U.S.C. 553(d)(1), because this rule relieves a restriction, it is not subject to a 30-day delay in effective date. NMFS is making the rule effective October 19, 1999 through November 18, 1999.

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this. Copies of the EA are available (see **ADDRESSES**).

Dated: October 19, 1999.

Andrew A. Rosenberg, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27692 Filed 10–19–99; 4:59 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 990525143–9277–02; I.D. 120197A]

RIN 0648–AM41

Designated Critical Habitat: Revision of Critical Habitat for Snake River Spring/Summer Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Through this rule, NMFS revises critical habitat for Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), pursuant to the Endangered Species Act (ESA) of 1973. After a review of the best available scientific information, NMFS determines that Napias Creek Falls constitutes a naturally impassable barrier for Snake River spring/summer chinook salmon. NMFS, therefore, excludes areas above Napias Creek Falls from designated critical habitat for this species.

DATES: The effective date of this determination is November 24, 1999.

ADDRESSES: Requests for information concerning this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street - Suite 500, Portland, OR 97232–2737, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at (503) 231–2005 or Chris Mobley at (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1991, NMFS proposed the listing of Snake River spring/summer chinook salmon as a threatened species under the ESA (56 FR 29542). The final determination listing Snake River spring/summer chinook salmon as a threatened species was published on April 22, 1992 (57 FR 14653), and corrected on June 3, 1992 (57 FR 23458). Critical habitat was designated on December 28, 1993 (58 FR 68543). In that document, NMFS designated all river reaches presently or historically accessible to listed spring/summer chinook salmon (except river reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) in various hydrologic units as critical habitat (58 FR 68543). Napias Creek, the area in question, occurs within one of these designated hydrologic units (Middle Salmon-Panther, U.S. Geological Survey Hydrologic Unit 17060203).

On January 6, 1997, the Secretary of Commerce (Secretary) received a petition from Meridian Gold Company (Meridian) to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, Idaho. In accordance with section 4(b)(3)(D) of the ESA, NMFS issued a determination on April 28, 1997, that the petition presented substantial scientific information indicating that a revision may be warranted (62 FR 22903). In that document of finding, NMFS solicited information and comments from interested parties and interested tribal governments concerning the petitioned action (62 FR 22903).

On September 16, 1997, Meridian submitted additional information in support of its petition. Specifically, Meridian submitted three new reports entitled: (1) "Ability of Salmon and Steelhead to Pass Napias Creek Falls"; (2) "Investigation of Physical Conditions at Napias Creek Falls"; and (3) "Historical and Ethnographic Analysis of Salmon Presence in the Leesburg Basin, Lemhi County, Idaho." This new information was added to the administrative record and was considered by NMFS in its 12-month determination published on January 30, 1998 (63 FR 4615).

On January 30, 1998, NMFS determined that the petitioned action was not warranted since available information indicated that the falls was likely passable to chinook salmon at some flows and that the presence of relict indicator species indicated historical usage by anadromous species (63 FR 4615). Subsequent to this determination, Meridian submitted a "petition for reconsideration," providing additional data and analyses concerning the likelihood Napias Creek Falls constitutes a naturally impassable barrier to anadromous salmonid migration (Meridian, 1998a, 1998b; Chapman, 1998). While NMFS' ESA implementing regulations do not provide a process for reconsidering findings on petitions, NMFS nonetheless agreed in a letter dated July 31, 1998, to consider Meridian's new information and provide Meridian with a written determination regarding its findings (NMFS, 1998a; Meridian, 1998d). On October 30, 1998, NMFS staff met with Meridian representatives to discuss the new technical information and its interpretations (NMFS, 1998b).

On December 29, 1998, Meridian expressed its desire to withdraw its "petition for reconsideration" stating that it interpreted NMFS' continuing treatment of the area as critical habitat as a denial of its petition (Meridian, 1998c). However, at that time, NMFS had not yet reached a conclusion regarding the additional information submitted by Meridian, nor had NMFS provided Meridian with a written determination on the matter as it had committed to do in its July 31, 1998, letter (NMFS, 1998a). NMFS ultimately concluded this information is part of the best scientific information available regarding whether the area in question constitutes critical habitat for the species. Therefore, in accordance with section 4(b)(1)(A) of the ESA, NMFS considered this information in its review of Meridian's "petition for reconsideration."

On June 2, 1999, NMFS published a proposed rule to revise critical habitat for Snake River spring/summer chinook salmon (64 FR 29618). In the proposed rule, NMFS determined that available evidence suggests that Napias Creek Falls, while passable at some flows, constitutes an effective migrational barrier for chinook salmon. This conclusion was based on an analysis of available hydrological and biological data, as well as some ethnographical information. In reaching this conclusion, NMFS recognized that scientific uncertainty remained whether (1) chinook salmon could establish a naturally reproducing population above the falls if present in sufficient numbers in Napias Creek; and (2) whether chinook salmon historically occurred above the falls. To help resolve this uncertainty, NMFS specifically requested comments and information regarding the proposed determination. Discussion of the comments received on the proposal follow.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species" (see 16 U.S.C. 1532(5)(A)). The term "conservation," as defined in section 3(3) of the ESA, means " * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" (see 16 U.S.C. 1532(3)).

Defining specific river reaches that constitute critical habitat for chinook salmon, and anadromous fish species in general, is difficult to do because of our imperfect understanding of the species' freshwater distribution, both current and historical, and the lack of comprehensive sampling efforts dedicated to monitoring these species. Given this scientific uncertainty, NMFS' approach to designating critical habitat for chinook salmon is to designate all areas currently accessible to the species within the range of the Evolutionarily Significant Unit. NMFS believes that this inclusive approach to designating critical habitat is appropriate because it (1) recognizes the species' extensive use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages; and (2) takes into account the natural variability in habitat use.

Process for Defining Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated, and essential habitat areas and features are identified. Second, the need for special management considerations or protection of the area(s) or features identified are evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, a notification of the proposed critical habitat is published in the *Federal Register* for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is typically published within 1 year of the proposed rule. Final critical habitat designations may be revised as new information becomes available.

Consultation with Affected Indian Tribes

The unique and distinctive relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility, involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards with respect to Indian lands, tribal trust and treaty resources, and the exercise of tribal rights.

As a means of recognizing the responsibilities and relationship previously described, the Secretary of Commerce and the Secretary of the Interior issued a Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" on June 5, 1997. The Secretarial Order clarifies the responsibilities of NMFS and the U.S. Fish and Wildlife Service when carrying out authorities under the ESA and requires that they consult with, and seek the participation of, affected Indian tribes to the maximum extent practicable.

During the course of this rulemaking, NMFS consulted with, and solicited comments from, affected Indian tribes, including the Shoshone-Bannock Tribes (Tribes). The Tribes, in turn, provided written comments and testimony on the proposed rule a discussion as follows.

Summary of Comments

During the public comment period on the proposed rule, NMFS received seven written comments from a variety of sources. On August 31, 1999, NMFS held a public hearing in Boise, Idaho at which seven people provided testimony concerning the proposed rule. Of the seven parties providing comments and testimony, five supported the conclusions reached in the proposed rule and two, including the Tribes, disagreed with such conclusions. Commenters provided no additional scientific information that resolves issues raised in the proposed rule. Pertinent comments are summarized here.

Comment 1: Two parties commented on the historic presence of chinook salmon above the falls in question and the historic value of this area. The Tribes stated that "salmon hunting above the falls that NMFS presently concludes is a barrier to salmon, has been reported by tribal fishermen." Another commenter stated that it is possible Tribal accounts may reflect historical fishing activities (and, thus, the presence of chinook salmon) before the formation of the existing barrier.

Response: The question of historic Tribal usage of areas above the falls, and, thus, presence of chinook salmon in this area, is a difficult one to analyze. The Tribal oral history indicates chinook salmon historically occurred above the falls; however, NMFS does not believe, based on current scientific information, that this area has supported chinook salmon populations over any appreciable and continuous length of time. Current biological information indicates that chinook salmon have not occurred above the falls over evolutionary time periods. For example, the absence of a native fish community above the falls and the presence of non-native fish species indicate that areas above the falls have been, and continue to be, isolated from areas below the falls. Further, a number of ethnographic studies indicate that chinook have not occurred in this area in recent times (i.e., within the last 100 years) (e.g., Larhen, 1999).

While available scientific evidence supports the conclusion that areas above the falls have not supported self-sustaining populations of chinook salmon, it is possible that this species may have periodically inhabited this area under certain environmental conditions. Such a possibility is supported by NMFS' passage analysis (a discussion follows) that indicates the falls is likely passable to chinook salmon under certain flow conditions. This intermittent habitation of chinook would likewise be consistent with Tribal accounts of fishing above the falls.

Comment 2: Two commenters, including the Tribes, expressed concern about potential impacts to water quality and other critical habitat elements in Napias Creek and areas downstream as a result of revising this designation. The Tribes also expressed concern that revision of critical habitat may hinder efforts to reestablish chinook salmon in Panther Creek.

Response: NMFS has previously stated that Napias Creek constitutes an important source of dilution water within the Panther Creek system and that any degradation of dilution flows from Napias Creek would likely hinder efforts to reestablish anadromous fisheries in Panther Creek (63 FR 4615, 4618). Recognizing this, NMFS intends to carefully evaluate proposed actions that may adversely affect salmonid habitat in this area (See Special Management Considerations).

Comment 3: Several parties commented on NMFS' conclusion that Napias Creek Falls is likely passable to chinook salmon at certain flow conditions. The Tribes concurred with NMFS' assessment, stating that such conclusions are consistent with reports from tribal fishermen of salmon above the falls during the months of May and June. One commenter disagreesed with NMFS' assessment, stating that existing hydrologic studies refute this conclusion.

Response: Aside from providing hydrographs that simply validate assumptions made in previous modeling exercises, commenters present no additional scientific information that NMFS has not considered in its passage assessments. Furthermore, NMFS has thoroughly reviewed available technical information and analyses, and has conducted on-site investigations to verify the validity of its conclusions. In doing so, NMFS has consistently concluded that chinook salmon can likely migrate past Napias Creek Falls under certain flow conditions (i.e., at about 49 cfs) (NMFS, 1997; NMFS, 1998; NMFS, 1999a).

Even though NMFS concludes that the falls in question are passable to chinook salmon at certain flows, NMFS recognizes that it is difficult to determine whether the falls constitutes an "effective" migrational barrier for the species, thus, precluding the species from colonizing areas above the falls (NMFS, 1999a). Since chinook salmon do not presently occur in Napias Creek, NMFS must rely on historical accounts and other biological and ecological information to infer whether Napias Creek Falls effectively constitutes a migrational barrier to the species. Such information indicates that chinook salmon have not historically colonized habitat above the falls, thus, leading 1 to the conclusion that the falls constitute an effective migrational barrier.

Analysis of Available Information

Two lines of evidence suggest that habitat above Napias Creek Falls is not presently accessible or essential for the conservation or recovery of the listed species. This evidence includes (1) current passage conditions at the falls; and (2) surveys of salmonid presence above the falls.

On several previous occasions, NMFS analyzed the specific hydrologic conditions present at Napias Creek Falls (NMFS 1997; 1998; 1999a). NMFS also conducted on-site evaluations of the falls to verify its theoretical analysis. During the public comment period, no additional information was presented that changes NMFS' previous conclusion that chinook salmon can likely migrate past Napias Creek Falls under certain flow conditions (i.e., at about 49 cfs). However, NMFS recognizes that it is difficult to predict the likelihood that chinook salmon would in fact colonize areas above the falls if present in Napias Creek. Since chinook salmon do not presently occur in Napias Creek, NMFS must rely on historical accounts and other biological information to infer whether Napias Creek Falls effectively constitutes a migrational barrier to the species.

Studies submitted by Meridian, as well as the opinions of Federal and state resource agencies (i.e., U.S. Forest Service [USFS], Idaho Department of Fish and Game, Idaho Division of Environmental Quality) indicate that Napias Creek Falls is a historic barrier to anadromous salmonid passage. However, this conclusion is in conflict with comments from a USFS fishery biologist. In a report dated February 8, 1996, Bruce Smith, Salmon and Challis National Forest Fisheries Biologist, concludes that Napias Creek historically contained chinook salmon (Smith, 1996a). Smith also states that areas above Napias Creek Falls currently contain relict indicator species (Smith, 1996a), indicating pre-historic accessibility of this area to anadromous salmonid species (Smith, 1996b).

In its January 30, 1998, determination, NMFS found Smith's analysis persuasive on the question of the historical presence of chinook salmon above Napias Creek Falls (63 FR 4615, 4617). However, since that time, NMFS has reconsidered its reliance on this information. While such relict indicator species as rainbow trout occur above the falls, other native fish species (e.g., mountain whitefish, westslope cutthroat trout, sculpins, and dace) do not presently occur above the falls, indicating that salmonids in the area may have been the result of hatchery introductions or transfers (Chapman 1998). This explanation is supported by the presence of other nonnative fish species above the falls (i.e., brook trout), and the apparent history of fish stocking in Napias Creek (Smith 1996a).

Available ethnographic information supports the conclusion that chinook salmon have not historically used habitat above Napias Creek Falls in recent times. Furthermore, available historic literature and surveys of nearby residents indicate chinook salmon have not occurred above the falls in recent times (Larhen, 1999).

After considering comments received on the proposed rule, NMFS concludes that habitat above Napias Creek Falls is outside the current range of listed spring/summer chinook salmon and that habitat in this area is not now essential for the conservation of the species. This conclusion is based on several considerations. First, while NMFS concludes the falls is likely passable to chinook salmon at certain flows, historic evidence suggests that chinook salmon have not used areas above the falls with any frequency in recorded history. Second, while relict indicator species occur above the falls suggesting historic use, the origin of these indicator species is uncertain.

Even though uncertainty remains regarding NMFS' conclusions, chinook salmon do not presently occur in Napias Creek, and therefore, habitat above the falls would not likely be used by the species in the near-term even if it were accessible. Furthermore, any potential long-term risk of harm to the species is lessened by the fact NMFS may revise its determination if in the future additional information indicates that habitat above Napias Creek Falls constitutes critical habitat for the species.

Special Management Considerations

Section 424.12(b) of NMFS' ESA implementing regulations states that in determining what areas constitute critical habitat, NMFS shall consider "physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection." (Emphasis added). As discussed earier, NMFS concludes that areas above the falls are outside the current range of chinook salmon, and are not now essential for conservation of the species. While these conclusions essentially end NMFS' inquiry into whether areas above the falls constitute critical habitat, in this case it is useful to consider the management implications of this conclusion.

NMFS believes that Napias Creek constitutes an important source of dilution water within the Panther Creek system and that any degradation of dilution flows from Napias Creek would likely hinder efforts to reestablish anadromous fisheries in Panther Creek (63 FR 4615, 4618; January 30, 1998). NMFS recently completed a section 7 biological opinion (BO) concerning the operation of the Beartrack Gold Project owned by Meridian Gold Company (NMFS, 1999b). In this BO, NMFS concluded that the proposed operation of the mine would jeopardize listed chinook, and recommended a reasonable and prudent alternative that requires Meridian to monitor and protect water quality in Napias Creek over the long-term. It is NMFS' belief that while mitigative measures contained in this BO will change as a result of this revision, such changes will not result in substantial impacts to salmonid habitat below the falls.

In addition to the presence of listed steelhead and chinook salmon in Napias Creek, bull trout also occur above Napias Creek Falls (Smith, 1996a). On June 10, 1998, the U.S. Fish and Wildlife Service (FWS) listed the Columbia River distinct population segment of bull trout (including populations in Panther Creek) as a threatened species (63 FR 31647). Consequently, the practical significance of excluding areas above Napias Creek Falls from chinook salmon critical habitat is debatable because federal agencies must ensure their actions do not jeopardize bull trout located in this area.

Expected Economic Impacts

Section 4(b)(2) of the ESA requires NMFS to consider the economic impact of specifying any particular areas as critical habitat. However, section 4(b)(1)(A) of the ESA prohibits NMFS from considering economic impacts associated with species listings. Consequently, when designating critical habitat, NMFS considers only the incremental economic impacts associated with the designation above the economic impacts attributable to the listing of the species or authorities other than the ESA. Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential for the conservation of the species.

In this particular case, positive economic impacts will likely result to parties in the subject area. Meridian owns and operates Beartrack Mine, which is adjacent to Upper Napias Creek (Napias Creek above the Falls), within the Salmon National Forest. Meridian is subject to a BO that contains measures to protect designated critical habitat in Napias Creek. NMFS is not aware of any other business operating in Upper Napias Creek whose operations might adversely modify potential salmon habitat. This action would reduce the ESU's critical habitat, by eliminating Upper Napias Creek from critical habitat. In turn, measures contained in the BO that relate to this designate are no longer applicable. Therefore, the reduction of critical habitat would lessen Meridian's economic burden resulting from measures contained in the BO.

Determination

After considering the best available scientific and commercial information, NMFS concludes that Napias Creek Falls likely constitutes a naturally impassable barrier for Snake River spring/summer chinook salmon. While the falls may be passable to chinook salmon at certain flows, available evidence suggests this species has not mounted this falls with any regularity in the recent past, nor is it likely do so in the future. NMFS will reevaluate this conclusion in the future if information indicates areas above the falls are essential for conservation of chinook salmon in the Panther Creek drainage.

References

A complete list of all references cited herein and maps describing the range of proposed Snake River spring/summer chinook salmon are available upon request (see ADDRESSES).

Classification

The Assistant Administrator for Fisheries, NOAA, has determined this rule is not significant for purposes of E.O. 12866.

Through this rule, NMFS designates only the current range of this chinook salmon ESU as critical habitat. Given the affinity of this species to spawn in small tributaries, this current range encompasses a wide range of habitat, including headwater streams, as well as mainstem, off-channel and estuarine areas. Areas excluded from this proposed designation include marine habitats in the Pacific Ocean and any historically occupied areas above impassable natural barriers (e.g., long-standing, natural waterfalls). NMFS concludes that the currently inhabited areas within the range of this ESU are the minimum habitat necessary to ensure the species' conservation and recovery.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on local businesses, organizations, and governments.

Meridian owns and operates Beartrack Mine, which is adjacent to Upper Napias Creek (Napias Creek above the Falls), within the Salmon National Forest. NMFS is not aware of any other business operating in Upper Napias Creek whose operations might adversely modify potential salmon habitat. This revision would reduce the ESU's critical habitat, by eliminating Upper Napias Creek from critical habitat. To the extent that Meridian may be impacted by the current designation of Upper Napias Creek as critical habitat, the reduction of critical habitat would lessen Meridian's economic burden, if any, from that impact.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the critical habitat designation, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS has determined that Environmental Assessments or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S. Ct. 698 (1996).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: October 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 226.205, paragraph (b) is revised to read as follows:

§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.

* * * * *

(b) *Snake River Spring/Summer Chinook Salmon (Oncorhynchus tshawytscha).* Geographic Boundaries. Critical habitat is designated to include the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to Hells Canyon Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls (including Napias Creek Falls) and Dworshak and Hells Canyon Dams) to Snake River spring/summer chinook salmon in the following hydrologic units: Hells Canyon, Imnaha, Lemhi, Little Salmon, Lower Grande Ronde, Lower Middle Fork Salmon, Lower Salmon, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, Pahsimeroi, South Fork Salmon, Upper Middle Fork Salmon, Upper Grande Ronde, Upper Salmon, Wallowa. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Blaine, Custer, Idaho, Lemhi, Lewis, Nez Perce, Valley.

* * * * *

[FR Doc. 99–27585 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990625173–9274–02; I.D. 033199C]

RIN 0648–AL57

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 16B

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 16B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule establishes size limits for banded rudderfish, lesser amberjack, cubera snapper, dog snapper, mahogany snapper, mutton snapper, schoolmaster, scamp, gray triggerfish, and hogfish; excludes banded rudderfish, lesser amberjack, and hogfish from the 20–fish aggregate (combined) reef fish bag limit; establishes new bag limits for hogfish, speckled hind, warsaw grouper, and for banded rudderfish and lesser amberjack combined; and removes queen triggerfish from the listing of Gulf reef fish and from the applicable regulations. The intended effect of this rule is to conserve and manage the reef fish resources of the Gulf of Mexico.

DATES: This final rule is effective November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree at 727-570-5305; Fax: 727-570-5583.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 14, 1999, NMFS announced the availability of Amendment 16B and requested comments on the amendment (64 FR 18395). On July 2, 1999, NMFS published a proposed rule to implement the measures in Amendment 16B and requested comments on the rule (64 FR 35981). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here. No comments were received on Amendment 16B or on the proposed rule. On July 14, 1999, NMFS approved Amendment 16B. The proposed rule has been adopted as final without change.

Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, determined that Amendment 16B is necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that Amendment 16B is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, the last sentence in paragraph (g)(1) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(g) * * *

(1) * * * The provisions of this paragraph do not apply to the following species: dwarf sand perch, hogfish, and sand perch.

* * * * *

3. In § 622.37, the section heading, introductory text, and paragraph (d) are revised to read as follows:

§ 622.37 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. Except for undersized king and Spanish mackerel allowed in paragraphs (c)(2) and (c)(3) of this section, a fish not in compliance with its size limit, as specified in this section, in or from the Caribbean, Gulf, South Atlantic, and/or Mid-Atlantic EEZ, as appropriate, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

* * * * *

(d) *Gulf reef fish*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—10 inches (25.4 cm), TL.

(iii) Cubera, dog, gray, mahogany, and yellowtail snappers and schoolmaster—12 inches (30.5 cm), TL.

(iv) Red snapper—15 inches (38.1 cm), TL.

(v) Mutton snapper—16 inches (40.6 cm), TL.

(2) *Grouper.* (i) Scamp—16 inches (40.6 cm), TL.

(ii) Black, red, and yellowfin groupers and gag—20 inches, (50.8 cm), TL.

(3) *Other Gulf reef fish species.* (i) Gray triggerfish—12 inches (30.5 cm), TL.

(ii) Hogfish—12 inches (30.5 cm), fork length.

(iii) Banded rudderfish and lesser amberjack—14 inches (35.6 cm), fork length (minimum size); 22 inches (55.9 cm), fork length (maximum size).

(iv) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(i); and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

* * * * *

4. In § 622.39, the second and third sentences of paragraph (a)(1), and paragraphs (b)(1)(ii), (b)(1)(v), and (b)(2) are revised; and paragraphs (b)(1)(vi) and (b)(1)(vii) are added to read as follows:

§ 622.39 Bag and possession limits.

(a) * * *

(1) * * * Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, possession limits apply to a person on a trip after the first 24 hours of that trip. * * *

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding jewfish and Nassau grouper—5 per person per day, but not to exceed 1 speckled hind and 1 Warsaw grouper per vessel per day.

* * * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section and excluding dwarf sand perch and sand perch—20.

(vi) Banded rudderfish and lesser amberjack, combined—5.

(vii) Hogfish—5.

(2) *Possession limits.* A person, or a vessel in the case of speckled hind or Warsaw grouper, on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

* * * * *

Table 3 of Appendix A to Part 622—Gulf Reef Fish [Amended]

5. In Table 3 of Appendix A to Part 622, the entry, "Queen triggerfish, *Balistes vetula*", is removed.

[FR Doc. 99–27584 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 205
Monday, October 25, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket No. FV99–361]

Perishable Agricultural Commodities Act: Recognizing Limited Liability Companies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the regulations under the Perishable Agricultural Commodities Act (PACA or Act) to recognize a limited liability company (LLC) as a legal entity, and also to recognize each member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC, as "responsibly connected" with the LLC, as defined in the PACA.

DATES: Comments must be received by November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095–So. Bldg., P.O. Box 96456, Washington, DC. 20090–6456, phone (202) 720–2272. Email—charles.parrott@usda.gov. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular business hours and posted on the internet at www.ams.usda.gov/fv/paca.htm.

SUPPLEMENTARY INFORMATION: This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

Background

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefitting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

Any person who buys or sells commercial quantities of fruits and vegetables in interstate or foreign commerce must be licensed under the PACA. Under the Act and regulations, the term "person" means any individual, partnership, corporation, association, or separate legal entity. 7 U.S.C. 499a(b)(1); 7 CFR 46.2(i). Separate licenses are required for each person. A person is designated as "responsibly connected" with a firm under the PACA if that person is affiliated as an owner, as a partner in a partnership, or as an officer, director or holder of more than 10 percent of the outstanding stock of a corporation or association. 7 U.S.C. 499a(b)(9); 7 CFR 46.2(ff). In the event that a licensee is found to have violated the Act and USDA suspends or revokes the firm's license, then the licensee and its "responsibly connected" principals face PACA licensing and employment restrictions which may include the denial of a license, a prohibition on employment with another PACA licensee, or the requirement that a bond be posted as a prerequisite to licensing or employment in the fruit and vegetable industry. 7 U.S.C.. 499h.

Although the PACA and PACA regulations do not specifically define a limited liability company as a "person," it is USDA policy to recognize an LLC as a separate legal entity, just as LLC's are recognized in most states, subject to licensing under the PACA. USDA published its current policy about recognizing LLC's in the **Federal Register** on April 14, 1999 (64 FR 18397) and no comments were received from the public. The proposed regulatory amendments herein will adopt that policy by expanding the current regulations to include LLC's under the PACA, especially with regard to the licensing of LLC's and the responsibly connected status of LLC members and managers.

An LLC may be described as a cross between a partnership and a corporation. This hybrid business structure is now available to businesses in most states. The personal liability protection afforded by the LLC is similar to that of a corporation. For example, the members are insulated from liability arising solely from being a member but are not insulated from liability for the acts of the LLC which violate any laws or regulations. Liability issues may vary somewhat according to state law and the LLC's organizational agreement.

Although an LLC affords personal liability protection to its owners that is similar to that of a corporation, the ownership characteristics of an LLC more closely resemble those of a partnership. The LLC owners are often referred to as members, and member-managers may be designated. Membership requirements in an LLC can be determined by the members; for example, members may join through financial contributions or through the performance of services.

In general, state LLC statutes require the filing of documentation similar to articles of incorporation, sometimes called articles of organization. In addition, an operating agreement is entered into which usually designates who has the authority to run the LLC company. This operating agreement usually details the process to be followed in choosing the manager(s) and sets forth the manager(s)" authority and the authority retained by the members. The manager(s) is often, but not always, a member of the LLC. Specific requirements vary by state.

Because of the unique composite nature of the LLC, an LLC's members are analogous to partners in a partnership, while managers, who are not always members, may be analogous to corporate officers, depending on the manager's responsibilities as set out by the LLC's operating agreement. Therefore, the proposed amendments would clarify that all LLC members, regardless of the member's financial contribution, are "responsibly connected" persons under the PACA, just as all partners are "responsibly connected" with a partnership. In addition, any person(s), whether or not a member, who is authorized by the LLC to be in charge of the daily business operations, management, and control of the LLC, would also be considered responsibly connected to the LLC, just as officers in a corporation are under the PACA. The determination of whether a person other than a member is "responsibly connected" would depend upon the terms of the LLC's operating agreement. These agreements are similar to a partnership agreement or corporate bylaws which outline who is in charge of the business' daily operations. Those persons whom the LLC authorizes to be in charge of the day-to-day operation, management and control of the LLC's daily business activities may include, but would not be limited to, those with the titles of managers, officers, and/or directors.

An LLC members' ownership in the company closely resembles a partnership. Therefore, the proposed amendments would require that all LLC members, including corporations or other entities, be identified on the firm's PACA license application. If a member is a corporation or other legal entity, more information, such as the names of officers of the corporation or other data, would be required by AMS. LLCs submitting PACA license applications would be required to submit organizational information about the company, including, but not limited to, documentation filed with the state in which the LLC is legally established, such as its articles of organization and its operating agreement. Only one LLC member's signature would be required to make a valid PACA application. In addition, just as is required of other legal entities, if the articles of organization or the operating agreements were to change, the LLC would be required to notify AMS" PACA Branch as soon as possible and submit revised documents to the PACA Branch.

The LLC business structure has become widely accepted throughout the United States as a new legal entity. AMS is hereby proposing that the PACA regulations be amended to require certain information from an LLC in order to obtain a license under the PACA. In addition, the proposed amendment would also expand the definition of the term "responsibly connected" to include all LLC members and LLC managers, even when they are not also members. The "responsibly connected" status of LLC managers would be determined on a case-by-case basis, depending upon the terms of the LLC's operating agreement and the ways in which the person's status is analogous to that of an officer, director or shareholder of a corporation. Therefore, both members and managers would be subject to PACA sanctions if the Act is violated by the LLC.

Executive Orders 12866 and 12988

This proposed rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended, has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR part 121) as those with less than 500 employees. The PACA requires all businesses that operate subject to its provisions to maintain a license issued by USDA. There are approximately 15,700 PACA licensees, the majority of which may be classified as small entities.

The proposed revisions to the PACA regulations would recognize a limited liability company (LLC) as a legal entity under the PACA regulations, and amend the definition of "responsibly connected" under the regulations to include any member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC. The LLC business structure has become widely accepted throughout the United States as a new legal entity and these proposed revisions to the regulations would clarify how USDA deals with these entities and their principals under the PACA.

Like a sole proprietorship, partnership, corporation, or any other separate legal entity, a LLC, whether a small or large business, must obtain and maintain a valid PACA license if it buys or sells commercial quantities of fruits and vegetables in interstate or foreign commerce. AMS believes that this proposed rule would have no more impact on an LLC than the current PACA regulations have on sole proprietorships, partnerships, associations, or corporations operating subject to the PACA, whether large or small.

Since LLC's are required to be licensed under the PACA as a "separate legal entity," they are subject to disciplinary actions by USDA for violating the PACA and regulations. Therefore, these proposed revisions would mainly impact those persons USDA considers as "responsibly connected" with the LLC under the PACA. If USDA suspends or revokes a firm's license for PACA violations, the firm and any person found "responsibly connected" with the firm are restricted for a certain period of time from holding a PACA license or from being employed with another PACA licensee. However, these restrictions apply to any firm which has been found to have violated the PACA, regardless of the firm's size or type of ownership.

Given the preceding discussion, AMS has determined that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The revisions set forth in this proposed rule involve a change in the existing information collection and record keeping requirements which were previously approved by the Office of Management and Budget (OMB) under provisions of 44 U.S.C. Chapter 35. In accordance with the Paperwork Reduction Act of 1995, this notice announces AMS' intentions to request a revision to a currently approved information collection in support of the Reporting and Record Keeping Requirement under the Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 499a—499t).

Title: Reporting and Record Keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Number: 0581–0031.

Expiration Date of Approval: April 30, 2001.

Type of Request: Revision of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent trade practices.

The law provides for the enforcement of contracts by providing a forum for resolving contract disputes, and for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA imposes a statutory trust on licensees for perishable agricultural commodities received, products derived from them, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents that have not been paid.

The PACA is enforced through a licensing system and is user-fee financed through a license fee. All commission merchant, dealers, and brokers engaged in business subject to the PACA must be licensed. The license is effective for three (3) years for retailers and grocery wholesalers, and must be renewed on a triennial basis. The license for all other licensees is effective for up to three (3) years. These licensees must also renew their licenses, but have the option of a 1-year, 2-year, or 3-year license term. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected from respondents is used to administer licensing provisions under the PACA. The records maintained are used to adjudicate reparation and administrative complaints filed against licensees to determine the imposition of sanctions on firms and responsibly connected individuals who have engaged in unfair trade practices. Since the LLC business structure became accepted by states and USDA first accepted PACA applications from LLC's, we have found that the majority of LLC applicants did not properly report the identities of the firms' principals. In most instances, AMS has found it necessary to request that LLC's submit copies of their articles of organization and operating agreements in order to identify the persons responsibly connected with each firm. Under the circumstances, USDA in this proposed revision to the PACA regulations would require that an LLC submit its articles or organization and its operating agreement as part of its application.

We estimate the paperwork and time burden on the above to be as follows:

Regulations Section 46.4(b)(3)—Application for License: LLC's submission of Articles of Organization and Operating Agreement.

Estimate of Burden: Public reporting burden for the collection of information is estimated to average .083 hours per response.

Respondents: Commission merchants, dealers, and brokers who are organized as limited liability companies and are engaged in the business of buying, selling, or negotiating the purchase or sale of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

Estimated Number of Respondents: 160.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 13 hours.

The revision to the information collection requirements approved under 0581–0031 also requests approval of existing requirements associated with this program.

A revision of collection 00581–0031 was submitted on December 1, 1997, and was subsequently approved by OMB on April 1, 1998. This revision allowed for respondents to use a business reply card (Form FV–232) as a means of informing USDA that a license was not required for their firm. We have discontinued the use of Form FV–232, Business Reply Card after a trial period. We found that our customers were not utilizing the form in sufficient numbers to make it cost effective for the program to continue its use. We also found that our customers continued to call or write us to verify whether or not they needed a PACA license. Under the circumstances, we are reducing the public's reporting burden by 330 hours (10,000 respondents × 2 minutes per business reply card = 330 hours).

In addition, the PACA requires that USDA mail each licensee a license renewal application (Form FV–231–1 to non-retailers and non-grocery wholesalers, who pay license fees, or FV–231–2 to retailers and grocery wholesalers, who do not pay license fees) at least 30 days prior to the licensee's PACA license anniversary date. If a licensee is continuing to operate subject to the PACA, it must renew its license prior to its anniversary date. If a licensee fails to renew its license prior to that date, the licensee has 30 days under the PACA to reinstate its license by submitting the proper license fee plus a $50 reinstatement fee. Currently, we notify licensees by letter of the need to reinstate their licenses and request that they submit Form FV–231–1 or FV–231–2, along with the license and reinstatement fees, to AMS so that the license renewal can be processed.

We have found this process creates confusion and raises difficulties for our licensees. In most instances, the licensees no longer have the renewal application (Form FV–231–1 or FV–231–2), or they inform us that they never received it in the mail. They usually contact one of the PACA programs' regional offices to find out how to reinstate a license.

We have developed Forms FV–231–lA and FV–231–2A, "Reinstatement Notice," for use only in the event we do not receive a licensee's renewal application. These two new forms are duplicates of the renewal applications (Form FV–231–1 or Form FV–231–2). A reinstatement notice (Form FV–231–1A or Form FV231–2A) is sent to a licensee only in the event AMS does not receive the licensee's renewal application (Form FV–231–1 or Form FV–231–2). We believe that the development of the reinstatement form will reduce confusion and other related problems that AMS" customers have with the reinstatement letter. Either form, FV–231–1/FV–231–2, or FV–231–1A/FV–231–2A would be sufficient for a licensee to send to AMS, along with the proper fees, for a renewed PACA license. We believe that there will be no additional reporting burden on the public with the addition of Form FV–231–1A/FV–231–2A.

AMS is now accepting Visa and MasterCard payments for PACA license and complaint fees. This change was adopted for customer convenience. Until now, customers/licensees had to pay fees by check, money order, or cash. We are updating our license, renewal, and reinstatement applications to include an area for the credit number and expiration date. No additional burden should result from this change.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095–So. Bldg., P.O. Box 96456, Washington, D.C. 20090–6456. Email—charles.parrott@usda.gov.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is proposed to be amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o

2. In § 46.2, paragraph (i) and (ff) would be revised to read as follows:

§ 46.2 Definitions.

* * * * *

(i) *Person* means any individual, partnership, limited liability company, corporation, association, or separate legal entity.

* * * * *

(ff) *Responsibly connected* means affiliation as individual owner, partner in a partnership, member, manager, officer, director or holder of more than a 10 percent ownership stake in a limited liability company, or officer, director or holder of more than 10 percent of the outstanding stock of a corporation or association.

* * * * *

3. Section 46.4, is amended as follows:

a. Paragraphs (b)(3) and (b)(4) are revised,

b. Paragraphs (b)(6)(ii) and (b)(6)(iii) are removed,

c. Paragraph (b)(6)(iv) is redesignated as paragraph (b)(6)(ii) and revised,

d. Paragraphs (b)(6)(v) and (b)(6)(vi) are redesignated as paragraphs (b)(6)(iii) and (b)(6)(iv), and

e. The introductory text of paragraph (b)(6) and paragraph (c) are revised to read as follows:

§ 46.4 Application for license.

* * * * *

(b)* * *

* * * * *

(3) Type of ownership. If a corporation or limited liability company, the applicant shall furnish the month, day, and year incorporated or organized; the State in which incorporated or organized; the name in which incorporated or organized; and the address of the principal office. A limited liability company shall also furnish a copy of its articles of organization and its operating agreement.

(4) Full legal name, all other names used, if any, and home address of owner. If a partnership, the applicant shall furnish the legal names, all other names used, if any, and home address of all partners, indicating whether general, limited, or special partners. If a limited liability company, the applicant shall furnish the full legal names, all other names used, if any, and home address of all members, managers, officers, directors and holders of more than 10 percent of the ownership stake, and the percentage of ownership in the company held by each such person. If an association or corporation, the applicant shall furnish the full legal names, all other names used, if any, and home address of all officers, directors and holders of more than 10 percent of the outstanding stock and the percentage of stock held by each such person. Minors shall also furnish the full name and home address of their guardian. If the applicant is a trust, the name of the trust and the full name and home address of the trustee must be furnished. If the applicant is a limited liability company and a member or holder of more than 10 percent of the ownership stake is a partnership, another limited liability company, corporation, association, or separate legal entity, the applicant shall furnish the full legal names and home address of that member's partners, members, managers, directors, and officers.

* * * * *

(6) Whether the applicant, or in case the applicant is a partnership, any partner, or in case the applicant is a limited liability company, any member, manager, officer, director or holder of more than 10 percent of the ownership stake, or in case the applicant is an association or corporation, any officer, director, or holder of more than 10 percent of the outstanding stock, has prior to the filing of the application:

(i)* * *

(ii) Within three years been adjudicated or discharged as a bankrupt or was an officer, director, stockholder, partner, member, manager or owner of a firm adjudicated or discharged as a bankrupt.* * *

* * * * *

(c) The application shall be signed by the owner, all general partners, or in case the applicant is a limited liability company, a member or manager, or in case the applicant is an association, or corporation, a duly authorized officer.

* * * * *

4. The first sentence of § 46.11 would be revised to read as follows:

§ 46.11 What constitutes valid license, form and use.

Each license shall bear a serial number, the names in which authorized to conduct business, type of ownership, if the business is individually owned, the name of the owner; if a partnership, the names of all general partners; if a limited liability company, the names of all members, managers, officers, directors and holders of more than 10 percent of the ownership stake, and the percentage of ownership in the company held by each such person; if a corporation or association, the names of all officers, directors, and shareholders of more than 10 percent of the outstanding stock and the percentage of stock held by each such person; the facsimile signature of the Deputy Administrator, the seal of the Department and shall be duly countersigned. * * *

5. Section 46.13 would be amended by revising paragraphs (a)(2) and (a)(5) to read as follows:

§ 46.13 Address, ownership, changes in trade name, changes in number of branches, changes in members of partnership, and bankruptcy.

The licensee shall:

(a) * * *

(2) Any changes in officers, directors, members, managers, holders of more than 10 percent of the outstanding stock in a corporation, with the percentage of stock held by such person, and holders of more than 10 percent of the ownership stake in a limited liability company, and the percentage of ownership in the company held by each such person;

* * * * *

(5) When the licensee, or if the licensee is a partnership, any partner is subject to proceedings under the bankruptcy laws. A new license is required in case of a change in the ownership of a firm, the addition or withdrawal of partners in a partnership, or in case business is conducted under a different corporate charter, or in case a limited liability company conducts business under different articles or organization from those under which the license was originally issued.

* * * * *

Dated: October 18, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–27743 Filed 10–22–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

Round Table Discussion on Defense in Depth as Applied to a Possible High-Level Waste Repository at Yucca Mountain, NV

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of facilitated Round Table Discussion in Las Vegas, Nevada.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently concluded the public comment period on the proposed licensing criteria for disposal of high-level radioactive wastes in a possible geologic repository at Yucca Mountain, Nevada (10 CFR Part 63). The proposed rule was published in the **Federal Register** on February 22, 1999 (64 FR 8640). Comments were received regarding the concept and implementation of defense in depth, as applied to a possible geologic repository at Yucca Mountain.

The NRC staff will hold a facilitated Round Table Discussion in Las Vegas, Nevada to foster a common understanding among the stakeholders on issues associated with repository defense in depth. The meeting will open with an NRC presentation of an overview and issues associated with the defense in depth concept, followed by public discussion facilitated by Francis X. Cameron, Special Counsel for Public Liaison, of the NRC Office of the General Counsel.

DATES: The Round Table Discussion will be held on Tuesday, November 2, 1999, from 1:30 p.m. to 5:00 p.m (Pacific time).

ADDRESSES: The Alexis Park Hotel, 375 East Harmon Avenue, Las Vegas, Nevada 89109.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001, or by telephone: (301) 415–1642 or e-mail: fxc@nrc.gov.

SUPPLEMENTARY INFORMATION: NRC's plan to clarify defense in depth as applied to a possible high-level waste repository at Yucca Mountain was discussed in SECY–99–186, dated July 16, 1999. Both the plan and the proposed rule can be obtained from the NRC website (http://www.nrc.gov/NRC/COMMISSION/SECYS/1999–186scy.html) and (http://www.nrc.gov/NMSS/DWM/hlwreg.html), respectively, or by contacting Ms. Christiana Lui at (301) 415–6200 or via e-mail at cxl@nrc.gov. Copies of both documents will also be available at the Round Table Discussion.

Dated at Rockville, Maryland this 19th day of October, 1999.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Acting Chief, High-Level Waste and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–27764 Filed 10–22–99; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 205, 213, 226, and 230

[Regulations B, E, M, Z, and DD; Docket Nos. R–1040, R–1041, R–1042, R–1043, and R–1044]

Equal Credit Opportunity; Electronic Fund Transfers; Consumer Leasing; Truth in Lending; Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments; extension of comment period.

SUMMARY: On September 14, 1999, the Board published revised proposals for public comment that would permit electronic delivery of federally mandated disclosures under five consumer protection regulations: B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings). The Board is extending the comment period to give the public additional time to provide comments.

DATES: Comments must be received by November 15, 1999.

ADDRESSES: Comments may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments should refer to Docket No. R–1040 for Regulation B, Docket No. R–1041 for Regulation E, Docket No. R–1042 for Regulation M, Docket No. R–1043 for Regulation Z, and Docket No. R–1044 for Regulation DD. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR Part 261.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor or Michael L. Hentrel, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. Users of Telecommunications Device for the Deaf (TDD) only, contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION: On September 14, 1999, the Board published proposed amendments to permit electronic delivery of federally mandated disclosures under Regulations B (Equal Credit Opportunity), 64 FR 49688; E (Electronic Fund Transfers), 64 FR 49699; M (Consumer Leasing), 64 FR 49713; Z (Truth in Lending), 64 FR 49722; and DD (Truth in Savings), 64 FR 49740. The Board is extending the comment period to give the public additional time to comment on the proposals.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, October 18, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27589 Filed 10–22–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–94–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, ATR42–300, and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, that currently requires inspections to determine the proper installation of rivets in certain key holes and to detect cracks in the area of the key holes where rivets are missing; and correction of discrepancies. This action would increase the compliance time for the existing requirements and expand the

applicability of the existing AD to include additional airplanes. This action also would require various inspections of the subject area for discrepancies, and corrective actions, if necessary; and replacement of certain cargo door hinges with new hinges. For certain airplanes, this action would also require replacement of friction plates, stop fittings, and bolts with new parts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracks of the cargo door skin, certain frames, and entry door stop fittings and friction plates, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by November 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–94–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 10, 1993, the FAA issued AD 93–18–04, amendment 39–8689 (58 FR 53853, October 19, 1993), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, to require an inspection to determine the proper installation of rivets in the key holes of certain fuselage frames; an inspection to detect cracks in area of the key holes where rivets are missing; and correction of discrepancies. That action was prompted by the discovery of cracks around key holes on fuselage frames 25 and 27 where rivets were missing. The requirements of that AD are intended to prevent the loss of strength of the fuselage frames.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that Aerospatiale has continued fatigue testing of Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. The DGAC has determined that, in addition to fuselage frames 25 and 27 there are other areas that require inspection and modification, if applicable, to ensure that fatigue cracks do not progress undetected and reduce the structural integrity of the airplane. These additional areas of concern include cargo door fasteners and hinges; certain standard fuselage frames; forward entry door stops, door stop bolts, friction and plates; and upper corners. Additionally, the DGAC has determined that the subject area on certain Model ATR42–200 series airplanes, which were not affected by AD 93–18–04, is identical to that on the affected Model ATR42–300 and ATR42–320 series airplanes. Therefore, all of these airplanes may be subject to the unsafe condition and should have fuselage frames 25 and 27 inspected.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993, which describes procedures for a general visual inspection to determine the proper installation of rivets in the key holes of certain fuselage frames; and corrective action, if necessary. The corrective actions involve performing an eddy current inspection to detect cracks in the area of the key holes where rivets are missing, and installing rivets in uncracked holes.

Aerospatiale has issued Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995, which describes procedures for replacement of the hinges on the cargo compartment door and fuselage with new improved hinges. The replacement procedures include inspections for fastener type and tolerances, hole diameters, or cracking, and repair; as applicable.

Aerospatiale has issued Service Bulletin ATR42–53–0076, Revision 2, dated October 15, 1996, which describes procedures for a general visual inspection of certain fuselage frames for proper installation of rivets, and corrective action, if necessary. The corrective actions involve a general visual inspection for cracks in the tooling or key holes, and installation of rivets in uncracked holes.

Aerospatiale also has issued Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993, which describes procedures for an eddy current inspection of forward entry door stop holes to detect cracking; a detailed visual inspection of forward entry door friction plates to detect wear; and corrective action, if necessary. The corrective action involves replacement of door stop fittings and friction plates with new parts.

Aerospatiale also has issued Service Bulletin ATR42–52–0059, dated February 16, 1995, which describes procedures for replacement of forward entry door friction plates, upper corner stop fittings, and bolts with parts of an improved design.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 92–044–046(B)R2, dated November 5, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–18–04 to require accomplishment of the actions specified in the service bulletins described previously. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although certain service bulletins described previously specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

There are approximately 106 airplanes of U.S. registry that would be affected by this proposed AD.

The general visual inspection of fuselage frames 25 and 27 that is proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $180 per airplane.

The cargo door hinge and skin replacement that is proposed in this AD action would take approximately 250 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,880 per airplane. Based on these figures, the cost impact of the door structure replacement proposed by this AD on U.S. operators is estimated to be $24,880 per airplane.

The general visual inspection of the key and tooling holes that is proposed in this AD action would take approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $6,000 per airplane.

The eddy current and detailed visual inspections of the forward entry door stop fitting and friction plate that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of these inspections proposed by this AD on U.S. operators is estimated to be $120 per airplane.

The replacement of the forward entry door stop fitting, friction plate, and upper door corner that is proposed in this AD action would take approximately 50 work hours per airplane to accomplish. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on this figure, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $3,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8689 (58 FR 53853, October 19, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Aerospatiale: Docket 98–NM–94–AD. Supersedes AD 93–18–04, Amendment 39–8689.

Applicability: All Model ATR42–200, ATR42–300, and ATR42–320 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks of the cargo door skin, certain frames, entry door stop fittings, or friction plates, which could result in reduced structural integrity of the airplane, accomplish the following:

Frame 25 and 27 Inspection

(a) For airplanes having serial numbers 005 through 016 inclusive, 018 through 030 inclusive, 032 through 036 inclusive, 038, 040, 042, 043, 048 through 062 inclusive, 064 through 090 inclusive, 092 through 094 inclusive, and 096 through 228 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, conduct a general visual inspection of fuselage frames 25 and 27 to verify the proper installation of a rivet in each of the key holes, in accordance with Aerospatiale Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being check."

Note 3: Inspection of fuselage frames 25 and 27 accomplished prior to the effective date of this AD in accordance with Aerospatiale Service Bulletin ATR42–53–0070, dated June 10, 1991, or Revision 1, dated June 12, 1992, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) If a rivet is installed in each of the key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the key holes, prior to further flight, perform an eddy current inspection of each open key hole to detect cracks, in accordance with the service bulletin.

(i) If no crack is found during the eddy current inspection, prior to further flight, install a rivet in the open key hole in accordance with the service bulletin. After such installation; no further action is required by this paragraph for that key hole.

(ii) If any crack is found during the eddy current inspection, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Inspection and Modification of Cargo Door Structure

(b) For airplanes equipped with a cargo compartment door on which Aerospatiale Modification 3191 has not been accomplished: Prior to the accumulation of 27,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, except as provided by paragraph (c) of this AD, replace the hinges on the cargo compartment door and fuselage (including inspections for fastener type and tolerances, hole diameters, or cracking, and repair; as applicable) with new improved hinges, in accordance with paragraph 2. of the Accomplishment Instructions of Aerospatiale Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995.

(c) Where the instructions in Aerospatiale Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995, specify that ATR is to be contacted for a repair, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Frame Inspection

(d) For airplanes having serial numbers 003 through 208 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, conduct a general visual inspection of the identified fuselage frames for proper installation of a rivet in each of the tooling and key holes, in accordance with Aerospatiale Service Bulletin ATR42–53–0076, Revision 2, dated October 15, 1996.

(1) If a rivet is installed in each of the tooling or key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the tooling and key holes, prior to further flight, perform a detailed visual inspection of each open tooling or key hole to detect cracks, in accordance with the service bulletin.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(i) If no crack is found during the detailed visual inspection required by paragraph (d)(2) of this AD, prior to further flight, install a rivet in the open hole in accordance with the service bulletin.

(ii) If any crack is found during the visual inspection required by paragraph (d)(2) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Inspection and/or Replacement of Entry Door Structure

(e) For Model ATR42–300 series airplanes having serial numbers listed in Aerospatiale Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993: Except as provided by paragraph (f) of this AD, prior to the accumulation of 10,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD.

(1) Perform an eddy current inspection of the forward entry door stop holes to detect cracking, in accordance with the service bulletin. If any cracking is detected, prior to further flight, replace any cracked forward entry door stop fitting with a new fitting, in accordance with the service bulletin.

(2) Perform a detailed visual inspection of the forward entry door friction plates for wear, in accordance with the service bulletin. If wear is found on any friction plate, and the wear has a depth equal to or greater than 0.8mm (0.0315 in.), prior to further flight, replace the friction plate with a new or serviceable part in accordance with the service bulletin.

(f) For Model ATR42–300 series airplanes listed in Aerospatiale Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993, accomplishment of the requirements of paragraph (g) of this AD at the time specified in paragraph (e) of this AD constitutes terminating action for the requirements of paragraph (e) of this AD.

(g) For Model ATR42–300 series airplanes listed in Aerospatiale Service Bulletin ATR42–52–0059, dated February 16, 1995: Prior to the accumulation of 18,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (g)(1), (g)(2), and (g)(3) of this AD in accordance with the service bulletin.

(1) Replace the forward entry door friction plates with improved friction plates.

(2) Replace the upper corners of the forward entry door surround structure with improved door surround corners.

(3) Replace the forward entry door stop fittings and bolts with improved fittings and bolts.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 6: The subject of this AD is addressed in French airworthiness directive 92–044–046(B)R2, dated November 5, 1997.

Issued in Renton, Washington, on October 19, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27792 Filed 10–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

27 CFR Parts 4, 5, and 7

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 884]

RIN 1512–AB97

Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R–199P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to amend the regulations to prohibit the appearance on labels or in advertisements of any statement that makes a substantive claim regarding health benefits associated with the consumption of alcohol beverages unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects. ATF is also proposing to prohibit any advertisements that attribute health benefits to the consumption of alcohol beverages unless such statement is appropriately qualified in a manner that is not likely to result in any consumer confusion or deception. This notice seeks comments on whether the negative consequences of alcohol consumption or abuse disqualify, as misleading, these products entirely from entitlement to any health-related statements. This notice also seeks comments on whether health-related statements on alcohol beverage labels and advertising directing consumers to sources, such as the U.S. Government Dietary Guidelines, of information are misleading and whether ATF should continue to approve such statements.

The proposed regulations are intended to ensure that labels and advertisements do not contain statements or claims that would tend to mislead the consumer about the significant health consequences of alcohol consumption.

DATES: Comments must be received on or before February 22, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 884.* Submit e-mail comments to: nprm.notice.884@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and (f), we are authorized to issue regulations on the packaging, labeling, and advertising of alcohol beverages in order to prohibit deception of the consumer and, without regard to their truth or falsity, statements relating to analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer.

Regulations that implement the provisions of section 205(e) and (f), as they relate to the labeling and advertising of wine, distilled spirits, and malt beverages, are set forth in Title 27, Code of Federal Regulations (CFR), parts 4, 5, and 7, respectively. Under these regulations, labels and advertisements are prohibited from containing any statement, design, representation, pictorial representation, or device representing that the use of wine, distilled spirits, or malt beverages has curative or therapeutic effects if such representation is untrue in any particular or tends to create a misleading impression. This prohibition originated more than 60 years ago with the initial labeling and advertising regulations issued under the FAA Act.

ATF and our predecessor agencies have historically taken a very strict view of the regulatory prohibition on curative or therapeutic claims about alcohol beverages. This strict interpretation is based on the view that "distilled spirits, wines and malt beverages are, in reality, alcoholic beverages and not medicines of any sort, * * *" (FA–129, dated January 5, 1938).

In view of the undisputed health risks associated with alcohol consumption, it has always been our position that statements attributing positive health effects to the consumption of alcohol beverages are misleading unless such statements are appropriately qualified and properly balanced.

II. Our Existing Policy Regarding Health Claims and Other Health-Related Statements—Summary

The following is a summary of our existing policy with respect to health claims and other health-related statements in the labeling and advertising of alcohol beverages.

We view statements that make substantive claims regarding health benefits associated with alcohol beverage consumption as making therapeutic or curative claims. Claims which set forth only a partial picture or representation might be as likely to mislead the consumer as those that are actually false. A claim which is supported by scientific evidence may still mislead the consumer without appropriate qualification and detail. Any such claim is considered misleading unless it is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

III. Negative Consequences of Alcohol Consumption

The risks associated with alcohol consumption are well-documented.

In an article entitled "Alcohol and Risk of Coronary Events," [1] Charles H. Hennekens, M.D. outlines these risks as follows:

> The hazards of heavy alcohol consumption are clear and substantial and have far-reaching health and social consequences. Alcohol is the second leading cause of preventable deaths in the United States as well as most industrialized countries, second only to cigarette smoking. Drinking increases the risk of cancer of the liver, mouth, tongue, and esophagus and has been implicated as a cause of 3 to 5 percent of all cancer deaths. Heavy alcohol consumption is also associated with increased risks of hemorrhagic stroke and cardiomyopathy, and it predisposes to hepatic cirrhosis, the ninth most common cause of death in the United States. In pregnant women, heavy alcohol consumption is associated with fetal alcohol syndrome. Alcohol drinking is also implicated in over 40 percent of all fatal traffic crashes, which are a chief cause of premature deaths in younger people, and it is associated with suicides, industrial accidents, sex crimes, robberies, and murders. It is estimated that 14 million U.S.

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[1] Endnotes to preamble appear at end of article.

> residents suffer from alcohol abuse and dependence, and 76 million are affected by its presence in a family member.

It is true that many of these health risks are caused by heavy levels of alcohol consumption. It is also true that there are millions of Americans with alcohol dependency problems who find themselves unable or unwilling to control their consumption of alcohol. Given the serious health risks associated with higher levels of alcohol consumption, and given the fact that most medical studies agree that the effects of moderate consumption differ from individual to individual, any claim associating health benefits with moderate alcohol consumption must be carefully evaluated to ensure that it does not mislead the consumer about the various health consequences related to the consumption of alcohol beverages.

We recognize that there are several scientific studies suggesting a link between moderate alcohol consumption and a lower risk of coronary artery disease ("CAD").[2] However, at this time, we do not believe there is significant scientific evidence to support an unqualified conclusion that moderate wine (alcohol) consumption has health benefits for all or even most individual consumers. Some studies have suggested that only older drinkers will accrue any health benefits from moderate alcohol consumption.[3] This is because younger individuals have such a low risk for coronary artery disease and are much more likely to be at risk from alcohol consumption even at lower levels. This difference in risk factors has been explained as follows:[4]

> The net contents of all-cause mortality associated with a certain alcohol consumption level therefore also depends on the drinker's absolute risk of dying from these various causes. Accordingly, older people—who are at high absolute risk of coronary heart disease and ischemic stroke and at low risk for injury, cirrhosis, and other alcohol-related diseases—are most likely to benefit from low levels of alcohol consumption. In contrast, for men and women under age 40, who have relatively low absolute risk of dying from strokes, heart disease, and alcohol-related diseases but a high absolute risk of dying from injury, all-cause mortality will increase even at relatively low alcohol-consumption rates * * *. Finally, the absolute risk of death from injury or coronary heart disease is lower in young women than in young men, leading to an increase in all-cause mortality even in young women who are light drinkers (less than two drinks every 3 days) compared with abstainers.

Overall, the available scientific literature suggests that there may be serious health risks associated with heavy as well as moderate alcohol consumption, depending on the individual.[5] In light of the negative health consequences of alcohol consumption or abuse, it is possible that these products may not be entitled to any health-related statement. As noted below in section VII, the Federal Trade Commission has adopted a policy that unqualified health claims on products that pose increased health risks are deceptive. Accordingly, we are soliciting comments on whether alcohol beverages should not be entitled to health-related statements.

IV. Industry Circular 93–8

On August 2, 1993, we published Industry Circular 93–8. The circular generally restated our existing position regarding misleading curative and therapeutic claims, i.e., we view statements that make substantive claims regarding health benefits associated with alcohol beverage consumption as making therapeutic or curative claims. Any claim that sets forth only a partial picture or representation might be as likely to mislead the consumer as those that are actually false. Thus, a statement which attributes health benefits to the moderate consumption of alcohol beverages, even if supported by medical evidence, might have an overall misleading effect if such statement is not properly qualified, does not give all sides of the issue, and does not outline the categories of individuals for whom any such positive effect would be outweighed by numerous negative health effects.

We also explained that our existing policy regarding health claims on labels had been reinforced by the 1988 enactment of the Alcoholic Beverage Labeling Act (ABLA), 27 U.S.C. 213 *et seq.* The ABLA contains a declaration of policy and purpose that states that the Congress finds that "the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information and to minimize burdens on interstate commerce." 27 U.S.C. 213. As a result of this concern, the ABLA requires that any alcohol beverage container held for sale or distribution in the United States must bear the following statement on the label:

> GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

It is clear that one of the purposes of the ABLA was to avoid confusing the American public about the health hazards associated with the consumption of alcohol beverages. In order to accomplish this goal, Congress prescribed specific language that must appear on the labels of alcohol beverage products. It is our position that to the extent that the overall message of any health claim is inconsistent with the message of the health warning statement, it may result in label information that is misleading and confusing to the consumer and would be prohibited under the FAA Act.

In Industry Circular 93–8, we further noted that other Federal agencies, such as the Food and Drug Administration and the Federal Trade Commission, may have jurisdiction over certain aspects of labeling and advertising issues involving health claims. We will address this issue further in section VII (*Role of Other Federal Agencies With Respect to Health Claims and Other Health-Related Statements*).

We also stated that the distribution of advertising materials which included the full text of the April 1992 edition of "Alcohol Alert," published by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), would not be in violation of current regulations. This NIAAA publication provides a comprehensive discussion of the health consequences of moderate alcohol consumption. If such advertising materials also contain editorializing, advertising slogans, or exhortations to consume the product, we would evaluate such additional text to determine whether or not the advertisement presents a balanced picture of the risks associated with alcohol consumption. In addition, we stated that the use of buttons, shelf talkers, table tents, and similar items that excerpt any portion of the NIAAA publication, that contain health slogans or other inferential statements drawn from this publication, or that are based upon any other publication or article citing the health benefits of alcohol consumption, will be closely scrutinized to determine if they present a balanced picture of the risks associated with alcohol consumption.

In addition, we reminded industry members in Industry Circular 93–8 that substantive health claims on labels are considered to be misleading unless they are properly qualified, present all sides of the issue, and outline the categories of individuals for whom any positive effects would be outweighed by numerous negative health effects. We concluded that it would be extremely unlikely that any such balanced claim would fit on a normal alcohol beverage label. Our policy with respect to substantive health claims has not changed since the issuance of the industry circular. Finally, we stated that it was our intent to initiate rulemaking on this issue; however, pending rulemaking, we would continue to evaluate claims in labeling and advertising on a case-by-case basis.

V. Competitive Enterprise Institute Petition

On May 9, 1995, the Competitive Enterprise Institute (CEI) submitted a petition asking us to issue a rule allowing alcohol beverage labels and advertisements to carry statements regarding the purported benefits of moderate alcohol consumption of alcohol beverages. More specifically, CEI proposed that the following language be permitted on labels and in advertisements: "There is significant evidence that moderate consumption of alcoholic beverages may reduce the risk of heart disease." We would consider this statement to be an example of a substantive health claim. By letter dated January 13, 1997, we denied this rulemaking petition stating that the specific health claim proposed by CEI was not appropriately qualified, was not balanced regarding the health consequences of alcohol consumption and, as such, its use on labels could mislead consumers.

VI. Dietary Guidelines

The Fourth Edition (1995) of the "Dietary Guidelines for Americans" was published by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services in 1996. The Guidelines contain a detailed discussion concerning the consequences and effects of alcohol beverage consumption. There have been suggestions that the Federal government itself, in its issuance of the Dietary Guidelines, has officially recognized the health benefits of moderate alcohol consumption. It is true that the Guidelines acknowledge that "[c]urrent evidence suggests that moderate drinking is associated with a lower risk for coronary heart disease in some individuals." However, this is not a statement of a health benefit; it is merely a conclusion that in some individuals, moderate drinking may be associated with a lower risk of coronary heart disease. The Dietary Guidelines then go on to discuss the "serious health problems" caused by alcohol consumption as follows:

> However, higher levels of alcohol intake raise the risk for high blood pressure, stroke, heart disease, certain cancers, accidents, violence, suicides, birth defects, and overall mortality (deaths). Too much alcohol may cause cirrhosis of the liver, inflammation of the pancreas, and damage to the brain and heart. Heavy drinkers also are at risk of malnutrition because alcohol contains calories that may substitute for those in more nutritious foods.

The Dietary Guidelines recommend that if adults choose to drink alcohol beverages, they should consume them only in moderation. The term "moderation" is defined as no more than one drink per day for women and no more than two drinks per day for men. However, the Dietary Guidelines also conclude that for some people, even moderate drinking is not recommended. Thus, many people should not drink alcohol beverages at all, including children and adolescents, women who are trying to conceive or who are pregnant, individuals who plan to drive or take part in activities that require attention or skill, and individuals using prescription and over-the-counter medications. Finally, the Dietary Guidelines also suggest that individuals of any age who cannot restrict their drinking to moderate levels should not drink at all. This last category is obviously hard to define, and may include many individuals who do not even realize that they fall within this category.

It is clear that the Dietary Guidelines explicitly recognize that moderate alcohol consumption is not an activity that has only beneficial effects to the health of the consumer. Millions of adult consumers fall within the categories of people who should not drink alcohol beverages at all. The Dietary Guidelines do not represent an unqualified endorsement of the health benefits of moderate alcohol consumption. Thus, without appropriate qualifications and explanations, any such statement to that effect would tend to mislead consumers. However, we have no objections to the dissemination of the entire Dietary Guidelines as advertising materials by industry members or to the dissemination of the two pages from the Guidelines dealing with alcohol beverages (pages 40 and 41).

VII. Role of Other Federal Agencies With Respect to Health Claims and Other Health-Related Statements

While ATF has primary jurisdiction over the labeling and advertising of alcohol beverages, under certain circumstances the labeling and advertising of alcohol beverages may also be subject to the jurisdiction of the Food and Drug Administration (FDA) or the Federal Trade Commission (FTC). For example, since certain wine products containing less than 7 percent alcohol by volume are not wines subject to the FAA Act, the labeling of such products falls within FDA's jurisdiction. We have always utilized the scientific and public health expertise of FDA in approving ingredients in alcohol beverages, requiring label disclosure of certain substances, and identifying adulterated alcohol beverages that are deemed mislabeled.

FDA has advised us that certain curative, therapeutic, or disease-prevention claims for an alcohol beverage might place the product in the category of a drug under the Federal Food, Drug, and Cosmetic Act (FFD&C Act), 21 U.S.C. 321(g)(1)(B). FDA evaluates health claims on food labels pursuant to its authority under the FFD&C Act, as amended by the Nutrition Labeling and Education Act (NLEA), Public Law 101–535 (1990). The law provides that a food product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with certain procedures mandated by the FDA. See 21 U.S.C. 343(r)(1)(B). FDA's regulations provide that FDA will only approve a health claim when it determines, "based on the totality of publicly available scientific evidence" that there is "significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence." 21 CFR 101.14(c). ATF would continue to review health-related statements to ensure consistency with FDA's statutory and regulatory authorities.

The FTC's general jurisdiction over advertising extends to alcohol beverages. A problem that is of particular relevance to the area of alcohol beverage advertising is that of the "qualified" health claim. In their policy statement, published in the **Federal Register** on June 1, 1994 (59 FR 28394), the FTC stated that it is necessary to examine "whether qualified claims are presented in a manner that ensures that consumers understand both the extent of the support for the claim and the existence of any significant contrary view within the scientific community." We would also note that the FTC policy statement stated that an unqualified health claim in the advertising of a food was likely to be deceptive if the food also contained a nutrient that increased the risk for another disease or health-related condition, and the risk-increasing nutrient was closely related to the subject health claim.

VIII. Notice of Proposed Rulemaking

We are proposing to revise the regulations to reflect our current policy and to provide that labels or advertisements may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, representing that consumption of alcohol beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of an alcohol beverage is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

While industry members are not required to submit advertising materials to us for pre-approval, we encourage the use of our voluntary pre-clearance process for any advertisements that refer to the health effects of alcohol consumption.

We believe that the proposed regulations will ensure that labels and advertisements do not contain statements or claims that would tend to mislead the consumer about the significant health consequences of alcohol consumption.

IX. First Amendment Issues

Various members of the alcohol beverage industry have suggested that under the First Amendment to the United States Constitution, ATF is precluded from preventing the dissemination of truthful information about health benefits from alcohol beverage labels and advertisements. We are prohibiting the use of misleading statements regarding health claims that are by definition not protected by the First Amendment. Commercial speech is protected by the First Amendment only if it is truthful and not misleading. *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of New York*, 447 U.S. 557, 566 (1980). This longstanding position has been upheld by the Supreme Court in its most recent commercial speech decision. *See 44 Liquor Mart, Inc.* v. *Rhode Island*, 1996 U.S. LEXIS 3020 (1996).

X. Footnotes Appearing in Text of Supplementary Information

1. Hennekens, C.H., "Alcohol and Risk of Coronary Events," Research Monograph No. 31, "Alcohol and the Cardiovascular System" at 15 (National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD, 1996).

2. See, *e.g.*, Boffetta, P. & Garfinkel, L., "Alcohol drinking and mortality among men enrolled in an American Cancer Society prospective study, "Epidemiology" 1(5):343–348, 1990; Stampfer, M.J.; Colditz, G.A.; Willett, W.C.; Speizer, F.E. & Hennekens, C.H., "A prospective study of moderate alcohol consumption and the risk of coronary disease and stroke in women," "New England Journal of Medicine," 319(5):267–273, 1988; Klatsky, A.L.; Armstrong, M.A.; and Friedman, G.D., "Alcohol and Mortality," "Annals of Internal Medicine," 117:646–654, 1992. See generally National Institute on Alcohol Abuse and Alcoholism, "Moderate Drinking," "Alcohol Alert," No. 16, April 1992, at 2, and studies cited therein.

3. See, *e.g.*, Criqui, M.H., "Moderate Drinking: Benefits and Risks," "Alcohol and the Cardiovascular System," at 117–118 ("Clearly, younger persons cannot possibly benefit much from alcohol consumption, at least in the short term, because their risk of ischemic CVD events is so low.").

4. DuFour, M.C., "Risks and Benefits of Alcohol Use Over the Life Span," "Alcohol Health & Research World," Vol. 20, No. 3:145–150 at 147, 1996.

5. See, *e.g.*, Hennekens, C.H., "Alcohol and risk of coronary events," Research Monograph No. 31, "Alcohol and the Cardiovascular System" at 20 (National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 1996) ("while the health risks of excessive drinking are clear, there may also be hazards associated with moderate intake that must be weighed, on an individual basis, against the apparent protection against CHD.").

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We have determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed regulations merely clarify ATF's existing policy concerning the use of health claims in the labeling and advertising of alcohol beverages and impose no burdens on the industry. Accordingly, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is imposed.

Public Participation

We are requesting comments on the proposed regulations from all interested persons. In particular, we are asking for public comment on our existing policy relating to health claims and other health-related statements on alcohol beverage labels and in advertisements (see section II). We also ask whether health-related statements on alcohol beverage labels and advertising directing consumers to balanced sources of information are misleading and whether ATF should continue to approve such statements. We are also asking whether the negative health consequences of alcohol consumption or abuse disqualify, as misleading, these products entirely from entitlement to any health-related statements (see section III). In addition, we are specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 120-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the comments received will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

27 CFR Part 7

Advertising, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR parts 4, 5, and 7 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.39(h) is revised to read as follows:

§ 4.39 Prohibited practices.

* * * * *

(h) *Curative and therapeutic claims.* Labels may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of wine is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

* * * * *

Par. 3. Section 4.64(i) is revised to read as follows:

§ 4.64 Prohibited practices.

* * * * *

(i) *Curative and therapeutic claims.* Advertisements may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of wine is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

* * * * *

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 4. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 5. Section 5.42(b)(8) is revised to read as follows:

§ 5.42 Prohibited practices.

* * * * *

(b) * * *

(8) Curative and therapeutic claims. Labels may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of distilled spirits is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

Par. 6. Section 5.65(d) is revised to read as follows:

§ 5.65 Prohibited practices.

* * * * *

(d) *Curative and therapeutic claims.* Advertisements may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular, or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of distilled spirits is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 7. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 8. Section 7.29(e) is revised to read as follows:

§ 7.29 Prohibited practices.

* * * * *

(e) *Curative and therapeutic claims.* Labels may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of malt beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding the health benefits associated with the use of malt beverages is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

* * * * *

Par. 9. Section 7.54(e) is revised to read as follows:

§ 7.54 Prohibited practices.

* * * * *

(e) *Curative and therapeutic claims.* Advertisements may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of malt beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of malt beverages is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

* * * * *

Signed: October 19, 1999.

John W. Magaw,

Director.

Approved: October 20, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–27774 Filed 10–20–99; 3:28 pm]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–179]

RIN 2115–AA97

Safety Zone: Christmas Party Fireworks, Hudson River, Manhattan, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the Hudson River for the Christmas Party Fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Hudson River.

DATES: Comments must reach the Coast Guard on or before November 24, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–179), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–179) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Fireworks by Grucci has submitted an Application for Approval of a Marine Event for a fireworks display on the Hudson River. This proposed regulation establishes a temporary safety zone in all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York. The proposed safety zone would be effective from 8:30 p.m. until 10 p.m. on December 14, 1999. If the event is cancelled due to inclement weather, then this event will be held from 8:30 p.m. until 10 p.m. on December 15, 1999. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 150 yards of the 850-yard wide Hudson River during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. The Coast Guard expects to receive no comments on this NPRM due to the limited duration of the event and the fact that it should not interfere with vessel transits.

Discussion of Proposed Rule

The proposed safety zone is for a Christmas Party Fireworks display held on the Hudson River at Pier 60, Chelsea Piers, Manhattan, New York. This event will be held on Tuesday, December 14, 1999. If the event is canceled due to inclement weather, then the event will be held on Wednesday, December 15, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Lower Hudson River during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, Piers 59–62 and the Piers at Castle Point, New Jersey, that vessels may safely transit to the east of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners, and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04.6, 160.5; 59 CFR 1.46.

2. Add temporary § 165.T01–179 to read as follows:

§ 165.T01–179 Safety Zone: Christmas Party Fireworks, Hudson River, Manhattan, New York.

(a) *Location:* The following area is a safety zone: All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York.

(b) *Effective Period.* This section is effective from 8:30 p.m. to 10 p.m. on December 14, 1999. If the event is cancelled due to inclement weather, then this section is effective from 8:30 p.m. until 10 p.m. on December 15, 1999.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: October 18, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–27736 Filed 10–22–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR part 165

[CGD01–99–130]

RIN 2115–AA97

Safety Zone: New York Harbor and Hudson River Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the NPRM (CGD01–99–130) which was published in the **Federal Register** on October 6, 1999. The corrections change an inaccurate latitude position for the Ellis Island Safety Zone.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

Correction

On October 6, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone: New York Harbor and Hudson River Fireworks in the **Federal Register** (64 FR 54252). As published, the NPRM contains an inaccurate Latitude position. Accordingly, the NPRM published on October 6, 1999 (CGD01–99–130), is corrected as follows:

On page 54252, in the third column line 38, and on page 54254 in the second column, line 16, the Latitude position "40°41′15″N" should read "40°41′45″N".

Dated: October 18, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–27737 Filed 10–22–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Processing Instructions for Nonautomation Mail and Revisions to Letter Tray Labels

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to the Domestic Mail Manual that will allow mailers to choose to exclude their letter-size mail from any automated processing involved with initial distribution of mail, including

tabbing and labeling machines, barcode sorters, and optical character readers. The proposal also revises Line 2 of tray labels, replacing "NON OCR" with "NON BC" for Presorted First-Class Mail letters and Presorted Standard Mail (A) letters. Line 2 of tray labels for Periodicals letters already reflect "NON BC."

DATES: Comments must be received on or before December 9, 1999.

ADDRESSES: Mail or deliver written comments to the Manager, Processing Operations, USPS Headquarters, 475 L'Enfant Plaza SW, Room 7631, Washington DC 20260–2814. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jamie Gallagher, (202) 268–4031.

SUPPLEMENTARY INFORMATION: Processing letter-size mail has been revolutionized during the last decade as the Postal Service deployed a network of automated equipment. With the installation of more than 11,500 optical readers and delivery barcode sorters, the Postal Service now processes nearly 95% of letter mail through automated operations. Leading-edge tabbing machines and labeling systems are among the newest additions to the array of automated postal equipment. Today's automation infrastructure increases mail processing efficiency, which holds down postage rates.

There are a growing number of mailers who lower their costs by forgoing envelopes and folding or binding their mailpieces. Typically, these are smaller firms that do not want to invest the time and capital necessary to meet requirements for higher postage discounts. During postal processing, mailpieces with unsealed edges frequently get torn or damaged. Mailpieces with open edges also can jam postal equipment, which reduces processing efficiency. As a result, some postal facilities affix tabs to the open edges of letter-size mail (*e.g.*, self-mailers, booklets, double postcards).

Postal tabbing machines use one or two translucent seals to secure the leading edge of a mailpiece. Typically, the leading edge is the right side of the mailpiece as the address is read. Postal tabbing stabilizes the mailpiece and minimizes damage that occurs with the quick acceleration and high-speed transport of optical character readers and barcode sorters.

The Mailers Technical Advisory Committee (MTAC) and the Postal Service recently discussed mailer concerns about postal tabbing. While the Postal Service will continue to maximize the amount of letter mail processed through automation, alternatives for mailers who do not want mail tabbed or processed through other automated equipment were considered. The final recommendation was for mailers to have the option to use new tray labels to designate the trays of mail that should be excluded from all automated processing. To identify these trays further, the Postal Service is adding four unique content identifier numbers (CINs) for mailers to use with barcoded tray labels. At this time, barcoded tray labels are optional for non-automation rate mailings.

While the new tray label should provide adequate identification of 5-digit letters that fill a 5-digit tray, facing slips printed with "DO NOT AUTOMATE" must be applied to required 3-digit, ADC, and mixed ADC packages. Mailer's use of facing slips will ensure proper identification of bundles for manual processing in downstream operations.

The introduction of nonautomation CINs provides the opportunity to restructure and simplify an existing, related series of mailer CIN codes, the "NON OCR" series. Initially used to identify nonautomation rate mail, "NON OCR" CINs also served as a means for mailers to indicate a preference for nonautomated processing for First-Class Mail letters and Standard Mail (A) letters. Replacing "NON OCR" CINs with the more widely used "NON BC" CINs will standardize human-readable content lines of tray labels.

The Postal Service proposes to implement these new mailing standards on April 1, 2000.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410 (a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 5552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

M Mail Preparation and Sortation

* * * * *

M032 Barcoded Labels

* * * * *

Exhibit 1.3a 3-Digit Content Identifier Numbers

* * * * *

[Amend Exhibit 1.3a as follows:]

Class and mailing	CIN	Human-readable content line
* * * * * * *		
FIRST-CLASS MAIL		
FCM Letters—Presorted (Basic Preparation)		
[Revise the following CIN and human-readable content lines:]		
5-digit trays	250	FCM LTRS 5D NON BC
3-digit trays	253	FCM LTRS 3D NON BC
ADC trays	256	FCM LTRS ADC NON BC
mixed ADC trays	259	FCM LTRS NON BC WKG
[Add a new category:]		
FCM Letters—Presorted (Nonautomation Processing)		
5-digit trays	267	FCM LTRS 5D MANUAL
all other required trays	268	FCM LTRS MANUAL ONLY

Class and mailing	CIN	Human-readable content line
* * * * * * *		
STANDARD MAIL (A)		
STD Letters—Presorted (Basic Preparation)		
[Revise the following CIN and human-readable content lines:]		
5-digit trays	550	STD LTRS 5D NON BC
3-digit trays	553	STD LTRS 3D NON BC
ADC trays	556	STD LTRS ADC NON BC
mixed ADC trays	559	STD LTRS NON BC WKG
[Add a new category:]		
STD Letters—Presorted (Nonautomation Processing)		
5-digit trays	604	STD LTRS 5D MANUAL
all other required trays	605	STD LTRS MANUAL ONLY

* * * * *

M130 Presorted First-Class Mail

1.0 BASIC STANDARDS

* * * * *

1.5 Processing Instructions

[Revise 1.5 to read as follows:]

If a mailer prefers that the USPS not automate letter-size pieces presented at Presorted rates, then the mailer must use the Line 2 tray label information in 2.4. The mailer must prepare all required trays in 2.2.

* * * * *

2.0 REQUIRED PREPARATION—LETTER-AND CARD-SIZED PIECES

* * * * *

[Revise 2.3 to read as follows:]

2.3 Tray Line 2

Line 2:
a. 5-digit: "FCM LTRS 5D NON BC."
b. 3-digit: "FCM LTRS NON BC."
c. ADC: "FCM LTRS ADC NON BC."
d. Mixed ADC: "FCM LTRS NON BC WKG."

[Add new 2.4 to read as follows:]

2.4 Optional Tray Line 2

For trays that mailers do not want automated under 1.5:
a. 5-digit: "FCM LTRS 5D MANUAL."
b. All other required trays: "FCM LTRS MANUAL ONLY."

* * * * *

M610 PRESORTED STANDARD MAIL (A)

1.0 BASIC STANDARDS

* * * * *

1.4 Processing Instructions

[Revise 1.4 to read as follows:]

If a mailer prefers that the USPS not automate letter-size pieces presented at Presorted rates, then the mailer must use the Line 2 tray label information in 2.4. The mailer must prepare all required trays in 2.2.

* * * * *

[Revise 2.3 to read as follows:]

2.3 Tray Line 2

Line 2:
a. 5-digit: "STD LTRS 5D NON BC."
b. 3-digit: "STD LTRS NON BC."
c. ADC: "STD LTRS ADC NON BC."
d. Mixed ADC: "STD LTRS NON BC WKG."

[Add new 2.4 to read as follows:]

2.4 Optional Tray Line 2

For trays that mailers do not want automated under 1.5:
a. 5-digit: "STD LTRS 5D MANUAL."
b. All other required trays: "STD LTRS MANUAL ONLY."

* * * * *

An amendment to 39 CFR 111.3 will be published to reflect these changes if the proposal is adopted.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 99–27679 Filed 10–22–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL–6463–1]

Elimination of Special Treatment for Category of Confidential Business Information

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend its regulations to eliminate the special treatment given to a category of confidential business information (CBI) received by EPA. This category of information includes comments received from businesses to substantiate their claims of confidentiality for previously submitted information ("a substantiation"). Under EPA's existing regulations, EPA automatically regards a substantiation as entitled to confidential treatment if it is not otherwise possessed by EPA and is properly marked as confidential when received by EPA. EPA proposes to eliminate this provision because special treatment of substantiations is no longer necessary to support the original purpose of the regulation, and elimination of this provision will bring EPA into conformity with how substantiations are treated by other federal agencies.

DATES: Comments on this proposed rule must be submitted by December 27, 1999. EPA does not intend to hold a public hearing on this proposed rule, unless it receives a request for such a hearing. If a request is submitted by November 24, 1999, EPA will hold a public hearing. If EPA holds such a hearing, comments must be submitted within 30 days of the date of the hearing.

ADDRESSES: Written comments on this proposed rule should be addressed to Oscar Morales, Environmental Protection Agency, Office of Environmental Information (2151), 401 M Street, SW., Washington, DC 20460. Documents related to this proposed rule will be available for public inspection and viewing by appointment. If you wish to request a public hearing on this proposed rule, please notify Mr. Morales at the address shown above.

FOR FURTHER INFORMATION CONTACT: Oscar Morales, (202) 260–3759.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, when EPA receives a Freedom of Information Act (FOIA) request for information in EPA's control that was originally claimed as confidential by the submitter of the information, EPA follows the procedures in 40 CFR 2.204(e). EPA provides the submitter with notice of the FOIA request and an opportunity to comment and provide a substantiation. Once EPA receives the submitter's substantiation, it evaluates the information and makes a determination as to the confidentiality of the requested information. If EPA determines that the requested information is not entitled to confidential treatment, EPA notifies the submitter of its right to seek judicial review of EPA's determination prior to the release of the information.

If the submitter claims the substantiation itself to be confidential and marks it in accordance with the requirements of 40 CFR 2.203(b), and if EPA does not already possess the information in the substantiation, under 40 CFR 2.205(c), the substantiation "will be regarded as entitled to confidential treatment and will not be disclosed by EPA without the [submitter's] consent, unless its disclosure is duly ordered by a Federal court, notwithstanding other provisions of this subpart to the contrary." Thus, if EPA were to receive a FOIA request for a substantiation that conforms to the above requirements, EPA would automatically withhold the substantiation without going through the CBI determination procedures of 40 CFR part 2, subpart B.

The original purpose of 40 CFR 2.205(c) was to encourage businesses, which bear the burden of substantiating their claims of confidentiality, to provide sufficient information to support their claims by automatically regarding their substantiations as entitled to confidential treatment if certain specified conditions were met.

II. Description of Proposed Rule

EPA proposes to amend its regulations to remove 40 CFR 2.205(c). This amendment will eliminate EPA's separate treatment of substantiations. Instead, EPA will treat substantiations in exactly the same manner as all other information requested under FOIA and claimed to be confidential.

EPA believes that there is no continued need for 40 CFR 2.205(c) for two reasons. First, the special treatment of substantiations under 40 CFR 2.205(c) is no longer necessary to support the original purpose of 40 CFR 2.205(c), which was to encourage businesses to provide sufficient information to support their claims. EPA believes that its CBI determination procedures of 40 CFR part 2, subpart B, provide adequate safeguards and protections to prevent the improper release of additional confidential business information contained in a submitter's substantiation.

Second, EPA believes that removing 40 CFR 2.205(c) will bring EPA into conformity with how substantiations are treated by other federal agencies, which do not provide special treatment for substantiations.

III. Statutory Authority

EPA is proposing this rule under the authority of 5 U.S.C. 301, 552 (as amended), and 553.

IV. Economic Impact

This proposed rule is expected to have little or no economic impact on parties affected by EPA's regulations at 40 CFR part 2, subpart B. The removal of 40 CFR 2.205(c) will result in EPA's treatment of substantiations in exactly the same manner as all other information requested under FOIA and claimed to be confidential. Businesses will continue to be required to comply with the marking requirements of 40 CFR 2.203(b) when submitting substantiations. Only after EPA receives a FOIA request for a substantiation and notifies the submitter, pursuant to 40 CFR 2.204(e), will the submitter have to provide comments to substantiate its original substantiation.

V. Paperwork Reduction Act

The information collection requirements in this proposed rule have not been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An amendment to the current Information Collection Request (ICR), (OMB Control No. 2020–0003) will be prepared by EPA. Once it is prepared, it will be announced in the **Federal Register** for public comment.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant economic impact on a substantial number of small entities because it is not expected to result in any significant additional costs to entities asserting a claim of confidentiality for their information submitted to EPA. Any cost of providing comments on a substantiation are likely to be incidental, and most often will simply document a basis for confidentiality that has already been developed. Therefore, under 5 U.S.C. 605(b), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Environmental Impact

This proposed rule is expected to have no environmental impact. It pertains solely to the collection and dissemination of information.

VIII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to interagency review under the Executive Order.

IX. Executive Orders 12875, 13132, and 12612 on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. This rule applies to businesses, not government entities, submitting comments to substantiate CBI. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)], which will take effect on November 2, 1999. In the interim, the current executive order on federalism, Executive Order 12612 [52 FR 41685 (October 30, 1987)] still applies. This proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612.

X. Executive Order 13084 on Consultation With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule applies to businesses, not government entities, submitting comments to substantiate CBI. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XI. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202, EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a federal mandate as defined in UMRA. The rule does not include a federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and does not establish regulatory requirements that may significantly or uniquely affect small governments.

XII. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR19885, April 23, 1997), applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

EPA believes Executive Order 13045 applies only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

XIII. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve any technical standards, and EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments and specifically invites the public to identify any potentially-applicable voluntary consensus standards and explain why such standards should be used in this rule.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Confidential business information, Freedom of information, Government employees.

Dated: October 19, 1999.

Carol M. Browner,

Administrator.

For the reasons set out above, EPA proposes to amend 40 CFR part 2 as follows:

PART 2—PUBLIC INFORMATION

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 205, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of

1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Section 2.205(c) is removed and reserved.

[FR Doc. 99–27798 Filed 10–22–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–6463–8]

Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today, EPA is proposing to rescind its prior findings that the 1-hour ozone national ambient air quality standard (NAAQS) and its accompanying designations and classifications no longer apply in certain areas. The EPA had previously taken final action regarding the applicability of the 1-hour standard for various areas on June 5, 1998, July 22, 1998, and June 9, 1999. A recent ruling of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has undermined the basis for EPA's previous determinations on applicability of the 1-hour ozone standard. In the ruling, the court remanded the 8-hour NAAQS for ozone and curtailed EPA's authority to enforce it. The effectiveness of the 8-hour standard served as the underlying basis for EPA's regulations governing these applicability determinations and thus for EPA's finding that the 1-hour standard no longer applied in areas that EPA determined were attaining the 1-hour standard. Since the court has ruled that EPA cannot fully implement the 8-hour standard, and it may be some time before EPA is able to take steps to secure the public health protection afforded by an 8-hour standard, EPA is today proposing to rescind the findings that the 1-hour standard no longer applies, and thereby reinstate the applicability of the 1-hour standard. Under this proposal, the designations and classifications that previously applied in such areas with respect to the 1-hour standard would be reinstated. Furthermore, in today's action, EPA is proposing to amend 40 CFR 50.9(b) to provide by rule that the 1-hour ozone standard will continue to apply to all areas notwithstanding promulgation of the 8-hour standard.

DATES: Your comments must be submitted on or before December 1, 1999 in order to be considered.

ADDRESSES: You may comment in various ways:

On paper. Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–99–22, U.S. Environmental Protection Agency, 401 M St., SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548.

Electronically. Send electronic comments to EPA at: A-and-R-Docket@epamail.epa.gov. Avoid sending confidential business information. We accept comments as e-mail attachments or on disk. Either way, they must be in WordPerfect 5.1 or 6.0 or ASCII file format. Avoid the use of special characters and any form of encryption. You may file your comments on this proposed rule online at many Federal Depository Libraries. Be sure to identify all comments and data by Docket number A–99–22.

Public inspection. You may read the proposed rule (including paper copies of comments and data submitted electronically, minus anything claimed as confidential business information) at the Docket and Information Center. They are available for public inspection from 8:00 a.m. to 5:30 p.m., Monday through Wednesday, excluding legal holidays. We may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Questions about this proposal should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238 or e-mail to nikbakht.annie@epamail.epa.gov or gilbert.barry@epamail.epa.gov. To ask about policy matters or monitoring data for a specific geographic area, call one of these contacts:

Region I—Richard P. Burkhart (617) 918–1664,
Region II—Ray Werner (212) 637–3706,
Region III—Marcia Spink (215) 814–2104,
Region IV—Kay Prince (404) 562–9026,
Region V—Todd Nettesheim (312) 353–9153,
Region VI—Lt. Mick Cote (214) 665–7219,
Region VII—Royan Teter (913) 551–7609,
Region VIII—Tim Russ (303) 312–6479,
Region IX—Morris Goldberg (415) 744–1296,
Region X—William Puckett (206) 553–1702

SUPPLEMENTARY INFORMATION: The Agency is asking for your comments on whether EPA should rescind findings that the 1-hour standard no longer applies, and on the effects of such a rescission. See section IV of this proposal for specific issues open for comment.

Table of Contents

I. Background
  A. What was the basis for EPA's previous rulemaking actions finding that the 1-hour ozone standard no longer applied in certain areas?
  B. What effect does the recent court decision have on today's proposed action?
II. What is the Agency's primary reason for reinstating the 1-hour ozone standard in areas where it no longer applies?
III. What action is EPA proposing to take today?
IV. What is the effect of rescinding previous findings that the 1-hour standard no longer applied?
V. What administrative requirements are considered in today's proposed rule?
  A. Executive Order 12866: Regulatory Impact Analysis
  B. Regulatory Flexibility Act
  C. Unfunded Mandates
  D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  E. Executive Order 12875: Enhancing the Intergovernmental Partnership
  F. Executive Order 12612: Federalism
  G. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  H. Paperwork Reduction Act
  I. Executive Order 12898: Environmental Justice
  J. National Technology Transfer and Advancement Act

I. Background

A. What was the basis for EPA's previous rulemaking actions finding that the 1-hour ozone standard no longer applied in certain areas?

On July 18, 1997 (62 FR 38856), we issued a regulation replacing the 1-hour 0.12 parts per million (ppm) ozone NAAQS with an 8-hour standard at a level of 0.08 ppm. An area's compliance with the 8-hour standard is measured by the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard, which became effective on September 16, 1997, provides increased protection to the public, especially children, the elderly, and other at-risk populations.

Also, on July 18, 1997, we announced that the 1-hour ozone NAAQS would continue to apply to areas until areas attained the 1-hour NAAQS. We did this to provide continuity in public health protection during the transition to implementation of the new NAAQS. We codified this approach in a regulation providing that the 1-hour standard would no longer apply to an area upon a determination by EPA that the area was attaining the 1-hour standard. 62 FR 38856, codified at 40 CFR 50.9(b). The regulation indicating that the 1-hour standard would no longer apply upon attainment was clearly premised upon the effectiveness of the 8-hour standard and the implementation scheme developed for that standard. See, e.g., 63 FR 31014, 31016 (3rd col.).

Also, on July 16, 1997, President Clinton issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of EPA indicating that within 90 days of our issuing the new 8-hour standard, we would publish an action identifying ozone areas to which the 1-hour standard would no longer apply. The memorandum recognized that for areas where the air quality did not currently attain the 1-hour standard, the 1-hour standard would continue in effect. The memorandum also recognized that provisions of subpart 2 part D of title I of the Clean Air Act (CAA) would apply to areas that remained subject to the 1-hour standard and that were designated nonattainment until EPA determined that the area was attaining the 1-hour standard.

On June 5, 1998 (63 FR 31014), July 22, 1998 (63 FR 39432), and June 9, 1999 (64 FR 30911), we issued final rules for many areas that were attaining the 1-hour standard, finding that the 1-hour standard no longer applied to these areas and amending the Code of Federal Regulations (CFR) to remove the designations and classifications that had applied to those areas for the 1-hour standard under sections 107, 172 and 181 of the CAA.

B. What Effect Does the Recent Court Decision Have on Today's Proposed Action?

On May 14, 1999, the D.C. Circuit issued an opinion questioning the constitutionality of the CAA authority to review and revise the NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. *American Trucking Association* v. *U.S. EPA,* 175 F.3d 1027 (D.C. Cir. 1999). The court stopped short of finding the statutory grant of authority unconstitutional, instead remanding to EPA to identify a determinate principle for promulgating the appropriate level of these NAAQS. The court also addressed other issues, including EPA's authority to designate and set attainment dates for a revised ozone standard. The court found that EPA has authority to designate areas for a revised ozone standard. However, based on the statutory provisions regarding classifications and attainment dates under sections 172(a) and 181(a), the court's ruling curtailed EPA's ability to implement and enforce a more stringent ozone NAAQS. On June 28, 1999, EPA filed a petition for rehearing in *American Trucking* addressing this and other portions of the court's opinion. The EPA believes that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. This reservation does not apply to any EPA actions based on the 1-hour standard because the court did not limit EPA's ability to implement the 1-hour standard.

II. What is the Agency's primary reason for reinstating the 1-hour ozone standard in areas where it no longer applies?

Since EPA is uncertain as to its ability to implement the new 8-hour standard, and will remain unsure until ongoing litigation is completed, EPA believes that it is not appropriate to leave in place the determinations that the 1-hour ozone standard no longer applies to areas that had attained the 1-hour standard. These determinations were premised on the existence of an implementation scheme for the 8-hour ozone standard and the need to transition to the implementation of that standard. Since EPA cannot effectively implement the 8-hour standard, EPA cannot justify keeping the 1-hour standard inapplicable in these areas. In the absence of a 1-hour standard, no ozone standard that could be effectively implemented would be in place in these areas. Therefore, pending resolution of the litigation involving EPA's ability to promulgate and enforce the 8-hour NAAQS, EPA is proposing to rescind the findings that the 1-hour ozone standard no longer applies. The EPA considers this action necessary in order to ensure continued health protection for the public while the issue of EPA's ability to promulgate and enforce a revised ozone standard is resolved. If EPA finalizes today's proposed action, and then EPA prevails in the litigation and retains the ability to promulgate a revised 8-hour ozone standard that can be effectively enforced, EPA believes it would again be appropriate for the 1-hour standard to no longer apply once an area attains that standard, as established in the original promulgation of the 8-hour standard.

The EPA is charged with ensuring that the American public has healthy air to breathe. A fully enforceable 8-hour standard would have provided substantial protection against exposures to ozone over both short- and long-term time periods. Without full authority to enforce the 8-hour standard and with no applicable 1-hour standard nationwide, the public will be at a greater risk of exposure to short-term ozone concentrations and acute effects based on 1- to 3-hour exposures. Such acute effects may be manifested as significant lung function decrements in individuals engaged in heavy exertion, respiratory symptoms (e.g., cough, chest pain), reduced exercise performance, increased airway responsiveness, impaired respiratory defenses, and increased hospital admissions and emergency room visits. New health effects information additionally demonstrates associations between a wide range of health effects and 6- to 8-hour exposures below the level of the 1-hour standard. Thus, insuring the 1-hour standard is met will both address effects related to 1-hour exposures and reduce, though not eliminate, the risk of health effects associated with 6- to 8-hour exposures.

Some of the areas where the 1-hour standard has been found inapplicable are now violating that standard and EPA is not aware of any plans in place in these areas to reduce emissions. Likewise, some areas with maintenance plans are now violating the 1-hour standard without implementing contingency measures to curtail violations. Without either a 1-hour standard in place or an 8-hour standard that can be fully implemented, there is no longer a defined process for improving the air quality in these areas.

III. What Action Is EPA Proposing To Take Today?

Today, we are proposing to rescind the findings that the 1-hour standard no longer applies in those areas where the Agency had previously determined that the 1-hour standard had been attained. The 1-hour standard would be put back in place in nearly 3,000 counties, all of the areas where the 1-hour standard had been determined inapplicable in previous final actions taken by the Agency. The areas affected are identified by air quality designations in the docket for this rulemaking at Docket No. A–99–22, and will be listed by county in the proposed CFR language to be published subsequently in a later

Federal Register. Also, the 40 CFR part 81 ozone table, listing areas of the country where the 1-hour ozone standard currently applies and those for which the 1-hour ozone standard is being proposed for reinstatement, can be viewed at the following internet website address: *http://www.epa.gov/ttn/oarpg*. Where the 1-hour ozone standard again becomes applicable as a result of this rulemaking, the attainment and nonattainment designations and classifications applicable to such areas previously will again apply. See Interim Implementation Policy Statement accompanying the proposed 8-hour NAAQS, 61 FR 65752, 65754 (Dec. 13, 1996)("the designations would remain in effect so long as the current 1-hour ozone NAAQS remains in effect").

Given that the previous designations and classifications of these areas were based upon the 1-hour ozone standard, which we are proposing will again apply, EPA proposes that the tables in Part 81 of the CFR be amended by again identifying the designation and classification of the area that applied prior to EPA's determinations that the standard no longer applied.

As discussed above, 40 CFR 50.9(b) presently provides that the 1-hour ozone standard would no longer apply once EPA determined that an area attained that standard. For the reasons described above concerning the need to retain the 1-hour standard while EPA's authority to implement and effectively enforce the 8-hour standard is in question, EPA is proposing to revise section 50.9(b) to indicate that the 1-hour standard remains applicable to all areas notwithstanding the promulgation of the 8-hour standard. Furthermore, because as explained above and in the promulgation of the 8-hour standard, EPA believes it is only appropriate to keep the 1-hour ozone standard in place as a transition mechanism to ensure continued public health protection as areas plan to meet the new 8-hour standard, EPA is proposing that after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in section 50.9 will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard. EPA believes that by the time the new 8-hour standard becomes fully enforceable under Part D and subject to no further legal challenge, the designations of areas as nonattainment for the 8-hour standard will either have already occurred or will occur very shortly. EPA concludes that at that time if an area is meeting the one-hour standard, it will be most appropriate for areas to concentrate all of their limited resources on planning to meet their obligations under the new 8-hour standard rather than having to simultaneously complete any remaining requirements that are needed to meet the 1-hour standard.

In light of many areas' needs to quickly develop additional State Implementation Plan (SIP) programs in response to the actions EPA is proposing today, EPA intends to provide in any final action on this proposal that the actions proposed today will become effective 90 days after publication of any final action in the **Federal Register**.

IV. What is the effect of rescinding previous findings that the 1-hour standard no longer applied?

The Agency is asking for your comments on the following aspects of this proposed action rescinding the findings that the 1-hour standard no longer applies. The issues are identified by designation status and current air quality. A list of the areas in each category can be found in the public docket for this proposed action at Docket No. A–99–22.

Areas Designated As Attainment with No Violations Since Revocation

For areas that were designated as attainment (with or without maintenance plans) prior to the determination that the 1-hour standard no longer applied and that have remained in attainment for the 1-hour standard since that determination, EPA proposes that no new subpart 2 programmatic SIP requirements, beyond continued compliance with existing provisions of any applicable maintenance plans, will apply to such areas upon reinstatement of the 1-hour standard.

Areas Designated Attainment (Without Maintenance Plans) With Violations Since Revocation

For areas that were designated as attainment that do not have a maintenance plan but have had one or more violations of the 1-hour standard since the determination that the 1-hour standard no longer applied, EPA believes that such areas should be given a reasonable time frame to plan to bring the areas back into attainment. The EPA has the authority to designate these areas as nonattainment; however, no decision to take such action has been made to date, and EPA is not proposing to take such action at this time.

Areas Designated Attainment (With Maintenance Plans) With Violations Since Revocation

For areas that were designated as attainment that do have a maintenance plan but have had one or more violations of the 1-hour standard since the determination that the 1-hour standard no longer applied, EPA believes that the contingency measures outlined in the maintenance plan must be implemented according to the schedule in the plan. In addition, EPA believes that if during the time since the determination that the 1-hour standard no longer applied any requirements to implement contingency measures based on a violation of the 1-hour standard had been removed from the SIP, States should put such requirements back into place in order to assure the correction of any such violations.

Areas Designated Nonattainment With No Violations Since Revocation

For areas that were designated as nonattainment prior to the determination that the 1-hour standard no longer applied and that have remained in attainment of the 1-hour standard since revocation, EPA proposes that the standard and accompanying nonattainment designation will again apply. However, EPA recommends that such areas follow the redesignation requirements of section 107(d)(3)(E) for submission of maintenance plans and redesignation to attainment. The EPA's Regional Offices will work with the States to expedite this process. Also, EPA proposes to apply its May 10, 1995 "Clean Data Policy" as appropriate to these areas, which permits suspension of certain requirements under Subpart 2 as they relate to ozone nonattainment areas meeting the ozone NAAQS, including requirements for reasonable further progress and attainment demonstrations. However, outstanding subpart 2 requirements not covered by this policy that were required prior to revocation would continue to apply until redesignation. The EPA will determine the applicability of this policy on a case-by-case basis to individual areas.

Areas Designated Nonattainment With Violations Since Revocation

For areas that were designated as nonattainment prior to the determination that the 1-hour standard no longer applied and that have had violations of the 1-hour standard since that determination, EPA proposes that all of the applicable nonattainment area planning requirements of subpart 2 must be followed. The EPA believes that the nonattainment requirements in subpart 2 would apply to such areas as a matter of law for purposes of the 1-hour standard once this proposed action becomes final. The EPA also believes that it is appropriate to provide a reasonable schedule for these areas to meet any remaining planning needs with respect to these requirements and will work with each area to establish a submittal schedule.

Programmatic Effects

Sanctions

The EPA proposes that any sanctions or Federal implementation plan clocks started under sections 110 or 179 of the CAA and 40 CFR 52.31 with respect to planning requirements in subpart 2 of the CAA would again become applicable to areas. As to the timing of restarting such clocks, EPA proposes that they would start back up where they left off, rather than being considered to have run during the period the standard was no longer in effect. This would be done as a matter of fairness to affected areas, which were not aware that such clocks could have been running during the time that the 1-hour standard was not in effect. The EPA requests comments on this proposed approach.

Conformity

Conformity requirements remained applicable to all areas with maintenance plans upon EPA's determination that the standard was no longer applicable. Rescission of that determination will not affect the continued applicability of conformity. Clean Air Act section 176(c)(5)(B). Conformity does not apply at any time to attainment areas without a maintenance plan. For example, conformity does not apply to the areas designated attainment (without maintenance plans) with violations since revocation, which is discussed above.

The EPA proposes that the conformity requirements of section 176 will apply to all areas previously designated nonattainment at the time the 1-hour standard was revoked. The EPA proposes that conformity requirements will apply immediately upon the effective date of the final action reestablishing the nonattainment designations. We note that the DC Circuit has held that EPA could not provide a one-year grace period for applicability of transportation conformity regulations to newly designated nonattainment areas under the 1-hour standard, but rather that transportation conformity requirements apply as a matter of law immediately upon final designation of any area as nonattainment. *Sierra Club v. EPA*, 129 F.3d 137 (D.C. Cir. 1997). Therefore, EPA believes that the interpretation of the CAA that is most consistent with the case law is that the conformity requirements must apply again to any area designated nonattainment upon the effective date of the designation, for all areas affected by today's proposed action.

The conformity requirements that would apply are included in 40 CFR parts 51 and 93. These requirements were recently modified by EPA's May 14, 1999 guidance entitled, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision" and DOT's June 18, 1999 guidance entitled, "Additional Supplemental Guidance for the Implementation of the Circuit Court Decision Affecting Transportation Conformity."

When conformity begins applying to affected areas, they must have a currently conforming transportation plan and program in order to receive federal approval or funding for transportation projects. Some areas may have a transportation plan and program that were found to conform before the one-hour standard was revoked. If that conformity determination is still valid, the area would not need to perform a new conformity determination.

The area would need to document that the current transportation plan and program have not changed since the time of the last conformity determination in a manner that would have required a new conformity determination. In addition, the conformity determination must not have expired under the conformity rule's frequency requirements of 40 CFR 93.104.

Many areas may need to complete a new conformity determination, because the transportation plan and program were changed during the time that the one-hour standard was revoked. Areas would demonstrate conformity using the motor vehicle emissions budgets in their one-hour ozone SIP, if we have approved the SIP or found it adequate for conformity purposes. If an area has submitted a SIP with motor vehicle emissions budgets for conformity purposes that we have not approved or affirmatively found adequate, those budgets may not be used for conformity purposes. Any area without a submitted SIP that we have approved or found adequate for conformity purposes would demonstrate conformity using the emission reduction tests (build/no-build) test and/or 1990 test, as described in 40 CFR 93.119.

New Source Review

With respect to new source review (NSR) requirements, EPA believes that, in most cases, the NSR program linked to the section 107 designation and classification that was in effect at the time EPA found that the standard no longer applied will apply automatically under the applicable SIP upon rescission of those findings. Thus, if this action is finalized as proposed, 1-hour attainment and unclassifiable areas will generally be required to continue to implement the prevention of significant deterioration (PSD) permitting program for ozone,[1] whereas 1-hour nonattainment areas will be required to implement the appropriate part D NSR program as necessary to comply with Subpart 2 of the CAA. At a minimum, and only if the applicable SIP specifies no part D NSR program, EPA believes that areas designated nonattainment for the 1-hour standard must issue permits consistent with the Emission Offset Interpretative Ruling in 40 CFR part 51, Appendix S.

The EPA believes that the NSR requirements for most areas will automatically apply under the terms of the applicable SIP. For instance, if an area were previously designated nonattainment and classified as "serious," the applicable SIP would have had to ensure that the area satisfy all of the NSR requirements of a "serious" area until we found that the 1-hour standard no longer applied. In most cases, SIPs satisfied this requirement by requiring that all "serious" areas in the State meet the applicable NSR requirements (e.g., defining "major source" to include any source emitting or having the potential to emit 25 or more tons per year of NOx or VOC). Accordingly, after we found that the standard no longer applied in a given area, the "serious" classification and "nonattainment" designation for that area were removed, and the SIP's provision applicable to all "serious" areas no longer applied to that area. The area was then required to implement whatever NSR program the SIP then specified for attainment areas. If the action proposed today is finalized, EPA believes that the restoration of the designations and classifications will, in most cases, trigger the applicable SIP requirements for nonattainment areas. This would mean that the hypothetical area described above would be required to implement a "serious" area part D NSR program once again.

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[1] Areas previously designated attainment/unclassifiable are required to implement PSD for ozone, even during the period that the 1-hour standard has not applied, because such areas would be attainment for some NAAQS and ozone is a regulated pollutant. See e.g., 40 CFR 52.21 (i)(2). However, such areas would have had to implement moderate area part D NSR during this interim period if located in the ozone transport region. See CAA section 184(b)(2).

Although EPA believes that most SIPs will require automatic reinstatement of the NSR requirements that are linked to areas' designations and classifications if today's proposal is finalized, certain SIPs may be worded in a way that does not link the NSR requirements to areas' designations and classifications, and thus such SIPs may present unique circumstances. For example, EPA understands that some SIPs identify specific areas by name and specify the part D NSR requirements for sources in the named areas. Following our prior findings that the standard no longer applied, such an area's requirements would have continued uninterrupted unless and until the State revised its SIP.

If such a SIP were revised since our findings that the designation and classification no longer applied to such an area (so that the SIP now specifies that a given named area must do PSD instead of part D NSR, for instance), the area's SIP would contain no part D NSR obligation for the named area and would not automatically require part D NSR if EPA finalizes this notice. The same issue would arise if the State deleted its part D NSR program entirely from its SIP upon our prior findings that the standard no longer applied. The EPA believes that sources in such areas must be required to obtain permits consistent with the Emission Offset Interpretative Ruling in 40 CFR part 51, Appendix S. The Offset Ruling explains that EPA interprets the CAA to require all major sources and major modifications in nonattainment areas lacking an applicable SIP-approved program to obtain permits meeting certain strict requirements. *See* 40 CFR 52.24(k) (specifying that areas designated nonattainment but lacking approved part D NSR programs must follow the Offset Ruling).

The EPA solicits public comment on whether it is appropriate to apply Appendix S to nonattainment areas where the SIP lacks the applicable nonattainment NSR provisions. In particular, EPA believes that States should act quickly to revise their SIPs to include a part D program for any area that lacks one. The EPA seeks input as to whether, instead of applying Appendix S, States should follow the Agency's prior policy, which specifies that to satisfy the CAA, States must issue permits consistent with subpart 2's additional requirements, even in the absence of an approved SIP. *See* Memorandum from John Seitz, "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements" at page 3 (Sept. 3, 1992).

V. What administrative requirements are considered in today's proposed rule?

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is a "significant regulatory action" under the terms of Executive Order 12866 and is therefore subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604), unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The EPA is proposing that this rule, in its final form, will not have a significant impact on a substantial number of small entities because the determination that the 1-hour standard again applies does not itself directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rule merely establishes that the 1-hour standard again applies in certain areas. For the most part, any requirements applicable to small entities that may indirectly apply as a result of this action would be imposed independently by the State under its SIP, not by EPA through this action. Moreover, to the extent this rule would automatically trigger the applicability of certain SIP requirements to small entities (e.g., new source review), this rule cannot itself be tailored to address small entities that would be subject to those requirements.

One requirement that may apply immediately upon this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. However, those rules only apply directly to Federal agencies and metropolitan planning organizations (MPOs), which by definition are designated only for metropolitan areas with population of at least 50,000 and thus do not meet the definition of small entities under the RFA. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least-burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Today's action, if finalized, would not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This rule would reinstate the applicability of the 1-hour ozone standard and alter the designation status of areas. The consequences of this action may result in some additional costs within the affected areas; however, the Agency believes that these costs would not exceed $100 million per year in the aggregate.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. These rules apply to Federal agencies and MPOs making conformity determinations. EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate annually. In addition, some areas with recent air quality violations will have to take the additional steps specified in their maintenance plans to limit emissions of air pollutants. These measures could, for example, include revising the threshold for new source review, establishing RACT level control for additional sources, establishing or enhancing I/M programs within the area, and requiring the sale of lower volatility gasoline. These measures vary substantially in terms of the expected emission reductions and their potential cost. Because the affected jurisdictions have some flexibility to choose among these measures, it is difficult to estimate the overall cost of these additional controls. EPA believes that the affected areas are already carrying out many of the other obligations associated with this action. For example, most areas have new source review requirements under their existing SIP programs. In addition, many of these areas are located in the OTR and are already carrying out many of the requirements associated with the re-instatement of the 1-hour standard. Therefore, EPA believes that these controls will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866, and it implements a previously promulgated health or safety-based Federal standard and does not itself involve decisions that affect environmental health or safety risks.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of the affected State, local and tribal governments; the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

The Agency did consult with a number of Mayors, State officials, and others to alert them to our consideration of reinstating the 1-hour ozone standard and to learn their reactions to the possibility of reinstatement. The EPA contacted elected officials and other State, regional, and local government representatives from across the nation. These contacts included discussions with Mayors from a large number of cities across the country. Reactions of the Mayors to the possible reinstatement varied. Many were clearly supportive of reinstatement and others were not opposed. A few expressed concerns about potential economic effects and several requested that any action taken by EPA follow usual notice and comment rulemaking procedures.

F. Executive Order 12612: Federalism

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612.

As noted previously, this rule would simply reinstate the applicability of the 1-hour ozone standard and the associated air quality designations for various areas. For the reasons described above, the rule itself will not directly impose significant new requirements on States or alter relationships between States and the Federal government. Therefore, EPA concludes that this rule will not have substantial federalism implications. After the new executive order takes effect, EPA will determine what its responsibilities are under the new order.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed action does not involve or impose any requirements that directly affect Indian tribes. Under EPA's tribal authority rule, tribes are not required to implement CAA programs but, instead, have the opportunity to do so. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Paperwork Reduction Act

This proposal does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

I. Executive Order 12898: Environmental Justice

Under Executive Order 12898, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. Today's proposal to reinstate the applicability of the 1-hour standard in certain areas does not adversely affect minorities and low-income populations.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: October 20, 1999.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 50—[AMENDED]

1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 50.9 is amended by revising paragraph (b) to read as follows:

§ 50.9 National 1-hour primary and secondary ambient air quality standards for ozone.

* * * * *

(b) The 1-hour standards set forth in this section will remain applicable to all areas notwithstanding the promulgation of 8-hour ozone standards under § 50.10. In addition, after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard. Area designations and classifications with respect to the 1-hour standards are codified in 40 CFR part 81.

[FR Doc. 99–27878 Filed 10–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–6462–4]

Notice of Availability of Class V Injection Well Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA and the Sierra Club entered into a modified consent decree on January 28, 1997. In accordance with the second action required by this decree, EPA has completed a study of all Class V wells not included in the July 29, 1998 proposed rulemaking (63 FR 40586).

ADDRESSES: The study is available on the EPA, Office of Ground Water and Drinking Water, Underground Injection Control web site: *http://www.epa.gov/OGWDW/uic/cl5study.html* or in the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW, East Tower Basement, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Safe Drinking Water Hotline, toll-free 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time. For technical inquiries, contact Amber Moreen, Underground Injection Control Program, Office of Ground Water and Drinking Water (mail code 4606), EPA, 401 M Street, SW, Washington, D.C., 20460. Phone: 202–260–4891. E-mail: moreen.amber@epa.gov.

SUPPLEMENTARY INFORMATION: The study of Class V underground injection wells required by a 1997 consent decree with the Sierra Club (*Sierra Club* v. *Browner*, D.D.C. No. 93–2644 NHJ) has been completed. The consent decree required EPA to complete a study of all Class V wells not included in an initial rulemaking (63 FR 40586). This initial rulemaking, also required by the consent decree, was proposed on July 29, 1998 and covers Class V wells determined by EPA to be the highest risk and for which additional study was not necessary. The Class V study provides background information for EPA to use in evaluating the risk that approximately 20 types of Class V wells pose to underground sources of drinking water. Information collected for each well type includes: inventory, injectate constituents, contamination incidents, and current State regulations.

EPA coordinated extensive peer and EPA workgroup reviews of each well-specific draft report to ensure technical accuracy and completeness of the documents. Technical experts were located through the Ground Water Protection Council, three **Federal Register** notices seeking peer reviewers (64 FR 1007–1008), the UIC technical workgroup, the Internet, and EPA. More detailed explanations of the well-types and the components of the study can be found in 64 FR 37803.

The information in the Study will be used to aid EPA in determining if additional federal regulations for these well types are warranted. According to the modified consent decree, no later than April 30, 2001, EPA must propose a decision regarding whether further rulemaking for each Class V well not included in the initial rulemaking is necessary and, if so, how each well should be regulated. A final rule or rules must be signed by the Administrator by May 31, 2002. Before these decisions are made, EPA plans to seek comment from the public. EPA plans to consider comments received at that time in deciding the most appropriate manner of ensuring that the remaining Class V wells are not endangering underground sources of drinking water.

Dated: October 12, 1999.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–27545 Filed 10–22–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–6003–P]

RIN 0938–AI49

Medicare Program; Appeals of Carrier Determinations That a Supplier Fails to Meet the Requirements for Medicare Billing Privileges

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would extend appeal rights to all suppliers whose enrollment applications for Medicare billing privileges are disallowed by a carrier or whose Medicare billing privileges are revoked, except for those suppliers covered under other existing appeals provisions of our regulations. In addition, we propose to revise certain appeal provisions to correspond with the existing appeal provisions in those other sections of our regulations. We also would extend appeal rights to all suppliers not covered by existing regulations to ensure they have a full and fair opportunity to be heard. Although we are not required by the Administrative Procedure Act to publish this rule as a proposed rule (see 5 U.S.C. section 553(b)(3)(A), we are doing so in order to allow interested parties the opportunity for prior notice and comment.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. Eastern time on December 27, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–6003–P, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, or
Room C5–16–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–6003–P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. Eastern time (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Charles Waldhauser, (410) 786–6140.

SUPPLEMENTARY INFORMATION:

I. Background

A Medicare beneficiary generally may obtain covered Medicare services from any person, agency or institution that is qualified to participate in the Medicare program and that undertakes to furnish those services. Various provisions of the statutes and regulations establish conditions of participation or standards that a health care supplier or provider must meet in order to receive Medicare payment. These standards differ depending on the type of provider or supplier involved and whether the services are furnished under parts A, B, or C of the Medicare statute. There are also differences in qualifications between providers and suppliers of services, and differences among the various types of suppliers, in how they are enrolled in the Medicare program. For some classifications of providers and suppliers, an on-site survey is required. For other individuals or entities, a determination can be made based largely on the information provided by the applicant.

The Medicare regulations in Part 498 provide appeal rights for certain suppliers that have been found to not meet certain conditions of participation or established standards. For the purposes of part 498, these suppliers include independent laboratories; suppliers of portable x-ray services; rural health clinics; federally qualified health centers; ambulatory surgical centers; organ procurement organizations; end-stage renal disease treatment facilities; and chiropractors and physical therapists in independent practice.

In addition, our regulations at § 405.874 provide an appeals process for Durable Medical Equipment, Prosthetics and Orthotics and Supplies (DMEPOS) suppliers that wish to contest a disallowance of an application for a billing number or the revocation of an existing billing number. The § 405.874 appeals process afforded DMEPOS suppliers includes the right to a carrier hearing before a carrier official who was not involved in the original determination, and the right to seek a review before a HCFA official designated by the HCFA Administrator.

The purpose of this proposed rule would be to establish an administrative appeals process for certain other suppliers, such as physicians or physician assistants, who have had an application for billing privileges disallowed or existing billing privileges revoked, but who are not specifically included under either the Part 498 or § 405.874 appeals processes. Because the adverse determinations with respect to these other suppliers are similar to those described above for DMEPOS suppliers, we are proposing to amend the existing appeals process at § 405.874 to include appeal rights for these other suppliers.

In December, 1998, we issued HCFA Ruling 98–1, regarding the appeals process Medicare carriers must provide to physicians, non-physician practitioners, and to certain entities that receive reassigned benefits from physicians and non-physician practitioners. HCFA Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. HCFA Rulings are binding on all HCFA components, Medicare contractors, the Provider Reimbursement Review Board, the Medicare Geographic Classification Review Board, the Departmental Appeals Board, and Administrative Law Judges (ALJs) who hear Medicare appeals. These Rulings promote consistency in interpretation of policy and adjudication of disputes. This proposed rule is very similar to HCFA Ruling 98–1, but expands the types of suppliers covered.

II. Provisions of the Proposed Rule

We are proposing to revise the scope of § 405.874 ("Appeals of carrier decisions that supplier standards are not met.") to extend appeal rights to all suppliers whose enrollment applications for Medicare billing privileges are disallowed or whose Medicare billing privileges are revoked, except for those suppliers covered under the appeals provisions of Part 498. These administrative appeal rights would now apply to suppliers of durable medical equipment, prosthetics, orthotics, and supplies; ambulance service providers; independent diagnostic testing facilities; physicians; and other entities such as physician assistants.

We would also revise the existing procedures in § 405.874. These procedural changes would be as follows:

Carrier Time Limit to Process Enrollment Application

Currently, § 405.874(a) provides that a carrier must accept or reject an entity's enrollment application for a billing number or request additional information within 15 days of the receipt of the enrollment application. We believe the 15-day requirement restricts our ability to properly evaluate enrollment applications. Although the majority of supplier applicants to the Medicare program are legitimate, our mandate to ensure the integrity of the Medicare program requires stringent review of supplier enrollment applications, including verifying information with outside agencies, for example State licensing boards. These application verifications require additional amounts of time, sometimes beyond the current 15-day period, and the amount of time is not always predictable. In addition, such a requirement is not germane to appeals provisions. Therefore, for the proposed revision to § 405.874(a), we would remove the 15-day requirement. In order to ensure that time frames do not become excessively burdensome to suppliers, we monitor the time required by carriers to process enrollment applications as part of our oversight of carrier operations. In addition, we are considering placing a timeliness requirement for processing of applications for supplier billing privileges in another part of our regulations.

Terminology

Current § 405.874(b) provides that a carrier can disallow or revoke an entity's request for a billing number but must notify the supplier of its right to appeal. The supplier then has 90 days after the postmark of the notice to request an appeal. For purposes of this section and to parallel language used in other appeals provisions of Part 405, in revised § 405.874(a) and § 405.874(b), we propose to clarify the language concerning when a notice is received by the supplier from "postmark of the notice" to "the date of receipt of the carrier's notice." We would specify that "the date of receipt of the notice" is presumed to be five days after the date of the notice. The burden would be on the supplier to show that more than five days actually elapsed between the date of the notice and the date it received the notice in order for the supplier to be granted relief from the requirement to file an appeal within 65 days from the date of the notice. In § 405.874(b)(1), we would clarify also that a Medicare billing number is the identification number of a provider or supplier to which we have granted Medicare billing privileges.

Disallowances and Revocations

Current § 405.874(b) discusses the procedures that carriers follow in disallowing a request for a Medicare supplier billing number and in revoking an enrolled supplier's Medicare billing number. We would now set forth the procedures to be followed by carriers concerning notifying a supplier of the disallowance of an enrollment application for supplier billing privileges in the proposed revision to § 405.874(a) and the revocation of an already enrolled supplier's billing number in the proposed revision to § 405.874(b). We would separate these procedures because we believe the prior language was not sufficiently clear.

Also, existing § 405.874(b) provides a 90-day time frame under which a supplier may appeal a carrier's determination or a supplier or carrier may appeal a carrier hearing officer's decision. We are proposing the revision of the 90-day appeal period to a 60-day appeal period in new paragraphs (a)(3), (b)(1)(iii), and (c)(3)(iii) in order to expedite the proceedings and to parallel the standard time frames for Medicare appellants who file Part A or Part B claim appeals with administrative law judges. We believe 60 days is a sufficient amount of time in which to file an appeal.

In the proposed revision to § 405.874(b)(2), we would clarify that a revocation of a supplier billing number that is based on a Federal exclusion or debarment is effective with the effective date of the exclusion or debarment, regardless of the date of the notice from the carrier that the billing number is revoked. We would further clarify in the proposed revision to § 405.874(b)(3) that suppliers are not paid for services or supplies furnished during a period in which their supplier billing number has been revoked. With respect to DMEPOS suppliers, section 1834(j)(1) of the Act states that, with the exception of medical equipment and supplies furnished incident to a physician's service, no payment may be made by Medicare for items and supplies unless the supplier has a valid, active Medicare billing number. Therefore, any expenses for items or supplies furnished to a Medicare beneficiary on or after the effective date of the inactivation (or revocation) of a DMEPOS supplier's billing number are the DMEPOS supplier's responsibility. Unless the DMEPOS supplier has proof it notified the beneficiary, in accordance with section 1834(a)(18)(A)(ii) of the Act, that Medicare payment may not be made and that the beneficiary agreed to take financial responsibility, the DMEPOS supplier is responsible for the expenses incurred for the items and services furnished. Without this proof of beneficiary notification and agreement, the DMEPOS supplier is required to refund on a timely basis to the beneficiary (and is liable to the beneficiary for) any amounts collected from the beneficiary for items or services furnished during the period of inactivation or revocation. If the DMEPOS supplier fails to refund as required, sanctions such as civil money penalties, assessments, and exclusions may be imposed. (See section 1879(h)(3) of the Act). In contrast, other, non-DMEPOS suppliers, for example, physicians, currently may bill for services furnished before they are issued a supplier billing number, assuming they meet Medicare requirements. We propose that claims submitted to carriers for services or supplies furnished during a period of supplier ineligibility are to be rejected by the carrier, not denied. Rejections of claims by carriers are not appealable by suppliers.

Hearing by Carrier

In the proposed revision to § 405.874(c)(1), we would change the language in current § 405.874(c) that requires a carrier hearing officer to "schedule a hearing to be held within one week," to require that the hearing must be held within "60 days of receipt of the appeal request." The previous "one week" language was unclear as to the intent—whether it was the "scheduling" or the "hearing" that was required within one week. We believe that it is unreasonable to require that a hearing be scheduled or held within 1 week of receiving the request for appeal. The carrier needs time to prepare the case and forward it to the hearing officer. The person or entity seeking review may also need more than one week to prepare for the case. With respect to the time frame for issuing hearing officer decisions, the new provision would parallel the timeliness requirement in § 405.834.

In addition, current § 405.874(c) also discusses the procedures to be followed in a carrier hearing in consideration of the disallowance or revocation of a supplier billing number. In the proposed revision to § 405.874(c)(2), we would change the language to clarify that the supplier is required to prove that it is in compliance with all Medicare requirements for billing privileges, and that the carrier incorrectly disallowed or revoked the supplier's billing number. The ultimate burden of proof is on the supplier to show that it meets all requirements upon application, and to show at any time that it continues to meet any requirements that may be in place to bill Medicare. It is presumed that the carrier made a reasonable determination to disallow or revoke a supplier's billing number based on information it had at the time of the decision. The supplier would be required to furnish the evidence that clearly shows the determination was in error at the time it was made.

In new § 405.874(c)(3), we would revise the timeliness requirement in current § 405.874(c) for the hearing officer to issue a decision from "two weeks" to "as soon as practicable after the hearing" because the hearing officer must be allowed sufficient time to adjudicate the facts and make a reasoned decision. In addition, the proposed revision requirement would parallel the timeliness requirement for other hearing officer decisions in part 405.

Implementation of Reversal of Carrier Determination

We propose to conclude our revision of current § 405.874(c) by adding paragraphs (5), (6), and (7) to allow carrier discretion in deciding whether to put into effect a carrier hearing officer's reversal of the carrier's determination to disallow or revoke a supplier billing number, pending a possible appeal by the carrier. If the carrier were to decide to appeal the carrier hearing officer's decision to HCFA, the carrier would be permitted to continue to hold the supplier billing number as disallowed or revoked, pending the HCFA official's decision. The carrier would also have the discretion to implement the reversal (that is, grant or reinstate billing privileges) even though it is appealing the carrier hearing officer's decision. A carrier would implement a reversal decision immediately if it decides not to appeal the carrier hearing officer's decision to HCFA.

In the event that a supplier were to decide to appeal a carrier hearing officer's partial reversal to HCFA, and the carrier were to decide not to appeal, the carrier would implement the partial reversal. A partial reversal could be, for example, a decision to reinstate a revoked billing number, but not back to the date of the revocation; thus, there would be a period of non-eligibility for the supplier from the date of revocation to the reinstatement date. If the supplier were to appeal to the HCFA official to be reinstated for full eligibility, and the carrier were to decide not to appeal, the carrier would still implement only the partial reinstatement until the HCFA official would issue a decision on the appeal for full reinstatement.

Hearing by HCFA

In the proposed revision to § 405.874(d), we would change the language that currently appears in § 405.874(d) to specify that the HCFA official bases his or her decision on the carrier hearing officer's decision and the case file (record) established by the carrier hearing officer. In other words, this is not a de novo hearing. However, the HCFA official would be permitted to supplement the record as deemed necessary to clarify any issues. The HCFA official would issue a decision as soon as practicable in light of the issues involved and his or her workload. The HCFA official's decision would be the last administrative process available to either the carrier or the supplier.

Reversal of Carrier Determination

We would revise current § 405.874(e) to clarify that we will not pay for services furnished by suppliers during a period in which the supplier's billing privileges have been revoked. Therefore, any reversals of carrier decisions must indicate the effective date of the reversal. No appeal rights for suppliers accrue to rejections of claims or parts of claims that were made because the services or items were furnished during a period of supplier ineligibility. Claims for items or services furnished during a period for which the supplier's eligibility is established upon reversal would be adjudicated by the carrier in accordance with normal procedures, and would be denied or approved on their own merits.

Reinstatement of Supplier Billing Number Following Corrective Action

Current § 405.874(f) addresses corrective action plans. We would revise this paragraph to clarify that the supplier must be in compliance with all requirements in order to have its billing number reinstated, and that we must be satisfied that the supplier is in compliance and will remain in compliance. The burden of proof again would be on the supplier to demonstrate that it can operate in accordance with Medicare requirements. It would not be enough for the supplier to submit a plan for corrective action. If we were to decide to reinstate a billing number, we would establish the date of reinstatement, and the carrier would be able to pay for services furnished on or after the effective date of reinstatement.

Reopening of Carrier Determination, Carrier Hearing Officer Decision, or HCFA Decision

We propose to add new § 405.874(g) to permit the carrier, carrier hearing officer, or HCFA official to reopen and revise its determination or decision in accordance with §§ 405.841 and 405.842. This means, for example, that the carrier would not be permitted to revise a carrier hearing officer's or HCFA official's decision.

Effective Date for DMEPOS Supplier Billing Number

We propose to add new § 405.874(h), wherein we would address the situation that a DMEPOS supplier may not be paid for items or services furnished prior to the date its billing number is issued. Any decision to change, either through appeal or reopening, a disallowance of an enrollment application would establish the effective date of the billing number. Any claims for services or items furnished prior to the effective date of the billing number would be rejected and no appeal rights would apply for those claims—see § 405.803. Further, sections 1834(a)(18)(A)(ii) and 1834(j)(4) of the Act apply to those claims and provide that no payment may be made, and that the supplier may not charge the beneficiary, for services furnished prior to the effective date, unless the beneficiary explicitly agreed to pay even though Medicare would not pay.

Submission of Claims

Finally, we would add new § 405.874(i) to describe the procedure for submitting claims after a reversal of a supplier enrollment application disallowance or billing number revocation, or after a billing number reinstatement. We would specify that if a supplier is reinstated, any claims for items or services, furnished during the period of supplier ineligibility that became a period of eligibility upon reinstatement, may be submitted for adjudication as long as the period for filing claims has not elapsed. If the claims previously were filed timely but were rejected, they would be considered filed timely upon resubmission.

III. Regulatory Impact Statement

We have examined the impact of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, most hospitals, and most other providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually.

According to data submitted to us by carriers in calendar year 1997, 129,000 enrollment applications were submitted to the Medicare carriers by suppliers seeking to receive billing privileges. We believe that a vast majority of these applicants were small businesses. Of those applications, 2,310 were denied. A total of 291 applicants requested an appeal of their denial.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. As discussed in detail, under section II., Provisions of the Proposed Rule, the purpose of the proposed changes to our current regulations would be to extend appeal rights to all suppliers whose enrollment applications for Medicare billing privileges are disallowed or whose Medicare billing privileges are revoked, except for those suppliers covered under the appeals provisions of part 498.

We believe that this proposed rule would have no adverse impact on small entities; in fact, it would afford small suppliers a measure of protection against adverse actions by HCFA, and extend protection to a larger group of suppliers beyond the DMEPOS suppliers currently covered under § 405.874. Because this proposed rule would merely clarify, expand, and update our current policy and administrative appeal rights, we anticipate slight, if any, economic impact on small entities. We are, however, inviting comments as to whether this rule would have a significant impact on a substantial number of small rural hospitals or entities.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we issue the final rule, we will respond to the comments in the preamble to that document.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, we believe the information collection activities referenced in § 405.874 are exempt under the terms of the PRA for the following reasons:

- As defined in 5 CFR 1320.4, information collections conducted or sponsored during the conduct of criminal or civil action, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities are exempt from the PRA;
- As described in 5 CFR 1320.3(h)(9), facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections, are exempt from the PRA; and/or
- Nonstandardized information collections directed to less than ten persons do not constitute information collections as outlined in 5 CFR 1320.3(c).

Since we believe that the collection requirements are either part of the administrative, audit and/or adjudicatory process, collected in a nonstandardized manner, and/or collected from less than ten persons, they fall under these exceptions.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn.: John Burke, HCFA–1907–P

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Allison Herron Eydt, HCFA Desk Officer

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart H—Appeals Under the Medicare Part B Program

1. The authority citation for part 405, subpart H, continues to read as follows:

Authority: Secs. 1102, 1842(b)(3)(C), and 1869(b) of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), and 1395ff(b)).

2. Section 405.874 is revised to read as follows:

§ 405.874 Appeals of carrier determinations that a supplier fails to meet the requirements for Medicare billing privileges.

(a) *Disallowance of supplier enrollment application.* If a carrier disallows a supplier's enrollment application, the carrier must notify the supplier by certified mail. The notice must include the following:

(1) The reason for the disallowance.

(2) The right to appeal.

(3) The date by which the supplier must file the appeal, that is, 60 days after the date of receipt of the carrier's notice. (The date of receipt of the carrier's notice is presumed to be 5 days after the date of the notice.)

(4) The address to which the written appeal must be mailed.

(b) *Revocation of Medicare billing number*—(1) *Notice of revocation.* If a carrier revokes a supplier's Medicare billing number, that is the identification number of a provider or supplier to which HCFA has granted Medicare billing privileges, the carrier must notify the supplier by certified mail. The notice must include the following:

(i) The reason for the revocation.

(ii) The right to appeal.

(iii) The date by which the supplier must file that appeal, that is, 60 days after the date of receipt of the carrier's notice. (The date of receipt of the carrier's notice is presumed to be 5 days after the date of the notice.)

(iv) The address to which the written appeal must be mailed.

(2) *Effective date.* Revocation of a supplier billing number is effective 15 days after the carrier mails the notice of its determination to the supplier. A revocation based on a Federal exclusion or debarment is effective with the date of the exclusion or debarment.

(3) *Payment.* Carriers do not pay for services furnished by the supplier beginning with the effective date of a revocation. Claims for services furnished to Medicare beneficiaries after the effective date of the revocation are rejected. Rejections of claims because a supplier does not have a valid billing number may not be appealed by the supplier. If the supplier is successful in overturning a revocation, rejected claims for services that were furnished during the overturned period of revocation may be resubmitted. (See paragraph (i) of this section).

(c) *Hearing by carrier.* (1) For suppliers, other than those whose appeal rights are defined in part 498 of this chapter, a carrier hearing officer, not involved in the original determination to disallow a supplier's enrollment application, or to revoke a current billing number, must hold a hearing within 60 days of receipt of the appeal request, or later if requested by the supplier.

(2) Both the supplier and the carrier may offer new evidence. The ultimate burden of proof is on the supplier to show that its enrollment application was incorrectly disallowed or that the revocation of its billing number was incorrect.

(3) The hearing officer issues a written decision as soon as practicable after the hearing and forwards the decision by certified mail to HCFA, the carrier, and the supplier. This decision includes the following:

(i) Information about the carrier's and supplier's further right to appeal.

(ii) The address to which the written appeal must be mailed.

(iii) The date by which the appeal must be filed, that is, 60 days after the date of receipt of the notice. (The date of receipt of the carrier's notice is presumed to be 5 days after the date of the notice.)

(4) Either the carrier or supplier may appeal the carrier hearing officer's decision to HCFA.

(5) A carrier hearing officer's partial or complete reversal of a carrier's determination is not implemented pending the carrier's decision to appeal the reversal to HCFA, unless the carrier, in its sole discretion, and without prejudice to its right to appeal, decides to implement the reversal pending an appeal.

(6) The carrier implements a reversal if it decides not to appeal a reversal to HCFA, or the time to appeal expires.

(7) A carrier may implement a carrier hearing officer's partial reversal even if the supplier has appealed the partial reversal to HCFA, or the time for the supplier to file an appeal has not expired.

(d) *Hearing by HCFA.* A HCFA official, designated by the Administrator of HCFA, issues a decision based on the decision and the record established by the carrier hearing officer. The HCFA official may supplement the record by requesting and obtaining any additional information from the carrier or the supplier. The HCFA official's decision—

(1) Is issued in writing as soon as practicable after the HCFA official determines that there is sufficient information to decide the appeal (or that no additional information is forthcoming), unless the party appealing the hearing officer's decision requests a delay;

(2) Is forwarded by certified mail to both the carrier and the supplier; and

(3) Contains information that no further administrative appeals are available.

(e) *Impact of reversal of carrier determination on claims processing.* If a revocation of a supplier billing number is reversed upon appeal, the appeal decision establishes the date the reinstated supplier number is effective. Claims for services furnished to Medicare beneficiaries during a period in which the supplier billing number was not effective are rejected. If a supplier is determined not to have qualified for a billing number in one period but qualified in another, carriers process claims for services furnished to beneficiaries during the period for which the supplier was Medicare-qualified. Subpart C of this part sets forth the requirements for recovery of overpayments.

(f) *Reinstatement of supplier billing number following corrective action.* If a supplier completes a corrective action and provides sufficient evidence to the carrier that it has complied fully with the Medicare requirements, the carrier may reinstate the supplier's billing number. The carrier may pay for services furnished on or after the effective date of the reinstatement. A carrier's refusal to reinstate a billing number is not an initial determination under § 405.803.

(g) *Reopening of carrier determination, carrier hearing officer decision, or HCFA decision.* An initial carrier determination, a decision of a carrier hearing officer, or a decision of a HCFA official may be reopened by the carrier, hearing officer, or HCFA official in accordance with §§ 405.841 and 405.842.

(h) *Effective date for DMEPOS supplier billing number.* If a carrier, carrier hearing officer, or HCFA official determines that a DMEPOS supplier's disallowed enrollment application meets the standards in § 424.57 of this chapter, the determination establishes the effective date of the billing number as not earlier than the date the carrier made the determination to disallow the supplier's enrollment application. Claims are rejected for services furnished before that effective date.

(i) *Submission of claims.* A supplier succeeding in having its enrollment application disallowance or billing number revocation reversed, or in having its billing number reinstated, may submit claims to the carrier for services furnished during periods of Medicare qualification, subject to the limitations in § 424.44 of this chapter regarding the timely filing of claims. If the claims previously were filed timely but were rejected, they will be considered filed timely upon resubmission.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 7, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: July 13, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–27623 Filed 10–22–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 101299F]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene six public hearings on Draft Amendment 12 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region (Draft Amendment 12) and its draft supplemental environmental impact statement (draft SEIS).

DATES: Written comments will be accepted until 5 p.m. on November 29, 1999. The hearings will be held from November 3 to November 29, 1999. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699. Copies of Draft Amendment 12 and the draft SEIS are available from Kerry O'Malley at 803-571-4366 and will also be available to the public at the hearings.

The hearings will be held in Florida, Georgia, South Carolina, and North Carolina. See SUPPLEMENTARY INFORMATION for locations of the hearings and special accommodations.

FOR FURTHER INFORMATION CONTACT: Kerry O'Malley, South Atlantic Fishery Management Council, 803-571-4366; Fax: 803-769-4520; E-mail address: kerry.omalley@noaa.gov.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on Draft Amendment 12 and the associated draft SEIS. Draft Amendment 12 includes management measures that would (1) prohibit the harvest and possession of red porgy; (2) require the Council to review the status of the red porgy resource every 3 years to determine whether the moratorium on harvest should be repealed; (3) establish a maximum sustainable yield of 5,285.4 metric tons (mt) for red porgy; (4) set optimum yield for red porgy at the yield produced by a stock size of 10,000 mt; (5) establish the two components of the overfishing definition for red porgy as: (a) the maximum fishing mortality threshold is the fishing mortality rate (F) in excess of F35% static spawning potential ratio (SPR) which is between 0.58 (F30%) and 0.33 (F40%) based on a 14 inch (35.6 cm) total length minimum size limit and data through 1996, and (b) minimum stock size threshold is the stock size associated with 20% SPR which is estimated at 3,000 mt. Current stock size was estimated to be 685 mt based on data through 1996; (6) set the rebuilding timeframe for red porgy at 18 years; (7) in the snapper grouper limited access system, allow same owner permit transfer regardless of vessel size for individuals harvesting snapper grouper species with a non-transferable 225 pound trip limit permit; and (8) modify the framework procedure for regulatory adjustments of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region by adding the following list of management options and measures that could be implemented via such framework procedure as: Description, identification, and regulation of fishing activities to protect essential fish habitat (EFH) and EFH-habitat areas of particular concern (EFH-HAPC); management measures to reduce or eliminate the adverse effects of fishing activities or fishing gear on EFH or EFH-HAPCs; and regulation of EFH-HAPCs.

In the following locations the hearings will begin at 6 p.m. and end when all business is completed:

1. Wednesday, November 3, 1999—Sombrero Resort and Marina,19 Sombrero Blvd., Marathon, FL 33050; Phone: 305–743–2250;
2. Wednesday, November 10, 1999—Richmond Hill City Hall, 40 Richard R. Davis Drive, Richmond Hill, GA 31324; Phone: 912–756–3345;
3. Thursday, November 11, 1999—Carteret Community College, 3505 Arendell Street, Morehead City, NC 28557; Phone: 252–247–3093;
4. Monday, November 15, 1999—Ramada Inn Surfside, 3125 S. Atlantic Avenue, Daytona Beach Shores, FL 32118; Phone: 1–800–255–3838;
5. Wednesday, November 17, 1999—Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; Phone: 843–571–1000; and
6. Monday, November 29, 1999—Blockade Runner, 275 Waynick Boulevard, Wrightsville Beach, NC 28480, Phone: 910–256–2251.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 29, 1999.

Dated: October 19, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27769 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 205
Monday, October 25, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Types and Quantities of Agricultural Committee Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for the Period October 1, 1999 Through December 31, 2000

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: On October 8, 1999 the President, Commodity Credit Corporation, determined that not more than 3.0 million metric tons of surplus wheat and wheat products (grain equivalent) and 100,000 metric tons of surplus barley that may be acquired by CCC would be available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, October 1, 1999 through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Merle Brown, Director, CCC Program Support Division, FAS USDA, (202) 720–3573.

Dated: September 22, 1999.

Timothy J. Galvin,

Vice President, Commodity Credit Corporation.

[FR Doc. 99–27745 Filed 10–22–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Great River Energy; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meeting and prepare an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) proposes to hold a scoping meeting and prepare an Environmental Assessment (EA) for its Federal action related to a project proposed by Great River Energy (GRE) of Elk River, Minnesota. The project consists of constructing a natural gas-fired simple cycle, combustion turbine power generation facility in Pleasant Valley Township in Mower County, Minnesota. Total electrical output from the facility is expected to range from 434 megawatts (MW) to 526 MW depending upon operating conditions.

MEETING INFORMATION: RUS will conduct a scoping meeting in open house forum on Tuesday, November 9, 1999, at the Sargeant Community Center, Chestnut Avenue, Sargeant, Minnesota, from 5 p.m. until 8 p.m.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1784, FAX: (202) 720–0820, e-mail: nislam@rus.usda.gov; or Tim Seck, Environmental Project Leader, GRE, 17845 East Highway 10, P.O. Box 800, Elk River, Minnesota 55330–0800, telephone (612) 241–2278, FAX: (612) 241–6078, e-mail: tseck@grenergy.com.

SUPPLEMENTARY INFORMATION: GRE proposes to construct the facility in Pleasant Valley Township in Mower County, Minnesota. The primary purpose of the facility is to meet GRE peak electrical load during hot summer weather. Under those conditions the facility's expected output is about 434 MW of power. The proposed project will consist of three simple cycle combustion turbines. Two of the turbines will have a maximum rating of 195.5 MW, with a summertime rating of 155 MW. The third unit will have a maximum rating of 135 MW with a summertime rating of 124 MW. The primary fuel will be natural gas and distillate oil will serve as the back-up fuel. The plant will require approximately 18 acres of land. The following additional facilities will also be constructed. A 161/345 kV substation will be constructed at the plant site. A short transmission line tap (500 feet) will be needed to connect to an existing Byron-Adams 345–kV transmission line. A new 69/161 kV transmission line, between 5 and 7 miles long, will be built from the plant to the Sargeant Substation. A new 161 kV line, approximately 17 miles long, will be constructed from the Sargeant Substation to the Austin North Substation in Austin. Where feasible the new 161 kV line will follow an existing 69 kV transmission line corridor. A total of about three-mile long new high-pressure gas line from the proposed generating station north to an existing gas line will provide gas supply. The total water usage will be approximately 1.8 million gallons per year.

Alternatives to be considered by RUS and GRE include no action, purchased power, upgrade of existing resources, new transmission facilities, alternative sites, alternative routes, fossil fuel technologies, customer-owned generation, energy conservation, renewable resources, and emerging technologies.

GRE has prepared an Alternative Evaluation and Site Selection Study for the project. The Alternative Evaluation and Site Selection Study is available for public review at the RUS or GRE at the addresses provided in this notice or at the following locations:

Austin Public Library, 323 4th Avenue, NE, Austin, Minnesota, (507) 433–2391
Brownsdale Public Library, Brownsdale Community Building, Brownsdale, Minnesota 55918, (507) 567–9951
Rochester Public Library, 101 2nd Street, SE, Rochester, Minnesota 55904, (507) 285–8022
Sargeant Community Center, Chestnut Avenue, Sargeant, Minnesota 55973, (507) 584–6885

Federal, state and local agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and GRE will be available at the scoping meeting to discuss RUS's environmental review process, the proposed project and the alternatives being considered, scope of the environmental issues to be considered, and answer questions. Oral and written comments will be accepted at the scoping meeting. Written comments regarding the proposed project will also be accepted for at least

30 days after the scoping meeting. All written comments should be sent to RUS at the address provided in this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the CEQ Regulations and RUS Environmental Policies and Procedures.

Dated: October 18, 1999.

Lawrence R. Wolfe,

Acting Director, Engineering and Environmental Staff, Rural Utilities Service.

[FR Doc. 99–27738 Filed 10–22–99; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting; Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, November 5, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of September 17, and October 1, 1999 Meetings
III. Announcements
IV. Staff Director's Report
V. Radical and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume II: The Mississippi Delta Report
VI. State Advisory Committee Report
  - Employment Opportunities for Minorities in Montgomery County, Ohio (Ohio)
VII. State Advisory Committee Appointments for California and Kentucky
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–27877 Filed 10–21–99; 1:02 pm]

BILLING CODE 6335–0–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review, Application No. 84–10A12.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Northwest Fruit Exporters ("NFE") on June 11, 1984. Notice of issuance of the Certificate was published in the **Federal Register** on June 14, 1984 (49 FR 24581).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 84–00012, was issued to NFE on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); and November 2, 1998 (63 FR 60304, November 9, 1998).

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Chief Orchards L.L.C., Yakima, Washington; J.C. Watson Co., Parma, Idaho; Jenks Bro. Cold Storage, Inc., Royal City, Washington; Naumes, Inc., Chelan, Washington; The Apple House, Inc., Brewster, Washington; Valicoff Fruit Company, Inc., Wapato, Washington; and Washington Cherry Growers, Wenatchee, Washington; and

2. Delete the following companies as "Members" of the Certificate: Crisp'n Spicy Growers, Inc., Pateros, Washington; D & G Packing Inc., Plymouth, Washington; Fox Orchards, Mattawa, Washington; Nickell Orchards, Pateros, Washington; and Rolling Hills Orchards, Emmett, Idaho.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: October 20, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–27775 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101899A]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on November 8–12, 1999.

ADDRESSES: These meetings will be held at the Caribe Royale Resort Suites, 14300 International Drive, Orlando, FL; telephone: 407–238–8000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

November 10

1:30 p.m.—Convene.

1:45 p.m. - 2:00 p.m.—Appointment of Council Committees.

2:00 p.m. - 5:30 p.m.—Receive public testimony on the Red Snapper total allowable catch (TAC) and Red Grouper TAC.

November 11

8:30 a.m. - 12:00 p.m.—Receive the Reef Fish Management Committee Report.

1:30 p.m. - 2:30 p.m.—Receive the Habitat Protection Committee Report.

2:30 p.m. - 2:45 p.m.—Receive the Joint Reef Fish/Mackerel Management Committee Report.

2:45 p.m. - 3:45 p.m.—Receive the Joint Vessel Monitoring Systems (VMS)/Law Enforcement Committee Report.

3:45 p.m. - 4:15 p.m.—Receive the Red Drum Management Committee Report.

4:15 p.m. - 5:00 p.m.—Receive the Administrative Policy Committee Report.

November 12, 1999

8:30 a.m. - 8:45 a.m.—Receive the Joint Marine Reserves/Reef Fish Management Committee Report.

8:45 a.m. - 9:00 a.m.—Receive the Shrimp Management Committee Report.

9:00 a.m. - 10:30 a.m.—Receive the Mackerel Management Committee Report.

10:30 a.m. - 10:45 a.m.—Receive the South Atlantic Fishery Management Council Liaison Report.

10:45 a.m. - 11:00 a.m.—Receive the International Commission for the Conservation of Atlantic Tunas Advisory Committee Report.

11:00 a.m. - 11:15 a.m.—Receive Enforcement Reports.

11:15 a.m. - 11:45 a.m.—Receive Director's Reports.

11:45 a.m.- 12:00 p.m.—Other Business.

Committees

November 8

8:00 a.m. - 11:00 a.m.—Convene the Habitat Protection Committee to consider revisions to the Council habitat protection policy and the recommendations of the three Habitat Protection Advisory Panels (APs).

11:00 a.m. - 12:00 p.m.—Convene the Joint Reef Fish/Mackerel Management Committees to approve the Draft Charter Vessel/Headboat Permit Moratorium Amendment for public hearings.

1:00 p.m. - 4:30 p.m.—Convene the Joint VMS/Law Enforcement Committees and the Law Enforcement AP to review the level of fishery violations in the Gulf and consider the recommendations of the AP for regulatory actions.

4:30 p.m. - 5:30 p.m.—Convene the Red Drum Management Committee to hear the Red Drum Stock Assessment Panel (SAP) report on the condition of the red drum stock and to consider the recommendations of the Red Drum AP, and Scientific and Statistical Committee (SSC).

November 9

8:00 a.m. - 12:00 p.m. and 1:00 p.m. to 3:30 p.m.—Convene the Reef Fish Management Committee to hear the Reef Fish SAP Report, consider the recommendations of the Socioeconomic Panel (SEP), APs, and SSC and develop recommendations to the Council on red snapper and red grouper TAC. The full Council will take final action on those recommendations on Thursday morning, November 11. The Reef Fish Management Committee will also consider management recommendations of a panel of red snapper stakeholders convened by NMFS.

3:30 p.m. - 5:30 p.m.—Convene the Joint Marine Reserves/Reef Fish Management Committees to consider whether to take action to develop an amendment that would include a proposal for a marine reserve near the Florida Keys.

November 10

8:00 a.m - 9:00 a.m.—Convene the Administrative Policy Committee to develop a policy on the handling and distribution of written public comment and on review of stock assessments.

9:00 a.m. - 9:30 a.m.—Convene the Shrimp Management Committee to hear a summary of the recommendations of stakeholders from a Bycatch Reduction Device (BRD) Workshop convened by NMFS.

9:30 a.m. - 12:30 p.m.—Convene the Mackerel Management Committee to to select management alternatives for a Dolphin/Wahoo Draft Fishery Management Plan (FMP) that will be presented at public hearings next year.

A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by November 1, 1999.

Dated: October 19, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27768 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101899B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Experimental Fisheries and Research Steering Committee in November, 1999. Recommendations from this committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held between Monday, November 8, 1999.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960: telephone: (978) 535–4600.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION: There will be a report on the Mass Fisheries Recovery Commission's draft strategic science plan and an update on recent and upcoming events followed by a report on initiatives undertaken by the Gulf of Maine groundfish industry to develop research priorities and planning goals for the state of Maine. The committee also will recommend priorities and potential projects to receive funding consideration under the $5 million dollar Disaster Assistance Program administered by NMFS. Additionally, the committee will review options and recommend changes to the Sea Scallop Plan's Total Allowable Catch 1 percent research set-aside mechanism. Alternatives will be included in draft Sea Scallop Framework Adjustment 12 and forwarded to the Scallop Committee for their consideration.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 19, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27766 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101899D]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) and Bycatch Reduction Device (BRD) Advisory Panel hold public meetings in Charleston, SC.

DATES: The SSC meeting will be held on November 8, 1999, from 1:30 p.m. to 5:30 p.m. and on November 9, 1999, from 8:30 a.m. to 5:30 p.m.; the joint meeting of SSC and BRD Advisory Panel will be held on November 10, 1999, from 8:30 a.m. to 12:00 noon.

ADDRESSES: The meetings will be held at the Sheraton Hotel, 170 Lockwood Drive, Charleston, SC 29403; telephone: 843-720-0835.

FOR FURTHER INFORMATION CONTACT: Kerry O'Malley, phone: (843) 571-4366; fax: (843) 769-4520; email: kerry.omalley@noaa.gov

SUPPLEMENTARY INFORMATION: The SSC will review and provide comments and guidance on the following: the Shrimp, Calico Scallop, Snapper Grouper and Red Drum Stock Assessment and Fishery Evaluation (SAFE) Reports; maximum sustainable yield (MSY) estimates for species managed by the Council; Snapper Grouper Amendment 12; the Golden Crab Options Paper; the Georgia special management zone (SMZ) request; the Marine Reserves Discussion Paper; the Economic Impact Assessment Guidelines and the Social Impact Assessment Guidelines. The SSC and BRD Advisory Panel will jointly review the Council's BRD Protocol and recommend modifications where appropriate.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 29, 1999.

Dated: October 19, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27767 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 19, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59944, published on November 6, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on October 26, 1999, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Levels in Group I	
225	6,134,827 square meters.
317	4,320,406 square meters.
333/334/335/833/834/835.	376,912 dozen of which not more than 168,257 dozen shall be in Categories 333/335/833/835.
336/836	79,632 dozen.
338	420,941 dozen.
339	1,758,344 dozen.
340	416,442 dozen.
341	265,468 dozen.
342	134,004 dozen.
345	73,749 dozen.
347/348/847	988,299 dozen.
350/850	89,336 dozen.
351/851	92,253 dozen.
359–C/659–C[2]	486,051 kilograms.
359–V[3]	171,602 kilograms.
625/626/627/628/629	6,332,954 square meters.
633/634/635	722,235 dozen.
638/639/838	2,217,441 dozen.
640	176,717 dozen.
641/840	275,416 dozen.
642/842	176,955 dozen.
645/646	389,667 dozen.
647/648	757,748 dozen.
659–S[4]	177,731 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt.[5], 464 and 469pt.[6], as a group.	1,597,637 square meters equivalent.
Sublevel in Group II	
445/446	83,625 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010. Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers: 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070, and 6211.42.0070.

[4] Category 659–S: only HTS numbers: 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–27772 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 19, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59944, published on November 6, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on October 28, 1999, you are directed to increase the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Levels in Group I	
336/836	84,174 dozen.
338	445,613 dozen.
339	1,861,686 dozen.
340	439,794 dozen.
341	280,530 dozen.
345	77,915 dozen.
347/348/847	1,046,697 dozen.
351/851	97,704 dozen.
359–C/659–C[2]	513,306 kilograms
633/634/635	762,818 dozen.
638/639/838	2,343,819 dozen.
641/840	290,860 dozen.
647/648	800,239 dozen.
659–S[3]	178,674 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt.[4], 464 and 469pt.[5], as a group.	1,690,703 square meters equivalent.
Sublevel in Group II	
445/446	88,642 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–27773 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendment To Convert the Kansas City Board of Trade's Western Natural Gas "Flat Price" Futures Contract to a "Basis" Future Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Kansas City Board of Trade (KCBT or Exchange) has submitted proposed amendments to its western natural gas futures contract related to the pricing of the contract. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on November 26, 1999—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before November 9, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb. Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the KCBT western natural gas futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph B. Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov

SUPPLEMENTARY INFORMATION: The existing terms of the western natural gas futures contract provide for prices to be quoted in dollars and cents per MMBtu. The proposed amendments will convert the existing "flat price" futures contract to a "basis" futures contract, in that prices would be quoted as a differential to the New York Mercantile Exchange's (NYMEX's) Henry Hub delivery natural gas futures contract. An additional amendment would reduce the hub fee charged for physical deliveries by the operator of the WAHA Hub, the delivery point on the contract, from the current two cents per MMBtu ($.02) to one quarter of one cent ($.0025) per MMBtu.

According to the Exchange:

> The idea of a basis contract was developed because it represented the way in which the gas commercials and marketers used our gas futures product. Since the inception of natural gas trading at the KCBT, the overwhelming majority of trades done on this exchange were versus offsetting trades at the New York Mercantile Exchange (NYMEX) in order to lock in a basis differential between east and west.
>
> However, over the past 18 months, the natural gas market has experienced lower volatility and the basis between east and west has been for the most part narrower than normal. This has caused basis trade to migrate to the over-the-counter market. Part of the reason for this is because the OPT market can package the basis trade into one transaction. In an east/west futures basis trade, you have two markets in which you must execute transactions, NYMEX and KCBT. With the reduction of volatility and narrow basis differential, business at the KCBT has diminished greatly, creating wider bid/ask spreads and making it more expensive for market participants to do basis trades in the futures market versus the OTC market.

With regard to the proposed change in the hub fee applicable to physical deliveries of natural gas current rules specify that it is the seller's responsibility to pay this fee when physical delivery of gas is made. According to the KCBT, after consultation with the WAHA Hub operator the operator and the Exchange determined that the proposed $.0025 cent fee was more representative of current conditions at the WAHA Hub cash market.

The Division requests comments on the proposed amendments and their effect that the usefulness of the revised contract for hedging.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Center, 21st Street, NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet on the CFTC website at www.cftc.gov under "What's New & Pending".

Other material submitted by the KCBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment set forth in 17 CFR 145.5 and 145.9. Request for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments or with respect to other materials submitted by the KCBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 19, 1999.

John Mielke,

Acting Director.

[FR Doc. 99–27734 Filed 10–22–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of the Twenty-Seventh Meeting of the Agricultural Advisory Committee

This is to give notice, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, Section 10(a)(2), and Section 101–6. 1015(b) of the regulations promulgated thereunder, 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission Agricultural Advisory Committee ("AAC") will conduct a public meeting on November 9, 1999, in the first floor hearing room (Room 1000) of the Commission's Washington, D.C. headquarters, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The meeting will begin at 1:00 p.m. and last until 4:30 p.m. The agenda will consist of the following:

Agenda

1. Welcoming Remarks
2. Discussion on Deregulatory Initiatives
   a. Contract Market Designation
   b. Exchange Rule Changes
3. Discussion on CFTC Reauthorization Issues
4. Briefing on Agricultural Trade Options Final Rules
5. Briefing on Exchange Issues
6. Other Business

The AAC was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by the agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee. The purposes and objectives of the AAC are more fully set forth in its charter.

The meeting is open to the public. The Chairman of the AAC, Commissioner David D. Spears, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the AAC should mail a copy of the statement prior to the meeting to the attention of: The Agricultural Advisory Committee, c/o Commissioner David D. Spears, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Members of the public who wish to make oral statements should also inform Commissioner Spears in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

For further information contact Jennifer A. Roe, Administrative Assistant to Commissioner Spears, at 202–418–5043, or Marcia K. Blase, Committee Management Officer, at 202–418–5138.

Issued by the Commission in Washington, D.C. on October 20, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–27824 Filed 10–22–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 24, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 19, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Designation of Exemplary and Promising Programs.

Frequency: Only required when submitting program for review.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 200.
Burden Hours: 1,200.

Abstract: The purpose of the expert panel system is to oversee a valid and viable process for identifying and designating promising and exemplary educational programs so that practitioners can make better-informed decisions in their ongoing efforts to improve the quality of student learning. The Office of Educational Research and Improvement (OERI) requires that each program submit descriptive information and an abstract in order to be considered for review. The information submitted by the entity will serve as the basis upon which the expert panel will judge the program according to the selection criteria for promising and exemplary.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: Extension.

Title: Income Contingent Repayment Plan Consent to Disclosure of Tax Information.

Frequency: Once every five years.

Affected Public: Individuals or households. *Reporting and Recordkeeping Burden:*

Responses: 114,000.
Burden Hours: 22,800.

Abstract: This form is the means by which a William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan provides written consent for the Internal Revenue Service to disclose certain tax return information to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

Requests for copies of this information collection should be addressed to Vivian Reese, US Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *OCIO* __IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@ed.gov . Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: Reinstatement.
Title: Income Contingent Repayment Plan Alternative Documentation of Income.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting and Recordkeeping Burden:
Responses: 25,000.
Burden Hours: 8,250.

Abstract: A William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan uses this form to submit alternative documentation of income if the borrower's adjusted gross income is not available or does not accurately reflect the borrower's current income.

Requests for copies of this information collection should be addressed to Vivian Reese, US Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *OCIO*__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: Reinstatement.
Title: William D. Ford Federal Direct Loan Program Statutory Forbearance Forms.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Burden:
Responses: 2,400
Burden Hours: 480.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to request statutory forbearance on their loans.

Requests for copies of this information collection should be addressed to Vivian Reese, US Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *OCIO*__IMG__Issues@ed.gov or should be faxed to 202–708–9346..

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Case Service Report.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 80.
Burden Hours: 4,240.

Abstract: As required by Section 13 of the Rehabilitation Act, the data are submitted by State VR agencies each year. The data contain personal and program-related characteristics, including economic outcomes of persons with disabilities whose case records are closed.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO*__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Sheila Carey at 202–708–6287 or by e-mail to *sheila carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of the Under Secretary

Type of Review: New.

Title: Evaluation of Effective Adult Basic Education Programs and Practices.

Frequency: Three times total for each respondent: 1st month, 9th month, 21st month.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:.

Responses: 1,385

Burden Hours: 3,923.

Abstract: This study will investigate the following research questions: (1) How much do first-level adult learners who participate in adult basic education programs improve their reading skills and increase the frequency of their reading-related behaviors? (2) What characteristics of first-level learners affect the amount of improvement that they make in their reading skills or reading-related behaviors after participating in adult basic education programs? (3) How are the operational and instructional characteristics of adult basic education programs related to the amount of improvement in reading skills or reading-related behaviors among first-level learners?

Requests for copies of this information collection should be addressed to Vivian Reese, US Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *OCIO*__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or by e-mail at the internet address jackie__montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–27718 Filed 10–22–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 16, 1999, 8 a.m.–6 p.m.; Wednesday, November 17, 1999, 8 a.m.–5 p.m.

ADDRESSES: The Miles & Virginia Willard Fine Arts Center, 498 A Street, Idaho Falls, Idaho, 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, INEEL SSAB Facilitator Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, (208–522–1662) or visit the Board's Internet homepage at *http://www.ida.net/users/cab;* or contact Mr. Charles Rice, INEEL SSAB Chair, c/o Jason Associates Corporation.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda:

Presentations and discussions on the following:

Alternative evaluated and major findings from the Draft Environmental Impact Statement for a Geologic Repository for Spent Nuclear Fuel and High-Level Waste, Nye County, Nevada;

The DOE Office of Science and Technology and how it contributes to the mission of the Environmental Management office;

The transition to the new INEEL Management and Operations contractor;

The Record of Decision for the Programmatic Environmental Impact Statement for the Storage of High Level Waste;

Worker exposure to plutonium at Paducah Gaseous Diffusion Plant;

Follow-on activities from the October 26–28, 1999 SSAB Seminar on Stewardship.

Status reports on the following:

The DOE—Idaho's use of the SSAB recommendation on the Proposed Plan for Waste Area Group 3 (Idaho Nuclear Technology and Engineering Center);

The results of the Soil Sorter experimental use at the Waste Area Group 5 (Power Burst Facility/Auxiliary Reactor Area) and its appropriateness for use at the INEEL.

Finalization of the following recommendations:

On the selection of an "indicator species" for use in ecological risk assessments at the INEEL;

On the INEEL's "Institutional Plan."

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda or visit the Internet site.)

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL CAB Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling the Board's facilitator at (208) 522–1662.

Issued at Washington, DC on October 20, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–27732 Filed 10–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Submission for OMB Review; Comment Request

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) has submitted a proposed information collection request to the Office of Management and Budget (OMB) for the collection of biodiesel purchase data from fleets participating in DOE's Alternative Fuel Transportation Program. The Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) requires agencies to submit information collection requests for OMB review and approval. OMB is particularly interested in receiving public comments on: (1) Whether the proposed collection of information is necessary, (2) The accuracy of DOE's estimate of the burden of the proposed information collection, (3) Ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of the collection of information on those who choose to respond.

DATES: Comments regarding this collection of information should be sent on or before November 24, 1999.

ADDRESSES: Comments should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: OMB Desk Officer for DOE, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington DC 20503. Written comments (5 copies) should also be sent to: Paul McArdle, US Department of Energy, EE–34, Docket No. EE–RM–99–BIOD, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection request may be obtained from: Paul McArdle, Office of Energy Efficiency and Renewable Energy, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586–9171; or e-mail to paul.mcardle@ee.doe.gov.

SUPPLEMENTARY INFORMATION: The following proposed collection of information has been sent to OMB for clearance:

Title: U.S. Department of Energy/ Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets.

OMB Control Number: 1910–5101.

Type of request: Revised collection.

Frequency of response: Annual.

Respondents: States and alternative fuel provider firms.

Estimated number of respondents: 1,000.

Total annual burden hours: 12,000 hours.

Summary/description of need: On May 19, 1999, DOE published an interim final rule to implement provisions of the Energy Conservation Reauthorization Act of 1998 that permit State and alternative fuel provider fleets to meet statutory alternative fueled vehicle acquisition requirements through use of biodiesel fuel use credits (64 FR 27169). DOE received public comments from 10 persons in response to the interim final rule, which invited public comment on this proposed collection, and has replied to these comments in its submission to OMB. To obtain documentation of use of such credits to meet the acquisition requirements, DOE plans to revise the annual reporting form for the program, DOE/OTT/101, Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets. Fleets claiming biodiesel fuel use credits must, for the model year in which the biodiesel fuel is purchased, report the quantity of biodiesel purchased for use in vehicles weighing more than 8,500 lbs. gross vehicle weight rating.

Issued in Washington, DC, on October 19, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 99–27731 Filed 10–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of submission for the Office of Management and Budget's review and request for comment.

SUMMARY: The Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE), has submitted the information collection entitled "Study of Central Air Conditioner Life Cycle Costs" to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act.

The following information is provided: (1) Collection title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (estimated number of respondents times the proposed frequency of response per year times the estimated average hours per response.)

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB/DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the Office of Energy Efficiency and Renewable Energy's point of contact, Michael E. McCabe, listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Comments should also be addressed to Dr. Michael E. McCabe at the address in the **FOR FURTHER INFORMATION CONTACT** section.)

FOR FURTHER INFORMATION CONTACT: Copies of the proposed collection of information and requests for additional information should be directed to Dr. Michael E. McCabe, Mail Station EE–41, Room 1J–018, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Dr. McCabe may be telephoned at (202) 586–0854 or e-mail at michael.e.mccabe@ee.doe.gov

SUPPLEMENTARY INFORMATION: The information collection submitted to OMB for review was:

1. Collection title: Study of Central Air Conditioner Life Cycle Costs
2. The collection is a new request and is sponsored by the Office of Building Research and Standards, Office of Building Technology, State and Community Programs, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy. Response is voluntary.
3. The Study of Central Air Conditioner Life Cycle Costs will survey participants in central air conditioner and heat pump markets to determine current retail unitary equipment prices and installation costs by equipment efficiency level. The information collection will include contractors participating in the residential unitary equipment market. Consumers will not be surveyed. Questions will attempt to gather data related to equipment costs, sales volumes, and other information pertinent to the determination of retail prices.
4. The respondents are likely to be businesses or other for-profit organizations.
5. The total reporting burden is estimated to be 375 hours (250 respondents reporting with an average estimated burden of 1.5 hours per response).

Issued in Washington, DC, on October 19, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 99–27733 Filed 10–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Information Collection Submitted for Review and Request for Comments

October 19, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the

Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of June 23, 1999 (64 FR 33473) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before November 24, 1999.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–598 "Determination for Entities Seeking Exempt Wholesale Generator Status."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0166. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a change to the reporting burden as a result of a decline in the number of applications submitted to the Commission. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) as added and redesignated by Section 711 of the Energy Policy Act of 1992. Section 32(a) of PUHCA defines an Exempt Wholesale Generator (EWG) as an individual determined by the Commission to be engaged directly or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating all or part of eligible facilities and selling electric energy at the wholesale. An eligible facility may include interconnecting transmission facilities necessary to effect wholesale power sales. Persons granted EWG status to be exempt from regulation under PUHCA. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 365.

Respondent Description: The respondent universe currently comprises on average, 112 respondents.

6. *Estimated Burden:* 672 total burden hours, 112 respondents, 1 response annually, 6 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 672 hours ÷ 2,088 hours per year × $109,889 per year = $35,503, average cost per respondent = $317.00.

Statutory Authority: Sections 32(a), of the Public Utility Holding Company Act, 15 U.S.C. Sections 79z–5a.

David P. Boegers,

Secretary.

[FR Doc. 99–27709 Filed 10–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–4–000]

Florida Gas Transmission Company; Notice of Application

October 19, 1999.

Take notice that on October 12, 1999, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP00–4–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity for permission and authorization to: (i) Upgrade two compressor engines at Compressor Station 11A by increasing the horsepower by approximately 4,800 horsepower, and (ii) install the necessary auxiliary facilities at Compressor Station 11A, hereinafter referred to as "Expansion Facilities", all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Suite 3997, 1400 Smith Street, Houston, TX 77002 or call (713) 853–6549.

The purpose of the proposed Expansion Facilities is to build facilities which enables FGT to transport 80,000 MMMBtu per day from the Destin Pipeline interconnect in Mississippi, to provide additional firm Western Division transportation service to Alabama Electric Cooperative, Inc. (AEC) under FGT's Rate Schedule FTS–WD pursuant to Subpart B of Part 284 of the Commission's Regulations. FGT and AEC have executed a September 22, 1999 Firm Transportation Service Agreement, for a primary term of twelve years, with a ten year rollover option. FGT is proposing to charge negotiated rates for the service. The estimated construction cost is $6.9 million and will be 100% reimbursable, with a required in-service date of December 2001.

FGT requests that the Commission issue a final order granting the authorizations requested herein by November 1, 2000 in order to complete construction prior to FGT's Peak Spring and Summer Periods starting April 1, 2001.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before November 9, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–27710 Filed 10–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–40–024]

Panhandle Eastern Pipe Line Company; Notice of Offer of Settlement

October 19, 1999.

Take notice that on October 13, 1999, the Missouri Public Service Commission (MoPSC), Panhandle Eastern Pipe Line Company (Panhandle) and Missouri Gas Energy, a division of Southern Union Company (collectively called Sponsoring Parties) filed an Offer of Settlement under Rule 602 of the Commission's Rules of Practice and Procedure in the captioned docket. Sponsoring Parties filed the Offer of Settlement to facilitate and expedite the Commission's implementation of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Public Service Company of Colorado.*[1] The Sponsoring Parties state the Offer of Settlement is intend to provide relief to small producers from their *ad valorem* tax refund liability and to reduce the administrative burdens on the Commission, its staff, first sellers and numerous interest owners and intervenors associated with the various proceedings pending at the Commission relating to such tax liability. A copy of the Offer of Settlement is on file with the Commission and is available for public inspection in the Public Reference Room. The Offer of Settlement may be viewed on the web at *http://www/ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

To achieve these objectives, the Offer of Settlement provides a $50,000 credit towards the *ad valorem* tax refund liability of the first sellers listed in the Statement of Refunds Due filed by Panhandle on November 10, 1997, as adjusted in Exhibit A to the Offer of Settlement to reflect subsequent corrections. Any first seller with a refund obligation of $50,000 or less for principal and interest will have its *ad valorem* tax refund waived in its entirety. First sellers with refund liabilities of $50,000 or less are not required to give up any rights or provide any other consideration as a condition to receiving the benefits. Sponsoring Parties state the Offer of Settlement would eliminate the entire refund obligation of 56 of the 105 first sellers on the Panhandle system.

Any first seller with a refund liability in excess of $50,000 as listed in the Statement of Refunds Due filed by Panhandle on November 10, 1997, as adjusted in Exhibit A to reflect subsequent corrections, is eligible to have its refund obligation reduced by $50,000. In order to be eligible for the $50,000 credits, such first sellers must pay the remaining refund liability (after deducting the $50,000), plus additional accrued interest through date of payment, and agree to withdraw all interventions, protests and court appeals related to the *ad valorem* tax refund. First sellers who accept the terms for partial waivers under the Offer of Settlement will be responsible for negotiating with their underlying interest owners the amount of the waiver relief applicable to their interest owners.

The Offer of Settlement also provides that any first seller listed in Panhandle's Statement of Refunds Due with a refund liability of $50,000 or less for principal and interest who has refunded to Panhandle amounts which would be waived under Article II will receive a refund from Panhandle of such amounts, plus additional accrued interest through date of payment by Panhandle. In addition, Article III provides that if Panhandle has previously received refunds directly from an interest owner whose obligation was incurred under a first seller whose entire refund obligation is waived pursuant to the agreement, Panhandle will refund such payments to the interest owner within 60 days of the effective date of the settlement. If jurisdictional refunds exceed the amount of undisbursed Kansas *ad valorem* tax refunds held by Panhandle, Panhandle will maintain a credit balance for the jurisdictional refunds. Any subsequent Kansas *ad valorem* tax refunds received by Panhandle will be used to reduce any credit balance before any disbursement is made to customers. One hundred twenty days (120) after the effective date of the Offer of Settlement, Panhandle shall be permitted to direct bill any remaining credit amounts.

In accordance with § 385.602(f), initial comments on the Offer of Settlement are due on November 2, 1999 and any reply comments are due November 12, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–27711 Filed 10–22–99; 8:45 am]

BILLING CODE 6717–01–M

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[1] *Public Service Co. of Colorado, et al.*, 80 FERC ¶ 61,264 (1997), *reh'g denied*, 82 FERC ¶ 61,058 (1998). Appeal pending. *Anadarko Petroleum Corporation* v. *FERC*, Case No. 98–1227 *et al.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 20, 1999.

The following notice of meeting is published pursuant to section 3(a) of the goverment in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 27, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information center.

Consent Agenda—Hydro, 728th—Meeting October 27, 1999, Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–2113, 119, WISCONSIN VALLEY IMPROVEMEMT COMPANY
CAH–2.
DOCKET# P–6879, 022, SOUTHEASTERN HYDRO-POWER, INC.
CAH–3.
DOCKET# EL96–47, 000, NIAGARA MOHAWK POWER CORPORATION AND NORTHERN ELECTRIC POWER COMPANY, L.P.
OTHERS# P–5276, 054, NIAGARA MOHAWK POWER CORPORATION AND NORTHERN ELECTRIC POWER COMPANY, L.P.
CAH–4.
DOCKET# P–1494, 160, GRAND RIVER DAM AUTHORITY

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER99–4318, 000, ENTERGY SERVICES, INC.
CAE–2.
DOCKET# ER99–4308, 000, GEORGIA POWER COMPANY
CAE–3.
DOCKET# ER99–4323, 000, PACIFIC GAS AND ELECTRIC COMPANY
CAE–4.
DOCKET# ER99–4378, 000, CENTRAL ILLINOIS LIGHT COMPANY
CAE–5.
DOCKET# ER99–4327, 000, SOUTHWEST POWER POOL, INC.
CAE–6.
DOCKET# ER99–4371, 000 PJM INTERCONNECTION L.L.C.
CAE–7.
DOCKET# ER99–4400, 000, SOUTHERN COMPANY SERVICES, INC.
CAE–8.
DOCKET# ER99–3531, 000, SOUTHERN COMPANY SERVICES, INC.
OTHER#S ER99–4384, 000, SOUTHERN COMPANY SERVICES, INC.
CAE–9.
DOCKET# ER99–4415, 000, ILLINOIS POWER COMPANY
OTHER# EL00–7, 000, ILLINOIS POWER COMANY
CAE–10.
DOCKET# ER99–3804, 000, NIAGARA MOHAWK POWER CORPORATION AND NEW YORK STATE ELECTRIC & GAS CORPORATION
OTHER#S EL99–84, 000, AMERGEN ENERGY COMPANY, LLC
EC99–98, 000, NIAGARA MOHAWK POWER CORPORATION AND NEW YORK STATE ELECTRIC & GAS CORPORATION
ER99–754, 002, AMERGEN ENERGY COMPANY, LLC
CAE–11. OMITTED
CAE–12.
DOCKET# ER99–2647, 000, AMERICAN TRANSMISSION SYSTEMS, INC.
OTHER#S EL99–71, 000, FIRSTENERGY OPERATING COMPANIES
ER99–2609, 000, FIRSTENERGY OPERATING COMPANIES
EC99–53, 000, FIRSTENERGY OPERATING COMPANIES, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, TOLEDO EDISON COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY AND AMERICAN TRANSMISSION SYSTEMS INC.
CAE–13.
DOCKET# ER99–2332, 000, SIERRA PACIFIC POWER COMPANY
OTHER#S ER99–2338, 000, NEVADA POWER COMPANY
CAE–14.
DOCKET# ER99–2021, 001, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–15.
DOCKET# ER97–1523, 015, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
OTHER#S OA97–470, 014, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
ER97–4234, 012, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
CAE–16.
DOCKET# ER97–697, 003, ALLEGHENY POWER SERVICE CORPORATION
CAE–17.
DOCKET# ER97–1523, 012, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
OTHER#S ER97–4234, 009, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
OA97–470, 011, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
CAE–18.
DOCKET# EC99–53, 000, FIRSTENERGY OPERATING COMPANIES, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, TOLEDO EDISON COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY AND AMERICAN TRANSMISSION SYSTEMS, INC.
CAE–19.
DOCKET# ER92–331, 006, CONSUMERS ENERGY COMPANY
OTHER#S ER92–332, 006, CONSUMERS ENERGY COMPANY
CAE–20.
OMITTED
CAE–21.
DOCKET# EL99–75, 001, CALIFORNIA ELECTRICITY OVERSIGHT BOARD
CAE–22.
DOCKET# ER99–55, 001, AVISTA CORPORATION
OTHER#S ER99–55, 002, AVISTA CORPORATION
CAE–23.
DOCKET# EL98–71, 001, PJM INTERCONNECTION, L.L.C.
CAE–24.
DOCKET# OA97–163, 002, MID-CONTINENT AREA POWER POOL

OTHER#S ER96–1447, 002, MID-CONTINENT AREA POWER POOL
EL97–53, 001, ENRON POWER MARKETING, INC. V. MID-CONTINENT AREA POWER POOL
OA97–163, 007, MID-CONTINENT AREA POWER POOL
OA97–658, 001, MID-CONTINENT AREA POWER POOL
OA97–658, 007, MID-CONTINENT AREA POWER POOL
ER97–1162, 001, MID-CONTINENT AREA POWER POOL
ER97–1162, 006 MID-CONTINENT AREA POWER POOL
EL98–76, 001 WESTERN RESOURCES, INC. V. MID-CONTINENT AREA POWER POOL

CAE–25.
DOCKET# OA97–130, 004, MINNESOTA POWER, INC.

CAE–26.
DOCKET# RM99–12, 000, DESIGNATION OF ELECTRIC RATE SCHEDULE SHEETS

CAE–27.
OMITTED

CAE–28.
DOCKET# RM00–1, 000, ELECTRONIC FILING OF FERC FORM NOS. 423, 714 AND 715

CAE–29.
DOCKET# ER99–417, 000, VIRGINIA ELECTRIC AND POWER COMPANY

Consent agenda—GAS AND OIL

CAG–1.
DOCKET# RP99–513, 000, QUESTAR PIPELINE COMPANY

CAG–2.
OMITTED

CAG–3.
DOCKET# RP99–512, 000, TRUNKLINE GAS CORPORATION

CAG–4.
DOCKET# RP99–514, 000, DESTIN PIPELINE COMPANY, L.L.C.

CAG–5.
DOCKET# RP99–484, 000, NATIONAL FUEL GAS SUPPLY CORPORATION

CAG–6.
DOCKET# RP99–176, 007, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER# RP99–176, 008, NATURAL GAS PIPELINE COMPANY OF AMERICA

CAG–7.
OMITTED

CAG–8.
OMITTED

CAG–9.
DOCKET# RP96–312, 024, TENNESSEE GAS PIPELINE COMPANY

CAG–10.
DOCKET# RP99–475, 000, TEXAS GAS TRANSMISSION CORPORATION

CAG–11.
DOCKET# TM00–1–22, 000, CNG TRANSMISSION CORPORATION

CAG–12.
DOCKET# RP00–5, 000, COLORADO INTERSTATE GAS COMPANY

CAG–13.
DOCKET# RP99–515, 000, FLORIDA GAS TRANSMISSION COMPANY

CAG–14.
DOCKET# RP00–3, 000, GARDEN BANKS GAS PIPELINE, LLC

CAG–15.
OMITTED

CAG–16.
DOCKET# TO00–1–25, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION

CAG–17.
DOCKET# RP00–13, 000, NORTHWEST PIPELINE CORPORATION

CAG–18.
DOCKET# RP00–2, 000, OVERTHRUST PIPELINE COMPANY

CAG–19.
OMITTED

CAG–20.
DOCKET# RP99–518, 000, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
OTHER# RP99–518, 001, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION

CAG–21.
DOCKET# RP00–8, 000, RELIANT ENERGY GAS TRANSMISSION COMPANY

CAG–22.
OMITTED

CAG–23.
DOCKET# RP00–7, 000, TEXAS EASTERN TRANSMISSION CORPORATION

CAG–24.
OMITTED

CAG–25.
OMITTED

CAG–26.
DOCKET# TM00–1–30, 000, TRUNKLINE GAS COMPANY

CAG–27.
OMITTED

CAG–28.
DOCKET# PR99–16, 000, DOW INTRASTATE GAS COMPANY
OTHER#S PR99–16, 001, DOW INTRASTATE GAS COMPANY

CAG–29.
DOCKET# RP98–256, 002, COLUMBIA GULF TRANSMISSION COMPANY

CAG–30.
DOCKET# RP96–312, 023, TENNESSEE GAS PIPELINE COMPANY

CAG–31.
DOCKET# PR99–6, 000, PG&E GAS TRANSMISSION TECO, INC.
OTHER#S PR99–6, 001, PG&E GAS TRANSMISSION TECO, INC.
PR99–6, 002, PG&E GAS TRANSMISSION TECO, INC.

CAG–32.
DOCKET# OR99–14, 000, EQUILON PIPELINE COMPANY LLC

CAG–33.
OMITTED

CAG–34.
OMITTED

CAG–35.
OMITTED

CAG–36.
DOCKET# RP99–355, 001, BALTIMORE GAS AND ELECTRIC COMPANY

CAG–37.
DOCKET# TM99–1–22, 003, CNG TRANSMISSION CORPORATION
OTHER#S TM98–2–22, 000, CNG TRANSMISSION CORPORATION
TM99–1–22, 004, CNG TRANSMISSION CORPORATION
TM99–1–22, 005, CNG TRANSMISSION CORPORATION
TM99–1–22, 006, CNG TRANSMISSION CORPORATION
TM99–1–22, 007, CNG TRANSMISSION CORPORATION

CAG–38.
DOCKET# RP96–290, 003, MICHIGAN GAS STORAGE COMPANY
OTHER#S RP96–290, 002, MICHIGAN GAS STORAGE COMPANY

CAG–39.
DOCKET# MG99–19, 001, PINE NEEDLE LNG COMPANY, L.L.C.

CAG–40.
DOCKET# OR99–16, 000, COLONIAL PIPELINE COMPANY

CAG–41.
DOCKET# CP99–211, 000, USG PIPELINE COMPANY

CAG–42.
DOCKET# CP99–262, 000, TENNESSEE GAS PIPELINE COMPANY

CAG–43.
DOCKET# CP99–563, 000, EASTERN SHORE NATURAL GAS COMPANY

CAG–44.
OMITTED

CAG–45.
DOCKET# CP96–152, 020, KANSAS PIPELINE COMPANY

CAG–46.
DOCKET# CP96–178, 011, MARITIMES & NORTHEAST PIPELINE, L.L.C.
OTHER#S CP96–809, 009, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP96–810, 004, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP97–238, 010, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP98–724, 001, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP98–797, 001, MARITIMES & NORTHEAST PIPELINE, L.L.C.

CAG–47.
OMITTED

CAG–48.
OMITTED

CAG–49.
OMITTED

CAG–50.
DOCKET# RP00–9, 000, COLUMBIA GAS TRANSMISSION CORPORATION

CAG–51.
DOCKET# RP00–10, 000, COLUMBIA GAS TRANSMISSION CORPORATION

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
RESERVED

II. Pipeline Certificate Matters

PC–1.
RESERVED

David P. Boergers,
Secretary.

[FR Doc. 99–27860 Filed 10–21–99; 11:53 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6247–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167.

Weekly receipt of Environmental Impact Statements

Filed October 12, 1999 Through October 15, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990372, Draft Supplement, AFS, ID, Frank Church—River of No Return Wilderness (FC–RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID, Due: February 01, 2000, Contact: Ken Wotring (208) 756–5100.

EIS No. 990373, Final EIS, BOP, MS, Yazoo City, Mississippi Federal Correctional Complex, Construction and Operation, Possibly Consisting of a High Security U. S. Penitentiary, Medium Security Federal Correctional Institution and Minimum Security Federal Prison, Site Selection and Possible COE Section 404 Permit, Yazoo City, Yazoo County, MS, Due: November 22, 1999, Contact: David J. Dorworth (202) 514–6470.

EIS No. 990374, Draft EIS, SFW, CA, Trinity River Mainstem Fishery Restoration, To Restore and Maintain the Natural Production of Anadromous Fish, Trinity and Humboldt Counties, CA, Due: December 06, 1999, Contact: Joe Polos (707) 822–7201.

EIS No. 990375, Draft EIS, IBR, NB, KS, Republican River Basin Long-Term Water Supply Contract Renewals for Five Irrigation Districts, Frenchman-Cambridge, Frenchman Valley and Bostwick Irrigation District in Nebraska and Bostwick No.2 and Almena Irrigation Districts on Kansas, NB and KS, Due: December 17, 1999, Contact: Jill Manring (308) 389–4622.

EIS No. 990376, Final EIS, COE, FL, Alligator Chain of Lakes and Lake Gentry Extreme Drawdown and Habitat Enhancement Project, Implement Aquatic Habitat Enhancement, Osceola County, FL, Due: November 22, 1999, Contact: Elmar Kurzbach (904) 232–2325.

EIS No. 990377, Draft EIS, FHW, TX, Loop 1 Extension Project, From Farm-to-Market (FM–734 (Palmer Lander) to TX–45 Highway, Funding, Travis and Williamson Counties, TX, Due: December 06, 1999, Contact: Walter Waidelich (512) 916–5988.

EIS No. 990378, Draft EIS, FHW, TX, TX–45 Highway Project, Extending from Anderson Mill Road (FM Road 2769) to Farm-to-Market Road 685 east of IH–35), Funding, Williamson and Travis Counties, TX, Due: December 06, 1999, Contact: Walter Waidelich (512) 916–5938.

EIS No. 990379, Draft EIS, SFW, WA, Simpson Washington Timberlands, Proposed Issuing of a Multiple Species Incidental Take Permit, Forest Management and Timber Harvesting, Thurston, Mason and Gray Harbor Counties, WA, Due: December 21, 1999, Contact: Jon Hale (360) 753–4371.

EIS No. 990380, Draft EIS, SFW, WA, Crown Pacific Project, Issuance of a Multiple Species Permit for Incidental Take, Hamilton Tree Farm, Habitat Conservation Plan, Whatcom and Skagit County, WA, Due: December 21, 1999, Contact: Jon Hale (360) 753–4371.

EIS No. 990381, Final EIS, COE, WA, Programmatic EIS—Puget Sound Confined Disposal Site Study, Implementation, WA, Due: November 22, 1999, Contact: Stephen Martin (206) 764–3631.

EIS No. 990382, Final EIS, NPS, AK, Lower Sheehjek River Wild and Scenic River Study, Designation, Tributary of the Porcupine River, ALASKA, Due: November 22, 1999, Contact: Jack Mosby (907) 256–2650.

EIS No. 990383, Draft EIS, FHW, Interstate 215 (I–215) Transportation Improvements, From the short segments of CA–60 and CA–91 in the Cities of Riverside and Moreno Valley, Funding, Riverside County, CA, Due: December 12, 1999, Contact: C. Glenn Clinton (916) 498–5037.

EIS No. 990384, Final Supplement, UAF, NY, Griffiss Air Force Base (AFB) Disposal and Reuse, Implementation, Oneida County, NY, Due: November 22, 1999, Contact: Jonathan D. Farthing (210) 536–2787.

EIS No. 990385, Final EIS, FAA, CA, San Jose International Airport Master Plan Update, Improvements include Extension of Runway 12R/30L from 10,200 ft to 11,000 ft; Extension of Runway 12L/30R, Airport Layout Plan, City of San Jose, Santa Clara County, CA, Due: November 22, 1999, Contact: John Pfeifer (650) 876–2894.

EIS No. 990386, Draft EIS, FHW, ME, Augusta River Crossing Study, To Reduce Traffic Deficiences within the Transportation System Serving the City of Augusta, Funding, Kennebec River, Kennebec County, ME, Due: November 15, 1999, Contact: Paul Lariviere (207) 622–8487.

The above FHW EIS should have appeared in the 10/01/99 **Federal Register**. The 45-day Comment Period is Calculated from 10/01/99.

EIS No. 990387, Final Supplement, AFS, ID, St. Joe Noxious Weed Control Project, Implementation, St. Maries River, St. Joe River and Little North Fork Clearwater River, Benewah, Shoshone and Latah Counties, ID, Due: November 22, 1999, Contact: Dennis Griffith (208) 245–2531.

Amended Notices

EIS No. 990274, Draft EIS, BLM, NV, South Pipeline Mine Project, Proposal to Extend Gold Mining Operations, Implementation, Lander County, NV, Due: November 19, 1999, Contact: Gary; Published FR 08–06–99—Review Period extended from 10–05–99 to 11–19–99.

EIS No. 990277, Draft EIS, AFS, CO, White River National Forest, Revised Land and Resource Management Plan, Implementation, Eagle, Garfield, Gunnison, Mesa, Moffat and Pitkin Counties, CO, Due: February 09, 2000, Contact: Martha Ketelle (970) 945–2521. Published FR 08–13–99 Review Period Extended. from 11–05–99 to 02–09–2000.

EIS No. 990311, Draft EIS, AFS, OR, Ashland Creek Watershed Protection Project, Proposal to Manage Vegetation, Rogue River National Forest, Ashland Ranger District, City of Ashland, Jackson County, OR, Due: November 19, 1999, Contact: Kristi Mastrafini (541) 482–3333. Published FR 09–03–99—Review Period Extended from 10–18–99 to 11–19–99.

EIS No. 990347, Draft EIS, SFW, CA, San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, Issuance of Incidental Take Permit, San Joaquin County, CA , Due: January 07, 2000, Contact: Ben Harrison (503) 231–2068. Published FR—10–01–99—Review Period Extended from 11–15–99 to 01–07–2000.

Dated: October 19, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–27690 Filed 10–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6247–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 4, 1999 Through October 8, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 10, 1999 (63 FR 17856).

Draft EISs

ERP No. D–APH–A82125–00 Rating EC2, Fruit Fly Cooperative Control Program, Eradication Program, Implementation.

Summary: EPA had environmental concerns with the control program. To address these concerns EPA suggested that the integrated approach be updated, that the risk assessment be more comprehensive, and that mitigation measures be developed for non-target species and sensitive resources.

ERP No. D–DOE–A08031–00 Rating EC1, Transmission System Vegetation Management Program, Implementation, Managing Vegetation, Site Specific, Right-of-Way Grant, CA, ID, MT, OR, UT, WA and WY.

Summary: EPA supported the management approach, but expressed concerns with its application. EPA requested that DOE take steps to minimize adverse ecological impacts from the use of herbicides to control vegetation beneath transmission lines and at electric substations.

ERP No. D–JUS–E81038–AL Rating EC2, Center for Domestic Preparedness (CDP), Expand Training for State and Local Emergency First Responders, Located at Fort McClellan, Calhoun, Cleburne, Randolph, Clay, Talladega, St. Clair, Etowah and Cherokee Counties, AL.

Summary: EPA expressed concern regarding potential air quality and hazardous waste disposal impacts and requested that these issues be further discussed in the Final EIS.

Final EISs

ERP No. F–FHW–F40353–WI, US 12 Highway Improvement, Sauk City to Middleton, Funding and COE Section 404 Permits Issuance, Sauk and Dane Counties, WI.

Summary: EPA has expressed concerns based on the project's potential impacts to Baraboo Hills National Natural Landmark Area. EPA was also concerned with the methodology used to analyze secondary impacts.

ERP No. RF–NOA–B91025–00, American Lobster Fishery Management Plan, Implementation, To Prevent Overfishing of American Lobster and to Rebuild Lobster Stocks, Exclusive Economic Zone (EEZ) off the New England and Mid-Atlantic.

Summary: EPA had no comment on the project.

Dated: October 19, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–27691 Filed 10–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6463–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting: Environmental Economics Advisory Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the USEPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1—Environmental Economics Advisory Committee (EEAC)

The Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board (SAB) will meet on Friday, November 12, 1999, at the U.S. Environmental Protection Agency, Ariel Rios Building—North, Room 6013, 1200 Pennsylvania Avenue, NW, Washington, DC (the entrance to the building is adjacent to the Federal Triangle Metro stop on 12th Street). The SAB main telephone number is (202) 564–4533. The meeting will begin at 9:00 a.m. and end no later than 3:00 p.m.

Purpose of the Meeting

The EEAC is meeting to consider and to provide advice and comment to EPA on its report Induced Travel: A Review of Recent Literature with a Discussion of Policy Issues. The EEAC will also receive a briefing by Agency personnel on the status of its efforts to develop an Economic Research Strategy and the committee will discuss its plans for additional meetings during Fiscal Year 2000.

Background Information

(a) *Induced Travel:* The Environmental Economics Advisory Committee has been asked to conduct an advisory review of the EPA report, Induced Travel: A Review of Recent Literature with a Discussion of Policy Issues. This follows a briefing on the subject at its April 20, 1999 meeting (see 64 FR 14232–14233). The theory of induced growth in vehicle travel hypothesizes that increases in the carrying capacity of a specific highway corridor or road network will result in an increased level of vehicle traffic. The increase in road capacity results in a decrease in the generalized cost of travel (especially the time costs of travel) and hence an increase in the demand for travel. This issue is a contentious issue among traffic engineers, transportation planners, and the environmental community. A common engineering approach assumes that demand for travel is derived from exogenous growth in economic activities, generally neglecting the inter-relationships between highway capacity, relative travel times, and overall regional accessibility.

The background document developed on this issue by EPA outlines the behavioral relationships underlying the theory of induced travel and reviews recent research that documents and empirically measures induced travel effects. The Agency believes that this research provides a strong case for the existence of induced travel effects, and in some cases suggests that a large fraction of growth in vehicle miles of travel (VMT) is directly attributable to increases in road capacity. The paper concludes with a discussion of the relevant research needs in this area and the implications for EPA policies and regulations.

(b) *Economic Research Plan:* The EEAC was asked at its April 9, 1998 meeting to provide the Agency with its advice on a list of topics proposed for inclusion in the EPA economic research program (see 63 FR 14112). The committee sent an Advisory to the EPA Administrator on September 22, 1998

(EPA–SAB–EEAC–ADV–98–005) to satisfy this request. Since that time, the Agency has continued to develop a draft Economics Research Strategy. The Agency will brief the EEAC on the status of its efforts to complete this strategy.

Charge to the Committee

The principal questions for the Science Advisory Board are:

(1) Is the theory of induced travel from the provision of highway capacity consistent with economic theory?

(2) Does the analytical methodology used in recent research—specifically the use of the econometric fixed effects statistical models—test the hypothesis of induced travel over the highway networks during the time periods studied?

(3) Do the empirical results of the recent research support a conclusion that induced travel has historically occurred over the national and state highway networks during the time periods studied?

For Further Information

Single copies of the background document on "Induced Travel" can be obtained by contacting Dr. Lewison Lem, U.S. Environmental Protection Agency, Office of Policy and Reinvention, Energy and Transportation Sectors Division (2126), 401 M Street, SW, Washington, DC, 20460, (202) 260–5447, FAX (202) 260–0512, or via email at: *lem.lewison@epa.gov.* No background material is to be provided on the economics research strategy.

Anyone wishing to make an oral presentation at the meeting must contact Mr. Thomas Miller, Designated Federal Officer for the Environmental Economics Advisory Committee, *in writing* no later than 4:00 pm, November, 8, 1999, at the above address, via fax (202) 501–0582, or via email at: *miller.tom@epa.gov.* The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 564–4558. A copy of the draft agenda will be available on the SAB Website (*http://www.epa.gov/sab*) or upon request from Ms. Dorothy Clark at (202) 564–4537, or by FAX at (202) 501–0582 or via e-mail at *clark.dorothy@epa.gov* no later than November 2, 1999.

2—Radiation Advisory Committee (RAC)

The Radiation Advisory Committee (RAC) will meet on Tuesday, November 16 through Thursday, November 18, 1999. The meeting will convene at 9 a.m. each day in the Science Advisory Board Conference Room 6013 Ariel Rios Building (North Entrance—adjacent to the entrance to the Federal Triangle Metro Stop on 12th Street), 1200 Pennsylvania Avenue, NW, Washington, DC and adjourn no later than 5:30 pm the first and second day, and no later than 2:30 pm the third day.

At this meeting, the RAC will: (a) Conduct a review of the risk assessment of radon in homes in light of the National Academy of Sciences (NAS) Biological Effects of Ionizing Radiation (BEIR VI) report. The Office of Radiation and Indoor Air (ORIA) draft document being reviewed is entitled "Assessment of Risks from Radon in Homes," dated October, 1999; (b) discuss and plan for the next RAC review meeting; and (c) briefly discuss additional projects planned for review in the balance of Fiscal Year 2000 and other projects as time permits.

During this meeting, the RAC intends to draft its report in review of the ORIA draft document. This was originally reviewed by the RAC as an advisory of a white paper (see EPA-SAB-RAC-ADV–99–010, dated July 14, 1999. Also 64 FR 10294–10295, dated Wednesday, March 4, 1999) focusing on the technical aspects of the Agency's methodology for estimating cancer risks from exposure to indoor radon in light of the NAS BEIR VI committee report entitled "Proposed EPA Methodology for Assessing Risks from Indoor Radon Based on BEIR VI," dated February 1999. The charge questions to be answered will include, but are not limited to areas of adequacy of the methodology and overall approach; appropriateness of assumptions behind the calculations; and the adequacy in describing and characterizing the limitations and uncertainties.

Regarding planning for upcoming reviews, the RAC will discuss with ORIA the proposed projects for Fiscal Year 2000. Among the proposed projects to be discussed are Review of an Updated Computer Model for Evaluating Atmospheric Releases of Radionuclides; Review of a Draft Uranium Mining Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM) Technical Report; Review of the Multi-Agency Radiation Laboratory Analytical Protocols (MARLAP) Manual; and proposed project sheets on self-initiated topics that are being explored by the RAC, namely Orphan Source Contamination of Metals, and Border Detectors.

For Further Information

Members of the public wishing further information concerning the meeting, such as copies of the proposed meeting agenda, or who wish to submit written comments should contact Mrs. Diana L. Pozun at (202) 564–4544; fax (202) 501–0582, or via E-Mail at: *pozun.diana@epa.gov.* Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. K. Jack Kooyoomjian *in writing* (by letter, fax, or by e-mail—see contact information below) no later than 12 noon Eastern Time, Tuesday, November 9, 1999 in order to be included on the Agenda. For further information, contact Dr. K. Jack Kooyoomjian, Designated Federal Officer for the Radiation Advisory Committee, Science Advisory Board (1400A), U.S. EPA, Washington, DC 20004, phone (202)-564–4557; fax (202)-501–0582; or via E-Mail at: *kooyoomjian.jack@epa.gov.*

For questions pertaining to the Review of the Assessment of Risks from Radon in Homes, please contact Dr. Jerome S. Puskin, ORIA (Mail Code 6603J), U.S. EPA, 401 M Street, SW, Washington, DC 20460; tel. (2020 564-9212, or Fax (202) 565–2065, or E-mail: *puskin.jerome@epa.gov.* For questions on any other topics discussed between the SAB's RAC and the ORIA staff, please contact Dr. Mary E. Clark, (6601J), ORIA, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, tel. (202) 564–9348; Fax (202) 565–2043; or E-mail: *clark.marye@epa.gov.* Documents pertaining to BEIR VI may also be obtained on the world wide web at the following address: *http://www4.nas.edu/cls/brerhome.nsf* and then click on "Publication List." The documents are in ascending chronological order, with BEIR VI being published in February, 1998 (near the end of the list). The documents pertaining to BEIR VI may also be obtained on the world wide web at the following address: *http://www.nap.edu/reading room* and search on "radon."

3—Clean Air Scientific Advisory Committee (CASAC)

The Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on Thursday, November 18, 1999 at the Hawthorne Suites, 300 Meredith Drive Durham, NC 27713, tel. (919) 361–1234.

The meeting will begin at 8:30 a.m. and end no later than 5 p.m.

Purpose of the Meeting

The Committee will continue its review of the carbon monoxide (CO) national ambient air quality standards (NAAQS) with a review of the National Center for Environmental Assessment's (NCEA) revised draft *Air Quality Criteria for Carbon Monoxide* (Second External Review Draft) October 1999, EPA/600/P–99/001B. At this meeting (the second in a series of meetings—see EPA–SAB–CASAC–LTR–99–003 for results of that first review), EPA is seeking advice and comment from CASAC with regard to the scientific soundness of the draft CO Criteria Document for its subsequent use in providing scientific basis for Agency decisions on retention or the possible need for revision to the existing CO NAAQS. The CASAC review will focus on the extent to which the draft document: (1) Adequately identifies and poses pertinent issues that need to be addressed in the document; (2) accurately and concisely summarizes relevant key findings from previous CO criteria review(s); (3) accurately and concisely summarizes and assesses important newly available pertinent information (or have any important new studies been omitted?); (4) appropriately interprets and synthesizes the assessed information; and (5) arrives at sound conclusions and findings, taking into account the newly available data assessed. The CASAC will also conduct a Consultation with the Office of Air Quality Planning and Standards (EXPOS) (of the Office of Air and Radiation) on its plans for the draft Carbon Monoxide Staff Paper and related analyses. CASAC will receive a briefing from ORD concerning the review process and schedule for the upcoming CASAC review of the Particulate Matter NAAQS (which begins on December 2, 1999—this meeting will be the subject of a subsequent **Federal Register** notice).

For information on obtaining copies of the second external review draft of the Air Quality Criteria for Carbon Monoxide, or to obtain information concerning contact individuals, please see 64 FR 55923, October 15, 1999. (For information concerning the *first* external review draft of the Air Quality Criteria for Carbon Monoxide, please see 64 FR 13198–13199, March 17, 1999.)

For Further Information Concerning the Meeting

Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at *flaak.robert@epa.gov*. A copy of the draft agenda will be available approximately two weeks prior to the meeting on the SAB website (*http://www.epa.gov/sab*) or from Ms. Diana Pozun at (202) 564–4544; FAX: (202) 501–0582; or e-mail at: *pozun.diana@epa.gov*.

Members of the public who wish to make a brief oral presentation to the CASAC must contact Mr. Flaak *in writing* (by letter, fax or e-mail—see previously stated information) no later than 12 noon Eastern Time, Wednesday, November 10, 1999 in order to be included on the Agenda.

4—Data From Testing on Human Subjects Subcommittee (DTHSS)

The Joint Science Advisory Board/Scientific Advisory Panel (SAB/SAP) Data from Testing on Human Subjects Subcommittee (DTHSS) will meet on November 30, 1999 at the Sheraton Crystal Hotel, 1800 Jefferson Davis Highway, Arlington VA 22202. The hotel telephone number is 703–486–1111. The meeting will begin at 8:30 am and end no later than 7:30 pm.

Purpose of the Meeting: The DTHSS is meeting to discuss issues on which the Subcommittee could not reach consensus following its initial meeting on December 10–11, 1998 (That meeting was announced in the **Federal Register** at 63 FR 64714–64715, November 23, 1998). The complete draft Charge identifying and addressing these issues will be posted on the SAB Website (*http://www.epa.gov/sab*) by October 30, 1999.

Availability of Review Materials: There are *no new review materials for this meeting*, however, hard copies of the EPA primary background documents for the *previous meeting* may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5805.

For Further Information: Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, (1400a), Co-Designated Federal Officer, DTHSS, Science Advisory Board, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (301) 812–2560; fax at (410) 286–2689; or via e-mail at *samuelr717@aol.com* or Dr. Stephanie R. Irene, Co-Designated Federal Officer, U.S. EPA, Office of Pesticide Programs, Environmental Fate and Effects Division (7505C), 401 M St., SW, Washington, DC 20460, telephone/voice mail 703–305–5024, fax 703–305–6309, email to *Irene.Stephanie@epa.gov*. A copy of the draft agenda will be available on the SAB Website (*http://www.epa.gov/sab*) or upon request from Ms. Wanda Fields (202) 564–4539, or by FAX at (202) 501–0582 or via e-mail at *fields.wanda@epa.gov* no later than November 15, 1999.

Providing Oral or Written Comments: Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Rondberg in writing (by letter, or by e-mail—see previously stated information) no later than 12 noon Eastern Time, November 19, 1999 in order to be included on the Agenda. Written comments may be sent by mail to: The Public Information and Records Integrity Branch (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202. Comments and data also may be submitted electronically by sending electronic mail (E-Mail) to: *opt-docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect 8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPP–98–31247. No Confidential Business Information (CBI) should be submitted through E-Mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION** below.

Supplementary Information: The Agency encourages that written statements be submitted before the meeting to provide Panel Members time to consider and review the comments. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

A public record has been established for this notice (including comments and data submitted electronically) under docket number OPP–98–31247. A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, will be available for inspection from 8:30 am to 4 pm, Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in Availability of Review Materials earlier in this Notice.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 19, 1999.

John R. Fowle III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 99–27795 Filed 10–22–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2365]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 14, 1999.

Petitions for Reconsideration and Clarification has been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by November 9, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171).

Number of Petitions Filed: 1.

Subject: Policy and Rules Concerning the Interstate Interexchange Marketplace (CC Docket No. 96–61).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–27528 Filed 10–22–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2367]

Petitions for Reconsideration of Action in Rulemaking Proceeding

October 18, 1999.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A247, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by November 9, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) (CC Docket No. 98–65).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–27771 Filed 10–22–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3140–EM]

California; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3140–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 13, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–27755 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1302–DR]

Connecticut; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Connecticut (FEMA–1302–DR), dated September 23, 1999, and related determinations.

EFFECTIVE DATE: October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Connecticut is hereby amended to include the Public Assistance program among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1999:

The counties of Fairfield and Hartford for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–27749 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1302–DR]

Connecticut; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Connecticut (FEMA–1302–DR), dated September 23, 1999, and related determinations.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Connecticut is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1999:

Litchfield County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–27754 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1300–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1300–DR), dated September 22, 1999, and related determinations.

EFFECTIVE DATE: October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1999:

Palm Beach County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–27748 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3150–EM]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida, (FEMA–3150–EM), dated October 15, 1999, and related determinations.

EFFECTIVE DATE: October 16, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of October 15, 1999, 1999:

The counties of Brevard, Broward, Charlotte, Collier, Dade, DeSoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Lucie, Sarasota, Seminole, and Volusia for Categories A and B (debris removal and emergency protective measures) under the Public Assistance program (already designated for direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–27751 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1303–DR]

Maryland; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maryland, (FEMA–1303–DR), dated September 24, 1999, and related determinations.

EFFECTIVE DATE: October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maryland is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 1999:

Anne Arundel County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–27750 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1294–DR]

Commonwealth of Pennsylvania; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1294–DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 1999:

Berks County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–27753 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1293–DR]

Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1293-DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 1999:

The counties of Brunswick, Charles City, Essex, New Kent, Northampton, Richmond and Westmoreland for Individual Assistance (already designated for Public Assistance).

The independent city of Poquoson, and the counties of Fairfax, Hanover and Henrico for Individual Assistance.

The independent city of Hopewell for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–27752 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. JD Financial Group, Inc., Evanston, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Pan American Bank, Chicago, Illinois. Comment regarding this application must be received not later than November 5, 1999.

2. Merchants Merger Corp., New Berlin, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Pyramid Bancorp. Inc., Grafton, Wisconsin, and thereby indirectly acquire Grafton State Bank, Grafton, Wisconsin.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480–0291:

1. Truman Bancshares, Inc., Truman, Minnesota, and its wholly owned subsidiary, Martin County Fidelity Bancshares Company, Fairmont, Minnesota; to acquire 87.65 percent of the voting shares of Martin County National Bank, Fairmont, Minnesota. Martin Couty Fidelity Bancshares Company has also applied to become a bank holding company.

Board of Governors of the Federal Reserve System, October 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27725 Filed 10–22–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99–27116) published on page 56210 of the issue for Monday, October 18, 1999.

Under the Federal Reserve Bank of Philadelphia heading, the entry for Patriot Bank Corp., Inc., Pottstown, Pennsylvania, is revised to read as follows:

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Patriot Bank Corp., Inc., Pottstown, Pennsylvania; to acquire ZipFinancial.com, Inc., and thereby engage *de novo* in providing data processing and data transmission services via the Internet, pursuant to section 225.28(b)(14) of Regulation Y, and in providing management consulting advice to unaffiliated depository institutions, pursuant to section 225.18(b)(9) of Regulation Y.

Comments on this application must be received by November 2, 1999.

Board of Governors of the Federal Reserve System, October 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27726 Filed 10–22–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. UBS AG, Zurich, Switzerland; to acquire Allegis Realty Investors, LLC, Hartford, Connecticut, and thereby indirectly acquire AgriVest LLC, Boston, Massachusetts, and Allegis Capital LLC, Hartford, Connecticut, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(b)(6) of Regulation Y; and securities brokerage services, pursuant to section 225.28(b)(7)(i) of Regulation Y. These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, October 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27727 Filed 10–22–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—09/13/1999			
19994182	Gilbert Global Equity Partners, L.P	OneCoast Network Corporation	OneCoast Network Corporation.
19994202	CGW Southeast Partners III, L.P	Chatwins Group, Inc	Chatwins Group, Inc.
19994234	ACE Limited	Capital Re Corporation	Capital Re Corporation.
19994287	E-Loan, Inc	Bank of America Corporation	Electronic Vehicle Remarketing, Inc.
19994288	Bank of America Corporation	E-Loan, Inc	E-Loan, Inc
19994306	Reunion Industries, Inc.	Chatwins, Group, Inc	Chatwins Group, Inc.
19994313	Aurora Equity Partners II L.P	Glenn R. Hanson	The Hanson Group, Ltd.
19994335	Fabrica de Ropa Nazareno S.A. de C.V	Ben O. Spickard	Kentucky Apparel LLP.
19994336	Fabrica de Ropa Nazareno S.A. de C.V	Guy D. Waggoner	Kentucky Apparel LLP.
TRANSACTIONS GRANTED EARLY TERMINATION—09/14/1999			
19994162	SPX Corporation	Rockwell International Corporation	North American Transformer, Inc.
19994233	Diageo plc	Nestle S.A	Nestle USA—Food Group, Inc.
19994305	Astec Industries, Inc	Neil E. & Linda M. Schmidgall	Superior Industries of Morris, Inc.
19994315	HMK Enterprises, Inc	Design Space, Inc	Design Space, Inc.
19994320	Unit Corporation	Parker Drilling Company	Parker Drilling Company North America, Inc.
19994324	VS&A Communications Partners III, L.P	HCIA, Inc	HCIA, Inc.
19994325	DBT Online, Inc	Kenneth R. Thomson	Information America Inc.
19994343	Lend Lease Corporation Limited	Boston Financial Group Limited Partnership (The).	Boston Financial Group Limited Partnership (The).
19994347	Gerald W. Schwartz	Hewlett-Packard Company	Hewlett-Packard Company.
19994348	Phoenix Children's Hospital, Inc	Triad Hospitals, Inc	Triad Hospitals, Inc.
19994349	Kolin Holding AG	Daniel L. McIlhon	Iowa Industrial Products, Inc.
19994350	The Christina Karen H. Durham Trust	Robert S. Stolmeier	KCL Corporation.
19994354	Southern Company (The)	ORIX Corporation	ORIX USA Corporation.
19994360	Daisytek International Corporation	Craig W. Funk	Arlington Industries, Inc.
19994362	Praxair, Inc	The Hugues Trust	Eutectic + Castolin Technology Holdings, Inc.
19994363	The Reader's Digest Association, Inc	Earl P. Kaplan	Books Are Fun, Ltd.
19994364	The Reader's Digest Association, Inc	SZ Investments, L.L.C	Books Are Fun, Ltd
19994366	Dynegy Inc	Dynegy Inc	McKittrick Limited.
19994367	Akzo Nobel NV	Textron Inc	Textron Inc.
19994368	Solution 6 Holdings Limited	Hummingbird Communications Ltd	CMS/Data Corporation. CMS/Data Corporation IP Corporation
19994370	The 1818 Fund III, L.P	Unwired Holding Company	US Unwired Inc.
19994376	Jean-Pierre Savare	De La Rue plc	De La Rue Card Systems, Inc.
19994377	Eurobike AG	Denis S. LaBonge	Intersport Fashions West, Inc.
19994378	Eurobike AG	Richard D. Miller	Intersport Fashions West, Inc.
19994379	Swifty Serve, LLC	William Frederick Lindsey	Dixie Gas & Oil Co., Inc. Gas Marts, Inc.
19994382	The Lyden Company, an Ohio corporation.	Royal Dutch Petroleum Company	N.V. Koninklike Nederlandshe Petroleum Maatschappij
19994383	Royal Dutch Petroleum Company	The Lyden Company, an Ohio corporation.	Lyden Oil Company.
19994386	TPG Partners II, L.P	NextWave Telecom Inc	NextWave Telecom Inc.
19994387	Oak Investment Partners VIII, L.P	NextWave Telecom Inc	NextWave Telecom Inc.
19994393	Cisco Systems, Inc	Monterey Networks Inc	Monetery Networks, Inc.
19994399	O. Bruton Smith	Thomas Saitta	Integrity Dodge, Inc. (a Nevada Corporation).
19994401	Martha Stewart	Martha Stewart	Martha Stewart Living Omnimedia, Inc.
19994402	Time Warner Inc	Martha Stewart	Martha Stewart Living Omnimedia, Inc.
19994404	AT&T Corp	AT&T Corp	Metroplex Telephone Company.
19994409	Jerry Zucker	Hoechst Aktiengesellchaft	Celgard LLC.
19994410	Edison International	Unicom Corporation	Commonwealth Edision Company.
19994413	Morgan Stanley Venture Partners III, L.P	Allscripts, Inc	Allscript, Inc.
19994414	PAG Partners, L.P	Drury Development Corporation	Drury Development Corporation.
19994421	Pearson plc	Avery Publishing Group Inc	Avery Publishing Group Inc.
19994449	PNE Media Holdings, LLC	Reilly Family Limited Partnership	The Lamar Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—09/15/1999			
19993154	Reilly Family Limited Partnership	Chancellor Media Corporation	Chancellor Media Corporation.
19993155	Chancellor Media Corporation	Reilly Family Limited Partnership	Lamar Advertising Company.
19994433	ABRY Broadcast Partners III, L.O	PNV.net, Inc	PNV.net, Inc.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—09/16/1999			
19994230	Rolls-Royce plc	Cooper Cameron Corporation	Cooper Cameron Corporation.
19994280	PECO Energy Company	Extant, Inc	Extant, Inc.
19994384	Joseph Littlejohn & Levy Fund II, L.P	Paty Lumber Company	Paty Lumber Company
19994406	Iowa Health System	Trinity Regional Health System	Trinity Regional Health System.
19994407	Chesapeake Corporation	Michael A. De Gennaro	Consumer Promotions International, Inc.
19994415	AT&T Corp.	AT&T Corp	Peak Cablevision, LLC.
19994417	Green Equity Investors III, L.P	White Cap Industries, Inc	White Cap Industries, Inc.
19994418	Duane R. Roberts	Don Tyson	Tyson Foods, Inc.
19994424	Synagro Technologies, Inc	Compost America Holding Company, Inc	Environmental Protection & Improvement Co., Inc.
19994426	Textron Inc	Conseco, Inc	Green Tree Financial Servicing Corporation.
19994427	Meditrust Corporation	Debra Lee Herman	TeleMatrix, Inc.
19994428	Bruce K. Anderson	Quorum Health Group, Inc	Quorum Health Group, Inc.
19994429	MLC Holdings Inc	Centura Banks, Inc	CLG, Inc.
19994430	GKN plc	Dana Corporation	Dana Corporation.
19994432	Associated Milk Producers, Inc	Glencoe Butter and Produce Association	Glencoe Butter and Produce Association.
19994437	Sun Microsystems, Inc	Forte Software, Inc	Forte Software, Inc.
19994439	Textron Inc	Robert and Iris Rickenbach	Rifcos Corp.
19994440	Caritas Christi	Good Samaritan Medical Center	Good Samaratan Medical Center.
19994442	Metropolitan Life Insurance Company	General American Mutual Holding Company.	GenAmerica Corporation.
19994444	Aavid Thermal Technologies, Inc	Bowthorpe plc	Bowthorpe plc (Subsidiaries).
19994447	Dyckerhoff AG	Lone Star Industries, Inc	Lone Star Industries, Inc.
19994452	Thomas H. Lee Foreign Fund IV-B, L.P	Big Flower Holdings, Inc	Big Flower Holdings, Inc
19994453	Thomas H. Lee Equity Fund IV, L.P	Big Flower Holdings, Inc	Big Flower Holdings, Inc.
19994454	EBF Group L.L.C	Big Flower Holdings, Inc	Big Flower Holdings, Inc.
19994456	Evercore Capital Partners L.P	Big Flower Holdings, Inc	Big Flower Holdings, Inc.
19994457	TPG Partners II, L.P	Oerlikon-Buhrle	Bally International AG.
19994459	PECO Energy Company	American International Group, Inc	Fischbach and Moore Electric LLC. Fischbach and Moore, Inc.
19994464	The Hub Group Limited	Mack and Parker, Inc	Mack and Parker, Inc.
19994484	PECO Energy Company	OSP Consultants, Inc	OSP Consultants, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/17/1999			
19994474	Acetex Corporation	L'Air Liquide, S.A.	Air Liquide America Corporation.
19994502	The Source Information Management Company.	Dennis M. Prock	Huck Store Fixture Company.
19994512	State Street Corporation	Wachovia Corporation	Wachovia Bank, N.A.
19994552	Morgan Stanley Dean Witter & Co	InterNAP Network Services Corporation	InterNAP Network Services Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—09/20/1999			
19994292	Russell L. Carson	Quorum Health Group, Inc	Quorum Health Group, Inc.
19994394	The Veritas Capital Fund, L.P	North American Fund II, L.P	AMTEC Precision Products, Inc.
19994438	Safeguard Scientifics, Inc	Extant, Inc	Extant, Inc.
19994460	SW Acquisition, L.P	TNP Enterprises, Inc	TNP Enterprises, Inc.
19994461	Fiserv, Inc	American International Group, Inc	Resource Trust Company
19994466	Consolidated Electrical Distributors, Inc	All-Phase Electric Supply Co	All-Phase Electric Supply Co.
19994467	Appollo Investment Fund, L.P	Samsonite Corporation	Samsonite Corporation.
19994468	Phoenix Home Life Mutual Insurance Company.	The Guarantee Life Companies, Inc	AGL Life Assurance Company. PFG Distribution Company. Philadelphia Financial Group Agency. Philadelphia Financial Group, Inc. Philadelphia Financial Insurance Agency of Mass, Inc.
19994476	Koninklijke Pakhoed N.V	Koninklijke Van Ommeren N.V.	Koninklijke Van Ommeren N.V.
19994488	BASF Akiengesellschaft	VEBA AG	Ultraform Company.
19994492	InfoSpace.com,Inc	OpenSite Technologies, Inc	OpenSite Technologies, Inc.
19994494	Harris Corpration	AirNet Communications Corporation	AirNet Communications Corporation.
19994540	Associates First Capital Corporation	Lawrence Lewis	Fleetmark, Inc.
19994541	HEICO Corporation	Edward C. Blanchet	Santa Barbara Infrared, Inc.
19994542	HEICO Corporation	Stephen W. McHugh	Santa Barbara Infrared, Inc.
19994544	Fortune Brands, Inc	Michael K. Boone	Boone International, Inc.
19994545	CFM Majestic, Inc	Monessen Hearth Systems Company	Monessen Hearth Systems Company.
19994557	Akzo Nobel NV	Hoechst AG	Hoechst AG.
TRANSACTIONS GRANTED EARLY TERMINATION—09/21/1999			
19994312	CSK Auto, Inc	PACCAR, Inc	PACCAR Automotive, Inc.
19994381	Dan Shaw	Harrah's Entertainment, Inc	Showboat, Inc.

Trans No.	Acquiring	Acquired	Entities
19994495 ...	NationsRent, Inc	Ellicott and Lynn Prigozen	Sylvan Equipment Corporation.
19994496 ...	NationsRent, Inc	Gary A. Runyon	Jack's Tool Rental, Inc.
19994498 ...	Xomed Surgical Products, Inc	Mentor Corporation	Mentor Ophthalmics, Inc., Mentor Medical, Inc.
19994499 ...	Motorola, Inc	Metrowerks Inc	Metrowerks Inc.
19994500 ...	Geac Computer Corporation Limited	Clarus Corporation	Clarus Corporation.
19994503 ...	Heinz C. Prechter	JPE, Inc	JPE, Inc.
19994504 ...	Biomet, Inc	Implant Innovations International Corporation.	Implant Innovations International Corporation.
19994505 ...	Medtronic, Inc	Xomed Surgical Products, Inc	Xomed Surgical Products, Inc.
19994506 ...	Markel Corporation	Terra Nova (Bermuda) Holdings, Ltd	Terra Nova (Bermuda) Holdings, Ltd.
19994507 ...	Harte-Hanks, Inc	SOFTBANK Corp	Ziff Davis, Inc.
19994517 ...	Leucadia National Corporation	Jeffrey Congdon	Tranex Credit Corp., Tranex Auto Securitization, L.L.C.
19994518 ...	Leucadia National Corporation	Gary L. Levine	Tranex Credit Corp., Tranex Auto Securitization, L.L.C.
19994519 ...	Cisco Systems, Inc	Cerent Corporation	Cerent Corporation.
19994522 ...	Clear Channel Communications, Inc	Thomas E. Ingstad	Iowa City Broadcasting Company, Inc. T&J Broadcasting, Inc.
19994523 ...	Henlys Group, plc	Blue Bird Corporation	Blue Bird Corporation.
19994525 ...	Red Man Pipe & Supply Co	R. J. Gallagher Company	R. J. Gallagher Company.
19994527 ...	ARCADIS N.V	Giffels Associates, Inc	Giffels Associates, Inc.
19994529 ...	Matthew Schoenberg	Murry J. Evans	Midtown Restaurants Corporation and Affiliated Companies.
19994554 ...	Greenwich Street Capital Partners, L.P	Vincent Von Zwehl	JV TEX Realty Corp. Varnco Products, Inc., Varnco Holdings, Inc.
19994556 ...	ALLTEL Corporation	Lawrence Tew	Southern Data, Inc.
19994559 ...	Alex Meruelo	East Los Angeles Community Union	Herman Weissker, Inc.
19994567 ...	McCown De Leeuw & Co. IV, L.P	Fitness Holdings, Inc	Fitness Holdings, Inc.
19994568 ...	Tyco International Ltd.	Bank of America Corporation	Advanced Quick Circuits, L.P.
19994571 ...	Deere & Company	Juilfs Legacy Limited Partnership	Senstar Capital Corporation.
19994579 ...	United Technologies Corporation	Gregory Van Boxel	Great Lakes Turbines Corp./Great Lakes Engines Sales, Inc.
19994582 ...	Voting Trust dated December 4, 1968 of v/s of Hallmark Cards.	Marcel & Margrit Schurman	Schurman Fine Papers, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—09/22/1999

19994169 ...	World Wide Parts and Accessories Corporation.	Patrick W. A. Handreke	Metrix Holdings, Inc.
19994284 ...	Kelso Investment Associates VI, L.P	Citation Corporation	Citation Corporation.
19994285 ...	KEP VI, LLC	Citation Corporation	Citation Corporation.
19994355 ...	Lucent Technologies Inc	Mr. Robert Madonna	Excel Switching Corporation.
19994356 ...	Mr. Robert Madonna	Lucent Technologies Inc	Lucent Technologies Inc.
19994396 ...	Douglas G. Smith	VoiceStream Wireless Corporation	VoiceStream Wireless Holding Corporation.
19994434 ...	Cox Enterprises, Inc	AMFM Inc	Capstar Radio Operating Company. Chancellor Media Corporation of Miami. Chancellor Media/Shamrock Broadcasting, Inc.
19994435 ...	AMFM Inc	Cox Enterprises, Inc	Cox Radio, Inc.
19994486 ...	Rhone Capital LLC	Bjorne Hanson	Hanson Machine Corporation.
19994515 ...	Thomson-CSF, S.A	Thomson-CSF, S.A	Sextant In-Flight Systems LLC.
19994538 ...	The Washington Post Company	Tribune Company	Tribune Career Events, Inc., ASI, Business Tech. Spec. Inc.
19994539 ...	Tribune Company	The Washington Post Company	HireSystems, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—09/23/1999

19994478 ...	Castle Harlan Partners III, L.P	John Rutledge Partners II, L.P	H&C Purchase Corporation.
19994546 ...	Loews Corporation	NextWave Telecom Inc., Debtor-in-Possession.	NextWave Telecom Inc., Debtor-in-Possession.
19994548 ...	The Walt Disney Company	Infoseek Corporation	Infoseek Corporation.
19994555 ...	Samuel J. Heyman	Monsanto Company	Monsanto Company.
19994562 ...	The Reader's Digest Association, Inc.	BrandDirect Marketing, Inc	BrandDirect Marketing, Inc.
19994569 ...	Crescent Operating, Inc	Marubeni Corp	Trax, Inc.
19994575 ...	Stephen J. Luczo	Seagate Technology, Inc	Seagate Technology, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—09/24/1999

19994027 ...	Grapevine Television, LLC	Gocom Communications, L.L.C	Gocom Communications, L.L.C.
19994487 ...	Rhone Capital LLC	Michael Hansen	Hanson Machine Corporation.

Trans No.	Acquiring	Acquired	Entities
19994563	Phelps Dodge Corporation	ASARCO Incorporated	ASARCO Incorporated.
19994564	Phelps Dodge Corporation	Cyprus Amax Minerals Company	Cyprus Amax Minerals Company.
19994573	AutoNation, Inc	Paul and Mary Nori	Ontario Dodge, Inc.
19994592	AutoNation, Inc	Kenneth L. Schnitzer, Jr	Park Place Motorcars of Houston, Ltd.
19994593	AutoNation, Inc	Douglas W. Schnitzer	Park Place Motorcars of Houston, Ltd.
19994594	AutoNation, Inc	SAL Auto Finance Co., Ltd	Park Place Motorcars of Houston, Ltd.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or, Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–27785 Filed 10–22–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and required that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—09/27/1999			
19994405	Nycomed Amersham plc	Sonus Pharmaceuticals, Inc	Sonus Pharmaceuticals, Inc.
19994513	The Hain Food Group, Inc	H.J. Heinz Company	H.J. Heinz Company.
19994514	H.J. Heinz Company	The Hain Food Group, Inc	The Hain Food Group, Inc.
19994604	Michael J. Cantanucci	Malcolm S. Pray, Jr	Pray Automobile Corp.
19994644	Vedior NV	Select Appointments (Holdings) PLC	Select Appointments (Holdings) PLC.
19994664	Hellman & Friedman Capital Partners, III, L.P.	Anthony E. Bakker	Blackbaud, Inc.
19994665	ING Groep N.V	BHF Bank Aktiengesellschaft	BHF Bank Aktiengesellschaft.
TRANSACTIONS GRANTED EARLY TERMINATION—09/27/1999			
19994372	PECO Energy Company	Illinova Corporation	Illinois Power Company.
19994373	British Energy plc	Illinova Corporation	Illinois Power Company.
19994375	Green Equity Investors, II, L.P	Lee Enterprises, Incorporated	Lee Enterprises, Incorporated.
19994391	FirstEnergy Corp	The Williams Companies, Inc	Volunteer Energy, L.L.C.
19994420	RoweCom Inc	Dawson Holdings PLC	Dawson, Inc.
19994425	Waste Management, Inc	Andrew A. Schweizer	Aagard Sanitation, Inc
19994445	Carlisle Companies Incorporated	Titan International, Inc	Titan International, Inc.
19994446	Maurice M. Taylor, Jr	Carlisle Companies Incorporated	Carlisle Companies Incorporated.
19994463	Datatec Limited	Marion Wilson	AllTech Data Systems, Inc.
19994483	AutoNation, Inc	Gerald M. Gleason	Golf Mill Ford, Inc. Jerry Gleason Chevrolet, Inc. Jerry Gleason Dodge, Inc.
19994509	Morgenthaler Venture Partners IV, L.P	William Kuchera	C.O.A. Management Company, Inc. Kuchera Defense Industries, Inc. Kuchera Industries, Inc.
19994537	Hutchison Whampoa Limited	VoiceStream Wireless Corporation	VoiceStream Wireless Corporation.
19994549	Harry T. Rose	Applebee's International, Inc	Applebee's of Pennsylvania, Inc.
19994553	RailWorks Corporation	William Troy Byler	W.T. Byler Co., Inc.
19994565	AT&T Corp	UnitedGlobalCom, Inc	UnitedGlobalCom, Inc.
19994566	AT&T Corp	Tickets.com, Inc	Tickets.com, Inc.
19994570	IWKA Akiengesellschaft	Norman G. Ulmer	Key Welder Corp.
19994576	Alan L. Levy	Viatel, Inc	Viatel, Inc.
19994577	Asahi Organic Chemicals Industry Co., Ltd.	Asahi/America, Inc	Asahi/America, Inc.
19994578	Cordant Technologies Inc	Robert Kanminski Revocable Trust 6/17/88.	Continental/Midland, Inc. KORE II, Inc. KORE, Inc.
19994580	Quantum Industrial Holdings, Ltd	Onvoy, Inc	Onvoy, Inc.
19994581	Hughes Supply, Inc	James G. Doyle	Reaction Supply Corporation.
19994586	Sunrise Capital Partners, L.P	SubMicron Systems Corporation	SubMicron Systems Corporation.
19994587	Group 1 Automotive, Inc	Don Bohn Ford, Inc	Don Bohn Ford, Inc.

Trans No.	Acquiring	Acquired	Entities
19994599	Kevin J. Laughlin	Lucent Technologies, Inc	Lucent Technologies, Inc.
19994600	John L. Drew	Lucent Technologies, Inc	Lucent Technologies, Inc.
19994601	Vernon R. Anderson	Lucent Technologies, Inc	Lucent Technologies, Inc.
19994602	Alfred West	Viatel, Inc	Viatel, Inc.
19994605	Gerald W. Schwartz	John Humphrey and James Humphrey, Voting Trustees.	Nelson Metal Products Corporation.
19994607	AT&T Corp	AT&T Corp	District Cablevision Limited Partnership.
19994608	GTCR Fund VI, L.P	Metamor Worldwide, Inc	Metamor Information Technology Service Inc.
19994611	Prodigy Communications Corporation	Joseph D. Fail	U.S. Republic Communications, Inc.
19994615	Bain Capital Fund VI, L.P	Stolberg Partners, L.P	Advanced Telecommunications, Inc.
19994622	Joseph Littlejohn & Levy Fund III, L.P	Tenet Healthcare Corporation	Tenet Healthcare Corporation.
19994623	Watonwan Farm Service Company	Truman Farmers Elevator Company	Truman Farmers Elevator Company.
19994624	Power Packaging Inc	Jeffrey D. Hettinger	PBP Secialty Beverage, Inc.
19994629	The Western and Southern Life Insurance Company.	Countrywide Credit Industries, Inc	Countrywide Financial Services, Inc.
19994630	The Reynolds and Reynolds Company	William G. Ziercher	Sterling Direct, Inc.
19994632	Advance America, Cash Advance Centers, Inc.	Steve A. and Brenda G. McKenzie	McKenzie Check Advance. National Cash Advance and Union Cash Advance.
19994633	Steve A. and Brenda G. McKenzie	Advance America, Cash Advance Centers, Inc.	Advance America, Cash Advance Centers, Inc.
19994636	Cox Enterprises, Inc	Pengo, L.L.C	Smith Management, LLC.
19994638	Carlton Communications Plc	Norddeutscher Rundfunk	Hamdon Entertainment, a general partnership.
19994640	AT&T Corp	Media/Communications Partners II Limited Partnership.	Triad Holdings I, LLC.
19994642	Summit Ventures V, L.P	Somera Communications, Inc	Somera Communications, Inc.
19994645	American Plumbing & Mechanical, Inc	Stephen F. Turner	Atlas Plumbing & Mechanical, Inc.
19994646	MBNA Corporation	Hancock Holding Corporation	Hancock Bank of Louisiana, Baton Rouge, Louisiana.
19994647	Banca Intesa S.p.A	Banca Commerciale Italiana S.p.A	Banca Commerciale Italiana S.p.A.
19994650	Bracknell Corporation	Nationwide Electric, Inc	Nationwide Electric, Inc.
19994659	AT&T Corp	Newco	Newco.
19994663	William P. and Patricia R. Carlton (husband and wife).	NCH Corporation	Resource Electronics, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—09/29/1999

Trans No.	Acquiring	Acquired	Entities
19994408	Engineered Support Systems, Inc	ESCO Electronics Corporation	Systems & Electronics Inc.
19994471	Michael D. Garvey	Hawaiian Electric Industries, Inc	Hawaiian Tug & Barge. Young Brothers, Limited
19994497	General Electric Company	John V. Saeman, Jr	Camp Systems International, LLC.
19994561	Hooper Holmes, Inc	Pediatric Services of America, Inc	Paramedical Services of America, Inc.
19994590	AutoNation, Inc	DKK Holding Company, Ltd	DKK Holding Company, Ltd.
19994595	AutoNation, Inc	Kenneth Nichols	Nichols Ford, Inc.
19994603	Bank of America Corporation	The Allstate Corporation	Hollinee, L.L.C.
19994610	Rolls-Royce plc	First Aviation Services Inc	National Airmotive Corporation.
19994613	Harrah's Entertainment, Inc	Players International, Inc	Players International, Inc.
19994635	National Equipment Services, Inc.	Keith Griggs	Safety Lights Sales and Leasing, Inc. of Texas.
19994657	Autoweb. com, Inc	Kenneth R. Thomason (a Canadian citizen).	The Gale Group, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—09/30/1999

Trans No.	Acquiring	Acquired	Entities
19992563	General Electric Company	Advanced Lighting Technologies, Inc	Advanced Lighting Technologies, Inc.
19994128	Plains Cooperative Oil Mill, Inc	Yazoo Valley Oil Mill, Inc	Yazoo Valley Oil Mill, Inc.
19994340	Brooks Automation, Inc	Jenoptik AG	Jenoptik Infab, Inc.
19994341	Jenoptik AG	Brooks Automation, Inc	Brooks Automation, Inc.
19994398	Affiliated Computer Services, Inc	General American Life Insurance Company.	Consultec, LLC.
19994422	Land O' Lakes, Inc	Swiss Valley Farms, Co	Swiss Valley Farms, Co.
19994423	Richard W. Couch	Patrick M. Byrne	Centricut Automation, LLC, Haverford Industries, LLC. Centricut, LLC, Centricut Manufacturing, LLC.
19994475	New York Life Insurance Company	PlanetRx.com, Inc	PlanetRx.com, Inc.
19994511	GKN plc	Borg-Warner Automotive, Inc	Borg-Warner Automotive Automatic Transmission Systems Corp.
19994572	Integrated Electrical Services, Inc	Britt Rice	Britt Rice Electric, Inc.
19994583	Wastequip, Inc	Galbreath Inc	Galbreath Inc.
19994621	Northern States Power Company	Northeast Utilities	Northeast Utilities.

Trans No.	Acquiring	Acquired	Entities
19994631	Dyno ASA	Kamilche Company	Simpson Timber Company.
19994643	Carousel Capital Partners, L.P	Fresh Foods, Inc	Claremont Restaurant Group, LLC. Fresh Foods Sales, LLC
19994648	Golder, Thoma, Cressey, Rauner Fund V, L.P.	APL Healthcare Group, Inc	APL Healthcare Group, Inc. APL Properties, LLC. Associated Pathologists, Chartered.
19994651	Reed International P.L.C	National Soft Drink Association	National Soft Drink Association.
19994652	Elsevier NV	National Soft Drink Association	National Soft Drink Association.
TRANSACTIONS GRANTED EARLY TERMINATION—10/04/1999			
19994330	Nortel Networks Corporation	Periphonics Corporation	Periphonics Corporation.
19994436	Telefonaktiebolaget L M Ericsson	Dr. Rajendra Singh	LLC Europe, AS. LLC International Inc
19994532	Behrman Capital II L.P	ICG Communications, Inc	ICG Fiber Optic Technologies, Inc.
19994591	Industrial & Financial Systems	Effective Management Systems, Inc	Effective Management Systems, Inc.
19994654	Terex Corporation	Allegheny Teledyne Incorporated	Teledyne Specialty Equipment; Teledyne B.V.
19994656	Flextronics International Ltd	Thomas C. Albright and Susie C. Albright	Circuit Board Assemblers, Inc. EMC International, Inc.
19994667	Madaus Aktiengesellschaft	MMS Holding Company	MMS Holding Company.
19994668	International Multifoods Corporation	Allen Kruh	Better Brands, Inc. Windsor Circle, LLC.
19994670	G.T.C. Transcontinental Group Ltd	Laurence N. Weiss	Forms Inc. Newton Business Forms Corp. Spectra Mail, Inc.
19994674	W. Marvin Rush	Edward Donahue, Sr	New Mexico Peterbilt, Inc. Southwest Peterbilt, Inc. Southwest Truck Center, Inc.
19994675	American Express Company	GetThere.com, Inc	GetThere.com, Inc.
19994676	Softbank Corp	Scott A. Blum Separate Property Trust U/D/T 8/2/95.	Buy.Com, Inc.
19994679	Citadel Communications Corporation	CAT Communications, Inc	Caribou Communications Co.
19994684	United Rentals, Inc	Burch Family Investments, L.P	Burch-Lowe, Inc.
19994689	JAKKS Pacific, Inc	Colorbok Paper Products, Inc	Colorbok Paper Products, Inc.
19994692	Quantum Industrial Holdings, Ltd	Greenwich Street Capital Partners, L.P	Day International Group, Inc.
19994693	Vodafone AirTouch Plc	Blackstone CCI Capital Partners L.P	CommNet Cellular, Inc.
19994698	Station Casinos Inc	Hilton Hotels Corp	Flamingo Hilton Riverboat Casino, L.P.
19994700	Freedom Securities Corporation	The Hill Thompson Group, Ltd	The Hill Thompson Group, Ltd.
19994701	Netopia, Inc	WBL Corporation Ltd	StarNet Technologies, Inc.
19994703	Florida Progress Corporation	EARTHCO	ECO Synfuel Group, LLC
19994705	Burlington Resources Inc	Poco Petroleums Ltd	Poco Petroleums Ltd.
19994706	Kenneth L. Schnitzer, Jr	Beck Imports Limited Partnership	Beck Imports Limited Partnership.
19994707	Douglas W. Schnitzer	Beck Imports Limited Partnership	Beck Imports Limited Partnership.
19994709	Bain Capital Fund VI, L.P	Buhrmann NV	Buhrmann NV.
19994711	Bain Capital VI Coinvestment Fund, L.P	Buhrmann NV	Buhrmann NV.
19994712	Bayer AG	Berwind Group Partners	Elastochem, Inc.
19994713	Apollo Investment Fund IV, LP	Buhrmann NV	Buhrmann NV.
19994726	Warburg, Pincus, Equity Partners, L.P.	Kidd Kamm Equity Partners, L.P	Wright Medical Technology, Inc.
19994732	RSTW Partners III, L.P	National Paper & Packaging, Co	National Paper & Packaging, Co.
19994735	Summit Ventures V, L.P	E-Commerce Exchange, Inc	E-Commerce Exchange, Inc.
19994741	The News Corporation Limited	Mr. Lawrence J. Ellison	Knowledge Enterprises, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/05/1999			
19994574	Leucadia National Corporation	MK Gold Company	MK Gold Company.
19994653	Amazon.com, Inc	Della & James, Inc	Della & James, Inc.
19994669	Brentwood Associates Private Equity III, L.P.	The Sports Club Company, Inc	Spectrum Club Holding Company.
19994691	TenFold Corporation	Barclays PLC	The LongView Group, Inc.
19994716	Seneca Foods Corporation	Pro-Fac Cooperative, Inc	Agrilink Foods, Inc.
19994717	Allen Holdings Inc	VoiceStream Wireless Corporation	VoiceStream Wireless Corporation.
19994719	Trident II, L.P	Marsh & McLennan Companies, Inc.	Sedgwick CMS Holdings, Inc.
19994724	Albert Bonnier AB	ING Groep N.V	De Ster Holding B.V.
19994725	EQT Scandinavia Limited	ING Groep N.V	De Ster Holding B.V.
19994736	Lennox International Inc	The Ducane Company, Inc	The Ducane Company, Inc.
19994738	J.W. Childs Equity Partners II, L.P	Morrell M. Avram, M.D	AFMSM, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/06/1999			
19994625	Tyco International Ltd	General Surgical Innovations, Inc	General Surgical Innovations, Inc.
19994682	Bestfoods	Case Swayne Holdings, Inc	Case Swayne Holdings, Inc.
19994745	Grupo Mexico, S. A. de C.V	Asarco Incorporated	Asarco Incorporated.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—10/07/1999			
19994133	EMC Corporation	Data General Corporation	Data General Corporation.
19994655	Tyco International Ltd	Vincent W. Foglia	Foglia Hills Building Partnership.
19994685	Severn Trent Plc	Arthur G. Burton	Del Mar Analytical Lab., Inc., North Creek Analytical, Inc., Great Lakes Analytical, Inc., Star Analytical Lab., Inc., Oceanic Analytical Lab., Inc. Sequoia Analytical Laboratory, Inc.
19994694	Cendant Corporation	Apollo Investment Fund III, L.P	NRT Incorporated.
19994697	Info-quest SA, a corporation under the laws of Greece.	AremisSoft Corporation, a Delaware corporation.	AremisSoft Corporation, a Delaware corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—10/08/1999			
19994598	Hudson United Bank	Credit Lyonnais Group	Lyon Credit Corporation.
19994686	Astec Industries, Inc	Phil Jenkins	American Augers, Inc.
19994695	Premiere Technologies, Inc	Healtheon Corporatioin	Healtheon Corporation.
19994729	American Industrial Partners Capital Fund II, L.P..	Big Sky Trust	Consoltex Group Inc.
19994739	Primedia, Inc	Games & Fish Publications, Inc	Games & Fish Publications, Inc.
19994742	The Pantry, Inc	Michael F. Mansfield	Kangaroo, Inc.
19994743	KKR 1996 Fund, L.P	Apollo Investment Fund III, L.P	Alliance Imaging Inc.
19994751	Textron Inc	Litchfield Financial Corporation	Litchfield Financial Corporation.
19994755	Ushio, Inc	John A. Pollock	Electrohome Limited.
19994759	U. Bertram Ellis, Jr	Healtheon Corporation	Healtheon Corporation.
19994763	SZ Investments, L.L.C	Transmedia Network, Inc	Transmedia Network, Inc.
19994767	Cortec Group Fund II, L.P	Conxall Corporation	Conxall Corporation.
19994788	Madison Dearborn Capital Partners III, L.P.	Stericycle, Inc	Stericycle, Inc.
19994789	Bain Capital Fund VI, L.P	Stericycle, Inc	Stericycle, Inc.
19994801	Foxworth-Galbraith Lumber Company	Tom W. and Elizabeth J. Watt	Apex Building Components, Inc. Brookhart's Inc.
19994809	H&R Block, Inc	B. Ross Angel	A.J. & R. Co. Ten Forty, Inc.
20000026	Odyssey Investment Partners Fund, LP	Koch Industries, Inc	PF.Net Holdings, Limited.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or, Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–27786 Filed 10–22–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 982–3040]

New England Tractor Trailer Training School of Massachusetts, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 27, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings or Elaine Kolish, FTC/S–4631, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, (202) 326–3010 or 326–3042.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 1, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondents New England Tractor Trailer Training School of Massachusetts, Inc., New England Tractor Trailer Training School of Connecticut, Inc., and Mark Greenberg, individually and as president of the corporate respondents.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the advertising, promotion, and sale of vocational training programs, including driver training for tractor trailer and heavy straight trucks. The Commission's complaint charges that respondents violated the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, by making numerous representations that were false and for which they lacked a reasonable basis of substantiation. These representations concerned: employment and/or placement rates for graduates of respondents' program; the availability of local truck driving jobs; the rate of passing the CDL test by graduates of respondents' program; the number of graduates of the program who pass the CDL test the first time they take it; the adequacy of training to prepare students for the Commercial Drivers License (CDL) test; the extent to which future employers will reimburse the cost of tuition; and the admissions criteria for respondents' program.

Part I of the proposed consent order prohibits future misrepresentations concerning the above, as well as other results or benefits of respondents' training programs or career services.

Part II of the proposed order requires a disclosure of respondents' placement rates. This disclosure is triggered by any representations about the rate of employment or placement of graduates of respondents' program. In addition, this disclosure is required to be given to prospective students, in writing, prior to the time that students are presented with the enrollment agreement and other enrollment forms. Appendices A and B to the proposed order set forth the prescribed manner of calculation of placement rates and the form in which the information will be given to prospective students.

Part III of the proposed order requires disclosure of the licensing test pass rates for graduates of respondents' program. This disclosure is triggered by any representations about the rate of passing any test, including but not limited to the CDL test, by graduates of respondents' program. In addition, this disclosure is required to be given to prospective students, in writing, prior to the time that students are presented with the enrollment agreement and other enrollment forms. Appendices C and D to the proposed order set forth the prescribed manner of calculation of test pass rates and the form in which the information will be given to prospective students.

Part IV of the proposed order is a record keeping provision that requires the respondents to maintain certain records for five (5) years after the last date of dissemination of any representation covered by the consent order. These records include: (1) All advertisements and promotional materials, sales or admissions interview scripts or training manuals, catalogs, and other marketing materials; (2) all materials relied upon in making any representation covered by the order; and (3) all evidence in respondents' possession or control that contradicts, qualifies, or calls into question the representation or the basis relied upon for it.

Part V of the proposed order requires distribution of the order, for five (5) years from the date of issuance, to officers and directors of the corporations; managers who have responsibilities with respect to the subject matter of the order; and personnel involved in sales, admissions, recruitment, or responding to consumer complaints and inquiries.

Part VI of the proposed order requires that the Commission notified of any changes in the corporations that might affect compliance obligations under the order.

Part VII of the proposed order requires that, for a period of five (5) years, the individual respondent notify the Commission of any new business affiliation or employment that involves the advertising, promotion, or sale of vocational training programs.

Part VIII of the proposed order requires that for a period of five (5) years, respondents undertake a monitoring program to ensure that all employees or independent contractors engaged in admissions, recruiting, sales, or other customer service, comply with Parts I, II, and III of the order.

Part IX of the proposed order requires the respondents to file compliance reports with the Commission.

Part X of the proposed order states that the Commission, without prior notice, may use investigators to pose as prospective consumers of respondents.

Finally, Part XI of the proposed order states that, absent certain circumstance, the order will terminate twenty (20) years from the date it is issued.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–27784 Filed 10–22–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

NAME: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

TIME AND DATE: 9 a.m.–4:30 p.m., November 17, 1999.

PLACE: Cavanaughs at Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, Washington 99336, telephone: 509/783–0611.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

BACKGROUND: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

PURPOSE: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, including a presentation and discussion on the DOE Richland Indian Office, update on tribal cooperative agreements, and agency updates.

MATTERS TO BE DISCUSSED: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include updating tribal members of the cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES.

Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: Leslie C. Campbell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE; M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR (28737), fax 404/639–6075.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 19, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–27722 Filed 10–22–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8:30 a.m.–5 p.m., November 18, 1999; 8 a.m.–4 p.m., November 19, 1999.

Place: Cavanaughs at Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, Washington 99336. Telephone: 509/783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters To Be Discussed: Agenda items include a presentation and discussion on the health effects subcommittee evaluations, Health of Hanford November 3 & 4 meeting update, issues related to combining doses from multiple environmental exposures, and a presentation and discussion on current activities with Consortium for Risk Evaluation and Stakeholder participation (CRESP).

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Leslie C. Campbell, Executive Secretary, HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR(28737), fax 404/639–6075.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 19, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–27723 Filed 10–22–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4329]

Agency Information Collection Activities; Proposed Collection; Comment Request; Filing Objections and Requests for a Hearing on a Regulation or Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for filing objections and requests for a hearing on a regulation or order.

DATES: Submit written comments on the collection of information by December 27, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506 (c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Filing Objections and Requests for a Hearing on a Regulation or Order—21 CFR Part 12 (OMB Control Number 0910–0184—Extension)

Under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(2)), within 30 days after publication of a regulation or order, any person adversely affected by such regulations or order may file objections and request a public hearing. The implementing regulations for these statutory requirements are found at 21 CFR 12.22, which sets forth the format and instructions for filing objections and requests for a hearing. Each objection for which a hearing has been requested must be separately numbered and specify with particularity the provision of the regulation or the proposed order objected to. In addition, each objection must include a detailed description and analysis of the factual information to be presented in support of the objection as well as any report or other document relied on, with some exceptions. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis only for the purpose of determining whether a hearing request is justified. The description and analysis do not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.22	60	1	60	20	1,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on agency data received on this administrative procedure for the past 3 years. Agency personnel responsible for processing the filing of objections and requests for a public hearing on a specific regulation or order, estimate approximately 60 requests are received by the agency annually, with each requiring approximately 20 hours of preparation time.

Dated: October 18, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–27698 Filed 10–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2097]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 24, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Humanitarian Use Devices—21 CFR Part 814—Subpart H (OMB Control Number 0910–0332)—Extension

This collection implements the humanitarian use device (HUD) provision under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and part 814 (21 CFR part 814) subpart H. Under section 520(m) of the act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnosis a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnosis the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collection herein will allow FDA to determine whether to: (1) Grant HUD designation of a medical device, (2) exempt an HUD from the effectiveness requirements in sections 514 and 515 of the act provided that the device meets requirements set forth in section 520(m) of the act, and (3) grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making these determinations. Also, this information enables FDA to determine whether the holder of a humanitarian device exemption (HDE) is in compliance with the HDE requirements.

Description of Respondents: Businesses or others for-profit.

In the **Federal Register** of July 19, 1999 (64 FR 38673), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.102	20	1	20	40	800
814.104(b) and (c)	15	1	15	320	4,800
814.106	15	4	60	50	3,000
814.108	12	1	12	80	960
814.116(d)(3)	1	1	1	1	1
814.124(a)	5	1	5	1	5
814.126(b)	1	1	1	2	2
814.126(b)(1)	15	1	15	120	1,800
Total					11,368

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.126(b)(2)	15	1	15	2	30
Total					30

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

I. Explanation of Reporting Burden Estimate

Generally, the information requested from respondents represents an accounting of information already in the possession of the applicant.

In the **Federal Register** of June 26, 1996 (61 FR 33232), the agency issued a final rule for HUD's. FDA based its estimates on comments received on the proposed rule, industry contact, and internal FDA benchmark factors (such as the number of premarket approval applications processed). The numbers generated in the current estimate as shown in Tables 1 and 2 of this document and described in the following paragraphs, are based upon those prior estimates, and they have only been modified if actual numbers over the past 3 years have indicated a significantly different trend.

The first HUD rule became effective in fiscal year (FY) 1997, and FDA has only a few years of actual data to compare to original estimated numbers. Although actual numbers are less than the estimated numbers for this information collection, FDA believes that as manufacturers become more familiar with the program, FDA will experience a larger number of submissions under the provisions discussed as follows:

Section 814.102 estimate assumes that 20 sponsors per year will submit a request for HUD designation. It is estimated to require 40 staff hours to complete each HUD designation request.

Section 814.104 estimate assumes that 15 sponsors per year will submit an HDE application after receiving HUD designation. FDA estimates that it will require an average of 320 staff hours to complete each HDE application.

Section 814.110(a) requires that a new indication for use of an HUD approved under this part be submitted as a new HDE application complying with § 814.104. All burden under this section is included under the estimate for § 814.104.

Section 814.106 estimate assumes that 4 times per year FDA will request or the sponsor will submit additional information or resubmit an HDE or HDE supplement for approximately 15 of the submitted HDE applications. FDA estimates that it will require the respondents to take an average of 50 staff hours to complete each amendment or resubmitted application. If FDA refuses to file the HDE application, requests for an informal conference (under § 814.112(b)) will be processed as an HDE amendment. Responses to approvable and not approvable letters (§ 814.116(b), (c), and (d)) will be processed as HDE amendments. A request for an opportunity for an informal hearing, prior to FDA issuing an order withdrawing approval, under § 814.118(d), will be processed as an HDE amendment. Because FDA only tracks amendments, and not the reasons for the amendment, the burden estimates for the sections listed in Tables 1 and 2 of this document are included in the burden estimate for § 814.106.

Section 814.108 estimate assumes that it will receive approximately 12 supplements for the submitted HDE applications. It is estimated that it will take approximately 80 staff hours to complete each supplemental application.

Section 814.116(d)(3) estimate assumes that it will receive approximately one request to withdraw an HDE application per year, based on withdrawals submitted in FY 1997 and FY 1998. FDA estimates it will take no longer than 1 staff hour to complete each written withdrawal notice.

Section 814.124(a) estimate assumes that five physicians will use HUD's in emergency situations before obtaining institute and review board (IRB) approval. FDA estimates that notification under this section will take an average of 1 hour per response.

Section 814.124(b) estimate assumes that one holder of an approved HDE will notify FDA of IRB withdrawal of approval. FDA estimates that it will take an average of 2 staff hours to notify FDA of IRB withdrawal.

Section 814.126(b)(1), following the implementation of the FDA Modernization Act, was amended to incorporate section 520(m)(5) of the act, which provides FDA the authority to require an HDE applicant to demonstrate continued compliance with the HDE requirements, if the agency believes that such a demonstration is necessary to protect the public health or has reason to believe that the criteria for the HDE exemption are no longer met. FDA amended this section to delete the requirement of an annual report and to include instead a periodic reporting requirement that will be established by the approval order for the HDE. This provision permits the agency to obtain sufficient information for it to determine whether there is reason to question the continued exemption of the device from the act's effectiveness requirements.

FDA anticipates that because of this amendment, the 15 HDE holders will remain active and therefore, estimates that 15 periodic reports will be received. FDA also estimates that it will take an average of 120 staff hours to complete a periodic report as a result of this amendment.

II. Explanation of Recordkeeping Burden Estimate

Section 814.126(b)(2) estimate assumes that 15 HDE holders per year will maintain records of certain required information. It is estimated that it will take an average of 2 staff hours to maintain this information.

Dated: October 18, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–27756 Filed 10–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4282]

Biotechnology in the Year 2000 and Beyond; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing three public meetings on issues within FDA's jurisdiction related to foods (both human and animal) derived from plants developed using bioengineering techniques. The purpose of these public meetings is for the agency to share its current approach and experience over the past 5 years regarding safety evaluation and labeling of food products derived from bioengineered plant varieties, to solicit views on whether FDA's policies or procedures should be modified, and to gather information to be used to assess the most appropriate means of providing information to the public about bioengineered products in the food supply. These meetings will afford consumers, industry, and academia an opportunity to provide focused comment on these issues in a manner that will assist FDA in evaluating and refining its existing policies and procedures.

DATES: The meetings are scheduled as follows:

1. Thursday, November 18, 1999, 9 a.m. to 6 p.m., Chicago, IL.
2. Tuesday, November 30, 1999, 10 a.m. to 7 p.m., Washington, DC.
3. Monday, December 13, 1999, 9 a.m. to 6 p.m., Oakland, CA.

Submit written comments by January 13, 2000.

ADDRESSES: The meetings will be held at the following locations:

1. Chicago—One Prudential Plaza, Plaza Club, 40th floor, 130 East Randolph St., Chicago, IL 60601.
2. Washington, DC— Grand Hyatt Washington, 1000 H St. NW., Washington, DC 20001.
3. Oakland—Elihu Harris State Office Building, 1515 Clay St., Oakland, CA 94612.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or via e-mail to www.fda.gov/ohrms/dockets. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For general information:

Nega Beru, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090, FAX 202–418–3131, e-mail nberu@bangate.fda.gov.

For information about and registration for the public meeting in Chicago, IL:

Darlene Bailey, Chicago District (HFR–CE 645), Food and Drug Administration, 300 S. Riverside

Plaza, Suite 550–South, Chicago, IL 60606, 312–353–7126, FAX 312–886–3280, e-mail dbailey@ora.fda.gov.

For information about and registration for the public meeting in Washington, DC:

Patricia Alexander, Office of Consumer Affairs (HFE–40), Food and Drug Administration, Rockville, MD 20857, 301–827–5006, FAX 301–827–3052, e-mail palexand@oc.fda.gov.

For information about and registration for the public meeting in Oakland, CA:

Janet McDonald, San Francisco District (HFR–PA100), Food and Drug Administration, 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070, 510–337–6845, FAX 510–337–6708, e-mail jmcdonal@ora.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA published a notice in the **Federal Register** of May 29, 1992 (57 FR 22984), entitled "Statement of Policy: Foods Derived from New Plant Varieties" (the 1992 policy) that clarified the agency's interpretation of the Federal Food, Drug, and Cosmetic Act (the act) with respect to foods derived from new plant varieties, including foods derived from plants developed through recombinant DNA techniques. The 1992 policy was issued in response to inquiries from developers and the public regarding food safety and labeling issues related to foods derived from bioengineered plants. The 1992 policy discussed how such foods would be regulated within the existing legal framework of the act and provided comprehensive guidance to developers for the safety and nutritional assessment of such foods. The agency's guidance, based on the agency's understanding of bioengineering advances in food and agriculture research then current, was intended to assist developers in meeting their legal duty under the act to ensure that relevant scientific, safety, and regulatory issues are resolved prior to commercial distribution of such foods. A basic principle of the 1992 policy is that the critical consideration in evaluating the safety of such foods should be the objective characteristics of the food product or its components rather than the fact that new development methods were used. Consistent with the 1992 policy, FDA believes that it is in the best interests of the public, the regulated industry, and the agency for developers to inform FDA about foods derived from new plant varieties developed through bioengineering prior to commercial distribution. Thus, FDA established procedures through which developers can consult with the agency, and through which these consultations can be brought to closure. FDA prepared guidance on the consultation procedures and made it available on its home page on the World Wide Web (http://www.fda.gov/cfsan under "Biotechnology").

FDA considers a consultation to be completed when all safety and regulatory issues have been resolved. Since 1994, when FDA completed its evaluation of the first food product developed using bioengineering (the Flavr Savr™ tomato), private firms have completed consultations with FDA on food safety, nutritional, and labeling issues for foods derived from over 40 different bioengineered plants.

The 1992 policy also addressed the labeling of foods derived from new plant varieties, including plants developed by genetic engineering. Under this policy and applicable law, FDA requires special labeling if the composition of a food developed through genetic engineering or any other method differs significantly from its conventional counterpart. For example, if a new food contains a protein derived from a food that commonly causes allergic reactions (and the developer cannot demonstrate that the protein is not an allergen), labeling would be necessary to alert sensitive consumers because they would not expect to be allergic to that food. Likewise, a new food that has a decrease in nutrients from the food's traditional counterpart would be required to contain that additional information on its label. In addition, the agency requires that the name of a new food be revised when that food is derived from a bioengineered plant that differs from its traditional counterpart such that the customary common or usual name no longer applies to the new food. FDA is not aware of information that would distinguish genetically engineered foods as a class from foods developed through other methods of plant breeding and, thus, the agency does not require that such foods be specially labeled to disclose the method of development. FDA believes that it would be useful to the public, the regulated industry, and the agency to conduct a series of public meetings to share the agency's current approach and experience over the past 5 years regarding its oversight of food products developed through bioengineering, to solicit views on whether FDA's process should be modified, and to gather information to be used to assess the most appropriate means of providing information to the public about bioengineered products in the food supply.

As part of the meetings, FDA will describe its current approach to regulating foods from bioengineered plants as well as the agency's experience over the past 5 years regarding safety testing and labeling of these products. FDA also intends to invite representatives from consumer groups, industry, and academia to make presentations on scientific and safety issues and to invite representatives of these same groups to make presentations on public information and labeling. Finally, there will be opportunities for oral presentations by preregistered members of the public.

II. Scope of Discussion

The scope of these three public meetings will be limited to the issues discussed in this document. A brief discussion on each of the issues with specific questions on which FDA seeks comment follows.

A. Scientific/Safety Issues

1. Has FDA's consultation process achieved its intended purpose? Based on experience to date, should this regulatory approach "sunset," continue in its current state, be made mandatory, or otherwise be revised?

2. What newly emerging scientific information related to the safety of foods derived from bioengineered plants is there, if any? Are there specific tests which, if conducted on such foods, would provide increased assurance of safety for man or animals consuming these foods?

3. What types of food products derived from bioengineered plants are planned for the future? Will these foods raise food safety issues that would require different approaches to safety testing and agency oversight? If so, what are those approaches?

B. Public Information Issues

1. Should FDA's policy requiring labeling for significant changes, including changes in nutrients or the introduction of allergens, be maintained or modified? Should FDA maintain or revise its policy that the name of the new food be changed when the common or usual name for the traditional counterpart no longer applies? Have these policies regarding the labeling of these foods served the public?

2. Should additional information be made available to the public about foods derived from bioengineered plants? If so, what information? Who should be responsible for communicating such information?

3. How should additional information be made available to the public: e.g., on the Internet, through food information phone lines, on food labels, or by other means?

III. Registration and Requests to Make Oral Presentations

If you would like to attend the meetings, you must register with the appropriate contact person (addresses above) 15 days prior to the meeting you wish to attend by providing your name, title, business affiliation, address, telephone, and fax number. To expedite processing, this registration information also may be faxed to the appropriate contact person (fax number above). If you need special accommodations due to disability, please inform the contact person when you register. If, in addition to attending, you wish to make an oral presentation during the meeting, you must so inform the contact person when you register and submit: (1) A brief written statement of the general nature of the views you wish to present; (2) the names and addresses of all persons who will participate in the presentation; and (3) an indication of the approximate time that you request to make your presentation. Depending upon the number of people who register to make presentations, FDA may have to limit the time allotted for each presentation.

IV. Comments

Interested persons may, on or before January 13, 2000, submit written comments to the Dockets Management Branch (address above). You may also send comments to the Dockets Management Branch via e-mail to www.fda.gov/ohrms/dockets. You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

A transcript of each meeting will be made. You may request a copy of any transcript in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. You may also examine the transcripts of the meetings at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA web site, http://www.fda.gov.

Dated: October 18, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–27694 Filed 10–20–99; 8:49 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Opthalmic Drugs Subcommittee of the Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Opthalmic Drugs Subcommittee of the Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 17, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Tracy Riley or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting. Current information may also be accessed on the Internet at FDA's website at www.fda.gov.

Agenda: The subcommittee will discuss new drug application 21–119 Visudyne™ (verteporfin for injection, QLT Therapeutics, Inc.), for treatment of age-related macular degeneration in patients with predominantly classic subfoveal choroidal neovascularization.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 12, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before November 12, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 14, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–27757 Filed 10–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on November 16, 1999, 9 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or John M. Treacy (HFD–21), 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12538. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application 21–107, Lotronex™ (alosteron HCl), Glaxo-Wellcome Pharmaceuticals, to be indicated for treatment of irritable bowel in female patients with diarrhea predominance.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 9, 1999. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 9, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 12, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–27758 Filed 10–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0222]

Notice of Appeal of Order Granting Summary Judgment and Permanent Injunction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is issuing this notice to inform interested parties that the United States is appealing the Order of the United States District Court for the District of Columbia, in *Washington Legal Foundation* v. *Henney*, Civ. No. 94–1306 (D.D.C. July 28, 1999). This order, entitled "Final Amended Order Granting Summary Judgment and Permanent Injunction," was previously published in the **Federal Register** at the court's direction (August 12, 1999, 64 FR 44025).

FOR FURTHER INFORMATION CONTACT: Bradford W. Stone, Office of Public Affairs (HFI–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6250.

Dated: October 13, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–27697 Filed 10–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1105–N]

Medicare Program; November 9, 1999, Meeting of the Competitive Pricing Demonstration Area Advisory Committee, Maricopa County, AZ

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Demonstration Area Advisory Committee (AAC), Maricopa County, AZ on November 9, 1999.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to appoint an AAC in each designated demonstration area to advise on implementation of the project, including the marketing and pricing of the plan and other factors. The AAC meetings are open to the public.

DATES: The meeting is scheduled for November 9, 1999, from 9:30 a.m. until 5 p.m., m.s.t.

ADDRESSES: The meeting will be held at the YWCA of the USA, Leadership Development Conference Center, 9440 North 25th Avenue, Phoenix, AZ 85021, (602) 944–0569.

FOR FURTHER INFORMATION CONTACT: Joseph Tilghman, Acting Regional Administrator, Health Care Financing Administration, 75 Hawthorne Street, 4th Floor, San Francisco, CA 94105, (415) 744–3501.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology.

Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research designs for implementing the project. Once an area is designated as a demonstration site, section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) to advise on the marketing and pricing of the plan in the area and other factors. Thus far, the Kansas City, MO Metropolitan Area and Maricopa County, AZ have been designated as demonstration sites.

The Maricopa County AAC has previously met on March 31, 1999, April 20, 1999, May 18 and 19, 1999, June 7 and 8, 1999, and June 30 and July 1, 1999, and September 23, 1999. The Maricopa County AAC is composed of representatives of health plans, providers, employers, and Medicare beneficiaries in the area. The members are: Joseph Anderson, Schaller Anderson Inc.; Rick Badger, Pacificare of Arizona; Reginald Ballantyne III, PMH Health Resources, Inc.; Donna Buelow, Arizona State Retirement System; Charles Cohen, Arizona Department of Insurance; John Hensing, M.D., Samaritan Health Systems; Mary Lynn Kasunic, Area Agency on Aging; Anne Lindeman, Governor's Advisory Council on Aging; Ben Lopez, Honeywell Corp.; Thomas Marreel, William M. Mercer Associates; Anthony Mitten, Maricopa County Medical Society; Edward Munno, Jr., Intergroup of Arizona; Erik Olsen, D.D.S., American Association of Retired Persons; Leland Peterson, Sun Health Corp.; Donna Redford, Arizona Bridge to Independent Living; Herb Rigberg, M.D., Health Services Advisory Group; Martha Taylor, Arizona SHIP; Clyde Wright, M.D., Cigna of Arizona; Arthur Pelberg, M.D., Schaller Anderson Inc.; Joseph Hanss, M.D., Physician; and Phyllis Biedess, Director, AHCCCS. Susan Navran of Blue Cross Blue Shield of Arizona has resigned from the Committee. In accordance with section 4012(b) of the BBA, the AAC will exist for the duration of the project in the area.

This notice announces the November 9, 1999, meeting of the Maricopa County AAC. This meeting will be held from 9:30 a.m. to 5 p.m., m.s.t. at the YWCA of the USA, Leadership Development Conference Center in Phoenix, AZ.

The agenda for the November 9, 1999, meeting will include the following:

- A discussion of the draft bid package for the competitive pricing demonstration.
- A discussion of a proposed plan for beneficiary education and outreach.
- Reports from the AAC subcommittees.
- A discussion of any outstanding issues.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the Acting San Francisco Regional Administrator, by 12 noon, November 2, 1999. Anyone who is not scheduled to speak may submit written comments to the Acting San Francisco Regional Administrator, by COB, November 4, 1999.

These meetings are open to the public, but attendance is limited to space available.

Authority: Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, Section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 20, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–27821 Filed 10–22–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information from discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: November 2, 1999

Time: 9:00 a.m. to 4:30 p.m.

Agenda: To review agency perspectives on the National Cancer Panel and develop questions and agendas for future meetings in 1999 and 2000.

Place: NOVA Research Company, 4600 East-West Highway, Suite 700, Bethesda, MD 20814.

Contact Person: Maureen O. Wilson, Ph.D., Executive Secretary, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892, (301) 496–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 18, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27806 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Special Emphasis Panel, Comparative Medicine Review Committee.

Date: October 26, 1999.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Camille M. King, Phd., Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0815.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS).

Dated: October 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27808 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung and Blood Institute Special Emphasis Panel, Family Blood Pressure Program.

Date: November 3–4, 1999.

Time: November 3, 1999, 7 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Time: November 4, 1999, 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Valerie L. Prenger, PhD, Health Science Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated October 18, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27807 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Midcareer Investigator Award in Patient-Oriented Research.

Date: October 25, 1999.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Rockledge Bldg. II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Diane M. Reid, M.D., Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 18, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27815 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: November 18–19, 1999.

Time: November 18, 1999, 8 p.m. to Recess.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Time: November 19, 1999, 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27809 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: December 20, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B32, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27810 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: November 3, 1999.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 18, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27816 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel T32 Conference Call.

Date: October 27, 1999.

Time: 10 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Ave., Suite 502C, MD 20891 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Phd, Scientific Review Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, T32 Training Grants.

Date: October 29, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Ramesh Vemuri, Phd, Scientific Review Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel to Review Contract Proposal RFP NIH AG 99 11.

Date: November 5, 1999.

Time: 1 pm to 6 pm.

Agenda: To review and evaluate contract proposals.

Place: Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, ADRC Review Meeting.

Date: November 15–17, 1999.

Time: 6:30 p.m. to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 1515 Pooks Hill Road, Bethesda, MD 20814, (Virtual Meeting).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Oxidative and Excitatory Toxicity in Neurodegeneration.

Date: November 22–23, 1999.

Time: 6 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Guest Suites, 400 Soldiers Field Road, Boston, MA 02134.

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Brain and Behavior.

Date: November 23, 1999.

Time: 10 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27811 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Acquired Immunodeficiency Syndrome Research Review Committee.

Date: November 5, 1999.

Time: 8 a.m. to 4:30 p.m.

Agenda: Grant applications.

Place: Crowne Plaza Hotel, Meetings Rooms 2 and 3, 14th and K Street, NW., Washington, DC 20005.

Contact Person: :Paula S. Strickland, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–27813 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–01, Review of RFA for R21 grants.

Date: December 5–6, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–05, Review of R01 grant.

Date: December 10, 1999.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–15, Review of P01.

Date: December 13–14, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD., Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27814 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel SITE VISIT Ledley-"Protein Info. Resource for the Next Millennium."

Date: November 2–3, 1999.

Time: November 2, 1999, 7:30 p.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.

Time: November 3, 1999, 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate the site.

Place: Georgetown University, Martin-Marietta, Conference Room, 3900 Reservoir Road, NW., Washington, DC 20007.

Time: November 3, 1999, 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.

Contact Person: Sharee Pepper, PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (301) 594–4933.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 19, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27805 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 25, 1999.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1, 1999.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1–2, 1999.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Jay Cinque, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1–2, 1999.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–1175, baker@drg.nih.gov.

Name of Committee: Oncological Sciences Initial Review Group, Metabolic Pathology Study Section.

Date: November 1–3, 1999.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1–2, 1999.

Time: 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Nabeeh Mourad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1, 1999.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Mohindar Poonian, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1168, poonianm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1–2, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Thomas A. Tatham, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2–3, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hampshire Hotel, 1310 New Hampshire Ave, NW., Washington, DC 20036.

Contact Person: Jay Joshi, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Mohindar Poonian, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1168, poonianm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immune Disease Trials.

Date: November 2, 1999.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Calbert Laing, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2, 1999.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Garrett V. Keefer, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3–4, 1999.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela M. Pattatucci, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Nursing Research Study Section.

Date: November 3–5, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3–4, 1999.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville, Pike, Rockville, MD 20852.

Contact Person: Richard Marcus, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3, 1999.

Time: 3:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Lamontagne, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BBCB2.

Date: November 3, 1999.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Donald Schneider, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, (301) 435–1727.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SSS–6–01.

Date: November 4–5, 1999.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Grand Westin Hotel, 2350 M Street, NW., Washington, DC 20037–1417.

Contact Person: Marjam G. Behar, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

Name of Committee: Cardiovascular Sciences Initial Review Group. Pharmacology Study Section.

Date: November 4–5, 1999.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Jeanne N. Ketley, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 4–5, 1999.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sami A. Mayyasi, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Cell Development and Function Initial Review Group. Cell Development and Function 6.

Date: November 4–5, 1999.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: Anthony D. Carter, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 4–5, 1999.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Gloria B. Levin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

Name of Committee: Genetic Sciences Initial Review Group, Genome Study Section.

Date: November 4–5, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Fair Lakes, 12777 Fair Lakes Circle, Fairfax, VA 22033.

Contact Person: Cheryl M. Corsaro, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435–1045, corsaroc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 4–5, 1999.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Julian L. Azorlosa, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 4, 1999.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 4–5, 1999.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: J. Terrell Hoffeld, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27812 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 26, 1999, 1:30 p.m. to October 26, 1999, 3 p.m., NIH Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on October 15, 1999, 64 FR 55954.

The meeting will be held on October 27, 1999, starting at 1 p.m. The end time and location remain the same.

The meeting is closed to the public.

Dated: October 19, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–27817 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–XU; GP0–0015]

Notice of Meeting of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Meeting of the Eastern Washington Resource Advisory Council; November 18, 1999, in Spokane, Washington.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on November 18, 1999. The meeting will convene at 9:00 a.m., at the Spokane District Office of the Bureau of Land Management, 1103 N. Fancher Road, Spokane, Washington, 99212–1275. The meeting will adjourn upon conclusion of business, but no later than 4:00 p.m. Public comments will be heard from 10:00 a.m. until 10:30 a.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. Topics to be discussed include: current status of the Interior Columbia Basin Ecosystem Management Project, Rangeland Standards and Guidelines implementation, Fiscal Year 1999 Accomplishments, Fiscal Year 2000 Issues, and schedule of meetings for 2000.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212; or call 509–536–1200.

Dated: October 19, 1999.

Joseph K. Buesing,

District Manager.

[FR Doc. 99–27724 Filed 10–22–99; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–XQ]

Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council (RAC) will be held as indicated below. The agenda for the first meeting of the fiscal year will be largely a training session for new members and will also include a brainstorming session for the entire RAC on issues they would like to discuss during the upcoming year. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meetings is listed below. Depending on the number of persons wishing to comment, and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or Page 1 of 2 other reasonable accommodations should contact David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, Idaho 83401, or telephone (208) 524–7559.

DATE AND TIME: The next meeting will be held December 2, 1999 at the BLM's Pocatello Field Office, 1111 North 8th Avenue in Pocatello, Idaho. The meeting will start at 8:30 a.m., with public comments scheduled from 8:40–9:10 a.m.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the of the public lands.

FOR FURTHER INFORMATION CONTACT: David Howell, Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, (208) 524–7559.

Dated: October 13, 1999.

James E. May,

District Manager.

[FR Doc. 99–27770 Filed 10–22–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–00–0777–XQ–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Southwest Resource Advisory Council meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) meeting scheduled for November 18, 1999 in Durango, Colorado, has been rescheduled. The new meeting date and location is Wednesday, November 17, 1999 in Montrose, Colorado.

DATES: The meeting will be held on Wednesday, November 17, 1999.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail Roger__Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The Southwest RAC meeting scheduled for Thursday, November 18, 1999 in Durango Colorado has been rescheduled to Wednesday, November 17, 1999 at the BLM Southwest Center conference room at 2465 South Townsend, Montrose, Colorado. The meeting will begin at 9:00 a.m. and end at 4:30 p.m. The agenda will focus on the draft recreation guidelines developed by BLM Colorado's three RAC's, but may include other issues/topics to be determined. Public comment is scheduled for 1:00 p.m.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: October 19, 1999.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 99–27787 Filed 10–22–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Science Committee (SC) of the Minerals Management Advisory Board; Announcement of Plenary Session

AGENCY: Minerals Management Service, Interior.

SUMMARY: The Minerals Management Advisory Board OCS SC will meet at the Sheraton Inner Harber Hotel in Baltimore, Maryland, on November 16–18, 1999.

The OCS SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific merit of the MMS OCS Environmental Studies Program as it relates to information needed for informed OCS decisonmaking.

The Committee will meet in plenary session on Tuesday, November 16, from 8:30 a.m. to 4:30 p.m., and reconvene on Wednesday, November 17, from 8:30 a.m. to 5:30 p.m. The session will end at noon on November 18. Discussion will focus on the following:

- Deepwater Research
- Environmental Monitoring for the Arctic OCS
- MMS's Coastal Marine Institutes

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come first-served basis at the plenary session.

A copy of the agenda may be requested from the MMS by calling Julie Reynolds at (703) 787–1211. Other inquiries concerning the OCS SC meeting should be addressed to Mr. Robert LaBelle, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170–4817. He may be reached by telephone at (703) 787–1756, and by electronic mail at Robert.LaBelle@mms.gov.

DATES: November 16–18, 1999.

ADDRESSES: Sheraton Inner Harbor Hotel, 300 South Charles Street, Baltimore, Maryland 21201, telephone (410) 962–8300.

FOR FURTHER INFORMATION CONTACT: Julie Reynolds or Robert LaBelle at the address or phone numbers listed above.

Authority: Federal Advisory Committee Act, P.L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A-63, Revised.

Dated: October 15, 1999.

Donald W. Hill,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–27473 Filed 10–22–99; 8:45 am]

BILLING CODE 4043–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement; Notice of intent; Big Cypress National, Florida

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement for the general management plan addendum for the Big Cypress National Preserve Addition, Florida.

SUMMARY: Big Cypress National Preserve, located in south central Florida, was established in 1974. The preserve's boundary was expanded in 1988 by PL 100–301 (Big Cypress National Preserve Addition Act) to include 147,280 acres of land northeast of the original preserve and a strip of land along the western boundary. Known as the Addition, these lands increased the area of the original preserve by approximately 30 per cent. The current General Management Plan (GMP) for the preserve, which was already under preparation when PL 100–301 was approved, does not address the management of the addition lands. Consequently, an Addendum to the GMP will be prepared for the Addition.

Under the provisions of the National Environmental Policy Act, the National Park Service (NPS) will prepare an Environmental Impact Statement (EIS) to assess the impacts of alternative management concepts for a General Management Plan Addendum for the Addition to Big Cypress National Preserve.

The purpose of a General Management Plan Addendum is to set forth a clearly defined direction for resource preservation and visitor use for the addition lands. The General Management Plan Addendum/Environmental Impact Statement will evaluate the environmental impacts of a range of alternatives to address distinct management issues for the Addition, such as resource protection, visitor use, and development.

Participation throughout the planning process will be encouraged and facilitated by various means, such as public meetings and newsletters. The NPS will conduct public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters. This notice will also serve as an additional scoping method. Persons who may be interested in or affected by the GMP/EIS are invited to participate in the scoping process by responding to this notice with written or e-mail comments.

DATES: Written comments concerning the GMP Addendum/EIS should be received no later than December 27, 1999.

ADDRESSES: Written comments concerning the GMP/EIS or requests to be added to the project mailing list should be sent to: Mr. Wally Hibbard, Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, FL 34141.

FOR FURTHER INFORMATION CONTACT: Ellen Hand, GMP Planning Coordinator, at the above address or at telephone number (941) 695–2000 ext. 318, or *Bicygmp@nps.gov*.

SUPPLEMENTARY INFORMATION: Commenters should be aware that National Park Service practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual commenters may request that we withhold their home address from the planning record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the planning record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: October 15, 1999.

W. Thomas Brown,

Regional Director, Southeast Region.

[FR Doc. 99–27702 Filed 10–22–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Notice of Intent: Selma to Montgomery National Historic Trail, Alabama

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement for a comprehensive management plan for the Selma to Montgomery National Historic Trail in Alabama.

SUMMARY: In 1990, Congress directed the National Park Service (NPS) to study the route and events associated with the 1965 Voting Rights March from Selma to Montgomery, Alabama, for potential designation as a National Historic Trail. Completed in 1993, the feasibility study recommended that the march route be designated as the Selma to Montgomery National Historic Trail, and be administered by NPS. ON November 12, 1996, Congress amended Section 5(a) of the National Trail System Act (16 U.S.C. 1244 (a) to establish the Selma to Montgomery NHT, and to designate 54 miles of city streets and U.S. Highway 80 from Brown Chapel A.M.E. Church in Selma to the State Capital building in Montgomery as the official trail corridor.

In August 1995, at the request of Alabama Department of Transportation (ALDOT), Governor Fob James designated the U.S. Highway 80 corridor between Selma and Montgomery as a state scenic highway. The Federal Highway Administration approved the route as part of the National Scenic Byways Program in December of the same year. In 1996 the route was also designated as an All-American Road by the U.S. Department of Transportation.

The ALDOT conducted a series of public meetings in 1997 and 1998 and prepared a draft master plan for the National Scenic Byway/All-American Road. This plan provides an overview of possibilities. The National Park Service is seeking to further coordinate the efforts of both agencies by preparing a Comprehensive Management Plan that will build upon the information and options presented in the ALDOT master plan. The Comprehensive Management Plan will provide strategies for the management, visitor use, and development of the National Historic Trail. Key management concerns will include preservation of significant cultural and natural resources including historic sites, structures and the march route. Other issues involve the story of the march and facilities and programs needed to convey this story to the visitor.

The Comprehensive Management Plan shall identify a resource-based framework for the trail and describe future conditions, preferred alternative, and general strategies, consistent with the trail's significance and mandates. The alternatives and general strategies required to achieve desired future

conditions would then be assessed for their environmental effects.

DATES: A public meeting(s) will be held in the surrounding community during this process. Please consult with local newspapers for the times and locations or call the park for this information. Comments provided during this process should be received within 45 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Superintendent, Selma to Montgomery NHT, P.O. Drawer 10, Tuskegee Institute, AL 36087, Telephone: 334–727–6390.

SUPPLEMENTARY INFORMATION: The National Park Service is beginning this planning process and invites your comments. You may provide your comments in person at the public meeting or by mail to the Superintendent at the above address. Issues for evaluation may be suggested as well as alternatives for addressing the issues. A draft of the plan and environment impact statement is expected to be available for public review by mid–2000. Your input is appreciated.

Dated: October 15, 1999.

W. Thomas Brown,

Regional Director, Southeast Region.

[FR Doc. 99–27700 Filed 10–22–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Saturday, November 6, 1999, at the Western Archeological and Conservation Center, 1415 North 6th Avenue, Tucson, Arizona, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Rose Ochi, Chairperson
William Michael, Vice Chairperson
Keith Bright
Martha Davis
Sue Kunitomi Embrey
Gann Matsuda
Vernon Miller
Mas Okui
Glenn Singley
Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after January 31, 2000. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: October 12, 1999.

Marian O'Dea,

Acting Superintendent, Manzanar National Historic Site.

[FR Doc. 99–27818 Filed 10–22–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Commission Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission (the Commission) will be held at 2 p.m. on Tuesday, November 16, 1999, at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and routine business, the Commission will continue deliberations of its review of the Commemorative Works Act of 1986. This review was requested by the Subcommittee on National Parks, Historic Preservation, and Recreation, United States Senate Committee on Energy and Natural Resources. The Commission's review is in conjunction with the National Capital Planning Commission/National Capital Memorial Commission/Commission of Fine Arts Joint Task Force on Memorials which convened, in part, to assist in an evaluation of that Act.

The Commission was established by Public Law 99–652, the Commemorative Works Act, to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Executive Secretary to the Commission, at (202) 619–7097.

Dated: October 6, 1999.

Joseph M. Lawler,

Acting Regional Director, National Capital Region.

[FR Doc. 99–27701 Filed 10–22–99; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–96 and 439–445 (Review)]

Industrial Nitrocellulose from Brazil, China, France, germany, Japan, Korea, The United Kingdom, and Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: October 15, 1999.

FOR FURTHER INFORMATION CONTACT: John Fry (202–708–4157), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 50107, September 15, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of these reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on March 17, 2000, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 6, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 29, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 3, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 28, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 17, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before April 17, 2000. On May 10, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 12, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 18, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–27819 Filed 10–22–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review)]

Steel Rails From Canada

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year reviews.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 3, 1999, the Commission established a schedule for the conduct of these expedited five-year reviews (64 FR 50108, September 15, 1999). Subsequently, the Department of Commerce extended the date for its final results in the expedited reviews from September 29, 1999 to December 28, 1999 (64 FR 55233, October 12, 1999). In order to have the benefit of the Department of Commerce's findings, the Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the five-year reviews is as follows: the staff report will be placed in the nonpublic record on November 8, 1999; the deadline for interested party comments (which may not contain new factual information) on the staff report is November 12, 1999; the deadline for interested party comments (which may not contain new factual information) on Commerce's final results is January 3, 2000; and the deadline for brief written statements (which shall not contain new factual information) pertinent to the reviews by any person that is neither a party to the five-year reviews nor an interested party is January 3, 2000.

For further information concerning these five-year reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; the Commission is using its authority under 19 U.S.C. 1675(c)(5)(B) to extend the deadline for these reviews. Further, this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 19, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–27820 Filed 10–22–99; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–135]

Centennial of Flight Commission: Appointment of Executive Director

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Centennial of Flight Commission executive director.

SUMMARY: NASA hereby gives notice that the Centennial of Flight Commission (PL 105–389)—on which the NASA Administrator serves—has established November 15, 1999, as the date by which interested Federal employees must submit applications to serve as executive director.

FOR FURTHER INFORMATION CONTACT: Code ZH, NASA Headquarters, Washington, DC 20546, telephone (202) 358–0384, fax (202) 358–2866, e-mail histinfo@hq.nasa.gov.

SUPPLEMENTARY INFORMATION: PL 105–389 directs the establishment of a Centennial of Flight Commission. The Centennial of Flight Commission is charged by the Congress of the United States with playing a leading role in coordinating and publicizing public activities celebrating the achievements of Wilbur and Orville Wright and commemorating a century of powered flight. The Commission encourages the broadest national and international support for and participation in the commemoration, publicizing and encouraging programs, projects and events that will involve, educate, enrich and inspire the maximum number of people. Detailed personnel from Federal agencies shall staff it for the period between November 25, 1999 and through the termination of the Commission, on or about June 30, 2004.

An Executive Director is required to oversee the day-to-day effort of the Commission, as stated in PL 105–389: "There shall be an Executive Director appointed by the Commission and chosen from among detailees from the agencies and organizations represented on the Commission. The Executive Director may be paid at a rate not to exceed the maximum rate of basic pay payable for the Senior Executive Service" (Sec. 7(a)).

The organizations from which candidates may be detailed to this position include:

- Department of the Air Force
- Federal Aviation Administration
- First Flight Centennial Foundation of North Carolina
- Department of the Interior
- Library of Congress
- National Aeronautics and Space Administration
- Department of the Navy
- Smithsonian Institution
- Department of Transportation
- 2003 Committee of Ohio

The detailee in this position shall:

- Be responsible to the Commission for all aspects of the operation.
- Work with Commission Chair, or executive committee, to plan and organize CFC meetings.
- Assist the Commission in the creation of the statutory Advisory Board, and manage the activities of that group.
- Be responsible for developing, coordinating and administering, in cooperation with the First Flight Centennial Commission of North Carolina, the 2003 Committee of Ohio, and others, programs, activities and events that are appropriate to the commemoration of the centennial of powered flight.
- Be responsible for encouraging and coordinating broad national and international participation and sponsorship of the commemoration.
- Oversee the creation, maintenance, and distribution of a calendar or register of international programs, projects and events relating to the history of aviation in general and the commemoration of the centennial of powered flight in particular.
- Work to achieve maximum visibility for the commemoration.

- Oversee staff in the preparation of an annual report to the Congress on the activities and status of the Commission, as per the statutory requirement.
- Coordinate CFC commemorative activities with the approved programs and plans of other local, state and federal agencies, private organizations and individuals.
- Develop and oversee the licensing of the Commission's logo and other publicly available materials.

All candidates must be civil service employees of the agencies named above and must submit a copy of their SF 50 showing career, career-conditional, or reinstatement eligibility.

Please submit the following documents to the address provided in this announcement:

- A letter of intent to be a candidate for this position.
- A written application for detail. You may use Optional Form (OF)-612, a resume, or a vita for this application.
- A narrative assessment of your qualifications for this position.
- A written statement acknowledging your Agency's willingness to detail you to this position through June 30, 2004.

DATES: Responses to this Notice must be received by November 15, 1999.

Dated: October 15, 1999.

Roger D. Launius,

NASA Senior Historian.

[FR Doc. 99–27460 Filed 10–22–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–136]

Centennial of Flight Commission: Criteria for Selection of Sixth Commissioner

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Centennial of Flight Commission criteria for selection of sixth Commissioner.

SUMMARY: NASA hereby gives notice that the Centennial of Flight Commission (PL 105–389)—on which the NASA Administrator serves—has established November 15, 1999, as the date by which interested organizations must submit applications to serve as the sixth commissioner.

FOR FURTHER INFORMATION CONTACT: Code ZH, NASA Headquarters, Washington, DC 20546, telephone (202) 358–0384, fax (202) 358–2866, e-mail histinfo@hq.nasa.gov.

SUPPLEMENTARY INFORMATION: PL 105–389 directs the establishment of a Centennial of Flight Commission. The Centennial of Flight Commission is charged by the Congress of the United States with playing a leading role in coordinating and publicizing public activities celebrating the achievements of Wilbur and Orville Wright and commemorating a century of powered flight. The Commission encourages the broadest national and international support for and participation in the commemoration, publicizing and encouraging programs, projects and events that will involve, educate, enrich and inspire the maximum number of people.

The Act establishes a Commission of six members to plan and assist in the commemoration. These include the following five named positions:

- Director, National Air and Space Museum of the Smithsonian Institution.
- Administrator, National Aeronautics and Space Administration.
- Administrator, Federal Aviation Administration.
- Chairman, First Flight Centennial Foundation of North Carolina.
- Chairman, 2003 Committee of Ohio.

PL 105–389 states, Sec. 4(5), that a sixth Commissioner shall also be appointed as follows: "As chosen by the Commission, the president or head of a United States aeronautical society, foundation, or organization of national stature or prominence who will be a person from a State other than Ohio or North Carolina."

All organizations fitting these criteria are invited to submit, not later than November 15, 1999, a proposal indicating an interest in serving on this Commission. The proposal should contain the following elements, but should not exceed 10 pages in length:

- A statement explaining why your organization should be chosen.
- The name and resume of the individual from your organization who will actually serve as Commissioner.
- A set of detailed initiatives that should be pursued by the Commission.
- Any indication of financial or organizational conflict of interest.

Please submit these documents to the address provided in this announcement.

DATES: Responses to this Notice must be received by November 15, 1999.

Dated: October 15, 1999.

Roger D. Launius,

NASA Senior Historian.

[FR Doc. 99–27462 Filed 10–22–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–138)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Microelectronics and Computer Technology Corporation of Austin, TX, 78759–5398, has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 4,902,769 entitled, "LOW DIELECTRIC FLUORINATED POLY (PHENYLENE ETHER KETONE) FILM AND COATING" for which a United States Patent was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Hillary W. Hawkins, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA, 23681–2199; telephone 757–864–8882; facsimile 757–864–9190.

Dated: October 19, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–27721 Filed 10–22–99; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423–LA–3; ASLBP No. 00–771–01–LA]

Northeast Nuclear Energy Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Northeast Nuclear Energy Company,
Millstone Nuclear Power Station, Unit No. 3

This Board is being established pursuant to the request for hearing submitted by the Connecticut Coalition

Against Millstone and the Long Island Coalition Against Millstone. The petition for leave to intervene was filed in response to issuance by the NRC staff of a proposed no significant hazards consideration notice with respect to a license amendment request of the Northeast Nuclear Energy Company to amend the operating license for the Millstone Nuclear Power Station, Unit No. 3. The proposed amendment would modify the license to allow an increase in the capacity of the spent fuel storage pools. A notice of the proposed amendment was published in the **Federal Register** at 64 FR 48672 (Sept. 7, 1999).

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

All correspondence, documents, and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 19th day of October 1999.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–27759 Filed 10–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–29]

PECO Energy Company; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Requirements of 10 CFR Part 72

By letter dated May 27, 1999, PECO Energy Company (PECO) requested an exemption, pursuant to 10 CFR 72.7 from the requirements of 10 CFR 72.72(d) for the Peach Bottom Atomic Power Station (Peach Bottom) Independent Spent Fuel Storage Installation (ISFSI). PECO is seeking US Nuclear Regulatory Commission (NRC or Commission) approval to maintain a single set of spent fuel records at a records storage facility qualified to American National Standards Institute (ANSI) N45.2.9–1979.

Environmental Assessment (EA)

Identification of Proposed Action: PECO is seeking Commission approval to maintain its Peach Bottom ISFSI records by keeping them in an ANSI N45.2.9–1979 qualified records storage facility. The requirements of 10 CFR 72.72(d) state in part that "Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records." The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

Need for the Proposed Action: The applicant states that, pursuant to 10 CFR 72.140(d), the Peach Bottom Quality Assurance (QA) Program has been applied to the ISFSI activities. In that program, quality assurance records are maintained in accordance with the commitments to ANSI N45.2.9–1979. PECO requests the exemption from 10 CFR 72.72(d) to allow ISFSI records of spent fuel in storage to be stored in the same manner as Peach Bottom Atomic Power Station records; *i.e.*, as a single set of records stored in accordance with ANSI N45.2.9–1979.

ANSI N45.2.9–1979 provides standards for the protection of nuclear power plant QA records against degradation. It specifies design standards for use in the construction of record storage facilities when use of a single storage facility is desired. It includes specific standards for protection against degradation mechanisms such as fire, humidity, and condensation. The requirements in ANSI N45.2.9–1979 have been endorsed by NRC in Regulatory Guide 1.88, "Collection, Storage, and Maintenance of Nuclear Power Plant Quality Assurance Records," as adequate for satisfying the recordkeeping requirements of 10 CFR Part 50, Appendix B. ANSI N45.2.9–1979 also satisfies the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms as nuclear power plant QA records.

Environmental Impacts of the Proposed Action: Elimination of the requirement to store ISFSI records at a duplicate facility has no impact on the environment. Storage of records does not change the methods by which spent fuel will be handled and stored at Peach Bottom and the Peach Bottom ISFSI and does not change the amount of any effluents, radiological or non-radiological, associated with the ISFSI.

Alternative to the Proposed Action: Since there is no environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow Peach Bottom to store ISFSI records in an ANSI N45.2.9 qualified facility. This alternative would have no environmental impact as well.

Agencies and Persons Consulted: On September 7, 1999, David Ney from the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.72(d), so that PECO may store records of spent fuel stored at the ISFSI in a single record storage facility which meets the standards of ANSI N45.2.9–1979, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the PECO exemption request dated May 27, 1999, which is docketed under 10 CFR Part 72, Docket 72–29. The exemption request is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and the Local Public Document Room located at the State Library of Pennsylvania, Harrisburg, PA.

Dated at Rockville, Maryland, this 14th day of October 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–27762 Filed 10–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on November 18, 1999, in Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 18, 1999—1 p.m. Until the Conclusion of Business

The Subcommittee will review the staff's resolution of the open and confirmatory items identified in the Safety Evaluation Report related to the license renewal of Calvert Cliffs Nuclear Power Plant Units 1 and 2 and related license renewal activities. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, *etc.*, that may have occurred.

Dated: October 18, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–27760 Filed 10–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Addendum to Subagreement Pertaining to State Resident Engineers Between the Nuclear Regulatory Commission and the State of Illinois

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Addendum No. 1 to Subagreement No. 3 Between NRC and the State of Illinois.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the State of Illinois entered into Subagreement No. 3 on December 18, 1990 (55 FR 51973). The Subagreement defined the way in which the NRC and the State, with the assistance of State Resident Engineers, cooperate in planning and conducting inspections of nuclear power plants in Illinois to ensure compliance with NRC regulations. The purpose of Addendum No. 1 is to modify Subagreement No. 3 to address inspections at permanently shut down nuclear power plants in Illinois that remain under license by the NRC. The text of Addendum No. 1 between the NRC and the State of Illinois follows.

FOR FURTHER INFORMATION CONTACT: Spiros C. Droggitis, Office of State Programs, telephone (301) 415–2367, e-mail scd@nrc.gov.

Dated at Rockville, Maryland this 19th day of October, 1999.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director Office of State Programs.

Addendum No. 1 to Subagreement No. 3 Pertaining to State Resident Engineers Between the U.S. Nuclear Regulatory Commission and the State of Illinois

I. Purpose

The purpose of this Addendum is to modify Subagreement No. 3 pertaining to State Resident Engineers between the U.S. Nuclear Regulatory Commission (NRC) and the State of Illinois (State), hereafter referred to as Subagreement No. 3, to address State inspections at permanently shut down nuclear power plants in Illinois that remain under license by the NRC.

II. Background

A. The NRC and the State entered into Subagreement No. 3 to define the way in which NRC and the State, with the assistance of State Resident Engineers will cooperate in planning and conducting inspections at operating nuclear power plants in Illinois. Subagreement No. 3 provided, among other things, for interaction and cooperation between State Resident Engineers and NRC Resident Inspectors. Since the entry into Subagreement No. 3, "State Resident Engineers" as referred to in Subagreement No. 3, have become known as "State Resident Inspectors."

B. Since the entry into Subagreement No. 3, NRC has received notice that a licensed nuclear power plant in Illinois has permanently ceased operations and has begun decommissioning.

C. It is NRC's practice to, approximately one year after shut down, withdraw its resident inspectors from licensed nuclear power plants that have permanently ceased operations and are undergoing decommissioning and to conduct inspections of such power plants with staff from its Regional offices.

D. The NRC has requested and the State of Illinois has agreed, in accordance with Section X. of Subagreement 3, to modify the Subagreement to recognize the changed circumstances for licensed power plants that are permanently shut down, are undergoing decommissioning, and are no longer inspected by NRC resident inspectors, and to provide for continued cooperation and coordination with the State of Illinois with regard to inspections at such plants.

III. Modifications

A. Subagreement No. 3 is modified as provided in this Addendum. Subagreement No. 3 shall remain in full and complete effect except as specifically modified in this Addendum. Insofar as any provisions in Subagreement No. 3 are inconsistent with this Addendum, this Addendum shall control for the purposes of decommissioning inspections at permanently shut down commercial nuclear power reactors.

B. The title to Subagreement No. 3 is modified to read "SUBAGREEMENT NO. 3 BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION AND THE STATE OF ILLINOIS PERTAINING TO STATE RESIDENT INSPECTORS AND STATE INSPECTORS FOR DECOMMISSIONING PLANTS."

C. Section VI.C.13 of Subagreement No. 3 is modified to read as follows: All written communications with the licensee will be made through NRC. After completing its portion of a safety inspection, the State will document to NRC its inspection's scope, details, and results in a report written in the format described in the NRC Inspection Manual. The NRC will use the information, as appropriate, in preparation of the NRC's final report. The State is responsible for the technical adequacy of State Resident Inspector's or State Inspector's inspection reports.

D. "State Resident Engineer" is modified in Subagreement No. 3 to read "State Resident Inspector."

E. State personnel who conduct decommissioning inspections pursuant to this Addendum and who need not be resident at nuclear power plants shall be referred to as "State Inspectors."

F. After NRC's withdrawal of its resident inspectors from licensed nuclear power plants in Illinois that have permanently ceased operations, State participation in NRC decommissioning inspections at these facilities will be governed by Subagreement 3 and this Addendum. This Addendum will not apply to State inspections conducted pursuant to any authority other than Subagreement No. 3.

G. State Inspectors will be State Resident Inspectors qualified and certified by the State in accordance with the NRC Inspection Manual, or its equivalent, for the specific inspection function they are to perform.

H. The State will utilize the NRC's Master Inspection Plan as the basis for proposing State Inspectors' participation in NRC scheduled decommissioning inspections. The State will submit inspection recommendations to the NRC Regional Administrator, Region III (or designee), at least one month prior to the scheduled inspection to allow sufficient time for NRC review and approval.

I. The State will perform decommissioning safety inspections only in accordance with the inspection plans using applicable procedures in the NRC Inspection Manual.

J. To facilitate cooperation and efficient use of resources, NRC and State Inspectors will conduct joint team decommissioning inspections under this Addendum. An NRC inspector will lead the team and be in charge of the inspection.

K. The principal senior management contacts for this Addendum will be the Director, Division of Nuclear Materials Safety, Region III, and the Manager, Office of Nuclear Facility Safety, Illinois Department of Nuclear Safety.

Dated: September 28, 1999.

For the U.S. Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Executive Director for Operations.

Dated: October 4, 1999.

For the State of Illinois.

Thomas W. Ortciger,

Director, Illinois Department of Nuclear Safety.

[FR Doc. 99–27761 Filed 10–22–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–28212]

Application and Opportunity for Hearing: Altos Hornos De Mexico, S.A., DE C.V.

October 18, 1999.

Notice is hereby given that Altos Hornos De Mexico, S.A., De C.V. ("Applicant"), has filed an application ("Application") under Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 ("Act") for a finding by the Securities and Exchange Commission ("Commission") that the trusteeship of Norwest Bank of Minnesota, N.A. ("Norwest") as successor trustee under (i) an Indenture dated as of May 6, 1997 ("1997 Indenture"), by and between the Applicant and the Chase Manhattan Bank ("Chase"), the predecessor trustee, with respect to 11⅜% Series A Senior Notes due April 30, 2002 ("Series A Notes"), and 11⅞% Series B Senior Notes due April 30, 2004 ("Series B Notes," together with the Series A Notes, the "1997 Notes"), and (ii) an Indenture dated as of December 16, 1996 ("1996 Indenture," together with the 1997 Indenture, "Indentures") by and between the Applicant and Chase, the predecessor trustee, with respect to the issuance of 5½% Senior Discounted Convertible Notes ("1996 Notes," together with 1997 Notes, "Notes") due 2001, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Norwest from acting as trustee under either of the Indentures. Section 310(b) provides that if a trustee under an indenture qualified under the Act has or acquires any conflicting interest, it shall, within ninety days after ascertaining such a conflicting interest, either eliminate such conflicting interest or resign. Section 310(b)(1) of the Act provides that with certain exceptions, a trustee shall be deemed to have a conflicting interest if such trustee is a trustee under another indenture in which any other securities of the same issuer are outstanding. However, under Section 310(b)(1)(ii) of the Act, certain situations are exempt from the deemed conflict of interest under Section 310(b)(1). Section 310(b)(1)(ii) provides in pertinent part that an indenture to be qualified shall be deemed exempt from Section 310(b)(1) if:

> the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture * * * is not likely to involve a *material conflict of interest* as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures * * *

Section 310(b)(1)(ii) (emphasis supplied). In other words, dual trusteeship by Norwest under the Indentures may be excluded from the operation of Section 310(b)(1) if the Applicant sustains the burden of proving, on application to the Commission that a material conflict of interest is no so likely as to make it necessary in the public interest or for the protection of investors to disqualify Norwest from acting under either of the Indentures.

The Applicant alleges that:

1. The 1996 Notes and the 1997 Notes were issued in registered public offerings in the United States (Registration Statement No. 333–6094 and No. 333–7252), and both Indentures are qualified under the Act. The Notes under the Indenture rank *pari passu* with each other and are wholly unsecured. However, neither Indenture references the other Indenture.

2. Pursuant to the Instrument of Resignation, Appointment and Acceptance, dated July 27, 1999 (the "Succession Agreement"), effective as of July 27, 1999, Norwest succeeded to Chase as trustee under the Indentures.

3. As of the date of this Application, the Applicant is in default under the 1997 Indenture for failing to pay interest that was due on May 1, 1999. This default has continued for more than 30 days, thus constituting an Event of Default under Section 501(1) of the 1997 Indenture. Based on this default, the Applicant is also in default under the 1996 Indenture. Section 501(5) of the 1996 Indenture provides that an event of default includes:

> a default under * * * any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidence any indebtedness for money borrowed by the Company * * * in an amount exceeding $10,000,000 * * *

> which default shall constitute a failure to pay * * * any interest or additional amounts on such indebtedness when due and payable after the expiration of any applicable grace period with respect thereto.

See 1996 Indenture, § 501(5). Thus, the Applicant is in default under both of its Indentures.

4. On May 25, 1999, the Applicant obtained from a Mexican court a declaration of suspension of payments ("Suspension of Payments"). Suspension of Payments is a form of protection from creditors under Mexican law afforded to a company to enable it to (i) seek a restructuring agreement with its creditors (ii) continue the operation of its business, and (iii) prevent liquidation. A description of certain effects of the Suspension of Payments is contained in the Applicant's form 20–F for the fiscal year ended December 31, 1998.

5. The Application asserts that had the 1997 Indenture simply contained a descriptive reference to the 1996 Indenture, no conflict of interest would be deemed to exist under Section 310(b)(1)(i) of the Act, and the Application would not be required. Section 310(b)(i) exempts an indenture from the provisions of Section 310(b) "if the indenture to be qualified and any such other indenture * * * or indentures * * * are wholly unsecured and rank equally and such other indenture or indentures * * * *are specifically described in the indenture to be qualified or are thereafter qualified.*" The Section 310(b)(1) issue arises only because the 1997 Indenture does not refer to the 1996 Indenture. The Application asserts that this technical omission does not create a risk of material conflict between the two Indentures where none otherwise exists.

6. The Application asserts that because all of the Notes rank equally with one another in right of payment and are wholly unsecured, it is highly unlikely that Norwest would ever be subject to a conflict of interest with respect to issues relating to the priority of payment. Norwest would neither be in a position to, nor be required by the terms of either Indenture to, assert that the Notes outstanding under one Indenture are entitled to payment prior to payment of claims under the other Indenture.

7. Further, both Indentures contain almost identical default and remedy provisions *See* 1996 Indenture, § 501 *et. seq.*, 1997 Indenture, § 501 *et seq.* The Application asserts that due to the similarity of these provisions (including the cross-default provisions), it is unlikely as a practical matter that Norwest would find itself in a position of proceeding against the Applicant for a default under one Indenture, but not the other Indenture.

8. The Application also asserts that it is in the best interest of the Applicant and the holders of the Notes that Norwest serve simultaneously under both Indentures. Given the existence of a default, Chase was required to resign as trustee under both Indentures due to Chase's concurrent status as a creditor of the Applicant. By succeeding to Chase as trustee under both Indentures, rather than just one, Norwest relieved Chase of an actual conflict and prevented the risk of an "orphan indenture" where the predecessor trustee has submitted its resignation but no successor has been appointed. Norwest is not a creditor of the Applicant and has no business relationship with the Applicant other than under the Indentures. Norwest's dual trusteeship also will allow the Applicant to avoid the significant duplicative costs associated with having two separate trustees and their separate professionals review, understand, and administer two similar Indentures, and interact with the Applicant and other parties in interest as the Applicant works to address its present financial circumstances.

Apart from granting relief under Section 301(b)(1)(ii) of the Act, the Commission may invoke its power to exempt Norwest under Section 304(d). On application by any interested person, Section 304(d) empowers the Commission to "exempt conditionally or unconditionally any person, registration statement, indenture, security or transaction * * * from any one or more of the provisions of this title, if and to the extent that such exemption is necessary or appropriate in the *public interest* and consistent with the *protection of investors* and purposes fairly intended by this title." Section 304(d) (emphasis supplied).

The Applicant waives notice and hearing with respect to the Application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said Application, which is a public document (File Number 22–28212) on file in the offices of the Commission at the Public Reference Section, 450 Fifth Street, NW, Washington, DC.

Notice is hereby given that any interested person may, not later than November 8, 1999, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such Application which he desires to controvert, or he may request that he be notified if the Commission would order a hearing thereon. Any such request should be addressed: Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Washington, DC 20549–0609. At any time after said date, the Commission may issue an order granting the Application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27712 Filed 10–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24088; File No. 821–11380]

Great-West Life & Annuity Insurance Company, et al.; Notice of Application

October 18, 1999.

AGENCY: Securities and Exchange Commission ("SEC. or "Commission").

ACTION: Noice of Application for approval under Section 26(b) of the Investment Company Act of 1940, as amended (the "1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the Maxim INVESCO Balanced Portfolio of the Maxim Series Fund for shares of the Fidelity VIP II Asset Manager Portfolio of the Fidelity Variable Insurance Products Fund II, and the substitution of shares of Maxim Stock Index Portfolio of the Maxim Series Fund for shares of the American Century VP Capital Appreciation Portfolio of American Century Variable Portfolios, Inc.

APPLICANTS: Great-West Life & Annuity Insurance Company ("GWL&A"), FutureFunds Series Account of GWL&A (the "FutureFunds Account") and Maxim Series Account of GWL&A (the "Maxim Account") (together, with the FutureFunds Account, the "Separate Accounts") and BenefitCorp Equities, Inc. ("BCE") (hereinafter all parties are collectively referred to as the "Applicants").

FILING DATE: The application was filed on October 29, 1998, and amended and restated on April 14, 1999, and July 15, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 12, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Jorden Burt Boros Cicchetti Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007–0805; Attention: Christopher Menconi, Esq.

FOR FURTHER INFORMATION CONTACT: Michael Pappas, Senior Counsel, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth St. NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. GWL&A is a stock life insurance company organized under the laws of the State of Colorado. GWL&A is wholly owned by The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco, Inc., an insurance holding company ultimately controlled by Power Corporation of Canada. GWL&A is principally engaged in offering life insurance, annuity contracts, and accident and health insurance and is admitted to do business in the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam and in all states of the United States, except New York.

2. The FutureFunds Account is a distinct investment account of GWL&A which acts as a funding vehicle for certain group variable flexible premium deferred annuity contracts (the "FutureFunds Contracts") designed and offered to provide retirement programs that qualify for special federal income tax treatment for employees of certain organizations. The FutureFunds Account is a unit investment trust ("UIT") and has filed a registration statement on Form N–4 (Registration No 2–89550), as amended) for the purpose of registering the FutureFunds Account under the 1940 Act and the FutureFunds Contracts as securities under the Securities Act of 1933, as amended (the "1933 Act").

3. The FutureFunds Contracts have twenty-eight investment divisions available for allocations of contributions, each of which invest exclusively in one of the corresponding portfolios of six open-end management investment companies. Twenty-three of the investment divisions invest solely in corresponding portfolios of Maxim Series fund, Inc. ("Maxim Series Fund"); one other investment division invests solely in a corresponding portfolio of American Century Variable Portfolios, Inc. ("American Century"); two other investment divisions invest solely in corresponding portfolios of Fidelity Variable Insurance Products Fund and Fidelity Variable Insurance Products Fund II; one other investment division invests solely in a corresponding portfolio of Janus Aspen Series; and one other investment division invests solely in a corresponding portfolio of the Stein Roe Variable Investment Trust.

4. The assets of the FutureFunds Account are kept separate from the other assets of GWL&A. The income, gains, and losses of the FutureFunds Account, whether or not realized, are credited to or charged against the FutureFunds Account without regard to other income, gains, or losses of any other separate account or arising out of any other business GWL&A may conduct.

5. The Maxim Account is a distinct investment account of GWL&A which acts as a funding vehicle for certain flexible premium variable deferred annuity contracts (the "Maxim Contracts"). Currently there are four different Maxim Contracts issued under the Maxim Account. Only two Maxim Contracts, however, are subject to this Application. Of these two Maxim Contracts, one is no longer sold, has less than 5,000 participants, and no longer files post-effective amendments in reliance upon certain precedent (hereinafter the "MSA–2 Contract"). The MSA–2 Contract has only five investment divisions, each of which invests exclusively in one of the corresponding portfolios of two open-end management investment companies. The other Maxim Contract at issue is the Maximum Value Plan (the "MVP Contract"). The MVP Contract has twenty-two investment divisions, each of which invests exclusively in one of the corresponding portfolios of two open-end management investment companies.

6. The Maxim Account is a UIT and has filed a registration statement on Form N–4 (Registration Nos. 811–3249 and 2–73879 for the MSA–2 Contract and 33–82610 for the MVP Contract) for the purpose of registering the Maxim Account under the 1940 Act and the Maxim Contracts as securities under the 1933 Act. The assets of the Maxim Account are kept separate from the other assets of GWL&A. The income, gains, and losses of the Maxim Account, whether or not realized, are credited to or charged against the Maxim Account without regard to other income, gains, or losses of any other separate account or arising out of any other business GWL&A may conduct.

7. With respect to the MSA–2 Contract, four of the available investment divisions invest solely in corresponding portfolios of Maxim Series Fund and the remaining investment division invests in a corresponding portfolio of American Century. In the MVP Contract, twenty-one of the available investment divisions invest solely in corresponding portfolios of Maxim Series Fund and the remaining investment division invests solely in a corresponding portfolio of American Century.

8. BCE is registered with the Commission under the Securities Exchange Act of 1934, as amended, as a broker/dealer and is a member of the National Association of Securities Dealers, Inc. BCE is the principal underwriter and distributor of the FutureFunds Contracts and the MVP Contracts. The MSA–2 Contracts are no longer sold and there is no need for an underwriter. The Maxim Contracts and the FutureFunds Contracts may collectively be referred to, where appropriate, as the "Contracts."

9. Of the underlying investment companies, only Maxim Series Fund is affiliated with GWL&A or the Separate Accounts. The investment adviser for Maxim Series Fund is GW Capital Management, Inc., which is also affiliated with GWL&A, the Separate Accounts, and BCE. No other underlying investment company or portfolio used in connection with the Contracts or investment adviser or underwriter for those underlying investment companies and portfolios is affiliated with GWL&A, the Separate Accounts, or BCE.

10. The FutureFunds Contracts may be issued in connection with contributions made by the following organizations: (1) Employers or employee organizations (such as non-profit entities defined in Section 501(c)

of the Internal Revenue Code of 1986, as amended, (the "Code") and governmental entities defined in Section 414(d)) to purchase annuities for their employees under pension or profit sharing plans described in Section 401(a) of the Code; (2) employers or employee organizations to purchase annuities for their employees under cash or deferred profit-sharing plans described in Section 401(k) of the Code, and state educational organizations and certain tax-exempt organizations to purchase annuities for their employees under Section 403(b) of the Code; and (3) certain state and local governmental entities and, for years beginning after 1986, other tax-exempt organizations to purchase annuities for their employees under deferred compensation plans described in Section 457 of the Code.

11. The MVP Contracts are flexible premium annuity contracts which may be issued under retirement plans which qualify for federal tax benefits under Sections 401 and 408 of the Code as individual retirement accounts and under other retirement plans which do not qualify under the Code. The MSA–2 Contracts are no longer sold.

12. The FutureFunds Contracts have no front-end sales load. The FutureFunds Contracts have a maximum contingent deferred sales charge of 6% that applies to surrenders or partial withdrawals during the first 72 months after a contribution. The Maxim Contracts do not have front-end sales loads. The MVP Contracts have a maximum contingent deferred sales charge of 7% that applies to surrenders of partial withdrawals within the first seven contract years. The MSA–2 Contracts had a flat contingent deferred sales charge of 5% that applied to surrenders or withdrawals in the first five contract years after contribution. The FutureFunds Contracts have an annual contract fee of $30.00. This charge may vary by group policyholder. The MVP Contracts have an annual contract fee of $27.00 and the MSA–2 Contracts have an annual contract fee of $35.00. These charges will not be affected by the proposed substitution.

13. There are no transfer charges for transfers among investment divisions offered in any of the Contracts and there are no limits on the number of transfers a Contract owner/participant can make.

14. All of the Contracts expressly reserve GWL&A's right, both on its own behalf and on behalf of the Separate Accounts, to eliminate investment divisions, combine two or more investment divisions, or substitute one or more underlying portfolios for others in which its investment divisions are invested or for a new underlying portfolio.

15. GWL&A, on its own behalf and on behalf of the Separate Accounts, proposes to exercise its contractual right to eliminate the American Century VP Capital Appreciation Portfolio (the "Capital Appreciation Portfolio") as a funding option under all the Contracts. GWL&A also proposes, on its behalf and on behalf of the FutureFunds account, to exercise its contractual right to eliminate the Fidelity VIP II Asset Manager Portfolio (the "Asset Manager Portfolio") as a funding option under the FutureFunds Contracts. Collectively, the portfolios being eliminated will hereinafter be referred to as the "Eliminated Portfolios." In all Contracts, GWL&A proposes to substitute shares of the Maxim Stock Index Portfolio ("Stock index Portfolio"), an existing investment option under the Contracts, for shares of the Capital Appreciation Portfolio. In the FutureFunds Contract, GWL&A also proposes to substitute shares of Maxim INVESCO Balanced Portfolio ("Balanced Portfolio" or "Maxim Balanced Portfolio"), an existing investment option, for the Asset Manager Portfolio.

16. When discussed separately or together, the transaction will be referred to as the "Substitution." Applicants believe the Substitution will benefit the Contract owners/participants by eliminating portfolios which, in Applicants' view, have had poor historical performance returns and replacing them with portfolios having comparable investment objectives and policies and better historical performance returns, and which Applicants believe are more likely to provide Contract owners/participants with favorable investment performance in the future.

17. The Substitution would result in a reduction in variable investment options and corresponding portfolios available under all Contracts. The number of investment divisions in the FutureFunds Contracts would be reduced from twenty-eight to twenty-six; the number of investment divisions in the MVP Contracts would be reduced from twenty-two to twenty-one; and the number of investment divisions in the MSA–2 Contracts would be reduced from five to four.

18. Applicants represent that each replacement portfolio was the most comparable to the corresponding eliminated Portfolio as compared to all other portfolios available under the affected Contracts in that the replacement portfolios have the investment objectives and policies that are similar to, and consistent with, those of the eliminated Portfolios.

19. The Capital Appreciation Portfolio's investment objective is to seek capital growth by investing in common stocks that, in the opinion of American Century's management, will increase in value over time. The Stock Index Portfolio's investment objective is to provide investment results, before fees, that correspond to the total return of the S&P 500 Index and the S&P Mid-Cap Index, weighted according to their respective pro-rata shares of the market. Applicants assert that, after the Substitution, Contract owners/participants who have allocated value to an investment division which invests in the Capital Appreciation Portfolio will continue to have their value allocated to an investment division which invests in an underlying portfolio that seeks capital growth primarily through investments in common stocks. Applicants point out that under the MSA–2 Contracts there is no other underlying portfolio whose investment objective requires that it invest primarily in common stocks.

20. Applicants represent that the Stock Index Portfolio has substantially outperformed the Capital Appreciation Portfolio while assessing lower overall fees. The total expenses of the Stock Index Portfolio currently are .60%, which is below the 1.00% total expenses of the Capital Appreciation Portfolio. The average annual total returns for the one year, three year, five year, ten year, and since inception periods ending December 31, 1998, for the Stock Index Portfolio were: 26.79%, 26.86%, 22.62%, 16.37% and 15.55% respectively, compared to the Capital Appreciation Portfolio which had returns of (2.15)%, (3.24)%, 3.25%, 8.70% and 8.24% for the same periods.[1]

21. Applicants represent that they have considered the fact that, with respect to the MSA–2 Contracts, the proposed substitution would reduce the number of available variable investment options from five to four, and that a previous substitution effected in 1998 had reduced those options from seven to five. Applicants do not believe MSA–2 Contact owners benefit merely from having an additional investment option which has historically provided them with poor performance and have made a determination that MSA–2 Contract owners will be better off without this option. Applicants believe that the remaining four investment alternatives

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[1] The Stock Index Portfolio commenced operations on July 1, 1982. The Capital Appreciation Portfolio commenced operations on November 20, 1987.

provide a sufficient range of choices along with sufficient diversification. Applicants believe, therefore, that the proposed substitution will be in the best interest of MSA–2 contract owners and is otherwise consistent with the standards for the granting of an order under Section 26(b).

22. The Asset Manager Portfolio's investment objective is to seek high total return with reduced risk over the long-term by allocating its assets among stocks, bonds, and short-term debt instruments. The Balanced Portfolio invests in a combination of common stocks and fixed income securities and seeks, as its investment objective, to achieve high total return on investment through capital appreciation and current income. Applicants have concluded that the Balanced Portfolio offers Contract owners/participants an underlying portfolio with investment objectives and policies that are the most comparable to those of the Eliminated Portfolio as compared with all other underlying portfolios available under the affected Contracts.

23. Applicants represent that the total expenses of the Balanced Portfolio are 1.00%, while the total expenses of the Asset Manager Portfolio are .65%. Applicants represent that, notwithstanding its higher fees, the Balanced Portfolio presents a better investment option for Contract owners/participants than the Asset Manager Portfolio based on the similarity of investment objectives and policies, comparative performance information, and other data. Applicants state that they carefully examined certain data in considering whether to replace the Asset Manager Portfolio with the Balanced Portfolio, including the performance history of the portfolios, as well as the performance of a similar fund and other information they deemed relevant.

24. GWL&A states that it has been concerned with the relatively poor performance of the Asset Manager Portfolio. Prior to the inception of the Balanced Portfolio in October 1996, however, there was no other (and there continues to be no other) underlying portfolio available under the affected Contracts whose principal investment strategy requires that it invest in a mix of debt and equity securities. For the periods for which the Balanced Portfolio and the Eliminated Portfolio both have standardized performance returns, namely average annual total returns for the one year period ended December 31, 1998, and the period from October 1, 1996 to December 31, 1998, the Balanced Portfolio outperformed the Eliminated Portfolio by over 3% and over 4%, respectively. Applicants state that the performance history of the Balanced Portfolio is somewhat limited, however, they state that the performance history of the INVESCO Balanced Portfolio, after which the Maxim Balanced Portfolio was modeled, has additional performance history. The Maxim Balanced Portfolio and the INVESCO Balanced Portfolio have the same investment objective, principal investment strategy, investment adviser (or sub-adviser, as applicable), and portfolio manager and, therefore, Applicants argue it was appropriate to consider its performance. The average annual total returns for the one year, three year, five year, and since inception periods ending December 31, 1998 were: Maxim Balanced Portfolio—18.42%, N/A, N/A, 22.85%; and Asset Manager Portfolio—15.05%, 16.74%, 11.81%, 12.98%.[2] The total returns for the INVESCO Balanced Portfolio for all of the preceding periods were higher than the total returns for the Asset Manager Portfolio during the same periods. For the period October 1, 1996 (commencement of the Maxim Balanced Portfolio) to December 31, 1998, the average annual total return for the Maxim Balanced Portfolio was 22.85% as compared with 18.77% for the eliminated portfolio.

25. Based on the other information reviewed by Applicants, Applicants also concluded that the Substituted Portfolio will not represent an unreasonable risk to investors.

26. As of December 31, 1998, the Maxim Balanced Portfolio had total assets of $152.83 million and the Asset Manager Portfolio had total assets of approximately $4,793 million. Applicants represent that the smaller asset base of the Maxim Balanced Portfolio as compared with the Asset Manager Portfolio will not disadvantage affected Contract owners/participants. First, the Maxim Balanced Portfolio assesses an all-inclusive annual fee of 1.00% under its advisory agreement and, therefore, the expense ratio cannot be affected by the size of the asset base. Moreover, Applicants represent that the Maxim Balanced Portfolio is sufficiently large so as to be capable of being managed efficiently and effectively in accordance with its investment objectives and policies. Additionally, if the proposed substitution is carried out, an additional $31.29 million (as of December 31, 1998) would be added to the Maxim Balanced Portfolio's asset base.

27. In sum, based on comparative investment objectives and policies, historical performance information, and other factors deemed relevant by Applicants, the Applicants believe that the Maxim Balanced Portfolio will provide Contract owners/participants with an investment option that (1) has a proven track record of outperforming the Eliminated Portfolio, (2) has investment objectives and policies which are comparable to the Eliminated Portfolio, and (3) is not believed to expose Contract owners/participants to a materially greater risk than is presented by the Eliminated Portfolio.

28. GWL&A will schedule the Substitution to occur on a date as soon as practicable following the issuance of an order by the Commission granting the relief requested in the Application (the "Automatic Selection Date"). By way of sticker, the FutureFunds Contract and MVP Contract prospectuses have disclosed the proposed Substitution for several months. The stickers also disclose that the investment divisions relating to the Eliminated Portfolios will not accept additional contributions (*i.e.*, new money or transfers) on or after February 5, 1999, and that FutureFunds Contract and MVP Contract values allocated to the Eliminated Portfolios can be transferred without assessment of any charges at any time prior to the Automatic Selection Date. Notifications similar to the stickers were mailed to all current Contract owners/participants shortly after the initial filing of the Application. MSA–2 Contract owners also were mailed a similar notification of the proposed Substitution and the Automatic Selection Date. After the order is issued, a second notification will be provided to all Contract owners/participants who have amounts allocated to the Eliminated Portfolios, again advising them of the pending Substitution and of their ability to transfer free of charge to the remaining investment division(s) of their choice (or remain in the Eliminated Portfolios until the automatic substitution on the Automatic Selection Date).

29. Affected Contract owners/participants also will receive confirmation of the Substitution transaction that will be mailed within five days of the Automatic Selection Date. The confirmation will contain a reminder that the Contract owners/participants may effect transfers from the investment divisions corresponding to the Stock Index Portfolio or Balanced Portfolio, as applicable, to any other

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[2] The Maxim Balanced Portfolio commenced operations on October 1, 1996; the INVESCO Balanced Portfolio commenced operations in December 1993; the Asset Manager Portfolio commenced operations in September 1989.

investment division without incurring any charges.

30. Applicants argue that the Substitution provides Contract owners/participants investment divisions which are currently available under the respective Contracts, and which are sufficiently similar so as to continue to fulfill the Contract owners/participants' objectives and risk expectations. If a Contract owner/participant with current allocations in the Eliminated Portfolios determines that another investment option is more appropriate for his or her needs, he or she may always transfer his or her assets to any remaining investment division available under the respective Contracts without incurring any charges.

31. Applicants represent that the proposed Substitution will be effected by redeeming shares of the Eliminated Portfolios on the Automatic Selection Date at net asset value and using the proceeds to purchase shares of the Stock Index Portfolio and/or the Balanced Portfolio, as applicable, at net asset value on the same date. Contract owners/participants will not incur any fees or charges as a result of the transfer of account values from the Eliminated Portfolios. All contract values will remain unchanged and fully invested. The Substitution will not increase Contract or Separate Account fees and charges after the Substitution and will not alter Contract owners/participants' rights and GWL&A's obligations under the Contracts. In addition, Applicants represent that, as of the date of filing the second amended Application, the Substitution will not result in any adverse federal income tax consequences for Contract owners/participants. Following the Substitution, the investment divisions which invest in the Eliminated Portfolios will be terminated.

Applicant's Legal Analysis and Conditions

1. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitutions of securities. Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered UIT holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will issue an order approving such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protection for which Section 26(b) was designed and will not result in any of the harms which Section 26(b) was designed to prevent. Applicants believe the substitution will benefit Contract owners/participants by eliminating portfolios with below average historical returns and replacing them with portfolios that have demonstrated superior performance histories.

3. Any Contract owner/participant who does not want his or her assets allocated to the Stock Index Portfolio or the Balanced Portfolio, as applicable, would be able to transfer assets to any one of the other investment divisions available under their respective Contracts without charge. Such transfers could be made prior to or after the Automatic Selection Date.

4. The Substitution will be effected at net asset value in conformity with Section 22 of the 1940 Act and Rule 22c–1 thereunder. Contract owners/participants will not incur any fees or charges as a result of the transfer of account values from any investment division. There will be no increase in the Contract or Separate Account fees and charges after the Substitution. All Contract values will remain unchanged and fully invested. In addition, Applicants represent that, as of the date of filing the second amended Application, the Substitution will not result in any adverse federal income tax consequences for Contract owners/participants.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27713 Filed 10–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24089; File No. 812–11722]

SEI Insurance Products Trust, et al.; Notice of Application

October 18, 1999.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of the SEI Insurance Products Trust (the "Trust") and shares of any other investment company or portfolio that is designed to fund insurance products and for which SEI Investments Management Corporation ("SIMC"), or any of its affiliates, may serve in the future, as investment adviser, administrator, manager, principal underwriter, or sponsor ("Future Trusts", together with Trust, "Trust") to be sold to and held by (i) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies, (ii) qualified pension and retirement plans outside of the separate account context, (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act, and (iv) SIMC or any of its affiliates (representing seed money in any of the Trusts).

APPLICANTS: The Trust and SIMC.

FILING DATE: The application was filed on July 26, 1999, and amended and restated on October 7, 1999. Applicants represent that they will file an amended and restated application during the notice period to conform to the representations set forth herein.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request hearing by writing to the Secretary of the Commission and serving Applicants with copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 12, 1999, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants c/o Todd B. Cipperman, Esq., SEI Investments Management Corporation, Oaks, Pennsylvania 19546.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW Washington, DC (tel (202) 942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust and is registered under the 1940 Act as an open-end management investment company. The Trust currently consists of 13 separate portfolio ("Funds"). Each Fund has its own investment objective or objectives, and policies.

2. SIMC serves as the investment manager to the Trust, and operates as a "manager of managers." SIMC is registered as an investment adviser under the Investment Advisers Act of 1940, and is a wholly owned subsidiary of SEI Investments Company.

3. Applicants state that, upon the granting of the exemptive relief requested by the Application, the Trust intends to offer shares representing interests in each Fund, and any other portfolio established by the Trust ("Future Portfolio") (Fund, together with Future Portfolios, "Portfolios" or each a "Portfolio"), to separate accounts of both affiliated and unaffiliated insurance companies to serve as the investment vehicle for variable annuity contracts and variable life insurance contracts (collectively referred to herein as "Variable Contracts"). The Insurance Companies that elect to purchase shares of one or more Portfolios are collectively referred to herein as "Participating Insurance Companies." The Participating Insurance Companies will establish their own separate accounts ("Separate Accounts") and design their own variable contracts. Applicants also propose that the Trust offer and sell shares representing interests in its Portfolios directly to qualified pension and retirement plans ("Qualified Plans" or "Plans") outside of the separate account context.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts to be offered and sold to, and held by: (1) Both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company ("mixed funding"); (2) Separate accounts of unaffiliated life insurance companies (including both variable annuity separate accounts and variable life insurance separate accounts) ("shared funding"); (3) trustees of Qualified Plans; (4) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act, and (5) SIMC or any of its affiliates (representing seed money in any of the Trusts).

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions form Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. These exemptions are available only if the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurer. Thus, the exemptions provided by Rule 6e–2 are not available if a scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares (i) to a variable annuity separate account or a flexible premium variable life insurance separate account of the same insurance company, (ii) to an unaffiliated life insurance company, or (iii) to an investment manager that is unaffiliated with a Participating Insurance Company (representing seed money shares). In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to Qualified Plans.

3. Rule 6e–3(T)(b)(15) provides similar partial exemptions in connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust. These exemptions, however, are available only if all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contacts or flexible premium variable life insurance contracts or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Thus, the exemptions provided by Rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding, sells seed money shares to an unaffiliated person of a Participating Insurance Company or sells shares to Qualified Plans.

4. Applicants state that current tax law permits the Trust to increase its asset base through the sale of its shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Fund. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the "Regulations"), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. The promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Regulations. Applicants state that, given the then-current tax law, the sale of shares of the same investment company to both the separate accounts of insurers and to Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(5) and 6e–3(T)(b)(15).

6. Section 9(a)(3) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated

person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2) of the 1940 Act. Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

7. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants state that it is unnecessary to apply Section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trusts as the funding medium for Variable Contracts. According to Applicants, there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management or administration of the Trusts. Moreover, those individuals who participate in the management or administration of the Trusts will remain the same regardless of which Separate Accounts, or Qualified Plans use the Trusts. Applicants argue that applying the monitoring requirements of Section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose. Further, the increased monitoring costs would reduce the net rates of return realized by contract owners.

8. Applicants also state that in the case of Qualified Plans, the Plans, unlike the Separate Accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

9. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming that the limitations on mixed and shared funding imposed by the 1940 Act and the rules promulgated thereunder are observed.

10. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the Participating Insurance Companies the right to disregard voting instructions of contract owners. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) each provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) each provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in the underlying investment company's investment policies, principal underwriter, or any investment adviser (subject to the provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Applicants represent that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard voting instructions of contract owners only with respect to certain specified items. Applicants also note that the potential for disagreement among Separate Accounts is limited by the requirements in Rules 6e–2 and 6e–3(T) that a Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

11. Applicants further represent that the offer and sale of Portfolio shares to Qualified Plans will not have any impact on the relief requested in this regard. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of ERISA, shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (2) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and Plan investors with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

12. Some Qualified Plans, however, may provide participants with the right to give voting instructions. Applicants note that there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable contract owners. Applicants, therefore, submit that the purchase of shares of the Portfolios by Qualified Plans that provide voting rights does not present

any complications not otherwise occasioned by mixed or shared funding.

13. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different that the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliated does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants state that the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Portfolios. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

15. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

16. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the relevant Trust's election, to withdraw its Separate Account's investment in such Portfolio, and no charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in the Portfolios.

17. Applicants submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance period. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A Portfolio supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the relevant Portfolio. Mixed and shared funding will broaden the base of contract owners which will facilitate the establishment of additional portfolios serving diverse goals.

19. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

20. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with Regulations, adequately diversified.

21. Regulations issued under Section 817(h) provide that, to meet the statutory diversification requirements, all of the beneficial investment company must be held by the segregated asset accounts of one or more insurance companies. The Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817-5(f)(3)(iii)). Thus, the Regulations specifically permit "qualified pension or retirement plans" and separate accounts to invest in the same portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest.

22. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or a Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c-1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Plan.

23. Applicants state that it is possible to provide an equitable means of giving

voting rights to contract owners in the Separate Accounts and to Qualified Plans. In connection with any meeting of shareholders, the Trusts will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rule 6e-2 and 6e-3(T), as applicable, and its participation agreement with the relevant Trust. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Trusts would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

24. Applicants submit that the ability of the Portfolios to sell their shares directly to Qualified Plans does not create a "senior security" as such term is defined under Section 18(g) of the 1940 Act. "Senior security" is defined under Section 18(g) of the 1940 Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts only have rights with respect to their respective shares of the Portfolios. They only can redeem such shares at net asset value. No shareholder of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

25. Applicants assert that there are no conflicts between the contract owners of the Separate Accounts and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. Applications note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

26. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Portfolios and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

27. Applicants also assert that there is no greater potential for material irreconcilable conflict arising between the interest of participants in the Qualified Plans and contract owners of the Separate Accounts from future changes in the federal tax laws than that which already exist between variable annuity contract owners and variable life insurance contract owners.

28. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Portfolio as a common investment media for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of SIMC, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Portfolio, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Therefore, making the Portfolios available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the Portfolios to Qualified Plans in addition to the Separate Accounts will result in an increased amount of assets available for investment by such Portfolios. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

29. Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. As noted above, Applicants assert that mixed and shared funding will have any adverse Federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:[1]

1. A majority of the Board of each Trust will consist of persons who are not "interested persons" of such Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or

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[1] Applicants agree that in the event SEI Insurance Products Trust, or any other Trust, operates as a "feeder" in a "master/feeder" structure, such Trust shall insure that, to the extent necessary, the "master," as well as such Trust, will comply with the conditions hereof.

judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, SIMC or an affiliate, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, the "Participants") will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment medium, including another Portfolio, or in the case of insurance company participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trusts, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Trust, SIMC, or SIMC's affiliate, as relevant, be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any variable contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if (a) a majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes such decision without a Plan participant vote.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all contract owners as required by the 1940 Act. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Portfolio held in its Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in this Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, SIMC or any of its affiliates will vote its shares of any Fund in the same proportion of all variable contract owners having voting rights with respect to that Fund; provided, however, that SIMC or any of its affiliates shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, each Trust will either provide for annual meetings (except to

the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trusts are not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trusts will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that (a) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict, and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 and rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the Order requested in this Application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in this Application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

12. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27730 Filed 10–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 25, 1999.

Open meetings will be held on Wednesday, October 27, 1999 at 10 a.m., and at 2 p.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the open meeting scheduled for Wednesday, October 27, 1999, at 10 a.m., will be:

The Commission will hear oral argument on an appeal by the Division of Enforcement from an administrative law judge's initial decision. The law judge dismissed an administrative proceeding against Russell Ponce. For further information, contact Sara P. Crovitz at (202) 942–0950.

The subject matter of the open meeting scheduled for Wednesday, October 27, 1999, at 2 p.m., will be:

Consideration of whether to issue a release requesting comments regarding when or under what conditions the Commission should accept financial statements of foreign private issuers that are prepared using standards promulgated by the International Accounting Standards Committee. For further information, contact Donald J. Gannon at (202) 942–4400.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 20, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27861 Filed 10–21–99; 11:54 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–4206; File No. SR–CBOE–99–43]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. To amend Its Constitution Pertaining to Corporate Governance

October 18, 1999.

I. Introduction

On August 6, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain provisions of its constitution pertaining to the governance of the Exchange. The proposed rule change was published in the **Federal Register** on September 7,

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

1999.[3] On September 24, 1999, the Exchange submitted an amendment to the proposed rule change.[4] On September 28, 1999, the Exchange submitted a second amendment to the proposed rule change.[5] The Exchange also submitted an amendment on October 15, 1999.[6] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change and approves on an accelerated basis and solicits comment on Amendment Nos. 1, 2, and 3 to the proposed rule change.

II. Description of the Proposed Rule Change

A. Board of Directors

The proposed rule change would alter the composition of the Exchange's Board of Directors ("Board"). For example, CBOE proposes to increase the number of public representatives on the Board from four to eight. In addition, CBOE proposes to add a seat on the Board to represent owner/lessor members.[7]

To accommodate these new Board members, CBOE proposes other changes to the composition of the Board. For example, the proposal would increase the total size of the Board from 21 to 23 directors. In addition, the number of floor directors on the Board would be reduced from six to four and the president of the Exchange, who is currently a member of the Board, will no longer be a Board member.

The number of off-floor firm directors and at-large directors will remain unchanged at six and three, respectively. In addition, the Chairman of the Exchange will continue to serve as a director.

Directors will continue to be elected for three-year terms, with all categories of directors to be elected by the members of the Exchange.[8] During the transition, each director currently serving on the Board will be permitted to complete their current terms of office.

B. Qualifications of Directors and Officers

The proposed rule change also clarifies certain requirements applicable to specific categories of directors and officers. For example, in addition to the current requirement that floor directors be primarily engaged in business on the floor of the Exchange, the proposal specifies floor directors must be "on a seat" (*i.e.*, acting in the capacity of a member by actively trading securities) in connection with their floor activity. In addition, the proposal clarifies the current requirement that a floor director must own or control a membership by specifying that a floor director may own a membership indirectly through an interest in a corporation, partnership, limited liability company, trust, or other entity that owns one or more memberships directly. A floor director with such indirect control, however, must have the sole and exclusive right to vote the membership and control its sale, and must possess all of the risks and rewards of a direct owner of at least 50% interest in a membership.

The proposed rule change also specifies an additional requirement for the Vice-Chairman of the Exchange, who is also the Chairman of the Executive Committee.[9] The proposal would require the Vice-Chairman of the Exchange to be primarily engaged in business on the floor of the Exchange. The current constitution requires only that the Vice-Chairman own a CBOE membership.

C. Nominating Committee

The proposed rule change would increase the size of the Nominating Committee from seven to ten members to accommodate adding representatives of retail firms, lessors and the public. The Nominating Committee is the Exchange committee that determines which candidates are qualified for election to the Board and other Exchange committees. As proposed, the Nominating Committee will consist of four floor members (except during the transition years, when the number of floor directors will first be six and then five), two members who represent firms that primarily conduct a public customer business, two members who are lessors of their memberships (at least one of whom must be a "passive" lessor),[10] and two public members.

All members of the Nominating Committee will be elected by the membership and will serve three-year terms.[11] The Nominating Committee that will serve with respect to the 1999 annual election meeting shall include two lessor members, two firm members, and two public members. The Chairman of the Executive Committee, with the approval of the Board, shall appoint these new committee members for the 1999 annual election meeting. Thereafter, the new committee members shall be elected in the same process as other Nominating Committee members.

The Nominating Committee will judge the qualifications of all candidates for election to the Board or the Nominating Committee that are nominated by that Committee. The Executive Committee will judge the qualifications of candidates who are nominated by petition.

D. Other Changes

The proposed rule change also would modify the timetable for various election matters that are specified in the constitution. For example, the Exchange proposes to advance the time by which the Chairman of the Executive Committee (the Vice-Chairman of the Exchange) is selected by a few weeks to enable the Vice-Chairman to complete the process of selecting chairpersons of various Exchange committees by the end of the year. In addition, CBOE proposes to move the annual meeting of members from the second Monday in December to the third Friday in November. Finally, petitions for nominations of candidates for the Board or the Nominating Committee would be required to be submitted by the Monday preceding the first Friday in November, instead of the current November 15 deadline.

The proposed rule change also would delete those provisions that refer to "special members" because there are no longer members in this category. Finally, the proposal contains conforming amendments made necessary by the proposal's substantive changes.

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[3] Securities Exchange Act Release No. 41791 (August 25, 1999), 64 FR 48682.

[4] Letter from Debora Barnes, Senior Attorney, CBOE, to Richard Strasser, Division of Market Regulation ("Division"), SEC, dated September 23, 1999 ("Amendment No. 1"). Amendment No. 1 contained grammatical changes to the proposed rule language and contained a chart describing the composition of CBOE's Board of Directors during the transition period when the proposed changes are implemented.

[5] Letter from Debora Barnes, Senior Attorney, CBOE, to Richard Strasser, Division, SEC, dated September 24, 1999 ("Amendment No. 2"). Amendment No. 2 made further grammatical corrections to the proposed rule language.

[6] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Richard Strasser, Assistant Director, Division, SEC, dated October 14, 1999 ("Amendment No. 3"). In Amendment No. 3, the Exchange proposes to amend CBOE Rule 8.80(b)(1), which provides for the composition and election of the MTS Appointments Committee ("MTS Committee"). Amendment No. 3 reflects changes proposed by the Exchange in an earlier filing submitted to the Commission for approval. *See* Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999) (File No. SR–CBOE–98–54).

[7] An owner/lessor member includes those members that own a CBOE membership but are not actively engaged in business as a broker-dealer. These owner/lessors are also referred to as "passive lessors."

[8] Currently, public directors are appointed by the Chairman of the Exchange.

[9] The Exchange Committee is responsible for managing the business and affairs of the Exchange.

[10] *See supra* note 6.

[11] During the transition period, some members may be elected for shorter terms.

E. CBOE Rule 8.80(b)(1)

In Amendment No. 3, the Exchange proposes to amend CBOE Rule 8.80, which, among other things, governs the composition and election of the Modified Trading System ("MTS") Committee.[12] The MTS Committee governs the Exchange's designated primary market maker ("DPM") program. The changes proposed in Amendment No. 3 were originally submitted by the CBOE in File No. SR–CBOE–98–54.[13]

The proposed changes to Rule 8.80(b)(1) provide for the election of MTS Committee members, which are currently appointed by the Nominating Committee with the approval of the Board. The election procedures proposed would be the same as those used for the election of the Exchange's directors. Accordingly, the election process would begin in October of each year when the Nominating Committee selects nominees to fill expiring terms and vacancies. The proposal also provides that MTS Committee members will serve three-year terms, which is an increase from the current two-year terms requirement. The Exchange proposes to add Amendment No. 3 to this proposal because of the election process time-line.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange.[14] In particular, the Commission believes that the proposal is consistent with Section 6(b)(3) of the Act.[15]

One of the requirements of Section 6(b)(3) of the Act provides that one or more directors of an exchange shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission has consistently stated its belief that representation of the public on exchange oversight committees that have decision-making authority is critical to ensuring that the exchange works to protect the public interest.[16] Further, public representation helps to ensure that no single group of investors has the ability to systematically disadvantage other market participants through the exchange governance process.

The proposed rule change amends the composition of the Board by increasing the number of public directors from four to eight. As a result, public directors will compromise nearly 35 percent of the Board, compared to the current 19 percent public representation. The Commission believes that this increase should substantially increase the public's voice on CBOE's Board, which is consistent with Section 6(b)(3) of the Act.[17] Public directors should bring knowledge of the interests of investors to the governance of the Exchange and provide a balance to the composition of the Board. They should possess a unique perspective, which should enhance the ability of the Board to address exchange issues in a non-discriminatory fashion.

In addition to increasing the number of public directors on the Board, the proposal adds two public members to the Nominating Committee. By adding public members to the Nominating Committee, the proposal should help to ensure that a fair and broad cross-section of members and the public are represented in the administration of the affairs of the Exchange.

The second requirement of Section 6(b)(3) of the Act[18] states that the rules of an exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs This requirement seeks to ensure that an exchange is administered in a way that is equitable to all market members and participants. A registered exchange is not solely a commercial enterprise. It has significant regulatory responsibilities with respect to its members, such as the responsibility to act fairly in adjudicating disciplinary proceedings against members. Therefore, the statute seeks to ensure that members' interests are adequately represented and protected.

The proposed rule change provides for the election for public directors. Currently, public directors are appointed by the Chairman of the Board and approved by the full Board. Public directors will now go through the full nominating and election process. This amendment provides members with agreater role in the administration of the Exchange and allows them to have a greater impact on the composition of their governing body.

The composition of the Board was further amended by the proposal to include the owner/lessor member community. Currently, approximately 85 percent of CBOE's memberships are leased.[19] By including lessor directors on the Board, the CBOE recognizes this large segment of its member population and provides it with a greater voice in the administration of the Exchange's affairs.

To accommodate the new owner/lessor director and the additional public directors, the proposal decreases the number of floor directors on the Board from six to four. The Commission finds that in light of the amount of lessor members and the public interest served by adding public directors this reduction is reasonable.[20]

The qualifications of floor directors also were amended by the proposed rule change. Floor directors will be required to be "on a seat" (*i.e.*, acting in the capacity of a member by actively trading securities) to be qualified for a director position. This new requirement, in addition to the current requirement that floor directors be primarily engaged in business on the floor of the Exchange, should ensure that floor members' interests are adequately supported. This new requirement should ensure that floor directors have a full appreciation and understanding of the issues that are of concern to floor members.[21]

The qualifications of the Vice-Chairman of the Board were also clarified to explicitly require that the Vice-Chairman be primarily engaged in business on the floor of the Exchange. By adding this requirement, the Vice-Chairman should be equipped with an in-depth knowledge of the business of the Exchange, which will enable him or her to make decisions and implement policies that are in the best interest of the Exchange and its members.

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[12] *See* Amendment No. 3, *supra* note 6.

[13] *See* Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999).

[14] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[15] 15 U.S.C. 78f(b)(3).

[16] *See, e.g.*, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[17] The Commission notes that currently the American Stock Exchange, National Association of Securities Dealers and its subsidiaries, and the Chicago Stock Exchange each have composed their boards so that industry directors do not out number the remaining directors. In addition, the Pacific Exchange, PCX Equities and the International Securities Exchange ("ISE") have each filed proposals that provide for the composition of their boards to include at least 50 percent public representation. *See* File No. SR–PCX–99–33 (proposing to amend the constitution of the Pacific Exchange); SR–PCX–99–39 (proposing to establish PCX Equities); and Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29867 (June 1, 1999) (the ISE application for exchange status).

[18] 15 U.S.C. 78f(b)(3).

[19] Telephone call between Debra Barnes, Senior Attorney, CBOE and Kelly Riley, Attorney, SEC, on October 7, 1999. As of September 30, 1999, CBOE and 931 memberships of which 794 are leased.

[20] Upon approval of this proposal and the subsequent elections to implement these changes, the Board will consist of eight public directors, six off-floor firm directors, four floor directors, three at-large directors, one owner/lessor director, and the Chairman of the Board.

[21] The Commission notes that an owner/lessor of multiple seats might qualify under more than one category of director.

The proposal also amended the composition of the Nominating Committee to include representatives of retail firms, lessors and the public. Floor members will continue to be represented. The new composition should provide the differing member communities with a voice in the candidates presented for election to the Board and other Exchange committees, which should ensure that a fair cross-section of qualified candidates are presented to members for election. By providing a balanced committee that is composed of the diverse member constituencies of the Exchange, the proposal should prevent the discriminatory exclusion of qualified candidates.

Finally, the Commission finds good cause to accelerate approval of Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register.** Amendment Nos. 1 and 2 proposed grammatical changes to the original filing. As Amendment Nos. 1 and 2 were merely technical in nature and do not raise any novel issues of regulatory concern, the Commission finds good cause to accelerate their approval.

Amendment No. 2 provides for the election of MTS Committee members, which are currently appointed by the Nominating Committee. The MTS Committee is charged with governing the DPM program on the floor of the Exchange. By allowing members to elect the members of this committee, the amendment enables Exchange members to be more actively involved in the administration of the Exchange. Moreover, the Commission finds that extending the MTS Committee members' terms of office to three years should enhance continuity in the application of Exchange rules and policies and should increase the expertise of the MTS Committee in addressing issues related to the DPM program. The Commission finds good cause to accelerate Amendment No. 3 because the election process for the Exchange is scheduled to begin in October and the Commission believes that it would be beneficial for members to elect the new MTS Committee members in the 1999 election. Further, the Commission notes that the proposed changes were published for public comment in the **Federal Register** and that no comments were received on the proposed changes.[22] Therefore, the Commission believes that good cause exists, consistent with Section 6(b)(3) of the Act[23] and Section 19(b)[24] of the Act, to approve Amendment Nos. 1, 2, and 3 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–43 and should be submitted by November 15, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the amended proposed rule change (SR–CBOE–99–43) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27715 Filed 10–22–99; 8:45 am]

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[22] *See supra* note 6.

[23] 15 U.S.C. 78f(b)(3).

[24] 15 U.S.C. 78s(b).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.40–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42012; File No. SR–CBOE–99–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Operation of the Retail Automatic Execution System

October 15, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 1999, the Chicago Board Options Exchange Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a new policy concerning the administration of its rules governing the operation of its Retail Automatic Execution System ("RAES"). The new policy concerns the handling of orders on RAES in cases where the CBOE's best bid or offer is inferior to the best bid or offer in another market. The policy will be reflected in new Interpretation .08 to rule 6.8. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Interpretation .02 to CBOE Rule 6.8 governs the handling of orders for multiply-traded options on RAES in cases where the CBOE's best bid or offer is inferior to the current best bid or offer in any other market. When RAES receives an order for a multiply-traded option at a time when a better bid or offer for that option (the National Best Bid or Offer, or "NBBO") is displayed on another exchange, the order will either be rejected for manual handling (so that the order is not automatically executed at an inferior price to the NBBO), or the order will be executed at the NBBO if the NBBO is better than the CBOE bid or offer by no more than the designated number of minimum trading variations ("step-up amount"). Pursuant to Interpretation .02 to rule 6.8, the appropriate Floor Procedure Committee ("FPC") determines which option classes will be entitled to be executed automatically at the better bid or offer and also determines the step-up amount at which the order still will be executed automatically on RAES.[3] In situations where the NBBO is better than the CBOE bid or offer by more than the number of ticks represented by the designated step-up amount, the order will be rerouted for manual handling.

The application of a step-up amount (pursuant to Interpretation .02 to rule 6.8), particularly a step-up amount two "ticks" or more, could result in a crossed market on the Exchange (i.e., a market where a stepped-up bid would be higher than the best offer, or a stepped-down offer would be lower than the best bid). The Exchange believes that it is inconsistent with a fair and orderly market for an automatic step-up to result in a crossed market. Moreover, by forcing market makers to buy options contracts at higher prices than they can sell those contracts, a crossed market subjects market makers to potentially significant losses.[4] The proposed new policy will prevent these occurrences as further described below.

Under proposed new Interpretation .08 to Rule 6.8, orders will not be automatically executed on RAES at stepped-up prices in situations where, after applying the step-up amount, there would be a crossed market on the Exchange. Any orders prevented from being automatically executed by operation of this policy will be rerouted to the Public Automated Routing ("PAR") machine of the Designated Primary Market Maker ("DPM") for manual handling.[5] Upon receipt of that order, in accordance with CBOE Rule 6.73, the floor broker or DPM will be obligated to use due diligence in the handling of the order to execute the order at the best price or prices available to him.

In addition, pursuant to the Exchange's firm quote rule, Rule 8.51, any order that is rerouted will be entitled to be executed at the Exchange's displayed bid or offer when that order is represented in trading crowd. Of course, depending on the circumstances, that order may be filed at a price better than the DBOE's displayed bid or offer.

By preventing the automatic execution of orders at prices that reflect crossed markets on the Exchange, the Exchange represents that the proposed policy is consistent with and in furtherance of the objectives of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to remove impediments to the perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participant or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(6) under the Act because:

(i) It does not significantly affect the protection of investors or the public interest;

(ii) It does not impose any significant burden on competition; and

(iii) By its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

In this regard the CBOE has agreed that the proposal need not become operative for 30 days, but has requested that the operative date be accelerated. In addition, the CBOE provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of filing of the proposed rule change.

The Commission finds that it is appropriate to designate the proposal to become operative today because such designation is consistent with the protection of investors and the public interest. Specifically, the Commission finds that it is appropriate to accelerate the operative date of the proposed rule change because the proposal will allow the CBOE to provide the benefits of a larger "step-up amount" for a greater number of customers, promoting prompt executions of these customer order at the NBBO. In addition, the proposal is similar to a rule of the Pacific Exchange, Inc. ("PCX") that was approved by the Commission in September 1998.[6] For these reasons the Commission finds that designation of the proposal to become operative today is consistent with the protection of investors and the public interest.[7]

The Commission requests, however, that the CBOE provide it with information regarding the occasions in which the new Interpretation is applied and the promptness of the manual execution of orders that are prevented from automatic execution by operation of the new Interpretation. This data should cover, at a minimum, the period commencing as of the proposed Interpretation's operative date and concluding six months thereafter.

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[3] In this regard, the Commission recently approved an amendment to Interpretation .02 that authorizes the appropriate FPC to establish a step-up amount greater than the one-tick increment established pursuant to CBOE rule 6.42. *See* Securities Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999) (SR–CBOE–99–17).

[4] Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (October 6, 1999).

[5] The PAR screen is a dynamic touch-screen terminal designed to allow electronic representation of crowd-routed orders. The PAR screen enables a broker to trade, cancel, print or electronically book an order or bundle of orders. When the order is filled or canceled, the execution or cancel report is sent from the trading pit to the branch. Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (October 12, 1999).

[6] Securities Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (SR–PCX–98–27).

[7] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation consistent with Section 3(f) of the Act, 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

VI. Solicitation of Commission

Interested persons are invited to submit data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–56 and should be submitted by November 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27716 Filed 10–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–42025; File No. SR–CHX–99–12)]

Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by the Chicago Stock Exchange, Inc. To Modify the Recommended Fine Schedule for the Submission of Late Financial and Operational Reports

October 18, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. On October 5, 1999, the CHX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the fixed fine schedule in Exchange Article XI, Rule 4,

Interpretation and Policy .02 ("IP.02"), regarding the submission of late financial and operational reports and subject violations under the rule to the CHX Minor Rule Violation Plan's standard recommended fine schedule. The text of the proposed rule change is available at the Office of the Secretary, the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the plates specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 30, 1996 the Commission approved a proposed rule change that established a CHX minor rule violation plan ("MRVP" or "Plan").[4] Under the Plan, the failure to file required financial and operational reports in a timely manner subjects members to a sanction. However, for such violations, the Plan's recommended fine schedule mirrors the fine schedule contained in IP .02. That fine schedule subjects members to late filing charges as follows:

Days Late/Amount	
1–30	$100
31–60	$200
61–90	$400

The Exchange is now proposing to eliminate the fixed fine schedule in IP .02, and to subject violations under the rule to the recommended fine schedule applicable to most other violations handled under the Plan. The recommended fine schedule provides that a $100 fine be imposed for the first violation within a rolling twelve month period and a $500 fine and $1000 fine be imposed for the second and third such violations. The Exchange believes that the proposed change would allow the MRVP panel to levy higher fines for the late submission of financial and operational reports.[5]

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations under that Act which are applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(1), 6(b)(6), 6(b)(7), 6(d)(1) and 19(d) of the Act. The proposal is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be disciplined appropriately for violations of the rules of the exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Angelo Evangelo, Senior Attorney, Market Regulation, CHX, to John Roeser, Attorney, Division of Market Regulation, Commission, dated October 1, 1999 ("Amendment No. 1").

[4] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). The CHX's Plan was approved by the Commission in 1996. *See* Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (approving File No. SR–CHX–95–25).

[5] With respect to the issue of how the MRVP panel would handle violations that differ in terms of the length of time submissions are overdue, the Exchange believes that the MRVP panel, in such instances, would use its discretion in determining appropriate fine amounts. Although the proposed new fine schedule would not expressly state that higher fine amounts are appropriate for overly late submissions, the Exchange indicates that the MRVP panel likely would exercise its discretion to sanction members in accordance with the number of days a report was late. *See* Amendment No. 1, *supra* note 3.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–12 and should be submitted November 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27714 Filed 10–22–99; 8:45 am]

BILLING CODE 8010–01–M

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[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42019; File No. SR–MSRB–99–7]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change Relating to an Amendment to Rule G–16 on Periodic Compliance Examinations

October 15, 1999.

I. Introduction

On August 13, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to Rule G–16 on periodic compliance examinations. The proposed rule change was published for comment in the **Federal Register** on August 20, 1999.[3] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Section 15B(c)(7)(A)[4] of the Act provides that periodic examinations of dealers for compliance with MSRB rules are to be conducted by the National Association of Securities Dealers, Inc. ("NASD") with respect to securities firms and by the appropriate federal bank regulatory agencies with respect to bank dealers. Rule G–16 permits periodic examinations of dealers for compliance with MSRB rules to be combined with other periodic examinations of securities firms and bank dealers to avoid unnecessary regulatory duplication and undue regulatory burdens for such firms and bank dealers. Rule G–16 currently requires that compliance examinations for dealers be conducted at least once every 24 months.

By letter dated April 28, 1999, NASD Regulation, Inc. ("NASDR") requested that the Board revise Rule G–16. The letter stated that because of NASDR's efforts to coordinate examination schedules, NASDR believes that the Board should change the 24-month requirement in Rule G–16 to a two calendar year requirement.

NASDR stated that the requirement in Rule G–16 that municipal securities examinations commence within 24 months of the previous examination takes precedence over all examinations when coordinating examination schedules. NASDR uses the "field work start date" of a firm's prior municipal securities examination to calculate the 24-month period for the purposes of Rule G–16. Applying this methodology, NASDR identifies all municipal securities examinations required in a given calendar year. A determination is then made as to whether the identified firms are also scheduled for a routine cycle examination during the same year.

If a routine cycle examination is required of a firm that is subject to a municipal inspection, the routine and municipal examinations are combined. If a routine cycle examination is not required, a separate "off-cycle" municipal examination may have to be conducted on-site. Whenever a municipal securities examination is accelerated, the due date for commencement of a subsequent examination is moved to an earlier period; increasingly the first quarter. NASDR stated that this hampers both current and future examination planning and coordination. NASDR stated that without the rule change it may be necessary to remove municipal securities examinations from the coordinated examination programs.

The proposed rule change alters Rule G–16's requirement that compliance examinations be conducted once every 24 months to once every two calendar years. The rule change is intended to facilitate coordination of on-site examinations to eliminate unnecessary regulatory duplication without negatively affecting investor protection. A formal Memorandum of Understanding among the North American Securities Administrators Association, Inc., Commission, NASDR and other securities industry self-regulatory organizations reflect the joint commitment to coordinated examinations.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2(C)[6] of the Act. Section 15B(b)(2)(C) of the Act requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change will prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade by enabling the NASD to better coordinate periodic examination schedules.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 41773 (Aug. 20, 1999), 64 FR 47209 (Aug. 30, 1999).

[4] 15 U.S.C. 78o–4(c)(7)(A).

[5] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change should improve efficiency and competition because it permits flexibility for scheduling periodic compliance examinations. 15 U.S.C. 78c(f).

The rule change will extend the maximum period between compliance examinations to three years. For example, if a dealer is examined in January, the two calendar year clock would not start running for the next compliance examination under Rule G–16 until the following January. While this could lengthen the time between compliance examinations, the Commission believes that enhancing the NASD's ability to coordinate examinations should reduce unnecessary regulatory duplication and regulatory burdens for dealers as well as permit the NASD to better allocate its examination resources. The Commission believes that the proposed rule change will ease the burdens for both the examiners and the dealers. By permitted more flexibility in arranging examination schedules, the change to Rule G–16 should result in scheduling examinations based on efficiency and methodology rather than the calendar.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[7] of the Act, that the proposed rule change (SR–MSRB–99–7) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27717 Filed 10–22–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3222]

State of Connecticut (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated October 13, 1999, the above-numbered Declaration is hereby amended to include Litchfield County, Connecticut as a disaster area due to damages caused by high winds, heavy rain, and flooding associated with Tropical Storm Floyd beginning on September 16, 1999 and continuing through September 21, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous County of Berkshire in the State of Connecticut may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 21, 1999 and for economic injury the deadline is June 23, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 15, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–27803 Filed 10–22–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3214]

Commonwealth of Pennsylvania (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated October 13, 1999, the above-numbered Declaration is hereby amended to include Berks County, Pennsylvania as a disaster area due to damages caused by Hurricane Floyd beginning on September 16, 1999 and continuing through September 29, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous County of Schuylkill in the Commonwealth of Pennsylvania may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 16, 1999 and for economic injury the deadline is June 19, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 15, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–27802 Filed 10–22–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3213]

Commonwealth of Virginia (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated October 12, 1999, the above-numbered Declaration is hereby amended to include the following areas in the Commonwealth of Virginia as a disaster area due to damages caused by Hurricane Floyd beginning on September 13, 1999 and continuing through September 26, 1999: The Counties of Brunswick, Charles City, Essex, Fairfax, Hanover, Henrico, New Kent, Northampton, Richmond, and Westmoreland, and the Independent Cities of Hopewell and Poquoson.

In addition, applications for economic injury loans from small businesses located in the following contiguous areas may be filed until the specified date at the previously designated location: The counties of Arlington, Caroline, King George, Loudoun, Louisa, Lunenburg, Prince William, and Spotsylvania and the Independent Cities of Alexandria, Fairfax, and Falls Church in the Commonwealth of Virginia, and Montgomery County, Maryland. Any areas contiguous to the above-named primary areas and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 16, 1999 and for economic injury the deadline is June 19, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 15, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–27804 Filed 10–22–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner; Cost-of-Living Increase and Other Determinations for the Year 2000

AGENCY: Social Security Administration.

ACTION: Notice.

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[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SUMMARY: The Commissioner has determined—

(1) A 2.4 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 1999;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2000 to $512 for an eligible individual, $769 for an eligible individual with an eligible spouse, and $257 for an essential person;

(3) The national average wage index for 1998 to be $28,861.44;

(4) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $76,200 for remuneration paid in 2000 and self-employment income earned in taxable years beginning in 2000;

(5) For beneficiaries under age 65, the monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 2000 to be $840;

(6) The dollar amounts ("bend points") used in the benefit formula for workers who become eligible for benefits in 2000 to be $531 and $3,202;

(7) The dollar amounts ("bend points") used in the formula for computing maximum family benefits for workers who become eligible for benefits in 2000 to be $679, $980, and $1,278;

(8) The amount of earnings a person must have to be credited with a quarter of coverage in 2000 to be $780;

(9) The "old-law" contribution and benefit base to be $56,700 for 2000;

(10) The monthly amount of substantial gainful activity applicable to statutorily blind individuals in 2000 to be $1,170;

(11) Coverage thresholds for 2000 to be $1,200 for domestic workers and $1,100 for election workers; and

(12) The OASDI fund ratio to be 193.6 percent for 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. For information on eligibility or claiming benefits, call (800) 772–1213. A summary of the information in this announcement is available in a recorded message by telephoning (410) 965–3053. Information relating to this announcement is also available on the Internet. The address is http://www.ssa.gov/OACT/COLA/index.html.

SUPPLEMENTARY INFORMATION: The Commissioner is required by the Act to publish within 45 days after the close of the third calendar quarter of 1999 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Commissioner is required to publish on or before November 1 the national average wage index for 1998 (section 215(a)(1)(D)), the OASDI fund ratio for 1999 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2000 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2000 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2000 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or dies in 2000 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2000 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The cost-of-living increase is 2.4 percent for benefits under titles II and XVI of the Act.

Under title II, OASDI benefits will increase by 2.4 percent beginning with December 1999 benefits, payable in January 2000. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 2.4 percent effective for payments made for the month of January 2000 but paid on December 30, 1999. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 1999 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective with December 1999, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1999, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1998 through the third quarter of 1999.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The arithmetic mean is rounded, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1998, is: for July 1998, 159.8; for August 1998, 160.0; and for September 1998, 160.2. The arithmetic mean for this calendar quarter is 160.0. The corresponding Consumer Price Index for each month in the quarter ending September 30, 1999, is: for July 1999, 163.3; for August 1999, 163.8; and for September 1999, 164.7. The arithmetic mean for this calendar quarter is 163.9. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1999, exceeds that for the calendar quarter ending September 30, 1998 by 2.4 percent, a cost-of-living benefit increase of 2.4 percent is effective for benefits under title II of the Act beginning December 1999.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (*i.e.*, the worker's attainment of age 62, or disability or death before age 62) occurred before 2000, benefits will increase by 2.4 percent beginning with benefits for December 1999 which are payable in January 2000. In the case of first eligibility after 1999, the 2.4 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235. The table is also available on the Internet at address http://www.ssa.gov/OACT/ProgData/tableForm.html.

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 "years of coverage." To earn a year of coverage for purposes of the special minimum, a person must earn at least a certain proportion (25 percent for years before 1991, and 15 percent for years after 1990) of the "old-law" contribution and benefit base. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 2.4 percent benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 1999

Number of years of coverage	Primary insurance amount	Maximum family benefit
11	28.50	43.20
12	57.40	86.80
13	86.70	130.40
14	115.50	173.80
15	144.50	217.00
16	173.60	261.10
17	202.70	304.80
18	231.80	348.20
19	260.80	391.80
20	289.70	435.30
21	319.10	479.20
22	347.90	522.60
23	377.20	566.80
24	406.30	610.20
25	435.30	653.30
26	464.60	697.70
27	493.50	741.00
28	522.50	784.40
29	551.50	828.20
30	580.60	871.50

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $205.70 for an individual under sections 227 and 228 of the Act is increased by 2.4 percent to obtain the new amount of $210.60. The current monthly benefit amount of $102.80 for a spouse under section 227 is increased by 2.4 percent to $105.20.

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 2.4 percent effective January 2000. For 1999, the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$500, $751, and $250, respectively—were derived from corresponding yearly unrounded Federal SSI benefit amounts of $6,010.02, $9,014.01, and $3,011.89. For 2000, these yearly unrounded amounts are increased by 2.4 percent to $6,154.26, $9,230.35, and $3,084.18, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2000, are $6,144, $9,228, and $3,084. The corresponding monthly amounts for 2000 are determined by dividing the yearly amounts by 12, giving $512, $769, and $257, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Fee for Services Performed as a Representative Payee.

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $27 per month ($53 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. The current amounts are thus increased by 2.4 percent to $28 and $54 for 2000.

National Average Wage Index for 1998

General

Under various provisions of the Act, several amounts are scheduled to increase automatically for 2000 based on the annual increase in the national average wage index. The amounts are: (1) The OASDI contribution and benefit base; (2) the retirement test exempt amount for beneficiaries under age 65; (3) the dollar amounts, or "bend points," in the primary insurance amount and maximum family benefit formulas; (4) the amount of earnings required for a worker to be credited with a quarter of coverage; (5) the "old-law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (6) the substantial gainful activity amount applicable to statutorily blind individuals, and (7) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

Computation

The determination of the national average wage index for calendar year 1998 is based on the 1997 national average wage index of $27,426.00 announced in the **Federal Register** on October 30, 1998 (63 FR 58446), along with the percentage increase in average wages from 1997 to 1998 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $26,309.73 and $27,686.75 for 1997 and 1998, respectively. To determine the national average wage index for 1998 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), the 1997 national average wage index of $27,426.00 is multiplied by the percentage increase in average wages from 1997 to 1998 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

Amount

The national average wage index for 1998 is $27,426.00 times $27,686.75 divided by $26,309.73, which equals $28,861.44. Therefore, the national average wage index for calendar year 1998 is determined to be $28,861.44.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $76,200 for remuneration paid in 2000 and self-employment income earned in taxable years beginning in 2000.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 2000 is set by statute at 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 2000 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 2000, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 2000, at the rate of 2.9 percent.)

(b) It is the maximum annual amount used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2000 shall be equal to the larger of: (1) The 1994 base of $60,600 multiplied by the ratio of the national average wage index for 1998 to that for 1992; or (2) the current base ($72,600). If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

The ratio of the national average wage index for 1998, $28,861.44 as determined above, compared to that for 1992, $22,935.42, is 1.2583785. Multiplying the 1994 OASDI contribution and benefit base amount of $60,600 by the ratio of 1.2583785 produces the amount of $76,257.74 which must then be rounded to $76,200. Because $76,200 exceeds the current base amount of $72,600, the OASDI contribution and benefit base is determined to be $76,200 for 2000.

Retirement Earnings Test Exempt Amounts

General

Social Security benefits are withheld when a beneficiary under age 70 has earnings in excess of the retirement earnings test exempt amount. Since 1978, higher exempt amounts have applied to beneficiaries aged 65 through 69 compared to those under age 65. Formulas for determining the monthly exempt amounts are provided in section 203(f)(8)(B) of the Act, as amended by section 102 of the "Senior Citizens' Right to Work Act of 1996," title I of Pub. L. 104–121. This amendment set the annual exempt amount for beneficiaries aged 65 through 69 to $12,500 for 1996, $13,500 for 1997, $14,500 for 1998, $15,500 for 1999, $17,000 for 2000, $25,000 for 2001, and $30,000 for 2002. The corresponding monthly exempt amounts are exactly one-twelfth of the annual amounts. After 2002, the monthly exempt amount for this group of beneficiaries will increase under the applicable formula.

For beneficiaries aged 65 through 69, $1 in benefits is withheld for every $3 of earnings in excess of the annual exempt amount. For beneficiaries under age 65, $1 in benefits is withheld for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula applicable to beneficiaries under age 65, the monthly exempt amount for 2000 shall be the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 1998 to that for 1992; or (2) the 1999 monthly exempt amount ($800). If the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Exempt Amount for Beneficiaries Under Age 65

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1992, $22,935.42, is 1.2583785. Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio 1.2583785 produces the amount of $843.11. This must then be rounded to $840. Because $840 is larger than the corresponding current exempt amount of $800, the retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $840 for 2000. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $10,080.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's "average indexed monthly earnings" to compute the primary insurance amount. The computation formula is adjusted automatically each year to reflect changes in general wage levels, as measured by the national average wage index.

A worker's earnings are adjusted, or "indexed," to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime. A certain number of years of earnings are needed to compute the average indexed monthly earnings. After the number of years is determined, those years with the highest indexed earnings are chosen, the indexed earnings are summed, and the total amount is divided by the total number of months in those years. The resulting average amount is then rounded down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 2000, the national average wage index for 1998, $28,861.44, is divided by the national average wage index for each year prior to 1998 in which the worker had earnings. The actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, is multiplied by the corresponding ratio to obtain the worker's indexed earnings for each year before 1998. Any earnings in 1998 or later are considered at face value, without indexing. The average indexed monthly earnings is then computed and used to determine the worker's primary insurance amount for 2000.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The dollar amounts in the formula which govern the portions of the average indexed monthly earnings are frequently referred to as the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

The bend points for 2000 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1998, $28,861.44, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 2000, the ratio is 2.9512365. Multiplying the 1979 amounts of $180 and $1,085 by 2.9512365 produces the amounts of $531.22 and $3,202.09. These must then be rounded to $531 and $3,202. Accordingly, the portions of the average indexed monthly earnings to be used in 2000 are determined to be the first $531, the amount between $531 and $3,202, and the amount over $3,202.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2000, or who die in 2000 before becoming eligible for benefits, their primary insurance amount will be the sum of:

(a) 90 percent of the first $531 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $531 and through $3,202, plus

(c) 15 percent of their average indexed monthly earnings over $3,202.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The dollar amounts in the formula which govern the portions of the primary insurance amount are frequently referred to as the "bend points" of the family-maximum formula. Thus, the bend points for 1979 were $230, $332, and $433.

The bend points for 2000 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1998, $28,861.44, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 2000, the ratio is 2.9512365. Multiplying the amounts of $230, $332, and $433 by 2.9512365 produces the amounts of $678.78, $979.81, and $1,277.89. These amounts are then rounded to $679, $980, and $1,278. Accordingly, the portions of the primary insurance amounts to be used in 2000 are determined to be the first $679, the amount between $679 and $980, the amount between $980 and $1,278, and the amount over $1,278.

Consequently, for the family of a worker who becomes age 62 or dies in 2000 before age 62, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $679 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $679 through $980, plus

(c) 134 percent of the worker's primary insurance amount over $980 through $1,278, plus

(d) 175 percent of the worker's primary insurance amount over $1,278.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2000 is $780. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year).

Computation

Under the prescribed formula, the quarter of coverage amount for 2000 shall be equal to the larger of: (1) The 1978 amount of $250 multiplied by the ratio of the national average wage index for 1998 to that for 1976; or (2) the current amount of $740. Section 213(d) further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1976, $9,226.48, is 3.1281095. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 3.1281095 produces the amount of $782.03, which must then be rounded to $780. Because $780 exceeds the current amount of $740, the quarter of coverage amount is determined to be $780 for 2000.

"Old-Law" Contribution and Benefit Base

General.

The "old-law" contribution and benefit base for 2000 is $56,700. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the "old-law" base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The "old-law" contribution and benefit base shall be the larger of: (1) The 1994 "old-law" base ($45,000) multiplied by the ratio of the national average wage index for 1998 to that for 1992; or (2) the current "old-law" base ($53,700). If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1992, $22,935.42, is 1.2583785. Multiplying the 1994 "old-law" contribution and benefit base amount of $45,000 by the ratio of 1.2583785 produces the amount of $56,627.03 which must then be rounded to $56,700. Because $56,700 exceeds the current amount of $53,700, the "old-law" contribution and benefit base is determined to be $56,700 for 2000.

Substantial Gainful Activity Amount for Blind Individuals

General

A finding of disability under titles II and XVI of the Act requires that a person be unable to engage in substantial gainful activity (SGA). Under current regulations, a person who is not statutorily blind and who is earning more than $700 a month (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals. This higher SGA amount increases in accordance with increases in the national average wage index.

Computation

The monthly SGA amount for statutorily blind individuals for 2000 shall be the larger of: (1) Such amount for 1994 multiplied by the ratio of the national average wage index for 1998 to that for 1992; or (2) such amount for 1999. If the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1992, $22,935.42, is 1.2583785. Multiplying the 1994 monthly SGA amount for statutorily blind individuals of $930 by the ratio of 1.2583785 produces the amount of $1,170.29. This must then be rounded to $1,170. Because $1,170 is larger than the current amount of $1,110, the monthly SGA amount for statutorily blind individuals is determined to be $1,170 for 2000.

Domestic Employee Coverage Threshold

General

Section 2 of the "Social Security Domestic Employment Reform Act of 1994" (Pub. L. 103–387) increased the threshold for coverage of a domestic employee's wages paid per employer from $50 per calendar quarter to $1,000 per annum in calendar year 1994. The statute held the coverage threshold at the $1,000 level for 1995 and then increased the threshold in $100 increments for years after 1995. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2000 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 1998 to that for 1993. If the amount so determined is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1993, $23,132.67, is 1.2476485. Multiplying the 1995 domestic employee coverage threshold amount of $1,000 by the ratio of 1.2476485 produces the amount of $1,247.65, which must then be rounded to $1,200. Accordingly, the domestic employee coverage threshold amount is determined to be $1,200 for 2000.

Election Worker Coverage Threshold

General

Section 303(b) of Pub. L. 103–296, the "Social Security Independence and Program Improvements Act of 1994," increased from $100 a year to $1,000 a year the amount an election official or election worker must be paid for the earnings to be covered under Social Security or Medicare, effective January 1, 1995. Beginning in the year 2000, the coverage threshold increases automatically with increases in the national average wage index.

Computation

Under the formula, the election worker coverage threshold amount for 2000 shall be equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 1998 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

Election Worker Coverage Threshold Amount

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1997, $27,426.00, is 1.0523387. Multiplying the 1999 election worker coverage threshold amount of $1,000 by the ratio of 1.0523387 produces the amount of $1,052.34, which must then be rounded to $1,100. Accordingly, the election worker coverage threshold amount is determined to be $1,100 for 2000.

OASDI Fund Ratio

General

In addition to providing an annual automatic cost-of-living increase in OASDI benefits, section 215(i) of the Act also includes a "stabilizer" provision that can limit such benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified threshold, the automatic benefit increase is equal to the lesser of: (1) The increase in the national average wage index; or (2) the increase in prices. The threshold specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The law also provides for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases can occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation

Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1999 is the ratio of: (1) The combined assets of the OASI and DI Trust Funds at the beginning of 1999 to (2) the estimated expenditures of the OASI and DI Trust Funds during 1999, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio

The combined assets of the OASI and DI Trust Funds at the beginning of 1999 equaled $762,460 million, and the expenditures are estimated to be $393,826 million. Thus, the OASDI fund ratio for 1999 is 193.6 percent, which exceeds the applicable threshold of 20.0 percent. Therefore, the stabilizer provision does not affect the benefit increase for December 1999. Although the OASDI fund ratio exceeds the 32.0-percent threshold for potential "catch-up" benefit increases, no past benefit increase has been reduced under the stabilizer provision. Thus, no "catch-up" benefit increase is required.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004 Social Security—

Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 20, 1999.

Kenneth S. Apfel,

Commissioner, Social Security Administration.

[FR Doc. 99–27865 Filed 10–22–99; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3139]

Culturally Significant Objects Imported for Exhibition Determinations: "Berlin Metropolis: Jews and the New Culture, 1890–1918"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], and Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], I hereby determine that the objects to be included in the exhibit, "Berlin Metropolis: Jews and the New Culture, 1890–1918," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Jewish Museum, New York, New York, from on or about November 14, 1999 to on or about April 23, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: October 19, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, United States Department of State.

[FR Doc. 99–27739 Filed 10–22–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–99–6375]

Motor Carrier Financial and Operating Information; Requests for Exemption From Public Release of Reports

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: Class I and Class II motor carriers of property and household goods are required to file annual and quarterly reports with the Bureau of Transportation Statistics (BTS). As provided by statute, carriers may request that their reports be withheld from public release. BTS is issuing this notice to invite comments on several requests submitted by carriers.

DATES: Comments must be submitted by November 24, 1999.

ADDRESSES: Please send comments to the Docket Clerk, Docket No. BTS–99–6375, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

You only need to submit one copy. If you would like the Department to acknowledge receipt of the comments, you must include a self-addressed stamped postcard with the following statement: Comments on Docket BTS–99–6375. The Docket Clerk will date stamp the postcard and mail it back to you.

If you wish to file comments using the Internet, you may use the U.S. DOT Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–1, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 14123 and its implementing regulations at 49 CFR 1420, BTS collects financial and operating information from for-hire motor carriers of property and household goods. The data are collected on annual Form M, filed by Class I and Class II carriers, and quarterly Form QFR, filed only by Class I carriers. The data are used by the Department of Transportation, other federal agencies, motor carriers, shippers, industry analysts, labor unions, segments of the insurance industry, investment analysts, and the consultants and data vendors that support these users. Among the uses of the data are: (1) Developing the U.S. national accounts and preparing the quarterly estimates of the Gross Domestic Product, which help us better understand the U.S. economy and the motor carrier industry's role in it; (2) measuring the performance of the for-hire motor carrier industry and segments within it; (3) monitoring carrier safety; (4) benchmarking carrier performance; and (5) analyzing motor carrier safety and productivity.

Generally, all data are made publicly available. A carrier can, however, request that its report be withheld from public release, as provided for by statute, 49 U.S.C. 14123(c)(2), and its implementing regulations, 49 CFR 1420.9. BTS will grant a request upon a proper showing that the carrier is not a publicly held corporation or that the carrier is not subject to financial reporting requirements of the Securities and Exchange Commission, and that the exemption is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as trade secret or privileged or confidential information under 5 U.S.C. 552(b)(4). The carrier must submit a written request containing supporting information. BTS must receive the request by the report's due date, unless it is postmarked by the due date or there are extenuating circumstances. Requests covering the quarterly reports must be received by the due date of the annual report that relates to the prior year.

In accordance with our regulations, after each due date of each annual report BTS then publishes a notice, such as this one, in the **Federal Register** requesting comments on any requests it has received. After considering the requests and comments, BTS will decide to grant or deny each request no later than 90 days after the request's due date. While a decision is pending, BTS will not publicly release the report, except as allowed under 49 CFR 1420.10(c). BTS issued a similar notice and request for comments on September 3, 1999 (64 FR 48452), covering the carrier requests it had received relating to their 1998 annual reports and, in some cases, their 1999 quarterly reports. BTS is issuing this second notice and request for comments for several additional requests. Those carriers received additional time, past the original May 31 report deadline, to make their requests due to extenuating circumstances.

II. Request for Comments

BTS invites comments on several carrier requests for exemption from public release. These requests cover the 1998 annual report and some also cover the 1999 quarterly reports. BTS is withholding portions of one carrier's request. While BTS will consider this material in deciding whether to grant the request, the information is not being released publicly. BTS has determined that some of the information is confidential business information and therefore exempt from public disclosure by 5 U.S.C. 552(b)(4) and 49 CFR 7.69. Other information would reveal the contents of the carrier's report and therefore releasing it would defeat the purpose of the exemption request. The public version of the request provides adequate notice.

Comments should be made within the context of the governing regulations at 49 CFR 1420.9, which were published in the **Federal Register** on March 23, 1999 (64 FR 13916). We are inviting your comments on requests from the following carriers:

Annett Holdings, Inc. (MC 115730)
D & A Truck Line, Inc. (MC147545)
LTI, Inc. (MC 170078)
North American Van Lines, Inc. (MC 107012)
The Kaplan Trucking Company (MC 002304)

If you wish the read their exemption requests and the comments submitted in response to this Notice, use the DOT Dockets Management System. This is located at the Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Internet users can access the Dockets Management System at http://dms.dot.gov. Please follow the instructions online for more information and help.

You must also use the Dockets Management System if you wish to comment on one or more exemption requests. Please follow the instructions listed above under **ADDRESSES.**

Ashish Sen,
Director.

[FR Doc. 99–27669 Filed 10–22–99; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 15, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, N.W., Washington, D.C. 20220.

DATES: Written comments should be received on or before November 24, 1999 to be assured of consideration.

Bureau of Engraving and Printing (BEP)

OMB Number: 1520–0002.

Form Number: BEP 5287.

Type of Review: Reinstatement.

Title: Claims for Amounts Due in the Case of Deceased Owner of Mutilated Currency.

Description: The Office of Currency Standards, Bureau of Engraving and Printing uses Form 5287 to determine ownership in cases of a deceased owner of damaged or mutilated currency.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 180.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 165 hours.

Clearance Officer: Pam Corsini (202) 874–2647, Bureau of Engraving and Printing, Room 3.2.C, Engraving and Printing Annex, 14th and C Streets, S.W., Washington, DC 20228.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 99–27706 Filed 10–22–99; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 15, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before November 24, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1002.

Form Number: IRS Form 8621.

Type of Review: Extension.

Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

Description: Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 hr., 38 min.
Learning about the law or the form	6 hr., 27 min.
Preparing and sending the form to the IRS	6 hr., 58 min.

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 54,080 hours.

OMB Number: 1545–1417.

Form Number: IRS Form 8845.

Type of Review: Extension.

Title: Indian Employment Credit.

Description: Employers can claim a credit for hiring American Indians or their spouses to work within an Indian reservation. The credit is figured by multiplying by 20% the increase in wages and health insurance costs over the comparable amount paid or incurred during calendar year 1993.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,246.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 hr., 25 min.
Learning about the law or the form	1 hr., 12 min.
Preparing and sending the form to the IRS	1 hr., 22 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 12,423 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–27707 Filed 10–22–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

International Financial Institution Advisory Commission

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and time of the first meeting of the International Financial Institution Advisory Commission and the provisional agenda for consideration by the Commission.

DATES: The fourth meeting of the Advisory Commission will be held on Tuesday, November 2, 1999 beginning at 9 a.m. in room HC 8 in the Capitol building. The meeting is expected to run until 3 p.m.

FOR FURTHER INFORMATION CONTACT: Bill McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Telephone number 202–622–0343. Final meeting details, including the final agenda, can be confirmed by contacting the above number.

SUPPLEMENTARY INFORMATION: The Commission is expected to pursue the following agenda at its first meeting. Other topics may be added prior to the meeting:

- Presentation and discussion about the agenda.
- Continuation of the discussion launched at the third meeting on the role of the multilateral development banks, including the World Bank Group and regional development banks.

The meeting is open to the public. If members of the public would like to present a paper to the Commission, please sent 16 copies to the Designated Federal Official on or before October 25, 1999.

Dated: October 19, 1999.

Bill McFadden,

Designated Federal Official.

[FR Doc. 99–27699 Filed 10–22–99; 8:45]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Secret Service

Proposed Collection; Comment Request

September 14, 1999.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(C)(2)(A)). Currently, the United States Secret Service, within the Department of the Treasury is soliciting comments concerning the SSF 86A, Supplemental Investigative Date.

DATES: Written comments should be received on or before December 20, 1999.

ADDRESSES: Direct all written comments to United States Secret Service, Special investigations and Security Division, Robin Deprospero, 950 H. St., N.W., Washington, DC 20001, Suite 3800, 202/406–5433.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to (Same as above).

SUPPLEMENTARY INFORMATION:

Title: Supplemental Investigative Data.

OMB Number: 1555–0001.

Form Number: SSF 86A.

Abstract: Respondents area all Secret Service applicants. These applicants, if approved for hire, will require a Top Secret Clearance, and possible SCI Access. Responses to questions on the SSF 86A yields information necessary for the adjudication for eligibility of the clearance, as well as ensuring that the applicant meets all internal agency requirements.

Type of Review: Extension.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 1.

Estimated Total Annual Burden Hours: 7,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) The annual cost burden to respondents or record keepers from the collection of information (a) total capital and start-up cost and a total operation and maintence cost.

Dated: September 14, 1999.

John Machado,

Branch Chief, Policy Analysis and Records Systems Branch.

[FR Doc 99–27452 Filed 10–22–99; 8:45 am]

BILLING CODE 4810–42–M

Corrections

Federal Register
Vol. 64, No. 205
Monday, October 25, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Deauthorization of Water Resources Projects

Correction

In notice document 99–26628 beginning on page 55459, in the issue of Wednesday, October 13, 1999, make the following corrections:

On pages 55460, 55461, and 55462, due to numerous errors, the tables are reprinted in their entirety:

1994 LIST: PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON MAY 1, 1997 UNDER SECTION 1001(b)(2), PUB. L. 99–662

District	Project name	Primary state	Purpose
NAE	TRUMBULL LAKE	CT	FC
SAJ	C&SF, WATER CONSERVATION AREA—CANAL 301	FL	FC
SAJ	C&SF, WATER CONSERVATION AREA—CANAL 303	FL	FC
SAJ	C&SF, WATER CONSERVATION AREA—CANAL 310	FL	FC
SAJ	C&SF, WATER CONSERVATION AREA—S12 SPREADER	FL	FC
SAJ	C&SF, WATER CONSERVATION AREA—STRUCTURE 125	FL	FC
SAJ	C&SF, WATER CONSERVATION AREA—STRUCTURE 320	FL	FC
SAJ	C&SF, WATER CONSERVATION AREA—STRUCTURE 321	FL	FC
SAJ	C&SF, WATER CONSERVATION AREA—STRUCTURE 322	FL	FC
SAJ	C&SF, WATER CONSERVATION AREA—STRUCTURE 323	FL	FC
LRC	LITTLE CALUMET RIVER (1974 ACT)	IL	FC
LRL	LOUISVILLE LAKE (1968 ACT)	IL	FC
MVN	GULF INTRACOASTAL WATERWAY (16-FT CHANNEL SECTION)	LA	N
MVN	MISSISSIPPI DELTA REGION, BOHEMIA	LA	FC
MVN	MISSISSIPPI DELTA REGION, HOMEPLACE	LA	FC
MVN	MORGAN CITY AND VICINITY, FRANKLIN AREA (1965 ACT)	LA	FC
NAE	PHILLIPS LAKE	MA	FC
LRE	SAGINAW RIVER, MIDLAND	MI	FC
NWO	MILES CITY	MT	FC
NWO	OAHE DAM—LAKE OAHE (WILDLIFE RESTORATION) (N. DAKOTA)	ND	MP
SPA	SANTA FE RIVER AND ARROYO MASCARAS (1976 ACT)	NM	FC
LRH	NEWARK (INTERIOR DRAINAGE)	OH	FC
SWT	SHIDLER LAKE	OK	FC
NWP	CHETCO RIVER	OR	N
	Total: 24.		

1996 LIST: PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON APRIL 5, 1999 UNDER SECTION 1001(b)(2), PUB. L. 99–662

District	Project name	Primary state	Purpose
MVK	TENSAS BASIN, BOEUF TENSAS LESS TENSAS RIVER	AR	FC
MVR	ROCK RIVER AGRICULTURAL LEVEE	IL	FC
MVR	SAVANNA SMALL BOAT HARBOR	IL	N
NWK	FORT SCOTT LAKE	KS	FC
NWK	LAWRENCE, KS, SOUTH LAWRENCE UNIT	KS	FC

1996 LIST: PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON APRIL 5, 1999 UNDER SECTION 1001(b)(2), PUB. L. 99–662—Continued

District	Project name	Primary state	Purpose
LRL	FALMOUTH LAKE	KY	FC
NAE	LYNN-NAHANT BEACH	MA	BE
MVS	PINE FORD LAKE	MO	FC
SAM	TOMBIGBEE RIVER & TRIBUTARIES, TIBBEE RIVER	MS	FC
SAM	TOMBIGBEE RIVER & TRIBUTARIES, CATALPA CREEK	MS	FC
SAM	TOMBIGBEE RIVER & TRIBUTARIES, SAKATONCHEE CREEK	MS	FC
SAM	TOMBIGBEE RIVER & TRIBUTARIES, LINE CREEK	MS	FC
SAM	TOMBIGBEE RIVER & TRIBUTARIES, NORTH CANAL	MS	FC
SAM	TOMBIGBEE RIVER & TRIBUTARIES, SOUTH CANAL	MS	FC
SAM	TOMBIGBEE RIVER & TRIBUTARIES, JOHNSON CREEK	MS	FC
SAM	TOMBIGBEE RIVER & TRIBUTARIES, TRIM CANE CREEK	MS	FC
SAM	TOMBIGBEE RIVER & TRIBUTARIES, SUN CREEK	MS	FC
MVK	YAZOO RIVER NAVIGATION	MS	N
SAW	AIWW-MASONBORO INLET—TRAINING WALL	NC	N
LRB	DANSVILLE & VICINITY	NY	FC
LRB	CUYAHOGA RIVER BASIN	OH	FC
SWT	SAND LAKE	OK	FC
NAP	HAY CREEK, BIRDSBORO (SCHUYLKILL RIVER BASIN)	PA	FC
SWF	BELTON LAKE HYDROPOWER	TX	MP
SWG	HIGHLAND BAYOU, LOWER 8.6 MILE CHANNEL RECTIFICATION	TX	FC
MVK	MCKINNEY BAYOU (INACTIVE PORTION)	TX	FC
LRE	GREEN BAY HARBOR, BROWN COUNTY (1962 MODIFICATION)	WI	N
	Total: 27.		

PROJECTS/SEPARABLE ELEMENTS REMOVED FROM 1994 AND 1996 DEAUTHORIZATION LISTS IN ACCORDANCE WITH SECTION 1001(b)(2) OF PUBLIC LAW 99–662 DUE TO OBLIGATIONS OF FUNDS

District	Project name	Primary state	Purpose
SWL	PINE MOUNTAIN LAKE (1996 List)	AR	FC
SAJ	LEE COUNTY, ESTERO ISLAND (1994 List)	FL	BE
SAJ	LEE COUNTY, GASPARILLA ISLAND (1994 List)	FL	BE
MVS	WOOD RIVER DRAINAGE & LEVEE DISTRICT (1996 List)	IL	FC
	Total: 4.		

PROJECT REMOVED FROM 1994 DEAUTHORIZATION LIST DUE TO REAUTHORIZATION

NOTE: The following project was reauthorized by Section 328 of Public Law 104–303, October 12, 1996; with a five-year limitation. The authorization will expire on October 13, 2001, unless Federal funds are obligated for planning, design or construction.

District	Project name	Primary state	Purpose
LRE	CROSS VILLAGE HARBOR (1966 ACT)	MI	N

PROJECTS REMOVED FROM 1996 DEAUTHORIZATION LIST DUE TO REAUTHORIZATION

NOTE: The following projects were among the projects reauthorized by Section 364 of Public Law 106–53, August 17, 1999, subject to determination by the Secretary of the Army that they are technically sound, environmentally acceptable, and economically justified.

District	Project name	Primary state	Purpose
LRE	CASS RIVER, SAGINAW RIVER BASIN, VASSAR (1958 ACT)	MI	FC
LRE	SAGINAW RIVER, SHIAWASSEE FLATS (1958 ACT)	MI	FC
	Total: 2.		

OTHER PROJECTS REAUTHORIZED BY LAW

NOTE: In addition to the two projects listed above, the following projects also were reauthorized by Section 364 of Public Law 106–53, August 17, 1999, subject to determination by the Secretary of the Army that they are technically sound, environmentally acceptable, and economically justified.

District	Project name	Primary state	Purpose
SAJ	INDIAN RIVER COUNTY (1986 ACT)*	FL	BE
SAJ	LIDO KEY BEACH, SARASOTA (1970 ACT)	FL	BE

OTHER PROJECTS REAUTHORIZED BY LAW—Continued

NOTE: In addition to the two projects listed above, the following projects also were reauthorized by Section 364 of Public Law 106–53, August 17, 1999, subject to determination by the Secretary of the Army that they are technically sound, environmentally acceptable, and economically justified.

District	Project name	Primary state	Purpose
MVP	PARK RIVER, GRAFTON (1986 ACT)	ND	FC
MVM	MEMPHIS HARBOR, MEMPHIS (1986 ACT)	TN	N
	Total: 4.		

*Although reauthorized by law, the Indian River County, FL, project was never deauthorized.

PROJECT ON 1996 LIST THAT WAS SPECIFICALLY DEAUTHORIZED

NOTE: The following project was specifically deauthorized by Section 361(b)(7) of Public Law 104–303, October 12, 1996, with the exception of named relocation and restoration features that remain authorized.

District	Project name	Primary state	Purpose
MVP	LAFARGE LAKE & CHANNEL IMPROVEMENT (1962 ACT)	WI	FC

PROJECTS REAUTHORIZED IN 1992 AND DEAUTHORIZED ON NOVEMBER 1, 1997 UNDER SECTION 115(B), PUB. L. 102–580

District	Project name	Primary state	Purpose
MVN	LAKE PONTCHARTRAIN, NORTH SHORE (1986 ACT)	LA	FC
NAN	DEAL LAKE, MONMOUTH COUNTY (1986 ACT)	NJ	FC
NAB	TYRONE (1944 ACT)	PA	FC
SWT	BIG PINE LAKE (1962 ACT)	TX	FC
	Total: 4.		

[FR Doc. C9–26628 Filed 10–22–99; 8:45 am]

BILLING CODE 1505–01–D

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federal register

Monday
October 25, 1999

Part II

Department of the Treasury

Internal Revenue Service
26 CFR Part 54

Department of Labor

Pension and Welfare Benefits Administration
29 CFR Part 2590

Department of Health and Human Services

Health Care Financing Administration
45 CFR Subtitle A, Parts 144 and 146
Health Insurance Portability; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2590

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

45 CFR Subtitle A, Parts 144 and 146

Health Insurance Portability

AGENCY: Office of Tax Policy and Internal Revenue Service, Treasury; Pension and Welfare Benefits Administration, Labor; and Health Care Financing Administration, HHS (the Departments).

ACTION: Solicitation of comments on interim rule.

SUMMARY: In response to interim regulations published on April 8, 1997, the Departments have received comments from the public on a number of issues arising under the portability, access, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Departments are interested in receiving further comments reflecting the experience that interested parties have had with the interim regulations.

DATES: The Departments have requested that comments be submitted on or before January 25, 2000.

ADDRESSES: For convenience, written comments should be submitted with a signed original and 3 copies to the Health Care Financing Administration (HCFA) at the address specified below. HCFA will provide copies to each of the Departments for their consideration. All comments will be available for public inspection in their entirety. Comments should be sent to: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2056–NC, P.O. Box 9013, Baltimore, MD 21244–9013.

If you prefer, you may deliver a signed original and 3 copies of your written comments to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland.

Comments may also be submitted electronically to the following e-mail address: HIPAAComments@hcfa.gov. E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address in order to be considered. All comments must be incorporated into the text of the e-mail message itself in case of any difficulty in accessing attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, comments by facsimile (FAX) transmission cannot be accepted. In commenting, please refer to file code HCFA–2056–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room 309–G of the Department of Health and Human Service's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Upon receipt from HCFA, the Department of Labor will make all comments available for public inspection and copying in their entirety. All comments received by the Department of Labor will be available for public inspection and copying at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210, on Monday through Friday of each week from 8:30 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner, Department of Labor, Pension and Welfare Benefits Administration, Health Care Task Force, at (202) 219–7006 (not a toll-free number); Russ Weinheimer, Internal Revenue Service, at (202) 622–4695 (not a toll-free number); or Danielle Noll, Health Care Financing Administration, at 410–786–1565 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Customer Service Information

To assist consumers and the regulated community, the Departments have issued questions and answers concerning HIPAA. Individuals interested in obtaining a copy of the Department of Labor's publication "Recent Changes in Health Care Law" may call a toll free number, 800–998–7542, or access the publication on-line at www.dol.gov/dol/pwba, the Department of Labor's website. Questions and answers pertaining to HIPAA are also available on-line at www.hcfa.gov/hipaa/hipaahm.htm (HCFA's website). The IRS publication "Deciding Whether to Elect COBRA Health Care Continuation Coverage After the Enactment of HIPAA" is available on the IRS's website at http://www.irs.ustreas.gov/prod/news/index.html. Copies of the interim rules under HIPAA, as well as notices and press releases related to HIPAA and other recently enacted health care laws, are also available at the above referenced websites.

Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted on August 21, 1996 (Public Law 104–191). HIPAA amended the Internal Revenue Code of 1986 (Code), the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act (PHS Act) to provide for, among other things, improved portability and continuity of health coverage including group health plan coverage provided in connection with employment and other coverage in the group and the individual insurance markets. Health coverage is regulated in part by the Federal government, through the Code, ERISA, the PHS Act and other Federal provisions, and in part by the States.

The portability, access, and renewability provisions of HIPAA are set forth in Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Title XXVII of the PHS Act (referred to below as the HIPAA portability provisions). The HIPAA portability provisions are designed to improve the availability and portability of health coverage by limiting exclusions for preexisting conditions and providing credit for prior coverage, guaranteeing availability of health coverage for small employers, prohibiting discrimination against employees and dependents based on health status, and guaranteeing renewability of health coverage for employers and individuals. The HIPAA portability provisions also include rules that guarantee access to individual coverage for people who lose their group coverage. These provisions also set forth requirements imposed on health insurance issuers. Pursuant to sections 101(g)(4), 102(c)(4), and 401(c)(4) of HIPAA, the Departments issued interim regulations made available on April 1, 1997 (published in the **Federal Register** on April 8,1997) (62 FR 16894) to carry out these provisions, and are in the process of updating those regulations.

Comments

In response to the interim regulations issued in April of 1997, comments have been received from the public on a number of issues arising under the HIPAA portability provisions. Further comments on the HIPAA portability provisions are welcome, including comments concerning, for example, certificates of creditable coverage, limitations on preexisting condition exclusion periods, special enrollment, excepted benefits, guaranteed availability and renewability of coverage, and individual market requirements. The Departments are interested in comments reflecting the experience of group health plans, health insurance issuers, States, individuals, and other interested parties in complying with or enforcing HIPAA's statutory and regulatory requirements, or in obtaining the protections provided by these provisions. With respect to HIPAA's nondiscrimination provisions, the Departments expect to publish comprehensive regulations shortly and comments will be solicited separately in connection with that rulemaking. In order to quantify the costs and benefits associated with the major provisions of HIPAA and the interim rule, the Departments are interested in comments, studies, surveys, or reports on these costs and benefits and why and how they arise. For benefits, areas of interest include the impact HIPAA has had on: "job lock," in which the risk of losing health care coverage discourages workers from changing jobs; health coverage—whether it has been expanded and whether lapses in health coverage have become less frequent and shorter in duration; and access to health coverage, particularly in light of HIPAA's nondiscrimination and guaranteed issue provisions. In terms of costs, areas of interest include the impact HIPAA has had on administrative costs, claims costs, and group and individual premiums. In addition, comments are sought regarding other changes to group health plans resulting from HIPAA, as well as the experience with State implementation of alternative mechanisms in the individual health insurance market.

In addition, a recent General Accounting Office (GAO) report contained a recommendation that the model certificate of creditable health plan coverage should more explicitly inform consumers of their rights under HIPAA.[1] The GAO recommended that, at a minimum, the model certificate should inform consumers about appropriate contacts for additional information about HIPAA, and highlight key provisions and restrictions, including: (1) The limits on preexisting condition exclusion periods and the guaranteed renewability of all health coverage; (2) the reduction or elimination of preexisting condition exclusion periods for employees changing jobs; (3) the prohibition against excluding an individual from an employer health plan on the basis of one or more health factors; and (4) the guarantee of access to insurance products for certain individuals losing group health coverage and the restrictions placed on that guarantee. In light of the GAO's recommendation, the Departments are interested in comments on how best to improve the model certificate of creditable coverage under HIPAA.

Signed at Washington, DC this 5th day of August 1999.

J. Mark Iwry,

Benefits Tax Counsel, Department of the Treasury.

Signed at Washington, DC this 5th day of August 1999.

Nancy J. Marks,

Acting Associate Chief Counsel, Employee Benefits and Exempt Organizations, Internal Revenue Service, Department of the Treasury.

Signed at Washington, DC this 19th day of July 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

Signed at Washington, DC this 15th day of September 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration, Department of Health and Human Services.

[FR Doc. 99–27646 Filed 10–22–99; 8:45 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

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[1] *Private Health Insurance: Progress and Challenges in Implementing 1996 Federal Standards* (HEHS–99–100, May 1999).

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federal register

Monday
October 25, 1999

Part III

Department of Education

Office of Student Financial Assistance; William D. Ford Federal Direct Loan Program and Federal Family Education Loan Program; Notice

DEPARTMENT OF EDUCATION

Office of Student Financial Assistance; William D. Ford Federal Direct Loan Program and Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of interest rates for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan Program for the period July 1, 1999, through June 30, 2000.

SUMMARY: The Chief Operating Officer for the Office of Student Financial Assistance announces the interest rates for variable-rate loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program for the period July 1, 1999, through June 30, 2000.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program: Brian Smith, Program Specialist. For the Direct Loan Program: Barbara F. Grayson, Program Specialist. Mailing address: Program Development Division, Office of Student Financial Assistance, U.S. Department of Education, Room 3045, ROB–3, 400 Maryland Avenue, SW, Washington, DC 20202–5345. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: General—The Higher Education Act of 1965, as amended, (HEA) provides that variable interest rates apply to parent and student loans made under the Direct Loan and FFEL programs. Variable interest rates also apply to Direct Consolidation Loans for which the application was received before February 1, 1999, and to FFEL Consolidation loans for which the application was received on or after November 13, 1997, and before October 1, 1998. All other Consolidation loans have fixed interest rates based on the weighted average of the loans being consolidated.

Except for Consolidation loans, the formulas for determining the interest rates charged to borrowers for Direct Loan Program loans and FFEL Program loans are established by section 455(b) of the HEA (20 U.S.C. 1087e) for Direct Loan Program loans and section 427A of the HEA (20 U.S.C. 1077a) for FFEL Program loans. These interest rate formulas do not apply to fixed-rate FFEL loans made before October 10, 1992, unless the fixed-rate loan has been converted to a variable-rate loan.

Consolidation loan interest rate formulas are established in 34 CFR 685.215(g) and 34 CFR 685.202(a) for Direct Consolidation Loans for which the application was received before October 1, 1998; section 455(b)(6)(D) and (E) of the HEA (20 U.S.C 1087e) for Direct Consolidation Loans for which the application is received on or after October 1, 1998, but before July 1, 2003; and section 428C of the HEA (20 U.S.C. 1078–3) for FFEL Consolidation loans.

As noted below, interest rate caps apply to most Direct Loan and FFEL Program loans.

The interest rates on variable-rate loans are determined annually and apply for each 12-month period beginning July 1 and ending June 30. For parent loans first disbursed on or after July 1, 1998, and all student loans, interest rates are based on the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held before June 1st of each year. For parent loans first disbursed before July 1, 1998, interest rates are based on the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held before June 1st of each year.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 24, 1999, (the last auction prior to June 1, 1999) is 4.621 percent, which rounds to 4.62 percent.

The bond equivalent rate of the 52-week Treasury bills auctioned on May 25, 1999, is 4.879 percent, which rounds to 4.88 percent.

William D. Ford Federal Direct Loan Program

Interest Rates for Direct Subsidized and Direct Unsubsidized Loans

1. Direct Subsidized and Direct Unsubsidized Loans first disbursed prior to July 1, 1995—the interest rate may not exceed 8.25 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

2. Direct Subsidized and Direct Unsubsidized Loans first disbursed on or after July 1, 1995, and before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.12 percent (4.62 percent plus 2.5 percent equals 7.12 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

3. Direct Subsidized and Direct Unsubsidized Loans first disbursed on or after July 1, 1998, and before July 1, 2003—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.32 percent (4.62 percent plus 1.7 percent equals 6.32 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

Interest Rates for Direct Subsidized and Direct Unsubsidized Consolidation Loans

1. Direct Subsidized and Direct Unsubsidized Consolidation Loans first disbursed before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.12 percent (4.62 percent plus 2.5 percent equals 7.12 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

2. Direct Subsidized and Direct Unsubsidized Consolidation Loans for which the application was received before October 1, 1998, and the loan was first disbursed on or after July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.32 percent (4.62 percent plus 1.7 percent equals 6.32 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

3. Direct Subsidized and Direct Unsubsidized Consolidation loans for which the application was received on or after October 1, 1998, and before February 1, 1999—the interest rate may not exceed 8.25 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

4. Direct Subsidized and Direct Unsubsidized Consolidation loans for which the application is received on or after February 1, 1999, and before July 1, 2003—the interest rate may not

exceed 8.25 percent: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent.

Interest Rates for Direct PLUS Loans

1. Direct PLUS loans first disbursed before July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

2. Direct PLUS loans first disbursed on or after July 1, 1998, and before July 1, 2003—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

Interest Rates for Direct PLUS Consolidation Loans

1. Direct PLUS Consolidation loans first disbursed before July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

2. Direct PLUS Consolidation loans for which the application was received before October 1, 1998, and the loan was first disbursed on or after July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

3. Direct PLUS Consolidation loans for which the application was received on or after October 1, 1998, and before February 1, 1999—the interest rate may not exceed 8.25 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

4. Direct PLUS Consolidation loans for which the application is received on or after February 1, 1999, and before July 1, 2003—the interest rate may not exceed 8.25 percent: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent.

Federal Family Education Loan Program

Interest Rates for "Converted" Variable-rate FFEL Stafford Loans

1. Eight/ten percent loans that were subject to the provisions of section 427A(i)(1) of the HEA and that have been converted to a variable interest rate—the interest rate may not exceed 10 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.87 percent (4.62 percent plus 3.25 percent equals 7.87 percent).

2. Seven percent, eight percent, nine percent and eight/ten percent loans that were subject to the provisions of section 427A(i)(3) of the HEA and that have been converted to a variable interest rate—the interest rate may not exceed seven percent, eight percent, nine percent, or ten percent, respectively: The interest rate for the period July 1, 1999, through June 30, 2000, is 7 percent for 7 percent loans and 7.72 percent for 8 percent, 9 percent, and 10 percent loans (4.62 percent plus 3.1 percent equals 7.72 percent, which exceeds the cap for 7 percent loans).

Interest Rates for Variable-rate FFEL Stafford Loans

1. FFEL Stafford loans made to "new" borrowers for which the first disbursement was made (a) on or after October 1, 1992, but before July 1, 1994, or (b) on or after July 1, 1994, for a period of enrollment ending before July 1, 1994 (*i.e.* a late disbursement)—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

2. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, for periods of enrollment that include or begin on or after July 1, 1994, for which the first disbursement is made on or after July 1, 1994, but before July 1, 1995—the interest rate may not exceed 8.25 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

3. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, on or after July 1, 1995, but before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, or deferment period: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.12 percent (4.62 percent plus 2.5 percent equals 7.12 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

4. FFEL Stafford loans, first disbursed on or after July 1, 1998, but before July 1, 2003—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.32 percent (4.62 percent plus 1.7 percent equals 6.32 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

Interest Rates for FFEL PLUS and FFEL Supplemental Loans for Students (SLS) Loans

1. Variable-rate FFEL PLUS and FFEL SLS loans first disbursed before October 1, 1992—the interest rate may not exceed 12 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 8.13 percent (4.88 percent plus 3.25 percent equals 8.13 percent).

2. FFEL SLS loans first disbursed on or after October 1, 1992, for a period of enrollment beginning before July 1, 1994—the interest rate may not exceed 11 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

3. FFEL PLUS loans first disbursed on or after October 1, 1992, but before July 1, 1994—the interest rate may not exceed 10 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

4. FFEL PLUS loans first disbursed on or after July 1, 1994, but prior to July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

5. FFEL PLUS loans first disbursed on or after July 1, 1998, and before July 1, 2003—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

Interest Rates for FFEL Consolidation Loans

1. FFEL Consolidation loans made before July 1, 1994—the interest rate may not be less than 9 percent: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

2. FFEL Consolidation loans made on or after July 1, 1994, for which the consolidation loan application was received by the lender before November 13, 1997: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.

3. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after November 13, 1997, and before October 1, 1998—the interest rate may not exceed 8.25 percent: The

interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

4. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after October 1, 1998, and before July 1, 2003—the interest rate may not exceed 8.25 percent: The interest rate is the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent.

5. If a portion of a Consolidation loan is attributable to a loan made under subpart I of part A of title VII of the Public Health Service Act, the maximum interest rate for that portion of a Consolidation loan is determined annually, for each 12-month period beginning on July 1 and ending on June 30. The interest rate equals the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending prior to July 1, plus 3 percent. For the quarter ending prior to July 1, 1999, the average 91-day Treasury bill rate was 4.60 percent. The maximum interest rate for the period July 1, 1999, through June 30, 2000, is 7.60 percent (4.60 percent plus 3.0 percent equals 7.60 percent).

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Program Authority: 20 U.S.C. 1077a and 20 U.S.C. 1087e.

Dated: October 19, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–27729 Filed 10–22–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Monday
October 25, 1999

Part IV

Department of Education

34 CFR Parts 674 and 682
Federal Perkins Loan Program and Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674 and 682

Federal Perkins Loan Program and Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan and Federal Family Education Loan (FFEL) program regulations by adding criteria that allow Peace Corps volunteers who are ineligible for deferment or cancellation of their federal student loans based solely on Peace Corps service to automatically qualify for economic hardship deferments while they are serving in the Peace Corps. This change also applies to the William D. Ford Federal Direct Loan (Direct Loan) Program in accordance with § 685.204(b)(3) of the Direct Loan Program regulations, which references the standards set forth in § 682.210(s) of the FFEL Program regulations in establishing a Direct Loan borrower's eligibility for an economic hardship deferment.

The Secretary also amends the Federal Perkins Loan Program regulations to eliminate the provision that requires a borrower to submit a request for a loan deferment, including a deferment in anticipation of cancellation, in writing.

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, that institutions that participate in the Federal Perkins Loan Program and lenders and guaranty agencies that participate in the FFEL Programs may, at their discretion, choose to implement the provisions of §§ 674.34, 674.38, and 682.210 as amended by these final regulations, on or after October 25, 1999. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT:

1. For the Federal Perkins Loan Program: Vanessa Freeman, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

2. For the FFEL Program: George Harris, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

3. For the Direct Loan Program: Jon Utz, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraphs.

SUPPLEMENTARY INFORMATION: On September 17, 1998, the Secretary published a notice of proposed rulemaking (NPRM) for the Federal Perkins Loan Program and FFEL Program regulations in the **Federal Register** (63 FR 49798).

The NPRM included a discussion of the issues surrounding the proposed changes that are not repeated here. The following changes were proposed:

Amending §§ 674.34(e)(2) and 682.210(s)(6)(ii) to add criteria that allow borrowers to qualify automatically for economic hardship deferments while they are serving in the Peace Corps.

Amending §§ 674.38(d) and 682.210(s)(6) to allow borrowers to receive economic hardship deferments for longer than a one-year period for each request while serving as Peace Corps volunteers.

Amending § 674.38(a) to eliminate the requirement that a borrower must submit a deferment or postponement request in writing.

Implementation Date of These Regulations

Section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)) requires that regulations affecting programs under title IV of the Act be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

Sections 674.34, 674.38 and 682.210—In Dear Colleague letter GEN–98–16, the Secretary provided interim procedures to be used by FFEL loan holders and postsecondary institutions in granting economic hardship deferments to Peace Corps volunteers until final regulations were published. Institutions that participate in the Federal Perkins Loans Program and guaranty agencies and lenders that participate in the FFEL program may, now at their discretion, choose to implement the provisions of §§ 674.34, and 682.210 upon October 25, 1999. Institutions that participate in the Federal Perkins Loan Program may implement the provisions of § 674.38 that eliminate the written request for a deferment in the Perkins Loan Program upon October 25, 1999.

These final regulations contain changes from the NPRM that are explained in the Analysis of Comments and Changes that follows.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 10 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

General

Comments: All of the commenters who addressed the Secretary's proposal to simplify the economic hardship deferment application process for certain Peace Corps volunteers supported the proposed changes.

Discussion: The Secretary appreciates the commenters' support for the proposed changes and believes they will encourage and support Peace Corps service.

Changes: None.

Sections 674.34 and 682.210 Deferment

Comments: Several commenters noted that the proposed placement of the new provision in §§ 674.34(e)(2) and 682.210(s)(6)(ii) appears to require a borrower to provide evidence that he or she is receiving payment from the Peace Corps rather than indicating clearly that the information required to establish a borrower's eligibility for the deferment is documentation from the Peace Corps that the borrower is serving (or will serve) as a Peace Corps volunteer. The commenters suggested that the regulatory language be revised to indicate that a borrower must provide documentation showing that he or she is serving or has agreed to serve as a Peace Corps volunteer.

Discussion: In the preamble to the NPRM and in Dear Colleague letter GEN 98–16, we indicated that evidence of a borrower's eligibility for an economic hardship deferment under the new provision is provided by documentation from the Peace Corps showing that the borrower will be or is serving as a Peace Corps volunteer. It was not our intent to require a borrower to provide documentation that he or she is actually receiving payments from the Peace Corps. However, we agree with the commenters that the regulatory language proposed in the NPRM could be misinterpreted.

Changes: The paragraph establishing Peace Corps service as a criterion for receipt of an economic hardship deferment has been removed from §§ 674.34(e)(2) and 682.210(s)(6)(ii) and made a separate paragraph in each part that clarifies that the borrower is not required to provide evidence of receiving payment from the Peace Corps to establish eligibility for the economic hardship deferment.

Comments: Several commenters felt that the proposed language amending Sections 674.34(e) and 682.210(s)(6) did not define clearly the intended deferment period as the borrower's term of service in the Peace Corps, not to exceed the statutory maximum of three years. The commenters noted that the proposed language stated only that an economic hardship deferment under the new provision for Peace Corps volunteers may be granted for longer than one year at a time. The commenters suggested that the regulatory language be revised to indicate that the deferment period covers a borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility, not to exceed the three-year statutory maximum.

Discussion: As discussed in the preamble to the NPRM and in Dear Colleague letter GEN–98–16, the deferment period for an economic hardship deferment granted to Peace Corps volunteers under the new provision is intended to be for the borrower's full term of service, up to the statutory maximum of three years. We agree with the commenters that the regulatory language proposed in the NPRM may not convey clearly the intended deferment period.

Changes: Sections 674.34(e) and 682.210(s)(6) have been revised to clarify that the period of an economic hardship deferment under the new provision is the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the statutory three-year maximum.

Comments: Several commenters expressed concern that the Peace Corps certification form the borrower receives from the Peace Corps at pre-service orientation sessions, and that certifies that the borrower will be serving as a Peace Corps volunteer, does not include the borrower's dates of service. The commenters believe that without information on the beginning and ending dates of the borrower's service, they will not have sufficient documentation to process an economic hardship deferment for the appropriate period of time. The commenters suggested that the Peace Corps certification document that was attached to Dear Colleague letter GEN–98–16 be revised to include the beginning and ending dates of the borrower's service to make the form consistent with the regulatory changes proposed in the NPRM.

Discussion: We agree that the documentation the Peace Corps supplies to the borrower supporting the borrower's request for deferment should include the beginning and ending dates of the borrower's Peace Corps service. We also believe that the Peace Corps certification form, which was originally developed to support only a borrower's request for the categorical Peace Corps deferment, should be revised to support both borrowers who apply for the categorical deferment and those that apply for an economic hardship deferment based on Peace Corps service.

Changes: The Peace Corp certification form has been revised to include the borrower's dates of service and to make it suitable for use as supporting documentation of Peace Corps service for both categories of borrowers serving in the Peace Corps.

Comments: Two commenters noted that the proposed regulations would permit borrowers to receive economic hardship deferments for their full term of service in the Peace Corps without having to reapply each year. These commenters expressed concern about the potential for fraud by borrowers who do not complete their term of service and felt that a system should be established to notify loan holders of a borrower's continuation in or termination from Peace Corps service. One of the commenters recommended that loan holders receive verification of a borrower's continued service in the Peace Corps annually before authorizing an extension of the borrower's deferment. The other commenter was concerned particularly about potential for fraud by borrowers who are eligible for loan cancellation in the Federal Perkins Loan Program based on their service as Peace Corps volunteers, and believed that borrowers should continue to be required to provide documentation of both the beginning and termination dates of their service.

Discussion: We appreciate the commenters' concerns regarding fraud in the case of borrowers who terminate their Peace Corps service early. However, we believe that requiring borrowers who receive economic hardship deferments based on their Peace Corps service to provide documentation annually to their loan holders essentially eliminates one of major benefits provided by the proposal to Peace Corps volunteers. Borrowers are clearly told, both on the deferment request forms used in the FFEL and Direct Loan programs and on the revised Peace Corps service certification form, that they must immediately notify their loan holders if they leave the Peace Corps before the projected termination date shown on their Peace Corps certification form. The new economic hardship deferment provisions for Peace Corps volunteers do not change this borrower responsibility.

We did not propose to eliminate the requirement that the loan holder make an annual determination of a borrower's eligibility for a categorical Peace Corp deferment in the FFEL and the Federal Direct Loan Programs, or for a deferment or cancellation, or both, based on Peace Corps service in the Federal Perkins Loan Program. We believe, however, that the same benefits of a less burdensome deferment and cancellation application process should be extended to all Peace Corps volunteers.

Changes: Sections 674.38(d) and 682.210(k) are amended to authorize a loan holder to grant a categorical deferment, including a deferment in anticipation of cancellation in the Federal Perkins Loan Program, for the borrower's full term of service in the Peace Corps, not to exceed three years.

Section 674.38 Deferment Procedures

Comments: Many commenters supported our proposal to eliminate the written request for deferment in the Federal Perkins Loan Program. The commenters believe that telephone or electronic requests by the borrower to the institution are an appropriate means for the borrower to request a deferment. They also stated that uniformity among the title IV loan program regulations, where possible, is beneficial for both institutions and borrowers.

All of the commenters, however, expressed concern about the disparities that remain between the FFEL, Direct Loan, and Federal Perkins Loan Programs with regard to the processing of in-school deferments. Several commenters indicated that, in the FFEL and Direct Loan programs, a lender may use a certified loan application, a form certified by the borrower's school, or other data it receives from the Student Status Confirmation Report (SSCR) or another third-party servicer verifying the borrower's in-school status as sufficient documentation to initiate and process an in-school deferment. In these instances, the student borrower is not required to make a specific request for the deferment. The commenters pointed out that under the regulations proposed by the Secretary for the Federal Perkins Loan Program, borrowers would still be required to contact the institution to request an in-school deferment.

Discussion: We agree that consistency between the various title IV student loan programs is an important goal. We also believe that the use of technology to reduce administrative burden for institutions is equally important. We further agree that the regulatory changes proposed to facilitate the processing of in-school deferments in the Federal Perkins Loan Program may not provide schools with enough flexibility in the processing of those deferments.

After examining the applicability of the methods used in the FFEL and Direct Loan Program to the Federal Perkins Loan Program, we have decided that use of a certified loan application to initiate the in-school deferment process is impractical because there is no separate Federal Perkins Loan application to use for this process. However, we believe that data verifying the borrower's in-school enrollment status, either from a third-party servicer or from the school in which the borrower is enrolled, is sufficient documentation for a school participating in the Federal Perkins Loan Program to grant an in-school deferment. To preserve the borrower's ability to participate in the deferment process, we also believe that the institution should notify the borrower when it grants a deferment in this manner to provide the borrower with the option to decline the deferment and to continue paying on the loan.

Changes: A provision has been added to § 674.38(a) to allow an institution to determine a borrower's eligibility and grant an in-school deferment based on the institution's receipt of student enrollment information from the school in which the borrower is enrolled or from a third-party servicer. The institution must notify the borrower that a deferment has been granted and provide the borrower with the option to continue paying on the loan.

Section 674.39 Postponement of Loan Repayments in Anticipation of Cancellation of Loans Made Before July 1, 1993.

Comments: Many commenters supported the Secretary's proposal to eliminate the written request for postponement of repayment in anticipation of cancellation for loans made under the Federal Perkins Loan Program before July 1, 1993.

Discussion: The Secretary published a notice of proposed rulemaking (NPRM) on July 29, 1999, in accordance with the Higher Education Amendments of 1998 (Pub. L. 105–244), that extends a deferment in anticipation of cancellation to all borrowers with a loan made under the Federal Perkins Loan Program. Because the extension of a deferment in anticipation of cancellation would eliminate the need for a postponement, the NPRM proposed to eliminate § 674.39 in its entirety from the Federal Perkins Loan Program regulations.

Changes: Proposed amendatory language with respect to § 674.39 has been eliminated from these final regulations.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined are necessary for administering these programs effectively and efficiently. Burden specifically associated with information collection requirements, if any, was identified and explained in the preamble to the NPRM.

In assessing the potential costs and benefits, both quantitative and qualitative, of these final regulations, we have determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The potential costs and benefits of these final regulations were discussed in the preamble to the NPRM (63 FR 49800).

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

The Federal Perkins Loan, Federal Family Education Loan, and William D. Ford Federal Direct Loan programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the responses to the NPRM and on our review, we have determined that the regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Stafford Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.038 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 674 and 682

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 19, 1999.

Richard W. Riley

Secretary of Education.

For the reasons stated in the preamble, the Secretary amends parts 674 and 682 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows by:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.34 is amended as follows by:

A. Revising paragraph (e) introductory text.

B. Redesignating paragraphs (e)(6), (e)(7), (e)(8), and (e)(9) as (e)(7), (e)(8), (e)(9), and (e)(10), respectively.

C. Removing the word "or" at the end of paragraph(e)(4).

D. Removing the semicolon at the end of paragraph (e)(1), (e)(2), and (e)(3) and adding, in its place, a period.

E. Adding a new paragraph (e)(6).

§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.

* * * * *

(e) The borrower need not repay principal, and interest does not accrue, for periods of up to one year at a time (except that a deferment under paragraph (e)(6) of this section may be granted for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility) that, collectively, do not exceed 3 years, during which the borrower is suffering an economic hardship, if the borrower provides documentation satisfactory to the institution showing that the borrower is within any of the categories described in paragraphs (e)(1) through (e)(6) of this section.

* * * * *

(6) Is serving as a volunteer in the Peace Corps.

* * * * *

3. Section 674.38 is amended by redesignating paragraph (a)(2) as paragraph (a)(3), adding new paragraph (a)(2), and by revising paragraphs (a)(1) and (d) to read as follows:

§ 674.38 Deferment procedures.

(a)(1) Except as provided in paragraph (a)(2)of this section, a borrower must request the deferment and provide the institution with all information and documents required by the institution by the date that the institution establishes.

(2) In the case of an in school deferment, the institution may grant the deferment based on student enrollment information showing that a borrower is enrolled as a regular student on at least a half-time basis, if the institution notifies the borrower of the deferment and of the borrower's option to cancel the deferment and continue paying on the loan.

* * * * *

(d) The institution must determine the continued eligibility of a borrower for a deferment at least annually, except that a borrower engaged in service described in §§ 674.34(e)(6), 674.35(c)(3), 674.36(c)(2), 674.37(c)(2), and § 674.60(a)(1) must be granted a deferment for the lesser of the borrower's full term of service in the Peace Corps, or the borrower's remaining period of eligibility for a deferment under § 674.34(e), not to exceed 3 years.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

4. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

5. Section 682.210 is amended by:

A. Redesignating paragraph (k) introductory text, following the heading *Peace Corps deferment.*, (k)(1), (k)(2), and (k)(3) as paragraphs (k)(1),(k)(1)(i),(k)(1)(ii), and (k)(1)(iii), respectively.

B. Adding new paragraph (k)(2).

C. Revising paragraph (s)(6) introductory text.

D. Redesignating paragraphs (s)(6)(vi), (vii), (viii), (ix), and (x) as paragraphs (s)(6)(vii), (viii), (ix), (x), and (xi), respectively.

E. By removing "; or" at the end of paragraph (s)(6)(iv), and adding, in its place, a period.

F. Removing the semicolon at the end of paragraphs (s)(6)(i), (s)(6)(ii), and (s)(6)(iii), and adding, in its place a period.

G. Removing "(s)(6)(ix)" in newly redesignated paragraphs (s)(6) (viii) and (ix) and by adding, its place, "(s)(6)(x)".

H. Adding a new paragraph (s)(6)(vi).

§ 682.210 Deferment

* * * * *

(k) * * *

(2) The lender must grant a deferment for the borrower's full term of service in the Peace Corps, not to exceed three years.

* * * * *

(s) * * *

(6) *Economic hardship deferment.* An eligible borrower is entitled to an economic hardship deferment for periods of up to one year at a time that, collectively, do not exceed 3 years (except that a borrower who receives a deferment under paragraph (s)(6)(vi) of this section is entitled to an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the 3-year maximum), if the borrower provides documentation satisfactory to the lender showing that the borrower is within any of the categories described in paragraphs (s)(6)(I) through (s)(6)(vi) of this section.

* * * * *

(vi) Is serving as a volunteer in the Peace Corps.

* * * * *

[FR Doc. 99–27728 Filed 10–22–99; 8:45 am]

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federal register

Monday
October 25, 1999

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Taxa That Are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Recycled Petitions; Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Taxa That Are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Recycled Petitions; and Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this document, we present an updated list of plant and animal taxa native to the United States that we regard as candidates or have proposed for possible addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate taxa can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list taxa as endangered or threatened. Even if we subsequently list a candidate taxon, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to the taxon.

We request additional status information that may be available for the identified candidate taxa and information on taxa that we should include as candidates in future updates of this list. We will consider this information in preparing listing documents and future revisions to the notice of review. This information will help us in monitoring changes in the status of candidate taxa and in conserving candidate taxa.

We announce the availability of listing priority assignment forms for candidate taxa and listing priority determinations for proposed taxa. These documents describe the status and threats that we evaluated in order to assign a listing priority number to each taxon.

We also announce our findings on recycled petitions and describe our progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the period September 3, 1997, to October 1, 1999.

DATES: We will accept comments on the candidate notice of review at any time.

ADDRESSES: Submit your comments regarding a particular taxon to the Regional Director of the Region identified as having the lead responsibility for that taxon. You may submit comments of a more general nature to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mail Stop 420 ARLSQ, Washington, DC 20240 (703/358–2171). Written comments and materials received in response to this notice will be available for public inspection by appointment at the appropriate Regional Office listed below.

Information regarding the range, status, and habitat needs of and listing priority assignment for a particular taxon is available for review at the appropriate Regional Office listed below or at the Division of Endangered Species, 4401 N. Fairfax Drive, Room 420, Arlington, Virginia 22203.

Region 1: California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands
Regional Director (TE), US Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6158).

Region 2: Arizona, New Mexico, Oklahoma, and Texas
Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue S.W., Room 4012, P.O. Box 1306, Albuquerque, New Mexico 87102 (505/248–6920).

Region 3: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin
Regional Director (TE), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056 (612/725–5334).

Region 4: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands
Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/679–4156).

Region 5: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia
Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413/253–8615).

Region 6: Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming
Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486 (303/236–7400).

Region 7: Alaska
Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199 (907/786–3505).

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Nancy Gloman Chief, Division of Endangered Species (703/358–2171).

SUPPLEMENTARY INFORMATION:

Candidate Notice of Review

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we identify taxa of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As part of this program, we have maintained a list of taxa we regard as candidates for listing. A candidate is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened. We maintain this list for a variety of reasons, including: to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to solicit input from interested parties to identify those candidate taxa that may not require protection under the Act or additional taxa that may require the Act's protections; and to solicit information needed to prioritize the order in which we will propose taxa for listing. Table 1 of this notice includes 258 taxa that we regard as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants, as well as 56 taxa for which we have published proposed rules to list, most of which we identified as candidates in the September 19, 1997, Candidate Notice of Review (62 FR 49398). We encourage consideration of these taxa in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR parts 1500–1508) and in local and Statewide land use planning. Table 2 of this notice contains 18 taxa identified as candidates in the September 19, 1997, Candidate Notice of Review that we have removed from candidate status, 93 taxa identified as proposed species in the 1997 notice that we have listed as threatened or endangered, and 15 taxa identified as proposed species in the 1997 notice for which we have withdrawn proposed rules. The Regional Offices identified as having lead responsibility for the particular taxa will revise and update the information on candidate taxa continually. We intend to publish an updated combined notice of review for animals and plants annually in the **Federal Register**. This will include our findings on recycled petitions and a description of our progress on listing actions.

Previous Notices of Review

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant taxa, which was published as House Document No. 94–51. We published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which we announced that we would review more than 3,000 native plant taxa named in the Smithsonian's report and other taxa added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants. A new comprehensive notice of review for native plants, that took into account the earlier Smithsonian report and other accumulated information, superseded the 1975 notice on December 15, 1980 (45 FR 82479). On November 28, 1983 (48 FR 53640), a supplemental plant notice of review noted changes in the status of various taxa. We published complete updates of the plant notice on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), September 30, 1993 (58 FR 51144), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596) and September 19, 1997 (62 FR 49398).

Previous animal notices of review included many of the animal taxa in the accompanying Table 1. We published earlier comprehensive reviews for vertebrate animals in the **Federal Register** on December 30, 1982 (47 FR 58454), and on September 18, 1985 (50 FR 37958). We published an initial comprehensive review for invertebrate animals on May 22, 1984 (49 FR 21664). We published a combined animal notice of review on January 6, 1989 (54 FR 554), and with minor corrections on August 10, 1989 (54 FR 32833). We again published comprehensive animal notices on November 21, 1991 (56 FR 58804), November 15, 1994 (59 FR 58982), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398). This revised notice supersedes all previous animal, plant, and combined notices of review.

Current Notice of Review

We gather data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those taxa (including, by definition, biological species, subspecies, and distinct population segments of vertebrate animals, and biological species, subspecies, and varieties of plants) that we currently regard as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants. In issuing this compilation, we rely on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies (such as the Forest Service and the Bureau of Land Management), knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 are arranged alphabetically by names of genera, species, and relevant subspecies and varieties under the major group headings for animals first, then plants. Animals are grouped by class or order. Plants are subdivided into three groups: flowering plants, conifers and cycads, and ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses (the synonyms preceded by an equal sign). Several taxa that have not yet been formally described in the scientific literature are included; such taxa are identified by a generic or specific name (in italics) followed by "sp." or "ssp." We incorporate standardized common names in these notices as they become available. The flux in common names, the inclusion of vernacular and composite subspecific names, and the fact that a majority of invertebrates still lack a standardized name combine to make common names relatively impractical for organizing the tables.

Table 1 lists all taxa that we regard as candidates for listing and all taxa proposed for listing under the Act. Candidate taxa are those taxa for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by other higher priority listing actions. We emphasize that we are not proposing these candidate taxa for listing by this notice, but we anticipate developing and publishing proposed listing rules for these taxa in the future. We encourage State agencies, other Federal agencies and other parties to give consideration to these taxa in environmental planning. Proposed taxa are those taxa for which we have published a proposed rule to list as endangered or threatened in the **Federal Register** (exclusive of taxa for which we have withdrawn or finalized the proposed rule).

Taxa in Table 1 of this notice are assigned to several status categories, noted in the "Category" column at the left side of the table. We explain the codes for the category status column of taxa in Table 1 below:

PE—Taxa proposed for listing as endangered.
PT—Taxa proposed for listing as threatened.
C—Candidates: Taxa for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these taxa is precluded at present by other higher priority listing actions. This category includes taxa for which we have made a "warranted but precluded" 12-month finding on a petition to list. We have recycled all petitions for which we have previously made "warranted but precluded" findings. We identify the taxa for which we have made a continued "warranted but precluded" finding on a recycled petition by the code "C*" in the category column. We anticipate developing and publishing proposed rules for candidate taxa in the future. We encourage State and other Federal agencies as well as other parties to give consideration to these taxa in environmental planning.

The column labeled "Priority" indicates the listing priority number for candidate taxa. We assign this number based on the immediacy and magnitude of threats as well as on taxonomic status. We published a complete description of our listing priority system in the September 21, 1983, **Federal Register** notice (48 FR 43098).

The third column identifies the Regional Office (R1–R7) to which you should direct comments or questions (see **ADDRESSES** section). We provided the comments received in response to the 1997 notice of review to the Region having lead responsibility for each candidate taxon mentioned in the comment. We will likewise consider all information provided in response to this notice of review in deciding whether to propose taxa for listing and when to undertake necessary listing actions. Comments received will become part of the administrative record for the taxa.

Following the scientific name of each taxon (fourth column) is the family designation (fifth column) and the common name if one exists (sixth column). The seventh column provides the known historical range for the taxon, indicated by postal code abbreviations for States and US territories (many taxa no longer occur in all of the areas listed). In the section on birds, the abbreviation "N" indicates the nesting range of the taxon, and the abbreviation "V" indicates additional areas in which the taxon spends other parts of its life cycle.

Taxa in Table 2 of this notice are taxa we included either as proposed taxa or as candidates in the 1997 notice of review but have since removed from such status for a variety of reasons. We have added many of the taxa identified as proposed in the last notice of review, to the Lists of Endangered or Threatened Wildlife and Plants. Table 2 also includes taxa that became candidates or were proposed for listing since the 1997 notice of review and are no longer classified as either candidates or proposed taxa (for example candidates or proposed species that we have listed or withdrawn since the 1997 notice of review). The first column indicates the present status of the taxa, using the following codes:

E—Taxa we listed as endangered.
T—Taxa we listed as threatened.
Rc—Taxa we removed from the candidate list because currently available information does not support issuance of a proposed listing.
Rp—Taxa we removed from the candidate list because we have withdrawn the proposed listing.

The second column provides a coded explanation of why we no longer regard the taxon as a candidate or proposed. Descriptions of the codes are as follows:

A—Taxa that are more abundant or widespread than previously believed and taxa that are not subject to the degree of threats sufficient to warrant continuance of candidate status, issuance of a proposed listing, or a final listing.
F—Taxa whose range is no longer a U.S. Territory.
I—Taxa for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.
L—Taxa we added to the Lists of Endangered or Threatened Wildlife and Plants.
M—Taxa we mistakenly included as candidates or proposed taxa in the last notice of review.
N—Taxa that are not a listable entity (do not meet the Act's definition of "species") based on current taxonomic understanding.
X—Taxa we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historic range include information as previously described for Table 1.

Summary

Since publication of the 1997 notice of review, we reviewed the available information on candidate taxa to ensure that issuance of a proposed listing is justified for each taxon and to reevaluate the relative listing priority assignment of each taxon. We undertook this effort to ensure that we are focusing conservation efforts on those taxa at greatest risk. As of October 1, 1999, there are 16 plants and 25 animals proposed for endangered status; 7 plants and 8 animals proposed for threatened status; and 154 plant and 104 animal candidates awaiting preparation of proposed rules (see Table 1). Table 2 includes 126 taxa that we classified as either proposed for listing or candidates that we no longer classify in those categories.

Petition of a Candidate Species

The Act provides two mechanisms for considering species for listing. First, the Act places on the Service the duty to identify and propose for listing those species which the Service finds require listing under the standards of section 4(a)(1). We implement this duty with the candidate program, discussed above. Second, the Act allows the public to petition us to add a species to the Threatened and Endangered Species Lists. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing is warranted (a "90-day finding"). If we make a positive 90-day finding, under section 4(b)(3)(B) we must make one of three possible findings within 12 months of the receipt of the petition (a "12-month finding").

The first possible 12-month finding is that listing is not warranted, in which case we need take no further action on the petition. Second, we may find that listing is warranted, in which case we must promptly publish a proposed rule to list the species. Once we publish a proposed rule for a species, section 4(b)(5) and (6) govern further procedures, regardless of whether or not we issued the proposal in response to a petition. Third, we may find that listing is "warranted but precluded." Such a finding means that immediate publication of a proposed rule to list the species is precluded by higher priority listing proposals, and that we are making expeditious progress to add and remove species from the Lists, as appropriate.

The standard for making a 12-month warranted but precluded finding on a petition to list a species is identical to our standard for making a species a candidate for listing. Therefore, we add all petitioned species subject to such a finding to the candidate list. Likewise, it follows that we can treat all candidates as having been subject to both a positive 90-day finding and a warranted but precluded 12-month finding; this notice constitutes publication of such findings pursuant to section 4(b)(3) for each species listed in Table 1 that is the subject of a subsequent petition to list as threatened or endangered. Pursuant to our Petition Management Guidance, made available on July 9, 1996 (61 FR 36075), we consider a petition to list a species already on the candidate list to be a second petition, and therefore redundant. We do not interpret the petition provisions of the Act to require us to make a duplicative finding; therefore, we will not make additional 90-day findings or initial 12-month findings on petitions to list candidate species. As discussed below, we will make recycled petition findings for petitions on such species via Candidate Notices of Review such as this one.

Findings on Recycled Petitions

Pursuant to section 4(b)(3)(C)(i), when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as recycled petition findings.

We reviewed the current status and threats to the taxa that were the subjects of the 25 outstanding warranted but precluded findings. As a result of this review, we have made continued warranted but precluded findings for all 25 species. For the 21 of these species that are candidates, we maintain them as candidates and identify them by the code "C*" in the category column on the left side of Table 1.

We have also previously made warranted but precluded findings on four petitions that sought to reclassify to endangered status, species already listed as threatened. Because these species are already listed, they are not technically candidates for listing and are not included in Table 1. However, this notice also constitutes the recycled petition findings for these species. We find that reclassification to endangered status is currently warranted but precluded for the:

(1) North Cascades Ecosystem grizzly bear (*Ursus arctos horribilis*) population (Region 6);
(2) Cabinet-Yaak and Selkirk grizzly bear populations (Region 6);
(3) spikedace (*Meda fulgida*) (Region 2); and
(4) loach minnow (*Tiaroga cobitis*) (Region 2).

We recently published a recycled warranted but precluded finding to reclassify the Cabinet-Yaak and Selkirk grizzly bear populations from threatened to endangered on May 17, 1999 (64 FR 26725). This recycled petition finding was prepared separately from this notice in response to litigation; however, as noted above, we are making another recycled petition finding at this time so that its annual reevaluation will come due at the same time as the others.

Progress in Revising the Lists

As described in section 4(b)(3)(B)(iii) of the Act, in order for us to make a "warranted but precluded" finding on a petitioned action, we must be making expeditious progress to add qualified taxa to the Lists of Endangered and Threatened Wildlife and Plants and to remove from the lists taxa for which the protections of the Act are no longer necessary. This notice describes our annual progress in revising the lists during the period September 3, 1997, to October 1, 1999. We intend to publish these descriptions annually.

Our progress in listing and delisting qualified taxa during the period September 3, 1997, to October 1, 1999, is represented by the publication in the **Federal Register** of emergency rules for 2 taxa, final listing actions for 94 taxa, proposed listing actions for 65 taxa, final delisting actions for 2 taxa, proposed delisting actions for 7 taxa, and withdrawals of proposed rules for 15 taxa. One taxon listed as threatened due to similarity of appearance, the southern population of the bog turtle (*Clemmys muhlenbergii*), is not included in the counts above.

Request for Information

We request you submit any further information on the taxa named in this notice as soon as possible or whenever it becomes available. We especially seek information:

(1) indicating that we should remove a taxon from candidate or proposed status;

(2) indicating that we should add a taxon to the list of candidate taxa;

(3) recommending areas that we should designate as critical habitat for a taxon, or indicating that designation of critical habitat would not be prudent for a taxon;

(4) documenting threats to any of the included taxa;

(5) describing the immediacy or magnitude of threats facing candidate taxa;

(6) pointing out taxonomic or nomenclatural changes for any of the taxa;

(7) suggesting appropriate common names; or

(8) noting any mistakes, such as errors in the indicated historical ranges.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 1, 1999.

Jamie Rappaport Clark,
Director, U.S. Fish and Wildlife Service.

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
			MAMMALS:			
C	3	R1	*Emballonura semicaudata*	Emballonuridae	Bat, sheath-tailed (Aguijan, American Samoa pops.).	U.S.A. (AS, GU, MP (Aguijan))
PT	3	R6	*Lynx canadensis*	Felidae	Lynx, Canada (contiguous U.S. pop.).	U.S.A. (AK, CO, ID, ME, MI, MN, MT, ND, NH, NY, OR, PA, UT, VT, WA, WI, WY), Canada, circumboreal
PE	3	R1	*Neotoma fuscipes riparia*	Muridae	Woodrat, riparian (=San Joaquin Valley).	U.S.A. (CA)
PE	3	R1	*Ovis canadensis*	Bovidae	Sheep, bighorn (Sierra Nevada pop.).	U.S.A. (Western conterminous states), Canada (southwestern), Mexico (northern)
PT	3	R1	*Pteropus mariannus mariannus.*	Pteropodidae	Bat, Mariana fruit (Aguijan, Tinian, Saipan pops.).	U.S.A. (MP)
C	3	R1	*Sorex ornatus relictus*	Soricidae	Shrew, Buena Vista Lake ornate.	U.S.A. (CA)
PT	3	R1	*Spermophilus brunneus brunneus.*	Sciuridae	Squirrel, northern Idaho ground.	U.S.A. (ID)
C	5	R1	*Spermophilus tereticaudus ssp. chlorus.*	Sciuridae	Squirrel, Coachella Valley round-tailed ground.	U.S.A. (CA)
C	5	R1	*Spermophilus washingtoni*	Sciuridae	Squirrel, Washington ground squirrel.	U.S.A. (WA, OR)
PE	3	R1	*Sylvilagus bachmani riparius*	Leporidae	Rabbit, riparian brush	U.S.A. (CA)
C*	9	R6	*Vulpes velox*	Canidae	Fox, swift (U.S. pop.)	U.S.A. (CO, IA, KS, MN, MT, ND, NE, NM, OK, SD, TX, WY), Canada
			BIRDS:			
PT	2	R6	*Charadrius montanus*	Charadriidae	Plover, mountain	U.S.A. (western), Canada, Mexico

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE	3	R1	*Chasiempis sandwichensis ibidus.*	Musicapidae	Elepaio, Oahu	U.S.A. (HI)
C	5	R4	*Dendroica angelae*	Emberizidae	Warbler, elfin woods	U.S.A. (PR)
C	6	R1	*Gallicolumba stairi*	Columbidae	Dove, friendly ground (American Somoa pop.).	U.S.A. (AS), Fiji, Tonga, Western Samoa
C	3	R1	*Oceanodroma castro*	Hydrobatidae	Petrel, band-rumped storm (=Harcourt's).	U.S.A. (HI)
C	5	R1	*Oreomystis bairdi*	Fringillidae	Creeper, Kauai	U.S.A. (HI)
PE	3	R7	*Phoebastris albatrus*	Diomedeidae	Albatross, short-tailed (U.S. pop.).	North Pacific Ocean—U.S.A. (AK, CA, HI, OR, WA), Canada, Japan, Russia
C	6	R1	*Porzana tubuensis*	Rallidae	Crake, spotless (American Samoa pop.).	U.S.A. (AS), Figi, Marquesas, Polynesia, Philippines, Australia, Society Islands, Tonga, Western Samoa
C	6	R1	*Ptilinopus perousii perousii*	Columbidae	Dove, many-colored fruit	U.S.A. (AS)
C*	8	R2	*Tympanuchus pallidicinctus*	Phasianidae	Prairie-chicken, lesser	U.S.A. (CO, KA, NM, OK, TX)
C	6	R1	*Zosterops conspicillata rotensis.*	Zosteropidae	White-eye, Rota bridled	U.S.A. (MP)
			REPTILES:			
C*	5	R2	*Graptemys caglei*	Emydidae	Turtle, Cagle's map	U.S.A. (TX)
C	3	R2	*Kinosternon sonoriense longifemorale.*	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico
C	6	R4	*Pituophis melanoleucus* ssp. *lodingi.*	Colubridae	Snake, black pine	U.S.A. (AL, LA, MS)
C	5	R4	*Pituophis melanoleucus*	Colubridae	Snake, Louisiana pine	U.S.A. (LA, TX)
C	9	R3	*Sistrurus catenatus catenatus.*	Viperidae	Massasauga, eastern	U.S.A. (IL, IN, IA, MI, MN, MO, NY, OH, PA, WI), Canada (Ont.)
			AMPHIBIANS:			
C*	5	R1	*Ambystoma californiense (=A. tigrinum c.).*	Ambystomatidae	Salamander, California tiger	U.S.A. (CA)
C*	3	R6	*Bufo boreas boreas*	Bufonidae	Toad, boreal (Southern Rocky Mountain pop.).	U.S.A. (CO, NM, WY)
C	5	R4	*Necturus alabamensis*	Proteidae	Waterdog, Black Warrior	U.S.A. (AL)
C	2	R4	*Rana capito sevosa (=R. sevosa).*	Ranidae	Frog, Mississippi gopher	U.S.A. (AL, LA, MS)
C*	2	R2	*Rana chiricahuensis*	Ranidae	Frog, Chiricahua leopard	U.S.A. (AZ, NM), Mexico
C*	9	R1	*Rana luteiventris* (formerly incl. in *R. pretiosa*).	Ranidae	Frog, Columbia spotted (formerly spotted) (Great Basin pop.).	U.S.A. (AK, CA, ID, MT, NV, OR, UT, WA, WY), Canada
C*	6	R1	*Rana pretiosa*	Ranidae	Frog, Oregon spotted (formerly spotted frog (W. Coast pop.)).	U.S.A. (CA, OR, WA)
			FISHES:			
PT	8	R1	*Catostomus santaanae*	Catostoidae	Sucker, Santa Ana	U.S.A. (CA)
PE	2	R2	*Cyprinodon pecosensis*	Cyprinodontidae	Pupfish, Pecos	U.S.A. (NM, TX)
PE	2	R2	*Dionda diaboli*	Cyprinidae	Minnow, Devils River	U.S.A. (TX), Mexico
C	5	R6	*Etheostoma cragini*	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK)
C	6	R4	*Etheostoma nigrum* ssp. *susanae.*	Percidae	Darter, Cumberland johnny	U.S.A. (KY, TN)
PE	3	R1	*Gila bicolor vaccaceps*	Cyprinidae	Chub, Cowhead Lake tui	U.S.A. (CA)
C*	2	R2	*Gila intermedia*	Cyprinidae	Chub, Gila	U.S.A. (AZ, NM), Mexico
C	2	R6	*Macrhybopsis gelida*	Cyprinidae	Chub, sturgeon	U.S.A. (AR, IA, IL, KY, KS, LA, MO, MS, MT, NE, ND, SD, TN, WY)
C*	2	R6	*Macrhybopsis meeki*	Cyprinidae	Chub, sicklefin	U.S.A. (AR, IA, IL, KS, KY, LA, MO, MS, MT, NE, ND, SD, TN)
PT	6	R1	*Oncorhynchus (=Salmo) clarki clarki.*	Salmonidae	Trout, coastal cutthroat (SW Washington/Columbia R. pop.).	U.S.A. (AK, CA, OR, WA), Canada
C	5	R4	*Percina aurora*	Percidae	Darter, Pearl	U.S.A. (LA, MS)
C	3	R5	*Salmo salar*	Salmonidae	Salmon, Atlantic (distinct population in 8 Maine Rivers).	U.S.A. (ME)

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
PT	9	R1	*Salvelinus confluentus*	Salmonidae	Trout, bull	U.S.A. (Pacific NW), Canada (NW Territories)
PE	5	R4	*Scaphirhynchus suttkusi*	Acipenseridae	Sturgeon, Alabama	U.S.A. (AL, MS)
C*	9	R6	*Thymallus arcticus*	Salmonidae	Grayling, Arctic (Upper Missouri R. fluvial pop.).	U.S.A. (MT, WY)
			Clams:			
PE	2	R3	*Leptodea leptodon*	Unionidae	Scaleshell (mussel)	U.S.A. (AL, AR, IL, IN, IA, KY, MN, MO, OH, OK, SD, TN, WI)
C	5	R4	*Lexingtonia dolabelloides*	Unionidae	Pearlymussel, slabside	U.S.A. (AL, KY, TN, VA)
C	5	R4	*Margaritifera marrianae*	Margaritiferidae	Pearlshell, Alabama	U.S.A. (AL)
C	5	R4	*Pleurobema chattanoogaense.*	Unionidae	Clubshell, painted	U.S.A. (AL, GA, TN)
C	5	R4	*Pleurobema hanleyanum*	Unionidae	Pigtoe, Georgia	U.S.A. (AL, GA, TN)
C	5	R4	*Pleurobema troshelianum*	Unionidae	Clubshell, Alabama	U.S.A. (AL, GA, TN)
C	5	R4	*Ptychobranchus subtentum*	Unionidae	Kidneyshell, fluted	U.S.A. (AL, KY, TN, VA)
			Snails:			
C	7	R3	*Antrobia culveri*	Hydrobiidae	Cavesnail, Tumbling Creek	U.S.A. (MO)
C*	2	R2	*Assiminea pecos*	Assimineidae	Snail, Pecos assiminea	U.S.A. (NM, TX), Mexico
PE	5	R4	*Campeloma decampi*	Viviparidae	Campeloma, slender	U.S.A. (AL)
PT	7	R1	*Erinna newcombi*	Lymnaeidae	Snail, Newcomb's	U.S.A. (HI)
C	2	R1	*Eua zebrina*	Partulidae	Snail, Tutuila tree	U.S.A. (AS)
C	5	R4	*Leptoxis downei*	Pleuroceridae	Rocksnail, Georgia	U.S.A. (GA, AL)
C	5	R1	*Newcombia cumingi*	Achatinellidae	Newcomb's tree snail	U.S.A. (HI)
C	9	R6	*Oreohelix peripherica wasatchensis.*	Oreohelicidae	Mountainsnail, Ogden (=Ogden Rocky).	U.S.A. (UT)
C	2	R1	*Ostodes strigatus*	Potaridae	Sisi (snail)	U.S.A. (AS)
C	2	R1	*Partula gibba*	Partulidae	Snail, Humped tree	U.S.A. (GU, MP)
C	2	R1	*Partula langfordi*	Partulidae	Snail, Langford's tree	U.S.A. (MP)
C	2	R1	*Partula radiolata*	Partulidae	Snail, Guam tree	U.S.A. (GU)
C	2	R1	*Partulina semicarinata*	Achatinellidae	Snail, Lanai tree or pupu kani oe.	U.S.A. (HI)
C	2	R1	*Partulina variabilis*	Achatinellidae	Snail, Lanai tree or pupu kani oe.	U.S.A. (HI)
PE	5	R4	*Pyrgulopsis (=Marstonia) pachyta.*	Hydrobiidae	Armored (=thick-shelled) snail (=marstonia).	U.S.A. (AL)
C*	8	R2	*Pyrgulopsis chupaderae*	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM)
C*	11	R2	*Pyrgulopsis gilae*	Hydrobiidae	Springsnail, Gila	U.S.A. (NM)
C	2	R2	*Pyrgulopsis morrisoni*	Hydrobiidae	Springsnail, Page	U.S.A. (AZ)
C*	2	R2	*Pyrgulopsis roswellensis*	Hydrobiidae	Springsnail, Roswell	U.S.A. (NM)
C*	11	R2	*Pyrgulopsis thermalis*	Hydrobiidae	Springsnail, New Mexico	U.S.A. (NM)
C	5	R2	*Pyrgulopsis thompsoni*	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico
C	2	R1	*Samoana fragilis*	Partulidae	Snail, fragile tree	U.S.A. (GU, MP)
C	5	R2	*Sonorella macrophallus*	Helminthoglyptida	Talussnail, Wet Canyon	U.S.A. (AZ)
C	2	R6	*Stagnicola bonnevillensis*	Lymnaeidae	Pondsnail, Bonneville (=fat-whorled).	U.S.A. (UT)
C	5	R2	*Tryonia adamantina*	Hydrobiidae	Snail, Diamond Y Spring	U.S.A. (TX)
C*	2	R2	*Tryonia kosteri*	Hydrobiidae	Snail, Koster's tryonia	U.S.A. (NM)
C	5	R2	*Tryonia stocktonensis*	Hydrobiidae	Springsnail, Gonzales	U.S.A. (TX)
			Insects:			
PE	2	R2	*Batrisodes venyivi*	Pselaphidae	Beetle, Helotes mold	U.S.A. (TX)
C	2	R4	*Cicindela highlandensis*	Cicindelidae	Beetle, highlands tiger	U.S.A. (FL)
C	2	R1	*Cicindela ohlone*	Cicindelidae	Beetle, Ohlone tiger	U.S.A. (CA)
C	5	R4	*Glyphopsyche sequatchie*	Limnephilidae	Caddisfly, Sequatchie	U.S.A. (TN)
PE	2	R2	*Rhadine exilis*	Carabidae	Beetle, [no common name]	U.S.A. (TX)
PE	2	R2	*Rhadine infernalis*	Carabidae	Beetle, [no common name]	U.S.A. (TX)
C	5	R1	*Polites mardon*	Hesperiidae	Skipper, Mardon	U.S.A. (CA, OR, WA)
C	12	R1	*Pseudocopaeodes eunus ssp. obscurus.*	Hesperiidae	Carson wandering skipper	U.S.A. (CA, NV)
C	1	R1	*Tinostoma smaragditis*	Sphingidae	Moth, fabulous green sphinx	U.S.A. (HI)
C*	9	R6	*Cicindela limbata albissima*	Cicindelidae	Beetle, Coral Pink Sand Dunes tiger.	U.S.A. (UT)
C	2	R1	*Drosophila aglaia*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila attigua*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila differens*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila digressa*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	2	R1	*Drosophila hemipeza*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila heteroneura*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila montgomeryi*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila mulli*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila musaphila*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila neoclavisetae*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila obatai*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila ochrobasis*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila substenoptera*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	2	R1	*Drosophila tarphytrichia*	Drosophilidae	Pomace fly, [no common name].	U.S.A. (HI)
C	3	R1	*Hypolimnas octucula mariannensis.*	Nymphalidae	Butterfly, Mariana eight-spot	U.S.A. (GU, MP)
PE	3	R1	*Icaricia icarioides fenderi*	Lycaenidae	Butterfly, Fender's blue	U.S.A. (OR)
PE	2	R1	*Manduca blackburni*	Sphingidae	Moth, Blackburn's sphinx	U.S.A. (HI)
C	2	R1	*Megalagrion leptodemus*	Coenagrionidae	Damselfly, crimson Hawaiian (=leptodemas megalagrion).	U.S.A. (HI)
C	2	R1	*Megalagrion nesiotes*	Coenagrionidae	Damselfly, flying earwig Hawaiian (=nesiotes megalagrion).	U.S.A. (HI)
C	9	R1	*Megalagrion nigrohamatum nigrolineatum.*	Coenagrionidae	Damselfly, blackline Hawaiian (=blackline megalagrion).	U.S.A. (HI)
C	2	R1	*Megalagrion oceanicum*	Coenagrionidae	Damselfly, oceanic Hawaiian (=oceanic megalagrion).	U.S.A. (HI)
C	2	R1	*Megalagrion pacificum*	Coenagrionidae	Damselfly, Pacific Hawaiian (=Pacific megalagrion).	U.S.A. (HI)
C	8	R1	*Megalagrion xanthomelas*	Coenagrionidae	Damselfly, orangeblack Hawaiian (=orangeblack megalagrion).	U.S.A. (HI)
C	2	R1	*Nysius wekiuicola*	Lygaeidae	Bug, Wekiu	U.S.A. (HI)
C	5	R1	*Phaeogramma* sp.	Tephritidae	Gall fly, Po'olanui	U.S.A. (HI)
C	5	R5	*Pseudanophthalmus holsingeri.*	Carabidae	Beetle, Holsinger's cave	U.S.A. (VA)
C	2	R1	*Vagrans egestina*	Nymphalidae	Butterfly, Mariana wandering	U.S.A. (GU, MP)
C	11	R6	*Zaitzevia thermae*	Elmidae	Beetle, warm springs zaitzevian riffle.	U.S.A. (MT)
			ARACHNIDS:			
PE	2	R2	*Cicurina baroni*	Dictynidae	Spider, Robber Baron cave	U.S.A. (TX).
PE	2	R2	*Cicurina madla*	Dictynidae	Spider, Madla's cave	U.S.A. (TX).
PE	2	R2	*Cicurina venii*	Dictynidae	Spider [no common name]	U.S.A. (TX).
PE	2	R2	*Cicurina vespera*	Dictynidae	Spider, Vesper cave	U.S.A. (TX).
PE	2	R2	*Neoleptoneta microps*	Leptonetidae	Spider, Government Canyon cave.	U.S.A. (TX).
PE	2	R2	*Texella cokendolpheri*	Phalangodidae	Harvestman, Robber Baron Cave.	U.S.A. (TX)
PE	1	R1	*Adelocosa anops*	Lycosidae	Spider, Kauai cave wolf or pe'e pe'e maka 'ole.	U.S.A. (HI)
C	8	R2	*Cicurina wartoni*	Dictynidae	Spider, Warton's cave	U.S.A. (TX)
			CRUSTACEANS:			
C	2	R1	*Metabetaeus lohena*	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI)
C	2	R1	*Antecaridina lauensis*	Atyidae	Shrimp, anchialine pool	U.S.A. (HI), Mozambique, Saudi Arabia, Japan
C	2	R1	*Calliasmata pholidota*	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI), Funafuti Atol, Saudi Arabia, Sinai Penninsula, Tuvalu
C	11	R4	*Fallicambarus gordoni*	Cambaridae	Crayfish, Camp Shelby burrowing.	U.S.A. (MS)
C	2	R1	*Palaemonella burnsi*	Palaemonidae	Shrimp, anchialine pool	U.S.A. (HI)

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	2	R1	*Procaris hawaiana*	Procarididae	Shrimp, anchialine pool	U.S.A. (HI)
C	5	R4	*Typhlatya monae*	Atyidae	Shrimp, troglobitic groundwater.	U.S.A. (PR), Barbuda, Dominican Republic
C	2	R1	*Vetericaris chaceorum*	Procaridae	Shrimp, anchialine pool	U.S.A. (HI)
PE	1	R1	*Spelaeorchestia koloana*	Talitridae	Amphipod, Kauai cave	U.S.A. (HI)
			FLOWERING PLANTS:			
C	11	R1	*Abronia alpina*	Nyctaginaceae	Ramshaw Meadows sand-verbena.	U.S.A. (CA)
C	11	R4	*Arabis georgiana*	Brassicaceae	Georgia rockcress	U.S.A. (AL, GA)
C	11	R4	*Argythamnia blodgettii*	Euphorbiaceae	Blodgett's silverbrush (=Bloddgett's wild mercury).	U.S.A. (FL)
C	3	R1	*Artemisia campestris* var. *wormskioldii.*	Asteraceae	Northern wormwood	U.S.A. (OR, WA)
C	2	R1	*Astelia waialealae*	Liliaceae	Pa'ini'u	U.S.A. (HI)
C	5	R4	*Aster georgianus*	Asteraceae	Aster, Georgia	U.S.A. (AL, FL, GA, NC, SC)
C*	2	R6	*Astragalus ampullarioides*	Fabaceae	Shivwitz (=Shem) milk-vetch	U.S.A. (UT)
PT	2	R6	*Astragalus desereticus*	Fabaceae	Deseret milk-vetch	U.S.A. (UT)
C	8	R6	*Astragalus equisolensis*	Fabaceae	Horseshoe milk-vetch	U.S.A. (UT)
C*	2	R6	*Astragalus holmgreniorum*	Fabaceae	Holmgren milk-vetch	U.S.A. (AZ, UT)
PE	3	R1	*Astragalus pycnostachyus* var. *lanosissimus.*	Fabaceae	Milk-vetch, Ventura Marsh	U.S.A. (CA)
C	2	R6	*Astragalus tortipes*	Fabaceae	Sleeping Ute milk-vetch	U.S.A. (CO)
C	5	R1	*Bidens amplectens*	Asteraceae	Ko'oko'olau	U.S.A. (HI)
C	6	R1	*Bidens campylotheca ssp. pentamera.*	Asteraceae	Ko'oko'olau	U.S.A. (HI)
C	3	R1	*Bidens campylotheca* ssp. *waihoiensis.*	Asteraceae	Ko'oko'olau	U.S.A. (HI)
C	5	R1	*Bidens conjuncta*	Asteraceae	Ko'oko'olau	U.S.A. (HI)
C	6	R1	*Bidens micrantha* ssp. *ctenophylla.*	Asteraceae	Ko'oko'olau	U.S.A. (HI)
C	5	R4	*Brickellia mosieri*	Asteraceae	Florida brickell-bush (=Mosier's false boneset).	U.S.A. (FL)
C	5	R1	*Calamagrostis expansa*	Poaceae	None	U.S.A. (HI)
C	5	R1	*Calamagrostis hillebrandii*	Poaceae	None	U.S.A. (HI)
C	5	R4	*Calliandra locoensis*	Mimosaceae	None	U.S.A. (PR)
C	5	R4	*Calyptranthes estremerae*	Myrtaceae	None	U.S.A. (PR)
C	5	R1	*Canavalia napaliensis*	Fabaceae	'Awikiwiki	U.S.A. (HI)
C	2	R1	*Canavalia pubescens*	Fabaceae	'Awikiwiki	U.S.A. (HI)
PE	5	R4	*Carex lutea*	Cyperaceae	Golden sedge	U.S.A. (NC)
C	8	R6	*Castilleja aquariensis*	Scrophulariaceae	Aquarius paintbrush	U.S.A. (UT)
C	11	R1	*Castilleja christii*	Scrophulariaceae	Christ's paintbrush	U.S.A. (ID)
C	6	R4	*Chamaecrista lineata* var. *keyensis (=Cassia keyensis).*	Fabaceae	Big Pine partridge pea (=Key cassia).	U.S.A. (FL)
C	6	R4	*Chamaesyce deltoidea* ssp. *pinetorum.*	Euphorbiaceae	Pineland sandmat	U.S.A. (FL)
C	6	R4	*Chamaesyce deltoidea* ssp. *serpyllum.*	Euphorbiaceae	Wedge spurge (=Wedge sandmat).	U.S.A. (FL)
C	5	R1	*Chamaesyce eleanoriae*	Euphorbiaceae	'Akoko	U.S.A. (HI)
C	6	R1	*Chamaesyce remyi* var. *kauaiensis.*	Euphorbiaceae	'Akoko	U.S.A. (HI)
C	6	R1	*Chamaesyce remyi* var. *remyi.*	Euphorbiaceae	'Akoko	U.S.A. (HI)
C	5	R1	*Charpentiera densiflora*	Amaranthaceae	Papala	U.S.A. (HI)
PT	9	R1	*Chlorogalum purpureum*	Liliaceae	Purple amole	U.S.A. (CA)
C	3	R1	*Chorizanthe parryi* var. *fernandina.*	Polygonaceae	San Fernando Valley spineflower.	U.S.A. (CA)
C	5	R4	*Chromolaena frustata (=Eupatorium frustatum).*	Asteraceae	Cape Sable thoroughwort	U.S.A. (FL)
PE	2	R1	*Cirsium loncholepis*	Asteraceae	La Graciosa thistle	U.S.A. (CA)
C	2	R4	*Cordia rupicola*	Boraginaceae	None	U.S.A. (PR), Anegada
C	6	R1	*Cyanea (=Rollandia) lanceolata* spp. *calycina.*	Campanulaceae	Haha	U.S.A. (HI)
C	6	R1	*Cyanea (=Rollandia) lanceolata* spp. *lanceolata.*	Campanulaceae	Haha	U.S.A. (HI)
C	2	R1	*Cyanea asplenifolia*	Campanulaceae	Haha	U.S.A. (HI)
C	2	R1	*Cyanea eleeleensis*	Campanulaceae	Haha	U.S.A. (HI)
C	2	R1	*Cyanea kuhihewa*	Campanulaceae	Haha	U.S.A. (HI)

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	5	R1	*Cyanea kunthiana*	Campanulaceae	Haha	U.S.A. (HI)
C	2	R1	*Cyanea obtusa*	Campanulaceae	Haha	U.S.A. (HI)
C	5	R1	*Cyanea pseudofauriei*	Campanulaceae	Haha	U.S.A. (HI)
C	5	R1	*Cyanea tritomantha*	Campanulaceae	Haha	U.S.A. (HI)
C	2	R1	*Cyrtandra filipes*	Gesneriaceae	Ha‘iwale	U.S.A. (HI)
C	5	R1	*Cyrtandra kaulantha*	Gesneriaceae	Ha‘iwale	U.S.A. (HI)
C	5	R1	*Cyrtandra oenobarba*	Gesneriaceae	Ha‘iwale	U.S.A. (HI)
C	2	R1	*Cyrtandra oxybapha*	Gesneriaceae	Ha‘iwale	U.S.A. (HI)
C	2	R1	*Cyrtandra sessilis*	Gesneriaceae	Ha‘iwale	U.S.A. (HI)
C	6	R4	*Dalea carthagenensis* var. *floridana*.	Fabaceae	Florida prairie-clover (=Cartagena prairie-clover)	U.S.A. (FL)
PE	2	R1	*Delphinium bakeri*	Ranunculaceae	Baker's larkspur	U.S.A. (CA)
PE	2	R1	*Delphinium luteum*	Ranunculaceae	Yellow larkspur	U.S.A. (CA)
C	5	R4	*Digitaria pauciflora*	Poaceae	Florida pineland crabgrass (=twospike fingergrass, twospike crabgrass, few-flowered fingergrass)	U.S.A. (FL)
C	6	R1	*Dubautia imbricata* ssp. *imbricata*.	Asteraceae	Na‘ena‘e	U.S.A. (HI)
C	3	R1	*Dubautia plantaginea* ssp. *magnifolia*.	Asteraceae	Na‘ena‘e	U.S.A. (HI)
C	5	R1	*Dubautia waialealae*	Asteraceae	Na‘ena‘e	U.S.A. (HI)
C	6	R2	*Echinomastus erectocentrus* var. *acunensis*.	Cactaceae	Acuna cactus	U.S.A. (AZ), Mexico
PE	3	R1	*Erigeron decumbens* var. *decumbens*.	Asteraceae	Willamette daisy	U.S.A. (OR)
C	8	R1	*Erigeron basalticus*	Asteraceae	Basalt daisy	U.S.A. (WA)
C	5	R2	*Erigeron lemmonii*	Asteraceae	Lemmon fleabane	U.S.A. (AZ)
PE	2	R1	*Eriodictyon capitatum*	Hydrophyllaceae	Lompoc yerba santa	U.S.A. (CA)
C	5	R1	*Eriogonum codium*	Polygonaceae	Umtanum desert-buckwheat	U.S.A. (WA)
C	5	R1	*Eriogonum kelloggii*	Polygonaceae	Red Mountain buckwheat	U.S.A. (CA)
C	5	R1	*Festuca hawaiiensis*	Poaceae	None	U.S.A. (HI)
C	11	R2	*Festuca ligulata*	Poaceae	Guadalupe fescue	U.S.A. (TX), Mexico
PE	2	R1	*Fritillaria gentneri*	Liliaceae	Gentner's (=Mission-bells) fritillaria.	U.S.A. (OR)
C	5	R1	*Gardenia remyi*	Rubiaceae	Nanu	U.S.A. (HI)
PT	3	R6	*Gaura neomexicana* ssp. *coloradensis*.	Onagraceae	Colorado butterfly plant	U.S.A. (CO, NE, WY)
C	5	R1	*Geranium hanaense*	Geraniaceae	Nohoanu	U.S.A. (HI)
C	8	R1	*Geranium humile*	Geraniaceae	Nohoanu	U.S.A. (HI)
C	2	R1	*Geranium kauaiense*	Geraniaceae	Nohoanu	U.S.A. (HI)
C	11	R6	*Gilia caespitosa*	Polemoniaceae	Wonderland alice-flower (=Rabbit Valley gilia)	U.S.A. (UT)
C	6	R1	*Gnaphalium sandwicensium* var. *molokaiense*.	Asteraceae	‘Ena‘ena	U.S.A. (HI)
C	5	R4	*Gonocalyx concolor*	Ericaceae	None	U.S.A. (PR)
C	2	R1	*Hackelia venusta*	Boraginaceae	Showy stickseed	U.S.A. (WA)
C	5	R1	*Hedyotis fluviatilis*	Rubiaceae	Kamapua‘a	U.S.A. (HI)
PT	8	R2	*Helianthus paradoxus*	Asteraceae	Pecos (=puzzle) sunflower	U.S.A. (NM, TX)
C	5	R4	*Helianthus verticillatus*	Asteraceae	Whorled sunflower	U.S.A. (AL, GA, TN)
PE	3	R1	*Hemizonia increscens* ssp. *villosa*.	Asteraceae	Gaviota tarplant	U.S.A. (CA)
C	5	R2	*Hibiscus dasycalyx*	Malvaceae	Neches River rose-mallow	U.S.A. (TX)
PT	2	R1	*Holocarpha macradenia*	Asteraceae	Santa Cruz tarplant	U.S.A. (CA)
C	6	R4	*Indigofera mucronata* var. *keyensis*.	Fabaceae	Florida (=Key's) indigo	U.S.A. (FL)
C	3	R1	*Joinvillea ascendens* ssp. *ascendens*.	Joinvilleaceae	‘Ohe	U.S.A. (HI)
C	5	R1	*Korthalsella degeneri*	Viscaceae	Hulumoa	U.S.A. (HI)
C	5	R1	*Labordia helleri*	Loganiaceae	Kamakahala	U.S.A. (HI)
C	5	R1	*Labordia pumila*	Loganiaceae	Kamakahala	U.S.A. (HI)
C	5	R1	*Lagenifera erici*	Asteraceae	None	U.S.A. (HI)
C	5	R1	*Lagenifera helenae*	Asteraceae	None	U.S.A. (HI)
C	5	R4	*Leavenworthia crassa*	Brassicaceae	Glade-cress	U.S.A. (AL)
C	5	R2	*Leavenworthia texana*	Brassicaceae	Texas golden gladecress	U.S.A (TX)
C	2	R1	*Lepidium papilliferum*	Brassicaceae	Slick spot peppergrass	U.S.A. (ID)
C	5	R4	*Lesquerella globosa*	Brassicaceae	Short's bladderpod	U.S.A. (IN, KY, TN)
PE	2	R2	*Lesquerella thamnophila*	Brassicaceae	Zapata bladderpod	U.S.A. (TX)
C	5	R1	*Lesquerella tuplashensis*	Brassicaceae	White Bluffs bladderpod	U.S.A. (WA)

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	3	R1	*Limnanthes floccosa* ssp. *grandiflora.*	Limnanthaceae	Large-flowered wooly meadowfoam.	U.S.A. (OR)
C	2	R4	*Linum arenicola*	Linaceae	Sand flax	U.S.A. (FL)
C	3	R4	*Linum carteri* var. *carteri*	Linaceae	Carter's small-flowered flax	U.S.A. (FL)
C	2	R1	*Lomatium cookii*	Apiaceae	Cook's lomatium	U.S.A. (OR)
PE	2	R1	*Lupinus nipomensis*	Fabaceae	Nipomo Mesa lupine	U.S.A. (CA)
PT	....	R1	*Lupinus sulphureus* var. *kincaidii.*	Fabacaeae	Kincaid's lupine	U.S.A. (OR, WA)
C	5	R1	*Lysimachia daphnoides*	Primulaceae	Lehua makanoe	U.S.A. (HI)
C	2	R1	*Lysimachia venosa*	Primulaceae	None	U.S.A. (HI)
C	5	R1	*Melicope christophersenii*	Rutaceae	Alani	U.S.A. (HI)
C	2	R1	*Melicope degeneri*	Rutaceae	Alani	U.S.A. (HI)
C	2	R1	*Melicope hiiakae*	Rutaceae	Alani	U.S.A. (HI)
C	2	R1	*Melicope macropus*	Rutaceae	Alani	U.S.A. (HI)
C	2	R1	*Melicope makahae*	Rutaceae	Alani	U.S.A. (HI)
C	2	R1	*Melicope paniculata*	Rutaceae	Alani	U.S.A. (HI)
C	5	R1	*Melicope puberula*	Rutaceae	Alani	U.S.A. (HI)
C	5	R1	*Myrsine fosbergii*	Myrsinaceae	Kolea	U.S.A. (HI)
C	2	R1	*Myrsine mezii*	Myrsinaceae	Kolea	U.S.A. (HI)
C	5	R1	*Myrsine vaccinioides*	Myrsinaceae	Kolea	U.S.A. (HI)
C	8	R5	*Narthecium americanum*	Liliaceae	Bog asphodel	U.S.A. (DE, NJ, NC, NY, SC)
C	1	R1	*Nesogenes rotensis*	Verbenaceae	None	U.S.A. (MP)
C	5	R1	*Nothocestrum latifolium*	Solanaceae	'Aiea	U.S.A. (HI)
C	2	R1	*Ochrosia haleakalae*	Apocynaceae	Holei	U.S.A. (HI)
C	5	R4	*Opuntia corallicola*	Cactaceae	Florida semaphore cactus (=semaphore pricklypear).	U.S.A. (FL)
C	12	R1	*Opuntia whipplei* var. *multigeniculata.*	Cactaceae	Blue Diamond cholla	U.S.A. (NV)
C	2	R1	*Osmoxylon mariannense*	Araliaceae	None	U.S.A. (MP)
C	5	R5	*Panicum hirstii*	Poaceae	Hirsts panic grass	U.S.A. (DE, GA, NC, NJ)
C	11	R2	*Paronychia congesta*	Caryophyllaceae	Bushy whitlow-wort	U.S.A. (TX)
C	6	R2	*Pediocactus peeblesianus* var. *fickeiseniae.*	Cactaceae	Fickeisen plains cactus	U.S.A. (AZ)
C	5	R6	*Penstemon debilis*	Scrophulariaceae	Parachute beardtongue	U.S.A. (CO)
C	5	R6	*Penstemon grahamii*	Scrophulariaceae	Graham beardtongue	U.S.A. (CO, UT)
C	6	R6	*Penstemon scariosus* var. *albifluvis.*	Scrophulariaceae	White River beardtongue	U.S.A. (CO, UT)
C	2	R1	*Peperomia subpetiolata*	Piperaceae	'Ala 'ala wai nui	U.S.A. (HI)
C	11	R6	*Phacelia submutica*	Hydrophyllaceae	DeBeque phacelia	U.S.A. (CO)
PE	2	R1	*Phlox hirsuta*	Polemoniaceae	Yreka phlox	U.S.A. (CA)
C	2	R1	*Phyllostegia bracteata*	Lamiaceae	None	U.S.A. (HI)
C	5	R1	*Phyllostegia floribunda*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Phyllostegia helleri*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Phyllostegia hispida*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Phyllostegia imminuta*	Lamiaceae	None	U.S.A. (HI)
C	5	R1	*Pittosporum napaliense*	Pittosporaceae	Ho'awa	U.S.A. (HI)
PE	2	R1	*Plagiobothrys hirtus*	Boraginaceae	Rough popcornflower	U.S.A. (OR)
C	5	R4	*Platanthera integrilabia*	Orchidaceae	White fringeless orchid	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA)
C	6	R1	*Platydesma cornuta* var. *cornuta.*	Rutaceae	None	U.S.A. (HI)
C	6	R1	*Platydesma cornuta* var. *decurrens.*	Rutaceae	None	U.S.A. (HI)
C	2	R1	*Platydesma remyi*	Rutaceae	None	U.S.A. (HI)
C	5	R1	*Platydesma rostrata*	Rutaceae	Pilo kea lau li'I	U.S.A. (HI)
C	5	R1	*Pleomele fernaldii*	Agavaceae	Hala pepe	U.S.A. (HI)
C	2	R1	*Pleomele forbesii*	Agavaceae	Hala pepe	U.S.A. (HI)
C	2	R1	*Polygonum hickmanii*	Polygonaceae	Scotts Valley polygonum	U.S.A. (CA)
C	5	R1	*Pritchardia hardyi*	Asteraceae	Na'ena'e	U.S.A. (HI)
C	2	R1	*Psychotria grandiflora*	Rubiaceae	Kopiko	U.S.A. (HI)
C	3	R1	*Psychotria hexandra* ssp. *oahuensis.*	Rubiaceae	Kopiko	U.S.A. (HI)
C	2	R1	*Psychotria hobdyi*	Rubiaceae	Kopiko	U.S.A. (HI)
C	5	R1	*Pteralyxia macrocarpa*	Apocynaceae	Kaulu	U.S.A. (HI)
C	5	R1	*Ranunculus hawaiensis*	Ranunculaceae	Makou	U.S.A. (HI)
C	2	R1	*Ranunculus mauiensis*	Ranunculaceae	Makou	U.S.A. (HI)
C	2	R1	*Rorippa subumbellata*	Brassicaceae	Tahoe yellow cress	U.S.A. (CA, NV)
C	2	R1	*Schiedea attenuata*	Caryophyllaceae	None	U.S.A. (HI)
C	3	R1	*Schiedea pubescens* var. *pubescens.*	Caryophyllaceae	None	U.S.A. (HI)

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	2	R1	*Schiedea salicaria*	Caryophyllaceae	None	U.S.A. (HI)
C	5	R1	*Sedum eastwoodiae*	Crassulaceae	Red Mountain stonecrop	U.S.A. (CA)
C	5	R1	*Sicyos macrophyllus*	Cucurbitaceae	'Anunu	U.S.A. (HI)
C	9	R1	*Sidalcea hickmanii* ssp. *parishii.*	Malvaceae	Parish's checkerbloom	U.S.A. (CA)
PE	2	R1	*Sidalcea keckii*	Malvaceae	Keck's checkermallow	U.S.A. (CA)
PE	3	R1	*Sidalcea oregana* var. *calva*	Malvaceae	Wenatchee Mountains (=Oregon) checkermallow.	U.S.A. (WA)
C	11	R1	*Solanum nelsonii*	Solanaceae	Popolo	U.S.A. (HI)
C	2	R1	*Stenogyne cranwelliae*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Stenogyne kealiae*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Tabernaemontana rotensis*	Apocynaceae	None	U.S.A. (GU, MP)
C	5	R1	*Thelypteris boydiae*	Thelypteridaceae	None	U.S.A. (HI)
PE	2	R1	*Thlaspi californicum*	Brassicaceae	Kneeland Prairie penny-cress.	U.S.A. (CA)
C	9	R1	*Torulinium odoratum* ssp. *auriculatum.*	Cyperaceae	Pu'uka'a (=kili'o'opu, kiolohia, mau'u pu'u, puko'a).	U.S.A. (HI)
PT	1	R6	*Yermo xanthocephalus*	Asteraceae	Desert yellowhead	U.S.A. (WY)
C	2	R1	*Zanthoxylum oahuense*	Rutaceae	A'e	U.S.A. (HI)
C		R2	*Zanthoxylum parvum*	Rutaceae	Shinner's tickle-tongue	U.S.A. (TX)
			FERNS AND ALLIES:			
C	2	R1	*Doryopteris takeuchii*	Pteridaceae	None	U.S.A. (HI)
C	2	R1	*Dryopteris tenebrosa*	Dryopteridaceae	None	U.S.A. (HI)
C	2	R1	*Microlepia mauiensis*	Dennstaedtiaceae	None	U.S.A. (HI)
C	2	R1	*Phlegmariurus stemmermanniae.*	Lycopodiaceae	Wawae'iole (or Lei lani firmoss).	U.S.A. (HI)

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS

Status		Lead region	Scientific name	Family	Common name	Historic range
Code	Expl.					
			MAMMALS:			
E	L	R1	*Dipodomys merriami parvus*	Heteromyidae	Kangaroo rat, San Bernardino Merriam's	U.S.A. (CA)
T	L	R6	*Zapus hudsonius preblei*	Zapodidae	Mouse, Preble's meadow jumping	U.S.A. (CO, WY)
E	L	R4	*Peromyscus polionotus peninsularis.*	Muridae	Mouse, St. Andrew beach	U.S.A. (FL)
E	L	R1	*Ovis canadensis*	Bovidae	Sheep, bighorn (U.S.A.—CA Peninsular Ranges pop.)	U.S.A. (Western conterminous states), Canada (southwestern), Mexico (northern)
E	L	R1	*Ovis canadensis*	Bovidae	Sheep, bighorn (Sierra Nevada pop.)	U.S.A. (Western conterminous states), Canada (southwestern), Mexico (northern)
Rc	A	R4	*Ursus americanus floridanus*	Ursidae	Bear, Florida black	U.S.A. (AL, FL, GA)
			REPTILES:			
Rp	A	R1	*Anniella pulchra nigra*	Anniellidae	Lizard, black legless	U.S.A. (CA)
T	L	R5	*Clemmys muhlenbergii*	Emydidae	Turtle, bog (=Muhlenberg) (northern pop. excluding GA, NC, SC, TN, VA)	U.S.A. (CT, DE, GA, MA, MD, NC, NJ, NY, PA, SC, TN, VA)
T	L	R1	*Masticophis lateralis euryxanthus.*	Colubridae	Whipsnake (=striped racer), Alameda	U.S.A. (CA)
T	L	R3	*Nerodia sipedon insularum*	Colubridae	Snake, Lake Erie water	U.S.A. (OH), Canada
			AMPHIBIANS:			
T	L	R4	*Ambystoma cingulatum*	Ambystomatidae	Salamander, flatwoods	U.S.A. (AL, FL, GA, SC)
Rc	A	R6	*Rana luteiventris* (formerly incl. in *R. pretiosa*).	Ranidae	Frog, Columbia spotted (formerly spotted)(Wasatch Front pop)	U.S.A. (AK, CA, ID, MT, NV, OR, UT, WA, WY), Canada
Rc	A	R6	*Rana luteiventris* (formerly incl. in *R. pretiosa*).	Ranidae	Frog, Columbia spotted (formerly spotted) (West Desert pop.).	U.S.A. (AK, CA, ID, MT, NV, OR, UT, WA, WY), Canada
			FISHES:			
Rp	A	R6	*Iotichthys phlegethontis*	Cyprinidae	Chub, least	U.S.A. (UT)

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Code	Expl.					
T	L	R2	*Notropis girardi*	Cyprinidae	Shiner, Arkansas River (Arkansas R. Basin pop.)	U.S.A. (AR, KS, NM, OK, TX)
E	L	R6	*Notropis topeka (=tristis)*	Cyprinidae	Shiner, Topeka	U.S.A. (IA, KS, MN, MO, NE, SD)
Rc	A	R1	*Oncorhynchus (=Salmo) mykiss* ssp..	Salmonidae	Trout, McCloud R. redband	U.S.A. (CA)
T	L	R1	*Pogonichthys macrolepidotus*	Cyprinidae	Splittail, Sacramento	U.S.A. (CA)
T	L	R1	*Salvelinus confluentus*	Salmonidae	Trout, bull (Columbia R. pop.)	U.S.A. (Pacific NW), Canada (NW Territories)
T	L	R1	*Salvelinus confluentus*	Salmonidae	Trout, bull (Klamath R. pop.)	U.S.A. (Pacific NW), Canada (NW Territories)
T	L	R1	*Salvelinus confluentus*	Salmonidae	Trout, bull (Jarbidge R. pop.)	U.S.A. (Pacific NW), Canada (NW Territories)
			CLAMS:			
E	L	R4	*Amblema neislerii*	Unionidae	Three-ridge (mussel), fat	U.S.A. (FL, GA)
T	L	R4	*Elliptoideus sloatianus*	Unionidae	Bankclimber (mussel), purple	U.S.A. (AL, GA, FL)
E	L	R4	*Medionidus penicillatus*	Unionidae	Moccasinshell, Gulf	U.S.A. (AL, FL, GA)
E	L	R4	*Medionidus simpsonianus*	Unionidae	Moccasinshell, Ochlockonee	U.S.A. (FL, GA)
E	L	R4	*Pleurobema pyriforme*	Unionidae	Pigtoe, oval	U.S.A. (AL, FL, GA)
E	L	R4	*Lampsilis subangulata*	Unionidae	Pocketbook, shinyrayed	U.S.A. (AL, FL, GA)
T	L	R4	*Elliptio chipolaensis*	Unionidae	Slabshell, Chipola	U.S.A. (AL, FL)
			SNAILS:			
T	L	R4	*Elimia crenatella*	Pleuroceridae	Elimia (snail), lacy	U.S.A. (AL)
E	L	R4	*Lioplax cyclostomaformis*	Viviparidae	Lioplax (snail), cylindrical	U.S.A. (AL, GA)
E	L	R4	*Lepyrium showalteri*	Hydrobiidae	Pebblesnail, flat	U.S.A. (AL)
T	L	R4	*Leptoxis taeniata*	Pleuroceridae	Rocksnail, painted	U.S.A. (AL)
E	L	R4	*Leptoxis plicata*	Pleuroceridae	Rocksnail, plicate	U.S.A. (AL)
T	L	R4	*Leptoxis ampla*	Pleuroceridae	Rocksnail, round	U.S.A. (AL)
Rp	A	R2	*Sonorella eremita*	Helminthoglyptidae	Talussnail, San Xavier	U.S.A. (AZ)
				INSECTS:.		
E	L	R2	*Heterelmis comalensis*	Elmidae	Beetle, Comal Springs riffle	U.S.A. (TX)
E	L	R2	*Stygoparnus comalensis*	Dryopidae	Beetle, Comal Springs dryopid.	U.S.A. (TX)
E	L	R1	*Speyeria zerene behrensii*	Nymphalidae	Butterfly, Behren's silverspot	U.S.A. (CA)
E	L	R1	*Speyeria callippe callippe*	Nymphalidae	Butterfly, callippe silverspot	U.S.A. (CA)
			CRUSTACEANS:			
E	L	R3	*Gammarus acherondytes*	Gammaridae	Amphipod, Illinois cave	U.S.A. (IL)
E	L	R2	*Stygobromus (=Stygonectes) pecki.*	Crangonyctidae	Amphipod, Peck's cave	U.S.A. (TX)
			FLOWERING PLANTS:			
T	L	R1	*Acanthomintha ilicifolia*	Lamiaceae	San Diego thornmint	U.S.A. (CA), Mexico
Rc	A	R2	*Allium gooddingii*	Liliaceae	Goodding's onion	U.S.A. (AZ, NM)
E	L	R1	*Allium munzii*	Liliaceae	Munz's onion	U.S.A. (CA)
Rp	A	R1	*Allium tuolumnense*	Liliaceae	Rawhide Hill onion	U.S.A. (CA)
E	L	R1	*Alopecurus aequalis* var. *sonomensis.*	Poaceae	Sonoma alopecurus	U.S.A. (CA)
Rp	A	R1	*Arabis johnstonii*	Brassicaceae	Johnston's rock-cress	U.S.A. (CA)
Rc	A	R6	*Arabis pusilla*	Brassicaceae	Small rock-cress	U.S.A. (WY)
T	L	R1	*Arctostaphylos myrtifolia*	Ericaceae	Ione manzanita	U.S.A. (CA)
T	L	R1	*Arctostaphylos pallida*	Ericaceae	Pallid manzanita	U.S.A. (CA)
T	L	R1	*Arenaria ursina*	Caryophyllaceae	Bear Valley sandwort	U.S.A. (CA)
E	L	R1	*Astragalus clarianus*	Fabaceae	Clara Hunt's milk-vetch	U.S.A. (CA)
E	L	R1	*Astragalus jaegerianus*	Fabaceae	Lane Mountain milk-vetch	U.S.A. (CA)
E	L	R1	*Astragalus lentiginosus* var. *coachellae.*	Fabaceae	Coachella Valley milk-vetch	U.S.A. (CA)
Rp	A	R1	*Astragalus lentiginosus* var. *micans.*	Fabaceae	Shining (=shiny) milk-vetch	U.S.A. (CA)
T	L	R1	*Astragalus lentiginosus* var. *piscinensis.*	Fabaceae	Fish Slough milk-vetch	U.S.A. (CA)
Rp	A	R1	*Astragalus lentiginosus* var. *sesquimetralis.*	Fabaceae	Sodaville milk-vetch	U.S.A. (CA, NV)
T	L	R1	*Astragalus magdalenae* var.	Fabaceae *peirsonii*	Peirson's milk-vetch	U.S.A. (CA)
Rc	A	R1	*Astragalus oophorus* var. *clokeyanus.*	Fabaceae	Clokey's egg-vetch	U.S.A. (NV)
E	L	R1	*Astragalus tener* var. *titi*	Fabaceae	Coastal dunes milk-vetch	U.S.A. (CA)
E	L	R1	*Astragalus tricarinatus*	Fabaceae	Triple-ribbed milk-vetch	U.S.A. (CA)
E	L	R1	*Atriplex coronata* var. *notatior*	Chenopodiaceae	San Jacinto Valley crownscale.	U.S.A. (CA)
E	L	R1	*Berberis nevinii*	Berberidaceae	Nevin's barberry	U.S.A. (CA)
T	L	R1	*Brodiaea filifolia*	Liliaceae	Thread-leaved brodiaea	U.S.A. (CA)

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Code	Expl.					
T	L	R1	*Brodiaea pallida*	Liliaceae	Chinese Camp brodiaea	U.S.A. (CA)
Rc	A	R1	*Calochortus umpquaensis*	Liliaceae	Umpqua mariposa lily	U.S.A. (OR)
T	L	R1	*Calyptridium pulchellum*	Portulacaceae	Mariposa pussypaws	U.S.A. (CA)
E	L	R1	*Carex albida*	Cyperaceae	White sedge	U.S.A. (CA)
Rp	A	R1	*Carpenteria californica*	Saxifragaceae	Carpenteria	U.S.A. (CA)
T	L	R1	*Castilleja cinerea*	Scrophulariaceae	Ash-gray Indian paintbrush	U.S.A. (CA)
Rc	N	R2	*Castilleja elongata*	Scrophulariaceae	Tall paintbrush	U.S.A. (TX)
E	L	R4	*Catesbaea melanocarpa*	Rubiaceae	None	U.S.A. (PR, VI), Antigua, Barbuda, Guadalupe
T	L	R1	*Ceanothus ophiochilus*	Rhamnaceae	Vail Lake ceanothus	U.S.A. (CA)
Rc	A	R2	*Cimicifuga arizonica*	Ranunculaceae	Arizona bugbane	U.S.A. (AZ)
E	L	R1	*Cirsium hydrophilum* var. *hydrophilum*.	Asteraceae	Suisun thistle	U.S.A. (CA)
E	L	R1	*Clarkia imbricata*	Onagraceae	Vine Hill clarkia	U.S.A. (CA)
T	L	R1	*Clarkia springvillensis*	Onagraceae	Springville clarkia	U.S.A. (CA)
Rc	N	R2	*Clematis hirsutissma* var. *arizonica*.	Ranunculaceae	Arizona leatherflower	U.S.A. (AZ)
E	5	R1	*Clermontia samuelii*	Campanulaceae	'Oha wai	U.S.A. (HI)
E	L	R1	*Cordylanthus mollis* ssp. *mollis*.	Scrophulariaceae	Soft bird's-beak	U.S.A. (CA)
E	3	R1	*Cyanea copelandii* ssp. *haleakalaensis*.	Campanulaceae	Haha	U.S.A. (HI)
E	2	R1	*Cyanea glabra*	Campanulaceae	Haha	U.S.A. (HI)
E	3	R1	*Cyanea hamatiflora* ssp. *hamatiflora*.	Campanulaceae	Haha	U.S.A. (HI)
Rc	A	R2	*Dalea tentaculoides*	Fabaceae	Gentry's indigobush	U.S.A. (AZ), Mexico
E	6	R1	*Dubautia plantaginea* ssp. *humilis*.	Asteraceae	Na'ena'e	U.S.A. (HI)
T	L	R1	*Dudleya stolonifera*	Crassulaceae	Laguna Beach liveforever	U.S.A. (CA)
E	L	R1	*Eriogonum apricum* (incl. var. *prostratum*).	Polygonaceae	Ione (incl. Irish Hill) buckwheat.	U.S.A. (CA)
Rc	A	R1	*Eriogonum argophyllum*	Polygonaceae	Sulphur Springs buckwheat	U.S.A. (NV)
T	L	R1	*Eriogonum kennedyi* var. *austromontanum*.	Polygonaceae	Southern mountain wild-buckwheat.	U.S.A. (CA)
E	L	R1	*Fremontodendron mexicanum*.	Sterculiaceae	Mexican flannelbush	U.S.A. (CA), Mexico
Rp	A	R1	*Fritillaria striata*	Liliaceae	Greenhorn adobe-lily	U.S.A. (CA)
E	3	R1	*Hedyotis schlechtendahliana* var. *remyi*.	Rubiaceae	None	U.S.A. (HI)
T	L	R5	*Helenium virginicum*	Asteraceae	Virginia sneezeweed	U.S.A. (VA)
T	L	R1	*Hemizonia conjugens*	Asteraceae	Otay tarplant	U.S.A. (CA)
E	1	R1	*Kanaloa kahoolawensis*	Fabaceae	Kohe malama malama o kanaloa.	U.S.A. (HI)
E	6	R1	*Labordia tinifolia* var. *lanaiensis*.	Loganiaceae	Kamakahala	U.S.A. (HI)
E	2	R1	*Labordia triflora*	Loganiaceae	Kamakahala	U.S.A. (HI)
Rc	A	R1	*Lathyrus biflorus*	Fabaceae	Two-flowered lathyrus	U.S.A. (CA)
Rc	A	R4	*Lesquerella stonensis*	Brassicaceae	Stones River bladderpod	U.S.A. (TN)
E	L	R1	*Lilium pardalinum* ssp. *pitkinense*.	Liliaceae	Pitkin Marsh lily	U.S.A. (CA)
Rp	A	R1	*Lupinus citrinus* var. *deflexus*	Fabaceae	Mariposa lupine	U.S.A. (CA)
E	2	R1	*Melicope munroi*	Rutaceae	Alani	U.S.A. (HI)
Rp	A	R1	*Mimulus shevockii*	Scrophulariaceae	Kelso Creek monkey-flower	U.S.A. (CA)
E	L	R1	*Monardella linoides* ssp. *viminea*.	Lamiaceae	Willowy monardella	U.S.A. (CA)
T	L	R1	*Navarretia fossalis*	Polemoniaceae	Spreading navarretia	U.S.A. (CA), Mexico (Baja California)
Rp	A	R1	*Navarretia setiloba*	Polemoniaceae	Piute Mountains navarretia	U.S.A. (CA)
Rp	A	R1	*Nolina interrata*	Liliaceae	Bear-grass, dehesa	U.S.A. (CA), Mexico
Rc	A	R2	*Pediocactus paradinei*	Cactaceae	Kaibab plains cactus	U.S.A. (AZ)
T	L	R6	*Pediocactus winkleri*	Cactaceae	Winkler cactus	U.S.A. (UT)
E	L	R1	*Piperia yadonii*	Orchidaceae	Yadon's piperia	U.S.A. (CA)
E	L	R1	*Plagiobothrys strictus*	Boraginaceae	Calistoga allocarya	U.S.A. (CA)
E	L	R1	*Poa atropurpurea*	Poaceae	San Bernardino bluegrass	U.S.A. (CA)
E	L	R1	*Poa napensis*	Poaceae	Napa bluegrass	U.S.A. (CA)
E	L	R1	*Potentilla hickmanii*	Rosaceae	Hickman's potentilla	U.S.A. (CA)
Rp	A	R2	*Puccinellia parishii*	Poaceae	Parish's alkali grass	U.S.A. (AZ, CA, CO, NM)
Rp	A	R2	*Rumex orthoneurus*	Polygonaceae	Chiricahua (=Blumer's) dock	U.S.A. (AZ, NM)
E	L	R1	*Sidalcea oregana* ssp. *valida*	Malvaceae	Kenwood Marsh checker-mallow.	U.S.A. (CA)

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Code	Expl.					
Rc	A	R1	*Silene campanulata* ssp. *campanulata*.	Caryophyllaceae	Red Mountain catchfly (=campion).	U.S.A. (CA)
E	L	R1	*Taraxacum californicum*	Asteraceae	California taraxacum	U.S.A. (CA)
T	L	R1	*Thelypodium howellii* ssp. *spectabilis*.	Brassicaceae	Howell's spectacular thelypody.	U.S.A. (OR)
T	L	R1	*Trichostema austromontanum* ssp. *compactum*.	Lamiaceae	Hidden Lake bluecurls	U.S.A. (CA)
E	L	R1	*Trifolium amoenum*	Fabaceae	Showy Indian clover	U.S.A. (CA)
E	L	R1	*Trifolium trichocalyx*	Fabaceae	Monterey clover	U.S.A. (CA)
T	L	R1	*Verbena californica*	Verbenaceae	Red Hills vervain	U.S.A. (CA)
Rc	A	R2	*Zanthoxylum parvum*	Rutaceae	Shinner's tickle-tongue	U.S.A. (TX)
			CONIFERS:			
T	L	R1	*Cupressus goveniana* ssp. *goveniana*.	Cupressaceae	Gowen cypress	U.S.A. (CA)

[FR Doc. 99–27822 Filed 10–21–99; 1:08 pm]

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regulation

FEDERA

53179–53
53581–53
53883–54
54199–54
54499–54
54759–55
55115–55
55405–55
55615–55
55809–56
56131–56
56251–56
56399–56
56669–56
56945–57
57361–57

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Federal Register

Vol. 64, No. 205

Monday, October 25, 1999

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

53179–53580	1
53581–53882	4
53883–54198	5
54199–54498	6
54499–54758	7
54759–55114	8
55115–55404	12
55405–55614	13
55615–55808	14
55809–56130	15
56131–56250	18
56251–56398	19
56399–56668	20
56669–56944	21
56945–57360	22
57361–57548	25

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

4865 (*See* Memorandum of April 16, 1999)	53883
4865 (*See* Memorandum of September 24, 1999)	55809
6763 (See Proclamation 7235)	55611
7227	53877
7228	54193
7229	54195
7230	54197
7231	54755
7232	54757
7233	54759
7234	55405
7235	55611
7236	55613
7237	55615
7238	55617
7239	55619
7240	56393
7241	56397
7242	56665

Executive Orders:

11145 (Amended by EO 13138)	53879
11183 (Amended by EO 13138)	53879
11287 (Amended by EO 13138)	53879
12131 (Amended by EO 13138)	53879
12196 (Amended by EO 13138)	53879
12216 (Amended by EO 13138)	53879
12345 (Amended by EO 13138)	53879
12367 (Amended by EO 13138)	53879
12382 (Amended by EO 13138)	53879
12473 (Amended by EO 13140)	55115
12484 (See EO 13140	55115
12550 (See EO 13140)	55115
12586 (See EO 13140)	55115
12708 (See EO 13140)	55115
12767 (See EO 13140)	55115
12852 (Revoked by EO 13138)	53879
12871 (Amended by EO 13138)	53879
12876 (Amended by EO 13138)	53879
12882 (Amended by EO 13138)	53879
12888 (See EO 13140)	55115
12900 (Amended by EO 13138)	53879
12905 (Amended by EO 13138)	53879
12936 (See EO 13140)	55115
12960 (See EO 13140)	55115
12961 (Revoked by EO 13138)	53879
12978 (See Notice of October 19, 1999)	56667
12994 (Amended by EO 13138)	53879
13010 (Revoked in part by EO 13138)	53879
13017 (Revoked by EO 13138)	53879
13021 (Amended by EO 13138)	53879
13037 (Revoked by EO 13138)	53879
13038 (Revoked by EO 13138)	53879
13050 (Revoked by EO 13138)	53879
13062 (Superseded in part by EO 13138)	53879
13086 (See EO 13140)	55115
13115 (Amended by EO 13138)	53879
13138	53879
13139	54175
13140	55115

Administrative Orders:

Memorandums:

April 16, 1999	53883
September 24, 1999	55809

Notices:

Notice of October 19, 1999	56667

Presidential Determinations:

No. 99–38 of September 21, 1999	53573
No. 99–39 of September 21, 1999	53575
No. 99–40 of September 21, 1999	53577
No. 99–41 of September 22,	

1999 53579
No. 99–42 of
September 29,
1999 54499
No. 99–43 of
September 30,
1999 54501
No. 99–44 of
September 30,
1999 54503
No. 99–45 of
September 30,
1999 53505

5 CFR

532 53179
831 53581
842 53581
870 54761
1201 54507

7 CFR

56 56945
210 55407
215 55407
220 55407
235 55407
245 55407
246 56669
301 .... 55811, 56948
735 54508
915 53181
923 53885
944 53181
966 57361
984 56131
997 56133
998 56133
999 56133
1000 53885
1001 53885
1002 53885
1004 53885
1005 53885
1006 53885
1007 53885
1012 53885
1013 53885
1030 53885
1032 53885
1033 53885
1036 53885
1040 53885
1044 53885
1046 53885
1049 53885
1050 53885
1064 53885
1065 53885
1068 53885
1076 53885
1079 53885
1106 53885
1124 53885
1126 53885
1131 53885
1134 53885
1135 53885
1137 53885
1138 53885
1139 53885
1755 53886
2003 56399
3570 56399
Proposed Rules:
46 57405

8 CFR

3 56135
Proposed Rules:
Ch. 1 54794

9 CFR

3 56142
77 56399
94 .... 55812, 55813
303 56400
304 56400
307 56400
308 56400
312 56400
314 56400
317 53186
327 56400
331 56400
350 56400
381 .... 53186, 56400
416 56400

10 CFR

20 .... 54543, 55524
50 53582
72 .... 53582, 56114
431 54114
600 56418
Proposed Rules:
2 55176
20 56274
50 .... 53270, 56476
63 57409

11 CFR

110 55125
Proposed Rules:
100 55440
102 55440
104 55440

12 CFR

4 56949
204 53617
211 56949
262 53188
347 56949
602 54511
612 55621
614 55621
615 56675
618 55621
701 .... 56953, 57363
703 57363
704 57363
709 57363
712 57363
713 57363
741 56148
790 57363
791 57363
792 57363
910 55125
Proposed Rules:
202 57409
205 57409
213 57409
226 57409
230 57409
714 55866
724 55871
745 55871
1750 56274

13 CFR

121 57366
125 57366
Proposed Rules:
121 .... 55873, 57188

14 CFR

25 54761
36 55598
39 .... 53189, 53191, 53193, 53620, 53621, 53623, 53625, 54199, 54200, 54202, 54512, 54513, 54515, 54517, 54518, 54763, 54767, 54769, 54770, 54773, 54774, 55407, 55409, 55411, 55413, 55414, 55416, 55621, 55624, 55815, 56151, 56158, 56158, 56159, 56161, 56163, 56420, 56422, 56424, 56426, 56957, 56959, 56960, 56962, 56963
71 .... 53627, 53887, 53888, 53889, 53890, 53891, 53892, 53893, 53894, 53895, 53896, 53898, 53899, 54203, 54204, 54205, 54206, 55131, 55815, 55816, 55817, 55818, 55819, 55820, 56251, 56428, 56429, 56676
93 53558
97 .... 55132, 55133, 55135
Proposed Rules:
Ch. 1 56275
11 56708
39 .... 53275, 53951, 53953, 54227, 54229, 54230, 54232, 54234, 54237, 54239, 54240, 54242, 54246, 54248, 54249, 54580, 54582, 54584, 54587, 54589, 54591, 54594, 54596, 54598, 54795, 54797, 54799, 54801, 54804, 54808, 54811, 54815, 54818, 54822, 54826, 54829, 54833, 55177, 55181, 55184, 55188, 55191, 55195, 55196, 55197, 55200, 55204, 55207, 55211, 55440, 55636, 55638, 55640, 55642, 55644, 56276, 56279, 56281, 56709, 56712, 56715, 57409
71 .... 53956, 53957
91 56708
121 56708
135 56708
145 56708
193 53958
450 54448

15 CFR

774 54520
902 .... 54732, 55821
2014 56429
Proposed Rules:
30 53861
732 53854
740 53854
743 53854
748 53854
750 53854
752 53854
758 53854
762 53854
772 53854

16 CFR

241 57372
Proposed Rules:
436 57294
453 56717

17 CFR

210 53900
228 53900
229 53900
230 53900
232 56430
239 .... 53900, 56430
240 53900
249 .... 53900, 56430
259 56430
260 53900
269 56430
274 56430
Proposed Rules:
210 55648
228 55648
229 55648
240 55648

18 CFR

2 54522
153 57374
157 .... 54522, 57374
284 54522
380 .... 54522, 57374
385 .... 54522, 56172
Proposed Rules:
281 56982
385 53959

19 CFR

24 56433
122 53627
159 56433
174 56433

20 CFR

Proposed Rules:
404 55214
422 55216
718 54966
722 54966
725 54966
726 54966
727 54966

21 CFR

Ch. II 54794
3 56441
5 56441
10 56441
20 56441
25 56454
50 .... 54180, 56441
56 56441
58 56441
173 56172
178 53925
207 56441
310 56441
312 .... 54180, 56441
316 56441
558 53926
600 56441
601 56441
607 56441
610 56441
640 56441
660 56441
878 53927
900 53195
Proposed Rules:
5 53281

25	53281
314	53960
500	53281
510	53281
558	53281
601	53960
880	53294

22 CFR

Ch. V	54538
40	55417
42	55417
171	54538
514	53928

Proposed Rules:

194	53632

24 CFR

200	53930, 55828
203	56108
234	56108
882	53868
888	53450, 56894
902	56676
903	56844
964	56870
982	56882, 56894

Proposed Rules:

964	56890

25 CFR

516	54541

Proposed Rules:

151	55878

26 CFR

1	55137
54	57520
301	56246

Proposed Rules:

1	54836, 56246, 56718
25	56179

27 CFR

1	54776
47	55625
55	55625

Proposed Rules:

4	57413
5	57413
7	57413

28 CFR

Ch. I	54794

Proposed Rules:

571	53872

29 CFR

2590	57520
4044	55828

30 CFR

202	56454
206	56454
250	53195
948	53200
950	53202

Proposed Rules:

250	53298
901	55878
904	56179
915	54840
916	56982
936	56983
946	54843
948	54845

32 CFR

700	56062
1800	53769

Proposed Rules:

199	56283
806	56181

33 CFR

100	53208, 53628, 55829, 55830
117	53209, 54776, 55137, 55419, 55831, 56252, 56677
165	55138, 55420
187	56965

Proposed Rules:

Ch. I	56286
20	53970
100	54847, 54849
117	55217
165	54242, 54963, 57418, 57419
175	53971
181	56287
183	56287
207	55441

34 CFR

602	56612
668	57356
674	57528
682	57528

Proposed Rules:

75	54254
614	57288

36 CFR

13	56455
1275	56678

Proposed Rules:

217	59074, 56293
219	59074, 56293

37 CFR

Proposed Rules:

1	53772
3	53772
5	53772
10	53772

38 CFR

3	54206
17	54207

Proposed Rules:

20	53302

39 CFR

776	56253

Proposed Rules:

111	54255, 57419

40 CFR

52	53210, 53931, 54559, 55139, 55141, 55421, 55831
60	57392
61	53212
62	55141
63	56173
76	55834
81	55421
180	54218, 54777, 54779, 55838, 56464, 56678, 56681, 56690, 56697
201	55141
261	56256, 56469
262	56469
268	56469
271	55142, 55153, 55629, 56173
300	53213, 53629, 56966

Proposed Rules:

2	57421
49	54851
50	57424
52	53303, 53973, 54600, 54601, 54851, 55219, 55220, 55442, 55662, 55667, 55879, 56181
76	55880
81	55442
85	56985
86	56985
122	53304
123	53304
124	53304
130	53304
131	53304
132	53632
144	57430
146	57430
147	56986
165	56918
180	56477
194	56185
197	53304
258	53976
261	55443, 55880
264	54604
271	55222, 55671
300	56992
710	56998

41 CFR

51-2	55841
51-5	55841

42 CFR

121	56650

Proposed Rules:

8	56294
57	54263
58	54263
405	57431
447	54263

43 CFR

1820	53213
3500	53512
3510	53512
3520	53512
3530	53512
3540	53512
3550	53512
3560	53512
3570	53512
3800	53213

Proposed Rules:

2800	55452
2880	55452

44 CFR

62	56174
64	56256
65	53931, 53933, 53936
67	53938, 53939
206	55158

Proposed Rules:

67	53980, 53982

45 CFR

96	55843
144	57520
146	57520

Proposed Rules:

302	55074
303	55074
304	55074
305	55074
308	55102

46 CFR

1	53220
2	53220
4	53220
10	53220, 53230
12	53230
15	53220
27	56257
31	53220
34	53220
38	53220
52	53220
53	53220
54	53220
56	53220
57	53220
58	53220
59	53220
61	53220
63	53220
64	53220
67	53220
68	53220
69	53220
76	53220
91	53220
95	53220
98	53220
105	53220
107	53220
108	53220
109	53220
118	53220
125	53220
133	53220
147	53220
151	53220
153	53220
160	53220
161	53220
162	53220
167	53220
169	53220
177	53220
181	53220
189	53220
193	53220
197	53220
199	53220
204	54782

Proposed Rules:

5	53970
15	56720

47 CFR

Ch. I	54561, 55671
0	55161, 55425, 56269
1	53231
13	53231
20	54564
22	53231, 54564
64	53242, 53944, 54577, 55163, 55164, 56177
73	54224, 54225, 54783, 54784, 54785, 54786, 55172, 55173, 55174, 55434, 56703, 56704, 56974

80	53231
87	53231
90	53231
95	53231
97	53231
101	53231

Proposed Rules:

54	53648
61	53648
69	53648
73	53655, 54268, 54269, 54270, 55222, 55223, 55452, 55453, 56723, 56724, 56999
76	54854

48 CFR

Ch. 19	54538
1	53264
15	53264
19	53264
52	53264
201	56704
209	55632
211	55632
213	56704
214	55632
237	53447
252	55632
415	54963

Proposed Rules:

204	56724
252	56724
909	55453
970	55453
1804	54270
1812	54270
1852	54270
9903	56296

49 CFR

Ch. III	56478
1	56270
71	56705
172	54730
192	56878
544	57393
1002	53264
1003	53264
1007	53264
1011	53264
1012	53264
1014	53264
1017	53264
1018	53264
1019	53264
1021	53264
1034	53264
1039	53264
1100	53264
1101	53264
1103	53264
1104	53264
1105	53264
1113	53264
1133	53264
1139	53264
1150	53264
1151	53264
1152	53264
1177	53264
1180	53264
1184	53264

Proposed Rules:

71	55892
192	56725
195	56725
661	54855

50 CFR

17	56582, 56590, 56596
216	53269
222	55858, 55860, 57397
223	55434, 55858, 55860, 57397
226	57399
600	54786
622	57403
635	53949, 54577, 55633, 56472
648	54732, 55821
660	54786, 56177
679	53630, 53950, 54225, 54578, 54791, 54792, 55438, 55634, 55865, 56271, 56272, 56473, 56474, 56475

Proposed Rules:

17	53655, 55892, 56297, 57534
216	56298, 57010, 57026
227	56297
622	57436
648	55688
660	54272, 55689, 56479
679	53305, 56481

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 25, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Eggs and egg products:
  - Shell eggs; refrigeration requirements; published 10-22-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- User fees:
  - Veterinary services—
    - Import or entry services at ports; published 9-23-99

ENVIRONMENTAL PROTECTION AGENCY

- Air programs; approval and promulgation; State plans for designated facilities and pollutants:
  - South Carolina; published 8-24-99
- Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Colorado; published 8-25-99
- Hazardous waste program authorizations:
  - Louisiana; published 8-25-99
  - North Carolina; published 8-25-99
  - Oklahoma; published 8-26-99

FEDERAL COMMUNICATIONS COMMISSION

- Radio frequency devices:
  - Scanning receivers, further ensurance against receiving cellular radio signals; published 4-27-99
- Radio stations; table of assignments:
  - California; published 10-6-99
  - New Hampshire; published 9-20-99

FEDERAL TRADE COMMISSION

- Industry guides:
  - Dog and cat food industry; published 10-25-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Human drugs:
  - Internal analgesic, antipyretic, and antirheumatic products (OTC)—
    - Professional labeling of aspirin, buffered aspirin, and aspirin in combinationwith antacid drug products; published 10-23-98
    - Professional labeling of aspirin, buffered aspirin, and aspirin in combination with antacid products; published 9-14-99
  - Internal analgesic, antipyretic, and antrheumatic products (OTC)—
    - Professional labeling of aspirin, buffered aspirin, and aspirin in combination with antacid products; correction; published 12-1-98
- Medical devices:
  - Gastroenterology and urology devices—
    - Electrogastrography system; classification; published 9-23-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

- Safeguarding classified national security information; Executive Order 12598 implementation; published 9-24-99

NATIONAL CREDIT UNION ADMINISTRATION

- Credit unions:
  - Technical amendments; published 10-25-99

SOCIAL SECURITY ADMINISTRATION

- Social security benefits:
  - Federal old age, survivors, and disability insurance—
    - Endocrine system and obesity impairments; revised medical criteria for determining disability; published 8-24-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Eurocopter Deutschland GmbH; published 10-8-99
- Airworthiness standards:
  - Rotorcraft; normal and transport category—
    - Critical parts regulations; harmonization; published 8-24-99
  - Special conditions—
    - Boeing Model 767-300 series airplanes; published 9-23-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

- Insurer reporting requirements:
  - Insurers required to file reports; list; published 10-25-99
- Motor vehicle safety standards:
  - Roof crush resistance test procedures; rounded or raised roofs; suitability; published 4-27-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Onions (Vidalia) grown in—
  - Georgia; comments due by 11-2-99; published 9-3-99
- Oranges and grapefruit grown in—
  - Texas; comments due by 11-1-99; published 8-31-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Plant-related quarantine, domestic:
  - Mediterranean fruit fly; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Balanced Budget Act of 1997; implementation—
    - Time-limit exemptions and employment and training programs; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT

Forest Service

- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

- Meat and poultry inspection:
  - Accurate weights, repairs, adjustments, and replacement after inspection; scale requirements; comments due by 11-1-99; published 10-1-99

AGRICULTURE DEPARTMENT

- Acquisition regulations:
  - Contracting by negotiation; part 415 reorganization; comments due by 11-1-99; published 9-30-99

COMMERCE DEPARTMENT

Export Administration Bureau

- Export administration regulations:
  - Syrian civilian passenger aircraft safety of flight; export and reexport of aircraft parts and components; license review policy; comments due by 11-1-99; published 9-16-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - West Coast States and Western Pacific fisheries—
    - West Coast salmon; comments due by 11-2-99; published 10-18-99

COMMODITY FUTURES TRADING COMMISSION

- Privacy Act; implementation; comments due by 11-1-99; published 9-30-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-1-99; published 9-30-99
  - District of Columbia; comments due by 11-1-99; published 9-30-99
- Air quality implementation plans; \A\approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Tennessee; comments due by 11-1-99; published 9-30-99

- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Chlorfenapyr; comments due by 11-1-99; published 9-1-99
  - Cymoxanil; comments due by 11-1-99; published 9-1-99
  - Difenoconazole; comments due by 11-1-99; published 9-1-99
- Solid wastes:
  - Municipal solid waste landfill permit programs; adequacy determinations—
    - Rhode Island; comments due by 11-4-99; published 10-5-99
- Superfund program:
  - Toxic chemical release reporting; community-right-to-know—
    - Lead and lead compounds; lowering of reporting thresholds; comments due by 11-1-99; published 9-21-99

FEDERAL COMMUNICATIONS COMMISSION

- Digital television stations; table of assignments:
  - Texas; comments due by 11-1-99; published 9-15-99
- Radio stations; table of assignments:
  - Arizona; comments due by 11-1-99; published 9-22-99
  - Arkansas; comments due by 11-1-99; published 9-22-99
  - Colorado; comments due by 11-1-99; published 10-6-99
  - Kansas; comments due by 11-1-99; published 9-22-99
  - Louisiana; comments due by 11-1-99; published 9-22-99
  - Pennsylvania and New York; comments due by 11-1-99; published 9-22-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Human drugs:
  - Abbreviated new drug applications; 180-day generic drug exclusivity; comments due by 11-4-99; published 8-6-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99
- Endangered and threatened species:
  - Aleutian Canada goose; comments due by 11-1-99; published 8-3-99
  - Findings on petitions, etc.—
    - Black-tailed prairie dog; comments due by 11-3-99; published 10-4-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Alabama; comments due by 11-1-99; published 10-15-99

NUCLEAR REGULATORY COMMISSION

- Production and utilization facilities; domestic licensing:
  - Noncombustible fire barrier penetration seal materials; requirement eliminated, etc.; comments due by 11-1-99; published 8-18-99

POSTAL SERVICE

- Domestic Mail Manual:
  - Special services labels; barcode requirements; comments due by 11-5-99; published 10-6-99

SECURITIES AND EXCHANGE COMMISSION

- Investment advisers:
  - Political contributions; comments due by 11-1-99; published 8-10-99

TRANSPORTATION DEPARTMENT

Coast Guard

- Drawbridge operations:
  - New Jersey; comments due by 11-1-99; published 9-1-99
- Ports and waterways safety:
  - Tampa Bay, FL; safety zone; comments due by 11-1-99; published 9-1-99
- Regattas and marine parades:
  - Puerto Rico International Cup; comments due by 11-1-99; published 8-31-99
- Vessel documentation and measurement:
  - Standard measurement system exemption from gross tonnage; comments due by 11-1-99; published 8-31-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Airbus; comments due by 11-1-99; published 10-5-99
  - Aircraft Belts, Inc.; comments due by 11-1-99; published 9-1-99
  - AlliedSignal Inc.; comments due by 11-3-99; published 8-5-99
  - Boeing; comments due by 11-1-99; published 8-31-99
  - Dowty Aerospace Propellers; comments due by 11-1-99; published 9-1-99
  - Empresa Brasileira de Aeronautica S.A.; comments due by 11-1-99; published 10-1-99
  - General Electric Co.; comments due by 11-2-99; published 9-3-99
  - Raytheon; comments due by 11-1-99; published 9-15-99
  - Rolls-Royce plc.; comments due by 11-1-99; published 8-31-99
  - Short Brothers; comments due by 11-5-99; published 10-6-99
  - Short Brothers and Harland Ltd.; comments due by 11-3-99; published 9-28-99
- Aviation safety:
  - Voluntarily submitted information; confidentiality protection; comments due by 11-4-99; published 10-5-99
- Class E airspace; comments due by 11-4-99; published 9-23-99

TRANSPORTATION DEPARTMENT

Federal Highway Administration

- Motor carrier safety standards:
  - Commercial motor vehicle; definition; comments due by 11-2-99; published 9-3-99
  - Small passenger-carrying commercial motor vehicles; operator requirements; comments due by 11-2-99; published 9-3-99
- Transportation Equity Act for 21st Century; implementation:
  - Federal lands highway program; transportation planning procedures and management systems—
    - Fish and Wildlife Service and refuge roads program; comments due by 11-1-99; published 9-1-99
    - Forest Service and forest highway program; comments due by 11-1-99; published 9-1-99
    - Indian Affairs Bureau and Indian reservation roads program; comments due by 11-1-99; published 9-1-99
    - National Park Service and park roads and parkways program; comments due by 11-1-99; published 9-1-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 3036/P.L. 106–73

To restore motor carrier safety enforcement authority to the Department of Transportation. (Oct. 19, 1999; 113 Stat. 1046)

H.R. 2684/P.L. 106–74

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Oct. 20, 1999; 113 Stat. 1047)

Last List October 21, 1999

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001-1)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–0002–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–8)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869-038-00097-1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869-034-00098-9)	39.00	July 1, 1999
43-end	(869-034-00099-7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–034–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–034–00102–1)	40.00	[8] July 1, 1999
*900–1899	(869–034–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–034–00105–5)	28.00	July 1, 1999
1911–1925	(869–034–00106–3)	18.00	July 1, 1999
1926	(869–034–00107–1)	30.00	July 1, 1999
1927–End	(869–034–00108–0)	43.00	July 1, 1999
30 Parts:			
1-199	(869–034–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–034–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
*200–End	(869–034–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–4)	46.00	July 1, 1999
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–1)	32.00	July 1, 1999
630–699	(869–034–00117–9)	23.00	July 1, 1999
700–799	(869–034–00118–7)	27.00	July 1, 1999
800–End	(869–034–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–7)	41.00	July 1, 1999
200–End	(869–034–00122–5)	33.00	July 1, 1999
34 Parts:			
*1–299	(869–034–00123–3)	28.00	July 1, 1999
300–399	(869–034–00124–1)	25.00	July 1, 1999
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–6)	21.00	July 1, 1999
*200–299	(869–034–00128–4)	23.00	July 1, 1999
300–End	(869–034–00129–2)	38.00	July 1, 1999
***37**	(869–034–00130–6)	29.00	July 1, 1999
38 Parts:			
*0–17	(869–034–00131–4)	37.00	July 1, 1999
18–End	(869–034–00132–2)	41.00	July 1, 1999
39	(869–034–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–034–00134–9)	33.00	July 1, 1999
50–51	(869–034–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
*52 (52.1019–End)	(869–034–00137–3)	37.00	July 1, 1999
*53–59	(869–034–00138–1)	19.00	July 1, 1999
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–3)	19.00	July 1, 1999
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00143–8)	11.00	July 1, 1999
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00150–1)	23.00	July 1, 1999
*260–265	(869–034–00151–9)	32.00	July 1, 1999
*266–299	(869–034–00152–7)	33.00	July 1, 1999
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
425–699	(869–034–00154–8)	42.00	July 1, 1998
700–789	(869–034–00155–6)	41.00	July 1, 1998
*790–End	(869–034–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00159–4)	39.00	July 1, 1999
102–200	(869–034–00160–8)	16.00	July 1, 1999
201–End	(869–034–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
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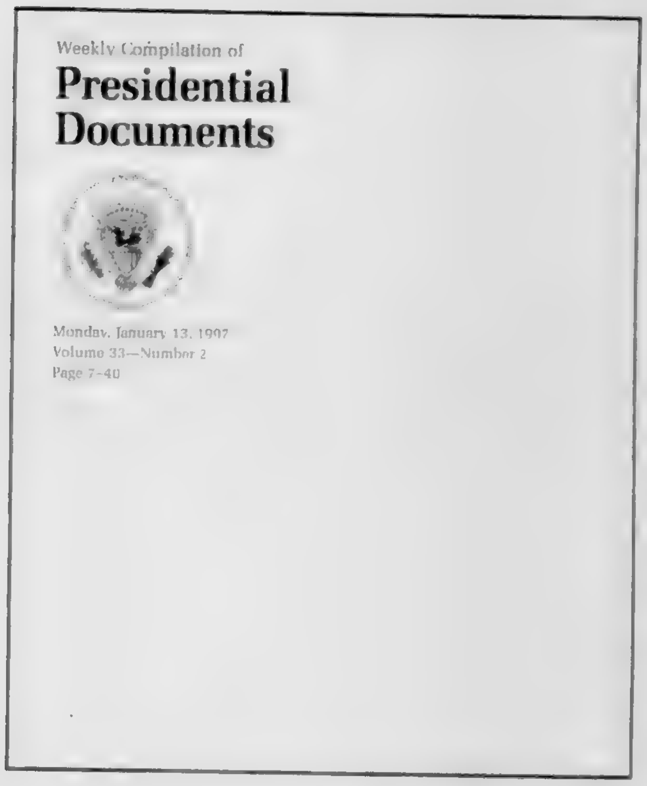
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Pages 57549-57768

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Contents

Federal Register

Vol. 64, No. 206

Tuesday, 26, 1999

Agricultural Marketing Service
PROPOSED RULES
Olives grown in—
  California, 57597–57600

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Air Force Department
NOTICES
Classified information concerning Air Force operations near Groom Lake, NV; disclosure exemption under Presidential determination, 57633–57634

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
  Nonregulated status determinations—
    Agritope, Inc.; genetically engineered cantaloupes, 57625

Coast Guard
NOTICES
Water pollution control:
  Clean Water Act; Class II administrative penalty assessments—
    D-O-R Production Management, LLC, 57691–57692

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Customs Service
RULES
Customs bonded warehouses:
  Inventory reports filing, 57564–57565

Defense Department
See Air Force Department

Employment and Training Administration
NOTICES
Adjustment assistance:
  Clarks Companies, N.A., 57656–57657
  General Electric Co. et al., 57657–57658
  Grant Geophysical Corp., 57658
  Lorraine Wardy Enterprises, 57658
  Paramount Pictures et al., 57658
  Ranger Oil Co., 57658
  Timkin Co., 57658–57659
Adjustment assistance and NAFTA transitional adjustment assistance:
  Polaroid Corp., 57656
NAFTA transitional adjustment assistance:
  Millennium Textiles, 57659
  Thomaston Mills, Inc., 57659

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
  Duke Energy Trading & Marketing, L.L.C., 57634
Meetings:
  Environmental Management Site-Specific Advisory Board—
    Nevada Test Site, NV, 57634–57635

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
  Publicly owned treatment works, 57572–57585
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 57638

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
  Boeing, 57553–57555
  Eurocopter France, 57555–57556
  General Electric Aircraft Engines, 57556–57557
  McDonnell Douglas, 57551–57553
  Raytheon, 57549–57551
Class E airspace, 57557–57558
Standard instrument approach procedures, 57559–57562
Standard instrument approach procedures; correction, 57562–57564
VOR Federal airways, 57558–57559
PROPOSED RULES
Airworthiness directives:
  Aerospatiale, 57602–57605
  British Aerospace, 57600–57602
  General Electric Co., 57606–57609
Class E airspace, 57609–57611
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 57692
Meetings:
  Satellite Operational Implementation Team; Global Positioning System/Wide Area and Local Area Augmentation Systems; capabilities, 57692

Federal Communications Commission
RULES
Organization, functions, and authority delegations:
  Inspector General; telephone conversations interception and recording, 57585
NOTICES
Meetings:
  Public Safety National Coordination Committee, 57638–57639
Meetings; Sunshine Act, 57639

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
  Portland General Electric Co. et al., 57635–57638

Applications, hearings, determinations, etc.:
Midwestern Gas Transmission Co., 57635

Federal Maritime Commission
NOTICES
Complaints filed:
Brewer, William J., 57639–57640

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 57640

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Oakland, CA; BART-Oakland Airport Connector, 57692–57694

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Columbian sharp-tailed grouse, 57620–57623
NOTICES
Endangered Species Convention:
Sturgeon and paddlefish; pre-convention certificates for caviar; nonacceptance policy, 57645–57646
Environmental statements; availability, etc.:
Incidental take permits—
Thurston, Mason, and Grays Harbor Counties, WA; marbled murrelet, etc., 57630–57631
Whatcom and Skagit Counties, WA; northern spotted owl, etc., 57631–57633
Environmental statements; notice of intent:
Incidental take permits—
Mendocino, Sonoma, and Humboldt Counties, CA; northern spotted owl, etc.; cancellation, 57633

Food and Drug Administration
RULES
Human drugs:
Food labeling—
Soy protein and coronary heart disease; health claims, 57699–57733
NOTICES
Reports and guidance documents; availability, etc.:
Clinical investigators; financial disclosure; industry guidance, 57640–57641

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
North Carolina
Phillips Monitor Raleigh; computer monitors and related peripheral products manufacturing facilities, 57626
Virginia—, 57626
Alfa Laval Thermal, Inc.; heat exchangers and parts manufacturing facilities, 57627
Ericsson, Inc.; cellular telephones, wireless communications equipment, and private radio equipment manufacturing facilities, 57626–57627

Forest Service
NOTICES
Meetings:
Intergovernmental Advisory Committee, 57625–57626

Geological Survey
NOTICES
Meetings:
Digital Earth Interagency Working Group, 57646–57647

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See Substance Abuse and Mental Health Services Administration
RULES
Health care programs; fraud and abuse:
Health Insurance Portability and Accountability Act—
Data collection program; final adverse actions reporting, 57739–57764
PROPOSED RULES
Privacy Act; implementation, 57619–57620

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
PROPOSED RULES
Medicare:
Home health prospective payment system overview; open town hall meeting and general home health listening session, 57612–57613

Health Resources and Services Administration
NOTICES
Meetings:
Migrant Health National Advisory Council, 57641

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57642
Meetings:
Fair Housing Act; variances not meeting design and construction requirements; report; comment request, 57735–57737
Privacy Act:
Computer matching programs, 57642–57643
Systems of records, 57643–57645

Inspector General Office, Health and Human Services Department
RULES
Health care programs; fraud and abuse:
Health Insurance Portability and Accountability Act—
Data collection program; final adverse actions reporting, 57739–57764
PROPOSED RULES
Privacy Act; implementation, 57619–57620

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57697

- Meetings:
  - Citizen Advocacy Panels—
    - Brooklyn District, 57697–57698
- Senior Executive Service:
  - Legal Division Performance Review Board; membership, 57698

International Trade Administration

NOTICES

- Antidumping:
  - Bars and wedges and hammers and sledges from—
    - China, 57628
  - Corrosion-resistant carbon steel flat products from—
    - Japan, 57628
  - Industrial nitrocellulose from—
    - Korea, 57628–57629
- Countervailing duties:
  - Hot-rolled lead and bismuth carbon steel products from—
    - United Kingdom, 57629–57630

Justice Department

NOTICES

- Pollution control; consent judgments:
  - Akzo Nobel A.B., 57652
  - Almond Investment Co. et al., 57652
  - ASARCO, Inc., et al., 57652–57653
  - Bay Chemical Co. et al., 57653
  - General Battery Corp. et al., 57653–57654
  - General Electric Co., 57654
  - Seattle, WA, 57654
  - Southdown, Inc., 57654–57655

Labor Department

See Employment and Training Administration
See Mine Safety and Health Administration
See Pension and Welfare Benefits Administration

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 57655–57656

Land Management Bureau

PROPOSED RULES

- Minerals management:
  - Mining claims or sites; location, recording, and maintenance; reporting and recordkeeping requirements, 57613
  - Mining claims under general mining laws; surface management, 57613–57619

NOTICES

- Closure of public lands:
  - Colorado, 57647
  - Oregon, 57647–57648
- Environmental statements; availability, etc.:
  - Colorado Sodium Products Development Project, CO; nahcolite mining, 57648
- Environmental statements; notice of intent:
  - Sublette County, WY; Jonah Field Natural Gas Project, 57648–57649
- Realty actions; sales, leases, etc.:
  - Wyoming, 57649–57650
- Withdrawal and reservation of lands:
  - California, 57650–57652

Mine Safety and Health Administration

NOTICES

- Petitions for safety standard modifications; summary of affirmative decisions, 57659–57661
- Safety standard petitions:
  - Clark Elkhorn Coal Co. et al., 57661–57664

National Oceanic and Atmospheric Administration

RULES

- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - Pollock, 57595–57596
  - Caribbean, Gulf, and South Atlantic fisheries—
    - Gulf of Mexico reef fish, 57585–57586
  - Northeastern United States fisheries—
    - Summer flounder, 57586–57587
    - Summer flounder, scup, and black sea bass, etc., 57587–57595

PROPOSED RULES

- Fishery conservation and management:
  - Caribbean, Gulf, and South Atlantic fisheries—
    - South Atlantic snapper-grouper, 57623–57624

NOTICES

- Environmental statements; availability, etc.:
  - Incidental take permits—
    - Thurston, Mason, and Grays Harbor Counties, WA; marbled murrelet, etc., 57630–57631
    - Whatcom and Skagit Counties, WA; northern spotted owl, etc., 57631–57633
- Environmental statements; notice of intent:
  - Incidental take permits—
    - Mendocino, Sonoma, and Humboldt Counties, CA; northern spotted owl, etc.; cancellation, 57633
- Meetings:
  - New England Fishery Management Council, 57633

National Transportation Safety Board

NOTICES

- Meetings; Sunshine Act, 57664

Nuclear Regulatory Commission

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 57664
- *Applications, hearings, determinations, etc.:*
  - Hydro Resources, Inc., 57664–57665
  - Indiana Michigan Power Co., 57665–57666
  - South Carolina Electric & Gas Co., 57666–57668

Office of United States Trade Representative

See Trade Representative, Office of United States

Pension and Welfare Benefits Administration

PROPOSED RULES

- Employee Retirement Income Security Act:
  - Section 3(40) Collective Bargaining Agreements Negotiated Rulemaking Advisory Committee Meetings, 57611–57612

Postal Service

RULES

- Domestic Mail Manual:
  - Mailing Online market test termination; changes in domestic classifications and fees, 57571–57572

Presidential Documents

PROCLAMATIONS

- *Special observances:*
  - Young People and Gun Violence, National Day of Concern About (Proc. 7243), 57765–57768

Public Health Service

See Food and Drug Administration

See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
NOTICES
Pipeline safety:
- Response plan review and exercise program, 57694–57695

Securities and Exchange Commission
NOTICES
Agency information collection activities:
- Submission for OMB review; comment request, 57668

Inter-market linkage plan for multiply-traded options; submission order to options exchanges, 57674–57676
Self-regulatory organizations; proposed rule changes:
- Boston Stock Exchange, Inc., 57676
- National Association of Securities Dealers, Inc., 57677–57679
- New York Stock Exchange, Inc., 57679–57681
- Pacific Exchange, Inc., 57681–57685
- Philadelphia Stock Exchange, Inc., 57685–57687

Applications, hearings, determinations, etc.:
- International Securities Exchange, LLC, 57668–57669
- Noble International, Ltd., 57669
- Puget Sound Alternative Investment Series Trust et al., 57669–57671
- Sentry Life Insurance Co. et al., 57671–57673
- Unistar Financial Service Corp., 57673–57674

Social Security Administration
NOTICES
Senior Executive Service:
- Performance Review Board; membership, 57687

Social security acquiescence rulings:
- Bloodsworth v. Heckler; judicial review of appeals council dismissal of request for review of Administrative Law Judge decision, 57687–57689

State Department
NOTICES
Art objects; importation for exhibition:
- Body Art: Marks of Identity, 57689

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
- Proposed collection; comment request, 57641–57642

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
- Indiana, 57565–57567
- Mississippi, 57567–57571

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
- Salt Lake City Southern Railroad Co., Inc., 57695–57696
- Union Pacific Railroad Co., 57696

Railroad services abandonment:
- CSX Transportation, Inc., 57696–57697

Trade Representative, Office of United States
NOTICES
World Trade Organization:
- Dispute settlement panel establishment requests—
  - European Communities; U.S.'s withholding of liquidation on imports, 57689–57690

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Transit Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
- Agreements filed; weekly receipts, 57690
- Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 57690–57691

Treasury Department
See Customs Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Health and Human Services, Food and Drug Administration, 57699–57733

Part III
Department of Housing and Urban Development, 57735–57737

Part IV
Department of Health and Human Services, Office of Inspector General, 57739–57764

Part V
The President, 57765–57768

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7243 55765
7 CFR
Proposed Rules:
932 57597
14 CFR
39 (5 documents) 57549, 57551, 57553, 57555, 57556
71 (2 documents) 57557, 57558
97 (3 documents) 57555, 57560, 57562
Proposed Rules:
39 (4 documents) 57600, 57602, 57606, 57608
71 (2 documents) 57609, 57610
19 CFR
19 57564
21 CFR
101 57700
29 CFR
Proposed Rules:
2510 57611
30 CFR
914 57565
924 57567
39 CFR
111 57571
40 CFR
63 57572
42 CFR
Proposed Rules:
409 57612
410 57612
411 57612
413 57612
424 57612
484 57612
43 CFR
Proposed Rules:
3730 57613
3800 57613
3820 57613
3830 57613
3840 57613
3850 57613
45 CFR
61 57740
Proposed Rules:
5b 57619
47 CFR
0 57585
50 CFR
622 57585
648 (2 documents) 57586, 57587
679 57595
Proposed Rules:
17 57620
622 57623

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64

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SUMMARY
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Rules and Regulations

Federal Register
Vol. 64, No. 206
Tuesday, October 26, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–210–AD; Amendment 39–11376; AD 99–21–30]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Mitsubishi MU–300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Raytheon Model Mitsubishi MU–300 airplanes, that requires revising the Airplane Flight Manual (AFM) to provide pilots with certain operating procedures during icing conditions, and to limit the maximum flaps position for flight in icing conditions or landing after an icing encounter. The amendment also requires installing an ice detector, and accomplishing a corresponding AFM revision to address its operation. For certain airplanes, the amendment requires converting the airplane configuration or modifying the warning horn system of the landing gear; and revising the AFM to specify flaps 10 degrees as a normal landing flap configuration. The actions specified by this AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

DATES: Effective November 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 30, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tina Miller, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4168; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Mitsubishi MU–300 series airplanes was published in the **Federal Register** on February 26, 1997 (62 FR 8648). That action proposed to require revising the Airplane Flight Manual (AFM) to provide pilots with certain operating procedures during icing conditions, and to limit the maximum flaps position for flight in icing conditions or landing after an icing encounter. (That AFM revision was previously required in AD 94–25–10.) That action also proposed to require installing an ice detector, and accomplishing a corresponding AFM revision to address its operation. For certain airplanes, that action proposed to require converting the airplane configuration or modifying the warning horn system of the landing gear; and revising the AFM to specify flaps 10 degrees as a normal landing flap configuration.

FAA Response to Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw the Proposal

One commenter states that the requirements of the proposal would require the addition of expensive and unnecessary equipment that does not provide any benefit to safety. The commenter also states that any competent pilot would already have the anti-ice systems engaged before the annunciator light of the proposed ice detector would illuminate. Additionally, the commenter asserts that during past experience in operating several different Raytheon BE–400 series airplanes, the annunciator of the ice detector, which is identical to the proposed ice detector, did not illuminate during icing conditions. Therefore, the commenter concludes that the proposed installation of the ice detector would not provide any additional warning or benefit to the pilot. Based on those comments, the FAA infers that the commenter is requesting that the proposal be withdrawn.

The FAA does not concur that the proposal should be withdrawn. The FAA considers that installation of the ice detector and the corresponding Airplane Flight Manual revision, as proposed, will alert pilots to turn on the airplane anti-ice systems in advance of the time that ice may be visually detected (especially during night operations). Extensive FAA flight testing on a similar airplane model (Beechcraft Model 400A series airplanes) indicated that the ice detector consistently and reliably illuminated during icing encounters. Since the advance notice provided by the ice detector will permit the pilot to engage the anti-ice system in a timely manner, accumulation of ice on the horizontal tail will be reduced. Therefore, the FAA has determined that the requirements of this AD are appropriate and necessary.

Request To Require the Manufacturer Cover Costs

This same commenter requests that, if the FAA insists on issuing the proposed rule, the FAA hold the manufacturer responsible for covering costs associated with the installation of the ice detector. The commenter states that if the kit is to be required, this would indicate a flaw in the design of the airplane. The commenter advises that the manufacturer has agreed to cover the cost of the ice detector for the Raytheon BE–400 series airplanes.

The FAA does not concur with the commenter's request that the FAA require the manufacturer to cover the cost of installing the ice detector. The FAA recognizes that the general obligation of the operator to maintain aircraft in an airworthy condition is vital, but sometimes expensive. The FAA considers that, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD. However, the manufacturer, not the FAA, determines if the manufacturer will cover the cost of implementing a particular action. Therefore, no change in this regard is necessary to the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 89 Model MU–300 airplanes of U.S. registry will be affected by this proposed AD.

The AFM revision that is currently required by AD 94–25–10, amendment 39–9094 (59 FR 64112, December 13, 1994), for Model MU–300 airplanes takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the currently required AFM revision will be $5,340, or $60 per airplane.

The ice detector installation that is required in this AD action for all airplanes will take approximately 80 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $7,000 per airplane. Based on these figures, the cost impact on U.S. operators of the installation required by this AD is estimated to be $1,050,200, or $11,800 per airplane.

The new AFM revisions that are required by this AD action for all airplanes will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these estimated figures, the cost impact on U.S. operators of the new AFM revisions will be $5,340, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The conversion of the configuration of the airplane that is specified in this AD action as an option for Diamond I airplanes, if accomplished, will require actions related to the airframe and the engine. The airframe portion of the conversion will take approximately 160 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $50,000 per airplane. The engine portion of the conversion should be accomplished during a regular engine overhaul; therefore, it will require no additional work hours. Required parts for this action will cost approximately $260,000 per airplane. Based on these figures, the cost impact of the conversion on U.S. operators, who elect to accomplish it, is estimated to be $319,600 per airplane.

If accomplished, the option for modification of the warning horn system that is specified in this AD action for Diamond I airplanes will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $600 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators will be $960 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–21–30 Raytheon Aircraft Company (Formerly Beech): Amendment 39–11376. Docket 96–NM–210–AD.

Applicability: All Model Mitsubishi MU–300 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded nose-down pitch at certain flap settings during icing conditions, accomplish the following:

(a) For all airplanes: Within 20 days after December 28, 1994 (the effective date of AD 94–25–10, amendment 39–9094), revise the Limitations Section and Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Icing Conditions

If icing conditions are encountered during flight, no greater than 10 degrees flaps may be utilized for landing unless the following conditions are met:

1. The icing conditions were encountered for less than 10 minutes, and the Ram Air Temperature (RAT) during such encounter was warmer than -8 degrees C.

or

2. A RAT of +5 degrees C or warmer is observed during approach and landing.

If either of the above two conditions are met, 30 degrees flaps may be utilized for landing.

Otherwise:

Flaps (landing flaps setting)—10 degrees

Land Select (LAND SEL) Switch—Flaps 10 degrees

Use landing data for 10 degrees flaps from Appendix 1 of this AD."

(b) For Diamond I airplanes, as identified in Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996: Within 2 years after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) through (b)(4) of this AD:

(1) Install an ice detector in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(2) Revise the Introduction, Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the FAA-approved AFM to address the operation of the ice detector system. This may be accomplished by inserting a copy of Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, in the AFM.

(3) Accomplish either paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

(i) Convert the airplane from the Diamond I configuration to the Diamond IA configuration in accordance with Mitsubishi MU–300 Diamond Service Recommendation SR 71–001, Revision 2, dated June 1, 1984; and accomplish the AFM revision required by paragraph (c)(3) of this AD. Or

(ii) Modify the warning horn system of the landing gear in accordance with Attachment 1 of Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(4) Revise the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, to allow landing flaps of 30 degrees if the icing encounter meets certain criteria, and to specify flaps 10 degrees as a normal landing flap configuration. This may be accomplished by inserting a copy of Diamond I Flight Manual, Revision 9, dated January 5, 1996, in the AFM.

(c) For Diamond IA airplanes: Within 2 years after the effective date of this AD, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Install an ice detector in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(2) Revise the Introduction, Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the FAA-approved AFM to address the operation of the ice detector system.

This may be accomplished by inserting a copy of Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, in the AFM.

(3) Revise the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, and Performance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, and to allow landing flaps of 30 degrees if the icing encounter meets certain criteria. This may be accomplished by inserting a copy of Mitsubishi MU–300 Diamond IA Airplane Flight Manual, Revision 9, dated January 5, 1996, in the AFM.

(d) Accomplishment of the requirements of paragraph (b) or (c) of this AD, as applicable, constitutes terminating action for the requirements of AD 94–25–10, amendment 39–9094 [and paragraph (a) of this AD.] Following accomplishment of paragraph (b) or (c) of this AD, as applicable, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraphs (a), (b)(2), (b)(4), (c)(2), and (c)(3) of this AD, the actions shall be done in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996; and Mitsubishi MU–300 Diamond Service Recommendation SR 71–001, Revision 2, dated June 1, 1984. Mitsubishi MU–300 Diamond Service Recommendation SR 71–001, Revision 2, dated June 1, 1984, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
List of Effective Pages, Pages 1, 2.	2	June 1, 1984.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 30, 1999.

Issued in Renton, Washington, on October 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27563 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–382–AD; Amendment 39–11386; AD 99–22–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80 and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80 and C–9 (military) series airplanes, and Model MD–88 airplanes, that requires revising the wiring of the air conditioning pneumatic supply control, if applicable, and revising the wiring of the pneumatic augmentation valve. This amendment is prompted by a report indicating that the pneumatic augmentation valve may go fully open when an engine fails during initial climb prior to deactivation of the second segment climb switch. The actions specified by this AD are intended to prevent opening of the pneumatic augmentation valve, which could result in significant loss of thrust from the remaining engine and consequent inadequate initial climb performance of the airplane.

DATES: Effective November 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 30, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80 and C–9 (military) series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on August 6, 1999 (64 FR 42868). That action proposed to require revising the wiring of the air conditioning pneumatic supply control, if applicable, and revising the wiring of the pneumatic augmentation valve.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,500 airplanes of the affected design in the worldwide fleet. The FAA estimates that 700 airplanes of U.S. registry will be affected by this AD, that it will take approximately between 1 to 6 work hours per airplane to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts cost will be nominal. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be between $42,000 and $252,000, or between $60 and $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–22–08 McDonnel Douglas: Amendment 39–11386. Docket 98–NM–382–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in the McDonnell Douglas Service Bulletin DC9–36–012, Revision 04, dated October 16, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening of the pneumatic augmentation valve during initial climb following an engine failure, which could result in significant loss of thrust on the remaining engine and consequent inadequate initial climb performance of the airplane, accomplish the following:

Modification

(a) Within 3 years after the effective date of this AD, revise the wiring of the air conditioning pneumatic supply control, if applicable, and revise the wiring of the pneumatic augmentation valve, in accordance with McDonnell Douglas Service Bulletin DC9–36–012, Revision 03, dated February 3, 1998, or Revision 04, dated October 16, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The modification shall be done in accordance with McDonnell Douglas Service Bulletin DC9–36–012, Revision 03, dated February 3, 1998; or McDonnell Douglas Service Bulletin DC9–36–012, Revision 04, dated October 16, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical

Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 30, 1999.

Issued in Renton, Washington, on October 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27562 Filed 10–25–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–178–AD; Amendment 39–11387; AD 99–22–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes. This action requires an inspection of the crew rest area heat exchangers to detect deflection or interference with the flight control cables; and various follow-on actions. This action also requires replacement of certain nutplate attachment rivets that attach the heat exchangers to the airframe with stronger rivets. This amendment is prompted by a report of interference between insulation blankets adjacent to the heat exchangers and flight control cables. The actions specified in this AD are intended to prevent a reduction in maximum rudder and elevator surface deflection due to the separation of heat exchangers from the body frame, which could result in reduced controllability of the airplane.

DATES: Effective November 10, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before December 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, System and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that the rudder and elevator of a Boeing Model 747–400 series airplane were "stiff." Further investigation revealed that the nutplate attachment rivets that attach the crew rest area (CRA) heat exchangers to the airframe at station 1920 had failed. When the CRA air supply fan was on, air pressure caused the heat exchangers to deflect downwards and push adjacent insulation blankets into the flight control cables, causing the stiffness of the flight controls. This condition, if not corrected, could result in reduced maximum deflection of the rudder and elevator surfaces, which could result in reduced controllability of the airplane.

Examination of failed rivets revealed that the rivets were not made of 2017-T4 aluminum, which was the rivet material specified in the engineering drawings. Instead, the rivets were made of lower-strength 1100–F aluminum. The airplane manufacturer has determined that rivets made of the proper material were installed during production on airplanes after line number 1205.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999, which describes procedures for inspection of the CRA heat exchangers to detect deflection or interference with the flight control cables; and an inspection of the heat exchanger panels, pitot-static tubes, and air distribution ducts in that area to detect damage, if necessary. If any damage is detected, the alert service bulletin specifies to contact the manufacturer for repair instructions. The alert service bulletin also describes procedures for performing an electrical conductivity measurement of the nutplate attachment rivets that attach the heat exchangers to the airframe to determine the rivet material, and replacement of certain rivets with stronger rivets. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent a reduction in maximum rudder and elevator surface deflection due to the separation of heat exchangers from the body frame, which could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as described below.

Differences Between Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection would be $120 per airplane.

It would require approximately 3 hours to accomplish the required replacement, at an average labor rate of

$60 per work hour. Required parts would cost approximately $17 per airplane. Based on these figures, the cost impact of this replacement would be $197 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–178–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–22–09 Boeing: Amendment 39–11387. Docket 99–NM–178–AD.

Applicability: Model 747–400 series airplanes; as listed in Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduction in maximum rudder and elevator surface deflection due to the separation of heat exchangers from the body frame, which could result in reduced controllability of the airplane, accomplish the following:

One-Time Inspection

(a) Within 400 flight hours or 30 days after the effective date of the AD, whichever occurs earlier, perform a one-time general visual inspection of the crew rest area (CRA) heat exchangers to detect deflection or interference with the flight control cables, in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Replacement

(b) If no deflection or interference is detected, within 6,000 flight hours after accomplishment of the inspection required by paragraph (a) of this AD, measure the electrical conductivity of the nutplate attachment rivets that attach the heat exchangers to the airframe at station 1920 to determine the rivet material, in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999. Prior to further flight, replace any rivets not made of 2017–T4 aluminum with rivets made of 2017–T4 aluminum, in accordance with the alert service bulletin.

(c) If any deflection or interference is detected during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Perform a one-time general visual inspection of the CRA heat exchanger panels, pitot-static tubes, and air distribution ducts in the area of station 1920 to detect damage, in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999. If any damage is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(2) Remove the nutplates and attachment rivets that attach the heat exchangers to the airframe at station 1920, and replace with new nutplates and rivets made of 2017–T4 aluminum,

in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (c)(1) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 10, 1999.

Issued in Renton, Washington, on October 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27561 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–59–AD; Amendment 39–11390; AD 99–22–12]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model AS332C, L, and L1 helicopters, that requires replacing certain electrical modules with airworthy electrical modules. This amendment is prompted by the discovery of several defective electrical modules. The actions specified by this AD are intended to prevent loss of electrical continuity, which could cause loss of critical systems and subsequent loss of control of the helicopter.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter France Model AS332C, L, and L1 helicopters was published in the **Federal Register** on May 20, 1999 (64 FR 27483). That action proposed to require replacing certain electrical modules with airworthy electrical modules.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for two nonsubstantive changes that have been made to paragraph (b) and Note 2 of the AD. In paragraph (b), the NPRM incorrectly states that alternative methods of compliance (AMOC) or adjustments of the compliance time may be approved by the "Manager, Rotorcraft Certification Office, Rotorcraft Directorate." This is incorrect and has been changed to state that the Manager, Regulations Group, Rotorcraft Directorate, is responsible for approving any AMOC or adjustment of the compliance time. Note 2 of the NPRM states that information concerning the existence of approved AMOC may be obtained from the "Rotorcraft Certification Office;" this is also incorrect and has been changed to state that information may be obtained from the "Regulations Group." The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 3 helicopters of U.S. registry will be affected by this AD, that it will take approximately 320 work hours per helicopter to replace all affected modules, and that the average labor rate is $60 per work hour. Required parts will cost approximately $23,484, but the helicopter manufacturer has stated that the parts will be provided at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,600 to replace all affected modules.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–22–12 Eurocopter France: Amendment 39–11390. Docket No. 98–SW–59–AD.

Applicability: Model AS332C, L, and L1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 300 hours time-in-service (TIS) or within the next 3 calendar months, whichever occurs first, unless accomplished previously.

To prevent loss of electrical continuity, which could cause loss of critical systems, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove and replace each "CONNECTRAL" green electrical module that does not have a white dot on the face and that has a manufacturing code 95/16 through 96/21 engraved on a side, with an airworthy electrical module. Those manufacturing codes identify modules manufactured between the beginning of the 16th week of 1995 and the end of the 21st week of 1996.

Note 1: Eurocopter France Service Bulletin No. 01.00.51, dated May 4, 1998, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on November 30, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 98–254–070(A), dated July 1, 1998.

Issued in Fort Worth, Texas, on October 18, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–27791 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–62–AD; Amendment 39–11388; AD 99–22–10]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain General Electric Aircraft Engines CF34 series turbofan engines, that establishes new life limits for certain high pressure compressor (HPC) spools, stage 9 HPC disks, and rear HPC spools. This amendment is prompted by a cyclic life analysis using increased stress levels resulting from manufacturing discrepancies. The actions specified by this AD are intended to prevent HPC spool and disk cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GEAE) Models CF34–1A, –3A, –3A1, and –3A2 turbofan engines was published in the **Federal Register** on April 5, 1999 (64 FR 16364). That action proposed to require removal from service of forward HPC spools, part number (P/N) 6078T56P01; rear HPC spools, P/N 6087T01P03 and 6087T01P04; and stage 9 HPC disks, P/N 5087T46P01 or 5087T46P02. The affected parts must be removed prior to accumulating cycles in service beyond new, reduced cyclic life limits.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter supports the rule as proposed.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 600 engines of the affected design in the worldwide fleet. The FAA estimates that 28 engines installed on aircraft of US registry will be affected by the requirement within this AD to replace the forward spool. The FAA has calculated the prorated cost for forward spool replacements to be $36,500 per engine, based on the estimated new part cost divided by the original life limit, multiplied by the number of cycles that will be reduced by the AD requirement. Therefore, the FAA estimates the total cost impact for replaced forward spools to be $1,022,000.

The FAA estimates that 200 engines installed on aircraft of US registry will be affected by the requirement to replace the stage 9 disk. The FAA has calculated the prorated cost for stage 9 disk replacements to be $3,500 per engine, based on the estimated new part cost divided by the original life limit, multiplied by the number of cycles that will be reduced by the AD requirement. The FAA estimates the total cost impact for replaced stage 9 disks to be $700,000.

The FAA estimates that 300 engines installed on aircraft of US registry will be affected by the requirement to replace the rear spool. The FAA has calculated the prorated cost for rear spool replacements to be $8,900 per engine, based on the new part cost divided by the original life limit, multiplied by the number of cycles that will be reduced by the AD requirement. Therefore, the FAA estimates the total cost impact for replaced rear spools to be $2,670,000.

The FAA has determined that it will take no additional work hours per engine to remove affected components, as removal would take place at available opportunities. Based on these figures, the total cost impact of the AD on US operators is estimated to be $4,392,000.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–22–10 General Electric Aircraft Engines: Amendment 39–11388. Docket 98–ANE–62–AD.

Applicability: General Electric Aircraft Engines (GEAE) Models CF34–1A, –3A, –3A1, and –3A2 turbofan engines, installed on but not limited to Canadair aircraft models CL–600–2A12, –2B16, and –2B19.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure compressor (HPC) spool and disk cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service the following HPC spools and disks prior to accumulating cycles in service beyond new, reduced cyclic life limits, and replace with a serviceable part, as follows:

(1) For forward HPC spools, part number (P/N) 6078T56P01, which have accumulated fewer than 6,000 cycles since new (CSN) on the effective date of this AD, remove prior to accumulating 6,000 CSN.

(2) For forward HPC spools, P/N 6078T56P01, which have accumulated 6,000 or more CSN on the effective date of this AD, remove at the next shop visit after the effective date of this AD, but prior to accumulating 12,000 CSN.

(3) For the purpose of this AD, engine shop visit is defined as engine disassembly that includes separation of the compressor section from the fan section front frame and from the combustion section combustion chamber frame.

(4) For stage 9 HPC disks, P/N 6087T01P03 or 6087T01P04, remove prior to accumulating 20,000 CSN.

(5) For rear HPC spools, P/N 5087T46P01 or 5087T46P02, remove prior to accumulating 17,000 CSN.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 27, 1999.

Issued in Burlington, Massachusetts, on October 18, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–27788 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–09]

Establishment of Class E Airspace: York County, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from the surface within a 6.5 mile radius of the York Airport (THV). The increased traffic at the airport and its capacity to accept flights operating under Instrument Flight Rules via a Standard Instrument Approach Procedure (SIAP) makes it desirable to establish Class E airspace designated as a surface area.

EFFECTIVE DATE: 0901 UTC, Nov. 5, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On August 4, 1999 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at York Airport, York County, PA was published in the **Federal Register** (64 FR 42301–42302). Controlled airspace extending upward from the surface is needed to accommodate the increased traffic. The notice proposed to establish controlled airspace extending upward from surface to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. E airspace areas designations for airspace extending upward from the surface are published in paragraph 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at York County, PA extending upward from the surface to accommodate operations conducted under Instrument Flight Rules. Additional controlled airspace upward from the surface will enhance the safety of flights operating in the vicinity of the York Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface

* * * * *

AEA PA E2 York County, PA [New]

York Airport (THV) PA
GRP (lat. 39°55′12″N. x long. 76°52′39″W.)

That airspace extending upward from the surface within a 6.5-mile radius of the York Airport.

* * * * *

Issued in Jamaica, New York, on October 5, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–27829 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–4]

RIN 2120–AA66

Modification of Federal Airway Victor 108 (V–108) in the Vicinity of Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of Federal Airway V–108. Specifically, this action includes a reference to the Hugo Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) as part of the legal description of V–108. This action is editorial and does not change the actual airway as currently used or depicted on aeronautical charts.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 (part 71) by inserting a reference to the Hugo VORTAC in the legal description of V–108. The Hugo VORTAC is part of the existing charted V–108 but was inadvertently omitted from the legal description of V–108 published on December 12, 1997. Since this action merely involves an editorial change to the legal description of V–108, and does not involve a change in the dimensions or operating requirements of the airway, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Domestic VOR Federal airway designations are published in paragraph 6010(a) of FAA Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–108 [Revised]

From Santa Rosa, CA, via Scaggs Island, CA; INT Scaggs Island 131° and Concord, CA, 276° radials; 7 miles wide (4 miles N. and 3 miles S. of centerline), Concord; Linden, CA. From Meeker, CO; via Red Table, CO; Black Forest, CO; Hugo, CO; 74 miles, 65 MSL, Goodland, KS; Hill City, KS.

* * * * *

Issued in Washington, DC, on October 15, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–27826 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29814; Amdt. No. 1956]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPS, an effective date at leAst 30 days after publication is approved.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 15, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part of 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, indentified as follows:

* * * *Effective November 4, 1999*

Minneapolis, MN, Minneapolis-St Paul Intl (Wold-Chamberlain) ILS RWY 30R, Amdt 10
Minneapolis, MN, Minneapolis-St Paul Intl (Wold-Chamberlain) ILS PRM RWY 30R, Amdt 5
Madison, WI, Dame County Regional-Truax Field, ILS RWY 21, Orig

* * * *Effective December 2, 1999*

Ankeny, IA, Ankeny Regional, GPS RWY 36, Amdt 2
Atlantic, IA, Atlantic Muni, GPS RWY 12, Amdt 1
Iowa City, IA, Iowa City Muni, GPS RWY 30, Amdt 2
Pella, IA, Pella Muni, GPS RWY 16, Amdt 1
Midland, TX, Midland Intl, GPS RWY 10, Orig

* * * *Effective December 30, 1999*

Mountain Village, AK, Mountain Village, GPS RWY 2, Orig
Mountain Village, AK, GPS RWY 20, Orig
Dover/Cheswold, DE, Delaware Airpark, GPS RWY 9, Amdt 1
Dover/Cheswold, DE, Delaware Airpark, GPS RWY 27, Amdt 1
Brooksville, FL, Hernando COunty, GPS RWY 2, Orig
Brooksville, FL, Hernando County, GPS RWY 9, Amdt 1
Brooksville, FL, Hernando County, GPS RWY 20, Amdt 1
Brooksville, FL, Hernando County, GPS RWY 27, Amdt 1
Brooksville, FL, Hernando County, NDB RWY 9, Amdt 6
Brooksville, FL, Hernando County, ILS RWY 9, Amdt 2
Fort Wayne, IN, Smith Field, GPS RWY 13, Orig
Lyons, KS, Lyons-Rice County Muni, VOR/DME-A, Amdt 3
Lyons, KS, Lyons-Rice County Muni, NDB RWY 17R, Amdt 6
Lyons, KS, Lyons-Rice County Muni, GPS RWY 17R, Orig
Lyons, KS, Lyons-Rice County Muni, GPS RWY 35L, Orig
Belfast, ME, Belfast Muni, GPS RWY 15, Amdt 1
Belfast, ME, Belfast Muni, GPS RWY 33, Amdt 1
Belfast, ME, Belfast Muni, NDB RWY 15, Amdt 3
Maple Lake, MN, Maple Lake Muni, GPS RWY 28, Orig
Jackson, MS, Hawkins Field, VOR/DME RNAV RNAV RWY 16, Amdt 4A, CANCELLED
Walls, MS, Twinkletown, RADAR-1, Amdt 2A, CANCELLED
Delaware, OH, Delaware Muni, NDB RWY 10, Orig
Delaware, OH, Delaware Muni, NDB RWY 10, Amdt 4, CANCELLED
Clinton, OK, Clinton Muni, NDB, RWY 35, Amdt 7
Clinton, OK, Clinton Muni, GPS, RWY 35, Amdt 1
Center, TX, Center Muni, NDB RWY 17, Amdt 2
Center, TX, Center Muni, GPS RWY 17, Amdt 1
Center, TX, Center Muni, GPS RWY 35, Orig
Houston, TX, West Houston, VOR-B, Amdt 3
Houston, TX, West Houston, NDB RWY 15, Amdt 2
Houston, TX, West Houston, NDB RWY 33, Amdt 3
Houston, TX, West Houston, VOR/DME RNAV RWY 15, Amdt 3
Houston, TX, West Houston, VOR/DME RNAV RWY 33, Amdt 3
Houston, TX, West Houston, GPS RWY 15, Orig
Houston, TX, West Houston, GPS RWY 33, Orig
Odessa, TX, Odessa-Schlemeyer Field, VOR-A, Amdt 6
Odessa, TX, Odessa-Schlemeyer Field, NDB RWY 20, Amdt 4
Odessa, TX, Odessa-Schlemeyer Field, GPS-B, Orig
Odessa, TX, Odessa-Schlemeyer Field, GPS RWY 20, Orig
Wichita Falls, TX, Kickapoo Downtown Airpark, RADAR-1, Amdt 3, CANCELLED
Berkeley Springs, WV, Potomac Airpark, VOR RWY 29, Amdt 6
Fairmont, WV, Fairmont Muni-Frankman Field, VOR/DME-A, Orig
Fairmont, WV, Fairmont Muni-Frankman Field, VOR/DME RWY 22, Amdt 4, CANCELLED
Fairmont, WV, Fairmont Muni-Frankman Field, GPS RWY 22, Amdt 1
Moundsville, WV, Marshall County, GPS RWY 24, Orig
Summersville, WV, Summersville, GPS RWY 4, Amdt 2
Summersville, WV, Summersville, GPS RWY 22, Amdt 2

[FR Doc. 99-27831 Filed 10-25-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29815; Amdt. No. 1957]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Fight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPSs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAP contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC. on October 15, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 94 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
09/04/99	TX	Robstown	Nueces County	FDC 9/7780	GPS RWY 13, ORIG...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7622	NDB or GPS RWY 15 AMDT 19a...
09/30/99	MN	Minneapolis	Airlake	FDC 9/7694	VOR or GPS RWY 11 AMDT 1...
09/30/99	MN	Minneapolis	Airlake	FDC 9/7695	ILS RWY 29 ORIG...
09/30/99	MN	St Paul	Lake Elmo	FDC 9/7696	NDB or GPS RWY 3 AMDT 3B...
09/30/99	MN	St Paul	Lake Elmo	FDC 9/7698	GPS RWY 31 ORIG...
09/30/99	MN	St Paul	St Paul Downtown Holman Field	FDC 9/7693	NDB or GPS RWY 30 AMDT 7B...
10/01/99	SD	Pierre	Pierre Regional	FDC 9/7719	VOR/DME or TACAN or GPS RWY 7 AMDT 4...
10/04/99	FL	Plant City	Plant City Muni	FDC 9/7773	NDB RWY 9 AMDT 1...
10/04/99	FL	Plant City	Plant City Muni	FDC 9/7775	GPS RWY 9 ORIG...
01/05/99	NH	Laconia	Laconia Muni	FDC 9/7805	ILS RWY 8 ORIG...
10/05/99	VA	Charlottesville	Charlottesville-Albemarle	FDC 9/7816	GPS RWY 21 ORIG...
10/05/99	VA	Charlottesville	Charlottesville-Albemarle	FDC 9/7818	ILS RWY 3 AMDT 12B...
10/06/99	FL	Lakeland	Lakeland Linder Regional	FDC 9/7851	VOR or GPS RWY 27, AMDT 5A...
10/06/99	FL	Lakeland	Lakeland Linder Regional	FDC 9/7853	VOR or GPS RWY 9, AMDT 2...
10/06/99	FL	Plant City	Plant City Muni	FDC 9/7841	VOR RWY 27, AMDT 3...
10/06/99	IN	Terre Haute	Sky King	FDC 9/7822	VOR or GPS–A AMDT 6...

FDC date	State	City	Airport	FDC No.	SIAP
10/06/99	KY	Mount Sterling	Mount Sterling-Montgomery County	FDC 9/7846	NDB or GPS RWY 3, AMDT 1A...
10/06/99	SC	Myrtle Beach	Myrtle Beach Intl	FDC 9/7811	ILS RWY 35 ORIG–B...
10/06/99	VA	Charlottesville	Charlottesville-Albemarle	FDC 9/7833	NDB RWY 3 AMDT 15A...
10/07/99	CA	Riverside	Riverside Muni	FDC 9/7881	VOR or GPS–A AMDT 5...
10/07/99	CA	Riverside	Riverside Muni	FDC 9/7882	VOR or GPS–B ORIG...
10/07/99	CA	Riverside	Riverside Muni	FDC 9/7883	VOR or GPS RWY 9 AMDT 9...
10/07/99	MO	St Louis	Lambert-St Louis Intl	FDC 9/7896	LDA/DME RWY 30L, AMDT 2B...
10/07/99	PA	Pittsburgh	Allegheny County	FDC 9,7898	ILS RWY 28 AMDT 27B...
10/07/99	VT	Rutland	Rutland State	FDC 9/7893	LOC/DME 1 RWY 19 AMDT 2...
10/08/99	CA	Watsonville	Watsonville Muni	FDC 9/7936	NDB or GPS–B AMDT 1A...
10/08/99	CA	Watsonville	Watsonville Muni	FDC 9/7937	VOR/DME or GPS–A ORIG–A...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7942	VOR RWY 4, AMDT 17...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7945	ILS RWY 22, AMDT 3A...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7947	NDB or GPS RWY 4, AMDT 14A...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7948	VOR/DME RWY 22, AMDT 8...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7949	VOR/DME RWY 32, AMDT 2...
10/12/99	OR	Aurora	Aurora State	FDC 9/8014	LOC RWY 17, ORIG...

[FR Doc. 99–27830 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29786; Amdt. No. 1954]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; corrections.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington DC, on October 1, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35, [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	SIAP
08/30/99	CA	Ramona	Ramona	FDC 9/6551	VOR DME or GPS–A AMDT 1B... This corrects 9/6551 Published in TL 99–21
09/13/99	ID	Boise	Boise Air Terminal/Gowen Field	FDC 9/7166	GPS RWY 28L, AMDT 1...
09/13/99	ID	Boise	Boise Air Terminal/Gowen Field	FDC 9/7175	VOR/DME or TACAN RWY 28L, AMDT 1A...
09/13/99	ID	Boise	Boise Air Terminal/Gowen Field	FDC 9/7177	HI ILS RWY 10R, AMDT 2...
09/15/99	NC	Greenville	Pitt-Greenville	FDC 9/7215	NDB RWY 19, AMDT 14C...
09/15/99	NC	Greenville	Pitt-Greenville	FDC 9/7216	ILS RWY 19, AMDT 2D...
09/16/99	CO	Colorado Springs	City of Colorado Springs Muni	FDC 9/7244	ILS/DME RWY 17L ORIG–B...
09/16/99	KS	Olathe	New Century Aircenter	FDC 9/7251	NDB or GPS RWY 35, AMDT 4B...
09/16/99	VA	Danville	Danville Regioinal	FDC 9/7261	GPS RWY 20, ORIG...
09/17/99	AZ	Flagstaff	Flagstaff Pulliam	FDC 9/7294	ILS/DME RWY 21 ORIG–A...
09/17/99	IA	Cresco	Ellen Church Field	FDC 9/7292	GPS RWY 15, ORIG...
09/21/99	AR	Rogers	Rogers Muni-Carter Field	FDC 9/7418	ILS RWY 19, AMDT 2...
09/21/99	AR	Walnut Ridge	Walnut Ridge Regional	FDC 9/7417	LOC RWY 17, AMDT 2B...
09/21/99	AZ	Casa Grande	Casa Grande Muni	FDC 9/7404	VOR RWY 5 AMDT 4...
09/21/99	AZ	Casa Grande	Casa Grande Muni	FDC 9/7406	ILS/DME RWY 5 AMDT 6...
09/21/99	AZ	Phoenix	Phoenix-Deer Valley Muni	FDC 9/7400	GPS RWY 7R ORIG–A...
09/21/99	AZ	Phoenix	Phoenix-Deer Valley Muni	FDC 9/7401	GPS–1 ORIG–A...
09/21/99	AZ	Phoenix	Phoenix-Deer Valley Muni	FDC 9/7402	NDB or GPS RWY 25L, AMDT 3...
09/21/99	AZ	Window Rock	Window Rock	FDC 9/7399	VOR DME or GPS–A ORIG...
09/21/99	CA	Palm Springs	Desert Resorts Regional	FDC 9/7416	VOR DME or GPS RWY 30 ORIG...
09/21/99	NV	Lovelock	Derby Field	FDC 9/7403	VOR or GPS–C ORIG...
09/21/99	NV	Lovelock	Derby Field	FDC 9/7408	GPS RWY 1 ORIG...
09/21/99	OR	Aurora	Aurora State	FDC 9/7396	GPS RWY 35, AMDT 1...
09/22/99	AZ	Grand Canyon	Grand Canyon National Park	FDC 9/7437	ILS DME RWY 3 AMDT 3...
09/22/99	AZ	Lake Havasu City	Lake Havasu City	FDC 9/7434	VOR DME or GPS–A ORIG–A...
09/22/99	AZ	Tucson	Ryan Field	FDC 9/7431	NDB/DME or GPS RWY 6R AMDT 1...
09/22/99	AZ	Tucson	Ryan Field	FDC 9/7433	ILS RWY 6R AMDT 5...
09/22/99	AZ	Winslow	Winslow-Lindbergh Regional	FDC 9/7439	VOR or GPS RWY 11 AMDT 4...
09/22/99	MA	Pittsfield	Pittsfield Muni	FDC 9/7464	NDB RWY 26 AMDT 4...
09/23/99	AZ	Grand Canyon	Grand Canyon National Park	FDC 9/7476	VOR RWY 3 AMDT 4...
09/23/99	AZ	Tucson	Ryan Field	FDC 9/7475	NDB or GPS–D AMDT 1...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7494	VOR or GPS RWY 4L AMDT 5C...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7495	VOR RWY 22R AMDT 4B...

FDC Date	State	City	Airport	FDC No.	SIAP
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7496	VOR/DME or GPS RWY 22R AMDT 4B...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7497	NDB RWY 4L AMDT 2C...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7498	NDB RWY 22R AMDT 7B...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7499	ILS RWY 22L ORIG (CAT I & II)...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7500	ILS RWY 22R AMDT 4B...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7501	ILS RWY 4R ORIG...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7502	ILS RWY 4L AMDT 4...
09/23/99	PA	Pittsburgh	Allegheny County	FDC 9/7478	ILS RWY 10 AMDT 3A...
09/24/99	MI	Benton Harbor	Southwest Michigan Regional	FDC 9/7533	ILS RWY 27 AMDT 6C...
09/27/99	PA	Pittsburgh	Allegheny County	FDC 9/7594	ILS RWY 28 AMDT 27B...
09/28/99	MO	Poplar Bluff	Poplar Bluff Muni	FDC 9/7627	GPS RWY 36, ORIG...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7628	VOR or GPS RWY 1 AMDT 11...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7629	GPS RWY 22 ORIG...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7630	ILS RWY 15 AMDT 21B...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7631	ILS/DME RWY 33 ORIG–A...

[FR Doc. 99–27926 Filed 10–25–99 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 19

[T.D. 99–78]

RIN 1515–AC41

Customs Bonded Warehouses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding the filing of certain inventory reports by bonded warehouse proprietors. Instead of requiring that these reports be filed with Customs, the document requires that bonded warehouse proprietors maintain these inventory reports after their preparation. In some instances when the inventory report is prepared, a letter must be submitted to Customs certifying that the report has been prepared. As amended, the port director is the Customs officer to whom certification letters must be submitted and to whom the annual report covering smelting or refining operations must be submitted. These changes and other changes made by this document are intended to simplify inventory recordkeeping procedures for warehouse proprietors. The changes are consistent with Customs' movement toward a post-audit environment and the spirit of "shared responsibility" embodied in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act.

EFFECTIVE DATE: November 26, 1999.

FOR FURTHER INFORMATION CONTACT: Edward Bowles, Senior Auditor, Regulatory Audit Division, (202–927–0071).

SUPPLEMENTARY INFORMATION:

Background

By a document published in the **Federal Register** (64 FR 16868) on April 7, 1999, Customs proposed several amendments to part 19, Customs Regulations (19 CFR part 19), concerning the submission to Customs of certain inventory reports covering merchandise in a bonded warehouse. Instead of requiring that certain reports be filed with Customs, the document proposed to amend the Customs Regulations to require that bonded warehouse proprietors maintain these inventory reports after their preparation. In certain instances, when the inventory report is prepared, a letter must be submitted to Customs certifying that the report has been prepared. Under the proposed amendment, the port director would be the Customs officer to whom certification letters would be submitted and to whom the annual report covering smelting or refining operations would be submitted. These proposed changes and other changes contained in the proposed rule were intended to simplify inventory recordkeeping procedures for warehouse proprietors and are consistent with Customs' movement toward a post-audit environment and the spirit of "shared responsibility" embodied in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182).

Adoption of Proposal

No comments were received from the public in response to the proposed rule. Following further consideration and review of the matter, Customs has determined that the proposed rule published in the **Federal Register** (64 FR 16868) on April 7, 1999, should be adopted as a final rule without change.

The Regulatory Flexibility Act and Executive Order 12866

The amendments are intended to simplify inventory recordkeeping procedures for warehouse proprietors and be consistent with Customs' movement toward a post-audit environment and the spirit of "shared responsibility" embodied in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do the amendments result in a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collections of information contained in this rulemaking have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned the following OMB control numbers: 1515–0093 for bonded warehouse proprietor's submissions; 1515–0121 for information to be supplied by owners or lessees in support of applications to establish a bonded warehouse facility; 1515–0127 for applications by manufacturers to bond (or discontinue a previously bonded) an establishment engaged in the smelting or refining of metal-bearing materials; and 1515–0135 for records of smelting or refining operations showing receipt and disposition of each shipment of material. This document restates the collections of information without substantive change.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning suggestions for reducing the burden of the collections of information should be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. A copy should also be sent to U.S. Customs Service, Information Services Group, Attention: J. Edgar Nichols, Room 3.2–C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

List of Subjects in 19 CFR Part 19

Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements, Warehouses.

Amendments to the Regulations

Part 19, Customs Regulations (19 CFR part 19), is amended as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19, and the relevant sectional authority citation, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Sections 19.17–19.25 also issued under 19 U.S.C. 1312;

* * * * *

2. Section 19.12 is amended by revising the seventh and eighth sentences of paragraph (d)(3), by revising the first sentence of paragraph (g), adding a sentence thereafter, and revising the last sentence of paragraph (g), and by revising the first sentence, respectively, of paragraphs (h)(1) and (h)(3), to read as follows:

§ 19.12 Inventory control and recordkeeping system.

* * * * *

(d) *Accountability for merchandise in a warehouse.* * * *

(3) *Theft, shortage, overage or damage.* * * * The proprietor must also record all shortages and overages as required in the Customs Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of Customs Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section. * * *

* * * * *

(g) *Warehouse proprietor submission.* Except as otherwise provided in paragraph (h) of this section or § 19.19(b) of this part, the warehouse proprietor must prepare a Warehouse Proprietor's Submission on Customs Form (CF) 300 within 45 calendar days from the end of the business year and maintain the Submission on file for 5 years from the end of the business year covered by the Submission. The proprietor must submit to the port director, within 10 business days after preparation of the CF 300, a letter signed by the proprietor certifying that the CF 300 has been prepared, is available for Customs review, and is accurate. * * * An alternative format may be used for providing the information required on the CF 300.

(h) *Annual reconciliation.* * * *

(1) *Report.* Instead of preparing Customs Form 300 as required under paragraph (g) of this section, the proprietor of a class 2, importers' private bonded warehouse, and proprietors of classes 4, 5, 6, 7, 8, and 9 warehouses if the warehouse proprietor and the importer are the same party, must prepare a reconciliation report within 90 days after the end of the fiscal year unless the port director authorizes an extension for reasonable cause. * * *

* * * * *

(3) *Certification.* The proprietor must submit to the port director within 10 business days after preparation of the annual reconciliation report, a letter signed by the proprietor certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. * * *

* * * * *

3. Section 19.17 is amended by revising the first and second sentences of paragraph (g) to read as follows:

§ 19.17 Application to establish warehouse; bond.

* * * * *

(g) *Statement of inventory and bond charges.* Where two or more smelting or refining warehouses are included under one blanket smelting and refining bond, an overall statement must be prepared and maintained by the principal named in the bond by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants. If the warehouses covered by an overall statement are located in more than one port, each port director may choose to verify the accuracy of the inventory report only with respect to that portion of the report that relates to amounts held at a plant that is located within that port director's jurisdiction. * * *

4. Section 19.19 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 19.19 Manufacturers' records; annual statement.

* * * * *

(b) Every manufacturer engaged in smelting or refining, or both, must prepare and submit to the port director at the port nearest which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. * * *

Raymond W. Kelly,

Commissioner of Customs.

Approved: September 15, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–27965 Filed 10–25–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–140–FOR; State Program Amendment No. 98–4]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed additions of rules concerning blaster certification. Indiana intends to revise its program to improve operational efficiency.

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of

Surface Mining, Minton-Capehart
Federal Building, 575 North
Pennsylvania Street, Room 301,
Indianapolis, Indiana 46204–1521.
Telephone (317) 226–6700. Internet:
INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Proposed Amendment

By letter dated July 1, 1999 (Administrative Record No. IND–1659), Indiana sent us an amendment to its program under SMCRA. This amendment replaces State Program Amendment No. 94–6, which we approved in the March 10, 1995, **Federal Register** (60 FR 13038). Indiana sent the amendment, which amends the Indiana Administrative Code (IAC), at its own initiative.

We announced receipt of the amendment in the July 15, 1999, **Federal Register** (64 FR 38165). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on August 16, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

A. Withdrawal of Previously Approved Amendment

Indiana notified us in its letter dated July 23, 1997 (Administrative Record No. IND–1578), that the statutory time frame for approving State Program Amendment No. 94–6 had expired prior to final approval. We approved this amendment, dated December 7, 1994 (Administrative Record No. IND–1416), on March 10, 1995 (60 FR 13038). Since Indiana did not adopt the amendment, we are removing our approval and amending 30 CFR 914.15 to reflect this decision.

B. 310 IAC 12–8–4.1, Application for Certification

Indiana proposed to add this section to require persons wishing to become certified blasters to submit an application for certification to the department. The application must be in writing, on forms supplied by the department, and completed in accordance with the application instructions. If an application form is incomplete, the department will notify the applicant of the deficiencies. The applicant will then have thirty days to provide the required information. If the applicant does not provide the required information, the department will terminate the application. The director or an authorized representative may verify the information shown on the application. Finally, if the department terminates the application, the applicant will not be considered for certification. However, the applicant may submit a new application at any time.

Federal regulations at 30 CFR 850.15(a) require regulatory authorities to certify for a fixed period those candidates qualified to accept responsibility for blasting operations. We find that the proposed regulations at 310 IAC 12–8–4.1 are consistent with the Federal regulations at 30 CFR 850.15(a).

C. 30 IAC 12–8–8.1, Renewal

Indiana proposed to add this section to require a certified blaster to renew his or her certification every three years. The request for renewal must be submitted to the department in writing, on forms supplied by the department, within thirty days prior to expiration of the certificate. The department will approve the renewal request if the certified blaster has worked at least twelve months of the preceding thirty-six as a certified blaster and is not in violation of 310 IAC 12–8–9. If the certified blaster does not renew his or her certification within one year after expiration, the certificate will no longer be renewable. A blaster must then submit a new application for certification. The department will send a renewal notice to each registrant at least two months before expiration of certification. Finally, the renewal notice and all other communications will be sent to the last address the registrant gave to the department. Failure to receive a renewal notice does not relieve the certified blaster of the obligation to renew his or her certification.

Federal regulations at 30 CFR 850.15(c) allow a regulatory authority to require periodic reexamination, training, or other demonstration of continued blaster competency. The proposed regulations at 310 IAC 12–8–8.1 are consistent with the Federal regulations at 30 CFR 850.15(c). Therefore, we approve them.

IV. Summary and Disposition of Comments

Public Comments

OSM requested public comments on the proposed amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1660). By letter dated July 19, 1999 (Administrative Record No. IND–1661), the Mine Safety and Heath Administration (MSHA) responded to our request by stating that Indiana's amendment does not conflict with MSHA regulations or policies.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1660). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 8, 1999, we requested comments on Indiana's amendment (Administrative Record No. IND–1660), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by

Indiana on July 1, 1999. We approve the rules that Indiana proposed with the provision that they be published in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

For reasons discussed in finding III.A., we are also amending 30 CFR Part 914 by removing the approval of an amendment that Indiana submitted on December 7, 1994.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 6, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by removing the entry for "Original amendment submission date" of December 7, 1994, and by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* *	* *
July 1, 1999	October 26, 1999	310 IAC 12–8–4.1; –8.1.

[FR Doc. 99–27846 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 924

[SPATS No. MS–015–FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposed revisions to regulations concerning formal hearings; bond release; hydrologic balance; cessation orders; formal review of citations; definitions; areas where mining is prohibited or limited; performance bonds; pre-blasting surveys; permitting; inspections; coal exploration; qualified laboratories; disposal of excess spoil; coal mine waste impounding structures; backfilling and grading; roads; and coal preparation plant performance standards. The State also proposed to correct typographical errors and make other non-substantive revisions. Mississippi intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: aabbs@balgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Mississippi Program

On September 4, 1980, the Secretary of the Interior approved the Mississippi program. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments, in the September 4, 1980, **Federal Register** (45 FR 58520). You can find later actions on the program at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Submission of the Proposed Amendment

By letter dated July 1, 1999 (Administrative Record No. MS–0373), Mississippi sent us an amendment to its program under SMCRA. Mississippi sent the amendment in response to required program amendments at 30 CFR 924.16(f)–(h), (j), (k), (m), and (n). The amendment also included changes made at Mississippi's own initiative. Mississippi proposed to amend the Mississippi Surface Coal Mining Regulations.

We announced receipt of the amendment in the July 26, 1999, **Federal Register** (64 FR 40326). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on August 25, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. Any revisions that we do not discuss below concern minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Non-Substantive Revisions and Correction of Typographical Errors

1. Mississippi assigned an incorrect section number (Section 5343.) to its regulatory provisions for "Use of Explosives: Pre-blasting Survey." Mississippi proposed to change this incorrect section number to Section 5349.

2. Mississippi proposed to correct typographical errors and to make other non-substantive revisions in the following sections: Section 105. Definitions; Section 407. Contents of Application for Exemption; Section 413. Conditions of Exemption and Right of Inspection and Entry; Section 1105. Areas Where Mining is Prohibited or Limited; Section 2103. Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations; Section 2105. Coal Exploration Compliance Duties: Section 2313. Permit Term Information; Section 3113. Review of Permit Applications; Section 3121. Permit Terms; Section 3509. Permit Renewals: Completed Applications; Section 3713. Qualified Laboratories; Section 5359. Disposal of Excess Spoil: General Requirements; Section 5377. Coal mine waste: Impounding structures; Section 5391. Backfilling and Grading: General Grading Requirements; Section 5393. Backfilling and grading: Thin Overburden; Section 53111. Roads: General; Section 5703. Steep Slopes: Backfilling and grading: Steep slopes; and Section 5903. Coal Preparation Plants: Performance Standards.

Correction of these typographical errors and other non-substantive revisions clarify the existing regulations. These revisions are no less effective than the Federal regulations and will not negatively impact the effectiveness of the Mississippi regulations.

B. Revisions to Mississippi's Regulations that are Required at 30 CFR 924.16

1. Section 3301. Formal Hearing

In accordance with the Federal regulations at 30 CFR 775.11(b)(2) and 43 CFR 4.1367, we required the State to add provisions at section 3301(b) that pertain to temporary relief concerning permit decisions. Mississippi revised paragraph (b) to read as follows:

> Any party may file a petition for temporary relief from the Permit Board's action in conjunction with the filing of the request for a formal hearing or at any time before a final decision is issued by the Permit Board after a formal hearing.

We find that the provision at section 3301(b) is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 775.11(b)(2) and 43 CFR 4.1367. Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(f).

2. Section 4501. Procedures for Seeking Release of Performance Bond

Mississippi proposed to revise paragraph (c) to clarify that Federal, State, and local governmental agencies which have special expertise with respect to any environmental, social, or economic impact involved in the coal mining operation are allowed to file written objections to the proposed bond release and to request public hearings. We find that the provision at section 4501(c) is consistent with and no less effective than the counterpart Federal regulation at 30 CFR 800.40(f) and no less stringent than section 519(f) of SMCRA. Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(g).

3. Section 5333. Hydrologic Balance: Surface- and Ground-Water Monitoring

Mississippi proposed to revise paragraph (b)(3)(A) to require the operator to demonstrate that the coal mining operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas. We find that the provision at section 5333 is substantively identical to and is no less effective than the counterpart Federal regulation at 30 CFR 816.41(e)(3)(i). Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(h).

4. Section 6501. Cessation Orders

Mississippi proposed to revise paragraph (c)(4) to replace a reference to § 53–9–69 with a reference to § 6509. We find that the provision at section 6501(c)(4) is substantively the same as and no less effective than the counterpart Federal regulation at 30 CFR 843.11(c)(4). Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(j).

5. Section 6511. Formal Review of Citations

a. At paragraph (a), Mississippi proposed to add a requirement that the Commission notify parties in writing of the time and place of the hearing at least five working days before the hearing date. We find that the provision at section 6511(a) is consistent with and no less stringent than section 525(a)(2) of SMCRA and no less effective than the Federal regulation at 43 CFR 4.1167. Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(k). Mississippi also proposed to revise paragraph (a) to require interested parties to request formal reviews within

30 days of the date of the Commission, the Executive Director, or the Executive Director's authorized representative took the action that is being contested during the formal review. We are approving this revision because it is consistent with and no less stringent than section 525(a)(1) of SMCRA.

b. Mississippi proposed to revise paragraph (1)(1) by changing the reference room § 6511(e) to § 6511(a). We find that the provision at section 6511(1)(1) is substantively identical to and no less effective than the counterpart Federal regulation at 43 CFR 4.1186(a)(1). Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(m).

c. Mississippi proposed to revise paragraph (n)(9) to read as follows:

> (9) Any party desiring to appeal a decision of the Commission granting or denying an application for expedited review may appeal to and seek relief from the appropriate chancery court pursuant to § 53–9–77.

We find that the provision at section 6511(n)(9) is consistent with and no less effective than the counterpart Federal regulation at 43 CFR 4.1187(f). Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(n).

C. Revisions to Mississippi's Regulations That the State Made at Its Own Initiative

1. Section 105. Definitions

Mississippi proposed to revise the definition for performance bond to read as follows:

> Performance Bond—a surety bond, collateral bond, letter or letters of credit, or self-bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the act, these regulations, this program and the requirements of the permit and reclamation plan.

In the above definition for performance bond, Mississippi added "letter or letters of credit." We are approving this revision because a letter or letters of credit is a form of collateral bond in accordance with the Federal regulations at 30 CFR 800.21(b). Therefore, Mississippi's definition of performance bond is no less effective than the Federal definition of performance bond at 30 CFR 701.5.

2. Section 1105. Areas Where Mining Is Prohibited or Limited

Mississippi proposed to revise paragraph (c) to read as follows:

> (c) on any lands which will adversely affect any publicly owned park or any place included on the National Register of Historic Places, unless approved jointly by the Permit Board and the federal, state or local agency with jurisdiction over the park or place;

Mississippi is clarifying that the Mississippi Environmental Quality Permit Board (Permit Board) and not the Mississippi Commission on Environmental Quality (Commission) is the State entity which must along with certain other government agencies jointly approve surface coal mining operations on any lands which will adversely affect any publicly owned park or any place included on the National Registry of Historic Places. Therefore, we are approving this revision because it is substantively the same as the counterpart Federal regulation at 30 CFR 761.11(c).

3. Section 3119. Permit Approval and Denial Actions

Mississippi proposed to add new paragraph (b)(2) to read as follows:

> (2) Notwithstanding any of the foregoing provisions of this Section, no time limit under the act or this Section requiring the Permit Board to act shall be considered expired from the time the Permit Board requests further information under § 3113(d) until the final decision of the Permit Board.

Mississippi's proposed new regulation pertains to decisions regarding permit issuance. Mississippi proposed that time limits imposed by its Act or this section of its regulations will not expire during a certain time period if the Permit Board requests, from permit applicants, information on current violations by those permit applicants. The time period runs from the time the Permit Board requests the information until the time the Permit Board makes its final decision on the permit.

If a current violation exists, section 3113(d) of the Mississippi regulations mandates that the Permit Board require the applicant or the person who owns or controls the applicant to submit certain information to the Permit Board before it can issue a permit. This requirement is substantively identical to the Federal regulations at 30 CFR 773.15(b)(1) (i)–(ii). Also, section 3113(b) states that the Permit Board shall not issue a permit if any surface coal mining and reclamation operation owned or controlled by the applicant or any person who owns or controls the applicant is currently in violation of the State Act, Federal Act, any corresponding State or Federal regulations, a State program, or any Federal or State law, rule, or regulation pertaining to air or water environmental protection. This regulation is substantively the same as the counterpart Federal regulation at 30 CFR 773.15(b)(1).

Although, we do not have a counterpart Federal regulation or statute to Mississippi's proposed new regulation and in light of the provisions in the State regulations at sections 3113 (b) and (d) and the Federal regulations at CFR 773.15 (b) and (b)(1) (i)–(ii), it makes sense that any corresponding time frames imposed during the permit approval process must be adjusted accordingly. The adjustments are necessary because of the time that will be required for the State to make the request to applicants for information on current violations and because of the time that will be required for the applicant to receive the request and to respond to it. Therefore, we are approving the addition of this new proposed regulation because it is not inconsistent with the Federal regulations at 30 CFR 773.15 (b) and (b)(1) (i)–(ii).

4. Section 4310. Form of the Performance Bond

Mississippi proposed to add the language "a letter or letters of credit" to the list of acceptable forms of performance bond at new paragraph (4). Mississippi also redesignated old paragraph (4) as new paragraph (5). We are approving the revision because a letter or letters of credit is a form of collateral bond in accordance with the Federal regulations at 30 CFR 800.21(b).

5. Section 4303. Terms and Conditions of the Bond

Paragraph (g) of this section pertains to letters of credit. Mississippi proposed to revise paragraph (g)(6) by replacing the term "indemnity agreement" with the term "letter of credit." We are approving this revision because Mississippi is merely identifying the form of indemnity agreement which, in this particular regulation, is a letter of credit.

6. Section 4701. General

Mississippi proposed to revise paragraph (a) to read as follows:

> (a) Except as in compliance with § 4701(b), the Commission shall proceed to cause the forfeiture of all or part of a bond or other collateral accepted pursuant to Chapter 43 for any permit where required or authorized by § 4705.

Mississippi is clarifying that it can proceed to forfeit in whole or in part, not just bonds, but other collateral accepted according to Chapter 43. Form, Condition and Terms of Performance Bonds and Liability Insurance. Mississippi is also clarifying that the forfeiture will occur unless it decides to withhold forfeiture according to section 4701(b). We are approving this revision because it is consistent with and no less effective than the Federal regulations at 30 CFR 800.50 (a), (a)(1) and (2).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Mississippi program (Administrative Record No. MS–0376). We received comments from two agencies.

Comment 1: In a letter dated July 30, 1999, the Mine Safety and Health Administration stated that it had no comments regarding the amendment (Administrative Record No. MS–0377).

Response: No response is necessary.

Comment 2: The U.S. Army Corps of Engineers in a letter dated August 18, 1999, stated that the proposed amendment should specify all measures in the International System of Units (SI) in lieu of the inch-pound (IP) system (Administrative Record No. MS–0379).

Response: The appropriateness of Mississippi's use of the IP system is not at issue in this rulemaking because the State did not propose any changes pertaining to measures. In addition, the Federal regulations at 30 CFR Part 700 to end do not require states to specify measures in the SI.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Mississippi proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. MS–0377). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 19, 1999, we requested comments on Mississippi's amendment (Administrative Record No. MS–0377), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Mississippi on July 1, 1999. We approve the regulations that Mississippi proposed with the provision that they be published in identical form to the regulations sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 924, which codify decisions concerning the Mississippi program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Mississippi to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Office 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 4, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 924 is amended as set forth below:

PART 924—MISSISSIPPI

1. The authority citation for Part 924 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 924.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 924.15 Approval of Mississippi regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
July 1, 1999	October 26, 1999.	Sections 105; 407; 413; 1105 (c)–(d); 2103; 2105; 2313; 3113; 3119; 3121; 3301(b); 3509; 3713; 4301; 4303(g)(6); 4501(c); 4701(a); 5333(b)(3)(A); 5349; 5359; 5377; 5391; 5393; 53111; 5703; 5903; 6501(c)(4); 6511 (a), (l)(1), & (n)(9).

§ 924.16 [Amended]

3. Section 924.16 is amended by removing and reserving paragraphs (f), (g), (h), (j), (k), (m) and (n).

[FR Doc. 99–27845 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Mailing Online Market Test: Changes in Domestic Classifications and Fees—Final Rule

AGENCY: Postal Service.

ACTION: Final rule; market test termination.

SUMMARY: This serves notice that the United States Postal Service is terminating the Mailing Online market test on October 29, 1999. The Postal Service originally intended that the test, which began on October 30, 1998, would end at a time tied to action on a Request for a Mailing Online experiment. However, such Request has been delayed. Postal management has made the operational decision to end the market test, in accordance with the Postal Rate Commission's Rules of Practice which specify that market tests ordinarily last only one year. This rule makes conforming changes to the Domestic Mail Manual.

EFFECTIVE DATE: October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Lettmann, (202) 268–6261, or Kenneth N. Hollies, (202) 268–3083.

SUPPLEMENTARY INFORMATION: On July 15, 1998, pursuant to its authority under 39 U.S.C. section 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a Request for a Recommended Decision on a Market Test Classification and Fee Schedule and a Recommended Decision on an Experimental Classification and Fee Schedule for Mailing Online Service. The PRC designated the filing as Docket No. MC98–1 and published a notice of the filing, with a description of the Postal Service's proposals, in the **Federal Register** on July 23, 1998 (63 FR 39600).

The Postal Service's Request to the PRC proposed that the Postal Service be permitted to establish new classifications and fees for Mailing Online, first as a market test and later as an experiment. The market test was to permit assessment of the features and viability of the new service while providing input for PRC and Postal Service consideration of the experiment and perhaps a permanent form of Mailing Online. The market test was to be a limited one involving up to 5,000 customers, starting in Tampa, Florida and the northeastern United States.

On October 7, 1998, the Commission issued its favorable Opinion and Recommended Decision on the market test. The Postal Service Governors voted on October 16, 1998, to accept the Commission's recommendation. Operation of the market test subsequently commenced on October 30, 1998.

On May 3, 1999, the Board of Governors, in Resolution No. 99–5, directed the withdrawal of the request for an experiment in consideration of major changes that had occurred in the structure of the Postal Service's presence on the Internet. These changes rendered inaccurate the factual foundation underlying the earlier request for a Mailing Online experiment.

Accordingly, the market test is being terminated at the end of one year based on operational considerations. This decision also accords with the PRC's Rules of Practice, 39 CFR 3001.162, which specify that market tests ordinarily last only up to one year. The Postal Service is now providing notice that operation of the Mailing Online market test will cease at approximately 1:59 p.m. EST on Friday, October 29, 1999.

Background

Mailing Online is a service that allows postal customers with access to a personal computer and the Internet to transmit electronic documents to a postal Web site for subsequent batching and transmission to a contract printer, who creates and presents the physical mailpieces for entry into the mailstream. Payment for postage and mailpiece preparation is made Online via credit card.

The Postal Service remains committed to Mailing Online and has not abandoned the project despite termination of the market test. Development of the single-channel USPS.com Internet presence continues and activities related to Mailing Online are being closely coordinated, although they are both under development and still being tested. Postal management hopes to ask the Governors to authorize the filing of a new request for a Mailing Online experiment, based upon the USPS.com architecture, in the near future.

Because of the limited scope of the market test, the Postal Service earlier did not solicit comment on its implementation. Similarly, the Postal Service finds no need to solicit comment on its termination.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as follows:

E Eligibility

* * * * *

E110 Basic Standards

1.0 CLASSIFICATION AND DESCRIPTION

* * * * *

1.3 Matter Closed Against Postal Inspection

[Revise 1.3 by removing reference to documents created and mailed by means of Mailing Online to read as follows:]

Matter closed against postal inspection must be mailed as First-Class Mail or Express Mail. Electronic documents created for possible transmission as First-Class Mail are closed against inspection. Hard copy versions of electronic documents, while being prepared for entry as First-Class Mail, also are closed against postal inspection. The USPS may open mail other than First-Class Mail or Express Mail to determine whether the proper rate of postage is paid. Material wrapped or packaged so that it cannot be examined easily or cannot be examined without destruction or serious damage is closed against postal inspection and is charged the appropriate First-Class Mail or Express Mail rate.

* * * * *

4.0 FEES

4.1 Presort Mailing

[Revise 4.1 to remove references to Mailing Online mailers to read as follows:]

A First-Class Mail presort mailing fee must be paid once each 12-month period at each office of mailing by any person or organization entering mailings at automation or Presorted First-Class Mail rates. Payment of one fee allows a mailer to enter mail at all those rates. Persons or organizations paying this fee may enter clients' mail as well as their own mail. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that which is in effect on the date of payment.

* * * * *

E140 Automation Rates

1.0 BASIC STANDARDS

[Revise 1.1b by removing reference to Mailing Online in G093 to read as follows:]

1.1 All Pieces

All pieces in a First-Class Mail automation rate mailing must:

* * * * *

b. Be part of a single mailing of at least 500 pieces of automation rate First-Class Mail, subject to 1.2.

* * * * *

E611 All Standard Mail

1.0 BASIC INFORMATION

* * * * *

1.2 Postal Inspection

[Revise 1.2 by removing reference to documents created in electronic form by means of Mailing Online to read as follows:]

Standard Mail is not sealed against postal inspection except for electronic documents retained by the Postal Service, which are sealed against postal inspection. Regardless of physical closure, the mailing of articles at Standard Mail rates constitutes consent by the mailer to postal inspection of the contents.

* * * * *

E612 Additional Standards for Standard Mail (A)

* * * * *

4.0 BULK RATES

* * * * *

4.7 Annual Fees

[Revise 4.7 by removing reference to fees in G093 to read as follows:]

Standard Mail (A) is subject to an annual mailing fee once each 12-month period. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that in effect on the date of payment. Each mailer who enters mail at Standard Mail (A) rates paid with a meter or precanceled stamps must pay an annual mailing fee at each post office of mailing; a mailer paying this fee may enter clients' mail as well as the mailer's own. The mailer whose permit imprint appears on pieces in a mailing paid with a permit imprint must show that permit number on the postage statement and must pay the annual mailing fee for that permit; this fee is in addition to the fee for an application to use permit imprints.

* * * * *

4.9 Preparation

[Revise 4.9b by removing reference to Mailing Online in G093 to read as follows:]

Each Standard Mail (A) mailing is subject to these general standards:

* * * * *

b. Each mailing must contain at least 200 pieces or 50 pounds. See E620 for volume requirement eligibility unique to Presorted Standard rate mailings. Other volume standards can also apply, based on the rate claimed.

* * * * *

G General Information

* * * * *

[Remove G093, Mailing Online, and remove the preceding headings G000 and G090.]

* * * * *

P040 Permit Imprints

5.0 MAILINGS

5.1 Minimum Quantity

[Remove 5.1d, which provided for Mailing Online permit imprint mailings.]

* * * * *

These revisions will be incorporated into the pages of the Domestic Mail Manual. An appropriate amendment to 39 CFR 111.3 will be published in the **Federal Register** to reflect these changes.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 99–27906 Filed 10–25–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6462–7]

RIN 2060–AF26

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing publicly owned treatment works (POTW). The primary hazardous air pollutants (HAP) emitted by these sources include xylenes, methylene chloride, toluene, ethyl benzene, chloroform, tetrachloroethylene, benzene, and naphthalene.

Each of these HAP can cause adverse health effects provided sufficient exposure. For example, exposure to methylene chloride can adversely affect the central nervous system and has been shown to cause liver and lung cancers in animals, while benzene is known to cause cancer in humans.

With this final rule, the EPA is requiring air pollution controls on a new or reconstructed treatment plant at a POTW that is a major source of HAP. The standards also require that new and existing POTW treating regulated waste streams from an industrial user, for the purpose of allowing that industrial user to comply with another NESHAP, meet the treatment and control requirements of the other relevant NESHAP.

EFFECTIVE DATE: October 26, 1999.

ADDRESSES: *Docket.* Docket No. A–96–46, containing information considered by the EPA in development of the promulgated standards, is available for public inspection from 8 a.m. to 5:30 p.m., Monday through Friday, at the following address in room M–1500, Waterside Mall (ground floor): US Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone number (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Responses to Comments Document. The responses to comments document for the promulgated standards may be obtained from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777, or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 605–6000 or (800) 553–6847 or via the Internet at www.fedworld.gov/ntis/ntishome/html. Please refer to "National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works—Background Information for Final Standards: Summary of Public Comments and Responses" (EPA–453/R–99–008, October 1999).

The document contains the following: (1) a summary of all the public comments made on the proposed standards and the Administrator's responses to the comments, and (2) a summary of the changes made to the standards since proposal. This document is also available for downloading from the Technology Transfer Network (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule or the analyses performed in developing this rule, contact Mr. Robert Lucas, Waste and Chemical Processes Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0884, facsimile number (919) 541–0246, electronic mail address "lucas.bob@epa.gov". For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA regional representatives. For a listing of EPA Regional contacts, see the following **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Electronic Access. These final standards and all other information considered by the EPA in the development of the final standards are available in Docket Number A–96–46 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). Electronic versions of documents from the Office of Air and Radiation (OAR) are available through the EPA's OAR Technology Transfer Network Web site (TTNWeb). The TTNWeb is a collection of related Web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the Internet via the World Wide Web location at the following address: "http://www.epa.gov/ttn". Electronic versions of this preamble and rule are located under the OAR Policy and Guidance Information Web site, at "http://www.epa.gov/ttn/oarpg/", under the **Federal Register** notices section. If more information on the TTNWeb is needed, contact the Systems Operator at (919) 541–5384.

EPA Regional Offices

Director, Office of Environmental Stewardship, Attn: Air Compliance Clerk
U.S. EPA Region I, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023, (617) 918–1740
Umesh Dholakia
U.S. EPA Region II, 290 Broadway Street, New York, NY 10007–1866, (212) 637–4023
Dianne Walker
U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–3297
Lee Page
U.S. EPA Region IV, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–3104, (404) 562–9131
Bruce Varner
U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–6793
Jim Yang (6EN–AT)
U.S. EPA Region VI, First Interstate Bank Tower, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, (214) 665–7578
Gary Schlicht
U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7097
Tami Thomas-Burton
U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202, (303) 312–6581
Ken Bigos
U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1200
Dan Meyer
U.S. EPA Region X, 1200 Sixth Street, Seattle, WA 98101, (206) 553–4150

Regulated Entities. Entities potentially regulated by this action are publicly owned treatment works. Regulated categories and entities include:

Category	Standard Industrial Classification (SIC) codes	North American Industrial Classification System (NAICS) codes	Examples of potentially regulated entities
Industry (3) Not affected			
Federal Government	4952	22132	Sewage treatment facilities, and federally owned treatment works.
State/local/tribal governments	4952	22132	Sewage treatment facilities, municipal wastewater treatment facilities, and publicly owned treatment works.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this promulgated action, you should carefully examine the applicability criteria in section III. A of this document and in 40 CFR 63.1580. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. National emission standards for hazardous air pollutants from POTW were proposed in the **Federal Register** on December 1, 1998 (63 FR 66084). Today's **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Clean Air Act (Act), judicial review of the final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Only an objection to this action which was raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in reading the preamble to the final rule.

I. Background
  A. Source Category Description
  B. Overview of HAP Emissions from POTW
II. Summary of Considerations Made in Developing This Standard
  A. Source of Authority
  B. Stakeholder and Public Participation
III. Summary of Promulgated Standards
  A. Affected Sources and Applicability
  B. Requirements
IV. Summary of Impacts
V. Significant Comments and Changes to the Proposed Standards
  A. Major Source Determination
  B. Co-location With Other Sources of HAP Emissions
  C. Control Requirements
  D. Federally Owned Treatment Works
VI. Administrative Requirements
  A. Executive Order 12866
  B. Executive Order 13045
  C. Paperwork Reduction Act
  D. Regulatory Flexibility Act
  E. Unfunded Mandates
  F. Executive Order 12875
  G. Executive Order 13084
  H. National Technology Transfer and Advancement Act
  I. Congressional Review Act
  J. Executive Order 12612

I. Background

A. Source Category Description

The EPA's initial list of categories of major sources of HAP emissions, established under section 112(c)(1) of the Act, included POTW. This list was published on July 16, 1992 (57 FR 31576). The POTW source category is defined in the supporting documentation for the initial source category list. The POTW source category "includes emissions from wastewaters which are treated at a POTW."

> These wastewaters are produced by industrial, commercial, and domestic sources. Emissions from these wastewaters can occur within the collection system (sewers) as well as during treatment at the POTW. Control options include, but are not limited to, reduction of HAP's at the source before they enter the collection system, add-on emission controls on the collection system and at the POTW, and/or treatment process modifications/substitutions. (Documentation for Developing the Initial Source Category List, EPA–450/3–91–030, July 1992)

Section 112(e)(5) of the Act defines POTW by referring to the definition of treatment works in title II of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act. As set forth in section 212(2), 33 U.S.C. 1292(2), treatment works include the wastewater treatment units themselves, as well as intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. Any of these devices which are publicly owned may be a POTW. The wastewater collected, transmitted, and treated by such POTW may be generated by industrial, commercial, and/or domestic sources.

B. Overview of HAP Emissions From POTW

The HAP emitted by POTW originate in wastewater streams discharged by industrial, commercial, and other facilities. Since POTW can receive any HAP constituent, potentially, POTW can have emissions of any HAP. Currently, the primary HAP constituents associated with POTW sources include xylenes, methylene chloride, toluene, ethyl benzene, chloroform, tetrachloroethylene, benzene, and naphthalene.

Each of these HAP can cause adverse health effects provided sufficient exposure. For example, exposure to methylene chloride can adversely affect the central nervous system and has been shown to cause liver and lung cancers in animals, while benzene is known to cause cancer in humans.

Hazardous air pollutants present in wastewater entering POTW treatment plants can biodegrade, adhere to sewage sludge, volatilize to the air, or pass through (remain in the discharge) to receiving waters. Within the POTW source category, wastewater treatment units are the most likely source for HAP emissions, but wastewater collection systems (including transport systems) and other devices may also have emissions.

II. Summary of Considerations Made in Developing This Standard

A. Source of Authority

Section 112 of the Act addresses stationary sources of HAP. Section 112(b) of the Act, as amended, lists 188 chemicals, compounds, or groups of chemicals as HAP. The EPA is directed by section 112 to regulate the emissions of HAP from stationary sources by establishing national emission standards.

The statute requires the EPA to establish standards to reflect the maximum degree of reduction in HAP emissions through application of maximum achievable control technology (MACT) to major sources. Section 112(a)(1) of the Act defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

Section 112(d)(3) prescribes a minimum level of control for major sources of HAP, referred to as the MACT floor.

Section 112(e)(5) of the Act required the EPA to promulgate a MACT standard for publicly owned treatment works by November 15, 1995. Under section 112(j)(2) (the "MACT hammer"), if the EPA failed to promulgate a POTW MACT standard by November 15, 1997, major sources in the POTW category would be required to submit, within 18 months (by May 15, 1999), an application for a permit which would impose MACT requirements on a case-by-case basis. Although the EPA was unable to meet this deadline, on May 14, 1999, the EPA promulgated a rule (64 FR 26311) which extended the section 112(j) permit application deadline for this source category until December 15, 1999. The obligation for facilities to file a permit application under section 112(j)(2) is eliminated by the promulgation of these final standards.

B. Stakeholder and Public Participation

As prescribed in section 112(n)(3) of the Act:

> The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions.

During the development of these final standards, representatives of POTW and sanitation districts were extensively consulted. The EPA worked closely with a trade association known as the Association of Metropolitan Sewerage Agencies (AMSA) for approximately 7 years.

A database comprising information supplied by the AMSA was used in the evaluation of HAP emissions and emissions control for POTW. Estimates of organic HAP emissions from model sources were developed by the EPA based on information supplied by the AMSA, including most of the modeling inputs used for the EPA WATER8 emissions estimation model.

III. Summary of Promulgated Standards

This section provides a summary of the final standards contained in 40 CFR part 63, subpart VVV. The full regulatory text is printed in today's document and is also available in Docket No. A–96–46, directly from the EPA, or from the Technology Transfer Network (TTN) on the EPA's electronic bulletin board. More information on how to obtain a copy of the final regulation is provided in the **SUPPLEMENTARY INFORMATION** section of this document.

A. Affected Sources and Applicability

The wastewater treatment plant at a POTW is the affected source for this subpart. The subpart is applicable only to POTW that are located at facilities which are major sources of HAP emissions. In addition, the final rule exempts facilities which are not required to develop a pretreatment program under 40 CFR part 403.

B. Requirements

The final standards for POTW do not require any additional controls for existing non-industrial POTW treatment plants. New or reconstructed non-industrial POTW treatment plants must reduce their HAP emissions. This is accomplished by using covers and control devices on the POTW treatment units up to, but not including, the secondary treatment units.

In response to comments that the control requirements for new or reconstructed non-industrial POTW were too prescriptive and did not account for the differences between POTW treatment plants, the final standards include an alternative compliance option. Using the available HAP data provided by the trade association, the EPA calculated a fraction emitted value equivalent to applying covers and control devices on treatment units up to, but not including, the secondary treatment units. Under this option, each month, facilities calculate the fraction emitted by dividing the sum total of HAP emissions by the sum total of HAP loading to the wastewater treatment plant. Facilities must demonstrate that the annual rolling average of the fraction emitted does not exceed 0.014. Facilities can use any combination of pretreatment, wastewater treatment plant modifications, and control devices to meet the fraction emitted limit.

The POTW which provide treatment and control for a waste stream regulated by an industrial MACT are defined as industrial POTW treatment plants. Under the industrial discharger's MACT, the POTW provides air pollution control, generally under a contractual agreement. Today's POTW standard makes these controls directly enforceable on the POTW. An owner or operator of a new or reconstructed industrial POTW treatment plant must comply with the existing source MACT or the new or reconstructed MACT for non-industrial POTW, whichever is more stringent.

IV. Summary of Impacts

There are approximately 16,000 POTW nationwide that receive and treat approximately 113.6 million cubic meters per day (30 billion gallons per day) of domestic, commercial, and industrial wastewater. It was not possible to survey each facility and make a major source determination. Although only six major sources have been identified, the EPA knows that additional major sources will be subject to these standards. Based on discussions with POTW representatives, the EPA believes that these additional major sources do not have different emission sources or controls than the six identified facilities. Today's final rule does not add new requirements for these existing facilities.

Several POTW have been identified as possible industrial POTW. In addition, as more industrial NESHAP are promulgated, the EPA believes that more POTW could be used by industries to comply with the requirements of their industrial NESHAP. Today's final rule does not require any additional control, but it does make the industrial NESHAP control requirements directly enforceable on the POTW.

Current information from POTW representatives projects no new or reconstructed major POTW for the next 5 years. Thus, the EPA does not expect that any facilities will be required to apply the emission controls included in today's final rule, and the EPA projects minimal impacts from today's action.

V. Significant Comments and Changes to the Proposed Standards

Nineteen comment letters were received on the proposed rule. The commenters included State and local air pollution agencies, owners and operators of POTW, trade organizations, representatives of academia, and private citizens. A detailed discussion of these comments and responses can be found in the Background Information Document for the Final Standards (EPA–453/R–99–008).

The EPA's review of the significant issues raised by the commenters resulted in several changes to the proposed rule. This section summarizes the significant comments and provides the EPA's response to those comments.

A. Major Source Determination

The EPA developed a methodology which included a number of ways by which a POTW could determine if their treatment plant was a major source of HAP emissions. The methods developed were presented in a tiered approach to provide maximum flexibility and were primarily intended to assist the thousands of POTW treatment plants that are not major sources. Several comments were received that opposed including any methodology for major source determination.

Due to title V, part 70 determinations, a POTW and its local air pollution regulatory authorities should have agreement on the methods by which the POTW estimates emissions from wastewater treatment operations. Therefore, the EPA has removed procedures for major source determination, and has referred to 40 CFR part 63, Subpart A—General Provisions, for the definition of a major source.

The procedures that were removed from the standards, along with additional guidance, will be included in a future document on estimating emissions from POTW. The EPA will continue to provide assistance on the use of the WATER8 model. Requests for guidance on emissions estimation for the purpose of major source determination will be addressed on an "as-needed" basis, and may be obtained by consulting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of today's final rule.

B. Co-Location With Other Sources of HAP Emissions

Several commenters believed that if a POTW treatment plant is not a major source, then it should not be considered a major source if it is co-located with another major source. These commenters recommended that the emissions should be based on actual emissions from the wastewater treatment portion of the POTW and should not include emissions from co-located sources (*e.g.*, portable internal combustion engines).

The term "major source" is defined in 40 CFR part 63, Subpart A—General Provisions, and includes the requirement for considering emissions and the potential for emissions from co-located sources when determining major source status. Therefore, the major source determination must be based on facility-wide emissions.

C. Control Requirements

Several commenters believed that it was inappropriate to require POTW to be subject to §§ 63.693 through 63.697 of 40 CFR part 63, Subpart DD—National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations. The commenters stated that the best-controlled facility, on which the EPA based its MACT floor for new and reconstructed facilities, does not comply with these standards.

In response to the comments, the EPA has removed requirements from §§ 63.693 through 63.697 of 40 CFR part 63 which are not appropriate for POTW. In particular, the final rule does not require the use of an organic vapor analyzer to check for leaks in either the closed-vent system or the covers on tanks.

In addition, the EPA has added an alternative compliance option based on a modeling study of the control requirements. This alternative compliance option allows a new or reconstructed source to comply by demonstrating, for units up to, but not including the secondary treatment, that the weighted fraction emitted does not exceed 0.014 based on an annual average. Facilities calculate the weighted fraction emitted by dividing the sum total of HAP emissions by the sum total of HAP loading to the wastewater treatment plant.

A POTW may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard. Facilities can determine the appropriate control efficiency for a particular control device. However, the POTW must document these calculations and demonstrate continuous compliance to the Administrator's satisfaction. In this context, continuous compliance refers to an annual rolling average of the fraction of the HAPs in the wastewater treated by the POTW which are emitted to the air.

D. Federally Owned Treatment Works

One commenter questioned whether Federally Owned Treatment Works (FOTW) should be subject to this rulemaking. The commenter suggested that FOTW should be excluded from the POTW source category because the term "publicly owned treated works" has been used more narrowly in other statutory contexts.

The EPA notes that many treatment works owned and operated by municipalities, States, and intermunicipal or interstate agencies are essentially the same in design, in operation, and in the types of wastewater that are treated as treatment works operated by the Federal government. Regulations developed under the Clean Water Act generally require that both types of facilities meet the same control requirements. EPA does not believe that it would be a constructive use of governmental resources to promulgate a separate MACT standard for FOTW. In addition, EPA believes that the inclusion of FOTW within the POTW source category is consistent with the intent of the Federal Facility Compliance Act of 1992.

EPA understands the confusion which could be caused by differences in the meaning of the term "publicly owned treatment works" in differing regulatory contexts. By including treatment works owned by the Federal government in the POTW source category, EPA does not intend to alter in any way the manner in which the term "publicly owned treatment works" has been interpreted or applied under any other statute or in any other regulation. Accordingly, EPA has revised the definition of POTW in this rule both to recognize this distinction and to confirm the intent of EPA to include FOTW in this source category.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The OMB has deemed this regulatory action significant and requested review of this final rulemaking package. Therefore, the EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

This final rule is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1891.02), and a copy may be obtained from Sandy Farmer by mail at the OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

Generally, respondents are required to submit one-time reports of (1) start of construction for new facilities, and (2) anticipated and actual start-up dates for new facilities. For sources constructed or reconstructed after the effective date of the relevant standard, the regulation requires that the source submit an application for approval of construction or reconstruction. The application is required to contain information on the air pollution control that will be used for each potential HAP emission point.

For POTW facilities, the public reporting and recordkeeping burden is estimated to average 41 hours per respondent per year. This estimate includes time for preparing and submitting notices, preparing and submitting demonstrations and applications, reporting releases, gathering information, and preparing and submitting reports. No capital costs are anticipated.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of certain proposed and final rules unless the agency certifies that the rule in question will not have a significant economic impact on a substantial number of small entities. The EPA's findings in this section are the result of the statutory requirements of the RFA as amended by the Small Business Regulatory Enforcement Fairness Act.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will impose no new requirements on existing industrial or non-industrial POTW treatment plants or new industrial POTW treatment plants. The EPA is uncertain whether any new non-industrial POTW treatment plants would be of sufficient size to be subject to this rule, but the number of affected sources would be very small in any case.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

F. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule is required under section 112 (e)(5) of the Clean Air Act. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

In developing this rule, the EPA consulted with these governments to enable them to provide meaningful and timely input in the development of this rule. As discussed in section II.B of this document, consultation opportunities included presumptive MACT partnerships, stakeholder meetings, and participation on the internal working group that prepared these final standards. State and local regulatory agencies are expected to be in favor of this final rule. Prior to publication of the proposed rule, some representatives of local governments had expressed concerns about the emission models and testing used to determine area source status. The EPA worked with these representatives in developing this final rule, and their concerns should be resolved with the publication of this final rule.

G. Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This final rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule imposes no new requirements on existing industrial or non-industrial POTW treatment plants or new industrial POTW treatment plants. The EPA is uncertain whether any new non-industrial POTW treatment plants will be of sufficient size to be subject to this rule, but the number of affected sources would be very small in any case and would not be likely to be located in the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

This final rulemaking includes technical standards and requirements for taking measurements. Consequently, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Network (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

The EPA searched for methods and tests required by this final rule, all of which are methods or tests previously promulgated. This final rule includes methods that measure: (1) Vapor leak detection (EPA Method 21); (2) volatile organic compound concentration in vented gas stream (EPA Method 18); (3) volumetric flow rate of the vented gas stream (EPA Methods 2, 2A, 2C, or 2D); and (4) sampling site location (Method 1 or 1A). These EPA methods are found in Appendix A to 40 CFR parts 60, 63, and 136.

Except for EPA Methods 2 and 2C (Appendix A to 40 CFR part 60), no other potentially equivalent methods for the methods and tests in the rule were found in the NSSN database search. The EPA identified one Chinese (Taiwanese) National Standard (CNS) which may potentially be an equivalent method to EPA Methods 2 and 2C. The CNS method is CNS K9019 for measuring velocity and flow rates in stack gases.

However, the EPA does not believe that CNS K9019 is a voluntary consensus method. It is unlikely that CNS K9019 was considered by industry groups or national standards setting organizations, because it was not developed in the U.S. and there is no available information about it in the U.S.

To confirm this, the EPA requested comments at proposal on whether any U.S. industry has adopted CNS K9019 as a voluntary consensus method. The EPA also requested comments on whether any potential voluntary consensus methods existed that could be allowed in addition to the methods in the proposed rule. No potential voluntary consensus methods were submitted with the public comments on the proposed version of this final rule. The EPA interprets this to mean that no applicable voluntary consensus standards are available for POTW.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 26, 1999.

J. Executive Order 12612

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255, August 10, 1999) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685, October 30, 1987) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. This rule is not likely to have a substantial direct effect on States because it imposes no new control requirements on existing treatment works, and because the incremental cost of any required controls for new sources would not be significant in the context of the construction of new facilities. Moreover, since the authority to regulate any affected sources will be routinely delegated to State permitting authorities, this rule should have no substantial effect on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Pretreatment, Publicly owned treatment works, Reporting and recordkeeping requirements.

Dated: October 15, 1999.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart VVV to read as follows:

Subpart VVV—National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

Sec.

Applicability

63.1580 Am I subject to this subpart?
63.1581 Does the subpart distinguish between different types of POTW treatment plants?

Industrial POTW Treatment Plant Description and Requirements

63.1582 What are the characteristics of an industrial POTW treatment plant?
63.1583 What are the emission points and control requirements for an industrial POTW treatment plant?
63.1584 When do I have to comply?
63.1585 How does an industrial POTW treatment plant demonstrate compliance?

Non-industrial POTW Treatment Plant Requirements

63.1586 What are the emission points and control requirements for a non-industrial POTW treatment plant?
63.1587 When do I have to comply?
63.1588 What inspections must I conduct?
63.1589 What records must I keep?
63.1590 What reports must I submit?

General Requirements

63.1591 What are my notification requirements?
63.1592 Which General Provisions apply to my POTW treatment plant?
63.1593 How will the EPA determine if I am in compliance with this subpart?
63.1594 Who enforces this subpart?
63.1595 List of definitions.
Table 1 to Subpart VVV—Applicability of 40 CFR Part 63 General Provisions to Subpart VVV

Applicability

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if the following are all true:

(1) You own or operate a publicly owned treatment works (POTW) that includes an affected source (§ 63.1595);

(2) The affected source is located at a major source of hazardous air pollutant (HAP) emissions; and

(3) Your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8 (for a POTW owned or operated by a municipality, state, or intermunicipal or interstate agency), or your POTW would meet the general criteria for development and implementation of a pretreatment program (for a POTW owned or operated by a department, agency, or instrumentality of the Federal government).

Note to paragraph (a)(2): See § 63.2 of the national emission standards for hazardous air pollutants (NESHAP) general provisions in subpart A of this part for a definition of major source.

(b) If your existing POTW treatment plant is not located at a major source as of October 26, 1999, but thereafter becomes a major source for any reason other than reconstruction, then, for the purpose of this subpart, your POTW treatment plant would be considered an existing source.

(c) If an industrial major source complies with applicable NESHAP requirements by using the treatment and controls located at your POTW, your POTW is considered to be a major source regardless of whether you otherwise meet the applicable criteria.

(d) If you reconstruct your POTW treatment plant, then the requirements for a new or reconstructed POTW treatment plant, as defined in § 63.1595, apply.

§ 63.1581 Does the subpart distinguish between different types of POTW treatment plants?

Yes, POTW treatment plants are divided into two subcategories. A POTW treatment plant which does not meet the characteristics of an industrial POTW treatment plant belongs in the non-industrial POTW treatment plant subcategory as defined in § 63.1595.

Industrial POTW Treatment Plant Description and Requirements

§ 63.1582 What are the characteristics of an industrial POTW treatment plant?

(a) Your POTW is an industrial POTW treatment plant if an industrial discharger complies with its NESHAP by using the treatment and controls located at your POTW. Your POTW accepts the regulated waste stream and provides treatment and controls as an agent for the industrial discharger. Industrial POTW treatment plant is defined in § 63.1595.

(b) If, in the future, an industrial discharger begins complying with its NESHAP by using the treatment and controls at your POTW, then on the date that the industrial discharger certifies compliance, your POTW treatment plant will be considered an industrial POTW treatment plant.

(c) If your POTW treatment plant accepts one or more specific regulated industrial waste streams as part of compliance with one or more other NESHAP, then you are subject to all the requirements of each appropriate NESHAP for each waste stream, as described in the following section. In the case of overlapping NESHAP requirements, the more stringent of the requirements will apply.

§ 63.1583 What are the emission points and control requirements for an industrial POTW treatment plant?

(a) The emission points and control requirements for an existing industrial POTW treatment plant are specified in the appropriate NESHAP(s) for the industrial user(s) (see § 63.1582). For example, an existing industrial POTW treatment plant that provides treatment for a facility subject to subpart FF of this part, the National Emission Standard for Benzene Waste Operations, must meet the treatment and control requirements specified in § 61.348(d)(4) of this chapter.

(b) The emission points and control requirements for a new or reconstructed industrial POTW treatment plant are either those specified by the particular NESHAP(s) which apply to the industrial user(s) who discharge their waste for treatment to the POTW, or those emission points and control requirements set forth in § 63.1586. The set of control requirements which applies to a particular new or reconstructed POTW is that set which requires the most stringent overall control of HAP emissions. If you are uncertain which set of requirements is more stringent, this determination should be made in consultation with the permitting authority. Reconstruction is defined in § 63.1595.

§ 63.1584 When do I have to comply?

(a) *Existing industrial POTW treatment plant.* If you have an existing industrial POTW treatment plant, the appropriate NESHAP(s) for the industrial user(s) sets the compliance date, or the compliance date is 60 days after October 26, 1999, whichever is later.

(b) *New industrial POTW treatment plant.* If you have a new industrial POTW treatment plant, you must be in compliance as soon as you begin accepting the waste stream(s) for treatment. If you begin accepting a specific regulated industrial waste stream(s) for treatment, you must be in compliance by the time specified in the appropriate NESHAP(s) for the industrial user(s).

§ 63.1585 How does an industrial POTW treatment plant demonstrate compliance?

(a) An existing industrial POTW treatment plant demonstrates compliance by operating treatment and control devices which meet all requirements specified in the appropriate industrial NESHAP(s). Requirements may include performance tests, routine monitoring, recordkeeping, and reporting.

(b) If you have a new or reconstructed industrial POTW plant, you must first determine whether the control requirements set forth in the applicable industrial NESHAP(s) or the control requirements applicable to a new or reconstructed nonindustrial POTW under § 63.1586 would require more stringent overall control of HAP emissions. You must then meet whichever set of requirements is more stringent. If you determine that the controls required by the applicable industrial NESHAP(s) are more stringent, you demonstrate compliance by operating treatment and control devices which meet all requirements specified in those industrial NESHAP(s). If you determine that the controls required for a new or reconstructed nonindustrial POTW are more stringent, you demonstrate compliance by meeting all requirements in §§ 63.1586 through 63.1590.

Non-industrial POTW Treatment Plant Requirements

§ 63.1586 What are the emission points and control requirements for a non-industrial POTW treatment plant?

There are no control requirements for an existing non-industrial POTW treatment plant. The control requirements for a new or reconstructed non-industrial POTW treatment plant are as follows:

(a) Covers on the emission points up to, but not including, the secondary influent pumping station or the secondary treatment units. These emission points are treatment units that include, but are not limited to, influent waste stream conveyance channels, bar screens, grit chambers, grinders, pump stations, aerated feeder channels, primary clarifiers, primary effluent channels, and primary screening stations. In addition, all covered units, except primary clarifiers, must have the air in the headspace ducted to a control device in accordance with the standards for closed-vent systems and control devices in § 63.693 of subpart DD of this part, except you may substitute visual inspections for leak checks rather than Method 21 of Appendix A of part 60 of this chapter. Reconstructed is defined in § 63.1595.

(1) Covers must be tightly fitted and designed and operated to minimize exposure of the wastewater to the atmosphere. This includes, but is not limited to, the absence of visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) If wastewater is in a treatment unit, each opening must be maintained in a closed, sealed position, unless plant personnel are present and conducting wastewater or sludge sampling, or equipment inspection, maintenance, or repair.

(b) As an alternative to the requirements in paragraph (a) of this section, you may comply by demonstrating, for all units up to the secondary influent pumping station or the secondary treatment units, that the fraction emitted does not exceed 0.014. You must demonstrate that for your POTW, the sum of all HAP emissions from those units divided by the sum of all HAP mass loadings results in a annual rolling average of the fraction emitted no greater than 0.014. You may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard; however, you must demonstrate, to the Administrator's satisfaction that:

(1) You have accurately determined your POTW's annual HAP mass loadings and your POTW's annual HAP emissions as of the date of start-up;

(2) Your POTW meets the fraction emitted standard of 0.014 or less; and

(3) Your POTW has established procedures to demonstrate continuous compliance which are consistent with the criteria set forth in § 63.1588(c)(4).

§ 63.1587 When do I have to comply?

If your POTW treatment plant began construction on or after December 1, 1998, you must comply with all provisions of this subpart either immediately upon startup, or by six months after October 26, 1999, whichever date is later.

§ 63.1588 What inspections must I conduct?

(a) If your treatment units are required to have covers, you must conduct the following inspections:

(1) You must visually check the cover and its closure devices for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) You must perform an initial visual inspection with follow-up inspections at least once per year.

(3) In the event that you find a defect on a treatment unit in use, you must repair the defect within 45 days. If you cannot repair within 45 days, you must notify the EPA or the designated State authority immediately and report the reason for the delay and the date you expect to complete the repair. If you find a defect on a treatment unit that is not in service, you must repair the defect prior to putting the treatment unit back in wastewater service.

(b) If you own or operate a control device used to meet the requirements for § 63.1586, you must comply with the inspection and monitoring requirements of § 63.695(c) of subpart DD of this part.

(c) To comply with the performance standard specified in § 63.1586(b), you must develop an inspection and monitoring plan. This inspection and monitoring plan must include, at a minimum, the following:

(1) A method to determine, to the satisfaction of the Administrator, the influent HAP mass loading, *i.e.*, the annual mass quantity for each HAP entering the wastewater treatment plant.

(2) A method to determine, to the satisfaction of the Administrator, your POTW's annual HAP emissions for all units up to and including the secondary influent pumping station or up to and not including the secondary treatment units as of October 26, 1999. The method you use to determine your HAP emissions, such as modeling or direct source measurement, must:

(i) Be approved by your EPA Regional Office, State, or local regulatory agency for use at your POTW;

(ii) Account for all factors affecting emissions from your plant including, but not limited to, emissions from wastewater treatment units; emissions resulting from inspection, maintenance, and repair activities; fluctuations (*e.g.*, daily, monthly, annual, seasonal) in your influent wastewater HAP concentrations; annual industrial loading; performance of control devices; or any other factors that could affect your annual HAP emissions; and

(iii) Include documentation that the values and sources of all data, operating conditions, assumptions, etc., used in your method result in an accurate estimation of annual emissions from your plant.

(3) Documentation, to the satisfaction of the Administrator, that your POTW meets the fraction emitted standard of 0.014 or less, *i.e.*, the sum of all HAP emissions from paragraph (c)(2) of this section divided by the sum of all HAP mass loadings from paragraph (c)(1) of

this section results in a fraction emitted of 0.014 or less as described in paragraph (c)(4) of this section.

(4) A method to demonstrate, to the satisfaction of the Administrator, that your POTW is in continuous compliance with the requirements of § 63.1586(b). Continuous compliance means that your emissions, when averaged over the course of a year, do not exceed the level of emissions that allows your POTW to comply with § 63.1586(b). For example, you may identify a parameter(s) that you can monitor that assures your emissions, when averaged over the entire year, will meet the requirements in § 63.1586(b). Some example parameters that may be considered for monitoring include your wastewater influent HAP concentration and flow, industrial loading from your permitted industrial dischargers, and your control device performance criteria. Where emission reductions are due to proper operation of equipment, work practices, or other operational procedures, your demonstration must specify the frequency of inspections and the number of days to completion of repairs. You must, at a minimum, perform the following each month to demonstrate that your annual rolling average of the fraction emitted is 0.014 or less:

(i) Determine the average daily flow of the wastewater entering your POTW treatment plant for the month;

(ii) Determine the flow-weighted monthly concentration of each HAP in your influent listed in Table 1 to subpart DD of this part;

(iii) Using the current month's information in paragraphs (c)(4)(i) and (ii) of this section, determine a total annual loading (Mg/year) of each HAP entering your POTW treatment plant;

(iv) Sum up the values in paragraph (c)(4)(iii) of this section and determine a total annual loading value (Mg/year) for all HAP entering your POTW treatment plant for the current month;

(v) Based on the current month's information in paragraph (c)(4)(iii) of this section along with source testing and emission modeling, for each HAP, determine annual emissions (Mg/year) from all wastewater units up to, but not including, secondary treatment units;

(vi) Sum up the values in paragraph (c)(4)(v) of this section and determine the total annual emissions value for the month for all HAP from all wastewater units up to, but not including, secondary treatment units;

(vii) Calculate the fraction emitted value for the month by dividing the total annual HAP emissions value from paragraph (c)(4)(vi) of this section by the total annual loading from paragraph (c)(4)(iv) of this section; and

(viii) Average the fraction emitted value for the month determined in paragraph (c)(4)(vii) of this section, with the values determined for the previous 11 months, to calculate an annual rolling average of the fraction HAP emitted.

§ 63.1589 What records must I keep?

(a) To comply with the equipment standard specified in § 63.1586(b), you must prepare and maintain the following records:

(1) A record for each treatment unit inspection required by § 63.1588(a). You must include a treatment unit identification number (or other unique identification description as selected by you) and the date of inspection.

(2) For each defect detected during inspections required by § 63.1588(a), you must record the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and the date the repair to correct the defect is completed.

(3) In the event that repair of the defect is delayed, in accordance with the provisions of § 63.1588(a), you must also record the reason for the delay and the date you expect to complete the repair.

(4) If you own or operate a control device used to meet the requirements for § 63.1586, you must comply with the recordkeeping requirements of § 63.696(a), (b), (g), and (h).

(b) To comply with the performance standard specified in § 63.1586(b), you must prepare and maintain the following records:

(1) A record of the methods and data used to determine your POTW's annual HAP emissions as determined in § 63.1588(c);

(2) A record of the methods and data used to determine that your POTW meets the fraction emitted standard of 0.014 or less, as determined in § 63.1588(c); and

(3) A record of the methods and data that demonstrates that your POTW is in continuous compliance with the requirements of § 63.1588(c).

§ 63.1590 What reports must I submit?

(a)(1) If you have an existing nonindustrial POTW treatment plant, you are not required to submit a notification of compliance status. If you have a new or reconstructed nonindustrial POTW treatment plant, you must submit to the Administrator a notification of compliance status, signed by the responsible official who must certify its accuracy, attesting to whether your POTW treatment plant has complied with this subpart. This notification must be submitted initially, and each time a notification of compliance status is required under this subpart. At a minimum, the notification must list—

(i) The methods that were used to determine compliance;

(ii) The results of any monitoring procedures or methods that were conducted;

(iii) The methods that will be used for determining continuing compliance;

(iv) The type and quantity of HAP emitted by your POTW treatment plant;

(v) A description of the air pollution control equipment (or method) for each emission point; and

(vi) Your statement that your POTW treatment plant has complied with this subpart.

(2) You must send this notification before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in this subpart.

(b) After you have been issued a title V permit, you must comply with all requirements for compliance status reports contained in your title V permit, including reports required under this subpart. After you have been issued a title V permit, and each time a notification of compliance status is required under this subpart, you must submit the notification of compliance status to the appropriate permitting authority, as described in § 63.1580(d), following completion of the relevant compliance demonstration activity specified in this subpart.

(c) You must comply with the delay of repair reporting required in § 63.1588(a).

(d) If your State has not been delegated authority, you must submit reports to your EPA Regional Office. If your State has been delegated authority, you must submit reports to your delegated State authority, and you must send a copy of each report submitted to the State to your EPA Regional Office. Your EPA Regional Office, at its discretion, may waive this requirement for any reports.

(e) You may apply to the Administrator for a waiver of recordkeeping and reporting requirements by complying with the requirements of § 63.10(f) of subpart A of this part.

(f) If you own or operate a control device used to meet the requirements of § 63.1586(a), you must submit the reports required by § 63.697(b) of subpart DD of this part, including a notification of performance tests; a performance test report; a startup, shutdown, and malfunction report; and a summary report.

(g) To comply with the performance standard specified in § 63.1586(b), you must submit, for approval by the Administrator, an initial report explaining your compliance approach 90 days prior to beginning operation of your new or reconstructed POTW. You must also submit a startup, shutdown, and malfunction report.

General Requirements

§ 63.1591 What are my notification requirements?

(a) If you are subject to this subpart, and your State has not been delegated authority, you must submit notifications to the appropriate EPA Regional Office. If your State has been delegated authority you must submit notifications to your State and a copy of each notification to the appropriate EPA Regional Office. The Regional Office may waive this requirement for any notifications at its discretion.

(b) You must notify the Administrator in writing no later than 120 calendar days after the effective date of this subpart (or within 120 calendar days after your POTW treatment plant becomes subject to the relevant standard), and you must provide the following information:

(1) Your name and address,

(2) The address (*i.e.*, physical location) of your POTW treatment plant;

(3) An identification of these standards as the basis of the notification and your POTW treatment plant's compliance date; and

(4) A brief description of the nature, size, design, and method of operation of your POTW treatment plant, including its operating design capacity and an identification of each point of emission for each HAP, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each HAP.

(c) You must notify the Administrator if your data show that you are no longer in continuous compliance.

§ 63.1592 Which General Provisions apply to my POTW treatment plant?

Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) which apply to POTW treatment plants.

§ 63.1593 How will the EPA determine if I am in compliance with this subpart?

(a) The Administrator will determine compliance with this subpart by reviewing your reports and records or by inspecting your POTW treatment plant.

(b) If you fail to comply with any or all of the provisions of this subpart, you will be considered in violation of this subpart. For example, failure to perform any or all of the following, specified in § 63.1588, would be a violation: failure to visually inspect the cover on your treatment unit, failure to repair a defect on a treatment unit in use within the specified time period, failure to report a delay in repair, failure to determine your POTW's annual HAP emissions when your new or reconstructed POTW becomes subject to this subpart, failure to demonstrate that your POTW achieves an HAP fraction emitted of 0.014, or failure to demonstrate that your POTW is in continuous compliance with the requirements of § 63.1586(b).

(c) Your POTW treatment plant may be exempted from compliance with this subpart if the President determines that the technology to implement these standards is not available, and that it is in the national security interests of the United States to do so. This exemption may last for up to 2 years at a time and may be extended for additional periods of up to 2 years each.

§ 63.1594 Who enforces this subpart?

If the Administrator has delegated authority to your State, then the State enforces this subpart. If the Administrator has not delegated authority to your State, then the EPA Regional Office enforces this subpart.

§ 63.1595 List of definitions.

Affected source means the group of all equipment that comprise the POTW treatment plant.

Area source means any stationary source of HAP that is not a major source.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the waste material managed in a treatment unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the treatment unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the treatment unit, or a cover may be formed by structural features permanently integrated into the design of the treatment unit. The cover and its closure devices must be made of suitable materials that will minimize exposure of the waste material to the atmosphere, to the extent practical, and will maintain the integrity of the cover and its closure devices throughout its intended service life.

Fraction emitted means the fraction of the mass of HAP entering the POTW wastewater treatment plant which is emitted prior to secondary treatment. The value is calculated using the following steps:

(1) Determine mass emissions from all equipment up to but not including secondary treatment for each HAP listed in Table 1 to subpart DD of this part;

(2) Sum the HAP emissions (ΣE);

(3) sum the HAP mass loadings (ΣL) in the influent to the POTW wastewater treatment plant; and

(4) Calculate the fraction emitted ($f_e$monthly) using $f_e\text{monthly}=\Sigma E/\Sigma L$.

HAP means hazardous air pollutant(s).

Industrial POTW means a POTW that accepts a waste stream regulated by an industrial NESHAP and provides treatment and controls as an agent for the industrial discharger. The industrial discharger complies with its NESHAP by using the treatment and controls located at the POTW. For example, an industry discharges its benzene-containing waste stream to the POTW for treatment to comply with 40 CFR part 61, Subpart FF—National Emission Standard for Benzene Waste Operations. This definition does not include POTW treating waste streams not specifically regulated under another NESHAP.

Industrial user means a nondomestic source introducing any pollutant or combination of pollutants into a POTW. Industrial users can be commercial or industrial facilities whose wastes enter local sewers.

Non-industrial POTW means a POTW that does not meet the definition of an industrial POTW as defined above.

Publicly owned treatment works (POTW) means a treatment works, as that term is defined by section 112(e)(5) of the Clean Air Act, which is owned by a municipality (as defined by section 502(4) of the Clean Water Act), a State, an intermunicipal or interstate agency, or any department, agency, or instrumentality of the Federal Government. This definition includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities is generated by industrial, commercial, and domestic sources. As used in this regulation, the term POTW refers to both any publicly owned treatment works which is owned by a State, municipality, or intermunicipal or interstate agency and therefore eligible to receive grant assistance under the Subchapter II of the Clean Water Act, and any federally owned treatment works as that term is described in section 3023 of the Solid Waste Disposal Act.

POTW treatment plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

Reconstruction means the replacement of components of an affected or a previously unaffected stationary source such that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of HAP from that source.

Secondary treatment means treatment processes, typically biological, designed to reduce the concentrations of dissolved and colloidal organic matter in wastewater.

Waste and wastewater means a material, or spent or used water or waste, generated from residential, industrial, commercial, mining, or agricultural operations or from community activities that contain dissolved or suspended matter, and that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated in a publicly owned treatment works.

TABLE 1 TO SUBPART VVV—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
§63.1		APPLICABILITY.
§63.1(a)(1)	Yes	Terms defined in CAAA.
§63.1(a)(2)	Yes	General applicability explanation.
§63.1(a)(3)	Yes	Cannot diminish a stricter NESHAP.
§63.1(a)(4)	Yes	Not repetitive. Doesn't apply to section 112(r).
§63.1(a)(5)	Yes	Section reserved.
§63.1(a)(6)–(8)	Yes	Contacts and authorities.
§63.1(a)(9)	Yes	Section reserved.
§63.1(a)(10)	Yes	Time period definition.
§63.1(a)(11)	Yes	Postmark explanation.
§63.1(a)(12)–(14)	Yes	Time period changes. Regulation conflict. Force and effect of subpart A.
§63.1(b)(1)	Yes	Initial applicability determination of subpart A.
§63.1(b)(2)	Yes	Operating permits by States.
§63.1(b)(3)	No	Subpart VVV specifies recordkeeping of records of applicability determination.
§63.1(c)(1)	Yes	Requires compliance with both subpart A and subpart VVV.
§63.1(c)(2)(i)	Yes	State options regarding title V permit.
§63.1(c)(2)(ii)–(iii)	No	State options regarding title V permit.
§63.1(c)(3)	Yes	Section reserved.
§63.1(c)(4)	Yes	Extension of compliance.
§63.1(c)(5)	No	Subpart VVV addresses area sources becoming major due to increase in emissions.
§63.1(d)	Yes	Section reserved.
§63.1(e)	Yes	Title V permit before a relevant standard is established.
§63.2	Yes	DEFINITIONS.
§63.3	Yes	UNITS AND ABBREVIATIONS.
§63.4		PROHIBITED ACTIVITIES AND CIRCUMVENTION.
§63.4(a)(1)–(3)	Yes	Prohibits operation in violation of subpart A.
§63.4(a)(4)	Yes	Section reserved.
§63.4(a)(5)	Yes	Compliance dates.
§63.4(b)	Yes	Circumvention.
§63.4(c)	Yes	Severability.
§63.5		CONSTRUCTION AND RECONSTRUCTION.
§63.5(a)(1)	Yes	Construction and reconstruction.
§63.5(a)(2)	Yes	New source—effective dates.
§63.5(b)(1)	Yes	New sources subject to relevant standards.
§63.5(b)(2)	Yes	Section reserved.
§63.5(b)(3)	Yes	No new major sources w/out Administrator approval.
§63.5(b)(4)	Yes	New major source notification.
§63.5(b)(5)	Yes	New major sources must comply.
§63.5(b)(6)	Yes	New equipment added considered part of major source.
§63.5(c)	Yes	Section reserved.
§63.5(d)(1)	Yes	Implementation of section 112(l)(2)—application of approval of new source construction.
§63.5(d)(2)	Yes	Application for approval of construction for new sources listing and describing planned air pollution control system.
§63.5(d)(3)	Yes	Application for reconstruction.
§63.5(d)(4)	Yes	Administrator may request additional information.
§63.5(e)	Yes	Approval of reconstruction.
§63.5(f)(1)	Yes	Approval based on State review.

TABLE 1 TO SUBPART VVV—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§63.5(f)(2)	Yes	Application deadline.
§63.6		COMPLIANCE WITH STANDARDS AND MAINTENANCE REQUIREMENTS.
§63.6(a)	Yes	Applicability of compliance with standards and maintenance requirements.
§63.6(b)	Yes	Compliance dates for new and reconstructed sources.
§63.6(c)	Yes	Compliance dates for existing sources apply to existing industrial POTW treatment plants.
§63.6(d)	Yes	Section reserved.
§63.6(e)	Yes	Operation and maintenance requirements apply to new sources.
§63.6(f)	Yes	Compliance with non-opacity emission standards applies to new sources.
§63.6(g)	Yes	Use of alternative non-opacity emission standards applies to new sources.
§63.6(h)	No	POTW treatment plants do not typically have visible emissions.
§63.6(i)	Yes	Extension of compliance with emission standards applies to new sources.
§63.6(j)	Yes	Presidential exemption from compliance with emission standards.
§63.7		PERFORMANCE TESTING REQUIREMENTS.
§63.7(a)	Yes	Performance testing is required for new sources.
§63.7(b)	Yes	New sources must notify the Administrator of intention to conduct performance testing.
§63.7(c)	Yes	New sources must comply with quality assurance program requirements.
§63.7(d)	Yes	New sources must provide performance testing facilities at the request of the Administrator.
§63.7(e)	Yes	Requirements for conducting performance tests apply to new sources.
§63.7(f)	Yes	New sources may use an alternative test method.
§63.7(g)	Yes	Requirements for data analysis, recordkeeping, and reporting associated with performance testing apply to new sources.
§63.7(h)	Yes	New sources may request a waiver of performance tests.
§63.8		MONITORING REQUIREMENTS.
§63.8(a)	Yes	Applicability of monitoring requirements.
§63.8(b)	Yes	Monitoring shall be conducted by new sources.
§63.8(c)	Yes	New sources shall operate and maintain continuous monitoring systems (CMS).
§63.8(d)	Yes	New sources must develop and implement a CMS quality control program.
§63.8(e)	Yes	New sources may be required to conduct a performance evaluation of CMS.
§63.8(f)	Yes	New sources may use an alternative monitoring method.
§63.8(g)	Yes	Requirements for reduction of monitoring data.
§63.9		NOTIFICATION REQUIREMENTS.
§63.9(a)	Yes	Applicability of notification requirements.
§63.9(b)	Yes	Initial notification requirements.
§63.9(c)	Yes	Request for extension of compliance with subpart VVV.
§63.9(d)	Yes	Notification that source is subject to special compliance requirements as specified in §63.6(b)(3) and (4).
§63.9(e)	Yes	Notification of performance test.
§63.9(f)	No	POTW treatment plants do not typically have visible emissions.
§63.9(g)	Yes	Additional notification requirements for sources with continuous emission monitoring systems.
§63.9(h)	Yes	Notification of compliance status when the source becomes subject to subpart VVV.
§63.9(i)	Yes	Adjustments to time periods or postmark deadlines or submittal and review of required communications.
§63.9(j)	Yes	Change of information already provided to the Administrator.
§63.10		RECORDKEEPING AND REPORTING REQUIREMENTS.
§63.10(a)	Yes	Applicability of notification and reporting requirements.
§63.10(b)(1)–(2)	Yes	General recordkeeping requirements.
§63.10(b)(3)	No	Recording requirement for applicability determination.
§63.10(c)	Yes	Additional recordkeeping requirements for sources with continuous monitoring systems.
§63.10(d)	Yes	General reporting requirements.
§63.10(e)	Yes	Additional reporting requirements for sources with continuous monitoring systems.
§63.10(f)	Yes	Waiver of recordkeeping and reporting requirements.
§63.11		FLARES AS A CONTROL DEVICE.
§63.11(a) and (b)	Yes	If a new source uses flares to comply with the requirements of subpart VVV, the requirements of §63.11 apply.
§63.12	Yes	STATE AUTHORITY AND DESIGNATION.
§63.13	Yes	ADDRESSES OF STATE AIR POLLUTION CONTROL AGENCIES AND EPA REGIONAL OFFICES.

TABLE 1 TO SUBPART VVV—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§63.14	Yes	INCORPORATION BY REFERENCE.
§63.15	Yes	AVAILABILITY OF INFORMATION AND CONFIDENTIALITY.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 99–176]

Interception and Recording of Telephone Conversations by Commission Personnel

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules with respect to the interception and recording of telephone conversations by agency personnel. The rules are being amended because the current GSA regulations have been repealed. The amended rules no longer make reference to the GSA regulations and the rule amendments clarify that the Inspector General has authority to intercept or monitor telephone conversations without obtaining a written authorization from the General Counsel.

DATES: Effective October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon Diskin, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Adopted: July 13, 1999.

Released: July 16, 1999.

1. Sections 0.41(l) and 0.251(f) of our rules, 47 CFR 0.41(l) and 0.251(f) govern the duties and responsibilities of the Office of General Counsel with respect to the interception and recording of telephone conversations by agency personnel. The rules currently in effect refer to and reflect General Service Administration (GSA) regulations regarding the interception of telephone conversations. These GSA regulations have been repealed. Because GSA regulations no longer contain any specific provisions regarding the manner in which government agencies monitor the interception and recording of telephone conversations by agency personnel, we are amending our rule to delete reference to these regulations. The authority of the Office of the General Counsel to issue any necessary written determinations with respect to these matters remains generally unchanged. However, because the Office of the Inspector General may deem it necessary to intercept or monitor telephone conversations in the conduct of audits or investigations, the rule amendments clarify that the Inspector General has such authority to do so without obtaining a written authorization from the Office of General Counsel.

2. Because these rule changes involve rules of agency organization, procedure or practice, prior notice and public comment procedures are not required. *See* 5 U.S.C. 553 (b)(3)(A).

3. Pursuant to sections 4(i), 4(j), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 155(c) and 303(r), it is *hereby ordered* that Part 0 of the Commission's Rules is amended and effective October 26, 1999.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies), Privacy.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225 unless otherwise noted.

2. Section 0.41(k) is revised to read as follows:

§0.41 Functions of the Office.

* * * * *

(k) To issue determinations on matters regarding the interception and recording of telephone conversations by Commission personnel. Nothing in this paragraph, however, shall affect the authority of the Inspector General to intercept or record telephone conversations as necessary in the conduct of investigations or audits.

* * * * *

3. Section 0.251(f) is revised to read as follows:

§0.251 Authority delegated.

* * * * *

(f) The General Counsel is delegated authority to issue written determinations on matters regarding the interception of telephone conversations. Nothing in this paragraph, however, shall affect the authority of the Inspector General to intercept or record telephone conversations as necessary in the conduct of investigations or audits.

* * * * *

[FR Doc. 99–27427 Filed 10–25–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 102099B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS projects that the initial portion of the annual commercial quota for red snapper will be reached on November 5, 1999. This closure is necessary to protect the red snapper resource.

DATES: Effective noon, local time, November 5, 1999, until noon, local time, February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, 727–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery

Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 1999. Those regulations split the red snapper commercial fishing season into two time periods, the first commencing at noon on February 1, with two-thirds of the annual quota (3.06 million lb (1.39 million kg)) available, and the second commencing at noon on September 1, with the remainder of the annual quota available. During the fall commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the **Federal Register**. Based on current statistics, NMFS projects that the available commercial quota of 4.65 million lb (2.11 million kg) for red snapper will be reached on November 5, 1999. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed from noon on November 5, 1999, until noon, local time, on February 1, 2000. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, November 5, 1999.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, November 5, 1999, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

Dated: October 21, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27922 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 101999A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 1999, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require the publication of this notification to advise the State of New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

DATES: Effective from 0001 hours, November 1, 1999, through 2400 hours, December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 1999 calendar year was set equal to 11,110,300 lb (5,039,547 kg)(64 FR 9088, February 24, 1999). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, or 790,948 lb (358,768 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1998, a total of 823,093 lb (373,349 kg) were landed in New York, creating a 59,674 lb (27,068 kg) overage that was deducted from the amount allocated for landings in the State during 1999 (64 FR 46596, August 26, 1999). The resulting 1999 quota for New York is 790,006 lb (358,341 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and that no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of New York will have attained its quota for 1999 as of November 1, 1999.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, November 1, 1999, further landings of summer flounder in New York by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1999 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the same date, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 21, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27923 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990301058–9225–02; I.D. 011499B]

RIN 0648–AL56

Fisheries of the Northeastern United States; Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved portions of Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP. This rule would implement framework provisions for amending management measures for these fisheries, restrict the size of domestic harvesting vessels permitted in the Atlantic mackerel fishery without restricting the size of processing vessels, and implement an operator permit requirement for the surf clam and ocean quahog fisheries. The purpose of these amendments is to meet the requirements of the Sustainable Fisheries Act (SFA) of October 1996 (SFA).

DATES: Effective November 26, 1999.

ADDRESSES: Copies of the SFA amendments, the environmental assessments (EA), the regulatory impact reviews, and other supporting documents are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this rule should be sent to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 978–281–9221.

SUPPLEMENTARY INFORMATION: Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP; Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP (collectively referred to as the SFA Amendments) were prepared by the Mid-Atlantic Fishery Management Council (Council) to address the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the SFA. Background concerning the development of the SFA Amendments was provided in the notice of proposed rulemaking (64 FR 16891, April 7, 1999), and is not repeated here. This final rule implements approved management measures contained in the SFA Amendments intended to eliminate overfishing, rebuild many of the associated stocks, comply with the provisions of the SFA, and achieve other goals. The SFA Amendments were partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on April 28, 1999.

Upon evaluation of the SFA Amendments as required by Section 304(a)(3) of the Magnuson-Stevens Act, NMFS, on behalf of the Secretary, disapproved several provisions of the amendments. The disapproved measures include the scup rebuilding schedule, the scup bycatch provision, the surf clam overfishing definition (OFD), and the deficient essential fish habitat (EFH) portions of all three of the SFA amendments. The deficient portions include: Section 2.2.3.7—Fishing Impacts on EFH and Section 2.2.4—Options for Managing Adverse Effects from Fishing in Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP; Section 2.2.3.7—Fishing Impacts on EFH and Section 2.2.4—Options for Managing Adverse Effects from Fishing in Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Section 2.2.3.8—Fishing Impacts on EFH,, and Section 2.2.4— Options for Managing Adverse Effects from Fishing in Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP. NMFS has notified the Council of the disapprovals and made recommendations for addressing the deficiencies noted.

Measures Approved in SFA Amendments

This final rule implements revisions to the Summer Flounder, Scup, and Black Sea Bass FMP, the Atlantic Mackerel, Squid, and Butterfish FMP, and the Atlantic Surf Clam and Ocean Quahog FMP by adding a framework adjustment process in addition to the annual specification setting process for each of the fisheries.

This final rule also revises regulations implementing the Atlantic Mackerel, Squid, and Butterfish FMP by revising the maximum fishing mortality rate (F) for *Illex* squid to F_{MSY} to reflect better the goal of achieving maximum sustainable yield (MSY) on a continuing basis, and restricting the size of domestic harvesting, but not processing, vessels permitted in the Atlantic mackerel fishery. A vessel permitted in the Atlantic mackerel fishery may not exceed either of the following specifications: (1) 165 ft (50.3 m) in length overall (LOA) and 750 gross registered tons (GRT), or (2) a shaft horsepower (shp) of 3,000 shp.

Comments and Responses

Forty-six written comments on the SFA Amendments were received during the comment period established by the notice of availability of the SFA Amendments, which ended March 29, 1999 (64 FR 4065, January 27, 1999). These comments were considered by NMFS in its decision to approve partially the SFA Amendments on April 28, 1999. In addition, NMFS received 10 comments during the comment period specified for the proposed rule, which ended on May 24, 1999. A number of the comments received on the proposed rule did not specifically address the proposed regulations. In fact, many of these letters referenced existing provisions in the management structures for each of the fisheries that were not proposed for revision under the SFA Amendments. Since those existing provisions had already been found to comply with the Magnuson-Stevens Act under reviews for both previous actions and the SFA Amendments, and were not revised in the SFA Amendments, NMFS determined that it would be inappropriate to address those comments in this final rule. Comments received during the specified comment periods pertaining to either the SFA Amendments or the proposed rule are addressed here.

General

Comment 1: One commenter supported the complete adoption of the SFA Amendments.

Response: Comment noted. NMFS, however, did not approve all of the SFA Amendments. Upon evaluation of the SFA Amendments, as required by Section 304(a)(3) of the Magnuson-Stevens Act, NMFS, on behalf of the Secretary, only partially approved the SFA Amendments. The measures disapproved were described in the preceding summary section and are not repeated here.

Atlantic Mackerel Vessel Size Restriction

Comment 2: Four comment letters, including three form letters representing 18 comments, supported the size restriction for vessels harvesting Atlantic mackerel. Commenters felt the action was necessary to slow the growth of the fishery while markets develop, and called the restriction "proactive" rather than "reactive." *Response*: NMFS approved this measure and supports the Council's intent to control access to the Atlantic mackerel fishery and fully develop a controlled access provision in a forthcoming amendment to the Atlantic Mackerel, Squid, and Butterfish FMP. This restriction and the publication of the control date (September 12, 1997) begins the process of addressing the Council's concerns about overcapitalization.

The Council established a control date for the Atlantic mackerel fishery of September 12, 1997 (62 FR 48047). The advance notice of proposed rulemaking informed the public that anyone entering the Atlantic mackerel fishery after that date could not be assured access to the fishery if a program to limit such access is developed. The control date and vessel size restriction give the Council time to develop a limited entry program without fear of an influx of vessels having high fishing power and capacity.

Comment 3: One commenter questioned the need for the vessel size restriction, noting that the restriction did not appear in Section 1.1—Purpose and Need for Action, and appeared to contradict the FMP objective that states the goal of promoting "the growth of the U.S. commercial fishery, including fishery for export." The commenter also questioned how the size restriction achieves the greatest overall benefit to the Nation (as defined by "optimum" under National Standard 1).

Response: NMFS believes that the vessel size restriction falls within the scope of the FMP objective of promoting the growth of the commercial Atlantic mackerel fishery. The vessel size restriction does not contradict that, or any other, objective of the FMP. The Council developed this provision not to prevent the growth of the commercial fishery, but rather to control its growth. The Council was concerned about the possibility of rapid overcapitalization of the fishery and of significant increases in harvest potential. Furthermore, the Council was concerned about providing high priority to historical participants in the Atlantic mackerel fishery as it considered development of a limited access system. The vessel size restriction in Amendment 8 helps protect against rapid overcapitalization and significant increases in harvest potential, while also allowing historical participants to remain in the fishery.

The term "optimum yield" (OY) refers to the yield from a fishery that will provide the greatest overall benefit to the Nation, prescribed by MSY, and reduced by social, economic, or ecological factors. National standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continual basis, the OY from each fishery for the U.S. fishing industry. National standard 1 does not require justification of the vessel size restriction by explaining how it achieves the greatest overall benefit to the Nation. Nevertheless, the Magnuson-Sevens Act authorizes consideration of social, economic, biological, and ecological factors in the development of conservation and management measures. The vessel size restriction reflects legitimate concerns about such factors, including overcapitalization, harvest potential, historical participation, and the impact on the resource due to possible overcapitalization and increased harvest potential.

Comment 4: One commenter stated that no environmental impact analysis was conducted on the size restriction nor was any rationale put forward for the specific size parameters.

Response: An environmental assessment was prepared for Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP and concluded that approval and implementation of the proposed action, which included the vessel size restriction, would not significantly affect the quality of the human environment. As a result, an environmental impact statement was not required. In Amendment 8, the Council explained that the vessel size restrictions were developed in response to concerns about the rapid overcapitalization of the mackerel fleet by the entry of large vessels with significant harvest potential and, by implication, the effect such a rapid chance in the fishery may have on the resource. By preventing such a rapid change in the fishery, the vessel size restriction constitutes a proactive means of protecting the resource and, therefore, would not have an adverse impact on the environment.

An analysis of the parameters of the Atlantic mackerel vessel size restriction was conducted by the Council in Amendment 8. The analysis investigated the vessels currently participating in the mackerel fishery, including vessel size necessary to participate successfully. The size limits adopted represent the upper bound of those permitted vessels that have been shown to harvest Atlantic mackerel successfully. Thus, the size restriction caps the size parameters of individual vessels in the fleet to those which currently exist in the fishery. Only new, larger vessels are precluded from entering the fishery by this restriction.

Comment 5: Thirty-three commenters opposed the vessel size restriction. Opposition to the measure focused mainly on fairness, equity, and conservation and management rationale. Commenters felt that the provision was an attempt by competitors to "reserve the resource for themselves," would impact only one fishing vessel, and violated several national standards.

Response: The size restriction for vessels harvesting Atlantic mackerel is not intended to single out an individual, corporation, or other entity, but is intended to preclude large, high capacity vessels from entering the fishery. This restriction is designed to address a class of vessels and to prevent rapid overcapitalization while the Council develops a limited access program for the Atlantic mackerel fishery in a future action. NMFS found the action in compliance with the national standards.

Comment 6: The Council submitted language to clarify the Atlantic mackerel vessel size restriction. Specifically, the Council reaffirmed that it intends the restriction to be applied to vessels that exceed any one of the two following criteria: (1) 165 ft LOA and 750 GRT; (2) shaft horsepower of 3,000 shp.

Response: NMFS had raised concerns about the specific language of the restriction both during the Council meetings and after Amendment 8 was submitted during informal discussions with Council staff. It was not clear whether the Council's intent was to adopt the vessel size restriction language of the American Fisheries Act, the Department of Commerce appropriations bill language, or the language developed by the New England Fishery Management Council for the Atlantic Herring FMP. Because of the subtle differences between all of these varying provisions, NMFS chose to publish the most restrictive provision in the proposed rule and solicit comment. No comments on the precise wording of the measure were received. However, based on the Council's clarification of its intent, the Council's clarification is accepted and adopted in this final rule.

Overfishing Definitions

Comment 7: One commenter felt that the OFDs for both scup and black sea bass were not sufficiently precautionary. The commenter cites technical recommendations that $F_{0.1}$ be adopted for both species.

Response: The Council adopted $F_{MAX} = 0.32$ as a fishing mortality reference point proxy for F_{MSY} for black sea bass, and $F_{MAX} = 0.26$ as a proxy for F_{MSY} for scup. Scientific advice recommended a more conservative reference point, $F_{0.1} = 0.18$ as a proxy for F_{MSY} for black sea bass, and $F_{0.1} = 0.15$ as a proxy for F_{MSY} for scup, to compensate for the uncertainty in the assessment of both. NMFS approved the OFDs for scup and black sea bass because they were conceptually sound, albeit less conservative and risk averse than those recommended by scientists.

Comment 8: One commenter felt that, for scup and black sea bass, the rebuilding plans specified in Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP were not adequate and should be disapproved. The commenter stated that, "given the level of uncertainty [in the assessment data for scup], a much greater level of caution" is necessary.

Response: NMFS agrees that the rebuilding plan specified for scup was not adequate, and, therefore, disapproved that provision because of the minimal probability that the stock could rebuild to the minimum biomass index within 10 years. The combination of the less conservative choice of mortality reference point by the Council (see comment 7 and response) and the general decline of this fishery is risk-prone and the rebuilding program warranted disapproval.

The rebuilding plan for black sea bass was not disapproved because the current rebuilding schedule for black sea bass is less risk-prone for a stock that has been relatively stable, albeit at low levels, for the past decade. In contrast, the scup stock indices have been trending downward during that time and the rebuilding schedule posed an unacceptably high risk.

Comment 9: Three commenters found the *Illex* OFD confusing.

Response: Since the OFDs are very technical in nature, they are also often confusing. Since the commenters did not specify what they found to be confusing in particular about the definition, it is difficult to respond. During development of Amendment 8, there was some confusion surrounding the estimation of the harvestable yield in the *Illex* squid fishery that would arise from the OFD. For the purposes of this response, NMFS will assume this is the point about which the commenter is confused. Rather than explain the calculations that were made which, again, would necessarily be technical, NMFS points out that an error was made that is corrected by this rule. This correction results in an increased harvest of *Illex* squid from 18,000 to 22,800 metric tons (mt). This revision—incorporating the intended, correct value—was approved by NMFS as part of the review of Amendment 8.

Comment 10: One commenter supported the *Illex* squid OFD.

Response: Comment noted. As noted, the *Illex* squid OFD was approved, as corrected (see comment 9 and response).

Essential Fish Habitat (EFH)

Comment 11: Two commenters considered the EFH portions of the SFA Amendments to be overly broad and exceeding the intent of Congress. The commenter specifically cited the breadth of EFH designations, noting that EFH appeared to be designated in an arbitrary manner, over the range of the species, and included coastal state and estuarine waters. The commenter opposed what he interpreted to be a requirement for EFH to be further designated by "project proponents." Another commenter supported the identification of EFH, noting that a broad designation of EFH was mandatory, especially where a stock is overfished and loss of habitat is considered to be a contributing factor. The commenter also supports the designation of submerged aquatic vegetation as habitat area of particular concern (HAPC) due to its value as nursery habitat.

Response: The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Therefore, the geographic scope of EFH must be sufficiently broad to encompass the biological requirements of the species. The information that the Council used for EFH designation was primarily species distribution and relative abundance data, which would be classified as "level 2" information under the EFH regulations (50 CFR 600.815). Since the information available was not more specific (e.g., did not show species production by habitat type), the approach prescribed by the regulations led to fairly broad EFH designations. The EFH regulations at 50 CFR § 600.10 interpret the statutory definition of EFH to include aquatic areas that are used by fish, including historically used areas, where appropriate, to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, provided that restoration is technologically and economically feasible. The Council's EFH designation is consistent with these requirements.

The specific methodology used by the Council for designating EFH was based on the highest relative density of each life stage for each species. This methodology was developed by scientists at the Northeast Fisheries Science Center, and is supported by scientific research and ecological concepts that show that the distribution and abundance of a species or stock are determined by physical and biological variables. The abundance of a species is higher where conditions are more favorable, and this tends to occur near the center of a species range. As population abundance fluctuates, the area occupied changes. At low levels of abundance, populations are expected to occupy the habitat that maximizes their survival, growth, and reproduction. As population abundance increases, individuals move into other available habitats.

Under the consultation provisions of the Magnuson-Stevens Act, a Federal agency must consult with NMFS when a proposed project has the potential to impact adversely any area of EFH that has been designated by the Council. The EFH regulations at 50 CFR 600.920(g) require that Federal agencies submit an EFH Assessment that describes the effects of the action on EFH. No requirement exists for further designation of EFH by project applicants.

Comment 12: A commenter stated that the conservation and enhancement recommendations for non-fishing impacts to EFH that are provided in the SFA Amendments are not based on the best available science, nor sufficiently supported. Two commenters contended that the recommended measures do not take into consideration current practices, are likely to be in conflict with measures being pursued under other regulatory programs, and may cause severe over regulation. One commenter also stated that the Magnuson-Stevens Act did not empower the Councils to address non-fishing activities.

Response: NMFS disagrees that the conservation and enhancement recommendations for non-fishing impacts to EFH are not based on the best available science. The information presented in the EFH sections of the SFA Amendments is well researched and substantiated by the best available information. Moreover, the commenter did not provide examples of specific information not considered by the Councils.

Conservation and enhancement recommendations for non-fishing industries were included to satisfy the requirements of section 303(a)(7) of the Magnuson-Stevens Act to "identify other actions to encourage the conservation and enhancement of [EFH]." This information is provided to assist non-fishing industries, such as the timber and paper industries, in avoiding impacts to EFH. The recommendations are neither posed as, nor meant to be, binding in nature. It is up to the discretion of the non-fishing industries and relevant regulatory agencies whether these recommendations are implemented.

Additionally, under section 305(b) of the Magnuson-Stevens Act, NMFS is required, and the Councils are authorized, to make conservation recommendations to any Federal or state agency regarding any activity that would adversely affect EFH. Moreover, Federal agencies are required to respond to these recommendations in writing.

Comment 13: Two commenters stated that the SFA Amendments contain no meaningful threshold of significance or likelihood of adverse effect on habitat for non-fishing impacts. The commenters suggested that the consultation and conservation recommendation provisions of the Magnuson-Stevens Act will be burdensome and unworkable. One commenter contended that the consultation procedures will be redundant with the National Environmental Policy Act (NEPA), costly, and time consuming.

Response: The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on activities that may adversely affect EFH. Adverse effects, as defined at 50 CFR 600.810(a), means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include, for example, direct effects through contamination or physical disruption, indirect effects such as loss of prey or reduction in species fecundity, and site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Only actions that have a reasonably foreseeable adverse effect require consultation.

Consultations are not likely to be redundant or inefficient. The EFH regulations provide for streamlined consultation procedures, such as general concurrences and abbreviated consultations, that may be used when the activities at issue do not have the potential to cause substantial adverse effects on EFH. The EFH consultation requirements will be consolidated with other existing consultation and environmental review procedures wherever appropriate. This approach will ensure that EFH consultations do not duplicate other environmental reviews, yet still fulfill the statutory requirement for Federal actions to consider potential effects on EFH.

Comment 14: A commenter stated that the SFA Amendments generally failed to address the potential for significant adverse impacts of these amendments on non-fishing entities, specifically citing the requirements of NEPA and the Regulatory Flexibility Act (RFA).

Response: The conservation and enhancement recommendations outlined in the SFA Amendments include a review of suggested measures for municipal, state, and Federal agencies and other organizations for the conservation and enhancement of EFH. As stated previously, these recommendations are non-binding. Any regulatory action that may reflect these recommendations will be subject to the analysis and public review required by state or Federal law, which will be the appropriate vehicle for consideration of impacts to both fishing and non-fishing entities.

In the EAs included with the SFA Amendments, the Council found, and NMFS concurs, that there will be no significant impacts on the human environment as a result of these SFA Amendments. The EFH regulations and NOAA policy require that NMFS coordinate EFH consultations with other consultation and commenting requirements under environmental review procedures currently in place. This will eliminate duplication and will ensure a workable review process.

An analysis of the rule with respect to the requirements of the RFA concluded that the SFA Amendments would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis was prepared. Further, no specific management measures were submitted regarding the EFH designation. Any changes in management provisions that arise as a result of the measures enacted by these SFA Amendments (such as a framework adjustment) will be reviewed for their economic impacts when submitted.

Comment 15: A number of commenters stated that the amendment did not adequately address fishing impacts to EFH, and urged NMFS to disapprove these sections. Commenters stated that work plans to implement additional HAPCs and gear management measures should be developed.

Response: NMFS agrees that the Council did not adequately address adverse impacts to EFH from fishing gear, and as a result, has disapproved three sections of the SFA Amendments that relate to EFH.

In letters to the Council dated September 4, 1998, and October 2, 1998, NMFS identified the need for improvements in these sections and provided specific recommendations. Although the Council attempted to address many of the comments provided by NMFS, the SFA Amendments fell short of the requirements set forth in both the SFA and the EFH regulations. In order to comply with the EFH regulations, the disapproved sections must be revised to discuss specifically how each of the fishing equipment types used in areas designated as EFH affect EFH. The SFA Amendments state that the gears expected to have the most adverse impact are hydraulic clam dredges and the scallop dredge, and note a number of discernable effects, but conclude that the effects are minimal. The SFA Amendments should be revised to give a clearer explanation of the basis for its conclusion about the magnitude and permanence of any adverse effects.

Section 2.2.4 of all three amendments states that evidence of various gear impacts on bottom habitat have been presented to the Council, and that all mobile gear contacting the sea floor has potential impact to EFH. However, the Council concludes that these effects are not "identifiable" and that for this reason and lack of quantifiable information, no management measures will be proposed. Although the Council may be correct that no new management measures are practicable, the SFA Amendments do not contain a sufficient discussion or analysis to support this conclusion. The three amendments should be revised either to provide a clear rationale for the conclusion that no new management measures are practicable, in accordance with 50 CFR 600.815(a)(3)(iii) and (iv); or to propose new management measures that address, to the extent practicable, any identifiable adverse effects.

Although NMFS agrees that the development of schedules for the identification of HAPCs and gear management measures could be useful, these activities are not required by either the Magnuson-Stevens Act or the EFH regulations.

Other Comments

Comment 16: Three commenters felt that the analyses and discussion of bycatch were not adequate, particularly with respect to the scup and summer flounder fisheries. One of the commenters referred to discards in these fisheries as "significant" and "a clear problem", respectively, and noted that minimizing scup bycatch has taken on a special urgency in light of what is believed to be a large year class in 1997.

Response: NMFS agrees that the bycatch provision for scup was not adequate, and disapproved the provision as inconsistent with National Standard 9. Measures for scup in the Summer Flounder, Scup, and Black Sea Bass FMP do not reduce bycatch adequately or minimize bycatch mortality. The most recent assessment for scup, conducted at the 27th stock assessment workshop (SAW–27) advised reducing F "substantially and immediately" and noted that reducing discards (especially in small mesh fisheries) would have the most impact in that regard. NMFS acknowledges that data with respect to identifying primary discard sources sufficient to implement management measures are limited. Still, it is envisioned that the Council would take the precautionary approach to develop measures to reduce discards as a result of this disapproval. The most recent stock assessment for summer flounder (SAW–25) did not express similar concerns for that fishery, although NMFS contemplates that the Council will take the precautionary approach when establishing future actions for this fishery as well.

NMFS supports action related to this issue, particularly as a follow-up to the discussions of scup discards in the April 27, 1999, workshop held by the Council's Comprehensive Management Committee. This Committee is charged with investigating alternatives to address scup discards, such as gear modification and season/area closures.

Comment 17: In addition to non-compliance with National Standard 9, one commenter believes the Summer Flounder, Scup, and Black Sea Bass FMP does not comply with National Standard 8, the requirement to take into account the impact of regulations on fishing communities, and National Standard 10 on safety at sea. Specifically, the commenter feels that the Council gave only "cursory treatment" to the changes the summer flounder state-by-state quota has had on fishing communities and that the quota created unsafe conditions for industry participants.

Response: NMFS approved the continuation of the state-by-state allocation of summer flounder quota under Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass FMP. The Council and Commission agreed that, although the state-by-state system has some problems, it is the most flexible in that it allows states to implement subquotas and trip limits to manage best their individual fisheries. Review of Amendment 10 included a review for consistency with the new National Standards, 8, 9, and 10. During that review, the quota allocation was found consistent with the national standards and other applicable law.

Comment 18: One commenter charges that the amendments do not address Magnuson-Stevens Act National Standards 1 (prevent overfishing), 2 (best available scientific information), and 7 (unnecessary duplication). The commenter stated that the Council "appeared to avoid serious discussion" of addressing overfishing and rebuilding overfished stocks.

Response: NMFS notes that the commenter did not elaborate on its assertion that the SFA Amendments violated several national standards. However, of the three FMPs reviewed under this rule, comprising a total of nine separate species, three of those species are considered overfished under their revised OFDs (summer flounder, scup, and black sea bass). The SFA Amendments continue the rebuilding programs already established for these species. These rebuilding programs called for an end to overfishing of the summer flounder resource in 1998, of scup in 2002, and of black sea bass in 2003. These schedules continue to direct the Council to design annual measures to achieve specific fishing mortality rates. However, as noted earlier in this document, the Council will be required to develop a more rigorous rebuilding program for scup. The scientific advice advocates for more conservative rebuilding measures, and NMFS agrees that more could have been done in this regard. However, only the scup rebuilding schedule was found so deficient as to compel disapproval (see response to comment 8), while those for summer flounder and black sea bass were determined to be adequate.

NMFS finds no evidence that the best scientific information was not used by the Council, consistent with National Standard 2.

With regards to the commenter's assertion that the SFA Amendments violate National Standard 7, NMFS assumes, for the purpose of responding to this comment, that the commenter is alleging that the EFH consultation process is duplicative of other federally required consultation processes.

Inter-agency consultations on Federal activities that may adversely affect EFH are required by the Magnuson-Stevens Act. Section 305(b)(2) of the Magnuson-Stevens Act states: "Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act." Other Federal statutes, such as the Fish and Wildlife Coordination Act, the Endangered Species Act, and NEPA require consultation or coordination between NMFS and other Federal agencies. EFH consultations will be conducted, to the extent possible, under existing review processes and within existing time frames. NMFS is committed to a consultation process that will be effective, efficient, and non-duplicative. The SFA Amendments contain conservation recommendations that are appropriate for many Federal actions, and they can also serve as guidelines that should be considered during project planning.

Framework Adjustment Procedures

Comment 19: Six commenters supported the framework provisions.

Response: Comment noted. NMFS also supports the approved framework provisions.

Comment 20: One commenter objects to inclusion of the OFD in the framework procedure, and states that it is "not a typical management measure" and is, therefore, inappropriate to include there.

Response: NMFS disagrees that inclusion of OFDs into the list of items that may be altered by framework adjustment is inappropriate. OFDs, and their related thresholds and targets, while not management measures, may change as stocks rebuild and those values are recalculated. Therefore, it is appropriate and scientifically sound that the Council have the ability to adjust OFDs as improved information becomes available without going through the formal amendment process.

Pertinent Data/Reporting Methodology

Comment 21: One commenter felt that the use of the available data (vessel trip reports (VTR) and observer data) to describe discards is not "valid or defensible." The commenter notes "ample evidence" from public comment that discards are more substantial than reported. The Council should, according to the commenter, undertake "an effort to reach out to fishermen for a more complete documentation of their fluke [summer flounder] discards."

Response: While NMFS acknowledges that data are limited in describing discards in many fisheries, anecdotal information presented at public forums is often contradictory and difficult to assimilate into a form useful for quantitative analysis. Currently, industry participants are required by law to report discards, truthfully and accurately, in their VTR logbooks. Industry cooperation in filling out these reports accurately is essential to provide managers and scientists with timely information to evaluate the condition of resources. The information is also necessary to evaluate the effectiveness of current management measures and to validate the information received through dealer reports. It is in industry's best interest to fill out these logbooks accurately and completely so that regulations are based on data that portray the industry correctly.

Comment 22: One commenter feels that the SFA Amendments do not comply with the mandate to establish a standardized reporting methodology for addressing discards.

Response: NMFS disagrees. The SFA Amendments do not establish a standardized reporting system because such a system already exists. The existing program includes the VTR system and sea sampling. The VTR system was established in 1993 in response to industry concerns that the voluntary reporting system did not provide complete information about their particular fishery, port, or vessel. The VTR system reaches all fishermen, even those in remote locations, and records important information concerning fishing operations, including data on gear and areas fished, as well as species kept and discarded.

The sea-sampling program is designed primarily to observe fishing operations in fisheries that have interactions with protected resources such as marine mammals and turtles. However, information on bycatch is also collected on these sampled trips. In addition, the Administrator, Northeast Region, NMFS (Regional Administrator), may request any vessel holding a moratorium permit for summer flounder, scup, or black sea bass, or a permit for mackerel, squid, or butterfish, to carry a NMFS-approved sea sampler/observer. If requested by the Regional Administrator to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or unless the requirement is waived.

Changes from the Proposed Rule

In § 648.4, paragraph (a)(5)(iii) is revised to reflect the request by the Council to clarify the language limiting the size and horsepower of a vessel permitted to harvest Atlantic mackerel. In § 648.14, paragraph (p)(10) is added for the same reason.

In § 648.5, paragraph (d) is revised to eliminate the optional information submission of the applicant's social security number.

In § 648.7, the last two sentences of paragraph (c) are removed, as they refer to sections that were modified in previous actions.

Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass fisheries prohibited the transfer of summer flounder at sea (62 FR 63872, December 3, 1997). Language in § 648.7(f)(3) includes reporting requirements for at-sea processors. This language conflicts with the prohibited action specified at § 648.13(d). Therefore, the language in § 648.7 is revised to reflect the intent of Amendment 10 to prohibit transfer of summer flounder at sea.

In § 648.21, paragraph (e) is removed, as it is redundant with the inseason adjustment process established under the framework provision in § 648.24.

Section 648.106 Sea Turtle Conservation, is revised by removing the old language and adding a reference to the current regulations implementing these measures under the authority of the Endangered Species Act (ESA) 50 CFR parts 222 and 223. This revision was discussed in the preamble to the proposed rule for this action (64 FR 16891, April 7.1999), however, the regulatory text was inadvertently omitted from the proposed rule. Because the public was notified and comment was invited on the change as part of the proposed rule, NMFS publishes the text as final.

Classification

This rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities.

While no comments were received specifically regarding this certification, one commenter did state that the SFA Amendments generally failed to address the potential for significant adverse impacts on non-fishing entities, as required under the RFA. This comment was addressed in the preamble (see the response to comment 14), and did not cause NMFS to change its determination regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have been approved by OMB under OMB control numbers 0648–0202 and 0648–0229. The requirements and their estimated response times are as follows:

1. Under OMB control number 0648–0202, surf clam and ocean quahog operator permits at 1 hour per response,

2. Under OMB control number 0648–0202, mackerel at-sea processor permits at 5 minutes per response, and

2. Under OMB control number 0648–0229, mackerel dealer weekly reporting for at-sea processors at 2 minutes to complete the dealer purchase report (Form 88–30), and 4 minutes to summarize and call-in the weekly interactive voice response report.

The response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (a)(5)(iii) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(5) * * *

(iii) *Atlantic mackerel permit.* Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ, except for vessels that exceed either 165 feet in length overall (LOA) and 750 gross registered tons, or a shaft horsepower of 3000 shp. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified under § 648.6(a)(2).

* * * * *

3. In § 648.5, paragraphs (a) and (d) are revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, black sea bass, or, as of November 26, 1999, Atlantic surf clams and ocean quahogs, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board, a valid operator's permit.

* * * * *

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; and signature of the applicant.

* * * * *

4. In § 648.6, paragraphs (a) and (c) are revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* (1) *Dealer permits.* All NE multispecies, sea scallop, summer flounder, surf clam, and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species. All mackerel, squid, and butterfish dealers and all scup and black sea bass dealers must have been issued under this section, and have in their possession, a valid permit for these species.

(2) *At-sea processors.* Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

* * * * *

(c) *Information requirements.* Applications must contain at least the following information, as applicable, and any other information required by the Regional Administrator: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the partnership agreement and the names and addresses of all partners, if the business is a partnership, name of at-sea processor vessel, and current vessel documentation papers.

* * * * *

5. In § 648.7, the last two sentences of paragraph (c) are removed and paragraph (f)(3) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any mackerel, or squid, or butterfish, or scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1), (a)(2), or (a)(3) of this section, as applicable, and provide those reports to the Regional Administrator or designee on the same frequency basis.

* * * * *

6. In § 648.14, paragraph (p)(10) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(p) * * *

(10) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds either 165 ft (50.3 m) in length overall and 750 GRT, or a shaft horsepower of 3000 shp, except for the retention and possession of Atlantic mackerel for processing by a vessel holding a valid at-sea processor permit pursuant to § 648.6(a)(2).

* * * * *

7. In § 648.20, paragraph (c) is revised to read as follows:

§ 648.20 Maximum optimum yield (OYs).

* * * * *

(c) *Illex*—catch associated with a fishing mortality rate of F_{MSY}.

* * * * *

8. In § 648.21, paragraph (b)(2)(i) is revised and paragraph (e) is removed to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(b) * * *

(2) *Mackerel.* (i) Mackerel ABC must be calculated from the formula ABC = T - C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to F_{target} (F = 0.25) at 890,000 mt spawning stock biomass (or greater) and decreases linearly to zero at 450,000 mt spawning stock biomass (½ B_{MSY}).

* * * * *

9. Section 648.24 is added under subpart B to read as follows:

§ 648.24 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description

and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

10. In § 648.73, paragraph (a)(4) is added to read as follows:

§ 648.73 Closed areas.

(a) * * *

(4) *Georges Bank.* The paralytic shellfish poisoning (PSP) contaminated area, which is located in Georges Bank, and is located east of 69° W. longitude, and south of 42°20′ N. latitude.

* * * * *

11. Section 648.77 is added under subpart E to read as follows:

§ 648.77 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Surf Clam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels) description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set aside quota for scientific research, vessel tracking system, optimum yield range.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule and published in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

12. Section 648.106 is revised to read as follows:

§ 648.106 Sea Turtle conservation.

Sea turtle regulations are found at 50 CFR parts 222 and 223.

13. Section 648.107 is added under Subpart G to read as follows:

§ 648.107 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, if after reviewing the Council's recommendation and supporting information:

(i) NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule and published in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

14. Section 648.127 is added under subpart H to read as follows:

§ 648.127 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.107(a).

(1) *Adjustment process.* See § 648.107(a)(1).

(2) *Council recommendation.* See § 648.107(a)(2)(i) through (iv).

(3) *NMFS action.* See § 648.107(a)(i) through (iii).

(4) *Emergency actions.* See § 648.107(a)(4).

(b) [Reserved]

15. Section 648.147 is added under subpart I to read as follows:

§ 648.147 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.107(a).

(1) *Adjustment process.* See § 648.107(a)(1).

(2) *Council recommendation.* See § 648.107(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.107(a)(i) through (iii).

(4) *Emergency actions.* See § 648.107(a)(4).

(b) [Reserved]

[FR Doc. 99–27921 Filed 10–25–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 102099A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1999 pollock total allowable catch (TAC) specified to the inshore component in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 24, 1999 until 2400 hrs A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish

Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with section 206(b)(1) of the American Fisheries Act (AFA), 50 percent of the remainder of the pollock TAC in the BSAI, after the subtraction of the allocation to the pollock Community Development Quota and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species, shall be allocated as a directed fishing allowance to catcher vessels harvesting pollock for processing by the inshore component. The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999), and subsequent reallocation (64 FR 56474, October 20, 1999), established the final 1999 amount of pollock allocated for processing by the inshore component of the Bering Sea subarea as 424,187 metric tons.

NMFS prohibited directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI effective October 6, 1999 (64 FR 55438, October 13, 1999) in accordance with § 679.20(d)(1)(iii) with the expectation that the directed fishing allowance would be caught by that date.

NMFS has determined that as of October 16, 1998, 10,600 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the pollock TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP and AFA objective of providing the pollock TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 20, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27876 Filed 10–21–99; 3:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 206
Tuesday, October 26, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV99–932–3 PR]

Olives Grown in California; Revisions to Handling Requirements and Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on revisions to the handling requirements under the California olive marketing order and announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the marketing order. The olive marketing order regulates the handling of olives grown in California, and is administered locally by the California Olive Committee (committee). This rule would establish exemption and safeguard requirements for handlers desiring to ship a small portion of their olives as new packaged olive products for test marketing and market development projects. If implemented, this rule would help provide uniform procedures under the order and improve overall program administration.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 148 and Marketing Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to handling requirements under the order for olives grown in California. The revision would implement procedures and reporting requirements for handlers desiring to use a small portion of their olives to test market and initiate market development projects for new packaged olive products. The procedures include completion and submission of a new form, the COC Form 155, and approval by committee staff. This rule also announces AMS's intention to request a revision to the currently-approved information collection requirements issued under the marketing order.

Sections 932.51 and 932.52 of the olive marketing order authorize regulatory requirements regarding the handling of California packaged olives. Such requirements include incoming and outgoing handling requirements with regard to quality, size, and style of olives. Certain of these requirements are implemented under § 932.149. Styles of olives include whole, pitted, sliced, segmented (wedged), halved, chopped, and broken pitted. Under this proposal, handlers would be permitted to use other styles of olives and to add other ingredients to the finished product, such as flavorings, pieces of garlic, or jalapeno peppers.

Section 932.55 of the order provides authority for exempting from any or all requirements handlers handling olives which are used for specified purposes, including shipments of olives used to facilitate the conduct of marketing research and development projects. Section 932.55 of the order also provides authority for the committee to recommend rules, regulations, and safeguards necessary to ensure that olives exempted under the provisions of this section are handled only as authorized.

Section 932.155 of the order's rules and regulations provides specific safeguards for certain special purpose shipments of packaged olives. However, these regulations do not include requirements and procedures related to shipping packaged olives for test marketing and market development. In the past, the committee has on occasion approved such marketing projects. This rule proposes revising § 932.155 for the purpose of clarifying the language and to include an exemption and safeguards in the rules and regulations for shipments of new packaged products for test marketing and market development. This would clarify existing practices in the regulations, and would establish uniform procedures for all handlers to ensure that the handling of new product packaged olives exempted under the provisions of § 932.55 will be handled only as authorized. Such new products could include packaged olives of different styles than those earlier mentioned containing various ingredients or flavorings, such as pieces of garlic, or jalapeno peppers.

The proposed rule includes a new form, the COC 155. Prior to engaging in test marketing and initiating market development projects for a new product, a handler would be required to file the COC 155 with the committee. The form includes: (1) The name and address of the requesting handler; (2) the quantity of olives to be utilized (limited to not more than five percent of the applicant handler's crop year acquisitions); (3) specific market outlet; (4) flavorings or other ingredients added to the olives; (5) style of olives used; (6) type of olives used, either black or green ripe; (7) container sizes; (8) varieties used, whether Ascolano, Barouni, Manzanillo, Mission, Sevillano, etc.; (9) sizes of olives utilized; (10) approximate dates on which the new product will be packaged; (11) place of inspection; (12) certification that all assessments and reporting in effect under the marketing order will be met prior to shipment; (13) certification that all such fruit will be kept separate from other packaged olives and will be so identified by control cards or other means acceptable to the Inspection Service; (14) purpose and nature of the request, whether for test marketing, evaluation, market research, etc.; and (15) an estimate of the amount of time required to complete the market-test. The committee shall promptly approve or deny the application, and may add limitations to any such approval.

Any product remaining at the end of the test-market period shall be disposed of according to paragraph (a) of § 932.155, which specifies procedures for disposing of packaged olives in the production of olive oil, donating to a charitable organization, and by dumping.

On December 10, 1998, the committee met to discuss the recommendation. Additional discussion occurred at various subcommittee meetings prior to the December 10, 1998, committee meeting.

According to the committee, demand for packaged olives has remained relatively stagnant in recent years. The committee believes that to improve returns to producers and handlers, handlers must have the flexibility to respond to shifting trends in the marketplace by test marketing new products. Handlers must be allowed the opportunity to try marketing innovative new products free from certain marketing order obligations, such as style and flavor requirements, which appear to be too restrictive for these new products. Such shipments, will, therefore, be exempt from the requirements of § 932.149. Because it appears that such shipments can comply with all other order requirements, they will remain applicable. This would allow the handlers to respond to marketing opportunities and requests from buyers, which could result in increased olive sales. In addition, since handlers have large amounts of capital invested in their processing plants, any increase in the amount of olives processed yields a reduction of per unit processing costs, which is a benefit to handlers and producers.

It has been the industry's experience that the ability to ship new products for test marketing and market development helps to encourage handlers to develop new product lines. The committee believes that this option should continue to be available, allowing handlers to take advantage of additional marketing opportunities to expand the market for processed olives. Adding procedures to the rules and regulations will help clarify the existing practice, and will provide uniform requirements for handlers.

Therefore, when the committee met in December, it unanimously recommended modifying the rules and regulations to specify procedures and reporting requirements to permit handlers to ship a small portion of their olives for new packed olive products for test marketing and market development projects. In addition, the committee recommended development of a new form, the COC Form 155, that handlers interested in test marketing and market development projects for new olive products must complete and file with the committee.

The information supplied by the applicant handler would provide the committee with information necessary to ensure that the product is used for test marketing or for marketing development projects and that the Inspection Service is aware of the product.

The new COC Form 155 will require a revision in the information collection requirements under the order. It is estimated that COC Form 155 would require 20 minutes for the applicant handlers to complete. It is expected that this could result in an increased reporting burden to handlers. The increased burden is estimated to be 20 minutes per handler annually. If all three handlers applied, the COC Form 155 would add 1 hour in total annual hours to the current response burden.

The information collection requirements contained in the referenced § 932.155 will require approval by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 3 handlers subject to regulation under the order and approximately 1,200 producers of olives in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. None of the olive handlers may be classified as small entities. The majority of producers may be classified as small entities.

A review of historical and preliminary information pertaining to the current fiscal year (January 1 through December 31) indicates that the total grower revenue for the 1999 crop year (August

1 through July 31) is estimated to be approximately $39,500,000, and the average grower revenue approximately $33,000. Thus, it can be concluded that the majority of producers of California olives may be classified as small entities.

This rule would revise § 932.155 to include requirements for handlers desiring to ship olives to test markets and initiate market development projects for small quantities of new olive products. This rule would also reformat § 932.155 for purposes of clarity.

An alternative to this action would be to maintain the status quo, whereby the regulations would not address the needs of handlers desiring to ship new products for test marketing and market development. However, the committee and the Department believe that regulations should be modified to address these needs. This would help ensure uniform requirements and procedures are followed by handlers who desire to test market and initiate market development projects. Such activity could ultimately result in increasing sales of processed olives.

Under this proposed rule, the committee would review written requests from handlers interested in test marketing and market development of new product lines. Such requests would be made on a new form, the COC 155, which would require uniform information from all applicant handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This new form is anticipated to be utilized when handlers have developed new product lines which they desire to test market. Accordingly, this action would impose an additional reporting or recordkeeping requirement on three olive handlers by requiring COC Form 155 to be filed prior to the test marketing of a new canned olive product. The form is estimated to take approximately 20 minutes to complete. There are only three handlers regulated under the order, and the additional burden created by the use of this form by all handlers is estimated to be 1 annual hour.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the committee's meeting was widely publicized throughout the olive industry and all interested persons were encouraged to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 10, 1998, meeting was a public meeting and all entities, both large and small, were encouraged to express views on this issue. The committee is comprised of 16 members, of which 8 are producers and 8 are handlers. Each of the three handler entities is presently represented on the committee. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request a revision to a currently approved information collection for olives grown in California, Marketing Order No. 932.

Title: Olives Grown in California, Marketing Order 932.

OMB Number: 0581–0142.

Expiration Date of Approval: October 31, 2000.

Type of Request: Revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of good quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), marketing order programs are established if favored by producers in referenda. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California olive marketing order program, which has been operating since 1965.

The California olive marketing order authorizes the issuance of quality, size, and inspection requirements. The order also has authority for research and development projects, including paid advertising. Pursuant to section 8e of the Act, import grade and size requirements are implemented on olives imported into the United States.

The order and its rules and regulations authorize the California Olive Committee (committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committee has developed forms as a means for persons to file required information with the committee relating to olive supplies, shipments, dispositions, and other information necessary to effectively carry out the purpose of the Act and the order. California olives are shipped year-round and these forms are used accordingly.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected would be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarter's staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information and AMS is the secondary user.

This proposed collection consists of a requirement for handlers to file a form with the committee for approval to ship new olive products to be test marketed.

The committee believes that to improve returns to producers and handlers, handlers should be encouraged to look for outlets for new product lines. One method to encourage development of new products is to continue to allow test marketing of such products by including authority in the rules and regulations that is uniformly applied to all handlers. The information supplied by the applicant handler would provide the committee with information necessary to ensure that the product is used for test marketing or for marketing development projects and that the inspection service is aware of the product.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1/3 hour per response.

Respondents: California olive handlers.

Estimated Number of Respondents: 3

Estimated Number of Responses per Respondent: one annually.

Estimated Total Annual Burden on Respondents: 1 hour.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0142 and California Olive Marketing Order No. 932, and be sent to the USDA in care of the docket clerk at the address referenced above. All comments received will be available for public inspection during regular business hours at the same address and will become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All responses to this notice will be summarized and included in the request for OMB approval.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 932.155, paragraphs (a) and (b) are revised to read as follows:

§ 932.155 Special purpose shipments.

(a) The disposition of packaged olives covered by § 932.152(d) which are not reprocessed, and new packaged olive products covered under paragraph (b) of this section which have not been disposed of by the end of the test market period, shall be handled in conformity with the applicable provisions of this paragraph.

(1) Under supervision of the Inspection Service, such packaged olives may be disposed of for use in the production of olive oil or dumped.

(2) Such packaged olives may be disposed of to a charitable organization for use by such organization, provided the following conditions are met:

(i) Any handler who wishes to so dispose of olives shall first file a written application with, and obtain written approval thereof from, the committee. Each such application shall contain at least:

(A) The name and address of the handler and the charitable organization;

(B) The physical location of the charitable organization's facilities;

(C) The quantity in cases, the variety, size, can size, and can code of the packaged olives; and

(D) A certification from the charitable organization that such olives will be used by the organization and will not be sold.

(ii) Prior to approval, the committee shall perform such verification of the accuracy of the information on the application as it deems necessary. The committee may deny any application if it finds that the required information is incomplete or incorrect, or has reason to believe that the intended receiver is not a charitable organization, or that the handler or the organization has disposed of packaged olives contrary to a previously approved application. The committee shall notify the applicant and the organization in writing of its approval, or denial, of the application. Any such approval shall continue in effect so long as the packaged olives covered thereby are disposed of consistent with this section. The committee shall notify the handler and the organization of each such termination of approval. The handler shall furnish the committee upon demand such evidence of disposition of the packaged olives covered by an approved application as may be satisfactory to the committee.

(b) In accordance with the provisions of § 932.55(b), packaged olives to be used in marketing development projects may be handled without regard to § 932.149 provided the following conditions are met. Such olives must be identified to the satisfaction of the Inspection Service and kept separate from other packaged olives. The handler shall submit to the committee for its approval "COC Form 155" at least 10 working days prior to the shipment of such packaged olives to test markets, and report progress or changes to the committee, as requested. The applicant handler shall provide the following information on COC Form 155:

(1) The quantity of olives to be utilized (limited to not more than five percent of the handler's crop year acquisitions);

(2) Specific market outlet;

(3) Flavorings or other ingredients added to the olives;

(4) Style of olives used;

(5) Type of olives used, either black or green ripe;

(6) Container sizes;

(7) Varieties used, whether Ascolano, Barouni, Manzanillo, Mission, Sevillano, etc.;

(8) Sizes of olives utilized;

(9) Approximate dates when the new product will be packaged;

(10) Name and address of requesting handler;

(11) Place of inspection;

(12) Certification that all assessment and reporting requirements in effect under the marketing order will be met prior to shipment;

(13) Certification that all such fruit will be kept separate from other packaged olives and will be so identified by control cards or other means acceptable to the Inspection Service;

(14) Purpose and nature of the request, whether for test marketing, evaluation, market research, etc.; and

(15) An estimate of the amount of time required to complete the test. The committee shall promptly approve or deny the application, and may add limitations to any such approval. Upon approval, the applicant handler shall notify the Inspection Service. Packaged olives so identified and remaining unused at the end of the approved test-market period shall be disposed of according to paragraph (a) of this section.

* * * * *

Dated: October 18, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–27744 Filed 10–25–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require modification of the engine intake ducts to provide new cable routes and improved contamination protection of connectors on the engine intake de-

icing system. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent chafing and subsequent damage to the engine intake de-icing system wiring, and contamination of electrical connectors and plugs. Damage to system wiring or contamination of the electrical connectors or plugs could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout.

DATES: Comments must be received by November 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–201–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that there were six reports of failures, including four double failures, of the engine intake de-icing system. The failures were attributed to chafing and consequent damage to system wiring due to vibration within the engine, and contamination of electrical connectors and plugs by oil and water. Damage to system wiring or contamination of the electrical connectors or plugs could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin ATP–30–056, dated June 11, 1999. The service bulletin describes procedures for modification of the engine intake ducts to provide new cable routes and improved contamination protection of connectors on the engine intake de-icing system. The procedures for modification include inspection of cable looms, wires, electrical connectors, and associated hardware for damage; and replacement of damaged parts with new or serviceable parts. The service bulletin also specifies procedures to reroute and modify the flexible duct cable loom and inlet duct power loom, and to install new connector boots and backshells to seal electrical connectors. These procedures are intended to increase the reliability of the engine intake de-icing system by eliminating chafing of electrical wires and protecting electrical connectors from contamination. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The British Aerospace service bulletin references Dunlop Limited Aviation Division Service Bulletin ACA1324–30–96, dated June 11, 1999, as an additional source of service information to accomplish the modification.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 56 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $33,600, or $3,360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–201–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and subsequent damage to the engine intake de-icing system wiring, and contamination of electrical connectors and plugs; which could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout; accomplish the following:

Modification

(a) Within 180 days after the effective date of this AD, accomplish the modification of the engine intake ducts (including inspection of the cable looms, wires, electrical connectors, and associated hardware for damage; replacement of damaged parts with new or serviceable parts; rerouting and modification of the flexible duct cable loom and inlet duct power loom; and installation of new connector boots and backshells on electrical connectors on the engine intake de-icing system) to provide new cable routes and improved contamination protection of connectors on the engine intake de-sicing system, in accordance with British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999.

Note 2: British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999, references Dunlop Limited Aviation Division Service Bulletin ACA1324–30–96, dated June 11, 1999, as an additional source of service information to accomplish the modification.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 20, 1999.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27940 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that would have required initial and repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective actions, if necessary. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by correcting an omission of the compliance time for accomplishment of the initial inspection for certain airplanes. The actions specified by this new proposed AD are intended to prevent fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by November 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–240–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 5, 1999 (64 FR 438). That NPRM would have required initial and repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective actions, if necessary. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. That condition, if not corrected, could result in fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comments received in response to that NPRM.

Omission of Compliance Time

Two commenters state that paragraph (a) of the proposed AD does not address a time frame for accomplishment of the proposed actions. Both commenters note that the compliance deadline in the service bulletin is 27,000 total flight cycles, and assume that the FAA's intent was to follow that compliance time.

The FAA acknowledges that paragraph (a) of the proposed AD does not specify a compliance time. It was the FAA's intent to follow the same compliance time as that specified in the service bulletin; the compliance time was inadvertently omitted from the NPRM. This error has been corrected, and, due to this omission, the revised rule will be issued as a supplemental NPRM.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Request To Allow Latest Service Bulletin Revisions

One commenter states that for paragraphs (b) and (c), respectively, ATR Service Bulletins ATR72–53–1013 and ATR72–53–1019, both Revision 3, were issued January 22, 1999. The commenter requests that the AD reference Revision 3 of both of these bulletins instead of Revision 2, as currently referenced. Revision 3 of the service bulletins provides a compliance time of 36,000 total flight cycles, which is consistent with the French AD and this NPRM.

The FAA concurs with the commenter's request. Revisions 2 and 3 of the service bulletins mentioned above are technically equivalent. This supplemental NPRM will be revised to reference Revision 3; however, Note 2 is revised to also allow compliance with Revision 2 prior to the effective date of the AD.

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1018 (14 U.S.-sregistered airplanes), it would take approximately 250 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,880 per airplane. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $348,320, or $24,880 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1013, Revision 2 (2 U.S.-registered airplanes), it would take approximately 3 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $360, or $180 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1019, Revision 2 (2 U.S.-registered airplanes), it would take approximately 100 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $12,000, or $6,000 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1028 (2 U.S.-registered airplanes), it would take approximately 5 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $600 or $300 per airplane, per inspection cycle.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1033, and ATR72–52–1029, Revision 1 (2 U.S.-registered airplanes), it would take approximately 145 work hours per airplane to accomplish the proposed door stop fitting replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the stop fittings replacement proposed by this AD on

U.S. operators is estimated to be $17,400 or $8,700 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1 (2 U.S.-registered airplanes), it would take approximately 30 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $3,600, or $1,800 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2 (2 U.S.-registered airplanes), it would take approximately 8 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $960, or $480 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1020 (14 U.S.-registered airplanes), it would take approximately 6 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $5,040, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 98–NM–240–AD.

Applicability: Model ATR72 series airplanes, certificated in any category; listed in the following Avions de Transport Regional Service Bulletins:

- ATR72–52–1018, dated May 18, 1995;
- ATR72–53–1013, Revision 2, dated March 22, 1993;
- ATR72–53–1019, Revision 2, dated October 15, 1996;
- ATR72–52–1028, dated July 5, 1993;
- ATR72–52–1033, dated April 28, 1995;
- ATR72–52–1029, Revision 1, dated November 16, 1994;
- ATR72–53–1021, Revision 1, dated February 20, 1995;
- ATR72–53–1014, Revision 2, dated October 15, 1992; and
- ATR72–53–1020, dated October 6, 1992.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For airplanes on which Aerospatiale Modification 03191 (reference Avions de Transport Regional Service Bulletin ATR72–52–1018, dated May 18, 1995) has not been accomplished: Prior to the accumulation of 27,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a preliminary inspection of the existing fasteners to determine if the fasteners are out of tolerance in accordance with paragraph 2.C.(1) of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–52–1018, dated May 18, 1995. Depending on the results of the inspection, prior to further flight, accomplish the requirements in paragraphs (a)(1) and (a)(2), or (a)(2) and (a)(3), of this AD, as applicable, as specified by paragraph 2.C.(1) of the service bulletin.

(1) Remove the fasteners and inspect the fastener holes to determine if they are out of tolerance or cracking, in accordance with Part A of the Accomplishment Instructions of the service bulletin. Perform a visual inspection of the holes for correct tolerance, and a high frequency eddy current (HFEC) inspection for cracking.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(2) Remove the existing fasteners and inspect the fastener holes for correct tolerance in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) or its delegated agent.

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(3) Remove the existing fasteners, repair, and replace the cargo compartment door hinges with new hinges in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(b) For airplanes having serial numbers 108 through 210 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the key holes located on main frames 25 and 27 of the fuselage, between stringers 14 and 15, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1013, Revision 3, dated January 22, 1999.

(1) If all rivets are installed, no further action is required by paragraph (b) of this AD.

(2) If any rivet is missing, prior to further flight, perform an eddy current inspection of the affected key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, install rivets in all affected key holes, in accordance with the service bulletin. If installation of rivets is not possible, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(ii) If any crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(c) For airplanes having serial numbers 108 through 207 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the tooling and key holes located on the standard frames of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1019, Revision 3, dated January 22, 1999.

(1) If all rivets are installed, no further action is required by paragraph (c) of this AD.

(2) If any rivet is missing, prior to further flight, perform a visual inspection of the affected tooling and key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, install new rivets in all affected tooling and key holes, in accordance with the service bulletin.

(ii) If any crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(d) For airplanes on which Aerospatiale Modification 03775 (reference Avions de Transport Regional Service Bulletin ATR72–52–1029, Revision 1, dated November 16, 1994) or Aerospatiale Modification 03776 (reference Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the plug door stop fittings of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1028, dated July 5, 1993.

(1) If no crack is detected, repeat the eddy current inspection required by paragraph (d) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

(2) If any crack is detected, prior to further flight, replace the cracked stop fittings with new, improved fittings, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995, or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that fitting.

(e) For airplanes on which Aerospatiale Modification 03775 or Aerospatiale Modification 03776 has not been accomplished: Prior to the accumulation of 18,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, replace the plug door stop fittings of the forward and aft passenger and service doors with new, improved fittings, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995; or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD.

(f) For airplanes on which Aerospatiale Modification 02986 (reference Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995) has not been accomplished: Prior to the accumulation of 18,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks in the rivet holes of the door surround corners of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995.

(1) If no crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, modify the rivet holes, and replace the door surround corners with modified corners, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, repair and modify in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(g) For airplanes on which Aerospatiale Modification 02397 (reference Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992.

(1) If no crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, install reinforcement angles on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(h) For airplanes on which Aerospatiale Modification 03185 (reference Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on stringer 11 of frame 26 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992.

(1) If no crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, install doublers and stringer clips on the left and right sides on stringer 11 of frame 26 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Note 2: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Avions de Transport Regional Service Bulletins ATR72–53–1013, dated June 10, 1991, or Revision 1, dated June 12, 1992, or Revision 2, dated March 22, 1993; ATR72–53–1019, dated May 13, 1993, or Revision 1, dated November 11, 1994, or Revision 2, dated October 15, 1996; ATR72–52–1029, dated July 20, 1994; or ATR72–53–1014, Revision 1, dated June 30, 1992; are considered acceptable for compliance with the applicable actions specified in this amendment.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(j) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 92–046–012(B)R4, dated November 5, 1997.

Issued in Renton, Washington, on October 20, 1999.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27939 Filed 10–25–99; 8:45 am]

BILLING CODE 4915–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–32–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45/50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/50 series turbofan engines. This proposal would require initial and repetitive inspections for cracks in the stage 14 high pressure compressor (HPC) disk lock slots, and removal from service of certain disks, at the first piece-part level or HPC rotor module level exposure, after 6,000 cycles since new (CSN). This proposal is prompted by reports of stage 14 HPC disk lock slot cracks discovered during shop fluorescent penetrant inspections. The actions specified by the proposed AD are intended to prevent stage 14 HPC disk failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–32–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Events Leading to This Proposed Rule

The Federal Aviation Administration (FAA) has received reports of stage 14 high pressure compressor (HPC) disk lock slot cracks discovered on General Electric Company (GE) CF6–45/50 series turbofan engines during routine shop fluorescent penetrant inspections. The investigation revealed higher stresses in the load and lock slots than prior analyses have predicted. Two populations or groups of disks have been identified. One group of disks was produced from forgings with coarser grain sizes than the other group of disks and therefore is less resistant to fatigue crack initiation. The referenced GE CF6–50 Alert Service Bulletins (ASB) 72–A1144, dated March 19, 1998, or ASB 72–A1144, Revision 1, dated May 13, 1999, define these forging groups by serial numbers and describe the applicable inspection procedures for each disk forging group. This condition, if not corrected, could result in a stage 14 HPC disk failure, which could result in uncontained engine failure and damage to the aircraft. The stage 14 HPC rotor disks are no longer being manufactured, and have been replaced with a stage 11–14 spool shaft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive inspections for cracks in the stage 14 HPC disk lock slots in accordance with procedures and intervals defined by forging group, and would require the removal from service of certain disks at the first piece-part level exposure or HPC rotor module level exposure above 6,000 CSN. The actions would be required to be accomplished in accordance with the ASB's described previously.

Cost Impact

There are approximately 1,538 engines of the affected design in the worldwide fleet. The FAA estimates that 460 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,600 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,263,200.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 98–ANE–32–AD.

Applicability: General Electric Company (GE) Model CF6–45/50 series turbofan engines, installed on but not limited to Airbus Industrie A300 series, Boeing Company 747 series, and McDonnell Douglas Corporation DC–10 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a stage 14 high pressure compressor (HPC) disk failure, which could result in uncontained engine failure and damage to the aircraft, accomplish the following:

Inspections

(a) Perform initial inspections of HPC stage 14 disks, part numbers (P/N's) 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04, with serial number (SN) prefixes GWN, MPO, RRY, and SNL, and disk SN's SNE00001 through SNE00017, and disk SN's SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) Inspect disks with 6,500 cycles since new (CSN) or less on the effective date of this AD before accumulating 9,800 CSN.

(2) Inspect disks with more than 6,500 CSN on the effective date of this AD no later than the next engine shop visit (ESV) after the effective date of this AD or before accumulating an additional 3,300 cycles-in-service (CIS) after the effective date of this AD, whichever occurs first.

(b) Perform repetitive inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04, with SN prefixes GWN, MPO, RRY, and SNL, and disk SN's SNE00001 through SNE00017, and disk SN's SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) For disks with less than 9,800 CSN at the time of the last inspection, perform repetitive inspections no later than 9,800 CSN or before accumulating 3,300 cycles since last inspection (CSLI), whichever occurs later.

(2) For disks with 9,800 CSN or greater at the time of the last inspection, perform repetitive inspections no later than 3,300 CSLI.

(c) Perform initial inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) Inspect disks with 4,200 CSN or less on the effective date of this AD before accumulating 7,500 CSN.

(2) Inspect disks with more than 4,200 CSN but less than 9,000 CSN on the effective date of this AD at the next ESV after the effective date of this AD, before accumulating an additional 3,300 CIS after the effective date of this AD, or before accumulating 11,000 CSN, whichever occurs first.

(3) Inspect disks with 9,000 CSN or greater on the effective date of this AD, at the next ESV after the effective date of this AD, or before accumulating an additional 2,000 CIS after the effective date of this AD, whichever occurs first.

(d) Perform repetitive inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) For disks with less than 7,500 CSN at the time of the last inspection, perform repetitive inspections no later than 7,500 CSN or before accumulating 3,300 CSLI, whichever occurs later.

(2) For disks with 7,500 CSN or greater at the time of the last inspection, perform repetitive inspections no later than 3300 CSLI.

Removal from Service

(e) Remove from service prior to further flight stage 14 HPC disks that equal or exceed the reject criteria established by GE CF6–50 ASB 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999.

(f) Remove from service, HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, with greater than 6,000 CSN after the effective date of this AD, at the next piece-part level exposure or at the next HPC rotor module level exposure after the effective date of this AD.

Terminating Action

(g) Replacement of the stage 14 HPC disk, P/N's 9080M34P03, 9080M34P04, 9080M34P05, 9349M91P04, with a stage 11–14 spool shaft is terminating action for the inspection requirements of this AD.

Reporting Requirements

(h) Report the results of inspections that equal or exceed the reject criteria within five days of the inspection to: Manager, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299. The following information must be included in the report:

(1) HPC Stage 14 rotor disk P/N,
(2) HPC Stage 14 rotor disk SN,
(3) HPC Stage 14 rotor disk CSN,
(4) HPC Stage 14 rotor disk CSLI, and
(5) Date and location of inspection.

Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056..

Definitions

(i) For the purpose of this AD, the following definitions apply:

(1) HPC Rotor disassembly occurs if any of the HPC

Rotor bolted flange joints are separated, such as the Stage 2 joint to accomplish the Stage 3–9 Spool inspection.

(2) Piece-part exposure is defined as disassembly and removal of the stage 14 disk from the HPC rotor structure, regardless of any blades, locking lugs, bolts or balance weights assembled to the disk.

(3) An engine shop visit is defined as the introduction of an engine into a shop where a major engine flange is separated. The following maintenance actions are not considered engine shop visits for the purpose of this AD:

(i) Introduction of an engine into a shop solely for removal or replacement of the Stage 1 Fan Disk;

(ii) Introduction of an engine into a shop solely for replacement of the Turbine Rear Frame;

(iii) Introduction of an engine into a shop solely for replacement of the Accessory Gearbox or Transfer Gearboxes;

(iv) Introduction of an engine into a shop for any combination of exceptions specified in paragraphs (i)(3)(i) through (i)(3)(iii).

Alternate Methods of Compliance

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Special Flight Permit

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 20, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–27938 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–79–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80C2 series turbofan engines. This proposal would require removal from service of affected fan mid shafts prior to reaching a new, lower cyclic life limit, and replacement with serviceable parts. This proposal is prompted by recent component test data. The actions specified by the proposed AD are intended to prevent fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-79-AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–79–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–79–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

General Electric Company (GE), the manufacturer of CF6–80C2 series turbofan engines, recently conducted component tests and analysis of low pressure rotor shafts that resulted in the need to reduce the cyclic life limit of fan mid shafts, part number (P/Ns) 9326M74P04 and P/N 9326M74P05. The analysis revealed high stress in the fan mid shaft spline teeth, which results in reduced component cyclic life. This condition, if not corrected, could result in fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would require removal from service of affected fan mid shafts prior to reaching a new, lower cyclic life limit, and replacement with serviceable parts.

Economic Analysis

There are approximately 1,796 engines of the affected design in the worldwide fleet. The FAA estimates that 230 engines installed on aircraft of US registry would be affected by this proposed AD and that required parts would cost approximately $90,085 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $20,719,600.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 98–ANE–79–AD.

Applicability: General Electric Company (GE) CF6–80C2 series turbofan engines, with fan mid shafts, part number (P/N) 9326M74P04 or P/N 9326M74P05, installed. These engines are installed on but not limited to Airbus Industrie A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

Removal From Service

(a) Remove from service affected fan mid shafts and replace with a serviceable part, as follows:

Note 2: GE CF6–80C2 Service Bulletin (SB) No. 72–958, dated December 10, 1998, contains information on this subject.

(1) For fan mid shafts that have accumulated 9,000 or more cycles-since-new (CSN) on the effective date of this AD, remove from service within 3,500 cycles-in-service (CIS) after the effective date of this AD, or prior to accumulating 15,000 CSN, whichever occurs first.

(2) For fan mid shafts that have accumulated 1,800 CSN or more, but less than 9,000 CSN on the effective date of this AD, remove from service within 5,000 CIS, or prior to accumulating to 12,500 CSN, whichever occurs first.

(3) For fan mid shafts that have accumulated less than 1,800 CSN on the effective date of this AD, remove from service prior to accumulating 6,800 CSN.

Note 3: GE CF6–80C2 SB 72–750, Revision 2, dated September 4, 1998, contains information on reworking fan mid shafts that results in changing the part number. After that rework, this AD would not apply to engines containing the reworked fan mid shaft.

New Life Limits

(b) Except for the provisions of paragraph (a) of this AD, no fan mid shafts, P/N 9326M74P04 or 9326M74P05, may remain in service beyond 6,800 CSN.

Alternate Method of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 20, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–27937 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–09]

Proposed revision of Class E airspace, Lakeview, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would amend the Lakeview, OR, Class E Airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) at the Lake County Airport, Lakeview, OR.

DATES: Comments must be received on or before December 10, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 99–ANM–09, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–09, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ANM–09." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Lakeview, OR, in order to accommodate a new SIAP to the Lake County Airport, Lakeview, OR. This amendment would provide additional airspace at Lakeview, OR, to meet current criteria standards associated with SIAP holding patterns. This action also incorporates the name change of the airport from Lakeview Airport to Lake County Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under Instrument Flight Rules (IFR) at the Lake County Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published Paragraph 6005, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragaph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Lakeview OR [Revised]

Lake County Airport, OR
(Lat. 42°09′40″N, long. 120°23′56″W)

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Lake County Airport, and within 1.8 miles each side of the 180° bearing from the Lake County Airport extending from Airport to 7 miles south of the Lake County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 42°45′00″N, long. 120°46′00″W; to lat. 42°45′00″N, long 120°12′00″W; to lat. 41°41′00″N, long. 120°12′00″W; to lat. 41°41′00″N, long. 120°46′00″W, to the point of beginning; that airspace extending upward from 10,500 feet MSL bounded on the north by lat. 44°00′00″N, on the east by a line extending from lat. 44°00′00″N, long. 120°00′04″W, to the north edge of V–122 at long. 119°00′04″W, on the south by the north edge of V–122, and on the west by the east edge of V–165.

* * * * *

Issued in Seattle, Washington, October 12, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–27828 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–13]

Proposed Amendment to Class E Airspace; Leonardtown, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Class E airspace area at Leonardtown, MD. Amendments to the Standard Instrument Approach procedures (SIAP) for the Global Positioning System (GPS) and VHF Omni Range (VOR) RWY–11 have made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace, Branch, AEA–520, Docket No. 99–AEA–13, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AEA–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Leonardtown, MD. Amendments to the SIAP, GPS and VOR RWY–11 for St. Marys County Airport make it necessary for additional controlled airspace extending upward from 700 feet AGL to be allocated to accommodate the SIAP and for IFR Operations at the airport. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 740.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points dated September 1, 1999, and effective September 16, 1999, is proposed to be amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5 Leonardtown, MD [Revised]

St. Marys County Airport, Leonardtown, MD
GRP (lat. 38°18′56″ N., long. 76°33′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of St. Marys County Airport, and within 4 miles each side of the PXT 293° radial extending from the 6.2 mile radius of the St. Marys Airport to 22 miles northwest of the PXT VORTAC.

* * * * *

Issued in Jamaica, New York, on October 2, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–27928 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Negotiated Rulemaking Committee notice of meeting.

SUMMARY: The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the

employees of more than one employer are "multiple employer welfare arrangements" (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state laws, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

DATES: The Committee will meet from 9:00 a.m. to approximately 5:00 p.m. on each day on Tuesday, November 16th and Wednesday, November 17th, 1999.

ADDRESSES: This Committee meeting will be held at the offices of the U.S. Department of Labor, Room C–5515, Conference Room #4, 200 Constitution Avenue, NW, Washington, DC. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend who need special accommodations should contact, at least 4 business days in advance of the meeting, Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219-7346). This is not a toll-free number.

Agenda

The Committee will continue to discuss the possible elements of a process and potential criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA, (29 U.S.C. 1002(40)). The agenda for the November meeting includes discussion of a possible consensus recommendation for a proposed rule and of the contents of a report to the Secretary of Labor under the Negotiated Rulemaking Act.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Tuesday, November 9, 1999, to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Goodwin or telephone (202) 219–4600. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Goodwin at the address above. Papers will be accepted and included in the record of the meeting if received on or before November 9, 1999.

Signed at Washington, DC, this 20th day of October, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–27907 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424 and 484

[HCFA–1103–N]

Medicare Program; Open Town Hall Meeting on November 8, 1999 To Present an Overview of the Home Health Prospective Payment System Proposed Rule Followed by a General Home Health Listening Session

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting to provide information on the home health prospective payment system (HH PPS) proposed rule. The proposed rule will be published in October 1999 in the **Federal Register**. In addition, there will be a general home health listening session.

DATES: The HH PPS town hall meeting is scheduled for Monday, November 8, 1999, from 10 a.m. until 3 p.m., E.S.T. The HH PPS presentation will be followed by the general home health listening session, which is scheduled for Monday, November 8, 1999, from 3:15 p.m. until 5:15 p.m., E.S.T.

ADDRESSES: The meeting will be held in the HCFA Central Office Main Auditorium, 7500 Security Boulevard, Baltimore, MD 21244 with satellite broadcast viewing areas located in Boston, Chicago, and Dallas. The general home health listening session will be held in the HCFA Central Office Main Auditorium only, and there will be no satellite broadcast of this session.

FOR FURTHER INFORMATION CONTACT:

Sharon Ventura, (410) 786–1985 (for information on the overview of the HH PPS proposed rule).

Gina Perantoni, (410) 786–3219 (for information on the general home health listening session).

SUPPLEMENTARY INFORMATION:

Background

The home health prospective payment system (HH PPS) proposed rule will be published in the **Federal Register** in October 1999. We are planning to hold a town hall meeting on Monday, November 8, 1999, which is during the 60-day comment period to brief the public on the proposed rule. We will not be accepting oral comments on the rule at this meeting. Written comments during the 60-day comment period are welcome. We anticipate interested parties to include: the home health agency (HHA) industry association representatives, HHA administrators and owners, home care professionals, university-based and private research organizations, Congressional members and staff, home care software vendors, beneficiary advocates, and any other interested parties.

In this meeting, we will provide an overview of the HH PPS proposed rule and will focus on a number of its key components and present past and current research efforts related to the HH PPS.

This meeting will be broadcast live from the HCFA Central Office Main Auditorium and will include three satellite broadcast viewing sites in Boston, Chicago, and Dallas. All four sites have a capacity of approximately 500 individuals. The audiences viewing the broadcast via satellite will have the ability to participate in the question-and-answer period at the end of this presentation. For those who cannot attend in Baltimore, the address of the downlink sites, registration information, and satellite coordinates for this presentation will be posted on the HCFA website www.hcfa.gov. Once individuals are on this website, they will need to highlight the red bullet, in the lower right hand corner, titled "Events, Meetings, and Workgroups."

The meeting will conclude with a question-and-answer session including the HCFA Central Office location as well as the three-satellite downlink sites. The toll-free phone number to call to participate will be broadcast during the meeting.

At the conclusion of the satellite broadcast, a 2-hour listening session is planned for participants in Baltimore only in the HCFA Central Office Main Auditorium during which time we will listen to concerns related to home health issues in general. This is a listening session only and not part of the HH PPS overview presentation.

In order to participate in the general home health listening session, individuals must sign up at 10 a.m. on the day of the town hall meeting. Presenters will be limited to the first 20 people who sign up. A sign up sheet will be available outside of the HCFA Main Auditorium. Individuals must limit their presentation to 3 minutes in length. We also ask that the oral presenters provide their statements in writing. Individuals who are unable to present oral statements may submit their statements in writing. We believe this will enable us to better consider all the concerns raised during this general home health listening session.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below.

Registration

AFYA Inc. will handle registration for all four meeting sites. Individuals must register following the directions posted on the HCFA website, www.hcfa.gov. Once individuals are on this website, they will need to highlight the red bullet, in the lower right hand corner, titled "Events, Meetings, and Workgroups."

Each participant will receive a confirmation letter as receipt of registration. Each participant will be provided with a meeting agenda at the time of the meeting. If individuals have any questions regarding registration, they should contact the AFYA Event Management Help Desk at (800) 377–9921.

Authority: Section 1895 of the Social Security Act (42 U.S.C. 1395fff).

Dated: October 21, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–27995 Filed 10–25–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3730, 3820, 3830, 3840, and 3850

[WO–620–1430–00–24 1A]

RIN 1004–AD31

Locating, Recording, and Maintaining Mining Claims or Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to requests from the public, the Bureau of Land Management (BLM) is extending the comment period on the proposed rule to amend regulations on locating, recording, and maintaining mining claims or sites. You may comment on this rule for an additional 90 days.

DATES: You should submit your comments on the proposed rule by January 24, 2000. In developing a final rule, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: If you want to comment, you may:

(1) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, N.W., Washington, D.C.;

(2) Mail comments to: Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C St., N.W., Washington, D.C. 20240; or

(3) Send comments by way of the Internet to: WOComment@blm.gov. If you submit your comments electronically, please submit them as an ASCII file to minimize computer problems and include "Attn: AD31" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–0350.

You may review the public comments received on the proposed rule at BLM's Regulatory Affairs Group office, 1620 L St., N.W., Room 401, Washington, D.C., during regular business hours (7:45 am to 4:15 pm) Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452–0355 or Ted Hudson in Regulatory Affairs at (202) 452–5042. For assistance in reaching the above contacts, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–(800) 877–8339 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The original proposed rule appeared in the **Federal Register** on August 27, 1999 (64 FR 47023). The initial comment period expires on October 26, 1999.

Dated: October 20, 1999.

Sylvia V. Baca,

Assistant Secretary of the Interior—Designate.

[FR Doc. 99–27870 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–300–1990–00]

RIN 1004–AD22

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental proposed rule; reopening of comment period on draft environmental impact statement.

SUMMARY: The Bureau of Land Management (BLM) announces the reopening of the comment period on our

surface management proposed rule (43 CFR part 3809) and the associated draft environmental impact statement (EIS). We are taking this action to carry out a provision of a recently enacted law requiring us to reopen the comment period on the proposed rule. This action enables the public and other interested parties to comment on the proposed rule and the draft EIS following publication of a report by the National Academy of Sciences (NAS) on hardrock mining on Federal lands. We are supplementing the proposed rule with recommendations from the NAS study and raising some related topics. And, we are responding to comments on our estimate of burden hours associated with the proposed rule.

DATES: Send your comments to reach BLM by February 23, 2000.

ADDRESSES: You may mail comments to Bureau of Land Management, Administrative Record, Nevada State Office, PO Box 12000, Reno, Nevada 89520–0006. You may hand-deliver comments to BLM at 1340 Financial Boulevard, Reno, Nevada 89520. Submit electronic comments and other data to WOComment@blm.gov. For other information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing address."

FOR FURTHER INFORMATION CONTACT: Robert M. Anderson, 202/208–4201; or Michael Schwartz, 202/452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact us through the Federal Information Relay Service at 1–800/877–8339.

SUPPLEMENTARY INFORMATION:

I. How Can I Comment on the Proposed Rule and draft EIS?

II. Why is BLM Reopening the Comment Period?

III. How Can I Obtain a Copy of the National Academy of Sciences Report?

IV. Which NAS Recommendations Identify Regulatory Gaps?

V. How Would BLM Regulate the Use of Suction Dredges?

VI. How Does BLM Define Certain Terms Used in this Subpart?

VII. Under What Circumstances May an Operator Not Begin Operations 15 Business Days After Filing a Notice?

VIII. How Would BLM Pay for Interim Site Care and Maintenance Until We Issue a Reclamation Contract?

IX. Would BLM Allow State Director Review of Decisions?

X. How Did BLM Meet its Procedural Obligations?

I. How Can I Comment on the Proposed Rule and Draft EIS?

Electronic Access and Filing Address

You may view an electronic version of this supplemental proposed rule; the February 9, 1999, proposed rule; and the draft EIS on BLM's Internet home page: www.blm.gov. You may also comment via the Internet to: WOComment@blm.gov. Please also include "Attention: RIN 1004-AD22" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, call us directly at 202/452–5030.

Written Comments

Your written comments on the proposed rule or draft EIS should be specific and confined to issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, you should reference the specific section or paragraph of the proposed rule or draft EIS that you are addressing. Refer to the February 9, 1999, proposed rule (64 FR 6422) or the February 17, 1999 notice of availability of the draft EIS (64 FR 7905) for detailed information.

You need not re-submit comments that you sent us previously. We will consider comments submitted during the previous comment period, as well as comments submitted during this new comment period, when we prepare the final rule and final EIS.

We are not required to consider, or include in the Administrative Record for the final rule, comments that we receive after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

BLM will make comments, including names, street addresses, and other contact information of respondents, available for public review at our Nevada State Office (See **ADDRESSES**) during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except Federal holidays. We will also make comments available at our Washington, DC office, 1620 L Street, NW, Room 401, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays.

Requests for Confidentiality

Individuals who send us comments on the proposed rule may request confidentiality. If you wish to request that BLM consider withholding your name; street address; and other contact information, such as Internet address, FAX or phone number from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Why is BLM Re-Opening the Comment Period?

On February 9, 1999, we published in the **Federal Register** a proposed rule to revise the regulations governing mining operations involving metallic and some other minerals on public lands administered by BLM. See 64 FR 6422. We call these regulations the surface management regulations. They are located in subpart 3809 of part 3800 of Title 43 of the Code of Federal Regulations (43 CFR Part 3800, subpart 3809). For this reason, they are also called the "3809" regulations. The comment period opened on February 9, 1999, and closed on May 10, 1999. We issued the notice of availability for the draft environmental impact statement (EIS) that analyzes the potential impacts of the 3809 regulations on February 17, 1999 (64 FR 7905). The comment period on the draft EIS also closed on May 10, 1999.

In the 1998 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, sec. 120(a)), Congress directed BLM to pay for a study by the National Academy of Sciences (NAS) Board on Earth Sciences and Resources. The study was to examine the environmental and reclamation requirements relating to mining of locatable minerals on Federal lands and the adequacy of those requirements to prevent unnecessary or undue degradation of Federal lands in each State in which such mining occurs. The law directed NAS to complete the study by July 31, 1999.

In the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, sec. 3002), Congress prohibited the Department of the Interior from completing its work on the February 9, 1999, proposed rule and issuing a final rule until we provide at least 120 days for public comment on the proposed rule after July 31, 1999. The NAS has now completed and published its study, entitled, "Hardrock Mining on Federal Lands." Accordingly, we are reopening the comment period on the proposed rule for 120 days. This action will allow the public to comment on the proposed rule in the context of the NAS report. In addition, we are reopening the comment period on the associated draft EIS for the same period.

III. How Can I Obtain a Copy of the National Academy of Sciences Report?

The National Academy of Sciences has posted the report on its Internet site. The address is *www.nap.edu/catalog/9682.html.* You can request a paper copy of the report by contacting NAS at National Academy of Sciences, Board on Earth Sciences and Resources, 2101 Constitution Avenue, NW, Washington, DC 20418; telephone: 202/334–2744. If you gave BLM an address with your comment on the proposed rule, draft EIS, or during the scoping process for the EIS, BLM has already arranged for NAS to mail you a copy of the study; you need not request another copy.

IV. Which NAS Recommendations Identify Regulatory Gaps?

The NAS study contains a number of recommendations for the coordination of Federal and State regulations to ensure environmental protection, increase efficiency, avoid duplication and delay, and identify the most cost-effective manner for implementation. Some of the recommendations are directed at BLM's regulatory framework. Others are aimed at the Forest Service, at changes in laws, or at areas that are not regulatory in nature, such as the recommendation to create a management information system.

BLM is carefully considering *all* of the NAS recommendations and seeks public comment on their validity and relevance to the proposed rule. Because the baseline for the study was the existing regulatory framework rather than the revisions to that framework that we proposed on February 9, 1999 (64 FR 6422), some of the NAS recommendations that are directed at BLM's regulatory framework overlap with the 3809 proposed rule.

In the interest of full and informed public comment on the proposed rule, we are including in this supplemental proposed rule those NAS recommendations that identify gaps in the existing regulations. This notice contains the verbatim text of the 3809-related NAS recommendations that identify regulatory gaps, along with explanatory material that highlights areas where we are particularly interested in receiving public comment. By doing so, we don't prejudge the validity of the NAS recommendations, and we reserve the right to adopt, modify, or decline to adopt any NAS recommendation. Under the Administrative Procedure Act, we must provide the public with adequate notice and an opportunity to comment on proposed regulatory changes (5 U.S.C. 553). Therefore, we are notifying you that we are considering one or more of the NAS recommendations and asking you for comments.

NAS Recommendation: "Financial assurance should be required for reclamation of disturbances to the environment caused by all mining activities beyond those classified as casual use, even if the area disturbed is less than five acres."

Request for Comments: Our 3809 proposed rule would require a financial guarantee for any operation greater than casual use. See proposed § 3809.552(a). BLM and the NAS study agree that lack of financial guarantee for notice-level operations constitutes a gap in the current rules.

However, the NAS study and the 3809 proposed rule differ concerning how financial guarantee amounts should be established. The NAS study recommends that we establish "standard bond amounts" for certain types of activities in specific kinds of terrain, especially for the activities of prospectors, small exploration companies, and small miners. According to the NAS study, BLM should use these standard bond amounts, which would be in the form of a certain number of dollars per acre of land disturbed, instead of detailed calculations of bond amounts based on the engineering design of a mine or mill. The 3809 proposed rule would base financial guarantee amounts on the estimated reclamation cost as if BLM were to contract with a third party to reclaim an operation following the requirements of the reclamation plan. See proposed § 3809.552(a).

We specifically request comments on whether standard bond amounts would be preferable to actual-cost financial guarantees. We are particularly interested in comments on how the standard amounts should be set; that is, should we base them on standard industry cost estimating manuals, recent actual cost experience, certified estimates from third-party professional engineers, or on something else. The BLM regulation that was remanded by the Federal courts in May 1998 set minimum standard bond amounts of $1,000 per acre (or fraction thereof) for notices and $2,000 per acre (or fraction thereof) for plans of operations. We would also like comments on whether and under what circumstances departures from the standard bond amounts (up or down) are appropriate.

NAS Recommendation: "Plans of operations should be required for mining and milling operations, other than those classified as casual use or exploration activities, even if the area disturbed is less than five acres."

Request for Comments: This recommendation reflects the NAS observation that unnecessary or undue degradation occurs on some notice-level mining operations. Our 3809 proposal agrees that this is a problem and contained two options for addressing it. Proposed § 3809.11 (Alternative 1) would limit use of notices by requiring a plan of operations where, among other things, operations involve leaching or use of chemicals (proposed § 3809.11(f)) or are in national monuments and national conservation areas administered by BLM (proposed § 3809.11(j)(7)). Proposed § 3809.11 ("Forest Service" Alternative) would limit use of notices by requiring a plan of operations whenever there is "significant disturbance of surface resources," regardless of the size of the disturbance.

The NAS recommendation, if adopted by BLM into the 3809 regulations, would have the effect of requiring a plan of operations for all mining and milling operations regardless of the size of the disturbance, thereby limiting notices to exploration activities. This approach is somewhat different from the two options in our proposal. We are asking the public specifically to comment on incorporating this NAS recommendation into the 3809 regulations; that is, whether we should limit the use of notices to exploration activities and require plans of operations for all other mining and milling operations, regardless of the size of the disturbance. We are particularly interested in comments on what activities we should consider "exploration" and eligible for a notice. For example, the NAS study specifically mentions "bulk sampling," which it identifies as extraction of 10 to 1,000 tons or more of presumed ore, as a kind of advanced exploration activity that should generally be authorized by a plan of operations, not a notice.

In addition to the two options in our proposal and the NAS recommendation discussed above, BLM is also considering another option, namely, to require an operator to file a plan of operations if BLM determines that proposed notice-level operations may adversely affect proposed or listed threatened or endangered species or their designated critical habitat. This approach would not be as restrictive as the NAS recommendation, but would limit the use of notices to a greater degree than that allowed under Alternative 1 of the proposed rule. In these circumstances, BLM could work to comply with the Endangered Species Act through a programmatic agreement with the appropriate agency, either the Fish and Wildlife Service or the National Marine Fisheries Service. We specifically request comments on this issue.

NAS Recommendation: "BLM and the Forest Service should revise their regulations to provide more effective criteria for modifications to plans of operations, where necessary, to protect the federal lands."

Request for Comments: NAS based this recommendation on comments it received that expressed concern about the ability of BLM and the Forest Service to require modifications of plans of operations in light of new circumstances or information, such as acid drainage, problems with water balance, adequacy of approved containment structures, mine closure, or discovery of impacts on wells and springs. We agree with this concern that the ability to require operators to make necessary modifications is essential to prevent unnecessary or undue degradation, and for this reason, we included provisions addressing this issue in our 3809 proposal. See proposed §§ 3809.430 to 3809.432.

The NAS study also raised the issue of whether our regulations should require a periodic review or reopening of plans of operations as a way of addressing changes in the operation or new information that may arise. We specifically request comments from the public on whether we should require this type of periodic review of plans of operations, and if so, what the interval between reviews should be, that is, one year, two years, five years, or longer.

NAS Recommendation: "BLM and the Forest Service should adopt consistent regulations that (a) define the conditions under which mines will be considered to be temporarily closed; (b) require that interim management plans be submitted for such periods; and (c) define the conditions under which temporary closure becomes permanent and all reclamation and closure requirements must be completed."

Request for Comments: NAS based this recommendation on the fact that temporary closures as a result of low mineral prices may cause environmental problems if appropriate management measures are not undertaken. The NAS study takes the position that land management agencies need to have the authority to require an operator to close a mine properly, rather than allowing it to remain in limbo if poor market conditions persist.

We agree with this concern, and our proposal contains provisions applicable to notices and plans of operations that would require an operator who stops conducting operations for any period of time to maintain public lands within the project area in a safe and clean condition, prevent unnecessary or undue degradation, and maintain an adequate financial guarantee. See proposed §§ 3809.334 and 3809.424. If the period of non-operation is likely to cause unnecessary or undue degradation, these provisions allow BLM to require the operator to take all steps necessary to prevent unnecessary or undue degradation and require the operator to remove all structures, equipment, and other facilities and reclaim the project area. In the case of plans of operations, our 3809 proposed rule would allow BLM to review operations that are inactive for 5 consecutive years to determine if we should terminate the plan of operations and direct final reclamation and closure. We also proposed a number of provisions to address abandonment of operations and forfeiture of financial guarantee. See, for example, proposed §§ 3809.424(a)(4) and 3809.595 through 3809.599.

We are interested in receiving public comments on whether we should define the conditions under which we will consider mines to be temporarily closed, and if so, how. Proposed §§ 3809.334(b)(2) and 3809.424(a)(2) use the term "extended period of non-operations for other than seasonal operations." We intended that the field staff have some flexibility in applying this concept. An alternative approach would be to specify an appropriate period of time after which we would consider an inactive operation to be temporarily closed, such as 90 days, 180 days, one year, or longer.

With regard to the NAS recommendation that we require an interim management plan for periods of temporary closure, we would like public comment on whether this requirement would be a significant burden and on what should be included in the interim management plan, such as security measures to protect the public and wildlife from danger, erosion control measures, water treatment plans, waste disposal, equipment removal, and the like.

We would also like public comments on the NAS recommendation that we define the conditions under which temporary closure becomes permanent and triggers final reclamation and closure. Under proposed § 3809.424(a)(3), we would review plans of operations (but not notice-level operations) after five consecutive years of inactivity. We do not view this proposed provision as precluding us from reviewing operations after shorter periods of inactivity, if circumstances warrant. Other approaches might include requiring periodic review or reopening of plans of operations regardless of whether the operation is inactive or not, as discussed above, or using indicators of potential future site activity, such as the presence of equipment or maintenance work on facilities and structures, to guide us in determining whether a temporarily closed operation should be permanently closed.

NAS Recommendation: "Federal land managers in BLM and the Forest Service should have both (1) authority to issue administrative penalties for violations of their regulatory requirements, subject to appropriate due process, and (2) clear procedures for referring activities to other federal and state agencies for enforcement."

Request for Comments: The NAS bases this recommendation on the fact that the existing 3809 regulations require BLM field staff to seek a court injunction to compel an operator to respond to a notice of noncompliance—an often slow and lengthy process. The NAS study takes the position that administrative penalties are a credible and expeditious means to secure compliance. We agree with the NAS concern, and our proposal included provisions outlining enforcement actions and administrative penalties. See §§ 3809.600 through 3809.604 and 3809.700 through 3809.703. We included due process provisions in our appeals section, proposed § 3809.800. We also proposed to address the issue of coordination of enforcement efforts with State agencies through our Federal/State Agreements provisions. See, for example, proposed §§ 3809.201 and 3809.202.

We request public comments on whether, in light of the NAS recommendation, we should have additional enforcement and penalty provisions.

NAS Recommendation: "BLM and the Forest Service should plan for and assure the long-term post-closure management of mine sites on federal lands."

Request for Comments: The NAS study based this recommendation on the view that current regulatory programs have only recently focused on post-closure management needs of mine sites on Federal lands. According to the NAS study, Federal land managers and those conducting operations on Federal lands should address the following management requirements for each site:

- Measures needed to preserve future mineral access;
- Residual public safety hazards and the need for fences, signs, and other features that must be periodically checked and maintained;
- Measures needed to assure the integrity of closed waste units, including the monitoring of tailings pond caps and waste rock and leach pad covers and their possible repair because of erosion or other failure, and the checking of adit plugs for continued effectiveness;
- Long-term environmental monitoring required to assure that the site remains stable and does not become a source of off-site contamination and the implementation of appropriate corrective measures;
- The operation and maintenance of any water treatment facilities required to maintain water quality compliance of the site over the long term; and
- A financial assurance to ensure implementation of these post-closure management requirements.

The NAS study also highlighted the importance of ensuring funding for long-term or perpetual water treatment facilities.

We agree with this concern, and our proposed rule addresses this issue in a number of ways. For example, we are proposing to require operators to establish a trust fund or other funding mechanism, where BLM identifies the need for it, to ensure continuing long-term treatment to achieve water quality standards and for other long-term, post-mining maintenance requirements. See proposed § 3809.552(c). The 3809 proposal would also put operators and mining claim holders on notice that they are jointly and severally liable for obligations that accrue while they held their interests, and that relinquishment, forfeiture, or abandonment of a mining claim doesn't relieve them of their responsibility. See proposed § 3809.116. We also propose that bond release wouldn't release mining claimants or operators from their reclamation obligation. See proposed § 3809.592. BLM believes that, taken together, these proposed provisions would provide funding for, and address the issue of responsibility for, long-term post-closure management. As the NAS study points out, however, there may be a need for additional measures. For this reason, we invite public comment on whether the 3809 regulations should incorporate any of the specific measures identified by the NAS study and listed above, and require, for example, that an operator address them in a post-mine closure plan that BLM would have to approve before release of the financial guarantee.

V. How Would BLM Regulate the Use of Suction Dredges?

This part of the supplemental proposed rule clarifies the intent and meaning of the February 9, 1999 proposed rule and discusses two additional options for regulating the use of suction dredges. Proposed § 3809.11(h) (Alternative 1) contains provisions that would regulate the use of suction dredges. We believe, based on several comments we received, that confusion may exist about the intent and meaning of those proposed provisions. For this reason, we want to clarify that for portable suction dredges with an intake diameter of more than 4 inches, BLM proposed that an operator would have to submit to BLM a notice or plan of operation, whichever is appropriate.

Under the proposal, if operations involve the use of a portable suction dredge with an intake diameter of 4 inches or less, the operator would not have to submit to BLM a notice or plan of operations if two conditions were met. First, the State would have to give some sort of authorization to use the dredge, such as a permit. Second, BLM and the State would have to have a written agreement under which BLM agrees that the State will authorize the use of dredges. Both conditions would have to be met. In cases where a State does not regulate suction dredges, an operator would have to submit to BLM a notice or plan of operations, whichever is appropriate, regardless of the size of the dredge.

The proposal would continue current policy that use of a portable suction dredge is not casual use. The Interior Board of Land Appeals has ruled that suction dredges fall within the definition of "mechanized earth moving equipment" at 43 CFR 3809.0–5, which are specifically not considered casual use. See *Pierre J. Ott*, 125 IBLA 250, and *Lloyd L. Jones*, 125 IBLA 94. We hope this clarifies what we meant in the February 9, 1999, proposal and encourage the public to comment on it again.

Also in response to comments on the proposed rule, we want to identify two options that we are considering and request public comment on them. We are considering adopting provisions that would enable an operator to use a portable suction dredge under a State authorization regardless of the size of the dredge. That is, instead of deferring to State regulation only when the dredge is under 4 inches, as originally proposed, we would allow an operator to use any size dredge if it was regulated by the State and the State and BLM have an agreement to this effect. This option would constitute a relaxation of the original proposal.

The other option we are considering is to require a plan of operations for the use of a portable suction dredge, regardless of intake diameter, when the dredge would be used in a waterway that supports species of fish that are listed, or proposed to be listed, as threatened or endangered under the Endangered Species Act. This option is intended to prevent impacts to fish populations and their spawning grounds or nests and represents an incremental tightening of the original proposal. We request public comment on these two options. A final rule could incorporate one or both of these options.

VI. How Does BLM Define Certain Terms Used in This Subpart?

In our proposed definition of "casual use," we said that casual use doesn't include use of motorized vehicles in areas designated as "closed" to off-road vehicles (proposed § 3809.5). This means that if an operator planned to use an off-road vehicle in a closed area, the operator would have to file a notice or proposed plan of operations, whichever is appropriate. We would like to clarify that this wouldn't mean that use of off-road vehicles in areas designated as "open" or "limited" is totally unrestricted. Use of off-road vehicles is regulated under BLM's existing regulations. See 43 CFR part 8340. Generally, off-road vehicle use is permitted on those areas and trails designated as open to off-road vehicle use; however, any person operating an off-road vehicle on those areas and trails designated as "limited" must conform to all restrictions applicable to those areas and trails. To make this clear, the final rule could include a cross-reference to BLM's off-road vehicle regulations.

VII. Under What Circumstances May an Operator Not Begin Operations 15 Business Days After Filing a Notice?

Under proposed § 3809.313, an operator couldn't begin operations 15 business days after filing a notice in certain circumstances, including if BLM determines that an on-site visit is necessary (proposed § 3809.313(d)). We would like to clarify that if BLM determined that a site visit is necessary to determine if a proposed or listed threatened or endangered species is present or would be affected by the planned operation, we would notify the operator not to begin operations until the site visit could take place and BLM could make its determination.

VIII. How Would BLM Pay for Interim Site Care and Maintenance Until We Issue a Reclamation Contract?

Proposed § 3809.552 addresses what an individual financial guarantee must cover. Based on our experience with recent bond forfeitures, we believe it is important to extend the provisions of that section to cover situations where interim site care and maintenance is necessary while BLM or a State regulator is developing and executing third-party reclamation contracts. For example, when an operator forfeits a financial guarantee, the site of operations is rarely reclaimed. BLM or the State regulatory must arrange for a third-party contractor to complete reclamation. This process takes time, during which site conditions usually deteriorate. We need the ability to quickly redeem a portion of the financial guarantee to fund interim site care and maintenance until the reclamation contract takes effect so as to prevent adverse environmental impacts. This is consistent with concerns expressed in the NAS study about mine closures.

We are including in this reopening notice proposed revisions to previously proposed § 3809.552. The revisions would require the financial guarantee to cover any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations in compliance with applicable environmental requirements while third-party reclamation contracts are being developed and executed. We would also require that the portion of the financial guarantee set aside for this purpose be immediately redeemable by BLM. See the proposed regulatory language at the end of this notice.

In addition, recent events at at least one closed mine make it advisable to clarify that our current policy is that a surety continues to be responsible for obligations that accrue while the surety's bond is in effect, unless a suitable replacement bond or other financial guarantee would cover those obligations. Even if a surety wishes to cancel the bond or other financial guarantee, the surety would remain responsible following the cancellation for obligations that accrue while the surety held the bond, unless a subsequent bond or other financial guarantee covers those obligations.

IX. Would BLM Allow State Director Review of Decisions?

Section 3809.800(a) of the February 9, 1999, proposed rule would allow any person adversely affected by a decision made under the 3809 regulations to appeal the decision to the Interior Board of Land Appeals (IBLA). See 64 FR 6468. The proposal also stated that review of a decision by the BLM State Director would take place if consistent with part 1840 of Title 43, Code of Federal Regulations. Currently, part 1840 does not authorize State Director review.

It may be in the best interest of operators and other affected parties to have the opportunity to pursue a possibly shorter appeals avenue than that provided by IBLA. We are proposing adding provisions to subpart 3809 that would allow both operators and other adversely affected parties the option of appealing first to the BLM State Director. This would not be a mandatory step, and a party could proceed directly to the IBLA if he or she so chooses. If an appeal is filed with the BLM State Director, the State Director would have 7 business days from receipt of the appeal to decide whether to consider it. If so, the State Director would follow the procedures referenced in part 1840. If an affected party appeals to the State Director and another affected party appeals to IBLA, then the State Director would defer to IBLA. Affected parties would have the right to appeal the State Director's decision to IBLA. We request comment from the general public and the regulated industry on whether allowing the option of appealing to the BLM State Director would be beneficial.

X. How Did BLM Meet Its Procedural Obligations?

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires a regulatory agency to evaluate each proposed rule and consider alternatives that would minimize the rule's impact on small entities (5 U.S.C. 601–612). However, the RFA "does not require that agencies necessarily minimize a rule's impact on small entities if there are significant legal, policy, factual, or other reasons for the rule's having such an impact." (The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies, U.S. Small Business Administration, Office of Advocacy, Washington, DC, 1998, p. 12).

The RFA permits the head of a federal agency to forego the preparation of an initial regulatory flexibility analysis (IRFA) upon a written certification that a rule will not have a "significant economic impact on a substantial number of small entities" (SBA, p. 22). In addition, "* * * if an agency is uncertain of the impact, it is recommended that the agency err on the side of caution and perform an IRFA with the available data and information, and solicit comments. * * * Then if appropriate the agency can certify on the final rule" (SBA, p. 23).

In our February 9, 1999, proposed rule, we determined under the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities (64 FR 6449). We reached this initial conclusion on the basis of the initial regulatory flexibility analysis (IRFA) we prepared for the proposed rule. Under the RFA, an agency must publish and make available for public comment an IRFA, unless the agency can certify based on a preliminary assessment or threshold analysis that the proposed rule will not have a significant economic impact on a substantial number of small entities. The IRFA describes the impacts of the proposed alternatives on small entities and describes any alternatives that would minimize the impact while accomplishing the stated objectives. BLM released an IRFA with the proposed rule on February 9, 1999. The comment period for this IRFA ended May 10, 1999. We are reopening it for 120 days. BLM's analysis of the public record developed in connection with the proposed rule will help it determine whether or not the final version of the rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be prepared if it is determined that the final rule will have a significant effect on a substantial number of small entities.

Paperwork Reduction Act

Several commenters on the proposed rule expressed the view that, based on their experience with the existing regulations, BLM underestimated the paperwork burden associated with the proposed rule. It appears from the comments that the commenters assumed that our burden estimate included all paperwork burden, both existing and proposed, as if no other State or Federal agencies imposed any paperwork burden on mining operations.

We would like to point out that, in accordance with the Paperwork Reduction Act and the Office of Management and Budget's instructions for estimating paperwork burden, we are estimating only the increment of paperwork imposed by the proposed regulations over and above the paperwork burden imposed by the existing regulations. We also correctly didn't include in our estimate any paperwork requirements contained in the proposed rule that would merely duplicate paperwork requirements imposed by other agencies, either Federal or State. If an operator has to give certain information to a State agency, the burden of also supplying that exact same information to BLM is relatively small. (Indeed, many of the same commenters noted that much of the proposed rule duplicated existing State requirements.)

Because of this possible misunderstanding, we are re-examining the information collection burden that would be imposed by the proposed rule. In the near future, we will release a revised paperwork burden estimate for public comment.

Other

The proposals described in this notice fall within the scope of the analyses prepared for the proposed rule. Please refer to the discussion of how BLM is meeting its procedural obligations contained in the proposed rule for further information (Feb. 9, 1999, 64 FR 6422, 6449).

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Dated: October 19, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, BLM proposes to amend its proposed rule published on February 9, 1999 (64 FR 6422) as set forth below:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3809—Surface Management

1. The authority citation for part 3800 continues to read as follows:

Authority: 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

2. In § 3809.552 as proposed at 64 FR 6463, revise paragraph (a) by adding a sentence at the end and add paragraph (d) to read as follows:

§ 3809.552 What must my individual financial guarantee cover?

(a) * * * The financial guarantee must also cover any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations in compliance with applicable environmental requirements while third-party contracts are developed and executed.

* * * * *

(d) When BLM identifies a need for it, you must establish that portion of the financial guarantee used to conduct site stabilization and infrastructure maintenance in a funding mechanism that would be immediately redeemable by BLM. BLM would use the funds to maintain the area of operations in a safe and stable condition that complies with applicable environmental requirements during the period needed for bond forfeiture and reclamation contracting procedures.

[FR Doc. 99-27765 Filed 10-25-99; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 5b

RIN 0991-AA99

Privacy Act; Exempt Record System

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would exempt the new system of records, the Healthcare Integrity and Protection Data Bank (HIPDB), from certain provisions of the Privacy Act (5 U.S.C. 552a). The establishment of the HIPDB is required by section 1128E of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 1128E of the Act directed the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers or practitioners, and to maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners. The new HIPDB system of records is being established by separate **Federal Register** notice. The proposed exemption being set forth in this rule would apply to investigative materials compiled for law enforcement purposes in anticipation of civil or criminal proceedings. This rule specifically seeks public comments on the proposed exemption.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on November 26, 1999.

ADDRESSES: Please mail or deliver your written comments to the following address: Department of Health and Human Services, Office of Inspector General, 330 Independence Avenue, SW, Room 5246, Attention: OIG-60-P, Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG-60-P.

FOR FURTHER INFORMATION CONTACT: Rick Burguieres, Investigative Policy and Information Management Staff, Office of Investigations, (202) 205-5200.

SUPPLEMENTARY INFORMATION: The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, requires the Secretary, acting through the Office of Inspector General (OIG) and the United States Attorney General, to establish a new health care fraud and abuse control program to combat health care fraud and abuse (see section 1128C of the Act, as enacted by section 201(a) of HIPAA). Among the major steps in this program is the establishment of a national data bank to receive and disclose certain final adverse actions against health care providers, suppliers, or practitioners (see section 1128C(a)(1)(E) of the Act). The establishment of the data bank is required by section 1128E of the Act (added by section 221(a) of HIPAA), which directs the Secretary to maintain a data base of such final adverse actions. Final adverse actions include: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion of a health care provider, supplier, or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulations. Settlements in which no findings or admissions of liability have been made will be excluded from reporting. However, any final adverse action that emanates from such settlements, and that would otherwise be reportable under the statute, is to be reported to the data bank. Final adverse actions are to be reported, regardless of whether such actions are being appealed by the subject of the report (see section 1128E(b)(2)(C) of the Act).

Groups that have access to this new data bank system include Federal and State government agencies; health plans; and self queries from health care suppliers, providers and practitioners. Reporting is limited to the same groups that have access to the information. One of the primary purposes of these data will be use of this information by a Federal or State government agency charged with the responsibility of investigating or prosecuting a case where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature. The information in this system may also be used in the preparation for a trial or hearing for such violation.

Specifically, this proposed rule would exempt this new records system from certain provisions of the Privacy Act.[1] This exemption is intended to protect, from release to the record subject, information on law enforcement queries to the data bank. It would also exempt the data bank from Privacy Act access and amendment procedures in order to establish access and amendment procedures in the HIPDB regulations.

While subjects will have access to information on all other queries to the data bank, disclosure of law enforcement queries could compromise ongoing investigation activities. The premature disclosure of the existence of a law enforcement activity to an outside party (who may also be the subject of the investigation) could lead to, among other things, the destruction or alteration of evidence and the tampering with witnesses.

Record subjects are guaranteed access to, and correction rights for, substantive information reported to the HIPDB. The procedures, set out in 45 CFR part 61, use the Privacy Act access and correction procedures as a basic framework while, at the same time, providing significant additional rights (such as automatic notification to the record subject of any report filed with the data bank). Data bank subjects also have broader rights on HIPDB correction procedures, including the right to file a statement of disagreement as soon as a report is filed with the data bank.

Regulatory Impact Statement

The Office of Management and Budget has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health, safety distributive and equity effects. In addition, under the Small Business Enforcement Act (SBEA) of 1996, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. The Secretary has reviewed this proposed exemption in accordance with the provisions of the SBEA, and certifies that this proposed exemption will not have a significant impact on a substantial number of small entities. Specifically, as indicated above, while the reports of adverse actions to the HIPDB will be known to the subjects of the records in the data bank, the access and use of such information by law enforcement agencies would not be known to the subjects of the records. As a result, we believe that disclosure of this information could compromise ongoing law enforcement activities.

Public Inspection of Comments and Response to Comments

Comments will be available for public inspection November 9, 1999, in Room 5518, Office of Counsel to the Inspector General, at 330 Independence Avenue, SW, Washington, DC on Monday through Friday of each week (Federal holidays excepted) between the hours of 9 a.m. and 4 p.m., (202) 619–0089.

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and will respond to the comments in the preamble of the final rule.

List of Subjects in 5 CFR Part 5b

Privacy.

Accordingly, the Department's Privacy Act regulations at 45 CFR part 5b would be amended follows:

PART 5b—[AMENDED]

Part 5b would be amended as follows:

1. The authority citation for part 5b would continue to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 would be amended by adding a new paragraph (b)(2)(ii)(F) to read as follows:

§ 5b. 11 Exempt systems.

* * * * *

(b) *Specific systems of records exempt.* * * *

(2) * * *

(ii) * * *

(F) The Healthcare Integrity and Protection Data Bank (HIPDB) of the Office of Inspector General. (See § 61.15 of this title for access and correction rights under the HIPDB by subjects of the Data Bank.)

* * * * *

Dated: June 3, 1999.

June Gibbs Brown,

Inspector General.

Approved: July 2, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–27587 Filed 10–25–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition to List the Columbian Sharp-tailed Grouse as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Service announces a 90-day finding for a petition to list the Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) under the Endangered Species Act of 1973, as amended. We find that the petition presents substantial scientific and commercial information indicating that listing the Columbian sharp-tailed grouse may be warranted.

DATES: The finding announced in this document was made on October 14, 1999. Send comments and information to us on or before December 27, 1999, concerning this petition finding. We may not consider comments received after the above date in making a decision for the 12-month finding.

ADDRESSES: You may submit data, information, comments, or questions concerning this petition to the Field Supervisor, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington 99206. The petition, administrative finding, supporting information, and comments received are available for public inspection, by appointment, during normal business hours at the above address.

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[1] Subsections (c)(3), (d)(1)–(4), and (e)(4)(G) and (H) of the Privacy Act, in accordance with 5 U.S.C. 522a(k)(2) and 45 CFR 5b.11(b)(ii)(F).

FOR FURTHER INFORMATION CONTACT: Christopher D. Warren, at the above address or call 509–891–6839.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species as threatened or endangered presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We base the finding on all the information available to us at the time the finding is made. To the maximum extent practicable, we make the finding within 90 days of receipt of the petition, and promptly publish the finding in the **Federal Register**. If we find that substantial information was presented, we must promptly commence a status review of the species.

The processing of this administrative petition finding conforms with our current listing priority guidance (LPG) which was published, after opportunity for public comment, on May 8, 1998 (63 FR 25502). Because of budgetary constraints and the lasting effects of a congressionally imposed listing moratorium from April 1995 to April 1996, we processed petitions and other listing actions according to the listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarified the order in which we processed listing actions during fiscal year 1997. The guidance gives highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this petition is a Tier 2 action.

A petition, dated March 14, 1995, was submitted by the Biodiversity Legal Foundation, Boulder, Colorado, and was received by us on March 16, 1995. The petitioner requested that the Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) be listed as a threatened species throughout its historic range in the contiguous United States, and requested that critical habitat be designated for the species as soon as its biological needs are sufficiently well known. The petitioner also recommended a review of the species' status in British Columbia, Canada.

Based on our review of the petition and the scientific and commercial information it presents, and other information available to us at this time, we have made a 90-day finding that the petition to list the Columbian sharp-tailed grouse presents substantial scientific and commercial information indicating that listing of the species may be warranted.

The Columbian sharp-tailed grouse was identified as a category 2 species in notices of review published in the **Federal Register** on January 6, 1989 (54 FR 560). At that time, a category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. Designation of category 2 status was discontinued in the February 28, 1996, notice of review (61 FR 7956). The Columbian sharp-tailed grouse is not currently a candidate species. A candidate species is defined as a species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule.

The Columbian sharp-tailed grouse is one of six recognized subspecies of sharp-tailed grouse that occur in North America (Miller and Graul 1980). Historically, the Columbian sharp-tailed grouse range extended westward from the continental divide in Montana, Idaho, Wyoming, and Colorado to northeastern California and eastern Oregon and Washington; southward to northern Nevada and central Utah; and northward through central British Columbia.

Columbian sharp-tailed grouse were once more abundant throughout their range where suitable habitats occurred (Hart *et al.*1950; Buss and Dziedzic 1955; Gruell circa 1960; Washington Division of Fish and Wildlife (WDFW) 1995). Excessive hunting in the mid- to late-19th century is thought to be a major contributing factor to the early extirpation of local populations and the initial reduction of the subspecies' range (Hart *et al.* 1950). Since the turn of the century, the conversion of native habitats to crop production and their degradation as a result of livestock grazing are thought to be the primary factors in further population declines and range reduction (Hart *et al.* 1950; Buss and Dziedzic 1955; Miller and Graul 1980; Marks and Marks 1987; Braun *et al.* 1994; WDFW 1995; McDonald and Reese 1998). Columbian sharp-tailed grouse were extirpated from California in the 1920s, Nevada in the 1950s, and Oregon in the 1960s (Miller and Graul 1980). On April 4, 1998, the Washington Fish and Wildlife Commission listed the Columbian sharp-tailed grouse as a threatened species in the State of Washington.

Sharp-tailed grouse males employ elaborate courtship displays in the spring to attract females to central "dancing grounds," called leks. Established leks may be used for many years, although their exact locations may shift over time and smaller satellite leks often form in the vicinity of historic leks. Interacting clusters of leks in a local area are defined as lek complexes (Schroeder *et al.* in press). Females typically nest and rear their broods within 1.6 kilometer (km) (1.0 mile (mi)) of an active lek (Saab and Marks 1992; Giesen and Connelly 1993). Spring-to-fall home range sizes of Columbian sharp-tailed grouse are relatively small, generally less than 2.0 square km (0.8 square mi), and the areas used are usually within a few kilometers of a lek. Seasonal movements to wintering areas from breeding grounds are typically less than 5 km (3.1 mi) (Giesen and Connelly 1993).

The area within 2.5 km (1.6 mi) of a lek is believed to be critical to the management of Columbian sharp-tailed grouse and this area should contain, or provide access to, suitable wintering habitats (Saab and Marks 1992; Giesen and Connelly 1993). Because of their importance, leks (including their surrounding area) may be viewed as the principal units affecting the demographics of Columbian sharp-tailed grouse. Assemblages of the subspecies range from local populations (single leks to lek complexes), to metapopulations (a larger population made up of smaller, local breeding populations that have some genetic and ecological interactions among them).

Based on a questionnaire distributed to recognized experts in 1979, respondents reported that Columbian sharp-tailed grouse occupied less than 10 percent of their former range in Idaho, Montana, Utah, and Wyoming; 10–50 percent in Colorado and Washington; and 80 percent or more in

British Columbia. The range-wide population estimate for the subspecies in 1979 was approximately 60,000–170,000 individuals, with roughly 60–80 percent occurring in British Columbia (Miller and Graul 1980). A current estimate is approximately 34,000–70,000 individuals, with roughly 50–70 percent occurring in Idaho. Current estimates are based on information provided by recognized experts throughout the range of the subspecies (Chutter, British Columbia Ministry of Environment, Wildlife Branch, pers. comm. 1995; Hoffman, Colorado Division of Wildlife, pers. comm. 1995; Mathews, Oregon Department of Fish and Wildlife, pers. comm. 1998; Meints, Idaho Department of Fish and Game, pers. comm. 1995; Mitchell, Utah Department of Natural Resources, pers. comm. 1995; Sands, U.S. Bureau of Land Management, pers. comm. 1998; Schroeder, Washington Department of Fish and Wildlife, pers. comm. 1998; Thier, Montana Department of Fish, Wildlife, and Parks, pers. comm. 1998).

Three metapopulations of Columbian sharp-tailed grouse currently likely exist—one in northwestern Colorado/south-central Wyoming totaling approximately 6,000–8,000 birds, one in southeastern Idaho/northern Utah totaling approximately 20,000–50,000 birds, and one in central British Columbia totaling 4,500–10,000 birds. To varying degrees, other population centers are comprised of both interacting and isolated local populations. These populations include approximately 600 birds in south-central Idaho/northeastern Nevada, a small population of about 50 birds in northeastern Oregon, approximately 700 birds occur in scattered small populations in north-central Washington, and two small populations with about 50 birds each in Montana.

Conversion of native habitats important to Columbian sharp-tailed grouse to crop production continues and are at risk from other activities including rural and suburban development, dam construction, mineral exploitation, chaining, herbicide spraying, and fire (Miller and Graul 1980; Wood 1991; Giesen and Connelly 1993). In addition, grazing practices within portions of the Columbian sharp-tailed grouse range have degraded, or continue to degrade, native habitats (Hart *et al.* 1950; Miller and Graul 1980; Wood 1992; Giesen and Connelly 1993).

Most of the areas that are currently or may potentially be used by Columbian sharp-tailed grouse occur on privately owned lands. Some large portions of these privately owned lands have withdrawn from crop production and planted native and non-native cover under the Federal Natural Resources Conservation Service Conservation Reserve Program (CRP), established in 1985 (USDA 1998). CRP lands have become important to Columbian sharp-tailed grouse in Colorado, Idaho, Oregon, Utah, and Washington (Hoffman, pers. comm. 1998; Mathews, pers. comm. 1998; Meints, pers. comm. 1995; Mitchell, pers. comm. 1995; Schroeder, pers. comm. 1995). A number of CRP contracts have expired since 1995, and more are scheduled to expire from now through 2002. While new contracts for CRP lands continue to be accepted and some expired contracts have been renewed, it is unclear what effects these changes have had, or will have, on Columbian sharp-tailed grouse populations. If CRP lands important to Columbian sharp-tailed grouse are put back into crop production, adverse impacts to the subspecies' populations will likely occur.

Columbian sharp-tailed grouse are currently hunted in Colorado (Hoffman, pers. comm. 1998), Idaho (Meints, pers. comm. 1995), and British Columbia (Chutter, pers. comm. 1995). Considering the most recent estimates, annual harvest rates in Idaho range from approximately 10–30 percent (approximately 6,500 birds) of the total population during the hunting season in Idaho (Meints, pers. comm. 1995). Reliable estimates of harvest rates in Colorado are not available but are likely less than 10 percent of the total estimated population (Hoffman, pers. comm. 1998). Harvest rates in British Columbia may approach 50 percent in some years (Chutter, pers. comm 1995; Ritcey 1995). There may be localized negative impacts to small populations occupying relatively small sites. Also, both incidental and illegal take of the subspecies may occur, especially in areas hunted extensively for other upland game species (Hart *et al.* 1950; Miller and Graul 1980). However, for relatively large, stable populations of upland birds under managed conditions, hunting is not likely to have an additive effect over natural mortality (Braun *et al.* 1994). In 1994, the State of Wyoming banned hunting of Columbian sharp-tailed grouse based on estimates indicating that populations of this subspecies were declining.

Reintroduction efforts for Columbian sharp-tailed grouse occurred in Washington (Schroeder, pers. comm. 1998), Montana (Their, pers. comm. 1998), Oregon (Mathews, pers. comm. 1998), and Idaho (Meints, pers. comm. 1995). Additional reintroduction efforts are planned for California, Oregon, and Washington (Meints, pers. comm. 1995; Sands, pers. comm. 1995; Schroeder, pers. comm. 1998). Past reintroduction efforts have failed to produce self-sustaining populations or increase the size or distribution of augmented populations (Toepfer *et al.* 1990). However, recent efforts indicate greater potential for success as reintroduction techniques have improved (Toepfer *et al.* 1990; Meints, pers. comm. 1998).

The fragmented and isolated nature of many populations of Columbian sharp-tailed grouse are a concern for the subspecies throughout portions of its range. Naturally occurring impacts and human influences may pose additional threats to these isolated populations. Such events may include drought, fire, inclement weather, accidents, cultivation practices, and recreation activities (Hart *et al.* 1950; Rogers 1969; WDFW 1995; Mitchell, pers. comm. 1995).

The lack of sufficient data with respect to the genetic integrity of the subspecies' populations is also a concern (Saab and Marks 1992). The deleterious effects of inbreeding and the changes in gene frequencies may pose long-term threats to small, isolated populations, and a reduction in fitness in the hybrid progeny, or later descendants, of crosses between members of different populations may be a concern for reintroduction efforts.

The larger populations of Columbian sharp-tailed grouse made up of smaller, local breeding populations that have the same genetic and ecological interactions among them are at relatively low risk to single or even multiple altering events. This is because other population segments within the affected area may provide specimens to recolonize impacted sites, or alternate areas of suitable habitat may exist to allow emigration of affected populations to adjust to the events. However, isolated, local and regional populations could be at risk from naturally occurring random events or human-influenced events. Conservation or reestablishment of these populations may require intensive management efforts (Toepfer *et al.* 1990).

We have reviewed the petition, literature cited in the petition, other available literature and information, and consulted with biologists and researchers familiar with the Columbian sharp-tailed grouse. Based on the best scientific and commercial information available, we find that the petition presents substantial information to indicate that listing the Columbian sharp-tailed grouse throughout its historic range in the contiguous United States may be warranted.

In making this finding, we recognize that there have been declines in Columbian sharp-tailed grouse populations because of habitat loss and degradation. The loss and degradation of habitat is due to any one or a combination of factors including crop production, livestock grazing, rural and suburban development, dam construction, herbicide spraying, fire, recreation, and other factors. The petition presented evidence that isolated local and regional populations of this subspecies are at risk. We also recognize that many states in which Columbian sharp-tailed grouse occur are attempting to restore the birds by relocating birds to unoccupied habitats and/or actively managing for them to improve their overall population status.

When making a positive 90-day finding on a petition, we are required to promptly commence a review of the status of the species. In the case of the Columbian sharp-tailed grouse, we are requesting information on the status of the species throughout its range in the contiguous United States and Canada. We solicit information regarding occurrence and distribution of the species; threats to its continued existence; and any additional comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the Columbian sharp-tailed grouse. Of particular interest is information regarding: (1) Population status and trends; (2) Extent of fragmentation and isolation of population segments; (3) Significance of discrete population segments; and, (4) Ongoing management measures that may be important with regard to the conservation of Columbia sharp-tailed grouse.

In regard to the petitioner's request that critical habitat be designated for the Columbian sharp-tailed grouse, the designation of critical habitat is not a petitionable action under the Act. If our 12-month finding indicates that the petitioned action to list the Columbian sharp-tailed grouse is warranted, then any subsequent proposed rule will address any designation of critical habitat.

After consideration of additional information submitted during the indicated time period (see DATES section), we will prepare a 12-month finding as to whether listing of the species is warranted.

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Author: The primary author of this notice is Christopher D. Warren, Upper Columbia River Basin Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Dated: October 14, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–27851 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 101499D]

RIN 0648–AK05

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Resubmission of a Disapproved Measure in Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a resubmitted measure in an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has resubmitted a previously disapproved measure contained in Amendment 9 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 9). The resubmitted measure would establish a 1,000–lb (454–kg) commercial trip limit for greater amberjack. Written comments are requested from the public.

DATES: Written comments must be received on or before December 27, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 9, which contains the proposed greater amberjack trip limit, a final supplemental environmental impact statement, an initial regulatory flexibility analysis, a regulatory impact review, and a social impact/fishery impact statement, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; Fax: 843–769–4520. Requests for NMFS' economic analysis should be sent to Peter J. Eldridge.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit a fishery management plan (FMP) or FMP amendment to the Secretary of Commerce for review, approval, and implementation. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a document in the **Federal Register** stating that the FMP or FMP amendment is available for public review and comment.

Under Amendment 9, the Council proposed management measures to ensure that greater amberjack did not approach an overfished condition. One proposed measure was the establishment of a 1,000–lb (454–kg) daily commercial trip limit for greater amberjack. On December 9, 1998, after conducting Secretarial review of Amendment 9, NMFS disapproved the proposed 1,000–lb (454–kg) commercial trip limit for greater amberjack because the scientific information and analysis of socioeconomic impacts at that time indicated that the trip limit would not provide benefits that would exceed costs.

NMFS' economic analysis based on more recent information indicates that the trip limit may result in net benefits exceeding costs, especially if a "derby" fishery is prevented. Accordingly, the Council has resubmitted the proposed 1,000–lb (454–kg) commercial trip limit for greater amberjack, as contained in Amendment 9, to NMFS for review, approval, and implementation.

NMFS has also received a proposed rule to implement the trip limit from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 9, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish it in the **Federal Register** for public review and comment.

NMFS will consider comments received by December 27, 1999, whether specifically directed to the resubmitted measure in Amendment 9 or the proposed rule, in its decision to approve, disapprove, or partially approve the resubmitted measure in Amendment 9. NMFS will not consider comments received after that date in this decision. NMFS will address all comments received during the comment periods on the resubmitted measure in Amendment 9 or on the proposed rule in the preamble of the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 20, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27963 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–003–2]

Agritope, Inc.; Availability of Environmental Assessment for Determination of Nonregulated Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared for a proposed determination that certain cantaloupe lines developed by Agritope, Inc., which have been genetically engineered for altered fruit ripening, would no longer be considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive by November 26, 1999.

ADDRESSES: Please send an original and three copies of your comments to: Docket No. 99–003–2, Regulatory Analysis and Development, PPD, APHIS Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–003–2.

You may read the petition for a determination of nonregulated status submitted by Agritope, Inc., the environmental assessment, and any comments we receive on this notice of availability at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 133, Suite 4B03, Riverdale, MD 20737–1236; (301) 734–4882. To obtain a copy of the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: kay.peterson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1998, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 98–350–01p) from Agritope, Inc. (Agritope), of Portland, OR, seeking a determination that cantaloupe (*Cucumis melo* L.) lines designated as A and B, which have been genetically engineered for delayed fruit ripening, do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On March 16, 1999, APHIS published a notice in the **Federal Register** (64 FR 12926–12927, Docket No. 99–003–1) announcing that the Agritope petition had been received and was available for public review. The notice also discussed the role of APHIS and the Food and Drug Administration in regulating the subject cantaloupe lines and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether cantaloupe lines A and B posed a plant pest risk. The comments were to have been received by APHIS on or before May 17, 1999. APHIS received no comments on the subject petition during the designated 60-day comment period.

Cantaloupe lines A and B have been genetically engineered to contain a modified SAMase (*sam-k*) gene derived from *Escherichia* coli bacteriophage T3. The *sam-k* gene encodes an S-adenosylmethionine hydrolase enzyme capable of degrading and thus reducing S-adenosylmethionine (SAM). Reduction of SAM results in lowered ethylene production during fruit ripening in cantaloupe lines A and B and a corresponding increase in the uniformity of ripening in the field. The subject cantaloupe lines also contain and express the neomycin phosphotransferase II (*nptII*) gene derived from *E. coli*. The *nptII* gene was used as a selectable marker during the plant transformation process. Expression of the added genes is controlled in part by gene sequences from the plant pathogen *Agrobacterium tumefaciens*, and the *A. tumefaciens* method was used to transfer the added genes into the parental inbred cantaloupe lines.

Cantaloupe lines A and B are considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain gene sequences derived from a plant pathogen. Field tests of the subject cantaloupe lines have been conducted under APHIS permits and notifications since 1997 under confined conditions. If Agritope's petition for a determination of nonregulated status were approved, Agritope's cantaloupe lines A and B would no longer be considered regulated articles under APHIS' regulations in 7 CFR part 340 and the requirements pertaining to regulated articles under those regulations would no longer apply to the subject cantaloupe lines or their progeny.

To provide the public with documentation of APHIS' review and analysis of the environmental impacts and plant pest risk associated with a determination of nonregulated status for Agritope's cantaloupe lines A and B, an environmental assessment (EA) has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 20th day of October, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–27920 Filed 10–25–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on

November 4, 1999, at the Double Tree Hotel, Columbia River, 1401 H. Hayden Island Drive, Portland, Oregon, 97217. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items to be discussed include, but are not limited to; Habitat Conservation Planning from the County perspective; a report on the Interagency Steering Committee meeting; and progress reports on ongoing implementation issues. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Curt Loop, Acting Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, PO Box 3623, Portland, OR 97208 (Phone: 503–808–2180).

Dated: October 29, 1999.

Curtis A. Loop,

Acting Designated Federal Official.

[FR Doc. 99–27858 Filed 10–25–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 19–99]

Foreign-Trade Zone 93—Durham, North Carolina; Withdrawal of Application for Subzone Status for Philips Monitor Raleigh Computer Monitors and Related Peripheral Products Plant

Notice is hereby given of the withdrawal of the application submitted by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the manufacturing facilities (computer monitors and related peripheral products) of Philips Monitor Raleigh, located at sites in the Durham, North Carolina, area. The application was filed on May 6, 1999 (64 FR 26933, 5/18/99).

The withdrawal was requested because of changed circumstances, and the case has been closed without prejudice.

Dated: October 15, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–27959 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48–99]

Foreign-Trade Zone 137—Washington Dulles International Airport, Virginia Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Washington Dulles Foreign Trade Zone, Inc., grantee of FTZ 137 (Fairfax/Loudoun Counties, Virginia), requesting authority to expand its zone to include a site in Gainesville (Prince William County), Virginia, within the Washington, DC, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 14, 1999.

FTZ 137 was approved on April 17, 1987 (Board Order 350, 52 FR 13489, 4/23/87). The zone project currently consists of sites (392 acres) at and adjacent to the Washington Dulles International Airport complex, Fairfax and Loudoun Counties: Site 1—within the airport complex; Site 2—warehouse facility, 110 Terminal Drive, Sterling; and, Site 3—near the intersection of Routes 606 and 621, Loudoun County. Two applications are currently pending with the Board for two additional sites in Virginia's Eastern Shore region (Doc. 44–98) and three additional sites in the Winchester-Frederick County area (Doc. 46–99).

This application is requesting authority to expand the general-purpose zone to include an additional site (171 acres) in Gainesville, Virginia (Proposed Site 9): Proposed Site 9 (171 acres)—within the 435-acre Virginia Gateway Development, southwest quadrant of the I–66/Rt. 29 interchange, Gainesville. The site is owned by Virginia Gateway Associates L.P., an affiliate of The Peterson companies. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 27, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 10, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Washington Dulles Foreign Trade Zone, Inc., 44701 Propeller Court, Dulles, VA 20166

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: October 15, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–27957 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49–99]

Foreign-Trade Zone 207—Richmond International Airport, Virginia; Application for Foreign-Trade Subzone Status, Ericsson, Inc. (Cellular Telephones, Wireless Communications Equipment, and Private Radio Equipment), Lynchburg, VA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Capital Region Airport Commission, grantee of FTZ 207, requesting special-purpose subzone status for the manufacturing facilities (cellular telephones, wireless communications equipment, and private radio equipment) of Ericsson, Inc. (Ericsson), located at sites in Lynchburg, Virginia. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 15, 1999.

The Ericsson facilities (153 acres, 1 million sq. ft.) are located at three sites in Lynchburg: manufacturing facility at 1 Mountain View Road; finished goods facility at 314 Jefferson Parkway; and parts inventory facility at 37 Millrace Drive. These facilities (3,000+ employees) are currently used for the manufacture of cellular telephones, wireless communications equipment, and private radio equipment. Some of the components used in manufacturing these products are purchased from abroad (comprising 50 to 60 % of parts value), including keypads, pin connectors, amplifiers, coaxial cable, storage batteries, transformers, switches, electric motors, clasps, loud speakers, screws, rubber parts, filter paper, and storage battery parts (duty rates on these items range from 1.8% to 6.6%).

Zone procedures would exempt Ericsson from Customs duty payments on foreign components used in export production. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rates that apply to the finished products (ranging from duty free to 3.4%) instead of the rates otherwise applicable to the foreign input materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste (scrap rate estimated at 1% of parts). FTZ procedures will help Ericsson to implement a more cost-effective system for handling Customs requirements (including reduced Customs merchandise processing fees). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 27, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 10, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, DC 20230

U.S. Department of Commerce Export Assistance Center, 400 North 8th Street, Suite 540, Richmond, VA 23240–0026

Dated: October 15, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–27958 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–99]

Foreign-Trade Zone 207—Richmond International Airport, Virginia; Application for Foreign-Trade Subzone Status; Alfa Laval Thermal, Inc. (Heat Exchangers); Richmond, VA, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Capital Region Airport Commission, grantee of FTZ 207, requesting special-purpose subzone status for the manufacturing facilities (heat exchangers and parts) of the Alfa Laval Thermal, Inc. (Alfa Laval), located at sites in the Richmond, Virginia, area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 14, 1999.

The Alfa Laval facilities are located at three sites in the Richmond, Virginia, area (23 acres, 115,000 sq. ft. total): *Site 1* (1 building/80,000 square feet on 17 acres)—headquarters and main manufacturing facilities, located at 5400 International Trade Drive, Richmond; *Site 2* (portion of 1 building/23,000 sq. ft.)—space used for repairs, light manufacturing, and warehousing, at 520 East Park Court, Woodland Center, Richmond; and *Site 3* (1 building/10,500 sq. ft. on 2.2 acres)—stocking and repair facility, located at 11100 Air Park Road, Hanover Industrial Park, Ashland.

The facilities (200 employees) are used for the engineering, manufacture, service, and distribution of Alfa Laval's heat exhanger products, which include plate heat exchangers, brazed heat exchangers, spiral heat exchangers, scraped surface heat exchangers, and new or reconditioned heat exchanger parts. Some of the components used in the manufacturing process are purchased from abroad (an estimated 38% of finished product value), including: nuts; screws; gaskets; washers; adhesives; stainless steel angles, shapes, and section; needle roller bearings; and titanium sheet (duty rates on the imported items range from 0.4% to 15.0%). The company will also use several foreign-sourced items that are duty free. The company indicates that it will admit the aforementioned stainless steel products to the proposed subzone in privileged-foreign status.

Zone procedures would exempt Alfa Laval from Customs duty payments on foreign components used in export production. FTZ procedures will help Alfa Laval to implement a more efficient and cost-effective system for handling Customs requirements (including reduced Customs merchandise processing fees). On its domestic sales, Alfa Laval would be able to choose the lower duty rate that applies to the finished products (0.8%) for the foreign components noted above, with the above-noted exception of stainless steel products. The company also would benefit from duty savings on scrap and waste resulting from the production process (Alfa Laval estimates its scrap rate as one percent of all components and materials). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness, and would enable the company to shift additional production from overseas to the Richmond-area facilities.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 27, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 10, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce Export Assistance Center, 400 North 8th Street, Suite 540, Richmond, VA 23240–0026

Dated: October 14, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–27956 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-803]

Bars and Wedges and Hammers and Sledges From the People's Republic of China: Extension of Time Limit for Preliminary Results of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of five-year ("sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the reviews initiated on the antidumping duty orders on bars and wedges and hammers and sledges from the People's Republic of China ("PRC"). Based on adequate responses from domestic interested parties and adequate responses from respondent interested parties, the Department is conducting full sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. As a result of these extension, the Department intends to issue its preliminary results not later than January 18, 2000.

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6397 or (202) 482-1560 respectively.

Extension of Preliminary Results

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a sunset review as extraordinary complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The Department has determined that the sunset reviews of antidumping duty orders on bars and wedges and on hammers and sledges from the PRC are extraordinary complicated. Therefore, the Department is extending the time limit for completion of the preliminary results of these reviews until not later than January 18,2000, in accordance with section 751(a)(5)(B) of the Act.

Dated: October 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-27833 Filed 10-25-99; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of certain corrosion-resistant carbon steel flat products from Japan. This review covers the period August 1, 1997 through July 31, 1998. The preliminary results of this review were published in the **Federal Register** on August 16, 1999 (64 FR 44483).

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson at (202) 482-0182 or (202) 482-3818, respectively; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Extension of Final Results

The final results of this review are currently due on December 14, 1999. The Department has determined that it is not practicable to issue its final results within the original time limit. *See* Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert S. LaRussa, Assistant Secretary for Import Administration, October 18, 1999. The Department is extending the time limit for completion of the final results by 60 days (*i.e.*, 180 days after the date on which the notice of the preliminary results was published in the **Federal Register**) until February 14, 2000, in accordance with Section 751(a)(3)(A) of the Act.

Dated: October 18, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 99-27955 Filed 10-25-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-805]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Industrial Nitrocellulose From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on industrial nitrocellulose ("INC") from Korea. Based on this information, we preliminarily determine that Korea CNC Ltd., ("KCNC"), is the successor-in-interest to Daesang Corporation ("Daesang") for purposes of determining antidumping liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6320 or (202) 482-3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to the regulations of the Department are to 19 CFR part 351 (1998).

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28267) the antidumping order on INC from Korea. On August 25, 1999, KCNC submitted a letter stating that KCNC is the successor-in-interest to Daesang, and, as such, KCNC is entitled to the receive the same antidumping treatment as is accorded Daesang.

Scope of Review

Imports covered by this review are shipments of INC from Korea. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System ("HTS") subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Initiation and Preliminary Results of Review

In a letter dated August 25, 1999, KCNC advised the Department that on April 1, 1999, China Nitrocellulose Co. ("CNC") purchased Daesang's INC business, including Daesang's only manufacturing and research and development ("R&D") facility for subject merchandise, located at Chonju Industrial Complex No. 3, 821 Yongam-Lee, Bongdong-Eub, Wanju-Gun, Chollabuk-Do, Korea (the "Chonju factory"). CNC transferred Daesang's INC business to KCNC, which CNC had newly established for that purpose. KCNC operates the Chonju factory without change. Production continues with the same equipment, the same workers, the same raw materials purchased from the same suppliers, and the same production process. KCNC continues to sell the same products to the same customers to which Daesang previously sold. The organizational and management structure of Daesang's INC business has essentially remained intact, except that KCNC has appointed a new president. All management and employees at the plant manager level and below are the same as when the factory was managed by Daesang, while the managing director was formerly employed by Daesang in another capacity.

Thus, in accordance with section 751(b) of the Act, the Department is initiating a changed circumstances review to determine whether KCNC is the successor-in-interest to Daesang for purposes of determining antidumping duty liability. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460 (May 13, 1992) ("*Canadian Brass*"). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994) and *Canadian Brass*, 57 FR 20460. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We preliminarily determine that KCNC is the successor-in-interest to Daesang. KCNC's management is virtually identical to Daesang. KCNC's business operation, with respect to the subject merchandise, is identical to the INC operations of Daesang. Production facilities are unchanged as are customer and supplier lists. Thus, KCNC should receive the same antidumping duty treatment as the former Daesang, *i.e.*, a 2.10 percent antidumping duty cash deposit rate. This cash deposit requirement will apply to all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This deposit rate shall remain in effect until publication of the final results of the next administrative review.

Interested parties are invited to comment on these preliminary results. Any written comments may be submitted no later than 30 days after date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, are due five days after the case brief deadline. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.309. The Department will publish the final results of the changed circumstances review including the results of any such comments.

This initiation of review, preliminary results of review and notice are in accordance with sections 751(b) and 777(i)(1) of the Act.

Dated: October 18, 1999.

Robert A. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 99–27834 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Notice of Extension of Time Limit for Countervailing Duty Administrative Review of Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 26, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the countervailing duty administrative review of the countervailing order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom, covering the period January 1, 1998 through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Jonathan Lyons, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3208 or (202) 482–0374, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Tariff Act, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days after the last day of the anniversary month for the relevant order. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, "Extension of Time for Preliminary Results." Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results to no later than March 30, 2000.

Dated: October 18, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 99–27835 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 101599J]

Availability of an Environmental Impact Statement and Receipt of an Application for Incidental Take Permits for the Simpson Timber Company, Northwest Operations, Habitat Conservation Plan, Thurston, Mason, and Grays Harbor Counties, Washington

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of application and availability for public comment.

SUMMARY: This notice advises the public that Simpson Timber Company, Northwest Timber and Wood Products (STC), has submitted an application to the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (together, the Services) for incidental take permits (Permits) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). As required by section 10(a)(2)(B) of the ESA, the applicant has also prepared a Habitat Conservation Plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is related to forest management and timber harvest on approximately 261,575 acres of Simpson's fee-owned timberlands in Thurston, Mason, and Grays Harbor Counties, Washington. The proposed Permits would authorize the take of the following endangered or threatened species incidental to otherwise lawful management activities: marbled murrelet (*Brachyramphus marmoratus marmoratus*), bald eagle (*Haliaeetus leucocephalus*), Puget Sound chinook salmon (*Oncorhynchus tshawytscha*), and Hood Canal summer run chum salmon (*Oncorhynchus keta*). STC is also seeking coverage for 48 currently unlisted species (including anadromous and resident fish) under specific provisions of the Permits, should these species be listed in the future. One of these, the coastal-Puget Sound population of the bull trout (*Salvelinus confluentus*), is currently in the final stages of the listing process. A determination will soon be made as to whether the bull trout will be listed as threatened. The duration of the proposed Permits and Plan is 50 years.

The Permit application includes: (1) the proposed Plan; and, (2) a proposed Implementing Agreement. The Services also announce the availability of a draft Environmental Impact Statement (EIS) for the Permit application.

This notice is provided pursuant to section 10(a) of the ESA, and National Environmental Policy Act (NEPA) regulations. The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Written comments on the Permit application, EIS, Plan, and Implementing Agreement must be received from interested parties no later than December 27, 1999.

ADDRESSES: Comments and requests for information should be directed to Linda Saunders, Project Biologist, FWS, 510 Desmond Drive, SE., Suite 102, Lacey, Washington, 98503–1273, (telephone: 360/753–5826; facsimile: 360/534–9331), and Mike Parton, Project Biologist, NMFS, 510 Desmond Drive, SE., Suite 103, Lacey, Washington, 98503–1273 (telephone: 360/753–4650; facsimile: 360/753–9517). Comments and materials received will also be available for public inspection, by appointment, at the above offices during normal business hours by calling (360)534–9330.

Requests for documents on CD ROM should be made by calling FWS at (360)534–9330. Hardbound copies are also available for viewing, or partial or complete duplication, at the following libraries: Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA, (360)352–0595; William G. Reed Library, Reference Desk, 710 West Alder Street, Shelton, WA, (360)426–1362; Hoodsport Timberland Library, 40 North Schoolhouse Hill Road, Hoodsport, WA, (360)877–9339; Elma Timberland Library, Information Desk, 118 North 1st Street, Elma, WA, (360)482–3737; W.H. Abel Public Library, Information Desk, 125 Main Street South, Montesano, WA, (360)249–4211; and, Aberdeen Timberland Library, Reference Desk, 121 East Market Street, Aberdeen, WA, (360)533–2360. The documents are also available electronically on the World Wide Web at http://www.r1.fws.gov/.

FOR FURTHER INFORMATION CONTACT: Linda Saunders, FWS, 360/753–5826; or Mike Parton, NMFS, 360/753–4650.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm has been defined by FWS to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering." NMFS' proposed definition of harm includes "significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, feeding, and sheltering."

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. FWS regulations governing permits for endangered species are promulgated in 50 CFR 17.22; and, regulations governing permits for threatened species are promulgated in 50 CFR 17.32. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Simpson Timber Company owns and manages approximately 261,575 acres of commercial timberland in Thurston, Mason and Grays Harbor counties, Washington. These properties are located from just south of Highway 8, north into the southern foothills of the Olympic Mountains, and west across the Wynoochee River valley to the City of Aberdeen's Wishkah watershed. Management activities on the tree farm include forest management and timber harvest.

Some forest management and timber harvest activities have the potential to impact species subject to protection under the ESA. Section 10 of the ESA contains provisions for the issuance of Permits to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval, a Plan containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

Simpson Timber Company has developed a Plan with technical assistance from the Services, to obtain Permits for their activities on the subject lands. Activities proposed for Permit coverage include the following: all aspects of mechanized timber harvest, log transportation, road construction, road maintenance and abandonment, site preparation, tree planting, fertilization, silvicultural thinning, experimental silviculture, controlled burns, wild fire suppression, stream restoration, and the management, harvest, and sale of minor forest products. The Permits and Plan would also cover certain monitoring activities and related scientific experiments in the Plan area. The duration of the proposed Permits and Plan is 50 years.

The Services formally initiated an environmental review of the project through a Notice of Intent to prepare an EIS in the Federal Register on February 9, 1999 (64 FR 6325). This notice also announced a 30-day public scoping period, during which other agencies, tribes, and the public were invited to provide comments and suggestions regarding issues and alternatives to be included in the EIS. Following this scoping period a draft EIS was prepared which considers the No Action alternative, the Proposed Action, and three additional action alternatives.

Under the No Action Alternative, Permits would not be issued and Simpson would continue a forest management program which avoids take of federally listed species. Under the Proposed Action, the Services would issue Permits and Simpson would implement their proposed Plan on 261,575 acres of Simpson's Washington timberlands. Under a Modified Northwest Forest Plan Alternative, the Services would issue Permits, and Simpson would implement a Plan with riparian conservation measures approximately mid-way between the Northwest Forest Plan (NFP) and the Proposed Action. Current (1999) Washington Forest Practices would be applied where NFP guidelines are not available.

Alternatives considered during scoping but which were not analyzed in detail include an alternative based on the Washington State Forestry Module (new proposed revisions to the Washington State Forest Practices Act), and a NFP Alternative. The Forestry Module Alternative, would have involved issuing Permits for an undetermined number of species and developing and implementing a Plan based on the Forestry Module guidelines for riparian, wetlands, unstable slopes, and road management. This alternative was not analyzed because it would result in similar riparian conservation to the Proposed Action. The NFP Alternative would have involved issuing a Permit for all threatened and endangered species that occur on the property and developing a Plan with mitigation measures similar to those found in the NFP. This alternative was not analyzed because it would restrict harvestable acres to approximately 68 percent of current levels, thereby resulting in excessive direct and indirect costs to the Applicant.

The No Action, Proposed Action, and Modified NFP alternatives are analyzed in detail in the draft EIS. The Forestry Module Alternative and NFP Alternative were dismissed from detailed analysis.

This notice is provided pursuant to section 10(a) of the ESA, and NEPA regulations.

Dated: October 18, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: October 18, 1999.

Don Weathers,

Acting Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 99–27695 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F, BILLING CODE 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 101599H]

Availability of an Environmental Impact Statement and Receipt of an Application for an Incidental Take Permit for the Crown Pacific, Ltd., Hamilton Tree Farm Habitat Conservation Plan, Whatcom and Skagit Counties, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of application and availability for public comment.

SUMMARY: This notice advises the public that Crown Pacific, Ltd., has submitted an application to FWS and NMFS (together, the Services) for an Incidental Take Permits (Permits) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). As required by section 10(a)(2)(B) of the ESA, Crown Pacific has also prepared a Habitat Conservation Plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is related to forest management and timber harvest, recreational activities, installation and operation of communication towers, and military training operations, on approximately 84,689 acres of Crown Pacific lands located in Whatcom and Skagit counties, Washington. The proposed Permits would authorize the take of the following endangered or threatened species incidental to otherwise lawful activities: northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), bald eagle (*Haliaeetus leucocephalus*), grizzly bear (*Ursus arctos*), gray wolf (*Canis lupus*), and chinook salmon (*Oncorhynchus tshawytscha*). Crown Pacific is also seeking coverage for 22 currently unlisted species of concern (including anadromous and resident fish) under specific provisions of the Permits, should these species be listed in the future. One of these, the coastal-Puget Sound population of the bull trout (*Salvelinus confluentus*), is currently in the final stages of the listing process. A determination will soon be made as to whether the bull trout will be listed as threatened. The duration of the proposed Permits and Plan is 100 years.

The Permit application includes: (1) the proposed Plan; and, (2) the proposed Implementing Agreement. The Services also announce the availability of a draft Environmental Impact Statement (EIS) for the Permit application.

This notice is provided pursuant to section 10(a) of the ESA, and National Environmental Policy Act (NEPA) regulations. The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Written comments on the permit application, EIS, Plan, and

Implementing Agreement must be received from interested parties no later than December 27, 1999.

ADDRESSES: Comments and requests for information should be directed to Brian Bogaczyk, Project Biologist, FWS, 510 Desmond Drive, SE., Suite 102, Lacey, Washington, 98503–1273, (telephone: (360)753–5824; facsimile: (360)534–9331), and Matt Longenbaugh, Project Biologist, NMFS, 510 Desmond Drive, SE., Suite 103, Lacey, Washington, 98503–1273 (telephone: (360)753–7761; facsimile: (360)753–9517). Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling (360)534–9330.

Requests for documents on CD ROM should be made by calling FWS at (360)534–9330. Hard bound copies are also available for viewing, or partial or complete duplication, at the following libraries: Sedro-Woolley Public Library, 802 Ball Street, Sedro Woolley, WA, (360)855–1166; Bellingham Public Library, Reference Desk, 210 Central Avenue, Bellingham, WA, (360)676–6860; Seattle Public Library, Government Publications Desk, 1000 4th Avenue, Seattle, WA, (260)386–4636; and, Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA, (360)352–0595. The documents are also available electronically on the World Wide Web at http://www.r1.fws.gov/.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm has been defined by FWS to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering." NMFS' proposed definition of harm includes "significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, feeding, and sheltering."

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. FWS regulations governing permits for endangered species are promulgated in 50 CFR 17.22; and, regulations governing permits for threatened species are promulgated in 50 CFR 17.32. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Crown Pacific, Ltd., owns and manages the Hamilton Tree Farm, located in Whatcom and Skagit Counties, Washington. The Tree Farm is composed of several parcels, totaling 84,689 acres, and is located north and south of State Highway 20, roughly between Sedro-Woolley and Marblemount, Washington. Management activities on the tree farm include forest management and timber harvest. A portion of the proposed Plan area, Arlecho Creek, a 2,246–acre basin, is in the process of being transferred to the Nature Conservancy and the Lummi Indian Nation, with the understanding that the property will be managed as a natural/cultural area. The transfer is expected to be completed in late 1999.

Some forest management and timber harvest activities have the potential to impact species subject to protection under the ESA. Section 10 of the ESA contains provisions for the issuance of Incidental Take Permits (Permits) to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval, a Habitat Conservation Plan (Plan) containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

Crown Pacific has developed a Plan with technical assistance from the Services, to obtain Permits for their activities on the Hamilton Tree Farm. Activities proposed for Permit coverage include the following: harvest of trees; silvicultural treatments; site preparation; tree planting; timberland inventory and monitoring; construction, maintenance, and use of logging roads and landings; quarrying stone and gravel; communication sites; recreation activities; fire prevention and suppression; habitat restoration; use of low-flying aircraft; tribal access; and, military training operations. The Permits and Plan would also cover certain monitoring activities and related scientific experiments in the Plan area. The duration of the proposed Permits and Plan is 100 years.

The Services formally initiated an environmental review of the project through a **Federal Register** notice on August 20, 1998 (63 FR 44634), which announced a 30-day public scoping period. A second **Federal Register** notice was published following the scoping period on February 5, 1999 (64 FR 5775), announcing the decision to prepare an EIS. Following this announcement a draft EIS was prepared.

Under Alternative A, the No Action Alternative, no Permit would be issued and take would be avoided for any and all threatened and endangered species on the property. Alternative B, the Proposed Action Alternative, involves issuing Permits for seven threatened and endangered species on the property (bald eagle, marbled murrelet, northern spotted owl, grizzly bear, gray wolf, and Puget Sound chinook salmon), with provisions for 22 unlisted species. The Plan details minimization and mitigation measures for the same six threatened and endangered species and 22 unlisted species. Alternative C, the Late-Successional Dependent Species and Anadromous Fish Alternative, involves issuing Permits for northern spotted owl, marbled murrelet, and chinook salmon, with provisions for 7 unlisted fish species. The Plan would have minimization and mitigation measures for northern spotted owl, marbled murrelet, and chinook salmon, and 7 unlisted fish species.

Alternatives considered during scoping but which were not analyzed in detail included a Candidate Conservation Agreement (CCA) Alternative, and a Northwest Forest Plan (NFP) Alternative. The CCA Alternative, would have involved developing and implementing a CCA with minimization and mitigation measures for a discreet list of species that are candidates for listing as threatened or endangered, or are expected to be candidates in the near future (specifically anadromous salmonids and bull trout), and take avoidance for any and all threatened and endangered species on the property. This alternative was not analyzed in detail because Crown Pacific included listed species in their proposal, as well as other unlisted species for which listing is not anticipated in the near future. This eliminates the implementation of a CCA as a management tool, because, by definition, the targets of CCAs are proposed and candidate species of fish, wildlife, and plants; and species likely to become candidate species in the near future (64 FR 32706, June 17, 1999). The NFP Alternative, would have involved issuing a Permit for all threatened and endangered species that occur on the property and developing a Plan with mitigation measures similar to those found in the NFP. This alternative was not analyzed in detail because it would result in excessive direct and indirect costs to Crown Pacific. These excessive costs do not meet the purpose in this Federal action, which is to provide protection and conservation to listed and proposed species and their habitats to the extent intended under 10(a)(1)(B) of the ESA, while allowing Crown Pacific to fulfill its forest management and timber harvest mission in a practical manner.

The No Action, Proposed Action, Late-Successional Dependent Species and Anadromous Fish alternatives are analyzed in detail in the draft EIS. The CCA Alternative and NFP Alternative were dismissed from detailed analysis.

This notice is provided pursuant to section 10(a) of the ESA, and NEPA regulations. The Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the ESA and NEPA. If it is determined that the requirements are met, Permits will be issued for the incidental take of listed species. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: October 8, 1999.

Donald Weathers,

Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: October 19, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–27696 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 101599I]

Cancellation of Notice of Intent to Prepare an Environmental Impact Statement for Issuance of an Incidental Take Permit to the Louisiana-Pacific Corporation.

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Cancellation Notice.

SUMMARY: FWS and NMFS hereby cancel their Notice of Intent to prepare an Environmental Impact Statement (EIS) for approval of a Habitat Conservation Plan, and issuance of an incidental take permit, pursuant to section 10(a) of the Endangered Species Act of 1973, as amended, as published August 28, 1997 (62 FR 45676). The Notice is canceled because the timberland to be addressed in the EIS has been sold by the Louisiana-Pacific Corporation to new landowners.

FOR FURTHER INFORMATION CONTACT: Ms. Amedee Brickey, 125 16th Street, Arcata, California, 95521.

Dated: October 8, 1999.

Donald Weathers,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service, U.S. Fish and Wildlife Service, Portland, Oregon.

Dated: October 19, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–27705 Filed 10–25–99; 8:45 am]

Billing Codes: 3510–22–F, 4310–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102199A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting; cancellation.

SUMMARY: The New England Fishery Management Council (Council) has canceled a public meeting of its Habitat Committee scheduled for November, 1999. This was to be a joint meeting with the Council's Habitat Advisory Panel.

DATES: The meeting was to be held on Tuesday, November 9, 1999, at 9:30 a.m.

ADDRESSES: The meeting was to be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923, telephone (978) 777–2500.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION: In the October 20, 1999, issue of the **Federal Register** the announcement of the New England Fishery Management Council's notice of public meetings was published (64 FR 56487). The Habitat Committee meeting scheduled for November 9, 1999, has been canceled.

Dated: October 21, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27962 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: Notice is hereby given that the President has exempted the United States Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information to any unauthorized persons.

FOR FURTHER INFORMATION CONTACT: Mr. W. Kipling At Lee, Jr., Deputy General Counsel (Military Affairs), Office of the Secretary of the Air Force, Washington DC 20330; telephone (703) 695–5663.

SUPPLEMENTARY INFORMATION: 42 U.S.C. Section 6961 makes each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste subject to all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. 42 U.S.C. Section 6961 also states that the President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so and that any exemption shall be for a period not in excess of one year.

On September 20, 1999, the President exempted the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person.

Therefore, the text of the Memorandum from the President to the Secretary of the Air Force is set forth below.

Janet A. Long,

Air Force Federal Register Liaison Officer.

Presidential Determination No. 99–37
September 20, 1999

Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

Subject: Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, (the subject of litigation in Kasza V. Browner (D. Nev. CV–S–94–795–PMP) and Frost v. Perry (D. Nev. CV–S–94–714–PMP)), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the *Federal Register*.

William J. Clinton

Editorial Note: The Office of the **Federal Register** did not receive the original of Presidential Determination No. 99–37.

[FR Doc. 99–27866 Filed 10–25–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

[Docket No. EA–166–A]

Application To Export Electric Energy; Duke Energy Trading and Marketing, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Duke Energy Trading and Marketing, L.L.C. (DETM) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 26, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On March 8, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized DETM to transmit electric energy from the United States to Mexico as a power marketer (Order No. EA–166) using the international electric transmission facilities owned and operated by San Diego Gas & Electric, El Paso Electric Company, Central Power & Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. That authorization will expire on March 9, 2000. On October 6, 1999, DETM filed an application with FE for renewal of this export authority and requested that the Order be issued for a 5-year term.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the DETM request to export should be clearly marked with Docket EA–166–A. Additional copies are to be filed with Kris Errickson, Legal/Regulatory Coordinator, Duke Energy Trading and Marketing, One Westchase Center, 10777 Westheimer Street, Suite 650, Houston, TX 77042; Christine M. Pallenik, Managing Counsel, Duke Energy Trading and Marketing, 4 Triad Center, Suite 1000, Salt Lake City, UT 84180; *and* Gordon J. Smith, Esq., John & Hengerer, 1200 17th Street, NW, Suite 600, Washington, DC 20036.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–166. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–166 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity" from the "Regulatory Info" menu, then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on October 20, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–27895 Filed 10–25–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 3, 1999: 6 p.m.–9 p.m.

ADDRESS: Donald C. Moyer Student Union building, Grand Ballroom, University of Nevada, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las

Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Panel discussion on groundwater issues with representatives from Clark County, the State of Nevada, and the Department of Energy.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to issues related to the resolution of the agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on October 21, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–27896 Filed 10–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Midwestern Gas Transmission Company; Notice of Request Under Blanket Authorization

October 20, 1999.

Take notice that on October 13, 1999, Midwestern Gas Transmission Corporation (Midwestern), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP00–5–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities for service to Scepter, Inc. (Scepter), an industrial end-user, in Knox County, Indiana, under Midwestern's blanket certificate issued in Docket No. CP82–414–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Midwestern requests authorization to construct and operate facilities consisting of a two-inch hot tap, check valve, and electronic gas measurement facilities on its system in Knox County to serve Scepter's industrial plant. It is stated that Midwestern will use the facilities to transport up to 862 dekatherms per day on an interruptible basis pursuant to the terms of Midwestern's IT rate schedule for delivery to Scepter. Midwestern estimates the cost of the facilities at $32,300, for which it will be reimbursed by Scepter. It is explained that Scepter will install, own, operate and maintain approximately 200 feet of 2-inch interconnecting pipe and that Scepter will also install, own and maintain measurement facilities. It is asserted that deliveries to Scepter will be within its certified entitlement at this location. It is further asserted that Midwestern has sufficient capacity to render the proposed service without disadvantage to its other existing customers and that Midwestern's tariff does not prohibit the addition of delivery point facilities. Midwestern states that the proposal will not have a significant impact on its peak day or annual deliveries because the proposed service is interruptible.

Any questions regarding the application may be directed to Thomas G. Joyce, Certificates Manager, at (713) 420–2459.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 99–27852 Filed 10–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–12–000, *et al.*]

Portland General Electric Company, et al., Electric Rate and Corporate Regulation Filings

October 18, 1999.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. EC00–12–000]

Take notice that on October 12, 1999, Portland General Electric Company (PGE), tendered for filing an application pursuant to Section 203 of the Federal Power Act for authority to sell certain jurisdictional transmission facilities, as more fully set forth in the application, to Avista Corporation.

A copy of this application has been served upon the Oregon Public Utility Commission.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. United American Energy Corporation

[Docket No. ER96–3092–014]

Take notice that on October 6, 1999, United American Energy Corporation tendered for filing a summary of activity for the quarter ending September 30, 1999, with the Commission in above-referenced proceeding.

3. Southern California Edison Co., California Independent System Operator Corp., El Segundo Power, LLC; Pacific Gas & Electric Co., Duke Energy Moss Landing, LLC, Duke Energy Oakland, LLC; San Diego Gas & Electric Co.; Southern California Edison, Pacific Gas & Electric Co., San Diego Gas & Electric Co., Duke Energy Moss Landing, LLC, Duke Energy Oakland, LLC

[Docket Nos. ER98–441–012, ER98–2550–000, ER98–495–000, ER98–1614–000, ER98–2145–000, ER98–2668–000, ER98–2669–000, ER98–4296–000, ER98–4300–000, ER98–496–000, ER98–2160–000, ER98–441–001, ER98–495–001, ER98–496–001, ER98–4300–001, ER98–2668–001, ER98–2669–001, ER98–4296–001, ER98–1127–000, and ER98–1128–000]

Take notice that on October 12, 1999 Pacific Gas and Electric Company tendered for filing a refund report in compliance with the Offer of Settlement filed in the above-captioned dockets on April 2, 1999 and approved by the Federal Energy Regulatory Commission (Commission) by letter order on May 28, 1999.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Supply Company and West Penn Power Company

[Docket No. ER99–4087–000]

Take notice that on October 12, 1999, Allegheny Power Supply Company (AE Supply), and West Penn Power Company (West Penn), tendered for filing an amended Form of Purchase and Sale Agreement for Ancillary Services pursuant to which AE Supply proposes to sell certain ancillary services to West Penn at cost-based rates, and to sell Energy Imbalance Service to West Penn at rates subject to an index-based cap, all as more fully described in the amended application.

Copies of this filing have been served upon the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER99–4415–000]

Take notice that on October 12, 1999, Illinois Power Company (Illinois Power), tendered for filing certain corrections to revised sheets of its Open Access Transmission Tariff (OATT) filed in the above docket.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER99–4472–000]

Take notice that on October 12, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APCo), tendered for filing an erratum to its September 20, 1999, filing in the above docket. This docket pertains to an amendment to the Amended and Restated Agreement for Partial Requirements and Complimentary Services between APCo and the Alabama Municipal Electric Authority (APCo. No. 168) (the PR Agreement). In the original filing in this proceeding, the revised contract pages did not reflect an earlier amendment to the PR Agreement that was made in Docket No. ER98–3046–000. The purpose of the erratum filing is to correct that oversight.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER99–4530–000]

Take notice that on October 12, 1999, Illinois Power Company (Illinois Power), tendered for filing certain corrections to revised sheets of its Open Access Transmission Tariff (OATT) filed in the above docket.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PECO Energy Company

[Docket No. ER00–83–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Corn Belt Energy Corporation. (CBEC), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CBEC as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to CBEC and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER00–84–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Oneok Power Marketing Company. (ONEOK), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds ONEOK as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to ONEOK and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER00–85–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Energy New England, LLC. (Energy New England) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Energy New England as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to Energy New England and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER00–86–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered filed a Service Agreement dated September 23, 1999 with Commonwealth Energy Corporation, a California Corporation Doing Business as Advantage Energy, Inc. (CEC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CEC as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to CEC and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER00–87–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Soyland Power Cooperative, Inc. (SOYLAND) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SOYLAND as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to SOYLAND and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER00–96–000]

Take notice that on October 12, 1999, Commonwealth Edison Company (ComEd), tendered for filing an unexecuted service agreement establishing Edison Mission Marketing & Trading, Inc. (EMMT), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of September 13, 1999 for the Service Agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on EMMT.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER00–95–000]

Take notice that on October 12, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an assignment letter indicating that Illinois Power (IP) is assigning to Illinova Power Marketing, Inc. (IPMI), and IPMI will assume rights and responsibilities under, the Non-Firm Point-to-Point Transmission Service Agreement dated January 21, 1997, under Virginia Power's Open Access Transmission Tariff to Eligible Purchasers.

Virginia Power requests an effective date of the assignment of September 30, 1999.

Copies of this filing were served upon IPMI, IP, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER00–88–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with NYSEG Solutions Inc. (NSI), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NSI as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to NSI and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER00–94–000]

Take notice that on October 12, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service, dated September 30, 1999 (the Service Agreement) between Louisville Gas & Electric Company/Kentucky Utilities Company (LG&E/KU) and OVEC. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff. The Service Agreement provides for firm transmission service by OVEC to LG&E/KU.

OVEC proposes an effective date of September 30, 1999 and requests waiver of the Commission's notice requirement to allow the requested effective date.

Copies of this filing were served upon LG&E/KU, the Kentucky Public Service Commission, the Tennessee Regulatory Authority and the Virginia State Corporation Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Southwest Power Pool, Inc.

[Docket No. ER00–93–000]

Take notice that on October 13, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for loss compensation firm service, and long-term firm, short-term and non-firm point-to-point transmission service under the SPP Tariff with Oklahoma Municipal Power Authority (OMPA).

A copy of this filing was served upon OMPA.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Minergy Neenah, L.L.C.

[Docket No. ER00–89–000]

Take notice that on October 12, 1999, Minergy Neenah, L.L.C., tendered for filing a long-term power sale agreement with Alliant Energy—Wisconsin Power and Light Company. Service under the agreement commenced on September 15, 1999. The Commission's order in Docket No. ER99–3125–000 requires Minergy Neenah to file long-term service agreements within thirty days of commencement of service.

Minergy Neenah requests an effective date of September 15, 1999.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PacifiCorp

[Docket No. ER00–92–000]

Take notice that on October 12, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Short-term Firm Point-To-Point Transmission Service Agreement with British Columbia Power Exchange Corporation (Powerex) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Duquesne Light Company

[Docket No. ER00–91–000]

Take notice that on October 12, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Citizens Power Sales (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of October 9, 1999.

Copies of this filing were served upon Customer.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27856 Filed 10–25–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6463–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; ENERGY STAR Labeling Program Evaluation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Collection of Information for the ENERGY STAR Labeling Program Evaluation, EPA ICR No.1861.02. The ICR describes the nature of the information collection and its expected burden and cost and includes the actual data collection instruments.

DATES: Comments must be submitted on or before November 26, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No.1861.02.

SUPPLEMENTARY INFORMATION:

Title: Collection of Information for the ENERGY STAR Labeling Program Evaluation, EPA ICR No.1861.02. This is a new collection.

Abstract: This information collection is designed to evaluate the efficacy of the Energy Star Labeling Program as a nonregulatory strategy for preventing air pollution, per section 103 of the Clean Air Act. The Energy Star Labeling Program was designed to create self-sustaining markets for energy efficient products and services via a common labeling strategy and awareness campaign and through strategic education for key market segments.

EPA plans to evaluate the program using ten voluntary data collection instruments targeted to key market segments. Nine of the data collection instruments will consist of telephone interviews that last between 12 to 15 minutes. One survey of household consumers will be mailed to respondents. In general all data collection instruments are designed to ascertain the respondents familiarity with the Energy Star label and to assess the degree to which long-term market effects or behavioral changes have occurred. The agency will use the information collected to evaluate program strategies, assess the overall efficacy of the labeling strategy and awareness campaign, and inform future program direction.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/22/98; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.24 hours (14.4 minutes) per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: consumers, information system managers, office managers, heating and cooling equipment professionals, computer/office equipment vendors.

Estimated Number of Respondents: 2,016.

Frequency of Response: one time data collection.

Estimated Total Annual Hour Burden: 475 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: none.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1861.02 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 20, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–27934 Filed 10–25–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–2162]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in New York City, New York. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the fourth meeting of the Public Safety National Coordination Committee.

DATES: November 19, 1999 at 1:30 p.m.–5:00 p.m.

ADDRESSES: One Police Plaza—First Floor Auditorium, New York, New York (Lower Manhattan) 10038.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the fourth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in New York City, New York. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: November 19, 1999.

Meeting Time: General Membership Meeting–1:30 p.m.–5:00 p.m.

Address: One Police Plaza—First Floor Auditorium.

New York, New York (Lower Manhattan) 10038

The NCC Subcommittees will meet from 8:00 a.m. to 12:00 noon, continuing their meetings from the previous day. The NCC General Membership Meeting will commence at 1:30 p.m. and continue until 5:00 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks
2. Administrative Matters
3. Report from the Interoperability Subcommittee
4. Report from the Technology Subcommittee
5. Report from the Implementation Subcommittee
6. Public Discussion
7. Other Business
8. Upcoming Meeting Dates and Locations
9. Closing Remarks

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191 (1998).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the fourth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and email address. This RSVP is for the purpose of determining the number of people who will attend this fourth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

D'wana R. Terry,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–27875 Filed 10–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

October 21, 1999.

Deletion of Agenda Item From October 21st Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the October 21, 1999, Open Meeting and previously listed in the Commission's Notice of October 14, 1999.

Item No.	Bureau	Subject
3	Mass Media and Office of Engineering and Technology	Title: Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service. Summary: The Commission will consider a Notice of Proposed Rulemaking concerning the introduction of digital audio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28030 Filed 10–22–99; 12:00 pm]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 99–19]

William J. Brewer v. Saeid B. Maralan (aka Sam Bustani) and World Line Shipping, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by William J. Brewer ("Complainant") against Saeid B. Maralan (aka Sam Bustani) and World Line Shipping, Inc. ("Respondents") was served October 19, 1999. Complainant alleges that Respondents violated sections 8 and 10 of the Shipping Act of 1984, 46 U.S.C. app. sections 1707 and 1709, by quoting charges for the shipment of Complainant's household and business property from Michigan to Egypt; after picking up the shipment, invoicing Complainant at a non-tariffed rate higher than that quoted; falsifying a bill of lading; after payment of invoiced charges, failing to make delivery of the shipment; and providing Complainant no information to help locate the shipment.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the prescribing officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 19, 2000, and the final decision of the Commission shall be issued by February 16, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–27869 Filed 10–25–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 1, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28098 Filed 10–22–99; 3:53 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4396]

Draft Guidance for Industry on Financial Disclosure by Clinical Investigators; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Financial Disclosure by Clinical Investigators." This draft guidance provides clarification, and responds to questions, concerning implementation of the final rule issued by FDA requiring anyone who submits a marketing application for any drug, biologic, or device to submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting clinical studies covered by the final rule.

DATES: Submit written comments concerning this draft guidance by December 27, 1999.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Financial Disclosure by Clinical Investigators" to Mary C. Gross, Office of International and Constituency Relations (HF–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20856. Send a self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 10–61, Rockville, MD 20852. See the **Supplementary Information** section of this document for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Office of International and Constituency Relations (HF–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20856, 301–827–3450, FAX 301–827–1335.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Financial Disclosure by Clinical Investigators." This draft guidance is intended to provide clarification concerning implementation of the final rule issued by FDA requiring anyone who submits a marketing application for any drug, biologic, or device to submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting clinical studies covered by the final rule. The requirements of the final rule took effect on February 2, 1999.

The agency's regulations on financial disclosure by clinical investigators require that financial interests and arrangements of clinical investigators that could affect the reliability of data submitted to FDA are identified and disclosed by the applicant. This requirement applies to any clinical study submitted in a marketing application that the applicant or FDA relies on to establish that the product is effective and any study in which a single investigator makes a significant contribution to the demonstration of safety. Applicants are required to certify to the absence of certain financial interests of clinical investigators or to disclose those financial interests. If the applicant does not include a certification and/or disclosure or does not certify that it was not possible to obtain the information, the agency may refuse to file the application.

The agency has received many questions concerning implementation of this final rule and has issued this draft guidance in the form of questions and answers in an effort to respond to these questions. FDA wishes to emphasize its commitment to work with sponsors as they begin their efforts to comply with the provisions of the rule.

II. Electronic Access

Copies of this guidance are available on the Internet. The guidance is located at www.fda.gov/oc/guidance/financialdis.html.

III. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by December 27, 1999, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–27840 Filed 10–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1999:

Name: National Advisory Council on Migrant Health.

Date & Time: November 18, 1999—9:00 a.m.–5:30 p.m.; November 19, 1999—9:30 a.m.–10:30 a.m.; November 20, 1999—8:00 a.m.–11 a.m.

Place: Omni Colonnade Hotel, 180 Aragon Avenue, Coral Gables, Florida 33134, Phone: (305) 441–2600; Fax: (305) 445–3929.

The meeting is open to the public.

Agenda

This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include the State Children's Health Insurance Program, Public Charge, the H–2 Guestworker Program, and including migrant workers in the Year 2000 Census. In addition, the Council will be holding its annual Farmworker Public Hearing. The Hearing is scheduled for Saturday, November 20, from 8 a.m. to 11 a.m. at the Omni Colonnade. The Council meeting is being held in conjunction with the 12th Annual East Coast Migrant Stream Forum, November 19–21, 1999. The Stream Forum also will take place at the Omni Colonnade, Coral Gables, Florida.

Anyone requiring information regarding the subject Council should contact Judy Rodgers, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone 301/594–4304.

Agenda items are subject to change as priorities indicate.

Dated: October 20, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–27841 Filed 10–25–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families—Phase III—(New)

The national evaluation of SAMHSA's Comprehensive Community Mental Health Services for Children and Their Families Program will collect data on child mental health outcomes, family life, and service system implementation and development. Data will be collected on 21 service systems (20 funded systems of care and one comparison site), and on approximately 5766 children and families. Data collection for this evaluation will be conducted over a five-year period. The core of the service system data will be collected every 18 months throughout the five-year evaluation period, with a provider survey conducted in selected years.

Service delivery and system variables of interest include the following: system of care development, adherence to the system of care program model, and client service experience. The length of time that individual families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. Child and family outcomes will be collected at intake and during subsequent follow-up sessions at six-month intervals. The outcome measures include the following: child symptomatology and functioning, family functioning, material resources, and caregiver strain. In addition, a treatment effectiveness study will examine the relative impact of an evidence-based treatment within one system of care. Internet-based technology will be used for data entry and management. The average annual respondent burden is estimated below. The estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent each year, the average length of time it will take for each response, and the total average annual burden for each category of respondent, and for all categories of respondents combined.

Respondent	Number of respondents	Responses/ respondent	Average burden/response (hrs.)	Total average annual burden
Caregiver	5,766	1.11	2.25	14,400.59
Youth	3,460	1.06	0.92	3,374.19
Provider/Administrator	420	0.52	1.32	288.29
Total	9,646			18,063.07

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 20, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–27859 Filed 10–25–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–24]

Notice of Proposed Information Collection: Comment Request; Contractor's and/or Mortgagor's Cost Breakdown, HUD–2328; Contractor's Certificate of Actual Cost, HUD–92330–A

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: December 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Wille Spearmon, Office of Business Products, Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contractor's and/or Mortgagor's Cost Breakdown, HUD–2328; Contractor's Certificate of Actual Cost, HUD–92330–A.

OMB Control Number, if applicable: 2502–0044.

Description of the need for the information and proposed use: Form HUD–2328 serves to facilitate the advances of mortgage proceeds and their monitoring. This form is used by the contractor to establish a schedule of values of construction items on which the monthly advances of mortgage proceeds are based. Form HUD–92330–A will be used by the contractor to convey its actual construction costs in a standardized format for cost certification. It uses the Uniform System of Cost Accounting to classify construction trade items, and its accounting classifications are identical to those in the Contractor's and/or Mortgagor's cost Breakdown, HUD–2328.

Agency form numbers, if applicable: HUD–2328, HUD–92330–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are 850, frequency of responses is 1, and the hours of response is estimated to be 8 hours per response for the HUD–2328 and 16 for the HUD–92330–A, totaling 9,600 hours.

Status of the proposed information collection: Reinstatement without change.

Authority: the Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 12, 1999.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 99–27838 Filed 10–25–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–08]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, (HUD).

ACTION: Notice of a Computer Matching Program between HUD and the Small Business Administration (SBA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Small Business Administration (SBA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with SBA's debtor files. In addition to HUD's data, the CAIVRS data base includes delinquent debt information from the Departments of Agriculture, Education Veterans Affairs, and judgment lien data from the Department of Justice. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or SBA direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the SBA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. Authorized users place a telephone call to the system. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision on any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATE: *Effective Date:* Computer matching is expected to begin at least 40 days from the date this computer matching notice is published, providing no comments are received which would result in a contrary determination. It will be accomplished 18 months from the beginning date.

Comments Due Date: November 26, 1999.

ADDRESSEES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION AND FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room P8202, Washington, DC 20410, Telephone Number (202) 708–2374. [This is not a toll-free number.]

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Ben Saars, Office of Financial Assistance, Small Business Administration, 409 Third Street, SW, Washington, DC 20416, Telephone Number (202) 401–1469. [This is not a toll-free number.]

REPORTING: In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and a report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the United States Senate, and the Office of Management and Budget.

AUTHORITY: The matching program will be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and the Office of Management and Budget (OMB) Circular A–129 (Revised January 1993), Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

OBJECTIVES TO BE MET BY THE MATCHING PROGRAM: The matching program will allow SBA access to a system which permits prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to SBA's debtor data for prescreening purposes.

RECORDS TO BE MATCHED: HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/ Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The SBA will provide HUD with debtor files contained in its system of records entitled, Loan Case File (SBA 075). HUD is maintaining SBA's records only as a ministerial action on behalf of SBA, not as a part of HUD's HUD/DEPT–2 system of records. SBA's data contain information on individuals who have defaulted on their direct loans. The SBA will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for SBA's data.

NOTICE PROCEDURES: HUD and the SBA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the SBA have published notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

CATEGORIES OF RECORDS/INDIVIDUALS INVOLVED: The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

PERIOD OF THE MATCH: Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination.

Dated: October 19, 1999.

Gloria R. Parker,

Chief Information Officer.

[FR Doc. 99–27837 Filed 10–25–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–07]

Privacy Act of 1974; Proposed New System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establish a new system of records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) as amended. The proposed new system of records is entitled Departmental Tracking System (DTS), V02A, HUD/EC–02. This system of records contains information on program participants who are direct or indirect recipients of HUD funds and who are subject to enforcement action due to fraud, waste, abuse and mismanagement of HUD funds. Information from this system will be used to determine whether these individuals are eligible to receive or to continue to receive federal financial and

non-financial assistance and benefits under federal programs and activities.

DATES: *Effective Date:* This action shall be effective without further notice in 30 calendar days unless comments are received during or before this period that would result in a contrary determination.

Comments Due Date: November 26, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records identified as HUD/EC–02, Departmental Tracking System (DTS), V02A.

Title 5 U.S. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: October 19, 1999.

Gloria R. Parker,

Chief Information Officer.

HUD/EC–02

SYSTEM NAME:

Departmental Tracking System (DTS), V02A.

SYSTEM LOCATION:

HUD Headquarters and HUD Computer Center, Lanham, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of any program participant who is a direct or indirect recipient of HUD funds and who is subject to enforcement action due to fraud, waste, abuse and mismanagement of HUD funds. Individuals would include: Mortgagors, mortgagees, partners, partnerships, associations, trustees, boards, board members, managers, developers, sponsors, builders, administrators, executives, tenants, employees, health care providers, vendors, consultants, bidders, brokers, appraisers, borrowers, sellers, contractors, corporations (include non-profits), attorneys, underwriters, inspectors, grant recipients, accountants, real estate and closing agents, companies, and units of government (however organized).

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records include pertinent information obtained from other automated systems such as: Name, address, title, job classification; identifying numbers such as social security number, tax identification number, project, and program identification numbers, and violations; sanctions including debarments, suspensions, Limited Denial of Participation (LDP), indictments, judgments, convictions, civil money penalties, reprimands, fines, settlement agreements, foreclosures, removal of program participants, takeovers, receiverships, 2530 denials, revocation of designation, grant and subsidy sanctions; and all enforcement actions taken by or on behalf of the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 3533 and 3535

PURPOSE(S):

The DTS is being developed to serve the following purposes: (1) To establish an agency-wide database that will allow personnel to access and track information to generate reports on all of the Department's efforts to eliminate fraud, waste, abuse and mismanagement in all HUD programs, and (2) to provide a mechanism to cross reference and match data on individuals against which an enforcement action has been taken or is in the process of being taken. This information may be used to determine whether those individuals are eligible to receive or to continue to receive federal financial and non-financial assistance and benefits under federal programs and activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES ARE:

See General Statement of Routine Use paragraphs in prefatory statement, which are disclosures generally permitted under 5 U.S.C. 552 a(b) of the Privacy Act. In addition to those disclosures generally permitted under the Privacy Act, these records or information contained therein, may specifically be disclosed outside of the agency as routine use pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use listed shall be construed to limit or waive any other routine use specified herein:

a. Internal Revenue Service (IRS)—for the purpose of effecting an administrative offset against the debtor for a delinquent debt owed to the U.S. Government by the debtor;

b. Department of Justice (DOJ)—for investigation and litigation and representation of HUD before the courts and performance of all legal work incident thereto;

c. General Accounting Office (GAO)—for further collection action on any delinquent account when circumstances warrant;

d. Outside collection agencies and credit bureaus—for the purpose of either adding to a credit history file or obtaining a credit history file on an individual for use in the administration of debt collection for further collection action;

e. Congress and the General Accounting Office (GAO) to provide reports on the Department's efforts to restore public trust.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records will be stored in the DTS (V02A System). Printouts will be stored manually in locked and lockable metal file cabinets and desk drawers.

RETRIEVABILITY:

Electronic records may be retrieved by individual or company name, case name, HUD/FHA program case number, social security number, tax/employee Identification number. Printouts may be retrieved manually from metal cabinets and drawers in the manner in which they are filed.

SAFEGUARDS:

Automated records will be saved in the DTS (V02A System) and accessed by authorized personnel who must use secured passwords to enter the system. Printouts are maintained in file cabinets and drawers within a limited access area.

RETENTION AND DISPOSAL:

Automated records will be retained in the DTS (V02 System) and updated. Printouts will be disposed of in accordance with HUD Handbook 2225.6.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Departmental Enforcement Center, Portals Building, Suite 200, 1250 Maryland Avenue, SW, Washington, D.C. 20024.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with procedures in 24 CFR part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individuals concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location (a list of all locations is given in Appendix A) and (ii) in relation to appeals of initial denials, the Department of Housing and Urban Development Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

The Departmental Tracking System will interface with other HUD information systems to extract pertinent data for tracking and reporting.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix B—Departmental Enforcement Center Headquarters and Satellite Office Locations

U. S. Department of Housing and Urban Development, Departmental Enforcement Center, Portals Building 1250 Maryland Avenue, SW, Suite 200, Washington, DC 20024

HUD Illinois Enforcement Center, Ralph H. Metcalfe Federal building 77 West Jackson Boulevard, Room 2207, Chicago, IL 60604–3507

HUD Georgia Enforcement Center, Richard B. Russell Federal Building 75 Spring Street, SW, Room 1070, Atlanta, GA 30303–3388

HUD Ft. Worth Enforcement Center, Federal Building 819 Taylor Street, Room 13A47, Ft. Worth, TX 76113

HUD Los Angeles Enforcement Center, 611 West 6th Street, Suite 3800, Los Angeles, CA 90017–3127

HUD New York Enforcement Center, 26 Federal Plaza, Room 3237, New York, NY 10278–0068

[FR Doc. 99–27836 Filed 10–25–99; 8:45 am]

BILLING CODE 4201–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AF66

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Carrying Out the Inclusion of all Species of the Order Acipenseriformes (Sturgeon and Paddlefish) in the Appendices to CITES

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed policy.

SUMMARY: We propose to no longer issue or accept for import any "pre-Convention" certificates for caviar. A pre-Convention certificate for caviar documents that the caviar pre-dates April 1, 1998, the effective date of the listing of all previously unlisted species of the Order Acipenseriformes (sturgeon and paddlefish) in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

DATES: We will consider comments and information received by November 10, 1999 in developing a final policy.

ADDRESSES: U.S. Fish and Wildlife Service, Office of Management Authority, Mail Stop 700 ARLSQ, 1849 C Street NW, Washington, DC 20240. If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to r9oma__cites@fws.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include Attn: [RIN number, 1018–AF66] and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the telephone number listed below. Finally, you may hand-deliver comments to the above address.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2093, fax (703) 358–2280.

SUPPLEMENTARY INFORMATION: To make sure that commercial demand does not threaten the survival of wild sturgeon, the Tenth Meeting of the Conference of Parties to CITES (COP10) adopted a proposal on June 20, 1997, to include all previously unlisted species of the Order Acipenseriformes (sturgeon and paddlefish) in Appendix II of CITES, effective April 1, 1998. Therefore, all international shipments of sturgeon and paddlefish specimens or their parts and products, including caviar, made on or after April 1, 1998, must include a valid CITES export permit, re-export certificate, or pre-Convention certificate, which shows that the CITES treaty is being followed.

We have issued pre-Convention certificates for the re-export of caviar only when we were satisfied that it was imported before April 1, 1998. We have learned from the sturgeon products industry and others that the normal shelf life for caviar is 12 months. By the time this proposed policy is finalized, the normal shelf life of any caviar imported before April 1, 1998, will have been exceeded by several months. In addition, it has become evident since April 1, 1998, that the false declaration of caviar as having been acquired before April 1, 1998, is a means of circumventing the CITES treaty. So, we propose to no longer issue pre-Convention certificates for caviar.

On March 12, 1999, the CITES Secretariat issued Notification to the Parties No. 1999/23, which recommends that no permits or certificates declaring pre-Convention caviar should be accepted after April 1, 1999. Consistent with that recommendation, we propose to no longer accept "pre-Convention" certificates for the importation of Appendix II sturgeon caviar into the United States.

For imports, this proposed policy does not affect aquaculture-produced caviar or caviar harvested from the wild after April 1, 1998, which will continue to be allowed with a valid CITES export permit from the country of origin or a valid CITES re-export certificate from the country of re-export. For exports or re-exports from the United States, this proposed policy does not affect aquaculture-produced caviar or caviar acquired from the wild after April 1, 1998, provided a valid CITES permit or re-export certificate is issued and accompanies the shipment.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be limited circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. But, we will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Required Determinations

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866.

The Department of the Interior certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed policy would restrict the sturgeon industry within the United States from engaging in foreign commerce with "pre-Convention" caviar that is, according to industry representatives, perhaps no longer available, and if available, only in very limited quantities at greatly reduced value. We estimate that there would likely be less than 100 businesses with remaining stocks of "pre-Convention" caviar. Any such caviar has exceeded its normal shelf life and has decreased in value dramatically. Therefore, this proposed policy is restricting the sturgeon industry within the United States from engaging in commerce, under an exemption to CITES, with a commodity that may no longer even be available, and if available, only in very limited quantities at greatly reduced value. Therefore, it does not appear likely that this proposed policy will have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. It should be noted that this proposed policy will not restrict members of the sturgeon products industry from conducting business with caviar that has been obtained after April 1, 1998. Only the availability of the "pre-Convention" exemption would be terminated if this proposed policy were made final.

Similarly, this proposed policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

This proposed policy does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Under Executive Order 12630, this proposed policy does not have significant takings implications for the same reason as described above under the Regulatory Flexibility Act.

Under Executive Order 12612, this proposed policy does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment because it is not anticipated that a state tagging program, similar to the one currently employed in the management of CITES listed furbearer species for export, will be administered in the management of exports of sturgeon products from U.S. wild-caught stock.

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

This proposed policy does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with CITES permits is covered by an existing OMB approval, and is assigned clearance No. 1018–0093, Form 3–200–27, with an expiration date of January 31, 2001. Detailed information for the CITES documentation appears at 50 CFR 23.15(g). The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This proposed policy does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. The proposed policy is categorically excluded from further National Environmental Policy Act requirements, under Part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed policy easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed policy clearly stated?; (2) Does the proposed policy contain technical language that interferes with its clarity? What else could we do to make this proposed policy easier to understand?

Our normal practice is to publish proposed policies with a 60-day comment period. But in this case, we are using a 15-day comment period since we feel that a 60-day comment period is unnecessary because: 1) we have learned in discussions we have had with the sturgeon products industry and others, that the normal shelf life for caviar is 12 months so, there no longer is any pre-Convention caviar available; 2) as a member of CITES, it is our responsibility to carry out promptly our obligations under the treaty.

Dated: September 21, 1999.

Donald J. Barry,

Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 99–27953 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Digital Earth Interagency Working Group

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of rescheduled meeting—digital earth alpha version.

SUMMARY: THE DIGITAL EARTH MEETING ORIGINALLY ANNOUNCED IN THE OCTOBER 14, 1999, Federal Register has been rescheduled from October 25, 1999, to November 10, 1999, to provide additional preparation time for interested participants. The Digital Earth Interagency Working Group, chaired by NASA with representatives from other Federal departments and agencies, will hold an open meeting at the USGS facility in Reston, Virginia, to discuss options for a near-term demonstration of the Digital Earth vision by public and private sector technology providers (for details, visit *www.digitalearth.gov.*

Throughout Federal, State, and local government, the private sector, and other public sector interests, there exist data, infrastructure, partnerships, and capability to support the exploitation of

geospatial information to answer questions of students, researchers, community leaders, and others. The goal of this meeting will be to identify existing and emerging data, infrastructure, and tools, that can be brought together to provide an "alpha version" demonstration of the Digital Earth vision in a limited number of use contexts (*e.g.*, a student asking a question about the effects of pollution on the community). The results of this discussion may lead to subsequent Commerce Business Daily requests for proposals regarding cooperative technology demonstrations.

The morning session will be focused on providing the Federal Digital Earth vision, program, progress, and organization. The afternoon session will be devoted to discussion on a Digital Earth alpha version for FY 2000. Time will be allocated for attendees to provide their perspectives on Digital Earth. Attendees must indicate their intent to present their views, and statements should be limited to 10 minutes.

DATES: The meeting will be held in the USGS main Auditorium on November 10, 1999, commencing at 9 a.m. and adjourning at 3 p.m. The meeting may be extended to 5 p.m. based on the number of attendees indicating interest in presenting their views on Digital Earth.

FOR FURTHER INFORMATION CONTACT: To reserve a space for the meeting, please contact Mr. Mark Reichardt at (703) 748–5742, or via e-mail at *mreichardt@usgs.gov* with your name, address, telephone, and e-mail address, and indicate whether or not you want to make a statement on Digital Earth. Although the meeting is open to all interested parties, space is limited and will be allocated on a first come basis. Please limit requests to one member of your organization.

Dated: October 20, 1999.

Hedy J. Rossmeissl,

Acting, Chief, National Mapping Division.

[FR Doc. 99–27964 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1620–MA]

Motor Vehicle Travel; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure order for motor vehicle travel.

SUMMARY: Notice is hereby given that effective October 15, 1999 certain public lands in Fremont County are closed to all types of motor vehicle travel. The purpose of this closure is to prevent the development of unauthorized user-created trails and to prevent resource damage to soils and vegetation. Future interdisciplinary planning will determine the appropriate travel routes for these areas.

EFFECTIVE DATES: These closures are effective October 15, 1999 and shall remain in effect until revised, revoked or amended.

ADDRESSES: Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Levi D. Deike, Field Office Manager or Diana Kossnar, Outdoor Recreation Planner.

SUPPLEMENTARY INFORMATION: The public lands affected by this temporary closure are identified as follows:

Fremont County, Colorado, Sixth Principal Meridian

Current Creek Area, located approximately 22 miles northwest of Canon City, Colorado, south and west of State Highway 9.

T.16S., R.72W.—All the part of Sections 6 and 7 lying south and west of the right-of-way of state highway 9.

T.16S., R.73W.—All that part of the following described public lands lying south and west of the right-of-way of state highway 9:

Section 1 Lots 2, 6, 7, 8, 9, 10, 11, SW¼, SE¼
Section 2 Lots 9, 10, 11, 12, S½
Section 3 Lots 9, 10, E½SE¼, NW¼SE¼
Section 10 E½SE¼, SW¼SE¼
Section 11 N½
Section 12 N½, N½SW¼

Cooper Mountain Area, located approximately 12 miles north of Canon City, Colorado, west of County Road 67.

T.16S., R.69W.

Section 29 SW¼

T.17S., R.69W.

Section 5 Lots 2, 3, 4, S½N½, S½
Section 6 SE¼SE¼
Section 7 NE¼, SE¼NW¼, E½SW¼, NE¼SE¼
Section 8 N½, N½S½
Section 9 Lots 1, 2, S½NE¼, W½NW¼, SE¼NW¼, N½SW¼, NW¼SE¼

Ecology Park Area, located approximately 1 mile southwest of Canon City, Colorado, ½ mile northwest of County Road 3.

T.19S., R.70W.—The Bureau of Land Management public lands located in Section 6 and 7.

This closure does not apply to emergency, law of enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fine of up to $5,000 and/or imprisonment for up to one year as defined in 18 U.S.C. 3571. Notice of this closure and a detailed map will be posted at the Royal Gorge Field Office.

Levi D. Deike,

Royal Gorge Field Office Manager.

[FR Doc. 99–27853 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–084–6333–00; GP–0–0006)]

Notice of Temporary Motor Vehicle Closure on Public Lands; Linn County, OR

AGENCY: Bureau of Land Management, Salem District Office, Cascades Resource Area, Oregon.

ACTION: A temporary closure to motorized vehicle use on public lands administered by the Bureau of Land Management (BLM), Cascade Resource Area, Salem District, Oregon.

SUMMARY: The BLM is temporarily closing certain public lands in Linn County to the use of motorized vehicles.

DATES: The closure will take effect upon the published date of this notice. The closure will continue until August 31, 2001 to allow time for a restoration plan to be completed and implemented.

FOR FURTHER INFORMATION CONTACT: Laura Graves, Salem District Office, 1717 Fabry Road SE, Salem, OR 97306, telephone (503) 375–5908.

Discussion of the Rules

The public lands affected by this closure are all lands administered by the BLM in Sections 15, 16, 17, 21 and 23 of Township 11 South, Range 1 East, Willamette Meridian, Oregon. Closure signs will be posted at main entry points to these locations. Maps of the closure area and information on the restoration plans may be obtained from the Salem District Office.

The lands affected by this closure have special status fish and wildlife species and are currently receiving high levels of off-road use by motorized vehicles. This use is causing soil erosion into streams, loss of vegetation and disturbance to wildlife. In addition, vehicles are being used for illegal dumping of household and commercial trash.

The restoration plan will address improving resource conditions and managing motorized access in the long term.

Prohibited Act

Motorized vehicles are not allowed in the closed area.

Exemptions

Persons who are exempt from these rules include BLM employees, Federal, State, or local officers, and members of any organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management.

Penalties

The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Richard C. Prather,

Area Manager, Cascades Resource Area.

[FR Doc. 99–27703 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of Record of Decision

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) approving the Colorado Sodium Products Development Project (Project), located in Rio Blanco County and Garfield County, Colorado. American Soda L.L.P. will be required to obtain the necessary federal, state, and local permits and approvals prior to commencing the project.

DATES: A thirty day appear period will begin October 26, 1999.

SUPPLEMENTARY INFORMATION: American Soda, L.L.P. (American Soda) intends to construct and operate a commercial hancolite solution mining operation in the northcentral portion of the Piceance Creek Basin in Rio Blanco, County, Colorado. Nahcolite is naturally occurring sodium bicarbonate that is found in association with oil shale deposits. After the hancolite is removed from the ground, it will be processed into a sodium carbonate solution and transported by a 44-mile pipeline south to a processing operation located at an existing industrial site in the Parachute Valley in Garfield County, Colorado. There it will be further processed to commercial grade sodium carbonate, sodium bicarbonate, and other sodium products which would then be shipped from the processing facility via a 4-mile long dedicated rail spur to an interstate rail connection near the town of Parachute.

This Decision selects the Agency Preferred Alternative as described in the Final Environmental Statement (FEIS) which incorporates five monitoring plans as well as project modifications resulting from public comments, plus any additional changes the have occurred since the publication of the FEIS.

FOR FURTHER INFORMATION CONTACT: Larry Shults, White River Field Office, 73544 Highway 64, Meeker, Colorado 81641, Telephone (970) 878–3601.

Jim Cagney,

Acting Field Officer Area Manager, White River Field Office.

[FR Doc. 99–27867 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–00–1310–EJ]

Jonah Field Environmental Assessment, Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Assessment and to conduct public scoping for a modified proposal for development of the Jonah Field Natural Gas Project.

SUMMARY: The Bureau of Land Management (BLM) intends to prepare an Environmental Assessment (EA) and to conduct public scoping to address a proposed modification of the Record of Decision (ROD) issued April 27, 1998, for the Jonah Field II Natural Gas Project Environmental Impact Statement (April 1998). In that decision, BLM approved development of the Jonah Field at one gas well per 80 acres. Project proponents, McMurry Oil Company and Amoco Production Company, have requested BLM approval of development of the field at one well per 40 acres.

Should the scoping process or the EA identify the potential for significant impacts, BLM would deem the EA to be a draft supplemental Environmental Impact Statement (EIS). Further scoping would not be conducted. However, the public will be notified through newspaper articles and a subsequent **Federal Register** notice if significant impacts are identified in the EA. BLM will also conduct a conformance review of the Pinedale Resource Management Plan (RMP) as part of the EA. Any needed changes in existing management or any new management actions to be prescribed for the area will be identified and, if necessary, the Pinedale RMP would be amended.

DATES: Public comments concerning this proposed modification will be accepted for 30 days following the date this notice is published in the **Federal Register**. A Public Notice will be distributed by mail to local media and known interested parties on or about the date of this notice.

BLM will hold an open house at the Sublette County Library (155 S. Tyler Street, Pinedale, Wyoming) on November 2, 1999, from 10 a.m. to 4 p.m. and again from 7 p.m. to 9 p.m. to answer questions concerning the proposed project modification and to explain the National Environmental Policy Act process chosen for this action.

ADDRESSES: Send written comments to: Bureau of Land Management, Rock Springs Field Office, ATTN: Arlan Hiner, Project Manager, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Project Manager, Bureau of Land Management, Rock Springs Field Office, Telephone 307–352–0206. Information and a copy of the Public Notice for the Jonah Field EA can be obtained from the following BLM offices: Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901; Pinedale Field Office, 432 East Mill Street, PO Box 768, Pinedale, Wyoming 82941; and Wyoming State Office, 5353 Yellowstone Road, PO Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: The Jonah Field Natural Gas Project is located approximately 32 miles south of Pinedale, Wyoming and 28 miles north of Farson, Wyoming, within Townships 28 and 29 North, Ranges 107, 108, and 109 West, Sublette County. The 30,320 acre project area includes 28,400 acres Federal surface, 640 acres private surface, and 1,280 acres State surface. The mineral estate includes 29,040 acres Federal minerals and 1,280 acres State minerals. Currently, 170 active gas wells out of 497 wells approved in the Jonah II EIS ROD have been drilled in the project area.

The project proponents would like to proceed with drilling gas wells within the area at a 40 acre spacing (16 wells per section) beginning in the summer of

2000. They expect that drilling 497 wells will allow them to adequately extract the natural gas. There are 170 wells located within the Jonah Field, which are served by three transportation pipelines. This field development project will not require any additional transportation pipelines. The potential development would include a separator, dehydrator, production tanks, and tinhorns (for holding produced water) at each surface well location; an access road and a 3 to 4 inch gas gathering pipeline to each surface well location; water supply wells; and produced water disposal systems (either injection wells or surface pits).

The companies will be allowed to continue to drill wells at 80 acre spacing as approved by the ROD for the Jonah II EIS while the EA is being prepared.

Dated: October 19, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–27868 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1430–00; WYW–146697]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands located near Pinedale, Wyoming, have been examined and found suitable for classification for conveyance to Sublette County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Sublette County intends to use the land as a shooting sports complex.

Sixth Principal Meridian

T. 34 N., R. 109 W.,
  Sec. 25, SE¼NW¼, E½NE¼SW¼,
    E½W½NE¼SW¼,
    NW¼NW¼NE¼SW¼,
    SW¼SW¼NE¼SW¼, N½SE¼SW¼.

The land described above contains 95 acres.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Pinedale Field Office, Bureau of Land Management, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, or contact Bill Wadsworth at (307) 367–5341.

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The conveyances, when completed, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. A right-of-way for ditches and canals constructed by the authority of the United States. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941.

The analysis may identify that an amendment to the Pinedale RMP is needed. If a plan amendment is needed, other notices, mailings, or media releases will announce a 30-day protest period on the proposed amendment.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for a shooting sports complex. Comments on the classification should only address whether the land is physically suited for a shooting sports complex (as appropriate), whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific uses proposed in the conveyance applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decisions, or any other factor not directly related to the suitability of the land for a shooting sports complex. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: October 18, 1999.

Douglas Powell,

Acting Field Manager.

[FR Doc. 99–27862 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1430–01; WYW–82504]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands located near the rural community of Pinedale in Sublette County, Wyoming, have been examined and found suitable for classification for lease and conveyance to Sublette County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) for a public recreation site.

Sixth Principal Meridian

T. 34 N., R. 110 W.,
  Sec. 24, NE¼NE¼.

The land described above contains 40 acres.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Pinedale Field Office, Bureau of Land Management, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, or contact Tracy Hoover at (307) 367–5432.

SUPPLEMENTARY INFORMATION: The lease/conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/conveyances, when completed, will be subject to the following terms, conditions and reservations:.

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. A right-of-way for ditches and canals constructed by the authority of the United States. Upon publication of

this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Pubic Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regrading the proposed lease/conveyance or classification of the lands to the Field Manager, Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify the realty action. In the absence of any objections, this proposed realty action will become final.

Dated: October 18, 1999.

Douglas Powell,

Acting Field Manager.

[FR Doc. 99–27863 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–ET, CACA 40671]

Notice of Proposed Partial Revocation of Executive Order Dated February 26, 1852 and Public Land Order Number 4883, Proposed Withdrawal, Proposed Transfer of Jurisdiction, and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Navy has filed a notice of its intent to relinquish its withdrawal on 18.72 acres of public land, more or less, located in San Diego County, withdrawn by an Executive Order dated February 26, 1852, or Public Land Order number 4883, for military purposes. The National Park Service has filed an application to withdraw those 18.72 acres of public lands, more or less, to include them in the Cabrillo National Monument. The National Park Service has also requested that the administrative jurisdiction of those 18.72 acres, more or less, plus the 6.88 acres, more or less, previously withdrawn by Public Land Order number 5234, be permanently transferred to it. This notice closes the 18.72 acres of public lands, more or less, for up to 2 years from settlement, sale, location, or entry under the general land laws, including the mining laws, and the operations of the mineral leasing laws and the Materials Act of 1947.

DATES: Comments and request for a public meeting must be received by January 25, 2000.

ADDRESSES: Comments and meeting requests should be sent to Sondra S. Humphries, Chief, Pacific Land Resources Program Center, Pacific West Region, National Park Service, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372.

FOR FURTHER INFORMATION CONTACT: Gary Chulla, Realty Specialist, National Park Service, San Francisco office, 415–427–1410, or Terry M. DiMattio, Superintendent, Cabrillo National Monument, 619–557–5450.

SUPPLEMENTARY INFORMATION:

1. On October 5, 1999, a petition was approved allowing the National Park Service to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, and to the operations of the mineral leasing laws and the Materials Act of 1947, subject to valid existing rights:

San Bernardino Meridian

(a). Bayside Trail (Also Known as Sylvester Road)

Commencing at a point on the easterly prolongation of the north line of the Cabrillo National Monument as shown on NAVFAC Drawing No. 6117948 on file in the Department of the Navy that bears thence South 89°56′36″ East 378.53 feet from the northeast corner of said monument: thence South 12°06′18″ East 105.96 feet to the True Point of Beginning of the herein described centerline, said point being on the arc of a 1,235.00-foot-radius curve concave northerly the center of which bears North 14°34′38″ West from said True Point of Beginning; thence continuing South 12°06′18″ East 46.84 feet to the beginning of a tangent 91.35-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 31°25′40″ a distance of 50.11 feet to the beginning of a tangent 59.49-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 53°19′25″ a distance of 55.37 feet to the beginning of a tangent 130.00-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 55°08′06″ a distance of 125.10 feet to a point of compound curvature with a 265.00-foot-radius curve; thence southwesterly along the arc of said curve through a central angle of 15°42′44″ a distance of 72.67 feet to the beginning of a tangent 100.00-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 42°28′35″ a distance of 74.14 feet to the beginning of a tangent 527.44-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 17°56′20″ a distance of 165.14 feet; thence tangent to said curve South 12°18′32″ West 107.03 feet to the beginning of a tangent 500.00-foot-radius curve concave northwesterly; thence southwesterly along the arc of said curve through a central angle of 18°03′54″ a distance of 157.65 feet to a point of compound curvature with a 90.00 foot-radius curve concave northwesterly; thence southwesterly along the arc of said curve through a central angle of 40°10′08″ a distance of 63.10 feet to the beginning of a tangent 650.00-foot-radius curve concave southeasterly; thence southwesterly along the arc of said curve through a central angle of 10°38′46″ a distance of 120.78 feet to the beginning of a tangent 103.00-foot-radius curve concave northerly; thence westerly along the arc of said curve through a central angle of 55°43′47″ a distance of 100.18 feet to the beginning of a tangent 35.00-foot-radius curve concave southeasterly; thence westerly, southwesterly and southerly along the arc of said curve through a central angle of 150°30′03″ a distance of 91.94 feet to a point of compound curvature with a 100.00-foot-radius curve concave northeasterly; thence southeasterly along the arc of said curve through a central angle of 32°52′30″ a distance of 57.38 feet; thence tangent to said curve South 67°44′58″ East 116.12 feet to the beginning of a tangent 100.00-foot-radius curve concave southwesterly; thence southeasterly and southerly along the arc of said curve through a central angle of 65°07′30″ a distance of 113.66 feet; thence tangent to said curve South 02°37′28″ East 86.76 feet to the beginning of a tangent 310.00-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 18°37′46″ a distance of 100.80 feet to the beginning of a tangent 45.00-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 47°16′43″ a distance of 37.13 feet to a point on the south line of the herein above described property that bears North 89°59′37″ East 198.59 feet from the southwesterly corner thereof; commencing at the southeasterly corner of Cabrillo National Monument as described in Proclamation

No. 3273 of February 2, 1959; thence, North 89°59′37″ East, 198.59 feet from said southeasterly Corner to the True Point of Beginning; thence South 31°16′30″ East 12.15 feet to the beginning of a tangent 55.00-foot-radius curve concave southwesterly; thence southerly along the arc of said curve through a central angle of 28°36′30″ a distance of 27.46 feet to a point of compound curvature with a 330.00-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 20°23′45″ a distance of 117.47 feet to a point of compound curvature with a 75.00-foot-radius curve concave northwesterly; thence southwesterly and westerly along the arc of said curve through a central angle of 69°08′46″ a distance of 90.51 feet; thence tangent to said curve South 86°52′31″ West 108.37 feet to the beginning of a tangent 95.00-foot-radius curve concave northerly; thence westerly along the arc of said curve through a central angle of 32°17′15″ a distance of 53.53 feet to a point of reverse curvature with a 60.00-foot-radius curve concave southerly; thence westerly along the arc of said curve through a central angle of 70°16′58″ a distance of 73.60 feet to a point of compound curvature with a 25.00-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 61°22′48″ a distance of 26.78 feet to point of compound curvature with a 175.00-foot-radius curve concave northeasterly; thence southeasterly along the arc of said curve through a central angle of 54°07′46″ a distance of 165.33 feet; thence tangent to said curve South 66°37′46″ East 88.66 feet to the beginning of a tangent 60.00-foot-radius curve concave southwesterly; thence southeasterly along the arc of said curve through a central angle of 49°28′15″ a distance of 51.98 feet to a point of compound curvature with a 90.00-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 45°28′13″ a distance of 71.42 feet; thence tangent to said curve South 28°28′42″ West 110.68 feet to the beginning of a tangent 400.00-foot-radius curve concave southeasterly; thence southwesterly along the arc of said curve through a central angle of 08°05′11″ a distance of 56.45 feet to a point of compound curvature with a 60.00-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 31°49′13″ a distance of 33.32 feet to a point of reverse curvature with a 125.00 foot-radius curve concave northwesterly; thence southwesterly along the arc of said curve through a central angle of 60°35′53″ a distance of 132.20 feet.

The area described contains 2.72 acres, more or less, in San Diego County.

(b). Point Loma Tidepool Area

Beginning at a point in the Southerly boundary of the Cabrillo National Monument as described in Presidential Proclamation No. 3273 dated February 2, 1959, which said point is shown as Monument "E" and Point No. 49 on NAVFAC Drawing No. 6117948, Naval Ocean Systems Center Real Estate Summary Map, Sheet 6 of 6; thence South 89°56′07″ East, 345.05 feet to Point No. 50 on the arc of a 1,030-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 07°33′27″, a distance of 135.86 feet to Point No. 51; thence tangent to said curve, South 04°05′38″ East, 1,049.96 feet to Point No. 52, the beginning of a tangent 330.20-foot-radius curve, concave westerly; thence southerly along the arc of said curve, through a central angle of 22°58′46″, a distance of 132.43 feet to Point No. 53; thence South 18°07′08″ West, 100.12 feet to Point No. 54, the beginning of a tangent 235.23-foot-radius curve, concave easterly; thence southerly along the arc of said curve, through a central angle of 37°45′00″, a distance of 154.98 feet to Point No. 55; thence North 19°37′52″ West, 260.00 feet to the beginning of a tangent 150.00-foot-radius curve concave southwesterly; thence northwesterly and westerly along the arc of said curve, through a central angle of 90°00′00″, a distance of 235.62 feet; thence South 70°22′08″ West to the MLLW of the Pacific Ocean (a distance of 200 feet more or less); thence northerly along the shoreline MLLW to a point on a line which bears North 89°56′07″ West from Monument "E"; thence South 89°56′07″ East to the POINT OF BEGINNING Monument "E".

The area described contains 16 acres, more or less, in San Diego County.

2. Pursuant to a notice of intent to relinquish filed by the United States Navy, the Executive Order of February 26, 1852, and Public Land Order number 4883 will be revoked insofar as they affect the lands described above in paragraphs 1(a) and 1(b).

3. The National Park Service has requested that administrative jurisdiction of those lands described above in paragraphs 1(a) and 1(b), and that land withdrawn by Public Land Order number 5234 be permanently transferred to the National Park Service, so that the lands can be managed as part of the Cabrillo National Monument and shall thereafter be subject to all laws and regulations applicable thereto, subject to valid existing rights. The 6.88 acres of land, more or less, withdrawn by Public Land Order number 5234 is known as the Point Loma Maintenance Area.

4. The purpose of the proposed withdrawal of the 18.72 acres of lands, more or less, is to: (a) Include those lands in the Cabrillo National Monument to facilitate the proper care and management of the Cabrillo National Monument and the historical landmarks and historical objects therein, (b) provide public access to the intertidal area, and (c) to preserve and protect sensitive coastal sage scrub habitat. The purpose of the proposed permanent transfer of jurisdiction is to include the 18.72 acres of lands, more or less, and the 6.88 acres of land, more or less, withdrawn by Public Land Order number 5234, in the Cabrillo National Monument, so that the lands can be managed as part of the Cabrillo National Monument and shall thereafter be subject to all laws and regulations applicable thereto, subject to valid existing rights.

5. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed actions described in this notice, may present their views in writing to the Chief, Pacific Land Resources Program Center, National Park Service, at the address listed above. If the authorized officer determines that a public meeting should be held, it will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). A notice of the time and place would be published in the **Federal Register** at least 30 days before the scheduled date of the public meeting.

6. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

7. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the 18.72 acres of lands, more or less, will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the lands, as determined by the Bureau of Land Management and the National Park Service.

Dated: October 20, 1999.

Duane Marti,

Acting Chief, Branch of Lands.

[FR Doc. 99–27936 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Supplemental Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, 28 U.S.C. 50.7, and pursuant to Section 122(d)(2) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA"), this supplemental notice is hereby given pertaining to a proposed consent decree in *United States* v. *Akzo Nobel A.B.*, Civ No. 1:99–CV–731, relating to the Bofors-Nobel Superfund Site in Muskegon, Michigan. The proposed consent decree was lodged with the United States District Court for the Western District of Michigan on September 22, 1999. This supplemental notice is issued because the original notice, published on October 14, 1999, 64 FR 55747, inadvertently failed to state that the Department of Justice will receive comments from the public on the proposed consent decree for a period of 30 days following publication of this notice.

Comments should be transmitted by mail to the attention of Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530 and should include the reference DJ# 90–11–3–191A.

Bruce S. Gelber,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27960 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of consent Decree Pursuant to the Clean Air Act and the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on October 6, 1999, a proposed consent decree in *United States* v. *Almond Investment Co. and Almond Products, Inc.* Civil Action No. 1:99 CV 783, was lodged with the United States District Court for the Western District of Michigan.

In this action, the United States sought injunctive relief and civil penalties under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for violations of the federally approved Michigan State Implementation Plan ("SIP") and Title V of the Clean Air Act at one of Almond Investment Co.'s Muskegon, Michigan, facilities. Specifically, the Complaint alleges the Almond Investment Co. violated various permitting and volative organic compound emission requirements in Mich. Admin. Code §§ 336.1201(1), 336.1220, 336.1621(1), 336.1621(5) of the Michigan State Implementation Plan, Title V of the Clean Air Act, 42 U.S.C. 7661—7661f, and Mich. Admin. Code § 336.1210 at its Muskegon, Michigan, facility located at 6435 Schamber Drive.

In addition, the United States sought injunctive relief and civil penalties under Section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. 1319(b), (d), for violations of Section 307(d) of the Clean Water Act, 33 U.S.C. 1317(d), and certain pretreatment standards in 40 CFR 413.44(c), (g), 413.54(c), (g), with respect to wastewater discharges at Almond Investment Co.'s Muskegon, Michigan, facility located at 1239 E. Broadway.

Almond Products, Inc., purchased the two Muskegon facilities from Almond Investment Co. in May 1999. Almond Products, Inc., is named as a defendant pursuant to Fed. R. Civ. P. 19 as a party that is necessary for complete relief.

The proposed decree provides for injunctive relief pursuant to which Almond Products, Inc., has permanently disconnected one of the coating lines at the Schamber facility and will install a thermal oxidizer at one of the remaining coating lines. At the Broadway facility, Almond Products, Inc., will prepare a baseline monitoring report reflecting current operations and will develop and implement an operation and maintenance plan to ensure compliance with applicable pretreatment limits. Almond investment Co. will pay a civil penalty of $50,000, based on an ability-to-pay analysis, to resolve claims under the Clean Air Act, the Michigan SIP, and the Clean Water Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Almond Investment Co. and Almond Products, Inc.*, DOJ Ref. # 90–5–2–1–06732.

The proposed consent decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Ave., NW, Ste. 501 Grand Rapids, Michigan 49503, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27902 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Under 28 CFR 50.7 and 42 U.S.C. 9622(i), notice is hereby given that on October 5, 1999, a proposed Consent Decree in *United States* v. *ASARCO, Inc., et al.*, Civil Action No. 99–1399, was lodged with the United States District Court for the District of Kansas.

This Consent Decree settles claims against ASARCO, Incorporated, Cyprus Amax Minerals Company, Gold Fields Mining Corporation, Blue Tee Corp., NL Industries, Inc., The Doe Run Resources Corporation and Sun Company, Inc. In this action, brought pursuant to sections 106 and 107 of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9696 and 9607 and section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, on behalf of the United States Environmental Protection Agency ("EPA"), the United States sought the performance of response work by the defendants at the Baxter Springs and Treece Subsites ("the Subsites") of the Cherokee County Superfund Site in Cherokee County, Kansas pursuant to the Record of Decision, dated August 20, 1997 ("ROD"). Additionally, the United States sought reimbursement of past response costs as well as future oversight costs. Under the Consent Decree, defendants will perform response work in accordance with the ROD, will provide a cash payment for

EPA to perform institutional controls, and will reimburse the United States for one half of future EPA oversight costs. In exchange, defendants will receive a covenant not to sue pursuant to sections 106 and 107(a) of CERCLA, and section 7003 of RCRA relating to the Subsites, subject to all standard reservations and reopeners. In addition, defendants will receive contribution protection under Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and will receive forgiveness of EPA's past costs at the Subsites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *ASARCO, Inc. et al.*, D.J. ref. 90–11–2–06017.

The Consent Decree may be examined at U.S. EPA—Region VII 901 N. 5th Street, Kansas City, Kansas 66101. A copy of the Consent Decree may be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044. In requesting a complete copy with all Attachments, please enclose a check in the amount of $87.00 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy of the Consent Decree without Attachments, please enclose a check in the amount of $24.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27900 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Bay Chemical Company, et al.*, Civil Action No. C–995521RJB was lodged on October 5, 1999 with the United States District Court for the Western District of Washington.

The complaint in this action seeks to recover, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607 response costs incurred and to be incurred by the U.S. Environmental Protection Agency ("EPA") in the Hylebos Waterway Problem Areas in Operable Unit 1 ("OU1") of the Commencement Bay Nearshore/Tideflats Superfund Site (hereinafter "the Site") located in Tacoma, Washington. The defendants include owners and operators of properties within two problem areas of one of the nine operable units at the Site.

The proposed Consent Decree embodies an agreement with seventeen potentially responsible parties ("PRPs") pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, to pays approximately $762,880 in past and future response costs associated with the Hylebos Waterway Problem Areas of OU1 of the Site. The above-described payments include a premium to be paid by each settling party to offset the risks that actual future response costs will exceed current estimates.

The Consent Decree provides the settling defendants with releases for civil liability for response costs under Sections 106 and 107 of CERCLA relating to the Hylebos Waterway Problem Areas of OU1 of the Site. The Consent Decree explicitly reserves the United States' claims for response costs associated with other operable units and problem areas of the Site, natural resource damages, and other potential United States' claims.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States.* v. *Bay Chemical Company, et al*, DOJ Ref. No. 90–11–2–06010.

The proposed consent decree may be examined at the Office of the United States Attorney, 3600 Seafirst Plaza, 800 5th Avenue, room 3601, Seattle, WA 98104, and the Region X Office of the Environmental Protection Agency, Region X Records Center, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed consent decree may be obtained by mail from the Consent Library at the following address: U.S. Department of Justice, Environmental Enforcement Section, Post Office Box 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $175.00 (25 cents per page reproduction costs), payment to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27903 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *General Battery Corporation, et al.*, Civil Action No. 85–1372 (E.D. Pa.) was lodged with the court on September 14, 1999.

The proposed decree resolves claims of the United States against two parties to the action, M. Glosser & Sons, Inc. and Barbara Brown DiMenichi, under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, for response costs and actions at the Brown's Battery Breaking Superfund site in Tilden Township, Pennsylvania. The decree also resolves claims brought against the same parties by General Battery Corporation. The decree requires M. Glosser & Sons to pay, in reimbursement of response costs, $130,000 to the United States and $360,000 to General Battery Corporation. The decree requires Barbara Brown DiMenichi to reimburse $30,000 in response costs to the United States and to assign certain insurance policies to General Battery Corporation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Battery Corporation, et al.*, Civil Action No. 85–1372, DOJ Ref. # 90–11–3–76.

The proposed consent decree may be examined and copied at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; or at the Region III Office of the Environmental Protection Agency, c/o Michael Hendershott, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box No. 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27901 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on October 7, 1999, a proposed consent decree in *United States* v. *General Electric Company*, Civil Action No. 99–30225–MAP, was lodged with the United States District Court for the District of Massachusetts. The proposed consent decree resolves certain claims against General Electric Company ("GE") under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607; section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973; and section 309 of the Clean Water Act, 33 U.S.C. 1319, regarding the disposal, release and/or threat of release of hazardous substances and/or wastes from the GE facility in Pittsfield, Massachusetts and related areas. Pursuant to the proposed settlement, GE shall reimburse the United States for certain past and future response costs; implement certain clean up measures at the GE facility, surrounding areas, and in the Housatonic River; and compensate the United States for natural resource damages. The total value of the settlement is estimated to exceed $250 million.

The proposed settlement also provides that the United States Environmental Protection Agency ("EPA") will issue a draft permit to GE pursuant to the corrective action provisions of RCRA. Consistent with 40 CFR 124.10, notice is hereby given of the draft RCRA permit issued to GE pursuant to the corrective action provisions of RCRA. A copy of the Fact Sheet describing the draft RCRA permit and the process for the public to comment upon the draft permit may be obtained by contacting Angela Bonarrigo, Community Relations Coordinator, EPA-New England Region at (617) 918–1034.

The Department of Justice will receive for a period of sixty (60) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Electric Company*, Civil Action No. 99–30225–MAP, D.J. Ref. 90–11–3–1479, and 90–11–3–1479z. Consistent with section 7003(d) of RCRA, 42 U.S.C. 6973(d), the Department of Justice will provide an opportunity for a public meeting to comment upon the proposed settlement.

The proposed consent decree may be examined at either of the following locations: (1) The Springfield Office of the United States Attorney, District of Massachusetts 1550 Main Street, Suite 310, Springfield, Massachusetts 01103; or (2) Region I, Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203. A copy of the consent decree can be obtained my mail (without attachments) from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy of the consent decree (without attachments), please enclose a check in the amount of $102.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27905 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Rivers and Harbors Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 8, 1999, a proposed amendment consent decree in *United States* v. *City of Seattle,* Civil No. C90–395WD, was lodged with the United States District Court for the Western District of Washington. The amended consent decree allows reallocation of settlement proceeds under the existing consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed amended consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Seattle* DOJ Ref. #90–11–2–527.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104 and at the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.50. Make the check payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27899 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on October 14, 1999, a consent decree was lodged in *United States* v. *Southdown, Inc.*, Civil Action No. 99–1674, with the United States District Court for the Western District of Pennsylvania.

This consent decree resolves alleged violations of Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), at Southdown, Inc's cement manufacturing facility in Wampum, Pennsylvania. The claims settled include alleged violations of limitations on visible and fugitive emissions imposed by the Pennsylvania State Implementation Plan (SIP). The consent decree provides for a civil penalty of $475,000, a Supplemental Environment Project (SEP) that requires Southdown to spend at least $75,000 to pave at least 11,810 square feet of dirt roads, and comprehensive injunctive relief, including the installation of new emissions control equipment and the identification and elimination of fugitive emissions to the full extent required by law.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Southdown, Inc.*, DOJ Ref. No. 90–5–2–1–2231. The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania. Copies of the consent decree may also be examined at the offices of the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy by mail, please enclose a check in the amount of $14.00 (twenty-five cents per page reproduction costs), payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc 99–27904 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 20, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316) by November 26, 1999.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Distribution of Characteristics of the Insured Unemployment.

OMB Number: 1205–0009.

Frequency: Monthly.

Affected Public: Federal Government; State, Local, or Tribal Govt.

Number of Respondents: 53.

Activity	Affected public	Respondents	Frequency	Average time per response	Total hours
Startup	States	53	Once	100 hrs	5,300
Reporting	States	53	Monthly	20 minutes	212

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This report is the only source of current demographic information (age, race/ethic, sex, occupation, industry) on the UI claimant population. These characteristics identify claimant cohorts for legislative, economic and social planning purposes and evaluation of the UI program on the Federal and State levels.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–27918 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 20, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202 396–7316), by November 26, 1999.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: General Inquiries to State Agency Contacts.

OMB Number: 1220–0NEW.

Frequency: As needed.

Affected Public: State, Local or Tribal Government.

Number of Respondent: 53.

Estimated Time Per respondent: 40 minutes (average).

Total Burden Hours: 15,762 hours.

Total Annualized capital/startup cots: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Bureau of Labor Statistics (BLS) awards to State Agencies in order to assist them in operating one or more of seven Labor Market Information and/or Occupational Safety and Health Statistics Federal/State cooperative statical programs. To ensure a timely flow of data and to be able to evaluate and improve the programs it is necessary to conduct ongoing communication between BLS and its State partners dealing with, for example, deliverables, program enhancements, and administrative issues.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–27919 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,160 AND NAFTA–3127]

Polaroid Corporation Film Manufacturing Division (Integral), R1, R2, and R3 Plants Waltham Massachusetts; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 18, 1999, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notices were signed June 21, 1999, and published in the **Federal Register** on July 20, 1999; the TAA at (64 FR 38920) and the NAFTA–TAA at (64 FR 38922).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of TAA for workers engaged in activities related to the production of integral film at Polaroid Corporation, Film Manufacturing Division (Integral), R1, R2 and R3 Plants Waltham, Massachusetts, was based on the finding that the "contributed importantly" criterion of the group eligibility requirements of section 222 of the Trade Act of 1974 was not met. The subject firm did not import products similar to that which was produced at the plants during the relevant time period.

The Department's denial of NAFTA–TAA for the same worker group was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. There was no shift in production of integral film from the subject firm to Mexico or Canada, nor were there company imports of like or directly competitive products from Mexico or Canada.

The petitioner asserts that machinery was shifted from the R2 plant production floor in Waltham to Mexico, and adds that the company has ordered semi-automatic assembly machines to be shipped to Mexico. The petitioner acknowledges that the machinery shipped to Mexico will be used to produce a new form of instant film called "Deli Strip." The initial investigation revealed that Deli Strip was being developed in the Waltham plant by temporary workers, not employees of Polaroid Corporation. The decision to produce Deli Strip in Mexico as opposed to Waltham was a corporate decision, and therefore, did not adversely affect workers of the subject firm producing integral film.

The petitioner's second point focuses on their contention that the Department was incorrect in the statement contained in the decision document that there is no competition for the integral film format produced at the subject firm plants. The petitioner asserts that over the years 35mm film has become competitive with integral film. The petitioner states that this being true, a great deal of 35mm film sold in the U.S. is being manufactured overseas by competitors, and that Polaroid is searching for a new plant in China. There was no evidence that the subject firm is importing products like or directly competitive with integral film produced at the Film manufacturing Division (Integral), R1, R2, and R3 plants in Waltham, Massachusetts.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 8th day of October 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27917 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,040A and TA–W–35,040B]

The Clarks Companies, N.A.; Manufacturing Shoe Plant, Franklin, West Virginia, Hanover, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on October 29, 1998, applicable to workers of The Clarks Companies, N.A., Manufacturing Shoe Plant, Franklin, West Virginia. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 67140).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations will occur in early 2000 at the Hanover, Pennsylvania location of The Clarks Companies. The Hanover, Pennsylvania location provides administrative support services for the subject firms' production facility in Franklin, West Virginia which is closing in early 2000. The workers are engaged in the production of men's dress and casual shoes.

The intent of the Department's certification is to include all workers of The Clarks Companies who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of The Clarks Companies, Hanover, Pennsylvania.

The amended notice applicable to TA–W–35,040A is hereby issued as follows:

> All workers of The Clarks Companies, Manufacturing Shoe Plant, Franklin, West Virginia (TA–W–35,040A) and Hanover, Pennsylvania (TA–W–35,040B) who became totally or partially separated from employment on or after September 25, 1997 through October 29, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27915 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (“the Act”) and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 5, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 5, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC this 30th day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

Appendix—Petitions Instituted on 09/30/1999

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
36,885	General Electric Co. (IUE)	Bucyrus, OH	09/13/1999	Fluorescent Lamps.
36,886	Carmet Company (Co.)	Bad Axe, MI	09/15/1999	Tungsten Carbide Parts.
36,887	Unitog (UNITEO	Warsaw, MO	09/09/1999	Uniforms.
36,888	Donaldson Company (Co.)	Oelwein, IA	07/06/1999	Engine Air Cleaners.
36,889	Ball Foster Glass (Co.)	Los Angeles, CA	09/17/1999	Glass Containers.
36,890	Crown Products (Wkrs)	Indiana, IN	09/23/1999	Wire and Sheet Metal Fabricating.
36,891	JPS Textile Group, Inc. (Co.)	Kingsport, TN	09/22/1999	Cotton Fabric.
36,892	NEC Technologies (Wkrs)	McDonough, GA	08/25/1999	Computer Monitors.
36,893	Calabrian Chemical Corp (Wkrs)	Port Neches, TX	09/20/1999	Chemicals.
36,894	Tara Textiles Int'l (Wkrs)	New York, NY	09/13/1999	Solid and Printed Textile Fabric.
36,895	AZ Is Coal Co. (UMWA)	Beckley, WV	09/12/1999	Coal.
36,896	General Electric Co (IUE)	Tell City, IN	09/22/1999	Fraction Motors and Parts.
36,897	Fargo Manufacturing Co. (Co.)	Poughkeepsie, NY	09/20/1999	Connectors.
36,898	Procon Products—Standex (Co.)	Mufreesboro, TN	09/20/1999	Positive Displacement Pumps.
36,899	GKN Sinter Metals (UAW)	Van Wert, OH	09/14/1999	Automotive Powdered Metal Parts.
36,900	Chadbourn Curtain Co. (Co.)	Chadbourn, NC	09/20/1999	Curtains.
36,901	Lear Corporation (Wkrs)	El Paso, TX	09/09/1999	Wiere Harness Sets.
36,902	Scovill Fasteners, Inc (Wkrs)	El Paso, TX	09/17/1999	Warehouse—Sales Office.
36,903	Unifi—Spanco Yarns (Wkrs)	Raeford, NC	09/10/1999	Yarn.
36,904	Bass Engery, Inc (Co.)	Breckenridge, TX	09/15/1999	Exploration & Production Drilling.
36,905	Kellwood Co. (Wkrs)	Rutherford, TN	09/10/1999	Men, Women & Children's Outerwear.
36,906	Prewash and Pressing Serv (Co.)	El Paso, TX	09/21/1999	Jeans.
36,907	Electric Cord Sets, Inc (Co.)	Angola, IN	09/16/1999	Power Supply Cords.
36,908	Remington Products (Wkrs)	Miford, CT	08/30/1999	Electric Shavers.
36,909	Topcraft Precision Molder (Wkrs)	Warminster, PA	09/16/1999	Staplers—Office Products.
36,910	Business Products & Serv. (Co.)	San Francisco, CA	09/14/1999	Support Services to Chevron.
36,911	Texaco U.S. Production (Wkrs)	Midland, TX	09/17/1999	Oi, Liquid—Hydro-Carbons, Gasoline.
36,912	Ultramar Diamond Shamrock (Wkrs)	Alma, MI	08/30/1999	Petroleum Products.
36,913	Ratholes, Inc (Co.)	Snyder, TX	09/23/1999	Drilling Services.
36,914	Forsheim Shoe Co. (Wrks)	Cape Girardeau, MO	09/09/1999	Dress Shoes and Work Shoes.

[FR Doc. 99–27910 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36, 084]

Grant Geophysical Corporation, Houston, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Grant Geophysical Corporation, Houston, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36, 084; Grant Geophysical Corporation
Houston, Texas (October 7, 1999)

Signed at Washington, DC this 8th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27914 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,588]

Hot Property, Inc. D.B.A Lorraine Wardy Enterprises, "OPAL", El Paso, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 28, 1999, applicable to workers of Lorraine Wardy Enterprises, El Paso, Texas. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52540).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that the Department inadvertently failed to identify the subject firm title name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read "Hot Property, Inc., d/b/a Lorraine Wardy Enterprises, 'Opal' ".

The amended notice applicable to TA–W–36,588 is hereby issued as follows:

> All workers of Hot Property, Inc., d/b/a Lorraine Wardy Enterprises, "Opal'", El Paso, Texas who became totally or partially separated from employment on or after June 30, 1998 through July 28, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27916 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,157 and TA–W–36,157A]

Paramount Pictures Hollywood, California and Walt Disney Pictures and Television Burbank, California; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Paramount Pictures, Hollywood, California and Walt Disney Pictures and Television, Burbank, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,157; Paramount Pictures
Hollywood, California (October 6, 1999)
and
TA–W–36,157A; Walt Disney Pictures and Television
Burbank, California (October 6, 1999)

Signed at Washington, DC this 8th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27913 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,713]

Ranger Oil Company, Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 16, 1999 in response to a worker petition which was filed on July 29, 1999 on behalf of workers at Ranger Oil Company, Houston, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation had been terminated.

Signed in Washington, DC this 6th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27909 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,864 and TA–W–35,864A]

The Timkin Company Canton, Ohio and The Timkin Company Wooster, Ohio; Notice of Revised Determination on Reconsideration

On August 17, 1999, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration, applicable to workers of the subject firm locations in Canton and Wooster, Ohio. The notice was published in the **Federal Register** on August 31, 1999 (64 FR 47525).

The Department initially denied TAA to workers producing specialty alloy steel and tapered roller bearings and components of The Timkin Company in Wooster and Canton, Ohio, because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted further survey of the major declining customers of The Timkin Company regarding their purchases of specialty carbon and alloy steel and tapered roller bearings and components. The survey revealed that customers accounting for a meaningful share of the subject firm's sales decline during the relevant time period, increased import purchases of articles like or directly competitive with those produced by workers at the Canton and Wooster plants.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with specialty steel and tapered roller bearings and components, contributed importantly to the declines in sales or production and to the total or partial separation of workers of The Timkin Company, Canton, Ohio and Wooster, Ohio. In accordance with the provisions of the Act, I make the following certification:

> All workers of The Timkin Company, Canton, Ohio and Wooster, Ohio, engaged in employment related to the production of specialty steel or tapered roller bearings and components, who became totally or partially separated from employment on or after March 2, 1998 through two years from the date of the issuance of this determination, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 13th day of October 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27908 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03420]

Millennium Textiles, Buchanan, Georgia; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 7, 1999 in response to a petition filed on behalf of workers at Millennium Textiles, Buchanan, Georgia.

In a letter dated October 4, 1999, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 6th day of October 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27912 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03279, 03279A, 03279B, 03279C]

Thomaston Mills, Inc., Thomaston, GA, Zebulon, GA, New York, NY, Los Angeles, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Thomaston Mills, Inc., Thomaston, Georgia, Zebulon, Georgia, New York, New York and Los Angeles, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA—03279; Thomaston Mills, Inc., Thomaston, Georgia
NAFTA—03279A Zebulon, Georgia
NAFTA—03279B New York, New York
NAFTA—03279C Los Angeles, California
(October 12, 1999)

Signed at Washington, DC this 13th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27911 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and where required a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term "FR Notice" appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: October 18, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–99–005–C.
FR Notice: 64 FR 12183.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1101–8.

Summary of Findings: Petitioner's proposal is to use an alternative method of arranging its sprinkler system using a single overhead pipe sprinkler system. This is considered an acceptable alternative method for the Dugout Canyon Mine, with conditions. MSHA grants the petition for modification for the Dugout Canyon Mine with conditions.

Docket No.: M–99–008–C.
FR Notice: 64 FR 16760.
Petitioner: Consol of Kentucky, Inc.
Regulation Affected: 30 CFR 75.1101–8.

Summary of Findings: Petitioner's proposal is to use an alternative method of arranging its sprinkler system using a single overhead pipe sprinkler system. This is considered an acceptable alternative method for the Big Springs El Mine, with conditions. MSHA grants the petition for modification for the Big Springs El Mine with conditions.

Docket No.: M–99–009–C.

FR Notice: 64 FR 16760.

Petitioner: KenAmerican Resources, Inc.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics instead of padlocks to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. The spring-loaded device configuration in lieu of a padlock configuration does not apply to the use of padlocks in controlling accessibility in the lockout and tagout requirements of 30 CFR 75.511. This limited application is considered an acceptable alternative method for the Paradise No. 9 Mine, with conditions. MSHA grants the petition for modification for the Paradise No. 9 Mine with conditions.

Docket No.: M–99–013–C.

FR Notice: 64 FR 16761.

Petitioner: Consolidation Coal Company.

Regulation Affected: 30 CFR 75.1002–1(a).

Summary of Findings: Petitioner's proposal is to use high-voltage (4,160 volt) cables to supply power to its longwall mining system inby the last open crosscut. This is considered an acceptable alternative method for the Rend Lake Mine, with conditions. MSHA grants the petition for modification for the Rend Lake Mine with conditions.

Docket No.: M–99–016–C.

FR Notice: 64 FR 23873.

Petitioner: Consolidation Coal Company.

Regulation Affected: 30 CFR 75.804(a).

Summary of Findings: Petitioner's proposal is to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as part of its longwall mining system. This is considered an acceptable alternative method for the Rend Lake Mine, with conditions. MSHA grants the petition for modification for the Rend Lake Mine with conditions.

Docket No.: M–99–019–C.

FR Notice: 64 FR 23874.

Petitioner: K and B Coal, Inc.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices on its mobile battery-powered machines instead of a padlock to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The spring-loaded device configuration in lieu of a padlock configuration does not apply to the use of padlocks in controlling accessibility in the lockout and tagout requirements of 30 CFR 75.511. This limited application is considered an acceptable alternative method for the Mine No. 1, with conditions. MSHA grants the petition for modification for the Mine No. 1 with conditions.

Docket No.: M–99–025–C.

FR Notice: 64 FR 25518.

Petitioner: Eighty-Four Mining Company.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal is to increase the maximum lengths of the trailing cables to 900 feet for the mining machine, loading machine, shuttle car, roof bolter, and section ventilation fan. The petitioner also states that the trailing cable would not be smaller than #4 A.W.G. for the section ventilation fan, roof bolting machine, and shuttle cars, smaller than #2 A.W.G. for the loading machine, or smaller than #2/0 A.W.G. for the continuous mining machine. This proposal, as amended by MSHA recommendations, is considered an acceptable alternative method for the Mine 84, with conditions. MSHA grants the petition for modification for the Mine 84 with conditions.

Docket No.: M–98–019–C.

FR Notice: 63 FR 18232.

Petitioner: Energy West Mining Company.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: The Petitioner is operating under a previously granted modification, docket number M–94–166–C, granting the use of belt air in a two entry mining system, as amended. Petitioner requests that the term and condition I.(v) prohibiting the installation of hydraulic fluid pumping stations in the two entry longwall panel be changed. Petitioner had earlier petitioned to use non-Part 36 approved diesel equipment. Petitioner's request regarding the installation of hydraulic fluid pumping stations in the two entry longwall panel has previously been granted. Now, the petition is amended to use non-Part 36 approved diesel equipment. This is considered an acceptable alternative method for the Trail Mountain Mine, with conditions. MSHA grants the petition for modification for the Trail Mountain Mine with conditions.

Docket No.: M–98–020–C.

FR Notice: 63 FR 18232.

Petitioner: Energy West Mining Company.

Regulation Affected: 30 CFR 75.352.

Summary of Findings: The Petitioner is operating under a previously granted modification, docket number M–94–167–C to use a belt conveyor in a return aircourse during development of two entry mining systems at the Trail Mountain Mine. Petitioner requests that the term and condition I.(v) prohibiting the installation of hydraulic fluid pumping stations in the two entry longwall panel be changed. Petitioner had earlier petitioned to use non-Part 36 approved diesel equipment. Petitioner's request regarding the installation of hydraulic fluid pumping stations in the two entry longwall panel has previously been granted. Now, the petition is amended to use non-Part 36 approved diesel equipment. This is considered an acceptable alternative method for the Trail Mountain Mine, with conditions. MSHA grants the petition for modification for the Trail Mountain Mine with conditions.

Docket No.: M–98–069–C.

FR Notice: 63 FR 45865.

Petitioner: Arclar Company.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal is to use a locking screw threaded through a steel bracket or a spring-loaded device configuration instead of padlocks to lock battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. The allowance of a locking screw or spring-loaded configuration in lieu of a padlock configuration does not apply to padlocks in the lockout and tagout requirements of 30 CFR 75.511. This limited application is considered an acceptable alternative method for the Big Ridge Mine Portal No. 2, with conditions. MSHA grants the petition for modification for the Big Ridge Mine Portal No. 2 with conditions.

Docket No.: M–98–096–C.

FR Notice: 63 FR 64104.

Petitioner: Mettiki Coal Corporation.

Regulation Affected: 30 CFR 75.1100–2(e)(2).

Summary of Findings: Petitioner's proposal is to permit provision of two portable fire extinguishers at each temporary electrical installation. Petitioner also proposes to store at each temporary electrical installation two multipurpose, dry chemical, portable fire extinguishers, each having at least a minimum capacity of 10 pounds of dry powder. This is considered an acceptable alternative method for the Mettiki Mine, with conditions. MSHA grants the petition for modification for the Mettiki Mine with conditions.

Docket No.: M–98–104–C.
FR Notice: 64 FR 2521.
Petitioner: U.S. Steel Mining Company, LLC.
Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to use 4,160 volt cables to supply power to permissible longwall equipment. This is considered an acceptable alternative method for the Gary No. 50 Mine, with conditions. MSHA grants the petition for modification for the Gary No. 50 Mine with conditions.

Docket No.: M–98–105–C.
FR Notice: 64 FR 2521.
Petitioner: Windsor Coal Company.
Regulation Affected: 30 CFR 75.364(b)(1).

Summary of Findings: Petitioner's proposal is to establish evaluation points to monitor the air and gas measurements in the affected area; to maintain the evaluation points in safe conditions; to have a certified person test for methane and the quality and quantity of air at both evaluation points; and to have the person making the examinations and test place their initials, date, and time at the evaluation points and in a book on the surface made available for interested persons. This is considered an acceptable alternative method for the Windsor Mine, with conditions. MSHA grants the petition for modification for the Windsor Mine with conditions.

Docket No.: M–98–113–C.
FR Notice: 64 FR 2519.
Petitioner: White County Coal Corporation.
Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. This is considered an acceptable alternative method for the Pattiki Mine, with conditions. MSHA grants the petition for modification for the Pattiki Mine with conditions.

Docket No.: M–97–147–C.
FR Notice: 63 FR 5971.
Petitioner: Jim Walter Resources, Inc.
Regulation Affected: 30 CFR 75.364(b)(2).

Summary of Findings: Petitioner's proposal is to establish evaluation points inby and outby the deteriorating return of the mine, and to have a certified person examine the evaluation points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. This is considered an acceptable alternative method for the No. 3 Mine, with conditions. MSHA grants the petition for modification for the No. 3 Mine with conditions.

Docket No.: M–91–003–M.
FR Notice: 56 FR 23941.
Petitioner: Tg Soda Ash, Inc.
Regulation Affected: 30 CFR 57.22305.

Summary of Findings: Petitioner's proposal is to use a nonpermissible battery-powered drill for drilling holes for surveying spads in the panel face area inby the last open crosscut. This is considered an acceptable alternative method for the Wyoming Soda Ash Mine, with conditions. MSHA grants the petition for modification for the Wyoming Soda Ash Mine with conditions.

Docket No.: M–86–020–M.
FR Notice: 52 FR 5217.
Petitioner: Kenneth Utah Copper Corporation.
Regulation Affected: 30 CFR 56.9300(d).

Summary of Findings: The Petitioner is operating under a previously granted modification, 30 CFR 56.9022. Petitioner requested that a pipeline would be located on the inside edge (e.g., driver's side) of the impoundment roadway, when there is a drop off sufficient for equipment to overturn, to serve as a guide for equipment operators. Petition is amended to install delineators along the perimeter of those areas of the elevated roadway where no pipeline was laid and there was a drop-off sufficient for equipment to overturn. At least three delineators along each elevated shoulder would always be visible to the drivers of vehicles. This is considered an acceptable alternative method for the UC Concentrator Plant, with conditions. MSHA grants the petition for modification for the UC Concentrator Plant with conditions.

[FR Doc. 99–27854 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration; Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Clark Elkhorn Coal Company

[Docket No. M–1999–084–c]

Clark Elkhorn Coal Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Ratliff Underground Mine (I.D. No. 15–16763) located in Pike County, Kentucky. The petitioner proposes to use a spring loaded locking device to secure battery plugs into the machine mounted battery receptacle on mobile battery powered equipment instead of using padlocks. The petitioner asserts that application of the mandatory standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

2. Matrix Coal Company

[Docket No. M–1999–085–C]

Matrix Coal Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mohawk Underground Mine (I.D. No. 15–18085) located in Pike County, Kentucky. The petitioner proposes to use a spring loaded locking device to secure battery plugs into the machine mounted battery receptacle on mobile battery powered equipment instead of using padlocks. The petitioner asserts that application of the mandatory standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

3. Remington Coal Company, Inc.

[Docket No. M–1999–086–C]

Remington Coal Company, 430 Harper Park Drive, Suite A, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Stockburg No. 1 Mine (I.D. No. 46–08634) located in Kanawha County, West Virginia. The petitioner proposes to use a spring loaded locking device to secure battery plugs into machine mounted receptacle on mobile battery powered equipment instead of using padlocks. The petitioner asserts that application of the mandatory standard will result in a diminution of safety to the miners.

4. Goodin Creek Contracting, Inc.

[Docket No. M–1999–087–C]

Goodin Creek Contracting, Inc., Rt. 1, Box 419–A1, Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.380(f)(4) (escapeways; bituminous and lignite mines) to its Goodin Creek Mine (I.D. No. 15–17980) located in Knox County, Kentucky. The petitioner proposes to install two ten pound portable chemical fire extinguishers in the operators' deck of each Mescher tractor. The fire extinguisher will be readily accessible to the operator. The petitioner proposes to instruct the equipment operator to inspect each fire extinguisher daily prior to entering the escapeway, maintain records of the inspections, and maintain a sufficient number of spare fire extinguishers at the mine in case a fire extinguisher becomes defective. The petitioner asserts that because of the low 24-inch heights of the coal being mined, available fire suppression systems will not fit on the equipment being used. The petitioner further asserts that application of the mandatory standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

5. Canfield Energy, Inc.

[Docket No. M–1999–088–C]

Canfield Energy, Inc., P.O. Box 1021, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways; bituminous and lignite mines) to its # 5 Mine (I.D. No. 15–18176) located in Knox County, Kentucky. The petitioner proposes to install two ten pound portable chemical fire extinguishers in the operators' deck of each Mescher tractor. The fire extinguisher will be readily accessible to the operator. The petitioner proposes to instruct the equipment operator to inspect each fire extinguisher daily prior to entering the escapeway, maintain records of the inspections, and maintain a sufficient number of spare fire extinguishers at the mine in case a fire extinguisher becomes defective. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

6. Canfield Energy, Inc.

[Docket No. M–1999–089–C]

Canfield Energy, Inc., P.O. Box 1021, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its #5 Mine (I.D. No. 15–18176) located in Knox County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen detector instead of machine-mounted methane monitors on three-wheel tractors. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

7. Canterbury Coal Company

[Docket No. M–1999–090–C]

Canterbury Coal Company, R.D. #1, Box 119A, Avonmore, Pennsylvania 15618 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its DiAnne Mine (I.D. No. 36–05708) located in Armstrong County, Pennsylvania. The petitioner proposes to use belt air to ventilate a working section(s). The petitioner proposes to install a carbon monoxide monitoring system as a fire detection system in all belt entries where air coursed through the belt entry is used to ventilate active working places. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

8. Mallie Coal Company

[Docket No. M–1999–091–C]

Mallie Coal Company, Rt. 1, Box 173, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Mine No. 4 (I.D. No. 15–17603) located in Knox County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen detector instead of machine-mounted methane monitors on three-wheel tractors. The petitioner asserts that application of the existing standard will diminish the safety of the miners and the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

9. Marfork Coal Company, Inc.

[Docket No. M–1999–092–C]

Marfork Coal Company, Inc., P.O. Box 457, Whitesville, West Virginia 25209 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Brushy Eagle Mine (I.D. No. 46–08315) located in Raleigh County, West Virginia. The petitioner proposes to use 4,160 volt longwall face equipment utilizing the specific terms and conditions listed in this petition for modification. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

10. RAG Empire Corporation

[Docket No. M–1999–093–C]

RAG Empire Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Eagle No. 5 Mine (I.D. No. 05–01370) located in Moffat County, Colorado. The petitioner requests a modification of the mandatory standard to permit the use of a 480-volt non-permissible pump in boreholes in sealed areas of the Eagle No. 5 Mine. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

11. RAG Empire Corporation

[Docket No. M–1999–094–C]

RAG Empire Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Eagle No. 5 Mine (I.D. No. 05–01370) located in Moffat County, Colorado. The petitioner requests a modification of the mandatory standard to permit the use of 480-volt non-permissible submersible pumps in boreholes into sealed areas at the 1 North areas of the Eagle No. 5 Mine. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

12. Wabash Mine Holding Company

[Docket No. M–1999–095–C]

Wabash Mine Holding Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.332(a)(2) (working sections and working places) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner requests a modification of the mandatory standard to permit the use of two continuous miners within the same split air. The petitioner proposes to have one continuous miner cleanup the working face previously mined, while the other continuous miner on the super section starts to cut and load coal from another working face on the same working section, on the same split of air. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

13. Canyon Fuel Company, LLC

[Docket No. M–1999–096–C]

Company Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley) to its Dugout Canyon Mine (I.D. No. 42–01890) located in Carbon County, Utah. The petitioner proposes to use a nominal voltage of longwall power circuits not to exceed 2,400 volts to supply power to permissible longwall mining equipment. The petitioner states that application of the mandatory standard will prevent a diminution of safety to the miners resulting from the application of the existing standard. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

14. Drummond Company, Inc.

[Docket No. M–1999–097–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202–0246 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Shoal Creek Mine (I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner requests a variance from the mandatory standard to permit the use of its diesel grader without individual service brakes on all grader wheels. The petitioner proposes to (i) equip the grader with service brakes on each drive wheel and stationary emergency brakes; (ii) limit the tramming speed of the grader to 10 miles per hour; and (iii) train grader operators to check the function of the brakes during pre-operational checks and if required, train the operators to lower the grader blade to the ground as an additional braking mechanism and while the machine is parked. The petitioner states that all grader operators will be trained during refresher training and on all provisions of its proposed alternative method. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

15. Canyon Fuel Company, LLC

[Docket No. M–1999–098–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.500 (permissible electric equipment) to its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the mandatory standard to permit the use of a nonpermissible hand-held battery powered drill in areas inby the last open crosscut. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

16. J & A Coal Corporation

[Docket No. M–1999–099–C]

J & A Coal Corporation, P.O. Box 848, Prestonburg, Kentucky 41653 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 1 Mine (I.D. No. 15–15776) located in Knott County, Kentucky. The petitioner proposes to use a spring loaded locking device to secure battery plugs into machine mounted receptacle on mobile battery powered equipment instead of using padlocks. The petitioner states that application of the mandatory standard will result in a diminution of safety to the miners affected.

17. Bowie Resources Limited

[Docket No. M–1999–100–C]

Bowie Resources Limited, P.O. Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Bowie No. 2 Mine (I.D. No.05–04591) located in Delta County, Colorado. The petitioner proposes to install brakes on the front wheels of six wheeled road graders in its Bowie No. 2 Mine. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

18. RAG Emerald Resources Corporation

[Docket No. M–1999–101–C]

RAG Emerald Resources Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Emerald Mine (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petitioner requests that certain provisions be eliminated from its previously granted high-voltage longwall petition, docket number M–95–37–C. The petitioner proposes to use 4,160 high-voltage longwall equipment. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

19. Nehemiah Coal Company, Inc.

[Docket No. M–1999–102–C]

Nehemiah Coal Company, Inc., 644 Callahan Avenue, P.O. Box 466, Appalachia, Virginia 24216 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; diesel-powered and electric-face equipment) to its Mine #1 (I.D. No. 44–06871) located in Wise County, Virginia. The petitioner proposes to operate face equipment without canopies. The petitioner asserts that using canopies in the low mining height present at the mine will result in a diminution of safety to the miners affected by the existing standard.

20. CONSOL of Kentucky, Inc.

[Docket No. M–1999–103–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Mousie H4 Mine (I.D. No. 15–18166) located in Knott County, Kentucky. The petitioner proposes to obtain a low- and medium voltage, three-phase, alternating current for use underground from a portable diesel-driven generator and to connect the neutral of the generator's transformer secondary through a suitable resistor to the frame of the diesel generator. The petitioner states that the frame of the diesel generator will not have solid connection to a borehole casing, a metal waterline, or a grounding conductor with a low resistance to earth. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

21. Wayne Processing, Inc.

[Docket No. M–1999–104–C]

Wayne Processing, Inc., Rt. 3, Box 144, Philippi, West Virginia 26416 has filed a petition to modify the application of 30 CFR 75.380(d)(3) (Escapeways; bituminous and lignite mines) to its Sentinel Mine (I.D. No. 46–014168) located in Barbour County, West Virginia. The petitioner proposes to use a mechnical device to travel across the #2 Miner Section belt undercast, where the escapeway height is less that that required by the standard. The undercast is used as a secondary escapeway. The petitioner proposes to post signs on both sides of the undercast indicating low clearance area. The petitioner states that the mechanical device will enable miners including disabled miners to escape quickly in an emergency, and allow a worker to sit down or be provided with a stretcher and pulled across the undercast to either the inby or outby ends. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

22. Alex Energy, Inc.

[Docket No. M–1999–105–C]

Alex Energy, Inc., P.O. Box 857, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Jerry Fork Eagle Mine (I.D. No. 46–08787) located in Nicholas County, West Virginia. The petitioner proposes to plug and mine through oil and gas wells and to notify the District Manager or designee prior to mining within 300 feet of the well. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 26, 1999. Copies of these petitions are available for inspection at that address.

Dated: October 18, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–27855 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Agenda

TIME AND DATE: 9:30 a.m., Tuesday, November 2, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

6952A Aviation Accident Report: Controlled flight into Terrain, Korean Air Flight 801, Boeing 747-300, HL7468, Nimitz Hill, Guam, on August 6, 1997

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, October 29, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Dated: October 22, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–28097 Filed 10–22–99; 3:51 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: Generic Letter 91–02, "Reporting Mishaps Involving LLW Forms Prepared for Disposal."

3. The form number, if applicable: N/A.

4. How often the collection is required: Reports are made only when the licensee or waste processor experiences a mishap that is reportable under the guidelines described in the Generic Letter.

5. Who will be required or asked to report: Nuclear power reactor licensees and Agreement State and non-Agreement State waste processors and disposal site operators.

6. An estimate of the number of responses: 34.

7. The estimated number of annual respondents: 34.

8. An estimate of the number of hours needed annually to complete the requirement or request: 272 hours (an average of 8 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: Generic Letter 91–02 encourages voluntary reporting (by both waste form generators and processors) of information concerning mishaps to low-level radioactive waste (LLW) forms prepared for disposal. The information is used by NRC to determine whether follow-up action is necessary to assure protection of public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by November 26, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0156), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 20th day of October 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–27951 Filed 10–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968–ML; ASLBP No. 95–706–01–ML]

Hydro Resources, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned 10 CFR part 2, Subpart L proceeding is hereby replaced by appointing Administrative Judge Thomas S. Moore as Presiding Officer in place of Administrative Judge Peter B. Bloch.

All correspondence, documents, and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203. The address of the new Presiding Officer is: Administrative Judge Thomas S. Moore, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Issued at Rockville, Maryland, this 20th day of October 1999.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–27949 Filed 10–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments involve movement of loads in excess of the design-basis seismic capability of the auxiliary building load handling equipment and structures. The proposed amendment requests approval to move the steam generator sections through the auxiliary building and to disengage crane travel interlocks, and also requests relief from performance of Technical Specification Surveillance Requirement 4.9.7.1.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

No. NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants," generically evaluates the probabilities for a heavy load handling event that could result in consequences that exceed 25% of 10 CFR 100 limits. The NRC determined, assuming heavy load handling in accordance with NUREG–0612 guidelines, that the associated risks are acceptable based on the very low likelihood of a load drop. The proposed activity will be performed in accordance with NUREG–0612 as approved for Donald C. Cook Nuclear Plant (CNP) and will be similar to the heavy loads program reviewed, approved, and demonstrated effective during the Unit 2 SGRP (Steam Generator Repair Project). The cranes feature single-failure-proof hoisting and braking systems in accordance with NUREG–0554, "Single-Failure-Proof Cranes for Nuclear Power Plants," and are evaluated to safely retain the load in the unlikely event of the safe shutdown earthquake (SSE). As such, this change does not introduce any new accident precursors or initiators and there is not a significant increase in the probability of previously evaluated accidents.

Administrative controls substitute for crane travel interlocks during the lifts to prevent loads from being carried over spent fuel assemblies. In addition, a load path evaluation has determined that, in the unlikely event of a load drop, requirements for safe shutdown of the operating unit, decay heat removal, and spent fuel pool cooling continue to be satisfied. As a result, there is no significant increase in the consequences of a load drop. Based on the above, the probability of occurrence and the consequences of accidents previously evaluated are not increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The potential accident involved in the proposed change is a design basis seismic event during load handling. The NUREG–0554 guideline for crane seismic capability is safe retention of the load during an SSE. A current engineering study demonstrates that the SG [steam generator] sections are safely retained by the cranes during load handling even in the unlikely event of an SSE. Although the crane travel interlocks are disengaged during the lifts, administrative controls prevent loads from being carried over the spent fuel pool. Furthermore, the load path, methods, and types of loads are similar to those previously reviewed and approved for the Unit 2 SGRP. That review also found that the possibility of a new or different kind of accident was not created. The current reviews and analyses for the Unit 1 SGRP have not identified a credible new kind of accident or one that is different from the evaluated load drop scenario. Based on the above, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. Handling of heavy loads during the proposed activity will be in accordance with the guidelines of NUREG–0612 (including appropriate codes and standards) as approved for CNP and will be similar to the heavy loads program previously approved for the Unit 2 SGRP. Administrative controls substitute for crane travel interlocks during the lifts to ensure that no loads are carried over spent fuel assemblies. The loads will be lifted by cranes with the single-failure proof features specified by NUREG–0554. For these loads, the design basis seismic capability of the load handling equipment and structures is exceeded. However, the likelihood of a seismic event coincident with the limited lift times for these loads is very remote. Furthermore, an evaluation of these lifts that considers the conservatism inherent in the design basis calculations concludes that the loads are safely retained even in the event of an SSE. Based on the above, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville

Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 26, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeremy J. Euto, Esquire, 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 23, 1999, as supplemented October 11, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 20th day of October 1999.

For the Nuclear Regulatory Commission.

John F. Stang, Sr.

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–27952 Filed 10–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company, V.C. Summer Nuclear Station, Unit 1; Exemption

I

South Carolina Electric & Gas Company (the licensee) is the holder of Facility Operating License No. NPF–12, that authorizes operation of the V.C. Summer Nuclear Station. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located on the V.C. Summer Nuclear Station site in Jenkinsville, South Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G states that "[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Code, Section XI, Appendix G limits.

Pressurized water reactor licensees have installed cold overpressure mitigation systems/low temperature overpressure protection (LTOP) systems in order to protect the reactor coolant pressure boundary (RCPB) from being operated outside of the boundaries established by the P–T limit curves and to provide pressure relief of the RCPB during low temperature overpressurization events. The licensee is required by the V.C. Summer Nuclear Station Technical Specifications (TS) to update and submit the changes to its LTOP setpoints whenever the licensee is requesting approval for amendments to the P–T limit curves in the TS.

Therefore, in order to address the provisions of amendments to the TS P–T limits and LTOP curves, the licensee requested in its submittal dated August 19, 1999, that the staff exempt V.C. Summer Nuclear Station from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and 10 CFR Part 50, Appendix G, and substitute use of ASME Code Case N–640 as an alternate reference fracture toughness for reactor vessel materials for use in determining the P–T limits.

The proposed action is in accordance with the licensee's application for exemption contained in a submittal dated August 19, 1999, and is needed to support the TS amendment that is contained in the same submittal and is being processed separately. The proposed amendment would impact the P–T limits of TS 3/4.4 for V.C. Summer Nuclear Station related to the heatup, cooldown, and inservice test limitations for the Reactor Coolant System to a maximum of 32 Effective Full Power Years (EFPY). It will result in a revision to TS 3/4.4.9, Pressure/Temperature Limits, to reflect the revised P–T limits of the reactor vessel.

Code Case N–640

The licensee has proposed an exemption to allow use of ASME Code Case N–640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, to determine that the P–T limits meet the underlying intent of the NRC regulations.

The proposed amendment to revise the P–T limits for V.C. Summer Nuclear Station relies in part on the requested exemption. The ASME Code Case N–640 approach for calculating the allowable limit curves for various heatup and cooldown rates specifies that the total stress intensity factor, K_I, for the combined thermal and pressure stresses at any time during heatup or cooldown cannot be greater than the reference stress intensity factor, K_{IC}, for the metal temperature at that time. K_{IC} is obtained from the reference fracture toughness curve, defined in Appendix G to Section XI of the 1996 ASME Code. The K_{IC} curve is based on the lower bound of static critical K_I values measured as a function of temperature on specimens of SA–533 Grade B Class 1, SA–508–2, and SA–508–3 steels.

Use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of a P–T operating limits curve is more technically correct than the K_{Ia} curve. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heat-up and cooldown process of a reactor vessel. The licensee has determined that the use of the initial conservatism of the K_{Ia} curve when the curve was codified in 1974 was justified. This initial conservatism was necessary due to the limited knowledge of reactor pressure vessel materials. Since 1974, additional knowledge has been gained about reactor pressure vessel materials, which demonstrates that the lower bound on fracture toughness provided by the KI_{Ia} curve is well beyond the margin of safety required to protect the public health and safety from potential reactor pressure vessel failure. In addition, P–T curves based on the K_{Ic} curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations. The two primary safety benefits in opening the low temperature operating window are a reduction in the challenges to RCS power-operated relief valves and elimination of RCP impeller cavitation wear.

Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of Summer with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily restrict the P–T operating window. This restriction requires, under certain low temperature conditions, that only one reactor coolant pump in a reactor coolant loop be operated. The licensee has found from experience that the effect of this restriction is undesirable degradation of reactor coolant pump impellers that results from cavitation sustained when either one pump or one pump in each loop is operating. Implementation of the proposed P–T curves as allowed by ASME Code Case N–640 does not significantly reduce the margin of safety. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served.

In summary, the ASME Section XI, Appendix G procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor pressure vessel materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that an exemption would be required to approve the use of Code Case N–640. The staff examined the licensee's rationale to support the exemption request and concurred that the use of the Code case would also meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR Part 50, Appendix G; Appendix G of the Code; and RG 1.99, Revision 2, the staff concluded that application of the Code case as described would provide an adequate margin of safety against brittle failure of the RPVs. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the LTOP setpoints and P–T limits for the Summer reactor coolant system.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants South Carolina Electric & Gas Company an exemption from the requirements of 10 CFR Part 50, Section 50.60(a) and 10 CFR Part 50, Appendix G, for the V.C. Summer Nuclear Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (64 FR 56359).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of October 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–27950 Filed 10–25–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 18f–1 and Form N–18F–1, SEC File No. 270–187, OMB Control No. 3235–0211

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 18f–1 [17 CFR 270.18f–1] enables a registered open-end management investment company ("fund") that may redeem its securities in kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940. A fund relying on the rule must file Form N–18F–1 [17 CFR 274.51] to notify the Commission of this election. The Commission staff estimates that approximately 106 funds file the Form annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 106 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 18f–1 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 18, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27880 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42042; File No. 10–127]

International Securities Exchange LLC; Notice of Filing of Amendment No. 1 to the Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

October 20, 1999.

The International Securities Exchange LLC ("ISE") has submitted an amendment to its Form 1 application[1] under the Securities Exchange Act of 1934 ("Exchange Act"). The ISE is seeking registration as a national securities exchange under Section 6 of the Exchange Act.[2] A copy of the ISE's Amendment No. 1 to the Form 1, including all exhibits, is available in the Commission's Public Reference Room, File No. 10–127, and on the Commission's website at http://www.sec.gov/rules/othrindx.htm. The Commission received approximately 21 comment letters in response to the original notice publication of the ISE's Form 1,[3] several of which raised substantive issues. The ISE has responded to these comments by amending its Form 1 application and the exhibits thereto, as well as providing a detailed explanation of its governance provisions and trading rules.

The Commission is publishing notice of Amendment No. 1 to the ISE's filing to afford interested person an opportunity to submit additional written comments. The Commission will take these comments into consideration in making its determination about whether to grant ISE's request to be registered as an exchange. The Commission shall grant such registration if it finds that the requirement of the Exchange Act and the rules and regulations thereunder are satisfied.[4]

Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

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[1] *See* Letter to Johathan Katz, Secretary, Commission, from David Krell, President and CEO, ISE, dated September 24, 1999 ("Amendment No. 1").

[2] *See* Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from David Krell, President and CEO, ISE, dated February 1, 1999 ("ISE Form 1").

[3] *See* Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (June 1, 1999). Copies of the comment letters are available in the Public Reference Room at the Commission and are contained in File No. 10–127.

[4] Section 19(a)(1) of the Exchange Act, 15 U.S.C. 78s(a)(1).

Washington, D.C. 20549–0609. Comments must be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comments must be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comments must be received on or before November 16, 1999. All comment letters should refer to File No. 10–127; this file number should be included on the subject line if comments are submitted using e-mail. All submissions will be available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (http://www.sec.gov).

For questions regarding this release, contact: Sheila Slevin, Assistant Director, at (202) 942–0796, Christine Richardson, Attorney, at (202) 942–0748, or Joseph Morra, Attorney, at (202) 942–0781; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27894 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Noble International, Ltd., Common Stock, No Par Value per Share) File No. 1–13581

October 20, 1999.

Noble International, Ltd. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d–2(d) promulgated thereunder, to withdraw the security specified above ("Old Common Stock") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

On January 26, 1999, the Company's Board of Directors approved a resolution to withdraw the Old Common Stock from listing and registration on the Amex in conjunction with a planned reincorporation of the Company in Delaware and the commencement thereafter of trading of the new Delaware Company's Common Stock, $.001 par value ("New Common Stock"), on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"). Such reincorporation became effective at the close of business on July 6, 1999, and trading in the New Common Stock commenced on the Nasdaq at the opening of business on July 7, 1999.

At the time of its initial public offering in November 1997, the Company chose to list the Old Common Stock on the Amex only because the Company did not at that time meet the Nasdaq's quantitative listing criteria. As of December 31, 1998, however, the Company achieved the revenue and asset goals necessary to meet these listing criteria and shortly thereafter adopted the resolution described above.

In making the determination to have its New Common Stock quoted on the Nasdaq, the Company has considered the differing trading structures of the Nasdaq and the Exchange and has stated that it believes that the variety of market participants available through the Nasdaq will provide better shareholder value than the auction market of the Exchange has done.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by its Board of Directors authorizing the withdrawal of the Old Common Stock from listing on the Amex and by setting forth in detail to the Exchange the reasons and supporting facts for such proposed withdrawal. The Amex has in turn informed the Company that it would not interpose any objection to the Company's application to withdraw its Old Common Stock from listing and registration on the Exchange.

The Company's application relates solely to withdrawal of the Old Common Stock from listing and registration on the Exchange and shall not affect the New Common Stock's designation for quotation on the Nasdaq. By reason of Section 12(g) of the Act and the rules and regulations of the commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before November 10, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27883 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24105; 812–11510]

Puget Sound Alternative Investment Series Trust, et al.; Notice of Application

October 20, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

SUMMARY OF APPLICATION: The order would permit applicants to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval.

APPLICANTS: Puget Sound Alternative Investment Series Trust (the "Trust") and Puget Sound Asset Management Co., LLC (the "Manager").

FILING DATES: The application was filed on February 11, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1999, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, One Yesler Building, Suite 200, Seattle, Washington 98104.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment

Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently consists of one series (the "Portfolio").[1]

2. The Manager, registered under the Investment Advisers Act of 1940 (the "Advisers Act"), serves as investment adviser for the Portfolio under an investment advisory agreement ("Advisory Agreement"). Under the Advisory Agreement, the Manager is responsible for managing the investment and reinvestment of the Portfolio's assets ("Portfolio Management Services"), subject to the supervision and control of the Trust's board of trustees (the "Board"). The Advisory Agreement also provides that the Manager may delegate its Portfolio Management Services to one or more subadvisers ("Subadvisers"). In the event of such delegation, the Manager will oversee and monitor the performance of each Subadviser and recommend the selection or termination of Subadvisers to the Board. In selecting Subadvisers, the Manager conducts extensive research and due diligence, using a combination of qualitative and quantitative criteria. The Portfolio pays the Manager a fee for its service based on the Portfolio's average daily net assets.

3. The Manager has entered into a subadvisory agreement (the "Subadvisory Agreement") with a single Subadviser to provide day-to-day Portfolio Management Services for the Portfolio. The Subadviser is, and any future Subadviser will be, registered under the Advisers Act. The Subadviser is not an "affiliated person," as defined in section 2(a)(3) of the Act ("Affiliated Person"), of the Manager. The Manager pays the Subadviser a fee out of the fees the Manager receives from the Portfolio.

4. Applicants request relief to permit the Manager to enter into and amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to a Subadviser that is an Affiliated Person of the Manager or the Trust, other than by reason of serving as a Subadviser to a Fund ("Affiliated Subadviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting shares. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that investment companies such as the Trust that use an adviser/subadviser structure divide responsibility for general management and investment advice between the Manager and one or more Subadvisers. Applicants also state that, under this type of management structure, the Manager selects and monitors the Subadvisers and the Subadvisers, in turn, select the specific portfolio investments. Applicants contend that, by choosing to invest in Funds that use the adviser/subadviser structure, investors are choosing to have the Manager manage the Subadvisers because the investors do not wish to select and monitor Subadvisers. Applicants submit that the requested relief will permit them to use the adviser/subadviser structure more efficiently by reducing expenses and by permitting the prompt implementation of subadvisory changes that are in the best interests of the shareholders. Applicants note that the Advisory Agreement will remain subject to the shareholder approval requirements of the Act and rules under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Manager will not enter into a Subadvisory Agreement with an Affiliated Subadviser without the agreement, including the compensation to be paid under the agreement, being approved by the shareholders of the applicable Fund.

2. At all times, a majority of the Board will be persons each of whom is not an "interested person" of the Trust (as defined in section 2(a)(19) of the Act) (the "independent Trustees"), and the nomination of new or additional Independent Trustees will be committed to the discretion of then existing Independent Trustees.

3. When a Subadviser change is proposed for a Fund having an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives an inappropriate advantage.

4. Before the currently existing Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act. Before a Future Fund may rely on the order requested in the application, the operation of the Future Fund in the manner described in the application will be approved by its initial shareholder before a public offering is made of the shares of the Future Fund, provided that shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 7 below.

5. Within 90 days after the hiring of any new Subadviser, the Trust will furnish shareholders with all information about a new Subadviser that would be included in a proxy statement. The information will include any change in the disclosure caused by the addition of a new Subadviser. A Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

6. No trustee or officer of the Trust or managing member or officer of the Manager will own, directly or indirectly

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[1] Applicants also request relief for any series of the Trust organized in the future ("Future Funds" and collectively with the Portfolio, the "Funds"), and any registered open-end management investment company, or series of the company, advised in the future by the Manager, or a person controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with the Manager that uses the adviser/subadviser structure described in the application and complies with the terms and conditions of the application ("Future Trusts"). Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant.

(other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser except for: (a) ownership of interests in the Manager or any entity that controls the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

7. The Trust will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the adviser/subadviser approach described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility to oversee Subadvisers and recommend their hiring, termination and replacement.

8. The Manager will provide general management and administrative services to the Trust, including overall supervisory responsibility for the general management and investment of the Trust's securities portfolios, and, subject to review and approval by the Board, will (i) set the Funds' overall investment strategies; (ii) select Subadvisers; (iii) monitor and evaluate the performance of the Subadvisers; (iv) allocate, and when appropriate, reallocate a Fund's assets among its Subadvisers in those cases where a Fund has more than one Subadviser; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with the Trust's investment objectives, policies and restrictions.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27882 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24091; File No. 812–11694]

Sentry Life Insurance Company, et al.

October 20, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for approval pursuant to Section 26(b) the Investment Company Act of 1940 (the "1940 Act") approving the proposed substitutions of securities.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of securities issued by certain registered management investment companies for securities issued by certain other registered management investment companies currently held by separate accounts of Sentry Life Insurance Company and Sentry Life Insurance Company of New York to support variable annuity contracts and variable life insurance policies.

APPLICANTS: Sentry Life Insurance Company ("Sentry Life"), Sentry Life Insurance Company of New York ("Sentry Life of New York" and, together with Sentry Life, the "Companies"), and their respective separate accounts, Sentry Variable Account II ("Variable Account II"), Sentry Variable Life Account I ("Variable Life Account I"), and Sentry Variable Account I ("Variable Account I" and together with Variable Account II and Variable Life Account I, the "Accounts").

FILING DATES: The application was filed on July 9, 1999, and amended and restated on September 29, 1999. Applicants represent that they will file an amended and restated application during the notice period to conform to the representations set forth herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 15, 1999, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Blazzard, Grodd & Hasenauer, P.C., 943 Post Road, East, Westport, CT 06880, Attention: Lynn K. Stone, Esq.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Attorney, or Kevin Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Sentry Life of New York, a New York corporation, is a wholly-owned subsidiary of Sentry Life, a Wisconsin corporation. Sentry Life is a wholly-owned subsidiary of Sentry Insurance a Mutual Company, also a Wisconsin corporation.

2. Sentry Variable Account I is a separate account of Sentry Life of New York. Sentry Variable Account II and Sentry Variable Life Account I are separate accounts of Sentry Life. Each of the Accounts is registered under the 1940 Act as a unit investment trust. The assets of each Account support variable annuity contracts and, with respect to Variable Life Account I, variable life insurance policies (the "Contracts"). Interests in each of the Accounts offered through the Contracts are registered under the Securities Act of 1933 on Form N–4 or Form S–6.

3. The variable annuity contracts permit Contract owners to make four transfers in any year before the income date and one transfer in any year after the income date. The variable life contracts permit owners to make four transfers in any Contract year. All the Contracts reserve the right to effect substitutions in compliance with applicable law or undertake to provide notice to the extent required by the 1940 Act.

4. Each of the Accounts is divided into four subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding series (each, a "Portfolio") of Neuberger Berman Advisers Management Trust, a series-type investment company which is registered under the 1940 Act as a diversified open-end management investment company.

5. Neuberger Berman Advisers Management Trust is currently comprised of nine Portfolios, the following four of which are involved in the proposed substitution: AMT Liquid Asset Portfolio; AMT Limited Maturity Bond Portfolio; AMT Balanced Portfolio; and AMT Growth Portfolio. Neuberger Berman Management is the investment manager, administrator and distributor for all four of the Portfolios. It engages Neuberger Berman, LLC as sub-adviser for each of the four Portfolios and to provide management and related services.

6. Applicants propose that the Companies carry out the following substitution of shares held by corresponding subaccounts of the Accounts: (a) shares of the Prime Reserve Portfolio of T. Rowe Price Fixed Income Series, Inc. for shares of the Liquid Asset Portfolio of Neuberger Berman Advisers Management Trust; (b) shares of the Limited-Term Bond Portfolio of T. Rowe Price Fixed Income Series, Inc. for shares of the Limited Maturity Bond Portfolio of Neuberger Berman Advisers Management Trust; (c) shares of the Personal Strategy Balanced Portfolio of T. Rowe Price Equity Series, Inc. for shares of the Balanced Portfolio of Neuberger Berman Advisers Management Trust; and (d) shares of the Aggressive Growth Portfolio of Janus Aspen Series for shares of the Growth Portfolio of Neuberger Berman Advisers Management Trust.

7. T. Rowe Price Fixed Income Series, T. Rowe Price Equity Series and Janus Aspen Series are each series type investment companies that are registered under the 1940 Act as open-end management investment companies. T. Rowe Price Fixed Income Series consists of two series, both of which are involved in the substitution. Each series is managed by an Investment Advisory Committee that develops and executes its investment program. T. Rowe Price Personal Strategy Balanced Portfolio is one of four series of the T. Rowe Price Equity Series, which are managed by two committees. The Asset Allocation Committee determines the asset allocation among stock, bonds and money market securities. The Investment Advisory Committee has day-to-day responsibility for management of investments. The Aggressive Growth Portfolio is one of eleven series of the Janus Aspen Series. The portfolio is advised by the Janus Capital Corporation.

8. The substitute portfolios have investment objectives that are similar to or comparable to those of the replaced portfolios. The Prime Reserve Portfolio, like the AMT Liquid Asset Portfolio, is a money market fund, which invests in high quality money market securities and maintains a stable $1.00 per share price. The Limited Term Bond Portfolio, like the AMT Limited Maturity Bond Portfolio, invests mainly in investment grade bonds and other securities from US Government and corporate issuers. The Personal Strategy Balanced Portfolio, like the AMT Balanced Portfolio, invests approximately 60 percent of its assets in growth stocks and the balance in senor fixed income securities. The Janus Aspen Series Aggressive Growth Portfolio, like the AMT Growth Portfolio, invests principally in the stocks of medium-sized companies that are selected for their growth potential.

9. The following table shows that the fees and expenses of the substituted funds are consistently lower than the replaced funds:

Neuberger Berman	*T. Rowe Price Fixed Income Series, Inc.*
AMT Liquid Asset Portfolio	Prime Reserve Portfolio
Management Fee: .65%	Management Fee: .55%
Expenses: .49%	Expenses: *
AMT Limited Maturity Bond Portfolio	Limited-Term Bond Portfolio
Management Fee: .65%	Management Fee: .70%
Expenses: .11%	Expenses: *
	T. Rowe Price Equity Series, Inc.
AMT Balanced Portfolio	Personal Strategy Balanced Portfolio
Management Fee: .85%	Management Fee: .90%
Expenses: .18%	Expenses: *
	Janus Aspen Series
AMT Growth Portfolio	Aggressive Growth Portfolio
Management Fee: .83%	Management Fee: .72%
Expenses: .09%	Expenses: .03%

* T. Rowe Price structures its management fee to include all expenses related to the portfolio.

10. The following table shows that, with one exception, the average annual returns of the substituted funds are higher than the replaced funds:

Neuberger Berman		*T. Rowe Price Fixed Income, Inc.*	
AMT Liquid Assets		Prime Reserve	
1996	3.3%	1996	N/A
1997	3.5%	1997	5.33%
1998	3.4%	1998	5.29%
AMT Limited Maturity Bond		Limited-Term Bond	
1996	3.1%	1996	3.26%
1997	5.5%	1997	6.74%
1998	3.1%	1998	7.28%
		T. Rowe Price Equity Series, Inc.	
AMT Balanced		Personal Strategy Balanced	
1996	5.6%	1996	14.20%
1997	18.0%	1997	18.04%
1998	10.9%	1998	14.32%
		Janus Aspen Fund	
AMT Growth		Aggressive Growth	
1996	7.8%	1996	8.0%
1997	27.5%	1997	12.7%
1998	14.2%	1998	34.3%

11. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in the Accounts. The substitutions will be effected by redeeming shares of the replaced portfolios on the date of substitution at net asset value and using the proceeds to purchase shares of the substitute portfolios at net asset value on the same date. At all times all

Contract values will remain unchanged and fully invested. Contract owners will not incur any fees or charges as a result of the proposed substitutions nor will their rights under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, brokerage, accounting and other fees and expenses, will be paid by the Companies. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

12. By supplements to the prospectuses for the Contracts and Accounts, all owners of Contracts have been notified of the Companies' intention to take the necessary actions, including seeking the order requested by the Application, to carry out the proposed substitutions. The supplements inform Contract owners that following the substitution, for a period of 30 days, the Life Companies will permit transfers from any subaccounts to any other subaccount without any limitation or charge being imposed and without the transfer counting against the number of transfers permitted each Contract year.

13. Additionally, within 5 days after the proposed substitutions are completed, all Contract owners will be sent a written notice informing them that the substitutions were completed and reiterating their right to make transfers to any other subaccount for a period of 30 days from the date of the notice without any limitation or charge being imposed and without the transfer counting against the number of transfers permitted each year. The Companies will include in such mailing the supplements to the prospectuses of the Accounts which describe the substitutions.

14. The Companies will provide Contract owners with copies of the substitute portfolios' prospectuses prior to the substitution or with the confirmation of the substitution.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the proposed substitutions. Section 26(b) provides, in pertinent part, that "it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the commission shall have approved such substitution." Section 26(b) also provides that the Commission will approve the substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants asset that the purposes, terms and conditions of the proposed substitutions are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that the section is designed to prevent. Applicants further assert that the proposed substitutions will not result in the type of costly forced redemption that Section 26(b) was intended to guard against.

3. Applicants maintain that each of the substitute portfolios is a suitable and appropriate investment vehicle for Contract owners. Each of the substitute portfolios has a similar or comparable investment objective as the portfolio it is replacing.

4. The average annual returns of the substitute portfolios for the past three years, with one exception, have exceeded the average annual returns of the replaced portfolios. The investment management and administrative fees and related expenses charged to the Accounts by the substitute portfolios are less than those fees and expenses charged to the Accounts by the replaced portfolios. Applicants, therefore, assert that the substitute portfolios will provide Contract owners with more favorable investment results than would be the case if the proposed substitutions do not take place.

5. Applicants assert that the proposed substitutions meet the standards that the Commission and its staff have applied to substitutions that have been approved in the past in that: (a) the investment objectives of the substitute portfolios are similar to or comparable to those of the replaced portfolios; (b) the substitutions, in all cases, will be effected at the net asset value of the respective shares in conformity with Section 22(c) of the Act and Rule 22c–1 thereunder, without imposition of any transfer or similar charge; (c) the Companies have undertaken to assume the expenses and transaction costs, including among others, legal, brokerage and accounting fees and any other expenses, relating to the substitutions; (d) the substitutions will in no way alter the insurance benefits to Contract owners or the contractual obligations of the Life Companies; (e) the substitutions will in no way alter tax benefits to Contract owners; and (f) Contract owners may choose to simply withdraw amounts credited to them following the substitutions under the conditions that currently exist without incurring any charges (other then applicable withdrawal charges).

16. Applicants assert that the transactions are consistent with the policies of the portfolios as recited in the current registration statements and reports filed under the 1940 Act; and that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27885 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unistar Financial Service Corp., Common Stock, $.01 Par Value per Share) File No. 1–14975

October 20, 1999.

Unistar Financial Service Corp., a Delaware corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

In its application to the Commission, the Company has stated that it does not believe it meets the requirements for continued listing on the Exchange. On August 24, 1999, representatives of the Amex advised the Company that, in reviewing the Company's eligibility for continued listing, the Amex was considering delisting the Security. The Exchange cited the following concerns to the Company:

(a) Whether the transactions through which the Company acquired U.S. Fidelity Holding Corp. involved related parties and, if so, whether those relationships were adequately disclosed;

(b) Whether the Company had appropriately valued a "customer List" which was its principal asset and which it carried at a value of approximately $86 million;

(c) Whether disclosure related to other transactions the Company has entered into, including disclosure and valuation of a reinsurance license, was complete and accurate; and

(d) Whether ownership interests and transactions in the common stock of the Company have been accurately disclosed.

In light of these concerns raised by the Amex, the Company has stated in its application to the Commission that it has determined it does not meet the requirements for continued listing on the Exchange. The Company has further stated in its application that it believes that these matters should be resolved by withdrawal of the Company's Security from listing on the Exchange.

Section 1011 of the American Stock Exchange Company Guide states:

> In appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a delisting application, provided that it states in its application that it is no longer eligible for continued dealings on the Exchange.

The Exchange, by letter dated October 5, 1999, has advised the Company that, based on the provisions of Section 1011 quoted above, it has determined not to interpose an objection to the Company's filing of its application with the Commission to withdraw the Security from listing and registration on the Exchange.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolution approved by its Board of Directors, effective September 21, 1999, authorizing the withdrawal of the security from listing on the Amex.

Any interested person may, on or before November 10, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

secretary.

[FR Doc. 99–27884 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42029]

Order Directing Options Exchanges To Submit an Inter-Market Linkage Plan Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934

October 19, 1999.

Notice is hereby given that pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act"),[1] the Securities and Exchange Commission ("SEC" or "Commission") orders the American Stock Exchange LLC ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Exchange Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX"), as well as requests the International Securities Exchange ("ISE")[2] (collectively, the "Options Exchanges"), to act jointly in discussing, developing, and submitting for Commission approval an inter-market linkage plan for multiply-traded options ("Linkage Plan"). The Commission further directs the Options Exchanges to submit for Commission approval a Linkage Plan no later than 90 days after the issuance of this Order.

I. Background

In 1975, Congress directed the Commission to oversee the development of a national market system.[3] At the time, the trading of standardized options was relatively new.[4] As a result, the Commission deferred applying to the options markets many of the national market system initiatives that applied to the equity markets to give options trading an opportunity to develop. Nevertheless, since the establishment of the options exchanges, the Commission has repeatedly called for market integration facilities for the options markets.[5] In 1980, the Commission ended a voluntary moratorium on expansion of the standardized options markets. The Commission deferred the general expansion of multiple trading to afford the options exchanges "an opportunity to consider whether, and to what extent, the development of market integration facilities would minimie concerns regarding market fragmentation and maximize competitive opportunities in the options markets."[6]

In 1989, the Commission adopted Exchange Act Rule 19c–5, which generally prohibits any exchange from adopting rules limiting its ability to list any stock option class because that option class is listed on another exchange.[7] In proposing Rule 19c–5, the Commission acknowledged that market integration facilities were unlikely to be built voluntarily if they were a prerequisite to multiple trading.[8] In 1990, then Chairman Breeden requested that the options exchanges develop an inter-market linkage plan.[9] The exchanges submitted proposals for the development of a linkage. However, unlike the equity markets,[10] the options exchanges never adopted an inter-market linkage plan.[11]

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[1] Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive, to facilitate the establishment of a national market system, by rule or order, "to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof."

[2] The ISE has filed an application with the Commission to register as a national securities exchange. *See* Securities Exchange Act Release No. 41439 (May 24, 1999) 64 FR 29367 (June 1, 1999).

[3] Pub. L. 49–29 Stat. 97 (1975).

[4] The trading of standardized options on securities exchanges began in 1973, with the organization of CBOE as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973) 1 S.E.C. Doc. 11 (February 13, 1973). Subsequently, the Commission approved options pilot programs at AMEX, PHLX, PCX, and the Midwest Stock Exchange ("MSE"). The New York Stock Exchange ("NYSE") began trading options in 1985. *See* Securities Exchange Act Release No. 11144 (December 19, 1974) 40 FR 3258 (January 20, 1975); Securities Exchange Act Release No. 11423 (May 15, 1975) 6 S.E.C. Doc. 894 (May 28, 1975); Securities Exchange Act Release No. 12283 (March 30, 1976) 41 FR 14454 (April 5, 1976); Securities Exchange Act Release No. 13045 (December 8, 1976) 41 FR 54783 (December 15, 1976); and Securities Exchange Act Release No. 21759 (February 14, 1985) 50 FR 7250 (February 21, 1985). The MSE's options program was merged into the CBOE's program in 1979. The NYSE sold its options business to CBOE in 1997. Currently, AMEX, CBOE, PCX, and PHLX are the only national exchanges that trade standardized options.

[5] *See* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978) (examining the major issues of market structure in standardized options markets, including multiple trading); Securities Exchange Act Release No. 16701 (March 26, 1980) 45 FR 21426 (April 1, 1980) (deferring expansion of multiple trading to afford the options exchanges an opportunity to consider the development of market integration facilities); Securities Exchange Act Release No. 22026 (May 8, 1985) 50 FR 20310 (May 15, 1985) (urging options market participants to consider the development of market integration facilities); Directorate of Economic and Policy Analysis, "The Effects of Multiple Trading on the Market for OTC Options" (November 1986); Office of the Chief Economist, "Potential Competition and Actual Competition in the Options Market" (November 1986); Securities Exchange Act Release No. 26871 (May 26, 1989) 54 FR 24058 (June 5, 1989) (requesting comment on three measures, including an inter-market linkage).

[6] *See* Securities Exchange Act Release No. 16701 (March 26, 1980) 45 FR 21426 (April 1, 1980). In 1997, the Commission had requested that the options exchanges refrain from listing any options classes beyond those already listed as of July 15, 1997, because of concerns over the rapid growth in listed options trading and possible trading and sales practice abuses.

[7] *See* Securities Exchange Act Release No. 26870 (May 26, 1989) 54 FR 23963 (June 5, 1989).

Recent increases in the multiple listing of options previously listed on a single exchange have heightened the need for an inter-market linkage. The registered options exchanges have been given ample opportunity to create a linkage but have not done so in the absence of a Commission directive. Ultimately, the Commission has concluded that the options markets have developed sufficiently to make market integration not only possible but also critical to promoting vigorous competition among the option exchanges. Therefore, the Commission is now directing the Options Exchanges to develop an acceptable Linkage Plan to be submitted to the Commission for its consideration.

II. Discussion

Section 11A(a)(2) of the Act[12] directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Act to facilitate the establishment of a national market system for securities. In exercising its authority to facilitate the establishment of a national market system, the Commission must protect the public interest in maintaining fair and orderly markets in the face of new technology and other significant market developments.[13] As part of this authority, Congress gave the Commission the ability to authorize or require by order the self-regulatory organizations "to act jointly * * * in planning * * * operating, or regulating a national market system."[14] This authority is intended, among other things, to enable the Commission to require joint activity that otherwise might be asserted to have a negative impact on competition, where the activity serves the public interest and the interests of investors.

The Commission believes that establishing a linkage among options markets will benefit investors by increasing competition among markets (and market participants) to provide the best execution of customer orders. The Commission considers ensuring competition among options market and the best execution of customer options orders to be in the public interest and for the benefit of investors. The Commission further believes that an inter-market linkage is essential to achieving these goals. In the absence of a linkage, which includes a prohibition against trade-throughs, the likelihood of inter-market trade-throughs increases. As a result, there is a risk that investors will not receive the best price available. This concern is heightened given the recent increase in multiple listing of the most active options.

The Commission finds that the public interest in maintaining fair and orderly markets is furthered by requiring the Options Exchanges to work jointly in discussing, developing, and implementing a Linkage Plan. Accordingly, the Commission has determined to order the Options Exchanges to cooperate with each other and to conduct joint discussions and to take such joint action as is necessary to develop and implement a single Linkage Plan to permit the efficient transmission of orders among the various Options Exchanges on a nondiscriminatory basis. The Commission believes that a linkage of all the Options Exchanges that permits orders to be transmitted between Options Exchanges on a nondiscriminatory basis is necessary to increase the opportunities for brokers to secure the best execution of their customers' orders, to ensure effective competition among the Options Exchanges, and to further facilitate the establishment of a national market system as directed by Congress in Section 11A of the Act.[15]

The Commission further believes that it is in the best interest of the Options Exchanges to develop and implement a Linkage Plan, which can be integrated with the Options Exchanges' existing technology at the lowest possible cost, that is acceptable to all of the Options Exchanges. As a result, the Commission is not mandating the details of a linkage at this time. At the same time, however, the Commission believes that to operate effectively any Linkage Plan submitted by the Options Exchanges for approval by the Commission must contain the following elements:

- *Uniform Trade-Through Rules*

Uniform trade-through rules are a necessary part of a national market system. Trade-through rules should generally prohibit a trade from being executed on one options market in a multiply-listed option at a price inferior to the price quoted on another options market. The absence of clear trade-through rules removes one incentive that firms would otherwise have to seek out better prices at away markets. In addition, as part of the implementation of uniform trade-through rules, the Options Exchanges should submit to the Commission proposed rule changes repealing existing trade-or-fade rules that become unnecessary with the adoption of trade-through rules.[16]

- *Expansion of Public Customer Definition*

The Commission believes that the firm quote requirement of the four currently-registered options exchanges[17] should be expanded to include agency orders presented by competing exchanges.[18] Therefore, an agency order received by one exchange that is routed to another exchange displaying the best bid or offer would receive the same protection as customer orders that originate on the exchange showing the best bid or offer.

Although the Commission is not mandating that the Options Exchanges include a uniform firm quote rule requirement as part of the Linkage Plan, the Commission anticipates that the Options Exchanges will address this issue in the proposal they submit to the Commission for approval. The Commission also anticipates that the options Exchanges will address the issue of fees charged by exchanges that receive orders through the proposed linkage.

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act,[19] that the AMEX, CBOE, PCX, and PHLX act jointly with ISE in discussing, developing, and submitting for Commission approval a Linkage Plan no later than 90 days after the issuance of this Order.[20]

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[8] *See* Securities Exchange Act Release No. 24613 (June 18, 1987) 52 FR 23849 (June 25, 1987).

[9] *See* Letter from Chairman Breeden to the Registered Options Exchanges dated January 9, 1990.

[10] *See* Securities Exchange Act Release No. 14661 (April 14, 1978) (issuing a provisional order authorizing ITS).

[11] *See* Securities Exchange Act Release No. 30187 (January 14, 1992) 57 FR 2612 (January 22, 1992) (soliciting comments on an inter-market linkage plan submitted by four out of five options exchanges). The exchanges never came to an agreement on an acceptable proposal and the Commission never approved it.

[12] 15 U.S.C. 78K–1(a)(2).

[13] *See generally*, Section 11A(a)(1)(B) of the Act, 15 U.S.C. 78k–1(a)(1)(B), and Section 11A(a)(1)(C) of the Act, 15 U.S.C 78k–1(a)(1)(C).

[14] Section 11A(a)(3)(B) of the Act, U.S.C. 78k–1(a)(3)(B).

[15] 15 U.S.C. 78k–1.

[16] *See* AMEX Rule 958A, Commentary .01; CBOE Rule 8.51(b); PCX Rule 6.37(d); PHLX Rule 1015(b); and proposed ISE Rule 804(d)(2).

[17] *See* AMEX Rule 958A; CBOE Rule 8.51(a); PCX Rule 6.86(a); and PHLX Rule 1015(a). This change should be reflected in ISE's rules when approved by the Commission.

[18] Accordingly, the Options Exchanges should submit to the Commission proposed rule changes to expand the public customer definition together with any Linkage Plan.

[19] 15 U.S.C. 78k–1(a)(3)(B).

This Order will be effective until such time as the options exchanges submit a Linkage Plan to the Commission for approval.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27881 Filed 10–25–99; 8:45 am]

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[20] Although Commission staff may be consulted in discussing the proposed Linkage Plan, staff presence at joint discussions is not required by this Order. In issuing this Order, the Commission does not address: (a) any joint or other conduct that occurred prior to the issuance of this Order, and (b) any joint or other conduct occurring after the date of this Order which is not ordered or requested by this Order.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42034; File No. SR–BSE–99–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Amending its Revenue Sharing Program

October 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Transaction Fee Schedule to revise the monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible member firms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Revenue Sharing Program highlighted on the BSE's Transaction Fee Schedule. Currently, the minimum amount of monthly transaction related revenue that the BSE must generate before it shares excess revenue with eligible member firms is $1,300,000.[3] The BSE proposes to revise this amount to $1,400,000 to meet the budgeted costs of operating the Exchange in the upcoming fiscal year.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change establishes or changes a due, fee, or other charge imposed by the BSE and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR–BSE–99–14 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–27891 Filed 10–25–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Eligible member firms receive excess revenue in the form of a credit that is applied toward each firm's total monthly transaction fees. *See* Securities Exchange Act Release No. 40591 (Oct. 22, 1998), 63 FR 58078 (Oct. 29, 1998). A member firm that generates at least $50,000 in BSE automated transaction fees is eligible to share in excess revenue. *See* Securities Exchange Act Release No. 41809 (Aug. 30, 1999), 64 FR 48887 (Sept. 8, 1999).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, Exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b–10 and 11Ac1–3 under the Act. 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] In reviewing this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42032; File No. SR–NASD–99–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Establishing Execution Fees for the Nasdaq Application of the OptiMark System

October 19, 1999.

Purusant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 1999, the National Association of Securities Dealers, Inc., ("NASD" or "Association") through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of The Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to establish fees for NASD members that obtain executions through, or sponsor customers that use, the Nasdaq Application of the OptiMark System ("Nasdaq Application"). The text of the proposed rule change is available at the NASD and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The SEC recently approved a proposed rule change filed by the NASD to implement the Nasdaq Application.[3] The Nasdaq Application permits NASD members and their customers to enter orders in Nasdaq stocks into an anonymous matching system that has been designed, developed, and patented by OptiMark Technologies, Inc. ("OptiMark Match") and has been integrated into Nasdaq's facilities in Trumbull, CT.

The Nasdaq Application allows NASD members (and if sponsored by NASD members, customers of such members) to enter trading interests, called profiles, into Nasdaq-operated systems where those profiles are collected and matched periodically by the OptiMark Match. In addition to matching profiles entered directly into the system, the Nasdaq Application incorporates bids and offers in the Nasdaq Quote Montage, creates profiles for such quotes, and includes the quotes in the next match. The OptiMark Match then attempts to match contra interests at the best prices and sizes according to the rules of the match process. If the system finds that profiles have matched, it creates execution reports for such matched interests. When an execution occurs, Nasdaq will charge a fee for such execution.

Nasdaq will charge NASD members that obtain executions through this new service the following fees. First, as a standard fee for all executions of profiles, Nasdaq shall charge a fee of $0.01 per share executed to the NASD member in whose name the profile was entered. Second, for executions that occur when a profile is entered by an NASD member for its own account as principal, the NASD member will be charged a discounted execution charge of $0.005 per share. However, if a profile that would otherwise qualify for a discounted fee receives an execution that results in price improvement of more than the minimum price increment, the execution will be charged the standard rate of $0.01.[4] Finally, Nasdaq has determined not to charge an execution fee with respect to executions that occur against any market maker or ECN quotations as a result of the Nasdaq Application including such quotations as part of the optiMark Match process.[5]

With respect to customers that are sponsored by NASD members and that directly enter profiles into the Nasdaq Application after signing all necessary agreements with Nasdaq, OptiMark, the sponsoring NASD member, and the Designated Clearing Broker, Nasdaq notes that fees for executions of such profiles shall be charged to the NASD member that is the sponsor of such customer. Therefore, Nasdaq will submit an invoice to the NASD member designated as the clearing broker, who will be responsible for paying the fee to Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act[6] in that the proposed fees provide for the equitable allocation of reasonable fees among members.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder in that it constitutes a fee for executions charged to NASD members. At any time within 60 days of the filing of the proposed rule change, the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999).

[4] With respect to the price improvement element of the fee structure, as an incentive to provide liquidity to the system, Nasdaq will temporarily waive the imposition of the price improvement aspect of the fee structure. Thus, even if an execution of a profile obtains price improvement as a result of a match, for the next six months, Nasdaq will not impose the higher execution fee if the NASD member's principal execution otherwise qualifies for the discounted execution rate.

[5] As is currently the case for executions through other Nasdaq facilities, an ECN whose quotation is matched with an Optimark profile may continue to charge a fee to the contra party. Telephone conversation between Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, and Richard Strasser, Assistant Director, Division of Market Regulation, SEC, on October 13, 1999.

[6] 15 U.S.C. 78o–(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[9] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–56 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27887 Filed 10–25–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42036; File No. SR–NASD–99–35]

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Definition of "Person Associated With a Member"

October 19, 1999.

I. Introduction

On August 3, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of "person associated with a member" in the By-Laws of the NASD, NASD Regulation, Inc. ("NASD Regulation"), and The Nasdaq Stock Market, Inc. ("Nasdaq"). Notice of the proposed rule change was published in the **Federal Register** on September 10, 1999.[3] The commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change comprises two amendments to the definition of "person associated with a member" in Article I of the NASD By-Laws and conforming amendments to the NASD Regulation and Nasdaq By-Laws.[4] It also includes a minor textual change to the definition to clarify an ambiguity.

The first amendment expands the definition to apply to certain owners of NASD members ("members") not currently included in its scope, specifically for purposes of NASD Rule 8210, entitled "Provision of Information and Testimony and Inspection and Copying of Books."[5] Currently, the definition of "person associated with a member" includes only owners who are natural persons engaged in the member's investment banking or securities business and who have a direct or indirect "control" relationship with the member.[6] The amendment expands the definition to give the staff authority to require the provision of information and testimony under NASD Rule 8210 from any person—including a natural person or corporate or other entity—who holds a five percent or greater interest in a member firm, regardless of whether they "control" the member firm or are actively engaged in its securities or investment banking business. Such persons are listed in Schedule A of Form BD of a member.

The second proposed provision resolves an anomaly between the current By-Law definition of the term "person associated with a member" and Form U–4, which is the application form for registration that must be signed by prospective registrants. Form U–4 states that by signing the Form, the applicant is subject to the jurisdiction of the NASD and any state in which he is applying for registration. However, the current definition of "associated person" in the By-Laws does not address applicants for registration. The proposed rule change makes the By-Laws consistent with Form U–4 in this respect by including in the definition a person who has applied for registration.

Finally, the word "other" is inserted into subsection 2 of the definition of "person associated with a member" to clarify that the subsection describes only natural persons.

The NASD proposes to make the rule change effective for all members within 45 days after Commission approval. The effective date will be announced at least 15 days in advance in a Notice To Members.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act, and, in particular, the requirements of section 15A[7] of the Act applicable to a registered securities association.[8] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)[9] of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change will promote the objectives of Section 15A(b)(6) of the Act by helping the NASD obtain necessary information to conduct its regulatory

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[9] In reviewing the proposed rule change, the commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41820 (September 1, 1999), 64 FR 49261.

[4] The By-Laws of the NASD, NASD Regulation, and Nasdaq are herein collectively referred to as "By-Laws."

[5] NASD Rule 8210 authorizes the staff of the NASD, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or rules, to require a member or associated person to provide information or testimony. The rule also authorizes the staff to inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding.

[6] The By-Laws do not define the term "control." Form BD defines "control" as the "power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that * * * directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or * * * in the case of a partnership, has the right to receive upon dissolution, or has contributed 25% or more of the capital, is presumed to control that company."

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[7] 15 U.S.C. 78*o*–3.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6)

investigations and proceedings and clarifying its jurisdiction over applicants for registration.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2)[10] of the Act, that the proposed rule change (SR–NASD–99–35) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27889 Filed 10–25–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42033; File No. SR–NYSE–99–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Exchange's Branch Office Application

October 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposal was amended on September 9, 1999,[3] so as to be filed as a "non-controversial" rule change under Rule 19b–4(f)(6).[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule change

The NYSE proposes to revise its Branch Office Application form to require more detailed information relating to the establishment of new branch offices by Exchange members and member organizations and to adopt a new Office Space Sharing form. The test of the proposed rule change is available at the Office of the Secretary, the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. Purpose

The purpose of this proposed rule change is to submit to the Commission the following two forms: the revised Branch Office Application and the new Office Space Sharing form. The Branch Office Application is employed by Exchange members and member organizations seeking Exchange approval of a new branch office in accordance with Exchange Rule 342 ("Offices—Approval, Supervision and Control"). Exchange Rule 342(c) requires that a member or member organization obtain the Exchange's prior written consent for each office established, other than a main office. Exchange Rule 343 ("Offices—Sole Tenancy, Hours, Disply of Membership Certificates") contains criteria under which members or member organizations may share office space with the securities-related individuals and organizations. The NYSE proposes to adopt an Office Space Sharing form, which will be used by members and member organizations seeking to share office space pursuant to NYSE Rule 343.

The Exchange determined to revise its Branch Office Application so that the form will provide more meaningful and detailed information concerning the personnel and activities of a member's or member organization's proposal branch office. Such additional information on the Application will enable the Exchange to make a better-informed decision concerning approval of the location.

Specifically, additional information required by the revised Application includes:

(i) A description of the types of activities to be conducted and the products to be offered at the branch office;

(ii) The estimated number of accounts to be serviced by the office;

(iii) Whether any persons assigned to the office are subject to Statutory Disqualification or have reportable adverse disciplinary histories;

(iv) Whether the office will have independent contractors assigned to it;

(v) Whether the office has been acquired from another broker-dealer or financial institution;

(vi) Where records pertaining to the office are maintained;

(vii) whether any person other than the member organization have a financial interest in the office;

(viii) Whether the broker-dealer and the office's registered representatives have required state registrations; and

(ix) Submission of the social security number and Central Registration Depository ("CRD") number of each registered person to be assigned to the office.

If the office will be shared with another person or organization, an Office Space Sharing form, which addresses compliance with the Exchange's space sharing rule, NYSE Rule 343, will be completed as part of the Branch Office Application.

Generally, NYSE Rule 343 prohibits Exchange members and member organizations from sharing office space with other broker-dealers, investment advisors or any other persons who conduct a securities or commodities business with the public, without prior approval of the Exchange. However, the rule sets forth certain conditions under which Exchange members or member organizations may share office space with securities-related individuals or organizations. If each of the appropriate rule provision's enumerated conditions is met, the Exchange may permit a space-sharing arrangement. The new Office Space Sharing form will serve as an attestation by the member or member organization that the conditions required by NYSE Rule 343 have been met. Exchange approval of the branch office location will encompass, where applicable, approval of the space sharing arrangement; there will not be a separate approval of the space sharing arrangement.

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated September 8, 1999 ("Amendment No. 1"). The NYSE originally filed the proposed rule change under Section 19(b)(3)(A)(iii) of the Act. 15 U.S.C. 78s(b)(3)(A)(iii). Amendment No. 1 also includes a rearranged version of the revised Branch Office Application Form. Additionally, in Amendment No. 1, the NYSE further clarifies the intent of the proposal and describes the implementation plan for the electronic filing program.

[4] 17 CFR 240.19b–4(f)(6).

The Exchange intends that, commencing in or about the second calendar quarter of 2000, the filing and processing of all Branch Office Applications will be performed electronically by all member firms that have Internet access via a software package that the Exchange will provide free of charge to all member organizations.[5] The NYSE has represented that, during December 1999, it will issue an Information Memorandum informing all members and member organizations that, as of February 1, 2000, all new branch office applications must be submitted on the revised form.[6] Electronic filings will be made by firms who have had the appropriate software installed; all others will manually file the revised form. By June 30, 2000, all members and member organizations with Internet access will have the software installed to enable electronic filing.

As a security measure, member organizations will be required to identify to the Exchange those persons who will become registered users and who will have access to the program and the ability to transmit information to the Exchange. Once submitted to the Exchange, the application and its current status may be viewed at any time by the authorized member organization personnel through the software program. The Exchange has been testing this electronic program since April 1999. This application is Internet-based and will be the sole method for submission of Branch Office Applications to the Exchange, although member organizations that do not have Internet access may submit the applications in hard copy.

The Exchange believes that revisions to the Branch Office Application will enhance the utility of the form in connection with the Exchange's regulatory oversight responsibilities by providing more detailed reporting and substantive disclosures. The revised form will also aid in monitoring for compliance with NYSE Rule 342 which mandates that each office, department and business activity of the member organization be under the supervision and control of the member organization establishing it and of the personnel delegated such authority and responsibility.

2. Statutory Basis

The Exchange believes the proposed rule change in consistent with Section 6(b)(5) of the Act[7] which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that it will enhance the process of Exchange review and approval of new branch offices established by Exchange members and member organizations. Further, the revised Branch Office Application and new Office Space Sharing forms will provide the Exchange with a centralized and efficient means of maintaining information concerning member organizations, their branch offices, and associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,[8] and Rule 19b–4(f)(6) thereunder,[9] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) the NYSE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–23 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27890 Filed 10–25–99; 8:45 am]

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[5] In Amendment No. 1, the Exchange explains that implementation will be gradual instead of immediate implementation by all member organizations because the Exchange Technology staff and all applicable member organization staff will be focusing efforts and resources on overall Y2K compliance during the last quarter of 1999. Installation of the software will be prioritized by firms who are the most active in submitting new branch office applications. *See* Amendment No. 1, *supra* note 3.

[6] *Id.*

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)f.

[10] Although originally filed under Section 19(b)(3)(A)(iii) on June 8, 1999, the Exchange refiled the proposed rule change under Rule 19b–4(f)(6) on September 9, 1999, at the suggestion of the Commission. *See* Amendment No. 1, *supra* note 3. Because the Commission had the proposed rule filing for more than five business days, because Amendment No. 1 did not substantively alter the proposed rule change already before the Commission, and because the Commission instructed the Exchange to refile the proposed rule change under Rule 19b–4(f)(6), the Commission waives the five-day written notice requirement for a proposed rule change under Rule 19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42040; File No. SR–NYSE–99–26]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change Amending Cancellation Procedures for MOC/LOC Orders

October 20, 1999.

I. Introduction

On June 14, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4,[2] a proposed rule change to amend market-on-close ("MOC") and limit-on-close ("LOC") order cancellation procedures.

The proposed rule change was published for comment in the **Federal Register** on August 18, 1999.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange utilizes special order cancellation procedures for MOC/LOC orders. Current procedures prohibit the cancellation of MOC/LOC orders after 3:40 p.m., except: (1) To correct a legitimate error, (2) to comply with the provisions of Exchange Rule 80A[4] or, (3) when a regulatory trading halt is in effect at or after 3:40 p.m.[5]

The proposed rule change would prohibit the cancellation or reduction in size of MOC/LOC orders after 3:50 p.m. for *any* reason. If Rule 80A goes into effect *before* 3:50 p.m., then members and member organizations must cancel MOC index arbitrage orders that are related to a derivative index product that is not expiring and that do not meet the tick restrictions no later than 3:50 p.m.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[7] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange proposes to amend its MOC/LOC order cancellation procedures by prohibiting any cancellations after 3:50 p.m. The Commission finds that prohibiting cancellations after 3:50 p.m. may increase the effectiveness of the MOC/LOC publication procedures thereby reducing volatility at the close. Currently, a market participant is permitted to cancel a MOC/LOC order until the market closes if Rule 80A has been triggered or if a legitimate error has been made or when a regulatory trading halt is in effect after 3:40 p.m. Under this current procedure, a specialist with a large order imbalance who may have been attempting to find contra side interest may have an imbalance change dramatically with very little time to arrange an orderly close. Under the proposed rule change, no MOC/LOC orders could be cancelled after 3:50 p.m. under any circumstances. As a result, specialists should be able to rely on their 3:50 p.m. imbalance figure because after that time, cancellations will no longer be permitted to alter the existing order imbalance. This proposal should allow specialists to effectively close a stock in an orderly fashion because they will no longer have to process cancellations after 3:50 p.m.

The Commission further finds that market participants should have sufficient time to cancel any MOC/LOC orders that may have been entered as the result of a legitimate error by 3:50 p.m. In addition, in the event that Rule 80A has been triggered, market participants should have sufficient time to cancel orders that do not meet the Rule's tick restrictions by 3:50 p.m. In both of these instances, market participants have the responsibility to make sure that the orders they have entered are accurate by this time.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–99–26) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27893 Filed 10–25–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41726 (August 11, 1999), 64 FR 44985.

[4] NYSE Rule 80A requires index arbitrage orders in any stock in the Standard & Poor's 500 Stock Price Index entered on the Exchange to be stabilizing (*i.e.*, the order must be marked either buy minus or sell plus) when the DOW Jones Industrial Average ("DJIA") advances or declines from its closing value on the previous trading day by 2% of the DJIA average closing value for the last month of the previous calendar quarter. Current procedures require that, when Rule 80A goes into effect, a MOC index arbitrage order without the appropriate tick restriction must be cancelled unless it is related to an expiring derivative index product.

[5] *See* Securities Exchange Act Release No. 41497 (June 9, 1999), 64 FR 32595 (June 17, 1999). If a regulatory trading halt is in effect at or after 3:40 p.m., MOC/LOC orders can be cancelled until 3:50 p.m. or the time the stock reopens, whichever is first.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5)

[8] 15 U.s.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42035; File SR–PCX–99–13]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Options Trading Rules for Market Makers and Lead Market Makers

October 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed with the Commission on June 15, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Michael A. Walinskas, Associate Director, Division of Market Regulation ("Division"), SEC from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, dated June 8, 1999. In Amendment No. 1, the PCX expanded the "proposal" section of the filing and made several technical corrections to the text of the proposed rule change. The additions are incorporated into this notice.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify its rules pertaining to Market Makers and Lead Market Makers on the trading floor by clarifying existing provisions, eliminating superfluous provisions, incorporating current policies and procedures and otherwise updating its current Market Maker and Lead Market Maker rules. The text of the proposed rule change is available at the Office of the PCX, the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make the following changes to the text of PCX Rule 6 ("Options Trading—Rules Principally Applicable to Trading of Options Contracts") with regard to Market Makers and Lead Market Makers ("LMMS"):

The PCX proposes to change the registration procedures for Market Makers under PCX Rule 6.33. Under the rule change, the application of Market Makers for registration will be approved when the applicant passes a Market Maker examination. The Exchange proposes to remove the review process whereby the Options Floor Trading Committee ("OFTC") must review and approve applications.[4] The Exchange believes that the OFTC review and approval of each Market Maker is unnecessary because each Market Maker's name is routinely posted and if there are any problems with a particular Market Maker, they can be brought to the attention of the Exchange before the Market Maker's application for membership is approved. In addition, the rule change will provide that an applicant Market Maker's name be posted on the bulletin board of the Floor of the Exchange for ten calendar days (rather than three business days, as currently stated).[5] The Exchange proposes these changes to expedite the registration process and to make the rules reflect current practices on the PCX.

The PCX also proposes to change PCX Rules 6.35 and 6.38(a) regarding the procedures for selection of Market Maker Primary Appointment Zones, which is akin to a post, so that in all cases, Market Makers will be required to select a primary zone before the expiration of a 60-day grace period.[6] The proposed change will allow Market Makers to select a Primary Appointment Zone during their first 60 days of trading to allow them to participate in the Exchange's Automatic Execution System ("Auto-Ex").[7] The proposed change will also delete PCX Rule 6.35, Commentary .02, which provides that the PCX Board of Governors may act to make all initial Primary Appointments. The Exchange proposes this change to simplify the process for Primary Appointment Zone selection and approval. Finally, the Exchange proposes to make PCX Rule 6.38 consistent with the changes to PCX Rule 6.35 by providing that certain Members "must obtain" a Primary Appointment Zone instead of "shall be given" a Primary Appointment Zone as currently provided.

To clarify PCX Rule 6.36 on the requirements pertaining to letters of guarantee and letters of authorization, the PCX proposes to add a provision (d) on FLEX Options, prohibiting Market Makers from transacting in FLEX options unless one or more letters of guarantee have been issued on behalf of the Market Maker. The Exchange also proposes to incorporate OFPA B–4, Subject: Market Maker Trading on the PSE Equity Floors into PCX Rule 6.36, Commentary .02. The Exchange proposes to remove the specific requirements from the provision pertaining to the form of a letter of guarantee and replace the requirements with a general statement whereby a letter of guarantee must be "in a form approved by the Exchange." The Exchange proposes to make this change to simplify and ease the PCX requirements on letters of guarantee.

To simplify PCX Rule 6.37, the PCX proposes the following changes. The PCX proposes to incorporate PCX Rule 6.37, Commentary .05, regarding a Market Maker's obligation to trade at least one contract at the quoted price, into PCX Rule 6.37(f). To clarify this obligation, the Exchange proposes to require that a Market Maker who makes a one-sided market will be obligated to trade at least one contract at the "implied" price, (*e.g.,* if a Market Maker provides a bid but not an offer, the Market Maker's offering price will be implied by that bid price plus the maximum bid/ask spread differential specified in PCX Rule 6.37(b)(1)). The Exchange also proposes to add a provision to proposed new Rule 6.37(f) stating that if a Market Maker at a trading post fails to provide a bid or offer after having a reasonable opportunity to do so, the Market Maker will be obligated to trade one contact at the best price quoted in the crowd, or if there are no prices quoted, at that Market Maker's disseminated price. Finally, the PCX proposes to eliminate the provision in PCX Rule 6.37(c)(1) that states that Market Makers should not "congregate in a particular class of option contract."[8]

The PCX also proposes to amend PCX Ruled 6.37, Commentary .08 (new Rule 6.37, Commentary .05), to specify the circumstances under which Market Makers, while on a leave of absence, may make opening transactions in Exchange-listed options for their Market Maker accounts. Specifically, the only circumstances permitted will be those specified under current PCX Rule 6.32, Commentary .03, which states in part that "limit orders to buy and sell in the same series, discretionary orders, and market not-held orders may not be handled on a GTC basis without being treated as orders entered from off the floor." Accordingly, the Exchange proposes to change the current reference in PCX Rule 6.37, Commentary, .08, Subsection (3) from PCX Rule 6.032, Commentary .01 to PCX Rule 6.32, Commentary .03.

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[4] Currently, PCX Rule 6.33 requires the OFTC to review applications and consider an applicant's ability, as demonstrated by his passing a Market Maker examination, financial resources and such other factors as the OFTC deems appropriate.

[5] In the future, the Exchange will propose similar rule changes to the procedure for registration of floor brokers under PCX Rule 6.44.

[6] Currently, PCX Rule 6.35 requires the Options Appointment Committee to assign Market Makers to a Primary Appointment Zone, however, it does not expressly require that Market Makers apply for such appointments. PCX Rule 6.35 states that a Market Maker's refusal to accept a Primary Appointment Zone may be deemed a sufficient cause for termination or suspension of a Market Maker's registration.

[7] Under Rule 6.87, Market Makers without a primary zone are not permitted to log on to the Auto-Ex system. Additionally, in the future, the Exchange proposes to modify its Minor Rule Plan and Recommended Fine Schedule to provide that Market Makers who fail to select a Primary Appointment Zone prior to the expiration of their 60-day grace periods, or thereafter, during any one-month period, will be subject to fines of $500, $1,000 and $1,500 for first-, second-, and third-time violations, respectively. *See* PCX Rules 10.13(h) and (i). The Exchange believes such sanctions to be more appropriate than termination or suspension of a Market Maker's registration, as currently provided.

[8] PCX contends that this provision, which was intended to promote trading in thinly traded securities, is not longer needed because there is sufficient liquidity across the trading floor and PCX rules on primary appointment zones (PCX Rule 6.35) and LMMs (PCX Rule 6.82) serve to assure that there is adequate coverage by Market Makers in all areas of the trading floor.

The PCX proposes to change its rule on LMMs (PCX Rule 6.83) by replacing references to "alternate LMMs" and "substitute LMMs" with references to "interim LMMs" and "back-up LMMs," respectively.

The Exchange also proposes to make various housekeeping, editorial and structural changes to the current rules on Market Makers and LMMs. The Exchange proposes to create Commentary .01 to PCX Rule 6.34 from the text of OFPA A–5, Subject: Prohibitions Against Use of the Book by Floor Brokers in Closing Out Errors, which states that "[s]ince bids, offers and transactions make to close out a position carried for a Floor Broker as a result of a brokerage error are clearly for the proprietary account of a member, they should not receive the priority treatment accorded to public customer orders held in the Book. Accordingly, the placing of such orders in the Book is deemed a violation of PCX Rule 6.52(a)." The Exchange proposes to delete the portion of text from OFPA A–5 which forbids any member, while on the Floor, from initiating a transaction in which the member has an interest, unless the member is acting as a Market Maker, or unless the member is liquidating a position taken into his own account as a result of an error made while attempting to execute an order for a customer because the Exchange believes this language is similar to the text of PCX Rule 6.34. The Exchange also proposes to incorporate PCX Rule 6.37, Commentary .07 into Rule 6.37(e) as "In Person Trading Requirements," and OFPA G–11, Subject: Marking, into Rule 6.37, Commentary .07. The Exchange proposes to make these changes to centralize rules applicable to Market Makers.

The Exchange also proposes to make the following minor changes to PCX Rule 6 pertaining to Market Makers. In PCX Rule 6.32, Commentary .04, the Exchange proposes to qualify commentary .04 by adding the following language: "[w]ith regard to orders of Market Makers entered from off the floor that are not entitled to special margin treatment pursuant to Commentaries .02 or .03." The Exchange proposes this language to clarify the commentary with respect to identification of orders.

In PCX Rule 6.35(f) the Exchange proposes to change the reference that currently reads "Rule 6.35. Com. .03" to "Commentary .03" to simplify and clarify that the Exchange is proposing to move commentary .03 or PCX rule 6.35 into the text of PCX rule 6.35.

The Exchange proposes to require, pursuant to PCX Rule 6.38(d), that a member who wishes to act as a Market Maker and Floor Broker apply for and receive approval "from the Exchange" and not "through the Option Appointment Committee."[9] The Exchange proposes this rule change to reflect the current practice for a Member applying for and receiving approval to act as Market Maker and Floor Broker.

Finally, in PCX Rule 6.84 (d) and (g), the Exchange proposes to change the reference from "Member Services Department" to "Exchange" to accurately reflect the practice of applying for joint accounts pursuant to PCX Rule 6.84(d), in which each participant in a joint account must file with the Exchange and thereafter keep current a completed application on a form prescribed by the Exchange. The Exchange also proposes to clarify, under PCX Rule 6.84(h) that a Market Maker trading for a joint account must have a primary appointment, but the joint account itself is not required to have a primary appointment.[10] The Exchange proposes this rule change to clarify the responsibilities of Market Makers with respect to joint accounts.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act[11] because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest. The Exchange also believes the proposal is consistent with Section 6(b)(6) of the Act[12] because it is designed to provide that the PCX members will be cross-only disciplined for violations of the PCX Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–13 and should be submitted by November 16, 1999.

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[9] "From the Exchange" means from the Exchange's Membership Department. Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and Heather Trigger, Attorney, Division, SEC, on August 25, 1999.

[10] PCX Rule 6.84(g) currently provides that joint accounts shall not be permitted to enter: (1) opening transactions from off the Floor for option contracts listed on the Exchange; (2) any transactions for option contracts not listed on the Exchange; and (3) transactions for any other security. This prohibition shall not apply to transactions entered for securities underlying Exchange option contracts in the joint account.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27886 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–42041; File No. SR–PCX–99–31]

Self-Regulatory Organization; Noticed of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Cross-Only Contingency Orders

October 20, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. the Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its rules to permit Floor Brokers to represent orders with a "cross-only" contingency. The text of the proposed rule change is set forth below. Addition are italicized.

* * * * *

PACIFIC EXCHANGE, INC. RULES TRADING PRACTICES AND PROCEDURES

¶4987 "Crossing" Orders

Rule 6.47

(a)–(c)—No change.

Cross-Only Contingency Orders

(d) A Floor Broker who holds cross-only orders a defined in rule 6.62(c)(3) may cross those orders by proceeding in the following manner: Prior to representing the orders in the trading crowd, the floor Broker must make the crowd award of the total number of contracts the Floor Brokers wishes to cross, the order are to executed on a cross-only basis, the price at which the Floor Broker wishes to cross the orders, and the name of the clearing member or members through whom the transaction will clear. The price must be or within the bid or offer.

* * * * *

¶5061 Certain Types of Orders Defined

Rule 6.62

(a)–(b)–No change.

(c) Contingency Orders.—No change.

(12)–(2)—No change.

(3) *Cross-Only Orders. A cross-only order is a contingency order that is to be executed in whole in equity options only, the amount determined by the Member Organization Placing the order, in a cross transaction with an order for another customer or the Member Organization itself. If the trading crowd does not allow the cross to take place, the Member Organization placing the order may withdraw it from consideration by the trading crowd.*

* * * * *

¶5127 Manner of Bidding and Offering

Rule 6.73

No change.

Commentary:

.01 Notwithstanding the above provision that all bids and offers must be general ones, a Floor Broker may represent orders with a cross-only contingency as defined in Rule 6.62.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX proposes to amend certain Exchange Rules to permit a Member Organization to enter and a Floor Broker to represent orders with a cross-only contingency. The purpose of the proposed rule change is to allow a Floor Broker to disclose to the trading crowd, prior to execution, that the Floor Broker wishes to cross two orders for a certain number of contracts, at a certain price within or at the quoted bid or offer. The Floor Broker must also disclose, prior to execution, the name of the clearing member or members through whom the transaction will clear. If the crowd does not permit the Floor Broker to do this, then the cross-only contingency provides that the Member Organization placing the orders may withdraw the orders, as if they never existed in the trading crowd. The two orders the Floor Broker holds to cross under this contingency may be two customer orders or orders between a customer and the firm itself. There are no restrictions on who the customer may be, *e.g.*, a customer could be a Market Maker, broker-dealer, or a public customer. The cross would be effected at or between the bid and offer. A cross-only order is defined to include only equity options orders that are to be executed in whole.

The Exchange believes that by allowing for the cross-only contingency, the Exchange will help to develop customer business and will expedite crosses yielding a similar result to what occurs on the floor currently, although currently it is done in a much more circuitous route. With the current competition in the marketplace, the Exchange believes that by providing the cross-only contingency more firms will want to bring business to the PCX, since the firm will have the ability to take the order elsewhere if the crowd does not allow the cross.

Although Exchange Rules currently allow a similar result as the cross-only contingency, it is much more cumbersome. The proposed rule change provides that the Floor Broker may make the crowd aware in advance of the number of contracts the Floor Broker wishes to cross; the price at which the cross would take place, at or between the quoted prices; the customer "give up" information;[3] and if the crowd bars the cross from taking place, the Member Organization may withdraw the orders. As the rules stand currently, a Floor Broker does not disclose in advance that he or she is holding two orders to cross; the Floor Broker must bid above the highest bid or offer below the lowest offer in the open market; if the bid or offer is not taken by the crowd, then the Floor Broker may cross at the higher bid or lower offer.[4] The difference in result between the proposed Rule and the current Rule is not substantial; however it is a much quicker result since the Floor Broker will know immediately whether the trading crowd will allow the cross to take place, and the Member Organization placing the order may withdraw it if the cross is not allowed by the crowd.[5]

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[13] 17 CFR 200.30-3(A)(12).

[1] 15 U.S.C. 78s(b)(2)

[2] 17 CFR 240.19b–4.

[3] *See* PCX Rule 6.66(a).

[4] *See* PCX Rule 6.47(a).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and further the objectives of Section 6(b)(5),[7] in particular, in that they are designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on whether the proposed rule change will result in fair executions for the various orders and parties represented in the crossing transaction. Also, commenters are requested to provide their views on this rule revision in light of the proposed rule change contained in SR–PCX–99–18, relating to facilitation crosses.[8] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–PCX–99–31 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27892 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

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[5] The Exchange notes that a substantially similar proposal of the Chicago Board Options Exchange ("CBOE") has been noticed for public comment in the **Federal Register**. *See* Securities Exchange Act Release No. 41610 (July 8, 1999), 64 FR 38495 (July 16, 1999). The PCX proposal differs from the CBOE proposal in two procedural respects: First, unlike the CBOE proposal, the PCX rule change will require that the floor broker disclose, prior to the transaction, the name of the clearing member or members through whom the transaction will clear. This is the same information that floor brokers must currently "give up" pursuant to PCX Rule 6.66(a). *See* proposed PCX Rule 6.47(d). Second, the PCX proposal covers orders that are to be executed in whole, while the CBOE proposal covers orders that are to be executed in whole or in part. *See* proposed PCX Rule 6.62(c)(3).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 41867 (September 13, 1999), 64 FR 51171 (September 21, 1999).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42028; File No. SR–Phlx–99–31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Require Exchange Members and Member Organizations to Provide Reports and Other Information Relating to Year 2000

October 18, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On October 1, 1999, the Phlx filed Amendment No. 1 to the proposal with the Commission.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 650, Mandatory Participation in Year 2000 Testing, to require members and member organizations to submit all reports, documents or other information relating to Year 2000 readiness or to the century date change as the Exchange may request. Currently, the rule mandates that members and member organizations are to participate in Year 2000 related testing and are to provide to the Exchange reports related to such testing.

The new clause in Phlx Rule 650 would also require members and member organizations to provide all reports and other documents relating to the Year 2000 century date change as requested by the Exchange. It would thus permit the Exchange to sanction, where appropriate, members and member organizations who do not respond reasonably promptly to requests for reports, such as, for example, Year 2000 Readiness Disclosures, updates on the member or member organization's efforts to become Year 2000 ready, and any other related information requested by the Exchange. Violations of Phlx Rule 650 would be referred to the Exchange's Business Conduct Committee. Below is the text of the proposed rule change. Proposed new language is in *italics*.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Richard S. Rudolph, Counsel, Phlx, to Heidi E. Pilpel, Special Counsel, Division of Market Regulation, Commission, dated October 1, 1999 (Amendment No. 1). The substance of Amendments No. 1 is incorporated into the notice and order.

* * * * *

Mandatory Participation in Year 2000 Testing

Rule 650. Each member and member organization shall participate in testing of computer and computer related systems designed to prepare for the Year 2000 century date change in a manner and frequency prescribed by the Exchange, and shall provide to the Exchange reports related to such testing, *and any such reports, documents, or other information relating to Year 2000 readiness or to Year 2000 century date change as the Exchange may require,* in a reasonably prompt fashion as requested by the Exchange. Any member or member organization which is subject to this rule and determined by the Exchange to be in violation of this rule may be subject to disciplinary action pursuant to the Exchange's rules.

Commentary

01. The Exchange may exempt a member or member firm from this requirement if that member cannot be accommodated in the testing schedule by the organization conducting the test or if the member does not employ computers in its business or for other good reasons determined by the Exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add a clause to Exchange Rule 650 which would require Exchange members and member firms to submit reports, documents or other information relating to the Year 2000 readiness or to the Year 2000 century date change as the Exchange may request.

Currently, Exchange Rule 650 mandates that members and member firms participate in testing related to Year 2000 issues, and to submit reports relating to such testing to the Exchange as requested.[4] The new clause in Phlx Rule 650 would broaden the rule to require Exchange members and member organizations to submit all Year 2000 related reports, documents or other information relating to Year 2000 readiness or to the Year 2000 century date change requested by the Exchange, rather than those relating to testing only. The proposed rule is intended to require members and member organizations to provide to the Exchange, upon request, reports, documents, contingency plans, and other information and representations regarding Year 2000 readiness, including, but not limited to, information similar to that required by Commission temporary-rules 15b7–3T and 17a–9T under the Act, which were recently adopted by the Commission.[5]

The proposal is not intended to require the Exchange to request certain reports and information relating to Year 2000 readiness from members and member organizations. Rather, it is intended as a measure through which the Exchange may require the submission of certain reports and information, and as an enforcement mechanism in the event that members and member organizations fail to comply with such a request.

The proposed rule change would allow the Exchange to ascertain the readiness of its members and member organizations for the Year 2000 century date change, and to determine what measures and contingency plans, policies and procedures have been put in place by those members and member organizations. Such members and member organizations who fail to respond to Exchange requests for Year 2000 reports and documents would be subject to disciplinary action by the Exchange.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5)[7] of the Act in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, and to reduce the risks of the Year 2000 century date change posed to investors and the securities markets, by requiring members and member firms to report to the Exchange their Year 2000 readiness, contingency plans, policies and procedures, and other related reports and documents requested by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(1)[8] and 6(b)(5)[9] of the Act. Section 6(b)(1) of the Act requires that an exchange be organized and have capacity to enforce compliance by its members with the provisions of Title 15 U.S.C., the rules and regulations thereunder, and the rules of the Exchange.[10] Section 6(b)(5) of the Act requires, among other things, that the rules of the exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[11]

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[4] *See* Securities Exchange Act Release No. 40870 (December 31, 1998), 64 FR 1263 (January 8, 1999), File SR–Phlx–99–53 (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1).

[5] *See* Securities Exchange Act Release No. 41661 (July 27, 1999), 64 FR 42012 (August 3, 1999), File S7–8–99.

[6] Phlx Rule 650 specifically states that any member or member organization determined by the Exchange to be in violation of the rule may be subject to disciplinary action pursuant to the Exchange's rules. While disciplinary action is implied as a consequence of any Exchange rule violation, the rule includes this clause in order to remain consistent with similar rules promulgated by other exchanges, on which Exchange Rule 650 is based.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(1).

Securities market participants will soon face a critical test of their automated systems with the upcoming Year 2000; and the Commission believes that the support of the self-regulatory organizations is necessary to minimize the risks resulting from the century date change. Currently, the Phlx is entitled to receive, upon request, only the Year 2000 testing reports of its members and member organizations. Under the Exchange's proposal, the Phlx has authority to require members and member organizations to submit additional information regarding their Year 2000 readiness. The Commission believes that this information will assist the Phlx in evaluating its members' Year 2000 readiness. With more complete information, the Commission believes that the Phlx will be better able to monitor its members and member organizations to ensure their compliance with federal securities laws and the Exchange's rules. Therefore, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act.

The Commission also believes that the Phlx's proposed rule change should help reduce the risks posed to investors and the securities markets by broker-dealers that have not adequately prepared their computer systems for the century date change. The Commission finds that the Phlx's proposed rule change should facilitate transactions in securities and protect investors and the public interest and is therefore consistent with Section 6(b)(5) of the Act.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval will permit the Exchange to obtain reports, documents, and other information related to the Year 2000 immediately, allowing the maximum amount of time possible to identify, assess, and remediate Year 2000 problems. Accordingly, the Commission believes that good cause exists, consistent with Section 6(b)(5) and Section 19(b)(2) of the Act, to grant accelerated approval to the proposal.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–31 and should be submitted by [insert date 21 days from date of publication].

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–99–31) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27888 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Senior Executive Service: Performance Review Board; Membership

AGENCY: Social Security Administration.

ACTION: Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, Section 4314(c) (4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register**.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Andria Childs
Eli N. Donkar
Glennalee K. Donnelly
Keith J. Fontenot
Philip A. Gambino
Diane B. Garro
Richard J. Gonzalez
Charlotte A. Hardnett
W. Burnell Hurt
Carmen M. Keller
Carolyn J. Shearin-Jones
Miguel A. Torrado
Judy Ziolkowski

Dated: September 23, 1999.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 99–27844 Filed 10–25–99; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 99-4 (11)]

Bloodsworth v. Heckler; Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge Decision—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Revised Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of a revision to Social Security Acquiescence Ruling 92-4(11) by issuing Social Security Acquiescence Ruling 99-4 (11).

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Wanda D. Mason, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966-5044.

SUPPLEMENTARY INFORMATION: We are rescinding Social Security Acquiescence Ruling 92-4(11) and publishing this revised Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

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[11] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

On April 8, 1992, we published Acquiescence Ruling 92-4(11) in the **Federal Register** (57 FR 11961) to reflect the holding in *Bloodsworth* v. *Heckler*, 703 F.2d 1233 (11th Cir. 1983). The Acquiescence Ruling applied to Appeals Council dismissals of requests for review of Administrative Law Judge (ALJ) decisions. The Court of Appeals for the Eleventh Circuit held that an Appeals Council dismissal of a request for review of an ALJ decision for reasons of untimeliness is a "final decision of the Secretary made after a hearing" within the meaning of section 205(g) of the Social Security Act and, therefore, subject to judicial review.

The Ruling's section entitled "Statement As To How *Bloodsworth* Differs From Social Security Policy" included a parenthetical statement that an "Appeals Council grant of request or denial of request for review of an ALJ decision is judicially reviewable." That statement is incorrect and is inconsistent with the regulations that it purports to explain, 20 CFR 404.955, 416.1455 and 422.210. The parenthetical statement also is inconsistent with the regulations at 20 CFR 404.981 and 416.1481. Moreover, it was not the issue addressed by the Acquiescence Ruling and was not the subject of the Eleventh Circuit's decision.

For purposes of clarity and consistency with our regulations, we are rescinding AR 92-4 (11) and revising the Acquiescence Ruling by deleting this parenthetical statement. We also have made several minor editorial and technical changes to update and clarify the Ruling. These revisions are technical corrections only and do not involve any substantive changes to the *Bloodsworth* Acquiescence Ruling. Some minor language changes are also being made for improved readability.

We will apply the holding of the Court of Appeals' decision as explained in this revised Social Security Acquiescence Ruling to Appeals Council dismissals of requests for review of ALJ decisions for claimants who reside within the states in the Eleventh Circuit at the time of the Appeals Council's dismissal of the request for review. This revised Social Security Acquiescence Ruling will apply to all Appeals Council dismissals of ALJ decisions made on or after October 26, 1999, except if relief and/or review has been granted pursuant to the previously issued Acquiescence Ruling 92-4 (11) which was published on April 8, 1992. If we made a determination or decision on your application for benefits between April 25, 1983, the date of the Court of Appeals' decision, and October 26, 1999, the effective date of this revised Social Security Acquiescence Ruling, you may request application of this Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Acquiescence Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect, as provided in 20 CFR 404.985(e), or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved. We will also explain why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivor's Insurance; 96.003 - Special Benefits for Persons Aged 72 and Over; 96.006 - Supplemental Security Income.)

Dated: September 2, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 99-4 (11)

Bloodsworth v. *Heckler*, 703 F.2d 1233 (11th Cir. 1983)—Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge Decision—Titles II and XVI of the Social Security Act.

Issue: Whether a dismissal by the Appeals Council of a request for review of an ALJ decision is a "final decision" which is judicially reviewable.

Statute/Regulation/Ruling Citation: Sections 205(g) and (h) and 1631(c)(3) of the Social Security Act (42 U.S.C. sections 405(g) and (h) and 1383(c)(3)); 20 CFR 404.955, 404.967, 404.968, 404.971, 404.972, 404.981, 404.982, 416.1455, 416.1467, 416.1468, 416.1471, 416.1472, 416.1481, 416.1482 and 422.210.

Circuit: Eleventh (Alabama, Florida, Georgia).

Bloodsworth v. *Heckler*, 703 F.2d 1233 (11th Cir. 1983)

Applicability of Ruling: This Ruling applies only to the Appeals Council dismissals of requests for review of ALJ decisions.

Description of Case: In 1979, Mr. Jack Bloodsworth, the claimant in this case, filed applications for a period of disability, disability insurance benefits, and supplemental security income payments. The applications were denied initially, on reconsideration, and by an ALJ after a hearing. The claimant missed the 60-day time limit for filing his request for review of the ALJ's decision to the Appeals Council because it was filed approximately two weeks after the deadline. Therefore, the Appeals Council dismissed the request for review on the basis of untimeliness without good cause.

The claimant then filed a complaint in Federal district court, alleging that denial of the extension of time to file was not supported by substantial evidence. The district court rejected the Social Security Administration's (SSA) argument that it lacked jurisdiction, reviewed the Appeals Council's denial of an extension of time, and remanded the case for consideration of the merits of the claim.[1] On remand, the Appeals Council restated its position that the claimant's request for review was untimely filed, but considered the claim on the merits as ordered, and denied the claimant's request for review. The district court affirmed the decision and the claimant appealed. On appeal, SSA again argued that the district court lacked jurisdiction.[2]

Holding: The Eleventh Circuit held that an Appeals Council dismissal of a request for review of an ALJ decision for reasons of untimeliness is a "final decision of the Secretary made after a hearing" within the meaning of section 205(g) of the Social Security Act[3] and, therefore, subject to judicial review.

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[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub.L.No. 103-296, effective March 31, 1995, Social Security Administration (SSA) became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

[2] The Government argued that the district court lacked subject matter jurisdiction under sections 205(g) and (h) of the Social Security Act (42 U.S.C. section 405(g) and (h)) because the plaintiff failed to meet the "final decision" and "made after a hearing" requirements of these sections. The Government contended that: (1) Dismissal of a request for review on the basis of untimeliness without "good cause" is not a "final decision" for it does not constitute a determination on the merits; and (2) it is not "made after a hearing" because no hearing is granted solely and specifically on the request for review itself.

[3] Section 205(g) of the Social Security Act (42 U.S.C. section 405(g)) currently provides in pertinent part that "[a]ny individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party,* * * may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow." At the time of the decision in *Bloodsworth*, however, the statute referred to a "final decision of the Secretary."

Regarding the right to judicial review, the Eleventh Circuit stated that neither the statute nor the regulations make any distinction between Appeals Council dismissals and "determinations on the merits." The court found that both actions are equally final and that both trigger a right to review by the district court. The court interpreted 20 CFR 404.972 and 404.981[4] to provide that "an Appeals Council review determination, on whatever grounds, is perceived as the appropriately 'final decision' from which to take an appeal to the district court under section 405(g)."

Statement as to How Bloodsworth Differs From SSA's Interpretation of the Regulations

The Eleventh Circuit held that an Appeals Council dismissal of a request for review of an ALJ decision is a "final decision of the Secretary made after a hearing" (now a "final decision of the Commissioner of Social Security") within the meaning of section 205(g) of the Social Security Act and, therefore, subject to judicial review.[5]

Contrary to the holding of the court in *Bloodsworth*, SSA policy is that the regulations make a clear distinction in regard to rights of judicial review between dismissals and determinations on the merits by the Appeals Council. The Appeals Council may take three types of action following an ALJ decision:

(1) It may grant a request for review;

(2) it may deny a request for review; or

(3) it may dismiss a request for review. The dismissal of a request for review of an ALJ decision is binding and not subject to further review. 20 CFR 404.972, 416.1472. *See also* 20 CFR 404.955, 416.1455, 422.210. The Appeals Council will dismiss a request for review if it is untimely filed and the time for filing has not been extended.[6] The Appeals Council may also dismiss a request for review for other prescribed reasons. 20 CFR 404.971, 416.1471.

SSA's position, based on the above-cited regulations, is that an Appeals Council dismissal is not a "final decision of the Commissioner of Social Security made after a hearing." Therefore, such a dismissal is not judicially reviewable under section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

Explanation of How SSA Will Apply The Bloodsworth Decision Within the Circuit

This Ruling applies only to cases involving claimants who reside in Alabama, Florida, or Georgia at the time of the Appeals Council dismissal of the request for review.

Notices sent by the Appeals Council which dismiss requests for review of ALJ decisions will advise claimants in these states of their right to request judicial review.

[FR Doc. 99–27843 Filed 10–25–99; 8:45 am]

BILLING CODE 4191–02–F

DEPARTMENT OF STATE

[Public Notice 3140]

Culturally Significant Objects Imported for Exhibition Determinations: "Body Art: Marks of Identity"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibit, "Body Art: Marks of Identity," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the American Museum of Natural History, New York, New York, from on or about November 16, 1999 to on or about May 29, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: October 20, 1999.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, United States Department of State.

[FR Doc. 99–27954 Filed 10–25–99; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–165]

WTO Dispute Settlement Proceeding Regarding Import Measures on Certain Products From the European Communities

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"), by the European Communities, to examine the U.S. announcement of 3 March 1999 that liquidation would be withheld on imports from the EC of a list of products together valued at $520 million. In this dispute, the European Communities alleges that this action was inconsistent with obligations of the United States under the Dispute Settlement Understanding and the General Agreement on Tariffs and Trade 1994. The USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by November 15, 1999, to be assured of timely consideration by the USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Dispute on Import Measures on Certain Products from the European Communities, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Bruce R. Hirsh, Associate General Counsel, at (202) 395–3582, or William L. Busis, Associate General Counsel, at 395–3150

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) 19 U.S.C. 3537(b)(1)), the USTR is providing notice that on May 12, 1999, the European Communities submitted a request for the establishment of a WTO dispute settlement panel to examine actions allegedly taken on March 3, 1999 to withhold liquidation on imports from the EC of a list of products valued at $520 million. The WTO Dispute Settlement Body ("DSB") established a panel for this purpose on June 16, 1999. Panelists were selected on October 8, 1999.

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[4] 20 CFR 404.981 and 416.1481 state, in pertinent part, that "[t]he Appeals Council's decision, or the decision of the administrative law judge if the request for review is denied, is binding unless you or another party file an action in Federal district court, or the decision is revised."

[5] As the Supreme Court has noted, the term "final decision" is not defined in the Social Security Act, but the Act gives authority to the agency to prescribe its meaning by regulation. *Weinberger* v. *Salfi*, 422 U.S. 749, 766 (1975).

[6] The Appeals Council, upon good cause shown, may extend the time for filing a request for review of an ALJ decision. 20 CFR 404.968(b), 416.1468(b).

Major Issues Raised and Legal Basis of the Complaint

The European Communities' panel request describes the purported U.S. measure it is challenging as "the U.S. decision, effective as of March 3, 1999, to withhold liquidation on imports from the EC of a list of products, together valued at $520 million on an annual basis, and to impose a contingent liability for 100% duties on each individual importation of affected products as of this date. . . . This measure includes administrative provisions that foresee, among other things, the posting of a bond to cover the full potential liability." According to the European Communities, by requiring the deposit of a bond, U.S. Customs "effectively already imposed 100% duties on each individual importation as of 3 March 1999, the return of which was uncertain, depending on future U.S. decisions." The EC assets that the U.S. thereby violated Articles 3, 21, 22 and 23 of the Dispute Settlement Understanding and Articles I, II, VIII and IX of GATT 1994. The EC also asserts that the purported U.S. measure "impedes important objectives of GATT 1994 and of the WTO."

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–165, Import Measures on Certain Products from the European Communities) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–27842 Filed 10–25–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 15, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 Sections U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6369
Date Filed: October 14, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR–JK 0048 dated 1 October 1999 Europe-Japan/Korea Resolutions r1–r46 Minutes—PTC23 EUR–JK 0049 dated 8 October 1999 Tables—PTC23 EUR–JK Fares 0017 dated 8 October 1999 Intended effective date: 1 April 2000

Docket Number: OST–99–6376
Date Filed: October 15, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0075 (Re-issued) dated 12 October 1999 Expedited Middle East-TC3 Resolutions r1–r15 Intended effective date: 15 November 1999

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–27872 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 15, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6345.
Date Filed: October 12, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 9, 1999.

Description

Joint Application of United Parcel Service Co. and Challenge Air Cargo, Inc. pursuant to 49 U.S.C. Section 41105 and Subpart Q, applies for approval of the transfer from Challenge to UPS of certain certificate and exemption authority and frequency allocations now held by Challenge which authorize Challenge to provide scheduled all-cargo foreign air transportation between the United States and various points in the Caribbean and Central and South

America. UPS further requests route integration authority enabling it to integrate its service on the transferred routes with its service on other routes operated by UPS.

Docket Number: OST–99–6367.

Date Filed: October 13, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 10, 1999.

Description

Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Sections 41102 and 41108, Part 201 and Subpart Q, applies for renewal of its authority to provide foreign air transportation of persons, property and mail between the United States and certain foreign points named on segments 1, 2, 3, 4, 5, 6 and 12 of its Certificate of Public Convenience and Necessity for Route 616.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–27871 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[ALJ 99–OOO5–CIV]

In the Matter of D–O–R Production Management, LLC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed penalty; opportunity to participate.

SUMMARY: The Coast Guard gives notice of and provides an opportunity to participate or file comments on the proposed assessment of a Class II administrative penalty against D–O–R Production Management, LLC, (D–O–R), for violations of the Federal Water Pollution Control Act (FWPCA). The alleged violations involve three oil spills that occurred at D–O–R's offshore XPLOR Energy Production facility and wells at Main Pass Block Thirty-five and occurred over the period starting on or about June 10, 1999 and continued through and including June 12, 1999. Interested persons may participate or file comments in this proceeding.

DATES: Comments must reach the Coast Guard no later than November 26, 1999.

ADDRESSES: You may mail comments to the Hearing Docket Clerk, Administrative Law Judge Docketing Center, United States Coast Guard, 40 South Gay Street, Room 412, Baltimore, Maryland 21202–4022. Comments may also be personally delivered to Room 412 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (410) 962–7434. You may also fax your comments to (410) 962–1742.

The Administrative Law Judge Docketing Center maintains the public docket for this matter. Comments will become part of this docket and will be available for inspection or copying in Room 412 at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. George J. Jordan, Director of Judicial Administration, Office of the Chief Administrative Law Judge, Commandant (G–CJ), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is (202) 267–2940.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their name, address, identify this document (ALJ 99–0005–CIV), and state the reason for each specific comment. Please submit all comments and attachments in an unbound format on white paper no longer than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment or receipt of comments should enclose self-addressed, stamped postcards or envelopes.

Discussion

This is a Class II civil penalty proceeding brought under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*)(FWPCA), as amended by the Oil Pollution Act of 1990 (33 U.S.C. 1321). The FWPCA requires the Coast Guard to publish notice of the proposed issuance of an order assessing a Class II civil penalty in the **Federal Register**.

If you wish to be an interested person, you must file written comments on the proceeding or written notice of intent to present evidence at any hearing held in this Class II civil penalty proceeding with the Hearing Docket Clerk.

The following table explains how interested persons may participate in a Class II civil penalty proceeding.

If—	Then—
a hearing is scheduled.	You will be given • Notice of any hearing; • A reasonable opportunity to be heard and to present evidence during any hearing; and • Notice and a copy of the decision 33 CFR 20.404
the proceeding is concluded without a hearing.	You may petition the Commandant of the Coast Guard to set aside the order and to provide a hearing. You must file the petition within 30 days after issuance of the administrative law judge's order. 33 CFR 20.1102

You can find the regulations concerning Class II civil penalty proceedings in 33 CFR part 20.

This proceeding (ALJ 99–0005-CIV) results from three separate oil spill incidents that occurred at the XPLOR Energy Production facility and wells operated by D–O–R located at Main Pass Block Thirty-five, over the period starting on or about June 10, 1999 and continuing through and including June 12, 1999. The Coast Guard alleges the offshore production facility located at Main Pass Block Thirty-five overflowed two oil storage tanks and spilled or discharged five gallons of oil into the contiguous waters of the United States on or about 1600, June 10,1999.

The Coast Guard further alleges that a ruptured flow line located near the well head on well number seventy-two at Main Pass Block Thirty-five spilled or discharged an unknown quantity of oil into the contiguous waters of the United States beginning on or about 1500, June 11, 1999 and continuing to and including June 12, 1999.

The Coast Guard further alleges that a ruptured hydraulic oil line located on a crane at the offshore facility at Main Pass Block Thirty-five spilled or discharged five gallons of oil into the contiguous waters of the United States on or about 1600, June 11, 1999.

The Coast Guard further alleges that unapproved chemical agents were used to clean up the hydraulic oil spilled from the ruptured hydraulic line on the crane at the offshore facility and that the Respondent improperly disposed of the recovered oil and oil contaminated materials.

The Coast Guard further alleges that D–O–R failed to immediately notify the National Response Center for the three oil spills that occurred over the period starting on or about 10 June, 1999 and continued to and including June 12,1999.

The Coast Guard filed the complaint on October 4, 1999 at New Orleans, LA.

The Respondent is D–O–R Production Management, LLC. 106 Oil Center Drive, Suite 214, Post Office Drawer 53829, Lafayette, LA 70505.

The Coast Guard seeks a civil penalty of $88,000.

Dated: October 20, 1999.

George J. Jordan,

Director of Judicial Administration, Office of the Chief Administrative Law Judge, United States Coast Guard.

[FR Doc. 99–27935 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1994 (44 U.S.C. 3501 *et seq.*), this notice announces that the information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describe the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, [FR 64, pages 29404–29405].

DATES: Comments must be submitted on or before November 26, 1999 A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Medical Examiner Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0604.

Form(s): FAA Form 8520–2.

Affected: Estimated 450 Physicians.

Abstract: The collection of information is currently accomplished by use of the FAA form 8520–2, Aviation Medical Examiner Designation Application. The collection is for the purpose of obtaining essential information concerning the applicant's professional and personal qualifications to be an aviation medical examiner.

Estimated Annual Burden Hours: 225 burden hours annually.

ADDRESSE: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 19, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–27827 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) hosted forum on the capabilities of the Global Positioning System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS).

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

Time and Date: 9:00 a.m.–5:00 p.m., November 15–16, 1999.

Place: The Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033.

Status: Open to the aviation industry with attendance limited to space available.

Purpose: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by a question and answer session. Those planning to attend are invited to submit proposed discussion topics.

Registration: Participants are requested to register their intent to attend this meeting by October 29, 1999. Names, affiliations, telephone and facsimile numbers should be sent to the point of contact listed below.

Point of Contact: Registration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at steven.CTR.albers@faa.gov.

Issued in Washington, DC on September 13, 1999.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 99–27929 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the BART-Oakland Airport Connector in Oakland, California

AGENCY: Federal Transit Administration, U.S. Department of Transportation.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the San Francisco Bay Area Rapid Transit District (BART) intend to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) and an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) for a proposed BART-Oakland Airport Connector (OAC). The transportation improvements are being defined in conjunction with a Major Investment Study (MIS), which will include the NEPA/CEQA scoping process and the selection of alternatives to be addressed in the joint environmental document. The EIS/EIR will evaluate a no build alternative, a quality bus alternative,

and various automated guideway transit technologies, as well as other options that surface during the scoping process. Based on the presentation of the proposed action, project alternatives, and breadth of the environmental analysis described below, please let us know of your agency's views regarding the scope and content of the EIS/EIR. Your thoughts can be offered at the scoping meeting or sent in written form to the contact person identified below.

DATES: *Comment Due Date:* Written comments regarding the scope of alternatives and impacts to be considered should be sent to BART by December 6, 1999. *Scoping Meeting:* A public scoping meeting is scheduled for Thursday, November 4, 1999 at 7:00 p.m. at the East Oakland Multipurpose Senior Center. See **ADDRESSES** below.

ADDRESSES: *Written comments* on project scope should be sent to Mr. Jerry Goldberg, San Francisco Bay Area Rapid Transit District, PO Box 12688, Oakland, CA 94604–2688, Mail Stop 1KB6. The *scoping meeting* will be held at: East Oakland Multipurpose Senior Center, 9255 Edes Avenue, Oakland, CA, (Located at the corner of Edes & Jones Avenue). BART Coliseum Station to AC Transit Bus Route 45.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Turchie, Federal Transit Administration, Region 9, (415) 744–3115.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and BART invite interested individuals, organizations, and federal, state, and local agencies to participate in defining the alternatives to be evaluated in the EIS/EIR and identifying any significant environmental issues related to the alternatives. The meeting is also being advertised in The Oakland Tribune and the San Francisco Chronicle, East Bay Edition. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule will be made available at the scoping meeting. Others may request the scoping materials by contacting Mr. Jerry Goldberg at BART at (510) 464–6427. People with special needs should call BART at (510) 464–6300. The building used for the scoping meeting is accessible to persons with disabilities.

During scoping, comments should focus on identifying specific environmental impacts to be evaluated and suggesting alternatives that are less environmentally damaging, which achieve similar objectives. Comments should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated during the comment period for the Draft EIS/EIR. If you wish to be placed on the mailing list to receive further information as the project continues, contact Mr. Jerry Goldberg at BART as previously described.

II. Description of Study Area and Project Need

Since the early 1970s, the concept of an improved transit linkage between the Metropolitan Oakland International Airport and BART has been explored, and various feasibility, engineering, and environmental studies have been undertaken. The major expansion program currently underway at the Metropolitan Oakland International Airport signals a substantial increase in travel by air passengers arriving and leaving the airport, as well as growth in the commute pattern of employees at the airport. As one of the three primary airports serving the San Francisco Bay Area, air traffic at the Metropolitan Oakland International Airport is projected to increase to serve more of the region's air passengers and air cargo. While the major improvement and construction program at the Metropolitan Oakland International Airport bears witness to the ever-growing demand to move passengers, goods, and service through this gateway, the ability to get to the airport via the automobile, airport shuttles, taxis, and vans has become ever more challenging and likely to encounter delays. Programmed improvements to enhance the regional freeways do not appear to be sufficient to accommodate expected growth and eliminate congestion.

Air passengers and employees who take transit to the airport either ride BART to the Oakland Coliseum station and transfer to the AirBART bus shuttle, or they ride AC Transit (local Route 58). However, even with programmed improvements to remedy local congestion and increase capacity on the local roadways, the growth at the airport is expected to create periods of congestion and delay. As a result, the minimum running time of 12 to 15 minutes on AirBART between the Oakland Coliseum Station and the airport often exceeds 20 minutes and is projected to lengthen and, more significantly for air passengers, is likely to become more unpredictable.

Because of foreseeable growth in airport use, local roadway congestion and delay, the demand for transit alternatives is expected to rise. To maintain the capacity, convenience, and reliability of transit services, the Proposed Action would be intended to improve access to the airport using direct, coordinated connections from the existing BART system. By reducing projected vehicle trips, the action would help alleviate regional roadway congestion and benefit local and regional air quality. The action would also be intended to improve the convenience and reliability of taking BART to the Metropolitan Oakland International Airport.

In light of the purpose of the project and the regional and local need for an improved transit connection, the following preliminary objectives are identified for the OAC:

- Provide reliable, scheduled service between the BART system and the Metropolitan Oakland International Airport.
- Offer operational flexibility to reduce headways during periods of increased travel demand between the BART system and the Metropolitan Oakland International Airport.
- Offer a competitive alternative travel mode to those who drive to the Metropolitan Oakland International Airport by providing predictable connections and travel time savings.
- Provide a convenient, safe, and comfortable connection between the BART system and the Metropolitan Oakland International Airport.
- Increase BART's systemwide ridership.
- Design a cost-efficient system, recognizing BART's budget constraints and available funding.

A "seamless" transit connection between the airport and the BART regional rail transit system would enable both air passengers and employees to access the airport without relying on an increasingly congested regional and local road network. To meet the above objectives, BART is currently examining the desirability of linking the 95-mile, four-County rapid rail network with the airport via an automated transit system that would operate on its own fixed guideway, and to which intermediate stops could be added in the future.

The OAC would travel a length of approximately 3 miles, with termini at the BART Oakland Coliseum Station and the new main terminal at the Metropolitan Oakland International Airport. Transit vehicles would operate along a guideway that would be separated from street traffic—a separation that would allow reliable service and a travel time of less than 6 minutes from one terminus to the other. In the year of opening (currently proposed to be 2004), the OAC would be projected to carry about 1 million passengers. By the year 2010, annual passengers could grow to about 3 million.

III. Alternatives

Specific alternatives to the Proposed Action are expected to evolve during the environmental review process and in response to the public scoping process. At this juncture, project alternatives expected to be evaluated in the EIS/EIR include:

- A No Build, or No Project, Alternative that considers the consequences of not improving transit services between BART and the Metropolitan Oakland International Airport. This alternative would involve continuation of the existing AirBART shuttle between the BART Oakland Coliseum Station and the Metropolitan Oakland International Airport.
- A "Quality Bus" Alternative that considers technical and operational transit improvements using buses. The system is called a "quality bus" alternative, in part, because it seeks to emulate the service levels provided by a fixed guideway rail system. Amenities would be provided at stations, and portions of the route could be constructed with exclusive transit lanes or other transit preferential treatments in order to bypass areas of localized traffic congestion.
- An Automated Guideway Transit Alternative (AGT) that would operate on its own exclusive guideway. The system would be fully automated, with a transfer station providing direct connection to the BART system at one end and a station at the Metropolitan Oakland International Airport at the other end. A specific technology has not been selected for evaluation in this EIS/EIR. A specific technology would be selected for implementation only if the proposed AGT project is approved after completion of the environmental evaluation. The term "Automated Guideway Transit" encompasses a group of technologies that provide medium capacity transit service on an exclusive guideway. Examples of Automated Guideway Transit systems include people movers, shuttle transit, and advanced light rail transit.

IV. Probable Effects

The purpose of the EIS/EIR is to fully disclose the social, economic, and environmental consequences of building and operating the OAC in advance of any decisions to make substantial financial or other commitments to its implementation. The EIS/EIR will explore the extent to which the project alternatives result in potentially significant social, economic, and environmental effects and identify appropriate actions to reduce or eliminate these impacts. Issues that will be investigated in the EIS/EIR include transportation, traffic, and circulation effects; land use compatibility and consistency with locally adopted plans; potential effects on local businesses and employment; disturbance to sensitive visual and cultural resources; geologic and hydrology effects; potential disturbance to sensitive wildlife and vegetation species and habitats; air and noise emissions from project-related construction and operation; public health and safety concerns related to exposure to hazardous materials; community service and utility demand; direct or indirect effects to public parklands, significant historic resources, or wildlife refuges; and environmental justice concerns from any disproportionate impacts of the project alternatives on low-income or ethnic minority neighborhoods.

V. FTA Procedures

The Draft EIS/EIR for the BART-Oakland Airport Connector will be prepared in conjunction with a Major Investment Study. After its publication, in accordance with the Federal Transit Act, as amended, and FTA policy, the Draft EIS/EIR will be available for review and comment by interested public members and local, state, and federal agencies, and a public hearing will be held. Based on the Draft EIS/EIR and comments received, BART will identify a locally preferred alternative for further assessment in the Final EIS/EIR. FTA and BART must approve the Final EIS/EIR prior to making any decisions regarding the project.

Issued on: October 19, 1999.

Leslie T. Rogers,

Regional Administrator.

[FR Doc. 99–27832 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–6157; Notice 2]

Pipeline Safety: OPS Response Plan Review and Exercise Programs

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Council on Environmental Quality regulations and Department of Transportation policy, the Research and Special Programs Administration (RSPA) has made a finding that the Office of Pipeline Safety's (OPS) Response Plan Review and Exercise Program will have no significant impacts on the environment.

EFFECTIVE DATE: This finding of no significant impact is effective October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Taylor, OPS, (202) 366–8860, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTARY INFORMATION: In 1990, the United States Congress passed the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), to improve the nation's ability to respond to and limit the economic and environmental impact from, marine spills of oil and other pollutants. Section 4202 of the OPA modifies the planning and response system created under the authority of Section 311(j) of the Federal Water Pollution Control Act (also known as the Clean Water Act). OPA required response plans for vessels and facilities that produce, store, transport, refine, and market oil.

Just as oil tankers are required to submit oil spill response plans to the Coast Guard and refineries are required to submit such plans to the Environmental Protection Agency (EPA), oil pipelines are required to submit their facility response plans to OPS for review and approval. To date, more than 1300 facility response plans have been submitted to OPS. They represent some 200 oil pipeline operators, and lines that vary in size from 3-inch gathering systems to 36-inch product lines to the 48-inch Trans-Alaska Pipeline System. OPS conducts a thorough review of the plans, with particular emphasis on the adequacy of the pipeline operator's response resources, incident command system, and ability to protect environmentally sensitive areas from harm. OPS also makes sure that the plans are consistent with both the National Contingency Plan and the local Area Contingency Plan, which are developed by Coast Guard and EPA.

In addition to reviewing operators' plans, OPS conducts exercises to test pipeline operators' ability to implement their facility response plans. To date, OPS has conducted sixty-nine Tabletop Exercises, scenario-driven discussions in which operators explain how they would implement their plans to respond to a worst-case spill. OPS has also conducted nine full-scale Area Exercises with pipeline operators in which they deploy people and equipment to the field in response to a simulated spill. In both Tabletop and Area Exercises, OPS makes every effort to have other Federal, State, and local environmental and emergency response agencies participate. Their participation makes exercises more realistic, and builds relationships between industry and public sector responders that make the response to real spills go more smoothly.

OPS prepared an Environmental Assessment (EA) to examine the environmental impacts of the Response Plan Review and Exercise Program (64 FR 47228). The EA concisely described OPS's recent review of the program's effectiveness, its proposed action to continue implementing the current program, the alternative programmatic approaches considered, the environment affected by this action, the consequences to the environment of the alternatives considered, and a list of the agencies and organizations consulted. In the EA, OPS preliminarily concluded that continuing the current program would not have significant environmental impacts. This conclusion was based on the fact that the program is now mature, and the proposed action to continue the current program will not have any significant environmental impact.

OPS received one public comment on the EA, which came from an environmental organization in Alaska. The commenter claimed that, (1) the EA inadequately addressed the threats to the environment from the Trans-Alaska Pipeline System (TAPS) and should not be considered a sufficient environmental analysis for the TAPS lease renewal, (2) the EA failed to mention specific pipelines and unique problems associated with specific pipelines, and (3) OPS did not consider an alternative that would be more protective of the environment, and should prepare an environmental impact statement (EIS) which more fully considers environmental effects of its program. These points will be addressed in order.

(1) The TAPS lease agreement is between Alyeska Pipeline Service Company (the seven company consortium that owns and operates the TAPS), the State of Alaska, and the Bureau of Land Management in the Department of the Interior. Working through the Joint Pipeline Office, OPS expects to participate in the TAPS lease renewal EIS process as a cooperating agency. However, OPS is not a party to the lease agreement and does not have authority to approve or disapprove the lease renewal. That decision rests solely with the State of Alaska and the Department of the Interior.

(2) The EA was a programmatic document, and as such was not intended to address issues associated with the TAPS or any other specific pipeline. Rather, the EA was meant to assess the impact of our program, which involves over 200 oil pipeline operators nationwide.

(3) The EA described the statutory basis for the program, its requirements, and its benefits in improved response capability on the part of oil pipeline operators nationwide. OPS believes that the EA provides sufficient information to allow a comprehensive evaluation of our Response Plan Review and Exercise Program. The EA was intended to address the overall program and not the issues associated with a specific pipeline. As for question of whether another alternative more protective of the environment was considered, OPS may consider, on a case by case basis, more stringent spill response requirements for a particular operator on the basis of the operator's spill history or other risk factors. Such individual cases are, however, outside the scope of this programmatic EA.

Based on the analysis and conclusions reached in the EA, OPS has found that there are no significant impacts on the environment associated with this action. The EA and the documents are incorporated by reference into this FONSI. To summarize, the reason that the program will not have a significant effect on the human environment is that the program is designed to improve pipeline operators' ability to respond effectively to oil spills, and the national trends in accident data support that conclusion. While there was a marked improvement in spill response preparedness and environmental protection shortly after implementing the Response Plan Review and Exercise Program in 1993, the program is now mature. Hence, the proposed action to continue the current program will not have any significant environmental impact. This rationale is further discussed in the EA referenced above.

Issued in Washington, DC on October 20, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–27825 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33803]

Utah Railway Company—Acquisition of Control Exemption—Salt Lake City Southern Railroad Company, Inc.

Utah Railway Company (UTAH), a Class III rail carrier, has filed a verified notice of exemption to acquire the capital stock of Salt Lake City Southern Railroad Company, Inc. (SLCS).[1] UTAH operates 275 miles of trackage and trackage rights in Utah and Colorado and also operates trackage between Provo and Ogden, UT, as agent of The Burlington Northern and Santa Fe Railway Company (BNSF). SLCS operates 24.95 miles of rail line from milepost 798.74 at Ninth South Street in Salt Lake City to milepost 775.19 at the Salt Lake County/Utah County boundary line near Mount (including the 1.4-mile Lovendahl Spur connecting with the main line at milepost 790.52), in Salt Lake County, UT.[2]

Under the terms of an agreement with SLCS's corporate parent, RailTex, Inc., UTAH was to purchase all of the issued and outstanding capital stock of SLCS on September 30, 1999 and place the shares into a voting trust. The transaction was scheduled to be consummated on October 13, 1999 (7 days after the exemption was filed), when UTAH was to acquire the stock held in the voting trust.

UTAH indicates that SLCS's trackage runs parallel to some of the trackage operated by UTAH, as BNSF's agent. UTAH maintains, however, that, as BNSF's agent, it does not have common carrier rights or obligations on BNSF trackage.

UTAH indicates that: (i) the railroads do not connect with each other; (ii) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

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[1] UTAH had filed a notice of exemption to acquire and operate SLCS's line in *Utah Railway Company—Acquisition and Operation Exemption—Lines of Utah Transit Authority in Salt Lake City, UT*, STB Finance Docket No. 33785 (STB served Aug. 30, 1999) (64 FR 47229). UTAH states that it does not intend to exercise authority under the notice of exemption in STB Finance Docket No. 33785.

[2] SLCS operates the line under a permanent easement granted by the Utah Transit Authority. *See Salt Lake City Southern Railroad Company, Inc—Acquisition and Operation Exemption—Line Between Mount and Salt Lake City, UT*, Finance Docket No. 32276 (ICC served Apr. 23, 1993).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33803, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Theodore A. McConnell, Kirkpatrick & Lockhart LLP, 1500 Oliver Building, Pittsburgh, PA 15222.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 18, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–27776 Filed 10–25–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33808]

Salt Lake City Southern Railroad Company, Inc.—Trackage Rights Exemption—Union Pacific Railroad Company

The Union Pacific Railroad Company (UP) has agreed to grant local trackage rights to the Salt Lake City Southern Railroad Company, Inc., (SLCS), a Class III rail carrier, over 2.1 miles of rail line between milepost 735.8 and milepost 737.9, on UP's Provo Subdivision, near Provo, UT. The trackage rights include the Midvale siding and crossover track.

The purpose of the trackage rights is to enable SLCS to provide improved rail service to certain shippers it is currently unable to serve and to improve its financial viability.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

The transaction was scheduled to be consummated on or after October 15, 1999.

This notice is filed under 49 CFR 1180.2(d)(7).[1] If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33808, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Theodore A. McConnell, Kirkpatrick and Lockhart LLP, 1500 Oliver Building, Pittsburgh, PA 15222.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 18, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary

[FR Doc. 99–27777 Filed 10–25–99; 8:45 am]

BILLING CODE 4915–00–P

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[1] The notice invokes the class exemption from 49 U.S.C. 11323 at 49 CFR 1180.2(d)(7). While the notice cites 49 U.S.C. 10902 rather than 49 U.S.C. 11323, in a telephone conversation with Board staff, SLCS acknowledged that 49 U.S.C. 11323 is the applicable statutory provision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 575X)]

CSX Transportation, Inc.—Abandonment Exemption—in Lee County, VA

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost OCV–242.00 and milepost OCV–243.6, near Hagans, in Lee County, VA, a distance of approximately 1.6 miles (line). The line traverses United States Postal Service Zip Code 24263.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 25, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 5, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 15, 1999, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Esq., CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 1, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by October 26, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 14, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–27383 Filed 10–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4810, Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

DATES: Written comments should be received on or before December 27, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

OMB Number: 1545–0430.

Form Number: 4810.

Abstract: Fiduciaries representing a dissolving corporation or a decedent's estate may request a prompt assessment of tax under Internal Revenue Code section 6501(d). Form 4810 is used to help locate the return and expedite the processing of the taxpayer's request.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms, and the Federal government.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 18, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–27847 Filed 10–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday November 19, 1999.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday November 19, 1999, 6 p.m. to 9 p.m. at the Internal Revenue Service Brooklyn Headquarters Building located at 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 6:00 p.m. to 6:30 p.m. on Friday November 19, 1999.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues and reports of the sub-committees.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 19, 1999.

MaryClare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 99–27849 Filed 10–25–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A public meeting of the Brooklyn District Citizen Advocacy Panel will be held in Hauppauge, New York.

DATES: The meeting will be held Wednesday November 17, 1999.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday November 17, 1999, 6:30 p.m. to 9:00 p.m. at the Wyndham Wind Watch Hotel located at 1717 Vanderbilt Motor Parkway, Hauppauge, NY 11788. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:00 p.m. to 9:00 p.m. on Wednesday November 19, 1999.

Individual comments will be limited to 5 minutes. If.you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 19, 1999.

MaryClare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 99–27850 Filed 10–25–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of the General Counsel

Appointment of members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Marlene Gross, Deputy Chief Counsel (Operations);
2. Kenneth Schmalzbach, Acting Deputy General Counsel;
3. Michael Danilack, III, Associate Chief Counsel (International);
4. Nancy J. Marks, Deputy Associate Chief Counsel (Employee Benefits and Exempt Organizations);
5. Gary D. Gray, Assistant Chief Counsel (General Litigation);
6. William F. Hammack, Midstates Regional Counsel; and
7. H. Stephen Kesselman, Pennsylvania District Counsel.

In addition, I hereby appoint the following persons to serve on the Performance Review Board for the Deputy Chief Counsel:

8. Robert E. Wenzel, Deputy Commissioner Operations; and
9. John M. Dalrymple, Chief Operations Officer.

This publication is required by 5 U.S.C. 4314(c)(4).

Dated; October 18, 1999.

Stuart L. Brown,

Chief Counsel, Internal Revenue Service.

[FR Doc. 99–27848 Filed 10–25–99; 8:45 am]

BILLING CODE 4830–01–M

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federal register

Tuesday
October 26, 1999

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98P–0683]

Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is authorizing the use, on food labels and in food labeling, of health claims on the association between soy protein and reduced risk of coronary heart disease (CHD). Based on its review of evidence submitted with comments to the proposed rule, as well as evidence described in the proposed rule, the agency has concluded that soy protein included in a diet low in saturated fat and cholesterol may reduce the risk of CHD by lowering blood cholesterol levels.

DATES: This regulation is effective October 26, 1999, except for § 101.82(c)(2)(ii)(B), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). Upon approval, the FDA will publish a document in the **Federal Register** announcing the effective date of those requirements.

FOR FURTHER INFORMATION CONTACT: Susan M. Pilch, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4500.

SUPPLEMENTARY INFORMATION:

I. Background Information

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One notable aspect of the 1990 amendments was that they provided procedures whereby FDA is to regulate health claims on food labels and in food labeling.

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA issued a final rule that implemented the health claim provisions of the act (hereinafter referred to as the 1993 health claims final rule). In that final rule, FDA adopted § 101.14 (21 CFR 101.14), which sets out rules for the authorization and use of health claims by regulation. Additionally, § 101.70 (21 CFR 101.70) establishes a process for petitioning the agency to authorize by regulation the use of health claims about a substance-disease relationship (§ 101.70(a)) and sets out the types of information that any such petition must include (§ 101.70(f)).

In response to the 1990 amendments, FDA also conducted an extensive review of the evidence on 10 substance-disease relationships. As a result of its review, FDA has authorized claims for 8 of these 10 relationships, one of which focused on the relationship between dietary saturated fat and cholesterol and reduced risk of CHD. CHD is the most common, most frequently reported, and most serious form of cardiovascular disease (CVD) (58 FR 2739, January 6, 1993). Further, although the agency denied the use on food labeling of health claims relating dietary fiber to reduced risk of CVD (58 FR 2552), it authorized a health claim relating diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain dietary fiber (particularly soluble fiber) to a reduced risk of CHD.

In the proposed rule entitled "Health Claims and Label Statements; Lipids and Cardiovascular Disease" (56 FR 60727, November 27, 1991) (hereinafter referred to as the saturated fat/cholesterol proposed rule), FDA set out criteria for evaluating evidence on diet and CVD relationships. The agency focused on those aspects of the dietary lipid and CVD relationship for which the strongest scientific evidence andagreement existed. FDA noted that, because of the public health importance of CHD, identification of "modifiable" risk factors for CHD had been the subject of considerable research and public policy attention. The agency also noted that there is general agreement that elevated blood cholesterol levels are one of the major "modifiable" risk factors in the development of CHD. FDA cited Federal Government and other reviews that concluded that there is substantial epidemiologic and clinical evidence that high blood levels of total and low density lipoprotein (LDL)-cholesterol are a cause of atherosclerosis and represent major contributors to CHD. Further, factors that decrease total blood cholesterol and LDL-cholesterol will also decrease the risk of CHD. FDA concluded that it is generally accepted that blood total and LDL-cholesterol levels are major risk factors for CHD, and that dietary factors affecting blood cholesterol levels affect the risk of CHD. High intakes of dietary saturated fat and, to a lesser degree, of dietary cholesterol are consistently associated with elevated blood cholesterol levels. FDA tentatively concluded that the publicly available data supported an association between diets low in saturated fat and cholesterol and reduced risk of CHD (56 FR 60727 at 60737), and it confirmed that conclusion in the saturated fat/cholesterol final rule (58 FR 2739 at 2751).

Based on its review using the stated criteria, and on its consideration of comments received in response to the proposed rule entitled "Health Claims; Dietary Fiber and Cardiovascular Disease" (56 FR 60582), FDA concluded that the publicly available scientific information supported an association between diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products (*i.e.*, foods that are low in saturated fat and cholesterol and that are good sources of dietary fiber) and reduced risk of heart disease (58 FR 2552 at 2572). In the 1993 dietary fiber and CVD final rule, in response to a comment regarding the apparent hypocholesterolemic properties of specific food fibers, FDA again articulated its criteria for evaluating diet and CHD relationships (58 FR 2552 at 2567). FDA agreed that the effectiveness of naturally occurring fibers in foods in reducing the risk of CHD may be documented for specific food products. Further, the agency indicated that if manufacturers could document, through appropriate studies, that dietary consumption of the soluble fiber in a particular food has a beneficial effect on blood lipids predictive of CHD risk, they should petition for a health claim for that particular product. In response to two petitions that documented such evidence, FDA has authorized health claims for soluble fiber from certain foods and reduced risk of CHD in § 101.81 (21 CFR 101.81) (62 FR 3600, January 23, 1997, and amended at 62 FR 15344, March 31, 1997, and 62 FR 8119, February 18, 1998).

In the **Federal Register** of November 10, 1998 (63 FR 62977), and in response to a petition from Protein Technologies International, Inc. (Ref. 1 and Ref. 2), the agency proposed § 101.82 to provide for health claims on the relationship of soy protein and reduced risk of CHD (hereinafter referred to as the soy protein proposed rule). In the soy protein proposed rule, FDA considered the relevant scientific studies and data presented in the petition as part of its review of the scientific literature on soy protein and CHD. The agency summarized this evidence in the soy protein proposed rule and presented the rationale for a health claim on this food-disease relationship as provided for under the significant scientific agreement standard in section 403(r)(3)(B)(i) of the act and § 101.14(c) of FDA's regulations.

Proposed § 101.82(c)(2)(ii)(A) identified the substance that is the subject of the proposed claim as soy protein from the legume seed *Glycine max*. The soy protein proposed rule included qualifying criteria for the purpose of identifying soy protein-containing foods eligible to bear the proposed health claim. The proposal also specified mandatory content for health claim statements; identified additional, optional information for such statements; and provided model health claims.

In its evaluation of the scientific evidence for a relationship between consumption of soy protein and blood total and LDL-cholesterol levels, the agency found the data suggestive but not sufficient to establish a dose-response for this relationship. However, the agency did find consistent, clinically significant reductions of total and LDL-cholesterol levels in controlled trials that used at least 25 grams (g) of soy protein per day. Thus, the agency proposed to base the qualifying level of soy protein on a total daily intake of 25 g, as suggested by the petitioner. Therefore, in § 101.82(c)(2)(iii)(A), FDA proposed the qualifying criterion for a food to bear the claim as 6.25 g of soy protein per reference amount customarily consumed (RACC) (*i.e.*, 25 g divided by 4 eating occasions per day).

In the soy protein proposed rule, FDA had tentatively indicated its intention to use a specific analytical method to measure soy protein for assessing compliance with the qualifying criterion. Comments persuaded the agency that the method would be inadequate for many products. Therefore, in the **Federal Register** of August 23, 1999 (64 FR 45932), FDA issued a proposed rule to provide for an alternative procedure for assessing compliance (hereinafter referred to as the soy protein reproposal). In the soy protein reproposal, in § 101.82(c)(2)(ii)(B) FDA proposed that it would rely on measurement of total protein and require manufacturers, when soy is not the sole source of protein in foods, to maintain records that document the amount of soy protein in products and to make these records available to appropriate regulatory officials for inspection and copying upon request.

II. Summary of Comments and the Agency's Responses

In response to the soy protein proposed rule, the agency received approximately 130 submissions, each containing one or more comments, from consumers, consumer organizations, professional organizations, government agencies, industry, trade associations, health care professionals, and research scientists.

About half of these submissions supported the proposed rule without providing grounds for this support other than those provided by FDA in the preamble to the soy protein proposed rule. The majority of the remaining comments were generally supportive, but requested modification of one or more provisions of the proposed rule. Some comments provided additional data on the relationship between soy protein and CHD, including one submission, originally submitted as a health claim petition and converted to a comment on the soy protein proposed rule (Ref. 3), that included a comprehensive review of available scientific evidence about the relationship. Some of the comments that disagreed with the soy protein proposed rule provided specific support for their positions. Some of the comments were received after the date for submitting comments had passed. Although the agency is not obligated to respond to late comments, in the interest of assessing the totality of the available data, it has considered each of these comments to the extent that it provided complete information for review or references accessible to the agency and addressed issues not raised in earlier comments. The agency has summarized and addressed the relevant issues raised in the comments in the sections of this document that follow.

In response to the soy protein reproposal, the Agency received approximately 10 submissions, each containing one or more comments. The agency has summarized and addressed these comments in section II.C.2 of this document.

A. Eligibility of Soy Protein as the Subject of a Health Claim

In the soy protein proposed rule, the agency assessed whether soy protein satisfied the preliminary requirement that a substance that is the subject of a health claim is associated with a disease for which the U.S. population is at risk (63 FR 62977 at 62978). Based on analyses presented in earlier rulemakings and its review of data on the mortality, morbidity, and costs of CHD and prevalence of "high risk" and "borderline high" total and LDL-cholesterol levels in the United States (Refs. 4 through 8), the agency tentatively concluded that, as required in § 101.14(b)(1), CHD is a disease for which the U.S. population is at risk. One comment reviewed additional sources of information and reached the same conclusion.

In the soy protein proposed rule, FDA also tentatively concluded that soy protein from *Glycine max* satisfied the preliminary requirement of § 101.14(b)(3)(i) that the substance be a food that contributes taste, aroma, or nutritive value (63 FR 62977 at 62978). Sources of soy protein identified in the soy protein proposed rule included foods composed of or derived from whole soybeans and foods that contain processed soy protein ingredients: Isolated soy protein (ISP), soy protein concentrate (SPC), soy flour (SF), texturized soy protein, or texturized vegetable protein (TVP). In addition to protein, these foods and ingredients contain other naturally occurring soy constituents, such as isoflavones, fiber, and saponins. The specific processing steps employed determine the extent of retention of such naturally occurring constituents in the final product.

In assessing whether the petitioner had demonstrated that soy protein is safe and lawful at the level necessary to justify the claim, FDA noted that the petitioner stated that soy protein ingredients were in common use in food before January 1, 1958, and that they are generally recognized as safe (GRAS) by self-determination (63 FR 62977 at 62978). Because the fractionation procedures used to convert vegetable flours to vegetable protein isolates and concentrates were commonplace prior to 1958, the petitioner also asserted that ISP and SPC can be defined as soy flour "subject only to conventional processing as practiced prior to January 1, 1958." In addition, FDA reviewed information submitted by the petitioner about potential risks of consuming soy products: allergenicity (Refs. 9 and 10), exposure to trypsin inhibitors (Refs. 11 through 16), reduced bioavailability of minerals (Refs. 13, 17, 18, 19, and 20), and hormonal disturbances due to soy isoflavones (Refs. 21 through 26). Based on the totality of the evidence and, in particular, its common use in food, the agency did not take issue with the petitioner's view that the use of soy protein is safe and lawful as required in § 101.14(b)(3)(ii). Thus, FDA tentatively concluded that the petitioner provided evidence that satisfied the requirement in § 101.14(b)(3)(ii) that use of soy protein at the levels necessary to justify a claim is safe and lawful under the applicable food safety provisions of the act (63 FR 62977 at 62979).

Several comments agreed with the agency's conclusion and some provided the rationale for their support. A number of comments disputed the petitioner's assertion of GRAS status for soy protein and raised questions about the safety of soy protein-containing foods. The specific aspects of disagreement are summarized and discussed in the following sections of this document.

1. Concerns About the Safety of Soy Protein-Based Infant Formulas

(Comment 1). Many of the comments that raised concerns about the safety of consuming soy protein-containing foods addressed the safety of soy protein-based infant formulas. The observed or hypothesized detrimental effects of such formulas discussed in these comments included: hormonal disturbances due to estrogenic effects of soy isoflavones; thyroid abnormalities; altered mineral balance, especially for zinc; and diabetogenic effects in infants.

FDA is aware of concerns raised about the safety of soy infant formulas, but notes that these are speculative at this time, pending the results of definitive research. FDA also notes that the American Academy of Pediatrics (Ref. 73) and the New Zealand Ministry of Health (Ref. 74) have recently issued guidelines for the safe and suitable use of soy-based infant formulas. Some issues regarding effects of infant formula are unique because infants may be entirely dependent on formula as a sole source of nutrition and the relevance of such issues for soy protein consumed as part of a mixed diet by the general U.S. population is not clear.

In any case, concerns about effects of soy protein specific to infant formulas are beyond the scope of the current rule, which authorizes a health claim about the relationship of soy protein and CHD for foods intended for use by the general population. Health claims are not permitted on foods represented or purported for use by infants and toddlers less than 2 years of age unless specifically provided for in the authorizing regulation (21 CFR 101.14(e)(5)). Diets restricted in fat, saturated fat, and cholesterol are not recommended for infants and young children, and the current rule (§ 101.82) contains no provisions for use of the health claim about the relationship between soy protein and CHD on foods for infants and toddlers.

2. Comments on Petitioner's Self-Determination of GRAS Status for Soy Protein

(Comment 2). One comment specifically agreed with the petitioner's assertion that soy protein-containing food ingredients are generally recognized as safe (GRAS) by self-determination and based on common use in food before January 1, 1958, in conformance with § 201(s) of the act. The comment also noted that, although soy protein is not listed as GRAS or prior sanctioned in Title 21 of the CFR, FDA has noted that these lists "do not include all substances generally recognized as safe for their intended use" and, as stated at 21 CFR 182.1, "[i]t is impracticable [for FDA] to list all substances that are GRAS for their intended use." This comment also agreed with the petitioner's conclusion that fractionation procedures used to convert vegetable flours to vegetable protein concentrates and isolates were commonplace in various sectors of the grain industry, such as corn processing, well before 1958. Therefore, SPC and ISP can be defined as soy flour "subject only to conventional processing as practiced prior to January 1, 1958." The comment concluded that SF (including steam-treated SF), SPC, and ISP all fall within the category of ingredients that are GRAS through experience based on their common use. Several comments objected to the petitioner's self-determination of GRAS status, citing a variety of reasons. As stated previously, FDA does not take issue with the petitioner's self-determination of GRAS status, and the comments, discussed below, have not convinced the agency to change that conclusion.

(Comment 3). Some comments raised objections on the basis that FDA has not approved the GRAS status of soy protein.

Although FDA has not ruled formally on the GRAS status of soy protein ingredients, it has not challenged determinations that soy's use as dietary protein is GRAS. Food ingredients whose use is generally recognized as safe by qualified experts are not required by law to receive FDA approval. Under the health claim petition process, FDA evaluates whether the substance is "safe and lawful" under the applicable food safety provisions of the act (§ 101.14(b)(3)(ii)). As discussed in greater detail below, FDA did not receive sufficient evidence from comments to challenge the petitioner's assertion that soy protein ingredients are GRAS by self-determination. The petitioner met the showing required by § 101.14(b)(3)(ii) that the substance be "safe and lawful."

(Comment 4). One comment claimed that the Center for Food Safety and Applied Nutrition recently returned a petition requesting GRAS recognition for soy protein.

The document referred to by the comment was a notification by Archer Daniels Midland Company (GRN 000001), rather than a petition for FDA action, and the subject of the notification was soy isoflavone extract, rather than soy protein. At the company's request, FDA ceased evaluation of the GRAS Notification pending the company's updating of the file (Ref. 75). Thus, this comment was incorrect.

(Comment 5). A comment asserted that petitioner's basis for GRAS self-determination of the use of soy protein as a dietary protein ingredient (*i.e.*, common use in food before January 1, 1958) was incorrect. Because the 1979 Select Committee on GRAS Substances (SCOGS) report (Ref. 76) determined that, at the time of the report, likely average dietary exposure to soy protein isolate was only about 150 milligrams (mg) from food items, the comment asserted that soy protein isolates could not have been in common use before 1958.

FDA finds that this comment is groundless and inaccurately characterizes the findings of the SCOGS. The 1979 SCOGS report includes the background statement "Edible soy protein isolates for food uses appeared about 1957 as a major article of commerce." The 1979 SCOGS Report also cited a 1972 National Research Council survey of GRAS ingredients that listed 14 food categories in which soy protein isolates were used and calculated an average daily intake of several grams. Soy protein isolates represent only one of several possible sources of soy protein in foods. In addition, for purposes of determining if a substance is GRAS, common use is not restricted to common use in the United States.

(Comment 6). A comment supporting the petitioner's self-determination of GRAS status noted that use of soy as a food dates to about the 11th century BC in the eastern half of north China. From about the first century AD to the 15th-16th century, soybeans were introduced in Korea, Japan, Indonesia, the Philippines, Vietnam, Thailand, Malaysia, Burma, Nepal, and northern India. Soybeans first grew in the United States in 1765 and were used then to manufacture soy sauce and vermicelli (soybean paste) (Ref. 77). A comment that disputed the petitioner's self-determination of GRAS status speculated that the species of soybean grown early in its history in Asia may have differed significantly in its content of nutrients and other active components from the modern species that is cultivated in this country.

FDA does not find this comment compelling. Although the composition of soybeans has likely changed over time, modern soybean species and cultivars are, in any case, encompassed within the period of common use of soy and soy protein in food.

(Comment 7). One comment questioned whether the Asian experience could provide assurance that soy is safe. Drawing parallels with herbal medicine in terms of attitudes, monitoring deficiencies, and the general difficulty in detecting toxicities with long latency, this comment concluded that the long history of apparent safe use of soy products cannot assure they are without risk (Ref. 78).

The comment did not provide evidence to document that soy products, consumed at levels necessary to justify the claim, are not generally recognized as safe. Moreover, considerable research is underway at this time because of the hypothesized benefits of the historical use of soy products by certain population groups. FDA supports the ongoing research to clarify the effects, both potentially beneficial and potentially adverse, of soy and agrees that any effects due to changes in the conditions of use should be monitored. However, the information currently available does not lead FDA to object to the petitioner's self-determination of GRAS status of soy protein.

(Comment 8). Several other comments asserted that the proposal did not adequately establish the GRAS status of soy protein food ingredients in that the proposal did not include a thorough evaluation of the safety of potentially harmful components, *e.g.*, lysinoalanine, nitrites and nitrosamines, trypsin inhibitors, phytate, and isoflavones.

FDA notes that the 1979 SCOGS report (Ref. 76) discussed several of these components extensively and recommended that it would be prudent to develop food grade specifications for soy protein isolates that would set acceptable limits on the levels of lysinoalanine, nitrites, and nitrosamines. But, the possible presence of these components in soy protein isolates did not lead the SCOGS panel to recommend against GRAS status of soy protein isolates.

As noted above, the agency finds the petitioner met the showing required by § 101.14(b)(3)(ii) that soy protein is "safe and lawful." The agency lacks documented evidence of adverse effects in humans and has received no information about actual levels of potentially harmful components or about threshold levels for adverse effects in humans. Accordingly, the agency has no basis to conclude that soy protein is not safe and lawful. The specific comments about potentially harmful components of soy are discussed below.

3. Lysinoalanine: Potential Toxic Effects

(Comment 9). A few comments noted concerns about the presence of lysinoalanine in soy protein isolates and cited the SCOGS report (Ref. 76), which indicated that lysinoalanine was implicated as a renal toxic factor in rats.

FDA finds that the comments inaccurately reflected the findings of the SCOGS report. The SCOGS report noted that the relatively severe alkali treatment used to modify viscosity and adhesive properties of soy protein isolates used as sizing and coating adhesives in the production of paper and paperboard products can cause formation of lysinoalanine. The report evaluated the risk of lysinoalanine exposure from soy protein adhesives and binders used in paper and paperboard food packaging. The 1979 SCOGS report noted that, "For edible isolated protein production, extraction is usually carried out at a pH below 9 to avoid hydrolytic or rheological changes" and concluded that, while relatively low levels of lysinoalanine had been reported in some samples of food grade soy protein isolate, available information indicated that the levels of lysinoalanine in food grade soy protein isolates pose no hazard to the consumer (Ref. 76).

FDA notes that the comments that expressed concern about lysinoalanine in soy protein ingredients did not provide any information about lysinoalanine levels in food grade soy protein ingredients nor about use of alkali-processed soy protein as a food ingredient. FDA finds that the potential presence of lysinoalanine in soy protein isolates used for sizing and coating adhesives in paper and paperboard products is not relevant to the safe and lawful use of soy protein in food. FDA also notes that the production of small amounts of lysinoalanine during alkali processing has also been documented with casein and lactalbumin, so it is not unique to soy. Good manufacturing practices are and should be employed to minimize the production of lysinoalanine because of its deleterious effects on protein quality.

4. Nitrites and Nitrosamines: Potential Carcinogenic Effects

(Comment 10). Some comments expressed concerns about the potential presence of nitrites in soy protein and the potential their presence poses for the in vivo formation of nitrosamines, which have been shown to be carcinogenic in experimental animals.

FDA notes that many natural and processed foods contribute to the total human intake of nitrite. In an appendix titled "Health Aspects of Nitrites in Soy Protein Isolates," the SCOGS report (Ref. 76) presented an estimate of the consumer exposure to nitrite contributed by soy protein in perspective to nitrite from other dietary sources and that formed in the gastrointestinal tract by reduction of salivary and dietary nitrate. The SCOGS report estimated the maximum daily nitrite consumption for a vegetarian eating meat alternatives prepared from soy protein to be 0.04 mg/kilogram (kg) body weight (or 2.8 mg for a 70-kg person). The report estimated daily per capita intake of nitrite from other foods of plant origin and cured meats to be about 2.4 mg and daily exposure to nitrite from saliva to be 15 mg. The report estimated that nitrite formed in the intestine from reduction of ammonia or organic nitrogen compounds contributed about 90 mg/day. Given the relatively minor potential contribution of soy protein to total nitrite exposure, and the fact that no data were submitted to document the current levels of nitrites or nitrosamines in soy protein isolates, FDA is not persuaded of the necessity for establishing specifications for acceptable levels of these compounds.

5. Trypsin Inhibitors: Potential Effects on Pancreatic Function

(Comment 11). A number of comments presented evidence that modern heat treatment and other processing do not entirely eliminate the activity of trypsin inhibitors in soy protein-containing products. Additional references provided in comments (Refs. 79, 80, 81, and 82) suggested that the mechanism of feedback regulation of pancreatic enzyme secretion may be responsible for deleterious effects on the pancreas—hyperplasia and formation of nodules—seen in animal studies. Further, Leiner (Ref. 80) demonstrated that infusion of high levels of isolated trypsin inhibitor in humans can evoke this mechanism but noted that further research was needed to assess whether frequent exposures to low levels of trypsin inhibitors consumed in the diet could have the same effect. Other comments cited evidence for potential anticarcinogenic effects of these and other protease inhibitors (Ref. 83). Leiner (Ref. 82) hypothesized that any anticarcinogenic effect of protease inhibitors would likely be manifested at levels too low to evoke their adverse effects on the pancreas.

FDA notes that the observed adverse effects have been limited to animal studies. To date, deleterious effects of consumption of low levels of soybean trypsin inhibitors have not been documented in humans. For example, Mills *et al.* (Ref. 84) conducted a prospective study of fatal pancreas cancer among 34,000 California Seventh-day Adventists, a group with high soy consumption. Compared to all U.S. whites, Adventists experienced decreased risk from pancreas cancer death, which was not statistically significant. Although there was a suggestive relationship between increasing meat, egg, and coffee consumption and increased pancreatic cancer risk, these variables were not significantly related to risk after controlling for cigarette smoking. However, increasing consumption of vegetarian protein products, beans, lentils, and peas as well as dried fruit was associated with highly significant protective relationships to pancreas cancer risk.

Therefore, FDA finds that the information presented in these comments has not documented deleterious effects of dietary intake of trypsin inhibitors from soy in humans and, thus, does not lead the agency to take issue with the petitioner's conclusion that the use of soy protein is safe and lawful as required by § 101.14(b)(3)(iii).

6. Phytate: Effects on Mineral Balance

Comments raised concerns about the potential deleterious effect of soy protein and its phytate content on mineral status. Phytate, the salt of phytic acid or inositol hexaphosphate, is a natural plant constituent containing six negatively charged phosphate groups that can form strong complexes with divalent cations such as calcium, magnesium, iron, zinc, and copper. Concerns relative to soy have concentrated mainly on iron and zinc, based primarily on studies of the absorption and bioavailability of these minerals.

(Comment 12). One comment cited a study in which a soy protein-based purified diet induced iron deficiency in monkeys (Ref. 85). The same comment also noted two studies in humans—one that found inhibition of the absorption of nonheme iron from both semisynthetic meals and meals comprising conventional foods by various soy protein-containing ingredients (Ref. 86), and one that found increasing inhibition of nonheme iron absorption with increasing amounts of phytate in liquid formula meals that contained soy protein isolates (Ref. 87). In a study cited in another comment, the substitution of some meat in a mixed meal by soy protein caused a decrease in the absorption of nonheme iron and an increase in the absorption of heme iron (Ref. 88), so that overall iron absorption was not compromised. Another comment reported that human feeding studies with soy protein that have examined measures of iron status have not shown detrimental effects (Ref. 89).

A comment raised concerns about the effect of soy protein on zinc status based on studies of absorption of zinc from soy infant formula (Ref. 90) and a study that showed decreased serum thymulin in subjects fed a low-zinc, soy protein-based experimental diet designed to produce mild zinc deficiency (Ref. 91). As noted earlier, issues specific to infant formula are outside the scope of this rulemaking and the experimental diet in the latter study (Ref. 91) is of limited relevance to the likely conditions of consumption of soy protein in the population that is the target of the health claim. Another comment cited two studies (Refs. 92 and 93) showing no adverse effects of soy protein on absorption of zinc from meals in subjects with adequate zinc status.

One comment provided additional information on the mechanism of phytate interference with zinc homeostasis (Ref. 94) and characterized the problem as more than a matter of decreased bioavailability of the zinc consumed in a meal. The comment noted that phytate can remove from the duodenum zinc that is mainly derived from pancreatic secretions, that is, zinc that may have been consumed 1–2 weeks earlier. Although these data are derived from animal studies, the comment indicated that the physiology of zinc homeostasis is not qualitatively different across species.

This comment expressed concern that high consumption of soy protein might exacerbate marginal zinc deficiency, which is difficult to diagnose, and suggested that labeling should include the content of both zinc and phytate so consumers can be educated that a molar ratio of phytate:zinc of less than 10 is needed to avoid detrimental effects on zinc status, as suggested by research in animals (including Ref. 95). The comment acknowledged that education would be needed for the public to utilize such labeling. The agency recognizes that adequacy of iron and zinc status in largely plant-based diets is a legitimate concern.

FDA finds that the evidence of potential adverse effects of soy protein on iron and zinc status is equivocal. Interpretation of the evidence is difficult because findings in human studies are often inconsistent with results of animal studies. Moreover, many factors affect the absorption of these minerals, including the amount consumed in a meal, the enhancing and inhibiting effects of other components of the meal, and the nutritional status of the subject. Animal studies suggest that zinc status is a strong determinant of effects of phytate/soy on zinc absorption: zinc absorption is more impaired with zinc deficiency, in contrast to the effect of low iron status, which enhances iron absorption. However, given the lack of documented evidence for impaired iron and zinc status in humans consuming soy protein as part of a mixed diet, FDA is not persuaded of the necessity for the suggested labeling with respect to the phytate: zinc molar ratio. Nor is it persuaded that many consumers would find the suggested information, which is highly technical, useful at this time.

7. Soy Isoflavones: Estrogenic Effects

Many comments addressed concerns about the possible deleterious consequences of phytoestrogen effects of the soy isoflavones, genistein and daidzein. Most of these addressed proliferative (and potentially carcinogenic) effects on estrogen-sensitive tissues, effects on circulating hormone levels and potential deleterious effects on fertility, and potentially adverse effects on sexual development.

a. *Proliferative effects.* (Comment 13). Several comments cited a number of studies of in vitro effects of individual isoflavones on proliferation of estrogen-sensitive cells. For example, Dees et al. (Ref. 96) found that genistein increased a number of indices for proliferative activity in MCF–7 human breast cancer cells. As the authors noted, these findings are consistent with the conclusion that dietary estrogens at low concentrations do not act as antiestrogens, but act like estradiol to stimulate human breast cancer cells to enter the cell cycle. However, many other studies (reviewed in Refs. 97 and 98) have found that the phytoestrogens present in soybeans inhibit breast cancer cell proliferation in vitro (at lower concentrations, closer to physiological levels) and inhibit mammary cancer development in various animal models. FDA concludes that studies in transformed cells cannot predict with certainty whether effects will be beneficial or detrimental in humans consuming soy protein.

(Comment 14). Comments argued that two reports showed effects of dietary intake of soy isoflavones on breast tissue in women. Petrakis *et al.* (Ref. 99) studied 24 normal pre- and postmenopausal white women, ages 30 to 58 years, who underwent monthly nipple aspiration of breast fluid and gave blood and 24-hour urine samples for biochemical studies. The women consumed no soy in months 1–3 and 10–12. During months 4–9 the women ingested daily 38 grams (g) of soy protein isolate containing 38 mg of genistein (daidzein content was not reported). This study's findings indicated that prolonged consumption of soy protein isolate had a stimulatory effect on the breast of premenopausal women, characterized by increased secretion of breast fluid and elevated levels of plasma estradiol. The study also detected evidence of epithelial proliferation (hyperplasia) in 7 of the 24 subjects during consumption of soy. McMichael-Phillips *et al.* (Ref. 100) examined the effects of dietary soy supplementation on the proliferation rate of premenopausal, histologically normal breast epithelium and the expression of progesterone receptor. Women (n = 48) with benign or malignant breast disease were randomly assigned to receive their normal diet either alone or with a 60-g soy supplement (containing 45 mg isoflavones) taken daily for 14 days. Serum concentrations of the isoflavones genistein and daidzein increased in the soy group at 14 days. The proliferation rate of breast lobular epithelium significantly increased after soy supplementation when both the day of menstrual cycle and the age of patient were accounted for. Progesterone receptor expression increased significantly in the soy group. The authors concluded that further studies are required to determine whether the short-term stimulation of breast proliferation is due to estrogen agonist activity and to examine the long-term effects of soy on both the pituitary gland and breast.

FDA finds that the detection of proliferative effects in these two studies suggests the need for additional research. The findings do not, however, establish that the observed effects are detrimental and are not supported by the findings of epidemiologic studies of soy intake and risk of premenopausal breast cancer (Ref. 101).

b. *Fertility and Hormone Levels.* (Comment 15). Some comments referenced a number of studies that reported reduced fertility in animals exposed to phytoestrogens (including Refs. 102, 103, and 104). Some of these studies involved phytoestrogens other than those found in soy or consumption of soy under extreme or unusual conditions. FDA is not convinced of the relevance of these studies to human consumption of soy protein.

(Comment 16). Comments cited the study of Cassidy *et al.* 1994 (Ref. 105) as suggesting the potential for deleterious effects on human fertility. These investigators examined the influence of a diet containing soy protein on the hormonal status and regulation of the menstrual cycle in six premenopausal women. Soy protein (60 g containing 45 mg isoflavones) given daily for 1 month significantly ($p<0.01$) increased follicular phase length and/or delayed menstruation. Midcycle surges of luteinizing hormone (LH) and follicle-stimulating hormone (FSH) were significantly suppressed during dietary intervention with soy protein. Plasma estradiol concentrations increased in the follicular phase and cholesterol concentrations decreased 9.6 percent. The authors concluded that responses to soy protein are potentially beneficial with respect to risk factors for breast cancer and may in part explain the low incidence of breast cancer and its correlation with a high soy intake in Japanese and Chinese women. One of the comments that cited this study acknowledged that it is unclear whether these soy effects are beneficial or adverse. FDA notes that the study found that soy did not interfere with ovulation and the study did not assess effects on fertility.

In a similar study with a longer duration, Duncan *et al.* (Ref. 106) studied effects of isoflavone consumption in 14 premenopausal women. The women consumed isoflavones in soy protein powders (control diet, 10; low isoflavone diet, 64; high isoflavone diet, 128 mg/day) for three menstrual cycles plus 9 days in a randomized cross-over design. The low isoflavone diet decreased LH and FSH levels during the periovulatory phase. The high isoflavone diet decreased free T3 and dehydroepiandrosterone sulfate levels during the early follicular phase and estrone levels during the midfollicular phase. No other significant changes were observed in hormone concentrations or in the length of the menstrual cycle, follicular phase, or luteal phase. Endometrial biopsies performed in the luteal phase of cycle 3 of each diet period revealed no effect of isoflavone consumption on histological dating. FDA notes that although this study's findings varied somewhat from those of Cassidy *et al.* (Ref. 105), it also did not directly address the effect of soy on human fertility. FDA finds that these two studies do not provide sufficient evidence to address the effect of soy protein on human fertility.

c. *Developmental Effects.* (Comment 17). One comment cited the study of Faber and Hughes, 1993 (Ref. 107) as showing alterations in LH regulation following developmental treatment with genistein, suggesting that during pregnancy in humans, isoflavones could be a risk factor for abnormal brain and reproductive tract development. This study involved injection of 0, 1, 10, 100, 200, 400, 500, or 1,000 micrograms of genistein into neonatal rats on days 1–10. Because of the differences in developmental stages between rodents and humans, this type of experiment is used as a model for prenatal (third trimester) effects of diethylstilbestrol (DES). Increased exposure to genistein led to decreased LH secretion; the volume of the sexually dimorphic nucleus of the preoptic area increased compared to controls only in animals that received the two highest doses of genistein. An earlier paper by Faber and Hughes 1991 (Ref. 108) showed that effects elicited by neonatal injections of 1000 micrograms of genistein were similar to those of 0.1 micrograms of DES. The comment also cited studies using a similar experimental model by Medlock *et al.* (Refs. 109 and 110) as demonstrating that equol (a metabolite of daidzein in some individuals) acts as an endocrine disruptor during development. FDA finds that the relevance of these studies to an assessment of potential prenatal effects of dietary soy protein during pregnancy is uncertain.

(Comment 18). One comment cited the study of Harrison *et al.* (Ref. 111) that showed pregnant Rhesus monkeys fed genistein had serum estradiol levels 50 to 100 percent higher than the controls in three different areas of the maternal circulation. The comment also noted the finding that the fetuses of genistein fed monkeys had a 70 percent higher serum estradiol level than did the controls. In this study, five monkeys were fed genistein (amount not specified) during pregnancy and compared to five controls. No differences were reported in maternal weight gain, fetal weights at delivery, or placental weights. Significant differences in estradiol levels (but not progesterone) were noted at delivery in maternal peripheral blood, uterine veins, ovarian veins, and the fetus, and in maternal blood during pregnancy, but values were not reported. FDA received only an abstract describing this study. Without more complete documentation, the merits or weaknesses of this study cannot be evaluated. Therefore, FDA has not used this study to evaluate the concerns raised in this comment.

FDA notes that, in another study that examined dietary effects, Fritz *et al.* (Ref. 112) fed female rats genistein from conception to day 21 postpartum in the diet at concentrations of 0, 25 and 250 mg genistein/kg diet. They found that genistein in the diet at "physiological levels" (equivalent to those in Asians consuming a traditional high soy diet) enhances cell differentiation, resulting in programming of mammary gland cells for reduced susceptibility to chemically induced mammary cancer, with no observed toxicity to the fertility of dams or the reproductive tract of female offspring. FDA finds that these dietary studies in animals do not provide evidence for detrimental developmental effects in humans.

(Comment 19). Another comment raised the possibility that soy phytoestrogens could be responsible for inducing premature puberty and cited the case-control study of estrogenic exposures by Freni-Titulaer *et al.* (Ref. 113) of patients with premature thelarche seen in Puerto Rico between 1978 and 1981. In subjects 2 years of age or older at the onset of thelarche, the study found no statistically significant associations. In subjects with onset before 2 years of age, statistically significant positive associations were found with a maternal history of ovarian cysts, consumption of soy-based formula, and consumption of various meat products. A statistically significant negative association was found with consumption of corn products. The authors concluded that these statistical associations were not sufficient to explain the reported increase in premature thelarche because in over 50 percent of the case subjects there was no exposure to any of the risk factors for which statistical associations were found.

Thus, FDA concludes that this study provides no convincing evidence that soy was responsible for premature thelarche. Moreover, FDA notes that the study documents no deleterious effects of consuming soy protein at the levels necessary to justify the health claim in population groups that are the target of the claim.

d. *Other.* (Comment 20). One comment cited a study associating intake of tofu in mid-life by Japanese-American men in Hawaii with vascular dementia and brain atrophy in old age (Ref. 114). This comment hypothesized that isoflavone inhibition of aromatase, which catalyzes the conversion of testosterone to estradiol, may provide a mechanistic explanation for this finding. The report cited (Ref. 116) is an abstract that indicates the researchers found an association of high tofu intake with low cognitive test scores and with Alzheimer's disease, rather than vascular dementia.

FDA finds that this abstract does not provide a sufficient basis to evaluate the merits and weaknesses of this study. As such, it is not useful in evaluating the safety concerns at issue. Moreover, the report does not provide information on total soy intake or what variables were controlled in the analysis. If tofu or soy were implicated in Alzheimer's disease, its prevalence would be expected to be higher in Japan than in Hawaii, but White *et al.* (Ref. 115) found the prevalence of Alzheimer's disease was higher in Hawaii than in Japan. Therefore, FDA is not persuaded by the comment raising concerns about potential adverse effects of soy protein in dementia and brain atrophy in older persons.

(Comment 21). One comment addressed the general issue of threshold effects for estrogenic compounds, citing a study (Ref. 116) that showed no threshold dose for estradiol-induced sex reversal of turtle embryos. It also cited a study (Ref. 117), available in abstract form, that reviewed 31 dose-response curves for hormone-mimicking chemicals that also failed to show a threshold. The report of this study did not include mention of soy isoflavones and did not specify the estrogenic effects examined. FDA does not find this evidence particularly useful. The relevance of the turtle model to humans is uncertain and the other cited evidence was available only in abstract form.

e. *Conclusion.* Soy isoflavones and other dietary phytoestrogens are known to exert hormonal effects—both estrogenic and antiestrogenic—depending on the amount and type consumed and endogenous hormonal status of the organism studied; they are much less potent than endogenous estrogen or synthetic estrogens such as DES. There is considerable variability from person to person in the absorption, metabolism, and disposition of the soy isoflavones, genistein and daidzein (Ref. 118), and researchers have found that their metabolism and excretion depend on the duration of ingestion and the subject's sex (Ref. 119).

Overall, the evidence for proliferative effects, effects on fertility and hormone levels, and developmental and other effects in humans due to the estrogenic effects of soy isoflavones is very limited. Both possible beneficial effects and possible detrimental effects are still hypothetical. FDA finds that the information presented in the comments has not adequately documented deleterious effects of dietary intake of soy isoflavones in humans.

8. Soy Isoflavones: Goitrogenic Effects

(Comment 22). Comments noted that isoflavones are inhibitors of the enzyme thyroid peroxidase (TPO), which produces the thyroid hormones T3 and T4, and indicated that its inhibition can be expected to generate thyroid abnormalities. Other comments, however, noted the lack of evidence for consequential effects of TPO inhibition (*i.e.*, high prevalence of goiter) in populations with high soy consumption.

One comment noted that there exists a body of animal data that demonstrates goitrogenic and even carcinogenic effects of soy products and cited the study by Kimura *et al.* (Ref. 120). These researchers developed malignant goiter in rats by feeding diets containing 40 percent defatted soybean and no iodine. No deleterious effects were seen in controls fed the same diet with iodine added.

Comments noted the existence of a number of case reports in the older literature of soy inducing goiter in infants (Refs. 121 through 125). Van Wyk *et al.* (Ref. 121) studied one infant who developed goiter on a soybean formula and tested the same product in 12 adults. In adults, the product did not interfere with iodine absorption, impair iodine uptake, interfere with oxidation of iodine in the thyroid, or (in most subjects) interfere with the release of protein-bound iodine into the blood. Hydovitz (Ref. 12) provided a single case report; Shepard *et al.* (Ref. 123) described three cases and presented evidence that soybean goiter was caused by iodine deficiency. Pinchera *et al.* (Ref. 124) reported on a case of a congenitally hypothyroid infant and found high fecal losses of thyroxine. Addition of adequate iodine to soy-based infant formulas in the 1960's generally resolved or prevented goiter. However, Chorazy *et al.* (Ref. 125) more recently reported on a hypothyroid infant who was semi-refractory to thyroid hormone therapy while consuming soy formula.

Several comments cited the study of Ishizuki *et al.* (Ref. 126) as evidence for goitrogenic effects of soy in adults. This study is published in Japanese and the available English abstract is poorly translated. As described in that abstract, the design and findings are unclear: goiters were said to occur in half the subjects eating 30 g soybeans daily for 3 months, though "various parameters of serum thyroid hormones remained unchanged by taking soybeans." The soybean preparation used (reported in some comments to be roasted, pickled soybeans), iodine intake, and other dietary changes were not reported.

In one comment, researchers indicated that they had identified genistein and daidzein as the goitrogenic isoflavonoid components of soy and defined the mechanisms for inhibition of TPO-catalyzed thyroid hormone synthesis using in vitro studies of the pure isoflavones (Refs. 127 and 128). The comment noted that the observed irreversible inactivation of TPO by isoflavones, through covalent binding to TPO, raises the possibility of neoantigen formation. The comment also noted that anti-TPO is the principal autoantibody present in autoimmune thyroid disease and proposed that this hypothetical mechanism is consistent with the reports of Fort *et al.* (Refs. 129 and 130) of a doubling of risk for autoimmune thyroiditis in children who had received soy formulas as infants compared to infants receiving other forms of milk. However, the studies of Fort *et al.* were retrospective case-control analyses of early feeding practices in children with diabetes (Ref. 129) or autoimmune thyroid disease (Ref. 130). The studies did not establish a cause-and-effect relationship or assess medical indications for use of soy formula in these children.

FDA notes that no data or other information presented in the comments documents deleterious effects on thyroid function of consuming soy protein at the levels necessary to justify the health claim in population groups that are the target of the claim.

9. Allergenicity of Soy Protein

(Comment 23). One comment disputed the statement in the soy protein proposed rule that soy allergies are often outgrown. FDA finds that the comment cited data that did not directly address this issue but documented the following with respect to soy: a case report of an anaphylactic reaction to soy in an adult (131); severe reactions to soy in several Swedish children and adolescents, who had known severe reactions to peanuts and asthma but had not reacted previously to soy (Refs. 132 and 133); cross reactivity of some soy and peanut allergens (Ref. 134); and an outbreak of gastrointestinal illness associated with consumption of an improperly processed soy protein tuna salad extender in which only a few individuals exhibited signs of true hypersensitivity reactions (Ref. 135).

(Comment 24). One comment noted that use of soy protein health claims will highlight the presence of soy protein in foods. Another comment noted that any food protein can stimulate a food allergy and that such allergies are commonly due to milk, egg, and nut proteins. This comment noted that infants who develop cow's milk allergies or intolerance are frequently prescribed soy substitutes and a small subset of these high-risk children also develop soy protein allergy.

FDA finds that the comments that noted concerns about the allergenicity of soy protein cited these concerns as evidence that consumption of soy is unsafe, but did not propose that any particular action be taken by the agency as a consequence to protect consumers with soy allergies. FDA does not believe that, because some persons may have allergic reactions to a food, it is unsafe. FDA has previously stated that the declaration of an allergenic substance in the ingredient statement on the food label provides adequate information for consumers regarding the presence of the allergenic ingredient in the product (63 FR 8103 at 8113), and sees no reason to change this view with respect to soy. FDA notes, in agreement with one of the comments received, that authorization of a health claim for soy protein and CHD will highlight the presence of soy protein in those food products that bear the claim. The agency, therefore, anticipates that persons with known soy allergies will be able more easily to avoid soy protein based products.

B. Updated Review of Scientific Evidence and Issues Related to the Evidence

In the soy protein proposed rule, FDA conducted a comprehensive review of the human studies submitted in the petition (Refs. 27 through 66) (63 FR 62977 at 62980). Of these, the agency gave particular weight to 14 clinical trials (Refs. 27, 28, 30 (1 trial), 31, 36, 37 (1 trial), 40 (2 trials), 44, 49, 51, 54, 58, and 59). These 14 trials met the criteria for selection set out by the agency (63 FR 62977 at 62980): they included subjects representative of the general U.S. population; were well controlled; reported information on intakes of saturated fat and cholesterol; and avoided problems associated with small sample size, lack of a placebo, and other design problems. The agency summarized these studies in Table 1 of the soy protein proposed rule (63 FR 62977 at 62998). The agency also summarized seven clinical trials in adults (Refs. 33, 35, 46, 55, 56, 60, and 64) and three trials in children (Refs. 34, 42/45, and 63) with type II or familial hypercholesterolemia in Table 2 of the soy protein proposed rule (63 FR 62977 at 63011). In addition, FDA reviewed the results of one epidemiological study (Ref. 65 and 63 FR 62977 at 62986) and a meta-analysis (Ref. 66 and 63 FR 62977 at 62987) that included a number of the soy protein studies submitted in the petition.

Based on these studies, FDA concluded there was scientific evidence for a consistent, clinically significant effect of soy protein on blood total and LDL-cholesterol levels (63 FR 62977 at 62989). The hypocholesterolemic effect of soy protein was seen in addition to the effects of a low saturated fat and low cholesterol diet. The degree of lowering of blood total and LDL-cholesterol was consistently and highly dependent on initial levels, within and across studies of subjects with normal, moderately elevated, and severely elevated blood lipid levels, with persons having higher blood lipid levels showing greater effects. Soy protein consistently caused only statistically nonsignificant effects or slight elevations in high density lipoprotein (HDL)-cholesterol levels. The intervention studies indicated that a minimum level of approximately 25 g of soy protein was needed to have a clinically significant effect on total and LDL-cholesterol levels.

1. Additional Data Submitted With Comments and New Studies

(Comment 25). Several comments included submissions of additional studies of the effects of soy protein on total and LDL-cholesterol or directed FDA to studies published since it issued the soy protein proposed rule. FDA reviewed these studies and found that two (Refs. 136 and 137) meet its criteria for consideration.

One comment included an unpublished paper by Teixeira *et al.*, 1999 (Ref. 136) that examined the effects of feeding four graded levels of soy protein in moderately hypercholesterolemic men. After a three-week lead-in on a National Cholesterol Education Program (NCEP) Step 1 diet, subjects were randomly assigned to one of five experimental groups. Each group received 50 g protein daily, provided in a variety of baked goods and ready-to-mix beverages, from ISP or casein in different proportions for 6 weeks. The proportions of protein were 50, 40, 30, 20, and 0 g (for control) as ISP and 0, 10, 20, 30, and 50 g as casein, respectively. At 3 weeks, statistically significant ($p<0.05$) reductions in total and non-HDL-cholesterol were seen only in the groups consuming 40 and 50 g of soy protein. At 6 weeks, statistically significant reductions ($p<0.05$) from baseline were found for non-HDL cholesterol levels in all soy protein-consuming groups and, in all except the 40 g soy protein group, for total cholesterol level. Although a reduction in total cholesterol was noted in this latter group, it was non-significant (p=0.07). The authors noted that neither non-compliance with the diet nor alterations in blood isoflavone content could account for this result. The study also showed that levels of HDL-cholesterol were not affected by dietary treatment at any soy consumption level investigated.

FDA also noted the recently published study by Wong *et al.*, 1998 (Ref. 137), who conducted a well designed and controlled trial using NCEP Step 1 diets with most protein provided by soy (50 g/day of soy protein) or animal protein. Subjects were 13 normocholesterolemic and 13 hypercholesterolemic men aged 20–50 years and the trial was a randomized, 2-part, crossover study. Subjects were fed either an NCEP Step I soy protein-containing diet or an NCEP Step I animal protein diet for 5 weeks. After a washout period of 10–15 weeks, the subjects were fed the alternate diet for 5 weeks. The study found the hypocholesterolemic effect of soy protein to be independent of age, body weight, pretreatment plasma lipid concentrations, and sequence of dietary treatment. Regardless of plasma lipid status, the soy protein diet was associated with a statistically significant decrease in the plasma concentrations of LDL cholesterol (p=0.029). FDA finds these two studies supportive of the relationship of soy protein to reduced risk of CHD.

(Comment 26). One comment cited two metabolic ward studies by Fumagalli *et al.* 1982 (Ref. 138), designed to examine fecal steroid excretion in adults with familial type II hypercholesterolemia, that had not been reviewed by FDA in the soy protein proposed rule, as supportive of the ability of soy protein to lower total cholesterol levels. However, FDA finds these studies had a very small number of subjects, short duration of treatment, and reported insufficient information to determine the amounts of soy protein in the diets consumed. These studies failed to meet FDA's selection criteria for review and, so, FDA has not considered them further.

(Comment 27). Comments included information on two studies by Jenkins et al. 1999 (Refs. 139 and 140) that assessed the effects of inclusion of soy protein and soluble dietary fiber in an NCEP Step II diet in hypercholesterolemic subjects in a randomized crossover design. Dietary saturated fat (less than 7 percent of energy) and cholesterol (less that 80 mg/day) did not differ in the test and control metabolic diets (Ref. 139). Compared with the control diet, the test diet (which provided 33 grams of soy protein from a variety of commercially available foods) resulted in a 6 percent decrease in total cholesterol and a 7 percent decrease in LDL-cholesterol levels. The second study (Ref. 140) used a similar design but was only available as an abstract that contained too little detail for the agency to evaluate it.

FDA finds that neither of these studies can provide support for a hypocholesterolemic effect of soy protein per se because both soy protein and soluble fiber were varied concurrently. However, these studies do suggest that inclusion of these specific components can further enhance the lipid-lowering effect of a low saturated fat, low cholesterol diet.

(Comment 28). A comment also submitted the recent study by Washburn *et al.*, 1999 (Ref. 141) for consideration. In this randomized, double-blind crossover trial, 51 normocholesterolemic, perimenopausal women consumed supplements for 6-week periods of 20 g of complex carbohydrate, 20 g of soy protein containing 34 mg of phytoestrogens given in a single dose, and 20 g of soy protein containing 34 mg of phytoestrogens split into two doses. Significant declines in total cholesterol level (6 percent lower) and LDL-cholesterol level (7 percent lower) were observed with both soy treatments compared to the carbohydrate placebo control. However, no dietary assessments were performed; thus, FDA cannot determine whether the women may have modified their usual dietary intake in response to the supplements and whether and how intake of dietary constituents may have differed among the treatment groups.

FDA identified two additional recently published studies for consideration. Nilausen and Meinertz, 1998 (Ref. 142) employed liquid formula diets containing a very high level of protein (150 g/day) with soy or casein as the sole protein source to examine individual variability in lipemic response in a small metabolic study of normocholesterolemic men. In most subjects effects of soy protein on both LDL- and HDL-cholesterol levels were favorable, but considerable variability in response was observed. Duane, 1999 (Ref. 143) also conducted a small metabolic ward study in normocholesterolemic men that compared effects of (1) a control diet with "standard" amounts of dietary cholesterol, (2) a diet with essentially no dietary cholesterol and all animal sources of protein substituted by TVP, and (3) a diet similar to the second one with eggs isocalorically substituted for protein and fat to bring dietary cholesterol levels to the moderate range. Diets containing soy protein decreased LDL-cholesterol but the effect was of borderline statistical significance. FDA notes that the small number of subjects and the unusual dietary conditions employed in these two studies limit their usefulness in adding to the body of evidence about the effects of soy protein on circulating lipid levels.

In summary, although most of the new studies considered had flawed or unusual designs that compromised their evaluation, the two better designed and controlled studies (Ref. 136 and Ref. 137) provide additional support for the cholesterol lowering effects of inclusion of reasonable amounts of soy protein in diets low in saturated fat and cholesterol.

2. Interpretation of the Clinical Trial Data for Soy Protein

(Comment 29). One comment raised concerns about the apparent inconsistency in FDA's application of its review selection criteria, especially with respect to giving the greatest weight in evaluation of the health claim to those studies that reported information about the dietary intake of constituents known to have the greatest influence on total and LDL-cholesterol levels. The comment noted that values for dietary saturated fat and cholesterol were not reported for some studies and that an outmoded description of polyunsaturated fatty acid to saturated fatty acid ratio was reported for some studies.

FDA agrees that values for these dietary constituents were not reported explicitly in all of the studies selected for review. In such cases, FDA relied upon other documentation contained in the study publications regarding the contents of the test and control diets, such as sample menus and reported manipulations of sources of saturated fat and cholesterol, for assurance that dietary saturated fat and cholesterol did not differ significantly in the test conditions.

(Comment 30). One comment questioned the appropriateness of including studies in which only total cholesterol levels were measured.

As noted above, in earlier rulemakings on diet and CHD relationships, FDA concluded that it is generally accepted that blood total and LDL-cholesterol levels are major risk factors for CHD, and that dietary factors affecting blood cholesterol levels affect the risk of CHD. FDA notes that a few of the older studies that it considered and reviewed in the soy protein proposed rule, and in previous rulemakings, measured only total cholesterol levels. FDA concluded that inclusion of these studies for review was desirable in order to assess the totality of the publicly available scientific evidence on the relationship of soy protein and risk of CHD, even though LDL-cholesterol levels are now considered to be a more powerful risk factor than total cholesterol levels.

(Comment 31). A few comments disagreed with FDA's tentative decision to authorize a health claim for the relationship between soy protein and CHD because not all of the studies reviewed in the soy protein proposed rule showed significant reductions of total and plasma cholesterol levels.

A recent review and meta-analysis of the effectiveness of NCEP Step 1 and Step 2 dietary interventions in free-living subjects by Yu-Poth *et al.* (Ref. 144) noted an appreciable range of response to the dietary interventions with the maximal effect being more than twice the average response reported in controlled feeding studies with Step 1 diets. The interventions reviewed were designed to achieve reduction of dietary saturated fat and cholesterol and weight reduction, factors known to have a major impact on circulating cholesterol levels. (The hypocholesterolemic effects of soy protein, like those of soluble fiber from whole oats and psyllium seed, are of a lesser magnitude than those of reduced dietary saturated fat and cholesterol.) Denke (Ref. 145), in an editorial comment on the study by Yu-Poth *et al.*, notes that cholesterol-lowering dietary therapy is subject to profound individual variation in response. In metabolic ward studies of subjects with unselected cholesterol levels, 5 percent of individuals had no cholesterol-lowering response to dietary modification and the percentage of nonresponders increased to 10–25 percent in outpatient studies (Denke, 1995, Ref. 146). Such nonresponse can result in a significant underestimation of the effectiveness of dietary intervention when only the mean response is considered. The small metabolic ward study of Nilausen and Meinertz (Ref. 142), described above, documented evidence for considerable inter-individual variability in the response of cholesterol levels to diets containing soy protein.

Based on the studies reviewed in the soy protein proposed rule and the new studies reviewed in this document, FDA concludes that the totality of the available scientific evidence supports a consistent, if not universal, hypocholesterolemic effect of soy protein included in a low saturated fat and low cholesterol diet. The degree of consistency is notable in light of the different experimental designs and diets studied, the different forms and amounts of soy protein tested, and the variability in initial cholesterol levels of the subjects. The modest lowering of total and LDL-cholesterol levels generally observed in these studies can effect a significant reduction in CHD risk.

(Comment 32). Other comments reviewed various possible mechanisms for the cholesterol-lowering effects of soy protein and some argued that until the mechanism of action of soy protein is clearly established, no health claim should be authorized. FDA notes, however, that such knowledge is not necessarily required for authorization of a health claim.

3. Role of Soy Isoflavones in and Effect of Processing on the Hypocholesterolemic Effect of Soy Protein

In the soy protein proposed rule, FDA examined the limited evidence that addressed whether the hypocholesterolemic effects of soy protein intake were dependent, as suggested by the petitioner, on concomitant intake of a specified level of naturally occurring soy isoflavones, *i.e.*, 2 mg isoflavones per g of soy protein (Refs. 22, 28, 31, 70, and 71). FDA also took note of a letter to the editor from Sirtori *et al.* (Ref. 72), who conducted a number of trials in which soy protein exhibited hypocholesterolemic effects and asserted that the products used in those trials were essentially devoid of isoflavones. Given the limited number of studies and the contradictory outcomes, FDA was not persuaded that the isoflavone component of soy protein was a relevant factor to the diet-disease relationship. Rather, FDA tentatively concluded that the evidence from a wide range of studies using differently processed soy protein was supportive of a relationship between soy protein per se and reduced risk of CHD.

(Comment 33). Several comments reviewed and discussed the animal and human studies that examined effects of isoflavones directly or that compared the effects of ISP processed with and without alcohol extraction that can remove essentially all isoflavones. Some of these studies examined effects on parameters in addition to cholesterol levels, such as measures of lipid-related gene expression, atherosclerosis, and vascular reactivity. Because the health claim for soy protein and CHD is based on the hypocholesterolemic effect of soy protein, only that aspect of the studies is summarized below.

In one study, Balmir *et al.* (Ref. 147) fed male rats diets containing protein from ethanol-acetone extracted ISP, nonextracted ISP, casein, or casein to which the ethanol-acetone extract was added. Rats fed either ISP diet had lower serum total cholesterol concentrations compared with those fed either casein diet. Lower serum LDL-cholesterol concentrations were found in rats fed either ISP diet and in rats fed casein plus extract compared with those fed casein. Sugano and Koba (Ref. 148) found that a methanol-extracted soy fraction was not as effective as the unextracted fraction in maintaining low plasma cholesterol levels in rats. Kirk *et al.* (Ref. 149) showed that a soy protein-based isoflavone-containing diet resulted in a reduction in cholesterol levels in C57BL/6 mice compared to a diet containing alcohol-washed soy protein, although it had no effect on cholesterol levels in transgenic mice that lacked the LDL receptor. In another study, Balmir *et al.* (Ref. 147) fed male Golden Syrian hamsters diets containing protein from ISP, ISP with added ethanol-acetone extract, casein, or casein with added extract. Lower serum total cholesterol and LDL cholesterol concentrations were observed in hamsters fed ISP, ISP with extract, or casein with extract compared with those fed casein. Addition of the extract to casein at higher levels did not lower serum lipids relative to casein. Tovar-Palacio *et al.* (Ref. 150) fed gerbils one of five experimental diets containing either casein or alcohol-washed ISP provided alone, or ISP supplemented with one of three different levels of an alcohol extract of isolated soy protein contributing either 2.1, 3.6 or 6.2 mg isoflavones/g protein. Gerbils fed all of the soy-based diets had significantly lower total and LDL + very low density lipoprotein (VLDL)-cholesterol levels than those fed casein. The additions of the alcohol extract to ISP did not reduce serum cholesterol levels any further. This study suggests that, in gerbils, consumption of an isoflavone-containing extract does not contribute to the hypocholesterolemic effect of alcohol-extracted soy protein. These reports did not characterize the nature of the extracts used in the studies. Overall, FDA finds that studies in these animal models do not clarify the role of isoflavones in the hypocholesterolemic effect of soy protein.

Comments noted a series of studies conducted in monkeys that examined the effect of removal of isoflavones and other alcohol-extractable compounds from soy protein on its cholesterol-lowering activity. Anthony *et al.* (Ref.

22) fed peripubertal male and female rhesus monkeys moderately atherogenic diets in which the source of dietary protein was a soy protein isolate, either containing isoflavones or with the isoflavones removed by alcohol extraction, in a crossover design with each period lasting for 6 months. The intact soy protein (compared with the extracted soy protein) significantly reduced LDL+VLDL-cholesterol levels in both males and females and significantly increased HDL-cholesterol levels for females. Honoré *et al.* (Ref. 23) fed young adult rhesus monkeys with pre-existing diet-induced atherosclerosis one of two soy-based diets, which were identical in composition except that the isoflavones were extracted from one and intact in the other, for 6 months. Total and LDL-cholesterol levels were significantly lower in females fed the intact soy protein than in those fed the extracted soy protein. The same trend was seen in males, but the difference was not statistically significant for total cholesterol. Anthony *et al.* (Ref. 70) studied young male cynomolgus macaques fed one of three moderately atherogenic diets for 14 months. The groups differed only in the source of dietary protein, which was either casein/lactalbumin, soy protein with the isoflavones intact, or soy protein with the isoflavones mostly extracted. Animals fed intact soy protein had significantly lower total and LDL+VLDL-cholesterol levels compared with the other two groups. The animals fed intact soy protein had the highest HDL-cholesterol level, the casein group had the lowest level, and the group fed the extracted soy protein was intermediate. Anthony *et al.* (Ref. 151) randomized male and female macaques to groups fed a casein-containing diet or diets with soy protein with the isoflavones intact or extracted. Fat and cholesterol were identical in all diets. The LDL+VLDL-cholesterol levels were highest in the casein group, slightly lower in the group fed extracted soy protein, and significantly lower in the group fed intact soy protein. The HDL-cholesterol levels were significantly higher in both soy protein groups than in the casein group. FDA notes that the alcohol extraction procedure used by these researchers, which was not characterized in the study reports, appeared to diminish the hypocholesterolemic effect of ISP.

Comments submitted three human studies of isolated isoflavones that examined their role in cholesterol lowering. In a study published only as an abstract, Colquhoun et *al.* (Ref. 152) administered daidzein and genistein to 23 male and female subjects with an average cholesterol level of 243 mg/deciliter (dL) in a blinded crossover design. Nestel *et al.* (Ref. 52) studied 21 women in a randomized cross-over design with two active treatment periods (80 mg of isolated soy isoflavones) and one 5-week placebo period, while they consumed a soy-free diet. Hodgson *et al.* (Ref. 153) conducted a randomized, blinded, placebo-controlled trial of 8 weeks duration and a two-way parallel design that tested the administration of 55 mg of soy isoflavones to 46 men and 13 postmenopausal women. Plasma lipid levels were not affected by soy isoflavones in any of these studies. FDA notes that these studies do not support a role for isolated isoflavones in cholesterol lowering.

Three studies submitted in comments examined the effects of variation of isoflavone content in soy protein-containing diets in human subjects. Cassidy *et al.* (Ref. 154) conducted metabolic ward studies of the effects of various soy products with and without isoflavones in small numbers of healthy, nonvegetarian, premenopausal women. During one (control) menstrual cycle, the women ate a constant diet containing no soy products. Then, over a second complete cycle six subjects consumed a similar diet into which 60 g TVP/day, containing 45 mg conjugated isoflavones, was incorporated. Three participants had 50 g miso, containing 25 mg unconjugated isoflavones, added daily to their diet over a menstrual cycle, and six others consumed 28 g TVP/day, containing 23 mg conjugated isoflavones. Five participants completed a third diet period in which they were randomly assigned to consume either the control diet over a cycle, or a similar diet incorporating 60 g of a ISP from which the isoflavones had been chemically extracted. A significant reduction in total cholesterol was found with 45 mg conjugated isoflavones, but not with 23 mg conjugated isoflavones or isoflavone-free ISP.

As previously reviewed in the soy protein proposed rule (63 FR 62977 at 62988), the study of Baum *et al.* (Ref. 28) investigated the impact of soy protein as ISP containing different levels of isoflavones in hypercholesterolemic, postmenopausal women. Adjusted mean differences in the change from baseline for total serum cholesterol level did not differ in the two soy groups and the control group. However, there was a statistically significant reduction of 8–9 percent in non-HDL (LDL+VLDL)-cholesterol in both of the ISP treatment groups ($p<0.05$) compared to the control group. HDL-cholesterol was also significantly increased ($p<0.05$) in both soy groups compared to the control. The level of isoflavones did not affect any of the blood lipid levels measured.

FDA also previously reviewed the unpublished study by Crouse et al., which was subsequently accepted and published (Ref. 31), in the soy protein proposed rule (63 FR 62977 at 62987). This study examined the effect of soy protein containing different levels of isoflavones in hypercholesterolemic men and women. Subjects with qualifying serum lipid levels (LDL-cholesterol greater than 140 mg/dL) after one month and who were compliant with the study regimen were randomized into one of five treatment groups. The treatment groups received 25 g protein from ISP prepared from soy with different levels of isoflavones (either 1.0, 1.6, or 2.5 mg total aglycone isoflavones/g protein), or 25 g protein from alcohol-washed ISP that contained essentially no isoflavones (0.2 mg total aglycone isoflavones/g protein) or 25 g protein from casein (no isoflavones) in beverages for 9 weeks. Results indicated that compared to casein the ISP containing the highest level of isoflavones significantly lowered total ($p<0.05$) and LDL-cholesterol ($p<0.05$), by 4 percent and 6 percent, respectively, while HDL-cholesterol was not altered. In subjects with LDL-cholesterol in the top half of the study population, serum total and LDL-cholesterol were reduced by 9 percent ($p<0.03$) and 12 percent ($p<0.03$), respectively, by the ISP with the highest isoflavone content, and by 8 percent ($p<0.03$) and 9 percent ($p<0.03$), respectively by the ISP with the second highest isoflavone content, while HDL-cholesterol concentrations were maintained. The authors reported a dose-response effect of increasing amounts of isoflavones on total and LDL cholesterol level. One comment included a reanalysis of the dose-response data that did not include data for the casein diet, in order to control for an independent effect from soy protein itself, and found no significant effect based on isoflavone content. A comment from the petitioner disagreed with this analysis. It also indicated that the study did not eliminate the possibility that isolated soy protein per se has cholesterol-lowering properties, but rather suggested that soy protein with higher levels of isoflavones might have even greater effects. FDA finds that the disparity in these comments does not clarify the equivocal nature of the available evidence. FDA finds that these studies do not provide sufficiently consistent results to cause the agency to change the conclusion reached in the soy protein proposed rule.

(Comment 34). One comment objected to FDA's consideration of the letter to the editor by Sirtori et al. (Ref. 72) because the reference substantiating the technique for processing the soy protein product was missing from the letter, the products were not tested for isoflavone content at the time of the studies, different soy products (isolate and flour) were used to manufacture the textured soy protein used in the studies, and the references for studies cited in the letter did not match the ones cited by FDA in the soy protein proposed rule. FDA agrees that the reference for the patented procedure for the production of the TVP, described as making use of rapid heating under high pressure, was omitted in the letter by Sirtori et al. (Ref. 72) and that the isoflavone content of the products reported (Cholsoy and Croksoy) was not measured at the time the studies in which they were used were conducted.

The letter by Sirtori et al. (Ref. 72) cites two older studies—Sirtori et al., 1979 (Ref. 55) and Sirtori et al., 1979 (Ref. 155)—as well more recent studies—Sirtori et al., 1995 (Ref. 156)—conducted by their group. The five studies of Sirtori's group that FDA reviewed and cited in the soy protein proposed rule as using products that contained essentially no isoflavones (Refs. 33, 34, 35, 46, and 56) are included in the reference list of Sirtori et al., 1995 (Ref. 156), which is a review article. The agency did not review Sirtori et al., 1979 (Ref. 155) in the soy protein proposed rule, and it did not cite Sirtori et al., 1977 (Ref. 55) because it specifically indicated use of a soy protein product different from those tested for isoflavone content. FDA gives some credence to the knowledge of the investigator about the products used in his studies, but agrees that the letter to the editor does not provide sufficient documentation to permit an unequivocal conclusion that the products found to be devoid of isoflavones were identical to those used in the clinical studies.

(Comment 35). One comment asserted that most of the studies reported by Sirtori's group were performed using a textured soy protein based on steam-treated soy flour; this treatment would be expected to remove isoflavones. The comment also included a letter from Sirtori (Ref. 157) stating that essentially all of his group's studies beginning in 1980 were with products without isoflavones. However, the patent referenced in this letter was not included with this submission. Thus, FDA cannot verify that the process used to produce the products used in Sirtori's studies over time was the same used to produce the products analyzed recently for isoflavone content.

(Comment 36). The interpretation of the data available on the role of soy isoflavones in and the effects of processing on the hypocholesterolemic effect of soy protein varied widely in the comments. Several comments agreed with FDA's conclusion that the evidence did not support a significant role for soy isoflavones in cholesterol-lowering effects of soy protein. One comment supported the petitioner's original conclusion that a level of 2 mg aglycone isoflavones per g soy protein was necessary for cholesterol lowering. In a comment, the petitioner agreed with FDA "that a relationship exists between soy protein per se and reduced risk of CHD."

The additional evidence about the role of isoflavones is contradictory and inconclusive and has not persuaded FDA to alter its original conclusion about the inability to identify a specific contribution of soy isoflavones to the cholesterol-lowering effects of soy protein. At the same time, the evidence shows a clear relationship between soy protein and reduced risk of CHD despite lack of a clearly defined mechanism for its effect.

(Comment 37). Several comments interpreted the evidence as showing that alcohol extraction used in the processing of certain soy protein ingredients (to the extent that they are rendered essentially devoid of isoflavones) impairs or eliminates the hypocholesterolemic effects of soy protein and recommended that the health claim not be allowed for alcohol-washed products. Comments also raised some questions about the extent to which extensively alcohol-washed products, such as those used in the animal studies, are available commercially. One comment asserted that some of ISP products used in the primate studies were subjected to additional alcohol extraction by the investigators, but the agency could not independently verify this assertion. This comment also stated that all commercial sources of soy protein contain some isoflavones.

FDA examined the recently compiled USDA-Iowa State University Isoflavone Database (Ref. 158), which documents the following ranges of total isoflavone content for various soy protein-containing ingredients, and found that most, but not all, contained levels of isoflavones higher than those that would result from harsh alcohol extraction procedures:

TABLE 1

Product	Aglycone isoflavones (mg/100 g edivle portion
Soy flour, textured	4.40–295.55
Soy flour, defatted	73.72–168.09
Soy flour, full-fat, raw	59.80–264.84
Soy flour, full-fat, roasted	131.70–260.50
Soy protein concentrate, aqueous washed	61.23–167.00
Soy protein concentrate produced by alcohol extraction	2.08–31.82
Soy protein isolate	46.50–199.25
Instant beverage, soy powder	100.10–125.00

FDA agrees that the data from the animal studies reviewed suggest that alcohol washing of soy protein can reduce its hypocholesterolemic effects. With respect to human studies, FDA finds the available evidence is insufficient to permit any conclusions about the impact of processing by alcohol extraction on the hypocholesterolemic effect of soy protein. Thus, FDA concludes it would be premature to exclude alcohol-washed products from eligibility to bear the health claim.

(Comment 38). One comment noted that several clinical trials designed to resolve questions about the impact of processing and isoflavone content are currently in progress. Many of the comments on these issues urged that FDA proceed with the health claim regulation as proposed, but monitor research developments and make changes in the regulation as warranted by the results.

As noted above, FDA finds that, in light of the evidence that soy protein processed in various ways, containing unknown amounts of isoflavones, has hypocholesterolemic effects, FDA is not applying any criteria for inclusion of naturally occurring isoflavones or excluding alcohol-washed products from eligibility to bear the health claim on soy protein and CHD.

(Comment 39). A few comments suggested that, regardless of the conclusions about the significance of soy isoflavones to the reduction of CHD risk, food products that bear the soy protein health claim be allowed or required to state the isoflavone content of the product on the label. The comments did not provide any evidence that persuaded the agency that consumers would find this information helpful in making healthful dietary choices. Accordingly, the agency is not adopting this suggestion.

4. Amount of Soy Protein Required for Significant Effect on Cholesterol Levels

Based on the limited data reviewed that supported a dose-response and the data that showed clinically significant reductions in total and LDL-cholesterol with soy protein ingestion in the range of 17–31 g/day, and recognizing that the hypocholesterolemic effects of soy protein were dependent on initial blood lipid levels, the agency tentatively concluded that 25 g/day represented a reasonable, effective amount of soy protein (63 FR 62977 at 62992). In addition, the agency noted that an amount of 25 g/day of soy protein represents half of the Reference Daily Intake (RDI) of 50 g for protein and is a reasonable level of consumption in the context of the total daily diet. Thus, FDA tentatively concluded that the amount of soy protein associated with reduction in total and LDL-cholesterol levels and, thus, with reduced risk of CHD was 25 g or more of soy protein per day (63 FR 62977 at 62992).

(Comment 40). Many comments agreed with the agency's conclusion that 25 g or more of soy protein per day was associated with reduction in total and LDL-cholesterol levels. Several comments raised concerns about the adequacy of the available data to support an assessment of dose-response. One comment expressed concern that higher levels of soy protein are needed to modify cholesterol levels in normocholesterolemic individuals and that this should be indicated as part of the claim.

FDA agrees that the available data on the hypocholesterolemic effects of soy protein do not permit a dose-response assessment. However, FDA notes that dose-response data are not required to establish the qualifying criteria for a substance that is the subject of a health claim. Under § 101.70, which describes the requirements for health claim petitions, the petition must address whether there is an optimum level of the particular substance to be consumed beyond which no benefit would be expected (§ 101.70(f)(B)(1)). This information may or may not be based on dose-response data. For example, in its evaluation of the scientific evidence for a relationship between consumption of soluble fiber from psyllium seed husk and blood total and LDL-cholesterol levels, the agency found no reliable data to establish a dose-response for this relationship (62 FR 28234 at 28240). However, the agency did find that, in placebo-controlled studies that tested an intake of 10.2 g of psyllium seed husk per day as a part of a diet low in saturated fat and cholesterol, there were consistently significant effects of psyllium husk on blood total and LDL-cholesterol levels. Therefore, the agency based the qualifying level of soluble fiber from psyllium seed husk on a total daily intake of 10.2 g husk or about 7 g of soluble fiber.

The qualifying level of 25 g/day has been demonstrated to have a consistent, clinically significant effect on total and LDL-cholesterol levels. This 25 g/day level of intake for cholesterol lowering is confirmed by the new study of Teixeira et al. (Ref. 136), which showed significant hypocholesterolemic effects of 20 g/day of soy protein. Therefore, the agency disagrees with the comments suggesting that dose-response data are needed before the agency can authorize a health claim. The totality of scientific data, which establish a clinically significant reduction in blood cholesterol based on an intake of at least 25 g/day of soy protein, provides an adequate basis for establishing a qualifying level for soy protein-containing products.

The agency agrees that the available data indicate that the hypocholesterolemic effect of soy protein may be dependent on initial cholesterol levels, but notes that moderately hypercholesterolemic individuals are generally more responsive to dietary interventions than normocholesterolemic individuals. As the leading cause of death in this country, CHD is a disease for which the general U.S. population is at risk. The risk of dying from CHD is related to serum cholesterol levels in a continuous and positive manner, increasing slowly for levels between 150 mg/dL and 200 mg/dL and more rapidly when the cholesterol level exceeds 200 mg/dL (Ref. 37). The public health policy articulated by the NCEP, National Heart, Lung, and Blood Institute, is to extend the benefits of cholesterol lowering to the population as a whole by promoting adoption of eating patterns that can help lower the blood cholesterol levels of most Americans (Ref. 67). A dietary intervention that lowers blood cholesterol levels only in persons with high levels would, like an intervention that lowers cholesterol levels across the entire population range, cause a shift in the population distribution of blood cholesterol levels resulting in a decrease in the mean value for the blood cholesterol level in the general population (Ref. 67). The anticipated effect of such a shift would be to reduce the morbidity from CHD and to produce a continued or accelerated decline in the CHD mortality rate in the United States. The agency is persuaded by the evidence it has reviewed in this rulemaking that the consumption of soy protein, as part of a low saturated fat and cholesterol diet, can be a useful public health measure to assist in the national policy of promoting eating patterns that will help in achieving or maintaining desirable blood cholesterol levels in the general population. Therefore, it concludes that the health claim need not indicate that hypercholesterolemic individuals may be more responsive to consumption of soy protein than normocholesterolemic individuals. In addition, consistent with the agency's conclusions in rulemaking on the dietary saturated fat and cholesterol/CHD claim (58 FR 2739 at 2745, January 6, 1993), the wording of the health claim as "'may' or 'might' reduce the risk of heart disease" adequately represents the fact that not all persons will realize the same magnitude of benefit from adopting the dietary change.

5. Summary of the Scientific Evidence

FDA reviewed human studies submitted by the petitioner and in comments that evaluated the effects on serum cholesterol and LDL-cholesterol levels of dietary interventions with soy protein in subjects with normal to elevated serum cholesterol levels and that met the agency's criteria for selection.

Most intervention trials in subjects with total cholesterol levels less than 300 mg/dL found that soy protein reduced total and/or LDL-cholesterol levels to a clinically significant degree (Refs. 31, 28, 27, 51, 44, 37, 49, 30, 58, 29, 43, 136, and 137.). Moreover, HDL-cholesterol levels were unchanged (Refs. 31, 27, 51, 40, 37, 49, 36, 53, 136, and 137) or slightly increased (Refs. 28, 44, 58, and 59). In some cases (Refs. 27, 44, and 49), decreases in total and LDL-cholesterol were statistically significant only in subsets of subjects with the higher initial blood lipid levels. Results in normocholesterolemic subjects (Refs. 30, 36, 58, 59, and 53) were more variable than those in hypercholesterolemic subjects (Refs. 31, 28, 27, 51, 44, 40, 37, 49, 54, 29, 43, and 136) except in the study of Wong et al. (Ref. 137), in which normocholesterolemic and moderately hypercholesterolemic subjects were equally responsive. The outcome of an epidemiologic study (Ref. 65) also supported a relationship between higher levels of soy protein intake and lower blood lipid levels.

Most of the studies in subjects with total cholesterol levels less than 300 mg/dL used low saturated fat and low cholesterol diets (Refs. 31, 28, 27, 51, 44, 30, 36, 53, 29, 43, 136, and 137), but some used "usual" diets (Refs. 37, 49, 54, 36, 58, and 59). Although soy protein was found to lower blood lipid levels in some of the studies using "usual" diets, hypocholesterolemic effects of soy protein were more consistently observed with diets low in saturated fat and cholesterol. Given the variability of amounts and forms in which soy protein was provided in the diets, the response of blood lipid levels appears robust and notably consistent, particularly in subjects with moderate hypercholesterolemia.

Data from studies of adults with type II and familial forms of hypercholesterolemia (and total cholesterol levels in excess of 300 mg/dL) (Refs. 55, 33, 64, 56, 64, 46, and 35) were also consistent in showing large and statistically significant decreases in total and LDL-cholesterol, accompanied by no changes or slight increases in HDL-cholesterol levels. Nearly all of the subjects in these trials consumed low saturated fat and low cholesterol diets during the studies and had consumed such diets prior to studies with soy protein. Soy protein was tested in a variety of foods but produced fairly consistent results regardless of the food form fed and apparent differences in processing techniques.

The FDA concludes, based on the evidence submitted and reviewed, that soy protein, included in a diet low in saturated fat and cholesterol, can lower blood total and LDL-cholesterol levels, without adversely affecting HDL-cholesterol levels. The agency also concludes that the effect is due to soy protein per se and is not consistently related to the presence or absence of isoflavones. The evidence currently available, as reviewed in section II.B.3 of this document, does not permit a conclusion regarding how significantly alcohol processing may affect the hypocholesterolemic effects of soy protein. The intervention studies reviewed indicate that a minimum level of approximately 25 g of soy protein per day results in a clinically significant effect on total and LDL-cholesterol levels.

With respect to the scientific data and information about the relationship of soy protein and CHD, the relevant data are provided by well controlled and well designed studies. Soy protein, the food substance that is the subject of the claim, is measured in those studies. The relationship of the biomarkers evaluated—total and LDL-cholesterol—to the risk of CHD is validated and the studies measured the biomarkers appropriately. Finally, a consistent body of evidence from a variety of studies is available. Accordingly, the agency is able to conclude, based on the totality of the publicly available scientific evidence, that there is significant scientific agreement that soy protein, included at a level of 25 g/day in a diet low in saturated fat and cholesterol, can help reduce total and LDL-cholesterol levels, and that such reductions may reduce the risk of CHD.

C. Nature of the Food Eligible to Bear the Claim

1. The Qualifying Amount of Soy Protein

Using 25 g of soy protein as the qualifying amount for a CHD claim, the petitioner suggested that a single serving of a soy protein-containing product (*i.e.*, one RACC) should provide $^1/_4$ of this amount (based on four servings a day). Thus, a soy protein-containing product would have to contain at least 6.25 g soy protein ($^1/_4 \times 25$ g) per RACC. The petitioner stated that this approach was reasonable because it would permit a wide variety of low fat, soy protein-containing products to bear the health claim. The petitioner provided a list of products on the market that currently meet the proposed requirements and a list of products that could be modified to meet them (Ref. 1, Appendix V). The agency has generally made the assumption that a daily food consumption pattern includes three meals and a snack (see 58 FR 2302 at 2379, January 6, 1993). The agency tentatively concluded in the soy protein proposed rule that the assumption of four servings per day of soy protein-containing foods was reasonable. Therefore, the agency found that use of the qualifying criterion set forth in the petition would be appropriate (63 FR 62977 at 62992).

Most comments agreed that the qualifying level of 6.25 g soy protein per RACC was appropriate. Many of these comments also indicated that a sufficient number and variety of soy protein-containing foods are available to enable consumers to select suitable products to consume a total of 25 g soy protein per day.

(Comment 41). Several comments suggested rounding the qualifying level to 6 or 7 g of soy protein per RACC, in keeping with the requirements for the labeling of protein in the Nutrition Facts panel.

FDA, however, notes that the Nutrition Facts panel contains the amount of total protein per serving of the product, regardless of the source ingredient. For many products that may bear the claim, soy protein may not be the sole contributor to total protein. Therefore, FDA finds that the amount of soy protein in a serving of a food that may bear the health claim will neither be required nor permitted to appear in the Nutrition Facts panel. The qualifying level need not conform to requirements specific to the Nutrition Facts Panel.

(Comment 42). One comment received in response to the soy protein reproposal indicated that food processors will be required to declare the corrected amount of protein and the percent Daily Value of protein on the Nutrition Facts panel, in accordance with 21 CFR 101.9(c)(7)(i). This comment noted that, in nearly all cases, the amount of protein declared will be lower than the quantity of protein present in the product and may, in some instances, be lower than the qualifying amount of soy protein.

FDA notes that compliance with the requirements of this regulation will be based on the actual amount of soy protein present in the food and not on the amount of protein declared on the nutrition label.

(Comment 43). One comment suggested that the qualifying level should be increased to 12.5 g soy protein per RACC because of concerns that consumers would not choose soy protein-containing foods frequently enough during a day to reach a total of 25 g and might believe that the health benefit may be attained by eating a single serving of a food that provided no more than 6.25 g soy protein. Several other comments also raised concerns that consuming soy protein-containing foods up to four times daily would represent a significant change from the typical American diet that might not be selected by many consumers.

FDA cannot assess how many consumers would be interested in making such a change, but it is persuaded that it will be feasible for motivated consumers to do so. Doubling the qualifying level of soy protein per RACC would greatly and unnecessarily restrict the number of foods potentially eligible to bear the health claim. Because § 101.82(c)(2)(i)(G) requires that the claim specify both the daily dietary intake of soy protein that is necessary to reduce the risk of coronary heart disease and the contribution that one serving of the product makes to the specified daily dietary intake, consumers will not be misled about the amount of soy protein needed for the health effect.

(Comment 44). A number of comments suggested that greater flexibility in meeting the recommended total daily intake of 25 g soy protein per day could be achieved by permitting a lower qualifying level on the basis of increasing the number of servings or eating occasions per day from four to five or six or more. Several of these comments proposed that the qualifying level of soy protein should be reduced to 4 g per RACC; one suggested lowering the qualifying level to 2.5 g per RACC. Most of these comments indicated that 4 g soy protein per RACC is the maximum amount of soy protein from soy flour that can be incorporated in baked products that consumers find palatable and acceptable. These comments suggested that lowering the qualifying level would stimulate manufacturers to develop a wider range of products and indicated that use of ISP in baked products would be prohibitively expensive. One comment challenged FDA's assertion that consumers would be able to consume an effective amount of soy protein from a variety of products, including baked goods. FDA based the assertion on its observation that baked products had been used to provide soy protein in some studies the agency relied upon to justify authorization of the health claim (Refs. 27, 28, and 51); in one study (Ref. 27), the authors indicated that 25 g soy protein daily was provided in four muffins. ISP was the source of soy protein in the baked products used in these studies. Some comments stated that FDA need not base the qualifying level on four eating occasions per day as the agency had done for other health claims for substances (beta-glucan soluble fiber from whole oats and soluble fiber from psyllium seed husks).

FDA finds that these comments did not provide a compelling rationale for selecting an appropriate number of eating occasions on any other basis. The agency has not limited its previous determinations of an appropriate qualifying level of a substance that does not have a Daily Value in a food to be eligible to bear a health claim to consideration of the number of individual foods or classes of food products then available that might bear the claim. Rather, in determining what constitutes a level of the substance sufficiently high to justify the claim, FDA considers factors such as the number of servings likely to be consumed and the feasibility of developing a variety of foods that contain a significant proportion of the total daily intake needed for the claimed benefit. For example, when the psyllium claim was authorized, FDA was aware of only one conventional food product that would have been eligible to bear the claim and concluded that, if various psyllium-containing foods were available, consumption of four servings daily could be achieved. Based on experience with that claim and other health claims, FDA believes that manufacturers will be encouraged by the availability of a health claim for soy protein and CHD to develop new products that will be eligible to bear the claim. The agency is not persuaded by the comments received that it should abandon its assumption that a daily food consumption pattern includes three meals and a snack (see 58 FR 2302 at 2379, January 6, 1993) and that one serving of a soy protein-containing product could reasonably be consumed at each eating occasion. As noted in the discussion above of the comments that expressed concerns about the willingness of consumers to select soy protein-containing foods as many as four times a day, such an eating pattern represents a considerable change from a typical American diet. Although one of the comments included detailed menus that illustrated the possibility of consuming more than one soy protein-containing product per eating occasion, FDA has concluded that it should not lower the amount of soy protein required for a food to be eligible to bear the health claim.

(Comment 45). One comment suggested that the amount of soy protein required for eligibility to bear the health claim be permitted to be determined on the basis of serving size as well as RACC.

This comment is outside the scope of this rulemaking. Current regulations (21 CFR 101.12(g)) require that, "The reference amount [*i.e.*, the reference amount customarily consumed] * * * shall be used in determining whether a product meets the criteria * * * for health claims." In a previous rulemaking, FDA had considered permitting this option, but comments persuaded the agency that the most reasonable approach was to base claim evaluations on the reference amount (58 FR 2229 at 2287). FDA agreed with the comments that claims should reflect the true characteristics of a product, and that those characteristics do not change if the product is packaged in a different size container. The comment received in response to the soy protein proposed rule did not provide a convincing rationale to justify a change in this decision.

2. Method for Determining Qualifying Amount of Soy Protein in Foods

In the soy protein proposed rule (63 FR 62977 at 62992), FDA proposed use of the Association of Official Analytical Chemists (AOAC) official method of analysis No. 988.10 to measure soy protein in foods. As described in the soy protein reproposal (64 FR 45932 at 45933), each of the comments on this proposed analytical method disagreed with its use and concluded that the method was unlikely to produce a reliable measure of the soy protein content in every food. The comments noted a variety of problems with the assay. These comments persuaded the agency that AOAC official method of analysis No. 988.10 was not an appropriate method for the quantitation of soy protein in many of the products that may be eligible to bear the health claim.

In the soy protein reproposal, FDA discussed the alternative approaches suggested in comments for assessing compliance with the qualifying level of soy protein in products that bear the health claim. Based on this information, the agency provided its tentative rationale for a procedure employing measurement of total protein and, for products containing sources of protein other than soy, calculation of the soy protein content based on information contained in manufacturers' records (64 FR 45932 at 45934). Thus, in the soy protein reproposal, FDA modified previously proposed § 101.82(c)(2)(ii)(B) to provide for this alternative approach for compliance assessment that relied, in some cases, on records that the agency could inspect.

The agency received approximately 10 comments in response to the soy protein reproposal. One of the comments did not address the proposed procedure for compliance assessment but, rather, reiterated concerns raised in comments on the soy protein proposed rule about the safety of soy isoflavones. Among the materials it referenced were two documents authored by FDA staff that the comment characterized as "reports." FDA could not identify one of these documents from the citation given and the other was a letter submitted as a comment to Docket 98P–0683 in response to the soy protein proposed rule. Another comment raised concerns about the GRAS status of soy protein. FDA has addressed the issues raised in the earlier comments regarding GRAS status and safety in Section II.A of this document. In addition to commenting about the reproposal, one comment raised a technical issue about the nutrition labeling declaration of protein that is addressed in Section II.C.1.

(Comment 46). Two comments objected to the 30-day comment period allowed for the soy protein reproposal. FDA stated its rationale and authority for selecting this period in the soy protein reproposal (64 FR 45932 at 45936 and 45937) and notes that these comments were submitted and received in timely fashion. One of these comments asserted that after the comment period for the soy protein proposed rule had passed, no new submissions or evidence after that date other than that of FDA origin (or from published scientific documents accessed by FDA) was acceptable. As noted in the introduction of Section II of this document, FDA disagrees with this assertion. FDA considered comments received after the initial comment period, regardless of source, to the extent that each provided complete information for review or references accessible to the agency and addressed issues not raised in earlier comments.

(Comment 47). A comment asserted that the issue of the method FDA will use to verify that foods contain the qualifying amount of soy protein is irrelevant because FDA was required to consider and evaluate only the claims made for the substance identified in the petition, soy protein with naturally occurring isoflavones.

This comment misunderstands FDA's responsibility to review and evaluate the available scientific evidence and reach appropriately supported conclusions about the substance-disease relationship based on information provided in the petition, accessed in the public scientific literature, and received in comments. FDA notes, for example, that in response to a petition for oat bran and oatmeal, it proposed to authorize a health claim on the relationship of those foods and CHD (61 FR 296). Comments received in response to that proposal persuaded FDA to change the substance of its final rule to beta-glucan soluble fiber from whole oats (62 FR 3584). The agency has addressed the earlier comments on the role of isoflavones in the hypocholesterolemic effect of soy protein in Section II.B.3 of this document.

(Comment 48). Two comments objected to any use of recordkeeping for compliance assessment, questioning whether it could be an appropriate substitute for analytical methods to assess the truthfulness of health claims. One of these comments also reiterated objections to authorization of the health claim, because of concerns about incomplete scientific understanding of the biological activity of soy components, in terms of both safety and contribution to the protective effect of soy protein in CHD. The agency has addressed these concerns, which were raised in comments on the soy protein proposed rule, in Sections II.A and II.B.3, respectively, of this document.

The other comment asserted that an approved, scientifically accurate methodology is needed for any health claim. However, it also indicated that FDA should finalize its regulation as originally proposed, but did not propose an alternative for compliance verification other than suggesting that a manufacturer might voluntarily share analytical data with the agency if questions about compliance were raised.

FDA does not agree with the contention that an analytical method is an absolute requirement for a health claim, even though it is the preferred means for verifying compliance with the requirements of a health claim regulation and substantiating the truthfulness of all label statements.

(Comment 49). Many other comments supported continued work to develop appropriate analytical methodology for measuring the content of soy protein in foods, and urged FDA, in collaboration with other government agencies, industry, and scientific organizations, to pursue this effort. As noted in the soy protein reproposal, FDA intends to do so, to the extent that resources permit. Also, as noted in the soy protein reproposal, and as urged in a number of comments, FDA would propose to amend its regulation to provide for compliance verification based on one or more analytical methodologies when such methods have been validated.

(Comment 50). Several of the comments specifically addressed the method for assessing compliance set out in the soy protein reproposal. None of these comments objected to use of an analytical method for measuring total protein as a measure of soy protein in foods that contain soy as the only source of protein. Absent an appropriate analytical methodology, each of these comments supported the need for manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to appropriate regulatory officials upon request. These comments noted that in cases where records are needed to substantiate label claims, food manufacturers have historically provided such records voluntarily upon request to the FDA and could be expected to continue to do so in the future. They argued that FDA need not assert broad records inspection authority in order to obtain the information needed for compliance assessment. They noted 21 CFR 101.13(j)(ii)(A), which requires firms to have substantiation for the basis of nutrient reference values in comparative nutrient content claims and to make such substantiation available to appropriate regulatory officials upon request, as a model for requests of records.

FDA agrees that a manufacturer must have substantiation that a qualifying amount of soy protein is present in a product that bears the health claim and that such records can serve as the basis for substantiation of use of the health claim. FDA noted in the **Federal Register** of February 2, 1996 (61 FR 3885 at 3886) several examples of regulations that implemented the 1990 amendments in which the agency could not independently, using analytical methodology, verify the basis for statements on the food label, but instead would rely on access to a manufacturers' information supporting its labeling claims. These include access to:

(1) A detailed protocol and records of all data used to derive a density-adjusted reference amount for aerated foods (58 FR 2229 at 2272 and § 101.12(e));

(2) Information that provides the basis for deriving reference nutrient values for comparative nutrient content claims such as "light" (58 FR 2302 at 2365 and § 101.13(j)(1)(ii)(A));

(3) Specific information with respect to the caloric content of new products with reduced digestibility (58 FR 2079 at 2087 and 2111 and § 101.9(c)(1)(i)(D)); and

(4) Information supporting nutrient content claims for restaurant foods (58 FR 2302 at 2388 and § 101.13(q)(5)(ii)).

In each of these cases, verification of the truthfulness of a label claim can be assessed by FDA only with access to information known only by the manufacturer. The same is true, in the absence of a validated analytical method to measure the amount of soy protein in the presence of other proteins, for verifying that the qualifying amount of soy protein to bear the health claim is present in a food that contains sources of protein in addition to soy. Thus, the agency concludes, in agreement with these comments, that it is appropriate to require access to manufacturers' records substantiating the ratio of soy protein to total protein for foods that contain sources of protein in addition to soy to assess their compliance with this regulation. Also, in agreement with these comments, the agency concludes that it need not assert broad records inspection authority to have access to appropriate records. The agency disagrees, however, with comments that indicate that reliance on the voluntary provision of records by manufacturers is sufficient to meet the agency's need to verify compliance. Rather, the agency is taking the approach of codifying a requirement for the manufacturer to provide appropriate records, on request, as the agency has done previously.

Although most of the comments supported the use of records, in principle, for compliance assessment, they also raised concerns about the types of records that FDA might request, the circumstances under which FDA would request records, and the legal authority of the FDA to require records and records inspection.

(Comment 51). Several comments indicated that FDA had used overly broad and imprecise language in the soy protein reproposal to describe the types of records that FDA would request. They indicated that a manufacturer is best able to determine the nature of the records that would be needed to substantiate the amount of soy protein in its own products and urged that manufacturers be allowed the flexibility to determine how to document substantiation. One comment argued that a recipe-based system would be too complex and burdensome for baked goods in particular. Other comments expressed concern that FDA would, in all cases, require inspection of a wide variety of records, including nutrient data bases or analyses, recipes or formulations, purchase orders for ingredients, and others.

FDA agrees that the manufacturer will be in the best position to know which of its records provide documentation of the amount of soy protein in its products, and specifically the ratio of soy protein to total protein. By listing the types of records that could provide such documentation in the soy protein reproposal, FDA did not intend to indicate that it would request all of these records and subject them to inspection, or even that it would specify any particular records when it requests them. Instead, FDA intended to suggest the types of records a manufacturer might use to substantiate the levels of soy protein in its foods. Accordingly, FDA has modified § 182(c)(2)(ii)(B) to clarify that the manufacturer is to identify these materials.

(Comment 52). One comment questioned whether FDA might request records for products in which soy is the only source of protein and urged FDA to specify that it would not request records for such products.

FDA agrees that, because measurement of total protein provides adequate assessment of compliance for products in which soy is the sole source of protein, that it would not, under the regulation, request records for substantiation of the amount of soy protein in such products. The agency believes that the proposed language adequately communicates this point and has made no changes to the regulatory language in response to this comment.

(Comment 53). One comment requested that FDA identify what circumstances would precipitate a request for records. Although FDA cannot specify all such circumstances, it notes, as did another of the comments, that a substantial proportion of its enforcement actions are undertaken in response to trade complaints.

(Comment 54). One comment asked that the agency specify that any records requested could be provided on site without the need for reproduction or duplication by the investigator. Another comment, however, objected to FDA making requests for information on site, arguing that most companies would have the necessary information at headquarters rather than at production facilities. This comment urged that FDA make any such requests in writing and allow the manufacturers to provide appropriate substantiation within a reasonable period of time. As FDA will not require inspection of records on site, the concern about reproduction or duplication is moot. FDA agrees that making a request for records in writing is appropriate and has modified the regulation accordingly.

(Comment 55). Some comments objected to the alternative offered in the soy protein reproposal that FDA would authorize the claim only for products that contain soy as the sole source of protein, if it could not proceed with a regulation to provide access to records for compliance verification. These comments noted that such an action would give unfair advantage to certain products, unfairly penalize products that were equally beneficial, and dilute the potential benefit of the health claim to consumers. Because the agency has authorized the claim for any food that contains adequate amounts of soy protein, without regard to other sources of protein, these comments are moot.

(Comment 56). One comment noted that, in addition to providing FDA, upon request, information regarding substantiation of the claim, food processors may, on a voluntary basis, present information on the food label or in labeling that may support the eligibility of the product to bear the claim and facilitate an FDA compliance review. Such information might take the form of statements about the percentage composition of soy protein in a serving of food. The agency agrees that manufacturers may voluntarily provide such truthful and not misleading information and that the provision of such information may aid consumer understanding of the claim.

(Comment 57). Several of the comments strongly objected to the proposal for records inspection on the basis that FDA lacks the statutory authority to require access to records for foods. Another comment argued that, once the agency determined that a substance-disease relationship meets the standard of significant scientific agreement, the act requires the agency to authorize a claim, and the agency may not require that manufacturers maintain records or that FDA be able to request or inspect them. This comment also asserted that, were FDA to require recordkeeping, record production, or records inspection, it would violate the First Amendment by conditioning the exercise of speech rights on the recordkeeping, record production, or records inspection requirement.

FDA disagrees with these comments. Other comments have convinced the agency that, in this instance, it need not assert its rulemaking authority to provide for inspection of records. This issue is therefore moot. The agency maintains, however, that it has the legal authority, using section 701(a) of the act, to promulgate record inspection requirements for the efficient enforcement of the act. The requirements that records be maintained and submitted to the agency upon request pass the test in *National Confectioners Association* v. *Califano*, 569 F.2d 690, 693 & n.9 (D.C. Cir. 1979). First, these requirements are limited to those records that the manufacturer reasonably determines substantiate the level of soy protein in its food, and only with respect to foods that contain a source of protein in addition to soy. Second, the requirements assist in the efficient enforcement of the act. They focus only on those foods for which an adequate analytical method is not available. They allow FDA to verify that the authorized soy health claim is truthful and not misleading when it is used on such foods. The requirements, therefore, assist in the effective and efficient enforcement of the act. Third, these requirements are not unduly burdensome. They require maintenance of records that manufacturers should already have to validate that their food product may lawfully bear the claim, and they permit them to identify the records that substantiate their claim. FDA requests copies of the records in writing without inspection. These burdens are not unreasonably onerous.

With respect to significant scientific agreement, the comment misreads the statute. Under section 403(r)(3)(B)(i) of the act, FDA authorizes a claim about a substance-disease relationship only if the standard of significant scientific agreement is met. Under that section, significant scientific agreement is a necessary condition, but not a sufficient one, for FDA to authorize a health claim. FDA may impose other requirements in accordance with section 403(r) of the act.

The agency also disagrees that the recordkeeping and record access provisions violate the First Amendment. Under section 201(g)(1) of the act, a food is not a drug solely because its labeling contains a health claim authorized and made in accordance with the requirements of section 403(r) of the act. Section 201(g)(1) provides no such provision for a food whose labeling contains a health claim that is not authorized and made in accordance with the requirements of section 403(r) of the act. Congress provided for the use on foods of health claims authorized under and made in accordance with the requirements of section 403(r) of the act to promote the public health by, in part, helping consumers maintain balanced and healthful diets (58 FR at 2514). FDA has required that foods whose labels contain an authorized health claim must contain a sufficiently high level of the substance that is the subject of the claim in question (see 21 CFR 101.14(d)(2)(vii)). This provision assures that a food bearing the claim in fact contributes to the claimed effect (56 FR at 60553) and so may help consumers to maintain a balanced and healthful diet. Absent the recordkeeping and access provisions, FDA could not assure that, when the soy protein health claim appears on foods, they will, in fact, contain sufficiently high levels of soy protein. These provisions, therefore, directly advance Congress' substantial interest in permitting the use of health claims on foods and they are narrowly tailored to do so. In addition, when used on a food, the authorized soy protein health claim must identify the amount of soy protein in a serving of food. Accordingly, the provisions also permit FDA to assure that the claim as it appears on a food is not false and misleading.

3. Requirement that Food Meets the Criterion for Low Fat

In § 101.82(c)(2)(iii)(B), the agency proposed, consistent with other authorized heart disease health claims, that foods bearing the health claim meet the requirements for "low saturated fat," "low cholesterol," and "low fat." In the preamble to the final rule authorizing the fruits, vegetables, and grain products and heart disease claim (§ 101.77, 58 FR 2552 at 2572), the agency stated that populations with diets rich in these low saturated fat and low cholesterol foods experience many health advantages, including lower rates of heart disease. In the preamble to the saturated fat/cholesterol proposed rule (56 FR 60727 at 60739), the agency stated that while total fat is not directly linked to increased risk of CHD, it may have significant indirect effects. Foods that are low in total fat facilitate reductions in intakes of saturated fat and cholesterol to recommended levels. Therefore, the agency tentatively concluded that proposed § 101.82(c)(2)(iii)(B) set forth appropriate requirements for foods to be eligible to bear the soy protein and CHD claim.

(Comment 58). No comments objected to the requirements that a food meet the criteria for "low saturated fat" and "low cholesterol" in order to bear a health claim about the relationship of soy protein and CHD. However, many comments objected to the requirement that a food meet the criterion for "low fat," mainly on the basis that all foods made from whole soybeans would be disqualified by virtue of the inherent ratio of protein to fat (approximately 2 to 1) in soybeans. Several of these comments noted that makers of such foods would have to use soy protein isolates to develop qualifying products. The comments that provided additional rationale argued that saturated fat and cholesterol were properly restricted for a CHD claim, but that total fat need not be restricted to the same degree because it is not directly related to risk of CHD. These comments noted that products derived from whole soybeans that contain 6.25 g of protein per RACC would just exceed the criterion for "low fat" of 3 g fat per RACC. However, these products would not lead to an increase in the intake of saturated fat or cholesterol and, thus, negate the health benefits of soy protein. In addition, they would serve as sources of the essential fatty acids, linoleic acid and linolenic acid.

As noted above, the FDA has required that foods bearing any of the previously authorized CHD health claims meet the requirements for "low saturated fat," "low cholesterol," and "low fat." In the saturated fat/cholesterol proposed rule, FDA proposed that in order for a food to bear the health claim, the food must also meet the requirements for a "low" claim relative to total fat content (56 FR 60727 at 60739). The agency noted that, while total fat is not directly related to increased risk for CHD, it may have significant indirect effects. Low fat diets facilitate reductions in the intake of saturated fat and cholesterol to recommended levels. Furthermore, the agency noted that obesity is a major risk factor for CHD, and dietary fats, which have more than twice as many calories per gram as proteins and carbohydrates, are major contributors to total calorie intakes. For many adults, maintenance of desirable body weight is more readily achieved with moderation of intake of total fat. The agency also concluded that this approach would be most consistent with the U.S. Dietary Guidelines and other dietary guidance that recommends diets low in saturated fat, total fat, and cholesterol. In the saturated fat/cholesterol final rule (58 FR 2739 at 2742), FDA reiterated the requirement for "low fat," but allowed for the exception that fish and game meats could meet the requirement for "extra lean," because these foods are appropriately included in a diet low in fat, saturated fat, and cholesterol. FDA also noted that the "low fat" requirement for foods to make the saturated fat/cholesterol and heart disease health claim would limit a manufacturer's ability to increase trans-fatty acid levels in foods, since any substitution of trans-fatty acids for saturated fatty acids would have to be accomplished within the 3 g per RACC or per 50 g limit for total fat. The agency considered this approach unlikely to result in significantly increased levels of trans-fatty acids in foods bearing the health claim (58 FR 2739 at 2744).

The latter consideration is not applicable to the case of foods made from whole soybeans. No substitution of one type of fatty acid for another is contemplated for these products. The amount by which foods made from whole soybeans that are otherwise eligible to bear the soy protein health claim would exceed the "low fat" criterion due to the inherent fat content of soybeans is small and well below the disqualifying level for total fat that a food bearing any health claim must meet (§ 101.14 (a)(4)). FDA is persuaded that products derived from whole soybeans are useful sources of soy protein that they, like fish and game meats that are "extra lean," can be appropriately incorporated in a diet that is low in fat, saturated fat, and cholesterol. Thus, FDA is modifying § 101.82(c)(2)(iii)(B) to require that all products meet the criteria for "low saturated fat" and "low cholesterol" and adding § 101.82(c)(2)(iii)(C) to require that a food meet the criterion for "low fat" in order to bear the soy protein health claim, except for products consisting of or derived from whole soybeans without additional fat.

D. Required Elements for the Claim

1. Context of the Total Daily Diet

In the soy protein proposed rule (63 FR 62977 at 62991), the agency tentatively found that, for the public to understand fully, in the context of the total daily diet, the significance of consumption of soy protein on the risk of CHD (see section 403(r)(3)(B)(iii) of the act), information about the total diet must be included as part of the claim. Therefore, in § 101.82(c)(2)(i)(D), the agency proposed to require that the claim include the fact that the effect of dietary consumption of soy protein on the risk of CHD is evident when it is consumed as part of a healthy diet and that, consistent with other authorized health claims related to CHD, the fat component of the diet be specified as "saturated fat" and "cholesterol."

(Comment 59). One comment objected to this requirement on several grounds: that FDA has been inconsistent in requiring specification of the need to consume diets low in saturated fat and cholesterol in previously authorized CHD health claims; that the effect of soy protein on blood cholesterol levels is independent of a low fat, low saturated fat, and low cholesterol diet; that the statutory requirement to place the claim in the context of the total daily diet need only relate the labeled product to the rest of the day's diet; and that consumers will conclude that soy protein will be of no benefit to them if they cannot reduce saturated fat and cholesterol in their diets. Other comments raised similar objections to the requirement. This comment and others proposed that FDA allow a variety of shortened claims that would effectively render this requirement an optional element of the claim or that FDA permit the information in this requirement to be presented in a split claim.

FDA disagrees with some of the characterizations of FDA's requirements for currently authorized heart disease claims. The comment notes that the agency requires a statement of the role of low saturated fat and cholesterol diets in the reduction of risk of heart disease in three of the authorized claims'the dietary lipids claim (21 CFR 101.75), the claim for fruits, vegetables, and grain products that contain dietary fiber, particularly soluble fiber (21 CFR 101.77), and the claim for soluble fiber from psyllium seed husks (21 CFR 101.81)—because the effect of the subject food substances had been established only in the context of such a diet. However, the comment maintained that evidence for the hypocholesterolemic effect of soluble fiber from whole oats showed it to be independent of other dietary changes. Thus, in requiring that the claim for this substance be stated in the context of a diet low in saturated fat and cholesterol (21 CFR 101.81), the comment asserted that FDA had failed to provide a claim that accurately and truthfully reflected the underlying science.

FDA disagrees with this characterization. The petition for a health claim for oat products stated that there was significant scientific evidence to show that the effect of oats on lowering serum lipids is independent of a diet low in saturated fat and cholesterol. In light of this evidence, the petitioner argued that any health claim that is authorized need not refer to such a diet. In the proposed rule for a health claim for oat products, the agency acknowledged that there were a number of studies that showed that high intakes of oat bran and oatmeal lowered blood total and LDL-cholesterol in subjects that otherwise consumed a typical American diet (61 FR 296 at 305). However, the agency also recognized that CHD is a major public health concern in the United States, and that the totality of the scientific evidence provides strong and consistent support that diets high in saturated fat and cholesterol are associated with elevated levels of blood total and LDL-cholesterol, and thus CHD (56 FR 60727 at 60737). Dietary guidelines from both government and private scientific bodies conclude that the majority of the American population would benefit from decreased consumption of dietary saturated fat and cholesterol. Although the results of several studies showed that daily consumption of oat bran or oatmeal lowered total cholesterol and LDL-cholesterol levels, the agency noted that the effects of dietary intake of oat bran or oatmeal were particularly evident when the diets were low in saturated fat and cholesterol (61 FR 296 at 306). Thus, the agency tentatively found it would be more helpful to Americans' efforts to maintain healthy dietary practices if the effect of oats on serum lipids were described in the context of a healthy diet (61 FR 296 at 306).

This tentative conclusion was supported by many of the comments received in response to the proposed rule and described in the final rule authorizing a health claim for soluble fiber from whole oats (62 FR 3584 at 3594). In the final rule, the agency noted that diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk, and that while soluble fiber from whole oats can contribute to this effect, its role is generally recognized as being of smaller magnitude (Ref. 5). Further, expert groups saw selection of foods with soluble fiber from whole oats as a useful adjunct to selection of diets low in saturated fat and cholesterol (Ref. 5). The agency concluded that it would not be in the best interest of public health or consistent with the scientific evidence to imply that selecting diets with soluble fiber from whole oats is a substitute for consuming diets low in saturated fat and cholesterol (62 FR 3584 at 3594). Therefore, FDA emphasized the importance of the dietary component of the health claim, *i.e.*, the necessity for soluble fiber from whole oats to be consumed as part of a low saturated fat, low cholesterol diet, for a complete understanding of the claim (62 FR 3584 at 3594).

The comment also characterized the claim for sodium/salt and hypertension (21 CFR 101.74) as a claim about risk of heart disease and indicated that FDA was not consistent because this claim is not required to be stated in the context of a diet low in saturated fat and cholesterol. FDA disagrees with this characterization of the claim and the conclusion that follows from it. This claim does not address the risk of heart disease, but rather is a claim specific for hypertension. The scientific evidence does not suggest that dietary saturated fat and cholesterol have a significant effect on blood pressure; thus, no mention of that dietary context is required. In addition, FDA has stated (58 FR 2739 at 2746) that it has not been presented with data that sodium intake

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PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION

is a risk factor for heart disease and that a claim characterizing the relationship between sodium and heart disease would misbrand a food under section 403(r)(1)(B) of the act unless it were specifically authorized by the agency. The agency does agree with the comment that it has not found that all the risk factors for CHD must be stated in order to ensure that a heart disease health claim is truthful and not misleading. In fact, for CHD claims authorized more recently (21 CFR 101.81), FDA has not required that CHD be characterized in the claim as a disease caused by many factors, in contrast to the claims that FDA authorized earlier as part of the initial NLEA reviews (21 CFR 101.75 and 21 CFR 101.77).

In addition, FDA disagrees with the assertion that the cholesterol lowering effect of soy protein is independent of other dietary changes; the agency interprets the data differently. As noted in the discussion above, most of the scientific evidence for an effect of soy protein on blood lipid levels is provided by studies that used diets low in saturated fat and cholesterol. Although soy protein was found to lower blood lipid levels in some of the studies using "usual" diets, hypocholesterolemic effects of soy protein were more consistently observed with diets low in saturated fat and cholesterol. The agency concludes that the data supporting an independent effect for soy protein are more limited than those supporting an independent effect of soluble fiber from whole oats in reducing cholesterol levels. Moreover, because the hypocholesterolemic effects of soy protein are seen in addition to the effects of a low saturated fat, low cholesterol diet, combining the two practices will provide enhanced benefits.

Nor does FDA agree with the comment's assertion that the statutory requirement to place the claim in the context of the total daily diet need only relate the labeled product to the rest of the day's diet. In the 1993 health claims final rule (58 FR 2478 at 2513), the agency disagreed with comments that proposed that the requirement to enable the public to understand the significance of the claim in the context of the total daily diet would be fulfilled if a health claim merely characterized the level of a substance vis-a-vis a disease, provided that there was significant scientific agreement that that level of intake of the substance was beneficial in reducing the risk of the disease. Rather, FDA found that section 403(r)(3)(B)(iii) of the act requires that a regulation that authorizes a health claim provide that the claim be stated in a manner that enables the public to comprehend the information in the claim and to understand the relationship of the substance to the disease, the significance of the substance in affecting the disease, and the significance of the information in the context of the total daily diet. Thus, a claim may need to address a wide variety of factors to fulfill these requirements, and the agency is not limited to requiring only that information that is necessary to prevent a claim from being misleading.

Finally, the agency is not persuaded that requiring the soy protein claim to be stated in the context of a total daily diet low in saturated fat and cholesterol will deter consumers who are interested in dietary control of cholesterol levels, and who have made unsuccessful attempts to lower dietary intake of saturated fat and cholesterol, from incorporating soy protein into their diets. Consumers now have had experience with the claims for soluble fiber from whole oats and psyllium seed husks. These claims, like the soy protein claim, accurately draw the consumer's attention to the dietary pattern associated most strongly with reduction of risk from heart disease—a diet low in saturated fat and cholesterol—and offer choices of specific foods that can be incorporated into this dietary pattern to enhance its beneficial effects. Thus, FDA is not modifying the requirement that the health claim for soy protein be stated in the context of a diet low in saturated fat and cholesterol.

2. Daily Dietary Intake of Soy Protein and Contribution of One Serving

In the soy protein proposed rule (63 FR 62977 at 62991), the agency proposed that § 101.82(c)(2)(i)(G) require that the claim specify the daily dietary intake of soy protein needed to reduce the risk of CHD and the contribution one serving of the product makes to achieving the specified daily dietary intake. The agency noted this requirement was consistent with requirements set forth in § 101.81 for claims about soluble fiber from whole oats and psyllium seed husks, food substances that (like soy protein) do not have Daily Values that can serve as a guide to consumers for appropriate levels of intake. It is also required by § 101.14(d)(2)(vii).

(Comment 60). Almost all of the comments that addressed these requirements supported the need for the claim to contain this information. Some comments expressed concern that even with this information some consumers might be misled into believing that a single serving of a soy protein-containing food would contribute the full daily amount needed for the claimed health benefit. FDA notes that these comments did not suggest what additional information might be helpful to consumers in understanding the claim.

(Comment 61). Several comments suggested that the daily dietary intake of soy protein needed to reduce the risk of CHD be required to be described as "at least 25 g/day of soy protein" or "a minimum of 25 g/day of soy protein."

FDA is not persuaded to require that such statements be used because it is concerned about the need to balance informing consumers about the effective level of soy protein intake needed to provide the claimed health benefit against encouraging excessive consumption of a single food substance. If consumers were to interpret the claim erroneously as supporting consumption of soy as the sole source of dietary protein or supplementing a diet already adequate in protein from various sources with additional soy protein, then the two most important tenets of a healthful diet—variety and moderation—would be violated.

(Comment 62). One comment noted that, in the second model claim, the characterization of the total dietary intake of soy protein appeared to have omitted indication that the amount is "per day." FDA agrees. This omission was inadvertent and the agency has corrected § 101.82 (e)(1).

Although comments generally viewed as desirable providing information on both the total daily dietary intake of soy protein and the contribution of a single serving of a food to the total intake, some comments urged that it need not be provided in one place on the label with all of the other required information. Many of these comments encouraged FDA to make provisions for the use of abbreviated claims that would include a referral statement directing the consumer elsewhere on the package for the full claim. Issues associated with abbreviated and split claims are addressed below.

3. Abbreviated/Split Claims

(Comment 63). Although there were not substantive objections regarding most of the required elements FDA specified, a large number of comments objected to the model claims proposed in § 101.82 (e), asserting that they are excessively long, complicated, and cumbersome, and requested that FDA devise shorter claim statements. Many of these comments expressed concerns that manufacturers would be reluctant to use and consumers unlikely to read such long, complex messages. They frequently suggested that FDA provide for split claims in this rule. These would comprise a short or abbreviated claim (that need not contain all of the required elements identified in the rule) appearing on the principle display panel of the label together with a referral statement for the full claim elsewhere on the package. As support for these suggestions, many of the comments cited the Keystone Dialog's (Ref. 159) endorsement of shorter claims and FDA's own health claim consumer research (Ref. 160), which the comments characterized as showing that short claims were more effective than long claims and that splitting claims between the front and back panels made little difference.

FDA notes, however, that the results of its consumer research were more complicated than indicated by that brief summary. The short and long claims studied differed in the inclusion of information about non-dietary risk factors and special populations at risk for the subject disease. The soy protein health claim already lacks these requirements. The study also found that, for some products with an abbreviated claim and a referral statement on the principal display panel, subjects were less likely to look at the back of the package for the full claim.

Concerns about health claims being too wordy and too lengthy have been raised to the agency in various ways, including by a petition submitted by the National Food Processors Association (NFPA) (Docket No. 94P–0390). In response to the NFPA petition, the agency proposed several changes to the requirements for health claims in the **Federal Register** of December 21, 1995 (60 FR at 66206) (the 1995 proposal). At that time, FDA stated that it had no desire for its regulations to stand in the way unnecessarily of the use of health claims and the presentation of the important information contained in them. The agency stated that, while health claims are being used on the label and in labeling, they could be used more extensively. The agency, therefore, proposed to provide for shorter health claims by making optional some of the elements that are presently required. FDA also proposed to authorize the use of abbreviated claims.

FDA has reviewed the comments received in response to the 1995 proposal on changing the requirements for health claims, including permitting the use of abbreviated claims, but it has not completed work on the final rule. Given that this rule is pending, and given its relevance to the issue of abbreviated claims, FDA has decided to defer a decision on allowing for abbreviated or split claims on soy protein and the risk of CHD. The agency intends to resolve this matter in the context of the rulemaking based on the NFPA petition. Thus, at this time, the agency is making provision only for a full claim.

E. Other Issues

1. Consideration of Health Claims for Benefits of Soy Protein in Addition to Effects on Cholesterol Levels and Risk of Coronary Heart Disease

(Comment 64). A few comments urged that FDA consider authorizing claims about other putative beneficial effects of soy protein or soy products on cardiovascular disease in addition to cholesterol lowering as well as putative beneficial effects on other diseases or health conditions such as cancer, osteoporosis, and menopausal symptoms. One comment suggested that statements derived from preliminary research on the putative beneficial effects of soy isoflavones be allowed on food labels and in labeling.

These suggestions are beyond the scope of the present rulemaking. The present rulemaking is based on FDA's review of information submitted in a petition about the relationship of soy protein and reduced risk of CHD based exclusively on studies of the cholesterol lowering effects of soy protein. The agency has neither received nor reviewed relevant data for any other possible effects of soy protein relevant to risk of heart disease or of other diseases or health-related conditions. Any interested person who has such data may submit a petition to the agency detailing the information for FDA's review and evaluation of whether such information meets the requirements for authorization of a health claim.

(Comment 65). At the same time, one comment expressed concern that the authorization of a health claim on the relationship of soy protein and risk of CHD might be read by some consumers as an implied claim for other putative benefits of soy foods.

FDA concludes, however, that the requirements it has set forth for the health claim already narrow the focus of the claim sufficiently to the relationship that FDA evaluated. Accordingly, consumers should not be so misled by the claim.

2. Drug Claims vs. Health Claims for Foods

(Comment 66). One comment objected to FDA's provision of a health claim for foods containing soy protein and reduced risk of CHD when FDA had not approved estrogen as a drug to have an indication for prevention of cardiovascular disease despite a large body of supportive evidence. The comment asserted that FDA must evaluate all products with the same ground rules.

This assertion is incorrect. As the agency explained in the 1993 health claims final rule (58 FR at 2506), the scientific standard for authorization of a health claims is less stringent than the requirements for approval of a new drug under section 505 of the act (21 U.S.C. 355).

3. Claims for Other Vegetable Proteins

(Comment 67). One comment reviewed data on the possible mechanisms for soy protein's hypocholesterolemic effects and concluded that they may be due in part to its amino acid composition, specifically its high arginine and low methionine content. The comment noted that other vegetable proteins, such as pea proteins, have a similar amino acid profile and would likely have the same effect on risk of CHD as soy protein. The comment proposed that qualifying levels of both arginine and isoflavones be required for the health claim and that the claim not be limited to soy protein. FDA finds that this suggestion is outside the scope of the current rulemaking. FDA has not reviewed any data on the hypocholesterolemic effects of specific vegetable proteins other than soy.

(Comment 68). Another comment that also discussed the possible importance of the amino acid composition of soy protein to its cholesterol-lowering ability suggested that the title of the new claim should be "Protein from Certain Foods and Reduced Risk of CHD" in anticipation that data will be generated showing hypocholesterolemic effects of other vegetable proteins with amino acid compositions similar to soy protein. Having reviewed data only on soy protein and being aware of no similar body of evidence about any other vegetable protein, FDA finds this suggestion premature.

4. Regulatory Issues Regarding Soy Protein Claims in Other Countries

(Comment 69). One comment provided extensive information about a complaint brought against a company regarding a particular television advertising campaign for a non-dairy soy beverage product in New Zealand that was alleged to be deceptive. This information included an unpublished report of a study comparing the effects of the non-dairy soy beverage to milk that was inadequate for assessing a hypocholesterolemic effect for soy protein or the soy product itself because dietary saturated fat and cholesterol varied substantially in the two dietary treatments. Another comment raised concerns about the importation of foods from the United States that may bear health claims in violation of Mexican law.

The FDA advises that violations of laws or regulations of other countries with respect to claims made on food labels or labeling or claims made in advertising are outside the scope of the present rulemaking. Companies doing business in other countries are responsible for complying with the relevant statutory and regulatory requirements of those countries.

5. Genetically Modified Soybeans

(Comment 70). Two comments noted that much of the current soybean crop in the United States consists of genetically modified varieties of soybeans. One comment requested that products bearing the health claim be required to indicate on the label whether genetically modified soybeans were used. The other comment noted that genetic modification may alter the content of isoflavones and other biologically active components of soy and suggested that research was needed to determine if such genetic modifications raise additional safety concerns. The comments provided no data or other information to justify labeling or substantiate any safety concerns.

FDA has considered these comments and disagrees with both, for the following reasons. FDA has stated its expectation that companies consult with the agency early in the process of developing a bioengineered food and that they provide the agency with a summary of safety data and a nutritional assessment for its review (Ref. 161). To date, three companies have consulted with the agency about bioengineered soybeans. Two companies developed soybeans that are resistant to the herbicides glyphosate and glufosinate, respectively. A third company modified the oil composition of the soybean to increase its levels of oleic acid, and it must be labeled as high oleic acid soybean. One company stopped further development of a genetically modified soybean that involved the addition of a brazil nut protein when it discovered that the protein would cause allergic reactions.

The safety and nutritional assessments of the three bioengineered soybeans show that there are no unintended effects of the genetic modification (Refs. 162 through 167). In particular, these soybeans possess the same nutritional profile as their parent or other commercially available soybeans, except that the high oleic acid soybean has a modified fat profile, as intended. In addition, levels of isoflavones, trypsin inhibitors, and endogenous allergens are unchanged. The agency therefore concludes that there is no basis to the comment's assertion that currently available bioengineered soybeans may raise additional safety concerns. Nor is there any basis to require that bioengineered soybeans be identified in food labeling as such.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the soy protein proposed rule (63 FR 62977 at 62993) and the soy protein reproposal (64 FR 45932 at 45935). The agency determined that this action is of a type that does not individually or cumulatively have a significant effect on the human environment, and that neither an environmental assessment nor an environmental impact statement is required, but provided incorrect citations for categorical exclusion in the proposed rules. The correct citation is 21 CFR 25.32(p). No new information or comments have been received that would affect the agency's previous determination.

IV. Analysis of Economic Impacts

A. Cost-Benefit Analysis

FDA has examined the impacts of this final rule under Executive Order 12866. Executive Order 12866 directs federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "economically significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered "significant" under Executive Order 12866 if it raises novel legal or policy issues. FDA finds that this final rule is neither an economically significant nor a significant regulatory action as defined by Executive Order 12866.

In addition, FDA has determined that this rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995 requiring cost benefit and other analyses. A significant rule is defined in 2 U.S.C. 1532 (a) as "a Federal mandate that may result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year."

Finally, in accordance with the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801(a)(1)(A)(ii), the Administrator of the Office of Information and Regulatory Affairs of the Office and Management and Budget has determined that this final rule is not a major rule for the purpose of Congressional review. A major rule for this purpose is defined in 5 U.S.C. 804 as one that the Administrator has determined has resulted or is likely to result in: (A) an annual effect on the economy of $100,000,000 or more; or (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Regulatory Options

FDA did not discuss regulatory options in the analysis of the proposed rule, because no costs were identified in that analysis. Public comments on the proposed rule raised a number of potential costs and a number of issues that may affect the benefits of this rule. The comments also suggested a large number of regulatory options. The primary options suggested in the comments were as follows:

(1) Take no new regulatory action.

(2) Take no action, but generate or wait for additional information on which to base a future action.

(3) Take proposed action.

(4) Take proposed action, but specify a different minimum level of soy protein for products bearing the claim.

(5) Take proposed action, but specify a minimum level of soy isoflavones in addition to a minimum level of soy protein for products bearing the claim.

(6) Take proposed action, but revise the wording of the claim or require that warnings or other statements accompany the claim.

(7) Take proposed action, but specify a different maximum total fat content or grant an exemption from the maximum total fat requirement for foods made with natural soy beans that have no added fat.

(8) Take proposed action, but use a different procedure for determining level of soy protein in particular products.

1. Option One: Take No New Regulatory Action

By convention, the option of taking no new regulatory action is the baseline in comparison with which the costs and benefits of the other options are determined. Therefore, neither costs nor benefits are associated with taking no new regulatory action.

2. Option Two: Take No Action, But Generate or Wait for Additional Information on Which To Base a Future Action

A number of comments suggested delaying action until further research is carried out on: (1) The mechanism by which soy protein reduces the risk of coronary heart disease (CHD), including the role of soy isoflavones; (2) the effect of particular methods of manufacturing soy protein isolates and products containing soy protein; (3) the effect of other characteristics of the diet such as fiber or mineral content; (4) potential health risks associated with increased intake of soy protein, soy isoflavones, other components of soybeans, and artifacts of particular methods of manufacturing soy protein isolates and products containing soy protein; (5) consumption patterns of foods containing soy protein and the percentage of such foods that meet the proposed requirements for the health claim; and (6) methods of measuring the level of soy protein in foods.

The cost of delay is the elimination of the benefits that would have been realized between the effective date of the non-delayed rule and the effective date of the delayed rule. The potential benefits of delay are: (1) The reduction of potential health risks, if any, associated with increased intake of soy protein and other relevant substances; (2) the reduced likelihood of the potential reduction in the perceived reliability of FDA-approved claims that might occur if future research were to require the soy protein health claim be revised; (3) the increase in the health benefits generated by a delayed health claim that, potentially, would be more accurate or complete.

As discussed below, the comments did not provide information establishing that the benefits of delaying the rule outweigh the costs.

3. Option Three: Take Proposed Action Costs

A number of comments suggested that this rule might lead to adverse health effects. According to these comments, potential health risks are associated with an increased intake of: (1) Soy protein; (2) other components of soybeans including soybean trypsin inhibitors and isoflavones such as genistein; (3) artifacts of particular methods of manufacturing soy protein isolates or products containing soy protein, such as nitrates, nitrosamines, and lysinolanine; and (4) artifacts of genetically engineered soy protein. Among the potential health concerns related to these substances mentioned in the comments were the following: (1) Allergenicity; (2) reduced bioavailability of vitamins and minerals including zinc and iron; (3) hormonal alterations, including changes in fertility and functioning of sex glands; (4) toxicity in estrogen sensitive tissues and an increase in estrogen-related diseases; (5) vascular dementia; (6) adverse effects on the central nervous system and behavioral changes; (7) thyroid abnormalities, including goiter; (8) cancer; (9) diabetes; (10) liver disease; (11) adverse effects on the immune and endocrine systems; and (12) adverse effects on metabolism. Other comments argued that no health concerns would be associated with the intake levels of soy protein and the other substances that can be associated with soy protein, such as soy isoflavones or various by-products of manufacturing soy protein isolates, that are likely to result from the proposed health claim.

As discussed previously in the preamble to this rule, FDA finds that there is no evidence that any increase in the intake of soy protein or the other substances discussed in the comments presents a risk of adverse health effects.

The availability of the health claim may increase the number of products containing soy protein. Increased availability of products containing soy protein may increase the likelihood that those who are allergic to soy protein may consume such products. The net effect of this rule on the incidence of allergic reactions to soy protein is unclear. As discussed earlier in the preamble, the presence of the health claim will serve to notify consumers of the presence of soy protein in products that bear the claim. However, some consumers who are allergic to soy protein may not already know they are allergic to soy protein and some consumers who do know they are allergic may inadvertently consume such products despite the presence of the health claim. FDA has insufficient information to estimate the net effect on the incidence of allergic reactions to soy protein. In addition, the addition of soy protein to products that do not currently contain soy protein may reduce, to some degree, the number of soy-free products that are available to those who are allergic to soy protein. This reduction in product choice may lead to utility losses for those consumers. However, a large number of products will continue to not contain soy protein, so this utility loss will probably be modest. This rule may also increase the incidence of the adverse health effects associated with zinc deficiency, which is typically related to largely plant-based diets, to some degree. However, FDA has insufficient information to estimate this effect.

Some comments suggested that this rule might indirectly increase the incidence of CHD. According to these comments, the proposed health claim could lead some consumers to overestimate the role of soy protein in preventing CHD and to neglect other actions that have an equal or greater effect on the risk of CHD. Other comments argued that this rule might lead to the adverse health effects caused by poor nutrition because the proposed health claim might lead some consumers to concentrate unduly on foods containing soy protein and to neglect the other components of a balanced diet. Another comment argued the proposed health claim could lead to miscellaneous adverse health effects because it might be interpreted by some consumers as an endorsement of the miscellaneous benefits that are sometimes claimed for soy products, such as the prevention of cancer or osteoporosis. This comment argued that this interpretation would lead some consumers to neglect the actions that reduce the risk of these other conditions.

Some consumers may misinterpret the proposed health claim (or any other health claim). However, the fact that the proposed health claim states that the risk of CHD may be reduced by an unspecified degree by consuming a specified level of soy protein per day, as part of a low saturated fat and low cholesterol diet, makes it unlikely that many consumers will neglect other activities that reduce the risk of CHD or neglect other types of foods. Similarly, the fact that the health claim specifies CHD makes it unlikely that many consumers will interpret the claim as an endorsement of other benefits that are sometimes claimed for soy products. The comments did not provide sufficient information to allow FDA to estimate the likelihood of these effects. Furthermore, these potential effects are no more likely to be associated with the proposed claim than with any other claim.

Some comments suggested that this rule might indirectly increase the incidence of miscellaneous adverse health effects by decreasing the perceived reliability of FDA-approved health claims in general. Some comments noted the presence of a certain degree of uncertainty concerning the mechanism by which soy protein reduces the risk of CHD. One comment argued that if further research on this mechanism were to find that isoflavones or other components of soybeans are involved, and the health claim were subsequently revised to reflect those findings, then FDA's scientific reputation and the perceived value of FDA-approved health claims could be adversely affected. Other comments implied that uncertainty over the mechanism means that future research might show that soy protein does not affect the risk of CHD. Other comments argued that the proposed claim would reduce FDA's scientific credibility because it would mean that FDA is treating soy protein in a manner that is inconsistent with how FDA treats certain other substances that may reduce the risk of CHD, including estrogens and linseed oil.

Future research could lead to results that would lead FDA to revise the soy health claim. However, the comments did not provide sufficient information to allow FDA to estimate the likelihood of revisions or to assess the impact of these revisions on the perceived reliability of FDA-approved health claims in general. The latter relationship is highly speculative, because it depends on consumers not knowing that scientific knowledge is in a constant state of development. In addition, although some revisions may be necessary, it is unlikely that future research will indicate that soy protein has no effect on CHD. As stated earlier in the preamble, FDA has concluded that the scientific evidence establishes that increased intake of soy protein reduces the risk of CHD and that this effect is not simply an artifact of the substitution of lower fat and cholesterol products for higher fat and cholesterol products. The comment that suggested otherwise ignores the many studies in which fat, saturated fat, and cholesterol were the same in treatment and control groups and soy protein still exerted an effect on the risk of CHD. Also, FDA disagrees that the only mechanism discussed in the petition was the soy isoflavone mechanism. Finally, the comments did not provide sufficient information to estimate the effect of the purported inconsistencies on the perceived value of FDA-approved health claims. However, in general, it is unclear that the failure to authorize a health claim for one substance would reduce the effectiveness of a health claim for another substance.

A number of comments addressed the method FDA proposed to use to determine the level of soy protein. Many of the comments recommended revising the proposed rule. These comments are discussed under Option 8 below.

C. Benefits

The analysis of the proposed rule discussed the benefit of this rule in terms of the value to consumers of the information communicated in the proposed health claim. The comments did not provide information directly relevant to estimating this value. However, a number of comments addressed the health and other benefits that might be generated by changes in consumer behavior that might follow from this rule. As discussed in the analysis of the proposed rule, the value of these other benefits may be considered a lower bound on the value to consumers of the information communicated in the health claim. This value is a lower bound because some consumers might want that information, but nevertheless choose not to modify their behavior. In addition, the value of these other benefits may be considered an appropriate independent metric for valuing the benefits of this rule because consumers may value the information in the claim based on the usefulness of that information for reducing the risk of CHD but may underestimate or overestimate the usefulness of that information.

Many comments argued that this rule would lead to a reduction in the incidence of CHD and provided information relevant to estimating that reduction. A few comments argued that this rule would not lead to a reduction in the incidence of CHD because soy protein does not affect the risk of CHD. One comment argued that this rule would generate benefits by obviating, in some cases, the need for riskier and more expensive pharmacological treatments for reducing the risk of CHD. Thus, according to this comment, this rule might generate benefits even if no reduction in the incidence of CHD were to take place.

Quantifying the effect of the proposed health claim on the incidence of CHD would involve a number of uncertainties and any ensuing estimate would be imprecise. In addition, there would be little value to generating such an estimate because, as discussed above, the comments did not provide sufficient information to estimate the purported costs of this rule. Therefore, although FDA believes this final rule will generate benefits, this analysis will not attempt to quantify the effect of this rule on the incidence of CHD.

Some comments argued that increasing soy intake would generate benefits other than a reduction in the risk of CHD, including reduction in the incidence of cancer, osteoporosis, and menopausal symptoms. These types of effects would be relevant to the estimation of the benefits of this rule. However, FDA has reviewed no scientific evidence to assess whether such benefits exist or to estimate the size of such benefits.

4. Option Four: Take Proposed Action, but Specify a Different Minimum Level of Soy Protein for Products Bearing the Claim

Many comments suggested revising the minimum level of soy protein that is required for a product to be able to bear the proposed health claim. Some comments addressed the significance of the 25 g per day of soy protein on which the proposed 6.25 g per RACC requirement was based. One comment noted that studies have found that soy protein affects the risk of CHD at intake levels of between 17 g and 31 g per day. Another comment argued that between 30 g to 50 g of soy protein per day is necessary to produce clinically significant results on the incidence of CHD.

Specifying the particular daily intake of soy protein that will have a significant effect on the risk of CHD involves some uncertainty. However, FDA does not have sufficient information to estimate the effect of specifying different levels and the comments did not provide sufficient information to allow FDA to do so. As discussed earlier in the preamble, FDA believes the 25 g soy protein per day level is supported by the scientific literature and disagrees that intake levels of 30 g to 50 g per day is necessary to produce clinically significant results on the incidence of CHD.

Other comments did not address the 25 g soy protein per day target level but did address the 6.25 g per RACC requirement derived from the daily target level. Some comments argued that the per RACC requirement was overly restrictive and that few products would qualify for the health claim under this requirement. One comment analyzed the list of products that was presented in the petition as qualifying for the health claim and found that only 61 products would qualify if multiple flavors of the same product were omitted, and that 88 products would qualify if multiple flavors were not omitted. This comment also noted that many of the products on the list that would qualify are products that are meant to be added to other products rather than consumed on their own, that it was unclear whether the final products would themselves meet the requirements for the proposed claim. Another comment noted that many of the qualifying products listed in the petition were varieties of non-dairy soy beverages or tofu, which this comment argued have not been well accepted by American consumers. Other comments noted that most of the soy products that are available on the market that would meet the proposed per RACC requirement are entree-type products that consumers would probably not consume four times per day. Some comments suggested that only vegetarian or soy burgers, shakes, tofu, and non-dairy soy beverages would meet the proposed per RACC requirement. One comment noted that many of the products that meet the RACC requirements are specialty items that are only available at health food stores.

In contrast, other comments argued that many existing soy products meet the proposed per RACC requirement or could easily be reformulated to meet that requirement. One comment suggested that the vast majority of products containing soy protein that are currently available on the market meet the proposed RACC level. These comments argued that the assumption of four eating occasions per day that was used to derive the 6.25 g per RACC requirement from the 25 g per day level was reasonable. Among the products listed in these comments were the following: tofu, soy-based beverages, soy burgers and other meat alternatives, frozen deserts, protein bars, cheese and yogurt alternatives, soybeans, soynut butter, soynuts, tempeh, miso, and soy flour or soy protein powder. Another comment implied that any product in which protein is normally consumed could easily be modified to meet the per RACC requirements, including snack foods, breakfast cereals, burger patties, and more formal entrees.

Some comments argued that the 6.25 g per RACC restrictions would effectively prevent baked products from bearing the claim. One comment noted that achieving a level of 6.25 g per RACC in these products would require incorporating soy flour at 15 percent inclusion or greater and that would yield a product that would be unacceptable to consumers and would also be too costly to compete effectively with other products. Many comments argued that the benefits of this rule would be greater if commonly consumed products such as baked products were able to bear the proposed health claim. One comment argued that a per RACC requirement that allowed baked goods containing soy protein to bear the health claim might lead to additional benefits in terms of encouraging the consumption of products from grain group of the USDA/DHHS Food Guide Pyramid, which this comment claims are currently underconsumed.

Other comments argued that the proposed per RACC requirement would effectively prevent other types of products from bearing the health claim. One comment argued that it is difficult to incorporate 6.25 g soy protein into a single RACC of most such foods in a way that it would be palatable to most American consumers, given current and reasonably anticipated technology.

Some of the comments that argued that few products would be able to meet the 6.25 g per RACC requirement recommended lowering the minimum per RACC level to allow a wider variety of foods to qualify for the health claim and to make it easier for consumers to achieve an intake of 25 g soy protein per day. Some comments argued that a level of 4 g per RACC would allow baked goods, allow soy pasta, low-fat extended meat products, and vegetarian burgers made with soy flour and textured soy protein to bear the claim. These comments noted that assuming intake levels of 5 to 6 servings per day of these types of products would be reasonable and that 4 g per RACC would, therefore, be consistent with a daily intake of 25 g per day. Another comment suggested that FDA has legal precedent for setting the per RACC requirement as low as 2.5 g per RACC.

In contrast, some of the comments that argued that few products would meet the 6.25 g per RACC requirement recommended raising the per RACC level to reduce the number of servings that would be necessary to obtain 25 g soy protein per day. Some comments argued that if the primary source of soy protein were from meals in which high protein meat dishes are currently eaten, then the per RACC requirement should be based on two or three servings per day, rather than the proposed assumption of four servings per day. Thus, these comments suggested that FDA revise the per RACC requirement from 6.25 g to either 8.3 g or 12.5 g.

FDA has insufficient information on the characteristics of the soy products that are currently on the market to determine the proportion of such products that would qualify for the health claim, the ease with which existing products can be reformulated to meet the requirements for making the health claims, or the ease with which new products can be developed that would meet the requirements for making the health claim. In addition, FDA has insufficient information on the consumption patterns of the relevant products to determine whether lowering the per RACC level would lead more or fewer consumers to consume 25 g soy protein per day.

Some comments noted that the proposed health claim contains information on (1) the daily intake level of soy protein that is associated with reduced risk of CHD and (2) the level of soy protein in a serving of the product bearing the claim. According to these comments, the provision of this information obviates the need to restrict the claim to products having 6.25 g or more soy protein per RACC, because consumers can easily determine the relative significance of particular products as a source of soy protein. These comments implied that specifying a much lower minimum level of soy protein would increase benefits because a wider variety of products would then be able to bear the claim and consumers would more easily be able to achieve an intake of 25 g soy protein per day.

Allowing the claim to appear on products containing very low levels of soy protein might increase the usefulness of the claim for consumers and might lead to a greater reduction in CHD than would be produced by taking the proposed action. The agency is unable to determine the likelihood of this effect.

Other comments suggested revising the per RACC requirement for other reasons. One comment argued that the per RACC requirement should be changed to a requirement based on serving size. This comment argued, for example, that a single veggie burger that contains 6.25 g of soy protein should qualify for the health claim, even if the product does not meet the per RACC requirement because the burger pattie is larger than the applicable RACC.

Changing the per RACC requirement to a per serving requirement would probably increase the number of products that would be able to bear the proposed health claim and might, therefore, increase the health benefits generated by the claims. However, the comments did not provide sufficient information to estimate this effect. In addition, this revision would require revision of the regulations at 21 CFR 101.12(g), and is, therefore, beyond the scope of this rulemaking.

One comment noted that the correct declaration of 6.25 g soy protein is 6 g because current law mandates that the amount of protein be rounded to the nearest whole number. According to this comment, this rounding might confuse consumers. If consumers were confused about the level of soy protein in the RACC of a particular product and the significance of that product for meeting the specified daily intake level, then the benefits of the health claim might be lower than they would be otherwise. This comment suggested that the per RACC requirement be revised from 6.25 g to either 6 g or 7 g. As discussed previously, the rounding requirement applies only to the Nutrition Facts Panel and soy protein content is not allowed to appear on the Nutrition Facts Panel.

5. Option Five: Take Proposed action, but Specify a Minimum Level of Soy Isoflavones in Addition to the Proposed Minimum Level of Soy Protein for Products Bearing the Claim

Some comments argued that the effect of soy protein on the risk of CHD may depend on the presence of soy isoflavones. These comments recommended that the health claim be restricted to products that contain a minimum level of total soy isoflavones, of particular isoflavones, of both total isoflavones and particular isoflavones, or of amino acids such as arginine and methionine. Some of the comments that argued that the beneficial effects of soy protein may depend on the presence of soy isoflavones also noted that particular manufacturing or processing methods can affect the level of soy isoflavones. These comments recommended that the health claim be restricted to products that have been manufactured or processed in particular ways. For example, many comments noted that alcohol washing reduces isoflavone content and suggested that products containing alcohol washed or extracted soy protein isolate should not be authorized to bear the health claim. Some comments added that there is no evidence that adding purified soy isoflavone extract back into such products is effective and argued that any isoflavone requirement should be based on naturally occurring isoflavones.

As discussed earlier in this preamble, FDA finds that the scientific evidence does not indicate that the effect of soy protein on the risk of CHD varies with the presence of soy isoflavones or amino acids. Therefore, no additional benefit would result from restricting the claim to products having particular levels of isoflavones, or produced using particular methods of manufacture.

6. Option Six: Take Proposed Action, but Revise Wording of the Claim or Require That Warnings or Other Statements Accompany the Claim

Some comments suggested that FDA require additional information be put on the labels of product bearing the proposed claim that explains the conditions under which soy protein reduces the risk of CHD. For example, some comments suggested that product labels should make it clear that no benefits should be expected for daily soy protein intake levels of less than 25 g. Some comments argued that the beneficial effects of soy protein accrue only to consumers who have high cholesterol levels and suggested that the proposed health claim be revised to communicate this fact.

Although requiring a label statement clarifying that benefits should not be expected for daily soy protein intake levels of less than 25 g might generate benefits, the marginal benefits of such a statement are unclear given that the proposed health claim relates health effects to an intake of 25 g per day and not to the intake of any particular product. The comment did not provide sufficient information to estimate the marginal benefit of an additional statement concerning the significance of the 25 g per day intake level. Finally, as discussed previously in this preamble, FDA has determined that the effect of soy protein on the risk of CHD may depend, in part, on initial cholesterol levels, but does not accrue only to those with high initial cholesterol levels. Therefore, restricting the health claim to apply to only those with high initial cholesterol levels would not generate marginal benefits.

Some of the comments that argued that the increased consumption of products containing soy protein could lead to health risks suggested that FDA require warning labels on those products to alert consumers of the risks. Other comments suggested that various types of information relevant to the purported health risks be reported on product labels. For example, one comment that argued that increased intake of soy protein could lead to zinc deficiency suggested that the labels of products bearing the health claim indicate the phytate and zinc content per serving for those products. One comment suggested that labels indicate a recommended maximum daily intake of soy protein to prevent the health risks associated with overconsumption of products containing soy protein. This comment argued that daily consumption of between 25 g and 100 g of isolated soy protein could result in nitrosamine exposures that exceeds established No Significant Risk Levels. One comment argued that manufacturers should voluntary provide information on product labels on various issues such as manufacturing methods and the use of pesticides, because consumers have a right to such information.

FDA has determined that there is no evidence that health risks are associated with increased intake of soy protein or the other substances discussed in the comments. Label statements warning of possible allergic reactions to soy protein would provide some potentially valuable information to consumers who do not realize they are allergic to soy protein or that such allergies are possible. However, such labeling would not provide useful information to those consumers who are already aware of the fact that allergies to common foods are possible, and might discourage the consumption of soy protein by those who are not allergic to soy protein. FDA has insufficient information to estimate the costs or benefits of such a warning statement or to determine if such a warning statement would provide a net benefit to consumers. Associating warning statements with the proposed health claim would generate no marginal benefits for consumers who know they are allergic to soy protein because the health claim would already indicate the presence of soy protein.

Label statements addressed to the potential effect of increased consumption of products containing soy protein on zinc deficiency, such as a warning statement, indications of the zinc and phytate content of products containing soy protein, or recommended maximum daily intakes, might reduce the likelihood that increased consumption of these products will lead to zinc deficiency. Earlier in the preamble to this rule, FDA determined that consumers would not find information relating to the zinc and phytate content of products containing soy protein useful. The other suggested labeling approaches for addressing the effect of increased consumption of these products on zinc deficiency may be useful for some consumers. However, again, the benefit of such labeling must be compared to the possible costs in terms of discouraging the use of such products among those who are not at risk of zinc deficiency. FDA has insufficient information to estimate the costs or benefits of the other suggested labeling approaches or determining whether such approaches would generate net benefits.

One comment suggested eliminating the language relating the effect of soy protein to diets low in saturated fat and cholesterol because the effect of soy protein on the risk of CHD is independent of these other factors. The benefit of eliminating this language is that consumers who are not currently eating a diet low in saturated fat and cholesterol may be more likely to react to the health claim if the effect of soy protein is not presented as applying only to those eating diets low in saturated fat and cholesterol. An increase in the number of consumers likely to react to the health claim may increase the benefits of the health claim. However, the size of this marginal benefit is unclear because, as discussed earlier, the available data on the effects of soy protein show that soy protein has a more consistent effect on CHD for those consuming a low fat and cholesterol diet than for others. The cost of eliminating this language is that some consumers might believe that achieving a certain intake of soy protein can substitute for eating a diet low in saturated fat and cholesterol and might, therefore, indirectly increase the intake of saturated fat and cholesterol. FDA has insufficient information to determine if eliminating the language relating the effect of soy protein to diets low in saturated fat and cholesterol would generate net benefits or costs.

Some comments suggested that the proposed health claim was either too long or too complicated to be effective. Many comments argued that the health claim would be more effective if it were shortened or replaced by a "split claim." Many comments suggested wording for a shorter health claim. Increasing the effectiveness of the health claim would increase the benefits associated with the health claim and would not affect costs. However, FDA has insufficient information to analyze the effect of different labeling formats or wording. Although FDA has studied the effectiveness of split claims for other types of claims, the relevance of that information for a health claim on soy protein is unclear.

7. Option Seven: Take Proposed Action, but Specify a Different Maximum Total Fat Content or Grant an Exemption from the Maximum Total Fat Requirement for Foods Made With Natural Soybeans That Have No Added Fat

Many comments noted that the low fat requirement for products bearing the proposed health claim would prevent soybeans and traditional soybean products from bearing the health claim. This rule has been revised so that foods made from whole soybeans with no added fat are exempted from the low fat requirement. The benefit of this revision is that more products will be able to bear the proposed health claim and the benefits generated by the health claim may be increased. The cost of this revision is that the total fat content of some products bearing the claim may be slightly higher than under the proposed rule. As explained earlier in the preamble, a reduction of total fat facilitates maintenance of normal body weight and, therefore, reduces the risk of obesity. The reduction of this effect would cause an increase in the risk of obesity and, therefore, produce a countervailing increase in the risk of CHD. In this case, the benefit of increasing the number of products probably outweighs the slight increase in the total fat content of qualifying products.

8. Option Eight: Take Proposed Action, but Use a Different Procedure for Determining Level of Soy Protein in Particular Products.

Many comments on the proposal addressed the analytical method that FDA proposed to use to confirm the level of soy protein in products bearing the proposed health claim. These comments were discussed in the reproposal. The reproposal specified various types of records that might allow FDA to calculate the level of soy protein in particular products. FDA received a number of comments on the reproposal. Most of these comments addressed the issue of which records FDA will use to determine the soy protein content of foods. Many comments argued that the reproposal appeared to allow FDA wide discretion in determining which records to inspect and duplicate. These comments also expressed the concern that FDA might inspect and duplicate records of each of the various types that were specified as potentially relevant in the reproposal, and might also inspect and duplicate as yet unspecified records that FDA later determines are relevant. According to these comments, some of the resulting record inspection and duplication might be unwarranted. Many comments suggested that the rule be revised to require manufacturers to provide FDA with records that provide a reasonable basis for concluding that a particular product has sufficient soy protein content to bear the health claim. According to these comments, this revision would eliminate the possibility that FDA will use the records inspections clause to inspect and duplicate records in situations in which such actions are not strictly necessary. One comment argued that the records inspection provision would give an unfair market advantage to firms that manufacture products whose sole source of protein is soy and which, therefore, need not provide FDA access to records to establish the level of soy protein in their products.

If FDA were to require the inspection and duplication of records that firms attempting to use the soy protein health claim considered unnecessary to establish compliance with the requirements for making that claim, then those firms would have less incentive to use the claim and the benefits associated with allowing that claim would be reduced. However, FDA has modified its proposal to inspect records to provide, instead, that manufacturers must identify and supply to FDA, on written request, records that substantiate the amount of soy protein in a food that bears the soy protein health claim if soy is not the sole source of protein in the food. Therefore, this rule will not require record inspection or unnecessary duplication of records. This rule may generate some distributive effects because it may put firms that are required to provide such records at a competitive disadvantage relative to firms that produce products in which soy is the only source of protein. However, these effects will probably be small because manufacturers probably already maintain the necessary records.

D. Small Entity Analysis

FDA has examined the impacts of this proposed rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. No compliance costs are generated by this rule because this rule does not require any labels to be changed, or any product to be reformulated. Therefore, small businesses will only relabel or reformulate products if the benefits to those small businesses outweigh the costs. FDA did not receive any comments that challenged this conclusion. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), FDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION

are shown below with an estimate of the annual recordkeeping and reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Record Retention Requirements for the Soy Protein/CHD Health Claim

Description: The regulation set forth in this rule authorizes the use in food labeling of a health claim about the relationship between soy protein and CHD. Section 403(r) of the act requires that food bearing a health claim authorized by regulation on a petition to the agency be labeled in compliance with the regulation issued by FDA. In response to comments received on the soy protein proposed rule (63 FR 62977), the agency proposed an alternative procedure for assessing compliance with the requirement that a food contain a qualifying amount of soy protein in the soy protein reproposal (64 FR 45932). This procedure would have required that a manufacturer of a product bearing the proposed soy protein health claim whose product contains a source or sources of protein in addition to soy retain the records that permit the calculation of the ratio of soy protein to other sources of protein in the food. The manufacturer of such a food product would have been required to make those records available for review and copying by appropriate regulatory officials upon request and during site visits. Comments received on the soy protein reproposal have been addressed by the agency in section II.C.2 of this document, and this rule reflects modifications made in response to those comments. This final rule requires a manufacturer of a product bearing the soy protein health claim whose product contains a source or sources of protein in addition to soy to identify and retain records that reasonably substantiate the ratio of soy protein to total protein. The rule also requires the manufacturer of such a food product to provide those records upon written request to appropriate regulatory officials.

FDA had submitted the information collection requirements to OMB for review under the PRA at the time the August 1999 soy protein reproposal was published. In response, OMB requested that FDA respond to the need for the collection and the burden hours that will be imposed as a result of this collection.

To bear the soy protein and CHD health claim, foods must contain 6.25 g soy protein per RACC. For foods that contain soy as the sole source of protein, analytical methods for total protein can be used to quantify the amount of soy protein. At the present time, there is no validated analytical methodology available to quantify the amount of soy protein in foods that contain other proteins. For these latter foods, FDA must rely on information known only to the manufacturer to assess compliance with the qualifying amount of soy protein. Thus, FDA is requiring manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to appropriate regulatory officials upon written request.

Although no comments on the soy protein reproposal specifically addressed the estimated burden of the information collection requirements, several indicated that recordkeeping and record inspection would be burdensome. These comments expressed concern about FDA's record inspection authority. In response to this concern, FDA has determined that, in this case, it need not assert record inspection authority in order to obtain the information needed for compliance assessment. The comments also expressed concern about the potentially broad array of records that FDA might demand. In response to this concern, FDA clarified that it did not intend to specify the records to be supplied. Rather, the final rule indicates that records will be requested in writing and that manufacturers will be responsible for identifying the records that they have used to substantiate the proportion of soy protein in their products.

FDA estimates the burden of this collection of information as follows:

Description of Respondents: Businesses or others for-profit.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total Hours
101.82(c)(2)(ii)(B)	25	1	25	1	25

[1] There are no capital costs or operating and maintenance costs associated with this collection.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
101.82(c)(2)(ii)(B)	5	1	5	1	5

[1] There are no capital costs or operating and maintenance costs associated with this collection.

Manufacturers must determine that their products are qualified to bear any claim used on foods labels or in labeling, including meeting the requirement for a qualifying amount of soy protein to bear the health claim authorized for use by this regulation. In the absence of a validated analytical methodology for soy protein in foods that contain other proteins, manufacturers will need to use records, *e.g.*, the food's formulation or recipe, to determine if such a food contains 6.25 g per RACC. In this rule, FDA is requiring that firms maintain the records they use to determine that a food is qualified to bear the claim, and that those records be submitted to FDA upon written request. Based upon its experience with the use of health claims, FDA estimated that 25 firms would market products bearing a soy protein and CHD health claim and that one of each firm's products would contain a source or sources of protein in addition to soy. FDA received no comments that challenged this estimate. FDA estimates that, annually, it would request records to assess compliance from 20 percent of firms subject to the recordkeeping requirement. The records that would be required to be retained by § 101.82(c)(ii)(B)(2) are records that, as described above, FDA believes a prudent and responsible manufacturer uses and retains as a normal part of doing business. Thus, the burden to the food manufacturer would be that involved in assembling and providing the records to appropriate regulatory officials upon written request. The requirements contained in this rule would require only a minimal burden, no more than one hour per response, from respondents.

The information collection provisions of this final rule have been submitted to OMB for review. FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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3. American Soybean Association, "Health Claim Petition for Soy Protein," October 29, 1998 [C1, vol. 8–12].

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5. Food and Nutrition Board, National Academy of Sciences, "Diet and Health: Implications for Reducing Chronic Disease Risk," National Academy Press, Washington, DC, pp. 291–309 and 529–547, 1989.

6. DHHS, Public Health Service (PHS) and National Institutes of Health, "National Cholesterol Education Program: Population Panel Report," Bethesda, MD, pp. 1–40, 1990.

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List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

The authority citation for 21 CFR part 101 continues to read as follows:

1. **Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Add § 101.82 to subpart E to read as follows:

§ 101.82 Health claims: Soy protein and risk of coronary heart disease (CHD).

(a) *Relationship between diets that are low in saturated fat and cholesterol and that include soy protein and the risk of CHD.* (1) Cardiovascular disease means diseases of the heart and circulatory system. CHD is one of the most common and serious forms of cardiovascular disease and refers to diseases of the heart muscle and supporting blood vessels. High blood total cholesterol and low density lipoprotein (LDL)-cholesterol levels are associated with increased risk of developing CHD. High CHD rates occur among people with high total cholesterol levels of 240 milligrams per deciliter (mg/dL) (6.21 millimole per liter (mmol/L)) or above and LDL-cholesterol levels of 160 mg/dL (4.13 mmol/L) or above. Borderline high risk total cholesterol levels range from 200 to 239 mg/dL (5.17 to 6.18 mmol/L) and 130 to 159 mg/dL (3.36 to 4.11 mmol/L) of LDL-cholesterol. The scientific evidence establishes that diets high in saturated fat and cholesterol are associated with increased levels of blood total and LDL-cholesterol and, thus, with increased risk of CHD.

(2) Populations with a low incidence of CHD tend to have relatively low blood total cholesterol and LDL-cholesterol levels. These populations also tend to have dietary patterns that are not only low in total fat, especially saturated fat and cholesterol, but are also relatively high in plant foods that contain dietary fiber and other components.

(3) Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soy protein to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD.

(b) *Significance of the relationship between diets that are low in saturated fat and cholesterol and that include soy protein and the risk of CHD.* (1) CHD is a major public health concern in the United States. It accounts for more deaths than any other disease or group of diseases. Early management of risk factors for CHD is a major public health goal that can assist in reducing risk of CHD. High blood total and LDL-cholesterol are major modifiable risk factors in the development of CHD.

(2) Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and an average of 30 percent or less of total calories from all fat. Recommended daily cholesterol intakes are 300 mg or less per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total and LDL-cholesterol levels. Soy protein, when included in a low saturated fat and cholesterol diet, also helps to lower blood total and LDL-cholesterol levels.

(c) *Requirements.* (1) All requirements set forth in § 101.14 shall be met.

(2) *Specific requirements*—(i) *Nature of the claim.* A health claim associating diets that are low in saturated fat and cholesterol and that include soy protein with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim states that diets that are low in saturated fat and cholesterol and that include soy protein "may" or "might" reduce the risk of heart disease;

(B) In specifying the disease, the claim uses the following terms: "heart disease" or "coronary heart disease";

(C) In specifying the substance, the claim uses the term "soy protein";

(D) In specifying the fat component, the claim uses the terms "saturated fat" and "cholesterol";

(E) The claim does not attribute any degree of risk reduction for CHD to diets that are low in saturated fat and cholesterol and that include soy protein;

(F) The claim does not imply that consumption of diets that are low in saturated fat and cholesterol and that include soy protein is the only recognized means of achieving a reduced risk of CHD; and

(G) The claim specifies the daily dietary intake of soy protein that is necessary to reduce the risk of coronary heart disease and the contribution one serving of the product makes to the specified daily dietary intake level. The daily dietary intake level of soy protein that has been associated with reduced risk of coronary heart disease is 25 grams (g) or more per day of soy protein.

(ii) Nature of the substance. (A) Soy protein from the legume seed Glycine max.

(B) FDA will assess qualifying levels of soy protein in the following fashion: FDA will measure total protein content by the appropriate method of analysis given in the "Official Methods of Analysis of the AOAC International," as described at § 101.9(c)(7). For products that contain no sources of protein other than soy, FDA will consider the amount of soy protein as equivalent to the total protein content. For products that contain a source or sources of protein in addition to soy, FDA will, using the measurement of total protein content, calculate the soy protein content based on the ratio of soy protein ingredients to total protein ingredients in the product. FDA will base its calculation on information identified and supplied by manufacturers, such as nutrient data bases or analyses, recipes or formulations, purchase orders for ingredients, or any other information that reasonably substantiates the ratio of soy protein to total protein. Manufacturers must maintain records sufficient to substantiate the claim for as long as the products are marketed and provide these records, on written request, to appropriate regulatory officials.

(iii) *Nature of the food eligible to bear the claim.* (A) The food product shall contain at least 6.25 g of soy protein per reference amount customarily consumed of the food product;

(B) The food shall meet the nutrient content requirements in § 101.62 for a "low saturated fat" and "low cholesterol" food; and

(C) The food shall meet the nutrient content requirement in § 101.62 for a "low fat" food, unless it consists of or is derived from whole soybeans and contains no fat in addition to the fat inherently present in the whole soybeans it contains or from which it is derived.

(d) *Optional information.* (1) The claim may state that the development of heart disease depends on many factors and may identify one or more of the following risk factors for heart disease about which there is general scientific agreement: A family history of CHD; elevated blood total and LDL-cholesterol; excess body weight; high blood pressure; cigarette smoking; diabetes; and physical inactivity. The claim may also provide additional information about the benefits of exercise and management of body weight to help lower the risk of heart disease;

(2) The claim may state that the relationship between intake of diets that are low in saturated fat and cholesterol and that include soy protein and reduced risk of heart disease is through the intermediate link of "blood cholesterol" or "blood total and LDL-cholesterol";

(3) The claim may include information from paragraphs (a) and (b) of this section, which summarize the relationship between diets that are low in saturated fat and cholesterol and that include soy protein and CHD and the significance of the relationship;

(4) The claim may state that a diet low in saturated fat and cholesterol that includes soy protein is consistent with "Nutrition and Your Health: Dietary Guidelines for Americans," U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO);

(5) The claim may state that individuals with elevated blood total and LDL-cholesterol should consult their physicians for medical advice and treatment. If the claim defines high or normal blood total and LDL-cholesterol levels, then the claim shall state that individuals with high blood cholesterol should consult their physicians for medical advice and treatment;

(6) The claim may include information on the number of people in the United States who have heart disease. The sources of this information shall be identified, and it shall be current information from the National Center for Health Statistics, the National Institutes of Health, or "Nutrition and Your Health: Dietary Guidelines for Americans," USDA and DHHS, GPO;

(e) *Model health claim.* The following model health claims may be used in food labeling to describe the relationship between diets that are low in saturated fat and cholesterol and that include soy protein and reduced risk of heart disease:

(1) 25 grams of soy protein a day, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of food] supplies ____ grams of soy protein.

(2) Diets low in saturated fat and cholesterol that include 25 grams of soy protein a day may reduce the risk of heart disease. One serving of [name of food] provides ____ grams of soy protein.

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–27693 Filed 10–20–99; 10:35 a.m.]

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federal register

Tuesday
October 26, 1999

Part III

Department of Housing and Urban Development

Notice of Public Meeting and Solicitation of Comments

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4540–N–01]

Notice of Public Meeting and Solicitation of Comments

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of meeting and solicitation of comments.

SUMMARY: The United States Department of Housing and Urban Development (HUD or the Department) announces a public meeting and requests public comments on a draft report developed by Steven Winter Associates (SWA) which identifies the variances between the Fair Housing Act's design and construction requirements and the:

- National Building Code, Building Officials and Code Administrators International (BOCA) 1996 edition;
- Uniform Building Code, International Conference of Building Officials (ICBO) 1997 edition;
- Standard Building Code, Southern Building Code Congress International (SBCCI) 1997 edition; and
- International Building Code First Draft, International Code Council (ICC) November 1997; Proposed International Building Code 2000, International Code Council (IBC–2000) Chapters 10 and 11, Appendix to Chapter 11, and Section 3407 (1999).

The draft report discusses only variances that do not meet the Fair Housing Act's design and construction requirements. As stated in the **BACKGROUND** section of this notice, the draft report is a precursor to a final report that HUD will deliver to the United States House of Representatives by December 31, 1999, as directed in the Committee Report of the FY 2000 HUD/VA Appropriations bill. After receipt and review of public comments, the Department will make its final revisions to the draft report and then issue the final report.

DATES: The meeting will be held on November 10, 1999, and will commence at 2:00 p.m. EST and continue until 5:00 p.m. EST. Written public comments will be received prior to the meeting, during the meeting, and after the meeting until the close of business (6:00 p.m. EST) on Monday, November 15, 1999.

ADDRESSES: The meeting will take place at the United States Department of Housing and Urban Development headquarters, 451 7th Street, SW, Washington, DC 20410 in the south side of the cafeteria on the ground floor of the HUD building. The Department of Housing and Urban Development is located at the L'Enfant Plaza Metro stop. The meeting will also be broadcast in HUD field offices. The addresses for the HUD field offices and telephone numbers for the Senior Community Builders may be obtained from www.hud.gov/directory/ascdir3.html or from Juanina Harris at the address and telephone number listed in the "RESERVATIONS" section of this notice.

Accessibility

The HUD headquarters building and field offices are accessible. The meeting in HUD headquarters will be interpreted in sign language and presented in open and real-time captioning. The broadcast will be open-captioned on television monitors in the HUD field offices with the exception of the following offices. The broadcast is available for listening only in Burlington, Vermont; Flint, Michigan; Wilmington, Delaware; and Springfield, Illinois. In Camden, New Jersey; Fargo, North Dakota; Memphis, Tennessee; Shreveport, Louisiana; Spokane, Washington; and Tucson, Arizona, the broadcast will be shown on computer monitors. If you plan to attend the broadcast in one of those offices, please notify the Senior Community Builder seven days before the meeting if you need the services of a sign language interpreter.

Hearing or speech-impaired individuals may access any of the HUD headquarters and field telephone numbers referenced in this notice via TTY/TDD by calling the toll-free federal Information Relay Service at 1–800–877–8339.

Reservations

If you would like to attend or view the meeting, you should make a reservation by 5:00 p.m. EST on November 8, 1999.

To make a reservation to attend the meeting at HUD headquarters in Washington, DC, you should telephone Juanina Harris at (202) 619–8046, extension 6979, with the following information: your name; the organization you are representing, if any; any reasonable accommodations you may need to attend or view the meeting; whether you intend to present oral comments; and the anticipated length of your comments. This telephone number is not toll-free. Commenters will be allowed no more than ten and, depending on the number of commenters, as few as five minutes to make their comments.

To make a reservation to view or listen to the broadcast of the meeting at a HUD field office, you should telephone the Senior Community Builder at the HUD field office where you would like to view or listen to the broadcast. You should provide the following information to the Senior Community Builder: your name; the organization you are representing, if any; and any reasonable accommodations you may need to view or listen to the broadcast of the meeting. The field office telephone numbers are not toll-free.

Alternatively, you may make a reservation to attend the meeting or to view or listen to the broadcast by using the registration form found at hud.gov/fhe/modelcodes, and following the instructions on the form.

Submission of Comments

Written comments should be submitted to Cheryl Kent, Director, Program Compliance and Disability Rights Support Division at 451 Seventh Street, SW, Room 5240, Washington, DC 20410–0500. Written comments will also be accepted at the public meeting. *Written comments must be submitted by close of business (6:00 p.m. EST) on Monday, November 15, 1999.*

Location of Documents

The HUD policy statement and draft report are located at www.hud.gov/fhe/modelcodes. The Fair Housing Act, the Fair Housing Act regulations, and the Fair Housing Accessibility Guidelines can also be obtained through links provided at this web site. Hard or Braille copies of the HUD policy statement and draft report may be requested from Ms. Harris at the telephone number or address listed in the "RESERVATIONS" section of this notice.

The Department recognizes that this report is designed to provide technical assistance to model code organizations and thus, because the report is responding to code language, it may be using terms unfamiliar to the general public. For this reason, the Department has arranged to have all of the source documents that SWA and the Department used in the analysis available to the public. The original and revised industry matrices that SWA and the Department reviewed are available at www.intlcode.org/fairhousing. You may also request a hard copy of the original and revised industry matrices from Ms. Harris at the telephone number or address listed in the "RESERVATIONS" section of this notice. The model code organizations have agreed to provide free of charge access to the chapters of the model codes that SWA and the Department reviewed. ANSI–A117.1 1992 and ANSI–A117.1 1998 are available for purchase at that web address. ANSI–A117.1–1986 is out of print and not available except in the HUD headquarters library at 451 Seventh St., S.W., and at HUD Fair Housing HUBs in the following locations: New York, New York; Boston, Massachusetts; Atlanta, Georgia; Fort Worth, Texas; San Francisco, California; Seattle, Washington; Chicago, Illinois; Kansas City, Missouri; Philadelphia, Pennsylvania; and Denver, Colorado.

Copies of all the relevant documents are also available for viewing at the HUD Library at 451 Seventh St., SW, Washington, DC 20410. To gain admission to the HUD Library you must present identification to the security guards and ask to visit the library. Photocopying in the HUD library is limited to 40 pages and all of the documents, with the exception of the HUD policy statement and the draft report, are copyrighted and therefore not available for photocopying.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Director, Program Compliance and Disability Rights Support Division, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5240, Washington, DC 20410–0500; telephone (202) 708–2333, extension 7058. (This telephone number is not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

In December 1997, the Council of American Building Code Officials (CABO) submitted to the Department a matrix ("the industry matrix") that compared the four model building codes referenced in the **SUMMARY** section of this notice to the Fair Housing Accessibility Guidelines (56 FR 9472–9515) ("the Accessibility Guidelines"). In response, the Department retained the services of SWA to analyze the industry matrix and to identify variances between the model building codes and the Fair Housing Act, 42 U.S.C. 3604; the Fair Housing Act Regulations, 24 CFR 100.205, and the Accessibility Guidelines, 56 FR 9472–9515. The Department also requested that SWA draft recommendations that code organizations could use to conform their codes with the Fair Housing Act, the Fair Housing Act Regulations, and the Accessibility Guidelines. SWA and the Department did not limit their review exclusively to the industry matrices or the Accessibility Guidelines. The review compared certain relevant chapters of each code with the Fair Housing Act, the Fair Housing Act Regulations, the Accessibility Guidelines, and ANSI–A117.1 1986, 1992, and 1998.

The Department is not promulgating any new technical requirements or standards by way of this draft report. This draft report and the final report will serve solely to respond to the model building code organizations' request for technical assistance and to provide technical assistance to other interested parties. This request for comment on the draft report is not a solicitation for changes to the design and construction requirements of the Act, its Regulations, or the Accessibility Guidelines.

Since the industry matrix was submitted to the Department, in December 1997, new editions of the BOCA and SBCCI codes have been published. Additionally, CABO indicated that there is a movement to fold all of the model building codes into one, the International Building Code. After consultation with CABO, CABO submitted a revised matrix to include the available proposed chapters of the Final Report for IBC–2000. The Final Report for IBC–2000 has not been published; however, the Department was able to obtain Chapter 10, Chapter 11, the Appendix to Chapter 11, and Section 3407 (1999) and has included an analysis of these in the draft report.

The United States House of Representatives Appropriations Committee issued a Report accompanying the Veterans Affairs and Housing and Urban Development Appropriations bill, HR–106–286 (Aug. 3, 1999). The Committee directed the Department to complete its review of the industry matrix and issue a policy statement by December 31, 1999. The Department intends to meet this deadline; however, prior to finalizing the report to Congress, the Department seeks public comment on the identification of variances and the recommendations contained in the draft report. Department staff have carefully reviewed and commented on the draft report and would like to hear from persons with disabilities, organizations representing persons with disabilities, code officials, home builders, and other interested parties prior to finalizing the report.

The draft report focuses only on the areas where the respective codes do not meet the requirements of the Fair Housing Act, the Fair Housing Act Regulations, the Accessibility Guidelines, ANSI–A117.1 1986, ANSI–A117.1 1992, or ANSI–A117.1 1998. If a particular provision of a code is not discussed, then the reader should presume that the position of SWA and the Department is that the provision meets the requirements of the Fair Housing Act even if the wording of the code provision and the Fair Housing Act requirements are not identical.

The November 10, 1999 Meeting

The November 10, 1999 meeting will be open to persons who register in advance. Attendance may be limited to the space available. A thirty-minute presentation by SWA will commence the meeting. The remainder of the time will be used for HUD officials to listen to public comments on the draft report. Members of the public may present oral comments during the meeting, to the extent that time permits, and file written comments with the Department for its consideration. Commenters will be limited to no more than ten minutes, and if there are numerous participants, as few as five minutes to make an oral statement. Written comments should be submitted to Cheryl Kent at the address listed in the **FOR FURTHER INFORMATION** section of this notice or to the registrar at the public meeting. The transcript of the meeting will be available for public inspection and copying by requesting them from Ms. Harris.

The Department will consider all comments received by close of business (6:00 EST) on November 15, 1999 and will publish its final report by December 31, 1999.

Dated: October 20, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99–27839 Filed 10–25–99; 8:45 am]

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Tuesday
October 26, 1999

Part IV

Department of Health and Human Services

Office of the Secretary

Office of Inspector General

45 CFR Part 61

Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 61

RIN 0906–AA46

Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes a new CFR part to implement the statutory requirements of section 1128E of the Social Security Act, as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 221(a) of HIPAA specifically directs the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers and practitioners, and to maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners.

EFFECTIVE DATE: This rule is effective on October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas C. Croft, Director, Division of Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, (301) 443–2300.

SUPPLEMENTARY INFORMATION:

I. Background

The Healthcare Integrity and Protection Data Bank

On October 30, 1998, the Office of Inspector General (OIG) published a proposed rule in the **Federal Register** (63 FR 58341) designed to implement the statutory requirements of section 1128E of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 221(a) of HIPAA specifically directs the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers and practitioners, and to maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners. Final adverse actions include: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier or practitioner related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers or practitioners; (4) exclusion of a health care provider, supplier or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulation. Settlements in which no findings or admissions of liability have been made will be excluded from reporting. Access to this new data bank is limited to Federal and State Government agencies and health plans. Reporting is limited to these same groups. Health care providers, suppliers and practitioners may self query the data bank, but have no reporting responsibilities. The Act also requires the Secretary to implement the national health care fraud and abuse data collection program in such a manner as to (1) assure that the privacy of individuals is maintained; (2) establish reasonable fees for disclosure of information to recover full operating costs; and (3) avoid duplication with the reporting requirements established for the National Practitioner Data Bank (NPDB). This new data bank is known as the Healthcare Integrity and Protection Data Bank (HIPDB).

II. Summary of the Proposed Rule

The proposed regulations published on October 30, 1998 were developed to establish a new 45 CFR part 61 to implement the requirements for reporting of specific data elements to, and procedures for obtaining information from, the HIPDB (and are applicable to Federal and State Government agencies and health plans). Set forth below is a description of the major provisions of the proposed rule, including, among other things, proposed definitions for certain terms associated with the HIPDB, a discussion of the specific reporting requirements and when such information must be reported, the fees applicable to requests for information, the issues of the confidentiality of information, and how to dispute the accuracy of information in the HIPDB.

Provisions of the Proposed Rule

1. Definitions

The proposed regulations expanded on previous regulatory definitions and clarified aspects of a number of terms set forth in the statute. The clarifications served to provide additional examples of the scope of the statutory definitions, but did not go beyond congressional intent. The proposed rule specifically set forth definitions for the terms "affiliated or associated;" "Government agency;" "health care provider;" "health care supplier;" "health plan;" "licensed health care practitioner, licensed practitioner and practitioner;" and "other adjudicated actions or decisions."

2. When Information Must Be Reported

The proposed regulations sought to establish the time frame for submitting reports to the HIPDB. As proposed, information would be submitted to the HIPDB (1) within 30 calendar days from the date the final adverse action was taken or the date when the reporting entity became aware of the final adverse action, or (2) by the close of the entity's next monthly reporting cycle, whichever is later. The date the final adverse action was taken, its effective date and duration of the action would all be contained in the information reported to the HIPDB.

We also proposed a list of "mandatory" data elements, as well as data elements that must be reported to the data bank "if known." We note that section 1128E(b)(2)(A) of the Act mandates that Federal and State Government agencies and health care plans collect and report Social Security Numbers and Federal Employer Identification Numbers for the purposes of reporting to the HIPDB.

3. Reporting Errors, Omissions, Revisions and Actions on Appeal

In § 61.6 of the proposed regulations, we indicated that if any errors or omissions in the final adverse action are discovered after the information has been reported, the person or entity that reported such information must send an addition or correction to the HIPDB within 60 calendar days of the discovery. We also proposed that any revision to the action or to appeal status must similarly be reported within 30 calendar days after the reporting entity learns of such revision or appeal. In turn, we proposed that each subject of a report will receive a copy when it is entered into the HIPDB and a copy of all revisions and corrections to the report. This is an opportunity only for the reporting entity to correct any errors or omissions in the information, not for the subjects to request re-adjudication of their cases.

4. Reporting Licensure Actions Taken by Federal or State Licensing and Certification Agencies

In proposed § 61.7, we addressed the reporting of licensure actions taken by Federal and State licensing and certification agencies. We proposed defining the phrase "any other negative action or finding" by a Federal or State licensing and certification authority to mean any action or finding that is publicly available and rendered by a licensing or certification authority. These actions or findings include, but are not limited to, imposition of civil money penalties (CMPs) and administrative fines, limitations on the scope of practice, injunctions and forfeitures. As indicated in the proposed rule, this definition included final adverse actions occurring in conjunction with settlements in which no findings or admissions of liability have been made, and that would otherwise be reportable under the statute.

The statute also requires the reporting of a health care provider, supplier or practitioner who voluntarily surrenders a license or certification. Based on extensive discussions with various State agencies, we were advised that voluntary surrender and non-renewal of licensure and provider participation agreements are not infrequently used as means to exclude questionable health care providers, suppliers and practitioners from participating in Federal and State health care programs. These voluntary surrenders and non-renewal actions result in allowing questionable health care providers, suppliers or practitioners to move from State to State without the new State licensing agency becoming aware of the true nature of the action in the prior licensing State. Therefore, for reporting purposes, we proposed that the term "voluntary surrender" include a surrender made after a notification of investigation or a formal official request by Federal or State licensing or certification authorities for a health care provider, supplier or practitioner to surrender the license or certification (including certification agreements or contracts for participation in Federal or State health care programs). This proposed definition also included those instances where a health care provider, supplier or practitioner voluntarily surrenders a license or certification (including program participation agreements or contracts) in exchange for a decision by the licensing or certification authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

We recognized that many voluntary surrenders are not a result of the types of adverse actions that are intended for inclusion in the HIPDB. Therefore, we proposed that voluntary surrenders and licensure non-renewals due to nonpayment of licensure fees, changes to inactive status, and retirement be excluded from reporting to the HIPDB unless they are taken in combination with one or more of the circumstances listed above (in which case they would be reportable).

5. Reporting Federal or State Criminal Convictions Related to the Delivery of a Health Care Item or Service

In proposed § 61.8, we stated that Federal and State law enforcement and investigative agencies would be required to report criminal convictions against health care providers, suppliers or practitioners. Consistent with section 1128E(g)(1)(A)(ii) of the Act, we also proposed that criminal convictions unrelated to the delivery of health care items or services would not be reported under this section.

6. Reporting of Civil Judgments in Federal or State Court Related to the Delivery of a Health Care Item or Service

In proposed § 61.9, we put forth that Federal and State law enforcement and investigative agencies and health plans be required to report civil judgments related to the delivery of a health care item or service (except those resulting from medical malpractice) against health care providers, suppliers or practitioners. The proposed rule indicated that civil judgments must be entered or approved by a Federal or State court. We also proposed that this reporting requirement would not include Consent Judgments that have been agreed upon and entered to provide security for civil settlements in which there was no finding or admission of liability.

7. Reporting Exclusion From Participation in Federal or State Health Care Programs

In proposed § 61.10, we stated that the OIG would be required to report health care providers, suppliers or practitioners excluded from participating in Federal or State health care programs. We also proposed that this section include exclusions made in a matter in which there also was a settlement even though the settlement itself is not reported because no findings or admissions of liability had been made.

8. Reporting Other Adjudicated Actions or Decisions

In proposed § 61.11, we proposed that Federal and State agencies and health plans be required to report other adjudicated actions or decisions. Although not specifically required by the statute, we proposed that "any other adjudicated actions or decisions" should relate to the delivery of a health care item or service, as do criminal convictions and civil judgments collected under the statute. We also proposed in this section that a due process mechanism be available with all adjudicated actions or decisions. In the proposed rule, we provided examples of an adjudicated action or decision to include, but not be limited to:

- Orders by an administrative law judge;
- CMPs and assessments;
- Revocations, debarments or other restrictions from participating in Federal or State government contracts or programs;
- Liquidation, dissolution, cancellation or revocation of a professional license; or
- Limitations on either clinical privileges or staff privileges by a health plan.

9. Fees Applicable to Requests for Information

Proposed § 61.13 addressed fees applicable to all requests for information from the HIPDB. In accordance with this proposed section, fees to be charged would be based on the full costs of operating the database, as authorized in section 1128E(d)(2) of the Act; criteria for assessing fees would be based on the guidelines set forth in OMB Circular A–25. These costs would encompass all direct and indirect costs of providing such information, including but not limited to:

- Direct and indirect personnel costs;
- Physical overhead, consulting, and other indirect costs;
- Agency management and supervisory costs; and
- Costs of enforcement, collection, research, establishment, regulations and guidance.

For maximum efficiency, we proposed that the HIPDB be an all-electronic system, with all fees collected through the most cost-effective methods (such as credit card and electronic funds transfer). The Act exempts Federal agencies from these fees.

10. Confidentiality of HIPDB Information

In proposed § 61.14, we stated that the confidentiality requirements would apply to all information obtained from the HIPDB. The confidentiality requirements are clearly specified in sections 1128E(b)(3) and (d)(1) and 1128C(a)(3)(B)(ii) of the Act. Specifically, section 1128E(b)(3) of the Act requires the Secretary to protect the privacy of individuals receiving health care services when determining what information is required. Section 1128E(d)(1) of the Act requires that information in the HIPDB will be available to Federal and State Government agencies and health plans. Section 1128C(a)(3)(B)(ii) of the Act requires the Secretary to assure that HIPDB information is provided and utilized in a manner that appropriately protects the confidentiality of the information. We proposed that information from this system be confidential and disclosed only for the purpose for which it was provided. We also proposed that appropriate uses of the information would include the prevention of fraud and abuse activities and improving the quality of patient care. This proposed provision did not go beyond the requirements set forth in the Act. The proposed requirements would not prevent an authorized user from sharing information from the HIPDB within the entity that requested it, as long as the information is used solely for the purpose for which it was provided. However, in accordance with section 1128E(b)(3) of the Act, we proposed that information obtained by a Government contractor, *e.g.*, a Medicare carrier, an intermediary or auditor, may only be used in the furtherance of its contractual responsibilities.

11. How To Obtain Access to, and Dispute the Accuracy of, HIPDB Information

The proposed regulations outlined the procedures for obtaining access to a report, submitting a statement, filing a dispute, and revising disputed information in a previously submitted report. These procedures are basically comparable to, or more generous than, procedures established in the Department's Privacy Act regulations at 45 CFR part 5b. The Secretary has exempted the HIPDB from those Privacy Act requirements in order to establish a more comprehensive and generous notification, access and correction procedure. While these procedures basically are comparable to similar provisions in the Privacy Act, these procedures include significant rights in addition to those set forth in the Privacy Act. For example, when a HIPDB report is created or amended, we automatically provide subjects a copy of the all report. Subjects may also file a statement of disagreement with a report as soon as the report is filed , rather than at the end of an appeal process, as under the Privacy Act.

In addition, we proposed that the subject of a report may dispute only the factual accuracy of the information contained in the HIPDB report concerning the individual or entity. As indicated in the proposed rule, the dispute process would afford the subject an opportunity to bring relevant factual information, including reversals of criminal convictions by an appeals court, to the attention of the reporter. The proposed dispute process would be consistent with that for the NPDB.

12. Sanctions for Failure To Report

We incorporated the new CMP sanctions provision for failure to report information to the data bank, as set forth in section 4331 of Public Law 105–33, the Balanced Budget Act of 1997. In the proposed rule, we indicated that any health plan that fails to report information on a final adverse action that is required to be reported would be subject to a CMP of not more than $25,000 for each such adverse action not reported. Such penalties would be imposed and collected in the same manner as other CMPs under section 1128A of the Act.

III. Summary and Response to Public Comments

As we have noted, the statute upon which the proposed regulations were drafted is quite broad and affords the Secretary numerous areas of discretionary authority on which we sought the benefit of public comment and input. The proposed rule set forth a 60-day public comment period ending December 29, 1998. On December 30, 1998, we extended the comment period for the proposed rule by an additional 2 weeks until January 11, 1999 (63 FR 71819). As a result, we received a total of 117 timely-filed public comments from Federal and State law enforcement agencies; health care practitioner and provider licensing boards, health departments, private attorneys representing health care providers, suppliers and practitioners; and various health plans, health plan associations, hospitals, professional associations, health care practitioners and other individuals and entities. Based on review of the statute and the assessment of public comments received, we believe the final regulations implementing this authority fully and adequately balance the concerns of the Department with those expressed by outside individuals and entities.

Set forth below is an overview of the various comments and recommendations received and our responses to those concerns. Section IV. of this preamble sets forth a summary of the specific revisions and clarifications to be made to the final regulations as a result of those comments.

A. Scope and Intent of the HIPDB

Comment: A principal concern raised in the majority of comments was the interpretation of what constitutes the reporting threshold for all final adverse actions under the term "health care fraud and abuse." Many commenters believed that the OIG broadened the definitions and criteria unnecessarily for reportable actions, well beyond a "health care fraud and abuse" data collection system. Specifically, these commenters only wanted actions involving health care related fraud and abuse reported to the HIPDB.

Response: It is clear from reviewing the statutory language of the implementing Act, and the legislative history (such as congressional conference reports), that the HIPDB is not merely about establishing an information collection system. Rather, it is directed at combating fraud and abuse in a broader scope. Congress used the term health care fraud and abuse only once in the provision's opening paragraph for purposes of naming the data collection program. The term does not appear elsewhere, especially with regard to limiting the scope of reportable actions. Instead, Congress defined reportable "final adverse actions" by specifying a finite list of actions. These actions include civil judgments related to the delivery of a health care item or service; Federal or State criminal convictions related to the delivery of a health care item or service; actions taken by Federal or State licensing or certification agencies; exclusions from participation in Federal or State health care programs; and any other adjudicated actions or decisions taken by a Federal or State Government agency or health plan. To limit the adverse actions collected by the data bank to only those that are based on health care fraud and abuse would create a data bank that does not fully capture the types of reports that Congress clearly intended to be collected in accordance with the statute.

The term "health care fraud and abuse," as used in the statute, merely represents congressional intent that the HIPDB support efforts to prevent such activities. To limit actions collected only to those based on fraud and abuse would deny investigators, Government contracting officers, health plans and others the reports which are necessary to effectively research the relevant backgrounds of potential providers, suppliers and practitioners. As indicated by one State licensing board, narrowing the scope of reportable actions may create an even greater burden on reporters to screen out final adverse action based solely on health care fraud and abuse. Accordingly, the definition related to final adverse actions, as well as the definitions of health care provider, supplier and practitioner, represent the statutorily-mandated reporting criteria for the HIPDB—and is not limited to health care fraud and abuse. It has been our goal to establish a complete and comprehensive data bank that effectively deters health care fraud and abuse in the health care industry, while promoting quality health care and protecting the public. A further discussion of the term "health care fraud and abuse" is contained in section III. B. 6. of this preamble.

B. Section-by-Section Analysis of Issues

Section 61.1 The Healthcare Integrity and Protection Data Bank

Comment: Several commenters viewed the regulations, in general, as overly-broad and complex. Two commenters stated that information reported to the HIPDB should be directly related to health care fraud and abuse (see discussion regarding the definition of "health care fraud and abuse" in the discussion of § 61.3 later in this section of this preamble). Another commenter expressed concern that the HIPDB would contain data on individuals who have not committed fraud. This commenter and others believed that the OIG will establish a vast system not targeted to identify truly egregious individuals and entities.

Response: We disagree with these comments. As indicated in the proposed rule and in the summary section above in this preamble, we believe this rulemaking and the HIPDB clearly focus on specific final adverse actions taken against individuals and entities, and that those actions relate to these actions that could be defined as "health care fraud and abuse." We believe these implementing regulations and the data bank are consistent with statutory intent and are properly targeted at capturing specific types of information relevant to the HIPDB's intended purpose.

Section 61.3 Definitions

1. Affiliated or Associated

Comment: With regard to the definition and application of the term "affiliated or associated," several commenters stated that the proposed definition overreached the intent of the statute.

Response: The OIG believes the definition supports congressional intent to enable authorized users who conduct fraud and abuse investigations to identify other business or commercial affiliations through which the subject may have committed other acts of wrongdoing, and to aid with subject identification, if the affiliation or association is known by the reporter.

Comment: Several commenters requested the definition be refined to exclude irrelevant affiliations and associations. The commenters recommended that the definition be limited to (1) those entities in which the subject has a business interest, and (2) those associations having the power to revoke or suspend a license.

Response: We agree that the definition and implementation of the term "affiliated or associated" set forth in the proposed rule may have resulted in some confusion. As a result, we are limiting the definition, in accordance with the first part of the commenters' concerns, to those health care entities in which the subject has a commercial interest.

Comment: A number of commenters believed that the collection of this information set forth in the definition would be in violation of the Privacy Act, as it implies guilt by association.

Response: The inclusion of an entity in this category by a reporter will in no way imply that the entity was a party to the act(s) or omission(s) that led to a reportable final adverse action. We believe that the revised definition will eliminate naming of professional affiliations or associations and the implied fear of invasion of privacy. We also note only individuals, *not* entities (even if the entity is an individual professional corporation), are protected by the Privacy Act.

Comment: One commenter believed that "affiliated or associated" entities should be included only if such entities had an active role in the underlying sanction. Another commenter stated the names of "affiliated or associated" entities should be expunged after an investigation that determined there was no involvement by the affiliation or association entity. A third commenter believed that there would be increased liability for reporters as a result of the definition set forth for this term.

Response: We believe limiting "affiliations or associations" to those health care entities with an active role in the underlying sanction, or removing the names after an investigation has determined there was no involvement by the affiliated or associated entity, would be contrary to the specific language of the statute. The statute explicitly requires that the names of affiliated or associated health care entities be reported. Involvement or non-involvement in the underlying action is irrelevant to this reporting requirement. Further, we do not agree that merely identifying an entity as being affiliated with the subject of a report somehow imputes wrongdoing to the affiliated entity, and a statement to this effect will be included in the data base report. There will be no independent identification of affiliated or associated entities in the HIPDB other than as part of a subject's report, unless the entity also has been the subject of a final adverse action. If it comes to the attention of a business entity that it is incorrectly identified in a subject's report as having a commercial business affiliation with the subject, then the business entity may avail itself of the same correction procedures that are available to the subject of a report. The affiliated entity first may ask the reporting agency or health plan to correct the subject's report. If the reporter declines to do so, the affiliated entity may request a correction to the subject's report by the Secretary. With respect to an increase in liability for reporters, the OIG is providing an immunity provision in the final rule that will alleviate any perceived increase in liability.

Comment: One commenter requested that the HIPDB provide written notice to each entity listed as an "affiliated or associated health care entity" within a final adverse action report, and that the HIPDB offer an appeal process to these entities in the event that the entities are incorrectly reported.

Response: The revised definition will require that a commercial relationship exist between the subject and the affiliate or associate. As we have previously noted, we believe that this data field in no way implies wrongdoing on the part of the reported affiliate or associate, and thus eliminates the need for these entities to be notified.

2. Any Other Negative Action or Finding

Comment: We received several comments regarding the manner in which the term "any other negative action or finding" was defined. Most of the commenters stated the proposed definition was too broad in nature and would create a tremendous burden on the reporters, especially if actions or findings pertaining to administrative fines and citations were to be included in the HIPDB. Several commenters expressed concern that there is a range of actions or findings taken that may or may not be the same from State to State and do not relate to health care *per se* (such as a practitioner fined for failure to provide a new address). The commenters requested that the OIG clarify and limit the definition of this term to actions that are directly connected to health care violations.

Response: We agree with the commenters that there will be variation from State to State regarding the types of final actions taken against health care providers, suppliers and practitioners. However, the HIPDB is being designed as a "flagging system" that will contain information on actions taken in a particular State or program that are considered by the State or program to warrant attention. We intend the data to provide a summary of the actions taken against a health care provider, supplier or practitioner. In addition, we acknowledge that there are certain kinds of actions or findings that would not meet the intent of the legislation and should not be reportable. For instance, administrative actions, such as limited training permits, limited licenses for telemedicine, fines or citations that do not restrict a practitioner's practice, or personnel actions for tardiness, are not within the range of actions intended by the statute. As a result of these comments, we are modifying the final regulations to exclude administrative fines or citations, corrective action plans and other personnel actions unless they are (1) connected to the billing, provision or delivery of health care services, and (2) taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender. For example, a nurse agreed to settle claims that he received Medicare and Medicaid reimbursement to which he was not entitled. As a result of this action, the State licensing board reprimanded the nurse and imposed a $5,000 fine. This action would be reportable.

Comment: Several commenters expressed concern that the preamble language that indicated that "settlements in which no findings or admissions of liability have been made will be excluded from reporting" conflicted with the next sentence in that discussion, which read, "However, any final adverse action that emanates from such settlements and consent judgments, and that would otherwise be reportable under the statute, is to be reported to the data bank."

Response: We agree that the statutory language is clear that settlement in which no findings of liability have been made will not be reportable to the HIPDB. However, if another action is taken against the provider, supplier or practitioner of a health care item or service, as a result of or in conjunction with the settlement, the second action is reportable. For example, a civil court settlement in which no finding against or admission of liability by a practitioner is made is not reportable. However, for example, if the State licensing board suspends the practitioner's license as a result of a civil court settlement, the licensing board must report the suspension of the license. Similarly, if the OIG excludes a provider, supplier or practitioner based on actions that were also the subject of a civil settlement in which no finding or admission of liability was made, the exclusion must be reported to the HIPDB.

Comment: One commenter questioned whether non-practitioners, such as an executive director, should be reported to the HIPDB, while another commenter requested clarification on the reporting of actions pertaining to the handling of an impaired practitioner.

Response: The OIG reiterates the statutory intent that any final action taken against a licensed or certified health care provider, supplier or practitioner by a Federal or State licencing or certification agency that is publicly available information is a reportable action. If, for example in the case of an executive director, he or she is licensed or certified as a health care provider, supplier or practitioner, then that individual will be subject to the HIPDB reporting requirements. If a Federal or State licensing agency takes a final adverse action that is publicly available information against an impaired practitioner, the final adverse action is reportable.

3. Clinical Privileges

Comment: Several commenters expressed concern that Congress never intended that clinical privilege actions would be reported to the HIPDB, particularly since such actions are already reported to the NPDB. Some commenters expressed a desire that clinical privileges suspensions only be reported when they are in effect for a period longer than 30 days, indicating that this limitation would parallel existing NPDB requirements for reporting of clinical privilege actions. Another commenter questioned why the proposed definition specifically mentioned physicians and dentists, when they believed the definition was to apply to all licensed health care practitioners.

Response: The OIG agrees with these concerns and, as a result, the HIPDB will not collect data on clinical privileging actions. We note that clinical privileging actions are already collected by the NPDB. We believe that information on clinical privileging actions will not be of significant value to HIPDB queriers, since queriers who have a need for this information will already be accessing it through the NPDB. Accordingly, we are adding language to the definition of the term "other adjudicated actions or decisions" to specify that the reporting of clinical privileging actions is excluded.

4. Exclusion

Comment: One commenter raised a concern about the term "exclusion" and mistakenly applied the definition for this term to a reportable licensure action.

Response: The OIG has clarified that the term "exclusion" applies only to debarment of an individual or entity from participation in any Federal or State health care related program; this term is only applicable to reporting exclusion from participation in Federal or State health care programs.

5. Government Agency

Comment: One commenter asserted that the definition of "Government agency" was too broad and potentially open-ended. The commenter requested clarification as to which agencies qualify as "Federal and State agencies responsible for the licensing and certification of health care providers, suppliers and practitioners." A second commenter suggested that the definition of "Government agency" be amended to include all agencies authorized to investigate health care fraud.

Response: We recognize the commenters' concerns and understand that regulatory boards and licensing programs vary from State to State. For this very reason, however, it is not possible for the OIG in this rulemaking to provide a listing of all agencies responsible for the licensing and certification of health care providers, suppliers and practitioners. In response to the proposed rule, we received only two comments from States that identified the agencies responsible for licensing. We believe that the definition of "Government agency" includes all agencies authorized to investigate health care fraud and abuse and, as a result, are making no changes to the final rule.

6. Health Care Fraud and Abuse

Comment: In general, comments reflected an assumption that the terms "health care fraud" and "health care abuse" defined the reporting criteria for all final adverse actions mandated by the statute. Specifically, commenters found the term "health care fraud," when used in conjunction with the proposed preamble definition of "health care abuse," to be too broad. Several commenters requested that definitions for health care fraud and abuse (and thus the nature of adverse actions collected) be limited to activities relating to financial violations, or require the reportable activities to meet a legal standard of fraud or abuse. One commenter stated that health care abuse should be limited to those actions against a health care system and not those relating to personal abuse. Other commenters believed that the terms should be combined into one definition. One State licensing agency requested specific guidance on whether all final adverse actions must be based on health care fraud and abuse to be reportable to HIPDB. The agency pointed out that only one percent of its adverse licensing actions would meet such a fraud and abuse reporting threshold. Three commenters did acknowledge and agree that the term "health care abuse" was properly described within the regulation and the statute as "final adverse actions."

Response: By attempting to define the terms "health care fraud" and "health care abuse" in the proposed rule, we gave the erroneous impression to some readers that final adverse actions may not be reported to the data bank unless they are categorized by the reporter as being based upon "health care fraud and abuse." That interpretation is too limiting. Congress intended that this data bank support efforts to prevent and combat health care fraud and abuse, and not merely catalogue adverse actions that reporters may choose to describe as arising from "health care fraud and abuse." Restricting reportable final adverse actions to those specifically relating to health care fraud and abuse would eliminate the reporting of many relevant actions that are included in the statutory definition of "final adverse actions." Accordingly, and as a result of the comments received, we are deleting the definition for the term "health care fraud" from the final rule and are opting not to define "health care abuse." Instead, we defer to the statutory definition of "final adverse actions" as encompassing the range of actions to be reported.

Comment: Several commenters requested changes to the "health care fraud and abuse" definition to narrow the range of actions, indicating that final adverse actions related to billing errors, benefits administration, payment and reimbursement issues, and quality of patient outcomes be excluded from the definition of "health care fraud and abuse."

Response: There may be instances when billing errors, benefits administration, payment and reimbursement issues, and quality of patient outcomes meet the criteria and, therefore, will be reported. However, it is also foreseeable that certain of the aforementioned actions may not be final adverse actions and, therefore, not reportable. The OIG takes the position that any action is reportable to the data bank as long as the action meets the criteria of a "final adverse action," as specified in the final rule.

Comment: One commenter requested that "health care fraud" exclude offenses by health plans or insurance companies and be limited to offenses by health care providers, suppliers, or practitioners against health plans or health plan sponsors. Another commenter stated that the reporting of health care abuse should be optional and CMPs should not be imposed for failure to report. One commenter questioned the value of report data containing actions related to health care abuse since such actions may suggest a standard of measurement less than a court adjudication or administrative review panel finding.

Response: The OIG believes that excluding organizations, such as health plans and insurance companies, would limit the effectiveness of the data bank to serve its intended function as a fraud and abuse prevention tool. We also believe that the intent of the statute is clear that all final adverse actions taken against a health care provider, supplier or practitioner must be reported to the HIPDB, and that failure to report such actions may result in the imposition of a CMP.

7. Health Care Provider

Comment: Several commenters indicated that the definition of "health care provider" was too broad and complex, and suggested as an alternative that the OIG use the definition set forth in section 1861(u) of the Act. Two commenters objected to the inclusion of health care entities, such as health maintenance organizations (HMOs) in this definition. The commenters believed the definition for this term was conflicting, since health care entities could be potential subjects of the HIPDB as well as reporting entities. One commenter stated that most States did not take compliance actions against these types of entities.

Response: Since Congress elected not to define "health care provider" in the Act, we believe the congressional intent was for this term to be defined broadly. There is no inherent conflict in health care entities being potential subjects of the HIPDB, as well as reporting entities. This is entirely consistent with the intent of the Act.

8. Health Care Supplier

Comment: The majority of commenters responding to the definition of "health care supplier" stated that the definition went beyond statutory authority and could allow inappropriate access to information. For example, several commenters noted that the definition included both direct and indirect providers of health care items and services. Several commenters recommended the definition be limited to suppliers as defined in section 1861(s) of the Act, and believed that the definition should not include health insurance or benefits providers, such as insurance agents, brokers, solicitors, consultants and reinsurance intermediaries. Other commenters pointed out that to broadly include health insurance or benefit providers in the definition of supplier also could have the effect of including nearly all public and private employers as the potential subjects of reports. These commenters requested that suppliers be limited to those who directly provide covered items or services to beneficiaries, or who directly receive reimbursement from a health care program.

One commenter requested that reportable subjects not be limited to practitioners, providers and suppliers, but rather encompass all individuals and entities involved in health care fraud, including beneficiaries, Government and private employees, managed care marketers and any individual who is responsible for the actions of an entity. One commenter requested clarification of the term "subject."

Response: We disagree with the contention of some commenters that Congress intended to collect final adverse action information only on *direct* providers of items or services covered by a health care program or plan. Such a definition would exclude many entities that are the subject of health care fraud and abuse investigations and actions. The OIG believes that the intent of Congress was to have a broad interpretation of the terms supplier, practitioner and provider. For example, Congress did define the terms "health care practitioner" and "health care provider" elsewhere in the statute, yet it did not specifically apply these definitions to the HIPDB. The term "health care supplier" is defined in these regulations to capture all final adverse actions relating to the delivery of a health care item or service. Accordingly, the OIG is electing to keep both direct and indirect suppliers in the definition of "health care supplier." Including indirect suppliers in the definition also is consistent with the definition of "supplier" used in the regulations implementing OIG exclusion authorities resulting from HIPAA (63 FR 46676; September 2, 1998).

However, we do not intend to include in the definition of "supplier" all public and private employers, unless they are self-insured for health care coverage. The definition will still include health plans, consultants, health insurance producers, agents, brokers and reinsurance intermediaries. On the other hand, the definition will not include businesses that merely provide their employees with health insurance coverage through a contract with a health insurance producer or a health plan. Therefore, in response to the concerns raised by the various commenters, we have modified the definition of "health care supplier" to clarify and limit its scope. Accordingly, we are replacing the proposed language with the term "health plan" and are inserting additional language excluding employers, unless they are self-insured.

In response to the request that reporting be expanded beyond health care providers, suppliers and practitioners, we note that individuals or entities can only be subjects of HIPDB reports if final adverse actions were taken against them. Beneficiaries are not included in that category. For the purposes of this regulation, the term "subject" means a health care provider, supplier or practitioner upon whom a reportable final adverse action was taken.

Comment: Two commenters indicated that States' burden of reporting would be increased since States do not regulate or collect data about many of the types of entities included in the supplier definition.

Response: The OIG reiterates that only final adverse actions, as specified in the statute and these regulations, taken against health care providers, suppliers and practitioners are reportable. Such actions are to be reported by the organization taking the action. The specific data required to be reported and responses to comments regarding the reporting burden are addressed below in response to comments on the regulatory impact statement.

9. Health Plan

Comment: With regard to the proposed definition of the term "health plan," commenters stated the definition is too broad, and suggested that the OIG use the definition as set forth in section 1128E of the Act, which incorporates the definition set forth in section 1128C(c) of the Act.

Response: The OIG maintains that the statutory intent of the definition was not meant to be exclusive or exhaustive. The OIG interprets congressional use of the word "includes" in the statutory definition as an indication that additional entities may be recognized as "health plans" if they meet the basic definition of "providing health benefits." Therefore, we will continue to use a broad definition. The statutory language indicates that Congress intended that "guarantors of payment" for health care services and items, including "self insured employers" who are often the subjects of health care fraud, have access to HIPDB information. The OIG believes that limiting the definition to the language of the statute would not provide a workable basis for organizations and those who provide health care services to appropriately determine their reporting responsibilities under the statute. In response to one commenter's recommendation to make the definition more inclusive, we are providing further clarification and modifying the proposed definition.

Comment: One commenter requested an exclusion be provided within the definition for direct reimbursements of an employee, stating there is no relationship between the employer who provides the reimbursement and the practitioner who provides the service.

Response: As revised, the definition of the term "health plan" reflects the variety of benefit plans with a wide range of organizations, groups and individuals that currently offer such health benefits that would include direct reimbursement. Given this change, we believe any further revision is not necessary.

Comment: One commenter believed that State-sponsored workman's compensation programs should be included as an example of a health plan.

Response: It is our intention that State-sponsored workman's compensation programs be covered under the regulations, and we believe the definition, as written, includes such programs, although not stated explicitly.

Comment: Two commenters stated the proposed definition would cause confusion as to which entity is responsible for reporting the action, i.e., the employer providing the health care policy or the insurance corporation with whom the employer has contracted.

Response: We are aware of the multiple structures under which a "health plan" may operate within an integrated health system. The final regulations state the entity taking the action is responsible for reporting the action to the HIPDB. The activity of reporting can be delegated to another entity, but the ultimate responsibility for the report will still lie with the entity taking the action.

10. Licensed health care practitioner, licensed practitioner or practitioner

Comment: Several commenters suggested that the definition for this term should be more specific and include additional practitioner groups not listed, such as occupational therapists and occupational therapists' assistants. The commenters recommended that by providing a comprehensive list of all practitioners and allied health personnel eligible to be possible subjects of reports to the HIPDB, the OIG would ensure that all States report consistently regardless of their differences in professional licensing categories.

Response: We note that the meaning of the term "licensed health care practitioner, licensed practitioner or practitioner" is consistent with the definition in section 1128E(g)(2) of the Act. We added the phrase "but not limited to" before our listing in order to provide adequate leeway for the inclusion of other health care practitioners as each individual State develops its own reporting categories. While we recognize the benefits of conformity in reporting practices, we have chosen not to sacrifice State flexibility and authority in determining appropriate reporting categories. Even Federal definitions may vary as to "categorizing" health care workers. In section 1861(s) of the Act, for example, both physical and occupational therapists are listed under the definition of supplier.

Comment: Other commenters requested clarification on how this definition will be interpreted in States with "title protection statutes." Generally, title protection statutes only restrict the use of a title of a health care practitioner and not the actual practice or the delivery of the service itself. Under title protection statutes, an individual may practice the profession without a license, but may not use the title unless licensed by the regulatory board.

Response: The definition, as written, is consistent with the statutory language. We recognize that "title protection statutes" may vary with each individual State. However, the statute only authorizes the collection of final adverse action information on an individual who is licensed or otherwise authorized by the State to provide health care services (including any individual who, without authority, holds himself or herself out to be so licensed or authorized by the State).

11. Organization Name and Type

Comment: We received several comments concerning the mandatory element of "organization name and type." Some commenters stated that they did not collect this type of information, while others were unclear as to the meaning of this term.

Response: As a result of these comments, we are clarifying this term by specifically adding a new definition in § 61.3 for the terms "organization name" and "organization type."

12. Other Adjudicated Actions or Decisions

Comment: Commenters raised numerous issues concerning different aspects of the definition for the term "other adjudicated actions or decisions." Several commenters stated that the proposed definition was too broad or burdensome, and extended beyond the scope of the statute. A number of commenters suggested that all reportable "adjudicated actions or decisions" should be related only to fraud.

Response: The OIG believes that the range of reportable "other adjudicated actions or decisions" is not overly broad or beyond the scope of the Social Security Act, since the statutory language states that all final adverse actions must be reported. Furthermore, as indicated above, the statute does not define fraud and abuse; it only defines final adverse actions. To promote an effective system to aid in deterring fraud and abuse, we believe it is necessary to define this term more inclusively, as is contemplated by the statute.

Comment: The criteria set forth for the term "other adjudicated actions or decisions" caused confusion for a majority of commenters. Specifically, commenters indicated that they were unclear as to the meaning of the phrase "official action," and whether actions involving (1) honest billing errors or differences in medical judgment, (2) employment or personnel-related actions and (3) CMPs would be reportable under this definition.

Response: In response to these concerns, we have restructured the definition to clarify that in order for a formal or official action to be reported under this provision it must meet the three criteria that it (1) is taken against a health care provider, supplier or practitioner by a Federal or State Governmental agency or a health plan; (2) includes the availability of a due process mechanism; and (3) is based on acts or omissions that affect or could affect the payment, provision or delivery of a health care item or service. We also made minor changes in the definition to provide further clarity about the types of actions that are excluded from the definition.

Comment: Two commenters requested clarification regarding the imposition of CMPs for failure to report. One commenter requested voluntary reporting of other adjudicated actions, in the hopes of eliminating such penalties. Another commenter asks that we include an intent clause as a necessary element to apply CMPs.

Response: We disagree with the commenter's alternative approach regarding voluntary reporting, which we believe to be inconsistent with Congress' intent in creating a CMP for failure to report. In accordance with the statutory language that requires such action, a health plan failing to report any "other adjudicated actions or decisions" could be assessed a CMP of not more than $25,000. The regulations implementing this CMP provision are not a direct part of this HIPDB implementing rule and are being addressed in specific detail through separate OIG final rulemaking directed toward new or revised exclusion and CMP authorities resulting from Public Law 105–33.

Comment: One commenter requested clarification on whether all reportable adjudicated actions must be related to professional competence or conduct.

Response: The term "other adjudicated actions or decisions" does not need to relate to professional competence or conduct However, such actions must relate to the delivery of health care items or services.

Comment: Several commenters stated the definition should be limited to final adverse actions involving a court or Government agency, in that reporting final adjudicated actions in which there was no finding of liability will discourage settlements; and adverse actions will vary from State to State, making it difficult to analyze or standardize the reporting process.

Response: We believe that the statutory language is clear about which entities are required to report. Certain health plan actions will meet the criteria of "other adjudicated actions or decisions," and, therefore, will be reportable. The statute also is clear that final actions resulting from settlements in which no findings of liability have been made are not reportable. The OIG recognizes the variation among States in the types of other adjudicated actions or decisions taken. We stress that the HIPDB is intended as a "flagging system" and that the information in the HIPDB should serve only to alert Federal and State agencies and health plans that there may be a problem with a particular provider's, supplier's or practitioner's background. The HIPDB information should be considered together with other relevant data in evaluating a provider's, supplier's or practitioner's background.

A hallmark of any valid adjudicated action or decision is the availability of a due process mechanism. In general, if an "adjudicated action or decision" follows an agency's established administrative procedures (that ensure that due process is available to the subject of the final adverse action), it would qualify as a reportable action under this definition. For example, a formal or official final action taken by a Federal or State Government agency or health plan may include, but is not limited to, a personnel-related action such as suspension without pay, reduction in grade for cause, termination or other comparable action in connection with the delivery of a health care item or service. For health plans that are not Government entities, an action taken following adequate notice and opportunity for a hearing that meet the standards of due process set forth in section 412(b) of the Health Care Quality and Improvement Act (42 U.S.C. 11112(b)) also will qualify as a reportable action under this definition. The fact that the subject elects not to use the due process mechanism provided by the authority bringing the action is immaterial, as long as such a process is available to the subject before the adjudicated action or decision is made final.

The revised definition for the term "other adjudicated actions or decision" specifically excludes clinical privileging actions taken by Federal or State governmental agencies, as well as the similar "paneling actions" taken by health plans. We will not collect'removal without cause" actions taken by health plans, such as when the health plan has to eliminate some of its specialists or when the health plan concludes that a physician is not maintaining a desirable rate of patient visits. On the other hand, health plans will report "quality actions" that include the availability of a due process procedure, such as the formal removal of a physician for problems based on quality of care or competence issues. Health plans also will report any health care related civil judgments they obtain against a health care practitioner, provider or supplier. The revised definition also clarifies that initial overpayment determinations by HCFA contractors, and similar overpayment decisions made by health plans, are not final, reportable actions.

13. Voluntary Surrender of License or Certification

Comment: We received several comments on the definition of "voluntary surrender of license or certification" from a variety of State and local agencies, private sector organizations and others. The majority of the commenters supported a broader definition of the term. One commenter did not believe voluntary surrenders should be included in the system because of added burden resulting from such action. Several commenters requested that the OIG provide further clarification of the term in the final regulations.

Response: In light of the strong support for the definition in the proposed regulations, we are adopting this definition in the final rule with certain clarifications. The OIG is aware that there are instances in which a voluntary surrender is used to identify practitioners who are deceased, retired, have not renewed their license or certification, or have simply moved out of the State. We are clarifying the definition to exclude non-disciplinary voluntary surrenders.

Section 61.4 How Information Must Be Reported

Comment: A number of commenters requested clarification on how information must be reported to the HIPDB. These commenters generally requested additional information on how electronic reporting would be accomplished, how consolidated reporting would occur for both the HIPDB and the NPDB, and whether all reporters would have the appropriate software and hardware to perform this function. Some commenters recommended, for example, that reporters be permitted to submit files electronically using file transfer protocol or electronic mail, and two commenters raised the issue of whether the HIPDB would accept paper reports.

Response: In response to these concerns, we are indicating in this final rule that reports may be submitted to the HIPDB either through a secure interactive web-based reporting service (using state-of-the-art encryption technology) or by mailing to the HIPDB properly formatted report data on a diskette. Other types of electronic submissions will not be accepted, nor will paper reports. Reporters who are required to submit the same report to both the NPDB and the HIPDB will be able to satisfy their reporting obligations by submitting their report only once. Web-based reporting or querying will require a personal computer with a modem and access to the Internet. We will provide technical details regarding required data formats and access to the web site through technical manuals, guidebooks and on-line user help. We believe that most reporters possess these basic tools required to gain access to the data bank. We also recognize that there may be a small number of reporters who do not have these capabilities, but these entities should be able to perform any required functions through the services of an authorized agent, who would report to and query the data bank on the entity's behalf.

Comment: One commenter requested that the NPDB and the HIPDB be consolidated in order to allow more efficient querying and reporting. The commenter also recommended allowing queriers to use search engines to more efficiently locate information.

Response: The issue of integrating the NPDB and HIPDB is addressed in greater detail in section III. C. of this preamble, "General Issues and Alternatives Suggestions." In response to the commenter's recommendation regarding the use of search engines for querying, queriers will be required to provide certain information about a provider, supplier or practitioner in order to process their query. Specific methods for querying will be addressed in subsequent guidance and technical documentation.

Comment: To reduce the possibility that non-relevant reports will be submitted to the HIPDB, one commenter recommended that the Secretary establish a reporting threshold or specific criteria for each type of report.

Response: Through development of a policy guidance guidebook, the Department intends to provide specific examples and establish the criteria for determining whether a final adverse action meets the standards established in regulations. These criteria will be specific to each type of action and will include examples of reportable and non-reportable actions. It will be up to each reporter, however, to review, understand and apply these criteria when reporting.

Section 61.5 When Information Must Be Reported

Comment: Commenters recommended extending the 30-day period for reporting final adverse actions to the HIPDB to 60 days. The commenters stated that the time frame set forth in the proposed rule was too stringent and unrealistic to be met by State licensing boards. Several associations representing State licensing boards suggested this time frame would place significant burden on licensing boards. By extending the time frame from 30 days to 60 days, commenters indicated that licensing boards would have adequate time to provide the information to their agent and, in turn, for the agent to submit the information to the HIPDB.

Response: We are unable to make the changes suggested since the statutory language requires reports to be submitted regularly, but not less often than monthly.

Section 61.6 Reporting Errors, Omissions, Revisions or Whether an Action Is on Appeal

Comment: One commenter stated that if a reportable adverse action is on appeal, the action should not be reported until the appeal process is final; if the appeal reverses the decision, then the entire report should be removed from the HIPDB.

Response: We disagree with the first aspect of the comment since the statutory language (section 1128E(b)(2)(C)) requires specifically that a statement as to whether the action is on appeal must be included in the report to the HIPDB. With respect to the second part of the commenter's concern, we agree that reports which have been reversed on appeal will require a revision to the report. The report may be voided by the reporter at the time of the revision.

Comment: Some commenters stated that the reporting of revisions, such as a reinstatement of a license, will cause confusion for queriers, that the accuracy of the reports in the HIPDB will be compromised, and that reporters will abuse the system by reporting "indiscriminately" to avoid a sanction for failing to report and fulfilling the 30-day time frame. Commenters also expressed uncertainty as to who is responsible for reporting the revision.

Response: We believe that there is a misconception on the part of some of the commenters. Specifically, when a reinstatement of a license occurs, the reporter must submit a revision to an action regarding the reinstatement.

Comment: Two commenters raised concern over the fact that a subject of a report may file a written statement to the HIPDB. The commenters believed this provision violates the due process rights of the entity taking the action. In addition, these commenters were concerned that the subject's statements could render an extremely inaccurate, biased and unreliable report. One commenter requested that reports be deleted after a 5-year period of time.

Response: We note that only final adjudicated actions are reportable. The Act does not provide for the removal of reports from the data bank except through the dispute process. A subject's statement provides the subject with the opportunity to state his or her views on the final adverse action report; the report and the addendum will be sent to subsequent queriers. It is unclear what "due process rights" of the reporting entity could be violated by giving the subject of a report the right to state his or her views about the report. Further, we note that this approach parallels the long-standing practice used in reporting to the NPDB.

Section 61.7 Reporting Licensure Actions Taken By Federal or State Licensing and Certification Agencies

Comment: Several commenters were concerned about the possibility of duplicative reporting when a practitioner is licensed in more than one State. The question was raised as to who reports the adverse licensing action. Several commenters questioned the process for reporting reinstatement of a license.

Response: The statute requires that the State taking the action is responsible for reporting that action to the HIPDB. Each respective State licensure action requires a separate report to HIPDB. This process of reporting parallels the approach taken under the NPDB. The process for reporting reinstatement of a license is explained in the preamble section discussing § 61.6.

Comment: With respect to reporting actions on individuals, a number of comments addressed the problem of collecting the mandatory and "if known" data elements.

Response: We are addressing this issue below in section III. C. of this preamble.

Comment: Several commenters believed that the description of actions in this section were too vague, and that the OIG should limit reportable actions to those that truly limit practice, such as revocation, suspension and limitation on licensure. Another commenter suggested the HIPDB should be collecting final adverse actions related only to fraud and abuse in the delivery of a health care item or service. Two commenters questioned whether censure letters and other de minimis sanctions are reportable since these actions are not usually subject to due process, and recommended that we include only actions taken against physicians holding full licenses to practice medicine.

Response: Section 1128E(g)(1)(A)(iii) of the Act states that Federal and State licensing and certification agencies must report to the HIPDB all of the following final adverse actions that are taken against a health care provider, supplier or practitioner:

- Formal or official actions, such as revocation or suspension of a license (and length of any such suspension), reprimand, censure or probation;
- Any other loss of the license or the right to apply for, or renew, a license of a provider, supplier or practitioner; and
- Any other negative action or finding as defined by the Federal or State agency.

Under section 1128E of the Act, the only limitation on a reportable disciplinary action is that it must be a formal or official action.

Comment: One commenter believed that automatic suspension of a license for failure to pay family support for a child or spouse, for example, should not be included as a reportable event.

Response: While we are aware of other ways in which a license may be suspended or revoked by other Federal laws not related to the HIPAA, this licensing action is considered a disciplinary action and, in accordance with the statute's definition of final adverse action, is reportable to the HIPDB.

Comment: Concerning what information must be reported on organizations, one commenter recommended that the actions reported by Federal and State licensing and certification agencies be limited to those who traditionally provide these services. The commenter believed that the combination of the definitions of "supplier" and "adverse action" could lead to a data bank for reporting complaints and appeals, and not fraudulent activities.

Response: In accordance with these comments, we are modifying the definitions of "adverse actions" and "supplier" in § 61.3 in order to collect meaningful data on subjects of reportable final adverse actions.

Comment: Several State licensing boards stated that they already report adverse action information to their individual professional association, and several professional associations also stated that they received reports from States on such actions. These commenters believed that they should be exempt from reporting to the HIPDB. Another commenter believed that HCFA should report all adverse actions to the HIPDB taken against Medicare and Medicaid providers and suppliers based on information that is already reported by State survey and certification agencies, thus leaving States with the responsibility to report only adverse actions taken against an entity based on State law.

Response: The statute does not provide an exclusion from reporting to the HIPDB for individual professions that may report to other data banks. We encourage these organizations to designate their professional associations to act as authorized agents with the HIPDB. The statute requires that Federal and State Government agencies and health plans report any adverse action taken against a health care provider, supplier or practitioner. The OIG recognizes that State survey and certification agencies already report their findings to HCFA and we will continue to work with HCFA to find methods of streamlining and coordinating the reporting process.

Section 61.8 Reporting Federal or State Criminal Convictions Related to the Delivery of a Health Care Item or Service

Comment: One commenter indicated that States already report convictions to the Federal Bureau of Investigation (FBI) and, as such, reporting to the HIPDB would be duplicative and costly. Another commenter requested clarification of the term "delivery."

Response: The scope of the HIPDB goes beyond the felony convictions obtained at the State and local level that are currently reported to the FBI. Information being reported to the data bank also will include misdemeanor convictions, nolo contendere pleas, and pre-trial diversions and similar actions, that are not reportable to the FBI. In addition, the FBI does not classify convictions as being related to the delivery of a health care item or service, nor does it classify those convicted individuals and entities as being health care providers, suppliers or practitioners. Consequently, the FBI's data bank does not contain every action that would be reportable to the HIPDB, nor does it provide a way in which all appropriate State and local convictions could be identified for use in the HIPDB. The term "delivery" includes, but is not limited to, participation in any part of the provision for or payment of a health care item or service.

Section 61.9 Reporting Civil Judgments Related to the Delivery of a Health Care Item or Service

Comment: One commenter was not clear as to when a health plan would be obligated to report a civil action, and recommended that health plans only be required to report when no Government agency was a party to the action. The commenter also suggested that health plans should be able to assign responsibility for reporting to another entity, if the other entity also were party to the suit. A second commenter believed that civil actions are best reported by a prosecuting entity.

Response: The OIG does not require that each party to a civil action report that action individually. However, to clarify who has the responsibility for reporting multi-claimant civil judgments, we are adding new language to § 61.9 to address responsibilities for the reporting of multi-claimant actions.

Section 61.10 Reporting Exclusion From Participation in Federal or State Health Care Programs

Comment: One commenter stated that the OIG did not provide adequate and clear information for providers to use to identify excluded individuals or entities.

Response: Revised OIG exclusion authorities were published as proposed rulemaking in the **Federal Register** on September 8, 1997 (62 FR 47182), and final regulations were published on September 2, 1998 (63 FR 46676). As indicated above in addressing the definition of the term "health care supplier," in the OIG's final rulemaking on new exclusions and revised authorities resulting from HIPAA, the OIG has the authority to exclude any individual or entity who directly or indirectly provides or supplies items or services. The scope of this exclusion authority includes items or services manufactured, distributed or otherwise provided by individuals or entities that do not directly submit claims to Medicare, Medicaid or other Federal health care programs, but that supply items or services to providers, suppliers or practitioners who submit claims to these programs for such items or services. Therefore, the OIG has already established through that final rule the conditions for excluding an individual and entity from a Federal or State health care program. As such, we believe no further revisions or clarifications are necessary in this final rule.

Section 61.12 Requesting Information From the HIPDB.

Comment: Several commenters believed there should be public access to the HIPDB, while other commenters stated that access to the HIPDB should be open only to those who have the authority to take adverse actions. Additionally, citing the need to obtain the information for screening and credentialing potential employees, several commenters requested that hospitals also be able to request information. Several commenters also expressed concern regarding the data elements to be included in the release of aggregate data for research purposes.

Response: While the OIG actively supports legislative proposals for expanding access to the HIPDB, the existing statute clearly limits access to the HIPDB to those entities that meet the definition of Federal or State agency or a health plan. Under the current statutory definition of entities having access, some hospitals will meet the criteria and be in a position to request information from the HIPDB, while other hospitals will not have access to the data bank. With regard to what data elements would be included, the OIG is clarifying the language in the final rule, as is discussed later in this preamble.

As set forth in § 61.12, at the time subjects request information as part of a "self-query," the subjects will receive (1) any report(s) in the HIPDB specific to them, and (2) a disclosure history from the HIPDB of the name(s) of any entity (or entities) that have previously received the report(s). This disclosure history will be restricted in accordance with revisions being made to the Department's Privacy Act regulations at 45 CFR part 5b which, when issued in final form, will include an exemption for law enforcement access of the HIPDB.

Section 61.13 Fees Applicable to Requests for Information

Comment: The majority of the comments received on this section were from State agencies. The commenters requested free or discounted rates for querying the HIPDB. The commenters suggested that those State agencies that actually file reports with the HIPDB should, in exchange, be able to query the data bank for free or at a discounted rate. One commenter expressed a concern over having to pay a separate fee to query both the HIPDB and the NPDB.

Response: The OIG is aware of the concerns of some State agencies. The HIPDB and the NPDB were established under separate statutes, each requiring a fee for querying. Each data bank, by statute, was designed to recover its own cost through the imposition of query fees. We are aware of the potential burden of dual querying and will make every effort to keep these fees to a minimum. The OIG cannot comply with this request to offer free or discounted queries to State agencies and others. Since the statute specifically mandates that the Department exempt only Federal agencies from query fees, in order to completely cover costs from paying customers, the OIG must charge all non-Federal customers the same rate.

The OIG intends to announce the actual amounts of the fees for the data bank in periodic notices in the **Federal Register**.

Comment: One commenter recommended that all Federal agencies also should be subjected to a fee when querying the HIPDB, while another commenter stated that since Federal agencies are exempted from paying fees, their access should be limited to "bona fide" purposes.

Response: With regard to the one commenter's suggestion as to Federal agencies fees, section 1128E(d)(2) of the Act specifically prevents the OIG from charging Federal agencies a fee to query the HIPDB. The appropriate uses of HIPDB information for all users, including Federal agencies, is being defined in § 61.14 of these regulations and the Privacy Act System of Records notice published in the **Federal Register** on February 16, 1999 (64 FR 7653).

Comment: One commenter recommended that the OIG not establish a fee for health care practitioners, providers or suppliers requesting information about themselves (self-queries) from the HIPDB. This commenter believed that State licensing boards will "game the system" by requiring licensees to submit self-query responses when requesting initial licensure or re-licensure. This commenter noted this type of activity already occurs with the NPDB.

Response: Since State licensing boards are not required by the statute to query, the OIG can not expressly mandate that they query the HIPDB directly in place of requiring practitioners to provide self-query responses. However, we will make every effort to strongly encourage State licensing boards to query the HIPDB directly to ensure they receive accurate and complete information.

Comment: One commenter asked that the HIPDB provide an automatic copy (without a request and free of charge) of every report to the health care provider, supplier or practitioner who is the subject of the report, and not just when the report is initially entered into the HIPDB. This would include any report that is "amended or deleted." A second commenter recommended that the OIG add a sentence to the final regulations stating that the HIPDB also will provide a copy of every HIPDB report automatically, without a request and free of charge, to the reporter who submitted the report.

Response: We agree with these comments and will modify the final regulations accordingly. The HIPDB will provide a copy of every HIPDB report to the reporter, as well as to the health care provider, supplier, or practitioner who is the subject of the report, when the report is initially entered. In addition, further notification will be made to these parties whenever the report is corrected or revised, and whenever the report is voided. We also agree to automatically provide the reporter with a copy of the revised report, without further request.

Section 61.14 Confidentiality of the HIPDB Information

Comment: The majority of the commenters responding to this provision questioned the confidentiality of the reported data bank elements and resulting privacy of the information once a report is submitted to the HIPDB. The confidentiality of individual elements, as well as of the report as a whole, were questioned and several commenters believed the final rule needed to be clarified further. Citing possible violation of the Privacy Act, commenters expressed concern about the "purpose" for which the data are provided and the process of how queriers may distribute and use the information provided in a report.

Response: Similar to the NPDB, the HIPDB requires specific data elements to be reported in order to maximize the accuracy of matching subjects of reports by the querier. The Privacy Act of 1974 established the guidelines for Federal governmental systems of records that are maintained by the names of individuals. The HIPDB was established as a system of records subject to the Privacy Act by notice published in the **Federal Register** on February 16, 1999 (64 FR 7653). Section 552(i)(3) of the Privacy Act provides that obtaining information knowingly from an agency system of records under false pretenses will be treated as a misdemeanor and will incur a fine of not more than $5,000 per occurrence. Section 552b(3) of the Privacy Act allows disclosure for "routine use," compatible with the purpose for which it was collected. Appropriate uses for the HIPDB information will include credentialing and employment decisions, fraud and abuse investigations, and use as a part of a querying entity's screening process which would indicate more complete details are needed about the subject. This "routine use" does not allow disclosure to the general public. We are clarifying this discussion in § 61.14 of the final regulations.

We note that information which would identify Federal or State agency health program beneficiaries, or other patients of providers or practitioners, is not reportable to the HIPDB. Further, we will disallow references to individual patients or beneficiaries in any rebuttal documents submitted as part of a report dispute process, or submitted as part of the written comments that a subject may submit to be included with a report.

Comment: Several commenters stated that the wording of this section was confusing, and did not fully explain the ways in which information can be disseminated once it is released to an eligible entity.

Response: With respect to the confidentiality requirements of information obtained from the HIPDB indirectly from another party, as well as information obtained directly from the data bank, an individual or entity that receives information from the HIPDB is permitted to disclose such information further in the course of carrying out the activity for which the information was sought. For example, during the course of a health plan's credentialing process, the plan may request information from the HIPDB on a practitioner's history of final adverse actions. The health plan may share this information with other individuals who are part of the credentialing review and decision making process on the practitioner's application. Nevertheless, the confidentiality limitations of the Act apply both to the health plan staff who initially receive the information and to the specific departmental staff who subsequently review this same information; they may each only use and disclose the information with respect to the credentialing decision.

Section 61.15 How To Dispute the Accuracy of the HIPDB Information

Comment: Several commenters were supportive of the mechanism set forth in the proposed rule that would allow practitioners to attach a 2,000 word statement to their report for purposes of disputing the accuracy of HIPDB information. Some commenters indicated that the inclusion of a 2,000 word statement to a report was unnecessary and recommended eliminating this provision for the final rule.

Response: We believe this mechanism will be useful, and are retaining it in the final regulations.

Comment: While some commenters believed a dispute mechanism was unnecessary or would greatly increase the burden on reporting entities, other commenters supported the inclusion of an additional dispute mechanism under which reporting entities could report disagreements with a Secretarial decision to delete a report from the HIPDB.

Response: The statute specifically requires that the HIPDB have a dispute mechanism in place. We are adopting the dispute mechanism that currently is being used for reports to the NPDB, which has proven to be effective. We are addressing regulatory burden issues later in this preamble.

C. General Issues and Alternative Suggestions

1. Coordination and distinctions between the HIPDB and the NPDB

Comment: One commenter stated that an additional data bank was unnecessary. The commenter believed that the NPDB is adequate, and that the HIPDB will only serve to be duplicative in nature.

Response: While we agree that the NPDB is adequate for its intended purpose of protecting the public from incompetent or unprofessional health care practitioners, the HIPDB reflects separate and distinct congressional intent, with unique data elements. The HIPDB data base is intended to collect a wide range of final adverse actions. The HIPDB serves a dual purpose of protecting the public, and assisting fraud and abuse investigations of health care practitioners, suppliers and providers. The HIPDB also contains information that is not reported to the NPDB, for purposes of meeting its intended statutory objectives.

Comment: Some commenters expressed a desire that the HIPDB and the NPDB be combined into one system, and commenters believed that for reports required under both systems, the OIG should have reporters report such actions only once.

Response: Although the HIPDB and the NPDB must be separate data banks, and serve different purposes, the HIPDB and the NPDB will, for certain reporting and querying purposes, form an integrated system, whereby a report required under both systems will only need to be reported once. The system will subsequently store the report in the HIPDB, the NPDB, or both, as appropriate. Additionally, a querier eligible to have access to both data banks can query both through a single request.

Comment: One commenter expressed concern that under an integrated reporting system for the NPDB and the

HIPDB a medical malpractice insurer would be forced to submit certain fields required under the HIPDB, such as for an individual's Social Security Number.

Response: This provision is only applicable to reports required under *both* data banks. For example, medical malpractice payment reports are only required to be reported to the NPDB; they are statutorily *exempt* from HIPDB reporting. Therefore, the HIPDB data elements required, such as an individual's Social Security Number, do not apply to those reports.

Comment: One commenter expressed a desire that actions taken before August 21, 1996, the effective date of the HIPAA statute, be required to be reported to the HIPDB.

Response: Since the Department does not have the statutory authority to retroactively require reports before the statute's date of enactment, we cannot accept this recommendation, and we would be unwilling to impose the burden of retroactive reporting on the reporting entities even if we had the authority to do so.

2. Immunity Provisions Under the HIPDB

Comment: More than half of the comments received regarding immunity provision under the HIPDB stated that any immunity provisions must be included within the final regulations and not merely alluded to in the preamble. The commenters specifically requested immunity with regard to submitting reports to the HIPDB. Several commenters stated that any immunity provisions included within the final regulations needed to specifically provide immunity for agents.

Response: We agree with the comments, and are adding a new § 61.16 within the final regulations to address this concern.

Comment: Three commenters were supportive of the proposed definition for the term "knowledge of falsity" to mean actual knowledge of falsity by the submitting party. One commenter requested the elimination of immunity for those who file information with the HIPDB recklessly.

Response: The intention of the statute is to encourage final adverse actions to be reported against subjects, without fear of the subject retaliating with a lawsuit against those who report the action. In accordance with the comments and the statute, we will continue to interpret the term "knowledge of falsity" to mean actual acknowledge. Consequently, we are including language in the final regulations stating that the submitting reporter will not be immune from liability if there is actual knowledge of falsity of a report.

Comment: One commenter stated the subject of a report should be required to follow the dispute resolution procedures before filing suit against a reporter for false knowledge in reporting to the HIPDB.

Response: We decline to accept this comment. The statute does not provide the authority to require the subject of a report to follow the dispute resolution procedures prior to filing suit against a reporter. Further, we believe this would result in unnecessary delays in reporting final adverse actions to the HIPDB.

3. Sanctions for Failure To Report

Comment: With regard to sanctions for failure to report to the HIPDB, commenters stated that a potential CMP of $25,000 per occurrence against health plans that fail to report was too severe. One commenter recommended that, because of the perceived breadth and ambiguity of the reporting requirements, the OIG should only assess CMPs against health plans that "knowingly and willfully fail to report." Another commenter stated that the CMP was proportionately unfair to single service health plans.

Response: Section 4331 of Public Law 105–33, the Balanced Budget Act (BBA) of 1997, authorizes a CMP of up to $25,000 for each adverse action not reported by a health plan. The statute does not require that this full amount be imposed; a lesser penalty could be assessed at the discretion of the OIG. The statute does not require a "knowing and willful" standard as part of the CMP criteria. However, the OIG has discretion in choosing whether to assess a CMP, and the OIG applies various mitigating and aggravating factors, as set forth in the OIG/CMP regulations, in determining the CMP amount up to the $25,000 limit. Specific policies and factors regarding imposition of this CMP are being set forth by the OIG in separate final rulemaking addressing new and revised sanction authorities resulting from the BBA.

Comment: One commenter asked whether the OIG would impose CMPs against health plans that cannot report because they do not collect all of the reportable data elements.

Response: Every effort has been made to specify a set of data elements that will not impose an undue burden on reporters and that still ensure a high degree of confidence in matching names of health care practitioners, providers and suppliers with existing reports in the HIPDB. Reporters will be required to report mandatory data elements, and may report all other fields if they are known. However, reporters that fail to submit reports with the minimum mandatory data required by statute and regulations may be subject to the sanctions referenced above.

Comment: Some commenters expressed concern that the OIG would impose CMPs for the non-reporting of adverse actions (or particular data elements associated with an adverse action) that occurred during the period between the effective date of HIPAA, August 21, 1996, and the effective date of this rule, a time period when the exact reporting requirements of the rule were not yet known to the entities now responsible for reporting.

Response: The basic types of actions to be reported were specified in the HIPAA and were, therefore, noticed to potential reporters as of August 21, 1996. We do realize, however, that the specific definitions of terms used, and the specification of exact data elements to be reported, are set forth in this rule. While there is a duty to report actions (and data elements) dating from the period between August 21, 1996 and the promulgation of this rule, the OIG will give due consideration to the ability of a reporting agency or health plan to comply with requirements to report such actions (and data elements) in determining whether to impose a CMP for failure to report in accordance with 42 CFR 1003.102(b)(5)(ii).

4. Implementation Schedule

Comment: Four comments were received regarding the implementation schedule for the HIPDB. Commenters stated that collecting data elements retroactively, as required by the Act, would be burdensome and difficult to obtain. One commenter recommended a separate date for "other adjudicated actions," stating that these actions are not final until each case has exhausted all appeal rights. Several commenters suggested the OIG should allow for two different dates: one for data that are available at the time of the opening of the data bank, and another date (for example, 60 days later) for additional and retroactive data.

Response: The OIG has taken these points into consideration. This concern is being addressed below in the section of this preamble discussing the burden of data collection.

5. Paperwork Reduction Act Statement

a. *Data elements to be reported to the HIPDB.* The OIG solicited comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comment: Over half of the comments received concerned the data elements in general. Commenters stated that the proposed rule was overreaching the scope of the statute and created unintended reporting burdens with regard to the various data elements specified for collection. Some commenters indicated that they did not collect one or more of the required data elements, while others suggested that not all of the requested data elements were necessary for the HIPDB, or that only a minimal set of elements were needed to insure proper identification of a subject. Some commenters stated that the required data elements would force physicians to devote additional time and expense to reporting these actions.

Response: The OIG disagrees with the commenters' assessments. The OIG continues to believe the data elements selected for inclusion into the HIPDB are essential for users in properly identifying individuals and entities which are the subjects of reports in the data bank. Further, as indicated earlier, with respect to the concerns indicated by some physicians, there are no requirements for physicians to report directly to the data bank and thus no additional non-medical time required of them with respect to the array of data elements.

Comment: A number of State agencies cited their respective State statutes that prohibit the collection or reporting of Social Security Numbers and, in some instances, other personal data (such as sex and date of birth). Ten commenters stated that their organizations did not routinely collect Social Security Numbers or Taxpayer Identification Numbers.

Response: The statute offers the OIG no discretion in this collection element provision. The Federal statute authorizing this data base takes precedence over and preempts State statutory requirements, and specifically requires the reporting of Taxpayer Identification Numbers, which includes Social Security Numbers and Federal Employer Identification Numbers. As to the inclusion of other personal identifiers, we have determined that these elements are required to insure proper identification of subjects reported to the data bank and, consequently, these requirements are being retained in the final regulations. We believe that the various reporting entities can make the proper adjustments to secure the required information without undue hardship or burden.

Comment: Some commenters raised concern over the need to include "Occupation" as one of the mandatory element under the HIPDB.

Response: For identification purposes, we believe it is important for a querier of the data bank to know a subject's occupation. Today's health care providers are frequently involved in different ventures and occupations. Reportable actions may arise in one area of a subject's endeavors, but not in others. Therefore, we believe that queriers must be made aware of all reportable actions against a subject, and an integral element of this is learning the occupation in which these actions were taken.

Comment: Three commenters requested that "Other Names Used" be a mandatory field, particularly with regard to female subjects.

Response: We are satisfied that this element should be reported "if known," and we assume the reporters will provide these names if such information is available to them.

Comment: We received comments regarding the "Physician Specialty" data element. Commenters questioned why specialty data were only being collected on physicians and not on other types of practitioners.

Response: We agree with the suggestion that "specialty" should be reported for all practitioners, if applicable, and are modifying the regulations accordingly.

Comment: Twenty-six commenters suggested that the "Name of the Affiliated or Associated Health Care Entity" not be made a mandatory field.

Response: The statute requires that this information be reported "if known." We agree with the commenters' concerns, and will clarify the language in the final regulations to emphasize that this information be reported only if known.

Comment: Several comments stated that potential reporters do not currently collect the mandatory element "National Provider Identifier" (NPI).

Response: We are aware that NPIs have not been issued and, therefore, cannot be reported. However, once HCFA issues these identification numbers, the collection and reporting of NPIs to the HIPDB will be mandatory. Reporters are advised to begin the necessary steps to collect this identifier in the future, as it becomes available. In this final rule, we are deleting the data field "NPI for Affiliated or Associated Health Care Entities."

Comment: One commenter suggested that the HIPDB also add the method used to detect the act that underlies the action being reported.

Response: We disagree. We believe this information will not be useful, and would create an additional reporting burden.

Comment: Commenters stated that some reporters do not collect data on the "Name of Each Professional School Attended and Year of Graduation."

Response: These data are mandatory requirements of the NPDB and are routinely provided by State agencies and organizations representing physicians and dentists. These NPDB requirements will remain unchanged. For reports made solely to the HIPDB, these data elements will be mandatory for licensing and certification actions reported by Federal and State agencies, which routinely collection this information, and will be designated as "if known" for all other reporters.

Comment: Several commenters noted the unreliability of a "Work Address" element for individual subjects, and other commenters stated that only an "Address of Record" would be known by certain reporters.

Response: The OIG agrees with these comments and is revising the final regulations accordingly. Only one address—either the subject's "Home Address" or the "Address of Record"—will be mandatory for each report. Other addresses, such as a primary work address, will be reportable only "if known."

Comment: Twelve comments were received concerning the mandatory "Description of the Acts or Omissions" and the "Description of the Action" fields. The commenters suggested use of numerical codes in lieu of narrative descriptions.

Response: The statute is clear that the "Description of the Acts or Omissions" field is a mandatory element. However, to assist users of this information, we are adopting the suggestion of a code list that corresponds to the most common underlying acts expected to be reported. Use of this code will be mandatory, along with a narrative description of the acts or omissions and injuries upon which the reported action was based. With regard to the "Description of the Action" field, we have changed the final rule to show that the mandatory requirements for reporting an action are the date the action was taken, its effective date and duration, the amount of any monetary penalty, and whether the action is on appeal. We believe these elements are essential for a user's understanding of the action being reported. The proposed rule also called for a mandatory "Classification of the action" in accordance with a reporting code adopted by the Secretary. While the "Description of the action" has been deleted, the "Action code" will remain as a mandatory element in the final regulations.

Comment: Five comments were received requesting additional clarification regarding the reporting of "Professional license, certification or registration."

Response: In response to these comments, we are clarifying the final regulations to indicate that for licensure certification or registration actions taken by Federal and State licensing and certification agencies, the mandatory information to be reported will be on the professional license, certification or registration on which the action was taken. Information on other licenses, certifications or registrations, including those issued in other States or by other agencies, will be reportable to the data bank "if known."

b. *Estimated burden of data collection requirements. Comment:* A number of commenters stated that the proposed rule did not accurately address the burden as it applies to the cost of creating and maintaining the data collection system, or the costs associated with collecting the required data elements. Commenters stated that the start-up cost, indicated at $5,000, was significantly underestimated. One commenter strongly believed that the costs associated with the HIPDB system would far outweigh its benefit, and several commenters stated that they would need to hire new employees in order to meet the HIPDB reporting requirements. One commenter indicated that, while their State proportionally had a smaller number of health care providers than some of the larger States, its State agency nevertheless took 712 actions last year that would need to be reported to the HIPDB, resulting in what they believed would be a larger than estimated burden nationwide.

Response: In developing our burden statement and estimate, calculations for the regulatory impact statement in the proposed rule were based on estimations derived from the regulatory impact prepared for the proposed rule currently being developed for State licensing boards addressing section 1921 of the Act. Section 1921 of the Act, as amended by section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987 and by the Omnibus Budget Reconciliation Act of 1990, requires each State to adopt a system that reports to the Secretary certain adverse licensure actions taken against health care practitioners and health care entities that are licensed or otherwise authorized by a State (or a political subdivision) to provide health care services. Similar to the information required for the HIPDB, section 1921 of the Act already requires, for reporting to the NPDB, that each State (1) report any negative actions or findings that a State licensing authority, peer review organization or private accreditation entity takes against a health care practitioner or health care entity; and (2) have an information reporting system in place as of January 1, 1992, regardless of whether the Secretary promulgated regulations to carry out these provisions. Therefore, since 1992, the States already have been required to collect much of the information to which they attribute their costs of collecting information for reporting to the HIPDB. However, we recognize that the regulatory impact will vary from State to State, and as a result, we have adjusted our burden estimates in this final rule accordingly. Specifically, after consideration of the concerns raised, we agree with the commenters that their developing or restructuring of a data collection system to incorporate the HIPDB requirements may have been underestimated. Therefore, we have increased the start-up cost estimate to $20,000 for each State licensing board. In terms of the reporting burden for State licensing agencies, we were advised by national organizations that represent State licensing boards that much of the requested data are already being collected and maintained by their organization. Therefore, we believe that the reporting burden for State licensing boards, such as nursing, chiropractic, optometry, physical therapist and social worker should be minimal.

Comment: Some commenters believed that complying with the HIPDB would be labor intensive and costly. Commenters suggested that the HIPDB data collection requirements would create an administrative burden for State licensing boards.

Response: As indicated above, the OIG has addressed the reporting requirements in detail in this preamble in response to public comments. We agree with many of the commenters' concerns, and are streamlining the HIPDB reporting requirements accordingly. The OIG believes that this final rule now reflects the least burdensome reporting requirements possible with respect to State agencies' compliance.

Comment: Several commenters proposed alternatives that they believed might ease the burden on State licensing boards. Specifically, commenters recommended that the OIG make use of various authorized agents, such as the National Council of State Boards of Nursing, Federation of Chiropractic Licensing Boards, National Association of Boards of Pharmacy and the American Association of State Social Work Boards to collect and report the required information, thus lessening the burden on individual health plans and State agencies.

Response: In developing this rulemaking, the OIG sought the input from States and representatives of various associations. Initially, the OIG met with State regulatory boards and associations, including the National Council of State Boards of Nursing, Federation of Chiropractic Licensing Boards, National Association of Boards of Pharmacy and the American Association of State Social Work Boards, to explain the requirements of the HIPDB and to explore options that would ease the regulatory burden on State agencies. As a result with respect to State licensing boards, we suggested the following options: (1) organizing a centralized or decentralized reporting mechanism within the State, or (2) reporting to the data bank through an authorized agent. If an authorized agent is utilized by the State, individual agreements must be made between the State and the professional association, as well as between the State and the HIPDB.

IV. Summary of Revisions in the Final Rule

Based on our review and response to the array of public comments, and based on the discretionary authority given the Department under the statute, we are making the following revisions to the proposed regulations that we believe will allow the collection and dissemination of information to and from the HIPDB to occur in a more effective and efficient manner:

Section 61.3

- We are revising the definition of the term "Affiliated or associated" to read as follows: *Affiliated or Associated* means health care entities with which a subject of a final adverse action has a commercial business relationship, including but not limited to, organizations, associations, corporations, or partnerships. It also includes a professional corporation or other business entity composed of a single individual.

- In the definition of the term "Any other negative action or finding," we are adding the following sentence: "This definition excludes administrative fines or citations and corrective action plans, unless they are: (1) Connected to the delivery of health care services, and (2) taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender."
- We are deleting the proposed definition for the term "Clinical privileges."
- We are amending the fourth element in the definition of the term "Government agency" to include both Federal and State law enforcement agencies, and law enforcement investigators as well as States Attorneys General.
- In the first sentence under the definition for the term "Health care supplier," we have inserted a comma and are adding the phrase "whether directly or indirectly," after the statement "* * * or any individual or entity, other than a provider, who furnishes" and we have replaced the example of "manufacturers of health care related items" with the phrase "manufacturers of health care items." We have also revised the second sentence in the definition to read as follows: "The term also includes any individual or entity under contract to provide such supplies, items or ancillary services, health plans as defined in this section (excluding employers that are not self-insured) and health insurance producers (including, but not limited to, agents, brokers, solicitors, consultants and reinsurance intermediaries)."
- We are modifying the fourth element in the proposed definition of the term "Health plan" to make the definition more inclusive. As revised the fourth element will include, but not be limited to, "[A] plan, program, agreement or other mechanism established, maintained or made available by a self insured employer or group of self insured employers, a practitioner, provider or supplier group, third party administrator, integrated health care delivery system, employee welfare association, public service group or organization or professional association * * *"
- We are adding a definition for the term "Organizational name and type." The "organization name" data element, to be reported for all types of actions described in §§ 61.7, 61.8, 61.9, 61.10 and 61.11, means the subject's business or employer at the time the underlying acts occurred. If more than one business or employer is involved, the one most closely related to the underlying acts must be reported in "organization name," with the others being reported in the "affiliated or associated health care entities" field. The "organization type" is a brief description of the nature of that business or employer.
- The definition for "Other adjudicated actions or decisions" specifically excludes clinical privileging actions taken by Federal or State governmental agencies, paneling decisions made by health plans and overpayment determinations by Federal and State agency contractors or by health plans.
- We are also adding a new definition for the term "Voluntary surrender" to mean a surrender made after a notification of investigation or a formal official request by Federal or State licensing or certification authorities for a health care provider, supplier, or practitioner to surrender the license or certification (including certification agreements or contracts for participation in Federal or State health care programs). The definition also includes those instances where a health care provider, supplier or practitioner voluntarily surrenders a license or certification (including program participation agreements or contracts) in exchange for a decision by the licensing or certification authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

Section 61.9

- With regard to reporting civil judgments related to the delivery of a health care item or service, we are adding the following language to § 61.9(a): "If a Government agency is party to a multi-claimant civil judgment, it must assume the responsibility for reporting the entire action, including all amounts awarded to all the claimants, both public and private. If there is no Government agency as a party, but there are multiple health plans as claimants, the health plan which receives the largest award must be responsible for reporting the total action for all parties."

Section 61.12

- With regard to requesting information from the HIPDB, we are revising the first sentence in § 61.12 (a)(4) to indicate that information in the data bank will be available, upon request, to "[A] person or entity who requests statistical information, which does not permit any personal identifiers for any individual or entity."

Section 61.13

- We are adding the following sentence to the end of § 61.13 (a) with regard to our policy on fees applicable to requests for information: "For the same purpose, the Department will provide a copy of the report—automatically, without a request and free of charge—to the reporter that submitted it."

Data Elements To Be Reported to the HIPDB

In view of the comments and responses discussed above, and in an effort to clarify reporting requirements, the data elements have been reformatted. Sections 61.7, 61.8, 61.9, 61.10 and 61.11 are structured as follows:

- The actions which must be reported and who is responsible for making those reports.
- The mandatory personal identifiers and employment or professional identifiers for individual subjects; the mandatory identifiers for organization subjects; and the mandatory data elements for all subjects relating to the acts or omissions, the action taken and the reporting entity.
- The "if known" personal identifiers and employment or professional identifiers for individual subjects; the "if known" identifiers for organization subjects; and the "if known" data elements for all subjects relating to the acts or omissions, and the action taken.
- Each section concludes with the sanctions for failure to report.

Section 61.16

- We are adding a new § 61.16 Immunity, to indicate that individuals, entities or their authorized agents and the HIPDB will not be held liable in any civil action filed by the subject of a report unless the individual, entity or their authorized agent submitting the report has actual knowledge of falsity of the information contained in the report.

V. Regulatory Impact Statement

Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive and equity effects). The Unfunded Mandates Reform Act, Public Law 104–4, requires that agencies prepare an assessment of anticipated costs and benefits on any rulemaking that may result in an annual expenditure by State, local or tribal government, or by the private sector of $100 million or more. In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations that are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis. The resources required to implement the requirements in this final rule are minimal. We have determined that this final rule does not meet the criteria for a major rule, as defined by Executive Order 12866. As indicated above, this final rule is designed to establish procedures for reporting to and releasing from the HIPDB information on health care providers, suppliers, or practitioners against whom final adverse actions have been taken.

In accordance with the Unfunded Mandates Reform Act of 1995, we have determined the only costs (which we believe will not be significant) would include the ability to transmit the information electronically (*e.g.*, Internet service) and additional staff hours needed to transmit the information. Based on the public comments, we have increased the initial start-up cost from $5,000 to $20,000 per State licensing and certification agency ($20,000 per State licensing and certification agency × 216 State agencies = $4,320,000). The Department determined that the initial start-up cost will be less than $100 per health plan ($100 per health plan × 20,000 health plans = $2,000,000). Section 221(a) of HIPAA intends that the Federal Government will not incur any costs for the operation and maintenance of the HIPDB; user fees are intended to cover the full costs of the HIPDB. For the reasons stated above, the Department has determined that this rule does not impose any mandates on State, local or tribal governments, or the private sector that will result in an annual expenditure of $100 million or more, and that a full analysis under the Act is not necessary.

In addition, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, we are required to determine if this rule will have a significant economic effect on a substantial number of small entities and, if so, to identify regulatory options that could lessen the impact. For purposes of this final rule, we have not categorized health plans as small business entities in accordance with the RFA, nor have we included individuals and States in this definition of small entities. Rather, we have defined small entities as nonprofit organizations and local government agencies. Although the statute does not specify local government agencies as reporters, we also have given States the option to decide the manner in which they will report, i.e., having one centralized point for reporting or having multiple agencies such as municipalities and local government agencies (including District and County attorneys) report independently to the HIPDB. If States elect to have multiple agencies reporting independently to the HIPDB, we have determined that both the burden and costs associated with reporting to the HIPDB will be minimal. We also have determined that this rule would affect less than 100 nonprofit and local government agencies. Also with respect to health plans, we have determined that the burden and cost to them will be minimal. In an effort to reduce the reporting and impact burdens upon health plans, we have, as indicated above, clarified the definition of the term "other adjudicated actions or decisions" to emphasize that such an action requires the availability of a due process mechanism. We have in the rule specifically limited the types of actions that health plans will be required o report to a more limited and narrower category of actions. We are not preparing an analysis for the RFA, since we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities and, in accordance with the threshold criteria of Executive Order 13132 (August 4, 1999), have determined that these regulations do not significantly affect the rights, roles and responsibilities of States.

Paperwork Reduction Act

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PWA) of 1995, we are required to solicit public comments, and receive final OMB approval, on any information collection requirements set forth in final rulemaking. As indicated above, in order to properly implement the HIPDB, the OIG requires the collection of certain information as set forth in §§ 61.6, 61.7, 61.8, 61.9, 61.11, 61.12 and 61.15 of this final rule. In accordance with the PWA, we are submitting to OMB at this time the following requirements for seeking emergency review of these provisions. We are requesting an emergency review because the data collection and reporting of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure the timely availability and reporting of data as necessary in order to improve the quality of patient care and to prevent health care fraud and abuse activities. Delaying the reporting process would delay implementation of the establishment of a complete data bank that effectively deters health care fraud and abuse in the health care industry and protects the public. We are requesting OMB review and approval of this collection within 16 working days from the date of publication of this rulemaking, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below within 15 working days from the dat of publication of these regulations. During this 180-day approval period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on the requirements set forth.

Collection of Information: The Healthcare Integrity and Protection Data Bank for Final Adverse Information on Health Care Providers, Suppliers and Practitioners.

Description: Information collected under §§ 61.6, 61.7, 61.8, 61.9, 61.11, 61.12 and 61.15 of this final rule would be used by authorized parties, specified in the proposed rule, to prevent health care fraud and abuse activities and to improve the quality of patient care.

Description of Respondents: Federal and State Government agencies and health plans. The reports from Federal agencies are not subject to the PRA.

Estimated Annual Reporting: The Department estimates that the public reporting burden for this final rule is

185,099 hours. As a result of the public comments, we acknowledge that the proposed rule significantly under estimated the number of licensure and certification actions taken by State licensing authorities against health care providers, suppliers and practitioners. Therefore, we have increased the reporting burden from 132,733 to 185,099 hours.

The estimated annual reporting and querying burden is as follows:

Section No.	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
61.6, Errors & Omissions	[1] 1,200	1	1,200	25	500
61.6, Revisions/Appeal Status	1,000	1	1,000	75	1,250
61.7—Licensure Actions:					
Disclosure by State Licensing Boards	[2] 1,836	22	40,400	75	50,500
Reporting by State Licensing Authorities	216	187	40,400	15	10,100
61.8, Criminal Convictions	[3] 54	13	700	75	875
61.9, Civil Judgments	[4] 62	8	500	75	625
61.11, Other Adjudicated Action or Decision	[5] 66	12	800	75	1,000
61.12:					
Queries	[6] 5,601	201	1,127,512	5	93,959
Self-queries	60,000	1	60,000	25	25,000
Entity verification [7]	5,000	1	5,000	10	833
Entity update	250	1	250	5	20
61.12, Authorized agent designation [7]	100	1	100	10	16
61.12, Authorized agent designation update	5	1	5	5	0.42
61.15—Disputed Reports & Secretarial Review:					
Initial Request	[8] 750	1	750	10	125
Request for Secretarial Review	37	1	37	480	296
Total	76,177	....	1,278,654	185,099	

Footnotes:

1. Section 61.6 requires each Government agency or health plan that reports information to the HIPDB to ensure the accuracy of the information. If there are any errors or omissions to the reports previously submitted to the HIPDB, the individual or entity that submitted the report to the HIPDB is also responsible for making the necessary correction or revision to the original report. If there is any revision to the action or the action is on appeal, the individual or entity that submitted the original report to the HIPDB is also responsible for reporting revisions and whether the action is on appeal. Based on corrections and revisions made to information contained in the NPDB, we have estimated that a total of 1,200 respondents will need to correct their reports each year and that a total of 1,000 respondents will need to revise actions originally reported, or to report whether an action is on appeal each year. Based on experience with the NPDB, a correction is expected to take 25 minutes to complete and submit. A revision is expected to take somewhat longer (75 minutes) because it involves completing a new report form rather that just correcting the individual items that are in error.

2. Section 61.7 requires Federal and State agencies responsible for the licensing and certification of health care providers, suppliers and practitioners to report all disciplinary licensure actions to the HIPDB. Therefore, we estimate that approximately 34 State licensing boards in each State will report to the State licensing and certification authorities (54 States and territories x 34 licensing boards/per State = 1,836 State licensing and certification boards), and the State licensing and certification authorities (4 per State) will be responsible for reporting information to the HIPDB (54 States and territories x 4 State licensing and certification authorities/per State = 216 State licensing and certification authorities). We estimate that 40,400 reports will be submitted directly to the HIPDB each year, for an average of 187 reports per State licensing and certification authority and 22 reports per State licensing board. Since disciplinary licensure actions by State licensing authorities in the NPDB overlap with this statute, this estimate includes all licensure actions that will be reported to both the NPDB and the HIPDB. The HIPDB will use similar forms and procedures for reporting as the NPDB. As a result, we estimate that it will take a State licensing board 75 minutes to complete and submit an initial report. We also estimate that it will take a State licensing and certification authority 15 minutes to verify the accuracy and completeness of the information contained in the initial report before electronically submitting the information to the HIPDB.

3. Section 61.8 requires Federal and State prosecutors to report criminal convictions related to the delivery of a health care item or service. Based on the number of health care providers, suppliers and practitioners convicted by the Federal Government, we estimate that there will be an approximate total of 700 State criminal convictions reported to the HIPDB each year, for an average of 13 convictions per State. Based on experience with the NPDB, we estimate that it will take 75 minutes to complete and submit each report.

4. Section 61.9 requires Federal and State attorneys and health care plans to report civil judgments against health care providers, suppliers and practitioners related to the delivery of a health care item or service. We estimate that there will be an approximate total of 500 civil judgments each year that will be reported by the 54 States Attorneys and an estimated 8 health plans, for a total of 62 reporters. Based on experience with the NPDB, we estimate that it will take 75 minutes to complete and submit each report.

5. Section 61.11 requires Federal and State Governmental agencies and health plans to report any adjudicated action or decision related to the delivery of a health care item or service against health care providers, suppliers and practitioners. We estimate that there will be an approximate total of 800 other adjudicated actions or decision reports submitted to the HIPDB each year by 54 State governmental agencies and an estimated 12 health plans, for a total of 66 reporters. Based on experience with the NPDB, we estimate that it will take 75 minutes to complete and submit each report.

6. Certain queriers have access to both the NPDB and the HIPDB. When these entities query one data bank, they may elect to automatically receive reports from both. The Department estimates that there will be 1,127,512 queries submitted to the HIPDB per year on health care providers, suppliers and practitioners, including an estimated 60,000 self-queries. These estimates include only queries submitted directly to the HIPDB; it does not include those transferred from the NPDB. The estimates of burden per response are based on experience with similar querying of the NPDB.

7. To access the HIPDB, entities are required to certify that they meet section 1128E reporting and querying requirements by completing an Entity Registration form and submitting it to the HIPDB. The information collected on this form provides the HIPDB with essential information concerning the entity, such as name, address and entity type. Eligible entities, such as State licensing agencies or certain managed care organizations, that have access to both the NPDB and the HIPDB have already registered for the NPDB and are not required to register separately for the HIPDB. Entities eligible to access only the HIPDB must complete and submit the Entity Registration form. We estimate that it will take an entity 10 minutes to complete and submit the Entity Registration form to the HIPDB. If there are any changes in the entity's name, address, telephone, entity type designation, or query and report point of contact, the entity representative must update the information on the Entity Information Update form and submit it to the HIPDB. Of the 5,000 new registrants, we estimate 250 entities (5 percent of all new registrants) will need to update their organization's information each year.

An eligible entity may elect to have an outside organization query or report to the HIPDB on its behalf. This organization is referred to as an authorized agent. Before an authorized agent acts on behalf of an entity, the eligible entity must complete and submit an Agent Designation form to the HIPDB Help Line. The information collected on this form provides the HIPDB with essential information concerning the agent, such as name, address and telephone number. We estimate that 100 entities (2 percent of all new registrants) will elect an authorized agent to query or report to the HIPDB on their behalf. We estimate that it will take an entity 10 minutes to complete and submit the Agent Designation form to the HIPDB. Any changes to the authorized agent designation, such as routing of responses to queries or termination of an authorized agent, the eligible entity must update the information on the Agent Designation Update form and submit it to the HIPDB. We estimate that five of the 100 eligible entities will need to update their agent's information each year.

8. Section 61.15 describes the process to be followed by a health care provider, supplier or practitioner in disputing the factual accuracy of information in a report and requesting Secretarial review of the disputed report. Based on experience with the NPDB, we estimate that 750 (10 percent of all new reports) will be entered into the "disputed status." We estimate that it will take a health care provider, supplier or practitioner 10 minutes to notify the HIPDB to enter the report into "disputed status." Of the 750 disputed reports, we estimate that only 37 reports (5 percent) will be forwarded to the Secretary for review. We estimate that it will take a health care provider, supplier or practitioner 8 hours to describe in writing which facts are in dispute and to gather supporting documentation related to the dispute.

Forms to be used in the day-to-day management of the HIPDB would include the following:

Form name	No. of respondents	Responses per respondent	Total responses	Hrs. per response (minutes)	Total burden hours	Wage rate	Total cost
Account Discrepancy ...	2,000	1	2,000	5	166	$15	$2,490
Electronic Funds Transfer Authorization	850	1	850	5	70	15	1,050
Entity Reactivation	500	1	500	5	41	15	615
Total	3,350	....	3,350	....	277	....	4,155

Comments on this information collection activity should be sent to: Allison Herron Eydt, OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20053, FAX: (202) 395–6974.

VI. Waiver of Delayed Effective Date

In publishing final regulations, we usually indicate an effective date of 30 days following their publication in the **Federal Register**. However, this procedure may be waived when an agency finds good cause that a delay in the effective date is impracticable, unnecessary or contrary to the public interest.

Section 221(a) of HIPAA stated that the Secretary establish a national health care fraud and abuse data collection program by January 1, 1997. After a series of meetings with more than 1,000 current users of the NPDB and potential users of, and reporters to, the HIPDB (including health plans, State licensing boards, law enforcement officials, Federal and State Government agencies and professional associations), on October 31, 1998, we published a notice of proposed rulemaking in the **Federal Register** in which we requested public comment on the implementation of the HIPDB. As indicated, we received 117 formal public comments in response to that proposed rulemaking. Further, in developing the final rule, we have also taken into consideration the concerns of numerous Federal agencies, including the Department of Justice, the Department of Defense, the Department of Veterans Affairs and the U.S. Postal Inspection Service. Through this process, the Department has continued to work closely with the 17 national licensing boards organizations—including those for nurses, chiropractors, optometrists and physical therapists—that represent more than 4 million health care practitioners. In addition, the OIG also has contacted each State Governor regarding the reporting requirements of the HIPDB and continues to work with the States to help implement the States' reporting.

To implement the requirements of the statute, we believe that it is urgent that final regulations be promulgated without further delay in order to (1) streamline the fact-gathering process by law enforcement officials, regulatory agencies and health plans; (2) allow health care-related final adverse actions taken against providers, practitioners and suppliers to be reported to the HIPDB; and (3) establish a centralized system that will make this information easily accessible to authorized users.

In light of the fact that we have provided ample opportunity for public input and comment, and have worked closely with Federal and State Government agencies and various national organizations and their members in developing the HIPDB, we find that imposing the normal 30-day delay would be contrary to public interest. Therefore, consistent with 5 U.S.C. 553(d), we find good cause to waive the delay in the effective date of this rule and allow for the timely implementation of final regulations and the start-up of the data bank.

List of Subjects in 45 CFR Part 61

Billing and transportation services, Durable medical equipment suppliers and manufacturers, Health care insurers, Health maintenance organizations, Health professions, Home health care agencies, Hospitals, Penalties, Pharmaceutical suppliers and manufacturers, Privacy, Reporting and recordkeeping requirements, Skilled nursing facilities.

Accordingly, a new 45 CFR part 61 is added to read as follows:

PART 61—HEALTHCARE INTEGRITY AND PROTECTION DATA BANK FOR FINAL ADVERSE INFORMATION ON HEALTH CARE PROVIDERS, SUPPLIERS AND PRACTITIONERS

Subpart A—General Provisions

Sec.
61.1 The Healthcare Integrity and Protection Data Bank.
61.2 Applicability of these regulations.
61.3 Definitions.

Subpart B—Reporting of Information

61.4 How information must be reported.
61.5 When information must be reported.
61.6 Reporting errors, omissions, revisions, or whether an action is on appeal.
61.7 Reporting licensure actions taken by Federal or State licensing and certification agencies.
61.8 Reporting Federal or State criminal convictions related to the delivery of a health care item or service.
61.9 Reporting civil judgments related to the delivery of a health care item or service.
61.10 Reporting exclusions from participation in Federal or State health care programs.
61.11 Reporting other adjudicated actions or decisions.

Subpart C—Disclosure of Information by the Healthcare Integrity and Protection Data Bank

61.12 Requesting information from the Healthcare Integrity and Protection Data Bank.
61.13 Fees applicable to requests for information.
61.14 Confidentiality of Healthcare Integrity and Protection Data Bank information.
61.15 How to dispute the accuracy of Healthcare Integrity and Protection Data Bank information.
61.16 Immunity.

Authority: 42 U.S.C. 1320a-7e.

Subpart A—General Provisions

§ 61.1 The Healthcare Integrity and Protection Data Bank.

(a) Section 1128E of the Social Security Act (the Act) authorizes the Secretary of Health and Human Services (the Secretary) to implement a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers, or practitioners. Section 1128E of the Act also directs the Secretary to maintain a database of final adverse actions taken against health care providers, suppliers or practitioners. This data bank will be known as the Healthcare Integrity and Protection Data Bank (HIPDB). Settlements in which no findings or admissions of liability have been made will be excluded from being reported. However, if another action is taken against the provider, supplier or practitioner of a health care item or service as a result of or in conjunction with the settlement, that action is reportable to the HIPDB.

(b) Section 1128E of the Act also requires the Secretary to implement the HIPDB in such a manner as to avoid duplication with the reporting requirements established for the National Practitioner Data Bank (NPDB) (See 45 CFR part 60). In accordance with the statute, the reporter responsible for reporting the final adverse actions to both the HIPDB and the NPDB will be required to submit only one report, provided that reporting is made through the Department's consolidated reporting mechanism that will sort the appropriate actions into the HIPDB, NPDB, or both.

(c) The regulations in this part set forth the reporting and disclosure requirements for the HIPDB.

§ 61.2 Applicability of these regulations.

The regulations in this part establish reporting requirements applicable to Federal and State Government agencies and to health plans, as the terms are defined under § 61.3.

§ 61.3 Definitions.

The following definitions apply to this part:

Act means the Social Security Act.

Affiliated or associated means health care entities with which a subject of a final adverse action has a commercial relationship, including but not limited to, organizations, associations, corporations, or partnerships. It also includes a professional corporation or other business entity composed of a single individual.

Any other negative action or finding by a Federal or State licensing agency means any action or finding that under the State's law is publicly available information, and rendered by a licensing or certification authority, including but not limited to, limitations on the scope of practice, liquidations, injunctions and forfeitures. This definition also includes final adverse actions rendered by a Federal or State licensing or certification authority, such as exclusions, revocations or suspension of license or certification that occur in conjunction with settlements in which no finding of liability has been made (although such a settlement itself is not reportable under the statute). This definition excludes citations, corrective action plans and personnel actions.

Civil judgment means a court-ordered action rendered in a Federal or State court proceeding, other than a criminal proceeding. This reporting requirement does not include Consent Judgments that have been agreed upon and entered to provide security for civil settlements in which there was no finding or admission of liability.

Criminal conviction means a conviction as described in section 1128(i) of the Act.

Exclusion means a temporary or permanent debarment of an individual or entity from participation in any Federal or State health-related program, in accordance with which items or services furnished by such person or entity will not be reimbursed under any Federal or State health-related program.

Government agency includes, but is not limited to—

(1) The U.S. Department of Justice;

(2) The U.S Department of Health and Human Services;

(3) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to, the U.S. Department of Defense and the U.S. Department of Veterans Affairs;

(4) Federal and State law enforcement agencies, including States Attorneys General and law enforcement investigators;

(5) State Medicaid Fraud Control Units; and

(6) Federal or State agencies responsible for the licensing and certification of health care providers, suppliers or licensed health care practitioners. Examples of such State agencies include Departments of Professional Regulation, Health, Social Services (including State Survey and Certification and Medicaid Single State agencies), Commerce and Insurance.

Health care provider means a provider of services as defined in section 1861(u) of the Act; any health care entity (including a health maintenance organization, preferred provider organization or group medical practice) that provides health care services and follows a formal peer review process for the purpose of furthering quality health care, and any other health care entity that, directly or through contracts, provides health care services.

Health care supplier means a provider of medical and other health care services as described in section 1861(s) of the Act; or any individual or entity, other than a provider, who furnishes, whether directly or indirectly, or provides access to, health care services, supplies, items, or ancillary services (including, but not limited to, durable medical equipment suppliers, manufacturers of health care items, pharmaceutical suppliers and manufacturers, health record services such as medical, dental and patient records, health data suppliers, and billing and transportation service suppliers). The term also includes any individual or entity under contract to provide such supplies, items or ancillary services; health plans as defined in this section (including employers that are self-insured); and health insurance producers (including but not limited to agents, brokers, solicitors, consultants and reinsurance intermediaries).

Health plan means a plan, program or organization that provides health benefits, whether directly, through insurance, reimbursement or otherwise, and includes but is not limited to—

(1) A policy of health insurance;

(2) A contract of a service benefit organization;

(3) A membership agreement with a health maintenance organization or other prepaid health plan;

(4) A plan, program, or agreement established, maintained or made available by an employer or group of employers, a practitioner, provider or supplier group, third party administrator, integrated health care delivery system, employee welfare

association, public service group or organization or professional association; and

(5) An insurance company, insurance service or insurance organization that is licensed to engage in the business of selling health care insurance in a State and which is subject to State law which regulates health insurance.

Licensed health care practitioner, licensed practitioner, or practitioner means, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized).

Organization name means the subject's business or employer at the time the underlying acts occurred. If more than one business or employer is involved, the one most closely related to the underlying acts should be reported in the "organization name," field with the others being reported in the "affiliated or associated health care entities" field.

Organization type means a brief description of the nature of that business or employer.

Other adjudicated actions or decisions means formal or official final actions taken against a health care provider, supplier or practitioner by a Federal or State governmental agency or a health plan; which include the availability of a due process mechanism, and; are based on acts or omissions that affect or could affect the payment, provision or delivery of a health care item or service. For example, a formal or official final action taken by a Federal or State governmental agency or a health plan may include, but is not limited to, a personnel-related action such as suspensions without pay, reductions in pay, reductions in grade for cause, terminations or other comparable actions. A hallmark of any valid adjudicated action or decision is the availability of a due process mechanism. The fact that the subject elects not to use the due process mechanism provided by the authority bringing the action is immaterial, as long as such a process is available to the subject before the adjudicated action or decision is made final. In general, if an "adjudicated action or decision" follows an agency's established administrative procedures (which ensure that due process is available to the subject of the final adverse action), it would qualify as a reportable action under this definition. This definition specifically excludes clinical privileging actions taken by Federal or State Government agencies and similar paneling decisions made by health plans. This definition does not include overpayment determinations made by Federal or State Government programs, their contractors or health plans; and it does not include denial of claims determinations made by Government agencies or health plans. For health plans that are not Government entities, an action taken following adequate notice and the opportunity for a hearing that meets the standards of due process set out in section 412(b) of the HCQIA (42 U.S.C. 11112(b)) also would qualify as a reportable action under this definition.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

Voluntary surrender means a surrender made after a notification of investigation or a formal official request by a Federal or State licensing or certification authority for a health care provider, supplier or practitioner to surrender the license or certification (including certification agreements or contracts for participation in Federal or State health care programs). The definition also includes those instances where a health care provider, supplier or practitioner voluntarily surrenders a license or certification (including program participation agreements or contracts) in exchange for a decision by the licensing or certification authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

Subpart B—Reporting of Information

§ 61.4 How information must be reported.

Information must be reported to the HIPDB as required under §§ 61.6, 61.7, 61.8, 61.9, 61.10, 61.11 and 61.15 in such form and manner as the Secretary may prescribe.

§ 61.5 When information must be reported.

(a) Information required under §§ 61.7, 61.8, 61.9, 61.10 and 61.11 must be submitted to the HIPDB—

(1) Within 30 calendar days from the date the final adverse action was taken or the date when the reporting entity became aware of the final adverse action; or

(2) By the close of the entity's next monthly reporting cycle, whichever is later.

(b) The date the final adverse action was taken, its effective date and duration of the action would be contained in the information reported to the HIPDB under §§ 61.7, 61.8, 61.9, 61.10 and 61.11.

§ 61.6 Reporting errors, omissions, revisions or whether an action is on appeal.

(a) If errors or omissions are found after information has been reported, the reporter must send an addition or correction to the HIPDB. The HIPDB will not accept requests for readjudication of the case.

(b) A reporter that reports information on licensure, criminal convictions, civil or administrative judgments, exclusions, or adjudicated actions or decisions under §§ 61.7, 61.8, 61.9, 61.10 or 61.11 also must report any revision of the action originally reported. Revisions include, but are not limited to, reversal of a criminal conviction, reversal of a judgment or other adjudicated decisions or whether the action is on appeal, and reinstatement of a license.

(c) The subject will receive a copy of all reports, including revisions and corrections to the report.

(d) Upon receipt of a report, the subject—

(1) Can accept the report as written;

(2) May provide a statement to the HIPDB that will be permanently appended to the report, either directly or through a designated representative (The HIPDB will distribute the statement to queriers, where identifiable, and to the reporting entity and the subject of the report. The HIPDB will not edit the statement; only the subject can, upon request, make changes to the statement); or

(3) May follow the dispute process in accordance with § 61.15.

§ 61.7 Reporting licensure actions taken by Federal or State licensing and certification agencies.

(a) *What actions must be reported.* Federal and State licensing and certification agencies must report to the HIPDB the following final adverse actions that are taken against a health care provider, supplier, or practitioner (regardless of whether the final adverse action is the subject of a pending appeal)—

(1) Formal or official actions, such as revocation or suspension of a license or certification agreement or contract for participation in Federal or State health care programs (and the length of any such suspension), reprimand, censure or probation;

(2) Any other loss of the license or loss of the certification agreement or contract for participation in Federal or

State health care programs, or the right to apply for, or renew, a license or certification agreement or contract of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewal (excluding nonrenewals due to nonpayment of fees, retirement, or change to inactive status), or otherwise; and

(3) Any other negative action or finding by such Federal or State agency that is publicly available information.

(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Name;

(ii) Social Security Number;

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable;

(iii) National Provider Identifier (NPI), when issued by the Health Care Financing Administration (HCFA);

(iv) Name of each professional school attended and year of graduation; and

(v) With respect to the State professional license (including professional certification and registration) on which the reported action was taken, the license number, the field of licensure, and the name of the State or territory in which the license is held.

(3) If the subject is an organization, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN), or Social Security Number when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI, when issued by HCFA;

(v) Type of organization; and

(vi) With respect to the State license (including certification and registration) on which the reported action was taken, the license and the name of the State or territory in which the license is held.

(4) For all subjects:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Classification of the action taken in accordance with a reporting code adopted by the Secretary, and the amount of any monetary penalty resulting from the reported action;

(iv) The date the action was taken, its effective date and duration;

(v) If the action is on appeal;

(vi) Name of the agency taking the action;

(vii) Name and address of the reporting entity; and

(viii) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Other name (s) used;

(ii) Other address;

(iii) FEIN, when used by the individual as a TIN; and

(iv) If deceased, date of death.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) Other State professional license number(s), field(s) of licensure, and the name(s) of the State or territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is an organization, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Number(s) used;

(iv) Other NPI(s) used;

(v) Other State license number(s) and the name(s) of the State or territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all subjects:

(i) If the subject will be automatically reinstated; and

(ii) The date of appeal, if any.

(d) *Sanctions for failure to report.* The Secretary will provide for a publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this section.

§ 61.8 Reporting Federal or State criminal convictions related to the delivery of a health care item or service.

(a) *Who must report.* Federal and State prosecutors must report criminal convictions against health care providers, suppliers, and practitioners related to the delivery of a health care item or service (regardless of whether the conviction is the subject of a pending appeal).

(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Name;

(ii) Social Security Number;

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable; and

(iii) National Provider Identifier (NPI), when issued by the Health Care Financing Administration (HCFA).

(3) If the subject is an organization, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN), or Social Security Number when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI, when issued by HCFA; and

(v) Type of organization.

(4) For all subjects:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Name and location of court or judicial venue in which the action was taken;

(iv) Docket or court file number;

(v) Type of action taken;

(vi) Statutory offense(s) and count(s);

(vii) Name of primary prosecuting agency (or the plaintiff in civil actions);

(viii) Date of sentence or judgment;

(ix) Length of incarceration, detention, probation, community service or suspended sentence;

(x) Amounts of any monetary judgment, penalty, fine, assessment or restitution;

(xi) Other sentence, judgment or orders;

(xii) If the action is on appeal;

(xiii) Name and address of the reporting entity; and

(xiv) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Other name (s) used;

(ii) Other address; and

(iii) FEIN, when used by the individual as a TIN.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) State professional license (including professional certification and registration) number(s), field(s) of licensure, and the name(s) of the State or territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is an organization, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Number(s) used;

(iv) Other NPI(s) used;

(v) State license (including certification and registration) number(s) and the name(s) of the State or territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all subjects:

(i) Prosecuting agency's case number;

(ii) Investigative agencies involved;

(iii) Investigative agencies case of file number(s); and

(iv) The date of appeal, if any.

(d) *Sanctions for failure to report.* The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on criminal convictions as required to be reported under this section.

§ 61.9 Reporting civil judgments related to the delivery of a health care item or service.

(a) *Who must report.* Federal and State attorneys and health plans must report civil judgments against health care providers, suppliers, or practitioners related to the delivery of a health care item or service (regardless of whether the civil judgment is the subject of a pending appeal). If a Government agency is party to a multi-claimant civil judgment, it must assume the responsibility for reporting the entire action, including all amounts awarded to all the claimants, both public and private. If there is no Government agency as a party, but there are multiple health plans as claimants, the health plan which receives the largest award must be responsible for reporting the total action for all parties.

(b) Entities described in paragraph (a) of this section must report the information as required in § 61.8(b).

(c) Entities described in paragraph (a) of this section should report, if known the information as described in § 61.8(c).

(d) *Sanctions for failure to report.* Any health plan that fails to report information on a civil judgment required to be reported under this section will be subject to a civil money penalty (CMP) of not more than $25,000 for each such adverse action not reported. Such penalty will be imposed and collected in the same manner as CMPs under subsection (a) of section 1128A of the Act. The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on civil judgments as required to be reported under this section.

§ 61.10 Reporting exclusions from participation in Federal or State health care programs.

(a) *Who must report.* Federal and State Government agencies must report health care providers, suppliers, or practitioners excluded from participating in Federal or State health care programs, including exclusions that were made in a matter in which there was also a settlement that is not reported because no findings or admissions of liability have been made (regardless of whether the exclusion is the subject of a pending appeal) .

(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Name;

(ii) Social Security Number;

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable; and

(iii) National Provider Identifier (NPI), when issued by the Health Care Financing Administration (HCFA).

(3) If the subject is an organization, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN), or Social Security Number when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI, when issued by HCFA; and

(v) Type of organization.

(4) For all subjects:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Classification of the action taken in accordance with a reporting code adopted by the Secretary, and the amount of any monetary penalty resulting from the reported action;

(iv) The date the action was taken, its effective date and duration;

(v) If the action is on appeal;

(vi) Name of the agency taking the action;

(vii) Name and address of the reporting entity; and

(viii) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Other name(s) used;

(ii) Other address;

(iii) FEIN, when used by the individual as a TIN;

(iv) Name of each professional school attended and year of graduation; and

(v) If deceased, date of death.

(2) If the subject is an individual, that *individual's* employment or professional identifiers, including:

(i) State professional license (including professional registration and certification) number(s), field(s) of licensure, and the name(s) of the State or Territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is an organization, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Number(s) used;

(iv) Other NPI(s) used;

(v) State license (including registration and certification) number(s) and the name(s) of the State or territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all subjects:

(i) If the subject will be automatically reinstated; and

(ii) The date of appeal, if any.

(d) *Sanctions for failure to report.* The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on exclusions or debarments as required to be reported under this section.

§ 61.11 Reporting other adjudicated actions or decisions.

(a) *Who must report.* Federal and State governmental agencies and health plans must report other adjudicated actions or decisions as defined in § 61.3 related to the delivery, payment or provision of a health care item or service against health care providers, suppliers, and practitioners (regardless of whether the other adjudicated action or decision is subject to a pending appeal).

(b) Entities described in paragraph (a) of this section must report the information as required in § 61.10(b).

(c) Entities described in paragraph (a) of this section should report, if known the information as described in § 61.10(c).

(d) *Sanctions for failure to report.* Any health plan that fails to report information on an other adjudicated action or decision required to be reported under this section will be subject to a civil money penalty (CMP) of not more than $25,000 for each such action not reported. Such penalty will be imposed and collected in the same manner as CMPs under subsection (a) of section 1128A of the Act. The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on other adjudicated actions as required to be reported under this section.

Subpart C—Disclosure of Information by the Healthcare Integrity and Protection Data Bank

§ 61.12 Requesting information from the Healthcare Integrity and Protection Data Bank.

(a) *Who may request information and what information may be available.* Information in the HIPDB will be available, upon request, to the following persons or entities, or their authorized agents—

(1) Federal and State Government agencies;

(2) Health plans;

(3) A health care practitioner, provider, or supplier requesting information concerning himself, herself or itself; and

(4) A person or entity requesting statistical information, which does not permit identification of any individual or entity. (For example, researchers can use statistical information to identify the total number of practitioners excluded from the Medicare and Medicaid programs. Similarly, health plans can use statistical information to develop outcome measures in their efforts to monitor and improve quality care.)

(b) *Procedures for obtaining HIPDB information.* Eligible individuals and entities may obtain information from the HIPDB by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fees set forth in § 61.13. The HIPDB will comply with the Department's principles of fair information practice by providing each subject of a report with a copy when the report is entered into the HIPDB.

(c) *Information provided in response to self-queries.* (1) At the time subjects request information as part of a "self-query," the subject will receive—

(i) Any report(s) in the HIPDB specific to them; and

(ii) A disclosure history from the HIPDB of the name(s) of any entity (or entities) that have previously received the report(s).

(2) The disclosure history will be restricted in accordance with the Privacy Act regulations set forth in 45 CFR part 5b.

§ 61.13 Fees applicable to requests for information.

(a) *Policy on fees.* The fees described in this section apply to all requests for information from the HIPDB, except requests from Federal agencies. However, for purposes of verification and dispute resolution at the time the report is accepted, the HIPDB will provide a copy—at the time a report has been submitted automatically, without a request and free of charge—of every report to the health care provider, supplier or practitioner who is the subject of the report. For the same purpose, the Department will provide a copy of the report—at the time a report has been submitted automatically, without a request and free of charge—to the reporter that submitted it. The fees are authorized by section 1128E(d)(2) of the Act, and they reflect the full costs of operating the database. The actual fees will be announced by the Secretary in periodic notices in the **Federal Register**.

(b) *Criteria for determining the fee.* The amount of each fee will be determined based on the following criteria —

(1) Direct and indirect personnel costs;

(2) Physical overhead, consulting, and other indirect costs including rent and depreciation on land, buildings and equipment;

(3) Agency management and supervisory costs;

(4) Costs of enforcement, research and establishment of regulations and guidance;

(5) Use of electronic data processing equipment to collect and maintain information—the actual cost of the service, including computer search time, runs and printouts; and

(6) Any other direct or indirect costs related to the provision of services.

(c) *Assessing and collecting fees.* The Secretary will announce through periodic notice in the **Federal Register** the method of payment of fees. In determining these methods, the Secretary will consider efficiency, effectiveness and convenience for users and for the Department. Methods may include credit card, electronic funds transfer and other methods of electronic payment.

§ 61.14 Confidentiality of Healthcare Integrity and Protection Data Bank information.

Information reported to the HIPDB is considered confidential and will not be disclosed outside the Department, except as specified in §§ 61.12 and 61.15. Persons and entities receiving information from the HIPDB, either directly or from another party, must use it solely with respect to the purpose for which it was provided. Nothing in this section will prevent the disclosure of information by a party from its own files used to create such reports where disclosure is otherwise authorized under applicable State or Federal law.

§ 61.15 How to dispute the accuracy of Healthcare Integrity and Protection Data Bank information.

(a) *Who may dispute the HIPDB information.* The HIPDB will routinely mail or transmit electronically to the subject a copy of the report filed in the HIPDB. The subject of the report or a designated representative may dispute the accuracy of a report concerning himself, herself or itself within 60 calendar days of receipt of the report.

(b) *Procedures for disputing a report with the reporting entity.* If the subject disagrees with the reported information, the subject must request in writing that the HIPDB enter the report into "disputed status."

(2) The HIPDB will send the report, with a notation that the report has been placed in "disputed status," to queriers (where identifiable), the reporting entity and the subject of the report.

(3) The subject must attempt to enter into discussion with the reporting entity to resolve the dispute. If the reporting entity revises the information originally submitted to the HIPDB, the HIPDB will notify the subject and all entities to whom reports have been sent that the original information has been revised. If the reporting entity does not revise the reported information, or does not respond to the subject within 60 days, the subject may request that the Secretary review the report for accuracy. The Secretary will decide whether to correct the report within 30 days of the request. This time frame may be extended for good cause. The subject also may provide a statement to the HIPDB, either directly or through a designated representative, that will permanently append the report.

(c) *Procedures for requesting a Secretarial review.* The subject must request, in writing, that the Secretary of the Department review the report for accuracy. The subject must return this request to the HIPDB along with appropriate materials that support the subject's position. The Secretary will only review the accuracy of the reported information, and will not consider the merits or appropriateness of the action or the due process that the subject received.

(2) After the review, if the Secretary—

(i) Concludes that the information is accurate and reportable to the HIPDB, the Secretary will inform the subject and the HIPDB of the determination. The Secretary will include a brief statement (Secretarial Statement) in the report that describes the basis for the decision. The report will be removed from "disputed status." The HIPDB will distribute the corrected report and statement(s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(ii) Concludes that the information contained in the report is inaccurate, the Secretary will inform the subject of the determination and direct the HIPDB or the reporting entity to revise the report. The Secretary will include a brief statement (Secretarial Statement) in the report describing the findings. The HIPDB will distribute the corrected report and statement (s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(iii) Determines that the disputed issues are outside the scope of the Department's review, the Secretary will inform the subject and the HIPDB of the determination. The Secretary will include a brief statement (Secretarial Statement) in the report describing the findings. The report will be removed from "disputed status." The HIPDB will distribute the report and the statement(s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(iv) Determines that the adverse action was not reportable and therefore should be removed from the HIPDB, the Secretary will inform the subject and direct the HIPDB to void the report. The HIPDB will distribute a notice to previous queriers (where identifiable), the reporting entity and the subject of the report that the report has been voided.

§ 61.16 Immunity.

Individuals, entities or their authorized agents and the HIPDB shall not be held liable in any civil action filed by the subject of a report unless the individual, entity or authorized agent submitting the report has actual knowledge of the falsity of the information contained in the report.

Dated: May 4, 1999.

June Gibbs Brown,
Inspector General.

Approved: May 21, 1999.

Donna E. Shalala,
Secretary.

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federal register

Tuesday
October 26, 1999

Part V

The President

Proclamation 7243—National Day of Concern About Young People and Gun Violence, 1999

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64

SS

2
0
6

OC

26

99

MI

Federal F
Vol. 64, 1
Tuesday,

Title 3–

The Pr

Federal Register
Vol. 64, No. 206
Tuesday, October 26, 1999

Presidential Documents

Title 3—

The President

Proclamation 7243 of October 21, 1999

National Day of Concern About Young People and Gun Violence, 1999

By the President of the United States of America

A Proclamation

Events of the past year have dramatically demonstrated the continuing need for a National Day of Concern About Young People and Gun Violence. In communities across our country, we saw young lives cut short by gunfire. We watched, horrified, as the same scene played out repeatedly in classrooms, school yards, and places of worship. Out of cities like Fort Worth, Texas; Conyers, Georgia; Granada Hills, California; and Littleton, Colorado, came the images that have become painfully familiar—racing ambulances, terrified children, grieving families. As a national community, we shared a sense of devastating loss too immediate to comprehend. Behind these headlines, every day in our Nation 12 young people die as a result of gun violence.

In response to this disturbing cycle, my Administration has taken comprehensive action against youth violence. Last October, we held the first-ever White House Conference on School Safety, where I launched a new initiative to increase the number of safety officers in schools and unveiled a new plan to help schools respond to violence. After the tragedy in Littleton, we held a Summit on Youth Violence at which we launched a national campaign to end youth violence.

Earlier this month, I established the White House Council on Youth Violence to ensure the effective coordination of the many agencies and programs of the Federal Government that address youth violence issues. In addition, we have selected 54 communities to receive more than $100 million in Safe Schools/Healthy Students grants in an effort to find and fund the best ideas to reduce youth violence through community-based collaborative efforts. These funds will allow communities to implement important measures such as hiring more security personnel, installing security equipment, and improving student mental health services.

I have also called upon the Congress to do its part by passing a juvenile crime bill that closes the dangerous gun show loophole, requires child safety locks for guns, and bans the importation of large-capacity ammunition clips. I will continue to fight hard to win passage of these commonsense measures to keep guns out of the wrong hands.

As we observe this year's National Day of Concern About Young People and Gun Violence, I encourage every student in America to sign a Student Pledge Against Gun Violence, a solemn oath never to bring a gun to school and never to use a gun to settle a dispute. More than one million students signed the pledge last year, and I hope that many more will participate this year. I also urge all Americans to make their voices heard and support efforts to reduce gun violence. We need every sector of our society—families, educators, communities, businesses, religious leaders, policymakers, and members of law enforcement—to join together in this crusade to end the cycle of violence and create a brighter, safer future for our children.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do herebyproclaim October 21, 1999, as a National Day of Concern About Young People and Gun Violence. On this day, I call upon all Americans to commit themselves anew to helping our young people avoid violence, to setting a good example, and to restoring our schools and neighborhoods as safe havens for learning and recreation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of October, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J Clinton

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Federal Register

Vol. 64, No. 206

Tuesday, October 26, 1999

CUSTOMER SERVICE AND INFORMATION

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Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
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Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

53179–53580	1
53581–53882	4
53883–54198	5
54199–54498	6
54499–54758	7
54759–55114	8
55115–55404	12
55405–55614	13
55615–55808	14
55809–56130	15
56131–56250	18
56251–56398	19
56399–56668	20
56669–56944	21
56945–57360	22
57361–57548	25
57549–57768	26

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
4865 (*See* Memorandum of April 16, 1999)	53883
4865 (*See* Memorandum of September 24, 1999)	55809
6763 (See Proclamation 7235)	55611
7227	53877
7228	54193
7229	54195
7230	54197
7231	54755
7232	54757
7233	54759
7234	55405
7235	55611
7236	55613
7237	55615
7238	55617
7239	55619
7240	56393
7241	56397
7242	56665
7243	57765
Executive Orders:	
11145 (Amended by EO 13138)	53879
11183 (Amended by EO 13138)	53879
11287 (Amended by EO 13138)	53879
12131 (Amended by EO 13138)	53879
12196 (Amended by EO 13138)	53879
12216 (Amended by EO 13138)	53879
12345 (Amended by EO 13138)	53879
12367 (Amended by EO 13138)	53879
12382 (Amended by EO 13138)	53879
12473 (Amended by EO 13140)	55115
12484 (See EO 13140	55115
12550 (See EO 13140)	55115
12586 (See EO 13140)	55115
12708 (See EO 13140)	55115
12767 (See EO 13140)	55115
12852 (Revoked by EO 13138)	53879
12871 (Amended by EO 13138)	53879
12876 (Amended by EO 13138)	53879
12882 (Amended by EO 13138)	53879
12888 (See EO 13140)	55115
12900 (Amended by EO 13138)	53879
12905 (Amended by EO 13138)	53879
12936 (See EO 13140)	55115
12960 (See EO 13140)	55115
12961 (Revoked by EO 13138)	53879
12978 (See Notice of October 19, 1999)	56667
12994 (Amended by EO 13138)	53879
13010 (Revoked in part by EO 13138)	53879
13017 (Revoked by EO 13138)	53879
13021 (Amended by EO 13138)	53879
13037 (Revoked by EO 13138)	53879
13038 (Revoked by EO 13138)	53879
13050 (Revoked by EO 13138)	53879
13062 (Superseded in part by EO 13138)	53879
13086 (See EO 13140)	55115
13115 (Amended by EO 13138)	53879
13138	53879
13139	54175
13140	55115
Administrative Orders:	
Memorandums:	
April 16, 1999	53883
September 24, 1999	55809
Notices:	
Notice of October 19, 1999	56667
Presidential Determinations:	
No. 99–38 of September 21, 1999	53573
No. 99–39 of September 21, 1999	53575
No. 99–40 of September 21, 1999	53577
No. 99–41 of	

September 22,
1999 53579
No. 99–42 of
September 29,
1999 54499
No. 99–43 of
September 30,
1999 54501
No. 99–44 of
September 30,
1999 54503
No. 99–45 of
September 30,
1999 53505

5 CFR

532 53179
831 53581
842 53581
870 54761
1201 54507

7 CFR

56 56945
210 55407
215 55407
220 55407
235 55407
245 55407
246 56669
301 .... 55811, 56948
735 54508
915 53181
923 53885
944 53181
966 57361
984 56131
997 56133
998 56133
999 56133
1000 53885
1001 53885
1002 53885
1004 53885
1005 53885
1006 53885
1007 53885
1012 53885
1013 53885
1030 53885
1032 53885
1033 53885
1036 53885
1040 53885
1044 53885
1046 53885
1049 53885
1050 53885
1064 53885
1065 53885
1068 53885
1076 53885
1079 53885
1106 53885
1124 53885
1126 53885
1131 53885
1134 53885
1135 53885
1137 53885
1138 53885
1139 53885
1755 53886
2003 56399
3570 56399

Proposed Rules:
46 57405
932 57597

8 CFR

3 56135

Proposed Rules:
Ch. 1 54794

9 CFR

3 56142
77 56399
94 .... 55812, 55813
303 56400
304 56400
307 56400
308 56400
312 56400
314 56400
317 53186
327 56400
331 56400
350 56400
381 .... 53186, 56400
416 56400

10 CFR

20 .... 54543, 55524
50 53582
72 .... 53582, 56114
431 54114
600 56418

Proposed Rules:
2 55176
20 56274
50 .... 53270, 56476
63 57409

11 CFR

110 55125

Proposed Rules:
100 55440
102 55440
104 55440

12 CFR

4 56949
204 53617
211 56949
262 53188
347 56949
602 54511
612 55621
614 55621
615 56675
618 55621
701 .... 56953, 57363
703 57363
704 57363
709 57363
712 57363
713 57363
741 56148
790 57363
791 57363
792 57363
910 55125

Proposed Rules:
202 57409
205 57409
213 57409
226 57409
230 57409
714 55866
724 55871
745 55871
1750 56274

13 CFR

121 57366
125 57366

Proposed Rules:
121 .... 55873, 57188

14 CFR

25 54761
36 55598
39 .... 53189, 53191, 53193, 53620, 53621, 53623, 53625, 54199, 54200, 54202, 54512, 54513, 54515, 54517, 54518, 54763, 54767, 54769, 54770, 54773, 54774, 55407, 55409, 55411, 55413, 55414, 55416, 55621, 55624, 55815, 56151, 56158, 56158, 56159, 56161, 56163, 56420, 56422, 56424, 56426, 56957, 56959, 56960, 56962, 56963, 57549, 57551, 575553,, 57555, 57556
71 .... 53627, 53887, 53888, 53889, 53890, 53891, 53892, 53893, 53894, 53895, 53896, 53898, 53899, 54203, 54204, 54205, 54206, 55131, 55815, 55816, 55817, 55818, 55819, 55820, 56251, 56428, 56429, 56676, 57557, 57558
93 53558
97 .... 55132, 55133, 55135, 57555, 57560, 57562

Proposed Rules:
Ch. 1 56275
11 56708
39 .... 53275, 53951, 53953, 54227, 54229, 54230, 54232, 54234, 54237, 54239, 54240, 54242, 54246, 54248, 54249, 54580, 54582, 54584, 54587, 54589, 54591, 54594, 54596, 54598. 54795, 54797, 54799, 54801, 54804, 54808, 54811, 54815, 54818, 54822, 54826, 54829, 54833, 55177, 55181, 55184, 55188, 55191, 55195, 55196, 55197, 55200, 55204, 55207, 55211, 55440, 55636, 55638, 55640, 55642, 55644, 56276, 56279, 56281, 56709, 56712, 56715, 57409, 57600, 57602, 57606, 57608
71 .... 53956, 53957, 57609, 57610
91 56708
121 56708
135 56708
145 56708
193 53958
450 54448

15 CFR

774 54520
902 .... 54732, 55821
2014 56429

Proposed Rules:
30 53861
732 53854
740 53854
743 53854
748 53854
750 53854
752 53854
758 53854
762 53854
772 53854

16 CFR

241 57372

Proposed Rules:
436 57294
453 56717

17 CFR

210 53900
228 53900
229 53900
230 53900
232 56430
239 .... 53900, 56430
240 53900
249 .... 53900, 56430
259 56430
260 53900
269 56430
274 56430

Proposed Rules:
210 55648
228 55648
229 55648
240 55648

18 CFR

2 54522
153 57374
157 .... 54522, 57374
284 54522
380 .... 54522, 57374
385 .... 54522, 56172

Proposed Rules:
281 56982
385 53959

19 CFR

19 57564
24 56433
122 53627
159 56433
174 56433

20 CFR

Proposed Rules:
404 55214
422 55216
718 54966
722 54966
725 54966
726 54966
727 54966

21 CFR

Ch. II 54794
3 56441
5 56441
10 56441
20 56441
25 56454
50 .... 54180, 56441
56 56441
58 56441
101 57700
173 56172
178 53925
207 56441
310 56441
312 .... 54180, 56441
316 56441
558 53926
600 56441

601....56441
607....56441
610....56441
640....56441
660....56441
878....53927
900....53195

Proposed Rules:

5....53281
25....53281
314....53960
500....53281
510....53281
558....53281
601....53960
880....53294

22 CFR

Ch. V....54538
40....55417
42....55417
171....54538
514....53928

Proposed Rules:

194....53632

24 CFR

200....53930, 55828
203....56108
234....56108
882....53868
888....53450, 56894
902....56676
903....56844
964....56870
982....56882, 56894

Proposed Rules:

964....56890

25 CFR

516....54541

Proposed Rules:

151....55878

26 CFR

1....55137
54....57520
301....56246

Proposed Rules:

1....54836, 56246, 56718
25....56179

27 CFR

1....54776
47....55625
55....55625

Proposed Rules:

4....57413
5....57413
7....57413

28 CFR

Ch. I....54794

Proposed Rules:

571....53872

29 CFR

2590....57520
4044....55828

Proposed Rules:

2510....57611

30 CFR

202....56454
206....56454
250....53195
914....57565
924....57567
948....53200
950....53202

Proposed Rules:

250....53298
901....55878
904....56179
915....54840
916....56982
936....56983
946....54843
948....54845

32 CFR

700....56062
1800....53769

Proposed Rules:

199....56283
806....56181

33 CFR

100....53208, 53628, 55829, 55830
117....53209, 54776, 55137, 55419, 55831, 56252, 56677
165....55138, 55420
187....56965

Proposed Rules:

Ch. I....56286
20....53970
100....54847, 54849
117....55217
165....54242, 54963, 57418, 57419
175....53971
181....56287
183....56287
207....55441

34 CFR

602....56612
668....57356
674....57528
682....57528

Proposed Rules:

75....54254
614....57288

36 CFR

13....56455
1275....56678

Proposed Rules:

217....59074, 56293
219....59074, 56293

37 CFR

Proposed Rules:

1....53772
3....53772
5....53772
10....53772

38 CFR

3....54206
17....54207

Proposed Rules:

20....53302

39 CFR

776....56253

Proposed Rules:

111....54255, 57419, 57571

40 CFR

52....53210, 53931, 54559, 55139, 55141, 55421, 55831
60....57392
61....53212
62....55141
63....56173, 57572
76....55834
81....55421
180....54218, 54777, 54779, 55838, 56464, 56678, 56681, 56690, 56697
201....55141
261....56256, 56469
262....56469
268....56469
271....55142, 55153, 55629, 56173
300....53213, 53629, 56966

Proposed Rules:

2....57421
49....54851
50....57424
52....53303, 53973, 54600, 54601, 54851, 55219, 55220, 55442, 55662, 55667, 55879, 56181
76....55880
81....55442
85....56985
86....56985
122....53304
123....53304
124....53304
130....53304
131....53304
132....53632
144....57430
146....57430
147....56986
165....56918
180....56477
194....56185
197....53304
258....53976
261....55443, 55880
264....54604
271....55222, 55671
300....56992
710....56998

41 CFR

51-2....55841
51-5....55841

42 CFR

121....56650

Proposed Rules:

8....56294
57....54263
58....54263
405....57431
409....57612
410....57612
411....57612
413....57612
424....57612
447....54263
484....57612

43 CFR

1820....53213
3500....53512
3510....53512
3520....53512
3530....53512
3540....53512
3550....53512
3560....53512
3570....53512
3800....53213

Proposed Rules:

2800....55452
2880....55452
2730....57613
3800....57613
3820....57613
3830....57613
3840....57613
3850....57613

44 CFR

62....56174
64....56256
65....53931, 53933, 53936
67....53938, 53939
206....55158

Proposed Rules:

67....53980, 53982

45 CFR

96....55843
61....57740
144....57520
146....57520

Proposed Rules:

5b....57619
302....55074
303....55074
304....55074
305....55074
308....55102

46 CFR

1....53220
2....53220
4....53220
10....53220, 53230
12....53230
15....53220
27....56257
31....53220
34....53220
38....53220
52....53220
53....53220
54....53220
56....53220
57....53220
58....53220
59....53220
61....53220
63....53220
64....53220
67....53220
68....53220
69....53220
76....53220
91....53220
95....53220
98....53220
105....53220
107....53220
108....53220
109....53220
118....53220
125....53220
133....53220
147....53220
151....53220
153....53220

160....53220
161....53220
162....53220
167....53220
169....53220
177....53220
181....53220
189....53220
193....53220
197....53220
199....53220
204....54782

Proposed Rules:

5....53970
15....56720

47 CFR

Ch. I....54561, 55671
0....55161, 55425, 56269, 57585
1....53231
13....53231
20....54564
22....53231, 54564
64....53242, 53944, 54577, 55163, 55164, 56177
73....54224, 54225, 54783, 54784, 54785, 54786, 55172, 55173, 55174, 55434, 56703, 56704, 56974
80....53231
87....53231
90....53231
95....53231
97....53231
101....53231

Proposed Rules:

54....53648
61....53648
69....53648
73....53655, 54268, 54269, 54270, 55222, 55223, 55452, 55453, 56723, 56724, 56999
76....54854

48 CFR

Ch. 19....54538
1....53264
15....53264
19....53264
52....53264
201....56704
209....55632
211....55632
213....56704
214....55632
237....53447
252....55632
415....54963

Proposed Rules:

204....56724
252....56724
909....55453
970....55453
1804....54270
1812....54270
1852....54270
9903....56296

49 CFR

Ch. III....56478
1....56270
71....56705
172....54730
192....56878
544....57393
1002....53264
1003....53264
1007....53264
1011....53264
1012....53264
1014....53264
1017....53264
1018....53264
1019....53264
1021....53264
1034....53264
1039....53264
1100....53264
1101....53264
1103....53264
1104....53264
1105....53264
1113....53264
1133....53264
1139....53264
1150....53264
1151....53264
1152....53264
1177....53264
1180....53264
1184....53264

Proposed Rules:

71....55892
192....56725
195....56725
661....54855

50 CFR

17....56582, 56590, 56596
216....53269
222....55858, 55860, 57397
223....55434, 55858, 55860, 57397
226....57399
600....54786
622....57403, 57585
635....53949, 54577, 55633, 56472
648....54732, 55821, 57586, 57587
660....54786, 56177
679....53630, 53950, 54225, 54578, 54791, 54792, 55438, 55634, 55865, 56271, 56272, 56473, 56474, 56475, 57595

Proposed Rules:

17....53655, 55892, 56297, 57534, 57620
216....56298, 57010, 57026
227....56297
622....57436, 57623
648....55688
660....54272, 55689, 56479
679....53305, 56481

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 26, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Tomatoes grown in—
  - Florida; published 10-25-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - Northeastern United States fisheries—
    - Summer flounder; published 10-26-99

ENVIRONMENTAL PROTECTION AGENCY

- Air pollutants, hazardous; national emission standards:
  - Publicly owned treatment works; published 10-26-99

FEDERAL COMMUNICATIONS COMMISSION

- Organization, functions, and authority delegations:
  - Inspector General; telephone conversations interception and recording; published 10-26-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Human drugs:
  - Food labeling—
    - Soy protein and coronary heart disease; health claims; published 10-26-99

HEALTH AND HUMAN SERVICES DEPARTMENT

- Health care programs; fraud and abuse:
  - Health Insurance Portability and Accountability Act—
    - Data collection program; final adverse actions reporting; published 10-26-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

- Health care programs; fraud and abuse:
  - Health Insurance Portability and Accountability Act—
    - Data collection program; final adverse actions reporting; published 10-26-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Indiana; published 10-26-99
  - Mississippi; published 10-26-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

- Pipeline safety:
  - Pipeline personnel; qualification requirements; published 8-27-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Onions (Vidalia) grown in—
  - Georgia; comments due by 11-2-99; published 9-3-99
- Oranges and grapefruit grown in—
  - Texas; comments due by 11-1-99; published 8-31-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Plant-related quarantine, domestic:
  - Mediterranean fruit fly; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Balanced Budget Act of 1997; implementation—
    - Time-limit exemptions and employment and training programs; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT

Forest Service

- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

- Meat and poultry inspection:
  - Accurate weights, repairs, adjustments, and replacement after inspection; scale requirements; comments due by 11-1-99; published 10-1-99

AGRICULTURE DEPARTMENT

- Acquisition regulations:
  - Contracting by negotiation; part 415 reorganization; comments due by 11-1-99; published 9-30-99

COMMERCE DEPARTMENT

Export Administration Bureau

- Export administration regulations:
  - Syrian civilian passenger aircraft safety of flight; export and reexport of aircraft parts and components; license review policy; comments due by 11-1-99; published 9-16-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - West Coast States and Western Pacific fisheries—
    - West Coast salmon; comments due by 11-2-99; published 10-18-99

COMMODITY FUTURES TRADING COMMISSION

- Privacy Act; implementation; comments due by 11-1-99; published 9-30-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-1-99; published 9-30-99
  - District of Columbia; comments due by 11-1-99; published 9-30-99
- Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Tennessee; comments due by 11-1-99; published 9-30-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Chlorfenapyr; comments due by 11-1-99; published 9-1-99
  - Cymoxanil; comments due by 11-1-99; published 9-1-99
  - Difenoconazole; comments due by 11-1-99; published 9-1-99
- Solid wastes:
  - Municipal solid waste landfill permit programs; adequacy determinations—
    - Rhode Island; comments due by 11-4-99; published 10-5-99
- Superfund program:
  - Toxic chemical release reporting; community-right-to-know—
    - Lead and lead compounds; lowering of reporting thresholds; comments due by 11-1-99; published 9-21-99

FEDERAL COMMUNICATIONS COMMISSION

- Digital television stations; table of assignments:
  - Texas; comments due by 11-1-99; published 9-15-99
- Radio stations; table of assignments:
  - Arizona; comments due by 11-1-99; published 9-22-99
  - Arkansas; comments due by 11-1-99; published 9-22-99
  - Colorado; comments due by 11-1-99; published 10-6-99
  - Kansas; comments due by 11-1-99; published 9-22-99
  - Louisiana; comments due by 11-1-99; published 9-22-99
  - Pennsylvania and New York; comments due by 11-1-99; published 9-22-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Human drugs:
  - Abbreviated new drug applications; 180-day generic drug exclusivity; comments due by 11-4-99; published 8-6-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

- Alaska National Interest Lands Conservation Act; Title VIII

implementation (subsistence priority):
  Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99
Endangered and threatened species:
  Aleutian Canada goose; comments due by 11-1-99; published 8-3-99
  Findings on petitions, etc.—
    Black-tailed prairie dog; comments due by 11-3-99; published 10-4-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
  Alabama; comments due by 11-1-99; published 10-15-99

NUCLEAR REGULATORY COMMISSION
Production and utilization facilities; domestic licensing:
  Noncombustible fire barrier penetration seal materials; requirement eliminated, etc.; comments due by 11-1-99; published 8-18-99

POSTAL SERVICE
Domestic Mail Manual:
  Special services labels; barcode requirements; comments due by 11-5-99; published 10-6-99

SECURITIES AND EXCHANGE COMMISSION
Investment advisers:
  Political contributions; comments due by 11-1-99; published 8-10-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
  New Jersey; comments due by 11-1-99; published 9-1-99
Ports and waterways safety:
  Tampa Bay, FL; safety zone; comments due by 11-1-99; published 9-1-99
Regattas and marine parades:
  Puerto Rico International Cup; comments due by 11-1-99; published 8-31-99
Vessel documentation and measurement:
  Standard measurement system exemption from gross tonnage; comments due by 11-1-99; published 8-31-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
  Airbus; comments due by 11-1-99; published 10-5-99
  Aircraft Belts, Inc.; comments due by 11-1-99; published 9-1-99
  AlliedSignal Inc.; comments due by 11-3-99; published 8-5-99
  Boeing; comments due by 11-1-99; published 8-31-99
  Dowty Aerospace Propellers; comments due by 11-1-99; published 9-1-99
  Empresa Brasileira de Aeronautica S.A.; comments due by 11-1-99; published 10-1-99
  General Electric Co.; comments due by 11-2-99; published 9-3-99
  Raytheon; comments due by 11-1-99; published 9-15-99
  Rolls-Royce plc.; comments due by 11-1-99; published 8-31-99
  Short Brothers; comments due by 11-5-99; published 10-6-99
  Short Brothers and Harland Ltd.; comments due by 11-3-99; published 9-28-99
Aviation safety:
  Voluntarily submitted information; confidentiality protection; comments due by 11-4-99; published 10-5-99
Class E airspace; comments due by 11-4-99; published 9-23-99

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
  Commercial motor vehicle; definition; comments due by 11-2-99; published 9-3-99
  Small passenger-carrying commercial motor vehicles; operator requirements; comments due by 11-2-99; published 9-3-99
Transportation Equity Act for 21st Century; implementation:
  Federal lands highway program; transportation planning procedures and management systems—
    Fish and Wildlife Service and refuge roads program; comments due by 11-1-99; published 9-1-99
    Forest Service and forest highway program; comments due by 11-1-99; published 9-1-99
    Indian Affairs Bureau and Indian reservation roads program; comments due by 11-1-99; published 9-1-99
    National Park Service and park roads and parkways program; comments due by 11-1-99; published 9-1-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.J. Res. 71/P.L. 106–75

Making further continuing appropriations for the fiscal year 2000, and for other purposes. (Oct. 21, 1999; 113 Stat. 1125)

S. 323/P.L. 106–76

Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (Oct. 21, 1999; 113 Stat. 1126)

H.R. 560/P.L. 106–77

To designate the Federal building and United States courthouse located at the intersection of Comercio and San Justo Streets, in San Juan, Puerto Rico, as the "Jose V. Toledo Federal Building and United States Courthouse". (Oct. 22, 1999; 113 Stat. 1134)

H.R. 1906/P.L. 106–78

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Oct. 22, 1999; 113 Stat. 1135)

Last List October 26, 1999

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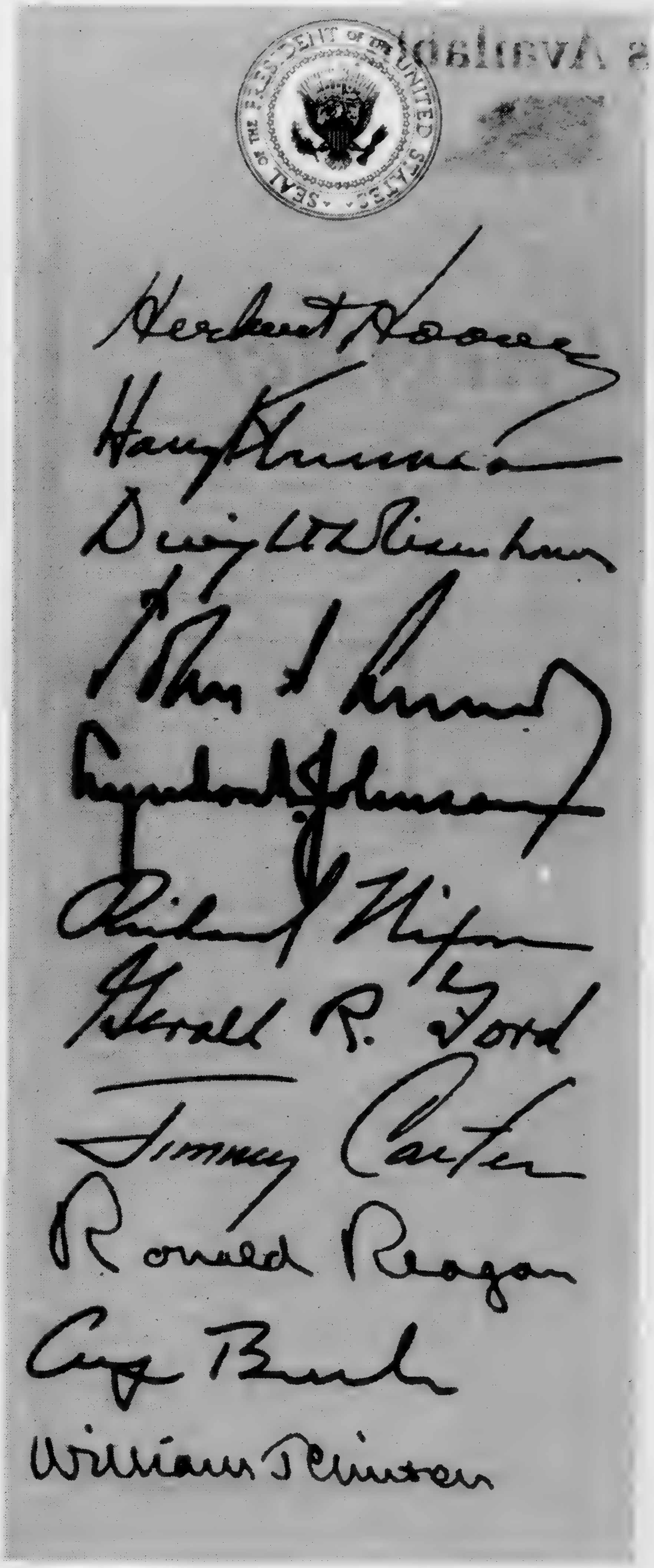
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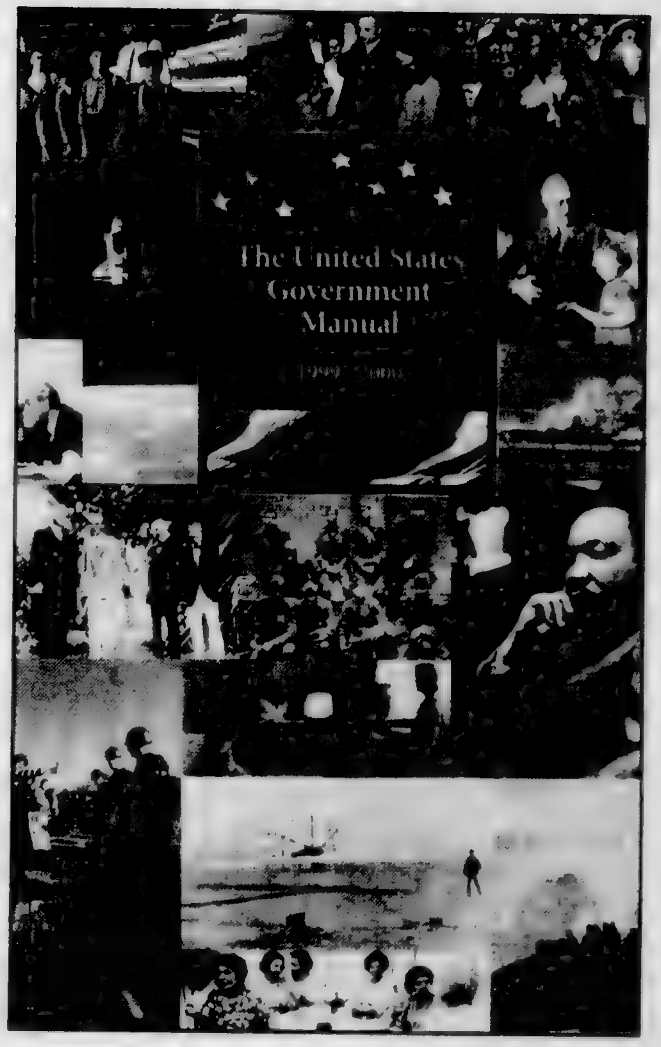

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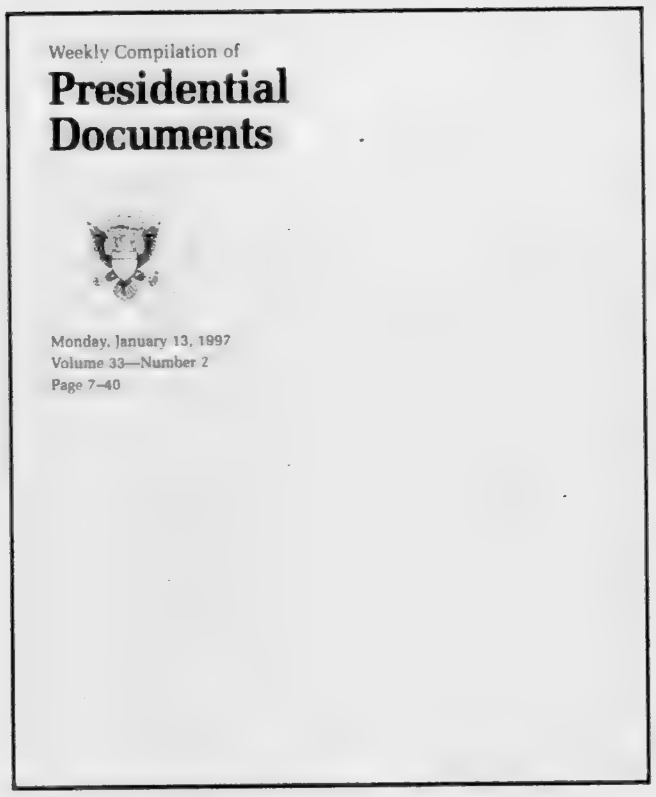

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Pages 57769–57966

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Contents

Federal Register
Vol. 64, No. 207
Wednesday, October 27, 1999

Agriculture Department
See Commodity Credit Corporation
See Food Safety and Inspection Service
See Rural Utilities Service

Air Force Department
NOTICES
Environmental statements; availability, etc.:
  Base realignment and closure—
    K.I. Sawyer Air Force Base, MI, 57869

Commerce Department
See Export Administration Bureau
See International Trade Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
  Brazil, 57865–57866
  Cambodia, 57866–57867
  Colombia, 57867
  Egypt, 57867–57868
  Uruguay, 57868–57869

Commodity Credit Corporation
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 57840

Defense Department
See Air Force Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
  Indian organizations and Indian-owned economic enterprises; utilization, 57963–57965

Education Department
RULES
Postsecondary education:
  William D. Ford Federal Direct Loan Program, 57959–57961

Emergency Oil and Gas Guaranteed Loan Board
RULES
Emergency Oil and Gas Guaranteed Loan Program; implementation, 57945–57958

Emergency Steel Guarantee Loan Board
RULES
Emergency Steel Guarantee Loan Program; implementation, 57931–57944

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
  Environmental Management Site-Specific Advisory Board—
    Savannah River Site, SC, 57869–57870

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
  Pennsylvania, 57781–57784
Air quality implementation plans; approval and promulgation; various States:
  District of Columbia, 57777–57781
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
  Tier 2 motor vehicle emission standards and gasoline sulfur control requirements, 57827–57834
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
  Pennsylvania, 57827
Air quality implementation plans; approval and promulgation; various States:
  District of Columbia, 57826–57827
Water programs:
  Clean Water Act—
    Water quality planning and management; National Pollutant Discharge Elimination System program and Federal antidegradation policy, etc., 57834–57835
NOTICES
Meetings:
  Good Neighbor Environmental Board; change of agenda, 57875–57876
Pesticide programs:
  Organophosphates; risk assessments and public participation in risk management—
    Chlorpyrifos, 57876–57877
Pesticide registration, cancellation, etc.:
  Methyl parathion, 57877–57881
Reports and guidance documents; availability, etc.:
  Food Quality Protection Act; science policy issues—
    Threshold of regulation policy; deciding whether pesticide with food use pattern requires tolerance, 57881–57884
  Particulate matter; air quality criteria, 57884–57885
Superfund; response and remedial actions, proposed settlements, etc.:
  Pulverizing Services Site, NJ, 57885

Export Administration Bureau
NOTICES
Meetings:
  Information Systems Technical Advisory Committee, 57841–57842

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
  Aerospatiale, 57787–57789
  Airbus, 57796–57802
  Boeing, 57794–57810
  Bombardier, 57798–57800
  McDonnell Douglas, 57789–57794, 57806–57825
  Pratt & Whitney, 57810–57811
NOTICES
Aviation Rulemaking Advisory Committee; task assignments, 57921–57922

Environmental statements; availability, etc.:
  Cleveland Hopkins International Airport, OH, 57922–57923
Passenger facility charges; applications, etc.:
  Natrona County International Airport, WY, 57923–57924

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
  Florida, 57837
  Illinois, 57838–57839
  Iowa, 57838
  Montana, 57836–57837
  South Dakota, 57837–57838
  Texas, 57835–57836

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 57885–57886

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
  Southeastern Hydro-Power, Inc., 57873
Environmental statements; notice of intent:
  Wyoming Interstate Co., Ltd., 57873–57874
Hydroelectric applications, 57874–57875
Applications, hearings, determinations, etc.:
  Eastern Shore Natural Gas Co., 57870
  KN Interstate Gas Transmission Co., 57870
  Natural Gas Pipeline Co. of America, 57871
  Natural Gas Pipeline Co. of America et al., 57871
  Northwest Pipeline Corp., 57871
  Oconto Electric Cooperative, 57872
  Transcontinental Gas Pipe Line Corp., 57872
  Williams Gas Pipelines Central, Inc., 57872

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
  Lebanon County, PA, 57924

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 57908–57909

Federal Reserve System
NOTICES
Banks and bank holding companies:
  Change in bank control, 57886
  Formations, acquisitions, and mergers, 57886–57887
  Permissible nonbanking activities, 57887

Federal Trade Commission
PROPOSED RULES
Privacy Act; implementation, 57825–57826
NOTICES
Privacy Act:
  Systems of records, 57887–57890

Food and Drug Administration
RULES
Mutual recognition agreements:
  U.S.-European Community—
    Pharmaceutical good manufacturing practices annex; meeting, 57776–57777
NOTICES
Agency information collection activities:
  Reporting and recordkeeping requirements, 57891–57892
  Submission for OMB review; comment request, 57892–57893
Food additive petitions:
  Ciba Specialty Chemicals Corp., 57893
Reports and guidance documents; availability, etc.:
  Sprouted seeds, microbial food safety hazards reduction; and sprout production, spent irrigation water sampling and microbial testing; industry guidances, 57893–57902

Food Safety and Inspection Service
NOTICES
Meetings:
  Meat and Poultry Inspection National Advisory Committee; correction, 57840–57841

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
  Indian organizations and Indian-owned economic enterprises; utilization, 57963–57965
NOTICES
Environmental statements; notice of intent:
  Springfield, MA; Federal courthouse, 57890
Federal property management:
  Utilization and disposal—
    Excess biomedical and information technology equipment with potential Y2K defects, 57890–57891

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 57902

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 57906–57908

Interior Department
See Land Management Bureau
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
  Cold-rolled flat-rolled carbon-quality steel products from—
    Slovakia, 57842
  Industrial nitrocellulose from—
    Brazil, 57854–57857
    China, 57857–57859
    France, 57859–57862
    Germany, 57843–57845
    Japan, 57845–57847
    Korea, 57847–57850
    United Kingdom, 57842–57843, 57850–57852
    Yugoslavia, 57852–57854
  Mechanical transfer presses from—
    Japan, 57862

Polyethylene terephthalate film, sheet, and strip from—
Korea, 57862–57863
Roller chain, other than bicycle, from—
Japan, 57863–57865
Applications, hearings, determinations, etc.:
University of—
Vermont, 57865

Justice Department
See Immigration and Naturalization Service

Labor Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57908

Land Management Bureau
NOTICES
Closure of public lands:
California, 57903
Realty actions; sales, leases, etc.:
Nevada, 57903–57904

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Indian organizations and Indian-owned economic enterprises; utilization, 57963–57965

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57924–57925

National Park Service
NOTICES
Environmental statements; notice of intent:
Navajo National Monument, AZ, 57904–57905
National Register of Historic Places:
Pending nominations, 57905–57906
Reports and guidance documents; availability, etc.:
Director's Order No. 25; land protection, 57906

Nuclear Regulatory Commission
RULES
Radioactive material packaging and transportation:
Fissile material shipments and exemptions; response to comments and request for information, 57769–57774
PROPOSED RULES
Rulemaking petitions:
Union of Concerned Scientists, 57785–57787
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57909
Meetings; Sunshine Act, 57909–57910

Presidio Trust
NOTICES
Meetings, 57910

Public Health Service
See Food and Drug Administration

Reclamation Bureau
NOTICES
Meetings:
Bay-Delta Advisory Council, 57906

Rural Utilities Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57841

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Public utility holding company filings, 57910–57918

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57918–57919

Social Security Administration
RULES
Social security benefits:
Federal old age, survivors, and disability insurance—
Title II benefits under family maximum provisions; reduction in cases of dual entitlement, 57774–57776
NOTICES
Social security acquiescence rulings:
Parisi by Cooney v. Chater; dual entitlement, reduction of benefits under family maximum; rescission, 57919

State Department
NOTICES
Art objects; importation for exhibition:
Dangerous Curves: The Art of the Guitar, 57919
Painting in Focus: Nicolas Poussin's Holy Family on the Steps, 57920
Meetings:
International Telecommunication Advisory Committee et al., 57920
Organization, functions, and authority delegations:
Assistant Secretary For Educational and Cultural Affairs, 57920
Shrimp trawl fishing; sea turtle protection guidelines; certification, 57921

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Puget Sound & Pacific Railroad, 57925–57926
Railroad services abandonment:
Norfolk Southern Railway Co., 57926–57927
Soo Line Railroad Co., 57927

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
See Transportation Statistics Bureau

Transportation Statistics Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57927–57928

Treasury Department

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 57928–57929

Udall, Morris K., Scholarship and Excellence in National Environmental Policy Foundation

NOTICES

Meetings; Sunshine Act, 57929

Separate Parts In This Issue

Part II

Emergency Steel Guarantee Loan Board, 57931–57944

Part III

Emergency Oil and Gas Guaranteed Loan Board, 57945–57958

Part IV

Department of Education, 57959–57961

Part V

Department of Defense, General Services Administration, National Aeronautics and Space Administration, 57963–57965

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR
71 57765
Proposed Rules:
30 57785

13 CFR
Ch. IV 57932
Ch. V 57946

14 CFR
Proposed Rules:
39 (19 documents) 57787, 57789, 57790, 57792, 57794, 57796, 57798, 57800, 57802, 57806, 57808, 57810, 57811, 57814, 57816, 57818, 57820, 57822, 57823

16 CFR
Proposed Rules:
4 57825

20 CFR
404 57774

21 CFR
26 57776

34 CFR
685 57960

40 CFR
52 57777
62 57781
Proposed Rules:
52 57826
62 57827
80 57827
85 57827
86 57827
122 57834
123 57834
124 57834
130 57834
131 57834

47 CFR
Proposed Rules:
73 (9 documents) 57835, 57836, 57837, 57838

48 CFR
Proposed Rules:
26 57964
52 57964

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64

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Rules and Regulations

Federal Register
Vol. 64, No. 207
Wednesday, October 27, 1999

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RIN 3150–AF58

Fissile Material Shipments and Exemptions; Response to Comments and Request for Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Response to public comments and request for information.

SUMMARY: The Nuclear Regulatory Commission (NRC) published on February 10, 1997; 62 FR 5907, an emergency final rule which amended its regulations regarding the shipment of exempt quantities of fissile material and the shipment of fissile material under a general license. The NRC issued the emergency final rule without a notice of proposed rulemaking and the accompanying opportunity for public comment prior to the rule's finalization, because NRC found good cause to dispense with these steps as being impracticable and contrary to the public interest, as permitted under the Administrative Procedure Act. Notwithstanding the final status of the rule, NRC solicited public comments on the rule during a 30-day comment period following publication in accordance with the Commission's regulations. This notice contains the NRC response to public comments received on the rule. These comments essentially stated that the emergency rule, although needed for shipments with special moderators, caused an unnecessary economic burden to shippers of fissile material exempt and general licensed shipments that use water as the moderator. In order to quantify any unintended economic impact caused by the emergency rule, the NRC is requesting information on the costs of implementing the emergency final rule.

DATES: The final rule became effective February 10, 1997. Comments on the costs associated with shipments of fissile material made under the fissile material exemption and general license provisions of Part 71 are requested by January 10, 2000.

ADDRESSES: Comments on the costs associated with shipments of fissile material made under the fissile material exemption and general license provisions of Part 71 should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc..gov.

Certain documents related to the emergency final rule, including comments received by the NRC on the costs associated with shipments of fissile material made under the fissile material exemption and general license provisions of Part 71, may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for the emergency final rule.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6103, e-mail nst@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 10, 1997; 62 FR 5907, the NRC published an emergency final rule to expeditiously correct a defect in its fissile material regulations, that was discovered 5 months earlier by Babcock & Wilcox, Naval Nuclear Fuel Division (B&W). B&W, an NRC licensee, had notified the NRC by telephone on September 11, 1996, that it had discovered that the NRC and the U.S. Department of Transportation (DOT) regulations (10 CFR 71.53 and 49 CFR 173.453, respectively) on fissile exempt shipments did not provide adequate criticality safety for certain shipments of fissile material[1] (enriched uranium containing beryllium oxide.) Specifically, B&W demonstrated through calculations that a shipment, containing large amounts of an exempt concentration of enriched uranium in the presence of beryllium, intended to be shipped pursuant to the then existing 10 CFR 71.53(d), could result in a nuclear criticality.[2] B&W indicated that a beryllium oxide-enriched uranium mixture would be produced as a waste product from its processing of strategic material resulting from operations to commercially downblend weapons-usable fissile material from the former Soviet Union. B&W promptly notified the NRC of its concern, provided its calculations to the NRC, and made commitments not to make any such shipments. The NRC staff subsequently reviewed and verified B&W's calculations and determined that expeditious revisions to NRC regulations were needed to correct the deficiency because an inadvertent nuclear criticality in the public domain could involve fatalities, health effects from the resulting radiation exposures, and extensive cleanup costs.

The NRC also brought this problem immediately to the attention of the DOT and the U.S. Department of Energy (DOE). The DOT is a coregulator of fissile material shipments, and the DOE makes many shipments of fissile exempt material each year. The NRC informed the DOT of its intent to issue an emergency final rule. The DOT decided to defer any rulemaking until DOT staff could review the public comments on the NRC's emergency final rule.

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[1] Fissile is defined in 10 CFR Part 71 and 49 CFR Part 173 as: plutonium-238, plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Packages used for shipment of materials containing these radionuclides must meet specific standards and operating limits designed to preclude nuclear criticality during transport, unless excepted by specific regulations (e.g., 10 CFR 71.53 or 49 CFR 173.453).

[2] For transportation purposes, nuclear criticality means a condition in which an uncontrolled, self-sustaining and neutron-multiplying fission chain reaction occurs. Nuclear criticality is generally a concern when sufficient concentrations and masses of fissile material and neutron moderating material exist together in a favorable configuration. The neutron moderating material cannot achieve criticality by itself in any concentration or configuration. It can enhance the ability of fissile material to achieve criticality by slowing down neutrons or reflecting neutrons.

The criticality safety problem brought to NRC's attention with respect to § 71.53 caused the NRC staff to review Part 71 to determine whether any other provisions of this part might be similarly deficient. The general licenses in §§ 71.18 and 71.22 provide for criticality control by limiting the quantity of fissile material in a single package (i.e., similar to the quantity-based fissile exemptions in § 71.53). Section 71.18 (General license: Fissile material, limited quantity per package) also assigns a criticality transport index [3] (pursuant to § 71.4) to each package. These sections were found to have deficiencies comparable to those discovered in § 71.53, where there were no restrictions placed on special moderating materials (i.e., materials which would increase the number of neutrons available to cause fission as compared with ordinary water. Section 71.22 (General license: Fissile material, limited quantity, controlled shipment) had the additional deficiency of not limiting the total amount of fissile material in a conveyance. During the NRC staff's review, §§ 71.20 and 71.24, which also provide general licenses, were found to be adequate in that the moderators of concern were excluded.

Packages for shipments made in accordance with a fissile material exemption in § 71.53 or the general license in § 71.18 or § 71.22, are not required to be certified by the NRC. The intent of §§ 71.53, 71.18, and 71.22, is that any materials packaged and shipped in accordance with the limits in these sections (and the other applicable sections of 10 CFR Part 71 and 49 CFR Part 173) were inherently safe (incapable of an inadvertent criticality). The B&W analyses demonstrated that a deficiency existed in these requirements.

The safety problem uncovered by the B&W calculations, and verified by the NRC, involved quantities, geometries, and concentrations of fissile materials and moderators that could result in criticality when shipped in compliance with sections of the regulations for which criticality analyses are not required. Fissile exemptions in § 71.53 and the general licenses in §§ 71.18 and 71.22, were originally based on the assumption that water is the only moderator that might be present in fissile exempt shipments. In these cases, these rules provide inherent criticality safety without a need for shippers to perform separate analyses. However, some moderators (herein referred to as special moderating materials) can increase the number of neutrons available to cause fission as compared to ordinary water and result in the potential for criticality in shipments where these moderators are present, even though the shipments are in compliance with 10 CFR 71.53 and 49 CFR 173.453.

When the issue was identified to the NRC in September 1996, the presence of special moderating materials in significant quantities in NRC-regulated shipments of fissile exempt materials had not been anticipated. However, certain international initiatives, including efforts to reduce stockpiles of strategic weapons material by processing for commercial use, have resulted in the greater likelihood of inclusion of these materials in NRC regulated shipments. The materials proposed to be shipped by B&W resulted from such a source. B&W had been awarded a contract to process weapons-usable enriched uranium materials from the Republic of Kazakstan. The waste product of the processing, a uranium-beryllium filtercake, met the fissile exemption provisions in then existing 10 CFR 71.53(d) and 49 CFR 173.453(d). However, B&W used a computer model of the enriched uranium-beryllium oxide waste packages to demonstrate that, if the packages were loaded for shipment into a sea-land container at the regulatory fissile exempt concentration limit, adequate confidence in nuclear criticality safety would not have been provided. NRC had verified through independent analyses that the concerns raised by the B&W analysis were valid and apply to other geometries and moderating characteristics as well. To avoid inadvertent criticality, the NRC determined that it was necessary to restrict shipments of fissile material with three special moderating materials: beryllium, graphite, and deuterium.

However, the NRC concluded that limiting beryllium, graphite, and deuterium to trace quantities would not completely eliminate the possibility of criticality in fissile exempt or generally licensed shipments. There was also a need to limit the quantity of material in a single consignment (the B&W criticality model calculations were performed using 200-centimeter high infinite slab configuration). The problem of a lack of control on the total amount of fissile exempt material in an exempt shipment was originally identified during the revision process for the 1996 Edition of the International Atomic Energy Agency's (IAEA's) "Regulations for the Safe Transport of Radioactive Material," Safety Requirement No. ST–1. The problem was addressed in ST–1 by adopting a consignment limit on the amount of fissile exempt material that a shipper could transport as a private carrier (400g for Uranium-235, and 250g for other fissile material), or deliver to a common carrier for shipment. Before the emergency final rule, the NRC could not enforce a limit on the total quantity of fissile material in a common carrier shipment because the regulations did not require a transport index for each package or require shipment by exclusive use. The latter would restrict the ability to use common carriers, while requiring a transport index would negate much of the advantage gained by the exemption. Consignment limits are enforceable and represent a practical operating limit that would prevent the potentially unsafe accumulation of fissile exempt materials during shipment.

The NRC addressed these regulatory defects by issuing the emergency final rule in February 1997. The final rule amended §§ 71.18, 71.22, and 71.53 by restricting the quantity of fissile material in a shipment—if trace quantities of special moderating materials (*i.e.*, beryllium, graphite, or deuterium) were present. The final rule also restricted the quantity of fissile material shipped under a general license or exempt shipment to a consignment limit of no greater than 400 grams.

The NRC issued the emergency final rule without a notice of proposed rulemaking and opportunity for public comment prior to finalization because the Commission found good cause for dispensing with these steps as being impracticable and contrary to the public interest under the good cause tests for omitting notice and comment of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Notwithstanding the final status of the rule, the Commission solicited public comments on the final rule during a 30-day comment period following publication of the rule, in accordance with the provisions of 10 CFR 2.804(e). The Commission stated that it would publish a statement in the **Federal Register** containing an evaluation of the significant comments received and any revisions to the rule to be made as a result of the comments. The comment period ended on March 12, 1997. Following publication of the emergency rule and receipt of public comments, the NRC staff sought to study the technical issues raised by the public comments, and to perform an independent evaluation of part 71 regulations relating to the fissile material exemption and general license limits. The NRC awarded a contract to the Oak Ridge National Laboratory (ORNL). The results of the ORNL study were published by NRC in July 1998 and noticed in the **Federal Register** on August 13, 1998. This notice responds to the comments received on the rule and the results of the ORNL study.

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[3] Transport index is defined in 10 CFR Part 71 as: the dimensionless number (rounded to the next tenth) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. For a fissile material package, the transport index is considered to be the larger of two numbers: the first is for external radiation control and is calculated based on the maximum radiation level at one meter from the external surface of the package, and the second is for criticality control purposes and is calculated based on the allowable number of packages stacked together during transportation.

II. Discussion

In developing the emergency final rule, NRC staff noted that the regulatory and technical bases for the fissile exemption and general license provisions of Part 71 were internally inconsistent and not thoroughly documented. Based on these regulatory/technical bases questions and the public comments received on the rule, the NRC issued a contract to Oak Ridge National Laboratory (ORNL) to: (1) perform an independent evaluation of Part 71 regulations relating to the fissile material exemption and general license limits; (2) review the technical issues raised by public comments on the emergency final rule; (3) perform independent calculations of the minimum critical mass limits for different combinations of fissile material and moderating material; and (4) identify potential changes to the fissile material exemption and general license limits which may be warranted. The results of the ORNL study are contained in NUREG/CR–5342,[4] Assessment and Recommendations for Fissile Material Packaging Exemptions and General Licenses Within 10 CFR Part 71, issued July 1998. Publication of NUREG/CR–5342 was noticed in the **Federal Register** (63 FR 44777; August 13, 1998).

ORNL researched the historical bases for the fissile material exemption and general license regulations in Part 71 and discussed the impact of the emergency final rule's restrictions on NRC licensees. ORNL also performed calculations of k_{eff} (k-effective) for various combinations of fissile material and moderating material, including beryllium, carbon, deuterium, silicon-dioxide, and water, to verify the accuracy of minimum critical mass values. These minimum critical mass values were applied to the regulatory structure contained in the current Part 71, and revised mass limits for both the general license and exemption provisions to Part 71 were determined. ORNL concluded, and NRC staff agreed, that the restrictions imposed by the emergency final rule on shipments with special moderating material were necessary to protect public health and safety; however, the restrictions are excessive for water-moderated shipments. Based on its new k_{eff} calculations, we also agree that: (1) The mass limits in the general license and exemption provisions could be safely increased and thereby provide greater flexibility to licensees shipping fissile radioactive material; and (2) additional revisions to Part 71 were appropriate to provide greater clarification and simplification of the regulations. We believe these changes will resolve the issues raised in the public comments on the emergency final rule, and provide greater usability to these Part 71 regulations.

III. Response to Comments on the Emergency Final Rule

The NRC received eight letters commenting on the emergency final rule. Four were from NRC fuel-cycle licensees; one from a remediation and decommissioning company, one from DOE, one from the Nuclear Energy Institute (NEI); and one from a member of the public (same comments as DOE's). None of the commenters objected to the rule insofar as it imposes restrictions on the shipments of fissile material when special moderating materials (*i.e.*, beryllium, graphite, or deuterium) are present. However, all the commenters also believed that the changes to Part 71 that imposed consignment limits when special moderating materials are not used, were too restrictive and imposed an unnecessary burden on licensees. Several commenters believed that the final rule would significantly increase the number of shipments and would increase licensee costs and paperwork burdens to transport the same quantity of fissile material. Some commenters indicated that the number of shipments of fissile material involving the presence of special moderators was only a small percentage of the total number of shipments involving fissile exempt and general license material which occur each year, and that the negative aspects of the rule for all shipments were not balanced by the accompanying increase in public health and safety. Some commenters requested that the consignment limits be removed, others requested that the table after 10 CFR 71.53(a) be clarified to indicate that it applied only to shipments with special moderating material present. Overall, the commenters indicated that the final rule was excessively burdensome for a large number of shipments that do not contain special moderators and requested that further rulemaking be accomplished to address their concerns. Detailed discussion of the comments is presented below. Response to this general comment is presented first, with responses to other specific comments presented later. Copies of the comment letters are available for public inspection and copying, for a fee, at the Commission's Public Document Room, located at 2120 L Street NW. (Lower Level), Washington, DC 20003–1527.

General Comment: All eight commenters objected to the imposition of the 400-gram limit of fissile material per consignment when special moderating materials (*i.e.*, beryllium, graphite, or deuterium) are not present. The commenters stated that the 400-gram limit was unnecessarily restrictive for the majority of shipments (*i.e.*, water-moderated), and imposed a penalty on shippers for what had been considered perfectly safe controls under the old requirements without a justification being provided. Two commenters stated that this new limit would double or triple the number of separate shipments needed to transport the same amount of fissile material, and that this increase in the number of shipments of fissile material would cause a corresponding increase in probability of worker injuries and transportation accidents, and would increase licensee costs and paperwork burdens to ship the same amount of fissile material. Two commenters indicated that the rule will impose unnecessary accounting and recordkeeping requirements on licensees to assure compliance with the rule. These commenters also believe that shippers will now need to more accurately determine the concentration of fissile material present in a package to assure compliance with this rule. One commenter was concerned that these negative aspects of the rule were not balanced by the accompanying increase in public health and safety. One commenter stated that instead of globally restricting shipments which do not contain special moderating materials, the NRC should have identified a category of material descriptive of the special moderator-containing material, and restricted only that category.

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[4] Copies of NUREGS may be purchased from the Reproduction and Distribution Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee at the NRC Public Document Room, 2120 L street, NW. (Lower Level), Washington, DC.

Response: The 400-gram limit of fissile material per consignment is essential to preclude an inadvertent criticality occurring during a transportation accident involving fissile material shipments with special moderators. However, the Commission agrees with the commenters that the 400-gram limit may have caused an unintended and unnecessary economic burden to licensees whose fissile material exempt and general licensed shipments use water as the moderator because the 400-gram consignment limit may be too restrictive, in some cases. The Commission will address these unintended economic impact issues in an upcoming rulemaking currently being developed to revise Part 71 to make it compatible with the 1996 IAEA standards. This rulemaking effort will more thoroughly examine these issues, however, the Commission has not, as yet, been able to obtain specific information regarding the burden claim made by the commenters. The staff is currently seeking specific information from the commenters to quantify this burden. The NRC needs this cost/benefit data from the fissile material shipping industry to quantify the unintended impact of the emergency rule. Therefore, the Commission is taking this opportunity to explicitly request this information from the commenters, the industry and the DOE.

The Commission had imposed the 400-gram consignment limit because of the regulatory latitude given to these fissile exempt and general license shippers. Shipments of exempt quantities of fissile material under § 71.53 occur without NRC prior review or imposition of any additional requirements on the quantity of fissile material which may be placed on a conveyance. Therefore, the Commission imposed a 400-gram limit on the amount of fissile material that could be shipped in a single package. This limit was intended to ensure that a nuclear criticality accident would be precluded under highly unlikely, but theoretically conceivable, circumstances by restricting the quantity of fissile material that could be inadvertently assembled to less than one-half that of a critical mass needed for criticality to occur. These circumstances could exist when exempt quantities of fissile material, from two different shippers, wind up on the same conveyance and that conveyance is subsequently involved in an accident.

Additionally, in the emergency final rule the Commission simplified the regulations to require that control be maintained over one parameter (*e.g.*, the mass of the fissile material), rather than controlling five separate parameters (*e.g.*, the mass of fissile material, the fissile material concentration, moderation, reflection, and geometry (*i.e.*, the spatial arrangement of the fissile material, moderating material, and any reflecting material)). This was accomplished by limiting the quantity of fissile material to less than one-half of a critical mass, while using bounding assumptions for the other parameters. Therefore, the fissile material can be in any geometrical configuration or concentration, and water can be present in any density (*i.e.*, moderating effectiveness and reflection) and the fissile material still remains subcritical. Further reductions in the mass limit were imposed if nuclides other than uranium ^{235} (*e.g.*, uranium ^{233} or any isotope of plutonium) were present or if moderating materials with a hydrogen density greater than water (*i.e.*, oil or plastic) were present.

Licensees desiring to ship fissile materials in quantities that do not meet the limits of the fissile material exemption, or the general license regulations, may use other provisions of Part 71 to submit an application to the NRC for approval of the design of a transportation package to ship the fissile material (*e.g.*, Type A(F) or Type B(F) packages), or may use previously approved Type A(F) or B(F) packages. [Note, the use of a Type B(F) package would also require a licensee to have a quality assurance program in place which meets the requirements of Part 71, Subpart H.]

Taken with the 0.1 percent limit on the presence of special moderating materials (*i.e.*, beryllium, deuterium, or graphite), the final rule sought to achieve a balanced approach with relaxation of controls over concentration, moderation, and reflection, while requiring greater control on the quantity of fissile mass, and assuming that prior NRC review and approval were not obtained.

The NRC has reviewed the factors which initiated the emergency final rulemaking, the ORNL evaluation, and public comments received on the emergency final rule, and concluded that the changes imposed by the emergency final rule were clearly warranted to protect public health and safety and the environment from an accidental criticality occurring during the transport of a special class of fissile material shipments (*i.e.*, those with special moderators). Although the Commission believes that the commenters may have valid concerns with respect to the unintended burden imposed by the emergency final rule on a large number of shipments that do not use special moderators, the staff has not been able to obtain specific information regarding the burden estimates. The Commission has decided to consider an additional rulemaking revising the fissile exemptions and general license regulations of Part 71 to: (1) Address the concerns raised by public comments; (2) provide greater clarity and simplicity to these Part 71 regulations; and (3) provide increased flexibility for licensees who use these regulations. This rulemaking is scheduled to revise Part 71 to make it consistent with the IAEA transportation standards, and would be undertaken in coordination with the DOT and the Agreement States.

Specific Comments

Comment: One commenter stated that the rule will double the number of water-moderated shipments that will be needed to transport the same amount of fissile material. The commenter further stated that the increase in the number of shipments will increase the cost of shipping the material, increase the chance of injury to workers due to increased probability of loading accidents, and will increase the probability of highway accidents due to the increased number of transport vehicles on the road.

Response: The Commission agrees that there may be an increase in the number of water-moderated shipments. [See response to the general comment.] Although the staff has not been able to quantify the cost, the Commission will consider the costs for fissile material shipments in the scheduled Part 71 rulemaking as part of the regulatory analysis.

Comment: One commenter stated that the term "unpackaged material" may be inadequate or misunderstood.

Response: The Commission agrees. The term "unpackaged material" is not currently defined in Part 71. In § 71.53(a)(1), the Commission considered imposing a 15-gram limit on fissile material in an individual package. For fissile material which is not contained in discrete packages (*i.e.*, unpackaged material or bulk material), the 15-gram limit is instead applied to all of the fissile material being transported on a specific conveyance. The Commission will address this issue in a future rulemaking.

Comment: One commenter stated that changes in the emergency final rule that are not directly associated with the special moderating materials (*i.e.*, total mass per consignment), may be needed, but these should be issued only after they go through the normal rulemaking review process.

Response: As stated in the emergency final rule (at 62 FR 5910), "[t]he Commission is promulgating this emergency final rule because the problem of regulatory safety limits over quantities and concentrations of fissile material and moderators * * * is an important safety issue meriting immediate corrective action. An accidental criticality in the public domain would very likely involve fatalities, health effects from the resulting radiation, and extensive cleanup costs." Consequently, for this reason, and as described in the general comment above, the changes made to Part 71 in the emergency final rule were necessary and met the good cause test of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), to dispense with notice and prepromulgation public comment as being impracticable and contrary to the public interest.

Comment: One commenter stated that because this special moderators issue was known for more than 2 years, they failed to understand why an emergency action was needed at this time.

Response: The Commission disagrees. The NRC was unaware of the regulatory defect that existed in Part 71 until it was notified by B&W in September 1996. Once the NRC became aware of the potential to affect public health and safety and the environment, the Commission deemed that prompt action was necessary to ensure that public health and safety and the environment remained protected; and hence the emergency final rule was issued.

Comment: One commenter stated that the emergency final rule addressed only a small number of specialized shipments, the size of a large freight container, and that the final rule appeared to be too conservative for smaller packages.

Response: The Commission agrees in part. The emergency final rule was too restrictive for small packages with water as the moderator. The Commission will address this issue in a future rulemaking. Also, see response to general comment.

Comment: One commenter stated that the rulemaking failed to address the value and impact of the rule change and that the rule does not consider the type and number of shipments that have been or will be impacted.

Response: The Commission agrees in part. A separate regulatory analysis was not prepared for the final rule because of its emergency nature. However, the Commission considered the values and impacts of the final rule in the discussion entitled "Alternatives Considered" on page 5909 of the **Federal Register** notice (62 FR 5907). The value of this rule was in preventing the possibility of an accidental criticality from occurring in the public domain during the transport of fissile material. As stated earlier, an accidental criticality could result in fatalities or other adverse health effects and would require extensive cleanup efforts. The Commission did consider that a limited number of licensees possess quantities of fissile material which could be affected by this change in regulations. However, the emergency nature of this rulemaking did not allow time for the NRC to complete as thorough a review of the type and number of impacted shipments as would occur during normal rulemaking. The NRC will address this issue in a future rulemaking. The NRC staff is currently attempting to collect cost/benefit data for this rulemaking. However, the NRC staff has had difficulty in collecting this data from affected licensees and shippers, and is working to obtain the necessary information. The NRC is requesting comments on the costs associated with shipments of fissile material made under the fissile material exemption and general license provisions of Part 71 implementing the emergency final rule.

Comment: One commenter stated that the rationale for limiting the mass of special moderating material to only 0.1 percent of the fissile mass is not clear.

Response: The Commission's basis for using the 0.1 percent limit was that it was consistent with the limit contained in the 1996 IAEA standard ST–1. The NRC believed that given the emergency nature of the rulemaking and absent sufficient time to develop a national standard, the use of an international consensus technical standard was a reasonable alternative. The NRC did depart from the standard established in ST–1 by including graphite in the list of special moderating material. The Commission will continue to impose limits on the allowable fissile mass if special moderators are present; however, the Commission will solicit comment on the continued use of a consensus technical standard in a future rulemaking. This effort will be a major rulemaking which will revise Part 71 to make it compatible with the IAEA ST–1, to revise fissile material exempt and general license provisions, and to revise other Non-IAEA provisions.

Comment: One commenter stated that it is not clear from the wording of the rule whether the 0.1 percent limit applies to all of the deuterium present in a shipment or only to the quantity that exceeds the amount of naturally occurring deuterium.

Response: The Commission intended that the 0.1 percent limit apply to all of the deuterium present in a shipment because the ability of deuterium to moderate neutrons is not dependent upon whether the deuterium is natural or created via a man-made process. The NRC will clarify this ambiguity in the rule language as part of its planned revision of Part 71.

Comment: One commenter stated that it is not so much the average hydrogen density that is important as it is the moderating effect of the material. The commenter suggested replacing "average hydrogen density greater than that of water," with "moderating effect greater than that of water."

Response: The Commission agrees that moderating effectiveness is the parameter of concern. However, in the past, the concept of average hydrogen density has been substituted for moderator effectiveness, because the principal focus was on moderation by ordinary water. The NRC believes this terminology, which had been widely used, is still appropriate and did not change this approach in the emergency final rule. The NRC will address this terminology issue in a future rulemaking.

Comment: One commenter stated that the use of absolute moderator limitations was too restrictive. The commenter believes that waste shipments from remediation and decommissioning of nuclear facilities often contain incidental quantities of special moderating materials (*e.g.*, process materials, motors, charcoal filters, batteries, and pencils). The commenter suggested that the rule be revised to specify a quantitative limit only for those deformable materials that can form a homogenous or latticed mixture of fissile and moderating material. Further, intact components, blocks, or articles would be considered exempt from consideration as special moderating materials. The commenter also recommended that the NRC encourage the DOT to make equivalent or similar changes to 49 CFR Part 173.

Response: The Commission agrees that the original problem with beryllium and enriched uranium involved homogenous mixtures of these substances and that discrete articles, blocks, or components would be less effective as moderating agents. The Commission will address this issue of homogenous versus heterogeneous mixture in a future rulemaking.

IV. Request for Cost Information

As stated above, the NRC has received comments on the emergency final rule which indicated that the rule had an unintended economic impact. NRC staff has attempted to solicit information on the costs associated with implementing the emergency final rule so as to quantify the unintended impact of the emergency final rule. However, staff has not been successful in obtaining this information. Consequently, the Commission is using this opportunity to explicitly request information from the public, industry, and the DOE on the costs of shipments made under the fissile material exemption and general license provisions of Part 71 prior to the emergency rule; and those costs and/or changes in costs resulting from implementation of the emergency final rule. The Commission is requesting that comments be submitted to the NRC by January 10, 2000.

V. Conclusion

The NRC staff is in the process of developing a rulemaking plan to revise Part 71 to make it compatible with the 1996 IAEA transportation standard ST–1, as well as to include other non-IAEA amendments. The staff intends to include in this rulemaking plan, proposed revisions to the fissile material exemption and general license limits, based on the ORNL recommendations.

As stated previously, the DOT deferred any rulemaking on 49 CFR 173.453 until DOT staff could review the public comments received on the NRC's emergency final rule and review the NRC's study on the fissile exemptions contained in NUREG/CR–5342. The NRC staff is currently coordinating with the DOT the resolution of these issues and the development of the rulemaking plan for the Part 71 revisions. In addition, NRC will coordinate the rulemaking plan with the Agreement States for issues that are a matter of compatibility.

Dated at Rockville, Maryland, this 20th day of October, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary for the Commission.

[FR Doc. 99–28049 Filed 10–26–99; 8:45 am]

BILLING CODE 7590–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960–AE85

Reduction of Title II Benefits Under the Family Maximum Provisions in Cases of Dual Entitlement

AGENCY: Social Security Administration.

ACTION: Interim final rules with a request for comments.

SUMMARY: We are amending our rules concerning the family maximum provisions under title II of the Social Security Act (the Act). These rules amend how we compute the total monthly benefits payable to a family when one or more of the beneficiaries are entitled to benefits on another earnings record. In certain specific circumstances, this change to our rules will increase the amount of benefits payable to some family members entitled on the record to which the family maximum applies. These final rules adopt nationwide the holding of the U.S. Court of Appeals for the First Circuit in *Parisi by Cooney* v. *Chater.* Although we are issuing these rules as interim final rules, we are also asking for public comments on this change.

DATES: These regulations are effective October 27, 1999. To be sure your comments are considered, we must receive them by December 27, 1999.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703, sent by telefax to (410) 966–2830, sent by E-mail to "*regulations@ssa.gov,*" or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document-Bill E. Hilton, Social Insurance Specialist, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2468 or TTY (410) 966–5609; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

Section 203(a) of the Act establishes a limit, derived from a worker's primary insurance amount (PIA), on the total monthly benefits to which dependents or survivors may be entitled on the basis of one worker's earnings record (the family maximum). Under our previous regulations, the benefits of each claimant entitled on the worker's earnings record were reduced proportionally so that the total monthly benefits of those entitled on the record in one month did not exceed the family maximum. In calculating total monthly benefits, we included all benefits of the claimants who were entitled on the worker's record without considering whether the benefits were actually due or payable.

Our previous regulations were challenged in court by the child of a worker who was disabled. The worker and his dependent child, the plaintiff in this case, began receiving Social Security benefits on the worker's earnings record. The worker's spouse became entitled to retirement benefits (old-age benefits) based on her own earnings record. Under section 202(r) of the Act, she was deemed also to have applied for and become entitled to wife's benefits based on the worker's earnings record. The Social Security Administration (SSA) determined that because the monthly retirement benefits that she was entitled to receive on her own exceeded the amount of her monthly wife's benefits on the worker's earnings record, she could only receive payment for the retirement benefits payable on her own earnings record. However, SSA counted the benefits to which she was entitled on the worker's earnings record, but which were not actually paid to her, toward the monthly maximum amount of benefits payable on the worker's earnings record (the family maximum). Because the total monthly amount of the worker's disability benefits, the plaintiff's child's benefits, and the wife's benefits exceeded the monthly family maximum limit, SSA reduced the amount of the plaintiff's and the wife's monthly benefits.

In *Parisi By Cooney* v. *Chater*, 69 F.3d 614 (1st Cir., 1995), the court held that, when computing a reduction under the family maximum pursuant to section 203(a) of the Act, SSA should not include the monthly benefit that would otherwise be payable to a spouse if payment of that spouse's benefit is precluded (by section 202(k)(3)(A) of the Act), due to the spouse's dual entitlement to a higher benefit on the spouse's own earnings record. To implement the Court's ruling in the First Circuit, we issued an Acquiescence Ruling (AR) on January 13, 1997 (62 FR 1792). Under this ruling (AR 97–1(1)), which applied only to claims for benefits in the First Circuit, SSA considers only the amount of monthly dependent's or survivor's benefits actually due or payable to the dually-entitled person when determining the amount of the benefit reduction because of the family maximum. As a result of the Court's decision, we reassessed our interpretation in our prior regulations and consistent with our rules on acquiescence which were designed to restore national uniformity to our programs, we have decided to adopt the court's holdings nationwide.

Explanation of Changes

We are amending § 404.403 of our regulations by adding a new paragraph (a)(5). This new paragraph specifies that, in cases involving benefits subject to reduction for both the family maximum and dual entitlement, we consider only the amount of monthly dependent's or survivor's benefits actually due or payable to the dually-entitled person when we determine how much to reduce total monthly benefits because of the family maximum. We have included examples of how we compute benefits payable in such cases.

These changes are effective for benefits payable for months beginning October 1999.

In conjunction with the revisions we are making to adopt the holdings of the *Parisi* court nationwide, we are publishing elsewhere in today's **Federal Register** a notice rescinding AR 97–1(1).

Clarity of These Regulations

Executive Order (E.O.) 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. In addition to your substantive comments on these rules, we invite your comments on how to make these rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear.
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office *http://www.access.gpo.gov/su_docs/*aces/aces140.html. It is also available on the Internet site for SSA (i.e., SSA Online): *http://www.ssa.gov/*.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. We have determined that prior public notice and comment in this instance would be contrary to the public interest since any delay in issuing these rules as final rules would unnecessarily deprive the small number of affected beneficiaries of increased benefits. Therefore, we are issuing these regulations as interim final rules. However, even though we are issuing these rules as interim final regulations, we are requesting public comments and will issue revised rules if necessary.

For the same reasons, we also find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d).

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these interim final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998. However, as noted earlier, we invite your comments on how to make the rules easier to understand.

Regulatory Flexibility Act

We certify that these interim final regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These interim final regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: October 20, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending subpart E of part 404 of Title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart E—[Amended]

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, and 902(a)(5)).

2. We are amending § 404.403 by adding a new paragraph (a)(5) to read as follows:

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

(a) * * *

(5) When a person entitled on a worker's earnings record is also entitled to benefits on another earnings record, we consider only the amount of benefits actually due or payable on the worker's record to the dually-entitled person when determining how much to reduce total monthly benefits payable on the worker's earnings record because of the maximum. We do not include, in total benefits payable, any amount not paid because of that person's entitlement on another earnings record (see § 404.407). The effect of this provision is to permit payment of up to the full maximum benefits to other beneficiaries who are not subject to a deduction or reduction.

(See § 404.402 for other situations where we apply deductions or reductions before reducing total benefits for the maximum.)

Example 1: A wage earner, his wife and child are entitled to benefits. The wage earner's primary insurance amount is $600.00. His maximum is $900.00. Due to the maximum limit, the monthly benefits for the wife and child must be reduced to $150.00 each. Their original benefit rates are $300.00 each.

Maximum—$900.00
Subtract primary insurance amount—$600.00
Amount available for wife and child—$300.00
Divide by 2—$150.00 each for wife and child

The wife is also entitled to benefits on her own record of $120.00 monthly. This reduces her wife's benefit to $30.00. The following table illustrates this calculation.

Wife's benefit, reduced for maximum—$150.00
Subtract reduction due to dual entitlement—$120.00
Wife's benefit—$30.00

In computing the total benefits payable on the record, we disregard the $120.00 we cannot pay the wife. This allows us to increase the amount payable to the child to $270.00. The table below shows the steps in our calculation.

Amount available under maximum—$300.00
Subtract amount due wife after reduction due to entitlement to her own benefit—$30.00
Child's benefit—$270.00

Example 2: A wage earner, his wife and 2 children are entitled to benefits. The wage earner's primary insurance amount is $1,250.00. His maximum is $2,180.00. Due to the maximum limit, the monthly benefits for the wife and children must be reduced to $310.00 each. Their original rates (50 percent of the worker's benefit) are $625.00 each. The following shows the calculation.

Maximum—$2,180.00
Subtract primary insurance amount—$1,250.00
Amount available for wife and children—$930.00
Divide by 3—$310 each for wife and children

The children are also entitled to benefits on their own records. Child one is entitled to $390.00 monthly and child two is entitled to $280.00 monthly. This causes a reduction in the benefit to child one to 0.00 and the benefit to child two to $30.00. Again, the following illustrates the calculation.

Benefit payable to child 1 reduced for maximum—$310.00
Subtract reduction due to dual entitlement—$390.00
Benefit payable to child 1—$0.00
Benefit payable to child 2, reduced for maximum—$310.00
Subtract reduction for dual entitlement—$280.00
Benefit payable to child 2—$30.00

In computing the total benefits payable on the record, we consider only the benefits actually paid to the children, or $30. This allows payment of an additional amount to the wife, increasing her benefit to $625.00. This is how the calculation works.

Amount available under maximum for wife and children—$930.00
Subtract amount due children after reduction due to entitlement to their own benefits—$30.00
Amount available for wife—$900.00
Amount payable to wife (original benefit)—$625.00

Example 3: A wage earner, his wife and 4 children are entitled to benefits. The wage earner's primary insurance amount is $1,250.00. His maximum is $2,180.00. Due to the maximum limit, the monthly benefits for the wife and children must be reduced to $186.00 each. Their original rates are $625.00 each. This is how the calculation works.

Maximum—$2,180.00
Subtract primary insurance amount—$1,250.00
Amount available for wife and children—$930.00
Divide by 5—$186.00 each for wife and four children

Two children are also entitled to benefits on their own records. Child one is entitled to $390.00 monthly and child two is entitled to $280.00 monthly. This causes a reduction in the benefit to child one to $0.00 and the benefit to child two to $0.00. This calculation is as follows.

Benefit to child 1, reduced for maximum—$186.00
Subtract reduction due to dual entitlement—$390.00
Benefit payable to child 1—$0.00
Benefit to child 2, reduced for maximum—$186.00
Subtract reduction for dual entitlement—$280.00
Benefit payable to child two—$0.00

In computing the total benefits payable on the record, we disregard the $372.00 we cannot pay the children. This allows payment of an additional amount to the wife, and the two remaining children as follows:

Amount available under maximum for wife and children—$930.00
Subtract amount due child one and child two after reduction due to entitlement to their own benefits—$0.00
Amount available for wife and the other two children—$930.00
Amount payable to the wife and each of the remaining two children—$310.00

* * * * *

[FR Doc. 99–28017 Filed 10–26–99; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 26

[Docket No. 98S–1064]

Mutual Recognition of Pharmaceutical Good Manufacturing Practices Annex; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the progress of implementing the Mutual Recognition Agreement (MRA) Pharmaceutical Good Manufacturing Practices (GMP's) Annex between the United States and the European Community (EC). FDA is inviting interested persons, including industry, trade, and consumer groups.

DATES: The meeting will be held on Wednesday, December 8, 1999, from 9 a.m. to 1 p.m. Registration and requests to make an oral presentation should be received by Monday, November 22, 1999.

ADDRESSES: The meeting will be held in the Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, Rockville, MD 20857. To register and request time for an oral presentation, send or fax written material to the listed contact person.

FOR FURTHER INFORMATION CONTACT: Charles A. Gaylord, Office of International and Constituent Relations (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0909, FAX 301–443–0235.

SUPPLEMENTARY INFORMATION:

I. Background

Regulations implementing the MRA were published as a final rule in the **Federal Register** of November 6, 1998 (63 FR 60122). In the preamble to the final rule, FDA stated that it plans to hold periodic meetings with interested parties and make public summaries of key meetings held with its EU counterparts concerning implementation of the MRA (63 FR 60122 and 60127). The regulations were codified in part 26 (21 CFR part 26). FDA established Docket No. 98S–1064 to share public information concerning the implementation of part 26 (64 FR 11376, March 9, 1999). FDA has and will continue to make information concerning the implementation of the MRA and part 26 available to the public on FDA's web site at http://www.fda.gov/oia/homepage.htm (International section).

II. The Public Meeting

The December 8, 1999, meeting is the first public meeting FDA has held on the Pharmaceutical GMP's Annex to the MRA since the final rule published. The purpose of the meeting is to provide information concerning FDA activities related to the implementation of the MRA Pharmaceutical GMP's Annex (covering human and animal drug and human biological products) and to provide an opportunity to hear comments and address concerns from interested members of the public.

The meeting agenda will include: (1) FDA presentations with a summary of the progress made in the implementation of the Pharmaceutical GMP's Annex; discussion of the two-way alert system; public access to information; the process used to determine the equivalence of the regulatory systems for pharmaceutical GMP's and work plan, (2) outside presentations, and (3) panel discussion; question and answer session.

When submitting a request for time for an oral presentation at the meeting, please indicate your topic, provide a presentation outline, and identify any presentation needs (an overhead projector, slide projector, etc.). Time allowed for accepted presenters will depend on the number of presentation requests. Registration information (including name, title, firm name, address, telephone, and fax number) and requests for presentation (including topic and outline) should be submitted to the listed contact person by November 22, 1999. Space is limited, therefore, interested parties are encouraged to register early. Special accommodations due to disability should be submitted at least 7 days in advance.

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–27973 Filed 10–26–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC–2012a; FRL–6457–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Stage II Gasoline Vapor Recovery and RACT Requirements for Major Sources of VOC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the District of Columbia State Implementation Plan (SIP). These revisions amend the requirements for all major volatile organic compounds (VOC) sources to implement reasonably available control technology (RACT) in the District of Columbia. These revisions also revise Stage II gasoline vapor recovery requirements. The intended effect of this action is to approve the revisions to the District's VOC regulations because they strengthen the SIP. This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on December 13, 1999 without further notice, unless EPA receives adverse comment by November 26, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, N.E., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the SIP Revisions

On June 21, 1985, the Mayor of the District of Columbia submitted a formal revision of the District of Columbia SIP. This 1985 submittal consisted of D.C. Law 5–165, "The District of Columbia Air Pollution Control Act of 1984". This law covered a variety of air pollution control programs including RACT requirements for major sources of VOC and Stage II gasoline vapor recovery requirements.

On October 22, 1993, the District of Columbia submitted a revision to its SIP for VOC RACT to comply with the RACT fix-up and catch-up requirements of the Clean Air Act (the Act). This 1993 submittal consisted of D.C. Law 10–24, "Air Pollution Control Act of 1984 National Ambient Air Quality Standards Attainment Amendment Act of 1993". The revision consists of new regulations which require sources that emit or have the potential to emit 50 tons per year (tpy) or more of VOC in the District ozone nonattainment area to comply with the RACT requirements, as well as amendments to Title 20 District of Columbia Municipal Regulations (DCMR) Chapter 7—Volatile Organic Compounds.

On April 8, 1993, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Environmental Regulation Administration submitted a negative declaration for 25 source categories of VOC covered by control technique guideline documents (CTG) issued prior to November 15, 1990. A negative declaration is a certification that no sources exist in the District for specified source categories.

On September 4, 1997, the District of Columbia submitted a supplement to its October 22, 1993, VOC RACT SIP revision. This supplement included a negative declaration for additional categories of VOC sources covered by CTGs prior to November 15, 1990 and non-CTG major sources, to certify that no such sources are located in the District.

On December 16, 1998, the District of Columbia Department of Health submitted a revision to its SIP regarding RACT for solvent cleaning (degreasing) activities and offset lithography printing operations. Amendments to Appendix 5–1, *Test Methods for Sources of Volatile Organic Compounds* and to the definitions and abbreviations were also included in this submittal.

Portions of the June 21, 1985 and October 22, 1993 submittal have already been approved into the District's SIP. These include most of the definitions in Section 199 of Title 20 of the DCMR, the monitoring, reporting and record keeping requirements in Sections 500, 501, and 502 applicable to the VOC sources covered under *Chapter 7—Volatile Organic Compounds, and Section 710—Engraving and Plate Printing*. The deficiencies previously identified by EPA in the District's VOC RACT regulations have either been rendered moot by the submittal of a negative declaration or corrected by the District of Columbia in its October 22, 1993 submittal.

For *Section 701—Storage of Petroleum Products, Section 702—Control of VOC Leaks from Petroleum Refinery Sources* and *Section 709—Cutback Asphalt of Title 20 of the DCMR, Chapter 7—Volatile Organic Compounds,* the District decided to take no action on the deficiencies identified by EPA because the District has determined that there are no sources located in the District subject to these regulations. A negative declaration has been submitted by the District of Columbia that covers these sources categories. If new major sources in these source categories were to locate in the District, they would be subject to the SIP's more stringent provisions for New Source Review (NSR).

Chapter 5—Source Monitoring and Testing of Title 20 of the DCMR has been amended by the District of Columbia in its October 22, 1993 and December 16, 1998 submittals. The District has amended *Section 500—Records and Reports* by adding subsections 500.6 and 500.7 to address EPA's requirement that owners and operators of stationary sources must maintain written records for at least two years. The District of Columbia has also amended *Section 502—Sampling Test and Monitoring* by adding subsections 503.13, 502.17 and appendix No. 5 to address the federal requirement for specifying the applicable test methods for sources of VOC.

Title 20 of the DCMR, *Chapter 7—Volatile Organic Compounds* has been amended by the District of Columbia in their October 22, 1993 submittal. The District of Columbia amended *Section 703—Terminal Vapor Recovery—Gasoline or Volatile Organic Compounds* regarding bulk gasoline plants and bulk gasoline terminals by adding subsection 703.7 and by modifying subsections 703.1 and 703.4. The District also added subsection 703.6 regarding leaks from gasoline tank trucks and vapor collection systems.

The October 22, 1993 submittal amended requirements in *Section 705—Stage II Gasoline Vapor Recovery* that established Stage II gasoline vapor controls to be applied to any facility that dispenses more than 10,000 gallons per month or 50,000 gallons per month in the case of independent small businesses marketers. Language was also incorporated to indicate that applicability will be based upon the average monthly throughput determined for the two year period prior to November 15, 1992 and that any periods of facility inactivity would not be included. The regulation stated the average monthly throughput shall be calculated using a thirty day rolling average. Also, the term "selling" was replaced in the regulation with the term "dispensing". EPA has determined that the District of Columbia has complied with section 182 (b)(3) of the Act and is approving the revised *Section 705—Stage II Gasoline Vapor Recovery* as a revision to the District of Columbia's SIP.

The December 16, 1998 submittal amended Chapter 1 by adding and revising definitions; Chapter 5 by adding test methods for degreasing and offset lithography to Appendix 5–1, and Chapter 7 by adding new sections 708.9 through 708.12 and 716 to regulate solvent cleaning (degreasing) activities and offset lithography printing operations.

II. Final Action

EPA is approving revisions to the District of Columbia SIP submitted on June 21, 1985, October 22, 1993, and December 16, 1998. The revisions to Title 20 DCMR, *Chapter 7—Volatile Organic Compounds* consist of the District's revised Stage II gasoline vapor recovery requirements and RACT requirements for major sources of VOC.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 13, 1999 without further notice unless EPA receives adverse comment by November 26, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule. On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987)] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve amendments to the District of Columbia's VOC RACT rules and its Stage II Vapor Recovery Program must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Dated: October 5, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. In § 52.470, the entries for Chapter 1, Section 199; Chapter 5, Section 599; all of Chapter 7; and all of Chapter 9 in the "EPA Approved Regulations for the District of Columbia" table in paragraph (c) are revised. The entry for Chapter 5, Sections 500.6 is added to this table after the existing entry for Chapter 5, Sections 500.4 and 500.5. The entry for Chapter 5, Sections 502.17 is added to this table after the existing entry for Chapter 5, Sections 502.1 through 502.15. The entry for Appendices is added to this table after the revised entry for Chapter 9. The amendments read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Chapter 1—General				
* *	*	*	*	* *
Section 199	Definitions and Abbreviations	10/02/98	10/27/99 [Insert Federal Register cite]	Added/revised definitions, effective 03/15/85: condensate, dry cleaning facility, external floating roof, petroleum refinery complex, solvent recovery dryer, vapor mounted seal, waxy heavy pour crude oil effective 10/02/98: Director, volatile organic compounds
* *	*	*	*	* *
Chapter 5—Source Monitoring and Testing				
* *	*	*	*	* *
Section 500.6	Records and Reports	09/30/93	10/27/99 [Insert Federal Register cite]	
* *	*	*	*	* *
Section 502.17	Sampling Tests, and Measurements.	09/30/93	10/27/99 [Insert Federal Register cite]	
* *	*	*	*	* *
Section 599	Definitions and Abbreviations	09/30/93	10/27/99 [Insert Federal Register cite]	
* *	*	*	*	* *
Chapter 7—Volatile Organic Compounds				
Section 700	Organic Solvents	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 701.1 through 701.3	Storage of Petroleum Products	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 702	Control of VOC leaks from Petroleum Refinery Equipment.	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 703.2, 703.3	Terminal Vapor Recovery—Gasoline or VOCs.	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 703.1, 703.4 through 703.7.	Terminal Vapor Recovery—Gasoline or VOCs.	09/30/93	10/27/99 [Insert Federal Register cite].	
Section 704	Stage I—Vapor Recovery	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 705.4 through 705.14	Stage II—Gasoline Vapor Recovery.	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 705.1 through 705.3	Stage II—Gasoline Vapor Recovery.	09/30/93	10/27/99 [Insert Federal Register cite].	
Section 706	Petroleum dry Cleaners	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 707	Perchloroethylene Dry Cleaning.	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 708.1 through 708.8	Solvent Cleaning	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 708.9 through 708.12	Solvent Cleaning	10/02/98	10/27/99 [Insert Federal Register cite].	
Section 709	Asphalt Operations	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 710	Engraving and Plate Printing	03/15/85	8/4/92 57 FR 34249.	
Section 711	Pumps and Compressors	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 712	Waste Gas Disposal from Ethylene Producing Plant.	03/15/85	10/27/99 [Insert Federal Register cite].	
Section 713	Waste Gas Disposal from Blow-down Systems.	03/15/85	10/27/99 [Insert Federal Register cite].	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 715	Reasonably Available Control Technology.	09/30/93	10/27/99 [Insert Federal Register cite].	
Section 716	Offset Lithography	10/02/98	10/27/99 [Insert Federal Register cite].	
Section 799	Definitions and Abbreviations	10/02/98	10/27/99 [Insert Federal Register cite].	
*	*	*	*	*
Chapter 9—Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants				
Section 904	Oxygenated Fuels	09/30/93	1/26/95 60 FR 5134.	
Appendices				
Appendix 1	Emission Limits for Nitrogen Oxide.	03/15/85	8/28/95 60 FR 44431.	
Appendix 2	Table of Allowable Particulate Emissions from Process Sources.	03/15/85	8/28/95 60 FR 44431.	
Appendix 3	Allowable VOC Emissions Under Section 710.	03/15/85	8/28/95 60 FR 44431.	
Appendix 5	Test Methods for Sources of Volatile Organic Compounds.	10/02/98	10/27/99 [Insert Federal Register cite].	
*	*	*	*	*

3. Section 52.478 is added to read as follows:

§ 52.478 Rules and Regulations.

(a) On April 8, 1993, the District of Columbia submitted a letter to EPA declaring that there are no sources located in the District belonging to the following VOC categories:

(1) Automobile and light-duty truck manufacturing;

(2) Coating of cans, coils, paper, fabric and vinyl, metal furniture, large appliances, magnet wire, miscellaneous metal parts and products, and flatwood paneling;

(3) Storage of petroleum liquids in fixed-roof tanks and external floating-roof tanks;

(4) Bulk gasoline plants and terminals;

(5) Petroleum refinery sources;

(6) Petroleum refinery equipment leaks;

(7) Manufacture of synthesized pharmaceutical products, pneumatic rubber tires, vegetable oil, synthetic organic chemicals (fugitive VOCs and air oxidation), and high density polyethylene, polypropylene and polystyrene resins;

(8) Graphic arts systems;

(9) Storage, transportation and marketing of VOCs (fugitive VOCs from oil and gas production and natural gas and gasoline processing).

(b) On September 4, 1997, the District of Columbia submitted a letter to EPA declaring that there are no sources located in the District which belong to the following VOC categories:

(1) Coating of plastic parts (business machines and other);

(2) Aerospace;

(3) Shipbuilding and repair;

(4) Automobile refinishing;

(5) Industrial wastewater;

(6) Distillation or reactor or batch processes in the synthetic organic chemical manufacturing industry;

(7) Volatile organic storage;

(8) Wood furniture coatings;

(9) Offset lithography;

(10) Clean-up solvents.

[FR Doc. 99–26849 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA022–4089a; FRL–6456–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Pennsylvania; Control of Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the section 111(d) plan submitted by the Commonwealth of Pennsylvania for the purpose of controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills. The plan was submitted to fulfill requirements of the Clean Air Act (the Act). The Pennsylvania plan establishes emission limits for existing Kraft Pulp Mills, and provides for the implementation and enforcement of those limits.

DATES: This final rule is effective December 27, 1999 unless by November 26, 1999 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public the rule will not take effect.

ADDRESSES: Comments may be mailed to Harold A. Frankford, Office of Air Programs, Mail Code 3AP20, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania

Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108, or by e-mail at frankford.harold@epamail.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, wherever "we", "us", or "our" is used, we mean EPA. This portion of this document poses and provides responses to the following questions:

What Action is EPA Taking?
What does the plan consist of?
What EPA Administrative Requirements was Pennsylvania required to meet?
What actions did the State take to satisfy these requirements?
What is EPA's Evaluation?

What Action Is EPA Taking?

We are approving Pennsylvania's section 111(d) plan for the control of total reduced sulfur (TRS) emissions from kraft pulp mills.

What Does the Plan Consist of?

Pennsylvania's section 111(d) plan consists of the following elements:

1. Emissions Standards for five source points: recovery furnaces, lime kilns, digesters, evaporators, smelt dissolving tanks. Among the recovery furnaces, there are emissions standards for two separate designs. These standards are described in Section 129.17(a) of Pennsylvania's air quality control regulations. The standards are:

Source point	PPM (volume) dry	Condition
Recovery furnace—old construction design (without welded wall or membrane wall construction or emission-control designed air systems).	20	12 hour average—corrected to 8% oxygen by volume
Recovery furnace—new design (with both welded wall or membrane wall construction or emission-control designed air systems).	5	12 hour average—design corrected to 8% oxygen by volume
Lime kiln (a rotary or fluosolid unit used to calcine calcium carbonate into calcium oxide)	20	Never to be exceeded—corrected to 10% oxygen by volume
Digester systems (continuous or batch process for cooking wood chips in sodium hydroxide and sodium sulfide to produce cellulosic material).	5	Never to be exceeded
Multiple effect evaporator system (vapor heads, heating elements, hot wells, condensers and associated equipment used to concentrate spent pulp mill cooking liquid).	5	Never to be exceeded
Smelt dissolving tank (the vessel used to produce an aqueous solution from the molten mixture discharged from the floor of a recovery furnace).	20	Never to be exceeded

2. TRS emissions are to be monitored continuously at the recovery furnaces, digester systems, and multiple effect evaporator systems unless emissions are incinerated at 1,200°F.

3. Provisions for compliance testing: provisions are found in Pennsylvania Regulations 129.17(b), 139.13(3) & (4), 139.15, 139.102(3), and 139.108 (except for 1994 amendment—parenthetical expression at end of § 139.108(1)). These provisions cross-reference EPA Methods 16, 16A and 16B found in 40 CFR part 60, Appendix A. (Last revision: May 20, 1986 (51 FR 18545) for emissions monitoring, February 14, 1990 (55 FR 5212) for test methods and procedures.)

4. Compliance schedule: All sources except for new source recovery furnaces were to be in final compliance with Section 129.17(a) by May 7, 1991. All new source recovery furnaces were to be in final compliance with Section 129.17(a) by May 7, 1994.

5. Identification of kraft pulp mills subject to this plan: Pennsylvania has identified three sources which are subject to the plan's provisions:

Appleton Papers—Blair County
P.H. Gladfelter—York County
Penntech Papers—Elk County

6. Expected reduction in TRS Emissions: Pennsylvania estimates that TRS emissions from the three kraft pulp mills totaled about 640 tons per year. Pennsylvania further states that the requirements of the State TRS regulations would reduce TRS emissions by about 80% (640 tons/year), thus reducing total TRS emissions to about 120 tons per year.

What EPA Administrative Requirements Was Pennsylvania Required To Meet?

Public Hearings, as per 40 CFR 60.23(d)

Submittal by designated official, as per 40 CFR 60.23(a)(2)

Evidence of legal authority, as per 40 CFR 60.26

What Actions Did the State Take To Satisfy These Requirements?

1. Hearing and Submittal Requirements

Original submittal:
- Public Hearings held: 7/24/97
- Submitted by designated official: 7/19/88

Revision No. 1:
- Public Hearings held: 9/21/89, 9/25/89, 9/27/89
- Submitted by designated official: 1/11/91

Revision No. 2:
- Public Hearings held: 7/25/90, 7/30/90, 8/1/90
- Submitted by designated official: 8/15/91

2. Evidence of Legal Authority

Pennsylvania cites Section 5 of the Pennsylvania Air Pollution Control Act (35 P.S. § 4005).

What Is EPA's Evaluation?

Prior to Pennsylvania's July 19, 1988 formal submittal, we evaluated a draft submittal dated December 31, 1985 under the parallel processing procedures. In a notice of proposed rulemaking (NPR) published on September 4, 1987 (52 FR 33605), we announced that we would approve Section 129.17 if Pennsylvania's rules establish a 12-hour averaging limit which is consistent with the requirements of 40 CFR part 60. During the public comment period, we had received comments indicating that Pennsylvania's proposed standard for lime kilns had not contained a 10% correction factor for oxygen by volume as allowed by 40 CFR part 60, Appendix B (the new source performance standard for kraft pulp mills).

The 1991 provisions of Section 129.17 and Chapter 139 incorporate the revisions suggested by the commenters of EPA's parallel process NPR. Since Pennsylvania's current version of Section 129.17 and Chapter 139 differs than that on which our proposal action was based, we are evaluating Pennsylvania current TRS requirements in a direct final rulemaking action and concurrent proposed rulemaking action.

We have determined that Pennsylvania's current limits for the various individual process facilities listed in Section 129.17(a) are in compliance with EPA guidelines except for the smelt dissolving tanks. Pennsylvania's standard for smelt dissolving tanks is 20 ppm, while the NSPS limit is 16 ppm. Nevertheless, EPA considers Pennsylvania's 20 ppm limit to be a reasonable limit for existing sources.

Section 129.17(b)(3) allows Pennsylvania to use data from alternate monitoring systems in order to determine compliance with the applicable emissions standards set forth in Section 129.17(a). According to Pennsylvania's November 7, 1987 proposed rulemaking package, this provision was meant to provide the targeted sources with flexibility to obtain compliance. We do not interpret this provision as giving Pennsylvania the discretion to approve an alternative monitoring system for the targeted sources. Rather, we interpret the State's discretion as being limited to the data obtained from alternative systems prescribed in Chapter 139. Therefore, we have determined that the provision set forth in Section 129.17(b)(3) meets the applicable Agency requirements. However, the use of any alternate monitoring system other than that which is prescribed in Chapter 139 of Pennsylvania's regulations must be approved by both the Pennsylvania Department of Environmental Protection (PADEP) and EPA.

II. Final Action

Based upon the rationale discussed above and in further detail in the Technical Support Document (TSD) associated with this action, we are approving the Commonwealth of Pennsylvania's Kraft Pulp Mill 111(d) plan for the control of TRS emissions from affected facilities. Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** portion of this document.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve Pennsylvania's Section 111(d) plan for controlling TRS emissions from kraft pulp mills if adverse comments are filed. This rule will be effective on December 27, 1999 without further notice unless we receive adverse comment by November 26, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule. On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987)] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because approvals under section 111(d) of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning section 111(d) plans on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Pennsylvania's section 111(d) plan controlling TRS emissions from existing kraft pulp mills may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Total reduced sulfur.

Dated: September 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, EPA Region III.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

Subpart NN—Pennsylvania

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Under the following undesignated centerhead, § 62.9611 is added to read as follows:

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

* * * * *

§ 62.9611 Identification of plan—Pennsylvania

(a) Title of Plan. Commonwealth of Pennsylvania Plan under section 111(d) for Designated Pollutants from Existing Facilities—Kraft Pulp Mills.

(b) The plan was officially submitted by the Pennsylvania Department of Environmental Resources on July 19, 1988, with revisions submitted on January 11, 1991, and August 15, 1991.

(c) Identification of sources. The Plan includes the following kraft pulp mills:

(1) Appleton Papers—Roaring Spring, Blair County

(2) P.H. Gladfelter—Spring Grove, York County

(3) Penntech Papers—Johnsonburg, Elk County

[FR Doc. 99–26853 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 64, No. 207
Wednesday, October 27, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 30

[Docket No. PRM–30–62]

Employee Protection Training; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated August 13, 1999, that was filed with the Commission by the Union of Concerned Scientists. The petition was docketed by the NRC on August 18, 1999, and has been assigned Docket No. PRM–30–62. The petitioner requests that the NRC amend its regulations concerning deliberate misconduct to require licensees to provide specific training to management, i.e., first line supervisors, managers, directors, and officers, on their obligations under the employee protection regulations. The petitioner believes that the amendment would prevent nuclear energy management from using "ignorance of the law" as an excuse for a violation and allow the NRC to take enforcement actions against individuals who violate the employee protection regulations.

DATES: Submit comments by January 10, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at *http://ruleforum.llnl.gov*. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *cag@nrc.gov*).

The Petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 1–800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Petitioner

The Union of Concerned Scientists (UCS) has had a nuclear safety program for over two decades and continue to work with nuclear workers—including employees of the Nuclear Regulatory Commission—who raise safety concerns. The UCS notes examples of anonymous concerns received by its organization that have led to significant improvements in safety levels, e.g., concerns that UCS forwarded to the State of Maine in December 1996 that led to the identification of faults in the safety analyses for the Maine Yankee plant. Other concerns received by UCS and presented to the NRC in January 1998 led to the discovery of serious defects in the ice condenser containment at the Donald C. Cook nuclear plant.

Grounds for Interest

The petitioner states that on May 14, 1996 (61 FR 24336) the NRC issued a policy statement that set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious environment in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. The responsibility for maintaining such an environment rests with each NRC licensee, as well as with contractors, subcontractors and employees in the nuclear industry. This policy statement is applicable to NRC regulated activities of all NRC licensees and their contractors and subcontractors.

The petitioner also notes that Title 10 of the Code of Federal Regulations contains regulations to protect such conscientious workers from discrimination. The petitioner asserts that these regulations are frequently violated, yet the individuals determined by the NRC staff as being responsible for these illegal activities are seldom held accountable.

Fitness-for-Duty Rule

The petitioner states that 10 CFR Part 26 that contains the "Fitness-For-Duty" regulations requires nuclear workers to be free from impairment by drugs and alcohol. The petitioner states that of the 111 individual enforcement actions listed in Attachment 1 to the petition, 17 involved violation of the fitness-for-duty rule. The petitioner stated that the NRC did not take actions against the licensees for these cases, but limited its sanctions to those individuals responsible for the violations.

To the contrary, the petitioner states that NRC treats violations of employee protection regulations differently. As an example, in Attachment 2 to the petition, the petitioner states that when the NRC establishes that a violation of an employee protection regulation has occurred such as the May 20, 1999, enforcement action that the NRC imposed against FirstEnergy, the NRC seldom takes enforcement action against the individuals responsible for the violations, but limits its enforcement actions to the licensees.

The petitioner believes that nuclear safety demands that workers not be impaired by drug and alcohol and that when any worker violates the fitness-for-duty rule, that individual should be held accountable. The petitioner believes it is equally important that nuclear workers feel free to raise safety issues without fear of discrimination and believes that when a nuclear worker violates the employee protection regulations, that individual should be held accountable.

The petitioner offers that the NRC holds individuals who violate the fitness-for-duty rule accountable. However, the agency is not holding individuals who violate the employee protection regulations accountable. The petitioner is attempting to remedy this inequity by this petition for rulemaking. The petitioner believes that by requiring licensees to train management on their obligations under the employee protection regulations, the NRC staff would no longer be able to claim that individuals were unaware that their actions were illegal.

Supporting Information

The petitioner states that "10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150 each contain a regulation against deliberate misconduct by employees and/or contractors of NRC licensees." The petitioner specifically set out in the petition the text from 10 CFR 50.5 to reflect the scope and content of the deliberate misconduct regulations.

The petitioner included three attachments to the petition that summarize the enforcement actions that NRC imposed against individuals, nuclear power plant owners, and non-nuclear power plant licensees between March 1996 and August 5, 1999. The enforcement data contained in the attachments were obtained from the website of the NRC Office of Enforcement, *http://nrc.gov.OE/*.

Sanctions Against Individuals

Attachment 1 to the petition indicates that NRC took enforcement action against individuals 111 times between March 1996 and August 5, 1999. The petitioner notes that only four cases involved enforcement actions taken by the NRC because the individual discriminated against nuclear workers raising safety concerns. The petitioner states that Federal regulations protect nuclear workers from being discriminated against for raising safety concerns and cites as an example the text of 10 CFR 50.7, Employee Protection, that applies to workers at nuclear power plants. The petitioner further states that 10 CFR contains equivalent regulations that apply to workers at non-power nuclear facilities.

The petitioner specifies that the four cases listed in Attachment 1 to the petition where NRC imposed enforcement action against individuals for their discriminatory actions against nuclear workers clearly demonstrate that the NRC can take such actions. However, according to the petitioner, the evidence is just as clear that the NRC seldom imposes enforcement actions against individuals even when it concludes that individuals were responsible for illegal discriminatory actions.

Sanctions Against Nuclear and Non-Nuclear Licensees

Attachment 2 to the petition lists eighteen enforcement actions imposed against nuclear power plant owners for discrimination against nuclear power plant workers. The petitioner states that in 12 of the 18 enforcement actions against the owners, the NRC also imposed a civil penalty. The penalties ranged between $55,000 and $200,000 with the average being $104,417.

Attachment 3 to the petition lists five enforcement actions imposed against non-nuclear power plant licensees for discrimination against workers. The petitioner states that in four of the five enforcement actions against non-nuclear plant licensees, the NRC also imposed a civil penalty. The penalties ranged between $4,400 and $10,000 with the average being $7,800.

The petitioner states that from March 1996 to August 5, 1999, the NRC took 23 enforcement actions against licensees for discriminating against nuclear workers. The petitioner notes that before taking the enforcement actions and imposing the fines, the NRC staff's investigations determined who did what to whom. According to the petitioner, the NRC concluded that the "what" violated the employee protection regulations of 10 CFR.

The petitioner states that despite identifying "who" was responsible for violating Federal regulations in the 23 cases, the NRC staff only took enforcement action against individuals on four occasions. The petitioner further adds that the fact that the NRC took actions against four individuals demonstrates that it has the statutory authority to do so and in fact revised its regulations on January 13, 1998 (63 FR 1890) to extend the Deliberate Misconduct Rule to six categories of persons. These categories included applicants for NRC licenses; applicants for, or holders of, certificates of compliance; applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants; applicants for, or holders of, certificates of registration; applicants for, or holders of, quality assurance program approvals; and the employees, contractors, subcontractors and consultants of the above five categories of persons.

10 CFR 2.206 Petition

On May 25, 1999, the petitioner filed a petition with the NRC under 10 CFR 2.206. The petition requested that the individual who was the Radiation Protection Manager at the Perry Nuclear Power Plant be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of at least five years.

An NRC News Announcement RIII–99–31 dated May 24, 1999, stated that an NRC investigation found that the Radiation Protection Manager at the Perry Nuclear Power Plant discriminated against a supervisor in 1997 for testifying in a United States Department of Labor hearing involving possible discrimination against another plant worker. The Announcement stated that the NRC has banned individuals in the recent past for five years for retaliation.

By letter dated June 23, 1999, the NRC denied the petition. According to the letter, the NRC stated that while consideration was given to taking enforcement action against the manager, it determined that the manager was not familiar with the requirements of 10 CFR 50.7. The NRC issued the manager a letter stating that the manager's actions contributed to the enforcement action against FirstEnergy. Additionally, the letter informed the manager that involvement in a future discrimination violation could result in enforcement action against the manager. The NRC proposed a $110,000 fine against FirstEnergy Nuclear Operating Company, for violation of the employee protection requirements of 10 CFR 50.7.

Conclusion

The petitioner states NRC's decision regarding its 2.206 petition makes little sense. The petitioner asserts that NRC inaction endorses the view that ignorance of the law is an excuse—at least when it comes to violating regulations promulgated to protect nuclear workers from discrimination. The petitioner noted that when the NRC revised the Deliberate Misconduct rule in January, 1998, it stated—

> The objective of the rule is to explicitly put those persons encompassed by this modification of the Deliberate Misconduct Rule on notice that enforcement action may be taken against them for deliberate misconduct or deliberate submission of incomplete or inaccurate information, in relation to NRC licensed activities. Under Section 234 of the Atomic Energy Act, the Commission may impose civil penalties on any person who violates any rule, regulation, or order issued under any one of the enumerated provisions of the Act, or who commits a violation for which a license may

> be revoked. The enforcement actions that may be taken, including orders limiting activities of wrongdoers in the future and civil penalties, will serve as a deterrent to others throughout the industry. [emphasis added by Petitioner]

The petitioner states that the NRC staff believes that people will be aware that the deliberate misconduct regulation was expanded to apply to them, but that these same people will be oblivious to all of the other regulations that define proper conduct. Further, the petitioner believes that rather than debating whether the NRC staff can really excuse illegal activities of nuclear industry management based on their ignorance of Federal regulations, UCS, the petitioner, is opting for this petition for rulemaking change to disallow the ignorance excuse.

Dated at Rockville, Maryland, this 21st day of October, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99-28050 Filed 10-26-99; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-183-AD]

RIN 2120-AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42 and ATR72 series airplanes. This proposal would require modification of the alerting capability of the anti-icing advisory system to improve crew awareness of icing conditions, replacement of the median wing de-icing boots with extended de-icing boots, and installation of de-icing boots on the metallic wing leading edge. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent degradation of lift and drag characteristics in prolonged severe icing exposure, which could result in loss of lift and consequent reduced controllability of the airplane.

DATES: Comments must be received by November 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-183-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-183-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-183-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Aerospatiale Model ATR42 and ATR72 series airplanes. The DGAC advises that, in several instances, crews have failed to activate the de-icing boots, despite the fact that ice accretion had been detected by the Anti-icing Advisory System (AAS). This failure to activate the de-icing boots may indicate that the current design of the AAS may not provide adequate alerting to the flight crew in all instances of ice accretion. In addition, the existing wing de-icing boots may not be adequate to protect the airplane during prolonged exposure to severe icing conditions. Such prolonged exposure could result in degradation of lift and drag characteristics, which could result in loss of lift and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletins ATR42-30-0064, Revision 1, dated May 7, 1999, and ATR42-30-0063, Revision 1, dated May 7, 1999 (for Model ATR42 series airplanes); and Service Bulletins ATR72-30-1032, Revision 1, dated May 7, 1999, and ATR72-30-1033, Revision 1, dated May 7, 1999 (for Model ATR72 series airplanes). These service bulletins describe procedures for replacing the median wing de-icing boots with extended de-icing boots and installing de-icing boots on the metallic wing leading edge.

Additionally, Aerospatiale has issued Service Bulletin ATR42-30-0065, Revision 1, dated May 17, 1999 (for Model ATR42 series airplanes), and Service Bulletin ATR72-30-1034, Revision 1, dated May 17, 1999 (for Model ATR72 series airplanes). These service bulletins describe procedures for modifying the ICING light flashing logic of the AAS.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 1999–165–077(B), dated April 21, 1999 (for Model ATR42 series airplanes), and 1999–166–041(B), dated April 21, 1999 (for Model ATR72 series airplanes), in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 140 airplanes of U.S. registry would be affected by this proposed AD.

The proposed replacement of existing de-icing boots and the new installation of de-icing boots would take approximately 75 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,400,000, or $10,000 per airplane.

The proposed modification of the alerting capability of the Anti-icing Advisory System (AAS) would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $532,000, or $3,800 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 99–NM–183–AD.

Applicability: All Model ATR42 and ATR72 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of lift and drag characteristics in prolonged severe icing exposure, which could result in loss of lift and consequent reduced controllability of the airplane, accomplish the following:

Boot Replacement/Installation

(a) Within 30 months after the effective date of this AD, replace the median wing de-icing boots with extended de-icing boots in accordance with Aerospatiale Service Bulletin ATR42–30–0063, Revision 1, dated May 7, 1999 (for Model ATR42 series airplanes), or ATR72–30–1032, Revision 1, dated May 7, 1999 (for Model ATR72 series airplanes); as applicable.

(b) Within 30 months after the effective date of this AD, install de-icing boots on the metallic wing leading edge in accordance with Aerospatiale Service Bulletin ATR42–30–0064, Revision 1, dated May 7, 1999 (for Model ATR42 series airplanes), or ATR72–30–1033, Revision 1, dated May 7, 1999 (for Model ATR72 series airplanes); as applicable.

Modification

(c) Within 30 months after the effective date of this AD, modify the ICING light flashing logic of the Anti-icing Advisory System (AAS), in accordance with Aerospatiale Service Bulletin ATR42–30–0065, Revision 1, dated May 17, 1999 (for Model ATR42 series airplanes), or Aerospatiale Service Bulletin ATR72–30–1034, Revision 1, dated May 17, 1999 (for Model ATR72 series airplanes); as applicable.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 1999–

165–077(B), dated April 21, 1999 (for Model ATR42 series airplanes), and 1999–166–041(B), dated April 21, 1999 (for Model ATR72 series airplanes).

Issued in Renton, Washington, on October 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28080 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–209–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90 series airplanes. This proposal would require a one-time detailed visual inspection to detect fatigue cracking of certain longerons and the attaching frames of the lower left nose; and repair, if necessary. The proposal also would require installation of a preventive modification. This proposal is prompted by several reports of fatigue cracking of certain longerons and the attaching frames. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Carl Fountain, Aerospace Engineer, Airframe Branch, ANM–120L; FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5222; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–209–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that cracking of the fuselage longerons-to-frame attachment holes occurred on three McDonnell Douglas Model DC–9 series airplanes. The fatigue cracking was found between longerons 22 though 26 on the left side at stations Y=160.000 and Y=200.000. These airplanes had accumulated between 59,110 and 74,445 total flight cycles. The cracking of the longeron segments has been attributed to fatigue. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane.

The fuselage longerons-to-frame attachments of McDonnell Douglas Model MD–90 series airplanes are similar to those of the affected McDonnell Douglas Model DC–9 series airplanes. Therefore, the Model MD–90 may be subject to the same unsafe condition.

Other Relevant Rulemaking

On November 20, 1998, the FAA issued AD 98–24–33, amendment 39–10919 (63 FR 66739, December 3, 1998), applicable to certain McDonnell Douglas DC–9 and MD–88 series airplanes, to require a one-time visual inspection to detect fatigue cracks between longerons 22 through 26 and the attaching frames, and corrective action, if necessary. However, this proposed AD would not affect the current requirements of that previously issued AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD90–53–004, dated August 20, 1998, which describes procedures for a one-time detailed visual inspection to detect cracking of longerons 22 through 26 and the attaching frames at stations Y=160.000 and Y=200.000 of the lower left nose, and repair, if necessary. The service bulletin also provides procedures for a preventive modification (i.e., installation of clips and doublers under longeron flanges and shims longeron) to relieve preloads.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 7 airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $360, or $60 per airplane.

It would take approximately 6 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Parts would cost approximately $312 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $4,032, or $672 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–209–AD.

Applicability: Model MD–90 series airplanes, as listed in McDonnell Douglas Service Bulletin MD90–53–004, dated August 20, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of longerons 22 through 26 and the attaching frames, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane; accomplish the following:

Inspection and Modification

(a) Prior to the accumulation of 40,000 total landings, or within 24 months after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracking of longerons 22 through 26 (inclusive) and the respective attaching frames at station frames Y=160.000 and Y=200.000 of the left lower nose, in accordance with McDonnell Douglas Service Bulletin MD90–53–004, dated August 20, 1998.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking is detected: Prior to further flight, install clips and doublers under the longeron flanges and shim the longerons in accordance with the service bulletin.

(2) If any cracking is detected: Prior to further flight, repair the cracks and install clips and doublers under the longeron flanges and shim the longerons in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28079 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–210–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes. This proposal would require repetitive fluorescent penetrant and magnetic particle inspections to detect fatigue cracking of the main landing gear (MLG) piston, and repair, if necessary. This proposal is prompted by reports of MLG failures during towing of in-service airplanes due to fatigue cracks. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of MLG pistons, which could result in failure of the pistons, and

consequent damage to the airplane structure and injury to flight crew, passengers, or ground personnel.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Carl Fountain, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–210–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of main landing gear (MLG) piston failures during towing of McDonnell Douglas Model DC–9–80 (MD–80) series airplanes. Investigation revealed that the fracture surface extended around the barrel section at the piston/axle transition. The fractures originated at a fatigue crack located where the inner/upper edge of a torque link lug blended into this transition. This condition, if not corrected, could result in failure of the pistons, and consequent damage to the airplane structure and injury to flight crew, passengers, or ground personnel.

The subject MLG torque link lugs on Model MD–90–30 series airplanes are similar to those on the affected McDonnell Douglas Model DC–9–80 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Other Relevant Rulemaking

On September 5, 1996, the FAA issued AD 96–19–09, amendment 39–9756 (61 FR 48617, September 16, 1996), applicable to certain McDonnell Douglas DC–9 and MD–88 series airplanes, to require a one-time inspection to detect cracking of the MLG pistons, and repair or replacement of the pistons with new or serviceable parts, if necessary. However, this proposed AD would not affect the current requirements of that previously issued AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD90–32–012, dated May 19, 1997, and Revision 01, dated June 2, 1998, which describes procedures for repetitive fluorescent penetrant and magnetic particle inspections of the MLG torque link lugs to detect fatigue cracking, and repair, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Operators also should note that, although the service bulletin recommends accomplishing the fluorescent inspections only for MLG's that have accumulated more than a specified number of landings, the FAA has determined that all of the subject parts are subject to the same fatigue cracking. Therefore, the compliance times for the proposed inspections address all MLG's of the affected design. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (two hours). In light of all of these factors, the FAA finds that intervals of 4,000 landings for inspection of MLG piston, part number (P/N) 5935347–509, and 5,000 landings for MLG piston, P/N's 5935347–511 and –513, address the identified unsafe condition in a timely manner. Therefore, the FAA has determined these compliance times for initiating the required actions to be warranted, in that they represent an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the

FAA may consider additional rulemaking.

Cost Impact

There are approximately 19 airplanes of the affected design in the worldwide fleet. The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,800, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–210–AD.

Applicability: Model MD–90–30 airplanes, as listed in McDonnell Douglas Service Bulletin MD90–32–012, Revision 01, dated June 2, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of main landing gear (MLG) pistons, which could result in failure of the pistons, and consequent damage to the airplane structure and injury to flight crew, passengers, or ground personnel, accomplish the following:

Inspection of MLG Piston Part Number 5935347–509

(a) For MLG pistons, part number (P/N) 5935347–509: Perform fluorescent penetrant and magnetic particle inspections to detect fatigue cracking of the MLG pistons, in accordance with McDonnell Douglas Service Bulletin MD90–32–012, dated May 19, 1997; or Revision 01, dated June 2, 1998, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 2,500 landings.

(1) Prior to the accumulation of 4,000 landings; or

(2) Within 2,500 landings or 12 months after the effective date of this AD whichever occurs first.

Inspection of MLG Piston Part Numbers 5935347–511 and –513

(b) For MLG pistons P/N's 5935347–511 and –513: Within 5,000 landings after the effective date of this AD, perform fluorescent penetrant and magnetic particle inspections to detect fatigue cracking of the MLG pistons, in accordance with McDonnell Douglas Service Bulletin MD90–32–012, dated May 19, 1997; or Revision 01, dated June 2, 1998. Repeat the inspections thereafter at intervals not to exceed 5,000 landings.

Repair

(c) If any crack is found during any inspection required by this AD: Repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28078 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–217–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes. This proposal would require a one-time eddy current conductivity test to determine the material type of the lower cap of the wing front spar; and modification of the lower cap of the wing front spar, if necessary. This proposal is prompted by reports of stress corrosion cracking in the forward tang of the lower caps of the wing front spar. The actions specified by the proposed AD are intended to prevent such stress corrosion cracking,

which if not corrected, could result in reduced structural integrity of the wing.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5231; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–217–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of stress corrosion cracking in the forward tang of the lower cap of the wing front spar of McDonnell Douglas Model DC–8 series airplanes. Investigation revealed that some front spar lower caps were manufactured from 7079–T6 material, which is susceptible to stress corrosion cracking. This condition, if not corrected, could result in reduced structural integrity of the wing.

Other Relevant Rulemaking

AD 90–16–05, amendment 39–6614 (55 FR 31818, August 6, 1990) requires certain inspections and structural modifications. McDonnell Douglas Service Bulletin DC8–57–030, Revision 3, dated December 10, 1970, was mandated as part of the service action requirements program required by AD 90–16–05. Revision 3 of the service bulletin describes procedures for a one-time visual inspection for cracks in the forward tang of the lower cap of the front spar, and modification, if cracking is detected.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC8–57–030, Revision 04, dated August 17, 1995; and Revision 05, dated April 28, 1998. Revisions 04 and 05 of the service bulletin describe procedures for a one-time eddy current conductivity test to determine the material type of the forward tang of the lower cap of the wing front spar, and modification of the front spar, if necessary. The modification involves replacement of lower cap of the wing front spar with a new lower cap. Revision 04 of the service bulletin recommends that airplanes previously modified in accordance with Revision 3 of the service bulletin be reworked if the lower cap was made of 7079–T6 material. (Revision 04 of the service bulletin was approved as an alternative method of compliance to AD 90–16–05.) Revision 05 of the service bulletin adds 52 additional airplanes to the list of effective airplane serial numbers. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 294 airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $45,180, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–217–AD.

Applicability: Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC8–57–30, Revision 05, dated April 28, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking of the lower cap of the wing front spar, which if not corrected, could result in reduced structural integrity of the wing, accomplish the following:

(a) Within 48 months after the effective date of this AD, perform a one-time eddy current conductivity test to determine the material type of the forward tang of the lower cap of the front spar in the center section of the wing, in accordance with McDonnell Douglas Service Bulletin DC8–57–30, Revision 05, dated April 28, 1998, or Revision 04, dated August 17, 1995.

(1) If 7079–T6 aluminum is not found, no further action is required by this AD.

(2) If any 7079–T6 aluminum is found, within 48 months after the effective date of this AD, modify the forward tang of the lower cap of the front spar, in accordance with the service bulletin.

(b) Accomplishment of the eddy current conductivity test, and modification, if necessary, specified in paragraph (a) of this AD constitutes terminating action for the repetitive inspection requirements of paragraph (a) of AD 90–16–05, amendment 39–6614, as it applies to the inspections of the forward tang of the lower cap of the front spar specified in McDonnell Douglas Service Bulletin DC8–57–30, Revision 3, dated December 10, 1970.

Alternative Methods of Compliance

(c) An alternative method of compliance that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28077 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–232–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require replacement of the clevis ends on the tie rods for the center stowage bin supports with improved clevis ends. This proposal is prompted by a report that, under ultimate load conditions, the aluminum clevis ends on the tie rods for the center stowage bin supports can break. The actions specified by the proposed AD are intended to prevent broken tie rods, which could result in the center stowage bins dropping onto the passenger seats below, causing possible injury to the occupants.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Julie Alger, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone (425) 227–2779; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–232–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report from Boeing indicating that, under ultimate load conditions on certain Boeing Model 777 series airplanes, the aluminum clevis ends on the tie rods that attach the center stowage bin support structure to the airplane structure can break. Such breakage has been attributed to the material of which the clevis ends are made (aluminum). This condition, if not corrected, could result in misalignment of the center stowage bins. Multiple broken tie rods could allow the center stowage bins to drop onto the passenger seats below, causing possible injury to the occupants.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 777–25–0120, dated February 11, 1999, which describes procedures for replacement of the aluminum clevis ends on affected tie rods (81 locations on 777–200 airplanes, 115 locations on 777–300 airplanes) with new steel clevis ends. The steel clevis ends are stronger than the aluminum clevis ends and will not break under ultimate load conditions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 184 airplanes (168 Model 777–200 and 16 Model 777–300) of the affected design in the worldwide fleet. The FAA estimates that 41 airplanes of U.S. registry, all Model 777–200 airplanes, would be affected by this proposed AD, and that it would take approximately 12 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $15,938 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $682,978, or $16,658 per airplane.

Currently, there are no Model 777–300 airplanes on the U.S. Register that would be affected by this AD. However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it would take approximately 17 work hours per airplane to accomplish the actions proposed by this AD, at an average labor rate of $60 per work hour. Required parts would cost approximately $18,457 per airplane. Based on these figures, the cost impact of the proposed AD on these airplanes is estimated to be $19,477 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–232–AD.

Applicability: Model 777 series airplanes, line numbers 2 through 103 inclusive, 105 through 119 inclusive, and 121 through 187 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent broken tie rods, which could result in the center stowage bins dropping onto the passenger seats below, causing possible injury to the occupants, accomplish the following:

(a) Within 4 years after the effective date of this AD, replace the aluminum clevis ends on the tie rods for the center stowage bin supports with new steel clevis ends, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–25–0120, dated February 11, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28076 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300–600 Series Airplanes Equipped with Dowty Ram Air Turbines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes, that currently requires repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod. This action would require modification of the RAT, which would terminate the repetitive tests and checks. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure the availability of the RAT in case of need.

DATES: Comments must be received by November 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–202–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 7, 1994, the FAA issued AD 94–04–05, amendment 39–8823 (59 FR 7208, February 15, 1994), applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes, to require repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod. That action was prompted by reports of failure of the RAT to rotate when necessary, due to maladjustment of the locking rod. The requirements of that AD are intended to ensure the availability of the RAT in case of need.

Explanation of Relevant Service Information

Since the issuance of AD 94–04–05, Airbus Industrie has issued Airbus Service Bulletin A300–29–0106, Revision 02 (for Model A300 series airplanes); A310–29–2078, Revision 02 (for Model A310 series airplanes); and Airbus Service Bulletin A300–29–6039, Revision 02 (for Model A300–600 series airplanes); all dated January 26, 1999. These service bulletins describe procedures for modification of the RAT by installing a grease nipple and a scraper seal assembly, replacing the locking rod spring with a stronger spring, and re-identifying the RAT with a new part number. Such modification would eliminate the need for the repetitive tests and checks specified in Airbus All Operator Telex (AOT) 29–09, dated November 16, 1993. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC) classified these service bulletins as mandatory and issued French airworthiness directive 98–448–262(B), dated November 18, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–04–05 to continue to require repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod until accomplishment of the actions specified in the service bulletins described previously.

Explanation of Changes Made to Applicability

The applicability of this proposed AD is different from AD 94–04–05. Two RAT part numbers were incorrectly identified in the applicability of that AD: RAT 16C 116 VG and RAT 16C 117 VG. Those part numbers identify RAT's that have already incorporated the modifications that would be required by this proposed AD; therefore, they have been removed from the applicability.

Cost Impact

There are approximately 126 airplanes of U.S. registry that would be affected by this proposed AD.

The repetitive tests and checks that were previously required by AD 94–04–05, and retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement of this proposed AD on U.S. operators is estimated to be $15,120, or $120 per airplane, per test/check cycle.

The new modification that is proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,995 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $548,730, or $4,355 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) If promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8823 (59 FR 7208, February 15, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–202–AD. Supersedes AD 94–04–05, Amendment 39–8823.

Applicability: Model A300, A310, and A300–600 series airplanes; certificated in any category; equipped with Dowty ram air turbines (RAT) having the following part numbers:

RAT 16C 100 VG
RAT 16C 101 VG
RAT 16C 102 VG
RAT 16C 103 VG
RAT 16C 104 VG
RAT 16C 105 VG
RAT 16C 109 VG
RAT 16C 110 VG

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the availability of the RAT in case of need, accomplish the following:

Restatement of Requirements of AD 94–04–05

Repetitive Tests and Checks

(a) Within 60 days after March 2, 1994 (the effective date of AD 94–04–05, amendment 39–8823), or 500 hours time-in-service after March 2, 1994, whichever occurs first, perform a deployment test of the RAT and check the adjustment of the locking rod, in accordance with Airbus All Operator Telex (AOT) 29–09, dated November 16, 1993. Repeat the deployment test and adjustment check thereafter at intervals not to exceed 10 months.

(1) If no discrepancy is found, prior to further flight, apply grease to the RAT leg at the entry and exit positions of the locking rod spring housing, in accordance with the AOT.

(2) If any discrepancy is found, prior to further flight, correct it and apply grease to the RAT leg at the entry and exit positions of the locking rod spring housing, in accordance with the AOT.

New Requirements of this AD

(b) Within 49 months after the effective date of this AD, modify the RAT by installing a grease nipple and a scraper seal assembly, replacing the locking rod spring with a stronger spring, and re-identifying the RAT with a new part number; in accordance with Airbus Service Bulletin A300–29–0106, Revision 02 (for Model A300 series airplanes); A310–29–2078, Revision 02 (for Model A310 series airplanes); or Airbus Service Bulletin A300–29–6039, Revision 02 (for Model A300–600 series airplanes); all dated January 26, 1999; as applicable. Accomplishment of the modification constitutes terminating action for the repetitive tests and checks required by paragraph (a) of this AD.

Note 2: The service bulletins refer to Sundstrand Service Bulletin ERPS26T–29–1 for modification instructions and new part numbers.

Note 3: Accomplishment of the actions specified in Airbus Service Bulletin A300–29–0106, Revision 01; A310–29–2078, Revision 01; or Airbus Service Bulletin A300–29–6039, Revision 01; all dated September 8, 1997; as applicable; is acceptable for compliance with the actions required by paragraph (b) of this AD.

Spares

(c) As of the effective date of this AD, no person shall install a RAT having the following part numbers on any airplane:

RAT 16C 100 VG
RAT 16C 101 VG
RAT 16C 102 VG
RAT 16C 103 VG
RAT 16C 104 VG
RAT 16C 105 VG
RAT 16C 109 VG
RAT 16C 110 VG

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 94–04–05, amendment 39–8823, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directive 98–448–262(B), dated November 18, 1998.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28081 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. For certain airplanes, this proposal would require removing the hydraulic tube assemblies from the main landing gear (MLG) bay, installing new re-routed hydraulic tube assemblies, and repositioning a fuel line, as applicable. For certain other airplanes, this proposal would require a general visual inspection to determine the routing of certain hydraulic and fuel lines, and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent damage to hydraulic and fuel lines resulting from failure of an MLG, which could cause a fire in the MLG wheel well.

DATES: Comments must be received by November 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–166-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–166–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. TCCA advises that a hard landing during touch-and-go training resulted in an in-flight separation of a main landing gear (MLG) from a Model CL–600–2A12 (CL–601) series airplane. This separation caused the rupture of hydraulic and fuel lines in the main wheel well area, which resulted in an in-flight fire. Investigation revealed that certain hydraulic and fuel lines are located such that separation of an MLG could cause damage to these hydraulic and fuel lines. This condition, if not corrected, could result in a fire in the MLG wheel well.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 600–0671, dated August 4, 1997 [for Model CL–600–1A11 (CL–600) series airplanes], which describes procedures for removing the five existing hydraulic tube assemblies from the main landing gear bay, installing six new re-routed hydraulic tube assemblies, and repositioning of a fuel line.

Bombardier also has issued Service Bulletin No. 601–0482, dated April 15, 1997, [Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and

–3R)], which describes procedures for removing five existing hydraulic tube assemblies from the main landing gear bay and replacing them with six new re-routed assemblies.

Bombardier also has issued Service Bulletin 604–29–001, dated December 20, 1996 [for Model CL–600–2B16 (CL–604) series airplanes], which describes procedures for performing a general visual inspection of the routing of the hydraulic lines in the main landing gear bay, and contacting the manufacturer for modification instructions, if necessary.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. TCCA classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–99–14, dated May 7, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Relevant Service Information

Operators should note that, although Bombardier Service Bulletin 604–29–001, dated December 20, 1996, specifies that the manufacturer may be contacted for disposition of certain hydraulic and fuel line routing conditions, this proposal would require the modification of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 249 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that 231 Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and –3R) series airplanes would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be $277,200, or $1,200 per airplane.

The FAA estimates that 18 Model CL–600–2B16 (CL–604) series airplanes would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection. Based on these figures, the cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be $1,080, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 99–NM–166–AD.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes, serial numbers 5001 through 5194 inclusive, and 5301 through 5317 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to hydraulic and fuel lines resulting from failure of a main landing gear (MLG), which could cause a fire in the MLG wheel well, accomplish the following:

Inspection and Modification

(a) Within 300 landings or 12 months after the effective date of this AD, whichever occurs first, accomplish the actions in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Model CL–600–1A11 (CL–600) series airplanes: Remove the five existing hydraulic tube assemblies from the MLG bay, install six new re-routed hydraulic tube assemblies, and reposition a fuel line, in accordance with Bombardier Service Bulletin 600–0671, dated August 4, 1997.

(2) For Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and –3R) series

airplanes: Remove the five existing hydraulic tube assemblies from the MLG bay, and install six new re-routed hydraulic tube assemblies, in accordance with Bombardier Service Bulletin 601-0482, dated April 15, 1997.

(3) For Model CL-600-2B16 (CL-604) series airplanes: Perform a general visual inspection of the routing of the hydraulic and fuel lines in the MLG bay in accordance with Bombardier Service Bulletin 604-29-001, dated December 20, 1996.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(i) If all hydraulic lines are routed in accordance with the service bulletin, no further action is required by this paragraph.

(ii) If any hydraulic line is not routed in accordance with the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF-99-14, dated May 7, 1999.

Issued in Renton, Washington, on October 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-28082 Filed 10-26-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-130-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 B4-600R and A300 F4-600R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A300 B4-600R and A300 F4-600R series airplanes, that currently requires a one-time visual inspection for damage of the center tank fuel pumps and fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. This action also would require repetitive visual inspections of the fuel pumps and repetitive eddy current inspections of the fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. This action also would reduce the applicability to include only those airplanes that have a trim tank system installed. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank.

DATES: Comments must be received by November 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-130-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-130-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-130-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On December 15, 1998, the FAA issued AD 98-25-53, amendment 39-10956 (63 FR 70639, December 22, 1998), applicable to all Airbus Model A300 B4-600R and A300 F4-600R series airplanes, to require a one-time visual inspection for damage of the center tank fuel pumps and fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. That action was prompted by reports of damaged center tank fuel pump canisters and damaged center tank fuel pumps. The requirements of that AD are intended to detect damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, airplane inspections have revealed additional cases of damaged center tank fuel pump canisters and pumps. The purpose of this proposed AD is to render mandatory a program of repetitive inspections in order to avoid the existence of ignition sources in the center tank caused by damage to the center tank fuel pump canisters and pumps.

In the preamble to AD 98–25–53, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

Airbus has issued Alert Service Bulletin A300–28A6061, dated February 19, 1999, which describes procedures for repetitive visual inspections of the fuel pumps and repetitive eddy current inspections of the fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this alert service bulletin as mandatory and issued French airworthiness directive 1999–149–280(B), dated April 7, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–25–53 to continue to require a one-time visual inspection for damage of the center tank fuel pumps and fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. The proposed AD also would require repetitive visual inspections of the fuel pumps and repetitive eddy current inspections of the fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts.

Reduced Applicability of the NPRM

The proposed AD would remove airplanes from the applicability of AD 98–25–53 to include only those airplanes that have a trim tank installed. This revised applicability corresponds to the applicability specified in the French airworthiness directive.

Cost Impact

There are approximately 67 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection that is currently required by AD 98–25–53, and retained in this proposed AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane.

The new inspections that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed requirement of this AD on U.S. operators is estimated to be $8,040, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10956 (63 FR 70639, December 22, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99-NM–130-AD. Supersedes AD 98–25–53, Amendment 39–10956.

Applicability: Model A300 B4–600R and A300 F4–600R series airplanes, on which Airbus Modification 4801 (trim tank system) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank, accomplish the following:

Inspections

(a) Prior to the accumulation of 5,000 total hours time-in-service, or within 250 hours time-in-service after the effective date of this AD, whichever occurs later, perform a detailed visual inspection for damage of the center tank fuel pumps and fuel pump canisters, in accordance with Airbus All Operators Telex (AOT) 28–09, dated November 28, 1998. Repeat the inspection prior to the accumulation of 12,000 total hours time-in-service, or within 250 hours time-in-service after accomplishment of the initial inspection, whichever occurs later. Thereafter, repeat the inspection at intervals not to exceed 250 hours time-in-service, until accomplishment of the initial inspection required by paragraph (b) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) At the applicable time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD: Perform a detailed visual inspection to detect damage of the center tank fuel pumps and perform an eddy current inspection to detect damage of the fuel pump canisters, in accordance with Airbus Alert Service Bulletin A300–28A6061, dated February 19, 1999. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles. Accomplishment of the initial inspections required by this paragraph constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) For airplanes that have accumulated 11,000 or more total flight cycles as of the effective date of this AD: Inspect within 300 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated 8,500 or more total flight cycles, but fewer than 11,000 total flight cycles, as of the effective date of this AD: Inspect within 750 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated fewer than 8,500 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 7,000 flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(c) If any damage is detected during any inspection required by this AD, prior to further flight, replace the damaged fuel pump or fuel pump canister with a new or serviceable part in accordance with Airbus Alert Service Bulletin A300–28A6061, dated February 19, 1999.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–149–280(B), dated April 7, 1999.

Issued in Renton, Washington, on October 21, 1999.

N. B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28083 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–64–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines. This proposal would require repetitive inspections and tests of the thrust reverser control and indication system, and corrective actions, if necessary. This proposal would also require installation of a thrust reverser actuation system (TRAS) lock, repetitive functional tests of that installation, and repair, if necessary. Installation of the TRAS lock would terminate the repetitive inspections and certain tests. This proposal is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in airplane controllability. The actions specified by the proposed AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–64–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 26, 1991, a Boeing Model 767–300ER series airplane was involved in an accident as a result of an uncommanded in-flight deployment of a thrust reverser. Following that accident, a study was conducted to evaluate the potential effects of an uncommanded thrust reverser deployment throughout the flight regime of other Boeing airplane models, including the Boeing Model 747 series airplane equipped with General Electric Model CF6–45 or –50 series engines. The study included a re-evaluation of the thrust reverser control system fault analysis and airplane controllability. The results of the evaluation revealed that, if not prevented, possible combinations of failures within the thrust reverser control system may result in an in-flight deployment of a thrust reverser and that, in the event of thrust reverser deployment during high-speed climb using high engine power, or during cruise, these airplanes may not be controllable.

The FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following the 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's that correct the same type of unsafe condition as that addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757, and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes in certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved throughout the operating envelope of the airplane following such a deployment. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA, have been unable to establish that the risks for uncommanded thrust reverser deployment at critical flight conditions are acceptably low.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following service bulletins:

- Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995, describes procedures for repetitive inspections and tests to verify proper operation of the thrust reverser stow/deploy switches, the bullnose seals, the airmotor brake, the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valve, and the microswitch pack on each engine; and repair, if necessary.
- Boeing Service Bulletin 747–78–2150, Revision 1, dated July 2, 1998, describes procedures for installation of a thrust reverser actuation system (TRAS) lock on each thrust reverser half of each engine. This service bulletin specifies that prior or concurrent incorporation of Boeing Service Bulletin 747–78–2067, Boeing Service Bulletin 747–78–2069, Boeing Service Bulletin 747–78–2133, Middle River Aircraft Systems CF6–50 Service Bulletin 78–3011, and Middle River Aircraft Systems CF6–50 Service Bulletin 78–3013, is necessary. Such installation eliminates the need for the repetitive inspections and tests described in Boeing Alert Service Bulletin 747–78A2160.

The FAA has also reviewed Chapter 78–34–00 of the Boeing 747 Maintenance Manual, dated April 25, 1998, which describes procedures for repetitive functional tests of the TRAS lock.

Accomplishment of the modification specified in Boeing Service Bulletin 747–78–2150, Revision 1, and the repetitive functional tests specified in the maintenance manual are intended to adequately address the identified unsafe condition.

The modification procedures described by Boeing Service Bulletin 747–78–2150, dated March 20, 1997, have been validated previously, and the necessary changes have been incorporated into Revision 1 of the service bulletin. The FAA has determined that the procedures described by Boeing Service Bulletin 747–78–2150, Revision 1, and the numerous referenced service bulletins, have been sufficiently validated to now propose that this modification be required. Several airplanes have been successfully modified in accordance with the service bulletin, and this past experience should minimize the likelihood for subsequent service bulletin revisions, requests for alternative methods of compliance, and superseding AD's.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive inspections and tests of the thrust reverser control and indication system, and corrective actions, if necessary. The proposed AD would also require installation of a TRAS lock, repetitive functional tests of that installation, and repair, if necessary. Installation of the TRAS lock would terminate the repetitive inspections and certain tests.

This proposed AD would also include a provision for deactivation of one thrust reverser in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this document.

Differences Between Proposed Rule and Service Bulletins

The effectivity of Boeing Alert Service Bulletin 747–78A2160 identifies all Model 747–100 and –200 series airplanes powered by General Electric Model CF6–45 or –50 series engines, line numbers 232 through 886 inclusive; however, this proposed AD would apply to all Model 747 series airplanes powered by General Electric Model CF6–45 or –50 series engines. The FAA has been notified by the airplane manufacturer that there are Model 747–300 and 747SR series airplanes, and airplanes having line numbers lower than 232, that are powered by Model CF6–45 or –50 series engines.

Operators should note that, although Boeing Alert Service Bulletin 747–78A2160 recommends accomplishing the inspections and tests within 1,500 flight hours or 4 months (after the release of the service bulletin), the FAA has determined that the recommended interval would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds a 90-day compliance time for initiating the inspections and tests of the thrust reverser stow/deploy switches, the bullnose seals, and the airmotor brakes; and a 6-month compliance time for initiating the inspections and tests of the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valves, and the microswitch packs; to be warranted, in that those times represent appropriate intervals of time allowable for affected airplanes to continue to operate without compromising safety.

Operators should also note that, although Boeing Service Bulletin 747–78–2150, Revision 1, does not specify a compliance time for accomplishment of installation of the TRAS locks, this proposal would require that action to be accomplished within 36 months after the effective date of this AD. In developing an appropriate compliance time for this proposed AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to accomplish the proposed actions (approximately 791 work hours). In light of these factors, the FAA finds a compliance time of 36 months for accomplishing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Although not described in either service bulletin, this proposed AD would allow the option to dispatch an airplane with one thrust reverser deactivated and operate the airplane for up to 10 days with one thrust reverser deactivated. This option would be allowed in the event of unsuccessful accomplishment of the repetitive inspections and tests specified in paragraphs (a) and (b) of this AD or installation of a spare thrust reverser assembly with a different configuration than that installed on the other engines of the airplane.

Cost Impact

There are approximately 138 airplanes of the affected design in the worldwide fleet. The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 12 work hours per airplane to accomplish the proposed inspections and tests of the thrust reverser stow/deploy switches, the bullnose seals, and the airmotor brakes, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed repetitive inspections and tests on U.S. operators is estimated to be $19,440, or $720 per airplane, per inspection and test cycle.

It would take approximately 11 work hours per airplane to accomplish the proposed inspections and tests of the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valves, and the microswitch packs, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed repetitive inspections and tests on U.S. operators is estimated to be $17,820, or $660 per airplane, per inspection and test cycle.

It would take approximately 791 work hours per airplane to accomplish the proposed installation of TRAS locks, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of the proposed installation on U.S. operators is estimated to be $1,281,420, or $47,460 per airplane.

This cost impact figure does not reflect the cost of the modifications described in the service bulletins listed in paragraph I.K.1.h. of Boeing Service Bulletin 747–78–2150, Revision 1, that are proposed to be accomplished prior to, or concurrently with, the installation of the TRAS lock. (The cost impact figure does reflect the cost of the modifications described in the service bulletins listed in paragraph I.K.1.j. of the service bulletin that are also proposed to be accomplished prior to, or concurrently with, the installation of the TRAS lock.) Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in paragraph I.K.1.h. of Boeing Service Bulletin 747–78–2150. As indicated earlier in this preamble, the FAA invites comments specifically on the overall economic aspects of this proposed rule. Any data received via public comments to this proposed AD will aid the FAA in developing an accurate accounting of the cost impact of the rule.

It would take approximately 4 work hours per airplane to accomplish the proposed functional test of the TRAS lock, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed repetitive functional tests on U.S. operators is estimated to be $6,480, or $240 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–64–AD.

Applicability: Model 747 series airplanes; certificated in any category; equipped with General Electric Model CF6–45 or –50 series engines.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections and Tests

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(a) Within 90 days after the effective date of this AD, perform the applicable detailed visual inspections and tests to verify proper operation of the thrust reverser stow/deploy switches, the bullnose seals, and the airmotor brake on each engine, in accordance with Work Package I of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995. Repeat the applicable inspections and tests thereafter at intervals not to exceed 1,300 flight hours, until accomplishment of paragraph (d) of this AD.

(b) Within 6 months after the effective date of this AD, perform the applicable detailed visual inspections and tests to verify proper operation of the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valve, and the microswitch pack on each engine, in accordance with Work Package II of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995. Repeat the applicable inspections and tests thereafter at intervals not to exceed 18 months, until accomplishment of paragraph (d) of this AD.

Corrective Actions

(c) If any of the inspections and tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is detected during the inspections and tests, accomplish paragraphs (c)(1) or (c)(2) of this AD, as applicable.

(1) Prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995. Additionally, prior to further flight, any failed inspection or test required by paragraph (a) or (b) of this AD must be repeated and successfully accomplished.

(2) Accomplish both paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph.

Note 3: The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List, provided that no more than one thrust reverser on the airplane is inoperative.

(ii) Within 10 days after deactivation of any thrust reverser in accordance with paragraph (c)(2)(i) of this AD, the affected thrust reverser must be repaired in accordance with Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995. Additionally, prior to further flight, any failed inspection or test required by paragraph (a) or (b) of this AD must be repeated and successfully accomplished; once such inspections and tests have been successfully accomplished, the thrust reverser may then be reactivated.

Modification

(d) Within 36 months after the effective date of this AD, install a thrust reverser actuation system (TRAS) lock on each thrust reverser half of each engine, in accordance with Boeing Service Bulletin 747–78–2150, Revision 1, dated July 2, 1998. All of the modifications described in the service bulletins listed in paragraphs I.K.1.h. and I.K.1.j. of Boeing Service Bulletin 747–78–2150, Revision 1, must be accomplished, as applicable, in accordance with those service bulletins, prior to, or concurrently with, the accomplishment of the installation of the TRAS lock. Accomplishment of these actions constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

Note 4: Accomplishment of the installation specified in Boeing Service Bulletin 747–78–2150, dated March 20, 1997, is acceptable for compliance with the installation required by paragraph (d) of this AD.

Functional Tests

(e) Within 3,000 flight hours after accomplishing the modification required by paragraph (d) of this AD, or within 1,000 flight hours after the effective date of this AD, whichever occurs later, perform a functional test of the TRAS lock on each reverser half, in accordance with Chapter 78–34–00 of the Boeing 747 Maintenance Manual, dated April 25, 1998.

Correction Actions

(1) If no discrepancy is detected, repeat the functional test thereafter at intervals not to exceed 3,000 flight hours.

(2) If any discrepancy is detected, prior to further flight, repair in accordance with the procedures specified in the Boeing 747 Maintenance Manual. Additionally, prior to further flight, the functional test must be successfully accomplished. Repeat the functional test thereafter at intervals not to exceed 3,000 flight hours.

Spares

(f) If, after incorporation of the modification required by paragraph (d) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that does not have the TRAS locks installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List, provided that the thrust reverser assembly that does not have the TRAS locks installed is deactivated in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that has the TRAS locks installed and reactivate the thrust reverser.

(g) If, prior to incorporation of the modification required by paragraph (d) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that has the TRAS locks installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List, provided that the thrust reverser assembly that has the TRAS locks installed is deactivated in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that does not have the TRAS locks installed and reactivate the thrust reverser.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 21, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28084 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–309–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes. This proposal would require detailed visual and eddy current inspections of the lower wing skin at the 3 outboard fasteners of the stringer 64 end fitting to detect cracks; and corrective actions, if necessary. This proposal is prompted by reports of fatigue cracks found in the lower wing skin initiating from the outboard fasteners of the stringer 64 end fitting. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could reduce structural integrity and loss of fail-safe capability of the airplane.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5231; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–309–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the lower wing skin at the 3 outboard fasteners of the stringer 64 end fitting. These cracks were discovered during inspections conducted as part of the Supplemental Inspection Document (SID) program, required by AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993). Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue cracking of the wing skin at the 3 outboard fasteners of the stringer 64 end fitting, if not detected in a timely manner, could result in reduced structural integrity and loss of fail-safe capability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC8–57–100, Revision 01, dated August 26, 1998. The service bulletin describes procedures for detailed visual and eddy current inspections to detect cracks of the lower wing skin at the 3 outboard fasteners of the stringer 64 end fitting; and corrective actions, if necessary. The corrective actions involve accomplishing a preventative modification (including stress or split sleeve coining of holes, and installing new pins), replacing pins with new pins, and repairing, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Operators should also note that the repair procedures for Condition 2 of the Work Instructions of the service bulletin do not provide for a follow-on inspection of the repaired area. The FAA has determined that a follow-on inspection of the repaired area is necessary to provide an appropriate level of safety.

Cost Impact

There are approximately 294 airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $60,240, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 98–NM–309–AD.

Applicability: Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC8–57–100, Revision 01, dated August 26, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower wing skin, which could reduce structural integrity and loss of fail-safe capability of the airplane, accomplish the following:

Note 2: This AD will affect Principal Structural Elements (PSE) 57.08.037, 57.08.038, 57.08.021, and 57.08.022 of the DC–8 Supplemental Inspection Document (SID).

Inspection, Repair, and Modification

(a) Within 24 months after the effective date of this AD, perform detailed visual and eddy current inspections to detect cracks in the lower wing skin fastener holes in the area surrounding 3 outboard fasteners of the stringer 64 end fitting, in accordance with McDonnell Douglas Service Bulletin DC8–57–100, Revision 01, dated August 26, 1998.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any crack is detected in the skin fastener holes and it is less than 3.1 inches long, prior to further flight, repair in accordance with the service bulletin. Within 14,100 landings after accomplishment of the repair, inspect the lower wing skin to detect cracks, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any crack is detected in the skin fastener holes and it is greater than or equal to 3.1 inches long, prior to further flight, repair in accordance with a method approved by the Manager Los Angeles ACO.

(3) If no crack is found, within 24 months after the effective date of this AD, accomplish the preventative modification (including stress or split sleeve coining the three fastener holes in the skin, and installing new pins), in accordance with the service bulletin. Accomplishment of this action constitutes terminating action for the requirements of this AD.

Note 4: This AD does not terminate the inspection requirements for PSE's 57.08.037, 57.08.038, 57.08.021, and 57.08.022 of the DC–8 SID in accordance with AD 93–01–15, amendment 39–6330.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 21, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28085 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–298–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737, 757, and 767 series airplanes. This proposal would require repetitive inspections of certain motor operated hydraulic shutoff valves to detect malfunctioning; and replacement with new valves, if necessary. This proposal also would require eventual replacement of certain existing valves with new valves, which would constitute terminating action for the repetitive inspections. This proposal is prompted by reports that the motor switch contacts on certain hydraulic shutoff valves were misaligned, causing subsequent malfunction of those valves. The actions specified by the proposed AD are intended to prevent failure of the motor operated hydraulic shutoff valves, which could result in leakage of hydraulic fluid to the engine fire zone, reduced ability to retract the landing gear, loss of backup electrical power or other combinations of failures; and consequent reduced controllability of the airplane.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–298–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–298–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–298–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received reports indicating that functional testing of the motors of certain hydraulic shutoff valves of Boeing Model 737, 757, and 767 series airplanes revealed that the motor switch contacts on the valves were misaligned. This misalignment could prevent the valve motor from turning off after it reaches the commanded stop position at the end of switch travel; such misalignment has been attributed to a design flaw. If the motor ceases operation and cannot be recommanded to operate, the related valve cannot open and close for the affected hydraulic system. Such malfunction could result in failure of the valve, leakage of hydraulic fluid to the engine fire zone, reduced ability to retract the landing gear, loss of backup electrical power, or other combinations of failures; and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 737–29A1073, Revision 2, (for Model 737 series airplanes); 757–29A0048, Revision 2, (for Model 757 series airplanes), both dated July 1, 1999; and 767–29A0083, Revision 2, dated July 15, 1999 (for Model 767 series airplanes). These service bulletins describe procedures for repetitive inspections of the motor operated hydraulic shutoff valves to verify proper functioning. The service bulletins also describe procedures for replacement of any malfunctioning valves with new valves. Accomplishment of the actions specified in the alert service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletins described previously, except as discussed below.

Differences Between the Alert Service Bulletins and the Proposed AD

Operators should note that this AD proposes to mandate, within 2 years, the replacement of the motor operated hydraulic shutoff valves described in the alert service bulletins as terminating action for the repetitive inspections. The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is in consonance with these conditions.

Operators should further note that the Circle Seal motor operated hydraulic shutoff valves having the replacement part numbers (P/N) specified in the alert service bulletins are not adequate for installation as replacement parts due to intermittent failures in the valves. The failures prevent the valves from being moved to the commanded position when commanded to open or close. However, Circle Seal valves having P/N S270T010–10, S270T010–11, and S270T010–12 are adequate for installation as replacement parts.

The FAA has approved design changes incorporated into these valves, and the valves are being installed on airplanes in production.

Cost Impact

There are approximately 3,029 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,234 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $148,080, or $120 per airplane, per inspection cycle.

There are approximately 802 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 558 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $100,440, or $180 per airplane, per inspection cycle.

There are approximately 701 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 280 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $67,200, or $240 per airplane, per inspection cycle.

For all airplanes, it would take approximately 5 work hours per valve to accomplish the proposed replacement, at an average labor rate of $60 per work hour.

Required parts and hydraulic fluid would cost approximately $4,316 per airplane. Based on these figures, the cost impact of the valve replacements proposed by this AD on U.S. operators is estimated to be $4,616 per airplane, per valve replacement. This proposed AD would require eventual replacement of approximately 5,000 valves.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–298–AD.

Applicability: Model 737, 757, and 767 series airplanes, certificated in any category, as listed in the following Boeing Alert Service Bulletins:

- 737–29A1073, Revision 2, dated July 1, 1999 (for Model 737 series airplanes);
- 757–29A0048, Revision 2, dated July 1, 1999 (for Model 757 series airplanes);
- 767–29A0083, Revision 2, dated July 15, 1999 (for Model 767 series airplanes).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the motor operated hydraulic shutoff valves, which could result in leakage of hydraulic fluid to the engine fire zone, reduced ability to retract the landing gear, loss of backup electrical power or other combinations of failures, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections/Corrective Action

(a) Within 6 months after the effective date of this AD: Perform a general visual inspection to detect malfunctioning of any Circle Seal motor operated hydraulic shutoff valve having a part number specified in the "Existing Part Number" column (including parts marked with the suffix "R" after the serial number), of Paragraph 2.E. of Boeing Alert Service Bulletin 737–29A1073, Revision 2 (for Model 737 series airplanes), or 757–29A0048, Revision 2 (for Model 757 series airplanes), both dated July 1, 1999; or 767–29A0083, Revision 2, dated July 15, 1999 (for Model 767 series airplanes); as applicable; in accordance with the applicable alert service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If any malfunction of any valve is detected, prior to further flight, replace the valve with a new Whittaker valve in accordance with the applicable service bulletin; or replace any valve having P/N S270T010–1, –4, or –7, with a new Circle Seal valve having P/N S270T010–10; replace any valve having P/N S270T010–2, –5, or –8,

with a new Circle Seal valve having P/N S270T010–11; and replace any valve having P/N S270T010–3, –6, or –9, with a new Circle Seal valve having P/N S270T010–12; as applicable. Repeat the inspection thereafter at intervals not to exceed 6 months until accomplishment of the terminating action required by paragraph (b) of this AD.

(2) If no malfunction of any valve is detected, repeat the inspection thereafter at intervals not to exceed 6 months until accomplishment of the terminating action required by paragraph (b) of this AD.

Terminating Action

(b) Within 2 years after the effective date of this AD, accomplish the replacement of any Circle Seal valve having a P/N specified in the "Existing Part Number" column (including parts marked with the suffix "R" after the serial number), of Paragraph 2.E. of Boeing Alert Service Bulletin 737–29A1073, Revision 2 (for Model 737 series airplanes); 757–29A0048, Revision 2 (for Model 757 series airplanes), both dated July 1, 1999; or 767–29A0083, Revision 2, dated July 15, 1999 (for Model 767 series airplanes); as required by either paragraph (b)(1) or (b)(2) of this AD; in accordance with the applicable service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by this AD.

(1) Replace with a new Whittaker valve in accordance with the applicable service bulletin.

(2) Replace any valve having P/N S270T010–1, –4, or –7, with a new Circle Seal valve having P/N S270T010–10; replace any valve having P/N S270T010–2, –5, or –8, with a new Circle Seal valve having P/N S270T010–11; and replace any valve having P/N S270T010–3, –6, or –9, with a new Circle Seal valve having P/N S270T010–12.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane, any part identified in the "Existing Part Number" column (including parts marked with the suffix "R" after the serial number), of Paragraph 2.E. of Boeing Alert Service Bulletin 737–29A1073, Revision 2 (for Model 737 series airplanes); 757–29A0048, Revision 2 (for Model 757 series airplanes), both dated July 1, 1999; or 767–29A0083, Revision 2, dated July 15, 1999 (for Model 767 series airplanes); as applicable.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28086 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines. This proposal would require recalculation of cyclic life limits for certain compressor and turbine disks installed on engines with hush kits (Stage III noise reduction systems) installed in accordance with PW Service Bulletin No. 5947, removal from service of disks that exceed the new, lower cyclic life limits, and replacement with serviceable parts. This proposal is prompted by reports that compressor and turbine disks have higher rotor speeds on engines with hush kits that result in lower cyclic lives. The actions specified by the proposed AD are intended to prevent compressor and turbine disk failure due to reduced cyclic lives, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–04–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–04–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–04–AD, 12 New

England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of higher than normal rotor speeds on certain compressor and turbine disks installed on Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, and –7A series turbofan engines with hush kits (Stage III noise reduction systems) installed in accordance with PW Service Bulletin (SB) No. 5947. Analysis indicates that higher rotor speeds result in reduced cyclic lives for affected disks. This condition, if not corrected, could result in compressor and turbine disk failure due to reduced cyclic lives, which could result in an uncontained engine failure and damage to the airplane.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6340, dated June 25, 1998, that identifies affected compressor and rotor disks by part number (P/N), and describes formulae for recalculating cyclic disk lives.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require recalculation of cyclic life limits for certain compressor and turbine disks installed on engines with hush kits installed in accordance with PW SB No. 5947, removal from service of disks that exceed the new, lower cyclic life limits, and replacement with serviceable parts. The actions would be required to be accomplished in accordance with the ASB described previously.

There are approximately 2,872 engines of the affected design in the worldwide fleet. The FAA estimates that 2,585 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that the prorated life reduction would cost approximately $5,700 per engine over the life of the engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,734,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 99–NE–04–AD.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, and –17A series turbofan engines with hush kits (Stage III noise reduction systems) installed in accordance with PW Service Bulletin (SB) No. 5947. These engines are installed on but not limited to Boeing 727 and 737 series aircraft, and McDonnell Douglas DC–9 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent compressor and turbine disk failure due to reduced cyclic lives, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within twenty five (25) cycles-in-service after the effective date of this AD, recalculate the cyclic life limits of affected compressor and turbine disks listed by part number (P/N) in PW Alert Service Bulletin (ASB) No. A6340 dated June 25, 1998, in accordance with the formulae described in the Accomplishment Instructions of the ASB.

(b) After recalculating the new cyclic life limits in accordance with paragraph (a) of this AD, but prior to further flight, remove from service affected compressor and turbine disks that exceed the new, lower cyclic life limits calculated in accordance with paragraph (a) of this AD, and replace with serviceable parts.

(c) Except as provided in paragraph (d) of this AD, this AD established new, lower cyclic life limits for affected compressor and turbine disks installed on engines with hush kits.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 21, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–28087 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–168–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness

directive (AD), applicable to all McDonnell Douglas Model MD–11 series airplanes, that currently requires a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. That AD was prompted by a report indicating that damaged electrical wires were found above the forward passenger doors due to flapper panels moving inboard and chafing the electrical wire assemblies of this area. For certain airplanes, this action would require the installation or modification of a flapper door ramp deflector on the forward entry drop ceiling structure. For certain other airplanes, this action would require inspection of the wire assembly support installation for evidence of chafing, and corrective actions, if necessary; and modification of the subject area. The actions specified by the proposed AD are intended to prevent such chafing, which could result in an electrical fire in the passenger compartment.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–168–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–168–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–168–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 31, 1998, the FAA issued AD 98–25–11 R1, amendment 39–10988 (64 FR 1502, January 11, 1999), applicable to all McDonnell Douglas Model MD–11 series airplanes, to require a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. That action was prompted by a report indicating that damaged electrical wires were found above the forward passenger doors due to flapper panels moving inboard and chafing the electrical wire assemblies of this area. The actions required by that AD are intended to prevent chafing of certain wires above the forward passenger doors, which could result in an electrical fire in the passenger compartment. [AD 98–25–11 R1 was issued as a correction to AD 98–25–11, amendment 39–10937 (63 FR 68172, December 10, 1998).]

Actions Since Issuance of Previous Rule

In the preamble to AD 98–25–11, the FAA specified that the actions required by that AD were considered "interim action" until final action is identified at which time the FAA may consider further rulemaking. The manufacturer has since developed a modification, and the FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999, which describes procedures for the installation or modification of the flapper door ramp deflector on the forward entry drop ceiling structure. The modification involves reworking the current middle angle support, part number 4223570–5, of the ramp deflector and reidentifying it as part number 4223570–9.

The FAA also has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999. The service bulletin describes procedures for a visual inspection of the wire assembly support installation for evidence of chafing, and corrective actions, if necessary; and modification of the wire assembly support installation above the entry door (L1) sliding panel. The corrective actions involve either repairing any chafed part or replacing any discrepant part with a new part.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–25–11 R1 to continue to require a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. The proposed AD also would require accomplishment of the actions specified in the service bulletins described previously.

Explanation of Change Made to Applicability

Since the issuance of AD 98–25–11 R1, the FAA has determined that the unsafe condition is not likely to exist or develop on McDonnell Douglas Model MD–11 series airplanes delivered new as freighter aircraft since the flapper door ramp deflector on the forward entry drop ceiling was not installed. Therefore, the applicability of the proposed AD does not include those airplanes.

Explanation of Changes to Requirements of AD 98–25–11 R1

The FAA has clarified the inspection requirement contained in AD 98–25–11 R1. Whereas that AD specified a visual inspection, the FAA has revised this proposed AD to clarify that its intent is to require a detailed visual inspection. Additionally, a note has been added to the proposed AD to define that inspection.

Operators should note that although AD 98–25–11 R1 requires operators to submit a report of the inspection results to the FAA, this proposed AD does not require such reporting. As a result of the reporting requirements in that AD, the FAA has received an adequate amount of inspection reports from operators to determine the proper corrective actions.

Cost Impact

There are approximately 152 airplanes of the affected design in the worldwide fleet on which the proposed installation or modification of the flapper door ramp deflector on the forward entry drop ceiling structure would be required. The FAA estimates that this installation or modification would be required on 29 airplanes of U.S. registry.

There are approximately 152 airplanes of the affected design in the worldwide fleet on which the proposed inspection and modification of the wire assembly support installation above the entry door (L1) sliding panel would be required. The FAA estimates that this inspection and modification would be required on 41 airplanes of U.S. registry.

The actions that are currently required by AD 98–25–11 R1 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $7,800, or $120 per airplane.

The new installation or modification of the flapper door ramp deflector on the forward entry drop ceiling structure that is proposed in this AD action would be required on three airplane groups.

- Group 1 (installation of a ramp deflector) affects approximately 23 airplanes of U.S. registry and would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $480 per airplane. Based on these figures, the cost impact of this proposed requirement of this AD on U.S. operators is estimated to be $22,080, or $960 per airplane.
- Group 2 (installation of a ramp deflector) affects approximately 4 airplanes of U.S. registry and would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $890 per airplane. Based on these figures, the cost impact of this proposed requirement of this AD on U.S. operators is estimated to be $5,480, or $1,370 per airplane.
- Group 3 (modification of a previously installed ramp deflector) affects approximately 2 airplanes of U.S. registry and would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of this proposed requirement of this AD on U.S. operators is estimated to be $240, or $120 per airplane.

The inspection of the wire assembly support installation above entry door (L1) sliding panel affects approximately 41 airplanes and would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $2,460, or $60 per airplane.

The modification of the wire assembly support installation above entry door (L1) sliding panel affects approximately 41 airplanes and would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $2,460, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for some labor associated with accomplishing the proposed actions. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10988 (64 FR 1502, January 11, 1999), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99–NM–168–AD. Supersedes AD 98–25–11 R1, amendment 39–10988.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletins MD11–25A194, Revision 05, dated June 21, 1999, and MD11–24A068, Revision 01, dated March 8, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of certain electrical wires above the forward passenger doors, which could result in an electrical fire in the passenger compartment, accomplish the following:

Restatement of The Requirements of AD 98–25–11 R1

Detailed Visual Inspection

(a) Within 10 days after December 28, 1998 (the effective date of AD 98–25–11 R1, amendment 39–10988), perform a detailed visual inspection of the aircraft wiring to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) At the area of the forward drop ceiling just outboard of mod block S3–735, and forward and inboard of the light ballast for the entry light on the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5.

(2) At the area above the forward right passenger door (1R) at station location x = −30, y = 430, and z = 70 in the ramp deflector assembly part number 4223570–501.

Corrective Action

(b) If any discrepancy is detected during the visual inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated January 1, 1998, or April 1, 1998.

New Requirements of this AD

Inspection, Installation, and Modification

(c) Within 6 months after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3) and (c)(4) of this AD, as applicable.

(1) For Group 1 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Install a ramp deflector assembly on the right side forward entry drop ceiling structure in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999.

(2) For Group 2 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Install a ramp deflector assembly on the right side forward entry drop ceiling structure in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999.

Note 3: Installation of a ramp deflector assembly in accordance with McDonnell Douglas Service Bulletin MD11–25–194, dated March 15, 1996; Revision 01, dated May 1, 1996; Revision 02, dated July 12, 1996; Revision 03, dated December 12, 1996; or Revision 04, dated March 8, 1999, is acceptable for compliance with the requirements of paragraph (c)(2) of this AD.

(3) For Group 3 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Modify the previously installed ramp deflector assembly bracket in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999.

(4) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999: Accomplish the actions specified in paragraphs (c)(4)(i) and (c)(4)(ii) of this AD in accordance with the service bulletin.

(i) Perform a general visual inspection of the wire assembly support installation for evidence of chafing. If any chafing is detected, prior to further flight, repair or replace any discrepant part with a new part in accordance with the service bulletin.

Note 4: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(ii) Modify the wire assembly support installation above the entry door (L1) sliding panel in accordance with the service bulletin.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 20, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27941 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–171–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; and corrective action, if necessary. This proposal is prompted by a report indicating that the wire bundle contained in the feedthrough behind the first observer's station was contacting the bottom portion of the feedthrough. The actions specified by the proposed AD are intended to prevent such contact, which could cause cable

chafing, electrical arcing, smoke, or fire in the cockpit.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Technical Specialist, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–171–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware that the wire bundle contained in the feedthrough behind the first observer's station was contacting with the bottom portion of the feedthrough. This incident was found on a Model MD–11 series airplane during a McDonnell Douglas production line check. The contact has been attributed to a design deficiency of the wire bundle support clamp installation at the first observer's station. The design deficiency led to excessive preloading of the support clamp and bracket during manufacturing, which caused the clamp to rotate. This condition, if not corrected, could allow the wire bundle contained in the feedthrough to contact the bottom of the feedthrough, which could cause cable chafing, electrical arcing, smoke, or fire in the cockpit.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A041, Revision 01, dated April 26, 1999, which describes procedures for a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; and repair of the wires and revision of the wire bundle support clamp installation at the observer's station, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 63 airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AD, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $720, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–171–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A041, Revision 01, dated April 26, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the wire bundle contained in the feedthrough from contacting the bottom of the feedthrough which could cause cable chafing, electrical arcing, and smoke or fire in the cockpit, accomplish the following:

Inspection and Modification

(a) Within 1 year after the effective date of this AD, perform a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A041, Revision 01, dated April 26, 1999.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes identified as Group 1 in the service bulletin: Accomplish paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable.

(i) If no damaged or chafed wire is found, no further action is required by this AD.

(ii) If any damaged or chafed wire is found, prior to further flight, repair in accordance with the service bulletin;

(2) For airplanes identified as Group 2 in the service bulletin: Accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If no damaged or chafed wire is found, within 1 year after the effective date of this AD, revise the wire bundle support clamp installation at the observer's station in accordance with the service bulletin.

(ii) If any damaged or chafed wire is found, prior to further flight, repair the wiring, and revise the wire bundle support clamp installation at the observer's station in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 20, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27942 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–174–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require a one-time visual inspection of the 90 percent brake pedal position switch to determine if certain date codes are present; and corrective action, if necessary. This proposal is prompted by reports indicating that the threaded insert connectors pulled free from the casing of the 90 percent brake pedal position switch, which allowed the insert connector contact to burn through the nose wheel steering cable. The actions specified by the proposed AD are intended to prevent the threaded insert connector from pulling free from the casing of the 90 percent brake pedal position switch and burning through the nose wheel steering cable, which could result in reduced aircraft directional control while on the ground.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft

Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–174–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA discovered instances of threaded insert connectors pulling free from the casing of the 90 percent brake pedal position switch and allowing the insert connector contact to burn through the nose wheel steering cable. These incidents occurred on McDonnell Douglas Model MD–11 series airplanes. This condition was caused by the switch manufacturer casting oversize holes in the casing. Casing holes that are too large can allow threaded insert connectors to pull free from the casing of the 90 percent brake pedal position switch and burn through the nose wheel steering cable. This condition, if not corrected, could result in reduced aircraft directional control while on the ground.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A071, Revision 01, dated May 20, 1999, which describes procedures for a one-time visual inspection of the 90 percent brake pedal position switch to determine if certain manufacturer's date codes are present, and corrective action, if necessary. The corrective action involves replacement of the 90 percent brake pedal switch with a new switch. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 91 airplanes of the affected design in the worldwide fleet. The FAA estimates that 33 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,980, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for some labor costs associated with accomplishing the proposed actions. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnel Douglas: Docket 99–NM–174–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A071, Revision 01, dated May 20, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the threaded insert connector from pulling free from the casing of the 90 percent brake pedal position switch and burning through the nose wheel steering cable, which could result in reduced aircraft directional control while on the ground, accomplish the following:

(a) For airplanes on which McDonnell Douglas Service Bulletin MD11–24–71, dated June 29, 1994, has not been accomplished: Within 12 months after the effective date of this AD, perform a one-time visual inspection of the 90 percent brake pedal position switch to determine the manufacturer's date code, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A071, Revision 01, dated May 20, 1999.

(1) If no manufacturer's date code 8944 through 9033 inclusive is not found on the 90 percent brake pedal position switch, no further action is required by this AD.

(2) If any manufacturer's date code 8944 through 9033 inclusive is found on the 90 percent brake pedal position switch, prior to further flight, replace the 90 percent brake pedal position switch with a new switch, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install a 90 percent brake pedal switch that has a manufacturer's date code of 8944 through 9033 inclusive, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 20, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27943 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–169–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require replacement of 10 amp circuit breakers with 5 amp circuit breakers in the left and right windshield anti-ice power controllers; and replacement of the anti-ice control panel with a new or modified panel, or modification and reidentification of the anti-ice control panel. This proposal is prompted by reports of smoke and sparks emanating from the anti-ice control panel in the cockpit. The actions specified by the proposed AD are intended to prevent burnt internal circuit boards caused by a short in either the engine or airfoil anti-ice valve, or the windshield anti-ice controller, which could result in smoke in the cockpit.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Technical Specialist, Systems Safety and Integration, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–169–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of several incidents of smoke and sparks emanating from the anti-ice control panel in the cockpit. These incidents occurred on McDonnell Douglas Model MD–11 series airplanes.

Investigation revealed that a short occurred in either the engine or airfoil anti-ice valve, or windshield anti-ice controller. This short caused certain internal circuit boards to burn. This condition, if not corrected, could burn the internal circuit boards, which could result in smoke and sparks emanating from the anti-ice control panel and consequent smoke in the cockpit.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–30A020, Revision 03 dated, May 5, 1999, which describes procedures for replacement of 10 amp circuit breakers with 5 amp circuit breakers in the left and right windshield anti-ice power controllers; and replacement of the anti-ice control panel with a new or modified panel, or modification and reidentification of the anti-ice control panel. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 130 airplanes of the affected design in the worldwide fleet. The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane (if the anti-ice control panel is replaced) or 10 work hours per airplane (if the anti-ice control panel is modified and reidentified) to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Honeywell has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts are not attributable to this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $7,380 and $24,600; or between $180 and $600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised by Honeywell that warranty remedies are available for some of the labor costs associated with accomplishing the modification of the anti-ice control panel required by the proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–169–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–30A020, Revision 03, dated May 5, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent burnt internal circuit boards caused by a short in either the engine or airfoil anti-ice valve, or windshield anti-ice controller, which could result in smoke in the cockpit, accomplish the following:

Replacement and Modification

(a) Within 1 year after the effective date of this AD, replace the 10 amp circuit breakers with 5 amp circuit breakers in the left and right windshield anti-ice power controllers, and accomplish either paragraph (a)(1) or (a)(2) of this AD, in accordance with McDonnell Douglas Alert Service Bulletin MD11–30A020 Revision 03, dated May 5, 1999.

(1) Option 1. Replace the anti-ice control panel and return the panel to Honeywell Inc. for modification and reidentification in accordance with Option 1 of the service bulletin.

(2) Option 2. Modify and reidentify the anti-ice control panel in accordance with Option 2 of the service bulletin.

Note 2: Replacements, modifications, and reidentifications accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Service Bulletin MD11–30–020, dated March 6, 1995; Revision 01, dated February 20, 1996; or Revision 02, dated August 25, 1997; are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install an anti-ice control panel, part number 4059030–901 or –902, on any airplane, unless it has been modified and reidentified as part number 4059030–911 or –912, in accordance with paragraph (a)(1) or (a)(2) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 20, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27944 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–172–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require modification of the battery ground cable installation in the center accessory compartment. This proposal is prompted by reports of battery ground studs that had arced due to loose ground stud attachments. The actions specified by the proposed AD are intended to prevent such arcing, which could cause smoke and/or fire in the center accessory compartment.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Technical Specialist, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–172–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of battery ground studs that had arced on McDonnell Douglas Model MD–11 series airplanes. The cause of arcing of the battery ground studs has been attributed to loose ground stud attachments. This condition, if not corrected, could cause smoke and/or fire in the center accessory compartment.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A141, dated May 17, 1999, and Revision 01, dated August 23, 1999, which describes procedures for modifying the battery ground cable installation in the center accessory compartment. This modification includes: modifying, reidentifying, and installing a bracket assembly; trimming of a name plate; plugging open holes; installing a support assembly and clamp; and connecting the battery ground cable with improved attachments. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 142 airplanes of the affected design in the worldwide fleet. The FAA estimates that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane (for Option 1; bracket assembly modification) or 2 work hours per airplane (for Option 2; bracket assembly replacement) to accomplish the proposed AD, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,204 per airplane for Option 1, or $2,115 per airplane for Option 2. Based on these figures, the cost impact of the proposed AD on U.S. operators for Option 1 is estimated to be $41,520, or $1,384 per airplane. The cost impact of the proposed AD on U.S. operators for Option 2 is estimated to be $67,050, or $2,235 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for some labor costs associated with accomplishing the proposed actions. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–172–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A141, Revision 01, dated August 23, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of the battery ground studs, which could cause smoke and/or fire in the center accessory compartment, accomplish the following:

(a) For airplanes on which McDonnell Douglas Service Bulletin MD11–24–090, dated August, 28, 1997; Revision 1, dated June 10, 1998; or Revision 2, dated May 17, 1999; has not been accomplished: Within 1 year after the effective date of this AD, accomplish the modification of the battery ground cable installation in the center accessory compartment specified in paragraph (a)(1) or (a)(2) of this AD, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A141, dated May 17, 1999, or Revision 01, dated August 23, 1999.

(1) Option 1 (Bracket Assembly Modification). Modify, reidentify, and install a modified bracket assembly; trim the nameplate; plug open holes; install the support assembly and clamp; and connect the battery ground cable with improved attachments.

(2) Option 2 (Bracket Assembly Replacement). Install a new bracket assembly; plug open holes; install the support assembly and clamp; and connect the battery ground cable with improved attachments.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 20, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27945 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–170–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require replacement of the air driven generator (ADG) wire assembly with a new, increased length wire assembly. This proposal is prompted by a report of loose terminal attachment hardware on the ADG power monitor relay due to a stress condition on the terminal attachment points. The actions specified by the proposed AD are intended to prevent loss of the charging capability of the aircraft battery. Loss of the charging capability of the aircraft battery, coupled with a loss of all normal electrical power, could prevent continued safe flight and landing of the airplane.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–170–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of loose terminal attachment hardware on the air driven generator (ADG) power monitor relay. This incident occurred on a Model MD–11 series airplane during a heavy maintenance check.

A subsequent inspection found other airplanes with similar loose terminal attachment hardware with internally broken lugs, including one airplane with a broken wire. During a Boeing investigation of production airplanes, it was revealed that the wire assembly connected to the ADG was installed with no slack, which caused a stress condition on the terminal attachment points, and resultant loose terminals and loss of the charging capability of the ADG. This condition, coupled with a loss of all normal electrical power, if not corrected, could prevent continued safe flight and landing of the airplane.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposal is one of a series of proposed actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletins MD11–24–128, dated September 17, 1998, and Revision 1, dated July 30, 1999, which describes procedures for replacement of the ADG wire assembly with a new, increased length wire assembly. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 180 airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $786 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $50,760, or $846 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) If promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–170–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Service Bulletin MD11–24–128, Revision 1, dated July 30, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the charging capability of the air driven generator (ADG), that when coupled with a loss of all normal electrical power, could prevent continued safe flight and landing of the airplane, accomplish the following:

Replacement

(a) Within 1 year after the effective date of this AD, replace the ADG wire assembly, part number (P/N) ACS9006–501, with a new, increased length wire assembly, P/N ACS9006–502, in accordance with McDonnell Douglas Service Bulletin MD–11–24–128, dated September 17, 1998, or Revision 1, dated July 30, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 20, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27946 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This proposal would require replacement of the existing terminal strips and supports above the main cabin area; and installation of spacers between terminal strips and mounting brackets in the avionics compartment; as applicable. This proposal is prompted by a report indicating that, during flight, an incident of electrical arcing occurred at a terminal strip located overhead in the main cabin. The actions specified by the proposed AD are intended to prevent electrical arcing caused by power feeder cable terminal lugs grounding against terminal strip support brackets, which could result in smoke and fire in the main cabin or avionics compartment.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–173–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident where arcing occurred during flight at a terminal strip located overhead in the main cabin of a McDonnell Douglas Model MD–11F series airplane. The arcing resulted in sparks landing on a cargo cover, which consequently caught fire. Investigation revealed that the design and installation did not provide adequate clearance between the terminal strips and mounting brackets, which allowed a power feeder cable terminal lug to ground against a terminal strip support bracket. Investigations conducted of other similar installations have revealed the potential for the same type of incident to occur at other specific aircraft locations. This condition, if not corrected, could result in smoke and fire in the main cabin or avionics compartment.

The subject area on certain McDonnell Douglas Model MD–11 series airplanes is identical to that on the affected Model MD–11F series airplanes. Therefore, both of these models may be subject to the same unsafe condition.

The incident described previously is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999, which describes procedures for replacement of the existing terminal strips and supports above the main cabin at station Y=5–32.000 with new terminal strips and supports. The FAA also has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A147, dated March 24, 1999, which describes procedures for installation of spacers between terminal strips and mounting brackets in the avionics compartment. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Cost Impact

There are approximately 136 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A147, dated March 24, 1999, in the worldwide fleet. The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed action, that would take approximately 3 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $445 per airplane. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $25,000, or $625 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for some labor with accomplishing the proposed actions. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

There are approximately 14 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999, in the worldwide fleet. Currently, none of these airplanes are on the US Register. However, should an affected airplane be imported and placed on the US Register in the future, it would require approximately 1 work hour to accomplish the proposed modification, at an average labor rate of $60 per work hour. The cost of required parts would be $885 per airplane. Based on these figures, the cost impact of this modification proposed by this AD would be $945 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) If promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–173–AD.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999, and McDonnell Douglas Alert Service Bulletin MD11–24A147, dated March 24, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent electrical arcing caused by power feeder cable terminal lugs grounding against terminal strip support brackets, which could result in smoke and fire in the main cabin or avionics compartment, accomplish the following:

Replacement of Terminal Strips and Supports

(a) For airplanes listed in the effectivity of McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999, on which the modification specified in McDonnell Douglas Service Bulletin MD11–24–085, dated August 1, 1995, has not been accomplished: Within 1 year after the effective date of this AD, replace the existing terminal strips and supports above the main cabin at station Y=5–32.000 with new terminal strips and supports in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999.

Installation of Spacers

(b) For airplanes listed in the effectivity of McDonnell Douglas Alert Service Bulletin MD11–24A147, dated March 24, 1999: Within 6 months after the effective date of this AD, install spacers between terminal strips and mounting brackets in the avionics compartment in accordance with the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 20, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27947 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 4

Privacy Act of 1974; Implementation

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed rule amendment and request for comment.

SUMMARY: The FTC proposes to amend its Privacy Act rules to add a new system of records that will be used to compile and maintain identity theft complaint data. This new exempt system of records is necessary to implement the requirements of the Identity Theft and Assumption Deterrence Act of 1998. The exemption will help prevent individuals suspected of engaging in identity theft from obtaining access to complaint data.

DATES: Comments must be received by November 26, 1999.

ADDRESSES: Submit comments in writing to the Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, "FTC File No. P994320, Identity Theft Program—Comment."

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447. For more information about the Commission's identity theft program, contact Beth Grossman, (202) 326–3019, or Joanna Crane, (202) 326–3258, Attorneys, Division of Planning & Information, Bureau of Consumer Protection, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, the FTC, in accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, is publishing a notice of a new agency system of records, to be designated as FTC–IV–2, "Identity Theft Complaint Management System—FTC." This system will enable the FTC to fulfill its statutory responsibilities under section 5 of the Identity Theft and Assumption Deterrence Act of 1998, Public Law 105–318, 112 Stat. 3007, 3010, 18 U.S.C. 1028 note ("ITADA"), which designates the FTC as a clearinghouse for the receipt and referral of identity theft complaints and requires that the FTC establish procedures: (1) To log and acknowledge receipt of complaints from individuals who certify that they have a reasonable belief that one or more of their means of identification have been assumed, stolen, or otherwise unlawfully acquired in violation of the statute; (2) to provide informational materials to such individuals; and (3) to refer such complaints to "appropriate entities." Under the statute, these entities include, but are not limited to, the three major national consumer reporting agencies (currently Equifax, Experian and Trans Union), and appropriate law enforcement agencies for potential law enforcement action.

The Commission believes that the identity theft complaint data contained in this system must be exempted under the Privacy Act to prevent certain categories of individuals who will be covered by the system (i.e., targets of complaints) from invoking the Act to obtain access to complaint files that may pertain to their activities. A principal purpose for compiling these complaint files is for law enforcement, since these complaints focus on specific instances of suspected illegal identity theft. In many cases, these complaints will be referred to other law enforcement authorities, as required by the ITADA, and in certain cases, may also be relevant to Commission investigations. Under these circumstances, disclosure of the complaint file to a target would harm or otherwise interfere with law enforcement efforts. For example, if the complaint data were not exempted from access, a target could anticipate and evade prosecution by learning about actual or potential law enforcement referrals, investigations, or other actions from information maintained in the complaint file. Such access to the file could also inadvertently facilitate further identity theft or retaliation by enabling the target to ascertain or confirm sensitive personal information submitted by and being maintained about the identity theft victim or about other informants. Thus, the Commission proposes to exempt this system of records under 5 U.S.C. 552a(k)(2), and to amend Commission Rule 4.13(m), 16 CFR 4.13(m), to include this system in its inventory of exempt systems. The Commission, however, reserves the sole discretion to permit access to categories of individuals covered by the system other than targets (e.g., complainants or other individual informants) with respect to information that was provided by such individuals in order to correct, update or verify the accuracy of the information or for other related purposes.

Pursuant to 5 U.S.C. 552a(r), the Commission is providing notice of this proposal to the appropriate committees of the House of Representatives and the Senate, and to the Office of Management and Budget.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Records, Sunshine Act.

PART 4—MISCELLANEOUS RULES

1. The authority for part 4 continues to read:

Authority: 15 U.S.C. 46, unless otherwise noted.

2. Amend § 4.13 by revising paragraph (m)(2) to read as follows:

§ 4.13 Privacy Act rules.

* * * * *

(m) * * *

(2) Pursuant to 5 U.S.C. 552a(k)(2), investigatory materials compiled for law enforcement purposes in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(k)(2):

Investigational, Legal, and Public Records—FTC
Disciplinary Action Investigatory Files—FTC
Clearance to Participate Applications and the Commission's Responses Thereto, and Related Documents—FTC
Management Information System—FTC
Office of the Secretary Control and Reporting System—FTC
Office of Inspector General Investigative Files—FTC
Stenographic Reporting Service Requests—FTC
Identity Theft Complaint Management System—FTC
Freedom of Information Act Requests and Appeals—FTC
Privacy Act Requests and Appeals—FTC
Information Retrieval and Indexing System—FTC

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc 99–28006 Filed 10–25–99; 10:38 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC–2012b; FRL–6456–9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Stage II Gasoline Vapor Recovery RACT Requirements for Major Sources of VOC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve State Implementation Plan (SIP) revisions submitted by the District of Columbia consisting of amendments for reasonably available control technology (RACT) requirements for major sources of volatile organic compounds (VOC) and Stage II gasoline vapor recovery requirements. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the District's SIP submittals as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A rationale for the approval is set forth in the direct final rule. A more detailed description of the District's submittals and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 26, 1999.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at the EPA Region III address above, or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: October 5, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–26850 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA022–4089; FRL–6456–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Pennsylvania; Control of Total Reduced Sulfur Emissions from Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPS proposes to approve Pennsylvania's Section 111(d) plan for the purpose of controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills. In the final rules section of the **Federal Register**, EPA is approving this plan. A detailed rationale for the approval is set forth in the direct final rule. if no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by November 26, 1999.

ADDRESSES: Comments may be mailed to Harold A. Frankford, Office of Air Programs, Mail Code 3AP20, Environmental Protection Agency, Regional III, 1650 Arch Street, Philadelphia, PA 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford (215) 814–2108, or by e-mail at frankford.harold@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule, with the same title, which is located in the Rules and Regulations section of the **Federal Register.**

Dated: September 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, EPA Region III.

[FR Doc. 99–26854 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85 and 86

[AMS–FRL–6463–7]

RIN 2060–AI23

Control of Air Pollution from New Motor Vehicles: Proposed Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Provision of Supplemental Information and Request for Comment.

SUMMARY: EPA published a Notice of Proposed Rulemaking (NPRM) on May 13, 1999, proposing a major program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, minivans, and sport-utility vehicles (the "Tier 2 program"). The proposed program combines requirements for cleaner vehicles and requirements for lower levels of sulfur in gasoline. A supplemental notice was published on June 30, 1999, clarifying the May 13, 1999, proposal in light of a May 14, 1999, ruling by a panel of the Court of Appeals for the District of Columbia regarding the recently promulgated national ambient air quality standards (NAAQS) for ozone and PM. Our supplemental notice also provided additional modeling information not included in the May 13, 1999, proposal regarding 1-hour ozone levels for areas where the 1-hour ozone standard currently applies.

In light of the uncertain status of the 8-hour ozone standard resulting from the Court of Appeals' ruling, EPA recently issued a Notice of Proposed Rulemaking on October 20, 1999, proposing to rescind our earlier findings that the 1-hour ozone standard is no longer applicable in certain areas that have attained the standard. Today's document explains how the October 20, 1999, reinstatement proposal relates to the May 13 proposal on vehicle and gasoline standards. Today's document also provides additional 1-hour ozone modeling and monitoring information for areas that would be affected by the proposed action.

DATES: *Comments:* We must receive your comments on this document by December 1, 1999.

ADDRESSES: *Comments:* You may send written comments in paper form or by E-mail. Send paper copies of written comments (in duplicate if possible) on the information in this document to Public Docket No. A–97–10 at the following address: US Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460. If possible, we also encourage you to send an electronic copy of your comments (in ASCII format) to the docket by e-mail to A-and-R-Docket@epa.gov or on a 3.5 inch diskette accompanying your paper copy. If you wish, you may send your comments by E-mail to the docket at the address listed above without the submission of a paper copy, but a paper copy will ensure the clarity of your comments.

Please also send a separate paper copy to the contact person listed below. If you send comments by E-mail alone, we ask that you send a copy of the E-mail message that contains the comments to the contact person listed below.

EPA's Air Docket is open from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor MI 48105; Telephone (734) 214–4349, FAX (734) 214–4816, E-mail *connell.carol@epa.gov.*

For information on ozone modeling for Beaumont-Port Arthur, Texas, contact Mick Cote, U.S. EPA, Fountain Place 12th Floor Suite 1200, 1445 Ross

Avenue, Dallas TX 75202–2733; Telephone (214) 665–7219, E-mail *cote.mick@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Review of Events Related To This Rulemaking

A. Tier 2 Proposal

On May 13, 1999, EPA published in the **Federal Register** our proposal to reduce emissions from light-duty vehicles (LDVs) and light-duty trucks (LDTs). 64 FR 26004. The proposal would also significantly reduce sulfur content in gasoline. The proposed program would phase in beginning in 2004. The program is projected to result in reductions of approximately 800,000 tons of nitrogen oxides (NO_X) per year by 2007 and 1,200,000 tons by 2010. It would result in reductions of about 70 percent in emissions of NO_X from LDVs and LDTs nationwide by 2020, compared to emissions in that year without the proposed program. In addition, the proposed program would reduce the contribution of vehicles to other serious health and environmental problems, including particulate matter, visibility problems, toxic air pollutants, acid rain, and nitrogen loading of estuaries.

We proposed the standards for LDVs and LDTs pursuant to our authority under section 202 of the Clean Air Act (CAA or the Act). In particular, section 202(i) of the Act provides specific procedures that we must follow to determine whether Tier 2 standards for LDVs and certain LDTs[1] are appropriate beginning in the 2004 model year. Specifically, we are required to first issue a study regarding "whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required" (the "Tier 2 study"). This study "shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards." It is also to consider (1) The availability of technology to meet more stringent vehicle emission standards, taking cost, lead time, safety, and energy impacts into consideration, and, (2) The need for, and cost effectiveness of, such standards, including consideration of alternative methods of attaining or maintaining the national ambient air quality standards. We must then submit the study as a Report to Congress. We submitted our Report to Congress on July 31, 1998.

Following the Report to Congress, we are required to determine by rulemaking whether (1) There is a need for further reductions in emissions in order to attain or maintain the national air quality standards (NAAQS), taking into consideration the waiver provisions of section 209(b); (2) The technology for more stringent emission standards from LDVs and LDTs with a loaded vehicle weight less than or equal to 3750 pounds will be available; and (3) Such standards are needed and cost-effective, taking into account alternatives. If we make affirmative determinations, then we are to promulgate new, more stringent motor vehicle standards ("Tier 2 standards"). We proposed affirmative responses to the three questions above and proposed new standards. We also proposed standards for larger light-duty trucks (up to 8500 pounds GVWR) under the general authority of Section 202(a)(1) and under Section 202(a)(3) of the Act, which requires that standards applicable to emissions of hydrocarbons, NO_X, CO and PM from heavy-duty vehicles[2] reflect the greatest degree of emission reduction available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety.

We proposed our gasoline sulfur controls pursuant to our authority under Section 211(c)(1) of the CAA. Under Section 211(c)(1), we may adopt a fuel control if at least one of the following two criteria is met: (1) The emission products of the fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or (2) The emission products of the fuel will significantly impair emissions control systems in general use or which would be in general use in a reasonable time were the fuel control to be adopted.

We proposed to control sulfur levels in gasoline based on both of these criteria. Under the first criterion, we believe that existing sulfur content in gasoline used in Tier 1 and LEV technology vehicles contributes to ozone pollution, air toxics, and PM at levels which can be reasonably expected to endanger public health or welfare. Under the second criterion, we believe that in the absence of gasoline sulfur control, sulfur in fuel that would be used in Tier 2 technology vehicles would significantly impair the emissions control systems expected to be used in such vehicles.

B. New Ozone and PM NAAQS

EPA promulgated new NAAQS for ozone and PM in 1997. 62 FR 38652 (July 18, 1997); 62 FR 38856 (July 18, 1997). We replaced the 1-hour 0.12 parts per million (ppm) ozone standard with an 8-hour standard at a level of 0.08 ppm. We also promulgated a regulation providing that the 1-hour ozone NAAQS would continue to apply until we determined that an area had attained the 1-hour standard. This provision was premised upon the existence of the 8-hour standard and the implementation scheme developed for that standard. On June 5, 1998, July 22, 1998, and June 9, 1999, we issued final rules for many areas finding that the 1-hour standard no longer applied in these areas because they had attained the 1-hour standard. In proposing the Tier 2 standards on May 13, 1999, we proposed our determination on the need for additional emission reductions under section 202(i) after considering monitoring data and air quality model predictions related to the new NAAQS for ozone (the "8-hour ozone NAAQS"), the pre-existing ozone NAAQS (the "1-hour ozone NAAQS"), the pre-existing PM_{10} NAAQS, the revised PM10 NAAQS, and the new $PM_{2.5}$ NAAQS.

C. Court Panel Opinion on the NAAQS, Our Supplemental Notice Regarding Its Effect on the Tier 2/Sulfur Rule, and Our Proposal To Rescind Previous Findings on Applicability of the 1-Hour Ozone NAAQS

On May 14, 1999, a panel of the U.S. Court of Appeals for the District of Columbia Circuit found, by a 2–1 vote, that sections 108 and 109 of the Clean Air Act, as interpreted by EPA, represent unconstitutional delegations of Congressional power. *American Trucking Ass'ns, Inc., et al.*, v. *Environmental Protection Agency*, Nos. 97–1440, 1441 (D.C. Cir. May 14, 1999). The Court remanded the record to EPA. The June 30, 1999 supplemental notice contained a summary of the Court's opinion. On June 28, 1999 we filed a petition for rehearing and a petition for rehearing *en banc* seeking review of the panel's decision.

In the May 13, 1999, NPRM and related documents we provided a significant amount of information and analysis regarding our proposed determinations that further emission reductions were needed to attain and maintain the NAAQS, that the technology for more stringent emission standards will be available, and that such standards are needed and cost effective, taking into account the alternatives. In the June 30, 1999, supplemental notice, we explained that, regardless of the eventual outcome of the Court case, the proposed Tier 2 Rule is justified as a necessary and important measure for reducing air pollutants and protecting public health. We stated that the proposed regulations continue to conform to the statutory requirements of the Act for the 1-hour ozone standard and the pre-existing PM_{10} NAAQS. The June 30, 1999, supplemental notice explained that the statutory requirements for the proposal remain satisfied, for each of the elements of the proposed rule that are covered by different statutory requirements (the "Tier 2" standards for LDVs and LDTs weighing 3750 lbs. or less, the standards for vehicles above this weight, and the gasoline sulfur limits). In particular, the supplemental notice summarized information on 1-hour ozone and PM air quality that had been presented in the May 13, 1999 notice. The supplemental notice also presented and discussed additional information on our ozone and PM air quality modeling analyses, focusing on the 1-hour ozone and the pre-existing PM_{10} NAAQS.

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[1] LDTs with a loaded vehicle weight less than or equal to 3750 pounds.

[2] Vehicle classifications are discussed in the May 13, 1999 proposal on page 26031. LDTs that have gross vehicle weight ratings above 6000 pounds are considered heavy-duty vehicles under the Act. See section 202(b)(3). For regulatory purposes, we refer to these LDTs as "heavy light-duty trucks," made up of LDT3s and LDT4s. For reference, LDTs that have gross vehicle weight ratings below 6000 pounds are referred to as "light light-duty trucks," made up of LDT1s and LDT2s.

The additional information on 1-hour ozone presented in the supplemental notice included a table (numbered as Table 2 in the supplemental notice) of metropolitan areas for which ozone modeling has indicated a need for additional emission reductions for 1-hour ozone attainment. This table showed the results of the "exceedance method"[3] for comparing ozone model predictions to the 1-hour standard. It listed 17 metropolitan areas which remained subject to the 1-hour standard as of June 30, 1999, and which based on ozone modeling we predicted would have 1-hour ozone levels in 2007 above the level of the 1-hour standard, even after implementation of the Regional Ozone Transport Rule (ROTR), the National Low Emission Vehicle Program, the 2004 highway diesel engine standards, the Phase II nonroad diesel engine standards, and other federal and SIP emission control measures required under the CAA.[4] We stated in the supplemental notice our belief that these results indicate that there are many geographically dispersed areas which need further ozone precursor emission reductions to meet the 1-hour ozone NAAQS. The 1990 population of these 17 metropolitan areas exceeded 70 million.[5]

On October 20, 1999, EPA issued a proposal to rescind our previous findings that the 1-hour standard is no longer applicable in certain areas that had attained the 1-hour standard. This proposal is in response to the Court's ruling concerning the 8-hour ozone standard, since the existence of the 8-hour standard was one of the key factors underlying our finding that the 1-hour standard no longer applied in such areas. We further proposed to reinstate the former designations and classifications for such areas when the final notice is effective. The October 20, 1999 proposal contains a detailed list of the areas that would be affected, and a discussion of the effects of restoring the applicability of the 1-hour standard. The comment period for this proposal ends on December 1, 1999. We plan to take final action on the reinstatement prior to the final action on the Tier 2/Sulfur standards.

EPA believes that the information in the May 13 and June 30, 1999, documents, including the information in today's notice on areas already addressed in the June 30 notice, fully support the standards and determinations proposed in the May 13th NPRM. This applies whether one considers the information in the May 13, 1999, notice and the June 30, 1999, notice separately or taken together. The purpose of today's document is to provide additional information focusing on those areas where we recently proposed to rescind our previous findings on the applicability of the 1-hour ozone standard. The information provided in this document on these areas lends additional support to the information and analyses previously provided by EPA in the two prior documents, for any area where EPA finalizes such proposed reinstatement. For such areas, it will be appropriate and necessary for us to consider the prospects for attainment and maintenance with the 1-hour standard when we make our final finding under section 202(i) regarding the need for further reductions in emissions in order to attain or maintain the NAAQS. While the determinations and standards proposed by EPA in May of 1999 would be appropriate even without this additional information, it provides even further evidence that the proposal is appropriate.

The additional information presented today consists of (1) Additional information on areas already addressed in the June 30, 1999 supplemental notice, and (2) Ozone model predictions for areas that were not covered by that document. The 1-hour ozone modeling information in the June 30, 1999, supplemental notice was restricted to only those areas in which the standard still applied. The ozone modeling that was summarized in the table in fact resulted in predictions of exceedances in 2007 in other areas as well, as presented in the next section of this document. Today's notice does not present any additional information regarding attainment or maintenance of the PM NAAQS.

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[3] The exceedance method is described in the June 30, 1999, supplemental notice and associated documents in the docket for this rulemaking. It is the method we have used in developing the ROTR, to assess prospects for future 1-hour ozone problems in specific areas based on regional ozone modeling. The ROTR was published on October 21, 1998 (63 FR 56292).

[4] The deadline for submission of state implementation plans under the ROTR was recently stayed by a panel of the Court of Appeals for the D.C. Circuit pending further review. EPA believes that the ROTR is fully consistent with the Clean Air Act and should be upheld. However, it should be noted that in the absence of the reductions mandated in the ROTR, the emission reductions from the Tier 2 program would be even more necessary for compliance with the NAAQS.

[5] One of the 17 areas discussed in the June 30, 1999, supplemental notice was the Los Angeles-Riverside-San Bernardino Consolidated Metropolitan Statistical Area (CMSA). Much of this area is within the South Coast Air Basin ozone nonattainment area. The supplemental notice explained that we consider the emission reduction needs of California's worst ozone nonattainment area to be relevant to our determination on the air quality need for emission reductions, even though the standards we proposed would only apply to vehicles and gasoline sold outside California. California has designed and implemented a state vehicle and fuel control program with vehicle standards and gasoline sulfur limits similar to those we proposed, and therefore the proposed Tier 2/gasoline sulfur program would likely not apply in California. However, in our proposal we noted in qualitative terms the importance of the Tier 2 and sulfur control reductions to California's efforts to reach attainment with the 1-hour ozone standard particularly in the South Coast Air Basin. Ozone levels in California would be reduced through reductions in emissions from vehicles sold outside California that subsequently enter California temporarily or permanently. According to California, about 7 to 10 percent of all car and light truck travel in California takes place in vehicles originally sold outside of California. Our vehicle standards will result in these vehicles being built with more effective emission controls. In addition, our gasoline sulfur standard will help ensure that cars which operate for a time outside of California and then within California will have fully functioning catalysts. With current gasoline sulfur levels, California vehicles which visit other states and non-California vehicles which visit or migrate to California would suffer catalyst poisoning that would persist even when operating on California's own low sulfur fuel. In fact, the state of California has recently filed an update to its State Implementation Plan for the South Coast Air Basin that expressly claims that the Tier 2 program will lead to four tons per day of reduced NO_X. The four tons per day NO_X reductions cited represents only a small fraction of the emission reductions needed in the South Coast to attain the NAAQS. Because of the information from California that these additional emission reductions from our proposed rule are needed for attainment in the South Coast Air Basin of California, the Los Angeles-Riverside-San Bernardino metro area was included in our list of areas with predicted exceedances in the absence of our proposed Tier 2/Sulfur standards, even though we have not modeled this area as we have the other areas listed in the table.

II. Supplemental Information

A. Update of Information Presented in the June 30, 1999, Supplemental Notice

We have several items of information which update and further explain the ozone situation in the metropolitan areas that were listed in the June 30, 1999, supplemental notice.

First, the population figure given in the supplemental notice for the Los Angeles-Riverside-San Bernardino metropolitan area was in error. The correct figure for the 1990 population of this area is 14,531,529. Also, the Dover, DE Metropolitan Statistical Area (MSA) should have been listed separately from the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD Consolidated Metropolitan Statistical Area. These are in the same nonattainment area, but the Dover MSA is a separate metropolitan area. The two metropolitan areas each meet the criteria for inclusion in our list.

Also, we need to clarify the ozone model predictions and give additional information for three of the areas listed in the June 30, 1999 supplemental notice. In that document, we stated that for all the listed metropolitan areas our regional ozone model has predicted an exceedance of the 1-hour standard (with the exception of the Los Angeles area which was not within our regional ozone modeling domain). There was an error in reporting the modeling results for certain metropolitan areas. In fact, for the four episodes modeled, no 2007 exceedances were observed in the Baton Rouge, Beaumont-Port Arthur, or Milwaukee-Racine metropolitan areas. However, we still consider it appropriate to include two of these areas in the set of areas which support our proposed determination that additional emission reductions are needed to attain and maintain the 1-hour ozone standard, for reasons given below.

- *Baton Rouge, Louisiana.* On July 2, 1999, we approved Louisiana's demonstration that Baton Rouge will attain the 1-hour standard by its November 15, 1999 deadline. 64 FR 35930–35941. Our regional modeling, presented in the May 13 and June 30, 1999, notices, in fact does not indicate any exceedances in 2007. We have no specific indication that Baton Rouge will be exceeding the 1-hour standard by 2004, the first year of the proposed Tier 2/Sulfur rule emission reductions. Therefore, we are removing Baton Rouge from the list of areas which we consider to support a determination that additional emission reductions are needed in order to attain and maintain the 1-hour ozone standard.
- *Beaumont-Port Arthur, Texas.* Beaumont-Port Arthur is a moderate ozone nonattainment area which failed to attain by its November 15, 1996 deadline. Presently, the state of Texas is seeking our approval for a demonstration that Beaumont-Port Arthur is impacted by ozone transport from the Houston area, in order to support a request that we extend its attainment deadline to 2007 which would be the same as the deadline for Houston. We proposed action on this request on April 16, 1999 (64 FR 18864) and extended the comment period on June 3, 1999 (64 FR 29822). While our own regional ozone modeling performed for the development of the ROTR did not show any 2007 exceedances in Beaumont-Port Arthur, we believe that the ozone episodes we used in our regional modeling are not the most conducive to ozone formation in this particular area. The 2007 attainment analysis prepared and submitted by the state is based on two different episodes that are associated with high measured ozone levels in Beaumont-Port Arthur. We presently consider this analysis by Texas to indicate that additional emission reductions beyond already adopted programs are needed in order to provide for attainment of the 1-hour ozone standard in Beaumont-Port Arthur. Therefore, we are retaining Beaumont-Port Arthur on our list of areas with exceedances in the absence of the Tier 2/Sulfur emission reductions. Information on the modeling submitted by Texas may be examined by contacting Mick Cote in our Regional Office in Dallas, Texas and mentioning File No. TX–81–1–7350. Contact information for Mr. Cote is given in the section titled **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice.
- *Milwaukee-Racine, Wisconsin.* Our regional ozone modeling did not indicate any 1-hour exceedance in any county within the boundaries of the Milwaukee-Racine CMSA itself. However, our modeling predicted days with 1-hour ozone levels above 0.124 ppm in locations within a larger Lake Michigan area modeling domain. Due to imprecision in the modeling of local wind fields over and around Lake Michigan, it is quite possible that the predicted ozone concentrations in these other locations are also representative of actual future concentrations in Milwaukee-Racine itself. Moreover, we consider that emissions in both Chicago and Milwaukee contribute to such violations. This does not affect our discussion of Chicago in the June 30, 1999, supplemental notice. We believe that both areas should be considered to need additional reductions in emissions to reach attainment of the 1-hour ozone standard in the domain affected by emissions from both. We therefore are retaining Milwaukee-Racine on our list of areas with exceedances in 2007 in the absence of the Tier 2/Sulfur emission reductions.

Table 1 below is the same as the list of areas with predicted 1-hour exceedances given in the supplemental notice, except for the addition of Dover, DE, deletion of Baton Rouge and the correction of the population figure for Los Angeles.[6]

TABLE 1

[Metropolitan areas projected to experience exceedances of the 1-hour standard in 2007 or 2010, as applicable, with ROTR controls but without Tier 2/Sulfur Controls. Does not include areas for which the 1-Hour Ozone NAAQs does not presently apply.]

Metropolitan area	1990 population
Atlanta, GA MSA	2,959,500
Beaumont-Port Arthur, TX MSA[a]	361,218
Birmingham, AL MSA	839,942
Chicago-Gary-Kenosha, IL-IN-WI CMSA	8,239,820
Cincinnati-Hamilton, OH-KY-IN CMSA[b]	1,817,569
Dallas-Fort Worth, TX CMSA[a]	4,037,282
Dover, DE MSA	110,993

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[6] Areas in Table 1 are grouped and identified by Consolidated Metropolitan Statistical Areas (CMSAs) where they exist, or by Metropolitan Statistical Areas (MSAs) where no CMSA applies. In some cases, we are grouping by MSA and CMSA groups counties or parts of counties differently than we and the states group them for purposes of nonattainment area boundaries, classifications, attainment deadlines, or SIP approval or disapproval actions. This is for simplicity of presentation in this document only.

TABLE 1—Continued

[Metropolitan areas projected to experience exceedances of the 1-hour standard in 2007 or 2010, as applicable, with ROTR controls but without Tier 2/Sulfur Controls. Does not include areas for which the 1-Hour Ozone NAAQs does not presently apply.]

Metropolitan area	1990 population
Hartford, CT MSA	1,157,585
Houston-Galveston-Brazoria, TX CMSA[a]	3,731,029
Los Angeles-Riverside-San Bernardino CA CMSA[a b]	14,531,529
Louisville, KY-IN MSA	949,012
Milwaukee-Racine, WI CMSA	1,607,183
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA CMSA	19,549,649
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD CMSA	[illegible],893,019
Springfield, MA MSA	587,884
St. Louis, MO-IL MSA	2,492,348
Washington-Baltimore, DC-MD-VA-WV CMSA[c]	[illegible],726,395
Total Population	75,593,947
Number of Areas	17

[a] = These areas are not subject to the ROTR and were modeled accordingly.

[b] = The attainment date considered for Los Angeles-Riverside-San Bernardino is 2010. For other listed areas, 2007 is the date considered in the local ozone modeling that is the basis of this table. However, some of these areas have required attainment dates prior to 2007.

[c] = Washington, DC and Baltimore, MD are distinct nonattainment areas within one CMSA. They each meet the criteria for inclusion in this table.

Based on this list and the information presented in the first and supplemental notices regarding attainment of the pre-existing 1-hour ozone standard and the pre-existing PM_{10} NAAQS, we reiterate our proposed determination that there is a need for further reductions in emissions in order to attain or maintain the NAAQS, even when consideration is limited to the one-hour ozone and the pre-existing PM_{10} NAAQS. We believe the further information presented in the remainder of this document regarding other areas supports this proposed determination, but that the proposal is appropriate even without the additional information presented on areas subject to our proposed rescission of determinations regarding the applicability of the 1-hour ozone standard.

EPA has received comments on the air quality modeling aspects of the May 13, 1999, proposed rulemaking notice and the June 30, 1999, supplemental notice. All of these comments will be more fully considered and addressed in formulating and explaining the basis for our final action.

As discussed at length in the proposed rule, emissions from LDVs and LDTs will represent a large percentage of all emissions of ozone precursors once the ROTR is implemented. We believe that reductions from LDVs and LDTs in particular will be a needed and cost-effective alternative to achieve the necessary significant additional reductions in precursor emissions needed for the areas discussed above to attain or maintain the 1-hour ozone NAAQS.

B. Additional Ozone Modeling Results for Areas That Would Be Affected by the Proposed Rescission

As stated above, we have proposed to rescind our findings that made the 1-hour standard inapplicable in many areas, and thereby restore its applicability in these areas. In light of our proposal, we are presenting in this document similar ozone modeling information as was presented in the June 30, 1999 supplemental notice for areas subject to the proposed reinstatement. This modeling information shows that if we finalize our proposed rescissions of previous findings, thus restoring the 1-hour standard's applicability nationwide, the air quality basis for the proposed vehicle and fuel standards will be even stronger because there are many additional areas which appear unable to attain or maintain the 1-hour standard without additional emission reductions.

In the ozone modeling used to develop the Regional Ozone Transport Rule (ROTR), EPA calculated hourly ozone levels for the year 2007 in all or parts of 37 eastern states. The ROTR modeling considered the effects of growth and emission control measures. One of the combinations of emission control measures analyzed consisted of the ROTR, the National Low Emission Vehicle Program, the 2004 highway diesel engine standards, the Phase II nonroad diesel engine standards, and other federal and SIP emission control measures required under the CAA. We consider these controls to be the baseline for the required finding regarding the need for additional emission reductions to attain and maintain the NAAQS.[7] We performed ozone modeling for this baseline for each of the OTAG episodes in July 1988, 1991, 1993, and 1995.

Using the ozone predictions from the modeling just described, EPA extracted the predicted daily maximum 1-hour ozone concentrations for 2007 for a large number of counties in which ozone is or has been a concern. This set of counties includes (a) Those counties that are or ever were designated as nonattainment for the 1-hour standard, (b) Any additional counties which had an ozone monitor(s) in operation during the 1995–98 period with enough data to calculate a design value, and (c) Any other counties in the same MSA or CMSA as counties included under the first two criteria. Using the county-specific predicted 2007 daily maximum values, we used the "exceedance method" to identify those metropolitan areas where ozone levels are predicted to exceed the 0.12 ppm 1-hour standard in 2007. We then divided these areas into two groups, based on whether recent air quality monitoring has also shown violations. The first group consists of areas with both predicted exceedances in 2007 and recent monitoring data indicating a design value higher than the 1-hour standard. The second group consists of areas with predicted exceedances in 2007 but no recent monitored violations. Tables 2 and 3 below list these groups.[8]

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[7] Comments have been received recommending that we investigate whether states have adopted additional local controls not reflected in the ROTR modeling. We will consider and respond to this comment in the final action.

Table 2—Areas with recent ozone violations—Of the proposed rescission areas that are predicted by regional ozone modeling to have 1-hour exceedances in 2007, monitoring data from 14 areas indicates a violation of the 1-hour standard in either or both of the 1995–97 period or the 1996–98 period (the two most recent periods for which monitoring data have been fully checked for accuracy and validity). These areas also all have one or more predicted exceedances of the 1-hour standard (in the ROTR modeling or in local modeling).[9] Table 2 lists these 14 proposed rescission areas; the 17 areas already listed in Table 1 are repeated in Table 2 to give a complete list of all areas with both predicted 2007 exceedances and recent design values in excess of the 1-hour standard. The combination of these two criteria is consistent with the criteria we used in developing the ROTR, for the purpose of identifying adverse impacts on 1-hour ozone attainment in receptor states due to interstate transport.

Based on their recent monitored design values, all 31 areas clearly need further emission reductions from current emission levels in order to attain the 1-hour standard. Some of the necessary emission reductions will come from already adopted or mandated measures. However, based on the ozone model predictions, in combination with the recent monitored violations, we believe that additional emission reductions, as would be provided by the Tier 2/Sulfur standards, will be needed for attainment of the standard in 2007 (2010 for Los Angeles). It should be noted that some of these areas have attainment dates prior to 2007. For the areas with an earlier attainment date, we expect total emissions will be higher in that earlier year than estimated for 2007 in this modeling. If we had performed regional ozone modeling for these higher emissions in earlier years, we would likely be predicting even higher ozone levels and more frequent and widespread exceedances.

We believe that the prospect of unresolved nonattainment problems in the additional 14 areas that appear in Table 2 provides further support for a finding that additional emission reductions are needed for attainment and maintenance, assuming that we re-apply the 1-hour standard at a minimum to the additional 14 areas. The total 1990 population of the 31 areas in Table 2 is over 90 million, compared to the population of about 75 million in the areas in Table 1. Correspondingly, these areas represent an even larger share of the vehicle and fuel market. Also, the broader geographic spread of these areas further supports the appropriateness of a national vehicle and fuel strategy.

TABLE 2

[Metropolitan areas with recent design values above the 1-hour ozone NAAQS and also projected to experience exceedances of the 1-hour standard in 2007 (2010 for Los Angeles) with ROTR controls but without Tier 2/Sulfur controls.]

Metropolitan area	1990 population
Atlanta, GA MSA	2,959,500
Barnstable-Yarmouth, MA MSA[b]	134,954
Beaumont-Port Arthur, TX MSA[a]	361,218
Birmingham, AL MSA	839,942
Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA[b]	5,455,403
Charlotte-Gastonia-Rock Hill, NC–SC MSA[b]	1,162,140
Chattanooga, TN–GA MSA[b]	424,347
Cincinnati-Hamilton, OH–KY–IN CMSA	1,817,569
Chicago-Gary-Kenosha, IL–IN–WI CMSA	8,239,820
Dallas-Fort Worth, TX CMSA[a]	4,037,282
Dover, DE MSA	110,993
Grand Rapids-Muskegon-Holland, MI MSA[b]	937,891
Hartford, CT MSA	1,157,585
Houma, LA MSA[b]	182,842
Houston-Galveston-Brazoria, TX CMSA[a]	3,731,029
Huntington-Ashland, WV–KY–OH MSA[b]	312,529
Indianapolis, IN MSA[b]	1,380,491
Knoxville, TN MSA[b]	585,960
Los Angeles-Riverside-San Bernardino CA CMSA[a]	14,531,529
Louisville, KY–IN MSA	949,012
Memphis, TN–AR–MS MSA[b]	1,007,356
Milwaukee-Racine, WI CMSA	1,607,183
Nashville, TN MSA[b]	985,026
New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA	19,549,649
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA	5,893,019
Portland, ME MSA[b]	221,095
Providence-Fall River-Warwick, RI–MA MSA[b]	1,134,350
Richmond-Petersburg, VA MSA[b]	865,640
Springfield, MA MSA MSA	587,884
St. Louis, MO–IL MSA	2,492,348
Washington-Baltimore, DC–MD–VA–WV CMSA[c]	6,726,395

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[8] A predicted ozone level of 0.125 was considered to be an exceedance of the 1-hour NAAQS. Counties in Tables 2 and 3 are grouped and identified by Consolidated Metropolitan Statistical Areas (CMSAs) where they exist, or by Metropolitan Statistical Areas (MSAs) where no CMSA applies. Within a CMSA or MSA, the county of a predicted exceedance in 2007 was not required to match the county which has experienced a recent monitored violation, in order to qualify an area for listing in the first group. In some cases, grouping by MSA and CMSA groups counties or parts of counties differently than we and the states group them for purposes of nonattainment area boundaries, classifications, attainment deadlines, or SIP approval or disapproval actions. This is for simplicity of presentation in this document only.

[9] Of the areas that would have the 1-hour standard restored by our proposed rescission action, one area had a design value above the standard in both 1995–97 and 1996–98. Six areas had monitored design values which exceeded the 1-hour standard in 1995–97 but not in 1996–98, and six areas had the reverse. We placed areas on Table 2 or Table 3 based on the period that gave the higher design value.

TABLE 2—Continued

[Metropolitan areas with recent design values above the 1-hour ozone NAAQS and also projected to experience exceedances of the 1-hour standard in 2007 (2010 for Los Angeles) with ROTR controls but without Tier 2/Sulfur controls.]

Metropolitan area	1990 population
Total Population	90,383,971
Number of Areas	31

[a]=These areas are not subject to the ROTR and were modeled accordingly.
[b]=EPA has proposed to re-apply the 1-hour ozone NAAQS.
[c]=Washington, DC and Baltimore, MD are distinct nonattainment areas within one CMSA. They each meet the criteria for inclusion in this table.

Table 3—Areas without recent ozone violations—Areas that have not recently experienced an ozone violation may nevertheless need further emission reductions in order to maintain their compliance with the 1-hour standard. In order to identify a set of areas that may need additional reductions to maintain the 1-hour standard, we have listed in Table 3 the areas for which our regional ozone modeling predicts at least one ozone exceedance day for 2007 but which had design values below the 1-hour NAAQS in both 1995–97 and 1996–1998. The proposal of October 20, 1999 proposed to restore the applicability of the 1-hour standard to these areas. Table 3 also indicates the closest that each area came to having a monitored design value above the standard in the 1995–98 period, by grouping the areas into bands of 95–100 percent of the NAAQS, 90–94 percent, etc. Preliminary 1999 data indicate that if the 1997–99 period is considered, some of these areas may have 1-hour design values above the NAAQS. Details on the monitored design values and 2007 exceedance predictions from the regional ozone modeling are given in a memo to Air Docket A–97–10, titled "Recent Design Values for Counties Predicted by Regional Ozone Modeling to Have 1-Hour Ozone Exceedances in 2007 Without Tier 2/Sulfur Control."

TABLE 3.

[Metropolitan areas with recent design values below the 1-hour ozone NAAQS, but projected to experience exceedances of the 1-hour standard in 2007 with ROTR controls but without Tier 2/Sulfur controls.]

Metropolitan area	1990 population
Recent Design Value Between 95 and 100 Percent of NAAQS[a]	
Augusta-Aiken, GA-SC MSA	415,220
Cleveland-Akron, OH CMSA	2,859,644
Greensboro-Winston Salem-High Point, NC MSA	1,050,304
Greenville-Spartanburg-Anderson, SC MSA	830,539
Montgomery, AL MSA	292,517
New Orleans, LA MSA[b]	1,285,262
Raleigh-Durham-Chapel Hill, NC MSA	858,485
Reading, PA MSA	336,523
Tulsa, OK MSA[b]	708,954
9 Areas Population Subtotal	8,637,448
Recent Design Value Between 90 and 94 Percent of NAAQS[a]	
Allentown-Bethlehem-Easton, PA MSA	595,081
Biloxi-Gulfport-Pascagoula, MS MSA[b]	312,368
Columbia, SC MSA	453,932
Columbus, OH MSA	1,345,450
Detroit-Ann Arbor-Flint, MI CMSA	5,187,171
Harrisburg-Lebanon-Carlisle, PA MSA	587,986
Johnson City-Kingsport-Bristol, TN-VA MSA	436,047
Mobile, AL MSA	476,923
Orlando, FL MSA[b]	1,224,844
Pensacola, FL MSA[b]	344,406
10 Areas Population Subtotal	10,964,208
Recent Design Value Below 85 and 89 Percent of NAAQS[a]	
Charleston, WV MSA	250,545
Columbus, GA-AL MSA	260,862
Fayetteville, NC MSA	274,713
Hickory-Morganton-Lenoir, NC MSA	292,405
Lafayette, LA MSA[b]	345,053
Norfolk-Virginia Beach-Newport News, VA-NC MSA	1,444,710
York, PA MSA	339,574
7 Areas Population Subtotal	3,207,862

TABLE 3.—Continued

[Metropolitan areas with recent design values below the 1-hour ozone NAAQS, but projected to experience exceedances of the 1-hour standard in 2007 with ROTR controls but without Tier 2/Sulfur controls.]

Metropolitan area	1990 population
Recent Design Value Below 85 Percent of NAAQS[a]	
Jackson, MS MSA[b]	395,396
1 Area Population Subtotal	395,396
Total Population	23,204,914
Number of Areas	27

[a] = Each area is assigned to one of these groups based on the higher of its 1995–97 or 1996–98 design value.

[b] = These areas are not subject to the ROTR and were modeled accordingly.

EPA believes that the ozone model's predictions of exceedances in the areas listed in Table 3 are information that is relevant to the determination we will make regarding the need for further emission reductions to attain or maintain the NAAQS, provided that the 1-hour standard is restored for these areas. Therefore we are presenting this information for public comment. In the development of the ROTR, we did not rely on presently clean areas such as these as receptor areas for determining whether emissions in upwind states will contribute to nonattainment in downwind states. However, at the time, the 1-hour standard did not apply to such areas so there was a legal as well as an air quality basis for not considering these areas. We invite comment on whether and how we should consider the areas listed in Table 3 for purposes of our section 202(i) determination on the need for additional emission reductions.

EPA has been updating its regional ozone modeling estimates and methods, in part in response to comments on our NPRM and the first supplemental notice. We are currently in the process of updating the docket to include documents that describe this additional ozone modeling. We intend to consider this modeling in taking final action on our May 13 proposal. Anyone who is interested in this updated modeling should review the docket for further information.

III. Public Comment

We seek comments on all aspects of this Supplemental Notice, including the continuing need for Tier 2 emission standards for vehicles and reducing sulfur in gasoline to attain and maintain the NAAQS. Please see the Addresses section in this document for how and where to send any comments you may have on the supplemental information provided in today's document.

Dated: October 20, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–27933 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, 130, and 131

[FRL–6464–3]

Proposed Revisions to the Water Quality Planning and Management Regulation, and Revisions to the National Pollutant Discharge Elimination System Program and Federal Antidegradation Policy in Support of Proposed Revisions to the Water Quality Planning and Management Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 23, 1999, EPA issued two proposed rules to revise, clarify and strengthen the current regulatory requirements for identifying impaired waters and establishing Total Maximum Daily Loads (TMDLs) under the Clean Water Act: revisions to the Water Quality Planning and Management Regulation (64 FR 46012); and revisions to the National Pollutant Discharge Elimination System (NPDES) Program and Federal Antidegradation Policy (64 FR 46058) in support of the revisions at 64 FR 46012. These proposed regulatory revisions address issues of fundamental importance to cleaning up our Nation's polluted waters. Listing impaired and threatened waters and establishing TMDLs are fundamental tools for identifying remaining sources of water pollution and achieving water quality goals. Clean-up plans developed consistent with these regulatory proposals will help to restore the health of thousands of miles of river and shoreline and make millions of lake acres safe for their designated uses.

EPA sought comment on both sets of proposed rules by October 22, 1999. In response to comments from the public requesting additional time to fully analyze the issues and prepare comprehensive comments, EPA extended the original comment period to December 22, 1999 (64 FR 53304, October 1, 1999). Today, in response to Congressional direction in EPA's appropriations bill, EPA is extending the comment period to January 20, 2000.

DATES: Comments on these proposals must be submitted on or before January 20, 2000. Comments provided electronically will be considered timely if they are submitted by 11:59 P.M. (Eastern time) January 20, 2000.

ADDRESSES: Send written comments on the Proposed Revisions to the Water Quality Planning and Management Regulation to the Comment Clerk for the TMDL Program Rule, Water Docket (W–98–31), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

Send written comments on the Revisions to the NPDES Program and Federal Antidegradation Policy in Support of Proposed Revisions to the Water Quality Planning and Management Regulation to the Comment Clerk, Water Docket (W–99–04), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

EPA requests that commenters submit any references cited in their comments. EPA also requests that commenters submit an original and 3 copies of their written comments and enclosures. Commenters that want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form on encryption. Electronic comments must be identified by the appropriate docket number (W–98–31 for the TMDL rule and W–99–04 for the NPDES Program/Federal Antidegradation Policy rule), and may be filed online at many Federal depository Libraries. No confidential business information (CBI) should be sent via e-mail.

A copy of the supporting documents cited in the proposals are available for review at EPA's Water Docket; Room EB–57 (East Tower Basement), 401 M Street, SW, Washington, DC 20460. For access to docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. An electronic version of the TMDL proposal is available via the Internet at: <http://www.epa.gov/OWOW/tmdl/index.html>.

FOR FURTHER INFORMATION CONTACT: Hazel Groman, U.S. EPA, Office of Wetlands, Oceans and Watersheds (4503F), 401 M St., S.W., Washington, D.C. 20640, (202) 401–4078 for the TMDL rule. Kim Kramer, Office of Wastewater Management, 401 M St., S.W., Washington, D.C. 20640, Mail Code 4203, e-mail: Kramer.Kim@epa.gov, telephone: (202) 260–9541 for information regarding the NPDES provisions, or Susan Gilbertson, Office of Science and Technology, 401 M St., S.W., Washington, D.C. 20640, Mail Code 4305, e-mail: Gilbertson.Sue@epa.gov, telephone (202) 260–7301 for information regarding the water quality standards provisions.

Dated: October 21, 1999.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 99–28044 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 2186, MM Docket No. 99–302, RM–9727]

Radio Broadcasting Services; Monahans and Gardendale, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Capstar Royalty II Corporation, requesting the reallotment of Channel 271C from Monahans, Texas, to Gardendale, Texas, and modification of the license for Station KCDQ to specify Gardendale, Texas, as the community of license. The coordinates for Channel 271C at Gardendale are 31–57–55 and 102–46–10. Although Gardendale is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government is not required as no change in channel or transmitter site has been requested. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 271C at Gardendale.

DATES: Comments must be filed on or before December 6, 1999, and reply comments on or before December 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gregory L. Masters, E. Joseph Knoll III, Wiley, Rein & Fielding, 1776 K street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–302, adopted October 6, 1999, and released October 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–27992 Filed 10–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2187, MM Docket No. 99–303, RM–9737]

Radio Broadcasting Services; Seymour, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Seymour Broadcasting Company proposing the allotment of Channel 254A at Seymour, Texas, as the community's second FM broadcast service. The channel can be allotted to Seymour in compliance with the Commission's Rules provided there is a site restriction 10.1 kilometers (6.3 miles) south of the community. The coordinates for Channel 254A at Seymour are 33–29–57 NL and 99–15–06 WL.

DATES: Comments must be filed on or before December 6, 1999, and reply comments on or before December 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Audrey P. Rasmussen, O'Connor & Hannan, L.L.P., 1919 Pennsylvania, Avenue, NW, Suite 800, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–303, adopted October 6, 1999, and released October 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–27991 Filed 10–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2187, MM Docket No. 99–304, RM–9738]

Radio Broadcasting Services; Charlotte, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charlotte Radio Broadcasting Company proposing the allotment of Channel 227A at Charlotte, Texas. The channel can be allotted to Charlotte in compliance with the Commission's spacing requirements at coordinates 28–49–49 NL and 98–51–01 WL. There is a site restriction 14.3 kilometers (8.9 miles) west of the community. Mexican concurrence will be requested for the allotment of Channel 227A at Charlotte.

DATES: Comments must be filed on or before December 6, 1999, and reply comments on or before December 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–304, adopted October 6, 1999, and released October 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–27990 Filed 10–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2187, MM Docket No. 99–305, RM–9537]

Radio Broadcasting Services; Alberton, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 294C3 at Alberton, Montana. The channel can be allotted to Alberton in compliance with the Commission's spacing requirements at coordinates 47–00–06 NL and 114–28–21 WL. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before December 6, 1999, and reply comments on or before December 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–305, adopted October 6, 1999, and released October 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–27989 Filed 10–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2187, MM Docket No. 99–306, RM–9729]

Radio Broadcasting Services; Inglis, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Levy County Broadcasting proposing the allotment of Channel 257A at Inglis, Florida, as the community's second FM broadcast service. The channel can be allotted to Inglis in compliance with the Commission's spacing requirements at coordinates 29–07–49 NL and 82–41–19 WL. There is a site restriction 11.1 kilometers (6.9 miles) north of the community.

DATES: Comments must be filed on or before December 6, 1999, and reply comments on or before December 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Tepper, Booth, Freret, Imlay & Tepper, P.C., 5101 Wisconsin Avenue, NW, Suite 307, Washington, DC 20016–4120.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–306, adopted October 6, 1999, and released October 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–27988 Filed 10–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2187, MM Docket No. 99–307, RM–9739]

Radio Broadcasting Services; Big Sky, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by R. Steven Hicks proposing the allotment of Channel 242A at Big Sky, Montana. The channel can be allotted to Big Sky in compliance with the Commission's spacing requirements at coordinates 45–16–02 NL and 111–22–14 WL.

DATES: Comments must be filed on or before December 6, 1999, and reply comments on or before December 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gregory L. Masters, Marjorie J. Dickman, Wiley, Rein & Fielding, 1776 K Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–307, adopted October 6, 1999, and released October 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–27987 Filed 10–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2195; MM Docket No. 99–310; RM–9742]

Radio Broadcasting Services; Box Elder, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by La Nina Education Association proposing the allotment of Channel 274A at Box Elder, South Dakota, as the community's first local aural transmission service. Channel 274A can be allotted to Box Elder in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates

for Channel 274A at Box Elder are 44–06–48 North Latitude and 103–04–12 West Longitude.

DATES: Comments must be filed on or before December 6, 1999, and reply comments on or before December 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Ms. Heidi Olivares, La Nina Education Association, 3802 Dawn Road, #A, Madson, Wisconsin 53704 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–310, adopted October 6, 1999, and released October 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28010 Filed 10–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2195; MM Docket No. 99–309; RM–9694]

Radio Broadcasting Services; Keosauqua, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by McTronix proposing the allotment of Channel 271C3 at Keosauqua, Iowa, as the community's first local aural transmission service. Channel 271C3 can be allotted to Keosauqua in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 271C3 at Keosauqua are 40–43–48 North Latitude and 91–57–48 West Longitude.

DATES: Comments must be filed on or before December 6, 1999, and reply comments on or before December 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: John S. Neely, Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–309, adopted October 6, 1999, and released October 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28009 Filed 10–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2195; MM Docket No. 99–308; RM–9693]

Radio Broadcasting Services; Watseka, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Iroquois County Broadcasting Company proposing the allotment of Channel 240A at Watseka, Illinois, as the community's second local FM transmission service. Channel 240A can be allotted to Watseka in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.3 miles) northwest at petitioner's requested site. The coordinates for Channel 240A at Watseka are 40–48–00 North Latitude and 87–47–15 West Longitude.

DATES: Comments must be filed on or before December 6, 1999, and reply comments on or before December 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Anne Thomas Paxson, Borsari & Paxson, 2021 L Street, NW, Suite 402, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.

99–308, adopted October 6, 1999, and released October 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28008 Filed 10–26–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension and a revision to an approved information collection in support of the Conservation Reserve Program (CRP). The collection requirements have been revised to amend the total burden hours to reflect CRP activity from 1999 through 2002, including enrolling new acreage in the program and releasing acreage before contract expiration as authorized by the Federal Agriculture Improvement and Reform Act of 1996.

DATES: Comments on this notice must be received on or before December 27, 1999 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Comments may be sent to Cheryl Zavodny, Chief, Conservation Programs Branch, Conservation and Environmental Programs Division, USDA, FSA, CEPD, STOP 0513, 1400 Independence Avenue, SW, Washington, DC 20250–0513, telephone (202)720–7333; facsimile (202)720–4619; or e-mail Cheryl_Zavodny@wdc.fsa.usda.gov.; or facsimile (202) 720–4619.

SUPPLEMENTARY INFORMATION:

Title: Conservation Reserve Program.

OMB Control Number: 0560–0125.

Expiration Date of Approval: February 29, 2000.

Type of Request: Extension and Revision of Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0125, as identified above allows FSA to effectively administer the regulations under the CRP. The CRP regulations at 7 CFR Part 1410 and formerly at 7 CFR Part 704 set forth basic policies, program provisions, and eligibility requirements for owners and operators to enter into and carry out long-term CRP contracts with financial and technical assistance and for making cost-share and annual rental payments under the program. All information collection under 7 CFR Part 704 has ceased. This regulation was removed by the final CRP rule published February 19, 1997, which revised 7 CFR Part 1410. CRP information collection requirements will continue under 7 CFR Part 1410. Total public burden hours are based on the following assumptions:

1. Average size for contracts is 70.0 acres for general and 8.0 acres for continuous signup contracts.
2. Approximately 3.442 million acres are scheduled to expire under CRP on September 30, 1999. The Secretary has the authority to maintain 36.4 million acres in the program through 2002. The remaining enrollment authority through 2002 is 7,181,000 acres.
3. Twenty-five percent of the producers requesting early release will not release the entire contract.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .067691 hours per response.

Respondents: Owners, operators, and other producers on eligible cropland.

Estimated Number of Respondents: 575,140.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 38,932.

Comments are sought on these requirements including: (a) whether the continued collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information to be collected; and (d) minimizing the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Cheryl Zavodny, Chief, Conservation Programs Branch, Conservation and Environmental Programs Division, USDA, FSA, 1400 Independence Avenue, SW, STOP 0513, Washington DC 20250–0513.

Copies of the information collection may be obtained from Cheryl Zavodny at the above address.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on October 18, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–28035 Filed 10–26–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–044C]

National Advisory Committee on Meat and Poultry Inspection; Correction

This notice revises the information provided in the **Federal Register** notice (64 FR 55226), published on October 12, 1999 (FR Doc. 99–26559). The location of the meeting was listed incorrectly in the **Federal Register**. The **Federal Register** stated that the full Committee meeting will take place at the United States Department of Agriculture, Whitten Building, 14th and Independence Avenue, SW, Washington, DC in the Jefferson Room. The full Committee meeting will now take place at the Quality Hotel and Suites, Jefferson Room, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201; telephone (703) 524–4000.

Additionally, the meeting agenda has changed. There will be only four issues discussed. The fifth issue will not be discussed, E. coli 0157 Action Plan.

Also, the actual date the Secretary of Agriculture renewed the charter for the Advisory Committee on Meat and Poultry Inspection is March 22, 1999, not February 12, 1997, as published in the **Federal Register**.

Done at Washington, DC on: October 21, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–28036 Filed 10–26–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by December 27, 1999.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Review Rating Summary.

OMB Control Number: 0572–0025.

Type of Request: Reinstatement of a previously approved collection with change.

Abstract: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended. An important part of safeguarding loan security is to see that RUS financed facilities are being responsibly used, adequately operated and adequately maintained. Future needs have to be anticipated to ensure that facilities will continue to produce revenue and that loans will be repaid as required by the RUS mortgage. A periodic operations and maintenance (O&M) review, using the RUS Form 300, in accordance with RUS Bulletin 161–5, is an effective means for RUS to determine whether the borrowers' systems are being properly operated and maintained, thereby protecting the loan collateral. An O&M review is also used to rate facilities and can be used for appraisals of collateral as prescribed by the Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 233.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 932 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 21, 1999.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 99–28034 Filed 10–26–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems; Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on November 9 and 10, 1999, 9 a.m., in room 3884 of the Herbert C. Hoover Building, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

November 9

Public Session

1. Comments or presentations by the public.
2. Electronic submission of support documents.
3. ISTAC proposal on graphics processors: present technology and recommendation.
4. A new look at computer architecture.
5. Discussion on revisions to high-performance computer security safeguard plan.

November 9 and 10

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. and Pennsylvania Ave, NW, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 10, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: October 20, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–27980 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–859–801]

Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Slovakia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: LaVonne Jackson, Doug Campau, or Abdelali Elouaradia, Office V, DAS Group II, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3003, 482–1784, or (202) 482–0498, respectively.

Postponement of Preliminary Determination

The Department of Commerce ("the Department") is postponing the preliminary determination in the antidumping duty investigation of cold-rolled, flat-rolled, carbon-quality steel products from Slovakia. The deadline for issuing the preliminary determination in this investigation is now December 8, 1999.

On June 21, 1999, the Department initiated an antidumping investigation of cold-rolled, flat-rolled, carbon-quality steel products from Slovakia. *See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela*, 64 FR 34194. The notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation (*i.e.*, November 8, 1999).

On October 13, 1999, pursuant to section 771(18)(B) of the Tariff Act of 1930, as amended ("the Act"), the Department revoked the non-market economy status of Slovakia. As a result, the Department discontinued the use of its non-market economy methodology in this investigation, and is now proceeding using its market economy methodology. Thus, the Department must now gather additional data, review responses, and address all issues using its market economy investigation methodology. Consequently, in accordance with section 733(c)(1)(B) of the Act, the Department concludes that this case is extraordinarily complicated, and that additional time is necessary to issue the preliminary determination. Therefore, pursuant to section 733(c)(1) of the Act, the Department is postponing the deadline for issuing this determination until December 8, 1999.

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: October 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28058 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom: Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 30, 1999, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom for Imperial Chemical Industries PLC ("ICI"), a manufacturer and exporter of industrial nitrocellulose. This administrative review was requested by ICI and is for the period July 1, 1998 through June 30, 1999. The Department is rescinding this review after receiving a timely withdrawal from ICI of its request for review.

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Futtner or Ron Trentham, Group II, Office 4, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–3814 and (202) 482–6320, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Background

On July 26, 1999, ICI requested that the Department conduct an administrative review of the subject merchandise it exported from the United Kingdom for the period July 1, 1998 through June 30, 1999.

On August 30, 1999, the Department published in the **Federal Register** (64 FR 47167) a notice of initiation of administrative review with respect to ICI for the period July 1, 1998 through June 30, 1999. On September 29, 1999, ICI requested that it be allowed to withdraw its request for a review and that the review be terminated.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because ICI's request for termination was submitted within the 90-day time limit, and there were no requests for review from other interested parties, we are rescinding this review. We will issue appropriate appraisement instructions directly to the US Customs Service.

This notice is in accordance with section 771(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 21, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–28056 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–803]

Final Results of Expedited Sunset Review: Industrial Nitrocellulose From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: industrial nitrocellulose from Germany.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on industrial nitrocellulose from Germany (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 27, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The product covered by this order is industrial nitrocellulose ("nitrocellulose") from Germany. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

The antidumping duty order on nitrocellulose from Germany was published in the **Federal Register** on July 10, 1990 (55 FR 28270).[1] In that order, the Department determined that the weighted-average dumping margin for all entries of the subject merchandise was 3.84 percent.[2] Since that time, the Department has completed one administrative review.[3] We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrocellulose from Germany (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Hercules Incorporated ("Hercules") on June 9, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Hercules asserts that it is not related to a foreign producer, foreign exporter, or domestic importer of the subject merchandise and that it is not an importer of the subject merchandise except on an occasional spot basis. (See Hercules' June 9, 1999 Intent to Participate at 2.)

We received a complete substantive response from Hercules on July 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). Hercules claims interested party status under section 771(9)(C) of the Act as a U.S. manufacturer, producer, and wholesaler of the subject merchandise. In its substantive response, Hercules indicates that it is the sole remaining U.S. producer of nitrocellulose, was the petitioner in the original investigation, and has participated in the administrative review proceeding. (See Hercules' July 1, 1999 Substantive Response at 1–2.)

We did not receive a substantive response from any respondent interested party to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. *See* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on industrial nitrocellulose from Germany is extraordinarily complicated. Therefore, on October 12, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

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[1] See Antidumping Duty Order: Industrial Nitrocellulose from Germany, 55 FR 28271 (July 10, 1990).

[2] However, the underlying investigation and the subsequent review dealt with only one German company, Wolff Walsrode AG ("Wolff").

[3] See Industrial Nitrocellulose From Germany: Final Results of Antidumping Duty Administrative Review, 63 FR 43372 (August 13, 1998).

[4] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 55233 (October 12, 1999).

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, Hercules' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, Hercules asserts that the likelihood of continuation or recurrence of dumping is high if the order is revoked. (See July 1, 1999 substantive response of Hercules at 3–5). In support of its assertion, Hercules stresses that dumping of the subject merchandise continued above the *de minimis* level after the issuance of the order. *Id.* Citing the Sunset Policy Bulletin, 63 FR at 18872, Hercules argues that continued dumping at any level above *de minimis* after the issuance of the order is highly probative of a likelihood of future dumping. *Id.* Furthermore, Hercules argues that an increase of weighted-average dumping margins of the subject merchandise in the most recent review clearly manifests Wolff's willingness to dump at an increasing rate in order to hold onto its U.S. market share.[5] *Id.*

Consistent with section 752(c) of the Act, the Department considered the import volumes of the subject merchandise before and after the issuance of the order. The data supplied by Hercules and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, since the imposition of the order, the import volumes of the subject merchandise have declined slightly.[6] Therefore, the Department determines that the import volumes of the subject merchandise were reduced slightly after the issuance of the order.

As indicated in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and House Report at 63–64, the Department also considered whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in the original investigation and from the previous administrative review,[7] the Department determines that, since the issuance of the order, weighted-average dumping margins for the subject merchandise have continued at above the *de minimis* level.

Given that dumping of the subject merchandise continued above the *de minimis* level after the issuance of the order and that respondent interested parties have waived their right to participate in this review, the Department agrees with Hercules' contention that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.)

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for Wolff and all-others: 3.84 percent.[8] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, while acknowledging that the Department normally will provide the Commission with the dumping margins from the original investigation, Hercules argues that, in the instant review, the Department, nevertheless, should report to the Commission a more recently calculated margin because Wolff increased its dumping in order to hold onto its market share in the United States. (See the July 1, 1999 Substantive Response of Hercules at 5-6.) Hercules urges, the Department, therefore, should provide to the Commission the more recent, increased margin, because that margin is the better indicator of the Wolff's likely behavior in the event the order is revoked.

The Department disagrees with Hercules' suggestion pertaining to the margin that is likely to prevail were the order revoked. In the Sunset Policy Bulletin, the Department indicated that when a company chooses to increase dumping in order to maintain or increase its market share, the Department may report a more recently calculated margin to the Commission if dumping margins increased after the issuance of the order. (See section II.B.2 of the Sunset Policy Bulletin.) In the instant case, however, the Department's latest finding of an increased weighted-average dumping margin did not coincide with increased import volumes of the subject merchandise. Nor was the increased dumping associated with steady market share. On the contrary, our review of imports shows that the higher margin was associated with decreased volumes of imports and slightly declined market share.[9] Therefore, the Department determines that it is inappropriate for the Department to report a more recently calculated rate to the Commission. Instead, because the margins from the original investigation reflect the behavior of German producers and exporters without the discipline of an order in place, the Department will provide to the Commission the margins found in the original investigation. We will report to the Commission the company-specific and all-others rate contained in the Final Results of Review section of this notice.

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[5] See footnote 1 and 3, supra. The rate from the antidumping duty order was 3.84 percent; the rate from the final results of the only administrative review, covering the period July 1996 through June 1997, was 7.18 percent for Wolff, which was the only company reviewed.

[6] The import volumes of the subject merchandise are as follows (the order was issued in June of 1990): 1989—2,331; 1990—2,576; 1991—1,800; 1992—2,824; 1993—2,357; 1994—1,787; 1995—2,298; 1996—2,173; 1997—2,021; 1998—2,095. These numbers correspond exactly with the U.S. International Trade Commission Data. Although the imports volumes remained relatively steady throughout the period, they declined immediately after the issuance of the order: 2,331 in 1989 compared to 1,800 in 1991. Also, the average volume of imports during the period 1994 through 1998 (2,074.8) is slightly less than that of 1989 (2,331).

[7] See footnote 6, supra.

[8] See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Germany, 55 FR 21058 (May 22, 1990).

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Wolff Walsrode AG	3.84
All Others	3.84

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28062 Filed 10–26–99; 8:45 am]

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[9] The only review in which the Department found a higher weighted-average dumping margin covered the period between July 1996 and June 1997. See footnote 3, supra. Both the import volumes and market shares of the subject merchandise between 1996 and 1998 are lower than those of 1995, and lower than the five-year averages of the import volumes and market shares between 1991—1995. See Hercules' July 1, 1999 Substantive Response Attachment 2.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–812]

Final Results of Expedited Sunset Review: Industrial Nitrocellulose From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: industrial nitrocellulose from Japan.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on industrial nitrocellulose from Japan (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 27, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The product covered by this order is industrial nitrocellulose ("nitrocellulose") from Japan. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

The antidumping duty order on nitrocellulose from Japan was published in the **Federal Register** on July 10, 1990 (55 FR 28268).[1] In that order, the Department determined that the weighted-average dumping margin for all entries of the subject merchandise was 66.0 percent.[2] Since that time, the Department has not conducted any administrative reviews. We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrocellulose from Japan (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Hercules Incorporated ("Hercules") on June 9, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Hercules asserts that it is not related to a foreign producer, foreign exporter, or domestic importer of the subject merchandise and that it is not an importer of the subject merchandise except on an occasional spot basis. (See Hercules' June 9, 1999 Intent to Participate at 2.)

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[1] See Antidumping Duty Order: Industrial Nitrocellulose from Japan, 55 FR 28268 (July 10, 1990).

[2] However, the underlying investigation dealt with only one Japanese company, Asahi Chemical Industry Co., Ltd. ("Asahi").

We received a complete substantive response from Hercules on July 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). Hercules claims interested party status under section 771(9)(C) of the Act as a U.S. manufacturer, producer, and wholesaler of the subject merchandise. In its substantive response, Hercules indicates that it is the sole remaining U.S. domestic producer of nitrocellulose and was the petitioner in the original investigation. (See Hercules' July 1, 1999 Substantive Response at 1—2.)

We did not receive a substantive response from any respondent interested parties to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. See section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on industrial nitrocellulose from Japan is extraordinarily complicated. Therefore, on October 12, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[1]

Determination:

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, Hercules' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, Hercules asserts that the likelihood of continuation or recurrence of dumping is high if the order is revoked. (See July 1, 1999 substantive response of Hercules at 3—5). To support its contention, Hercules points to the drastic decline in import volumes of the subject merchandise immediately after the issuance of the order. According to Hercules, after the imposition of the antidumping order, imports of the subject merchandise virtually disappeared.[4] *Id.* The virtual cessation of imports immediately after the issuance of the order, Hercules further argues, is highly probative of the likelihood of future dumping. *Id.*

Moreover, Hercules indicates that, for the past five years, imports of the subject merchandise have been at or near zero.[5] *Id.* In conclusion, Hercules argues that Japanese manufacturers/exporters of the subject merchandise have not been able to sell during the antidumping duty order regime; in other words, Japanese manufacturers/exporters have to dump in order to export the subject merchandise to the United States.

Consistent with section 752(c) of the Act, the Department considers the import volumes of the subject merchandise before and after the issuance of the order. The data supplied by Hercules and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, since the imposition of the order, import volumes of the subject merchandise have declined substantially.[6] Moreover, for the period 1994–1998, the United States International Trade Commission Data shows rather insignificant import volumes for the subject merchandise.[7] Therefore, the Department determines that the import volumes of the subject merchandise decreased significantly after the issuance of the order.

As indicated in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and House Report at 63–64, the Department also considers whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. Because no administrative review has been conducted since the issuance of the order, the margins from the original investigation are the prevailing margins. Thus, the Department determines that weighted-average dumping margins for the subject merchandise have continued at above the de minimis level.

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[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 55233 (October 12, 1999).

[4] The order was imposed on July 10, 1990. (See footnote 1, supra.) In 1989 and 1990, imports of the subject merchandise were 487 and 163 metric tons, respectively; however, during 1991 through 1998, the import volumes were as follows: 1991—29; 1992—80; 1993—20; 1994—8; 1995—8; 1996—10; 1997—0; and 1998—16 metric tons. (See Hercules' July 1, 1999 substantive response, Attachment 2.)

[5] See footnote 3, supra. During 1994–1998, the average import volume of the subject merchandise was only 8.4 metric tons, which was about 2.58 percent of the average imports of 1989 and 1990, or 1.72 percent of 1989 imports alone.

[6] See footnote 3, supra. The numbers supplied by Hercules exactly correspond with those of the U.S. International Trade Commission Data.

[7] See footnote 4.

Given that dumping margins above de minimis continue in effect after the issuance of the order, that the import volumes of the subject merchandise decreased substantially after the issuance of the order, and that respondent interested parties have waived their right to participate in this review, the Department agrees with Hercules' contention that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.)

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for Asahi and all-others: 66.00 percent.[8] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Hercules urges the Department to report to the Commission the dumping margins from the original investigation as the margins likely to prevail. (See the July 1, 1999 Substantive Response of Hercules at 6.) Hercules argues that, since the Department has not conducted any administrative reviews pertaining to the instant order, the best and only possible recommendation the Department can make, regarding margins that are likely to prevail, is to rely upon the rates from the original investigation. *Id.*

The Department agrees with the Hercules' suggestion pertaining to the margin that is likely to prevail if the order were revoked. Because the margins from the original investigation reflect the behavior of Japanese producers/exporters without the discipline of an order in place, the Department will provide to the Commission the margins found in the original investigation. Absent argument and evidence to the contrary, the Department sees no reason to change its usual practice of selecting the rate from the original investigation. We will report to the Commission the company-specific and all-others rate contained in the Final Results of Review section of this notice.

Final Results of Review:

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Asahi Chemical Industry Co., Ltd.	66.00
All Others	66.00

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28063 Filed 10–26–99; 8:45 am]

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[8] See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Japan, 55 FR 21053 (May 22, 1990).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–805]

Final Results of Expedited Sunset Review: Industrial Nitrocellulose From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Industrial Nitrocellulose from the Republic of Korea.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on industrial nitrocellulose from the Republic of Korea (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 27, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") *Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The product covered by this order is industrial nitrocellulose ("nitrocellulose") from the Republic of Korea. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks.

The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

The antidumping duty order on nitrocellulose from the Republic of Korea was published in the **Federal Register** on July 10, 1990 (55 FR 28266).[1] In that order, the Department determined that the weighted-average dumping margin for all entries of the subject merchandise was 66.30 percent.[2] Since that time, the Department has completed one administrative review.[3] We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrocellulose from the Republic of Korea ("Korea") (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the petitioner Hercules Incorporated ("Hercules"), on June 9, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Hercules asserts that it is not related to a foreign producer, foreign exporter, or domestic importer of the subject merchandise and that it is not an importer of the subject merchandise except on an occasional spot basis. (*See* Hercules' June 9, 1999 Intent to Participate at 2.)

We received a complete substantive response from Hercules on July 1, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Hercules claims interested party status under section 771(9)(C) of the Act as a U.S. manufacturer, producer, and wholesaler of the subject merchandise. In its substantive response, Hercules indicates that it is the sole remaining U.S. producer of nitrocellulose, was the petitioner in the original investigation, and has participated in the administrative review proceeding. (*See* Hercules' July 1, 1999 Substantive Response at 1–2.)

We did not receive a substantive response from any respondent interested party to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. *See* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on industrial nitrocellulose from Korea is extraordinarily complicated. Therefore, on October 12, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, Hercules' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, Hercules asserts that the likelihood of continuation or recurrence of dumping is high if the order is revoked. (See July 1, 1999 substantive response of Hercules at 3–6). To support this argument, Hercules notes a drastic decline in import volumes of the subject merchandise immediately after the issuance of the order. According to Hercules, after the imposition of the antidumping order, imports of the subject merchandise completely stopped.[5] *Id*. The cessation of imports in the years immediately after the issuance of the order, Hercules further argues, is highly probative of the likelihood of future dumping. *Id.*

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[1] *See Antidumping Duty Order: Industrial Nitrocellulose from the Republic of Korea*, 55 FR 28266 (July 10, 1990).

[2] However, the underlying investigation dealt with only one Korean company, Miwon Company, Ltd. ("Miwon").

[3] *See Industrial Nitrocellulose From the Republic of Korea; Notice of Final Results of Antidumping Duty Administrative Review*, 63 FR 60302 (November 9, 1998).

[4] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 55233 (October 12, 1999).

[5] The order was imposed on July 10, 1990. (*See* footnote 1, supra.) In 1989 and 1990, imports of the subject merchandise were 147 and 58 metric tons, respectively; however, during the period 1991 through 1998, the import volumes were as follows: 1991—0; 1992—0; 1993—0; 1994—0; 1995—0; 1996—0; 1997—18; and 1998—0 metric tons. (*See* July 1, 1999 substantive response of the Hercules, Attachment 2.)

Hercules also indicates that, for the past five years, imports of the subject merchandise have been mostly at zero or near zero.[6] *Id.* According to Hercules, the small amount of imports of the subject merchandise in 1997 was the result of Korean producers/exporters' attempt to attain a reduced cash deposit rate in a pending administrative review.[7] *Id.* To further illustrate its contention, Hercules notes that after the weighted-average dumping margin for the subject merchandise was reduced, Korean producers/exporters still could not sustain the exports of the subject merchandise.[8] *Id.* In conclusion, Hercules argues that Korean manufacturers/exporters of the subject merchandise could not sustain their level of exports to the United States after the issuance of the antidumping duty order; in other words, Korean manufacturers/exporters have to dump in order to export the subject merchandise to the United States.

Consistent with section 752(c) of the Act, the Department considers the import volumes of the subject merchandise before and after the issuance of the order. The data supplied by Hercules and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, since the imposition of the order, the import volumes of the subject merchandise have declined substantially.[9] Moreover, for the period 1994–1998, the United States International Trade Commission Data shows rather insignificant import volumes for the subject merchandise.[10] Therefore, the Department determines that the import volumes of the subject merchandise decreased significantly after the issuance of the order.

As indicated in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and House Report at 63–64, the Department also considers whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in the original investigation and from the previous administrative review,[11] the Department determines that, since the issuance of the order, weighted-average dumping margins for the subject merchandise have continued at above the *de minimis* level.

Given that dumping of the subject merchandise continued above the *de minimis* level after the issuance of the order, that the import volumes of the subject merchandise decreased substantially after the issuance of the order, and that respondent interested parties have waived their right to participate in this review, the Department agrees with Hercules' contention that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for Miwon and all-others: 66.30 percent.[12] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Hercules urges the Department to report to the Commission the dumping margins from the original investigation as the margins likely to prevail if the order were revoked. (*See* the July 1, 1999 Substantive Response of Hercules at 6.) Although the Department found a substantially reduced 2.10 percent dumping margin for a Korean producer in its administrative review, Hercules contends that the reduced dumping margin coincided with greatly declined import volumes of the subject merchandise.[13] *Id.* Moreover, Hercules notes that a year after the administrative review, in 1998, imports of the subject merchandise again returned to zero indicating that Korean producers/exporters were unable to increase their exports of the subject merchandise to the United States at the reduced antidumping margin. *Id.* Therefore, Hercules concludes, the 2.1 percent margin achieved by a Korean producer was clearly the result of a small test shipment and does not reflect commercial reality. *Id.* In other words, the best and only possible recommendation the Department can make, regarding the margins that are likely to prevail, is to rely upon the rates from the original investigation.

The Department agrees with Hercules' suggestion pertaining to the margin that is likely to prevail if the order were revoked. Because the margins from the original investigation reflect the behavior of Korean producers/exporters without the discipline of an order in place, the Department will provide to the Commission the margins found in the original investigation. Absent argument and evidence to the contrary, the Department sees no reason to change its usual practice of selecting the rate from the original investigation. We will report to the Commission the company-specific and all-others rate contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Miwon Corporation	66.30
All Others (including Daesang)	66.30

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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[6] *See* footnote 5, supra. During 1994–1998, the average import volume of the subject merchandise was only 3.6 metric tons, which is about 3.51 percent of the average imports of 1989 and 1990, or 2.45 percent of 1989 imports alone.

[7] *See* footnote 3, supra. In that review, the Department found a 2.1 percent weighted-average dumping margin for one reviewed company, Daesang Corporation ("Daesang") while leaving all other entries of nitrocellulose from Korea subject to the rate determined in the original investigation: 66.30 percent.

[8] *See* footnote 5, supra. The import level of the subject merchandise in 1998 was zero.

[9] *See* footnote 5, supra. The numbers supplied by Hercules exactly correspond with those of the U.S. International Trade Commission Data.

[10] *See* footnote 6, supra.

[11] *See* footnote 7, supra.

[12] *See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from the Republic of Korea*, 55 FR 21054 (May 22, 1990).

[13] *See* footnote 3, supra. In its only administrative review, the Department found that Daesang Corporation, which was not subject of the original investigation, was dumping at the rate of 2.10 percent during the period July 1, 1996 through June 30, 1997. At the same time, the Department indicated that cash deposit rate for Miwon and all-others was the original, less-than-fair-value rate of 66.30 percent.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28064 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Final Results of Expedited Sunset Review: Industrial Nitrocellulose From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Industrial Nitrocellulose from the United Kingdom.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on industrial nitrocellulose from the United Kingdom (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 27, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The product covered by this antidumping order is industrial nitrocellulose ("INC") from the United Kingdom. Industrial INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. INC is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

The antidumping duty order on nitrocellulose from the United Kingdom was published in the **Federal Register** on July 10, 1990 (55 FR 28270).[1] In that order, the Department determined that the weighted-average dumping margin for all entries of the subject merchandise is 11.13 percent.[2] Since that time, the Department has completed several administrative reviews.[3] We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrocellulose from the United Kingdom (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Hercules Incorporated ("Hercules") on June 9, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Hercules asserted that it is not related to a foreign producer, foreign exporter, or domestic importer of the subject merchandise and that it is not an importer of the subject merchandise except on an occasional spot basis. (See Hercules' June 9, 1999 Intent to Participate at 2.)

We received a complete substantive response from Hercules on July 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). Hercules claimed interested party status under section 771(9)(C) of the Act as a U.S. manufacturer, producer, and wholesaler of the subject merchandise. In its substantive response, Hercules indicated that it is the sole remaining U.S. domestic producer of nitrocellulose, was the petitioner in the original investigation, and has participated in all review proceedings. (See Hercules' July 1, 1999 Substantive Response at 1–2.)

We did not receive a substantive response from any respondent interested party to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. *See* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on industrial nitrocellulose from the U.K. is extraordinarily complicated. Therefore, on October 12, 1999, the

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[1] See Antidumping Duty Order: INC from the United Kingdom, 55 FR 28270 (July 10, 1990).

[2] However, the underlying investigation and subsequent administrative reviews dealt with only one British company, Imperial Chemical Industries PLC ("Imperial").

[3] See INC From the United Kingdom: Final Results of Antidumping Duty Administrative Review, 59 FR 66902 (December 28, 1994), as amended, INC From the United Kingdom: Amendment of Final Results of Antidumping Duty Administrative Review, 60 FR 41876 (August 14, 1995); INC From the United Kingdom: Final Results of Antidumping Duty Administrative Review, 61 FR 29342 (June 10, 1996); INC From the United Kingdom: Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 6609 (February 10, 1999), as amended, INC From the United Kingdom: Amended Final Results of Antidumping Duty Administrative Review, 64 FR 11836 (March 10, 1999).

Department extended the time limit for completion of the preliminary results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, Hercules' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, Hercules asserts that the likelihood of continuation or recurrence of dumping is high if the order is revoked. (See July 1, 1999 substantive response of Hercules at 3–5). To support its assertion, Hercules points out that dumping of the subject merchandise continued above the *de minimis* level after the issuance of the order. *Id.* In addition, Hercules insists that a sharp increase of the weighted-average dumping margins in the most recent review clearly manifests the inability of the British manufacturers/exporters to successfully compete without dumping in the United States.[5] *Id.* In conclusion, Hercules argues that British manufacturers/exporters of the subject merchandise have demonstrated over the past decade that they have to dump in order to export the subject merchandise to the United States.

Consistent with section 752(c) of the Act, the Department considered the import volumes of the subject merchandise before and after the issuance of the order. The data supplied by Hercules and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, since the imposition of the order, the import volumes of the subject merchandise have shown an increasing trend.[6] Moreover, for the period between 1994 and 1998, the United States International Trade Commission Data show rather substantially increased import volumes of the subject merchandise compared to those of pre-order.[7] Therefore, the Department determines that, as acknowledged by Hercules in its July 1, 1999 substantive response at 5, the import volumes of the subject merchandise increased or showed an increasing trend after the issuance of the order.

The Department also considered whether dumping continued at any level above *de minimis* after the issuance of the order. As indicated in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in the original investigation and from the previous administrative reviews,[8] the Department determines that, since the issuance of the order, weighted-average dumping margins for the subject merchandise have continued at above the *de minimis* level.

Given that dumping of the subject merchandise continued above the *de minimis* level after the issuance of the order and that respondent interested parties have waived their right to participate in this review, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.)

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[4] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 55233 (October 12, 1999).

[5] See footnote 3, supra. Although weighted-average dumping margins of the subject merchandise decreased in each of the first two administrative reviews (from original investigation margin of 11.13 percent to 6.62 percent in the first review and then to 1.48 percent in the second review), in the third and the most recent administrative review, the dumping margin increased to 13.0 percent.

[6] The import volumes of the subject merchandise are as follows (the order was issued in June of 1990; numbers are in metric tons): 1989–2,430; 1990–3,279; 1991–3,415; 1992–3,931; 1993–3,828; 1994–4,096; 1995–3,423; 1996–3,991; 1997–3,594; 1998–3,461. These numbers correspond exactly with the U.S. International Trade Commission Data.

[7] See footnote 6, supra. During 1994–1998, the average import volume of the subject merchandise was 3,713 metric tons, which denotes a 30.0 percent increase over the average of 1989 and 1990 pre-order import levels, or 53 percent over 1989 import volume alone.

[8] See footnote 5, supra.

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for Imperial and all-others: 11.13 percent.[9] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, while acknowledging that the Department normally will provide the Commission with the dumping margins from the original investigation, Hercules argues that, in the instant review, the Department, nevertheless, should report to the Commission a more recently calculated margin because Imperial increased its dumping in order to increase its market share in the United States. (See the July 1, 1999 Substantive Response of Hercules at 6–7.) In addition to supplying data, which tend to indicate that Imperial's market share in the United States has increased after the imposition of the order,[10] Hercules also claims that Imperial's market behavior of not raising its export prices,[11] after a higher dumping margin was imposed in the most recent administrative review,[12] suggests that Imperial intends to continue dumping at the recent, higher margins to hold onto or to increase its market share. *Id.* Therefore, Hercules urges, the Department should provide to the Commission the more recent, increased margin, because that margin is the better indicator of the Imperial's likely behavior in the event the order is revoked.

The Department disagrees with the Hercules' suggestion pertaining to the margin that is likely to prevail were the order to be revoked. In the Sunset Policy Bulletin, the Department indicated that when a company chooses to increase dumping in order to maintain or increase its market share, the Department may report a more recently calculated margin to the Commission. (See section II.B.2 of the Sunset Policy Bulletin.) In the instant case, however, the Department's latest finding of increased weighted-average dumping margins of the subject merchandise did not coincide with increased import volumes or increased market share. In contrast, the largest import volume and highest market share of the subject merchandise were associated with the lowest dumping margin.[13] Therefore, the Department determines that it is inappropriate for the Department to report a more recently calculated rate to the Commission. Instead, because the margins from the original investigation accurately reflect the behavior of British producers and exporters without the discipline of an order in place, the Department will provide to the Commission the margins found in the original investigation. We will report to the Commission the company-specific and all-others rate contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Imperial Chemical Industries PLC ("Imperial")	11.13
All Others	11.13

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28065 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–P

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[9] *See Final Determination of Sales at Less Than Fair Value: INC from the United Kingdom,* 55 FR 21055 (May 22, 1990).

[10] *See* footnote 7, supra. Also, according to Hercules' business proprietary information, the magnitude of Imperial's increased market share is comparable to its volume increases during the relevant period.

[11] To support this, Hercules submits its business manager's sworn affidavit, in which the business manager indicated an absence of price increase by Imperial since Imperial's antidumping margin increased from 1.48 percent to 13.0 percent in March, 1999. (See the July 1, 1999 Substantive Response of Hercules, attachment 4.)

[12] *See* footnote 5, supra. In the most recent administrative review, the Department assessed Imperial with a higher 13.0 percent antidumping margin than in the previous review–1.48 percent.

[13] The increases of the import volumes and market shares of the subject merchandise were simultaneous with a decrease (not increase) in dumping margins: in its first two administrative reviews, covering the period 1992 to 1993 and 1993 to 1994 , the Department reduced the weighted-average dumping margins for the subject merchandise to 6.62 (the original rate was 11.13) and 1.48, respectively. The three-year moving average of each of the import volume and the average market share of the subject merchandise during 1992–1994, is the highest compared to any other three-year period (for the market share, the average of 1992–1994 is tied with that of 1994-1996). See footnote 4 and 5, supra. In other words, and more importantly, the imposition of a sharply increased antidumping margin by the Department, for the review period of 1996–1997, did not result in increased import volume and market share. See *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–479–801]

Final Results of Expedited Sunset Review: Industrial Nitrocellulose From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Industrial Nitrocellulose From Yugoslavia.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on industrial nitrocellulose from Yugoslavia (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 27, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset

Regulations") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The product covered by this order is industrial nitrocellulose ("nitrocellulose") from Yugoslavia. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

The antidumping duty order on nitrocellulose from Yugoslavia was published in the **Federal Register** on October 16, 1990 (55 FR 41870).[1] In that order, the Department determined that the weighted-average dumping margin for all entries of the subject merchandise was 10.81 percent.[2] Since that time, the Department has completed no administrative reviews. We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrocellulose from Yugoslavia (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Hercules Incorporated ("Hercules") on June 9, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Hercules asserts that it is not related to a foreign producer, foreign exporter, or domestic importer of the subject merchandise and that it is not an importer of the subject merchandise except on an occasional spot basis. (See Hercules' June 9, 1999 Intent to Participate at 2.)

We received a complete substantive response from Hercules on July 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). Hercules claims interested party status under section 771(9)(C) of the Act as a U.S. manufacturer, producer, and wholesaler of the subject merchandise. In its substantive response, Hercules indicates that it is the sole remaining U.S. domestic producer of nitrocellulose and was the petitioner in the original investigation. (See Hercules' July 1, 1999 Substantive Response at 1—2.)

We did not receive a substantive response from any respondent interested parties to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. *See* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on industrial nitrocellulose from Yugoslavia is extraordinarily complicated. Therefore, on October 12, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, Hercules' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, Hercules asserts that the likelihood of continuation or recurrence of dumping is high if the order is revoked. (See July 1, 1999 substantive response of Hercules at 3—5). To buttress its contention, Hercules points out a drastic decline in import volumes of the subject merchandise immediately after the issuance of the order. According to Hercules, after the imposition of the antidumping order, imports of the subject merchandise fell to zero.[4] *Id.* The cessation of imports almost immediately after the issuance of the order, Hercules further argues, is highly probative of the likelihood of future dumping. *Id.*

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[1] *See Antidumping Duty Order: Industrial Nitrocellulose from Yugoslavia*, 55 FR 41870 (October 16, 1990).

[2] However, the underlying investigation dealt with only one Yugoslavian company, Milan Blagojevic ("Milan"), located in Lucani, Yugoslavia.

[3] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 55233 (October 12, 1999).

Moreover, Hercules indicates that, for the past five years, the import volumes of the subject merchandise have been at zero.[5] *Id.* In conclusion, Hercules contends that Yugoslavian manufacturers/exporters of the subject merchandise have not been able to sell in the United States during the antidumping duty order regime; in other words, Yugoslavian manufacturers/exporters have to dump in order to export the subject merchandise to the United States.

Consistent with section 752(c) of the Act, the Department considered the import volumes of the subject merchandise before and after the issuance of the order. The data supplied by Hercules, the United States Census Bureau IM146s, and the United States International Trade Commission indicate that, since the imposition of the order, the import volumes of the subject merchandise have declined substantially.[6] Moreover, for the period 1994–1998, the United States International Trade Commission Data show a complete cessation of the import volumes for the subject merchandise.[7] Therefore, the Department determines that the import volumes of the subject merchandise ceased after the issuance of the order.

As indicated in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and House Report at 63–64, the Department also considered whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. Because no administrative review has been conducted since the issuance of the order, the margins from the original investigation are the prevailing and therefore effective margins. Thus, the Department determines that weighted-average dumping margins for the subject merchandise have continued above the *de minimis* level.

Given that the import volumes of the subject merchandise ceased completely after the issuance of the order, that dumping margins above the *de minimis* level have continued since the issuance of the order, and that respondent interested parties have waived their right to participate in this review, the Department agrees with Hercules' contention that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.)

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for Milan and all-others: 10.81 percent.[8] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Hercules urges the Department to report to the Commission the dumping margins from the original investigation as the margins likely to prevail. (See the July 1, 1999 Substantive Response of Hercules at 6.) Hercules argues that, since the Department has not conducted any administrative reviews pertaining to the instant order, the best and only possible recommendation the Department can make, regarding margins that are likely to prevail, is the ones from the original investigation. *Id.*

The Department agrees with Hercules' suggestion pertaining to the margin that is likely to prevail if the order were revoked. Because the margins from the original investigation reflect the behavior of Yugoslavian producers/exporters without the discipline of an order in place, the Department will provide to the Commission the margins found in the original investigation. Absent argument and evidence to the contrary, the Department sees no reason to change its usual practice of selecting the rate from the original investigation. We will report to the Commission the company-specific and all-others rate contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Milan Blagojevic	10.81
All Others	10.81

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28066 Filed 10–26–99; 8:45 am]

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[4] The order was imposed on October 16, 1990. (See footnote1, supra.) In 1989 and 1990, imports of the subject merchandise were 748 and 1,041 metric tons, respectively; however, during the period from 1991 through 1998, the import volumes were as follows: 1991—312; 1992—47; 1993—0; 1994—0; 1995—0; 1996—0; 1997—0; and 1998—0 metric tons. (See Hercules' July 1, 1999 substantive response, Attachment 2.)

[5] See footnote 4, supra. During 1994–1998, the average import volume of the subject merchandise was 0 metric ton.

[6] See footnote 3, supra. The numbers supplied by Hercules exactly correspond with those of the U.S. International Trade Commission Data.

[7] See footnote 4.

[8] See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Yugoslavia, 55 FR 34946 (August 27, 1990).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–804]

Final Results of Expedited Sunset Review: Industrial Nitrocellulose From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Industrial Nitrocellulose from Brazil.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on industrial nitrocellulose from Brazil (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Result of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 27, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The product covered by this order is industrial nitrocellulose ("nitrocellulose") from Brazil. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

The antidumping duty order on nitrocellulose from Brazil was published in the **Federal Register** on July 10, 1990 (55 FR 28266).[1] In that order, the Department determined that the weighted-average dumping margin for all entries of the subject merchandise was 61.25 percent.[2] Since that time, the Department has completed one administrative review.[3] We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrocellulose from Brazil (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Hercules Incorporated ("Hercules") on June 9, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Hercules asserts that it is not related to a foreign producer, foreign exporter, or domestic importer of the subject merchandise and that it is not an importer of the subject merchandise except on an occasional spot basis. (See Hercules' June 9, 1999 Intent to Participate at 2.)

We received a complete substantive response from Hercules on July 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). Hercules claims interested party status under section 771(9)(C) of the Act as a U.S. manufacturer, producer, and wholesaler of the subject merchandise. In its substantive response, Hercules indicates that it is the sole remaining U.S. producer of nitrocellulose, was the petitioner in the original investigation, and has participated in the only administrative review proceeding. (See Hercules' July 1, 1999 Substantive Response at 1–2.)

We did not receive a substantive response from any respondent interested party to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. *See* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on industrial nitrocellulose from Brazil is extraordinarily complicated. Therefore, on October 12, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, Hercules' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"),

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[1] See Antidumping Duty Order: Industrial Nitrocellulose from Brazil, 55 FR 28266 (July 10, 1990).

[2] However, the underlying investigation and the subsequent administrative review dealt with only one Brazilian company, Companhia Nitro Quimica Brasileira ("Quimica").

[3] See Industrial Nitrocellulose From the Brazil; Notice of Final Results of Antidumping Duty Administrative Review, 58 FR 38750 (July 20, 1993).

[4] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 55233 (October 12, 1999).

H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, Hercules asserts that the likelihood of continuation or recurrence of dumping is high if the order is revoked. (See July 1, 1999 substantive response of Hercules at 3–6). To support its contention, Hercules points to a drastic decline in import volumes of the subject merchandise immediately after the issuance of the order. According to Hercules, after the imposition of the antidumping order, imports of the subject merchandise virtually stopped.[5] Id. The virtual cessation of imports in the years immediately after the issuance of the order, Hercules further argues, is highly probative of the likelihood of future dumping. Id.

Hercules also indicates that Brazilian producers/exporters, in an attempt to achieve a reduced cash deposit rate in the forthcoming administrative review, made some small scale imports in 1991 and 1992. Id. Hercules notes that, soon thereafter, however, imports of the subject merchandise began to increase. Id. According to Hercules, this increasing trend stopped and the import volumes of the subject merchandise were reduced to zero after Hercules requested a second administrative review in 1996.[6] Id. In conclusion, Hercules argues that Brazilian producers/exporters of the subject merchandise could not sustain their level of exports after the issuance of the antidumping duty order; in other words, Brazilian producers/exporters have to dump in order to export the subject merchandise to the United States.

Consistent with section 752(c) of the Act, the Department considered the import volumes of the subject merchandise before and after the issuance of the order. The data supplied by Hercules and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, immediately after the imposition of the order, the import volumes of the subject merchandise declined substantially.[7] However, for the period 1994–1998, it is unclear whether the import volumes have declined substantially, or declined at all, when compared to pre-order volume.[8] Therefore, the Department determines that although the import volumes of the subject merchandise decreased significantly immediately after the issuance of the order, the Department cannot determine that import volumes of the subject merchandise decreased for the five-year period preceding the year of publication of this notice of initiation vis a vis pre-order imports volumes.

As indicated in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and House Report at 63–64, the Department also considered whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in the original investigation and from the previous administrative review,[9] the Department determines that, since the issuance of the order, weighted-average dumping margins for the subject merchandise have continued at above the *de minimis* level.

Given that dumping of the subject merchandise continued above the *de minimis* level after the issuance of the order, and that respondent interested parties have waived their right to participate in this review, the Department agrees with Hercules' contention that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.)

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for Quimica and all-others: 61.25 percent.[10] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Hercules urges the Department to report to the

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[5] The order was imposed on July 10, 1990. (See footnote 1, supra.) In 1989 through 1990, imports of the subject merchandise were 734 and 207 metric tons, respectively; however, during 1991 and 1998, the imports volumes were as follows: 1991—7; 1992—13; 1993—0; 1994—228; 1995—635; 1996—1261; 1997—698; and 1998—0 metric tons. (See July 1, 1999 substantive response of the Hercules, Attachment 2.)

[6] Hercules is suggesting that the Brazilian producers/exporters were dumping at an increased rate and only stopped exporting the subject merchandise entirely because of imminent imposition of a higher margin in a pending administrative review. Hercules states that it withdrew its request for the review after it recognized that Quimica, the only firm subjected to the investigation and review, had experienced an industrial accident and, as a consequence, would not be in position for some time to dump the subject merchandise in the United States. In other words, exports of the subject merchandise reduced to zero in 1998 because of an accident, which shut down Quimica's production facilities in Brazil. See Industrial Nitrocellulose From Brazil; Rescission of Antidumping Duty Administrative Review, 62 FR 63666 (December 15, 1997).

[7] See footnote 4, supra. The numbers supplied by Hercules exactly correspond with those of the U.S. International Trade Commission Data.

[8] The average volume of imports of the subject merchandise between 1994 and 1998 was 564.4; however, if we exclude 1998 zero level, which was due to Quimica's production incapacitation, the average volume between 1994 and 1997 was 705.5. The average of 1989 and 1990 pre-order volume was 470.5; in 1989 alone, the pre-order volume was 734.

[9] See footnote 3, supra. In this Administrative Review, covering the period July 1991 through June 1992, the Department determined that the weighted-average dumping margin for Quimica was 5.81 percent and for all-others was 61.25 percent.

[10] See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Brazil, 55 FR 23120 (June 6, 1990).

Commission the dumping margins from the original investigation as the margins likely to prevail. (See the July 1, 1999 Substantive Response of Hercules at 6–7.) Although the Department found a substantially reduced 5.81 percent dumping margin for a Brazilian producer in its administrative review, Hercules contends that the reduced dumping margin coincided with greatly declined import volumes of the subject merchandise.[11] Id. Therefore, the rates which would most accurately reflect the antidumping margins that are likely to prevail were the order revoked are the ones from the original investigation.

The Department agrees with Hercules' suggestion pertaining to the margins that are likely to prevail if the order were revoked. Because the margins from the original investigation reflect the behavior of Brazilian producers/exporters without the discipline of an order in place, the Department will provide to the Commission the margins found in the original investigation. Absent argument and evidence to the contrary, the Department sees no reason to change its usual practice of selecting the rate from the original investigation. We will report to the Commission the company-specific and all-others rate contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter	Margin (percent)
Companhia Nitro Quimica Brasileira	61.25
All Others	61.25

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28067 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–802]

Final Results of Expedited Sunset Review: Industrial Nitrocellulose From People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Industrial Nitrocellulose from People's Republic of China.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on industrial nitrocellulose from People's Republic of China (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 27, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The product covered by this order is industrial nitrocellulose ("nitrocellulose") from the People's Republic of China ("China"). Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

The antidumping duty order on nitrocellulose from China was published in the **Federal Register** on July 10, 1990 (55 FR 28267).[1] In that order, the Department indicated that the weighted-average dumping margins for all entries of the subject merchandise is 78.40 percent. Since that time, the Department has completed only one administrative review. In that review, covering July 1, 1995 through June 30, 1996, we found that China North Industries Guangzhou Corp. ("CNIGC") was the only exporter. In that review, the Department determined not to grant CNIGC a separate rate; instead, we established a rate of zero for all entries from the People's Republic of China ("PRC-wide rate") based on information submitted by CNIGC.[2] The order remains in effect for all manufacturers and exporters of the subject merchandise.

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[11] See footnote 5 and 8, supra.

[1] See Antidumping Duty Order: Industrial Nitrocellulose from the People's Republic of China, 55 FR 28267 (July 10, 1990).

[2] See Industrial Nitrocellulose From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65667 (December 15, 1997). In the review, the Department found that the PRC-wide rate was zero for the period of review.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrocellulose from China (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Hercules Incorporated ("Hercules") on June 9, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Hercules asserts that it is not related to a foreign producer, foreign exporter, or domestic importer of the subject merchandise; nor is it an importer of the subject merchandise except on an occasional spot basis. (See Hercules' June 9, 1999 Intent to Participate at 2.)

We received a complete substantive response from Hercules on July 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). Hercules claims interested party status under section 771(9)(C) of the Act as a U.S. manufacturer, producer, and wholesaler of the subject merchandise. In its substantive response, Hercules indicates that it is the sole remaining U.S. domestic producer of nitrocellulose, was the petitioner in the original investigation, and has participated in all contested review proceedings. (See Hercules' July 1, 1999 Substantive Response at 1–2.)

We did not receive a substantive response from any respondent interested parties to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. *See* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on industrial nitrocellulose from China is extraordinarily complicated. Therefore, on October 12, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, Hercules' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, Hercules asserts that the likelihood of continuation or recurrence is high if were the order revoked. (See July 1, 1999 substantive response of the Hercules at 3–6). To buttress its contention, Hercules points out a drastic decline in import volumes of the subject merchandise immediately after the issuance of the order. According to Hercules, after the imposition of the antidumping order, imports of the subject merchandise all but disappeared.[4] Id. The virtual cessation of imports immediately after the issuance of the order, Hercules further argues, is highly probative of the likelihood of future dumping. Id.

Moreover, Hercules indicates that, for the past five years, imports of the subject merchandise have been at or near zero. Id. According to Hercules, the— small scale of imports of the subject merchandise in 1996 was just the Chinese producers/exporters' attempt to attain a reduced cash deposit rate in a pending administrative review.[5] Id. Hercules further notes that even after weighted-average dumping margin for the subject merchandise was reduced to zero (from 78.40 percent), Chinese producers/exporters could not sustain the exports of the subject merchandise. *Id.* As a result, Hercules concludes, dumping of the subject merchandise will continue if the order were revoked.

As indicated in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and House Report at 63–64, the Department considers whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. Since publication of the final results of the 1995–1996 administrative review, the cash deposit rate has remained zero.

However, consistent with section 752(c) of the Act, the Department also considered the import volumes of the subject merchandise before and after the issuance of the order. The data supplied by Hercules and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, since the imposition of the order, import volumes of the subject merchandise have declined substantially.[6] Moreover, for the period 1994–1998, although Census Bureau IM 146 data do not reflect any annual imports of the subject merchandise, the United States International Trade Commission Data show rather insignificant imports of the subject merchandise during the period.[7] Therefore, the Department determines that the import volumes of the subject merchandise decreased significantly after the issuance of the order.

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[3] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 55233 (October 12, 1999).

[4] In 1989 and 1990, imports of the subject merchandise were 508 and 237 metric tons, respectively; however, during the period 1991 through 1998, imports volumes were as follows: 1991—2; 1992—0; 1993—17; 1994—0; 1995—0; 1996—9; 1997—0; and 1998—27 metric tons. (See July 1, 1999 substantive response of Hercules, Attachment 2.)

[5] See footnote 4, supra. In the 1995–1996 review, the Department found a 0% weighted-average dumping margin for entries of nitrocellulose from China.

Given that the import volumes of the subject merchandise decreased significantly after the issuance of the order and that respondent interested parties have waived their right to participate in this review, the Department agrees with Hercules' contention that dumping is likely to continue if the order is revoked.

Magnitude of the Margin:

In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.)

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for CNIGC and all-others: 78.40 percent.[8] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, citing the SAA at 890 and the Sunset Policy Bulletin at 18873, Hercules states that the Department normally will provide the Commission with the dumping margins from the investigation unless the import volumes increase while at the same time dumping margins decrease after the issuance of the order. (*See* the July 1, 1999 Substantive Response of the Hercules at 6–7.) Hercules points out that, in the instant case, however, the reduced weighted-average dumping margin for Chinese producers/exporters coincides with a greatly declined import volume of the subject merchandise. *Id.* In other words, Hercules states that Chinese producers/exporters are incapable of reducing weighted-average dumping margins while at the same time increasing exports of the subject merchandise to the United States. *Id.* Therefore, Hercules urges, the Department should abide by its practice, as set forth in the Sunset Policy Bulletin, and report to the Commission the margin set forth in the original investigation.

The Department agrees with Hercules' suggestion pertaining to the margin that is likely to prevail if the order were revoked. Because the margins from the original investigation reflect the behavior of Chinese producers and exporters without the discipline of an order in place, the Department will provide to the Commission the margin found in the original investigation. Absent argument and evidence to the contrary, the Department sees no reason to change its usual practice of selecting the rate from the original investigation. We will report to the Commission the PRC-wide rate contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter	Margin (percent)
PRC-wide	78.40

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28068 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–009]

Final Results of Expedited Sunset Review: Industrial Nitrocellulose From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Industrial Nitrocellulose from France.

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on industrial nitrocellulose from France (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 27, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and

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[6] See id. The numbers supplied by Hercules exactly correspond with those of the U.S. International Trade Commission Data.

[7] See id. During 1994–1998, the average import volume of the subject merchandise was 7.2 metric tons, which is a mere 1.93 percent of 1989 and 1990 pre-order import levels.

[8] See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose From the People's Republic of China, 55 FR 21051 (May 22, 1999).

Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The product covered by this order is industrial nitrocellulose ("nitrocellulose") from France. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

The antidumping duty order on nitrocellulose from France was published in the **Federal Register** on August 10, 1983 (48 FR 36303).[1] In that order, the Department determined that the weighted-average dumping margin for all entries of the subject merchandise was 1.38 percent.[2] Since that time, the Department has completed several administrative reviews.[3] To date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrocellulose from France (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Hercules Incorporated ("Hercules") on June 9, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Hercules asserts that it is not related to a foreign producer, foreign exporter, or domestic importer of the subject merchandise and that it is not an importer of the subject merchandise except on an occasional spot basis. (See Hercules' June 9, 1999, Intent to Participate at 2.)

We received a complete substantive response from Hercules on July 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). Hercules claims interested party status under section 771(9)(C) of the Act as a U.S. manufacturer, producer, and wholesaler of the subject merchandise. In its substantive response, Hercules indicates that it is the sole remaining U.S. producer of nitrocellulose, was the petitioner in the original investigation, and has participated in all review proceedings. (See Hercules' July 1, 1999, Substantive Response at 1–2.)

We did not receive a substantive response from any respondent interested party to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the Sunset Regulations, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. See section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on industrial nitrocellulose from France is extraordinarily complicated. Therefore, on October 12, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, Hercules' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

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[1] *See Industrial Nitrocellulose from France; Antidumping Duty Order*, 48 FR 36303 (August 10, 1983).

[2] However, the underlying investigation and subsequent administrative reviews dealt with only one French company, Societe Nationale des Poudres et Explosifs ("SNPE") except in the most recent administrative review in which Bergerac, N.C. ("Bergerac"), a successor company with respect to production of the subject merchandise and a subsidiary of SNPE, became the subject of the review.

[3] *See Industrial Nitrocellulose From France: Final Results of Antidumping Duty Administrative Review*, 51 FR 43227 (December 1, 1986); *Industrial Nitrocellulose From France: Final Results of Antidumping Duty Administrative Review*, 53 FR 15262 (April 28, 1988); *Industrial Nitrocellulose From France: Final Results of Antidumping Duty Administrative Review*, 53 FR 27185 (July 19, 1988); *Industrial Nitrocellulose From France: Final Results of Antidumping Duty Administrative Review*, 63 FR 49085 (September 14, 1998).

[4] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 55233 (October 12, 1999).

In its substantive response, Hercules asserts that the likelihood of continuation or recurrence of dumping is high if the order is revoked. (See July 1, 1999, substantive response of Hercules at 3–6.) To support its assertion, Hercules points out that, during the 1990s, Bergerac continued to increase its extent of dumping of the subject merchandise. Hercules notes that, after finding Bergerac was dumping at the rate of 4.39 percent for the period of 1986–1987, in the next and the most recent administrative review covering 1996–1997, the Department determined that the dumping margin for Bergerac was 13.35 percent. Id. Hercules argues that Bergerac has demonstrated over the past decade that it has to dump in order to export the subject merchandise to the United States.

Consistent with section 752(c) of the Act, the Department considered the import volumes of the subject merchandise before and after the issuance of the order. The data supplied by Hercules and those of the United States Census Bureau IM146s and the Commission indicate that, during 1990s, the import volumes of the subject merchandise have shown an increasing trend.[5] Specifically, between 1994 and 1998, the Commission's data show a rather substantial increase in the import volumes of the subject merchandise *vis a vis* pre-order volumes.[6] Therefore, the Department determines that the import volumes of the subject merchandise increased or showed an increasing trend after the issuance of the order.

As indicated in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and House Report at 63–64, the Department also considers whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in the original investigation and from the previous administrative reviews,[7] the Department determines that, since the issuance of the order, except for the period between May 1983 and July 1986, the weighted-average dumping margins for the subject merchandise have continued at above the *de minimis* level.

Given that dumping of the subject merchandise continued above the *de minimis* level after the issuance of the order and that respondent interested parties have waived their right to participate in this review, the Department agrees with Hercules' contention that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.)

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for SNPE and all-others of 1.38 percent.[8] To date, the Department has not issued any duty absorption findings in this case.

In its substantive response, while acknowledging that the Department normally will provide the Commission with the dumping margins from the original investigation, Hercules argues that, in the instant review, the Department should report to the Commission a more recently calculated margin because Bergerac increased its dumping in order to increase its market share in the United States. (See the July 1, 1999, Substantive Response of Hercules at 6–7.) In addition to supplying data which indicate clearly that Bergerac's market share in the United States increased during the 1990s,[9] Hercules also claims that Bergerac's market behavior of not raising its export prices,[10] after a higher dumping margin was imposed in the most recent administrative review,[11] suggests that Bergerac intends to continue dumping at the recent, higher margins to hold onto or to increase its market share. *Id.* Therefore, Hercules urges the Department to provide to the Commission the more recent, higher margin because that margin is a better indicator of Bergerac's likely behavior in the event the order is revoked.

The Department agrees with the Hercules' argument pertaining to the margin that is likely to prevail were the order revoked. In the Sunset Policy Bulletin, the Department indicated that, when a company chooses to increase dumping in order to maintain or increase its market share, the Department may report a more recently calculated margin to the Commission if dumping margins increased after the issuance of the order. (See section II.B.2 of the Sunset Policy Bulletin.) Absent argument and evidence to the contrary, the Department sees no reason to change its practice as articulated in the Sunset Policy Bulletin of selecting a more recently calculated rate when increased weighted-average dumping margins for a company coincide with its increased market share of the subject merchandise. We will report to the

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[5] The import volumes of the subject merchandise during the 1990s are as follows (the order was issued in August 1983; numbers are in metric tons): 1990—188; 1991—306; 1992—788; 1993—1,633; 1994—2,564; 1995—2,338; 1996—2,760; 1997—4,377; 1998—3,883. These numbers correspond exactly with the Commission data.

[6] See footnote 5, supra. During 1994—1998, the average import volume of the subject merchandise was 3,184.4 metric tons, which denotes a 36.58 percent increase over the average of 1982 and 1983 pre-order import levels (2,331.5 metric tons).

[7] See footnote 3, supra. Although the weighted-average dumping margins of the subject merchandise decreased to zero or *de minimis* levels in each of the first three administrative reviews (from the original investigation margin of 1.38 percent to 0.17 percent in the first review, 0 percent in the second review, and 0.07 percent in the third review), in the fourth review, the margin increased to 4.39 percent, and in the most recent, fifth, review, the dumping margin increased to 13.35 percent.

[8] See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from France, 48 FR 21615 (May 13, 1983).

[9] In particular, during and after the period covered by the latest administrative review, in which the Department found substantially increased dumping of the subject merchandise, Bergerac's market share increased rather significantly as well (inasmuch as the U.S. demand for the domestic like product has remained stable during the relevant period, Bergerac's increase in the volume of exports of the subject merchandise is directly translated to the increase in Bergerac's market share). Also, in general, during the 1990's, Bergerac's market share showed an increasing trend; this trend started after the Department's fourth administrative review in which the Department found that Bergerac was dumping at 4.39 percent rather than at the zero or de minimis levels, which the Department found during the first three administrative reviews.

[10] To support this, Hercules submitted its business manager's sworn affidavit, in which the business manager indicated that Bergerac had not offered any price increase in its offers to customers since Bergerac's antidumping margin increased from 4.39 percent to 13.35 percent in September 1998. (See the July 1, 1999 Substantive Response of Hercules, attachment 4.)

[11] *See* footnote 6, supra.

Commission the company-specific and all-others rate contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Bergerac, N.C.	13.35
All Others	1.38

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28069 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of administrative review.

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5255 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (1999).

Background

On February 26, 1999, the Department of Commerce (the Department) received a request from Verson Division of Allied Products Corporation for an administrative review of the antidumping duty order on mechanical transfer presses from Japan. On March 19, 1999, the Department initiated this administrative review covering the period of February 1, 1998 through January 31, 1999 (64 FR 14860, published March 29, 1999).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the Administrative Review of Mechanical Transfer Presses from Japan*, dated October 19, 1999, it is not practical to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results to February 28, 2000. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: October 20,1999.

Richard O. Weible,

Acting Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–28059 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On July 30, 1999, the Department of Commerce (the Department) published the preliminary results of the new shipper review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea (64 FR 41380). The review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 1998 through December 31, 1998. We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

We have determined that Hyosung Corporation (Hyosung) made no U.S. sales below normal value, and we will instruct the U.S. Customs Service to assess no antidumping duties for Hyosung for the period covered by this new shipper review.

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, US Department Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475 or (202) 482–5222.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1998, the Department received a request from Hyosung for a new shipper review pursuant to section 751(a)(2) of the Act and Section 351.214(b) of the Department's regulations. On February 2, 1999, we published the notice of initiation for this new shipper review (64 FR 5030). On July 30, 1999, the Department published in the **Federal Register** the preliminary results of its new shipper review of the antidumping duty order on PET film from Korea. We received no comments on our preliminary results. The final results of this review are unchanged from those presented in our preliminary results.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period July 1, 1998 through December 31, 1998. The Department is conducting this review in accordance with section 751(a)(2)(B) of the Act.

Final Results of Review

We determine that a margin of 0.00 percent exists for Hyosung for the period July 1, 1998 through December 31, 1998. We will disclose calculations performed in connection with these final results of review within 5 days of publication of this notice.

We will instruct the U.S. Customs Service not to assess antidumping duties on entries of the subject merchandise from Hyosung for the period of review.

Furthermore, the following deposit requirements shall be required for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) For Hyosung the cash deposit will be zero; (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in the less-than-fair-value (LTFV) investigation or a previous administrative review, the cash deposit will continue to be the most recent rate published in the final determination or final results of review for which the manufacturer or exporter received a company-specific rate; (3) If the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recent review or the LTFV investigation; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 21.5%, the "all others" rate established in the LTFV investigation.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Dated: October 20, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28057 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle From Japan: Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Finding, Rescission of Antidumping Duty Administrative Reviews, and Termination of Scope Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances review and intent to revoke finding, rescission of antidumping administrative reviews, and termination of scope inquiry.

SUMMARY: In response to a request from the petitioner, the American Chain Association ("ACA"), the Department of Commerce ("the Department") is initiating a changed circumstances review and issuing this notice of preliminary changed circumstances review results and intent to revoke the antidumping finding on roller chain from Japan. Moreover, because the petitioner is no longer interested in maintaining the finding after April 1, 1997, we have preliminarily determined to revoke the finding retroactive to this date. In addition, in response to the petitioner's and respondents' withdrawal requests for the ongoing 1997–1998 and 1998–1999 administrative reviews, the Department is rescinding these administrative reviews of the finding. Finally, we are terminating a scope inquiry associated with the 1997–1998 Sugiyama Chain Company, Ltd., administrative review.

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Tom Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4114 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1998).

Background

On October 13, 1999, the ACA requested that the Department conduct a changed circumstances review to revoke the antidumping finding on roller chain from Japan retroactive to April 1, 1997. The petitioner stated that circumstances have changed such that the petitioner no longer has an interest in maintaining the antidumping finding. Additionally, the petitioner indicated that it represents virtually all roller chain producers in the United States accounting for over 90 percent of the U.S. roller chain production.

The petitioner also requested that, given the pendency of the ongoing administrative review of the finding, the Department initiate and complete the changed circumstances review on an expedited basis.

Futhermore, on October 13, 1999, the petitioner filed a withdrawal of its request for administrative reviews covering the periods of April 1, 1997, through March 31, 1998, and April 1, 1998, through March 31, 1999. Between October 14–18, 1999, Daido Kogyo Company, Ltd. Daido Tsusho Company, Ltd, Daido Corporation, Enuma Chain Manufacturing Company, Sugiyama Chain Company, Ltd., Izumi Chain Manufacturing Company, Ltd., Oriental Chain Company, R.K. Excel Company, Ltd., and Tsubakimoto Chain Company, Ltd., the respondents in this proceeding, also filed a withdrawal of their requests for administrative reviews covering the above-mentioned periods. Additionally, Sugiyama Chain Company, Ltd., requested a termination of a scope inquiry associated with its 1997–1998 administrative review. Given that the petitioner's and respondents' withdrawal and rescission requests were filed after the 90-day period for withdrawing a request for a review, the parties asked the Department to exercise its regulatory discretion under 19 CFR 351.213(d)(1) to rescind the above-mentioned reviews.

Scope of Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller link, or multiple strand of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

On March 24, 1998, the Department determined that certain models of silent timing chain produced and exported by Kaga for use in automobiles are outside the scope of the antidumping finding. (*See Final Scope Ruling: Kaga's Request for Scope Ruling on Automotive Silent Timing Chain,* March 24, 1998, on file in the Central Records Unit (CRU) in room B–099 of the Main Commerce Building).

Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Finding

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping findings based on a review under section 751(b) of the Act (*i.e.*, changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances review in accordance with 19 CFR 351.221, if the Department determines that there exist changed circumstances sufficient to warrant a review. Section 782(h) of the Act and 19 CFR 351.222(g)(10(i) provide further that the Department may revoke a finding, in whole or in part, if it concludes that the finding under review is no longer of interest to producers accounting for substantially all of the production of the domestic like product. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

The ACA is a domestic interested party as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and was the petitioner in the less-than-fair-value (''LTFV'') investigation of this proceeding. Based on the ACA's October 13, 1999, submission, we preliminarily determine that the ACA represents producers accounting for substantially all of the production of the domestic like product. In light of the affirmative statement by the ACA of no interest in the continued application of the antidumping finding on roller chain from Japan, we are initiating this changed circumstances review. Further, based on the request by the petitioner and its affirmative statement of no interest dating back to April 1, 1997, we have determined that expedited action is warranted, and have combined our notices of initiation and preliminary results. Moreover, we have preliminarily determined that there are changed circumstances sufficient to warrant revocation of the finding in whole. Consequently, we are hereby notifying the public of our intent to revoke in whole the antidumping finding on roller chain from Japan retroactive to April 1, 1997.

If final revocation of the finding occurs, we intend to instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of roller chain from Japan on or after April 1, 1997, in accordance with 19 CFR 351.222(g)(4). We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Rescission of Administrative Reviews and Scope Inquiry

On October 13, 1999, and between October 14–18, 1999, respectively, the petitioner and respondents withdrew their requests for administrative reviews for the periods April 1, 1997, through March 31, 1998 and April 1, 1998 through March 31, 1999. These withdrawal requests cover all requests received for administrative reviews during the 1997–1998 and 1998–1999 review segments. In accordance with 19 CFR 351.213(d)(1), we are rescinding these reviews because the parties withdrew their requests for reviews and no other interested party requested that the Japanese respondents be reviewed. Although parties to the proceeding did not file their withdrawal requests within 90 days of the publication of initiation of the requested review, we are exercising the Department's discretion to rescind a review after 90 days because it is reasonable to do so. In this case, the petitioner concomitantly has filed a request for a changed circumstances review and revocation of the finding based on a lack of domestic interest dating back to April 1, 1997, the month the requests were filed for the 1997–1998 administrative review. Given the lack of domestic interest prior to the date of initiatives of the 1997–1998 review, we have determined that it is reasonable to rescind both reviews based on the petitioner's and respondents' requests for terminations of these reviews. Finally, we are terminating a scope inquiry associated with the 1997–1998 administrative review of Sugiyama Chain Company, Ltd.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice. Written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal comments to written comments, limited to issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28061 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–023. *Applicant:* University of Vermont, Given Building, Room E219, Burlington, VT 05405. *Instrument:* Microforge, Model MF–830. *Manufacturer:* Narishige Scientific Instrument Lab., Japan. *Intended Use:* The instrument is intended to be used for polishing glass microelectrodes during studies of the electrical properties of Dorsal Root Ganglion and other neuronal and non-neuronal tissues. Experiments are designed to characterize the difference between the sodium and potassium channel currents among experimental and control animals. The objective of the studies is to find a correlation between the electrical properties and the properties of the inflamed bladder tissue. *Application accepted by Commissioner of Customs:* September 30, 1999.

Docket Number: 99–024. *Applicant:* University of Vermont, Given Building, Room E219, Burlington, VT 05405. *Instrument:* Glass Microelectrode Puller, Model PP–830. *Manufacturer:* Narishige Scientific Instrument Lab., Japan. *Intended Use:* The instrument is intended to be used to pull glass capillary tubes to a point fine enough to allow one to seal a small piece of cell membrane in the resulting microscopic opening in studies of the electrical properties of Dorsal Root Ganglion and other neuronal and non-neuronal tissues. Experiments are designed to characterize the difference between the sodium and potassium channel currents among experimental and control animals. The objective of the studies is to find a correlation between the electrical properties and the properties of the inflamed bladder tissue. Application accepted by Commissioner of Customs: September 30, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–28060 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

October 21, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit	
200–227, 237, 239pt. [1], 300–326, 331–348, 350–352, 359pt. [2], 360–363, 369–D [3], 369pt. [4], 400–431, 433–438, 440–448, 459pt. [5], 464, 469pt. [6], 600–629, 631, 633–652, 659pt. [7], 666, 669–P [8], 669pt. [9] and 670, as a group.	591,553,474 square meters equivalent.
Sublevels within the aggregate	
218	7,350,735 square meters.
219	26,836,716 square meters.
225	12,863,788 square meters.
300/301	9,969,289 kilograms.
313	61,733,128 square meters.
314	10,107,264 square meters.
315	30,321,791 square meters.
317/326	27,565,262 square meters.
334/335	197,806 dozen.
336	109,894 dozen.
338/339/638/639	1,978,068 dozen.
342/642	582,430 dozen.
347/348	1,428,604 dozen.
350	221,635 dozen.
361	1,494,539 numbers.
363	31,897,074 numbers.
369–D	712,414 kilograms.
410/624	14,701,474 square meters of which not more than 2,775,267 square meters shall be in Category 410.
433	19,265 dozen.
445/446	75,470 dozen.
604	697,850 kilograms of which not more than 533,358 kilograms shall be in Category 604–A [10].
607	6,480,040 kilograms.
647/648	659,357 dozen.
669–P	2,374,718 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369pt.: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[9] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 12, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factor for merged Categories 338/339/638/639 is 10 (square meters equivalent/category unit).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–28071 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

October 22, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 438 is being increased for swing, reducing the limit for Categories 645/646.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 64 FR 6050, published on February 8, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on October 27, 1999, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit [1]
438	100,800 dozen.
645/646	170,049 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–28074 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

October 21, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following restraint limits:

Category	Twelve-month limit
315	28,425,533 square meters.
443	131,889 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 4, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–28072 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

October 21, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Egypt and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Fabric Group	
218–220, 224–227, 313–O [1], 314–O [2], 315–O [3], 317–O [4] and 326–O [5], as a group.	130,768,460 square meters.
Sublevels within Fabric Group	
218	2,508,000 square meters.
219	30,766,900 square meters.
220	30,766,900 square meters.
224	30,766,900 square meters.
225	30,766,900 square meters.
226	30,766,900 square meters.
227	30,766,900 square meters.
313–O	56,496,844 square meters.
314–O	30,766,900 square meters.
315–O	36,129,848 square meters.
317–O	30,766,900 square meters.
326–O	2,508,000 square meters.
Levels not in a group	
300/301	12,157,140 kilograms of which not more than 3,812,906 kilograms shall be in Category 301.
338/339	3,427,555 dozen.
340/640	1,419,988 dozen.
369–S [6]	1,798,146 kilograms.
448	19,762 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated October 1, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–28070 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the Republic of Uruguay

October 21, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Uruguay and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	185,605 dozen.
335	159,779 dozen.
410	2,997,371 square meters of which not more than 1,712,786 square meters shall be in Category 410–A [1] and not more than 2,759,482 square meters shall be in Category 410–B [2].
433	17,898 dozen.
434	26,701 dozen.
435	53,926 dozen.

Category	Twelve-month restraint limit
442	38,147 dozen.

[1] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[2] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020. 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated October 14, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–28073 Filed 10–26–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of K.I. Sawyer Air Force Base (AFB), Michigan

On September 16, 1999, the Air Force issued the Supplemental Record of Decision (SROD) for the disposal and reuse of K.I. Sawyer AFB, Michigan. The decisions included in the SROD were made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the disposal and reuse of K.I. Sawyer AFB, filed with the Environmental Protection Agency and made available to the public on February 15, 1996.

K.I. Sawyer AFB closed on September 30, 1995, pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission. The FEIS analyzed potential environmental impacts of the Air Force's disposal options by portraying a variety of potential land uses to cover a range of reasonably foreseeable future uses of the property and facilities by others.

The Air Force issued a ROD on April 12, 1996, which documented a series of decisions regarding the intended disposal of Government-owned property for both public airport and economic development use, together with the intended termination of certain leases of improved real property with the County of Marquette, and the disposal of base utilities.

The SROD modifies certain decisions made in the ROD, thus completing the disposal decisions for K.I. Sawyer AFB. Specifically, in the SROD the Air Force, in consultation with Marquette County, modified the Airport Public Benefit Transfer, and Economic Development Conveyance property boundaries and simplified the K.I. Sawyer parcel disposal map.

The implementation of these conversion activities and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Feeder, State and Local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment.

Any questions regarding this matter should be directed to Mr. Paul MacPherson at 703–696–5569. Correspondence should be sent to AFBCA/DB, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–28053 Filed 10–26–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, November 15, 1999: 4:00 p.m–9:00 p.m.; Tuesday, November 16, 1999: 8:30 a.m.–4:00 p.m.

ADDRESSES: All meetings will be held at: Sheraton Charleston Hotel, 170 Lockwood Boulevard, Charleston, SC 29403.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, November 15, 1999

4:00 p.m. Outreach Subcommittee
6:30 p.m. Public Comment Session
7:00 p.m. Subcommittee Meetings
9:00 p.m. Adjourn

Tuesday, November 16, 1999

8:30 a.m.
Approval of Minutes, Agency Updates (approximately 15 minutes)
Public Comment Session (5-minute rule, approximately 10 minutes)
Facilitator Update (approximately 15 minutes)
SRS and Criticality Issues (approximately 30 minutes)
Medical University of South Carolina Cancer Registry Update (approximately 30 minutes)
Environmental Restoration and Waste Management Subcommittee Report (approximately 1½ hours)
Public Comment (approximately 10 minutes)
12:00 p.m.
Lunch Break
Environmental Restoration and Waste Management Subcommittee Report continued (approximately 45 minutes)

Nuclear Materials Management Subcommittee Report (approximately 1 hour)
Risk Management and Future Use Subcommittee Report (approximately 20 minutes)
Administrative Subcommittee Report (approximately 20 minutes)
Proposal to Amend By-Laws
Outreach Subcommittee Report (approximately 10 minutes)
Public Comments (approximately 10 minutes)

4:00 p.m.
Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting, Monday, November 15, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling (803)–725–5374.

Issued at Washington, DC, on October 21, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–28032 Filed 10–26–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–2–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 21, 1999.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on October 12, 1999 certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, Second Revised Volume No. 1, bear a proposed effective date of November 1, 1999.

The purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS. The costs of the above referenced storage service comprise the rates and charges payable under ESNG's Rate Schedules SST and FSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Copies of this filing are on file with the Commission and are available for public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 first Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing my be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28021 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–27–000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

October 21, 1999.

Take notice that on October 15, 1999, KN Wattenberg Transmission LLC (KNW) tendered for filing Tariff Sheet(s) of its FERC Gas Tariff, First Revised Volume No. 1 KNW is submitting this filing in order to incorporate a back up for determination of the index prices for the imbalance cash out mechanism.

First Revised Volume No. 1

First Revised Sheet No. 18
Original Sheet No. 18A
Original Sheet No. 31A

KNW states that copies of this filing have been served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing maybe viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28025 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–25–000]

Natural Gas Pipeline Company of America, K N Interstate Gas Transmission Co., K N Wattenberg Transmission Limited, Liability Company, Caprock Pipeline Company, Canyon Creek Compression Company, Stingray Pipeline Company, Trailblazer Pipeline Company, and TCP Gathering Company; Notice of Petition for Waiver

October 21, 1999.

Take notice that on October 13, 1999, Natural Gas Pipeline Company of America (Natural), K N Interstate Gas Transmission Co., K N Wattenberg Transmission Limited Liability Company, Caprock Pipline Company, TCP Gathering Co., Canyon Creek Compression Company, Stingray Pipeline Company and Trailblazer Pipeline Company (collectively Petitioners) filed a petition for limited waiver of the Commission's Regulations and the nomination procedures set forth in their respective Tariffs in order to waive certain nomination cycles during the Y2K rollover period. Petitioners request waiver of such provision in order to minimize business disruptions and promote stability of their regular business transactions on and after January 1, 2000.

Petitioners state that copies of the filing have been mailed to all of the shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary

[FR Doc. 99–28026 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–009]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

October 21, 1999.

Take notice that on October 13, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing Original Sheet No. 26B to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective October 12, 1999.

Natural states that the purpose of this filing is to implement a Negotiated Rate transaction with MidAmerican Energy Company under Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions (GT&C) of Natural's tariff.

Natural requested waiver of the Federal Energy Regulatory Commission's (Commission) Regulations, including the 30-day notice requirement of Section 154.207, to the extent necessary to permit Original Sheet No. 26B to become effective October 12, 1999. Natural also requested waiver of Section 49.1(e) of the GT&C of its Tariff to the extent that this filing is submitted one (1) day late.

Natural states that copies of the filing are being mailed to its customers, interested state regulatory commissions and all parties set out on the official service list at Docket No. RP99–176.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online.rims.htm (call 202–208–2222 for assistance.)

David P. Boergers,

Secretary.

[FR Doc. 99–28027 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–494–002]

Northwest Pipeline Corporation; Notice of Compliance Filing

October 21, 1999.

Take notice that on October 15, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 63, to become effective October 1, 1999.

Northwest states that the purpose of this filing is to comply with the Order Accepting Tariff Sheets, Subject to Conditions issued September 30, 1999 in Docket Nos. RP99–494–000 and RP99–494–001 (Order). Northwest states that it has revised the basis for scheduling interruptible injection and withdrawal nominations in Rate Schedule SGS–2I to utilize a price-based priority for scheduling.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28023 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1981–010]

Oconto Electric Cooperative; Notice of Meeting

October 21, 1999.

On November 10, 1999, the Federal Energy Regulatory Commission staff will meet with Oconto Electric Cooperative and agency representatives to discuss project-related issues concerning the Stiles Hydroelectric Project (Project No. 1981–010), which is located on the Oconto River near Oconto Falls, in Oconto County, Wisconsin. The meeting will be from 9:00 a.m. to 3:00 p.m. The meeting will be conducted at Oconto Electric Cooperative's office, located at 7479 REA Road, Oconto Falls, Wisconsin.

For more information about this meeting or the Stiles Hydroelectric Project, please contact:

Patti Leppert-Slack, Federal Energy Regulatory Commission, 888 First Street, NE Room 72–33 Washington, DC 20426, (202) 219–2767, E-mail: *patricia.leppertslack@ferc.fed.us*

Jan Stranz, Oconto Electric Cooperative, 7479 REA Road, Oconto Falls, Wisconsin, (920) 846–2816, E-mail: *jstranz@ocontoelectric.com*

David P. Boergers,

Secretary.

[FR Doc. 99–28028 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–4–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

October 21, 1999.

Take notice that on October 13, 1999, Transcontinental Gas Pipe Line Corporation tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached thereto. The proposed effective date of the revised tariff sheets is December 1, 1999.

Transco states that the purpose of the instant filing is to implement and modify the current imbalance "cash out" provisions of Transco's film and interruptible transportation rate schedules. Specifically, Transco proposes to:

- Consolidate into a new Section 37, "Cash Out provisions", in the General Terms and Conditions of its tariff the imbalance "cash out" provisions set forth in its firm and interruptible rate schedules and include in those rate schedules a reference to the terms of the new Section 37;
- Substitute Gas Daily in place of Natural Gas Week as the source publication for the spot price indices and to establish a Reference Spot Price and monthly Average Spot Price for each zone to be used to determine the Reference Sport "Buy" or "Sell" and the Average Spot Price at which Transco and buyers under the applicable rate schedules will "cash out" imbalances;
- Revise (i) the monthly Reference Spot "Buy" and "Sell" Price for each one to use the average of the three (3) Lowest or Highest Daily Midpoint Prices, respectively, for that zone in the month determined from Gas Daily, as opposed to the currently used lowest and highest weekly Reference Spot Price for the month determined from Natural Gas Week, and (ii) the monthly Average Spot Price for each zone to use the simple arithmetic average of the Midpoint Price for that zone in the month from Gas Daily; and
- Revise the imbalance tolerance level to one and one-half percent (1.5%) from two and one-half percent (2.5%), to determine the application of the Weighted Average Spot Price in the "cash out" of imbalances for so-called majority shippers.

Transco states that its proposed tariff revisions are consistent with Commission policy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–209–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28022 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–45–002]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

October 21, 1999.

Take notice that on October 15, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing its report for refunds made on September 20, 1999, under Docket No. RP99–451.

Williams states that on July 29, 1999, as amended August 12, 1999, it filed an interruptible excess refund report for the month of October 1993. By letter order issued September 9, 1999, the Commission accepted the report and directed refunds be made pursuant to the timetable provided in Article 12 of Williams' tariff. The order also directed Williams to file a refund report within 30 days of the date the refund was made. Williams refunded approximately $1.3 million, including interest, on September 20, 1999.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28019 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6879–019]

Southeastern Hydro-Power, Inc.; Notice of Availability of Environmental Assessment

October 21, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to amend the license for the proposed W. Kerr Scott Hydroelectric Project, to be located on the Yadkin River immediately below the existing W. Kerr Scott Dam, operated by the Wilmington District Corps of Engineers, in Wilkes County, North Carolina, and has prepared an Environmental Assessment (EA) for the proposed action.

In the EA, Commission staff concludes that approval of the subject amendment of license with staff's recommended mitigative measures would not produce any significant adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, DC 20426, or by calling (202) 208–1371. The EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

David P. Boergers,

Secretary.

[FR Doc. 99–28024 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–624–000]

Wyoming Interstate Company, Ltd.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Medicine Bow Lateral Phase II Project and Request for Comments on Environmental Issues

October 21, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Medicine bow Lateral Phase II Project involving the construction and operation of natural gas transmission facilities by Wyoming Interstate Company, Ltd. (WIC) in Weld County, Colorado and Converse County, Wyoming.[1] These proposed facilities primarily consist of about 5.6 miles of 24-inch-diameter pipeline and 7,170 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

WIC wants to expand the capacity of its facilities in Colorado and Wyoming to transport an additional 120,000 Decatherms per day of natural gas on the Medicine Bow Lateral. WIC seeks authority to construct and operate:

Phase II Facilities (1999)

- About 5.6 miles of 24-inch-diameter pipeline in Weld County, Colorado;
- One 7,170-hp compressor unit at its existing Douglas Compressor Station in Converse County, Wyoming; and
- One check meter at its existing Cheyenne Compressor Station in Weld County, Colorado.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 61.3 acres of land. Following construction, about 33.3 acres would be maintained as permanent right-of-way. The remaining 28 acres of land would be restored and allowed to revert to it former use. All construction at WIC's Douglas Compressor Station in Converse County, Wyoming and its Cheyenne Compressor Station in Weld County, Colorado would occur within the existing sites.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

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[1] WIC's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR-11.1;
- Reference Docket No. CP99-624-000; and
- Mail your comments so that they will be received in Washington, DC on or before November 22, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208-1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208-2474.

David P. Boergers,

Secretary.

[FR Doc. 99-28029 Filed 10-26-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 21, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-11821-000.

c. *Date filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Deer Creek Dam Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Deer Creek Dam and Reservoir on Deer Creek, near the Town of Williamsport, Pickaway County, Ohio.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)-825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115

i. *FERC Contact:* Ed Lee (202) 219-2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Descrition of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Deer Creek Dam and Reservoir, and would consist of the following facilities: (1) a new 90-foot-long and 5.5-foot-in-diameter steel penstock; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 800 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenent facilities. The proposed average annual generation is estimated to be 5 gigawatt-hours. The cost of the studies under the permit will not exceed $600,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and File Maintenance Branch, located at 888 First Street, N.E., Room 2-A, Washington, D.C. 20426, or by calling (202) 219-1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208-2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulation to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boerger,

Secretary.

[FR Doc. 99–28020 Filed 10–26–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6466–1]

Good Neighbor Environmental Board; Change of Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency gives notice of change of agenda for the Good Neighbor Environmental Board meeting published in 64 FR 54626.

The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico. The Board is required to submit an annual report to the President and the Congress. The Board has representatives from eight U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The Board meets three times annually, including an annual meeting with its Mexican counterpart, Region 1 of the Mexican National Advisory Council for Sustainable Development. The joint meeting with Region 1 of the Mexican National Advisory Council for Sustainable Development has been canceled. However, the Good Neighbor Environmental Board will meet during the scheduled dates.

DATES: The Board will meet on November 3–5, 1999. The Board will have work group sessions on November 3, 1999, from 4:00 p.m. to 6:00 p.m. On November 4, the Board will meet from 9:00 a.m. until 5:30 p.m. On November 5, the Board will meet from 9:00 a.m. until 12:00 p.m. instead of adjourning at 2:30 p.m. The public comment session will be held on Thursday, November 4 from 12:00 p.m. to 12:30 p.m. The public comment session scheduled for the Joint Session on Friday, November 5 from 1:00 p.m. to 1:30 p.m has been canceled. Seating will be limited and available on a first-come, first-served basis.

Members of the public who wish to make brief oral presentations should contact Nancy Bradley at 202–564–9741 by November 1, 1999 to reserve a time during the public comment session. Individuals or groups making presentations will be limited to a total time of five minutes. Those who have not reserved time in advance may make comments during the public comment session as time allows.

ADDRESSES: The Regency Plaza Hotel, 1515 Hotel Circle South, San Diego, California. Materials or written comments may be sent to Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA (1601A), Office of Cooperative Environmental Management, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA, Office of

Cooperative Environmental Management, telephone 202–564–5987.

Dated: October 25, 1999.

Gordon Schisler,

Deputy Director, Office of Cooperative Environmental Management.

[FR Doc. 99–28220 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34203; FRL–6389–3]

Organophosphate Pesticide; Availability of Preliminary Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of the EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary human health and ecological risk assessments and related documents for chlorpyrifos. This notice also starts a 60-day public comment period for the preliminary risk assessments. Comments are to be limited to issues directly associated with the one organophosphate that has the risk assessments placed in the docket and should be limited to issues raised in those documents. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these organophosphate pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket control number OPP–34203, must be received on or before December 27, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify the docket control number OPP–34203 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on chlorpyrifos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the preliminary risk assessments for the one organophosphate pesticide may also be accessed at http: www.epa.gov/oppsrrd1/op.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34203. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify the docket control number OPP–34203 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form

must be identified by docket control number OPP–34203. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve this notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA, as amended by the FQPA. The Agency's preliminary human health and ecological risk assessments for one organophosphate pesticides are available in the individual organophosphate pesticide docket: Chlorpyrifos.

Included in the individual organophosphate pesticide docket is the Agency's preliminary risk assessments. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the one organophosphate pesticide listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for the one organophosphate pesticide. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessment, these risk assessments and registrant responses will be placed in the individual organophosphate pesticide dockets. A notice of availability for subsequent assessments will appear in the **Federal Register**.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemicals specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to these specific chemicals. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the organophosphate tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by December 27, 1999 at the address given under Unit I. of the "SUPPLEMENTARY INFORMATION." Comments will become part of the Agency record for each individual organophosphate pesticide to which they pertain.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 21, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–28046 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66272; FRL–6387–8]

Methyl Parathion, Receipt of Requests for Cancellation; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Receipt of requests for voluntary cancellation; cancellation order.

SUMMARY: The companies that hold the pesticide registrations of pesticide products containing methyl parathion (*O,O*-dimethyl-*O*-(4-nitrophenyl) phosphorothioate) have asked EPA to cancel their registrations for these products. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these voluntary cancellation requests from the registrants. These requests for voluntary cancellation are the result of an agreement regarding the registration of products containing methyl parathion reached between EPA and the registrants. Given the risks associated with use of methyl parathion under the existing terms and conditions of use, EPA is granting the requests for voluntary cancellation. The voluntary cancellation is effective today, with the publication of this document in the **Federal Register**, which contains the Cancellation Order. As of today, any distribution, sale, or use of canceled methyl parathion products will only be permitted if such distribution, sale, or use is consistent with the terms of the Cancellation Order set forth in this document.

DATE: The cancellations are effective on October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Deziel, Special Review and Reregistration Division (7508), Office of Pesticide Programs, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 703–308–8173, e-mail address: deziel.dennis@epa.gov.

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you manufacture, sell, distribute, or use methyl parathion products. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II of this document. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available support documents from the EPA Internet Home Page at http://www.epa.gov/. You may access this document by selecting "Laws and Regulations" on EPA's Home Page and then looking up the entry for this document under the "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.* To access information about the risk assessment for methyl parathion, go to the Home Page for the Office of Pesticide Programs or go directly *http:www/epa.gov/oppsrrd1/op/methyl* parathion.htm.

2. *In person.* The Agency has established an official record for this action under docket control number 66272. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number 66272 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

3. *Electronically.* You may submit your comments electronically by e- mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number 66272. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide copies of any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Receipt of Requests for Voluntary Cancellation

In a memorandum of agreement ("Agreement") effective August 2, 1999, EPA and all registrants of products containing methyl parathion agreed to take several steps to reduce the risks associated with the use of methyl parathion. Methyl parathion is one of the most toxic and widely used organophosphate pesticides. EPA initiated the negotiations with registrants after methyl parathion was found to pose unacceptable dietary risks, especially to children. Among other things, the registrants agreed to cancel the use of methyl parathion on all fruits, many vegetables, and all non-food and non-feed uses. The crop uses that the registrants agreed to cancel are listed under "Uses To Be Canceled" in Table 1 below. Canceling these crop uses considerably reduces risks to children through food, and mitigates some of the risks of concern to workers and non-target species in the environment, such as honeybees.

TABLE 1.— USES TO BE CANCELED OR MAINTAINED

Uses To Be Canceled	Uses To Be Maintained
Food/Feed Uses: Apples, artichokes, birdsfoot trefoil, broccoli, Brussels sprouts, carrots, cauliflower, celery, cherries, clover, collards, filberts, garden beets, grapes, kale, kohlrabi, lettuce, mustard greens, nectarines, peaches, pears, plums, rutabagas, sorghum, spinach, succulent beans, succulent peas, tomatoes, turnips, vetch.. Non-Food Uses: Christmas trees, chrysanthemums, daisies, field grown ornamentals, flowering plants, forest, grasses grown for seed, guayule, jojoba, marigolds, any mosquito larvicide use, nursery stock, non-agricultural land, roadside areas, wasteland..	Food/Feed Uses: Alfalfa[1], almonds[2], barley, cabbage[1], corn, cotton, dried beans, dried peas, grass (including rangeland and pastures), hops, lentils[2], oats, onions, pecans[1], rape seed (canola)[1], rice, rye[1], soybeans, sugar beets[1], sunflower[1], sweet potatoes[2], walnuts[2], wheat, white potatoes Non-Food Uses: No non-food uses remain.

[1] Emulsified Concentrate formulation only
[2] Microencapsulated formulation only

In order to cancel these crop uses, the Agreement provides that existing registrations of methyl parathion products will be replaced with new registrations of these products without the uses identified in Table 1 above as "Uses to be Canceled." As part of the Agreement, the registrants agreed to submit voluntary requests for cancellation of all existing registrations of pesticide products containing methyl parathion. The products for which cancellation was requested are listed in Table 2 of this notice. These include Special Local Need (SLN) registrations that authorize the use of the product on any crop listed under "Uses To Be Canceled" in Table 1 of this notice. The Agreement also provides that any registrant that desires to continue to hold a registration for any pesticide product containing methyl parathion must submit an application for registration pursuant to section 3(c)(7)(A) of FIFRA and consistent with the terms of the Agreement. Among other things, applications for registration of manufacturing-use products must include in the "Directions for Use" section of the label a statement that the product may only be reformulated for uses identified in Table 1 of this notice as "Uses To Be Maintained" that the registrant previously supported under a registration listed in Table 2 of this notice. Any SLN registrations that authorize the use of a methyl parathion product on any use to be maintained will automatically be supported by the new product registration issued by EPA. The Agreement further provides that requests for voluntary cancellations may be expressly conditioned on EPA's grant of such applications for registration. Thus, the issuance of new registrations and the cancellation of existing registrations will effectively cancel the methyl parathion uses that the registrants agreed to cancel.

TABLE 2.—COMPANY NAME, REGISTRATION NUMBERS AND PRODUCT NAMES

Company	Registration No	Product	SLNs
FMC Corporation Agricultural Products Group	279–2149	Methyl Parathion 2 Thioden 3EC	
	279–2609	Methyl Parathion 1.0 Thioden 2.0 C.O. EC	
Griffin L.L.C.	1812–399	Griffin Methyl Parathion Technical	WA980020
	1812–405	Declare	ID980005
Wilbur-Ellis Company	2935–527	Methyl Parathion 5 Spray	NV97000100
	2935–528	Methyl Parathion 4 Spray	WA97001800
	2935–482	Ethyl–Methyl Parathion 6–3 Spray	TX97000900
Elf Atochem North America Inc.	4581–292	Penncap–M Microencapsulated Insecticide	AR99009 AL97000300 CA97002400 ID84001000 IL99000700 IN88000200 IN88000700 LA96000100 MN97000100 MO95000100 MS97000600 NM82000400 WA82005400 WI95000500

TABLE 2.—COMPANY NAME, REGISTRATION NUMBERS AND PRODUCT NAMES—Continued

Company	Registration No	Product	SLNs
Cheminova Agro A/S	4787–28	Cheminova Methyl Parathion Technical	
Cheminova Inc.	67760–29	Cheminova Methyl Parathion 4EC	ID97001300 OR97002000 TX97000600 WA970003400
Amvac Chemical Corporation	5481–175	Methyl Parathion 5	
	5481–307	Methyl Parathion 4 Emulsifiable	
	5481–330	Durham Methyl Parathion Granules 2	
	5481–437	Parathion E/M 6–3	
Helena Chemical Company	5905–198	Helena Brand Malathion-Methyl Parathion Emulsifiable Liquid	
	5905–528	Helena 4 LB. Methyl Parathion	
Terra International, Inc.	9779–344	Riverside Methyl Parathion 4	
Drexel Chemical Co.	19713–37	Drexel Methyl Parathion 4E	
	19713–281	Drexel Methyl Parathion 4	
Platte Chemical Company, Inc.	34704–794	Methyl Parathion 4EC	
	34704–795	Methyl Parathion 5–E	
Micro–Flo Company	51036–284	Methyl Parathion 4EC	

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that EPA cancel any of their pesticide registrations. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day period in which the public may comment before the Agency may act on the request for voluntary cancellation. However, such comment period may be waived upon a registrant's request. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive any applicable comment period before taking action on their requests to cancel the registrations of the products identified in Table 2 of this notice. In light of this request and to expedite the risk mitigation measures set forth in the Agreement, EPA is granting the request to waive the comment periods and is canceling the registrations today with the publication of this document in the **Federal Register**.

As part of the Agreement negotiated with the registrants, EPA agreed to allow continued distribution and sale of existing stocks of canceled products through December 1, 1999, and continued use of such stocks pursuant to the terms of the existing labels through December 31, 1999. The Agreement also called on EPA to grant the voluntary cancellation requests as expeditiously as possible. Because of the risks associated with the use of methyl parathion, the Agency's agreement to the expeditious granting of cancellation requests, and the Agency's issuance of new registrations pursuant to the Agreement, the Agency is granting the requested cancellations to be effective on October 27, 1999.

III. Cancellation Order

The registrants have requested voluntary cancellation of the registrations of the pesticide products identified in Table 2 of this notice. Pursuant to section 6(f) of FIFRA, EPA hereby grants the requests for voluntary cancellation and orders that the registrations of the pesticide products identified in Table 2 of this notice be canceled. Any distribution, sale, or use of existing stocks of these products that is not consistent with the terms of this Order will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy at 56 FR 29362, Wednesday, June 26, 1991, as those stocks of a canceled pesticide product that were in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation.

A. Existing Stocks Provision

1. *Distribution or sale by registrants.* The distribution or sale of existing stocks by registrants will not be lawful under FIFRA after December 1, 1999, except for the purpose of shipping such stocks for relabeling or repackaging, for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

2. *Distribution or sale by other persons.* The distribution or sale of existing stocks by persons other than registrants will not be lawful under FIFRA after December 1, 1999, except for the purpose of shipping such stocks for relabeling or repackaging, for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

3. *Use of existing stocks.* The use of existing stocks will not be lawful under

FIFRA after December 31, 1999, except for the purposes of producing (e.g., repackaging or relabeling) new manufacturing-use and end-use products that conform with the terms of the Agreement. Persons applying such existing stocks as part of a service of applying methyl parathion products prior to December 31, 1999, shall not be considered to be engaged in the distribution or sale of pesticides, unless such persons also deliver unapplied methyl parathion pesticides. Any use of existing stocks of canceled product prior to January 1, 2000, must be in accordance with either the directions for use contained in the Agreement or the existing labeling of that product.

B. Notification of Possession of Canceled Products

No later than November 1, 1999, and pursuant to section 6(g) of FIFRA, any producer or exporter, registrant, applicant for a registration, applicant or holder of an experimental use permit, commercial applicator, or any person who distributes or sells any pesticide, who after the publication of this Notice possesses any stocks of the pesticide products identified on Table 2 of this notice, shall notify EPA and appropriate State and local officials of: (1) Such possession; (2) the quantity of canceled methyl parathion pesticide product possessed; and (3) the place at which the canceled methyl parathion pesticide product is stored.

List of Subjects

Environmental protection.

Dated: October 12, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–27800 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00569B; FRL–6388–2]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the revised version of the pesticide science policy document entitled "Threshold of Regulation (TOR) Policy—Deciding Whether a Pesticide With a Food Use Pattern Requires a Tolerance." This notice is the twelfth in a series concerning science policy documents related to Food Quality Protection Act and developed through the Tolerance Reassessment Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Vivian Prunier, Environmental Protection Agency (7506C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 308-9341; fax: (703) 305-5884; e-mail address: prunier.vivian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available electronically, from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select "FQPA" and then look up the entry for this document under "Science Policies." You can also go directly to the listings at the EPA Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry to this document under "**Federal Register**--Environmental Documents." You can go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr/.

2. *Fax on demand.* You may request a faxed copy of the revised science policy paper, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6042 for the paper entitled "Threshold of Regulation (TOR) Policy—Deciding Whether a Pesticide With a Food Use Pattern Requires a Tolerance." You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP-00569B. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background for the Tolerance Reassessment Advisory Committee (TRAC)

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the TRAC, chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met six times as a full committee from May 27 through April 29, 1999.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas it believes were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA is announcing through the **Federal Register** the availability of a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. After receiving and reviewing comments from the public and others, EPA is also issuing revised science policy documents which reflect changes made in response to comments. In addition to comments received in response to these **Federal Register** notices, EPA will consider comments received during the TRAC meetings. Each of these issues is evolving and in a different stage of refinement. Accordingly, as the issues are further refined by EPA in consultation with USDA and others, they may also be presented to the SAP.

III. Summary of Revised Science Policy Guidance Document

This **Federal Register** notice announces the availability of a revised version of the EPA pesticide science policy guidance document that has been retitled "Threshold of Regulation (TOR) Policy—Deciding Whether a Pesticide With a Food Use Pattern Requires a Tolerance." The guidance document describes the approach that EPA will use for determining when a food use pattern does not produce residues in or on food that require establishment of a tolerance or tolerance exemption. Specifically, the guidance document describes:

A. EPA's authority for determining whether a tolerance or tolerance exemption is, or is not, required.

B. The criteria that EPA will use for determining whether a tolerance is required for a pesticide use in, on, or near food that produces no detected residues in the food.

C. The data, including toxicology and residue chemistry studies, that EPA will rely upon when deciding whether a tolerance is required.

D. Procedures that EPA will follow for evaluating new or existing pesticide uses that meet the criteria of the TOR policy.

E. Procedures that EPA will follow to establish a regulation in title 40 of the Code of Federal Regulations (CFR) for each use that meets the criteria of the TOR policy.

The Agency plans to use this guidance during tolerance reassessment to determine whether a tolerance is needed for existing uses. The Agency expects to use this guidance to evaluate proposed pesticide uses that could replace pesticide uses that are being discontinued. EPA believes that this policy will promote a reasonable transition for agriculture.

IV. Issues Raised in Comments

EPA published a draft version of the document described in Unit III. in the **Federal Register** on December 4, 1998 (63 FR 67063) (FRL–6048–2) and comments were filed under docket control number OPP–00569. The original public comment period ended on February 4, 1999, but was extended to February 18, 1999, in a **Federal Register** document published on February 5, 1999 (64 FR 5795) (FRL–6061–5). The Agency received comments from 22 different organizations. All comments were considered by the Agency in revising the document. The comments and the Agency's responses to these comments are briefly summarized in this Unit.

Many of the comments were similar in content, and pertained to general issues concerning the proposed policy or specific sections within the draft document. To facilitate review and consideration of the comments for purposes of revising the document, the Agency grouped the comments in accordance to nature of the comment, or issue or section of the document with which they addressed. Hence, comments were grouped as follows:

A. The purpose and effects of the policy.

B. Residue chemistry data requirements.

C. Toxicity data requirements.

D. Risk criteria for TOR decisions.

E. Registration criteria for pesticide uses that meet the criteria of the TOR policy.

F. Procedural issues, including publication of decisions made under the policy, enforcement, and assessment of fees.

The full text of the Agency's comments and response to the comments document is available as described in Unit I.B.1.

The comments raised several significant issues including:

1. What is EPA's authority for deciding that a tolerance is not required for a pesticide use in, on, or near food?

EPA has interpreted section 402 of the Federal Food, Drug and Cosmetic Act (FFDCA) as meaning that any use of a pesticide in, on, or near growing crops, livestock, or food will result in residues in the food that are subject to section 408 of the Act unless the EPA decides otherwise. The TOR policy would establish criteria to decide whether additional food use patterns, in addition to those identified in 40 CFR 180.6, do not produce residues in food for which a tolerance or tolerance exemption is required. EPA finds that sections 408(e) and 701(a) of the FFDCA give EPA authority to issue regulations necessary to interpret the Act.

2. How will EPA implement, publish, and compile TOR decisions? How will FDA enforce TOR decisions?

Commenters asked EPA to publish notices of TOR policy decisions that specify the conditions of use and analytical method used to support each TOR decision and to maintain a list of TOR decisions in the CFR.

EPA has decided to issue each TOR decision as a regulation. The TOR regulation will identify the pesticide, conditions of use of the pesticide, and the analytic method that the Agency relied on in determining that the use of the pesticide would not produce detectable residues. This information will guide growers or other pesticide users who wish to employ a pesticide for a TOR use and should enable them to avoid misusing the pesticide.

This policy does not alter FDA's enforcement in any way. FDA monitors food for pesticide residues. FDA will continue to monitor food in interstate commerce for pesticide residues. To detect and quantify pesticide residues in a food, FDA may use either the analytical method that EPA relied upon in making the TOR decision or another method. Because the TOR policy is based on the premise that no residues will be found in a food following the use of a pesticide, FDA will continue to regard any residue finding for which there is no tolerance or tolerance exemption as a violation of the FFDCA and would deem the food as adulterated under section 402(a)(2)(B) of the FFDCA.

3. What would happen to a TOR use if a more sensitive analytical method is developed?

Food processors were concerned that FDA would eventually develop more sensitive enforcement methods and would be able to detect residues from TOR uses.

EPA agrees that advances in the science of analytical chemistry may eventually produce methods that are capable of detecting pesticide residues from TOR uses. If FDA adopts a new enforcement method that is more sensitive than the method described in the TOR regulation and subsequently detects residues in a food, it could deem the food to be adulterated under section 402 of the FFDCA. However, FDA generally provides the public ample notice when it is considering adopting a new analytical method for enforcement purposes. A person who is relying on a TOR approval to support a pesticide use would have opportunity to evaluate the new analytical method before FDA adopts it.

4. Several commenters asserted that EPA should expand the TOR Policy criteria to include detected residues that pose risks that are so inconsequential that they are "*de minimis*" and should not be regulated.

Under this principle, an agency may decide that some violations of the law are so trivial that they are not worth regulating. The commenters argued that, if EPA applies this principle, it would be able to find that a residue does not need to be regulated under FFDCA section 408 if a given level of a particular pesticide based on the hazard characteristics of the pesticide poses a "*de minimis*" risk. Detected residues of a pesticide could also be eligible for consideration under a "*de minimis*" policy.

EPA's approach does not attempt to write an exception to the statutory language as does the *de minimis* principle; rather, EPA has relied upon the less controversial legal approach of fashioning a reasonable interpretation of existing statutory language -- here, "any pesticide chemical residue in or on a food." EPA's policy describes criteria that will be taken into account in determining when a pesticide can be deemed to be "in or on food" when the pesticide is NOT detectable on the food. EPA's approach of focusing on the risk posed by potential residues is a reasonable interpretation of when zero detected residues means the pesticide is not in or on food.

EPA chose not to rely on the *de minimis* doctrine as its primary justification for several reasons. First, despite the fact that the *de minimis* principle is well-established, there is always some legal risk when an agency asks a court to disregard the plain language of the statute. In the event that a court concludes that potential risk is not an appropriate consideration in determining when undetected residues qualify as residues "in or on food," the *de minimis* principle provides a secondary justification for EPA's approach. Second, reliance on a *de minimis* theory as a primary justification is only necessary if EPA's policy extends to pesticide residues that are detectable. However, EPA is uncertain whether an expansion of TOR to detected residues posing insignificant risks is necessary to meet the concerns that motivated EPA to formulate the TOR policy. If, at some later date, EPA decides to explore an expansion of TOR, EPA would at that time evaluate the application of the *de minimis* doctrine as the primary justification for the TOR policy. Finally, EPA does not need to rely on the *de minimis* principle in order to apply the policy. As outlined in the policy, EPA has already been making this type of determination as to a considerable range of pesticide uses.

5. The criteria in the "essentially zero" exposure approach proposed in the draft TOR policy blurred the distinction between a food use pattern that is subject to FFDCA and a non-food use that is not subject to FFDCA.

It appears that the proposed "essentially zero" exposure approach for a TOR determination could be interpreted as applying both to food uses e.g., uses that result in a reasonable expectation of no finite residues in milk, meat, poultry or eggs and to uses that are likely to be classified as "non-food" uses.

EPA modified the policy to make clear that it applies to the uses of pesticide in, on, or near growing crops, livestock, or food and not to uses that have been classified as "non-food" uses.

EPA found that the proposed "essentially zero" exposure approach for a TOR determination could be interpreted as applying to certain food uses e.g., uses that result in no finite residues in milk, meat, poultry, or eggs. EPA already has procedures for handling "essentially zero" residues in some foods in 40 CFR 180.6(a)(3) and 180.6(c)(3). Because a mechanism already exists for managing certain pesticide uses that result in "essentially zero" residues in food, EPA believes that the "essentially zero" exposure approach proposed in the TOR policy is redundant and potentially confusing. To eliminate this confusion, EPA will not use the "essentially zero" exposure approach in its TOR policy.

6. Should EPA make TOR decisions in the absence of data to characterize a pesticide's hazard?

A government Agency advised EPA to continue to require toxicity information for all food use patterns, including uses that meet the criteria of the TOR policy.

When EPA originally proposed "essentially zero" exposure criteria for TOR decisions, it reasoned that if exposure is "essentially zero," risk would also be "essentially zero." EPA has reconsidered this position, however, because it cannot conclude with certainty that very low exposures are without risk if there is no relevant information about the biological activity of the pesticide. Accordingly, EPA expects to evaluate the array of toxicity data that are normally used in a dietary risk assessment in order to identify health hazards and quantify a dose response. The Agency will normally perform a quantitative risk assessment before concluding that a specific use poses "essentially zero" risk from dietary exposures. Therefore, proponents of a TOR use should provide a full set of toxicity data, as specified in 40 CFR 158.340.

7. What criteria will be used to define "essentially zero" risk for infants and children?

EPA should explain what "acceptable risk" means with respect to risks to infants and children or other subpopulations when the Agency states that food risks from a TOR use must be less than 0.1% of acceptable risks.

EPA will separately evaluate the incremental dietary risk (i.e., risks from food) posed by a proposed TOR use to each population subgroup, particularly infants and children. If EPA has already determined the appropriate FQPA safety factor for a particular pesticide, EPA will use this safety factor in its evaluation of the proposed TOR use. If EPA has not established an FQPA safety factor, EPA will, as a matter of policy, decide whether the FQPA safety factor is appropriate, and if so, the Agency will use it when evaluating the potential risk posed by the proposed TOR use to infants and children.

8. The risk criteria in the TOR policy represent "risk management policy," not "science policy." Furthermore, the definition of "essentially zero" risk is so restrictive that few pesticide uses will qualify.

Several commenters asked that EPA ease the risk criterion, recommending either a specific value such as 1% of acceptable risk for the pesticide or more subjective criterion such as "an insignificant proportion of allowable risk" be used as the risk threshold in the TOR policy.

EPA agrees that the selection of the risk criterion for the TOR policy is a risk management rather than a science policy decision. EPA intends that the exposures from TOR uses be so small that risk resulting from such exposures would be of no concern. Because selection of the risk criterion for TOR decisions is a risk management decision; the risk level itself should connote the triviality of the risk.

EPA conducted its own analysis to ascertain whether the selected risk criteria were so strict that no uses would qualify. The results suggest that many pesticides will qualify for a TOR for use on a food item that is a minor component of the diets of the general U.S. population or children aged 1 to 6 years.

9. Some interpreted the policy to mean that if there are no detected residues above 10 ppb, no tolerances are needed.

EPA finds that this interpretation is not accurate. Tolerances (or exemptions from tolerance) continue to be required for any use of a pesticide in, on, or near food unless EPA determines that the use meets TOR criteria.

10. EPA should adopt alternative criteria for deciding not to establish tolerances for potential residues resulting from the use of pesticides to treat seeds.

Registrants of seed treatment asserted that exposures from seed treatment uses would be even lower than exposures from other uses that may be eligible for TOR decisions. Accordingly, EPA should adjust data requirements and other criteria for making TOR decisions on seed treatment uses.

The Agency will apply the criteria in the revised TOR Policy to seed treatment uses. As discussed above, a proponent of a TOR use would normally be expected to submit the full toxicity data set for a food use. EPA will, however, consider waiving toxicity data requirements on a case-by-case basis.

11. EPA should not require tolerance fees for TOR requests because fees can be charged only for actions done under FFDCA 408.

TOR eligibility determinations involve application of FFDCA section 408. The decision whether FFDCA section 408 applies to a particular case is itself a section 408 action. Accordingly, EPA could require payment of a "tolerance fee" to cover the costs of evaluating a TOR eligibility request.

V. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 17, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–28047 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[NCEA–CD–99–1072; FRL–6464–1]

Air Quality Criteria for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency.

ACTION: Notice of a Draft for Public Review and Comment.

SUMMARY: The Environmental Protection Agency (EPA), National Center for Environmental Assessment (NCEA), is today announcing the availability of an external review draft of the document, Air Quality Criteria for Particulate Matter. Required under sections 108 and 109 of the Clean Air Act, the purpose of this document is to provide an assessment of the latest scientific information on the effects of airborne particulate matter (PM) on the public health and welfare for use in the next periodic review of the National Ambient Air Quality Standards (NAAQS) for PM.

DATES: Anyone who wishes to comment on the draft document, Air Quality Criteria for Particulate Matter, must submit the comments in writing by no later than January 14, 2000.

ADDRESSES: Send the written comments to the Project Manager for Particulate Matter, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

A copy of the Air Quality Criteria for Particulate Matter (External Review Draft) is available on CD ROM from the OAO Corporation, which is under contract to the EPA. Contact Ms. Cindy Jenkins, OAO Corporation representative, at 919–541–4826, 919–541–1818 (fax), or jenkins.cindy@epa.gov to request the document. OAO will need the document's title, Air Quality Criteria for Particulate Matter (External Review Draft), as well as your name and address to properly process your request. Internet users may download a copy from the Internet homepage for EPA's National Center for Environmental Assessment. The URL is http://www.epa.gov/ncea/.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Kotchmar, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4158; fax: 919–541–1818; E-mail: kotchmar.dennis@epa.gov.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency is updating and revising, where appropriate, the EPA's Air Quality Criteria for Particulate Matter. Sections 108 and 109 of the Clean Air Act require that the EPA carry out a periodic review and revision, where appropriate, of the criteria and the National Ambient Air Quality Standards (NAAQS) for the "criteria" air pollutants such as particulate matter. Details of the EPA's plans for the review of the NAAQS for PM were announced in a previous **Federal Register** notice (62 FR 55201, October 23, 1997).

Near the end of the comment period on the external review draft, Air Quality Criteria for Particulate Matter, the EPA will present the draft at a public meeting for review by the Clean Air Scientific Advisory Committee (CASAC). There will be a subsequent **Federal Register** notice to inform the public of the exact date and time of that CASAC meeting.

The EPA is aware that a substantial number of new scientific studies on particulate matter are underway that will likely be completed and accepted for publication in time to be included in the final criteria document. To this end, the Agency encourages timely completion and submission of these studies for publication. Because the potential import of many of these additional studies cannot be assessed in the present draft, the Agency is requesting that the CASAC's and the public's comments on this external review draft focus particularly on the aspects of organization, structure, and presentation in the document, although comments on provisional conclusions and specific details are, of course, welcome.

Following the CASAC meeting, the EPA plans to incorporate revisions to the document in response to public comments and CASAC review of the first external review draft, and then to release a second external review draft for public comment and CASAC review in midyear 2000. For reasons discussed above, the second draft may address a number of studies not completed in time for assessment in the first draft. Accordingly, the EPA urges that interested parties be prepared to review the second draft on that basis.

Findings and conclusions from the Air Quality Criteria for Particulate Matter will be used as key inputs to the preparation during 2000 of a draft EPA staff paper on airborne particles, which will pose possible options for the EPA Administrator to consider in regard to potential retention or revision of current PM NAAQS.

Dated: October 21, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–28045 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6464–4]

NOTICE OF PROPOSED ADMINISTRATIVE ORDER ON CONSENT FOR REMOVAL UNDER SECTIONS 104, 106(a), 107, AND 122 OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT PULVERIZING SERVICES SUPERFUND SITE, TOWNSHIP OF MOORESTOWN, NEW JERSEY

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative order on consent and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA") Region II announces a proposed Administrative Order on Consent under sections 104, 106(a), 107, and 122 of CERCLA, relating to the Pulverizing Services Superfund Site ("Site") in the Township of Moorestown, Burlington County, New Jersey. This Site is not on the National Priorities List established pursuant to section 105(a) of CERCLA. This notice is being published to inform the public of the proposed Order and of the opportunity to comment on the proposed cost reimbursement provision of this Order.

The Administrative Order on Consent is being entered into by the Respondent, PPG Industries, Inc., and EPA. The Site occupies approximately 24 acres in an industrial park in the Township of Moorestown, New Jersey. The Site was operated as a toll processing facility for the formulation of pesticides by several companies from approximately 1935 to 1979. Respondent owned and operated the Site from approximately 1948 to 1963.

The work portion of this Order will require the removal of soils contaminated with elevated levels of pesticides. Previous Orders at this Site have addressed site security, the removal of materials from buildings located on the Site, and the study of soil contamination at the Site.

Because of the existence of an orphan share of liability at the Site, pursuant to the EPA's Orphan Share Policy, EPA agrees in the proposed Order not to pursue the Respondent for unreimbursed past costs related to the Site and for future costs related to oversight of the proposed Order.

DATES: EPA will accept written comments relating to the proposed settlement on or before November 26, 1999.

ADDRESSES: Comments should be sent to Delmar Karlen, Chief, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866. Comments should reference the Pulverizing Services Superfund Site and EPA Index No. II–CERCLA–99–20389. For a copy of the Order, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Alexandra Varlay, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866, Telephone: 212–637–3144.

Dated: October 7, 1999.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 99–28043 Filed 10–26–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Acquisition Services Information Requirements.

Form Number: 3700/04A.

OMB Number: 3064–0072.

Annual Burden

Estimated annual number of respondents: 31,528.

Estimated time per response 0.42 hours.

Average annual burden hours 13,241 hours.

Expiration Date of OMB Clearance: August 31, 2001.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before November 26, 1999 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The proposed revision to this collection involves the submission of information on Form 3700/04A by contractors who wish to do business with the FDIC. The form is used to help determine a contractor's compliance with FDIC contracting regulations for potential FDIC contract awards, including whether the contractor is a minority-owned business or women-owned business.

Dated: October 29, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–28092 Filed 10–26–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 10, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Paul James Senty*, Onolaska, Wisconsin; Amy Cathrine Hegenbarth, Madison, Wisconsin; and James Herbert Hegenbarth, Madison, Wisconsin; all to retain voting shares of Deerfield Financial Corporation, Madison, Wisconsin, and thereby indirectly retain voting shares of The Bank of Deerfield, Deerfield, Wisconsin.

Board of Governors of the Federal Reserve System, October 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27981 Filed 10–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Bank of America Corporation, and NB Holdings Corporation*, both of Charlotte, North Carolina; to acquire 19.6 percent of the voting shares of Lake - Osceola State Bank, Baldwin, Michigan.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Overton Merger Corporation*, Livingston, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Overton Financial Services, Inc., Livingston, Tennessee, and thereby indirectly acquire Union Bank & Trust, Livingston, Tennessee.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Farmers & Merchants Investment, Inc.*, Milford, Nebraska; to acquire 19.6 percent of the voting shares of North Central Bancorp, Inc., Norfolk, Nebraska, and thereby indirectlyacquire Bank of Norfolk, Norfolk, Nebraska.

2. *Twenty-First Century Financial Services Company*, Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Oklahoma National Bank, Tulsa, Oklahoma (a *de novo* bank in organization).

In connection with this application, Applicant also has applied to acquire Twenty-First Century Building Company, Tulsa, Oklahoma, and thereby engage in leasing activities, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, October 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27983 Filed 10–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. State Street Corporation, Boston, Massachusetts; to engage *de novo* through its subsidiary, WFBN.com, LLC, Chicago, Illinois, in a joint venture and thereby engage in furnishing general economic information and advice and providing data processing and data transmission services, pursuant to §§ 225.28(b)(6) and (14) of Regulation Y.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Fuji Bank, Limited, Tokyo, Japan; to establish through Heller Financial, Inc., Chicago, Illinois, a joint venture between Heller's indirect, wholly owned subsidiary, Heller Financial Leasing, Inc., Troy, Michigan, and SFS Holding Corporation, Park Ridge, New Jersey, an indirect, wholly owned subsidiary of Sony Corporation, Tokyo, Japan, and thereby engage de novo through Sony Financial Services LLC in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; and in leasing personal or real property or acting as agent, broker, or adviser in leasing such property, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, October 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27982 Filed 10–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of new Privacy Act system of records.

SUMMARY: The FTC is establishing a new system of records subject to the Privacy Act of 1974, as amended. This system implements the requirements of the Identity Theft and Assumption Deterrence Act of 1998. The Commission will use this system to log and acknowledge complaints submitted by victims of identity theft, to provide information to such individuals, and to refer their complaints to appropriate entities.

DATES: Comments must be submitted by November 26, 1999. This system notice, which is being published in proposed form, shall become final and effective December 13, 1999, without further notice unless otherwise amended or repealed by the Commission on the basis of any comments received.

ADDRESSES: Submit comments in writing to the Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, "FTC File No. P994320, Identity Theft Program–Comment."

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447. For more information about the Commission's identity theft program, contact Beth Grossman, (202) 326–3019, or Joanna Crane, (202) 326–3258, Attorneys, Division of Planning & Information, Bureau of Consumer Protection, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the FTC is publishing this notice of a new agency system of records, to be designated as FTC–IV–2, "Identity Theft Complaint Management System–FTC." This system will enable the FTC to fulfill its statutory responsibilities under section 5 of the Identity Theft and Assumption Deterrence Act of 1998, Pub. L. 105–318, 112 Stat. 3007, 3010, 18 U.S.C. 1028 note ("ITADA"). The ITADA designates the FTC as a clearinghouse for the receipt and referral of identity theft complaints and requires that the FTC establish procedures: (1) To log and acknowledge receipt of complaints from individuals who certify that they have a reasonable belief that one or more of their means of identification have been assumed, stolen, or otherwise unlawfully acquired in violation of the statute; (2) to provide informational materials to such individuals; and (3) to refer such complaints to "appropriate entities." Under the statute, these entities include, but are not limited to, the three major national consumer reporting agencies (currently Equifax, Experian and Trans Union), and appropriate law enforcement agencies for potential law enforcement action.

The new system of records is designed to meet these statutory requirements and will be managed and operated by the FTC's Bureau of Consumer Protection, Division of Planning & Information. The system consists primarily of a computerized database that will compile and track identity theft complaints received by the agency. Copies of identity theft complaints originally received in paper format (e.g., by mail or fax) will also be considered part of the system, but will be retained for only a temporary period after they are entered by agency personnel or contractors into the database.

Records in this system will include complaint information submitted by identity theft victims or on their behalf by others (e.g., friends or relatives). Additional sources of information will include other federal, state and local agencies ("data-contributing agencies") and retail businesses that may suspect they are dealing with an individual or entity engaged in identity theft. The FTC will use the system to log and acknowledge these complaints, to provide identity theft victims with information on how to deal with credit or other problems that may result from identity theft, and to evaluate and refer their complaints to appropriate entities.

Until the system is fully established and operational, data from these complaints are being compiled and maintained in the Commission's general consumer complaint database (FTC–IV–1). That database, however, was not originally designed to serve the special statutory purpose for which the identity theft complaint system is being created, nor was it meant to record or track certain identity theft data that the FTC intends to collect with respect to identity theft complaints. Records in the identity theft complaint system will also be maintained and retrieved according to a somewhat broader category of individuals, as described below. Thus, the Commission is treating these complaint systems as separate systems of records for Privacy Act purposes, even if, as a practical matter, the information in both systems will reside on a common relational database and will be compiled and entered into the database by many of the same agency and contractor personnel.

Despite the sensitive nature of identity theft complaint data, the ITADA does not itself contain any provisions to protect the confidentiality of the data that the Commission is required to compile. Nonetheless, because these complaints will be collected and maintained in a system of records pertaining to individuals within the meaning of the Privacy Act, such records will be disclosed by the Commission only as authorized by that Act. *See* 5 U.S.C. 552a(b). The Commission intends that such disclosures will include certain necessary "routine uses" that the Commission has previously published pursuant to subsection (b)(3) of the Act, 5 U.S.C. 552a(b)(3), and made generally applicable to all of its FTC Privacy Act systems of records (e.g., use in government law enforcement litigation, where necessary). *See* 57 FR 45678 (1992) (Appendix I). Likewise, identity theft complaint data may also be incorporated, as appropriate, into other systems of records maintained by the Commission, such as the Commission's general complaint database (FTC–IV–1, cited earlier) or its legal investigatory files (FTC–I–1), and would be subject to any "routine uses" applicable to those systems.

The Commission has also identified certain additional "routine uses" that are necessary in order to carry out the requirements of the ITADA. These "routine uses" include referral of the complaint to a company that is the subject of the complaint or otherwise associated with the complaint, such as the three major national consumer reporting agencies, since such entities would be in a position to resolve the complaint by taking investigative or corrective action.

Another "routine use" is disclosure of the complaint to other federal, state, or local government authorities for law enforcement or regulatory purposes. This routine use will allow referral of complaint data for investigatory purposes with or without a specific law enforcement request from such authorities, as would otherwise be required by the Privacy Act. *See* 5 U.S.C. 552a(b)(7). It will also allow routine disclosure of complaint records, as needed, to other regulatory agencies at the federal, state or local level so they have the information they need to identify methods or patterns of identity theft and to develop regulations, policies, or other safeguards or remedies to help stop or prevent identity theft. Once the Commission makes an authorized disclosure of complaint data to a company or another government agency, complainants should be aware that further disclosures beyond the Commission's control may not be avoidable as a practical or legal matter. The Commission intends to limit this risk by sharing complaint information only under confidentiality agreements that require that the information be used only for purposes consistent with the ITADA (e.g., resolving the individual's complaint, law enforcement or regulation, etc.).

Similarly, neither the ITADA nor the Privacy Act prevents a request for public disclosure from being filed under the Freedom of Information Act, 5 U.S.C. 552. Identity theft complaint data would normally be exempt from disclosure under that statute, however, where such disclosure would constitute a clearly unwarranted invasion of personal privacy, 5 U.S.C. 552(b)(6), or for other reasons. *See, e.g.,* 5 U.S.C. 552(b)(7)(A) (investigatory materials that are compiled for law enforcement purposes and, if disclosed, could reasonably be expected to interfere with law enforcement proceedings).

Because the categories of individuals covered by the system may include, among others, the target of an identity theft complaint, the Commission has determined that it is necessary to exempt the system from disclosure to such individuals for law enforcement purposes, even in cases where the Commission may choose to make the complaint file available for review by the complainant or other individual who submitted the information. Thus, the Commission proposes to exempt this system of records under 5 U.S.C. 552a(k)(2), and is proposing elsewhere in the **Federal Register** to amend its Privacy Act rules, 16 CFR 4.13, to include this system in its list of systems covered by that exemption. *See* 16 CFR 4.13(m).

Accordingly, as set forth below, the Commission proposes a new system of records to become effective on the date noted earlier, unless the Commission amends or revokes the system on the basis of any comments received. Pursuant to 5 U.S.C. 552a(r), the Commission is providing notice of this proposal to the appropriate committees of the House of Representatives and the Senate, and to the Office of Management and Budget.

FTC–IV–2

SYSTEM NAME:

Identity Theft Complaint Management System–FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM/LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Records will be compiled and centrally maintained at this location, including any identity theft complaints that may be initially received or collected by the agency's Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who communicate with the Commission to complain about or to request assistance in resolving problems relating to identity theft, or to request information concerning identity theft.

b. Individuals who submit their complaints about identity theft to another organization that has agreed to provide its consumer complaint information on identity theft to the Commission (a "data-contributing member").

c. Individuals who communicate to the Commission on behalf of another person who is the victim of identity theft. In such a case, both individuals will be covered.

d. Individuals who are suspected of committing the complained-about identity theft.

e. Individuals who, at the time the records are added to the system, are Commission employees or contractors assigned to process or respond to correspondence or telephone calls.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Personal identifying information about the individual who communicates with the Commission or data contributing agency as a victim of identity theft, including, for example, the individual's name, address, telephone number, fax number, date of birth, social security or credit card numbers, e-mail address and other personal information extracted or summarized from the individual's complaint. Personal identifying information about the individual who communicates with the Commission or data-contributing agency as a reporting individual on behalf of someone else who was the victim of the identity theft, including, for example, the reporting individual's name, address, phone or fax number and e-mail address.

b. Name, address, telephone number or other information about an individual suspected of having committed the complained-about identity theft.

c. Name, address, telephone number or other information about a company that is suspected of having committed identity theft, is the subject of a complaint about how it handled the alleged incident of identity theft, or is associated with the complaint either as a creditor, debt collector, account issuer, credit bureau, or in another role (hereinafter, "company complained about or otherwise associated with the complaint"). This company information, although included in the system, is not subject to the Privacy Act.

d. Name and reference number of FTC staff member or contractor who entered or updated the complaint information in the Identity Theft Complaint Management System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*; section 5 of the Identity Theft and Assumption Deterrence Act of 1998, 18 U.S.C. 1028 note.

PURPOSE(S):

To maintain records of complaints and inquiries concerning identity theft, in order to: enable the Commission to track and respond to complaints and inquiries; enable the Commission to refer complaints to appropriate entities, which may include referral to the three major national consumer reporting agencies and appropriate law enforcement agencies for potential law enforcement action; provide useful information that may lead to or be incorporated into law enforcement investigations and litigation or for other law enforcement purposes (when used in connection with law enforcement activities, also becomes part of FTC-I-1, Investigational, Legal and Public Records); provide useful information that may contribute to regulation and oversight of institutions and systems that play a role in or are affected by identity theft; and provide statistical data on the number and types of complaints and inquiries about identity theft received by the agency or its data-contributing members.

ROUTINE USES OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system may be disclosed as permitted by 5 U.S.C. 552a(b), and, as authorized by 5 U.S.C. 552a(b)(3), in accordance with the routine uses announced by the Commission in Appendix I of its system notice applicable to all other agency Privacy Act systems of records (57 FR 45678). Additional routine uses for records in this system are as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use published for this system:

a. Records may be made available or referred on an automatic or other basis to a company complained about or otherwise associated with the complaint, which may include the three major national consumer reporting agencies.

b. Records may be made available or referred on an automatic or other basis to other federal, state, or local government authorities for regulatory or law enforcement purposes.

c. Records may be incorporated, as appropriate, into other systems of records maintained by the Commission, including the Commission's consumer complaint database (FTC–IV–1) or its legal investigatory files (FTC–I–1), and subject to the routine uses published for those systems.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Identity theft complaints maintained in this system of records may be referred to consumer reporting agencies (and other appropriate entities) in accordance with the Identity Theft and Assumption Deterrence Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in a computer data base maintained on magnetic disks and tape. Paper records stored in file folders.

RETRIEVABILITY:

Indexed by name, area code, phone number, address, state, zip code, social security number and date of birth of consumers who are the victims of identity theft. Also indexed by the name, area code, phone number, address, state, and zip code of individuals, if any, who are identity theft suspects. Also indexed by FTC reference number, by name, address, and telephone number of company complained about or otherwise associated with the complaint, by name of other government entity or consumer reporting agency, if any, contacted by consumer in effort to resolve complaint, by name of FTC office or data-contributing agency receiving complaint, by name of Commission staff member or contractor who entered or updated the information concerning the complaint in the system database, and by other categories of retrieval.

SAFEGUARDS:

Paper records of incoming complaints maintained in lockable rooms and cabinets; access to computerized records by electronic security precautions, including "user ID" and password combinations and encrypted communications with external law enforcement agencies. Access restricted to those agency personnel and contractors whose responsibilities require access, or to approved staff members of external law enforcement agencies who have entered into a confidentiality agreement with the Commission.

RETENTION AND DISPOSAL:

Letters retained for a minimum of one year; automated information retained indefinitely.

SYSTEM MANAGERS AND ADDRESS:

Identity Theft Program Manager, Division of Planning & Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

NOTIFICATION PROCEDURE:

16 CFR 4.13. Not applicable to the extent the system is exempt under 5 U.S.C. 552a(k)(2), as discussed below.

RECORD ACCESS PROCEDURES:

16 CFR 4.13. Not applicable to the extent the system is exempt under 5 U.S.C. 552a(k)(2), as discussed below.

CONTESTING RECORD PROCEDURES:

16 CFR 4.13. Not applicable to the extent the system is exempt under 5 U.S.C. 552a(k)(2), as discussed below.

RECORD SOURCE CATEGORIES:

Individuals who have complained about identity theft and others who may submit complaints on behalf of such individuals; data-contributing agencies; companies complained about or otherwise associated with a complaint.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

5 U.S.C. 552a(k)(2). *See* 16 CFR 4.13(m). This exemption protects records compiled for law enforcement purposes and is intended to prevent unauthorized disclosure to a target of the complaint. The Commission reserves the right to afford, at its discretion, any individual with notification, access, and contesting procedures under the Commission's rules (16 CFR 4.13) with regard to information entered or otherwise submitted by that individual into the system.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc 99–28007 Filed 10–25–99; 10:38 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an EIS; MA

The General Services Administration (GSA) intends to prepare an Environmental Impact Statement (EIS) on the following project:

New Federal Courthouse, Springfield, Hampden County, Massachusetts

The GSA will serve as lead agency and project sponsor in the preparation and filing of an EIS. The proposed action would involve the construction and operation of a new courthouse in Springfield, Massachusetts. Space and security constraints in the existing Federal Court facilities located in the Federal Building at 1550 Main Street, Springfield have caused the Court to seek relocation to a new building that would supply the required space, security, and facilities to accommodate the Court's current and projected caseload. This action is intended to provide approximately 140,000 occupiable square feet (13,000 square meters) of space for the various operations of the Federal Court and related agencies.

The EIS will evaluate a No-Action alternative and a Build alternative involving a preferred site on State Street between Elliot Street and Spring Street in Springfield, Massachusetts. It will also evaluate impacts on the affected environment, including, but not limited to, socioeconomics, hazardous materials, traffic/transportation, land use, urban design/neighborbood character, historic/cultural resources, noise, air quality, environmental justice, and cumulative impacts.

Public Scoping Meeting

To ensure that all issues relating to the proposed project are identified and all potentially significant issues are addressed and satisfied in the EIS, public comments and suggestions are being solicited. To facilitate the receipt of comments, two public Scoping Meetings will be held in Springfield on Monday, November 15, 1999. The first will be held from 3 PM to 5 PM on the fifth floor of the Federal Building, 1550 Main Street, and the second will be from 6 PM to 8 PM on the second floor of the City Hall, 36 Court Street. Public comment concerning the scope of the EIS will be taken at these meetings.

FOR FURTHER INFORMATION CONTACT: Kevin J. Richards, Asset Manager, U.S. General Service Administration, Portfolio Management Division (1 PT), 10 Causeway Street, 9th Floor, Boston, MA 02222–1077, Tel: (617) 565–5845, Fax: (617) 565–8650, E-mail: Kevin.Richards@gsa.gov.

Written comments may be mailed to the informational contact person no later than December 3, 1999.

Issued in Boston, Massachusetts on October 20, 1999.

George Klueber,

Portfolio Manager, General Service Administration, Region 1.

[FR Doc. 99–28093 Filed 10–26–99; 8:45 am]

BILLING CODE 6820–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR H–78]

Utilization and Disposal

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin provides revised information for Federal agencies on the disposal of excess biomedical equipment and IT equipment with potential Y2K defects.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Personal Property Management Policy Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone (202) 501–3846; e-mail martha.caswell@gsa.gov.

GSA Bulletin FPMR H–78 Utilization and Proposal

TO: Heads of Federal agencies
SUBJECT: Disposal of Year 2000 (Y2K) Noncompliant Biomedical Equipment and Information Technology (IT) Equipment

1. *What is the purpose of this bulletin?* To provide revised information for Federal agencies on the disposal of excess biomedical and IT equipment with potential Y2K defects.

2. *When does this bulletin expire?* This bulletin contains information of a continuing nature and will remain in effect until canceled or revised.

3. *What is the background?* The Y2K technology problem concerns computers, computer chips, and software that may not properly recognize or process dates after December 31, 1999. In addition, there are other specific dates that may be troublesome, such as February 29, 2000. This problem may affect the normal operation of biomedical equipment and information technology (IT) equipment. In biomedical equipment used in direct patient treatment, the monitoring of vital patient parameters, or used to support or sustain life, the Y2K problem may present a potential risk to public health and safety if not corrected. In those situations, biomedical device failure could injure the patient or compromise effective patient treatment. In response to this potential risk, GSA is providing guidance to Federal agencies on the disposal of such equipment when it becomes excess to their needs.

4. *What does this bulletin cover?* This bulletin applies to (1) all excess biomedical equipment, and (2) all excess IT equipment.

5. *Biomedical equipment.* a. *Where can I find information about the Y2K status and potential risks posed by biomedical equipment?* Federal agencies should consult the Food and Drug Administration's (FDA's) website at *http://www.fda.gov* for general Y2K information on biomedical equipment. Federal agencies can find more specific information provided by manufacturers of biomedical equipment in the Federal Y2K Biomedical Equipment Clearinghouse (Y2K Clearinghouse) located at *http://www.fda.gov/cdrh/yr2000/year2000/html*. Federal agencies can also access the Y2K Clearinghouse through the FDA website's Year 2000 link.

b. *How can I determine the Y2K status of the biomedical equipment?* Information provided by the original manufacturer is the best source for determining the Y2K status of the biomedical equipment under consideration.

c. *Where can I find manufacturer information?* Please consult the FDA Y2K Clearinghouse website or contact the manufacturer directly.

d. *How do I use Y2K information when disposing of excess biomedical*

equipment? Use the manufacturer's information, with the assistance of your biomedical engineers/technicians, to determine the Y2K status of equipment and label the biomedical equipment as:
(1) Y2K compliant;
(2) Y2K noncompliant; or
(3) Y2K status unknown.

6. *How do I dispose of biomedical equipment that is Y2K compliant?* If Y2K compliant, identify excess biomedical equipment as "Y2K compliant" on the equipment itself and on the excess reporting document (SF 120). Dispose of such equipment through normal disposal procedures described in FPMR 101–43.3, 101–44.2, and 101–45.3. Federal agencies obtaining excess Y2K compliant biomedical equipment must reflect the "Y2K compliant" status on all inventory control documentation pertaining to such equipment.

7. *Y2K noncompliant biomedical equipment.* a. *What should I consider before I dispose of biomedical equipment that is not Y2K compliant?* Before you proceed with disposal, consider two questions: First, what is the potential risk posed by the equipment? And second, does the equipment meet the criterion for "extremely hazardous" property" as defined in paragraph 7.c.?

b. *How can I determine what types of Y2K noncompliant biomedical equipment pose the greatest potential risk?* Use the information found under "Computer-Controlled Potentially High-Risk Medical Devices" on the FDA website to help you identify biomedical equipment having the greatest potential for presenting a risk to patients if used with an uncorrected date problem.

Note: The FDA website is not all-inclusive. See paragraph 7.e. for the disposal of Y2K noncompliant biomedical equipment not mentioned on the "Computer-Controlled Potentially High-Risk Medical Devices" list.

c. *What is "extremely hazardous" biomedical equipment?* "Extremely hazardous," in this instance, is Y2K noncompliant biomedical equipment that is judged by the holding agency to pose a potential risk by endangering public health or safety, or the environment, if not rendered harmless (i.e., made Y2K compliant) before being used by other agencies or released outside the Government.

d. *How do I dispose of Y2K noncompliant biomedical equipment that I judge to be "extremely hazardous?"* If not made Y2K compliant, you must destroy Y2K noncompliant biomedical equipment that is extremely hazardous to render it innocuous, in accordance with FPMR 101–45.902–2(a)(2). Destruction means the rendering of biomedical equipment completely inoperable for its intended purpose. Actions such as cutting, tearing, crushing, breaking, burning, etc. will accomplish rendering inoperable.

e. *Do I need to be concerned about Y2K noncompliant biomedical equipment not mentioned under "Computer-Controlled Potentially High-Risk Medical Devices?"* Yes. Evaluate other Y2K noncompliant biomedical equipment for associated risks. Using the manufacturer's information, and with assistance from your biomedical engineers/technicians, assess whether or not the equipment, if used without a modification to address the date problem, will endanger public health or safety, or the environment (i.e., can be deemed "extremely hazardous"). If judged to be "extremely hazardous," dispose of in accordance with paragraph 7.d.

f. *What if I judge the Y2K noncompliant biomedical equipment, of any type, to be non-hazardous?* You must identify it as "Y2K noncompliant" on the equipment itself and on the excess reporting document (SF 120) and dispose of it through normal disposal procedures described in FPMR 102–43.3, 102–44.2 and 101–45.3. Federal agencies obtaining excess Y2K noncompliant biomedical equipment must reflect the "Y2K noncompliant" status on all inventory control documentation pertaining to such equipment.

8. *How do I dispose of biomedical equipment when the Y2K status is unknown?* You may not transfer excess biomedical equipment when the Y2K status cannot be determined. If the Y2K status cannot be determined, the holding agency must destroy the equipment in accordance with FPMR 101–45.902–2(a)(2).

9. *IT equipment.* a. *How do I define "IT" equipment?* "IT" is any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

b. *Do I also report the status of IT equipment?* Yes, all IT equipment must also be identified by the holding agency as Y2K compliant, Y2K noncompliant, or Y2K status unknown. The Y2K status must be visible on the equipment and all excess reporting documents.

c. *What disposal procedures do I following for IT equipment?* IT equipment, of any status, will be disposed of through normal disposal procedures as described in FPMR 101–43.3, 101–44.2 and 101–45.3.

10. *Whom should I contact for further information?* Martha Caswell, Personal Property Management Policy Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone (202) 501–3846; e-mail martha.caswell@gsa.gov.

11. *Cancellation.* FPMR Bulletin H–76 dated August 4, 1999, is canceled.

Dated: October 21, 1999.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 99–28004 Filed 10–26–99; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1392]

Agency Information Collection Activities; Announcement of OMB Approval; State Enforcement Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "State Enforcement Notification" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 1999 (64 FR 46204), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0275. The approval expires on October 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 20, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–27974 Filed 10–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1393]

Agency Information Collection Activities; Announcement of OMB Approval; State Petitions for Exemption from Preemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "State Petitions for Exemption from Preemption" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 20, 1999 (64 FR 45554), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0277. The approval expires on October 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 20, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–27975 Filed 10–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1522]

Agency Information Collection Activities; Announcement of OMB Approval; Temporary Marketing Permit Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Temporary Marketing Permit Applications" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 31, 1999 (64 FR 47508), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0133. The approval expires on October 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 20, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–27978 Filed 10–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N-4397]

Agency Emergency Processing Request Under OMB Review; Survey of Food Manufacturing Facilities for Year 2000 Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a survey of food manufacturing facilities for Year 2000 compliance.

DATES: Submit written comments on the collection of information by November 1, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Section 705(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 375(b)) permits the Secretary of Health and Human Services (the Secretary) to disseminate information regarding food, drugs, devices, and cosmetics in situations involving in the opinion of the Secretary imminent danger to health, or gross deception of the consumer. FDA has requested emergency processing of this proposed collection of information under the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). FDA is requesting certain information, i.e., manufacturer, food products produced, etc., immediately to allow for the assessment of their vulnerability to Year 2000 problems and to take corrective actions, if necessary, in advance of January 1, 2000. The potential existence of Year 2000 problems in the food industry could pose potentially serious health and safety consequences. The use of normal clearance procedures would prolong the time needed to assess Year 2000 compliance by regulated industry.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Survey of Food Manufacturing Facilities for Year 2000 Compliance

Facilities will be asked to provide a status on their Year 2000 readiness. They will also be asked if they have contingency plans. The survey will also ask if they have tested, verified, and certified their systems. The request will also ask for a single point of contact at the manufacturer to discuss information.

The manufacturer will provide paper copy of the information to FDA. The provision of information will signify that the information provided is true to the best of the manufacturer's knowledge. The information will be used for possible FDA inspectional followup, if it indicates potential unsafe food manufacturing situations, as well as in the preparation of industry and consumer directed material addressing Year 2000 concerns.

Respondents: Food manufacturers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
250	1	250	1	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA establishment inventory lists were used to determine the number of firms who would be subject to this collection. FDA estimates that it will take firms an average of 2 hours to collect, prepare, and submit the requested information.

Dated: October 20, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–27977 Filed 10–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0187]

Ciba Specialty Chemicals Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 5B4467) (filed by Ciba Specialty Chemicals Corp.; formerly named Ciba-Geigy Corp.) proposing that the food additive regulations be amended to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-s-triazine-2,4-diyl] [2,2,6,6-tetramethyl-4-piperidyl)imino] hexamethylene [(2,2,6,6-tetramethyl-4-piperidyl)imino]] as a light stabilizer in polymers used as indirect food additives.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 3, 1995 (60 FR 39753), FDA announced that a food additive petition (FAP 5B4467) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-s-triazine-2,4-diyl] [2,2,6,6-tetramethyl-4-piperidyl)imino] hexamethylene[(2,2,6,6-tetramethyl-4-piperidyl)imino]], as a light stabilizer in polymers used as an indirect food additive. Ciba Specialty Chemicals Corp., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 12, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrion.

[FR Doc. 99–27976 Filed 10–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 99D–4488 and 99D–4489]

Guidance for Industry: Reducing Microbial Food Safety Hazards for Sprouted Seeds and Guidance for Industry: Sampling and Microbial Testing of Spent Irrigation Water During Sprout Production

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing two related guidance documents entitled "Guidance for Industry: Reducing Microbial Food Safety Hazards for Sprouted Seeds" and "Guidance for Industry: Sampling and Microbial Testing of Spent Irrigation Water During Sprout Production." These guidances are intended to provide recommendations to suppliers of seed for sprouting and sprout producers about how to reduce microbial food safety hazards common to the production of raw sprouts to ensure that sprouts are not a cause of foodborne illness and to ensure that they comply with the food safety provisions of the Federal Food, Drug, and Cosmetic Act (the act). The first guidance is based largely on recommendations from the National Advisory Committee for Microbiological Criteria for Food's report entitled "Microbial Safety Evaluations and Recommendations on Sprouted Seeds" (the 1999 NACMCF report) (Ref.1). The second guidance is intended to assist sprouters in implementing one of the principle recommendations (i.e., microbial testing) in the broader sprout guidance.

DATES: Written comments may be submitted at any time, however, comments should be submitted by December 13, 1999, to ensure adequate consideration in preparation of revised documents, if warranted.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry: Reducing Microbial Food Safety Hazards for Sprouted Seeds" and/or the guidance entitled 'Guidance for Industry: Sampling and Microbial Testing of

Spent Irrigation Water During Sprout Production" to the Office of Plant and Dairy Foods and Beverages (HFS–306), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4200. Send one self-adhesive label to assist that office in processing your request. The guidances are attached to this notice as appendixes 1 and 2 and are also accessible via the FDA home page on the Internet: http://www.fda.gov. Submit written comments on the final guidance(s) to the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–2975, FAX: 202–205–4422, e-mail: msmith1@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1995, raw sprouts have been increasingly implicated in foodborne outbreaks. Between January 1995 and May 1999, there were 11 reported outbreaks in the United States associated with sprouts from commercial growers, 9 of which were due to various *Salmonella* serotypes and 2 to *Escherichia coli* O157. The number of culture-confirmed cases in each of these outbreaks ranged from 8 to more than 500, and more than 1,300 cases have been reported overall (Ref. 1). Alfalfa and clover sprouts have been implicated most often, but, because all kinds of sprouts are produced under similar conditions, all raw (uncooked) sprouts may pose a risk. In all of the reported outbreaks, the likely source of the pathogen was contaminated seed. However, in a large 1996 *Salmonella* Montevideo/Meleagridis outbreak, poor sanitation and unhygienic practices at the sprouting facility may also have contributed to the contamination of sprouts (Ref. 1).

Sprouted seeds represent a food safety problem because the conditions under which sprouts are produced (time, temperature, water activity, pH, and nutrients) are ideal for the exponential growth of bacteria. If bacterial pathogens are present on or in the seed, sprouting conditions are likely to encourage their proliferation (Ref. 2).

FDA and other public health officials are working with industry to identify and implement production practices to ensure that seed and sprouted seed are produced under conditions that are safe. While these efforts have improved food safety awareness within the industry and have led to a significantly better understanding of the microbial ecology of sprout-associated foodborne illness, not all industry segments have been reached. Traceback investigations reveal that most of the firms associated with recent outbreaks were not using approved seed disinfection treatments, or were not using them consistently, and were not testing for microbial contamination during sprout production. Although currently approved treatments can significantly reduce pathogen levels in or on seeds, they have not been shown to completely eliminate pathogens (Ref. 1). Consequently, outbreaks continue to occur.

On July 9, 1999, FDA issued a consumer advisory advising all consumers to be aware of the risks associated with eating any variety of raw sprouts, and advising persons at high risk of developing serious illness due to foodborne disease (children, the elderly, and persons with weakened immune systems) not to eat raw sprouts (Ref. 3). This advisory is updated from a previous advisory issued August 31, 1998 (Ref. 4), and was prompted by information from clover and alfalfa sprout-associated salmonellosis outbreaks that occurred from January 1999 through May 1999.

II. Guidance

In 1997, FDA asked the National Advisory Committee for Microbiological Criteria for Food (NACMCF) to : (1) Review the current literature on sprout-associated outbreaks, (2) identify the organisms and production practices of greatest public health concern, (3) prioritize research needs, and (4) provide recommendations on intervention and prevention strategies. On May 28, 1999, NACMCF adopted a report entitled "Microbial Safety Evaluations and Recommendations on Sprouted Seeds" (Ref. 1).

FDA is now issuing "Guidance to Industry: Reducing Microbial Food Safety Hazards for Sprouted Seeds" (the sprout guidance). This guidance incorporates some of the recommendations made by the 1999 NACMCF report. The guidance identifies the most important steps, e.g., use of good agricultural practices (Ref. 5), seed disinfection treatment, and microbial testing, which the agency believes should be implemented immediately to reduce the risk of raw sprouts as a vehicle for foodborne illness and to ensure that sprouts comply with the Food Safety Provision of the act (21 U.S.C. 301–397).

As noted in the sprout guidance, routine use of approved seed disinfection treatments (such as 20,000 parts per million of calcium hypochlorite in water) is likely to reduce the level of contamination if present in or on seeds and, in turn, reduce the risk of foodborne illness from the consumption of sprouted seed. However, current approved treatments do not guarantee total elimination of pathogens. If even a few pathogens survive a seed disinfection treatment, they can grow to high levels during sprouting and contaminate the entire batch. Therefore, although seed disinfection treatment is recommended, microbial testing of spent irrigation water from each batch or production lot of sprouts should also be conducted to prevent contaminated product from entering the food supply.

In addition, FDA is issuing "Guidance to Industry: Sampling and Microbial Testing of Spent Irrigation Water During Sprout Production" (the microbial testing guidance). This guidance is designed to assist sprouters in designing a microbial testing program to ensure adulterated product does not enter commerce. Specifically, this guidance recommends testing spent irrigation water from each individual batch or production lot of sprouts for two pathogens, *E. coli* O157:H7 and *Salmonella*. The microbial testing guidance also provides instructions for the sampling and testing of sprouts for those instances when it is not possible to test spent irrigation water. However, sprouts should not be tested in lieu of irrigation water when spent irrigation water is available.

Sprouters should be aware that the microbial testing program described in this guidance involves a number of hazards. Microbial test procedures should only be run by qualified personnel, in a qualified independent laboratory that is separate from food production areas. Additional criteria for laboratories performing these tests are provided in the microbial testing guidance.

As more effective treatments or other food safety controls are identified and implemented, the current recommendation to test spent irrigation water from each batch of sprouts produced may be changed, e.g., to periodic microbial testing as a tool for validating the effectiveness of food safety systems.

These guidance documents do not provide detailed information on all individual steps that should be followed in the production of seeds and sprouts. References and resources for assistance are listed at the end of this notice and in the broader sprout guidance. Other materials, in the form of further guidance, educational videos, etc. will be made available, as appropriate. For example, FDA and the California Department of Health Services, Food and Drug Branch, in cooperation with industry, are producing a comprehensive educational video outlining sprout specific practices, in a number of areas, including those practices recommended in this guidance. The agency expects the video to be available in early 2000.

The guidance documents (see appendixes 1 and 2) represent FDA's current thinking on prevention of microbial hazards in sprouted seeds. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of applicable statutes and regulations. Following the recommendations in this guidance will not shield any person or any food from appropriate enforcement under the act if adulterated food is distributed in interstate commerce. The guidances are being distributed in accordance with FDA's policy for Level 1 guidance documents as set out in the agency's Good Guidance Practices, published in the **Federal Register** of February 27, 1997 (62 FR 8961).

FDA believes this guidance and current education and outreach efforts will have a significant positive impact on those industry segments that still need tools to make a safer product. The agency will closely monitor the safety of sprouts and the adoption of enhanced prevention practices as set out in this guidance.

Failure to adopt effective preventive controls can be considered insanitary conditions which may render food injurious to health. Food produced under such conditions is adulterated under the act (section 402(a)(4) (21 U.S.C. 342(a)(4))). FDA will consider enforcement actions against seed and sprout producers who do not have effective preventive controls in place, in particular, effective microbial testing.

On December 27, 1999, FDA plans to initiate a national field assignment, sending investigators to sprouting facilities to test water used to grow sprouts (i.e., spent irrigation water) and to assess the level of adoption of preventive controls.

III. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Advisory Committee on Microbiological Criteria for Foods, 1999a. Microbiological Safety Evaluations and Recommendations on Sprouted Seeds, http://vm.cfsan.fda.gov/~mow/sprouts2.html.

2. National Advisory Committee on Microbiological Criteria for Foods, 1999b. Microbiological Safety Evaluations and Recommendations on Fresh Produce. Food Control, 10:117–143.

3. FDA, 1999, Press Release—Consumers Advised of Risks Associated With Raw Sprouts, P99–13, http://www.fda.gov/bbs/topics/NEWS/NEW00684.html.

4. FDA, 1998, Talk Paper—Interim Advisory on Alfalfa Sprouts, T98–47.

5. FDA, 1998, Guidance for Industry—Guidance to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables, http://www.foodsafety.gov/~dms/prodguid.html.

IV. Comments

FDA is soliciting public comments, but is implementing this guidance document immediately because of continuing foodborne illness outbreaks associated with consumption of raw sprouts. Interested persons may, at any time, submit written comments on the guidance documents to the Dockets Management Branch (address above). Two copies of any comments are to be submitted except that individuals may submit one copy. Comments should be identified with the appropriate docket numbers found in brackets on each guidance document. A copy of the guidance documents and comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 21, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

The text of the guidances follows:

GUIDANCE FOR INDUSTRY - REDUCING MICROBIAL FOOD SAFETY HAZARDS FOR SPROUTED SEEDS[1]

[Docket No. 99D–4488]

All parties involved in the production of sprouts—seed producers, seed conditioners, and distributors, and sprout producers—should be aware that seeds and sprouted seeds have been recognized as an important cause of foodborne illness. The following recommendations identify the preventive controls that the Food and Drug Administration (FDA) believes should be taken immediately to reduce the risk of raw sprouts serving as a vehicle for foodborne illness and ensure sprouts are not adulterated under the food safety provisions of the Food, Drug, and Cosmetic Act (the act). Failure to adopt effective preventive controls can be considered insanitary conditions which may render food injurious to health. Food produced under such conditions is adulterated under the act (21 U.S.C. 342(a)(4)). FDA will consider enforcement actions against any party who does not have effective preventive controls in place, in particular, microbial testing.

These recommendations are based on the recommendations of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF, 1999) and elaborate on Compliance Policy Guide 7120.28 (CPG 7120.28).

Seed Production: Seeds for sprout production should be grown under good agricultural practices (GAPs) in order to minimize the likelihood that they will contain pathogenic bacteria. For more information on GAPs, see FDA's 1998 "Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables". Copies of this guidance are available on the internet (http://www.foodsafety.gov/dms/prodguid.html) or by calling the number listed in the references and resources at the end of this guidance.

Seed Conditioning, Storage, and Transportation: Seeds that may be used for sprouting should be conditioned, stored, and transported in a manner that minimizes the likelihood that the seeds will be contaminated with pathogens. For example, seed should be stored in closed or covered containers in a clean dry area dedicated to seed storage. Containers should be positioned off the floor and away from walls to reduce the possibility of contamination by rodents or other pests and to facilitate regular monitoring for pest problems.

Sprout Production: Sprouters should implement appropriate practices to ensure that sprouts are not produced in violation of the act which prohibits the production of food under insanitary conditions which may render food injurious to health (21 U.S.C. 342(a)(4)). In addition to seed treatment and testing for pathogens (see below), sprouters should maintain facilities and equipment in a condition that will protect against contamination. Facilities with poor sanitation can significantly increase the risk of contaminating product. Sprouters should employ good sanitation practices as a standard operating procedure to maintain control throughout all stages of sprout production. Inadequate water quality and poor health and hygienic practices can all increase the risk of food becoming contaminated with pathogens. Sprouters may wish to review 21 CFR Part 110 which sets forth good manufacturing practices (GMPs) in manufacturing, packaging, or holding human food that cover these aspects of food production.

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[1] This guidance has been prepared by the Office of Plant and Dairy Foods and Beverages in the Center for Food Safety and Applied Nutrition at the Food and Drug Administration. This guidance represents the agency's current thinking on reducing microbial food safety hazards for sprouted seeds. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations. Following the recommendations in this guidance will not shield any person or any food from appropriate enforcement under the Federal Food, Drug, and Cosmetic Act if adulterated food is distributed in interstate commerce.

Seed Treatment: Seeds for sprouting should be treated with one or more treatments (such as 20,000 ppm calcium hypochlorite[2]) that have been approved for reduction of pathogens in seeds or sprouts. Some treatments can be applied at the sprouting facility while others will have to be applied earlier in the seed production process. However, at least one approved antimicrobial treatment should be applied immediately before sprouting[3]. Sprouters should carefully follow all label directions when mixing and using antimicrobial chemicals.

Testing for Pathogens: Because currently approved antimicrobials have not been shown to be capable of eliminating all pathogens from seed, sprout producers should conduct microbiological testing of spent irrigation water from each production lot to ensure that contaminated product is not distributed. Because testing for pathogens can be done with irrigation water as early as 48 hours into what is generally a 3 to 10 day growing period, producers who plan accordingly can obtain test results before shipping product without losing product shelf-life. Testing, whether done by the producer or contracted out, should be done by trained personnel, in a qualified laboratory, using validated methods. Additional information on sample collection and microbial testing, including how to sample and test sprouts when testing spent irrigation water is not practicable (as may be the case with soil-grown sprouts), can be found in a companion guidance document referenced below.

Traceback: Traceback cannot prevent a foodborne illness outbreak from occurring. However, being able to trace a food back to it's source quickly can limit the public health and economic impacts of an outbreak, if it occurs. Information gained in traceback investigations may also help prevent future outbreaks. Sprout producers, seed producers, conditioners and distributors should develop and implement systems to facilitate traceback and recalls in the event of a problem. All parties should test their systems in advance of a real problem.

References and resources:

1. Food and Drug Administration. 1982. Compliance Policy Guide Sec. 555.750 Seeds for Sprouting Prior to Food Use, i.e., Dried Mung Beans, Alfalfa Seeds, etc. (CPG 7120.28) can be viewed and printed from the WWW at the following address http://www.fda.gov/ora/compliance—ref/cpg/cpgfod/cpg555–750.html

2. Food and Drug Administration. 1998. Guidance for Industry—Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables can be viewed and printed from the WWW at the following address http://www.foodsafety.gov/dms/prodguid.html or may be obtained by calling 202–401–9725.

3. Food and Drug Administration, 1999. Press Release—Consumers Advised of Risks Associated with Raw Sprouts. P99–13. http://www.fda.gov/bbs/topics/NEWS/NEW00684.html

4. FDA, 1999. "Guidance for Industry: Sampling and Microbial Testing of Spent Irrigation Water During Sprout Production" can be viewed and printed from the WWW at http://vm.cfsan.fda.gov

5. National Advisory Committee on Microbiological Criteria for Foods. 1999a. Microbiological Safety Evaluations and Recommendations on Sprouted Seeds. http://vm.cfsan.fda..gov/mow/sprouts2.html

6. National Advisory Committee on Microbiological Criteria for Foods. 1999b. Microbiological Safety Evaluations and Recommendations on Fresh Produce. Food Control. 10:117–143.

7. Copies of Federal regulations in the Code of Federal Regulations (CFR) may be purchased from the U.S. Government Printing Office or by telephone at (202) 512–1800. The CFR is also available at local branches of U.S. Government Printing Office Bookstores. Information on location of regional branches is available on the WWW at the following address: http://vm.cfsan.fda.gov/lrd/ob-reg.html

8. Sections of the CFR, such as 21 CFR Part 110 Current Good Manufacturing Practices in Manufacturing, Packing, or Holding Human Food, can be viewed and printed from the WWW at the following address: http;//www.access.gpo.gov/nara/cfr/index.html.

Appendix 2—Guidance for Industry: Sampling and Microbial Testing of Spent Irrigation Water During Sprout Production

GUIDANCE FOR INDUSTRY -

SAMPLING AND MICROBIAL TESTING OF SPENT IRRIGATION WATER

DURING SPROUT PRODUCTION[4]

[Docket No. 99D–4489]

Introduction

Raw sprouts have been associated with at least eleven foodborne illness outbreaks since 1995. FDA and other public health officials are working with industry to identify and implement production practices that will assure that seed and sprouted seed are produced under safe conditions. While these efforts have improved food safety awareness within the industry and have led to a significantly better understanding of the microbial ecology of sprout-associated foodborne illness, not all industry segments have been reached and outbreaks continue to occur. Consequently, FDA released a guidance document, entitled "Guidance for Industry: Reducing Microbial Food Safety Hazards for Sprouted Seed" (the "sprout guidance"). The sprout guidance identifies a number of areas, from the farm to the sprout facility, where FDA believes immediate steps should be taken to reduce the risk of sprouts serving as a vehicle for foodborne illness and to ensure that sprouts are not adulterated under the Food, Drug, and Cosmetic Act (the act). Specific recommendations in the sprout guidance include: development and implementation of good agricultural practices and good manufacturing practices in the production and handling of seeds and sprouts, seed disinfection treatments, and microbial testing before product enters the food supply.

The agency will closely monitor the safety of sprouts and the adoption of enhanced prevention practices as set out in the sprout guidance. FDA plans to send investigators to sprouting facilities to test water used to grow sprouts (i.e., spent irrigation water) and assess the adoption of preventive controls. Failure to adopt effective preventive controls can be considered insanitary conditions which may render food injurious to health. Food produced under such conditions is adulterated under the act (21 U.S.C. 342(a)(4)). FDA will consider enforcement actions against any party who does not have effective preventive controls in place, in particular, effective microbial testing.

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[2] In 1998, the Environmental Protection Agency issued a "section 18" for the temporary use of 20,000 ppm calcium hypochlorite to disinfect seed for sprouting. In the fall of 1999, the exemption was renewed for another year. However, in order to ensure continued availability of this treatment, registrants should be actively pursuing a full registration under section 3 in 2000.

[3] Antimicrobials are either pesticides chemicals or food additives, depending on where they are used. As such their use on seeds for sprouting must be approved by EPA or FDA. To find out what antimicrobials have been approved by EPA or FDA for use on seeds for sprouting, you can call 202–418–3098.

[4] This guidance has been prepared by the Office of Plant and Dairy Foods and Beverages in the Center for Food Safety and Applied Nutrition at the Food and Drug Administration. This guidance represents the agency's current thinking on reducing microbial food safety hazards for sprouted seeds. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations. Following the recommendations in this guidance will not shield any person or any food from appropriate enforcement under the Federal Food, Drug, and Cosmetic Act if adulterated food is distributed in interstate commerce.

This guidance document, ''Sampling and Microbial Testing of Spent Irrigation Water During Sprout Production,'' is intended to assist sprouters in implementing one of the principal recommendations in the broader sprout guidance, i.e., that producers test spent irrigation water for two pathogens (Salmonella and Escherichia coli O157:H7) before product enters commerce. Instructions are also provided for the sampling and testing of sprouts for those instances when it is not possible to test spent irrigation water. However, for the reasons discussed below, sprouts should not be tested in lieu of irrigation water.

Why Test

Salmonella and Escherichia coli O157:H7 have been the major causes of sprout-associated illness outbreaks. Seeds are the likely source of contamination in most of these outbreaks. Routine use of approved seed disinfection treatments (such as 20,000 parts per million of calcium hypochlorite in water) is likely to reduce the level of contamination if pathogens are present in or on seeds and, in turn, reduce the risk of foodborne illness from the consumption of sprouted seed. However, current approved treatments cannot guarantee total elimination of pathogens. The same conditions that encourage germination and growth of seeds (e.g., temperature, available moisture, and nutrients), also encourage the growth of bacterial pathogens. Even if only a few pathogens survive a seed disinfection treatment, they can grow to high levels during sprouting and contaminate the entire batch. Therefore, seed disinfection treatments should be combined with microbial testing to ensure that pathogens are not present before sprouts enter the food supply.

As additional food safety controls are identified and implemented, the current recommendation to test irrigation water from every batch of sprouts produced may be changed, e.g., to periodic microbial testing as a tool for validating the effectiveness of food safety systems.

Who Should Perform The Tests

Sample collection

Sample collection should be done by personnel that have been trained to collect representative samples aseptically. Obviously, sample collection should be done on site, either by employees or by contract personnel. Aseptic sampling procedures are described below.

Testing

FDA recommends that all testing for pathogens be conducted in an external, qualified, independent laboratory that should meet several key criteria. First, the lab should be physically separated from the food production facility to prevent cross-contamination from test materials. This is especially important where the materials used in the enrichment step required before testing and the positive controls (described below) can contain pathogens and if not properly handled may contaminate sprouts.

Second, the laboratory should be staffed by personnel with training and experience in analytical microbiology techniques to ensure that tests are performed correctly and that all appropriate safety precautions, including appropriate waste disposal, are followed. Third, the laboratory should have appropriate resources and a demonstrable quality management system.

If testing is done by the sprouter, then the laboratory facilities, personnel, and management system should also meet all these criteria to ensure that testing is reliable and does not create food safety hazards.

Why Sample Irrigation Water

Procedures are provided for testing spent irrigation water and sprouts. Although each has advantages and disadvantages, FDA is recommending testing spent irrigation water.

Spent irrigation water that has flowed over and through sprouts is a good indicator of the types of microorganisms in the sprouts themselves and the microflora in spent irrigation water is fairly uniform. Thus sampling procedures for spent irrigation wate are relatively simple. Furthermore, water can be used directly in the test procedures described here. The only potential disadvantage of testing spent irrigation water is that the level of microorganisms recovered in irrigation water is about 1 log less than the level in sprouts. If pathogens are present in sprouts at very low levels, it is possible that they might be missed in water but recovered in sprouts.

Testing the sprouts themselves has several significant disadvantages. First, multiple sprout samples must be taken from different locations in the drum or trays to ensure that the sample collected is representative of the batch. Furthermore, additional preparation (e.g., selecting representative subsamples for analyses, blending or stomaching, and allowing sprout particles to settle out) is required when testing sprouts. Each additional step in any procedure (sampling or testing) introduces a possibility for error.

Consequently, sprouts should not be tested in place of irrigation water unless production methods make it impossible to test spent irrigation water. For example, spent irrigation water may not be available when sprouts are grown in soil. [Note: The recommendation to test irrigation water does not preclude adding the testing of sprouts (either sprouts collected during production or finished product), to a food safety plan that includes testing irrigation water.] Sampling and testing steps specific to sprouts are given in italics and may be disregarded when testing spent irrigation water.

Sampling Plan

Sprouters should have a sampling plan in place to ensure the consistent collection of samples in an appropriate manner. The following factors should be considered in determining when and how to sample.

When to Sample

Pathogens are most likely to be present at detectable levels at or after 48 hours from the start of the sprouting process. Levels will not necessarily increase after 48 hours and may decline slightly. Thus, collecting samples for testing can be done as early as 48 hours after the start of sprouting. If seeds are presoaked (e.g., soaked in water for a short time and then transferred to growing units for sprouting), presoak time should be included in the 48 hour minimum.

If you are using rapid test kits, samples may be collected as late as 48 hours prior to shipping and still provide an opportunity for the sprouter to obtain test results before product enters the food supply. However, early results will allow a sprouter to take corrective actions sooner, minimizing the potential for a contaminated batch of sprouts to contaminate other production batches. Earlier testing (i.e., 48 hours after the start of sprouting) will also minimize the time and resources spent on a batch of sprouts if a presumptive positive is found. If a firm's action plan includes running confirmatory tests on a presumptive positive before discarding product, testing earlier rather than later allows more time to run additional tests.

How to Sample

Aseptic procedures are critical to avoid contaminating the sample during sample collection, storing the sample(s), and transporting the sample(s) to the lab. Aseptic sampling procedures, as described below, should be part of a firm's plan for sample collection.

Equipment used to collect samples should be clean and sterile. Sampling tools and sample containers may be purchased pre-sterilized. Alternatively, tools and containers may be sterilized at 121 °C (250 °F) for 30 minutes in an autoclave prior to use. Heat-resistant, dry materials may be sterilized in a dry-heat oven at 140 °C (284 °F) for 3 hours.

The type of sample containers used will depend on the type of samples collected but may include pre-sterilized plastic bags, tubes, cups, and flasks. Containers should be dry, leak-proof, wide mouthed, and of a size suitable for the samples. Sample containers should be properly labeled prior to starting sample collection.

Sample collectors should wear a clean lab coat, sterile gloves, and a hair net to insure they do not contaminate the samples. Hands should be washed immediately before sampling, and prior to putting on sterile gloves. Sterile gloves should be put on in a manner that does not contaminate the outside of the glove. Gloves should be properly disposed of after use.

Hands should be kept away from mouth, nose, eyes, and face while collecting samples.

Sampling instruments should be protected from contamination at all times before and during use. Sampling instruments and samples moved between the sampling site and the sample container, should not be passed over the remaining pre-sterilized instruments.

The sterile sample container should be opened only sufficiently to admit the sample, place the sample directly in the container, then immediately closed and sealed. If collecting samples in a container with a lid, the lid and container should be held in one hand while collecting the sample. The lid should NOT be completely removed. (The lid should not be held separately or placed on a counter).

The sample container should be filled no more than 3/4 full to prevent overflow. The air from the container should not be expelled when sealing, particularly for plastic bags. Samples or sampling equipment should not be exposed to unfiltered air currents.

Samples should be delivered to the laboratory promptly. Perishable material should be kept at an appropriate temperature, preferably at 0 to 4.4 °C (32 to 40 °F). Sealed coolant packs should be used to avoid contamination from melting ice.

What to Sample and How Much to Collect

FDA recommends that a sprouter test for pathogens by collecting a sample of spent irrigation water from each production lot or batch. For purposes of this guidance, a production lot or batch is defined as sprouts from a single lot of seed that were started at the same time in a single growing unit (i.e., a single drum or rack of trays). Pooling samples should be avoided as pooling from different production batches may decrease the sensitivity of the tests by diluting the level of pathogens in a contaminated sample with samples that are not contaminated. Pooling samples from different batches also complicates the interpretation of results. If a presumptive positive is found, the sprouter should discard all lots represented by the pooled sample or perform additional tests to determine which batch(s) are contaminated.

1. Sample Collection for Spent Irrigation Water

The volumes given below for spent irrigation water (or sprouts) represent a sufficient sample size to test for both Salmonella and Escherichia coli O157:H7.

If testing spent irrigation water, 1 liter of water (about 2 pints or one quart) should be aseptically collected as the water leaves a drum or trays during the irrigation cycle.

If sprouts are grown in drums, a single 1 liter sample may be collected.

If sprouts are grown in trays, and all trays in a production lot have a common trough for collecting spent irrigation water, a 1 liter sample may be collected at that point. If there is no common collection point for water from trays, it may be necessary to collect water samples from individual trays and pool these samples. In this case, a sampling plan should be devised to ensure collection of a sample that is representative of the production lot. When 10 or fewer trays make up a production lot, approximately equal volumes of water should be collected from each of the 10 trays to make a total sample volume of 1 liter. For example, collect about 100 ml of water from each of 10 trays to make a 1 liter sample; about 125 ml from each of 8 trays; 167 ml from each of 6 trays, and so on. When more than 10 trays make up a production lot, ten samples should be aseptically collected, approximately 100 ml each from different trays. Again, samples should be collected throughout the entire production lot (e.g., if there are 20 trays in a production lot, collect samples from every other tray in the rack moving from top to bottom, side to side, and front to back). Samples should be placed directly into a clean, sterile, prelabeled container.

2. Sample Collection for Sprouts

If testing sprouts, thirty-two (32) sample units should be aseptically collected, approximately 50 grams each, from different locations in the drum or growing trays. The total sprout sample will be approximately 1,600 g (about 56.48 ounces or 3.53 pounds per production lot or batch). Sample units should be collected throughout the entire production lot (e.g., from top to bottom, side to side, and front to back of the drum or trays). Each 50 gram sample unit should be placed directly into individual clean, sterile, prelabeled containers. (Keeping the thirty-two sample units separate will make it easier for the lab to select representative analytical units for microbial analysis compared to pulling analytical units from a single 1,600 gram mass of sprouts.)

Microbial Testing

Testing Procedures

The testing procedures described in this guidance are screening tests. They were chosen to obtain results as simply and quickly as possible (i.e., to provide answers in 48 hours or less) on the presence or absence of two major pathogenic bacteria, i.e., Salmonella and Escherichia coli O157:H7. Formal confirmation methods, which take longer than 48 hours, are described in the FDA Bacteriological Analytical Manual (published by AOAC International, Gaithersburg, MD).

The kits identified in this guidance are AOAC approved screening tests and/or FDA has experience with their use. These are also the tests that FDA plans to use as screening tests to monitor spent irrigation water at sprouting facilities. If screening methods, other than those described here are used, they should first be validated either by formal collaborative studies or by comparative studies with standard methods using the specific commodity in question spent irrigation water or sprouts.

Procedures for determining the presence or absence of Escherichia coli O157:H7 and Salmonella species using the test kits listed below are provided at the end of this guidance. These procedures should be performed separate from the food production facility by a qualified laboratory, preferably an independent, certified lab.

The rapid test procedures described in this guidance all involve an enrichment step to encourage the selective growth of pathogens, if they are present, in order to make their detection possible. These test kits will NOT detect pathogens in irrigation water or sprouts if the enrichment step is not performed.

In addition, seasonal or regional differences in water quality, type of seed being sprouted, individual sprout production factors, and variations in sampling and analytical conditions may all impact on the effectiveness of the screening tests. Therefore, the lab should periodically run positive controls (i.e., sprout or water samples to which a known quantity of pathogens have been added) to ensure the tests used are capable of detecting pathogens when they are present in the samples being tested.

Test Kits

Escherichia coli O157:H7

1. VIP EHEC, Biocontrol, Inc., Bellview, WA., (AOAC Official method ι 996.09)

or

2. Reveal E. coli O157:H7, Neogen Corp., Lansing, MI.

Salmonella

1. Assurance Gold Salmonella EIA, (AOAC Official method ι 999.08)

or

2. Visual Immunoprecipitate (VIP) Assay for Salmonella, (AOAC Official method # 999.09)

(Both kits are manufactured by BioControl Systems, Inc., 12822 SE 32nd Street, Bellevue, WA 98005).

General Laboratory Instructions

Prepared Media Storage

Unless noted otherwise most media can be made in advance and stored at 20–30 °C (68–86 °F) in the dark with a shelf life of at least one month. Media should be well wrapped or contained in order to reduce evaporation.

Equipment Sterilization

Safe and proper operation of sterilizing autoclaves requires specially trained personnel. The sterilization time is typically 121 °C (250 °F) for 15 minutes.

Media and Equipment Decontamination

Used culture media and test kits should be decontaminated by autoclaving before disposal. Decontamination should be performed in an area that is totally separated from media preparation and sterilization. Trained personnel should be used to properly decontaminate used media.

Dividing Samples into Subsamples for Analyses

Spent Irrigation Water - A total of 1 L of spent irrigation should be collected for analysis. Two (2) 100 ml subsamples should be analyzed for the presence of E. coli O157:H7. Two (2) 375 ml subsamples should be analyzed for the presence of Salmonella. Any unused portion of the spent irrigation water should be stored under refrigeration pending completion of the analysis.

Sprouts - Thirty-two (32) 50 g analytical units of sprouts should be collected for analysis. Two (2) of the 50 g analytical units (25 g subsamples from each) should be analyzed for the presence of E. coli O157:H7 and thirty (30) of the 50 g sample units (25 g subsamples from each) should be analyzed for the presence of Salmonella. Unused portions of the sprout analytical units should be stored under refrigeration pending completion of the analysis.

Sample preparation (stomaching sprouts)

The procedures in this guidance use a blender to prepare sprouts for testing. As an alternative to blending, sprouts may be homogenized in a Stomacher (Model 400). To use a Stomacher, place 25 grams of sprouts in a sterile Stomacher bag, add 225 ml enrichment broth and process on medium speed for 2 minutes.

Interpretation of Results and Subsequent Actions

Interpreting Results

Analyses should be performed in duplicate (two tests for each of the two pathogens). When results are negative for all tests, results are assumed to be correct. When results are positive for one or both tests for either pathogen, the results are considered presumptive and the grower should either:

1. Consider the presumptive positive result(s) to be true and take immediate corrective actions, as described below, OR

2. Ask the testing laboratory to run confirmatory tests and destroy the batch only if the confirmatory tests are also positive for the presence of a pathogen.

In considering the second option, remember that confirmatory testing takes extra time and will lessen the marketable shelf life of the sprouts. (All product should be held until test results are available.) Rapid test kits are for screening ONLY. Confirmatory testing should be done using standard methods in the FDA Bacteriological Analytical Manual (Edition 8, Revision A–1998).

Corrective Actions

Each facility should have a corrective action plan in place before a positive is found so that, if one does occur, corrective actions can be taken quickly. The following should be included in a corrective action plan.

Seed is the likely source of contamination in sprout-associated foodborne illness outbreaks. Further, recent outbreak investigations have shown that a single contaminated seed lot can result in contamination of multiple production lots of sprouts. Therefore, when a batch of sprouts is considered to be contaminated with a pathogen, the batch of sprouts, the seed lot used to produce the sprouts, and any other sprout production lots that were made from the same seed lot and that are still under control of the sprouter, should be discarded.

In addition, anything in the sprouting facility that has come into contact with the contaminated production lot or its water (e.g., drums, trays, bins, buckets, tool and other sprouting equipment, testing equipment, and other possible surfaces, such as floors, drains, walls, and tables), should be thoroughly cleaned and then sanitized to avoid contamination of subsequent batches of sprouts. Care must be taken in handling contaminated sprouts or water, equipment, and test materials to avoid accidental exposure to the pathogen(s).

A) Procedure for the Escherichia coli O157:H7 Rapid Analysis of Spent Irrigation Water or Sprouts.

I. Test Kits choose one.• VIP EHEC[5], Biocontrol, Inc., Bellview, WA., or • Reveal E. coli O157:H7[5], Neogen Corp., Lansing, MI.

II. Equipment and Materials

1. 1 Mechanical blender (capable of 10,000 to 12,000 rpm) or Stomacher Model 400 (with required stomacher bags)
2. Sterile blender jars, with cover, resistant to autoclaving for 60 min at 121 °C
3. 1 Balance, with weights (2000 g capacity, sensitivity of 0.1 g)
4. 1 L Erlenmeyer flask
5. 2 Sterile graduated pipettes, 1.0 and 10.0 ml and pipette aids
6. Sterile instruments for use in taking and handling of samples (such as knives, tongs, scissors, spoons, etc.)
7. Sterile culture tubes, 16 x 150mm or 20 x 150mm
8. Incubator/shaker platform, 35 + 1 °C
9. pH meter or test strips
10. Fisher or Bunsen burner
11. Magnetic stirrer and stir bars

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[5] The enrichment procedure described in this guidance for the tests for Escherichia coli O157:H7 have been modified by FDA to enhance the ability of the kits to detect Escherichia coli O157:H7 in spent irrigation water and sprouts.

12. Sterile syringes
13. Sterile 0.2 m filters
14. Distilled water

III. Ingredients

1. Peptone
2. NaCl
3. Na2HPO4
4. KH2PO4
5. Casamino acid
6. Yeast extract
7. Lactose
8. Acriflavin (antibiotic)
9. Cefsulodin (antibiotic)
10. Vancomycin (antibiotic)

Preparation of antibiotic stock solutions

Prepare a stock solution of each antibiotic (acriflavin, cefsulodin, and vancomycin) by dissolving 1000 mg of each antibiotic in a separate tube containing 10.0 ml of distilled water. Filter-sterilize the solution using a 0.2 m filter and syringe. The stock solution may be stored for several months in foil wrapped tubes at 4 C (39.2 C).

Prepare the modified Buffered Peptone Water as described below, autoclave, cool, add antibiotic supplements. Instructions for sprouts are given in italics.

Modified Buffered Peptone Water (mBPW)

Step 1. To make 1000 ml of mBPW, mix the following constituents into distilled water, stirring to dissolve. For spent irrigation water, prepare double strength (2X) mBPW, as follows: (*If testing sprouts, use single strength enrichment broth base.*)

Modified Buffered Peptone Water (mBPW)

Ingredient	Double strength (2X) (For use with spent irrigation water)	Single strength (1X) (For use with sprouts)
Peptone	20.0 g	10.0 g
NaCl	10.0 g	5.0 g
Na2HPO4	7.2 g	3.6 g
KH2PO4	3.0 g	1.5 g
Casamino acid	10.0 g	5.0 g
Yeast extract	12.0 g	6.0 g
Lactose	20.0 g	10.0 g
Distilled water*	1000 ml	1000 ml

*pH 7.2 ± 0.2 (Test pH of distilled water BEFORE adding the ingredients above. If necessary, pH may be adjusted with 1N HCl or 1N NaOH.

Step 2. Sterilize mBPW by autoclaving at 121 °C (250 °F) for 15 minutes. Remove from autoclave and allow to cool until cool to the touch.

Step 3. Once the medium is cooled and immediately prior to the addition of a subsample, add the following filter-sterilized antibiotics to 1000 ml of medium. For spent irrigation water, add the quantity of antibiotics listed in the column labeled double strength to the double strength (2X) mBPW. (If testing sprouts, add the quantity of antibiotics listed in the column labeled single strength to the single strength mBPW.)

Antibiotic supplements for mBPW

Antibiotic Stock Solution	Double strength (2X) (For use with spent irrigation water)	Single strength (1X) (For use with sprouts)
Acriflavin (A)	0.2 ml	0.1 ml
Cefsulodin (C)	0.2 ml	0.1 ml
Vancomycin (V)	0.16 ml	0.08 ml

IV. Testing - Perform analysis in duplicate: For microbial testing, duplicate sub-samples (analytical units) need to be removed from the sample and placed in enrichment broth. Enrichment broth containing sub-samples are allowed to incubate for a period of time, and a small quantity of the enrichment broth/sample is applied to the test kit device. Specific directions follow:

Step 4.

Water: Two (2) 100 ml subsamples of spent irrigation will be analyzed. From the 1000 ml sample of spent sprout irrigation water, aseptically transfer 100 ml of sample into a sterile 1L flask containing 100 ml of 2X mBPW+ACV. Repeat with second subsample.

Sprouts: Two (2) 50 g analytical units of sprouts will be analyzed. From two of the thirty-two 50 g analytical units collected, aseptically remove and weigh out a 25g subsample of sprouts. Transfer each of the 25 gram subsamples of sprouts into separate sterile blender jars or sterile stomacher bags. Add 225 ml of single strength enrichment broth with added antibiotic supplements (1X mBPW+ACV) and blend at 10,000 to 12,000 rpm until homogenized (at least 60 seconds) or stomach for 2 minutes on medium setting in a Stomacher Model 400. Transfer sprout homogenate to a 1L Erlenmeyer flask.

Step 5. Incubate the enrichment broth/sample mixtures overnight at 37 °C **(98.6 °F) with shaking at 140 RPM.**

Step 6. Test each enrichment broth sample for the presence of E. coli O157:H7, using either the VIP EHEC device or the Reveal E. coli O157:H7 device. Use 0.1 ml from the inoculated and incubated mBPW +ACV to inoculate VIP or 0.12 ml for the Reveal. Follow the manufacturers instructions for the inoculation of test kits.

Step 7. Observe test results within 10 minutes to avoid possible fading of bands which could lead to false negative results. A band in both the test and control chambers is a positive test for contamination. A band in only the control chamber is a negative test. If a band does not appear in the control chamber, the test was not done correctly and must be repeated.

B) Procedure for the Salmonella Rapid Analysis of Spent Irrigation Water (or Sprouts)

I. Test kits choose one

- Assurance Gold Salmonella EIA, or
- Visual Immunoprecipitate (VIP) Assay for Salmonella

Both are manufactured by BioControl Systems, Inc., (12822 SE 32nd Street, Bellevue, WA 98005). For purposes of pre-enrichment and selective enrichment, these test kits provide different instructions for each of three types of foods: (a) processed foods, (b) dried powder processed foods, and (c) raw foods. For the analysis of sprouts and spent irrigation water, use the pre-enrichment/selective enrichment procedures described for (c) raw foods.

II. Equipment and materials1. Blender and sterile blender jars OR Stomacher Model 400 with appropriate stomacher bags.

2. Sterile, 16 oz (500 ml) wide-mouth, screw-cap jars, sterile 500 ml Erlenmeyer flasks, sterile 250 ml beakers, sterile glass or paper funnels of appropriate size, and, optionally, containers of appropriate capacity to accommodate composited samples
3. Balance, with weights; (2000 g capacity, sensitivity of 0.1 g)
4. Balance, with weights; (120 g capacity, sensitivity of 5 mg)
5. Incubator, 35 °C (95 °F)
6. Refrigerated incubator or laboratory refrigerator, 4 + 1 °C (39 + 1 °F)
7. Water bath, 42 + 0.2 °C (107.6 + 0.2 °F)
8. Sterile spoons or other appropriate instruments for transferring food samples
9. Sterile culture dishes, size 15 x 100 mm, glass or plastic
10. Sterile pipettes, 1 ml, with 0.01 ml graduations; 5 ml with 0.1 ml graduations and 10 ml with 0.1 ml graduations and pipette aids
11. Inoculating needle and inoculating loop (about 3 mm id or 10 l), nichrome, platinum-iridium, chromel wire, or sterile plastic
12. Sterile test or culture tubes, sizes 16 x 150 mm and 20 x 150 mm
13. Test or culture tube racks
14. Vortex mixer
15. Sterile shears, large scissors, scalpel, and forceps
16. Fisher or Bunsen burner
17. pH test paper (pH range 6–8) with maximum graduations of 0.4 pH units per color change
18. Sterile syringe
19. Sterile 0.2 m filters

III. Media and reagents

For preparation of media and reagents, refer to sections 967.25 to 967.28 in *Official Methods of Analysis* (published by AOAC International, Gaithersburg, MD USA). Designations within parentheses refer to Appendix 3, Media and Reagents, of the *Bacteriological Analytical Manual* (BAM), Edition 8, Revision A (also published by AOAC International).

1. Buffered peptone water (commercially available-Oxoid, BBL, or Difco)
2. Buffered peptone water + novobiocin
3. Tetrathionate (TT) broth (M145)
4. Rappaport-Vassiliadis (RV) medium (M132)
5. Trypticase soy broth (commercially available)
6. Trypticase soy broth + novobiocin
7. Trypticase soy broth + 2, 4 dinitrophenol + novobiocin
8. 1 N Sodium hydroxide solution (NaOH) (R73)
9. 1 N Hydrochloric acid (HCl) (R36)
10. Novobiocin solution, 0.1%
11. Sterile distilled water

Buffered peptone water (Number 1.), Buffered peptone water with novobiocin (Number 2), Trypticase soy broth with novobiocin (Number 6) and Trypticase soy broth with 2,4 dinitrophenol and novobiocin (Number 7), are not included in the BAM. Their preparation is described below.

1. Buffered Peptone Water (BPW)

Dissolve 20 grams of commercially available buffered peptone water medium in 1 liter distilled water. Mix thoroughly. Dispense 225 ml portions into 500 ml Erlenmeyer flasks. After autoclaving for 15 min at 121 °C, and just before use, aseptically adjust volume to 225 ml with sterile distilled water. Adjust pH, if necessary, to 7.2 + 0.2 with sterile 1 N NaOH or 1 N HCl.

2. Buffered Peptone Water + novobiocin (BPW + n)

Immediately prior to the addition of a 25 g subsample, add 4 ml of 0.1% novobiocin solution to each 225 ml volume of buffered peptone water.

6. Trypticase soy broth + novobiocin (TSB+n)

Suspend 30 g of commercial available trypticase soy broth medium in 1 L of distilled water. Mix thoroughly. Warm gently on a temperature controlled hot plate until the medium is dissolved. Dispense in 10 ml aliquots in 20 x 150 mm tubes and autoclave 15 min. at 121 °C.

Just prior to sample addition, add 0.1 ml of 0.1% novobiocin solution to each tube containing 10 ml of Trypticase soy broth.

7. Trypticase soy broth + 2, 4 dinitrophenol + novobiocin (TSB+DNP+n)

Suspend 30 g of commercial available trypticase soy broth medium and 0.1 [illegible] of 2, 4 dinitrophenol in 1 L of distilled water. Mix thoroughly. Warm gently on a temperature controlled hot plate until the medium is dissolved. Dispense in 10 ml aliquots in 20 x 150 mm tubes and autoclave 15 min. at 121 °C (250 °F).

Just prior to sample addition, add 0.1 ml of 0.1% novobiocin solution to each tube containing 10 ml of Trypticase soy broth + 2, 4 dinitriphenol.

9. Novobiocin solution, 0.1%

Novobiocin, sodium salt 0.1 g
Distilled water 100 ml

Dissolve novobiocin in distilled water. Do not autoclave. Sterilize by filtering through a 0.2 m filter. Store solution at 4 °C (39.2 °F), protected from light (e.g. wrap container in aluminum foil). Solution can be stored for one week.

IV.Testing

A. Irrigation water-From the 1 L spent irrigation water sample, two (2) 375 ml subsamples will be analyzed for the presence of Salmonella.

1. Aseptically transfer a 375 ml subsample directly to a 6 L Erlenmeyer flask containing 3,375 ml BPW + n. Swirl to mix thoroughly. Repeat procedure with second 375 ml subsample of spent irrigation water.
2. Allow flasks to stand for 60 min at room temperature. Mix well and determine pH with test paper. Adjust pH, if necessary, to 6.8 + 0.2 with sterile 1 N NaOH or 1 N HCL.
3. Incubate flasks without shaking for 18–26 hours at 35–37 °C (95–98.6 °F). Each flask is considered to contain pre-enrichment broth.

4a. If using the Assurance Gold *Salmonella* Enzyme Immunoassay, transfer 0.1 ml pre-enrichment broth to 10 ml RV medium and transfer another 1.0 ml of pre-enrichment broth to 10 ml TT broth. Incubate in a water bath 5–8 hours at 42 °C (107.6 °F). Incubation of the RV medium and TT broth in the water bath is termed the selective enrichment process. Following selective enrichment, transfer and combine 1.0 ml TT broth and 0.5 ml RV medium into a single tube containing 10 ml of prewarmed [42 °C (107.6 °F)] TSB + n broth. Incubate in a water bath 16–20 hours at 42 °C (107.6 °F). Continue as described in this kit's instructions for (c) raw foods.

4b. If using the VIP Assay for *Salmonella*, transfer 0.1 ml pre-enrichment broth to 10 ml RV medium and transfer another 1.0 ml of pre-enrichment broth to 10 ml TT broth. Incubate in a water bath 18–24 hours at 42 °C. Incubation of the RV medium and TT broth in the water bath is termed the selective enrichment process. Following selective enrichment, transfer and combine 0.5 ml of TT broth and 0.5 ml RV medium into a single tube containing 10 ml prewarmed [42 °C (107.6 °F)] TSB+DNP+n broth. Incubate in a water bath 5–8 hours at 42 °C (107.6 °F). Continue as described in this kit's instructions for (c) raw foods.

B. Sprouts - Thirty 50 g analytical units of sprouts were collected for Salmonella analysis. Aseptically weigh out a 25 g subsample from each analytical unit and transfer each subsample to a sterile blending jar (or stomacher bag). Add 225 ml buffered peptone water plus novobiocin (BPW + n). Blend the 25 g sprout subsample with 225 ml BPW + n for 2 min. Repeat procedure for remaining twenty-nine analytical units.

1. The thirty 25 g sprout subsamples may be analyzed by either of the following two options:

Option A:

Each 25 g/225 ml blended sprout homogenate is poured into a 500 ml Erlenmeyer flask, or equivalent container, and analyzed individually.

Option B:

Fifteen of the thirty 25 g/225 ml blended sprout homogenates are poured into a 6 L Erlenmeyer flask, and analyzed collectively. Repeat with the remaining 15 blended sprout homogenates . Thus, each sample consists of two 375-g composites .

2. Allow flasks to stand for 60 min at room temperature. Mix well and determine pH with test paper. Adjust pH, if necessary, to 6.8 + 0.2 with sterile 1 N NaOH or 1 N HCL.

3. Incubate flasks without shaking for 18–26 hours at 35–37 °C (95–98.6 °F). Each flask is considered to contain pre-enrichment broth.

4a. If using the Assurance Gold Salmonella Enzyme Immunoassay, transfer 0.1 ml pre-enrichment broth to 10 ml RV medium and transfer another 1.0 ml of pre-enrichment broth to 10 ml TT broth. Incubate in a water bath 5–8 hours at 42 °C (107.6 °F). Incubation of the RV medium and TT broth in the water bath is termed the selective enrichment process. Following selective enrichment, transfer and combine 1.0 ml TT broth and 0.5 ml RV medium into a single tube containing 10 ml of prewarmed [42 °C (107.6 °F)] TSB + n broth. Incubate in a water bath 16–20 hours at 42 °C (107.6 °F). Continue as described in this kit's instructions for (c) raw foods.

4b. If using the VIP Assay for Salmonella, transfer 0.1 ml pre-enrichment broth to 10 ml RV medium and transfer another 1.0 ml of pre-enrichment broth to 10 ml TT broth. Incubate in a water bath 18 24 hours at 42 °C. Incubation of the RV medium and TT broth in the water bath is termed the selective enrichment process. Following selective enrichment, transfer and combine 0.5 ml of TT broth and 0.5 ml RV medium into a single tube containing 10 ml prewarmed [42 °C (107.6 °F)] TSB+DNP+n broth. Incubate in a water bath 5–8 hours at 42 °C (107.6 °F). Continue as described in this kit's instructions for (c) raw foods.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0298]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New; *Title of Information Collection:* Evaluation of New Medicare Members of Medicare+Choice Plans; *Form No.:* HCFA–R–0298 (OMB# 0938–New); *Use:* The objective of this survey is to understand the special information needs of new Medicare members, their sources of information, their preferred distribution channels, their understanding of the traditional Medicare program and their understanding of their particular +Choice plan, and the impact National Medicare Education Program activities may have on new members' decisions to choose a +Choice plan or change their plan; *Frequency:* On occasion; *Affected Public:* Individuals; *Number of Respondents:* 3000; *Total Annual Responses:* 3000; *Total Annual Hours:* 1212.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 18, 1999.

John Parmigiani,

Acting, HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–27986 Filed 10–26–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–99–2822–00–D889]

Closure and Restriction Orders

AGENCY: Bureau of Land Management, (BLM) Interior.

ACTION: Emergency closure of certain public lands to human entry in the Juniper Flats area, San Bernardino County, California.

SUMMARY: Public lands in the Juniper Flats area are closed to human entry from October 17, 1999 to July 1, 2000. Closed are approximately 16,000 acres burned in the Willow fire. You are not to enter the closed area by any means of access, including but not limited to: motor vehicles, OHVs, equestrian, bike or foot traffic. The closure protects persons, property, soil, cultural resources, vegetation, wildlife, and wildlife habitat.

DATES: This closure order goes into effect at 11:59 p.m. on Sunday, October 17, 1999 and shall remain in effect until 11:59 p.m. on Saturday, July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Tim Read, Barstow Field Office Manager, Bureau of Land Management, 2601 Barstow Road, Barstow, CA 92311; or call (760) 252–6000.

SUPPLEMENTARY INFORMATION: On Saturday August 28th, the Willow Fire started on U.S. Forest Service lands adjacent to BLM lands in the Juniper Flats area. The fire burned 63,486 acres, including approximately 16,000 acres of BLM land. Natural resources comprising the local ecosystems were extensively damaged by the fire. The vegetative cover was burned away leaving bare soils exposed and vulnerable to erosion. The loss of vegetation has also stressed wildlife populations by reducing available cover and forage.

The fire damaged cultural resources, soils, vegetation, wildlife, and wildlife habitat. As a result these resources are extremely sensitive to further impacts from human activity. We are closing the area to prevent disturbances to these types of sensitive resources. By preventing disturbances we will help avoid excessive soil erosion and loss, vegetative damage, wildlife mortality, riparian area degradation, destruction of fences, and water quality impacts. Temporarily closing the area provides a protected environment for natural systems to begin recovering. A successful recovery is needed to sustain the long term health of the land.

In general, the closed public lands are east of Deep Creek Road, south of the Atchison Topeka and Santa Fe rail lines, west of Highway 18, and north of Deep Creek. The authority for this closure is 43 CFR 8364.1, 18 U.S.C. 3571. This closure only applies to those portions of the following sections burned during the Willow Fire: San Bernardino Base and Meridian, T.3N. R.1W. sections 2, 3, 4, 5, 6; T.3N. R.2W. sections 1, 2, 3, 4, 5, 6, 7 and 8; T.3N. R.3W. sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; T.4N. R.1W. sections 31 and 32; T.4N. R.2W. sections 26, 27, 28, 29, 31, 32, 33, 34 and 35; T.4N. R.3W. sections 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 and 35. If you fail to comply with this closure order you may be fined up to $100,000.00 or be imprisoned for up to 12 months, or both.

You are exempt from this closure if you are engaged in one of these activities: law enforcement, emergency services, government business, or work to maintain utilities and infrastructure. You may be exempt if permitted by a BLM Authorizing Officer. You and your guests are exempt to access your residence or property if it is within the closed area. This closure only affects public lands. County roads and segments of roads through private lands are unaffected. You are exempt to use the portion of Bowen Ranch Road that is a County road. The exempt portion crosses public lands in section 31 of T.4N. R.2W., and sections 1, 11 and 12 of T.3N. R.3W., ending at the boundary of the Bowen Ranch.

Two previous closures provided immediate protection for the burned area. While those closures were in effect a long term rehabilitation strategy was developed. The strategy is contained in a report compiled by the fire rehabilitation team. The closure is being re-issued as part of the rehabilitation strategy. Our intent is to protect the damaged natural systems through at least the first growing season. The growing season runs from the fall to the spring. This is when there is sufficient rainfall for the vegetation to grow. The recovery effort will be evaluated next spring to determine if the closure needs to be re-issued again.

Tim Read,

BLM, Barstow Field Office Manager.

[FR Doc. 99–27704 Filed 10–26–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–063–5440–EQ–F502; N–62443]

Notice of Realty Action Nevada: Conveyance of Public Land for Airport Purposes in Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Conveyance of Public Land for Airport Purposes in Lander County, Nevada.

SUMMARY: The following public land in Lander County, Nevada has been found suitable for conveyance to Lander County for airport purposes under section 516 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215).

Mount Diablo Meridian

T. 18 N., R. 42 E.,
  Sec. 1, lots 1–3, S½NE¼, SE¼NW¼.
T. 19 N., R. 42 E.,
  Sec. 25, S½S½;
  Sec. 36, E½, E½NW¼.
T. 18 N., R. 43 E.,
  Sec. 6, lots 3 and 4.
T. 19 N., R. 43 E.,
  Sec. 30, lot 4;
  Sec. 31, lots 1–4, SE¼NW¼, E½SW¼.
  Containing approximately 1205.09 acres

Conveyance of the land is consistent with applicable Federal and County land use plans and will help meet the needs of Lander County. The land is not required for any Federal purposes and will not be conveyed until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chuck Lahr, Realty Specialist, Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820.

SUPPLEMENTARY INFORMATION: The airport is currently under lease (Nev–057498) to Lander County, Nevada. The lease will be terminated prior to the proposed conveyance. The land is segregated by virtue of the existing airport lease. This notice continues the segregation of the above described public land from operation of the public land laws, including the mining laws. The segregative effect will end upon issuance of the conveyance. Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed by authority of the United States, Act of August 30, 1890, (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and

remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe;

3. The property shall revert to the United States in the event the lands are not developed for airport or airway purposes or are used in a manner inconsistent with the terms of the conveyance.

And will be subject to:

1. Those rights for highway purposes granted to the Nevada Department of Transportation, its' successors or assigns, by right-of-way CC–021379A, pursuant to the Act of August 27, 1958, as amended, (23 Stat. 317).

2. Those rights for telephone line purposes to Shoshone Telephone Cooperative, Inc., its' successors or assigns, by right-of-way N–7189, pursuant to the Act of March 4, 1911.

3. Those existing Federal grazing permits, unless waived by the grazing permittee. Such grazing shall be valid for a period of 2 years from the date that the permittee has received notification of the land transfer. In accordance with Part 402(g) of the Act of October 21, 1976, as amended (43 U.S.C. 1752), the grazing permittees will receive reasonable compensation for the value of their interest in authorized permanent improvements.

4. All other valid existing rights.

And will contain the following Covenants:

1. That the grantee will use the property interest for airport purpose, and will develop that interest for airport purposes within one to five years after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport in accordance with National Plan of Integrated Airports System (NPIAS) the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator of the Federal Aviation Administration and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

2. That the airport runway system and its appurtenant safety areas, and all buildings and facilities, will be operated for public airport purposes on fair and reasonable terms without unjust economic discrimination; or on the basis of race, color, or national origin, as to airport employment practices, and as to accommodations, services, facilities, or other public uses of the airport.

3. That the grantee will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349 9(a), as amended), at the airport or at any other airport now owned or controlled by it.

4. Agrees that no person shall be excluded from any participation, be denied any benefits, or be otherwise subjected to any discrimination on the grounds of race, color, national origin, or disability.

5. Agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21)—nondiscrimination in federally assisted programs of the Department of Transportation—effectuation of Title VI of the Civil Rights Act of 1964.

6. That in furtherance of the policy of the Federal Aviation Administration under covenant, the grantee:

- Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;
- Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before July 17, 1962, at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and
- Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

7. That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the Instrument of Conveyance.

8. That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

9. That, if any covenant or condition in this instrument of conveyance, other than the covenant contained in paragraph 7 of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

10. That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right entry and possession of title stipulated in the forgoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or in the Administrator's discretion, to that part interest to which the breach relates.

For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Field Manager, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: October 15, 1999.

M. Lee Douthit,

Associate Field Manager.

[FR Doc. 99–27985 Filed 10–26–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Environmental Impact Statement, Navajo National Monument, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the general management plan, Navajo National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the

National Park Service is preparing an environmental impact statement for the general management plan (GMP) for Navajo National Monument. The environmental impact statement will be approved by the Director, Intermountain Region.

Navajo National Monument was established by Presidential Proclamation No. 873 on March 20, 1909 (36 Stat. 2491), to preserve "a number of prehistoric cliff dwellings and pueblo ruins, situated within the Navajo Indian Reservation, Arizona, and which are new to science and wholly unexplored, and because of their isolation and size are of the very greatest ethnological, scientific and educational interest." The GMP will result in a comprehensive plan that would balance protection and preservation of natural and cultural resources with the interests of American Indians, as well as provisions for visitor use and interpretation and development of necessary and appropriate facilities. In cooperation with the Navajo Nation, and other affiliated American Indian tribes, agencies and organizations, and local interests, attention will also be given to resources outside the boundaries that affect the integrity of Navajo National Monument's resources. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following major issues:

- How can the important natural and cultural resources be best protected and preserved in concert with American Indian traditions and concerns?
- How can Navajo National Monument develop and maintain good relationships, as well as explore new opportunities for partnerships, with affiliated American Indian tribes?
- What level and type of use is appropriate to be consistent with Navajo National Monument's purpose, and to relate to the national monument's significance?
- What facilities are needed to meet the mission goals of Navajo National Monument regarding natural and cultural resource management, visitor use and interpretation, partnerships, and operations?

The National Park Service is planning to hold public scoping meetings regarding the GMP in January, 2000. Specific dates, times, and locations will be announced in the local media and can also be obtained by contacting the superintendent of Navajo National Monument. The purpose of the meetings is to explain the planning process and to obtain comments concerning appropriate resource management; desired visitor use, interpretation, and facilities; and issues that need to be resolved. In addition to attending the scoping meetings, people wishing to provide input to this initial phase of developing the GMP may address comments to the superintendent. Scoping comments should be received no later that 60 days from the publication of this Notice of Intent.

FOR FURTHER INFORMATION: Contact Superintendent James Charles, Navajo National Monument, HC71, Box 3, Tonalea, AZ 86044–9704; Tel: (520) 672–2366; FAX: (520) 672–2345; e-mail: james__charles@nps.gov.

Dated: October 19, 1999.

Ronald E. Everhart,

Acting Director, Intermountain Region.

[FR Doc. 99–27971 Filed 10–26–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 16, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by November 12, 1999.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Lee County

Mixon—Evans Barn, 459 S. Alabama St. and US 1 Bus. S., Marianna, 99001349

Madison County

Bunch Store, 100 Public Sq., Kingston, 99001350

Sebastian County

New Theatre, 9 N. 10th St., Fort Smith, 99001351

Sevier County

Brookes, Bishop, House, 407 N. 6th St., DeQueen, 99001352

Stone County

Sylamore Creek Bridge (Historic Bridges of Arkansas MPS) Co. Rd. 283 over Sylamore Cr., Allison vicinity, 99001353

Union County

Dual State Monument, C. Rd. 86, Aurelle vicinity, 99001354

Van Buren County

Scanlan, Art, House, Rt. 1, W. of US 65, Bee Branch, 99001355

HAWAII

Hawaii County

Nanbu, A., Hotel—Holy's Bakery, Akoni Pule Hwy., Kapa'au, 99001356

ILLINOIS

Coles County

Fifteenth Street and Oklahoma Avenue Brick Street, 500 through 1217 Fifteenth St. and 1500 through 1521 Oklahoma Ave., Mattoon, 99001357

LOUISIANA

Orleans Parish

Gentilly Terrace Historic District, Roughly bounded by Spain, Mirabeau, Eastern, and Gentilly Blvd., New Orleans, 99001358

MISSISSIPPI

Hinds County

Lebanon Presbyterian Church, Lebanon Presbyterian Church Rd., Utica, 99001359

Holmes County

Noel, Gov. Edmund F., House, 315 North St., Lexington, 99001360

Jones County

G.W.O. Site, Address Restricted, Lanham vicinity, 99001361

MISSOURI

Andrew County

Roberts, J.F., Octagonal Barn, Jct. MO B and MO 48, Rea vicinity, 99001362

NEW JERSEY

Burlington County

St. Stephens Episcopal Church, 158 Warren St., Beverly City, 99001363

NEW YORK

Steuben County

Pulteney Square Historic District, Roughly surrounds Pulteney Sq., Hammondsport, 99001364

NORTH CAROLINA

Edgecombe County

Edgemont Historic District, 500–800 blocks of Tarboro St, 600–800 blocks of Hill St. and S. side of 600–800 blocks of Sycamore St., Rocky Mount, 99001365

Mecklenburg County

Billingsville School, 3100 Leroy St., Charlotte, 99001366

Nash County

Falls Road Historic District, 500–600 Avent St., 100–200 Braswell St., 100 Earl St., 400–700 Falls Rd., 500 Peachtree St. and 100 Wilkinson St., Rocky Mount, 99001367

Villa Place Historic District, 200–300 S. Grace St., 400–600 Hammond St., 200–300 Howell St., 400–600 Nash St., 200–300 Pearl St., 200–300 Villa St., Rocky Mount, 99001368

TENNESSEE

Gibson County

Skullbone Store, 1 Shade's Bridge Rd., Skullbone, 99001369

Shelby County

Overton Parkway Historic District (Residential Resources of Memphis MPS) Roughly bounded by Cooper St., East Parkway, Poplar and Madison Sts., Memphis, 99001370

Sullivan County

King, Edward Washington, House, 308 7th St., Bristol, 99001371

Williamson County

McLemore House, 447 11th Ave. N., Franklin, 99001372

Wilson County

Lebanon Commercial Historic District, Roughly around the Public Sq., and 104–124 N. College, 105–115 N. Cumberland, 102–203 E. Main, and 103–122 E. Market St., Lebanon, 99001373

VIRGINIA

Prince William County

Thoroughfare Gap Battlefield, Jct VA 55 and I–66, Broad Run vicinity, 99001374

Roanoake Independent City

Roanoke Star, Mill Mountain, Roanoke, 99001375

[FR Doc. 99–27972 Filed 10–26–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning Land Protection

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) is converting and updating its current system of internal policy instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public review and comment. Draft Director's Order #25, "Land Protection" provides guidance on protecting of lands and resources within the boundaries of NPS units.

DATES: Information from interested parties will be accepted on or before November 26, 1999.

ADDRESSES: Request for copies and written comments should be sent to Donald T. King, National Park Service, P.O. Box 908, Martinsburg, WV 25402–0908, (304)263–4943. You may also email (donald_t._king@nps.gov) your comments or requests.

FOR FURTHER INFORMATION CONTACT: Donald T. King at (304)263–4943.

Dated: October 22, 1999.

Gene Repoff,

Acting Chief, Land Resources Division, WASO.

[FR Doc. 99–28033 Filed 10–26–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on November 9, 1999 to discuss a Roundtable conflict of interest policy, an environmental water acquisition program, FY 2001 planning and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:00 p.m. on Tuesday, November 9, 1999.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together at CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State—Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balance plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advise to CALFED on the program mission, problems to be addressed and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 20, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–28001 Filed 10–26–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities Proposed Collection; Comment Request

ACTION: Notice of information collection under review; petition for alien relative.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the

Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 27, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–130. Office of Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on this form will be used to determine eligibility for benefits sought for relatives of United States citizens and lawful permanent residents.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 183,034 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 91,517 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–4–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestion regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suit 850, Washington Center Building, 1001 G Street, NW., Washington, DC 20530.

Dated: October 21, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28014 Filed 10–26–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Interagency record of individual requesting change/adjustment to or From A or G status or requesting A, G, or NATO dependent employment authorization.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 27, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Interagency Record of Individual Requesting Change/Adjustment to or From A or G Status or Requesting A, G, or NATO Dependent Employment Authorization.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–566. Office of Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. This form facilities processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by the Immigration and Naturalization Service and the Department of State.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,400 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestion regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center Building, 1001 G Street, NW., Washington, DC 20530.

Dated: October 21, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28015 Filed 10–26–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 20, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) of the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Study of Unemployment Insurance (UI) Exhaustees.

OMB Number: 1205–0NEW.

Frequency: Other (one-time).

Affected Public: Individuals or households; State, Local, or Tribal govt.

Active	Affected public	Respondents	Frequency	Hours per response	Total hours
State Administrative Request.	State	25	One-time	80 hrs.	2,000
UI Recipient Survey	UI Claimant	4,000	One-time	35 mins.	2,333

- Total Burden Hours: 4,333.
- Total Annualized capital/startup costs: $0.
- Total annual costs (operating/maintaining systems or purchasing services): $0.
- Description: Collection of administrative records and survey data is sought to support a study of UI exhaustees. Eighteen thousand administrative records of UI recipients would be collected from a sample of 25 States. A subsample of 4,000 recipients would be surveyed.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 99–28054 Filed 10–26–99; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

October 20, 1999.

TIME AND DATE: 10:00 a.m., Thursday, November 4, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Black Mesa Pipeline, Inc., Docket Nos. WEST 97–49, etc. (Issues include whether the judge erred in concluding that 30 CFR § 77.103 can be reasonably interpreted to permit the Secretary to recognize two levels of persons "qualified" to work on electrical equipment—those qualified to work on low/medium-voltage equipment and those qualified to work on high-voltage equipment.)

TIME AND DATE: 9:30 a.m., Thursday, November 18, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Consolidation Coal Co., Docket Nos. WEVA 93–77–R, etc. (Issues include whether the judge erred in concluding that the air quality requirements of 30 CFR § 75.301 did not apply to a production shaft that had been capped but not entirely sealed, and into which a dewatering pipe was being installed from the cap; and whether the violation was significant and substantial and occurred as a result of the operator's unwarrantable failure.)

TIME AND DATE: The Commission meeting will commence following the conclusion of oral argument in Consolidation Coal Co., Docket Nos. WEVA 97–77–R, etc., which commences at 9:30 a.m. on Thursday, November 18, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of a quorum of the Commission that the Commission consider and act upon the following in closed session:

1. Consolidation Coal Co., Docket Nos. WEVA 93–77–R, etc. (*See* oral argument listing, *supra*, for issues.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT Vol. 64, No. 189, at 52,797, September 30, 1999

PREVIOUSLY ANNOUNCED TIME AND DATE: 2:00 p.m., Thursday, October 28, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

CHANGES IN MEETING: The Commission has postponed the meeting to consider and act upon *Pero* v. *Cyprus Plateau Mining Corp.*, Docket No. WEST 97–154–D.

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. §§ 2606.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–28272 Filed 10–25–99 3:46 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 396, Certification of Medical Examination by Facility Licensee.

3. *The form number if applicable:* NRC Form 396.

4. *How often the collection is required:* Upon application for an initial operator license, every six years for the renewal of operator or senior operator license, and upon notices of disability.

5. *Who will be required or asked to report:* Facility employers of applicants for operator licenses.

6. *An estimate of the number of responses:* 1116.

7. *The estimated number of annual respondents:* 141.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 730 (244 for reporting [.25 hours per response] and 486 hours for recordkeeping [3.4 hours per recordkeeper]).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial or renewal operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licenses is such that the applicant would not be expected to cause operational errors endangering public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 26, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0024), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 20th day of October, 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–28051 Filed 10–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nucleare Regulatory Commission.

DATE: Weeks of October 25, November 1, 8, and 15, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 25

There are no meetings scheduled for the Week of October 25.

Week of November 1—Tentative

Thursday, November 4

9:25 a.m. Affirmation Session (Public Meeting) (if needed)
9:30 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of November 8—Tentative

Monday, November 8

1:30 p.m. Briefing on Integrated Review of Decommissioning Requirements (Public Meeting) (Contact: Stuart Richards, 301–415–1395)

Tuesday, November 9

9:00 a.m. Meeting on NRC Interactions with Stakeholders on Nuclear Materials and Waste Activities (Public Meeting) Place: NRC Auditorium, Two White Flint North

Wednesday, November 10

9:25 a.m. Affirmation Session (Public Meeting) (if needed)
9:30 a.m. Briefing on Draft Maintenance Regulatory Guide (Public Meeting) (Contact: Richard Correia, 301–415–1009)

Week of November 15—Tentative

Friday, November 19

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 4–0 on October 19, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Advanced Medical Systems, Inc. Petition for Review LBP–99–28" (PUBLIC MEETING) be held on October 20, and on less than one week's notice to the public.

ADDITIONAL INFORMATION: By a vote of 4–0 on October 19, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of North Atlantic Energy Service Corp. (Seabrook Station, Unit 1) and Northeast Nuclear Energy Co. (Millstone Station, Unit 3) Docket Nos 50–443–LT and 50–423–LT (Consolidated), Petitions to Intervene" (PUBLIC MEETING) be held on October 21, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: October. 22, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–28173 Filed 10–25–99; 1:01 pm]

BILLING CODE 7590–01–M

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Public Law 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held from 9 a.m. to 12 p.m. (PST) on Wednesday, November 17, 1999, at the Presidio Golden Gate Club, Fisher Loop, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purpose of this meeting is to consider the Vegetation Management Plan. Public comment on this topic will be received and memorialized in accordance with the Trust's Public Outreach Policy. A swearing in ceremony will take place for newly appointed and reappointed Board members.

TIME: The meeting will be held from 9 a.m. to 12 p.m. (PST) on Wednesday, November 17, 1999.

ADDRESSES: The meeting will be held at the Presidio Golden Gate Club, Fisher Loop, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: October 20, 1999.

Karen A. Cook,

General Counsel.

[FR Doc. 99–27998 Filed 10–26–99; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27092]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 21, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 15, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 15, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Dominion Resources Inc., ***et al.*** **(70–9477)**

Dominion Resources, Inc. ("DRI"), 120 Tredegar Street, Richmond, Virginia 23219, a Virginia corporation and public utility holding company exempt from registration under section 3(a)(1) and rule 2 under the Act, and Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, have filed an application-declaration in connection with a proposed merger between the two companies under sections 6(a), 7, 10 and 13(b) of the Act and rules 54, 87, 88, 90 and 91 under the Act.

DRI and CNG have entered into an amended and restated agreement and plan of merger ("Merger") dated as of May 11, 1999.[1] The Merger contemplates a two-step transaction. In the first step, a wholly owned subsidiary of DRI will merge ("First Merger") with and into DRI, in which DRI will be the surviving corporation.[2] In the second step, CNG will either merge ("Second Merger") (1) with and into another wholly owned subsidiary of DRI ("CNG Acquisition") in a transaction in which CNG Acquisition will be surviving corporation, or (2) with and into DRI in a transaction in which DRI will be the surviving corporation. The First Merger and Second Merger, are hereinafter referred to as the "Merger," are each conditioned on the other occurring. As a result of the Merger and other transactions contemplated by the Merger Agreement, either CNG Acquisition, as the successor in interest to CNG, will become a direct subsidiary of DRI or each of CNG's public utility subsidiaries will become direct subsidiaries of DRI.[3]

In the Merger, shareholders of both DRI and CNG will have the option to elect to receive either cash or DRI common stock in return for each of their DRI or CNG shares, as the case may be, subject to allocation and certain limitations. In exchange for each share of DRI common stock held, DRI shareholders will have the option to receive either $43.00 in cash or one share of DRI common stock. In either case, this option is subject to the limitation that the aggregate amount of cash to be distributed to DRI shareholders in the First Merger shall be equal to $1,251,055,526 (plus any cash paid for fractional shares).[4] In exchange for each share of CNG common stock held, CNG shareholders will have the option to receive either $66.60 in cash or shares of DRI common stock at an exchange rate, plus an amount in cash equal to 1.52 multiplied by the excess, if any, of $43.816 over the Average Price.[5] The CNG exchange ratio will be (1) $66.60 divided by the Average Price of DRI common stock, if the DRI Average Price is no less than $43.816 and (2) 1.52, if the DRI Average Price is less than $43.816. In either case, this option is subject to the proration so that 38,159,060 shares of CNG common stock (including any fractional shares exchanged for cash) will be converted into the right to receive cash in the Second Merger. However, DRI may reallocate the cash and shares of DRI commons stock to be received by CNG shareholders to follow more closely the actual elections of CNG shareholders as long as the reallocation does not affect the desired tax treatment of the Second Merger.

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[1] DRI, CNG, and their respective subsidiaries have also filed in S.E.C. file no. 70–9517 an application-declaration related to the financing of the proposed DRI registered holding company system and CNG's registered holding company system. A notice of that filing is being issued simultaneously with this notice.

[2] As part of their approval of the Merger, DRI shareholders approved an amendment to the DRI Articles of Incorporation to increase the authorized shares of common stock of DRI from 300 million to 500 million.

[3] CNG's public utility subsidiaries include: Virginia Natural Gas, Inc. ("VNG"), Hope Gas, Inc. ("Hope"), The Peoples Natural Gas Company ("Peoples"), and The East Ohio Gas Company ("East Ohio").

[4] Under the terms of the Merger, DRI has the right to increase this amount to $1,668,400,000.

Following the proposed Merger, current DRI shareholders will own approximately 65% of the combined company and current CNG shareholders will own approximately 35% of the combined company.

As a result of the Merger, the combined company will have *pro forma* 1998 assets of $28.0 billion as of March 31, 1999 and revenues of $8.8 billion for the year ended December 31, 1998. The combined company will also have an energy portfolio of approximately 20,000 MW of domestic power generation, 2.9 trillion cubic feet equivalent in natural gas and oil reserves producing nearly 300 billion cubic feet equivalent annually. It will operate a major interstate gas pipeline system and the largest natural gas storage system in North America with approximately 900 Bcfe of storage and will have approximately 5,000 miles of electric transmission lines. The combined company will be the eleventh largest independent oil and gas producer in the United States, measured by reserves.

Following completion of the Merger, DRI will register as a holding company with the Commission under section 5 of the Act and CNG may continue to register as a holding company with the Commission.

Parties to the Merger

DRI and Its Subsidiaries

DRI seeks authorization to retain its interest in its utility and nonutility business and to acquire and retain the interests of CNG's utility and nonutility business.

DRI is a diversified utility holding company[6] whose principal subsidiary is Virginia Electric and Power Company ("Virginia Power"),[7] an electric public utility company primarily engaged in the generation, transmission, distribution and sale of electric energy within a 30,000 square-mile area in Virginia and northeastern North Carolina.[8] Virginia Power operates nuclear, fossil fuel and hydroelectric generating units with an aggregate capability of 13,635 MW. It supplies energy at retail to approximately two million customers and sells electricity at wholesale to rural electric cooperatives, power marketers and certain municipalities. The Virginia service area represents 65% of Virginia's total land area and accounts for over 80% of its population. The North Carolina service area is comprised of retail customers located in the northeastern region of the state, excluding certain municipalities. Virginia Power also engages in off-system wholesale purchases and sales of electricity and purchases and sales of natural gas. In 1998, Virginia Power accounted for $4,285 million in revenues.

DRI's other major subsidiaries are Dominion Energy, Inc. ("DEI"), an independent power and natural gas subsidiary, and Dominion Capital, Inc. ("DCI"), a financial services company.[9] DRI also owns and operates a 365 MW natural gas fired generating facility in the United Kingdom.

DEI is primarily engaged in the competitive electric power generation business and in the development, exploration and operation of natural gas and oil reserves. DEI is involved in power projects in five states in Argentina, Bolivia, Belize and Peru.[10] Domestic power projects include the Kincaid Power Station, a 1,108 MW coal fired station in central Illinois; a 600 MW gas-fired peaking facility under construction in central Illinois; two geothermal projects and one solar project in California; three small hydroelectric projects in New York; a waste coal-fueled project in West Virginia and a waste wood and coal-fueled project in Maine. Additionally, DEI has interests in various generation and small power production facilities in the United States all of which are qualifying facilities ("QFs") as defined in the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), or exempt wholesale generators ("EWGs") as defined in section 32 under the Act. DEI is also involved in natural gas and oil development, exploration and production in Canada, the Appalachian Basin, the Michigan Basin, the Illinois Basin, the Black Warrior Basin, the Uinta Basin, the San Juan Basin and owns proven oil and natural gas reserves of approximately 1.2 trillion cubic feet of natural gas equivalent. DEI, through its subsidiaries, is involved in the wholesale aggregation, marketing and trading of natural gas and storage capacity positions, on behalf of DEI and third parties. In 1998, DEI accounted for $383 million in revenues.

DCI is a diversified financial services holding company with several subsidiaries in the commercial lending, merchant banking and residential lending business.[11] Its principal subsidiaries are First Source Financial, LLP, First dominion Capital LLC, Saxon Mortgage, Inc. and Stanton Associates, Inc. DCI also owns a 46% interest in Cambrian Capital LLP. First Source Financial provides cash-flow and asset-based financing to middle-market companies seeking to expand, recapitalize or undertake buyouts. First Dominion Capital is an integrated merchant banking and asset management business. Saxon Mortgage and its affiliates originate and securitize home equity and mortgage loans to individuals. Cambrian Capital provides financing to small and mid-sized independent oil and natural gas producers undertaking acquisitions, refinancings and expansions. Stanton

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[5] Average Price is defined as the average market price of DRI common stock over a twenty consecutive day trading period ending on the tenth business day before the closing.

[6] At December 31, 1998, DRI and its subsidiaries had 11,033 full time employees.

[7] The term "Virginia Power" refers to the entirety of Virginia Electric and Power Company, including its Virginia and North Carolina operations and all of its subsidiaries. In Virginia it trades under the name "Virginia Power" and in North Carolina it trádes under the name "North Carolina Power."

[8] Virginia Power has made investments in some nonutility business and supports the investment and financing needs of its subsidiaries on a stand-alone basis.

[9] DRI states that it will divest its interest in DCI and DCI's subsidiary companies within three years following completion of the Merger.

[10] International power projects include a hydroelectric and a gas-fired project in Argentina, two hydroelectric projects in Bolivia, a run-of-river hydroelectric project in Belize, and two hydroelectric and six diesel oil-fueled projects in Peru.

[11] DCI's financial activities include providing commercial finance through senior secured loans, unsecured or subordinated debt or mezzanine investments, bridge loans and equity investments. Senior secured loans have a first priority lien on all assets which includes, but is not limited to, accounts receivable, inventory, real and personal property, equipment, trademarks, and copyrights. Corporate finance activities include underwriting and syndication of debt and equity instruments and debt and equity securities, managing assets for third parties and broker-dealer operations. Consumer finance comprises origination, purchase, securitization and servicing of mortgages. Other operations include investments in real estate, a lease in a hydroelectric facility, venture capital and a portfolio of preferred and equity securities.

Associates, Inc. engages in real estate investment and management.

DRI, either directly or indirectly is also involved in the following business activities: oil and natural gas exploration and development, both domestically and internationally, transportation and processing of natural gas and the manufacture and sale of equipment used in connection therewith, energy marketing and brokering, telecommunications, real estate activities, energy lending, and debt and equity financing to commercial businesses and consumers. DRI, through DCI, also holds minority interests in various other businesses, of which the aggregate amount of investments made by DCI at March 31, 1999, was $176 million. In 1998, DCI accounted for $409 million in revenues.

CNG and Its Subsidiaries

CNG is engaged solely in the business of owning and holding all of the outstanding equity securities of nineteen directly owned subsidiary companies. CNG and its subsidiaries are engaged in all phases of the natural gas business including: distribution, transmission, storage, exploration and production.

VNG, Hope, Peoples and East Ohio are the four public utility subsidiaries of CNG. Principal cities served on a retail basis include: Cleveland, Akron, Youngstown, Canton, Warren, Lima, Ashtabula and Marietta in Ohio; Pittsburgh (a portion), Altoona and Johnstown in Pennsylvania; Norfolk, Newport News, Virginia Beach, Chesapeake, Hampton and Williamsburg in Virginia; and Clarksburg and Parkersburg in West Virginia. CNG serves approximately two million residential, commercial and industrial gas sales and transportation to retail customers.

CNG Transmission Corporation operates a regional interstate pipeline system and provides gas transportation and storage services to each of CNG's public utility subsidiaries and to non-affiliated utilities, end-users and others in the Midwest, the mid-Atlantic states and the Northeast. Through its wholly owned subsidiary, CNG Iroquois, Inc., CNG Transmission Corporation holds a 16% general partnership interest in the Iroquois Gas Transmission System, L.P., which owns and operates an interstate natural gas pipeline extending from the Canada United States border near Iroquois, Ontario, to Long island, New York. The Iroquois pipeline transports Canadian gas to utility and power generation customers in metropolitan New York and New England.

CNG Producing Company is CNG's exploration and production subsidiary. Its activities are conducted primarily in the Gulf of Mexico, the southern and western United States, the Appalachian region, and in Canada.

CNG Retail Services Corporation markets natural gas, electricity and related products and services to residential, commercial and small industrial customers. CNG Products and Services, Inc. also provides energy-related services to customers of CNG's local distribution subsidiaries and others.

CNG International Corporation invests in foreign energy activities. CNG International Corporation currently owns interests in natural gas pipeline companies in Australia, and gas and electric utility companies in Argentina.

Establishment of a Service Company and Service Agreement

DRI intends to establish a new direct subsidiary service company, DRI Services, which will assume from DRI all of the service functions currently performed for affiliates of DRI and all employees performing those functions will become employees of DRI Services.[12]

It is contemplated that as a result of the Merger, some centralization of service functions will occur. Initially, DRI and CNG proposed to commence their combined operations with two subsidiary service companies. Upon closing of the Merger, DRI Services and other DRI affiliates will enter into a new single systemwide Service Agreement with CNG, CNG Services and other subsidiaries of CNG. The new agreement will be modeled after the current service agreement in effect for the CNG system.[13] The combined company will operate with two service companies, and each DRI–CNG affiliate will have the opportunity to elect to purchase services from either company.

Over time it is anticipated that the provision of services within the combined DRI–CNG system will be rationalized. However, in the interim, DRI and CNG each seek authorization to engaged, through their respective service companies, the following service activities: accounting, auditing, legal and regulatory services, information technology, electronic transmission and computer services, software pooling, employee benefits and pension investment, employee relations, operations, executive and administrative services, business and operations services, exploration and development services, risk management, marketing, medical services, corporate planning, purchasing, rate structure analysis, research, tax services, corporate secretary services, and investor relations.

Following completion of the Merger, DRI states that all services will be provided to system companies in compliance with all applicable provisions of the Act, including section 13(b) and rules 90 and 91 under the Act. DRI does, however, request and exemption from the at-cost standard of section 13(b) of the Act and rules 90 and 91 under the Act in one or more of the following situations: (1) to permit Virginia Power to continue to provide services to exempt nonutility associate companies which are subject to the Virginia State Corporation Commission's 1986 settlement order; and (2) to permit Virginia Power to provide future service arrangements to exempt nonutility associate companies within the DRI–CNG system. Exempt nonutility associate companies are defined as: (1) FUCOs and EWGs which do not derive any part of their income either directly or indirectly, from the generation and sale of electric energy within the United States; (2) EWGs which sell electricity at market based rates that have been approved by the Federal Energy Regulatory Commission ("FERC") or relevant state public utility commission, provided that the purchaser is not an electric utility company affiliate of DRI; (3) a QF that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, or to an electric utility company that is not a DRI affiliate company at the purchaser's "avoided cost" as determined under the regulations under PURPA; and (4) an EWG or QF that sells electricity based upon its cost of service, as approved by the FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an electric utility company affiliate of DRI.

Dominion Resources, Inc. (70–9517)

Dominion Resources, Inc. ("DRI"), 120 Tredgar Street, Richmond, Virginia 23219, a Virginia corporation and holding company exempt from registration under section 3(a)(1) of the Act and rule 2, has filed an application-declaration under sections 6(a), 7, 9,(a),

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[12] Initially, DRI Services will issue 100 shares of common stock, no par value, all of which will be subscribed to DRI at $1 per share.

[13] On August 26, 1966 (Holding Co. Act Release No. 15548), the Commission authorized formation of CNG's service company. Several amendments to the service agreement have been approved by the Commission under "60-day letter proceedings."

10, 12(b) of the Act and rules 42, 45, 53 and 54 under the Act.

This application-declaration is submitted in connection with DRI's proposed acquisition of Consolidated Natural Gas Company ("CNG"), a Delaware corporation and registered holding company ("Merger") (S.E.C. file No. 70–9477). As result of the Merger and other related transactions, either (1) CNG Acquisition, as the successor in interest to CNG, will become a direct subsidiary of DRI or (2) each of CNG's four public utility subsidiaries will become direct subsidiaries of DRI. Following completion of the Merger, DRI will register as a holding company with the Commission under section 5 of the Act.

To effectuate the merger,[14] shareholders of DRI will have the option to receive either $43.00 in cash or one share of DRI common stock in exchange for each share of DRI common stock held, subject to certain cash distribution limitations. Shareholders of CNG common stock will have the option to receive either $66.60 in cash or shares of DRI common stock in exchange for each share of CNG common stock held, subject to certain cash distribution limitations.

Applicants seek authority for: (1) DRI to issue common stock of DRI to shareholders of CNG in connection with the Merger; (2) DRI to issue additional equity, preferred and/or debt securities for general corporate purposes for the period from and after the Merger through the second anniversary of the effectiveness of the Merger ("Authorization Date"); (3) DRI and its subsidiaries, including CNG, to maintain in effect for the period from and after the Merger through the Authorization Date, all existing credit facilities and financing arrangements and to maintain outstanding all indebtedness and similar obligations created thereunder as of the date of the closing of the Merger (including, without limitation, any facilities, financing arrangements, indebtedness or similar obligations incurred in connection with or to finance the Merger) and to amend, renew, extend and/or replace any of these credit facilities, financing arrangements, indebtedness or similar obligations up to the aggregate dollar amounts specified below, provided that no amendment, renewal, extension and/or replacement which is effected following completion of the Merger shall provide for an increase in the aggregate amount of indebtedness which occurs after the Authorization Date, unless otherwise approved by the Commission; (4) DRI and its subsidiaries, including CNG, to incur additional indebtedness and similar obligations including guarantees and other credit support; and (5) DRI to issue up to 45.5 million shares of common stock under dividend reinvestment and stock-based management incentive and employee benefit plans.

Issuance of Securities and Incurrence of Indebtedness

Shareholders of DRI and CNG will, in connection with the Merger, be given the option to receive either cash or shares of DRI common stock in exchange for each share of DRI or CNG common stock held, subject to limitations on the aggregate amount of cash that may be distributed in connection with Merger. Accordingly, indebtedness will be incurred to finance cash payments to DRI and CNG shareholders in connection with the Merger. DRI anticipates that approximately $4.5 billion will be required to finance the cash portion of the Merger. Of this amount, $1 billion will be obtained through equity securities or securities convertible into equity securities and the remaining financing will be obtained through debt securities with a maturity not to exceed 50 years and an interest rate not in excess of 500 basis points over the comparable London Interbank Offered Rate ("LIBOR").

DRI anticipates that cash will initially be obtained through the issuance of commercial paper under an expanded DRI commercial paper program backed by a combination of short-term and long-term credit facilities similar to the types of credit facilities that DRI currently has in place. After closing of the Merger, DRI anticipates replacing a significant portion of the commercial paper program with proceeds from (1) the issuance of debt, preferred and/or convertible securities, (2) divestiture of DRI's financial serves subsidiary, Dominion Capital, Inc. ("DCI"), and (3) the sale of other non-core assets.[15]

At present, DRI has established various financing arrangements with respect to its equity, preferred and debt securities ("Securities").[16] DRI has entered into various credit facilities with outside lenders, has issued debt securities, and has guaranteed or otherwise supported the obligations of its nonutility subsidiaries. DRI seeks authorization to maintain its, and CNG's, existing financing arrangements and other commitments through the Authorization Date.[17]

DRI proposes through the Authorization Date to issue equity, preferred and/or debt securities including, without limitation, for the purpose of refinancing indebtedness incurred to finance the cash component of the consideration to be paid to DRI and CNG shareholders in connection with the Merger. DRI seeks authorization to issue the above-mentioned securities provided that the aggregate principal amount of the proceeds not exceed $1.5 billion and provided that the cost of money with respect to these securities shall not exceed 500 basis points over LIBOR.[18]

In addition to the Securities, DRI proposes to issue other securities ("Other Securities"). DRI currently maintains in effect the following credit and financing facilities:

(1) DRI sells commercial paper in regional and national markets. Proceeds of commercial paper issuances are used for general corporate purposes and are made available to DRI's nonutility subsidiaries under intercompany credit agreements. DRI's nonutility subsidiaries repay these financings through cash flows and proceeds of permanent financings. DRI's commercial paper is supported by bank lines of credit maintained by DRI. At December 31, 1998, the aggregate outstanding maximum face amount of DRI commercial paper was $3.1 million.

(2) DRI has entered into an Amended and Restated Credit Agreement dated April 3, 1996 and amended by the First Amendment dated April 2, 1997 ("DRI Credit Agreement"), among DRI, the lenders identified, and NationsBank,

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[14] The Merger transaction is more fully described in File No. 70–9477, which has been noticed contemporaneously.

[15] DRI states that it will divest its interest in DCI and DCI's subsidiary companies within three years following completion of the Merger.

[16] DRI filed a universal shelf registration with the Commission on September 12, 1997 (Registration No. 333–35501). The shelf registration covers equity, preferred and debt securities and allows DRI to issue any one or more of the foregoing types of securities provided that the aggregate principal amount of proceeds of securities issuances that may be obtained does not exceed $950 million. As of the date of the application-declaration, DRI issued common stock under the universal shelf registration and derived $275 million of proceeds from the issuance.

[17] By order dated March 28, 1996 (Holding Co. Act Release No. 26500) ("Omnibus Order"), CNG was authorized to engage in various financing and related transactions through March 31, 2001.

[18] The dividends payable on preferred stock and the interest rate and maturity of debt securities which may be issued under this authorization will be determined at the time of issuance and will not exceed those generally obtainable at the time of issuance for securities having the same or reasonably similar maturities, terms, conditions and features issued by utility companies or utility holding companies of reasonably comparable credit quality.

N.A., as agent for the lenders, under which the lenders have agreed to make loans to DRI in an aggregate principal amount not to exceed $300 million at any one time outstanding. Proceeds of the loans may be used for general corporate purposes and to support commercial paper. The commitment of the lenders under the DRI Credit Agreement will expire on April 3, 2002 if not canceled or terminated.

(3) DRI has entered into a Second Amended and Restated Short-Term Credit Agreement dated March 31, 1999 ("DRI Short-Term Credit Agreement"), among DRI, the lenders identified, and NationsBank, N.A., as administrative agent for the lenders, under which the lenders have, subject to the terms and conditions set forth in the DRI Short-Term Credit Agreement, agreed to make loans to DRI in an aggregate principal amount not to exceed $300 million at any one time outstanding. Proceeds of loans may be used for general corporate purposes and to support commercial paper. The commitment of the lenders under the DRI Short-Term Credit Agreement will expire 364 days after the date thereof if not canceled or terminated.

(4) DRI has in place an Indenture dated as of December 1, 1997 ("DRI Indenture") between DRI and The Chase Manhattan Bank under which DRI may, subject to the terms and conditions set forth in the DRI Indenture, issue an unlimited amount of Junior Subordinated Debentures in one or more series. As of the date of this application-declaration, DRI has entered into a First Supplemental Indenture dated December 1, 1997 with The Chase Manhattan Bank under which DRI has issued $257.7 million aggregate principal amount of 7.83% Junior Subordinated Debentures to Dominion Resources Capital Trust I, which has in turn issued $250 million aggregate principal amount of Capital Securities to investors. Proceeds of the issuance of the Capital Securities by Dominion Resources Capital Trust I are used solely to acquire Junior Subordinated Debentures. Payments on account of the Junior Subordinated Debentures are used by Dominion Resources Capital Trust I to make payments on account of the Capital Securities. Proceeds of the issuance of the Junior Subordinated Debentures are used by DRI for general corporate purposes including debt repayment. Amounts in respect of the Capital Securities are guaranteed by DRI under the Capital Securities Guarantee Agreement dated as of December 8, 1997 between DRI and The Chase Manhattan Bank, as guarantee trustee, and the New Capital Securities Guarantee Agreement dated as of June 18, 1998 between DRI and The Chase Manhattan Bank, as guarantee trustee.

(5) DRI has entered into a five-year End Loaded Lease Financing ("ELLF") as of September 9, 1998. The ELLF is structured as an off-balance sheet financing with a single purpose grantor trust, the lessor, formed to purchase, improve and own certain assets which are then leased to DRI. The lease structure is designed to permit DRI to finance the assets on an off-balance sheet basis while allowing DRI to maintain control of the property and retain the benefits of ownership for tax purposes. The assets which are financed under the ELLF include an office building and two aircraft. Payments made by DRI under this leasing arrangement are intended to cover the periodic interest and principal payments required to be made by the lessor which has financed its acquisition of the lease assets. The estimated aggregate amount of lease payment that DRI is required to make under the lease are $12.5 million.

(6) DRI has issued a note in the face amount of $28.4 million due in 2008 which bears interest at a rate of 9.25% per year. As of December 31, 1998, the principal balance outstanding of the note was $18.6 million.

(7) DRI has also entered into a Guarantee Agreement dated as of October 30, 1998 in favor of Bayerische Landesbank Girozentrale in connection with the Pounds Sterling 33,500,000 Committed Multi-Currency Revolving Advances Facility dated as of October 30, 1998 between DR Group Holdings, a special purpose financing subsidiary company organized under the laws of the United Kingdom, and Bayerische Landesbank Girozentrale.

DRI requests Commission authorization to maintain outstanding the Other Securities which currently total approximately $955.31 million. DRI further requests authorization to issue additional other securities ("Additional Other Securities") with financing arrangements similar to those described above in paragraphs (1) through (7), through the Authorization Date, provided that the additional aggregate principal amount of the Additional Other Securities shall not exceed $250 million, the cost of money shall not exceed 500 basis points above LIBOR and the final maturity date of the Additional Other Securities shall not exceed 50 years.

Guarantees and Other Credit Support

As of December 31, 1998, Dominion Energy, Inc. ("DEI"), a nonutility subsidiary of DRI,[19] had paid-in-capital from equity investments made by DRI of $456.4 million. DRI has entered into an Intercompany Credit Agreement dated as of August 31, 1987 between DRI and DEI under which DEI may, subject to the terms and conditions of the Intercompany Credit Agreement, borrow up to $350 million aggregate principal amount at any one time outstanding from DRI. Proceeds from borrowings may be used by DEI for general corporate and working capital purposes. As of the date of this application-declaration, DRI has guaranteed $122.312 million aggregate principal amount of payment obligations of DEI and its subsidiaries.

DEI has also entered into an engagement letter dated July 13, 1999 with Bank of America Leasing and Capital Group, an affiliate of NationsBank, with respect to a $825 million lease financing for the construction and lease of ten to fourteen new gas-fired turbines and associated equipment to be installed at various new power generation facilities currently under development by DEI.[20] The terms of the engagement letter require that DRI guarantee the obligations of the lessee under the lease financing documents.

DRI requests authorization to maintain in place the above guarantee and other credit support arrangements, which total approximately $947.312 million through the Authorization Date. In addition, DRI proposes, through the Authorization Date, to provide additional guarantees or other credit support for DEI and it subsidiaries up to an aggregate principal amount of $1.5 billion.

As of December 31, 1998, DCI had paid-in-capital from equity investments made by DRI of $593.5 million. As of the date of this application-declaration, except as described below, DRI has not entered into any capital contribution agreement or similar arrangement which expressly requires DRI to make additional cash capital contributions to DCI or any of the other DCI Companies. As of the date of this application-declaration, DRI has entered into an Intercompany Credit Agreement dated as of December 20, 1985 between DRI and DCI under which DCI may, subject to the terms and conditions of the Intercompany Credit Agreement, borrow up to $250 million aggregate principal amount at any one time outstanding from DRI. Proceeds of borrowings by DCI may be used for general corporate and working capital purposes.

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[19] DEI has interests in various generation and small power production facilities in the United States, all of which are qualifying facilities (QFs") as defined in the Public Utility Regulatory Policies Act of 1978, as amended, or exempt wholesale generators ("EWGs") as defined in section 32 of the Act.

[20] It is anticipated the generation facilities will be "eligible facilities" within the meaning of section 32(a)(2) of the Act and their owners will qualify as EWGs.

As of the date of this application-declaration, DRI has guaranteed $47.5 million aggregate principal amount of payment obligations of DCI and its subsidiaries and has provided liquidity support under the following agreements:

(1) Guaranty Agreement dated as of May 13, 1996 by DRI in favor of DYNEX Capital, Inc. (formerly Resource Mortgage Capital, Inc.). The Guaranty was given in connection with a $47.5 million promissory note made by Dominion Mortgage Services, Inc., an indirect wholly owned subsidiary of DRI.

(2) Support Agreement dated as of February 5, 1999 made by DRI in favor of DCI in connection with the implementation of a $400 million commercial paper financing program by DCI. The Support Agreement requires DRI to maintain 100% ownership of DCI voting stock, to maintain a net worth $100 million for DCI and to provide liquidity support for DCI.

DRI requests authorization to maintain in place the foregoing guarantees and other credit support arrangements for the benefit of DCI. DRI further requests through the Authorization Date, to provide additional guarantees or other credit support for DCI and its subsidiaries up to an aggregate principal amount of $1.6 billion.

Incentive Compensation Plans and Employee Benefit Plans

DRI maintains a direct stock purchase plan ("Dominion Direct") with a dividend reinvestment feature, incentive compensation plans,[21] and other employee benefit plans. Following the Merger, Dominion Direct, DRI's incentive compensation plans, and other employee benefit plans will remain in effect.

CNG maintains a dividend reinvestment plan ("CNG DRIP"). DRI proposes, following consummation of the Merger, to terminate the CNG DRIP. CNG also maintains several stock incentive plans. Following consummation of the Merger, DRI proposes to compensate plan participants for all benefits, grants of awards, and options with an appropriate amount of cash. CNG also maintains employee benefit plans. DRI proposes that following consummation of the Merger, that the employee benefit plans be either maintained, modified to provide for the issuance of DRI common stock in lieu of CNG common stock, or terminated.

CNG and Its Subsidiaries

By Commission order dated March 28, 1996, (Holding Co. Act Release No. 26500) ("Omnibus Order"), CNG was authorized to engage in various financing and related transactions through March 31, 2001. The Omnibus Order allows CNG financing if CNG meets the following conditions: (1) CNG's long-term debt must be rated investment grade by at least one nationally recognized statistical rating organization; (2) CNG's common equity, as reflected in its most recent Form 10–K or Form 10–Q an as adjusted to reflect subsequent events that affect capitalization, will be at least 30% of consolidated capitalization; (3) the effective cost of money for debt may not exceed 300 basis points over the interest rate on United States Treasury securities of a comparable term; (4) the effective cost of money for preferred stock and other fixed securities may not exceed 500 basis points over the interest rate on 30-year United States Treasury securities; (5) the maturity of debt may not be more than 50 years; (6) issuance expenses in connection with an offering of securities, including any underwriting fees, commissions or other similar compensation, may not exceed 5% of the total amount of securities being issued; (7) proceeds of the proposed financing may not be used to invest in an EWG or a FUCO; (8) at the time of each financing transaction, CNG must be in compliance with the requirements of rule 53 under the Act; and (9) proceeds of the proposed financing by subsidiaries of CNG must be used only in connection with their respective existing businesses.

Under the Omnibus Order CNG may issue and sell common stock, preferred stock, short-term debt, long-term debt and other securities from time to time through March 31, 2001, provided that the aggregate amount of short-term and revolving debt outstanding at any one time and the aggregate amount of common stock, preferred stock, long-term debt and other securities issued during the period shall not exceed $7 billion. All sales and issuances of common stock, short-term debt and long-term debt by CNG subsequent to March 28, 1996 have occurred under the Omnibus Order.

CNG issues and sells commercial paper under the Omnibus Order to dealers at the discount rate prevailing at the date of issuance for comparable commercial paper. The dealers reoffer this commercial paper at a discount to investors. The amount of commercial paper outstanding at any one time varies according to the seasonal working capital needs of CNG. There was $558.9 million principal amount of CNG commercial paper outstanding on December 31, 1998.

Currently outstanding under the Omnibus Order is a credit agreement dated as of June 27, 1997 ("CNG Credit Agreement"), among CNG and several banks with The Chase Manhattan Bank, as agent. The CNG Credit Agreement provides a line of credit of up to $775 million as back-up for commercial paper. No loans are currently outstanding under the Credit Agreement.

As of December 31, 1998, CNG had an aggregate of $1,392,875 principal amount of senior debentures outstanding (excluding current maturities). Of this amount, $950 million principal amount were issued under an Indenture, dated as of April 1, 1995, between CNG and United States Trust Company of New York, as trustee. The remaining $442,875,000 principal amount was issued under an Indenture, dated as of May 1, 1971, between CNG and The Chase Manhattan Bank, as successor trustee.

CNG, and certain of its subsidiaries, are authorized under the Omnibus Order to enter into guarantee arrangements, obtain letters of credit and otherwise provide credit support with respect to the obligations of its subsidiaries. The aggregate amount of all these arrangements cannot exceed $2 billion. Approximately $169.3 million in guarantees is currently outstanding.

DRI proposes to make the following modifications to the Omnibus Order: (1) that the term of the Omnibus Order be extended through the Authorization Date; (2) that the amount of financing permitted under the Omnibus Order, as extended, be increased from $7 billion to $10 billion; (3) that the aggregate amount of guarantees and credit support that may be given by CNG and its subsidiaries be increased from $2 billion to $3 billion; and (4) that CNG be authorized to give guarantees and other credit support for the benefit of any of its direct and indirect subsidiaries as needed to support the subsidiary's normal course of business.

There are also several individual outstanding authorizations granted to CNG system companies under the Act in addition to the Omnibus Order.

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[21] Performance grants, restricted stock awards, goal-based stock awards, stock options and stock appreciation rights may be granted under the DRI incentive compensation plans.

(1) CNG Money Pool. By orders dated June 12 and July 16, 1986 (Holding Co. Act Release Nos. 24128 and 24150, respectively), as amended by orders dated May 27, 1987 (Holding Co. Act Release No. 24399), February 14, 1990 (Holding Co. Act Release No. 25040), May 13, 1991 (Holding Co. Act Release No. 25311), April 8, 1994 (Holding Co. Act Release No. 26021), and July 18, 1997 (Holding Co. Act Release No. 26742), the Commission authorized the establishment and operation of the Consolidated System Money Pool.

(2) Iroquois Pipeline. By orders dated January 9, 1991, February 28, 1991, May 7, 1991, July 6, 1993, and September 12, 1996 (Holding Co. Act Release Nos. 25239, 25263, 25308, 25845 and 26571, respectively), the Commission authorized CNG Transmission Corporation ("CNGT") to provide financing to its wholly owned subsidiary, CNG Iroquois, Inc. ("CNGI"), for use relating to CNGI's 16% general partnership interest in Iroquois Gas Transmission System L.P. ("Iroquois"). The interstate pipeline owned by Iroquois was completed in 1992. Financing of CNGT's interest in Iroquois was accomplished through the purchase by CNGT of common stock of CNGI. Related authorizations concerning credit support expire on June 30, 2001.

(3) Hub Market Center. By order dated October 21, 1994 (Holding Co. Act Release No. 26148), the Commission authorized CNG to provide its subsidiary, CNG Power Company ("CNG Power") with up to $2 million in financing to be used by CNG Power to invest in its special purpose wholly owned subsidiary, CNG Market Center Services, Inc. ("CNGMC"). Financing can be provided by CNG through the purchase of CNG Power common stock, the making of open account advances, long-term loans to CNG Power, or any combination thereof. The authorization expires on July 1, 2004.

(4) Energy Related Services. By orders dated August 28, 1995 and August 27, 1997 (Holding Co. Act Release Nos. 26363 and 26757, respectively), the Commission authorized CNG Products and Services, Inc. ("CNGP&S") to engage in the business of providing several categories of energy-related services to customers of CNG's local distribution companies and to others, primarily customers of utilities not affiliated with CNG. CNG was authorized to provide CNGP&S with up to $10 million of financing through the sale of debt and common stock to its immediate parent, or through the obtaining of open account advances from its parent. The authorization expires on December 31, 2000.

(5) Partnerships. By orders dated July 26, 1995 and December 30, 1997 (Holding Co. Act Release Nos. 26341 and 26807, respectively), the Commission authorized a former wholly owned subsidiary of CNG, CNG Energy Services Corporation ("Energy Services"), to acquire ownership interests with nonaffiliates in projects that involve gas-related activities. The dollar limit on these investments is $200 million. Under this authorization, Energy Services formed CNG Main Pass Gas Gathering Corporation and CNG Main Pass Oil Gathering System. In connection with the sale of Energy Services to an unaffiliated third party, ownership in these two companies was transferred to CNG, and the authority to form partnerships with nonaffiliates without prior Commission approval was transferred to CNG Producing Company. This authorization expires on December 31, 2002.

(6) Power Services Guarantees. By order dated August 2, 1996 (Holding Co. Act Release No. 26551), the Commission authorized CNG to issue parent guarantees up to an aggregate of $250 million on behalf of its wholly owned subsidiary, CNG Power Services Corporation ("CNG Power Services"). CNG Power Services is engaged in the purchase and sale of electricity at wholesale. The authorization expires on March 13, 2001.

(7) Energy Marketing. By order dated January 15, 1997 (Holding Co. Act Release No. 26652), the Commission authorized Energy Services to invest up to $250 million to expand its business to market electricity and other energy commodities and to engage in fuel management and other incidental related activities. Energy Services was authorized to acquire interests in other entities, including corporations, partnerships, limited liability companies, and joint ventures. CNG Retail Corporation was formed on January 30, 1997 under the order to engage in the business of selling natural gas, electricity and other products at retail. On July 29, 1998 (Holding Co. Act Release No. 26900), CNG Retail Corporation became a direct subsidiary of CNG and succeeded to the authorizations and reporting obligations under the order subsequent to the sale of Energy Services by CNG to an unaffiliated party. The authorization expires on December 31, 2001.

(8) CNG International. By order dated May 30, 1996 (Holding Co. Act Release No. 26523), the Commission authorized CNG to form CNG International Corporation ("CNG International"), to acquire directly or through intermediary companies interests in foreign EWGs and FUCOs. The order also authorized CNG to provide CNG International up to $300 million credit support with respect to its investments. Jurisdiction was retained over CNG's request to invest up to $300 million in certain foreign energy activities including foreign gas pipelines. By supplemental order dated October 25, 1996 (Holding Co. Act Release No. 26595), the Commission released jurisdiction over proposed investments of up to an aggregate of $75 million in two gas pipelines, one in Bolivia and the other in Argentina. No direct investment was made by CNG International under this authorization, and the authorization is regarded as having lapsed. By supplemental order dated November 19, 1996 (Holding Co. Act Release No. 26608), the Commission released jurisdiction over a proposed investment of up to $75 million in three gas pipelines in Australia. Approximately $38.8 million was invested in these projects in late 1996. As a result of these transactions, CNG International now indirectly holds a 30% ownership interest in Epic Energy Pty Ltd., an Australian company. By supplemental order dated February 12, 1998 (Holding Co. Act Release No. 26824), the Commission released jurisdiction over a proposed investment of up to $165 million by CNG International in the Alinta gas pipeline in Western Australia. In March 1998, CNG International paid approximately $143.2 million to acquire its 33% equity interest in the pipeline, through intermediate companies including Epic Energy Australia Trust. By supplemental order dated April 9, 1999 (Holding Co. Act Release No. 27002), the Commission released jurisdiction over a proposed investment of up to $100 million by CNG International in a gas pipeline being privatized by the state of Victoria, Australia. CNG International was not the winning bidder for the pipeline, and no investment will be made under this authorization.

DRI requests Commission authorization to maintain in effect the above described CNG financing arrangements and to extend through the Authorization Date, all of the above described authorizations which are stated to expire prior to December 31, 2002.

Energy East Corporation, *et al.* (70–9545)

Energy East Corporation ("Energy East"), a New York corporation and a public utility holding company exempt from registration under section 3(a)(1) of the Act from all provisions of the Act, except section 9(a)(2), and Merger Co., a Connecticut corporation wholly owned by Energy East which is not currently subject to the Act, c/o Energy East, each at P.O. Box 1196, Stamford, Connecticut 06904, seek an order under sections 9(a)(2) and 10 of the Act authorizing them to acquire all of the issued and outstanding common stock of Connecticut Energy Corporation ("Connecticut Energy"), a Connecticut corporation and a public utility holding company exempt from registration under section 3(a)(1) of the Act from all provisions of the Act, except section 9(a)(2). Energy East and Merger Co. also request exemptions under section 3(a)(1) from all provisions of the Act, except section 9(a)(2), upon consummation of the proposed transaction.

Energy East is an exempt holding company by order of the Commission.[22] Energy East's principal subsidiaries are New York State Electric & Gas Corporation ("NYSEG"), a combined gas and electric public utility company, and Energy East Enterprises, Inc. ("Enterprises"), a non utility company which is also a public utility holding company by virtue of its ownership of a majority of the voting securities of CMP Natural Gas, L.L.C. ("Maine GasCO"), a gas public utility company.

NYSEG, a New York corporation, is engaged in generating,[23] purchasing, transmitting, and distributing electricity, and purchasing, transporting, and distributing natural gas. NYSEG's electric service territory covers about 19,900 square miles and NYSEG's natural gas service territory covers about 6,594 square miles, both in the central, eastern, and western parts of the State of New York. NYSEG serves about 826,000 electric customers and about 244,000 natural gas customers. NYSEG's retail electric and gas service, among other things, is regulated by the Public Service Commission of the State of New York ("NYPSC"), and its wholesale sales of electricity are regulated by the Fedora Energy Regulatory Commission ("FERC").

Enterprises, a wholly owned subsidiary of Energy East, is an exempt holding company by order of the Commission.[24] Enterprises owns natural gas and propane air distribution companies including a majority of the voting securities of Maine Gas Co. Enterprises' nonutility subsidiaries are: New Hampshire Gas Corporation, an energy services company in New Hampshire specializing in propane air distribution systems; Southern Vermont Natural Gas Corporation, which is developing a combined natural gas supply and distribution project that includes an extension of a pipeline from New York to Vermont and the development of natural GS distribution systems in Vermont; and Seneca Lake Storage, Inc., which proposes to own and operate a gas storage facility in New York.

Maine GasCo, a Maine corporation, is an emerging gas utility company which began providing service to retail customers in May 1999. Maine GasCo is in the process to constructing a local natural gas distribution system in the State of Maine.

Energy East also owns several non-utility subsidiaries, including: (1) Enterprises, which, besides serving as Main GasCo's parent, owns natural gas and propane air distribution companies; (2) XENERGY Enterprises; Inc., which provides energy and telecommunications services and owns several nonutility subsidiary companies; (3) Energy East Management Corporation, which invests the proceeds of the sale of NGE Generation, Inc.'s generation assets; (4) Oak Merger Co., which was formed solely for the purpose of consummating the proposed merger with COG Resources, Inc., an exempt gas utility holding company; and (5) EE Merger Corp., which was formed solely for the purpose of consummating the proposed merger with and into CMP Group, Inc., an exempt electric and gas utility holding company.

For the 12 months ended June 30, 1999, Energy East's operating revenues and total utility plant on a consolidated basis were approximately $2.5 billion and $2.2 billion, respectively. Also as of June 30, 1999, Energy East had 115,878,000 outstanding shares of common stock, $0.01 par value; 25,000,000 outstanding shares of preferred stock subject to mandatory redemption; and 10,131,000 outstanding shares of preferred stock redeemable solely at the option of the subsidiary.

Connecticut Energy claims an intrastate exemption by rule 2. Connecticut Energy wholly owns The Southern Connecticut Gas Company ("Southern Connecticut"), a gas utility company, which is Connecticut Energy's sole public utility subsidiary. Connecticut Energy also directly and indirectly owns several non utility subsidiaries, including: CNE Energy Services Group, Inc., which provides an array of energy products and services to commercial and industrial customers, including sales of bulk energy, operation of a liquefied natural gas open access storage facility, and sales of natural gas for peak-shaving and emergency deliveries; CNE Development Corporation, which is a 16.67% equity participant in East Coast Natural Gas Cooperative, LLC, which purchases and stores gas spot supplies, provides storage service utilization services and is involved in bundled sales; and CNE Venture-Tech, Inc., which invests in ventures that produce or market technologically advanced energy-related products.

Southern Connecticut, a Connecticut corporation, is engaged in the transportation and retail distribution of natural gas in a service territory along the southern Connecticut coast from Westport to Old Saybrook, including Bridgeport and New Haven. Southern Connecticut serves about 158,000 customers. Southern Connecticut is subject to retail rate regulation, among other things, by the Connecticut Department of Public Utility Control ("DPUC").

For the 12 months ended June 30, 1999, Connecticut Energy's operating revenues and total utility plant on a consolidated basis were $230 million and $277 million, respectively. Also as of June 30, 1999, Connecticut Energy had 10,388,000 outstanding shares of common stock, $1 par value.

Energy East also states that the merged gas system will meet the standards of section 2(a)(29)(B) as the gas operations of Energy East and Connecticut Energy will be integrated. Energy East states that Connecticut Energy's gas system and Energy East's gas system will share a "common source of supply" and will be operated as a "single coordinated system." Energy East further states that Connecticut Energy and Energy East will be able to achieve "substantial economies" in gas supply through the increased purchasing power and gas supply coordination that will result from being part of the larger combined gas system. Finally, Energy East states that the area or region served by NYSEG and by Southern Connecticut will not be "so large as to impair * * * the advantages of localized management, efficient operation, and the effectiveness of regulation."

Merger Co. was formed to facilitate the merger of Energy East and Southern Connecticut. Energy East owns all of Merger Co.'s issued and outstanding shares. Merger Co. owns no subsidiary companies.

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[22] *See Energy East Corporation*, Holding Co. Act Release No. 26976 (Feb. 12, 1999).

[23] NYSEG generates electricity from its 18% share of a nuclear station and its hydroelectric stations. NYSEG has agreed to sell its share of the nuclear station, which is expected to be completed by early next year.

[24] *See Energy East Corporation*, Holding Co. Act Release No. 26976 (Feb. 12, 1999).

Under the Agreement and Plan of Merger, dated as of April 23, 1999, as amended as of July 15, 1999 ("Merger Agreement"), Energy East will acquire all of the issued and outstanding common stock of Connecticut Energy.[25] Upon completion of the proposed transaction, Merger Co. will be the surviving party, remain a wholly-owned subsidiary of Energy East, and change its name to, and operate under, the name of "Connecticut Energy Corporation." Southern Connecticut will become a direct, wholly-owned subsidiary of Merger Co. and an indirect, wholly-owned subsidiary of Energy East.

For the transaction, all outstanding shares of common stock of Connecticut Energy (other than those held by Connecticut Energy shareholders who have not voted in favor of the transaction and have properly demanded dissenters' rights) will be converted into the right to receive the merger consideration. Connecticut Energy shareholders can elect to receive cash, Energy East shares, or a combination of cash and Energy East shares. The cash consideration amounts to $42 in cash, without interest, per share. The stock consideration is a number of Energy East shares that will vary depending on the "Average Market Price,"which is defined in the Merger Agreement as the average of the closing prices of Energy East shares on the New York Stock Exchange during the 20 trading days immediately preceding the second trading day prior to the effective time of the transaction. If the Average Market Price is equal to or more than $23.10 per share and equal to or less than $29.40 per share, then a Connecticut Energy share will be exchanged for $42 worth of Energy East shares. If the Average Market Price is less than $23.10, then a Connecticut Energy share will be exchanged for 1.82 Energy East shares. If the Average Market Price is more than $29.40, then a Connecticut Energy share will be exchanged for 1.43 Energy East shares.

Subject to an adjustment for tax reasons, 50% of all outstanding Connecticut Energy shares will be converted into cash and 50% will be converted into Energy East shares. Connecticut Energy shareholders as a group may submit elections to convert more than half of the outstanding Connecticut Energy shares into cash or more than half into Energy East shares. If either cash or Energy East shares is oversubscribed, then an equitable *pro rata* adjustment will be made to ensure that half of the outstanding Connecticut Energy shares are converted into cash and half are converted into Energy East shares.

Energy East states that the transaction will produce benefits to the consumers of electricity and gas in the northeastern United States by operating more cost-effectively, increasing financial flexibility and providing strategic growth opportunities that will benefit the combined company and its shareholders and customers. Energy East also states that, after the transaction, the combined system will be better positioned to take advantage of operating economies and efficiencies through, among other measures, joint management and optimization of their respective portfolios of gas supply, transportation, and storage assets. Furthermore, Energy East states that the combination of the companies' complementary expertise and infrastructure will provide the combined system with the size and scope necessary to be an effective participant in the emerging and increasingly competitive electric and natural gas markets. Finally, Energy East states that the combined system will be financially stronger and will have a broader customer base than Connecticut Energy has as an independent entity.

The application states that, following the transaction, Energy East and Merger Co. will each meet the requirements for an exemption under section 3(a)(1) of the Act. It is stated that each of Energy East and Merger Co. and their respective public utility subsidiaries will be predominantly instrastate in character and will carry on their business substantially in New York and Connecticut, respectively, the states in which they are organized. It is also stated that Enterprises will continue to be entitled to an exemption under section 3(a)(1) of the Act as the transaction will have no impact on the status of Enterprises as a holding company.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-27984 Filed 10-26-99; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before December 27, 1999.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, S.W. Suite 6050.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Program Analyst, 202-205-6734 or Curtis B. Rich, Management Analyst, 202-205-7030.

SUPPLEMENTARY INFORMATION:

Title: "Governor's Request for Disaster Declaration."

Form No: N/A.

Description of Respondents: Person's applying for Disaster Loans.

Annual Responses: 52.

Annual Burden: 1,040.

Title: "Disaster Home/Business Loan Inquiry."

Form No: 700.

Description of Respondents: Person's applying for Disaster Loans.

Annual Responses: 37,736.

Annual Burden: 9,434.

Dated: October 22, 1999.

Vanessa Piccioni,

Acting Chief, Administrative Information Branch.

[FR Doc. 99-28095 Filed 10-26-99; 8:45 am]

BILLING CODE 8025-01-P

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[25] The transaction will be accounted for as an acquisition of Connecticut Energy by energy east under the purchase method of accounting in accordance with generally accepted accounting principles. A portion of the purchase price will be allocated to nonutility assets and liabilities of Connecticut Energy based on their estimated fair market values at the date of acquisition. As a regulated utility, the assets and liabilities of Southern Connecticut will not be revalued. The difference between the purchase price, representing fair value, and the recorded amounts will be shown as goodwill on the balance sheet of Connecticut Energy.

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before December 27, 1999.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Eunice Ricks, Business Development Specialist, Office of Business Initiatives, Small Business Administration, 409 3rd Street, S.W. Suite 6100.

FOR FURTHER INFORMATION CONTACT: Eunice Ricks, Business Development Specialist, 202–205–7422 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Counselor's Case Report."

Form No: 641A.

Description of Respondents: SBI and Score Counselors.

Annual Responses: 300,000.

Annual Burden: 60,000.

Dated: October 22, 1999.

Vanessa Piccioni,

Acting Chief, Administrative Information Branch.

[FR Doc. 99–28096 Filed 10–26–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 97–1(1)

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 97–1(1)—*Parisi By Cooney* v. *Chater,* 69 F.3d 614 (1st Cir. 1995).

SUMMARY: In accordance with 20 CFR 404.985(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 97–1(1).

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On January 13, 1997, we issued Acquiescence Ruling 97–1(1) to reflect the holding in *Parisi By Cooney* v. *Chater,* 69 F.3d 614 (1st Cir. 1995), that the Social Security Administration (SSA), when computing a family maximum reduction pursuant to section 203(a) of the Social Security Act, should not include the monthly benefit that would otherwise be payable to a spouse entitled on the earnings record of a worker if payment of that spouse's benefit is precluded by section 202(k)(3)(A) of the Act due to the spouse's entitlement to a higher benefit on the spouse's own earnings record. The court also held that the statutory language of section 203(a) requires SSA to consider the actual amount of benefits payable under the relevant benefit provisions, not purely theoretical entitlements, in calculating the total monthly benefits payable on the worker's earnings record under the family maximum.

Concurrent with the rescission of this Ruling, we are publishing our final rules amending section 404.403 of Social Security Regulations No. 4 (20 CFR 404.403) to change the method for computing the family maximum benefit reduction when a beneficiary has dual entitlement on a another earnings record. The final rules provide in paragraph 404.403(a)(5) that, when benefits are subject to reduction for both the family maximum and dual entitlement, we consider only the amount of benefits actually due or payable to the person with dual entitlement on the same earnings record when calculating the reduction under the family maximum. Because the change in the regulations adopts the Parisi court's holding on a nationwide basis, we are rescinding Acquiescence Ruling 97–1(1).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: October 20, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 99–28018 Filed 10–26–99; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3142]

Culturally Significant Objects Imported for Exhibition Determinations: "Dangerous Curves: The Art of the Guitar"

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Dangerous Curves: The Art of the Guitar," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Massachusetts from on or about November 5, 2000, to on or about February 24, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: October 21, 1999.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 99–28090 Filed 10–26–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3143]

Culturally Significant Objects Imported for Exhibition Determinations: "A Painting in Focus: Nicolas Poussin's Holy Family on the Steps"

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "A Painting in Focus: Nicolas Poussin's Holy Family on the Steps," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Cleveland Museum of Art, Cleveland, Ohio, from on or about November 14, 2000, to on or about January 23, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: October 21, 1999.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 99–28091 Filed 10–26–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice No. 3134

International Telecommunication Advisory Committee; International Telecommunication Advisory Committee Telecommunication Standardization Sector (ITAC–T) National Committee and Study Group A; Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee, and International Telecommunication Advisory Committee—Telecommunication Standardization (ITAC–T) National Committee and Study Group A. The purpose of the Committees is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization. Except where noted, meetings will be held at the Department of State, 2201 "C" Street, NW, Washington, DC.

The ITAC will meet from 10:00 AM to noon on October 27 (rather than October 20 as previously announced), November 3, November 10, November 17, November 22, December 1, and December 8 to continue preparations for a meeting of the ITU Working Group on ITU Reform. All meetings will be at the Department of State.

The ITAC–T National Committee will meet from 9:30 to 4:00 on November 18, 1999 to review actions taken at the recent ITU Telecommunication Sector Advisory Group (TSAG) and consider further action required by the ITU Working Group on Reform and the World Telecommunication Sector Assembly. The meeting will be held at the Department of State.

US Study Group A will meet from 9:30 to noon on December 1, 1999 to prepare for the next meeting of ITU–T Study Group 3 in December. It is anticipated that the meeting will be at the Department of State.

Members of the general public may attend these meetings. Entrance to the Department of State is controlled; people intending to attend any of the ITAC meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC, ITAC T National Committee, or Study Group A and date of meeting), your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: US driver's license, passport, US Government identification card. Enter from the 23rd Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins. Actual room assignments may be determined at the lobby or by calling the Secretariat at 202 647–7407.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: October 18, 1999.

Marian Gordon,

Director, Telecommunication & Information Standardization, U.S. Department of State.

[FR Doc. 99–28206 Filed 10–25–99; 2:04 pm]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

Under Secretary of State for Public Diplomacy and Public Affairs; Delegation of Authority No. 236 [Relating to Immunity from Judicial Seizure of Cultural Objects Temporarily Imported into the United States]

By virtue of the authority vested in me as the Under Secretary of State for Public Diplomacy and Public Affairs by law, including by Delegation of Authority No. 234 of October 1, 1999, and the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 et seq.), and to the extent permitted by law, I hereby delegate to the Assistant Secretary for Educational and Cultural Affairs the functions in Public Law 89–259 (79 Stat. 985) (22 U.S.C. 2459) (providing for immunity from judicial seizure for cultural objects imported into the U.S. for temporary exhibits).

Until such time as the Assistant Secretary for Educational and Cultural Affairs has been confirmed by the Senate and sworn into office, the functions delegated by this order shall be exercised by the Executive Director of the Bureau of Educational and Cultural Affairs, in consultation with the Executive Assistant to the Under Secretary of State for Public Diplomacy and Public Affairs and the Office of the Legal Adviser.

Notwithstanding any other provision of this order, the Under Secretary of State for Public Diplomacy and Public Affairs may at any time exercise any function or authority delegated or reserved by this delegation of authority.

Functions delegated by this delegation of authority may be redelegated, to the extent consistent with law.

Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation shall be published in the **Federal Register.**

Dated: October 19, 1999.

Evelyn S. Lieberman,

Under Secretary of State for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 99–28088 Filed 10–26–99; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3141]

Determination by the Department of State Regarding Shrimp Imports From the Spencer Gulf in Southern Australia

SUMMARY: The Department of State has determined that the harvesting of shrimp in the Spencer Gulf of southern Australia does not pose a threat of the incidental taking of sea turtles. Accordingly, the prohibitions on the importation of shrimp set forth in Section 609 of Public Law 101–162 do not apply to shrimp harvested in the Spencer Gulf.

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington DC, telephone number (202) 647–2335.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 ("Section 609") provides that shrimp harvested with commercial fishing technology that may adversely affect certain species of sea turtles may not be imported into the United States. This import prohibition does not apply to certain categories of shrimp harvested in ways that do not harm sea turtle species.

Following the publication by the Department of State of a notice in the **Federal Register** on July 8, 1999 (Public Notice 3086, 64 FR 36946), which revised the guidelines used by the Department in implementing Section 609, the relevant provisions of those guidelines specify that:

"B. Shrimp Harvested in a Manner Not Harmful to Sea Turtles

The Department of State has determined that the import prohibitions imposed pursuant to Section 609 do not apply to shrimp or products of shrimp harvested under the following conditions, since such harvesting does not adversely affect sea turtle species:

a. Shrimp harvested in an aquaculture facility in which the shrimp spend at least 30 days in a pond prior to being harvested.

b. Shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States.

c. Shrimp harvested exclusively by means that do not involve the retrieval of fishing nets by mechanical devices, such as winches, pulleys, power blocks or other devices providing mechanical advantage, or by vessels using gear that, in accordance with the U.S. program described above, would not require TEDs.

d. Shrimp harvested in any other manner or under any other circumstances that the Department of State may determine, following consultation with the National Marine Fisheries Service, does not pose a threat of the incidental taking of sea turtles. The Department of State shall publish any such determinations in the **Federal Register** *and shall notify affected foreign governments and other interested parties directly." (emphasis added.)*

The Department of State hereby determines, following consultation with the National Marine Fisheries Service, that the harvesting of shrimp in the Spencer Gulf in southern Australia does not pose a threat of the incidental taking of sea turtles.

In requesting such a determination, the Government of Australia submitted information, including a report compiled by the South Australian Research and Development Institute, which contained evidence, described below, that commercial shrimp trawling operations in the Spencer Gulf do not pose a threat to sea turtles. This information, which was reviewed by the Office of Marine Conservation of the Department of State and the Office of Protected Resources of the National Marine Fisheries Service, includes a wide range of scientific, biological and commercial data.

In particular, the information submitted by the Government of Australia reflects diverse sources of data from long-term surveys—fishery dependent and independent observer records, logbooks and records of sea turtle strandings. The data on sea turtle distribution and migrations are based on the credible research of scientists. The lack of nesting sites along the entire coast of southern Australia, as well as the near absence of stranded sea turtles, near-shore sea turtle sightings, and trawl-captured sea turtles since 1968 indicate that sea turtle abundance in the area is extremely low.

Accordingly, shrimp harvested in the Spencer Gulf are not subject to the import prohibitions imposed pursuant to Section 609. The Department of State has notified the U.S. Customs Service and other interested parties of this determination.

Dated: October 20, 1999.

R. Tucker Scully,

Deputy Assistant Secretary for Oceans, Fisheries and Space.

[FR Doc. 99–28089 Filed 10–26–99; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Dorenda Baker, Transport Airplane Directorate, Aircraft Certification Service (ANM–110), 1601 Lind Avenue, SW., Renton, WA 98055; phone (425) 227–2109; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. this includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is transport airplane and engine issues. These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Task: Implementation of International Civil Aviation Organization (ICAO) Rules From Amendment 97 to Annex 8 Concerning Design for Security

ICAO provisions for annex 8 "Airworthiness of Aircraft" concerning design for security were submitted to states for comment in 1994. The following were adopted by the ICAO Air Navigation Council by Amendment 97 on March 12, 1997 and will be effective on March 12, 2000.

- Survivability of systems

- Fire suppression
- Cabin smoke extraction
- Direction of smoke from the cockpit
- Least risk bomb location (identification)
- Least risk bomb location (design)
- Pilot compartment (penetration resistance)
- Interior design to facilitate searches

Review the adopted rules and recommend changes to the JAR and FAR and develop associated advisory material. Phase I of the task should define the scope and extent to which the ICAO Amendment 97 rules should be implemented and a strategy for implementation. Phase II should develop recommendations for practical airworthiness requirements for specific FAR paragraphs and prepare any associated advisory material. The recommended design criteria should be consistent with the security threat taking into account the operation and function of the airplane and the current and future aviation security systems.

For Phase I, the FAA requests that ARAC provide a report detailing the implementation strategy. The FAA expects ARAC to submit this report by February 1, 2000.

For Phase II, the FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives. The FAA expects ARAC to submit its recommendation(s) under Phase II to the FAA within 26 months of tasking.

ARAC Acceptance of Task

ARAC has accepted the task and has chosen to establish a new Design for Security Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Design for Security Harmonization Work Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

Participation in the Working Group

The Design for Security Harmonization Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. All requests to participate must be reviewed by the assistant chair, the assistant executive director, and the working group co-chairs, and the individuals will be advised whether or not the request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and participate actively in the working group (*e.g.*, attend all meetings, provide written comments when requested to do so, etc.). They also will be expected to devote the resources necessary to ensure the ability of the working group to meet any assigned deadline(s). Members are expected to keep their management chain advised of working group activities and decisions to ensure that the agreed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for a vote.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Design for Security Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on October 20, 1999.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–28011 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Environmental Impact Statement/ Section 4(f) Evaluation for Proposal Development at Cleveland Hopkins International Airport, Cleveland, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a draft environmental impact statement/4(f) evaluation.

SUMMARY: The Federal Aviation Administration (FAA) is making available the Draft Environmental Impact Statement (DEIS) which includes a Section 4(f) Evaluation for proposed development at Cleveland Hopkins International Airport, Cleveland, Ohio.

DATES AND ADDRESSES: Written comments will be accepted prior to Wednesday, December 29, 1999. Written comments may be sent to: Mr. Ernest Gubry, Community Planner, FAA Great Lakes Region, Detroit Airports District Office, Willow Run Airport, 8820 Beck Road, Belleville, MI 48111. Oral or written comments may also be given at a public hearing that will be held on Tuesday, November 30, 1999, 6 p.m. to 9 p.m. at the Olmsted Falls High School, Cafeteria, 26939 Bagley Road, Olmsted Falls, OH; and Wednesday, December 1, 1999, 6 p.m. to 9 p.m. at the Cleveland Airport Marriott Hotel, Grand Ballroom, 4277 West 150th St, Cleveland, OH.

POINT OF CONTACT: Mr. Ernest Gubry, Community Planner, FAA Great Lakes Region, Detroit Airports District Office, Willow Run Airport, 8820 Beck Road, Belleville, MI 48111.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) is making available the Draft Environment Impact Statement (DEIS) for the following proposed development: (a) The construction of a replacement 9,000-foot Runway 5L/23R with associated taxiway improvements; (b) the development of a 2,250-foot extension and shift to existing Runway 5R/23L to a length of 11,250 feet; (c) the Federal actions regarding installation of navigational aides, airspace use, and approach and departure procedures associated with the proposed development; (d) airport support facilities improvements to the terminal area; (e) airport support facilities improvements to the landside area (f) on- and off-airport roadway improvement projects; and (g) implementation of noise abatement measures recommended in the 1999 Part 150 Noise Compatibility Plan Update. A Draft Environmental Impact Statement (DEIS) and 4(f) Evaluation has been prepared and will be available for public review and comment. Section 4(f) of the Department of Transportation Act of 1966 has been recodified at 49 U.S.C., Subtitle I, Section 303 dated January 12, 1983. This document will be available 30 days prior to the Hearing during normal business hours at the following locations:

Eastman Branch Library, 11602 Lorain Avenue, Cleveland, OH 44111
Fairview Park Regional Library, 21255 Lorain Road, Cleveland, OH 44126
Parma Heights Library, 6206 Pearl Road, Cleveland, OH 44130
Bay Village Library, 502 Cahoon Road, Bay Village, OH 44140
Parma-Ridge Library, 5850 Ridge Road, Parma, OH 44129
West Park Branch Library 3805 W. 157th Street Cleveland, OH 44111
Berea Library, 7 Berea Commons, Berea, OH 44017
North Olmsted Library, 27425 Butternut Ridge Road, North Olmstead, OH 44070
Brook Park Library, 6155 Engle Road, Brook Park, OH 44142
Lakewood Branch, 15425 Detroit Avenue, Lakewood, OH 44107
Rockport Branch Library, 4421 W. 140th Street, Cleveland, OH 44135
Brooklyn Library, 4480 Ridge Road, Brooklyn, OH 44144
Rocky River Library, 1600 Hampton Road, Rocky River, OH 44116
Olmsted Falls Library, 7850 Main Street, Olmstead Falls, OH 44138
Westlake Library, 27333 Center Ridge Road, Westlake, OH 44145

The purpose of the Hearing is to consider the social, economic, and environmental effects of the proposed actions. During the hearing the public will be given an opportunity to present oral and/or written comments for the public record. This hearing is being held pursuant to the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and other laws as applicable. Additionally, prior to Wednesday, December 29, 1999 written comments may be addressed to Mr. Ernest Gubry, Community Planner, FAA Great Lakes Region, Detroit Airports District Office, Willow Run Airport, and 8820 Beck Road, Belleville, MI 48111.

Issued in Detroit Michigan October 19, 1999.

Robert H Allen,

Acting Manager, Detroit Airport District Office.

[FR Doc. 99–28012 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–04–C–00–CPR) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Natrona County International Airport, Submitted by the County of Natrona, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Natrona County International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before November 26, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dan E. Mann, Airport Manager, at the following address: Natrona County International Airport, 8500 Airport Parkway, Casper, Wyoming 82604. Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Natrona County International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (99–04–C–00–CPR) to impose and use the revenue from a PFC at Natrona County International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On October 20, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Natrona, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 20, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: June 1, 2004.

Total requested for use approval: $539,352.00.

Brief description of proposed projects: Purchase snow removal equipment, Purchase 14 ft. loader/backhoe, Rehabilitate Runway 3/21, Airport terminal building assessment, Purchase 20 ft. runway sweeper.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Natrona County International Airport.

Issued in Renton, Washington on October 20, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–28013 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lebanon County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in the City of Lebanon, Lebanon County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:
David W. Cough P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720, Telephone: 717–221–3411,
or
Mark Malhenzie, Project Manager, Pennsylvania Department of Transportation, Engineering District 8–0, 2140 Herr Street, Harrisburg, Pennsylvania, 17103, Telephone: 717–783–5080.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will conduct a project Needs Analysis and Design Location Studies and will prepare an Environmental Impact Statement to evaluate alternatives which provide grade-separated access over a railroad corridor located in the City of Lebanon. The study area will extend from 12th Street to Lincoln Avenue. The railroad corridor is an active lien recently acquired by Norfolk Southern.

The railroad line is a high-density rail line with eight at-grade crossings through the City of Lebanon. There are no grade-separated crossing through the City causing long queues at the crossings which result in congestion and unacceptable delays for emergency service providers. The study offers the opportunity to provide grade-separated motorist, bicycle and pedestrian crossings and eliminate some at-grade crossings. Potential impacts to the environment include cultural resources and residential and business displacements.

The initial stage of this process is for scoping, documentation of the project need, and development of conceptual alignment corridors. This stage of the study will culminate in a Needs Analysis Report.

A range of conceptual alignment corridors will be developed and examined within the context of the identified project needs, environmental and socioeconomic constraints, and public input, as well as their consistency with County and municipal plans and policies. Alternatives to be examined will include the No-Build Alternative. This analysis will be used to refine the alternatives or eliminate a particular alternative from further consideration due to the potential for socio-economic, environmental, or engineering impacts. This stage of the study will result in a Preliminary Alternatives Analysis Report.

Following the preliminary analysis, the alternatives which are recommended for further study will be developed in greater detail and the environmental impacts for each will be assessed and described in the Environmental Impact Statement.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who express an interest in the proposal. Agency scoping and public meetings will be initiated in Fall 1999. Public involvement and inter-agency coordination will be maintained throughout the development of the study. Public notices of the time and place of the public meetings and any required public hearings will be provided.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 19, 1999.

David W. Cough,

Director of Operations, Harrisburg, Pennsylvania.

[FR Doc. 99–28052 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–99–6397]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 27, 1999.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Walter Culbreath, NHTSA 400 Seventh Street, SW, Room 6132, NSC–01,Washington, DC 20590. Mr. Culbreath's telephone number is (202) 366–1566. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) Title: Designation of Agent.

OMB Control Number: 2127–0040.

Type of Request: Extension of a previously approved collection.

Affected Public: Business.

Abstract: The U.S. agent is used to advise foreign manufacturers of safety related defects where laws vary from country to country. In turn, the manufacturer can notify U.S. purchasers and correct the defect.

Estimated Annual Burden: 1470.

Number of Respondents: 70.

(2) Title: 49 CFR part 575 Consumer Information Regulations (Sections 103 and 105).

OMB Control Number: 2127–0049.

Type of Request: Extension of a previously approved collection.

Affected Public: Individuals or households and business.

Abstract: In order to ensure that motor vehicle manufacturers are complying with 49 CFR Part 575, NHTSA needs consumer information from manufacturers of new light trucks and utility vehicles before this information is distributed to prospective purchasers and first purchasers of a vehicle. The manufacturers will provide technical information related to performance and safety of light trucks and utility vehicles.

Estimated Annual Burden: 225.

Number of Respondents: 15.

(3) Title: Motor Vehicle Importation.

OMB Control Number: 2127–0002.

Type of Request: Extension of a previously approved collection.

Form Number: Form HS–7 and Form HS–474.

Affected Public: Business.

Abstract: These forms are required to implement 49 CFR parts 591 and 592, Regulations for Motor Vehicle Importation which require an imported vehicle to conform to applicable Federal Motor Vehicle Safety Standards, or to be brought into compliance within 120 days of importation.

Estimated Annual Burden: 72,500.

Number of Respondents: 838,000.

(4) Title: National Accident Sampling System (NASS) Crashworthiness Data System (CDS).

OMB Control Number: 2127–0021.

Type of Request: Extension of a previously approved collection.

Affected Public: Individuals or households.

Abstract: NASS investigates high severity crashes. This includes interviewing occupants and witness, inspecting crash scenes and vehicles, and obtaining medical records. The data is used in programs to prevent accidents and to reduce injuries when crashes occur.

Estimated Annual Burden: 0.

Number of Respondents: 13,500.

(5) Title: Nationwide Survey Regarding Speeding and Other Unsafe Driving Actions.

OMB Control Number: 2127–0587.

Type of Request: Extension of a previously approved collection.

Affected Public: Individuals or households.

Abstract: NHTSA is committed to the development of effective programs to reduce the number of deaths and injuries related to speeding and other unsafe driving. The objective of this study is to develop and implement a nationwide survey of the driving public to determine: the characteristics of drivers who speed and do not obey traffic signals or stop signs; the situations and driver motivations that accompany these unsafe behaviors; the public's attitudes regarding speed limits, including the NMSL, and the enforcement of these limits; and countermeasures the public would support to reduce the occurrence of these unsafe driving actions.

Estimated Annual Burden: 0.

Number of Respondents: 6,000.

(6) Title: 23 CFR part 1313 Certification Requirements for State Grants for Drunk Driving Prevention Programs.

OMB Control Number: 2127–0501.

Type of Request: Extension of a previously approved collection.

Affected Public: State, Local or Government.

Abstract: Title 23 of the U.S. Code established a Federal alcohol incentive grant program designed to encourage States to enact strong, effective anti-drunk driving legislation and improve the enforcement of these laws. Section 410 also promotes the development and implementation of innovative programs to combat impaired driving. The program is administered by the NHTSA. Grants are awarded to the states through their designated Highway Safety offices.

Estimated Annual Burden: 2340.

Number of Respondents: 52.

(7) Title: 49 CFR 571.213, " Child Restraint Systems".

OMB Control Number: 2127–0511.

Type of Request: Extension of a previously approved collection.

Affected Public: Business.

Abstract: Manufacturers are required to provide each child restraint with a permanently attached label, an instruction brochure which gives the model, manufacturer's name, date of manufacture, certification that the seat conforms to FVSS No. 213, and owner's name and address for registration of child restraints and use in case of a recall.

Estimated Annual Burden: 63,000.

Number of Respondents: 15.

Issued on October 22, 1999.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 99–28055 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33812]

Arizona & California Railroad Company Limited Partnership d/b/a Puget Sound & Pacific Railroad—Modified Rail Certificate

On October 12, 1999, Arizona & California Railroad Company Limited Partnership (ARZC) d/b/a Puget Sound & Pacific Railroad (PS&P) (collectively, ARZC d/b/a PS&P)[1] filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate 10 miles of a rail line extending from milepost 0.0 in Chehalis to milepost 10.0 in Curtis, in Lewis County, WA.

An exemption to abandon the line was granted to Curtis Milburn & Eastern Railroad Company (CMER) in *Curtis Milburn & Eastern Railroad Company—Abandonment Exemption—In Lewis County, WA*, Docket No. AB–378X (ICC served Jan. 19, 1993).[2] The Port of Chehalis (the Port), a municipal corporation of the State of Washington, subsequently acquired the line. On October 1, 1999, ARZC d/b/a PS&P and the Port executed the Agreement, which governs the rail operations to be conducted by ARZC d/b/a PS&P in Lewis County. Rail freight operations over the line were to commence on or after October 18, 1999.

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[1] ARZC is an existing Class III rail carrier, and PS&P is an operating division of ARZC.

The line's only interline connection is with Tacoma & Eastern Railway Co. (Tacoma), at milepost 0.0 (Tacoma milepost 67.0). ARZC d/b/a PS&P anticipates acquiring reciprocal overhead trackage rights over 1 mile of Tacoma's line so that it can connect with The Burlington Northern and Santa Fe Railroad Company (BNSF)[3] in Chehalis.[4]

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

ARZC d/b/a PS&P indicates that no subsidy is involved and that there are no preconditions for shippers to meet in order to receive rail service.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW, Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street, NW, Suite 520, Washington, DC 20005.

Decided: October 19, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–27779 Filed 10–26–99; 8:45 am]

BILLING CODE 4915–00–P

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[2] Based on CMER's petition for exemption, the decision describes the line as an 11-mile line of railroad between milepost 0.0 at CM&E Junction, WA, and milepost 10.0 near Curtis, WA. According to the instant notice, milepost 0.0 at CM&E Junction and milepost 0.0 in Chehalis refer to the same location. The Railroad Right of Way Use and Track Agreement (the Agreement), attached to the notice as Exhibit A, describes the line as approximately 10 miles of rail line. The mileage discrepancy is not explained, but the line description as a whole is unambiguous.

[3] Although the Agreement indicates that ARZC d/b/a PS&P will use these trackage rights to connect with the Union Pacific Railway Company in addition to BNSF, ARZC d/b/a PS&P anticipates that the trackage rights agreement it negotiates with Tacoma will provide ARZC d/b/a PS&P only with access to BNSF.

[4] Prior to operating over Tacoma's line via the overhead trackage rights, ARZC d/b/a PS&P states that it will obtain any necessary regulatory authority from the Board.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 155X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Oconee County, SC

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 1.26 miles of its line of railroad between milepost Z–42.6 at West Union and milepost Z–43.86 at Walhalla, in Oconee County, SC. The lines traverses United States Postal Service Zip Code 29691.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years and any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 26, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 8, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 16, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 1, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NS's filing of a notice of consummation by October 27, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 18, 1999.

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–27780 Filed 10–26–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub-No. 49X)]

Soo Line Railroad Company—Abandonment Exemption—in MacIntosh County, ND

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 19.0+/−mile portion of its line of railroad known as the Pollack Line between milepost 342.0+/−near Wishek and milepost 361.0+/−at the end of track near Ashley, in MacIntosh County, ND. The line traverses United States Postal Service Zip Codes 58495 and 58413.

Soo has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 26, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 8, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 16, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Diane P. Gerth, Esq., Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Soo has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 1, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Soo shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Soo's filing of a notice of consummation by October 27, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 19, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–27778 Filed 10–26–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Bureau of Transportation Statistics, DOT

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 10, 1999 (FR 64, pages 31345–31346).

DATES: Comments must be submitted on or before November 26, 1999.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Reporting Required for International Civil Aviation Organization.

Type of Request: Extension of a currently approved Collection.

OMB Control Number: 2138–0039.

Form(s): BTS Form EF.

Affected Public: Large Certificated Air Carriers.

Abstract: BTS collects aviation data for the International Civil Aviation Organization (ICAO) to fulfill a United States treaty obligation. Most of the data supplied to ICAO is extracted by the Office of Airline Information from its Form 41 data base. However, carriers that provide international service are required to submit a couple of additional cost items which are not reported on the carriers Form 41 Report.

Estimated Annual Burden Hours: 16 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Budget, 725–17th Street, NW. Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 21, 1999.

Timothy E. Carmody,

Director, Office of Airline Information.

[FR Doc. 99–28003 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 10, 1999 (64 FR 31345).

DATES: Comments must be submitted on or before November 26, 1999.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Submission of Audit Reports, Part 248.

Type of Request: Extension of a currently approved Collection.

OMB Control Number: 2138–0004.

Form(s): None.

Affected Public: Certificated Air Carriers.

Abstract: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, the Department will accept the annual report submitted to the stockholders. The audited reports are needed by DOT as (a) a means to monitor an air carrier's continuing fitness to operate, (b) reference material used by analysts in examining foreign route cases, (c) reference material used by analysts in examining proposed acquisitions, mergers, and consolidations, (d) a means whereby the Department sends a copy of the report to International Civil Aviation Organization (ICAO) in fulfillment of a U.S. treaty obligation, and (e) corroboration of carriers' Form 41 filings.

Estimated Annual Burden Hours: 21 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 21, 1999.

Timothy E. Carmody,

Director, Office of Airline Information.

[FR Doc. 99–28005 Filed 10–26–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on two information collections that are due for renewed approval by the Office of Management and Budget. The Office of Program Services within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form BL–2/BL–2(SA), Custody Liabilities of Reporting Banks, Brokers and Dealers to Foreigners, Denominated in Dollars; and Treasury International Capital Form BQ–2, Part 1: Liabilities to, and Claims on, Foreigners of Reporting Bank, Broker or Dealer, and Part 2: Domestic Customers' Claims on Foreigners Held by Reporting Bank, Broker or Dealer, Denominated in Foreign Currencies.

DATES: Written comments should be received on or before December 27, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205 MT, 1500 Pennsylvania Avenue NW, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205 MT, 1500 Pennsylvania Avenue NW, Washington DC 20220, (202) 622–1276, Fax (202) 622–7448.

SUPPLEMENTARY INFORMATION:

Titles: Treasury International Capital Form BL–2/BL–2(SA), Custody Liabilities of Reporting Banks, Brokers and Dealers to Foreigners, Denominated in Dollars; and Treasury International Capital Form BQ–2, Part 1: Liabilities to, and Claims on, Foreigners of Reporting Bank, Broker or Dealer, and Part 2: Domestic Customers' Claims on Foreigners Held by Reporting Bank, Broker or Dealer, Denominated in Foreign Currencies.

OMB Numbers: 1505–0018 and 1505–0020.

Abstracts: Forms BL–2/BL–2(SA) and BQ–2 are required by law (22 U.S.C. 286f; 22 U.S.C. 3103; EO 10033; 31 CFR 128) and are designed to collect timely information on international portfolio capital movements. Form BL–2 is a monthly report (with a semiannual supplement) that covers the U.S. dollar custody liabilities of banks, other depository institutions, brokers and dealers, *vis-à-vis* foreign residents. Form BQ–2 is a quarterly report that covers the liabilities to and claims on foreigners of banks, brokers and dealers, and the custody claims on foreigners of banks, brokers and dealers, that are denominated in foreign currencies. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: No changes to reporting requirements for either form are proposed at this time.

Type of Review: Extensions.

Affected Public: Business or other for-profit.

Form BL–2/BL–2(SA) (1505–0018)

Estimated Number of Respondents: 125.

Estimated Average Time per Respondent: Five (5) hours per respondent per filing.

Estimated Total Annual Burden Hours: 7,500 hours, based on twelve reporting periods per year.

Form BQ–2 (1505–0020)

Estimated Number of Respondents: 200.

Estimated Average Time per Respondent: Four (4) hours per respondent per filing.

Estimated Total Annual Burden Hours: 3,200 hours, based on four reporting periods per year.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether Forms BL–2/BL–2(SA) and BQ–2 are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Dated: October 21, 1999.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 99–27994 Filed 10–26–99; 8:45 am]

BILLING CODE 4810–25–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act Notice; Notice of Meeting

The Board of Trustees of the Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation will hold a meeting beginning at 8:00 a.m. on Wednesday, November 10, 1999 at the offices of the U.S. Institute for Environmental Conflict Resolution, 110 South Church, Ste. 3350, Tucson, AZ 85701.

The matters to be considered will include (1) A report on the U.S. Institute of Environmental Conflict Resolution; and (2) A report from the Udall Center for Studies and Public Policy; (3) Fiscal Year 2000 Budget Approval; and (4) Program Reports. The meeting is open to the public.

CONTACT PERSON FOR MORE INFORMATION: Christopher L. Helms, 110 South Church, Ste. 3350, Tucson, Arizona 85701. Telephone: (520) 670–5608.

Dated this 20th day of October, 1999.

Christopher L. Helms,

Contact Person.

[FR Doc 99–28141 Filed 10–25–99; 12:55 pm]

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Wednesday
October 27, 1999

Part II

Emergency Steel Guarantee Loan Board

13 CFR Chapter IV
Emergency Steel Guarantee Loan Program; Final Rule

EMERGENCY STEEL GUARANTEE LOAN BOARD

13 CFR Chapter IV

RIN 3004–ZA00

Emergency Steel Guarantee Loan Program

AGENCY: Emergency Steel Guarantee Loan Board.

ACTION: Final rule.

SUMMARY: On August 17, 1999, President Clinton signed into law an act providing authority for guarantees of loans to qualified steel and iron ore companies and to qualified oil and gas companies. Chapter 1 of the Emergency Steel Loan Guarantee Act of 1999 ("Act"), established the Emergency Steel Guarantee Loan Program ("Program") for guaranteeing loans made by private sector lending institutions to qualified steel and iron ore companies. The Act established the Emergency Steel Guarantee Loan Board ("Board"), composed of the Chairman of the Board of Governors of the Federal Reserve System, as Chairman of the Board, the Secretary of Commerce, and the Chairman of the Securities and Exchange Commission. The Board has certain responsibilities under the law, including the issuance of necessary rules. The Department of Commerce was appropriated funds to implement and administer the Program. These regulations have been approved by the Board, and are being issued to implement the Program.

DATES: This rule is effective December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Executive Director, Steel Guarantee Loan Board, U.S. Department of Commerce, Washington DC 20230, (202) 482–6151.

SUPPLEMENTARY INFORMATION:

Background

The Program will provide guarantees for up to $1 billion in loans to qualified steel and iron ore companies. These loans will be made by private sector lenders, with the Federal Government providing a guarantee for up to 85 percent of the amount of the principal of the loan. The Board, composed of the Chairman of the Board of Governors of the Federal Reserve System, who will serve as Chairman of the Board, the Secretary of Commerce, and the Chairman of the Securities and Exchange Commission, will oversee the Program. The Board will select an Executive Director, a Secretary, and a General Counsel to oversee day-to-day operations of the Program.

A loan guarantee may be issued upon application to the Board by a private banking or investment institution which has committed to enter into an agreement to provide a loan to a qualified steel company. A qualified steel company is defined in the Act to mean any company that: (A) Is incorporated under the laws of any State; (B) is engaged in the production and manufacture of a product defined by the American Iron and Steel Institute as a basic steel mill product, including ingots, slab and billets, plates, flat-rolled steel, sections and structural products, bars, rail type products, pipe and tube, and wire rod; and (C) has experienced layoffs, production losses, or financial losses since January 1998 or that operates substantial assets of a company that meets these qualifications. An iron ore company incorporated under the laws of any State will be treated as a qualified steel company for purposes of the Program.

In order to guarantee a loan to a qualified steel company, the Board must make certain determinations. The Board must determine that credit is not otherwise available to a qualified steel company under reasonable terms or conditions sufficient to meet its financing needs. Next, the prospective earning power of that company, together with the character and value of the security pledged, must furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms. In addition, the loan to be guaranteed must bear interest at a rate determined by the Board to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of such loan. Further the company must agree to an audit by the General Accounting Office, or its designee, and an independent auditor acceptable to the Board, prior to the issuance of the Guarantee and annually thereafter while such guarantee is outstanding. In addition, audited financial statements are required to be submitted with an application. Finally, in the case of a purchaser of substantial assets of a qualified steel company, the Board must find that the company is unable to reorganize itself.

The Act established several conditions applicable to each loan guarantee issued by the Board. All loans guaranteed under this Program must be paid in full not later than December 31, 2005. The guarantee level may not exceed 85 percent of the amount of principal of the loan. The aggregate amount of loans guaranteed and outstanding at any one time under this Program may not exceed $1 billion, and the aggregate amount of loans guaranteed under this Program with respect to a single qualified steel company may not exceed $250 million. Of the $1 billion aggregate amount of loans authorized to be guaranteed and outstanding at any one time under the Program, not more than $30 million will be loans made to iron ore companies. A qualified steel company receiving a guarantee under this section will be required to pay a fee in the amount of 0.5 percent of the principal of the loan to the Department of the Treasury to cover the costs of the Program payable within one year from the issuance of the guarantee. Finally, the terms and conditions of each guaranteed loan must provide that the loan may not be amended, and that no provision of the loan documents or the guarantee agreement can be waived, without the prior written consent of the Board.

In the Act, Congress appropriated $140 million for the cost of the loans guaranteed. The Board will consider applications and award guarantees under the Program in accordance with the appropriated funding.

Public Meeting

To receive public input regarding operation of the Program, the Board held a public meeting on September 22, 1999, at the Department of Commerce. The meeting consisted of parties presenting oral statements to staff of the Department of Commerce, the Federal Reserve Board, and the Securities and Exchange Commission. Oral statements addressed issues and made suggestions regarding implementation of the Program. Thirteen parties, representing steel companies, presented oral testimony at the meeting. In addition to oral statements presented at the meeting, written comments were submitted by interested parties. All comments were considered in promulgating these rules.

Description of Regulation

The Board's regulations are divided into three subparts. Subpart A sets out the purpose of the rules and contains definitions of terms used in the other subparts. Subpart B contains rules regarding the Board's organization, staffing, rules of procedure, and procedures for public access to the Board's records. The Board will establish an official staff consisting of an Executive Director, General Counsel, and Secretary, with the respective responsibilities set out in Subpart B.

The Board may delegate to its official staff authority to take certain actions, subject to such terms and conditions as the Board deems appropriate. The Board may employ additional staff or outside consultants as it deems necessary to carry out its functions in accordance with the Act.

Subpart C sets out the eligibility requirements for lenders and borrowers under the Program, general loan terms, fees, and restrictions on assignment and transfer of loans guaranteed under the Program. In addition, Subpart C describes the process by which eligible lenders can submit applications for loan guarantees to the Board and the Board's procedures for processing and evaluating the applications in order to select the loans that will be granted guarantees. Finally, Subpart C sets out some of the Lender's responsibilities in originating and administering a guaranteed loan and the events and conditions that could cause the Board to terminate the guarantee in whole or in part.

The Act directs the Board to act on applications for loan guarantees as soon as possible. In addition, the Board must implement the Program within the appropriated funding provided by the Act and, thus, must ensure that it grants guarantees to the loans that it determines best meet the Program's evaluation criteria. In view of these and other considerations, the Board has determined to create an application "window" during which applicants must submit their loan guarantee applications. The window will run from the date these rules are published in the **Federal Register** until December 30, 1999.

Each application package received by the Board during this window will be screened to confirm that it meets all of the Program's eligibility requirements as set out in the applicable regulations and application forms. Application packages that do not meet the Program's eligibility requirements will not be considered for a loan guarantee. The Board will compare the eligible applications on a competitive basis and offer guarantees to those applications that it determines best meet the Program's evaluation criteria. As discussed in more detail in Subpart C, the Program's evaluation criteria include the ability of the Borrower to repay the loan according to its terms, the protection provided by the proposal to the Government in the event of default (including sufficiency of collateral, lien position, and percentage of guarantee requested), and the adequacy of the Lender's loan underwriting analysis. Since the accelerated schedule does not provide time for the Board to negotiate with individual applicants and the Board's selection process will be on a competitive basis, it is in each applicant's best interest to provide, at the outset, a thorough proposal that ranks as high as possible on each of the Program's evaluation criteria. For example, applicants should request the lowest guarantee percentage practicable for their proposals at the outset. In addition, applications giving the government a higher security position on higher quality collateral will be given preference over those that provide a lesser level of security. Failure to do so could reduce the likelihood that the application will be selected to receive a guarantee.

Administrative Law Requirements

Executive Order 12866

This final rule has been determined to be a "significant regulatory action" under section 3(f) of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

Paperwork Reduction Act

The Board will submit to the Office of Management and Budget, for clearance under the Paperwork Reduction Act, a package containing the necessary forms and documentation for participation in this Program.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be a major rule for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.* The Congressional Review Act requires that major rules have their effective date delayed 60 days while Congress has the opportunity to review the rule. While there are certain exemptions to this delayed effective date requirement, the Board has determined that none are applicable to this rule.

Intergovernmental Review

No intergovernmental consultation with state and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

National Environmental Policy Act

The Board determined that this Program does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, Public Law 91–190 (NEPA), an Environmental Impact Statement is not required. Loans sought to be guaranteed under the Program will be assessed individually to determine appropriate compliance with NEPA.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 12612

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

Programs Affected

There is no Catalog of Federal Domestic Assistance listing for the Emergency Steel Loan Guarantee Program.

List of Subjects in 13 CFR Part 400

Administrative practice and procedure, Freedom of Information, Loan programs—Steel, Reporting and recordkeeping requirements.

Dated: October 18, 1999.

Jonathan Orszag,

Acting Executive Director, Emergency Steel Loan Guarantee Board.

For the reasons set out in the preamble, 13 CFR Chapter IV is established to read as follows:

CHAPTER IV—EMERGENCY STEEL GUARANTEE LOAN BOARD

PART 400—EMERGENCY STEEL GUARANTEE LOAN PROGRAM

Sec.

Subpart A—General

400.1 Purpose.
400.2 Definitions.

Subpart B—Board Procedures

400.100 Purpose and scope.
400.101 Composition of the Board.
400.102 Authority of the Board.
400.103 Offices.
400.104 Meetings and actions of the Board.
400.105 Staff.
400.106 Ex parte communications.
400.107 Freedom of Information Act.
400.108 Restrictions on lobbying.
400.109 Government-wide debarment and suspension (nonprocurement).
400.110 Amendments.

Subpart C—Steel Guarantee Loans

400.200 Eligible Borrower.
400.201 Eligible Lender.
400.202 Loan amount.
400.203 Guarantee percentage.
400.204 Loan terms.
400.205 Application process.
400.206 Environmental requirements.
400.207 Application evaluation.
400.208 Issuance of the Guarantee.
400.209 Funding for the Program.
400.210 Assignment or transfer of loans.
400.211 Lender responsibilities.
400.212 Liquidation.
400.213 Termination of Guarantee.
400.214 OMB control number.

Authority: Pub. L. 106–51, 113 Stat. 252 (15 U.S.C. 1841 note).

Subpart A—General

§ 400.1 Purpose.

This part is issued by the Emergency Steel Guarantee Loan Board pursuant to section 552 of title 5 of the United States Code and the Emergency Steel Loan Guarantee Act of 1999, Chapter 1 of Public Law 106–51. This part contains rules for making and servicing loans to qualified steel and iron ore companies guaranteed by the Board.

§ 400.2 Definitions.

(a) *Act* means the Emergency Steel Loan Guarantee Act of 1999, Chapter 1 of Public Law 106–51.

(b) *Administer, administering and administration,* mean the Lender's actions in making, disbursing, servicing (including, but not limited to care, preservation and maintenance of collateral), collecting and liquidating a loan and security.

(c) *Applicant* means the private banking or investment institution applying for a loan guarantee under this part.

(d) *Board* means the Emergency Steel Guarantee Loan Board.

(e) *Borrower* means a Qualified Steel Company which could receive a loan guaranteed by the Board under this Program.

(f) *Guarantee* means the written agreement between the Board and the Lender, and approved by the Borrower, pursuant to which the Board guarantees repayment of a specified percentage of the principal of the loan, including the Special Terms and Conditions, the General Terms and Conditions, and all exhibits thereto.

(g) *Lender* means a private banking or investment institution that is eligible pursuant to § 400.201.

(h) *Loan Documents* mean the loan agreement and all other instruments, and all documentation between the Lender and the Borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of the loan.

(i) *Program* means the Emergency Steel Guarantee Loan Program established by the Act.

(j) *Security* means all property, real or personal, required by the provisions of the Guarantee or by the Loan Documents to secure repayment of any indebtedness of the Borrower under the Loan Documents or Guarantee.

(k) *Qualified Steel Company* means a company that is incorporated under the laws of any State; is engaged in the production and manufacture of a product defined by the American Iron and Steel Institute as a basic steel mill product, including ingots, slab and billets, plates, flat-rolled steel, sections and structural products, bars, rail type products, pipe and tube, and wire rod; and has experienced layoffs, production losses, or financial losses since January 1, 1998. An iron ore company incorporated under the law of any state is considered a Qualified Steel Company for purposes of the Program.

Subpart B—Board Procedures

§ 400.100 Purpose and scope.

This subpart describes the Board's authorities and organizational structure, the means and rules by which the Board takes actions, and procedures for public access to Board records.

§ 400.101 Composition of the Board.

The Board consists of the Chairman of the Board of Governors of the Federal Reserve System, who acts as Chairman of the Board, the Chairman of the Securities and Exchange Commission, and the Secretary of Commerce.

§ 400.102 Authority of the Board.

Pursuant to the provisions of the Act, the Board is authorized to guarantee loans provided to Qualified Steel Companies by private banking and investment institutions in accordance with the procedures, rules, and regulations established by the Board, to make the determinations authorized by the Act, and to take such other actions as necessary to carry out its functions in accordance with the Act.

§ 400.103 Offices.

The principal offices of the Board are in the U.S. Department of Commerce, Washington, DC 20230.

§ 400.104 Meetings and actions of the Board.

(a) *Place and frequency.* The Board meets, on the call of the Chairman, in order to consider matters requiring action by the Board. Time and place for any such meeting shall be determined by the members of the Board.

(b) *Quorum and voting.* Two voting members of the Board constitute a quorum for the transaction of business. All decisions and determinations of the Board shall be made by a majority vote of the voting members. All votes on determinations of the Board required by the Act shall be recorded in the minutes. A Board member may request that any vote be recorded according to individual Board members.

(c) *Agenda of meetings.* To the extent practicable, an agenda for each meeting shall be distributed to members of the Board at least two days in advance of the date of the meeting, together with copies of materials relevant to the agenda items.

(d) *Minutes.* The Secretary of the Board shall keep minutes of each Board meeting and of action taken without a meeting, a draft of which is to be distributed to each member of the Board as soon as practicable after each meeting or action. To the extent practicable, the minutes of a Board meeting shall be corrected and approved at the next meeting of the Board.

(e) *Use of conference call communications equipment.* Any member may participate in a meeting of the Board through the use of conference call, telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board.

(f) *Actions between meetings.* When, in the judgment of the Chairman, circumstances occur making it desirable for the Board to consider action when it is not feasible to call a meeting, the relevant information and recommendations for action may be transmitted to the members by the Secretary of the Board and the voting members may communicate their votes to the Chairman in writing (including an action signed in counterpart by each Board member), electronically, or orally (including telephone communication). Any action taken under this paragraph has the same effect as an action taken at a meeting. Any such action shall be recorded in the minutes.

(g) *Delegations of authority.* The Board may delegate authority, subject to such terms and conditions as the Board deems appropriate, to the Executive Director, the General Counsel, or the Secretary of the Board, to take certain actions not required by the Act to be taken by the Board. All delegations shall be made pursuant to resolutions of the Board and recorded in writing, whether in the minutes of a meeting or otherwise. Any action taken pursuant to delegated authority has the effect of an action taken by the Board.

§ 400.105 Staff.

(a) *Executive Director.* The Executive Director of the Board advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

(b) *General Counsel.* The General Counsel of the Board provides legal advice relating to the responsibilities of the Board and performs such other duties as the Board may require.

(c) *Secretary of the Board.* The Secretary of the Board sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board and performs such other duties as the Board may require.

§ 400.106 Ex parte communications.

Oral or written communication, not on the public record, between the Board, or any member of the Board, and any party or parties interested in any matter pending before the Board concerning the substance of that matter is prohibited. This section also applies to the Board's staff and employees of the constituent agencies who are or reasonably may be expected to be involved in the decisional process of the matter pending before the Board.

§ 400.107 Freedom of Information Act.

(a) *Definitions.* All terms used in this section which are defined in 5 U.S.C. 551 or 5 U.S.C. 552 shall have the same meaning in this section. In addition the following definitions apply to this section:

(1) *FOIA,* as used in this section, means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under paragraph (c) of this section. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(4) *Duplication* means the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microfilm, audiovisual materials, or machine-readable documentation (*e.g.,* magnetic tape or disk).

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(6) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *News* means information about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the general public.

(9) *Review* means the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(10) *Search* means the process of looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. Searches may be done manually or by computer.

(b) *Records available for public inspection and copying.*—(1) *Types of records made available.* The information in this section is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information FOIA, as amended (5 U.S.C. 552)(FOIA). This section sets forth the procedures the Board follows to make publicly available the materials specified in 5 U.S.C. 552(a)(2). These materials shall be made available for inspection and copying at the Board's Freedom of Information Office pursuant to 5 U.S.C. 552(a)(2). Information routinely provided to the public as part of a regular Board activity (for example, press releases) may be provided to the public without following this section.

(2) *Reading room procedures.* Information available under this section is available for inspection and copying, from 9:00 a.m. to 5:00 p.m. weekdays, at the Freedom of Information Office of the Board, Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230.

(3) *Electronic records.* Information available under this section that was created on or after November 1, 1996, shall also be available on the Board's website, found at www.doc.gov

(c) *Records available to the public on request.*—(1) *Types of records made available.* All records of the Board that are not available under paragraph (b) of this section shall be made available upon request, pursuant to the procedures in this section and the exceptions set forth in the FOIA. The Board's policy is to make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(2) *Procedures for requesting records.* A request for records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board, Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230; or sent by facsimile to the Secretary of the Board. The request shall be clearly marked *FREEDOM OF INFORMATION ACT REQUEST.*

(3) *Contents of request.* The request shall contain the following information:

(i) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(ii) Whether the requested information is intended for commercial use, or whether the requester represents an educational or noncommercial scientific institution, or news media;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies paragraph (f) of this section.

(d) *Processing requests.*—(1) *Priority of responses.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency, is the date the Secretary of the Board actually receives the request. The Secretary of the Board shall normally process requests in the order they are received. However, in the Secretary of the Board's discretion, the Board may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (d)(2). of this section. When using multitrack processing, the Secretary of the Board may provide requesters in the slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. The Secretary of the Board shall contact the requester by telephone or by letter, whichever is most efficient in each case.

(2) *Expedited processing.* (i) A person may request expedited access to records by submitting a statement, certified to be true and correct to the best of that person's knowledge and belief, that demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(ii) The Secretary of the Board shall notify a requester of the determination whether to grant or deny a request for expedited processing within ten working days of receipt of the request. If the Secretary of the Board grants the request for expedited processing, the Board shall process the request for access to information as soon as practicable. If the Secretary of the Board denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (e) of this section, and the Board shall respond to the appeal within twenty days after the appeal was received by the Board.

(3) *Time limits.* The time for response to requests shall be 20 working days, except:

(i) In the case of expedited treatment under paragraph (d)(2) of this section;

(ii) Where the running of such time is suspended for payment of fees pursuant to paragraph (f)(2)(ii) of this section;

(iii) Where the estimated charge is less than $250, and the requester does not guarantee payment pursuant to paragraph (f)(2)(i) of this section; or

(iv) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B)(iii), the time limit may be extended for a period of time not to exceed 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or such alternative time period as mutually agreed to by the Secretary of the Board and the requester when the Secretary of the Board notifies the requester that the request cannot be processed in the specified time limit.

(4) *Response to request.* In response to a request that satisfies paragraph (c) of this section, an appropriate search shall be conducted of records in the custody and control of the Board on the date of receipt of the request, and a review made of any responsive information located. The Secretary of the Board shall notify the requester of:

(i) The Secretary of the Board's determination of the request and the reasons therefor;

(ii) The information withheld, and the basis for withholding; and

(iii) The right to appeal any denial or partial denial, pursuant to paragraph (e) of this section.

(5) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, classified by, or is in the primary interest of another agency, the Secretary of the Board may refer the request to that agency for a direct response by that agency and inform the requester promptly of the referral. The Secretary of the Board shall consult with another Federal agency before responding to a requester if the Board receives a request for a record in which:

(i) Another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or

(ii) Another Federal agency not subject to the FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(6) *Providing responsive records.* (i) A copy of records or portions of records responsive to the request shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Secretary of the Board deems it appropriate to send the documents by another means. The Secretary of the Board shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format, but the Secretary of the Board need not provide more than one copy of any record to a requester.

(ii) The Secretary of the Board shall provide any reasonably segregable portion of a record that is responsive to the request after deleting those portions that are exempt under the FOIA or this section.

(iii) Except where disclosure is expressly prohibited by statute, regulation, or order, the Secretary of the Board may authorize the release of records that are exempt from mandatory disclosure whenever the Board or designated Board members determine that there would be no foreseeable harm in such disclosure.

(iv) The Board is not required in response to the request to create records or otherwise to prepare new records.

(7) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board officers, employees, or agents properly entitled to such information for the performance of official duties), unless required by law.

(e) *Appeals.* (1) Any person denied access to Board records requested under paragraph (c) of this section, denied expedited processing under paragraph (d) of this section, or denied a waiver of fees under paragraph (f) of this section may file a written appeal within 30 calendar days after the date of such denial with the Board. The written appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to the General Counsel of the Board, Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230; or sent by facsimile to the General Counsel of the Board. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the requested records should be made available and why the initial denial was in error.

(2) The General Counsel of the Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal, and the determination letter shall notify the appealing party of the right to seek judicial review in event of denial.

(f) *Fee schedules; waiver of fees.*—

(1) *Fee schedule.* The fees applicable to a request for records pursuant to paragraph (c) of this section are set forth in the uniform fee schedule at the end of this paragraph (f).

(i) *Search.* (A) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (f)(1)(iv) of this section. The Secretary of the Board shall charge for time spent searching even if no responsive record is located or if the Secretary of the Board withholds the record(s) located as entirely exempt from disclosure.

Search fees shall be the direct costs of conducting the search by the involved employees.

(B) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (f)(3) of this section will be charged no search fee and certain other requesters (as provided in paragraph (f)(3)) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(ii) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (f)(1)(iv) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be 15 cents per page. For copies produced by computer, such as tapes or printouts, the Secretary of the Board shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the Secretary of the Board will charge the direct costs of that duplication.

(iii) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when the Secretary of the Board determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(iv) *Limitations on charging fees.* (A) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(B) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(C) Whenever a total fee calculated under this paragraph is $25 or less for any request, no fee will be charged.

(D) For requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.

(2) *Payment procedures.* All persons requesting records pursuant to paragraph (c) of this section shall pay the applicable fees before the Secretary of the Board sends copies of the requested records, unless a fee waiver has been granted pursuant to paragraph (f)(6) of this section. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(i) *Advance notification of fees.* If the estimated charges are likely to exceed $25, the Secretary of the Board shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Secretary of the Board to reformulate the request to lower the costs. The processing of the request shall be suspended until the requester provides the Secretary of the Board with a written guarantee that payment will be made upon completion of the processing.

(ii) *Advance payment.* The Secretary of the Board shall require advance payment of any fee estimated to exceed $250. The Secretary of the Board shall also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the difference shall be refunded to the requester. The time period for responding to requests under paragraph (d)(4) of this section, and the processing of the request shall be suspended until the Secretary of the Board receives the required payment.

(iii) *Late charges.* The Secretary of the Board may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717.

(3) *Categories of uses.* The fees assessed depend upon the fee category. In determining which category is appropriate, the Secretary of the Board shall look to the identity of the requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary of the Board may seek additional clarification before categorizing the request.

(i) *Commercial use requester.* The fees for search, duplication, and review apply when records are requested for commercial use.

(ii) *Educational, non-commercial scientific institutions, or representatives of the news media requesters.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(iii) *All other requesters.* For all other requests, the fees for search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(4) *Nonproductive search.* Fees for search may be charged even if no responsive documents are found. Fees for search and review may be charged even if the request is denied.

(5) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary of the Board reasonably believes that a

requester is separating a request into a series of requests for the purpose of evading the assessment of fees or that several requesters appear to be acting together to submit multiple requests solely in order to avoid payment of fees, the Secretary of the Board may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary of the Board to presume that multiple requests by one requester on the same topic made within a 30-day period have been made to avoid fees.

(6) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in under paragraph (d)(4) of this section, shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(i) *Standards for determining waiver or reduction.* The Secretary of the Board may grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(A) Whether the subject of the records concerns the operations or activities of the government;

(B) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(C) Whether the requester has the intention and ability to disseminate the information to the public;

(D) Whether the information is already in the public domain;

(E) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(F) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(ii) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraph (f)(6)(i) of this section.

(iii) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(iv) *Determination by Secretary of the Board.* The Secretary of the Board shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with paragraph (e) of this section.

(7) *Uniform fee schedule.*

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search.	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction.	$.15 per page
(B) Other reproduction (*e.g.*, computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes preparation for release, *i.e.* excising).	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(g) *Request for confidential treatment of business information.*—(1) *Submission of request.* Any submitter of information to the Board who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Board at the time the information is submitted or a reasonable time after submission.

(2) *Form of request.* Each request for confidential treatment of business information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(3) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated *"PROPRIETARY"* or *"BUSINESS CONFIDENTIAL"* in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential commercial or financial information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(h) *Request for access to confidential commercial or financial information.*—(1) *Request for confidential commercial or financial information.* A request by a submitter for confidential treatment of any business information shall be considered in connection with a request for access to that information.

(2) *Notice to the submitter.* (i) The Secretary of the Board shall notify a submitter who requested confidential treatment of information pursuant to 5 U.S.C. 552(b)(4), of the request for access.

(ii) Absent a request for confidential treatment, the Secretary of the Board may notify a submitter of a request for access to submitter's business information if the Secretary of the Board reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(iii) The notice given to the submitter by mail, return receipt requested, shall be given as soon as practicable after receipt of the request for access, and shall describe the request and provide the submitter seven working days from the date of notice, to submit written objections to disclosure of the information. Such statement shall specify all grounds for withholding any of the information and shall demonstrate why the information which is considered to be commercial or financial information, and that the information is a trade secret, is privileged or confidential, or that its disclosure is likely to cause substantial competitive harm to the submitter. If the submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to the release of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(3) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(i) The Secretary of the Board determines that the request for access should be denied;

(ii) The requested information lawfully has been made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary of the Board, except that in this last instance the Secretary of the Board shall give the submitter written notice of the determination to disclose the information at least seven working days prior to disclosure.

(4) *Notice to requester.* At the same time the Secretary of the Board notifies the submitter, the Secretary of the Board also shall notify the requester that the request is subject to the provisions of this section.

(5) *Determination by Secretary of the Board.* The Secretary of the Board's determination whether or not to disclose any information for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary of the Board determines to disclose the business information over the objection of a submitter, the Secretary of the Board shall give the submitter written notice via mail, return receipt requested, or similar means, which shall include:

(i) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(6) *Notice of lawsuit.* The Secretary of the Board shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information, and shall promptly notify a requester of any suit filed against the Board to enjoin the disclosure of requested documents.

§ 400.108 Restrictions on lobbying.

(a) No funds received through a loan guaranteed under this Program may be expended by the recipient of a Federal contract, grant, loan, loan Guarantee, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan or loan Guarantee, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, loan Guarantee, or cooperative agreement.

(b) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in the application form, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(c) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a Standard Form–LLL if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(d) Each person shall file a certification, contained in the application form, and a disclosure form (Standard Form–LLL), if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(e) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or Guarantee a loan exceeding $150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (c) of this section.

(f) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (d) or (e) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

§ 400.109 Government-wide debarment and suspension (nonprocurement).

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect. The Board shall review the List of Debarred entities prior to making final loan Guarantee decisions. Suspension or debarment may be a basis for denying a loan Guarantee.

(b) This section applies to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of this section such transactions will be referred to as "covered transactions".

(1) *Covered transaction.* For purposes of this section, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) Primary covered transaction. Except as noted in paragraph (b)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan Guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person.

(ii) Lower tier covered transaction. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction;

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $100,000) under a primary covered transaction;

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons may include loan officers or chief executive officers acting as principal investigators and providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of this section would be prohibited by law.

(3) *Board covered transactions.* This section applies to the Board's loan Guarantees, subcontracts and transactions at any tier that are charges as direct or indirect costs, regardless of type.

(c) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to paragraph (l) of this section.

(d) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see paragraph (b)(1)(ii) of this section for the period of their exclusion.

(e) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of this section would be prohibited by law.

(f) Persons who are ineligible are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(g) Persons who accept voluntary exclusions are excluded in accordance with the terms of their settlements. The Board shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(h) The Board may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with the Executive Order.

(i) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(j) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in paragraph (h) of this section.

(k) Except as permitted under paragraphs (h) or (i) of this section, a participant shall not knowingly do business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(l) Violation of the restriction under paragraph (k) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(m) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

§ 400.110 Amendments.

The Board's rules in this chapter may be adopted or amended, or new rules may be adopted, only by majority vote of the Board. Authority to adopt or amend these rules may not be delegated.

Subpart C—Steel Guarantee Loans

§ 400.200 Eligible Borrower.

(a) An eligible Borrower must be a Qualified Steel Company that can demonstrate:

(1) Credit is not otherwise available to it under reasonable terms or conditions

sufficient to meet its financing needs, as reflected in the financial and business plans of the company;

(2) The prospective earning power of that company, together with the character and value of the security pledged, furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

(3) The company has agreed to permit audits by the General Accounting Office and an independent auditor acceptable to the Board prior to the issuance of the guarantee and while any such guaranteed loan is outstanding;

(4) It has experienced layoffs, production losses, or financial losses between January 1, 1998, and the date of application for the Guarantee, demonstrated as a comparison between employment, production, or net income existing on January 1, 1998 and on the date of application; and

(5) In the case of a purchaser of substantial assets of a Qualified Steel Company; the Qualified Steel Company is unable to re-organize itself.

(b) For purposes of this section, a company will be considered a purchaser of substantial assets of a Qualified Steel Company if the company's identifiable assets purchased from a Qualified Steel Company are 50 percent or more of the consolidated assets of that Qualified Steel Company and its subsidiaries.

(c) The Lender must provide with its application a letter from at least one lending institution other than the Lender to which the Borrower has applied for financial assistance, since January 1, 1998, indicating that the Borrower was denied for substantially the same loan they are now applying for, and the reasons the Borrower was unable to obtain the financing for which it applied. In addition, the Lender applying for a guarantee under this Program must certify that it would not make the loan without the Board's guarantee.

§ 400.201 Eligible Lender.

(a) A lender eligible to apply to the Board for a Guarantee of a loan must be:

(1) A banking institution, such as a commercial bank or trust company, subject to regulation by the Federal banking agencies enumerated in 12 U.S.C. 1813; or

(2) An investment institution, such as an investment bank, commercial finance company, or insurance company that is currently engaged in commercial lending in the normal course of its business.

(b) Status as a Lender under paragraph (a) of this section does not assure that the Board will issue the Guarantee sought, or otherwise preclude the Board from declining to issue a Guarantee. In addition to evaluating an application pursuant to § 400.207, in making a determination to issue a Guarantee to a Lender, the Board will assess:

(1) The Lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of investment institutions;

(2) Whether the Lender possesses the ability to administer the loan, as required by § 400.211(b), including its experience with loans to steel companies;

(3) The scope, volume and duration of the Lender's activity in administering loans;

(4) The performance of the Lender's loan portfolio, including its current delinquency rate;

(5) The Lender's loss rate as a percentage of loan amounts for its current fiscal year; and

(6) Any other matter the Board deems material to its assessment of the Lender.

(c) In the case of the refinancing of an existing credit, the applicant must be a different lender than the holder of the existing credit.

§ 400.202 Loan amount.

(a) The aggregate amount of loan principal guaranteed under this Program to a single Qualified Steel Company may not exceed $ 250 million.

(b) Of the aggregate amount of loans authorized to be guaranteed and outstanding at any one time, not more than $30 million shall be loans to iron ore companies.

§ 400.203 Guarantee percentage.

A guarantee issued by the Board may not exceed 85 percent of the amount of the principal of a loan to a Qualified Steel Company.

§ 400.204 Loan terms.

(a) All loans guaranteed under the Program shall be due and payable in full no later than December 31, 2005.

(b) Loans guaranteed under the Program must bear a rate of interest determined by the Board to be reasonable. The reasonableness of an interest rate will be determined with respect to current average yields on outstanding obligations of the United States with remaining periods of maturity comparable to the term of the loan sought to be guaranteed. The Board may reject an application to guarantee a loan if it determines the interest rate of such loan to be unreasonable.

(c)(1) The performance of all of the Borrower's obligations under the Loan Documents shall be secured by, and shall have the priority in, such Security as provided for within the terms and conditions of the Guarantee.

(2) Without limiting the Lender's and Borrower's obligations under paragraph (c)(1) of this section, at a minimum, the loan shall be secured by—

(i) A fully perfected and enforceable security interest and/or lien, with first priority over conflicting security interests or other liens in all property, both real and personal, tangible or intangible, including accessions, replacements and proceeds thereof, which are acquired, improved, or derived from the loan funds; and

(ii) A fully perfected and enforceable security interest and/or lien in all other property of the Borrower, including accessions, replacements and proceeds thereof, or which may be given by a third-party as Security for the loan, the priority of which shall be on the same and equal status with the highest voluntarily granted or acquired security interest or lien then existing therein;

(3) The entire loan will be secured by the same Security with equal lien priority for the guaranteed and the unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference over the guaranteed portion.

(4) An Applicant's compliance with paragraph (c)(2) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the loan.

(d) An eligible Lender may assess and collect from the Borrower such other fees and costs associated with the application and origination of the loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such other fees and costs into consideration when determining whether to offer a Guarantee to the Lender.

§ 400.205 Application process.

(a) *Application deadline.* An original application and three copies must be received by the Board no later than [illegible] p.m. EST, December 30, 1999 in U.S. Department of Commerce, Washington DC 20230. Applications which have been provided to a delivery service on or before December 29, 1999, with "delivery guaranteed" before 8 p.m. on December 30, 1999, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed above guaranteed prior to the closing date and time. A postmark of December 30, 1999, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

(b) Applications shall contain the following:

(1) A completed Form "Application for Steel Guarantee Loan";

(2) The information required for the completion of Form "Environmental Assessment and Compliance Findings for Related Environmental Laws" and attachments, as required by § 400.206(a)(2)(i)(D), unless the project is categorically excluded under § 400.206(b);

(3) All Loan Documents that will be signed by the Lender and the Borrower, if the application is approved, including all terms and conditions of, and Security or additional Security to assure the Borrower's performance under, the loan;

(4) Certification by the chairman of the board and the chief executive officer of the Borrower acknowledging that the Borrower is aware that the Lender is applying to the Board for a Guarantee of a loan under the Program, as described in the Loan Documents; and agreeing to permit audits by the General Accounting Office, its designee, and an independent auditor acceptable to the Board prior to the issuance of the Guarantee and annually thereafter while such guarantee is outstanding;

(5) The Lender's full written underwriting analysis of the loan to be guaranteed by the Board;

(6) A certification that the Lender has followed the same loan underwriting analysis with the loan to be guaranteed as it would follow for a loan not guaranteed by the Government; and a certification by the Lender, that the loan, Lender, and Borrower meet each of the requirements of the Program as set forth in the Act and the Board's rules in this part;

(7) A description of all Security for the loan, including, as applicable, current appraisal of real and personal property, copies of any appropriate environmental site assessments, and current personal and corporate financial statements of any guarantors for the same period as required for the Borrower. Appraisals of real property shall be prepared by State licensed or certified appraisers, and be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation. Financial statements of guarantors shall be prepared by independent Certified Public Accountants;

(8) Consolidated financial statements of the Borrower for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(9) A five year history and five year projection for revenue, cash flow, average realized prices and average realized production costs. If the loan funds are to be used to purchase substantial assets of an existing firm, a pro forma balance sheet at startup, and five years projected year end balance sheets and income statement at start-up;

(10) Documentation that credit is not otherwise available to the borrower under reasonable terms or conditions sufficient to meet its financial needs, as reflected in the financial or business plan of that company. The Lender must provide with its application those items required by § 400.200(c); and

(11) Documentation sufficient to demonstrate that the Lender is eligible under § 400.201(a) and to allow the Board to make a determination to issue a Guarantee to such Lender as set forth in § 400.201(b).

(c) No Guarantee will be made if either the Borrower or Lender has an outstanding, delinquent Federal debt until:

(1) The delinquent account has been paid in full;

(2) A negotiated repayment schedule is established and at least one payment has been received; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt, are made.

§ 400.206 Environmental requirements.

(a)(1) *General.* Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and Executive Orders. Therefore, except as provided in paragraph (b) of this section, and subject to paragraph (c) of this section, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Environmental information required from the Lender.* (i) Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities. The Lender may obtain this information from the Borrower. Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the loan at issue;

(D) The information required for the completion of Form "Environmental Assessment and Compliance Findings for Related Environmental Laws;" and

(E) Any other information that can be used by the Board to ensure compliance with environmental laws.

(ii) All information supplied by the Lender is subject to verification by the Board.

(b) *Categorical exclusions from National Environmental Policy Act (NEPA) reviews.* The actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They are categorically excluded from the need to prepare an environmental assessment or impact statement under NEPA. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from compliance with other applicable local, State, or Federal environmental laws.

(1) Projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of facilities, structures or businesses, for replacement or restoration purposes, with minimal change in use, size, capacity, purpose or location from the original facility (e.g., replacement in-kind of utilities such as water or sewer lines and appurtenances, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements);

(2) Project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(3) Projects that solely involve the purchase and installation of office equipment, public safety equipment, or motor vehicles;

(4) Projects that solely involve the acquisition of working capital; and

(5) Projects that solely involve a combination of activities under paragraphs (b)(1) through (4) of this section.

(c) Actions listed in paragraph (b) that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(1) A floodplain;

(2) A wetland;

(3) Important farmlands, or prime forestlands or rangelands;

(4) A listed species or critical habitat for an endangered species;

(5) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(6) An area within an approved State coastal zone management Program;

(7) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(8) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;

(9) A sole source aquifer recharge area;

(10) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(11) Federal lands.

(d) The regulations of the Council on Environmental Quality implementing NEPA require the Board to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public. See 40 CFR 1506.6(b). Environmental information concerning specific projects can be obtained from the Board by contacting: Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230.

§ 400.207 Application evaluation.

(a) *Eligibility screening.* Applications will be reviewed to determine whether the Lender and Borrower are eligible, the information required under § 400.205(b) is complete, and the proposed loan complies with applicable statutes and regulations. The Board can at any time reject an application that does not meet these requirements.

(b) *Evaluation criteria.* Applications that are determined to be eligible pursuant to paragraph (a) of this section shall be subject to a substantive review, on a competitive basis, by the Board based upon the following evaluation factors, in order of importance:

(1) The ability of the Borrower to repay the loan by the date specified in the Loan Document, which shall be no later than December 31, 2005;

(2) The adequacy of the proposed provisions to protect the Government, including sufficiency of Security, the priority of the lien position in the Security, and the percentage of Guarantee requested; and

(3) Adequacy of the underwriting analysis performed by the Lender in preparing the application and the ability of the Lender to administer the loan in full compliance with the requisite standard of care set forth in § 400.211(b).

(c) *Decisions by the Board.* Upon completion of the evaluation of the application and as soon as possible after the due date, the Board will approve or deny all eligible applications timely received under this Program. The Board shall notify all Applicants in writing of the approval or denial of the Guarantee applications as soon as possible. Approvals for loan Guarantees shall be conditioned upon compliance with § 400.208.

§ 400.208 Issuance of the Guarantee.

(a) The Board's decisions to approve any application for, and extend an offer of, guarantee under § 400.207 is conditioned upon:

(1) The Lender and Borrower obtaining any required regulatory or judicial approvals;

(2) The Lender and Borrower being legally authorized to enter into the loan under the terms and conditions submitted to the Board in the application;

(3) The Board's receipt of the Loan Documents, Guarantee, and any related instruments, properly executed by the Lender, Borrower, and any other required party other than the Board; and

(4) No material adverse change in the Borrower's ability to repay the loan between the date of the Board's approval and the date the Guarantee is to be issued.

(b) The Board may withdraw its approval of an application and rescind its offer of Guarantee if the Board determines that the Lender or the Borrower cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer.

(c) Only after receipt of all the documentation, required by this section, will the Board sign and deliver the Guarantee.

(d) A Borrower receiving a loan guaranteed by the Board under this Program shall pay a one-time guarantee fee of 0.5 percent of the amount of the principal of the loan. This fee must be paid no later than one year from the issuance of the Guarantee.

§ 400.209 Funding for the Program.

The Act provides funding for the costs incurred by the Government as a result of granting Guarantees under the Program. While pursuing the goals of the Act, it is the intent of the Board to minimize the cost of the Program to the Government. The Board will estimate the risk posed by the guaranteed loans to the funds appropriated for the costs of the Guarantees under the Program and operate the Program accordingly.

§ 400.210 Assignment or transfer of loans.

(a) Neither the Loan Documents nor the Guarantee of the Board, or any interest therein, may be modified, assigned, conveyed, sold or otherwise transferred by the Lender, in whole or in part, without the prior written approval of the Board.

(b) Under no circumstances will the Board permit an assignment or transfer of less than 100 percent of the Loan Documents and Guarantee, nor will it permit an assignment or transfer to be made to an entity which the Board determines not to be an Eligible Lender pursuant to § 400.201.

(c) The proscription under paragraph (a) of this section shall not apply to:

(1) Transfers which occur by operation of law, unless a primary purpose of the transaction leading to such a transfer was to assign, convey or sell the loan note or Guarantee without the necessity of securing the Board's prior written approval; or

(2) An action or agreement by the Lender which has the effect of distributing the risks of the credit among other Lenders if:

(i) Neither the loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part;

(ii) Both the unguaranteed and guaranteed portions of the loan are treated in the same manner;

(iii) The Lender remains solely responsible for the administration of the loan; and

(iv) The Board's ability to assert any and all defenses available to it under the Guarantee and the law is not adversely affected.

§ 400.211 Lender responsibilities.

(a) *General.* Lender shall comply with all provisions of the Guarantee.

(b) *Standard of care.* The Lender shall exercise due care and diligence in administering the loan as would be exercised by a responsible and prudent banking institution when administering a secured loan of such banking institution's own funds without a Federal guaranty. Such standard shall also apply to any and all approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(c) *Representation to the Board.* In addition to any other representations required by the Guarantee, the Lender shall represent to the Board that it has the ability to, and will, administer the loan, as well as to exercise the Lender's rights and pursue its remedies, including conducting any liquidation of the Security or additional Security in full compliance with the standard of care, without the need for any advice, opinion, determination, recommendation, approval, disapproval, assistance (financial or other) or participation by the Board, except where the Board's consent is expressly required by the Guarantee, or where the Board, in its sole discretion and pursuant to the Guarantee, elects to provide same.

(d) *Covenants.* With respect to any loan guaranteed by the Board pursuant to the Act and this part, the Lender shall require the Loan Documents to contain such affirmative and negative covenants by the Borrower as are required by the terms and conditions of the Guarantee, such as the prohibition on the payment of dividends.

(e) *Monitoring.* In accordance with the Guarantee, the Lender shall monitor Borrower's performance under the Loan Documents to detect any noncompliance by the Borrower with any provision thereof, and will use its best efforts to cause Borrower's timely correction of any such noncompliance and Borrower's compliance with such provision thereafter.

(f) *Reporting.* With respect to any loan guaranteed by the Board pursuant to the Act and this part the Lender shall provide the Board with the following information:

(1) Audited financial statements for the Borrower for the prior fiscal year;

(2) Projected balance sheet, income statement, and cash flows for the Borrower for each year remaining on the term of the loan within 60 days of the Borrower's fiscal year end; and

(3) A completed signed copy of Form "Quarterly Compliance Statement" that includes information on the recent performance of the loan, within 15 days of the end of each calendar quarter.

(g) *Notices.* All written notices, requests, or demands made to the Board shall be mailed to the Board at the U.S. Department of Commerce, Washington, DC 20230, except as otherwise specified by the Guarantee or as directed by the Board. Lender shall notify the Board in writing without delay of:

(1) Deterioration in the internal risk rating of a loan guaranteed under this Program within 3 business days of such action by the Lender;

(2) The occurrence of each event of default under the Loan Documents or Guarantee promptly, but not later than 3 business days, of the Lender's learning of such occurrence; and

(3) Any other notification requirements as provided by law, or by the terms of the Guarantee or Loan Documents.

§ 400.212 Liquidation.

(a) The Board may take, or direct to be taken, any action in liquidating the Security which the Board determines to be necessary or proper, consistent with Federal law and regulations.

(b) Pursuant to the Guarantee, upon written demand by the Lender and whether or not the Board has made any payment under the Guarantee, the Board, at the Board's sole option shall have the right to require that the Lender, solely or jointly with the Board, conduct to completion the liquidation of any or all of the Security. The Board may choose to conduct the liquidation itself.

§ 400.213 Termination of Guarantee.

(a) The Board, in its discretion, shall be entitled to terminate all of the Board's obligations under the Guarantee, without further cause, by giving written notice to the Lender of such termination, in the event that:

(1) The closing of the loan shall not have occurred in accordance with the terms and conditions of the Guarantee;

(2) The Guarantee fee required by § 400.208(d) shall not have been paid;

(3) The Lender shall have released or covenanted not to sue the Borrower or any other guarantor, or agreed to the modification of any obligation of any party to any agreement related to the loan, without the prior written consent of the Board;

(4) Lender has released the Board from its liability and obligations under the Guarantee;

(5) Lender has been repaid in full on the loan;

(6) Lender shall have made any incorrect or incomplete representation to the Board in any material respect in connection with the Application, the Guarantee or the Loan Documents; or

(7) Lender failed to comply with any material provision of the Loan Documents or the Guarantee.

(b) Upon receipt of a written demand for payment made pursuant to the Guarantee, the Board shall be entitled to seek such certifications from the Lender, undertake such audits or investigations, or take such other action as is provided for by law or the Guarantee so as to determine whether the Lender has complied with all of the Lender's obligations under the Guarantee.

§ 400.214 OMB control number.

[Reserved].

[FR Doc. 99–27581 Filed 10–22–99; 2:19 pm]

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Wednesday
October 27, 1999

Part III

Emergency Oil and Gas Guaranteed Loan Board

13 CFR Chapter V

Emergency Oil and Gas Guaranteed Loan Program; Final Rule

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

13 CFR Chapter V

RIN 3003–ZA00

Emergency Oil and Gas Guaranteed Loan Program

AGENCY: Emergency Oil and Gas Guaranteed Loan Board.

ACTION: Final rule.

SUMMARY: On August 17, 1999, President Clinton signed into law an act providing authority for guarantees of loans to qualified steel and iron ore companies and to qualified oil and gas companies. Chapter 2 of the Emergency Oil and Gas Guaranteed Loan Program Act ("Act"), established the Emergency Oil and Gas Guaranteed Loan Program ("Program") for guaranteeing loans made by private sector lending institutions to qualified oil and gas companies. The Act established the Guarantee Loan Board ("Board"), composed of the Chairman of the Board of Governors of the Federal Reserve System, as Chairman of the Board, the Secretary of Commerce, and the Chairman of the Securities and Exchange Commission. The Board has certain responsibilities under the law, including the issuance of necessary rules. The Department of Commerce was appropriated funds to implement and administer the Program. These regulations have been approved by the Board, and are being issued to implement the Program.

DATES: This rule is effective December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Executive Director, Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Washington D.C. 20230, (202) 482–6151.

SUPPLEMENTARY INFORMATION:

Background

The Program will provide guarantees for up to $500 million in loans to qualified oil and gas companies. These loans will be made by private sector lenders, with the Federal Government providing a guarantee for up to 85 percent of the amount of the principal of the loan. The Board, composed of the Chairman of the Board of Governors of the Federal Reserve System, who will serve as Chairman of the Board, the Secretary of Commerce, and the Chairman of the Securities and Exchange Commission, will oversee the Program. The Board will select an Executive Director, a Secretary, and a General Counsel to oversee day-to-day operations of the Program. A loan guarantee may be issued upon application to the Board by a private banking or investment institution which has committed to enter into an agreement to provide a loan to a qualified oil and gas company. A qualified oil and gas company is defined in the Act to mean any company that (A) is: (i) An independent oil and gas company (within the meaning of section 57(a)(2)(B)(i) of the Internal Revenue Code of 1986); or (ii) A small business concern under section 3 of the Small Business Act, 15 U.S.C. 632, (or a company based in Alaska, including an Alaska Native Corporation created pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*) that is an oil field service company whose main business is providing tools, products, personnel, and technical solutions on a contractual basis to exploration and production operators that drill, complete wells, and produce, transport, refine, and sell hydrocarbons and their byproducts as the main commercial business of the concern or company; and (B) has experienced financial losses since January 1997.

In order to guarantee a loan to a qualified oil and gas company, the Board must make certain determinations. The Board must determine that credit is not otherwise available to a qualified oil and gas company under reasonable terms or conditions sufficient to meet its financing needs. Next, the prospective earning power of that company, together with the character and value of the security pledged, must furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms. In addition, the loan to be guaranteed must bear interest at a rate determined by the Board to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of such loan. Further the company must agree to an audit by the General Accounting Office, or its designee, and an independent auditor acceptable to the Board, prior to the issuance of the Guarantee and annually thereafter while such guarantee is outstanding. In addition, audited financial statements are required to be submitted with an application.

The Act established several conditions applicable to each loan guarantee issued by the Board. All loans guaranteed under this Program must be paid in full not later than December 31, 2010. The guarantee level may not exceed 85 percent of the amount of principal of the loan. The aggregate amount of loans guaranteed and outstanding at any one time under this Program may not exceed $500 million, and the aggregate amount of loans guaranteed under this Program with respect to a single qualified oil and gas company may not exceed $10 million. A qualified oil and gas company receiving a guarantee under this section will be required to pay a fee in the amount of 0.5 percent of the principal of the loan to the Department of the Treasury to cover the costs of the Program payable within one year from the issuance of the guarantee. Finally, the terms and conditions of each guaranteed loan must provide that the loan may not be amended, and that no provision of the loan documents or the guarantee agreement can be waived, without the prior written consent of the Board.

In the Act, Congress appropriated $122.5 million for the cost of the loans guaranteed. The Board will consider applications and award guarantees under the Program in accordance with the appropriated funding.

Public Meeting

To receive public input regarding operation of the Program, the Board held a public meeting on September 22, 1999, at the Department of Commerce. The meeting consisted of parties presenting oral statements to staff of the Department of Commerce, the Federal Reserve Board, and the Securities and Exchange Commission. Oral statements addressed issues and made suggestions regarding implementation of the Program. Four parties, representing oil and gas companies, presented oral testimony at the meeting. In addition to oral statements presented at the meeting, written comments were submitted by interested parties. All comments were considered in promulgating these rules.

Description of Regulation

The Board's regulations are divided into three subparts. Subpart A sets out the purpose of the rules and contains definitions of terms used in the other subparts. Subpart B contains rules regarding the Board's organization, staffing, rules of procedure, and procedures for public access to the Board's records. The Board will establish an official staff consisting of an Executive Director, General Counsel, and Secretary, with the respective responsibilities set out in Subpart B. The Board may delegate to its official staff authority to take certain actions, subject to such terms and conditions as the Board deems appropriate. The Board may employ additional staff or outside consultants as it deems necessary to carry out its functions in accordance with the Act.

Subpart C sets out the eligibility requirements for lenders and borrowers under the Program, general loan terms, fees, and restrictions on assignment and transfer of loans guaranteed under the Program. In addition, Subpart C describes the process by which eligible lenders can submit applications for loan guarantees to the Board and the Board's procedures for processing and evaluating the applications in order to select the loans that will be granted guarantees. Finally, Subpart C sets out some of the Lender's responsibilities in originating and administering a guaranteed loan and the events and conditions that could cause the Board to terminate the guarantee in whole or in part.

The Act directs the Board to act on applications for loan guarantees as soon as possible. In addition, the Board must implement the Program within the appropriated funding provided by the Act and, thus, must ensure that it grants guarantees to the loans that it determines best meet the Program's evaluation criteria. In view of these and other considerations, the Board has determined to create an application "window" during which applicants must submit their loan guarantee applications. The window will run from the date these rules are published in the **Federal Register** until December 30, 1999.

Each application package received by the Board during this window will be screened to confirm that it meets all of the Program's eligibility requirements as set out in the applicable regulations and application forms. Application packages that do not meet the Program's eligibility requirements will not be considered for a loan guarantee. The Board will compare the eligible applications on a competitive basis and offer guarantees to those applications that it determines best meet the Program's evaluation criteria. As discussed in more detail in Subpart C, the Program's evaluation criteria include the ability of the Borrower to repay the loan according to its terms, the protection provided by the proposal to the Government in the event of default (including sufficiency of collateral, lien position, and percentage of guarantee requested), and the adequacy of the Lender's loan underwriting analysis. Since the accelerated schedule does not provide time for the Board to negotiate with individual applicants and the Board's selection process will be on a competitive basis, it is in each applicant's best interest to provide, at the outset, a thorough proposal that ranks as high as possible on each of the Program's evaluation criteria. For example, applicants should request the lowest guarantee percentage practicable for their proposals at the outset. In addition, applications giving the government a higher security position on higher quality collateral will be given preference over those that provide a lesser level of security. Failure to do so could reduce the likelihood that the application will be selected to receive a guarantee.

Administrative Law Requirements

Executive Order 12866

This final rule has been determined to be a "significant regulatory action" under section 3(f) of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

List of Subjects in 13 CFR Part 500

Administrative practice and procedures, Freedom of Information, Loan programs—Natural resources, Reporting and recordkeeping requirements.

Paperwork Reduction Act

The Board will submit to the Office of Management and Budget, for clearance under the Paperwork Reduction Act, a package containing the necessary forms and documentation for participation in this Program.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be a major rule for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.* The Congressional Review Act requires that major rules have their effective date delayed 60 days while Congress has the opportunity to review the rule. While there are certain exemptions to this delayed effective date requirement, the Board has determined that none are applicable to this rule.

List of Subjects in 13 CFR Part 500

Administrative practice and procedure, Freedom of Information: Loan programs—Natural resources, Reporting and recordkeeping requirements.

Intergovernmental Review

No intergovernmental consultation with state and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

National Environmental Policy Act

The Board determined that this Program does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. §4321 *et seq.*, Public Law 91–190 (NEPA), an Environmental Impact Statement is not required. Loans sought to be guaranteed under the Program will be assessed individually to determine appropriate compliance with NEPA.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 12612

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

Programs Affected

There is no Catalog of Federal Domestic Assistance listing for the Emergency Oil and Gas Guaranteed Loan Program.

Dated: October 18, 1999.

Jonathan Orszag,

Acting Executive Director, Emergency Oil and Gas Guaranteed Loan Board.

For the reasons set out in the preamble, 13 CFR Chapter V is established to read as follows:

CHAPTER V—EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

PART 500—EMERGENCY OIL AND GAS GUARANTEED LOAN PROGRAM

Subpart A—General

500.1 Purpose.
500.2 Definitions.

Subpart B—Board Procedures

500.100 Purpose and scope.
500.101 Composition of the Board.
500.102 Authority of the Board.
500.103 Offices.

500.104 Meetings and actions of the Board.
500.105 Staff.
500.106 Ex parte communications.
500.107 Freedom of Information Act.
500.108 Restrictions on lobbying.
500.109 Government-wide debarment and suspension (nonprocurement).
500.110 Amendments.

Subpart C—Oil and Gas Guaranteed Loans

500.200 Eligible Borrower.
500.201 Eligible Lender.
500.202 Loan amount.
500.203 Guarantee percentage.
500.204 Loan terms.
500.205 Application process.
500.206 Environmental requirements.
500.207 Application evaluation.
500.208 Issuance of the Guarantee.
500.209 Funding for the Program.
500.210 Assignment or transfer of loans.
500.211 Lender responsibilities.
500.212 Liquidation.
500.213 Termination of Guarantee.
500.214 OMB control number.

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

Subpart A—General

§ 500.1 Purpose.

This part is issued by the Emergency Oil and Gas Guaranteed Loan Board pursuant to section 552 of title 5 of the United States Code and the Emergency Oil and Gas Guaranteed Loan Act, Chapter 2 of Public Law 106–51. This part contains rules for making and servicing loans to qualified oil and gas guaranteed by the Board.

§ 500.2 Definitions.

(a) *Act* means the Emergency Oil and Gas Guaranteed Loan Program Act, Chapter 2 of Public Law 106–51.

(b) *Administer, administering and administration*, mean the Lender's actions in making, disbursing, servicing (including, but not limited to care, preservation and maintenance of collateral), collecting and liquidating a loan and security.

(c) *Applicant* means the private banking or investment institution applying for a loan guarantee under this part.

(d) *Board* means the Emergency Oil and Gas Guaranteed Loan Board.

(e) *Borrower* means a Qualified Oil and Gas Company which could receive a loan guaranteed by the Board under this Program.

(f) *Guarantee* means the written agreement between the Board and the Lender, and approved by the Borrower, pursuant to which the Board guarantees repayment of a specified percentage of the principal of the loan, including the Special Terms and Conditions, the General Terms and Conditions, and all exhibits thereto.

(g) *Lender* means a private banking or investment institution that is eligible pursuant to § 500.201.

(h) *Loan Documents* mean the loan agreement and all other instruments, and all documentation between the Lender and the Borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of the loan.

(i) *Program* means the Emergency Oil and Gas Guaranteed Loan Program established by the Act.

(j) *Security* means all property, real or personal, required by the provisions of the Guarantee or by the Loan Documents to secure repayment of any indebtedness of the Borrower under the Loan Documents or Guarantee.

(k) *Qualified Oil and Gas Company* means any company that: (A) is (i) an independent oil and gas company (within the meaning of section 57(a)(2)(B)(i) of the Internal Revenue Code of 1986) or; (ii) a small business concern under section 3 of the Small Business Act, 15 U.S.C. 632, (or a company based in Alaska, including an Alaska Native Corporation created pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*) that is an oil field service company whose main business is providing tools, products, personnel, and technical solutions on a contractual basis to exploration and production operators that drill, complete wells, and produce, transport, refine, and sell hydrocarbons and their byproducts as the main commercial business of the concern or company; and (B) has experienced layoffs, production losses, or financial losses since January 1997.

Subpart B—Board Procedures

§ 500.100 Purpose and scope.

This subpart describes the Board's authorities and organizational structure, the means and rules by which the Board takes actions, and procedures for public access to Board records.

§ 500.101 Composition of the Board.

The Board consists of the Chairman of the Board of Governors of the Federal Reserve System, who acts as Chairman of the Board, the Chairman of the Securities and Exchange Commission, and the Secretary of Commerce.

§ 500.102 Authority of the Board.

Pursuant to the provisions of the Act, the Board is authorized to guarantee loans provided to Qualified Oil and Gas companies by private banking and investment institutions in accordance with the procedures, rules, and regulations established by the Board, to make the determinations authorized by the Act, and to take such other actions as necessary to carry out its functions in accordance with the Act.

§ 500.103 Offices.

The principal offices of the Board are in the U.S. Department of Commerce, Washington, D.C. 20230.

§ 500.104 Meetings and actions of the Board.

(a) *Place and frequency.* The Board meets, on the call of the Chairman, in order to consider matters requiring action by the Board. Time and place for any such meeting shall be determined by the members of the Board.

(b) *Quorum and voting.* Two voting members of the Board constitute a quorum for the transaction of business. All decisions and determinations of the Board shall be made by a majority vote of the voting members. All votes on determinations of the Board required by the Act shall be recorded in the minutes. A Board member may request that any vote be recorded according to individual Board members.

(c) *Agenda of meetings.* To the extent practicable, an agenda for each meeting shall be distributed to members of the Board at least two days in advance of the date of the meeting, together with copies of materials relevant to the agenda items.

(d) *Minutes.* The Secretary of the Board shall keep minutes of each Board meeting and of action taken without a meeting, a draft of which is to be distributed to each member of the Board as soon as practicable after each meeting or action. To the extent practicable, the minutes of a Board meeting shall be corrected and approved at the next meeting of the Board.

(e) *Use of conference call communications equipment.* Any member may participate in a meeting of the Board through the use of conference call, telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board.

(f) *Actions between meetings.* When, in the judgment of the Chairman, circumstances occur making it desirable for the Board to consider action when it is not feasible to call a meeting, the relevant information and recommendations for action may be transmitted to the members by the Secretary of the Board and the voting members may communicate their votes to the Chairman in writing (including an action signed in counterpart by each Board member), electronically, or orally (including telephone communication). Any action taken under this paragraph has the same effect as an action taken at a meeting. Any such action shall be recorded in the minutes.

(g) *Delegations of authority.* The Board may delegate authority, subject to such terms and conditions as the Board deems appropriate, to the Executive Director, the General Counsel, or the Secretary of the Board, to take certain actions not required by the Act to be taken by the Board. All delegations shall be made pursuant to resolutions of the Board and recorded in writing, whether in the minutes of a meeting or otherwise. Any action taken pursuant to delegated authority has the effect of an action taken by the Board.

§ 500.105 Staff.

(a) *Executive Director.* The Executive Director of the Board advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

(b) *General Counsel.* The General Counsel of the Board provides legal advice relating to the responsibilities of the Board and performs such other duties as the Board may require.

(c) *Secretary of the Board.* The Secretary of the Board sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board and performs such other duties as the Board may require.

§ 500.106 Ex parte communications.

Oral or written communication, not on the public record, between the Board, or any member of the Board, and any party or parties interested in any matter pending before the Board concerning the substance of that matter is prohibited. This section also applies to the Board's staff and employees of the constituent agencies who are or reasonably may be expected to be involved in the decisional process of the matter pending before the Board.

§ 500.107 Freedom of Information Act.

(a) *Definitions.* All terms used in this section which are defined in 5 U.S.C. 551 or 5 U.S.C. 552 shall have the same meaning in this section. In addition the following definitions apply to this section:

(1) *FOIA,* as used in this section, means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under paragraph (c) of this section. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(4) *Duplication* means the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microfilm, audiovisual materials, or machine-readable documentation (*e.g.,* magnetic tape or disk).

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(6) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *News* means information about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the general public.

(9) *Review* means the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(10) *Search* means the process of looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. Searches may be done manually or by computer.

(b) *Records available for public inspection and copying.*—(1) *Types of records made available.* The information in this section is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act, as amended (5 U.S.C. 552) (FOIA). This section sets forth the procedures the Board follows to make publicly available the materials specified in 5 U.S.C. 552(a)(2). These materials shall be made available for inspection and copying at the Board's Freedom of Information Office pursuant to 5 U.S.C. 552(a)(2). Information routinely provided to the public as part of a regular Board activity (for example, press releases) may be provided to the public without following this section.

(2) *Reading room procedures.* Information available under this section is available for inspection and copying, from 9:00 a.m. to 5:00 p.m. weekdays, at the Freedom of Information Office of the Board, Oil and Gas Guarantee Loan Board, U.S. Department of Commerce, Washington, D.C. 20230.

(3) *Electronic records.* Information available under this section that was created on or after November 1, 1996, shall also be available on the Board's website, found at www.doc.gov.

(c) *Records available to the public on request.*—(1) *Types of records made available.* All records of the Board that are not available under paragraph (b) of this section shall be made available upon request, pursuant to the procedures in this section and the exceptions set forth in the FOIA. The Board's policy is to make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(2) *Procedures for requesting records.* A request for records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board, Oil and Gas Guarantee Loan Board, U.S. Department of Commerce, Washington, D.C. 20230; or sent by facsimile to the Secretary of the Board. The request shall be clearly marked *FREEDOM OF INFORMATION ACT REQUEST.*

(3) *Contents of request.* The request shall contain the following information:

(i) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(ii) Whether the requested information is intended for commercial use, or whether the requester represents an educational or noncommercial scientific institution, or news media;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies paragraph (f) of this section.

(d) *Processing requests.*—(1) *Priority of responses.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency, is the date the Secretary of the Board actually receives the request. The Secretary of the Board shall normally process requests in the order they are received. However, in the Secretary of the Board's discretion, the Board may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (d)(2) of this section. When using multitrack processing, the Secretary of the Board may provide requesters in the slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. The Secretary of the Board shall contact the requester by telephone or by letter, whichever is most efficient in each case.

(2) *Expedited processing.* (i) A person may request expedited access to records by submitting a statement, certified to be true and correct to the best of that person's knowledge and belief, that demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(ii) The Secretary of the Board shall notify a requester of the determination whether to grant or deny a request for expedited processing within ten working days of receipt of the request. If the Secretary of the Board grants the request for expedited processing, the Board shall process the request for access to information as soon as practicable. If the Secretary of the Board denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (e) of this section, and the Board shall respond to the appeal within twenty days after the appeal was received by the Board.

(3) *Time limits.* The time for response to requests shall be 20 working days, except:

(i) In the case of expedited treatment under paragraph (d)(2) of this section;

(ii) Where the running of such time is suspended for payment of fees pursuant to paragraph (f)(2)(ii) of this section;

(iii) Where the estimated charge is less than $250, and the requester does not guarantee payment pursuant to paragraph (f)(2)(i) of this section; or

(iv) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B)(iii), the time limit may be extended for a period of time not to exceed 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or such alternative time period as mutually agreed to by the Secretary of the Board and the requester when the Secretary of the Board notifies the requester that the request cannot be processed in the specified time limit.

(4) *Response to request.* In response to a request that satisfies paragraph (c) of this paragraph, an appropriate search shall be conducted of records in the custody and control of the Board on the date of receipt of the request, and a review made of any responsive information located. The Secretary of the Board shall notify the requester of:

(i) The Secretary of the Board's determination of the request and the reasons therefor;

(ii) The information withheld, and the basis for withholding; and

(iii) The right to appeal any denial or partial denial, pursuant to paragraph (e) of this section.

(5) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, classified by, or is in the primary interest of another agency, the Secretary of the Board may refer the request to that agency for a direct response by that agency and inform the requester promptly of the referral. The Secretary of the Board shall consult with another Federal agency before responding to a requester if the Board receives a request for a record in which:

(i) Another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or

(ii) Another Federal agency not subject to the FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(6) *Providing responsive records.* (i) A copy of records or portions of records responsive to the request shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Secretary of the Board deems it appropriate to send the documents by another means. The Secretary of the Board shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format, but the Secretary of the Board need not provide more than one copy of any record to a requester.

(ii) The Secretary of the Board shall provide any reasonably segregable portion of a record that is responsive to the request after deleting those portions that are exempt under the FOIA or this section.

(iii) Except where disclosure is expressly prohibited by statute, regulation, or order, the Secretary of the Board may authorize the release of records that are exempt from mandatory disclosure whenever the Board or designated Board members determine that there would be no foreseeable harm in such disclosure.

(iv) The Board is not required in response to the request to create records or otherwise to prepare new records.

(7) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board officers, employees, or agents properly entitled to such information for the performance of official duties), unless required by law.

(e) *Appeals.* (1) Any person denied access to Board records requested under paragraph (c) of this section, denied expedited processing under paragraph (d) of this section, or denied a waiver of fees under paragraph (f) of this section may file a written appeal within 30 calendar days after the date of such denial with the Board. The written appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to the General Counsel of the Board, Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Washington, D.C. 20230; or sent by facsimile to the General Counsel of the Board. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the requested records should be made available and why the initial denial was in error.

(2) The General Counsel of the Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal, and the determination letter shall notify the appealing party of the right to seek judicial review in event of denial.

(f) *Fee schedules; waiver of fees.*—(1) *Fee schedule.* The fees applicable to a request for records pursuant to paragraph (c) of this section are set forth in the uniform fee schedule at the end of this paragraph (b).

(i) *Search.* (A) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (f)(1)(iv) of this section. The Secretary of the Board shall charge for time spent searching even if no responsive record is located or if the Secretary of the Board withholds the record(s) located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(B) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (f)(3 of this section) will be charged no search fee and certain other requesters (as provided in paragraph (f)(3)) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(ii) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (f)(1)(iv) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be 15 cents per page. For copies produced by computer, such as tapes or printouts, the Secretary of the Board shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the Secretary of the Board will charge the direct costs of that duplication.

(iii) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when the Secretary of the Board determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(iv) *Limitations on charging fees.* (A) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(B) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(C) Whenever a total fee calculated under this paragraph is $25 or less for any request, no fee will be charged.

(D) For requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.

(2) *Payment procedures.* All persons requesting records pursuant to paragraph (c) of this section shall pay the applicable fees before the Secretary of the Board sends copies of the requested records, unless a fee waiver has been granted pursuant to paragraph (f)(6 of this section. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(i) *Advance notification of fees.* If the estimated charges are likely to exceed $25, the Secretary of the Board shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Secretary of the Board to reformulate the request to lower the costs. The processing of the request shall be suspended until the requester provides the Secretary of the Board with a written guarantee that payment will be made upon completion of the processing.

(ii) *Advance payment.* The Secretary of the Board shall require advance payment of any fee estimated to exceed $250. The Secretary of the Board shall also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the difference shall be refunded to the requester. The time period for responding to requests under paragraph (d)(4) of this section, and the processing of the request shall be suspended until the Secretary of the Board receives the required payment.

(iii) *Late charges.* The Secretary of the Board may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717.

(3) *Categories of uses.* The fees assessed depend upon the fee category. In determining which category is appropriate, the Secretary of the Board shall look to the identity of the requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary of the Board may seek additional clarification before categorizing the request.

(i) *Commercial use requester.* The fees for search, duplication, and review apply when records are requested for commercial use.

(ii) *Educational, non-commercial scientific institutions, or representatives of the news media requesters.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(iii) *All other requesters.* For all other requests, the fees for search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(4) *Nonproductive search.* Fees for search may be charged even if no responsive documents are found. Fees for search and review may be charged even if the request is denied.

(5) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid

payment of fees. If the Secretary of the Board reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees or that several requesters appear to be acting together to submit multiple requests solely in order to avoid payment of fees, the Secretary of the Board may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary of the Board to presume that multiple requests by one requester on the same topic made within a 30-day period have been made to avoid fees.

(6) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in paragraph (4)(d) of this section, shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(i) *Standards for determining waiver or reduction.* The Secretary of the Board may grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(A) Whether the subject of the records concerns the operations or activities of the government;

(B) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(C) Whether the requester has the intention and ability to disseminate the information to the public;

(D) Whether the information is already in the public domain;

(E) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(F) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(ii) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraph (f)(6)(i) of this section.

(iii) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(iv) *Determination by Secretary of the Board.* The Secretary of the Board shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with paragraph (e) of this section.

(7) *Uniform fee schedule.*

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search.	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction.	$.15 per page.
(B) Other reproduction (*e.g.*, computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes preparation for release, *i.e.* excising).	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(g) *Request for confidential treatment of business information.*—(1) *Submission of request.* Any submitter of information to the Board who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Board at the time the information is submitted or a reasonable time after submission.

(2) *Form of request.* Each request for confidential treatment of business information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(3) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated "*PROPRIETARY*" or "*BUSINESS CONFIDENTIAL*" in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential commercial or financial information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(h) *Request for access to confidential commercial or financial information.*—(1) *Request for confidential commercial or financial information.* A request by a submitter for confidential treatment of any business information shall be considered in connection with a request for access to that information.

(2) *Notice to the submitter.* (i) The Secretary of the Board shall notify a submitter who requested confidential treatment of information pursuant to 5 U.S.C. 552(b)(4), of the request for access.

(ii) Absent a request for confidential treatment, the Secretary of the Board may notify a submitter of a request for access to submitter's business information if the Secretary of the Board reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(iii) The notice given to the submitter by mail, return receipt requested, shall be given as soon as practicable after receipt of the request for access, and shall describe the request and provide the submitter seven working days from the date of notice, to submit written objections to disclosure of the information. Such statement shall specify all grounds for withholding any of the information and shall demonstrate why the information which is considered to be commercial or financial information, and that the information is a trade secret, is privileged or confidential, or that its disclosure is likely to cause substantial competitive harm to the submitter. If the submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to the release of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(3) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(i) The Secretary of the Board determines that the request for access should be denied;

(ii) The requested information lawfully has been made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary of the Board, except that in this last instance the Secretary of the Board shall give the submitter written notice of the determination to disclose the information at least seven working days prior to disclosure.

(4) *Notice to requester.* At the same time the Secretary of the Board notifies the submitter, the Secretary of the Board also shall notify the requester that the request is subject to the provisions of this section.

(5) *Determination by Secretary of the Board.* The Secretary of the Board's determination whether or not to disclose any information for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary of the Board determines to disclose the business information over the objection of a submitter, the Secretary of the Board shall give the submitter written notice via mail, return receipt requested, or similar means, which shall include:

(i) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(6) *Notice of lawsuit.* The Secretary of the Board shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information, and shall promptly notify a requester of any suit filed against the Board to enjoin the disclosure of requested documents.

§ 500.108 Restrictions on lobbying.

(a) No funds received through a loan guaranteed under this Program may be expended by the recipient of a Federal contract, grant, loan, loan Guarantee, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan or loan Guarantee, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, loan Guarantee, or cooperative agreement.

(b) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in the application form, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(c) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a Standard Form-LLL if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(d) Each person shall file a certification, contained in the application form, and a disclosure form (Standard Form-LLL), if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(e) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or Guarantee a loan exceeding $150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (c) of this section.

(f) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (d) or (e) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

§ 500.109 Government-wide debarment and suspension (nonprocurement).

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect. The Board shall review the List of Debarred entities prior to making final loan Guarantee decisions. Suspension or debarment may be a basis for denying a loan Guarantee.

(b) This section applies to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of this section such transactions will be referred to as "covered transactions".

(1) *Covered transaction.* For purposes of this section, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) Primary covered transaction. Except as noted in paragraph (b)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan Guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person.

(ii) Lower tier covered transaction. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction;

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $100,000) under a primary covered transaction;

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons may include loan officers or chief executive officers acting as principal investigators and providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of this section would be prohibited by law.

(3) *Board covered transactions.* This section applies to the Board's loan Guarantees, subcontracts and transactions at any tier that are charges as direct or indirect costs, regardless of type.

(c) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to paragraph (l) of this section.

(d) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see paragraph (b)(1)(ii) of this section) for the period of their exclusion.

(e) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of this section would be prohibited by law.

(f) Persons who are ineligible are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(g) Persons who accept voluntary exclusions are excluded in accordance with the terms of their settlements. The Board shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(h) The Board may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with the Executive Order.

(i) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(j) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in paragraph (h) of this section.

(k) Except as permitted paragraphs (h) or (i) of this section, a participant shall not knowingly do business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(l) Violation of the restriction under paragraph (k) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(m) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

§ 500.110 Amendments.

The Board's rules in this chapter may be adopted or amended, or new rules may be adopted, only by majority vote of the Board. Authority to adopt or amend these rules may not be delegated.

Subpart C—Oil and Gas Guaranteed Loans

§ 500.200 Eligible Borrower.

(a) An eligible Borrower must be a Qualified Oil and Gas Company that can demonstrate:

(1) Credit is not otherwise available to it under reasonable terms or conditions sufficient to meet its financing needs, as reflected in the financial and business plans of the company;

(2) The prospective earning power of that company, together with the character and value of the security pledged, furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

(3) The company has agreed to permit audits by the General Accounting Office and an independent auditor acceptable to the Board prior to the issuance of the guarantee and while any such guaranteed loan is outstanding; and

(4) It has experienced layoffs, production losses, or financial losses between January 1, 1997, and the date of application for the Guarantee, demonstrated as a comparison between employment, production, or net income existing on January 1, 1997 and on the date of application.

(b) The Lender must provide with its application a letter from at least one lending institution other than the Lender to which the Borrower has applied for financial assistance, since January 1, 1997, indicating that the Borrower was denied for substantially the same loan they are now applying for, and the reasons the Borrower was unable to obtain the financing for which it applied. In addition, the Lender applying for a guarantee under this Program must certify that it would not make the loan without the Board's guarantee.

§ 500.201 Eligible Lender.

(a) A lender eligible to apply to the Board for a Guarantee of a loan must be:

(1) A banking institution, such as a commercial bank or trust company, subject to regulation by the Federal banking agencies enumerated in 12 U.S.C. § 1813; or

(2) An investment institution, such as an investment bank, commercial finance company, or insurance company, that is currently engaged in commercial lending in the normal course of its business.

(b) Status as a Lender under paragraph (a) of this section does not assure that the Board will issue the Guarantee sought, or otherwise preclude the Board from declining to issue a Guarantee. In addition to evaluating an application pursuant to § 500.207, in making a determination to issue a Guarantee to a Lender, the Board will assess:

(1) The Lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of investment institutions;

(2) Whether the Lender possesses the ability to administer the loan, as required by § 500.211(b), including its experience with loans to oil and gas companies;

(3) The scope, volume and duration of the Lender's activity in administering loans;

(4) The performance of the Lender's loan portfolio, including its current delinquency rate;

(5) The Lender's loss rate as a percentage of loan amounts for its current fiscal year; and

(6) Any other matter the Board deems material to its assessment of the Lender.

(c) In the case of the refinancing of an existing credit, the applicant must be a different lender than the holder of the existing credit.

§ 500.202 Loan amount.

The aggregate amount of loan principal guaranteed under this Program to a single Qualified Oil and Gas Company may not exceed $10 million.

§ 500.203 Guarantee percentage.

A guarantee issued by the Board may not exceed 85 percent of the amount of the principal of a loan to a Qualified Oil and Gas Company.

§ 500.204 Loan terms.

(a) All loans guaranteed under the Program shall be due and payable in full no later than December 31, 2010.

(b) Loans guaranteed under the Program must bear a rate of interest determined by the Board to be reasonable. The reasonableness of an interest rate will be determined with respect to current average yields on outstanding obligations of the United States with remaining periods of maturity comparable to the term of the loan sought to be guaranteed. The Board may reject an application to guarantee a loan if it determines the interest rate of such loan to be unreasonable.

(c)(1) The performance of all of the Borrower's obligations under the Loan Documents shall be secured by, and shall have the priority in, such Security as provided for within the terms and conditions of the Guarantee.

(2) Without limiting the Lender's and Borrower's obligations under paragraph (c)(1) of this section, at a minimum, the loan shall be secured by—

(i) A fully perfected and enforceable security interest and/or lien, with first priority over conflicting security interests or other liens in all property, both real and personal, tangible or intangible, including accessions, replacements and proceeds thereof, which are acquired, improved, or derived from the loan funds; and

(ii) A fully perfected and enforceable security interest and/or lien in all other property of the Borrower, including accessions, replacements and proceeds thereof, or which may be given by a third-party as Security for the loan, the priority of which shall be on the same and equal status with the highest voluntarily granted or acquired security interest or lien then existing therein;

(3) The entire loan will be secured by the same Security with equal lien priority for the guaranteed and the unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference over the guaranteed portion.

(4) An Applicant's compliance with paragraph (c)(2) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the loan.

(d) An eligible Lender may assess and collect from the Borrower such other fees and costs associated with the application and origination of the loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such other fees and costs into consideration when determining whether to offer a Guarantee to the Lender.

§ 500.205 Application process.

(a) *Application deadline.* An original application and three copies must be received by the Board no later than 8 p.m. EST, December 30, 1999 in U.S. Department of Commerce, Washington D.C. 20230. Applications which have been provided to a delivery service on or before December 29, 1999, with "delivery guaranteed" before 8 p.m. on December 30, 1999, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed above guaranteed prior to the closing date and time. A postmark of December 30, 1999, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

(b) Applications shall contain the following:

(1) A completed Form, "Application for Oil and Gas Guarantee Loan";

(2) The information required for the completion of Form "Environmental Assessment and Compliance Findings for Related Environmental Laws" and attachments, as required by § 500.206(a)(2)(i)(D), unless the project is categorically excluded under § 500.206(b);

(3) All Loan Documents that will be signed by the Lender and the Borrower, if the application is approved, including all terms and conditions of, and Security or additional Security to assure the Borrower's performance under, the loan;

(4) Certification by the chairman of the board and the chief executive officer of the Borrower acknowledging that the Borrower is aware that the Lender is applying to the Board for a Guarantee of a loan under the Program, as described in the Loan Documents, and agreeing to permit audits by the General Accounting Office, its designee, an independent auditor acceptable to the Board prior to the issuance of the Guarantee and annually thereafter while such guarantee is outstanding;

(5) The Lender's full written underwriting analysis of the loan to be guaranteed by the Board;

(6) A certification that the Lender has followed the same loan underwriting analysis with the loan to be guaranteed as it would follow for a loan not guaranteed by the Government; and a certification by the Lender, that the loan, Lender, and Borrower meet each of the requirements of the Program as set forth in the Act and the Board's rules in this part;

(7) A description of all Security for the loan, including, as applicable, current appraisal of real and personal property, copies of any appropriate environmental site assessments, and current personal and corporate financial statements of any guarantors for the same periods as required for the Borrower. Appraisals of real property shall be prepared by State licensed or certified appraisers, and be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation. Financial statements of guarantors shall be prepared by independent Certified Public Accountants;

(8) Consolidated financial statements of the Borrower for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(9) A five year history and five year projection for revenue, cash flow, average realized prices and average realized production costs. If the loan funds are to be used to purchase substantial assets of an existing firm, a pro forma balance sheet at startup, and five years projected year end balance sheets and income statement at start-up;

(10) Documentation that credit is not otherwise available to the borrower under reasonable terms or conditions sufficient to meet its financial needs, as reflected in the financial or business plan of that company. The Lender must provide with its application those items required by § 500.200(b);

(11) Documentation sufficient to demonstrate that the Lender is eligible under § 500.201(a) and to allow the Board to make a determination to issue a Guarantee to such Lender as set forth in § 500.201(b); and

(12) A report as to the Borrower's designation of the nature and value of project reserves from an independent petroleum engineer acceptable to the Board.

(c) No Guarantee will be made if either the Borrower or Lender has an outstanding, delinquent Federal debt until:

(1) The delinquent account has been paid in full;

(2) A negotiated repayment schedule is established and at least one payment has been received; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt, are made.

§ 500.206 Environmental requirements.

(a)(1) *General.* Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and Executive Orders. Therefore, except as provided in paragraph (b) of this section, and subject to paragraph (c) of this section, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Environmental information required from the Lender.* (i) Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities. The Lender may obtain this information from the Borrower. Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the loan at issue;

(D) The information required for the completion of Form "Environmental Assessment and Compliance Findings for Related Environmental Laws;" and

(E) Any other information that can be used by the Board to ensure compliance with environmental laws.

(ii) All information supplied by the Lender is subject to verification by the Board.

(b) *Categorical exclusions from National Environmental Policy Act (NEPA) reviews.* The actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They are categorically excluded from the need to prepare an environmental assessment or impact statement under NEPA. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from compliance with other applicable local, State, or Federal environmental laws.

(1) Projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of facilities, structures or businesses, for replacement or restoration purposes, with minimal change in use, size, capacity, purpose or location from the original facility (e.g., replacement in-kind of utilities such as water or sewer lines and appurtenances, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements);

(2) Project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(3) Projects that solely involve the purchase and installation of office equipment, public safety equipment, or motor vehicles;

(4) Projects that solely involve the acquisition of working capital; and

(5) Projects that solely involve a combination of activities under paragraphs (B)(1) through (4) of this section.

(c) Actions listed in paragraph (b) that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(1) A floodplain;

(2) A wetland;

(3) Important farmlands, or prime forestlands or rangelands;

(4) A listed species or critical habitat for an endangered species;

(5) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(6) An area within an approved State coastal zone management Program;

(7) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(8) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;

(9) A sole source aquifer recharge area;

(10) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(11) Federal lands.

(d) The regulations of the Council on Environmental Quality implementing NEPA require the Board to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public. See 40 CFR 1506.6(b). Environmental information concerning specific projects can be obtained from the Board by contacting: Executive Director, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Washington, DC 20230.

§ 500.207 Application evaluation.

(a) *Eligibility screening.* Applications will be reviewed to determine whether the Lender and Borrower are eligible, the information required under § 500.205(b) is complete, and the proposed loan complies with applicable statutes and regulations. The Board can at any time reject an application that does not meet these requirements.

(b) *Evaluation criteria.* Applications that are determined to be eligible pursuant to paragraph (a) of this section shall be subject to a substantive review, on a competitive basis, by the Board based upon the following evaluation factors, in order of importance:

(1) The ability of the Borrower to repay the loan by the date specified in the Loan Document, which shall be no later than December 31, 2010;

(2) The adequacy of the proposed provisions to protect the Government, including sufficiency of Security, the priority of the lien position in the Security, and the percentage of Guarantee requested; and

(3) Adequacy of the underwriting analysis performed by the Lender in preparing the application and the ability of the Lender to administer the loan in full compliance with the requisite standard of care set forth in § 500.211(b).

(c) *Decisions by the Board.* Upon completion of the evaluation of the application and as soon as possible after the due date, the Board will approve or deny all eligible applications timely received under this Program. The Board shall notify all Applicants in writing of the approval or denial of the Guarantee applications as soon as possible. Approvals for loan Guarantees shall be conditioned upon compliance with § 500.208.

§ 500.208 Issuance of the Guarantee.

(a) The Board's decisions to approve any application for, and extend an offer of, guarantee under § 500.207 is conditioned upon:

(1) The Lender and Borrower obtaining any required regulatory or judicial approvals;

(2) The Lender and Borrower being legally authorized to enter into the loan under the terms and conditions submitted to the Board in the application;

(3) The Board's receipt of the Loan Documents, Guarantee, and any related instruments, properly executed by the Lender, Borrower, and any other required party other than the Board; and

(4) No material adverse change in the Borrower's ability to repay the loan between the date of the Board's approval and the date the Guarantee is to be issued.

(b) The Board may withdraw its approval of an application and rescind its offer of Guarantee if the Board determines that the Lender or the Borrower cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer.

(c) Only after receipt of all the documentation, required by this section, will the Board sign and deliver the Guarantee.

(d) A Borrower receiving a loan guaranteed by the Board under this Program shall pay a one-time guarantee fee of 0.5 percent of the amount of the principal of the loan. This fee must be paid no later than one year from the issuance of the Guarantee.

§ 500.209 Funding for the Program.

The Act provides funding for the costs incurred by the Government as a result of granting Guarantees under the Program. While pursuing the goals of the Act, it is the intent of the Board to minimize the cost of the Program to the Government. The Board will estimate the risk posed by the guaranteed loans to the funds appropriated for the costs of the Guarantees under the Program and operate the Program accordingly.

§ 500.210 Assignment or transfer of loans.

(a) Neither the Loan Documents nor the Guarantee of the Board, or any interest therein, may be modified, assigned, conveyed, sold or otherwise transferred by the Lender, in whole or in part, without the prior written approval of the Board.

(b) Under no circumstances will the Board permit an assignment or transfer of less than 100 percent of the Loan Documents and Guarantee, nor will it permit an assignment or transfer to be made to an entity which the Board determines not to be an Eligible Lender pursuant to § 500.201.

(c) The proscription under paragraph (a) of this section shall not apply to:

(1) Transfers which occur by operation of law, unless a primary purpose of the transaction leading to such a transfer was to assign, convey or sell the loan note or Guarantee without the necessity of securing the Board's prior written approval; or

(2) An action or agreement by the Lender which has the effect of distributing the risks of the credit among other Lenders if:

(i) Neither the loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part;

(ii) Both the unguaranteed and guaranteed portions of the loan are treated in the same manner;

(iii) The Lender remains solely responsible for the administration of the loan; and

(iv) The Board's ability to assert any and all defenses available to it under the Guarantee and the law is not adversely affected.

§ 500.211 Lender responsibilities.

(a) *General.* Lender shall comply with all provisions of the Guarantee.

(b) *Standard of care.* The Lender shall exercise due care and diligence in administering the loan as would be exercised by a responsible and prudent banking institution when administering a secured loan of such banking institution's own funds without a Federal guaranty. Such standard shall also apply to any and all approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(c) *Representation to the Board.* In addition to any other representations required by the Guarantee, the Lender shall represent to the Board that it has the ability to, and will, administer the loan, as well as to exercise the Lender's rights and pursue its remedies.

including conducting any liquidation of the Security or additional Security in full compliance with the standard of care, without the need for any advice, opinion, determination, recommendation, approval, disapproval, assistance (financial or other) or participation by the Board, except where the Board's consent is expressly required by the Guarantee, or where the Board, in its sole discretion and pursuant to the Guarantee, elects to provide same.

(d) *Covenants.* With respect to any loan guaranteed by the Board pursuant to the Act and this part, the Lender shall require the Loan Documents to contain such affirmative and negative covenants by the Borrower as are required by the terms and conditions of the Guarantee, such as the prohibition on the payment of dividends.

(e) *Monitoring.* In accordance with the Guarantee, the Lender shall monitor Borrower's performance under the Loan Documents to detect any noncompliance by the Borrower with any provision thereof, and will use its best efforts to cause Borrower's timely correction of any such noncompliance and Borrower's compliance with such provision thereafter.

(f) *Reporting.* With respect to any loan guaranteed by the Board pursuant to the Act and this part, the Lender shall provide the Board with the following information:

(1) Audited financial statements for the Borrower for the prior fiscal year;

(2) Projected balance sheet, income statement, and cash flows for the Borrower for each year remaining on the term of the loan within 60 days of the Borrower's fiscal year end; and

(3) A completed signed copy of Form "Quarterly Compliance Statement," that includes information on the recent performance of the loan, within 15 days of the end of each calendar quarter.

(g) *Notices.* All written notices, requests, or demands made to the Board shall be mailed to the Board at the U.S. Department of Commerce, Washington, D.C. 20230, except as otherwise specified by the Guarantee or as directed by the Board. Lender shall notify the Board in writing without delay of:

(1) Deterioration in the internal risk rating of a loan guaranteed under this Program within 3 business days of such action by the Lender;

(2) The occurrence of each event of default under the Loan Documents or Guarantee promptly, but not later than 3 business days, of the Lender's learning of such occurrence; and

(3) Any other notification requirements as provided by law, or by the terms of the Guarantee or Loan Documents.

§ 500.212 Liquidation.

(a) The Board may take, or direct to be taken, any action in liquidating the Security which the Board determines to be necessary or proper, consistent with Federal law and regulations.

(b) Pursuant to the Guarantee, upon written demand by the Lender and whether or not the Board has made any payment under the Guarantee, the Board, at the Board's sole option shall have the right to require that the Lender, solely or jointly with the Board, conduct to completion the liquidation of any or all of the Security. The Board may choose to conduct the liquidation itself.

§ 500.213 Termination of Guarantee.

(a) The Board, in its discretion, shall be entitled to terminate all of the Board's obligations under the Guarantee, without further cause, by giving written notice to the Lender of such termination, in the event that:

(1) The closing of the loan shall not have occurred in accordance with the terms and conditions of the Guarantee;

(2) The Guarantee fee required by § 500.208(d) shall not have been paid;

(3) The Lender shall have released or covenanted not to sue the Borrower or any other guarantor, or agreed to the modification of any obligation of any party to any agreement related to the loan, without the prior written consent of the Board;

(4) Lender has released the Board from its liability and obligations under the Guarantee;

(5) Lender has been repaid in full on the loan;

(6) Lender shall have made any incorrect or incomplete representation to the Board in any material respect in connection with the Application, the Guarantee or the Loan Documents; or

(7) Lender failed to comply with any material provision of the Loan Documents or the Guarantee.

(b) Upon receipt of a written demand for payment made pursuant to the Guarantee, the Board shall be entitled to seek such certifications from the Lender, undertake such audits or investigations, or take such other action as is provided for by law or the Guarantee so as to determine whether the Lender has complied with all of the Lender's obligations under the Guarantee.

§ 500.214 OMB control number.

[Reserved.]

[FR Doc. 99–27582 Filed 10–22–99; 2:19 pm]

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federal register

Wednesday
October 27, 1999

Part IV

Department of Education

34 CFR Part 685

William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1845–AA10

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program. The amendment is a result of a recently enacted change made to the Higher Education Act of 1965, as amended (HEA) by the Higher Education Amendments of 1998 (1998 Amendments). These final regulations reflect the Secretary's authority to charge reduced interest rates on Direct Loan Program loans to encourage on-time loan repayment.

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that Direct Loan Program borrowers may, at their discretion, choose to implement the provisions of § 685.211(b) on or after November 1, 1999. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 3045, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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SUPPLEMENTARY INFORMATION:

These regulations address a change made to the HEA by the 1998 Amendments (Pub. L. 105–244) that affects the Direct Loan Program. On June 16, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for the Direct Loan Program in the **Federal Register** (64 FR 32358). On August 24, 1999, the Secretary published final regulations in the **Federal Register** (64 FR 46252) for all of the proposed amendments in the NPRM except for the amendment to § 685.211 that would reflect the Secretary's authority to charge borrowers reduced interest rates to encourage on-time loan repayment. Before publishing final regulations on repayment incentives, the Secretary met certain reporting procedures in section 455(b)(7) of the HEA. This final regulation is the same as the proposed amendment to § 685.211 published in the NPRM.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

§ 685.211(b)—On or after November 1, 1999, these regulations may be implemented by Direct Loan Program borrowers at their discretion. This means that Direct Loan Program borrowers may receive a reduced interest rate by choosing to repay their loans under a system or on a schedule that meets requirements specified by the Secretary.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on June 16, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by July 30, 1999 and several comments were received. An analysis of the comments received on the proposed regulations for all of the provisions in the NPRM except § 685.211 was included in the preamble to the final regulations the Secretary published on August 24, 1999. An analysis of the comments received on the proposed changes to § 685.211 follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Repayment Incentives (§ 685.211(b))

Comments: A number of commenters representing individual schools and associations of schools supported the proposed rule that would reflect the Secretary's authority to charge reduced interest rates to encourage on-time loan repayment. The commenters endorsed the proposed regulation as a means of reducing costs to Direct Loan Program borrowers in a way that previously had been available only to Federal Family Education Loan (FFEL) Program borrowers.

Discussion: We appreciate the support expressed by the commmenters for the proposed change to § 685.211(b).

As the first step in implementing this regulation, the Secretary will reduce the interest rate charged on Direct Loan Program loans for borrowers repaying by means of automated account debiting. Beginning on November 1, 1999, borrowers repaying their Direct Loan Program loans via automated debiting of their personal checking, savings, or other type of account at a financial institution will receive a .25 percent reduction in the interest being charged on their loans.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM on June 16, 1999 (64 FR 32360).

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.268 William D. Ford Federal Direct Loan Program.)

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

Dated: October 15, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by amending Part 685 as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

2. Section 685.211 is amended by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), respectively; by adding a new paragraph (b); by removing the reference to "(d)(1)" in the first sentence of newly redesignated paragraph (e)(2), and by adding, in its place, "(e)(1)"; and by removing the reference to "(d)(2)" in newly redesignated paragraph (e)(3), and by adding, in its place, "(e)(2)" to read as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(b) *Repayment incentives.* To encourage on-time repayment, the Secretary may reduce the interest rate for a borrower who repays a loan under a system or on a schedule that meets requirements specified by the Secretary.

* * * * *

[FR Doc. 99–27719 Filed 10–26–99; 8:45 am]

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Wednesday
October 27, 1999

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 26 and 52

Federal Acquisition Regulation; Utilization of Indian Organizations and Indian-Owned Economic Enterprises; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 26 and 52

[FAR Case 99–301]

RIN 9000–AI52

Federal Acquisition Regulation; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to delete DoD-unique language pertaining to incentive payments made to prime contractors for the utilization of Indian organizations and Indian-owned economic enterprises.

DATES: Comments should be submitted on or before December 27, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.99–301@gsa.gov.

Please submit comments only and cite FAR case 99–301 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 99–301.

SUPPLEMENTARY INFORMATION:

A. Background

Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) established the Indian Incentive Program. Annual DoD appropriations acts have restricted DoD payments under the Program to those contractors that submitted subcontracting plans pursuant to 15 U.S.C. 637(d) and those contractors participating in the test program for comprehensive small business subcontracting plans established by Section 854 of Pub. L. 101–189. Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Pub. L. 105–262) eliminated the link between a DoD contractor's subcontracting plan requirement and the contractor's eligibility for participation in the Indian Incentive Program. This change now allows DoD to make incentive payments to small businesses that subcontract to Indian organizations or Indian-owned economic enterprises when the contract includes the clause at FAR 52.226–1, Utilization of Indian Organizations and Indian-owned Economic Enterprises. This rule proposes to remove obsolete DoD-unique implementing guidance from the FAR. The Defense Acquisition Regulations Council will add guidance to the Defense Federal Acquisition Regulation Supplement under a separate case to implement the change made in Section 8024 of Pub. L. 105–262.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely deletes DoD-unique requirements from the FAR. The rule will have no effect on small entities doing business with civilian agencies. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 99–301), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 26 and 52

Government procurement.

Dated: October 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 26 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 26 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 26—OTHER SOCIOECONOMIC PROGRAM

26.101 [Amended]

2. Amend section 26.101 as follows:

a. In the definition "Indian", remove "which" and insert "that", in its place;

b. In the definition "Indian-owned economic enterprise" remove "shall constitute" and insert "constitutes", in its place; and

c. In the definition "Indian tribe", remove "which" and insert "that", in its place.

3. Revise section 26.104 to read as follows:

26.104 Contract clause.

Contracting Officers in civilian agencies may insert the clause at 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts if—

(a) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and

(b) Funds are available for any increased costs as described in paragraph (b)(2) of the clause at 52.226–1.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.226–1 as follows:

a. Revise the date of the clause;

b. Remove paragraph (a);

c. Redesignate paragraphs (b) through (d) as (a) through (c), respectively;

d. In the newly designated paragraph (a):

(1) Remove "which" from the definition "Indian" and insert "that", in its place;

(2) Remove "shall constitute" from the definition "Indian-owned economic enterprise" and insert "constitutes", in its place; and

(3) Remove "which" from the definition "Indian tribe" and insert "that", in its place.

e. Revise newly designated paragraphs (b) and (c).

The revised text reads as follows:

52.226–1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

* * * * *

Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Date)

* * * * *

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS 2626–MIB, Washington, DC 20240–4000. The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures. The Contracting Officer's decision is final and not subject to the Disputes clause of this contract.

(End of clause)

[FR Doc. 99–27857 Filed 10–26–99; 8:45 am]

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Federal Register

Vol. 64, No. 207

Wednesday, October 27, 1999

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

53179–53580	1
53581–53882	4
53883–54198	5
54199–54498	6
54499–54758	7
54759–55114	8
55115–55404	12
55405–55614	13
55615–55808	14
55809–56130	15
56131–56250	18
56251–56398	19
56399–56668	20
56669–56944	21
56945–57360	22
57361–57548	25
57549–57768	26
57769–57966	27

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
4865 (*See* Memorandum of April 16, 1999)	53883
(*See* Memorandum of September 24, 1999)	55809
6763 (See Proclamation 7235)	55611
7227	53877
7228	54193
7229	54195
7230	54197
7231	54755
7232	54757
7233	54759
7234	55405
7235	55611
7236	55613
7237	55615
7238	55617
7239	55619
7240	56393
7241	56397
7242	56665
7243	57767
Executive Orders:	
11145 (Amended by EO 13138)	53879
11183 (Amended by EO 13138)	53879
11287 (Amended by EO 13138)	53879
12131 (Amended by EO 13138)	53879
12196 (Amended by EO 13138)	53879
12216 (Amended by EO 13138)	53879
12345 (Amended by EO 13138)	53879
12367 (Amended by EO 13138)	53879
12382 (Amended by EO 13138)	53879
12473 (Amended by EO 13140)	55115
12484 (See EO 13140	55115
12550 (See EO 13140)	55115
12586 (See EO 13140)	55115
12708 (See EO 13140)	55115
12767 (See EO 13140)	55115
12852 (Revoked by EO 13138)	53879
12871 (Amended by EO 13138)	53879
12876 (Amended by EO 13138)	53879
12882 (Amended by EO 13138)	53879
12888 (See EO 13140)	55115
12900 (Amended by EO 13138)	53879
12905 (Amended by EO 13138)	53879
12936 (See EO 13140)	55115
12960 (See EO 13140)	55115
12961 (Revoked by EO 13138)	53879
12978 (See Notice of October 19, 1999)	56667
12994 (Amended by EO 13138)	53879
13010 (Revoked in part by EO 13138)	53879
13017 (Revoked by EO 13138)	53879
13021 (Amended by EO 13138)	53879
13037 (Revoked by EO 13138)	53879
13038 (Revoked by EO 13138)	53879
13050 (Revoked by EO 13138)	53879
13062 (Superseded in part by EO 13138)	53879
13086 (See EO 13140)	55115
13115 (Amended by EO 13138)	53879
13138	53879
13139	54175
13140	55115
Administrative Orders:	
Memorandums:	
April 16, 1999	53883
September 24, 1999	55809
Notices:	
Notice of October 19, 1999	56667
Presidential Determinations:	
No. 99–38 of September 21, 1999	53573
No. 99–39 of September 21, 1999	53575
No. 99–40 of September 21, 1999	53577
No. 99–41 of September 22,	

1999 ... 53579
No. 99–42 of September 29, 1999 ... 54499
No. 99–43 of September 30, 1999 ... 54501
No. 99–44 of September 30, 1999 ... 54503
No. 99–45 of September 30, 1999 ... 53505

5 CFR

532 ... 53179
831 ... 53581
842 ... 53581
870 ... 54761
1201 ... 54507

7 CFR

56 ... 56945
210 ... 55407
215 ... 55407
220 ... 55407
235 ... 55407
245 ... 55407
246 ... 56669
301 ... 55811, 56948
735 ... 54508
915 ... 53181
923 ... 53885
944 ... 53181
966 ... 57361
984 ... 56131
997 ... 56133
998 ... 56133
999 ... 56133
1000 ... 53885
1001 ... 53885
1002 ... 53885
1004 ... 53885
1005 ... 53885
1006 ... 53885
1007 ... 53885
1012 ... 53885
1013 ... 53885
1030 ... 53885
1032 ... 53885
1033 ... 53885
1036 ... 53885
1040 ... 53885
1044 ... 53885
1046 ... 53885
1049 ... 53885
1050 ... 53885
1064 ... 53885
1065 ... 53885
1068 ... 53885
1076 ... 53885
1079 ... 53885
1106 ... 53885
1124 ... 53885
1126 ... 53885
1131 ... 53885
1134 ... 53885
1135 ... 53885
1137 ... 53885
1138 ... 53885
1139 ... 53885
1755 ... 53886
2003 ... 56399
3570 ... 56399

Proposed Rules:

46 ... 57405
932 ... 57597

8 CFR

3 ... 56135

Proposed Rules:

Ch. 1 ... 54794

9 CFR

3 ... 56142
77 ... 56399
94 ... 55812, 55813
303 ... 56400
304 ... 56400
307 ... 56400
308 ... 56400
312 ... 56400
314 ... 56400
317 ... 53186
327 ... 56400
331 ... 56400
350 ... 56400
381 ... 53186, 56400
416 ... 56400

10 CFR

20 ... 54543, 55524
50 ... 53582
71 ... 57769
72 ... 53582, 56114
431 ... 54114
600 ... 56418

Proposed Rules:

2 ... 55176
20 ... 56274
30 ... 57785
50 ... 53270, 56476
63 ... 57409

11 CFR

110 ... 55125

Proposed Rules:

100 ... 55440
102 ... 55440
104 ... 55440

12 CFR

4 ... 56949
204 ... 53617
211 ... 56949
262 ... 53188
347 ... 56949
602 ... 54511
612 ... 55621
614 ... 55621
615 ... 56675
618 ... 55621
701 ... 56953, 57363
703 ... 57363
704 ... 57363
709 ... 57363
712 ... 57363
713 ... 57363
741 ... 56148
790 ... 57363
791 ... 57363
792 ... 57363
910 ... 55125

Proposed Rules:

202 ... 57409
205 ... 57409
213 ... 57409
226 ... 57409
230 ... 57409
714 ... 55866
724 ... 55871
745 ... 55871
1750 ... 56274

13 CFR

121 ... 57366
125 ... 57366

Proposed Rules:

121 ... 55873, 57188
Ch. IV ... 57932
Ch. V ... 57946

14 CFR

25 ... 54761
36 ... 55598
39 ... 53189, 53191, 53193, 53620, 53621, 53623, 53625, 54199, 54200, 54202, 54512, 54513, 54515, 54517, 54518, 54763, 54767, 54769, 54770, 54773, 54774, 55407, 55409, 55411, 55413, 55414, 55416, 55621, 55624, 55815, 56151, 56158, 56158, 56159, 56161, 56163, 56420, 56422, 56424, 56426, 56957, 56959, 56960, 56962, 56963, 57549, 57551, 575553,, 57555, 57556
71 ... 53627, 53887, 53888, 53889, 53890, 53891, 53892, 53893, 53894, 53895, 53896, 53898, 53899, 54203, 54204, 54205, 54206, 55131, 55815, 55816, 55817, 55818, 55819, 55820, 56251, 56428, 56429, 56676, 57557, 57558
93 ... 53558
97 ... 55132, 55133, 55135, 57555, 57560, 57562

Proposed Rules:

Ch. 1 ... 56275
11 ... 56708
39 ... 53275, 53951, 53953, 54227, 54229, 54230, 54232, 54234, 54237, 54239, 54240, 54242, 54246, 54248, 54249, 54580, 54582, 54584, 54587, 54589, 54591, 54594, 54596, 54598, 54795, 54797, 54799, 54801, 54804, 54808, 54811, 54815, 54818, 54822, 54826, 54829, 54833, 55177, 55181, 55184, 55188, 55191, 55195, 55196, 55197, 55200, 55204, 55207, 55211, 55440, 55636, 55638, 55640, 55642, 55644, 56276, 56279, 56281, 56709, 56712, 56715, 57409, 57600, 57602, 57606, 57608, 57787, 57789, 57790, 57792, 57794, 57796, 57798, 57800, 57802, 57806, 57808, 57810, 57811, 57814, 57816, 57818, 57820, 57822, 57823
71 ... 53956, 53957, 57609, 57610
91 ... 56708
121 ... 56708
135 ... 56708
145 ... 56708
193 ... 53958
450 ... 54448

15 CFR

774 ... 54520
902 ... 54732, 55821
2014 ... 56429

Proposed Rules:

30 ... 53861
732 ... 53854
740 ... 53854
743 ... 53854
748 ... 53854
750 ... 53854
752 ... 53854
758 ... 53854
762 ... 53854
772 ... 53854

16 CFR

241 ... 57372

Proposed Rules:

4 ... 57825
436 ... 57294
453 ... 56717

17 CFR

210 ... 53900
228 ... 53900
229 ... 53900
230 ... 53900
232 ... 56430
239 ... 53900, 56430
240 ... 53900
249 ... 53900, 56430
259 ... 56430
260 ... 53900
269 ... 56430
274 ... 56430

Proposed Rules:

210 ... 55648
228 ... 55648
229 ... 55648
240 ... 55648

18 CFR

2 ... 54522
153 ... 57374
157 ... 54522, 57374
284 ... 54522
380 ... 54522, 57374
385 ... 54522, 56172

Proposed Rules:

281 ... 56982
385 ... 53959

19 CFR

19 ... 57564
24 ... 56433
122 ... 53627
159 ... 56433
174 ... 56433

20 CFR

404 ... 57774

Proposed Rules:

404 ... 55214
422 ... 55216
718 ... 54966
722 ... 54966
725 ... 54966
726 ... 54966
727 ... 54966

21 CFR

3 ... 56441
5 ... 56441
10 ... 56441
20 ... 56441
25 ... 56454
26 ... 57776
50 ... 54180, 56441

56 56441
58 56441
101 57700
173 56172
178 53925
Ch. II 54794
207 56441
310 56441
312 .... 54180, 56441
316 56441
558 53926
600 56441
601 56441
607 56441
610 56441
640 56441
660 56441
878 53927
900 53195

Proposed Rules:
5 53281
25 53281
314 53960
500 53281
510 53281
558 53281
601 53960
880 53294

22 CFR

40 55417
42 55417
171 54538
Ch. V 54538
514 53928

Proposed Rules:
194 53632

24 CFR

200 .... 53930, 55828
203 56108
234 56108
882 53868
888 .... 53450, 56894
902 56676
903 56844
964 56870
982 .... 56882, 56894

Proposed Rules:
964 56890

25 CFR

516 54541

Proposed Rules:
151 55878

26 CFR

1 55137
54 57520
301 56246

Proposed Rules:
1 .... 54836, 56246, 56718
25 56179

27 CFR

1 54776
47 55625
55 55625

Proposed Rules:
4 57413
5 57413
7 57413

28 CFR

Ch. I 54794

Proposed Rules:
571 53872

29 CFR

2590 57520
4044 55828

Proposed Rules:
2510 57611

30 CFR

202 56454
206 56454
250 53195
914 57565
924 57567
948 53200
950 53202

Proposed Rules:
250 53298
901 55878
904 56179
915 54840
916 56982
936 56983
946 54843
948 54845

32 CFR

700 56062
1800 53769

Proposed Rules:
199 56283
806 56181

33 CFR

100 .... 53208, 53628, 55829, 55830
117 .... 53209, 54776, 55137, 55419, 55831, 56252, 56677
165 .... 55138, 55420
187 56965

Proposed Rules:
Ch. I 56286
20 53970
100 .... 54847, 54849
117 55217
165 .... 54242, 54963, 57418, 57419
175 53971
181 56287
183 56287
207 55441

34 CFR

602 56612
668 57356
674 57528
682 57528
685 57960

Proposed Rules:
75 54254
614 57288

36 CFR

13 56455
1275 56678

Proposed Rules:
217 .... 59074, 56293
219 .... 59074, 56293

37 CFR

Proposed Rules:
1 53772
3 53772
5 53772
10 53772

38 CFR

3 54206
17 54207

Proposed Rules:
20 53302

39 CFR

776 56253

Proposed Rules:
111 .... 54255, 57419, 57571

40 CFR

52 .... 53210, 53931, 54559, 55139, 55141, 55421, 55831, 57777
60 57392
61 53212
62 .... 55141, 57781
63 .... 56173, 57572
76 55834
81 55421
180 .... 54218, 54777, 54779, 55838, 56464, 56678, 56681, 56690, 56697
201 55141
261 .... 56256, 56469
262 56469
268 56469
271 .... 55142, 55153, 55629, 56173
300 .... 53213, 53629, 56966

Proposed Rules:
2 57421
49 54851
50 57424
52 .... 53303, 53973, 54600, 54601, 54851, 55219, 55220, 55442, 55662, 55667, 55879, 56181, 57826
62 57827
76 55880
80 57827
81 55442
85 .... 56985, 57827
86 .... 56985, 57827
122 .... 53304, 57834
123 .... 53304, 57834
124 .... 53304, 57834
130 .... 53304, 57834
131 .... 53304, 57834
132 53632
144 57430
146 57430
147 56986
165 56918
180 56477
194 56185
197 53304
258 53976
261 .... 55443, 55880
264 54604
271 .... 55222, 55671
300 56992
710 56998

41 CFR

51-2 55841
51-5 55841

42 CFR

121 56650

Proposed Rules:
8 56294
57 54263
58 54263
405 57431
409 57612
410 57612
411 57612
413 57612
424 57612
447 54263
484 57612

43 CFR

1820 53213
3500 53512
3510 53512
3520 53512
3530 53512
3540 53512
3550 53512
3560 53512
3570 53512
3800 53213

Proposed Rules:
2800 55452
2880 55452
2730 57613
3800 57613
3820 57613
3830 57613
3840 57613
3850 57613

44 CFR

62 56174
64 56256
65 .... 53931, 53933, 53936
67 .... 53938, 53939
206 55158

Proposed Rules:
67 .... 53980, 53982

45 CFR

96 55843
61 57740
144 57520
146 57520

Proposed Rules:
5b 57619
302 55074
303 55074
304 55074
305 55074
308 55102

46 CFR

1 53220
2 53220
4 53220
10 .... 53220, 53230
12 53230
15 53220
27 56257
31 53220
34 53220
38 53220
52 53220
53 53220
54 53220
56 53220
57 53220
58 53220
59 53220
61 53220
63 53220
64 53220
67 53220

68.....53220
69.....53220
76.....53220
91.....53220
95.....53220
98.....53220
105.....53220
107.....53220
108.....53220
109.....53220
118.....53220
125.....53220
133.....53220
147.....53220
151.....53220
153.....53220
160.....53220
161.....53220
162.....53220
167.....53220
169.....53220
177.....53220
181.....53220
189.....53220
193.....53220
197.....53220
199.....53220
204.....54782

Proposed Rules:

5.....53970
15.....56720

47 CFR

Ch. I.....54561, 55671
0.....55161, 55425, 56269, 57585
1.....53231
13.....53231
20.....54564
22.....53231, 54564
64.....53242, 53944, 54577, 55163, 55164, 56177
73.....54224, 54225, 54783, 54784, 54785, 54786, 55172, 55173, 55174, 55434, 56703, 56704, 56974
80.....53231
87.....53231
90.....53231
95.....53231
97.....53231
101.....53231

Proposed Rules:

54.....53648
61.....53648
69.....53648
73.....53655, 54268, 54269, 54270, 55222, 55223, 55452, 55453, 56723, 56724, 56999, 57835, 57836, 57837, 57838
76.....54854

48 CFR

1.....53264
15.....53264
19.....53264
52.....53264
201.....56704
209.....55632
211.....55632
213.....56704
214.....55632
237.....53447
252.....55632
415.....54963
Ch. 19.....54538

Proposed Rules:

26.....57964
52.....57964
204.....56724
252.....56724
909.....55453
970.....55453
1804.....54270
1812.....54270
1852.....54270
9903.....56296

49 CFR

1.....56270
71.....56705
172.....54730
192.....56878
Ch. III.....56478
544.....57393
1002.....53264
1003.....53264
1007.....53264
1011.....53264
1012.....53264
1014.....53264
1017.....53264
1018.....53264
1019.....53264
1021.....53264
1034.....53264
1039.....53264
1100.....53264
1101.....53264
1103.....53264
1104.....53264
1105.....53264
1113.....53264
1133.....53264
1139.....53264
1150.....53264
1151.....53264
1152.....53264
1177.....53264
1180.....53264
1184.....53264

Proposed Rules:

71.....55892
192.....56725
195.....56725
661.....54855

50 CFR

17.....56582, 56590, 56596
216.....53269
222.....55858, 55860, 57397
223.....55434, 55858, 55860, 57397
226.....57399
600.....54786
622.....57403, 57585
635.....53949, 54577, 55633, 56472
648.....54732, 55821, 57586, 57587
660.....54786, 56177
679.....53630, 53950, 54225, 54578, 54791, 54792, 55438, 55634, 55865, 56271, 56272, 56473, 56474, 56475, 57595

Proposed Rules:

17.....53655, 55892, 56297, 57534, 57620
216.....56298, 57010, 57026
227.....56297
622.....57436, 57623
648.....55688
660.....54272, 55689, 56479
679.....53305, 56481

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 27, 1999

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Telecommunications Act of 1996; implementation—
    - Local competition provisions; published 9-27-99

SOCIAL SECURITY ADMINISTRATION

- Social security benefits and supplemental security income:
  - Federal old age, survivors, and disability benefits; and aged, blind, and disabled—
    - Prehearing proceedings and decisions; attorney advisors authority; extension; published 9-27-99
- Social security benefits:
  - Federal old age, survivors, and disability insurance—
    - Title II benefits under family maximum provisions; reduction in cases of dual entitlement; published 10-27-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Airbus; published 9-22-99
  - Bombardier; published 9-22-99
  - British Aerospace; published 9-22-99
  - Dornier; published 9-22-99
  - Fokker; published 9-22-99
  - Saab; published 9-22-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Onions (Vidalia) grown in—
  - Georgia; comments due by 11-2-99; published 9-3-99
- Oranges and grapefruit grown in—
  - Texas; comments due by 11-1-99; published 8-31-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Plant-related quarantine, domestic:
  - Mediterranean fruit fly; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Balanced Budget Act of 1997; implementation—
    - Time-limit exemptions and employment and training programs; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT

Forest Service

- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

- Meat and poultry inspection:
  - Accurate weights, repairs, adjustments, and replacement after inspection; scale requirements; comments due by 11-1-99; published 10-1-99

AGRICULTURE DEPARTMENT

- Acquisition regulations:
  - Contracting by negotiation; part 415 reorganization; comments due by 11-1-99; published 9-30-99

COMMERCE DEPARTMENT

Export Administration Bureau

- Export administration regulations:
  - Syrian civilian passenger aircraft safety of flight; export and reexport of aircraft parts and components; license review policy; comments due by 11-1-99; published 9-16-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - West Coast States and Western Pacific fisheries—
    - West Coast salmon; comments due by 11-2-99; published 10-18-99

COMMODITY FUTURES TRADING COMMISSION

- Privacy Act; implementation; comments due by 11-1-99; published 9-30-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-1-99; published 9-30-99
  - District of Columbia; comments due by 11-1-99; published 9-30-99
- Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Tennessee; comments due by 11-1-99; published 9-30-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Chlorfenapyr; comments due by 11-1-99; published 9-1-99
  - Cymoxanil; comments due by 11-1-99; published 9-1-99
  - Difenoconazole; comments due by 11-1-99; published 9-1-99
- Solid wastes:
  - Municipal solid waste landfill permit programs; adequacy determinations—
    - Rhode Island; comments due by 11-4-99; published 10-5-99
- Superfund program:
  - Toxic chemical release reporting; community-right-to-know—
    - Lead and lead compounds; lowering of reporting thresholds; comments due by 11-1-99; published 9-21-99

FEDERAL COMMUNICATIONS COMMISSION

- Digital television stations; table of assignments:
  - Texas; comments due by 11-1-99; published 9-15-99
- Radio stations; table of assignments:
  - Arizona; comments due by 11-1-99; published 9-22-99
  - Arkansas; comments due by 11-1-99; published 9-22-99
  - Colorado; comments due by 11-1-99; published 10-6-99
  - Kansas; comments due by 11-1-99; published 9-22-99
  - Louisiana; comments due by 11-1-99; published 9-22-99
  - Pennsylvania and New York; comments due by 11-1-99; published 9-22-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Human drugs:
  - Abbreviated new drug applications; 180-day generic drug exclusivity; comments due by 11-4-99; published 8-6-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99
- Endangered and threatened species:
  - Aleutian Canada goose; comments due by 11-1-99; published 8-3-99
  - Findings on petitions, etc.—
    - Black-tailed prairie dog; comments due by 11-3-99; published 10-4-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Alabama; comments due by 11-1-99; published 10-15-99

NUCLEAR REGULATORY COMMISSION

- Production and utilization facilities; domestic licensing:
  - Noncombustible fire barrier penetration seal materials; requirement eliminated, etc.; comments due by 11-1-99; published 8-18-99

POSTAL SERVICE

- Domestic Mail Manual:

- Special services labels; barcode requirements; comments due by 11-5-99; published 10-6-99

SECURITIES AND EXCHANGE COMMISSION

- Investment advisers:
  - Political contributions; comments due by 11-1-99; published 8-10-99

TRANSPORTATION DEPARTMENT

Coast Guard

- Drawbridge operations:
  - New Jersey; comments due by 11-1-99; published 9-1-99
- Ports and waterways safety:
  - Tampa Bay, FL; safety zone; comments due by 11-1-99; published 9-1-99
- Regattas and marine parades:
  - Puerto Rico International Cup; comments due by 11-1-99; published 8-31-99
- Vessel documentation and measurement:
  - Standard measurement system exemption from gross tonnage; comments due by 11-1-99; published 8-31-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Airbus; comments due by 11-1-99; published 10-5-99
  - Aircraft Belts, Inc.; comments due by 11-1-99; published 9-1-99
  - AlliedSignal Inc.; comments due by 11-3-99; published 8-5-99
  - Boeing; comments due by 11-1-99; published 8-31-99
  - Dowty Aerospace Propellers; comments due by 11-1-99; published 9-1-99
  - Empresa Brasileira de Aeronautica S.A.; comments due by 11-1-99; published 10-1-99
  - General Electric Co.; comments due by 11-2-99; published 9-3-99
  - Raytheon; comments due by 11-1-99; published 9-15-99
  - Rolls-Royce plc.; comments due by 11-1-99; published 8-31-99
  - Short Brothers; comments due by 11-5-99; published 10-6-99
  - Short Brothers and Harland Ltd.; comments due by 11-3-99; published 9-28-99
- Aviation safety:
  - Voluntarily submitted information; confidentiality protection; comments due by 11-4-99; published 10-5-99
- Class E airspace; comments due by 11-4-99; published 9-23-99

TRANSPORTATION DEPARTMENT

Federal Highway Administration

- Motor carrier safety standards:
  - Commercial motor vehicle; definition; comments due by 11-2-99; published 9-3-99
  - Small passenger-carrying commercial motor vehicles; operator requirements; comments due by 11-2-99; published 9-3-99
- Transportation Equity Act for 21st Century; implementation:
  - Federal lands highway program; transportation planning procedures and management systems—
    - Fish and Wildlife Service and refuge roads program; comments due by 11-1-99; published 9-1-99
  - Forest Service and forest highway program; comments due by 11-1-99; published 9-1-99
  - Indian Affairs Bureau and Indian reservation roads program; comments due by 11-1-99; published 9-1-99
  - National Park Service and park roads and parkways program; comments due by 11-1-99; published 9-1-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.J. Res. 71/P.L. 106–75

Making further continuing appropriations for the fiscal year 2000, and for other purposes. (Oct. 21, 1999; 113 Stat. 1125)

S. 323/P.L. 106–76

Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (Oct. 21, 1999; 113 Stat. 1126)

H.R. 560/P.L. 106–77

To designate the Federal building and United States courthouse located at the intersection of Comercio and San Justo Streets, in San Juan, Puerto Rico, as the "Jose V. Toledo Federal Building and United States Courthouse". (Oct. 22, 1999; 113 Stat. 1134)

H.R. 1906/P.L. 106–78

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Oct. 22, 1999; 113 Stat. 1135)

Last List October 26, 1999

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Contents

Federal Register
Vol. 64, No. 208
Thursday, October 28, 1999

Agriculture Department
See Animal and Plant Health Inspection Service

Air Force Department
NOTICES
Environmental statements; availability, etc.:
  Base realignment and closure—
    Grissom Air Force Base, IN, 58038
    Wurtsmith Air Force Base, MI, 58038

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
  Fire ant, imported, 57969–57971

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Bonneville Power Administration
NOTICES
Reports and guidance documents; availability, etc.:
  Subscription power sales contracts; sales to customers and customer's sales of firm resources; policy, 58039–58045

Centers for Disease Control and Prevention
NOTICES
Committees; establishment, renewal, termination, etc.:
  Injury Research Grant Review Committee, 58068
Meetings:
  Injury Prevention and Control Advisory Committee, 58068–58069

Coast Guard
RULES
Ports and waterways safety:
  Lower Mississippi River, Above Head of Passes; safety zone, 57981–57982

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
  Technology Advisory Committee, 58036–58037
Meetings; Sunshine Act, 58037–58038

Defense Department
See Air Force Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
  Increased payment protection; withdrawn, 58281–58282

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
  Schedules I and II—
    1999 aggregate; correction, 58131

Education Department
RULES
Postsecondary education:
  Federal Perkins Loan Program, 58297–58315
  Student assistance general provisions—
    Federal Perkins Loan Program et al., 58283–58295

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
  California, 57991–57994
  Maryland, 57989–57991
  Texas, 57983–57989
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
  Ohio, 58018–58021
Air quality implementation plans; approval and promulgation; various States:
  California, 58007–58011
  Maryland, 58007
  Texas, 58006–58007, 58011–58018
Hazardous waste:
  Cement kiln dust; management standards, 58022
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58058
Water pollution control:
  Total maximum daily loads for copper in Arthur Kill and Kill Van Kull, withdrawal; and for nickel in Hackensack River, establishment, 58058–58060

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
  Bell, 57971–57972
  British Aerospace, 57972–57973
PROPOSED RULES
Class D airspace, 57995–57996

Federal Communications Commission
RULES
Common carrier services:
  Truth-in-billing and billing format; common sense principles
    Correction, 57994
NOTICES
Agency information collection activities:
  Reporting and recordkeeping requirements, 58060–58063
  Submission for OMB review; comment request, 58063

Federal Energy Regulatory Commission

NOTICES
Electric rate and corporate regulation filings:
  Idaho Power Co. et al., 58047–58049
  Rocky Road Power, LLC, et al., 58049–58050
Environmental statements; availability, etc.:
  Regional Transmission Organizations, 58050
Hydroelectric applications, 58050–58057
Applications, hearings, determinations, etc.:
  Columbia Gas Transmission Corp., 58045
  Destin Pipeline Co., L.L.C., 58045
  East Tennessee Natural Gas Co., 58045–58046
  Florida Gas Transmission Co., 58046
  Granite State Gas Transmission, Inc., 58046
  Tennessee Gas Pipeline Co., 58047
  Transcontinental Gas Pipe Line Corp., 58047

Federal Highway Administration

NOTICES
Environmental statements; notice of intent:
  Loudon County et al., TN, 58123–58124
  Polk County, TN, 58124

Federal Housing Finance Board

NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 58063–58064

Federal Maritime Commission

NOTICES
Agreements filed, etc., 58064
Freight forwarder licenses:
  Bayani Commerical, Inc., et al., 58064
Investigations, hearings, petitions, etc.:
  Gstaad, Inc., et al., 58064–58065

Federal Railroad Administration

NOTICES
General railroad system; shared use by conventional railroads and light rail transit systems; joint statement of agency policy, 58124–58125

Federal Reserve System

NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58065
Banks and bank holding companies:
  Change in bank control, 58066
  Formations, acquisitions, and mergers, 58066–58067
  Formations, acquisitions, and mergers; correction, 58066
  Permissible nonbanking activities, 58067

Federal Transit Administration

NOTICES
Grants and cooperative agreements; availability, etc.:
  Transit assistance programs; apportionments, allocations, and program information (2000 FY), 58211–58263
Grants and cooperative agreements; certifications and assurances; annual list, 58265–58279

Fish and Wildlife Service

NOTICES
Comprehensive conservation plans; availability, etc.:
  Deep Fork National Wildlife Refuge, OK, 58085–58086
Endangered and threatened species:
  Incidental take permits—
    Douglas County, CO; Preble's meadow jumping mouse, 58086
Reports and guidance documents; availability, etc.:
  General conservation permits; policy, 58086–58093

Food and Drug Administration

RULES
Color additives:
  D&C Violet No. 2 for coloring meniscal tacks, 57974
Food additives:
  Polymers—
    Mono- and bis-(octadecyldiethylene oxide) phosphates, 57976–57978
  Polysorbate 60, 57974–57976
PROPOSED RULES
Medical devices:
  Surgeon's and patient examination gloves; reclassification, 58004
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 58069–58070
Food additive petitions:
  Engelhard Corp., 58070
Reports and guidance documents; availability, etc.:
  Medical Glove Guidance Manual, 58070–58071

General Services Administration

PROPOSED RULES
Federal Acquisition Regulation (FAR):
  Increased payment protection; withdrawn, 58281–58282

Health and Human Services Department

See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

RULES
Medical care and examinations:
  Indian Health Service eligibility regulations, 58317–58322
PROPOSED RULES
Quarantine, inspection, and licensing:
  Interstate shipments—
    Centers for Disease Control; infectious substances and select agents; packaging and handling, 58022–58031
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 58067–58068
Federal claims; interest rates on overdue debts, 58068

Health Care Financing Administration

PROPOSED RULES
Medicare:
  Home health agencies; prospective payment system, 58133–58209

Housing and Urban Development Department

NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58080–58083
  Submission for OMB review; comment request, 58084
Environmental statements; availability, etc.:
  Monterey Park, CA; Monterey Park Towne Plaza Project, 58084–58085

Interior Department

See Fish and Wildlife Service

See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
PROPOSED RULES
Income taxes:
  Trusts with foreign grantors; definition of term "grantor"; cross reference and public hearing
    Hearing cancellation, 58006
Procedure and administration:
  Federal tax lien notice; withdrawal in certain circumstances
    Hearing, 58006

International Trade Administration
NOTICES
Antidumping:
  Heavy forged hand tools from—
    China, 58034
  Industrial nitrocellulose from—
    United Kingdom, 58034
  Sugar and syrups from—
    Canada, 58035
Antidumping and countervailing duties:
  Sugar from—
    Various countries, 58033–58034
Applications, hearings, determinations, etc.:
  National Institutes of Health et al., 58035

Justice Department
See Drug Enforcement Administration

Labor Department
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 58100

Land Management Bureau
NOTICES
Closure of public lands:
  Montana, 58093
Environmental statements; availability, etc.:
  Box Elder Resource Area, UT, 58093–58094
Meetings:
  Resource Advisory Councils—
    John Day-Snake, 58094
Reports and guidance documents; availability, etc.:
  Fossils from Federal and Indian lands; collection, storage, preservation and scientific study; unified Federal policy, 58094
Withdrawal and reservation of lands:
  Wyoming, 58094–58095

Minerals Management Service
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 58095–58098

National Aeronautics and Space Administration
PROPOSED RULES
Acquisition regulations:
  Export controlled technology; standard clause, 58031–58032
Federal Acquisition Regulation (FAR):
  Increased payment protection; withdrawn, 58281–58282

National Credit Union Administration
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58100–58101

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
  Combined Arts Advisory Panel, 58101

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
  Nonconforming vehicles—
    Importation eligibility; determinations, 58125–58127
Motor vehicle safety standards; exemption petitions, etc.:
  Italjet S.p.A., 58127–58128

National Institutes of Health
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58071
  Submission for OMB review; comment request, 58072
Meetings:
  National Cancer Institute, 58072–58073
  National Heart, Lung, and Blood Institute, 58073–58074
  National Institute of Allergy and Infectious Diseases, 58075
  National Institute of Arthritis and Musculoskeletal and Skin Diseases, 58076
  National Institute of Environmental Health Sciences, 58075
  National Institute of General Medical Sciences, 58074–58075
  National Institute of Mental Health, 58074
  National Institute of Neurological Disorders and Stroke, 58075–58076
  National Institute on Alcohol Abuse and Alcoholism, 58074
  Scientific Review Center, 58076–58080

National Oceanic and Atmospheric Administration
NOTICES
Fishery conservation and management:
  Atlantic highly migratory species—
    Atlantic yellowfin tuna, 58035–58036

National Park Service
NOTICES
Meetings:
  Cape Cod National Seashore Advisory Commission, 58099

National Science Foundation
NOTICES
Meetings:
  Advanced Networking and Infrastructure Research Special Emphasis Panel, 58101–58102
  Astronomical Sciences Special Emphasis Panel, 58102–58103
  Biological Infrastructure Advisory Panel, 58103
  Biological Sciences Special Emphasis Panel, 58103–58104
  Chemical and Transport Systems Special Emphasis Panel, 58104
  Cognitive, Psychological and Language Sciences Advisory Panel, 58104
  Economics, Decision and Management Sciences Advisory Panel, 58104–58105

Electrical and Communications Systems Special Emphasis Panel, 58105
Elementary, Secondary and Informal Education Special Emphasis Panel, 58105–58106
Social and Political Science Advisory Panel, 58106
Undergraduate Education Special Emphasis Panel, 58106

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
  Northeast Nuclear Energy Co. et al., 58106–58107
Reports and guidance documents; availability, etc.:
  Selection of sample rate and computer wordlength in digital instrumentation and control systems, 58107–58108

Postal Rate Commission
RULES
Privacy Act; implementation, 57982–57983

Presidential Documents
PROCLAMATIONS
Special observances:
  United Nations Day (Proc. 7244), 57967–57968

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
PROPOSED RULES
Securities:
  Short sales; limits lifted, etc., 57996–58004
NOTICES
Meetings; Sunshine Act, 58111–58112
Securities:
  Transfer agents; registration, cancellation, etc.—
    Non-bank transfer agents, 58112
Self-regulatory organizations; proposed rule changes:
  National Association of Securities Dealers, Inc., 58112–58117
  Pacific Exchange, Inc., 58117–58119
Applications, hearings, determinations, etc.:
  JNL Variable Fund LLC, 58108–58111

State Department
PROPOSED RULES
Visas; immigrant and nonimmigrant documentation:
  Immigrant visa fees; change in payment procedures, 58004–58006
NOTICES
Grants and cooperative agreements; availability, etc.:
  Eastern Europe and Independent States of Former Soviet Union Research and Training Program, 58119–58122
Meetings:
  International Economic Policy Advisory Committee, 58122–58123

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
  Missouri, 57978–57981
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 58099–58100

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
  Tishomingo Railroad Co., Inc., 58128–58129

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Meetings:
  Amtrak Reform Council, 58123
  Partnership Council, 58123

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 58129–58130

Veterans Affairs Department
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58130

Western Area Power Administration
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
  Boulder City, NV; Mead Substation access road and water supply improvements, 58057
  Laramie, WY; Miracle Mile-Cheyenne No. 1 transmission line, 58057–58058

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 58133–58209

Part III
Department of Transportation, Federal Transit Administration, 58211–58263

Part IV
Department of Transportation, Federal Transit Administration, 58265–58279

Part V
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 58281–58282

Part VI
Department of Education, 58283–58295

Part VII
Department of Education, 58297–58315

Part VIII
Department of Health and Human Services, 58317–58322

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

7244	57969

7 CFR

301	57969

14 CFR

39 (2 documents)	57974, 57972

Proposed Rules:

71	57995

17 CFR

Proposed Rules:

240	57996

21 CFR

74	57974
172	57974
177	57976

Proposed Rules:

801	58004
878	58004
880	58004

22 CFR

Proposed Rules:

40	58004
42	58004

26 CFR

Proposed Rules:

1	58006
301	58006

30 CFR

925	57978

33 CFR

165	57981

34 CFR

668	58284
673	58284
674 (2 documents)	58284, 58298
675	58284
676	58284
690	58284

39 CFR

3003	57982

40 CFR

52 (3 documents)	57983, 57989, 57991

Proposed Rules:

52 (6 documents)	58006, 58007, 58008, 58011, 58018
81	58018
261	58022

42 CFR

36	58318
36a	58318

Proposed Rules:

72	58022
409	58134
410	58134
411	58134
413	58134
424	58134
484	58134

47 CFR

64	57994

48 CFR

Proposed Rules:

28 (3 documents)	58282
52 (3 documents)	58282
1825	58031
1852	58031

Federal Register
Vol. 64, No. 208
Thursday, October 28, 1999

Presidential Documents

Title 3—

The President

Proclamation 7244 of October 22, 1999

United Nations Day, 1999

By the President of the United States of America

A Proclamation

As the 20th century draws to a close, Americans are taking time to reflect on the institutions that have shaped our past and that hold great hope for our future. One of the most important of these institutions is the United Nations. A dream of peace rising from the ashes of World War II, the U.N. has made great strides toward fulfilling the goals of its founders by saving lives, enhancing the security of law-abiding nations, and improving living conditions across the globe. This year, in marking the 54th anniversary of the founding of the U.N., we celebrate not only the organization's many accomplishments, but also its potential to bring the family of nations together to work toward a more peaceful, democratic, just, and prosperous world.

Since the U.N.'s founding more than half a century ago, humankind has learned a great deal—how to produce enough food for growing populations, how human activity affects the environment, how telecommunications can link the countries of the world into a single global community. But one of the most important lessons humanity has learned is one that Americans have always known: open societies are more just and open markets create more wealth.

Through the United Nations, America has access to a powerful forum where we can join with the other peoples of the world to raise awareness of these truths and to advance common interests and shared values. During the past decade, U.N. conferences have brought together nearly 50,000 people in Beijing to advance the rights and well-being of women; 47,000 in Rio de Janeiro to discuss ways to promote development while protecting the environment; and 30,000 people in Istanbul to seek solutions to urban problems.

In the last year alone, we have seen abundant evidence of the ways in which the United Nations benefits America and the world. The United Nations is the primary multilateral forum to press for international human rights and lead governments to improve their relations with their neighbors and their own people. As we saw during the Kosovo conflict, and more recently with regard to East Timor, the perpetrators of ethnic cleansing and mass murder can find no refuge in the United Nations and no source of comfort in its charter. It is the institution the international community turns to in pursuit of solutions to armed conflict. It is the primary vehicle for broad international cooperation in addressing the needs of refugees and of the tens of millions of people around the world who remain mired in abject poverty. The United Nations and its affiliated agencies also provide a powerful voice for upholding and furthering the development of the rule of law and standards of international commerce—rules and standards that are crucial to global and economic stability and progress.

In acknowledging the far-reaching contributions of the United Nations to the international community, we must renew our commitment to work with our fellow U.N. members to advance international peace and prosperity and to champion human rights. In achieving these goals, the United Nations should make wise use of the international resources at its disposal; and the United States should meet its obligation to provide our share of these resources. By doing so, we can ensure that the United Nations will be an integral player in making the next millennium an era of unprecedented global peace, security, and prosperity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 1999, as United Nations Day. I encourage all Americans to acquaint themselves with the activities and accomplishments of the United Nations and to observe this day with appropriate ceremonies, programs, and activities furthering the goal of international cooperation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of October, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J Clinton

[FR Doc. 99–28435
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Rules and Regulations

Federal Register
Vol. 64, No. 208
Thursday, October 28, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–027–2]

Imported Fire Ant; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the imported fire ant regulations by adding the insecticide pyriproxyfen (Distance®) to the list of chemicals authorized for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas. This action will give the regulated community another choice with which to meet certification requirements. We are also updating the imported fire ant regulations by amending dosages and formulations for currently authorized insecticides in order to be consistent with product labeling and availability; by alphabetizing, for organizational purposes, the list of authorized chemicals; and by adding a brand name to the list of authorized chemicals, for consistency.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301)734–5255.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery.

The regulations in "Subpart—Imported Fire Ant (7 CFR 301.81 through 301.81–10, referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of certain articles from those quarantined States or areas for the purpose of preventing the artificial spread of the imported fire ant.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the Appendix to the subpart, which sets forth the treatment provisions of the "Imported Fire Ant Program Manual."

On June 7, 1999, we published in the **Federal Register** (64 FR 30250–30252, Docket No. 99–027–1) a proposal to amend the imported fire ant regulations by adding the insecticide pyriproxyfen (Distance®) to the list of chemicals authorized for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas. We also proposed to update the imported fire ant regulations by amending dosages and formulations for currently authorized insecticides, by alphabetizing the list of authorized chemicals, and by adding a brand name to the list of authorized chemicals.

We solicited comments concerning our proposal for 60 days ending August 6, 1999. We received four comments by that date. They were from a chemical producer, a crop health service company, and two State agriculture departments. Three comments supported our proposal and one comment, which is discussed below, called for two changes.

First, the commenter stated that flowable formulations of tefluthrin have been approved as a treatment for the imported fire ant and that this should be reflected in our rule. However, no flowable formulation of tefluthrin has been developed; we believe the commenter has confused flowable tefluthrin with flowable bifenthrin. Second, the commenter stated that the application rate for flowable bifenthrin should be 50 ppm, as listed on the Talstar Nursery Flowable label, not 25 ppm as stated in the proposed rule. The Talstar Nursery Flowable label does not list application rates in parts per million, but rather in pounds of chemical per volume of soil. According to our calculations, the application rate listed for flowable bifenthrin is equivalent to 25 ppm.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that approves the use of a new chemical pesticide that may be used as an alternative to other authorized chemicals. Immediate implementation of this rule will enable those persons wishing to sell or use pyriproxyfen (Distance®) to benefit from its availability for treatment of the imported fire ant during the fall planting season, which is about to begin. Therefore, pursuant to 5 U.S.C. 553, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective less than 30 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

For our proposed rule, we performed an initial regulatory flexibility analysis in which we invited comments about the potential economic effects of this rule on small entities. We did not receive any comments addressing this issue. We have, therefore, prepared this final regulatory flexibility analysis using the data available to us. Based on the information that we have, there is no basis to conclude that this rule will result in any significant economic effects on a substantial number of small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

This rule amends the Appendix to the imported fire ant regulations by allowing the use of the bait insecticide pyriproxyfen (Distance®) for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas.

There are approximately 13,266 nurseries in the quarantined areas. Approximately 82–99 percent of those nurseries would be considered small businesses with annual sales of less than $500,000. It is unknown how many of these nurseries move containerized nursery stock interstate from quarantined areas each year, but any that do would be likely to benefit from the availability of pyriproxyfen (Distance®) as an approved pesticide for treating the imported fire ant.

Prior to this final rule, for certification, containerized nursery plants and field-grown woody ornamentals had to be treated with a bait insecticide, either fenoxycarb (AWARD®) or hydramethylnon (AMDRO®), in conjunction with a contact insecticide, bifenthrin (Talstar®). This action allows pyriproxyfen (Distance®) to be used as an alternative to fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) in order to give nurseries another option by which they can certify their products for interstate movement. All three bait insecticides fall within the same price range, $8–10 per pound, but competition between imported fire ant insecticide producers, which would be stimulated by the inclusion of pyriproxyfen (Distance®), could result in decreased prices, benefiting many nurseries.

The only significant alternative to this final rule that we considered was to not add pyriproxyfen (Distance®) to the list of authorized chemicals for the treatment of regulated materials. We have rejected this alternative because it would deny nurseries the benefit of having another authorized bait insecticide to choose from.

This final rule contains no reporting or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In part 301, Subpart—Imported Fire Ant (§§ 301.81—301.81–10), the Appendix to the subpart is amended as follows:

a. In paragraph III.B., under the heading "INSECTICIDES," the list is revised to read as set forth below.

b. In paragraph III.C.3.d., under the heading "Method C—Topical Application," a fourth paragraph is added to read as set forth below.

c. In paragraph III.C.4., under the heading "Control," immediately following the word "(AMDRO®)", the word "or" is removed and a comma is added in its place, and immediately following the word "(AWARD®)", the words ", or pyriproxyfen (Distance®)" are added.

d. In paragraph III.C.4., under the heading "Exclusion," under "Bifenthrin," first sentence, immediately following the word "granular", the word ", flowable," is added.

e. In paragraph III.C.4., under the heading "Exclusion," under "Bifenthrin," first paragraph, the last sentence is revised to read as set forth below.

f. In paragraph III.C.4., under the heading "Exclusion," under "Tefluthrin," first sentence, immediately following the word "granular", the word ", flowable," is added.

g. In paragraph III.C.5., the "Material" and "Dosage" paragraphs are revised to read as set forth below.

h. In paragraph III.C.5., in the "Method" paragraph, the phrase "1.5 lb (0.68 kg)" is removed and the phrase "1.0–1.5 lb (0.45–0.68 kg)" is added in its place.

i. In paragraph III.C.5., in the "Method" and "Special Information" paragraphs, the words "fenoxycarb (AWARD®) or hydramethylnon (AMDRO®)" are removed and the words "fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®)" are added in their place each time they appear.

Appendix to Subpart "Imported Fire Ant"—Portion of "Imported Fire Ant Program Manual" [8]

III. Regulatory Procedures

* * * * *

B. * * *

INSECTICIDES

Bifenthrin (Talstar®)
Chlorpyrifos (Dursban®)
Diazinon
Fenoxycarb (AWARD®)
Hydramethylnon (AMDRO®)
Pyriproxyfen (Distance®)
Tefluthrin (FIREBAN®)

C. * * *

3. * * *

d. * * *

Method C—Topical Application

* * * * *

Manufacture of the 10WP (wettable powder) formulation was discontinued in 1998; however, the EPA will allow this product to be utilized until supplies are exhausted.

* * * * *

4. * * *

Exclusion

Bifenthrin

* * * The dosage rate for granular bifenthrin is variable and is determined by the certification period selected; for flowable bifenthrin it is 25 ppm; for wettable powder bifenthrin it is 50 ppm.

* * * * *

5. Field-Grown Woody Ornamentals (In-Field Treatment Prior to Harvest)

Material: Chlorpyrifos used in combination with fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®) fire ant bait.

Dosage: Fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®) at 1.0–1.5 lb (0.45–0.68 kg) bait/acre. Chlorpyrifos at 6.0 lb (2.7 kg) a.i./acre.

* * * * *

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[8] A copy of the entire "Imported Fire Ant Program Manual" may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 135, Riverdale, Maryland 20737–1236.

Done in Washington, DC, this 22nd day of October 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–28181 Filed 10–27–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–07–AD; Amendment 39–11391; AD 99–22–13]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to BHTC Model 407 helicopters, that requires visually inspecting the vertical fin (fin) for reduced skin thickness; repairing or replacing the fin, if necessary; and identifying fins that have been inspected or repaired. This amendment is prompted by a report of an inboard skin damaged during production. The actions specified by this AD are intended to detect fin assemblies with reduced skin thickness which, if not corrected, reduce the strength of the skin and could lead to failure of the fin and loss of control of the helicopter.

DATES: Effective December 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 2, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to BHTC Model 407 helicopters was published in the **Federal Register** on August 2, 1999 (64 FR 41841). That action proposed to require visually inspecting the fin for reduced skin thickness; repairing or replacing the fin, if necessary; and identifying fins that have been inspected or repaired.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 124 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3.0 work hours to accomplish the visual inspection; 4.0 work hours to accomplish the vertical fin replacement, and 0.5 work hour to mark the fin, and that the average labor rate is $60 per work hour. Required parts will cost approximately $18,770. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,220 per helicopter, or a total of $2,383,280 for the entire fleet, to accomplish all the actions including replacing the fin.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–22–13 Bell Helicopter Textron Canada: Amendment 39–11391. Docket No. 99–SW–07–AD.

Applicability: Model 407 helicopters, with vertical fin (fin) assembly, part number (P/N) 206–020–113–223A, –223B, or –223S, with a serial number with a prefix of "BP", up to and including 2266 (except BP2260, BP2262, and BP2265), installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service, unless accomplished previously.

To detect fin assemblies with reduced skin thickness which, if not corrected, reduce the strength of the skin and could lead to failure of the vertical fin (fin) and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually inspect the fin assembly for reduced skin thickness, indicated by notches, scratches, or grooves on the skin, in accordance with Part I of the Accomplishment Instructions contained in Bell Helicopter Textron Alert Service Bulletin No. 407–98–17, Revision A, dated June 26, 1998 (ASB). If notches, scratches, or grooves are found, repair or replace the fin assembly in accordance with Part II of the Accomplishment Instructions contained in the ASB.

(b) Identify any fin that has been inspected or repaired in accordance with Part III of the Accomplishment Instructions in the ASB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The visual inspection, repair or replacement of the fin, if necessary, and the identification of fins that have been repaired or replaced shall be done in accordance with Parts I, II, or III, as applicable, of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–98–17, Revision A, dated June 26, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 2, 1999.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–10R1, dated August 20, 1998.

Issued in Fort Worth, Texas, on October 18, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–27790 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–27–AD; Amendment 39–11389; AD 99–22–11]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes, that requires installation of modified roller sub-assemblies in both the main landing gear (MLG) door lock and the MLG uplock. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the roller sub-assemblies, which could result in failure of the MLG to retract and lock after takeoff, or to deploy properly for landing.

DATES: Effective December 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes was published in the **Federal Register** on July 7, 1999 (64 FR 36626). That action proposed to require installation of modified roller sub-assemblies in both the main landing gear (MLG) door lock and the MLG uplock.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Include Alternate Modification

One commenter, the manufacturer, requests that the proposed AD allow reference to an improved roller which will be approved in the near future. British Aerospace Service Bulletin SB.32–150–70656A, dated December 1, 1998, which is referenced in the proposed AD as the appropriate source of service information, introduces an interim standard roller for the main landing gear door lock and uplock (reference British Aerospace Modification HCM70656A). However, the commenter advises that an improved roller is to be introduced in the next two months as British Aerospace Modification HCM70656B. According to the commenter, this modification is being addressed with the Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, and is expected to be approved as an alternative method of compliance. The commenter requests that this alternative modification be referenced in the AD in order to allow operators to readily take advantage of either method of compliance.

The FAA concurs. The FAA has received additional information from the manufacturer regarding the acceptability of the improved roller described in British Aerospace Modification HCM70656B. This modification has now been approved by the CAA of the United Kingdom as an acceptable alternative method of compliance to installation of the standard roller described in Service Bulletin SB.32–150–70656A. Accordingly, the FAA has determined that Modification HCM70656B is an acceptable method of compliance for the requirements of this AD, and has added a "NOTE" to the final rule to provide such credit to operators. A reference to Modification HCM70656A has also been included in paragraph (a) of the AD to clarify the requirements of that paragraph.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $32,400, or $720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99-22-11 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39-11389. Docket 99-NM-27-AD.

Applicability: All Model BAe 146 and Avro 146-RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the roller sub-assemblies in both the main landing gear (MLG) door lock and the MLG uplock, which could result in failure of the MLG to retract and lock after takeoff, or to deploy properly for landing, accomplish the following:

Modification

(a) Install a modified roller sub-assembly in the MLG door lock unit and the MLG uplock unit (British Aerospace Modification HCM70656A), in accordance with British Aerospace Service Bulletin SB.32-150-70656A, dated December 1, 1998, at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD.

(1) For airplanes that have accumulated 30,000 total flight cycles or more as of the effective date of this AD: Within six months after the effective date of this AD.

(2) For airplanes that have accumulated 26,000 or more, but fewer than 30,000 total flight cycles as of the effective date of this AD: Within 12 months after the effective date of this AD.

(3) For airplanes that have accumulated 22,000 or more, but fewer than 26,000 total flight cycles as of the effective date of this AD: Within 18 months after the effective date of this AD.

(4) For airplanes that have accumulated fewer than 22,000 total flight cycles as of the effective date of this AD: Within 18 months after the accumulation of 22,000 total flight cycles.

Note 2: Accomplishment of British Aerospace Modification HCM70656B (installation of improved rollers) is acceptable for compliance with the requirements of paragraph (a) of this AD.

(b) As of the effective date of this AD, no person shall install on any airplane a MLG door lock assembly, part number 200898001 or 200898002, or a MLG uplock assembly, part number 200885001 or 200885002.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with British Aerospace Service Bulletin SB.32-150-70656A, dated December 1, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 005-12-98.

(f) This amendment becomes effective on December 2, 1999.

Issued in Renton, Washington, on October 19, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-27789 Filed 10-27-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 98C–0158]

Listing of Color Additives For Coloring Meniscal Tacks; D&C Violet No. 2; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of July 20, 1999, for the final rule that appeared in the **Federal Register** of June 18, 1999 (64 FR 32803), and that amended the color additive regulations to provide for the safe use of D&C Violet No. 2 to color absorbable meniscal tacks made from poly(L-lactic acid).

DATES: Effective date confirmed: July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 18, 1999 (64 FR 32803), FDA amended the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 to color absorbable meniscal tacks made from poly(L-lactic acid).

FDA gave interested persons until July 19, 1999, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of June 18, 1999, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the June 18, 1999, final rule. Accordingly, the amendments issued thereby became effective July 20, 1999.

Dated: October 21, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation

[FR Doc. 99–28108 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 84F–0050]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Polysorbate 60

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polysorbate 60 as an emulsifier in ice cream, frozen custard, fruit sherbet, and nonstandardized frozen desserts. This action is in response to a petition filed by ICI Americas, Inc.

DATES: This regulation is effective October 28, 1999; written objections and requests for a hearing by November 29, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 20, 1984 (49 FR 10364), FDA announced that a food additive petition (FAP 4A3774) had been filed by ICI Americas, Inc., Wilmington, DE 19897 (now, Wilmington, DE 19850–5391). The petition proposed to amend the food additive regulations to provide for the safe use of polysorbate 60 (polyoxyethylene (20) sorbitan monostearate) as an emulsifier in ice cream, frozen custard, ice milk, fruit sherbet, and nonstandardized frozen desserts when used alone or in combination with polysorbate 65 and/or polysorbate 80. The agency notes that the standard of identity for ice milk was removed from the Code of Federal Regulations in the final rule published in the **Federal Register** of September 14, 1994 (59 FR 47080). Therefore, the amendment to provide for the use of polysorbate 60 in ice milk will be included under the provisions for nonstandardized desserts in the regulation set forth below.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, which are carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants, and manufacturing aids, such as 1,4-dioxane and ethylene oxide are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive will result in an estimated mean daily intake of 39 milligrams per person per day (mg/p/d). The cumulative exposure to all ethoxylated direct additives from previously regulated uses is estimated to be 166 mg/p/d (Ref. 1).

The agency has reviewed the available toxicological data on the additive and concludes that the estimated dietary exposure resulting from the petitioned use of the additive is safe. The calculated cumulative intake of ethoxylated direct food additives (166 mg/p/d) when added to the estimated intake of polysorbate 60 for use in frozen dairy desserts (39 mg/p/d) (i.e., 205 mg/p/d) is much lower than the current estimated acceptable daily intake of 1,500 mg/p/d for all regulated polysorbates, thus supporting the safety of the petitioned use (Ref. 2).

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 1,4-dioxane and ethylene oxide, the carcinogenic chemicals that may be present as impurities in the additive. The risk evaluation of 1,4-dioxane and ethylene oxide has two aspects as follows: (1) Assessment of exposure to the impurities from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. 1,4-Dioxane

FDA has estimated that exposure to 1,4-dioxane from the petitioned uses of the additive in frozen dairy desserts would not exceed 19 nanograms (ng)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane from the use of the additive in frozen dairy desserts will not exceed 19 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive in frozen dairy desserts is 6.7 x 10^{-10} or 6.7 in 10 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

B. Ethylene oxide

FDA has estimated that exposure to ethylene oxide from the petitioned use of the additive in the manufacture of frozen dairy desserts would not exceed 7.7 ng/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on ethylene oxide demonstrated that ethylene oxide was carcinogenic for female rats under the conditions of the study. The author reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas *in situ* of the glandular stomach.

Based on the agency's estimate that the exposure to ethylene oxide will not exceed 7.7 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive in frozen dairy desserts is 1.5 x 10^{-8} or 1.5 in 100 million (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

C. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in polysorbate 60 for use in frozen dairy desserts (Ref. 6). The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect the impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime human risk from exposure to 1,4-dioxane and ethylene oxide are very low, 6.7 in 10 billion and 1.5 in 100 million, respectively.

III. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, and that the additive will achieve its intended technical effect as an emulsifier in frozen dairy desserts. Therefore, the agency concludes that the regulations in 21 CFR 172.836 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 29, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from CFSAN's Chemistry Review Branch (HFS–247) to CFSAN's Direct Additives Branch (HFS–217) concerning "FAP 4A3774 & FAP 4A3824: Ethylene Oxide and 1,4-dioxane Residues in Polysorbate 60, Direct Additives Branch Request of 9/3/93," dated September 28, 1993.

2. Memorandum from CFSAN's Additives Evaluation Branch No. 1 (HFS–226) to CFSAN's Direct Additives Branch (HFS-217) concerning "Chemistry Review Branch (HFS–247) Memorandum of March 1, 1996, EDI's for Polyoxyethylene (20) Sorbitan Monostearate (Polysorbate 60) in Frozen Dairy Desserts and Coconut Milk Drinks, and Risks Estimates for Residual Ethylene Oxide and 1,4-dioxane," dated March 13, 1996.

3. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

4. Memorandum from CFSAN's Division of Petition Control (HFS–215) to the Executive Secretary, Quantitative Risk Assessment Committee (HFS–308) concerning "Estimation of Upper-bound Lifetime Risk from Ethylene Oxide (EO) and 1,4-dioxane (DX) Residues in Polysorbate 60: Subject of Food Additive Petition 4A3774 (ICI Americas, Inc.)," dated December 14, 1998.

5. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46: pp. 924–933, 1982.

6. Memorandum to the Record from CFSAN's Division of Petition Control (HFS–215) concerning "FAP 4A3774—Consideration of a Need for Specification for 1,4-dioxane in a Regulation for Polysorbate 60 use in Frozen Dairy Desserts," dated December 14, 1998.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.836 is amended by adding new paragraph (c)(16) to read as follows:

§ 172.836 Polysorbate 60.

* * * * *

(c) * * *

(16) As an emulsifier in ice cream, frozen custard, fruit sherbet, and nonstandardized frozen desserts when used alone or in combination with polysorbate 65 and/or polysorbate 80, whereby the maximum amount of the additives, alone or in combination, does not exceed 0.1 percent of the finished frozen dessert.

* * * * *

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28113 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 99F–0345]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of mono- and bis-(octadecyldiethylene oxide)phosphates as components of coatings on cellophane intended for use in contact with food. This action is in response to a petition filed by UCB Films PLC.

DATES: The regulation is effective October 28, 1999; written objections and requests for a hearing by November 29, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 18, 1999 (64 FR 13431), FDA announced that a food additive petition (FAP 9B4642) had been filed by UCB Films PLC, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 177.1200 *Cellophane* (21 CFR 177.1200) to provide for the safe use of mono- and bis-(octadecyldiethylene oxide)phosphates as component of coatings on cellophane intended for use in contact with food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive, *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984).

II. Safety of Petitioned Use of The Additive

FDA estimates that the petitioned use of the additive, mono- and bis-(octadecyldiethylene oxide)phosphates as a component of coatings (as a release agent) on cellophane will result in exposure to no greater than 43.5 parts per billion of the additive in the daily diet (3 kilogram (kg)) or an estimated daily intake of 0.13 milligram per person per day (mg/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 1,4-dioxane and ethylene oxide, the carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of the exposure to the impurities from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive in the coating on cellophane to be 0.22 part per trillion of the daily diet (3 kg) or 0.66 nanogram (ng)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 0.66 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 2.3×10^{-11} (or 2.3 in 100 billion) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

B. Ethylene Oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive in coatings on cellophane to be 22 parts per quadrillion in the daily diet (3 kg) or 66 picograms (pg)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to ethylene oxide resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach in female rats.

Based on the agency's estimate exposure that to ethylene oxide of 66 pg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 1.2×10^{-10} (or 1.2 in 10 billion) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

C. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additives, the agency would not expect the impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to 1,4-dioxane and ethylene oxide is very low, 2.3 in 100 billion and 1.2 in 10 billion, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 177.1200 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4642 (64 FR 13431). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 29, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Team, FDA, to the file concerning "FAP 9B4642 (MATS #1025, M2.0 & 2.1): UCB Films PLC, dated March 30, 1999. Use of Mono- and Bis-(octadecyldiethylene oxide)phosphates as a Release Agent in Food-contact Coatings Applied to Cellophane."

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

4. Memorandum from the Indirect Additives Branch, FDA, to the Executive Secretary, Quantitative Risk Assessment Committee, FDA, concerning "Estimation of Upper-bound Lifetime Risk from Ethylene Oxide and 1,4-dioxane in Mono- and Bis-(octadecyldiethylene oxide)phosphates as a Release Agent in Food-contact Coating Applied to Cellophane: Food Additive Petition No. 9B4642 (UCB Films PLC)," dated June 10, 1999.

5. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-propylene Oxide Upon Intragastric Administration to Rats." *British Journal of Cancer*, 46:924–933, 1982.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1200 is amended in the table in paragraph (c) by alphabetically adding an entry under the headings "List of substances" and "Limitations" to read as follows:

§ 177.1200 Cellophane.

* * * * *

(c) * * *

List of substances	Limitations (residue and limits of addition expressed as percent by weight of finished packaging cellophane)
* * *	* * *
Mono- and bis-(octadecyldiethylene oxide) phosphates (CAS Reg. No. 62362–49–6).	For use only as a release agent at a level not to exceed 0.6 percent by weight of coatings for cellophane.
* * *	* * *

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Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28112 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–035–FOR]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Missouri proposed normal husbandry practices that the permittee may use without causing the Phase III liability period or the five-year responsibility period to be extended. The practices include applying pesticides and soil amendments; subsoiling; repairing rills and gullies; burning; overseeding; and planting and pruning trees. Missouri intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Office of Surface Mining, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460. Internet: jcoleman@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. You can find general background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77017). You can find later actions on the Missouri program at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of the Proposed Amendment

By letter dated October 10, 1990, Missouri sent us an amendment to its program under SMCRA (Administrative Record No. MO–519). We announced receipt of the amendment in the November 1, 1990, **Federal Register** (55 FR 46076) and invited public comment on its adequacy. The public comment period closed December 3, 1990. In the September 29, 1992, **Federal Register** (57 FR 44660), we approved the amendment with exceptions. The exceptions included revisions to

Missouri's rule at 10 CSR 40–7.021(1)(B)2 concerning normal husbandry practices. We did not approve this rule because Missouri had not provided evidence to substantiate the use of each proposed practice as a normal husbandry practice. As codified at 30 CFR 925.16(p)(15), we required Missouri to provide such evidence for the administrative record or to delete the rule at 10 CSR 40–7.021(1)(B)2.

By letter dated June 4, 1999, Missouri submitted agricultural publications and guidelines as supporting documentation for the normal husbandry practices proposed in its rule at 10 CSR 40–7.021(1)(B)2. We announced receipt of the supporting documentation for Missouri's proposed normal husbandry practices in the June 17, 1999, **Federal Register** (64 FR 32449). In the same document, we opened the public comment period. The public comment period closed on July 19, 1999.

We are also taking this opportunity to remove the required amendments codified at 30 CFR 925.16(p)(7) and 925.16(p)(8). Missouri satisfied these required amendments in a previous submittal dated December 14, 1995 (Administrative Record No. MO–633).

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning Missouri's amendment.

A. Required Amendment at 30 CFR 925.16(p)(15): 10 CSR 40–7.021(1)(B)2. Normal Husbandry Practices

1. Missouri's rule at 10 CSR 40–7.021(1)(B)2 would allow the permittee to use specified normal husbandry practices. Using these practices will not cause the Phase III liability period or the five-year responsibility period to be extended if the permittee can demonstrate that: (1) discontinuance of these measures after the liability period expires will not reduce the probability of permanent revegetation success; (2) the practices are normal husbandry practices within the region on unmined lands having land uses similar to the approved postmining land use of the areas; and (3) the practices are necessary to prevent exploitation, destruction or neglect of the resource and to maintain the prescribed level of use or productivity.

The Federal regulations at 30 CFR 816.116(c)(4) for surface mining operations and 817.116(c)(4) for underground mining operations allow the regulatory authority to approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, under specified conditions. The regulatory authority must obtain prior approval from OSM in accordance with 30 CFR 732.17 that the practices are normal husbandry practices that can be expected to continue as part of the postmining land use, or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. We find that Missouri's requirements at 10 CSR 40–7.021(1)(B)2. are no less effective than the requirements of the counterpart Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

2. Missouri specified mowing, applying pesticides, applying soil amendments, subsoiling, burning, overseeding, and planting and pruning trees as normal husbandry practices. The application of soil amendments must be equal to or less than that recommended by the high management yield goal of the NRCS. Subsoiling must not remove the revegetation from the surface and is limited to less than two feet below the surface. Overseeding must only be done to maintain the approved composition of the vegetation stand. Missouri submitted agricultural publications and guidelines developed by the University of Missouri—Columbia Extension Division (UMC); other cooperative extension services in cooperation with the U.S. Department of Agriculture (DOA); the Missouri Department of Conservation (MDOC); and the U.S. Natural Resources Conservation Service (NRCS) as supporting documentation for these practices.

We determined that the agricultural publications and guidelines provided by Missouri demonstrate that the listed practices are normal husbandry practices within the region for unmined lands. We find that Missouri's proposed normal husbandry practices in 10 CSR 40–7.021(1)(B)2. meet the requirements of the counterpart Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

3. Missouri also proposed the repair of rills and gullies as a normal husbandry practice under specified conditions. Repairing rills and gullies will not cause the Phase III liability period to be extended when rills and gullies develop after the initiation of the Phase III liability period and when the repair is restricted to the filling, grading, and reseeding of the eroded portion of the area. Missouri submitted guidelines from the NRCS to support this practice.

We determined that the documents submitted by Missouri for this provision represent normal husbandry practices in the State for repair of rills and gullies. We believe that by restricting the size of areas that may be repaired, requiring the eroded portion of the areas to be filled, and demonstrating that such practices are supported as normal husbandry practices, Missouri has ensured that the probability of revegetation success will not be reduced. Therefore, we find that Missouri's proposed guidelines for repair of rills and gullies are no less effective than the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

B. Required Amendment at 30 CFR 925.16(p)(7): 10 CSR 40–3.120(6)(B)2.A., D., and G. and 3.270(6)(B)2.A., D., and G. Revegetation Standards for Success for Woodland, Wildlife Habitat, and Recreational Postmining Land Uses

On October 10, 1990, Missouri proposed to amend its rules at 10 CSR 40–3.120(6)(B) 2.A., D., and G and 3.270(6)(B)2.A., D., and G. (Administrative Record No. MO–519). Missouri proposed a ground cover success standard of 70 percent for areas to be developed for woodland, wildlife habitat, and recreation land use. In the September 29, 1992, **Federal Register** (57 FR 44660), we did not approve the rule changes because Missouri did not demonstrate that a vegetative ground cover standard of 70 percent would achieve the approved post mining land use as required by the Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii). At 30 CFR 925.16(p)(7) we required Missouri to provide statistical proof that a vegetative ground cover of 70 percent will in all cases achieve the approved woodland, wildlife habitat, and recreational postmining land uses or otherwise amend its program to be no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.117(b)(3)(iii).

By letter dated December 14, 1995 (Administrative Record No. MO–633), Missouri submitted a proposed amendment that contained the statistical proof that we required. Based on this proof, we approved Missouri's rules at 10 CSR 40–3.120(6)(B)2.A., D., G. and 3.270(6)(B)2.A., D., and G. in the May 28, 1996, **Federal Register** (61 FR 26454). Therefore, we are removing the required amendment at 30 CFR 925.16(p)(7).

C. Required Amendment at 30 CFR 925.16(p)(8): 10 CSR 40–3.120(6)(B)2.E. and 3.270(6)(B)2.E. Revegetation Standards for Success for Pasture Land Use

On October 10, 1990, Missouri proposed to amend its rules at 10 CSR 40–3.120(6)(B) 2.E. and 3.270(6)(B)2.E. (Administrative Record No. MO–519). Missouri proposed a ground cover success standard of 90 percent for areas to be developed for pasture land use. In the September 29, 1992, **Federal Register** (57 FR 44660), we did not approve this provision because Missouri did not demonstrate that a vegetative ground cover standard of 90 percent would achieve the approved post mining land use as required by the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). At 30 CFR 925.16(p)(8) we required Missouri to provide statistical proof that a vegetative ground cover of 90 percent will in all cases achieve the approved pasture postmining land use, or otherwise amend its program to be no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2).

By letter dated December 14, 1995 (Administrative Record No. MO–633), Missouri submitted a proposed amendment that contained the statistical proof that we required. Based on this proof, we approved Missouri's provisions at 10 CSR 40–3.120(6)(B)2.E. and 3.270(6)(B)2.E. in the May 28, 1996, **Federal Register** (61 FR 26454). Therefore, we are removing the required amendment at 30 CFR 925.16(p)(8).

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record No. MO–656.1). We did not receive any comments on the amendment.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA with respect to those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. 656.1). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 9, 1999, we requested comments on Missouri's amendment (Administrative Record No. MO–656.1), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Missouri on June 4, 1999.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 925, which codify decisions concerning the Missouri program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Missouri to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 13, 1999.

Richard J. Seibel,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 925 is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
June 4, 1999	10–28–99	10 CSR 40–7.021(1)(B)2.

§ 925.16 [Amended]

3. Section 925.16 is amended by removing and reserving paragraphs (p)(7), (p)(8), and (p)(15).

[FR Doc. 99–28230 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans, LA Regulation 99–027]

Safety Zone; Mile 94.0 to Mile 96.0, Lower Mississippi River, Above Head of Passes

RIN 2115—AA97

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone from mile 94.0 to mile 96.0, Lower Mississippi River, extending the entire width of the river. The safety zone will protect vessels transiting the area from a hazardous condition associated with a fireworks display in the vicinity of Algiers Point. Entry into this zone is prohibited to all vessels unless authorized by the Captain of the Port. Vessels desiring authorization to enter this safety zone must request permission from the Coast Guard Traffic Light Operator at the Governor Nicholls Traffic Light VHF–FM Channel 67. Authorization to enter this safety zone will only be granted during emergency situations that affect the safety of the vessel or the safety of the port. The safety zone will ensure the safety of human life and property.

EFFECTIVE DATES: This temporary rule is effective on October 28, 1999, from 9:45 p.m. until October 28, 1999, ending at 10:30 p.m.

FOR FURTHER INFORMATION CONTACT: COTP New Orleans representative, LT(jg) Kevin Lynn at (504) 589–4221.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the potential hazards to local marine traffic involved.

Background and Purpose

The hazardous condition requiring this regulation is a result of a fireworks display on the Mississippi River between mile 94.0 and mile 96.0. A safety zone is needed to protect vessels transiting the area. Entry into this zone is prohibited to all tankships and tankbarges unless authorized by the Captain of the Port. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of Part 165.

Regulatory Evaluation

This temporary rule is not a significant regulatory evaluation under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will only be in effect for several hours and the impacts on small entities are expected to be minimal.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of Chapter 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 1605; 49 CFR 1.46

2. A new § 165.T08–041 is added to read as follows:

§ 165.T08–041 Safety Zone

(a) *Location.* The following area is a safety zone: The waters of the Lower Mississippi River from mile 94.0 to mile 96.0, in the vicinity of Algiers Point, extending the entire width of the river.

(b) *Effective date.* This section will become effective on October 28, 1999 at 9:45 p.m. It will terminate on October

28, 1999, at 10:30 p.m., unless sooner terminated by the Captain of the Port. The Captain of the Port will notify the public of changes in the status of this zone by Marine Radio Safety Broadcasts on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

(c) *Regulations.*

In accordance with the general regulations in § 165.23, entry into this zone by any vessel is prohibited unless authorized by the Captain of the Port New Orleans.

Dated: October 7, 1999.

S.W. Rochon,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 99–28237 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–15–U

POSTAL RATE COMMISSION

39 CFR Part 3003

[Order No. 1269; Docket No. RM99–4]

Privacy Act; Implementation

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting previously-proposed revisions to its rules of practice implementing the Privacy Act of 1974. The substantive changes conform the rules to prevailing law. Editorial changes improve clarity.

DATES: Effective November 29, 1999.

ADDRESSES: Send correspondence regarding this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: In Order No. 1256 (published at 64 FR 49120 on September 10, 1999), the Commission proposed revisions to its rules implementing the Privacy Act of 1974 (39 CFR part 3003). The proposed revisions clarified application of the rules and shortened and simplified the text. The Commission invited comments on its proposal, but no comments were received.

The Commission has reviewed its initial proposal, and has determined that adoption of the revisions as previously published is appropriate. Part I explains the changes. Part II summarizes the effect of the changes on organization of the rules. Part III sets out the final rules.

Part I—Background

The Commission's rules implementing the Privacy Act have been amended only in minor respects since their original adoption shortly after the passage of the Act in 1974. The current rules have operated adequately, but it is apparent on review that they are capable of both substantive and editorial improvement. Accordingly, the Commission adopts a redrafted set of rules to replace those currently contained in part 3003.

The substantive changes in the final rule conform them more closely to prevailing standards of Privacy Act administration without altering the rights of individuals or the obligations of the Commission under the Act. The special procedure for access to medical records contained in current § 3003.6, under which access to such records is contingent on the judgment of the Commission's chief administrative officer, is eliminated in favor of the general access provision in § 3003.4. Section 3003.2 eliminates some unnecessary definitions, links others to the text of the Privacy Act, and rewords other definitions slightly for the sake of clarity. Also for clarification, § 3003.1 adds a statement indicating that the Commission's Privacy Act rules are not intended either to broaden or narrow the scope of an individual's rights afforded by the Act.

The final rules alter the substance of the current rules pertaining to requests for individual records and appeals of denials only in minor ways, but they appreciably shorten and simplify the provisions. Language that does not relate directly to the exercise of rights by individuals under the Privacy Act, and thus is unnecessary, is not included in the final rules. Additionally, the language of the current rules is generally simplified and shortened without affecting individuals' exercise of their rights or the Commission's performance of its obligations under the Privacy Act.

Part II—Effect on Organization of the Commission's Rules

The set of revisions adopted here operate as a complete replacement for the existing rules.

Part III—Final Rule

The text of the final rule appears below.

Dated: October 22, 1999.

Margaret P. Crenshaw,

Secretary.

List of Subjects in 39 CFR Part 3003

Administrative practice and procedure; Archives and records; Privacy; Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 39 CFR part 3003 is revised as follows:

PART 3003—PRIVACY ACT RULES

Sec.
3003.1 Purpose and scope.
3003.2 Definitions.
3003.3 Procedures for requesting inspection, copying, or correction.
3003.4 Response to a request.
3003.5 Appeals of denials of access or amendment.
3003.6 Fees.
3003.7 Exemptions.

Authority: Privacy Act of 1974 (Pub. L. 93–579), 5 U.S.C. 552a.

§ 3003.1 Purpose and scope.

This part implements the Privacy Act of 1974 (5 U.S.C. 552a) by establishing Commission policies and procedures that permit individuals to obtain access to and request amendment of information about themselves that is maintained in systems of records. This part does not expand or restrict any rights granted under the Privacy Act of 1974.

§ 3003.2 Definitions.

For purposes of this part:

(a) *Commission* means the Postal Rate Commission.

(b) *Individual, record,* and *system of records* have the meanings specified in 5 U.S.C. 552a(a).

(c) *Day* means a calendar day and does not include Saturdays, Sundays, and legal holidays.

§ 3003.3 Procedures for requesting inspection, copying, or correction.

(a) An individual who—

(1) Wishes to know whether a Commission system of records contains a record about him or her,

(2) Seeks access to a Commission record about him or her that is maintained in a system of records (including the accounting of disclosures), or

(3) Seeks to amend a record about him or her that is maintained in a system of records, may file a written request with the chief administrative officer of the Commission at the Commission's current address (1333 H Street NW., Suite 300, Washington, DC 20268–0001). The request should state on the outside of the envelope and in the request that it is a Privacy Act request.

(b) A request for amendment must describe the information sought to be amended and the specific reasons for the amendment.

(c) A requester—

(1) May request an appointment to inspect records at the Commission's offices between the hours of 8 a.m. and 4:30 p.m. on any day;

(2) Must present suitable identification, such as a driver's license, employee identification card, or Medicare card;

(3) If accompanied by another individual, must sign a statement, if requested by the chief administrative officer, authorizing discussion of his or her record in the presence of that individual;

(4) Who files a request by mail must include his or her date of birth, dates of employment at the Commission (if applicable), and suitable proof of identity, such as a facsimile of a driver's license, employee identification card, or Medicare card; and

(5) Must, if requested by the chief administrative officer, provide additional proof of identification.

§ 3003.4 Response to a request.

(a) In the case of a request for notice of the existence of a record, the chief administrative officer shall respond within 10 days of receipt of a request and shall inform the individual whether a system of records maintained by the Commission contains such a record.

(b) In the case of a request for access to a record or for a copy of a record, the chief administrative officer shall acknowledge the request within 10 days and shall promptly thereafter—

(1) Fulfill the request by mail or arrange for an inspection by the requester in the Commission's offices; or

(2) If the request is denied, notify the requester of the denial, the reasons for the denial, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

(c) In the case of a request for amendment, the chief administrative officer shall

(1) Acknowledge the request in writing within 10 days;

(2) Promptly review the record; and

(3)(i) Make any requested amendment of a record found to be not accurate, relevant, timely, or complete; notify the requester of the change and provide a copy of the corrected record; and notify any previous recipient of the record (excluding Commission staff who obtained the record in the performance of their duties and recipients under the Freedom of Information Act) of any change; or

(ii) Inform the requester of a refusal to amend the record, the reasons for the refusal, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

§ 3003.5 Appeals of denials of access or amendment.

(a) If a request for access to or amendment of a record is denied, the requester may file a written appeal with the Chairman of the Commission. The Chairman will decide each appeal within 30 days of receipt unless the Chairman has, for good cause, extended the period for another 30 days.

(b) If an appeal is denied, the requester will be notified of the decision, the reasons for the denial, the right to file a concise statement of disagreement, the procedures for filing a statement of disagreement, the subsequent uses of a statement of disagreement, and of the right to seek judicial review in accordance with subsection (g) of the Privacy Act.

§ 3003.6 Fees.

The first copy of any record furnished under the Privacy Act of 1974 will be provided without charge. Additional copies will be charged at the cost of reproduction.

§ 3003.7 Exemptions.

The Postal Rate Commission has not established any exempt system of records.

[FR Doc. 99–28125 Filed 10–27–99; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–79–1–7328a, FRL–6459–8]

Approval and Promulgation of Implementation Plans; Texas; Repeal of Board Seal Rule and Revisions to Particulate Matter Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving revisions to the Texas Natural Resource Conservation Commission (TNRCC) regulations in the Texas State Implementation Plan (SIP). These revisions remove the Texas Air Control Board (TACB) Seal rule from the Texas SIP and revise and recodify regulations for control of particulate matter in the Texas SIP. Removal of the Board Seal rule eliminates a rule that no longer applies to TNRCC. These revisions to the particulate matter regulations update the SIP-approved regulations and make the SIP citations consistent with the current State citations.

DATES: This rule is effective on December 27, 1999 without further notice, unless EPA receives adverse comment by November 29, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we" is used, we mean EPA. Texas Regulation I in the SIP and revisions to Regulation I being approved in this action have undesignated headings. In this document, references to these undesignated heading are preceded by the word "concerning." This document makes many references to subsections of 40 CFR 52.2270. Section 40 CFR 52.2270 was moved to 40 CFR 52.2299 in a **Federal Register** action published July 7, 1999 (64 FR 36586).

On September 1, 1993, the TACB merged with the former Texas Department of Water Resources to become the Office of Air Quality in the new TNRCC. The TACB air regulations were transferred from Title 31 of the Texas Administrative Code (31 TAC) to Title 30 of the Texas Administrative Code (30 TAC). The designation for the General Rules changed from 31 TAC Chapter 101 to 30 TAC Chapter 101. The designation for Regulation I changed from 31 TAC Chapter 111 to 30 TAC Chapter 111. References to TNRCC replaced references to TACB in the regulations.

I. What Is EPA Approving in This Action?

Below is a brief discussion of the State submittals being approved in this **Federal Register** action.

A. Adopted by TACB on June 16, 1989, and Submitted to EPA on August 21, 1989

The TACB adopted the repeal of the existing Regulation I and adopted a new Regulation I. The primary purpose of the new rules was to address EPA's new national ambient air quality standards in the El Paso County PM_{10} nonattainment area. While in most cases the purpose of the new rule provisions remained the same, the regulations were reorganized and the rules renumbered and stylistically changed.

We acted upon sections of this submittal concerning Outdoor Burning and concerning Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots on January 18, 1994 (59 FR 2534), at 52.2270(c)(79), in a **Federal Register** action approving the PM_{10} SIP for the El Paso County PM_{10} nonattainment area.

We acted upon sections of this submittal concerning Visibility on May 8, 1996 (61 FR 20732), at 52.2270(c)(94).

The purpose of this **Federal Register** action is to approve the remaining sections of the submittal concerning: Incineration, Emission Limits on Nonagricultural Processes, Emission Limits on Agricultural Processes, Exemptions for Portable or Transient Operations, and the repeal of § 111.92 relating to Compliance Dates. We are approving these revisions to Regulation I as 30 TAC Chapter 111 even though they were submitted as 31 TAC Chapter 111.

B. Adopted by TNRCC March 29, 1995 and Submitted to EPA on July 12, 1995

The TNRCC adopted the repeal of § 101.12, Board Seal, from the TNRCC General Rules because the rule no longer applies to TNRCC. The TNRCC also revised Regulation I, § 111.103, Exemptions to Prohibitions to Outdoor Burning, by deleting Subsection § 111.103(b)(8). The municipal solid waste provisions contained in this Subsection have been superseded by the Federal Resource Conservation and Recovery Act (RCRA).

C. Adopted by TNRCC August 21, 1996, and Submitted to EPA on August 30, 1996

The TNRCC revised Regulation I to clarify the requirements for allowable outdoor burning and to clarify exceptions to prohibition of outdoor burning. The rules were structured to more adequately relate to current outdoor burning needs. This revision repealed §§ 101.101 to 101.107 concerning Outdoor Burning and replaced them with new §§ 101.201 to 101.221 under new Subchapter B, Outdoor Burning. All other sections in Regulation I became Subchapter A, Visible Emissions and Particulate Matter. The TNRCC also replaced all references to TACB in Regulation I with references to TNRCC.

II. Why Is the TACB Board Seal Rule Being Removed From the SIP?

Section 101.12, Board Seal, of the TNRCC General Rules was approved as Rule 13 in the TACB General Rules approved by EPA May 31, 1972, with the original Texas SIP. The purpose of the Board Seal rule was to provide for a seal bearing the words "Texas Air Control Board," and the oak and olive branches common to other official State seals. The TNRCC adopted the repeal of § 101.12, on March 29, 1995, because the TACB no longer exists and the rule no longer applies to TNRCC.

III. Background of Texas Regulation I in the Texas SIP?

We approved Texas Regulation I on May 31, 1972 (37 FR 10895), with the original Texas SIP. It was adopted by TACB on January 26, 1972, and consisted of: Rule 101, Outdoor Burning; Rule 102, Incineration; Rule 103, Visible Emissions; Rule 104, Particulate Matter From Materials Handling, Construction, and Roads; Rule 105, Particulate Matter; Rule 106, Transient Operations; Rule 107, Agricultural Process; and untitled Rule 108 for compliance dates.

We approved revisions to Regulation I on: March 25, 1980 (45 FR 19244); July 26, 1982 (47 FR 32126); February 25, 1983 (48 FR 08073); January 18, 1994 (59 FR 02538); and May 8, 1996 (61 FR 20732).

The current SIP-approved Regulation I is available for public inspection by selecting "Texas" and then "TX Chap 111 (Reg 1)" at the following web site: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm

IV. Outline of Regulation I in the Texas SIP as a Result of This Federal Register Action

Below is an outline of Regulation I as being approved by this action. Sections with titles followed by an "*" have already been approved by EPA, but are being placed in Subchapter A in this action as requested by the August 30, 1996, submittal. The rest of the sections in Regulation I are being revised and recodified in this action.

Regulation I (30 TAC Chapter 111)—Control of Air Pollution from Visible Emissions and Particulate Matter

Subchapter A. Visible Emissions and Particulate Matter Visible Emissions*

Section 111.111 Requirements for Specified Sources*
Section 111.113 Alternative Opacity Limitations*

Incineration

Section 111.121 Single-Chamber Incinerators

Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots*

Section 111.141 Geographic Areas of Application and Date of Compliance*
Section 111.143 Materials Handling*
Section 111.145 Construction and Demolition*
Section 111.147 Roads, Streets, and Alleys*
Section 111.149 Parking Lots*

Emission Limits on Nonagricultural Processes

Section 111.151 Allowable Emissions Limits
Section 111.153 Emission Limits for Steam Generators
Section 111.155 Ground Level Concentrations

Emission Limits on Agricultural Processes

Section 111.171 Emission Limits Based on Process Weight Method
Section 111.173 Emissions Limits Based on Alternate Method
Section 111.175 Exemptions

Exemptions for Portable or Transient Operations

Section 111.181 Exemption Policy
Section 111.183 Requirements for Exemptions

Subchapter B. Outdoor Burning

Section 111.201 General Prohibitions
Section 111.203 Definitions
Section 111.205 Exceptions for Fire Training
Section 111.207 Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth
Section 111.209 Exception for Disposal Fires
Section 111.211 Exception for Prescribed Burn
Section 111.213 Exception for Hydrocarbon Burning
Section 111.215 Executive Director Approval of Otherwise Prohibited Outdoor Burning
Section 111.219 General Requirements for Allowable Outdoor Burning
Section 111.221 Responsibility for Consequences of Outdoor Burning

V. How Are Sections of Regulation I Being Revised by This Action?

The revisions to Regulation I adopted by TNRCC August 21, 1996, and submitted to EPA on August 30, 1996, placed all sections concerning outdoor burning in new Subchapter B, Outdoor Burning. All other sections in Regulation I were placed in Subchapter

A, Visible Emissions and Particulate Matter.

A. Subchapter A, Visible Emissions and Particulate Matter.

We are approving revisions to Regulation I adopted by TACB on June 16, 1989, concerning: Incineration, Emission Limits on Nonagricultural Processes, Emission Limits on Agricultural Processes, Exemptions for Portable or Transient Operations, and the repeal of Section 111.92 in the SIP relating to Compliance Dates.

Below is a brief discussion of each section of Subchapter A.

1. Sections 111.111 and 111.113 Concerning Visible Emissions

We approved sections 111.111 and 111.113 on January 18, 1994 (59 FR 2534), at 52.2270(c)(79), and on May 8, 1996 (61 FR 20732), at 52.2270(c)(94). These revisions included amendments adopted by TACB on June 16, 1989; October 12, 1990; October 25, 1991; September 18, 1992; and June 18, 1993.

2. Section 111.121 Concerning Incineration

Section 111.121, Single-Chamber Incinerators, as adopted by TACB on June 16, 1989, replaces Section 111.11, Incineration, and Section 111.12, Approval of Incinerators, approved by EPA on July 26, 1982 (47 FR 32126), at 52.2270(c)(44). Section 111.121 makes minor revision to the limitations on the burning of garbage or rubbish in residential, publicly-owned, commercial, or hospital/pathological waste incinerators.

3. Sections 111.141 to 111.151 Concerning Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots

Sections 111.141, 111.143, 111.145, 111.147, and 111.149, as adopted by the TACB on June 16, 1989, and October 25, 1991, were approved by EPA January 18, 1994 (59 FR 2534), at 52.2270(c)(79).

4. Sections 111.151 to 111.155 Concerning Emission Limits on Nonagricultural Processes

Sections 111.151, 111.153, and 111.155, adopted by TACB on June 16, 1989, replace Rule 105, Particulate Matter, approved by EPA May 31, 1972, with the original Texas SIP.

Section 111.151 reformats and makes slight revisions to Rule 105.1. An equation in Subsection 111.151(b) replaces Figure 1, a log-log graph entitled Allowable Particulate Emission Rates for Specific Flow Rates. An equation in Subsection 111.151(c) replaces Figure 2, a graph entitled Standard Effective Stack Height Based on Specific Flow Rates. Table 1, Allowable Particulate Emission Rates for Specific Flow Rates, and Table 2, Standard Effective Stack Height Based on Specific Flow Rates, are identical to Tables 1 and 2 approved with the original Texas SIP except that Table 1 now clarifies that the rate of emissions is for total suspended particulate (TSP).

Section 111.153, Emissions Limits for Steam Generators, replaces Rule 105.3. Subsection 111.153(a) provides that Section 111.151 does not apply to, or set limits to, any oil or gas fuel-fired steam generator with a heat input greater than 2500 million British thermal units (Btu) per hour or any solid fossil fuel-fired steam generator. Subsection 111.153(b) sets limits to any solid fossil fuel-fired steam generator at 0.3 pounds of TSP per million Btu heat input, averaged over a two-hour period. Subsection 111.153(c) limits any oil or gas fuel-fired steam generator with a heat input greater than 2500 million Btu per hour to 0.1 pounds of TSP per million Btu input averaged over a two-hour period.

Section 111.155, Ground Level Concentrations, which replaces Rule 105.2, sets limits for particulate matter resulting from any ground level source.

5. Sections 111.171 to 111.175 Concerning Emission Limits on Agricultural Processes

Sections 111.171, 111.173, and 111.175, adopted by TACB on June 16, 1989, replace Sections 111.71, 111.72, 111.73, 111.74, 111.75, and 111.76, concerning Particulate Matter from Agricultural Processes, approved by EPA July 26, 1982 (47 FR 32126), at 52.2270(c)(44), and February 25, 1983 (48 FR 8073), at 52.2270(c)(50).

Section 111.171, Emission Limits Based on Process Weight Method, establishes that all sources affected by Section 3.10(e) the Texas Clean Air Act (TCAA), shall have allowable particulate emissions levels determined by the process weight method unless a request for an alternate method is submitted and approved.

Section 111.173, Emission Limits Based on Alternate Method, allows for a source affected by Section 3.10(e) of the TCAA to request an approved alternate method.

Section 111.175, Exemptions, enumerates the sections of Regulation I from which agricultural processes are exempt.

Table 3, Allowable Rate of Emission Based on Process Weight Rate, cited in Section 111.171, is identical to Tables 3 approved with the original Texas SIP. Figure 3, a log-log graph entitled Allowable Emissions Levels Based on Process Weight Rate, has been deleted.

6. Sections 111.181 and 111.183 Concerning Exemptions for Portable or Transient Operations

Sections 111.181 and 111.183, adopted by TACB on June 16, 1989, replace Sections 111.81, 111.82, and 111.83 concerning Exemptions approved by EPA February 25, 1983 (48 FR 8073), at 52.2270(c)(50).

Section 111.181, Exemption Policy, exempts most portable facilities and transient operations, except those in the inhalable particulate matter Group I and Group II areas in Dallas, El Paso, and Harris counties, from the requirements of certain sections of Chapter 111.

Section 111.183, Requirements for Exemption, stipulates conditions which have to be met in order to qualify for the exemption in section 111.181.

7. Repeal of Section 111.92, Compliance Dates

Section 111.92 was approved by EPA February 25, 1983 (48 FR 8073), at 52.2270(c)(50). No replacement for Section 111.92 was included in the new Regulation I adopted by TACB on June 16, 1989, because the section was outdated and referred to sections of Regulation I that have been revised or have their own compliance dates. The dates in Section 111.92 have passed.

B. Subchapter B, Outdoor Burning

Sections 111.101, 111.103, 111.105, and 111.107 concerning Outdoor Burning in the current Texas SIP were adopted by the TACB on June 16, 1989, and October 25, 1991, and approved by EPA on January 18, 1994 (59 FR 2534) at 52.2270(c)(79).

On July 12, 1995, the Governor submitted a revision to Regulation I adopted by TNRCC on March 29, 1995, which revised Section 111.103, Exemptions to Prohibitions to Outdoor Burning, by deleting Subsection 111.103(b)(8). The municipal solid waste provisions contained in this Subsection have been superseded by RCRA.

On August 30, 1996, the Governor submitted to EPA revisions to Regulation I adopted by TNRCC on August 21, 1996, which repealed Sections 111.101, 111.103, 111.105, and 111.107 concerning Outdoor Burning and replaced them with new Subchapter B, Outdoor Burning, consisting of Sections 111.201, 111.203; 111.205; 111.207; 111.209; 111.211; 111.213; 111.215; 111.219; and 111.221. This was done in order to clarify requirements and, where appropriate, add flexibility to existing requirements. Subsections of old Section 111.103, Exceptions to Prohibition of Outdoor Burning, have been placed in five separate sections in Subchapter B. Below is a brief discussion of each of the sections being approved in this action.

1. Section 111.201, General Prohibitions

Section 111.201 replaces Section 111.101 of the same title. The definition of the term "Executive Director" has been revised to include TNRCC staff representatives. This section prohibits outdoor burning unless authorized by statute, order, or permit.

2. Section 111.203, Definitions

Section 111.203 is a new section which adds definitions of the following terms: Extinguished, Landclearing operation, Practical alternative, Prescribed burn, Structure containing sensitive receptor(s), Sunrise/Sunset, and Wildland. These definitions clarify terms and concepts previously considered ambiguous or undefined.

3. Section 111.205, Exceptions for Fire Training

Section 111.205 replaces Subsection 111.103(b)(1). The revisions simplify the notification procedures by eliminating some of the repetitive and nonessential notification requirements for fire training managers.

4. Section 111.207, Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth

Section 111.207, replaces and makes minor editorial changes to Subsection 111.103(b)(3). Section 111.207 permits fires used solely for recreational or ceremonial purposes, for the noncommercial preparation of food, or for the exclusive purpose of supplying warmth during cold weather.

5. Section 111.209, Exception for Disposal Fires

Section 111.209 replaces Subsections 111.103(b)(2), (4), and (5). Section 111.209 differentiates between fires used solely for the disposal of wastes and other forms of outdoor burning and regulates them in relation to practical alternatives. In regard to domestic waste burning, the rule clarifies allowable burning both in terms of waste collection criteria and types of wastes. The rule permits the burning of diseased animal carcasses when burning is the most effective means of controlling the spread of disease. This section now addresses off-site impacts in burns for land clearing and right-of-way maintenance. New additions specifically address the regulation of crop residue burning and brush burning by counties and municipalities for detrimental public health and safety considerations.

6. Section 111.211, Exception for Prescribed Burn

Section 111.211, replaces Subsection 111.103(b)(6) relating to exceptions for prescribed burn. Section 111.211 recognizes the use of fire as a positive forest, range, and wildland/wildlife management tool under certain circumstances for which there is no practical alternative. In the case of the burning of coastal salt-marsh, the notification criteria and procedures have been simplified.

7. Section 111.213, Exception for Hydrocarbon Burning

Section 111.213 replaces Subsection 111.103(b)(7). Section 111.213 has been revised to include a sampling and monitoring requirement. Section 111.213 permits hydrocarbon burning for pipeline breaks and spills if the Executive Director determines that the burning is necessary to protect public welfare.

8. Section 111.215, Executive Director Approval of Otherwise Prohibited Outdoor Burning

Section 111.215, relating to Executive Director approval of otherwise prohibited outdoor burning where there is no practical alternative, replaces Subsection 103(a). Section 111.215 now recognizes that authorization is contingent upon not causing a condition of nuisance or traffic hazard.

9. Section 111.219, General Requirements for Allowable Outdoor Burning

Section 111.219, which replaces Section 111.105, clarifies points which have previously been unclear or ill-defined. Section 111.219(1) requires notification of the Texas Forest Service prior to a prescribed or controlled burn. Section 111.219(2) is modified to recognize local government burning ordinance authority stipulated in the TCAA. Section 111.219(3) has been changed to avoid potential off-site impacts to sensitive receptor(s). Section 111.219(4) requires the person initiating a burn to post a flag-person where smoke may blow across a road. Section 111.219(5) adds flexibility to the previously inflexible 300 foot prohibition by setting wind direction and distance from sensitive receptors as the regulatory criteria for determining the extent of the burn. Section 111.219(6) establishes the allowable burn hours to one hour after sunrise to one hour before sunset. This provision allows more flexibility but is also intended to ensure meteorological conditions are properly evaluated. Section 111.219(7) is modified to provide more specificity to prohibited burn fuels.

10. Section 111.221, Responsibility for Consequences of Outdoor Burning

Section 111.221 replaces Section 111.107 of the same title. There are no changes from the existing rule. This provision states that the authority to burn does not excuse compliance with other applicable laws and does not exempt the person responsible from any consequences, damages, or injuries even though the burning is otherwise conducted in compliance with this regulation.

VI. Final Action

We are approving revisions to Regulation I in the Texas SIP adopted by TACB June 16, 1989, and submitted to EPA on August 21, 1989, concerning: Incineration, Emission Limits on Nonagricultural Processes, Emission Limits on Agricultural Processes, Exemptions for Portable or Transient Operations, and the repeal of Section 111.92, Compliance Dates. We are also approving revisions, adopted by TNRCC March 29, 1995, and August 21, 1996, and submitted to EPA on July 12, 1995, and August 30, 1996, respectively. These revisions remove Section 101.12, Board Seal, from the TNRCC General Rules. These revisions also revise the Outdoor Burning sections in TNRCC Regulation I and places them in new Subchapter B and places the rest of the sections in Regulation I in new Subchapter A, Visible Emissions and Particulate Matter.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on December 27, 1999 without further notice unless we receive adverse comment by November 29, 1999. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in Federal Clean Air Act (the Act).

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective December 27, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Hydrocarbons, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270(c) the first table is amended by revising the entry for Chapter 111 and by removing the entry for "Section 101.12, Board Seal" to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State adoption date	EPA approval date	Explanation
*	*	*	*	*
Chapter 111 (Reg 1)—Control of Air Pollution from Visible Emissions and Particulate Matter				
Subchapter A—Visible Emissions and Particulate Matter				
Visible Emissions				
Section 111.111(a), (b)	Requirements for Specified Sources.	06/18/93	05/08/96, 61 FR 20732, 01/18/94, 59 FR 2532.	Ref. 52.2299(c)(94) 52.2299(c)(79)
Section 111.113	Alternative Opacity Limitations	06/16/89	05/08/96, 61 FR 20732	Ref. 52.2299(c)(94)
Incineration				
Section 111.121	Single-Chamber Incineration	06/16/89	October 28, 1999.	
Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots				
Section 111.141	Geographic Areas of Application and Date of Compliance.	10/25/91	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Section 111.143	Materials Handling	06/16/89	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Section 111.145	Construction and Demolition	10/25/91	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Section 111.147	Roads, Streets, and Alleys	10/25/91	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Section 111.149	Parking Lots	06/16/89	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Emission Limits on Nonagricultural Processes				
Section 111.151	Allowable Emissions Limits	06/16/89	October 28, 1999.	
Section 111.153	Emission Limits for Steam Generators.	06/16/89	October 28, 1999.	
Section 111.155	Ground Level Concentrations	06/16/89	October 28, 1999.	
Emission Limits on Agricultural Processes				
Section 111.171	Emission Limits Based on Process Weight Method.	06/16/89	October 28, 1999.	
Section 111.173	Emissions Limits Based on Alternate Method.	06/16/89	October 28, 1999.	
Section 111.175	Exemptions	06/16/89	October 28, 1999.	
Exemptions for Portable or Transient Operations				
Section 111.181	Exemption Policy	06/16/89	October 28, 1999.	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State adoption date	EPA approval date	Explanation
Section 111.183	Requirements for Exemptions	06/16/89	October 28, 1999.	
Subchapter B—Outdoor Burning				
Section 111.201	General Prohibitions	08/21/96	October 28, 1999.	
Section 111.203	Definitions	08/21/96	October 28, 1999.	
Section 111.205	Exceptions for Fire Training	08/21/96	October 28, 1999.	
Section 111.207	Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth.	08/21/96	October 28, 1999.	
Section 111.209	Exception for Disposal Fires	08/21/96	October 28, 1999.	
Section 111.211	Exception for Prescribed Burn	08/21/96	October 28, 1999.	
Section 111.213	Exception for Hydrocarbon Burning.	08/21/96	October 28, 1999.	
Section 111.215	Executive Director Approval of Otherwise Prohibited Outdoor Burning.	08/21/96	October 28, 1999.	
Section 111.219	General Requirements for Allowable Outdoor Burning.	08/21/96	October 28, 1999.	
Section 111.221	Responsibility for Consequences of Outdoor Burning.	08/21/96	October 28, 1999.	

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[FR Doc. 99–27136 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD093–3040; FRL–6460–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOCs from Paint, Resin and Adhesive Manufacturing and Adhesive Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on two revisions to the Maryland State Implementation Plan (SIP). The revisions consist of amendments to Maryland's regulation to control volatile organic compounds (VOC) from Paint, Resin & Adhesive manufacturing and Adhesive Application. The first revision amends Maryland's definition of "honeycomb core installation" to include additional substrates. The second revision clarifies the general emission standard for VOCs from adhesive applications. EPA is approving these revisions to in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on December 13, 1999 without further notice, unless EPA receives adverse written comment by November 29, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, or by e-mail at Lewis.Janice@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the SIP Revisions

On April 12, 1999, the Maryland Department of the Environment (MDE) submitted two revisions to its State Implementation Plan (SIP). The first SIP revision amends the definition of "Honeycomb core installation" found at COMAR 26.11.19.15A(2) so that it includes other substrates in addition to metal foil. This revision was adopted by Maryland on March 2, 1999 and has been effective in the State as of March 22, 1999. The second SIP revision clarifies the applicability of the General Emission Standard for adhesive applications found at COMAR 26.11.19.15C(4). The intent of this regulation is to require the VOC content of the adhesives to be limited to 3.8 pounds per gallon if the total plantwide VOC emissions from all adhesive applications exceeds 50 pounds per day.

B. EPA's Evaluation of the SIP Revisions

The EPA has determined that these amendments to COMAR 26.11.19.15: Paint, Resin, and Adhesive Manufacturing and Adhesive Application meet all federal criteria for approval.

II. Final Action

EPA is approving the amendments to COMAR 26.11.19.15 submitted by the MDE on April 12, 1999 as revisions to the Maryland SIP.

EPA is publishing this rule without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 13, 1999 without further notice unless EPA receives adverse comment by November 29, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule. On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1999. Filing a petition for reconsideration by the Administrator of this final rule approving two revisions to Maryland's regulations for controlling VOCs from adhesives applications does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 30, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(145) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(145) Revisions to the Maryland State Implementation Plan submitted on April 12, 1999, by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of April 12, 1999, from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan, pertaining to Regulation .15 under Code of Maryland Administrative Regulations (COMAR) 26.11.19 Volatile Organic Compounds from Specific Processes.

(B) Revision to COMAR 26.11.19.15: Paint, Resin, and Adhesive Manufacturing and Adhesive Application amending the definition found at COMAR 26.11.19.15 A(2) of the term "honeycomb core installation" to include other substrates. This revision was adopted on March 2, 1999 and effective on March 22, 1999.

(C) Revision to COMAR 26.11.19.15: Paint, Resin, and Adhesive Manufacturing and Adhesive Application clarifying the applicability of COMAR 26.11.19.15.C(4) General Emission Standard. This revision was adopted on April 9, 1998 and effective on May 4, 1998.

(ii) *Additional Material*—Remainder of April 12, 1999 submittal pertaining to COMAR 26.11.19.15 Paint, Resin, and Adhesive Manufacturing and Adhesive Application.

[FR Doc. 99–27201 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA71–168a ; FRL –6452–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern Kern County Air Pollution Control District (KCAPCD), Rule 424 and Yolo-Solano Air Quality Management District, Rule 2.37. The revisions include rescission and removal of an obsolete rule from the SIP and the incorporation of two rules into the Federally approved SIP.

The rule to be removed regulated sulfur compound emissions from oil field steam generators. No units covered by this rule remain or are in operation within KCAPCD's jurisdictional area.

The rules to be incorporated control emissions of oxides of nitrogen (NO_X) from natural gas-fired residential water heaters.

This approval action will incorporate the two rules into the Federally approved SIP. The intended effect of approving the rules is to regulate NO_X emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA actions on SIP submittals. SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

DATES: These rules are effective on December 27, 1999 without further notice, unless EPA receives adverse comments by November 29, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted respective rules are also available for inspection at the following locations:

Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370

Yolo-Solano Air Quality Management District 1947 Galileo Court, Suite 103, Davis, CA 95616–4882

FOR FURTHER INFORMATION CONTACT: Sam Agpawa, Air Planning Office, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1228.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being rescinded and removed is KAPCD Rule 424. The rule was adopted by KAPCD on July 18, 1983; approved into the SIP on May 3, 1984; and rescinded by KAPCD's Board on April 19, 1993. The rule was submitted to EPA for rescission on November 18, 1993. The rule number was reassigned to a subsequent rule which was adopted by KAPCD's Board on the date of rescission.

The rule being approved for rescission and removal from the SIP is the old KAPCD rule 424. The rule applied to sulfur compounds from oilfield steam generators. The rules being approved into the California SIP are:

(1) The new KCAPCD Rule 424 and (2) YSAQMD Rule 2.37. The rules apply to natural gas-fired residential water heaters. The rules were submitted by the State of California to EPA on: (1) KCAPCD Rule 424—November 18, 1993; and (2) YSAQMD Rule 2.37—February 24, 1995.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. KCAPCD and YSAQMD are designated and classified as non-attainment-serious for ozone[1]; therefore, the jurisdictional areas of KCAPCD and YSAQMD are subject to the RACT requirements of section 182(b)(2) cited below and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There are no major stationary sources covered by KCAPCD Rule 424 and YSAQMD Rule 2.37 and RACT requirements do not apply; however, the rules are expected to achieve substantial reductions of NO_X because they apply to a large number of small sources.

This document addresses EPA's direct final action for KCAPCD Rule 424 and YSAQMD Rule 2.37, applying to natural gas-fired residential water heaters. The rules were adopted on: (1) KCAPCD Rule 424—April 19, 1993 and (2) YSAQMD 2.37—November 9, 1994.

The State of California submitted the rules to EPA for incorporation into its SIP on: (1) KCAPCD Rule 424—November 18, 1993; and (2) YSAQMD Rule 2.37—February 24, 1995. KCAPCD Rule 424 was found complete on December 27, 1993; YSAQMD Rule 2.37 was found complete on March 10, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V.[2] The rules are being finalized for approval into the SIP.

NO_X emissions contribute to the production of ground level ozone and smog. Both rules specify exhaust emission standards for NO_X from residential water heaters. The rules were originally adopted as part of each applicable district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

KCAPCD Rule 424 and YSAMQD Rule 2.37 prohibit the sale and installation of units within Kern County and the Yolo-Solano Air Quality Management District that exceed the Rules' specified emission rates. Rule 424 replaces a rescinded rule which controlled sulfur compound emissions from oil fields. The rescinded rule is no longer applicable. The new rule was assigned the same number (424). KCAPCD Rule 424 and YSAQMD Rule 2.37 are similar to South Coast Air Quality Management District (SCAQMD) Rule 1121 which prohibits units that do not meet the SCAQMD rule requirements from being sold or installed in Los Angeles Basin.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, KCAPCD Rule 424; and YSAQMD Rule 2.37, Natural Gas-fired Residential Water Heaters; are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 27, 1999 without further notice unless the Agency receives adverse comments by November 29, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 27, 1999 and no further action will be taken on the proposed rule.

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[1] Kern County and the Yolo-Solano Air Quality Management District retained their designation(s) of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rules do not create a mandate on State, local or tribal governments. The rules do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to these rules.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. These rules are not subject to E.O. 13045 because they do not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rules do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to these rules.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These final rules will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These rules are not "major" rules as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1999. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rules or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 9, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(140)(ii)(C), (194)(i)(B)(*4*), (215)(i)(D) introductory text, and (215)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(140) * * *

(ii) * * *

(C) Previously approved on May 3, 1984 and now deleted without replacement for implementation in the Southeast Desert Air Basin Rule 424.

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(194) * * *

(i) * * *

(B) * * *

(*4*) Rule 424 adopted on April 19, 1993.

* * * * *

(215) * * *

(i) * * *

(D) Yolo-Solano Air Pollution Control District.

* * * * *

(*2*) Rule 2.37 adopted on November 9, 1994.

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[FR Doc 99–27199 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 98–170; FCC 99–72]

Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On June 25, 1999 the Federal Communications Commission published rules in the **Federal Register** concerning Truth-in-Billing principles and guidelines for telecommunications common carriers. This document makes a correction to that rule.

DATES: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: David Konuch, Enforcement Division, Common Carrier Bureau (202) 418–0960.

SUPPLEMENTARY INFORMATION: On April 15, 1999, the Commission adopted an order establishing billing principles to ensure that consumers are provided with basic information they need to make informed choices among telecommunications services and providers, to protect themselves against inaccurate and unfair billing practices, and to enhance their ability to detect cramming and slamming. A summary of this order was published in the **Federal Register**. *See* 64 FR 34488, June 25, 1999. On October 18, 1999, a notice was published in the **Federal Register** correcting this summary. See 64 FR 56177, October 18, 1999. This document corrects a typographical error contained in the October 18, 1999 notice. In that notice, "Subpart U" was revised to read "Subpart W". This document corrects the October 18, 1999 notice. In this document, "Subpart W" is corrected to read "Subpart Y".

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–27873 Filed 10–27–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 208
Thursday, October 28, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–20]

Proposed Amendment to Class D Airspace; Jacksonville NAS Cecil Field, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the name of the Jacksonville NAS Cecil Field, FL Airport to Cecil Field Airport and amend Class D airspace and hours of operation. The U.S. Navy has discontinued operations at NAS Cecil Field, including decommissioning the Cecil Nondirectional Radio Beacon (NDB) and the Cecil Tactical Air Navigation (TACAN) navigation aids; thereby, eliminating airspace extensions. The Jacksonville, FL, Port Authority has opened a contract airport traffic control tower at the airport. The control tower at Cecil Field is scheduled to be open 0800–1800, daily, Monday through Friday. Therefore, the Class D airspace hours of operation would be amended from continuous to part time.

DATES; Comments must be received on or before November 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–20, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by changing the name of Jacksonville NAS Cecil Field, FL to Cecil Field and amending the Class D airspace and hours of operation for the airport traffic control tower. The U.S. Navy is discontinuing operations at NAS Cecil Field, including decommissioning the Cecil Nondirectional Radio Beacon (NDB) and the Cecil Tactical Air Navigation (TACAN) navigation aids; thereby, eliminating airspace extensions. The Jacksonville, FL, Port Authority is opening a contract airport traffic control tower at the NAS Cecil Field airport. The control tower at Cecil Field is scheduled to be open 0800–1800 daily. Therefore, the Class D airspace would be amended from continuous to part time. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Jacksonville Cecil Field, FL [Revised]

Cecil Field, FL
(Lat. 30°12′59″N, long. 81°52′29″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.5-mile radius of Cecil Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in College Park, Georgia, on October 18, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–28236 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–42037; File No. S7–24–99]

RIN 3235–AH84

Short Sales

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; Request for comments.

SUMMARY: The Securities and Exchange Commission is seeking public comment on the regulation of short sales of securities. In this release, we seek comment on, among other things: lifting the limits on short sales of exchange listed securities under advancing market conditions; providing an exception for actively traded securities; focusing short sale restrictions on certain market events and trading strategies; removing short sale restrictions on hedging transactions; revising short sale regulation in response to certain market developments; revising the definition of "short sale"; extending short sale regulation to non-exchange listed securities; and eliminating short sale regulation altogether.

DATES: Comments must be received on or before December 27, 1999.

ADDRESSES: Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–24–99. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, at (202) 942–0772: James Brigagliano, Alan Reed, or Michael Trocchio.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission (Commission) adopted Rule 10a–1[1] (short sale rule or Rule) under the Securities Exchange Act of 1934 (Exchange Act)[2] at a time when the securities markets had less trading volume and simpler trading strategies than current markets. Since the adoption of the short sale rule, securities trading has increased drastically in volume, velocity, and complexity. There have also been substantial improvements in market transparency and surveillance mechanisms. Short sale regulation, however, has remained fundamentally unchanged. This separation between Rule 10a–1 and the markets has resulted in frequent requests for relief from the short sale rule and suggestions for modification of it. Our goal is to examine ways to modernize our approach to provide the most appropriate regulatory structure for short sales.

Among other things, we propose to assess whether the restrictions of Rule 10a–1 produce benefits to the markets that are proportionate to the costs associated with those restrictions. We believe that a comprehensive assessment of Rule 10a–1 is necessary to achieve this goal. Therefore, we are seeking public comment on the regulation of short selling. In particular, we solicit comment on eight concepts related to the regulation of short sales of securities:

- Suspending the short sale rule when the security or market is above a threshold price;
- Providing an exception for actively traded securities;
- Focusing short sale restrictions on certain market events and trading strategies;
- Excepting hedging transactions from short sale regulation;
- Revising short sale regulation in response to certain market developments;
- Revising the definition of "short sale";
- Extending the short sale rule to non-exchange listed securities; and
- Eliminating Rule 10a–1.

The comments we receive will assist us in determining whether to propose changes to the short sale rule and in tailoring the scope of any such changes.

A. Background

A short sale[3] is the sale of a security that the seller does not own or that the seller owns but does not deliver. In order to deliver the security to the purchaser, the short seller will borrow the security, typically from a broker-dealer or an institutional investor. The short seller later closes out the position by returning the security to the lender, typically by purchasing equivalent securities on the open market. In general, short selling is utilized to profit from an expected downward price movement, or to hedge the risk of a long position in the same security or in a related security.

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[1] 17 CFR 240.10a–1.

[2] 15 U.S.C. 78a *et seq.*

[3] Rule 3b–3 under the Exchange Act, 17 CFR 240.3b–3, defines a short sale as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." Pursuant to Rule 3b–3, a seller of an equity security subject to Rule 10a–1 must aggregate all positions in that security in order to determine whether the seller has a "net long position." Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119. *See also Letter regarding Rule 10a–1—Aggregation Units* (November 23, 1998) (permitting broker-dealers to net positions for "aggregation units" (rather than firm-wide) for the purpose of complying with Rule 10a–1).

Short selling provides the market with two important benefits: market liquidity and pricing efficiency. Substantial market liquidity is provided through short selling by market professionals, such as market makers, block positioners, and specialists, who facilitate the operation of the markets by offsetting temporary imbalances in the supply and demand for securities. To the extent that short sales are effected in the market by securities professionals, such short sale activities, in effect, add to the trading supply of stock available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary contraction of supply.

Short selling also can contribute to the pricing efficiency of the equities markets. Efficient markets require that prices fully reflect all buy and sell interest. When a short seller speculates on a downward movement in a security, his transaction is a mirror image of the person who purchases the security based upon speculation that the security's price will rise. Both the purchaser and the short seller hope to profit by buying the security at one price and selling at a higher price. The strategies primarily differ in the sequence of transactions. Market participants who believe a stock is overvalued may engage in short sales in an attempt to profit from a perceived divergence of prices from true economic values. Such short sellers add to stock pricing efficiency because their transactions inform the market of their evaluation of future stock price performance. This evaluation is reflected in the resulting market price of the security. Arbitrageurs also contribute to pricing efficiency by utilizing short sales to profit from price disparities between a stock and a derivative security, such as a convertible security or an option on that stock. For example, an arbitrageur may purchase a convertible security and sell the underlying stock short to profit from a current price differential between two economically similar positions.[4]

Although short selling serves useful market purposes, it also may be used as a tool for manipulation.[5] One example is the "bear raid" where an equity security is sold short in an effort to drive down the price of the security by creating an imbalance of sell-side interest. Many people blamed "bear raids" for the 1929 stock market crash and the market's prolonged inability to recover from the crash.[6] Short selling was one of the central issues studied by Congress before enacting the Exchange Act, but Congress made no determinations about its permissibility.[7] Instead, Congress gave the Commission broad authority to regulate short sales in order to stop short selling abuses.[8]

B. Current Regulation of Short Selling

1. Rule 10a–1

Section 10(a) of the Exchange Act gives [illegible] Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as necessary to protect investors.[9] After conducting an inquiry into the effects of concentrated short selling during the market break of 1937, the Commission adopted Rule 10a–1 under that grant of authority.[10] The core provisions of the Rule are largely the same today as when they were adopted.

Paragraph (a) of Rule 10a–1 generally covers short sales in any security registered on a national securities exchange (listed securities) if trades of the security are reported pursuant to an "effective transaction reporting plan" and if information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information.[11] Paragraph (b) applies to short sales on a national exchange in securities that are not covered by paragraph (a). Short sales of securities not registered on an exchange and transactions in securities covered by paragraph (b) that are effected in the OTC market are not subject to the Rule.[12]

Rule 10a–1(a)(1) provides that, subject to certain exceptions, a listed security may be sold short: (i) At a price above the price at which the immediately preceding sale was effected (plus tick), or (ii) at the last sale price if it is higher than the last different price (zero-plus tick). Conversely, short sales are not permitted on minus ticks or zero-minus ticks, subject to narrow exceptions. The operation of these provisions is commonly described as the "tick test." The reference price for the tick test is either the last transaction price reported pursuant to an effective transaction reporting plan [13] or on a particular exchange.[14] Both the New York Stock Exchange, Inc. (NYSE) and the American Stock Exchange LLC (Amex) have elected to use the prices of trades on their own floors for the tick test.[15]

The Commission adopted the tick test after considering the effects of short selling in downward moving markets.[16] In adopting this approach, the Commission sought to achieve three objectives:

(i) Allowing relatively unrestricted short selling in an advancing market;

(ii) Preventing short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down; and

(iii) Preventing short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers.[17]

These objectives continue to be the foundation for Rule 10a–1. They represent the Commission's goal to prevent short selling that could manipulate or depress the market for a security, irrespective of the intention of the short seller.[18] Because Congress granted specific statutory authority to regulate short sales, the Commission adopted a rule that restricts certain types of short sales. Thus, a person can violate the rule without manipulative or fraudulent intent.

A number of exceptions have been incorporated into Rule 10a–1 for a range of activities that are not deemed to present the concerns that the Rule was designed to address.[19] The Commission has also granted relief from the Rule in specific situations that did not appear to present the opportunity for abuse that the Rule was designed to prevent.[20] Recently, the Commission has received a variety of additional requests for relief from the Rule. Some of these requests, if granted, would result in fundamental changes in the operation of the Rule. We think public comment on these proposals would assist us in evaluating them. Therefore, we have reflected the requests in this release.

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[4] Such arbitrage activity is specifically excepted from compliance with the provisions of the short sale rule in paragraph (e)(7) of Rule 10a–1. 17 CFR 240.10a–1(e)(7).

[5] *See, e.g., S.E.C.* v. *Gardiner*, 48 S.E.C. Docket 811, No. 91 Civ. 2091 (S.D.N.Y. March 27, 1991) (alleged manipulation by sales representative by directing or inducing customers to sell stock short in order to depress its price).

[6] *See* 7 Louis Loss and Joel Seligman, Securities Regulation 3203–04, note 213 (3d ed. 1989).

[7] *See* 2 Securities and Exchange Commission, Report of Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. 247 (1963) (Special Study).

[8] *Id.*

[9] 15 U.S.C. 78j(a).

[10] *See* Securities Exchange Act Release No. 1548 (January 24, 1938), 3 FR 213. In this release, the Commission also adopted Rule 3b–3.

[11] Rule 10a–1 uses the term "effective transaction reporting plan" as defined in Rule 11Aa3–1 (17 CFR 240.11Aa3–1) under the Exchange Act. *See* 17 CFR 240.10a–1(a)(1)(i).

[12] The National Association of Securities Dealers, Inc. (NASD) has adopted a short sale rule that applies to Nasdaq National Market System (NMS) securities. *See infra* Section I.B.2.

[13] 17 CFR 240.10a–1(a). An "effective transaction reporting plan" is a plan approved by the Commission for collecting, processing, and disseminating transaction reports in reported securities. *See* 17 CFR 11Aa3–1(a)(3)

[14] 17 CFR 240.10a–1(b).

[15] NYSE Rule 440B and Amex Rule 7.

[16] The tick test replicated the approach used by the NYSE at the time.

[17] *See* Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530 (1976 Release).

[18] *See, e.g., SEC* v. *Tudor Investment Corp.*, 62 S.E.C. Docket 2289, No. 96 CV 02119 (D.D.C. Sept. 12, 1996) (concentrated short sales of stocks of the Dow Jones Industrial Average (DJIA) seen as significant factor in a drop in value of the DJIA).

[19] *See* 17 CFR 240.10a–1(e)(1)–(13).

2. Short Selling Over-the-Counter Securities

Rule 10a–1 only covers short sales of securities listed or traded on an exchange.[21] In 1986, the NASD commissioned a study of short sales in the Nasdaq market.[22] This study concluded that adopting restrictions similar to the tick test for Nasdaq securities would impose a restraint on trading. However, the NASD proposed a short sale rule covering Nasdaq National Market System (NMS) securities,[23] citing a competitive disadvantage between the NASD and the exchanges.[24] In 1994, the Commission approved the NASD's rule.[25] It is currently designated as NASD Rule 3350.[26]

NASD Rule 3350 prohibits short sales by NASD members in NMS securities at or below the current best (inside) bid as shown on the Nasdaq screen when that bid is lower than the previous best (inside) bid (this is referred to as the "bid test"). It contains certain exemptions, including an exemption for qualified Nasdaq market makers, options market makers, and warrant market makers. Rule 3350 also includes exceptions similar to those provided under Rule 10a–1. The NASD also requires members to report regularly to the NASD their total short positions in all customer and proprietary firm accounts.[27]

In 1996, the NASD produced a study of the economic impact of the Nasdaq short sale rule.[28] This study concluded that the Nasdaq short sale rule is effective in restricting short sale activity at the inside bid during large price declines and has no adverse effects on market quality. It stated that "the Nasdaq Short Sale Rule meets its intended objective—to slow down the piling-on of short sales when prices fall—with very little adverse impact on normal short sale activity on Nasdaq."[29]

C. Previous Reviews of Short Selling

1. The 1963 Special Study

In 1963, the Commission included an examination of short selling in response to the request by Congress for a study of the securities markets.[30] One purpose of the Special Study was to determine "the relationships between changes in short positions and subsequent price trends."[31] The Special Study observed that the ratio of short sales to total volume increases in a declining market. It concluded that the short sale rules did not prevent the harmful effects of short selling that the rules were designed to prevent. The Special Study recommended improvements in short sale data collection.

2. The 1976 Proposing Release

In 1976, the Commission ordered a public investigation and proposed temporary rules related to short selling.[32] The Commission stated that the proceedings were "intended to be the first step in a thorough and comprehensive reexamination of short sale regulation in the light of changing market and regulatory conditions and to provide a framework for public discussion of the issues."[33]

These proposals were intended to enable the Commission to collect data regarding the effects of unrestricted short-selling on the markets. The 1976 Release noted the problems of insufficient data that the Special Study faced in 1963. It added that "the availability of data with respect to short selling continues to be inadequate to establish meaningful conclusions" regarding the general effects of short selling or the efficacy of short sale regulation.[34] The Commission believed that it was possible that no conclusive statistical evidence regarding the short or long-term effects of short selling could be gathered while Rule 10a–1 limited short selling activity, and that some type of suspension of the existing short sale rules might be necessary. Accordingly, the Commission proposed alternative temporary rules that would have suspended the tick test in varying degrees.

The Commission proposed three alternative temporary rules. The first alternative would have suspended the operation of the short sale rule for all securities registered, or admitted to unlisted trading privileges, on a national securities exchange. The second alternative would have suspended the operation of the tick test only for equity securities (other than warrants, rights, or options) that are registered, or admitted to unlisted trading privileges, on more than one national securities exchange and for which transactions are reported in the consolidated system. The final alternative would have suspended the operation of the tick test only for the fifty most active equity securities (other than warrants, rights, or options) during the 12 calendar months preceding the effective date of the rule.

The Commission received 12 comment letters in response to the 1976 Proposals.[35] Eight commenters, including the NYSE and Amex, strongly opposed any suspension of the tick test. The common sentiment against the proposed changes was that the short sale rule provides important protection for investors that should not be removed. The NYSE's reasons for opposing any changes in short sale regulation are representative of the comments against adopting any of the proposals. The NYSE believed the most damaging consequences of the changes would be: (1) Wider day-to-day price fluctuations; (2) disadvantages for public customers who could not withdraw limit orders to purchase before market professionals sold short; (3) accelerated price declines and increased volatility; (4) distortions in the markets for secondary and tertiary stocks; and (5) impaired market liquidity because block positioners would be discouraged from taking positions. Two commenters thought that the Commission needed more information before eliminating the tick test. AT&T, the only issuer to comment, opposed the revision or elimination of Rule 10a–1 because of the potential increase in the volatility of its stock. One commenter thought that all short sales should be unregulated.[36]

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[20] *See, e.g., Letter regarding Instinet Corporation Crossing Network,* (1992) Fed. Sec. L. Rep. (CCH) ¶ 76,290 (July 1, 1992); *Letter regarding Portfolio System for Institutional Trading,* (1991–1992) Fed. Sec. L. Rep. (CCH) ¶ 76,097 (December 31, 1991); *Letter regarding Off-Hours Trading by the Amex,* (1991) Fed. Sec. L. Rep. (CCH) ¶ 79,802 (August 5, 1991); *Letter regarding Operation of Off-Hours Trading by the NYSE,* (1991) Fed. Sec. L. Rep. (CCH) ¶ 79,736 (June 13, 1991); *Letter regarding Merrill Lynch, Pierce, Fenner & Smith, Inc.* (December 17, 1986), published with modifications in Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949 (Merrill Lynch Letter).

[21] However, the Rule applies to transactions in exchange listed securities whether effected on an exchange or in the OTC markets.

[22] *See* Irving Pollack, Short-Sale Regulation of NASDAQ Securities (1986) (Pollack Study).

[23] NMS securities are securities of issuers that meet a series of standards similar to those required for listing on an exchange. These securities are distinguished from securities traded on the Nasdaq SmallCap market.

[24] *See* Securities Exchange Act Release No. 34277 (July 6, 1994), 59 FR 34885.

[25] *Id.* In the approval order, the Commission recognized that exchange markets were able to attract customers with claims that their markets protect against potential short selling abuses. However, several commenters cited the Pollack Study, *supra* note 21, to support their opposition to the NASD short sale rule. Originally approved for only 18 months, the NASD and the Commission have extended Rule 3350 numerous times. Most recently, the Commission approved an extension of the rule until December 31, 1999. Securities Exchange Act Release No. 41568 (June 28, 1999), 64 FR 36416.

[26] *NASD Manual,* Conduct Rules, Rule 3350.

[27] *NASD Manual,* Conduct Rules, Rule 3360.

[28] The Economic Impact of the Nasdaq Short Sale Rule, Prepared by D. Timothy McCormick and Lorraine Reilly (1996) (Nasdaq Economic Study).

[29] *Id.* at 30.

[30] Special Study, *supra* note 7, at 246–294.

[31] *Id.* at 248.

[32] *See* 1976 Release, *supra* note 17.

[33] *Id.* at 56530.

[34] *Id.* at 56534.

[35] *See* Comment letters in Public File No. S7–665, available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

In 1980, the Commission withdrew the proposals, principally due to the public comments opposing the elimination of the tick test.[37]

3. 1991 Congressional Report on Short Selling

In 1991, the House Committee on Government Operations released a report on short selling.[38] The House Report stated that the "effects of short selling on the securities markets are not widely understood," and that "(m)any people have questioned the effectiveness of the present uptick rule and, by implication at least, question whether any purpose would be served by implementing a similar rule for NASDAQ trading."[39]

The House Report made numerous findings and recommendations, including that: (1) Short selling plays an important and constructive functional role in the equity market; (2) The uptick rule acts as a price stabilizing force and should be retained; (3) Short sale regulation should be extended to the Nasdaq system; (4) Many complaints about short selling are not soundly based and may be the result of a poor understanding of short selling; (5) "A pattern of abusive and destructive rumor mongering, targeted specifically at companies in the equity securities of which some short-selling investors have established major short positions, appear(ed) to be occurring;" (6) A large part of the problem with equity securities targeted by short sellers is the psychological misperception that short sellers possess much greater manipulative power than they really do; (7) A method for collecting daily short-selling activity and weekly short interest data from broker-dealers should be developed and this information should be available electronically to the market in aggregate form; and (8) Congress should enact a reporting requirement for large individual short positions.[40]

Since the House Report, a number of changes have occurred that impact its findings. The NASD adopted a short sale rule covering NMS securities. Both the NYSE and the NASD adopted rules requiring members to report data on their short sale activities. In 1991, the Commission published a concept release requesting comment on reporting material short positions.[41] The Commission has not taken any further action on this matter.

D. Recent Developments

Despite the many studies and recommendations, the basic provisions of Rule 10a–1 have remained unchanged for 60 years. Developments in the markets, however, may have diminished the need for the Rule in its current form. Among other things, the national securities exchanges today have high levels of transparency and regulatory surveillance. Transparency helps market participants observe and evaluate market price movements which limits the ability of short sales to unevenly affect prices. The self-regulatory organizations (SROs) also have sophisticated surveillance technologies that allow them to monitor market activity on a real-time basis. This surveillance reduces the risk of undetected manipulation and permits regulators to monitor the types of activities that Rule 10a–1 is designed to prevent. As the markets change, commentators continually question the relationship between the objectives of Rule 10a–1 and its operation.[42]

Short selling is instrumental to a growing number of sophisticated investment models and instruments. For example, short sales are used to hedge option positions and to engage in a variety of arbitrage strategies.[43] Short selling is also integral to other trading and investment strategies that are not tied to individual securities, but involve baskets of securities. The restrictions in the Rule may inject unnecessary inefficiencies into such trading strategies. To accommodate the developments, we have granted a number of requests for relief from Rule 10a–1.[44] The growing array of requests for relief indicate that present short sale regulation may have become unduly burdensome and possibly ill-suited for the present and future markets.

II. Concepts Regarding Short Sale Regulation

In this section of the release, we present for public comment eight concepts regarding short sale regulation: (1) Suspending the short sale rule when the security or market is above a threshold price; (2) Providing an exception for actively traded securities; (3) Focusing short sale restrictions on certain market events and trading strategies; (4) Excepting hedging transactions from short sale regulation; (5) Revising the short sale rule in response to certain market developments; (6) Revising the definition of "short sale"; (7) Extending the short sale rule to non-exchange listed securities; and (8) Eliminating Rule 10a–1.

We seek comment on these concepts to assist our review of Rule 10a–1 and short selling in the current market. We encourage commenters addressing the concepts in this release to present data to support their positions.

A. Suspending the Short Sale Rule When the Security or Market is Above a Threshold Price

One objective of short sale regulation is to permit relatively unrestricted short selling in an advancing market. The tick test in Rule 10a–1, however, applies in all market conditions. Thus, even in a generally advancing market, a short sale would be inhibited when the price of the transaction does not permit the seller to meet the tick test.[45] This restriction may allow the prices of securities to advance beyond the prices that the market would reflect if short selling were unrestricted. Some argue that the restrictions contribute to market volatility because prices move up without the checks that unrestricted short selling would provide.

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[36] *Comment letter from Lynch, Jones & Ryan* (March 23, 1977).

[37] Securities Exchange Act Release No. 17347 (November 28, 1980), 45 FR 80834.

[38] Short-Selling Activity in the Stock Market: Market Effects and the Need for Regulation (Part 1) (House Report), H.R. Rep. No. 102–414 (1991), *reprinted* in CCH Federal Securities Law Reports Number 1483 Part II (1992).

[39] *Id.* at 1. As discussed above, the NASD adopted its short sale rule in 1994.

[40] *Id.*

[41] Securities Exchange Act Release No. 29278 (June 7, 1991), 56 FR 27280, 27281 (1991 Release).

[42] *See, e.g.,* Jonathan R. Macey, Mark Mitchell, and Jeffry Netter, *Restrictions on Short Sales: an Analysis of the Uptick Rule and its Role in View of the October 1987 Stock Market Crash*, 74 Cornell L. Rev. 799 (1989); and J. Randall Woolridge and Amy Dickinson, *Short Selling and Common Stock Prices*, Financial Analysts Journal, January-February 1994.

[43] Arbitrage can involve inherent relationships between securities, such as convertible arbitrage, or statistical relationships, as used in "pairs trading."

[44] *See, e.g., Letter regarding Optimark* (October 31, 1997), included in Public File No. S7–24–99, available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[45] *See* Alexander, Gordon J., and Mark Peterson, *Short Selling on the New York Stock Exchange and the Effects of the Uptick Rule*, Journal of Financial Intermediation, Vol. VIII, Issue 1 (June 1999) (this article concludes that the short sale rule fails to meet its objective to allow relatively unrestricted short selling in advancing markets).

In response to recent criticism of the Rule, we seek comment on suspending the tick test when a security's price is above a threshold.[46] This alternative approach assumes that the current Rule is unnecessarily restrictive in upward moving markets. By suspending the tick test when the security or the market is above a threshold price, short sellers could sell without regard to price movements. The tick test would apply, however, at any time the price of the security (or a market index) went below the threshold (*i.e.*, the tick test would apply at prices below the threshold). We request comment on this concept to determine if such an alternative is consistent with the Rule's objective to allow relatively unrestricted short selling in an advancing market.

We further request comment on what benchmark would be appropriate for establishing the threshold price discussed in this alternative approach. One possible benchmark is the previous day's closing price of a security.[47] Another possible benchmark could be a percentage decline in the price of the security. For example, the threshold could be 5 percent or 10 percent below the previous closing price of the security. A general market indicator also could be used as a benchmark. For example, the tick test's application could correspond to the operation of SRO rules that impose limitations when markets experience significant declines.[48] Once the market indicators crossed the threshold, the tick test would apply.

Q1. Does Rule 10a–1 permit relatively unrestricted short selling in an advancing market? If not, please provide specific examples to demonstrate that this objective is not currently met.

Q2. Does more short selling occur in an advancing market or a declining one?

Q3. Should the threshold price for suspending the tick test be the previous closing price of the security?

Q4. Should the threshold price correlate to a point change or a percentage change in the price of a security?

Q5. Would volatile markets create complexity for this structure as short sellers must continually take into account the market price of the security to determine whether short selling is restricted?

Q6. If the security's price moves below the threshold price, should the tick test remain in effect during the trading session even if the price subsequently moves above the threshold price?

Q7. Is there another price or manner of determining a more effective threshold for this purpose?

Q8. Could a short seller initiate downward momentum on the price of a security through short selling down to the threshold price? If so, could this momentum cause the depressing effect on the market for a security that Rule 10a–1 is intended to prevent?

Q9. Is it appropriate or preferable to base short sale regulation on general market movements, rather than the price of individual securities?

B. Providing An Exception for Actively Traded Securities

Some of the Commission's anti-manipulation rules assume that highly liquid securities are less vulnerable to manipulation and abuse than securities that are less liquid. For example, Rule 101 of Regulation M has an exception for securities with a public float value of at least $150 million and an average daily trading volume of at least $1 million.[49] A similar approach may be effective for regulating short sales.

Q10. Are highly liquid securities less vulnerable to the abuses that Rule 10a–1 is designed to prevent?

Q11. Are the Regulation M requirements for liquidity under the exception in Rule 101(c)(1) adequate standards for this purpose? If not, what values would work better for this purpose?

Q12. Rule 10a–1 is not focused solely on preventing manipulative activity. Is it appropriate to use these anti-manipulation approaches in the short sale context?

C. Focusing Short Sale Restrictions on Certain Market Events and Trading Strategies

Certain market events and trading strategies may make a security more vulnerable to abusive short sale activity. The Commission previously has recognized that certain events increase the potential for short selling abuse.[50] Specific market events related to an issuer or a security (such as a pending merger or acquisition) may cause this increased vulnerability. Also, there may be certain times in a trading day when there is a heightened concern about manipulation.[51] We, therefore, request comment on whether short selling should continue to be regulated or even prohibited during specific market conditions.

Q13. Are there corporate events (*e.g.*, mergers, acquisitions, or tender offers) that make a security vulnerable to abusive short selling?

Q14. Are there other cyclical, or regular market events (*e.g.*, option expiration dates or the opening and closing of a trading session) that make a security vulnerable to abusive short selling?

Q15. Are there other trading abuses or manipulations involving short sales under unusual market conditions that Rule 10a–1 currently does not address? If so, could the Rule be amended to prevent these abuses?

Q16. Should short selling be prohibited for a period preceding a significant corporate or market event?

Q17. If the Rule was eliminated, should restrictions continue to apply preceding a significant corporate or market event?

D. Excepting Hedging Transactions From Short Sale Regulation

Today, short selling is integral to many complex trading strategies involving a variety of sophisticated financial instruments. Short sales are often used in these strategies to hedge a position in another security or a related financial instrument. Short positions and short sales related to such hedges are treated the same under Rule 10a–1 as any other short activity. Complying with Rule 10a–1 potentially increases transaction costs on persons using short hedging because of delays caused by waiting for upticks. The risks of a particular strategy, therefore, also may increase as a result of the Rule. We seek comment on whether hedged short positions should be excluded from calculating a person's net position. We also seek comment on whether we should propose adding an exception to Rule 10a–1 that would cover short sales conducted exclusively for the purpose of establishing a *bona fide* hedge.[52]

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[46] This approach to short sale regulation has been suggested by others. *See Letter from David A. Rocker to Chairman Arthur Levitt* (March 5, 1998), included in Public File No. S7–24–99, available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

[47] Transaction prices in securities covered by Rule 10a–1 must be reported in accordance with Rule 11Aa3–1. 17 CFR 240.10a–1(a)(1)(i).

[48] *See, e.g.*, NYSE Rule 80A (which, among other things, imposes certain trading restrictions when the Dow Jones Industrial Average (DJIA) declines or advances by at least the "two-percent value" as calculated in the rule from its previous closing level).

[49] *See* 17 CFR 242.101(c)(1).

[50] *See* Rule 105 of Regulation M (prohibiting a person from purchasing securities in a distribution if he or she has sold that security short within five days prior to the pricing of the distribution). 17 CFR 242.105.

[51] *Cf.* Securities Exchange Act Release No. 17222 (October 17, 1980), 45 FR 70890 (discussing certain time restrictions on issuer repurchases at the opening and closing of trading sessions).

[52] For the purposes of Rule 10a–1, the Commission has described a *bona fide* hedge as

Q18. Is the definition of "*bona fide* hedge" currently used by the Commission appropriate and adequate?

We have received a number of inquiries seeking relief from Rule 10a–1 for short sales that are part of a *bona fide* hedge. Proponents argue that it is unlikely that short sales used to create *bona fide* hedges present a threat of manipulation because gains from the short position would be offset by losses in an equivalent security, *i.e.*, they are "economically neutral."[53] Rule 10a–1 currently may inhibit such short sales even though they present little risk of the abuses that it was designed to guard against. We have provided exceptions from and interpretations of Rule 10a–1 for economically neutral short sales that do not present an incentive for abuse.

Rule 10a–1 presently provides exceptions for:

(i) *Bona fide* arbitrage[54] undertaken to profit from a current difference between a convertible security and the underlying common stock;[55] and

(ii) *bona fide* arbitrage undertaken to profit from a current difference between the price of a security in the United States and its price abroad.[56]

Both of these exceptions allow short sales without compliance with the tick test, where the sales are to take advantage of temporary price differentials between related securities or different markets.

Rule 10a–1 also has a limited exception for block positioning activities by broker-dealers.[57] This exception permits a broker-dealer selling securities that it acquired as a block positioner to disregard, in determining whether it is net long or net short, proprietary short positions to the extent those short positions are the subject of one or more offsetting positions created in the course of *bona fide* arbitrage, risk arbitrage,[58] or *bona fide* hedge activities. The Commission relied upon the premise that the short positions excluded from the calculation are not subject to the same potential for abuse as short positions that are not linked to an offsetting position.

We recently granted relief for certain specialist activities that expands on the aggregation relief discussed above.[59] The exemptions provide greater flexibility where short positions are subject to *bona fide* hedges. As with the block positioner exception and the Merrill Lynch Letter,[60] the exemptions exclude hedged short positions from the calculation of a net position. In addition, the short sales were limited to the specialists' performance of obligatory market functions.

Using a rationale similar to that underlying the limited exception for block positioning activities, our staff took a limited no-action position to facilitate unwinding certain index arbitrage positions with a long stock component. This relief from the tick test applies to broker-dealers unwinding long index arbitrage positions. As with block positioners, this no-action position was limited to circumstances where the sale of securities was deemed a short sale solely as a result of the netting of the index arbitrage long position with one or more short positions created in the course of arbitrage or hedging activities. These securities positions were considered economically neutral, and the unwinding of the index arbitrage position was not thought to involve the types of abuses that Rule 10a–1 was designed to prevent. In these contexts, the staff assumed that economically neutral transactions do not present the incentive to engage in short sales in a manner that would cause or accelerate a decline in the market, because any gain from the short stock would be offset by a loss in the security or securities making up the *bona fide* hedge or arbitrage position.[61]

Q19. Should the Commission exclude hedged short positions for the purposes of determining what a person's net position is under Rule 3b–3?

Q20. Should long stock positions that are fully hedged be excluded from the calculation of a person's net position in that stock?

In addition, we have received requests for relief from Rule 10a–1 to permit short sales that are part of trading strategies conducted to establish *bona fide* hedges. Many of the strategies use statistical formulas or relationships between or among securities to determine the offsetting transaction for the hedge. For example, the purchaser of a convertible security may short the underlying security to hedge against a potential decline in the price of the underlying security. The short sales used in these strategies are distinguishable from short sales that reflect an opinion about the current or future market price of a security.

A broad array of financial instruments can be hedged using short sales of securities. These instruments may not be related to the security sold short, but they nonetheless are economically equivalent. Because of the potential variety of instruments that may be hedged with short sales, we believe that an exception would have to be crafted broadly enough to afford flexibility. For example, the Rule could except short sales that are conducted to offset "qualified financial contracts" (QFC), using the definition in the Federal Deposit Insurance Corporation Act that includes "any securities contract, forward contract, repurchase agreement, swap agreement, and any similar agreement. * * *"[62]

Q21. Should a broad exception covering short sales offset by equivalent securities be proposed? If so, what securities should be considered equivalent?

Q22. Is "economic neutrality" the proper basis for such an exception? If not, what types of relationships (using a short hedge) that appear to be economically neutral present a potential for manipulation that Rule 10a–1 is designed to prevent?

The relationship between a short position and the instrument hedged by the short position will vary according to custom and practice. Firms that are more tolerant of risk may not fully hedge a position. Instead, they may use a ratio hedge that reflects their tolerance of risk. Such hedging techniques may be difficult for regulatory agencies to evaluate and determine whether a particular hedge should be viewed as a *bona fide* hedge.[63]

Q23. Should an exception for hedging transactions be limited to transactions or positions that involve a complete

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largely a matter of custom and practice, but it must involve long and short positions in related securities where one security is exercisable, convertible, or otherwise related by its terms to the other security, and substantially offsets the risk of that security. To be considered *bona fide*, the hedge must offset most or all of the risk of the security being hedged. *See, e.g.*, Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415, 24420 (1992 Release) (citing Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084). We request comment on whether this definition is appropriate or adequate.

[53] *See* Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119, 45120 note 14.

[54] *Bona fide* arbitrage is "an activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to 'lock in' a gross profit or spread resulting from a current differential in pricing." *See*, 1992 Release, *supra* note 51, at 6089.

[55] 17 CFR 240.10a–1(e)(7).

[56] 17 CFR 240.10a–1(e)(8).

[57] 17 CFR 240.10a–1(e)(13).

[58] Risk arbitrage is a transaction effected with a view to profit from the consummation of a merger, acquisition, tender offer or other similar transaction involving a recapitalization.

[59] *See, e.g., Letter regarding Select Sector SPDRs II* (February 12, 1999); *Letter regarding Select Sector SPDRs* (December 28, 1998).

[60] *See* Merrill Lynch Letter, *supra* note 20.

[61] Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119, 45120. *See also* Securities Exchange Act Release No. 20715 (March 13, 1984), 49 FR 9414, 9415; 1992 Release at 24419.

[62] 12 U.S.C. 1821(e)(8)(D)(i).

[63] *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084, at 6090.

hedge? If so, how should a complete hedge be defined and measured?

Q24. What type of surveillance should the Commission consider for monitoring short sales conducted as part of economically neutral transactions?

E. Revising the Short Sale Rule in Response to Certain Market Developments

If Rule 10a–1 is retained (in whole or in part), certain basic adjustments may be required to keep pace with changes to the operation of the national securities exchanges. We request comments on two potential changes: Expansion of trading hours into after-hours trading sessions and conversion to price quotations using a decimal format. Please comment on any other changes to the operation of the national securities exchanges or alternative trading systems (ATSs) that you believe may affect the regulation of short selling.

1. After-hours Trading Sessions

Securities trading is rapidly expanding beyond the regular trading hours of 9:30 a.m. to 4 p.m. This evolution is manifested by the proliferation of trading in ATSs and consideration of extended trading sessions by both the NYSE and Nasdaq. As in regular hours trading, short sellers could add liquidity and contribute to pricing efficiency in after-hours trading.

The tick test of Rule 10a–1 currently operates relative to the last reported price on the Consolidated Tape. If the Consolidated Tape does not operate after the close of regular trading hours, short sales can only be executed at a price above the closing price on the Consolidated Tape for the security (or, at the closing price if that price was an uptick). This result could greatly limit the ability to execute short sales in after hours trading.

We note that Rule 10a–1 permits exchanges to use the price of the last transaction on the exchange, rather than the last price reported to the Consolidated Tape, as the last reported price. Thus, an exchange operating an after-hours session could rely on this provision. ATSs cannot rely on this provision. Thus, short sales through ATSs must use the last price reported to the Consolidated Tape.

Q25. If the Consolidated Tape does not operate during after hours trading, should we consider adopting an exception to permit each ATS to use the last transaction in its system as the reference price?

Q26. What impact would multiple permissible prices at which short sales could be executed have on the effectiveness of short sale regulation?

Q27. If a number of ATSs all operated using their internal prices for Rule 10a–1 compliance, each could produce a different "closing" price at the close of trading on the ATS. How would multiple after-hours "last sale" prices affect the first trade in the morning trading session when the Consolidated Tape recommences operation?

2. Decimalization

We also note that the securities industry is targeting June 30, 2000, as the date when price quotations will be expressed in terms of decimals rather than fractions. Decimal pricing may result in exchanges setting the Minimum Price Variation (MPV) (*i.e.*, the smallest amount by which the price of a security can change), which today is $\frac{1}{16}$ ($.0625) for most equity securities, at one cent or potentially even smaller. A further result of the use of smaller MPVs is that the short sale rule may be triggered by a change in price that, on a percentage basis, could reflect an extremely small decrease in the price of the security. For example, the average price per share traded on the NYSE for June 1999 was approximately 45$\frac{7}{8}$. In an environment where the MPV is $\frac{1}{16}$, a decrease in the share price by $\frac{1}{16}$ (.136%) would trigger the short sale rule. In an environment where the MPV is one cent, the short sale rule would be triggered by a decrease of the share price by $\frac{1}{100}$ (.02%).

At least one study has analyzed the effects of smaller spreads on the operation of Rule 10a–1.[64] The study concludes that smaller increments, such as one cent, would improve execution quality for certain short sales and hurt others.

Q28. How did the recent decrease in the MPV from $\frac{1}{8}$ to $\frac{1}{16}$ affect short selling?

Q29. How will the potential use of a smaller MPV affect the operation of Rule 10a–1?

Q30. Is a price change as small as one penny per share the type of market impact that the short sale rule is designed to prevent?

Q31. Would the use of a smaller MPV support modifying or eliminating Rule 10a–1?

Q32. Should Rule 10a–1 be altered to remain effective with respect to smaller MPV?

F. Revising the Definition of "Short Sale" Under Rule 3b–3

The definition of "short sale" set forth in Rule 3b–3 is integrally related to regulating short sales under Rule 10a–1. As with Rule 10a–1, many developments in the securities markets have challenged the current definition.

1. Aggregation

Short sellers are required to net all of their positions to determine whether they are "short" under the definition in Rule 3b–3. Continual netting is cumbersome and impractical for large, multi-service firms. As a result, the staff of the Commission has granted relief to these firms to ease the burdens of complying with Rule 10a–1, while preserving the protections that the rule provides.[65]

Q33. Should we consider changing the definition of "short sale" to reduce the need to aggregate positions within a single entity? Please describe other situations where an alternative to firm-wide aggregation is justified.

2. Strategies for Creating a Temporary "Long" Position

Certain trading strategies have developed that may be used to avoid the restrictions of the short sale rule. Traders employing such strategies enter arrangements with a counterparty to create a position in an equity security that technically is long, but gives the traders no real economic stake in the equity security. Typically, these strategies rely on the provision of Rule 3b–3 that provides that a person has a long position in a security if he has "entered into an unconditional contract, binding on both parties thereto, to purchase [the stock] but has not yet received it."[66] Often, these strategies involve the creation of a married put prior to, or simultaneous with, a sale of the stock.[67] Soon after creating this arrangement (*i.e.*, later in the day), it is unwound when the market participant purchases shares to return to the counterparty.

A potential for abuse exists where the trader aggressively sells the "long" stock position, destabilizing the price of the stock, and soon after repurchases the stock in the market to return to the counterparty. This type of strategy may present a heightened potential for manipulation. While there are legitimate reasons to engage in married puts (or other similar arrangements), we are concerned that they may be used for improper purposes.

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[64] See Alexander, Gordon J. and Mark A. Peterson, *Quote Jumping, Minimum Tick Variation, and the Execution of Short Sell Orders*, 1999 working paper, included in Public File No. S7–24–99, available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

[65] *See supra* note 2.

[66] 17 CFR 240.3b–3(2). *See also* 1992 Release, *supra* note 51.

[67] Married puts can be used to hedge the price paid for a stock through the simultaneous purchase of a stock and deep-in-the-money puts for the stock.

Q34. Please describe examples of any manipulative strategies that exploit the current definition of "short sale," and whether regulatory measures should be adopted to combat such strategies.

G. Extending the Short Sale Rule to Non-Exchange Listed Securities

Current short sale regulations cover securities that are either listed on an exchange or traded in the Nasdaq NMS. As a result, they cover securities that are generally characterized by high trading liquidity. In addition, these markets have a relatively high degree of transparency.

Securities traded in the OTC markets (*e.g.*, Nasdaq Small Cap, the NASD's OTCBB, the Pink Sheets) are not subject to short sale restrictions. The staff frequently receives complaints alleging short sale abuses involving securities in the OTC markets. As a corollary to other concepts presented in this release, we seek comment on regulating short sales in this market sector. We recognize that section 10(a) does not grant specific authority to the Commission to regulate short sales of securities not listed on a national exchange. Thus, regulations that extend short sale regulation to new market sectors would have to be adopted under other available statutory authority.

Q35. Should we consider extending short sale regulation to cover non-exchange listed securities?

Q36. If so, how should the new regulation restrict short sales? Does the current NASD short sale rule provide an applicable model for this purpose?

H. Eliminating Rule 10a–1

As noted above, the need for short sale regulation has often been debated. We believe that the developments in the securities markets noted in this release warrant a general review of Rule 10a–1. Therefore, we are also seeking comment on whether we should consider eliminating Rule 10a–1 as a prophylactic measure and rely on the antifraud and anti-manipulation provisions of the securities laws to address abusive short selling.

One school of thought believes that unrestricted short selling can involve abusive activity that influences market prices for securities. This view was strongly expressed to Congress during its investigations of the securities markets prior to enacting the Exchange Act, which gave the Commission the authority to regulate short sales.[68] Proponents of this view believe that successive short selling by speculators may accelerate the impact of their bearish outlook for a security.[69] In 1963, the Special Study concluded that the aggravating influence of short sales occurred even with regulatory restrictions (which are still in place today).[70] However, data about the actual relationship between short selling and price movements in the securities markets is scarce.[71]

In contrast, a number of commentators have argued that short sale regulation prevents the market from reflecting the true or "efficient" price of a security.[72] These commentators specifically criticize Rule 10a–1 for imposing costs on market participants as they wait for an uptick.[73] We have considered these observations and determined that the concept of eliminating the tick test deserves analysis in light of recent market developments. If we eliminate the Rule, short selling would only be subject to recordkeeping, reporting, and the general antifraud and anti-manipulation rules.[74]

Q37. Are the objectives of Rule 10a–1 legitimate concerns in today's markets?

Q38. Are the provisions of Rule 10a–1 necessary in the securities markets? If so, please give specific examples that demonstrate this need.

Q39. Does Rule 10a–1 continue to serve a valid purpose in a declining market by preventing short sellers from accelerating declines in securities prices, or "depressing" the market?

Q40. Does Rule 10a–1 prevent efficient pricing or slow the incorporation of negative perceptions into an efficient price? Does the need for more efficient pricing, if there is a need, outweigh the protective benefits of Rule 10a–1?

Q41. Is Rule 10a–1 effective in preventing manipulative short selling?

Q42. Would deregulation of short selling lead to an increase of speculation in the market? If so, would this increase disadvantage investors that are not engaged in speculation?

Q43. Does Rule 10a–1 limit price volatility in the securities that it covers?

Q44. Would investors avoid securities, or classes of securities, that they perceive to be vulnerable to abusive short selling? If so, would this result be exacerbated by deregulation of short selling?

Q45. Would antifraud surveillance and enforcement actions be enough to protect investors from abusive short selling?

Q46. If we rescind Rule 10a–1, should we reconsider a recordkeeping and/or disclosure requirement for significant short positions?[75]

Q47. Would dissemination of aggregate open short positions on a daily basis decrease the necessity of Rule 10a–1? What costs would be associated with such a program?

Q48. If we rescind Rule 10a–1, should we consider adopting a rule that requires a seller to identify a source of borrowable shares prior to executing a short sale?

Q49. If we rescind Rule 10a–1, should SROs continue to regulate short selling through their rules?

Q50. If the short sale rule is retained, should we consider ways to regulate short sales of all securities, not just those listed on exchanges (specifically, OTC securities, including those securities quoted in the non-Nasdaq OTC markets)?

Q51. If the short sale rule is retained, should we consider replacing the tick test with a bid test similar to NASD Rule 3350?

Typically, market professionals are able to act quickly in response to news. Eliminating the short sale rule may enable short sellers to act even more rapidly. Open public limit orders may be hit in rapid succession at prices that no longer are attractive to the investors that placed the orders. As a result, these orders may be hit before the investors have the opportunity to cancel them.

Q52. Without the tick test, would market professionals have an unfair advantage over public investor limit orders?

Q53. Would unrestricted short selling increase the risk for certain trading strategies (*e.g.*, block positioning)?

III. Conclusion

The securities markets and short selling activities have changed significantly from the era in which Rule 10a–1 was adopted. We solicit comment on alternative approaches to regulating short sales to determine the appropriate response to these continuing developments.

By the Commission.

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[68] *See* Special Study, *supra* note 7, at 247.

[69] *See* Woolridge, *supra* note 42 (concluding that short sellers do not enjoy unfair profits by forcing the price of a security down through short sales).

[70] Special Study, *supra* note 7, at 293–294.

[71] *See, e.g.*, 1976 Release, supra note 17, at 56534.

[72] *See, e.g.*, Macey, *supra* note 42.

[73] *See* Alexander, *supra* note 45.

[74] *E.g.*, 15 U.S.C. 78i(a) and 78j(b); 17 CFR 240.10b–5.

[75] *See* 1991 Release, *supra* note 41.

Dated: October 20, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27879 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 878, and 880

[Docket No. 98N–0313]

Surgeon's and Patient Examination Gloves; Reclassification; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 27, 2000, the comment period for the proposed rule that appeared in the **Federal Register** of July 30, 1999 (64 FR 41710) . The proposed rule would reclassify all surgeon's and patient examination gloves as class II medical devices. The agency is taking this action in response to two requests for extension of the comment period. This extension of the comment period is intended to allow interested persons additional time to submit comments on the proposed rule.

DATES: Written comments by January 27, 2000.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4777.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

In the **Federal Register** of July 30, 1999, FDA published a proposed rule to reclassify all surgeon's and patient examination gloves as class II medical devices. FDA is soliciting comments and information from interested persons concerning the reclassification of these devices into four categories (powdered surgeon's gloves, powder-free surgeon's gloves, powdered patient examination gloves, and powder-free patient examination gloves), and it proposed special controls consisting of a "Medical Glove Guidance Manual" and labeling requirements that address protein and powder content.

FDA received one request from a manufacturer of medical gloves and another request from a voluntary standard setting organization to extend the comment period an additional 90 days. The manufacturer and the voluntary standard setting organization requested additional time to allow the American Society for Testing and Materials (ASTM), a voluntary standard setting organization, to complete its balloting for revisions of its standards to include a recommended maximum powder limit in its standards for latex surgeon's gloves, latex patient examination gloves, polyvinyl medical gloves, and nitrile patient examination gloves. The manufacturer and the voluntary standard setting organization wanted the additional time to allow FDA and others to consider ASTM's recommendations along with FDA's proposal. In response to the letters, FDA is extending the comment period for 90 additional days. Elsewhere in this issue of the **Federal Register**, FDA is announcing an extension of the comment period for the draft guidance entitled "Medical Glove Guidance Manual."

II. Comments

Interested persons may, on or before January 27, 2000, submit to the Dockets Management Branch (address above) written comments regarding the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 21, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28109 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Parts 40 and 42

[Public Notice 3122]

Documentation of Immigrants and Nonimmigrants Under the Immigration and Nationality Act, as Amended—Change in Procedures for Payment of Immigrant Visa Fees

AGENCY: Department of State.

ACTION: Proposed rule, with request for comments.

SUMMARY: This rule changes the regulation relating to immigrant visa fees to require the applicant to pay the application processing fee prior to the time of application. Related changes are made to ensure that this fee change is not misunderstood as changing the long-held Department of State principle that an alien has "applied for a visa" only when, in the case of nonimmigrants, the application (with processing fee or evidence of the prior payment of the processing fee) has been accepted for adjudication or, in the case of immigrants, the applicant has presented all of the required forms and the processing fee (or evidence of the prior payment of the processing fee) and has attested to the application under oath or affirmation before the consular officer.

DATES: Comments must be received on or before December 27, 1999.

ADDRESSES: For written comments, please contact H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1204.

SUPPLEMENTARY INFORMATION: The basic purpose of this regulation is to modify the point in time at which an immigrant visa applicant must pay the application processing fee. The regulation defining the time at which applications have been "made" is being added to prevent any confusion from arising as a result of the revised terminology in the fee regulation.

Why is it necessary to alter the time when the applicant must pay the immigrant visa processing fee? An application fee is not a penalty for applying for a visa; it is intended to cover the costs of the processing required in connection with such an application. The current regulation calls for payment of the application fee prior to the formal application interview, normally when the applicant is at the embassy or consulate on the day of the visa interview. However, services to the applicant, and costs incurred by the government, begin long before that time. Records must be established by the Department of State as soon as an approved petition is received from the Immigration and Naturalization Service and a number of processing steps then ensue. As the purpose of a processing fee is to cover these costs, it is appropriate that the fee be collected at an earlier point in the procedures. However, due to heavy immigrant visa demand, many immigrant visa registrants may wait years after registration before reaching the point of receiving a request from the Department to obtain the documents needed to support their visa application. In recognition of this, the Department believes it would be unfair to collect the processing fee at the time of registration. On the other hand, once an applicant has been informed that a visa number is expected to become available and instructed to obtain such supporting documents, it is quite reasonable to collect the processing fee at that point. Doing so may also permit the Department to develop more efficient fee collection procedures. Provision is made for refund of the fee if, for reasons attributable only to the U.S. Government, the applicant is precluded from proceeding to the remaining steps in making the application after payment of the fee.

"Making" an application. The point at which the application is made is here made explicit in the regulation.

Why is it necessary to clarify the definition of "making an application" in immigrant visa cases? Because immigrant visa cases are quite complex and involve many steps along the way, some people speak of "having applied for a visa" when the only thing that has happened to that point is that a relative or prospective employer has filed a petition to accord the alien a particular status under the immigration laws. Sometimes such persons believe that when they have been told to obtain supporting documents, or to complete a biographic form, they have now "applied." This regulation makes it clear that a person has "applied" for an immigrant visa when he or she has presented all required forms, documents and processing fees (or evidence of the prior payment of the processing fees) and has been interviewed by a consular officer and has attested to the veracity and validity of the documents submitted. Except as otherwise provided by regulation (§§ 42.62(a) and 42.63(a)(2)), the law (8 U.S.C. 1202(e)) requires the appearance and the taking of an oath before a consular officer. Therefore, it has always been the expressed view of the Department, implicit throughout its regulations, that an alien cannot be considered to have "applied" for an immigrant visa until this requirement is fulfilled. This distinction may become important in instances in which aliens must apply for a visa by a particular date. To the extent that some people might mistake payment of the application processing fee for the making of an application, it is useful to reiterate this point at this time.

Why should the definition of "making an application for a visa" be clarified in the case of nonimmigrant visas? Normally, a consular officer takes action on a nonimmigrant visa application when the officer receives required forms, documents and fees or evidence of the prior payment of the fees. Thus, the nonimmigrant visa application is not as susceptible to be subject to misunderstanding as in the case of immigrant visas. This rule does, however, clarify the fact that signing the form and giving it to a travel agent for presentation, or mailing it to a consulate, or leaving it in the consular mailbox, is not, in itself, sufficient. It must also be received by a consular officer and be accepted for adjudication.

Regulatory Analysis and Notices

Proposed Rule

This is a proposed rule, with a 60-day provision for public comments.

The Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

E.O. 12988 and E.O. 12866

This rule has been reviewed as required under E.O. 12998 and determined to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency therewith. The rule does not directly affect states or local governments or Federal relationships and does not create unfunded mandates.

5 U.S.C. Chapter 8

As required by 5 U.S.C., chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

Paperwork Reduction Act

This rule does not create any new paperwork requirements.

List of Subjects in 22 CFR Parts 40 and 42

Aliens, Immigrants, Passports and visas.

In view of the foregoing, 22 CFR part 40 and 22 CFR part 42 are amended as follows:

PART 40—[AMENDED]

1. The authority citation for part 40 is revised to read as folows:

Authority: 8 U.S.C. 1104.

2. Section 40.1 is amended by redesignating paragraphs (l), (m), (n), (o), (p), (q), (r), and (s) as paragraphs (m), (n), (o), (p), (q), (r), (s), and (t), respectively, and adding a new paragraph (l) to read as follows:

§ 40.1 Definitions

* * * * *

(l) *Make or file an application for a visa* means: (1) For a nonimmigrant visa applicant, submitting for formal adjudication by a consular officer of a completed Form OF–156, with any required supporting documents and the requisite processing fee or evidence of the prior payment of the processing fee when such documents are received and accepted for adjudication by the consular officer;

(2) for an immigrant visa applicant, personally appearing before a consular officer and verifying by oath or affirmation the statements contained on the Form OF–230 and in all supporting documents, having previously submitted all forms and documents required in advance of the appearance and paid the visa application processing fee.

* * * * *

PART 42—[AMENDED]

3. The authority citation for part 42 continues to read:

Authority: 8 U.S.C. 1104.

4. Section 42.71 is amended by revising paragraph (b) to read as follows:

§ 42.71 Authority to issue visas; visa fees.

* * * * *

(b) *Immigrant visa fees.* The Secretary of State prescribes separate fees for the processing of immigrant visa applications and for the issuance of immigrant visas thereafter to persons whose applications are approved. An individual registered for immigrant visa processing must pay the processing fee upon being notified that a visa is expected to become available in the near future and being requested to obtain the supporting documentation needed to apply formally for a visa, in accordance with instructions received with such notification. The fee must be made before the applicant will receive an appointment to appear and make application before a consular officer. The applicant must pay the issuance fee after the consular officer has completed the visa interview and approved issuance of the visa, but prior to its issuance. A fee collected for the processing of an immigrant visa application is refundable only if the principal officer of a post or the officer in charge of a consular section determines that the notification of prospective visa availability was sufficiently erroneous to preclude the applicant from benefiting from the processing. A fee collected for the issuance of an immigrant visa is refundable only if either of such officers determines that the visa was issued in error or could not be used as a result of U.S. Government actions over which the alien had no control and for which the alien was not responsible in whole or in part.

Dated: September 10, 1999.

Maura A. Harty,

Acting Assistant Secretary of State for Consular Affairs.

[FR Doc. 99–24439 Filed 10–27–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–252487–96]

RIN 1545–AX25

Inbound Grantor Trusts With Foreign Grantors; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to inbound grantor trusts with foreign grantors.

DATES: The public hearing originally scheduled for Tuesday, November 2, 1999, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Guy Traynor of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on August 10, 1999, (64 FR 43323), announced that a public hearing was scheduled for November 2, 1999, at 10 a.m., room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224. The subject of the public hearing is proposed regulations under section 671 of the Internal Revenue Code. The public comment period for these proposed regulations expired on October 12, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of October 18, 1999, no one has requested to speak. Therefore, the public hearing scheduled for November 2, 1999, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–28038 Filed 10–27–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–101519–97]

RIN 1545–AV00

Withdrawal of Notice of Federal Tax Lien in Certain Circumstances; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to the withdrawal of notice of federal tax liens in certain circumstances.

DATES: The public hearing is being held on November 30, 1999, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by November 16, 1999.

ADDRESSES: The public hearing is being held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:DOM:CORP:R (REG–101519–97), room 5226, Internal Revenue Service , POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–101519–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting them directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be places on the building access list to attend the hearing LaNita Van Dyke, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–101519–97) that was published in the **Federal Register** on Wednesday, June 30, 1999 (64 FR 35102).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, November 16, 1999.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–28130 Filed 10–27–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–79–1–7328b, FRL–6459–7]

Approval and Promulgation of Implementation Plans; Texas; Repeal of Board Seal Rule and Revisions to Particulate Matter Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action approving revisions

to the Texas Natural Resource Conservation Commission (TNRCC) regulations in the Texas State Implementation Plan (SIP). These revisions remove the Texas Air Control Board (TACB) Seal rule from the Texas SIP and revise and recodify regulations for control of particulate matter in the Texas SIP. Removal of the Board Seal rule eliminates a rule that no longer applies to TNRCC. These revisions to the particulate matter regulations update the SIP-approved regulations and make the SIP citations consistent with the current State citations.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by November 29, 1999.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION: This document concerns repeal of the TACB Board Seal rule from the Texas SIP and revisions to the particulate matter regulations in the Texas SIP. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–27137 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD093–3040; FRL–6460–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOCs From Paint, Resin and Adhesive Manufacturing and Adhesive Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Maryland for the purpose of amending its regulation to control volatile organic compounds (VOC) from Paint, Resin & Adhesive Manufacturing and Adhesive Application. The revisions amend the definition of "honeycomb core installation" to include additional substrates and clarify the general emission standard for VOCs from adhesive applications. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 29, 1999.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III office address listed above, or via e-mail at Lewis.Janice@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 30, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–27202 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA71–166b; FRL–6452–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; and Yolo-Solano Air Quality Management District

ACTION: Proposed rule.

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the recission and removal of a obsolete rule and the addition of rules to control oxides of nitrogen (NO_X) emissions from natural gas-fired residential water heaters.

The intended effect of this action is the recission and removel of an obsolete rule and to regulate emissions of nitrogen oxides in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views these as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final

rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on these proposed rules. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by November 29, 1999.

ADDRESSES: Comments should be addressed to: Andy Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102) 401 "M" Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Kern County Air Pollution Control District 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370.

Yolo-Solano Air Quality Management District 1947 Galileo Court, Suite 103 Davis, CA 95616–4882.

FOR FURTHER INFORMATION CONTACT: Sam Agpawa, Air planning Office [Air-2], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1228.

SUPPLEMENTARY INFORMATION: This document concerns (1); Kern County Air Pollution Control District, Rule 424, Natural Gas-Fired Residential Water Heaters and (2)Yolo-Solano Air Quality Management District, Rule 2.37, Natural Gas-Fired Residential Water Heaters. The rules were submitted to EPA on November 18, 1993; and February 24 1995 respectively by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: September 14, 1999.

Keith Takata,

Acting, Regional Administrator, Region IX.

[FR Doc. 99–27200 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217–148; FRL–6465–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) for the San Joaquin Valley Unified Air Pollution Control District ("SJVUAPCD"). This revision concerns SJVUAPCD Rule 4354, which controls oxides of nitrogen (NO_X) emissions from glass melting furnaces.

The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because the revision, while strengthening the SIP, does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102) 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Ave., Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4354, Glass Melting Furnaces. Rule 4354 was submitted by the State of California to EPA on September 29, 1998.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. SJVUAPCD is classified as severe [1]; therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

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[1] SJVUAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4354, Glass Melting Furnaces, adopted by the SJVUAPCD on April 16, 1998. The State of California submitted this amended version of Rule 4354 to EPA on September 29, 1998. The rule was found to be complete on January 26, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[2].

NO_X emissions contribute to the production of ground level ozone and smog. SJVUAPCD Rule 4354 specifies exhaust emission standards for NO_X, carbon monoxide (CO), and VOCs, and was originally adopted as part of SJVUAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents[3]. Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purpose of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB) has developed a guidance document entitled, "Suggested Control Measure for the control of Nitrogen Emissions from Glass Melting Furnaces." EPA has used CARB's RACT Determination, dated September 5, 1980, in evaluating Rule 4354 for consistency with the CAA's RACT requirements.

There is currently a September 14, 1994 version of San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4354, Glass Melting Furnaces in the SIP. The 1994 rule includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X), volatile organic compounds (VOCs) and carbon monoxide (CO).
- Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

The version of the rule submitted in 1998 contains the following significant modifications from the 1994 version:

- A new Tier 2 emissions limit reduces NO_X emission levels for flat glass, container glass, and fiberglass furnaces and adds controls for CO and VOCs.
- A Bubbling option, CEMS (or alternate emissions monitoring with daily recordkeeping), and five year record retention requirements.
- Exemptions from emission control requirements on start-up have been increased for all furnaces with innovative controls to allow 180 days from first glass pull, or 30 days after achieving 60% of capacity, whichever is later.
- Exemptions from emission control requirements have also been added for unlimited periods of time from the "start of a change to initiate" a start-up, shutdown, or idling.
- New "Tier 2 controls" compliance deadline at the first furnace rebuild after January 1, 1999.
- Source testing for each furnace, or furnace battery, shall occur each calender year, not more than every 18 months, but not sooner than every 6 months.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. Rule 4354 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. The SJVUAPCD has projected that incorporation of Rule 4354 into the SIP would decrease the NO_X emissions allowed by the SIP.

EPA has evaluated San Joaquin Valley Unified Air Pollution Control District Rule 4354 for consistency with the CAA, EPA regulations, and EPA policy and has found that although SJVUAPCD Rule 4354 will strengthen the SIP, this rule contains deficiencies which must be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA.

- *Section 3.17.3: Start-up definition:* states: "180 days following initial glass pull, or 30 days after the glass pull rate reaches 60 percent of the furnace's glass production capacity, whichever occurs later, for any furnace that uses a NO_X control technique * * * " Coupled with section 4.2, this would seem to allow for an unlimited period of time for operations up to 60% glass production while exempt from compliance tests and possibly controls while at production temperatures. EPA policy generally does not allow automatic exemption from excess emissions during such periods. The District needs to demonstrate that RACT limits are to be in place at all possible times. Control systems need to be in operation and limits established as temperatures are increased to levels where NO$_X$ is made and *before* the furnace is at production levels. The time allowed to operate with exemption, at less than 60% of rated capacity, must be limited. 180 days start-up exemption seems excessive. The district should remove this exemption or demonstrate that it complies with CAA Sections 110(l) and 182 regarding rule relaxations and RACT.

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[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

- *Section 4.2: Exemptions:* states: (new text in italic) "The requirements of Section 5.0 shall not apply during periods of start-up, shutdown or idling. *The period of exemption shall apply from the beginning of operational changes required to initiate idling, shutdown, or start-up. The owner shall comply with the requirements of Section 6.7 when performing such operations.*"

Initiation of operational changes allow the "beginning of startup, idling and cool down" exemptions, which could last forever. The requirements of section 6.7 do nothing to limit these periods. The duration of these periods must have finite limits. Clarifying statements are required on two issues: (1) that control systems must be in operation during these periods of exemption, and (2) that the exemption periods indicate the period of time allowed *before a compliance test* is required. Burner controls operate from the start, a SCR unit can start at 650 F., and a SNCR can begin operation at 1800 F. There should be stated limits for emission levels considered acceptable during the startup, idling and cool down periods. The first glass draw, when temperatures approach 2900 degrees F., should be allowed only if the system is in compliance with these limits. (See TSD referenced Guidance Document: *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,* U.S. EPA, Office of Air Quality Planning and Standards, September 20, 1999).

- *Section 5.3: Tier 1 NO$_X$ emission limit Compliance Determination:* The first equation should be reformatted to clarify that "CF" is in the numerator.
- *Section 7.1: Compliance schedule:* A final date for major NO$_X$ sources to adopt CEMS or alternate continuous monitoring methods should be specified to prevent avoidance of continuous monitoring by running forever without an official "rebuild."
- *Section 7.2.3: Full compliance schedule:* A final date for facilities to achieve the full Tier 2 compliance should be specified to prevent avoidance of controls by running forever without an official "rebuild."
- *Sections 9.0, 9.4, and 9.7: Aggregated NO$_X$ emissions:* This is an Alternate Emission Control Plan (AECP). Provisions must be consistent with the EPA Emissions Trading Policy Statement (ETPS) published on December 4, 1986 (51 FR 43814), the Economic Incentive Program Rules (EIP) promulgated April 7, 1994 (59 FR 16690), and EPA policies regarding equivalency provisions, AECPs, cross-line averaging, and other bubbles as described in the document entitled, "Issues Relating to VOC Regulation Cutpoints, deficiencies, and deviations: Clarification to Appendix D of November 24, 1987 **Federal Register**." The EIP and EPA policies required AECP provisions to meet, among other things, a 10 percent (%) or greater reduction in emissions beyond the established baseline.

A detailed discussion of these deficiencies can be found in the Technical Support Document for Rule 4354, dated October 1, 1999, which is available from the U.S. EPA, Region IX office. Because of these deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3), in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SJVUAPCD's submitted Rule 4354 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the San Joaquin Valley Unified Air Pollution Control District and is currently in effect in the San Joaquin Valley Unified Air Pollution Control District. EPA's final limited disapproval action will not prevent the San Joaquin Valley Unified Air Pollution Control District or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 18, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–28216 Filed 10–27–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–102–1–7395; FRL–6465–2]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides for the Houston/Galveston and Beaumont/Port Arthur Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: The EPA is proposing conditional approval of rules into the Texas State Implementation Plan (SIP). These rules require Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO_X) in the Houston/Galveston (H/G), and the Beaumont/Port Arthur (B/PA) ozone nonattainment areas. Texas originally submitted these rules on June 15, 1993. Texas has made nine revisions to the rules since the original Submittal. In this document we propose conditional approval of Texas' SIP submittals concerning control of NO_X emissions dating from June 15, 1993 to May 20, 1998, as meeting the NO_X RACT requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action including the Technical Support Document, are available for public inspection during normal business hours at the above and following location. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What are we proposing to approve?
II. What are nitrogen oxides?
III. What is Reasonably Available Control Technology?
IV. What are the Clean Air Act's RACT requirements for NO_X emissions?
V. What are definitions of major sources for NO_X?
VI. What are Alternative Control Techniques (ACTs)?
VII. What is a State Implementation Plan?
VIII. What is the Federal approval process for a SIP?
IX. What does Federal approval of a SIP mean to me?
X. What is a nonattainment area?
XI. What counties in Texas will this rule affect?
XII. What are the specific rule revisions we are proposing to approve?
XIII. What kind of major source categories will this rule affect?
XIV. Are NO_X emission specifications in Texas rule comparable with Federal guidelines?
XV. Why is this a conditional approval?
XVI. What are the monitoring requirements?

Administrative Requirements

Throughout this document "we," "us," and "our" means EPA.

I. What Are We Proposing To Approve?

We are proposing conditional approval of revisions to the Texas Rule 30 TAC Chapter 117 for the control of air pollution from nitrogen compounds. These measures will reduce NO_X emissions in H/G and B/PA ozone nonattainment areas. By this approval we are agreeing that the State of Texas will be implementing the RACT on sources listed in Section XIII of this notice. Specifically, we are proposing to conditionally approve revisions submitted on June 15, 1993, August 31, 1993, June 9, 1994, August 3, 1994, September 21, 1994, December 29, 1994, March 6, 1996, August 9, 1996, May 21, 1997, and May 20, 1998. The approval is conditioned on Texas revising Regulation 117.570 to remove the ability to add one standard deviation to the emissions baseline for trading purposes. Furthermore, the Texas Accelerated Vehicle Retirement (AVR) program is not a part of the approved SIP (see 62 FR 66576, December 19, 1997, and 63 FR 41756, August 5, 1998); consequently, if a source plans to rely upon any emission reduction credits generated or claimed through the AVR program, for interim compliance with Chapter 117, the State will have to submit a separate source specific SIP revision to us for approval.

Texas must submit the approvals of the alternative case-specific specifications under sections 117.121, 117.221, 117.321 and 117.426, by the Executive Director or the Commissioners, to the EPA for approval as source-specific SIP revisions. Texas must submit approvals of a petition for phased RACT under Section 117.540, by the Executive Director or the Commissioners, to the EPA for approval as source-specific SIP revision. Otherwise, a source operating under such a State approval is subject to Federal enforcement action for violation of the required specifications and/or compliance deadline.

II. What Are Nitrogen Oxides?

Nitrogen oxides (NO_X) belong to the group of criteria air pollutants. The NO_X are produced from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

III. What Is Reasonably Available Control Technology?

Reasonably Available Control Technology is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. This requirement is established by sections 182(b)(2) and 182(f) of the Act. These sections, taken together, establish the requirements for Texas to submit a NO_X RACT regulation for all major stationary sources of NO_X in ozone nonattainment areas classified as moderate and above. A State may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source.

IV. What Are the Clean Air Act's RACT Requirements for NO_X Emissions?

Section 182(b)(2) requires States located in areas classified as moderate ozone nonattainment areas to require implementation of RACT with respect to all major sources of VOCs. Section 182(f) states that, "The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen." This NO_X RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications.

On November 25, 1992, (57 FR 55620), we published a notice of proposed rulemaking entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement). The NO_X Supplement describes and provides preliminary guidance on the requirements of section 182(f) of the Act. You should refer to the NO_X supplement for further information on the NO_X requirements. The EPA's mandatory Economic Incentive Program (EIP) rules for criteria pollutants appear in 40 CFR part 51, subpart U (59 FR 16710). The EPA's discretionary EIP rules concerning emission trading appear in the 1994 EIP guidance document (59 FR 16690). In addition, other EPA guidance memoranda, such as those included in the "NO_X Policy Document for the Clean Air Act of 1990," (EPA–452/R96–005, March 1996), should also be referred to for more information about NO_X requirements.

On August 17, 1994, the Texas Natural Resource Conservation Commission (TNRCC) petitioned us under section 182(b) to temporarily exempt the B/PA and H/G ozone nonattainment areas from the NO_X requirements of the Act. The TNRCC asked for the exemption based on air quality modeling that indicated that the control of NO_X would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS). We approved the petition on April 19, 1995.

The temporary exemption was to expire on December 31, 1996 with RACT compliance no later than May 31, 1997. On March 6, 1996, the TNRCC asked us to extend the temporary waiver. The TNRCC asked for an extension of the temporary waiver based on section 182(f) of the Act. Section 182(f) allows for a waiver of certain federally required NO_X control measures, if the State demonstrates that NO_X reductions do not contribute to ozone attainment in moderate or above areas. The State submitted modeling information with a petition predicting that the NO_X reductions would be counterproductive to ozone attainment in portions of H/G and B/PA areas. The EPA approved the petition and granted an extension until December 31, 1997, to allow time for carrying out further modeling. The NO_X RACT compliance date was as expeditious as practicable, but no later than May 31, 1999. Based on this further modeling, TNRCC allowed the waiver to expire. We provided notice that the waiver had expired in the **Federal Register** on February 12, 1998 (63 FR 7071). The NO_X RACT compliance date was extended to no later than November 15, 1999.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions not covered by either a pre-enactment or post-enactment control techniques guideline (CTG) document. There were no NO_X CTGs issued before enactment and we have not issued a CTG document for any NO_X sources since enactment of the Act. States can use the information contained in the Alternative Control Techniques (ACTs) to develop their RACT rules. The Texas rules covering NO_X sources and submitted as SIP revisions require final installation of the actual NO_X controls as expeditiously as practicable, but no later than November 15, 1999.

V. What Are Definitions of Major Sources for NO_X?

Section 302 of the Act generally defines "major stationary source" as a facility or source of air pollution which emits, when uncontrolled, 100 tons per year (tpy) or more of air pollution. This general definition applies unless another specific provision of the Act explicitly defines major source differently. Therefore, for NO_X, a major source is one which emits, when uncontrolled, 100 tpy or more of NO_X in marginal and moderate areas. According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X.

According to section 182(d) of the Act, a major source in a severe nonattainment area is a source that emits, when uncontrolled, 25 tpy or more of NO_X.

Houston is a severe ozone nonattainment area, so the major source size for Houston is 25 tpy or more, when uncontrolled. Beaumont is a moderate ozone nonattainment area, so the major source size for Beaumont is 100 tpy or more, when uncontrolled.

VI. What Are Alternative Control Techniques (ACTs)?

Section 183(c) of the Act provides that we will issue technical documents which identify alternative controls for stationary sources of oxides of nitrogen which emit, when uncontrolled, 25 tpy or more of this pollutant. These ACT documents are to be subsequently revised and updated by us. The information in the ACT documents is generated from EPA papers, literature sources and contacts, control equipment vendors, engineering firms, and Federal, State, and local regulatory agencies. States can use information in the ACT to develop their RACT regulations. The following table contains list of ACT documents for various source categories of NO_X with their corresponding EPA publication numbers.

TABLE I.—ACT DOCUMENTS FOR SOURCE CATEGORIES OF NO_X AND THEIR EPA PUBLICATION NUMBERS

Source category	EPA publication number
Nitric/adipic Acid Plants	EPA–450/3–91–026
Gas Turbines	EPA–453/R–93–007
Process Heaters	EPA–453/R–93–034
Internal Combustion Engines	EPA–453/R–93–032
Cement Plants	EPA–453/R–94–004
Non-utility Boilers	EPA–453/R–94–022
Utility Boilers	EPA–453/R–94–023
Glass Manufacturing	EPA–453/R–94–037
Iron and Steel Manufacturing	EPA–453/R–94–065

VII. What is a State Implementation Plan?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS established by the EPA. The NAAQS are established under section 109 of the Act to protect public health, and they address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each state has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

VIII. What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the federally enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State may submit the adopted provisions to us and request that these provisions be included in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If adverse comments are received, we must address them prior to a final action.

All State regulations and supporting information approved by us under section 110 of the Act are incorporated into the federally approved SIP. Records of these SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations which were approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

IX. What Does Federal Approval of a SIP Mean to me?

Enforcement of the State regulation before and after it is incorporated into federally approved SIP is primarily a state function. However, once the regulation is federally approved, we and the public may take enforcement action against violators of these regulations if the State fails to do so.

X. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. It has been estimated that 60 percent of Americans live in nonattainment areas. The H/G and B/PA are nonattainment areas for ozone.

XI. What Counties in Texas Will This Rule Affect?

This rule affects the H/G and B/PA ozone nonattainment areas. The B/PA area is classified as moderate ozone nonattainment and includes the following counties: Hardin, Jefferson, and Orange. The H/G is classified as severe ozone nonattainment and includes the following counties: Brazoria, Chambers, Fort Bend, Harris, Galveston, Liberty, Montgomery, and Waller. If you are in one of these counties, you should refer to the rules to determine if and how this rule will affect you.

XII. What Are the Specific Rule Revisions EPA is Proposing To Approve?

The State of Texas submitted the NO_X RACT program Chapter 117, "Control of Air Pollution From Nitrogen Compounds," as a number of revisions to the SIP. This rulemaking will address the following SIP revisions:

A. On June 15, 1993, the Governor submitted a major revision that adopted new NO_X regulations, sections 117.10, 117.101–117.601, and repealed the old regulations, Sections 117.1–117.4. Texas submitted this revision to us to comply with the Act's 1990 amendments requirements concerning control of nitrogen oxides emissions at major stationary sources in ozone nonattainment areas. These rules included emission limitations, control technologies, and a RACT averaging program allowing facility-wide averaging with each unit having an enforceable emission limit. The *Texas Register* published these regulations on May 28, 1993 (18TR3409) and effective June 9, 1993.

B. On August 30, 1993, Texas adopted amendments to sections 117.105 and 117.205, repealed sections 117.540, 117.550, and added new sections 117.540, 117.550, and 117.580. Texas added section 117.540, phased RACT, to allow affected sources to petition TNRCC for a later compliance date. A source may receive the later compliance date, if it shows there were unforseen and unavoidable delays in delivery, construction and installation of control equipment. The new section 117.550 provided an avenue for a general permit approach for collateral criteria pollutant increases. The new section 117.580 provided for a NO_X source cap program. Instead of unit emission rates, a facility could comply with an overall facility mass emissions cap. The cap was based upon the average actual activity level, using the lower of actual or allowable for previously permitted sources; restricted how shutdown units may be incorporated; restricted how units exempt from NO_X RACT can be incorporated; and required that the area's offset ratio be used for exempt units brought into the plant cap. The proposed changes were part of a series of proposed revisions to Chapter 117 being developed in response to requirements by the Act and EPA comments. The *Texas Register* published the amendments to these sections on December 3, 1993 (18TR8956) and effective December 15, 1993.

C. On May 25, 1994, Texas adopted amendments to sections 117.10, 117.103–117.121, 117.203–117.221, 117.311–117.321, 117.411–117.421, 117.510–117.560, added section 117.223, and repealed section 117.580. The new section 117.580 provided for a NO_X source cap program. Section 117.580 (source cap) was moved to Section 117.223. A new subsection 117.540(c) allowed the use of MERCs from scrappage for interim compliance with Chapter 117, if the source followed the procedures of section 117.570 (Trading). The life of these vehicle scrappage MERCs was three years. The *Texas Register* published the adopted revisions on June 10, 1994 (19TR4523) and effective June 23, 1994.

D. On July 27, 1994, Texas adopted the new section 117.570 and repealed the old section 117.570. The new 117.570 established a NO_X RACT trading program to provide a cost-effective alternative method of complying with the NO_X emission specifications of this chapter. Under the new trading program, an owner or operator may reduce the required amount of NO_X emissions by using an approved Emission Reduction Credit (ERC). The ERC may be generated by another company in the same ozone nonattainment area. Shutdown credits can be generated and used only by sources participating in a source cap. The source cap provisions in section 117.223 did not allow for generation of paper credits. The *Texas Register* published these changes on August 9, 1994 (19TR6223) and effective August 23, 1994.

E. On August 31, 1994, Texas adopted amendments to sections 117.451, 117.510, 117.520, 117.530, and 117.601. The purpose of the adopted changes was to extend the final compliance date of the Chapter 117 rule from May 31, 1995, to May 31, 1997. The *Texas Register* published these revisions on September 9, 1994 (19TR7128) and effective September 22, 1994.

F. On December 7, 1994, Texas adopted amendments to section 117.510. The amendment extends the Federal acid rain January 1, 1995 compliance date under section 117.510(2)(A), concerning certification of continuous emissions monitoring systems for Phase II oil-fired and Phase II gas-fired units at electric utility sources, to May 31, 1997. The *Texas Register* published these revisions on December 16, 1994 (19TR10005) and effective January 2, 1995.

G. On January 10, 1996, Texas adopted amendments to sections 117.451, 117.510, 117.520, 117.530, and 117.601. The purpose of adopted amendments was to extend the final compliance date of the Chapter 117 rule from May 31, 1997, to May 31, 1999. The *Texas Register* published these revisions on January 19, 1996 (21TR516) and effective February 1, 1996.

H. On July 24, 1996, Texas adopted revisions to section 117.540. The amendments to section 117.540, regarding Phased RACT, extended applicable dates to be consistent with the May 31, 1999 final compliance date. This revision extended the final compliance date for an approved phased RACT request to August 31, 2000. In addition, Texas added new subsection 117.540(c), allowing the use of clean-fueled vehicle MERCs to meet chapter 117 requirements on an interim basis. Texas moved the scrappage MERCs to subsection 117.540(b). The life of the clean fuel vehicle MERCs is two years for MERCs generated prior to September 1, 2002, and there after, the estimated remaining useful vehicle life. The Texas Register published these revisions on August 9, 1996 (21TR7560) and effective August 16, 1996.

I. On April 30, 1997, Texas adopted the repeal of section 117.550. Texas moved the collateral emission increases associated with installation of NO_X control measures into the permitting requirements of Chapter 116. The EPA is acting on the repeal of section 117.550, but is not acting on Chapter 116 in this action. The *Texas Register* published this adoption on May 13, 1997 (22TR4248) and effective May 22, 1997.

J. On May 20, 1998, Texas adopted revisions to subsections 117.451, 117.510, 117.520, 117.530, 117.540, and 117.601 extending the final NO_X RACT compliance date, for certain major source nitrogen oxides control measures in the H/G and B/PA ozone nonattainment areas, to November 15, 1999, and made emission monitoring requirements more flexible. Texas extended the final phased RACT compliance date to no later than February 15, 2001. Texas revised the compliance period for carbon mooxide emissions, in subsection 117.105(j), from a twenty-four hour period to an hourly period for any electric utility unit which does not use a Continuous Emission Monitoring System (CEMS) or Presumptive Emission Monitoring System (PEMS) for CO, stating that twenty-four hours of manual stack sampling is impractical. The *Texas Register* published this adoption on June 5, 1998 (23TR5973) and effective June 10, 1998.

XIII. What Kind of Major Source Categories Will This Rule Affect?

This rule will affect NO_X emissions from the following existing source categories in Texas: (a) Utility boilers, steam generators, auxiliary steam boilers, and gas turbines used to generate electricity in H/G and B/PA ozone nonattainment areas (see section 117.101 of this rule); (b) commercial, institutional, or industrial boiler (non-utility boiler) and process heaters in H/G and B/PA with a maximum rated capacity of 40 million Btu per hour or greater, stationary gas turbines in H/G and B/PA with a megawatt (mW) rating of 1.0 mW or higher; (c) stationary rich burn internal combustion engines of 150 horsepower (hp) or greater for stationary rich burn internal combustion engines in H/G ozone nonattainment area, and stationary internal combustion engines of 300 hp or greater for stationary internal combustion engines in B/PA ozone nonattainment area (see section 117.210 of this rule); and (d) nitric acid manufacturing (see section 117.401 of this rule) and adipic acid manufacturing (see section 117.301 of this rule) plants in H/G and B/PA ozone nonattainment areas.

XIV. Are NO_X Emissions Specifications in Texas Rule Comparable With Federal Guidelines?

The emission specifications in pounds NO_X per million Btu (lb NO_X/MMBtu) from utility boilers are in agreement with the "Alternative Control Techniques Document—NO_X Emissions from Utility Boilers," EPA–453/R–94–023, March 1994, and 57 FR 55620 (the NO_X supplement).

The emission specifications in pounds NO_X per million Btu (lb NO_X/MMBtu) from non-utility boilers are in agreement with the "Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional Boilers," EPA–453/R–94–022, March 1994.

The emission specifications in pound nitrogen dioxide (NO_2) per ton of acid produced (lb NO_2/ton acid) from Nitric and Adipic acid manufacturing plants are in agreement with the "Alternative Control Techniques Document—Nitric and Adipic Acid Manufacturing Plants," EPA–450/3–91–026, December 1991.

The emission specifications in pounds NO_X per million Btu (lb NO_X/MMBtu) from process heaters are in agreement with the "Alternative Control Techniques Document—NO_X Emissions from Process Heaters (Revised)," EPA–453/R–93–034, September 1993.

The emission specifications in gram NO_X per horsepower-hour (g/hp-hr) from internal combustion engines are in agreement with the "Alternative Control Techniques Document—NO_X Emissions from Stationary Reciprocating Internal Combustion Engines," EPA–453/R–93–032, July 1993.

The emission specifications in parts per million (ppm) NO_X from stationary gas turbines are in agreement with the "Alternative Control Techniques Document—NO_X Emissions from Stationary Gas Turbines," EPA–453/R–93–007, January 1993.

The NO_X emissions specifications in this rule are comparable with our guidelines for RACT and ACT documents. A listing of our ACT documents is in Table I of this proposed action. For a complete review and evaluation of this rule please refer to the Technical Support Document (TSD) developed for this proposed action. The following table contains a summary of the type of affected sources, their corresponding emission limit, and relevant applicability information for these sources in the H/G and B/PA nonattainment areas.

TABLE II.—SUMMARY OF THE TEXAS NO_X RACT RULE FOR SOURCES IN THE H/G AND B/PA NON-ATTAINMENT AREAS

Source	NO_X limit	Additional information
Utility Boilers	0.26 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 24-hour rolling average.
Utility Boilers	0.20 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 30-day rolling average.
Utility Boilers	0.38 lb/MMBtu	Coal, tangentially-fired, 24-hour rolling average.
Utility Boilers	0.43 lb/MMBtu	Coal, wall-fired, 24-hour rolling average.
Utility Boilers	0.30 lb/MMBtu	Fuel oil only, 24-hour rolling average.
Utility Boilers	[a(0.26) + b(0.30)]/(a + b)	Oil and gas mixture, 24-hour rolling average, where. a = percent natural gas heat input. b = percent fuel oil heat input.

TABLE II.—SUMMARY OF THE TEXAS NO_X RACT RULE FOR SOURCES IN THE H/G AND B/PA NON-ATTAINMENT AREAS—Continued

Source	NO_X limit	Additional information
Stationary Gas Turbines	42 parts per million (ppmvd)	@ 15% O2, natural gas, ≥ 30 Mega Watt (mW) annual electric output ≥ 2500 hour mW rating.
Stationary Gas Turbines	65 parts per million (ppmvd)	@ 15% O2, fuel oil/
Stationary Gas Turbines	0.20 lb/MMBtu	Natural gas, peaking units, annual electric output <2500 hour mW rating.
Stationary Gas Turbines	0.30 lb/MMBtu	Fuel oil, peaking units, annual electric output <2500 hour mW rating.
Non-utility Boilers	0.10 lb/MMBtu	Natural gas, low heat release and T < 200 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.15 lb/MMBtu	Natural gas, low heat release, preheated air 200 ≤ T < 400 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boiler	0.20 lb/MMBtu	Natural gas, low heat release, preheated air T ≥ 400 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.20 lb/MMBtu	Natural gas, high heat release, without air or preheated air T < 250 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.24 lb/MMBtu	Natural gas, high heat release, preheated air 250 ≤T < 500 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.28 lb/MMBtu	Natural gas, high heat release, preheated air T ≥ 500 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, preheated air T ,< 200 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.13 lb/MMBtu	Natural gas, preheated air 200 ≤T < 400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.18 lb/MMBtu	Natural gas, low heat release, preheated air T ≥ 400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, firebox T < 1400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.125 lb/MMBtu	Natural gas, firebox 1400 ≤T < 1800 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.15 lb/MMBtu	Natural gas, firebox T ≥ 1800 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters and Non-utility Boilers.	0.30 lb/MMBtu	Liquid fuel, capacity ≥ 100 MMBtu/hr.
Process Heaters and Non-utility Boilers.	0.30 lb/MMBtu	Wood fuel, capacity ≥ 100 MMBtu/hr.
Stationary Gas Turbines	42 parts per million (ppmvd)	@ 15% O2, rating ≥ 10 mW.
Reciprocating Internal Combustion Engines.	2.0 gram/hp-hr	Natural gas, rich burn, stationary, capacity ≥ 150 hp in H/G, capacity ≥ 300 hp in B/PA.
Absorbers of Adipic Acid Production Units.	2.5 lb/ton of acid produced	24-hr rolling average.
Absorbers of Nitric Acid Production Units.	2.0 lb/ton of acid produced	24-hr rolling average.

XV. Why Is This a Conditional Approval?

The allowable NO_X emission rates are calculated based on a rolling 30-day average method (see equation 117.223(b)(1) of this rule) and based on a maximum daily cap method (see equation 117.223(b)(2) of this rule). The definition of actual daily heat input in 117.570(b)(2), and the definition of actual historical average of the daily heat input in 117.223(b)(1) allow sources to add one standard deviation to their baseline heat input or emission rate to establish the baseline for generating emission credits. Adding one standard deviation to the baseline could generate "paper credits."

We understand from Texas that this allowance was an inadvertent oversight and they have committed in the July 19, 1999, letter to change the rule and submit it as a SIP revision to our office by November 15, 1999. We are conditionally approving the rule based on their commitment.

XVI. What Are the Monitoring Requirements?

The Act requires that SIP rules be enforceable. To insure continuous compliance, SIP rules must have monitoring requirements. The Texas NO_X Rules require either a CEMS or PEMS to ensure compliance.

It is very important to use proper Quality Assurance/Quality Control (QA/QC) techniques to insure the monitors read correctly. One issue we are concerned with is that the Texas rules allow a Cylinder Gas Audit (CGA) to replace the Relative Accuracy Test Audit (RATA) for ongoing QA/QC of the monitors.

Our rules under 40 CFR part 60, New Source Performance Standards for new sources prohibit the use of CGA for more than 3 consecutive calender quarters. The CGA outlined in 40 CFR part 60, appendix F is the test which demonstrates that the analyzer reads correctly over its range. For example, in a CGA test you might compare the protocol gases of 0 ppm, 50 ppm, and 100 ppm to what the analyzer reads. If the analyzer's readings match the concentration of the corresponding protocol gas, then the analyzer passes the CGA test. The CGA or linearity test however, is only a means of verifying performance of the analyzer and not a means of verifying performance of the total monitoring system.

The RATA determines if the CEMS reads correctly during actual operation by testing the entire system. The RATA compares the readings of the CEMS to an independent "reference method" when both the CEMS and RATA are measuring the pollutant concentration in the stack simultaneously. The reference method is designed to be as accurate as possible and verifies that the CEMS will perform correctly in normal operation.

Texas has stated that economic reasons, i.e., higher cost of performing a RATA vs. cost of performing a CGA and ease of scheduling a CGA as opposed to scheduling a RATA, as the reasons for substituting a CGA with RATA for ongoing quality assurance of CEMS. Texas believes, if performed correctly, a CGA test provides adequate assurance of monitor operation and that additional cost of RATA is not justified.

We are proposing to agree with Texas in substituting a CGA with RATA for ongoing quality assurance of CEMS. As indicated at the outset of this notice, we will be collecting comments and consider any comments received on this subject by November 29, 1999.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local, or tribal governments. The proposed rule does not impose any enforceable rules on any of these entities. This proposed action does not create any new requirements but simply approves the requirements the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this proposed rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132, (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because it proposes to approve a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed action does not involve or impose any new requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP proposes approval does not create any new requirements, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State Submittal does not affect State-enforceability. Moreover, EPA's disapproval of the Submittal does not impose any new requirements. Therefore, I certify that this proposal action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this proposed action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 6, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–28215 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 103–1a; FRL–6464–7]

Approval and Promulgation of Implementation Plans; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate Coshocton, Gallia, and Lorain Counties to the status of areas in attainment of the National Ambient Air Quality Standards (NAAQS)for sulfur dioxide (SO_2). Ohio requested this action on October 26, 1995, and provided supplemental supporting material to EPA in a letter dated September 14, 1999.

EPA is also proposing to approve the maintenance plans for Coshocton, Gallia, and Lorain Counties. The plans are intended to ensure maintenance of the NAAQS, and were submitted with the redesignation requests.

In conjunction with these actions, EPA is proposing to approve State-adopted emission limits for the following facilities: in Coshocton County: Columbus and Southern Ohio Electric—Conesville plant; in Gallia County: Ohio Valley Electric Company—Kyger Creek plant and Ohio Power—Gavin Plant; and in Lorain County: CEI—Avon Lake plant, Ohio Edison—Edgewater Plant, U.S. Steel—Lorain plant, and B.F. Goodrich Company—Lorain County plant. These limits would replace equivalent limits in the Federal Implementation Plan (FIP) for these three Counties.

EPA is "parallel processing" Ohio's request to redesignate the three counties to attainment while Ohio finalizes its rule revisions. If Ohio's final submittal is the same as the submittal on which this proposal is made and EPA receives no persuasive adverse comments then EPA will take final action to approve the redesignation requests. Otherwise, EPA will repropose this action.

DATES: Comments on this proposed action must be received by November 29, 1999.

ADDRESSES: You may send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Program Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Phuong Nguyen, Environmental Scientist, at (312) 886–6701 before visiting the region 5 office.)

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886–6701.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information:
1. What action is EPA proposing to take today?
2. Why is EPA proposing to take this action?
3. What is the background for this action?

II. Background on Ohio Submittal
1. What information did Ohio submit, and what were its requests?
2. What guidance documents did EPA use in this rulemaking to evaluate Ohio's request?

III. State Implementation Plan (SIP)
1. How do these emission limits compare to the FIP limits?
2. What are the sources and emission limits that will be affected by EPA's action?

IV. Maintenance Plan
1. How does the maintenance plan apply in these three counties?
2. What are the reduction requirements?

V. Redesignation Evaluation
1. What five criteria did EPA use to review the redesignation request?
2. Are these criteria satisfied for Coshocton, Gallia, and Lorain counties?

I. General Information

1. What Action Is EPA Proposing To Take Today?

In this action, EPA proposes to approve three SO_2 redesignation requests submitted by the State of Ohio for Coshocton, Gallia, and Lorain Counties. EPA also proposes to approve the maintenance plans for these counties. Finally, EPA proposes to approve State-adopted emission limits for the remaining sources in these three counties.

This action applies parallel processing, in which EPA proposes action on proposed State rules based on the expectation that the State will finalize its rules as proposed. If the State's final rules differs significantly from the proposed rules, then EPA will repropose action.

2. Why Is EPA Proposing To Take This Action?

EPA is proposing to take this action because the redesignation requests meet the five criteria all redesignation requests must meet. The emission limits in the submittal are equivalent to those allowed by the FIP limits. Coshocton, Gallia, Lorain Counties have been designated as nonattainment areas for sulfur dioxide but now meet the sulfur dioxide NAAQS. The three counties have plans for keeping their sulfur dioxide levels within the health-based standard for the next 10 years and beyond. The plans require the three counties to consider impacts of future activities on air quality and to manage those activities.

3. What Is the Background for This Action?

EPA promulgated the applicable FIP in 1976. The FIP requires significant emission reductions at specific facilities throughout the State to attain and maintain the NAAQS for SO2.

On October 5, 1978, Coshocton, Gallia, and Lorain Counties (among others) were designated as nonattainment areas for the primary sulfur dioxide standards. The State adopted its own regulations in 1979, generally imposing limits similar to those promulgated in the FIP. The State submitted these regulations for EPA approval in 1980, including regulations for Coshocton, Gallia, and Lorain Counties.

The State then withdrew its submittal for selected sources. These sources are:

1. Coshocton County:
   - —Columbus and Southern Ohio Electric—Conesville plant.
2. Gallia County:
   - —Ohio Valley Electric Company—Kyger Creek plant,
   - —Ohio Power—Gavin plant.
3. Lorain County:
   - —Cleveland Electric Illuminating (CEI)—Avon Lake plant,
   - —Ohio Edison—Edgewater plant.
   - —U.S. Steel—Lorain plant.
   - —B.F. Goodrich Company.

EPA approved this SIP regulation on January 27, 1981, for Coshocton, Gallia, and Lorain counties (46 FR 8481) except for the source limits withdrawn by the State. The federally promulgated FIP regulations, therefore, have remained in effect for the above sources.

On October 26, 1995, Governor George Voinovich requested that EPA redesignate to attainment all remaining SO_2 nonattainment areas within the State of Ohio, including Coshocton, Gallia, and Lorain Counties.

On May 28, 1996, EPA Administrator Browner sent a letter to Governor Voinovich informing him that the redesignation request depended on EPA approval of State-adopted rules in place of FIP rules.

II. Background on Ohio Submittal

1. What Information Did Ohio Submit and What Were its Requests?

In June 1999, Ohio e-mailed copies of proposed rule revisions for Coshocton, Gallia, and Lorain Counties to EPA. On September 14, 1999, Ohio submitted additional material requested by EPA to support the State's requests to redesignate these Counties to attainment with respect to SO_2. The state requested parallel processing by EPA to approve SIP limits for the specific facilities named above in these three counties in place of federal promulgated limits. In addition, the State requested approval for the SO_2 maintenance plans for Coshocton, Gallia, and Lorain Counties. Finally, the State requested approval of its request to redesignate these three counties to attainment status for sulfur dioxide.

2. What Guidance Documents Did EPA Use in This Rulemaking To Evaluate Ohio's Requests?

Guidance for these requests includes a September 28, 1994, memorandum from the Director, Air Quality Management Division, Office of Air Quality Planning and Standards, EPA, to the Director, Air and Radiation Division, Region 5, entitled, "Response to Request for Guidance on Issues with Ohio Sulfur Dioxide Federal Implementation Plan".

This memorandum sets forth three criteria to be met for the approval of State limits that are equivalent to existing FIP limits without new modeling. Under the first two criteria, there must be no known inadequacy in the original attainment demonstration. Under the third criterion, the State limits must reflect no relaxation of existing emission limits.

All three of these criteria are met by the State-promulgated SIP limits. Therefore, the revised limits, if adopted and submitted as proposed, can be considered to be adequate to assure attainment without further modeling.

Another guidance document relevant to this rulemaking is an April 21, 1983 memorandum entitled "Section 107 Designation Policy Summary" from the Director of the EPA Office of Air Quality Planning and Standards, which requires eight consecutive quarters of data showing SO_2 NAAQS attainment before an area can be redesignated. A county violates the NAAQS when its SO_2 level exceeds the NAAQS more than once in any year. Coshocton, Gallia, and Lorain Counties have eight consecutive quarters of data showing SO_2 NAAQS attainment.

Finally, a September 4, 1992, EPA policy memorandum on "Procedures for Processing Requests to Redesignate Areas to Attainment" was also relevant to this rulemaking. This memorandum explains that additional dispersion modeling is not required in support of an SO_2 redesignation request if an adequate modeled attainment demonstration was previously submitted and approved as part of the implemented SIP, and no indication of an existing air quality deficiency exists. These conditions are met here.

III. SIP Approval

1. How Do These Emission Limits Compare to the FIP Limits?

The proposed emission limits are equivalent to the FIP limits for Coshocton, Gallia, and Lorain Counties, respectively. As a result of these limits, attainment in Coshocton, Gallia, and Lorain counties is assured on the basis of State-adopted, EPA-approved limits. Consequently, there is no further need for federally promulgated limits, and the corresponding FIP limits for these sources in all three counties can be rescinded.

2. What Are the Sources and Emission Limits That Will Be Affected by the SIP Approval?

The table below shows the sources and state emission limits that will be affected by the SIP approval.

County names	State emission limits	Source names
Coshocton County	—OAC 3745–18–22 (B)	—Columbus and Southern Ohio Electric; Conesville.
Gallia County	—OAC 3745–18–33 (B)	—Ohio Valley Electric Company; Kyger Creek.
	—OAC 3745–18–33 (D)	—Ohio Power-Gavin.
Lorain County	—OAC 3745–18–53 (B)	—CEI-Avon Lake.
	—OAC 3745–18–53 (D)	—Ohio Edision; Edgewater Plant.
	—OAC 3745–18–53 (E)	—U.S. Steel.
	—OAC 3745–18–53 (G)	—B.F. Goodrich.

IV. Maintenance Plan Approval

1. How Does the Maintenance Plan Apply in These Three Counties?

Ohio's attainment plan for sulfur dioxide provides for attainment even with major sources emitting their maximum allowable emissions. Therefore, maintenance is provided by assuring that minor source impacts do not increase significantly. The principal minor sources are distant point sources and diesel vehicles.

2. What Are the Reduction Requirements?

Title IV reductions and the required national conversion to low sulfur diesel fuel were the identified maintenance plan provisions contained in the approved redesignation for Washington and Morgan Counties in 1994 (59 FR 48403). These reductions will also be realized in the other nonattainment counties such as Coshocton, Gallia, and Lorain.

V. Redesignation Evaluation Criteria

1. What Five Criteria Did EPA Use To Review the Redesignation Requests?

Section 107(d)(3)(E) of the Clean Air Act (Act), as amended in 1990, establishes requirements to be met before an area may be redesignated from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act. An area can be redesignated to attainment if the following five conditions are met:

(A) The area has attained the applicable NAAQS.

(B) The area has a fully approved SIP under section 110(k) of the Act.

(C) The EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.

(D) The EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act.

(E) The State has met all requirements applicable to the area under section 110 and part D of the Act.

2. Are These Five Criteria Satisfied for Coshocton, Gallia, and Lorain Counties?

A. Demonstrated Attainment of the NAAQS

Relevant Agency guidance is provided in both the April 21, 1983, and September 4, 1992 guidance documents cited above. The April 21, 1983 memorandum explains that eight consecutive quarters of data showing SO_2 NAAQS attainment are required for redesignation. The September 4, 1992 guidance explains that the area must have no more than one exceedance per year.

Ohio's September 14, 1999, submittal provides ambient monitoring data showing that Coshocton, Gallia, and Lorain counties have met the NAAQS for the years 1980–1995.

Dispersion modeling is commonly used to demonstrate attainment of the SO_2 NAAQS. A modeling analysis was done in 1976 to show that, under all allowed operating scenarios, the emission limits in these three counties' SO_2 SIPs would lead to attainment and maintenance of the SO_2 standards. According to the September 4, 1992 memorandum, no further dispersion modeling is needed for the counties' redesignation. Ohio has provided evidence that sources in these counties are complying with these limits.

Based on this evidence, EPA concludes that emissions are sufficiently low to assure attainment throughout these areas currently designated nonattainment.

B. Fully Approved SIP

The SIP for the area at issue must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply.

EPA's guidance for implementing section 110 of the Act is discussed in the General Preamble to Title I (44 FR 20372, April 14, 1979; and 57 FR 13498, April 16, 1992). The SO_2 SIP for Coshocton, Gallia, and Lorain counties met the requirements of section 110 of the Act, and EPA approved the SIP on January 27, 1981, except that EPA did not take action for a limited set of sources.

State limits for the remaining set of specific sources in Coshocton, Gallia, and Lorain Counties are being proposed for approval in this rulemaking.

C. Permanent and Enforceable Reductions in Emissions

Coshocton, Gallia, Lorain Counties attained the SO_2 standards by implementing the SO_2 SIP controls.

The reductions in SO_2 emissions primarily come from converting some fuel-burning sources to lower sulfur content fuels, and to shutting down various types of sources. The use of lower-sulfur "cleaner" fuels is ensured by the facilities" air emission permits and federally enforceable SIP regulations.

D. Fully Approved Maintenance Plan

EPA has concluded that the combination of limitations on maximum allowable emissions from major point sources and implementation of programs that will yield reductions in minor source emissions will assure maintenance of the standards. Approval of the maintenance plan is being proposed in today's action.

E. Part D and Other Section 110 Requirements

With the approval of limits proposed today, along with the approval of limits and attainment demonstration published January 27, 1981 (46 FR 8481), Ohio has met the relevant requirements.

VI. Proposed Rulemaking Action

In summary, EPA is proposing to approve State-adopted emission limits for 7 sources in Coshocton, Gallia, and Lorain Counties. In addition, EPA is proposing to approve the SO_2 maintenance plan for Coshocton, Gallia, and Lorain Counties as adequately ensuring that attainment will be maintained. We are proposing to rescind the FIP limits for Coshocton, Gallia, and Lorain Counties because we are also proposing to replace these FIP limits with the State limits. Finally, EPA is proposing to approve redesignation requests from the State of Ohio which were submitted on September 14, 1999.

VII. Administration Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments.

The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)], which will take effect on November 2, 1999. In the interim, current Executive Order 12612 [52 FR 41685 (October 30, 1987)] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

This Order regarding *Protection of Children from Environmental Health Risks and Safety Risks* [62 FR 19885 (April 23, 1997)] applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–28042 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6464–8]

EPA Standards for the Management of Cement Kiln Dust; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Extension of period for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing an extension of the public comment period for its Proposed Rule on Standards for the Management of Cement Kiln Dust to February 17, 2000.

DATES: The comment period of the Proposed Rule on Standards for the Management of Cement Kiln Dust is extended and will close on February 17, 2000.

ADDRESSES: Those persons wishing to submit public comments must send an original and two copies of their comments referencing EPA docket number F–1999–CKDP–FFFFF to: RCRA Docket Information Center (5305W), U.S. Environmental Protection Agency Headquarters (EPA,HQ), 401 M Street, SW, Washington, DC, 20460. Hand deliveries of comments, including courier, postal and non-postal express deliveries, should be made to the Arlington, VA address below.

Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also identify the docket number F–1999–CKDP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I Building, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The Proposed Rule is also available electronically. See the **SUPPLEMENTARY INFORMATION** section below for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of today's action, contact Bill Schoenborn, U.S. Environmental Protection Agency (5306W), 401 M Street, SW, Washington, DC 20460, at (703) 308–8483, or e-mail: *schoenborn.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

Customer Service

In developing the Proposed Rule, we tried to address the concerns of all our stakeholders. Your comments will help us improve this regulatory action. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this regulatory action may affect you, or other relevant information. We welcome your views on all aspects of this action, but we request comments in particular on the items discussed in the Proposed Rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the report.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

Copies of the full proposal, titled *Standards for the Management of Cement Kiln Dust; Proposed Rule* (EPA publication number EPA 530–Z–99–007), are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: http://www.epa.gov/osw/special.htm. Printed copies of the proposal and related documents, can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

Background

Cement kiln dust (CKD) is one of six "special wastes" (also known as *Bevill wastes*) that were temporarily exempt from hazardous waste regulation under Resource Conservation Recovery Act, until information could be gathered and assessed and the most appropriate regulatory approach could be determined. In 1993, EPA issued a detailed and comprehensive study of CKD in a Report to Congress that explored a broad spectrum of issues related to the adverse effects on human health and the environment from the disposal of CKD. Following extensive evaluation and public comment, on January 31, 1995, EPA concluded that additional control of CKD is warranted to protect human health, and to prevent environmental damage associated with current disposal practices, including off-site uses, for this waste (see 60 FR 7366, February 7, 1995). The Agency issued a proposed rule titled *Standards for the Management of Cement Kiln Dust; Proposed Rule* on August 20, 1999. In the Proposed Rule, EPA established a 90-day public comment period, which is scheduled to close on November 18, 1999. Subsequently, the Agency received requests from stakeholders to extend the comment period another 90 days. EPA supports the requests for an extension, and the comment period will now extend until February 17, 2000.

Dated: September 29, 1999.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 99–28214 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 72

RIN 0920–AA02

Packaging and Handling of Infectious Substances and Select Agents

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Centers for Disease Control and Prevention proposes to amend the regulations concerning the interstate shipment of infectious substances in order to clarify and expand the existing requirements for proper packaging and handling of these agents. One purpose of the proposed rule is to ensure that all biological materials that are known or suspected of containing an infectious substance are packaged for interstate shipment to minimize the potential for leakage of contents that could contaminate the environment or come into direct physical contact with persons handling such packages during transit. A second purpose is to insure receipt of certain infectious substances. This new regulation will harmonize CDC regulations with other Federal agencies' regulations and with international regulations.

It also updates the requirements for facilities transferring or receiving select agents, incorporating by reference the 4th edition of the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories.

DATE: Written comments must be received on or before December 27, 1999. Written comments on the proposed information collection requirements should also be submitted on or before December 27, 1999.

ADDRESSES: Mail written comments to the following address: Nashandra Hayes, Office of Health and Safety, Centers for Disease Control and Prevention, 1600 Clifton Road, Mail Stop—FO5, Atlanta, Georgia 30333.

Mail written comments on the proposed information collection requirements to: Wendy Taylor, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, rm. 10235, Washington, DC 20503, Att.: Desk Officer for CDC.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan Y. Richmond or Dr. Richard Knudsen, Office of Health and Safety, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mail Stop F05, Atlanta, Georgia 30333; telephone (404) 639–2453 or 639–3235, respectively.

SUPPLEMENTARY INFORMATION:

Revised Proposed Notice of Rulemaking

Replaces NPRM at 55 FR 7678, March 2, 1990.

I. Background

Under 42 U.S.C. 264, the Department of Health and Human Services is authorized to promulgate regulations to prevent the introduction, transmission and spread of communicable diseases from foreign countries and between the states. Authority was given to CDC in 1971 to regulate the interstate shipment of infectious substances. The current regulations are at 42 CFR part 72. The regulations provide requirements for minimum packaging and labeling for biological products and diagnostic specimens, and include a list of infectious agents for which special tracking is required. These regulations were last updated in 1980.

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on March 2, 1990 (55 FR 7678), to update the existing packaging requirements for infectious substances. Impetus for that NPRM came from postal workers and members of Congress who expressed concerns about the potential risk of exposure to infectious agents for people who handle improperly packaged or damaged packages of biomedical material during transit. Persons shipping these materials also stated that some definitions in the 1980 regulation were unclear. There had also been changes in the list of infectious agents that required notification of receipt.

Comments on the 1990 NPRM focused on two major issues. Numerous parties, including United States Postal Service workers, submitted comments regarding the transport of clinical specimens for diagnostic studies. Several parties encouraged CDC to harmonize the proposed regulation with the international shipping regulations.

Several government agencies and industry groups, in addition to CDC, regulate the packaging, labeling and shipment of infectious materials within the United States and internationally.

- The Department of Transportation (DOT) Hazardous Materials regulations, at 49 CFR parts 171–180, regulate the interstate transportation by surface or air of infectious substances, medical waste, chemical and radioactive materials. That regulation does not apply to the transport of clinical or diagnostic specimens, unless specifically known to contain an infectious substance (49 CFR 173.134).
- The United States Postal Service (USPS) regulates the shipment, by U.S. mail, of etiologic agents, infectious substances, clinical specimens, biological products, and sharps (e.g., contaminated needles and other sharp medical materials) and unsterilized containers (39 CFR and Domestic Mail Manual C023, Etiologic Agent Preparations, Clinical Specimens, and Biological Products; and International Mail Manual 135 Mailable Dangerous Goods).
- The Department of Labor, Occupational Safety and Health Administration (OSHA), at 29 CFR 1910.1030, Occupational Exposure to Bloodborne Pathogens, regulates the worker safety aspects of the handling, packaging and transport of human blood and body fluids, unfixed tissues, organs and cell cultures, and other fluids from humans and animals infected or possibly infected with bloodborne pathogens.
- The Department of Commerce (DOC) maintains a list of controlled items, including certain microorganisms that cannot be exported from the U.S. (15 CFR parts 768–799). The DOC recommends that shippers follow the CDC regulation for packaging when a shipment is allowed to a foreign country.
- The United Nations Committee of Experts on the Transport of Dangerous Goods makes recommendations on the international transport of infectious substances and clinical specimens. These recommendations are included in the International Civil Aeronautics Organization (ICAO) technical instructions, which have been adopted by the International Air Transport Association (IATA).

—ICAO publishes Technical Instructions for the Safe Transport of Dangerous Goods by Air, based on the United Nations (UN) recommendations for the domestic and international transport of infectious substances and clinical (diagnostic) specimens.

—IATA publishes the Dangerous Goods Regulations (DGR), which further describe for IATA member airlines, the national and international recommendations for air transport of infectious substances and clinical (diagnostic) specimens. The IATA DGR are followed by the domestic and international member airlines.

CDC's regulation, currently at 42 CFR part 72, provides packaging and labeling requirements for shipments of infectious materials. There are several reasons why CDC regulates this area in addition to the other agencies listed above. The focus of the CDC regulation is on protection of the public health by minimizing the potential for (1) Direct physical contact with package contents by persons handling such packages during transit, (2) Contamination of the environment, and (3) The spread of disease into the community. The CDC regulations serve by filling the gaps where there is no governance, by complementing the requirements of other agencies where there is overlapping authority, and by providing CDC as a central reporting authority assures availability of CDC's infectious disease expertise to assist in the response when packages are damaged.

Although there had been some review of the requirements of other agencies when developing the 1990 NPRM, there had not been any comprehensive attempt to harmonize the various requirements. When comments to the 1990 NPRM were reviewed, it became clear that there was confusion among shippers and handlers as to how all the various requirements of other agencies related to the CDC regulations. Because of substantive differences in the requirements and use of different terminology, there was a clear need to harmonize the various requirements.

In response to the comments on the 1990 NPRM, and as part of the regulatory reform/reinventing government initiative, CDC has collaborated with the other agencies and groups to prepare revised proposed CDC regulations that are in harmony with the other requirements, thereby reducing the burden on shippers while still maintaining, or even improving, packaging standards to protect the public health. In some instances, one or more of the other agencies/groups will also be revising their requirements as part of our joint effort to achieve complementary regulations. We invite specific comment on any requirements contained in the proposed CDC regulations which are thought to be inconsistent or unclear in relation to the requirements of any other regulatory authority.

CDC also serves as a Center for Applied Biosafety and Training for the World Health Organization (WHO) and for the UN. In conjunction with the National Institutes of Health, CDC has participated in developing revised international guidelines for the shipment of infectious materials and diagnostic specimens. This NPRM also reflects the recommendations of the WHO biosafety advisory group, as published in 1997, in Guidelines for the Safe Transport of Infectious Substances and Diagnostic Specimens.

As a result of this extensive collaboration, significant changes have been made to the 1990 NPRM, and a new NPRM is being published to provide the opportunity for laboratories and other shippers of infectious materials, persons who transport or handle packages, public health officials and other affected parties to comment on these proposed regulations to ensure that the final regulations are both complementary to other packaging and shipping requirements and protective of the public health.

CDC believes these regulations will not be an additional burden to shippers because shippers interested in ensuring the integrity of their packages are already utilizing comparable packaging. These regulations will help to ensure that all shippers are aware of and utilize appropriate packaging when shipping infectious substances, thereby protecting the public health.

Comparison of CDC's Proposed Packaging and Labeling Requirements With Other Agencies' and Groups' Packaging and Labeling Requirements

This NPRM proposes packaging and labeling requirements for: (1) Clinical specimens because they may contain infectious agents, and (2) materials known or suspected of containing infectious substances or toxins.

Table 1 shows which types of infectious materials are covered by each regulating authority and the scope of that coverage. As noted in the table, no single agency covers all aspects regarding the shipment of infectious substances.

TABLE 1.—INFECTIOUS SUBSTANCES: COMPARISON OF THE CDC NPRM[1] WITH OSHA,[2] DOT,[3] USPS,[4] AND IATA[5] PACKAGING AND LABELING REQUIREMENTS

Requirements	CDC NPRM[1]	Regulations			
		OSHA[2]	DOT[3]	USPS[4]	IATA[5]
Infectious materials:					
Biological products	+	+	−[6]	+	+
Clinical (diagnostic) specimens	+	+	−[6]	+	+
Cultures and reference stocks	+	+	+	+	+
Packaging materials:					
Watertight primary receptacle	+	+	+	+	+
Absorbent material	+	na	+	+	+
Watertight secondary packaging	+	na	+	+	+
List of contents	+	na	+	−[7]	+
Outer packaging	+	na	+	+	+
Packaging performance standards	+	na	+	+	+
Packaging labels:					
Infectious substance/biohazard symbol label	+	+	+	+	+
Shipping label,[8] outer packaging	+	na	−[9]	+	+
Shipping label, secondary packaging	+	na	na	+	na
Tracking special infectious substances	+	na	na	na	na
Terminology	+	+	+	+	+
Shipping modes covered	All	All	All	Mail only	Air only

Legend: + = same or very similar to the CDC NPRM; − = significantly different from the CDC NPRM; na = not addressed in regulation.

[1] CDC: Centers for Disease Control and Prevention, 42 CFR Part 72 as proposed in this NPRM.

[2] OSHA: Occupational Safety and Health Administration, 29 CFR 1910.1030.

[3] DOT: Department of Transportation, 49 CFR Parts 171–180.

[4] USPS: United States Postal Service, Domestic Mail Manual CO23.

[5] IATA: International Air Transport Association, Dangerous Goods Regulations.

[6] Only those biological products and clinical specimens known to contain infectious substances are covered under 49 CFR 173.134.

[7] USPS requires a list of contents (manifest) for all sharps mailing containers, but only requires a list of contents for other items sent via air transportation

[8] Shipping label: Names, addresses, contact names and phone numbers of person shipping the package and intended recipient (addressee).

[9] DOT specifies that the shipper include an emergency response telephone number on the shipping documents (49 CFR 172.604).

II. Proposed Rule

This proposed rule would amend the existing regulations at 42 CFR part 72 concerning the interstate shipment of infectious substances to clarify and expand the existing requirements for proper packaging and handling of these agents. The purpose of this regulation is to ensure that all biological materials that contain, or may contain, an infectious substance are packaged for interstate shipment in a manner that minimizes the potential for leakage and possible contamination of the environment, or direct physical contact with the contents by persons handling such packages during transit. This rule will also require that infectious agents and toxins capable of causing serious infection, illness or death be labeled and tracked during shipment.

It also updates the requirements for facilities transferring or receiving select agents, incorporating by reference the 4th edition of the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories.

A. Definitions

Biological products—Biological product means a biological product that is subject to preparation and manufacture in accordance with the provisions of 9 CFR part 102 (Licensed Veterinary Biological Products), 9 CFR part 103 (Biological Products for Experimental Treatment of Animals), 9 CFR part 104 (Imported Biological Products), 21 CFR part 312 (Investigational New Drug Application), or 21 CFR parts 600–680 (Biologics) and that, in accordance with such provisions, may be shipped in interstate traffic. FDA-approved vaccines are exempt from this regulation.

Only biological products that are known or presumed to contain an infectious substance are subject to this regulation.

Clinical Specimens—A clinical specimen is any human or animal material including, but not limited to excreta, secreta, blood and its components, tissue and tissue fluids, that is collected for the purpose of diagnosis, research, or other purposes. Formalin-fixed specimens are excluded. Animal material clinical specimens are subject to the regulation only if known or suspected of containing human pathogens.

Under the concept of Universal Precautions all bodily fluids of human origin must be handled as if they are infectious in order to minimize the potential for exposure to bloodborne pathogens. Section 72.3 in this NPRM meets those requirements.

Some clinical specimens are known or presumed to contain viable infectious micro-organisms that could result in an infection if an exposure occurred during a transport mishap. These specimens must be packaged and labeled as infectious substances (see § 72.4(a)). If exposure could result in an extremely serious infection or illness in an exposed worker or the public, such specimens are considered special infectious substances and must be tracked during shipment.

Infectious substance—CDC has replaced the term "etiologic agent" with the DOT and international term "infectious substance". For purposes of this regulation, an infectious substance is any substance, clinical specimen or culture, isolate, or other derivative of a clinical specimen that contains, or is suspected of containing a viable infectious virus, prion, or a viable microorganism, such as a bacterium, rickettsia, parasite or fungus, that is known or reasonably believed to cause disease in humans. Toxins known to be pathogenic are to be packaged and shipped either as infectious substances or as special infectious substances (§ 72.5), as applicable.

Examples of infectious substances include:

1. All cultures containing or suspected of containing a microorganism that causes or may cause disease in humans;
2. All human or animal clinical specimens that are known or suspected of containing an infectious microorganism or toxin;
3. Environmental samples to the extent that they are suspected of containing human pathogens at a level that presents risk of infection.
4. Other specimens not included above and designated as infectious by a qualified person (e.g., physician, scientist, veterinarian, nurse).

To maintain consistency with DOT regulations, a qualifying sentence has been added to the definition of an infectious substance that states that a microbial toxin that causes disease in humans will be packaged and shipped as an infectious substance.

Packaging—A change in this NPRM is the adoption of DOT and IATA terminology to clarify that there is agreement among the various organizations involved in regulating this area. The terms "primary container", "secondary container", and "outer container" have been replaced with the DOT terms and definitions of "primary receptacle", "secondary packaging", and "outer packaging'.

Special infectious substance means any of the microbiological agents or toxins listed in § 72.5 or appendix A to part 72 (proposed to be recodified as appendix to subpart B). These special infectious substances include those agents listed in the CDC/NIH publication, Biosafety in Microbiological and Biomedical Laboratories, as biosafety level (BSL) 4 and most of the BSL3 agents. Special infectious substances present a potentially high risk of infection and/or death to persons exposed to them through either direct contact, aerosol or ingestion. Therefore, shipments of special infectious substances are tracked to assure their safe arrival.

B. Transport of Clinical Specimens

Clinical specimens are to be packaged in such a manner that they will remain intact under conditions that normally occur during transit. If the primary receptacle were to break or leak during transit, the specimen would be contained by the absorbent material and by the secondary packaging, so no material would leak to the outside surface of the outer packaging.

Packaging requirements for clinical specimens proposed in this NPRM are similar to those for infectious substances, except that the proposed performance standards are less rigorous. These packaging and labeling requirements meet the specifications established by OSHA and various international agencies.

C. Transport of Infectious Substances

Infectious substances are to be packaged in such a manner that they would withstand conditions which would normally occur during transit and would not leak even if the primary receptacle were to break. In addition, the proposed packaging requirements have been enhanced by adding a requirement that the packaging be capable of passing a drop test. The completed package must be capable of passing the tests specified in 49 CFR 178.609. The requirements established in this NPRM meet those of DOT, OSHA, various international agencies and are consistent with the 1999 IATA Dangerous Goods Regulations.

In keeping with DOT and the international guidelines and regulations, volume/weight limits have been changed to four liters or four kilograms in a single package (excluding the packaging and coolant weights). An itemized list of contents must be enclosed between the secondary packaging and outer packaging. The proposed rule also details provisions associated with substances shipped refrigerated or frozen (prefrozen packs, wet or dry ice), shipped in liquid nitrogen, or as lyophilized materials.

The proposed rule requires on the outer packaging a black and white label bearing the words "Infectious Substance", CDC's telephone number for reporting damaged packages, and the biohazard symbol. The proposed rule also would require that the name, address, and telephone number of both the shipper and recipient be affixed to the outer package.

D. Transport of Special Infectious Substances; Failure to Receive

This proposed rule would be unique in requiring that the most dangerous human pathogens be shipped as "special infectious substances". These agents include those identified for work at biosafety level 3 and 4 as specified in the Biosafety in Microbiological and Biomedical Laboratories publication.

Special infectious substances must be shipped by the carrier and a system that provides for tracking the shipment and notifying CDC if the packages are not received. Information gathered by CDC from such notifications will be useful in identifying problems and implementing corrective actions.

E. Select Agents

Some of the microorganisms listed as special infectious substances are also considered to be "select agents" and are regulated in 42 CFR 72.6 (Additional Requirements for Facilities Transferring or Receiving Select Infectious Agents) (proposed here to be renumbered as Section 72.11). The only changes in this proposed rule to § 72.6 are at § 72.6 (a)(5) (now § 72.11 (a)(5)), and § 72.6 (c)(1) (now § 72.11(c)(1)), which are revised to incorporate the 4th edition of the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories.

F. Variations

To promote innovation and allow for new technologies, the proposed rule would allow the Director, CDC, to approve variations from the requirements of this subpart if, upon written application, it is found that such variations provide protection at least equivalent to that provided by the requirements in this subpart, as finalized, and such findings are made a matter of official written record.

G. Penalties

Violations of the rule would be subject to criminal penalties as prescribed in 42 U.S.C. 271 and 18 U.S.C. 3559, 3571. Specifically, individuals in violation of the rule would be subject to a fine or imprisonment of not more than one year, or both.

III. Procurement of Labels

Shippers will be able to order a supply of the two shipping labels described in the regulations from private printers by furnishing them the exact specifications provided in the final rule, or by purchasing the labels from the Superintendent of Documents (U.S. Government Printing Office, Mail Stop: SSOP, Washington, D.C. 20402–9328).

IV. Analysis of Impacts

A. Review Under Executive Order 12866, Sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (P.L. 104–4), and by the Regulatory Flexibility Act (5 U.S.C 603–605)

The Department has examined the potential impact of this proposed rule as directed by Executive Order 12866, by sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4), and by the Regulatory Flexibility Act (5 U.S.C. 603–605).

Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives, and, when regulation is necessary, to select regulatory approaches that maximize net benefits. This proposed rule is designed to ensure that all biological materials that contain, or may contain, an infectious substance are packaged in a manner for interstate shipment that minimizes the potential for leakage and possible contamination of the environment or direct physical contact with the contents by persons handling such packages during transit. The proposed rule is designed to complement other shipping requirements developed by the Departments of Commerce, Agriculture, and Transportation, the USPS, OSHA, and the International Air Transport Association and, thereby, to reduce the burden on shippers while imposing minimal administrative costs, and to prevent possible serious, harmful effects to public safety and health. (The proposal has been reviewed by the Office of Management and Budget under the terms of the Executive Order.)

The Unfunded Mandates Reform Act of 1995, in sections 202 and 205, requires Federal agencies to prepare several analytic statements before proposing a rule that may result in expenditures of $100 million by State, local and tribal governments, or by the private sector in any one year. Because a final rule resulting from this proposal would not result in expenditures of this magnitude, such statements are not necessary.

The Regulatory Flexibility Act requires Federal agencies to prepare a regulatory flexibility analysis of the potential impact of the proposed rule on small entities and permits agency heads to certify that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. CDC does not know how many small entities will be impacted by this regulation, and does not know what the economic impact on those small entities would be. However, CDC believes that packaging requirements set forth in this rule would not be an additional burden on shippers because this is an amendment to existing PHS rules with which shippers must comply. In addition, it will harmonize these rules with other existing regulations that shippers must follow. CDC believes that this rule will lessen confusion regarding proper packaging and shipping of infectious materials and will bring HHS regulations into conformity with other regulations. CDC is requesting information/comments on the number of small entities that would be impacted by this NPRM, the economic burden on those small entities and why the Secretary should not certify that this rule will have no significant impact on small entities. CDC is also requesting comments/recommendations on other possible less burdensome approaches to ensuring that all infectious or potentially infectious materials are packaged and shipped in a way that minimizes risks to workers, the public and the environment.

These regulations will help to ensure that all shippers are aware of and utilize appropriate packaging when shipping infectious substances, thereby protecting the public health.

B. Review Under the Paperwork Reduction Act of 1995

The proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description and respondent description of the information collection are shown below with an estimate of the annual reporting burden. The estimate includes the time for reviewing instructions, gathering and maintaining the necessary data, and completing and reviewing the collection of information. With respect to the following collection of information, CDC invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of CDC's public health functions, including whether the information shall have practical utility; (b) the accuracy of CDC's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automatic collection techniques or other forms of information technology.

Title: Packaging and Handling of Infectious Substances and Select Agents.

Description: The CDC proposes to amend the regulations concerning the interstate shipment of infectious substances in order to clarify and expand requirements for proper packaging and handling of these agents. The proposed rule would ensure that all biological materials that may contain an infectious substance are packaged for interstate shipment in a manner that minimizes the potential for leakage and possible contamination of the environment or direct physical contact with the contents by persons handling such packages during transport. It also updates the requirements for facilities transferring or receiving select agents, incorporating by reference the 4th edition of the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories.

Anyone handling damaged or leaking packages of infectious substances during interstate shipment must isolate the package, notify the shipper and intended recipient immediately and notify CDC as soon as feasible (1–800–232–0124). When notifying CDC, the caller should provide a description of the condition of the package, the name, address and telephone number of the shipper, and any other pertinent information, so that information and assistance can be provided, as necessary, regarding appropriate decontamination and disposal procedures.

Persons who ship packages containing special infectious substances must notify the addressee of the date of shipment, and the addressee must confirm receipt by telephone or other electronic means. If the shipper does not receive such confirmation within 3 days of anticipated delivery, the shipper must then contact CDC within 24 hours to enable the agency to determine whether a public health response is necessary. Information gathered by CDC from such notifications will also be useful in identifying problems and implementing corrective actions.

Description of Respondents: Government agencies, universities, research institutions, laboratories, private companies and others that ship or receive infectious substances, and government or commercial carriers of infectious substances.

ESTIMATED ANNUAL REPORTING BURDEN

CFR section	Number of respondents	Frequency of reporting	Total annual responses	Hours per response	Total hours
72.4(b)	500	1x/yr	50	0.1	5
72.5(b)	200	10/yr	2,000	0.1	200
72.5(c)	200	10/yr	2,000	0.1	200
72.5(d)	20	1/yr	20	0.2	4
Total					409

Reporting or Disclosures: These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on past experiences of respondents reporting such information to CDC. There are no capital costs or operating and maintenance costs for the respondents associated with this information collection.

The agency has submitted a copy of this proposed rule to OMB for its review of this information collection. Interested persons are requested to submit written comments regarding this information collection, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Rm. 10235, Washington, DC 20503, Att.: Desk Officer for CDC.

List of subjects in 42 CFR Part 72

Biologics, packaging and containers, Transportation.

Dated: March 12, 1999.

Jeffrey Koplan,

Director, Centers for Disease Control and Prevention.

Dated: May 31, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, it is proposed to amend 42 CFR Chapter I, part 72, as follows:

PART 72—PACKAGING AND HANDLING OF INFECTIOUS SUBSTANCES AND SELECT AGENTS

1. The authority citation for Part 72 is revised to read as follows:

Authority: 42 U.S.C. 216, 264, 271; 31 U.S.C. 9701; 18 U.S.C. 3559, 3571; 42 U.S.C. 262 note.

2. The heading of part 72 is revised to read as set forth above.
3. Sections 72.1–72.5 are revised.
4. 72.6 is redesignated as § 72.11.
5. A new § 72.6 is added.
6. A heading for subpart A is added and sections §§ 72.1–72.6 are transferred to subpart A.
7. A heading for subpart B is added and redesignated section 72.11 is transferred to subpart B and amended by revising paragraphs (a)(5) and (c)(1).
8. Section 72.7 is redesignated as section 72.21.
9. A heading for subpart C is added and redesignated section 72.21 is transferred to subpart C.
10. Appendix A to Part 72 is transferred to subpart B and the heading is revised to read "Appendix to Subpart B".

The additions and revisions to part 72 read as follows:

Subpart A—Interstate Shipment of Biological Materials That Contain or May Contain Infectious Substances

§ 72.1 Purpose.

The purpose of this regulation is to ensure that all materials that contain or may contain an infectious substance are packaged for interstate shipment in a manner that minimizes the potential for leakage and possible contamination of the environment or direct physical contact with the contents by persons handling such packages during transit.

The rule also requires the tracking of shipments of special infectious substances and requires registration of certain select agents. The requirements of this subpart are in addition to and not in lieu of any other packaging or other requirements for the transportation of infectious substances in interstate traffic as prescribed by the US Department of Transportation, the US Postal Service and other agencies of the Federal Government.

§ 72.2 Definitions.

As used in this subpart:

Absorbent material means material that is capable of absorbing liquids. It may be either particulate or non-particulate, but if particulate, it shall be contained so it does not leak out of the package.

Biological product means a biological product that is subject to preparation and manufacture in accordance with the provisions of 9 CFR part 102 (Licensed Veterinary Biological Products), 9 CFR part 103 (Biological Products for Experimental Treatment of Animals), 9 CFR part 104 (Imported Biological Products), 21 CFR part 312 (Investigational New Drug Application), or 21 CFR parts 600–680 (Biologics) and that, in accordance with such provisions, may be shipped in interstate traffic. Only biological products that are known or presumed to contain an infectious substance are subject to this regulation. FDA-approved vaccines are exempt from this regulation.

Clinical specimen (diagnostic specimen) is any human or animal material including, but not limited to excreta, secreta, blood and its components, tissue and tissue fluids, that is collected for the purposes of diagnosis, research, or other purposes. Formalin-fixed specimens are exempt from this regulation. Animal material clinical specimens are subject to this regulation only if known or suspected of containing human pathogens. All human clinical specimens are covered.

Coolant material means material such as ice, dry ice, liquid nitrogen, and gel packs, that is included in the package to cool the contents.

Infectious substance (etiologic agent) and infectious material are considered synonymous. An infectious substance is defined as a substance containing or suspected of containing an infectious virus, prion, or a viable microorganism, such as a bacterium, rickettsia, parasite or fungus, that is known or reasonably believed to cause disease in humans. Toxins known to be pathogenic to humans are to be packaged and shipped as infectious substances or special infectious substances (§ 72.5). The term "infectious substance" excludes any medical waste that is regulated under other federal regulations. For purposes of this regulation, infectious substances include:

(1) All cultures containing or suspected of containing a microorganism that causes or may cause disease in humans;

(2) All human or animal clinical specimens that are known or suspected of containing an infectious microorganism or toxin;

(3) Environmental samples if they are suspected of containing human pathogens at a level that presents risk of infection.

(4) Other specimens not included above and designated as infectious by a qualified person (e.g., a physician, scientist, veterinarian, nurse).

Interstate traffic means the movement, including any portion entirely within a State or possession, from a point of origin in any State or possession or from outside the Untied States, to a point of destination in any other State or possession; or form any State or possession to another country; or between a point of origin and a point of destination in the same State or possession but through any other State, possession or contiguous foreign country.

Outer packaging means the container in which a primary receptacle and secondary package, together with any absorbent materials and cushioning, is shipped.

Primary receptacle means a tube, vial, bottle, ampule, or similar item that contains the material being shipped.

Secondary packaging means a container into which the primary receptacle is placed.

Special infectious substance means any of the microbiological agents or toxins listed in § 72.5 or appendix to subpart B of this part, including any human or animal specimens known or suspected of containing such a microbial agent, or any other microorganism that could cause serious infection and/or death in persons exposed to them through either direct contact, aerosol or ingestion. Additional changes to this list may be made through publication of a notice in the **Federal Register.**

§ 72.3 Transportation of clinical specimens; minimum packaging requirements.

(a) *General requirements.* No person may knowingly transport or cause to be transported in interstate traffic, directly or indirectly, any clinical specimen unless such material is packaged, labeled, and shipped in accordance with the requirements of this section. However, any clinical specimens known or suspected to contain an infectious substance shall be labeled and packaged as described under § 72.4.

(1) Clinical specimens shall be packaged to withstand conditions incident to ordinary handling in transit, including shocks and pressure changes, so that if leakage of the primary receptacle(s) occurs during transit, the contents will be contained within the outer packaging. Required packaging and components are as follows:

(i) A watertight primary receptacle.

(ii) Watertight secondary packaging.

(iii) Absorbent material must be placed between the primary receptacle(s) and the secondary packaging. If multiple primary receptacles are placed in a secondary packaging, they msut be placed so as to ensure that contact between them is prevented. The absorbent material must be sufficient to absorb the entire contents of all primary receptacles.

(iv) Outer packaging must be of adequate strength for its capacity, mass and intended use. Any package with liquid contents shall have sturdy outer packaging constructed of corrugated cardboard, fiberboard, wood, metal, or rigid plastic. Styrofoam, plastic bags and paper envelopes are unacceptable outer packaging for such packages.

(2) The size of the outer package must be at least 100 mm (3.9 inches) in the smallest overall external dimension.

(3) The primary receptacle and the secondary packaging must be capable of withstanding, without leakage, an internal pressure which produces a pressure differential of not less than 95kPA (0.95 bar, $13.8 lb/in^2$) in the temperature range of −40° C to +55° C (−40° F to 131° F).

(4) An itemized list of contents must be enclosed between the secondary packaging and the outer packaging.

(5) For substances shipped at ambient temperatures or higher, means of ensuring a leak-proof seal of the primary receptacle, such as a heat seal, skirted stopper or metal crimp seal must be provided. Screw caps must be reinforced to ensure they do not leak. Evacuated specimen collection tubes such as Vacutainer® (Becton-Dickinson, Franklin Lakes, NJ) tubes do not require additional sealing.

(6) For substances shipped refrigerated or frozen (wet ice, prefrozen packs, dry ice), ice or dry ice must be placed outside the secondary packaging(s). Interior support must be provided to secure the secondary packaging(s) in the original position as the ice or dry ice melts or sublimates, respectively. If ice is used, the outer

packaging must be leak-proof. If dry ice is used, the outer packaging must permit the release of carbon dioxide gas. The primary receptacle must maintain its containment integrity at the temperature of the refrigerant as well as the temperatures and pressure of air transport to which the receptacle could be subjected if refrigeration were to be lost.

(7) *For substances shipped in liquid nitrogen,* a watertight material, capable of withstanding cryogenic temperatures must be used as the primary receptacles. Secondary packaging must also withstand very low temperatures. All requirements for shipment of liquid nitrogen must also be observed. The primary receptacle must maintain its containment integrity at the temperature of the refrigerant as well as at the temperatures and pressure of air transport to which the receptacle could be subjected if refrigeration were to be lost.

(8) *For lyophilized substances,* primary receptacles capable of containing lyophilized substances must be used (including, but not limited to, flame-sealed glass ampules or rubber-stoppered glass vials with metal seals).

(9) The completed package must be capable of withstanding at least a 1.2 meter drop on a hard unyielding surface without release of its contents.

(10)(i) Biohazard Labeling is required for the primary receptacle and outer packaging as described in 29 CFR 1910.1030, Occupational Exposure to Bloodborne Pathogens.

(ii) The outer packaging shall bear a label as illustrated and described below:

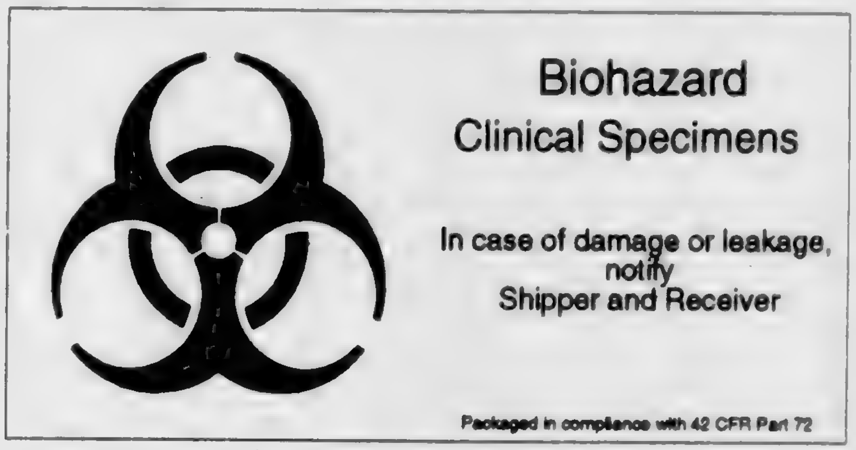
Biohazard
Clinical Specimens
In case of damage or leakage, notify
Shipper and Receiver
Packaged in compliance with 42 CFR Part 72

(A) The color of material on which the label is printed shall be bright orange; the printing shall be black. The color of the biohazard symbol shall be black.

(B) The label shall be a rectangle measuring 51 mm (2 inches) high by 102.5 mm (4 inches) long.

(C) The biohazard symbol, measuring 40 mm (1.56 inches) in diameter, shall be centered on a square measuring 51 mm (2 inches) on each side.

(D) Size of the letters (Helvetica) on the label shall be as follows:

Biohazard—16 pt.
Clinical specimens—14 pt.
Packaged in compliance with 42 CFR part 72—6 pt.
In case of damage or leakage, notify—10 pt.
Shipper and Receiver—10 pt.

(iii) The outer packaging shall also bear a shipping label with the names, addresses, and contact names and telephone numbers of the individual/institution sending the package and the intended recipient (addressee).

(b) *Leaking packages.* The carrier, the receiver, or anyone handling a package described in paragraph (a) of this section that is leaking, shall upon discovery of leakage, isolate the package, and immediately, or as soon as feasible, notify the shipper and intended recipient to receive instructions on clean-up and disposition of the package.

§ 72.4 Transportation of infectious substances; minimum packaging requirements.

(a) *General requirements.* No person may knowingly transport or cause to be transported in interstate traffic, directly or indirectly, any infectious substance, including clinical specimens or biological products that are known or presumed to contain infectious substances, unless such material is packaged, labeled, and shipped in accordance with the requirements of this section.

(1) Infectious substances shall be packaged to meet the requirements of § 72.3(a) (1)–(8).

(2) The maximum amount of infectious substances that may be placed in a single outer shipping package shall not exceed four liters or four kilograms, excluding the packaging and coolant weights.

(3) In addition, each complete package must be capable of passing the tests specified in 49 CFR 178.609.

(4)(i) Biohazard Labeling is required for the primary receptacle and outer package as described in 29 CFR 1910.1030, Occupational Exposure to Bloodborne Pathogens.

(ii) The outer packaging shall bear a label as illustrated and described below:

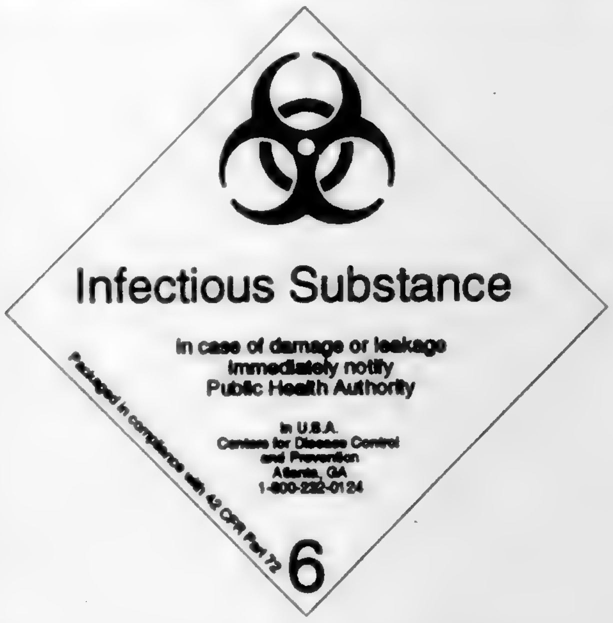

(A) The color of material on which the label is printed shall be white and the printing shall be in black; the biohazard symbol shall be in black.

(B) The label shall be a diamond-on-point measuring, at a minimum, 51 mm (4 inches) on each side.

(C) The black biohazard symbol, measuring 21 mm (.81 inches) in diameter, shall be centered on a square measuring 51 mm (2 inches) on each side.

(D) Size of the letters (Helvetica) on the label shall be as follows:

Infectious Substance—16 pt.
Packaged in compliance with 42 CFR Part 72—5 pt.
In case of damage or leakage—7 pt.
Immediately notify—7 pt.
Public Health Authority—7 pt.
In U.S.A.—5 pt
Centers for Disease Control and Prevention—5 pt.
Atlanta, GA—5 pt
1–800–232–0124—5 pt.
6—24 pt.

(E) The number 6 (mandated by the DOT) shall be centered at the bottom of the label.

(iii) The outer packaging and the secondary packaging shall also bear labels with the names, addresses, and contact names and telephone numbers of the individual/institution sending the package and of the intended recipient (addressee).

(b) *Damaged or leaking packages.* The carrier, the receiver, or anyone handling a package described in paragraph (a) of this section that is damaged or leaking, shall upon discovery of damage or leakage, isolate the package and immediately, or as soon as feasible, in order to receive instructions on appropriate decontamination and disposal, notify the shipper, receiver, and the Centers for Disease Control and Prevention by telephone at 1–800–232–0124. The caller shall provide a description of the condition of the package; the name, address and telephone number of the shipper; and other pertinent information.

(This information collection has been approved by OMB (0920–0199)).

§ 72.5 Packaging and method of shipment of special infectious substances; failure to receive.

(a) *List of special infectious substances.* (1) The following microorganisms and toxins are considered special infectious substances because they present a potentially high risk of infection and/or death to persons exposed to them through either direct contact, aerosol or ingestion. Shipments of special infectious substances must be tracked to assure their safe arrival.

Bacterial Agents

Bacillus anthracis
Bartonella bacilliformis
Brucella, all species
Burkholderia (Pseudomonas) mallei
Burkholderia (Pseudomonas) pseudomallei
Clostridium botulinum
Francisella tularensis
Mycobacterium tuberculosis (drug-resistant strains)
Yersinia pestis

Viral and Rickettsial Agents

Arboviruses assigned to Biosafety level 3 or 4 in the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories, which may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Other Viral Agents

Crimean-Congo hemorrhagic fever virus
Eastern Equine Encephalitis virus
Ebola virus
Hantaan virus (Korean hemorrhagic fever virus)
Hantavirus (all viruses of genus)
Herpesvirus simiae (B virus)
Lassa fever virus
Lymphocytic choriomeningitis virus
Marburg virus
Pox viruses pathogenic for humans (e.g., smallpox, monkeypox)
South American Hemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito)
Tick-borne Encephalitis complex viruses
Venezuelan Equine Encephalitis virus
Yellow fever virus

Rickettsial Agents:

Rickettsia rickettsiae
Rickettsia prowazekii
Coxiella burnetti

Fungal Agents

Coccidioides immitis
Histoplasma capsulatum
Histoplasma duboisii

Toxins

Toxins listed in appendix to Subpart B of this part are to be shipped as special infectious substances. Other microbial toxins known to be pathogenic shall be shipped as infectious substances, as provided under § 72.4.

(2) This list may be supplemented through publication of a notice in the **Federal Register**. Call 1–888–232–3299 (the FAX Information system in CDC's Office of Health and Safety) for a copy of the current list, or check the CDC website at http://www.cdc.gov/od/ohs.

(b) *Packaging and method of shipment.* All materials that contain or are reasonably believed to contain a special infectious substance shall be packaged and labeled for interstate shipment according to the requirements of § 72.4. In addition, the shipper shall: Use a shipping system that provides for tracking during transport (e.g., registered mail or those of certain private carriers); Provide 24 hours-per-day telephonic response to emergency calls from carriers in case of a spill or incident involving a package containing a special infectious agent; and, Notify the addressee by telephone or other electronic means of the date of shipment on the date of shipment, or provide a written schedule of shipment in advance, and request confirmation of receipt of each shipment. Records of such notifications shall be retained by the shipper until notified of receipt.

(c) *Confirmation of receipt.* Upon receipt, the addressee shall provide confirmation to the shipper by telephone or other electronic means.

(d) *Failure to receive.* When confirmation of receipt of material designated in paragraph (a) of this section is not received by the shipper within 3 days following anticipated delivery of the package, the shipper shall notify the carrier which shall immediately seek to ascertain the disposition of the package. In addition, the shipper shall notify the Centers for Disease Control and Prevention within 24 hours by telephone at 1–800–232–0214 to enable the agency to determine whether a public health response is necessary.

§ 72.6 Requirements; variations.

The Director, Centers for Disease Control and Prevention, may approve variations from the requirements of this subpart if, upon written application, review and evaluation, it is found that such variations provide protection at least equivalent to that provided by compliance with the requirements specified in this subpart, and such findings are made a matter of official written record.

§ 72.7 [Redesignated as § 72.21]

Subpart B—Handling of Select Agents

§ 72.11 Additional requirements for facilities transferring or receiving select agents.

(a) * * *

(5) The requirements for BSL–2, 3, and 4 operations pertaining to this section are contained in the CDC/NIH publication, "Biosafety in Microbiological and Biomedical Laboratories," Fourth Edition, May 1999 which is hereby incorporated by reference. The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR part 51 the incorporation by reference of the above publication. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia, or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC. The manual is also available on the CDC web site at www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm.

* * * * *

(c) * * *. (1) The Secretary may authorize a state agency or private entity to register facilities under paragraph (a) of this section, if the Secretary determines that the registering entity's criteria for determining the biosafety standards for facilities handling select agents are consistent with the requirements contained in the CDC/NIH publication "Biosafety in Microbiological and Biomedical Laboratories," Fourth Edition.

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Subpart C—Penalties

§ 72.21 [Redesignated from § 72.7]

Appendix A to Part 72 [Transferred to Subpart B and heading revised]

Appendix to Subpart B

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[FR Doc. 99–27640 Filed 10–27–99; 8:45 am]

BILLING CODE 4163–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1825 and 1852

Standard Clause for Export Controlled Technology

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This is a proposed rule amending the NASA FAR Supplement (NFS) to add a contract clause the purpose of which is to assure contractors (and offerors) understand that they are responsible for controlling export compliance in accordance with law and regulation, and that they should not rely on NASA to obtain necessary licenses in execution of the contracted work. This clause complies with performance based contracting principles. It notifies the contractor of its responsibilities under the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) during contract performance. Additional, tailored clauses may be required when specific exemptions or licenses are applicable, as, for example, with the International Space Station. These clauses would be developed on a case-by-case basis.

DATES: Comments should be submitted on or before December 27, 1999.

ADDRESSES: Interested parties should submit written comments to Patrick Flynn, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to patrick.flynn@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0460.

SUPPLEMENTARY INFORMATION:

A. Background

The potential for disclosure of military or dual-use technology to foreign powers is a serious concern throughout the Government. The acquisition community should take steps to control exports of sensitive data, and hardware, and services at all levels of contract management, including subcontracts and technical interchanges. In response to field center requests, NASA proposes an "Export Licenses" clause and guidance for the NFS. The clause notifies contractors they are responsible for obtaining all required licenses when exporting.

B. Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1825 and, 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part Parts 1825 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1825 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1825—FOREIGN ACQUISITION

2. Sections 1825.970, 1825.970–1, and 1825.970–2 are added to read as follows:

1825.970 Export control.

1825.970–1 Background.

(a) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or "foreign person", as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a "foreign person". (See 22 CFR 120.165 and 15 CFR 734.2(b)(2)(ii).)

(b) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225–70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

1825.970–2 Contract clause.

Insert the clause at 1852.225–70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.225–70 is added to read as follows:

1852.225–70 Export Licenses.

As prescribed in 1825.970–2, insert the following clause:

Export Licenses

(Date)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120–130, and the Export Administration Regulations (EAR), 15 CFR Parts 730–799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

Alternate I

(Date)

As prescribed in 1825.970–2, add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[FR Doc. 99–27961 Filed 10–27–99; 8:45 am]

BILLING CODE 7510–01–P

Notices

Federal Register
Vol. 64, No. 208
Thursday, October 28, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–077, A–427–078, A–428–082, and C–408–046]

Continuation of Antidumping Findings on Sugar from Belgium, France and Germany and Countervailing Duty Order on Sugar from the European Community

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Continuation of antidumping findings on sugar from Belgium, France and Germany and countervailing duty order on sugar from the European Community

SUMMARY: On February 2, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping findings on sugar from Belgium, France and Germany would be likely to lead to continuation or recurrence of dumping (64 FR 5638 (February 2, 1999)). On September 19, 1999, the Department determined that revocation of the countervailing duty order on sugar from the European Community would be likely to lead to continuation or recurrence of a countervailable subsidy (64 FR 49464 (September 19, 1999)). On October 6, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping findings on sugar from Belgium, France, and Germany and revocation of the countervailing duty order on sugar from the European Community would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 54335 (October 6, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping findings on sugar from Belgium, France, and Germany, and continuation of the countervailing duty order on sugar from the European Union.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 28, 1999.

Background

On October 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 52683 and 63 FR 52759, respectively) of the antidumping duty findings on sugar from Belgium, France, and Germany, and of the countervailing duty order on sugar from the European Union pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping findings would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the findings to be revoked (*see Final Results of Expedited Sunset Reviews: Sugar from France, Belgium and Germany*, 64 FR 5638 (February 4, 1999)). Further, the Department found that revocation of the countervailing duty order on sugar from the European Community would be likely to lead to continuation or recurrence of a countervailable subsidy and notified the Commission of the net countervailable subsidy likely to prevail were the order to be revoked and the nature of the subsidy (*see Final Results of Full Sunset Review: Sugar from the European Community*, 64 FR 49464 (September 13, 1999)).

On October 6, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping findings on sugar from Belgium, France, and Germany, and revocation of the countervailing duty order on sugar from the European Union would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sugar From the European Union; Sugar From Belgium, France, and Germany; and Sugar and Syrups From Canada*, 64 FR 54355 (October 6, 1999), and USITC Pub. 3238, Inv. Nos. 104–TAA–7, AA1921–198–200, and 731–TA–3 (September 1999)).

Scope

The merchandise subject to these antidumping findings from France, Belgium, and Germany is sugar, both raw and refined, with the exception of specialty sugars (*e.g.*, cones, hats, pearls, loaves). The order on sugar from France excludes homeopathic sugar pellets meeting the following criteria: (1) Composed of 85 percent sucrose and 15 percent lactose; (2) having a polished, matte appearance, and more uniformly porous than domestic sugar cubes; (3) produced in two sizes of 2 mm and 3.8 mm in diameter.[1]

The merchandise under review is currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 1701.1100, 1701.1101, 1701.1102, 1701.1103, 1701.1105, 1701.1110, 1701.1120, 1701.1150, 1701.1200, 1701.1201, 1701.1202, 1701.1205, 1701.1210, 1701.1250, 1701.9105, 1701.9110, 1701.9120, 1701.9121, 1701.9122, 1701.9130, 1701.9900, 1701.9901, 1701.9902, 1701.9905, 1701.9910, 1701.9950, 1702.9005, 1702.9010, 1702.9020, 1702.9030, 1702.9031, 1702.9032, 2106.9011, 2106.9012, 2106.9042, 2106.9044, and 2106.9046. The HTSUS item numbers are provided for convenience and customs purposes only. They are not determinative of the products subject to the orders. The written description remains dispositive.

The merchandise subject to the countervailing duty order from the European Community is sugar, with the exception of specialty sugars (*e.g.*, cones, hats, pearls, loaves), from the European Community. Blends of sugar and dextrose, a corn-derived sweetener, containing at least 65 percent sugar are within the scope of this order. The merchandise subject to this order is currently classifiable under item numbers 1701.11.00, 1701.12.00,

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[1] *See Sugar from France: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Finding*, 61 FR 40609 (August 5, 1996).

1701.91.20, and 1701.99.00 of the HTSUS (*see Sugar from the European Community; Final Results of Countervailing Duty Administrative Review*, 55 FR 35703 (August 31, 1990)). HTSUS subheadings are provided for convenience and customs purposes only. They are not determinative of the products subject to the order. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping findings and this countervailing duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping findings on sugar from Belgium, France, and Germany, and of the countervailing duty order on sugar from the European Community. The Department will instruct the U.S. Customs Service to continue to collect antidumping and countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these antidumping findings and countervailing duty order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) the Department intends to initiate the next five-year reviews of these findings and order not later than September 2004.

Dated: October 22, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28241 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of reviews, heavy forged hand tools from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of the administrative review of the antidumping duty orders on Heavy Forged Hand Tools from the People's Republic of China. These reviews cover five manufacturers/exporters of the subject merchandise to the United States for the period February 1, 1998 to January 31, 1999.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or James Terpstra, AD/CVD Enforcement, Office 4, Group II, Import Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–3601, or (202)–482–3965, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the final results of these reviews within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the preliminary results until February 28, 2000. *See* Memorandum from Bernard T. Carreau to Robert LaRussa, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building (October 21, 1999).

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A).

Dated: October 22, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–28239 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom: Notice of Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for final results of antidumping duty administrative review of industrial nitrocellulose from the United Kingdom.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the antidumping duty administrative review of the antidumping order on industrial nitrocellulose from the United Kingdom. This review covers one producer/exporter of industrial nitrocellulose for the period July 1, 1997, through June 30, 1998.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–6320 or (202) 482–3814, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351(1998).

Extension of Time Limit for Final Results

The Department published the preliminary results of this administrative review on August 6, 1999 (64 FR 42908). Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. Due to the complexity of the issues in this case, the Department determines that it is not practicable to complete the preliminary results of this review within the statutory time limit. *See* memorandum from Bernard T. Carreau to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters. Therefore, the Department is extending the time limit for the final results of the aforementioned review to February 2, 2000.

This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 22, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–28238 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–085]

Revocation of Antidumping Duty Order: Sugar and Syrups From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order: Sugar and syrup from Canada.

SUMMARY: Pursuant to section 751(c) of the Tariff Act from 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the antidumping duty order on sugar and syrups from Canada is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 54355 (October 6, 1999)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department of Commerce ("the Department") is publishing notice of the revocation of the antidumping duty order on sugar and syrups from Canada. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: January 1, 2000.

Background

On October 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 52683 and 63 FR 52759, respectively) of the antidumping duty order on sugar and syrups from Canada pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Full Sunset Review: Sugar and Syrups from Canada*, 64 FR 48326 (September 3, 1999)).

On October 6, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on sugar and syrups would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sugar From the European Union; Sugar From Belgium, France, and Germany; and Sugar and Syrups From Canada*, 64 FR 54355 (October 6, 1999), and USITC Pub. 3238, Inv. Nos. 104–TAA–7, AA1921–198–200, and 731–TA–3 (September 1999)).

Scope

The merchandise subject to this antidumping duty order is sugar and syrups from Canada produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar.[1] The subject merchandise is currently classified under Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 1701.99.0500, 1701.99.1000, 1701.99.5000, 1702.90.1000, and 1702.90.2000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of this antidumping duty order is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, will revoke the antidumping duty order on sugar and syrups from Canada. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: October 22, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28240 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–P

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[1] This order excludes icing sugar decorations as determined in the U.S. Customs Classification of January 31, 1983 (CLA–2 CO:R:CV:G).

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Health, et al. Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC.

Docket Number: 99–020. Applicant: National Institutes of Health, Bethesda, MD 20892. Instrument: Electron Microscope, Model JEM-1010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 64 FR 50058, September 15, 1999. Order Date: July 13, 1999.

Docket Number: 99–021. Applicant: University of Kentucky, Lexington, KY 40506–0046. Instrument: Electron Microscope, Model JEM–2010F. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 64 FR 50058, September 15, 1999. Order Date: June 30, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–28242 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092099A]

Atlantic Highly Migratory Species Fisheries; Atlantic Yellowfin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: As required under the Fisheries Act of 1995, NMFS is publishing final statistics on the level of U.S. recreational and commercial landings of Atlantic yellowfin tuna (YFT) in metric tons (mt) since 1981. Preliminary statistics were published in March 1996, and NMFS received considerable public comment. NMFS is publishing these final statistics to inform the public of updated data on landings trends in the YFT recreational and commercial fisheries.

ADDRESSES: To request a copy of the scientific paper which forms the basis for these revised YFT statistics, contact Pasquale Scida at 978–281–9208.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of yellowfin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

NMFS is required under the Fisheries Act of 1995, Title III, Atlantic Tunas Convention Act, section 309(a) to publish **Federal Register** documents with preliminary and final/revised statistics on the commercial and recreational yellowfin tuna landings for the past 10 years. NMFS published preliminary data on YFT landings in a **Federal Register** document to inform the public of trends in YFT recreational and commercial landings (61 FR 10319, March 13, 1996). In order to meet the intent of the Fisheries Act of 1995, given the complexity of the issues involved with a complex data recovery of YFT landings, NMFS deemed it preferable to at least publish preliminary data within the 140-day deadline and requested public comment over a 2-month time period.

These preliminary data and data issues have been discussed at meetings of the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) in recent years. Comments received from both the general public and from the ICCAT Advisory Committee (IAC) resulted in extensive reexamination of the data by NMFS scientists to gather the best available data on commercial and recreational YFT landings for publication and subsequent revisions to the preliminary statistics. At the November 1998 IAC meeting, a copy of a draft report to be used as the basis for submitting revised estimates of YFT landings to ICCAT was circulated to the IAC. After further refining the information, NMFS provided a draft scientific paper detailing YFT data revisions to the IAC at its March 1999 meeting.

The source of the YFT data and revisions made to the historical database are described in a paper that has been submitted to the ICCAT Standing Committee on Research and Statistics (SCRS) at its 1999 meetings. As noted in the summary of this SCRS paper, a variety of commercial landings databases were examined for the purpose of evaluating the possible need for revising reports of U.S. landings of Atlantic bigeye, albacore, yellowfin, and skipjack tuna to ICCAT. This SCRS paper updates, with appropriate revision and additions, a previous review of U.S. commercial landings of Atlantic yellowfin as presented in an earlier SCRS paper. In addition, various sources of recreational landing tallies and estimates are examined and landings values are presented. To obtain copies of this SCRS paper, see **ADDRESSES**.

In presenting these revised data to the SCRS, the United States is formally revising historical landings statistics. These revised statistics have been submitted through the ICCAT reporting process, after incorporating the review comments received from both the IAC and the SCRS, and will be published in future reports of the SCRS. Because this review and revision of YFT statistics included extensive research of all sources of YFT data and a variety of estimation techniques, NMFS considers these historical data as the best data available at this time. NMFS, therefore, does not intend to consider further revisions to these data unless new, verifiable data become available.

NMFS is exploring and, in some cases, implementing new measures designed to improve the quality of YFT commercial and recreational landings data. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, adopted in April 1999, includes new permitting and reporting requirements for recreational vessels, including logbooks for Highly Migratory Species charter/headboats, if selected. Through efforts implemented under the Atlantic Coast Cooperative Statistics Program, NMFS is working with states and other fishery management authorities to ensure uniform, non-redundant, and consistent data collection systems. These and other efforts should contribute to improved quality of YFT data in coming years.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: October 22, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

TABLE: YELLOWFIN TUNA COMMERCIAL AND RECREATIONAL LANDINGS, 1981–1998, IN METRIC TONS ROUND WEIGHT

Year	Commercial Landings	Recreational Landings
1981	1886	1274
1982	819	912
1983	358	2196
1984	1775	405
1985	6342	3394
1986	5102	4836
1987	5710	3952
1988	9166	1899
1989	6530	1930
1990	5121	545
1991	5495	1418
1992	5982	957
1993	4386	1898
1994	3775	4522
1995	4395	4157
1996	3788	4498
1997	4105	3569
1998	2693	2927

[FR Doc. 99–28104 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Notice of Establishment of the Technology Advisory Committee

SUMMARY: The Commodity Futures Trading Commission has determined to establish the "Technology Advisory Committee" As required by Section 9(a)(2) of the Federal Advisory Committee Act 5 U.S.C. app. 2, § 9(a)(2) and 41 CFR 101–6.1007, the Commission has consulted with the Committee Management Secretariat of the General Services Administration. The Commission certifies that the creation of this advisory committee is necessary and is in the public interest in connection with the performance of duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as amended. This notice is published pursuant to Section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 9(a)(2) and 41 CFR 101–6.1015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fox, Legal Counsel to Commissioner James E. Newsome, at 202–418–5052, or Marcia K. Blase, Committee Management Officer, at 202–418–5138. Written comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Sophisticated communication technology has expanded access to markets and market users. The rise of electronic screen-based trading is changing the face of the financial services industry and along with it, the regulatory concerns of the Commission, of other regulators and of the United States Congress. As electronic trading platforms become more prevalent and in some markets, directly compete with or displace traditional open-outcry trading pits, it is imperative that the Commission keep informed of the ever evolving technological environment, the impact of technology on our markets, market professionals and other market participants, and to consider regulatory reform as appropriate.

The Technology Advisory Committee's charter directs the committee to assist the Commission in: (1) Reviewing emerging technologists utilized by financial services and commodity markets and their participants, (2) identifying technology providers for the financial services and commodity markets, (3) analyzing the impact of emerging technologies on financial services and commodity markets, as well as on market professionals and market users, particularly in the areas of system capacities and readiness, order flow practices, and clearing and payment activities, (4) reviewing the Commodity Exchange Act and the regulations promulgated thereunder to assess their applicability to electronic issues and to ensure the Commission's ability to exercise appropriate fraud and manipulation authority, and (5) examining ways that the Commission may respond to the increasing use of technology in financial services and commodity markets through appropriate legislative proposals and/or regulatory reform.

The Commission anticipates that the Technology Advisory Committee will provide a valuable forum for information exchange and advice on these matters. The reports, recommendations and general advice from the committee will enable the Commission to assess more effectively the need for possible statutory, regulatory, policy or programmatic initiatives to address the challenges posed by a technology driven marketplace. The committee's membership will include representatives of those markets, firms and market users most directly involved in and affected by the technological evolution of the industry and will be balanced in terms of points of view represented. Toward that end, the Commission is considering for membership a broad cross-section of persons representing technology providers, exchanges, regulatory organizations, financial intermediaries, end-users, traders and academics.

The Commission has found that advice on such specialized matters is best obtained through the advisory committee framework rather than through other more costly, less flexible and less efficient means of assembling persons from all sectors of the financial services industry. The Commission has also found that the Technology Advisory Committee will not duplicate the functions of the Commission, another existing advisory committee, or other means such as public hearings. The Commission has concluded, therefore, that the creation of the Technology Advisory Committee is essential to the accomplishment of its mission and is in the public interest.

Fifteen days after publication of this notice in the **Federal Register**, a copy of the charter of the Technology Advisory Committee will be filed with the Chairman of the Commission, the Senate Committee on Agriculture, Nutrition and Forestry, and the House Committee on Agriculture. A copy of the charter will be furnished to the Library of Congress and the Committee Management Secretariat and will be posted on the Commission's website at http://www.cftc.gov.

Issued in Washington, DC, on October 20, 1999, by the Commission.

Jean W. Webb,

Secretary of the Commission.

[FR Doc. 99-28105 Filed 10-27-99; 8:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, November 5, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5111.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-28342 Filed 10-26-99; 1:40 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, November 12, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.

Jean W. Webb,

Secretary of the Commission.

[FR Doc. 99-28343 Filed 10-26-99; 1:40 pm

BILLING CODE 6351-001-M

COMMODITY FUTURES TRADING

Sunshine Act Meeting Commission

AGENCY HOLDING THE MEETING: Commodity Future Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, November 19, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-28344 Filed 10-26-99; 1:40 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 26, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–28345 Filed 10–26–99; 1:40 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Wurtsmith Air Force Base (AFB), Michigan

On August 13, 1999, the Air Force issued the Second Supplemental Record of Decision (SSROD) for the disposal and reuse of Wurtsmith AFB, Michigan. The decisions included in this SSROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the disposal and reuse of Wurtsmith AFB, filed with the Environmental Protection Agency and made available to the public on September 24, 1993.

Wurtsmith AFB closed on June 30, 1993, pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission. The FEIS analyzed potential environmental impacts of the Air Force's disposal options by portraying a variety of potential land uses to cover a range of reasonably foreseeable future uses of the property and facilities by others.

The Air Force issued a ROD on December 12, 1994 and a Supplemental ROD on July 7, 1996 that documented decisions regarding the intended disposal of Government-owned property at the base. Since the issuance of the ROD and SROD, changing governmental priorities and economic situations have required modifications to some of the Air Force's disposal decisions.

Approximately 33 acres and 18 facilities in Parcels 20, 28, 31, 33 and 38 at the former base will be made available to the Charter Township of Oscoda ("Township") for inclusion in the no-cost rural Economic Development Conveyance (EDC). Any property not conveyed through the EDC will be made available for public sale. Formerly, the property was identified in the Supplemental ROD (SROD) for disposal through public benefit conveyances or public sale.

The Air Force will terminate its lease on the Township-owned land upon which Buildings 225, 245, 500, 305, 420, 445, and 1608 are located and the buildings will become the property of the Township. Formerly, the Air Force was to have terminated its leasehold interest in the property and offered the property for public sale, with proceeds apportioned with the Township in a mutually agreed upon manner.

The implementation of these conversion activities and associated environmental mitigation measures will proceed with minimal adverse impact to the environmental. This action conforms with applicable Federal, State, and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment. The analyses contained in the FEIS are still valid.

Any questions regarding this matter may be directed to Mr. John P. Carr, Program Manager at (703) 696–5547. Correspondence should be sent to AFBCA/DB, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–28223 Filed 10–27–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Grissom Air Force Base (AFB), Indiana

On August 13, 1999, the Air Force issued the Third Supplemental Record of Decision (TSROD) for and the disposal reuse of Grissom AFB, Indiana. The decisions included in this TSROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the disposal and reuse of Grissom AFB, filed with the Environmental Protection Agency and made available to the public on September 16, 1994.

Grissom AFB closed on September 30, 1994, pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission. The FEIS analyzed potential environmental impacts of the Air Force's disposal options by portraying a variety of potential land uses to cover a range of reasonably foreseeable future uses of the property and facilities by others.

The Air Force issued a ROD on October 11, 1994 and Supplemental RODs on June 20, 1997 and April 14, 1998 that documented decisions regarding the intended disposal of Government-owned property at the base. Since the issuance of the ROD and SRODs, changing governmental priorities and economic situations have required modifications to some of the Air Force's disposal decisions.

Parcels H, I, J, K, S, and F: These parcels are made available for disposal by Economic Development Conveyance (EDC). The previous disposal decision was to convey approximately 113 acres and 51 facilities on Parcels H, I, J, and K by public sale; Parcel S by negotiated sale; and Parcel F by Public Benefit Conveyance (PBC) through the Department of Interior (DOI) to the state of Indiana.

Parcel M: An unimproved 2-acre portion of Parcel M, adjacent to the west side of the wastewater treatment plant, is made available for public health PBC, public sale or EDC. The previous disposal decision was to make the entire Parcel M available for EDC.

Parcels 01 and 02: Parcels 01 (waste treatment facilities, including approximately 1 acre of land) and 02 (water production, storage and distribution facilities, including approximately 1 acre of land) are made available for disposal by EDC and public sale, as well as by PBC. The previous decision was to convey Parcels 01 and 02 to Peru Utilities through a public health PBC.

The implementation of these conversion activities and associated environmental mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations; and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment. The analyses contained in the FEIS are still valid.

Any questions regarding this matter may be directed to Mr. John P. Carr, Program Manager at (703) 696–5547. Correspondence should be sent to AFBCA/DB, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–28224 Filed 10–27–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment; Regarding Bonneville Power Administration's Subscription Power Sales to Customers and Customer's Sales of Firm Resources

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of revised draft policy proposal.

SUMMARY: BPA is publishing a revised draft policy proposal regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts under sections 5(b) and 9(c) of the Northwest Electric Power Planning and Conservation Act, (the Northwest Power Act), P.L. 96–501, and section 3(d) of the Act of August 31, 1964, (the Northwest Preference Act), P.L. 88–552. This revised draft policy would modify BPA's 1994 Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy. *See* Modifications to 1994 Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy.

DATES: Comments must be received by Tuesday, November 30, 1999.

ADDRESSES: Comments on the revised policy proposal regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, may be sent to: Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212; or faxed to (503) 230–4019. Comments may be sent electronically to: *comment@bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, telephone (503) 230–4328 or 1–800–622–4519.

Information can also be obtained from your BPA Account Executive or from:

—Mr. Allen Burns, Vice President, Power Marketing, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–7640

—Mr. Rick Itami, Manager, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358–7409

—Mr. John Elizalde, Acting Manager, Western Power Business Area, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97232, telephone (503) 230–7597

—Mr. Steve Oliver, Manager, Bulk Power Business Area, 905 N.E. 11th, P.O. Box 3621, Portland OR 97208, telephone (503) 230–3295

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Relevant Statutory Provisions
II. Scope of the Proposed Policy
III. Policy on Determining Net Requirements
  A. Determination of the Amount of Federal Power For Sale Under Section 5(b)(1)
  B. Statutory Discontinuance For A Customer's Generating and Contractual Resource
  C. Use of New Renewable Resources to Serve Retail Firm Power Loads
  D. Changes in the Amount of Federal Power Purchased During the Term of a Contract
IV. Scope of the Section 9(c) Policy
  A. Modification to BPA's Non-Federal Participation Section 9(c) Policy
  B. Section 9(c) Policy
  C. Scope of the Section 9(c) Policy
  D. Subscription 9(c) Study
V. Section-by-Section Review of Changes in Revised Draft Policy from the Original Draft Proposal issued April 26, 1999

On December 21, 1998, BPA published its Power Subscription Strategy and accompanying Record of Decision for selling Federal power under new contracts with its publicly and cooperatively owned utility, investor-owned utility and direct service industrial customers. The Power Subscription Strategy stated overall policies for determining the amount of Federal power to be offered to Pacific Northwest public utility and investor-owned utility customers under section 5(b)(1) of the Northwest Power Act.

On May 6, 1999, BPA published a **Federal Register** Notice with a draft proposed policy for determining the net requirements of publicly and cooperatively owned utility and investor-owned utility customers. (64 Fed. Reg. 24376) BPA sought public comment on its proposed polices for determining utility customer net requirements under section 5(b)(1) of the Northwest Power Act. Adoption of a final policy is important to a successful implementation of BPA's post-2001 power sales contracts under BPA's Power Subscription Strategy.

BPA is issuing this revised draft policy proposal based upon comments and requests to provide additional comment on BPA's draft policy. This policy would provide guidance on implementation of the Power Subscription Strategy under applicable statutes and describe how certain factual determinations will be made regarding the amount of Federal power publicly and cooperatively owned utilities, or investor-owned utilities may purchase from BPA under section 5(b)(1) of the Northwest Power Act. BPA's determination of this amount, as described in this revised policy, is affected by a customer's export of hydroelectric resources and non-hydroelectric resources out of the Pacific Northwest in accordance with section 9(c) of the Northwest Power and section 3(d) of the Northwest Preference Act. BPA will review a customer's export of power or output from resources under its 1994 Policy as modified herein.

I. Relevant Statutory Provisions

The Northwest Power Act provisions are:

5(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 [16 U.S.C. 832 *et seq.*] and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds—

(A). The capability of such entity's firm peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and

(B). Such other resources as such entity determines, pursuant to contracts under this chapter, will be used to serve its firm load in the region.

5(b)(1) In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights. 16 U.S.C. 839c(b)(1)

9(c) Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 23, 1964 (16 U.S.C 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837d and 837f) [16 U.S.C. 837d and 837f] shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this chapter. *The Administrator shall, in making any determination, under any contract executed pursuant to section 839c of this title, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to* *section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus. 16 U.S.C. 839f(c) (emphasis supplied).*

The Northwest Preference Act provision is:

> 3(d) The Secretary, in making any determination of the energy requirements of any Pacific Northwest customer which is a non-Federal utility having hydroelectric generating facilities, shall exclude any amounts of hydroelectric energy generated in the Pacific Northwest and disposed of outside the Pacific Northwest by the utility which, through reasonable measures, could have been conserved or otherwise kept available for the utility's own needs in the Pacific Northwest. The Secretary may sell the utility as a replacement therefor only what would otherwise be surplus energy. 16 U.S.C. 837b(d).

II. Scope of the Proposed Policy

The Policy on Determining Net Requirements addresses the amount of Federal power that BPA is obligated to offer to customers requesting contracts to serve firm power loads under section 5(b)(1) of the Northwest Power Act. Purchasers eligible to request a contract under section 5(b)(1) include public body, cooperative, or investor-owned utilities in the region.[1] BPA has a corresponding statutory duty when determining the net requirements of a requesting purchaser to apply the provisions of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act. Such provisions direct the Administrator to determine whether an export or proposed export of a requesting purchaser's non-hydroelectric or hydroelectric resource would result in an increase in the firm energy requirements of any of BPA's customers. Findings by BPA that the export of such resources are likely to increase BPA's firm obligations, and that the resource could have been conserved, or otherwise retained to serve regional loads, will result in a reduction (decrement)[2] of the amount of Federal power and energy available for purchase under section 5(b)(1) equal to the amount of power and energy, and for the duration, of the export.

III. Policy on Determining Net Requirements

A. Determination of the Amount of Federal Power for Sale Under Section 5(b)(1)

1. BPA will determine the amount of Federal power for sale under section 5(b)(1) in the manner described below. In making this determination BPA will reduce the amount of Federal power a customer may purchase in accordance with section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.

(a) BPA will offer an amount of Federal power for sale to a purchaser under section 5(b)(1) based upon such customer's actual retail firm power loads in the region. To establish the purchaser's actual retail firm power loads in the region, BPA may use either the actual measured load of the customer, or the customer's own actual load forecast if BPA determines such forecast is reasonable. (Any actual or forecast loads of the customer shall exclude any wholesale loads served by the customer. Wholesale loads means power sales made by the customer using its own resources to serve its own wholesale customers who are purchasing to resell the power at wholesale or retail.)

(b) For purposes of determining the amount of Federal power BPA will offer to existing customers in the post-2001 period, BPA will require an existing customer to continue to use all generating and contractual resources included in the Firm Resource Exhibit (FRE) of such customer's current 1981 or 1996 power sales contracts for the 1998–1999 operating year. BPA will not, however, require customers to continue the use of resources identified in their 1998–99 FREs for any one of the following reasons: (1) The customer's contractual resource(s) expires prior to October 1, 2001; (2) the customer's generating resource(s) is determined by BPA to be lost due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources); or (3) the customer's contractual resource(s) is determined to be lost in accordance with section III.B.2 (loss of contractual resources). In addition, customers who were given express written consent by the Administrator to permanently remove a resource from use in serving regional firm power loads are not required to return such resources to use.

(c) BPA's requirement that the customer continue using the customer's resources listed in its FRE for the 1998–1999 operating year is based upon a decision made in BPA's Power Subscription Strategy. The decision was to establish a baseline for determining the customer's resources expected to continue serving regional firm power loads in the post-2001 period. In addition, BPA will require that all Federal surplus firm power contracts or excess Federal power contracts with terms which extend further than one year beyond 2001 be applied as firm resources used to serve the customer's retail firm power load in the region.

(d) Customers may elect to use additional generating resources or contractual resources for their consumer load service under their section 5(b)(1) contract. Under the contract customers can also agree to contractually commit power purchases from the market to serve any remaining amounts of their retail firm power load in the region which is not served by (1) generating resources or contractual resources that a customer must use to serve load under section III.A.2, above; and (2) additional generating resources or contractual resources that a customer elects to use under this section. Customers may elect to apply short term power purchases from the market to their loads in amounts agreed to under the terms of a BPA 5(b)(1) contract. Customers using market purchases to serve their loads will be required to use such market purchases for the entire 5 year rate period for which BPA establishes rates of general application. All additional generating resources or contractual resources shall be used for the term of the contract except for resources added pursuant to section III.C (renewable resources).

(e) BPA will apply the Declaration Parameters included in the Power Products Catalog under Actual Partial Service for the Subscription Strategy to establish the amount of power available from the customer's generating and contractual resources under the Subscription contract. Because the Declaration Parameters are subject to revision, BPA will use the Declaration Parameters in effect at the time of BPA's contract offer to determine the amount of Federal power offered. The customer may declare a reduction in the amount of power that would otherwise be available from its own generating and contractual resources by the amount of power the customer uses from such resources to serve its wholesale loads, defined above; which were served prior to December 5, 1980, and which continue to be served by such resources.

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[1] The Policy also addresses any sales of Federal power BPA makes under section 5(b) in settlement of a customer's right to service under the residential exchange program created under section 5(c) of the Northwest Power Act. While recognizing that this is a settlement, it does not affect the application of, or change, the policy regarding the net requirements of any customer.

[2] The 1994 Section 9(c) Policy BPA published uses the term "decrement" to mean a decrease or reduction in BPA's obligations to sell power to a customer under its section 5 power sales contract with BPA. When used in this Policy and modification of that Policy the terms "decrement," "decrease," "reduce" or "reduction" have the same meaning.

2. In addition to subsections (a) through (e) above, BPA will reduce the amount of Federal power BPA will offer to a customer under section 5(b)(1), consistent with the application of BPA's Section 9(c) Policy as modified, and resultant findings made under section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.

B. Statutory Discontinuance for a Customer's Generating and Contractual Resource

1. A customer's non-Federal generating resource is considered no longer used to serve regional retail firm power load under a section 5(b)(1) contract if the resource's use is permanently discontinued due to obsolescence, retirement, or loss.

(a) Obsolescence must result from the inability to continue to operate a resource due to lack of available replacement parts or sources of fuel supply regardless of price.

(b) Retirement must result from a demonstration by the customer that the cost of replacements, improvements, or additions to continue to operate the resource, combined with the resource's variable operating costs, exceed the reasonable economic return over the remaining life of the resource. The reasonable economic return will be determined by requiring the customer to measure the cost to the customer of replacing its operating resource with market purchases plus the cost to shut down the plant against the cost of operating the resource.

(c) Loss of a resource must result from factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy including complete destruction of the resource, complete loss of the Federal or State license to own or operate the resource, or complete and/or partial reduction of the capability of a resource to the extent of the loss resulting from orders of a State or Federal agency affecting the operation of the resource.

2. A customer's contractual resource is considered no longer used to serve regional firm power load if the customer experiences a permanent loss of contract right. Loss of contract right must result from expiration of the term of the contract, after any extensions of the contract term unilaterally available to the customer, or factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy. Loss of contract right does not include the following: (a) a customer's failure to exercise a right to renew a contract; (b) a customer's failure to exercise a right of first refusal on termination of the contract; (c) a change in price under the contract; and (d) any other action or inaction by a customer which results in the contract being unavailable to the customer.

C. Use of New Renewable Resources To Serve Retail Firm Power Loads

1. A customer may elect to use a new renewable resource to serve its regional retail firm power load for a specified period which is less than the term of its section 5(b)(1) contract; provided, however, that such new renewable resource is part of the first 200 aMW of all new renewable resources requested by all BPA customers under this section to serve regional retail firm power load each year. Customers may choose to elect to use new renewable resources at the time of contract execution and during an annual review of their net load requirements under their section 5(b)(1) contract.

2. Only new renewable resources that meet the standards established to qualify for BPA's conservation and renewable resource discount may be used under this section.

3. Application of a new renewable resource under section III.C.1 shall reduce the customer's net requirements load.

D. Changes in the Amount of Federal Power Purchased During the Term of a Contract

1. Under section 5(b)(1) contracts, BPA will require a customer to submit annual reports that track and forecast the customer's retail firm power loads in the region. The purpose for the annual report is to provide information that shows any increase or reduction in the amount of the customer's retail firm power loads in the region from the amount served when the contract was executed. Based on such load information BPA shall make an annual determination of the net firm requirement load of the customer under a section 5(b)(1) contract as follows.[3] First, BPA will account for:

(a) The generating and contractual resources a customer is required to use to serve firm power load in the region under section III.A.1.(b) (FRE firm resources);

(b) Additional resources a customer has elected to use under section III.A.1.(d) (additional generating and contractual resources); and

(c) Power purchases from the market that a customer has contractually committed to purchase in amounts specified in their 5(b)(1) contract, consistent with section III.A.1.(d) (market purchases).

Second, BPA will make adjustments for:

(d) Changes in a customer's new renewable resources used to serve retail firm power load in the region under section III.C.1 (renewable resources);

(e) Changes in the customer resources serving its load pursuant to III.A.1.(b) and III.A.1.(d) due to BPA's determination of a statutory discontinuance of the customer's generating resource(s) or contract resource(s) under section III.B (statutory discontinuance); and.

(f) Any reductions in the amount of power a customer may purchase under a section 5(b)(1) contract due to the annual review under section III.D.3.

2. If BPA's annual determination of a customer's net firm requirement load results in a finding that the amount of Federal power a customer can purchase is less than the contracted amount of power to be purchased for the next contract year, then the customer shall first remove from use for its regional firm load, for a period of one year, any market purchases the customer has agreed to use under its BPA contract. Such removal shall be in an amount and shape equal to the difference between the amount of Federal power a customer can purchase for the next year and the amount and shape of Federal power a customer has contracted to purchase for the next contract year.

If the amount of Federal power a customer can purchase after the removal of the market purchases is still less than the amount of power the customer has contracted to purchase for the next contract year, then BPA will implement the mitigation measure for load loss specified in the customer's section 5(b)(1) contract and reduce the amount of Federal power a customer is obligated to purchase. Alternatively, BPA may consent to the customer's removal of a generating resource or contractual resource from use for its regional firm load, for a period of one year. The portion of a customer's generating resource or contractual resource removed shall be equal to the difference between the amount and shape of Federal power a customer can purchase and the amount and shape of Federal power the customer has contracted to purchase for the next contract year. Any customer's resources, other than market purchases, which are removed from use for regional firm load service under this section, are subject to BPA's determinations made under sections 9(c) of the Northwest Power Act and 3(d) of the Northwest Preference Act. If the customer's use of that resource results in a reduction or decrease in BPA's obligation to provide power under section III.D.3, then BPA will recalculate the amount of power a customer may purchase for the upcoming year as provided under this section (III.D.2).

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[3] Such reports may be in addition to other load or resource information the customer is required to provide BPA on its loads or resources for contract administration and planning purposes. Such determinations may be in addition to other determinations of net firm power requirements loads made more frequently under the terms of the customer's contract.

3. On an annual basis as provided under a section 5(b)(1) contract BPA will review the export of power from a customer's regional non-Federal generating and contractual resources and, if necessary, will reduce the amount of Federal power a customer may purchase in accordance with section IV of this policy.

4. BPA shall make available additional amounts of power to a customer under a section 5(b)(1) contract to serve its regional loads which were formerly served by a customer's generating resources or contractual resources but are no longer required to be used to serve the customer's retail firm power loads in the region, in accordance with section III.B (statutory discontinuance), and BPA will make available Federal power to serve new loads acquired by a customer due to purchase or condemnation of additional distribution for its system. Such service shall be on 6 months notice that such an event has occurred or as mutually agreed.

IV. Scope of the Section 9(c) Policy

A. Modification to BPA's Non-Federal Participation Section 9(c) Policy

BPA's modification to its 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy) is set out below. Deletions, changes and additions are included in an interlined version which is available from BPA on request or at BPA's Web site at http://www.bpa.gov/Power/subscription. BPA's 1994 NFP, as modified will be retitled: BPA's Section 9(c) Policy.

BPA reaffirms the application of its 1994 section 9(c) policy and legal interpretation published in July of 1994. The context for some of the determinations made in the 1994 policy was, in part, prior exports and new exports of firm power from customer resources out of the region by participation in the new, Third AC Intertie. The interpretation has been of general application since 1994 to customer exports. BPA is now modifying the policy to address certain issues which were not previously addressed. Prior determinations made under the 1994 NFP Policy remain in effect for the duration of the export sale.

In the 1994 NFP Policy, BPA did not address the export of firm power from Investor-Owned Utility (IOU) resources because the IOUs were not placing any firm power loads on BPA under their section 5(b)(1) power sales contracts with BPA. *See* footnote 3, page B–10, BPA's 1994 NFP Policy. Since the IOUs were not taking any power service from BPA, reductions pursuant to a section 9(c) determination in their service under those section 5(b)(1) contracts would not have affected their BPA service. Presently, BPA is preparing new section 5(b)(1) power sales contracts for the post-2001 period to be offered to customers eligible to purchase Federal power. BPA anticipates that IOUs will take firm power service from BPA under new 5(b)(1) contracts. BPA will require that the export of firm power from resources of IOUs be accounted for, in setting BPA's net firm load obligations under those contracts. Additionally, the 1994 NFP Policy would be modified to update the technical provisions to accommodate recent changes. Therefore, the 1994 NFP Policy would be modified as follows:

B. Section 9(c) Policy

Section 1. Northwest Power Act Section 9(c) Determinations

As required by the Northwest Power Act, BPA shall make its Section 9(c) determinations for the exports of its customers.

Section 2. Finding Required

In examining the export of Pacific Northwest resources, BPA shall make its finding based on the following requirements of Section 9(c):

(a) BPA shall analyze whether the customer's exports would result in an increase in the electric power requirements of any of its customers in the region. BPA shall do this by examining its load/resource forecasting and planning documents to determine the impact the exports will have on BPA's and its customers' ability to meet Pacific Northwest load presently and in the future. BPA shall also analyze the information available from other sources including least-cost plans and load/resource information of Pacific Northwest utilities which do not currently place any load on BPA.

(b) BPA shall review the specific resources and categories of resources being exported to determine if such exports will result in an increase in the firm energy requirements of its customers and if so, determine whether the resource could be conserved or otherwise retained for service to regional loads by using reasonable means. To do this BPA shall compare the resource a customer is proposing to export with those resources which BPA finds in its analysis can be exported without having to decrement the customer's Section 5(b) utility power sales contract.

Section 3. Scope of Section 9(c) Policy

This Section 9(c) Policy addresses a customer's exports of power from the Pacific Northwest resources out of the region. BPA shall make its Section 9(c) determinations based on a factual determination using information about the specific resource the customer intends to export.

Section 4. Data on Specific Resources

BPA shall base its Section 9(c) determination on specific information BPA has obtained from the customer on the resources it intends to export. This includes, but is not limited to, the following information:

(a) Name of the resource to be exported;

(b) Location of the resource;

(c) type of resource;

(d) Whether the resource is currently in any Pacific Northwest utility's firm resource exhibit;

(e) Whether the resource is planned or existing; and

(f) Type of transaction or sale, and if it is a seasonal exchange, the terms of the exchange.

BPA will also consider any prior history of the resource including prior efforts to market it to BPA or other Pacific Northwest utilities.

Section 5. Prior Case-by-Case Section 9(c) Interpretations

BPA does not propose to modify its existing determinations on Pacific Northwest utility exports including its 1994 NFP Policy determinations and will apply its prior case-by-case interpretations of Section 9(c), and Section 3(d) of the Regional Preference Act to such decisions without modification. Therefore, BPA incorporates by reference in this Policy these prior interpretations of Sections 9(c) and 3(d) and the determinations made thereunder for the duration of the export sale.

Section 6. Categories of Resources

(a) Exports That Will Not be Decremented by BPA: Under this Section 9(c) Policy determination, BPA will determine whether the export of certain resources will not result in an increase in the electric power requirements of any of its customers. If the export of a resource does not increase the firm energy requirements of BPA's customers, the resource may be exported without a reduction in BPA's firm load obligation under the customer's Section 5(b) utility power sales contract.

(b) Exports That Will be Decremented by BPA: BPA has determined based on its prior policy interpretations of Northwest Power Act Section 9(c) that the following categories of resources are conservable and if they are exported BPA shall decrement the customer's Section 5(b) power sales contract:

(1) All Pacific Northwest hydroelectric resources owned or purchased by a Pacific Northwest utility, whether or not dedicated in any Pacific Northwest utility's firm resource exhibit; and

(2) All Section 5(b)(1)(A) and 5(b)(1)(B) thermal resources that are currently dedicated by a utility in any customer's firm resource exhibit.

Section 7. System Sales

BPA shall utilize a case-by-case approach to system sales. BPA shall require the exporting utility to submit an operating plan for the duration of the export, identifying these specific resources or categories of resources supporting the system sale. If the export is a system sale made up solely of a customer's resources that individually would not result in a decrement if each resource were exported standing alone, then BPA would not decrement a customer's firm power purchase under section 5(b) for such a system sale. BPA shall decrement the customer's Section 5(b) utility power sales contract if the system sale involves the export of hydro to support a power sale (whether or not in a firm resource exhibit); a thermal resource that is in a firm resource exhibit; or any sale that is a prohibited resale of Federal power.

Any customer that was previously a Contracted Requirements customer of BPA, and which is currently purchasing power and energy from BPA under its power sales contract, shall have BPA's firm power obligation under its section 5(b)(1) contract reduced by a system sale in the amount of the power and for the duration of the export sale. If the customer was not placing load on BPA under its section 5(b) utility power sales contract at the time of the export sale, then at such time as the customer requests to place a firm load obligation on BPA, BPA shall make an appropriate determination and may reduce its energy sales to such customer in the amount of the export sale and for any remaining duration of the export sale.

Section 8. Seasonal Exchange

Any seasonal exchange between a customer and an out of region entity which results in no net regional energy deficit during any Operating Year shall not result in a decrement by BPA of the customer's Section 5(b) utility power sales contract.

Section 9. Recall

Any customer that does not want its Northwest Power Act, Section 5(b) power sales contract decremented by BPA may agree to include terms for the recall of its export sale upon notice from BPA that the energy from such customer's resource is needed to meet BPA or other customers firm power load in the Pacific Northwest.

Section 10. Resource Offer

This Section 9(c) Policy gives a customer an option to offer a resource to BPA or to all other Pacific Northwest customers. If offered for sale to BPA, the resource shall be treated as an unsolicited proposal. If BPA proposes to acquire the resource, and if it is greater than 50 aMW or offered for longer than 5 years, it will be subject to the Northwest Power Act Section 6(c) process, which can take more than 12 months. If neither BPA, nor any Pacific Northwest customer, purchases the offered resource (offered at the customer's cost including a reasonable rate of return), the resource may then be exported without a decrement of the customer's Northwest Power Act Section 5(b) power sales contract.

Section 11. Consumer-Owned and Independent Power Producer-Owned Resources

If a customer contracts to purchase and then export any consumer-owned resource or any resource developed by an independent power producer, BPA shall decrement the customer's Section 5(b) power sales contract if the resource being exported is a hydroelectric resource or if the resource is dedicated to any Pacific Northwest utility load in any utility's firm resource exhibit.

Section 12. BPA Notification

BPA shall notify in writing any customer which has exported a resource or proposes to export a resource of the outcome of BPA's Section 9(c) determination. The BPA notification shall be made within 30 working days from the date the customer notifies BPA that it will be exporting a regional resource or BPA receives the information it requests about a specific resource.

C. Scope of the Section 9(c) Policy

BPA's Section 9(c) Policy (9(c) Policy) addresses the effect of exports of resources by any public body, cooperative, or investor-owned utility purchasing power under a section 5(b) contract for service after October 1, 2001. The findings and interpretations of the 9(c) Policy shall be applied to all exports occurring after publication of this 9(c) Policy. Customers that have exported resources prior to publication of the 9(c) Policy may face a reduction in the amount of Federal power that BPA will offer at the time they request a contract under section 5(b)(1) for service after September 30, 2001. A reduction in BPA's obligation to provide firm power requirements to a customer under its section 5(b)(1) contract will be based on a case by case factual determination regarding the export of a resource by a BPA customer, and may be based on the regional load resource balance at the time of the export and other factors. BPA shall address the effect of exports of resources by a customer purchasing power under a contract pursuant to section 5(c), section 5(d)(1), or section 5(f) of the Northwest Power Act on a case by case basis.

D. Subscription 9(c) Study

BPA will perform a Subscription 9(c) Study to be issued with the final Policy on Determining Net Requirements. The study will provide part of the factual basis for determining whether an export of a resource during the period from October 1, 2001, through September 30, 2006, is likely to result in an increase in the firm energy requirements of BPA customers, and if so, whether the resource could be conserved, or otherwise retained to serve regional loads.

V. Section-by-Section Review of Changes in Revised Draft Policy From the Original Draft Proposal Issued April 26, 1999

This section provides section-by-section review of the changes in the revised draft policy from the initial draft policy proposal published in the **Federal Register** on May 6, 1999. The revised draft policy is reorganized as follows: new section III replaces former sections I and II; and new section IV replaces former section III.A, III.B, III.C, III.D, III.E, and III.F. An interlined version showing the proposed changes is available at BPA's Web site at http://www.bpa.gov/Power/subscription.

III. Policy on Determining Net Requirements

A. Determination of the Amount of Federal Power For Sale Under Section 5(b)(1)

New section III.A includes the provisions included in the former section I. New section III.A.1.(a) is intended to clarify the customer loads BPA will use as the basis of the initial contract offer described in former section I.A.

New section III.A.1.(b) is intended to clarify the resources a customer is required to continue to use to serve load described in former sections I.B, I.C, and I.D. The revised draft policy contains no references to the rate at which BPA would sell power to the customer. Such rate will be established in BPA rate cases. New section III.A.1(b). eliminates the requirement for the customer to notify BPA in writing of lost resources or lost contracts prior to execution of a customer's Subscription contract.

New section III.A.1.(d) is intended to clarify that customers may elect to use additional resources to serve their regional firm power loads in addition to the customer resources required to be used under section III.A.1.(b). Under new section III.A.1.(d) customers can contractually commit to purchase power from the market to serve any consumer load not served by customer resources or purchases from BPA. New section III.A.1.(d) also specifies requirements for the period of use of resources under a section 5(b) contract.

New section III.A.1.(e) is intended to clarify which Declaration Parameters BPA will use to establish the capability of customer resources described in former section I.E. New section III.A.1.(e) also includes a right for a customer to reduce the capability of the resources that are used to serve any wholesale loads that the customer served on December 5, 1980, and continues to serve, from the customer's resources.

New section III.A.2 is intended to clarify the reduction in Federal power purchases due to the export of non-Federal resources described in former section I.F.

B. Statutory Discontinuance for A Customer's Generating and Contractual Resource

New section III.B replaces former sections II.D and II.E. New section III.B is intended to clarify the application of BPA's existing standards to lost generation and contractual resources and loss of contract rights. The initial draft inadvertently omitted application of the description of a loss of contract right from section II.E. Section III.B was moved in the policy to reflect the determination of resources that are permanently discontinued from use to serve the customer's regional firm load between 1998 and the time of contract offer.

New section III.B.1 establishes a physical test of when a resource is obsolescent under the statute and an economic test to be applied when a resource may be retired in its use to serve firm load in the region. New section III.B.1 is also intended to clarify the conditions under which a customer resource is lost, including the partial loss of a resource due to orders of a State or Federal agency.

New section III.B.2 is intended to clarify a customer's loss of a contract right.

C. Use of New Renewable Resources To Serve Retail Firm Power Loads

New section III.C replaces former section II.C. New section III.C is intended to clarify that a customer may elect to use a new renewable resource in its initial contract and during the term of the contract.

D. Changes in the Amount of Power Purchased During the Term of a Contract

New section III.D replaces former sections II.A, II.B, and II.F. New section III.D.1 describes the annual review of the customer's loads under a section 5(b)(1) contract and is intended to clarify that any changes in the amount of power purchased under a section 5(b)(1) contract will be based on forecasts of the expected load changes for the next contract year and how such changes, and other annual changes, in the customer's load and resources will be used to determine a customer's annual net firm requirement load amount under a section 5(b) contract.

New section III.D.2 describes how BPA will compare the amount of Federal power a customer can purchase against the contracted amount of power for the next contract year. Section III.D.2 describes how BPA will implement mitigation measures under its section 5(b) contracts when a customer's right to purchase is less than its contracted amount and provides BPA's consent to a customer's election not to use its non-Federal resource to serve its retail firm power load in the region for the next contract year. Resources that a customer elects not to use to serve its retail firm power load are subject to a BPA determination under BPA's Section 9(c) Policy.

New section III.D.3 is intended to clarify how BPA will annually review the export of energy from a customer's non-Federal resources.

New section III.D.4 describes when customers may purchase additional amounts of Federal power they did not contract to purchase in their initial contract.

IV. Scope of the Section 9(c) Policy

Section IV.A—Modification to BPA's Non-Federal Participation Section 9(c) Policy

Section IV.A modifies BPA's 1994 Non-Federal Participation Section 9(c) Policy and renames it BPA's Section 9(c) Policy.

Section IV.B—Scope of the Section 9(c) Policy

Section IV.B describes the application of the Section 9(c) Policy. The Section 9(c) Policy will be applied to all purchases under a section 5(b) contract for service after October 1, 2001. The findings and interpretations of the Policy shall be applied to all customer exports of power from non-Federal resources or sales of resources occurring after publication of the policy. Customers that have exported power from resources or sold resources prior to publication of the policy may face a reduction of the amount of Federal power they can purchase at the time they request a contract for service after September 30, 2001, based on a case by case factual determination.

Section IV.C—Subscription 9(c) Study

Section IV.C describes a factual study that BPA will provide with its final policy stating a basis for determining what exports of resources during the period from October 1, 2001 until September 30, 2006, may [or may not] result in an increase in the firm energy requirements of BPA's customers. The Subscription 9(c) Study will be based on the principles stated in the Section 9(c) Policy regarding resources that can be conserved to serve a regional load and the resources that may otherwise be retained to serve regional load.

Responsible Official: Mr. Sydney Berwager, Subscription Policy Manager is the official responsible for the development of the revised draft policy proposal for addressing issues under section 5(b) of the Northwest Power Act regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, and the Section 9(c) Policy which modifies the 1994 NFP.

Issued in Portland, Oregon, on October 19, 1999.

Judith A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 99–28178 Filed 10–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–10–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 22, 1999.

Take notice that on October 18, 1999, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–1046, filed in Docket No. CP00–10–000 a request pursuant to Sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain natural gas facilities and points of delivery to Mountaineer Gas Company (Mountaineer) under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–0400 for assistance).

Columbia states that the points of delivery to be abandoned are located on jurisdictional pipeline in West Virginia that is being sold to Mountaineer. Mountaineer has agreed to continue providing the service supplied to these points of delivery. Columbia does not propose a reduction or termination of service as a result of the abandonment. Mountaineer will install measurement at the interconnection of Line E and EM–63. The volumes that Columbia delivers to Mountaineer will shift to the site of the new measurement.

Any questions regarding this application should be directed to Steven Hellman at (703) 227–3467, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 10146, Fairfax, Virginia 22030–0146.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–28182 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–38–001]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

October 22, 1999.

Take notice that on October 13, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing the following tariff sheets as part of Destin's FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1999.

Second Revised Sheet No. 2
Original Sheet No. 258

Destin states that the purpose of this filing is to file a tariff sheet referencing certain non-conforming service agreements in compliance with the Commission's order issued September 29, 1999. Destin has requested an effective date of November 1, 1999. Destin states that copies of the filing will be served upon parties designated on the official service list, its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28183 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR94–271–002]

East Tennessee Natural Gas Company; Notice of Compliance Filing

October 22, 1999.

Take notice that on October 13, 1999, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing the following revised tariff sheets for inclusion in East Tennessee's FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Sheet No. 6
Second Revised Sheet No. 100
First Revised Sheet No. 158
First Revised Sheet No. 159
First Revised Sheet No. 160
Second Revised Sheet No. 161

Tennessee requests that the attached sheets to the filing be made effective November 12, 1999.

Tennessee states that the attached tariff sheets to the filing are submitted in compliance with the Commission's Letter Order in the above-referenced docket. East Tennessee Natural Gas Company, 88 FERC ¶ 61,241 (1999). Tennessee further states that the revised tariff sheets reflect the proposed changes to its FERC Gas Tariff as a result of Tennessee Gas Pipeline Company's ("Tennessee") reconciliation and termination of Tennessee's Account No. 191.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance)

David P. Boergers,

Secretary.

[FR Doc. 99–28185 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–28–000]

Florida Gas Transmission Company; Notice of Filing of Pro Forma Tariff Changes

October 22, 1999.

Take notice that on October 15, 1999, Florida Gas Transmission Company (FGT) tendered for filing pro forma tariff sheets in compliance with the Commission's Order dated May 26, 1999 and the "Notice of Extension of Time" issued July 28, 1999 in Docket No. RP99–186–000:

Pro Forma Sheet No. 125A
Pro Forma Sheet No. 129
Pro Forma Sheet No. 129A
Pro Forma Sheet No. 129C
Pro Forma Sheet No. 163B
Pro Forma Sheet No. 163C
Pro Forma Sheet No. 163D
Pro Forma Sheet No. 163E
Pro Forma Sheet No. 163H
Pro Forma Sheet No. 184B
Pro Forma Sheet No. 184D

FGT states that on December 18, 1998 an Annual Report of system balancing costs and revenues was filed detailing the activity of the Cash Out, Fuel Resolution and Balancing Tools mechanisms for the Settlement Period ended September 30, 1998 in Docket No. RP99–186–000. For the second consecutive year, the Annual Report reflected that system balancing costs exceeded system balancing revenues. FGT's tariff provides that FGT will make a tariff filing to increase the non-compliance penalties in the event system balancing costs exceed system balancing revenues (subject to certain dollar thresholds). Because FGT believed that simply increasing the non-compliance penalties would not adequately address the underlying reasons for the revenue deficiency, FGT requested waiver of this tariff provision. The Commission deferred action on FGT's waiver request and directed its staff to convene a technical conference.

As a result of the technical conference held in Washington, DC on March 11, 1999, FGT and the active parties to the proceeding reached agreement for the resolution of a portion of the cumulative cost underrecovery and agreed to meet and further discuss the causes and possible solutions for the remaining deficiency, as provided for in the Joint Motion for Approval of Limited Waivers ("Joint Motion"), filed by FGT and the active parties on April 12, 1999. At an Operating Committee meeting held in Orlando, Florida on June 8, 1999, FGT and its customers exchanged information and ideas. The Operating Committee attendees agreed that a minor mechanical change to the presentation of the fuel imbalances in the Annual Report was appropriate and recognize that many non-compliance penalties are still tied to specific indices—Tivoli and St. Helena—even though the cash out mechanism has been modified to utilize the highest and lowest of three indices. Finally, FGT and its shippers recognized that the current tariff provisions requiring a tariff filing to increase non-compliance penalties in the event of certain under recoveries may not be appropriate to address the causes of such underrecoveries.

FGT states that the Operating Committee agreed to defer further discussions of more substantive changes to FGT's tariff pending the results of the activity for the current Settlement Period. The data for the Settlement Period ended September 30, 1999 is being compiled by FGT and will be circulated to shippers when complete.

FGT states that as part of the Joint Motion and a "Request for Extension of Time" filed on July 23, 1999 it agreed to make a pro forma tariff filing no later than October 15, 1999 to propose changes to FGT's tariff. Accordingly, FGT states, the instant filing is made to reflect limited changes to FGT's tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28188 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–486–001]

Granite State Gas Transmission, Inc.; Notice of Compliance Filing

October 22, 1999.

Take notice that on October 12, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheet listed below for effectiveness on August 1, 1999:

Sub Tenth Revised Sheet No. 289

Granite State states that the purpose of this filing is to comply with the Letter Order issued in this proceeding on September 24, 1999. According to Granite State, copies of the filing have been mailed to all affected customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28187 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-203-070]

Tennessee Gas Pipeline Company; Notice of Refund Report Filing

October 22, 1999.

Take notice that on October 14, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing its rate case refund report in the above-referenced dockets.

Tennessee states that the refunds were made in compliance with the Commission's Order On Rehearing and Compliance Filing issued in the above-referenced dockets on April 16, 1999. Tennessee Gas Pipeline Company, 87 FERC ¶ 61,086 (1999) (April 16th Order). Tennessee further states that April 16th Order had directed Tennessee to file revised tariff sheets and to make refunds consistent with its allocation of the costs of certain lateral facilities located in Tennessee's New England Rate Zone.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-28184 Filed 10-27-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-472-001]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

October 22, 1999.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing in the referenced docket on October 15, 1999, certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A to the filing. The effective date for the tariff sheets is November 1, 1999.

Transco states that the purpose of the filing is to comply with the Commission's order dated September 30, 1999 in this proceeding. 88 FERC 61,311 (1999) ("September 30 Order"). In the September 30 Order, the Commission accepted, subject to condition, modification and clarification, Transco's August 18, 1999 filing to revise its authority to enter into negotiated rate transactions. The September 30 Order directed Transco to revise the last sentence of proposed Section 53.3 of the General Terms and Conditions to be consistent with bid evaluation proposals approved by the Commission in other proceedings and to ensure that the net present value evaluations of different rate forms are comparable by providing that only the fixed cost component of the usage revenue in a negotiated rate bid is included when comparing bids. In addition, the September 30 Order directed Transco to refile Section 53 of the General Terms and Conditions to affirmatively state that negotiated rates do not apply as the price cap for capacity release transactions. Transco states that the filing submits revised tariff sheets reflecting the changes required by the September 30 Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-28186 Filed 10-27-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00-108-000, et al.]

Idaho Power Company, et al.; Electric Rate and Corporate Regulation Filings

October 19, 1999.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER00-108-000]

Take notice that on October 13, 1999, Idaho Power Company tendered for filing a Notice of Cancellation of all Service Agreements currently effective under the Company's existing FERC Electric Tariff, Volume No. 1, Third Revised.

Idaho Power has requested that said cancellation be effective December 15, 1999.

Copies of the filing were mailed to those utilities now signatory to Idaho Power's FERC Electric Tariff Volume 1, Third Revised, as well as the utility regulatory commissions for Idaho, Oregon and Nevada.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Reliant Energy Desert Basin, LLC

[Docket No. EG00-6-000]

Take notice that on October 14, 1999, Reliant Energy Desert Basin, LLC (Reliant Desert Basin) tendered for filing an application for determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.A. § 79z-5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Reliant Desert Basin is a Delaware limited liability company and proposed to contract, own and operate a 500 MW gas-fired, combined-cycle facility in Casa Grande, Arizona.

Comment date: November 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Minnesota Power, Inc.

[Docket No. ER00-106-000]

Take notice that on October 14, 1999, Minnesota Power, Inc. filed its quarterly report for the quarter ending September 30, 1999.

Comment date: November 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra CoGen, Inc.

[Docket No. QF86–442–003]

Take notice that on October 14, 1999, Sierra CoGen, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on March 31, 1986 in Docket No. QF86–442–000. The Facility was self-recertified in Docket Nos. QF86–441–001 and QF86–441–002. Recertification is sought to reflect the divestiture of certain upstream ownership interests in the facility and a change in status of such owner.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Bear Mountain Cogen, Inc.

[Docket No. QF87–128–005]

Take notice that on October 14, 1999, Bear Mountain Cogen, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of the Bear Mountain facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on March 23, 1987 in Docket No. QF87–128–000. The Commission granted recertification of the facility on September 9, 1994 in Docket No. QF87–128–001. The Facility was self-recertified in Docket Nos. QF87–128–002, QF87–128–003, and QF87–128–004. Recertification is sought to reflect the divestiture of certain upstream ownership interests in the facility and a change in status of such owner.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. McKittrick Limited

[Docket No. QF87–147–003]

Take notice that on October 15, 1999, McKittrick Limited, 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on February 24, 1987 in Docket No. QF87–147–000. By letter dated June 25, 1991, in Docket No. QF87–147–001, McKittrick notified the FERC of a change in ownership, a name change for the steam host, and revised performance data. The Facility was self-recertified in Docket No. QF87–147–002. Recertification is sought to reflect the divestiture of half of the upstream ownership interests in the facility and a change in status of such owner.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–97–000]

Take notice that on October 12, 1999, Alliant Energy Corporate Services, Inc., (Alliant Services), tendered for filing a signed Service Agreement under Alliant's Market Based Wholesale Power Sales Tariff (MR–1) between itself and The Energy Authority (TEA).

Alliant Services respectfully requests a waiver of the Commission's notice requirements, and an effective date of October 7, 1999.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Minergy Neenah, LLC

[Docket No. ER00–104–000]

Take notice that on October 13, 1999, Minergy Neenah, LLC tendered for filing a report of its short-term transactions for the period July 1, 1999 through September 30, 1999.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. AI Energy, Inc.

[Docket No. ER00–105–000]

Take notice that on October 13, 1999, AI Energy, Inc., One Blue Hill Plaza, Pearl River, New York 10965, tendered for filing with the Federal Energy Regulatory Commission a Notice of Succession (Notice) to reflect a name change from AIE Energy, Inc., to AI Energy, Inc. In its Notice, AI Energy, Inc., adopts, ratifies, and makes its own in every respect, all applicable rate schedules and supplements thereto previously filed with the Commission by AIE Energy Inc.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. La Paloma Generating Company, LLC

[Docket No. ER00–107–000]

Take notice that on October 13, 1999, La Paloma Generating Company, LLC (La Paloma), tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity and energy, including certain ancillary services, at market-based rates. La Paloma plans to construct a nominally rated approximately 1,040 MW natural gas-fired, combined cycle power plant near the town of McKittrick, California.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER00–109–000]

Take notice that on October 13 , 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing Notification of Assignment of the Long-Term Firm Point-to-Point Transmission Service Agreement provided by Entergy Power, Inc., to Entergy Services, Inc., regarding the assignment of certain transmission rights to East Texas Electric Cooperative, Inc.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER00–110–000]

Take notice that on October 13, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Public Service Corporation.

NSP requests that the Commission accept the agreement effective September 30, 1999, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Montana Power Trading & Marketing Company

[Docket No. ER00–112–000]

Take notice that on October 13, 1999, Montana Power Trading & Marketing Company tendered for filing notification of transactions under its FERC Electric Rate Schedule No. 1 (Market Based Rates) for the quarter ending September 30, 1999.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER00–113–000]

Take notice that on October 13, 1999, Florida Power Corporation (FPC), tendered for filing revisions to its Open Access Transmission Tariff that provide for Generator Regulation Service and Delivery Scheduling and Balancing Service.

Florida Power requests that the amendments take effect on December 12, which is 60 days after they were filed.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28127 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4459–000, et al.]

Rocky Road Power, LLC, et al.; Electric Rate and Corporate Regulation Filings

October 20, 1999.

Take notice that the following filings have been made with the Commission:

1. Rocky Road Power, LLC

[Docket No. ER99–4459–000]

Take notice that on October 13, 1999, Rocky Road Power, LLC filed its quarterly report for the quarter ending June 30, 1999.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Power Providers Inc. and ENMAR Corporation

[Docket Nos. ER96–2303–013 and ER99–254–004]

Take notice that on October 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

3. Quark Power L.L.C., Superior Electric Power Corporation, Agway Energy Services, Inc., Metro Energy Group, LLC, Total Gas & Electric, Inc. and Rainbow Energy Marketing Corporation

[Docket Nos. ER97–2374–010, ER95–1747–016, ER97–4186–008, ER99–801–002, ER97–4202–009 and ER94–1061–022]

Take notice that on October 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Union Electric Development Corporation, AC Power Corporation, Ocean Energy Services, Inc. and Washington Gas Energy Services, Inc.

[Docket Nos. ER97–3663–009, ER97–2867–009, ER96–588–010 and ER96–2830–005]

Take notice that on October 14, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

5. Conectiv Energy Supply, Inc., Dynegy Power Services, Inc., Enova Energy, Inc., NJR Energy Services Company, New Jersey Natural Energy Company and Russell Energy Services Company

[Docket Nos. ER98–2045–006, ER94–1612–023, ER96–2372–016, ER99–2384–002, ER96–2627–011 and ER96–2882–012]

Take notice that on October 15, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. Novarco Ltd. and Cook Inlet Energy Supply

[Docket Nos. ER98–4139–004 and ER96–1410–016]

Take notice that on October 18, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

7. New York State Electric & Gas Corporation

[Docket No. ES00–1–000]

Take notice that on October 13, 1999, New York State Electric & Gas Corporation submitted an application under Section 204 of the Federal Power Act, seeking authority to issue all securities with up to $275 million outstanding at any one time, which it may issue prior to January 1, 2005 (or such earlier date that the Commission may authorize, provided that such earlier date is not earlier than January 1, 2002), which have a maturity of one year or less.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Cleco Utility Group Inc.

[Docket No. ER99–3855–001]

Take notice that on October 12, 1999, Cleco Utility Group Inc., tendered for filing a notification of change in status and a three-year updated generation market analysis regarding the market-based tariff approved October 8, 1996, in Docket No. ER96–2677–000 for Cleco Utility Group Inc.'s predecessor, Central Louisiana Electric Company, Inc.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER00–114–000]

Take notice that on October 14, 1999, Commonwealth Edison Company (ComEd) tendered for filing a service agreement establishing Consumers Energy Company (Consumers), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales, and an executed Service Agreement with American Municipal Power-Ohio, Inc. (AMP). ComEd requests an effective date of September 28, 1999 for the Service Agreement, and accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on Consumers and AMP.

Comment date: November 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. State Line Energy, L.L.C.

[Docket No. ER96–2869–002]

Take notice that on October 22, 1999, State Line Energy, L.L.C. (State Line), tendered for filing an updated market power study in compliance with an order issued by the Federal Energy Regulatory Commission on October 17, 1996, in the above-referenced docket. See State Line Energy, L.L.C., 77 FERC ¶ 61,040 (1996).

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Electric Clearinghouse, Inc.

[Docket No. ER94–968–028]

Take notice that on August 16, 1999, Electric Clearinghouse, Inc., tendered for filing its summary of activity for the quarter ended June 30, 1999.

12. DC Tie, Inc., WPS Energy Services, Inc., Edgar Electric Cooperative, d/b/a/ EnerStar Power Corporation, ICC Energy Corporation, Symmetry Devise Research, Inc., Murphy Oil USA, Inc., AMVEST Coal Sales, Inc., AMVEST Power, Inc., American Power Exchange, Inc. and J. Aron & Company

[Docket Nos. ER91–435–031, ER96–1088–027, ER98–2305–004, ER96–1819–012, ER96–2524–007, ER97–610–010, ER97–464–012, ER97–2045–010, ER94–1578–020 and ER95–34–021]

Take notice that on October 13, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28128 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000]

Regional Transmission Organizations; Notice of Availability of the Environmental Assessment for the Proposed Regional Transmission Organizations Rulemaking

October 22, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the proposed rulemaking on Regional Transmission Organizations (RTOs). The EA was prepared to further the policies and goals of the National Environmental Policy Act.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Any person wishing to comment on the EA may do so. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send *two* copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426; Label *one* copy of the comments for the attention of Jim Turnure, Room 64–09.
- Reference Docket No. RM99–2–000.
- Mail your comments so that they will be received in Washington, DC on or before November 22, 1999.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from James Apperson of the Commission's Office of External Affairs, at (202) 208–0004 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. The RIMS helpline can be reached at (202) 208–2222.

David P. Boergers,

Secretary.

[FR Doc. 99–28196 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11759–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi L&D #18 Project.

f. *Location:* At the Corps of Engineer's Mississippi L&D #18 Dam, on the Mississippi River, near the Town of Burlington, Henderson County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date for this notice.

All documents (original and eight copies) should be filed with: David P.

Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Mississippi L&D #18 dam and consist of the following: (1) Twelve 108-inch-diameter, 80-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing twelve generating units with a total capacity of 28 MW and an estimated average annual generation of 172.0 GWh; and (3) a 1,000-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Any qualified development applicant desiring a file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28189 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11760–000.

c. *Dated filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi L&D #24 Project.

f. *Location:* At the Corps of Engineer's Mississippi L&D 24Dam, on the Mississippi River, near the Town of Clarksville, Pike County, Missouri.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules and practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Mississippi L&D #24 dam and consist of the following: (1) Twenty 114-inch-diameter, 80-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing ten generating units with a total capacity of 50 MW and an estimated average annual generation of 307.0 GWh; and (3) a 500-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date of the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have not comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28190 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene And Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11763–000.

c. *Date filed:* June 14, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi L&D #16 Project.

f. *Location:* At the Corps of Engineer's Mississippi L&D 16 Dam, on the Mississippi River, near the Town of Muscatine, Rock Island County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael. Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Mississippi L&D #16 dam and consist of the following: (1) Seven 108-inch-diameter, 80-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing seven generating units with a total capacity of 14 MW and an estimated average annual generation of 86.0 GWh; and (3) a 1.5-mile-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction of at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. this filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of itnent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comemnts—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comemnts. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28191 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11789–000.

c. *Date filed:* July 15, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky L&D #2 Project.

f. *Location:* At the Corps of Engineer's Kentucky L&D #2, on the Kentucky River, near the Town of Gratz, Henry County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Kentucky L&D #2 and consist of the following: (1) Six 108-inch-diameter, 50-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing six generating units with a total capacity of 8.2 MW and an estimated average annual generation of 50.0 GWh; and (3) a 200-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28192 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11790–000.

c. *Date filed:* July 15, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky L&D #5 Project.

f. *Location:* At the Corps of Engineer's Kentucky L&D #5, on the Kentucky River, near the Town of Clifton, Anderson County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Kentucky L&D #5 and consist of the following: (1) Five 96-inch-diameter, 50-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing five generating units with a total capacity of 6.0 MW and an estimated average annual generation of 36.0 GWh; and (3) a 200-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28193 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11794–000.

c. *Date filed:* July 16, 1999.

d. *Applicant:* Shelby Electric Cooperative, Inc.

e. *Name of Project:* Lake Shelbyville Project.

f. *Location:* At the Corps of Engineer's Shelbyville Dam, on the Kaskaskia River, near the Town of Shelbyville, Shelby County, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. James E. Coleman, Shelby Electric Cooperative, Route 128 and North 6th Street, Shelbyville, Illinois 62565, (217) 774–3986.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Shelbyville dam and consist of the following: (1) a 12.25-inch-diameter, 332-foot-long steel penstock, constructed in the existing outlet works; (2) a powerhouse containing one generating unit with a total capacity of 6.1 MW and an estimated average annual generation of 21.2 GWh; and (3) a 800-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.W., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28194 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11811–000.

c. *Date Filed:* September 1, 1999.

d. *Applicant:* Wisconsin Logs, Inc.

e. *Name of Project:* Merrill Paper Mill.

f. *Location:* On the Prairie River, in the town of Merrill and the city of Merrill, Lincoln County, Wisconsin. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael A. Swiger, Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, NW, Seventh Floor, Washington, DC 20007, (202) 298–1891.

i. *FERC Contact:* William H. Diehl, E-mail address, William.Diehl@ferc.fed.us, or telephone (202) 219–2813.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The existing, inoperative project would consist of: (1) An 18-foot-high dam having a 78-foot-long gated spilway, five 11-foot-wide, 9-foot-high timber taintor gates, a 550-foot-long main earthen embankment, and a 400-foot-long secondary embankment; (2) a reservoir, known as Ward Mill Pond or Prairie Lake, having a 118-acre surface area and a 709-acre-foot storage capacity; (3) a forty-foot-long flume; (4) an intake pipe; (5) a powerhouse containing a 187-kW generating unit; and (6) appurtenant facilities. The facilities are owned by International Paper Company, 3 Paragon Drive, Montvale, New Jersey 07645.

Applicant will finance all efforts required to conduct studies and to prepare and file a license application. Project energy would be used in the lumber mill.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28195 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Floodplain Involvement for Mead Substation Access Road and Water Supply Improvements

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain involvement.

SUMMARY: Western Area Power Administration (Western) proposes to reconstruct about 1.25 miles of Buchanan Boulevard south of Boulder City, Nevada, to improve the access to Mead Substation. The road is subject to washing out during high intensity thunderstorms at its crossing of Georgia Wash. The existing culverts at the wash cannot handle the flood flows, causing the road to wash out, temporarily blocking access to Mead Substation until repairs can be completed. Two water supply lines that serve Mead Substation also cross Georgia Wash. Western is exploring other water supply options, including replacing the water supply lines. Per a review of the flood hazard maps for Clark County, Nevada, Western determined that the road and water supply lines involve the 100-year floodplain of Georgia Wash. In accordance with the U.S. Department of Energy (DOE) Floodplain/Wetland Review Requirements (10 CFR part 1022), Western will prepare a floodplain assessment and will review the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplain. The floodplain assessment will be included in the environmental assessment being prepared for the proposed actions in accordance with DOE National Environmental Policy Act Implementing Procedures (10 CFR part 1021).

DATES: Comments on the proposed floodplain action are due to the address below no later than November 12, 1999.

ADDRESSES: Comments should be addressed to Mr. John Holt, Environment Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, email holt@wapa.gov

FOR FURTHER INFORMATION CONTACT: Mr. George Perkins, Environmental Specialist, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 352–2536, email perkins@wapa.gov.

SUPPLEMENTARY INFORMATION: The proposed Buchanan Boulevard improvements would involve construction activities within the floodplain, including culvert removal, excavation, modifications to the existing drainage channel, new culvert installation, grading, and riprap placement. The floodplain assessment will examine the replacement of the water supply lines where they cross the floodplain, in addition to other water supply options. Buchanan Boulevard crosses the floodplain in Clark County in T. 23 S., R. 64 E., Section 20. Mead Substation is located in T. 23 S., R. 64 E., Section 28. Maps and further information are available from Western from the contact above.

Dated: October 19, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc 99–28179 Filed 10–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Floodplain Involvement for the Miracle Mile-Cheyenne No. 1 Transmission Line

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain involvement.

SUMMARY: Western Area Power Administration (Western) proposes to redirect the flow of the Little Laramie River about 9 miles north west of Laramie, Wyoming, to prevent a transmission line structure on the Miracle Mile-Cheyenne No. 1 transmission line from being washed out. The wood pole H-frame transmission line structure is located in the center of a small ox bow of the Little Laramie River. The river has eroded the bank on the ox bow to within a few feet of the structure. If the current rate of erosion continues, the structure could potentially fail during the year 2000 spring runoff. Per a review of the flood hazard maps for Albany County, Wyoming, Western determined that redirecting the flow of the river around the transmission line structure involves the 100-year floodplain of the Little Laramie River. In accordance with the U.S. Department of Energy's Floodplain/Wetland Review Requirements (10 CFR part 1022), Western will prepare a floodplain assessment and will perform the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

DATES: Comments on the proposed floodplain action are due to the address below no later than November 12, 1999.

ADDRESSES: Comments should be addressed to Mr. Jim Hartman, Environment Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, email hartman@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Jones, Environmental Specialist, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, telephone (970) 490–7371, email rjones@wapa.gov.

SUPPLEMENTARY INFORMATION: The proposal to redirect the flow of the Little Laramie River to avoid potential failure of a transmission line structure would involve construction activities within the floodplain, including mechanical land excavation of a new channel that would cut across a small ox bow. The floodplain assessment will examine the construction of a new channel that would divert the river flow away from the transmission line structure. The Miracle Mile-Cheyenne No. 1 transmission line crosses the floodplain of the Little Laramie River in Albany County, Wyoming in T. 17 N., R. 74 W., Sections 7, 17, and 18. Maps and further information are available from Western from the contact above.

Dated: October 7, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 99–28180 Filed 10–27–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6465–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Title: Environmental Radiation Ambient Monitoring System (ERAMS); Subject: Environmental Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Environmental Radiation Ambient Monitoring System (ERAMS); EPA ICR No. 0877.06; OMB Control No. 2060–0015; expiration date, January 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 27, 1999.

ADDRESSES: National Air and Radiation Environmental Laboratory, 540 South Morris Avenue, Montgomery, Alabama 36115–2601. Limited number of hard copies available at this address. ICR available electronically at www.epa.gov/narel.

FOR FURTHER INFORMATION CONTACT: Charles M. Petko: TEL (334) 270–3411; FAX (334) 270–3454; and E-MAIL petko.charles@epa.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Sample collectors.

Title: Environmental Radiation Ambient Monitoring System (ERAMS); OMB Control No. 2060–0015; EPA ICR No. 0877.06; expiration date January 2000.

Abstract: The Environmental Radiation Ambient Monitoring System (ERAMS) is a national network of stations collecting sampling media that include air, precipitation, drinking water, surface water, and milk. Samples are sent to EPA's National Air and Radiation Environ-mental Laboratory (NAREL) in Montgomery, AL, where they are analyzed for radioactivity. ERAMS provides emergency response and ambient monitoring information regarding levels of environmental radiation across the nation. All stations, usually manned by state and local personnel, participate in ERAMS voluntarily. Station operators complete information forms that accompany the samples. The forms request descriptive information related to sample collection, *e.g.*, sample type, sample location, length of sampling period, and volume represented. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collec-tion of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 0.37 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Sample collectors, who are usually employed by state or, in a few cases, local government.

Estimated number of respondents: 313.

Frequency of Response: from twice weekly to four times annually, depending upon type of media being sampled.

Estimated Total Annual Hour Burden: 9201.8 hours.

Estimated Total Annualized Cost Burden: $178,515.20 (total refers to labor costs only).

Dated: October 22, 1999.

John G. Griggs,

Acting Director, NAREL.

[FR Doc. 99–28217 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6465–5]

CWA 303(d): Proposed Withdrawal of Total Maximum Daily Loads (TMDLs) for Copper in the Arthur Kill and the Kill Van Kull and Proposed Establishment of a TMDL for Nickel in the Hackensack River

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has has reached the following conclusions regarding certain segments of the New York-New Jersey Harbor: the applicable water quality standard for copper in the Arthur Kill and the Kill Van Kull is not likely to be exceeded (*i.e.*, the waters are not water quality-limited for copper) and, therefore, no TMDL is necessary for copper; and the Hackensack River below the Oradell Dam is water quality-limited for nickel.

Therefore, as part of this action, EPA is proposing to establish a TMDL for nickel.

EPA is hereby issuing public notice on its: proposed withdrawal of total maximum daily loads (TMDLs) for copper in the Arthur Kill and the Kill Van Kull; and, proposed establishment of a TMDL for nickel in the Hackensack River below the Oradell Dam.

DATES: Comments on the proposed action must be submitted to EPA on or before November 29, 1999.

ADDRESSES: Copies of the relevant supporting documents may be obtained by writing to Ms. Rosella O'Connor, Fate & Effects Team, U.S. Environmental Protection Agency Region 2, 290 Broadway, 24th Floor, New York, New

York 10006–1866, oconnor.rosella@epamail.epa.gov, or by calling (212) 637–3823.

The administrative record containing background technical information is on file and may be inspected at the U.S. EPA, Region 2 office between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday, except holidays. Arrangements to examine the administrative record may be made by contacting Ms. Rosella O'Connor.

FOR FURTHER INFORMATION CONTACT: Ms. Rosella O'Connor, telephone number (212) 637–3823.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action

I. Background

A TMDL, or total maximum daily load, is the maximum amount of a pollutant that a waterbody can assimilate and still meet ambient water quality standards. TMDLs are established for water quality-limited segments, which are defined as "any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of technology-based effluent limitations* * *" (40 CFR 130.2(j)).

On January 24, 1996, EPA established certain phased TMDLs, including waste load allocations (WLAs) and load allocations (LAs) for copper and mercury (61 F.R. 1930) for specific waters of the New York-New Jersey Harbor. The Phase I TMDLs established in January 1996 required additional data collection in the New Jersey Harbor waters before the establishment, as necessary, of revised Phase II TMDLs. Phase II TMDLs were to be established only if the additional data and/or modeling indicated that it was necessary to reduce point and/or nonpoint sources of certain metals below Phase I levels.

The New Jersey Harbor Dischargers Group (NJHDG), in cooperation with the New Jersey Department of Environmental Protection (NJDEP) and EPA, agreed to undertake the necessary additional ambient and load monitoring and modeling effort necessary to determining if copper, nickel and lead exceeded or potentially exceeded applicable water quality standards in the following New Jersey Harbor waters: Newark Bay, Hackensack River below the Oradell Dam, Passaic River below the Dundee Dam, Raritan River below the Fieldville Dam and Raritan Bay. Based on the results of the monitoring effort, it was determined that copper does not exceed the applicable water quality criteria in any of the above-mentioned waters. Therefore, the Phase I copper TMDLs, for the waters mentioned above, were withdrawn on September 19, 1997 (62 FR 49226). It was also determined that, of all of the above-mentioned waters, only the Hackensack and Passaic Rivers are potentially water quality-limited for nickel and required further assessment and, as necessary, the establishment of TMDLs for nickel. None of the above waters were water quality-limited for lead. The Arthur Kill and the Kill Van Kull were not directly included in this investigation, therefore the TMDLs for copper have remained in effect for those waters. The mercury TMDLs established in 1996 still remain in effect for those waters.

In 1997 and 1998, the NJHDG, NJDEP and EPA completed a monitoring program and water quality modeling to: (1) Determine if copper is actually water quality-limiting in the Arthur Kill and the Kill Van Kull; and, establish, as necessary, nickel TMDLs for the Hackensack and Passaic Rivers and Newark Bay. The ambient water quality data and modeling evaluation contained in the study entitled, "Monitoring and Modeling of Nickel in The Hackensack and Passaic Rivers and Newark Bay and Monitoring and Data Analysis for Copper in The Arthur Kill and Kill Van Kull", indicate that: (1) Copper is not water quality-limiting in the Arthur Kill and the Kill Van Kull, and therefore, the Phase I copper TMDLs (established January 24, 1996) are no longer necessary; (2) the Hackensack River is water quality-limited for nickel and requires the establishment of a TMDL for nickel; and (3) the Passaic River and Newark Bay are not water quality-limited for nickel and, at this time, do not require TMDLs for nickel. EPA is requesting comments on the first two actions.

II. Proposed Action

EPA is requesting comments on the (1) proposed withdrawal of TMDLs for copper in the Arthur Kill and Kill Van Kull because those waters are not impaired for copper and effluent limitations required of point sources under Section 301(b) of the Clean Water Act are stringent enough to implement water quality standards for copper applicable to such waters (*i.e.* these waters are not water quality-limited for copper) and (2) the proposed establishment of a TMDL for nickel in the Hackensack River. EPA is establishing the nickel TMDL in the Hackensack River at the request of the New Jersey Department of Environmental Protection. These proposed actions are appropriate given the specific circumstances, original and additional monitoring data, and management approach agreed upon by the States of New Jersey and New York and EPA, for the waters of the New York-New Jersey Harbor.

The supporting technical documentation for these actions is contained in "Proposed Withdrawal of Total Maximum Daily Loads (TMDLs) for Copper in the Arthur Kill and Kill Van Kull and Proposed Establishment of a TMDL for Nickel in the Hackensack River (EPA, September 1999) and "Monitoring and Modeling of Nickel in The Hackensack and Passaic Rivers and Newark Bay and Monitoring and Data Analysis for Copper in The Arthur Kill and Kill Van Kull" (Great Lakes Environmental Center, 1998).

The determination that TMDLs for copper are no longer necessary in the Arthur Kill and Kill Van Kull is based on additional monitoring data and modeling conducted by the NJHDG's consultant, with assistance from EPA. Monitoring and modeling projections included more recent municipal plant effluent data and New Jersey storm water and combined sewer overflow data. Previous modeling projections and TMDLs were based on New York storm water and combined sewer overflow data. These data were used due to a lack of data for New Jersey storm water and combined sewer overflows. The more recent storm water and combined sewer overflow data are much lower than the original estimates. The data and modeling projections now indicate that the applicable copper criterion is not likely to be exceeded in these waters. Therefore, the Arthur Kill and Kill Van Kull are not water quality-limited for copper and do not require TMDLs. EPA is soliciting public comment on the proposed withdrawal of the copper TMDLs in the Arthur Kill and Kill Van Kull.

Analysis of ambient data and modeling projections in the Hackensack River indicate that the applicable nickel criterion of 8.2 µg/L (expressed in the dissolved form) is likely to be exceeded, and therefore, a TMDL is required. NJHDG's consultant developed a water quality model to facilitate the development of a TMDL. Modeling projections indicate that the Hackensack River is an effluent-dominated river. The ambient nickel concentration is driven by the concentration of nickel in the Bergen County Utilities Authority (BCUA) discharge. BCUA represents the largest source of nickel to the River. Other smaller sources include: North Bergen Sewage Treatment Plant, Secaucus Sewage Treatment Plant, combined sewer overflows (CSOs), storm water, atmospheric and background (upstream sources). Using the calibrated water quality model, EPA calculated a TMDL of 4.98 lbs µg/day of nickel which will meet the applicable nickel criterion, taking into account seasonal variations and critical conditions, and including a margin of safety. The TMDL was allocated to point sources (waste load allocations) and nonpoint sources (load allocations). The existing loads of nickel, waste load (WLA), and load allocations (LA) needed to achieve the TMDL are shown below. The WLA for BCUA represents a major reduction in nickel load to the Hackensack River. This reduction will result in meeting the applicable water quality criterion for nickel. Because the other loads represent relatively small contributions, and reducing their load has little or no impact on receiving water quality, no other reductions are being proposed at this time.

TABLE—1. PROPOSED TMDL/WLAS/LAS FOR NICKEL IN THE HACKENSACK RIVER

Source	Existing load (lbs/day)	WLA/LA (lbs/day)
BCUA [NJ0020028]	11.3	[1] 2.2
North Bergen STP [NJ0034339]	0.28	[2] 0.38
Secaucus STP [NJ0025038]	0.04	[3] 0.06
CSOs	0.10	0.10
Storm Water	0.81	0.81
	ΣWLAs	3.55
Atmospheric	1.06	1.06
Boundary (Background) [4]	0.37	0.37
	TMDL	4.98

[1] The WLA of 2.2 lbs/day is established at an effluent concentration of 3.6 µg/L (total recoverable) and flow of 75 mgd; if the effluent flow is 109 mgd, the WLA is 3.3 lbs/day with an effluent concentration of 3.6 µg/L.

[2] Based on design flow of 10 mgd and mean effluent concentration of 4.6 µg/L (total recoverable).

[3] Based on design flow of 5.12 mgd and mean effluent concentration of 1.5 µg/L (total recoverable).

[4] Calculated at the boundary condition of the Hackensack River upstream at the Oradell Dam.

EPA is soliciting public comment on the proposed TMDL for nickel in the Hackensack River.

Dated: September 30, 1999.

William J. Muszynski, Acting

Acting Regional Administrator, Region 2.

[FR Doc. 99–28213 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P 4163–18–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 22, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0526.

Expiration Date: 10/31/2002.

Title: Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities—CC Docket No. 91–141.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 13 respondents; 48 hours per response (avg.); 624 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Pursuant to Section 203 of the Communications Act, LECs are required to tariff communications service offerings with the Commission. Sections 201 and 202 of the Act require that all tariffed charges, practices, classifications, and regulations be just and reasonable and not unjustly or unreasonably discriminatory. The Commission concluded that it will allow LECs additional special access pricing flexibility for services subject to competition in any study area in which expanded interconnection offerings are operational. If they choose, LECs may file density pricing plans establishing systems of pricing zones. Rates for special access services subject to competition will be averaged within zones, but will be allowed to diverge between zones over time subject to a price cap mechanism. LECs will be permitted to lower the weighted average rate level in any zone by as much as 10 percent annually relative to the price cap index for the special access basket, or to raise the weighted average rate level in any zone by up to five percent annually relative to the price cap index for the special access basket, without triggering any of the additional cost justification or advance notice requirements contained in the price cap rules. Material supporting each LEC's density pricing plan is necessary to ensure that these plans generally reflect cost differences and foster fair competition. Absent the review of such information by the Commission, the LECs would have strong incentives to attempt to use this additional pricing flexibility in an anticompetitive manner. In the Switched Transport Expanded Interconnection Order, the Commission created a density zone pricing plan that allows some degree of deaveraging for switched transport services. The Commission concluded that relaxing the pricing rules in this manner would enable price cap LECs to respond to increased competition in the interstate switched transport market. For purposes of deaveraging services in the trunking basket, the Commission in the Fifth Report and Order issued in CC Docket No. 96–262, released August 27, 1999, eliminates the limitations inherent in its current density zone pricing plan and allow price cap LECs to define the scope and number of zones within a study area, provided that each zone, except the highest-cost zone, accounts for at least fifteen percent of the incumbent LEC's trunking basket revenues in the study area. In addition, the Commission eliminates the requirement that LECs file zone pricing plans prior to filing their tariffs. The density pricing plan information is used by the FCC staff to ensure that the tariff rates to be paid for special access services are just, reasonable, and nondiscriminatory, as Sections 201 and 202 of the Communications Act require. The filing of density pricing plans is necessary to allow review of the number of zones and how offices were assigned to the different zones. The information is used to determine if the carriers have complied with our order on zone density. Without this information, the FCC would be unable to determine whether the rates for these services are just, reasonable, nondiscriminatory, and otherwise in accordance with the law. The density pricing plans are to be filed whenever a LEC voluntarily elects to implement additional special access pricing flexibility. Obligation to comply: Required to obtain or retain benefits.

OMB Control No.: 3060–0760.

Expiration Date: 10/31/2002.

Title: Access Charge Reform—CC Docket No. 96–262, First Report and Order, Second Order on Reconsideration and Memorandum Opinion and Order, Third Report and Order, and Fifth Report and Order.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 14 respondents; 4165 hours per response (avg.); 58,319 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $8,000.

Frequency of Response: On occasion.

Description: In the Fifth Report and Order (Order), CC Docket No. 96–262, Access Charge Reform, released August 27, 1999, the Commission is modifying the rules that govern the provision of interstate access services by those price cap LECs subject to price regulation to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. The pricing flexibility framework adopted in the Order is designed to grant greater flexibility to price cap LECs as competition develops, while ensuring that: (1) Price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives.

a. Showings under the Market-Based Approach: In the Fifth Report and Order, the Commission provides detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops. The Order grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of certain interstate interexchange services from price cap regulation. The Order also provides for additional pricing flexibility, to be granted in two phases, that is contingent upon competitive showings. To obtain Phase I relief, price cap LECs must demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue. For instance, for dedicated transport and special access services, price cap LECs must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA. Higher thresholds apply, however, for channel terminations between a LEC end office and an end user customer. In that case, the LEC must demonstrate that unaffiliated competitors have collocated in 50 percent of the price cap LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the price cap LEC's revenues from this service within an MSA. For traffic-sensitive, common line, and the traffic-sensitive components of tandem-switched transport services, a LEC must show that competitors offer service over their own facilities to 15 percent of the price cap LEC's customer locations within an MSA. Phase I relief permits price cap LECs to offer, on one day's notice, volume and term discounts and contract tariffs for these services, so long as the services provided pursuant to contract are removed from price caps. To obtain Phase II relief, price cap LECs must demonstrate that competitors have established a significant market presence (*i.e.*, that competition for a particular service within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period) for provision of the services at issue. Phase II relief for dedicated transport and special access services is warranted when a price cap LEC demonstrates that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA. Again a higher threshold applies to channel terminations between a LEC end office and an end user customer. In that case, a price cap LEC must show that unaffiliated competitors have collocated in 65 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 85 percent of the LEC's revenues from this service within an MSA. Phase II relief permits price cap LECs to file tariffs for these services on one day's notice, free from both our Part 61 rate level and our Part 69 rate structure rules. See also 47 CFR Sections 1.774, 69.707, 69.709, 69.711, 69.713, 69.725, 69.727, 69.729. (No. of respondents: 13; hours per response: 2117; total annual burden: 27,520 hours).

b. Cost Study of Interstate Access Service That Remain Subject to Price Cap Regulation: The 1996 Act has created an unprecedented opportunity for competition to develop in local telephone markets. The Commission recognizes, however, that competition is unlikely to develop at the same rate in different locations, and that some services will be subject to increasing competition more rapidly than others. The Commission also recognizes, however, that there will be areas and services for which competition may not develop. The Commission will adopt a prescriptive "backdrop" to our market-based approach that will serve to ensure that all interstate access customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly. To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition. (No. of respondents: 13; hours per response: 8; total annual burden 104 hours).

c. Tariff Filings: In the First Report and Order, the Commission requires the filing of various tariffs, with modifications. For example, the FCC directs incumbent LECs to establish separate rate elements for the multiplexing equipment on each side of the tandem switch. LECs must establish a flat-rated charge for the multiplexers on the SWC side of the tandem, imposed pro-rata on the purchasers of the dedicated trunks on the SWC side of the tandem. Multiplexing equipment on the EO-to-tandem transport on a per-minute of use basis. These multiplexer rate elements must be included in the LEC access tariff filings to be effective January 1, 1998. In the Second Order on Reconsideration, the FCC clarifies that the TIC exemption for access customers using competitive transport providers only applies to that portion of the residual per-minute TIC that is related to transport facilities, and directs incumbent local exchange carriers to include, in their access tariff filing, the amount of per-minute transport interconnection charge (TIC) they anticipate will be allocated to facilities-based rate elements in the future. (No. of respondents: 13; hours per response 35 hours; total annual burden: 455 hours).

d. Third-Party Disclosure: In the Second Order on Reconsideration, the Commission requires LEC to provide IXCs with customer-specific information about how many and what type of presubscribed interexchange carrier charges (PICCs) they are assessing for each of the IXC's presubscribed customers. One of the primary goals of our First Report and Order was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. Without access to information that indicates whether the LEC is assessing a primary or non-primary residential PICC, or about how many local business lines are presubscribed to a particular IXC, the IXC will be unable to develop rates that accurately reflect the underlying costs. (No. of respondents: 14; hours per response: 35 hours; total annual burden 455 hours).

e. Contract-based Tariff Filings: Price cap LECs who have made a Phase I showing may now offer contract-based tariffs. Contract-based tariffs enable price cap LECs to tailor services to their customers' individual needs, but also prevent targeting by requiring that price cap LECs make contract tariffs available to all similarly situated customers. See 47 CFR Sections 61.55 and 69.727. (No. of respondents: 13; hours per response: 3 hours; total annual burden: 780 hours).

In the Further Notice of Proposed Rulemaking issued in CC Docket No. 96–262, released August 27, 1999, the Commission seeks comment on whether to permit incumbent LECs to deaverage common line and traffic sensitive access elements without a competitive showing. To the extent that parties advocate conditioning deaveraging upon satisfaction of a competitive showing, the Commission seeks comment on the appropriate showing and the procedure by which evidence be presented and evaluated.

f. Proposed Deaveraging of Common Line and Traffic Sensitive Access Elements: Deaveraging common line and traffic sensitive access elements would require at least one additional tariff filing and may require an additional competitive showing. (No. of respondents: 13; hours per response: 109 hours; total annual burden: 1420 hours).

g. Proposed Common line and Traffic Sensitive Phase II Showings: Incumbent LECs seeking pricing flexibility for switched services may be required to file a petition demonstrating that it has met the triggers, and make an initial tariff filing. (No. of respondents: 13; hours per response: 1984 hours; total annual burden: 25,800).

The Commission's authority to collect this information is provided under 47 U.S.C 201–205 and 303(r). The information to be collected would be submitted to the FCC by incumbent LECs for use in determining whether the incumbent LECs should receive the regulatory relief proposed in the Orders. The information collected under the Second Order on Reconsideration and Memorandum Opinion and Order would be submitted by the LECs to the interexchange carriers (IXCs) for use in developing the most cost-efficient rates and rate structures. Obligation to comply: Mandatory.

OMB Control No.: 3060–0770.

Expiration Date: 10/31/2002.

Title: Price Cap Performance Review for Local Exchange Carriers—CC Docket No. 94–1 (New Services).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 13 respondents; 10 hours per response (avg.); 130 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In the Fifth Report and Order, issued in CC Docket Nos. 96–262 and 94–1, released August 27, 1999, the Commission permits price cap LECs to introduce new services on a streamlined basis, without prior approval. The Commission modified the rules to eliminate the public interest showing required by Section 69.4(g) and to eliminate the new services test (except in the case of loop-based new services) required under Sections 61.49(f) and (g). These modifications will eliminate the delays that now exist for the introduction of new services as well as encourage efficient investment and innovation. The Commission's authority to collect this information is provided under 47 U.S.C. Section 203. The information collected would be submitted to the Commission by an incumbent LEC for use in determining whether it is in the public interest for the incumbent LEC to offer a proposed new switched access service. Obligation to comply: Required to obtain or retain benefits.

OMB Control No.: 3060–0907.

Expiration Date: 04/30/2002.

Title: Universal Service Amendment Worksheets.

Form No.: FCC Form 457(M) and FCC Form 499–S(M).

Respondents: Business or other for-profit.

Estimated Annual Burden: 100 respondents; 2 hours per response (avg.); 200 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: One-time requirement.

Description: On May 8, 1997, the Commission issued the Universal Service Order, implementing the universal service provisions in Section 254 of the Communications Act of 1934, as amended and setting forth a plan to fulfill the universal service goals established by Congress. In the Universal Service Order, the Commission announced its plan for establishing a system of universal service support for rural, insular, and high cost areas that will replace the existing high-cost support mechanisms and implicit federal subsidies with explicit, competitively-neutral federal universal service support mechanisms. Pursuant to the Act, the Commission also adopted rules to ensure that quality services are available to low-income consumers at affordable rates. In addition, the Commission adopted rules creating new support mechanisms to promote universal service for eligible schools and libraries, and rural health care providers, as mandated by Congress in the Act. Finally, the Commission modified its existing funding methods, so that funding for the support mechanisms is not generated exclusively through charges on long distance carriers. Instead, as the statute requires, the new universal service rules require equitable and nondiscriminatory contributions from all telecommunications carriers that provide interstate telecommunications services, as well as other providers of interstate telecommunications to the extent that the Commission determines that their contributions would serve the public interest. On July 30, 1999, a three-judge panel of the United States Court of Appeals for the Fifth Circuit issued a decision affirming in part, remanding in part, and reversing in part the Commission's May 8, 1997 Universal Service Order. Several of the court's rulings in that decision affect the assessment and recovery of universal service contributions. In light of the court's ruling, the Commission amends sections 54.706 and 54.709 of its rules in the Universal Service Remand Order, released October 8, 1999, to provide for a single contribution base for purposes of funding all of the universal service support mechanisms. Specifically, in response to the court's determination that the Commission lacks jurisdiction to assess providers' intrastate revenues, we have eliminated intrastate revenues from the contribution base. Consistent with the court's ruling, we also reconsider the basis for assessing the international revenues of interstate providers. The Commission is requiring each contributor that qualifies for the international revenues exception adopted in the Universal Service

Remand Order to file an amendment to its March 1999 and September 1999 worksheets, identifying the amount and percentages of the contributor's interstate and international revenues. This information is to be filed on FCC Form 457(M) and/or FCC Form 499–S(M). Amendment to March 1999 Universal Service Worksheet, FCC Form 457(M) and Amendment to September 1999 Telecommunications Reporting Worksheet, FCC Form 499–S(M) simply require contributors to identify the amounts and percentages of their interstate and international revenues and will only apply to the revenue data provided on the March 1999 and September 1999 Worksheet. Contributors that qualify for the international revenues exception must file the amendment forms with USAC by December 1, 1999. Copies of the forms may be downloaded from the Commission's forms Web page, www.fcc.gov/formpage.html. The form is also available through the FCC Fax-on-Demand system. Copies may be order via fax 24 hours a day by calling 202–418–0177 from the handset of any fax machine. The document retrieval number for the FCC Form 475(M) is 0004571; the document retrieval number for the FCC Form 499–S(M) is 0004993. The files contain both the instructions and the forms. Follow the system voice prompts and enter the document retrieval number when requested. Due to the limited number of phone lines into the forms Fax-on-Demand system, callers may wish to call during non-business hours. If you have difficulty with the transmission of your fax contact Patricia Quartey at 202–418–0212. Finally, copies may be obtained from the USAC at (973) 560–4400. Obligation to comply: Mandatory. Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28204 Filed 10–27–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

October 12, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 29, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0900.

Title: Second Report and Order in CC Docket 94–102, Compatibility of Wireless Services with Enhanced 911.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 100.

Estimate Time Per Response: 1 to 20 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 2,190 hours.

Total Annual Costs: None.

Needs and Uses: This document creates rules that will improve the ability of cellular phone users to complete wireless 911 calls. The action is taken to improve the security and safety of analog cellular users, especially in rural and suburban areas. The primary goal of this action is to ensure that reliable, effective 911 and Enhanced E911 service is available to wireless users by approving three mechanisms any of which will result in more wireless 911 calls being completed than occurs today.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28205 Filed 10–27–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–15]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled "Affordable Housing Program" to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on December 31, 1999.

DATES: Interested persons may submit comments on or before November 29, 1999.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Janet M. Fronckowiak, Acting Deputy Director, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2575 or by electronic mail at fronckowiakj@fhfb.gov, or Melissa L. Allen, Program Analyst, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2524 or by electronic mail at *allenm@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires the Federal Housing Finance Board (Finance Board) to promulgate regulations under which the 12 Federal Home Loan Banks (FHLBanks) must establish an Affordable Housing Program (AHP) to make subsidized advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j). Section 10(j) also establishes the standards and requirements for making subsidized AHP advances to FHLBank members. *Id.* Part 960 of the Finance Board's regulations implements the statutory requirements and authorizes the FHLBanks to make AHP funding decisions. *See* 12 CFR part 960.

The information collection contained in part 960 is necessary to enable and is used by the FHLBanks to determine whether an AHP applicant satisfies the statutory and regulatory requirements to receive subsidized advances or direct subsidies under the AHP. The Finance Board requires and uses the information collection, through examination of the FHLBanks, to ensure that a FHLBank's funding decisions, and the use of the funds awarded, are consistent with statutory and regulatory requirements.

The OMB number for the information collection is 3069–006. The OMB clearance for the information collection expires on December 31, 1999.

The likely respondents include applicants for AHP funding.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 7,462, with 1.33 responses per respondent. The estimate for the average hours per response is 6.5 hours. The estimate for the total annual hour burden is 64,509 hours (7,462 respondents x 1.33 responses per respondent x approximately 6.5 hours per response).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on June 30, 1999. *See* 64 FR 35158 (June 30, 1999). The 60-day comment period closed on August 30, 1999. The Finance Board received no public comments.

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: October 19, 1999.

William W Ginsberg,

Managing Director.

[FR Doc. 99–28107 Filed 10–27–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–011587–006.

Title: United States South Europe Conference.

Parties: A.P. Moller-Maersk Line, P&O Nedlloyd Limited, Sea-Land Service, Inc.

Synopsis: The proposed amendment revises the Agreement's voting requirements and makes other non-substantive changes.

By Order of the Federal Maritime Commission.

Dated: October 22, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–28101 Filed 10–27–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Bayani Commerical, Inc., 526 South Jackson Street, Seattle, WA 98104, Officers: Yukiyo Kistler, Managing Director, (Qualifying Individual), David O. Patacsil, President

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

R.A.V. Services Inc. d/b/a Interfreight Co., 2217 Sheridan Blvd., Inwood, NY 11096, Officers: Thomas Staub, President (Qualifying Individual), Robert Vandeventer, Vice President

Dated: October 22, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–28102 Filed 10–27–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 99–20]

Gstaad, Inc. and Sergio Lemme—Possible Violations of Sections 10(a)(1) of the Shipping Act of 1984; Notice of Investigation

Notice is given that the Commission, on October 21, 1999, served an Order of Investigation and Hearing on Gstaad, Inc. ("Gstaad"), a tariffed and bonded non-vessel operating common carrier

("NVOCC"), and Sergio Lemme, President and Treasurer of Gstaad. The Order institutes a formal investigation to determine whether Gstaad and Sergio Lemme violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. section 1709(a)(1), by knowingly and willfully obtaining or attempting to obtain transportation at less than the rates and charges shown in applicable tariffs or service contracts through the receipt of rebates and the misuse of service contracts. Should violations be found, the proceeding will determine whether to impose civil penalties, suspend Gstaad's tariff, suspend or revoke its license, and issue a cease and desist order. The full text of the Order may be viewed on the Commission's home page at www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–28103 Filed 10–27–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY

Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATE: Comments must be submitted on or before December 27, 1999.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. Report title: Survey of Terms of Bank Lending

Agency form number: FR 2028A, FR 2028B, and FR 2028S.

OMB control number: 7100-0061.

Frequency: Quarterly.

Reporters: commercial banks (all three reports) and U.S. branches and agencies of foreign banks (FR 2028A and FR 2028S).

Annual reporting hours: 8,095.

Estimated average hours per response: FR 2028A: 4.0; FR 2028B: 1.5; and FR 2028S: 0.1.

Number of respondents: FR 2028A: 398; FR 2028B: 250; and FR 2028S: 567. Small businesses are affected.

This information collection is voluntary (12 U.S.C. § 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The Survey of Terms of Bank Lending provides unique information concerning the price and certain nonprice terms of loans made to businesses and farmers by commercial banks. The reports are completed for the first full business week of the mid-month of each quarter (February, May, August, and November). The FR 2028A and B collect detailed data on individual loans made during the survey week. The FR 2028S collects the prime interest rate for each day of the survey. From these sample STBL data, estimates of the terms of business and farm loans extended during the reporting week at all insured U.S. commercial banks are constructed. The estimates for business loans are published in the quarterly E.2 release, "Survey of Terms of Bank Lending," while estimates for farm loans are published in the quarterly E.15 release, "Agricultural Finance Databook."

Board of Governors of the Federal Reserve System, October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28119 Filed 10–27–99; 8:45am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Imperial Credit Industries, Inc., Torrance, California; to acquire voting shares of Bay View Capital Corporation, San Mateo, California, and thereby indirectly acquire voting shares of Bay View Bank, N.A., San Mateo, California.

Board of Governors of the Federal Reserve System, October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-28117 Filed 10-27-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Exchange National Bancshares, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Midcentral Bancorp, Inc., Warsaw, Missouri, and thereby indirectly acquire Osage Valley Bank, Warsaw, Missouri.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. FNB Bancorp, Layton, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Layton, Layton, Utah.

Board of Governors of the Federal Reserve System, October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-28116 Filed 10-27-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-27464) published on page 56791 of the issue for Thursday, October 21, 1999.

Under the Federal Reserve Bank of Dallas heading, the entry for Texas Independent Bancshares, Inc., Texas City, Texas, is revised to read as follows:

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Independent Bancshares, Inc., Texas City, Texas; to merge with American Independent Bancshares, Inc., Santa Fe, Texas, and thereby indirectly acquire Texas First Bank, Santa Fe, Texas.

Comments on this application must be received by November 15, 1999.

Board of Governors of the Federal Reserve System, October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-28118 Filed 10-27-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. GB&T Bancshares Inc., Gainesville, Georgia; to merge with UB&T Financial Services Corporation, Rockmart, Georgia, and thereby indirectly acquire United Bank & Trust Company, Rockmart, Georgia.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:.

1. Peregrine Corporation, Chaska, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Chaska, Chaska, Minnesota (a *de novo* bank).

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Community Bancshares of Chanute, Inc.*, Chanute, Kansas; to merge with Edna Bancshares, Inc., Edna, Kansas, and thereby indirectly acquire First State Bank, Edna, Kansas.

Board of Governors of the Federal Reserve System, October 25, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28243 Filed 10–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 12, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Hometown Bancorp, Ltd.*, St. Cloud, Wisconsin; to engage *de novo* through its subsidiary, Hometown Mortgage Services, Inc., Fond du Lac, Wisconsin, in extending and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; in collection agency services, pursuant to § 225.28(b)(2)(iv) of Regulation Y; and in real estate settlement services, pursuant to § 225.28(b)(2)(viii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 25, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28244 Filed 10–27–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Survey of Opinions of Principal Investigators on Managing a Biomedical Research Laboratory—NEW—The Office of Research Integrity is proposing an informal survey of principal investigators to obtain anecdotal information on experiences associated with the management of a biomedical research laboratory. This information will be shared with the research community to promote good laboratory management practices. *Respondents:* Principal Investigators; *Number of Respondents:* 200; *Average Burden per Response:* 3.5 hours; *Total Burden:* 700 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address; Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: October 15, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–28142 Filed 10–27–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulations—HHSAR Part 352 Solicitation Provisions and Contract Clauses- 0990–0130—Extension—The Key Personnel clause for HHSAR 352.27–5 requires contractors to obtain approval before substituting key personnel which are specified in the contract. *Respondents:* State or local governments, Businesses or other for-profit, non-profit institutions, Small businesses, *Total Number of Respondents:* 1921; *Frequency of Response:* one time; *Average Burden per Response:* 2 hours; *Estimated Annual Burden:* 3842 hours.

2. HHS Acquisition Regulations HHSAR Part 370 Special Programs Affecting Acquisition—0990–0129—Extension—HHSAR Part 370 establishes requirements for the accessibility of meetings, conferences, and seminars to persons with disabilities; establishes requirements for Indian Preference in employment, training and subcontracting opportunities. *Respondents:* State or local governments, Businesses or other for-profit, non-profit institutions, Small businesses; *Burden Information about Accessibility of Meetings—Annual Number of Respondents:* 335; *Annual Frequency of Response:* one time; *Average Burden per Response:* 10 hours; *Total Annual Burden:* 3,350 hours—*Burden Information about Indian Preference—Annual Number of Respondents:* 932; *Annual Frequency of Response:* one time; *Average Burden per Response:* 8 hours; *Total Annual Burden:* 7,456 hours—*Total Burden:* 10,806 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: October 15, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–28143 Filed 10–27–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

October 22, 1999.

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 13⅜% for the quarter ended September 30, 1999. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 22, 1999.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 99–28144 Filed 10–27–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Injury Research Grant Review Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through August 20, 2001.

For further information, contact John Finklea, M.D., Executive Secretary, Injury Research Grant Review Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 1600 Clifton Road, NE, M/S D–32, Atlanta, Georgia 30333, telephone 770/488–4821 or fax 770/488–1467.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99–28136 Filed 10–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 1:30 p.m.-4:30 p.m., November 16, 1999; 8:30 a.m.-3:15 p.m., November 17, 1999.

Place: Holiday Inn Select Atlanta-Decatur Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: The purpose of the November 16 meeting is for the Science and Program Review Work Group (SPRWG) to review program oversight issues which include discussions on the biomechanics review; non-Office of Research Grants/National Center for Injury Prevention and Control (NCIPC) extramural fiscal year 1999 awards; BioCAD and whiplash projects; Injury Control Research Center request for proposals; and NCIPC research agenda. At the November 17 meeting of the full Committee, following introduction of the new NCIPC Acting Director, and the Acting Director's update on NCIPC, discussions will include (1) A strategic planning update; (2) NCIPC Division of Violence Prevention update on youth violence and suicide prevention efforts; reports from the November 16 meetings of the (3) Subcommittee on Family and Intimate Violence Prevention and (4) SPRWG; and (5) NCIPC Research priorities.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Mr. Wayne Stephens, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1465.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 21, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–28135 Filed 10–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee for Injury Prevention and Control (ACIPC): Family and Intimate Violence Prevention Subcommittee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 8:30 a.m.–4:30 p.m., November 16, 1999.

Place: Holiday Inn Select-Atlanta Decatur Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30033.

Status: Open to the public, limited only by the space available.

Purpose: To provide and make recommendations to ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence sexual assault. The Subcommittee will make recommendations regarding policies, strategies, objectives and priorities.

Matters to be Discussed: The Subcommittee will discuss and provide recommendations to the CDC on future directions for program activities, evaluation, and research related to the National Resource Council Report, Understanding Violence Against Women.

Agenda items are subject to change as priorities dictate.

Contact Person for more Information: Lemyra DeBruyn, Ph.D., Acting Team Leader, Family and Intimate Violence Prevention Team, Division of Violence Prevention, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341, telephone 770/488–4410.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–28137 Filed 10–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2549]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 29, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Cosmetic Product Voluntary Reporting Program—21 CFR 720.4, 720.6, and 720.8(b) (OMB Control Number 0910–0030—Extension)

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file with the agency an ingredient statement for each of their products (§ 720.4). Ingredient statements for new submissions (§ 720.1) are reported on Form FDA 2512 entitled "Cosmetic Product Ingredient Statement," and Form FDA 2512a, a continuation form. Changes in product formulation (§ 720.6) are also reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514 entitled "Discontinuance of Commercial Distribution of Cosmetic Product Formulation" (§ 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA uses the information received on these forms as input for a computer-based information storage and retrieval system. These voluntary formula filings provide FDA with the best information available about cosmetic product formulations, ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. FDA's data base also lists cosmetic products containing ingredients suspected to be carcinogenic or otherwise harmful to the general public health. The information provided under the Cosmetic Product Voluntary Reporting Program assists FDA scientists in evaluating reports of alleged injuries and adverse reactions to the use of cosmetics. The information also is utilized in defining and planning analytical and toxicological studies pertaining to cosmetics.

FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry. For example, by submitting a Freedom of Information Act request, consumers can obtain information about which products do or do not contain a specified ingredient and about the levels at which certain ingredients are typically used. Dermatologists use FDA files to cross-reference allergens found in patch-test kits with cosmetic ingredients. The Cosmetic, Toiletry, and Fragrance Association, which is conducting a review of ingredients used in cosmetics, has relied on data provided by FDA in selecting ingredients to be reviewed based on frequency of use.

The Cosmetic Product Voluntary Reporting Program was suspended during fiscal year (FY) 1998 because of a lack of funding and was reinstated at the beginning of FY 1999. Participation returned to the previous level. Thus, FDA estimates that the burden of this collection of information will remain the same as the estimate presently on file with OMB.

In the **Federal Register** of August 9, 1999 (64 FR 43188), the agency requested comments on the proposed collections of information. One comment was received in support of the continuation of the program.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.4 (New submissions)	FDA 2512/ FDA 2512a	550	4.2	2,310	0.5	1,155
720.6 (Amendments)	FDA 2512/ FDA 2512a	550	1.4	770	0.33	254
720.6 (Notices of discontinuance)	FDA 2514	550	4.5	2,500	0.1	250
720.8 (Requests for confidentiality)		2	1.0	2	1.5	3
Total						1,662

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: October 21, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–28111 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–4373]

Engelhard Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Engelhard Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a solid solution of 2-naphthalenesulfonic acid, 5-[(5-chloro-4-methyl-2-sulfophenyl)azo]-6-hydroxy]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[(4-chloro-5-ethyl-2-sulfophenyl)azo]-6-hydroxy]-, strontium salt (1:1) (C.I. Pigment Red 276) as a colorant for polymers intended for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Mark Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4698) has been filed by Engelhard Corp., Pigments and Additives Group, 3400 Bank St., Louisville, KY 40212. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of a solid solution of 2-naphthalenesulfonic acid, 5-[(5-chloro-4-methyl-2-sulfophenyl)azo]-6-hydroxy]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[(4-chloro-5-ethyl-2-sulfophenyl)azo]-6-hydroxy]-, strontium salt (1:1) (C.I. Pigment Red 276) as a colorant for polymers intended for food-contact applications.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 30, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–28114 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2335]

Medical Gloves; Draft Guidance Manual; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 27, 2000, the comment period for the draft guidance entitled "Medical Glove Guidance Manual." FDA published a notice of availability of the draft guidance in the **Federal Register** of July 30, 1999 (64 FR 41744). The agency is taking this action to harmonize the comment period for the draft guidance with the extension of the comment period for the proposed rule on the reclassification of surgeon's and patient examination gloves (64 FR 41710, July 30, 1999). The document announcing the extension of that comment period for the proposed rule is published elsewhere in this issue of the **Federal Register**. The draft guidance is a proposed special control for that reclassification. This extension of the comment period is intended to allow interested persons additional time to submit comments on the draft guidance.

DATES: Written comments by January 27, 2000.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Arthur K. Yellin, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 800–638–2041, ext. 146 or 301–443–6597, ext. 146.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

In the **Federal Register** of July 30, 1999, FDA published a notice of availability of the draft guidance entitled "Medical Glove Guidance Manual." The draft guidance is intended to provide current information to assist manufacturers and others in obtaining marketing clearance, applying manufacturing and design controls, and properly labeling medical gloves. FDA also proposes to use the "Medical Glove Guidance Manual" as a special control in its proposed reclassification of surgeon's and patient examination gloves (64 FR 41710 at 41714).

Elsewhere in this issue of the **Federal Register**, FDA is announcing an extension of the comment period for the proposed rule on the reclassification of surgeon's and patient examination gloves. Because FDA has proposed that the "Medical Glove Guidance Manual" be a special control in that proposed reclassification, FDA wanted to harmonize the comment periods. Consequently, FDA is extending the comment period on the draft guidance for 90 additional days.

II. Comments

Interested persons may, on or before January 27, 2000, submit to the Dockets Management Branch (address above) written comments regarding the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 21, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28110 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request NIH Intramural Research Training Award, Program Application

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: NIH Intramural Research Training Award, Program Application; *Type of Information Collection Request:* Revision/OMB No. 0925–0299; 4/30/2000; *Need and Use of Information Collection:* The proposed information collection activity is for the purpose of collecting data related to the availability of Training Fellowships under the HIH Intramural Research Training Award Program. This information must be submitted in order to receive due consideration or an award and will be used to determine the eligibility and quality of potential awardees. *Frequency of Response:* On occasion. *Affected Public:* Individuals seeking Intramural Training award opportunities. *Type of Respondents:* Postdoctoral, Predoctoral, Post-baccalaureate, Technical, and Student IRTA applicants. *Estimated Number of Respondents:* 15779. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours Requested:* .53. *Estimated Total Annual Burden Hours Requested:* 8422.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs of report.

Type of respondent	Estimated number for respondents	Estimated numbers of respondents per respondent	Average burden hours per response	Estimated total annual burden hours requested
Postdoctoral IRTA	1089	1	1	1089
Predoctoral IRTA	6	1	1	6
Postbaccalureate IRTA	290	1	1	290
Technical IRTA	27	1	1	27
Student IRTA	3,386	1	1	27
References for all IOTA categories	10,981	....	.33	3,624
Total	15779	1	.53	8,422

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Edie Bishop, Human Resource Consultant, Office of Human Resource Management, OD, NIH, Building 31, Room B3C07, 31 Center Drive MSC. 2203, Bethesda, MD 20892–2203.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before December 27, 1999.

Dated: October 20, 1999.

Stephen C. Benowitz,

Director, Office of Human Resource Management.

[FR Doc. 99–28270 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Contraception and Infertility Research Loan Repayment Program (CIR–LRP)

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development, (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information on collection listed below. This proposed information collection was previously published in the **Federal Register** on July 30, 1999, page 41445 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow and additional 30 days for public comment.

5 CFR 1320.5 (General requirements) Reporting and Recordkeeping Requirements: Final Rule requires that the agency inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Proposed Collection

Title: Contraception and Infertility Research Loan Repayment Program. Type of Information Collection Request: Revision (OMB No. 0925–0440, Exp. 12/31/99). Form Number: NIH 2756–1, NIH 2756–2. Need and Use of Information Collection: The information proposed for collection will be used by NICHD to determine an applicant's eligibility for participation in the CIR–LRP. It will enable the NICHD to select qualified individuals for participation in the program, and to deliver eligible benefits. Frequency of Response: On occasion. Affected Public: Individuals or households, business or other for-profit, Not-for-profit institutions, and State, Local and Tribal government. Type of Respondents: Qualified health and allied health professional such as physicians, physician assistants, scientists, nurses, graduate students and postgraduate fellows.

The annual burden estimates are as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Applicants	40	6	1.306	314
Lender	160	1	0.334	53
State/Other Entity	8	1	0.334	3
Total				370

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden to the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Office for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Louis V. DePaolo, Ph.D., Director, Contraception and Infertility Research Loan Repayment Program, Center for Population Research, NICHD, NIH, Building 61E, Room 8B01, Bethesda, Maryland 20892–7510, or call (301) 435–6970 or E-mail your request to: 1d38p@nih.gov. Information can also be obtained via the World Wide Web at http://www.nichd.nih.gov/about/cpr/rs/rs.htm.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before November 29, 1999.

Dated: October 15, 1999.

Michael Rosenthal,

Executive Officer, NICHD.

[FR Doc. 99–28269 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: November 19, 1999.

Time: 8 am to 5 pm.

Agenda: National Cancer Program: Then, Now, and in the Future.

Place: University of Utah, Huntsman Cancer Institute, 2000 Circle of Hope, Salt Lake City, UT 84112.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28257 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–7987.

Name of Committee: National Cancer Institute Special Emphasis Panel, Early Detection Research Network Biomarkers Validation Laboratories.

Date: November 12, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28258 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Quick Trails for Prostate Cancer Therapy.

Date: October 29, 1999.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd., 6th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Brian E. Wojcik, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6130 Executive Boulevard, Room 611D, Bethesda, MD 20892, 301/402–4408.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc 99–28263 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Nutrition Academic Award.

Date: November 4, 1999.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise P. Corman, PhD, Scientific Review Administrator, NIH, NHLBI, DEA, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National institutes of Health, HHS)

Dated: October 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28255 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Program Project (P01).

Date: November 30, 1999.

Time: 3 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Rockledge 2 Center, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anthony M Coelho, PhD, Leader, Clinical Studies SRG, NIH, NHLBI, DEA, Review Branch, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–28256 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel

Date: November 5, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 20007.

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28253 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARMTENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institutes of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF MENTAL HEALTH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: November 17, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 4N230, Bethesda, MD 20892.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381, 301–496–3501.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28254 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Pharmacology.

Date: November 9, 1999.

Time: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Irene B. Glowinski, Scientific Review Administrator, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892–6200, (301) 594–3663, glowinsi@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28261 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 3–4, 1999.

Time: 7:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Town Center Hotel, 8727 Colesville Rd, Silver Spring, MD 20910.

Contact Person: Katherine Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 19, 1999.

Time: 8:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Paul A. Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28262 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, October 12, 1999, 1:00 pm to October 12, 1999, 6:00 pm, NIAID, NIH (Room 1202), 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610 which was published in the **Federal Register** on October 6, 1999, 64 FR 54341.

The meeting will be held on October 27, 1999, from 10 a.m. to 5 p.m. The meeting is closed to the public.

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–28265 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Pulmonary Effects of Environmental Oxidant Pollutants.

Date: November 3, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Ethel B. Jackson, DDS, Chief, Scientific Review Branch, Nat'l Institute of Environmental Health Sciences, PO Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–7826.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28266 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: November 8, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31; Room 4C32, NIAMS Conference Room, Bethesda, Maryland 20892.

Contact Person: Peter E. Lipsky, MD, Scientific Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Bldg. 10; Room 9N228, Bethesda, MD 20892, (301) 496–2612.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28267 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M8

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of such would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: October 22, 1999.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Resort and Spa, 250 Racquet Club Road, Fort Lauderdale, FL 33326.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28268 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1, 1999.

Time: 9 am to 10 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1, 1999.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 4, 1999.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Luigi Giacometti, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 1999.

Time: 9 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel R01 application.

Date: November 5, 1999.

Time: 12 pm to 3 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Donald Schneider, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892; (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8–9, 1999.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW, Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Gopal C. Sharma, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (18).

Date: November 8, 1999.

Time: 8 am to 4 pm.

Agenda: To provide concept review of proposed grant applications.

Place: Holiday Inn Central, 1501 Rhode Island Ave, NW, Washington, DC 20005.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8–9, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person: Patricia H. Hand, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8–9, 1999.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael Micklin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, Respiratory and Applied Physiology Study Section.

Date: November 8–9, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, N.W., Washington, DC 20037.

Contact Person: Everett E. Sinnett, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–8 (01).

Date: November 8–9, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Samuel Rawlings, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Hematology Subcommittee 2.

Date: November 9–10, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6710 Rockledge Drive, Room, 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 9–10, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: John Bishop, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 9–10, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Central, 1143 New Hampshire Avenue, Washington, DC 20037.

Contact Person: Ranga V. Srinivas, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28259 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Oral Biology and Medicine Subcommittee 2, October 25, 1999, 8:30 am to October 26, 1999, 5:00 pm, Holiday Inn Hotel & Suites, 625 First Street, Alexandria, VA, 22314 which was published in the **Federal Register** on October 15, 1999, 64 FR 55954.

The meeting will be held at the Holiday Inn, Select, Old Town Alexandria. The dates and times remain the same. The meetings is closed to the public.

Dated: October 19, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28260 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 8:30 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW, Washington, DC 20007.

Contact Person: Richard Panniers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel—Harbor Building, 1000 29th Street, NW, Washington, DC 20007.

Contact Person: Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 9:00 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–1175, bakerh@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10, 1999.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–1FCN1 (03).

Date: November 10, 1999.

Time: 10 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10, 1999.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kathryn Meadow-Orlans, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–12, 1999.

Time: 8:30 pm to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: Argonne Guest Hotel, Argonne National Laboratory, 9700 South Cass Avenue—Bldg. 460, Argonne, IL 60439.

Contact Person: Marjam G. Behar, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–9 (24).
Date: November 11–12, 1999.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Bill Bunnag, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 11–12, 1999.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Nadarajen A. Vydelingum, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Geriatrics and Rehabilitation Medicine.
Date: November 11–12, 1999.
Time: 8 am to 5 pm.
Agenda: To review and evaluate applications.
Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.
Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 11–12, 1999.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 11, 1999.
Time: 1:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 12, 1999.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Ranga V Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN7–2.
Date: November 12, 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, Washington, DC 20036.
Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15–16, 1999.
Time: 8 am to 6 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sally Ann Amero, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 60461, MSC 7890, Bethesda, MD 20892, 301–435–1159, ameros@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM-2 (02) B.
Date: November 15, 1999.
Time: 8:00 am to 8:30 am.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15–16, 1999.
Time: 8:30 am to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 1999.
Time: 8:30 am to 6:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, One Metro Center, Bethesda MD 20814.
Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 1999.
Time: 8:30 am to 6:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel, VISA.
Date: November 15, 1999.
Time: 11 am to 1 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15–16, 1999.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.
Contact Person: Shirley Hilden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 1999.
Time: 3 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul K. Strudler, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 1999.
Time: 12:00 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nabeeh Mourad, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 1999.

Time: 8:30 am to 6:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16–17, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela M. Pattatucci, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 1999.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 1999.

Time: 1 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 1999.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 1999.

Time: 12 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2 Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nabeeh Mourad, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17–18, 1999.

Time: 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jean D. Sipe, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17–18, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Lawrence N. Yager, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 1999.

Time: 8:30 am to 6:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 1999.

Time: 9 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Michael J. Kozak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 1999.

Time: 11 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 1999.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 1999.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Weller, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BIO3.

Date: November 17, 1999.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28264 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4442–N–13]

Notice of Proposed Information Collection for Public Comment: Evaluation of the Housing Opportunities for Persons With AIDS (HOPWA) Program

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451–7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Marge Martin, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8120, Washington, DC 20410–6000, telephone 202–708–1520, extension 5925 (this is not a toll free number). A copy of the proposed forms and other available documents to be submitted to OMB may be obtained from Ms. Martin.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Evaluations of the Housing Opportunities for Persons with AIDS (HOPWA) Program.

Description of the need for information and proposed use: The Department is conducting, under contract to ICF, Consulting, a 1-year study to evaluate the Housing Opportunities for Persons With AIDS (HOPWA) program. The purpose of the study is to examine the effectiveness of the HOPWA program in assisting persons living with HIV/AIDS and their families. Additionally, the study will describe the types of local programs funded and the characteristics of the clients served in more detail than is available through the program's Annual Progress Report. The intent is to understand how well States and localities have used HOPWA resources to further the statutory purpose of the program of devising long-term comprehensive strategies for meeting the housing needs of persons with AIDS. To that end, this study will examine the extent to which HOPWA grantees have used and developed local or State planning and implementation mechanisms.

Agency Form Numbers, if Applicable: None.

Members of the affected public: Government officials in 97 formula grant jurisdictions, 1,200 organizations serving as HOPWA project sponsors, and a sample of 25 to 50 individual clients receiving support through the HOPWA program.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The researchers will administer a one-time, mail survey to 97 formula grantees and 1,200 project sponsors. The completion of the mail surveys is expected to take 30 minutes for a total burden hour estimate of 650 hours. Additionally, the researchers will administer a telephone survey to 25 to 50 program clients. The completion of the client survey is expected to last 15 minutes for a total burden hour estimate of 6.5 to 12.5 hours. Total burden hour estimate for all three surveys is 656.5 to 662.5 hours.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 18, 1999.

Lawrence L. Thompson,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 99–28120 Filed 10–22–99; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4541–N–02]

Notice of Proposed Information Collection: Comment Request

Implementation of the Housing for Older Persons Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: the proposed information collection requirement established under the final rule implementing the Housing for Older Persons Act of 1995 (HOPA) will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the information collection requirement.

DATES: *Comments Due Date:* December 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection requirement. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Turner Russell, Department of Housing and Urban Development, 451 7th Street, SW, Room 5210, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Juan E. Milanés, Acting Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Room 5206, 451 Seventh Street, SW, Washington, DC 20410, telephone: (202) 707–0836 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection requirement to the OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Regulation: 24 CFR Part 100, Implementation of the Housing for Older Persons Act of 1995; final rule.

OMB Control Number, if applicable: 2529–0046.

Description of the need for the information and proposed use: In The Fair Housing Amendments Act of 1988 (the Act) [42 U.S.C. § 3601 et seq.], Congress prohibited discrimination in the sale or rental of housing based on familial status (families with children under 18 years of age). However, at § 3607(b)(2) of the Act, Congress exempted 3 categories of "housing for older persons" from liability for familial status discrimination: (1) housing provided under any State or program which the Secretary of HUD determines is specifically designed and operated to assist elderly persons; (2) housing intended for, and solely occupied by, persons 62 years of age or older; and (3) housing intended and operated for occupancy by at least one person 55 years of age or older per until ("55 or older" housing). In December 1995, Congress passed the "Housing for Older Persons Act of 1995 (HOPA) [Public Law 104–76]. The HOPA modified the "55 or older" housing" exemption provided under the Act by eliminating the requirement for "significant facilities and services specifically designed to meet the physical or social needs of older persons." The HOPA still requires that at least 80 percent of the occupied units must be occupied by at least one person who is 55 years of age or older; and that housing providers must publish and adhere to policies and procedures that demonstrate the intent to provide housing for persons 55 years of age or older. In addition, the HOPA mandates compliance with "rules issued by the Secretary for verification of occupancy, which shall * * * provide for [age] verification by reliable surveys and affidavits."

The final rule does not significantly increase the record keeping burden. It describes in greater detail the documentation that HUD will consider when determining whether or not a community or facility qualifies for the "55 or older" housing exemption. Further, § 100.305(e)(5) of the final rule provides a non-extendible one-year transition period [May 3, 1999–May 3, 2000] for existing communities or facilities that wish to qualify for the "55 or older" housing exemption. An existing community or facility that fails to complete the transition by the expiration of that period must stop reserving vacant units for "55 or older" residents; market available housing to the general public regardless of familial status; and rescind all policies, practices, and procedures that discriminate against residents with minor children. By definition, such communities would no longer need to collect or maintain occupancy/age verification information for purposes of the "55 or older" housing exemption.

The information collection requirements contained in §§ 100.306 and 100.307 of the final rule are necessary to satisfy the criteria for the "55 or older" housing exemption under the HOPA. The information required under the Act, the HOPA, and the HOPA final rule will be collected in the normal course of business in connection with the sale, rental or occupancy of dwelling units within a "55 or older" hosing community or facility. The statutory and regulatory requirement to publish and adhere to age verification policies and procedures for current and prospective occupants is the usual and customary practice of the "senior housing" industry without regard to the requirements of the Act or the HOPA. The procedures for verifying ages of current residents may require an initial survey and periodic review and update of existing records. The creation of such records should occur in the normal course of sale of rental transactions and should require minimal time.

Three types of information would be collected under the final rule. The publication of a community's housing policies and procedures is not confidential by nature of the fact that such policies and procedures must be disclosed to current and prospective residents, and to residential real estate professionals. The occupancy survey results must be available for public inspection. The survey summary need not contain confidential information because it may simply indicate the total number of dwelling units occupied by persons 55 years of age or older. The supporting age verification records may contain some private information which would need not be disclosed unless the community or facility claims the "55 or older" housing exemption as a defense to a jurisdictional familial status discrimination complaint filed with HUD.

HUD's Office of Fair Housing and Equal Opportunity will request disclosure of this information by a housing provider when HUD investigates a jurisdictional familial status discrimination complaint, and the housing provider claims the "55 or older" housing exemption as an affirmative defense to the complaint.

Agency form number(s), if applicable: None.

Members of affected public: Both the HOPA and the HOPA final rule require that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or order to routinely collect and update age verification information necessary to meet the eligibility criteria for the "55 or older" housing exemption. The record keeping requirements are the responsibility of the housing provider that wishes to qualify for the exemption.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The information collection requirements of the HOPA final rule are the responsibility of the community or facility that claims eligibility for the "55 or older" housing exemption provided under the HOPA. Since the HOPA does not require HUD certification or registration for "55 or older" communities or facilities, it is difficult to estimate the number of communities or facilities that intend to collect this information in order to qualify for the exemption. When the proposed rule was published for public comment in January 1997, HUD estimated that approximately 1,000 communities or facilities would seek the exemption. HUD also estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the community or facility, and that the number of such transactions per year might vary significantly depending on the size and nature of the community. HUD estimated the average number of housing transactions per year at "10 per community." HUD concluded that the publication of policies and procedures "* * * is likely to be a one-time event and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden for the three collections is 5,500 hours."

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 21, 1999.

Juan E. Milanés,

Acting Director, Office of Enforcement.

[FR Doc. 99–28250 Filed 10–27–99; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4541–N–01]

Notice of Proposed Information Collection: Comment Request; Fair Housing Initiatives Program SuperNOFA Application Kit

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the *Fair Housing Initiatives Program* will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Myron Newry, Department of Housing and Urban Development, 451 7th Street, SW, Room 5228, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Department of Housing and Urban Development, 451 7th Street, SW, Room 5228, Washington, DC 20410. Telephone number (202) 708–0800 (This is not a toll free number). Hearing or speech-impaired individuals my access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Notice of Submission of Proposed Information Collection to OMB

Title: Fair Housing Initiatives Program SuperNOFA Application Kit and Reporting/Recordkeeping Requirements.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: The information required by the application kit will assist projects and activities that increase compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In addition, it will help the Department to provide funds to public and private agencies involved in administering programs to prevent or eliminate discriminatory housing practices. This program (FHIP) will carry out these fair housing enforcement and/or education and outreach activities under the following initiatives: Administrative Enforcement, Private Enforcement, Education and Outreach, and Fair Housing Organizations. The information collected from quarterly and final reports and enforcement logs will enable the Department to evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminatory housing practices. These grants are authorized under Section 561 of the Housing and Community Development Act of 1967 (42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) and the implementing regulations are found at 24 CFR part 125.

Agency form numbers: SF–269A, SF–424/A/B/M: SF–LLL, HUD 2880, HUD 2992, HUD–50070, HUD–50071:

Members of affected public: 400.

Reporting Burden: The Department estimates that the application kit, quarterly report, final report, and enforcement log, will have the following reporting burdens:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application development	400		1		53		21,200
Quarterly Report	70		4		12		3,360
Enforcement Log	35		4		7		980
Final Report	70		4		20		5,600

The number of respondents is based on the total number of applications received under all initiatives. The number of hours per response is an average based on grantee estimates of time to review instructions, search existing data sources, prepare required responses to the application kit, and assemble exhibits.

Estimates are based on 70 of 400 applications funded, thus, 70 respondents will report 4 times annually on program performance and financial status. Approximately half of applicants funded include enforcement activities requiring completion of the enforcement log. Hours per response are averages based on grantee estimates of time to review instructions, search existing data sources, gather and maintain the data needed, and complete or respond to and review the collection of information. Actual time may vary because of differences in activity, size, or complexity of grant, and depending on whether grantee automates format.

Status of the proposed information collection: Extension.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 20, 1999.

Ivy L. Davis,

Deputy Director, Office of Programs.

[FR Doc. 99–28251 Filed 10–27–99; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–50]

Submission for OMB Review: New Questions for the Supplement to the December 1999 Current Population Survey: Effects of Disclosure on Public Awareness of Lead Paint Hazards

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: This is a request for OMB's approval to add eight new items to the supplement to the December 1999 Current Population Survey (CPS), that is concerned with Lead-based Paint Hazard Awareness. Most of additional items will be administrated to narrow subpopulations, with a minimal effect on overall respondent burden. This proposal has been submitted to Office of Management and Budget for emergency review and approval.

DATES: *Comments Due Date:* November 4, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number 2539–0006 and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 1999.

Wayne Eddins,

Departmental Reports, Management Office of Investment Strategies, Policy and Management.

Title of Proposal: New Questions for the Supplement to December 1999 Current Population Survey: Effects to Disclosure on Public Awareness of Lead Paint Hazards.

Office: Office of Lead Hazard Control.

OMB Control Number: 2539–0006.

Description of the Need for the Information and its Proposed Use: This is a request to add questions to an existing data collection instrument, that will improve understanding of disclosure and childhood lead poisoning.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	48,000		1		.136		6,640

Total Estimated Burden Hours: 6,640.

Status: Revision.

Contact: Wayne Eddins, HUD, (202) 708–5221 Ext. 121 or Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–28252 Filed 10–27–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–03]

Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS); City of Monterey Park, CA; Section 108 Loan Guarantee/Economic Development Initiative Grant (EDI)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of availability of DEIR/DEIS.

SUMMARY: The Department of Housing and Urban Development gives this notice to the public that the City of Monterey Park, California has prepared a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Monterey Park Towne Plaza Project, which, among other components includes the development of a 515,382-square foot retail center including a home improvement store with a garden center, three restaurants, and various other retail uses, in the City of Monterey Park, California.

This notice is in accordance with regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Interested individuals, government agencies and private organizations are invited to comment on the EIR/EIS concerning the project to the specified person or address listed below. Particularly solicited are comments on the Draft EIR/EIS and the major issues identified below.

Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the final EIR/EIS effort.

EFFECTIVE DATES: Effective Date: This notice shall be effective on October 20, 1999.

Comment Due Date: Written comments must arrive by December 3, 1999 at the address given below. We will consider all comments received in preparing the Final EIR/EIS.

ADDRESSES: All interested agencies, groups and persons are invited to submit written comments on the Draft EIR/EIS to: Ray Hamada, City of Monterey Park, Community Development Department, 320 West Newmark Avenue, Monterey Park, California, 91754 (626) 307–1463.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Hamada (see address and phone number above).

SUPPLEMENTARY INFORMATION: A combined Draft EIR/EIS has been completed and accepted for the proposed action described below. Comments on the Draft EIR/EIS are requested and will be accepted by the contact person until December 3, 1999.

Title of Action: Monterey Park Towne Plaza Section 108 Loan Guarantee/ Economic Development Initiative Grant (EDI) Project.

Description of Proposed Action: The City of Monterey Park, acting on behalf of the U.S. Department of Housing and Urban Development, has prepared a Draft EIR/EIS to analyze potential impacts of developing a triangular-shaped, 47.1-acre piece of property, located in the southeast portion of the City of Monterey Park immediately north of the Pomona Freeway (State Route 60) and west of Paramount Boulevard. The proposed project would consist of a 515,382-square foot retail center including a home improvement store with a garden center, three restaurants, and various other retail uses. The project site includes a net 0.1-acre land dedication to Caltrans that results from an approximately 1-acre land trade. The proposed project would also include roughly 4.4-acres of Southern California Edison property to the northwest and east of the site to be used for surface parking and an access road. The new access road would require realignment of the intersection of Paramount Boulevard/Neil Armstrong Street. An existing berm located along the southern boundary of the site would also be leveled.

Approximately 10 acres of the western portion of the site contain a historic landfill ("North Parcel Landfill"), that received municipal solid waste between 1948 and 1975. Due to the past landfill operations, the project site is currently designated as a Superfund site. A leachate treatment plant (LTP) is also located on the site and currently processes collected groundwater (leachate) from a landfill located just south of the Pomona Freeway ("South Parcel Landfill"), which stopped accepting waste in 1984. The LTP will continue to operate on-site in this capacity following the closure of the South Parcel Landfill in the year 2000. The North Parcel Landfill is currently being remediated based upon guidance from the U.S. Environmental Protection Agency.

Other businesses that currently occupy the site include Ecology Auto Wrecking, Aman Brothers Pavement Crushing, Manhole Adjustment Inc., and Recycled Wood Products. Other than the LTP, all of the tenants will vacate the project site prior to development of the site.

The Draft EIR/EIS analyzes potential environmental effects of three alternative projects. The alternative projects described here are illustrative of varying options for development, enabling an evaluation of the full range of impacts identified within the EIR/EIS alternative.

The No Action Alternative would not implement the proposed Monterey Park Towne Plaza Project, and the environmental effects from implementation of the Proposed Action or the other alternatives would not occur. The existing on-site tenants would remain on the project site and the LTP would continue to treat leachate from the South Parcel Landfill.

Under the Reduced Density Alternative, all land uses associated with the Proposed Action would be reduced by 25 percent. As such, this alternative would involve approximately 386,538 square feet of commercial retail development. The site plan for the Reduced Density Alternative would be similar to that of the Proposed Action in terms of location and orientation of buildings, parking lots, and internal roadways. Buildings would be the same height as the Proposed Action but the building pads would be slightly smaller. This alternative would also involve the same site improvements as the Proposed Action, including: (1) New utility infrastructure; (2) leveling of the freeway berm; and (3) provision of a new access road from Paramount Boulevard. The LTP would remain on the project site under this alternative.

Under the Existing Zoning Alternative, Retail Buildings "G," "H," "I," and Restaurant 3 associated with the Proposed Action would be replaced with a 126,000-square foot theatre and a 186,300-square foot parking structure. Excluding the parking structure, the Existing Zoning Alternative would involve approximately 656,742 square feet of commercial retail development. The site plan for the Existing Zoning Alternative would be similar to that of the Proposed Action and the Reduced Density Alternative in terms of location and orientation of buildings, parking lots, and internal roadways. Building heights under this alternative would also be the same as the Proposed Action but the building pads for some retail uses (*i.e.*, Retail "A" and Pad 2) would be slightly larger. This alternative would involve the same site improvements as the Proposed Action, including: (1) New utility infrastructure; (2) leveling of the freeway berm; and (3) provision of a new access road from Paramount Boulevard. The LTP would remain on the project site under this alternative.

Location: City of Monterey Park, Los Angeles County, California.

Potential Environmental Impacts: Transportation/circulation; air quality; noise; geology/seismicity; human health hazards; hydrology/water quality; land use; aesthetics/views; light and glare; population, employment and housing; public services; utilities; and cumulative effects. Most of these impacts would be reduced to a level of insignificance following implementation of proposed mitigation measures.

The Draft Environmental Impact Report/Environmental Impact Statement will be published on or about October 14, 1999 and will be on file at the City of Monterey Park, Community Development Department, 320 West Newmark Avenue, Monterey Park, California, 91754 and available for public inspection, or copies may be attained at the same address, upon request to Mr. Ray Hamada, Planning Manager (626) 307–1463.

Dated: October 20, 1999.

Richard H. Broun,

Director, Office of Community Viability.

[FR Doc. 99–28121 Filed 10–27–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Issue the Final Comprehensive Conservation Plan, Associated Environmental Assessment, and Finding of No Significant Impact for the Deep Fork National Wildlife Refuge in the Southwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared a Final Comprehensive Conservation Plan (CCP), associated Environmental Assessment (EA), and Finding of No Significant Impact (FONSI) for the Deep Fork National Wildlife Refuge (National Wildlife Refuge), Okmulgee, Oklahoma pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations. The Regional Director, Southwest Regional Office, upon issuing a FONSI for the Deep Fork National Wildlife Refuge EA considered ranges of alternatives for that document.

Approval of the Deep Fork National Wildlife Refuge CCP formalizes ten goals which will result in: (1) Protection and enhancement of wetlands; (2) Protection, restoration, and maintenance of the bottomland hardwood forest

community; (3) Protection and enhancement of habitat for migratory birds; (4) Protection and enhancement of Refuge habitat to sustain healthy populations of native fish and wildlife in addition to migratory birds; (5) Restoration of native threatened and endangered species on Refuge lands; (6) Development of a database of pertinent scientific information regarding Refuge habitats and wildlife; (7) Provision of quality consumptive and non-consumptive wildlife-dependent public use; (8) Development of education and outreach programs that enable the public to 1—understand, enjoy and value the fish and wildlife resources found on and off the Refuge, 2—understand events and issues related to these resources, and 3—act to promote fish and wildlife conservation; (9) Compliance with historic and archaeological resource protection laws and regulations; and (10) Institution of an efficient administration that supports accomplishment of Refuge objectives. Some of the specific actions proposed to achieve these goals include but are not necessarily limited to the following strategies:

- Acquire lands within the proposed refuge boundary as they become available from willing sellers;
- Restore bottomland hardwood forest in floodplain areas previously converted to pecan orchard, cropland or pasture;
- Control excessive or prolonged flooding in bottomland forests through the installation of water control structures in existing beaver dams and/or control of problem beaver populations;
- Develop green tree reservoirs, moist soil units and other managed wetlands where conditions support their creation to enhance habitat for waterfowl;
- Develop a recreational trail and visitor contact center;
- Map and monitor wildlife habitats;
- Establish three waterfowl sanctuaries closed to all public entry (2,500 acres total);
- Convert all exotic grass pastureland to bottomland hardwood, wetland or tallgrass prairie conditions that originally existed on the sites.

Based on a review and evaluation of the information contained in the CCP and EA for Deep Fork National Wildlife Refuge, the Regional Director, Southwest Region, U.S. Fish and Wildlife Service, has determined that the approval of the individual or cumulative approaches reflected in the Proposed Alternative and CCP Goals, Objectives and Strategies, is not deemed to constitute a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act (NEPA). Therefore, an Environmental Impact Statement is not required. However, it is the intent of the Service to revisit questions of potential significant environmental consequences in accordance with NEPA upon consideration of the implementation of site specific proposals called for and discussed in the final plan document.

ADDRESSES: Copies may be obtained by writing to: Mr. John Slown, AICP, Biologist/Conservation Planner, Division of Refuges, U.S. Fish and Wildlife Service, P. O. Box 1306, Albuquerque, NM 87103–1306.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of these documents. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Service considered comments and advice generated in response to a draft document issued April 1999. The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of the availability of the final documents.

Dated: October 7, 1999.

Stephen W. Perry,

Acting Regional Director, Albuquerque, NM.

[FR Doc. 99–28124 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of permit issuance.

On June 3, 1999, a notice was published in the **Federal Register**, vol. 64, no. 106 and FR 29873, that an application was filed with the Fish and Wildlife Service by Douglas County, Colorado, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, Preble's meadow jumping mouse (*Zapus hudsonius preblei*) in Douglas County, Colorado, pursuant to the terms of Maytag Trail Habitat Conservation Plan.

Notice is hereby given that on October 12, 1999, as authorized by the provisions of the Act, the Service issued a permit (PRT–TE018090) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the threatened species, and that it was consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Additional information on this permit action may be requested by contacting the Field Supervisor, Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370, between the hours of 8:00 a.m. and 4:00 p.m. weekdays.

Dated: October 20, 1999.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 99–28140 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AF63

Proposed Policy on General Conservation Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces a proposed policy to enhance the use of permits as conservation tools by granting general conservation permits under a number of wildlife and plant laws and treaties. The policy recognizes scientific and conservation professionals and institutions as partners in resource conservation and management and provides incentives for them to work with protected species and their habitats. It establishes a framework for us to evaluate permit applications based on a risk assessment and grant a general conservation permit under certain circumstances to professionals conducting scientific, management, and conservation activities. This proposed policy is intended to complement the current system used to process permit applications.

The development of this policy is the first step in an ongoing review of our permits programs. We also are developing a long-term implementation plan for permits reform, will be conducting a study of existing successful permits programs and practices, and anticipate forming a permits process advisory committee.

DATES: Send public comments on this notice by December 27, 1999.

ADDRESSES: Send comments to the Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Materials received will be available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Office of Management Authority.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, Office of Management Authority, at the above address, telephone (703) 358–2093 or fax (703) 358–2280.

SUPPLEMENTARY INFORMATION:

Background

We implement a number of wildlife and plant laws and treaties, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Migratory Bird Treaty Act (MBTA), Lacey Act, Bald and Golden Eagle Protection Act (BGEPA), Wild Bird Conservation Act (WBCA), Endangered Species Act (ESA), and Marine Mammal Protection Act (MMPA). Each of these laws and treaties provides for permits to be issued for otherwise prohibited activities under specific circumstances. Permits are a means of regulating human activities that can have an impact on populations of protected wildlife and plants, thereby conserving these species and their habitats for future generations. Our goal in administering the permits programs is to foster conservation of protected species and their habitats, while imposing the least possible burden on the affected public.

Over the past several years, certain wildlife and plant professionals and conservation organizations have raised concerns about our permits programs. Their concerns have centered on the need for a better approach to programmatic permitting and the need to recognize scientific and conservation organizations conducting work with protected species as partners in resource conservation. These individuals and organizations believe that our current permits system is a disincentive to working with protected species, and at times even impedes scientific investigation, conservation, and endangered and threatened species recovery efforts.

Last year, we established a Permits Work Group to review concerns raised about our permits programs and to make recommendations on how to address the concerns. Members of the work group include representatives from our permits programs in the Washington Office and in each of the seven regions. They include managers of permits programs, as well as legal instruments examiners and biologists who review permit applications.

On August 10, 1998, we published a scoping notice in the **Federal Register** (63 FR 42639). We described the four programs that administer permits—Office of Management Authority, Office of Law Enforcement, Division of Endangered Species, and Office of Migratory Bird Management—and summarized the permits initiatives currently being undertaken within the four programs. We also asked for comments on the development of a policy that would approach permits as conservation tools and provide a more efficient permits process that would be consistently implemented Service-wide, with a focus on scientific research and scientific and conservation institutions that meet certain high biological and legal standards (i.e., paragraph C of the proposed policy outlines these standards).

Summary of Comments

We received 135 comments from 4 Federal agencies, 57 individuals (including 30 form letters from individuals who rehabilitate migratory birds), 6 foreign entities, 8 State or county government agencies, 17 museums, and 43 organizations. There was a wide range of comments that addressed not only policy development for scientific and conservation permits, but the permits process as a whole for all types of applicants.

Members of one organization were strongly opposed to our specific proposal to identify cooperators from scientific and conservation institutions, streamline the approval of permits for these cooperators, and/or issue general permits. They considered the current permits process to be "extraordinarily" easy and expected to see a high threshold of proof applied to ensure that permits are granted in a precautionary manner. They did not believe that permit decisions could be generalized. They asserted that, while an institution may be noteworthy for its contribution to conservation of one particular species, it may have no expertise in the conservation of another. They also believed that any kind of pre-approval process would limit public access to information on applicants and their proposed activities.

Other commenters generally supported the development of a new permits policy and either identified problems and/or made suggestions on changes that could improve the current permits programs. The following briefly summarizes these other general comments and suggested solutions received from the public and/or identified by the Permits Work Group. The identified problems and suggested solutions are not given in any priority order, nor is the inclusion of a problem or suggestion an indication that we agree with it or will be able to implement it. We have reviewed all the comments, incorporated some ideas into this proposed policy, and are considering others in the ongoing review of our permits programs.

Problem Identified: Sometimes permit applications, amendments, and renewals are not processed in a timely manner, and there are no regulatory time limits for processing such actions.

Suggested Solutions: Establish mandatory time frames for processing permit applications; specify review due dates for low-risk transactions; evaluate staffing needs; establish time frames/guidelines for reviewing offices; notify the public of any anticipated delays in processing permits; use the new computer system, Service Permit Issuance and Tracking System (SPITS), for more efficient permits processing; use general advices, findings, and biological opinions, where appropriate; streamline the renewal process and reporting requirements; allow electronic/faxed submission of applications; develop a system to check the status of an application by phone or internet; and allow payment of fees by credit card.

Problem Identified: The permit process is too complex. It is difficult to understand how our programs process applications and what office to contact for a specific type of permit. Applicants must submit duplicate information for each permit.

Suggested Solutions: Evaluate whether permits are being issued by the appropriate office or program; establish a single point of contact for permits; conduct a study of successful permit programs; establish an electronic species query for all wildlife and plant laws; provide on the internet general information on our permits programs and whom to contact; harmonize CITES and ESA species listings; simplify application forms with clear guidance on what is needed and why; establish an applicant master file for baseline information that can be accessed by all permits offices to reduce duplication; register captive-breeding or plant propagation facilities to expedite issuance of permits; and issue or renew permits even if the project is not currently funded.

Problem Identified: Permit regulations are not clear, are out of date, or take too long to develop. Policies and procedures are unclear and not available to the public. There is confusion about terms we use.

Suggested Solutions: Establish time frames to update regulations, internal practices, and policies; establish a cross-program team to coordinate review and ensure consistency; convert regulations to plain English; involve constituents by establishing a task force or advisory council to assist in formulating regulations and policies and in discussions of permit issues; notify permittees of changes in a timely manner; develop guidance, policy, or regulations on the following: development of special rules under section 4(d) of the ESA; use of euthanasia; import of sport-hunted trophies; rehabilitation of wildlife; use of ESA-listed species in educational programs; and placement of salvaged, incidentally taken, deceased, or seized wildlife and plants.

Problem Identified: Applicants have no specific guidelines on how to submit a successful application. The public is unfamiliar with laws and regulations that apply to their proposed activities and the multitude and complexity of the different permit application requirements and issuance criteria. Experts in conservation are not always experts in dealing with the permit process.

Suggested Solutions: Create a permits clearinghouse and/or toll-free hotline; develop a handbook for applicants; develop more fact sheets to assist the public in understanding the laws and permit procedures; test effectiveness of current application forms and continue to simplify the forms as appropriate; create one Service permits web page and fax retrieval system; develop a permits outreach plan; and publicize improvements in the permits system.

Problem Identified: Permits need to be combined. A single transaction may require multiple permits with differing effective dates, reporting requirements, and conditions.

Suggested Solutions: Review current permit types to develop combined terms and conditions so one permit can be issued for multiple authorizations; issue permits for longer periods of time, if appropriate; consolidate annual reporting requirements; expedite process to add new species or activities to an existing permit; and allow other Department of the Interior (DOI) agencies to act as subpermittees under regional permits.

Problem Identified: Too many permits are required at different levels of government (i.e., State, Federal, and foreign). It is difficult to comply with foreign law.

Suggested Solutions: Coordinate with State and other Federal permitting agencies; link our web site to other sites that contain information on State, Federal, and foreign permitting programs, including copies of foreign and State wildlife and plant laws and addresses of foreign and State conservation agencies; and work with other countries to standardize permits procedures.

Problem Identified: Port clearance needs to be simplified. People would like to import or export wildlife through any Customs port. Some believe that the import and export clearance of non-protected wildlife is burdensome.

Suggested Solutions: Register all permanently marked museum specimens and require no further permits (if existing laws and treaties allow) or clearance to transfer them; allow the clearance of low-risk specimens at Customs ports; increase the number of designated ports and inspectors at border ports; eliminate the filing of a Wildlife Declaration form for non-protected insects; and allow the electronic filing of the Wildlife Declaration form.

Problem Identified: Weaknesses in the Service's internal communication and coordination have created inconsistencies in interpreting and implementing policies and regulations from region to region and among programs.

Suggested Solutions: Establish one-stop shopping through one Service-wide permits program or one permits office in each region; create a Washington office permits coordinator for each program; create a national permits team; develop permits handbooks and national internal guidance; hold annual internal permits training and workshops; use SPITS to share data and improve coordination; harmonize permit applications across programs; review permit terms and conditions to make them consistent and reasonable; and establish a Washington office ombudsman to referee regional inconsistencies and consider complaints.

Problem Identified: The Service neither recognizes the efforts or contributions of partners (including State agencies, research institutions, conservation organizations, non-Federal recovery team members, range states) and other NGOs, nor utilizes the expertise available in scientific and conservation institutions. We need to give greater recognition to the inherent value of research.

Suggested Solutions: Include individuals, zoos, and landowners as partners; increase communication and outreach; utilize experts and peer review; increase collaboration with State wildlife and plant agencies in permit decisions; establish electronic links with institutional databases for tracking specimens; give public recognition to conservation partners; and develop incentive programs for private landowners.

Problem Identified: The current system serves as a disincentive to engage in conservation activities or work with protected species; impedes scientific investigation, conservation, and endangered and threatened species recovery efforts; and exists first to enforce regulations and only secondly to conserve wildlife and plants and their biodiversity. Current regulations and their implementation focus on each action and animal, rather than assisting in scientific or conservation efforts. The Service does not view the import of sport-hunted trophies as a conservation tool and needs to be more supportive of foreign range countries' conservation programs.

Suggested Solutions: Open up discussion of systemic shortcomings before moving forward with permit reform; issue programmatic permits; identify low-, medium-, and high-risk activities; allow for low-risk, non-specified activities; involve external conservation and research professionals in developing criteria for permit issuance; base decisions on good science; consider cumulative effects; simplify process for obtaining permits; expedite the processing of permits, especially for captive-bred animals; and establish a monitoring program for Safe Harbor Agreements.

Problem Identified: The Service does not use risk management in administering the permits programs and micro-manages low-risk specimens (e.g., pre-CITES, accessioned museum specimens).

Suggested Solutions: Evaluate program-based or general permits for activities and species within the scientific scope of a research project under all laws and across our programs; consider the following options: (1) For scientific and conservation institutions, develop standardized criteria for excellence that qualify them for general permits and pre-approve such cooperators to receive individual CITES permits on a streamlined basis; (2) develop a two-tiered, risk-based system that would not require people to obtain individual permits for research activities for low-risk species (i.e., species other than ones listed under the ESA as endangered or threatened or migratory birds of special concern); (3) develop an accreditation system that would allow legitimate members of the scientific community to conduct their research programs without intensive oversight; and (4) allow multiple-use permits for low-risk activities.

Problem Identified: The current process places too much emphasis on preventing unqualified persons from getting permits, not on facilitating conservation by qualified persons. There are no policies outlining factors to be considered for the issuance of program-based or general permits.

Suggested Solutions: Criteria for issuing permits should be flexible and consider principles of adaptive management; factors to be considered should include: (1) The types of activities (e.g., ecosystem-level activities; conservation efforts; import and export of tissue samples; activities and species that are the same or similar to those previously approved; and activities with SSP (Species Survival Plan) species); (2) qualifications of person or institution (e.g., a specific person based on their research; a master permit holder who designates subpermittees; an individual with demonstrated successful conservation activities; members accredited by a professional organization such as the American Museum Association; or an institution registered under CITES); (3) record of compliance with wildlife and plant laws; (4) resources available to accomplish the project; (5) record of compliance with permit terms and conditions; (6) permit terms and conditions that require permittees to submit annual reports that allow us to spot check activities and records, and to re-qualify periodically; and (7) revocation of permits if requirements are not met.

Problem Identified: There has been an increase in the complexity of permit issues and numbers of permits without a corresponding increase in staff.

Suggested Solutions: Analyze workload, issues, and priorities of permits programs; allocate resources between management of generally harmless activities (e.g., import of research samples collected ancillary to species' conservation programs and education) versus activities that are potentially harmful (e.g., lethal take of ESA-listed species); and develop an ongoing approach to identify permit problems and dialogue to resolve them.

Future Steps

This proposed policy is the first step in a series of actions we will undertake to make the processing and administration of permits more effective. It also serves as a model for us to evaluate other types of permit activities, the risks to a species and its habitat associated with those activities, and how we can look at them differently.

In addition to considering the concerns we have heard to date, we believe we need to work to a greater extent with others to find innovative solutions to the increasingly complex issues associated with species management and conservation, and human activities. Thus, we are developing a long-term implementation plan, will be conducting a study to see what successful approaches to permitting are in place by other private organizations and public agencies, and will consider forming an advisory committee that would establish a forum for continuous dialogue on creative approaches to permitting and ensure that we hear diverse points of view.

At the same time, we will proceed with the permits initiatives undertaken in the last few years. These initiatives are in various stages of development and implementation. It is worth noting that many overlap with suggestions listed in the Summary of Comments section. They include efforts to:

Make the Process More Efficient and User Friendly

- Review permit application forms under the Paperwork Reduction Act. (Such a review was completed on January 31, 1998, resulting in redesigned, simplified forms that are tailored, where possible, to a particular type of activity or species. Since we formally review the information collected by application forms every 3 years, we intend to incorporate changes identified by the ongoing permits reform at the next review in 2001.)
- Develop a new computer system to allow for more efficient tracking and issuance of permits. (SPITS went online nationwide for permit issuance in 1998 and will be online for species tracking by the end of 1999.)
- Provide better access to permit information through the development of new fact sheets, a faxback system that allows application forms to be ordered by using a toll-free number, and the internet (our web site—http://www.fws.gov).
- Increase the number of ports designated for the import and export of wildlife and the number of wildlife inspectors to clear shipments, including an increase in wildlife inspectors at Canadian and Mexican border ports.

Ensure Consistent and Fair Implementation

- Develop permits handbooks to assist in training persons reviewing permit applications and ensure consistency by them in interpretation of laws and treaties and the processing of permit applications.
- Draft new policies and permit regulations to clarify permit procedures and issuance criteria.
- Share data and improve coordination between offices within programs and between programs through SPITS.

Foster Partnerships for Wildlife and Plant Conservation

- Increase outreach through conferences and meetings.
- Use program-based permits to expedite the issuance of specific import or export permits for conservation activities.
- Lessen import and export requirements for accredited scientific institutions by eliminating the requirement to obtain an Import/Export License and allowing the use of U.S. Customs ports and international mail for shipment of non-protected scientific specimens.

Focus on Risk Management and Conservation

- Expand SPITS to track and analyze cumulative wildlife and plant data for species management.
- Re-assign law enforcement wildlife inspectors to ports with high numbers of shipments.

Examples of Potential Applications for General Conservation Permits

Although many of the permits initiatives outlined above affect all types of permits, we are narrowing our focus at this time in this proposed policy to general conservation permits. After giving careful consideration to the concerns raised and suggestions given on programmatic or general permits, we are proposing that general conservation permits be issued only under specific circumstances. We would combine permit requirements of all laws and treaties across our programs, when appropriate, into one permit that authorizes multiple transactions for approved species and activities and allows for expedited processing of individual import and export permits under CITES. In most cases, an applicant wishing to conduct activities on multiple species and/or with multiple cooperators must obtain a separate permit from each affected program. Under the proposed policy, a single general conservation permit could be issued in lieu of a number of individual permits. The scope of activities allowed under such a permit would be based on potential risk to the conservation of the species and its habitat. A general conservation permit would only be available to individuals and institutions that have outstanding professional credentials (i.e., has demonstrated expertise over time to conduct the activities with the same or similar species) and that are conducting scientific, management, and conservation activities.

This proposed policy provides an opportunity for us to work closely with the scientific and conservation community, to test the concept of a general permit that is similar to a State scientific collecting permit, to establish general factors to be considered in approving these broader-based permits, and to better coordinate with existing State programs. Some components of this proposed policy come from approaches we currently apply to the processing of permits. However, the proposed policy should clarify our procedures, streamline them for applicants who want to conduct activities that will benefit species' conservation, and provide consistency in administering permits. The proposed policy also lets us try a risk-driven system, which will allow us to apply our limited resources toward those species considered to be at the greatest conservation risk and that can receive the maximum benefit from our enhanced attention. We believe that the use of general conservation permits will provide benefits not only to the permittees but also to the resource.

A potential example with ESA-listed species and their habitats might be to issue a general conservation permit that allows qualified consultants to perform a wide variety of actions, such as the survey and salvage of several mussel species, over several States and across several regions.

The following describes two types of permits we recently issued that could also fall into potential applications for the general conservation permit. The first example involves a permit issued to an organization based on its conservation program in foreign countries for a species listed under the ESA, WBCA, and CITES. The application was published in the **Federal Register** to notify the public and receive comment on the program's activities for 5 years. The permit authorizes multiple imports of live birds for rehabilitation, imports of injured birds for captive breeding, and imports of biological samples for scientific research. It also authorizes the export of live birds for reintroduction, re-export of rehabilitated birds, and export or re-export of biological specimens. Although CITES limits the issuance of import permits to 1 year and requires a separate original export permit for each shipment, these permits can be issued expeditiously since the scientific and legal findings have already been made for the program as a whole for 5 years.

The second example involves the import and export of biological samples for scientific and conservation purposes. We issued a permit to an applicant authorizing imports of unlimited quantities of biological samples from any species listed under CITES or the ESA. As with the previous example, the findings are valid for 5 years and successive import permits will be issued for 1 year to meet the requirements of CITES. The permit was conditioned based on the risk associated with the activity or/and with the species. For example, samples collected invasively must be collected by the permittee's staff or by other appropriately trained personnel who are pre-approved in writing by the permittee. The permittee must retain a record of whom it approves. These conditions do not apply to samples that are collected non-invasively. Samples from wild animals of CITES Appendix-I species can only be collected in cooperation with local management authorities. Separate permits are required for each export or re-export because of CITES requirements, but issuance of these permits can be done quickly since all the required findings were made for both import and export at the time the import permit was issued.

Public Comments Solicited

We invite interested organizations and the public to comment on this proposed Policy on General Conservation Permits. We particularly seek comments on factors to consider in evaluating applications for general conservation permits and how we could by the issuance of these permits foster partnerships for wildlife and plant conservation; focus permits on risk management and conservation; reduce paperwork, streamline the permit process, and provide user-friendly service; and implement the process fairly and consistently while still focusing on our conservation mission. At this time, we are seeking comments on this proposed policy, not on other types of permits or steps in our ongoing permits reform efforts.

Required Determinations

This proposed policy has not been reviewed by OMB under Executive Order 12866.

A review under the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) has revealed that this proposed policy would not have a significant economic effect or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The groups affected by this rule are a relatively small number of wildlife and plant professionals and conservation organizations who will be eligible to apply for general conservation permits that combine authorizations under various wildlife and plant laws and treaties into one permit while meeting the existing permit regulations and fulfilling our conservation mission. The primary economic impact is the reduction in burden hours for applicants applying for multiple permits. We estimate these benefits are less than $700,000 annually.

Similarly, this proposed policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, and will not negatively affect the economy, consumer costs, or US-based enterprises.

We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed policy will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Under Executive Order 12630, the proposed policy does not have significant takings implications for the same reasons as described above under the Regulatory Flexibility Act.

Under Executive Order 12612, this proposed policy does not have significant Federalism implications. We have evaluated possible effects on Federally recognized Tribes and determined that there will be no adverse effects to any Tribe.

Under Executive Order 12988, the Office of the Solicitor has determined that the proposed policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

The proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Information collection is covered by existing OMB approvals and assigned clearance numbers 1018–0092, 1018–0093, 1018–

0094, and 1018–0022 with an expiration date of February 28, 2001. We will use the information to review permit applications and make decisions, according to criteria established in statutes and regulations, on the issuance or denial of permits.

We have also determined that this proposed policy is categorically excluded under the DOI's procedures for complying with the National Environmental Policy Act (NEPA) (516 DM 2, Appendix 1.10).

Executive Order 12866 requires us to write regulations that are easy to understand. We invite your comments on how to make this proposed policy easier to understand, including answers to the following questions: (1) Are the requirements in the proposed policy clearly stated; (2) does the proposed policy contain technical language that interferes with its clarity; and (3) what else could we do to make this proposed policy easier to understand?

Policy on General Conservation Permits

A. Why approach permits as conservation tools?

The purpose of this policy is to encourage greater involvement of qualified individuals and institutions in protected species' conservation through the issuance of general conservation permits. Our goals in administering the permits programs are to: (1) Create incentives to foster partnerships for the conservation of species and their habitats while meeting our basic statutory responsibilities of species' protection and management, (2) focus on risk management when processing permit applications, (3) impose the least possible burden on the affected public, and (4) implement permits fairly and consistently.

We are committed to carrying out our statutory obligations and will apply Federal authorities in a manner to ensure sound resource decisions while understanding the importance of partnerships in wildlife and plant conservation. We are only one component of a greater conservation community and acknowledge that teamwork among Federal, Tribal, State, local, international, and private stakeholders is an essential ingredient for the management and conservation of wildlife and plants. Thus, this policy recognizes scientific and conservation professionals and institutions as partners with us in resource conservation and management and provides incentives for them to work with protected species and their habitats.

B. What is the scope of a general conservation permit?

This policy establishes a framework for us to use in evaluating permit applications and deciding whether or not to issue a general conservation permit. These general conservation permits are available to approved individuals or institutions conducting non-commercial scientific, management, and conservation activities when the provisions of all applicable wildlife and plant laws are met and when the benefits gained from the proposed activities counter any potential harm to the affected species and its habitats.

We will, as appropriate, consolidate authorizations under the various wildlife and plant laws listed in section H of this policy and issue one general conservation permit, rather than separate permits. This permit may cover most or all of the regulated activities in a program described by an individual or institution. In the case of ESA-listed species, a general conservation permit would only be available for activities under section 10(a)(1)(A) that involved intentional take of species for the purposes of scientific research, management, or conservation, excluding Safe Harbor and Candidate Conservation Agreement with Assurances permits. It does not include permits issued under section 10(a)(1)(B) of the ESA which authorize take that is incidental to otherwise lawful activities (which in this context means economic development or the use of land or water). Nor does it replace the need to develop a Habitat Conservation Plan under the incidental take permit regulations.

The scope of the activities authorized in the permit will vary depending on the risk assessment as outlined below. A general conservation permit may authorize multiple transactions, depending on the applicant's program and the species involved, and allow for streamlined issuance of specific CITES permits for import and export. We will explore the feasibility of providing a single point of contact in each regional office, across regional and programmatic boundaries, for the processing of applications and administration of the general conservation permit.

C. What factors will we consider in evaluating permit applications for general conservation permits?

Because general conservation permits may authorize a broader scope of activities, we will consider the following factors in evaluating applications for such permits:

(1) Whether any potential risk to the species in the wild or its habitat and/or to the captive population, if applicable, is appropriate for the conservation benefits to be gained from the proposed activities.

(2) Whether the purpose of the activity is for non-commercial scientific research, management, or the conservation of the species or its habitat. The proposal must provide clear biological goals and the means by which the goals will be achieved, including proposed time frames as appropriate. Through the permits process, we will discuss with you, the applicant, the proposed activities in view of species' biological and management needs, provide technical assistance, and resolve issues to ensure species' conservation.

(3) Whether you have adequate resources to accomplish the proposed activities.

(4) Whether you have the biological and legal qualifications, including whether you have been a permittee in good standing with a long-term record of compliance in the use of similar Federal wildlife and plant permits. You should provide copies of any publications that demonstrate your biological expertise to conduct the proposed activities. We also would consider the qualifications of an individual acting as your subpermittee and your ability to retain oversight over the actions of that individual.

(5) If the activities involve holding live wildlife and plants, whether the facilities are adequate to accomplish the goals, including your prior record of care and maintenance of the same or similar wildlife and plants.

(6) Whether you and your proposed activities meet statutory requirements. The proposed policy is intended to complement the current permits processing system and not supersede or alter any Federal law or regulation related to species' conservation.

D. How do we calculate potential risk?

Our basic statutory responsibility under the various wildlife and plant laws and treaties is to conserve fish, wildlife, plants, and the ecosystems upon which they depend for future generations. The scope of the activities and the species authorized in a general conservation permit will be based on an evaluation of the degree of conservation benefit to the wild and captive populations of the species and its habitat versus the degree of potential risk posed by the proposed activities outlined in the application. The evaluation will be based on the best scientific information available and the conservation needs of the species and its habitat. The proposed policy limits these permits to scientific, management, and conservation activities. Some actions generally may have such low risk to the conservation of the species and its habitat that we may grant a permit for a broader scope of activities. On the other hand, some actions with some species may have such a high degree of risk that we may limit the scope of activities or terms and conditions of the permit, or we may deny a permit for the proposed activity.

Within this framework, we will look at a number of factors to perform a risk assessment. Each of these factors (outlined below) has a continuum of risk associated with it. The factors are not listed in any order of priority. Neither is the list meant to be an exhaustive list of the factors used in performing a risk assessment, nor to be a rigid hierarchy since other aspects of the proposed activities and species status may affect the degree of risk.

(1) *Level of species protection.* We will look at how the species is protected. For example, if a species is listed under the ESA, there is a continuum based on the risk of extinction recognized by the law from high risk to low risk as follows:

Endangered;
Threatened;
Threatened with a special rule (often referred to as a 4(d) rule);
Experimental population; and
Similarity of appearance.

This same recognition of differences in risk exists in programs under other laws and treaties. Each law and treaty outlines the purposes for which the fish, wildlife, plants, and their ecosystems may be used and standards for making decisions on whether to allow the proposed activity. When a species is regulated under more than one law or treaty, all the requirements are evaluated.

(2) *Potential effect of the proposed activities.* We will review the intended purpose of the proposed activities in relation to their potential effect on the species' biological, ecological, and management needs (e.g., population status, best management practices, available scientific information). Again, there will be a continuum of risk, depending on how the proposed activities may affect the species' population status, habitat, or management. For example, risks associated with the source or type of specimen in general have a continuum from high risk to low risk such as:

Intentional killing of wild animals;
Permanent removal of live animals and plants from the wild;
Removal from the wild as part of a recovery effort or reintroduction program;
Death or permanent removal from an essential captive population;
Invasive collection of tissue samples from wild animals;
Non-invasive collection of tissue samples with captive or wild specimens;
Culled or surplus specimens; and
Salvaged dead specimens when not intentionally killed for the purpose of collecting.

We will conduct this review using our own scientists (e.g., the Office of Scientific Authority), outside experts, and peer review as needed. We will take into consideration the level of biological uncertainty in the available scientific information and management strategies. The degree of risk may be higher when there are significant gaps in the biological data about the species' ecology, management techniques, or potential effects of the proposed activities on the species and its habitat. You may want to anticipate these uncertainties and design your activities to provide for flexibility by outlining alternative methods or strategies to achieve your biological goals. This may allow us to issue a permit with specific terms and conditions in response to the proposed alternatives and anticipated changing circumstances.

(3) *Benefits.* At the same time, we will consider net or overall benefits to the species and its habitat that may be gained by the activities.

(4) *Part of a management plan or strategy.* We will consider if the activity is part of a recognized management plan or strategy. For ESA-listed species, we will consider whether the activity is a task identified in a final recovery plan or outline.

(5) *Level of pressure on the species.* This would include the degree of risk associated with whether the transaction would encourage or allow for commercial use.

(6) *Potential cumulative effects.* We would look at cumulative effects on the species' wild and captive populations and its habitat.

(7) *Safeguards.* Terms and conditions of general conservation permits, including monitoring of activities through reports and field visits, will be based on the degree of risk to the species and its habitat. For example, permits to conduct activities with threatened or endangered species, and migratory birds of management concern are more likely to have closer and more frequent monitoring and more restrictive permit terms and conditions.

For high-risk activities, we may accompany the permittee when take activities are being conducted. This allows us to develop closer partnerships with researchers; check information on species, habitat, and techniques; identify unanticipated deficiencies or benefits associated with the activities; help prevent accidental violations of the terms and conditions of the permit; and work out any adjustments that may be needed in the permit.

Generally through the use of annual reports, we will periodically review the activities to ensure the terms and conditions of the permit are being implemented; to look at the level and impacts of authorized take; and to determine if the activities are producing the desired results. We will use the information to assess cumulative trends in species' populations or changes in its habitat.

E. What are the benefits of these permits?

The granting of general conservation permits generally offers benefits in four broad areas. We will take the identified actions to help further these benefits.

(1) *Foster partnerships for wildlife and plant conservation.*

- Issue general conservation permits that consolidate the terms and conditions for multiple activities. This will enhance our existing partnerships, and may encourage new partnerships, by reducing the paperwork burden on our conservation partners and simplifying the permit process.
- Reach out to current and potential partners by providing permit information at scientific meetings and conferences, in newsletters, etc.
- Use our own scientists and outside experts and encourage peer review to obtain the best available scientific information when evaluating permit applications. The results of any external review will be entered into the administrative record of the decision and made available for public review consistent with provisions of the Freedom of Information Act and the Privacy Act.

(2) *Focus permits on risk management and conservation.*

- Continue to base our permit decisions on the best available scientific information within the bounds of the laws and treaties.
- Consider cumulative effects of permit issuance over time. Use the computer system, Service Permit Issuance and Tracking System (SPITS), to analyze cumulative wildlife and plant data.
- Base our permits programs on conservation risk management to ensure

that our limited resources are directed toward species at the greatest conservation risk and that can benefit from our enhanced attention.

(3) *Reduce paperwork, streamline the permit process, and provide user-friendly service.*

- Explore the feasibility of providing a single point of contact in each regional office for the processing of permit applications and administration of the general conservation permit.
- Develop and use harmonized permit application forms to consolidate the information needed to apply for a permit under multiple wildlife and plant laws and actively seek comments from the public during the Office of Management and Budget (OMB)-approval process for forms under the Paperwork Reduction Act.
- Develop and use general findings (e.g., no-detriment advices under CITES, programmatic biological opinions under the ESA) to decide when an application meets the permits issuance criteria.
- Issue and track the processing of permits through SPITS.
- Issue general conservation permits for up to 5 years for ongoing activities, depending on the results of the risk assessment.
- Consolidate annual reporting requirements and, when possible, tailor the report due date to the activities conducted. This would allow the permittee to submit a single report and meet the requirements of more than one law or treaty.

(4) *Implement the permit process fairly and consistently.*

- Develop standardized permit conditions for activities with the same species or related groups of species.
- Use the computer system SPITS to share data and ensure use of consistent permit terms and conditions.

F. What if I don't qualify for a general conservation permit?

Individuals or organizations that do not qualify for permits under this policy may apply for individual permits under existing regulations, just as they do now.

G. What is the scope of this policy?

This policy applies Service-wide to programs that process permit applications for all species of wildlife and plants under the law and treaties listed in section H of this policy.

H. Authority

The authorities for this action are the Bald and Golden Eagle Protection Act (16 U.S.C. 668a); Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 U.S.T. 1087); Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Lacey Act (18 U.S.C. 42); Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*); Migratory Bird Treaty Act (16 U.S.C. 703–712); and Wild Bird Conservation Act (16 U.S.C. 4901–4916).

Dated: August 30, 1999.

John G. Rogers,

Acting Director.

[FR Doc. 99–28232 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

Emergency Closure and Restriction of Certain Uses of Public Lands Within the Dillon Field Office, Montana

AGENCY: Dillon Field Office, Bureau of Land Management, DOI.

ACTION: Notice of Emergency Closure and Restriction Order.

SUMMARY: Effective immediately, all newly acquired public lands that lie within sections 1, 2, 11, 12, and 13 of Township 9 South, Range 10 West, PMM; and the South East corner of section 35 in Township 8 South, Range 10 West, PMM; will be restricted to certain uses. The closure and restriction order is being implemented to prevent conflicts with waterfowl management, which is one of the primary reasons for the acquisition. Travel restrictions are necessary to prevent the spread of noxious weeds and to prevent resource damage to the area. In addition restriction of certain uses are necessary for public safety.

Vehicle Travel

All public land in sections 1, 2, and 11 (Township 9 South, range 10 West, PMM) that lie East of the I–15 frontage road and West of the Union Pacific Rail Road right of way will be closed to all motorized vehicle travel. Motorized vehicle travel will be allowed from the point where the road crosses the Union Pacific Railroad tracks at the SW¼ of the NW¼ of section 11 (Township 9 South, Range 10 West, PMM) and continues parallel to the north east of the tracks, until the point where Gallagher Creek meets it. At this point the road will be closed to further motorized vehicle travel through the creek bed. This closure is necessary to prevent further damage to the Gallagher Creek stream bed, to prevent the spread of noxious weeds, and to reduce erosion. Motorized vehicle travel in the remaining area will be limited to existing roads and trails unless otherwise designated.

Hunting

Hunting on those public lands in sections 1, 2, and 11 (Township 9 South, Range 10 West, PMM) that lie East of the I–15 frontage road and West of the Union Pacific Rail Road right of way will be restricted to archery, shotgun, traditional handgun, and muzzleloader only. Definitions of legal archery, shotgun, traditional handgun, and muzzleloader are contained within the State of Montana regulations for hunting.

The authority for this closure and restriction order is 43 CFR 8364.1. The order will remain in effect until a Management Plan for the area is completed.

ADDRESSES: Copies of the closure and restriction order, and maps showing the location of the affected lands are available from the Dillon Field Office, 1005 Selway Drive, Dillon, Montana, 59725.

FOR FURTHER INFORMATION CONTACT: Scott Powers, Field Manager, Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725.

Scott Powers,

Field Manager, Dillon Field Office, Dillon, Montana 59725.

[FR Doc. 99–28225 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–MT–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–00–1020–00]

Salt Lake Field Office Proposed Plan Amendment

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of availability

SUMMARY: The Utah Bureau of Land Management, Salt Lake Field Office, has completed an Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for a Proposed Plan Amendment to the Box Elder Resource Management Plan (RMP) (1986). The proposed plan amends the RMP by eliminating domestic livestock grazing from the Newfoundland Mountains upon relinquishment of the current sheep permit. This action is needed to eliminate future conflicts between domestic livestock and bighorn sheep.

DATES: The proposed plan amendment may be protested. The protest period will commence with the date of publication of this notice. Protests must be submitted on or before November 29, 1999.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, Resource Planning Team, 1849 C Street, NW., Washington, DC 20240, within 30 days after the date of publication of this notice for the proposed planning amendment.

FOR FURTHER INFORMATION CONTACT: Alice Stephenson, Bureau of Land Management, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah, telephone (801) 977–4317. Copies of the Proposed Plan Amendment are available for review at the Salt Lake Field Office.

SUPPLEMENTARY INFORMATION: Any person who participated in the planning process and has an interest which is or may be adversely affected by the Proposed Plan Amendment may protest to the Director of the Bureau of Land Management. The protest must be in writing and filed within 30 days of the date of publication of this Notice of Availability in the **Federal Register**. The protest must be specific and contain the following information:

—The name, mailing address, telephone number and interest of the person filing the protest;
—A statement of the issue(s) being protested;
—A statement of the part(s) of the proposed amendment being protested;
—A copy of all documents addressing the issue(s) that were submitted by the protestor during the planning process; and
—A concise statement explaining why the BLM State Director's proposed decision is believed to be in error.

In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Linda S. Colville,

Acting State Director.

[FR Doc. 99–28138 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–XU;GPO–0011]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District Office.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; December 9 and 10, 1999.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on December 9 from 8:00 a.m. to 5:00 p.m. and on December 10 from 7:30 a.m. to 3:00 p.m. at the Red Lion (formerly Doubletree) Inn, 304 SE Nye Avenue, Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 10:00 a.m. on December 10. Topics to be discussed by the Council will include: social and economic training; John Day River Plan update and Hells Canyon NRA Comprehensive Plan review; reports from the Forest Health Subgroup; ICBEMP update; and a 15 minute round table for general issues.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, P.O. Box 550, Prineville, Oregon 97754, or call 541–416–6700.

Dated: October 19, 1999.

James L. Hancock,

District Manager and Designated Federal Official; John Day-Snake Resource Advisory Council.

[FR Doc. 99–28226 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–240–1050–00–24–1A]

Collection, Storage, Preservation and Scientific Study of Fossils From Federal and Indian Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that a review period on the Draft Report of the Assessment of Fossil Management on Federal and Indian Lands is open for 30 days.

DATES: Submit comments by November 29, 1999.

ADDRESSES: Written comments may be sent to Sara Pena, Bureau of Land Management, 1849 C St., NW, LS–204, Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Sara Pena, Bureau of Land Management at (202) 452–5040.

SUPPLEMENTARY INFORMATION: The United States Senate (Senate Report 105–227) requested that the Secretary of the Interior, in consultation with appropriate scientific, educational, and commercial entities, prepare a report assessing the need for a unified federal policy on the collection, storage, and preservation of fossils. The draft report, "Assessment of Fossil Management on Federal and Indian Lands," provides some information on current federal policies on paleontology. A copy of the Draft Report is available on the Interior Department web site at *http://www.fs.fed.us/geology* or by contacting Sara Pena, Bureau of Land Management, 1849 C. St., NW, LS–204, Washington, DC, 20240, telephone: (202) 452–5040.

Dated: October 22, 1999.

John Douglas,

Acting Group Manager, Cultural Heritage, Wilderness, Special Areas and Paleontology, Bureau of Land Management.

[FR Doc. 99–28106 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–06; WYW 132601]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw 4943.13 acres of public land in Fremont County, to protect and preserve significant recreation, scenic, riparian, historic, and wildlife resources along segments of the Sweetwater River. This notice closes the land for up to 2 years from surface entry and mining. The lands are not available for mineral leasing in accordance with the Bureau of Land Management's Green River Resource Management Plan.

DATE: Comments and requests for a public meeting must be received by January 26, 2000.

ADDRESS: Comments and requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 307–775–6124, or Stan McKee, BLM Rock Springs Field Office Manager, 280 Highway 191 North, Rock Springs, Wyoming 82901, 307–352–0256.

SUPPLEMENTARY INFORMATION: On October 5, 1999, a petition/application was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 28 N., R. 102 W.,

Sec. 3, lots 2–4, SW¼, W½SE¼, SE¼SE¼;
Sec. 4, lots 1–4, N½SW¼, E½SW¼SW¼, SE¼SW¼, SE¼;
Sec. 5, lot 1, NE¼SE¼;
Sec. 9, NE¼NW¼, NE¼SE¼NW¼, N½NE¼SE¼, W½NE¼, SE¼NE¼;
Sec. 10, S½NE¼NE¼, W½NE¼, SE¼NE¼, NW¼, N½SW¼, N½SE¼SW¼, N½SE¼, E½SW¼SE¼, SE¼SE¼;
Sec. 11, SW¼NW¼, NW¼SW¼, SW¼SE¼NW¼, W½NE¼SW¼.

T. 29 N., R. 102 W.,
Sec. 5, lots 3 and 4, S½NW¼, N½SW¼, SE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 6, lot 1, SE¼NE¼;
Sec. 8, NE¼, NE¼NW¼, E½SE¼NW¼, E½E½SW¼, SE¼;
Sec. 9, W½W½NW¼, W½NW¼SW¼, SW¼SW¼;
Sec. 17, N½NE¼, E½SW¼NE¼, SE¼NE¼, NE¼SE¼;
Sec. 27, SW¼NE¼, E½SW¼, W½NE¼SE¼, W½SE¼;
Sec. 34, NW¼NE¼, S½NE¼, NE¼NE¼NW¼, N½SE¼;
Sec. 35, W½W½.

T. 30 N., R. 102 W.,
Sec. 19, lots 1–4, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 30, W½NE¼, W½SE¼NE¼, E½NW¼, E½SW¼, W½NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 31, NE¼, E½NW¼, E½NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 32, SW¼.

The area described contains 4943.13 acres in Fremont County.

The purpose of the proposed withdrawal is to protect and preserve significant recreation, scenic, riparian, historic, and wildlife resources along segments of the Sweetwater River pending further study and possibly longer-term actions.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the plant habitat may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Dated: October 21, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–28139 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of currently approved information collection (1010–0059).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the Office of Management and Budget (OMB) for review and approval. We are also inviting your comments on this ICR.

DATES: Submit written comments by November 29, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0059), 725 17th Street, N.W., Washington, D.C. 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart H, Oil and Gas Production Safety Systems.

OMB Control Number: 1010–0059.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*) gives the Secretary of the Interior the responsibility to preserve, protect, and develop oil and gas resources in the OCS consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. To carry out these responsibilities, we established regulations at 30 CFR 250, subpart H, Oil and Gas Production Safety Systems. In addition, we also issue Notices to Lessees and Operators (NTL) to clarify and provide additional guidance on some aspects of the regulations.

We collect information under subpart H of the regulations to evaluate equipment and/or procedures that lessees propose to use during production operations. Information is also used to verify the no-flow condition of wells to continue the waiver of requirements to install valves capable of preventing backflow. The MMS inspectors review the records maintained to verify compliance with testing and minimum safety requirements. In the Pacific OCS Region, respondents submit Emergency Action Plans (EAP) to their local air quality agencies in response to California air quality laws to protect public health during exceptional air pollution episodes. We review these plans prior to the event of an air pollution episode to ensure that abatement measures do not jeopardize safe platform operations.

If we did not collect the information, we could not carry out the mandate of the OCS Lands Act to ensure safe operations in the OCS. Specifically, MMS could not review safety system designs prior to installation to ensure that minimum safety standards will be met; review records of erosion control to ensure that erosion control programs are effective; review plans for simultaneous operations to ensure safety of operations when more than one activity is being conducted simultaneously on a production facility; review records of safety devices to ensure proper maintenance during the useful life of that equipment; and verify proper performance of safety and pollution prevention equipment (SPPE).

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on August 12, 1999 (64 FR 44044).

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion and annual.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 5,204 burden hours, averaging approximately 40 hours per respondent. See following chart.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart H	Reporting and recordkeeping requirement	Annual number	Burden	Annual burden hours
800; 801(a), (d), (e)(1), (f), (g), (h)(3); 802(e); 803(b)(1)(iii), (2)(ii)(A), (4)(ii), (7)(iii),(8).	Application and approvals for design, installation, and operation of subsurface safety devices and surface production-safety systems and related requirements.	176 Submissions	4 hours	704
800; 804(a)(11)	Notify MMS prior to production when ready to conduct pre-production test and inspection.	152 Notices	.5 hour	76
801(g)	Submit annual verification of no-flow condition of well.	35 Verifications	2 hours	70
801(h)(1)	Form MMS–124, Sundry Notices and Reports on Wells.	Burden covered under 1010–0045 for this form.		0
801(h)(2); 803(c)	Identify well with sign on wellhead that subsurface safety device is removed; flag safety devices that are out of service.	Usual/customary safety procedures for removing or identifying out-of-service safety devices.		0
802	Submit statement verifying final surface production safety system installed conforms to approved design.	150 Statements	3 hours	450
803(b)(8)(iv)	Post diagram of firefighting system	75 Postings	2 hours	150
804; related NTL	Submit copy of state-required EAP containing test abatement plans in the Pacific OCS Region.	8 Plans	1 hour	8
806(c)	Request evaluation and approval of other quality assurance programs covering manufacture of SPPE.	1 Request	2 hours	2
Reporting—Subtotal		597		1,460
801(h)(2); 802(e); 804(b)	Maintain records on subsurface and surface safety devices to include approved design & installation features, testing, repair, removal, etc.	130 Recordkeepers	12 hours	1,560
803(b)(1)(iii), (2)(i)	Maintain pressure-recorder charts	130 Recordkeepers	10 hours	1,300
803(b)(4)(iii)	Maintain schematic of the emergency shutdown which indicates the control functions of all safety devices.	130 Recordkeepers	4 hours	520
803(b)(11)	Maintain records of wells that have erosion-control programs and results.	130 Recordkeepers	2.8 hours	364
Recordkeeping—Subtotal.		130		3,744
Reporting & Recordkeeping Total Hour Burden.		727		5,204

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no information collection cost burdens for this collection of information.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 29, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: September 30, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–28234 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of currently approved information collection (1010–0057).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the Office of Management and Budget (OMB) for review and approval. We are also inviting your comments on this ICR.

DATES: Submit written comments by November 29, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0057), 725 17th Street, N.W., Washington, DC 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*) gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. The OCS Lands Act also requires the Secretary to administer the provisions of this subchapter relating to the leasing of the OCS, and to prescribe such rules and regulations as may be necessary "for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State." The OCS Lands Act directs the Secretary to "establish regulations requiring all materials, equipment, tools, containers, and all other items used on the OCS to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use."

To carry out the responsibilities, we issued regulations at 30 CFR 250, subpart C, Pollution Prevention and Control. These regulations collect information related to new facilities and modifications to existing facilities with respect to pollution prevention and control. In addition, we also issue Notices to Lessees and Operators to clarify and provide additional guidance on some aspects of the regulations.

We collect information under subpart C to ensure that:

- There is no threat of serious, irreparable, or immediate damage to the marine environment and to identify potential hazards to commercial fishing caused by OCS oil and gas exploration, development, and production activities;
- The location of items lost overboard is recorded to aid in recovery by the operator during site clearance activities on the lease;
- Operations are conducted according to all applicable regulations, permit conditions and requirements, and conducted in a safe and workmanlike manner;
- OCS oil and gas operations minimize air pollution of the OCS and adjacent onshore areas and comply with the emission levels specified in the MMS Development and Production Plan approval conditions;
- A data baseline is established for the meteorological, oceanographic, and sea-ice conditions in frontier areas of the OCS to determine that offshore facilities and operational practices can withstand the expected environmental forces in an area;
- Discharge or disposal of drill cuttings, sand, and other well solids, including those containing naturally occurring radioactive materials (NORM), are properly handled for the protection of OCS workers and the environment; and
- Facilities are inspected daily for the prevention of pollution, and problems observed have been corrected.

If we did not collect the information, we could not carry out the mandate of the OCS Lands Act to ensure safe and environmentally sound operations in the OCS. We could not determine if operations comply with standards to minimize air pollution of the OCS and adjacent onshore areas.

Beginning January 1, 2000, we will conduct a 1-year information collection of meteorological data and air pollutant emissions for production facilities in the Breton National Wildlife Refuge/Wilderness Area (BWA). The information will be submitted on a monthly basis. We will use the information collected from the affected lessees/operators to determine whether emissions from OCS activities may be significantly affecting the air quality of the BWA, a Prevention of Significant Deterioration Class I Area as defined by the Clean Air Act. In addition, the Environmental Protection Agency has promulgated new, more stringent ambient air quality standards for ozone and is drafting regulations dealing with regional haze. It is anticipated that these regulations will require State agencies to perform modeling for ozone and regional haze for their State Implementation Plans (SIPs). The States will require information for the year 2000 on OCS activities in the central and western Gulf of Mexico (GOM). In preparation, we are requiring the affected respondents to collect and report facility, equipment, fuel usage, and other information beginning January 1, 2000. The information will be submitted for the entire year, sometime during March 2001. We will use the information collected from the affected lessees/operators to calculate air pollutant emissions that may significantly impact onshore areas. The emissions inventory will be available for State agencies to help them in preparing the SIPs for the coastal parishes/counties that have been declared as non-attainment areas for ozone.

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on August 12, 1999 (64 FR 44043).

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion, monthly, or annual.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 194,311 burden hours, averaging approximately 1,495 hours per respondent. See following chart.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart C	Reporting and recordkeeping requirement	Annual number	Burden	Annual burden hours
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM..	130 Lessees	3 hours	390
300(c)	Mark items that could snag or damage fishing devices..	130 Lessees	.5 hour	65
300(d)	Report items lost overboard.	130 Lessees	1 hour	130
303(a), (b), (c), (d), (i), (j); 304(a), (f).	Submit or revise Exploration Plans and Development and Production Plans..	Burden covered under 1010–0049		0
303(k); 304(g)	Monitor emissions air quality and submit monthly report (1-year study of selected sites in the BWA area)..	350 Platforms	4 hrs per mo×12 mos=48 hrs.	16,800
303(k); 304(a), (g)	Monitor and submit basic emission data to MMS or to a State (1-year study of sites in the western/central GOM area on ozone and regional haze air quality). Submit one-time annual report..	1,500 Platforms	2 hrs per mo×12 mos=24 hrs.	36,000
		130 Reports	8 hours	1,040
303(l); 304(h)	Collect and submit meteorological data	Not routinely collected; see item A.13 for discussion of special study		0
304(a), (f)	Request by a State to MMS for basic emission data from existing facilities to update State's emission inventory.	5 Requests	40 hours	200
304(e)(2)	Submit compliance schedule for application of best available control technology.	10 Schedules	40 hours	400
304(e)(2)	Apply for suspension of operations	Burden covered under 1010–0030		0
Reporting—Subtotal		2,385		55,025
300(d)	Record items lost overboard	130 Recordkeepers	1 hour	130
301(a)	Inspect drilling/production facilities daily for pollution; maintain inspection/repair records 2 years.	1,525 Facilities	.25 hour per day×365 days=91.25 hours.	139,156
Recordkeeping—Subtotal.		1,655		139,286
Reporting & Recordkeeping Total Hour Burden.		4,040		194,311

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: Meteorological data will be collected for 1 year from selected sites pursuant to §§ 250.303(l) and 250.304(h) to determine cumulative impacts of air quality within the 100-kilometer radius of the BWA. The Offshore Operators Committee (OOC) has agreed to undertake this project. The OOC estimates this one-time data collection effort will cost approximately $750,000.00, which will be expensed to the OCS lessees.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 29, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: September 30, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–28235 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, November 19, 1999.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting—October 1, 1999
3. Reports of Officers
4. Subcommittee Reports, Personal Watercraft
5. Superintendent's Report:
   Introduce Nancy Finley
   Highlands Center
   Americorps
   Community-oriented policing
   News from Washington
6. Old Business:
   Head of the Meadow Gas Station—Commercial Certificate

Motion to clarify the respective roles of the Cape Cod National Seashore Advisory Commission and the Friends of the Cape Cod National Seashore in the administration of the Joshua A. Nickerson Conversation Fund:

"That henceforth any materially significant disbursements or disposition of the income and/or assets of the Joshua A. Nickerson Conversation Fund will be made only upon the recommendation of the Cape Cod National Seashore Advisory Commission with the authorization of the Board of the Friends of the Cape Cod National Seashore."

7. New Business
8. Agenda for next meeting
9. Date for next meeting—January 7, 2000
10. Public comment
11. Adjournment

The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 19, 1999.

Maria Burks,

Superintendent.

[FR Doc. 99–28229 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR Part 870, Abandoned mine reclamation fund—fee collection and coal production reporting; and for three OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program narrative). These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 29, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR Part 870, Abandoned mine reclamation fund—fee collection and coal production reporting; and for three OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program Narrative). OSM is requesting a 3-year term of approval of each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for Part 870 is 1029–0090. Grant form OSM–49 is currently approved under OMB control number 1029–0059. The collection request being sent to OMB for review will include OSM Forms OSM–47 and OSM–51 under 1029–0059 since they are all grant forms.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on August 2, 1999 (64 FR 41946). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Budget information, financial reporting, and performance reporting forms.

OMB Control Number: 1029–0059.

Summary: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Number: OSM–47, OSM–49 and OSM–51.

Frequence of Collection: Semi-annually and annually.

Description of Respondents: State and Tribal regulatory and reclamation authorities.

Total Annual Responses: 131.

Total Annual Burden Hours: 655 hours.

Title: 30 CFR Part 870—Abandoned mine reclamation fund—fee collection and coal production reporting.

OMB Control Number: 1029–0090.

Summary: Section 402 of SMCRA requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection request is needed to support verification of the moisture deduction allowance. The information will be used by OSM during audits to verify that the amount of excess moisture taken by the operator is appropriate.

Frequency of Collection: quarterly.

Description of Respondents: Coal mine operators.

Total Annual Responses: 1,000.

Total Annual Burden Hours: 750.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029–0059 for the three grant forms, and 1029–0090 for Part 870 in your correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: October 22, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–28231 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 21, 1999.

The Department of Labor (DOL) has submitted the following public information collection request (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills, ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 79.

OMB Number: 1220–0109.

Frequency: Biennially.

Affected Public: Individuals or households.

Form	Total number of respondents	Total annual response	Average minutes per response	Total estimated annual burden hours
Prestest	50	50	60	50
Young Adults	8,300	8,300	60	8,300
Reinterview	1,250	1,250	6	125
Children of Female Respondents	6,390	6,390	52	5,538
Totals	14,740	15,990		14,013

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information provided in this survey will be used by the Department of Labor and other government agencies to help understand the dynamics of career development and family formation as well as the cognitive, social, emotional and motor development of children.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28203 Filed 10–27–99; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collections; Comment Request.

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). These information collection are published to obtain comments from the public.

DATES: Comments will be accepted until December 27, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0155.

Form Number: CLF 8705.

Type of Review: Extension of a currently approved collection.

Title: Central Liquidity Facility Prepayment, Security and Credit Reporting Agreement (Agent Member).

Description: Form used in conjunction with agent member's request for facility advances.

Respondents: Credit unions.

Estimated No. of Respondents/Recordkeepers: 36.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Reporting; once.

Estimated Total Annual Burden Hours: 36.

Estimated Total Annual Cost: None.

OMB Number: 3133–0156.

Form Number: NCUA–7005.

Type of Review: Extension of a currently approved collection.

Title: Central Liquidity Facility Agent Request for Funds.

Description: Form used by agent member requesting a facility advance.

Respondents: Credit unions.

Estimated No. of Respondents/Recordkeepers: 40.

Estimated Burden Hours Per Response: .25 hours.

Frequency of Response: Reporting; estimated 3 times.

Estimated Total Annual Burden Hours: 30.

Estimated Total Annual Cost: None.

OMB Number: 3133–0157.

Form Number: CLF–8706.

Type of Review: Extension of a currently approved collection.

Title: Central Liquidity Facility Repayment, Security and Credit reporting Agreement (Agent Group Representative).

Description: Form used in conjunction with agent member's request for facility advance.

Respondents: Credit unions.

Estimated No. of Respondents/Recordkeepers: 36.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Reporting; once.

Estimated Total Annual Burden Hours: 36.

Estimated Total Annual Cost: None.

OMB Number: 3133–0158.

Form Number: CLF–8700.

Type of Review: Extension of a currently approved collection.

Title: Central Liquidity Facility Application and Agreement for Agent Membership.

Description: Used to request agent membership in central liquidity facility.

Respondents: Credit unions.

Estimated No. of Respondents/Recordkeepers: 36.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Reporting; once.

Estimated Total Annual Burden Hours: 36.

Estimated Total Annual Cost: None.

OMB Number: 3133–0159.

Form Number: CLF–10.

Type of Review: Extension of currently approved collection.

Title: Central Liquidity Facility Needs Loan Application.

Description: Establishes terms of relationship between credit unions, agent members and agent group representatives.

Respondents: Credit unions.

Estimated No. of Respondents/Recordkeepers: 100.

Estimated Burden Hours Per Response: .25 hours.

Frequency of Response: Reporting.

Estimated Total Annual Burden Hours: 25 hours.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on October 21, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–28134 Filed 10–27–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Dance section (Heritage & Preservation, Education and Access categories), to the National Council on the Arts will be held from November 8–10, 1999 in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. The Panel will meet from 9:00 a.m. to 6:00 p.m. on November 8th and 9th and from 9:00 a.m. to 4:30 p.m. on November 10th. A portion of the meeting, from 3:30 p.m. to 4:30 p.m. on November 10th, will be open to the public for policy discussion.

The remaining portions of this meeting, form 9:00 a.m. to 6:00 p.m. on November 8th and 9th and from 9:00 a.m. to 3:30 p.m. on November 10th, are for the purpose of Panel review, discussion evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained form Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment of the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 13, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–28132 Filed 10–27–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date/Time: November 17 and 18, 1999; 8:30 a.m.–5:00 p.m.

Place: Room Picasso/Devinci, Hilton Arlington & Towers, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research and Special Projects Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28149 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Act 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date/Time: November 22 and 23, 1999; 8:30 a.m.—5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research and Special Projects Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters even exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28150 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date/Time: December 9 and 10, 1999; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1905.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals submitted to the Networking Research and Special Projects Programs as part of this selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28151 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences (#1186).

Date/Time: November 3–5, 1999, 8:30 a.m. 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. James P. Wright, Program Director, Education, Human Resources, and Special Programs, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1030, Arlington, VA 22230. (703) 306–1819.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Career Program in the area of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28152 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences (#1186).

Date/Time: December 2–3, 1999; and December 9–10, 1999: 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Terry Oswalt, Program Director, Stellar Astronomy and Astrophysics, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. (703) 306–1825.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Stellar Astronomy and Astrophysics Program in the area of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28153 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis panel in Astronomical Sciences (#1186).

Date/Time: December 7–8, 1999, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Vernon L. Pankonin, Program Director, Galactic Astronomy, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. (703) 306–1826.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Galactic Astronomy Program in the area of Astronomical Sciences.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28154 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Astronomical Sciences (#1186).

Date/Time: January 19–20, 2000, 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Susan Simkin, Program Director, Extragalactic Astronomy and Cosmology, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. (703) 306–1826.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Extragalactic Astronomy and Cosmology Program in the area of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28155 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences (#1186).

Date/Time: February 23–24, 2000, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Vernon L. Pankonin, Program Director, Galactic Astronomy, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. (703) 306–1826.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Planetary Astronomy Program in the area of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28156 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Infrastructure (#1215).

Date/Time: November 15–17, 1999, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Place: Closed.

Contact Person: Dr. William R. Gordon, Program Director, Research Experiences for Undergraduate, Division of Biological Infrastructure, National Science Foundation, 4201 Wilson Boulevard, Room 615, Arlington, VA 22230. (703) 306–1469.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Experience for Undergraduate Sites proposals as part of the selection process for awards.

Reason for Closing: the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28160 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis in Biological Sciences (#1754).

Date/Time: February 24, 2000, 8:00 a.m.–5:00 p.m. and February 25, 2000, 8:00 a.m.–Adjourn.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Sam Schiener and Dr. Edward T. Elliott, Program Officers, Mrs.

Elizabeth Behrens, Coordinating Program Assistant, Ecological Studies, National Science Foundation. Telephone: (703) 306–1479.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals to the National Science Foundation (NSF) for financial support.

Agenda: To review and evaluate proposals submitted in response to the Doctoral Dissertation Improvement Grants in the Directorate for Biological Sciences (NSF 98–151).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28166 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date and Time: November 19–20, 1999, 8:00 a.m. to 5:00 p.m.

Place: Hyatt Regency New Orleans, 500 Padras Plaza, New Orleans, LA 70113–1805.

Type of Meeting: Closed.

Contact Person: Dr. John Foss, Program Director, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY99 Fluid, Dynamics & Hydraulics Career Panel proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28157 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date and Time: November 30, 1999, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. M.C. Roco, Program Director, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY99 Career Panel proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28158 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the Advisory Panel for Cognitive, Psychological and Language Sciences (#1:758):

1. *Date and Time:* October 31, 1999; 3:00 p.m.–7:30 p.m.; November 1, 1999; 7:30 a.m.–6:15 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Contact Person: Dr. Diane Scott-Jones, Program Director for Child Learning and Development, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: To review and evaluate child learning and development proposals as part of the selection process for awards.

2. *Date and Time:* November 8–10, 1999; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Contact Person: Dr. Rodney R. Cocking, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: To review and evaluate human cognition and perception proposals as part of the selection process for awards.

3. *Date and Time:* November 16–18, 1999; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 880, Arlington, VA.

Contact Person: Dr. Steven J. Breckler, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1723.

Agenda: To review and evaluate social psychology proposals as part of the selection process to awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to other NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28159 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the Advisory Panel for Economics, Decision, Risk and Management Sciences (#1759):

1. *Date/Time:* November 12–13, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Daniel H. Newlon, Program Director for Economics, National Science Foundation. Telephone: (703) 306–1753.

Agenda: To review and evaluate Economics proposals as part of the selection process for awards.

2. *Date/Time:* November 11–12, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Hal Arkes, Program Director for Decision, Risk and Management

Science (DRMS), National Science Foundation, (703) 306–1757.

Agenda: To review and evaluate DRMS proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc 99–28165 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System (1196).

Date/Time: November 8–9, 1999; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; November 8—Room 630 and November 9—Room 880.

Type of Meeting: Closed.

Contact Person: Dr. Kishan Baheti, Program Director, Control, Networks, and Computational Intelligence, Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230 (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals in the Control, Networks, and Computational Intelligence program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28146 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date/Time: November 8–9, 1999; 8:30 a.m.—5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 770, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Usha Varshney, Program Director, Electronics, Photonics, and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230 (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28147 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System (#1196).

Date and Time: November 15–16, 1999, 8:30 a.m. to 5:00 p.m.

Place: Comfort Inn, 1211, North Glebe Road, Arlington, VA 22201.

Type of Meeting: Closed.

Contact Persons: Dr. Rajinder Khosla, Program Director, Electronics, Photonics, and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230; Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning Biosystems at Nanoscale proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the Electronics, Photonics, and Device Technologies program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28148 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date/Time: December 2, 1999; 6:00 pm to 10:00 pm; December 3, 1999; 8:00 am to 6:00 pm; December 4, 1999; 8:00 am to 3:00 pm.

Place: Metro Marriott, 775 12th Street, NW, Washington, DC.

Type Meeting: Closed.

Contact Person: Dr. Gerhard L. Salinger, Program Director, Division of Elementary, Secondary and Informal Education, The National Science Foundation, Room 885, 4201 Wislon Boulevard, Arlington, VA, 22230, (703) 306–1620.

Purpose of Meeting: To provide advice and recommendations concerning formal proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Advanced Technological Education Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28162 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Social and Political Science; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, and amended), the National Science Foundation announces the following meetings:

Name: Advisory Panel for Social and Political Science (#1761).

Date/Time: November 15–16, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA.

Contact Person: Dr. Frank Scioli and Dr. Marianne Stewart, Program Directors for Political Science, National Science Foundation. (703) 306–1761.

Agenda: To review and evaluate the political science proposals as part of the selection process for awards.

Name: Advisory Panel for Social and Political Science (#1761)

Date/Time: November 5–6, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Contact Person: Dr. D. Marie Provine, Program Director, Law and Social Science, National Science Foundation. (703) 306–1762.

Agenda: To review and evaluate the Law and Social Science Proposals as a part of the selection process for awards.

Name: Advisory Panel for Social and Political Science (#1761)

Date/Time: December 2–3, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA.

Contact Person: Dr. Patricia White and Dr. Murray Webster, National Science Foundation; Telephone (703) 306–1756.

Agenda: To review and evaluate the Sociology proposals as a part of the selection process for awards.

Type of meetings: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28161 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, and amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education (#1214).

Date/Time: December 2, 1999 (7:30 pm–9:00 pm). December 3, 1999 (8:00 am–5:00 pm). December 4, 1999 (8:00 am–1:00 pm).

Place: Metro Marriott Hotel at Metro Center, 775 12th Street NW, Washington, DC 20005. (202) 737–2200.

Type of Meeting: Closed.

Contact Person: Elizabeth J. Teles, Program Director, Division of Undergraduate Education, Room 835, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1668.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF's ATE Program.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for FY2000 Advanced Technological Education.

Summary Minutes: May be obtained from the contact person listed above.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28163 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education (#1214).

Date/Time: November 8, 1999, (7:30 PM–9:00 PM.
November 9, 1999 (8:00 AM–5:00 PM).
November 10, 1999 (8:00 AM–1:00 PM).

Place: Double Tree Hotel, 300 Army-Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Persons: Marilyn J. Suiter, Program Director, Division of Undergraduate Education Room 835, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. (703) 306–1616.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF's CSEMS Program.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for FY2000 Computer Science, Engineering and Mathematics Scholarships.

Summary Minutes: May be obtained from the contact person listed above.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28164 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Unit No. 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (NNECO or the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 (MP3), located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the analysis for the design basis loss-of-coolant accident (LOCA) to include the dose contribution from a previously unevaluated radioactivity release pathway to the environment. The licensee identified a potential pathway for post accident back-leakage of highly radioactive containment sump water from the Recirculation Spray System (RSS) to the Refueling Water Storage Tank (RWST). Since the RWST is vented to the atmosphere, this pathway could contribute to an inadvertent release of radioactivity not previously accounted for in offsite dose calculations. Previously, the licensee had assumed no radiological consequences due to back-leakage. This revision adds the dose from RWST back-leakage to the LOCA analysis, as documented in the Final Safety Analysis Report (FSAR).

The proposed action is in accordance with the licensee's application for amendment dated May 7, 1998, as supplemented by letter dated January 22, 1999.

The Need for the Proposed Action

Pursuant to 10 CFR 50.59 licensees are required to obtain prior NRC approval of changes to the facility that involve an unreviewed safety question. The licensee determined that the back-leakage from RSS to the RWST involves an unreviewed safety question. Therefore, the licensee was required to obtain prior NRC approval for changes to the LOCA analysis and the FSAR to incorporate the dose consequences of the potential for back-leakage from the RSS to the RWST that had not been previously accounted for in offsite dose calculations.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concluded that the contribution to the LOCA dose to the thyroid (most limiting organ) from the RWST back-leakage as calculated by the licensee is small (2.1 rem at the Low Population Zone (LPZ) and 0.9 rem at the Control Room). When added to the licensee's previously calculated doses, the affected LOCA doses to the thyroid are 11 rem at the LPZ and 12 rem at the Control Room. The increase are small when compared to, and these results continue to meet the acceptance criteria in, 10 CFR Part 100 for the offsite dose consequences and in 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 19 for the control room. All other offsite and control room doses were unchanged. On this basis the staff determined there is no significant radiological environmental impact.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action the staff considered requiring the licensee to maintain zero back-leakage from the RSS to the RWST. Since this is the original analysis condition, this alternative is the same as the staff denying the proposed action (*i.e.*, the "no-action" alternative). Zero back-leakage cannot be ensured for the valves between the RSS and the RWST; therefore, this alternative is impractical. Denial of the proposed action would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Millstone Nuclear Power Station, Unit No. 3," dated December 1984 (NUREG–1064).

Agencies and Persons Consulted

In accordance with its stated policy, on September 23, 1999, the staff consulted with the Connecticut State official, Mr. Fred Scheuritzel of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 7, 1998, as supplemented by letter dated January 22, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 22nd day of October 1999.

For the Nuclear Regulatory Commission.

John A. Nakoski, Sr.,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28228 Filed 10–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Selection of Sample Rate and Computer Wordlength in Digital Instrumentation and Control Systems, Availability of Draft NUREG for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of Draft NUREG–1709, "Selection of Sample Rate and Computer Wordlength in Digital Instrumentation and Control Systems," dated August 1999.

ADDRESSES: Draft NUREG–1709, is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington DC 20555–0001. A free single copy of Draft NUREG–1709, to the extent of supply, may be requested by writing to Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Terry Jackson, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–6486.

SUPPLEMENTARY INFORMATION: Digital sampling of analog signals adds two types of errors, aliasing and finite wordlength error, to the sampled version of the signal. Aliasing is characterized by high frequency components misrepresented as low frequency components in the sampled signal. It is greatly influenced by the sample rate, and may lead to degraded performance in monitoring, alarm, control, and protection systems. Since computer wordlengths are finite in length, digital systems are limited in their capability to represent real number values. Finite wordlength errors related to round-off, truncation, and data conversion have the potential to adversely impact the performance of digital instrumentation and control (I&C) systems.

The Office of Nuclear Regulatory Research has investigated the technical bases and review guidance regarding aliasing and finite wordlength errors in nuclear facilities. Hazards associated with these errors are minimized through proper design and selection of sample rates and computer wordlengths. Draft NUREG–1709 provides the regulatory background, theoretical information, practical issues, best engineering practices, review guidance, and examples associated with sample rate and computer wordlength selection. This information is used by NRC staff to identify proper treatment of aliasing and finite wordlength error in digital I&C systems.

While draft NUREG–1709 is intended for NRC staff use, the NRC realizes that licensees and vendors may reference the NUREG for their particular I&C development. Because of its impact on I&C development, the NRC is requesting comments on draft NUREG–1709. The comment period will last until March 1, 1999, at which time the NRC will consider the comments and pursue a final version. To send comments on draft NUREG–1709, refer to the comment instructions at the front of the report. Comments may also be sent to the NRC Home page, as detailed below.

Electronic Access

Draft NUREG–1709, is available electronically by visiting NRC's Home Page (http://www.nrc.gov) and choosing "Reference Library," then "NRC (NUREG) report number," then "NRC Staff Reports," and then "NUREG–1709." Instructions for sending comments electronically are included with the document at the web site.

Dated at Rockville, Maryland, this 24th day of August, 1999.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Engineering Research Applications Branch, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 99–28227 Filed 10–27–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–24106; File No: 812–11514]

JNL Variable Fun LLC; Notice of Application

October 21, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section (c) of the Investment Company Act of 1940 ("1940 Act" or "Act").

SUMMARY OF APPLICATION: Applicant seeks an order under Section 6(c) of the 1940 Act exempting Applicant and its series and any other open-end investment company or series thereof advised or managed by Jackson National Life Insurance Company ("JNL"), Jackson National Financial Services, LLC, or their affiliates, or any entities controlled by or under common control with JNL, and that follows an investment strategy that is the same as the JNL/First Trust Dow Target 5 Series ("DJIA 5 Series"), the NJL/First Trust Dow Target 10 Series ("DJIA 10 Series"), the JNL/First Trust Global Target 15 Series ("Target 15 Series"), or the JNL/First Trust S&P Target 10 Series ("S&P Target 10 Series") ("Future Companies"), from the provisions of section 12(d)(3) of the 1940 Act to the extent necessary to permit them to establish and maintain series which may invest up to 10.5% of their total assets (the DJIA 10 Series) or up to 20.5% of their total assets (the DJIA 5 Series) or up to 7⅙% of their total assets (the Target 15 Series) or up to 10.5% of their total assets (the S&P Target 10 Series), in securities of issuers that derive more than (15%) of their gross revenues from securities related activities.

APPLICANT: JNL Variable Fund LLC.

FILING DATE: The application was filed on February 12, 1999, and amended on April 28, 1999, and September 3, 1999.

HEARING OR NOTIFICATION OF HEARINGS: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving Applicant with a copy of the request personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 15, 1999, and must be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyer, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicant, c/o Amy D. Eisenbeis, Esq., Jackson National Life Insurance Company 5901 Executive Drive, Lancing, Michigan 48911–5389.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch 450 Fifth Street, NW, Washington, D.C. 20549–0102 [tel (202) 942–8090].

Applicant's Representations

1. JNL is a stock life insurance company organized under the laws of the State of Michigan. JNL is licensed to transact life insurance and annuity business in the District of Columbia and all states except New York. JNL's ultimate parent is Prudential Corporation plc, a British financial services group.

2. Applicant is a Delaware limited liability company registered with the Commission as an open-end investment company. Applicant's 12 series, including the DJIA 5 Series, the DJIA 10 Series, the Target 15 Series and the S&P Target 10 Series (the DJIA 5 Series and the DJIA 10 Series, the "DJIA Series" together with the Target 15 Series and S&P Target 10 Series, "Series"), serve as underlying investment vehicles for variable annuity contracts offered by JNL through Jackson National Separate Account I ("JNL Account I"), a registered unit investment trust.

3. Jackson National Financial Services, LLC (the "Manager"), a wholly owned subsidiary of JNL, serves as applicant's investment adviser and in such capacity has responsibility for the overall management of the investment strategies and policies of Applicant and its series. The Manager has retained First Trust Advisers L.P. ("Sub-adviser") as sub-adviser for each of Applicant's series.

4. The DJIA 5 Series will invest approximately twenty percent (20%) of its total assets in the common stock of each of the five companies with the lowest per share stock price of the ten companies in the Dow Jones Industrial Average (the "DJIA") that have the highest dividend yield as of the close of

business on or about the last business day prior to the initial investment date and annually, on the anniversary of said initial investment date, thereafter (each a "Stock Selection Date").

5. The DJIA 10 Series will invest approximately ten percent (10%) of its total assets in the common stock of each of the ten companies in the Dow Jones Industrial Average ("DJIA") with the highest dividend yield as of each Stock Selection Date.

6. The Target 15 Series will invest approximately six and two-thirds percent (6⅔%) of its total assets in the common stock of each of fifteen companies which are components of the DJIA, the Financial Times Industrial Ordinary Share Index ("FT Index") and the Hang Seng Index. Such companies will have the five lowest per share stock prices of the ten companies in each respective index which have the highest dividend yield in such respective index at the close of business on or about the last business day prior to each applicable Stock Selection Date.

7. The S&P Target 10 Series will invest approximately ten percent (10%) of its total assets in the common stock of each of the ten companies with the greatest one year appreciation of the one hundred and twenty-five companies in the S&P 500 Index that have the lowest price to sales ratio as of the close of business on or about the last business day prior to each Stock Selection Date. Such one hundred and twenty-five companies will be selected from two hundred and fifty companies that have the largest market capitalization in the S&P 500 Index as of the close of business on or about the last business day prior to each applicable Stock Selection Date.

8. The DJIA is comprised of thirty stocks chosen by the editors of The Wall Street Journal. The DJIA is the property of the Dow Jones & Company, Inc., which is not affiliated with JNL, JNL Account I or Applicant and does not participate in any way in the creation of any Series or the selection of their stocks.

9. The FT Index is comprised of thirty stocks chosen by the editors of The Financial Times as representative of the British industry and commerce. The FT Index is the property of The Financial Times and is not affiliated with JNL, JNL Account-1 or Applicant and does not participate in any way in the creation of any Series or the selection of their stocks.

10. The Hang Seng Index consists of thirty-three of the three hundred fifty-eight stocks and represents approximately 70% of the total market capitalization of the stocks listed on the Hong Kong Stock Exchange. The Hang Seng Index is the property of HSI Services Limited and is not affiliated with JNL, JNL Account-1 or Applicant and does not participate in any way in the creation of any Series or the selection of their stocks.

11. The S&P 500 Index consists of 500 stocks chosen for market size, liquidity and industry group representation. It is a market-value weighted index with each stock's weight in the index proportionate to its market value. the S&P 500 Index is the property of The McGraw-Hill Companies, Inc. which is not affiliated with JNL, JNL Account I or the Applicant and does not participate in any way in the creation of any Series or the selection of their stocks.

12. The objective of each Series is to provide an above-average total return through a combination of dividend income and capital appreciation. On each Stock Selection Date, each Series will allocate or reallocate its investments so that its assets are invested, in substantially equal amounts, in the common stock of the companies meeting each Series respective investment criteria (as held in a Series, such common stock is referred to as the "Common Shares"). A percentage relationship among the Common Shares held in each Series will be established for each Series as of the Stock Selection Date. When funds are deposited into or withdrawn from a Series during the year, Common Shares will be purchased or sold for said Series, as appropriate, to duplicate, as nearly as practicable, the percentage relationship of the number of Common Shares established on the immediately preceding Stock Selection Date for said Series. Applicant states that the percentage relationship among the number of Common Shares in each Series therefore should remain stable until the next Stock Selection Date.

13. Section 817(h) of the Internal Revenue Code of 1986, as amended ("Code"), provides that in order for a variable contract which allocates funds to a Series to qualify as an annuity contract under the Code, the investments underlying the variable contracts must be adequately diversified in accordance with regulations issued by the United States Department of the Treasury ("Treasury"). To be adequately diversified, each Series must have (a) no more than 55% of the value of its total assets represented by any one investment; (b) no more than 70% of the value of its total assets represented by any two investments; (c) no more than 80% of the value of its total assets represented by any three investments; and (d) no more than 90% of the value of its total assets represented by any four investments (the "Section 817(h) diversification requirements").

14. The Series intend to comply with the Section 817(h) diversification requirements. The Manager has entered into an agreement with the Sub-adviser that requires the Series to be operated in compliance with the Treasury regulations including the Section 817(h) diversification requirements. Therefore, the Sub-adviser may depart from a Series' applicable investment strategy, if necessary, in order to meet the Section 817(h) diversification requirements.

15. Applicant represents that, except in order to meet the Section 817(h) diversification requirements, the Common Shares purchased for each Series will be chosen solely according to the formula described above, and will not be based on the research opinions or buy or sell recommendations of the Sub-adviser. During each year, the Sub-adviser will invest additional amounts received from JNL Account I in additional Common Shares or arrange sales of Common Shares to meet redemption or transfer requests, so that the proportion relationship among the number of shares of each stock in the Series established on the immediately preceding Stock Selection Date is maintained, to the extent practicable. The Sub-adviser has no discretion as to which Common Shares are purchased. However, the Sub-advisor will have limited discretion with respect to the short-term investment of any cash that may exist in a Series following: (a) the purchase or sale of the appropriate portion of Common Shares based on the formulas noted herein, to the extent that all of the cash can not be used to purchase such securities or more securities need to be sold than that necessary to meet redemption needs, due to round-lot purchase and sale requirements; or (b) a default by an issuer of Common Shares in the payment of its outstanding obligations, a decrease in the price of the security or other credit factors such that in the opinion of the Sub-advisor the retention of the applicable Common Share would be detrimental to the applicable Series.

16. Securities purchased for each of the Series may include securities of issuers in the DJIA, the FT Index, the Hang Seng Index or the S&P 500 Index that derived more than fifteen percent of their gross revenues in their most fiscal year from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the 1940 Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a

broker, dealer, underwriter or investment adviser. Rule 12d3–1 under the 1940 Act exempts purchases by an investment company of securities of an issuer (except its own investment adviser, promoter or principal underwriter or their affiliates) that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer.

2. Section 6(c) of the 1940 Act provides that the Commission may exempt any person, transaction or class of transactions from any provisions of the 1940 Act or any rule thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicant requests that the Commission exempt the Applicant from the provisions of Section 12(d)(3) in order to permit the Series to acquire securities of an issuer that derives more than 15% of its gross revenues from securities related activities, provided that; (a) those securities are included in the DJIA, the FT Index, the Hang Seng Index or the S&P 500 Index as of the applicable Stock Selection Date; (b) with respect to the DJIA 5 Series, the securities represent one of the five companies with the lowest per share stock price of the ten companies in the DJIA that have the highest dividend yield as of Stock Selection Date; (c) with respect to the DJIA 10 Series, the securities represent one of the ten companies with the lowest per share stock price of the ten companies in the DJIA that have the highest dividend yield as of each Stock Selection Date; (d) with respect to the Target 15 Series, the securities represent the fifteen companies which reflect the five lowest per share stock prices of the ten companies in each of the DJIA, the FT Index and the Hang Seng Index and which have the highest dividend yield in such respective index as of each Stock Selection Date; (e) with respect to the S&P Target 10 Series, the securities represent the ten companies with the greatest one year price appreciation of the one hundred and twenty-five companies in the S&P 500 Index that have the lowest price to sales ratio as of each Stock Selection Date. The one hundred and twenty-five companies will be selected from two hundred and fifty companies that have the largest market capitalization in the S&P Index as of each Stock Selection Date; and (f) as of the first business day after each Stock Selection Date, with respect to the DJIA 5 Series, the value of the Common Shares of each securities related issuer represents approximately 20%, but not more than 20.5% of the value of the DJIA 5 Series total assets, with respect to the DJIA 10 Series, the value of the Common Shares of each securities related issuer represents approximately 10%, but not more than 10.5% of the value of the DJIA 10 Series' total assets, with respect to the Target 15 Series, the value of the Common Shares of each securities related issuer represents approximately 6⅔%, but not more than 7 1/16% of the value of the Target 15 Series total assets, and with respect to the S&P Target 10 Series, the value of the Common Shares of each securities related issuer represents approximately 10%, but not more than 10.5% of the value of the S&P Target 10 Series total assets. The 20%, 5%, 10.5% and 7 1/16% respective standards will be based on the prices of the Common Shares as of the first business day after the applicable Stock Selection Date.

4. Applicant and each Series undertake to comply with all of the requirements of Rule 12d3–1, except the condition prohibiting an investment company from investing more than five percent of the value of its total assets in securities of a securities related issuer.

5. Applicant asserts that Section 12(d)(3) was intended: (a) to prevent investment companies from exposing their assets to the entrepreneurial risk of securities related business; (b) to prevent potential conflicts of interest; (c) to eliminate certain reciprocal practices between investment companies and securities related businesses; and (d) to ensure that investment companies maintain adequate liquidity in their portfolios.

6. A potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant maintains that this concern does not arise in this situation because the Sub-adviser does not have discretion in choosing the Common Shares or the amount purchased. The stock must first be included in the DJIA, the FT Index, the Hang Seng Index, or the S&P 500 Index, as applicable, (none of which are affiliated with the Applicant, the Manager or the Sub-adviser). In addition, the securities must also qualify based on applicable arithmetic formula for each Series, as of the applicable Stock Selection Date.

7. Applicant states that prior Section 12(d)(3) relief has been granted to applicants which were unit investment trusts with no discretion to choose the portfolio securities or the amount purchased, but with discretion to sell portfolio securities to the extent necessary to meet redemptions. Additionally, relief has also been granted to an applicant which was a managed investment company issuing variable annuities which resulted in continuing new premiums that needed to be invested on a continual basis, and where such continuing investments were made based on the ratios of the number of shares established at the beginning of each year, using an investment strategy similar to that proposed by the Applicant, and not based on the advisers discretion.

8. The Sub-adviser is permitted to deviate from the applicable formula for the respective Series where circumstances are such that the investment of the particular Series would fail to meet the Section 817(h) diversification requirements and would thus cause the annuity contracts to fail to qualify as an annuity contract under the Code. Applicant maintains that, in such a situation, the Sub-adviser must be permitted to deviate from the investment strategy of the applicable Series, but only in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Additionally, the Sub-adviser has limited discretion with respect to the short-term investment of any cash that may exist in a Series due to round-lot purchase and sale requirements and certain defaulted security situations. Applicant states that this limited discretion does not raise the concerns that Section 12(d)(3) is designated to prevent.

9. Applicant submits that the liquidity of the Series' portfolios is not a concern because the shares of common stock selected are each included in the DJIA, FT Index, Hang Seng Index or S&P 500 Index and traded on the New York Stock Exchange, the American Stock Exchange, the London Stock Exchange, the Hong Kong Stock Exchange, or over-the-counter markets and are among the most actively traded securities in their respective markets.

10. Applicant also submits that the investment policies of the Series will not lead to reciprocal practices between the Applicant and issuers involved in securities related businesses since purchases by the Series will have no significant effect on these issuers. The common stocks of securities related issuers represented in the DJIA, the FT Index, the Hang Seng Index and the S&P

500 Index are widely held and have active markets and potential purchases by a Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of those issuers.

11. Applicant states that a conflict of interest could occur if broker-dealers are influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. However, because of the large market capitalization of the DJIA, the FT Index, the Hang Seng Index and the S&P 500 Index issuers, and the small portion of these issuers common stock and trading volume that would be purchased by the Series, Applicant finds that it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that JNL Account I or one of the Series would be invested in the broker-dealer or parent thereto.

12. Applicant states that another potential conflict of interest could occur if an investment company directed brokerage to an affiliated broker-dealer in which the company has invested to enhance the broker-dealers profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of the application, that no company held in any Series portfolio, or any affiliate of such company, will act as broker for any Series in the purchase or sale of any security for their portfolios.

13. Finally, Applicant represents that any Future Companies will comply with the terms and conditions for the Series. Applicant submits that without class relief, exemptive relief for any Future Companies would have to be requested and obtained separately and would present no issues under the 1940 Act not already addressed in the application. Applicant states that if it were to repeatedly seek exemptive relief with respect to the same issues, investors would not receive additional protection or benefit, and investors and the Applicant could be disadvantaged by increased costs from preparing such additional requests for relief. Applicant asserts that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources.

Applicant's Conditions

The Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. As to the DJIA Series, the Common Shares are of issuers included in the DJIA as of the applicable Stock Selection Date;

2. As to the DJIA 10 Series, the Common Shares represent one of the ten companies in the DJIA that has the highest-dividend yield as of the applicable Stock Selection Date;

3. With respect to the DJLA 5 Series, the Common Shares represent one of the five companies with the lowest dollar per share price of the ten companies in the DJIA that has the highest dividend yield as of the applicable Stock Selection Date;

4. With respect to the DJIA 10 Series, on the first business day after each Stock Selection Date, the value of the Common Shares of each securities related issuer represents approximately ten percent (10%) of the value of the DJIA 10 Series total assets, but in no event more than ten and one-half percent (10.5%) of the value of the DJIA 10 Series total assets;

5. With respect to the DJIA 5 Series, on the first business day after each Stock Selection Date, the value of the Common Shares of each securities related issuer represents approximately twenty percent (20%) of the value of the DJIA 5 Series total assets, but in no event more than twenty and one-half percent (20.5%) of the value of the DJIA 5 Series total assets;

6. As to the Target 15 Series, the Target Stocks are of issuers included in the DJIA, FT Index and the Hang Seng Index as of the applicable Stock Selection Date;

7. As to the Target 15 Series, the Target Stocks represent one of the ten companies in each of the DJIA, FT Index and Hang Seng Index that has the highest dividend yield as of the applicable Stock Selection Date;

8. With respect to the Target 15 Series, the Target Stocks represent one of the five companies with the lowest per share price of the ten companies in each of the DJIA, FT Index or the Hang Seng Index that has the highest dividend yield as of the applicable Stock Selection Date;

9. With respect to the Target 15 Series, on the first business day after each Stock Selection Date, the value of the Target Stocks of each securities related issuer represents approximately six and two-thirds percent (6⅔%) of the value of the Target 15 Series total assets, but in no event more than seven and one-sixth percent (7⅙%) of the value of the Target 15 Series total assets;

10. As to the S&P Target 10 Series, the S&P Target Stocks are of issuers included in the S&P 500 Index as of the applicable Stock Selection Date;

11. As to the S&P Target 10 Series, the S&P Target Stocks represent one of the ten companies with the greatest one year price appreciation of the one hundred and twenty-five companies in the S&P 500 Index that have the lowest price to sales ratio as of the applicable Stock Selection Date. The one hundred and twenty-five companies will be selected from two hundred and fifty companies that have the largest market capitalization in the S&P 500 Index as of the applicable Stock Selection Date;

12. With respect to the S&P Target 10 Series, on the first business day after each Stock Selection Date, the value of the S&P Target Stocks of each securities issuer represents approximately ten percent (10%) of the value of the S&P Target 10 Series total assets, but in no event more than ten and one-half percent (10.5%) of the value of the S&P Target 10 Series total assets; and

13. As to any Series, no issuer whose securities are held by any Series, nor any affiliate thereof, will act as broker for such Series in the purchase or sale of any security for such Series.

Conclusion

For the reasons summarized above, Applicant asserts that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 99–28107 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Agency Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [64 FR 57499, October 25, 1999

STATUS: . Open meetings.

PLACE: 450 Fifth Street NW, Washington, DC.

DATE PREVIOUSLY ANNOUNCED: October 20, 1999.

CHANGE IN THE MEETING: Cancellation.

The open meeting scheduled for Wednesday, October 27, 1999 at 10:00 a.m., has been canceled. The subject of this meeting was an appeal by the

Division of Enforcement from an administrative law judge's initial decision. The law judge dismissed an administrative proceeding against Russell Ponce.

The open meeting scheduled for Wednesday, October 27, 1999 at 2:00 p.m. has been canceled. The subject of this meeting was consideration of whether to issue a release requesting comments regarding when or under what conditions the Commission should accept financial statements of foreign private issuers that are prepared using standards promulgated by the International Accounting Standards Committee.

At time, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 25, 1999.

[FR Doc. 99-28316 Filed 10-26-99; 11:41 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42039]

Notice of Intention To Cancel Registrations of Certain Transfer Agents

October 20, 1999.

Notice is given that the Securities and Exchange Commission ("Commission") intends To issue an order, pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),[1] cancelling the registrations of the transfer agents whose names appear in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Gregory J. Dumark, Special Counsel, at 202/942-4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-1001.

Background

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. Accordingly, at any time after November 29, 1999, the Commission intends to issue an order cancelling the registrations of any or all of the transfer agents listed in the Appendix.

The Commission has made efforts to locate and determine the status of each of the transfer agents listed in the Appendix. In some cases, the Commission was unable to locate the transfer agent, and in other cases, the Commission learned that the transfer agent was no longer in existence or had ceased doing business. Based on the facts it has, the Commission believes that the transfer agents listed in the Appendix are no longer in existence or have ceased doing business as a transfer agent.

Any transfer agent listed in the Appendix that believes its registration should not be cancelled must notify the Commission in writing prior to November 29, 1999. Written notifications must be mailed to: Gregory J. Dumark, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-1001, or be sent by facsimile to Gregory J. Dumark at (202) 942-9695.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

Appendix

Registration No.	Name
(84-5767)	American Transfer & Registrar Inc.
(84-5394)	First Federal Savings & Loan Association of Montana.
(84-5779)	Franklin American Corp.
(84-5686)	Selena T. Jackson.
(84-5562)	Stephen Rudolph Jones, d/b/a New York Stock Transfer.
(84-1864)	Library Bureau, Inc.
(84-1606)	Mt. Olive Church of God in Christ-United Mission, Inc.
(84-1960)	Odenton Federal Savings & Loan Association.

[FR Doc. 99-28200 Filed 10-27-99; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78q-1(c)(4)(B).

[2] 17 CFR 200.30-3(a)(22).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42043; File No. SR-NASD-98-14]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 4, 5, and 6 to the Proposed Rule Change Relating to Sales Charges and Prospectus Disclosure for Mutual Funds and Variable Contracts

October 20, 1999.

I. Introduction

On March 12, 1998,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[2] and Rule 19b-4 thereunder,[3] a proposed rule change to amend Rule 2820 (the "Variable contracts Rule") and Rule 2830 (the "Investment Company Rule") of the Conduct Rules of the NASD. The Investment Company Rule would be amended to: (1) provide maximum aggregate sales charge limits for fund-of-funds arrangements; (2) permit mutual funds to charge installment loads; (3) prohibit loads on reinvested dividends; (4) impose redemption order requirements for shares subject to contingent deferred sales loads

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[1] NASD Regulation initially submitted the proposed rule change on February 17, 1998; however, the submission failed to provide a statutory basis section. Because proposed rule changes are not deemed filed until all necessary components, such as a statutory basis section, are provided, the proposed rule change was deemed filed when the Commission received NASD Regulation's amendment providing the statutory basis for the proposed rule change ("Amendment No. 1"). *See* Letter to Katherine A. England, Assistant Director, Commission, from Joan C. Conley, Secretary, NASD Regulation, dated March 12, 1998. NASD Regulation submitted another amendment on June 11, 1998, making certain technical corrections ("Amendment No. 2"). *See* Letter to Katherine A. England, Assistant Director, Commission, from Joan C. Conley, Secretary, NASD Regulation, dated June 10, 1998. Amendment No. 2, however, was insufficient in form. As a result, on July 13, 1998, NASD Regulation filed another amendment, superseding and replacing all previous versions of the filing ("Amendment No. 3"). *See* Letter to Katherine A. England, Assistant Director, Commission, from Joan C. Conley, Secretary, NASD Regulation, dated July 10, 1998. The substance of Amendment No. 3 was published in the **Federal Register**.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b-4.

("CDSLs"); and (5) eliminate duplicative prospectus disclosure. The Variable Contracts Rule would be amended to eliminate the specific sales charge limitations in the rule and a filing requirement relating to changes in sales charges.

The proposed rule change was published for comment in the **Federal Register** on August 17, 1998.[4] The NASD subsequently filed amendments to the proposed rule change on August 13, 1998, June 4, 1999, and September 13, 1999, respectively.[5] The Commission received 8 comments on the proposal.[6] This order approves the proposed rule change, as amended.

II. Description

A. Proposed Amendments to the Investment Company Rule

1. Fund-of-Funds

The National Securities Market Improvement Act of 1996 (the "1996 Amendments") amended the Investment Company Act of 1940 ("1940 Act") to, among other things, broaden the ability of mutual fund sponsors to establish "fund-of-funds" arrangements.

The Investment Company Rule currently does not take into account two-tier fund-of-funds structures in which asset-based sales charges are imposed at both the acquiring and underlying fund levels. The proposed amendments would amend the Investment Company Rule to ensure that, if a fund-of-funds charges distribution fees at both levels, the combined sales charges do not exceed the maximum percentage limits currently contained in the rule. The amended rule would permit an acquiring fund, an underlying fund, or both, to charge an asset-based sales fee that in the aggregate may not exceed .75 percent of average net assets and a service fee that in the aggregate does not exceed .25 percent of average net assets. Consistent with the current rule, aggregate front-end and deferred sales charges would be limited in any transaction to 7.25 percent, or 6.25 percent if the contract includes a service fee.

2. Deferred Sales Loads

In September 1996, the Commission amended Rule 6c–10 under the 1940 Act to permit new types of deferred stocks, such as back-end and installment loads. The proposed amendments to the Investment Company Rule also would permit these types of deferred sales charges. The amendments would conform the definition of "deferred sales charge" in the Investment Company Rule to the definition of "deferred sales load" in Rule 6c–10 under the 1940 Act (*i.e.*, "any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption").

3. Loads on Reinvested Dividends

The proposed amendments would prohibit loads on reinvested dividends. When NASD Regulation proposed to prohibit loads on reinvested dividends in Notice to Members 97–48, commenters representing unit investment trust ("UIT") sponsors objected to the proposed amendments. Although NASD Regulation does not believe that this practice is prevalent, it continues to believe that it is appropriate to prohibit loads on reinvested dividends for all investment companies, including UITs. It asserts that loads on reinvested dividends constitute excessive compensation, regardless of the type of investment company that imposes them. NASD Regulation proposes to defer implementation of this prohibition until April 1, 2000, to address the commenters' Y2K concerns.[7]

4. CDSL Calculations

The proposed amendments would prohibit members from selling fund shares that impose a CDSL unless the method used by the fund to calculate CDSLs in partial redemptions requires that investors be given full credit for the time they have invested in the fund. Because a CDSL declines over the period of a shareholder's investment, a first-in-first-out ("FIFO") redemption order requirement generally would ensure that transactions are subject to the lowest applicable CDSL. The proposed amendments, however, also would expressly provide that if a redemption order other than FIFO (*e.g.*, last-in-first-out, or "LIFO") would result in a redeeming shareholder paying a lower CDSL, the other method could be used.

5. Prospectus Disclosure

The Investment Company Rule currently prohibits a member from offering or selling shares of a fund with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by the rule. In March 1998, the Commission adopted significant revisions to prospectus disclosure requirements for mutual funds. Included in the amendments is a requirement that the prospectuses of funds with asset-based sales charges include disclosure regarding Rule 12b–1 plans that is similar to the type of disclosure required by the Investment Company Rule. Accordingly, the proposed amendments would eliminate the prospectus disclosure requirement in the Investment Company Rule.

B. Proposed Amendment to the Variable Contracts Rule

In Notice to Members 97–48, NASD Regulation proposed to amend the Variable Contracts Rule to eliminate the maximum sales charge limitations. The commenters to NTM 97–48 strongly supported the proposed amendment because they viewed specific sales charge limits in the Variable Contracts Rule as unnecessary and inconsistent with the "reasonableness" standard enacted in the 1996 Amendments. Consistent with these comments, the proposed amendments would eliminate the maximum sales charge limitations in the Variable Contracts Rule. The proposed amendments also would make a conforming change to eliminate the requirement in the rule to file with the Advertising/Investment Companies Regulation Department the details of any changes in a variable annuity's sales charges.

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[4] *See* Exchange Act Release No. 40310 (August 7, 1998), 63 FR 43974 (August 17, 1998).

[5] *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 12, 1998 ("Amendment No. 4"). Amendment No. 4 made grammatical and technical changes to the proposed rule language. NASD Regulation asserted that the changes contained in Amendment No. 4 were non-substantial, and that Amendment No. 4 superseded and replaced the previous filing and amendments thereto. *See* Letter from Thomas M. Selman, Vice President, Investment Companies/Corporate financing, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 19, 1999 ("Amendment No. 5"). Amendment No. 5 provided certain changes, discussed below, in response to commenters' concerns. *See* Letter from Thomas M. Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, to Christine Richardson, Division of Market Regulation, Commission, dated September 13, 1999 ("Amendment No. 6"). As discussed below, Amendment No. 6 provides clarification with respect to certain issues.

[6] *See* Letters from Kathleen H. Moriarty, Carter, Ledyard & Milburn, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 ("Carter Letter"); Felice R. Foundos, Chapman & Cutler, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 ("Chapman & Cutler Letter"); Michael R. Rosella, Battle Fowler, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 ("Battle Fowler Letter"); Nora M. Jordan, Davis Polk & Wardwell, dated September 8, 1998 ("Davis Polk Letter"); Frances M. Stadler, Deputy Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 ("'ICI Letter"); Nathalie P. Maio, Senior Vice President, Deputy General Counsel, Prudential, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 ("Prudential Letter"); Philip A. Heimowitz, Cahill Gordon & Reindel, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 ("Cahill Letter"); and Mark J. Mackey, President and Chief Executive Officer, National Association for Variable Annuities, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 ("NAVA Letter").

[7] *See* Amendment No. 5. NASD Regulation originally proposed to include a "grandfather provision" that would exempt from the operation of the prohibition all investment companies that currently impose such fees. The grandfather clause provision has since been eliminated. *See* Amemdment No. 6.

III. Summary of Comments

A. Proposed Amendments to the Investment Company Rule

1. Fund-of-Funds

NASD Regulation proposed to amend the Investment Company Rule to ensure that the combined sales charges of a fund-of-funds that charges a distribution fee at both the acquiring and underlying fund levels, do not exceed the maximum percentage limits that are currently permitted by the rule. Under the proposed amendment, the aggregate asset-based sales charges of an acquiring fund and an underlying fund would not be subject to the cumulative sales limits that apply to other investment companies with asset-based sales charges. Instead, any asset-based fee charged by the acquiring fund and the underlying fund could not, in the aggregate, exceed .75% of average net assets. In addition, any service fee charged by the acquiring fund and the underlying fund could not, in the aggregate, exceed .25% of average net assets. The acquiring and underlying funds in a fund-of-funds structure, however, would remain individually subject to the cumulative limits in the Investment Company Rule.

The Commission received comment on the proposed definition of "fund-of-funds." As proposed, "fund-of-funds" would have been defined as "an investment company that invests any portion of its assets in the securities of registered open-end investment companies or registered unit investment trusts." Chapman & Cutler and the ICI believed this definition was too broad and might include funds that invest only a small portion of their assets in other funds. They suggested that the definition of "fund-of-funds" be modified to more closely reflect traditional fund of funds, such as those companies relying on Sections 12(d)(1)(F) and 12(d)(1)(G) of the 1940 Act.[8] In the alternative, the ICI suggested that the definition include only funds whose investments in other funds exceed the limits permitted under Section 12(d)(1)(A) of the 1940 Act.[9]

NASD Regulation has modified the definition of "fund-of-funds" by narrowing its scope to include only investment companies that acquire securities issued by other investment companies in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act.[10]

2. Deferred Sales Loads

NASD Regulation proposed to conform the definition of "deferred sales charge" in the Investment Company Rule to the definition in Rule 6c–10 under the 1940 Act (*i.e.*, "any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption"). The Commission did not receive comment on this aspect of the proposal.

3. Loads on Reinvested Dividends

NASD Regulation proposed to prohibit NASD members from imposing front-end or deferred sales loads on the shares purchased through reinvested dividends. Several commenters objected to this prohibition.[11] In particular, the commenters believed that the prohibition would be especially disadvantageous to UITs. Although the prohibition contained a "grandfather clause" for existing UITs so that it would only apply to investment companies, including UITs, registered after a certain date, commenters believed that it would disrupt the reinvestment options for those UITs that were not eligible for the "grandfather clause."[12] Some commenters asserted that such a prohibition was not justified because UIT investor does not pay a sales charge twice on the same assets when he or she purchases shares through reinvested dividends.[13] Moreover, some commenters pointed out that unlike mutual fund underwriters, UIT sponsors are not permitted to receive fees pursuant to Rule 12b–1 under the 1940 Act. Commenters believe that UIT sponsors should be permitted to recoup their expenses through sales charges imposed on reinvested dividends.[14]

Several commenters asserted that prohibiting such sales charges would be inconsistent with Commission exemptive orders that permit certain UIT sponsors to impose sales charges on reinvested dividends, subject to certain conditions.[15] Other commenters asserted that this prohibition would require certain UITs that offered deferred sales load structures to create multiple classes of shares, which could raise issues under the 1940 Act and the federal tax laws.[16]

Commmenters also believed that the prohibition would require UITs to develop expensive new computer systems to separate reinvestment shares when deferred sales charges are deducted.[17] Davis Polk questioned the Commission's authority to approve this portion of the rule change, given the Commission's moratorium on the implementation of new Commission rules that require major reprogramming of regulated entities' computer systems between June 1, 1999, and March 31, 2000.[18]

NASD Regulation responded to these comments by stating that it continues to believe that loads on reinvested dividends constitute excessive compensation, regardless of the type of investment company that imposes them. NASD Regulation believes that the proposed rule is not inconsistent with exemptive relief granted to UITs under the 1940 act, as that relief does not refer to any dividend reinvestment program, and that the exemptive orders provide no relief from the application of NASD Conduct Rules.[19]

NASD Regulation asserted that the proposed rule would not require UITs to adopt a multiple class structure, but provided no rationale to support this belief. Instead, it deferred to the Commission's Division of Investment Management for its expertise on the matter. In contrast to commenters' interpretation of the potential effect of the rule change, NASD Regulation believes that, whether an investment company's loads on reinvested dividends are excessive, is unrelated to whether the investment company charges Rule 12b–1 fees. NASD Regulation stated that the prohibition on charging front-end or deferred sales loads on shares purchased through reinvested dividends would apply to investment companies that have no Rule 12b–1 plan just as it would apply to investment companies that have such plans. It notes that, under the proposed rule change, UITs would not be prohibited from imposing sales charges on the initial purchase of UIT shares, which UITs may set at a level to adequately compensate them for their distribution costs.

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[8] *See* Chapman & Cutler Letter; and ICI Letter.

[9] *See* ICI Letter.

[10] *See* Amendment No. 5.

[11] *See* Carter Letter; Chapman & Cutler Letter; Battle Fowler Letter; Davis Polk Letter; ICI Letter; Prudential Letter; and Cahill Letter. NASD Regulation has since eliminated the "grandfather clause." *See* Amendment No. 6. Instead, NASD Regulation proposes to defer the prohibition until April 1, 2000. *See* Amendment No. 5.

[12] *See* Carter Letter; and Davis Polk Letter.

[13] *See* Carter Letter; Davis Polk Letter; Prudential Letter; and Cahill Letter.

[14] *See* Chapman & Cutler Letter; Prudential Letter; and Cahill Letter.

[15] *See* Carter Letter; ICI Letter; Prudential Letter; and Cahill Letter.

[16] *See* Battle Fowler Letter; and Chapman & Cutler Letter.

[17] *See* Carter Letter; and Davis Polk Letter.

[18] *See* Davis Polk Letter.

[19] NASD Regulation asserts that although the exemptive relief "permitted UIT sponsors to charge installment loads, it does not appear to refer to any dividend reinvestment program. Indeed, we understand that at least two of these orders applied to fixed portfolio UITs that offered dividend reinvestment only into no-load mutual funds." *See* Amendment No. 5.

NASD Regulation responded to the commenters' Y2K concerns by amending the proposed rule change to delay implementation of the prohibition until April 1, 2000.[20]

4. CDSL Calculations

NASD Regulation also proposed to reinstate requirements previously applicable under Rule 6c–10 under the 1940 Act concerning the order in which fund shares subject to a CDSL must be redeemed when an investor redeems some, but not all, of his fund shares. Chapman & Cutler commented that some investors, for business or tax reasons, may want to apply a different order of redemption than the one specified by the proposed rule (FIFO), and that the proposed rule therefore should be modified to allow investors to dictate a different order of redemption.[21] The ICE commented that, while it does not object to the provision, it believes that the rule language should be modified to specify that it applies to partial redemptions. The ICI also recommended that the proposed rule language be modified to provide that an order of redemption other than FIFO may be used if such an order "could" (rather than "would") result in the shareholder paying a lower CDSL.[22]

NASD Regulation indicated that it does not intend to modify the proposed rule. NASD Regulation stated that it was not aware of any significant problems that had arisen as a result of identical requirements that were previously imposed on the investment company industry by Rule 6c–10 under the 1940 Act. NASD Regulation also is concerned that if investors were permitted to consent to a different order of redemption, investment company account agreements could include standard language that effectively would allow a fund sponsor to determine the order of redemption. Further, NASD Regulation does not believe it is necessary to modify its proposal to reflect that it applies only to partial redemptions because, if all shares are redeemed, the issue of redemption order becomes moot.[23]

5. Prospectus Disclosure

NASD Regulation proposes to eliminate a prospectus disclosure requirement in the Investment Company Rule that is already required by Commission rules. The Commission did not receive comment on this aspect of the proposal.

B. Proposed Amendment to the Variable Contracts Rule

NASD Regulation proposes to amend the Variable Contracts Rule to eliminate sales charge limits for variable annuity contracts, as well as to eliminate the requirement in the rule to file the details of any changes in a variable annuity's sales charges. NAVA strongly supported eliminating the sales charge limits on variable annuity sales loads. NAVA also believed that the imposition of sales charge restrictions on variable annuities would be inconsistent with the purpose and intent of the "reasonableness" standard adopted in the 1996 Amendments.[24]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b)(6).[25] Section 15A(b) requires that the rules of the Association, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change will further these requirements by adapting the Investment Company Rule and the Variable Contracts Rule to take into account recent legislation, regulations promulgated by the Commission, and new distribution arrangements.[26]

A. Amendments to the Investment Company Rule

1. Fund-of-Funds

The Commission finds that the proposed application of aggregate sales charge limits on fund-of-funds that charge distribution fees at both levels to be consistent with the Act. Specifically, the Commission believes that the proposed amendment clarifies that the Investment Company Rule applies to two-tier fund-of-funds structures in which asset-based sales charges are imposed at both the acquiring and underlying fund levels. The application of these sales charge limits should help to ensure that charges remain reasonable and do not become excessive for investors.

The Commission also believes that the definition of "fund-of-funds" being adopted is consistent with the common understanding of the type of investment company that constitutes a fund-of-funds. As proposed, "fund-of-funds" would have been defined as "an investment company that invests any portion of its assets in the securities of registered open-end investment companies or registered unit investment trusts." The commenters indicated that the proposed definition was broader than the traditional understanding of what constitutes a fund-of-funds. In response to public comment, NASD Regulation revised this definition to include only those investment companies that acquire securities issues by another investment company in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act. Section 12(d)(1)(A) of the 1940 Act permits an investment company to purchase a limited amount of the total outstanding voting stock of another investment company.[27] Therefore, the definition of fund-of-funds will exclude investment companies that invest only a small portion of their assets in other funds' shares. The Commission believes that the definition being adopted sufficiently addresses the concern that a fund-of-fund might assess unlimited sales loads (*i.e.*, excessive layering of sales loads) by clarifying that the Investment Company Rule applies to those fund-of-funds that invest more than a *de minimis* amount of their assets in the shares of other investment companies. The Commission further believes that NASD Regulation's modification to its proposed definition of fund-of-funds will make it more manageable for investment companies in a fund-of-funds structure to monitor and enforce compliance with the requirements of the Investment Company Rule.

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[20] *See* Amendment No. 5.

[21] *See* Chapman & Cutler Letter.

[22] *See* ICI Letter.

[23] *See* Amendment No. 5.

[24] *See* NAVA Letter.

[25] 15 U.S.C. 78o–3(b)(6).

[26] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[27] Section 12(d)(1)(A) generally prohibits any registered investment company and companies controlled by it (the "acquiring company") from acquiring securities of any other investment company (the "acquired company"), and any investment company and companies controlled by it (the "acquiring company") from acquiring any security issued by a registered investment company (the "acquired company") if, after the acquisition, the acquiring company would own in the aggregate (i) more than 3% of the total outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the acquiring company; or (iii) securities issued by the acquired company and all other investment companies (other than treasury stock of the acquiring company) having an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Deferred Sales Loads

The Commission finds it appropriate to amend the definition of "deferred sales charge" in the Investment Company Rule to conform to the definition in Rule 6c–10 under the 1940 Act (*i.e.*, "any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption"). The Commission believes that conforming the definition in this manner will allow for more flexibility in structuring deferred sales loads (*e.g.*, by permitting installment loads), as taken into account by the 1996 Amendments to Rule 6c–10. The Commission also notes that the conforming definition will prevent possible confusion and compliance burdens that could result from inconsistent definitions in Commission and NASD rules.

3. Loads on Reinvested Dividends

NASD Regulation proposed to prohibit NASD members from imposing front-end or deferred sales loads on shares purchased with reinvested dividends. As noted above, the Commission received substantial comment on this aspect of the proposal, all of it critical. Specifically, commenters believed that the proposed prohibition included in NASD Rule 2830(d)(6) would create a disadvantage for UITs by restricting only front-end and deferred sales loads, but not asset-based sales charges, *e.g.*, Rule 12b–1 fees, which UIT's are not permitted to charge. Commenters believe that UITs would be disadvantaged because non-UIT funds would be permitted to charge Rule 12b–1 fees on reinvested dividends, and therefore recoup their distribution costs, while UITs would not. As noted by the NASD, UITs may set the sales charge on the initial purchase at a level to adequately compensate them for their distribution costs.

Commenters further asserted that the proposed rule change would require UITs to create two classes of units with different characteristics, which would result in each class representing a different pool or specified securities, and would therefore raise issues under the 1940 Act and federal tax law. NASD Regulation asserted its view that "complying with the proposed amendments should not require UITs to adopt a multiple class structure." NASD Regulation also consulted with staff in the Commission's Division of Investment Management on the matter, and the staff agrees that complying with the proposed amendments should not result in the creation of multiple classes.[28] The Commission believes that the proposed rule change is consistent with the Act in that it should prevent sales charges from exceeding the appropriate limits, thereby benefiting investors and the public interest.

4. CDSL Calculations

The Commission believes that it is consistent with the Act to reinstate requirements previously applicable under Rule 6c–10 under the 1940 Act, concerning the order in which fund shares subject to a CDSL must be redeemed when an investor redeems some, but not all, of his fund shares. Although commenters asserted that investors should be able to choose the order of redemption used in calculating the CDSL applied to their shares, the Commission agrees with NASD Regulation that such discretion could result in investment companies incorporating standard language into account agreements, effectively allowing a fund sponsor to determine the order of redemption. The Commission believes that the provision provides sufficient flexibility as proposed. Specifically, the provision provides that if a redemption order other than FIFO (*e.g.*, LIFO) would result in a redeeming shareholder paying a lower CDSL, the other method may be used. This approach should benefit investors by permitting them to pay the lowest CDSL when partially redeeming shares.

5. Prospectus Disclosure

The Commission finds it appropriate to eliminate a prospectus disclosure requirement currently included in the Investment Company Rule in light of the Commission's 1998 revisions to the prospectus disclosure requirements for mutual funds. Specifically, the Commission requires that mutual funds with asset-based sales charges include disclosure in their prospectuses regarding Rule 12b–1 plans that is similar to the disclosure required in the Investment Company Rule. The adoption of this prospectus disclosure requirement made the prospectus disclosure requirement in the Investment Company Rule duplicative and unnecessary.

B. Proposed Amendment to the Variable Contracts Rule

The Commission believes that the elimination of the maximum sales charge limitations from the Variable Contracts Rule is appropriate in light of the "reasonable" standard adopted in the 1996 Amendments. Specifically, in 1996, the 1940 Act was amended to exempt variable annuity (as well as variable life insurance) contracts from the specific charge restrictions contained in Sections 26 and 27. In place of the specific charge restrictions, the 1996 amendments added a section to the 1940 Act[29] to regulate variable contract charges by requiring that the fees and charges under a variable contract, in the aggregate, be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.[30] The Commission believes eliminating the maximum sales charge limitations from the Variable Contracts Rule is appropriate in light of the 1996 amendments.

Because Rule 2820 provisions regulating sales charges for variable annuities are being eliminated, NASD Regulation also proposed to eliminate the requirement to file with the Advertising/Investment Companies Regulation Department the details of any changes in a variable annuity's sales charges.[31] The Commission believes the elimination of this filing requirement is appropriate in light of the concurrent elimination of the maximum sales charge limitations in the Variable Contracts Rule.

The Commission finds good cause to approve Amendment No. 4 to the proposed rule change prior to the 30th days after the date of publication of notice filing thereof in the **Federal Register**. Amendment No. 4 makes grammatical and technical changes to the proposed rule language and supersedes and replaces the previous filing and amendments thereto. It does not substantive modify the proposal. Accordingly, the Commission believes that it is consistent with Sections

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[28] *See* Amendment No. 5.

[29] *See* Section 26(e)(2) of the 1940 Act.

[30] Insurance companies issuing variable contracts are required to represent in the contract registration statements that fees and charges are reasonable.

[31] *See* Amendment No. 6.

15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 4 to the proposed rule change on an accelerated basis.

The Commission finds good cause to approve Amendment No. 5 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 5 does two things. First, in response to commenters, Amendment No. 5 modifies the definition of "fund-of-funds" so that it includes only those investment companies that acquire securities issued by any other investment company in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act. This definition is narrower than the one originally proposed and should make clear that the combined sales charge limits apply only to those structures traditionally understood to be funds-of-funds. Second, also in response to commenters, Amendment No. 5 delays the implementation of the prohibition of sales loads on reinvestment dividends until April 1, 2000. This addresses commenters concerns regarding Y2K and the computer systems changes that the proposed rule change will necessitate. Accordingly, the Commission believes that is consistent with Sections 15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 5 to the proposed rule change on an accelerated basis.

The Commissions finds good cause to approve Amendment No. 6 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 6 clarifies that the prohibition of front-end or deferred sales charges on shares of investment companies purchased with reinvested dividends is not meant to apply to investment companies whose registration statements became effective under the Securities Act of 1933 prior to April 1, 2000. Amendment No. 6 also clarifies that the definition of "fund-of-funds" is intended only to cover an investment company that invests in the securities of another registered investment company. Accordingly, the Commission believes that it is consistent with Sections 15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 6 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, 5, and 6 including whether the proposed rule changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–98–14 and should be submitted by November 18, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NASD–98–14) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28199 Filed 10–27–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42050; File No. SR–PCX–99–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Adoption of a Continued Listing Fee

October 21, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to adopt a new $500 per month/per issue fee that will apply to Options Market Makers and Lead Market Makers ("LMMs") who want to continue trading certain low-volume option issues.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discusses any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a new Continued Listing Fee for option issues. The purpose of the new fee is two-fold. First, it is designed to facilitate the delisting of inactive or low-volume option issues that are currently listed and traded on the PCX. The Exchange recognizes the industry-wide need to reduce the overall amount of quotation and last sale reporting information that is currently being disseminated through the Options Price Reporting Authority ("OPRA"). At the same time, the Exchange is seeking to provide the members who trade these inactive issues with an opportunity to continue trading the ones that they deem to be most promising, subject to the fee.[3] Second, the new fee is designed to allow the Exchange to recover the costs of supporting the listing and trading of their inactive issues.

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[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In September 1999, 273 of the approximately 800 issues traded on the Exchange were subject to the new fee. Of those issues, LMMs paid the $500 fee for 190 issues. Consequently, 83 issues were eligible for redistribution and were posted for reallocation. Because there were no applicants for those issues, the Reallocation Committee delisted them. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Gordon Fuller, Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission; and Melinda Diller, Law Clerk, Commission (October 8, 1999).

The new fee applies to equity and index option issues that do not generate at least $400 in Exchange revenue per month, based on a "rolling" three-month average.[4] The fees and charges included in calculating whether an issue has generated $500 in Exchange revenue are: (1) PCX Transaction Charges;[5] PCX Ticket Data Entry Charges;[6] (3) PCX On-line Comparison Charges;[7] (4) PCX Book Execution Fees;[8] and (5) PCX Book Staff Entry Charges.[9] Once an issue is subject to the new fee, the new fee will continue to apply in subsequent months, unless the issue generates $500 or more in Exchange revenue per month, based on a "rolling" three-month average.[10]

Once an option issue has been identified as being subject to the fee, the Exchange will immediately notify the LMM or trading crowd that trades the issue. The LMM or trading crown representative will then have an opportunity to make a commitment to pay the fee on an ongoing basis.[11] Alternatively, if the LMM or trading crowd representative does not commit to paying the fee on an ongoing basis, then the Exchange will make the issue available for reallocation to other trading crowds or LMMs who are willing to commit to the fee upon reallocation.[12] If the issue is not reallocated, then it will be delisted. The Exchange always provides an opportunity for an option issue to be reallocated before initiating the delisting process.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objective of Section 6(b)(4) of the Act[15] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[16] and subparagraph (f)(2) of Rule 19b–4 thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other, than those that may be withheld from the public in accordance with the provisions of 5U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–32 and should be submitted by November 18, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28198 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–M

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 37860 (October 23, 1996), 61 FR 56079 (October 30, 1996) (order approving File No. SR–PSE–96–37).

[4] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 17 CFR 200.30–3(a)(12).

[3] In September 1999, 273 of the approximately 800 issues traded on the Exchange were subject to the new fee. Of those issues, LMMs paid the $500 fee for 190 issues. Consequently, 83 issues were eligible for redistribution and were posted for reallocation. Because there were no applicants for those issues, the Reallocation Committee delisted them. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Gordon Fuller, Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission; and Melinda Diller, Law Clerk, Commission (October 8, 1999).

[4] The rolling average is derived from the three months immediately preceding imposition of the fee. For example, if an issue generated $490 in July, $490 in August and $500 in September, the issue will be subject to the new fee for October because the three-month average of $493 is less than the $500 threshold. However, if an issue generated $490 in July, 490 in August and $525 in September, the issue would not be subject to the new fee for October because the three month average of $502 would exceed the $500 threshold. A newly-listed option issue will not be subject to the fee until it has been listed on the Exchange for at least three months.

[5] These are currently set at $0.12 per contract side for customer transaction (except that no customer

[11] The Exchange represents that the LMM will have approximately one week to decide whether or not to pay the fee. Once an LMM or trading crowd has committed to paying the fee on an ongoing basis, the LMM will be required to continue paying the fee on a monthly basis unless either (a) the issue is no longer subject to the fee (because the issue generates $500 or more in Exchange revenue per month, based on a "rolling" three-month average); or (b) the LMM or trading crowd representative indicates to the Exchange an unwillingness to continue paying the fee, and the issue is posted for reallocation. Telephone conversation between Michael Pierson, Director, Regulatory Policy, PCX, and Melinda Diller, Law Clerk, Commission (September 28, 1999).

[12] The Exchange represents that it follows an informal policy in reallocating before the opening of the market. Any LMM who wishes to apply for the issue may do so by submitting an application to the Reallocation Committee no later than 11 a.m. that day. The Committee then meets to consider all of the applicants and reassigns the issue to the applicant it considers to be best suited for the issue. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission, and Melinda Diller, Law Clerk, Commission (October 8, 1999).

[13] Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission, and Melinda Diller, Law Clerk, Commission (October 8, 1999).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42048; File No. SR–PCX–99–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Registration Fee Change ($8 to $25)

October 21, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Schedule of Rates and Charges for Exchange Services by increasing the annual Registration Fee from eight dollars to twenty-five dollars, for new applications, maintenance, and transfer of registration status for each Registered Representative ("RR") and each Registered Options Principal ("ROP").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. Currently, the PCX Schedule of Rates and Charges provides for an eight dollar Registration Fee to be paid by Member Organizations for new applications, maintenance, or transfer of registration status for each Registered Representative ("RR") and each Registered Options Principal ("ROP").[3]

Proposal. The Exchange is now proposing to increase the annual Registration Fee for new applications, maintenance, and transfer of registration status for each RR or ROP. Specifically, the Exchange proposes to increase the annual Registration Fee from eight dollars to twenty-five dollars in order to offset the Exchange's costs relating to its market surveillance programs, regulatory responsibilities and routine Designated Examining Authority (DEA) activity.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act, in general, and Section 6(b)(4) of the Act, in particular, in that it provides for the equitable allocation of reasonable charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and paragraph (f)(2) of 19b–4 thereunder in that it establishes or changes a due, fee or other charge.[4]

At any time within 60 days of the filing of each proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection in copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–42 and should be submitted by November 18, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28201 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3144]

Discretionary Grant Programs Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 2000 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the countries of Central and East Europe, Russia, and Eurasia. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 37860 (October 23, 1996), 61 FR 56079 (October 30, 1996) (order approving File No. SR–PSE–96–37).

[4] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 17 CFR 200.30–3(a)(12).

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 2000 under a program administered by the Department of State. The program seeks to build and sustain expertise among Americans willing to make a career commitment to the study of Central and East Europe, Russia, and Eurasia.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by January 28, 2000.

Applications Delivered by Mail

An application sent by mail must be addressed to W. Kendall Myers, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520–6510.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If any application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand delivered must be taken to W. Kendall Myers, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, 2201 C Street, NW, Washington, DC. Please phone first at (202) 736–4572 to gain access to the building.

The Advisory Committee staff will accept hand-delivered applications between 9 a.m. and 4 p.m. EST daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983, the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The program provides financial support for advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Central and East Europe, Russia, and Eurasia, the program contributes to the overall objectives of the FREEDOM Support and SEED Acts.

The full purpose of the Act and the eligibility requirements are set forth in Public Law 98–164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Serbia (including Kosovo and Montenegro), Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes the final determination on awards.

Applications for funding under the Act are invited from U.S. organizations prepared to conduct competitive programs on Central and East Europe, Russia, and Eurasia and related fields. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral level, and must have demonstrated a likely career commitment to the study of Central and East Europe, Russia, and/or Eurasia.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Central and East Europe, Russia, and/or Eurasia by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Central and East Europe, Russia, and Eurasia, and in related studies, including training in the languages of the region, with such training to be conducted on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Central and East Europe, Russia, and Eurasia, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the countries of Central and East Europe, Russia, and Eurasia by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate the public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of Central and East Europe, Russia, and Eurasia in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies and priorities:

- *Support for Transitions.* The Advisory Committee strongly encourages support for activities which, while building expertise among US specialists on the region, also (1) promote fundamental goals of US assistance programs such as helping establish market economies and promoting democratic governance and civil societies, and (2) provide knowledge related to current US policy interests in the region, broadly defined. This includes, but is not limited to, such topics as ethnic conflict, post-Soviet economics, and political participation. The Advisory Committee gives priority to programs on Central Asia, the Caucasus, and the Balkans, where gaps in knowledge exist, and encourages research on Russia's regions and other areas outside capital cities. Historical or cultural research that promotes understanding of current events in the region also is encouraged if an explicit connection can be made to contemporary political and/or economic transitions.
- *Publications.* Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.
- *Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.
- *Library Activities.* Funds may be used for certain library activities that clearly strengthen research and training on the countries of Central and East Europe, Russia, and Eurasia and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.
- *Language Support.* The Advisory Committee encourages attention to the non-Russian languages of Eurasia and the less commonly taught languages of the Central and East Europe. Support provided for Russian language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above that has appropriate peer group review mechanisms.
- *Support for Non-Americans.* The purpose of the program is to build and sustain U.S. expertise on the countries of Central and East Europe, Russia, and Eurasia. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (*i.e.*, U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, *i.e.*, nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must justify the expenditure. Despite this restriction on support for non-Americans, collaborative projects are encouraged—where the non-American component is funded from other sources—and priority is given to institutions whose programs contain such an international component.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Central and East Europe, Russia, and Eurasia. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort that will ensure attention to all the countries of the area. Legislation requires and this announcement indicates under *Program Information* of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost-sharing is encouraged, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $4.8 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 1999, the Congress appropriated to the program $4.8 million from the FREEDOM Support and Support for East European Democracies (SEED) Acts, which funded grants to 9 national organizations, with $3.3 million for activities on Russia and Eurasia and $1.5 million for those on Central and East Europe, including the Baltic states. The number of awards varies each year, depending on the level of funding and the quality of the applications submitted.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years after the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in 12 pitch in the following format: one-page, single-spaced Executive Summary; Budget presentation; narrative description of proposed programs not to exceed 20 double-spaced pages; one-page, single-spaced vitae of key professional staff; and required certifications. Applicants may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully.

Budget

Because funds will be appropriated separately for Central and East Europe (including the Baltic states) and New Independent States programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR part 145, "Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education * * * Uniform Administrative Requirements," and OMB Circular A–133, "Audits of

Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A detailed program budget indicating direct expenses with clearly identified administrative costs by program element and by region (NIS or Central and East Europe), indirect costs, and the total amount requested. The budget also should reflect administrative costs as a percentage of the total requested funding. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report, if available) and the name, address, and point of contact of the audit agency. N.B.: The threshold for grants that trigger an audit requirement has been raised from $25,000 to $300,000.

(5) An indication of the applicant's priorities if funding is being requested for more than one program or activity.

All payments will be made to grant recipients through the Department of State.

Narrative Statement

The Applicant must describe fully the proposed programs, including detailed information about plans for advertising programs, peer review and selection procedures and identification of anticipated selection committee participants, estimates of the types and amounts of anticipated awards, and benefits of these programs for the Central and East European, Russian, and Eurasian fields.

Applicants who have received previous grants from this State Department program should provide detailed information on the awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. Applicant's should specify both past and anticipated applicant to award ratios. A summary of an organization's past grants under this State Department program also should be included.

Proposals from national organizations involving language instruction programs should provide, for those programs supported in the past year, information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

Certifications

Applicants must include a description of affirmative action policies and practices and certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Public Law 100–690), in accordance with Appendix C of 22 CFR part 137, Subpart F; and (2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Public Law 101–121), in accordance with Appendix A of 22 CFR part 138, New Restrictions on Lobbying Activities.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in Program Part II, Information (45 points);

(2) The professional qualifications of the applicant's key personnel and selection committees, and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Central and East Europe, Russia, and Eurasia (35 points); and

(3) Budget presentation and cost effectiveness (20 points).

Further Information

For further information, contact W. Kendall Myers, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520–6510. Telephone: (202) 736–4572 or 736–4386, fax: (202) 736-4851 or (202) 736–4807.

Dated: October 21, 1999.

W. Kendall Myers,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 99–28208 Filed 10–27–99; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice No. 3135]

Advisory Committee on International Economic Policy Charter Amendment and Meeting Notice

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9:00 a.m. to 1:00 p.m. on Tuesday, November 23, 1999, in Room 1105, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and by Acting Under Secretary of State for Economic, Business and Agricultural Affairs Alan P. Larson.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government. The charter has been amended to increase the membership.

Topics for the November 23 meeting will be: Asian Financial Crisis—Next Steps and Indonesia; World Trade Organization and the New Round; International Affairs Resources; and short briefings and discussion on Southeast Europe, Sanctions, Biotechnology, APEC Private Sector Initiatives, and Anti-Corruption Developments.

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the record. Admittance to the Department of State Building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the ACIEP Executive Secretariat by phone at (202) 647–5968 or fax (202) 647–5713 (Attention: Arlene Nelson) by Friday, November 19, 1999. On the date of the meeting, persons who have registered should come to the 23rd Street entrance. One of the following valid means of identification will be required for admittance: a U.S. driver's license with photo, a passport, or a U.S. Government ID.

FOR FURTHER INFORMATION CONTACT: Arlene Nelson, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 6828, Main State, Washington, DC 20520.

Dated: October 22, 1999.

William J. McGlynn,

Executive Secretary.

[FR Doc. 99–28207 Filed 10–27–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special public outreach meeting with South/South Central State Departments of Transportation.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a special public outreach meeting of the Council with representatives from the South/South Central states. At the special meeting, the Council will hear from, among others, representatives from the states of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, and West Virginia, to discuss all aspects of intercity railroad passenger service, including corridor service, in the South/South Central region of the country. The Honorable Kay Bailey Hutchison, U.S. Senator from Texas, is scheduled as the Keynote Speaker.

DATES: The Special Public Outreach meeting will be held on November 8, 1999 from 9:00 a.m. to 5:00 p.m. in the Dallas Union Station (attached to the Hyatt Regency Dallas), 400 S. Houston Street, Dallas, TX 75207.

ADDRESSES: The Meetings will held in Pullman Room B, Dallas Union Station (attached to the Hyatt Regency Dallas), 400 S. Houston Street, Dallas, TX 75207, telephone at the Hyatt (214) 651–1234. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTAL INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after two years, the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and Congressional leaders. Each member is to serve a five-year term.

Issued in Washington, DC, October 20, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99–28129 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on Wednesday, November 17, 1999, at 10:00 a.m., at the Department of Transportation, Nassif Building, room 10214, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 10th floor.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: Jean B. Lenderking, Corporate Human Resource Leadership Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–8085.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to brief the Council on the Federal Employees Cancer Warmline, the Life with Cancer Signature Project in memory of the late American Federation of Government Employees (AFGE) President John Sturdivant; status report on Phase II of DOT labor-management climate study; and initiatives/options for enhancing partnership efforts throughout DOT.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by November 12, 1999 in order to be considered at the November 17th meeting.

Issued in Washington, DC on October 22, 1999.

For the Department of Transportation.

John E. Budnik,

Associate Director, Corporate Human Resource Leadership Division.

[FR Doc. 99–28218 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Loudon, Roane, Anderson, and Knox Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public than an environmental impact statement will be prepared for a proposed project in Loudon, Roane, Anderson, and Knox Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Charles S. Boyd, Division Administrator, Federal Highway Administration, 640 Grassmere Park, Suite 112, Nashville, TN 37211, Telephone (615) 781–5770.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to connect Interstate 40 with Interstate 75 from near the current I–40/I–75 interchange in Loudon County, near Lenoir City, Tennessee, to an area north and east in Anderson County, near the interchange of I–75 and State Route 61. The proposed project is considered necessary to improve the operation and safety of these affected interstate highways.

Alternatives to be considered include: (1) taking no action; (2) three build alternatives consisting of diffeenct alignments; and (3) other alternatives that may arise from public and agency input.

Coordination letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies. Public meetings were held to dicuss concept alignments in January and February 1997 and public comments were received. The draft environmental impact statement (EIS) will be prepared and made available for public and agency review and comment. Comments from the initial coordination letters and the public meetings will be considered in determining the scope of the EIS.

To insure that the full range of issues to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address above.

(Catalogue of Federal Domestic assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.)

Issued on October 15, 1999.

Charles S. Boyd,

Division Administrator, Tennessee Division, Nashville, Tennessee.

[FR Doc. 99–28174 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Polk County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Polk County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Charles S. Boyd, Division Administrator, Federal Highway Administration, 640 Grassmere Park, Suite 112, Nashville, Tennessee 37211, Telephone: (615) 781–5770.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve U.S. Route 64 (U.S. 64) in Polk County, Tennessee. The proposed project would involve improvements to a section of the U.S. 64 roadway between U.S. 411 on the west and State Route 68 in Ducktown for a distance of about 42 kilometers (26) miles.

Improvements to the corridor are considered necessary to provide for existing and projected traffic demand and to improve safety. Alternatives under consideration include (1) taking no action; and (2) widening the existing two-lane highway to four lanes to the east and west of the Ocoee River Gorge, and constructing a four-lane divided highway on new location to bypass existing U.S. 64 through the Ocoee River Gorge.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held upon completion of the Draft EIS and public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting is planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 15, 1999.

Charles S. Boyd,

Division Administrator, Tennessee Division, Nashville, Tennessee.

[FR Doc. 99–28175 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. FRA–1999–5685, Notice No. 3]

RIN 2130—AB33

Proposed Joint Statement of Agency Policy Concerning Shared Use of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

AGENCIES: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), DOT.

ACTION: Extension of comment period.

SUMMARY: By notice of a proposed policy statement published on May 25, 1999 (64 FR 28238), FRA and FTA proposed how they intend to coordinate use of their respective safety authorities to address safety issues related to light rail transit operations that take place, or are planned to take place, on the general railroad system of transportation. The proposal also summarized how the process of obtaining waivers of FRA's safety regulations may work, particularly where the light rail and conventional rail operations occur at different times of day. In that notice, the deadline for the submission of written comments was July 30, 1999. By notice published on July 28, 1999 (64FR 40931), the deadline for the submission of written comments was extended until October 29, 1999.

Due to the need to ensure that all interested parties have a sufficient amount of time to fully develop their comments, and because FRA's separate proposed statement of agency policy concerning its safety jurisdiction over railroad passenger operations is not yet published, this document announces an additional extension of the deadline for the submission of written comments.

DATES: Written comments must be received by January 14, 2000. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Procedures for written comments: Submit one copy to the Department of Transportation Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. All docket material on the proposed statement will be available for inspection at this address and on the Internet at http://doms.dot.gov. (Docket hours at the Nassif Building are Monday-Friday, 10:00 a.m. to 5:00 p.m., excluding

Federal holidays.) Persons desiring notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, FTA, TCC–2, Room 9316, 400 Seventh Street, SW, Washington, DC 20590 (telephone: (202) 366–4063); and Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6029).

SUPPLEMENTARY INFORMATION: In the proposed joint policy statement issued on May 25, 1999 by FRA and FTA, the agencies explained that the proposal is intended to delineate the nature of the most important safety issues related to shared use of the general railroad system by conventional and rail transit equipment and summarize the application of FRA safety rules to such shared-use operations. The proposal will help transit authorities, railroads, and other interested parties understand how the respective safety programs of the two agencies will be coordinated. The proposed statement noted that FRA soon intended to issue its own proposed statement of agency policy concerning its safety jurisdiction over railroad operations, which would discuss the extent and exercise of FRA's jurisdiction, provide guidance on which of FRA's safety rules are likely to apply in particular operational situations, and summarize how the process of obtaining waivers of FRA's safety regulations may work. The expectation of the two agencies was that commenters would then have the ability to study and analyze FRA's proposed policy statement before October 29, 1999, the revised deadline for submitting written comments on the proposed joint statement.

Since FRA has not yet issued its separate proposed policy statement, potential commenters will be unable to review that document before the close of the revised comment deadline for the proposed joint statement. Due to the complexity and importance of adopting a joint policy concerning shared use of the general railroad system by conventional railroads and light rail transit systems, especially to communities that are planning or developing light rail systems, FRA and FTA do not wish to inhibit the ability of any party to fully develop its comments and seek to provide sufficient time for all interested parties to gather necessary information. Consequently, FRA and FTA believe it is in the best interest of all parties involved to extend the period for the submission of written comments in this proceeding to January 14, 2000, which is the anticipated deadline that FRA will set for submission of comments on its separate proposed statement of agency policy. FRA and FTA do not anticipate any further extension of the comment period in this proceeding. The two agencies will consider comments submitted after January 14, 2000, only to the extent possible without causing additional expense or delay.

Issued in Washington, DC, on October 25, 1999.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 99–28350 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6383]

Notice of Receipt of Petition for Decision That Nonconforming 1998 Jaguar XK–8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998 Jaguar XK–8 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1998 Jaguar XK–8 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) It is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 29, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether a 1998 Jaguar XK–8 passenger car is eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1998 Jaguar XK–8 passenger car that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1998 Jaguar XK–8 to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1998 Jaguar XK–8, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1998 Jaguar XK–8 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the vehicle conforms to the Bumper Standard found at 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) Installation of a seat belt warning lamp that displays the appropriate symbol; (c) Recalibration of the speedometer/odometer to show distance in miles and speed in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) Installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) Installation of U.S.-model taillamp assemblies; (d) Installation of a high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) Installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) Replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder belts that adjust by means of an automatic retractor and release by means of a single push button at the front outboard seating positions, with combination lap and shoulder restraints that release by means of a single push button at the rear outboard seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line.

The petitioner also states that all vehicles will be inspected prior to importation to ensure that they are equipped with anti-theft devices in compliance with the Theft Prevention Standard found in 49 CFR part 541 and modified if necessary.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on October 22, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–28099 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6384]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Eagle Vision Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Eagle Vision passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1994 Eagle Vision that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) It is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 29, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1994 Eagle Vision passenger cars originally manufactured in the United States for export to foreign markets are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1994 Eagle Vision that was manufactured for sale in the United States and certified by its manufacturer, Chrysler Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1994 Eagle Vision to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Eagle Vision, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Eagle Vision is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 111 *Rearview Mirror*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-US certified 1994 Eagle Vision complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Replacement of the odometer/speedometer with units calibrated in miles/miles per hour on vehicles that are not already so equipped; (b) Inscription of the word "brake" on the brake failure indicator lamp lens.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the headlights, taillights, and front and rear sidemarker assemblies with components that conform to the standard.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* Installation of driver's and passenger's side airbags and knee bolsters. The petitioner states that the vehicle is equipped with Type 2 seat belts in front and rear outboard seating positions, and with a lap belt in the rear center designated seating position.

The petitioner states that a vehicle identification number plate that meets the requirements of 49 CFR part 565 will be affixed to the vehicle if it is not already so equipped.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 22, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–28100 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–6093; Notice 2]

Italjet S.p.A.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

This notice grants the application by Italjet S.p.A., an Italian corporation, through Italjet USA ("Italjet") of New York City, NY, for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The basis of the request was that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. Sec. 30113(b)(3)(B)(iv).

We published a notice of receipt of the application on August 24, 1999 (64 FR 46225) asking for comments, but received none.

Italjet has applied on behalf of its Torpedo 125, Formula 125, Millenium 125, and Millenium 150 motor scooters ("scooters"). The scooters are defined as "motorcycles" for purposes of compliance with the Federal motor vehicle safety standards. According to Italjet, its scooters have a peak motor output of 26 hp and a top speed of 60 miles per hour.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, though the left handlebar is permissible for motor driven cycles (Item 11, Table 1). Italjet would like to use the left handlebar as the control for the rear brakes of the scooters, whose peak motor output of 26 hp produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. The gear ratio of the vehicle is fixed, and "there is no need for the rider to shift gears, as on a standard motorcycle." Because of this, the scooters are "equipped with neither a clutch nor a clutch lever, and the left hand of the rider is free to operate a brake lever." Italjet states that it prefers this design, given its focus on European and Asian markets "where rear brake controls for scooters of all horsepower ratings are typically mounted on the left handlebar."

Italjet argues that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. It believes that "the prevalence of the left hand operated design in Europe and Asia is one strong indicator that a vehicle designed in this way can be operated safely." It believes that "vehicle safety might be somewhat enhanced with the left hand brake lever, as the hand (bare or gloved) is generally more capable of sensitive modulation of the braking force than the foot."

Italjet intends to field test a small number of the scooters in the American market in Fall 1999 to assess the design, and without an exemption it would be unable to do so. It wishes to consider whether the United States' scooter market offers sufficient sales potential to justify the creation of a design specifically for the United States that incorporates the right foot brake pedal. Alternatively, it may petition for rulemaking to amend Standard No. 123 to allow the hand-operated brake control on motorcycles with more than 5 hp.

Italjet anticipates sales of not more than 2500 scooters a year while an exemption is in effect. It believes that an exemption would be in the public interest and consistent with the objectives of traffic safety "because it would maintain an acceptable level of safety while accelerating the advancement of an important new class of vehicles for use by consumers and businesses."

The application by Italjet is substantially similar to that by Aprilia, S.p.A. which we granted on August 13, 1999 (64 FR 44264). Aprilia also requested an exemption from the rear brake location requirement of S5.2.1 (Table 1) of Standard No. 123 pursuant to 49 U.S.C. 30113(b)(3)(B)(iv). On August 20, 1999, we also granted an exemption from this requirement to Vectrix Corporation for its electric scooter pursuant to 49 U.S.C. 30113(b)(3)(B)(iii), on the basis that it would make the development or field evaluation of a low-emission vehicle easier (64 FR 45585).

As we observed in granting Aprilia's application, we must find that an exemption is consistent with the public interest and motor vehicle safety (49 U.S.C. Sec. 30113(b)(3)(A)), and that compliance with the brake control location requirement of Standard No. 123 would prevent Aprilia from selling a motorcycle with an overall safety level at least equal to the safety level of a nonexempt motorcycle (49 U.S.C. Sec. 30113(b)(3)(B)(iv)).

Aprilia correctly identified our principal area of concern: the standardization of motorcycle controls. In adopting Standard No. 123 in April 1972, effective September 1, 1974, we justified standardization of motorcycle controls as a means of minimizing operator error in responding to the motoring environment, saying that "a cyclist, especially the novice and the cyclist who has changed from one make of machine to another, must not hesitate when confronted with an emergency" (37 FR 7207).

We asked Aprilia to comment on our concern that a left hand lever-operated rear brake may contribute to unfamiliarity and thus degrade a rider's overall braking reaction beyond what would exist on a motorcycle with conventionally configured controls. At the request of Aprilia's U.S. sales subsidiary, Aprilia U.S.A. Inc. of Woodstock, Georgia, Carter Engineering of Franklin, Tennessee, prepared a report on "Motorscooter Braking Control Study" (Report No. CE–99-APR–05, May 1999) comparing braking response times of riders using the left hand control of the Leonardo 150 and the right foot control of the Yamaha XC–125 Riva. We have placed a copy of this report in the Aprilia docket, Docket No. NHTSA–98–4357. Aprilia U.S.A. commented that "[o]verall, the test subjects" reaction times on the Leonardo were approximately 20% quicker than their reaction times on the conventional motorcycle." Aprilia believed that "a less complex braking arrangement like that of the [vehicle for which it sought exemption] will improve rider reaction in an emergency situation." We interpreted the report as indicating that a rider's braking response was not likely to be degraded by the different placement of the brake controls, thus directly addressing and meeting our safety concern.

With respect to the public interest and consistency with objectives of motor vehicle safety, the available information suggests that Italjet's request to operate the rear brake with the left hand instead of the right foot may not degrade the rider's braking response. By allowing exempted vehicles to be sold on a temporary basis for two years, it will be possible for us to gather data on operators' experience with this alternative rear brake control. This information would allow us to make a more informed decision about locations for motorcycle brake controls.

In consideration of the foregoing, it is hereby found that to require compliance with Standard No. 123 would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. It is further found that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Italjet, S.p.A. is hereby granted NHTSA Temporary Exemption No. EX99–11 from the requirement of Item 11, Column 2, Table 1 of 49 CFR 571.123 Standard No. 123, *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption applies only to models Torpedo 125, Formula 125, Millenium 125, and Millenium 150, and will expire on October 1, 2001. 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on October 22, 1999.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 99–28176 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33806]

Tishomingo Railroad Company, Inc.—Lease and Operation Exemption—Line of State of Mississippi at Iuka, MS

Tishomingo Railroad Company, Inc., a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from the State of Mississippi, Department of Economic and Community Development, and operate approximately 10 miles of rail line in Iuka, MS (line). The line runs between the Tri-State Commerce Park and a connection with the Memphis main line of Norfolk Southern Corporation, at station 8385–475 (east leg of Wye) and station 8406.00 (west leg of Wye).

The parties report that they intend to consummate the transaction promptly after the effective date of the exemption. The earliest the transaction can be consummated is October 21, 1999, 7 days after the exemption was filed.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33806, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James E. Howard, Esq., 90 Canal Street, Boston, MA 02114.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–28122 Filed 10–27–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 22, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 1999, to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0399.

Form Number: ATF F 5400.21.

Type of Review: Extension.

Title: Application Permit For User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).

Description: Form ATF F 5400.21 is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1,800.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 540 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–28221 Filed 10–27–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0071.

Form Number: IRS Form 2120.

Type of Review: Extension.

Title: Multiple Support Declaration.

Description: A taxpayer who pays more than 10%, but less than 50% of the support for an individual may claim that individual as a dependent provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 11,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 min.
Learning about the law or the form—3 min.
Preparing the form—7 min.
Copying, assembling, and sending the form to the IRS—10 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 4,950 hours.

OMB Number: 1545–0718.

Form Number: IRS Form 941–M.

Type of Review: Extension.

Title: Employer's Monthly Federal Tax Return.

Description: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as notified by the district Director that they must file Form 941–M monthly.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—12 hr., 26 min.
Learning about the law or the form—35 min.
Preparing, copying, assembling and sending the form to the IRS—50 min.

Frequency of Response: Monthly.

Estimated Total Reporting/Recordkeeping Burden: 166,320 hours.

OMB Number: 1545–1209.

Regulation Project Number: IA–83–90 Final.

Type of Review: Extension.

Title: Disclosure of Tax Return for Purposes of Quality or Peer Reviews: Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

Description: These regulations govern the circumstances under which tax return information may be for purposes of conducting quality or per reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 250,000.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Estimated Total Recordkeeping Burden: 250,000 hours.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 Final (T.D. 8382).

Type of Review: Extension.

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

Description: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion, annually.

Estimated Total Reporting Burden: 50,000 hours.

OMB Number: 1545–1497.

Form Number: IRS Form 8837.

Type of Review: Extension.

Title: Notice of Adoption of Revenue Procedure Model Amendments.

Description: Form 8837 is used as a transmittal document by the sponsors of "master or prototype" plans, regional prototype plans, and volume submitter plans. Revenue Procedures implementing law changes or other changes may be issued at any time requiring changes in plan documents. These changes or amendments can be submitted to the Service using this form.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 3,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 11 min.

Preparing and sending the form to the IRS—28 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 7,950 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–28222 Filed 10–27–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (Survey of Benefits Usage)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Planning and Analysis, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Planning and Analysis, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information that will be collected by a telephone survey concerning the usage of VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 27, 1999.

ADDRESSES: Submit written comments on the collection of information to Marcelle Habibion, Task Order Project Manager, Office of Assistant Secretary for Planning and Analysis (008B2), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–NEW (Survey of Benefits Usage)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Marcelle Habibion at (202) 273–5058 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Planning and Analysis invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Survey of Department of Veterans Affairs (VA) Benefits Usage.

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: The proposed telephone survey is intended to collect data as part of a program evaluation to assess the effectiveness and efficiency of Department of Veterans Affairs (VA) programs which assist the survivors of veterans and servicemembers who die of service-connected disabilities (in the case of Dependency and Indemnity Compensation) or with service-connected disabilities (in the case of Insurance) and certain other veterans. This evaluation will fulfill the ongoing requirements of Public Law 103–62, the Government Performance and Results Act of 1993; Title 38, U.S.C., Section 527, Evaluation and Data Collection; and Title 38 CFR, Section 1.15, Standards for Program Evaluation. In addition, this evaluation will fulfill the specific requirements of Public Law 105–368, Section 303, Assessment of Effectiveness of Insurance and Survivor Benefits Programs for Survivors of Veterans with Service-connected Disabilities.

Affected Public: Individuals or households.

Estimated Time Per Respondent and Annual Burden:

a. 2,604 survivors @ 35 minutes per response = 1,519 hours
b. 1,511 insurance takers @ 20 minutes per response = 505 hours
c. 1386 non-insurance takers @ 15 minutes per response = 347 hours.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,501.

Dated: October 13, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–28271 Filed 10–27–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 64, No. 208
Thursday, October 28, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcemnt Administration

[DEA # 179F]

Controlled Substances: 1999 Aggregate Production Quotas

Correction

In notice document 99–27291 beginning on page 56366 in the issue of Tuesday, October 19, 1999, make the following correction:

On page 56367, in the table, under **Schedule II**, under the heading "Established final 1999 quotas", in the third entry "3,900" should read "3,800".

[FR Doc. C9–27291 Filed 10–27–99; 8:45 am]

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federal register

Thursday
October 28, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 409, 410, 411, etc.

Medicare Program; Prospective Payment System for Home Health Agencies; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, and 484

[HCFA–1059–P]

RIN 0938–AJ24

Medicare Program; Prospective Payment System for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish requirements for the new prospective payment system for home health agencies as required by section 4603 of the Balanced Budget Act of 1997, as amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999. These include the implementation of a prospective payment system for home health agencies, consolidated billing requirements, and a number of other related changes. The prospective payment system described in this rule would replace the retrospective reasonable-cost-based system currently used by Medicare for the payment of home health services under Part A and Part B.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 27, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1059–P, P.O. Box 8010, Baltimore, MD 21244–8010.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT:

Bob Wardwell (Project Manager), (410) 786–4607.

Susan Levy (Payment Policy), (410) 786–9364.

Debbie Chaney (Data), (410) 786–8164.

Randy Throndset (Data), (410) 786–0131.

SUPPLEMENTARY INFORMATION: Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1059–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

Table of Contents

Preamble

I. Background
  A. Current System for Payment of Home Health Agencies
  B. Requirements of the Balanced Budget Act of 1997 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 for the Development of a Prospective Payment System for Home Health Agencies
  C. Summary of the Research
  D. Home Health Agency Prospective Payment—Overview
  1. Payment Provisions—National Episode Payment Rate
  a. Episode Definition
  b. National Episode Payment Rate
  2. Payment Provisions—Split Payment
  3. Payment Provisions—Outlier Payments
  4. Payment Provisions—Transition Period
  5. Consolidated Billing for Home Health Agencies
  6. Medical Review Under the Prospective Payment System
  7. Continued Access to Quality Home Health Services Under the Prospective Payment System
  8. Implementation of the Prospective Payment System
II. Prospective Payment System for Home Health Agencies
  A. National 60-Day Episode Payment
  1. Costs and Services Covered by the 60-Day Episode Payment
  2. Data Sources Used for the Development of the 60-Day Episode Payment
  a. Audited Cost Report Data
  b. Home Health Agency Market Basket Index
  c. Claims Data
  d. Hospital Wage Index
  e. Abt Associates Case-Mix Research Project Data
  3. Methodology Used for the Calculation of the 60-Day Episode Payment Amount
  a. Cost Data—60-Day Episode Payment
  b. Utilization Data—60-Day Episode Payment
  c. Updating the Data
  d. Standardization Factor
  e. Budget-Neutrality Factor
  4. Methodology Used for Low-Utilization Payments
  5. Methodology Used for Outlier Payments
  B. Examples of National Standardized 60-Day Episode Payment Amounts and Low-Utilization Payment Adjustments
  C. Design and Methodology for Case-Mix Adjustment of 60-Day Episode Payments
  1. Background on Clinical Model Patient Classification System
  2. The Clinical Model—Home Health Resource Group Classification System
  3. Determining the Case-Mix Indices
  4. Application of the Clinical Model Patient Classification System
  5. Background on the Case-Mix Research Project for a National Home Health PPS
III. Audited Cost Report Data Sample Methodology
IV. HHA PPS Framework—How the System Works
  A. Start of Care
  B. End of Episode
  C. Recertification of 60-day Episode Period
  D. Determining Whether a Beneficiary Is Under an Established Plan of Care
  E. Medical Review
  F. Overpayments and Adjustments
  G. Implementation Effective Date for PPS
  H. Claims Processing Transition
  I. Quality System
  J. Illustrative Examples
  1. 60-day Episode—No Recertification
  2. 60-day Episode with Recertification
  3. Partial Episode Payment Adjustment Examples
  4. Significant Change in Condition Payment Adjustment Examples
  K. Required Schedule for Completing OASIS Supplemented by One Additional Case-Mix Item
  L. Relationship Between Payment and OASIS
  M. Transition of Assessment and Certification Dates for Beneficiaries Under an Established Home Health Plan of Care
  1. Use of Current OASIS Assessment for Purposes of Case-Mix Classification
  2. Physician Certification Dates for Beneficiaries Under an Established Home Health Plan of Care
V. Consolidated Billing
  A. Background
  B. HHA Consolidated Billing Legislation
  C. Types of Services That Are Subject to the Provision

  D. Effects of This Provision
  E. Effective Date for Consolidated Billing
VI. Provisions of the Proposed Rule
VII. Response to Comments
VIII. Collection of Information Requirements
IX. Regulatory Impact Statement
  A. Background
  1. General
  2. 60-Day Episode Definition and Payment Rate
  3. Case Mix
  B. Alternatives Considered
  1. Unit of Payment
  a. 60-Day National Episode Payment
  b. Low-Utilization Payment Adjustment
  c. Partial Episode Payment Adjustment
  d. Significant Change in Condition Adjustment
  2. Outlier Payments
  3. Transition
  4. Operational Options
  5. Consolidated Billing
  C. Effects of this Proposed Rule
  D. Rural Hospital Impact Statement
Regulations Text

In addition, because of the many terms to which we refer by abbreviation in this rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL—Activities of Daily Living
BBA—Balanced Budget Act of 1997
COPs—Conditions of participation
DME—Durable medical equipment
FIs—Fiscal intermediaries
FFY—Federal fiscal year
FMR—Focused medical review
FY—Fiscal year
HHA—Home health agency
HIC—Health insurance claim
HHRGs—Home Health Resource Groups
IADL—Instrumental Activities of Daily Living
IPS—Interim payment system
LUPA—Low-utilization payment adjustment
MS—Medical social services
MSA—Metropolitan Statistical Area
NCSB—Neurological, cognitive, sensory, and behavioral variables
OASIS—Outcome and Assessment Information Set
OBQI—Outcome based quality improvement
OCESAA—Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999
OES—[U.S. Bureau of Labor Statistics] Occupational Employment Survey
OSCAR—On-line Survey and Certification System
OT—Occupational therapy
PEP—Partial episode payment
PPS—Prospective payment system
PT—Physical therapy
RHHI—Regional Home Health Intermediary
RUGs—Resource Utilization Groups
SCIC—Significant Change in Condition
SN—Skilled nursing service
SP—Speech-language pathology

I. Background

A. Current System for Payment of Home Health Agencies

The Balanced Budget Act of 1997 (Public Law 105–33) (BBA), enacted on August 5, 1997, significantly changed the way we pay for Medicare home health services. Until the implementation of a home health prospective payment system (PPS), home health agencies (HHAs) receive payment under a cost-based reimbursement system, referred to as the interim payment system and generally established by section 4602 of the BBA. The interim payment system imposes two sets of cost limits for HHAs. Section 4206(a) of the BBA reduced the home health per-visit cost limits from 112 percent of the mean labor-related and nonlabor per-visit costs for freestanding agencies to 105 percent of the median. In addition, HHA costs are subjected to an aggregate per-beneficiary cost limitation. For those providers with a 12-month cost reporting period ending in Federal fiscal year (FFY) 1994, the per-beneficiary cost limitation is based on a blend of costs (75 percent on 98 percent of the agency-specific costs and 25 percent on 98 percent of the standardized regional average of the costs for the agency's census region). For new providers and those providers without a 12-month cost-reporting period ending in FFY 1994, the per-beneficiary limitation is the national median of the per-beneficiary limits for HHAs. Under the interim payment system, HHAs are paid the lesser of (1) actual costs; (2) the per-visit limits; or (3) the per-beneficiary limits. Effective October 1, 1997, the interim payment system exists until prospective payment for HHAs is implemented.

On October 21, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA), 1999 (Public Law 105–277) was signed into law. Section 5101 of OCESAA amended section 1861(v)(1)(L) of the Social Security Act (the Act) by providing for adjustments to the per-beneficiary and per-visit limitations for cost-reporting periods beginning on or after October 1, 1998. We had published a notice with comment period establishing the cost limitations for cost reporting periods beginning on or after October 1, 1998 in the **Federal Register** that was entitled "Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998" (HCFA–1035–NC) on August 11, 1998 (63 FR 42912). OCESAA made the following adjustments to these limitations:

Providers with a 12-month cost reporting period ending during FY 1994, whose per-beneficiary limitations were less than the national median, which is to be set at 100 percent for comparison purposes, will get their current per-beneficiary limitation plus ⅓ of the difference between their rate and the adjusted national median per-beneficiary limitation. New providers and providers without a 12-month cost-reporting period ending in FFR 1994 whose first cost-reporting period begins before October 1, 1998 will receive 100 percent of the national median per-beneficiary limitation.

New providers whose first cost-reporting periods begin during FFY 1999 will receive 75 percent of the national median per-beneficiary limitation as published in the August 11, 1998 notice. In the case of a new provider or a provider that did not have a 12-month cost-reporting period beginning during FFY 1994 that filed an application for HHA provider status before October 15, 1998 or that was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate freestanding agency on or after that date, the per-beneficiary limitation will be set at 100 percent of the median. The per-visit limitation effective for cost-reporting periods beginning on or after October 1, 1998 is set at 106 percent of the median instead of 105 percent of the median, as previously required in the BBA.

There is contingency language for the home health PPS provided in the BBA that was also amended by section 5101 of OCESAA. If the Secretary for any reason does not establish and implement the PPS for home health services, the Secretary will provide for a reduction by 15 percent to the per-visit cost limits and per-beneficiary limits, as those limits would otherwise be in effect on September 30, 2000.

B. Requirements of the Balanced Budget Act of 1997 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 for the Development of a Prospective Payment System for Home Health Agencies

Section 4603(a) of the BBA provides the authority for the development of a PPS for all Medicare-covered home health services paid on a reasonable cost basis that will ultimately be based on units of payment by adding section 1895 to the Act entitled "Prospective Payment For Home Health Services."

Section 5101(c) of OCESAA amends section 1895(a) of the Act by removing the transition into the PPS by cost-reporting periods and requiring all HHAs to be paid under PPS effective upon the implementation date of the system. Section 1895(a) of the Act now states "Notwithstanding section 1861(v), the Secretary shall provide for portions of cost-reporting periods occurring on or after October 1, 2000, for payments for home health services in accordance with a prospective payment system established by the Secretary under this section."

Section 1895(b)(1) of the Act requires the Secretary to establish a PPS for all costs of home health services. Under this system all services covered and paid for on a reasonable-cost basis under the Medicare home health benefit as of the date of enactment of the BBA, including medical supplies, will be paid on the basis of a prospective payment amount. The Secretary may provide for a transition of not longer than 4 years during which a portion of the prospective payment may be agency-specific as long as the blend does not exceed budget-neutrality targets.

Section 1895(b)(2) of the Act requires the Secretary in defining a prospective payment amount to consider an appropriate unit of service and the number, type, and duration of visits furnished within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services.

Section 1895(b)(3)(A)(i) of the Act requires that (1) the computation of a standard prospective payment amount include all costs of home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case mix and wage levels among HHAs.

Section 5101(c) of OCESAA modifies the effective date of the budget-neutrality targets for HHA PPS by amending section 1895(b)(3)(A)(ii) of the Act. Section 1895(b)(3)(A)(ii) of the Act, as amended, requires that the standard prospective payment limitation amounts be budget neutral to what would be expended under the current interim payment system with the limits reduced by 15 percent at the inception of the PPS on October 1, 2000.

Section 5101(d)(2) of OCESAA also modifies the statutory provisions dealing with the home health market basket percentage increase. For fiscal years 2002 or 2003, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act, as so modified, require that the standard prospective payment amounts be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires the rates to be increased by the applicable home health market basket index change.

Section 1895(b)(3)(C) of the Act requires the Secretary to reduce the prospective payment amounts if the Secretary accounts for an addition or adjustment to the payment amount made in the case of outlier payments. The reduction must be in a proportion such that the aggregate reduction in the prospective payment amounts for the given period equals the aggregate increase in payments resulting from the application of outlier payments.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that explains a significant amount of the variation in cost among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. These wage-adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to grant additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year cannot exceed 5 percent of total payments projected or estimated.

Section 1895(b)(6) of the Act provides for the proration of prospective payment amounts between the HHAs involved in the case of a patient electing to transfer or receive services from another HHA within the period covered by the prospective payment amount.

Section 1895(d) of the Act limits review of certain aspects of the HHA PPS. Specifically, there is no administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, of the following: the establishment of the transition period under 1895(b)(1) of the Act, the definition and application of payment units under section 1895(b)(2) of the Act, the computation of initial standard prospective amounts under 1895(b)(3)(A) of the Act (including the reduction described in section 1895(b)(3)(A)(ii) of the Act), the establishment of the adjustment for outliers under 1895(b)(3)(C) of the Act, the establishment of case-mix and area wage adjustments under 1895(b)(4) of the Act, and the establishment of any adjustments for outliers under 1895(b)(5) of the Act.

Section 4603(b) of the BBA amends section 1815(e)(2) of the Act by eliminating periodic interim payments for HHAs effective October 1, 2000.

Section 4603(c) of the BBA sets forth the following conforming amendments: Section 1814(b)(1) of the Act is amended to indicate that payments under Part A will also be made under section 1895 of the Act; section 1833(a)(2)(A) of the Act is amended to require that home health services, other than a covered osteoporosis drug, are paid under HHA PPS, and section 1833(a)(2) is amended by adding a new subparagraph (G) regarding payment of Part B services at section 1861(s)(10)(A) of the Act; and section 1842(b)(6)(F) is added to the Act and section 1832(a)(1) of the Act is amended to include a reference to section 1842(b)(6)(F), both governing the consolidated billing requirements.

Section 4603(d) of the BBA was amended by section 5101(c)(2) of OCESAA by changing the effective date language for the HHA PPS and the other changes made by section 4603 of the BBA. Section 4603(d) provided that: "Except as otherwise provided, the amendments made by this section shall apply to portions of cost reporting periods occurring on or after October 1, 2000." This change requires all HHAs to be paid under HHA PPS effective October 1, 2000 regardless of the current cost-reporting period. This change is discussed in detail in section IV.H. of this regulation.

Section 4603(e) of the BBA sets forth the contingency language for HHA PPS. If the Secretary for any reason does not establish and implement HHA PPS on October 1, 2000, the per-visit cost limits and per-beneficiary limits under the interim payment system will be reduced by 15 percent.

C. Summary of the Research

The PPS described in the following sections is a culmination of substantial research efforts focusing on the areas of HHA payment and quality.

The Per-Visit Prospective Payment Demonstration

Description of the Demonstration

Under the per-visit demonstration, administered under a contract to Abt Associates, Inc., 47 agencies in California, Florida, Illinois, Massachusetts, and Texas were phased into the project at the beginning of their fiscal years starting in October 1990 and continuing for 3 years. Of the 47 agencies, 26 were randomly assigned to be paid prospectively, and the remaining 21 were paid retrospectively, subject to the statutory limitations. The participating agencies were representative nationally in terms of their average costs per visit for each visit type and their patients' characteristics.

For the first year, prospective per-visit rates by type of visit (for example, skilled nursing or occupational therapy) were set for each demonstration agency based on the agency's cost for the year preceding its entry into the project and adjusted for inflation. If the base year cost used to set the rates exceeded the statutory cost limits, it was reduced to satisfy the limits. For the second and third years, the agency-specific rates were updated for inflation. The demonstration payment rates were adjusted annually for changes in agencies' volume. Payments were adjusted to share losses and profits with us.

The opportunity to earn a profit on visits was expected to motivate demonstration agencies to hold increases in cost per visit below the rate of increase in their payment per visit. It was expected that agencies would make a variety of changes to enhance efficiency and hold down both service-related and administrative costs. However, it was recognized that costs to the Medicare program could potentially increase under prospective rate setting, if agencies furnished more visits than they would have under cost reimbursement, or if agencies' efforts to lower costs also lowered quality of care and led to increased use of other Medicare services. It was the role of the evaluation contractor to study these and other potential consequences.

Evaluation of the Demonstration

We contracted with Mathematica Policy Research, Inc. to perform an independent evaluation of the demonstration. The objectives of the evaluation were to describe and assess the impacts on the Medicare program and its beneficiaries and to understand possible changes in agency decision making and operations as a result of the incentives of the new payment method.

Major data resources for the evaluation included Medicare claims, enrollment files, case studies, and site visits with participating providers, an annual mail survey of demonstration agencies, interviews with organizations involved in the demonstration (for example, fiscal intermediaries), provider cost reports, patient surveys, patient intake data collected by the providers, home health certification and plan of treatment forms (Form 485), and records of quality assurance reviews from the New England Research Institute, the demonstration's quality assurance contractor.

Several types of multivariate regression models were used to estimate treatment-control differences. For example, analysis of costs per visit and visit volume involved a comparison of cost reports during the 3 years of the demonstration and the 3 prior years. Using a regression procedure, the treatment group's change in average visit cost and average number of visits was compared to the control group's change. Impacts on visits per episode were estimated using episode-level data from claims, with separate analyses conducted for each demonstration year. Patient survey data and quality assurance reviews were among the sources for analyses of quality impacts, which controlled for potential confounding factors such as patient and agency characteristics.

Qualitative research to understand agency responses used case study methods. Twenty-two cases for study (11 treatment and 11 control agencies) were drawn from across the five States to represent the variation in a range of provider characteristics, such as auspices, size, and urban or rural location. The agencies were followed over most of the 3 years of the demonstration. Data were collected through site visit and telephone interviews, as well as from cost reports and a mail survey of agencies. The case studies focused on several key aspects of demonstration operations, such as strategic planning, clinical costs, administrative costs, relations between the agencies and administrative organizations, and perceptions about a national program of prospective payment.

Evaluation Results

Cost

The per-visit PPS did not result in more cost control, nor did it induce excessive volume. There were no statistically significant differences between treatment and control agencies in the change in average cost per visit, regardless of type of visit. For example, the cost per skilled nursing visit for treatment agencies increased from an average of about $81 to about $92 between the predemonstration and demonstration periods. Control agencies' average costs grew by a similar amount. A related analysis found that a subgroup of agencies—freestanding agencies with a large proportion of Medicare visits—exhibited treatment-control differences in profits and ability to control cost increases. Their greater success in generating profits and in holding down Medicare cost increases suggested that HHAs can be induced to control costs. Nonetheless, this possible demonstration effect was too small to produce a difference in impacts for the sample as a whole.

Utilization

The analysis of volume suggested no impact from prospective rate setting. Average total visits for the two groups grew at similar rates between the base year and the end of the demonstration—21.3 percent per year for the treatment group and 23.6 percent per year for the control group. Visit growth for three specific types of visits (skilled nursing, aide, and physical therapy) was statistically equal for the two groups as well. Small sample sizes prevented reliable estimation for the remaining three visit types.

Treatment group agencies did not differentially increase the number of visits per episode. They provided slightly fewer physical therapy visits per episode, a result that is inconsistent with the incentives to increase visits under visit-based rate setting and may not have been a result of the demonstration. The duration of episodes did not differ between treatment and control agencies, although the length of aide visits was significantly shorter for treatment agencies. However, the evaluators concluded this was probably not due to the prospective payment, and this finding was not supported by data from other evaluation sources. The demonstration had no effects on patients' use of other Medicare-covered services, such as hospital care or physicians' visits. Finally, per-visit PPS did not appear to affect patients' use of non-Medicare services or on the amount of informal care received.

Quality and Access

The evidence suggested that quality of care was unaffected by per-visit prospective payment. Analyses of quality assurance data uncovered no impacts. Access-related provider behavior—such as agencies becoming more selective about the patients they accepted—was unaffected. For example, treatment and control group patients differed significantly in all 3 years on only two of the many patient characteristics at admission—clinical stability and pre-admission location. There were no significant differences in the proportion of admissions with characteristics suggesting a need for long visits.

Qualitative Findings

The first year of the demonstration was a time of transition, during which participants were adjusting to demonstration operations, which included collection of special patient-intake data and use of a single fiscal intermediary. Agencies reported that these adjustments imposed costs that limited their ability to reduce overall costs. The environment of the first year was one of change and competition, which continually compelled providers to assess their services and service areas, payment sources, and marketing activities. For many providers, it was also a time of large volume growth and an increasing proportion of more acutely ill patients. Agencies were continuing to seek efficiency measures, as they had before the demonstration. The evaluators did not observe any effect of the demonstration itself on such clinical activities as referral procedures, intake procedures, assessment and care planning, and quality assurance procedures. Relations with the fiscal intermediary were generally smooth, although some problems needed resolution, particularly during the early months.

By the third year of the demonstration, it was clear that the incentives introduced by the switch to visit-based prospective payment did not dramatically alter the overall environment of treatment agencies relative to controls. This outcome seemed attributable to background conditions deriving from Medicare program cost limits and allowable cost determinations. In addition, the combined effects of competition in the industry and cost control policies in other health sectors created a climate in which agencies, both treatment and control, felt pressures to produce services efficiently. Yet most identified little that could be done to reduce their costs. The evaluators concluded that the prospective payment incentive may have been responsible for some slight additional attention to cost cutting. Specific examples included more attention to efficiency and profitability in the strategic plans of treatment as compared to control agencies, more branch offices opened by treatment than control agencies, more use of computers by treatment than control agencies, and higher productivity expectations for staff of treatment compared to control agencies.

Summary of Results

The evaluation findings overall suggested that prospective per-visit rates are unlikely to generate sizable cost savings for the Medicare program. Agencies appeared to respond modestly to this incentive to be more efficient. Due to the limited size of the project, the evaluators had little opportunity to assess whether prospective rate setting worked better for certain types of agencies. Nevertheless, the demonstration suggested that agencies can make some changes to slow the rate of increase in costs per visit.

The Per-Episode Prospective Payment Demonstration Description of the Demonstration

The per-episode PPS demonstration, administered under a contract to Abt Associates, Inc., began in June 1995. The demonstration was scheduled to terminate by December 1998. At the participating agencies' request, the demonstration has been extended pending the implementation of a national, episode-based PPS. However, as originally planned, the collection of evaluation data terminated at year-end 1998.

Ninety-one agencies from five sites—California, Florida, Illinois, Massachusetts, and Texas—were randomly assigned to either the treatment group (PPS payment, 48 agencies) or the control group (conventional cost-based reimbursement, 43 agencies). The agencies phased into the demonstration at the beginning of their 1996 fiscal year.

The payments received by the treatment group agencies for the first 120 days of an episode are based on each agency's own costs in the fiscal year immediately preceding its entry into the demonstration, updated for inflation and adjusted for changes in its case mix. While each agency is "at risk" during the first 120 days after admission for all home health visits the patient needs, we reimburse treatment agencies for up to 99 percent of fiscal-year losses, up to the statutory payment limits. Profits in excess of the specified statutory limits are shared with us. For visits occurring after the initial 120 days, agencies are reimbursed using prospective per-visit rates.

Episodes are defined by gaps of at least 45 days in the receipt of Medicare home health care. Only after the 120-day payment period and a 45-day gap in services could an agency receive a new episode-based payment for a given Medicare beneficiary.

Treatment agencies can reduce the cost of care they furnish during the 120-day payment period by reducing visits, changing the mix of visits to make less costly visits a larger proportion of visits, reducing per-visit costs, or some combination of all three. The cost-reducing activities raise the possibility that quality of care might deteriorate under episode-based payment. Quality reduction could occur through several cost-saving mechanisms, such as inadequate provision of expensive therapeutic services, excessive reductions in visit frequency, or excessive shortening of visits.

Evaluation of the Demonstration

We contracted with Mathematica Policy Research, Inc. to evaluate the episode-based demonstration. As with the visit-based demonstration evaluation, this project sought to answer policy questions on two main issues: program impacts and agency decisions and operations. The program evaluation addresses impacts on home health utilization, other Medicare services utilization, non-Medicare services utilization, quality and access, and cost. The analysis of agency decisions and operations seeks to provide useful insights for the implementation of a national program of episode-based prospective payment.

We also contracted with the Center for Health Policy Research at the University of Colorado to perform quality assurance monitoring. All agencies participating in the demonstration are required to collect patient status data at the start of care, at discharge, at 120 days after admission if the patient is still on service, at admission to an inpatient facility for 48 hours or more, and upon resumption of care after an inpatient stay. Outcomes are reported at the agency level. Based on outcome report findings, agencies are requested to engage in follow-up activities to investigate processes of care, and specific agencies are selected for an additional process of care review. In addition to outcome monitoring for individual agencies, the quality assurance project reports on patterns of outcomes for treatment and control agencies.

The evaluation results to date are based largely on data from the first year of the demonstration. Most of the analyses are based on approximately 51,000 home health episodes from 85 of the demonstration agencies (6 dropped out or had inadequate data). All admissions occurring between an agency's start date (beginning of its 1996 fiscal year) and August 1996 are included. Medicare claims files provided data on the outcomes variables describing the use of services. Claims data were supplemented with data from the quality assurance contractor for the analyses of quality impacts. Claims data and cost report data were used to research the impact of the demonstration on agency costs. Data from a survey of patients conducted during the second and third demonstration years were the basis for a study of utilization of non-Medicare services and selected quality outcomes.

For most statistical analyses, regression models were used to estimate treatment-control differences. Use of regression analysis permits the isolation of PPS effects from other potential causes of treatment-control differences, such as a difference in the proportion of agencies affiliated with a hospital. Data collected at admission for case-mix adjustment and from prior Medicare claims histories provided measures of pre-admission patient characteristics that were used to account for potential pre-existing treatment-control differences in patient populations. Other control variables were obtained from agency cost reports and the demonstration contractor.

A qualitative research component of the evaluation is based on case study methods. For a judgmental sample of 67 demonstration agencies, primary data were collected during site visits early in the demonstration and supplemented by agency documents. Freestanding agencies (56) predominated in the sample. About half of the freestanding agencies were for-profit, and half were voluntary or private nonprofit organizations (primarily visiting nurse associations). Administrative data on these agencies came from our provider files. The researchers also conducted telephone interviews with representatives of the demonstration contractor and fiscal intermediaries.

Interim Evaluation Results

Cost

On average, episode prospective payment reduced the cost per episode by $419, or 13 percent. This appears to have resulted from the combined effects of fewer visits and higher average cost per visit, compared to agencies not paid prospectively. For treatment agencies, the rising cost per visit would have increased the cost per episode by $377, whereas decreases in visits per episode would have reduced the cost per episode by $656, for a net decline of $280. For control agencies, a relatively small increase in cost per episode ($139, or about 4 percent) was due almost entirely to increases in costs per visit. Because treatment agencies' costs declined by $280 per episode instead of rising by $139, the overall effect of prospective payment was $419.

The impact on cost per episode was similar across different types of agencies, except that small agencies (less than 30,000 visits in the base year) exhibited a significantly smaller effect than large agencies. Small agencies failed to decrease their cost per episode in the first demonstration year, evidently because they added to their cost per visit more, and lowered their number of visits less, than larger treatment agencies. This response may be due in part to more pronounced economies of scale among small agencies, with the result that they incur relatively high cost increases as volume declines.

Utilization

Based on first-year findings, per-episode PPS appears to have a substantial impact on the amount of services delivered during the 120-day payment period. Few other impacts on the pattern of service delivery were observed. The number of visits in a 120-day risk period was 17 percent lower for patients in treatment agencies compared to controls. Treatment agencies delivered an average of 37 visits, compared to an average of 45 for control agencies. This difference was primarily due to fewer skilled nurse visits, home health aide visits, and medical social worker visits. Episode prospective payment reduced the average length of episodes (within the first 120 days) by about 15 percent. About 25 percent of stays exceeded 120 days under prospective payment, compared to about 35 percent without prospective payment.

Except for occupational therapy, the proportion of patients receiving care in each home health discipline changed little under episode payment. The one-third reduction in the user rate for occupational therapy (to about 8 percent of patients) may be due to fewer patients receiving assessment visits from occupational therapists. Prospective payment appeared to have no effect on the proportion of visits per episode accounted for by any particular home health discipline.

These findings generally applied to agencies regardless of size, nonprofit status, affiliation status (hospital or freestanding), or use pattern (that is, whether the agency provided more or less than the average number of visits during a base year, given its case mix). One exception to this rule was that the reduction in total visits was significantly greater for agencies with a high-use practice pattern than for agencies with a low-use practice pattern.

The reduction in visits does not lead to compensating utilization in other parts of the health care system. The analysis of utilization and reimbursement for other Medicare-covered services during the 120-day payment period found that prospective payment did not affect the use of reimbursement for these services. This suggests that a reduction in home health utilization at the level observed under the demonstration does not adversely affect care quality or shift costs to services in other settings (acute care hospitals, emergency rooms, skilled nursing facilities, other HHAs, and outpatient hospital departments). Questions on the patient survey addressed "spillover effects" on certain non-Medicare services. Prospective payment was associated with a lower likelihood of admission to an assisted living facility. It may have reduced the likelihood of admission to a nursing home. It did not affect the likelihood of receipt of nonresidential services, such as personal care aide and adult day care. Nor did it affect the likelihood of receipt of care from relatives or friends.

Quality

The interim analysis of quality impacts found few differences in patient outcomes between treatment and control agencies, and when differences were found they were small. The three basic sources of quality evaluation data to date are claims, the patient survey, and patient assessment data.

Analysis of claims data indicated that episode PPS patients have significantly lower emergency room use. There were no significant differences due to episode PPS in any other outcomes studied from the claims data, including institutional admissions for a diagnosis related to the home health diagnosis, and mortality.

Results from the patient survey on client satisfaction suggested that both treatment and control group clients were generally satisfied. On three specific components of satisfaction with agency staff, treatment-group clients were found to be somewhat less satisfied than control group clients, although satisfaction levels were quite high in both groups. Measures of health and functional outcomes from the survey offered equivocal evidence for small negative effects of prospective payment in a few of the functional outcomes. Those results are preliminary and will require further study.

Measures constructed from the patient status assessments at the start of care and at discharge or follow-up consist of indicators of improvement or stabilization for 17 outcomes, such as improvement in pain or ambulation. Results from these data source are provisional, in part because differences in the timing of quality outcome data collection between the treatment and control groups could cause unreliable comparisons. As noted earlier, treatment agency patients tend to be discharged sooner. Their outcome measurements may reflect less improvement because of the earlier average observation point.

The comparisons demonstrated one significant difference suggesting improvement in measures of confusion was more likely among treatment agencies. There were also two differences in the stabilization indicators, one favoring the treatment group and one the control group; however, both differences were small. Analysis of the assessment data by the quality assurance contractor using different methods suggested no consistent evidence that per-episode payment under the demonstration improves or harms patient outcomes. Several separate analyses conducted by the contractor revealed a mix of small impacts, some favoring the treatment group and others favoring the control group. A recent analysis of the second year of the demonstration did not show any statistically significant differences between treatment and control agencies. See Center for Health Policy Research, Executive Summary of Quality Assurance Activities and Findings to Date, December 1998.

Qualitative Findings

The qualitative evaluation results to date come from the case study activities conducted early in the demonstration. Almost all of the case study agencies, which included both PPS agencies and controls, had taken steps to reduce their per-visit costs in the 3 years before the site visits. They had done so primarily to make themselves more attractive to managed care organizations from whom they were seeking contracts. Strategies to cut costs varied. About half of the agencies sought to reduce administrative costs (for example, through consolidating functions or positions) or to stabilize them while growing their volume. About one agency in five reduced per-visit costs by making technology investments, such as portable computers for home health workers. In addition, about one in six took an approach such as using lower-cost staff for intake, scheduling and record keeping; introduction of productivity standards and controls on overtime hours; moving away from hourly or salary payment of staff to per-visit payment; reducing travel costs by restructuring staffing of geographic areas or improving scheduling programs to reduce mileage; and reducing supply costs, through, for example, centralized purchasing.

Half of the visited treatment agencies reported plans for specific initiatives to reduce per-episode costs spurred by their participation in the demonstration project. These initiatives included closer supervision of utilization through such measures as better review of the initial plan of treatment and requiring special justification for any visits beyond those originally approved; use of care protocols for patients with selected diagnoses; greater reliance on community services or informal caregivers; replacement of some visits by telephone contacts; speeding up patient education in self-care; eliminating multiple visits in a day; making greater use of specialists such as dietitians and wound healing experts; focusing on patient rehabilitation or environmental modifications to reduce patient need for personal care; and use of multidosing pumps for intravenous therapy patients, so that patients and caregivers can administer a larger proportion of therapy treatments without assistance.

From their case studies conducted early in the demonstration, the evaluators concluded that treatment agencies did not change their behavior in ways that threatened access or quality of care. They did not change referral and patient admission practices to avoid costly patients or recruit lower-care ones. Many agencies were struggling to maintain a stream of referrals. They were not in a position to shun referral sources, and they did not do so. Some of the strategies being planned seemed likely to improve care quality, such as strategies to achieve quicker patient independence. For certain other strategies, the long-term consequences might be variable. For example, the success of greater reliance on informal caregivers and community resources would depend on the adequacy of these auxiliary resources.

Remaining Evaluation Activities

The evaluation of the second year of the demonstration is expected to be completed by fall 1999. A draft report that includes analysis of utilization effects beyond the first 120 days has been received and is under review. The findings are consistent with the initial results reported earlier: Episode prospective payment reduced the average number of visits to a patient in the year following admission to home health care by 24 percent compared to the levels under cost-based reimbursement. Reductions in services occurred both during and after the 120-day period covered by the episode payment, and they were of a similar proportion for each service type. Prospectively paid agencies achieved these reductions by shortening the overall length of service and by lowering the frequency of visits provided. Reductions occurred among all subgroups of agencies and patients investigated, and they were stable between the first and second years of the demonstration.

Subsequent reports will evaluate the consequences of these service reductions on patient health and access, non-home health expenditures, and other outcomes. These reports will include results from a follow-up patient survey at 8 months from admission that will address impacts on quality of care and use of non-Medicare health services over a longer term than did the first survey. There will be further case study results on agency response to the demonstration and an extension of previous work on cost impacts to include an analysis of agencies' financial performance. Finally, supplementary analyses will consider the representativeness of the demonstration sample and the patient selection behavior of agencies.

Case-Mix Research

Case-mix adjustment is a prerequisite for an effective national home health PPS. With a prospectively set payment unit, providers have an incentive to seek profits by economizing on patient care during the covered period. For example, providers can try to economize by admitting patients with lower care needs, or by furnishing fewer and lower-quality services. Case-mix adjustment seeks to counteract this incentive by modifying the prospective payments according to patient need for services. To administer the case-mix adjustment system, patients are evaluated and then classified into groups with differing expected need. Varying payments for the groups will reduce provider incentives to economize inappropriately. Case-mix adjusted payments are intended to produce appropriate compensation for providers while retaining opportunities to manage care efficiently.

Background of the Case-Mix Project

In the late 1980s, the Secretary funded several empirical studies that sought to increase understanding of the major issues facing PPS designers, particularly the factors that define case mix. As reported in the 1989 Report to Congress, studies investigating case-mix issues were necessary because methodologies at that time were insufficiently tested on a large scale with Medicare patients. A sizable, comprehensive Medicare database was considered necessary to test existing methodologies and possibly develop new ones.

We assembled this data resource under a cooperative agreement with the Georgetown University School of Nursing (Virginia K. Saba, "Develop and Demonstrate a Method for Classifying Home Health Patients to Predict Resource Requirements and to Measure Outcomes, Georgetown University School of Nursing, February 1991). Subsequent attempts to test existing case-mix methodologies using the Georgetown data suggested that indicators of home health treatments could play a substantial role in case-mix adjusters of acceptable predictive accuracy. Examples of treatment measures include indicators for specific skilled nursing activities, such as teaching diabetic care and infusion care, and physical, occupational, and speech therapy. Two basic case-mix adjustment methodologies tested with these data demonstrated comparable accuracy for the purposes of paying providers prospectively (Brown, Randall S., Barbara R. Phillips, and Valarie E. Cheh, *et al.* "Case Mix Analysis Using Georgetown Data: Home Health Prospective Payment Demonstration." Princeton, NJ: Mathematica Policy Research, Inc., November 25, 1991). These two approaches were a regression-based approach and a classification-method approach that uses computer algorithms to find groups of similar patients.

Although case-mix research on the Georgetown data and other smaller-scale data sets demonstrated progress in testing and developing case-mix methodologies, a significant concern lingered. Research had demonstrated the explanatory power of treatment information, but treatments are not necessarily a suitable basis for payment. Treatment planning and execution is subject to some discretion on the part of the provider. This means a case-mix system predicated on treatments planned or delivered may be vulnerable to manipulation for profit maximization.

In the early 1990s, the per-visit prospective payment demonstration provided another relatively large source of data to continue case-mix adjuster development. The database was not as varied as the Georgetown database, but it was sizable, containing 11,000 cases. The expendability of possibly manipulable treatment variables was specifically addressed in the Georgetown research. This demonstration tested the impact of using less treatment information with the best methodologies. When measures of treatments considered highly or moderately vulnerable to provider manipulation were dropped from the study's case-mix adjuster, the predictive accuracy of the adjuster was poor. The researchers recommended that in future research we study additional patient characteristics data needed to make up for the loss of explanatory power from the treatments (Phillips, Barbara R., Randall S. Brown, Jennifer L. Schore, Amy C. Klein, Peter Z. Schochet, Jerrold W. Hill, and Dexter Chu. "Case-Mix Analysis Using Demonstration-Data: Home Health Prospective Payment Demonstration." Princeton, NJ: Mathematica Policy Research, Inc., December 21, 1992; and Phillips, Barbara R. "Improving the Accuracy of Case-Mix Adjusters for Per-episode Home Health Prospective Payment: Measures of Alternative Sources of Care and Patient and Caregiver Characteristics." Draft Report. Princeton, NJ: Mathematica Policy Research, Inc., April 27, 1995).

By 1994, we had launched a comprehensive review of home health care policies called the Medicare Home Health Initiative. One result was a recommendation to revise the HHA conditions of participation (COP). The revision would require a standard assessment instrument to be used in a program of continuous quality improvement. We subsequently adopted a comprehensive list of specific patient assessment elements to implement this quality improvement system (final regulations were published January 25, 1999 (64 FR 3747 and 64 FR 3764)). Known as the Outcome and Assessment Information Set (OASIS), these elements cover patient demographics and health history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs), medications, equipment management, emergent care use, and discharge disposition. OASIS offers a fairly detailed examination of the patient's condition. Importantly, if OASIS elements could be the basis for a case-mix adjuster as well as continuous quality improvement, we could implement home health payment and quality reforms while minimizing data burdens on providers.

Case-Mix Research Project for a National Home Health PPS

In 1996, in anticipation of the Medicare program's eventual adoption of OASIS assessment data, we began research with a sample of 90 HHAs to develop a case-mix adjustment system for use under a future national prospective payment for home health care. The project was conducted under contract to Abt Associates, Inc., of Cambridge, Mass. (Contract Number 500–96–0003/TO2). The purpose of this project was to develop a case-mix adjuster based on OASIS assessment elements and, potentially, on additional assessment items that could enhance the case-mix adjuster's predictive accuracy. To assure its relevancy to Medicare's needs, the project collected data on a large cohort of Medicare patients admitted to a broad sample of Medicare-certified HHAs in late 1997 and early 1998. An important feature of the Abt Associates research is the use of improved measurement methods compared to previous studies. Improvements in measurement for the dependent variable, resource costs, and for the explanatory variables of patient characteristics allow the system's developers to reach a clearer understanding of the contribution of individual items to case-mix measurement. This leads to improved predictive accuracy for the case-mix groups.

Another important feature of the Abt Associates project is its objective of developing easily understandable patient case-mix groupings. We sought a system of groups that uses recognizable clinical categories and adheres to clinicians' logic as they assess a patient's care needs.

The case-mix system resulting from the Abt Associates project was developed from statistical analysis, review of the literature, and consultation with home health clinicians. Government policy and research experts helped with the development process to ensure the administrative feasibility and policy relevance of the final product.

The system is a straightforward method of combining 20 data elements to measure case mix. The data elements measure three basic dimensions of case mix: clinical severity factors, functional status factors, and service utilization factors. Each possible value for each data element used in a dimension is given a score. Scores were developed through statistical analysis of the agencies' data. Within each dimension, scores on assessment items are summed, and the resulting summation is used to assign a patient to a severity level on the given dimension. The case-mix system defines a set of 80 groups from all possible combinations of severity levels across the three dimensions.

The process of defining a structure for the case-mix system, and of selecting items for the dimensions, is described in detail in Abt Associates, Second Interim Report, August 1999. The process of selecting items for the three case-mix dimensions employed not only statistical criteria for predictive accuracy, but also qualitative criteria relating to policy objectives, incentives to provide good care, susceptibility to gaming, apparent item subjectivity, and administrative feasibility. Further discussion of the item selection process is provided below in section II.C.

The first case-mix system dimension is the clinical severity dimension. It is measured by OASIS items pertaining to the following clinical conditions and risk factors: diagnoses involving orthopedic, neurological, or diabetic conditions; therapies used at home (that is, intravenous therapy or infusion therapy, parenteral and enteral nutrition); vision status; pain frequency; status of pressure ulcers, stasis ulcers, and surgical wounds; dyspnea; urinary and bowel incontinence; bowel ostomy; and cognitive/behavioral problems such as impaired decisionmaking and hallucinations. This dimension captures significant indicators of clinical need from several OASIS subdomains, including patient history, sensory status, integumentary status, respiratory status, elimination status, and neuro/emotional/behavioral status.

The second case-mix dimension is the functional status dimension, comprised of six Activities of Daily Living: upper and lower body dressing, bathing, toileting, transferring, and locomotion. These items come from the ADL/IADL subdomain of the OASIS assessment instrument.

The third case-mix dimension is the services utilization dimension. This dimension is measured via two basic kinds of data elements. The first describes the patient's pre-admission location in the 14 days preceding admission to home care. The pre-admission location is recognized among clinicians and in the literature as an indicator for the amount and type of care likely to be needed by a patient. It comes from the patient history subdomain of OASIS. The second is a utilization variable from the period of the home health episode itself. This variable is receipt of home health therapies totaling at least 8 hours. The data for this variable will come from the HHA's billing records. Ideally, the case-mix system should rely on data elements that do not depend on treatments planned or received; however, the case-mix research project found that a measure of therapy received is extremely powerful in explaining resource use, even after all other predictive patient characteristics are used in the system. Consequently, we decided to incorporate a measure of therapy. It is adopted under a definition designed to minimize its vulnerability to provider manipulation. A patient must need and use at least 8 hours of home health therapies to be assigned to a therapy case-mix group. In the Abt Associates sample, a minority of therapy users receive at least 8 hours of therapy. It is probable that many of the remaining therapy users received relatively little therapy beyond services from therapists for evaluation purposes. The therapy receipt definition in the case-mix system is intended to preserve access to therapy for patients with significant therapy needs. Patients receiving relatively little therapy or those with therapy use limited to evaluation services with or without a small amount of therapy are included in nontherapy groups. Their relative resource cost is accounted for in those groups.

For each dimension, additional measures of patient characteristics or utilization were considered and tested before arriving at the final set of data elements in the recommended model. The proposed set of data elements is our best recommendation after an intensive process of subjecting the items to statistical analysis, policy criteria, criteria pertaining to clinical care incentives and gaming vulnerability that might be introduced, reliability-related criteria, and administrative feasibility considerations.

The recommended case-mix system performs well in terms of overall predictive accuracy. It explains 32 percent of the variation in resource use over a 60-day episode. The 60-day episodes available for case-mix system development from the Abt Associates research sample pertained to the first 60 days from admission. However, a sizable number of observations was assembled from the study sample to evaluate the explanatory power for the subsequent 60-day period of care. From data available to the case-mix project to date, we find that the explanatory power of the groups is similar regardless of whether the episode is the patient's first 60 days or the subsequent 60 days following the start of care. The presence of certain data elements in the case-mix adjustment model may help explain the statistical finding suggesting that the case-mix model is inherently self-adjusting to changes in patient characteristics that drive resource use over a sequence of 60-day episodes. Examples comprise the preadmission location variable, the functional status elements, the therapy receipt variable, and the ulcers/wound status variables. As the accumulating data permit, we will continue to test the model's explanatory power on later 60-day units.

The data and methods of the case-mix development project are described in further detail in sections II.A.2 and II.C below and in Abt Associates, Inc., Second Interim Report, August 1999. Comments on specific issues of model design and implementation are being solicited as noted in section II.C.

D. Home Health Agency Prospective Payment—Overview

1. Payment Provisions—National Episode Payment Rate

a. Episode Definition

The PPS will apply to all home health services furnished by all HHAs participating in the Medicare program. Section 4603(a) of the BBA adds section 1895(b)(1) to the Act. Section 1895(b)(1) requires all services covered and paid on a reasonable cost basis under the Medicare home health benefit as of the date of the enactment of the BBA, including medical supplies, to be paid on the basis of a prospective payment amount under HHA PPS. Durable medical equipment (DME) is a covered home health service that is not currently paid on a reasonable cost basis, but paid on a fee schedule basis when covered as a home health service under the Medicare home health benefit. Under HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule. Thus, a separate additional payment amount based on the DME fee schedule in addition to the prospective payment amount for home health services will be made for DME covered as a home health service under PPS.

In compliance with section 1895(b)(2) of the Act, requiring the Secretary to determine the unit of payment under PPS, we have analyzed the number, type, duration, and costs of visits furnished within the proposed episode payment. In addition, we will discuss the general system design that provides for continued access to quality services in section IV.J. of this regulation.

Preliminary results from the Phase II per-episode HHA PPS demonstration have provided information regarding how length of episodes are affected by prospective payments and how analysis from the National Claims History File can show the existing use and length of service. Preliminary results from the Phase II per-episode PPS demonstration indicate that about 60 percent of episodes paid under PPS were completed within 60 days and 73 percent within 120 days. These episode completion rates are about 5 to 10 percentage points higher than rates for the control group under the demonstration. These findings indicate that PPS should result in shorter average length of episodes.

We also conducted analysis on an episode database created from the 1997 National Claims History File using 60-day episodes. Data from the 1997 national claims history suggest that the proportions completing their episodes in the first and second month are slightly lower than the proportions for the PPS demonstration control group. We interpret the demonstration findings to indicate that national PPS should use shorter average episodes. From the 1997 national claims history, we find at the end of a full year, 20 percent of home health beneficiaries have not yet completed their episodes. This indicates the need to provide continuing episode payments to capture the long-stay home health patient under PPS since the volume of long-stay cases exceeds the capacity of an outlier policy.

60-Day National Episode Payment

Recognizing that OASIS data will be captured on a 60-day cycle and current Medicare plan of care certification requirements govern a bimonthly period of time, we are proposing a 60-day episode as the basic unit of payment for the HHA PPS. We are proposing that a new 60-day episode begins with the first Medicare billable visit as day 1 and ends on and includes the 60th day from the start-of-care date. The next continuous episode recertification period would begin on day 61 and end on and include day 120. We are proposing the requirement that the 60-day episode payment covers one individual for 60 days of care regardless of the number of days of care actually furnished during the 60-day period unless there is one of the following intervening events during the 60-day episode: (1) A beneficiary elected transfer; (2) a discharge resulting from the beneficiary reaching the treatment goals in the original plan of care (not defined as a significant change in condition during an existing plan of care) and return to the same HHA; or (3) a significant change in condition resulting in a new case-mix assignment. The significant change in condition is a change not anticipated in the original plan of care or as part of the expected course of the patient's response to treatment. The significant change in condition must be sufficient to require a new OASIS assessment and thus, resulting in a change in the case-mix assignment.

The intervening event defined above as (1) a beneficiary elected transfer or (2) a discharge and return to the same HHA during a 60-day episode, starts a new 60-day episode for purposes of payment, OASIS assessment, and physician certification of the plan of care. The original 60-day episode payment is proportionally adjusted to reflect the actual length of time the beneficiary remained under the agency's care prior to the intervening event of the beneficiary elected transfer or the discharge and return to the same HHA during the 60-day episode. The proportional payment adjustment that closes the original 60-day episode payment is called the partial episode payment adjustment or PEP adjustment. We are proposing the PEP adjustment to the original 60-day episode payment in order to equitably recognize the intervening events of a beneficiary elected transfer or a discharge and return to the same HHA over the course of a 60-day episode of home health care.

Since we are proposing to close out the initial episode payment with a PEP adjustment and restart the 60-day episode clock under an existing episode due to a beneficiary elected transfer, we are concerned that these transfer situations could be subject to manipulation. Therefore, we are proposing not to apply the PEP adjustment in the situation of transfers between organizations of common ownership. A determination of whether an individual (or individuals) or organization possesses significant ownership or equity in the provider organization and the supplying organization, in order to consider if the organizations related by common ownership, will be made on the basis of the facts and circumstances in each case. This rule applies whether the provider organization or supplying organization is a sole proprietorship, partnership, corporation, trust or estate, or any other form of business organization, proprietary or nonprofit. In the case of a nonprofit organization, ownership or equity of interest will be determined by reference to the interest in the assets of the organization. In the situation of a transfer among organizations of common ownership, we are proposing that the HHAs under common ownership look to the initial HHA for payment. Therefore, PEP adjustment would not apply in situations of transfers among HHAs under common ownership.

The discharge and return to the same HHA during the 60-day episode period is only recognized when a beneficiary has reached all treatment goals in the original plan of care for the 60-day episode. The original plan of care must be terminated with no anticipated need for additional home health services for the balance of the 60-day period. The discharge cannot be a result of a significant change in condition. In order for the situation to be defined as a PEP adjustment due to discharge and return to the same HHA during the 60-day episode, the discharge must be a termination of the complete course of treatment in the original plan of care. We would not recognize any PEP adjustment in an attempt to circumvent the more conservative payment made under the significant change in condition payment adjustment discussed below.

If a patient experiences an intervening hospital stay during an existing 60-day episode under an open plan of care, then the patient would not have met all of the treatment goals in the plan of care. Therefore, the intervening hospital admission during an existing 60-day episode could result in a SCIC adjustment, but could not be considered a discharge and return to the same HHA PEP adjustment.

The PEP adjustment is based on the span of days including the start of care date (first billable service date through and including the last billable service date) under the original plan of care prior to the intervening event. The PEP adjustment is calculated using the span of days (first billable service date through and including the last billable service date) under the original plan of care as a proportion of 60. The proportion is multiplied by the original case mix and wage adjusted 60-day episode payment. For example, a patient is assigned to a 60-day episode payment of $3000. Day 1 through Day 30 the patient is served by HHA–1. Day 1 is the first billable service date and Day 30 is the last billable service provided by HHA–1 under the original plan of care. The beneficiary elects to transfer to HHA–2 on Day 35. The first ordered service for the beneficiary under the new plan of care is Day 38. Day 38 starts a new 60-day episode clock for purposes of payment, OASIS assessment, and physician certification of the plan of care. Day 38 becomes Day 1 of the new 60-day episode. The final payment to HHA–1 is proportionally adjusted to reflect the length of time the beneficiary remained under its care. HHA–1 would receive a PEP adjustment equal to 30/60

* $3000 = $1500. The initial percentage payment will be adjusted accordingly to reflect the PEP adjustment. Several illustrative PEP adjustment examples are provided in section IV. of this regulation. An HHA may also receive a low-utilization payment adjustment instead of the PEP adjustment described in this section of the regulation or an outlier payment in addition to the PEP adjustment described in section IV. of this regulation.

We are proposing the requirement that the 60-day episode payment covers the individual for 60 days of care unless one of three intervening events occurs. The PEP adjustment described above encompasses the two intervening events defined as a beneficiary elected transfer or a discharge and return to the same HHA over the course of a 60-day episode of home health care. We are proposing that the third intervening during a 60-day episode of home health care that could trigger a change in payment level would be a significant change in the patient's condition. We are proposing the significant change in condition payment adjustment (SCIC adjustment) to be the proportional payment adjustment reflecting the time both prior and after the patient experienced a significant change in condition during the 60-day episode. The proposed SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case mix assignment for purposes of SCIC payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in treatment approach in the patient's plan of care.

The SCIC adjustment is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment *prior* to the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment *after* the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) before the patient's significant change in condition (defined below) as a proportion of 60 multiplied by the original episode payment amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA prior to the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case mix assignment for payment at the end of the 60-day episode.

The second part of the SCIC adjustment reflects the time the patient is under the care of the HHA after the patient experienced the significant change in condition during the 60-day episode that warranted the new case mix assignment for payment purposes. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and continuing until the end of the 60-day episode. Once the HHA completes the OASIS, obtains the necessary physician change orders reflecting the need for a new course of treatment in the plan of care, and assigns a new case mix level for payment, the second part of the SCIC adjustment begins. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment (or any applicable medical review or (LUPA) discussed below) determined at the final billing for the 60-day episode. Illustrative examples are provided in section IV.J.4. of this proposed rule.

As discussed above, we are concentrating additional monitoring resources on the events that would trigger the PEP adjustment and SCIC adjustment. We are also planning to analyze the data from the demonstration sites to determine the frequency of a (1) beneficiary elected transfer, (2) discharge and return to the same HHA during the 60-day episode, or (3) significant change in condition, in order to establish a baseline of information to determine how frequently these events occur prior to PPS. Based on this information we will establish a baseline, identify agencies which differ significantly from it, and concentrate monitoring resources on those agencies.

In order to address the needs of longer stay patients, at this time we are proposing not to limit the number of 60-day episode recertifications in a given fiscal year. There is the potential for unlimited consecutive episodes. Recertification of and payment for consecutive 60-day episodes is, of course, dependent on OASIS assessment and the patient's eligibility for continued medically necessary Medicare home health services. We believe the consecutive 60-day episode recertification and payment will ensure continued access to the Medicare home health benefit without exceeding the statutory budget-neutrality targets.

We believe the 60-day episode provides an appropriate time frame for purposes of prospective payment for many reasons. The 60-day episode period is the basic time frame under which HHAs have historically been required to manage and project home health care needs of beneficiaries in order to comply with current plan of care certification requirements for Medicare home health plans of care. The 60-day episode period also basically matches the reassessment schedule for OASIS, and this parallel time frame will permit case-mix adjustment of each episode. Further, the 60-day episode captures the majority of stays experienced in the Phase II per-episode HHA PPS demonstration.

As discussed above, about 60 percent of the Phase II per-episode HHA/PPS demonstration patients completed their episodes within 60 days. If capturing a majority of the patients is one criterion for the episode length, we now have evidence from the Phase II per-episode PPS demonstration that a 60-day episode will do so. A 120-day episode, as tested in the Phase II per-episode HHA/PPS demonstration, also meets this criterion, but we do not gain a significantly larger completion percentage by lengthening the episode to 120 days. A 120-day episode may result in more inequity in payments because of the larger risk of a change in a patient's condition over the span of the longer episode. We are specifically soliciting comments on the utility of a 60-day episode period for purposes of prospective payment and the efficacy of unlimited consecutive episode recertifications for eligible beneficiaries in a given fiscal year.

Low-Utilization Payment Adjustment

As discussed above, the statute requires that the definition of the unit of payment must take into consideration the number, type, duration, mix, and cost of visits furnished within the unit of payment. We are concerned with the financial incentive to provide minimal services within an episode. We are also challenged by the possible motivation to obtain an additional full 60-day episode payment beyond a current episode by furnishing the absolute minimum of additional services. Utilization incentives potentially change from overutilization under the cost based payment system to underutilization under a prospective payment system. We want to ensure that HHAs do not have an incentive to provide less care than is necessary. Under such an approach, an HHA that provided the minimum threshold number of visits or less during the 60-day episode would receive a low utilization payment adjustment reflecting a national average per-visit payment by discipline for the visits actually provided during the episode. We believe this policy reduces incentives to provide only one or two visits to beneficiaries to trigger a full prospective payment and, in addition, makes it harder to obtain either an initial or a second prospective payment by providing a minimal number of additional services. As a result of our analysis, we determined the need to recognize a low utilization payment adjustment under HHA PPS.

Our next decision required us to determine the number of visits that must be provided before a full 60 day prospective payment is made. Increasing the number of visits required, decreases the potential for agency gaming by providing a few additional services to obtain a full prospective payment. Based on analysis of our episode database, we concluded approximately 12 percent of current episodes constitute four or fewer visits. We explored the option of a six or fewer visit threshold for the low utilization payment adjustment and found approximately 20 percent of episodes in our database contain six or fewer visits. However, we recognize that these numbers may change under a fully implemented PPS.

A potential advantage of the six or fewer visit threshold would be to further reduce the number of episodes with only six or fewer visits during a 60-day episode; that is, agencies will have incentives to provide enough services to reach the threshold by increasing the number of services delivered to individuals who currently receive only a few. It would also make it harder to provide enough additional services to game or trigger full prospective episode payments inappropriately. However, the six visit threshold based on current data would result in 20 percent of all episodes under national HHA PPS being paid at the lower per-visit amount. We are soliciting comments and supporting data on the most appropriate threshold for the low utilization payment adjustment. We also plan to focus our medical review resources on the fourth or sixth visit, whichever is chosen in the final rule, to assure the medical appropriateness of the visits which actually triggers a full prospective episode payment.

We have developed our approach in the regulation to reflect the four or fewer visit threshold for the low-utilization payment adjustment. The methodology for the low-utilization payment adjustment and all other payment calculations in this rule reflect the four or fewer visit threshold. Under this proposed provision, a 60-day episode, a PEP adjustment, or a SCIC adjustment with four or fewer visits would be paid the national standardized per-visit amount by discipline for each visit type furnished during the 60-day episode. However, we are seeking comments and supporting data on the utility of the six or fewer visit threshold for the low-utilization payment adjustment. We are soliciting comments on the operational and financial impact of the low utilization payment adjustment. We are also specifically seeking comments on the potential financial impact on rural HHAs to comply with this requirement.

We are concerned with the potential manipulation of the LUPA under a pattern of certification of continuous home health episodes. Our interest is focused on patterns of behavior involving two continuous 60-day episodes. We are concerned that the possibility of a 60-day period may be too long for a second episode if the intensity of services is greater in the earlier part of that second episode. We are also concerned that agencies may have greater incentives to provide five additional visits beyond the first 60-day episode so as to trigger a second 60-day payment than they do at the beginning of the first episode. We are analyzing data on the second and subsequent 60-day episode and the distribution of the intensity of services within these episodes. Based on this analysis, we are considering the following possible alternative policies: (1) modify the proposed episode definition; (2) extend the LUPA for the second and subsequent episodes from four to six visits. We invite comment on these alternatives to the policies presented in this proposed regulation.

b. National Episode Payment Rate

We propose that the HHA PPS use a 60-day national episode payment rate. Section 1895(b)(3)(A)(i) of the Act requires—(1) the computation of a standard prospective payment amount to include all costs of home health services covered and paid for on a reasonable cost basis and to be initially based on the most current audited cost report data available to the Secretary, and (2) the prospective payment amounts to be standardized to eliminate the effects of case mix and wage levels among HHAs. Section 5101(c) of OCESAA amends section 1895(b)(3)(A)(ii) of the Act, to require that the standard prospective payment amounts be budget neutral to the amounts expended under the current interim payment system as of the inception of the PPS on October 1, 2000, with the limits reduced by 15 percent. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost-reporting periods contained in our database and September 30, 2001. Sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act, as amended by section 5101(d)(2) of OCESAA, require the standard prospective payment amounts for fiscal year 2002 or 2003 to be increased by a factor equal to the home health market basket minus 1.1 percentage points. For any subsequent fiscal years, the statute requires the rates to be increased by the applicable home health market basket index change.

The national 60-day episode payment incorporates adjustments to account for provider case mix using a clinical classification system that accounts for the relative resource utilization of different patient types. The classification system, The Clinical Model from Abt, uses patient assessment data (from the Outcome and Assessment Information Set (OASIS)) supplemented by one additional patient-specific item regarding number of therapy hours received in the 60-day episode period that is completed by HHAs to assign patients into one of 80 Home Health Resource Groups (HHRGs). The OASIS items and the supplemental therapy item are discussed in detail in section II.C.2. of this regulation. HHAs complete the OASIS assessment according to an assessment schedule specifically designed for Medicare payment (see section IV.L. of this regulation). The total case-mix-adjusted 60-day episode payment is based on the initial OASIS assessment and the supplemental item indicating projected therapy hours received in a 60-day episode submitted at the start of the 60-day episode. The projected number of therapy hours received (physical, speech-language pathology, and occupational therapy in any combination) in a 60-day episode reported at the start of the 60-day episode is confirmed by the actual receipt of therapy via the line-item date visits submitted on the final claim at the end of the 60-day episode. The reconciliation of projected therapy use with actual therapy services furnished during the 60-day episode has the potential to decrease the final payment if actual therapy use reported at the end of the episode does not correspond to the projected therapy use provided at the start of the episode. We are proposing to use visit utilization data as a proxy for time. The proxy approach is discussed in detail in the case-mix methodology in section II.C.2. of this regulation.

For Medicare billing purposes, there are codes associated with each of the 80 HHRGs. The patient will be grouped into the appropriate case-mix category from the OASIS assessment at the HHA. The case-mix methodology consists of 19 OASIS items plus one supplemental non-OASIS item. We are exploring the approach that the "grouper" software will be provided to HHAs via the HAVEN software used for State transmission of OASIS quality data. The OASIS assessment is fed into the grouper logic at the HHA. The grouper logic selects the OASIS elements supplemented by one additional non-OASIS item indicating projected therapy hours (as translated into therapy visits) in a 60-day episode needed to establish the case-mix group and determines the appropriate case-mix category for the patient. The visit projection must be based on the physician's orders in the plan of care certified by the physician. The grouper logic generates a code. The code corresponds to the appropriate case-mix category and would be placed on the claim at the provider. The initial claim is submitted for an initial percentage payment at the start of care (see section I.D.2. of this regulation on percentage payments). As mentioned above, as applicable, the confirmation of the projected number of therapy hours received during the 60-day episode from the line-item date visit information submitted at the end of the 60-day episode is used for pricing the final case-mix adjusted payment. The pricer logic at the Regional Home Health Intermediary (RHHI) will compute the final episode payment based on the reconciliation of the projected therapy use received during the 60-day episode with the actual therapy visits reported on the final claim submitted at the end of the 60-day episode.

The confirmation of projected therapy services has the potential to decrease the final payment if the actual therapy use reported at the end of the episode does not correspond with the projected therapy use furnished at the start of the episode. The 60-day case-mix adjusted episode payment is intended to provide full payment for the patient for the 60-day period except in the case of a partial episode payment adjustment, low-utilization payment adjustment, outlier payment adjustment, or a finding that the episode was not medically necessary or covered due to medical review. We are seeking comments on our approach to the case-mix assignment during the 60-day episode. We are specifically seeking comments on potential effects on cash flow for HHAs. Operational aspects of the system design are discussed in more detail in section IV. of this regulation.

2. Payment Provisions—Split Payment

We are proposing a split percentage payment during the 60-day episode period. We propose that there be two percentage payments (initial and final) and two corresponding claims (initial and final) per 60-day episode. First, the initial percentage payment will equal 50 percent of the estimated case-mix adjusted episode payment. Each initial claim submitted for the initial percentage payment must be based on a current OASIS-based case mix and supplemented, as applicable, by one item indicating proposed therapy use in a 60-day episode. Second, the final payment will equal 50 percent of the actual case-mix adjusted episode payment. A new initial and final bill must be submitted for each recertified 60-day episode period. For example, patient is assessed via OASIS supplemented by the therapy variable, if applicable, and is categorized by the grouper logic into HHRG group Y. Included in HHRG group Y is a projected therapy use of 8 hours or more in a 60-day period. The HHRG group case-mix adjusted payment for the 60-day episode is $2,000. The HHA submits the claim with the corresponding code to HHRG group Y. The pricer at the RHHI computes 50 percent of the payment for HHRG group. The HHA receives an initial payment of $1,000. At the end of the 60-day episode, the HHA bills for the residual 50 percent final payment. The line-item date information confirms the receipt of at least 10 therapy visits as a proxy for time. The final claim is submitted for payment. The pricer at the RHHI confirms the line-item date information. No increase or decrease adjustment is necessary for therapy use. The pricer computes the 50 percent residual final payment. The HHA receives a final payment of $1,000. The initial percentage payment will be adjusted to reflect a LUPA, PEP adjustment, SCIC adjustment, or medical review determination as applicable.

Operational aspects of the split payment relationship to the system design are discussed in detail in section III. of this regulation. We are specifically soliciting comments on the impact on HHAs to financially and operationally comply with the split percentage payment approach. We are proposing a 50/50 percentage split for purposes of this proposed rule; however, more complete data may result in future refinements to the percentage payment approach.

3. Payment Provisions—Outlier Payments

Section 1895(b)(5) of the Act notes that we may provide for additions or adjustments to the payments due to unusual variations in the type or amount of medically necessary home health care. The total amount for addition or adjustment payments during a fiscal year may not exceed 5 percent of total payments projected or estimated to be made based on the HHA PPS in that year. Because successive episode payments will be made for a beneficiary as long as the beneficiary continues to be recertified and otherwise eligible for additional home care, there will be no need for long-stay outlier cases under the HHA PPS. However, we believe outlier payments for 60-day episodes in which the HHA incurs extraordinary costs beyond the regular episode payment amount may be desirable. Outlier payments would provide some protection for beneficiaries whose care needs cost more than the amount of the episode payment. They would also provide HHAs with some financial protection against possible losses on individual beneficiaries.

The methodology proposed for outlier payments is modeled on the outlier payment methodology of the Medicare inpatient hospital PPS. There are two basic principles underlying the approach: First, before outlier payments are made for a case or episode, cost should exceed the payment for the case. The amount by which cost exceeds payment should be the same for cases in all case-mix groups because a dollar lost is a dollar lost whether the case belongs in a low cost or a high cost case-mix group. Use of a uniform fixed dollar loss for all case-mix groups avoids creating differential incentives to accept patients in different case-mix groups. The second principle is that outlier payments should cover less than the full amount of the additional costs above the outlier threshold to preserve the incentive to contain costs once a case qualifies for outlier payments. (See Emmett B. Keeler, Grace M. Carter, and Sally Trude, "Insurance Aspects of DRG

Outlier Payments," The Rand Corporation, N–2762–HHS, October 1988.) We discuss the outlier payments in greater detail in section II.A.5. of this regulation.

We are seeking comments on our approach to outlier payments.

4. Payment Provisions—Transition Period

Section 4603(b)(1) of the BBA provides discretion on the transition from payment under the current reasonable cost-based interim payment system to the full prospective payment amount by blending a portion of the PPS amount with agency-specific costs for a period of time. The statute provides for the blend of agency-specific costs for up to 4 years in a budget-neutral manner.

Blending options provides significant practical obstacles. We could in theory blend what would have been paid under the current reasonable cost reimbursement system and PPS. A percentage of the payment would be based on costs of the agency building on the current interim payment system and a percentage would be based on the national PPS amount.

While other prospective payment systems have used a blended agency and national payment amount, the complexities of blending dissimilar payment methodologies for home health are so great that we believe it is not a viable option. Moreover, OCESAA amended the statute to require that we implement PPS on the same date for all providers, regardless of their cost reporting period. This break in the cost reporting period further discourages continued use of the cost-based system. The legislation also reflects Congressional interest in expediting the transition from the interim payment system to PPS. We believe proceeding with a highly complicated percentage payment system based on historical data from the cost-based interim payment system would not be in the best interest of the industry based on historical reaction to the interim payment system.

We believe full transition to the PPS system on October 1, 2000 is the most viable option.

5. Consolidated Billing for Home Health Agencies

Both sections 4603(c)(2)(B) and (c)(2)(C) of the BBA require a new consolidated billing and bundling of all home health services while a beneficiary is under the plan of care. The BBA requires payment for all covered home health items and services to be made to an HHA. However, in accordance with section 1895(b)(1) of the Act, PPS payments are to include only those home health services paid on a reasonable cost basis, and DME is currently paid under the DME fee schedule. Furthermore, payment for Medicare covered home health services can only be made to the HHA that establishes the individual's home health plan of care. The result is that the HHA must bill when the plan of care specifies DME and even if an outside supplier provides it. HHAs will no longer be able to "unbundle" services to an outside supplier that can then submit a separate bill directly to the Part B carrier. Instead, the HHA itself will have to furnish the home health services either directly or under an arrangement with an outside supplier in which the HHA itself, rather than the supplier, bills Medicare. The outside supplier must look to the HHA rather than to Medicare Part B for payment. The HHA consolidated billing requirement is discussed in detail in section V. of this regulation.

6. Medical Review Under the Prospective Payment System

The financial incentives available to HHAs change from overutilization to underutilization under an episode-based PPS. The initial claim for each 60-day episode may contain visit information and will only include the code corresponding to the appropriate case-mix category. The final claim for the 60-day episode will include all of the line-item visit information for the previous 60 days. Given the limited information on the initial claim, prepayment review of the initial claim would be limited to overall medical necessity of care and technical eligibility issues, such as whether the homebound requirement was met. Medical review will be conducted on a random and targeted basis. Targeting may include claim-specific and patterns of case-mix upcoding as well as general issues of the medical need for the episode of care and technical eligibility. There must be the capacity, for both prepayment and postpayment, to deny claims in total or to adjust payment to correct case mix. Medical review will validate OASIS case-mix category information used for payment against medical records and the OASIS information separately submitted for quality. Medical review will also be conducted to verify individual beneficiary therapy information and patterns of therapy information for larger groups. The information reported on claims will be an essential part of this effort due to the significant impact of therapy use in the case-mix designation.

7. Continued Access to Quality Home Health Services Under the Prospective Payment System

The quality component of PPS is critical to ensure that HHAs do not furnish less care than is necessary to beneficiaries in an attempt to increase profit. The advantage of using similar elements to measure quality through outcomes of care and case mix for payment purposes is that an agency that provides less care than needed to a patient in an episode will be likely to reflect poor outcomes of care in terms of quality. The quality component of the HHA PPS is crucial to ensuring that beneficiaries receive needed services. The continued access to quality services under PPS is discussed further in section IV.J. of this regulation.

8. Implementation of the Prospective Payment System

Section 5101(c)(1) of OCESAA removed the effective date of the PPS by cost reporting period previously prescribed in the BBA and instead requires all Medicare participating HHAs to be paid under PPS effective on the same date of implementation—October 1, 2000. The implementation approach is discussed in section IV.H. of this regulation.

II. Prospective Payment System for Home Health Agencies

A. National 60-Day Episode Payment

This proposed rule sets forth the methodology for the national PPS applicable to all Medicare home health services covered under both Part A and Part B. This proposed rule incorporates a national 60-day episode payment for all of the reasonable costs of services furnished to an eligible beneficiary under a Medicare home health plan of care. This section describes the components of the national 60-day episode payment and the methodology and data used in computation.

1. Costs and Services Covered by the 60-Day Episode Payment

The 60-day episode prospective payment applies to all home health services set forth in section 1861(m) of the Act that are covered and paid on a reasonable cost basis under the Medicare home health benefit as of the date of the enactment of the BBA, including medical supplies. DME is a covered home health service that is not currently paid on a reasonable cost basis, but is paid on a fee schedule basis when covered as a home health service under the Medicare home health benefit. Under the HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule. Thus, we believe a separate payment amount in addition to the prospective payment amount for home health services will be made for DME currently covered as a home health service under the PPS. All DME must be billed by the HHA during the 60-day episode when it is furnished directly, under arrangement, or otherwise as discussed in section V.C. of this regulation. Although the covered osteoporosis drug under the home health benefit is currently paid on a reasonable cost basis, section 4603(c) of the BBA of '97 amended section 1833(a)(2)(A) of the Act to specifically exclude it from the prospective payment rate. In addition, like DME, the osteoporosis drug is included in the consolidated billing requirements.

2. Data Sources Used for the Development of the 60-Day Episode Payment

The methodology we used in developing the 60-day episode payment combines a number of data sources. These data sources include audited cost report data, claims data, a wage index, a market basket inflation index, and Abt Associates Case-Mix Research Project Data. This section describes each of these data sources while the following section describes the methodology that combines them to produce the 60-day episode payment.

a. Audited Cost Report Data

Section 1895(b)(1) of the Act requires the prospective payment amount to include all services covered and paid on a reasonable cost basis under the Medicare home health benefit, including medical supplies. Section 1895(b)(3)(A)(i) of the Act requires the computation of a standard prospective payment amount to be initially based on the most recent audited cost report data available to the Secretary. Under section 1895(b)(3)(A)(i) of the Act, the primary data source in developing the cost basis for the 60-day episode payments was the audited cost report sample of HHAs whose cost reporting periods ended in fiscal year 1997 (that is, ended on or after October 1, 1996 through September 30, 1997).

In February 1998, we directed our fiscal intermediaries (FIs) to conduct comprehensive audits of the cost reports submitted by a sample of HHAs whose cost reporting periods ended in FFY 1997. Each FI received a list of agencies to audit and instructions on how to conduct the audits and report the data obtained.

The sample was designed to be representative of the home health industry in several respects: type of provider (for example, provider-based), census region, urban versus rural location, and large versus small agencies. We anticipated that many agencies in the sample would not be audited because their records were unavailable for a variety of reasons or their cost reporting periods were less than 12 months long. Consequently, the sample size was adjusted upward by 15 to 20 percent to allow for attrition.

To create national HHA PPS rates, each observation in the final data set is weighted so that in the aggregate the entire sample reflects the national Medicare home health payment experience. For example, the estimates will reflect differences across census regions and urban versus rural areas.

Audit Sample Methodology

The sample frame was intended to include all home health agencies except very small ones and agencies without a full year of cost reporting for the audit period. The sample selection design was a stratified sample. With this design, agencies are selected as samples within each stratum, where a stratum is defined for each provider type. There were four strata: freestanding not-for-profit, freestanding for-profit, freestanding governmental, and provider-based agencies. The stratified design of the sample takes into account the number of providers and the variation in cost and beneficiaries associated with each provider type. The sample was designed to produce estimates from key elements of the audit data with a reasonable level of precision.

One issue arose as auditing activities unfolded. Although ordinarily each sampling unit should appear once and only once in the frame, after the sample was drawn and fieldwork begun, it was found that this assumption was not strictly true for the governmental units. In some cases, multiple providers' numbers corresponding to a single cost report appear on the frame, while in other cases a provider number is a parent possibly with multiple subunits. In the former case, we considered the subunits associated with a single cost report as the appropriate sampling unit, and assigned weights to those observations to compensate for their higher probability of inclusion in the sample. This weighting procedure ensures that correct totals are obtained from the analysis.

The original sample design anticipated that the weights would need further adjustment so that audits expected but ultimately missing from the sample are represented and the sample in total will produce the known totals from the frame for key subgroups or cells. The process assigns a larger weight to audited units in the sample similar (in the same cell) to those missed. In the case of the HHA, the cells were defined by cross-classification of three characteristics: urban or rural location; the four census regions of Northeast, Midwest, South, and West; and provider type. Therefore, the weights were adjusted for the missed sample units to ensure that the units obtained most closely represent the missed units cell by cell. (The adjustment gives more weight to the audited HHA in a cell to account for the missing audits within the cell.) The adjustment was a minor one, because examination of counts from the realized sample, intended sample, and sample frame showed that the sample actually obtained generally was within range or close to the specifications.

After completing the weight adjustments, a file was created with the resulting weights, the provider number, provider type, Census4 (four census regions), and Metropolitan Statistical Area (MSA) code. This file can be merged with the data from the cost reports for the audited providers to compute weighted values for costs and visits in order to compute the average cost-per-visit ratios by discipline. As a check on the computations, the following table is the result of a summary by provider type that agrees with the frame totals.

Type	Sample	Frame #
FS/F	142	3290
FS/G	159	458
FS/N	171	955
PROV	95	2458

The final audit sample contained 567 audited cost reports which were the basis of the home health PPS rate calculations. See Section III. below for a more detailed description of the sampling and estimation procedures.

Updating to September 30, 2001

Before computing the average cost per visit for each discipline that would be used to calculate the prospective payment rate, we adjusted the costs from the audit sample by the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods ending in FY 1997 to September 30, 2001. Multiplying nominal dollars for a given FY end by their respective inflation adjustment factor will express those dollars in the dollar level for the FY end September 30, 2001. Therefore, we multiplied the total costs for each provider by the appropriate inflation factor shown in the table below. See section II.A.2.b. of this regulation for a detailed description of the market basket.

Nonroutine Medical Supplies Paid on a Reasonable Cost Basis Under a Home Health Plan of Care

Before computing the average cost per episode for nonroutine medical supplies paid on a reasonable cost basis under a home health plan of care, we also adjusted the audited cost report data for nonroutine medical supplies using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods ending in FY 1997 to September 30, 2001.

Adjusting Costs for Providers Impacted by the Visit Limits

For cost reporting periods ending in FY 1997, Medicare recognized reasonable costs as the lower of the provider's actual costs or the per-visit limit applied in the aggregate for the six disciplines. Because some providers' costs were higher than the per-visit limits applied in the aggregate for the six disciplines, it was necessary to adjust their costs in order to reflect only those costs for which the provider's payment was based. The adjustment factor was calculated by dividing a provider's total visit limit by the total Medicare costs, but only if the total visit limit was less than total Medicare costs. For those providers not impacted by the visit limit, no adjustment was necessary, and the adjustment factor was set equal to one. The adjustment factor was applied to each provider's total costs for each discipline. Summing each provider's updated, weighted, and adjusted total costs by the sum of visits for each discipline results in the nonstandardized, updated, weighted, and visit limit adjusted average cost per visit by discipline. The Office of Inspector General (OIG) has raised concerns that the payment rates may be inflated because improper costs were included in the base year data. These concerns are based on prior OIG reviews which have found improper payments have been made to HHAs in the past. Depending on the results of these past reviews and additional OIG reviews currently underway, HCFA may consider adjusting the payment rates to account for improper costs that were included in these rate calculations.

b. Home Health Agency Market Basket Index

The data used to develop the HHA PPS payments (60-day episode and LUPA) were adjusted using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 2001. The following inflation factors were used in calculating the HHA PPS:

Factors for Inflating Database Dollars to September 30, 2001

FY end	1996	1997
October 31	1.15486	
November 30	1.15222	
December 31	1.14961	
January 31		1.14705
February 28		1.14453
March 31		1.14202
April 30		1.13952
May 31		1.13703
June 30		1.13444
July 31		1.13175
August 31		1.12896
September 30		1.12615

For fiscal year 2002 or 2003, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act require the standard prospective payment amounts to be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires the rates be increased by the applicable home health market basket index change.

c. Claims Data

We also conducted analysis on an episode database created from the 1997 National Claims History File using 60-day episodes to define episode lengths. These data were based on use of home health services under the current system.

The 1997 60-day episode file used to establish the PPS rates was created in two parts. The first part matched all home health claim records for each beneficiary together to create a complete episode history. We combined monthly records of home health services using a 60-day gap of service as the break for when an episode would begin and end (that is, a 60-day consecutive gap in home health services would trigger a new episode). The second part of the episode file creation was to create exact 60-day episodes from the monthly episode file. Using the first day of the episode, we counted exactly 60 days to find the end of the 60-day episode. If the beneficiary was still receiving home health services, we then started another 60-day episode on day 61 and continued the process until the end of the episode.

In order to create the first part of the 1997 60-day episode file, we used the 100 percent National Claims History of 1997 HHA records. A list of Health Insurance Claim (HIC) numbers was created for all beneficiaries who received home health services in calendar year 1997. Using the HIC number for each of those beneficiaries, we compared it against the 1997 Master Beneficiary Denominator File. The comparison was done to eliminate (1) Railroad Board beneficiaries, (2) invalid beneficiary HIC numbers, and (3) beneficiaries enrolled in an HMO for any part of 1997.

The valid matches on the 1997 Master Beneficiary Denominator File were then matched against the initial 100 percent of 1997 HHA records. The records that resulted from this step were compared to a program table consisting of the dates that encompassed the universe of complete episodes created (January 1996 through June 1998). The HHA records were reformatted with Units and Reimbursement allocated to 1 of 7 Revenue Center Code groupings:

550–559	skilled nursing
420–429	physical therapy
430–439	occupational therapy
440–449	speech pathology
560–569	medical social services
570–579	home health aide
270–279	medical supplies

This output was then sorted by the "From and Thru Dates" on each claim to see if the From Date was within the first 2 months of 1997 and the Thru Date was within the last 2 months of 1997. If the From Date was within the first 2 months of 1997, a HIC list was created and matched to the 1996 HHA records. If the Thru Date was within the last 2 months of 1997, a HIC list was created and matched to the 1998 HHA records. At the time these files were created, 1998 HHA records were complete only through June 1998. The HIC lists were processed through a cross-reference procedure that ensures that any changes in HIC numbers are related to the original HIC and to ensure all utilization for a beneficiary was reflected under one current HIC number. These files were matched against the 1996 HHA and 1998 HHA files, respectively. The outputs of these matches were reformatted with Units and Reimbursement allocated to 1 of 7 Revenue Center Code groupings (listed above). The same process was performed on the 1997 HHA records.

The resulting three files for 1996, 1997, and 1998 were sorted by From Date within each HIC number. The sorted file was read and a complete home health history was created for each beneficiary HIC. This was accomplished by sorting the HHA records for each HIC in chronological order from January 1996 through June 1998. During this process, Number of Days, Total Charges, and Total Reimbursement were allocated to a monthly table. For any records that spanned 2 calendar months, charges, visits, and reimbursement were apportioned based on the distribution of those days in each respective month. Whenever a beneficiary HIC's history was read and tabled, the data were analyzed in order to determine whether any prospective episodes would have ended in 1996 or started in 1998. If either was true, that historical utilization was discarded. The final valid data included 1996 data that were contiguous or ended within 2 months (60 days) of 1997 data and 1998 data that began within 2 months of 1997 data.

Once the valid table was completed, a single episode or multiple episodes were determined by a 60-day break. The final episode(s) for each home health beneficiary with combined monthly records was written to an output file referred to as the 1997 Home Health Monthly Interval File.

The 1997 HHA 60-Day Episode file was then derived from the 1997 Home Health Monthly Interval File by analyzing monthly records by episode number and sequential month number. A full episode from the Home Health Monthly Interval File is made up of two consecutive monthly intervals in which the beneficiary received services (no 60-day gap in services furnished to that beneficiary for a given episode of care). Each monthly record within the common episode number was assigned a sequential month number to indicate where, in the sequence of monthly records for that given episode number, a particular monthly record exists.

The first episode-begin-date for a 60-day episode was derived from the first from-date for a given previously established episode (a group of related monthly records) as read from the home health interval file. An episode-end-date for that first 60-day episode was calculated by adding 59 days to the episode-begin-date. Visits, charges, lengths of stay, and reimbursement dollars were then accumulated across the six disciplines (skilled nursing services, home health aide services, physical therapy (PT) services, occupational therapy (OT) services, speech-language pathology services, and medical social services) for the 60-day episode by adding in subsequent monthly interval records (if appropriate) for a given episode. If an episode-end-date occurs within a monthly record, accumulating variables were prorated between the 60-day episode record that was closed out and the subsequent 60-day episode to be created. Consequently, the subsequent 60-day episode was assigned an episode-begin-date equal to that of the previous episode's episode-end-date plus 1. For episodes that did not begin and end within a monthly record, the episode-begin-dates were established from the from-date and episode-end-dates were calculated from the episode-begin-date.

The end result was a 1997 HHA episode file of 60-day episode records. In addition to the accumulating variables mentioned above, the episode record also contained up to three provider numbers of HHAs involved in furnishing care for that patient during the 60-day episode. For identifiable purposes, the episode record contained variables depicting—(1) the episode number (the episode number relates 60-day episode records for which no 60-day gap in services existed), (2) the total number of related 60-day episodes for that episode number, and (3) a sequential number for that 60-day episode within the episode number.

Using the 60-day episode file, we were able to analyze the number, type, and duration of visits for each 60-day period as well as across multiple 60-day episodes. Since the full 100 percent episode file was created to determine actual episodes that could span more than 1 year, episodes were defined by actual start and end dates even if they were outside the calendar year period, as long as the beneficiary received home health services in calendar year 1997. This provided a true representation of the length of home health episodes and showed that 10 percent of the beneficiaries were receiving services that spanned more than a full calendar year. This file also showed that 46 percent of the beneficiaries completed home health services in the first 60 days and over 60 percent actually completed their episodes in less than 120 days.

To complete the second part of the 1997 60-day episode file needed to calculate prospective payment rates and to develop impacts, we needed to convert the full episode file to a file containing only those 60-day episodes that fell into the calendar year 1997 period. This meant that if a beneficiary started receiving home health services in July 1996 and continued for multiple 60-day episodes through June 1997, we only included their 4th, 5th, and 6th 60-day episodes that fell in calendar year 1997. Calculating the distribution of beneficiaries across the total number of episodes as we did for the full episode file, we determined that the total percentage of beneficiaries with only one episode increased to 51 percent. The table below shows the distribution across total number of 60-day episodes for both the full episode file and the calendar year 1997 file.

TABLE 1.—DISTRIBUTION OF THE NUMBER OF CONSECUTIVE 60-DAY EPISODES

Total number of consecutive 60-day episodes	Distribution based on all 60-day episodes—even those outside the CY 1997 period (percent)	Distribution based on only 60-day episodes that occurred in the CY 1997 period (percent)
1	46	51
2	16	18
3	8	8
4	5	5
5	3	4
6	3	3
7	3	10
8	3	
9	2	
10	2	
11	1	
12	2	
13	2	
14	3	
15	0	

Next, we calculated the average number of visits by discipline for all 60-day episodes and compared that to only those episodes that fell into the calendar year 1997. We discovered that there was a slight decrease in the average number of visits for home health aide and skilled nursing services when using only the episodes that fell in calendar year 1997. This was expected due to the fact that the utilization in 1997 declined because of the incentives under Operation Restore Trust and because the distribution of beneficiaries having fewer number of total episodes increased as shown in Table 1 above. Beneficiaries with fewer total episodes had on average a lower total average number of visits.

For purposes of rate setting, we believed it was more appropriate to use the average number of visits for only those episodes that occurred in calendar year 1997, as these reflect the reduced visit utilization experienced since 1997 and thus represented more closely the actual episodes that we would be paying for under PPS. Because we are paying episodes with four or fewer visits on a per-visit basis, under the LUPA methodology mentioned previously, it is necessary to exclude them for the calculation of the average number of episodes. Taking the low-visit episodes out of the calculation resulted in an overall higher average for each discipline as would be expected.

TABLE 2.—COMPARISON OF THE AVERAGE NUMBER OF VISITS PER EPISODE FOR EACH DISCIPLINE FOR THE FULL EPISODE FILE, EPISODES IN CY 1997 AND EPISODES IN CY 1999 WITH FIVE OR MORE VISITS

Average number of visits by discipline	Average based on all 60-day episodes—even those outside the CY 1997 period	Average based on only 60-day episodes that fell into the CY 1997 period	Average based on only 60-day episodes that fell into the CY 1997 period with visits
Skilled Nursing Services	13.14	12.55	14.69
Physical Therapy Services	2.08	2.35	2.74
Occupational Therapy Services	.36	0.41	0.48
Speech Pathology Services	.14	0.15	0.18
Medical Social Services	.30	0.31	0.36
Home Health Aide Services	16.78	14.59	17.59
Total for all disciplines	32.8	30.36	36.04

Analysis of each 60-day episode that occurred within calendar year 1997 showed that the distribution of visits across each discipline changed the longer the home health patient received home health services. For beneficiaries who had only one episode, the proportion of skilled nursing visits to home health aide visits was about 2 to 1. But for beneficiaries who are in their 6th consecutive episode, the relationship is reversed. The longer a beneficiary receives home health services, the lower their skilled nursing needs and the more they become dependent only on home health aide services. It is also noticeable and expected that physical therapy services decline over time. This finding suggests that future PPS research should be directed at whether the episode payment should vary with each consecutive episode.

TABLE 3.—DISTRIBUTION OF DISCIPLINES ACROSS SERIES OF 60-DAY EPISODES

Total number of 60-day episodes	Episode No. within series of 60-day episodes	Percent of skilled nursing services	Percent of home health aide services	Percent of occupational therapy services	Percent of speech pathology services	Percent of medical social services	Percent of physical therapy services
1	1	50	26	3	1	2	19
2	1	46	34	3	1	1	15
2	2	44	40	2	1	1	12
3	1	46	38	2	1	1	11
3	2	43	44	2	1	1	9
3	3	43	46	1	1	1	8
4	1	45	42	2	1	1	9
4	2	42	48	1	1	1	7
4	3	42	49	1	1	1	6
4	4	42	50	1	0	1	6
5	1	44	45	2	1	1	8
5	2	41	50	1	1	1	6
5	3	40	52	1	0	1	5
5	4	40	53	1	0	1	5
5	5	40	53	1	0	1	5
6	1	42	48	1	1	1	7
6	2	39	53	1	0	1	5
6	3	38	55	1	0	1	4
6	4	38	57	1	0	1	4
6	5	37	57	1	0	1	4
6	6	38	56	1	0	1	4
7	1	36	59	1	0	1	4
7	2	35	60	1	0	1	3
7	3	35	61	0	0	1	3
7	4	34	62	0	0	1	3
7	5	34	62	0	0	1	3
7	6	34	62	0	0	1	2
7	7	35	61	0	0	1	3

National Part B Claims History File

Nonroutine medical supplies are also a covered home health service listed in section 1861(m) of the Act. As discussed above, the home health prospective payment rate includes those items that are currently covered and paid on a reasonable-cost basis. DME covered as a home health service (see section 1861(m) of the Act) will continue to be paid the fee schedule amount. As discussed previously, there is a new consolidated billing provision that requires HHAs to bill for all home health services listed in section 1861(m) of the Act that are ordered under a home health plan of care.

Before PPS implementation, HHAs were not required to bundle all home health services. Specifically, nonroutine medical supplies that are covered and paid under Part B could have been furnished by a supplier rather than the HHA. Under the current interim payment system, nonroutine medical supply costs were subjected to the aggregate per-beneficiary limits, but not the per-visit limits. Some HHAs may have chosen to unbundle those nonroutine medical supplies that had a corresponding Part B payment. In order to determine the scope of the unbundled nonroutine medical supplies under the current system, we identified 199 HCPCS codes, representing those items that would fall into the possible "unbundled nonroutine medical supply" category. We pulled all claims with the corresponding HCPCS codes from the Part B national claims history file. In order to determine whether the HCPCS codes were related to a beneficiary receiving home health services under a home health plan of care, we linked every Part B claim with one or more of the 199 HCPCS codes to home health episodes from our episode database, by beneficiary and dates of service. If a beneficiary received home health services during a 60-day episode and there was a corresponding Part B claim with one of the 199 HCPCS codes that was billed during the same 60-day episode, we identified the item as related to the home health stay.

Since the nonroutine medical supply costs are bundled into the prospective payment rate and subjected to consolidated billing under prospective payment, we are proposing an additional payment amount in the 60-day episode base rate for those nonroutine medical supplies with corresponding Part B codes that may have been unbundled under the interim payment system. The methodology amount is set forth in section II.B. of this regulation.

d. Hospital Wage Index

As discussed in section I. of this regulation, sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act, require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under the PPS to account for area wage differences. The wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act. The statute allows the Secretary to use the area where the services are furnished or such area as the Secretary may specify for the wage index adjustment. To be consistent with the application of the wage index adjustment under the current interim payment system for HHAs, we propose that the wage index value applied to the labor portion of the 60-day episode payment under HHA/PPS be adjusted by the appropriate wage index for the geographic area in which the beneficiary received home health services.

In addition, section 1895(b)(3)(A)(i) of the Act requires the Secretary to standardize the cost data used in developing the HHA/PPS payment amount for wage levels among different HHAs in a budget-neutral manner. The wage-index adjustments to the 60-day episode payments must be made in a manner that does not result in aggregate payments that are greater or less than those that would otherwise be made if the 60-day episode payments were not adjusted by the wage index.

Each HHA's labor market area is determined based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). In establishing the 60-day episode payments, we used the most recently published hospital wage index (that is, the FY 1999 hospital wage index published in the **Federal Register** on February 25, 1999 (64 FR 9378), which is based on 1995 hospital wage data) without regard to whether these hospitals have been reclassified to a new geographic area. Therefore, the prospective payments reflect the MSA definitions that are currently in effect under the hospital PPS.

We believe the use of the hospital wage data results in an appropriate adjustment to the labor portion of costs based on an appropriate wage index as required under sections 1895(b)(3)(A)(i), (b)(4)(A)(ii), and (b)(4)(C) of the Act.

TABLE 4A.—FY 1999 WAGE INDEX FOR RURAL AREAS—PRE-FLOOR AND PRE-RECLASSIFIED

Rural Area	Wage Index
Alabama	0.7294
Alaska	1.2430
Arizona	0.7989
Arkansas	0.7250
California	0.9979
Colorado	0.8436
Connecticut	1.2074
Delaware	0.8807
Florida	0.8877
Georgia	0.7888
Guam	0.6516
Hawaii	1.0910
Idaho	0.8477
Illinois	0.7916
Indiana	0.8380
Iowa	0.7777
Kansas	0.7319
Kentucky	0.7844
Louisiana	0.7454
Maine	0.8467
Maryland	0.8555
Massachusetts	1.0834
Michigan	0.8875
Minnesota	0.8595
Mississippi	0.7312
Missouri	0.7452
Montana	0.8398
Nebraska	0.7674
Nevada	0.9256
New Hampshire	1.0240
New Jersey[1]	....
New Mexico	0.8269
New York	0.8588
North Carolina	0.8112
North Dakota	0.7497
Ohio	0.8519
Oklahoma	0.7124
Oregon	0.9910
Pennsylvania	0.8664
Puerto Rico	0.4080
Rhode Island[1]	....
South Carolina	0.8046
South Dakota	0.7508
Tennessee	0.7492
Texas	0.7565
Utah	0.8859
Vermont	0.9416
Virgin Islands	0.4588
Virginia	0.7857
Washington	1.0489
West Virginia	0.7875
Wisconsin	0.8711
Wyoming	0.8768

[1] All counties within the State are classified as urban.

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED

MSA	Urban Area (Constituent counties)	Wage Index
0040	Abilene, TX	0.7981
	Taylor, TX	
0060	Aguadilla, PR	0.4727
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	0.9900
	Portage, OH	
	Summit, OH	
0120	Albany, GA	0.7975
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY	0.8610
	Albany, NY	
	Montgomery, NY	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.8613
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.8526
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA	1.0204
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9335
	Blair, PA	
0320	Amarillo, TX	0.8474
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.2818
	Anchorage, AK	
0440	Ann Arbor, MI	1.1033
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.8658
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI	0.8825
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.4867
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.8940
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	0.8673
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	0.9915
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ	1.1536
	Atlantic, NJ	
	Cape May, NJ	
0600	Augusta-Aiken, GA–SC	0.9233
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.8782
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	0.9531
	Kern, CA	
0720	Baltimore, MD	0.9642
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Anne's, MD	
0733	Bangor, ME	0.9474
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA	1.5382
	Barnstable, MA	
0760	Baton Rouge, LA	0.8872
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX	0.8659
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.1434
	Whatcom, WA	
0870	Benton Harbor, MI	0.8531
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.2186
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	0.9143
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS	0.8276
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.9059
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.9073
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.8025
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.8965
	Monroe, IN	
1040	Bloomington-Normal, IL	0.8851
	McLean, IL	
1080	Boise City, ID	0.9160
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1269
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	1.0038
	Boulder, CO	
1145	Brazoria, TX	0.8906
	Brazoria, TX	
1150	Bremerton, WA	1.1055
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX	0.8237
	Cameron, TX	
1260	Bryan-College Station, TX	0.7820
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY	0.9587
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	0.9577
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.4400
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH	0.8813
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.870
	Natrona, WY	
1360	Cedar Rapids, IA	0.8814
	Linn, IA	
1400	Champaign-Urbana, IL	0.8723
	Champaign, IL	
1440	Charleston-North Charleston, SC	0.9114
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.8990
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC	0.9686
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0272
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA	0.9074
	Catoosa, GA	
	Dade, GA	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8149
	Laramie, WY	
1600	Chicago, IL	1.0461
	Cook, IL	
	DeKalb, IL	
	DuPage, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	1.0145
	Butte, CA	
1640	Cincinnati, OH–KY–IN	0.9595
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN–KY	0.8040
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH	0.9886
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO	0.9390
	El Paso, CO	
1740	Columbia, MO	0.8942
	Boone, MO	
1760	Columbia, SC	0.9290
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	0.8511
	Russell, AL	
	Chattahoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840	Columbus, OH	0.9781
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.8513
	Nueces, TX	
	San Patricio, TX	
1900	Cumberland, MD–WV	0.8242
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	0.9369
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.9045
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL	0.8413
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	0.9605
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.9134
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.8233
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8035
	Macon, IL	
2080	Denver, CO	1.0331
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.8448
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.0544
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.7892
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9363
	Kent, DE	
2200	Dubuque, IA	0.8222
	Dubuque, IA	
2240	Duluth-Superior, MN–WI	0.9962
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.0530
	Dutchess, NY	
2290	Eau Claire, WI	0.8573
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.9215
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9305
	Elkhart, IN	
2335	Elmira, NY	0.8440
	Chemung, NY	
2340	Enid, OK	0.7983
	Garfield, OK	
2360	Erie, PA	0.9271
	Erie, PA	
2400	Eugene-Springfield, OR	1.1193
	Lane, OR	
2440	Evansville-Henderson, IN–KY	0.8528
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN	0.9520
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.8389
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR	0.8614
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	0.9483
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1031
	Genesee, MI	
2650	Florence, AL	0.7676
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.8501
	Florence, SC	
2670	Fort Collins-Loveland, CO	1.0770
	Larimer, CO	
2680	Ft. Lauderdale, FL	0.9807
	Broward, FL	
2700	Fort Myers-Cape Coral, FL	0.8942
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL	1.0241
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR–OK	0.7623
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL	0.8615
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9047
	Adams, IN	
	Allen, IN	
	De Kalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX	0.9719
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0700
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.8779
	Etowah, AL	
2900	Gainesville, FL	0.9453
	Alachua, FL	
2920	Galveston-Texas City, TX	1.0894
	Galveston, TX	
2960	Gary, IN	0.9435
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.8490
	Warren, NY	
	Washington, NY	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
2980	Goldsboro, NC	0.8530
	Wayne, NC	
2985	Grand Forks, ND–MN	0.8836
	Polk, MN	
	Grand Forks, ND	
2995	Grand Junction, CO	0.8279
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI	0.9971
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	0.8872
	Cascade, MT	
3060	Greeley, CO	0.9457
	Weld, CO	
3080	Green Bay, WI	0.9156
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC	0.9547
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150	Greenville, NC	0.9434
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC	0.9222
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	1.0183
	Washington, MD	
3200	Hamilton-Middletown, OH	0.9233
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA	1.0060
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.1831
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.7261
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC	0.8904
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.1510
	Honolulu, HI	
3350	Houma, LA	
	Lafourche, LA	
	Terrebonne, LA	0.8197
3360	Houston, TX	0.9889
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV–KY–OH	0.9647
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.8385
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	0.9831
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	0.9481
	Johnson, IA	
3520	Jackson, MI	0.9224
	Jackson, MI	
3560	Jackson, MS	0.8292
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.8560
	Madison, TN	
	Chester, TN	
3600	Jacksonville, FL	0.8900
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.7556
	Onslow, NC	
3610	Jamestown, NY	0.7660
	Chautauqua, NY	
3620	Janesville-Beloit, WI	0.9051
	Rock, WI	
3640	Jersey City, NJ	1.1598
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA	0.8773
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.8619
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.7407
	Craighead, AR	
3710	Joplin, MO	0.7873
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI	1.1331
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	0.9418
	Kankakee, IL	
3760	Kansas City, KS–MO	0.9645
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	0.9129
	Kenosha, WI	
3810	Killeen-Temple, TX	1.0109
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.8918
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	0.9275
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	0.8913
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.8255
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.8841
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.7674
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL	0.8939
	Polk, FL	
4000	Lancaster, PA	0.9561
	Lancaster, PA	
4040	Lansing-East Lansing, MI	1.0090
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.7343
	Webb, TX	
4100	Las Cruces, NM	0.8870
	Dona Ana, NM	
4120	Las Vegas, NV–AZ	1.1413
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150	Lawrence, KS	0.8655
	Douglas, KS	
4200	Lawton, OK	0.8697
	Comanche, OK	
4243	Lewiston-Auburn, ME	0.9149
	Androscoggin, ME	
4280	Lexington, KY	0.8506
	Bourbon, KY	
	Clark, KY	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	0.8949
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	0.9303
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR	0.8503
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	0.8698
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA	1.2085
	Los Angeles, CA	
4520	Louisville, KY–IN	0.9093
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.8496
	Lubbock, TX	
4640	Lynchburg, VA	0.8900
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.8980
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	1.0018
	Dane, WI	
4800	Mansfield, OH	0.8534
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	0.4401
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX	0.8893
	Hidalgo, TX	
4890	Medford-Ashland, OR	1.0020
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL	0.9216
	Brevard, Fl	
4920	Memphis, TN–AR–MS	0.8361
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	1.0033
	Merced, CA	
5000	Miami, FL	1.0017
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ	1.1152
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI	0.9356
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI	1.0854
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9189
	Missoula, MT	
5160	Mobile, AL	0.8377
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.0346
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.1317
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.8219
	Ouachita, LA	
5240	Montgomery, AL	0.7821
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	0.9414
	Delaware, IN	
5330	Myrtle Beach, SC	0.8179
	Horry, SC	
5345	Naples, FL	1.0177
	Collier, FL	
5360	Nashville, TN	0.9480
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.3593
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2328
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT	1.1616
	New London, CT	
5560	New Orleans, LA	0.9310
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.4461
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.1866
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
	Newburgh, NY–PA	1.1155
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VA–NC	0.8275
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.4993
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	0.9152
	Marion, FL	
5800	Odessa-Midland, TX	0.8656
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK	0.8708
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.1522
	Thurston, WA	
5920	Omaha, NE–IA	0.9972
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
5945	Orange County, CA	1.1522
	Orange, CA	
5960	Orlando, FL	0.9813
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.7771
	Daviess, KY	
6015	Panama City, FL	0.8507
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH	0.8016
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8246
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.8058
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ	1.1370
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	0.9591
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.7912
	Jefferson, AR	
6280	Pittsburgh, PA	0.9789
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0819
	Berkshire, MA	
6340	Pocatello, ID	0.8792
	Bannock, ID	
6360	Ponce, PR	0.4788
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	0.9561
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA	1.1178
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI	1.0801
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	0.9885
	Utah, UT	
6560	Pueblo, CO	0.8712
	Pueblo, CO	
6580	Punta Gorda, FL	0.9031
	Charlotte, FL	
6600	Racine, WI	0.9130
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC	0.9812
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.8208
	Pennington, SD	
6680	Reading, PA	0.9234
	Berks, PA	
6690	Redding, CA	1.1858
	Shasta, CA	
6720	Reno, NV	1.1095
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA	1.0287
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA	0.9211
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA	1.0757
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	0.8509
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.1698
	Olmsted, MN	
6840	Rochester, NY	0.9657
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.8615
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.9012
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.1962
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI	0.9487
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	0.9586
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.9889
	Andrew, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	0.9151
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
7080	Salem, OR	0.9904
	Marion, OR	
	Polk, OR0	
7120	Salinas, CA	1.5142
	Monterey, CA	
7160	Salt Lake City-Ogden, UT	0.9398
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.7646
	Tom Green, TX	
7240	San Antonio, TX	0.8100
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.2265
	San Diego, CA	
7360	San Francisco, CA	1.3957
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.3827
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.4623
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso Robles, CA	1.1264
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.1194
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA	1.3981
	Santa Cruz, CA	
7490	Santa Fe, NM	0.9652
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3597
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	0.9532
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	1.0060
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton—Wilkes-Barre—Hazleton, PA	0.8299
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA	1.1526
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.8847
	Mercer, PA	
7620	Sheboygan, WI	0.8225
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.8570
	Grayson, TX	
7680	Shreveport-Bossier City, LA	0.9386
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA–NE	0.8481
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.8912
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	0.9859
	St. Joseph, IN	0.9859
7840	Spokane, WA	1.0928
	Spokane, WA	
7880	Springfield, IL	0.8720
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.8071
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.0990
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	0.9449
	Centre, PA	
8080	Steubenville-Weirton, OH–WV	0.8428
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.1075
	San Joaquin, CA	
8140	Sumter, SC	0.8127
	Sumter, SC	
8160	Syracuse, NY	0.9400
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.0380
	Pierce, WA	
8240	Tallahassee, FL	0.8449
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL	0.9113
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.8991
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX	0.8506
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	0.9991
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.9812
	Shawnee, KS	
8480	Trenton, NJ	1.0509
	Mercer, NJ	
8520	Tucson, AZ	0.9028
	Pima, AZ	
8560	Tulsa, OK	0.8463
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.7641
	Tuscaloosa, AL	
8640	Tyler, TX	0.8818
	Smith, TX	
8680	Utica-Rome, NY	0.8418
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA	1.3413
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1014
	Ventura, CA	
8750	Victoria, TX	0.8381
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ	1.0440
	Cumberland, NJ	
8780	Visalia-Tulare-Porterville, CA	1.0083
	Tulare, CA	
8800	Waco, TX	0.8371
	McLennan, TX	
8840	Washington, DC–MD–VA–WV	1.0807
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA	0.7958
	Black Hawk, IA	
8940	Wausau, WI	0.9733
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL	1.0219
	Palm Beach, FL	
9000	Wheeling, WV–OH	0.7627
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	0.8898
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.7830
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	0.8556
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD	1.1868
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	0.9343
	New Hanover, NC	
	Brunswick, NC	
9260	Yakima, WA	1.0318
	Yakima, WA	
9270	Yolo, CA	1.1233
	Yolo, CA	
9280	York, PA	0.9410
	York, PA	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
9320	Youngstown-Warren, OH	0.9815
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.0865
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	1.0058
	Yuma, AZ	

e. Abt Associates Case Mix Research Project Data

Under the Abt Associates case-mix research project (Contract Number 500–96–0003/TO2), data necessary for developing a system of case-mix groups were collected and assembled into an analytic file. The basic data components needed for case-mix system development were (1) a reliable measure of resource cost for a defined unit of time and (2) reliable measures of patient characteristics along with several utilization variables. The patient and utilization variables were to be tested for their usefulness as predictors of resource cost. The defined unit of time was the 60-day payment episode, which was simulated from dates appearing on Medicare claims and primary data (visit logs) collected as part of the Abt Associates research. A total of 22,120 records for simulated 60-day episodes from more than 17,000 patients in the study sample comprise the file. A random subsample of episode records from this file was used for case-mix system development and refinement. The remaining records were used to validate the predictive accuracy of the recommended case-mix system. (A preliminary sample of 4,303 records available early in the study was used for most of the period during which Abt Associates conducted case-mix system development activities.)

After the case-mix system development phase was completed, the same file—now with a case-mix group assigned to every 60-day episode record—was combined with data on provider characteristics and national episode counts to generate a set of sample weights for the Abt Associates episode records. The provider characteristics data came from the On-line Survey and Certification System (OSCAR) Provider of Service file, and the national episode counts came from the episode claims file described in subsection c. above. In addition to the sample weights, the area hospital wage index applicable to each 60-day episode record was merged onto the sample of episodes.

The sample weights were designed to make the sample episodes with their case-mix group assignments represent 100 percent of the payment episodes nationally in 1997. Weights were developed by case-mix group for up to 32 stratification cells defined from an agency auspices variable, urban/rural location, and regional location. Weights were computed from the ratio of 1997 episodes in the stratum to episodes in the sample from that stratum. Weights for initial 60-day episodes were derived separately from weights for noninitial 60-day episodes.

After weighting the data, we estimated the average resource cost by case-mix group, as well as the overall average resource cost. Ratios formed from these averages provide case-mix relative weights. The file's sample weights also permit national estimates of case-mix group frequencies for 60-day episodes in 1997. Thus, the sample weights in conjunction with the case-mix group assignment for each record in the sample support two procedures underlying the rate setting methodology. One is the computation of the case-mix relative weights shown in Table 9. This computation procedure is described in Section II.C.3. The second procedure is the computation of the standardization factor (which also relies on the merged area hospital wage index). For a description of the standardization factor computation, see section II.A.3.d.

The remainder of this section provides a summary of the study sample and file construction activities leading to the Abt Associates analytic file comprising 22,120 simulated 60-day episodes. More detailed information on these aspects of the study is found in section II.C below.

Ninety agencies were selected to provide the patient sample—a cohort of all patients newly admitted between October 1997 and April 1998. Agencies were drawn from eight States (Arkansas, California, Florida, Illinois, Massachusetts, Pennsylvania, Texas, and Wisconsin) chosen to be representative of four census geographic regions (northeast, north central, south, and west). Within these States, agencies were selected from the four major auspices types (freestanding for-profit, freestanding voluntary/private nonprofit, hospital-based, and government) and both urban and rural areas. A final selection criterion was the practice pattern of the agencies, measured in terms of their visit volume relative to other agencies in the region.

Primary data sources for the study came from patient assessments and visit logs. Secondary data came from Medicare claims and several other administrative and economic data bases.

The assessment instrument consisted of OASIS data items supplemented by approximately 40 additional assessment items. Using the visit logs, agencies in the study collected data on every home health visit to members of the cohort. The visit logs provide the study's fundamental measure of resource use, the visit time, which is converted into a standardized resource cost using Bureau of Labor Statistics hourly wage data. Previous research on case mix generally used a measure of resource use based on the count of visits. The case-mix study measured time spent on visits rather than visit counts themselves to provide more reliable information for forming case-mix groups than did previous research.

Medicare claims for the 6-month cohort were linked to the patient characteristics data (OASIS and other assessment items) and visit log data to verify membership in the patient cohort, to provide utilization measures, and to simulate 60-day episodes, using the from-and thru-dates on the claims. Assessments were linked to an episode in the simulation file only if the assessment was conducted within 14 days of the start of the episode. Iterative matching algorithms, and intensive manual review of potential matches, were used to match assessments and visit logs to the claims records.

In order to estimate resource use for each 60-day period of care, decision rules for allocating claims and visit logs by discipline to 60-day "windows" of time, or episodes, were developed.

After resources were calculated for all simulated payment segments, analysis of the data revealed the presence of outliers in mean minutes per visit by discipline within payment segment. Outlier values were replaced with agency-level mean visit lengths by home health discipline. The application of the various linkage rules resulted in the final analytic file consisting of 22,120 60-day episodes of care. Further information on these data procedures is provided below in Section II.C. For complete details, see Abt Associates, Inc., Second Interim Report, August 1999.

3. Methodology Used for the Calculation of the 60-Day Episode Payment Amount

The methodology used to compute the standardized national 60-day episode payment rates was a multistep process combining each of the data sources described above. As stated above, section 1895(b)(3)(A)(i) of the Act, requires—(1) the computation of a standard prospective payment amount that includes all costs of home health services covered and paid for on a reasonable-cost basis be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts to be standardized to eliminate the effects of case mix and wage levels among HHAs. Section 5101(c)(1) of the OCESAA amends section 1895(b)(3)(A)(ii) of the Act, to require the standard prospective payment amounts be budget neutral to the amounts expended under the current interim payment system with the limits reduced by 15 percent at the inception of the PPS on October 1, 2000. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost reporting periods contained in our database and September 30, 2001.

With data described above we calculated the standard average prospective payment amount for the 60-day episode using the following formula:

The nonstandardized average prospective payment amount for a 60-day episode is calculated by—

(1) multiplying the national mean cost per visit updated for inflation for each of the six disciplines (skilled nursing, physical therapy, occupational therapy, speech-language pathology services, medical social services, and home health aide services) in a 60-day episode by (2) the national mean utilization for each of the six disciplines in a 60-day episode summed in the aggregate. Added to this amount are amounts for (1) nonroutine medical supplies paid on a reasonable-cost basis under a home health plan of care, (2) possible unbundled nonroutine medical supplies billed under Part B that will be included under the PPS rate, and (3) an OASIS adjustment to pay HHAs for estimated ongoing OASIS assessment reporting costs.

Nonroutine Medical Supplies

The per-episode nonroutine medical supply amounts, paid on a reasonable cost basis under a home health plan of care, were calculated by summing the nonroutine medical supply costs for all of the providers in the audited cost report sample weighted to represent the national population and updated to FY 2001. That total was divided by the number of episodes for the providers in the audited cost report sample weighted to represent the national population and updated to FY 2001.

The per-episode possible unbundled nonroutine medical supply amounts billed under Part B included in the PPS rate were calculated by summing the allowed charges for the 199 HCPC codes (described in section II.A.2.c.) in calendar year 1997 for beneficiaries under a home health plan of care. That total was divided by the total number of episodes in calendar year 1997 from the episode database.

Ongoing OASIS Cost Adjustments

In the August 11, 1998 IPS Per-Visit and Per-Beneficiary Limitations notice (63 FR 42912) HCFA discussed a proposed adjustment for HHAs for the agency collection of the Outcome Assessment Information Set (OASIS) Data. Collecting and reporting OASIS is a condition of Medicare participation for HHAs. As we stated in the August 11, 1998 IPS notice, we believe there will be no permanent ongoing incremental costs associated with OASIS collection. Additionally, we believe that there will be no further one-time, start-up, OASIS reporting costs beyond those recognized at the inception of OASIS collection under IPS. However, we do believe that ongoing costs are associated with reporting OASIS data. Our proposed adjustment for the ongoing costs associated with OASIS reporting is based on information from the ongoing Medicare Quality and Improvement Demonstration, as well as the OASIS demonstration data. We assume, for purposes of deriving the OASIS proposed adjustment, that the typical HHA has 486 admissions and 30,000 visits per year and an 18 person staff. OASIS reporting adjustments are unlike the one-time OASIS collection adjustments published in the August 11, 1998 **Federal Register** which were based only on the number of skilled visits. These reporting adjustments are based on total Medicare visits. The following are HCFA's estimates of costs a typical HHA will incur for OASIS reporting which form the basis of the per-visit OASIS reporting adjustment and the per-episode OASIS adjustment. The first descriptive chart below shows the base OASIS reporting costs for an HHA which include the following: audits to ensure data accuracy; data entry, editing and auditing; supplies; and telephone costs. We estimate these ongoing OASIS costs to total $.101228 per visit. The second descriptive chart shows the OASIS personal computer costs for those HHAs that are unable to run OASIS because they lack the requisite hardware needed to support automation of the assessment tool. We estimate this percentage to be 50 percent (64 FR 3759). These costs consist of the depreciation of a personal computer and printer. For years one through three, HHAs are able to depreciate both their personal computer and printer. We estimate this OASIS cost to be $.026778 per visit. For years four and five, HHAs can only depreciate their printer. We estimate this OASIS cost to be $.004 per visit. In order for HHAs to keep pace with the ever evolving computing standards, to include enhancements to computer hardware and software, as well as future versions of Haven's OASIS software, this process of the depreciation of computer hardware is one that would repeat itself every five years. In that vain, a yearly average computer hardware depreciation adjustment was computed to yield an OASIS adjustment for each of the five years. This was accomplished by multiplying the first three years' computer hardware depreciation adjustment of $.026778 by 3, multiplying the following two years' computer hardware depreciation adjustment of $.004 by 2, summing those two factors, and dividing that sum by the total number of depreciable years(5) to get a yearly average for the computer hardware depreciation adjustment of $.017667. This yearly average for computer hardware depreciation adjustments ($.017667), when added to the base OASIS adjustment ($.101228), results in a total OASIS adjustment of $.118895 rounded to $.12 per visit.

For purposes of calculating the ongoing OASIS adjustment for the 60-day episode payment, we multiplied the average number of visits per 60-day episode (36 visits) by the total rounded per-visit OASIS adjustment ($.12 per visit). The calculation resulted in a per-episode OASIS adjustment of $4.32 for each 60-day episode under HHA PPS. The home health prospective payment calculation is provided in Table 5.

We calculated the ongoing OASIS adjustment for the low utilization payment adjustments by adding the total rounded per-visit OASIS adjustment ($.12 per visit) to the national standardized average cost per visit by discipline for each of the four or fewer visits provided in the episode. The low utilization payment adjustment calculation is provided in Table 6.

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Continuous Oasis Adjustment: base (for data reporting)

Type of Adjustment	Source	Formula	Cost per Visit
Audits to ensure data accuracy	University of Colorado (CHPR) BLS Occupational Employment Survey (1996) 1994 & 1995 HCFA Cost Report Data	(((((10 records per month * 12 months)) * .25 hrs) * $25.42) / 30,000 avg visits)...professional staff	$.02542
Data entry, editing, & auditing	University of Colorado(CHPR) Estimated average salary for clerical staff 1994 & 1995 HCFA Cost Report Data	((((8.5 hrs per month * 12) + (5 hrs per month * 12) + (1 hr per month * 12) + (5 hrs per year)) * $10 per hour) / 30,000 avg visits)	$.059667
Supplies	HCFA-3006-IFC OASIS Reporting (64FR3748) 1994 & 1995 HCFA Cost Report Data	$250 avg cost / 30,000 avg visits	$.008333
Ongoing telephone costs	Bell Atlantic 1994 & 1995 HCFA Cost Report Data (for average size HHA)	(((($13.14 per month, per line) + ($ 6.38 per month subscriber fee)) * 12 months) / 30,000 avg visits)	$.007808
TOTAL			**$.101228**

Continuous Oasis Adjustment: 5 year depreciation averaging (for data reporting)

Type of Adjustment	Source	Formula	Cost per Visit
Computer Hardware:	American Hospital Association's...... Health Data & Coding Standards Group's "Estimated Useful Lives of Depreciable Hospital Assets" (revised 1998)		
Computer	Average cost for PC with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data	$2050 computer depreciated over 3 years.... (($2050/3) / 30,000 avg visits	$.022778
Printer	Average cost for printer with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data	$600 printer cost depreciated over 5 years... (($600/5) / 30,000 avg visits	$.004
	First 3 Year's Adjustment	***Note: computer & printer depreciation**	**$.026778**
	Next 2 Year's Adjustment	***Note: printer ONLY depreciation**	**$.004**
	5-Year Average Adjustment	**((($.026777 * 3) + ($.004 * 2)) / 5)**	**$.017667**

Personal Computer Minimal Specifications

Description	Minimal Specifications
Warranty	Minimum 3 year
Processor	Pentium II Processor running at 400Mhz w/512 Cache
Operating System	32-bit operating system with Graphical User Interface
Hard Drive	3 Gb Hard drive minimum
Memory	32Mb minimum
CD ROM	14-32X, IDE, integrated sound
Floppy Drive	3.5" 1.44Mb diskette drive
Fax Modem	56K v.90 Data/Fax
Monitor	17" Color Monitor
Graphics	8Mb AGP
Mouse	Wheel mouse
Keyboard	104 key ergonomic keyboard
Anti Virus	Anti Virus Software
Management Software	System management client software/license
Printer	600 dpi Laser printer with cable

Oasis Adjustment: "One-Time" (for data reporting)

Type of Adjustment	Source	Formula	Cost per Visit
Training of Data Entry Staff	BLS Employer Provided Training(Hrs of Training{1995} & an estimated average salary for clerical personnel 1994 & 1995 HCFA Cost Report Data	(24 hrs * $10) / 30,000 avg visits	$.008
Telephone installation	Bell Atlantic Bell Atlantic 1994 & 1995 HCFA Cost Report Data	($28 processing fee) + ($40 per line connect fee)/ 30,000 avg visits	$.002266
TOTAL One Time Adjustment			**$.010266**

The nonstandardized average prospective payment amount must be standardized to eliminate the effects of case mix and wage levels among HHAs. The standard average prospective payment amount for the 60-day episode equals the nonstandardized average prospective payment amount for a 60-day episode divided by the standardization factor. The standardization factor is discussed in section II.A.3.d. of this regulation. Once the payment rate is standardized, that amount is multiplied by the budget-neutrality factor. The budget-neutrality factor is discussed in section II.A.3.e. of this regulation. The standardized budget-neutral amount is divided by 1.05 to account for outlier payments capped at 5 percent of total estimated outlays under PPS.

The actual national 60-day episode payment amount that will be paid to HHAs incorporates the standard average prospective payment amount adjusted to account for case mix and wage index. All of the elements incorporated into the national 60-day episode payment amounts (the standard average prospective payment amount adjusted to account for case mix and wage index) must be budget neutral to the interim payment system limitation amounts reduced by 15 percent. Table 5 illustrates the home health prospective payment calculation.

TABLE 5- HOME HEALTH PROSPECTIVE PAYMENT CALCULATION

Home Health Discipline Type	Total Costs for all providers in the PPS audit sample (weighted, updated to FY 2001, and visit limit adjusted)	Total Visits for all providers in the PPS audit sample (weighted)	Average Cost per Visit from the PPS audit sample	Average number of visits for episodes with >4 visits from the CY 1997 Episode File	Home Health Prospective Payment Rate
Home Health Aide Services	5,825,520,715	139,826,559	$41.66	17.59	$732.80
Medical Social Services	446,102,371	2,896,223	$154.03	.36	$55.45
Occupational Therapy. Services	435,117,642	4,192,964	$103.79	.48	$49.82
Physical Therapy Services	2,418,400,914	23,352,076	$103.56	2.74	$283.75
Skilled Nursing Services	11,945,901,801	126,256,624	$94.62	14.69	$1389.97
Speech Pathology Services	220,671,286	1,954,344	$112.91	.18	$20.32
Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001					$2532.11
Average Cost per Episode for Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report					$52.78
Average Payment per Episode for Non Routine Medical Supplies possibly unbundled and billed separately to Part B					$10.35
Average Payment per episode for Ongoing OASIS Adjustment Costs					$4.32
Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001 Plus Medical Supplies & Ongoing OASIS					$2,599.56

Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001	Standardization Factor for Wage Index and Case Mix /1	Budget Neutrality Factor /2	Outlier Adjustment Factor 3/	Final Standardized and Budget Neutral Prospective Payment Amount Per 60-Day Episode For FY 2001
$2,599.56	.95502	.78578	1.05	$2037.04

/1 (based on ABT data validated using 100% episode wage index standardization factor)

/2 (budget neutral to current IPS with 15% reduction in limits)

/3 (Adjustment to PPS rate to account for 5% of total payments to outlier episodes)

Calculation for Non Routine Medical Supplies Per Episode Amount included in the Home Health Benefit

Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report 1/	Total number of episodes for those providers in the audited cost report sample 2/	Average Cost per Episode for Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report
$419,729,371.85	7,952,692	$52.78

1/Source: Audited Cost Report Data from the audit sample updated to FY 2001 and weighted to National Totals

2/Source: Calendar Year 1997 Episode file

Calculation for Non Routine Medical Supplies Per Episode Amount Possibly Unbundled and Billed under Part B

Non Routine Medical Supplies possibly unbundled and billed separately to Part B and reimbursed on the Fee Schedule 1/	Total number of episodes for all providers in the calendar year 1997 file adjusted for estimated total episodes in FY 2001 2/	Average Payment per Episode for Non Routine Medical Supplies possibly unbundled and billed separately to Part B
$92,958,370.81	8,985,000	$10.35

1/Source: 1997 National Claims History Part B file extract for 199 codes matched to the 60-Day episode file by beneficiary and dates of service

2/Source: Calendar Year 1997 Episode file

Calculation for Ongoing OASIS Adjustment Cost Per Episode

Average Cost per Visit for Ongoing OASIS Adjustment Costs 1/	Average number of Visits per Episode for Episodes with Greater than 4 Visits 2/	Average Payment per Episode for Ongoing OASIS Adjustment Costs
$0.12	36.04	$4.32

1/See Section II.A.3 for a description of the average cost per visit

2/Source: Calendar Year 1997 Episode file

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Each component of the methodology is discussed below. The methodology set forth in this rule may be refined based on the accumulation of national OASIS data reported to us. We are specifically soliciting comments on the impact on HHAs to financially comply with the methodology set forth in this section.

a. Cost Data—60-Day Episode Payment

The audited cost data is discussed above in detail in section II.A.2.a. of this proposed regulation. The data source used in developing the national mean cost per visit for a 60-day episode is the audited cost report sample database. We calculated the national mean cost per visit for each of the six disciplines (skilled nursing, physical therapy, occupational therapy, speech-language pathology services, medical social services, and home health aide services) used in a 60-day episode. The data source in developing the average cost per episode for nonroutine medical supplies paid on a reasonable-cost basis under a home health plan of care is the audited cost report sample database also discussed in section II.A.2.a. and III of this proposed regulation.

b. Utilization Data—60-Day Episode Payment

As discussed above, developing the national mean number of visits for each of the six disciplines in a 60-day episode resulted from the thorough analysis of the national claims history. See section II.A.2.c. of this regulation for a detailed description of the utilization data analysis.

c. Updating the Data

The HHA market basket index reflects changes over time in the prices of an appropriate mix of goods and services included in covered HHA services. The HHA market basket index is used to develop the national 60-day episode payment rates. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost reporting periods contained in our database and September 30, 2001. For fiscal year 2002 or 2003, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act require the standard prospective payment amounts be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires the rates to be increased by the applicable home health market basket index change. A complete discussion concerning the design and application of the HHA market basket index and the factors used in developing the 60-day episode payment rates is discussed in section II.A.2.b. of this regulation.

d. Standardization Factor

Section 1895(b)(3)(A)(i) of the Act requires that the prospective payment amounts be standardized to eliminate the effects of variation in wage levels and case mix among HHAs. The objective of standardization is to ensure that the wage-index and case-mix adjustments to the episode payment amount do not alter the aggregate payments that would occur in the absence of these adjustments. All the estimates described in this section are based on episodes with more than four visits since only those episodes will be paid on a per-episode basis.

Several types of information are required for standardization. To account for wage differences, the proportion of labor and nonlabor components of HHA costs must be identified. These proportions are based on the relative importance of the different components of the HHA market basket index. As calculated, the labor-related portion of cost is 77 percent and the nonlabor-related portion is 23 percent. Wage differences are measured using the hospital wage index. In standardizing the episode payment amount, we used the FY 1999 hospital wage index, which is based on 1995 hospital wage data. For application of the wage index, the statute allows us to use the service area or any other area we specify. To be consistent with the current interim payment system, the wage index value that will be applied to the labor portion of the episode amount will be the appropriate wage index for the geographic area where the beneficiary received home health services.

To account for case-mix differences, it is necessary to have information on the distribution of 60-day home health episodes among the 80 groups of the HHRG case-mix system. For this proposed rule, the only available nationally representative sample of Medicare home health episodes with information on HHRG case mix is the Abt data set (described in section II.C. of the preamble) that was used to develop the HHRG case-mix classification system. As national OASIS data become available, we will develop a national data set that may enable us to refine our standardization estimate for the final rule. Also required for standardization is the set of HHRG relative weights that reflect the resource intensity of the average episode in each HHRG group relative to the overall average episode. A detailed description of the HHRG relative weights appears in section II.C. of this regulation.

Ideally, standardization would be estimated using nationally representative data with information on the joint variation in case-mix and wage-index values. Currently, national data on wage-index variation are only available from the episode data set constructed from 1997 Medicare home health claims. However, we are not able to classify these data by case mix using the HHRGs. Only the Abt data set currently provides information on both wage and case-mix variation. However, because they are a sample, the Abt data provide less information on wage variation than the claims episode data set.

In calculating standardization factors using the Abt sample, population weights that reflect the number of episodes in the national population represented by each sample episode were used in place of 1.0 for each episode to obtain the best population estimate from the sample. These weights take account of the region, agency type, and urban/rural characteristics used to stratify the Abt sample as well as the case-mix distribution among HHRGs in the Abt data. The national episode data derived from 1997 home health claims were the source of the population estimates of episodes by region and agency characteristics. These weights should not be confused with the audit sample weights described in section II.A.2.a. The Abt sample weights are described in detail in Appendix F of Abt Associates, Inc. *Case-Mix Adjustment for a National Home Health Prospective Payment System*. Second Interim Report, August 1999.

To make full use of the available data, we developed the following strategy for standardizing the episode amount: First, we estimated two standardization factors using the Abt data set. One accounts only for variation in wage-index values; the other accounts for both case-mix and wage-index variation. The Abt standardization factors differ by about .006 (.96093 vs. .96667). Next, the wage-only standardization factor from the Abt data was compared to the wage-only standardization factor computed from the national claims episode data (.96093 vs. .94935). These standardization factors differ by about .012. These three estimates are quite consistent with one another. However, because the wage-only standardization factor based on the national claims data provides the most reliable estimate of the effects of wage variation, we decided to use it (.94935) after applying a small adjustment for the combined effects of wage and case-mix variation. Therefore, we multiplied .94935 by the ratio of the two Abt estimates (.9667/.96093=1.00597) to obtain a standardization factor of .95502.

Each of the three estimates of the standardization factor was calculated in the following manner: For each episode (or in the case of the Abt data, the number of episodes represented by each sample episode), the appropriate wage-index value was multiplied by the labor-related proportion of cost (.77) and added to the nonlabor-related proportion (.23) to obtain a wage-adjustment factor. In turn, the wage-adjustment factor was multiplied by the HHRG relative weight. The product of the wage and case-mix factors was summed over all episodes in the database, yielding a case-mix and wage-adjusted episode sum. Dividing the case-mix and wage-adjusted episode sum by the total number of episodes (the unadjusted episode sum) yields the standardization factor, a ratio that indicates how the combined effects of wage and case-mix variation impact aggregate payments. If the standardization factor is greater than one, the unstandardized episode cost must be reduced to account for the aggregate payment effect of the case-mix and wage-index payment adjustments. If the factor is less than one, then the unstandardized episode cost must be increased to accomplish the same objective. The standardized episode amount is equal to the unstandardized episode cost divided by the standardization factor. Note that all three of our estimates were less than one, which implies that the standardization factor increases the standard episode amount. Our final standardization factor produces an increase of about 4.7 percent.

The OASIS data should give us better information about the national distribution of episodes across the HHRG categories. As these data are collected and reported, we will examine them to determine whether refinements to the current estimate are needed.

e. Budget-Neutrality Factor

Section 1895(b)(3)(A)(i) of the Act requires that the standardized prospective payment amounts be computed in a budget-neutral manner so that the total amounts payable under the PPS are equal to the amounts that would have been made if the PPS were not in effect (that is, payments were made under the interim payment system) but if the per-visit and per-beneficiary limits had been reduced by 15 percent. The BBA had established budget-neutrality with respect to expenditures that would have been made under the interim payment system for FY 2000 (that is, beginning October 1, 1999), and section 5101(c) of OCESAA changed the date for the budget-neutrality calculation to be expenditures that would have been made under the interim payment system for FY 2001 (that is, beginning October 1, 2000), as if the 15 percent reduction in per-visit and per-beneficiary limits had taken place. Before calculating home health PPS rates in 2001, the IPS rates are reduced by 15 percent. Then, the total amounts payable under the PPS are calculated in a budget neutral fashion to be what would have been expended under the current interim payment system with the limits reduced by 15 percent at the inception of the PPS on October 1, 2000. The reduction in the IPS limits will occur even if the PPS is not implemented by the October 1, 2000 statutory deadline.

To determine the adjustment factor, we determined what would have been paid under a prospective payment system having an episode payment of the non-standardized payment rate described earlier, which is $2,599.56. Under this system, in cases where a beneficiary receives four or fewer visits in an episode, we plan to reimburse at the per-visit rates described in low utilization payment adjustment methodology section of this regulation. We assumed that 5 percent of episodes would be reimbursed under this method. We determined the average reimbursement in these cases would be $348.72. This amount was determined by taking the difference between the non-standardized episode payment without low utilization episodes, $2,599.56 and the non-standardized payment that included such episodes in the average payment, $2,250.84.

In determining how many episodes there will be in fiscal year 2001, results from the analysis of the calendar year 1997 episode file were applied to the actual number of visits incurred in calendar year 1997. The most accurate estimate of incurred visits for 1997 is 281.6 million. The number of visits per episode resulting from these visits would have been 31.34, resulting in 8.985 million episodes. Although the number of visits in total has declined since 1997, there is nothing to indicate whether this would affect the number of 60-day episodes in a year. We are projecting that the total number of episodes will be the same in fiscal year 2001 as it was for 1997, 8.985 million. It is estimated that 95 percent of these episodes will be receiving an average payment of $2,599.56 and 5 percent will receive an average payment of $348.72. This would result in incurred fee-for-service home health payments of (8.985*.95*2599.56)+(8.985*.05*348.72), equaling $22,346 million for fiscal year 2001.

The current projection of incurred fee-for-service home health expenditures for FY 2001 under IPS with a 15 percent reduction in the per-visit and beneficiary cap limits is $17,466 million. We add to this the projected costs of the non-routine medical supplies under PPS that may have otherwise been unbundled under the interim payment system, which is $93 million. The budget neutrality factor is then calculated by dividing the sum of (1) our current projection for fee-for-service incurred home health expenditures and (2) the projected non-routine medical supplies currently paid by fee schedule by the projected aggregate episode payments: (17,466+93)/22,346=0.78578. The resulting budget neutrality factor is 0.78578.

4. Methodology Used for Low-Utilization Payments

As discussed above, section 1895(b)(1) of the Act requires the development of the definition of the unit of payment or episode to take into consideration the number, type, duration, mix, and cost of visits provided within the unit of payment. As a result of our analysis, we determined the need to also recognize a low-utilization payment under HHA PPS. Low-utilization payment would reduce the 60-day episode payments or the PEPA to those HHAs that provide minimal services to patients during a 60-day episode.

Payments for low-utilization episodes will be made on a per-visit basis using the cost-per-visit rates by discipline determined from the audited cost report sample for calculation of the standard episode amount. Included in these per-visit amounts are amounts for (1) nonroutine medical supplies paid under a home health plan of care, (2) nonroutine medical supplies possibly unbundled to Part B, and (3) a per visit ongoing OASIS reporting adjustment as discussed above in section II.A.3 of this regulation. These per-visit "prices" would be updated and adjusted for budget neutrality in the same manner as the standard episode amount. For low-utilization payments, they would be adjusted by the wage index in the same manner as the standard episode amount. However, the low-utilization payments are not case mix adjusted. The standardization factor used to adjust the LUPAs was calculated using national claims data for episodes containing four or fewer visits. This standardization factor includes adjustments only for the wage index. The "savings" from the reduced episode payments would be redistributed to all episodes.

Below is Table 6, which presents the home health low-utilization provider adjustment payment calculation.

TABLE 6.—HOME HEALTH LOW-UTILIZATION PROVIDER ADJUSTMENT PAYMENT CALCULATION

Home health discipline type	Average cost per visit from the PPS audit sample	Average cost per visit for non routine medical supplies reported as costs on the cost report	Average cost per visit for non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule	Average cost per visit for ongoing OASIS adjustment costs[4]	Standardization factor for wage index[1]	Budget neutrality factor[2]	Outlier adjustment factor[3]	Final wage standardized and budget neutral per visit payment amounts per 60-day episode for FY 2001
Home Health Aide Services	$41.66	$1.41	$0.35	$0.12	.94622	.78578	1.05	$34.44
Medical Social Services	154.03	1.41	0.35	0.12	.94622	.78578	1.05	123.31
Occupational Therapy. Services	103.79	1.41	0.35	0.12	.94622	.78578	1.05	83.57
Physical Therapy Services	103.56	1.41	0.35	0.12	.94622	.78578	1.05	83.39
Skilled Nursing Services	94.62	1.41	0.35	0.12	.94622	.78578	1.05	76.32
Speech Pathology Services	112.91	1.41	0.35	0.12	.94622	.78578	1.05	90.79

[1] Based on 100% episode for episodes with 4 or fewer visits and wage index only standardization factor.
[2] Budget neutral to current IPS with 15% reduction in limits.
[3] Adjustment to PPS rate to account for 5% of total payments to outlier episodes.
[4] See Section II.A.3 for description of calculation of OASIS Adjustment cost.

CALCULATION FOR NONROUTINE MEDICAL SUPPLIES PER-VISIT AMOUNT INCLUDED IN THE HOME HEALTH BENEFIT

Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report[1]	$419,729,371.85
Total number of visits for those providers in the audited cost report sample[2]	298,478,790
Average Cost per visits for Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report	$1.41

[1] Source: Audited Cost Report Data from the audit sample updated to FY 2001 and weighted to National Totals.
[2] Source: Calendar Year 1997 Episode file.

CALCULATION FOR NONROUTINE MEDICAL SUPPLIES PER-VISIT AMOUNT POSSIBLY UNBUNDLED AND BILLED UNDER PART B

Non Routine Medical Supplies possibly unbundled and billed separated to Part B and reimbursed on the Fee Schedule[1]	$92,958,370.81
Total number of visits for all providers in the calendar year 1997 file adjusted for estimated total episodes in FY 2001[2]	263,144,000
Average Payment per visits for Non Routine Medical Supplies possibly unbundled and billed separately to Part B	$0.35

[1] Source: 1997 National Claims History Part B file extract for 199 codes matched to the 60-day episode file by beneficiary and dates of service.
[2] Calendar Year 1997 Episode file.

5. Methodology Used for Outlier Payments

As discussed above, while we are not statutorily required to make provision for outlier payments, we are proposing outlier payments. Outlier payments are payments made in addition to regular 60-day case-mix-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments would be made for episodes whose estimated cost exceeds a threshold amount for each HHRG. The outlier threshold for each HHRG is defined as the 60-day episode payment for the HHRG plus a fixed dollar loss amount that is the same for all case-mix groups. Outlier payments can be made for 60-day episode payments that reflect a PEP adjustment or SCIC adjustment. The PEP adjustment results in a truncated episode period and a SCIC adjustment results in a total of two proportional payments over a 60-day episode, but these periods could still incur unusually large costs. The outlier threshold for the PEP adjustment is the PEP adjustment plus a fixed dollar loss. The outlier threshold for the SCIC adjustment equals the total SCIC payment plus a fixed dollar loss. The wage adjusted component discussed below will be applied consistently for the 60-day episode payment, the PEP adjustment, and the total SCIC adjustment. The outlier payment is defined to be a proportion of the estimated costs beyond the threshold. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

The fixed dollar loss amount and the loss-sharing ratio are chosen so that estimated total outlier payments are 5 percent of total episode payments. The 5 percent constraint on total outlier payments creates a tradeoff between the values selected for the fixed dollar loss amount and the loss-sharing ratio. For a given level of outlier payments, a higher fixed dollar loss amount reduces the number of cases that receive outlier payments, but makes it possible to select a higher loss-sharing ratio and therefore increase outlier payments per episode. Alternatively, a lower fixed dollar loss amount means that more episodes qualify for outlier payments, but outlier payments per episode must be lower. Therefore, setting these two parameters involves policy choices about the number of outlier cases and their rate of payment.

Estimating the fixed dollar loss amount and loss-sharing ratios that are consistent with the 5 percent constraint requires simulation of payments under the PPS (including PEP adjustment, LUPA, 60-day episode, SCIC adjustments and outlier payments) with and without outlier payments. Feasible choices of fixed dollar loss amounts and loss-sharing ratios must meet the following conditions: First, total payments with and without outlier payments must be equal. Second, for the simulation with outlier payments, total outlier payments must be 5 percent of total payments including outlier payments. In calculating LUPA and 60-day episode payments the standard per-visit and episode amounts are divided by 1.05 as the means of financing the outlier payments. There will be no retroactive payments or recoupments in the event the projected amounts turn out to be different than the actual payment.

This simulation requires information on the HHRG for each episode with more than four visits in order to calculate the case-mix adjusted episode payment. The case-mix adjusted payment is necessary to determine the outlier threshold. In other words, episodes that qualify for outlier payments cannot be identified without knowing the assigned HHRG. Because the Abt sample data are the only data source that contains HHRG information by episode, they were used to simulate potential outlier policy parameters.

Another data requirement for the policy simulation and also for actual implementation of an outlier payment policy is an estimate of the resource cost of each episode. To calculate outlier payments, two questions must be answered: Does the cost of the episode exceed the outlier threshold, and if so, by how much? Using the Abt data, we estimated the cost of each episode using the same method that we propose to use for the low-utilization. Specifically, the national per-visit cost amounts used in constructing the standard episode payment amount were multiplied by the number of visits in each discipline to estimate a standard cost of the episode. In actually making outlier payments under PPS, the cost of outlier episodes would be calculated using the per-visit "prices" for each discipline that are used to pay for low-utilization episodes.

The wage adjustment can be conceptualized in two ways that are mathematically equivalent. First, all components could be wage adjusted: the case-mix adjusted episode amount, the fixed dollar loss amount, and the estimated cost of the episode. Then the difference between the wage-adjusted episode cost and the wage-adjusted outlier threshold would be multiplied by the loss-sharing ratio to obtain the outlier payment for the episode. Alternatively, but equivalently, the outlier threshold and the episode cost could be determined without applying the wage adjustment. Their difference could then be multiplied by the loss-sharing ratio and wage adjusted to obtain the outlier payment.

Simulations using the Abt data provide some guidance about the tradeoffs involved in the choice of outlier policy parameters. As shown below, a loss-sharing ratio of .80 is consistent with a fixed dollar loss of 1.35 times the standard episode payment amount. With these values, 5.5 percent of regular episodes would qualify for outlier payments, and the average outlier payment per outlier episode would be 93 percent of the standard episode payment amount. Decreasing the loss-sharing ratio to .70 supports a fixed dollar loss of 1.22 times the standard episode payment amount and increases the percent of episodes receiving outlier payments to 6.5 percent. For purposes of this rule, we are proposing the outlier policy option of a fixed dollar loss of 1.07 times the standard episode payment amount and a loss sharing ratio of .60. We believe this option provides the most equitable threshold for qualification of an outlier payment in the first year of PPS. The proposed option increases the estimated percent of episodes receiving outlier payment to 7.5 percent while holding estimated outlier outlays at the required 5 percent. We are interested in receiving comments concerning the choice of the outlier policy parameters set forth below.

The data were collected between October 1997 and April 1998, a period that is initially pre-interim payment system and that ends early in the interim payment system experience. Again, the availability of national OASIS data for outlier simulations before finalization of this rule will help us refine our outlier estimates.

OPTIONS FOR OUTLIER POLICY PARAMETERS: THE TRADEOFF BETWEEN THE FIXED DOLLAR LOSS AND THE LOSS SHARING RATIO

Fixed dollar loss	Loss sharing ratio	Outlier payments of total payments	Outlier episodes of total episodes	Outlier payment of std. episode amt.
1.35	.80	5.0	5.5	.93
1.29	.75	5.0	5.9	.93
1.22	.70	5.0	6.5	.72
1.15	.65	5.0	7.0	.66
1.07	.60	5.0	7.5	.62

Example: An HHA serves a beneficiary who resides in Harrisburg, PA. The HHA determines the beneficiary is in HHRG C3F4S0. The episode contained 88 skilled nursing visits and 60 home health aide visits. It qualifies for outlier payments. To simplify matters and demonstrate the determination of outlier payments, the example begins after the case-mix-adjusted episode payment has been calculated. Further, Harrisburg was chosen because its wage-index value is very close to 1.0060, and again for simplicity, the wage-index adjustment has also been omitted.

1. Determine the outlier threshold for C3F4S0 with the fixed dollar loss option of 1.07:	
Outlier threshold = Fixed Dollar Loss + Case-mix adj. payment Fixed Dollar Loss = 1.07 * $2,037.04	$2,179.63
Case-mix adjusted episode payment = ($2,037.04 * 1.4357)	$2,924.58
Outlier threshold	$5,104.21
2. Calculate the standard cost of the episode:	
88 skilled nursing visits @ $76.32	$6,716.16
60 hh aide visits @ $34.44	$2,066.40
Total cost	$8,782.56
3. Calculate the cost in excess of the threshold:	
$8,782.56 − $5,104.21	$3,678.35
4. Calculate the outlier payment:	
$3,678.35 * .6	$2,207.01
5. Calculate total payment for the episode:	
$2,924.58 + $2,207.01	$5,131.59

B. Examples of National Standardized 60-Day Episode Payment Amounts and Low-Utilization Payment Adjustments

For any HHRG group, to compute a case-mix and wage-adjusted 60-day episode prospective payment amount, the standardized prospective payment rate for FY 2001 (see Table 5 of this regulation) is multiplied by the case-mix index from Table 9 for that HHRG group. To compute a wage-adjusted national 60-day episode payment, the labor-related portion of the 60-day national prospective payment rate for FY 2001 is multiplied by the HHA's appropriate wage-index factor listed in Table 4A or 4B. The product of that calculation is added to the corresponding nonlabor-related component. The resulting amount is the national case-mix and wage-adjusted 60-day episode prospective payment rate for FY 2001.

EXAMPLE 1.—AN HHA IS PROVIDING SERVICES TO A MEDICARE BENEFICIARY IN STATE COLLEGE, PA. THE HHA DETERMINES THE BENEFICIARY IS IN HHRG C2F2S2

COMPUTATION OF CASE MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case mix index from Table 9 for case mix group	1.8275
Standardized Prospective Payment Rate for FY 2001	$2,037.04
Calculate the Case Mix adjusted Prospective Payment Rate for FY 2001 (1.8275 * $2,037.04)	$3,722.69
Calculate the Labor portion of the Prospective Payment Rate for FY 2001 (.77668 * $ 3,722.69)	$2,891.34
Apply wage index factor from Table 4B for patient in State College, PA (0.9449 * $ 2,891.34)	$2,732.03
Calculate the Non-Labor portion of the Prospective Payment Rate for FY 2001 (.22332 * $3,722.69)	$831.35
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case mix and wage index amounts ($2,732.03 + $831.35)	$3,563.38

EXAMPLE 2. AN HHA SERVES A BENEFICIARY WHO RESIDES IN LAKE PLACID, NY. THE HHA DETERMINES THE PATIENT IS IN HHRG C1F4S3

COMPUTATION OF CASE MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case mix index from Table 9 for case mix group	2.2241
Standardized Prospective Payment Rate for FY 2001	$2,037.04
Calculate the Case Mix adjusted Prospective Payment Rate for FY 2001 (2.2241 * $2,037.04)	$4,530.58
Calculate the Labor portion of the Prospective Payment Rate for FY 2001 .77668 * $4,530.58)	$3,518.81
Apply wage index factor from Table 4A for patient in Lake Placid, NY (0.8588 * $3,518.81)	$3,021.95
Calculate the Nonlabor portion of the Prospective Payment Rate for FY 2001 (.22332 * $4,530.58)	$1,011.77
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and nonlabor portion of the case mix and wage index amounts ($3,021.95 + $ 1,011.77)	$4,033.72

EXAMPLE 3.—HHA SERVES A BENEFICIARY WHO RESIDES IN FORT COLLINS, CO. THE HHA DETERMINES THE BENEFICIARY IS IN HHRG C3F0S0

COMPUTATION OF CASE MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT	
Case mix index from Table 9 for case mix group	.9591
Standardized Prospective Payment Rate for FY 2001	$2,037.04
Calculate the Case Mix adjusted Prospective Payment Rate for FY 2001 (.9591 * $ 2,037.04)	$1,953.73
Calculate the Labor portion of the Prospective Payment Rate for FY 2001 (.77668 * $1,953.73)	$1,517.42
Apply wage index factor from Table 4B for patient in Fort Collins, CO (1.0770 * $1,517.42)	$1,634.26
Calculate the Non-Labor portion of the Prospective Payment Rate for FY (2001 .22332 * $1,953.73)	$436.31
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case mix and wage index amounts ($1,634.26 + $ 436.31)	$2,070.57

EXAMPLE 4.—HHA SERVES A BENEFICIARY WHO RESIDES IN GRAND FORKS, ND. THE HHA DETERMINES THE BENEFICIARY IS IN HHRG C0F3S1

COMPUTATION OF CASE MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case mix index from Table 9 for case mix group	.8537
Standardized Prospective Payment Rate for FY 2001	$2,037.04
Calculate the Case Mix adjusted Prospective Payment Rate for FY 2001 (.8537* $2,037.04)	$1,739.02
Calculate the Labor portion of the Prospective Payment Rate for FY 2001 (.77668 * $1,739.02)	$1,350.66
Apply wage index factor from Table 4B for patient in Grand Forks, ND (0.8836 * $1,350.66)	$1,193.44
Calculate the Non-Labor portion of the Prospective Payment Rate for FY (2001 .22332 * $1,739.02)	$388.36
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case mix and wage index amounts ($1,193.44 + $388.36)	$1,581.80

Example 5. An HHA in Baltimore, MD assigns a patient to an HHRG at the start of a 60-day episode. The final claim for the patient indicates that only two visits (one skilled nursing and one home health aide) were furnished during the 60-day episode. The HHA would be paid the low-utilization payment adjustment. Any necessary adjustment to the 50 percent initial payment for the episode would be made on subsequent claims for the HHA.

COMPUTATION OF WAGE INDEX ADJUSTED LOW UTILIZATION PAYMENT

Number and visit discipline type	Final wage standardized and budget neutral per-visit payment amounts per 60-day episode for FY2001 [1]
1 Skilled Nursing Visit	$76.32
1 Home Health Aide Visit	34.44

[1] See Table 6 for the Calculation of Final Wage Standardized and Budget Neutral Per-Visit Payment Amounts Per 60-Day Episode for FY 2001.

Calculate the labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 Skilled Nursing Visit—.77668 * $76.32 = $59.28

Apply wage index factor from Table 4B for Baltimore, MD—.9642 * $59.28 = $57.15

Calculate the non-labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 Skilled Nursing Visit—.22332* $76.32 = $17.04

SUBTOTAL-Low Utilization Payment for 1 Wage Adjusted Skilled Nursing Visit rendered in a 60-day episode—$57.15 + $17.04 = $74.19

Calculate the labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 home health aide visit—.77668* $34.44 = $26.75

Apply wage index factor from Table 4B for Baltimore, MD—.9642* $26.75 = $25.79

Calculate the non-labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 home health aide visit—.22332* $34.44 = $7.69

SUBTOTAL—Low Utilization Payment for 1 wage adjusted home health aide visit rendered in a 60-day episode—$25.79 + $7.69 = $33.48

Calculate Total Low Utilization Payment Adjustment for 2 visits provided during the 60-day episode by adding the wage adjusted skilled nursing visit and the wage adjusted home health aide visit—$74.19 + $33.48 = $107.67

C. Design and Methodology for Case-Mix Adjustment of 60-Day Episode Payments

1. Background on Clinical Model Patient Classification System

As discussed above in section I.C. of this regulation, in 1996, we began the current research project. The basic approach to the home health case-mix adjuster development was to use the patient data and other appropriate data to define alternative case-mix adjusters and then estimate their ability to explain variation (R-squared value) in resource use over the course of a 60-day payment period. Compared to the 120-day payment period tested under the Phase II per-episode HHA PPS Demonstration, a 60-day payment period will make payments more responsive to the needs of long-stay home health patients and Medicare (as the payor), as discussed in section I.D.1.a of the preamble to this regulation.

The two basic data sources for the study are case-mix explanatory variables from the patient data on OASIS–B (supplemented by additional patient-specific items) and a resource-use variable from visit data. To arrive at an estimate of resource use from the visit logs (as discussed in section I.C. of this regulation), time is weighted by mean labor cost for the discipline providing the visit. Medicare claims were linked to the OASIS data and the visit log data to verify the visits and provide utilization measures.

Clinical judgment was used to refine the components and structure of a decision tree for assigning patients into case-mix groups. Along with clinical judgment, the relative predictive value of potential case-mix variables, their susceptibility to gaming and subjectivity, and as well as administrative implications were considered in the final resolution of the elements retained in the Clinical Model. The Clinical Model consists of 80 HHRGs and has an R-squared of 32 percent. The information to assign a patient to one of the 80 HHRGs are comprised of 19 OASIS–B elements supplemented by one additional patient status item regarding projected therapy use in the 60-day episode. The non-OASIS items tested in the case-mix research did not significantly increase the predictive value of the model; therefore, the non-OASIS items were not included in the final case-mix methodology.

2. Home Health Resource Group (HHRG) Classification System

In the HHRG case-mix classification system, patient characteristics and health status information from the OASIS–B such as "primary home care diagnosis," "ability to perform ADLs" as supplemented by projected therapy use during a 60-day episode, will be used to assign the patient to an HHRG for payment.

The HHRG system measures three dimensions of case mix. Table 7 provides the HHRG system three-level decision tree logic.

Table 7--Home Health Resource Group Case-Mix Classification

Decision Tree Logic

Clinical Dimension				
OASIS+ Item	**Description**	**Value**	**Points**	**Scoring**
M0230	Primary home care diagnosis	If Orthopedic DG, add	10	min = 0-7 low = 8-16 mod = 17-26 high = 27+
		If Neurological DG, add	19	
		If Diabetes DG, add	16	
M0250	IV/Infusion/ Parenteral/Enteral Therapies	If box 1, add	15	
		If box 2, add	20	
		If box 3, add	24	
M0390	Vision	If box 1 or 2, add	7	
M0420	Pain	If box 2 or 3, add	6	
M0460	Current pressure ulcer stage	If box 1 or 2, add	15	
		If box 3 or 4, add	43	
M0476	Stasis ulcer	If box 3, add	24	
M0488	Surgical wound	If box 2 or 3, add	10	
M0490	Dyspnea	If box 2 - 4, add	5	
M0530	Urinary	If box 1 or 2, add	8	
M0540	Bowel	If box 2 -5, add	11	
M0550	Bowel ostomy	If box 1 or 2, add	10	
M0610	Behavioral	If box 1-6, add	3	

Functional Status Dimension

OASIS+ Item	Description	Value	Points	Scoring
M0650 (current) M0660 (current)	Dressing	If M0650 or M0660 = box 1 - 3, add	4	min = 0-4 low = 5-15 mod = 16-22 high = 23-35 max = 36
M0670 (current)	Bathing	If box 2 - 5, add	8	
M0680 (current)	Toileting	If box 2 - 4, add	3	
M0690 (current)	Transfer-ring	If box 1, add If box 2 - 5, add	3 8	
M0700 (current)	Locomotion	If box 1 or 2, add If box 3 - 5, add	6 13	

Services Utilization Dimension

Variable	Description	Value	Scoring
M0170 - line 1	NO Hospital discharge past 14 days	If box 1 IS BLANK, add 1 to score	Min = 0-2 Low = 3 Mod = 4-6 High= 7
M0170 - line 2 or 3	Inpatient rehab/SNF discharge past 14 days	If box 2 or 3, add 2 to score	
Receipt of Therapy	8 or more therapy hours	If yes, add 4 to score	

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A patient can be classified in one of 80 possible HHRG categories. The first level of the decision tree is the Clinical Dimension, which is divided into four severity groups. A patient is assigned one of four severity levels in the Clinical Dimension: minimum, low, moderate, or high clinical severity. To determine the severity group, a numeric score is applied to each answer provided to the following 12 clinical OASIS–B items: MO230 primary home health diagnosis, MO250 IV/Infusion/Parenteral/Enteral Therapies, MO390 Vision, MO420 Pain, MO460 Current Pressure Ulcer Stage, MO476 Stasis Ulcer, MO488 Surgical Wound, MO490 Dyspnea, MO530 Urinary Incontinence, MO540 Bowel Incontinence, MO550 Bowel Ostomy, MO610 Behavioral Problems. Table 7 provides the corresponding numeric scores for the responses provided to the items in the four severity groups within the Clinical Dimension. The scores are then summed. The severity level is determined by the value of the summed score. The next level of the subdivision of the decision tree logic is based on patient functional status.

The Functional Dimension is divided into five severity groups. A patient is assigned one of five severity levels in the Functional Dimension: minimum, low, moderate, high, or maximum functional severity. To determine the severity group, a numeric score is applied to each answer provided for the following six OASIS-B items: MO650 and MO660 Dressing Upper and Lower Body, MO670 Bathing, MO680 Toileting, MO690 Transferring, and MO700 Locomotion. Table 7 provides the corresponding numeric scores to the responses provided to the functional status items. The scores are then summed. The severity level for the Functional Dimension is determined by the value of the summed score. The final level of the subdivision of the decision tree logic is the Services Utilization Dimension.

The Services Utilization Dimension is also divided into four severity groups. A patient is assigned to one of the four following severity levels in the Services Utilization Dimension: minimum, low, moderate, or high. To determine the severity group, a numeric score is applied to each answer provided to the following OASIS–B item divided into two questions, and one supplemental item regarding projected receipt of therapy use: MO170 hospital discharge in past 14 days, MO170 inpatient rehabilitation/SNF discharge in past 14 days, and receipt of therapy. Table 7 provides the corresponding scores to the responses provided to the items in the Services Utilization Dimension. The scores are then summed. The severity level for the Services Utilization Dimension is determined by the value of the summed scores.

We are proposing a utilization proxy for the time variable corresponding to the need for 8 or more therapy hours during a 60-day episode. As a result of the Abt case-mix research, Abt determined that 10 visits of physical therapy, occupational therapy, or speech-language pathology services in any combination in a 60-day period equate to 8 hours of physical therapy, occupational therapy, or speech-language pathology services in any combination in a 60-day period. At the inception of HHA PPS, the case-mix treatment variable regarding the need for 8 or more hours of therapy in a 60-day episode will be defined as 10 visits of physical therapy, occupational therapy, or speech-language pathology services in any combination furnished during the 60-day episode.

As discussed above, HHAs will project the therapy need for the patient at the start of the 60-day episode. In accordance with the utilization proxy for time developed by Abt, the need for 8 or more hours of therapy during the 60-day episode will be defined as 10 visits of physical therapy, occupational therapy, or speech-language pathology services in any combination in a 60-day episode. The projection of therapy use at the start of the 60-day episode (8 hours of therapy as defined as 10 visits) will be confirmed at the end of the 60-day episode with the current line-item date visit billing requirements included on the final claim under PPS. We envision that the pricer logic at the RHHI will confirm the projection of the utilization data at the start of care with the actual utilization data submitted on the final claim. If 8 or more hours of therapy as defined as 10 therapy visits are projected at the start of the episode and confirmed at the end of the episode via the line-item date billing information on the final claim, the episode would be paid at the case-mix index level including the therapy-use variable. This assumes no adjustment for other reasons, for example, medical review etc. However, the reconciliation of projected therapy use with actual therapy use has the potential to decrease the final episode payment if the actual therapy use reported at the end of the episode on the final claim does not correspond to projected therapy use provided at the start of the episode. Depending upon the results of the reporting of 15-minute increment billing, we will of course consider reverting to measure the therapy use in terms of hours by 15-minute increments rather than visits.

We are soliciting comments on the financial impact of this proposal on HHAs as well as suggestions for future research to refine the PPS methodology after implementation. The 60-day payment schedule results in conforming changes to the current time frames governing plan of care certifications and recertifications and the cycle of OASIS assessments. The conforming changes are discussed in section IV. of this regulation.

Application of the case-mix indices to the standardized 60-day payment amount presented in Table 6 results in 80 separate case-mix-adjusted 60-day episode national payment amounts corresponding to the 80 separate HHRG classification groups described above and individually listed in Table 9.

Below is Table 8 designating the acceptable ICD–9 codes corresponding to the orthopedic, neurological, and diabetes diagnosis groups for purposes of case-mix classification.

TABLE 8.—ICD–9 CODES USED TO DEFINE DIAGNOSTIC GROUPS

DG	ICD–9 Code	Description
ORTHO	170	MAL NEO BONE/ARCTIC CART.
ORTHO	171	MAL NEO SOFT TISSUE.
ORTHO	213	BEN NEO BONE/ARCTIC CART.
ORTHO	274	GOUT.
ORTHO	710	DIFF CONNECTIVE TISS DIS.
ORTHO	711	ARTHROPATHY W INFECTION.
ORTHO	712	CRYSTAL ARTHROPATHIES.
ORTHO	713	ARTHROPATH IN OTHER DIS.
ORTHO	714	OTH INFLAMM POLYARTHROP.
ORTHO	716	ARTHROPATHIES NEC/NOS.
ORTHO	717	INTERNAL DERANGEMENT KNEE.
ORTHO	718	OTHER JOINT DERANGEMENT.
ORTHO	720	INFLAM SPONDYLOPATHIES.
ORTHO	721	SPONDYLOSIS ET AL.
ORTHO	722	INTERVERTEBRAL DISC DIS.
ORTHO	723	OTHER CERVICAL SPINE DI.
ORTHO	724	BACK DISORDER NEC & NOS.
ORTHO	725	POLYMYALGIA RHEUMATICA.
ORTHO	728	DIS OF MUSCLE/LIG/FASCIA.
ORTHO	730	OSTEOMYELITIS.
ORTHO	731	OSTEITIS DEFORMANS.
ORTHO	732	OSTEOCHONDROPATHIES.
ORTHO	781	NERV/MUSCULSKEL SYS SYMP.
ORTHO	800	SKULL VAULT FRACTURE.
ORTHO	801	SKULL BASE FRACTURE.
ORTHO	802	FRACTURE OF FACE BONES.
ORTHO	803	OTHER SKULL FRACTURE.
ORTHO	804	MULT FX SKULL W OTH BONE.
ORTHO	805	VERTEBRL FX W/O CORD INJ.
ORTHO	806	VERTEBRAL FX W CORD INJ.
ORTHO	807	FX RIB/STERN/LARYN/TRACH.
ORTHO	808	PELVIC FRACTURE.
ORTHO	809	FRACTURE OF TRUK BONES.
ORTHO	810	CLAVICLE FRACTURE
ORTHO	811	SCAPULA FRACTURE.
ORTHO	812	HUMERUS FRACTURE.
ORTHO	813	RADIUS & ULNA FRACTURE.
ORTHO	814	CARPAL FRACTURE.
ORTHO	815	METACARPAL FRACTURE.
ORTHO	816	FRACTURE PHALANGES, HAND.
ORTHO	817	MULTIPLE HAND FRACTURES.
ORTHO	818	FRACTURE ARM MULT/NOS.
ORTHO	819	FX ARMS W RIB/STERNUM.
ORTHO	820	FRACTURE NECK OF FEMUR.
ORTHO	821	OTHER FEMORAL FRACTURE.
ORTHO	822	PATELLA FRACTURE.
ORTHO	823	TIBIA & FIBULA FRACTURE.
ORTHO	824	ANKLE FRACTURE.
ORTHO	825	FX OF TARSAL/METATARSAL.

TABLE 8.—ICD–9 CODES USED TO DEFINE DIAGNOSTIC GROUPS—Continued

DG	ICD–9 Code	Description
ORTHO	827	LOWER LIMB FRACTURE NEC.
ORTHO	828	FX LEGS W ARM/RIB.
ORTHO	831	SHOULDER DISLOCATION.
ORTHO	832	ELBOW DISLOCATION.
ORTHO	833	WRIST DISLOCATION.
ORTHO	835	DISLOCATION OF HIP.
ORTHO	836	DISLOCATION OF KNEE.
ORTHO	837	DISLOCATION OF ANKLE.
ORTHO	838	DISLOCATION OF FOOT.
ORTHO	846	SPRAIN SACROILIAC REGION.
ORTHO	847	SPRAIN OF BACK NEC/NOS.
ORTHO	88	TRAUMATIC AMPUT ARM/HAND.
ORTHO	896	TRAUMATIC AMPUTAT FOOT.
ORTHO	897	TRAUMATIC AMPUTATION LEG.
ORTHO	927	CRUSHING INJ UPPER LIMB.
ORTHO	928	CRUSHING INJURY OF LEG.
NEURO	13	CNS TUBERCULOSIS.
NEURO	45	ACUTE POLIOMYELITIS.
NEURO	46	CNS SLOW VIRUS INFECTION.
NEURO	47	ENTEROVIRAL MENINGITIS.
NEURO	48	OTH ENTEROVIRAL CNS DIS.
NEURO	49	OTH NONARTHROPOD CNS VIR.
NEURO	191	MALIGNANT NEOPLASM BRAIN.
NEURO	192	MAL NEO NERVE NEC/NOS.
NEURO	225	BENIGN NEO NERVOUS SYST.
NEURO	320	BACTERIAL MENINGITIS.
NEURO	321	OTH ORGANISM MENINGITIS
NEURO	322	MENINGITIS, UNSPECIFIED.
NEURO	323	ENCEPHALOMYELITIS.
NEURO	324	CNS ABSCESS.
NEURO	325	PHLEBITIS INTRCRAN SINU.
NEURO	326	LATE EFF CNS ABSCESS.
NEURO	330	CEREBRAL DEGEN IN CHILD.
NEURO	331	CEREBRAL DEGENERATION.
NEURO	332	PARKINSON'S DISEASE.
NEURO	333	EXTRAPYRAMIDAL DIS NEC.
NEURO	334	SPINOCEREBELLAR DISEASE.
NEURO	335	ANT HORN CELL DISEASE.
NEURO	336	SPINAL CORD DISEASE NEC.
NEURO	337	AUTONOMIC NERVE DISORDER.
NEURO	340	MULTIPLE SCLEROSIS.
NEURO	341	OTHER CNS DEMYELINATION.
NEURO	342	HEMIPLEGIA.
NEURO	343	INFANTILE CEREBRAL PALSY.
NEURO	344	OTH PARALYTIC SYNDROMES.
NEURO	347	CATAPLEXY AND NARCOLEPS.
NEURO	348	OTHER BRAIN CONDITIONS.
NEURO	349	CNS DISORDER NEC/NOS.
NEURO	352	DISORDER CRAN NERVE NEC.
NEURO	356	HERED PERIPH NEUROPATHY.
NEURO	357	INFLAM/TOXIC NEUROPATHY.
NEURO	358	MYONEURAL DISORDERS .
NEURO	392	RHEUMATIC CHOREA.
NEURO	430	SUBARACHNOID HEMORRHAGE.
NEURO	431	INTRACEREBRAL HEMORRHAGE.
NEURO	432	INTRACRANIAL HEM NEC/NOS.
NEURO	433	PRECEREBRAL OCCLUSION.
NEURO	434	CEREBRAL ARTERY OCCLUS.
NEURO	435	TRANSIENT CEREB ISCHEMIA.
NEURO	436	CVA .
NEURO	437	OTH CEREBROVASC DISEASE.
NEURO	741	SPINA BIFIDA.
NEURO	742	OTH NERVOUS SYSTEM ANOM.
NEURO	851	CEREBRAL LACER/CONTUSION.
NEURO	852	MENINGEAL HEM FOLLOW INJ.
NEURO	853	OTH TRAUMATIC BRAIN HEM.
NEURO	854	OTHER BRAIN INJURY.
NEURO	907	LATE EFF NERV SYSTEM INJ.
NEURO	950	INJ OPTIC NERV/PATHWAYS.
NEURO	951	CRANIAL NERVE INJURY NEC.
NEURO	952	SPINAL CORD INJ W/O FX.
NEURO	953	INJ NERVE ROOT/SPIN PLEX.

TABLE 8.—ICD–9 CODES USED TO DEFINE DIAGNOSTIC GROUPS—Continued

DG	ICD–9 Code	Description
NEURO	954	INJURY OTH TRUNK NERVE.
NEURO	955	INJ PERIPH NERV SHLD/ARM.
NEURO	956	INJ PERIPH NERV PELV/LEG.
DM	250	DIABETES MELLITUS.

3. Determining the Case-Mix Indices

As discussed in section I. of this regulation, sections 1895(b)(4)(A)(i) and (b)(4)(B) of the Act require us to establish and make appropriate case-mix adjustments to the episode payment in a manner that explains a significant amount of the variation in cost. Case-mix adjustment takes into account the relative resource use of different patient types served by an HHA. The goal of a case-mix payment system is to measure the intensity of care and services required for each patient and translate it into an appropriate payment level. A patient's need for care resources is represented by an index score or relative weight based on the combination of clinical, functional, and service utilization indicators measured at the start of the 60-day episode. The decision tree logic for the case-mix groups is discussed in section II.C.2. of this regulation.

As also discussed in section I.C. of this regulation, the patient classification system used under the HHA PPS is the Clinical Model developed by Abt, an 80-group patient case-mix classification system (HHRGs), which provides the basis for the case-mix payment indices used both for standardization of the 60-day episode payments and subsequently to establish the case-mix adjustments to the 60-day episode payment for patients with different home health service needs. These indices reflect the weight of relative resource utilization or value of each of the 80 HHRGs relative to all of the groups.

These payment indices are based on patient data (from the OASIS–B supplemented by an additional non-OASIS treatment variable) and average resource use per discipline. To arrive at an estimate of resource use through visit logs, time is weighted by mean labor cost for each of the six disciplines covered under the Medicare home health benefit providing the visit. Medicare claims were linked to the OASIS data and the visit log data to verify the visits and provide utilization measures.

Construction of the Relative Weights for the HHRGs

Each of the 80 HHRGs is assigned a relative weight that, when multiplied by the wage-adjusted standard episode amount, comprises the case-mix-adjusted payment for each episode. The relative weights measure the average resource intensity of the episodes in each HHRG relative to the average resource intensity of all episodes. The data that Abt used to develop the case-mix groups of the HHRG classification system were also used to construct the relative weights reported in Table 9. At this time, they are the only data that contain information on resource intensity by HHRG. Because we are proposing to pay episodes with four or fewer visits on a per-visit basis, we excluded those episodes from the data used to construct the relative weights. The resulting data set contained 19,449 episodes. The measure of resource intensity used in the computation was the same variable that Abt used in developing the HHRG system: the minutes spent on each visit were multiplied by a standard national labor cost per minute for the type of visit (skilled nursing, home health aide, etc.); these standard visit costs were then summed for all visits within the episode to obtain the cost for the episode.

If a large national data set that linked resource utilization and HHRG classifications for 60-day episodes of care were available, we would have computed the relative weights in the following manner: First, we would have calculated the mean cost per episode for each HHRG, as well as the mean cost for all episodes. Then, each mean cost would have been divided by the mean cost of all episodes. Calculating the relative weights in this manner ensures that the relative weight of the average episode is 1.0.

However, since only a sample data set is available, it was necessary to modify this method in order to obtain reliable relative weights. The Abt data set is large enough to establish the case-mix groups and to calculate average resource use for many of the HHRG categories. However, there are also many HHRGs with relatively small numbers of episodes for which reliable estimates cannot be made. As a result, it was necessary to make full use of the information contained in the sample. We are proposing to revise the case mix weights to adjust for changes in patient population, actual changes in home health care practice patterns, and changes in the coding or classification of patients that do not reflect real changes in case mix.

All episodes at each level of the clinical, functional, and service domains were employed to estimate the resource use for specific combinations of clinical, functional, and service levels. For example, in estimating the average cost of HHRG C3F4S1, we used data for all C3 episodes, all F4 episodes, and all S1 episodes. The method involved computing an average cost for each clinical level (C0, C1, C2, and C3), each functional level (F0, F1, F2, F3, and F4), and each service level (S0, S1, S2, and S3). Then the average additional cost of each level above the C0F0S0 base cost was computed: C1–C0, C2–C0, C3–C0; F1–F0, F2–F0, F3–F0, F4–F0; S1–S0, S2–S0, S3–S0. Finally, these average additional cost amounts were added to the base cost (C0F0S0) to obtain the average cost of each HHRG. For example, to calculate the average cost of C1F1S0, take the C0F0S0 amount and add to it the additional cost of C1 cases (C1–C0) and the additional cost of F1 cases (F1–F0); likewise, to obtain the average cost of C3F4S1, start with C0F0S0 and add to it C3–C0, F4–F0, and S1–S0.

In more precise statistical terms, the mean cost estimates described above were obtained using multiple regression analysis. To account for the stratification of the sample, weighted regression was used. We regressed the dependent variable (the Abt resource cost) on categorical variables C1–C3, F1–F4, and S1–S3. By omitting C0, F0, and S0 from the regression, the intercept term measures the mean cost of the C0F0S0 group. The regression coefficients of each of the clinical, functional, and service levels measure the mean difference in cost between the given level and the base cost (C0F0S0). For example, the coefficient of the C2 variable measures the average cost difference, C2–C0.

Example: Calculation of Relative Weight for HHRG C3F4S1

Average cost for HHRG C0F0S0:	$1371.44
Additional average cost of C3:	+1121.77

Additional average cost of F4: +1239.00
Additional average cost of S1: +218.09

Average cost of C3F4S1: $3,950.30

Relative weight of C3F4S1: Average cost of C3F4S1 divided by average cost of all episodes: $3950.30/$2599.56=1.5196

TABLE 9—RELATIVE CASE-MIX WEIGHTS CORRESPONDING TO HOME HEALTH RESOURCE GROUPS

HHRG group	HHRG description	Case mix weight
C0F0S0	"Clinical=Min, Functional=Min, Service=Min"	0.5276
C0F0S1	"Clinical=Min, Functional=Min, Service=Low"	0.6115
C0F0S2	"Clinical=Min, Functional=Min, Service=Mod"	1.4400
C0F0S3	"Clinical=Min, Functional=Min, Service=High"	1.6620
C0F1S0	"Clinical=Min, Functional=Low, Service=Min"	0.6015
C0F1S1	"Clinical=Min, Functional=Low, Service=Low"	0.6854
C0F1S2	"Clinical=Min, Functional=Low, Service=Mod"	1.5140
C0F1S3	"Clinical=Min, Functional=Low, Service=High"	1.7360
C0F2S0	"Clinical=Min, Functional=Mod, Service=Min"	0.7234
C0F2S1	"Clinical=Min, Functional=Mod, Service=Low"	0.8073
C0F2S2	"Clinical=Min, Functional=Mod, Service=Mod"	1.6359
C0F2S3	"Clinical=Min, Functional=Mod, Service=High"	1.8579
C0F3S0	"Clinical=Min, Functional=High, Service=Min"	0.7698
C0F3S1	"Clinical=Min, Functional=High, Service=Low"	0.8537
C0F3S2	"Clinical=Min, Functional=High, Service=Mod"	1.6822
C0F3S3	"Clinical=Min, Functional=High, Service=High"	1.9043
C0F4S0	"Clinical=Min, Functional=Max, Service=Min"	1.0042
C0F4S1	"Clinical=Min, Functional=Max, Service=Low"	1.0881
C0F4S2	"Clinical=Min, Functional=Max, Service=Mod"	1.9166
C0F4S3	"Clinical=Min, Functional=Max, Service=High"	2.1386
C1F0S0	"Clinical=Low, Functional=Min, Service=Min"	0.6131
C1F0S1	"Clinical=Low, Functional=Min, Service=Low"	0.6970
C1F0S2	"Clinical=Low, Functional=Min, Service=Mod"	1.5255
C1F0S3	"Clinical=Low, Functional=Min, Service=High"	1.7475
C1F1S0	"Clinical=Low, Functional=Low, Service=Min"	0.6870
C1F1S1	"Clinical=Low, Functional=Low, Service=Low"	0.7709
C1F1S2	"Clinical=Low, Functional=Low, Service=Mod"	1.5995
C1F1S3	"Clinical=Low, Functional=Low, Service=High"	1.8215
C1F2S0	"Clinical=Low, Functional=Mod, Service=Min"	0.8089
C1F2S1	"Clinical=Low, Functional=Mod, Service=Low"	0.8928
C1F2S2	"Clinical=Low, Functional=Mod, Service=Mod"	1.7214
C1F2S3	"Clinical=Low, Functional=Mod, Service=High"	1.9434
C1F3S0	"Clinical=Low, Functional=High, Service=Min"	0.8553
C1F3S1	"Clinical=Low, Functional=High, Service=Low"	0.9392
C1F3S2	"Clinical=Low, Functional=High, Service=Mod"	1.7677
C1F3S3	"Clinical=Low, Functional=High, Service=High"	1.9898
C1F4S0	"Clinical=Low, Functional=Max, Service=Min"	1.0897
C1F4S1	"Clinical=Low, Functional=Max, Service=Low"	1.1736
C1F4S2	"Clinical=Low, Functional=Max, Service=Mod"	2.0021
C1F4S3	"Clinical=Low, Functional=Max, Service=High"	2.2241
C2F0S0	"Clinical=Mod, Functional=Min, Service=Min"	0.7192
C2F0S1	"Clinical=Mod, Functional=Min, Service=Low"	0.8031
C2F0S2	"Clinical=Mod, Functional=Min, Service=Mod"	1.6316
C2F0S3	"Clinical=Mod, Functional=Min, Service=High"	1.8536
C2F1S0	"Clinical=Mod, Functional=Low, Service=Min"	0.7932
C2F1S1	"Clinical=Mod, Functional=Low, Service=Low"	0.8771
C2F1S2	"Clinical=Mod, Functional=Low, Service=Mod"	1.7056
C2F1S3	"Clinical=Mod, Functional=Low, Service=High"	1.9276
C2F2S0	"Clinical=Mod, Functional=Mod, Service=Min"	0.9150
C2F2S1	"Clinical=Mod, Functional=Mod, Service=Low"	0.9989
C2F2S2	"Clinical=Mod, Functional=Mod, Service=Mod"	1.8275
C2F2S3	"Clinical=Mod, Functional=Mod, Service=High"	2.0495
C2F3S0	"Clinical=Mod, Functional=High, Service=Min"	0.9614
C2F3S1	"Clinical=Mod, Functional=High, Service=Low"	1.0453
C2F3S2	"Clinical=Mod, Functional=High, Service=Mod"	1.8738
C2F3S3	"Clinical=Mod, Functional=High, Service=High"	2.0959
C2F4S0	"Clinical=Mod, Functional=Max, Service=Min"	1.1958
C2F4S1	"Clinical=Mod, Functional=Max, Service=Low"	1.2797
C2F4S2	"Clinical=Mod, Functional=Max, Service=Mod"	2.1082
C2F4S3	"Clinical=Mod, Functional=Max, Service=High"	2.3303
C3F0S0	"Clinical=High, Functional=Min, Service=Min"	0.9591
C3F0S1	"Clinical=High, Functional=Min, Service=Low"	1.0430
C3F0S2	"Clinical=High, Functional=Min, Service=Mod"	1.8715
C3F0S3	"Clinical=High, Functional=Min, Service=High"	2.0935
C3F1S0	"Clinical=High, Functional=Low, Service=Min"	1.0331
C3F1S1	"Clinical=High, Functional=Low, Service=Low"	1.1170
C3F1S2	"Clinical=High, Functional=Low, Service=Mod"	1.9455

TABLE 9—RELATIVE CASE-MIX WEIGHTS CORRESPONDING TO HOME HEALTH RESOURCE GROUPS—Continued

HHRG group	HHRG description	Case mix weight
C3F1S3	"Clinical=High, Functional=Low, Service=High"	2.1675
C3F2S0	"Clinical=High, Functional=Mod, Service=Min"	1.1550
C3F2S1	"Clinical=High, Functional=Mod, Service=Low"	1.2389
C3F2S2	"Clinical=High, Functional=Mod, Service=Mod"	2.0674
C3F2S3	"Clinical=High, Functional=Mod, Service=High"	2.2894
C3F3S0	"Clinical=High, Functional=High, Service=Min"	1.2013
C3F3S1	"Clinical=High, Functional=High, Service=Low"	1.2852
C3F3S2	"Clinical=High, Functional=High, Service=Mod"	2.1138
C3F3S3	"Clinical=High, Functional=High, Service=High"	2.3358
C3F4S0	"Clinical=High, Functional=Max, Service=Min"	1.4357
C3F4S1	"Clinical=High, Functional=Max, Service=Low"	1.5196
C3F4S2	"Clinical=High, Functional=Max, Service=Mod"	2.3481
C3F4S3	"Clinical=High, Functional=Max, Service=High"	2.5702

4. Application of the Clinical Model Patient Classification System

The following are several illustrative examples.

Case 1

An 83-year-old woman was discharged from a hospital 2 days ago after admission for a stroke and referred for home health care. She has residual right hemiparesis and also has diabetes and hypertension. She is able to dress her upper body if clothes are laid out for her, but needs help putting on socks, nylons and sometimes slacks. She needs assistance with bathing to get in and out of the tub and uses a cane for ambulating on flat surfaces and to transfer from sitting to standing, but needs another person's assistance to go up and down stairs. She is occasionally incontinent of urine, especially at night.

Her plan of care includes—

Physical therapy: two 45-minute visits per week for 9 weeks
Occupational therapy: one 45-minute visit per week for 4 weeks
Skilled nursing: one visit per week for 2 weeks, then one visit every other week for 7 weeks
Aide: one visit twice a week for 9 weeks
Scoring: Clinical Severity=19 (for neurologic diagnosis)+8 urinary incontinence=27 high severity
Functional Status Domain=4 (for dressing)+9 (bathing)+6 (locomotion)=19 Moderate severity
Service Domain=2 (hospital discharge)+4 (therapy more than 8 hours) Moderate severity
HRG=C3F2S2

Case 2

A 73-year-old man with amyotrophic lateral sclerosis (ALS) is referred for home health care after a hospitalization for an aspiration pneumonia. Because of his inability to swallow, he had a gastrostomy tube placed during the hospitalization and now receives enteral feeding. He is dependent in all activities of daily living (ADLs).

His plan of care includes—

Skilled nursing three times a week for 9 weeks
Aide services daily for 9 weeks
Scoring
Clinical severity=19 (for neurological)+20 (for enteral feeding) High
Functional status=27 High severity
Service Domain=0 Minimum severity
HRG=C3F3S0

5. Background on Case-Mix Research Project for a National Home Health PPS

In 1996, in anticipation of the Medicare program's eventual adoption of OASIS assessment data, we began research with a sample of 90 HHAs to develop a case-mix adjustment system for use under a future national prospective payment for home health care. The project was conducted under contract to Abt Associates, Inc., of Cambridge, Mass. (Contract Number 500–96–0003/TO2). Agencies participating in the sample have collected OASIS data supplemented by approximately 50 additional assessment items on all patients newly admitted between October 1997 and April 1998 (this group of patients is called the six-month cohort) to enable comparisons among items in terms of their utility in measuring case mix. At the same time, agencies in the study collected data on every home health visit to members of the cohort. Visit information was collected on visit logs specially designed for each home health service discipline (skilled nursing, physical therapy, medical social work, etc.). The visit logs provided the fundamental measure of resource use for developing case-mix groups. This measure is the visit time, which is converted into a standardized resource cost using Bureau of Labor Statistics hourly wage data (see below for further description).

The development of case-mix groups requires identifying groups of patients with similar resource cost and similar clinical and functional characteristics. To do this, data analyses studied the statistical association between clinical and functional characteristics, as measured by the assessments, and resource cost, as measured by the standardized resource cost. In choosing patient characteristics for inclusion in the case-mix adjuster, and in arranging those characteristics into a system of groups, the system's developers gave considerable weight to the clinical diagnostic process. We sought data elements and an overall system that reflected a clinician's perspective when confronted with a patient with care needs to be assessed. We also gave considerable weight to simplicity in the system's overall structure, and thus opted for a straightforward three-dimensional approach. Under this approach, a patient's case-mix classification is found by assessing the patient on each of the three dimensions, and then combining the results from the three dimensions. Further details on the methods of the study and the resulting case-mix system follow.

Methods

Sample Selection

Agencies were recruited for the case-mix research in the spring of 1997. The sample design was intended to permit the computation of nationally representative results. Eight States (Arkansas, California, Florida, Illinois, Massachusetts, Pennsylvania, Texas, and Wisconsin) were selected to be representative of four census geographic regions: northeast, north central, south, and west. Sample selection was also intended to ensure that the four major auspices types (freestanding for-profit, freestanding voluntary/private nonprofit, hospital-based, and government) and both urban and rural agencies would be included. In addition, selection criteria included the historical practice pattern of the agencies, in order to ensure representation of agencies with relatively low, moderate, and high numbers of visits per episode in their region. When cross-classified, the four selection criteria—region (four classes), auspices (four classes), urban/rural (two classes), and practice pattern (three classes)— produced a theoretical stratification scheme consisting of 96 cells. Target sample sizes for the cells were proportional to the universe populations of the cells (for example, some of the cells had zero agencies in the universe), and totaled 90 agencies for the sample overall. To be selected, agencies had to have active Medicare certification before July 1, 1993, at least 50 Medicare patients in CY 1995, could not be participating in other HCFA demonstrations involving collection of OASIS data, and could not have been participating in the treatment group of the per-visit home health prospective payment demonstration.

Considerable effort was made to recruit and inform potential participants of the study goals and operations, and potential benefits to themselves. Potential participants were told they could expect to receive three main benefits from participation—management reports based on the data to be collected during the study, technical assistance and training on OASIS procedures, and reimbursement for data collection costs. Out of 1,797 eligible providers, approximately 290 agencies actually volunteered to participate in the study. Agencies were randomly selected from among the volunteers within each sampling cell in July 1997. Further details of the recruitment process are provided in Abt Associates, First Interim Report, July 1998 (revised December 1998).

Agency Training

The next phase of the study was training the agencies in data collection procedures. Abt Associates staff developed a Procedures Manual covering the project overview, directions on administering patient assessments using the OASIS and supplemental items (OASIS and the supplemental items were termed OASIS+, data storage and transfer procedures, and information on training techniques for agencies to use internally with their staff. Particular attention was given to item-by-item guidelines for OASIS elements, in part to ensure the reliability of the data collected for developing the case-mix adjuster. The uniform assessments afforded by OASIS were a strength of the project, because reliable data allow analysts to accurately evaluate the contribution of potential case-mix variables to a case-mix adjuster.

Additional training activities included slides and other written materials, and 2-day training sessions for participants. At least one training session was held in each of the 8 States in July and August of 1997. Training sessions were attended by 296 staff from the 90 participating agencies, and covered the meaning and intent of the OASIS and other assessment items, as well as operational procedures and data management. A significant effort was made to educate staff in methods of training and motivating their colleagues at the participating agency. After the sessions, follow-up training activities and other educational contacts were conducted by the contractor. Once the study was underway, Abt Associates continued to promote communication with the agencies, and to foster information-sharing among agencies, through activities such as conference calls, meetings, and an e-mail discussion group.

Data Resources

The two basic data sources for the study are case-mix explanatory variables from the patient assessments and a resource use variable from the visit data. Claims data comprised a third data source, and were used to verify membership in the 6-month cohort and to supply several additional potential case-mix explanatory variables for testing. All three sources of data were collected on the 6-month cohort from admission until the end of home care in the participating agency or March through April 1999, whichever came first.

OASIS data. Study agencies collected patient characteristics data using the OASIS assessment supplemented by additional assessment items at the following points: admission to home health, resumption of care following an inpatient stay, at follow up (every 57 to 62 days until discharge), upon transfer to an inpatient facility, and at discharge or death at home. The 129 patient data elements cover the following domains: patient demographics and health history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, ADLs and IADLs, medications, equipment management, emergent care use, and discharge disposition. The items supplemental to OASIS were integrated in the following OASIS domains: demographics and patient history; living arrangements; supportive assistance; integumentary status; elimination status; neuro/emotional/behavioral status; ADLs and IADLs; and medications. An additional dimension was added to the assessment data set, nutrition/hydration status, as the research literature indicates that nutritional status and the potential for dehydration are important predictors of poorer outcomes. Development of new items was beyond the scope of the project; therefore, supplemental items generally came from previously validated instruments such as the Minimum Data Set for Home Care (MDS–HC) (Morris, J. N., B. E. Fries, and D. Mehr, et al. "A Comprehensive Clinical Assessment in Community Settings." November 1996a, unpublished manuscript; and Morris, J. N. The Minimum Data Set for Home Care. Presentation for "The Key to Elderly Care in an Aging World" in Reykjavik, Iceland, 1996b).

Visit log data. Visit information was recorded on a visit log separately tailored for each type of visit (for example, home health aide or medical social worker). The visit log consists of identifying information, starting and ending times, and a column of items for checkoff that detail the services performed during the visit and factors explaining the time spent. The checkoff items were not intended to capture information on all activities performed in the home—only those likely to significantly affect the length of the visits. The starting and ending times allow the calculation of total visit time for the key resource use measure for the study. To arrive at a standardized measure of resource use, time is weighted by the average labor cost for the discipline of the clinician making the visit.

Standardized measure of resource use. Previous research on case mix generally used a measure of resource use based on the count of visits. However, visit lengths may vary substantially, making visit counts a relatively imprecise measure of resource use. The case-mix study measured time spent on visits, rather than the number of visits themselves, to provide a more reliable measure resource use than did previous research. The mean labor cost estimate for the standardized resource use measure was based on hourly wage data from HHA respondents to the U.S. Bureau of Labor Statistics Occupational Employment Survey (OES). The survey collects wage data by occupation and industry. The Standard Industrial Classification industry category used for our estimate excludes agencies under government auspices and hospital-based agencies where workers are employed by the hospital. However, government civil service grades or hospital pay for specialized occupations may systematically depart from market wage rates. Our mean labor cost included an estimate of benefits. Following our salary equivalency estimates for therapists, the benefits were estimated exclusive of supplemental pay. The occupational category mix within each discipline (for example, registered nurses and licensed practical nurses delivering skilled nursing visits) was estimated from the OES data. For further details on the derivation of the mean labor cost used in the study, see Appendix E in Abt Associates, Inc., First Interim Report, July 1998, Revised December 1998.

Medicare claims. The Medicare claims for the 6-month cohort were linked to the patient characteristics data and visit log data to verify membership in the 6-month cohort and to provide utilization measures (for example, therapy use or institutional health care services received during the episode). The Medicare claims were also used to simulate 60-day episodes, using the from-and through-dates on the claims.

Data collection and management. The project's data management procedures were designed to support agencies in the collection and submission of consistent and reliable data on patient characteristics and service use. Participating agencies entered the patient assessment data into an electronic data file using software provided by Abt Associates or their own data systems. Data entry on site was required because this allowed a computer program to edit the data and to report any errors for correction before the data were submitted to Abt Associates. The visit logs were printed in different colors to minimize the chances for confusion. The forms were designed for optical scanning of the checkoff boxes, and the agencies forwarded the originals directly to an optical scanning contractor. The data were double entered and scanned, and the hard copy forms were sent to Abt Associates, along with the electronic data files, for cleaning. Abt processed all visit log forms received from project agencies, and generated reports for the agencies indicating the outcomes of this editing process. When agencies received the error reports and the associated hard copy logs, their responsibility was to review the problems, make any changes, and resubmit the forms.

Data preparation. The OASIS and other assessment items that had been submitted by agencies had to be merged with the records for cohort patients as defined using the claims data. Iterative matching algorithms, and intensive manual review of potential matches, were used to match assessment records to the claims patient records. Of 21,426 patients identified for the 6-month cohort from claims, 17,351 had one or more assessments that could be matched at the time Abt Associates constructed the analytic file used for case-mix system development. Visit logs on more than 750,000 visits that had been submitted by project agencies and processed by August 1998 were available for matching to claims records. Because of the occasional presence of inaccurate data in the identifying fields on the visit logs, it was necessary to protect against false matching based on incorrect visit log data. Even with an exact match on one key matching field (besides the necessary match on provider, discipline and date), it was required that the rest of the key fields be compatible. To accomplish this, a matching algorithm was developed by Abt Associates and applied to comparisons of all possible match fields. Based on the algorithm, 588,846 logged visits were matched to claims for cohort patients. The remaining logs come from visits to non-cohort Medicare patients at participating providers and visits to non-Medicare patients, inasmuch as some agencies completed logs for all of their home care patients, regardless of payor, to simplify recordkeeping procedures during the study. In addition, some of the unmatched logs likely come from an unknown number of visits to patients in the 6-month cohort whose identifying information was not sufficient to make a match at the time of file construction. (For further details of these matching procedures, see Abt Associates, Second Interim Report, August 1999.)

Analytic file construction. The project data were assembled to simulate a 60-day episode. In order to estimate resource use for each 60-day period of care, we developed certain decision rules for allocating claims and visit logs by discipline to 60-day "windows" of time, or episodes. Because we superimposed the 60-day episodes on the pre-existing claims stream, an episode could start and end sometime during the period covered by a claim. Many claims did not show the date of each visit; therefore, an algorithm was needed to allocate visits when a claim period fell into more than one episode. In general, the visit logs were used to make this allocation since they provided individual visit dates. If some logs were missing, the percentages of nonmissing logs falling in the claim service period before and after the episode date boundary were used to allocate visits identified on the claim to the two episodes straddled by the claim. If no logs were available, the visits from claims were allocated to the episodes in proportion to the number of days covered by the claim that fell in each 60-day episode. In episodes with missing logs, additional steps were taken to estimate the missing minutes of care that would have been measured in the missing logs. Efforts were made to use all available patient-and discipline-specific information in the imputation. Combining these procedures with a rule requiring a 60-day gap in service before a new start of care could be initiated for a cohort member resulted in a total of 31,725 payment episodes—an average of approximately 1.4 60-day episodes per cohort member with the data available at the time of file construction. After resources were calculated for all payment segments, analysis of the data revealed the presence of extreme values of mean minutes per visit by discipline within the 60-day episode. Visit lengths in episodes with extreme values (defined as the highest and lowest 0.25 percent of cases within each home health discipline) were replaced with agency-level mean visit lengths by discipline. A total of 335 episodes (1 percent) were adjusted in this manner, resulting in an insignificant change in mean total resources per 60-day episode. These allocation, imputation, and data adjustment procedures are described in detail in Abt Associates, Inc., Second Interim Report, August 1999.

Linking the Assessment Data

To complete the analytic file, the patient assessment data had to be added to the simulated episode file that contained data on visits and resource costs. To protect the reliability of the assessment data for the purpose of case-mix system development, assessments were linked to an episode in the simulation file only if the assessment was conducted within 14 days of the start of the episode.

Analytical Approach

Initial development of the case-mix model used data from 4,303 episodes pertaining primarily to the first 60-day period of care for members of the 6-month cohort who enrolled from October 1997 through December 1997. Subsequent refinement of the model occurred after the analytic file was enlarged with data accumulated later to create an augmented file. The augmented file was partitioned into a development sample and a validation sample. The development sample, consisting of 10,413 initial 60-day episodes for cohort members and 2,059 subsequent episodes, was used for the refinement phase. The development sample episodes were randomly selected from the augmented file. The remaining episodes—6,963 initial episodes and 1,331 subsequent episodes—were reserved to validate the final model.

The basic approach to case-mix development was to use the patient data and other appropriate data to identify candidate case-mix adjusters or their components, and then estimate their ability to explain variation in resource use over the course of the simulated 60-day episode. The measure of "explanatory power" used to evaluate the overall system and its component dimensions as development proceeded was the coefficient of determination, or R-squared.

The R-squared measures the proportion of variation in standardized resource costs that is explained by the case-mix groups. R-squared cannot be negative or greater than one. An R-squared of one would indicate that each case-mix group's average resource cost exactly predicts the individual resource cost of each episode in the case-mix group. In actual applications in social science research, an R-squared of one could be obtained only if each observation comprised its own group. The R-squared for the final home health case-mix model is .32. Based on the R-squared results, the home health case-mix system has predictive accuracy comparable to its counterparts from other payment systems. The diagnosis-related group (DRG) system used for hospital PPS has an R-squared reported in various studies in the range of .26 to .33 (Worthman, Linda G. and Shan Cretin. Review of the Literature on Diagnosis Related Groups. A RAND Note. N–2492–HCFA. Santa Monica, CA. October 1986). The Resource Utilization Groups (RUGS)–III system of 44 case mix groups used for Medicare SNF per diem prospective payment has a reported R-squared as high as .56 (Fries, B. E., D. P. Schneider, and W. J. Foley, et al., "Refining a Case-Mix Measure for Nursing Homes: Resource Utilization Groups (RUG/II)." *Medical Care* 32:668–685, 1994). But comparisons between the SNF and home health case-mix measures must recognize that home health resource consumption is being "predicted" over a 60-day period rather than on a daily basis, and that factors other than case mix may be a stronger influence on resource consumption under home health, leaving less variation to be explained by case-mix variables. Additionally, there is evidence that the RUGS–III system in actual application under the Medicare program will achieve an R-squared of less than .56 (White, A., S. Pizer, and C. White. Refining Resource Utilization Groups (RUG–III) for a National Skilled Nursing Facility System: Technical Expert Panel Briefing. October 1998).

To construct alternative case-mix groupings, preliminary regression analyses were used to investigate the relative importance of various factors explaining resource use. Then, clinical judgment was used to identify and define clinically meaningful dimensions of case mix, taking into account the results from the regressions. Alternative ways of measuring and constructing the dimensions and relating them to one another in a complete structure were explored in consultation with clinical experts. Along with clinical considerations, policy and incentive implications of alternative variables or structures were also considered—particularly the implications of alternatives for promoting improvement in health and functional status and for making the adjuster vulnerable to manipulation for profit-maximization.

Another consideration was ease of implementing the system. For example, if all of the case-mix elements were available on the OASIS assessment, then adoption of the data collection procedures necessary for PPS would already be accomplished when agencies met the OASIS requirements of the revised Conditions of Participation, pending for the quality system. Thus, the resulting case-mix groupings, and their component dimensions, were evaluated and refined interactively with clinical, policy, and administrative input.

Case-mix development work under the Abt Associates contract produced two alternative case-mix models, dubbed the "clinical" model and the "diagnostic" model. The two models had many elements in common, but the diagnostic model gave more emphasis to medical diagnosis in measuring case mix. In the diagnostic model, patients were classified into one of seven diagnosis groups based on the home health primary diagnosis from the OASIS. Further subgrouping of the basic seven groups was based on clinical, functional, and utilization-related variables. There has been controversy regarding the relative advantages and disadvantages of a diagnostically-driven model. Proponents believe it more accurately reflects the way clinicians think about patients. It may also have the potential to create more homogeneous patient groupings, providing an opportunity to develop clinical, functional, and utilization criteria customized for different diagnoses. There are several disadvantages of the diagnostically-driven model, however. One is that only a relatively few diagnostic categories (notably orthopedic, neurological, diabetes, and skin wounds/lesions) carried significant explanatory power in the analyses. This suggests that diagnostic classification beyond these few categories brings little or no additional benefit in predictive accuracy. Also, the diagnosis-based approach usually leads to a model with a higher number of end-points that may make it more complex and difficult to use. Another disadvantage is that the use of diagnostic categories is problematic when dealing with a home care population that frequently has multiple diagnoses—the choice of a primary diagnosis to report could be unduly influenced by payment incentives. If the case-mix system were to consider multiple diagnoses simultaneously, the problem of incentive impacts on reporting might be reduced, but at the expense of more complexity in the adjuster. High predictive accuracy could outweigh these disadvantages, but the R-squared of the diagnostic model was not appreciably higher than the simpler clinical model.

The case-mix project analytic work occurred in three stages: early exploratory analyses, clinically driven development work, and refinements.

Early data analyses. We began exploratory analyses with the 4,303 observations available early in the analysis phase. These analyses relied mostly on regression equations to begin to understand which OASIS and other assessment variables might play an important role in an eventual case-mix adjuster, and to gauge how much variation in resource use beyond case mix alone could be explained in a mathematical model that included factors such as agency characteristics, economic characteristics in the agency's environment, and events taking place during the home health visit. These exploratory regressions suggested that up to .47 of the variation in resource use could be explained using regression analyses that accounted for a range of causal factors encompassing more than case mix. The equations included variables to measure clinical, functional, home environment, agency, and economic factors; home health treatment variables; and unusually time-consuming events taking place during visits. These analyses highlighted several potentially appropriate and powerful variables in the data, such as preadmission location of the patient; certain acute conditions (orthopedic, neurologic, open wounds and lesions, diabetes); the presence of an ostomy; and functional dependence in locomotion. These models further suggested that restricting the explanatory variables to a subset of purely clinical and functional patient characteristics alone would produce an R-squared of approximately .20.

Clinically driven case-mix models: The project's goal from the outset was to develop a case-mix adjuster that defines a number of mutually exclusive patient groups that could be associated with differing resource use. Another criterion for the grouping system is that it should be clinically meaningful to the home health clinicians using it, by making use of recognized clinical categories and by being consistent with the clinical diagnostic process. A further criterion was simplicity; ideally, the system should be comprised of a limited number of mutually exclusive groups, and rules for classifying patients into groups should be straightforward.

As described in their project report (Abt Associates, Inc., Second Interim Report, August 1999), these objectives were approached by the Abt Associates nurse-clinicians through a combination of professional experience and study of previous work in the field reported in the literature. They first focused on identifying clinically significant indicators that address patient care needs from the perspective of the home health clinician. To help identify indicators, they considered the following questions: What level of complexity, severity and instability characterizes the patient's clinical condition? How much and what type of assistance does the patient need with activities of daily living? Does the patient require special therapies or high-tech services? What cognitive impairments, behavioral characteristics, risk factors, and environmental conditions affect the amount and type of care this patient will require? The Abt team then proceeded to review the patient assessment variables as a source of information for the indicators. The resulting list of variables was reviewed in light of several issues:

Policy implications: Some patient characteristics are not suitable as a basis for payment because they raise issues of equity or are otherwise questionable from a policy perspective. For example, the assessment's race and education variables were excluded, as were measures of the patient's social or physical environment (for example, unsanitary or unsafe conditions). Similarly, a case-mix adjustment system should not discourage assistance from family members of home care patients. Although many observers assume that the availability or efficacy of a caregiver is a significant influence on HHA resource consumption, adjusting payment in accordance with caregiver variables does not seem advisable.

Administrative ease: Initially, the list of assessment items capturing clinically significant indicators included some that were supplemental to the OASIS itself. Incorporating these items in the assessment would require modification of the OASIS data collection procedures and complicate the startup phase for OASIS data collection. We carefully examined the explanatory power of the individual items and sought substitutes for them whenever possible from among the existing OASIS items. We were able to find substitutes for almost all of them with little impact on the explanatory power of the model. The only notable exception was an assessment item about a history of falls, which analysis suggests could raise the explanatory power of the model by about one one-hundredth. However, because this was the only remaining variable that was not obtainable from the existing OASIS collection procedure, we weighed its utility against possible delays and confusion in OASIS implementation and decided not to use it. A utilization variable pertaining to inpatient stays occurring during the home health episode was also seriously considered but ultimately dropped because data limitations prevented us from clearly understanding its impact and because it posed an added data collection burden for home health providers. This item would have required the HHA to report whether a Medicare-covered inpatient stay occurred during the 60-day episode and the length of the stay. This information would be used to determine any adjustment to the case-mix group assignment at the end of the episode.

Other criteria: Reliability-related concerns were also a part of the item selection process. If case-mix variables address characteristics that appear subject to varying interpretation by assessing clinicians, the system could be vulnerable to manipulation by providers or patients. When payment increments are at stake, great care must be taken before accepting items even if they have been proved reliable in other circumstances, such as quality assurance research. For example, items on rehabilitative prognosis and overall prognosis were eliminated on these grounds. Some symptoms may be very short-lived, but if they are present at the time of the assessment they would have an impact on the case-mix adjuster if included. An example is a supplemental item such as "In last 3 days, noticeable decrease in the amount of food client usually eats or fluids usually consumed?" We determined that basing payment adjustments on potentially transient signs and symptoms captured by these items is ill-advised because their impact on care delivery is uncertain at best. In addition, diagnoses that were candidates for inclusion in broader diagnosis groups were reviewed by a member of our clinical staff from the perspective of their reliability as markers for resource-intensive conditions.

Incentive effects: Unintended incentive effects could result from using variables that reward providers for negative practice patterns, such as the use of a urinary catheter absent clinical need for the device.

Structure of the system for case-mix measurement. In addition to studying individual variables from the perspectives of explanatory power, policy and administrative implications, and reliability, it was necessary to define the system's decision logic, or structure. Examples of other grouping models developed for research purposes, case-mix classification, risk adjustment or care and treatment were studied to suggest ways of categorizing functional impairment, clinical severity, and other patient characteristics—such as whether to group patient characteristics via distinct dimensions of health status (for example, functional versus clinical); whether to consider bifurcations of groups for which partitioning would produce clinical and statistical meaning (that is, ADL "splits," as the RUG–III system uses); the desirability of symmetrical versus asymmetrical models; and whether to create an indexing system or a categorical system. For example, when considering issues such as cognition, we considered whether these variables would be more appropriately captured within a clinical or functional domain, or whether they would provide more clinical meaning (or statistical power) if used as a binary split (that is, yes/no cognitive impairment) after clinical and functional groups were established.

Similarly, in our consideration of existing classification systems, we examined the clinical value of different structural and operational features of systems. The Nursing Severity Index, for example, adds points per each qualifying nursing diagnosis and sums to a total score. The total score, or index, reflects the patient's severity, with a total index of 34 reflecting the highest severity of illness. Unlike the NSI, the RUG–III classification system is a hierarchical system, with seven general categories that are placed in general order of costs associated with caring for residents. The first category, or top split, is rehabilitation; the last is reduced physical function. As we reviewed these systems, we gave consideration to which type of system seemed least complex for use by home health clinicians, most clinically-intuitive, and most feasible to operationalize, given the nature of the assessment data set.

Abt Associates used a computer package called PC-Group, which creates decision trees whose terminal nodes may be regarded as case-mix groups. This package allows the analyst to "grow" the tree interactively, which means considerable judgment can be imposed in selecting and dividing nodes as the tree is constructed.

To produce a workable product with the package, it was necessary for the Abt analysts to summarize their variables first. Based on the conceptual work and literature review conducted during the project, they arrived at a small set of dimensions for summarizing assessment elements. There are separate dimensions for clinical severity; functional status; and service utilization. This organizing principle suggests that patients can be classified along each dimension, and this classification is correlated with resource consumption in home care. In an effort to maximize the clinical utility and explanatory power of the patient classification model, the project team experimented with many variations of each dimension, adding and removing items and examining their effect on the way the models functioned.

The Clinical Severity Dimension. The clinical severity in the final model incorporates three diagnostic categories: Neurologic, Orthopedic, and Diabetes. Specific diagnoses comprising each group were reviewed to ensure that diagnoses used on highly heterogeneous groups of patients would not be included. Inclusion of these diagnoses could weaken the predictive power of the case-mix adjuster. The diagnoses in each group are shown in Table 9. The diagnosis code comes from OASIS item number M230. The clinical dimension also includes the following OASIS items as indicators of clinical severity: status of wounds and ulcers (M0460, M0476, M0488); vision status (M0390); pain frequency (M0420); presence of a bowel ostomy; (M0550) use of parenteral and enteral nutrition, and intravenous therapy or infusion therapy (M0250); dyspnea (M0490); urinary and bowel incontinence (M0530, M0540); and behavioral problems (M0610).

Early versions of the clinical model did not include measures of cognitive, sensory and behavioral impairment which might affect resource use, primarily because statistical analysis did not suggest they were useful in explaining variation. Based upon subsequent review, we determined this was a serious omission from the model, so we renewed attempts to integrate cognition and related indicators into the model. An additional dimension consisting solely of the OASIS neurological, cognitive, sensory, and behavioral (NCSB) variables was created, which produced a minor variance reduction in the overall sample of only .015. Furthermore, the highest degree of cognitive impairment was not consistently related to the highest mean costs.

Since increasing levels of severity of the NCSB variables as a group are not consistently associated with increased resource use, we did not attempt to use them as an independent dimension. Using data from regression analysis, however, we were able to integrate M0390 (vision) and M0610 (behaviors) into the Clinical Severity dimension in a way that did not produce counter-intuitive cost groupings.

Further technical discussion of the statistical results on each variable is found in Abt Associates, Second Interim Report, August 1999, Chapter 3.

The Functional Status dimension. As in the development of the clinical severity dimension, we began by selecting assessment items considered to be potential predictors of increased resource use, focusing on the extent of assistance the patient required with activities of daily living. Early exploration with the available functional indicators suggested OASIS items were equivalent in explanatory power to the supplemental items we tested. We tested restricting the ADLs to late loss ADLs (that is, those ADLs likely to be lost late in life: eating, transferring, toileting, and bed mobility) to see whether the restricted list better predicted resource use in the home-bound elderly, as is the case among the elderly which reside in nursing homes (Williams, Brent C., Brant E. Fries, and William J. Foley, "Activities of Daily Living and Costs in Nursing Homes," *Health Care Financing Review*, 15 (4):117–134 (Summer 1994)). This was not supported. We also experimented with cognition-related variables, based on findings in the literature (Torres, H. A., L. Fratiglioni, Z. Guo, M. Viitanen, E. von Strauss, and B. Winblad, "Dementia is the Major Cause of Functional Dependence in the Elderly: 3-Year Follow-up Data from a Population-based Study," *American Journal of Public Health*, 88:1452–1456 (1998).

In the version of the dimension ultimately used in the Clinical model, ambulation locomotion was integrated and both early-loss and late-loss ADLs were included (while cognitive factors were incorporated into the Clinical Dimension). We dropped the eating and grooming ADLs because they were statistically redundant when the other items (dressing (M0650, M0660), bathing (M0670), toileting (M0680), transferring (M0690), and locomotion (M0700)) were included. M0650 (Dressing Upper body) and M0660 (Dressing lower body) were found to have a significant degree of interaction and therefore were combined. Additional experimentation with the functional status dimension involved testing different schemes for ordering the variables and partitioning subgroups of patients in accordance with measurements on the variables.

None of the variables in the Functional Status Dimension was eliminated due to reliability-related or incentive concerns. Some home health clinicians who reviewed the model in October 1998 commented on the potential of functional status items to be manipulated by providers, who would have an incentive to make patients seem as functionally impaired as possible on admission to home care. However, because the functional status items make an important contribution in predicting home health resource use, and because they are integral to clinical decisionmaking for the home care benefit, they were retained. Furthermore, under the planned Outcome-Based Quality Improvement system for home care, beyond the initial assessment, quality assurance monitoring may help counteract any tendency to overstate the functional dependency of patients. We are soliciting suggestions for approaches, new assessment items, procedures, or other mechanisms that might help guard against mismeasurement of functional status items due to payment incentives.

The Service Utilization Dimension

The Service Utilization dimension contains variables related to services the patient received both before and during the episode of home care. To measure utilization before the start of home care, OASIS item M0170 collects information about inpatient discharges during the 14 days before the assessment. In the analysis of costs associated with pre-admission location, we examined how responses to M0170 were related to mean resource cost. It should be noted that a Medicare SNF stay is always preceded by an acute care hospital stay, so if a patient has a long SNF stay (exceeding 14 days) the acute care stay probably would not be measured by this item. A similar censoring of an acute care event may also occur with rehabilitation stays, although there is no Medicare requirement that such stays be preceded by an acute care hospital stay. On the other hand, if both an acute care stay and a SNF or rehabilitation inpatient discharge occurred within the previous 14 days, it seems likely that the SNF stay or rehabilitation stay was relatively short. We found that patients who are admitted to home care directly from the community are on average more resource-intensive for home care providers than patients who were recently discharged from an acute care hospital and had no evidence from M0170 that they used post-acute institutional care. Patients experiencing both a hospital and SNF/rehabilitation stay within the past 14 days are about as resource-intensive as the patients with no pre-admission stay. Finally, patients for whom only a SNF/rehabilitation hospital stay is observable within the past 14 days are the most expensive. We theorize that they tended to have relatively long SNF or rehabilitation stays of (at least 14 days), which may suggest that the definition of this group using M0170 is a marker for clinically complicated cases with intensive care needs.

The other variable in the service utilization dimension measures home health therapy hours totaling 8 hours or more during the 60-day episode. In developing the patient classification models, we sought to focus on variables that predicted care needed by the patient, as opposed to care furnished by providers. Ideally, we sought a case-mix adjustor that creates as little incentive as possible for providers to enhance revenues by providing unnecessary services. However, including a variable measuring the receipt of a significant amount of home health therapy (physical, occupational, or speech/language) improved the R-squared of our models by about .20. The RUG–III system for SNF case-mix measurement also includes an indicator for receipt of therapy. An advantage of paying differentially for therapy cases in the case-mix adjuster is that it will help to maintain access to therapy among home health patients who need it. The threshold of 8 hours targets additional payments for home health therapy to patients with a clear need for therapy. We believe this decision rule will motivate home health providers to efficiently plan therapy evaluation visits and therapy delivery for patients who need little or no therapy.

Additional variables were tested for the services utilization dimension. We decided not to use a variable for previous home health utilization in the past 90 days because, under the influence of payment incentives, it carried the potential to encourage readmissions to home care within the 90-day window. The predictive value of the service utilization was lowered by only .0059 as a result. We also tested the value of including inpatient stay events during the episode. This intervening-stay variable modestly improved the total R-squared for the model. However, as discussed above, it may present substantial data collection burdens for providers.

Scoring Patient Variables and Developing Severity Categories

Variables within the clinical and functional dimensions have differing impacts on resource cost. Before the final refinement phase of model development, we assigned a score to each outcome on each variable based on the increase in mean resource cost associated with each outcome. Within each dimension, the sum of scores for the component variables is correlated with resource consumption in home care. This is consistent with our conceptualization of the clinical, functional, and service utilization components as dimensions along which patients can be classified in accordance with their home health resource consumption.

During the refinement phase of model development, we used regression-adjusted mean resource cost to re-examine the scores. The purpose of the regression was to control for all case-mix variables simultaneously to get a more accurate picture of their respective independent contribution to resource use. Having quantified their contribution via the regression, we could derive more accurate scores for the variables. In addition, we looked for results that could signal redundancy among the variables and tested several interaction terms in the regression. (Interaction terms capture potential synergy among variables.) Both the improved scoring and the interaction terms could potentially improve the explanatory power of the case-mix system. The results of the regression analyses changed some of the scoring and resulted in the merging of some items. A few items were eliminated after examining the regressions, which suggested they were redundant.

The next step in model development was to find score intervals along the clinical dimension and the functional dimension that would define patient groups of relative severity along the respective dimension. Whenever possible, we used "natural breaks" in the array of scores in the sample to define the intervals. When partitioning the functional dimension scores, we examined the types of dependencies that would be captured in the intervals, particularly at the low and high end of the functional dimension. We determined the number of intervals also in light of the number of groups that would ultimately be created as more intervals are defined. The R-squared does not improve substantially when one or two more breaks are defined, but the number of groups increases greatly, adding to the complexity of the system.

For the clinical dimension, we classified patients into four levels of impact (minimal, low, moderate, and high), and for the functional dimension, five levels of impact (minimal, low, moderate, high, and maximum). The service utilization dimension is actually comprised of categorical variables that partition patients into four groups of increasing impact on resource use. We assigned scores to each of these four groups in accordance with the increasing impact.

Case-mix Groups. Each dimension contains four or five impact levels or intervals (for example, high, moderate, minimum, and low). For every combination of intervals, there is a case-mix group. For example, patients who are high on the clinical dimension, moderate on the functional dimension, and low on the services utilization dimension are grouped together. Since there are four clinical levels, five functional levels, and four service utilization levels, the case-mix system comprises a total of 80 groups. Half of the groups involve patients with therapy use of at least 8 hours.

In the case-mix research sample, the number of patients in each group varies widely, from few or no patients to between 1,000 and 1,500 in several of the groups (unweighted data). The therapy groups comprise a minority of patients in the sample— 15 percent (unweighted). Approximately 30 percent of the sample fell into the minimal clinical level, 30 percent into the low clinical level, 23 percent into the moderate clinical level, and 17 percent into the high clinical level. Approximately 15 percent of the sample fell into the minimal functional level, 30 percent into the low functional level, 36 percent into the moderate functional level, 11 percent into the high functional level, and 7 percent into the maximal functional level.

III. Audited Cost Report Data Sample Methodology

Audited Cost Report Data

Section 1895(b)(1) of the Act requires the prospective payment amount to include all services covered and paid on a reasonable cost basis under the Medicare home health benefit, including medical supplies. Section 1895(b)(3)(A)(i) of the Act requires the computation of a standard prospective payment amount to be initially based on the most recent audited cost report data available to the Secretary. Under section 1895(b)(3)(A)(i) of the Act, the primary data source in developing the cost basis for the 60-day episode payments was the audited cost report sample of HHAs whose cost reporting periods ended in fiscal year 1997 (that is, ended on or after October 1, 1996 through September 30, 1997).

In February 1998, we directed our fiscal intermediaries (FIs) to conduct comprehensive audits of the cost reports submitted by a sample of HHAs whose cost reporting periods ended in FFY 1997. Each FI received a list of agencies to audit and instructions on how to conduct the audits and report the data obtained.

The sample was designed to be representative of the home health industry in several respects: provider-based versus freestanding, census region, urban versus rural location, and large versus small agencies. Because we anticipated that many agencies in the sample would not be audited because their records were unavailable for a variety of reasons or their cost reporting periods were less than 12 months long, the sample size was adjusted upward by 15 to 20 percent to allow for attrition.

To create national HHA PPS rates, each observation in the final data set is weighted to reflect the national Medicare home health payment experience. For example, the estimates will reflect differences across census regions and urban versus rural areas.

Audit Sample Methodology

To meet these objectives, a statistical sample begins with a list of all HHAs that submit cost reports. The list is referred to as a frame. Considerable effort went into the process of developing the frame for HHAs and identifying units to be included. The frame for this sample excludes all HHAs that are incidental providers (too small) or not likely to yield a full year of cost reporting for the audit period.

Once a frame was developed, we selected a sample. The sample for the HHAs was selected by choosing samples for each provider type (freestanding not-for-profit, freestanding for-profit, freestanding governmental, and provider-based). The provider types are referred to as strata in sampling terms. The design of the sample took into account the number of providers and the variation in cost and beneficiaries in each stratum. The sample was designed to produce estimates from key elements of the audit data with a reasonable level of precision.

A sample selection assumes the frame is complete and each sampling unit appears once and only once in the frame. Unfortunately, after the sample was drawn and fieldwork begun, we found that this assumption was not strictly true for the governmental units.

The problem arises from the fact that multiple providers, referred to as subunits, report under a single cost report. In some cases, multiple providers' numbers corresponding to a single cost report appear on the frame, while in other cases a provider number is a parent possibly with multiple subunits. We then considered the subunits associated with a single cost report as the appropriate sampling unit because there is no way to accurately distribute costs among subunits. The subunits on the frame associated with a single cost report were identified and the listings of individual subunits were regarded as if the appropriate sampling unit had been included a known number of times on the frame list.

This somewhat changed the sample composition. When the sample was drawn for a stratum so that each unit on the list has the same probability of selection (as among the governmental units), the probability that the multiply-listed unit be included in the sample was higher. The higher probability of representation is in proportion to the number of inclusions on the frame list. This is like a drawing in which an individual enters his name (or his family members' names) multiple times to enhance his (or his family's) odds of winning. When one analyzes data from a sample that is biased by giving a higher probability of selection to some units, these units need to be given smaller weights if the estimates are to correctly represent the population that the frame should have enumerated.

That is, the analysis of the sample data must take into account the sampling probabilities by assigning each sampling unit a weight that is less if the probability of inclusion is higher. Indeed, the sample may include the same subunit multiple times, and we retained the values for each time the unit appears in the sample when the proper weights are used.

For purposes of this example, n equals the number of governmental subunits reporting under a single cost report in the frame. Therefore, a governmental cost report is n-times more likely to appear in the sample, and the weights for each occurrence in the sample are reduced by dividing by n. A description of a similar situation involving a household survey based on samples drawn from children in school is described in Morris H. Hansen, William N. Hurwitz, and William G. Madow, *Sample Survey Methods and Theory*, vol. 1 (NY: Wiley, 1953) 59–65. Because households with large families will have a higher probability of being included in the sample, households with large families will be over-represented in the sample unless some adjustment is made. That adjustment can be done, as we did here, by providing weights in the analysis that give less weight to the households that are more likely to be included in the sample.

From the frame we have known totals for the number of units in the cells. Weights were adjusted so that corresponding totals based on the sample match these known cell totals. Even if all units in the sample were successfully audited, the process described above ensures that correct cell totals are obtained from the analysis.

However, when audits are not obtained as intended and the missed units are not in the sample as intended, the weights must be adjusted so that the sample data reproduce the known totals from the frame for key subgroups or cells. The process assigns a larger weight to audited units in the sample similar (in the same cell) to those missed. In the case of the HHA, the cells were defined by the urban or rural area; the four census regions of Northeast, Midwest, South, and West; and provider type. Therefore, the weights were adjusted for the missed sample units to ensure that the units obtained most closely represent the missed units cell by cell.

Summary of the Missing Audits in the Home Health Audit Sample and Results Used to Develop Weights for the Sample

In the home health audit sample design we assumed there would be nonresponse or missing audits for a variety of reasons. The reasons included situations such as the following: the provider no longer existed in order to do the audit, the provider was under investigation, or the provider filed a short cost report, that is, a cost reporting period less than 12 months. The chart below shows the original sample sizes for each provider type and the oversampling cushion associated with each one. Because we rounded numbers up in the sample size calculations and selection algorithms, the actual oversampling factors exceed 13 percent, as follows:

Stratum	True sample size	Oversample	Oversample percentage
Freestanding nonprofit	161	31	19.3
Freestanding for profit	148	23	15.5
Freestanding government	141	20	14.2
Provider-based	98	23	23.5

After examining the data for missing cases, we found the actual number of missing cases as follows:

Stratum	Sample size	Actual	Percent missed	Percent of target
Freestanding nonprofit	192	171	10.9	107.5
Freestanding for profit	171	142	17	98.0
Freestanding government	161	159	1.2	114.2
Provider-based	121	95	21.5	98.0

From this it is evident that the sample actually obtained generally was within range or close to the specifications. The percent of target is based on the sample size without the allowance for anticipated missed audits.

Freestanding for Non-Profit Summaries

DISTRIBUTION OF SAMPLE AND FRAME FOR FREESTANDING FOR NONPROFIT BY URBAN/RURAL AND CENSUS REGION

Area	Audits	Missed	Frame
MW—Rural	12	0	58
MW—Urban	40	4	195
NE—Rural	9	1	59
NE—Urban	46	3	260
SO—Rural	20	6	112
SO—Urban	25	2	148
WS—Rural	5	3	49
WS—Urban	14	2	74

Freestanding For-Profit Summaries

DISTRIBUTION OF SAMPLE AND FRAME FOR FREESTANDING FOR-PROFIT BY URBAN/RURAL AND CENSUS REGION

Area	Audits	Missed	Frame
MW—Rural	6	0	131
MW—Urban	19	6	520
NE[1]—Urban	18	0	263
SO—Rural	21	2	458
SO—Urban	54	15	1311
WS—Rural	7	1	102
WS—Urban	17	5	489

[1] No sample was obtained in the NE Rural category for this group. This cell was combined with NE Urban in obtaining weights.

Freestanding Governmental Summaries

DISTRIBUTION OF SAMPLE AND FRAME FOR FREESTANDING GOVERNMENTAL BY URBAN/RURAL AND CENSUS REGION

Area	Audits	Missed	Frame
MW—Rural	53	1	222
MW—Urban	11	0	36
NE—Rural	8	0	29
NE—Urban	9	0	42
SO—Rural	49	1	193
SO—Urban	20	0	69
WS—Rural	8	0	25
WS—Urban	1	0	11

Provider-Based Summaries

DISTRIBUTION OF SAMPLE AND FRAME FOR PROVIDER-BASED BY URBAN/RURAL AND CENSUS REGION

Area	Audits	Missed	Frame
MW—Rural	15	2	450
MW—Urban	13	0	293
NE—Rural	2	0	31
NE—Urban	9	3	196
SO—Rural	26	4	567
SO—URBAN	13	11	485
WS—Rural	10	3	195
WS—Urban	7	3	241

Determination of the Weights for the Actual Sample

The weights would essentially be equal for each HHA within a type if all HHAs in the sample had been successfully audited. The weights would be the ratio of the frame to sample size for each type because the units were drawn with equal probability within provider type. However, as noted above, some of the proposed sample units were not successfully audited. Therefore, the numbers for the distribution in the frame given above were used as known control totals. Then the known control totals were used to adjust the weights to the frame control totals. The ratio of the frame to the corresponding sample totals is used as the weight for the corresponding cases in the sample, provided the audits are not missing. If the HHA was not audited and therefore missing, the weight was zero. This process gives more weight to the audited HHA in a cell to account for the missing audits within the cell. This is equivalent to imputing the weighted average of the audited HHAs in the cell to the missed HHAs within the same cell. In one case noted above, cells were combined because there were no providers in the sample in the relatively small NE Rural cell for freestanding for-profit providers.

Weight Adjustment Factors to Account for Governmentals

In the case of the governmental HHAs, the adjustment process was modified to account for the multiple subunits included on the frame. First, it was necessary to examine the provider numbers on the frame for the governmental HHAs. Providers that are subunits have the last four digits in the range 7800–7999. We also used the last four digits to identify parent units. Parents have the last four digits in the ranges 7000–7299 or 7400–7799 or 8000–8499 or 9000–9999. The following list shows the distribution of subunits and parents on the frame by State.

State	Provider	Subunits	Parents
AL	61	60	1
AR	62	62	0
AZ	5	0	5
CA	7	0	7
CO	8	0	8
CT	8	0	8
DE	1	0	1
FL	2	0	2
GA	3	1	2
IA	56	0	56
ID	2	0	2
IL	29	0	29
IN	3	0	3
KS	21	0	21
KY	18	0	18
LA	6	0	6
MA	3	0	3
MD	10	9	1
MI	18	0	18
MN	31	0	31
MO	26	0	26
MS	16	16	0
MT	4	0	4
NC	39	0	39
ND	2	0	2
NE	2	1	1
NH	2	0	2
NJ	6	0	6
NM	2	0	2
NV	2	0	2
NY	50	0	50
OH	30	0	30
OR	3	0	3
PR	1	0	1
SC	13	13	0
SD	1	0	1
TN	4	0	4
TX	2	0	2
UT	1	0	1
VA	9	0	9
VI	1	0	1
WI	39	0	39
WV	16	15	1
WY	2	1	1

An examination of the data for the few cases with multiple subunits from the same State confirmed that parent numbers were from a single cost report, and subunits, as in Alabama, all had a single cost report but a different parent.

Although there are various possible approaches regarding this issue, the approach taken here is consistent with the HCFA numbering conventions and the data examined to the extent we were able to confirm them from the sample. Therefore, a number of units was assigned to each HHA in the frame for the governmental HHAs. The number of units assigned is one for each parent and the sum of the number of subunits within a State for each subunit within the corresponding State. The same unit numbers were also assigned to the HHAs in the sample.

When totals are computed for the reciprocal of the unit numbers, the result is the number of cost reports. To see how this works, consider the State of Alabama. There are 60 subunits each assigned a unit count of 60, and there is 1 parent assigned a unit count of 1. The sum of the reciprocal of the unit numbers for the 60 subunits is 60 times 1/60 or 1, and the sum of the reciprocal of the unit number of 1 for the parent is 1. Therefore, there would be two cost reports if all of the HHAs from Alabama were audited.

The following summary by State shows the number of governmental providers on the frame and the number of cost reports or audits one would expect to find for each State if all governmental providers on the frame were audited.

State	Provider	Cost reports
AL	61	2
AR	62	1
AZ	5	5
CA	7	7
CO	8	8
CT	8	8
DE	1	1
FL	2	2
GA	3	3
IA	56	56
ID	2	2
IL	29	29
IN	3	3
KS	21	21
KY	18	18
LA	6	6
MA	3	3
MD	10	2
MI	18	18
MN	31	31
MO	26	26
MS	16	1
MT	4	4
NC	39	39
ND	2	2
NE	2	2
NH	2	2
NJ	6	6
NM	2	2
NV	2	2
NY	50	50
OH	30	30
OR	3	3
PR	1	1
SC	13	1
SD	1	1
TN	4	4
TX	2	2
UT	1	1
VA	9	9
VI	1	1
WI	39	39
WV	16	2
WY	2	2

Frame totals for possible audits were obtained by using the assigned unit numbers for each HHA in the governmental stratum. Therefore, the following control totals apply to the governmental stratum.

Area	HHAs	Audits
MW—Rural	222	222.00
MW—Urban	36	36.00
NE—Rural	29	29.00
NE—Urban	42	42.00
SO—Rural	193	61.31
SO—Urban	69	31.69
WS—Rural	25	25.00
WS—Urban	11	11.00

Note that a summary by State yields whole numbers for the audits. However, both the urban and rural classifications occur within a State. Therefore, a single audit may apply to providers within each category.

The corresponding sample totals are as follows:

Area	Providers	Audits
MW—Rural	54	54.00
MW—Urban	11	11.00
NE—Rural	8	8.00
NE—Urban	9	9.00
SO—Rural	50	12.18
SO—Urban	20	8.45
WS—Rural	8	8.00
WS—Urban	1	1.00

These totals are used to obtain the adjusted weights so that the sample totals for audits will match the frame totals. This is as if 458 audits are needed to audit the frame of 627 HHA providers because a single audit covers multiple provider numbers or subunits.

Final Weight Factor Calculations

The weight adjustment was applied to the cells defined by the four major census regions and the Urban/Rural classification. The weight adjustments used the control totals from the frame. Each weight was modified so that the weighted totals using the providers actually audited for each cell matched the corresponding control totals. The adjustment was a simple ratio adjustment. This corrected for the imbalance associated with sampling and the imbalance that arose from the distribution of missed audits.

After completing the weight adjustments, a file was created with the resulting weights, the provider number, provider type, Census 4 (four census regions), and Metropolitan Statistical Area (MSA) code. This file can be merged with the data from the cost reports for the audited providers to compute weighted values for costs and visits in order to compute the average cost-per-visit ratios by discipline. As a check on the computations, the following table is the result of a summary by provider type that agrees with the frame totals.

Type	Sample	Frame No.
FS/F	142	3290
FS/G	159	458
FS/N	171	955
Provider	95	2458

The final audit sample contained 567 audited cost reports which were the basis of the HHA PPS rate calculations.

IV. HHA PPS Framework—How the System Works

We are proposing the following policy framework; however, refinements will be made based on comments, additional national data, and efficiencies realized in the development of the final rule.

As discussed earlier in this regulation, we are proposing a 60-day episode as the ordinary unit of payment for home health PPS. The new 60-day episode begins with the start of care date, which is the first billable service date, and includes the 60th day from start of care date. The 60-day episode payment covers one individual for 60 days of care regardless of the number of days of care actually provided during the 60-day period unless there is a PEP adjustment, SCIC adjustment, LUPA, additional outlier payment, or medical review determination.

The 60-day episode payment will be case-mix adjusted using the OASIS assessment (as mandated by HHA conditions of participation regulations published in the **Federal Register** on January 25, 1999 at 65 FR 3747 and 65 FR 3764) supplemented, as applicable, by one additional patient-specific item regarding projected number of therapy hours received in the 60-day episode period (see section II.C. and IV.L of this regulation). The total case-mix-adjusted 60-day episode payment is based on the initial OASIS assessment and the supplemental item regarding projected therapy hours received submitted at the start of the 60-day episode and the confirmation of projected therapy use submitted via the line-item date visit information reported on the final claim at the end of the 60-day episode.

A. Start of Care

The HHA establishes the plan of care and the patient will be grouped into the appropriate case-mix category via the OASIS assessment and the additional item regarding projected number of therapy hours received in a 60-day episode at the HHA. We are exploring the approach that would allow grouper software at the HHA to interface with the HAVEN software used for State transmission of OASIS quality data. The OASIS assessment supplemented by one additional treatment-specific item on projected therapy use is fed into the grouper logic, and the grouper logic selects the OASIS elements needed to establish the case-mix group and determines the appropriate case-mix category for the patient. The grouper logic generates a code. The code corresponds to the appropriate case-mix category and is placed on the initial claim. The HHA must have all physician orders in the plan of care and a physician's signature for the plan of care before billing. The physician's orders for therapy services will be a key focus of medical review.

The initial claim with the appropriate code is submitted to the RHHI for payment. The pricer computes the initial percentage payment equal to 50 percent of the 60-day case-mix adjusted payment for that HHRG category. The pricer also adjusts the payment by the appropriate wage index corresponding to the site of service delivery. The clean claim is processed, and the initial 50 percent payment is issued to the HHA.

The HHA that initially establishes the plan of care is responsible for billing for all home health services provided under the plan of care, including nonroutine medical supplies and durable medical supplies in a 60-day episode. If a patient transfers during a 60-day episode, the responsibility for consolidating billing moves to the transfer HHA.

The Use of Clinical Model "Grouper" Software

As discussed at the beginning of this section, all data necessary to classify a patient to one of the 80 HHRG categories are contained on the OASIS–B supplemented, as applicable, by one additional item regarding projected therapy use in a given 60-day episode period. Under this PPS, HHAs are required to use the collection reporting requirements for the data elements in the **Federal Register** on January 25, 1999, supplemented by one additional item regarding projected therapy use in a given 60-day episode period for classification of patients for case mix. We expect that the software programs that use OASIS–B supplemented by projected therapy use to assign patients to the appropriate groups, called grouper software, will be available from many software vendors. The version we use will be available at no cost from our future HCFA website on PPS. We are proposing an option to build the grouper logic into the HAVEN software, which is used for transmission of OASIS–B data for purposes of quality via the State system. We may refine the grouper logic with experience and the onset of 15-minute increment billing data in the future.

B. End of Episode

The final claim may contain all of the line-item date visit information for the entire 60-day episode period. As discussed above, the confirmation of actual therapy hours received in the previous 60-day episode period will be captured with a utilization proxy based on the line-item date visit information reported on the final claim. The final claim will be sent to the RHHI and the pricer will compute the final payment equal to 50 percent of the actual case-mix-adjusted episode payment and wage index adjusts the payment. If the actual therapy use does not correspond to the code submitted for the episode, a correction will be necessary.

C. Recertification of 60-Day Episode Period

At the end of the 60-day episode a decision must be made to recertify the patient for another 60-day episode period. An eligible beneficiary who qualifies for a continuous 60-day episode would start the continuous 60-day episode on Day 61. A new OASIS is performed as part of the overall approach to assessment and to determine the appropriate case-mix category for the next episode. The physician's orders for services in the plan of care and the physician's certification of eligibility are required before the HHA submits a bill for the next 60-day episode period.

D. Determining Whether a Beneficiary Is Under an Established Plan of Care

Episodes must be tracked to ensure the case-mix adjusted episode payment is allocated to the appropriate HHA. This tracking requirement, which is needed for payments, proration, and consolidated billing, entails both an ability for internal RHHI systems to inquire and establish the status of HHAs providing services under a home health plan of care in a given 60-day episode period, as well as an external ability for HHAs to query the system to determine whether a beneficiary is already under an established home health plan of care in a given 60-day episode period. The national episode history by beneficiary must be created and maintained that contains beneficiary identification, provider identification, dates of service, utilization, case-mix classification codes, and discharge and transfer status indicators. HCFA is proposing to develop a tracking system available to both providers and RHHIs that would provide information on whether a beneficiary is under an established home health plan of care.

E. Medical Review

Section 1816 of the Act requires our contractors to conduct audits of providers' records, as needed, to ensure that payments are appropriate for the items or services furnished. Payments under this HHA PPS are per episode prospective payment rates based on the patient's condition as determined by classification into one of the 80 HHRGs. This classification system uses patient assessment data from the OASIS–B supplemented, as applicable, by one additional patient-specific item regarding the amount of therapy hours received in the 60-day episode period. HHAs must complete the OASIS assessment according to an assessment schedule specifically designed for Medicare payment (see section IV.L. of this regulation). HHAs will send each patient's OASIS–B (including, as indicated, projected therapy use) to the State and claims for Medicare payment to the RHHI.

The total case-mix-adjusted 60-day episode payment is based on the initial OASIS assessment and, if applicable, a supplemental item indicating the projected therapy (that is, physical, speech-language pathology, and occupational therapy in any combination) hours to be received in a 60-day episode submitted at the start of the 60-day episode (note: we are proposing to use therapy visit data as a proxy for time). The projected number of therapy hours reported at the start of the 60-day episode (that is, on the initial claim) is confirmed by the actual receipt of therapy identified on the final claim (that is, line-item visit information) at the end of the 60-day episode. The initial claim for each 60-day episode may not contain visit information and may only include the code corresponding to the appropriate case-mix category/HHRGs. The final claim for the 60-day episode may include all of the line-item visit information for the previous 60 days. Adjustment to the HHRG payment is the confirmation of actual therapy use and coverage determinations based on medical review of the claim. These adjustments are in lieu of the partial episode, low-utilization, and outlier payment adjustments (see sections I.D., II.A.4., and II.A.5. of this regulation) discussed in the earlier sections of this proposal.

The medical review process for HHA PPS bills must be consistent with the new total case-mix-adjusted 60-day episode payment process and billing information available on the initial and final claims for each 60-day episodes.

Considering the limited information available on the initial claim, prepayment medical review of the initial claim would probably be limited to the technical eligibility for home health services and overall medical necessity of care. For example, the RHHI would determine if the patient is homebound (HCFA=Pub. 11, Sec. 204.1), whether a plan of treatment is established (HCFA=Pub. 11, Sec. 204.2), and skilled services are needed. For the final claim for the 60-day episode, line-item date visit information for the previous 60 days will be considered in confirming actual therapy use and medical necessity coverage determinations. For continuous 60-day episode periods, any payment adjustments (for example, recovery of overpayments) would be made on an ensuing 60-day episode claim for that or other patients. At this time, specific to final closeout claims (see section IV.B. of this regulation), we anticipate no change in the current process for recovering overpayments from an HHA.

Because all Medicare-participating HHAs will be transitioned onto the new payment system on a particular calender date (see section IV.H. of this regulation), the initial medical review strategy for HHA PPS bills will be a parallel approach of random and focused medical review. The purpose of the random review is to get a cross-sectional overview of trends in beneficiary care and utilization of services. The information gained will support HCFA's and RHHI's data needs and aid in developing focused medical review (FMR) criteria that may be unique to a particular RHHI's provider population. In addition to the random review, RHHIs will continue to monitor specific claims or services historically known for potential areas of abuse. As with current medical review guidelines, RHHIs will be required to validate suspected problems before targeting medical review efforts.

After a few months of HHA PPS experience, HCFA and the RHHIs should be able to gain the information needed to identify and study trends in beneficiary care and utilization of services. At that time, medical review efforts will return to a data-driven approach targeting on those areas with the most potential for inappropriate billing, overutilization, and abuse (that is, FMR). Review efforts may be claim specific and driven by patterns of case-mix upcoding or the medical need for the episode(s) of care and technical eligibility. As with current Medicare medical review practice, HCFA will allow RHHIs to supplement their primary prepayment review activities with a limited amount of postpayment review.

Prepayment and postpayment review activity will continue with the capability to deny claims in total or adjust payment to correct case mix. Also, because this case-mix classification system can be supplemented by the amount of therapy hours received in a 60-day episode period, if applicable to the claim, medical review should ensure that the therapy was actually furnished and intensity (for example, time) of those services were reasonable and necessary for the beneficiary's condition. Information, such as the patient's OASIS, medical records, and the billing history will be considered in determining payment for covered services. This same review strategy will also be used to determine the coverage of medical supplies and DME under a home health plan of care (that is, consolidated billing). Finally, if during the review of HHA PPS claims the RHHI becomes suspicious of poor health and safety conditions, case referrals will be made to HCFA staff who will in turn alert the applicable State Agencies. Beneficiary quality of care concerns will also be referred to the applicable Peer Review Organization.

To accomplish this new perspective on medical review of HHA claims, the RHHIs need to have timely information on patients to determine, for example, whether the HHRG rate to be paid is appropriate and accurately reflects the beneficiary's clinical condition. The HHA PPS Inquiry System (see section III.E. of this regulation) will provide the RHHIs with the internal and external real-time query capability to access the information as establishing the status of an HHA providing services under a home health plan of care in a given 60-day episode period, beneficiary identification, provider identification, dates of service, utilization, case-mix classification codes, and discharge and transfer status indicator codes. Also, RHHI access into the national HCFA Repository should help facilitate the data matching and analysis of beneficiary-specific OASIS–B and billing information used to support program integrity functions.

F. Overpayments and Adjustments

If it is determined from proration, medical review, etc. that the preliminary case-mix-adjusted episode payment exceeds the amount ultimately due to an HHA, the overpayment may be offset against future episode payments due to the HHA for the same or other agency patients.

G. Implementation Effective Date for PPS

OCESAA requires all HHAs to be paid under PPS effective upon implementation of the system October 1, 2000. There is no transition by cost reporting period; therefore, all HHAs begin PPS on the same implementation date (October 1, 2000). We are aware that most cost reporting periods do not end with the statutory implementation date of PPS. Rather than requiring the close-out of cost reports with short period cost reports, we are exploring the use of a supplemental schedule in the cost report to allocate costs and limits between pre- and post-PPS.

H. Claims Processing Transition

Under the October 1, 2000 PPS implementation date, all HHAs must bill for all eligible Medicare beneficiaries under a home health plan of care under the PPS. If an HHA has beneficiaries already under an established plan of care, all open bills for services provided September 30, 2000 or earlier will need to be closed as of September 30, 2000.

I. Quality System

Under the Medicare COPs, HHAs must develop, implement, maintain, and evaluate an effective, data-driven quality assessment and performance improvement program. The program must reflect the complexity of the HHA's organization and services, including those services provided directly or under arrangement. The HHA must take actions that result in improvements in the HHA's performance across the spectrum of care. An integral part of this approach is the additional COP requirement that HHAs use a standard core assessment data set, the Outcome and Assessment Information Set (OASIS), when evaluating patients. The OASIS is a set of valid, reliable measures, developed to assess patient outcomes to care provided in the home.

The use of a uniform patient assessment in home health is part of a broader HCFA goal to develop outcome measures for all provider types. The OASIS is expected to become one of the most important aspects of the HHA's quality assessment and performance improvement efforts. By integrating a core standard assessment data set into its own more comprehensive assessment system, an HHA can use this data set as the foundation for valid and reliable information for patient assessment, care planning, and service delivery, as well as to build a strong and effective quality assessment and performance improvement program.

As a part of the COP, Medicare-certified HHAs are required to collect, and report to the States, OASIS data on all adult home health patients served by the agency with the following exceptions: (1) Maternity patients; (2) those under 18; and (3) those receiving other than personal care services or health services, for example, housekeeping and chore services. We will regularly collect OASIS data from the States for storage in a national OASIS repository. Information from the repository will be used to generate national OASIS outcome reports for dissemination through the States to the HHAs to be used for outcome based quality improvement (OBQI).

The general framework for OBQI is a two-stage process of continuous quality improvement. Data are collected at regular time intervals for all adult patients. Outcome measures are computed using the OASIS data reported by the HHAs. Risk adjustment is undertaken, and outcome reports are produced for specific patient conditions (focused reports) and for all adult patients (global reports). These outcome reports are provided to the participating HHAs and are used to determine which outcomes are inferior, thereby providing a focus for agency staff to target problematic care. Exemplary care is also investigated in order to reinforce positive care behaviors. A plan of action allows the agency to monitor the changes in care behavior and through the next round of data collection, determine if targeted outcomes have improved and if reinforcement activities have maintained exemplary outcomes. HHAs are expected to integrate this information into the development of their OBQI programs to care for all home health patients.

The State Agencies will be responsible for disseminating the national aggregate information, generating and disseminating State aggregate information, and providing individual reports for each HHA in their State. Each HHA will have regular access to outcome reports based on its own OASIS data submissions and comparative State and national aggregate reports. Eventually, the individual HHA reports will include case-mix-adjusted outcomes from the HHA's current year and previous year. In addition, through the States, the HHA will have continuous on-line access to case-mix, tabular, and adverse event reports based on its own reported OASIS data.

We will provide support to the States and HHAs to ensure the continuous reporting of OASIS data, the generation of OBQI reports, and the development and use of OBQI programs by HHAs. To assist in the effective use of OBQI, HHAs will be expected to participate in a program specified by the Secretary that involves the targeting of State or specific national quality outcomes for improvement.

J. Illustrative Examples

1. 60-day Episode—No Recertification

In a 60-day episode, a patient is assessed and assigned to HHRG10 by HHA–A. The patient is under a physician certified plan of care with a predicted end date of Day 30. The patient meets the treatment goals and is discharged on Day 30. The patient does not experience a significant change in condition from Day 1–30. The patient does not return to HHA–A during Day 31–60 of the 60-day episode and does not transfer to another HHA during Day 31–60 of the 60-day episode. Even though HHA–A only served the patient from Day 1–30, HHA–A receives the total 60-day episode payment for the patient.

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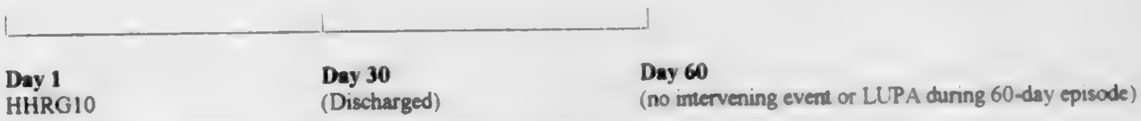

HHA-A receives full 60-day episode payment for HHRG10 even though discharged on Day 30

2. 60-Day Episode with Recertification

An eligible home health patient is certified for a 60-day episode period including the start of care date October 1 through and including the last day of the episode November 29. The patient is grouped into HHRG W. No therapy is required for the patient. The corresponding payment amount for

HHRG W is $800. The HHA has obtained a signed plan of care before billing. The HHA submits the initial claim with the code associated with HHRG W to the RHHI. The pricer computes the 50 percent payment for HHRG W, and the RHHI processes the $400 payment to the HHA.

The 60-day payment covers the patient for the 60-day period covering October 1 (the first billable service date) through November 29. At the end of the episode, the HHA reassesses the patient via the OASIS and in conjunction with the physician determines the need for continued home care. At the end of the episode, the HHA submits the final claim for the residual 50 percent payment for HHRG W. The HHA submits the final claim to the RHHI. The pricer computes the 50 percent residual payment and processes the clean claim. The HHA receives the $400 residual payment for the patient.

At the end of the episode, the HHA also completes a follow-up OASIS for purposes of recertification of the 60-day episode. The reassessment OASIS is fed into the grouper logic at the HHA, and a different HHRG code is generated. The HHRG U is placed on the claim, and the HHA will submit an initial claim for the next 60-day episode. The cycle repeats.

As discussed above, the recertification of subsequent episodes for continuous home care spans the start of care date plus 60 days. Unlike the PEP adjustment, continuous episode recertifications for eligible beneficiaries do not begin with the first billable visit.

3. Partial Episode Payment Adjustment Examples

The following specific intervening events—

- a beneficiary elected transfer; or
- a discharge and return to the same HHA start a new 60-day episode clock for purposes of payment, OASIS assessment, and physician certification of the plan of care. The original 60-day episode payment is proportionally adjusted to reflect the length of time the beneficiary remained under the agency's care prior to the intervening event. The proportional payment is called the PEP adjustment.

The PEP adjustment is based on the span of days including the start-of-care date (first billable service date through and including the last billable service date) under the original plan of care prior to the intervening event. The PEP adjustment is calculated using the span of days (first billable service date through and including the last billable service date) under the original plan of care as a proportion of 60. The proportion is multiplied by the original case mix and wage adjusted 60-day episode payment.

Beneficiary Elected Transfer

In a 60-day episode, a patient is assigned to HHRG10=$3000 by HHA–1 and is discharged on Day 20. Day 18 is the last day of the current 60-day episode with a physician ordered/billable visit. The patient transfers to HHA–2 on Day 40. HHA–2 assesses the patient and obtains physician orders for a new plan of care. The first ordered service/billable service is Day 43. Day 43 becomes Day 1 of the new 60-day episode for HHA–2. The PEP adjustment for HHA–1 would equal $3000 * 18/60. The triggering date for the end of the partial episode is the last physician ordered service/billable visit date for the HHA. The triggering date for the new 60-day episode is the first ordered service in the new plan of care corresponding to the new 60-day episode due to the beneficiary elected transfer or transfer to a new HHA that is not under common ownership with original HHA–1.

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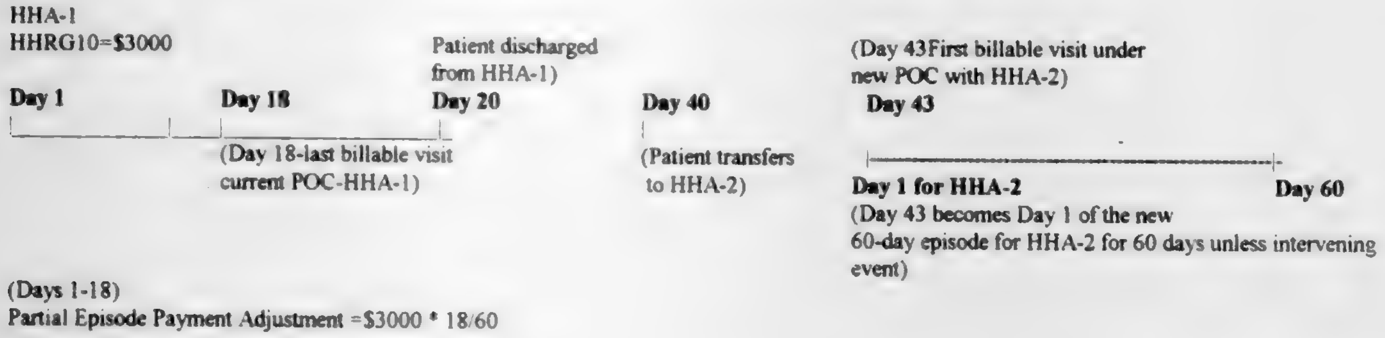
HHA-1
HHRG10=$3000
Patient discharged from HHA-1)
(Day 43First billable visit under new POC with HHA-2)
Day 1
Day 18
Day 20
Day 40
Day 43
(Day 18-last billable visit current POC-HHA-1)
(Patient transfers to HHA-2)
Day 1 for HHA-2
Day 60
(Day 43 becomes Day 1 of the new 60-day episode for HHA-2 for 60 days unless intervening event)
(Days 1-18)
Partial Episode Payment Adjustment =$3000 * 18/60

Discharge and Return to the Same HHA During the 60-Day Episode

In a 60-day episode, a patient is discharged on Day 20 and returns to the same HHA on Day 35. The patient met the treatment goals in the original plan of care. The original plan of care was terminated with no anticipated need for home care during the balance of the 60-day episode. The initial percentage payment would be adjusted to recognize the 20 days served by the HHA under the initial case-mix category. The last ordered visit was under the original plan of care coincidentally furnished on Day 20 of the initial 60-day episode. For example, the patient is assigned to HHRG10=3000 episode payment, is discharged on Day 20, and returns to the same HHA on Day 35. The HHA would reassess the patient on or about Day 35 and start a new 60-day clock for physician recertification, OASIS, and case-mix assignment for payment. The start of the new payment clock corresponds to the first physician ordered service/billable service in the new plan of care. For purposes of this example, the first physician ordered service in the new plan of care for the new 60-day episode payment is Day 40. Day 40 of the original episode becomes Day 1 of the new certified period.

The adjusted payment for the partial episode spans the start of care date (Day 1-first physician ordered service) through and including the last day of the 60-day episode that includes the last physician ordered service furnished/billable visit prior to the intervening event as a proportion of 60 days. The adjusted payment for the partial episode spans Day 1 through and including Day 20. Day 20 is the last day of the original episode that includes a physician ordered/billable service. The PEP adjustment would equal $3000 times 20/60. The triggering date that closes the original episode with a PEP adjustment is the last date of service with a physician ordered/billable service prior to the intervening event. The triggering date for the new episode is the first ordered service in the new plan of care corresponding to the new 60-day episode due to discharge and return to the HHA in same episode.

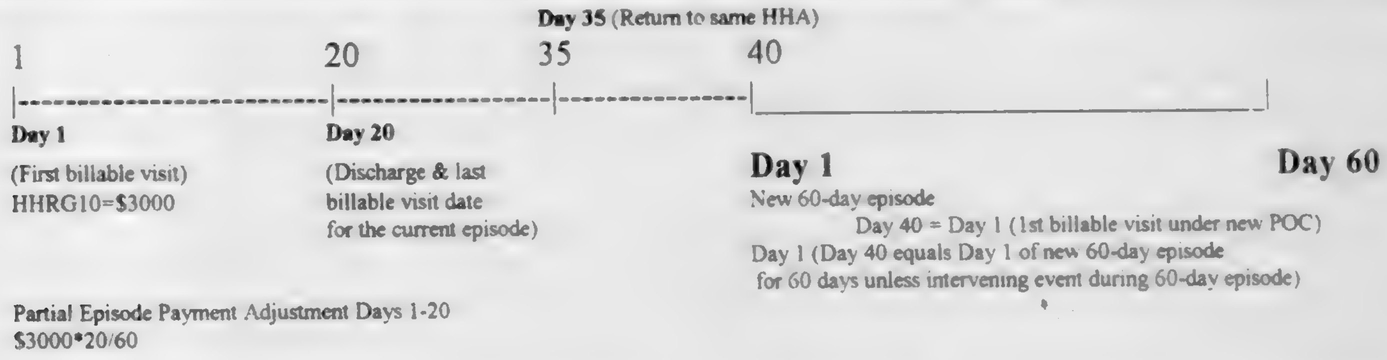
Day 35 (Return to same HHA)
1
20
35
40
Day 1
(First billable visit)
HHRG10=$3000
Day 20
(Discharge & last
billable visit date
for the current episode)
Day 1
Day 60
New 60-day episode
Day 40 = Day 1 (1st billable visit under new POC)
Day 1 (Day 40 equals Day 1 of new 60-day episode
for 60 days unless intervening event during 60-day episode)
Partial Episode Payment Adjustment Days 1-20
$3000*20/60

4. Significant Change in Condition Payment Adjustment Examples

As discussed above, we are proposing that the third intervening event over a course of a 60-day episode of home health care that could trigger a change in payment level would be a significant change in the patient's condition. We are proposing the significant change in condition payment adjustment (SCIC Adjustment) to be the proportional payment adjustment reflecting the time both prior and after the patient experienced a significant change in condition during the 60-day episode. The proposed SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in treatment approach in the patient's plan of care.

As discussed above, the SCIC adjustment occurs in two parts during the 60-day episode. The first part of the SCIC adjustment uses the span of days of the first billable service date through the last billable service date prior to the intervening event of the patient's significant change in condition that warrants a new case mix assignment for payment. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment (or any applicable medical review or LUPA) determined at the final billing of the 60-day episode .

For example, an HHA assigns a patient to a HHRG that equals $2,000 and would be paid the initial 50 percent equaling $1,000 at the start of the episode. The patient's first billable service date is Day 1. The patient experiences a significant change in condition on Day 19. The last billable service date prior to the significant change in condition is Day 20. The HHA completes the OASIS assessment, obtains the necessary physician change orders to alter the course of treatment in the plan of care, and changes the case mix assignment for payment reflecting the patient's change in condition. The HHA has all of the necessary information to begin rendering services under the revised plan of care and at the new case mix level of a HHRG that equals $4,000 on Day 25. The span of days that are used to calculate the first part of the SCIC adjustment are Day 1 through Day 20. Day 25 is the first billable service date under the second part of the SCIC adjustment. Day 60 is the last billable service date at the case mix level HHRG that equals $4,000 prior to the end of the 60-day episode.

The first part of the SCIC adjustment is:

(Day 1–Day 20) 20/60 × $2,000 = $666.67

The second part of the SCIC adjustment is:

(Day 25–Day 60) 36/60 × $4,000 = $2,400.00

Total SCIC Adjustment= $3,066.67

The original $1,000 payment (50 percent of the HHRG=$2,000) would be adjusted with $2,066.67. to pay the balance of the total SCIC Adjustment of $3,066.67 unless there is any applicable medical review or LUPA determined at the final billing for the 60-day episode.

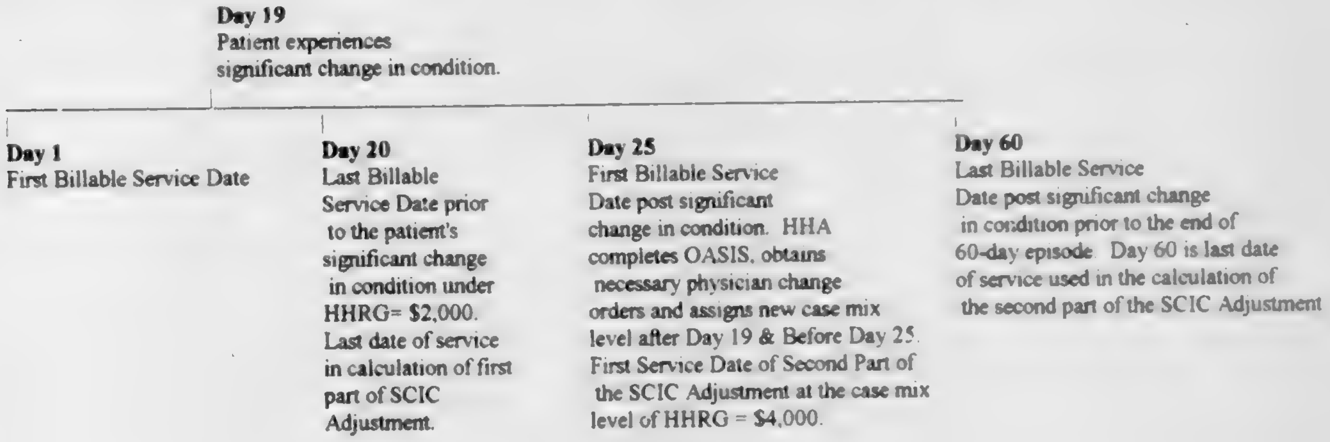
Day 19
Patient experiences
significant change in condition.
Day 1
First Billable Service Date
Day 20
Last Billable
Service Date prior
to the patient's
significant change
in condition under
HHRG= $2,000.
Last date of service
in calculation of first
part of SCIC
Adjustment.
Day 25
First Billable Service
Date post significant
change in condition. HHA
completes OASIS, obtains
necessary physician change
orders and assigns new case mix
level after Day 19 & Before Day 25.
First Service Date of Second Part of
the SCIC Adjustment at the case mix
level of HHRG = $4,000.
Day 60
Last Billable Service
Date post significant change
in condition prior to the end of
60-day episode. Day 60 is last date
of service used in the calculation of
the second part of the SCIC Adjustment

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K. Required Schedule for Completing OASIS Supplemented by One Additional Case-Mix Item

As discussed above, sections 1895(b)(4)(A)(i) and (b)(4)(B) of the Act require the Secretary to establish and make appropriate case-mix adjustments to the units of payment in a manner that explains a significant amount of the variation in cost among different units of service. Section 1895(b)(2) of the Act requires the Secretary to provide a general system design for the HHA PPS that provides for continued access to quality services. Further, section 4602(e) of the BBA, effective for cost reporting periods beginning on or after October 1, 1997, the Secretary may require all HHAs to submit additional information that the Secretary considers necessary for the development of a reliable case-mix system.

Required Schedule for Completion of OASIS Supplemented by One Additional Case-Mix Item

As discussed above, the initial OASIS assessment completed at the start of care and the assessment at every subsequent follow-up recertification for beneficiaries who continue to be eligible for home health services will be the only assessments recognized for purposes of payment for the 60-day episode. The start of care OASIS must be completed at the beginning of each 60-day episode. An HHA may not bill for the initial percentage episode payment without the grouper-generated code corresponding to the complete OASIS assessment supplemented, as necessary, by the additional therapy variable for that 60-day episode. We are proposing to amend the current bimonthly completion time frames published in the January 25, 1999 conditions of participation (COP) final rule (64 FR 3764) by revising 42 CFR 484.55, "Condition of participation: Comprehensive assessment of patients," paragraph (d)(1), to state that the standard for the update of the comprehensive assessment would be every 60 days beginning with the start of care date, unless there is an intervening beneficiary elected transfer, a significant change in condition resulting in a new case mix assignment, or a discharge and return to the same HHA during the 60-day episode. We are using discrete 60-day episodes for purposes of payment under PPS, so it is necessary to replace references to the current "bimonthly period" to "every 60 days unless there is an intervening beneficiary elected transfer, a significant change in condition resulting in a new case mix assignment, or a discharge and return to the same HHA during the 60-day episode." The initial OASIS assessment completed at the start of care is updated every 60 days. The initial OASIS and subsequent follow-up OASIS supplemented, as applicable, by the treatment variable regarding therapy use will also be updated on a 60-day timetable. Each 60-day follow-up OASIS supplemented by the treatment variable regarding therapy will be the basis for case-mix adjusting each subsequent 60-day episode period for purposes of payment.

One modification to the current OASIS schedule for the follow-up assessment is necessary in order for the case-mix adjustment of each subsequent 60-day episode recertification. The current follow-up assessment schedule does not now include data elements MO230 Primary Home Care Diagnosis and MO390 Vision. Both are necessary elements of the case-mix adjustment methodology. The schedule for follow-up assessments must be modified to include these two case-mix variables. Each follow-up assessment is used as the basis for updating the comprehensive assessment and case-mix adjusting subsequent 60-day episodes for payment purposes. The follow-up assessment schedule must include all 19 OASIS items that have been determined to be necessary for case-mix adjustment.

As discussed above in section IV.A. of this regulation, we are proposing that the grouper logic will be located at the provider level. The grouper logic at the HHA will select and categorize the relevant OASIS items and one treatment variable regarding therapy use necessary to establish a case-mix category for payment purposes. As stated above, under section 4602(e) of the BBA, effective for cost reporting periods beginning on or after October 1, 1997, the Secretary may require all HHAs to submit additional information that the Secretary considers necessary for the development of a reliable case-mix system. Therapy use (physical therapy, speech-language pathology services, and occupational therapy) during the 60-day episode is a significant explanatory variable in the clinical case-mix model. Since actual therapy use cannot be determined until the end of the 60-day episode, we are proposing the projection of therapy use at the start of the 60-day episode and the confirmation of the therapy use at the end of the 60-day episode. As discussed in section II.C. of this regulation, the research has developed a utilization proxy for time. As stated above, 10 therapy visits equate to 8 or more therapy hours during a 60-day episode. We will use the line-item date information from the close-out bill to confirm the projected therapy use incorporated into the code placed on the start of care bill.

The additional case-mix item regarding therapy use during a 60-day episode will be effective October 1, 2000 with the date of PPS implementation.

L. Relationship Between Payment and OASIS

As explained above, each Medicare home health patient is classified into an HHRG group for each 60-day episode period. The group to which the patient is classified is based on the information about the patient's clinical resource needs as reported on the OASIS–B as part of the approach to overall comprehensive assessment as required by 42 CFR 484.55 in the HHA COPs, and the services ordered in the patient's home health plan of care, including but not limited to, a physician's orders for therapy services.

M. Transition of Assessment and Certification Dates for Beneficiaries Under an Established Home Health Plan of Care

For eligible beneficiaries under an established home health plan of care on October 1, 2000, we are providing transition alternatives.

1. Use of Current OASIS Assessment for Purposes of Case-Mix Classification

If a beneficiary is under an established home health plan of care before October, 1, 2000 and the HHA has completed a Start of Care or Follow-Up OASIS earlier than September 1, 2000, the HHA must complete a one-time additional Follow-Up OASIS within 5 days before October 1, 2000 for purposes of case-mix classification. If a beneficiary is under an established home health plan of care before October 1, 2000 and the HHA completed a Start of Care or Follow-Up OASIS on or after September 1, 2000 and does not wish to do a one-time OASIS at the inception of PPS, the HHA may use that earlier version of the OASIS. This is a one-time grace period.

2. Physician Certification Dates for Beneficiaries Under an Established Home Health Plan of Care

If a beneficiary is under an established home health plan of care before October 1, 2000 and the certification date is earlier than September 1, 2000, the HHA in conjunction with a certifying physician must complete a one-time additional recertification of the plan of care before the inception of PPS on October 1, 2000.

If a beneficiary is under an established home health plan of care before October 1, 2000 and the certification date is on or after September 1, 2000 and the HHA in conjunction with a certifying physician does not wish to do a one-time additional recertification of the plan of care at the inception of PPS, the HHA may use the recertification date (September 1, 2000 through September 30, 2000) from the earlier version of the plan of care. This is a one-time grace period.

V. Consolidated Billing

A. Background

Under the HHA Consolidated Billing requirement established by sections 4603(c)(2)(B) and (c)(2)(C) of the BBA, the HHA that establishes the home health plan of care has the Medicare billing responsibility for all of the Medicare-covered home health services listed in section 1861(m) of the Act that the patient receives and are ordered by the physician in the plan of care.

B. HHA Consolidated Billing Legislation

Specific Provisions of the Legislation

Sections 4603(c)(2)(B) and (c)(2)(C) of the BBA amend sections 1842(b)(6) and 1862(a) of the Act, respectively, to require a new consolidated billing and bundling of all home health services while a beneficiary is under the plan of care. The statute now requires payment for all items and services to be made to an agency.

Specifically, the law requires, "in the case of home health services furnished to an individual who (at the time the item or service is furnished) is under the plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise)."

However, the statute also provides for separate payment amounts for home health care and services currently provided under the DME fee schedule. As discussed above in section I.D.1.a. of this regulation, under the HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule. We believe a separate payment amount in addition to the prospective payment amount for home health services will be made for DME currently covered as a home health service under the PPS. Nevertheless, payment for home health services can only be made to the HHA that establishes the individual's home health plan of care. This requirement would apply even in circumstances in which the services are not provided directly or under arrangement. For example, this would require the HHA to bill when the plan of care specifies DME and an outside supplier provides it.

C. Types of Services That Are Subject to the Provision

Under the consolidated billing requirement, we require that the HHA must submit all Medicare claims for the home health services included in 1861(m) of the Act while the beneficiary is under the home health plan of care established by a physician and is eligible for the home health benefit. The home health services included in consolidated billing are:

- Part-time or intermittent skilled nursing care.
- Part-time or intermittent home health aide services.
- Physical therapy.
- Speech-language pathology.
- Occupational therapy, medical social services.
- Routine and nonroutine medical supplies.
- A covered osteoporosis drug (as defined in section 1861(kk) of the Act—(not paid under PPS rate, see 1833(a)(2)(A)), but excluding other drugs and biologicals).
- DME subject to 20 percent coinsurance whether covered under Part A or Part B.
- Medical services provided by an intern or resident-in-training of the hospital, under an approved teaching program of the hospital in the case of an HHA that is affiliated or under common control with a hospital
- Services at hospitals, SNFs, or rehabilitation centers when they involve equipment too cumbersome to bring to the home.

We are seeking comments on the operational feasibility of this requirement.

D. Effects of This Provision

HHAs will no longer be able to "unbundle" services to an outside supplier that can then submit a separate bill directly to the Part B carrier. Instead, the HHA itself will have to furnish the home health services either directly or under an arrangement with an outside supplier in which the HHA itself, rather than the supplier, bills Medicare. The outside supplier must look to the HHA rather than to Medicare Part B for payment. This will be a change, especially regarding nonroutine medical supplies and DME.

The consolidated billing requirement eliminates the potential for duplicative billings for the same services to the RHHI by the HHA and to the Part B carrier by an outside supplier. All covered home health services listed in section 1861(m) of the Act ordered in the patient's plan of care must be billed by the HHA. We are exploring two options for the administrative implementation of this provision. The first option would require that all covered home health services listed in section 1861(m) of the Act ordered in the patient's plan of care must be billed by the HHA to the RHHI. This would include all home health services included in the prospective payment amount (part-time or intermittent skilled nursing services, part-time or intermittent home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, medical social services, and medical supplies) and the separate additional fee schedule payment for durable medical equipment subject to the 20 percent coinsurance would be billed by the HHA to the RHHI. The second option would require all covered home health services listed in section 1861(m) of the Act ordered in the plan of care included in the prospective payment amount (part-time or intermittent skilled nursing services, part-time or intermittent home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, medical social services, and medical supplies) to be billed by the HHA to the RHHI and the separate additional fee schedule payment for durable medical equipment subject to the 20 percent coinsurance billed by the HHA as a supplier to be billed to the Durable Medical Equipment Regional Carrier under Part B. This means the HHA would have to otherwise conform with supplier standards. We solicit public comment on either of these approaches.

As discussed in section II.D.4 of this regulation, the responsibility for consolidated billing moves to the transfer HHA. The consolidated billing requirement enhances the HHA's capacity to meet its existing responsibility to oversee and coordinate the Medicare-covered home health services that each of its patients receives.

Consistent with SNF PPS consolidated billing, the beneficiary exercises his or her freedom of choice for the entire home health benefit of services listed in 1861(m) by choosing the HHA. Once a home health patient chooses a particular HHA, he or she has clearly exercised freedom of choice with respect to all items and services included within the scope of the

Medicare home health benefit. The HHA's consolidated billing role supersedes all other billing situations the beneficiary may wish to establish for home health services covered under the scope of the home health benefit during the certified episode.

Current law is silent regarding the specific terms of an HHA's payment to an outside supplier, and does not authorize the Medicare program to impose any requirements in this regard. We remain concerned, however, over the potential for the provision of unnecessary services, and will continue to evaluate possible legislative and other approaches addressing this concern. One appropriate way to address any abusive practices would be through more vigorous enforcement of existing statutes and regulations (such as medical review procedures). Further, since under current law, an HHA's relationship with its supplier is essentially a private contractual matter, the terms of the supplier's payment by the HHA must be arrived at through direct negotiations between the two parties themselves. Accordingly, we believe that the most effective way for a supplier to address any concerns that it may have about the adequacy or timeliness of the HHA's payment would be for the supplier to ensure that any terms to which it agrees in such negotiations satisfactorily address those concerns. Finally, we note that matters relating to the enforcement of the statutory anti-kickback provisions lie exclusively within the purview of the Office of the Inspector General, and any questions or concerns in this area should be directed to the attention of that agency.

E. Effective Date for Consolidated Billing

The effective date for consolidated billing is October 1, 2000.

VI. Provisions of the Proposed Rule

We are proposing to make a number of revisions to the regulations in order to implement both the prospective payment system and the HHA Consolidated Billing provision. We propose to make conforming changes in 42 CFR parts 409, 424, and 484 to synchronize all timeframes for the plan of care certification, OASIS resumption of care assessment, and episode payments to reflect a 60-day period. In addition, we are proposing to add a new subpart in part 484 to set forth our new payment system for HHAs. These revisions and others are discussed in detail below.

First, we are proposing to revise part 409, subpart E, which discusses the requirements that must be met for Medicare to make payment for home health services. We are proposing to make a conforming change in § 409.43 regarding the plan of care requirements. Specifically, we propose to revise the frequency for review in paragraph (e) of this section by replacing the phrase "62 days" with "60 days unless there is—

- An intervening beneficiary elected transfer;
- A significant change in condition resulting in a new case mix assignment: or
- A discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care."

In addition, we are proposing to revise subpart H of this part regarding payments of hospital insurance benefits. We are proposing to revise paragraph (a) in § 409.100, which discusses payment for services, to specify the conditions under which Medicare may pay hospital insurance benefits for home health services. We are proposing to provide introductory text to paragraph (a) and to redesignate the current paragraph (a) as paragraph (a)(1). Proposed paragraph (a)(2) of this section would require that Medicare may pay hospital insurance benefits for the home health services specified at section 1861(m) of the Act, when furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA, to the HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

We are proposing to make similar changes in part 410, subpart I, which deals with payment of benefits under Part B. We propose to add a new paragraph (b)(19) to § 410.150 to specify the conditions under which Medicare Part B pays for home health services. Specifically, proposed paragraph (b)(19) would specify that Medicare Part B pay a participating HHA, for home health services furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

We also propose to revise part 411 subpart A, which discusses excluded services. We propose to add a new paragraph (q) to § 411.15 to specify the conditions under which HHA services are excluded from coverage. Proposed paragraph (q) would specify that a home health service as defined in section 1861(m) of the Act furnished to an individual who is under a plan of care of an HHA is excluded from coverage unless that HHA has submitted a claim for payment for such services.

We are also proposing to simplify the authority citation for part 413. In § 413.1 in the introduction to the section on principles of reasonable cost reimbursement, we are proposing to add a new paragraph (h) to include the timeframe under which home health services will be paid prospectively. Paragraph (h) under this section would specify that the amount paid for home health services as defined in section 1861(m) of the Act that are furnished beginning on or after October 1, 2000 to an eligible beneficiary under a home health plan of care is determined according to the prospectively determined payment rates for HHAs set forth in part 484, subpart E of this chapter. In addition, we propose to amend § 413.64 concerning payments to providers. Specifically, we propose to amend paragraph (h)(1) of this section by removing Part A and Part B HHA services from the periodic interim payment method.

We also propose to revise part 424, which explains the conditions for Medicare payment. We are proposing to revise § 424.22 regarding the certification requirements as a condition for payment. We are proposing to add a new paragraph (a)(1)(v) that would specify that as a condition for payment of home health services under Medicare Part A or Medicare Part B, a physician must certify that the individual is correctly assigned to one of the HHRGs. We are also proposing to make a conforming change at paragraph (b)(1) of this section regarding the timing of the recertification. Specifically, we propose to amend § 424.22(b) by replacing the phrase "at least every 2 months" with "at least every 60 days," and adding the following sentence: "The recertification is required at least every 60 days unless there is a beneficiary elected transfer, or a discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care."

We are proposing to add a new statutory authority, section 1895 of the Act, to paragraph (a) of § 484.200, "Basis and scope." Section 1895 provides for the implementation of a prospective payment system for HHAs for portions of cost-reporting periods occurring on or after October 1, 2000.

We are proposing to revise the regulations in 42 CFR part 484, which deal with the conditions that an HHA must meet in order to participate in

Medicare. First, we are proposing to revise the part heading from "Conditions Of Participation: Home Health Agencies" to the more generic heading "Home Health Services." We are proposing to make a conforming change in § 484.18(b) by replacing the phrase "62 days" with "60 days unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a change in the case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode."

Also, we propose to revise § 484.55(d)(1) by replacing "every second calendar month" with language that reflects the 60-day episode and possible PEP adjustment or SCIC adjustment. We are proposing to require that the comprehensive assessment be updated and revised as frequently as the patient's condition warrants but not less frequently than every 60 days beginning with the start-of-care date unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a change in the case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode.

In addition, we are proposing to add and reserve a new subpart D, then add a new subpart E, "Prospective Payment System for Home Health Agencies." This new subpart would set forth the regulatory framework of the new prospective payment system. It specifically discusses the development of the payment rates, associated adjustments, and related rules. In § 484.202, "Definitions," we are proposing the following definitions for purposes of this new subpart:

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the clinical model.

Clinical model means a system for classifying Medicare-eligible patients under a home health plan of care into mutually exclusive groups based on clinical, functional, and intensity-of-service criteria. The mutually exclusive groups are defined as Home Health Resource Groups (HHRGs).

Discipline means one of the six home health disciplines covered under the Medicare home health benefit (skilled nursing services, home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

Market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in home health services.

In proposed § 484.205 "Basis of payment," we discuss the Medicare payment to providers of services. Proposed § 484.205(a) describes the method by which the provider will receive payment. Specifically, § 484.205(a)(1) provides that an HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis. We determine this national 60-day episode payment under the methodology set forth in § 484.215. Paragraph (a)(2) would specify that an HHA may receive a low-utilization payment adjustment (LUPA) of a predetermined per-visit rate. We determine the LUPA under the methodology set forth in § 484.230. Paragraph (a)(3) of this section provides that an HHA may receive a PEP adjustment due to an intervening event during an existing 60-day episode that initiates the start of a new 60-day episode payment and a new patient plan of care. We determine the PEP adjustment under the methodology set forth in § 484.235. Paragraph (a)(4) of this section specifies that a HHA may receive a significant change in condition payment adjustment (SCIC) adjustment due to the intervening event defined as a significant change in the patient's condition during an existing 60-day episode. We determine the SCIC adjustment under a methodology set forth in § 484.237.

Proposed paragraph (b) discusses the 60-day episode payment and circumstances surrounding adjustments to the payment method. This paragraph proposes that the national 60-day episode payment represents payment in full for all costs associated with furnishing a home health service paid on a reasonable cost basis as of August 5, 1997 (the date of the enactment of the BBA) unless the national 60-day episode payment is subject to a low-utilization payment adjustment as set forth in § 484.230, a partial episode payment adjustment as set forth in § 484.235, a significant change in condition payment adjustment set forth in § 484.237 or an additional outlier payment as set forth in § 484.240. All payments under this system may be subject to a medical review adjustment. DME provided as a home health service as defined in section 1861(m) of the Act continues to be paid the fee schedule amount.

In paragraph (c) of this section, we propose the low-utilization payment adjustment to the 60-day episode payment. We would require that an HHA receive a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless we determine at the end of the 60-day episode that the HHA furnished minimal services to a patient during the 60-day episode. We determine a low-utilization payment adjustment under the methodology set forth in § 484.230.

In paragraph (d), we discuss the partial episode payment adjustment (PEP). We describe that an HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless there is an intervening event that warrants the initiation of a new 60-day episode payment and a new physician certification of the new plan of care. The initial HHA receives a PEP adjustment reflecting the length of time the patient remained under its care. The PEP adjustment would not apply in situations of transfers among HHAs of common ownership. Further, the discharge and return to the same HHA is only recognized in those circumstances when a beneficiary reached the goals in the original plan of care. The original plan of care must have been terminated with no anticipated need for additional home health services for the balance of the 60-day episode. We determine a partial episode payment adjustment under the methodology set forth in § 484.235.

In paragraph (e), we discuss the significant change in condition adjustment. We discuss that the HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event defined as a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care. The significant change in condition payment adjustment is a proportional payment adjustment reflecting the time both before and after the patient experienced a significant change in condition during the 60-day episode.

In paragraph (f), we discuss how we treat payment for outliers. In this paragraph we would provide that an HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable-cost basis as of August 5, 1997, unless the estimated cost of the 60-day episode exceeds a threshold amount. The outlier payment is defined to be a proportion of the estimated costs beyond the threshold. An outlier payment is a payment in addition to the national 60-day episode payment. The total of all outlier payments is limited to 5 percent of total outlays under the HHA PPS. We determine an outlier payment under the methodology set forth in § 484.240.

In the proposed § 484.210, we would specify the data used for the calculation of the national prospective 60-day episode payment. These data include the following:

- Medicare cost data on the most recent audited cost report data available.
- Utilization data based on Medicare claims.
- An appropriate wage index to adjust for area wage differences.
- The most recent projections of increases in costs from the HHA market basket index.
- OASIS assessment data and other data that account for the relative resource utilization for different HHA Medicare patient case-mix.

In § 484.215, paragraphs (a) through (e) would specify the methodology used for the calculation of the national 60-day episode payment. Proposed paragraph (a) would specify that in calculating the initial unadjusted national 60-day episode payment applicable for a service furnished by an HHA using data on the most recent available audited cost reports, we determine each HHA's costs by summing its allowable costs for the period. We determine the national mean cost per visit.

Proposed paragraph (b) of this section would specify that in calculating the initial unadjusted national 60-day episode payment, we determine the national mean utilization for each of the six disciplines using home health claims data.

Proposed paragraph (c) of this section would specify that we use the HHA market basket index to adjust the HHA cost data to reflect cost increases occurring between October 1, 1996 through September 30, 2001. For each fiscal year from 2002 or 2003, we update the cost data by a factor equivalent to the annual market basket index percentage minus 1.1 percentage points.

Proposed paragraph (d) of this section would describe how we calculate the unadjusted national average prospective payment amount for the 60-day episode. Specifically, we would calculate this payment amount by—

- Computing the mean national cost per visit;
- Computing the national mean utilization for each discipline;
- Multiplying the mean national cost per visit by the national mean utilization summed in the aggregate for each discipline; then
- Adding to this amount, amounts for nonroutine medical supplies and an OASIS adjustment for estimated ongoing reporting costs.

Proposed paragraph (e) regarding standardization of the data for variation in area wage levels and case-mix would specify that we standardize the cost data described in paragraph (a) of this section to remove the effects of geographic variation in wage levels and variation in case mix. We standardize the cost data for geographic variation in wage levels using the hospital wage index. We standardize the cost data for HHA variation in case mix using the case-mix indices and other data that indicate HHA case mix.

Proposed § 484.220 would describe how we calculate the national adjusted prospective 60-day episode payment rate for case-mix and area wage levels. This section would specify that we adjust the national prospective 60-day episode payment rate to account for HHA case mix using a case-mix index to explain the relative resource utilization of different patients. We also adjust the national prospective 60-day episode payment rate to account for geographic differences in wage levels using an appropriate wage index.

In proposed § 484.225, we explain our methods for annually updating the national adjusted prospective 60-day episode payment rates for inflation. This update is handled in the following manner:

- We update the unadjusted national 60-day episode payment rate on a fiscal year basis.
- For FY 2001, the unadjusted national 60-day episode payment rate is adjusted using the latest available market basket factors.
- For fiscal year 2002 or 2003, the unadjusted national 60-day episode payment rate is equal to the rate for the previous period or fiscal year increase by a factor equal to the HHA market basket minus 1.1 percentage point.
- For any subsequent fiscal years, the unadjusted national rate is equal to the rate for the previous fiscal year increased by the applicable HHA market basket index amount.

In proposed § 484.230, we explain the methodology we use for the calculation of the low-utilization payment adjustment. In this section, we would specify that in calculating the low-utilization payment adjustment an episode with four or fewer visits is paid the national average standardized per-visit amount by discipline for each visit type. We would also specify that the national average standardized per-visit amount is determined by using cost data set forth in § 484.210(a) and adjusting by the appropriate wage index.

Proposed § 484.235 illustrates the methodology we used to calculate the partial episode payment adjustment. The intervening event of a beneficiary elected transfer, or discharge and return to the same HHA during the 60-day episode warrants a new 60-day episode payment and a new physician certification of a new plan of care. The original 60-day episode payment is adjusted with a partial episode payment that reflects the length of time the beneficiary remained under the care of the original HHA. The partial episode payment is calculated using the actual days served by the original HHA as a proportion of 60 multiplied by the initial 60-day episode payment.

Proposed § 484.237 illustrates the methodology we used to calculate the significant change in condition payment adjustment. The intervening event, here a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care, initiates the significant change in condition payment adjustment. The significant change in condition adjustment is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment *prior* to the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment *after* the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA prior to the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case mix assignment for payment at the end of the 60-day episode. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and continuing until the end of the 60-day episode. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment.

Proposed § 484.240 describes the methodology we used to calculate the outlier payment. This methodology for the calculation of the outlier payment involves the following:

- We make an outlier payment for an episode whose estimated cost exceeds a threshold amount for each case-mix group.
- The outlier threshold for each case-mix group is the episode payment amount for that group, the PEP adjustment amount for the episode or the total significant change in condition adjustment for the episode plus a fixed dollar loss amount that is the same for all case-mix groups.
- The outlier payment is a proportion of the amount of estimated cost beyond the threshold.
- We estimate the cost for each episode by applying the standard per-visit amount to the number of visits by discipline reported on claims.
- The fixed dollar loss amount and the loss-sharing proportion are chosen so that the estimated total outlier payment is no more than 5 percent of total episode payment.

Proposed § 484.250 relates to data that must be submitted for the development of a reliable case mix. Specifically, we would require an HHA to submit the OASIS data described at the current § 484.55(b)(1) and (d)(1) (that we propose to revise in this rule) to administer the payment rate methodologies described in § 484.215 (methodology used for the calculation of the national 60-day episode payment), § 484.230 (methodology used for the calculation of the LUPA), § 484.235 (methodology used for the calculation of the PEP adjustment), and § 484.237 (methodology used for the calculation of the SCIC adjustment.

Proposed § 484.260 discusses the limitation for review with regard to our new payment system. In this section, we specify that judicial or administrative review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of a payment unit including the national 60-day episode payment rate and the LUPA. This prohibition includes the establishment of the transition period, definition and application of the unit of payments, the computation of initial standard prospective payment amounts, the establishment of the adjustment for outliers, and the establishment of case-mix and area wage adjustment factors.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the information collection requirements (ICRs) as summarized and discussed below.

Section 484.55 Condition of Participation: Comprehensive Assessment of Patients

Section 484.55(d)(1), "Update of the comprehensive assessment," requires entities to complete OASIS every 60 days beginning with the start of care date. This proposed requirement will revise the current requirement referenced in § 484.55(d)(1) by replacing "every second calendar month" with "every 60 days" and adding language to address the possible PEP adjustment or SCIC adjustment. The new language would require that the comprehensive assessment be updated and revised as frequently as the patient's condition warrants but not less frequently that every 60 days beginning with the start-of-care date, unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a new case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care. We believe the 60-day episode provides an appropriate time frame for purposes of prospective payment for many reasons. The 60-day episode period is the basic time frame under which HHAs have historically been required to manage and project home health care needs of beneficiaries in order to comply with current plan of care certification requirements for Medicare home health plans of care. The 60-day episode period basically matches the reassessment schedule for OASIS, and this parallel time frame will permit case-mix adjustment of each episode. As discussed above in section I.C., the 60-day episode captures the majority of stays experienced in the per-episode HHA PPS Demonstration.

We do not believe the change in reporting from at least every 62 days to 60 days imposes any additional burden on HHAs. However, we explicitly solicit comments on this revision of reporting requirements.

We are specifically seeking comments on the potential burden associated with the PEP adjustment in terms of acquiring a new physician certification and new plan of care in order to receive a new 60-day episode payment when a patient is discharged and returns to the same HHA during the 60-day episode or a beneficiary elects to transfer to a new HHA during the 60-day episode. We do not believe there is any new burden associated with requiring a new physician certification and new plan of care when a patient elects to transfer to a new HHA during a 60-day episode, as these are current requirements. We also believe the SCIC adjustment reflects the current practice of notifying the physician when the patient's condition changes and obtaining necessary physician change orders to reflect a change in the course of treatment in the beneficiary's existing plan of care. We are, however, seeking comments on the proposal.

Each episode must be identified to establish that a beneficiary is under a plan of care at that primary HHA. The primary HHA is responsible for coordinating the beneficiary's care and billing for all covered home health services ordered in the plan of care for the 60-day episode. The primary HHA must provide this information to HCFA. Consistent with the patients' rights provisions in the HHA conditions of participation regulation, the HHA must advise patients that as their primary HHA, all covered home health services provided during the episode must be furnished directly or under arrangement with the agency unless the beneficiary elects to transfer to another primary HHA. The acknowledgment that this information has been provided should be retained by the HHA. We do not envision a new specific form requirement for the primary HHA designation. We are specifically seeking comments on the industry's ability to operationally comply with this requirement.

We have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration,
Office of Information Services,
Security and Standards Group,
Division of HCFA Enterprise
Standards, Room N2–14–26, 7500
Security Boulevard, Baltimore, MD
21244–1850, Attn: John Burke,
HCFA–1059–P
and
Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC
20503, Attn: Allison Eydt, HCFA Desk
Officer.

IX. Regulatory Impact Statement

Section 804(2) of title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets.

We estimate, based on a simulation model, that the redistributional effects on HHAs participating in the Medicare program associated with this proposed rule would range from a positive $650 million for freestanding not-for-profit agencies to a negative $983 million for freestanding for-profit agencies in FY 2001. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2).

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, (Public Law 104–4), and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). Section 1895(b)(3)(A)(i) of the Act requires that the total amounts payable under the HHA PPS be equal to the total amount that would have been paid if this system had not been in effect. Section 1895(b)(3)(A)(ii) of the Act requires the standard prospective payment amounts to be budget neutral to the FY 2001 home health interim payment system limits reduced by 15 percent. Section 4603(e) requires that the 15 percent reduction in interim payment system limits takes place if the PPS is not implemented. Section 5101(d)(2) of OCESAA adds a new section 1895(b)(3)(B)(ii) to the Act to require the standard prospective payment amounts to be increased by a factor equal to the home health market basket minus 1.1 percentage points for FY 2002 or 2003. In addition, for subsequent fiscal years, the law requires the rates to be increased by the applicable home health market basket index change. Thus, subject to these adjustments, the statutory construction of this proposed rule is budget neutral. However, we are aware that there would be a number of organizational accommodations that must be made by HHAs in order to make the transition from the cost-based/interim payment system environment to a prospective payment environment that would result in costs to these entities. On that basis, we are preparing this RIA.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any given year. We believe that the costs associated with this proposed rule that apply to these governmental sectors would fall below this threshold. Therefore, the law does not apply and we have not prepared an assessment of anticipated costs and benefits of this proposed rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most HHAs are considered small entities, either by nonprofit status or by having revenues of $5 million or less annually. Table 10 illustrates the distribution of HHAs by provider type participating in Medicare as of April 13, 1999.

TABLE 10.—NUMBER OF HHAS BY PROVIDER TYPE

HHA provider type	Number
Visiting Nurse Association	484
Combination Government and Voluntary	34
Official Health Agency	1,067
Rehab Facility Based	2
Hospital Based	2,486
Skilled Nursing Facility Based	174
Other	4,612
Total	8,859

Source: HCFA—On Line Survey Certification and Reporting System Standard Report 10—4/13/99.

The following RIA/RFA analysis, together with the rest of this preamble, explains the rationale for and purposes of this rule, analyzes alternatives, and presents the measures we propose to minimize the burden on small entities.

A. Background

1. General

This proposed rule sets forth a prospective payment system for all costs of home health services under section 1895(b) of the Act. Section 5101(c)(2) of OCESAA amended the statute to require that all HHAs be paid under HHA PPS effective October 1, 2000. Section I. of the preamble details the requirements of the BBA and OCESAA for the development of the HHA PPS. Below we summarize a number of those areas that specifically apply to the impact.

- Section 1895(b)(1) of the Act provides for a transition of not longer than 4 years during which a portion of the prospective payment amount may be agency-specific as long as the blend does not exceed budget-neutrality targets.

- Section 1895(b)(3)(A)(i) of the Act requires that the prospective payment amounts be standardized to eliminate the effects of case mix and wage levels among HHAs.
- Section 1895(b)(3)(C) of the Act provides for outlier payments. Section 1895(b)(5) of the Act states that total outlier payments cannot exceed 5 percent of either projected or estimated total HHA PPS payments.

Section 1895(b) of the Act allows us broad authority in the establishment of several key elements of the system. Most of these elements, and the alternatives that were considered, are discussed in detail earlier in the preamble of this proposed rule. Several that warrant additional discussion are the length of episode for payment purposes, the case-mix methodology, and proration of prospective payment amounts.

2. 60-Day Episode Definition and Payment Rate

As we explain in section II. of the preamble, we are proposing that the prospective payment unit of payment under the HHA PPS be based on a 60-day episode of Medicare-covered home health care as OASIS data will be captured on a 60-day cycle. Current Medicare plan-of-care certification requirements are also done bimonthly, and most episodes in the HHA per-episode PPS demonstration ended in 60 days or less.

As we explain in section II. of the preamble, the 60-day episode payment rate includes all costs of home health services covered and paid for on a reasonable-cost basis and would be based on the most recently available audited cost-report data. It would be standardized to eliminate the effects of case mix and wage levels among HHAs. It must be budget neutral to the current HHA interim payment system limitation amounts reduced by 15 percent at the inception of the HHA PPS on October 1, 2000. As amended by section 5101(d)(2) of OCESAA, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act require that the standard prospective payment amounts are to be increased by a factor equal to the home health market basket minus 1.1 percentage points for fiscal year 2002 or 2003. Also, it incorporates adjustments to account for provider case mix using a clinical classification system that accounts for the relative resource utilization of different patient types. The classification system used, the Clinical Model from Abt, uses the OASIS patient data set supplemented, as applicable, by one additional patient-specific item regarding number of therapy hours/visits received in the 60-day episode period.

3. Case Mix

The goal of a case-mix payment system is to measure the intensity of care and services required for each patient and translate it into an appropriate payment level. Case-mix adjustment takes into account the relative resource use of different patient types served by an HHA. As we explain in section II. of the preamble, sections 1895(b)(4)(A)(i) and (b)(4)(B) of the Act require us to establish and make appropriate case-mix adjustments to the episode payment amounts in a manner that explains a significant amount of the variation in cost among different units of services. The patient classification system used under the HHA PPS is the Clinical Model from Abt, an 80-group patient classification system, that provides the basis for the case-mix payment indices used both for standardization of the 60-day episode payments and subsequently to establish the case-mix adjustments to the 60-day episode payment for patients with different home health service needs.

B. Alternatives Considered

Several alternatives have been considered in our development of the HHA PPS.

1. Unit of Payment

Section 1895(b)(2) of the Act requires the Secretary in defining a prospective payment amount to consider an appropriate unit of service and the number, type, and duration of visits provided within the unit; and potential changes in the mix of services provided within that unit and their cost. As discussed in section II. of this preamble, we are proposing a 60-day episode for the unit of payment under the HHA PPS. The proposed system provides for a low-utilization payment adjustment (LUPA) and a partial episode payment adjustment (PEP) adjustment. The proposed payment system also provides for a separate cost outlier payment in addition to the 60-day episode payment. Outlier payment alternatives are discussed below.

a. 60-Day National Episode Payment

Recognizing that (1) OASIS data will be captured on a 60-day cycle, (2) current Medicare plan of care certification requirements govern a bimonthly period of time, and (3) most episodes of care will be concluded in 60 days or less in the HHA PPS demonstration, we are proposing a 60-day episode as the unit of payment for HHA PPS. We are proposing that the 60-day episode begins with the start-of-care date as day 1 (first billable date) and ends on and includes the 60th day from start of care. The next continuous episode period would begin on day 61 as the start-of-care date and end on and include day 120. We are proposing the requirement that the 60-day episode payment covers one individual for 60 days of care regardless of the number of days of care actually provided during the 60-day period, unless there is a low-utilization payment adjustment, partial episode payment adjustment, additional outlier payment, or medical review determination. An HHA that accepts a Medicare-eligible beneficiary for home health care for the 60-day episode period and submits a bill for payment may not refuse to treat an eligible beneficiary who has been discharged from the HHA during the 60-day episode, but later requires Medicare-covered home health services during the same 60-day episode period and elects to return to the same HHA.

In order to address the needs of longer stay patients, at this time we are proposing not to limit the number of 60-day episode recertifications in a given fiscal year. There is the potential for unlimited consecutive episodes if eligibility and coverage rules continue to be satisfied. Recertification of and payment for consecutive 60-day episodes is, of course, dependent on OASIS assessment and the patient's eligibility and need for continued medically necessary Medicare home health services. We believe consecutive 60-day episode recertification and payment would ensure continued access to the Medicare home health benefit without exceeding the statutory budget-neutrality targets.

We believe the 60-day episode provides an appropriate time frame for purposes of prospective payment for many reasons. The 60-day episode period is the basic time frame that HHAs have historically been required to manage and project home health care needs of beneficiaries in order to comply with current plan of care certification requirements for Medicare home health plans of care. The 60-day episode period also matches the reassessment schedule for OASIS, and this parallel time frame would permit case-mix adjustment of each episode.

We considered the option of a 120-day episode payment under the national HHA PPS. As discussed in section I. of this preamble, the HHA per-episode PPS demonstration tested a 120-day episode payment. In the HHA per-episode PPS demonstration, the 120-day episode payment was calculated using agency-specific costs in a given base-year period. The calculation used for the 120-day episode payment in the HHA per-episode PPS demonstration was mean agency-specific cost per discipline multiplied by mean agency-specific utilization per discipline summed in the aggregate. The 60-day national episode payment methodology set forth in this rule parallels the general formula of mean cost multiplied by mean utilization summed in the aggregate. However, the 60-day episode payment for the national system is based on national mean cost and national mean utilization from the audited cost report sample database. The HHA per-episode PPS demonstration reflected an agency-specific methodology.

Another feature of the HHA per-episode PPS demonstration that was not adopted in the national PPS proposal is a prospective per-visit payment approach after completion of the 120-day episode. In the HHA per-episode PPS demonstration, agencies were paid a prospective per-visit amount for beneficiaries who required home health care after the 120-day episode had elapsed. Under the national HHA PPS, we are proposing continuous 60-day case-mix and wage-adjusted episode payments for beneficiaries who continue to be eligible for Medicare-covered home health services.

Based on the HHA per-episode PPS demonstration findings, the 60-day episode captured the majority of stays experienced in the HHA per-episode PPS demonstration. About 60 percent of the HHA per-episode PPS demonstration patients completed their episodes within 60 days. One criterion for the appropriate episode length is that it capture a majority of the patients. We now have evidence from the HHA per-episode PPS demonstration that a 60-day episode will do so. A 120-day episode, as tested in the HHA per-episode PPS demonstration, also meets this criterion, but we do not gain significantly larger completion percentage by lengthening the episode to 120 days. Moreover, a 120-day episode would result in more inequity in payments because of the larger risk of a change in a patient's condition over the span of the longer episode. We are specifically soliciting comments on the utility of a 60-day episode period for purposes of prospective payment and the efficacy of unlimited consecutive episode recertifications for eligible beneficiaries in a given fiscal year. We are also proposing a low-utilization payment adjustment (LUPA).

b. Low-Utilization Payment Adjustment

As discussed in section I. of the preamble, the statute requires that the definition of the unit of payment or episode must take into consideration the number, type, duration, mix, and cost of visits provided within the unit of payment. As a result of our analysis, we determined the need to also recognize a low-utilization payment under the HHA PPS. Low-utilization payment would reduce the 60-day episode payments, the partial episode payment adjustment, or the significant change in condition adjustments to those HHAs that provide minimal services to patients during the time the beneficiary is under their care. A reduced payment for low-utilization episodes would moderate the financial incentive for extreme skimping on services provided within an episode. It would also reduce the incentive to obtain an additional episode payment beyond a current episode by providing a bare minimum of additional services. It also redistributes monies to episodes reflecting higher service intensity.

Episodes with four or fewer visits would be paid the national average standardized per-visit amount times the number of visits actually provided during the episode. Based on analysis of our episode database, we concluded approximately 15 percent of current episodes constitute four or fewer visits. We explored the option of a six-visit threshold for low-utilization payments, but found approximately 20 percent of episodes in our episode database contain six or fewer visits. However, we are soliciting comments on the six or fewer visit threshold as discussed above in section I.D. of this regulation.

c. Partial Episode Payment Adjustment

We are proposing that the 60-day episode payment covers one beneficiary for 60 days of care regardless of the number of the days of care actually furnished during the 60-day episode unless one of the following intervening events occurs during the 60-day episode:

- A beneficiary elected transfer, or
- A discharge and return to the same HHA.

The intervening event described above restarts the 60-day episode clock for purposes of payment, OASIS assessment, and new physician certification of the new plan of care. The original 60-day episode payment is proportionally adjusted to reflect the actual length of time the beneficiary remained under the agency's care prior to the intervening event. The proportional payment is called the partial episode payment adjustment (PEP) adjustment.

The PEP adjustment is based on the span of days including the start of care date (first billable service date through and including the last billable service date) under the original plan of care prior to the intervening event. The PEP adjustment is calculated using the span of days (first billable service date through and including the last billable service date) under the original plan of care as a proportion of 60. The proportion is multiplied by the original case mix and wage adjusted 60-day episode payment. For example, a patient is assigned to a 60-day episode payment of $3000. Day 1 through Day 30 the patient is served by HHA–1. Day 1 is the first billable service date and Day 30 is the last billable service provided by HHA–1 under the original plan of care. The beneficiary elects to transfer to HHA–2 on Day 35. The first ordered service for the beneficiary under the new plan of care is Day 38. Day 38 starts a new 60-day episode clock for purposes of payment, OASIS assessment, and physician certification of the plan of care. Day 38 becomes Day 1 of the new 60-day episode. The final payment to HHA–1 is proportionally adjusted to reflect the length of time the beneficiary remained under its care. HHA–1 would receive a PEP adjustment of 30/60 * $3000 = $1500.

d. Significant Change in Condition Adjustment

We are proposing the requirement that the 60-day episode payment covers the individual for 60 days of care unless one of three intervening events occurs. The PEP adjustment described above encompasses the two intervening events defined as a beneficiary elected transfer or a discharge and return to the same HHA over the course of a 60-day episode of home health care. We are proposing that the third intervening event over a course of a 60-day episode of home health care that could trigger a change in payment level would be a significant change in the patient's condition. The proposed SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case mix assignment for purposes of SCIC payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care.

The SCIC adjustment is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment *prior* to the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment *after* the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment uses the span of days of the first billable service date through the last billable service date prior to the intervening event of the patient's significant change in condition that warrants a new case mix assignment for payment. The first part of the SCIC adjustment is determined by taking the span of days prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode payment amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA prior to the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case mix assignment for payment at the end of the 60-day episode.

The second part of the SCIC adjustment reflects the time the patient is under the care of the HHA after the patient experienced the significant change in condition during the 60-day episode that warranted the new case mix assignment for payment purposes. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and continuing until the end of the 60-day episode. Once the HHA completes the OASIS, obtains the necessary physician change orders reflecting the need for a new course of treatment in the plan of care, and assigns a new case mix level for payment, the second part of the SCIC adjustment begins. The second part of the SCIC adjustment is calculated by using the span of days of the first billable service date through the last billable service date during the balance of the 60-day episode. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment (or any applicable medical review or LUPA discussed below) determined at the final billing for the 60-day episode.

2. Outlier Payments

Section 1895(b)(5) of the Act governs the payment option for additions or adjustments to the payments due to unusual variations in the type or amount of medically necessary home health care under the HHA PPS. The total amount for addition or adjustment payments during a fiscal year may not exceed 5 percent of total payments projected or estimated to be made based on the HHA PPS in that year.

We considered the option of a long-stay outlier payment. Because we are proposing that successive episode payments would be made for a beneficiary as long as the beneficiary continues to be eligible and requires covered services, there would be no need for long-stay outlier cases under the HHA PPS. However, we believe outlier payments for 60-day episodes in which the HHA incurs extraordinary costs beyond the regular episode payment amount may be desirable. Outlier payments would provide some protection for beneficiaries whose care needs cost much more than the prospectively determined amount of the episode payment. They would also provide HHAs with some financial protection against possible losses on individual beneficiaries.

As discussed in section I. of the preamble, while we are not statutorily required to make provision for outlier payments, we are proposing outlier payments. Outlier payments are payments made in addition to regular 60-day case-mix-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments would be made for episodes whose estimated cost exceeds a threshold amount for each HHRG. The outlier threshold for each HHRG would be the 60-day episode payment amount for that group plus a fixed dollar loss amount that is the same for all case-mix groups. Outlier payments would be made for 60-day episode payments that have been adjusted by a PEP adjustment or SCIC adjustment. The outlier threshold for the PEP adjustment equals the PEP adjustment plus a fixed dollar loss amount that is the same for all case-mix groups. The outlier threshold for the SCIC adjustment is the total SCIC payment plus a fixed dollar loss amount that is the same for all case mix groups. The outlier payment would be a proportion of the amount of estimated costs beyond the threshold. Costs would be estimated for each episode by applying standard per-visit amounts to the number of visits by discipline reported on claims. The fixed dollar loss amount and the loss-sharing proportion would be chosen so that estimated total outlier payments are no more than 5 percent of total episode payments. As discussed above, there is no need for a long-stay outlier payment because we are not limiting the number of continuous episode payments in a fiscal year that may be made for Medicare home health care to eligible beneficiaries. As described above, the proposed outlier option is a fixed dollar loss of 1.07 times the standard episode payment amount and a loss sharing ratio of .60. The proposed option results in 7.5 percent of total estimated episodes receiving outlier payment, while holding total estimated outlier outlays to the required 5 percent.

3. Transition

Section 1895(b)(1) of the BBA provides discretion on providing for a transition from the current cost-based interim payment system to a full prospective payment system by permitting a blended PPS payment amount. Under such a transition, the law allows us to provide for a PPS amount, with a portion of payments based on agency-specific costs. The law provides for this blended PPS amount for up to 4 years in a budget-neutral manner.

Blending options provides significant practical obstacles. We could in theory blend what would have been paid under the current reasonable-cost reimbursement system and the PPS. A percentage of the payment would be based on reasonable costs building off the current interim payment system and a percentage would be based on the national PPS amount.

While other PPS systems have used a blended agency and national payment amount, the complexities of blending payments under such dissimilar payment methodologies for home health are so great, that we believe it is not a viable option. Moreover, OCESAA requires that we implement the PPS on the same date for all providers, regardless of their cost-report year. This break in cost-report year would further encourage continued use of the cost-based system. Recent legislation also reflects Congressional interest in expediting the transition from the interim payment system to the PPS. We believe proceeding with a highly complicated blended percentage payment system based on historical data from the cost-based interim payment system would not be in the best interest of the industry.

Section 1895(b)(3) also provides the option to recognize regional differences or differences based upon whether the services or agency are in an urbanized area. We are proposing a national system of payment rates upon PPS implementation. The wage-index adjustment based on site of service reflects the regional differences in wages across urban and rural areas.

4. Operational Options

As discussed above, we envision two claims per beneficiary per 60-day episode. The initial claim submitted at the start of care will contain the appropriate HHRG code for purposes of partial payment for the 60-day episode and the final claim will be submitted at the end of the 60-day episode. The final claim may contain all of the line-item data visit information for the 60-day period and permit payment for the balance due for the episode. We do not believe this billing approach would impose any additional burden on the industry. We are proposing to require that the HHA identify itself as the primary HHA for the beneficiary during the 60-day episode. This is necessary to establish the HHA to which payment is made during the episode. We do not envision a new specific form requirement for this requirement.

5. Consolidated Billing

The requirement to consolidate all durable medical equipment (DME) with the billing for home health services is expected to have a number of positive benefits. By making the HHA accountable for all services furnished to a Medicare patient, the HHA is in a better position to coordinate all aspects of the care being provided. This ensures that the responsibility for managing both the services and the DME needed for the patient's care is located in one place. The coordination will reduce the possibility of duplicate billings for DME and the opportunities for abusive billing practices. Moreover, the patient does not have to deal with two or more entities involved in the patient's care—one providing the skilled care and one or more entities supplying the DME during the time the HHA is in charge of caring for the patient.

However, we are concerned that because the statute requires an HHA to assume responsibility for all DME while the patient is under the care of the HHA, problems may occur for patients who already have a relationship with their current DME supplier. The impact of the consolidated billing provision with regard to DME takes effect when an HHA takes over the care of a patient, the HHA has no agreement with the patient's DME supplier, and the patient's existing relationship with the DME supplier ends. The HHA's DME supplier will replace the previous supplier and the patient will be required to receive his or her equipment from the new DME supplier. When a patient is discharged from the HHA, a similar situation could arise. Unless the patient chooses to continue receiving his or her DME from the HHA's DME supplier, when the patient is discharged, he or she will have to find a new supplier or reestablish contact with the previous supplier.

The problem of switching suppliers as a result of the consolidated billing requirement could be especially acute for a patient who must maintain a long term relationship with a DME supplier. Patients who might be most affected by the consolidated billing requirement include those who need oxygen equipment or complex equipment such as motorized wheelchairs that require periodic maintenance. Switching between DME suppliers could be confusing for patients and could affect a patient's treatment and well being. Currently we have no immediate solutions to these difficulties under the current statutory language and invite public comment.

C. Effects of This Proposed Rule

This proposed rule would establish requirements for the new prospective payment system for home health agencies as required by section 4603 of the BBA, as amended by section 5101 of OCESAA. These include the implementation of a prospective payment system for home health agencies, consolidated billing requirements, and a number of other related changes. The prospective payment system described in this rule replaces the retrospective reasonable cost-based system currently used by Medicare for the payment of home health services subject to interim payment system limits under Part A and Part B.

Section 1895(b)(3)(A)(i) of the Act requires the computation of a standard prospective payment amount to be initially based on the most recent audited cost-report data available to the Secretary. In accordance with this section of the Act, the primary data source in developing the cost basis for the 60-day episode payments was the audited cost-report sample of HHAs whose cost reporting periods ended in fiscal year 1997 (that is, ending on or after October 1, 1996 through September 30, 1997).

However, Table 11 below illustrates the proportion of HHAs that are likely to be affected.

This table reflects how agencies would be paid under PPS versus how they would be paid under the interim payment system (IPS) with the 15 percent reduction in limits required in FY 2001. The limits under IPS were determined by updating the per-visit limits in effect for FY 2000 by the market basket minus 1.1 percent updating each agency's per-beneficiary cap for FY 2000 by this same percentage. Each of these limits was then reduced by 15 percent. For each agency in the audited cost report data set, we updated their costs from FY 1997 to FY 2001 by our best estimate of HHA cost increases during this period. We then compared each agency's FY 2001 costs to the IPS limits to determine their IPS payment in FY 2001. To determine each agency's payment under PPS, we translated the cost report data into 60-day episodes and used the average case mix for urban/rural and provider type as a proxy. We extrapolated the audited cost report data to reflect the total Medicare HHA distribution. We obtained average case-mix values based on the type of provider and whether the HHA was urban or rural from the Abt data set. We then multiplied the agency's expected number of episodes in FY 2001 by the wage-adjusted and case-mix-adjusted episode payment to obtain the agency's expected PPS payment. The PPS payment was then compared to the IPS payment.

TABLE 11.—IMPACT OF THE HOME HEALTH PROSPECTIVE PAYMENT AMOUNTS ON HOME HEALTH AGENCIES BY TYPE AND LOCATION FOR THE 567 AUDITED COST REPORT SAMPLE AGENCIES

Type of agency	Percentage Change from (IPS—15%) to PPS
ALL AGENCIES	0.0
By Urban/Rural and Provider Type	
Rural:	
Freestanding:	
For-Profit	−17.0
Governmental	46.4
Non-Profit	13.7
Provider Based.	
Urban:	
Freestanding:	
For-Profit	−18.4
Governmental	50.9
Non-Profit	20.5
Provider Based	2.1
By Provider Type	
Freestanding:.	
For-Profit	−18.1
Governmental	47.9
Non-Profit	19.4
Provider Based	3.8

TABLE 11.—IMPACT OF THE HOME HEALTH PROSPECTIVE PAYMENT AMOUNTS ON HOME HEALTH AGENCIES BY TYPE AND LOCATION FOR THE 567 AUDITED COST REPORT SAMPLE AGENCIES—Continued

Type of agency	Percentage Change from (IPS—15%) to PPS
By Urban/Rural	
Rural Agencies	4.2
Urban Agencies	−0.4
By Region	
Midwest States	21.8
Northeast States	21.4
Southern States	−15.5
Western States	−1.3

Table 11 represents the projected effects of the HHA PPS and is based on the 567 providers in the audited cost-report sample weighted to the national total of HHAs. This sample has been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost-reporting periods for the data contained in the database and September 30, 2001.

This impact table compares the effect on categories of HHAs in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology and thus already factors in the effects of the interim payment system minus 15 percent limits. These cost limits have already had the effect of reducing many extremes in the cost of the system; therefore, as a result of the interim payment system, a majority of HHA providers are currently held at the median national cost per beneficiary or below. It should be noted that HHAs will have had 2 or more years experience under this system before PPS implementation.

Column one of this table divides HHAs by a number of characteristics including provider type, region, and urban versus rural location. For purposes of this impact table four regions have been defined: Northeast, South, Midwest, and West. The Northeast Region consists of Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands. The South Region consists of Alabama, Arkansas, the District of Columbia, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The Midwest Region consists of Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, South Dakota, and Wisconsin. The West Region consists of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

Column two shows the percentage change in Medicare payments a particular category of HHAs would experience in moving from the interim payment system limits minus 15 percent payment methodology to the proposed PPS payment methodology. Because the statute requires aggregate payments under the HHA PPS and HHA interim payment system limits minus 15 percent payment methodology to be budget neutral, the effect on agencies in the aggregate is zero.

Rural freestanding for-profit HHAs experience a 17.0 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Rural freestanding governmental HHAs experience a 46.4 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Rural freestanding nonprofit HHAs experience a 13.7 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Rural provider-based HHAs, in the aggregate, experience a 10.1 percent increase in moving from the interim payment system limits minus 15 percent methodology to the PPS payment methodology. Rural agencies, in the aggregate, experience a 4.2 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology.

Urban freestanding for-profit HHAs experience an 18.4 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Urban freestanding governmental HHAs experience a 50.9 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Urban freestanding nonprofit HHAs experience a 20.5 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Urban provider-based HHAs, in the aggregate, experience a 2.1 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Urban agencies, in the aggregate, experience a −0.4 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology.

The current cost limits have been criticized as providing better financial treatment of urban providers relative to rural providers. The HHA PPS system, which is based on patient characteristics, tends to level the playing field; thus, rural providers, in general, fare relatively better than urban providers. The largest impact on urban providers is in the urban freestanding for-profit category where it can be argued that historical costs have been disproportionately high compared to other providers for reasons unrelated to the relative needs of the patients they serve.

Freestanding for-profit HHAs, in the aggregate, experience an 18.1 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Freestanding governmental HHAs, in the aggregate, experience a 47.9 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Freestanding nonprofit HHAs, in the aggregate, experience a 19.4 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Provider-based HHAs, in the aggregate, experience a 3.8 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology.

It should be noted that governmental providers fare relatively better under the HHA PPS system than other types of providers. In part, this is because the HHA PPS system is driven primarily by the needs of patients rather than utilization incentives. Thus, governmental providers are less affected by the interim payment system limits minus 15 percent payment methodology because their costs have been historically lower and visit utilization per episode is much lower. On average, governmental agencies have reported lower average costs per visit as well as fewer visits per episode. It should be noted that this category of HHAs accounts for only 2.6 percent of total home health expenditures and therefore the large increase attributed to them has little impact in the aggregate system costs. Although provider-based agencies tended to have, as a group, higher per-visit costs, the payment differential reflected in this impact table for provider-based agencies is relatively modest and in a positive direction. This can be attributed to the fact that the reduction in the per-visit limit under interim payment system limits minus 15 percent payment methodology has the effect of reducing this cost-per-visit differential, and thus provider-based HHAs actually gain slightly under PPS.

HHAs in the Midwest region experience a 21.8 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. HHAs in the Northeast region experience a 21.4 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. HHAs in the South region experience a 15.4 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. HHAs in the West region experience a 1.3 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology.

We would have preferred to provide an impact table with more regions; however, the limitations of our data prevented us from obtaining provider data at a lower level than the four major regions. However, this regional breakdown does reflect what one might expect in moving from our current interim payment system cost limitations payment methodology to a national PPS payment methodology. Medicare payments have historically varied by region without regard to the relative needs/conditions of patients; therefore, those regions that had the highest unexplained costs for home health services are the most impacted areas (South region followed by the West region). In contrast, the Northeast region and the Midwest region fare relatively well by comparison. It must be noted that in a payment methodology system that is legislatively required to achieve budget neutrality, any effort to increase payments to those regions more affected by a national payment system necessarily results in a reduction of payments to those regions that have historically restrained costs under home health.

D. Rural Hospital Impact Statement

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We have not prepared a rural impact statement since we have determined, and the Secretary certifies, that this rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that the proposed rule would not have substantial direct effects on the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

A. Amend part 409 as set forth below:

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1395hh).

2. In § 409.43, revise paragraph (e) to read as follows:

§ 409.43 Plan of care requirements.

* * * * *

(e) *Frequency of review.* (1) The plan of care must be reviewed by the physician (as specified in § 409.42(b)) in consultation with agency professional personnel at least every 60 days unless there is a—

(i) Beneficiary elected transfer;

(ii) Significant change in condition resulting in a change in the case-mix assignment; or

(iii) Discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care.

(2) Each review of a beneficiary's plan of care must contain the signature of the physician who reviewed it and the date of review.

* * * * *

3. In § 409.100, revise paragraph (a) to read as follows:

§ 409.100 To whom payment is made.

(a) *Basic rule.* Except as provided in paragraph (b) of this section—

(1) Medicare pays hospital insurance benefits only to a participating provider.

(2) For home health services furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA, payment is made to the HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

* * * * *

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

B. Amend part 410 as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1395hh).

2. In § 410.150, republish the introductory text to paragraph (b) and add new paragraph (b)(19) to read as follows:

§ 410.150 To whom payment is made.

* * * * *

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

* * * * *

(19) To a participating HHA, for home health services furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

C. Amend part 411 as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1395hh).

2. In § 411.15, republish the introductory text to the section, and add a new paragraph (q) to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage:

* * * * *

(q) A home health service as defined in section 1861(m) of the Act furnished to an individual who is under a plan of care of an HHA, unless that HHA has submitted a claim for payment for such services.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

D. Amend part 413 as set forth below:

1. Revise the authority citation for part 413 to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

2. In § 413.1, add a new paragraph (h) to read as follows:

§ 413.1 Introduction.

* * * * *

(h) *Payment for services furnished by HHAs.* The amount paid for home health services as defined in section 1861(m) of the Act that are furnished beginning on or after October 1, 2000 to an eligible beneficiary under a home health plan of care is determined according to the prospectively determined payment rates for HHAs set forth in part 484, subpart E of this chapter.

§ 413.64 [Amended]

3. In § 413.64, in paragraph (h)(1), remove the phrase "and for both Part A and Part B HHA services" at the end of the paragraph.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

E. Amend part 424 as set forth below:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1895hh).

2. In § 424.22, republish the introductory text to paragraph (a)(1), add a new paragraph (a)(1)(v), and revise paragraph (b)(1) to read as follows:

§ 424.22 Requirements for home health services.

* * * * *

(a) *Certification*—(1) *Content of certification.* As a condition of payment of home services under Medicare Part A or Medicare Part B, a physician must certify as follows:

* * * * *

(v) The individual is correctly assigned to one of the Home Health Resource Groups.

* * * * *

(b) *Recertification.* (1) *Timing and signature of recertification.* Recertification is required at least every 60 days, preferably at the time the plan is reviewed, and must be signed by the physician who reviews the plan of care. The recertification is required at least every 60 days unless there is a—

(i) Beneficiary elected transfer; or

(ii) Discharge and return to the same HHA during the 60-day episode.

* * * * *

PART 484—HOME HEALTH SERVICES

F. Amend part 484 as set forth below:

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh).

2. Revise the heading for part 484 to read as set forth above.

§ 484.18 [Amended]

3. In § 484.18, in paragraph (b), remove the phrase "62 days" and in its place add the phrase "60 days unless there is a beneficiary elected transfer; a significant change in condition resulting in a change in the case-mix assignment; or a discharge and return to the same HHA during the 60-day episode."

4. In § 484.55, revise paragraph (d)(1) to read as follows:

§ 484.55 Condition of participation: Comprehensive assessment of patients.

* * * * *

(d) *Standard: Update of the comprehensive assessment.* * * *

(1) Every 60 days beginning with the start-of-care date, unless there is a—

(i) Beneficiary elected transfer;

(ii) Significant change in condition resulting in a new case-mix assignment; or

(iii) Discharge and return to the same HHA during the 60-day episode.

* * * * *

5. Add and reserve a new subpart D.

6. Add a new subpart E, consisting of §§ 484.200, 484.202, 484.205, 484.210, 484.215, 484.220, 484.225, 484.230, 484.235, 484.237, 484.240, 484.250, and 484.260 to read as follows:

Subpart E—Prospective Payment System for Home Health Agencies

Sec.

484.200 Basis and scope.
484.202 Definitions.
484.205 Basis of payment.
484.210 Data used for the calculation of the national prospective 60-day episode payment.
484.215 Methodology used for the calculation of the national 60-day episode payment.
484.220 Calculation of the national adjusted prospective 60-day episode payment rate for case mix and area wage levels.
484.225 Annual update of the national adjusted prospective 60-day episode payment rate.
484.230 Methodology used for the calculation of the low-utilization payment adjustment.
484.235 Methodology used for the calculation of the partial episode payment adjustment
484.237 Methodology used for the calculation of the significant change in condition payment adjustment
484.240 Methodology used for the calculation of the outlier payment.
484.250 Patient assessment data.
484.260 Limitation on review.

Subpart E—Prospective Payment System for Home Health Agencies

§ 484.200 Basis and scope.

(a) *Basis.* This subpart implements section 1895 of the Act, which provides for the implementation of a prospective payment system (PPS) for HHAs for portions of cost reporting periods occurring on or after October 1, 2000.

(b) *Scope.* This subpart sets forth the framework for the HHA PPS, including the methodology used for the development of the payment rates, associated adjustments, and related rules.

§ 484.202 Definitions.

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the clinical model.

Clinical model means a system for classifying Medicare-eligible patients under a home health plan of care into mutually exclusive groups based on clinical, functional, and intensity-of-service criteria. The mutually exclusive groups are defined as Home Health Resource Groups (HHRGs).

Discipline means one of the six home health disciplines covered under the Medicare home health benefit (skilled nursing services, home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

Market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in home health services.

§ 484.205 Basis of payment.

(a) *Method of payment.* (1) An HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis. HCFA determines this national 60-day episode payment under the methodology set forth in § 484.215.

(2) An HHA may receive a low-utilization payment adjustment (LUPA) of a predetermined per-visit rate. HCFA determines the LUPA under the methodology set forth in § 484.230.

(3) An HHA may receive a partial episode payment adjustment (PEP) adjustment due to an intervening event defined as a beneficiary elected transfer or a discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment during an existing 60-day episode, that initiates the start of a new 60-day episode payment and a new physician certification of the new plan of care. HCFA determines the PEP adjustment under the methodology set forth in § 484.235.

(4) An HHA may receive a significant change in condition payment adjustment (SCIC Adjustment) due to the intervening event defined as a significant change in the patient's condition during an existing 60-day episode. The SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. We determine the SCIC Adjustment under a methodology set forth in § 484.237.

(b) *Episode payment.* The national 60-day episode payment represents payment in full for all costs associated with furnishing a home health service paid on a reasonable cost basis as of August 5, 1997 unless the national 60-day episode payment is subject to a low-utilization payment adjustment set forth in § 484.230, a partial episode payment adjustment set forth at § 484.235, or an additional outlier payment set forth in § 484.240. All payments under this system may be subject to a medical review adjustment. DME provided as a home health service as defined in section 1861(m) of the Act continues to be paid the fee schedule amount.

(c) *Low-utilization payment.* An HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines at the end of the 60-day episode that the HHA furnished minimal services to a patient during the 60-day episode. HCFA determines a low-utilization payment adjustment under the methodology set forth in § 484.230.

(d) *Partial episode payment adjustment.* An HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event, defined as a beneficiary elected transfer, or discharge and return to the same HHA during a 60-day episode, warrants a new 60-day episode payment. The PEP adjustment would not apply in situations of transfers among HHAs of common ownership. The discharge and return to the same HHA during the 60-day episode is only recognized in those circumstances when a beneficiary reached the goals in the original plan of care. The original plan of care must have been terminated with no anticipated need for additional home health services for the balance of the 60-day episode. If the intervening event warrants a new 60-day episode payment and the new physician certification of a new plan of care, the initial HHA receives a partial episode payment adjustment reflecting the length of time the patient remained under its care. HCFA determines a partial episode payment adjustment under a methodology set forth in § 484.235.

(e) *Significant change in condition adjustment.* The HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event defined as a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care occurred. In order to receive a new case mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care. The total significant change in condition payment adjustment is a proportional payment adjustment reflecting the time both prior and after the patient experienced a significant change in condition during the 60-day episode.

(f) *Outlier payment.* An HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis as of August 5, 1997, unless the estimated cost of the 60-day episode exceeds a threshold amount. The outlier payment is defined to be a proportion of the estimated costs beyond the threshold. An outlier payment is a payment in addition to the national 60-day episode payment. The total of all outlier payments is limited to 5 percent of total outlays under the HHA PPS. HCFA determines an outlier payment under the methodology set forth in § 484.240.

§ 484.210 Data used for the calculation of the national prospective 60-day episode payment.

To calculate the national prospective 60-day episode payment, HCFA uses the following:

(a) Medicare cost data on the most recent audited cost report data available.

(b) Utilization data based on Medicare claims.

(c) An appropriate wage index to adjust for area wage differences.

(d) The most recent projections of increases in costs from the HHA market basket index.

(e) OASIS assessment data and other data that account for the relative resource utilization for different HHA Medicare patient case mix.

§ 484.215 Methodology used for the calculation of the national 60-day episode payment.

(a) *Determining an HHA's costs.* In calculating the initial unadjusted national 60-day episode payment applicable for a service furnished by an HHA using data on the most recent available audited cost reports, HCFA determines each HHA's costs by summing its allowable costs for the period. HCFA determines the national mean cost per visit.

(b) *Determining HHA utilization.* In calculating the initial unadjusted national 60-day episode payment, HCFA determines the national mean utilization for each of the six disciplines using home health claims data.

(c) *Use of the market basket index.* HCFA uses the HHA market basket index to adjust the HHA cost data to reflect cost increases occurring between October 1, 1996 through September 30, 2001.

(d) *Calculation of the unadjusted national average prospective payment amount for the 60-day episode.* HCFA calculates the national unadjusted 60-day episode payment in the following manner:

(1) By computing the mean national cost per visit.

(2) By computing the national mean utilization for each discipline.

(3) By multiplying the mean national cost per visit by the national mean utilization summed in the aggregate for the six disciplines.

(4) By adding to this amount, amounts for nonroutine medical supplies and an OASIS adjustment for estimated ongoing reporting costs.

(e) *Standardization of the data for variation in area wage levels and case mix.* HCFA standardizes the cost data described in paragraph (a) of this section to remove the effects of geographic variation in wage levels and variation in case mix. HCFA standardizes the cost data for geographic variation in wage levels using the hospital wage index. HCFA standardizes the cost data for HHA variation in case mix using the case-mix indices and other data that indicate HHA case mix.

§ 484.220 Calculation of the national adjusted prospective 60-day episode payment rate for case mix and area wage levels.

HCFA adjusts the national prospective 60-day episode payment rate to account for HHA case mix using a case-mix index to explain the relative resource utilization of different patients. HCFA also adjusts the national prospective 60-day episode payment rate to account for geographic differences in wage levels using an appropriate wage index.

§ 484.225 Annual update of the national adjusted prospective 60-day episode payment rate.

(a) HCFA updates the unadjusted national 60-day episode payment rate on a fiscal year basis.

(b) For fiscal year 2001, the unadjusted national 60-day episode payment rate is adjusted using the latest available market basket factors.

(c) For fiscal year 2002 or 2003, the unadjusted national 60-day episode payment rate is equal to the rate for the previous period or fiscal year increase by a factor equal to the HHA market basket minus 1.1 percentage point.

(d) For subsequent fiscal years, the unadjusted national rate is equal to the rate for the previous fiscal year increased by the applicable HHA market basket index amount.

§ 484.230 Methodology used for the calculation of the low-utilization payment adjustment.

An episode with four or fewer visits is paid the national average standardized per-visit amount by discipline for each visit type. The national average standardized per-visit amount is determined by using cost data set forth in § 484.210(a) and adjusting by the appropriate wage index.

§ 484.235 Methodology used for the calculation of the partial episode payment adjustment.

(a) HCFA makes a partial episode payment adjustment to the original 60-day episode payment that is interrupted by an intervening event described in § 484.205(d).

(b) The original 60-day episode payment is adjusted to reflect the length of time the beneficiary remained under the care of the original HHA.

(c) The partial episode payment is calculated by determining the actual days served by the original HHA as a proportion of 60 multiplied by the initial 60-day episode payment.

§ 484.237 Methodology used for the calculation of the significant change in condition payment adjustment.

(a) HCFA makes a significant change in condition payment adjustment to the original 60-day episode payment that is interrupted by the intervening event defined in § 484.205(e).

(b) The SCIC adjustment is calculated in two parts.

(1) The first part of the SCIC adjustment reflects the adjustment to the level of payment prior to the significant change in the patient's condition during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode amount.

(2) The second part of the SCIC adjustment reflects the adjustment to the level of payment after the significant change in the patient's condition occurs during the 60-day episode. The second part of the SCIC adjustment is calculated by using the span of days of the first billable service date through the last billable service date during the balance of the 60-day episode.

(c) The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the total SCIC adjustment determined at the end of the 60-day episode.

§ 484.240 Methodology used for the calculation of the outlier payment.

(a) HCFA makes an outlier payment for an episode whose estimated cost exceeds a threshold amount for each case-mix group.

(b) The outlier threshold for each case-mix group is the episode payment amount for that group, the PEP adjustment amount for the episode or the total significant change in condition adjustment amount for the episode plus a fixed dollar loss amount that is the same for all case-mix groups.

(c) The outlier payment is a proportion of the amount of estimated cost beyond the threshold.

(d) HCFA estimates the cost for each episode by applying the standard per-visit amount to the number of visits by discipline reported on claims.

(e) The fixed dollar loss amount and the loss sharing proportion are chosen so that the estimated total outlier payment is no more than 5 percent of total episode payment.

§ 484.250 Patient assessment data.

HCFA requires an HHA to submit the OASIS data described at § 484.55(b)(1) and (d)(1) to administer the payment rate methodologies described in §§ 484.215, 484.230, 484.235, and 484.237.

§ 484.260 Limitation on review.

Judicial or administrative review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of the payment unit, including the national 60-day episode payment rate and the LUPA. This prohibition also includes the establishment of the transition period, definition and application of the unit of payments, the computation of initial standard prospective payment amounts, the establishment of the adjustment for outliers, and the establishment of case-mix and area wage adjustment factors.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 4, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: July 21, 1990.

Donna E. Shalala,

Secretary.

[FR Doc. 99–27864 Filed 10–27–99; 8:45 am]

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federal register

Thursday
October 28, 1999

Part III

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 2000 Apportionments, Allocations and Program Information; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2000 Apportionments, Allocations and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act for Fiscal Year 2000 (Pub. L. 106–69) was signed into law by President Clinton on October 9, 1999, and provides fiscal year 2000 appropriations for the Federal Transit Administration (FTA) transit assistance programs. Based upon this Act, the Transportation Equity Act for the 21st Century (TEA–21), and 49 U.S.C. Chapter 53, this notice contains a comprehensive list of apportionments and allocations of the various transit programs.

This notice includes the apportionment of fiscal year 2000 funds in the 2000 DOT Appropriations Act for the: Metropolitan Planning Program and State Planning and Research Program; Urbanized Area Formula Program; Nonurbanized Area Formula Program; Rural Transit Assistance Program; Elderly and Persons with Disabilities Program; and the Capital Investment Program for Fixed Guideway Modernization. This notice also contains the allocations of funds for the New Starts and Bus categories under the Capital Investment Program and the Job Access and Reverse Commute Program. It contains general information about other programs established under TEA–21, including the Over-the-Road Bus Accessibility Program and the Clean Fuels Formula Program.

Information regarding TEA–21 funding authorization levels for use in developing Metropolitan Transportation Improvement Programs (TIPs) and State Transportation Improvement Programs (STIPs) is included. For informational purposes, the notice contains the apportionment of fiscal year 2000 funds for the Federal Highway Administration (FHWA) Metropolitan Planning Program and the estimated apportionment of the fiscal year 2000 State Planning and Research Program.

A listing of prior year unobligated allocations for the Section 5309 New Starts and Bus Programs is included, as in previous years. In addition, the FTA policy regarding pre-award authority to incur project costs and the Letter of No Prejudice Policy are provided. The section on pre-award authority has been revised in relation to New Starts preliminary engineering and final design work. Other pertinent program information is also included.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Patricia Levine, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Rural Transit Assistance Program, the Elderly and Persons with Disabilities Program, the Clean Fuels Formula Program, the Over-the-Road Bus Accessibility Program, or the Capital Investment Program; or Robert Stout, Director, Office of Planning Operations, (202) 366–6385, for general information concerning the Metropolitan Planning Program and the State Planning and Research Program; or Dr. Lewis P. Clopton, Director, Office of Research Management, (202) 366–9157, for information about the Job Access and Reverse Commute Program.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Overview
  A. Fiscal Year 2000 Appropriations
  B. TEA–21 Authorized Program Levels
  C. Project Management Oversight
III. Fiscal Year 2000 Focus
  A. Y2K
  B. Disadvantaged Business Enterprise (DBE) Regulation
  C. Urbanized Area Formula Study
  D. Intelligent Transportation Systems (ITS)
IV. Section 5303 Metropolitan Planning Program and Section 5313(b) State Planning and Research Program
  A. Metropolitan Planning Program
  B. State Planning and Research Program
  C. Data Used for Metropolitan Planning and State Planning and Research Apportionments
  D. FHWA Metropolitan Planning Program and State Planning and Research Program
  E. Local Match Waiver for Specified Planning Activities
  F. Planning Emphasis Areas for Fiscal Year 2000
  G. Federal Planning Certification Reviews
  H. Consolidated Planning Grants
  I. New Starts Approval to Enter Preliminary Engineering and Final Design
V. Section 5307 Urbanized Area Formula Program
  A. Total Urbanized Area Formula Apportionments
  B. Data Used for Urbanized Area Formula Apportionments
  C. Urbanized Area Formula Fiscal Year 2000 Apportionments to Governors
  D. Transit Enhancements
  E. Fiscal Year 2000 Operating Assistance
  F. Carryover Funds for Operating Assistance
  G. Designated Transportation Management Areas
  H. Urbanized Area Formula Funds Used for Highway Purposes
  I. National Transit Database Internet Reporting
VI. Section 5311 Nonurbanized Area Formula Program and Section 5311(b) Rural Transit Assistance Program (RTAP)
  A. Nonurbanized Area Formula Program
  B. Rural Transit Assistance Program (RTAP)
VII. Section 5310 Elderly and Persons With Disabilities Program
VIII. Surface Transportation Program and Congestion Mitigation and Air Quality Flexible Funds Used for Transit Purposes (Title 23, U.S.C.)
  A. Transfer Process
  B. Matching Share for Flexible Funds
IX. Section 5309 Capital Investment Program
  A. Fixed Guideway Modernization
  B. New Starts
  C. Bus
X. Job Access and Reverse Commute Program—Section 3037 of TEA–21
XI. Over-the-Road Bus Accessibility Program—Section 3038 of TEA–21
XII. Section 5308 Clean Fuels Formula Program
XIII. Unit Values of Data for Section 5307 Urbanized Area Formula Program, Section 5311 Nonurbanized Area Formula Program, and Section 5309 Fixed Guideway Modernization Program
XIV. Period of Availability of Funds
XV. Automatic Pre-Award Authority to Incur Project Costs
  A. Background
  B. Conditions
  C. Environmental, Planning, and Other Federal Requirements
  D. Extension of Pre-award Authority to New Starts Projects Approved for Preliminary Engineering and/or Final Design
XVI. Letter of no Prejudice Policy (Prior Approval of Pre-Award Authority)
  A. Policy
  B. Conditions
  C. Environmental, Planning, and Other Federal Requirements
  D. Request for LONP
XVII. FTA Homepage on the Internet
XVIII. FTA Fiscal Year 2000 Annual List of Certifications and Assurances
XIX. Grant Application Procedures

Tables

1. FTA FY 2000 Appropriations for Grant Programs
2. FTA FY 2000 Section 5303 Metropolitan Planning Program and Section 5313(b) State Planning and Research Program Apportionments
3. FHWA FY 2000 Metropolitan Planning (PL) Program and Estimated State Planning and Research (SP&R) Program Apportionments
4. FTA FY 2000 Section 5307 Urbanized Area Formula Apportionments
5. FTA FY 2000 Section 5311 Nonurbanized Area Formula Apportionments, and Section 5311(b) Rural Transit Assistance Program (RTAP) Allocations

6. FTA FY 2000 Section 5310 Elderly and Persons with Disabilities Apportionments
7. FTA FY 2000 Section 5309 Fixed Guideway Modernization Apportionments
8. FTA FY 2000 Section 5309 New Start Allocations
8A. FTA Prior Year Unobligated Section 5309 New Start Allocations
9. FTA FY 2000 Section 5309 Bus Allocations
9A. FTA Prior Year Unobligated Section 5309 Bus Allocations
10. FTA FY 2000 Job Access and Reverse Commute Program Allocations
11. FTA TEA–21 Authorization Levels (Guaranteed Funding Only)
11A. FTA TEA–21 Authorization Levels (Guaranteed and Non-Guaranteed Funding)
12. FTA FY 2000 Apportionment Formula for Section 5307 Urbanized Area Formula Program
13. FTA FY 2000 Apportionment Formula for Section 5309 Fixed Guideway Modernization Program
14. FTA FY 2000 Formula Grant Apportionments Unit Values of Data

I. Background

Metropolitan Planning funds are apportioned by statutory formula to the Governors for allocation to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof. State Planning and Research funds are apportioned to states by statutory formula. Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned by statutory formula to Governors for capital, operating and administrative assistance in nonurbanized areas. The Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. New Start and Bus allocations identified in the DOT Appropriations Act are included in this notice.

II. Overview

A. Fiscal Year 2000 Appropriations

The fiscal year 2000 appropriation for the FTA program is $5,797,000,000, the guaranteed funding level under TEA–21. The appropriation for the Metropolitan Planning Program is $49,632,000, and the appropriation for the State Planning and Research Program is $10,368,000. The appropriation for formula grants totals $3,098,000,000. Under statutory authority, the distribution of the total formula funds available is as follows: $4,849,950 is set aside for the Alaska Railroad; $50,000,000 is for the Clean Fuels Formula Program, which was transferred and merged with funding for the Capital Bus Program; and $3,700,000 is for the Over-the-Road Bus Accessibility Program. Of the remaining amount of $3,039,450,050, 91.23 percent ($2,772,890,281) is made available to the Urbanized Area Formula Program, 6.37 percent ($193,612,968) is made available to the Nonurbanized Area Formula Program, and 2.4 percent ($72,946,801) is made available to the Elderly and Persons with Disabilities Program.

The other program appropriations contained in this notice are as follows: $5,250,000 for the Rural Transit Assistance Program (RTAP); and $2,501,000,000 for the Capital Investment Program. Of the Capital Investment Program amount, $980,400,000 is for Fixed Guideway Modernization, $980,400,000 is for New Starts, and $490,200,000 is for Bus Capital. In addition, $50,000,000 of formula funds for Clean Fuels was transferred and merged with the Bus Capital Program increasing that program to $540,200,000. An amount of $75,000,000 is for the Job Access and Reverse Commute Program.

Table 1 displays the amounts appropriated by program, including adjustments and final apportioned and allocated amounts. The following text provides a narrative explanation of the funding levels and other factors affecting the apportionments and allocations.

B. TEA–21 Authorized Program Levels

TEA–21 provides a combination of trust and general fund authorizations that total $6,810,000,000 for the fiscal year 2000 FTA program. Of this amount, $5,797,000,000 is guaranteed under the discretionary spending cap. See Table 11 for fiscal years 1998–2003 guaranteed fund levels by program and Table 11A for the total of guaranteed and non-guaranteed levels by program.

Information regarding estimates of the funding levels for 1999–2003 by state and urbanized area is available on the FTA homepage at [www.fta.dot.gov]. The numbers are for planning purposes only as they will be revised in the future but may be used for programming metropolitan transportation improvement programs and statewide transportation improvement programs.

C. Project Management Oversight

Section 5327 of 49 U.S.C. allows the Secretary of Transportation to use not more than one-half percent of the funds made available under the Urbanized Area Formula Program and the Nonurbanized Area Formula Program, and three-quarters percent of funds made available under the Capital Investment Program to contract with any person to oversee the construction of any major project under these statutory programs to conduct safety, procurement, management and financial reviews and audits, and to provide technical assistance to correct deficiencies identified in compliance reviews and audits. Therefore, one-half percent of the funds appropriated for the Urbanized Area Formula Program, and the Nonurbanized Area Formula Program for fiscal year 2000, and three-quarters percent of Capital Investment Program funds were reserved for these purposes before funds were apportioned.

III. Fiscal Year 2000 Focus

A. Y2K

FTA began working on the Year 2000 (Y2K) issue as early as 1996. The goal of FTA's efforts is to ensure that transit services are not interrupted by computer failures resulting from Y2K problems. In order to accomplish this, FTA is providing Y2K information, guidance and assistance to the transit community. A series of "Dear Colleague Letters" was sent to FTA grantees, which provided guidance on Y2K and a five-phased approach FTA Y2K Management Plan. The five phases were as follows: (1) Assessment; (2) Renovation/Validation; (3) Certifications; (4) Submission of Business Continuity and Contingency Plan (BCCP) or outline of BCCP; and (5) Reporting test results of the BCCP.

In January 1999, FTA Grantees were required to complete the Assessment Phase, and in March 1999, FTA Grantees were required to complete the Renovation/Validation Phase. On June 30, 1999, the FTA grantees were required to certify Y2K compliance or submit an outline of the contingency plan for continuing operations of their systems while repairing or replacing the calendar year 2000 non-compliant elements. The 30 largest grantees were required to submit a copy of the Business Continuity and Contingency Plan. Other transit operators were asked to submit an outline of their BCCP. All grantees are also to submit to FTA the results of their first two tests of the BCCP by October 31, 1999.

As the changeover approaches, FTA will continue to work with grantees to ensure a smooth transition. FTA will monitor transit activity during the Y2K changeover, with emphasis on the 30 largest operators. FTA will also serve as a clearinghouse for information during the changeover.

B. Disadvantaged Business Enterprise (DBE) Regulation

The Department of Transportation's (DOT's) new regulation implementing the disadvantaged business enterprise (DBE) program was published February 2, 1999, in the **Federal Register** and was effective March 4, 1999. The DBE program is intended to remedy past and current discrimination against disadvantaged business enterprises, ensure a "level playing field" and foster equal opportunity in DOT-assisted contracts, improve the flexibility and efficiency of the DBE program, and reduce burdens on small businesses.

FTA grantees were required to submit revised DBE programs by September 1, 1999. FTA has reviewed all programs received. A sample DBE Program has been created for grantees along with DOT approved Q&As for assistance to grant recipients required to submit programs. For more information, contact Arthur Andrew Lopez, Director, Office of Civil Rights, at (202) 366–4018, or Gloria Dixon at (816) 329–3920 or (816) 523–0204, or go to the Office of Small and Disadvantaged Business Utilization website at: [http://osdbuweb.dot.gov/programs/dbe/dbe.htm].

C. Urbanized Area Formula Study

Section 3033 of TEA–21 requires FTA to conduct a study to assess whether the formula for apportioning funds to urbanized areas (at 49 U.S.C. 5336) accurately reflects the transit needs of small urbanized areas that provide an unusually high level of transit service for their size. A **Federal Register** Notice on the commencement of the study was published on July 9, 1999, and numerous comments were received.

In that notice, FTA sought suggestions on conducting the study and comment on the following questions from interested parties: (1) Are population and population density adequate factors for use in apportioning funds to small urbanized areas; (2) Are there specific reasons why other factors should not be applied to these small cities; (3) Should service factors also be applied to small urbanized areas in apportioning formula funds—in particular, should bus revenue vehicle miles be applied to small urbanized areas as well; (4) Should bus passenger miles and operating costs used in the incentive tier be applied to small urbanized areas; (5) Would examining other aid sources available to small urbanized areas be useful and informative; and (6) What other mechanisms besides changing the formula might be practical and useful in order to assist small transit-intensive cities?

The study is to be submitted to Congress by December 31, 1999. For more information, contact Darren Timothy, FTA Office of Policy Development, at (202) 366–0177.

D. Intelligent Transportation Systems (ITS)

Section 5206(e) of TEA–21 requires that Intelligent Transportation Systems (ITS) projects using funds from the Highway Trust Fund (including the Mass Transit Account) conform to the National ITS Architecture and Standards. Interim guidance on conformity with National ITS Performance Standards was issued October 2, 1998, jointly by FTA and FHWA. This document provides guidance for meeting this provision of TEA–21 and is available from FTA regional offices and on the FTA website. These standards and requirements apply to fiscal year 2000 allocations included in this notice that contain ITS components.

Questions regarding the applicability of these standards and requirements should be addressed to the FTA regional office or Ronald Boenau, FTA Office of Research, Demonstration and Innovation, at (202) 366–0195.

IV. Section 5303 Metropolitan Planning Program and Section 5313(b) State Planning and Research Program

A. Metropolitan Planning Program

The fiscal year 2000 Metropolitan Planning apportionment to states for MPOs' use in urbanized areas totals $49,642,128. This amount includes $49,632,000 in fiscal year 2000 appropriated funds, and $10,128 in prior year deobligated funds available for reapportionment under this program. A basic allocation of 80 percent of this amount ($39,713,702) is distributed to the states based on the state's urbanized area population as defined by the U.S. Census Bureau for subsequent state distribution to each urbanized area, or parts thereof, within each state. A supplemental allocation of the remaining 20 percent ($9,928,426) is also provided to the states based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 2 contains the final state apportionments for the combined basic and supplemental allocations. Each state, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment, which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the state. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in fiscal year 1991 (minimum MPO allocation). Each state formula must include a provision for the minimum MPO allocation. Where the state and MPOs desire to use a new formula not previously approved by FTA, it must be submitted to the appropriate FTA Regional Office for prior approval.

B. State Planning and Research Program

The fiscal year 2000 apportionment for the State Planning and Research Program totals $10,374,946. This amount includes $10,368,000 in fiscal year 2000 appropriated funds, and $6,946 in prior year deobligated funds, which have become available for reapportionment under this program. Final state apportionments for this program are also contained on Table 2. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, management training, and cooperative research. In addition, a state may authorize a portion of these funds to be used to supplement planning funds allocated by the state to its urbanized areas, as the state deems appropriate.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each state by administrative formula in fiscal year 1991 was used as a "hold harmless" base in calculating funding to each State.

D. FHWA Metropolitan Planning Program and State Planning and Research Program

For informational purposes, the fiscal year 2000 apportionment for the FHWA Metropolitan Planning Program (PL) and estimated apportionment for fiscal year 2000 State Planning and Research Program (SP&R) are contained in Table 3. These estimates do not include expected SP&R funding increases from the Revenue Budget Aligned Authority authorized in TEA–21, Section 1105.

E. Local Match Waiver for Specified Planning Activities

(1) *Job Access Planning Activities.* Federal, state and local welfare reform initiatives may require the development of new and innovative public and other transportation services to ensure that former welfare recipients have adequate mobility for reaching employment opportunities. In recognition of the key role that transportation plays in ensuring the success of welfare-to-work initiatives, FTA and FHWA permit the waiver of the local match requirement for job access planning activities undertaken with Metropolitan Planning Program and State Planning and Research Program funds. FTA and FHWA will support requests for waivers when they are included in metropolitan Unified Planning Work Programs and State Planning and Research Programs and meet all other appropriate requirements.

(2) *Contributions to the Development of the Census Transportation Planning Package (CTPP).* In conjunction with the increased emphasis on the use of Census data in the planning process, FTA will permit the waiver of the local match requirement for activities intended to contribute to the development of the CTPP. FHWA PL and SPR funds can be used without match only to purchase the CTPP package through AASHTO.

F. Planning Emphasis Areas for Fiscal Year 2000

The FTA and FHWA cooperatively develop Planning Emphasis Areas (PEAs) to promote priority themes for consideration, as appropriate, in metropolitan and statewide transportation planning processes. Identification as a PEA brings attention to the need for guidance and training for FTA/FHWA, as well as attention to the allocation of planning resources by participants in planning processes. Three planning topics have been identified as PEAs due to their importance in the coming year: Transportation equity/public involvement, the Intelligent Transportation Systems National Architecture, and preparations for the Year 2000 Census. By identifying these as PEAs FTA and FHWA encourage planning organizations to consider expanding and reporting on their work activities on these themes.

(1) Transportation Equity and Public Involvement

Increasingly, concerns for compliance with provisions of Title VI of the Civil Rights Act have been raised by citizens and advocacy groups with regard to broad patterns of transportation investment and impact considered in metropolitan and statewide planning. While Title VI and environmental justice concerns have most often been raised during project development, it is important to recognize that the law applies equally to the processes and products of metropolitan and statewide planning. Public involvement is a major element of this process.

FTA and FHWA are working jointly to develop guidance to support metropolitan areas and states in their efforts to incorporate considerations of transportation equity in their local planning processes and substantiate compliance through demonstrated actions. States and Metropolitan Planning Organizations in their planning processes are generally advised to expand and document their efforts in two categories of work activity:

(a) Expanding the focus of public involvement efforts, with special attempts to include the traditionally under-served and under-represented in the planning process;

(b) Assessing the distribution of benefits and adverse environmental impacts at both the plan and project level.

Over the fiscal year, a range of possible procedural and analytical approaches for complying with provisions of Title VI and the Executive Order on Environmental Justice at the planning stage will be developed and disseminated through guidance and regulation. To support that effort, "innovative practice" case study development and training opportunities will be enhanced, based in part on the reported activities and experiences of metropolitan and statewide planning processes in this area.

(2) Intelligent Transportation Systems (ITS) National Architecture

TEA–21 identifies system management and operation as a focal theme and context for transportation investment nationwide. The Act further identifies the need for integrated planning and application of ITS strategies and the role of the ITS National Architecture as a resource for achieving this functional integration. Section 5206(e) of TEA–21 requires all ITS projects funded through the Highway Trust Fund, including the Mass Transit Account, to be consistent with the National Architecture and Standards.

FTA and FHWA have prepared guidance for developing ITS projects and programs in a coordinated way through metropolitan and statewide planning processes, using the ITS National Architecture. This guidance is being disseminated in a number of ways, including training, technical assistance, and formal regulation. FTA and FHWA will work to provide assistance to participants in planning processes to facilitate attention and response to this requirement.

(3) Preparing for the Year 2000 Census

As with prior decennial censuses, the Year 2000 Census will be an invaluable information resource for transportation planning at both the metropolitan and statewide levels. The journey-to-work and other socioeconomic data from it will provide a key baseline for a wide range of planning activities, including regional transportation equity analyses, job access planning, development and validation of travel demand models, and more. The Year 2000 census will be especially important because it will likely be the last to include a "long form" questionnaire to collect the types of detailed household, traveler, and travel information most useful to transportation planning. In future years, the Bureau of the Census will initiate a program to collect such data during the next decade as part of a continuous monthly survey called the American Community Survey. Data from the Year 2000 census will be critical for states and MPOs to make the transition to American Community Survey data.

To leverage use of this important information resource, planning processes need to consider a wide range of ancillary work activities, including:

- Aligning census geography with transportation analysis geography in their areas;
- Conducting origin/destination and home interview travel surveys; and
- Expanding travel monitoring programs to develop comprehensive area-wide and corridor inventories.

G. Federal Planning Certification Reviews

Federal certification of the planning process is conducted in a Transportation Management Area (TMA), which is an urbanized area with a population of 200,000 and above or other urbanized areas designated by the Secretary of Transportation (the Secretary). The Secretary is responsible for certifying, at least once every three years, that the metropolitan transportation planning process in the TMA is being carried out under applicable provisions of Federal law.

Dates for site visits for the TMAs to be reviewed in fiscal year 2000 are being established and will be available on the

FTA website at [http://www.fta.dot.gov/office/planning].

For further information regarding Federal certifications of the planning process contact: For FTA: Mr. Charles Goodman, FTA Metropolitan Planning Division, (202) 366–1944; or Scott Biehl, FTA Office of Chief Counsel, (202) 366–4063. For FHWA: Mr. Sheldon Edner, FHWA Metropolitan Planning Division, 202–366–4066; or Reid Alsop, FHWA Office of the Chief Counsel, 202–366–1371.

H. Consolidated Planning Grant

In fiscal year 1997, FTA and FHWA began offering states the option of participating in a pilot Consolidated Planning Grant (CPG) program. FTA and FHWA have now made CPG a permanent pilot. As part of the permanent pilot, additional participants are sought so that FTA and FHWA can benefit from the widest possible range of participant input to improve and further streamline the process.

Since the first CPG grant was awarded in April 1997, almost $159 million has been obligated by the pilot states. Of this total, more than $125 million is from FHWA sources. All but one of the participants have elected to amend the original CPG grant to add new fiscal year funds to treat the CPG more like an FTA grant, but with even greater flexibility. Under the multi-year approach option, the CPG grant would stay open for a period of years to be determined by the state (and MPO, jointly, for Metropolitan Planning funds) with the approval of the Federal Government. New apportionments can be added by grant amendment as funds become available. One state has elected to continue the pilot with new, separate CPG grants for each year. This approach treats the CPG much as FHWA funds are treated currently, that is, as basically annual apportionments with a yearly close-out of project activities and a deobligation and reobligation cycle. The obligation pattern so far is somewhat of a hybrid of the two approaches with at least one state starting out with annual grants and switching in later years to the multi-year grant approach. Those with the multi-year grants can close them at any time and begin the next year with either a new multi-year grant or an annual grant. The ease with which a state can opt for the single year or the multi-year approach to the CPG grant is just one example of the flexibility intended for the pilot.

As part of a survey of experiences in the first two years of the pilot, FTA and FHWA have made two pilot-wide changes in response to recommendations from participants. States can now report metropolitan planning expenditures (to comply with the Single Audit Act) for both FTA and FHWA under the Catalogue of Federal Domestic Assistance (CFDA) number for FTA's Metropolitan Planning Program. Additionally, for states with an FHWA Metropolitan Planning fund matching ratio greater than 80 percent, the state (through FTA) can request a waiver of the 20 percent local share requirement in order that all FTA funds used for metropolitan planning in a CPG can be granted at the higher, FHWA rate. For some states, this Federal match rate can exceed 90 percent.

As in previous years, pre-award authority is granted to both of FTA's planning programs as part of this annual notice. This pre-award authority enables states to continue planning program activities from year to year with the assurance that eligible costs can later be converted to a regularly funded Federal project without the need for prior approval or authorization from the granting agency. As part of the pilot, FTA will continue to work with participating states to increase the flexibility and further streamline the consolidated approach to planning grants. For further information on participating in the CPG Pilot, contact Ms. Candace Noonan, Intermodal and Statewide Planning Division, FTA, at (202) 366–1648 or Anthony Solury, Planning and Environment Core Business Unit, FHWA, at (202) 366–5003.

I. New Starts Approval to Enter Preliminary Engineering and Final Design

TEA–21 extends FTA's long-standing authority for approving the advancement of candidate New Starts projects into preliminary engineering (PE) by requiring that FTA also approve entrance into the final design (FD) stage of project development. Specifically, 49 U.S.C. 5309(e)(6) requires that the basis for PE/FD approval is FTA's evaluation of candidate project's New Start criteria, leading to an overall project rating of "Highly Recommended," "Recommended," or "Not Recommended." FTA has established a set of decision rules for approving entrance into preliminary engineering and final design. After first meeting several basic planning, environmental, and project management requirements which demonstrate the "readiness" of the project to advance into the next stage of project development, candidate projects are subject to FTA evaluation against the New Starts project justification and local financial commitment criteria. Projects may advance to the next appropriate stage of project development (PE or FD) only if rated "Recommended" or "Highly Recommended," based on the criteria. Projects rated "Not Recommended" will not be approved to advance.

49 U.S.C. Section 5309(e)(8)(A) exempts projects which request a Section 5309 New Starts share of less than $25 million from the requirements of Section 5309(e). TEA–21 also provides statutory exemptions to certain specific projects. It is important to note that any exemption under 5309(e)(8)(A) applies only to the New Starts criteria serving as the basis for FTA's approval to advance to preliminary engineering and final design for such projects. New Starts projects which request less than $25 million in New Starts funding must still request entrance to the next stage of development, and must fulfill all appropriate planning, environmental, and project management requirements.

Aside from the formal evaluation and rating of (non-exempt) New Starts projects, the general process for approving entrance into FD and PE is largely consistent with FTA's prior procedures for approving entrance into preliminary engineering. FTA is revising its guidance for evaluating and approving local agency requests for advancing projects in the New Starts project development process. These revised procedures will be available in fiscal year 2000.

V. Section 5307 Urbanized Area Formula Program

A. Total Urbanized Area Formula Apportionments

In addition to the appropriated fiscal year 2000 Urbanized Area Formula funds of $2,772,890,281, the apportionment also includes $4,589,012 in deobligated funds which became available for reapportionment for the Urbanized Area Formula Program as provided by 49 U.S.C. 5336(i).

Table 4 displays the amount apportioned for the Urbanized Area Formula Program. After the one-half percent for oversight is set-aside ($13,864,451), the amount of appropriated funds available for apportionment is $2,759,025,830. The funds to be reapportioned, described in the previous paragraph, are then added and increase the total amount apportioned for this program to $2,763,614,842.

An additional $4,849,950 is appropriated for the Alaska Railroad for improvements to its passenger operations. After the one-half percent for oversight is reserved ($24,250),

$4,825,700 is available for the Alaska Railroad.

Table 12 contains the fiscal year 2000 apportionment formula for the Section 5307 Urbanized Area Formula Program.

B. Data Used for Urbanized Area Formula Apportionments

Data from the 1998 NTD (49 U.S.C. 5335) Report Year submitted in late 1998 and early 1999 have been used to calculate the fiscal year 2000 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. The population and population density figures used in calculating the Urbanized Area Formula are from the 1990 Census.

C. Urbanized Area Formula Fiscal Year 2000 Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each state is shown in Table 4. This table also contains the total apportionment amount attributable to each of the urbanized areas within the state. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed below in Section G, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

D. Transit Enhancements

For urbanized areas with populations 200,000 and over, TEA–21 established a minimum annual expenditure requirement of one percent for transit projects and project elements that qualify as enhancements under the Urbanized Area Formula Program. Table 4 indicates the amount set aside for enhancements in these areas. The term "transit enhancement" includes projects or project elements that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities.

(1) Eligible Enhancements. The following are transit projects and project elements that may be counted to meet the minimum enhancement expenditure requirement:

(a) Historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities);

(b) Bus shelters;

(c) Landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights;

(d) Public art;

(e) Pedestrian access and walkways;

(f) Bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles;

(g) Transit connections to parks within the recipient's transit service area;

(h) Signage; and

(i) Enhanced access for persons with disabilities to mass transportation.

(2) *Requirements.* One percent of the Urbanized Area Formula Program apportionment in each urbanized area with a population of 200,000 and over must be made available only for transit enhancements. When there are several grantees in an urbanized area, it is not required that each grantee spend one percent of its Urbanized Area Formula Program funds on transit enhancements. Rather, one percent of the urbanized area's apportionment must be expended on projects and project elements that qualify as enhancements. If these funds are not obligated for transit enhancements within three years following the fiscal year in which the funds are apportioned, the funds will lapse and no longer be available to the urbanized area, and will be reapportioned under the Urbanized Area Formula Program.

It will be the responsibility of the MPO to determine how the one percent will be allotted to transit projects. The one percent minimum requirement does not preclude more than one percent being expended in an urbanized area for transit enhancements. Items that are only eligible as enhancements—in particular, operating costs for historic facilities—may be assisted only within the one percent fund level.

(3) *Project Budget.* The project budget for each grant application that includes enhancement funds must include a scope code for transit enhancements and specific budget activity line items for transit enhancements.

(4) *Bicycle Access.* TEA–21 provides that projects providing bicycle access to transit assisted with the FTA enhancement apportionment shall be eligible for a 95 percent Federal share.

(5) *Enhanced Access for Persons with Disabilities.* Enhancement projects or elements of projects designed to enhance access for persons with disabilities must go beyond the requirements contained in the Americans with Disabilities Act.

(6) *Enhancement Report.* The recipient must submit a report to the appropriate FTA Regional Office listing the projects or elements of projects carried out with those funds during the previous fiscal year and the amount awarded. The report must be submitted in the Federal fiscal year's final quarterly report, in the Transportation Electronic Awards and Management System (TEAM). The report should include the following elements: (a) grantee name, (b) urbanized area name and number, (c) FTA project number, (d) transit enhancement category, (e) brief description of enhancement and progress towards project implementation, (f) activity line item code from the approved budget, and (g) amount awarded by FTA for the enhancement.

E. Fiscal Year 2000 Operating Assistance

Fiscal year 2000 funding for operating assistance is available only to urbanized areas with populations under 200,000. For these areas, there is no limitation on the amount of the state apportionment that may be used for operating assistance, and the Federal/local share ratio is 50/50.

TEA–21 provided two exceptions to the prohibition on operating assistance in areas over 200,000 in population. These areas were identified and addressed in fiscal year 1999.

F. Carryover Funds for Operating Assistance

Carryover funds for fiscal years 1997–1998, which were eligible for use as operating assistance are still available for operating assistance. However, the operating assistance limitations remain on the unused fiscal years 1997–1998 funds. These funds continue to be available for obligation at the Federal/local share ratio of 50/50 in fiscal year 2000 and throughout the period of availability. For unused fiscal year 1998 funds for areas under 200,000, operating assistance as a capital project with an 80 percent federal match ratio (without limitation) will continue to be available throughout the period of availability.

G. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as transportation management areas (TMAs), in accordance with 49 U.S.C. Section 5305. These designations were formally made in a **Federal Register** Notice dated May 18, 1992 (57 FR 21160), signed by the Federal Highway Administrator and the Federal Transit Administrator. Additional areas have been designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. During fiscal year 1999, one addition to an existing TMA was formally designated: Titusville, Florida, is included within the boundaries of the Melbourne/Palm Bay, Florida TMA.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries, which have been established by the MPO for the designated TMA, also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate Urbanized Area Formula program "Governor's Apportionment" funds for urbanized areas with less than 200,000 in population is restricted.

As required by 49 U.S.C. 5307(a)(2), a recipient(s) must be designated to dispense the Urbanized Area Formula funds attributable to TMAs. Those urbanized areas that do not already have a designated recipient must name one and notify the appropriate FTA regional office of the designation. This includes those urbanized areas with less than 200,000 in population that may receive TMA designation independently, or those with less than 200,000 in population which are currently included within the boundaries of a larger designated TMA. In both cases, the Governor only has discretion to allocate Governor's Apportionment funds attributable to areas which are outside of designated TMA boundaries. In order for the FTA and Governors to know which urbanized areas under 200,000 in population are included within the boundaries of an existing TMA, and so that they can be identified in future **Federal Register** notices, each MPO whose TMA planning boundaries include these smaller urbanized areas is asked to identify such areas to the FTA. This notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 Seventh Street, SW, Washington, DC 20590, no later than July 1 of each fiscal year. To date, FTA has been notified of the following urbanized areas with less than 200,000 in population that are included within the planning boundaries of designated TMAs:

Designated TMA	Small urbanized area included in TMA boundaries
Baltimore, Maryland	Annapolis, Maryland.
Dallas-Fort Worth, Texas	Denton, Texas; Lewisville, Texas.
Houston, Texas	Galveston, Texas; Texas City, Texas.
Orlando, Florida	Kissimmee, Florida.
Melbourne-Palm Bay, Florida	Titusville, Florida.
Philadelphia, Pennsylvania	Pottstown, Pennsylvania.
Pittsburgh, Pennsylvania	Monessen, Pennsylvania; Steubenville-Weirton, OH-WV-PA (PA portion).
Seattle, Washington	Bremerton, Washington.
Washington, DC-MD-VA	Frederick, Maryland (MD portion).

H. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA are also available for highway projects if the following three conditions are met: (1) such use must be approved by the MPO in writing after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990 (ADA); and (3) the MPO determines that local transit needs are being addressed.

Urbanized Area Formula funds that are designated for highway projects will be transferred to and administered by the FHWA. The MPO should notify FTA of its intent to program FTA funds for highway purposes.

I. National Transit Database Internet Reporting

The National Transit Database (NTD) is FTA's national database for statistics on the transit industry. Each year, FTA grantees use diskettes to report on their operating and financial statistics to FTA. These grantees receive formula funds based, in part, on the statistics they submit. NTD data is summarized and used to report to Congress on the performance of the transit industry and to assess whether FTA goals have been met. In addition, a profile report is produced for each transit authority that submits data. NTD profile report data is often used in transit planning. These annual NTD summary reports and profile reports have been available on FTA's website for several years.

During the fall of 1999, FTA will begin testing a new Internet reporting system to replace diskette reporting. A number of agencies have volunteered to test this new system of transit operator data input via the Internet. Internet reporting should speed data collection and validation. Internet reporting is scheduled to begin in the fall of year 2000.

VI. Section 5311 Nonurbanized Area Formula Program and Section 5311(b)(2) Rural Transit Assistance Program (RTAP)

A. Nonurbanized Area Formula Program

The fiscal year 2000 Nonurbanized Area Formula apportionments to the states total $192,717,384 and are displayed in Table 5. Of the $193,612,968 appropriated, one-half percent ($968,065) was reserved for oversight. In addition to the current appropriation, the funds available for apportionment included $72,481 in deobligated funds from fiscal years prior to 2000. The population figures used in calculating these apportionments are from the 1990 Census.

The Nonurbanized Formula Program provides capital, operating and administrative assistance for areas under 50,000 in population. Each state must spend no less than 15 percent of its fiscal year 2000 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the state are being adequately met. Fiscal year 2000 Nonurbanized Area Formula grant applications must reflect this level of programming for intercity bus or include a certification from the Governor.

B. Rural Transit Assistance Program (RTAP)

The fiscal year 2000 RTAP apportionments to the states total $4,800,180 and are also displayed on Table 5. This amount includes $4,725,000 in fiscal year 2000 appropriated funds, and $75,180 in prior year deobligated funds, which are available for reapportionment.

Of the total $5,250,000 authorized and appropriated for RTAP in fiscal year 2000, FTA set-aside 10 percent in order to fund RTAP activities carried out at the national level. Due to the limited amount of discretionary funds available this year in the national planning and research program, FTA elected to fund both state and national components from the RTAP appropriation in order to ensure the continuity of national program activities, such as the Transit Resource Center and production and distribution of training materials that support the various states' RTAP activities.

All states will notice a reduction in their apportionment compared to fiscal year 1999 as a result of the 10 percent takedown. However, the impact on the larger states is proportionately greater because the formula includes a minimum allocation of $65,000 to each state. For most states, however, the fiscal year 2000 allocation is greater than, or only slightly less than, their apportionment in fiscal year 1998.

The funds are allocated to the states to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the states' administration of the Nonurbanized Area Formula Program.

VII. Section 5310 Elderly and Persons With Disabilities Program

A total of $72,986,415 is apportioned to the states for fiscal year 2000 for the Elderly and Persons with Disabilities Program. In addition to the fiscal year 2000 appropriation of $72,946,801, the fiscal year 2000 apportionment also includes $39,614 in prior year unobligated funds, which are available for reapportionment under the Elderly and Persons with Disabilities Program. Table 6 shows each state's apportionment.

The formula for apportioning these funds uses 1990 Census population data for persons aged 65 and over and for persons with disabilities.

The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the state that there are no non-profit organizations in the area that are readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement the Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year.

VIII. Surface Transportation Program and Congestion Mitigation and Air Quality Flexible Funds Used for Transit Purposes (Title 23, U.S.C.)

A. Transfer Process

TEA–21 made changes in how funds are to be transferred from FHWA to FTA. Section 1103(i) of TEA–21, as amended, provides that when funds are transferred or "flexed," obligation authority will be transferred to the receiving agency. Under ISTEA obligation authority was not transferred.

Effective October 1, 1999, new procedures were implemented to accommodate this change for fiscal year 2000 and subsequent years. The transfer process is described below.

Transfer from FHWA to FTA. Flexible funds designated for use in transit projects must result from the metropolitan and state planning and programming process, and must be included in an approved State Transportation Improvement Program (STIP) before the funds can be transferred. To initiate the process the grantee must submit a completed application to the FTA regional office and notify the State Highway Agency that it has submitted an application that requires a transfer of funds. By letter, the State Highway Agencies (SHA) request the transfer of highway funds for a transit project(s) through their FHWA Division. The letter should specify the project, amount to be transferred, apportionment year, State, federal aid apportionment category (i.e. Surface Transportation Program (STP), Congestion Mitigation and Air Quality (CMAQ), Interstate Substitute, or Other—Earmarks), and a description of the project as contained in the STIP.

The FHWA Division Office confirms that the apportionment amount is available for transfer and concurs in the transfer by letter to the State Highway Agency and FTA. FHWA then transfers obligation authority and an equal amount of cash to FTA. All CMAQ or STP, or Other funds (FHWA earmarks) will be transferred to one of the three FTA formula programs (i.e. Urbanized Area Formula (Section 5307), Nonurbanized Area Formula (Section 5311) or Elderly and Persons with Disabilities (Section 5310).

The FTA grantee application for the project must specify which transit program (title 49 U.S.C. section) funds will be utilized and the application should be prepared in conformance with the requirements and procedures governing that section. Upon review and approval of the grantee's application, FTA obligates funds for the project.

The flexible funds are treated as FTA formula funds, although they retain a special identifying code. The funds may be used for any purpose eligible under the FTA formula programs. CMAQ funds, however, have to be used for air quality purposes and some eligible projects are defined by the Clean Air Act. All FTA requirements are applicable to transferred funds. Flexible funds should be combined with regular FTA funds in a single annual grant application.

Transfers from FTA to FHWA. The Metropolitan Planning Organization (MPO) submits a request to the FTA Regional Office for a transfer of FTA Section 5307 formula funds (apportioned to an urbanized area 200,000 and over in population) to FHWA based on its approved use for highway purposes, as contained in the State governor's approved multi-year STIP document. The MPO must certify that: (1) the funds are not needed for capital investments required by the Americans with Disabilities Act; (2) notice and opportunity for comment and appeal has been provided to affected transit providers; and (3) local funds used for non-Federal match are eligible to provide assistance for either highway or transit projects. The FTA Regional Administrator reviews and concurs in the request then forwards the approval to FTA Headquarters, where the grantee's formula apportionmment is reduced, in TEAM (FTA's electronic grant making and management system), by the dollar amount being transferred to FHWA.

For information regarding these procedures, please contact Kristen D. Clarke, FTA Budget Division at (202) 366–2918 or Fred Gessler, FHWA Finance Division at (202) 366–2847.

B. Matching Share for Flexible Funds

The provisions of Title 23, U.S.C. regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, flexible funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by the FHWA.

There are three instances in which a higher than 80 percent Federal share would be maintained. First, in states with large areas of Indian and certain public domain lands, and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that state. This sliding scale, which permits a greater

Federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land states. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using flexible funds administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA.

The third instance includes the 100 percent Federal safety projects; however, these are subject to a nationwide 10 percent program limitation.

IX. Section 5309 Capital Investment Program

A. Fixed Guideway Modernization

The formula for allocating the Fixed Guideway Modernization funds contains seven tiers. The allocation of funding under the first four tiers, through fiscal year 2003, will be based on data used to apportion the funding in fiscal year 1997. Funding under the last three tiers will be apportioned based on the latest available route miles and revenue vehicle miles on segments at least seven years old as reported to the National Transit Database.

Table 7 displays the fiscal year 2000 Fixed Guideway Modernization apportionments. Fixed Guideway Modernization funds apportioned for this section must be used for capital projects to maintain, modernize, or improve fixed guideway systems.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the National Transit Database reporting system to ensure that all eligible fixed guideway data is included in the calculation of the apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting one mile or less of Fixed Guideway mileage under the National Transit Database are not included.

For fiscal year 2000, $980,400,000 was appropriated for fixed guideway modernization. After deducting the three-fourth percent for oversight ($7,353,000), $973,047,000 is available for apportionment to the specified urbanized areas.

Each year, the new fixed guideway modernization formula will allocate funds by seven tiers. A listing of the tiers and the funds available under each are delineated in Table 13. For tiers 5, 6, and 7, allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least seven years old as reported to the National Transit Database.

B. New Starts

The fiscal year 2000 appropriation for New Starts is $980,400,000, which was fully allocated in the fiscal year 2000 DOT Appropriations Act. However, by statute, this amount is reduced by three-fourth percent ($7,353,000) for oversight activities, leaving $973,047,000 available for allocations to projects. The oversight reduction was applied on a pro-rata basis to all projects specified in the fiscal year 2000 DOT Appropriations Act, yielding the final allocation for each project as shown in Table 8 of this notice. Prior year unobligated appropriations for New Starts in the amount of $542,823,668 remain available for obligation in fiscal year 2000. These carryover amounts are displayed in Table 8A.

C. Bus

The fiscal year 2000 appropriation for Bus is $490,200,000 for the purchase of buses, bus-related equipment and paratransit vehicles, and for the construction of bus-related facilities. TEA–21 established a $100,000,000 Clean Fuels Formula Program under Section 5308. The program is authorized to be funded with $50,000,000 from the Bus category of the Capital Investment Program, and $50,000,000 from the Formula Program. However, the fiscal year 2000 DOT Appropriations Act directs FTA to transfer $50,000,000 appropriated under the Formula Program to and merge it with funding provided for the Bus category of the Capital Investment Program. Thus, $540,200,000 of funds appropriated in fiscal year 2000 are available for funding the Bus category of the Capital Program. After deducting the three-fourth percent for oversight ($4,051,500) the amount of fiscal year 2000 appropriated funds available for allocation is $536,148,500. Prior year unobligated funds directed by Congress to be reallocated in the amount of $1,199,750 are then added and increase the total amount allocated to $537,348,250 under the Bus category.

The 2000 DOT Appropriations Act allocated all of the fiscal year 2000 Bus funds to specified states or localities for bus and bus-related projects.

Because the three-fourth percent for oversight was subtracted from the amount appropriated in the DOT Appropriations Act and not the reallocated funds, each bus project receives less than the funding level contained in the DOT Appropriations Act. No funds remain available for discretionary allocation by the Federal Transit Administrator. Table 9 displays the allocations of the fiscal year 2000 Bus funds by area.

Prior year unobligated appropriations for Bus Program earmarks in the amount of $472,955,785 remain available for obligation in fiscal year 2000, and are displayed in Table 9A.

For Section 5309 projects funding battery electric, hybrid electric or fuel cell vehicles, FTA intends to ask for additional information as part of project quarterly progress reports. Grantees will be advised of the specifics of this at a later date. See section XII, Clean Fuels Formula Program, for a discussion of this proposal.

X. Job Access and Reverse Commute Program

The fiscal year 2000 appropriation for the Job Access and Reverse Commute Program is $75,000,000. Of this amount $49,570,000 has been allocated to projects specified in the fiscal year 2000 Conference report. These allocations are listed in Table 10.

This program, established under TEA–21, provides funding for the provision of transportation services designed to increase access to jobs and employment-related activities. Job Access projects are those which transport welfare recipients and low-income individuals in urban, suburban, or rural areas to and from jobs and activities related to their employment. Reverse Commute projects provide transportation services for the general public from urban, suburban, and rural areas to suburban employment opportunities. A total of $10 million from the appropriation can be used for Reverse Commute Projects.

One of the goals of the Job Access and Reverse Commute program is to increase collaboration among transportation providers, human service agencies, employers, metropolitan planning organizations, states, and affected communities and individuals. All projects funded under this program must be derived from an area-wide Job Access and Reverse Commute Transportation Plan, developed through a regional approach which supports the implementation of a variety of transportation services designed to connect welfare recipients to jobs and related activities. A key element of the program is making the most efficient use of existing public, nonprofit and private transportation service providers.

In fiscal year 1999, FTA undertook a national solicitation of applications for this program and established a competitive process to review all applications. As a result of this process, FTA selected 179 different projects in agencies and organizations in 42 states for funding.

A separate **Federal Register** Notice providing program guidance and application procedures for fiscal year 2000 will be issued for the program. The notice will be also available on the FTA website.

XI. Over-the-Road Bus Accessibility Program

The amount available for the Over-the-Road Bus Accessibility (OTRB) Program in fiscal year 2000 is $3,710,000. In addition to $3,700,000 appropriated for fiscal year 2000, $10,000 remaining from the fiscal year 1999 appropriation is available for award in fiscal year 2000. Of the $3,710,000 available for the program, $2,010,000 is available to providers of intercity fixed-route service, and $1,700,000 is available to other providers of the over-the-road bus services, including local fixed-route service, commuter service, and charter and tour service.

The Over-the-road Bus (OTRB) Accessibility program authorizes FTA to make grants to operators of over-the-road buses to help finance the incremental capital and training costs of complying with the DOT over-the-road bus accessibility final rule, published in a **Federal Register** Notice on September 24, 1998. FTA conducts a national solicitation of applications and grantees are selected on a competitive basis.

In fiscal year 1999, the first year in which the program was implemented, a total of $2 million was available to intercity fixed-route providers. FTA selected 11 applicants from among the 20 applications submitted for funding incremental capital and training costs.

A separate **Federal Register** Notice providing program guidance and application procedures for fiscal year 2000 will be issued for this program. The notice will be available on the FTA website.

XII. Clean Fuels Formula Program

TEA–21 established a $100,000,000 Clean Fuels Formula Grant Program under Section 5308 to assist non-attainment and maintenance areas in achieving or maintaining attainment status and to support markets for emerging clean fuel technologies. Under the program, public transit agencies in maintenance and non-attainment areas (as defined by the EPA) were to apply for formula funds to acquire clean fuel vehicles, to repower or retrofit engines for clean fuels operation, and to construct or improve facilities to support clean fuel vehicles. The legislation specified the program to be funded with $50,000,000 from the Bus category of the Capital Investment Program, and $50,000,000 from the Formula Program. The fiscal year 2000 DOT Appropriations Act transfers $50,000,000 appropriated under the Formula Program to and merges it with funding provided for the replacement, rehabilitation and purchase of buses and related equipment and the construction of bus related facilities under the Bus category of the Capital Investment Program. In addition, in fiscal years 1999 and 2000 Congress allocated the entire Bus category, including the $100,000,000, which TEA–21 provides for funding of the Clean Fuels Formula Program. The appropriation actions of Congress override the provisions established in TEA–21 for the Clean Fuels Formula Program. Therefore, FTA cannot implement this new program in fiscal year 2000. The fiscal year 2000 Bus Allocations on Table 9 include the funding which would have been available for the Clean Fuels Formula Program under TEA–21.

While the Clean Fuels Formula Program was not funded by Congress in fiscal year 2000, as in fiscal year 1999, FTA supports the objectives of the program and is interested in collecting relevant information on the operations and performance of clean fuel technology buses in revenue service to help assess the reliability, benefits, and costs of these technologies compared to conventional vehicle technologies, and to provide more accurate information to transit agencies for future clean fuel and advanced propulsion vehicle purchases. It was FTA's intent to require grantees receiving Clean Fuels Formula funds for projects to purchase or lease buses powered by advanced propulsion technologies (e.g. battery electric, hybrid electric and fuel cell powered vehicles) to provide information to FTA on the operations, performance and maintenance of those vehicles. Since the Clean Fuels Formula Program was not funded in fiscal year 2000, but rather funds were allocated as part of the capital program for bus, FTA intends to require grantees receiving capital funds to purchase or lease buses powered by advanced propulsion technologies (battery electric, hybrid electric, and fuel cell) to report to FTA information that will further the state of the industry's knowledge about operation of these advanced technologies. Grantees receiving funds to purchase or lease alternative fuel technologies such as CNG or LNG may voluntarily provide similar information. Grantees will be advised of the new reporting requirements for the Section 5309 program for these specific bus technologies in the near future.

XIII. Unit Values of Data for the Section 5307 Urbanized Area Formula Program, Section 5311 Nonurbanized Area Formula Program, and Section 5309 Capital Fixed Guideway Modernization

The dollar unit values of data derived from the computations of the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, and the Capital Investment Program—Fixed Guideway Modernization apportionments are displayed in Table 14 of this notice. To determine how an apportionment amount was computed for an area, multiply its population, population density, and data from the NTD by the unit values.

XIV. Period of Availability of Funds

The funds apportioned under the Metropolitan Planning Program and the State Planning and Research Program, the Urbanized Area Formula Program, and the Fixed Guideway Modernization Program, in this notice, will remain available to be obligated by FTA to recipients for three fiscal years following fiscal year 2000. Any of these apportioned funds unobligated at the close of business on September 30, 2003 will revert to FTA for reapportionment under these respective programs.

Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two fiscal years following fiscal year 2000. Any such funds remaining unobligated at the close of business on September 30, 2002, will revert to FTA for reapportionment among the states under the Nonurbanized Area Formula Program. Funds allocated to states under the Elderly and Persons with Disabilities Program in this notice must be obligated by September 30, 2000. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the states under the Elderly and Persons with Disabilities Program. The fiscal year 2000 DOT Appropriations Act includes a provision requiring that fiscal year 2000 New Starts and Bus funds not obligated for their original purpose as of September 30, 2002, shall be made available for other discretionary projects within the respective categories of the Capital Investment Program.

XV. Automatic Pre-Award Authority To Incur Project Costs

A. Policy

FTA provides blanket or automatic pre-award authority to cover certain program areas described below. This pre-award authority allows grantees to incur project costs prior to grant approval and retain their eligibility for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions, which are described below, are met to retain eligibility. This automatic pre-award spending authority permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Prior to exercising pre-award authority, grantees must comply with the conditions and Federal requirements outlined in paragraphs B and C immediately below. Failure to do so will render an otherwise eligible project ineligible for FTA financial assistance. In addition, grantees are strongly encouraged to consult with the appropriate regional office if there could be any question regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements.

Authority to incur costs for fiscal year 1998 Fixed Guideway Modernization, Metropolitan Planning, Urbanized Area Formula, Elderly and Persons with Disabilities, Nonurbanized Area Formula, STP or CMAQ flexible funds to be transferred from the FHWA and State Planning and Research Programs in advance of possible future Federal participation was provided in the December 5, 1997, **Federal Register** Notice. Pre-award authority was extended in the June 24, 1998 **Federal Register** Notice on TEA–21 to all formula funds and flexible funds that will be apportioned during the authorization period of TEA–21, 1998–2003. Pre-award authority also applies to Capital Investment Bus allocations identified in this notice. Pre-award authority does not apply to Capital New Start funds, or to Capital Investment Bus projects not specified in this or previous notices, except as described in D. below. Pre-award authority also applies to preventive maintenance costs incurred within a local fiscal year ending during calendar year 1997, or thereafter, under the formula programs cited above.

For Section 5309 Capital Investment Bus projects, the date that costs may be incurred is the date that the appropriation bill in which they are contained is enacted. For blanket pre-award authority in formula programs described above, the effective date is June 9, 1998.

B. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1) The pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance awarded to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA), and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before state or local funds are spent on implementing activities such as final design, construction, and acquisition for a project that is expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has issued either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs either for activities expected to be funded by New Start funds, or for Bus Capital projects not listed in this notice or previous notices, it must first obtain a written LONP from FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

D. Extension of Pre-Award Authority to New Start Projects Approved for Preliminary Engineering and/or Final Design

New Starts Projects are required to follow a federally defined planning process. This process includes, among other things, FTA approval of entry of a project into preliminary engineering and approval to enter final design. The grantee requests for entry into preliminary engineering and the request for entry into final design both document the project and how it meets the New Starts criteria in detail. With FTA approval to enter preliminary engineering, and subsequently approval to enter final design, FTA will automatically extend pre-award authority to that phase of project development. The pre-award authority to incur costs for final design is strictly limited to design work. No capital items or right of way acquisition is included in this blanket pre-award authority.

This is a new provision and is intended to streamline and eliminate duplicative and unnecessary paperwork and reinforce the importance of these new starts approval actions. New Starts construction or right-of-way acquisition as well as New Starts planning funded with Section 5309 funds not covered by preliminary engineering or final design approval still need to request letters of no prejudice as described below.

XVI. Letter of No Prejudice Policy (Prior Approval of Pre-Award Authority)

A. Policy

Letter of No Prejudice (LONP) Policy authority allows an applicant to incur costs on a future project utilizing non-Federal resources with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should the FTA approve the project at a later date. LONPs are applicable to projects not covered by automatic pre-award authority. The majority of LONPs will be for Section 5309 New Starts funds not covered under a full funding grant agreement or for Section 5309 Bus funds not yet appropriated by Congress. At the end of an authorization period, there may be LONPs for formula funds beyond the life of the current authorization.

Under most circumstances the LONP will cover the total project. Under certain circumstances the LONP may be issued for local match only. In such cases the local match would be to permit real estate to be used for match for the project at a later date.

B. Conditions

The following conditions apply to all LONPs.

(1) LONP pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the LONP will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which this pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

As with automatic pre-award authority, FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA), and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before state or local funds are spent on implementation activities such as final design, construction, or acquisition for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this pre-award authority requires a grantee to make certain that no Federal requirements are circumvented. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

D. Request for LONP

Before an applicant may incur costs for a project not covered by automatic pre-award authority, it must first submit a written request for an LONP to the appropriate regional office. This written request must include a description of the project for which pre-award authority is desired and a justification for the request.

XVII. FTA Home Page on the Internet

FTA provides extended customer service by making available transit information on the FTA website, including this Apportionment Notice. Also posted on the website are FTA program Circulars: C9030.1C, Urbanized Area Formula Program: Grant Application Instructions, dated October 1, 1998; C9040.1E, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, dated October 1, 1998; C9070.1E, The Elderly and Persons with Disabilities Program Guidance and Application Instructions, dated October 1, 1998; C9300.1A, Capital Program: Grant Application Instructions, dated October 1, 1998; 4220.1D, Third Party Contracting Requirements, dated April 15, 1996; C5010.1C, Grant Management Guidelines, dated October 1, 1998; and C8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Program Grants, dated October 25, 1996. The fiscal year 2000 Annual List of Certifications and Assurances is also posted on the FTA website. Other documents on the FTA website of particular interest to public transit providers and users include the 1998 Statistical Summaries of FTA Grant Assistance Programs, and the National Transit Database Profiles.

The FTA Home Page may be accessed at: [http://www.fta.dot.gov]. FTA circulars are listed at: [http://www.fta.dot.gov/fta/library/admin/checklist/circulars.htm]. Other guidance of interest to Grantees can be found at: [http://www.fta.dot.gov/grantees/index.html].

Grantees should check the FTA website frequently to keep up to date on new postings.

XVIII. FTA Fiscal Year 2000 Annual List of Certifications and Assurances

The Fiscal Year 2000 Annual List of Certifications and Assurances is published in conjunction with the Apportionments, as per 49 U.S.C. section 5307(k). It appears as a separate

Part of the **Federal Register** on the same date whenever possible. The fiscal year 2000 list contains several changes to the previous year's **Federal Register** publication. As in previous years, the grant applicant should certify electronically. Under certain circumstances the Applicant may enter its PIN number in lieu of an electronic signature provided by its Attorney, provided the Applicant has on file the current Affirmation of its Attorney in writing dated this Federal fiscal year. The applicant is advised to contact the appropriate FTA Regional Office for electronic procedure information.

The fiscal year 2000 Annual List of Certifications and Assurances is accessible on the Internet at: *http://www.fta.dot.gov/*. Any questions regarding this document may be addressed to the appropriate Regional Office.

XIX. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. FTA utilizes an electronic grant application system known as TEAM and all applications should be filed electronically. FTA has provided exceptions to the requirement for electronic filing of applications for certain new, non-traditional grantees in the Job Access and Reverse Commute and Over the Road Bus programs as well as to a few grantees who have not successfully connected to or accessed TEAM. Formula and Capital Investment grant applications should be prepared in conformance with the following FTA Circulars: Program Guidance and Application Instructions for Metropolitan Planning Program Grants—C8100.1B, October 25, 1996; Urbanized Area Formula Program: Grant Application Instructions—C9030.1C, October 1, 1998; Nonurbanized Area Formula Program Guidance and Grant Application Instructions—C9040.1E, October 1, 1998; Section 5310 Elderly and Persons with Disabilities Program Guidance and Application Instructions C9070.1E, October 1, 1998; and Section 5309 Capital Program: Grant Application Instructions—C9300.1A, October 1, 1998. Guidance on preparation of applications for State Planning and Research funds may be obtained from each FTA Regional Office. Copies of circulars are available from FTA Regional Offices as well as the FTA Home Page on the Internet.

Applications for STP or CMAQ "flexible" fund grants should be prepared in the same manner as for funds under the program to which they are being transferred. The application for flexible funds needs to specifically indicate the type and amount of flexible funds being transferred to FTA. The application should also describe which items are being funded with flexible funds, consistent with the Statewide Transportation Improvement Program (STIP).

Issued on: October 21, 1999.

Gordon J. Linton,

Administrator.

BILLING CODE 4910–57–P

TABLE 1

FEDERAL TRANSIT ADMINISTRATION

FY 2000 APPROPRIATIONS FOR GRANT PROGRAMS

SOURCE OF FUNDS	APPROPRIATION	
TRANSIT PLANNING AND RESEARCH PROGRAMS		
Planning		
Section 5303 Metropolitan Planning Program	$49,632,000	
Reapportioned Funds Added	10,128	
Total Apportioned	$49,642,128	
Section 5313(b) State Planning and Research Program	$10,368,000	
Reapportioned Funds Added	6,946	
Total Apportioned	$10,374,946	
Research		
Section 5311(b)(2) Rural Transit Assistance Program (RTAP)	$5,250,000	
Less 10 percent for RTAP National Program	(525,000)	
Reapportioned Funds Added	75,180	
Total Apportioned	$4,800,180	
FORMULA PROGRAMS	$3,098,000,000	
Alaska Railroad (Section 5307)	4,849,950	
Less Oversight (one-half percent)	(24,250)	
Total Available	4,825,700	
Section 5308 Clean Fuels Formula Program	(50,000,000)	a/
Over-the-Road Bus Accessibility Program	3,700,000	
Section 5307 Urbanized Area Formula Program		
91.23% of Total Available for Sections 5307, 5311, and 5310	$2,772,890,281	
Less Oversight (one-half percent)	(13,864,451)	
Reapportioned Funds Added	4,589,012	
Total Apportioned	$2,763,614,842	
Section 5311 Nonurbanized Area Formula Program		
6.37% of Total Available for Sections 5307, 5311, and 5310	$193,612,968	
Less Oversight (one-half percent)	(968,065)	
Reapportioned Funds Added	72,481	
Total Apportioned	$192,717,384	
Section 5310 Elderly and Persons with Disabilities Formula Program		
2.4% of Total Available for Sections 5307, 5311, and 5310	$72,946,801	
Reapportioned Funds Added	39,614	
Total Apportioned	$72,986,415	
CAPITAL INVESTMENT PROGRAM	$2,501,000,000	
Section 5309 Fixed Guideway Modernization	$980,400,000	
Less Oversight (three-fourth percent)	(7,353,000)	
Total Apportioned	$973,047,000	
Section 5309 New Starts	$980,400,000	
Less Oversight (three-fourth percent)	(7,353,000)	
Total Allocated	$973,047,000	
Section 5309 Bus	$540,200,000	b/
Less Oversight (three-fourth percent)	(4,051,500)	
Reallocated Funds Added	1,199,750	c/
Total Allocated	$537,348,250	
JOB ACCESS AND REVERSE COMMUTE PROGRAM (Section 3037, TEA-21)	$75,000,000	
TOTAL APPROPRIATION (Above Grant Programs)	$5,689,250,000	

a/ The FY 2000 Appropriations Act transfers $50 million appropriated for Clean Fuels to the Bus Category.

b/ Includes $490,200,000 plus $50 million transferred from the Cleans Fuels Program.

c/ Conference Report approximated Bus recoveries at $1,470,000. The amount of Bus recoveries made available for reallocation is $1,199,750.

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5303 METROPOLITAN PLANNING PROGRAM AND SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM APPORTIONMENTS

STATE	SECTION 5303 APPORTIONMENT	SECTION 5313(b) APPORTIONMENT
Alabama	$434,813	$113,592
Alaska	198,569	51,875
Arizona	790,795	163,970
Arkansas	198,569	51,875
California	8,463,459	1,572,168
Colorado	645,896	146,797
Connecticut	580,320	151,606
Delaware	198,569	51,875
District of Columbia	267,787	51,875
Florida	2,796,938	628,325
Georgia	958,264	291,391
Hawaii	198,569	51,875
Idaho	198,569	51,875
Illinois	2,900,719	523,440
Indiana	704,204	186,235
Iowa	222,764	58,196
Kansas	257,521	62,884
Kentucky	308,461	78,828
Louisiana	533,037	137,649
Maine	198,569	51,875
Maryland	1,152,512	221,105
Massachusetts	1,405,704	292,035
Michigan	1,810,929	358,838
Minnesota	736,337	146,372
Mississippi	198,569	51,875
Missouri	813,010	171,795
Montana	198,569	51,875
Nebraska	198,569	51,875
Nevada	215,306	56,247
New Hampshire	198,569	51,875
New Jersey	2,461,011	409,281
New Mexico	198,569	51,875
New York	4,997,493	871,467
North Carolina	593,830	155,134
North Dakota	198,569	51,875
Ohio	1,710,750	410,974
Oklahoma	320,052	83,612
Oregon	359,506	87,669
Pennsylvania	2,218,797	444,981
Puerto Rico	538,076	131,205
Rhode Island	198,569	51,875
South Carolina	337,161	88,081
South Dakota	198,569	51,875
Tennessee	524,150	136,931
Texas	3,373,131	702,076
Utah	311,831	81,464
Vermont	198,569	51,875
Virginia	1,109,510	236,432
Washington	884,320	198,465
West Virginia	198,569	51,875
Wisconsin	619,141	152,162
Wyoming	198,569	51,875
TOTAL	$49,642,128	$10,374,946

TABLE 3

FEDERAL HIGHWAY ADMINISTRATION

FY 2000 METROPOLITAN PLANNING PROGRAM (PL) AND ESTIMATED STATE PLANNING AND RESEARCH (SP&R) PROGRAM APPORTIONMENTS

STATE	PL APPORTIONMENT	EST. TOTAL SP&R APPORTIONMENT	EST. SP&R PLANNING APPORTIONMENT a/
Alabama	$2,096,066	$9,179,493	$6,884,620
Alaska	943,920	6,127,679	4,595,759
Arizona	3,025,679	8,616,667	6,462,500
Arkansas	943,920	6,590,979	4,943,234
California	29,010,697	46,860,901	35,145,676
Colorado	2,708,783	5,974,979	4,481,234
Connecticut	2,797,499	7,639,218	5,729,414
Delaware	943,920	2,318,434	1,738,826
District of Columbia	943,920	1,987,701	1,490,776
Florida	11,594,222	24,687,572	18,515,679
Georgia	3,714,519	17,674,140	13,255,605
Hawaii	943,920	2,571,856	1,928,892
Idaho	943,920	3,710,965	2,783,224
Illinois	9,658,814	16,636,692	12,477,519
Indiana	3,067,463	11,948,882	8,961,662
Iowa	1,073,859	6,034,459	4,525,844
Kansas	1,160,381	5,862,661	4,396,996
Kentucky	1,454,577	8,213,697	6,160,273
Louisiana	2,538,130	7,921,564	5,941,173
Maine	943,920	2,664,230	1,998,173
Maryland	4,079,956	8,139,229	6,104,422
Massachusetts	5,388,792	9,197,062	6,897,797
Michigan	6,621,497	16,439,466	12,329,600
Minnesota	2,700,940	7,344,562	5,508,422
Mississippi	943,920	6,196,025	4,647,019
Missouri	3,170,060	12,402,732	9,302,049
Montana	943,920	5,233,995	3,925,496
Nebraska	943,920	4,051,156	3,038,367
Nevada	1,037,908	3,720,638	2,790,479
New Hampshire	943,920	2,519,838	1,889,879
New Jersey	7,552,289	13,271,150	9,953,363
New Mexico	943,920	4,991,975	3,743,981
New York	16,080,818	25,065,498	18,799,124
North Carolina	2,862,626	13,775,016	10,331,262
North Dakota	943,920	3,419,340	2,564,505
Ohio	7,583,541	17,034,360	12,775,770
Oklahoma	1,542,851	7,863,098	5,897,324
Oregon	1,617,714	5,985,581	4,489,186
Pennsylvania	8,210,690	21,735,865	16,301,899
Rhode Island	943,920	3,089,561	2,317,171
South Carolina	1,625,323	8,598,240	6,448,680
South Dakota	943,920	3,601,039	2,700,779
Tennessee	2,526,726	10,528,697	7,896,523
Texas	12,955,120	39,077,701	29,308,276
Utah	1,503,216	4,028,067	3,021,050
Vermont	943,920	2,353,427	1,765,070
Virginia	4,362,791	13,055,828	9,791,871
Washington	3,662,189	8,803,505	6,602,629
West Virginia	943,920	4,039,926	3,029,945
Wisconsin	2,807,779	10,047,107	7,535,330
Wyoming	943,920	3,619,011	2,714,258
TOTAL	$188,784,075	$502,451,464	$376,838,605

a/ 75 percent of Est. (Estimated) Total SP&R Apportionment

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
OVER 1,000,000 IN POPULATION	$20,258,039	$2,025,803,872
200,000-1,000,000 IN POPULATION	4,693,144	469,314,428
50,000-200,000 IN POPULATION	————	268,496,542
NATIONAL TOTAL	$24,951,183	$2,763,614,842

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 1,000,000 and Over in Population:		
Atlanta, GA	$390,464	$39,046,432
Baltimore, MD	325,674	32,567,432
Boston, MA	783,137	78,313,708
Chicago, IL-Northwestern IN	1,787,419	178,741,915
Cincinnati, OH-KY	140,266	14,026,602
Cleveland, OH	240,763	24,076,342
Dallas-Fort Worth, TX	401,670	40,167,021
Denver, CO	253,879	25,387,948
Detroit, MI	353,322	35,332,248
Ft Lauderdale-Hollywood-Pompano Beach, FL.	213,610	21,360,999
Houston, TX	432,549	43,254,860
Kansas City, MO-KS	96,806	9,680,601
Los Angeles, CA	1,887,969	188,796,855
Miami-Hialeah, FL	363,636	36,363,571
Milwaukee, WI	183,303	18,330,290
Minneapolis-St. Paul, MN	245,019	24,501,851
New Orleans, LA	155,262	15,526,242
New York, NY-Northeastern NJ	5,750,117	575,011,773
Norfolk-Virginia Beach-Newport News, VA	123,898	12,389,808
Philadelphia, PA-NJ	994,941	99,494,051
Phoenix, AZ	218,885	21,888,483
Pittsburgh, PA	292,821	29,282,128
Portland-Vancouver, OR-WA	229,168	22,916,766
Riverside-San Bernardino, CA	170,474	17,047,416
Sacramento, CA	130,824	13,082,376
San Antonio, TX	181,354	18,135,401
San Diego, CA	400,072	40,007,176
San Francisco-Oakland, CA	1,097,316	109,731,573
San Jose, CA	283,893	28,389,252
San Juan, PR	279,876	27,987,618
Seattle, WA	524,574	52,457,436
St. Louis, MO-IL	232,853	23,285,342
Tampa-St. Petersburg-Clearwater, FL	156,427	15,642,708
Washington, DC-MD-VA	935,796	93,579,648
TOTAL	$20,258,038	$2,025,803,872

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population		
Akron, OH	$56,283	$5,628,302
Albany-Schenectady-Troy, NY	60,601	6,060,114
Albuquerque, NM	50,191	5,019,072
Allentown-Bethlehem-Easton, PA-NJ	47,093	4,709,294
Anchorage, AK	24,165	2,416,472
Ann Arbor, MI	31,484	3,148,399
Augusta, GA-SC	17,074	1,707,442
Austin, TX	112,833	11,283,287
Bakersfield, CA	33,488	3,348,750
Baton Rouge, LA	29,347	2,934,746
Birmingham, AL	37,882	3,788,211
Bridgeport-Milford, CT	66,832	6,683,156
Buffalo-Niagara Falls, NY	112,711	11,271,082
Canton, OH	29,007	2,900,692
Charleston, SC	29,586	2,958,637
Charlotte, NC	59,426	5,942,586
Chattanooga, TN-GA	21,603	2,160,327
Colorado Springs, CO	36,551	3,655,098
Columbia, SC	25,437	2,543,677
Columbus, GA-AL	15,298	1,529,796
Columbus, OH	105,130	10,512,991
Corpus Christi, TX	34,545	3,454,532
Davenport-Rock Island-Moline, IA-IL	26,122	2,612,168
Dayton, OH	110,820	11,082,007
Daytona Beach, FL	29,413	2,941,272
Des Moines, IA	31,947	3,194,707
Durham, NC	31,309	3,130,919
El Paso, TX-NM	75,158	7,515,810
Fayetteville, NC	16,900	1,690,046
Flint, MI	45,639	4,563,910
Fort Myers-Cape Coral, FL	24,931	2,493,140
Fort Wayne, IN	18,590	1,859,045
Fresno, CA	51,064	5,106,436
Grand Rapids, MI	38,732	3,873,229
Greenville, SC	13,298	1,329,753
Harrisburg, PA	30,493	3,049,277
Hartford-Middletown, CT	93,019	9,301,886
Honolulu, HI	224,512	22,451,206
Indianapolis, IN	87,101	8,710,107
Jackson, MS	18,062	1,806,204
Jacksonville, FL	71,351	7,135,108
Knoxville, TN	24,119	2,411,894
Lansing-East Lansing, MI	31,532	3,153,242
Las Vegas, NV	141,519	14,151,912
Lawrence-Haverhill, MA-NH	31,706	3,170,554
Lexington-Fayette, KY	19,370	1,936,953

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population (continued)		
Little Rock-North Little Rock, AR	26,857	2,685,661
Lorain-Elyria, OH	13,663	1,366,277
Louisville, KY-IN	104,245	10,424,528
Madison, WI	45,104	4,510,388
McAllen-Edinburg-Mission, TX	13,438	1,343,765
Melbourne-Palm Bay, FL	30,952	3,095,167
Memphis, TN-AR-MS	88,440	8,844,028
Mobile, AL	19,871	1,987,093
Modesto, CA	27,379	2,737,937
Montgomery, AL	12,021	1,202,063
Nashville, TN	50,699	5,069,927
New Haven-Meriden, CT	109,799	10,979,867
Ogden, UT	30,576	3,057,602
Oklahoma City, OK	47,696	4,769,610
Omaha, NE-IA	53,467	5,346,660
Orlando, FL	139,209	13,920,892
Oxnard-Ventura, CA	65,124	6,512,436
Pensacola, FL	19,613	1,961,267
Peoria, IL	20,235	2,023,545
Providence-Pawtucket, RI-MA	155,761	15,576,051
Provo-Orem, UT	29,383	2,938,314
Raleigh, NC	29,150	2,915,009
Reno, NV	31,795	3,179,497
Richmond, VA	60,381	6,038,138
Rochester, NY	68,651	6,865,124
Rockford, IL	18,217	1,821,740
Salt Lake City, UT	117,076	11,707,570
Sarasota-Bradenton, FL	37,250	3,724,967
Scranton-Wilkes-Barre, PA	29,910	2,991,033
Shreveport, LA	24,850	2,484,956
South Bend-Mishawaka, IN-MI	30,097	3,009,660
Spokane, WA	55,842	5,584,196
Springfield, MA-CT	56,911	5,691,096
Stockton, CA	35,381	3,538,091
Syracuse, NY	42,926	4,292,606
Tacoma, WA	104,779	10,477,857
Toledo, OH-MI	46,650	4,664,987
Trenton, NJ-PA	41,780	4,177,974
Tucson, AZ	76,279	7,627,905
Tulsa, OK	44,221	4,422,131
West Palm Beach-Boca Raton-Delray Bch, FL	149,532	14,953,208
Wichita, KS	29,653	2,965,322
Wilmington, DE-NJ-MD-PA	69,254	6,925,397
Worcester, MA-CT	41,988	4,198,768
Youngstown-Warren, OH	23,767	2,376,670
TOTAL	$4,693,146	$469,314,428

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population	
ALABAMA:	$4,985,156
Anniston, AL	480,853
Auburn-Opelika, AL	385,788
Decatur, AL	440,303
Dothan, AL	369,820
Florence, AL	515,217
Gadsden, AL	455,365
Huntsville	1,445,530
Tuscaloosa, AL	892,280
ALASKA:	$0
ARIZONA:	$1,304,894
Flagstaff, AZ	513,348
Yuma, AZ-CA (AZ)	791,546
ARKANSAS:	$1,904,687
Fayetteville-Springdale, AR	525,660
Fort Smith, AR-OK (AR)	715,567
Pine Bluff, AR	483,565
Texarkana, TX-AR (AR)	179,895
CALIFORNIA:	$29,175,484
Antioch-Pittsburg, CA	1,649,944
Chico, CA	720,399
Davis, CA	874,519
Fairfield, CA	1,062,135
Hemet-San Jacinto, CA	886,135
Hesperia-Apple Valley-Victorville, CA	1,130,450
Indio-Coachella, CA	535,822
Lancaster-Palmdale, CA	1,901,446
Lodi, CA	744,407
Lompoc, CA	457,181
Merced, CA	812,779
Napa, CA	849,265
Palm Springs, CA	1,058,042
Redding, CA	611,778
Salinas, CA	1,609,906
San Luis Obispo, CA	762,395
Santa Barbara, CA	2,490,601
Santa Cruz, CA	1,287,861
Santa Maria, CA	1,171,709
Santa Rosa, CA	2,271,814
Seaside-Monterey, CA	1,526,612
Simi Valley, CA	1,445,047
Vacaville, CA	877,250
Visalia	1,002,011
Watsonville, CA	552,025
Yuba City, CA	880,815
Yuma, AZ-CA (CA)	3,136

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
COLORADO:	$5,375,868
Boulder, CO	1,196,211
Fort Collins, C0	996,330
Grand Junction, CO	567,271
Greeley, CO	796,881
Longmont, CO	726,189
Pueblo, CO	1,092,986
CONNECTICUT:	$20,431,625
Bristol, CT	847,319
Danbury, CT-NY (CT)	3,654,719
New Britain, CT	1,586,597
New London-Norwich, CT	1,276,746
Norwalk, CT	3,825,289
Stamford, CT-NY (CT)	4,677,640
Waterbury, CT	4,563,315
DELAWARE:	$405,570
Dover, DE	405,570
FLORIDA:	$12,360,871
Deltona, FL	410,994
Fort Pierce, F	984,528
Fort Walton Beach, FL	954,371
Gainesville, FL	1,223,087
Kissimmee, FL	569,676
Lakeland, FL	1,250,368
Naples, FL	822,912
Ocala, FL	552,788
Panama City, FL	829,583
Punta Gorda, FL	542,498
Spring Hill, FL	414,710
Stuart, FL	723,599
Tallahassee, FL	1,394,259
Titusville, FL.	399,118
Vero Beach, FL	505,468
Winter Haven, FL.	782,912
GEORGIA:	$5,411,902
Albany, GA.	670,332
Athens, GA.	642,694
Brunswick, GA	369,849
Macon, GA.	1,201,466
Rome, GA.	377,040
Savannah, GA	1,571,991
Warner Robins, GA	578,530
HAWAII:	$1,438,341
Kailua, HI	1,438,341

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
IDAHO:	$2,846,734
Boise City, ID	1,741,957
Idaho Falls, ID	624,457
Pocatello, ID	480,320
ILLINOIS:	$13,039,478
Alton, IL	704,693
Aurora, IL	1,973,637
Beloit, WI-IL (IL)	90,065
Bloomington-Normal, IL	1,135,262
Champaign-Urbana, IL	1,602,075
Crystal Lake, IL	643,251
Decatur, IL	901,814
Dubuque, IA-IL (IL)	21,007
Elgin, IL	1,423,686
Joliet, IL	1,646,194
Kankakee, IL.	646,084
Round Lake Beach-McHenry, IL-WI (IL)	937,528
Springfield, IL.	1,314,182
INDIANA:	$7,605,189
Anderson, IN	614,716
Bloomington, IN	917,307
Elkhart-GosheN, IN	919,374
Evansville, IN-KY (IN)	1,703,133
Kokomo, IN	619,041
Lafayette-West Lafayette, IN	1,230,688
Muncie, IN	904,711
Terre Haute, IN	696,219
IOWA:	$4,140,175
Cedar Rapids, IA	1,286,628
Dubuque, IA-IL (IA)	626,250
Iowa City, IA	741,322
Sioux City, IA-NE-SD (IA)	684,685
Waterloo-Cedar Falls, IA	801,290
KANSAS:	$2,010,184
Lawrence, KS	761,215
St. Joseph, MO-KS (KS)	6,283
Topeka, KS	1,242,686
KENTUCKY:	$1,584,353
Clarksville, TN-KY (KY)	193,324
Evansville, IN-KY (KY)	237,396
Huntington-Ashland, WV-KY-OH ((KY)	473,409
Owensboro, KY	680,224
LOUISIANA:	$4,692,211
Alexandria, LA	684,727
Houma, LA	481,636
Lafayette, LA	1,184,744
Lake Charles, LA	951,685
Monroe, LA	904,907
Slidell, LA	484,512

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MAINE:	$2,042,136
Bangor, ME	419,625
Lewiston-Auburn, ME	487,597
Portland, ME	1,042,595
Portsmouth-Dover-Rochester, NH-ME (ME)	92,319
MARYLAND:	$2,270,953
Annapolis, MD	739,653
Cumberland, MD-WV (MD)	393,387
Frederick, MD	533,696
Hagerstown, MD-PA-WV (MD)	604,217
MASSACHUSETTS	$8,994,014
Brockton, MA	1,642,939
Fall River, MA-RI (MA)	1,602,399
Fitchburg-Leominster, MA	649,363
Hyannis, MA	463,715
Lowell, MA-NH (MA)	2,033,701
New Bedford, MA	1,762,301
Pittsfield, MA	419,770
Taunton, MA	419,826
MICHIGAN:	$7,675,133
Battle Creek, MI	641,018
Bay City, MI	716,120
Benton Harbor, MI	517,989
Holland, MI	581,348
Jackson, MI	715,727
Kalamazoo, MI	1,545,579
Muskegon, MI	942,740
Port Huron, MI	620,436
Saginaw, MI	1,394,176
MINNESOTA:	$2,735,192
Duluth, MN-WI (MN)	665,591
Fargo-Moorhead, ND-MN (MN)	384,849
Grand Forks, ND-MN (MN)	84,346
La Crosse, WI-MN (MN)	41,318
Rochester, MN	750,719
St. Cloud, MN	808,369
MISSISSIPPI:	$2,348,217
Biloxi-Gulfport, MS	1,453,849
Hattiesburg, MS	453,122
Pascagoula, MS	441,246
MISSOURI:	$3,235,877
Columbia, MO	638,845
Joplin, MO	448,646
Springfield, MO	1,507,106
St. Joseph, MO-KS (MO)	641,280

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MONTANA:	$2,154,127
Billings, MT	830,760
Great Falls, MT	774,700
Missoula, MT	548,667
NEBRASKA:	$2,394,728
Lincoln, NE	2,291,136
Sioux City, IA-NE-SD (NE)	103,592
NEVADA:	$0
NEW HAMPSHIRE:	$2,908,063
Lowell, MA-NH (NH)	5,952
Manchester, NH	1,219,106
Nashua, NH	974,879
Portsmouth-Dover-Rochester, NH-ME (NH)	708,126
NEW JERSEY:	$2,203,394
Atlantic City, NJ	1,588,141
Vineland-Millville, NJ	615,253
NEW MEXICO:	$1,199,868
Las Cruces, NM	666,532
Santa Fe, NM	533,336
NEW YORK:	$6,657,249
Binghamton, NY	1,670,995
Danbury, CT-NY (NY)	22,649
Elmira, NY	686,164
Glens Falls, NY	471,864
Ithaca, NY	476,242
Newburgh, NY	618,415
Poughkeepsie, NY	1,299,062
Stamford, CT-NY (NY)	154
Utica-Rome, NY	1,411,704
NORTH CAROLINA:	$10,807,407
Asheville, NC	834,195
Burlington, NC	605,137
Gastonia, NC	886,065
Goldsboro, NC	460,155
Greensboro, NC	1,905,751
Greenville, NC	529,819
Hickory, NC	505,301
High Point, NC	852,125
Jacksonville, NC	822,694
Kannapolis, NC	593,914
Rocky Mount, NC	474,762
Wilmington, NC	776,539
Winston-Salem, NC	1,560,950

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
NORTH DAKOTA:	$2,099,863
Bismarck, ND	605,512
Fargo-Moorhead, ND-MN (ND)	875,726
Grand Forks, ND-MN (ND)	618,625
OHIO:	$5,773,649
Hamilton, OH	1,193,362
Huntington-Ashland, WV-KY-OH (OH)	303,894
Lima, OH	652,210
Mansfield, OH	629,684
Middletown, OH	820,501
Newark, OH	499,922
Parkersburg, WV-OH (OH)	74,027
Sharon, PA-OH (OH)	48,815
Springfield, OH	949,098
Steubenville-Weirton, OH-WV-PA (OH)	341,451
Wheeling, WV-OH (OH)	260,685
OKLAHOMA:	$898,637
Fort Smith, AR-OK (OK)	15,765
Lawton, OK	882,872
OREGON:	$4,686,368
Eugene-Springfield, OR	2,205,976
Longview, WA-OR (OR)	14,671
Medford, OR	681,748
Salem, OR	1,783,973
PENNSYLVANIA:	$12,250,998
Altoona, PA	836,913
Erie, PA	2,152,942
Hagerstown, MD-PA-WV (PA)	7,375
Johnstown, PA	771,765
Lancaster, PA	1,946,538
Monessen, PA	529,730
Pottstown, PA	502,685
Reading, PA	2,272,243
Sharon, PA-OH (PA)	351,927
State College, PA	732,444
Steubenville-Weirton, OH-WV-PA (PA)	2,558
Williamsport, PA	613,984
York, PA	1,529,894
PUERTO RICO:	$11,317,330
Aguadilla, PR	990,114
Arecibo, PR	925,138
Caguas, PR	2,422,805
Cayey, PR	716,333
Humacao, PR	619,973
Mayaguez, PR	1,332,011
Ponce, PR	2,964,121
Vega Baja-Manati, PR	1,346,835

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
RHODE ISLAND:	$720,380
Fall River, MA-RI (RI)	165,142
Newport, RI	555,238
SOUTH CAROLINA:	$3,050,731
Anderson, SC	410,299
Florence, SC	422,024
Myrtle Beach, SC	442,572
Rock Hill, SC	469,916
Spartanburg, SC	819,167
Sumter, SC	486,753
SOUTH DAKOTA:	$1,514,777
Rapid City, SD	482,434
Sioux City, IA-NE-SD (SD)	13,526
Sioux Falls, SD	1,018,817
TENNESSEE:	$2,344,389
Bristol, TN-Bristol, VA (TN)	219,130
Clarksville, TN-KY (TN)	534,276
Jackson, TN	404,396
Johnson City, TN	616,431
Kingsport, TN-VA (TN)	570,156
TEXAS:	$21,706,886
Abilene, TX	770,125
Amarillo, TX	1,428,410
Beaumont, TX	982,435
Brownsville, TX	1,427,936
Bryan-College Station, TX	956,487
Denton, TX	516,668
Galveston, TX	548,067
Harlingen, TX	701,792
Killeen, TX	1,342,335
Laredo, TX	1,695,320
Lewisville, TX	596,449
Longview, TX	586,831
Lubbock, TX	1,671,261
Midland, TX	732,263
Odessa, TX	812,346
Port Arthur, TX	886,146
San Angelo, TX	761,463
Sherman-Denison, TX	381,161
Temple, TX	432,724
Texarkana, TX-AR (TX)	349,173
Texas City, TX	928,170
Tyler, TX	725,803
Victoria, TX	503,143
Waco, TX	1,096,112
Wichita Falls, TX	874,266

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
UTAH:	$433,852
Logan, UT	433,852
VERMONT:	$761,283
Burlington, VT	761,283
VIRGINIA:	$5,053,357
Bristol, TN-Bristol, VA (VA)	156,005
Charlottesville, VA	726,621
Danville, VA	412,634
Fredericksburg, VA	484,443
Kingsport, TN-VA (VA)	29,453
Lynchburg, VA	691,272
Petersburg, VA	876,343
Roanoke, VA	1,676,586
WASHINGTON:	$4,775,510
Bellingham, WA	562,649
Bremerton, WA	1,089,956
Longview, WA-OR (WA)	476,091
Olympia, WA	847,994
Richland-Kennewick-Pasco, WA	884,646
Yakima, WA	914,174
WEST VIRGINIA	$3,670,219
Charleston, WV	1,476,469
Cumberland, MD-WV (WV)	17,659
Hagerstown, MD-PA-WV (WV)	4,460
Huntington-Ashland, WV-KY-OH (WV)	828,947
Parkersburg, WV-OH (WV)	533,119
Steubenville-Weirton, OH-WV-PA (WV)	229,371
Wheeling, WV-OH (WV)	580,194
WISCONSIN:	$10,047,371
Appleton-Neenah, WI	1,839,851
Beloit, WI-IL (WI)	394,376
Duluth, MN-WI (WI)	172,747
Eau Claire, WI	720,646
Green Bay, WI	1,397,379
Janesville, WI	530,354
Kenosha, WI	965,672
La Crosse, WI-MN (WI)	766,630
Oshkosh, WI	669,054
Racine, WI	1,491,481
Round Lake Beach-McHenry, IL-WI (WI)	559
Sheboygan, WI	630,370
Wausau, WI	468,252
WYOMING:	$1,051,862
Casper, WY	482,515
Cheyenne, WY	569,347
TOTAL	$268,496,542

TABLE 5

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

STATE	SECTION 5311 APPORTIONMENT	SECTION 5311(b) APPORTIONMENT
Alabama	$4,603,405	$99,521
Alaska	686,467	70,148
America Samoa	97,843	10,734
Arizona	2,016,250	80,112
Arkansas	3,680,231	92,598
California	8,982,245	132,357
Colorado	1,917,350	79,378
Connecticut	1,739,218	78,042
Delaware	433,893	68,254
Florida	5,774,183	108,300
Georgia	6,730,668	115,473
Guam	278,536	12,089
Hawaii	755,415	70,665
Idaho	1,524,027	76,429
Illinois	6,175,012	111,306
Indiana	5,964,922	109,731
Iowa	3,836,697	93,771
Kansas	3,051,970	87,887
Kentucky	5,038,137	102,781
Louisiana	4,166,904	96,247
Maine	2,010,694	80,078
Maryland	2,510,254	83,824
Massachusetts	2,690,230	85,174
Michigan	7,285,603	119,634
Minnesota	4,192,444	96,439
Mississippi	4,091,281	95,680
Missouri	4,883,117	101,618
Montana	1,234,582	74,258
Nebraska	1,862,828	78,969
Nevada	608,185	69,561
New Hampshire	1,610,315	77,076
New Jersey	2,302,409	82,266
New Mexico	1,810,042	78,573
New York	8,104,755	125,777
North Carolina	8,609,644	129,563
North Dakota	913,029	71,847
Northern Marianas	90,672	10,680
Ohio	8,765,216	130,730
Oklahoma	3,747,039	93,099
Oregon	2,975,182	87,311
Pennsylvania	9,777,689	138,323
Puerto Rico	2,921,881	86,911
Rhode Island	374,298	67,807
South Carolina	4,309,170	97,314
South Dakota	1,112,911	73,346
Tennessee	5,562,645	106,714
Texas	11,744,291	153,070
Utah	843,648	71,326
Vermont	995,038	72,462
Virgin Islands	212,971	11,597
Virginia	4,931,824	101,984
Washington	3,455,667	90,914
West Virginia	2,938,313	87,034
Wisconsin	5,077,060	103,073
Wyoming	710,084	70,325
TOTAL	$192,717,384	$4,800,180

TABLE 6

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS

STATE	APPORTIONMENT
Alabama	$1,263,045
Alaska	191,890
America Samoa	52,634
Arizona	1,112,627
Arkansas	880,019
California	6,878,982
Colorado	861,153
Connecticut	987,989
Delaware	293,852
District of Columbia	291,611
Florida	4,639,244
Georgia	1,640,232
Guam	133,760
Hawaii	376,045
Idaho	385,025
Illinois	2,996,023
Indiana	1,568,010
Iowa	946,671
Kansas	792,307
Kentucky	1,210,112
Louisiana	1,214,053
Maine	483,465
Maryland	1,219,834
Massachusetts	1,760,613
Michigan	2,562,126
Minnesota	1,237,149
Mississippi	854,719
Missouri	1,590,250
Montana	352,572
Nebraska	556,193
Nevada	411,680
New Hampshire	388,463
New Jersey	2,115,374
New Mexico	488,168
New York	4,912,556
North Carolina	1,866,530
North Dakota	298,904
Northern Marianas	52,406
Ohio	3,127,059
Oklahoma	1,043,154
Oregon	969,236
Pennsylvania	3,750,831
Puerto Rico	919,030
Rhode Island	429,419
South Carolina	1,008,050
South Dakota	323,437
Tennessee	1,492,836
Texas	3,874,080
Utah	454,360
Vermont	265,950
Virgin Islands	136,122
Virginia	1,553,327
Washington	1,392,260
West Virginia	734,389
Wisconsin	1,421,596
Wyoming	224,993
TOTAL	$72,986,415

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

STATE	AREA	APPORTIONMENT
AZ	Phoenix	$1,526,094
CA	Los Angeles	16,061,063
CA	Sacramento	2,547,302
CA	San Diego	7,171,934
CA	San Francisco	59,418,714
CA	San Jose	10,232,718
CO	Denver	1,219,287
CT	Hartford	1,093,013
CT	Southwestern Connecticut	35,804,354
DC	Washington	46,383,358
DE	Wilmington	755,391
FL	Ft. Lauderdale	2,849,955
FL	Jacksonville	70,241
FL	Miami	8,670,657
FL	Tampa	55,068
FL	West Palm Beach	2,177,666
GA	Atlanta	17,521,698
HI	Honolulu	625,993
IL	Chicago/Northwestern Indiana	121,618,120
IN	South Bend	543,128
LA	New Orleans	2,709,022
MD	Baltimore	6,625,409
MD	Baltimore Commuter Rail	16,006,620
MA	Boston	61,234,103
MA	Lawrence-Haverhill	1,300,607
MI	Detroit	440,130
MN	Minneapolis	2,874,132
MO	Kansas City	22,090
MO	St. Louis	1,860,740
NJ	Northeastern New Jersey	76,326,308
NJ	Trenton	1,132,579
NY	Buffalo	1,092,589
NY	New York	315,681,131
OH	Cleveland	12,079,312
OH	Dayton	3,463,546
PA	Harrisburg	414,023
PA	Philadelphia/Southern New Jersey	84,711,646
PA	Pittsburgh	19,675,690
PR	San Juan	1,968,870
OR	Portland	2,868,068
RI/MA	Providence	2,146,509
TN	Chattanooga	71,083
TX	Dallas	732,151
TX	Houston	4,406,131
VA	Norfolk	987,183
WA	Seattle	14,551,881
WA	Tacoma	680,570
WI	Madison	639,123
	TOTAL	$973,047,000

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION
AK/HI	Alaska or Hawaii Ferry Projects	$10,322,000
AK	Girdwood, Alaska Commuter Rail Project	9,925,000
AL	Birmingham- Transit Corridor	2,977,500
AZ	Phoenix- Metropolitan Area Transit Project	4,962,500
CA	Sacramento- South Corridor LRT Project	24,812,500
CA	San Francisco- BART Extension to the Airport Project	64,512,500
CA	San Jose- Tasman West Light Rail Project	19,850,000
CA	San Diego- Mission Valley East Light Rail Transit Project	19,850,000
CA	San Diego- Mid-Coast Corridor Project	4,962,500
CA	San Diego- Oceanside-Escondido Light Rail System	1,985,000
CA	Los Angeles- North Hollywood Extension Project	49,625,000
CA	Los Angeles- Mid-City and East Side Corridors Projects	3,970,000
CA	Los Angeles-San Diego LOSSAN Corridor Project	992,500
CA	Orange County-Transitway Project	992,500
CA	Stockton- Altamont Commuter Rail Project	992,500
CA	San Bernardino- Metrolink Extension Project	992,500
CO	Denver- Southwest Corridor Project	34,737,500
CO	Denver- Southeast Corridor Project	2,977,500
CO	Roaring Fork Valley Project	992,500
CT	Stamford- Fixed Guideway Connector	992,500
DE	Wilmington- Downtown Transit Connector	992,500
FL	Fort Lauderdale- Tri-County Commuter Rail Project	9,925,000
FL	Palm Beach, Broward and Miami-Dade Counties Rail Corridor	496,250
FL	Miami Metro-Dade Transit East-West Corridor Project	1,488,750
FL	Tampa Bay- Regional Rail Project	992,500
FL	Pinellas County- Mobility Initiative Project	2,481,250
FL	Orlando- Lynx Light Rail Project [Phase 1]	4,962,500
GA	Atlanta- South DeKalb-Lindbergh Corridor Project	992,500
GA	Atlanta-North Line Extension Project	44,803,440
IL	Chicago- Metra Commuter Rail Project	24,812,500
IL	Chicago- CTA Douglas Branch Line Project	3,473,750
IL	Chicago- CTA Ravenswood Branch Line Project	3,473,750
IN	Indianapolis- Northeast Downtown Corridor Project	992,500
IN	Northern Indiana- South Shore Commuter Rail Project	3,970,000
KS/MO	Kansas City Area- Johnson County, KS, I-35 Commuter Rail Project	992,500
LA	New Orleans- Canal Street Corridor Project	992,500
ME	Calais- Branch Rail Line Regional Transit Program	496,250
MA	Boston- South Boston Piers Transitway	53,490,785
MA	Boston- Urban Ring Project	992,500
MA	Boston- North Shore Corridor Project	992,500
MA/NH	Lowell, MA - Nashua, NH Commuter Rail Project	992,500
MD	MARC Commuter Rail Project	697,730
MD	MARC- Expansion Projects- Silver Spring Intermodal and Penn-Camden Rail Connection	1,488,750
MD	Baltimore- Central LRT Double Track Project	4,714,380
MD	Wash.DC/MD- Washington Metro- Blue Line Extension- Addision Road (Largo) Project	4,714,380

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION
MN	Twin Cities- Transitways Projects	2,977,500
MN	Twin Cities- Transitways- Hiawatha Corridor Project	42,479,000
MO/IL	St. Louis- St. Clair MetroLink Light Rail (Phase II) Extension Project	49,625,000
MO	St. Louis- MetroLink Cross County Corridor Project	2,481,250
NC	Charlotte- North-South Corridor Transitway Project	3,970,000
NC	Raleigh-Durham-Chapel Hill- Triangle Transit Project	7,940,000
NJ	Newark Rail Link MOS-1 Project	11,910,000
NJ	New Jersey Hudson-Bergen LRT Project	98,257,500
NJ/NY	Trans-Hudson Midtown Corridor	4,962,500
NJ	West Trenton Rail Project	992,500
NM	Greater Albuquerque Mass Transit Project	6,947,500
NM	Santa Fe/El Dorado Rail Link	2,977,500
NV	Las Vegas- Clark County, Nevada Fixed Guideway Project	3,473,750
NY	New York- Whitehall Ferry Terminal Reconstruction Project	1,985,000
NY	New York- LIRR East Side Access Project	1,985,000
OH	Dayton- Light Rail Study	992,500
OH	Cincinnati- Northeast/Northern Kentucky Corridor Project	992,500
OH	Cleveland- Euclid Corridor Improvement Project	992,500
OH	Canton-Akron-Cleveland Commuter Rail Project	2,481,250
OR	Portland- Westside-Hillsboro Project	10,979,040
OR	Portland- Wilsonville to Washington County, OR Connection to Westside	496,250
PA	Harrisburg- Capitol Area Transit/Corridor One Commuter Rail Project	496,250
PA	Pittsburgh- Stage II Light Rail Project	7,940,000
PA	Pittsburgh- North Shore Central Business District Corridor Project	9,925,000
PA	Philadelphia- SEPTA Cross County Metro	992,500
PA	Philadelphia-Reading -SEPTA Schuylkill Valley Metro Project	3,970,000
PR	San Juan- Tren Urbano Project	31,760,000
SC	Charleston- Monobeam Corridor Project	2,481,250
TN	Memphis- Medical Center Rail Extension Project	2,481,250
TN	Knoxville-MemphisCommuter Rail Feasibility Study	496,250
TN	Nashville- Commuter Rail Project	992,500
TX	Austin- Capital Metro Northwest/north Central Corridor Project	992,500
TX	Dallas- North Central Light Rail Extension Project	49,625,000
TX	Galveston- Rail Trolley Extension Project	1,488,750
TX	Houston- Regional Bus Project	52,374,205
TX	Houston- Advanced Transit Program	2,977,500
UT	Salt Lake City- North/South Light Rail Project	37,643,540
UT	Salt Lake City- Olympic Transportation Infrastructure Investments	9,925,000
VA	Norfolk-Virginia Beach Corridor Project	992,500
VA	Dulles Corridor Project	24,812,500
VA	Virginia Railway Express Commuter Rail Project	2,183,500
WA	Seattle- Puget Sound RTA Link Light Rail Project	24,812,500
WA	Seattle- Puget Sound RTA Sounder Commuter Rail Project	4,962,500
WA	Spokane- South Valley Corridor Light Rail Project	1,985,000
WI	Kenosha-Racine-Milwaukee Rail Extension Project	992,500
	TOTAL ALLOCATION	$973,047,000

a/ An additional $1,488,750 in lapsed FY 1995 New Starts funds is made available to the Clark County, Nevada Fixed Guideway Project IAW Public Law 106-69.

TABLE 8A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 1998 CARRYOVER	FY 1999 CARRYOVER	UNOBLIGATED ALLOCATION
AK/HI	Alaska-Hawaii Ferry Projects	0	10,322,550	10,322,550
AL	Birmingham- Alternatives Analysis & Preliminary Eng.	0	992,550	992,550
AR	Little Rock- River Rail Project	0	992,550	992,550
AZ	Phoenix- Metropolitan Area Transit	0	4,962,765	4,962,765
CA	Los Angeles- Mid-City and East Side Projects	0	420	420
CA	San Bernardino- Metrolink Extension	996,766	992,550	1,989,316
CA	Riverside County- San Jacinto Branch Line Project	0	496,280	496,280
CA	Orange County- Transitway Project	0	2,481,380	2,481,380
CA	San Diego Mission Valley East Extension	996,766	1,488,830	2,485,596
CA	San Diego Mid-Coast Extension	1,495,150	1,985,100	3,480,250
CA	San Diego Oceanside-Escondido Light Rail System	2,990,300	2,977,660	5,967,960
CO	Denver- Southeast Multimodal Corridor Project	0	496,280	496,280
CO	North Front Range Corridor Feasibility Study	0	496,280	496,280
CO	Roaring Fork Valley Rail Project	793,530	0	793,530
CT	Hartford- Griffin Light Rail Project	0	0	993,023
CT	Hartford- Light Rail Project	0	1,488,830	1,488,830
CT	Hartford- Old Saybrook Project	0	496,280	496,280
CT	New London- Waterfront Access Project	0	496,280	496,280
CT	Stamford- Fixed Guideway Connector	0	992,550	992,550
FL	Miami- North 27th Avenue Project	0	2,977,660	2,977,660
FL	Miami- Metro Dade East-West Corridor Project	0	2,977,660	2,977,660
FL	Fort Lauderdale- Tri-County Commuter Rail	0	3,970,210	3,970,210
GA	Atlanta- South DeKalb- Lindbergh Corridor Project	0	992,550	992,550
GA	Savannah- Water Taxi	0	496,280	496,280
HI	Honolulu- Major Investment Analysis of Transit Alternatives	0	2,977,660	2,977,660
IA	Sioux City- Micro Rail Trolley System	0	248,140	248,140
IL	Chicago- Metra Commuter Rail Extensions & Upgrades	0	5,955,320	5,955,320
KS/MO	Johnson County, KS, I-35 Commuter Rail Project	0	992,550	992,550
LA	New Orleans- Canal Street Corridor Project	5,980,594	21,836,160	35,760,937
LA	New Orleans- Desire Streetcar Project	1,993,530	1,985,100	3,978,630
MA	Boston- South Boston Piers Transitway	1	53,580,975	53,580,976
MA	Boston- Urban Ring Project	2	3	5
MA	Boston- North Shore Corridor Project	0	2	2
MA	Boston- North-South Rail Link	0	496,280	496,280
MD	Baltimore- Central Downtown Transit Alternatives MIS	0	496,280	496,280
MD	Largo Blue Line Extension Project	0	992,550	992,550
MD	Route 5 Corridor Study	0	992,550	992,550
MI	Southeast Michigan- Commuter Rail Viability Project	0	198,510	198,510
MN	Twin Cities- Transitways- Hiawatha Corridor Project	122,188	16,873,400	16,995,588
MO	St. Louis-Jefferson City-Kansas City Commuter Rail Project	0	496,280	496,280
MS	Jackson- Intermodal Corridor	2,990,300	0	2,990,300
NC	Charlotte- North-South Corridor	0	2,977,660	2,977,660
NC	Research Triangle Park- Regional Transit Plan	11,961,188	9,925,525	21,886,713
NE	Omaha- Trolley System	0	992,550	992,550
NJ	Hudson-Bergen Project	0	69,478,700	69,478,700
NJ	Newark- Elizabeth Rail Link	0	5,955,320	5,955,320
NJ	West Trenton Rail Project	0	992,550	992,550
NM	Albuquerque- Light Rail Project	0	4,962,765	4,962,765
NV	Las Vegas, Clark County Fixed Guideway Project	0	3,970,210	3,970,210
NY	New York- St. George Ferry	2,491,914	0	2,491,914

TABLE 8A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 1998 CARRYOVER	FY 1999 CARRYOVER	UNOBLIGATED ALLOCATION
NY	New York- Nassau Hub Rail Link EIS	498,383	0	498,383
OH	Cincinnati- NE/N. KY Rail Line Project	0	1,786,595	1,786,595
OH	Cleveland- Euclid Corridor Improvement Project	0	1,985,100	1,985,100
OH	Cleveland- Berea Red Line Extension to Airport	697,736	992,550	1,690,286
OH	Canton-Akron-Cleveland Commuter Rail	0	2,183,615	2,183,615
OR	Portland- Westside-Hillsboro Extension	0	3,000,000	3,000,000
PA	Philadelphia-Reading- SEPTA Schuylkill Valley Metro Proj.	0	2,977,660	2,977,660
PA	Philadelphia- SEPTA Cross County Metro	0	752,550	752,550
PA	Pittsburgh- Airport Busway Phase I	4,983,828	0	4,983,828
PA	Pittsburgh- Stage II Light Rail Project	0	3,970,210	3,970,210
PA	Pittsburgh- North Shore CBD Corridor Project	0	992,550	992,550
PA	Harrisburg- Capital Area Transit/Corridor One Project	0	992,550	992,550
PA	Scranton- Laurel Rail Line Project	498,383	0	498,383
SC	Charleston Monobeam Project	0	2,183,615	2,183,615
TN	Knoxville- Electric Transit Project	0	808,830	808,830
TN	Memphis- Medical Center Rail Extension	2	2,183,615	2,183,617
TN	Nashville- Regional Commuter Rail Project	0	992,550	992,550
TX	Austin- Capital Metro Project	996,766	992,550	1,989,316
TX	Dallas- North Central Light Rail Extension	0	3	3
TX	Dallas- Ft. Worth RAILTRAN	7,974,126	11,910,635	19,884,761
TX	Galveston- Rail Trolley System Project	1,993,530	0	1,993,530
TX	Houston- Regional Bus Plan	50,934,727	59,225,625	110,160,352
UT	Salt Lake City- Airport to University (West/East) Light Rail Proj.	0	4,962,765	4,962,765
UT	Salt Lake City- Regional Commuter Rail	2,787,062	0	2,787,062
VA	Dulles Corridor Project	0	16,873,400	16,873,400
VA	Virginia Railway Express- Commuter Rail Project	1,993,530	1,985,100	6,257,699
VT	Burlington-Essex Commuter Rail	4,843,828	1,985,100	6,828,928
WA	Seattle- Puget Sound RTA- Sounder Commuter Rail Project	0	40,694,660	40,694,660
WA	King County- Water Taxi	0	248,140	248,140
WA	Spokane- South Valley Corridor Light Rail	0	992,550	992,550
WV	Morgantown- Fixed Guideway Modernization Project	0	3,970,210	3,970,210
	TOTAL UNOBLIGATED ALLOCATION	$111,014,130	$420,593,263	$542,823,668

a/ Total carryover includes FY 97 funds for the following projects which were extended for obligation by the FY 2000 Appropriations Conference Report: New Orleans- Canal Street Corridor project ($7,944,183); Hartford, CT- Griffin Line Project ($993,023); and the Virginia Railway Express Quantico Bridge Project ($2,279,069).

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
AK	Anchorage Ship Creek intermodal facility	4,466,325
AK	Fairbanks intermodal rail/bus transfer facility	1,985,033
AK	Juneau downtown mass transit facility	1,488,775
AK	North Star Borough-Fairbanks intermodal facility	2,977,550
AK	Wasilla intermodal facility	992,517
AK	Whittier intermodal facility and pedestrian overpass	1,146,357
AL	Alabama statewide rural bus needs	2,481,292
AL	Baldwin Rural Area Transportation System buses	992,517
AL	Birmingham intermodal facility	1,985,033
AL	Birmingham-Jefferson County buses	1,240,646
AL	Cullman, buses	496,258
AL	Dothan Wiregrass Transit Authority vehicles and transit facility	992,517
AL	Escambia County buses and bus facility	99,252
AL	Gees Bend Ferry facilities, Wilcox County	99,252
AL	Huntsville Airport international intermodal center	3,473,808
AL	Huntsville, intermodal facility	1,240,646
AL	Huntsville Space and Rocket Center intermodal center	3,473,808
AL	Jasper buses	49,626
AL	Jefferson State Community College/University of Montevallo pedestrian walkway	198,503
AL	Marshall County, buses	496,258
AL	Mobile waterfront terminal complex	4,962,583
AL	Montgomery Union Station intermodal center and buses	3,473,808
AL	Valley bus and bus facilities	109,177
AR	Arkansas Highway and Transit Department buses	1,985,033
AR	Arkansas state safety and preventative maintenance facility	794,013
AR	Fayetteville, University of Arkansas Transit System buses	496,258
AR	Hot Springs, transportation depot and plaza	1,548,326
AR	Little Rock, Central Arkansas Transit buses	297,755
AZ	Phoenix bus and bus facilities	3,721,937
AZ	Phoenix South Central Avenue transit facility	496,258
AZ	San Luis, bus	69,476
AZ	Tucson buses	2,535,880
AZ	Yuma paratransit buses	124,065
CA	California Mountain Area Regional Transit Authority fueling stations	79,401
CA	Contra Costa County Connection buses	248,129
CA	Culver City, CityBus buses	1,240,646
CA	Davis, Unitrans transit maintenance facility	620,323
CA	Healdsburg, intermodal facility	992,517
CA	I-5 Corridor intermodal transit centers	1,240,646
CA	Livermore automatic vehicle locator program	992,517
CA	Lodi, multimodal facility	843,639
CA	Los Angeles County Metropolitan transportation authority buses	2,977,550
CA	Los Angeles County Foothill Transit buses and HEV vehicles	1,736,904
CA	Los Angeles Municipal Transit Operators Coalition	2,233,162
CA	Los Angeles, Union Station Gateway Intermodal Transit Center	1,240,646
CA	Maywood, Commerce, Bell, Cudahy, California buses and bus facilities	794,013
CA	Modesto, bus maintenance facility	620,323
CA	Monterey, Monterey-Salinas buses	620,323
CA	Orange County, bus and bus facilities	1,985,033
CA	Perris bus maintenance facility	1,240,646

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
CA	Redlands, trolley project	794,013
CA	Sacramento CNG buses	1,240,646
CA	San Bernardino Valley, CNG buses	992,517
CA	San Bernardino train station	2,977,550
CA	San Diego North County buses and CNG fueling station	2,977,550
CA	San Francisco, Islais Creek maintenance facility	1,240,646
CA	Santa Barbara buses and bus facility	1,736,904
CA	Santa Clarita bus maintenance facility	1,240,646
CA	Santa Cruz buses and bus facilities	1,741,867
CA	Santa Maria Valley/Santa Barbara County, buses	238,204
CA	Santa Rosa/Cotati, Intermodal Transportation Facilities	744,387
CA	Westminster senior citizen vans	148,877
CA	Windsor, Intermodal Facility	744,387
CA	Woodland Hills, Warner Center Transportation Hub	620,323
CO	Boulder/Denver, RTD buses	620,323
CO	Colorado Association of Transit Agencies	7,940,133
CO	Denver, Stapleton Intermodal Center	1,240,646
CT	New Haven bus facility	2,233,162
CT	Norwich buses	2,233,162
CT	Waterbury, bus facility	2,233,162
DC	Fuel cell bus and bus facilities program, Georgetown University	4,813,706
DC	Washington, D.C. Intermodal Transportation Center, District	2,481,292
DE	Delaware buses and bus facility	496,258
DE	New Castle County buses and bus facilities	1,985,033
FL	Daytona Beach, Intermodal Center	2,481,292
FL	Gainesville hybrid-electric buses and facilities	496,258
FL	Jacksonville buses and bus facilities	992,517
FL	Lakeland, Citrus Connection transit vehicles and related equipment	1,240,646
FL	Miami Beach, electric shuttle service	744,387
FL	Miami-Dade Transit buses	2,729,421
FL	Orlando, Lynx buses and bus facilities	1,985,033
FL	Orlando, Downtown Intermodal Facility	2,481,292
FL	Palm Beach, buses	992,517
FL	Tampa HARTline buses	496,258
GA	Atlanta, MARTA buses	13,398,973
GA	Chatham Area Transit Bus Transfer Center and buses	3,473,808
GA	Georgia Regional Transportation Authority buses	1,985,033
GA	Georgia statewide buses and bus-related facilities	2,729,421
HI	Hawaii buses and bus facilities	2,233,162
HI	Honolulu, bus facility and buses	1,985,033
IA	Ames transit facility expansion	694,762
IA	Cedar Rapids Intermodal facility	3,473,808
IA	Clinton transit facility expansion	496,258
IA	Fort Dodge, Intermodal Facility (Phase II)	878,377
IA	Iowa City Intermodal facility	1,488,775
IA	Iowa statewide buses and bus facilities	2,481,292
IA	Iowa/Illinois Transit Consortium bus safety and security	992,517
IL	East Moline transit center	645,136

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
IL	Illinois statewide buses and bus-related equipment	8,138,636
IN	Gary, Transit Consortium buses	1,240,646
IN	Indianapolis buses	4,962,583
IN	South Bend Urban Intermodal Transportation Facility	1,240,646
IN	West Lafayette bus transfer station/terminal (Wabash Landing)	1,736,904
KS	Girard, buses and vans	694,762
KS	Girard Southeast Kansas Community Action Agency maintenance facility	476,408
KS	Johnson County, farebox equipment	248,129
KS	Kansas City buses	744,387
KS	Kansas Public Transit Association buses and bus facilities	1,488,775
KS	Topeka Transit downtown transfer facility	595,510
KS	Wichita, buses and bus facilities	2,481,292
KY	Kentucky (southern and eastern) transit vehicles	992,517
KY	Lexington (LexTran), maintenance facility	992,517
KY	River City, buses	1,488,775
KY	Transit Authority of Northern Kentucky (TANK) buses	2,481,292
LA	Louisiana statewide buses and bus-related facilities	4,962,583
MA	Attleboro intermodal transit facility	496,258
MA	Brockton intermodal transportation center	1,091,768
MA	Greenfield Montague, buses	496,258
MA	Merrimack Valley Regional Transit Authority bus facilities	464,002
MA	Montachusett, bus and park-and-ride facilities	1,240,646
MA	Pioneer Valley, alternative fuel and paratransit vehicles	645,136
MA	Pittsfield intermodal center	3,573,060
MA	Springfield, Union Station	1,240,646
MA	Swampscott, buses	64,514
MA	Westfield, intermodal transportation facility	496,258
MA	Worcester, Union Station Intermodal Transportation Center	2,481,292
MD	Maryland statewide bus facilities and buses	11,413,940
MI	Detroit, transfer terminal facilities	3,933,343
MI	Detroit, EZ Ride program	284,852
MI	Menominee-Delta-Schoolcraft buses	248,129
MI	Michigan statewide buses	22,331,623
MI	Port Huron, CNG fueling station	496,258
MN	Duluth, Transit Authority community circulation vehicles	992,517
MN	Duluth, Transit Authority intelligent transportation systems	496,258
MN	Duluth, Transit Authority Transit Hub	496,258
MN	Greater Minnesota transit authorities	496,258
MN	Northstar Corridor, Intermodal Facilities and buses	9,925,165
MN	Twin Cities metropilitan buses and bus facilities	9,925,165
MO	Columbia buses and vans	496,258
MO	Franklin County buses and bus facilities	198,503
MO	Jackson County buses and bus facilities	496,258
MO	Kansas City Area Transit Authority buses and Troost transit center	2,481,292
MO	Missouri statewide bus and bus facilities	3,473,808
MO	OATS Transit	1,488,775
MO	Southeast Missouri transportation service rural, elderly, disabled service	1,240,646
MO	Southwest Missouri State University park and ride facility	992,517

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
MO	St. Joseph buses and vans	496,258
MO	St. Louis, Bi-state Intermodal Center	1,240,646
MO	St. Louis , buses	1,985,033
MS	Harrison County multimodal center	2,977,550
MS	Jackson, maintenance and administration facility project	992,517
MS	North Delta planning and development district, buses and bus facilities	1,191,020
MT	Missoula urban transportation district buses	595,510
NC	Greensboro multimodal center	3,314,013
NC	Greensboro, Transit Authority buses	1,488,776
NC	North Carolina statewide buses and bus facilities	2,473,351
ND	North Dakota statewide buses and bus-related facilities	992,517
NH	New Hampshire statewide transit systems	2,977,550
NJ	New Jersey Transit alternative fuel buses	4,962,583
NJ	New Jersey Transit jitney shuttle buses	1,736,904
NJ	Newark intermodal and arena access improvements	1,637,652
NJ	Newark, Morris & Essex Station access and buses	1,240,646
NJ	South Amboy, Regional Intermodal Transportation Initiative	1,240,646
NM	Albuquerque West Side transit facility	1,985,033
NM	Albuquerque, buses	1,240,646
NM	Las Cruces buses and bus facilities	744,387
NM	Northern New Mexico Transit Express/Park and Ride buses	2,729,421
NM	Santa Fe, buses and bus facilities	1,985,033
NV	Clark County Regional Transportation Commission buses and bus facilities	2,481,292
NV	Lake Tahoe CNG buses	694,762
NV	Washoe County transit improvements	2,233,162
NY	Babylon Intermodal Center	1,240,646
NY	Buffalo, Auditorium Intermodal Center	1,985,033
NY	Dutchess County, Loop System buses	517,101
NY	Ithaca intermodal transportation center	1,116,581
NY	Ithaca, TCAT bus technology improvements	1,240,646
NY	Long Island, CNG transit vehicles and facilities and bus replacement	1,240,646
NY	Mineola/Hicksville, LIRR intermodal centers	1,240,646
NY	New York City Midtown West 38th Street ferry terminal	992,517
NY	New York, West 72nd St. Intermodal Station	1,736,904
NY	Putnam County, vans	466,483
NY	Rensselaer intermodal bus facility	5,955,100
NY	Rochester buses and bus facility	992,517
NY	Syracuse, buses	2,977,550
NY	Utica Union Station	2,084,285
NY	Westchester County DOT, articulated buses	1,240,646
NY	Westchester County, Bee-Line transit system fareboxes	971,674
NY	Westchester County, Bee-Line transit system shuttle buses	992,517
OH	Cleveland, Triskett Garage bus maintenance facility	620,323
OH	Dayton, Multimodal Transportation Center	4,094,131
OH	Ohio statewide buses and bus facilities	8,942,823
OK	Oklahoma statewide bus facilities and buses	4,962,583

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
OR	Corvallis buses and automated passenger information system	297,755
OR	Lane County, Bus Rapid Transit, buses and facilities	4,367,073
OR	Lincoln County Transit District buses	248,129
OR	Portland, Tri-Met bus maintenance facility	645,136
OR	Portland, Tri-Met buses	1,736,904
OR	Salem Area Mass Transit District natural gas buses	496,258
OR	Sandy buses	99,252
OR	South Metro Area Rapid Transit (SMART) maintenance facility	198,503
OR	Sunset Empire Transit District intermodal transit facility	297,755
PA	Allegheny County buses	1,488,775
PA	Altoona bus testing	2,977,550
PA	Altoona, Metro Transit Authority buses and transit system improvements	835,699
PA	Armstrong County-Mid-County, bus facilities and buses	148,877
PA	Bethlehem, intermodal facility	992,517
PA	Cambria County, bus facilities and buses	570,697
PA	Centre Area Transportation Authority buses	1,240,646
PA	Chester County, Paoli Transportation Center	992,517
PA	Erie, Metropolitan Transit Authority buses	992,517
PA	Fayette County, intermodal facilities and buses	1,260,496
PA	Lackawanna County Transit System buses	595,510
PA	Lackawanna County, intermodal bus facility	992,517
PA	Mid-Mon Valley buses and bus facilities	248,129
PA	Norristown, parking garage (SEPTA)	992,517
PA	Philadelphia, Frankford Transportation Center	4,962,583
PA	Philadelphia, intermodal 30th Street Station	1,240,646
PA	Reading, BARTA Intermodal Transportation Facility	1,736,904
PA	Robinson, Towne Center Intermodal Facility	1,488,775
PA	Somerset County bus facilities and buses	173,690
PA	Towamencin Township, Intermodal Bus Transportation Center	1,488,775
PA	Washington County intermodal facilities	625,285
PA	Westmoreland County, Intermodal Facility	198,503
PA	Wilkes-Barre, Intermodal Facility	1,240,646
PA	Williamsport bus facility	1,191,020
PR	San Juan Intermodal access	595,510
RI	Providence, buses and bus maintenance facility	3,269,350
SC	Central Midlands COG/Columbia transit system	2,679,795
SC	Charleston Area regional transportation authority	1,885,782
SC	Clemson Area Transit buses and bus equipment	545,884
SC	Greenville transit authority	496,258
SC	Pee Dee buses and facilities	893,265
SC	Santee-Wateree regional transportation authority	397,007
SC	South Carolina Statewide Virtual Transit Enterprise	1,210,870
SC	Transit Management of Spartanburg, Incorporated (SPARTA)	595,510
SD	South Dakota statewide bus facilities and buses	1,488,775
TN	Southern Coalition for Advanced Transportation (SCAT) (TN, GA, FL, AL) electric buses	3,473,808
TX	Austin buses	1,736,904
TX	Beaumont Municipal Transit System buses and bus facilities	992,517
TX	Brazos Transit Authority buses and bus facilities	992,517
TX	El Paso Sun Metro buses	992,517

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
TX	Fort Worth bus replacement (including CNG vehicles) and paratransit vehicles	2,481,292
TX	Fort Worth intermodal transportation center	3,076,802
TX	Galveston buses and bus facilities	992,517
TX	Texas statewide small urban and rural buses	4,962,583
UT	Ogden Intermodal Center	794,013
UT	Salt Lake City Olympics bus facilities	2,481,292
UT	Salt Lake City Olympics regional park and ride lots	2,481,292
UT	Salt Lake City Olympics transit bus loan project	496,258
UT	Utah Transit Authority, intermodal facilities	1,488,775
UT	Utah Transit Authority/Park City Transit, buses	6,451,358
VA	Alexandria, bus maintenance facility	992,517
VA	Alexandria, Transit Center	992,517
VA	Dulles Corridor Park-and-Ride Express Bus Program	1,985,033
VA	Fair Lakes League	198,503
VA	Loudoun Transit multi-modal facility	992,517
VA	Potomac and Rappahannock Transportation Commission fleet replacement	1,786,530
VA	Prince William County Agency on the Aging bus replacement	84,364
VA	Richmond, GRTC bus maintenance facility	1,240,646
VA	Richmond Main Street Station	2,332,414
VT	Burlington multimodal center	2,679,795
VT	Chittenden County Transportation Authority buses	794,013
VT	Essex Junction multimodal station rehabilitation	496,258
VT	Killington-Sherburne satellite bus facility	248,129
WA	Bremerton multimodal center--Sinclair's Landing	744,387
WA	Everett, Multimodal Transportation Center	1,935,407
WA	Grant County, Grant Transit Authority	496,258
WA	Grays Harbor County, buses and equipment	1,240,646
WA	King Country Metro King Street Station	1,985,033
WA	King County Metro Atlantic and Central buses	1,488,775
WA	King County park and ride expansion	1,339,897
WA	Mount Vernon, buses and bus related facilities	1,736,904
WA	Pierce County Transit buses and bus facilities	496,258
WA	Seattle, intermodal transportation terminal	1,240,646
WA	Sequim, Clallam Transit multimodal center	992,517
WA	Snohomish County, Community Transit buses, equipment and facilities	1,240,646
WA	Spokane, HEV buses	1,488,775
WA	Tacoma Dome Station	248,129
WA	Vancouver Clark County (C-TRAN) bus facilities	992,517
WA	Washington State DOT combined small transit system buses and bus facilities	1,985,033
WI	Milwaukee County, buses	5,955,100
WI	Wisconsin statewide bus facilities and buses	14,143,361
WV	Huntington intermodal facility	11,910,198
WV	Parkersburg, intermodal transportation facility	4,466,325
WV	West Virginia Statewide Intermodal Facility and buses	4,962,583
	TOTAL ALLOCATION	$537,348,250

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
FY 1999 Unobligated Allocations:		
AK	Anchorage	$4,267,750
AK	Fairbanks	1,985,000
AK	North Slope Borough	496,250
AK	Whittier	694,750
AL	Birmingham	1,985,000
AL	Birmingham-Jefferson County	1,240,625
AL	Dothan Wiregrass Transit Authority	496,250
AL	Huntsville	992,500
AL	Jasper	49,625
AL	Lee-Russell Council	784,075
AL	Mobile	4,762,052
AL	Pritchard	496,250
AL	Tuscaloosa	1,935,375
AL	University of North Alabama	794,000
AR	Statewide	1,488,750
AR	Arkansas Highway and Transit Department	198,500
AR	Fayetteville	496,250
AR	Hot Springs	555,800
AZ	Phoenix	3,970,000
AZ	Tucson	992,500
CA	Central Contra Costa County	198,500
CA	Culver City	1,240,625
CA	Davis/Sacramento Area	942,875
CA	Folsom	992,500
CA	Healdsburg	992,500
CA	Humboldt	992,500
CA	Huntington Beach	198,500
CA	Lake Tahoe	496,250
CA	Livermore	992,500
CA	Los Angeles	2,481,250
CA	Modesto	1,344,838
CA	Monterey, Monterey-Salinas	620,313
CA	Morango Basin	645,125
CA	North San Diego County Transit District	1,736,875
CA	Perris	1,240,625
CA	Riverside Transit Agency	992,500
CA	Sacramento	1,240,625
CA	San Bernardino	992,500
CA	San Diego	992,500
CA	San Fernando Valley	297,750
CA	San Francisco	1,240,625
CA	San Joaquin (Stockton)	992,500
CA	Santa Clara Valley Transportation Authority	992,500
CA	Santa Clarita	2,233,125
CA	Santa Rosa, Cotati, and Rohnert Park	744,375
CA	Santa Rosa/Cotati	744,375
CA	Solano Links	992,500
CA	Ukiah	496,250
CA	Windsor	744,375
CA	Woodland Hills	322,563
CA	Yolo County	1,191,000
CO	Colorado	2,225,277
CO	Denver	1,240,625
CT	Hartford	794,000

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
CT	New Haven	2,233,125
CT	Norwich	2,233,125
CT	Waterbury	2,233,125
DC	Washington, D.C.	136,964
DC	Washington, D.C.	2,481,250
DE	DELAWARE Statewide	992,500
FL	Clearwater	2,481,250
FL	Gainesville	1,488,750
FL	Jacksonville	992,500
FL	Lakeland	1,240,625
FL	Miami Beach	744,375
FL	Miami Beach	992,500
FL	Tampa	1,240,625
GA	Atlanta	11,909,994
GA	Savannah/Chatham Area Transit	3,473,750
HI	Honolulu	977,625
IA	Fort Dodge	878,383
IA	Iowa/Illinois Transit Consortium	992,500
IL	Statewide	723,667
IL	Rock Island	2,481,250
IN	City of East Chicago	198,500
IN	Gary	930,469
IN	Indianapolis	4,962,500
IN	South Bend	1,240,625
KY	Northern Kentucky Area Development District	99,250
KY	Owensboro	198,500
KY	Southern and Eastern Kentucky	1,985,000
LA	Louisiana Statewide	
LA	Baton Rouge	198,500
LA	Jefferson Parish	347,375
LA	Monroe	446,625
LA	New Orleans	8,014,438
LA	Shreveport	397,000
LA	State infrastructure bank, transit account	347,375
LA	St. Tammany Parish	99,250
MA	Essex and Middlesex	1,406,000
MA	New Bedford/Fall River	248,125
MA	Pittsfield	4,566,500
MA	Springfield	1,240,625
MD	Maryland statewide	9,925,000
MN	Duluth Transit Authority	992,500
MN	Duluth Transit Authority	362,250
MN	Duluth Transit Authority	496,250
MN	Northstar Corridor	5,955,000
MN	Twin Cities Area Metro Tranist	9,428,750
MO	St. Louis	1,240,625
MO	Statewide	1,916,960
MS	Harrison County	1,885,750
MS	High Street, Jackson	1,985,000
MS	Jackson	660,660
MT	Butte	1,488,750
NC	Greensboro	3,314,950
NC	Greensboro	1,488,750
NC	Greensboro	318,993
NC	Statewide	4,962,500

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
ND	Statewide	1,228,226
NH	Berlin	119,100
NH	Carroll County	198,500
NH	Concord Area Transit	744,375
NH	Greater Laconia Transit Agency	446,625
NH	Keene HCS community care	99,250
NH	Lebanon	148,875
NH	Statewide	992,500
NJ	New Jersey Transit	1,736,875
NJ	Newark, Morris & Essex Station	1,240,625
NJ	South Amboy	1,240,625
NJ	Statewide	7,443,750
NM	Albuquerque	3,721,875
NM	Northern New Mexico	1,985,000
NV	Reno	1,240,625
NV	Washoe County	2,233,125
NY	Babylon	1,240,625
NY	Brookhaven Town	223,313
NY	Brooklyn-Staten Island	794,000
NY	Broome County	893,250
NY	Buffalo	2,977,500
NY	Dutchess County	517,083
NY	East Hampton	99,250
NY	Ithaca	1,240,625
NY	Long Beach	744,375
NY	Mineola/Hicksville	1,240,625
NY	New York City	1,488,750
NY	New York	1,736,875
NY	Niagara Frontier Transportation Authority	496,250
NY	Riverhead	124,063
NY	Rome	397,000
NY	Shelter Island	99,250
NY	Smithtown	124,063
NY	Southampton	124,063
NY	Southold	99,250
NY	Suffolk County	99,250
NY	Ulster County	992,500
NY	Utica and Rome	496,250
NY	Utica	2,084,250
NY	Westchester County	971,868
NY	Westchester County	992,500
NY	Westchester County	1,240,625
OH	Cleveland	620,313
OH	Toledo Mud Hens transit center study	198,500
OK	Oklahoma statewide	4,962,500
OR	Lane County	4,367,000
OR	Portland	1,736,875
OR	Rogue Valley Transit District	992,500
OR	Salem Area Mass Transit System	992,500
OR	Wilsonville	397,000
PA	Altoona	420,820
PA	Altoona	794,000
PA	Armstrong County-Mid-County	48,875
PA	Chambersburg Transit Authority	297,750
PA	Chambersburg Transit Authority	992,500

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
PA	Fayette County	1,260,475
PA	Mercer County	744,375
PA	Monroe County Transportation Authority	992,500
PA	Philadelphia	1,240,625
PA	Philadelphia	744,375
PA	Reading	1,736,875
PA	Red Rose	992,500
PA	Robinson Towne Center	1,488,750
PA	Schuylkill County	218,350
PA	Somerset County	173,688
PA	Towamencin Township	1,488,750
PA	Washington County	625,275
PA	Westmoreland County	198,500
PA	Wilkes-Barre	1,240,625
PR	San Juan	942,875
SC	Columbia	1,091,750
SC	Pee Dee	1,240,625
SD	South Dakota	794,000
SD	South Dakota	2,606,842
TN	Statewide	992,500
TN	Chattanooga	992,500
TX	Austin	2,233,125
TX	Brazos Transit Authority	1,488,750
TX	Corpus Christi Transit Authority	992,500
TX	Galveston	992,500
UT	Ogden	794,000
UT	Utah	1,488,750
VA	Alexandria	992,500
VA	Alexandria	1,091,750
VA	Harrisonburg	198,500
VA	Lynchburg	198,500
VA	Richmond	1,240,625
VA	Roanoke	198,500
VA	Statewide	4,014,663
VA	Falls Church	397,000
VA	Franconia-Springfield	645,125
VA	Manassas Transit Depot	277,900
VA	Richmond	1,985,000
VA	Stringfellow Road/Interstate 66	992,500
VA	Warrenton Circuit Rider	24,813
VT	Brattleboro	2,481,250
VT	Burlington	992,500
WA	Anacortes	496,250
WA	Bremerton	992,500
WA	Central Puget Sound Seattle	7,940,000
WA	Chelan-Douglas	893,250
WA	Everett	1,935,375
WA	Grant County	595,500
WA	Mount Vernon	1,736,875
WA	Port Angeles center	992,500
WA	Seattle	1,240,625
WA	Snohomish County	992,500
WA	Tacoma Dome	1,736,875
WA	Thurston County	992,500
WA	Tri-Cities Area	992,500

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
WA	Vancouver Clark County (C-Tran)	992,500
WI	Wisconsin statewide	1,490,832
WI	Appleton, Green Bay, Shawano, Menominee Tribe and Oneida Tribe	2,059,438
WI	LaCrosse, Onalaska, Prairie Du Chien, Rice Lake, Viroqua and Ho Chuck Nation	992,500
WI	Ashland, Chippewa Falls, Eau Claire, Ladysmith, Marshfield, Rhinelander, Rusk County	297,750
WI	Milwaukee	992,500
WI	Waukesha	496,250
WV	Huntington	7,940,000
WV	West Virginia statewide	6,451,250
	Total FY 1999 Unobligated Allocation	*$329,490,836*
FY 1998 Unobligated Allocations:		
AL	Birmingham/Jefferson County	$2,931,588
AL	Birmingham	5,863,178
AL	Huntsville	4,885,981
AL	Mobile	977,196
AL	Mobile	977,196
AL	Mobile	200,448
AL	Mobile	5,374,579
AL	Tuscaloosa	977,196
AZ	Tuscon	977,196
CA	Folsom	1,465,794
CA	I-5 Consortium Cities Joint Powers Authority	3,885,981
CA	Inglewood	488,598
CA	Lake Tahoe	977,196
CA	Modesto	1,710,093
CA	Rialto	1,074,916
CA	Riverside County	977,196
CA	Sacramento	977,196
CA	San Joaquin (Stockton)	1,954,393
CA	Santa Clara	2,442,991
CA	Sonoma County	977,196
CO	Statewide	60,043
CT	Bridgeport	1,954,393
CT	Bridgeport	3,664,486
CT	New Haven	1,172,636
DE	Statewide	1,465,794
FL	Florida Citrus Connection	1,465,794
FL	Lakeland	977,196
FL	Tampa (Hillsborough County)	1,465,794
GA	GA Chatham	3,908,785
GA	MARTA	2,060,830
LA	Monroe	781,757
LA	New Orleans	937,912
LA	St. Tammany Parish	293,159
MN	Metropolitan Council transit Operations	8,794,766
MN	St. Paul	1,465,794

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
MS	Jackson	1,954,393
NC	Statewide	3,340,000
NJ	Statewide	6,863,178
NM	Las Cruces, Santa Fe and Albuquerque	977,196
NM	Statewide	1,707,666
NY	New Rochelle	1,465,794
NY	New York City	7,328,971
NY	NFTA	977,196
NY	Poughkeepsie	1,954,393
NY	Staten Island/Brooklyn	977,196
NY	Suffolk County	2,100,972
NY	Yonkers	1,954,393
OR	Salem and Corvallis	678,164
PA	Fayette and Somerset	125,998
PA	Lawrence County	977,196
PA	New Castle area transit authority	732,897
PA	Schuykill County	195,439
PA	Towanda Borough	1,954,393
PA	Wilkes-Barre	1,465,794
PA	Statewide	244,299
SC	Columbia	1,954,393
SC	Pee Dee Regional Planning Authority	1,143,908
TX	Brazos Transit Authority	409,748
TX	Corpus Christi	1,905,533
TX	El Paso	977,196
TX	Galveston	1,954,393
UT	Utah Transit Authority Olympic	788,553
UT	Utah Transit Authority	824,332
UT	Utah Transit Authority Olympic	22,527
UT	Statewide	692,198
VA	Clarendon canopy project	244,299
VA	Dulles corridor	2,442,991
VA	Richmond	2,442,991
VT	Burlington	1,465,794
VT	Statewide	76,420
WA	Bremerton	412,166
WA	Chelan- Douglas	977,196
WA	Everett	2,442,991
WA	King County	977,196
WA	King County	1,465,794
WA	King County	4,885,981
WI	Milwaukee	977,196
WV	Huntington	6,440,374
	Total FY 1998 Unobligated Allocation	*$143,464,950*
	TOTAL UNOBLIGATED ALLOCATION	$472,955,785 a/

a/ In addition, the FY 2000 Appropriations Conference Report extended the availability for San Joaquin ($2,729,375) and New Rochelle, NY intermodal facility ($1,235,000).

TABLE 10

FEDERAL TRANSIT ADMINISTRATION

FY 2000 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

STATE	PROJECT AND DESCRIPTION	ALLOCATION
AK	Matanuska-Susitna borough, Alaska	300,000
AL	Alliance for children and families, Alabama	$1,000,000
AL	Troy State University, Alabama-Rosa Parks Center	1,000,000
CA	Los Angeles County Metropolitan Transit Authority, California	1,000,000
CA	San Bernardino, California	600,000
CA	San Diego metropolitan transit development board, California	650,000
DC	District of Columbia	1,250,000
FL	Hillsborough area regional transit authority, Florida	500,000
FL	Miami-Dade Transit Authority, Florida	1,100,000
FL	Palm Beach County, Florida	500,000
GA	Atlanta regional commission, Georgia	1,000,000
GA	Central Kenai peninsula public transportation task force	500,000
IA	Iowa public transit association	2,700,000
IL	Chicago-DuPage area, Illinois	100,000
IL	DuPage County, Illinois	120,000
IL	National Welfare to Work Center at the University of Illinois, Illinois	1,000,000
IL	Transportation opportunities training, Chicago, Illinois	1,000,000
IN	Gary, Indiana	1,000,000
IN	Indianapolis, Indiana	1,000,000
IN	Lafayette, Indiana	200,000
KS	Kansas City, Kansas JOBLINKS	850,000
KS	Wichita, Kansas	725,000
KY	Kentucky human services transportation delivery system (including Hardin County, Owensboro, Barren River, central Kentucky community action agency, Audubon area community services organization, Kentucky River Foothills express, Blue Grass Ultra-transit services, Lexington-Fayette county area), Kentucky	2,500,000
KY	Maribe, Kentucky	125,000
LA	State of Louisiana, small urbanized and rural areas	1,000,000
MA	Northern Tier community transportation, Massachusetts	550,000
MD	State of Maryland, Baltimore and Washington metropolitan areas, small urban and rural areas	3,000,000
MN	Minneapolis/St. Paul, Minnesota	1,500,000
MO	Mid-America regional council, Missouri	1,000,000
MO	Southeast Missouri State University	600,000
NJ	State of New Jersey	2,000,000
NM	Albuquerque access to jobs	1,000,000
NV	State of Nevada	1,500,000
NY	Westchester County, New York job access support centers	1,000,000
OH	Ohio-Kentucky-Indiana regional council of governments	515,000
PA	Philadelphia, Pennsylvania reverse commute grants	1,000,000
PA	Pittsburgh, Pennsylvania reverse commute grants	1,000,000
SC	State of South Carolina	2,000,000
TN	State of Tennessee, small urban areas	1,300,000
TX	Dallas, Texas	1,500,000
VA	Loudon County, Virginia	300,000
VA	Lynchburg, Virginia	100,000
VA	Springfield, Virginia	350,000
VT	State of Vermont	1,385,000
WI	State of Wisconsin	4,000,000
WV	State of West Virginia	1,000,000
—	JOBLINKS	1,250,000 a/
	TOTAL ALLOCATION	$49,570,000

a/ To be used for demonstration projects, technical assistance for demonstration projects and technical assistance to small and urban and rural community providers.

TABLE 11

FEDERAL TRANSIT ADMINISTRATION

TEA-21 AUTHORIZATION LEVELS (GUARANTEED FUNDING ONLY)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,298,852,727	$2,548,190,791	$2,772,890,281	$2,997,316,081	$3,220,601,506	$3,445,939,606	$17,283,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	250,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	451,400,000	490,200,000	529,200,000	568,200,000	607,200,000	3,046,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
New Starts (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
Job Access and Reverse Commute Program	0	50,000,000	75,000,000	100,000,000	125,000,000	150,000,000	500,000,000
Metropolitan Planning (Section 5303)	39,500,000	43,841,600	49,632,000	52,113,600	55,422,400	60,385,600	300,895,200
State Planning & Research (Section 5313(b))	8,250,000	9,158,400	10,368,000	10,886,400	11,577,600	12,614,400	62,854,800
National Planning & Research (Section 5314)	32,750,000	27,500,000	29,500,000	29,500,000	31,500,000	31,500,000	182,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	54,000,000	60,000,000	64,000,000	67,000,000	73,000,000	363,738,000
FEDERAL TRANSIT ADMINISTRATION TOTAL:	$4,643,738,000	$5,315,000,000	$5,797,000,000	$6,271,000,000	$6,747,000,000	$7,226,000,000	$35,999,738,000

-- Fiscal Years 1999-2003 funding for the Clean Fuels Program established under TEA-21 equals $100,000,000. $50,000,000 is shown under the Cleans Fuels Program (Section 5308) and $50,000,000 is included under the Bus and Bus Related (Section 5309).

TABLE 11A

FEDERAL TRANSIT ADMINISTRATION

TEA-21 AUTHORIZATION LEVELS (GUARANTEED AND NONGUARANTEED FUNDING)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,298,852,727	$2,698,190,791	$2,922,890,281	$3,147,316,081	$3,370,601,506	$3,595,939,606	$18,033,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	551,400,000	590,200,000	629,200,000	668,200,000	707,200,000	3,546,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	1,002,800,000	1,080,400,000	1,158,400,000	1,236,400,000	1,314,400,000	6,592,400,000
New Starts (Section 5309)	800,000,000	1,302,800,000	1,390,400,000	1,478,400,000	1,566,400,000	1,644,400,000	8,182,400,000
Job Access and Reverse Commute Program	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Metropolitan Planning (Section 5303)	39,500,000	70,312,000	76,929,600	80,238,400	84,374,400	90,164,800	441,519,200
State Planning & Research (Section 5313(b))	8,250,000	14,688,000	16,070,400	16,761,600	17,625,600	18,835,200	92,230,800
National Planning & Research (Section 5314)	32,750,000	58,500,000	60,500,000	62,500,000	64,500,000	65,500,000	344,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	67,000,000	74,000,000	80,000,000	84,000,000	91,000,000	441,738,000
TOTAL FUNDING ALL PROGRAMS:	$4,643,738,000	$6,341,000,000	$6,810,000,000	$7,274,000,000	$7,737,000,000	$8,194,000,000	$40,999,738,000

TABLE 12

FEDERAL TRANSIT ADMINISTRATION

FY 2000 APPORTIONMENT FORMULA FOR FORMULA PROGRAMS

Percent of Formula Funds Available

Section 5310:	2.4%	States - allocated to states based on state's population of elderly and persons with disabilities
Section 5311:	6.37%	Nonurbanized Areas - allocated to states based on state's nonurbanized area population
Section 5307:	91.23%	Urbanized Areas (UZA)

UZA Population and Weighting Factors

50,000-199,000 in population : 9.32% of available Section 5307 funds
(Apportioned to Governors)

- *50% apportioned based on population*
- *50% apportioned based on population x population density*

200,000 and greater in population: 90.68% of available Section 5307 funds
(Apportioned to UZAs)

- 33.29% (Fixed Guideway Tier*)
  - 95.61% (Non-incentive Portion of Tier)
    - — at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
    - 60% - fixed guideway revenue vehicle miles
    - 40% - fixed guideway route miles
  - 4.39% ("Incentive" Portion of Tier)
    - – at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
    - – fixed guideway passenger miles x fixed guideway passenger miles/operating cost
- 66.71% ("Bus" Tier)
  - 90.8% (Non-incentive Portion of Tier)
    - 73.39% for UZAs with population 1,000,000 or greater
      - *50% - bus revenue vehicle miles*
      - *25% - population*
      - *25% - population x population density*
    - 26.61% for UZAs pop. < 1,000,000
      - *50% - bus revenue vehicle miles*
      - *25% - population*
      - *25% - population x density*
  - 9.2% ("Incentive" Portion of Tier)
    - – bus passenger miles x bus passenger miles/operating cost

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*Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

TABLE 13

FEDERAL TRANSIT ADMINISTRATION

FY 1998 - 2003 SECTION 5309 FIXED GUIDEWAY MODERNIZATION PROGRAM APPORTIONMENT FORMULA

Tier 1 First $497,700,000 to the following areas:

Baltimore	$	8,372,000
Boston	$	38,948,000
Chicago/N.W. Indiana	$	78,169,000
Cleveland	$	9,509,500
New Orleans	$	1,730,588
New York	$	176,034,461
N. E. New Jersey	$	50,604,653
Philadelphia/So. New Jersey	$	58,924,764
Pittsburgh	$	13,662,463
San Francisco	$	33,989,571
SW Connecticut	$	27,755,000

Tier 2 Next $70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1 and Tier (2(B): 50 percent to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 Next $5,700,000 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79%; and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 Next $186,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

Tier 5 Next $70,000,000 as follows: 65% to the 11 areas identified in Tier 1, and 35% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than than 7 years old in the year of the apportionment will be deleted from the database.

Tier 6 Next $50,000,000 as follows: 60% to the 11 areas identified in Tier 1, and 40% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 7 Remaining amounts as follows: 50% to the 11 areas identified in Tier 1, and 50% to all other areas using the most current Urbanized Area Formula Program fixed guideway formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

TABLE 14

FEDERAL TRANSIT ADMINISTRATION

FISCAL YEAR 2000 FORMULA GRANT APPORTIONMENTS - UNIT VALUES OF DATA

		APPORTIONMENT UNIT VALUE
Section 5307 Urbanized Area Formula Program - Bus Tier		
Urbanized Areas Over 1,000,000:		
Population		$2.92438989
Population x Density		$0.00075006
Bus Revenue Vehicle Mile		$0.38917578
Urbanized Areas Under 1,000,000:		
Population		$2.64283878
Population x Density		$0.00116390
Bus Revenue Vehicle Mile		$0.46633761
Bus Incentive (PM denotes Passenger Mile):		
Bus PM x Bus PM = Operating Cost		$0.00471658
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier		
Fixed Guideway Revenue Vehicle Mile		$0.52828404
Fixed Guideway Route Mile		$29,791
Commuter Rail Floor	$5,982,289	
Fixed Guideway Incentive:		
Fixed Guideway PM x Fixed Guideway PM = Operating Cost		$0.00044127
Commuter Rail Incentive Floor	$274,681	
Section 5307 Urbanized Area Formula Program - Areas Under 200,000		
Population		$4.77159150
Population x Density		$0.00238438
Section 5311 Nonurbanized Area Formula Program		
Areas Under 50,000		
Population		$2.09186651

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
Legislatively Specified Areas:			*All Areas*			
Revenue Vehicle Mile	$0.03043443	—	$1.13683131	$0.03879580	$0.02557965	$0.03966849
Route Mile	$2,122.43	—	$7,832.52	$2,824.90	$1,862.57	$2,888.46
Other Ubanized Areas:						
Revenue Vehicle Mile	$0.16377360	$0.00579309		$0.13663353	$0.11153758	$0.25945592
Route Mile	$4,772.78	$168.83		$4,509.48	$[illegible],681.21	$8,563.13

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Thursday
October 28, 1999

Part IV

Department of Transportation

Federal Transit Administration

Fiscal Year 2000 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2000 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice contains FTA's comprehensive compilation of the Federal Fiscal Year 2000 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2000, in accordance with 49 U.S.C. 5323(n).

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, see the FTA Web Site at http://www.fta.dot.gov or contact the Office of Public Affairs, Federal Transit Administration (202) 366–4019.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts
Telephone # 617–494–2055

Region 2: New York

States served: New York, New Jersey, and Virgin Islands
Telephone # 212–668–2170

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia
Telephone # 215–656–7100

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico
Telephone # 404–562–3500

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio
Telephone # 312–353–2789

Region 6: Dallas/Ft.Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico
Telephone # 817–978–0550

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska
Telephone # 816–523–0204

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota,
Telephone # 303–844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands
Telephone # 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska
Telephone # 206–220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the Applicant must provide to FTA all certifications and assurances pertaining to itself or its project as required by Federal laws and regulations. The requisite certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2000 covers all projects for which the Applicant seeks funding during that fiscal year. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect for the life of the grant or cooperative agreement to closeout, or the life of the project or project property when a useful life or standard industry life is in effect. If in a later year, however, the Applicant provides certifications and assurances that differ from the certifications and assurances previously made, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, except as FTA otherwise permits.

Background

Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required into one document. FTA intends to continue publishing this document annually in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Federal Fiscal Year 2000 Changes

(1) Recipients of funds apportioned under Section 5336 that serve a population of 200,000 or more are required by 49 U.S.C. 5307(k) to make one (1) percent of their funds available for transit enhancement activities. Those recipients are also required to submit an annual report listing the projects carried out during the preceding fiscal year with those funds. Because recipients provide that annual report as part of their quarterly report for the fourth quarter of Federal Fiscal Year 1999, we no longer request the Applicant to indicate specifically whether that annual report has been submitted. The preface to Category XII includes clarification of the reporting requirement for those recipients receiving Transit Enhancement funds. (2) Additional changes include updated reference sources, such as the reference to FTA's disadvantaged business enterprise regulations at 49 CFR part 26, and other clarifications.

Text of Federal Fiscal Year 2000 Certifications and Assurances

A detailed compilation of the provisions of the Certifications and Assurances and the Signature Page is set forth in Appendix A of this Notice, and also appears in the Certification & Assurances Tab Page of the TEAM system. It is important that each Applicant be familiar with all fifteen certification and assurance categories contained in this Notice as they may be a prerequisite for receiving FTA financial assistance. Provisions of this Notice supersede conflicting statements in any circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2000; do not rely on the statements within certifications and assurances appearing in circulars.

Significance of Certifications and Assurances

Selecting and submitting certifications and assurances to FTA, either through the TEAM system or submission of the Signature Page of Appendix A, signifies the Applicant's intent to comply with the requirements of those certifications and assurances to the extent they apply to a program for which the Applicant submits an application for assistance in Federal Fiscal Year 2000.

Requirement for Attorney's Signature

FTA requires a current (Federal Fiscal Year 2000) attorney's affirmation of the Applicant's legal authority to certify compliance with the funding obligations in this document. Irrespective of whether the Applicant chooses to make a single selection for all fifteen categories or select individual options from the fifteen categories, the attorney signature from a previous year on is not acceptable.

Deadline for Submission

All Applicants for FTA capital investment program or formula program assistance, and current grantees with an active project financed with FTA capital investment program or formula program assistance, will be required to provide Federal Fiscal Year 2000 Certifications and Assurances within 90 days from the date of this publication or with its first grant application in Fiscal Year 2000, whichever is first. Other Applicants are encouraged to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission

FTA has expanded the use of the electronic programs for Applicants, first introduced in 1995. Applicants should submit their applications as well as certifications and assurances electronically through FTA's Transportation Electronic Award and Management (TEAM) system. If an Applicant is unable to submit its certifications and assurances through the TEAM system, the Applicant should use the Signature Page form in Appendix A of this Notice.

Procedures for Electronic Submission

The Certification & Assurances Tab Page of the TEAM system contains fields for selecting the certifications and assurances to be submitted. Within that tab page are fields for the Applicant's authorized representative and its attorney to enter their personal identification numbers (PINs), and thus "sign" the certifications and assurances for electronic transmission to FTA. In certain circumstances, the Applicant may enter its PIN number in lieu of an electronic signature provided by its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice or the TEAM Helpdesk for more information.

Procedures for Paper Submission

The following procedures apply to an Applicant that is unable to submit its certifications electronically. The Applicant must mark the certifications and assurances it is making on the Signature Page form in Appendix A of this Notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space at the top of the Signature Selection Page in Appendix A. In certain circumstances, the Applicant may certify in lieu of the signature of its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice for more information.

References

The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Issued on October 21, 1999.

Gordon J. Linton,

Administrator.

Appendix A: Federal Fiscal Year 2000 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for the various Federal Transit Administration (FTA) programs. FTA requests each Applicant to provide as many of the following certifications and assurances as necessary to cover all programs for which the Applicant intends to seek FTA assistance in Federal Fiscal Year 2000. A state providing certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. The fifteen categories of certifications and assurances are listed by Roman numerals I through XV on the other side of the Signature Page of this document and on the certifications and assurances tab page of FTA's Transportation Electronic Award and Management (TEAM) system. Categories II through XV will apply to some, but not all, applicants. The designation of the categories corresponds to the circumstances mandating submission of specific certifications, assurances, or agreements. As previously stated, FTA encourages the Applicant to submit its certifications and assurances through the TEAM system.

I. Certifications and Assurances Required of Each Applicant

Each Applicant for Federal assistance awarded by FTA *must* provide all certifications and assurances in this category I. Consequently, FTA may not award any Federal assistance until the Applicant provides assurance of compliance by selecting category "I" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant,

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant or cooperative agreement. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) of this certification, it shall indicate so in its applications, or in the transmittal letter or message or accompanying its annual certifications and assurances, and provide a written explanation to FTA.

D. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 CFR part 29, Subpart F, as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about:

(a) The dangers of drug abuse in the workplace,

(b) Its policy of maintaining a drug-free workplace,

(c) Any available drug counseling, rehabilitation, and employee assistance programs, and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1) of this certification;

(4) Notifying each of its employees in the statement required by paragraph (1) of this certification that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will be required to:

(a) Abide by the terms of the statement, and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients", and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit

the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Disadvantaged Business Enterprise Assurance

In accordance with 49 CFR 26.13(a), the Recipient assures that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 CFR part 26. The Recipient assures that it shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from the U.S. DOT. The Recipient's DBE program, as required by 49 CFR part 26 and approved by the U.S. DOT, is incorporated by reference and made part of the grant agreement or cooperative agreement. Implementation of this DBE program is a legal obligation, and failure to carry out its terms shall be treated as a violation of the grant agreement or cooperative agreement. Upon notification by the Government to the Recipient of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*

H. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

I. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

J. Certifications Prescribed by the Office of Management and Budget (SF–424B and SF–424D)

The Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application.

(2) Will give FTA, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

(3) Will establish safeguard to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval.

(5) Will comply with all statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, 1683, and 1685 through 1687, which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibit discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) The requirements of any other nondiscrimination statute(s) that may apply to the project.

(6) Will comply, or has complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*,

which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal of federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24 including, but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will participate in the Applicant's eligible costs of providing payments for those expenses as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

(7) To the extent applicable, will comply with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but pursuant to 23 U.S.C. 142(g), does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply.

(8) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements.

(9) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

(10) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and

(i) Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of national, state, or local significance used in a transit project as required by 49 U.S.C. 303.

(11) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.* relating to protecting components of the national wild and scenic rivers systems.

(12) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a-1 *et seq.*

(13) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

(14) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency.

(15) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

(16) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

(17) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the State.

(18) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance.

(19) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.* pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by FTA assistance.

(20) Will have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations and Department of Transportation provisions of OMB A–133 Compliance Supplement, April, 1999."

(21) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

II. Lobbying Certification for an Application Exceeding $100,000

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. Consequently, FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting category "II" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

III. Certification Pertaining to the Effects of the Project on Private Mass Transportation Companies

An Applicant that is a state or local government that seeks Federal assistance authorized by 49 U.S.C. chapter 53 to acquire property of a private mass transportation company or an interest in property of a private mass transportation company or operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification. Consequently, FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting category "III" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires property or an interest in property of a private mass transportation company or operates mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible;

C. Paid just compensation under State or local law to a private mass transportation company for its franchises or property acquired and;

D. Acknowledged that the assistance falls within the labor standards compliance requirements of 49 U.S.C. 5333(a) and 5333(b).

IV. Public Hearing Certification for a Capital Project That Will Substantially Affect a Community or Its Transit Service

An Applicant seeking Federal assistance under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or the community's transit service must provide the following certification. Consequently, FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting category "IV" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined that the project is consistent with official plans for developing the urban area.

V. Certification of Pre-Award and Post-Delivery Reviews Required for Acquisition of Rolling Stock

An Applicant seeking FTA assistance to acquire rolling stock must provide the following certification. Consequently, FTA may not provide assistance to acquire rolling stock until the Applicant provides this certification by selecting category "V" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

VI. Bus Testing Certification Required for New Bus Acquisitions

An Applicant seeking FTA assistance to acquire new buses must provide the following certification. Consequently, FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting category "VI" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

VII. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23, U.S.C. (except 49 U.S.C. 5310) must enter into the following charter service agreement. Consequently, FTA may not provide assistance for those projects until the Applicant enters into this agreement by selecting category "VII" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. As required by 49 U.S.C. 5323(d) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Applicant agrees that it and its recipients will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies, and

(2) Comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VIII. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23, U.S.C. must agree as follows. Consequently, FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting category "VIII" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. As required by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and implementing regulations, and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

IX. Certification Required for the Direct Award of FTA Assistance to an Applicant for Its Demand Responsive Service

An Applicant seeking direct Federal assistance to support demand responsive service must provide the following certification. Consequently, FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting category "IX" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

X. Substance Abuse Certifications

If the Applicant is required by Federal regulations to provide the following substance abuse certifications, FTA may not provide Federal assistance to that Applicant until it provides these certifications by selecting category "X" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. Alcohol Testing Certification

As required by FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," at 49 CFR 654.83, the Applicant certifies that it has established and implemented an alcohol misuse prevention program in compliance with 49 CFR part 654; and if the Applicant has employees regulated by the U.S. Federal Railroad Administration (U.S. FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program in compliance with U.S. FRA regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

B. Anti-Drug Program Certification

As required by FTA regulations "Prevention of Prohibited Drug Use in Transit Operations," at 49 CFR 653.83, the Applicant certifies that it has established and implemented an anti-drug program and conducted employee training in compliance with 49 CFR part 653; and if the Applicant has employees regulated by the U.S. Federal Railroad Administration (U.S. FRA), the Applicant also certifies that it has for those employees an anti-drug program in compliance with U.S. FRA regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

XI. Certification Required for Interest or Other Financing Costs

The Applicant must provide the following certification in connection with requests for reimbursements of interest or other financing costs of capital projects. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting category "XI" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless its records demonstrate it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA might require.

XII. Certifications and Assurances for the Urbanized Area Formula Program and the Job Access and Reverse Commute Program

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized for 49 U.S.C. 5307 and each Applicant for Job Access and Reverse Commute Program assistance authorized for section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, must provide the following certifications in connection with its application. Consequently, FTA may not award Urbanized Area Formula Program assistance or Job Access and Reverse Commute Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting category "XII" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

In addition, each Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1) must include within its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects carried out during the preceding Federal fiscal year with those Transit Enhancement funds. That list constitutes the report of transit projects carried out during the preceding fiscal year to be submitted as part of the Applicant's annual certifications and assurances, as required by 49 U.S.C. 5307(k)(3), and is thus incorporated by reference and made part of that Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and that report contains the requisite list.

A. Certifications Required by Statute

(1) As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It has or will have satisfactory continuing control over the use of the equipment and facilities;

(c) It will adequately maintain the equipment and facilities;

(d) It will ensure that elderly or handicapped persons, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307 or for section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(e) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;

(f) It has complied or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it has made available or before submitting its application it will make available: (1) To the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposes to undertake with those funds; (2) in consultation with interested parties including private transportation providers, develop a proposed program of projects for activities to be financed; (3) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (5) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (7) make the final program of projects available to the public;

(g) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(h) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5310 (a) through (d) (programs for the elderly and persons with disabilities);

(i) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(j) As required by required by 49 U.S.C. 5307(d)(1)(J), unless it has determined that it is not necessary to expend one (1) percent of the amount of Federal assistance it receives for this fiscal year apportioned in accordance with 49 U.S.C. 5336 for transit security projects, it will expend at least one (1) percent of the amount of that assistance for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects implemented in the preceding Federal fiscal year using Transit Enhancement funds, and made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, "Capital Leases," at 49 CFR 639.15(b)(1) and 639.21, to the extent the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to acquire any capital asset by lease, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

XIII. Certifications and Assurances for the Elderly and Persons With Disabilities Program

An Applicant that intends to administer, on behalf of the state, the Elderly and Persons with Disabilities Program must provide the following certifications and assurances. Consequently, FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting category "XIII" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and any public body that is a prospective subrecipient of capital assistance has provided an opportunity for a public hearing.

G. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

H. The subrecipient is in compliance with all applicable civil rights requirements, and has provided the Nondiscrimination Assurance. (Category I.F, "Certifications and Assurances Required of Each Applicant").

I. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs and has provided the Disadvantaged Business Enterprise Assurance (Category I.G, "Certifications and Assurances Required of Each Applicant").

J. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, (Category I.H, "Certifications and Assurances Required of Each Applicant"). If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 CFR 37.77(c).

K. The subrecipient has certified to the state that it will comply with the applicable provisions of 49 CFR 605 pertaining to school transportation operations (Category VIII, "School Transportation Agreement").

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I through XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

XIV. Certifications and Assurances for the Nonurbanized Area Formula Program

An Applicant that intends to administer, on behalf of the state, the Nonurbanized Area Formula Program must provide the following certifications and assurances. Consequently, FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting category "XIV" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.

D. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program.

E. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

F. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

G. The subrecipient is in compliance with all applicable civil rights requirements, and has provided the Nondiscrimination Assurance. (Category I.F, "Certifications and Assurances Required of Each Applicant").

H. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs and has provided the Disadvantaged Business Enterprise Assurance (Category I.G, "Certifications and Assurances Required of Each Applicant").

I. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, (Category I.H, "Certifications and Assurances Required of Each Applicant"). If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 CFR 37.77(c).

J. The subrecipient has complied with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) Signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.

K. The subrecipient has certified to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations (Category VII, "Charter Service Agreement," and Category VIII, "School Transportation Agreement").

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new bus models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I through XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

P. As required by 49 U.S.C. 5311(f), it will expend not less than fifteen (15) percent of the Federal assistance authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

XV. Certifications and Assurances for the State Infrastructure Bank Program

A state Applicant for a grant of Federal assistance for deposit in the State Infrastructure Bank (SIB) must provide the following certifications and assurances. Consequently, FTA may not award Federal assistance to capitalize a SIB until the state Applicant provides these certifications and assurances by selecting category "XV" on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

Based on its own knowledge and, as necessary, on information submitted by the participating parties, the state serving as the Applicant for Federal assistance for the Transit Account of its state SIB program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions will be fulfilled pertaining to any project financed with Federal assistance derived from the Transit Account of the SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the Transit Account of the SIB within the state (subrecipient) that each Project financed with Federal assistance derived from the Transit Account will be administered in accordance with the:

(1) Applicable provisions of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto,

(2) Provisions of FTA's NHS Guidelines, and any amendments thereto,

(3) Terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations,

(4) Provisions of FHWA and FTA cooperative agreement with the state to establish the state's SIB program, and

(5) Provisions of the FTA grant agreement with the state that obligating Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, and FTA SIB Guidelines, the provisions of the cooperative agreement establishing the SIB program within the state, or the text within the FTA grant agreement.

B. The state agrees to comply with and assures the compliance of the SIB and each subrecipient of all applicable requirements for the SIB program, as those requirements may be amended from time to time. Pursuant to subsection 1511(h)(2) of TEA–21, applicants for assistance authorized by the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, agree that previous cooperative agreements entered into with States under section 350 of the National Highway System Designation Act of 1995, as amended, will be revised to comply with new requirements.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 1511 of TEA–21, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a grant agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the Transit Account of its SIB to amounts that do not exceed the limitations specified in the underlying grant agreement or the approved project budget for that grant agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the Transit Account of the SIB, including the ability to comply with Year 2000 (Y2K) management of funds and investments, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that the SIB will provide Federal assistance derived from the Transit Account only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project.

G. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

H. The state assures that the SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

I. The state assures that before the SIB enters into an agreement with a subrecipient under which Federal assistance within the Transit Account of the SIB will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and it has obtained from each subrecipient of capital assistance that is also a public body a certification that an opportunity for a public hearing has been provided.

J. The state assures that the SIB has, to the maximum extent feasible, coordinated with other transportation providers and users, and other interested parties within the area.

K. The state assures that the SIB is in compliance with all applicable civil rights requirements (Category I.F, "Certifications and Assurances Required of Each Applicant").

L. The state assures that the SIB will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs and has provided the Disadvantaged Business Enterprise Assurance (Category I.G, "Certifications and Assurances Required of Each Applicant").

M. To the extent applicable, the state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. The state assures that the SIB will provide to the state an Assurance of Nondiscrimination on the Basis of Disability from each subrecipient (Category I.H, "Certifications and Assurances Required of Each Applicant"). If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities (Category IX, "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service,"). This "Certification of Equivalent Service" must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions or restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

N. The state assures that before the SIB provides Federal assistance from the Transit Account, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project.

O. The state assures that each subrecipient has certified or will certify to the state that it will comply with applicable provisions of 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations (Category VII, "Charter Service Agreement," and Category VIII, "School Transportation Agreement").

P. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in paragraph Q of this Category XV. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that the SIB will not provide financial assistance from the Transit Account for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that the SIB will provide no financial assistance from its Transit Account for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

Q. The state assures that the subrecipient has submitted (or will submit), when applicable, all certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000; assurances FTA requires for projects involving real property; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances of Categories I through XI of this document, but modified as necessary to accommodate the SIB and the subrecipient's circumstances.

R. The state agrees and assures that the SIB and each subrecipient will agree to permit FTA, U.S. DOT, and the Comptroller General to conduct audits to verify compliance with the foregoing requirements and stipulations.

Selection and Signature Pages Follow

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Appendix A

FEDERAL FY 2000 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE

Name of Applicant: ______________________________________

The Applicant agrees to comply with applicable requirements of Categories I - XV. ____
(The Applicant may make this selection in lieu of individual selections below.)
OR
The Applicant agrees to comply with the applicable requirements of the following categories it has selected:

I. Certifications and Assurances Required of Each Applicant. ____

II. Lobbying Certification ____

III. Certification Pertaining to Effects on Private Mass Transportation Companies ____

IV. Public Hearing Certification for a Project with Substantial Impacts ____

V. Certification for the Purchase of Rolling Stock ____

VI. Bus Testing Certification. ____

VII. Charter Service Agreement. ____

VIII. School Transportation Agreement. ____

IX. Certification for Demand Responsive Service ____

X. Substance Abuse Certifications ____

XI. Certification Required for Interest and Other Financing Costs ____

XII. Certifications and Assurances for the Urbanized Area Formula Program, and the Job Access and Reverse Commute Program ____

XIII. Certifications and Assurances for the Elderly and Persons with Disabilities Program ____

XIV. Certifications and Assurances for the Nonurbanized Area Formula Program ____

XV. Certifications and Assurances for the State Infrastructure Bank (SIB) Program ____

(Both sides of this Signature Page must be appropriately completed and signed where indicated.)

Appendix A

FEDERAL FISCAL YEAR 2000 FTA CERTIFICATIONS AND ASSURANCES

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

Name of Applicant: ____

Name and Relationship of Authorized Representative: ________________________________

BY SIGNING BELOW I, ___________________ (name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2000.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2000.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature____ Date: _____________
Name____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _________________________________ (Name of Applicant)

As the undersigned legal counsel for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the Applicant promptly, which may so inform FTA.

Signature____ Date: _____________
Name____
Applicant's Attorney

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Attorney's affirmation of the Applicant's legal capacity. The Applicant may enter its PIN number in lieu of the electronic signature of its Attorney, provided the Applicant has on file this Affirmation of its Attorney in writing dated this Federal fiscal year.

[FR Doc. 99-27925 Filed 10-27-99; 8:45 am]
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federal register

Thursday
October 28, 1999

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 28 and 52

Federal Acquisition Regulation; Increased Payment Protection; Withdrawal of Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28 and 52

[FAR Case 98–014]

RIN 9000–AI21

Federal Acquisition Regulation; Increased Payment Protection

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) agreed to withdraw FAR Case 98–014, Increased Payment Protection, in light of the recent enactment of the Construction Industry Payment Protection Act of 1999, Public Law 106–49. The proposed rule was published in the **Federal Register** at 63 FR 71711, December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAR case 98–014, withdrawal.

SUPPLEMENTARY INFORMATION:

A. Background

The rule which was published in the **Federal Register** at 63 FR 71711, December 29, 1998, proposed to increase the required penal amount of payment bonds on construction contracts over $6,250,000 and to allow the contracting officer to increase the amount of any payment bond or alternative payment protection to an amount not to exceed the contract price, if the contracting officer decides that a greater amount is appropriate.

Due to the recent enactment of the Construction Industry Payment Protection Act of 1999, Public Law 106–49, this rule is being withdrawn and proposed changes will be overtaken by the revisions and regulatory changes that will result from the legislation.

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: October 21, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–27993 Filed 10–27–99; 8:45 am]

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Thursday
October 28, 1999

Part VI

Department of Education

34 CFR Part 668 et al.

Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Perkins Loan Program; Federal Work-Study Programs; Federal Supplemental Educational Opportunity Grant Program; and Federal Pell Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 673, 674, 675, 676, and 690

RIN 1845–AA01

Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Perkins Loan Program; Federal Work-Study Programs; Federal Supplemental Educational Opportunity Grant Program; and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: These final regulations amend the regulations governing the Student Assistance General Provisions, the Campus-Based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), and the Federal Pell Grant Program. These regulations incorporate changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments).

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the Act, that institutions may, at their discretion, choose to implement the provisions of §§ 673.5(c), 675.26(a), and 675.26(d)(2)(iii) on or after October 28, 1999. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Gause, U.S. Department of Education, 400 Maryland Avenue, SW, Regional Office Building 3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

SUPPLEMENTARY INFORMATION: These regulations implement certain provisions of the 1998 Amendments (Pub. L. 105–244), enacted October 7, 1998. On August 3, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 42206). In the NPRM, we proposed to amend the Student Assistance General Provisions regulations (part 668) which apply to all of the Title IV, HEA programs, the General Provisions regulations for the Campus-Based programs (part 673), and the regulations for the Federal Perkins Loan (part 674), FWS (part 675), FSEOG (part 676), and the Federal Pell Grant (part 690) programs.

The NPRM included a discussion of the proposed changes that will not be repeated here. The following list summarizes those changes and identifies the pages of the preamble to the NPRM on which the discussion can be found:

Student Assistance General Provisions

Section 668.8 Eligible Program and Section 668.32 Student Eligibility—General

The conforming changes to the Student Assistance General Provisions regulations resulting from allowing certain students enrolled in a postbaccalaureate teacher certificate or licensing program to receive a Federal Pell Grant, as proposed in §§ 668.8(h) and 668.32(c) (page 42207 of the NPRM).

Section 668.161 Scope and Purpose

The conforming changes to the Student Assistance General Provisions regulations resulting from changing the procedures that institutions must follow for paying students under the FWS Program, as proposed under § 668.161(a) (page 42207 of the NPRM).

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

Section 673.5 Overaward

The revision of the definition of the term "resources" for awarding campus-based aid resulting from the change in the definition of "estimated financial assistance" in determining a student's eligibility for subsidized loans, as proposed in § 673.5(c) (page 42207 of the NPRM).

Sections 674.10, 675.10, and 676.10 Selection of Students

The requirement that an institution offer less-than-full-time or independent students a reasonable portion of the FWS allocation, FSEOG allocation, or dollar amount of Federal Perkins Loans made, instead of offering five percent of those amounts, as proposed in §§ 674.10(b), 675.10(c), and 676.10(b) (pages 42207–42208 of the NPRM).

Federal Work-Study Programs

Section 675.2 Definitions

The revision of the definition of "community services," as proposed in § 675.2(b) (page 42208 of the NPRM).

Section 675.8 Program Participation Agreement

The elimination of the requirement that an institution employing FWS students make equivalent non-FWS jobs reasonably available to all students at the institution who want to work, as proposed in § 675.8 (page 42208 of the NPRM).

Section 675.16 Payments Directly to the Student's Account

The procedures under which an institution would be allowed, upon request of a student, to make payments of FWS funds directly to the student's account at a financial institution or to credit the student's account at the educational institution, as proposed in § 675.16 (pages 42208–42209 of the NPRM).

Section 675.18 Use of Funds

The requirement that increases the minimum percentage of an institution's FWS allocation that must be spent on community service jobs from five to seven percent, as proposed in § 675.18(g) (page 42209 of the NPRM).

The requirement that an institution, in meeting the community service requirement, must ensure that one or more of its FWS students is employed (1) in a community service reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a community service family literacy project, as proposed in § 675.18(g) (page 42209 of the NPRM).

The provision of a waiver of the above requirement, as provided in § 675.18(g) (pages 42209–42210 of the NPRM).

The requirement that if an institution employs FWS students as reading tutors in elementary schools, the institution, to the extent practicable, must give priority to employing students in schools that are participating in a reading reform project, as proposed in § 675.18(g) (page 42210 of the NPRM).

The clarification that an institution may pay FWS students for a reasonable amount of time spent for training for any FWS employment, as proposed in § 675.18(h) (page 42210 of the NPRM).

The provision that an institution may pay FWS students for a reasonable amount of time spent for travel that is directly related to employment in community service activities (including tutoring in reading and family literacy activities), as proposed in § 675.18(h) (page 42210 of the NPRM).

Section 675.20 Eligible Employers and General Conditions and Limitation on Employment

The clarification that FWS employment may include internships, practicums, or assistantships (*e.g.*, research or teaching assistantships), as proposed in § 675.20(d) (pages 42210–42211 of the NPRM).

Section 675.23 Employment Provided by a Private For-Profit Organization

The provision that if a student is employed by a private for-profit organization the work that the student performs must be academically relevant to the student's educational program only to the maximum extent possible, as proposed in § 675.23(b) (page 42211 of the NPRM).

Section 675.26 FWS Federal Share Limitations

The provision that the Federal share of an FWS student's compensation may exceed 75 percent, but may not exceed 90 percent, if the student is employed at a nonprofit or a public organization that cannot afford to pay the regular non-Federal share, as proposed in § 675.26(a) (page 42211 of the NPRM).

The authorization of a Federal share of 100 percent of the FWS funds awarded to students by an institution for an award year, if the student is performing literacy activities when employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school, as proposed in § 675.26(d) (page 42211 of the NPRM).

Work-Colleges Program (Subpart C)

Section 675.45 Allowable Costs, Federal Share, and Institutional Share

The provision of more flexibility to Work-Colleges by allowing them to use available funds to coordinate and carry out joint projects to promote work service learning, and to conduct a comprehensive longitudinal study of academic progress and academic and career outcomes, as proposed in § 675.45(a) (page 42211 of the NPRM).

Federal Supplemental Educational Opportunity Grant Program

Section 676.18 Use of funds.

The inclusion of a new authority for an institution to carry up to ten percent of its current award year FSEOG allocation forward to spend in the next award year and to carry back up to ten percent of its current award year allocation to spend in the prior award year, as proposed in § 676.18 (pages 42211–42212 of the NPRM).

The inclusion of a new authority for an institution to carry back any portion of its current award year FSEOG funds to make awards to students for payment periods that begin on or after May 1 of the prior award year but end prior to the start of the current award year, as proposed in § 676.18(f) (page 42212 of the NPRM).

Federal Pell Grant Program

Section 690.6 Duration of Student Eligibility—Undergraduate Course of Study and Eligible Postbaccalaureate Program

The provision that extends Federal Pell Grant eligibility to certain students enrolled in a postbaccalaureate teacher certificate or licensing program even if they have earned a bachelor's degree, as proposed in § 690.6 (pages 42212–42213 of the NPRM).

Section 690.7 Institutional Participation

The provision that an institution is ineligible to participate in the Federal Pell Grant Program upon losing its eligibility to participate in the FFEL or Direct Loan programs because of its default rate, as proposed in § 690.7(c) (page 42213 of the NPRM).

Substantive Changes to the NPRM

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Implementation Date of These Regulations

Section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)) requires that regulations affecting programs under Title IV of the Act be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

§ 673.5(c)—Upon publication, these regulations may be implemented by institutions at their discretion. This means that when packaging campus-based programs, institutions may exclude as a resource any portion of a subsidized Stafford Loan under the FFEL Program or Direct Subsidized Loan under the Direct Loan Program that is equal to or less than the amount of the student's Montgomery GI Bill—active duty veterans education benefits and AmeriCorps education awards or post-service benefits paid for the cost of attendance.

§ 675.26(a)—Upon publication, these regulations may be implemented by institutions at their discretion. This means that institutions may pay a Federal share of up to 90 percent for an FWS student employed at a nonprofit or a public organization that can not afford to pay the regular non-Federal share under the requirements specified by the Secretary.

§ 675.26(d)(2)(iii)—Upon publication, these regulations may be implemented by institutions at their discretion. This means that institutions may pay a Federal share of up to 100 percent for an FWS student performing family literacy activities when employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school. The waiver of the institutional share requirement will no longer be limited to tutoring in a family literacy program.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 3, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of Committee III dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, and several comments were received. An analysis of the comments follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

General

Comments: A number of commenters representing institutions of higher education and organizations submitted joint and individual comments that were supportive of our efforts to provide consistency among the Title IV, HEA programs and to allow institutions more flexibility to assist students. Several commenters stated that there are many positive aspects to these proposed regulations.

Changes: None.

Student Assistance General Provisions and the Federal Pell Grant Program

Sections 668.8 Eligible Program, 668.32 Student Eligibility—General, and 690.6 Duration of Student Eligibility—Undergraduate Course of Study and Eligible Postbaccalaureate Program

Comments: One commenter requested clarification on whether a student enrolled in the type of program offered at the commenter's school would qualify for a Federal Pell Grant. The commenter's institution does not award a baccalaureate degree in education. Students must choose another field of study, but may have a concentration in education. The baccalaureate degree the institution awards is for that other field of study, not for education.

The commenter stated that it is also possible for students to enter a teacher certification program after they receive their baccalaureate degrees and before they begin any graduate study.

Discussion: As described by the commenter, the student enrolled in the institution's baccalaureate degree program would be ineligible to receive a Federal Pell Grant under the provisions in § 690.6, but may be eligible to receive a Federal Pell Grant as an undergraduate student. However, a student enrolled in the institution's teacher certification program would be ineligible for a Federal Pell Grant award for the reasons discussed below.

The 1998 Amendments created a very limited exception to the requirement that a Federal Pell Grant recipient be an undergraduate student. Thus, to qualify for a Federal Pell Grant, a student who has a bachelor's degree must first be enrolled in an institution of higher education that does not offer a baccalaureate degree in education. Second, the student must be enrolled in a postbaccalaureate program that (a) consists of the courses required by a State to receive a professional certification or licensing credential necessary for employment as a teacher in an elementary or secondary school in that State, and (b) does not lead to a graduate degree. Third, the student must be pursuing an initial teacher certification or licensing credential within a State. Fourth, the student must be enrolled as at least a half-time student.

Therefore, the student enrolled in the commenter's baccalaureate program does not come within the requirements contained in § 690.6 because the program in which he or she is enrolled is not a postbaccalaureate program. The student enrolled in the commenter's teacher certificate program does not meet the requirements of § 690.6, even if the courses included in the certificate program are required by the State, because the certificate program does not appear to be a postbaccalaureate program. An undergraduate program does not become a postbaccalaureate program merely because it admits students who have baccalaureate degrees.

Changes: None.

Section 668.161 Scope and Purpose

Comments: One organization stated that the proposed amendments to § 668.161 to indicate that an institution must follow § 675.16 for paying a student under the FWS Program instead of §§ 668.164 and 668.165 make the disbursement procedures under § 668.164 inapplicable to the FWS Program. The commenter requested clarification on whether the definition of disbursement under § 668.164(a)(1) still applies to the FWS Program.

Discussion: We agree with the commenter that the proposed language in § 668.161 does not make clear that the definition of disbursement in § 668.164 is still applicable to the FWS Program. This definition continues to apply to all Title IV, student financial aid programs.

Changes: We have revised the regulations to clarify that the definition of disbursement in § 668.164(a) will continue to apply to the FWS Program, Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs.

Section 673.5 Overaward

Comments: Several commenters, including two organizations, objected to the proposal that would change the definition of "resources" for the campus-based programs.

Discussion: The proposed regulations would modify the overaward provisions in § 673.5 of the regulations for the campus-based programs. They would apply in cases where students receive both a subsidized loan and veterans education benefits under Title 38, Chapter 30 (Montgomery GI Bill—active duty) and/or national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (AmeriCorps).

The statute requires that these benefits must be excluded as estimated financial assistance in determining a student's eligibility for a subsidized Stafford Loan or Direct Subsidized Loan. However, the statute requires that these same benefits must be considered as a resource for the campus-based programs, as well as estimated financial assistance for unsubsidized loans. The proposed regulations would allow an institution, in packaging campus-based aid, to exclude as a resource any portion of a subsidized Stafford Loan or Direct Subsidized Loan that is equal to or less than the amount of the student's Montgomery GI Bill—active duty veterans education benefits and/or AmeriCorps education awards or post-service benefits paid for the cost of attendance.

Changes: None.

Comments: Some commenters stated that the treatment of the aforementioned benefits in two different ways in determining a student's eligibility is confusing and an administrative burden for institutions. They stated that it is extremely difficult for institutions to package a student when the student has both subsidized loans and campus-based aid. One commenter stated that it would be difficult to explain to students why in some cases their benefits are treated as a resource, but not in other cases.

Most of the commenters stated that the proposal would require schools that use computerized packaging systems to reprogram their financial aid software to determine when to include or exclude all or a part of these benefits. Commenters also believed that this requirement would result in institutions being forced to implement a verification system to determine the type of benefits the student is receiving while also determining, on a case-by-case basis, the type and amount of benefits that are to be considered as estimated financial assistance. They also stated that the issue is further complicated by the fact that a student's financial aid package does not always remain the same after making initial awards. Changes in resources require recalculating the student's eligibility for Federal assistance. Commenters also stated that any combination of Montgomery GI Bill benefits, AmeriCorps benefits, subsidized Stafford loans and campus-based aid will involve manual intervention to correct an overaward situation.

One of the organizations that objected to the proposal expressed concern about errors institutions may make in interpreting this provision and calculating student awards, and therefore requests that institutions be held harmless and not assessed any liabilities until the Department can provide guidance on correct implementation.

Some commenters recommended that we work with Congress to treat Montgomery GI Bill benefits and AmeriCorps education awards or post-service benefits identically for all student aid programs.

Discussion: We understand the concerns that the commenters have regarding handling students that have these benefits along with other types of Title IV aid. However, this provision that treats veterans and AmeriCorps benefits different for the Title IV programs is the result of the change in section 428(a)(2)(C) of the HEA that requires that these benefits must be excluded as "estimated financial assistance" for purposes of subsidized loans.

Changes: None.

Comments: One commenter expressed his belief that the order in which the student received the financial aid awards determines if the student is overawarded and would mean that students with similar need and aid may not be treated the same.

Discussion: Under current campus-based regulations, if a student has both a subsidized loan and campus-based aid, the most stringent requirement regarding resources becomes operative because the student's eligibility for campus-based funds is reduced by the amount of subsidized loans as well as any Montgomery GI Bill—active duty benefits and AmeriCorps funds, or both, paid for the cost of attendance. Thus, students receiving subsidized loans because of the new exclusion of these benefits may have their eligibility for campus-based aid reduced. The negotiated rulemaking committee concluded that the proposed change in the definition of "resources" for the campus-based programs is the best solution to allow students to have the full advantage of this statutory exclusion of benefits for subsidized loans without losing campus-based eligibility.

We remind the commenters that the use of the proposed regulations that would change the definition of "resources" for the campus-based programs in cases where a student receives both a subsidized loan and Montgomery GI Bill—active duty veterans education benefits and/or an AmeriCorps education award is an option provided to an institution and not a requirement. Unlike the requirements mandated by section 428(a)(2)(C) of the HEA for subsidized loans, where the definition of "estimated financial assistance" requires the exclusion of these benefits, this proposal provides the institution with the flexibility to address different packaging issues if the financial aid administrator determines that it is necessary to rectify a particular situation on a case-by-case basis.

Changes: None.

Comment: One commenter also noted that it is frequently difficult to identify the specific type of veterans benefits that individual veterans may be receiving. This commenter encourages us to work closely with the Veterans Administration to develop computer database interfaces that will permit this information to be reported on the Institutional Student Information Records, or to set up a web site similar to the National Student Loan Data System that will permit access to this information. Until this can be accomplished, the commenter encourages us to seek other means of enabling participating institutions to easily identify those veterans receiving Montgomery GI Bill education benefits.

Discussion: Regardless of our campus-based regulations, an institution, under the statute, must be able to identify the Montgomery GI Bill—active duty benefits and the Americorps funds for students applying for subsidized loans. We thank the commenter for the suggestion on solutions for identifying veterans benefits. We will explore possible systems solutions to address this comment.

Changes: None.

Comments: One organization in expressing its support for this proposed regulation, noted the confusion caused by the proliferation of names by which Direct and FFEL loans are known. The commenter suggested that we use the name "Direct Subsidized Loan" when referring to the Federal Direct Stafford/Ford Loan.

Discussion: We agree with the commenter that the names for the Direct and FFEL loans can be confusing, and that "Direct Subsidized Loan" is the simplest name to understand when referring to a Federal Direct Stafford/Ford Loan.

Changes: For clarity, we have added the words "Direct Subsidized Loan" in parenthesis in § 673.5(c)(4) after "Federal Direct Stafford/Ford Loan."

Comments: Another commenter also expressed concern with the lack of clarification on a required implementation date, which the commenter believes could possibly cause institutional liability. One organization also sought clarification on when institutions could begin using the proposed new definition of "resources" for the campus-based programs. The organization further recommended that we authorize optional early implementation by institutions under the Master Calendar.

Discussion: In response, the Secretary authorizes optional early implementation by institutions of this provision under the Master Calendar. Institutions may begin using this new definition for "resources" effective with the publication date of these regulations. This authority is discussed in the **DATES** and **SUPPLEMENTARY INFORMATION** sections of this preamble.

Changes: None.

Federal Work-Study Programs

Section 675.2 Definitions

Comments: One commenter stated that on-campus facilities should count as community service employers even if the service is provided only for students, faculty, staff, and their families, because these individuals pay taxes and also are part of the "local community."

Discussion: The statute states that the definition of "community services" now includes child care services provided on campus that are "open and accessible to the community." A university or college in and of itself is not considered the community for this purpose. Therefore, if the service is provided only to students, faculty, staff, and their families, an FWS job does not meet the definition of "community service." As stated in the NPRM (page 42208), these regulations are not proposing to set a numerical count or percentage requirement for institutions to demonstrate public use of on-campus services.

Changes: None.

Section 675.16 Payments Directly to the Student's Account

Comments: One organization commented that the proposed regulations governing the application of a student's FWS earnings to his or her institutional account are far too prescriptive. The commenter believes the procedure will discourage institutions from offering students this option, and that implementation will create a significant cost and administrative burden for institutions. The same commenter believes the current cash management regulations (Subpart K) provides sufficient protection for the student and recommends that these proposed regulations be rescinded and institutions be referred to the existing cash management regulations.

Discussion: Prior to the 1998 Amendments, the FWS regulations prohibited an institution from directly transferring the Federal share of FWS earnings to a student's account at the institution. The 1998 Amendments broadened the institution's authority concerning students who want their FWS earnings credited to their accounts at the institution to cover institutional charges. The commenter is correct that the *Subpart K—Cash Management* regulations already regulated disbursement procedures for all other Title IV, HEA program funds. We do not agree with the commenter that the proposed regulations in § 675.16 will discourage institutions from offering students this option, and that implementation will create a significant cost and administrative burden for institutions. We believe that it was important to make a distinction between FWS Program funds and other Title IV program funds. In the FWS Program students hold jobs and their compensation is earned and governed by the same applicable Federal, State, or local laws as any other type of earnings from employment. We also believe that it will be less confusing to have the FWS disbursement procedures in the FWS Program regulations.

Changes: None.

Comments: Another commenter noted that in most cases students receiving FWS funds are notified of the amount of the award on the financial aid award letter sent to them by the institution. This commenter asks us to clarify that an award letter sent to the student by the institution meets the requirement for notifying the student of the amount of FWS compensation he or she is authorized to earn.

Discussion: We are aware that providing a student with a notice of the amount of funds he or she is eligible to earn, and how and when the FWS funds will be paid is standard institutional practice and required by regulations. The award letter, as used by many institutions, meets the requirement for notification to a student of the amount of FWS compensation he or she is authorized to earn. It was not our intent to confuse the public in § 675.16 by implying that an additional notice is required. Because FWS funds are earned compensation, we concluded that the requirement for the notice should be reiterated in the new provisions in § 675.16.

Changes: None.

Comments: Another organization stated that the proposed regulations in § 675.16 are not clear about what would be required if the student rescinds an authorization to hold excess FWS earnings. The commenter observed that § 675.16(a)(4) allows a student to authorize an institution to credit FWS funds to the student's institutional account and also allows a student to authorize an institution to hold excess FWS funds (credit balances). The commenter noted that § 675.16(a)(7) generally requires that a credit balance consisting of FWS funds be paid out to the student within 14 days, presumably if the student authorizes crediting the account but does not authorize holding excess funds. Section 675.16(a)(6)(i) states that if any authorization allowed under § 675.16(a)(4) is modified, the modification takes effect on the date received. The commenter asked whether the institution has up to 14 days to process the FWS credit balance after a student rescinds his or her authorization that allowed an institution to hold excess FWS funds.

Discussion: We agree with the commenter that the proposed language in the regulations in § 675.16 is not clear about what would be required if the student rescinds an authorization to hold excess FWS earnings. Our intent is that the excess FWS funds must be paid by the institution to the student as soon as possible, but not later than 14 days after the student rescinds an authorization to hold excess funds.

Changes: We have revised the regulations and added a new § 675.16(a)(9) to reflect that if a student cancels the written authorization to hold excess FWS funds, the institution must pay those funds to the student as soon as possible but no later than 14 days after the institution receives that cancellation notice.

Sections 675.18 Use of Funds and 675.26 FWS Federal Share Limitations

New reading tutoring and family literacy project requirement (§ 675.18(g)(1) and waiver of FWS institutional-share requirement for literacy activities (§ 675.26(d)(2).

Comments: A commenter representing an organization requested clarification on the wording in § 675.18(g)(1)(ii) that refers to a family literacy project that employs students "in family literacy activities." The commenter stated that the statute simply requires students to be employed in a family literacy project and is silent on whether students must be engaged in family literacy activities. The commenter stated that the statute authorizes a 100 percent Federal share for FWS students employed in a family literacy project, and the proposed language in § 675.26(d)(2)(iii) reflects the statute in that it only requires the student to be employed in a family literacy project, as long as the project provides certain services.

Discussion: For purposes of employment in a family literacy project, both of the following new statutory provisions require that the student be performing family literacy activities.

Amended section 443(b)(2) of the HEA requires, that beginning with the 2000–2001 award year, an institution must ensure that in meeting the FWS community service requirement at least one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project.

Amended section 443(d)(3) of the HEA provides that, beginning with the 2000–2001 award year, an institution may pay a Federal share of compensation that exceeds 75 percent to students employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project.

We agree that the different proposed language used in § 675.18(g)(2)(ii) and § 675.26(d)(2)(iii) is confusing. The HEA is specific on the reference to family literacy activities. The new FWS community service requirement in section 443(b) of the HEA does require that the family literacy project employ one or more FWS students in family literacy activities. Further, the new authority in section 443(d) of the HEA to pay a Federal share of up to 100 percent of the compensation earned by a student employed in a family literacy project also requires the student to be performing family literacy activities.

In accordance with the amended statute, these regulations amend § 675.18(g)(1)(ii) to require that, beginning July 1, 2000, an institution must ensure that one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project.

We have changed § 675.26(d)(2)(iii) of these regulations to clarify that the waiver of the institutional-share requirement is for an FWS student performing family literacy activities when employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school.

Changes: We have revised the language in § 675.26(d)(2)(iii) to make this language consistent with the family literacy activities language used in § 675.18(g)(1)(ii). This change also follows the language provided in the statute that the FWS student must perform family literacy activities when employed in a family literacy project.

Comments: The same commenter also requested clarification of the effective date on which institutions may pay a 100 percent Federal share for family literacy employment in addition to tutoring.

Discussion: The Secretary is authorizing optional early implementation of the new institutional-share waiver for an FWS student performing family literacy activities when employed in a family literacy project. Effective with the publication date of these regulations institutions may begin to pay a Federal share of compensation that exceeds 75 percent to a student performing family literacy activities that are not limited just to tutoring. This authority is discussed in the **DATES** and the **SUPPLEMENTARY INFORMATION** sections of the preamble.

Changes: None.

Comments: The commenter further requested clarification on whether indirect services in a family literacy project would qualify the employment: (1) as community service; (2) as satisfying the separate family literacy project requirement; and/or (3) as eligible for the 100 percent Federal share?

Discussion: We are not defining "family literacy activities" for purposes of the new community service requirement in § 675.18(g)(1)(ii) or the new waiver of the institutional-share requirement in § 675.26(d)(2)(iii). We are providing reasonable flexibility to institutions to determine the job description and duties for an FWS student performing family literacy activities. Under the revised statute and regulations, the jobs in family literacy projects are not limited to just students employed as tutors. For example, the family literacy activities may include an FWS student training tutors, performing administrative tasks such as coordinating the tutors, or working as an instructional aide who prepares the materials for the project. However, it would not be reasonable to include janitorial or building repair jobs for the project as family literacy activities.

Under § 675.26(d)(2)(iii), to qualify for the new FWS waiver of the institutional-share, the family literacy activities job does not have to be community service. For example, the family literacy activities could be open to only institutional staff and their families. However, under § 675.18(g)(1)(ii), an FWS student's job as a reading tutor in a required reading tutoring project or job performing family literacy activities in a required family literacy project must be considered community service.

The definition of "community services" in § 675.2 does not require that the service provided by the FWS student be "direct" to be considered community service. The services must be open and accessible to the community. A service is considered open to the community if the service is publicized to the community and the general public uses the service. A university or college in and of itself is not considered the community for this purpose.

In determining whether the FWS student's employment provides community service, the institution must always consider whether the service provided by the student primarily benefits the community as opposed to the agency or institution. For example, if an FWS student was hired to take care of the grounds for the administrative offices of the private nonprofit agency that provides the family literacy project, that job would not be community service. It is important to note that this job would also not be considered to be performing family literacy activities.

Changes: None.

Waiver—Employment of Students as Reading Tutors or in a Family Literacy Project (§ 675.18(g)(2))

Comments: As stated in the discussion for the previous comments, beginning July 1, 2000, an institution must ensure that one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project. Section 443(b)(2) of the HEA grants the Secretary waiver authority with respect to both of these requirements if the Secretary determines that enforcing them would cause hardship for students at an institution.

Several institutions commented that their academic programs are solely focused on health professions programs with a majority of either graduate or first-professional degree students attending their institutions. They stated that they are "single-purpose institutions" providing degrees in health professions (*e.g.*, nursing, occupational therapy, medical technicians, biological sciences, dentistry, medicine, pharmacy, dental hygiene, physical therapy, clinical nutrition, medical technology). The institutions have no problem meeting and exceeding the community service percentage requirement for FWS. However, students in these programs actively seek community service activities that involve health care (*e.g.*, the homeless medical clinic). The graduate and professional programs are rigorous and time-consuming, and the nature and demands of their academic programs do not support their employment in area elementary and secondary schools as reading tutors. Students are typically in classes from 8 a.m. to 5 p.m. One of these commenters stated that it is common for students to be available to work FWS jobs only on evenings or weekends, and if literacy tutor positions are not available in the time frames that students can work because of academic requirements, penalties should not be assessed.

Another of these commenters stated that the proposed reading tutoring/family literacy placement would strain their resources to create, monitor and staff the necessary support mechanisms to implement a component that students, faculty and staff are currently not geared to provide (as a health professions institution). Several of the institutions that focus primarily on health professions requested that the final regulations provide clear guidance to institutions on what would be viewed as a hardship and steps the institution must take to qualify for a waiver. One of these commenters requested that we consider granting an automatic waiver of the reading tutoring/family literacy placement requirement for "single-purpose institutions."

Discussion: We do not foresee many instances in which a waiver of the reading tutoring and family literacy activities requirement would be granted. However, we are sensitive to the commenters' concerns and will evaluate situations involving institutions that specialize in health professions or other single areas of study, along with other waiver requests, if they are submitted during the waiver process. To allow flexibility to consider all factors that are valid reasons for a waiver, we are not specifying the circumstances that would receive a waiver in these final regulations.

In the Spring of 2000, the Department plans to issue a Dear Partner Letter regarding the waiver process that will provide procedures and time frames for institutions to request waivers of the community service and/or the reading tutor/family literacy activities requirements for the 2000–2001 award year. We intend to notify institutions of our decision on their waiver requests prior to the start of the 2000–2001 award year so as not to cause any disruptions to institutions' award processes. Institutions should keep in mind that a waiver will be granted if they provide evidence that enforcing the requirement would cause a hardship for students at the institution. The fact that it may be difficult for the institution to comply with this provision is not in and of itself a basis for granting a waiver.

Changes: None.

Comments: One commenter expressed opposition to the new reading tutoring and family literacy project requirement by stating that it seems that schools are being forced more and more to implement "social policy" as a consequence of accessing Title IV funds. The commenter stated that the commenter trains career oriented and vocationally focused students who are not interested in these types of projects. Therefore, the commenter suggested that the entire reading tutoring and family literacy project requirement be waived and that we focus more on simplifying the HEA rather than complicating the regulations with social initiatives.

Discussion: Reading is a fundamental skill for learning and many American school children have trouble learning how to read. The FWS students not only help children read better by giving them extra learning time, they also build confidence and boost motivation. Research shows that children whose parents work with them on literacy skills during early childhood have a better chance of reading well and independently.

Student achievement in reading and mathematics in the United States is below the international average. There is a growing interest among many professionals in technical, mathematical and scientific fields to share their enthusiasm and knowledge about mathematics with school children. College students, particularly those with an affinity for mathematics and science, seek opportunities to mesh their interests with their commitment to community service. Students who need help in mastering the fundamentals of reading and mathematics in elementary and middle school can benefit from extra help, personal attention, and additional learning time.

We believe that participation in these community service activities can help to serve the needs of the community and give FWS students a rewarding and enriching experience. College students participating as tutors of reading and math may decide to pursue teaching as a career, based on successful tutoring experiences. This investment in our youth is an investment in this country's future. We believe that the efforts associated with regulations for FWS students to tutor children in reading and math, and work in family literacy activities, are justified by the benefits of preparing children to compete in the global economy and ensuring our Nation's economic growth.

Changes: None.

Payment for Time Spent in Training and Travel (§ 675.18(h))

Comments: One commenter expressed concern about the ability of time cards to demonstrate travel time when the student is employed in community service. This commenter suggested that we leave this regulation as flexible as possible by allowing a simple statement from the student attached to an already existing time card that only lists hours worked. Another commenter also questioned the requirement that travel time be designated separately on timesheet records, and suggested that the supervisor's signature certifying the accuracy of the timesheet record should be adequate documentation.

Discussion: The Department's policy does require that the time spent for travel that is directly related to employment in community service activities be reported on the student's FWS time record as the hours worked are also reported. We recommend that institutions use a time record that shows a separation for the time spent in travel from hours worked. This enables those hours to be monitored by a supervisor to ensure that the hours are reasonable and maintains the integrity of the FWS Program.

Changes: None.

Comments: A commenter objected to the differential treatment of FWS earnings for training and travel. The commenter believes that the differential treatment of earnings for training and travel time for standard off-campus FWS positions and those designated as community service are inequitable and administratively cumbersome. That commenter recommends that the treatment of earnings for travel and training be consistent across all off-campus FWS employment positions.

Discussion: The proposed regulations do not represent a change in our policy to allow FWS students to be paid wages during a training period conducted for a reasonable length of time for any FWS employment. The examples of math or reading tutors as positions that may require longer training periods were not used in the preamble to the NPRM (page 42210) to imply that an FWS student could not be paid for a training period in other types of FWS jobs. This policy applies whether the student is employed in community service activities or not.

With regard to payment for travel time, the HEA at section 443(b)(2)(A) clearly provides that beginning with the 1999–2000 award year, institutions will be allowed to pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities. We do not have authority to allow institutions to pay for travel time for any other types of FWS jobs.

Changes: None.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goals that (1) all children will start school ready to learn and that student achievement will be enhanced; (2) call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning; (3) every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship; and (4) the Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century. The regulations in § 675.18(g) further the objectives of these Goals by requiring FWS student participation in reading tutoring and in family literacy projects where the family is recognized as an institution for education and learning and the parent is recognized as their children's first teachers. The objectives of the Goals are also addressed by extending eligibility for Federal Pell Grants to those students who are pursuing a teacher certification or licensing credential through a State approved non-degree postbaccalaureate program.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM on page 42213.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

The Federal Perkins Loan, Federal Work-Study, and Federal Pell Grant programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.007 Federal Supplemental Educational Opportunity Grant Program; and 84.063 Federal Pell Grant Program)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 673, 674, 675, and 676

Employment, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: October 20, 1999.

Richard W. Riley,
Secretary of Education.

For the reasons stated in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by amending Parts 668, 673, 674, 675, 676, and 690 as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.8 is amended by revising paragraph (h) to read as follows:

§ 668.8 Eligible program.

* * * * *

(h) *Eligibility for Federal Pell Grant and FSEOG programs.* In addition to satisfying other relevant provisions of this section—

(1) An educational program qualifies as an eligible program for purposes of the Federal Pell Grant Program only if the educational program is an undergraduate program or a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(2) An educational program qualifies as an eligible program for purposes of the FSEOG Program only if the educational program is an undergraduate program.

* * * * *

3. Section 668.32 is amended by revising paragraph (c) to read as follows:

§ 668.32 Student eligibility—general.

* * * * *

(c)(1) For purposes of the FSEOG Program, does not have a baccalaureate or first professional degree;

(2) For purposes of the Federal Pell Grant Program—

(i)(A) Does not have a baccalaureate or first professional degree; or

(B) Is enrolled in a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(ii) Is not incarcerated in a Federal or State penal institution; and

(3) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated;

* * * * *

4. Section 668.161 is amended by revising paragraph (a)(4) to read as follows:

§ 668.161 Scope and purpose.

(a) * * *

(4) *FWS Program.* An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures in §§ 668.164(b) through (g) and 668.165.

* * * * *

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

5. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C 421–429, 1070b-1070b-3, and 1087aa-1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

6. Section 673.5 is amended by revising paragraph (c)(1) introductory text and paragraph (c)(1)(ix); by redesignating paragraphs (c)(1)(x) and (c)(1)(xi) as paragraphs (c)(1)(xi) and (c)(1)(xii), respectively; by adding new paragraphs (c)(1)(x) and (c)(4); and by revising the OMB control number following the section to read as follows:

§ 673.5 Overaward.

* * * * *

(c) *Resources.* (1) Except as provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section, the Secretary considers that "resources" include, but are not limited to, any—

* * * * *

(ix) Veterans educational benefits paid under Chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(x) National service education awards or post-service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps);

* * * * *

(4) The institution may exclude as a resource any portion of a Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) and subsidized Federal Stafford Loan that is equal to or less than the amount of a student's veterans education benefits paid under Chapter 30 of title 38 of the United States Code (Montgomery GI Bill) and national service education awards or post service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps).

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

PART 674—FEDERAL PERKINS LOAN PROGRAM

7. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

8. Section 674.10 is amended by revising paragraph (b) to read as follows:

§ 674.10 Selection of students for loans.

* * * * *

(b) If an institution's allocation of Federal Capital Contribution is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the dollar amount of loans made under this part must be offered to those students.

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

9. The authority citation for part 675 is revised to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

10. In § 675.2 paragraph (b) is amended by revising paragraphs (1) and (3) of the definition of "community services" to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Community services * * *

(1) Such fields as health care, child care (including child care services provided on campus that are open and accessible to the community), literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

* * * * *

(3) Support services to students with disabilities, including students with disabilities who are enrolled at the institution; and

* * * * *

§ 675.8 [Amended]

11. Section 675.8 is amended by removing paragraph (d), and redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

12. Section 675.10 is amended by revising paragraph (c), and by revising the OMB control number following the section to read as follows:

§ 675.10 Selection of students for FWS employment.

* * * * *

(c) *Part-time and independent students.* If an institution's allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

(Approved by the Office of Management and Budget under control number 1845–0019)

13. Section 675.16 is amended to read as follows by:

(a.) Redesignating paragraphs (a)(2), (a)(3), and (a)(4), as paragraphs (a)(10), (a)(11), and (a)(12), respectively;

(b.) Revising paragraph (a)(1) and adding new paragraphs (a)(2) through (a)(9);

(c.) In newly redesignated paragraph (a)(11), removing "wages are" and adding, in its place, "compensation is";

(d.) In newly redesignated paragraph (a)(12), removing "wages" and adding, in its place, "compensation";

(e.) Revising paragraph (b)(1);

(f.) In paragraphs (b)(2), (b)(3), and (c), removing "shall" and adding, in its place, "must"; and

(g.) Revising the OMB control number following the section.

§ 675.16 Payments to students.

(a)(1) An institution must pay a student FWS compensation at least once a month.

(2) Before an institution makes an initial disbursement of FWS compensation to a student for an award period, the institution must notify the student of the amount of funds the student is authorized to earn, and how and when the FWS compensation will be paid.

(3) An institution must pay FWS compensation to a student by—

(i) Check or similar instrument that the student can cash on his or her own endorsement;

(ii) Initiating an electronic funds transfer (EFT) to a bank account designated by the student after obtaining the authorization described in paragraph (a)(4)(i) of this section;

(iii) Crediting the student's account at the institution after obtaining the authorization described in paragraph (a)(4)(i) of this section. The institution may only credit the student's account at the institution to satisfy current award year charges for—

(A) Tuition and fees;

(B) Board, if the student contracts with the institution for board;

(C) Room, if the student contracts with the institution for room; and

(D) Other institutionally provided educationally related goods and services; or

(iv) Crediting the student's account at the institution to satisfy minor prior award year authorized charges if these charges are less than $100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs after obtaining the authorization described in paragraph (a)(4)(i) of this section.

(4)(i) Except for the noncash contributions allowed under paragraphs (b)(2) and (b)(3) of this section, an institution must obtain a separate written authorization from the student if the student is paid FWS compensation by—

(A) Crediting the student's account at the institution; or (B) Initiating an EFT to a bank account designated by the student.

(ii) If an institution obtains a written authorization from the student, the institution may hold excess FWS funds under paragraph (a)(8) of this section.

(iii) The institution must obtain and use the written authorization in accordance with the requirements of paragraphs (a)(5) and (a)(6) of this section.

(5) In obtaining the student's written authorization described in paragraph (a)(4) of this section, an institution—

(i) May not require or coerce the student to provide that authorization;

(ii) Must allow the student to cancel or modify that authorization at any time; and

(iii) Must clearly explain to the student how it will carry out that activity.

(6)(i) If a student modifies the written authorization described in paragraph (a)(4) of this section, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student cancels the written authorization described in paragraph (a)(4)(i)(A) of this section, the institution may use the FWS compensation to pay only those authorized charges incurred by the student before the institution received the notice.

(7) If an institution pays a student FWS compensation by crediting the student's account, and the result is a credit balance, the institution must pay the credit balance directly to the student as soon as possible but no later than 14 days after the balance occurred on the account.

(8) Except if prohibited by the Secretary under the reimbursement payment method, an institution may hold, on behalf of the student, FWS funds that would otherwise be paid directly to the student under paragraph (a)(7) of this section, if the institution obtains the authorization described in paragraph (a)(4)(ii) of this section. If an institution holds excess FWS funds, the institution must—

(i) Identify the amount of FWS funds the institution holds for each student in a subsidiary ledger account designated for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of FWS funds the institution holds for the student; and

(iii) Pay any remaining balance by the end of the institution's final FWS payroll period for an award period.

(9) If a student cancels the written authorization as described in paragraph (a)(4)(ii) of this section to hold excess FWS funds, the institution must pay those funds directly to the student as soon as possible but no later than 14 days after the institution receives that cancellation notice.

* * * * *

(b)(1) Except for the noncash contributions allowed under paragraph (b)(2) or (b)(3) of this section, an institution must pay the student its share of his or her FWS compensation at the same time it pays the Federal share.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

14. Section 675.18 is amended as follows by:

(A) Revising paragraph (a)(2);

(B) In paragraph (f), removing, "May 15" and adding, in its place, "May 1";

(C) Revising paragraphs (g)(1) and (g)(2); and adding new paragraphs (g)(3) and (h).

§ 675.18 Use of funds.

(a) * * *

(2) Paying administrative expenses as provided for in 34 CFR 673.7;

* * * * *

(g) *Community service.* (1) For the 2000–2001 award year and subsequent award years, an institution must use at least seven percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities. In meeting this community service requirement, an institution must include at least one—

(i) Reading tutoring project that employs one or more FWS students as reading tutors for children who are preschool age or are in elementary school; or

(ii) Family literacy project that employs one or more FWS students in family literacy activities.

(2) The Secretary may waive the requirements in paragraph (g)(1) of this section if the Secretary determines that an institution has demonstrated that enforcing the requirements in paragraph (g)(1) of this section would cause a hardship for students at the institution.

(3) To the extent practicable, in providing reading tutors for children under paragraph (g)(1)(i), an institution must—

(i) Give priority to the employment of students to tutor in reading in schools that are participating in a reading reform project that—

(A) Is designed to train teachers how to teach reading on the basis of scientifically-based research on reading; and

(B) Is funded under the Elementary and Secondary Education Act of 1965; and

(ii) Ensure that any student who is employed in a school participating in a reading reform project described in paragraph (g)(3)(i) of this section receives training from the employing school in the instructional practices used by the school.

(h) *Payment for time spent in training and travel.* (1) For any award year, an institution may pay students for a reasonable amount of time spent for training that is directly related to FWS employment.

(2) Beginning with the 1999–2000 award year, an institution may pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities (including tutoring in reading and family literacy activities).

15. Section 675.20 is amended by adding a new paragraph (d), and by revising the OMB control number following the section to read as follows:

§ 675.20 Eligible employers and general conditions and limitation on employment.

* * * * *

(d) *Academic credit and work-study.* (1) A student may be employed under the FWS program and also receive academic credit for the work performed. Those jobs include, but are not limited to, work performed when the student is—

(i) Enrolled in an internship;

(ii) Enrolled in a practicum; or

(iii) Employed in a research, teaching, or other assistantship.

(2) A student employed in an FWS job and receiving academic credit for that job may not be—

(i) Paid less than he or she would be if no academic credit were received;

(ii) Paid for receiving instruction in a classroom, laboratory, or other academic setting; and

(iii) Paid unless the employer would normally pay the person for the same position.

(Approved by the Office of Management and Budget under control number 1845–0019)

16. Section 675.23 is amended by revising paragraph (b)(1) to read as follows:

§ 675.23 Employment provided by a private for-profit organization.

* * * * *

(b) * * *

(1) The work that the student performs must be academically relevant to the student's educational program, to the maximum extent practicable; and

* * * * *

17. Section 675.26 is amended by revising paragraph (a)(1), by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), by adding a new paragraph (a)(2), and by revising paragraph (d)(2)(iii) to read as follows:

§ 675.26 FWS Federal share limitations.

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent unless the Secretary approves a higher share under paragraph (a)(2) or (d) of this section.

(2) The Federal share of the compensation paid to a student may exceed 75 percent, but may not exceed 90 percent, if—

(i) The student is employed at a private nonprofit organization or a Federal, State, or local public agency that—

(A) Is not a part of, and is not owned, operated, or controlled by, or under common ownership, operation, or control with, the institution;

(B) Is selected by the institution on an individual case-by-case basis;

(C) Would otherwise be unable to afford the costs of this employment; and

(ii) The number of students compensated under paragraph (a)(2)(i) of this section is not more than 10 percent of the total number of students paid under the FWS Program at the institution.

* * * * *

(d) * * *

(2) * * *

(iii) The student is performing family literacy activities in a family literacy project that provides services to families with preschool age children or children who are in elementary school; or

* * * * *

Subpart C—Work-Colleges Program

18. Section 675.45 is amended by adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 675.45 Allowable costs, Federal share, and institutional share.

(a) * * *

(5) Coordinate and carry out joint projects and activities to promote work service learning.

(6) Carry out a comprehensive, longitudinal study of student academic progress and academic and career outcomes, relative to student self-sufficiency in financing their higher education, repayment of student loans, continued community service, kind and quality of service performed, and career choice and community service selected after graduation.

* * * * *

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

20. Section 676.10 is amended by revising paragraph (b) to read as follows:

§ 676.10 Selection of students for FSEOG awards.

* * * * *

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

21. Section 676.18 is amended by revising paragraph (a)(2), and adding new paragraphs (c), (d), (e) and (f) to read as follows:

§ 676.18 Use of funds.

(a) * * *

(2) Paying administrative expenses as provided for in 34 CFR 673.7.

* * * * *

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year.

(2) Before an institution may spend its current year FSEOG allocation, it must spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) *Use of funds carried forward and carried back.* An institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Carry back funds for summer FSEOG awards.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FSEOG allocations for the current award year to make awards to eligible students for payment periods that begin on or after May 1 of the previous award year but end prior to the beginning of the current award year.

PART 690—FEDERAL PELL GRANT PROGRAM

22. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

23. Section 690.6 is amended by revising the heading and paragraph (a), and adding new paragraphs (c) and (d) to read as follows:

§ 690.6 Duration of student eligibility—undergraduate course of study and eligible postbaccalaureate program.

(a) Except as provided in paragraphs (c) and (d) of this section, a student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

* * * * *

(c) An otherwise eligible student who has a baccalaureate degree and is enrolled in a postbaccalaureate program is eligible to receive a Federal Pell Grant for the period of time necessary to complete the program if—

(1) The postbaccalaureate program consists of courses that are required by a State for the student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary or secondary school in that State;

(2) The postbaccalaureate program does not lead to a graduate degree;

(3) The institution offering the postbaccalaureate program does not also offer a baccalaureate degree in education;

(4) The student is enrolled as at least a half-time student; and

(5) The student is pursuing an initial teacher certification or licensing credential within a State.

(d) An institution must treat a student who receives a Federal Pell Grant under paragraph (c) of this section as an undergraduate student enrolled in an undergraduate program for title IV purposes.

24. In § 690.7 paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 690.7 Institutional participation.

* * * * *

(c)(1) If an institution loses its eligibility to participate in the FFEL or Direct Loan program under the provisions of 34 CFR 668.17, it also loses its eligibility to participate in the Federal Pell Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.17(b).

* * * * *

[FR Doc. 99–28167 Filed 10–27–99; 8:45 am]

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Part VII

Department of Education

34 CFR Part 674

Federal Perkins Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 674

RIN 1845–AA05

Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan Program regulations. The regulations implement changes to the Higher Education Act of 1965, as amended (HEA), resulting from the Higher Education Amendments of 1998 (1998 Amendments). These final regulations reflect the provisions of the 1998 Amendments that affect the institutions that participate in, and borrowers who have loans made under, the Federal Perkins Loan Program. These final regulations expand borrower benefits under the Federal Perkins Loan program by increasing loan limits, expanding borrower eligibility for deferments and cancellations, establishing a loan rehabilitation program for borrowers in default on their Federal Perkins Loans, establishing an incentive repayment program, and providing a closed school discharge.

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA, that institutions that participate in the Federal Perkins Loan Program may, at their discretion, choose to implement the provisions of §§ 674.2, 674.5(c), 674.9, 674.16, 674.33(f), 674.41, 674.42, and 674.45 in these final regulations, on or after October 28, 1999. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION**: Section of this preamble.

FOR FURTHER INFORMATION CONTACT: Gail McLarnon, Program Specialist, Program Development Division, Office of Student Financial Assistance, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, D.C. 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These regulations implement the Higher Education Amendments of 1998 (Pub. L. 105–244), enacted October 7, 1998.

On July 29, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for the Federal Perkins Loan Program regulations in the **Federal Register** (64 FR 41231). In the preamble to the NPRM, the Secretary discussed the following major proposed changes:

Amending § 674.2 to add a definition of the term "satisfactory repayment arrangements" (page 41233).

Amending § 674.5 to establish, effective with award year 2000–2001, a default penalty of zero Federal Capital Contribution for institutions with a cohort default rate of 25 percent or higher and a new default penalty that terminates the eligibility of an institution to participate in the Federal Perkins Loan Program if the institution has a cohort default rate of 50 percent or higher for the three most recent years for which data are available. The Secretary also discussed amending § 674.5 to allow an institution to exclude certain loans from its cohort default rate calculation (pages 41233–41234).

Removing and reserving § 674.7 in accordance with the elimination of the Expanded Lending Option.

Amending § 674.9 to authorize the use of the same criteria that remove a borrower from an institution's cohort default rate to re-establish a borrower's eligibility for additional Federal Perkins Loans (pages 41234–41235).

Amending § 674.12 to increase annual maximum loan amounts and increase the aggregate maximum loan amounts allowable for an eligible student to levels formerly authorized under the Expanded Lending Option (page 41235).

Amending §§ 674.16, 674.31, and 674.45 to update and clarify credit bureau reporting requirements with which an institution must comply (page 41235 and page 41238).

Amending § 674.31 to exclude from a borrower's initial grace period any period, not to exceed three years, during which a borrower who is a member of an Armed Forces reserve component is called or ordered to active duty (page 41235).

Amending § 674.33 to authorize institutions to establish an incentive repayment program to reduce defaults and replenish their Federal Perkins Loan revolving fund. Also amending § 674.33 to establish a closed school discharge for Federal Perkins Loan borrowers who are unable to complete their programs of study due to an institution's closure (pages 41235–41236).

Amending § 674.34 to extend the deferment benefits in this section to all borrowers regardless of the terms of the borrower's promissory note or when the loan was made (page 41236).

Amending § 674.39 to require institutions to establish a loan rehabilitation program for all defaulted Federal Perkins Loan borrowers (pages 41236–41237).

Amending §§ 674.41, 674.42 and 674.45 to require that institutions participating in the Federal Perkins Loan Program provide borrowers with information on the availability of the Student Loan Ombudsman's office (pages 41237–41238).

Amending § 674.42 to facilitate the use of electronic means in providing personalized exit counseling and make exit counseling requirements in the Federal Perkins Loan Program consistent with those in the Federal Direct Loan and the Federal Family Education Loan Programs (pages 41237–41238).

Amending § 674.47 to authorize an institution, until July 1, 2002, to charge its revolving fund for any collection costs assessed on a rehabilitated loan that are in excess of the 24 percent maximum limit that may be passed along to the borrower (page 41238).

Amending § 674.49 to reflect changes made to section 523(a)(8) of the Bankruptcy Code that eliminate a borrower's ability to have a student loan discharged on the ground that the loan has been in repayment for seven years or more (page 41238).

Amending §§ 674.53, 674.56, 674.57, 674.58, and 674.60 to extend the cancellation benefits authorized by these sections, for eligible service performed on or after October 7, 1998, to all borrowers with a loan made under the Federal Perkins Loan program regardless of the date the loan was made or the terms of the borrower's promissory note (pages 41238–41239).

Implementation Date of These Regulations

Section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)) requires that regulations affecting programs under title IV of the Act be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

Section 674.2—Upon publication, institutions may implement the "satisfactory repayment arrangements" as defined in this provision.

Section 674.5(c)(3)—Upon publication, institutions may exclude certain loans from its cohort default rate calculation.

Section 674.9—Upon publication, institutions may use the criterion that removes a borrower from its cohort default rate to re-establish a borrower's eligibility for Perkins Loans.

Sections 674.16, 674.31 and 674.45—Upon publication, institutions may implement the credit bureau reporting requirements contained in these sections.

Section 674.33(f)—Upon publication, institutions may implement incentive repayment programs.

Sections 674.41, 674.42 and 674.45—Upon publication, institutions may provide borrowers with information on the availability of the Student Loan Ombudsman's office.

These final regulations contain changes from the NPRM that are explained in the Analysis of Comments and Changes that follow.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 29, 1999, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999, and several comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

General Comment

Comment: We received 28 comments on the Federal Perkins Loan Program NPRM published July 29, 1999. The comments were generally supportive. However, one commenter stated that any changes made by the Secretary in the Federal Perkins Loan program final regulations that represent a substantive departure from the proposed regulations published on July 29, 1999, would be viewed as a failure to honor the consensus reached by Committee II, a violation of the good faith with which members of Committee II engaged in negotiated rulemaking and would be detrimental to future negotiations.

Discussion: The 1998 Amendments amended section 492 of the HEA to require that all Title IV proposed regulations be subject to the negotiated rulemaking process. While this change requires the Secretary to publish proposed regulations that conform to agreements resulting from a negotiated rulemaking process, the 1998 Amendments did not change the process by which final regulations are promulgated. All proposed regulations continue to be subject to a public comment period, as required by the Administrative Procedure Act, and may be changed as a result of our full and careful consideration of the comments we receive from the public on an NPRM, regardless of agreements reached on proposed regulations during the negotiated rulemaking process.

Section 674.2 Definitions

Comment: One commenter expressed the view that the proposed definition of "satisfactory repayment arrangements," which requires the borrower to make six on-time, consecutive, monthly payments on a defaulted loan to re-establish Title IV HEA eligibility, should specify how an institution determines the amount of the six monthly payments the borrower must make.

Discussion: The concept of satisfactory repayment arrangements is not new to the Federal Perkins Loan Program. The Federal Perkins Loan program regulations have contained a definition of satisfactory repayment arrangements since July 1, 1995. The regulatory definition required that a defaulted borrower either repay the loan in full, or execute a new written repayment agreement and make one payment each month for six consecutive months to re-establish title IV eligibility. We disagree that the regulations should specify how an institution determines the amount of the six monthly payments the borrower must make to re-establish Title IV eligibility. However, it has been our long-standing interpretation that the institution would calculate the amount due for each of the six payments consistent with an overall payment schedule that would allow the borrower to satisfy the outstanding balance on the loan in the time remaining in the original 10-year repayment period. The new written repayment agreement facilitated this calculation.

A similar definition of satisfactory repayment arrangements was codified in law by the 1998 Amendments but does not contain the requirement that the borrower execute a new written repayment agreement when making satisfactory repayment arrangements. Regardless of that fact, it remains our interpretation that in determining the amount of the six payments a borrower must make to re-establish Title IV eligibility, an institution must calculate a payment amount consistent with a payment schedule that satisfies the total amount due on the loan within the time remaining in the original ten-year repayment period, especially absent statutory language in the 1998 Amendments that specifies that the monthly payment amount as determined by the institution be reasonable and affordable based on the borrower's total financial circumstances, as is the case in the Federal Family Education Loan (FFEL) and the William D. Ford Federal Direct Loan (Direct Loan) programs. We believe the definition of satisfactory repayment arrangements, as proposed, is the best reflection of both the statute and our long-standing interpretation of the payment amount required by a borrower.

Changes: None.

Section 674.5 Federal Perkins Loan Program cohort default rate and penalties

Comment: One commenter objected to the elimination of the graduated default penalties imposed on institutions with cohort default rates that equal or exceed 20, 25, or 30 percent or more in favor of one default penalty of zero if an institution's cohort default rate equals or exceeds 25 percent. The commenter felt that this change creates a disincentive for institutions to collect on defaulted loans.

Discussion: We appreciate the commenter's concern. However, the elimination of the graduated default penalties is required by the 1998

Amendments. The final regulations reflect this statutory change.

Changes: None.

Comment: We received several comments regarding § 674.5(a)(2), which reflects a new default penalty that terminates an institution's eligibility to participate in the Federal Perkins Loan Program if it has a cohort default rate of 50 percent or higher for the three most recent years for which data are available. One commenter recommended that we specify in regulation that an institution's cohort default rate must equal or exceed 50 percent for each of the three most recent "consecutive" years for which cohort default data is available. One commenter suggested that the regulation clearly state that an institution does not lose eligibility to participate in the Federal Perkins Loan program if, upon appealing a determination of ineligibility, any one of the three rates used to make that determination is found to be below 50 percent. Lastly, one commenter suggested that we clarify in the regulations that an institution loses its eligibility to participate only in the Federal Perkins Loan program if its Perkins Loan cohort default rates meet the criteria set forth in this section.

Discussion: We do not agree that the word "consecutive" should be added to the regulatory language. Although the regulations do not contain the word "consecutive" in describing the three years of cohort default data that will be used by the Secretary to make a determination of ineligibility, it is our intent to use consecutive year cohort default rate data as long as it is available. However, we believe that a requirement that we use consecutive year data could prevent the Department from making a determination of ineligibility, thus thwarting legislative intent, if either the Department or an institution is unable to calculate an institution's cohort default rate in any given year because of unforeseen circumstances. We believe that language requiring the use of an institution's cohort default rate data for each of the three most recent years for which data are available better reflects statutory intent.

As to the request for clarification regarding the appeals process and the loss of Federal Perkins Loan program eligibility, the language in § 674.5(a)(2)(i)(A) clearly states that an institution will not lose eligibility if, as a result of an appeal, any one of the three cohort rates used to make a determination of ineligibility is below 50 percent. We also note that the language in § 674.5(a)(2) also clearly states that an institution loses eligibility to participate only in the Federal Perkins Loan program.

Changes: None.

Comment: Two commenters objected to the elimination of the provision allowing an institution to exclude improperly serviced loans from its cohort default rate.

Discussion: The elimination of this provision reflects a 1998 Amendments change. This provision had the perverse effect of rewarding an institution for its, or its servicer's, lack of due diligence in servicing and collecting its Perkins Loans by allowing the institution to remove defaulted borrowers from its cohort default rate.

Changes: None.

Comment: We received several comments regarding the exclusion of borrowers from an institution's cohort default rate in § 674.5(c)(3)(i). One commenter suggested that borrowers who are considered paid-in-full as a result of a small balance write-off of their loan under § 674.47(h) be referenced in § 674.5(c)(3)(i)(C). One commenter urged us to add language allowing a school to exclude from its cohort default rate calculation all borrowers who have filed for bankruptcy and are in a stay of collection. Lastly, one commenter suggested that § 674.5(c)(3)(i)(D) be clarified to state that the borrower's status must be less than 240- or 270-days past due as a result of receiving a deferment or forbearance.

Discussion: We agree that adding a reference to borrowers whose loans have been written off under § 674.47(h) would add clarity to the regulations. However, we believe this addition is more appropriately added in § 674.5(c)(3)(ii)(D).

We disagree with the commenter who believes that all borrowers who have filed for bankruptcy and are in a stay of collections should be excluded from an institution's cohort default rate calculation. During the required stay of collection, a loan is considered to be in a suspended status. It does not continue to age, although interest continues to accrue for which the borrower is responsible. If a borrower files a bankruptcy petition that includes a defaulted Perkins loan that has not reached a 240- or 270-day past due status, the loan will retain its pre-240- or 270-day status and will be excluded from the calculation of a school's cohort rate until the bankruptcy proceeding has concluded. If the borrower includes a defaulted loan that is more than 240 or 270 days past due, the loan will retain its more than 240- or 270-day past due status and be included in the calculation of the school's cohort default rate. While we realize that an institution is unable to contact the borrower during a stay of collections, we believe that the time to work those accounts and perform the due diligence necessary to return the borrower to repayment is before the borrower becomes 240 or 270 days past due.

We do not agree that additional language specifying that a deferment or forbearance must bring the borrower to a pre-240- or 270-day status is necessary. As currently drafted, the regulations allow the institution to exclude a borrower from its cohort calculation if the borrower has "received a deferment or forbearance based on a condition that predates the borrower reaching a 240- or 270-day past due status." The addition of language specifying that the deferment or forbearance has brought the borrower to a pre-240- or 270-day status is unnecessary.

Changes: A reference to loans repaid in full in accordance with § 674.47(h) has been added to § 674.5(c)(3)(ii)(D).

Comment: Several commenters objected to the proposal that payments obtained through income tax offset, wage garnishment, income or asset execution, or pursuant to a judgment should not be considered voluntary payments for the purpose of removing borrowers from an institution's cohort default rate calculation if the borrower voluntarily makes six consecutive payments or voluntarily makes all payments currently due. One commenter stated that our definition of voluntary payments is unnecessarily harsh and that all payments, regardless of how they are made, should be considered voluntary. One commenter noted that a borrower's payments are not guaranteed by a judgment—a school must still work the account to ensure that payments are made. The commenter also noted that many borrowers consider payments obtained through income tax offset to take the place of regularly scheduled payments that the borrower is already making on their own.

Discussion: We disagree that payments obtained through income tax offset, garnishment, income or asset execution, or pursuant to a judgment should be considered voluntary payments made by the borrower in order to remove a borrower whose loans are brought current or who has made six consecutive monthly payments from an institution's cohort default rate calculation. Generally, payments obtained by these methods are automatically deducted from the borrower's Federal or state tax refund, wages, or assets and the borrower has no control or choice in the payment process. We continue to believe that the initiation of court action to obtain payment on a defaulted loan represents last resort due diligence efforts on the part of the school. Payments obtained through this process would not have been obtained otherwise and cannot be considered voluntary. While we recognize that a school may have to work to collect the payments due on some judgment accounts, the required payments are nonetheless made as a result of a court order. Further, borrowers have no control over a payment applied to their defaulted loan as a result of income tax offset regardless of the fact that the borrower may already be making payments.

Changes: None.

Section 674.9 Student Eligibility

Comment: One commenter felt strongly that restoring eligibility for a Federal Perkins Loan to a borrower who meets any of the criteria that would remove him or her from an institution's cohort default rate calculation is bad public policy.

Discussion: Although the return of Federal Perkins Loan eligibility to a borrower who meets any of the criteria that remove him or her from an institution's cohort default rate calculation represents a significant departure from past policy, this is a statutory requirement enacted as part of the 1998 Amendments.

Changes: None.

Comment: One commenter strongly supported our definition of "voluntary" payments for the purpose of a borrower re-establishing eligibility for a Perkins Loan under this section.

Discussion: We appreciate the support of the commenter and believe it is an important condition to re-establishing eligibility.

Changes: None.

Comment: One commenter suggested that we quantify in § 674.9(i)(1) what amount a payment made "over and above" a payment made pursuant to a judgment must be to qualify as a voluntary payment when a school enters into a repayment agreement with the borrower on a judgment. For example, if a school has entered into an agreement with a borrower that requires $50 monthly payments to satisfy a judgment, what payment amount "over and above" the $50 payment would a borrower be required to make in order for his or her payment to be considered voluntary? The commenter believed that specific language would clarify the conditions a borrower must satisfy to re-establish eligibility.

Discussion: We do not believe that further clarification of the definition of voluntary payment for the purpose of re-establishing a defaulted borrower's eligibility for Federal Perkins Loans is necessary. However, a payment that is generally equal to the payment the borrower is required to make pursuant the judgment will satisfy the definition of voluntary in this section. We believe an approach that treats borrowers consistently and precludes situations in which one borrower might be required to make small payments while another borrower might be required to make large payments over and above payments made pursuant to a judgment is an important consideration when re-establishing eligibility.

In almost all cases, the terms of a judgment make the whole obligation due in full immediately, and any monthly payment arrangement that arises is solely by agreement between the borrower and the school. In some cases, the borrower and the school negotiate a repayment arrangement that is subsequently incorporated in a consent judgment. A school is free to agree to any monthly payment that it considers reasonable in such an agreed judgment or in a repayment agreement to satisfy a judgment. Therefore, we would consider payments over and above the amount owed under the judgment itself or the repayment agreement already reached to satisfy that judgment to be voluntary payments for purposes of reestablishing eligibility for new student aid. This level of payment not only represents a good faith effort on the part of the borrower to repay the debt in a manner that is neither required nor automatic, but also represents a good faith effort on the part of the school to replenish its revolving fund and responsibly administer the Federal Perkins Loan Program.

Using the above example, if a school has entered into an agreement with a borrower that requires $50 monthly payments on a judgment, we would consider a borrower that makes payments of at least $50 to be making voluntary payments.

Changes: None.

Comment: One commenter objected to having one definition of "voluntary" payments for re-establishing a borrower's eligibility for Federal Perkins Loans and another definition of "voluntary" payments in order to determine which borrowers can be excluded from an institution's cohort default rate. The commenter felt that the definition of voluntary payments should be consistent within the program regulations.

Discussion: We disagree that the definition of "voluntary" payments must be consistent within the program regulations. Denying a borrower access to additional student financial assistance has far more serious consequences than excluding that borrower from an institution's cohort default rate. The negotiators agreed that cutting off a borrower's access to Federal Perkins Loans had the potential to prohibit the borrower from furthering his or her education, securing employment and honoring his or her student loan obligations. The negotiators also agreed that a borrower who made payments over and above the payments made on a judgment was making a good faith effort to repay the debt and that those efforts should be recognized.

Changes: None.

Comment: One commenter felt that language restricting the definition of "voluntary" payments to those payments made directly by the borrower was too restrictive and that payments made on behalf of the borrower should be included as well.

Discussion: We disagree with the commenter that payments made on behalf of the borrower should be included in the definition of voluntary payments for the purpose of re-establishing a defaulted borrower's eligibility for Federal Perkins Loans. Payments made on behalf of the borrower are not payments made directly by the borrower and are payments over which the borrower has no control or choice. Payments made in this manner cannot be considered voluntary in this context.

Changes: None.

Section 674.12 Loan Maximums

Comment: All of the comments we received on the new increased loan maximums and the use of the aggregate unpaid balance in determining a borrower's eligibility for additional loans under the Federal Perkins Loan Program were supportive.

Changes: None.

Section 674.16 Making and disbursing loans

Comment: Several commenters supported language in this section that requires an institution to report to at least one national credit bureau information concerning the repayment and collection of the loan until the loan is paid in full. One commenter believed that it would be a violation of the Fair Credit Reporting Act (FCRA), however, for an institution to report on the loan until it is paid in full. Several commenters urged the Secretary to work with the Federal Trade Commission to amend the FCRA to require consumer reporting agencies to make reports containing credit information regarding the status of a borrower's Federal Perkins Loan until the loan is paid in full rather than for seven years as currently required under the FCRA.

Discussion: The general requirement that an institution report on the status of the loan to a consumer reporting agency until it is paid in full is not a new requirement under section 463 of the HEA. The 1998 Amendments did change this section of the HEA and codified many of the credit bureau reporting requirements that institutions have been required to perform for some time. We should also note that it is not now, and has not been, a violation of the FCRA for a consumer reporting agency to accept and disseminate information on a loan until the loan is paid in full; it was, prior to the 1998 Amendments to section 463, a violation of the FCRA for a consumer reporting agency to make reports for certain purposes that contain adverse information on accounts for more than seven years from the date of the adverse event reported. (The 1998 Amendments to section 463 the HEA give credit reporting agencies the option to make reports containing adverse credit information until the loan is paid in full; they do not require it.)

We will pursue opportunities to work with the Federal Trade Commission as they arise to amend the FCRA in ways that support and strengthen the repayment of Title IV student loans.

Changes: None.

Section 674.31 Promissory Note

Comment: One commenter noted that the promissory note used in the Federal Perkins Loan Program does not reflect the new provision in this section that excludes any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of Title 10, United States Code is called or ordered to active duty for a period of more than 30 days from the borrower's initial grace period. The commenter requests that we clarify our intentions with regard to the development of a new Federal Perkins Loan promissory note.

Discussion: We appreciate the commenter's concern regarding the development of a promissory note that contains terms and conditions that reflect the changes made to the HEA by the 1998 Amendments. We plan to develop, as soon as possible after the publication of final regulations, an addendum to the Federal Perkins Loan program promissory note now in use that reflects the new provisions of the 1998 Amendments. The development of a new promissory note will follow. Until an addendum or a new note is developed, however, we would note that institutions must comply with the changes made to the HEA by the 1998 Amendments and that the promissory notes contained in CB–96–8 and CB–93–9 are legally valid documents.

Changes: None.

Section 674.33 Repayment

(**Note:** In this and other sections of the regulations in Part 674, the holder of a loan may be the Secretary or a non-Federal party. In these cases, requirements are written in the present indicative, rather than using the word "must." However, we intend these provisions to be mandatory, regardless of who holds the loan.)

Comment: Several commenters objected to the requirement that the institution reimburse its revolving fund for any money lost to its fund that otherwise would have been paid by the borrower if the borrower had not received one of the repayment incentive discounts described in this section. The commenters felt that the Secretary should pay for incentive repayment discounts or that the revolving fund should absorb the cost of any incentive repayment that an institution may extend to its borrowers.

Discussion: The 1998 Amendments prohibit an institution from using Federal funds, including Federal funds from an institution's revolving fund, or institutional funds from the revolving fund to pay for any repayment incentive.

Changes: None.

Comment: One commenter, while supporting repayment incentives in general, believed that the regulations should allow an institution to factor in administrative savings in reimbursing its revolving fund for any money lost due to incentive repayment discounts that otherwise would have been paid by the borrower. The commenter felt that the purpose of repayment incentives is to encourage prompt repayments without increasing, and perhaps even lowering, the administrative costs to the revolving fund.

Discussion: We appreciate the commenter's desire to reflect the administrative savings generated by borrowers who pay the loan in full prior to the end of the repayment period or who make regular consecutive payments for 48 months, thereby offsetting an institution's required reimbursement of money lost to its revolving fund. However, we believe it would take a statutory change to reflect those savings in the regulations.

Changes: None.

Comment: One commenter felt that offering repayment incentives to borrowers who repay their loans in a timely fashion does nothing to help needy borrowers, the intended beneficiaries of the Federal Perkins Loan program, who may be struggling to repay their loans.

Discussion: While we appreciate the concerns expressed by the commenter regarding borrowers who may be struggling to repay their Federal Perkins Loan, the provision allowing institutions to offer incentive repayment discounts to borrowers who repay their loans timely is statutory and voluntary on the institution's part. Additionally, we believe that incentives encourage borrowers to repay in full, or to begin or maintain repayment on a regular basis, thereby replenishing an institution's revolving fund and making more money available to the needy individuals for whom Federal Perkins Loans are intended.

Changes: None.

Section 674.34 Deferment of repayment—Federal Perkins loans, National Direct Student loans and Defense loans

Comment: One commenter suggested that the final regulations be revised to extend the Federal Perkins Loan program deferments contained in statute prior to July 1, 1993 to borrowers who are currently eligible only for the deferments contained in section 464(c)(2)(A) of the HEA. The commenter believed that making this change would simplify the deferment process for borrowers and institutions and reduce the amount of paperwork that the deferment process requires.

Discussion: We are sympathetic to the commenter's suggestion. However, we are unable to revise the regulations to expand the deferments available to Federal Perkins Loan borrowers because it is beyond the scope of the 1998 Amendments change to the HEA and would require additional statutory change.

Changes: None.

Section 674.39 Loan Rehabilitation

Comment: We received many comments on the new loan rehabilitation provisions in this section. Many commenters questioned aspects of loan rehabilitation that are required by statute. Other commenters asked only for clarification regarding the rehabilitation process without objecting to or requesting revisions to the regulations.

Discussion: We cannot address requests for revisions to the proposed regulations that are inconsistent with the statute. We believe it is helpful to review the aspects of loan rehabilitation in the Perkins Loan Program that relate to borrower benefits and institutional responsibilities that are required by law, and therefore cannot be changed.

Under the 1998 Amendments, a defaulted loan is considered rehabilitated if "the borrower of a loan made under this part who has defaulted on the loan" makes the required 12 payments. Accordingly, loan rehabilitation is available to all defaulted borrowers with a loan made under the Federal Perkins Loan Program. If a borrower requests loan rehabilitation, the institution or its servicer must allow the borrower to rehabilitate his or her loan. This also applies to defaulted loans that an institution has placed with a collection agency. However, the borrower may only rehabilitate a defaulted loan once. Because the statute specifically refers to a stream of 12 payments as determined by the institution, the institution must work with the borrower to determine a payment amount that is appropriate. The statute does not require a signed rehabilitation agreement.

In accordance with the 1998 Amendments, once the loan is rehabilitated (after the 12th payment has been made), the institution or its servicer must request that any credit bureau to which the defaulted loan was reported remove the default from the borrower's credit history. The borrower is brought current and is no longer considered to be delinquent or in default. Removing the default is consistent with the requirements of the Fair Credit Reporting Act (FCRA), which requires that an institution correct and update the information it furnishes to a credit reporting agency. In this case, the institution would be updating the borrower's credit history to reflect the rehabilitation of the loan. The FCRA also requires credit reporting agencies to have reasonable procedures in place to accept updated or corrected information.

Once the loan is rehabilitated, the borrower is subject to the terms, conditions, benefits and privileges of the borrower's original promissory note. This includes eligibility for deferments, forbearance, cancellations, and flexible repayment options. The borrower is also subject to the same responsibilities under the note, which include, but are not limited to, making regular payments and informing the school or servicer of an address change or the need for flexible repayment arrangements. We sum up this status by saying the borrower is returned to regular repayment status in § 674.39(b)(1) of the regulations.

Finally, in accordance with the 1998 Amendments, a borrower who has rehabilitated his or her loan re-establishes eligibility for Title IV student financial assistance, as long as the borrower is otherwise eligible.

Changes: None.

Comment: One commenter requested clarification regarding when an institution must notify a defaulted borrower of the option and consequences of rehabilitating the loan. The commenter also asked us to specifically state what the consequences of loan rehabilitation are in the Federal Perkins Loan Program.

Discussion: An institution has several opportunities under the requirements in Subpart C-Due Diligence of the Federal Perkins Loan Program to notify a defaulted borrower of his or her option to rehabilitate. We will not regulate prescriptively in this area and will leave the timing of that notification to the institution. Clearly, however, once a borrower has begun to miss payments, the billing procedures in § 674.43 require an institution to contact the borrower to demand payment. A notification of the option and the consequences of loan rehabilitation can be included as part of any or all of these payment demands. We believe that this notification should be made no later than the final demand for payment required by § 674.43(d). Further, notification regarding the option and consequences of loan rehabilitation should also be provided during the more intensive efforts an institution, or its servicer, makes to recover amounts owed on a defaulted loan under § 674.45. Regardless of the timing of the notification and regardless of whether the institution is servicing the loan or a billing or collection agency is servicing the loan, the borrower may request rehabilitation of his or her defaulted loan at any time. Additionally, although the proposed regulations require that an institution notify only a defaulted borrower, institutions are encouraged to include information regarding loan rehabilitation as part of the disclosures regarding the definition and consequences of default required when making and disbursing a loan under § 674.16(a)(1)(x) and when conducting exit counseling under § 674.42(b)(2)(v).

The consequences of rehabilitating a defaulted loan of which the borrower should be advised include returning the borrower to regular repayment status, treating the first payment made under the twelve consecutive payments as the first payment in a new repayment period of up to 10 years, instructing any credit bureau to which the default was reported to remove the default from the borrower's credit history, and the re-establishment of the borrower's eligibility for Title IV student financial assistance, provided that the borrower is otherwise eligible.

Changes: None.

Comment: Several commenters requested clarification regarding whether or not a borrower must request loan rehabilitation. One commenter suggested that we revise the regulations to require that the borrower contact the institution prior to the first of the twelve payments so that the institution can work with the borrower to assure their successful rehabilitation.

Discussion: We agree that a borrower must notify the institution of his or her desire to rehabilitate a defaulted loan and believe this is implicitly stated in the regulations in describing rehabilitation as the making of 12 consecutive on-time, consecutive, monthly payments "as determined by the institution." However, in order to avoid confusion and add clarity to this section, we have amended the regulations to require a request from the borrower. We note, however, that we are not specifying that the borrower's request be written nor that the borrower's request precede the 12 consecutive on-time, monthly payments.

Changes: We are adding the phrase "and the borrower requests rehabilitation," to § 674.39(a)(2).

Comment: One commenter requested clarification regarding whether a revised repayment schedule is required for a rehabilitated loan.

Discussion: We will not specify in regulations that an institution must prepare a revised repayment agreement for a rehabilitated borrower. However, institutions are required under § 674.39(b)(2) to treat the first payment made under the 12 consecutive payments as the first payment under a new repayment period of up to 10 years. Servicing a rehabilitated loan in a manner consistent with program regulations would appear to necessitate a revised repayment agreement to ensure a borrower's successful repayment. We believe that a new revised repayment agreement is probably in the best interests of both the school and the borrower.

Changes: None.

Comment: One commenter requested clarification regarding when an institution may begin counting payments made by a borrower toward the rehabilitation of the borrower's defaulted loan. The commenter asked if only payments made on or after the effective date of the final regulations (July 1, 2000) may be counted toward the 12 payments the borrower is required to make in order to rehabilitate a defaulted loan or if payments made before the effective date of the final regulations may be counted toward the rehabilitation.

Discussion: An institution may count payments made before July 1, 2000, toward the 12 on-time, monthly payments the borrower must make to rehabilitate a defaulted Federal Perkins Loan as long as at least one of the 12 payments is made on or after the July 1, 2000, effective date of the final regulations.

Changes: None.

Comment: One commenter recommended that we revise the regulations to prohibit a borrower from rehabilitating a defaulted Federal Perkins Loan on which a judgment has been rendered because the judgment has taken the place of the original promissory note as the debt instrument.

Discussion: We disagree that the regulations should be revised to prohibit borrowers from rehabilitating a defaulted loan on which a judgment has been rendered. We interpret section 464(h) of the HEA to require that a rehabilitation program must be available to all defaulted borrowers even if the institution has secured a judgment against the borrower. This is consistent with the statutory interpretation of loan rehabilitation in both the FFEL and Federal Direct Loan Programs. However, we share the commenter's concern that the promissory note already signed by the borrower in these cases no longer embodies that borrower's obligations with respect to the debt. Therefore, the borrower of a defaulted loan on which a judgment has been entered must sign a new promissory note that incorporates outstanding principal after making the 12 on-time, consecutive, monthly payments required by rehabilitation. In addition to the amount of the new promissory note, the borrower is responsible for interest and late charges that accrued while the borrower was in default. The borrower is also subject to the same 24 percent limit on collection costs once the loan has been rehabilitated.

Changes: We have amended § 674.39 by adding a new paragraph (a)(3) to require a defaulted borrower to sign a new promissory note if the institution has a judgment against the borrower.

Comment: Several commenters objected to extending a new ten-year repayment period to rehabilitated borrowers because it would delay the replenishment of the institution's revolving fund and is inequitable to other Federal Perkins Loan borrowers. One commenter recommended that a borrower be required to repay the outstanding balance on a rehabilitated loan in the remaining time left in the borrower's original ten-year repayment period. Further, this commenter felt that if the borrower's original ten-year repayment period had elapsed, the borrower should be required to repay the defaulted loan in full in the twelve payments that constitute rehabilitation.

Discussion: The point of rehabilitation is to return the borrower to regular repayment on a defaulted loan to ensure successful payment in full. We do not believe that rehabilitating a borrower's loan only to encourage redefault by establishing an unreasonable repayment schedule is within the intent of the rehabilitation program. Further, a successful post-rehabilitation payment returns money to an institution's revolving fund and reduces costs associated with default collections. The extension of a new repayment period of up to 10 years, which assumes minimum monthly payments in some cases, is also consistent with the rehabilitation provisions in the Federal Family Education Loan and the Federal Direct Loan Programs.

Changes: None.

Comment: One commenter asked whether an institution may shorten a rehabilitated borrower's repayment period by requiring a minimum monthly payment.

Discussion: An institution may require a borrower to pay a minimum monthly payment on a rehabilitated loan only if the institution required a minimum monthly payment under the borrower's original promissory note and the payment amount due on the rehabilitated loan is less than the minimum monthly payment. This does not preclude the borrower and the institution from agreeing to a monthly repayment amount on a rehabilitated loan that repays the loan in less than 10 years if the institution did not exercise the minimum monthly payment option in the original note. As stated earlier, a new repayment period of up to 10 years, assuming a minimum monthly payment in some cases, is extended to a rehabilitated borrower to ensure that the borrower successfully rehabilitates the loan.

Changes: None.

Comment: One commenter supported the provision returning the benefits and privileges of the original promissory note to the rehabilitated borrower, but believed that the regulations should reflect the borrower's eligibility only for the remaining balance of those privileges under the statutory maximums contained in the HEA. For example, if a borrower had received one year of forbearance before rehabilitating the loan, the borrower would be eligible for only two years of forbearance after rehabilitation.

Discussion: We agree that the borrower is eligible only for the statutory maximums on benefits available under the original promissory note and that language reflecting this change would improve the clarity of the regulations.

Changes: Section 674.39(d) has been changed to specify that the borrower regains eligibility for the balance of benefits and privileges available under the original promissory note.

Comment: Several commenters requested clarification regarding whether an institution must require the return of a rehabilitated loan from a collection agency after receipt of the required 12 consecutive monthly payment amounts.

One commenter, noting the borrower's return to regular repayment status, the return of all of the benefits and privileges of the original promissory note, and the borrower's ability to request flexible repayment options, stated that collection agencies typically focus only on collecting the total amount of any debt placed with it and not on servicing loans in regular repayment status. The commenter stated that the return of these benefits would suggest the return of the account to the institution.

Discussion: The issue of whether a loan may remain with a collection agency after rehabilitation was discussed during negotiated rulemaking. Committee II reached consensus on the rehabilitation provisions in this section with the understanding that an institution may allow a rehabilitated loan to remain with a collection agency.

The institution is responsible for insuring that any third party servicer with which it contracts is in compliance with required statutory and regulatory program requirements, which would include the requirements of rehabilitation in the Federal Perkins Loan program. If the institution chooses to leave the rehabilitated account with a collection agency, the collection agency must provide the rehabilitated borrower with all of the benefits associated with loan rehabilitation and required by this section. An institution may leave a rehabilitated loan with a collection agency only if that agency is capable of providing the following services in a manner consistent with program regulations:

- billing the borrower (§ 674.43);

- processing deferment and cancellation requests (§§ 674.34, 674.35, 674.36, 674.37, 674.38 and Subpart D-Loan Cancellation);
- providing flexible repayment arrangements in accordance with the terms of the promissory note (§ 674.33);
- providing any notice or disclosure required under the program regulations (Subpart C-Due Diligence); and
- providing any other statutory or regulatory benefit to which the borrower is entitled.

If the collection agency is unable to provide a rehabilitated borrower with the benefits of rehabilitation, the institution must remove the account from the agency.

Changes: None.

Comment: Many commenters objected to the provision limiting collection costs that can be charged to the borrower on a rehabilitated loan to 24 percent of the unpaid principal and accrued interest.

Several commenters believed that it will be problematic to renegotiate contracts with collection agencies and that the terms of collection agency contracts should be flexible and subject only to negotiation between the school and the collection agency. They believed that the 24 percent cap on collection costs that can be passed on to a rehabilitated borrower will limit the number of collection agencies an institution is able to contract with to those collection agencies that charge lower rates as opposed to those that are best at recovering debts, thereby limiting the ability of an institution to maximize the return of funds to its revolving fund.

Several commenters stated that accounting for collection costs that are different depending on the type of loan on which they are assessed is burdensome, confusing and time-consuming. The commenters questioned why rehabilitated loans should be treated differently than other Federal Perkins Loans since, under the terms of their promissory notes, all borrowers are responsible for reasonable collection costs incurred by an institution in collecting the loan.

Discussion: We disagree that the renegotiation of collection agency contracts will be problematic and that schools will be limited in their choice of collection agencies to those that charge lower fees as opposed of those that are best at collecting debts. We believe that the marketplace will generate competition among collection agencies and that collection agencies will adapt their rates and their servicing practices to those rates and practices required to service rehabilitated loans. We also believe that a borrower is more likely to continue paying on his or her loan once the loan is rehabilitated and that these payments will replenish an institution's revolving fund, not deplete it.

We further believe that collection costs on a rehabilitated loan should be reduced once the borrower has successfully rehabilitated a defaulted loan. A rehabilitated borrower has re-established eligibility for Title IV student financial assistance, is once again entitled to all of the benefits and privileges available under the promissory note and, most importantly, is no longer considered to be in default on the loan. We believe that to assess collection costs on a loan in good standing at a rate higher than the 24 percent maximum is excessive.

Lastly, a reduction in the collection costs that can be charged to a rehabilitated borrower was intensely debated during the negotiated rulemaking process. Committee II reached consensus on a collection cost cap of 24 percent. This rate is consistent with the reduction of collection costs that may be charged to a rehabilitated borrower in the FFEL and Federal Direct Loan Programs, adjusted to allow for the fact that collection costs cannot be capitalized in the Federal Perkins Loan program as they are in the FFEL and Direct Loan programs.

Changes: None.

Comment: Two commenters, while not objecting to the proposed regulations agreed to by the negotiators that cap the collection costs that can be charged to a rehabilitated borrower at 24 percent, expressed concern that the preamble language in the NPRM does not accurately reflect current Federal policy contained in 34 CFR 30.60 on assessing collection costs to defaulted borrowers. The commenters stated that institutions and their servicers would be forced to incur significant expenses in reprogramming and redesigning current systems and procedures to comply with a process that required them to calculate a 24 percent cap on collection-costs on the unpaid principal and accrued interest remaining on the loan at the time it is rehabilitated.

The commenters also expressed concern that the NPRM preamble language states that payments on a rehabilitated loan cannot be treated on a "fee-on-fee," basis which is a widely accepted method for determining collection costs on delinquent debtors. The commenters expressed confidence, however, that institutions and servicers could utilize current systems and procedures, along with the fee-on-fee method of determining collection costs, in such a way as to not exceed the 24 percent cap on rehabilitated loans.

Conversely, three commenters suggested that the text of the preamble discussion be included in the final regulations. They believed that this would provide clarity to the regulations and guard against the possibility that a rehabilitated borrower would be charged in excess of the 24 percent cap on collection costs after the loan has been successfully rehabilitated.

Discussion: The preamble language contained in the NPRM accurately describes the basis on which consensus was reached on the 24 percent cap on collection costs that may be charged on a rehabilitated Federal Perkins Loan. Default-related collection costs of up to 18.5 percent are passed along to the borrower of a rehabilitated FFEL or Federal Direct Loan, are capitalized, and become part of the rehabilitated principal on which interest accrues after rehabilitation. As a result, an FFEL or Federal Direct Loan borrower ultimately pays post-rehabilitation collection costs of approximately 24 percent over the remaining life of the loan. In order to treat rehabilitated borrowers consistently across the Title IV loan programs, the negotiators agreed to a generally comparable 24 percent cap on collection costs on a rehabilitated Federal Perkins Loan, acknowledging that because collection costs in the Federal Perkins Loan Program cannot be capitalized they must be treated as a separate cost. The use of current Federal policy contained in 34 CFR 30.60 when assessing collection costs on a rehabilitated Federal Perkins loan was not specifically discussed. However, several negotiators were very concerned that the 24 percent cap on collection costs on a rehabilitated Federal Perkins loan would be exceeded depending on how the payments from the borrower were applied.

An institution, or its servicer, charges a commission on each payment the borrower makes on a defaulted loan using the formula in 34 CFR 30.60(a)(1). The formula does not take into account interest that continues to accrue on the outstanding balance of a defaulted loan as it is paid down. However, because a rehabilitated loan is no longer considered to be in default, interest must be a factor when applying payments to a rehabilitated loan. Therefore, if an institution or its servicer uses the formula contained in 34 CFR 30.60, it must ensure that when the commissions retained on payments received from the borrower on a rehabilitated loan reach an amount equal to 24 percent of the original principal and accrued interest that remained on the loan after the borrower made the 12 payments, no more costs may be calculated or assessed against the borrower.

We agree that clarifying the regulations to guard against the possibility that a rehabilitated borrower will be charged collection costs in excess of the 24 percent cap is appropriate. An institution, or its servicer, must consider the interest that accrues on the outstanding balance of the rehabilitated loan over the length of the post-rehabilitation repayment period to ensure that collection costs of no more than 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment are paid by the borrower.

Changes: Section 674.39(c)(1) has been changed to specify that collection costs, if charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment.

Comment: One commenter believed that the regulations should be revised to allow an institution to charge collection costs not paid by the borrower on a rehabilitated loan to its revolving fund if the borrower subsequently redefaults.

Discussion: We disagree that the regulations should be revised to allow an institution to charge its revolving fund for collection costs not paid by the borrower if the borrower subsequently redefaults. If the borrower redefaults on a rehabilitated loan, the borrower would be responsible for paying any reasonable collection costs incurred by the institution in attempting to collect the debt. We would note that if a rehabilitated loan is being serviced by a collection agency, § 674.48(e) of the Federal Perkins Loan Program regulations requires an institution to recall the loan and place it with a different collection agency if the loan redefaults. Section 674.48(b) prohibits an institution from using a billing service (which are the duties assumed by the collection agency upon the successful rehabilitation of a loan) and a collection agency that is owned or controlled by the same entity.

Changes: None.

Section 674.41 Due Diligence—General requirements

Comment: Several commenters objected to the requirement that, as part of an institution's general due diligence activities, it provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute. The commenters felt there was no need for a Student Loan Ombudsman's office, that it would be an unnecessary expense and that it would be a bureaucratic intrusion between the institution and the borrower. We received similar objections to the addition of language in §§ 674.42 and 674.45 that requires an institution to inform borrower's of the availability of the Student Loan Ombudsman's office.

Discussion: The 1998 Amendments require the Department of Education to appoint a Student Loan Ombudsman who must receive, review and attempt to resolve informally complaints from borrowers regarding the terms of their loans. Although there is no specific statutory requirement that institutions or other loan participants disseminate information regarding the availability of the Student Loan Ombudsman to borrowers, the negotiators for Committees I and II agreed that as our partners in student loan administration, it made sense for loan participants, as well as the Department, to provide borrowers with information on the Student Loan Ombudsman's office. The negotiators agreed that adding a provision on the availability of this service to § 674.41, as well as to §§ 674.42 and 674.45, will increase borrower awareness and greatly enhance successful repayment of student loans and reduce defaults.

Changes: None

Comment: Several commenters expressed concern that the proposed regulations did not address what kind of information an institution must provide to borrowers when complying with the requirement to inform them about the availability of the Student Loan Ombudsman's office. One commenter felt that the proposed regulations should be revised to require institutions to provide the borrower with information on the availability of the Student Loan Ombudsman's office only as that information is provided to institutions by the Secretary.

Discussion: The proposed regulations require that an institution provide the borrower with information about the availability of the Student Loan Ombudsman's office. This information is meant to convey to the borrower that, if the borrower is unable to resolve a dispute with the loan holder, another avenue of redress is available. An institution may comply with this requirement by providing the borrower with the Ombudsman's website address or mailing address at the Department of Education. The Student Loan Ombudsman's website address is http://www.sfahelp.ed.gov.

Changes: None.

Section 674.42 Contact with the borrower

Comment: One commenter applauded our initiative to allow for loan counseling through interactive electronic means but objected to the requirement that the institution obtain through return receipt or some other mechanism documentation that the student received and completed the materials when electronic exit counseling is used. The commenter believed that obtaining return receipt that the student received and completed electronic exit counseling was too high a standard of compliance for institutions to meet and suggested that we adopt the receipt standards of the U.S. Postal Service, which are that if mail is not returned to the sender, it can be considered delivered.

Discussion: We disagree that obtaining documentation that the borrower has received and completed exit counseling, either through return receipt or some other mechanism, is too high a standard to require when an institution provides exit counseling electronically. Institutions were previously required to provide exit counseling to their borrowers either in person or in a group to ensure that borrowers received and completed exit counseling. We believe that providing exit counseling electronically should be viewed as comparable to providing in person counseling and should provide the same assurances.

The standards of the U.S. Postal service provide that if mail is not returned to the sender, it can be considered delivered. Because there is currently no similar standard for electronic mail, we believe that it is in the best interest of borrowers to require an institution to take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes interactive electronic exit counseling given the current available technology.

Changes: None.

Comment: One commenter supported the requirement that an institution provide a borrower with an explanation of any options the borrower might have to consolidate or refinance his or her loan during exit counseling. However, the commenter suggested that we require institutions to inform Federal Perkins Loan borrowers that the interest rate on a consolidation loan may be higher than the 5 percent interest rate on their Federal Perkins loan.

Discussion: Because Federal Perkins loan borrowers lose eligibility for cancellation benefits and are charged a different rate of interest upon consolidating their Perkins loans, we agree that disclosing the consequences of consolidating a Federal Perkins loan will help borrowers make an informed decision.

Change: Section 674.42(b)(2)(ii) has been amended to require an institution to inform borrowers about the consequences of consolidating a Federal Perkins Loan.

Comment: One commenter stated that the provision requiring schools to provide borrowers with "additional matters that the Secretary recommends that a school include in the exit counseling or materials set forth in Appendix D to 34 CFR 668" be deleted. The commenter believes that such a requirement is unnecessary especially given the elimination of default reduction plans in the Federal Perkins Loan Program.

Discussion: We disagree that this provision should be deleted. Including additional information recommended by the Secretary or materials in Appendix D in exit counseling is an option, not a requirement. We believe that Appendix D is a useful resource to institutions when counseling borrowers on default avoidance.

Changes: None.

Section 674.47 Costs chargeable to the fund

Comment: One commenter expressed concern that institutions may be unable to renegotiate collection agency contracts by July 1, 2002 that comply with the requirement that no more than 24 percent of the unpaid principal and accrued interest remaining on the loan at the time the loan is rehabilitated can be assessed a borrower in collection costs. The commenter requested that we include an explicit commitment in the preamble of the final regulations to revisit this issue if the majority of institutions are unable to renegotiate contracts to account for the 24 percent collection costs cap.

Discussion: We believe that because this will be a general program requirement, the market will expand to meet institutional needs. Further, we believe it is inappropriate for us to commit to a regulatory change outside of the negotiated rulemaking process required by the 1998 Amendments. However, we will carefully consider this provision in the future as part of our ongoing regulatory review.

Changes: None.

Section 674.49 Bankruptcy of borrower

Comment: One commenter submitted a detailed analysis of § 674.49 and suggested substantive changes to this section of the regulations. These suggested changes included eliminating paragraph (b), which requires an institution to file a proof of claim in a bankruptcy; eliminating paragraph (e), which outlines an institution's responsibilities when a borrower files a Chapter 13 bankruptcy; and, clarifying paragraph (g)(1)(i), which deals with termination of collection and write-off of the loan under certain circumstances.

Discussion: We appreciate the analysis of § 674.49 submitted by the commenter. However, we did not propose to amend this section other than to:

- Reflect the change to the bankruptcy code that eliminates a borrower's ability to discharge a loan in bankruptcy on the basis of the loan being in repayment for more than seven years, and require all borrowers who seek discharge of a Perkins loan to prove undue hardship;
- Clarify that the seven year repayment period on bankruptcies filed before October 8, 1998, excludes applicable suspensions of the repayment period; and
- Insert language stating that the institution must use diligence and may assert any defense consistent with its status under applicable law to avoid the discharge of the loan.

While this section may undoubtedly deserve closer scrutiny, we do not believe it is appropriate to make the changes suggested by the commenter outside of the negotiating rulemaking process.

Changes: None.

Comment: One commenter suggested that we delete § 674.49(4)(i), which requires an institution to monitor the borrower's compliance with the requirements of a Chapter 13 repayment plan, and to take certain steps if the borrower has not made payments or has requested a hardship discharge on the debt. The commenter asserted that the institution has no legal grounds to monitor the borrower unless the institution appoints a trustee.

Discussion: The code expressly directs that a trustee be appointed for every Chapter 13 proceeding and authorizes any "party in interest" or "creditors" to move for any of a number of reasons to have a Chapter 13 proceeding dismissed or converted to a Chapter 7, 11 U.S.C. 1302, 1307(c). Because the comment has no basis in the law, we disagree with the commenter's suggestion that we delete this paragraph from the regulations. The proposed changes to this paragraph reflect only the deletion of language that referred to loans held by an institution that had been in repayment for more than seven years. We believe that any further changes in this section of the regulation should be undertaken only as part of negotiated rulemaking process.

Changes: None.

Comment: One commenter noted an inconsistency between the preamble discussion on § 674.49(c)(1) and the proposed regulatory language. Specifically, the preamble states that "the proposed regulations would amend this section to 'require' institutions to use due diligence and assert any defense consistent with its status." The actual regulatory language states that "the institution must use diligence and 'may' assert any defense consistent with its status." The commenter requested that we correct the preamble in the NPRM.

Discussion: Any inconsistency between the preamble and the proposed regulatory language was not intended. Recently, some State institutions have responded to undue hardship complaints by asserting that sovereign immunity barred relief on these claims in bankruptcy proceedings. We intend the proposed amendment to make clear that every institution must use due diligence to oppose discharge, but that State institutions may do so—if they wish—by asserting sovereign immunity as a defense to an undue hardship complaint. Unfortunately, some courts misconstrue Department regulations to bar State institutions from asserting sovereign immunity in these circumstances. We intend this amendment as an authoritative explanation of the meaning of the Federal Perkins Loan regulations and Program Participation Agreement on this due diligence obligation.

Changes: None.

Section 674.54 Teacher cancellation—Federal Perkins loans and Direct loans made before July 23, 1992

Comment: One commenter suggested that we consider removing and reserving § 674.54 of the Federal Perkins Loan Program regulations because it is redundant with § 674.53. (Section 674.54 authorizes teaching cancellation benefits for Federal Perkins Loans and Direct Loans made before July 23, 1992. All borrowers with loans made before July 23, 1992 are eligible for all of the cancellation provisions contained in § 674.53.)

Discussion: We agree that § 674.54 is redundant and should be removed and reserved. We note that borrowers who teach handicapped students and receive cancellation benefits under § 674.54(b) remain eligible for cancellation under § 674.53(b)—Full time teaching in special education.

Changes: Section 674.54 is removed and reserved.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of the 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

List of Subjects in 34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: October 20, 1999.

Richard W. Riley,
Secretary of Education.

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.2(b) is amended by adding, in alphabetical order, a definition of "satisfactory repayment arrangement," to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Satisfactory repayment arrangement: For purposes of regaining eligibility for grant, loan, or work assistance under Title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six (6) on-time, consecutive, monthly payments on a defaulted loan. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once on a defaulted loan.

* * * * *

3. Section 674.5 is amended as follows:

A. By revising paragraphs (a)(1) and (a)(2).

B. By removing paragraphs (a)(3) and (a)(4).

C. By removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2).

D. By removing paragraph (c)(4); and redesignating paragraph (c)(3)(ii) as paragraph (c)(4) and by removing "; and" at the end of the sentence in the new paragraph (c)(4) and adding, in its place, a period; and by revising paragraph (c)(3).

E. By removing paragraphs (e) and (f).

§ 674.5 Federal Perkins Loan Program cohort default rate and penalties.

(a) * * *

(1) *FCC reduction.* If the institution's cohort default rate equals or exceeds 25 percent, the institution's FCC is reduced to zero.

(2) *Ineligibility.* For award year 2000–2001 and succeeding award years, an institution with a cohort default rate that equals or exceeds 50 percent for each of the three most recent years for which cohort default rate data are available is ineligible to participate in the Federal Perkins Loan Program. Following a review of that data and upon notification by the Secretary, an institution is ineligible to participate for the award year, or the remainder of the award year, in which the determination is made and the two succeeding award years. An institution may appeal a notification of ineligibility from the Secretary within 30 days of its receipt.

(i) *Appeal procedures.*

(A) *Inaccurate calculation.* An institution may appeal a notice of ineligibility based upon the submission of erroneous data by the institution, the correction of which would result in a recalculation that reduces the institution's cohort default rate to below 50 percent for any of the three award years used to make a determination of ineligibility. The Secretary considers the edit process, by which an institution adjusts the cohort default rate data that it submits to the Secretary on its Fiscal Operations Report, to constitute the procedure to appeal a determination of ineligibility based on a claim of erroneous data.

(B) *Small number of borrowers entering repayment.* An institution may appeal a notice of ineligibility if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used by the Secretary to make a determination of ineligibility.

(C) *Decision of the Secretary.* The Secretary issues a decision on an appeal within 45 days of the institution's submission of a complete, accurate, and timely appeal. An institution may continue to participate in the program until the Secretary issues a decision on the institution's appeal.

(ii) *Liquidation of an institution's Perkins Loan portfolio.* Within 90 days of receiving a notification of ineligibility or, if the institution appeals, within 90 days of the Secretary's decision to deny the appeal, the institution must—

(A) Liquidate its revolving student loan fund by making a capital distribution of the liquid assets of the Fund according to section 466(c) of the HEA; and

(B) Assign any outstanding loans in the institution's portfolio to the Secretary in accordance with § 674.50.

(iii) *Effective date.* The provisions of paragraph (a)(2) of this section are effective with the cohort default rate calculated as of June 30, 2001.

* * * * *

(c) * * *

(3)(i) In determining the number of borrowers who default before the end of the following award year, a loan is excluded if the borrower has—

(A) Voluntarily made six consecutive monthly payments;

(B) Voluntarily made all payments currently due;

(C) Repaid the full amount due, including any interest, late fees, and collection costs that have accrued on the loan;

(D) Received a deferment or forbearance based on a condition that predates the borrower reaching a 240- or 270-day past due status; or

(E) Rehabilitated the loan after becoming 240- or 270-days past due.

(ii) A loan is considered canceled and also excluded from an institution's cohort default rate calculation if the loan is—

(A) Discharged due to death or permanent and total disability;

(B) Discharged in bankruptcy;

(C) Discharged due to a closed school; or

(D) Repaid in full in accordance with § 674.33(e) or § 674(h).

(iii) For the purpose of this section, funds obtained by income tax offset, garnishment, income or asset execution, or pursuant to a judgment are not considered voluntary.

* * * * *

§ 674.9 [Removed and Reserved]

4. Section 674.6 is removed and reserved.

§ 674.7 [Removed and Reserved]

5. Section 674.7 is removed and reserved.

6. Section 674.9 is amended by redesignating paragraph (i) as paragraph (j) and adding a new paragraph (i) to read as follows:

§ 674.9 Student eligibility.

* * * * *

(i) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in § 674.5(c)(3)(i) or (ii) except that—

(1) For the purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are those payments made directly by the borrower, including payments made over and above payments made pursuant to a judgment; and

(2) Voluntary payments do not include payments obtained by income tax refund offset, garnishment, income or asset execution, or pursuant to a judgment.

* * * * *

7. Section 674.12 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student may borrow is—

(1) $4,000 for a student who is enrolled in a program of undergraduate education; and

(2) $6,000 for a graduate or professional student.

(b) The aggregate unpaid principal amount of all Federal Perkins Loans and Direct Loans received by an eligible student may not exceed—

(1) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree;

(2) $40,000 for a graduate or professional student; and

(3) $8,000 for any other student.

* * * * *

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section, and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution.

* * * * *

8. Section 674.16 is amended by revising paragraph (i) and the Office of Management and Budget control number to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(i)(1) An institution must report to at least one national credit bureau—

(i) The amount and the date of each disbursement;

(ii) Information concerning the repayment and collection of the loan until the loan is paid in full; and

(iii) The date the loan was repaid, canceled, or discharged for any reason.

(2) An institution must promptly report any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported.

(Approved by the Office of Management and Budget under control number 1845–0019)

* * * * *

9. Section 674.31 is amended by redesignating paragraphs (b)(2)(i) (C) and (D) as (D) and (E), respectively; by adding new paragraph (b)(2)(i)(C); by revising paragraph (b)(10)(i); and by revising the Office of Management and Budget control number to read as follows:

§ 674.31 Promissory note.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) For purposes of establishing the beginning of the repayment period for Direct or Perkins loans, the 6- and 9-month grace periods referenced in paragraph (b)(2)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of Title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Direct or Perkins loan borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a new 6- or 9-month grace period upon completion of the excluded period.

* * * * *

(10) * * *

(i) The institution must disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

10. Section 674.33 is amended by adding new paragraphs (f) and (g); and by revising the Office of Management and Budget Control number to read as follows:

§ 674.33 Repayment.

* * * * *

(f)(1) *Incentive repayment program.* An institution may establish the following repayment incentives:

(i) A reduction of no more than one percent of the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments.

(ii) A discount of no more than five percent on the balance owed on a loan which the borrower pays in full prior to the end of the repayment period.

(iii) With the Secretary's approval, any other incentive the institution determines will reduce defaults and replenish its Fund.

(2) *Limitation on the use of funds.* (i) The institution must reimburse its Fund, on at least a quarterly basis, for money lost to its Fund that otherwise would have been paid by the borrower as a result of establishing a repayment incentive under paragraphs (f)(1)(i), (ii) and (iii) of this section.

(ii) An institution may not use Federal funds, including Federal funds from the student loan fund, or institutional funds from the student loan fund to pay for any repayment incentive authorized by this section.

(g) *Closed school discharge.* (1) *General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) "School" means a school's main campus or any location or branch of the main campus; and

(C) The "holder" means the Secretary or the school that holds the loan.

(2) *Relief pursuant to discharge.* (i) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued interest or collection costs with respect to the loan.

(ii) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(iii) A borrower who has defaulted on a loan discharged under this section is not considered to have been in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the HEA.

(iv) The Secretary or the school, if the school holds the loan, reports the discharge of a loan under this section to all credit bureaus to which the status of the loan was previously reported.

(3) *Determination of borrower qualification for discharge by the Secretary.* The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application if the Secretary determines that—

(i) The borrower qualified for and received a discharge on a loan pursuant to 34 CFR 682.402(d) (Federal Family Education Loan Program) or 34 CFR 685.213 (Federal Direct Loan Program), and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan; or

(ii) Based on information in the Secretary's possession, the borrower qualifies for a discharge.

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, in order to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement the borrower must—

(i) State that the borrower—

(A) Received the proceeds of a loan to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(C) Did not complete and is not in the process of completing the program of study through a teachout at another school as defined in 34 CFR 602.2 and administered in accordance with 34 CFR 602.207(b)(6), by transferring academic credit earned at the closed school to another school, or by any other comparable means;

(ii) State whether the borrower has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(iii) State that the borrower—

(A) Agrees to provide to the holder of the loan upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

(5) *Fraudulently obtained loans.* A borrower who secured a loan through fraudulent means, as determined by the ruling of a court or an administrative tribunal of competent jurisdiction, is ineligible for a discharge under this section.

(6) *Cooperation by borrower in enforcement actions.*

(i) In order to obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(B) Provide any documents reasonably available to the borrower with respect to those representations; and

(C) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(ii) The holder denies the request for a discharge or revokes the discharge of a borrower who—

(A) Fails to provide the testimony, documents, or a sworn statement required under paragraph (g)(6)(i) of this section; or

(B) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(7) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) In the case of a loan held by the Secretary, upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged NDSL or Federal Perkins Loan.

(8) *Discharge procedures.* (i) After confirming the date of a school's closure, the holder of the loan identifies any NDSL or Federal Perkins Loan borrower who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(ii) If the borrower's current address is known, the holder of the loan mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan. The holder of the loan may continue to receive borrower payments.

(iii) In the case of a loan held by the Secretary, if the borrower's current address is unknown, the Secretary attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school or representatives of the closed school's third-party billing and collection servicers, the school's licensing agency, the school accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(8)(ii) of this section.

(iv) In the case of a loan held by a school, if the borrower's current address is unknown, the school attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by taking steps required to locate the borrower under § 674.44.

(v) If the borrower fails to submit the written request and sworn statement described in paragraph (g)(4) of this section within 60 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

(vi) If the holder of the loan determines that a borrower who requests a discharge meets the qualifications for a discharge, the holder of the loan notifies the borrower in writing of that determination.

(vii) In the case of a loan held by the Secretary, if the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower, in writing, of that determination and the reasons for the determination.

(viii) In the case of a loan held by a school, if the school determines that a borrower who requests a discharge does not meet the qualifications for discharge, the school submits that determination and all supporting materials to the Secretary for approval. The Secretary reviews the materials, makes an independent determination, and notifies the borrower in writing of the determination and the reasons for the determination.

(ix) In the case of a loan held by a school and discharged by either the school or the Secretary, the school must reimburse its Fund for the entire amount of any outstanding principal and interest on the loan, and any collection costs charged to the Fund as a result of collection efforts on a discharged loan. The school must also reimburse the borrower for any amount of principal, interest, late charges or collection costs the borrower paid on a loan discharged under this section.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

11. Section 674.34 is amended by revising the section heading; revising paragraphs (a) and (c); and adding the Office of Management and Budget control number to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, Direct loans and Defense loans.

(a) The borrower may defer making a scheduled installment repayment on a Federal Perkins loan, a Direct loan, or a Defense loan, regardless of contrary provisions of the borrower's promissory note and regardless of the date the loan was made, during periods described in this section.

* * * * *

(c) The borrower of a Federal Perkins loan, a Direct loan, or a Defense loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

12. Section 674.39 is revised to read as follows:

§ 674.39 Loan rehabilitation.

(a) Each institution must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans made under this part. The institution's loan rehabilitation program must provide that—

(1) A defaulted borrower is notified of the option and consequences of rehabilitating a loan; and

(2) A loan is rehabilitated if the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months and the borrower requests rehabilitation; and

(3) A borrower who wishes to rehabilitate a loan on which a judgment has been entered must sign a new promissory note after rehabilitating the loan.

(b) Within 30 days of receiving the borrower's last on-time, consecutive, monthly payment, the institution must—

(1) Return the borrower to regular repayment status;

(2) Treat the first payment made under the 12 consecutive payments as the first payment under the 10-year repayment maximum; and

(3) Instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(c) Collection costs on a rehabilitated loan—

(1) If charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment; and

(2) That exceed the amounts specified in paragraph (c)(1) of this section may be charged to an institution's Fund until July 1, 2002 in accordance with § 674.47(e)(5).

(d) After rehabilitating a defaulted loan and returning to regular repayment status, the borrower regains the balance of the benefits and privileges of the promissory note as applied prior to the borrower's default on the loan. Nothing in this paragraph prohibits an institution from offering the borrower flexible repayment options following the borrower's return to regular repayment status on a rehabilitated loan.

(e) The borrower may rehabilitate a defaulted loan only one time.

(Approved by the Office of Management and Budget under control number 1845–0019)

13. Section 674.41 is amended by adding a new paragraph (a)(3); and by

adding the Office of Management and Budget control number to read as follows:

§ 674.41 Due diligence—general requirements.

(a) * * *

* * * * *

(3) Provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023).

14. Section 674.42 is amended by redesignating paragraph (b) as paragraph (c), revising paragraph (a), adding a new paragraph (b), and revising the Office of Management and Budget control number to read as follows:

§ 674.42 Contact with the borrower.

(a) *Disclosure of repayment information.* The institution must disclose the following information in a written statement provided to the borrower either shortly before the borrower ceases at least half-time study at the institution or during the exit interview. If the borrower enters the repayment period without the institution's knowledge, the institution must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period. The institution must disclose the following information:

(1) The name and address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(2) The name and address of the party to which payments should be sent.

(3) The estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin.

(4) The stated interest rate on the loan.

(5) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(6) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(7) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(8) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(9) The total interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(10) A copy of the borrower's signed promissory note.

(b) *Exit interview.* (1) An institution must conduct exit counseling with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must conduct this counseling shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the school approves for credit, the school may provide written counseling materials by mail within 30 days after the borrower completes the program. If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student as to the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Perkins loans for attendance at that school or in the borrower's program of study;

(ii) Review for the borrower available repayment options (*e.g.* loan consolidation and refinancing, including the consequences of consolidating a Federal Perkins Loan);

(iii) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(iv) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(v) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation;

(vi) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school;

(vii) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan;

(viii) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, the borrower's expected permanent address, the address of the borrower's next of kin, as well as the name and address of the borrower's expected employer; and

(ix) Review with the borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are in appendix D to 34 CFR part 668.

(4) An institution that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the exit counseling.

(5) The institution must maintain documentation substantiating the school's compliance with this section for each borrower.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023)

15. Section 674.45 is amended by revising paragraph (b), by adding a new paragraph (h), and by revising the Office of Management and Budget control number to read as follows:

§ 674.45 Collection procedures.

* * * * *

(b)(1) An institution must report to any national credit bureau to which it reported the default, according to the reporting procedures of the national credit bureau, any changes to the account status of the loan.

(2) The institution must resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan.

* * * * *

(h) As part of the collection activities provided for in this section, the institution must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023)

16. Section 674.47 is amended by redesignating paragraphs (e)(5) and (e)(6) as (e)(6) and (e)(7), respectively, by adding new paragraph (e)(5), and by revising the Office of Management and Budget control number to read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(e) * * *

(5) Until July 1, 2002 on loans rehabilitated pursuant to § 674.39, amounts that exceed the amounts specified in § 674.39(c)(1) but are less than—

(i) 30 percent if the loan was rehabilitated while in a first collection effort; or

(ii) 40 percent if the loan was rehabilitated while in a second collection effort.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023)

17. Section 674.49 is amended as follows:

A. By redesignating paragraphs (f)(2)(ii)(A) and (f)(2)(ii)(B) as paragraphs (f)(2)(ii)(B) and (f)(2)(ii)(C), respectively; and adding a new paragraph (f)(2)(ii)(A).

B. By redesignating paragraphs (f)(3)(ii)(A) and (f)(3)(ii)(B) as paragraphs (f)(3)(ii)(B) and (f)(3)(ii)(C), respectively; and adding a new paragraph (f)(3)(ii)(A). By revising paragraphs (c)(1), (c)(2) and (c)(3);

C. Revising paragraph (e)(4)(i) introductory text; newly redesignated paragraphs (f)(2)(ii)(B) and (f)(3)(ii)(B); and paragraph (g).

D. By revising the Office of Management and Budget control number.

§ 674.49 Bankruptcy of borrower.

* * * * *

(c) * * *

(1) The institution must use due diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. The institution must follow the procedures in this paragraph to respond to a complaint for a determination of dischargeability under 11 U.S.C. 523(a)(8) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents, unless discharge would be more effectively opposed by avoiding that action.

(2) If the petition for relief in bankruptcy was filed before October 8, 1998 and more than seven years of the repayment period on the loan (excluding any applicable suspension of the repayment period defined in 34 CFR 682.402(m)) have passed before the borrower filed the petition, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) In any other case, the institution must determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

* * * * *

(e) * * *

* * * * *

(4)(i) The institution must monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), the institution must determine from its own records and information derived from documents filed with the court—

* * * * *

(f) * * *

(2) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any applicable suspension of the repayment period as defined by 34 CFR 682.402(m), and

* * * * *

(3) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any application suspension of the repayment period as defined by 34 CFR 682.402(m) before the filing of the petition; and

* * * * *

(g) *Termination of collection and write-off.* (1) An institution must terminate all collection action and write off a loan if it receives a general order of discharge—

(i) In a bankruptcy in which the borrower filed for relief before October 8, 1998, if the loan entered the repayment period more than seven years (exclusive of any applicable suspension of the repayment period defined by 34 CFR 682.402(m)) from the date on which a petition for relief was filed; or

(ii) In any other case, a judgment that repayment of the debt would constitute an undue hardship and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023)

18. Section 674.52 is amended by revising paragraphs (c)(1) and (d); and by revising the Office of Management and Budget control number to read as follows:

§ 674.52 Cancellation procedures.

* * * * *

(c) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation by complying with the requirements of paragraph (a) of this section.

* * * * *

(d) *Concurrent deferment period.* The Secretary considers a Perkins Loan, Direct Loan or Defense Loan borrower's loan deferment under § 674.34(c) to run concurrently with any period for which cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

19. Section 674.53 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) as (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), respectively; by revising the heading of the section; by adding a new paragraph (a)(2); by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 674.53 Teacher cancellation—Federal Perkins, Direct and Defense loans.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.*

(1)(i) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school.

(ii) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(2) The borrower must be teaching full-time in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

* * * * *

(b) *Cancellation for full-time teaching in special education.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(c) *Cancellation for full-time teaching in fields of expertise.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

§ 674.54 [Removed and Reserved]

20. Section 674.54 is removed and reserved.

21. Section 674.56 is amended by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

§ 674.56 Employment cancellation—Federal Perkins, Direct and Defense loans.

(a) *Cancellation for full-time employment as a nurse or medical technician.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for full-time service as a nurse or medical technician performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of these children.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for employment in a child or family service agency on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individual with Disabilities Act.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992 for early intervention service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

22. Section 674.57 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) as (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8), respectively; by revising the section heading and paragraph (a)(1); and adding a new paragraph (a)(2) to read as follows:

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins, Direct and Defense loans.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct Loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

23. Section 674.58 is amended by revising paragraph (a) to read as follows:

§ 674.58 Cancellation for service in a Head Start Program.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Direct or Federal Perkins loan, for service as a full-time staff member in a Head Start program.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Defense loan for service as a full-time staff member in a Head Start program performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) The Head Start program in which the borrower serves must operate for a complete academic year, or its equivalent.

(4) In order to qualify for cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

* * * * *

24. Section 674.60 is amended by revising the section heading and paragraph (a) to read as follows:

§ 674.60 Cancellation for volunteer service—Perkins loans, Direct loans and Defense loans.

(a)(1) An institution must cancel up to 70 percent of the outstanding balance on a Perkins loan, and 70 percent of the outstanding balance of an NDSL made on or after October 7, 1998, for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) An institution must cancel up to 70 percent of the outstanding balance on a Direct or Defense loan for service as

a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs) performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

§ 674.8, 674.10, 674.19, 674.20, 674.35, 674.36, 674.38, 674.50, 674.61 [Amended]

25. Sections 674.8, 674.10, 674.19, 674.20, 674.35, 674.36, 674.38, 674.50, and 674.61 are amended by revising the Office of Management and Budget control number to read "1845–0019".

26. Sections 674.13 is amended by adding the Office of Management and Budget control number before the authority citation.

§ 674.13 Reimbursement to the Fund.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

27. Section 674.37 is amended by adding the Office of Management and Budget control number before the authority citation.

§ 674.37 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

§ 674.43, 674.48 [Amended]

28. Sections 674.43 and 674.48 are amended by revising the Office of Management and Budget control number to read "1845–0023".

[FR Doc. 99–28168 Filed 10–27–99; 8:45 am]

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federal register

Thursday
October 28, 1999

Part VIII

Department of Health and Human Services

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42 CFR Parts 36 and 36a

Currently Effective Indian Health Service Eligibility Regulations; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 36 and 36a

RIN 0917–AA03

Currently Effective Indian Health Service Eligibility Regulations

AGENCY: Indian Health Service, HHS.

ACTION: Republication of currently effective Indian Health Service eligibility regulations.

SUMMARY: The HHS is publishing in the **Federal Register**, final regulations governing eligibility for services from the Indian Health Service. The eligibility regulations currently codified at 42 CFR part 36 are under a congressional moratorium. Republishing the regulations that are currently in effect while the codified regulations are under moratorium is being done for the convenience of the public and in conformance with the requirement of the Administrative Procedure Act, 5 U.S.C. 552(a)(1), that the Code of Federal Regulations (CFR) must contain currently effective regulations.

DATES: Effective October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie M. Morris, Director, Division of Regulatory and Legal Affairs, Suite 450, 12300 Twinbrook Parkway, Rockville, Maryland 20852, telephone: (301) 443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 16, 1987, HHS published new final regulations governing eligibility for IHS services at 52 FR 35044. These regulations were to supplant eligibility for IHS services at 52 FR 35044. These regulations were to supplant eligibility regulations effective prior to that date but were never implemented.

In the Fiscal Year 1988 Appropriations Act, Section 315, Public Law 100–202, Congress delayed implementation of the new regulations for one year and has imposed a moratorium on the use of appropriated funds for implementation of the new regulations in subsequent fiscal years. In Section 719(a) of the Indian Health Care Amendments of 1988, Public Law 100–713, Congress directed the IHS "* * * during the period of this moratorium * * * to provide services pursuant to the criteria for eligibility for such services that were in effect on September 15, 1987."

In Section 719(b), Congress also directed the IHS to conduct a study to determine, among other things, the financial impact of the rules published September 16, 1987. The study has been completed (*Impact of the Final Rule "Health Care Services of the Indian Health Service" 42 CFR Part 36—Final Report*, contract No. 282–910065) and sent to the tribes for comment, but it has not yet been submitted to Congress. The IHS has not submitted a budget request reflecting increased costs associated with the new regulations as directed by the various appropriations acts.

The regulations in effect on September 15, 1987, which Congress has made applicable during the moratorium, were last published in the CFR in 1986. The new regulations have been published in each edition of the CFR after 1986 but have not been implemented. This has caused considerable confusion because a reader of the current CFR would assume that the eligibility regulations published therein are currently applicable, which is not the case.

Because the moratorium continues in effect, for the convenience of the public, the HHS is republishing the eligibility regulations in effect on September 1, 1987, so these regulations may appear in the CFR printed in regular type, followed by the suspended regulations in small type.

The suspended regulations are redesignated as part 36a for clarity of citation purposes because two distinct regulations cannot use the same regulation number.

The following eligibility rules that were in effect on September 1, 1987, along with 42 CFR subpart G, 36.61, payor of last resort, (published February 9, 1990, at 55 FR 4609) are currently in effect for the IHS. Subpart G has replaced §§ 36.21(a) and 36.23(f) of the rules in effect on September 15, 1987.

List of Subjects in 42 CFR Parts 36 and 36a

Alaska Natives, Contract health services, Employment, Government contracts, Government procurement, Grant programs—education, Grant programs—health, Grant programs—Indians, Health care, Health facilities, Health service delivery areas, Indians, Penalties, Reporting and recordkeeping requirements, Scholarships and fellowships, Student aid.

Dated: September 2, 1999.

Michael E. Lincoln,

Acting Director, Indian Health Service.

Approved: September 29, 1999.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, 42 CFR chapter I is amended as follows:

PART 36—[REDESIGNATED AS PART 36a]

1. Part 36 is redesignated as Part 36a.

2. In newly redesignated § 36a.212, paragraphs (h)(i) through (h)(iv) are redesignated as paragraphs (h)(i) through (h)(4).

3. In newly redesignated Part 36a, in the redesignated section and paragraph listed in the first column below, references to the sections listed in the second column are revised to read as shown in the third column:

Redesignated section	Old section reference	New section reference
36a.12(a)(2), (a)(3), and (b)(1)	36.15	36a.15
36a.15(b)(1)	36.(a)(1) and (3)	36a.(a)(1) and (3)
36a.16(a)	36.12(a)	36a.12(a)
36a.33(a)	36.32(a)	36a.32(a)
36a.33(b)	36.14	36a.14
36a.34(b)	36.14	36a.14
36a.42(a)	36.41	36a.41
36a.43	36.41	36a.41
36a.53	36.51	36a.51
36a.53	36.54	36a.54
36a.56	36.54	36a.54
36a.106(a)(4)	36.105	36a.105
36a.116	36.114	36a.114
36a.120(a)	section 102(g) of this subpart	36a.102(g)
36a.205(b)(18)	36.216	36a.216
36a.208(b)(4)	36.206	36a.206
36a.212(h)(iv)	36.214	36a.214

Redesignated section	Old section reference	New section reference
36a.230(b)	36.208	36a.208
36a.230(b)	36.214	36a.214
36a.232	36.233(a)	36a.233(a)
36a.302(v)(4)	36.350(a)	36a.350(a)
36a.303 (a) and (d)	36.302	36a.302
36a.321(d)	36.320	36a.320
36a.322(a)(2)	36.332	36a.332
36a.350(a) introductory text	36.351	36a.351
36a.351(b)(5), (b)(6), (b)(7), (b)(9)	36.350(a)	36a.350(a)
36a.353	36.350(a) (7) and (8)	36a.350(a) (7) and (8)
36a.371(c), (d)	36.370	36a.370
36a.372(a)(2)	36.332	36a.332

4. Redesignated part 36a is suspended indefinitely.

5. A new part 36 is added to read as follows:

PART 36—INDIAN HEALTH

Subpart A—Purpose and Definitions

Sec.
36.1 Definitions.
36.2 Purpose of the regulations.
36.3 Administrative instructions.

Subpart B—What Services Are Available and Who Is Eligible To Receive Care

36.11 Services available.
36.12 Persons to whom services will be provided.
36.13 [Reserved]
36.14 Care and treatment of ineligible individuals.

Subpart C—Contract Health Services

36.21 Definitions.
36.22 Establishment of contract health service delivery areas.
36.23 Persons to whom contract health services will be provided.
36.24 Authorization for contract health services.
36.25 Reconsideration and appeals.

Subpart D—[Reserved]

Subpart E—Preference in Employment

36.41 Definitions.
36.42 Appointment actions.
36.43 Application procedure for preference eligibility.

Subpart F—Abortions and Related Medical Services in Indian Health Service Facilities and Indian Health Service Programs

36.51 Applicability.
36.52 Definitions.
36.53 General rule.
36.54 Life of the mother would be endangered.
36.55 Drugs and devices and termination of ectopic pregnancies.
36.56 Recordkeeping requirements.
36.57 Confidentiality.

Subpart G—Residual Status

36.61 Payor of last resort.

Authority: 25 U.S.C. 13; sec. 3, 68 Stat. 674 (42 U.S.C., 2001, 2003); Sec. 1, 42 Stat. 208 (25 U.S.C. 13); 42 U.S.C. 2001, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 36.1 Definitions.

When used in this part:

Bureau of Indian Affairs (BIA) means the Bureau of Indian Affairs, Department of the Interior.

Indian includes Indians in the Continental United States, and Indians, Aleuts and Eskimos in Alaska.

Indian health program means the health services program for Indians administered by the Indian Health Service within the Department of Health and Human Services.

Jurisdiction has the same geographical meaning as in Bureau of Indian Affairs usage.

Service means the Indian Health Service.

§ 36.2 Purpose of the regulations.

The regulations in this part establish general principles and program requirements for carrying out the Indian health programs.

§ 36.3 Administrative instructions.

The service periodically issues administrative instructions to its officers and employees, which are primarily found in the *Indian Health Service Manual* and the Area Office and program office supplements. These instructions are operating procedures to assist officers and employees in carrying out their responsibilities, and are not regulations establishing program requirements which are binding upon members of the general public.

Subpart B—What Services Are Available and Who Is Eligible To Receive Care?

§ 36.11 Services available.

(a) *Type of services that may be available.* Services for the Indian community served by the local facilities and program may include hospital and medical care, dental care, public health nursing and preventive care (including immunizations), and health examination of special groups such as school children.

(b) *Where services are available.* Available services will be provided at hospitals and clinics of the Service, and at contract facilities (including tribal facilities under contract with the Service).

(c) *Determination of what services are available.* The Service does not provide the same health services in each area served. The services provided to any particular Indian community will depend upon the facilities and services available from sources other than the Service and the financial and personnel resources made available to the Service.

§ 36.12 Persons to whom services will be provided.

(a) *In general.* Services will be made available, as medically indicated, to persons of Indian descent belonging to the Indian community served by the local facilities and program. Services will also be made available, as medically indicated, to a non-Indian woman pregnant with an eligible Indian's child but only during the period of her pregnancy through postpartum (generally about 6 weeks after delivery). In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction. The Service will also provide medically indicated services to non-Indian members of an eligible Indian's household if the medical officer in charge determines that this is necessary to control acute infectious disease or a public health hazard.

(2) Generally, an individual may be regarded as within the scope of the Indian health and medical service program if he/she is regarded as an Indian by the community in which he/she lives as evidenced by such factors as tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in tribal affairs, or other relevant factors in keeping with general

Bureau of Indian Affairs practices in the jurisdiction.

(b) *Doubtful cases.* (1) In case of doubt as to whether an individual applying for care is within the scope of the program, the medical officer in charge shall obtain from the appropriate BIA officials in the jurisdiction information that is pertinent to his/her determination of the individual's continuing relationship to the Indian population group served by the local program.

(2) If the applicant's condition is such that immediate care and treatment are necessary, services shall be provided pending identification as an Indian beneficiary.

(c) *Priorities when funds, facilities, or personnel are insufficient to provide the indicated volume of services.* Priorities for care and treatment, as among individuals who are within the scope of the program, will be determined on the basis of relative medical need and access to other arrangements for obtaining the necessary care.

§ 36.13 [Reserved]

§ 36.14 Care and treatment of ineligible individuals.

(a) In case of an emergency, as an act of humanity, individuals not eligible under § 36.12 may be provided temporary care and treatment in Service facilities.

(b) Charging ineligible individuals. Where the Service Unit Director determines that an ineligible individual is able to defray the cost of care and treatment, the individual shall be charged at rates approved by the Assistant Secretary for Health and Surgeon General published in the **Federal Register**. Reimbursement from third-party payors may be arranged by the patient or by the Service on behalf of the patient.

Subpart C—Contract Health Services

§ 36.21 Definitions.

(a) *Alternate resources* is defined in § 36.61(c) of subpart G of this part.

(b) *Appropriate ordering official* means, unless otherwise specified by contract with the health care facility or provider, the ordering official for the contract health service delivery area in which the individual requesting contract health services or on whose behalf the services are requested, resides.

(c) *Area Director* means the Director of an Indian Health Service Area designated for purposes of administration of Indian Health Service programs.

(d) *Contract health service delivery area means* the geographic area within which contract health services will be made available by the IHS to members of an identified Indian community who reside in the area, subject to the provisions of this subpart.

(e) *Contract health services* means health services provided at the expense of the Indian Health Service from public or private medical or hospital facilities other than those of the Service.

(f) *Emergency* means any medical condition for which immediate medical attention is necessary to prevent the death or serious impairment of the health of an individual.

(g) *Indian tribe* means any Indian tribe, band, nation, group, Pueblo, or community, including any Alaska Native village or Native group, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(h) *Program Director* means the Director of an Indian Health Service "program area" designated for the purposes of administration of Indian Health Service programs.

(i) *Reservation* means any federally recognized Indian tribe's reservation, Pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), and Indian allotments.

(j) *Secretary* means the Secretary of Health and Human Services to whom the authority involved has been delegated.

(k) *Service* means the Indian Health Service.

(l) *Service Unit Director* means the Director of an Indian Health Service "Service unit area" designated for purposes of administration of Indian Health Service programs.

§ 36.22 Establishment of contract health service delivery areas.

(a) In accordance with the congressional intention that funds appropriated for the general support of the health program of the Indian Health Service be used to provide health services for Indians who live on or near Indian reservations, contract health service delivery areas are established as follows:

(1) The State of Alaska;

(2) The State of Nevada;

(3) the State of Oklahoma;

(4) Chippewa, Mackinac, Luce, Alger, Schoolcraft, Delta, and Marquette Counties in the State of Michigan;

(5) Clark, Eau Claire, Jackson, La Crosse, Monroe, Vernon, Crawford, Shawano, Marathon, Wood, Juneau, Adams, Columbia, and Sauk Counties in the State of Wisconsin and Houston County in the State of Minnesota;

(6) With respect to all other reservations within the funded scope of the Indian health program, the contract health services delivery area shall consist of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation.

(b) The Secretary may from time to time, redesignate areas or communities within the United States as appropriate for inclusion or exclusion from a contract health service delivery area after consultation with the tribal governing body or bodies on those reservations included within the contract health service delivery area. The Secretary will take the following criteria into consideration:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

(c) Any redesignation under paragraph (b) of this section shall be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553).

§ 36.23 Persons to whom contract health services will be provided.

(a) *In general.* To the extent that resources permit, and subject to the provisions of this subpart, contract health services will be made available as medically indicated, when necessary health services by an Indian Health Service facility are not reasonably accessible or available, to persons described in and in accordance with § 36.12 of this part if those persons:

(1) Reside within the United States and on a reservation located within a contract health service delivery area; or

(2) Do not reside on a reservation but reside within a contract health service delivery area and:

(i) Are members of the tribe or tribes located on that reservation or of the tribe or tribes for which the reservation was established; or

(ii) Maintain close economic and social ties with that tribe or tribes.

(b) *Students and transients.* Subject to the provisions of this subpart, contract health services will be made available to students and transients who would be eligible for contract health services at the place of their permanent residence within a contract health service delivery area, but are temporarily absent from their residence as follows:

(1) Student—during their full-time attendance at programs of vocational, technical, or academic education, including normal school breaks (such as vacations, semester or other scheduled breaks occurring during their attendance) and for a period not to exceed 180 days after the completion of the course of study.

(2) Transients (persons who are in travel or are temporarily employed, such as seasonal or migratory workers) during their absence.

(c) *Other persons outside the contract health service delivery area.* Persons who leave the contract health service delivery area in which they are eligible for contract health service and are neither students nor transients will be eligible for contract health service for a period not to exceed 180 days from such departure.

(d) *Foster children.* Indian children who are placed in foster care outside a contract health service delivery area by order of a court of competent jurisdiction and who were eligible for contract health services at the time of the court order shall continue to be eligible for contract health services while in foster care.

(e) *Priorities for contract health services.* When funds are insufficient to provide the volume of contract health services indicated as needed by the population residing in a contract health service delivery area, priorities for service shall be determined on the basis of relative medical need.

(f) *Alternate resources.* The term "alternate resources" is defined in § 36.61(c) of Subpart G of this part.

§ 36.24 Authorization for contract health services.

(a) No payment will be made for medical care and services obtained from non-Service providers or in non-Service facilities unless the applicable requirements of paragraphs (b) and (c) of this section have been met and a purchase order for the care and services has been issued by the appropriate ordering official to the medical care provider.

(b) In nonemergency cases, a sick or disabled Indian, an individual or agency acting on behalf of the Indian, or the medical care provider shall, prior to the provision of medical care and services notify the appropriate ordering official of the need for services and supply information that the ordering official deems necessary to determine the relative medical need for the services and the individual's eligibility. The requirement for notice prior to providing medical care and services under this paragraph may be waived by the ordering official if:

(1) Such notice and information are provided within 72 hours after the beginning of treatment or admission to a health care facility; and

(2) The ordering official determines that giving of notice prior to obtaining the medical care and services was impracticable or that other good cause exists for the failure to provide prior notice.

(c) In emergency cases, a sick or disabled Indian, or an individual or agency acting on behalf of the Indian, or the medical care provider shall within 72 hours after the beginning of treatment for the condition or after admission to a health care facility notify the appropriate ordering official of the fact of the admission or treatment, together with information necessary to determine the relative medical need for the services and the eligibility of the Indian for the services. The 72-hour period may be extended if the ordering official determines that notification within the prescribed period was impracticable or that other good cause exists for the failure to comply.

§ 36.25 Reconsideration and appeals.

(a) Any person to whom contract health services are denied shall be notified of the denial in writing together with a statement of the reason for the denial. The notice shall advise the applicant for contract health services that within 30 days from the receipt of the notice the applicant:

(1) May obtain a reconsideration by the appropriate Service Unit Director of the original denial if the applicant submits additional supporting information not previously submitted; or

(2) If no additional information is submitted, may appeal the original denial by the Service Unit Director to the appropriate Area or program director. A request for reconsideration or appeal shall be in writing and shall set forth the grounds supporting the request or appeal.

(b) If the original decision is affirmed on reconsideration, the applicant shall be so notified in writing and advised that an appeal may be taken to the Area or program director within 30 days of receipt of the notice of the reconsidered decision. The appeal shall be in writing and shall set forth the grounds supporting the appeal.

(c) If the original or reconsidered decision is affirmed on appeal by the Area or program director, the applicant shall be so notified in writing and advised that a further appeal may be taken to the Director, Indian Health Service, within 30 days of receipt of the notice. The appeal shall be in writing and shall set the grounds supporting the appeal. The decision of the Director, Indian Health Service, shall constitute final administrative action.

Subpart D—[Reserved]

Subpart E—Preference in Employment

Authority: 25 U.S.C. 44, 45, 46 and 472; Pub. L. 83–568, 68 Stat 674, 42 U.S.C. 2003.

§ 36.41 Definitions.

For purposes of making appointments to vacancies in all positions in the Indian Health Service, a preference will be extended to persons of Indian descent who are:

(a) Members of any recognized Indian tribe now under Federal jurisdiction;

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;

(c) All others of one-half or more Indian blood of tribes indigenous to the United States;

(d) Eskimos and other aboriginal people of Alaska; or

(e) Until January 4, 1990, or until the Osage Tribe has formally organized, whichever comes first, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

§ 36.42 Appointment actions.

(a) Preference will be afforded a person meeting any one of the definitions of § 36.41 whether the placement in the position involves initial appointment, reappointment, reinstatement, transfer, reassignment, promotion, or any other personnel action intended to fill a vacancy.

(b) Preference eligibles may be given a schedule A excepted appointment under 5 CFR 213.3116(b)(8). If the individuals are within reach on a Civil Service Register, they may be given a competitive appointment.

§ 36.43 Application procedure for preference eligibility.

To be considered a preference eligible, the person must submit with the employment application a Bureau of Indian Affairs certification that the person is an Indian as defined by § 36.41 except that an employee of the Indian Health Service who has a certificate of preference eligibility on file in the Official Personnel Folder is not required to resubmit such proof but may instead include a statement on the application that proof of eligibility is on file in the Official Personnel Folder.

Subpart F—Abortions and Related Medical Services in Indian Health Service Facilities and Indian Health Service Programs

Authority: Sec. 1, 42 Stat. 208, (25 U.S.C. 13); sec. 1, Stat. 674, (42 U.S.C. 2001); sec. 3, 68 Stat. 674, (42 U.S.C. 2003).

§ 36.51 Applicability.

This subpart is applicable to the use of Federal funds in providing health services to Indians in accordance with the provisions of subparts A, B, and C of this part.

§ 36.52 Definitions.

As used in this subpart:

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery at an Indian Health Service or tribally run facility, or by the state in which he or she practices.

§ 36.53 General rule.

Federal funds may not be used to pay for or otherwise provide for abortions in the programs described in § 36.51, except under the circumstances described in § 36.54.

§ 36.54 Life of the mother would be endangered.

Federal funds are available for an abortion when a physician has found and so certified in writing to the appropriate tribal or other contracting organization, or Service Unit or Area Director, that "on the basis of my professional judgment the life of the mother would be endangered if the fetus were carried to term." The certification must contain the name and address of the patient.

§ 36.55 Drugs and devices and termination of ectopic pregnancies.

Federal funds are available for drugs or devices to prevent implantation of the fertilized ovum, and for medical procedures necessary for the termination of an ectopic pregnancy.

§ 36.56 Recordkeeping requirements.

Documents required by § 36.54 must be maintained for three years pursuant to the retention and custodial requirements for records at 45 CFR part 74, subpart C.

§ 36.57 Confidentiality.

Information which is acquired in connection with the requirements of this subpart may not be disclosed in a form which permits the identification of an individual without the individual's consent, except as may be necessary for the health of the individual or as may be necessary for the Secretary to monitor Indian Health Service program activities. In any event, any disclosure shall be subject to appropriate safeguards which will minimize the likelihood of disclosures of personal information in identifiable form.

Subpart G—Residual Status

§ 36.61 Payor of last resort.

(a) The Indian Health Service is the payor of last resort for persons defined as eligible for contract health services under the regulations in this part, notwithstanding any State or local law or regulation to the contrary.

(b) Accordingly, the Indian Health Service will not be responsible for or authorize payment for contract health services to the extent that:

(1) The Indian is eligible for alternate resources, as defined in paragraph (c) of this section, or

(2) The Indian would be eligible for alternate resources if he or she were to apply for them, or

(3) The Indian would be eligible for alternate resources under State or local law or regulation but for the Indian's eligibility for contract health services, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(c) *Alternate resources* means health care resources other than those of the Indian Health Service. Such resources include health care providers and institutions, and health care programs for the payment of health services including but not limited to programs under titles XVIII or XIX of the Social Security Act (*i.e.*, Medicare, Medicaid), State or local health care programs, and private insurance.

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Federal Register

Vol. 64, No. 208

Thursday, October 28, 1999

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

53179–53580	1
53581–53882	4
53883–54198	5
54199–54498	6
54499–54758	7
54759–55114	8
55115–55404	12
55405–55614	13
55615–55808	14
55809–56130	15
56131–56250	18
56251–56398	19
56399–56668	20
56669–56944	21
56945–57360	22
57361–57548	25
57549–57768	26
57769–57966	27
57967–58322	28

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
4865 (*See* Memorandum of April 16, 1999)	53883
(*See* Memorandum of September 24, 1999)	55809
6763 (See Proclamation 7235)	55611
7227	53877
7228	54193
7229	54195
7230	54197
7231	54755
7232	54757
7233	54759
7234	55405
7235	55611
7236	55613
7237	55615
7238	55617
7239	55619
7240	56393
7241	56397
7242	56665
7243	57767
7244	57967
Executive Orders:	
11145 (Amended by EO 13138)	53879
11183 (Amended by EO 13138)	53879
11287 (Amended by EO 13138)	53879
12131 (Amended by EO 13138)	53879
12196 (Amended by EO 13138)	53879
12216 (Amended by EO 13138)	53879
12345 (Amended by EO 13138)	53879
12367 (Amended by EO 13138)	53879
12382 (Amended by EO 13138)	53879
12473 (Amended by EO 13140)	55115
12484 (See EO 13140	55115
12550 (See EO 13140)	55115
12586 (See EO 13140)	55115
12708 (See EO 13140)	55115
12767 (See EO 13140)	55115
12852 (Revoked by EO 13138)	53879
12871 (Amended by EO 13138)	53879
12876 (Amended by EO 13138)	53879
12882 (Amended by EO 13138)	53879
12888 (See EO 13140)	55115
12900 (Amended by EO 13138)	53879
12905 (Amended by EO 13138)	53879
12936 (See EO 13140)	55115
12960 (See EO 13140)	55115
12961 (Revoked by EO 13138)	53879
12978 (See Notice of October 19, 1999)	56667
12994 (Amended by EO 13138)	53879
13010 (Revoked in part by EO 13138)	53879
13017 (Revoked by EO 13138)	53879
13021 (Amended by EO 13138)	53879
13037 (Revoked by EO 13138)	53879
13038 (Revoked by EO 13138)	53879
13050 (Revoked by EO 13138)	53879
13062 (Superseded in part by EO 13138)	53879
13086 (See EO 13140)	55115
13115 (Amended by EO 13138)	53879
13138	53879
13139	54175
13140	55115
Administrative Orders:	
Memorandums:	
April 16, 1999	53883
September 24, 1999	55809
Notices:	
Notice of October 19, 1999	56667
Presidential Determinations:	
No. 99–38 of September 21, 1999	53573
No. 99–39 of September 21, 1999	53575
No. 99–40 of September 21, 1999	53577
No. 99–41 of	

September 22, 1999 53579
No. 99–42 of September 29, 1999 54499
No. 99–43 of September 30, 1999 54501
No. 99–44 of September 30, 1999 54503
No. 99–45 of September 30, 1999 53505

5 CFR

532.........................53179
831.........................53581
842.........................53581
870.........................54761
1201.........................54507

7 CFR

56.........................56945
210.........................55407
215.........................55407
220.........................55407
235.........................55407
245.........................55407
246.........................56669
301 ....55811, 56948, 57969
735.........................54508
915.........................53181
923.........................53885
944.........................53181
966.........................57361
984.........................56131
997.........................56133
998.........................56133
999.........................56133
1000.........................53885
1001.........................53885
1002.........................53885
1004.........................53885
1005.........................53885
1006.........................53885
1007.........................53885
1012.........................53885
1013.........................53885
1030.........................53885
1032.........................53885
1033.........................53885
1036.........................53885
1040.........................53885
1044.........................53885
1046.........................53885
1049.........................53885
1050.........................53885
1064.........................53885
1065.........................53885
1068.........................53885
1076.........................53885
1079.........................53885
1106.........................53885
1124.........................53885
1126.........................53885
1131.........................53885
1134.........................53885
1135.........................53885
1137.........................53885
1138.........................53885
1139.........................53885
1755.........................53886
2003.........................56399
3570.........................56399

Proposed Rules:

46.........................57405
932.........................57597

8 CFR

3.........................56135

Proposed Rules:

Ch. 1.........................54794

9 CFR

3.........................56142
77.........................56399
94.........................55812, 55813
303.........................56400
304.........................56400
307.........................56400
308.........................56400
312.........................56400
314.........................56400
317.........................53186
327.........................56400
331.........................56400
350.........................56400
381.........................53186, 56400
416.........................56400

10 CFR

20.........................54543, 55524
50.........................53582
71.........................57769
72.........................53582, 56114
431.........................54114
600.........................56418

Proposed Rules:

2.........................55176
20.........................56274
30.........................57785
50.........................53270, 56476
63.........................57409

11 CFR

110.........................55125

Proposed Rules:

100.........................55440
102.........................55440
104.........................55440

12 CFR

4.........................56949
204.........................53617
211.........................56949
262.........................53188
347.........................56949
602.........................54511
612.........................55621
614.........................55621
615.........................56675
618.........................55621
701.........................56953, 57363
703.........................57363
704.........................57363
709.........................57363
712.........................57363
713.........................57363
741.........................56148
790.........................57363
791.........................57363
792.........................57363
910.........................55125

Proposed Rules:

202.........................57409
205.........................57409
213.........................57409
226.........................57409
230.........................57409
714.........................55866
724.........................55871
745.........................55871
1750.........................56274

13 CFR

121.........................57366
125.........................57366

Proposed Rules:

Ch. IV.........................57932
Ch. V.........................57946
121.........................55873, 57188

14 CFR

25.........................54761
36.........................55598
39 ....53189, 53191, 53193, 53620, 53621, 53623, 53625, 54199, 54200, 54202, 54512, 54513, 54515, 54517, 54518, 54763, 54767, 54769, 54770, 54773, 54774, 55407, 55409, 55411, 55413, 55414, 55416, 55621, 55624, 55815, 56151, 56158, 56158, 56159, 56161, 56163, 56420, 56422, 56424, 56426, 56957, 56959, 56960, 56962, 56963, 57549, 57551, 575553,, 57555, 57556, 57971, 57972
71 ....53627, 53887, 53888, 53889, 53890, 53891, 53892, 53893, 53894, 53895, 53896, 53898, 53899, 54203, 54204, 54205, 54206, 55131, 55815, 55816, 55817, 55818, 55819, 55820, 56251, 56428, 56429, 56676, 57557, 57558
93.........................53558
97 ....55132, 55133, 55135, 57555, 57560, 57562

Proposed Rules:

Ch. 1.........................56275
11.........................56708
39 ....53275, 53951, 53953, 54227, 54229, 54230, 54232, 54234, 54237, 54239, 54240, 54242, 54246, 54248, 54249, 54580, 54582, 54584, 54587, 54589, 54591, 54594, 54596, 54598, 54795, 54797, 54799, 54801, 54804, 54808, 54811, 54815, 54818, 54822, 54826, 54829, 54833, 55177, 55181, 55184, 55188, 55191, 55195, 55196, 55197, 55200, 55204, 55207, 55211, 55440, 55636, 55638, 55640, 55642, 55644, 56276, 56279, 56281, 56709, 56712, 56715, 57409, 57600, 57602, 57606, 57608, 57787, 57789, 57790, 57792, 57794, 57796, 57798, 57800, 57802, 57806, 57808, 57810, 57811, 57814, 57816, 57818, 57820, 57822, 57823
71 ....53956, 53957, 57609, 57610, 57995
91.........................56708
121.........................56708
135.........................56708
145.........................56708
193.........................53958
450.........................54448

15 CFR

774.........................54520
902.........................54732, 55821
2014.........................56429

Proposed Rules:

30.........................53861
732.........................53854
740.........................53854
743.........................53854
748.........................53854
750.........................53854
752.........................53854
758.........................53854
762.........................53854
772.........................53854

16 CFR

241.........................57372

Proposed Rules:

4.........................57825
436.........................57294
453.........................56717

17 CFR

210.........................53900
228.........................53900
229.........................53900
230.........................53900
232.........................56430
239.........................53900, 56430
240.........................53900
249.........................53900, 56430
259.........................56430
260.........................53900
269.........................56430
274.........................56430

Proposed Rules:

210.........................55648
228.........................55648
229.........................55648
240.........................55648, 57996

18 CFR

2.........................54522
153.........................57374
157.........................54522, 57374
284.........................54522
380.........................54522, 57374
385.........................54522, 56172

Proposed Rules:

281.........................56982
385.........................53959

19 CFR

19.........................57564
24.........................56433
122.........................53627
159.........................56433
174.........................56433

20 CFR

404.........................57774

Proposed Rules:

404.........................55214
422.........................55216
718.........................54966
722.........................54966
725.........................54966
726.........................54966
727.........................54966

21 CFR

Ch. II.........................54794
3.........................56441
5.........................56441
10.........................56441
20.........................56441
25.........................56454

26.....57776
50.....54180, 56441
56.....56441
58.....56441
74.....57974
101.....57700
172.....57974
173.....56172
177.....57976
178.....53925
207.....56441
310.....56441
312.....54180, 56441
316.....56441
558.....53926
600.....56441
601.....56441
607.....56441
610.....56441
640.....56441
660.....56441
878.....53927
900.....53195

Proposed Rules:

5.....53281
25.....53281
314.....53960
500.....53281
510.....53281
558.....53281
601.....53960
801.....58004
878.....58004
880.....53294, 58004

22 CFR

Ch. V.....54538
40.....55417
42.....55417
171.....54538
514.....53928

Proposed Rules:

40.....58004
42.....58004
194.....53632

24 CFR

200.....53930, 55828
203.....56108
234.....56108
882.....53868
888.....53450, 56894
902.....56676
903.....56844
964.....56870
982.....56882, 56894

Proposed Rules:

964.....56890

25 CFR

516.....54541

Proposed Rules:

151.....55878

26 CFR

1.....55137
54.....57520
301.....56246

Proposed Rules:

1.....54836, 56246, 56718, 58006
25.....56179
301.....58006

27 CFR

1.....54776
47.....55625
55.....55625

Proposed Rules:

4.....57413
5.....57413
7.....57413

28 CFR

Ch. I.....54794

Proposed Rules:

571.....53872

29 CFR

2590.....57520
4044.....55828

Proposed Rules:

2510.....57611

30 CFR

202.....56454
206.....56454
250.....53195
914.....57565
924.....57567
925.....57978
948.....53200
950.....53202

Proposed Rules:

250.....53298
901.....55878
904.....56179
915.....54840
916.....56982
936.....56983
946.....54843
948.....54845

32 CFR

700.....56062
1800.....53769

Proposed Rules:

199.....56283
806.....56181

33 CFR

100.....53208, 53628, 55829, 55830
117.....53209, 54776, 55137, 55419, 55831, 56252, 56677
165.....55138, 55420, 57981
187.....56965

Proposed Rules:

Ch. I.....56286
20.....53970
100.....54847, 54849
117.....55217
165.....54242, 54963, 57418, 57419
175.....53971
181.....56287
183.....56287
207.....55441

34 CFR

602.....56612
668.....57356, 58284
673.....58284
674.....57528, 58284, 58298
675.....58284
676.....58284
682.....57528
685.....57960
690.....58284

Proposed Rules:

75.....54254
614.....57288

36 CFR

13.....56455
1275.....56678

Proposed Rules:

217.....59074, 56293
219.....59074, 56293

37 CFR

Proposed Rules:

1.....53772
3.....53772
5.....53772
10.....53772

38 CFR

3.....54206
17.....54207

Proposed Rules:

20.....53302

39 CFR

776.....56253
3003.....57982

Proposed Rules:

111.....54255, 57419, 57571

40 CFR

52.....53210, 53931, 54559, 55139, 55141, 55421, 55831, 57777, 57983, 57989, 57991
60.....57392
61.....53212
62.....55141, 57781
63.....56173, 57572
76.....55834
81.....55421
180.....54218, 54777, 54779, 55838, 56464, 56678, 56681, 56690, 56697
201.....55141
261.....56256, 56469
262.....56469
268.....56469
271.....55142, 55153, 55629, 56173
300.....53213, 53629, 56966

Proposed Rules:

2.....57421
49.....54851
50.....57424
52.....53303, 53973, 54600, 54601, 54851, 55219, 55220, 55442, 55662, 55667, 55879, 56181, 57826, 58006, 58007, 58008, 58011,58018
62.....57827
76.....55880
80.....57827
81.....55442, 58018
85.....56985, 57827
86.....56985, 57827
122.....53304, 57834
123.....53304, 57834
124.....53304, 57834
130.....53304, 57834
131.....53304, 57834
132.....53632
144.....57430
146.....57430
147.....56986
165.....56918
180.....56477
194.....56185
197.....53304
258.....53976
261.....55443, 55880, 58022
264.....54604
271.....55222, 55671
300.....56992
710.....56998

41 CFR

51-2.....55841
51-5.....55841

42 CFR

36.....58318
36a.....58318
121.....56650

Proposed Rules:

8.....56294
57.....54263
58.....54263
72.....58022
405.....57431
409.....57612, 58134
410.....57612, 58134
411.....57612, 58134
413.....57612, 58134
424.....57612, 58134
447.....54263
484.....57612, 58134

43 CFR

1820.....53213
3500.....53512
3510.....53512
3520.....53512
3530.....53512
3540.....53512
3550.....53512
3560.....53512
3570.....53512
3800.....53213

Proposed Rules:

2730.....57613
2800.....55452
2880.....55452
3800.....57613
3820.....57613
3830.....57613
3840.....57613
3850.....57613

44 CFR

62.....56174
64.....56256
65.....53931, 53933, 53936
67.....53938, 53939
206.....55158

Proposed Rules:

67.....53980, 53982

45 CFR

96.....55843
61.....57740
144.....57520
146.....57520

Proposed Rules:

5b.....57619
302.....55074
303.....55074
304.....55074
305.....55074
308.....55102

46 CFR

1.....53220

2.....53220
4.....53220
10.....53220, 53230
12.....53230
15.....53220
27.....56257
31.....53220
34.....53220
38.....53220
52.....53220
53.....53220
54.....53220
56.....53220
57.....53220
58.....53220
59.....53220
61.....53220
63.....53220
64.....53220
67.....53220
68.....53220
69.....53220
76.....53220
91.....53220
95.....53220
98.....53220
105.....53220
107.....53220
108.....53220
109.....53220
118.....53220
125.....53220
133.....53220
147.....53220
151.....53220
153.....53220
160.....53220
161.....53220
162.....53220
167.....53220
169.....53220
177.....53220
181.....53220
189.....53220
193.....53220
197.....53220
199.....53220
204.....54782

Proposed Rules:

5.....53970
15.....56720

47 CFR

Ch. I.....54561, 55671
0.....55161, 55425, 56269, 57585
1.....53231
13.....53231
20.....54564
22.....53231, 54564
64.....53242, 53944, 54577, 55163, 55164, 56177, 57994
73.....54224, 54225, 54783, 54784, 54785, 54786, 55172, 55173, 55174, 55434, 56703, 56704, 56974
80.....53231
87.....53231
90.....53231
95.....53231
97.....53231
101.....53231

Proposed Rules:

54.....53648
61.....53648
69.....53648
73.....53655, 54268, 54269, 54270, 55222, 55223, 55452, 55453, 56723, 56724, 56999, 57835, 57836, 57837, 57838
76.....54854

48 CFR

Ch. 19.....54538
1.....53264
15.....53264
19.....53264
52.....53264
201.....56704
209.....55632
211.....55632
213.....56704
214.....55632
237.....53447
252.....55632
415.....54963

Proposed Rules:

26.....57964
28.....58282
52.....57964, 58282
204.....56724
252.....56724
909.....55453
970.....55453
1804.....54270
1812.....54270
1825.....58031
1852.....54270, 58031
9903.....56296

49 CFR

Ch. III.....56478
1.....56270
71.....56705
172.....54730
192.....56878
544.....57393
1002.....53264
1003.....53264
1007.....53264
1011.....53264
1012.....53264
1014.....53264
1017.....53264
1018.....53264
1019.....53264
1021.....53264
1034.....53264
1039.....53264
1100.....53264
1101.....53264
1103.....53264
1104.....53264
1105.....53264
1113.....53264
1133.....53264
1139.....53264
1150.....53264
1151.....53264
1152.....53264
1177.....53264
1180.....53264
1184.....53264

Proposed Rules:

71.....55892
192.....56725
195.....56725
661.....54855

50 CFR

17.....56582, 56590, 56596
216.....53269
222.....55858, 55860, 57397
223.....55434, 55858, 55860, 57397
226.....57399
600.....54786
622.....57403, 57585
635.....53949, 54577, 55633, 56472
648.....54732, 55821, 57586, 57587
660.....54786, 56177
679.....53630, 53950, 54225, 54578, 54791, 54792, 55438, 55634, 55865, 56271, 56272, 56473, 56474, 56475, 57595

Proposed Rules:

17.....53655, 55892, 56297, 57534, 57620
216.....56298, 57010, 57026
227.....56297
622.....57436, 57623
648.....55688
660.....54272, 55689, 56479
679.....53305, 56481

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 28, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Onions (Vidalia) grown in—
  - Georgia; published 9-28-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Plant-related quarantine, domestic:
  - Fire ant, imported; published 10-28-99

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Truth-in-billing and billing format; common sense principles
    - Correction; published 10-28-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Food additives:
  - Polymers—
    - Mono- and bis-(octadecyldiethylene oxide) phosphates; published 10-28-99
  - Polysorbate 60; published 10-28-99

HEALTH AND HUMAN SERVICES DEPARTMENT

- Medical care and examinations:
  - Indian Health Service eligibility regulations; published 10-28-99

INTERIOR DEPARTMENT

Land Management Bureau

- Coal management:
  - Regional coal leasing process; public participation and regional coal team meetings; Federal Advisory Committee Act exemption; published 9-28-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Missouri; published 10-28-99

JUSTICE DEPARTMENT

- Federal Bureau of Investigation; criminal justice information services systems and procedures; published 9-28-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Airbus; published 10-13-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Onions (Vidalia) grown in—
  - Georgia; comments due by 11-2-99; published 9-3-99
- Oranges and grapefruit grown in—
  - Texas; comments due by 11-1-99; published 8-31-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Plant-related quarantine, domestic:
  - Mediterranean fruit fly; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Balanced Budget Act of 1997; implementation—
    - Time-limit exemptions and employment and training programs; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT

Forest Service

- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

- Meat and poultry inspection:
  - Accurate weights, repairs, adjustments, and replacement after inspection; scale requirements; comments due by 11-1-99; published 10-1-99

AGRICULTURE DEPARTMENT

- Acquisition regulations:
  - Contracting by negotiation; part 415 reorganization; comments due by 11-1-99; published 9-30-99

COMMERCE DEPARTMENT

Export Administration Bureau

- Export administration regulations:
  - Syrian civilian passenger aircraft safety of flight; export and reexport of aircraft parts and components; license review policy; comments due by 11-1-99; published 9-16-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - West Coast States and Western Pacific fisheries—
    - West Coast salmon; comments due by 11-2-99; published 10-18-99

COMMODITY FUTURES TRADING COMMISSION

- Privacy Act; implementation; comments due by 11-1-99; published 9-30-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-1-99; published 9-30-99
  - District of Columbia; comments due by 11-1-99; published 9-30-99
- Air quality implementation plans; \A\approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Tennessee; comments due by 11-1-99; published 9-30-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Chlorfenapyr; comments due by 11-1-99; published 9-1-99
  - Cymoxanil; comments due by 11-1-99; published 9-1-99
  - Difenoconazole; comments due by 11-1-99; published 9-1-99
- Solid wastes:
  - Municipal solid waste landfill permit programs; adequacy determinations—
    - Rhode Island; comments due by 11-4-99; published 10-5-99
- Superfund program:
  - Toxic chemical release reporting; community-right-to-know—
    - Lead and lead compounds; lowering of reporting thresholds; comments due by 11-1-99; published 9-21-99

FEDERAL COMMUNICATIONS COMMISSION

- Digital television stations; table of assignments:
  - Texas; comments due by 11-1-99; published 9-15-99
- Radio stations; table of assignments:
  - Arizona; comments due by 11-1-99; published 9-22-99
  - Arkansas; comments due by 11-1-99; published 9-22-99
  - Colorado; comments due by 11-1-99; published 10-6-99
  - Kansas; comments due by 11-1-99; published 9-22-99
  - Louisiana; comments due by 11-1-99; published 9-22-99
  - Pennsylvania and New York; comments due by 11-1-99; published 9-22-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Human drugs:
  - Abbreviated new drug applications; 180-day generic drug exclusivity; comments due by 11-4-99; published 8-6-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99
- Endangered and threatened species:

- Aleutian Canada goose; comments due by 11-1-99; published 8-3-99
- Findings on petitions, etc.—
  - Black-tailed prairie dog; comments due by 11-3-99; published 10-4-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Alabama; comments due by 11-1-99; published 10-15-99

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:
- Noncombustible fire barrier penetration seal materials; requirement eliminated, etc.; comments due by 11-1-99; published 8-18-99

POSTAL SERVICE

Domestic Mail Manual:
- Special services labels; barcode requirements; comments due by 11-5-99; published 10-6-99

SECURITIES AND EXCHANGE COMMISSION

Investment advisers:
- Political contributions; comments due by 11-1-99; published 8-10-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- New Jersey; comments due by 11-1-99; published 9-1-99

Ports and waterways safety:
- Tampa Bay, FL; safety zone; comments due by 11-1-99; published 9-1-99

Regattas and marine parades:
- Puerto Rico International Cup; comments due by 11-1-99; published 8-31-99

Vessel documentation and measurement:
- Standard measurement system exemption from gross tonnage; comments due by 11-1-99; published 8-31-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; comments due by 11-1-99; published 10-5-99
- Aircraft Belts, Inc.; comments due by 11-1-99; published 9-1-99
- AlliedSignal Inc.; comments due by 11-3-99; published 8-5-99
- Boeing; comments due by 11-1-99; published 8-31-99
- Dowty Aerospace Propellers; comments due by 11-1-99; published 9-1-99
- Empresa Brasileira de Aeronautica S.A.; comments due by 11-1-99; published 10-1-99
- General Electric Co.; comments due by 11-2-99; published 9-3-99
- Raytheon; comments due by 11-1-99; published 9-15-99
- Rolls-Royce plc.; comments due by 11-1-99; published 8-31-99
- Short Brothers; comments due by 11-5-99; published 10-6-99
- Short Brothers and Harland Ltd.; comments due by 11-3-99; published 9-28-99

Aviation safety:
- Voluntarily submitted information; confidentiality protection; comments due by 11-4-99; published 10-5-99

Class E airspace; comments due by 11-4-99; published 9-23-99

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:
- Commercial motor vehicle; definition; comments due by 11-2-99; published 9-3-99
- Small passenger-carrying commercial motor vehicles; operator requirements; comments due by 11-2-99; published 9-3-99

Transportation Equity Act for 21st Century; implementation:
- Federal lands highway program; transportation planning procedures and management systems—
  - Fish and Wildlife Service and refuge roads program; comments due by 11-1-99; published 9-1-99
  - Forest Service and forest highway program; comments due by 11-1-99; published 9-1-99
  - Indian Affairs Bureau and Indian reservation roads program; comments due by 11-1-99; published 9-1-99
  - National Park Service and park roads and parkways program; comments due by 11-1-99; published 9-1-99

LIST OF PUBLIC LAWS

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H.R. 2561/P.L. 106–79

Department of Defense Appropriations Act, 2000 (Oct. 25, 1999; 113 Stat. 1212)

S. 322/P.L. 106–80

To amend title 4, United States Code, to add the Martin Luther King Jr. holiday to the list of days on which the flag should especially be displayed. (Oct. 25, 1999; 113 Stat. 1285)

S. 800/P.L. 106–81

Wireless Communications and Public Safety Act of 1999 (Oct. 26, 1999; 113 Stat. 1286)

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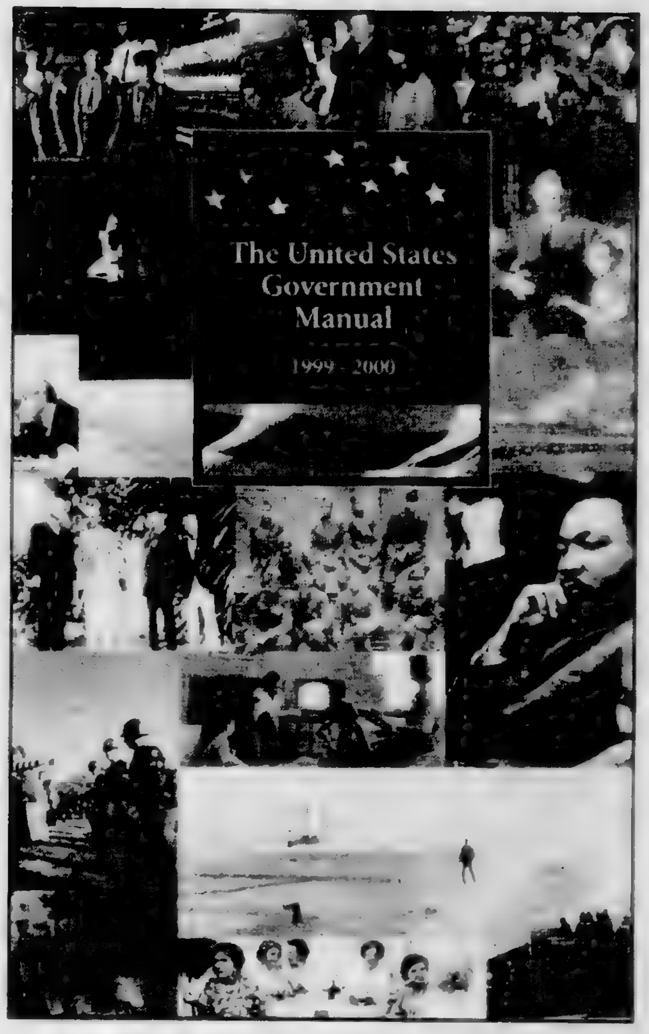

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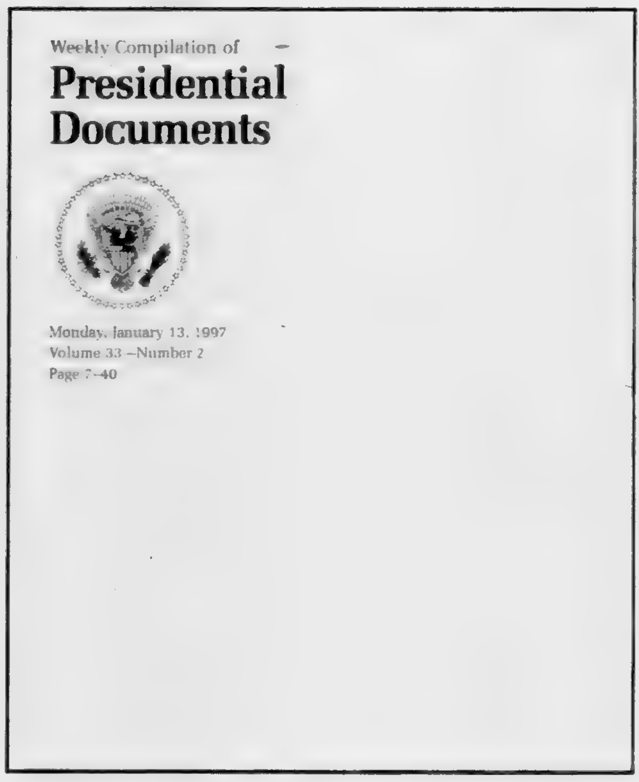
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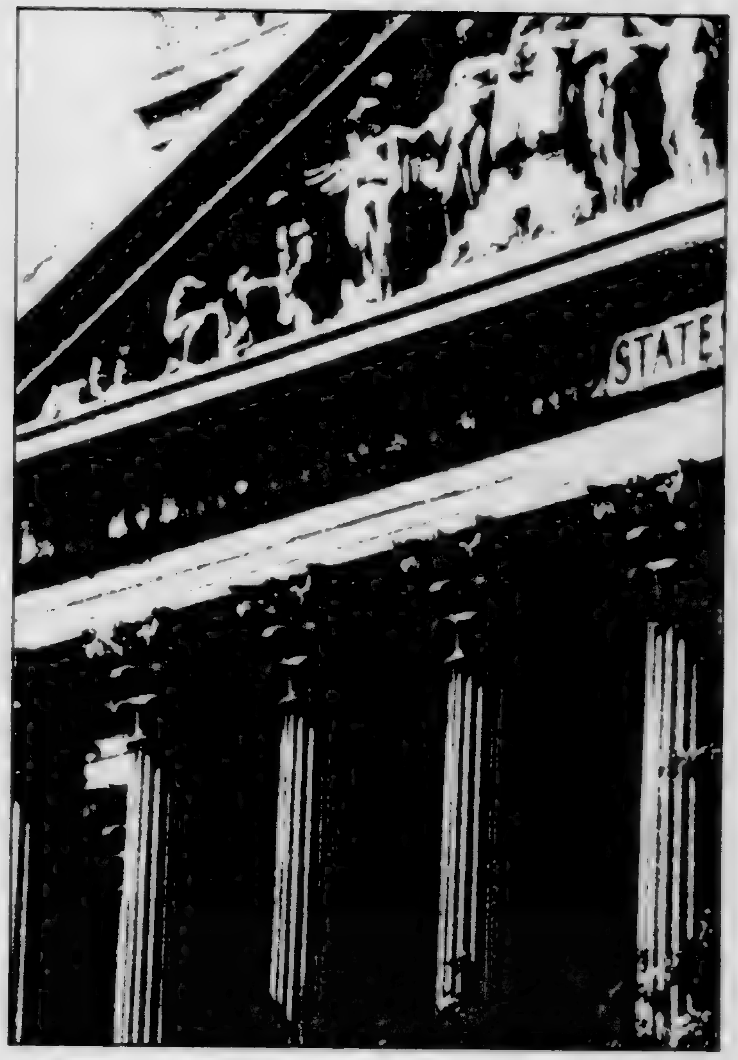

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Contents

Federal Register

Vol. 64, No. 209

Friday, October 29, 1999

Agency for International Development
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

Agency for Toxic Substances and Disease Registry
NOTICES
Superfund programs:
  Hazardous substances priority list (toxicological profiles) Revision; correction, 58416

Agricultural Marketing Service
RULES
Cherries (tart) grown in—
  Michigan et al., 58323–58325
Walnuts grown in—
  California, 58325–58328
PROPOSED RULES
Agricultural and vegetable seeds; inspection and certification:
  Fee increase, 58358–58359

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
  Northwest Agricultural Products, 58375

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Commodity Credit Corporation
See Foreign Agricultural Service
PROPOSED RULES
Forest Service; Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee:
  Establishment, 58368–58369
NOTICES
Meetings:
  21st Century Production Agriculture Commission, 58375

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58416–58418
  Submission for OMB review; comment request, 58418

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
  Louisiana, 58379

Coast Guard
PROPOSED RULES
Ports and waterways safety:
  Hudson River, NY; safety zone, 58366–58368

Commerce Department
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 58379–58380

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 58377–58379

Commodity Credit Corporation
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58375–58376

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 58381

Corporation for National and Community Service
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

Defense Department
See Engineers Corps
See Navy Department
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

Education Department
RULES
Postsecondary education:
  Federal Family Education Loan Program, 58621–58641
  Student financial assistance programs; institutional eligibility, 58608–58619

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 58454–58455

Energy Department
See Federal Energy Regulatory Commission

NOTICES
- Defense Nuclear Facilities Safety Board recommendations:
  - Fissionable material called "pits"; safe storage, 58383–58384
- Floodplain and wetlands protection; environmental review determinations; availability, etc.:
  - Oak Ridge National Laboratory, TN; fire protection systems upgrade, 58384–58385
- Senior Executive Service:
  - Performance Review Board; membership, 58385–58387

Engineers Corps
NOTICES
- Environmental statements; notice of intent:
  - Broward County, FL; beach erosion control project, 58381–58382

Environmental Protection Agency
RULES
- Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Minnesota, 58347–58355
- Air quality implementation plans; approval and promulgation; various States:
  - Maryland, 58340–58344
  - Minnesota, 58344–58347
- Superfund program:
  - Toxic chemical release reporting; community right-to-know—
    - Persistent bioaccumulative toxic (PBT) chemicals; reporting thresholds lowered, etc., 58666–58753

PROPOSED RULES
- Air pollution control; new motor vehicles and engines:
  - Heavy duty highway engines and vehicles (2004 and later model years); emissions control, and light-duty truck definition, 58471–58566
- Air quality implementation plans; approval and promulgation; various States:
  - Maryland, 58369–58370
- Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606
- Superfund program:
  - Toxic chemical release reporting; community right-to-know—
    - Lead and lead compounds; lowering of reporting thresholds, 58370–58372

NOTICES
- Agency information collection activities:
  - Proposed collection; comment request, 58396–58403
- Environmental statements; availability, etc.:
  - Agency statements—
    - Comment availability, 58403–58404
    - Weekly receipts, 58404
  - Longhorn Partners Pipeline, L.P.; petroleum products pipeline in Texas, 58404–58405
- Meetings:
  - Antimicrobial stakeholder meeting, 58405
- Superfund; response and remedial actions, proposed settlements, etc.:
  - Culbertson Plastics Drum Site, FL, 58405
  - Operating Industries, Inc. Landfill Site, CA, 58406
  - San Gabriel Valley Sites, CA, 58406
- Toxic and hazardous substances control:
  - Asbestos-containing materials in schools; State waiver requests—
    - Texas, 58406–58408
- Water pollution control:
  - Aquatic life criteria for copper, etc.: data availability, 58409–58410

Equal Employment Opportunity Commission
RULES
- Sex discrimination and national origin discrimination guidelines; employer liability standard for harassment by supervisors; rescission, 58333–58334

Executive Office of the President
See Management and Budget Office

Export-Import Bank
NOTICES
- Meetings:
  - Sub-Saharan African Advisory Committee, 58410

Federal Aviation Administration
RULES
- Airworthiness directives:
  - Pratt & Whitney, 58328–58329
- Class E airspace, 58329–58333

PROPOSED RULES
- Airworthiness directives:
  - Bob Fields Aerocessories, 58359–58362
- Class D airspace, 58362–58364
- Transport airplane fuel tank system design review, flammability reduction, and maintenance and inspection requirements, 58643–58664

Federal Bureau of Investigation
NOTICES
- Meetings:
  - Criminal Justice Information Services Advisory Policy Board, 58445
  - National Crime Prevention and Privacy Compact Council, 58445

Federal Communications Commission
NOTICES
- Meetings:
  - North American Numbering Council, 58410–58411

Federal Deposit Insurance Corporation
NOTICES
- Meetings; Sunshine Act, 58411

Federal Emergency Management Agency
PROPOSED RULES
- Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

NOTICES
- Disaster and emergency areas:
  - California, 58411
  - Florida, 58411–58412
  - New Hampshire, 58412–58413
- Meetings:
  - National Dam Safety Review Board, 58413
  - Technical Mapping Advisory Council, 58413

Federal Energy Regulatory Commission
NOTICES
- Electric rate and corporate regulation filings:
  - LSP-Kendall Energy, LC, et al., 58391–58393
- Hydroelectric applications, 58393–58396
- *Applications, hearings, determinations, etc.:*
  - Geysers Power Co., LLC, 58387

Gulfstream Natural Gas System, L.L.C., 58387–58389
Little Bay Power Corp., 58389–58390
Northern States Power Co., 58390
Tennessee Gas Pipeline Co., 58390
West Georgia Generating Co. L.P. et al., 58390–58391

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Burlington Northern Sante Fe Railway, 58466

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 58413
Formations, acquisitions, and mergers, 58413–58414
Permissible nonbanking activities; correction, 58414
Meetings; Sunshine Act, 58414

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 58414

Federal Trade Commission
NOTICES
Prohibited trade practices:
VNU N.V., 58414–58416

Financial Management Service
See Fiscal Service

Fiscal Service
PROPOSED RULES
Financial management services:
Collateral acceptability and valuation, 58364–58366
NOTICES
Federal debt collection and discount evaluation; Treasury current value of funds rate, 58467

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 58437
Environmental statements; availability, etc.:
Central Valley Project Improvement Act, CA, 58437–58438

Foreign Agricultural Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 58376–58377

General Services Administration
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606
NOTICES
Acquisition regulations:
Summary worksheet for estimating forms cost (SF 335); cancellation, 58416

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 58418–58419
Meetings:
Medicare—
Transplant center criteria; open town hall meeting, 58419

Housing and Urban Development Department
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 58435–58437

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 58445–58451

Inspector General Office, Health and Human Services Department
NOTICES
Reports and guidance documents; availability, etc.:
Nursing facilities; compliance program guidance, 58419–58435

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 58467–58470

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Commission
NOTICES
Import investigations:
Drams of one megabit and above from—
Taiwan, 58442
Iron metal castings, etc., from—
Various countries, 58442–58443
Rare-earth magnets and magnetic materials and articles containing same, 58443–58444

Justice Department
See Federal Bureau of Investigation
See Immigration and Naturalization Service
See Prisons Bureau

PROPOSED RULES

- Education programs and activities receiving Federal financial assistance; noneiscrimination on basis of sex, 58568–58606

NOTICES

- Pollution control; consent judgments:
  - Calderon, Enrique, et al., 58444
  - Mazda Motor of America, Inc., 58444–58445

Labor Department

See Employment Standards Administration
See Mine Safety and Health Administration
See Pension and Welfare Benefits Administration

PROPOSED RULES

- Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 58451–58454

Land Management Bureau

NOTICES

- Environmental statements; availability, etc.:
  - Alturas Resource Area, CA, 58438
- Protraction diagram plat filings:
  - Montana, 58438–58439
- Withdrawal and reservation of lands:
  - Montana, 58439

Management and Budget Office

NOTICES

- Federal Activities Inventory Reform Act of 1998; implementation:
  - Commercial Activities Inventories; availability, 58461–58462

Mine Safety and Health Administration

RULES

- Education and training:
  - Shell dredging and mining of sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines; miners training and retraining
    - Correction, 58334–58335

National Aeronautics and Space Administration

PROPOSED RULES

- Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

National Archives and Records Administration

PROPOSED RULES

- Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

National Foundation on the Arts and the Humanities

PROPOSED RULES

- Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex:
  - Institute for Museum and Library Services, 58568–58606
  - National Endowment for the Arts, 58568–58606
  - National Endowment for the Humanities, 58568–58606

National Institute of Standards and Technology

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request, 58380

National Oceanic and Atmospheric Administration

NOTICES

- Meetings:
  - New England Fishery Management Council; correction, 58380–58381
- Permits:
  - Marine mammals, 58381

National Park Service

NOTICES

- Environmental statements; availability, etc.:
  - Golden Gate National Recreation Area, CA, 58440
  - Joshua Tree National Park, CA; backcountry and wilderness management plan, 58440–58441

National Science Foundation

PROPOSED RULES

- Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

NOTICES

- Meetings:
  - Experimental and Integrative Activities Special Emphasis Panel, 58456

Navy Department

NOTICES

- Environmental statements; notice of intent:
  - Base realignment and closure—
    - Naval Weapons Industrial Reserve Plant, Bethpage, NY, 58382–58383
- Meetings:
  - Marine Corps University Board of Visitors, 58383

Nuclear Regulatory Commission

PROPOSED RULES

- Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

NOTICES

- Regulatory guides; issuance, availability, and withdrawal, 58461
- *Applications, hearings, determinations, etc.:*
  - Falvey, Randall G., 58456–58457
  - Indiana Michigan Power Co., 58458–58460

Office of Management and Budget

See Management and Budget Office

Office of Motor Carrier Safety

RULES

- Organization, functions, and authority delegations:
  - Office of Motor Carrier Safety; CFR chapter revision, 58355–58356

PROPOSED RULES

- Motor carrier safety standards:
  - Railroad-highway grade crossing; safe clearance; public meeting, 58372–58374

Overseas Private Investment Corporation

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 58441–58442

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58455–58456

Postal Rate Commission
RULES
Freedom of Information Act; implementation, 58335–58340

Prisons Bureau
NOTICES
Environmental statements; availability, etc.:
  Saint Francis County, AR; medium-security Federal correctional institution, 58451

Public Debt Bureau
See Fiscal Service

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention

Railroad Retirement Board
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58462

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
  Central Valley Project Improvement Act, CA, 58437–58438

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
  Exemption applications—
    AIM Advisors, Inc., et al., 58462–58464

Small Business Administration
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

Social Security Administration
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58464–58466

State Department
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606
NOTICES
Meetings:
  Shipping Coordinating Committee, 58466

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
  RailTex, Inc., et al., 58466–58467

Tennessee Valley Authority
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Office of Motor Carrier Safety
See Surface Transportation Board
RULES
Organization, functions, and authority delegations:
  Motor Carrier Safety Office, Director, 58356–58357
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

Treasury Department
See Fiscal Service
See Internal Revenue Service
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

Veterans Affairs Department
PROPOSED RULES
Education programs and activities receiving Federal financial assistance; nondiscrimination on basis of sex, 58568–58606

Separate Parts In This Issue

Part II
Environmental Protection Agency, 58471–58566

Part III
Nuclear Regulatory Agency et al., 58567–58606

Part IV
Department of Education, 58607–58619

Part V
Department of Education, 58621–58641

Part VI
Department of Transportation, Federal Aviation Administration, 58643–58664

Part VII
Environmental Protection Agency, 58665–58753

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
930....58323
984....58325
Proposed Rules:
75....58358

10 CFR
Proposed Rules:
5....58584

13 CFR
Proposed Rules:
113....58584

14 CFR
39....58328
71 (3 documents)....58329, 58331, 58332
Proposed Rules:
21....58644
25....58644
39....58359
71 (2 documents)....58362, 58363
91....58644
121....58644
125....58644
129....58644
1253....58585

15 CFR
Proposed Rules:
8a....58586

18 CFR
Proposed Rules:
1317....58587

22 CFR
Proposed Rules:
146....58587
229....58588

24 CFR
Proposed Rules:
3....58589

28 CFR
Proposed Rules:
54....58589

29 CFR
1604....58333
1606....58333
Proposed Rules:
36....58590

30 CFR
46....58334
48....58334

31 CFR
Proposed Rules:
28....58591
380....58364

32 CFR
Proposed Rules:
196....58594

33 CFR
Proposed Rules:
165....58366

34 CFR
600....58608
668....58608
682....58622

36 CFR
Proposed Rules:
Ch. II....58368
1211....58595

38 CFR
Proposed Rules:
23....58598

39 CFR
3001....58335
3002....58335
3004....58335

40 CFR
52 (3 documents)....58340, 58344, 58347
81....58347
372....58666
Proposed Rules:
5....58599
52....58369
85....58472
86....58472
372....58370

41 CFR
Proposed Rules:
101-4....58600

43 CFR
Proposed Rules:
41....58600

44 CFR
Proposed Rules:
19....58601

45 CFR
Proposed Rules:
618....58602
1155....58602
1171....58603
1182....58604
2555....58604

49 CFR
Ch. III....58355
1....58356
Proposed Rules:
25....58605
392....58372

Rules and Regulations

Federal Register
Vol. 64, No. 209
Friday, October 29, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV99–930–3 FR]

Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0025 per pound to $0.00225 per pound. The interim final rule also decreased the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.00125 per pound to $0.001125 per pound. Both assessment rates are established for the Cherry Industry Administrative Board (Committee) under Marketing Order No. 930 for the 1999–2000 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 29, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect a decrease in the assessment rate established for the Board for the 1999–2000 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0025 to $0.00225 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree also was decreased from $0.00125 per pound to $0.001125 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 18–19, 1999, and unanimously recommended 1999–2000 expenditures of $497,780 and an assessment rate of $0.00225 per pound of cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and an assessment rate of $0.001125 per pound of cherries utilized for juice, juice concentrate, or puree. In comparison, last year's budgeted expenditures were $540,000. Decreased assessment rates have been recommended by the Board because the cherry industry has experienced record high crops for the past two seasons, and the Board wants to reduce handler costs and keep its monetary reserve within the authorized maximum of approximately one year's operational expenses specified in § 930.42(a). The decreased rates are expected to generate enough income to meet the Board's reduced operating expenses in 1999–2000.

The major expenditures recommended by the Board for the 1999–2000 crop year include $222,780 for personnel, $100,000 for Board meetings, and $100,000 for compliance. Budgeted expenses for these items in 1998–99 were $150,000 for personnel, $80,000 for Board meetings, and $175,000 for compliance.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1998, tart cherry utilization for juice, wine, or brined uses was 28.3 million pounds for all districts covered under the order. The total processed amount of tart cherries for 1998 was 303.8 million pounds. Juice, wine, and brined tart cherries represented less than 10 percent of the total processed crop, and about 8 percent over the last three seasons (1996 through 1998).

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 204.5 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 55.5 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $460,125 (204.5 million pounds × $0.00225 per pound). Potential income from tart cherries utilized for juice, juice concentrate, or puree would be $62,500 (55.5 million pounds × $0.001125 per pound). Therefore, total assessment income for 1999–2000 is estimated at $522,625, which will be adequate to cover expenses. Funds in the reserve (currently $225,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 930.42(a)).

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the marketing order and approximately 900 producers of tart cherries in the regulated area. The number of reported tart cherry producers in the regulated area has been reduced from 1,220 to 900 based on more recent information received by the Board. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

This rule continues in effect decreases in the assessment rate established for the Board and collected from handlers for the 1999–2000 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0025 to $0.00225 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.00125 to $0.001125 per pound. The Board unanimously recommended 1999–2000 expenditures of $497,780 and the reduced assessment rates. The quantity of assessable tart cherries for the 1999–2000 crop year is estimated at 260 million pounds. Assessment income, based on this crop, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 1999–2000 fiscal period include $222,780 for personnel, $100,000 for Board meetings, and $100,000 for compliance. Budgeted expenses for these items in 1998–99 were $150,000 for personnel, $80,000 for Board meetings, and $175,000 for compliance.

The Executive Committee of the Board, after discussing a proposed budget and assessment rates in executive session, recommended the continuation of the current rates. It concluded that it was prudent for the Board to have approximately one year's budget amount in the operating reserve.

However, after considerable discussion, the Board concluded it should reduce handlers' assessment costs and that the reserve should not exceed one-half year's budget amount. Further, the amount budgeted for Board compliance costs has been reduced. The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to exceed what is actually needed.

After the discussion, the Board voted unanimously to decrease the assessment rates.

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 204.5 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 55.5 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $460,125 (204.5 million pounds × $0.00225 per pound). Potential income from tart cherries utilized for juice, juice concentrate, or puree would be $62,500 (55.5 million pounds × $0.001125 per pound). Therefore, total assessment income for 1999–2000 is estimated at $522,625, which will be adequate to cover expenses. Funds in the reserve (currently $225,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 930.42(a)).

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate decreases reduce the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the March 18–19, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on July 27, 1999. Copies of the rule were mailed by the Board's staff to all Board members and cherry handlers. In addition, the rule was made available through the Internet by the office of the Federal Register. That rule provided a 60-day comment period which ended September 27, 1999. No comments were received.

A small business guide on complying with fruit, vegetable and specialty crop marketing agreement and orders may be viewed at the following website: http:/www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that finalizing this interim final rule , without modifications, as published in the **Federal Register** (64 FR 40511), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 64 FR 40511 on July 27, 1999, is adopted as a final rule without change.

Dated: October 26, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28377 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV99–984–2 FR]

Walnuts Grown in California; Reporting Walnuts Grown Outside of the United States and Received by California Handlers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the administrative rules and regulations of the Federal marketing order for California walnuts (order) to require handlers to report receipts of walnuts grown outside of the United States. The order regulates the handling of walnuts grown in California and is administered locally by the Walnut Marketing Board (Board). Requiring handlers to report to the Board receipts of walnuts grown outside of the United States will allow the Board to have better information on the total available supply of walnuts within California, which includes both California and foreign product. This will facilitate program administration.

EFFECTIVE DATE: This rule becomes effective November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the order's administrative rules and regulations to require handlers to report to the Board receipts of walnuts grown outside of the United States. This will allow the Board to have better information on the total available supply of walnuts within California, which includes both California and foreign product, which will facilitate program administration. This action was unanimously recommended by the Board at a meeting on September 11, 1998.

Section 984.76 of the order provides authority for the Board, with the approval of the Secretary, to require handlers to furnish reports and information to the Board as needed to enable the Board to perform its duties under the order. The Board meets during the season to make decisions on various programs authorized under the order. These programs include quality control (minimum grade and size requirements for both inshell and shelled walnuts placed into channels of commerce), volume regulation, and projects regarding production research, and marketing research and development.

The Board would like to have better information on the total supply of walnuts within California, which includes both California and foreign product. The Board will use this information in its marketing policy deliberations each fall when it reviews the crop estimate, handler carryover, and other factors to determine whether volume regulation would be appropriate. In addition, the Board has some concerns that, particularly in short crop years when handlers may import more walnuts to meet customer demands, imported walnuts could be included in handler inventory reports of California walnuts. Accurate information regarding the supply of walnuts within California is needed by the Board in its administration of the order.

According to the National Agricultural Statistics Service, the 10-year average annual production of California walnuts is 235,000 inshell tons. Bureau of Census data indicates that the 10-year average annual import figure for walnuts is 1,036.5 shelled tons. However, during short crop years in California such as the 1992–93 (203,000 inshell tons) and 1996–97 (208,000 inshell tons) seasons, imports increased to 8,046 and 5,806 shelled tons, respectively.

Thus, the Board recommended that handlers be required to report to the Board receipts of walnuts grown outside of the United States. This report, WMB Form No. 7, will be submitted to the Board four times per year as follows: On or before November 5 for such walnuts received during the period August 1 to October 31; on or before February 5 for such walnuts received during the period November 1 to January 31; on or before May 5 for such walnuts received during the period February 1 to April 30; and on or before August 5 for such walnuts received during the period May 1 to July 31. The report will include the quantity of such walnuts received, country of origin, and whether such walnuts were inshell or shelled. Given the effective date of this final rule, the first reporting date will be February 5, 2000, for walnuts received during the period November 1 to January 31.

The Board also recommended that, with each report, the handler submit a copy of a product tag issued by the Dried Fruit Association of California (DFA) for compliance purposes. The DFA is a private agency designated under the marketing order to provide inspection services for handlers to ensure that California walnuts meet minimum grade and size requirements in effect under the order. The product tag will indicate the name of the person from whom the walnuts were received, the date the walnuts were received by the handler, the number of containers and U.S. Custom's Service entry number, whether the product is inshell or shelled, the quantity of walnuts, country of origin, the name of the DFA inspector who issued the tag, and the date such tag was issued. The Board believes product tags are necessary to verify handler receipt reports for imported walnuts. Accordingly, a new § 984.476 is added to the orders' administrative rules and regulations.

Final Regulatory Flexibility Analysis and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and approximately 50 handlers subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of producers of California walnuts may be classified as small entities.

During the 1997–98 season, as a percentage, 33 percent of the handlers shipped over 2.4 million kernelweight pounds of walnuts, and 67 percent of the handlers shipped under 2.4 million kernelweight pounds of walnuts. Based on an average price of $2.10 per kernelweight pound at the point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule adds a new § 984.476 to the order's administrative rules and regulations which requires handlers to report to the Board receipts of walnuts grown outside of the United States. This will allow the Board to have better information on the total available supply of walnuts, including California and foreign product, which will facilitate program administration. Authority for requiring handlers to submit this information to the Board is provided in § 984.76 of the order.

Regarding the impact of this action on affected entities, this rule should impose minimal additional costs. The Board estimates that about six handlers have imported walnuts over the past few years. Such handlers will be required to submit an additional report to the Board four times per year along with tags issued by the DFA verifying receipts of foreign product. The DFA currently provides inspection services for all handlers of California walnuts and will be available at no additional cost to issue product tags to handlers receiving imports. Handlers will then submit these tags to the Board for verification purposes.

An alternative to this action would be to not collect information from handlers on receipts of imported walnuts. However, as previously mentioned, the Board would like to have better information on the total available supply of walnuts within California, which includes both California and foreign product. The only way this information can be obtained by the Board is to collect it from handlers. This information will facilitate program administration by improving the Board's base of information from which to make decisions.

The Board also recommended that a system be established for monitoring walnuts grown outside of the United States that are received by California handlers. Under the proposed monitoring system, DFA inspectors would check whether or not foreign product had been inspected and met the requirements of section 8e of the Act. Under section 8e, whenever certain specified commodities are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestic commodity. Walnuts are included under section 8e, and thus importers of walnuts are required to have such walnuts inspected. However, it is the USDA's responsibility to ensure that imported walnuts meet the requirements of section 8e. Thus, we are not proceeding with this recommendation.

Finally, the Board considered whether it would be useful to collect information on walnuts grown outside of California, but within the United States. However, Board members agreed that the amount of such walnuts was so small, it was not worth requiring handlers to report such information.

This action imposes some additional reporting and recordkeeping burden on handlers that receive walnuts grown outside of the United States. It is estimated that six handlers may import walnuts during the season. Such handlers will be required to submit a receipt report to the Board four times per year. It is estimated that it will take such handlers 5 minutes to complete each report. Thus, the additional annual burden should total no more than 2 hours for the industry. The information will be collected on WMB Form No. 7. That form has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has identified one relevant Federal rule regarding requirements for walnuts grown outside of the United States. As previously stated, walnuts are included under section 8e. Thus, importers of walnuts are required to have such walnuts inspected by the USDA's inspection service. Importers whose walnuts meet section 8e requirements do not have to submit any paperwork to the USDA. However, importers whose walnuts fail section 8e requirements, or whose walnuts are exempt from section 8e because such walnuts are so immature that they cannot be used for drying and sale as dried walnuts (green walnuts), or are being sent to designated outlets (animal feed, processing, or charity) have to submit paperwork to the USDA. However, only a small amount of information requested by the USDA in these instances or by the Board through this rule, will be duplicative.

In addition, the Board's meeting on September 11, 1998, where this action was deliberated was a public meeting widely publicized throughout the walnut industry. This issue was also deliberated at an earlier Board meeting on February 2, 1998, and at a Grades and Standards Subcommittee meeting on June 5, 1998. All interested persons were invited to attend these meetings and participate in the industry's deliberations. A proposed rule concerning this action was published in the **Federal Register** on August 19, 1999 (64 FR 45208). Copies of the rule were mailed to all handlers, Board members, and alternate members. The rule was also made available through the Internet by the Office of the Federal Register. A 60-day comment period ending October 18, 1999, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The Board would like to begin collecting this report as soon as possible in order to have better information on the total supply of walnuts within California; (2) the first report would be due to the Board on or before February 5, 2000; (3) handlers are aware of this rule which was unanimously recommended at a public meeting; and (4) a 60-day comment period was provided in the proposed rule; no comments were received.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 984.476 is added to read as follows:

§ 984.476 Report of walnut receipts from outside of the United States.

Each handler who receives walnuts from outside of the United States shall file with the Board, on WMB Form No. 7, a report of the receipt of such walnuts. The report shall be filed beginning with the February 5, 2000, report as follows: On or before November 5 for such walnuts received during the period August 1 to October 31; on or before February 5 for such walnuts received during the period November 1 to January 31; on or before May 5 for such walnuts received during the period February 1 to April 30; and on or before August 5 for such walnuts received during the period May 1 to July 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled. With each report, the handler shall submit a copy of a product tag issued by a DFA of California inspector for each receipt of such walnuts that includes the name of the person from whom such walnuts were received, the date such walnuts were received by the handler, the number of containers and the U.S. Custom's Service entry number, whether such walnuts are inshell or shelled, the quantity of such walnuts received, the country of origin for such walnuts, the name of the DFA of California inspector who issued the product tag, and the date such tag was issued.

Dated: October 26, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28376 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–15; Amendment 39–11392; AD 99–22–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT8D–200 series turbofan engines, that currently requires installation of high pressure turbine (HPT) containment hardware. This amendment requires removing low pressure turbine (LPT)-to-exhaust case bolts and nuts and replacement with improved LPT-to-exhaust case bolts and nuts, and installation of improved HPT containment hardware. This amendment is prompted by uncontained HPT events resulting from HPT shaft fractures and LPT flange separations resulting from LPT blade failures. The actions specified by this AD are intended to prevent damage to the airplane resulting from uncontained engine debris following an HPT shaft fracture or an LPT blade failure.

DATES: Effective December 28, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–23–10, Amendment 39–8746 (57 FR 57705, December 17, 1993), which is applicable to certain Pratt & Whitney (PW) JT8D–200 series turbofan engines, was published in the **Federal Register** on March 15, 1999 (64 FR 12770). That action proposed to require removing low pressure turbine (LPT)-to-exhaust case bolts and nuts and replacement with improved LPT-to-exhaust case bolts and nuts, and installation of improved high pressure turbine (HPT) containment hardware.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests Revision 1 of PW Service Bulletin (SB) No. 6149, dated August 27, 1998, be the required SB for performance of the actions required by paragraph (b) of the proposed rule. The FAA concurs. Since publication of the NPRM, PW has also issued Revision 1 to PW Alert Service Bulletin (ASB) No. A6346, dated April 23, 1999. The FAA has added both later revisions to this final rule as references. Operators who have installed hardware in accordance with the original versions of the SB and the ASB are not required to apply for an Alternate Method of Compliance (AMOC) in order to be considered as having complied with the AD.

One commenter states that the estimated number of domestic JT8D–217C/219 engines is incorrect in the economic analysis of the proposed rule, and offers a better estimate. The FAA concurs and has revised the economic analysis in this final rule.

One commenter has no objection to the rule as proposed.

One commenter agrees with the rule as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,727 engines of the affected design in the worldwide fleet. The FAA estimates that 1,473 engines installed on airplanes of U.S. registry will be affected by this AD, and that no additional work hours per engine to accomplish the required actions are necessary since they should take place when an engine is already sufficiently disassembled for normal maintenance on those parts. Required parts will cost approximately $19,911 per engine for the 1,030 engines requiring improved (over AD 93-23-10) containment hardware, and $3,275 for 1,473 engines requiring improved bolts and nuts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,332,405. The manufacturer may be providing parts free of charge; therefore the actual cost to operators may be reduced.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8746 (57 FR 57705, December 17, 1993) and by adding a new airworthiness directive, Amendment 39–11392, to read as follows:

99–22–14 **Pratt & Whitney:** Amendment 39–11392. Docket 92–ANE–15. Supersedes AD 93–23–10, Amendment 39–8746.

Applicability: Pratt & Whitney (PW) Model JT8D–209, –217, –217A, –217C, and –219 turbofan engines, installed on but not limited to McDonnell Douglas MD–80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the airplane resulting from uncontained engine debris following a high pressure turbine (HPT) shaft fracture or a low pressure turbine (LPT) blade failure, accomplish the following:

(a) For PW Model JT8D–217C and –219 engines, install improved HPT containment hardware at the next shop visit after the effective date of this AD, but no later than December 31, 2004, in accordance with PW JT8D Alert Service Bulletin (ASB) No. A6346, dated September 10, 1998, or Revision 1, dated April 23, 1999.

(b) For PW Model JT8D–209, –217, –217A, –217C and –219 engines, install improved LPT-to-turbine exhaust case bolts and nuts at the next shop visit after the effective date of this AD but no later than December 31, 2004, in accordance with paragraph 2.A.(1) and 2.B.(1) of PW Service Bulletin (SB) No. 6149, January 19, 1994, or Revision 1, dated August 27, 1998.

(c) For the purpose of this AD, an engine shop visit is defined as engine maintenance that entails the separation of the J and K flanges.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the ECO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following PW service documents:

Document No.	Pages	Revision	Date
ASB No. A6346	1,2	1	April 23, 1999.
	3	Original	September 10, 1998.
	4	1	April 23, 1999.
	5,6	Original	September 10, 1998.
	7–25	1	April 23, 1999.
Total pages: 25.			
ASB No. A6346	1–23	Original	September 10, 1998.
Total pages: 23.			
SB No. 6149	1–3	1	August 27, 1998.
	4–10	Original	January 19, 1994.
Total pages: 10.			
SB No. 6149	1–10	Original	January 19, 1994.
Total pages: 10.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565-4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on December 28, 1999.

Issued in Burlington, Massachusetts, on October 21, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–28075 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–24]

Revision of Class E Airspace; Hebbronville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Hebbronville, TX.

The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP), at Jim Hogg County Airport, Hebbronville, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Jim Hogg County Airport, Hebbronville, TX.

DATES: Effective 0901 UTC, February 24, 2000.

Comments must be received on or before December 13, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–24, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–242–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Hebbronville, TX. The development of a NDB SIAP, at Jim Hogg County Airport, Hebbronville, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Jim Hogg County Airport, Hebbronville, TX.

Class E airspace designations are published in Paragraph 6005 at FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–24." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW TX E5 Hebbronville, TX [Revised]

Hebbronville, Jim Hogg County Airport, TX
(Lat. 27°20′58″ N., long. 98°44′13″ W.)
Hebbronville, O.S. Wyatt Airport, TX
(Lat. 27°25′18″ N., long. 98°36′16″ W.)
Hebbronville NDB
(Lat. 27°21′14″ N., long. 98°44′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jim Hogg County Airport and within 2.5 miles each side of the 325° bearing from the Hebbronville NDB extending from the 6.5-mile radius to 7.5 miles northwest of the airport and within a 6.9-mile radius of O.S. Wyatt Airport.

* * * * *

Issued in Fort Worth, TX, on October 12, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–27506 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–25]

Revision of Class E Airspace; Beaumont, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Beaumont, TX. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Beaumont Municipal Airport, Beaumont, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Beaumont Municipal Airport, Beaumont, TX.

DATES: Effective 0901 UTC, February 24, 2000.

Comments must be received on or before December 13, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–25, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–252–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Beaumont, TX. The development of a GPS SIAP, at Beaumont Municipal Airport, Beaumont, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Beaumont Municipal Airport, Beaumont, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, as adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–25." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation: (1) Is not a "significant regulatory action" under

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW TX E5 Beaumont, TX [Revised]

Beaumont, Beaumont/Port Arthur, Southeast Texas Regional Airport, TX
(Lat. 29°57′03″ N., long. 94°01′15″ W.)
Beaumont Municipal Airport, TX
(Lat. 30°04′14″ N., long. 94°12′56″ W.)
Orange County Airport, TX
(Lat. 30°04′09″ N., long. 93°48′03″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Southeast Texas Regional Airport and within a 6.4-mile radius of Beaumont Municipal Airport and within 2 miles each side of the 312° bearing from the airport extending from the 6.4-mile radius to 8.3 miles northwest of the airport and within a 6.6-mile radius of Orange County Airport.

* * * * *

Issued in Fort Worth, TX, on October 12, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–27505 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–26]

Revision of Class E Airspace; El Paso, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at El Paso, TX. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at El Paso International Airport, El Paso, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to El Paso International Airport, El Paso, TX.

DATES: Effective 0901 UTC, February 24, 2000.

Comments must be received on or before December 13, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–26, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–262–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at El Paso, TX. The development of a GPS SIAP, at El Paso International Airport, El Paso, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to El Paso International Airport, El Paso, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–26." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW TX E5 El Paso, TX [Revised]

El Paso, Biggs AAF, TX
(Lat. 31°50′58″ N., long. 106°22′48″ W.)
El Paso International Airport, TX
(Lat. 31°48′24″ N., long. 106°22′40″ W.)
El Paso VORTAC, TX
(Lat. 31°48′57″ N., long. 106°16′55″ W.)
El Paso, West Texas Airport, TX
(Lat. 31°43′11″ N., long. 106°14′21″ W.)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Biggs AAF and within a 8.4-mile radius of El Paso International Airport and within 2 miles each side of the 050° bearing from the airport extending from the 8.4-mile radius to 13 miles northeast of the airport and within 1.6 miles each side of the 093° radial of the El Paso VORTAC extending from the 8.4-mile radius to 7.3 miles east of the VORTAC and within a 6.6-mile radius of the West Texas Airport.

* * * * *

Issued in Fort Worth, TX, on October 12, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–27504 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–13–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1604 and 1606

Sex Discrimination Guidelines and National Origin Discrimination Guidelines

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This rule rescinds those paragraphs of the Equal Employment Opportunity Commission's (EEOC's) Sex Discrimination Guidelines and National Origin Discrimination Guidelines that set a standard for employer liability for harassment by supervisors. This action is necessary as a result of recent Supreme Court rulings.

EFFECTIVE DATE: October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Dianna Johnston, Assistant Legal Counsel, Title VII/ADEA/EPA Division, Office of Legal Counsel, or Elaine Herskowitz, Senior Attorney/Advisor, Title VII/ADEA/EPA Division, Office of Legal Counsel. They can be reached at 202–663–4679. This final rule is also available in the following formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the EEOC's Publication Center by calling 1–800–669–3362 (voice) or 1–800–669–6820 (TDD).

SUPPLEMENTARY INFORMATION: The EEOC is rescinding those subsections of the Sex Discrimination Guidelines, found in 29 CFR 1604.11(c), and the National Origin Discrimination Guidelines, found in 29 CFR 1606.8(c), that address employer liability for harassment by supervisors. The standard set forth in those subsections is no longer valid in light of the Supreme Court's rulings in *Burlington Industries, Inc.* v. *Ellerth*, 524 U.S. 742 (1998), and *Faragher* v. *City of Boca Raton*, 524 U.S. 775 (1998). The Commission has issued detailed guidance interpreting those decisions and explaining the circumstances under which employers are vicariously liable for unlawful harassment by supervisors. *See* EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (6/18 /99), EEOC Compliance Manual (BNA), N:4075 [Binder 3]; also available through EEOC's web site, at www.eeoc.gov, or by calling the EEOC Publications Distribution Center, at 1–800–669–3362 (voice), 1–800–800–3302 (TTY).

Regulatory Procedures

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Public Law 96–354, as amended by Public Law 104–121), the Commission has reviewed this regulation, and by approving it, certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget.

List of Subjects

29 CFR Part 1604

Advertising, Employee benefit plans, Equal employment opportunity, Sex discrimination.

29 CFR Part 1606

Equal employment opportunity.

For the Commission,

Ida L. Castro,

Chairwoman.

PART 1604—[AMENDED]

1. The authority citation for part 1604 continues to read as follows:

Authority: Sec. 713(b), 78 Stat. 265, 42 U.S.C. 2000e–12.

2. Section 1604.11 is amended by removing and reserving paragraph (c).

3. Section 1604.11 is amended by adding Appendix A at the end of the section to read as follows:

§ 1604.11 Sexual harassment.

* * * * *

Appendix A to § 1604.11—Background Information

The Commission has rescinded § 1604.11(c) of the Guidelines on Sexual Harassment, which set forth the standard of employer liability for harassment by supervisors. That section is no longer valid, in light of the Supreme Court decisions in *Burlington Industries, Inc.* v. *Ellerth*, 524 U.S. 742 (1998), and *Faragher* v. *City of Boca Raton*, 524 U.S. 775 (1998). The Commission has issued a policy document that examines the Faragher and Ellerth decisions and provides detailed guidance on the issue of vicarious liability for harassment by supervisors. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (6/18/99), EEOC Compliance Manual (BNA), N:4075 [Binder 3]; also available through EEOC's web site, at www.eeoc.gov., or by calling the EEOC Publications Distribution Center, at 1–800–669–3362 (voice), 1–800–800–3302 (TTY).

PART 1606—[AMENDED]

4. The authority citation for part 1606 continues to read as follows:

Authority: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*

5. Section 1606.8 is amended by removing and reserving paragraph (c).

6. Section 1606.8 is amended by adding Appendix A at the end of the section to read as follows:

§ 1606.8 Harassment.

* * * * *

Appendix A to § 1606.8—Background Information

The Commission has rescinded § 1606.8(c) of the Guidelines on National Origin Harassment, which set forth the standard of employer liability for harassment by supervisors. That section is no longer valid, in light of the Supreme Court decisions in *Burlington Industries, Inc.* v. *Ellerth*, 524 U.S. 742 (1998), and *Faragher* v. *City of Boca Raton*, 524 U.S. 775 (1998). The Commission has issued a policy document that examines the Faragher and Ellerth decisions and provides detailed guidance on the issue of vicarious liability for harassment by supervisors. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (6/18/99), EEOC Compliance Manual (BNA), N:4075 [Binder 3]; also available through EEOC's web site, at www.eeoc.gov., or by calling the EEOC Publications Distribution Center, at 1–800–669–3362 (voice), 1–800–800–3302 (TTY).

[FR Doc. 99–28291 Filed 10–28–99; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 46 and 48

RIN 1219–AB17

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines; Correction

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the final rule for training and retraining of miners that appeared in the **Federal Register** on September 30, 1999.

EFFECTIVE DATE: October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On September 30, 1999, in FR Doc. 99–25273 (64 FR 53080), MSHA published a final rule amending existing health and safety training regulations by establishing new training requirements for shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines. This document corrects errors in the preamble.

1. On page 53080, in the third column, in the second full paragraph the last three sentences from the end should read "Based on Table 2, MSHA estimates that mine operators will incur a total of 253,393 burden hours at a cost of about $8.2 million in the first year, and in every other succeeding year (*i.e,* 3, 5, 7, 9). MSHA estimates the mine operators will incur 240,575 burden hours at a cost of $7.8 million in years 2, 4, 6, 8, etc. The first year burden hours and costs are composed by summing the figures in Tables 1, 2, 3, and 4."

2. On page 53081, Table 2 should read:

Table 2—Mine Operators' Annual Burden Hours and Costs

Prov.	Mines (1–5)		Mines (6–19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.3	254.584	$8,614	166.180	$5,620	124.032	$4,321	545	$18,554
46.5	41,153	1,481,519	21,604	777,757	4,963	178,654	67,720	2,437,930
46.6	8,534	307,213	4,641	167,066	1,092	39,327	14,267	513,606
46.7	6,102	219,673	13,328	479,804	18,692	672,924	38,122	1,372,401
46.8	34,944	1,257,994	15,538	559,369	5,552	199,882	56,035	2,017,246
46.9	1,541	40,829	3,145	83,345	2,995	79,357	7,680	203,531

Table 2—Mine Operators' Annual Burden Hours and Costs—Continued

Prov.	Mines (1–5)		Mines (6–19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.11	25,298	581,843	22,155	509,565	8,730	200,790	56,183	1,292,198
Total	117,826	3,897,684	80,577	2,582,527	42,148	1,375,254	240,552	7,855,465

3. On page 53088, in the first column, in the first full paragraph the first sentence should read "Several commenters favored a six-month delay in the effective date, stating it would provide adequate time for compliance if MSHA and state agencies were available to assist operators in such areas as the development of training plans and training materials."

4. On page 53088, in the first column, the first sentence in the last paragraph should read "We have concluded that a one-year delay in the effective date, without interim compliance deadlines, will ensure that production-operators, independent contractors, and others affected by the final part 46 rule will have sufficient time to become familiar with the rule's requirements and take steps to come into compliance."

5. On page 53089, in the first column, in the first full paragraph, the last two sentences should read "MSHA's current budget includes $6.013 million for the State Grants program. Our budget request for fiscal year 2000 would increase that sum to $6.139 million."

Dated: October 20, 1999.

Marvin W. Nichols,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–27897 Filed 10–28–99; 8:45 am]

BILLING CODE 4510–43–P

POSTAL RATE COMMISSION

39 CFR Parts 3001, 3002 and 3004

[Docket No. RM99–2; Order No. 1267]

Freedom of Information Act Administrative Rulemaking

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting previously-proposed changes to its rules of practice to implement the Electronic Freedom of Information Act and to reflect improved methods of information management. These changes establish consistency with current law. They also improve the Commission's administration of related responsibilities and the public's ability to obtain or review certain information.

DATES: Effective November 29, 1999.

ADDRESSES: Send correspondence concerning this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Introduction. The Commission hereby adopts, as a final rule, the revisions to its rules implementing the Freedom of Information Act (FOIA) described and identified here. (Order No. 1267, issued October 8, 1999.) The revisions, which were the subject of Commission Order No. 1253, were previously published at 64 FR 50031. No comments on the proposal were received.

The Commission has reviewed its initial proposal, and has determined that final adoption of the revisions is appropriate. The previous version is unchanged except for clarifying that claims that sensitive business information should be exempt from disclosure can be made under several subparts of 5 U.S.C. 552(b). Part I explains the changes. Part II summarizes the effect of the changes on organization of the rules. Part III sets out the final rules.

Part I—Background

The Commission's rules implementing the requirements of the FOIA, 5 U.S.C. 552, have not been amended since 1993. Consequently, they do not incorporate changes in applicable law since that time, most notably the requirements added by the Electronic FOIA, Pub. L. 104–231. Also, they do not reflect recent changes in the Commission's methods of information management, which have become increasingly computer-based, or other administrative changes affecting access to information at the Commission.

The rules adopted here are intended to address and accommodate these changes. They also incorporate a major structural change for the convenience of persons interested in obtaining information by various means. This entails the transfer of all provisions describing FOIA access and processes at the Commission to a new Part 3004.

A. Compliance With Public Inspection and Copying Requirements as Modified by the Electronic FOIA Amendments

Subsection (a)(2) of the FOIA requires an agency to make available for public inspection and copying its final opinions in adjudicated cases, policy statements and interpretations not published in the **Federal Register**, and administrative staff manuals and instructions to staff that affect members of the public. The 1996 Electronic FOIA amendments extended this requirement by directing agencies to make such records created on or after November 1, 1996, available by computer telecommunications or other electronic means.

Description of changes. The final rules reflect the actions the Commission has taken to achieve compliance with the amended public inspection and copying requirements. Since 1996, the Commission has operated a website linked to the Internet for the purposes of telecommunication and publication of official information. Recently, the Commission has expanded the material available on its website to include all decisions issued on or after January 1, 1996; orders, notices and other documents issued in proceedings pending before the Commission; the domestic mail classification schedule, which is a compilation of all provisions that define the categories of mail and postal services available in the national postal system; and the rules of practices which govern the conduct of proceedings before the Commission. These materials are now available for viewing and downloading from the Commission's website at www.prc.gov. Accordingly, 39 CFR 3004.2(c) identifies that domain as the location of the Commission's electronic reading room, and describes generally the categories of information available from the website.

B. Transfer of FOIA Procedural Rules to New Part 3004

Currently, the rules describing public information available at the Commission and procedures for obtaining access are contained in 39 CFR 3001.42 and 3001.42a, within the rules of general applicability in part 3001. (Part 3001 is a compilation of all the Commission's rules of practice and procedure.) For the convenience of persons interested primarily in obtaining access to public information, the final rules incorporate a major structural change. Rules describing the procedures for obtaining access to public information at the Commission, fees associated with some retrieval and copying services, and procedures relating to the submission and disclosure of sensitive business information are transferred to a new part 3004, entitled "Freedom of Information Rules." Rules describing the Commission's public information resources generally are retained in section 3001.42, with additional detailed information in part 3002, the organizational description of the Commission.

In addition, new part 3004 includes revisions of, and updates to, the provisions transferred from sections 3001.42 and 42a to conform to current FOIA legal requirements and practices. Sections 3004.1 and 3004.2 describe the purpose of the rules and the sources of the Commission's public information, including the physical and electronic reading rooms. Section 3004.3 provides both for regular FOIA requests and requests for expedited processing based on a demonstration of compelling need. The time limit specified in section 3004.4 for responding to requests is changed from 10 days to 20 days, in accordance with the 1996 amendments. The period for filing an appeal of a denial of a request with the Commission, currently 20 days, is extended to one year under section 3004.4(a)(2).

C. Provisions Relating to Submission of Sensitive Business Information

Section 3004.8 adopts procedures for the Commission's treatment of materials containing sensitive business information that are considerably more detailed than those in current section 3001.42a. Section 3004.8(a) directs any person who submits information believed to be exempt from disclosure under 5 U.S.C. section 552(b) to designate the exempt information by appropriate markings, and provide a brief written statement explaining why the information is exempt. Any such designation expires 10 years after the date of submission, unless the submitter requests and justifies a longer duration.

Should the Commission receive an FOIA request seeking business information that has been properly designated under section 3004.8(a), or one that may be exempt from disclosure under 5 U.S.C. section 552(b), section 3004.8(b) provides that the Commission is to notify the submitter that such a request has been made, and provide a copy of the notice to the requester. Under section 3004.8(c), the submitter has 7 days to submit written objections to the information's disclosure, specifying all grounds for withholding it under the FOIA. The submitter will be considered to have no objection to disclosure if it submits no response by the end of the 7-day period.

If the submitter objects to disclosure, the Commission then decides whether to disclose the information. If the decision is to disclose, section 3004.8(d) requires the Commission to provide the submitter with written notice of that decision and a brief explanation for not sustaining the submitter's objections. Actual disclosure is not to be made until 5 days after the submitter's receipt of the notice. Section 3004.8(e) provides that the Commission need not notify the submitter if it determines not to disclose the information; if the information has been lawfully published or officially made publicly available; or if disclosure is required by a regulation or a statute other than the FOIA.

Finally, section 3004.8(f) specifies that protection of business information made available in formal Commission proceedings, and under the periodic reporting requirements in subpart G of 39 CFR part 3001, is provided under the terms of section 3001.31a. Thus, the procedures in section 3004.8 do not apply to the potential disclosure of commercially sensitive materials in the course of the Commission's performance of its primary jurisdictional responsibilities.

D. Updated Information Responsive to Publication Requirements

Subsection (a)(1) of the FOIA specifies five categories of information that agencies are required to "currently publish in the **Federal Register** for the guidance of the public[.]" The final rules are designed to comply fully with these publication requirements, and also to carry out the intent of the Electronic FOIA Amendments of 1996 to increase the public availability of information through computer telecommunications.

The final rules address publication requirements by incorporating several amendments to existing rules that enhance the information provided regarding the Commission's operations, facilities, and information resources available to the public. Section 3002.2 adds a description of the Commission's statutory functions, including its jurisdictional responsibilities and the means by which the public may participate in Commission proceedings, in response to 5 U.S.C. 552(a)(1)(B). Section 3002.3 describes the potential sources of public information in the Commission's docket room, physical reading room, and electronic reading room on its website, as directed in 5 U.S.C. 552(a)(1)(A). Section 3002.4(e) provides additional detail concerning the information available on the Commission's website, and clarifies the responsibility of the Commission's administrative office to maintain it and the other public information resources of the agency.

Part II. Summary of Effect of Changes on the Rules

In 39 CFR part 3001, paragraph (c) of existing 3001.42, captioned "Public information and requests," is deleted in its entirety. Existing 3001.42(d), captioned "Procedure in event of subpoena," is redesignated as 3001.42(c). In addition, 3001.42a, captioned "Protection of trade secrets and commercial or financial information" is deleted in its entirety.

In 39 CFR part 3002, 3002.1 is retained without change. Provisions currently designated as 3002.2, 3002.3 and 3002.4 are redesignated as 3002.3, 3002.4 and 3002.5, respectively. In the redesignated paragraphs, a new paragraph (c) is added in 3002.3 and a new paragraph (e) is added in 3002.4.

The redesignation leaves 3001.2 available. The Commission uses this space for new text addressing its functions. Accordingly, this section, formerly captioned "The Commission and its offices," is given the new caption of "Statutory functions," and new language appears therein.

A new part 3004, captioned "Freedom of Information Rules" is added. It contains eight paragraphs describing various responsibilities and requirements.

Part III. Final Rules

The final rules appear below.

List of Subjects in 39 CFR Parts 3001, 3002 and 3004

Administrative practice and procedure, Archives and records, Freedom of information, Organization, Privacy, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 39 CFR chapter III is amended as follows.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

§ 3001.42 [Amended]

2. In § 3001.42, remove paragraph (c) in its entirety, and redesignate paragraph (d) as (c).

§ 3001.42a [Removed]

3. Remove § 3001.42a in its entirety.

PART 3002—ORGANIZATION

4. The authority citation for part 3002 continues to read as follows:

Authority: 39 U.S.C. 3603; 5 U.S.C. 552.

§§ 3002.2, 3002.3, 3002.4 [Redesignated as §§ 3002.3, 3002.4, and 3002.5]

5. Redesignate §§ 3002.2, 3002.3 and 3002.4 as §§ 3002.3, 3002.4, and 3002.5, respectively.

6. In newly designated § 3002.3, add a new paragraph (c) to read as follows:

§ 3002.3 The Commission and its offices

* * * * *

(c) The Commission's offices are located at 1333 H Street, NW., Suite 300, Washington, DC 20268. On these premises, the Commission maintains offices for Commissioners and the staff components described in §§ 3001.4, 3001.5, 3001.6 and 3001.7; a docket room where documents may be filed with the Commission pursuant to § 3001.9 and examined by interested persons; a public reading room where the Commission's public records are available for inspection and copying; a library containing legal and technical reference materials; and a hearing room where formal evidentiary proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the Internet, on its website at www.prc.gov.

7. In newly designated § 3002.4, add new paragraph (e) to read as follows:

§ 3002.4 Administrative Office.

* * * * *

(e) The Administrative Office is also responsible for the maintenance of the Commission's public information resources, including the docket room, the physical reading room, and the library on the premises of the Commission's offices, as well as the electronic reading room accessible on the Commission's website at www.prc.gov. The information available on the Commission's website is, in general, coextensive with that available from the Commission's docket room and physical reading room, and includes: Commission decisions, rules, orders and notices; testimony, pleadings and reference materials filed in Commission proceedings; and current information concerning Commission activities, employment opportunities, and a calendar of upcoming events.

8. Add new § 3002.2 to read as follows:

§ 3002.2 Statutory functions.

(a) *Areas of jurisdiction.* The Commission has jurisdiction over changes in postal rates and fees under 39 U.S.C. 3622, and over mail classifications under 39 U.S.C. 3623. It issues recommended decisions to the Governors of the Postal Service on these matters. It also acts on postal patrons' appeals from Postal Service decisions to close or consolidate post offices under 39 U.S.C. 404(b). Further, the Commission investigates complaints of substantial national scope concerning postal rates, fees, mail classifications or services under 39 U.S.C. 3662. It also responds to requests of the Postal Service for advisory opinions on changes in the nature of postal services under 39 U.S.C. 3661. Because of the Commission's expertise, Congress occasionally asks it to undertake special studies on postal issues.

(b) *Public participation.* Interested persons may elect to participate in Commission rate and mail classification proceedings as formal intervenors (§ 3001.20), limited participators (§ 3001.20a), or commenters (§ 3001.20b). Interested parties who believe the Postal Service is charging rates which do not conform with the policies of the Postal Reorganization Act, or who believe that they are not receiving postal service in accordance with the policies of title 39, may lodge a complaint with the Commission under section 3001.82. Persons served by post offices that the Postal Service decides to close or consolidate with other post offices may appeal such determinations under § 3001.111.

9. Part 3004 is added to read as follows:

PART 3004—FREEDOM OF INFORMATION RULES

Sec.
3004.1 Purpose.
3004.2 Reading room.
3004.3 Requests for records and or expedited processing.
3004.4 Response to requests.
3004.5 Appeals.
3004.6 Fees.
3004.7 Aggregation of requests.
3004.8 Submission of business information.

Authority: 39 U.S.C. 3603; 5 U.S.C. 552, 552a.

§ 3004.1 Purpose.

(a) This part is published pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, to describe the procedures by which a person can request copies of Commission records. It also describes how a submitter of trade secrets or confidential business information can identify information that the submitter believes to be exempt from disclosure under 5 U.S.C. 552(b).

(b) An individual seeking access to a record about himself or herself that is subject to the Privacy Act of 1974 should also consult the Commission's Privacy Act rules in part 3003 for the procedures that apply to requests for records under that Act. Requests for first-party access can be made under both the FOIA and the Privacy Act of 1974.

(c) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in part 3002, elsewhere in this chapter, in the **Federal Register**, or on the Commission's website at www.prc.gov. The Commission's guide to the FOIA, all required FOIA indexes, and any available annual FOIA reports, are also available at the website in the electronic reading room or elsewhere on the site.

(d) Section 3001.42(b) of this chapter identifies records that the Commission has determined to be public.

§ 3004.2 Reading room.

(a) The Commission maintains a public reading room at its offices at 1333 H Street NW., Washington, DC 20268. The reading room is open from 8:00 a.m. until 4:30 p.m. during business days.

(b) The records available for public inspection and copying in the reading room include: final opinions, statements of policy, administrative staff manuals and instructions that affect a member of the public, copies of selected records released under the FOIA, and indexes required to be maintained under the FOIA, and records described in 39 CFR 3001.42(b) relating to any matter or proceeding before the Commission.

(c) The Commission's electronic reading room is maintained at its website at www.prc.gov. Commission decisions, orders, rules of practice, and other directives affecting the public are available from the electronic reading room. To the extent practicable, other documents available in the reading room are also posted and available on the website.

§ 3004.3 Requests for records and for expedited processing.

(a) A request for records must be in writing and must reasonably describe the records sought. A request should be addressed or delivered to the Secretary of the Commission at the offices of the Commission at 1333 H Street NW., Washington, DC 20268. A request should be clearly identified as "Freedom of Information Act Request" both in the text of the request and on the envelope. A requester should include a daytime telephone number.

(b) A request for expedited processing may be made in cases in which the requester demonstrates a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v). The Commission may otherwise grant requests for expedited processing at its discretion. A request for expedited processing should be clearly identified as "Expedited Freedom of Information Act Request" both in the text of the request and on the envelope.

(c) A demonstration of compelling need by a requester seeking expedited processing must be made by a statement certified by the requester to be true and correct to the best of the requester's knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

(d) A request for expedited processing may be made at the time of an initial request (or appeal) or at a later time.

§ 3004.4 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of a request for a Commission record, the Secretary of the Commission will:

(1) Determine to comply with the request and immediately notify the requester of the determination and of any fees that must be paid; or

(2) Deny the request in writing. The denial letter will explain the reason for the denial, including each exemption used as a basis for withholding of the records sought. The denial letter will include an estimate of the volume of requested matter that was denied. If disclosure of a record has been partially denied, the amount of information deleted will be indicated on the released portion if technically feasible. If revealing the amount or location of a denied record will harm an interest protected by an exemption, then the description of the amount or location of deleted information may be withheld. The denial letter will inform the requestor that he/she may, within one year, appeal the denial to the Commission.

(b) A denial is any form of adverse determination, including: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; an adverse decision on any disputed fee matter, including a denial of a requested fee waiver; and a denial of a request for expedited treatment.

(c) Within ten days after the receipt of a request for expedited processing, the Secretary will:

(1) Grant the request for expedited processing and process the request for records as soon as practicable; or

(2) Deny a request for expedited processing in writing. Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing. The denial letter will inform the requestor that he/she may, within five days, appeal the denial to the Commission.

(d) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Secretary may extend the time for a response for up to ten working days. The Secretary will notify the requester of any extension, and the reason for the extension, in writing. The Secretary will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

§ 3004.5 Appeals.

(a) A requester who seeks to appeal any denial must file an appeal in writing with the Commission. The Commission may review any decision of the Secretary on its own initiative. The Commission will grant or deny the appeal in writing, within 20 days (excluding Saturdays, Sundays and legal public holidays) of the date the appeal is received. If on appeal the denial of the request for records is upheld, the Commission will notify the person making such request of the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c). The Commission will expeditiously consider an appeal of a denial of expedited processing.

(b) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Commission may extend the time for a response to an appeal for up to ten working days. The Commission will notify the requester of any extension, and the reason for the extension, in writing. The Commission will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

§ 3004.6 Fees.

(a) Definitions pertaining to fees:

(1) *Direct costs* means expenditures the Commission actually incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee performing work (the basic pay rate of such employee plus 16 percent to cover benefits) and the cost of operating required machinery.

(2) *Search* includes all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

(3) *Duplication* means making copies of documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

(4) *Review* means examining documents located in response to a commercial-use request to determine whether any portion is exempt from mandatory disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

(5) *Commercial use request* means a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

(6) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Noncommercial scientific institution* means an institution, not operated on a *commercial* basis (as referenced above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity organized and operated to publish or broadcast news to the public. *News* means information about current events or that would be of current interest to the public. Freelance

journalists will be regarded as working for a news medium if they demonstrate (for example, by a publication contract or a past record of publication) a solid basis for expecting publication through such organization even though not actually employed by it.

(b) Except in the case of commercial-use requesters, the first 100 pages of duplication and the first two hours of search time are provided without charge. A *page* for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy. *Search time* for these purposes refers to manual searching; if the search is performed by computer, the amount not charged for will be the search cost equivalent to two hours' salary of the person performing the search. No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for two hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(c) Fees will be charged in accordance with the following provisions:

(1) The level of fee charged depends on the category of requester:

(i) A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(ii) A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(iii) A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(iv) A request from any other requester will be charged the full direct cost of searching for and duplicating records responsive to the request, except that the first 100 pages of duplication and the first two hours of search will be furnished without charge.

(v) A request from a record subject for records about himself or herself filed in a Commission Privacy Act system of records will be charged fees as provided under the Commission's Privacy Act regulations in part 3003 of this chapter.

(2) Fees will be calculated as follows:

(i) Manual search: At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time may be charged for even if the Commission fails to locate records or if records located are exempt from disclosure.

(ii) Computer search: At the actual direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) Review (commercial-use requests): At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Charges are imposed only for the review necessary at the initial administrative level to determine the applicability of any exemption, and not for review at the administrative appeal level of an exemption already applied.

(iv) Duplication: At 15 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) Additional services: Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actual cost.

(d) Interest at the rate prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills, starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

(e) Advance payment may be required only when the allowable fees are likely to exceed $250, in which case advance payment in part or in full may be required of requesters with no history of prompt payment, and satisfactory assurance of payment from requesters with such history; or when the requester has previously failed to pay a fee timely (within 30 days of the billing date), in which case the Commission may require full payment of the amount owed, plus applicable interest, or a demonstration that the fee has in fact been paid, together with full advance payment of the estimated fee. When advance payment is required, the administrative time limits prescribed in subsection (a)(6) of the FOIA begin only after such payment has been received.

(f) Records will be provided without charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

§ 3004.7 Aggregation of requests.

Should the Secretary or the Commission reasonably believe that a requester or a group of requesters acting in concert, have attempted to evade fees or to seek a procedural advantage over other requesters by breaking down a request into a series of requests, the Commission may aggregate the separate requests and treat them as a single request. Multiple requests involving unrelated subjects will not be aggregated.

§ 3004.8 Submission of business information.

(a) Any person who submits to the Commission a trade secret or commercial or financial information that the submitter reasonably believes to be exempt from disclosure under 5 U.S.C. 552(b) must designate the exempt information by appropriate markings at the time of submission or at a reasonable time after submission. The submission should be accompanied by a brief written statement explaining why the information is exempt. Any designation will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(b) Before disclosing, in response to a FOIA request, any information properly designated under this part, the Commission will provide the submitter with written notice that a request seeks disclosure of the information. The Commission may also provide notice when it has reason to believe that business information possibly exempt from disclosure may fall within the scope of any FOIA request. The requester will be provided a copy of any notice sent to the submitter.

(c) A submitter has seven days to submit written objections to the disclosure specifying all grounds for withholding the information under the FOIA. If the submitter fails to respond to the notice, the submitter will be considered to have no objection to the disclosure of the information.

(d) If, after considering the submitter's objections to disclosure, the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter's objections. The actual disclosure will not be made before five days after the submitter has received the notice.

(e) A submitter may not receive notice if the Commission determines that the information should not be disclosed; if the information has been lawfully published or officially made available to the public; or if a statute (other than the FOIA) or a regulation requires disclosure.

(f) Protection of information made available pursuant to proceedings subject to the rules in 39 CFR part 3001, including information provided pursuant to that subpart requiring the filing of periodic reports, is provided upon request to the Commission as described in § 3001.31a.

Dated: October 22, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–28126 Filed 10–28–99; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD081–3043a; FRL–6449–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are converting our conditional approval of the State of Maryland's State Implementation Plan (SIP) revision for an enhanced vehicle inspection and maintenance (I/M) program, which was granted on July 31, 1997 (61 FR 40938), to a full approval. In the State of Maryland the I/M program is known as the vehicle emissions inspection program (VEIP). In our July 31, 1997 conditional approval, we imposed fifteen conditions for full approval. We have determined that Maryland has met all of those conditions for full approval. The intent of this action is to convert our conditional approval of Maryland's VEIP SIP to a full approval.

DATES: This rule is effective on December 28, 1999 without further notice, unless EPA receives adverse written comment by November 29, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. Please contact Christopher Cripps at (215) 814–2179 if you wish to arrange an appointment to view the docket at the Philadelphia office.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. What action is EPA taking today?
II. Who is affected by this action?
III. Who will benefit from this action?
IV. What Maryland SIP revision is the topic of this action?
V. What were the requirements for full approval of the Maryland program?
VI. How did Maryland fulfill these requirements for full approval?
VII. What is EPA doing Regarding Vehicles at Federal Facilities?
VIII. EPA Action
IX. Administrative Requirements

I. What Action is EPA Taking Today?

In this action, we are converting our conditional approval of Maryland's I/M program as a revision to the SIP to a full approval.

II. Who is Affected by This Action?

Residents of the following jurisdictions in Maryland: Anne Arundel County, Baltimore County, Calvert County, Carroll County, Cecil County, Charles County, Frederick County, Harford County, Howard County, Montgomery County, Queen Anne's County, Washington County and Baltimore City. It is important to note that our action today does not impose any new requirements on Maryland residents; we are merely granting full approval (versus the conditional approval previously granted) to the Maryland laws and regulations already in place at the state level to implement enhanced I/M in Maryland. These laws and regulations were made part of the Maryland SIP by the conditional approval that was published on July 31, 1997.

III. Who Will Benefit From This Action?

The residents of Maryland will benefit from this program, which is designed to keep vehicles maintained and operating within pollution control standards. Because air pollution does not recognize political boundaries, neighboring states' residents will also benefit from implementation of this program, designed to prevent excessive vehicle pollution.

IV. What Maryland SIP Revision is the Topic of this Action?

This notice deals with a revision to the State of MD SIP entitled "Enhanced Vehicle Emissions Inspection Program (SIP Revision 98–13)" which was submitted by the Secretary of the Maryland Department of the Environment (MDE) September 25, 1998 and supplemented on May 25, 1999. Today we are acting only upon this September 25, 1998, SIP revision and supplemental submittals to determine that Maryland satisfied certain deficiencies of its conditionally approved enhanced I/M plan, and in so doing we are not reopening our July 31, 1997, final rulemaking granting conditional approval of Maryland's enhanced I/M SIP submitted on July 10, 1995, as supplemented on March 27, 1996.

V. What Were the Requirements for Full Approval of the Maryland Program?

Approval of Maryland's I/M program SIP was subject to 15 conditions which are summarized in Table 1. These were also discussed in detail in our July 31, 1997 conditional approval.

VI. How Did Maryland Fulfill These Requirements for Full Approval?

On September 25, 1998, Maryland submitted revisions to its enhanced I/M SIP to EPA in order to correct conditions for full approval, as detailed in Table 1.

TABLE 1.—SATISFACTION OF THE CONDITIONS FOR FULL APPROVAL

[Major Conditions " As Summarized from the July 31, 1997 Rule]

Requirement for Full Approval	How Maryland Satisfied the Requirement
(1) Submit fully adopted regulations for the enhanced I/M program	Maryland submitted copies of fully adopted enhanced I/M regulations, COMAR 26.11.14 "Vehicle Emissions Inspection Program", adopted on November 21, 1997, and on September 16, 1998.
(2) Provide an opinion from the Attorney General's Office or legislation that demonstrates that the legislative authority for the program expires no earlier than November 15, 2005.	Maryland submitted a Certification by the Maryland Attorney General's Office that Maryland's Transportation Article authorizes the Maryland I/M program for as long as is required by federal law.
(3) Submit a modeling demonstration of the program using appropriate assumptions for the years 2002 and 2005.	Maryland submitted an acceptable modeling demonstration of their program.
(4) Demonstrate that adequate funding and tools exist for the years 1997 and 1998 for running the program. This included information on the numbers of personnel dedicated to the I/M program areas and budget allocations for equipment resources.	Maryland submitted staffing and budget data for the years 1997 and 1998.
(5) Provide an explanation of how all vehicles in the I/M program will be identified Maryland provided information on how vehicles in the I/M program are identified.	Maryland provided information on how vehicles in the I/M program are identified. Maryland law requires residents residing in the program area to register these vehicles properly. This is enforced by checking registration information whenever a vehicle is stopped by police for any reason and by surveys of parked vehicles to identify vehicles with out-of-state tags that are operated routinely in or by de facto residents of the program area.
(6) Provide information on applicable Maryland law and regulations on how "engine switching is handled" and how vehicles without a certified configuration will be testing.	Maryland submitted a copy the Maryland law that prohibits any modification to the vehicle's original emission control system Maryland submitted a procedures document which specifies that Maryland's engine switch guidelines require that a switched engine must meet or exceed the requirements for the vehicles model year and class and that owners of vehicles with a non-certified engine configuration or replacement engine may request a one-time extension, which may not exceed one-year, to the emission testing requirements in order to bring the vehicle into compliance.
(7) Submit written specifications for gas cap testing	Maryland submitted written specifications for gas cap testing.
(8) Submit a description of Maryland's practice of issuing short-term time extensions due to economic hardship and the time limit(s) for such exemptions.	Maryland submitted the procedures and documentation that adequately address the issuance of short-term time extensions due to economic hardship and the time limit for such exemptions.
(9) Submit documentation regarding: (a) aspects of the I/M program as applied to exemptions for residents out-of-state, to residents newly located in the I/M program area, and to require confirmation of exempt status, and (b) citation of owners for noncompliance with Maryland's registration requirements and practices regarding impounding of vehicles.	Maryland submitted the procedures for handling exemptions for residents out-of-state, the procedures and documentation that adequately address residents newly located in The I/M program areas and that require verification of exempt status. Maryland submitted the procedures and documentation that adequately address citation of owners for noncompliance with Maryland's registration requirements and practices regarding impounding of vehicles.
(10) Demonstrate that Maryland's enforcement program oversight is quality controlled and quality assured.	Maryland submitted acceptable quality assurance oversight procedures and documentation.
(11) Provide a description of Maryland's auditing program	Maryland submitted a description of Maryland's auditing program.
(12) Submit documentation regarding the penalty schedule applicable to the I/M program contractor.	Maryland submitted the current penalty schedule for the I/M program contractor.
(13) Submit evidence that inspectors must be re-certified at least every two years or less.	Maryland submitted a procedures document that requires such recertification every 24 months.
(14) Submit documentation on how it investigates and responds to motorist complaints, and submit documentation relating to protection of whistle blowers.	Maryland submitted a procedures document that outlines the procedures used to investigate and respond to complaints Maryland submitted a copy of Maryland Code Title 5, subtitle 3 which provides for whistle blower protection.
(15) Start mandatory testing of all subject vehicles as soon as possible, or by November 15, 1997 at the latest.	On October 1, 1997 Maryland commenced implementation of its VEIP and required affected vehicles to pass I/M testing as a condition of eligibility for registration.

VII. What is EPA Doing Regarding Vehicles at Federal Facilities?

EPA is not requiring Maryland to implement section 40 CFR 51.356(a)(4) of the I/M rule which deals with federal installations within I/M areas at this time. The Department of Justice has recommended to EPA that this regulation be revised since it appears to grant states authority to regulate federal installations in circumstances where the federal government has not waived sovereign immunity. Federally owned vehicles operated in Maryland are required to meet the same requirements as Maryland registered vehicles, but it would not be appropriate to require compliance with this regulation if it is not constitutionally authorized. EPA will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final. EPA is not approving or disapproving requirements which apply to federal facilities at this time.

VIII. EPA Action

EPA is converting its conditional approval of Maryland's enhanced I/M program to a full approval the exception of the provisions regarding federal facilities. EPA is not approving or disapproving requirements which apply to federal facilities at this time. An extensive discussion of Maryland's enhanced I/M program and our rationale for our approval action was provided in the previous final rule that conditionally approved the enhanced I/M program (see 62 FR 40938 and 61 FR 56194). This action to convert our conditional approval to a full approval is being published without prior proposal because we view this as a noncontroversial amendment and because we anticipate no adverse comments. In a separate document in the "Proposed Rules" section of this **Federal Register** publication, we are proposing to convert our conditional approval of Maryland's enhanced I/M program SIP revision to a full approval if adverse comments are filed. This action will be effective without further notice unless we receive relevant adverse comment by November 29, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. Any parties interested in commenting must do so at this time. If no such comments are received by November 29, 1999, you are advised that this action will be effective on December 28, 1999.

IX. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule. On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987)) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to convert our conditional approval of Maryland's enhanced I/M program to a full approval must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action converting our conditional approval of the Maryland enhanced I/M SIP to a full approval may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: September 28, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(144) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(144) Revisions to the Maryland State Implementation Plan submitted by the Maryland Department of the Environment on July 10, 1995, March 27, 1996, and September 25, 1998 as supplemented on May 25, 1999:

(i) Incorporation by reference.

(A) Letter of July 10, 1995, from the Maryland Department of the Environment transmitting an Enhanced Vehicle Emissions Inspection Program.

(B) Regulations for the Vehicle Emissions Inspection Program COMAR 11.14.08, adopted by the Secretary of the Environment on August 1, 1994, effective January 2, 1995:

(*1*) COMAR 11.14.08.01 through COMAR 11.14.08.02, inclusive.

(*2*) COMAR 11.14.08.03A.

(*3*) COMAR 11.14.08.03A(1).

(*4*) COMAR 11.14.08.03A(2) except the word "federal," in the first line.

(*5*) COMAR 11.14.08.03B.

(*6*) COMAR 11.14.08.04.

(*7*) COMAR 11.14.08.05, section A.

(*8*) COMAR 11.14.08.05 sections B(1) through (7), inclusive.

(*9*) COMAR 11.14.08.05 sections C. through F., inclusive.

(*10*) COMAR 11.14.08.06 through COMAR 11.14.08.42, inclusive.

(C) Letter of March 27, 1996, from the Maryland Department of the Environment transmitting amendments to the Enhanced Vehicle Emissions Inspection Program.

(D) Letter of September 25, 1998, from the Maryland Department of the Environment transmitting amendments to the Enhanced Vehicle Emissions Inspection Program.

(E) The following revisions to the provisions of COMAR 11.14.08 adopted by the Secretary of the Environment on November 21, 1996, effective December 16, 1996:

(*1*) Amendments to COMAR 11.14.08.03B.

(*2*) The addition of a new COMAR 11.14.08.03C.

(*3*) Amendments to COMAR 11.14.08.05B(4).

(*4*) Amendments to COMAR 11.14.08.06D(7).

(*5*) Renumbering COMAR 11.14.08.09A to .09B, .09B to .09C, .09C to .09D and .09D to. 09E, .09E to .09F, and .09F to .09G.

(*6*) The addition of a new COMAR 11.14.08.09A, A(1) and A(3).

(*7*) Amendments to COMAR 11.14.08.09B(1), B(1)(a), B(1)(b), B(2), B(3), B(3)(a), B(3)(b) and B(4).

(*8*) Amendments to COMAR 11.14.08.09E.

(*9*) The addition of a new COMAR 11.14.08.09–1 except the phrase "and, to the extent allowed by federal law, a vehicle owned by the federal government" in section COMAR 11.14.08.09–1A.

(*10*) Renumbering COMAR 11.14.08.06B(3) to B(4), B(4) to B(5), B(5) to B(6), and B(6) to B(7).

(*11*) Creation of a new COMAR 11.14.08.06B(3) from the last two sentences of COMAR 11.14.08.06B(2).

(*12*) Amendments to COMAR 11.14.08.10B(3).

(*13*) Amendments to COMAR 11.14.08.10C.

(*14*) Deletion of COMAR 11.14.08.10C(1), C(1)(a) through C(1)(c), inclusive, and C(2).

(*15*) Renumbering COMAR 11.14.08.10C(2)(a) to C(1), C(2)(b) to C(2), C(2)(c) to C(3), C(2)(d) to C(4), C(2)(e) to C(5), and C(2)(f) to C(6).

(*16*) The addition of a new COMAR 11.14.08.11–1 except the phrase "and, to the extent allowed by federal law, a vehicle owned by the federal government" in section COMAR 11.14.08.11–1A.

(*17*) Amendments to COMAR 11.14.08.12A.

(*18*) Deletion of COMAR 11.14.08.12A(1) through .12A(6), inclusive.

(*19*) Amendments to COMAR 11.14.08.12B(1).

(*20*) Amendments to COMAR 11.14.08.29A(2).

(*21*) Amendments to COMAR 11.14.08.30D(2).

(*22*) Amendments to COMAR 11.14.08.32A.

(*23*) Amendments to COMAR 11.14.08.32B(5).

(*24*) Amendments to COMAR 11.14.08.42.

(F) The following revisions to the provisions of COMAR 11.14.08 adopted by the Secretary of the Environment on September 16, 1998, effective October 19, 1998:

(*1*) Amendments to COMAR 11.14.08.02B(40), B(40(a), and B(40)(b).

(*2*) Deletion of COMAR 11.14.08.03C.

(*3*) Addition of a new COMAR 11.14.08.03C and .03D.

(*4*) Amendments to COMAR 11.14.08.06A(2).

(*5*) Amendments to COMAR 11.14.08.06A(3)(k), (p), (q) and (r).

(*6*) Renumbering COMAR 11.14.08.06A(3)(s) and (t) to COMAR 11.14.08.06A(3)(t) and (u), respectively.

(*7*) The addition of a new COMAR 11.14.08.06A(3)(s).

(*8*) Amendment of COMAR 11.14.08.06D(7).

(*9*) Addition of a new COMAR 11.14.08.07C.

(*10*) Amendments to COMAR 11.14.08.09A.

(*11*) Deletion of COMAR 11.14.08.09A(1) through .09A(3), inclusive.

(*12*) Addition of a new COMAR 11.14.08.09A(1).

(*13*) Addition of a new COMAR 11.14.08.09A(2), A(2)(a) and A(2)(b).

(*14*) Amendments to COMAR 11.14.08.09B, B(1), B(1)(a) and B(1)(a)(i).

(*15*) Amendments to COMAR 11.14.08.09B(1)(b).

(*16*) Amendments to COMAR 11.14.08.09B(2) and B(2)(a).

(*17*) Amendments to COMAR 11.14.08.09B(3).

(*18*) Amendments to COMAR 11.14.08.09B(3)(a) and (b).

(*19*) Amendments to COMAR 11.14.08.09A(4).

(*20*) Amendments to COMAR 11.14.08.09A(4)(a).

(*21*) Renumbering of COMAR 11.14.08.09E to .09F, .09F to .09G, and .09G to .09H.

(*22*) Reservation with notes of COMAR 11.14.08.09C and .09D,

(*23*) Addition with a note of a new reserved COMAR 11.14.08.09E.

(*24*) Amendments to COMAR 11.14.08.09F and .09G.

(*25*) Amendments to COMAR 11.14.08.10B(1)(c) and B(1)(d).

(*26*) Amendments to COMAR 11.14.08.10C(6)(b).

(*27*) Renumbering of COMAR 11.14.08.11 to COMAR 11.14.08.11–1.

(*28*) Addition of a new COMAR 11.14.08.11.

(*29*) Amendments to COMAR 11.14.08.11–1, .11–1A(3), .11–1A(4), 11–1B, 11–1B(4) and 11–1B(5).

(*30*) Reservation with a note of COMAR 11.14.08.11–1C.

(*31*) Amendments to COMAR 11.14.08.11–1D(1) and 11–1D(2).

(*32*) Amendment to COMAR 11.14.08.12.

(*33*) Renumbering of COMAR 11.14.08.12B to .12C.

(*34*) Reservation with a note of COMAR 11.14.08.12A.

(*35*) Addition a new COMAR 11.14.08.12B and .12B(1).

(*36*) Addition with a note of a new reserved COMAR 11.14.08.12B(2).

(*37*) Amendments to COMAR 11.14.08.12C(1) and C(3).

(*38*) Amendments to COMAR 11.14.08.15C(7)(c).

(*39*) Amendments to COMAR 11.14.08.16.

(*40*) Renumbering COMAR 11.14.08.16C to COMAR 11.14.08.16D.

(*41*) Reservation with a note of COMAR 11.14.08.16A and .16B.

(*42*) Addition with a note of a new reserved COMAR 11.14.08.16C.

(*43*) Amendments to COMAR 11.14.08.16D.

(*44*) Renumbering COMAR 11.14.08.22C to COMAR 11.14.08.22D.

(*45*) Reservation with a note of COMAR 11.14.08.22A and .22B.

(*46*) Addition with a note of a new reserved COMAR 11.14.08.22C.

(*47*) Amendments to COMAR 11.14.08.27C(2).

(*48*) The deletion of COMAR 11.14.08.27C(3).

(*49*) Renumbering COMAR 11.14.08.27C(4) to COMAR 11.14.08.27C(3).

(*50*) Amendments to COMAR 11.14.08.28A.

(*51*) Amendments to COMAR 11.14.08.32A.

(*52*) Amendments to COMAR 11.14.08.32B(5).

(*53*) Amendments to COMAR 11.14.08.42.

(G) Letter of May 25, 1999, from the Maryland Department of the Environment transmitting amendments to the Enhanced Vehicle Emissions Inspection Program.

(ii) Additional material.

(A) Remainder of the July 10, 1995, submittal;

(B) Remainder of March 27, 1996, submittal;

(C) Remainder of September 25, 1998, submittal; and

(D) Remainder of May 25, 1999, submittal.

§ 52.1072 [Amended]

3. In § 52.1072, paragraph (a) is removed and reserved.

[FR Doc. 99–27197 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN42–01–7267; FRL–6465–3]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an amendment to the carbon monoxide (CO) State Implementation Plan (SIP) for Minnesota. Minnesota submitted this amendment to the SIP to the EPA in five separate submittals, dated November 14, 1995, July 8, 1996, September 24, 1996, June 30, 1999, and September 1, 1999. EPA proposed this action on August 6, 1999 (64 FR 42888). No adverse comments were received on EPA's proposed approval.

The submittals include revisions to the motor vehicle inspection and maintenance (I/M) program currently in operation in the Minneapolis/St. Paul CO nonattainment area. The revisions make changes to the State's I/M program, including model year coverage, vehicle waiver provisions, and other program deficiencies identified by the EPA. The revision also contains provisions for the discontinuation of the I/M program if EPA redesignates the area to attainment for CO.

DATES: This final rule is effective on November 29, 1999.

ADDRESSES: Copies of the revision requests are available for inspection at the following address: United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Mooney at 312–886–6043 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: John Mooney, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6043.

I. SUPPLEMENTARY INFORMATION

Overview

The Minnesota Pollution Control Agency (MPCA) submitted its initial I/M submittals to EPA in November and December of 1993. As described in EPA's proposed approval action (64 FR 42888), the EPA conditionally approved Minnesota's initial submittal on October

13, 1994 (59 FR 51860). Subsequently, Minnesota submitted to the EPA five additional revisions to the State's I/M program. The changes proposed since 1993 reflect actions taken by the State Legislature pertaining to model year coverage, waiver provisions, and other program changes required by EPA's conditional approval.

The information in this section is organized as follows:

A. What SIP amendments is EPA approving?

B. Who sent comments on EPA's proposed action?

C. What happens if the Minneapolis/St. Paul area is redesignated to attainment for CO?

A. What SIP Amendments is EPA Approving?

The following table outlines the revisions submitted by the State to EPA subsequent to the State's initial I/M submittal in 1993. The State's most recent submittal identifies those provisions of their earlier submittals that address EPA's conditional approval. In this submittal, the State also withdraws Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B, C), and Part 7023.1055, Subp. 1(E)(2) of the Minnesota Rules. The State is withdrawing these provisions because they have been superceded by recent amendments to the State I/M program. EPA is approving the relevant portions of each of these submittals as requested by the State on June 30, 1999.

Date of submittal to EPA	Items received
November 14, 1995.	Basic I/M performance standard modeling. I/M legislation with changes to model year coverage. Response to EPA's October 13, 1994 conditional approval (59 FR 51860).
July 8, 1996 ...	Notification of public hearing.
September 24, 1996.	Administrative materials for the November 14, 1995, and July 6, 1996 submittals, including proof of public hearing.
June 30, 1999	Minnesota Statute Sections 116.60 to 116.65 as amended by the 1999 Minnesota State Legislature. Letter from the Minnesota Attorney General detailing the prevalence of statute over rules. Letter from the Minnesota Pollution Control Agency (MPCA) requesting approval of I/M legislation, certain portions of Minnesota's I/M regulation, and performance standard modeling from earlier submittals. This letter also withdraws certain obsolete sections of the State's earlier submittals.
September 1, 1999.	Notice of public hearing on June 30, 1999 submittal.

As requested by the State, the EPA is proposing to approve: Minnesota Statutes Sections 116.60 to 116.65; Minnesota Rules 7023.1010–7023.1105 (except Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B, C), and Part 7023.1055, Subp. 1(E)(2)); and technical materials showing that the program meets EPA's basic I/M performance standard, as well as the conditions of EPA's October 13, 1994 conditional approval.

B. Who Sent Comments on EPA's Proposed Action?

The MPCA submitted the only comments on EPA's proposal in a letter dated September 1, 1999. The MPCA's letter included the required notice of public hearing that completed the State's SIP submittal. The EPA deemed the State's submittal complete in a letter dated October 7, 1999. As a result, the State's I/M submittal meets all approval criteria. There were no other comments on EPA's proposed approval of Minnesota's I/M SIP.

C. What Happens if the Minneapolis/St. Paul Area Is Redesignated to Attainment for CO?

As noted in EPA's proposed approval of Minnesota's I/M SIP, the MPCA has performed computer photochemical modeling which shows that in the future the I/M program will not be necessary to attain or maintain the National Ambient Air Quality Standard (NAAQS) for CO. In its redesignation request, the State also included the I/M program as a contingency measure if the program is subsequently needed to correct a violation of the CO NAAQS. The EPA has reviewed the modeling submitted with the redesignation and has found that it meets EPA's technical modeling criteria. As a result, once the Minneapolis/St. Paul CO nonattainment area is redesignated to attainment, the State may discontinue operation of its I/M program. If EPA does not approve the redesignation request for the area, I/M will remain as an applicable requirement and EPA will work with the State to ensure that all nonattainment control programs are implemented in accordance with the requirements of the Act.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 (64 FR 43255 (August 10, 1999)) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Carbon monoxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 21, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding paragraph (c)(51) to read as follows:

§ 52.1220 Identification of Plan.

* * * * *

(c) * * *

(51) On November 14, 1995, July 8, 1996, September 24, 1996, June 30, 1999, and September 1, 1999, the State of Minnesota submitted revisions to its State Implementation Plan for carbon monoxide regarding the implementation of the motor vehicle inspection and maintenance program in the Minneapolis/St. Paul carbon monoxide nonattainment area. This plan approves Minnesota Statutes Sections 116.60 to 116.65 and Minnesota Rules 7023.1010-7023.1105. This plan also removes Minnesota Rules Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C), and Part 7023.1055, Subp. 1 (E)(2) from the SIP.

(i) Incorporation by reference.

(A) Minnesota Statutes Sections 116.60 to 116.65;

(B) Minnesota Rules 7023.1010–7023.1105 (except Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C), and Part 7023.1055, Subp. 1 (E)(2)).

* * * * *

3. In § 52.1222 the table is amended by revising the entry for motor vehicles to read as follows:

§ 52.1222 EPA-approved Minnesota State regulations.

* * * * *

TABLE 52.1222.—EPA APPROVED REGULATIONS:

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in § 52.1220[1]
*	*	*	*	*
Motor Vehicles.	7023.1010–7023.1105	All rules except Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C), and Part 7023.1055, Subp. 1 (E)(2).	November 29, 1999.	c51
*	*	*	*	*

[1] Recodifications affect essentially all rules but are shown only for substantially revised rules.

[2] "Existing" sources are sources other than those subject to a new source performance standard.

[FR Doc. 99–28309 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MN58–01–7283; FRL–6465–4]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Minnesota's request to redesignate the Minneapolis/St. Paul area, which includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright Counties to attainment for carbon monoxide (CO). The EPA is also approving the corresponding 175A maintenance plan associated with the redesignation request as a revision to the Minnesota State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standard (NAAQS) for CO. The EPA proposed to approve this plan on May 13, 1999 (64 FR 25855).

DATES: This rule will be effective November 29, 1999.

ADDRESSES: Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address: Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.)

A copy of these SIP revisions are available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Public Comments
  A. Comments from the Izaak Walton League of America
  B. Comments from Envirotest Corporation
  C. Comments from Environ Corporation
III. EPA Final Action
IV. Administrative Requirements
  A. Executive Order 12866
  B. Executive Order 12875
  C. Executive Order 13045
  D. Executive Order 13084
  E. Regulatory Flexibility Act
  F. Unfunded Mandates Act
  G. Submission to Congress and the Comptroller General
  H. National Technology Transfer and Advancement Act
  I. Petitions for Judicial Review

I. Background

A. Minneapolis/St. Paul CO Nonattainment Area

On March 3, 1978 (43 FR 8902), pursuant to section 107 of the Clean Air Act (Act), EPA designated the Minneapolis/St. Paul area as nonattainment for CO. Under the 1990 amendments to the Act, the EPA is authorized to designate nonattainment areas and to classify them according to degree of severity. Therefore, on November 16, 1991 (56 FR 56694), the EPA designated the Minneapolis/St. Paul area moderate CO nonattainment.

B. Redesignation Request

On March 23, 1998, pursuant to Section 107(d)(3) of the Act, the State of Minnesota requested the redesignation of the Minneapolis/St. Paul area to attainment with respect to the CO NAAQS. In order to qualify for redesignation, an area must first demonstrate that monitored air quality levels are within the applicable NAAQS. Since attaining the standard in 1995 and 1996, air quality monitors in the Minneapolis/St. Paul area continue to show attainment of the CO NAAQS. Therefore, pursuant to section 107(d) of the Act, the area is eligible for redesignation from nonattainment to attainment. In order to ensure continued attainment of the CO standard, Minnesota also submitted a maintenance plan under section 175A of the Act. Once redesignation is approved, the section 175A maintenance plan will become a federally enforceable part of the SIP for the Minneapolis/St. Paul area.

II. Public Comments

On May 13, 1999, the EPA proposed approval of a revision to the Minnesota SIP for attainment and maintenance for the NAAQS for CO (64 FR 25855) and opened a 30 day comment period on the proposed action. During the comment period, the Izaak Walton League of America, Envirotest Corporation, and Envirotest Corporation's consultant ENVIRON submitted adverse comments on EPA's proposed action. These comments are summarized below, along with EPA's response.

A. Comments From the Izaak Walton League of America

Comment: Discontinuance of the Vehicle Inspection/Maintenance (I/M) Program Leaves the State without a Fully-Approved SIP for the Area.

In the proposal, EPA stated that the Agency "will not finalize its approval of the redesignation until such time that EPA approves the state's I/M SIP for the Minneapolis St. Paul area." 64 FR 25855, 25858 (May 13, 1999). But the Legislature has subsequently discontinued the I/M program. Clearly, EPA cannot finalize this proposed redesignation without a fully approved SIP in place. 42 U.S.C. § 7407(d)(3)(E)(ii). Just as clearly, EPA has stated that a fully approved SIP sufficient to justify a redesignation to attainment for CO must include an EPA-approved vehicle I/M program.

EPA Response: As discussed in the May 13, 1999 proposal, the SIP for the Minneapolis/St. Paul area must be fully approved in order to be redesignated to attainment. At the time of proposal, the EPA had approved every required element into the SIP, except for the I/M program. As noted in EPA's proposed action on the redesignation request, final approval of the redesignation request is contingent on the approval of the I/M program. EPA proposed full approval of the I/M plan on August 6, 1999 (64 FR 42888) and is finalizing its approval elsewhere in today's **Federal Register**.

Furthermore, EPA policy contained in a September 4, 1992, memorandum from John Calcagni, Director of the Air Quality Management Division entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni memo) notes that "the State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance." Additional guidance on this issue is contained in a memorandum dated September 17, 1993, from Michael Shapiro, Acting Assistant Administrator for Air and Radiation entitled, "State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide National Ambient Air Quality Standards on or after November 15, 1992" (Shapiro memo). This memo states:

> As a general policy, a State may not relax the adopted and implemented SIP upon the area's redesignation to attainment. States should continue to implement existing control strategies in order to maintain the standard. However, section 175A recognizes that States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard. The type of demonstration necessary is dependent upon the pollutant for which the area has been redesignated to attainment.
>
> In order to make such a demonstration for an area redesignated to attainment for CO, EPA believes that the State could submit a revised control strategy demonstration showing that the measure is not necessary to maintain the standard.

In its redesignation request, Minnesota shows through an emissions analysis, as well as through microscale modeling, that the area can maintain the CO NAAQS without the implementation of the I/M program. This analysis is described in more detail in EPA's proposed approval of the State's I/M SIP published on August 6, 1999 (64 FR 42888). The EPA has reviewed the State's emissions inventory and modeling analyses and finds that they meet applicable guidance and requirements. Therefore, the State has made the necessary demonstration that the I/M program is not necessary to maintain the CO NAAQS. In accordance with this policy, the State must include the program as a contingency measure in the maintenance plan for the redesignated area, which it has done.

Today's approval of Minnesota's I/M SIP applies to the program while it remains in effect, while recognizing the potential redesignation of the Minneapolis/St. Paul area to attainment. This action also approves the State's plan to discontinue the program after the area is redesignated to attainment and move it to the contingency measures portion of the maintenance plan for the area in accordance with the policy noted above and the requirements of the Act. The State has made the necessary corrections to its I/M plan, and has also made the appropriate demonstrations that the program is not necessary for attainment. Therefore, the I/M plan has been fully approved, fulfilling the requirement that the area have a fully approved SIP in order to be redesignated to attainment.

Comment: Minnesota has not demonstrated that the improvements to CO are due to permanent and enforceable emissions decreases.

EPA also must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions before an area can be redesignated. 42 U.S.C. 7407(d)(3)(E)(iii). The State has based its request on statements that this element has been met through the implementation of federally enforceable FMVCP, oxygenated fuel and vehicle I/M reductions. But as noted above, the vehicle I/M program will no longer be implemented.

EPA response: Section 107(d)(3)(E)(iii) requires that, for the EPA to approve a redesignation, it must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions. The Calcagni memo clarifies this requirement by stating that "attainment resulting from temporary reductions in emission rates (*e.g.*, reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions." As discussed in the May 13, 1999 **Federal Register** notice, the Minneapolis/St. Paul area has reasonably demonstrated that permanent and enforceable emission reductions are responsible for the recent improvement in air quality. This demonstration was accomplished through an estimate of the reductions (from a nonattainment year, 1990 to an attainment year, 1996) of CO achieved primarily through implementation of the Federal Motor Vehicle Control Program (FMVCP), oxygenated gasoline and the I/M program, in line with the Calcagni memo. However, since the I/M program may be discontinued upon redesignation, the EPA has analyzed the State's emissions data to ensure that the area can meet the permanent and enforceable test without counting the I/M program. This analysis indicates that the permanent and enforceable reductions from FMVCP and the oxygenated gasoline programs are large enough to meet the permanent and enforceable test without reductions from I/M. The State, therefore, adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions.

The commentor notes that the I/M program will be discontinued in future years. A future year analysis is necessary as part of an approvable maintenance plan under sections 107(d)(3)(E)(iv) and 175(A) of the Act. In general, maintenance plans are designed to show that an area will continue to remain in attainment of the applicable NAAQS for a period of at least ten years beyond approval of a redesignation request. As noted in the Calcagni memo, States must make a maintenance demonstration, either through an emissions analysis, or through computer modeling, that future year emissions levels will not cause a violation of the NAAQS. This demonstration should include an analysis of future growth in industry and population, increases in the number of vehicle miles traveled, and other changes that would affect air quality levels in the area, such as the discontinuation of a required control program. The State of Minnesota has made this demonstration through both the emissions analysis and modeling methods in accordance with EPA's emissions inventory and modeling guidance. The State's Technical Support Document (TSD) for the redesignation request contains an analysis of emissions levels with and without the I/M program, and has shown that the CO standard can be maintained without I/M in the future. A more detailed discussion of the I/M demonstration is contained in EPA's proposed approval of the I/M SIP, published on August 6, 1999 (64 FR 42888).

Comment: Minnesota does not have an approvable maintenance plan for the area.

Minnesota also must submit, and EPA must approve, a maintenance plan for the area. 42 U.S.C. 7407(d)(3)(E)(iv). EPA has stated that an approvable maintenance plan for the area must include the state's continuance of "all the control measures contained in the SIP prior to redesignation," and contingency measures in the event of a future CO problem. 64 FR 25855, 25859 (May 13, 1999). Among those contingency measures is a basic vehicle I/M program. Id. at 25860–61. But EPA seems unaware that the Minnesota Legislature has invalidated such programs.

EPA response: As noted in the Calcagni memo "the State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance." Additional guidance on moving implemented programs to the contingency plan portion of the maintenance plan is contained in the Shapiro memo. As noted above, this memo allows for an area to discontinue a required measure and move it to the contingency plan if the State is able to make the appropriate demonstrations. Minnesota has submitted a modeling-based revised control strategy demonstration showing that the area can maintain the CO NAAQS without the implementation of the I/M program. This analysis is described in more detail in EPA's proposed approval of the State's I/M SIP published on August 6, 1999 (64 FR 42888). The EPA has reviewed the State's emissions inventory and modeling analyses and finds that they meet applicable guidance and requirements. Therefore, the State has made the necessary demonstration that the I/M program is not necessary to maintain the CO NAAQS in accordance with the Shapiro memo. As required, the State has included the program as a contingency measure in the maintenance plan for the redesignated area. The commentor is incorrect in stating that the "Minnesota Legislature has invalidated such programs," since the I/M program continues to operate and is clearly identified as a contingency measure in the State's maintenance plan.

Comment: The redesignation request, coupled with the vehicle I/M discontinuance, means that all requirements of section 110 of the Act are not met.

In order for an area to be redesignated to attainment, the state must show that it has met "all requirements applicable to the area under Section 110 of this title and part D of this subchapter." 42 U.S.C. 7407(d)(3)(E)(v). We read this as requiring the state to demonstrate and the Agency to consider and determine whether plans for implementation, maintenance and enforcement of all NAAQS, promulgated or revised, would continue in the event of the redesignation. This proposal, however, accompanied as it will be by the discontinuance of the vehicle I/M program, will undoubtedly result in increased oxides of nitrogen (NO_X) emissions (as well as increased CO). NO_X are precursors, along with volatile organic compounds (VOCs), of ozone smog. Automobiles and other vehicles emit NO_X and VOCs, as well as CO. When the vehicle I/M program is discontinued, we believe that automobiles will pollute in an unchecked fashion in Minnesota, causing increases in NO_X and VOC emissions. Increased NO_X emissions, however, and the resulting implications for the area's and state's ability to meet the 1-hour and 8-hour NAAQS for ozone have not been assessed as part of this redesignation. We believe that the statute requires EPA to make such an analysis where it is aware that there is a risk that any air quality problem may ensue. Indeed the Agency has noted that contingency plans must be in place "to assure prompt correction of any air quality problems." 64 FR 25855, 25859 (May 13, 1999). However the proposed redesignation does not include analysis of the potential effects on the area's ozone status to be expected from the CO redesignation and subsequent lifting of the vehicle I/M program. We believe this makes the redesignation request unapprovable.

EPA response: As noted above, the State's I/M SIP is approved elsewhere in today's **Federal Register**. As a result, the area has met all requirements of section 110 and Part D of the Act. At present, the I/M program remains in operation and the State has made the required demonstrations to discontinue the program after redesignation to attainment for CO.

Under the sections 107 and 175A of the Act, the State is only required to address the pollutant for which the area was violating and demonstrate that there will not be subsequent violations of the applicable NAAQS following redesignation. The State has performed modeling that shows continued attainment of the CO standard, and projected CO emissions through the maintenance period which show decreases from the attainment level. Notwithstanding the commentor's interpretation of EPA's proposed action, which stated that "maintenance plans must contain contingency measures, with schedules to assure prompt correction of any air quality problems' (64 FR 25859), section 175A(d) of the Act specifies that "each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area." Clearly, this language indicates that contingency plans need only include measures for the pollutant for which the area is being redesignated.

Section 110(l) of the Act notes that "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act." While the I/M program was put into place for purposes of CO, the issue of whether the discontinuation of the I/M program will interfere with the area's ability to meet other applicable NAAQS must be addressed. As noted above, I/M programs do have additional air quality benefits in that they reduce emissions of VOC and NO_x, both precursors of ground level ozone.

Historically, however, the Minneapolis/St. Paul area has never experienced a ground level ozone nonattainment problem. The EPA has reviewed monitoring data for the one-hour ozone levels recorded since 1980, showing attainment of the one-hour NAAQS. In fact, monitors in the area have not shown a single exceedance of the one-hour ozone NAAQS since 1990. The one-hour ozone NAAQS that was established in 1979 allows three exceedances of the standard at any monitor over a three year period before an area is considered to violate the standard. In no year since 1980 have more than two exceedances occurred, including 1988, a year known for its high ozone levels around the country. In 1980, by far the worst year on record in the Minneapolis/St. Paul area, three monitors in the area recorded only five exceedances of the one-hour ozone standard. Even then, the three year values at these monitors did not show a violation of the NAAQS. Since the last exceedance in 1990, ozone levels measured in the Minneapolis/St. Paul area have continued to drop off and remain well below the health based one-hour ozone standard. The current ozone design value, the measure that EPA uses to assess the nonattainment status of an area, in Minneapolis/St. Paul is 24 percent below the one-hour ozone NAAQS with a value of .091 ppm compared to the .120 ppm standard.

In 1997, the EPA established a new, more stringent eight-hour ozone standard based on more recent health effects information. Since that time, EPA has been developing guidance and regulations to establish compliance strategies for the new standard. As part of this effort, the EPA will be establishing new nonattainment areas for the eight-hour standard in July 2000. In preparation for this activity, the EPA has analyzed eight-hour ozone data for areas around the country to see which areas have monitored levels over the new standard. The analysis that was done for Minnesota concludes that since 1993, the first year that eight-hour ozone information is available, current eight-hour concentrations are well below the health-based NAAQS. Unlike the one-hour standard which is exceedance based, allowing three exceedances over a three year period, the eight-hour standard looks at the average of the fourth highest level over a three year period. Since 1993, no monitor in the area has recorded a fourth high over the eight-hour standard at any time. In order to be considered in violation of the NAAQS, the average of the fourth high over a three year period would need to be over the standard. EPA's analysis shows that monitors in the Minneapolis/St. Paul area are well below these levels, and does not expect the area to experience a nonattainment problem in the future.

Much of the improvement in ozone levels nationwide has been attributed to the reduction in emissions from the automobile. The EPA continues to establish more stringent motor vehicle emissions standards at the national level and emissions from the automobile continue to drop dramatically. This, along with other control programs, has brought many areas into attainment with the one-hour ozone NAAQS without implementation of I/M programs. The ozone levels recorded in Minneapolis/St. Paul are well below levels seen in areas that have been successfully redesignated. Since the area has never experienced an exceedance of the one-hour ozone standard, continues to show low eight-hour ozone values, and automobile emissions continue to decline overall, the EPA has no reason to believe that any marginal increase in VOC and NO_X emissions resulting from the shutdown of the I/M program will interfere with the area's ability to meet either the one-hour or the eight-hour ozone NAAQS standard.

B. Comments from Envirotest Corporation

Comment: We are concerned with the disposition of a series of CO violations that took place in September 1998. According to the EPA Aerometric Information Retrieval System (AIRS) web page (http://www.epa.pov/airs/nonattn.html) Minneapolis had experienced violations of the NAAQS for CO. We learned that EPA allowed MPCA to erase these violations. It is our understanding that the MPCA was successful in getting these violations erased from the database because the problem was explained to be an equipment malfunction, yet that same piece of equipment is still in place and there were no repairs made to it! This seems odd to us. It appears that the monitoring system is used as a measure of air quality until such time as the air quality levels are exceeded.

EPA response: The EPA retrieved the air quality data for the 1997 and 1998 CO season from AIRS. The data illustrates that all the monitors in the area continue to demonstrate attainment of the CO NAAQS.

On September 26–28, 1998, a downtown Minneapolis, MN CO monitor (27–053–0954), located at 528 Hennepin Avenue, measured three periods of high concentrations. In a February 26, 1999 letter, the MPCA requested EPA concurrence on the removal of the September 26–28, 1998 CO monitoring data from AIRS for this site. MPCA prepared a report on an investigation into the validity of this data. This report concluded that this data is the result of equipment malfunction, most likely due to thunderstorm activity in the area.

The MPCA monitoring network was granted approval in November of 1998. On December 29 and 30, 1998, EPA-Region 5 Air Monitoring Section staff performed a Technical Systems Audit (TSA) on the Minnesota monitoring network. The TSA concluded that there are no deficiencies in the monitoring network. The Air Monitoring Section further documented information on the CO episode in a memorandum entitled "Minnesota Carbon Monoxide Episode," dated February 26, 1999. The MPCA investigation coupled with the TSA and additional information was used to make a decision on the validity of the abnormally high CO monitoring data. On March 2, 1999, USEPA concurred on the MPCA request to withdraw the erroneous data from AIRS. The likely malfunction identified in the State's report is uncommon but has been seen in other areas. Malfunctions of this type do not typically require replacement of the monitor, and the EPA believes that the State has acted appropriately to ensure that this monitoring site records accurate data. The EPA has reviewed the monitoring quality assurance procedures present in the Minneapolis/St. Paul area and finds that they meet the requirements of 40 CFR 51.110(k).

C. Comments From ENVIRON Corporation

i. Impact of Discontinuing I/M Program on Ambient CO Concentrations

Comment: VMT growth factors used to estimate future year mobile source CO emissions appear to exhibit anomalous behavior within individual areas, with rates of growth varying widely from one five year period to the next and from one area to the next. For example, VMT growth rates for the St. Paul Central Business district alternate between positive and negative for each successive time interval and these rates bear no apparent relationship to the rates for any other area (most of which exhibit there own fluctuating and highly unusual growth rates). Emission projections based on such anomalous growth rates are highly suspect.

EPA response: The Metropolitan Council, the Metropolitan Planning Organization for the Minneapolis/St. Paul area, provides the VMT growth factors used to estimate future VMT. These growth rates are consistent with the 2020 Regional Transportation Plan for the area. On November 25, 1997, the EPA made a determination that this plan was adequate for transportation planning purposes. This information represents the best available forecast of on-road travel, and has been developed in accordance with EPA and Department of Transportation guidance. The EPA believes that these estimates are appropriate for use in the State's maintenance projections.

Comment: CO dispersion modeling methods used by the MPCA to estimate future year CO concentrations are not consistent with EPA guidelines. The deviation from guideline procedures affected the model results in at least two ways:

1. A Gaussian dispersion model (CAL3QHC) was used to estimate peak concentrations around ten major intersections in the nonattainment area. This model only estimates the contribution of the specific intersection being modeled to the total CO concentration; the urban background concentration must be added to the model predictions. Current state-of-the-art procedures rely on an urban-wide grid model such as the Urban Airshed Model (UAM) for estimating this urban background concentration under current and future emission conditions. These models are able to account for the fact that the appropriate "background" concentration may vary from one intersection to the next based on the distribution of surrounding sources and prevailing meteorological conditions. This is the EPA guideline procedure for preparation of CO State Implementation Plans (SIPs) and would therefore be the most appropriate procedure for use in a CO redesignation request. Despite this, the TSD did not include a UAM analysis and instead used a very limited amount of ambient data from a single monitoring site to estimate the background concentration for each intersection. No justification is given in the TSD for not following the SIP guideline procedure. Projected background levels given in the TSD were based on the anomalous regional VMT growth projections noted above. As the individual region-type growth factors are suspect (see above), the future-year background concentrations are equally suspect. For example, this projection procedure predicts that, by 2018, the highest background concentrations (by a significant margin) will be in the rural areas and the lowest will be in the Minneapolis and St. Paul CBDs. This makes no sense. Furthermore, according to the SAI report, no allowance was made for the expected growth in non-road mobile and stationary sources. This is significant as the area and non-road mobile emissions are projected to increase by 2018 as shown in Table 3–1 of the TSD and the fraction of total emissions contributed by these sources is also projected to increase as shown in Figure 3–1 of the TSD.

2. Dispersion modeling was based on a single year of meteorological data. This represents a significant departure from the EPA guidelines which require the use of at least five years of meteorological data so as to maximize the opportunity to simulate the worst-case conditions that can lead to CO exceedances. Additional years of meteorological data are readily available for the study area from EPA and from the National Climatic Data Center and should be used. It should also be noted that the TSD relies on meteorological data collected at the Minneapolis/St. Paul International Airport which is located a considerable distance from most of the modeled intersections. These data may therefore not be representative of actual conditions at the intersections.

EPA response: The Calcagni memo states that areas may assess areawide maintenance through emissions projections, demonstrating that emissions do not increase from the attainment year, or through areawide modeling such as UAM. The State utilized the emissions projection method and an intersection "hot-spot" analysis to show that emissions levels will be below the attainment level, and the CO concentrations at the selected intersections. The Calcagni memo notes that hot-spot modeling is EPA's preferred approach for CO demonstrations. The CAL3QHC model is EPA's approved model for performing CO hot-spot analysis. The EPA believes that the States analysis is appropriate and meets redesignation and modeling criteria.

The State's TSD describes the meteorological inputs used in the first screen microscale analysis. The State assumed worst case meteorological conditions for wind speed, wind direction, stability class, and mixing height as defined by the EPA's "Guideline for Modeling Carbon Monoxide from Roadway Intersection." The State developed temperature inputs for the modeling using methodology which is consistent with EPA's "Guideline for Modeling Carbon Monoxide from Roadway Intersections" and "procedure for Emission Inventory Preparation Volume IV: Mobile Sources." As a result, the EPA believes that the State has developed the appropriate inputs for the modeling analysis.

Comment: Intersections selected for the TSD modeling analysis resulted in the selection of seven intersections (in addition to the three "required" intersections where monitoring data are available) with some unusual characteristics one would not normally associate with transportation facilities that produce peak CO concentrations. The seven selected intersections were all located well away from the congested Minneapolis and St. Paul urban centers, had free flow speeds of 45 to 55 mph on at least one artery, and had free-flow right turn lanes in every case. These seven intersections represent primarily busy highways intersecting with relatively low volume secondary roads so that the bulk of the traffic volume is accounted for by the high speed links. Based on additional information provided by the MPCA about the intersection ranking procedure, it appears that the selection process gave too much weight to the average daily traffic volume (ADT) of intersections without taking into consideration the number of traffic lanes present or the degree to which cross traffic interferes with the free flow of vehicles. This resulted in high volume, high capacity suburban intersections being favored over lower volume (but more congested) urban intersections. The level of service ranking procedure was apparently insufficient to overcome this bias. This is evident from the fact that the three modeled intersections with a known history of NAAQS exceedances (e.g., University at

Lexington Ave., Snelling at University, and Hennepin Ave. at Lake St.) received the three lowest ranks in the selection procedure. Furthermore, two of these intersections receive mid-level ranks when sorted by maximum CAL3QHC predicted concentrations instead of the bottom rankings suggested by the intersection selection procedure.

EPA response: The State selected intersections for modeling based on traffic and congestion. The State initially identified 30 intersections in the nonattainment area as potential candidates for modeling. These 30 intersections were ranked by level of congestion, and ultimately reduced to ten, the top seven ranked and the three historic CO NAAQS violating intersections, for the modeling analysis. As a result, the EPA believes that the State's selection of intersections to model for hot-spot analysis is appropriate and represents a good mix of high congestion intersections and intersections where high levels of CO have been monitored.

The method utilized by the State is consistent with EPA guidelines which require areas to model the top three intersections based on traffic volume and congestion level. None of the intersections selected for modeling by the State exceeded the CO NAAQS in the modeling and, therefore, adequately demonstrate maintenance of the CO NAAQS.

ii. Impact of Discontinuing I/M Program on O_3, PM and Regional Haze

Comment: When evaluating the impact of discontinuing the current I/M program in Minneapolis/St. Paul as is proposed in Minnesota's maintenance plan, it must be recognized that such an action, by itself, can be expected to result not only in higher CO emissions than would otherwise occur but also higher emissions of reactive organic gases (commonly referred to as VOCs) and nitrogen oxides (NO_X) that are an important precursor of ground-level ozone, particulate matter, and regional haze. Thus, irrespective of the program's continuing role in maintaining attainment of the ambient CO standard, discontinuation of the program can be expected to have an adverse impact on ozone levels and PM levels in the Twin Cities as well as regional haze in nearby Class I areas. This issue is particularly critical in light of EPA's recent promulgation of a revised NAAQS for 8-hour ozone which is significantly more stringent than the previous 1-hour standard, a new PM2.5 NAAQS, and a Regional Haze regulation.

EPA response: As discussed above, Section 110(l) of the Act notes that "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act." This includes an area's ability to meet the NAAQS for ozone and PM2.5, as well as the requirements of EPA's Regional Haze regulation. A detailed discussion on why EPA believes that discontinuation of the I/M program will not interfere with attainment of the ozone NAAQS has already been discussed in today's action.

In the past, the PM10 problems that have been experienced in the Minneapolis/St. Paul area have been due to emissions from large factories or groups of factories or other stationary sources, or from road dust that is blown in the air from wind or heavy duty vehicle traffic. The area has never experienced a PM10 nonattainment problem caused by motor vehicle emissions. As a result, the EPA has no reason to believe that the discontinuation of the I/M program and the potential increase in NO_X or VOC emissions would interfere with the area's ability to meet the PM10 NAAQS.

For fine particles, or PM2.5, the EPA is currently working with States to establish monitoring networks to assess the magnitude of the problem. Without accurate monitoring data, it is impossible to identify where PM2.5 problems exist, assess the cause of these problems, or develop control strategies to correct the problem and bring areas to attainment. At present, there is not enough information to indicate whether there is a PM2.5 problem in the Minneapolis/St. Paul area or not, much less enough information to indicate whether motor vehicle emissions cause or contribute to the problem. As a result, the EPA has no reason to believe that disconinuation of the I/M program will contribute to the area's ability to meet the PM2.5 NAAQS.

For regional haze, the EPA has developed regulations to address the impairment of visibility in Federal Class I areas. Like PM2.5, the first part of this process is focused on monitoring where visibility is impaired, and then assessing the causes of the problem. At present, a nationwide monitoring network is being established and information on the contributors to regional haze problems is not yet available. Studies that have been performed to date indicate that in the Midwest, sulfate emissions are the major contributor to haze problems, and that the problem is regional in nature. As a result, EPA expects that control strategies for regional haze in the Midwest will focus on region wide industrial source controls, rather than local controls on the automobile. At present, therefore, the EPA has no reason to believe that discontinuation of the I/M program will contribute to the area's ability to meet the regional haze regulations.

III. EPA Final Action

The EPA approves the Minneapolis/St. Paul CO maintenance plan as a SIP revision meeting the requirements of section 175A. In addition, the EPA is approving the redesignation request for the Minneapolis/St. Paul area because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

CO SIPs are designed to satisfy the requirements of part D of the Act and to provide for attainment and maintenance of the CO NAAQS. This proposed redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the

Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987)] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide.

40 CFR Part 81

Environmental protection, Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: October 21, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Y—Minnesota

2. Section 52.1237 is amended by adding paragraph(c) to read as follows:

§ 52.1237 Control strategy: Carbon monoxide.

* * * * * * *

(c) Approval—On March 23, 1998, the Minnesota Pollution Control Agency submitted a request to redesignate the Minneapolis/St. Paul CO nonattainment area (consisting of portions of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright) to attainment for CO. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1996 attainment year) emission inventory for CO, a demonstration of maintenance of the ozone NAAQS with projected emission inventories to the year 2009, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the CO NAAQS (which must be confirmed by the State), Minnesota will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measures includes oxygenated fuel, transportation control measures, or a vehicle inspection and maintenance program. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7871q.

2. In § 81.324 the table for "Minnesota-CO" is amended by revising the entry for the Minneapolis/St. Paul area for carbon monoxide to read as follows:

§ 81.324 Minnesota

* * * * *

MINNESOTA-CO

Designated Areas	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Minneapolis-Saint Paul Area:				
Anoka	November 29, 1999.	Attainment.		
County	......do	Attainment.		
Carver County (part)				
Carver, Chanhassen, Chaska, Hamburg, Norwood, Victoria, Waconia, Watertown, Young America, Chaska Township, Laketown Township, Waconia Township, Watertown Township, Young America Township.	......do	Attainment.		
Dakota County (part)				
Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemount, South St. Paul, Sunfish Lake, West St. Paul.	......do	Attainment.		
Hennepin	......do	Attainment.		
County	......do	Attainment.		
Ramsey				
County				
Scott County (part)	......do	Attainment.		
Belle Plaine, Elko, New Market, New Prague, Prior Lake, Savage, Shakopee, Credit River Township, Jackson Township, Louisville Township, New Market Township, Spring Lake Township.	......do	Attainment.		

MINNESOTA-CO—Continued

Designated Areas	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Washington County (part)				
All cities and townships except Denmark Township				
Wright County (part)				
Albertville, Annandale, Buffalo, Clearwater, Cokato, Delano, Hanover, Monticello, Montrose, Rockford, St. Michael, South Haven, Waverly, Dayton (Wright Co. part), Buffalo Township, Chatham Township, Clearwater Township, Cokato Township, Corrinna Township, Frankfort Township, Maple Lake Township, Franklin Township, Marysville Township, Monticello Township, Ostego Township, Rockford Township, Silver Creek Township, Southside Township				

* * * * * * *

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 99–28310 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

49 CFR Chapter III

[Docket No. OMCS–99–6386]

RIN 2125–AE70

Motor Carrier Safety Regulations

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Final rule.

SUMMARY: This document amends the heading for chapter III concerning motor carrier safety regulations. On October 9, 1999, the Secretary of Transportation (Secretary) rescinded the authority previously delegated to the Federal Highway Administrator to perform motor carrier functions and operations, and redelegated that authority to the Director, Office of Motor Carrier Safety, a new office within the Department of Transportation (Department). The title of chapter III is therefore being changed from "Federal Highway Administration, Department of Transportation" to "Office of Motor Carrier Safety, Department of Transportation" to reflect the organizational changes.

EFFECTIVE DATE: This final rule is effective October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Safety, HMCS–10, (202) 366–4009; or Mr. Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act [Public Law 106–69, 113 Stat. 986, at 1022 (October 9, 1999)] prohibits the expenditure of any funds appropriated by that Act "to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration" (FHWA). Section 338 further provides that, if the authority of the Secretary on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety, a new office within the Department [64 FR 56270, October 19, 1999].

The new OMCS includes the following headquarters offices of the FHWA's former Office of Motor Carrier and Highway Safety (OMCHS): the Office of Motor Carrier Research and Standards, the Office of Data Analysis and Information Systems, the Office of Motor Carrier Enforcement, the Office of Policy and Program Management, the Office of National and International Safety Programs, the Office of Technology Evaluation and Deployment, and the Office of Program Evaluation. However, the Office of Highway Safety Infrastructure remains part of the FHWA. In addition, the motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement, and other activities of the OMCHS while part of the FHWA will be continued by the new OMCS. The redelegation will cause no changes in the motor carrier functions and operations of the offices or resource centers listed above. For the time being, all phone numbers and addresses are unchanged.

The heading for 49 CFR chapter III is changed to read "Chapter III—Office of Motor Carrier Safety, Department of Transportation."

This rule is being published as a final rule and made effective on the date of publication in the **Federal Register**. As the rule relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). This action makes no substantive changes to the motor carrier safety regulations. It simply provides a chapter heading change to 49 CFR chapter III. Therefore, prior notice and opportunity to comment are unnecessary and good cause exists to dispense with the 30-day delay in effective date requirement so that the Office of Motor Carrier Safety may resume its rulemaking functions.

In consideration of the foregoing and under the authority of 49 U.S.C. 301 and

322, Public Law 106–69, 113 Stat. 986, at 1022, and 49 CFR 1.73, the heading for chapter III of title 49, Code of Federal Regulations, is revised to read as follows:

CHAPTER III—OFFICE OF MOTOR CARRIER SAFETY, DEPARTMENT OF TRANSPORTATION

Issued on: October 21, 1999.

Julie Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–28177 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–1999–6189]

Organization and Delegation of Powers and Duties; Redelegation to the Director, Office of Motor Carrier Safety

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) redelegates to the Director, Office of Motor Carrier Safety (OMCS), the authority previously delegated by statute to the Federal Highway Administrator to carry out the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, United States Code. This action, combined with the Secretary's previous delegation to the OMCS, enables that office to exercise all of the authority previously held by the Federal Highway Administration's Office of Motor Carriers.

EFFECTIVE DATE: This rule is effective on October 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; or Ms. Gwyneth Radloff, Office of the General Counsel, (202) 366–9319, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act (Public Law 106–69, 113 Stat. 986, at 1022, October 9, 1999) prohibits the Federal Highway Administration (FHWA) from spending funds to carry out the functions and operations of its Office of Motor Carriers (OMC). The legislation provides that, if the Secretary delegates those functions and operations outside of the FHWA, the funds shall also be transferred. Accordingly, on October 9, 1999, the Secretary rescinded as much of the current delegation of his authority to the Federal Highway Administration to carry out motor carrier functions and operations as he could (*see* Final rule, 64 FR 56270, October 19, 1999), and redelegated that authority to the Director of the new Office of Motor Carrier Safety in the Department of Transportation.

However, the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, United States Code, were delegated by statute to the Federal Highway Administrator by 49 U.S.C. 104(c)(2) and could not be exercised or transferred by the Secretary without legislative approval. Public Law 106–73 (113 Stat. 1046, October 19, 1999) amended the second proviso of Sec. 338 to read as follows: "Provided further, That notwithstanding section 104(c)(2) of title 49, United States Code, the Federal Highway Administrator shall not carry out the duties and functions vested in the Secretary under 49 U.S.C. chapters 5 and 315." Sec. 338, as amended by Public Law 106–73, now prohibits the Federal Highway Administrator from carrying out the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 and restores the Secretary's authority to exercise or delegate these authorities, effective retroactively to October 9, 1999.

Accordingly, the Secretary delegates the authority to carry out certain portions of chapters 5 and 315 to the Director, Office of Motor Carrier Safety. This restores to the Office of Motor Carrier Safety the authority under 49 U.S.C. 521(b) to issue civil penalties or assist the Department of Justice in pursuing civil or criminal cases, authority that could not be exercised under the original version of Sec. 338. Also being delegated to OMCS is the Secretary's authority: (1) To investigate motor carriers, subpoena witnesses and records and take depositions (49 U.S.C. 502); (2) relating to service of process, designation of agents to receive service of process, and identification of interstate motor vehicles (49 U.S.C. 503 and 31504); (3) to establish recordkeeping and reporting requirements for, and inspect the equipment and records of, motor carriers (49 U.S.C. 504); (4) to require motor carriers to file copies of their contracts or other arrangements with shippers (49 U.S.C. 505); (5) to investigate violations of chapter 5 by motor carriers (49 U.S.C. 506); (6) to bring a civil action or request the Attorney General to bring court proceedings against motor carriers or brokers to enforce chapter 5 or a regulation or order based on chapter 5 (49 U.S.C. 507); (7) to issue regulations governing the release by a motor carrier of a former driver's safety performance records to his or her subsequent motor carrier employers (49 U.S.C. 508); (8) to levy civil penalties against motor carriers for violations of certain statutes on which the Federal Motor Carrier Safety Regulations (FMCSRs) are based (49 U.S.C. 521(b)(1)–(5), (7)); (9) relating to the disclosure of certain business information obtained during inspections by Department of Transportation employees (49 U.S.C. 523); (10) relating to qualifications and maximum hours of service of motor carrier drivers (49 U.S.C. 31502); and (11) relating to investigation of the need for regulation of qualifications and maximum hours of service of motor carrier drivers (49 U.S.C. 31503).

This rule is being published as a final rule effective retroactively to October 9, 1999 pursuant to section 2 of Public Law 106–73. As the rule relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). In addition, the functions addressed in this rule were transferred to enable the Department's motor carrier safety program to continue. For this reason, the Secretary finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective retroactively to October 9, 1999.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–69, 113 Stat. 1022; Pub. L. 106–73, 113 Stat. 1046.

§ 1.48 [Amended]

2. In § 1.48, remove and reserve paragraphs (e), (f), and (g).

3. In § 1.73, remove paragraph (j) and redesignate paragraph (k) as paragraph (j).

4. In § 1.73, add paragraphs (k), (l), (m), and (n) to read as follows:

§ 1.73 Delegation to the Director of the Office of Motor Carrier Safety.

* * * * *

(k) Carry out 49 U.S.C. 31503 as it relates to investigation of the need for regulation of qualifications and maximum hours of service of employees of motor carriers and motor private carriers.

(l) Carry out 49 U.S.C. 31502 relating generally to qualifications and maximum hours of service of employees and safety of operation and equipment of motor carriers, motor private carriers and motor carriers of migrant workers.

(m) Carry out 49 U.S.C. 503 and 31504 relating generally to service of process, designation of agents to receive service of process, and identification of interstate motor vehicles so far as they pertain to motor private carriers of property and motor carriers of migrant workers (except motor contract carriers).

(n) Carry out 49 U.S.C. 502, 504, 506, and 523 to the extent they relate to motor carriers, motor carriers of migrant workers, and motor private carriers; 49 U.S.C. 507 to the extent it relates to motor carriers, motor carries of migrant workers, motor private carriers, or freight forwarders; and 49 U.S.C. 505, 508, and 521(b)(1), (2), (3), (4), (5), and (7).

Issued in Washington, DC, on October 22, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–28346 Filed 10–27–99; 9:59 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 64, No. 209
Friday, October 29, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[Docket Number LS–99–06]

Increase in Fees for Federal Seed Testing and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the hourly fee rate charged for voluntary Federal seed testing and certification services. The fee rate needs to be increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs.

DATES: Comments must be received on or before December 28, 1999.

ADDRESSES: Send written comments to Richard C. Payne, Acting Chief; Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA; Building 306, Room 209, BARC-East; Beltsville, MD 20705–2325. Comments may be faxed to (301) 504–8098.

State that your comments refer to Docket No. LS–99–06 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Acting Chief, Seed Regulatory and Testing (SRT) Branch, (301) 504–9430.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Over ninety percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the Department's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2000 revenues for seed testing and certification services are projected at $104,000, costs are projected at $108,000, and the trust fund balance would be $78,000. With a fee increase, FY 2000 revenues are projected at $114,000, costs are projected at $113,000, and the trust fund balance would be $83,000.

This action would raise the hourly rate charged to users of the seed testing and certification services. The AMS estimates that this proposed rule would yield an additional $10,000 during FY 2000. The hourly rate for seed testing and certification services would increase by approximately 9.9 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual firms would be, on average, approximately $6.70 per Federal Seed Analysis Certificate issued. There would also be an increase of $1.10 for each duplicate certificate issued.

C. Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction Act

The information collection requirements that appear in Part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0140 under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Background and Proposed Changes

The Secretary of Agriculture is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This action would increase the hourly fee rate and charges for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective October 1, 1998, revealed that anticipated revenue will not cover increased program costs. Without a fee increase FY 2000 revenues for seed testing and certification services are projected at $104,000, costs are projected at $108,000, and the trust fund balance would be $78,000. With a fee increase, FY 2000 revenues are projected at $114,000, costs are projected at $113,000, and the trust fund balance would be $83,000.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated hours of service—revenue hours—provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 90 percent of the total budget. A general and locality salary increase of 3.68 percent for Federal employees involved in the seed testing and certification service became effective in January 1999 and has materially affected program costs. Another general and locality salary increase estimated at 4.8 percent is expected in January 2000.

This proposed fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 1999 and projected increases in 2000, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is proposing to increase the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from $40.40 to $44.40. The fee for issuing additional duplicate certificates would increase from $10.10 to $11.10.

The proposed action will fully recover all costs associated with providing the voluntary testing service to the seed and grain industry. Although the proposed user-fee increase would increase costs to individual firms, the cost for providing the seed testing and certification services would increase by an average of only $6.70 per Federal Seed Analysis Certificate and $1.10 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately $10,000 annually.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR part 75 is proposed to be amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624

§ 75.41 [Amended]

2. In § 75.41, "$40.40" is removed and "$44.40" is added in its place.

§ 75.47 [Amended]

3. In § 75.47, "$10.10" is removed and "$11.10" is added in its place.

Dated: October 26, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–28374 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–88–AD]

RIN 2120–AA64

Airworthiness Directives; Bob Fields Aerocessories Inflatable Door Seals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise Airworthiness Directive (AD) 98–21–21, which currently requires de-activating the electric door seal inflation system for all aircraft equipped with Bob Fields Aerocessories inflatable door seals. Since issuance of that AD, the manufacturer has developed a modification that would allow these electric door seal inflation systems to remain in service, and the Federal Aviation Administration (FAA) has approved this modification. The proposed AD would incorporate this modification as a method of complying with the current AD, and would exclude those airplanes with manual door seal inflation systems from the AD requirements of de-activating the system. The actions specified by the proposed AD are intended to prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury.

DATES: Comments must be received on or before December 23, 1999.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–88–AD, Room 506, 901 Locust, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Bob Fields Aerocessories, 340 East Santa Maria St., Santa Paula, California 93060; telephone: (805) 525–6236; facsimile: (805) 525–5286. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: George Y. Mabuni, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5341; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–88–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–88–AD, Room 506, 901 Locust, Kansas City, Missouri 64106.

Discussion

AD 98–21–21, Amendment 39–10844 (63 FR 55321, October 15, 1998), currently requires the following on aircraft equipped with Bob Fields Aerocessories inflatable door seals installed in accordance with either the applicable supplemental type certificate (STC) or through field approval:

—De-activating the electric door seal inflation system, fabricating and installing a placard specifying that the system is inoperative, and inserting a copy of the AD into the Limitations Section of the airplane flight manual (AFM).

The AD only applies to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of different design than the referenced Bob Fields Aerocessories inflatable door seals.

AD 98–21–21 resulted from occurrences of overheated components associated with the electric door seal inflation system on aircraft equipped with the affected inflatable door seals. The actions specified by AD 98–21–21 are intended to prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury.

Actions Since Issuance of Previous Rule

Since AD 98–21–21 has become effective, the FAA has determined that the requirements of de-activating the door seal inflation system should only affect those airplanes with an electric door seal inflation system. Those airplanes incorporating a manual door seal inflation system should not be affected by these actions. In addition, Bob Fields Aerocessories has developed modifications that would allow these electric door seal inflation systems to remain in service. These modifications are:

—*Option 1*: Converting all previous inflatable door seal systems into a manual system by connecting a new bulb and hose assembly to the 3814–6 hose that was attached to the electric pump and inflating the door seals manually. Complete removal of the inflatable door system is not required for this option; and

—*Option 2*: Converting all previous inflatable door seal systems into an electrical system, which includes replacing the existing pump with a new compressor pump.

Bob Fields Aerocessories Service Bulletin No. BFA–001, Dated: November 3, 1998, contains the procedures for accomplishing these modifications.

The FAA's Determination

After examining the circumstances and reviewing all available information related to this subject, including the above-referenced service information, the FAA has determined that:

—The requirements of de-activating the electric door seal inflation system contained in AD 98–21–21 should only affect those airplanes with an electric system, and those airplanes incorporating a manual door seal inflation system should be excluded from these requirements;

—Accomplishing one of the modifications referenced in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998, should be considered as an alternative method of compliance with the system de-activation requirements of AD 98–21–21; and

—AD action should be taken to incorporate this information into the current AD and to continue to prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other aircraft equipped with Bob Fields Aerocessories inflatable door seals that are installed in accordance with either the applicable STC or through field approval, the FAA is proposing AD action to revise AD 98–21–21. The proposed AD would retain the requirements of the existing AD, would exclude those airplanes incorporating a manual inflatable door seal system from the system de-activation requirements, and would provide the option of incorporating one of the modifications referenced in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998, as a method of accomplishing the AD.

Like AD 98–21–21, the proposed AD would only apply to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of a different design than the referenced Bob Fields Aerocessories inflatable door seals.

Cost Impact

The FAA does not know the number of aircraft that have the affected electric door seal inflation systems installed. The manufacturer is presently compiling a distribution list of all aircraft owners and aircraft dealers the electric door seal inflation system kits have been sold to under the existing STC's and field approvals.

The FAA estimates that it would take approximately 3 workhours per airplane to accomplish the optional modifications that would allow these systems to be put back in service, at an average labor rate of approximately $60 an hour. Based on these figures, the total cost impact of the optional modification proposed in this document on U.S. operators is estimated to be $180 per airplane aircraft equipped with Bob Fields Aerocessories inflatable door seals.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13, is amended by removing Airworthiness Directive (AD) 98–21–21, Amendment 39–10844, and adding a new AD to read as follows:

Bob Fields Aerocessories: Docket No. 98–CE–88–AD; Revises AD 98–21–21, Amendment 39–10844.

Applicability: Electric inflatable door seals, installed either in accordance with the applicable supplemental type certificate (STC) or through field approval, that are installed on, but not limited to, the following aircraft:

Affected STC	Make and model aircraft affected
SA3735NM	Cessna Models 170, 170A, and 170B Airplanes.
SA4136WE	Cessna Models 310, 310A, 310B, 310C, 310D, 310E, 310F, 310G, 310H, 310I, 310J, 310K, 310L, 310N, 310P, 310Q, 310R, T310P, T310Q, and T310R Airplanes.
SA2226NM	Cessna Models P210N and P210R Airplanes.
SA3736NM	Cessna Models 185, 185A, 185B, 185C, 185D, A185E, and A185F Airplanes.
SA4177WE	Cessna Models 175, 175A, 175B, and 175C Airplanes.
SA4212WE	Cessna Models 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, 210–5 (205), and 210–5A (205A) Airplanes.
SA4283WE	Cessna Models 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, and 172N Airplanes.
SA4284WE	Cessna Models 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, and 180K Airplanes.
SA4285WE	Cessna Models 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, R182, and TR182 Airplanes.
SA4286WE	Cessna Models 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, and TU206G Airplanes.
SA4287WE	Cessna Models 320, 320A, 320B, 320C, 320D, 320E, 320F, and 320–1 Airplanes.
SA4180WE	Raytheon (Beech) Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, 36, A36, A36TC, and B36TC Airplanes.
SA4184WE	Raytheon (Beech) Models 95, B95, B95A, E95, 95–55, 95–A55, 95–B55, 95–B55A, 95–B55B, 95–C55, D55, E55, 56TC, 58, and 58A Airplanes.
SA4239WE	Raytheon (Beech) Models 58P, 58PA, 58TC, and 58TCA Airplanes.
SA4240WE	Raytheon (Beech) Models 50, B50, C50, D50, D50A, D50B, D50C, D50E, D50E–5990, E50, F50, G50, H50, and J50 Airplanes.
SA4282WE	Raytheon (Beech) Models 35, A35, B35, C35, D35, E35, F35, G35, and 35R Airplanes.
SA4178WE	Mooney Models M20, M20A, M20C, M20D, M20E, M20F, M20G, M20J, and M20K Airplanes.
SA4234WE	The New Piper Aircraft, Inc. (Piper) Models PA–34–200, PA–34–200T, and PA–34–220T Airplanes.
SA4179WE	Piper Models PA–24, PA–24–250, PA–24–260, and PA–24–400 Airplanes.
SA4235WE	Piper Models PA–44–180 and PA–44–180T Airplanes.
SA4236WE	Piper Models PA–28–140, PA–28–150, PA–28–160, PA–28–180, PA–28–235, PA–28–151, PA–28–181, PA–28–161, PA–28–236, PA–28–201T, PA–28S–160, PA–28S–180, PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, and PA–28RT–201T Airplanes.
SA4237WE	Piper Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 Airplanes.
SA4238WE	Piper Models PA–30, PA–39, and PA–40 Airplanes.
SA4385WP	Piper Models PA–31, PA–31–300, PA–31–325, and PA–31–350 Airplanes.
SA4288WE	Piper Models PA–32–260, PA–32–300, PA–32S–300, PA–32–301, PA–32–301T, PA–32R–300, PA–32R–301, PA–32R–301T, PA–32RT–300, and PA–32RT–300T Airplanes.
SA2511NM	Bellanca Models 17–30, 17–31, and 17–31TC Airplanes.
SA2510NM	Bellanca Models 17–30A, 17–31A, and 17–31ATC Airplanes.
SA4316WE	Wing Aircraft Company Model D–1 Airplanes.

Note 1: This AD applies to each aircraft identified in the preceding applicability provision that has the affected inflatable door seals installed, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury, accomplish the following:

(a) Prior to further flight after October 30, 1998 (the effective date of AD 98–21–21), deactivate the electric door seal inflation system by accomplishing the following:

(1) Disconnect the battery.

(2) Locate the air pump and identify the power wire to the air pump.

(3) Trace the power wire to its connection to the airplane's original electrical power system. Disconnect the power wire at its attachment to the airplane's electrical power system and stow the wire end.

(4) For non-pressurized airplanes, fabricate a placard that incorporates the following words utilizing letters that are at least 0.10-inch in height, and install this placard on the instrument panel within the pilot's clear view:

"ELECTRIC DOOR SEAL INFLATION SYSTEM INOPERATIVE"

(5) For pressurized airplanes or for airplanes that do not have an operating manual door seal inflation system, fabricate a placard that incorporates the following

words utilizing letters that are at least 0.10-inch in height, and install this placard on the instrument panel within the pilot's clear view:

"ELECTRIC DOOR SEAL INFLATION SYSTEM INOPERATIVE. THIS AIRPLANE CAN ONLY BE OPERATED IN UNPRESSURIZED FLIGHT"

(6) Reconnect the battery before returning to service.

(b) Prior to further flight after October 30, 1998 (the effective date of AD 98–21–21), insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM).

Note 2: The prior to further flight compliance time of paragraphs (a) and (b) of this AD is being retained from AD 98–21–21. The only substantive difference between this AD and AD 98–21–21 is the addition of the alternative method of compliance referenced in paragraph (c) of this AD.

Note 3: This AD only applies to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of a different design than the referenced Bob Fields Aerocessories inflatable door seals.

(c) One of the following actions may be accomplished as an alternative method of compliance to the requirements of paragraphs (a) and (b) of this AD. No further action is required by this AD as long as one of these configurations remains incorporated on the aircraft.

(1) Modify the electric door seal inflation system in accordance with the procedures in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998; or

(2) Install a manual door seal inflation system instead of an electric system. Aircraft with existing manual systems as of the effective date of this AD are excluded from the requirements of paragraphs (a) and (b) of this AD.

(d) As of the effective date of this AD, no person may install, on any aircraft, a Bob Fields Aerocessories electric door seal inflation system unless the actions specified in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998, are incorporated.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Blvd., Lakewood, California 90712.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–21–21 are considered approved as alternative methods of compliance for this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Bob Fields Aerocessories, 340 East Santa Maria St., Santa Paula, California 93060; or may examine this document(s) at the FAA, Central Region, Office of the Regional Counsel, Room 506, 901 Locust, Kansas City, Missouri 64106.

(h) This amendment revises AD 98–21–21, Amendment 39–10844.

Issued in Kansas City, Missouri, on October 22, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28416 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–19]

Proposed Amendment to Class D

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D airspace at Eglin AFB, FL. The Non-Directional Radio Beacon (NDB) Runway (RWY) 32 Standard Instrument Approach Procedure (SIAP) at Destin—Fort Walton Beach Airport has been amended. As a result, additional controlled airspace extending upward from the surface is needed to accommodate the SIAP at Destin—Fort Walton Beach Airport. An extension via the 147° bearing from the Destin NDB for the NDB RWY 32 SIAP would be necessary. The length of the Class D airspace extension southeast of the NDB would be 7 miles, and the width of the airspace extension would be 5 miles.

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–19, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal

Aviation Regulations (14 CFR part 71) to amend Class D airspace at Eglin AFB, FL. The NDB RWY 32 SIAP at the Destin—Fort Walton Beach Airport has been amended. Additional controlled airspace extending upward from the surface is needed to accommodate the SIAP at Destin—Fort Walton Beach Airport. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation list in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operational current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034 February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In considering of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000. Class D airspace.

* * * * *

ASO FL D Eglin AFB, FL [Revised]

Eglin AFB, FL
(Lat. 30°29′13″ N, long. 86°31′34″ W)
Destin—Fort Walton Beach Airport
(Lat. 30°24′01″ N, long. 86°28′18″ W)
Destin NDB
(Lat. 30°24′30″ N, long. 86°28′43″ W)
Duke Field
(Lat. 30°39′07″ N, long. 86°31′23″ W)
Hurlburt Field
(Lat. 30°25′44″ N, long. 86°41′20″ W)

That airspace extending upward from the surface, to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB and within a 4-mile radius of Destin—Fort Walton Beach Airport and within 2.5 miles each side of the 147° bearing from the Destin NDB, extending 7 miles southeast of the NDB, exlcuding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius circle centered on Duke Field; excluding the portion southwest of a line connecting the 2 points of intersection within a 5.3-mile radius of Hurlburt Field; excluding a portion east of a line beginning at lat. 30°30′43″ N., long. 86°26′21″ W., extending north of the 5.5-mile radius and north of a line beginning at lat. 30°30′43″ N., long. 86°26′21″ W., extending east to the 5.5-mile radius.

* * * * *

Issued in College Park, Georgia, on October 18, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–28323 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–18]

Proposed Amendment to Class D

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D airspace at Mc Entire ANGB, Eastover, SC. In accordance with a periodic review, the Non-Directional Radio Beacon (NDB) Runway (RWY) 32 Standard Instrument Approach Procedure (SIAP) requires additional airspace. As a result, additional controlled airspace extending upward from the surface is needed to accommodate the SIAP at Mc Entire ANGB. An extension via the 164° bearing from the Mc Entire NDB for the NDB RWY 32 SIAP would be necessary. The length of the Class D airspace extension southeast of the NDB would be 6.3 miles, and the width of the airspace extension would be 5 miles.

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–18, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320. The office docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they made desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Mc Entire ANGB, Eastover, SC. A periodic review reveals the NDB RWY 32 SIAP requires additional airspace. Additional controlled airspace extending upward from the surface is needed to accommodate the SIAP at Mc Entire ANGB. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulation action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000. Class D airspace.

* * * * *

ASO SC D Eastover, SC [Revised]

Eastover, Mc Entire ANGB, SC
(Lat. 33°55′06″ N, long. 80°47′59″ W)
Mc Entire NDB
(Lat. 33°56′09″ N, long. 80°47′56″ W)

That airspace extending upward from the surface, to and including, 2,800 feet MSL within a 4.5-mile radius of Mc Entire ANGB and within 2.5 miles each side of the 164° bearing from the Mc Entire NDB, extending 6.3 miles southeast of the NDB. This Class D airspace area is effective during the dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on October 18, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–28322 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 380

Collateral Acceptability and Valuation

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury is publishing for comment a proposed rule that will govern the acceptability and valuation of all collateral pledged to secure deposits of public monies and other financial interests of the government under Treasury's three Fiscal Service collateral programs. These programs are titled and described in existing parts of the Code of Federal Regulations ("CFR") as: Depositaries and Financial Agents of the Government; Payment of Federal Taxes and the Treasury Tax and Loan Program; and Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties.

The standards of this proposed rule are essentially the same as those under current requirements and procedures. This proposed rule has been drafted using "plain language," and we specifically request comment on its clarity and how we can make it easier to understand.

DATES: Submit comments on or before November 29, 1999.

ADDRESSES: You may send your hard copy comments to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, 999 E Street N.W., Room 315, Washington, D.C. 20239–0001. You may also send us comments by e-mail to govsecreg@bpd.treas.gov. When sending comments over the Internet, please use an ASCII file format and provide your full name and mailing address. Comments received will be available for public inspection and downloading from the Internet and for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. To visit the library, call (202) 622–0990 for an appointment. You can download this proposed rule from the following web site: www.publicdebt.treas.gov.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), or Kurt Eidemiller (Senior Financial Advisor), Department of the Treasury, Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Treasury ("Treasury," "Department," or "we") is publishing for comment a proposed new rule that will govern the determination of the acceptable types of collateral and their assigned values when pledged to secure deposits of public monies and other financial interests of the government under Treasury's collateral programs. We would establish a new part 380 of Title 31 for this purpose.

The Department's Fiscal Service administers several financial programs that involve the pledging of specific collateral. These programs are described in, and governed by, existing regulations at 31 CFR Part 202 (Depositaries and Financial Agents of the Government), 31

CFR Part 203 (Payment of Federal Taxes and the Treasury Tax and Loan Program), and 31 CFR Part 225 (Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties). The Financial Management Service ("FMS"), a bureau within the Department's Fiscal Service, administers these programs, which are handled operationally by the Federal Reserve System, acting as the fiscal agent for Treasury. FMS is responsible for administering and amending the regulations for these programs. The Bureau of the Public Debt ("Public Debt"), another bureau within the Department's Fiscal Service, will administer the specific regulations pertaining to the acceptability and valuation of the collateral in these programs.

FMS will continue to be responsible for any other operational and regulatory oversight of Treasury's collateral programs and will provide for corresponding regulatory amendments to parts 202, 203, and 225 in 31 CFR. After consideration of any comments received in response to this proposed rule, we will publish new Part 380 in final form. We expect that new Part 380 (final rule) will be published in the **Federal Register** concurrently with amendments to Parts 202, 203, and 225 (final rules), which will delete certain collateral provisions and will provide appropriate cross-references.

At this time, we're proposing that acceptable types of collateral be consistent with the collateral that is currently acceptable under Parts 202, 203, and 225. The proposed rule simply establishes a different regulatory structure by centralizing the collateral provisions in a single place and specifically setting out the classes of acceptable collateral in the regulations.

The proposed rule also addresses how the acceptable collateral will be valued, consistent with current requirements. Acceptable collateral for part 202 will be valued at par, or at 90% of par, depending on the pledged asset as set out in § 380.2. As described in § 380.3, the valuation of pledged collateral for Part 203 will be based on the class of acceptable security or instrument using those valuation methods applied by the Federal Reserve System, at the direction of the Treasury. Effective September 21, 1998, this assigned value typically reflects a market valuation methodology or mark-to-market pricing. Acceptable collateral for part 225 will be valued at par as noted in § 380.4.

We may choose in the final rule not to set out the acceptable classes of collateral and respective valuations as proposed. Instead, we may choose to reference current Treasury guidance by stating: "We will specify the types and valuation of acceptable collateral in Treasury procedural instructions." The term "procedural instructions," though subject to change, is currently defined in 31 CFR Section 203.2 as "the Treasury Financial Manual, Volume IV (IV TFM), other Treasury instructions issued through the TFAs, and FRB operating circulars issued consistent with this part."

The office responsible for implementing new Part 380, including any guidance and interpretation, is the Office of the Commissioner. Public Debt also intends to post all related information about collateral acceptability and valuation on its Internet website at the following address: www.publicdebt.treas.gov.

II. Procedural Requirements

This proposed rule is not a "significant regulatory action" under Executive Order 12866. We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation merely sets forth, without substantive change, existing standards and procedures for the acceptability and valuation of collateral pledged to the government under the three collateral programs. Accordingly, we are not required to perform a regulatory flexibility analysis. Finally, this proposed rule contains no new collection of information. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 380

Collateral, Depositaries, Government obligations, Government securities, Securities, Surety bonds.

For the reasons set forth in the preamble, we propose to amend subchapter B of chapter II of Title 31 of the Code of Federal Regulations, by adding part 380 to read as follows:

PART 380—COLLATERAL ACCEPTABILITY AND VALUATION

Subpart A—General Information

Sec.
380.0 What do these regulations govern?
380.1 What special definitions apply to this part?

Subpart B—Acceptable Collateral and Its Valuation

380.2 What collateral may I pledge if I am a depositary or a financial agent of the Government under 31 CFR part 202, and what value will you-assign to it?
380.3 What collateral may I pledge if I am a Treasury Tax and Loan depositary under 31 CFR part 203, and what value will you assign to it?
380.4 What collateral may I pledge instead of a surety bond under 31 CFR part 225, and what value will you assign to it?

Subpart C—Miscellaneous Provisions

380.5 Where can I find current information, and who can I contact for additional guidance and interpretations?

Authority: 12 U.S.C. 90, 265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122, 3101–3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323, 3301–3304, 3336, 9301, 9303.

Subpart A—General Information

§ 380.0 What do these regulations govern?

The regulations in this part govern the types of acceptable collateral that you may pledge to secure deposits of public monies and other financial interests of the federal government, as well as the valuation of that collateral. Specifically, the regulations in this part apply to the programs governed by the Department of the Treasury's regulations at 31 CFR Part 202 (Depositaries and Financial Agents of the Government), 31 CFR Part 203 (Payment of Federal Taxes and the Treasury Tax and Loan Program), and 31 CFR Part 225 (Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties). The regulations in this part apply only to the acceptability and valuation of collateral that may be pledged under these programs. 31 CFR parts 202, 203, and 225 continue to govern the respective programs themselves.

§ 380.1 What special definitions apply to this part?

Special definitions that may apply to this part are contained in 31 CFR parts 202, 203 and 225.

Subpart B—Acceptable Collateral and its Valuation

§ 380.2 What collateral may I pledge if I am a depositary or a financial agent of the Government under 31 CFR part 202, and what value will you assign to it?

(a) Unless we specify otherwise, you may pledge the following classes of marketable securities, to be valued as follows:

(1) Obligations issued, fully insured, or guaranteed by the United States Government or any United States Government agency. We will value these obligations at par;

(2) Obligations of United States Government-sponsored corporations that under specific statute may be accepted as security for public funds. We will value these obligations at ninety percent of par; and

(3) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the

Asian Development Bank, or the African Development Bank. We will value these obligations at ninety percent of par.

(b) You may not pledge zero-coupon or declining balance obligations of any entity defined above in this section.

§ 380.3 What collateral may I pledge if I am a Treasury Tax and Loan depositary under 31 CFR part 203, and what value will you assign to it?

(a) Unless we specify otherwise, you may pledge marketable securities or instruments of the following classes:

(1) Obligations issued, fully insured, or guaranteed by the United States Government or any United States Government agency;

(2) Zero-coupon obligations of the United States Government;

(3) Obligations of United States Government-sponsored corporations that under specific statute may be accepted as security for public funds;

(4) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank;

(5) Obligations partially insured or guaranteed by a United States Government agency;

(6) Insured student loans or notes representing educational loans insured or guaranteed under a program authorized under Title IV of the Higher Education Act of 1965, as amended, or Title VII of the Public Health Service Act, as amended;

(7) General obligations issued by states of the United States and Puerto Rico;

(8) Obligations of counties, cities, or other governmental authorities or instrumentalities within the United States that are not in default as to payments on principal or interest and that may be purchased by banks as investment securities under the limitations established by appropriate federal bank regulatory agencies;

(9) Obligations of domestic corporations that may be purchased by banks as investment securities under the limitations established by appropriate federal bank regulatory agencies; and

(10) Qualifying commercial paper, commercial and agricultural loans, and bankers' acceptances approved by the Federal Reserve System, at the direction of the Treasury.

(b) Collateral for Special Direct Investment Program:

(1) Unless we specify otherwise, to secure your Special Direct Investment (SDI) balances, you may only pledge:

(i) One to four family mortgages; and

(ii) Insured student loans or notes representing education loans insured or guaranteed under a program authorized under Title IV of the Higher Education Act of 1965, as amended, or Title VII of the Public Health Service Act, as amended.

(2) In addition, all pledged collateral must be:

(i) Acceptable by the Federal Reserve System to secure borrowings from a Federal Reserve Bank for its borrow-in-custody of collateral program; and

(ii) Held by the pledging depositary institution which retains possession of the collateral on its own premises under an off-premises collateral arrangement.

(c) We will value all collateral acceptable under this section based on the class of collateral as described using the valuation methods applied by the Federal Reserve System, at the direction of the Treasury. The assigned value typically employs a market valuation methodology.

§ 380.4 What collateral may I pledge instead of a surety bond under 31 CFR part 225, and what value will you assign to it?

(a) Unless we specify otherwise, you may pledge a public debt obligation of the United States Government or an obligation whose principal and interest is unconditionally guaranteed by the United States Government. We will value these obligations at par.

(b) You may not pledge zero-coupon obligations of the United States Government or any United States Government agency.

Subpart C—Miscellaneous Provisions

§ 380.5 Where can I find current information, and who can I contact for additional guidance and interpretations?

You can find a current list of acceptable classes of securities and instruments described in this Part at Public Debt's website, www.publicdebt.treas.gov. You can also contact your local Federal Reserve Bank for general assistance in interpreting our criteria. You also may contact the Office of the Commissioner, Bureau of the Public Debt. We can be reached by postal mail at: Office of the Commissioner, Bureau of the Public Debt, Department of the Treasury, 999 E Street, NW, Room 315, Washington, DC 20239–0001, or by e-mail at govsecreg@bpd.treas.gov.

Dated: October 22, 1999.

Van Zeck,

Commissioner.

[FR Doc. 99–28145 Filed 10–28–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–180]

RIN 2115–AA97

Safety Zone: Ambassador Construction Fireworks, Hudson River, Anchorage Channel

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the Hudson River for the Ambassador Construction Fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Hudson River.

DATES: Comments must reach the Coast Guard on or before November 29, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–180), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–180) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Bay Fireworks has submitted an Application for Approval of a Marine Event for a fireworks display on the Hudson River. This proposed regulation establishes a temporary safety zone in all waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42′00″ N 074°01′17″ W (NAD 1983), about 340 yards south of The Battery, Manhattan, New York. The proposed safety zone would be effective from 8:30 p.m. until 10 p.m. on December 17, 1999. There is no rain date for this event. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and Anchorage Channel, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 780 yards of the 1400-yard wide Hudson River, the eastern 300 yards of the 730-yard wide Anchorage Channel, and the East River during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. The Coast Guard expects to receive no comments on this NPRM due to the limited duration of the event and the fact that it should not interfere with vessel transits.

Discussion of Proposed Rule

The proposed safety zone is for the Ambassador Construction Fireworks display held on the Hudson River at The Battery, Manhattan, New York. This event will be held on Friday, December 17, 1999. There is no rain date for this event. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Lower Hudson River and Anchorage Channel during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, piers at The Battery, Manhattan, that vessels may safely transit through the Hudson River and Anchorage Channel during the event, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners, and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–180 to read as follows:

§ 165.T01–180 Safety Zone: Ambassador Construction Fireworks, Hudson River, Anchorage Channel.

(a) *Location.* The following area is a safety zone: All waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42′00″ N 074°01′17″ W (NAD 1983), about 340 yards south of The Battery, Manhattan, New York.

(b) *Effective Period.* This section is effective from 8:30 p.m. to 10 p.m. on December 17, 1999. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: October 21, 1999.

R. E. Bennis,

Captain, U. S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–28381 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

36 CFR Chapter II

Forest Service

Negotiated Rulemaking Advisory Committee; Fixed Anchors in Wilderness

AGENCY: Forest Service.

ACTION: Notice of intent to establish.

SUMMARY: The Secretary of Agriculture intends to establish an advisory committee to develop recommendations for a proposed rulemaking for the placement, use, and removal of fixed anchors used for recreational rock climbing purposes in congressionally designated wilderness areas administered by the Forest Service. This committee, called the Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee, will be made up of individuals representing a broad cross section of interests with a definable stake in the outcome of the proposed rule. The Committee will be established in accordance with the provisions of the Federal Advisory Committee Act and will be engaged in the process of a negotiated rulemaking pursuant to the provisions of the Negotiated Rulemaking Act.

DATES: Written comments in response to this notice and nominations for membership must be postmarked not later than November 29, 1999.

ADDRESSES: Written comments or nominations should be sent to the Director, Recreation, Heritage and Wilderness Resources Staff, Mail Stop 1125, Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090–6090. Comments may also be telefaxed to the Director at (202) 205–1145 or sent by Internet (anchors/wo@fs.fed.us). All comments received, including names and addresses where provided, are available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Jerry Stokes, Recreation, Heritage, and Wilderness Resources, (202) 205–0956.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is establishing a negotiated rulemaking advisory committee to assist in the development of a proposed rule regarding the placement, use, and removal of fixed anchors used for recreational rock climbing purposes in congressionally designated wilderness areas administered by the Forest Service. The Department invites comment in response to this notice, especially on whether the proposed composition and membership of the Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee (Committee) provides sufficient representation of the broad cross section of interests that would be significantly affected by rules governing fixed anchors in wilderness.

Rock Climbing

Recreational rock climbing has occurred on National Forest System lands for many years. The activity occurs within designated wilderness areas as well as on nonwilderness lands administered by the Forest Service. Rock climbers routinely use a piece of equipment known as a "fixed anchor" to assist them in their climb and to help them navigate dangerous terrain with a modicum of safety. The safest, most common, and most reliable type of fixed anchor is an "expansion bolt," which is a small steel bolt placed into a hole that has been drilled into a rock. Frequently, a "hanger" is used by a climber to link an expansion bolt to the rope or safety system.

Although fixed anchors can be removed, it is difficult and time consuming to do so. As a result, many climbers leave their fixed anchors in a rock even after the completion of their climb. Many rock climbers argue that fixed anchors are an important and necessary device which enables them to engage in a legitimate recreational activity that predates an area's designation as wilderness. Many wilderness enthusiasts, on the other hand, have asserted that fixed anchors are "installations" that are not necessary for the administration of a wilderness area and, therefore, are prohibited by the express terms of the Wilderness Act itself.

Fixed Anchors in Wilderness Negotiated Rulemaking

The Secretary has determined that the best way to resolve this issue in the wilderness areas on National Forest System lands is to proceed with a negotiated rulemaking pursuant to the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* To carry out the rulemaking process, an advisory committee is established which consists of an agency representative and other parties representing a broad cross section of the interests significantly affected by the rulemaking. Through a series of meetings, the members of the advisory committee negotiate in good faith and strive to reach consensus on recommendations for a proposed rule.

As provided for in the Negotiated Rulemaking Act, the Forest Service retained the services of a convener highly experienced in negotiated rulemakings to determine whether such a process would be useful to resolve the fixed-anchor issue. After speaking directly with representatives of many of the parties that would be affected by a fixed anchor in wilderness regulation, the convener issued a convening report to the Forest Service on January 26, 1999, with a recommendation to proceed with a negotiated rulemaking. Among other things, the report noted that with respect to fixed anchors, the following criteria established by the Negotiated Rulemaking Act were satisfied: (1) There is a need for a rule; (2) there is a limited number of identifiable interests that would be significantly affected by the rule; (3)

there is a reasonable likelihood that a committee can be established with a balanced representation of interested parties who would be willing to negotiate in good faith to reach consensus; (4) there is a reasonable likelihood that the committee would be able to reach consensus; (5) the negotiated rulemaking procedure will not unreasonably delay the promulgating of a fixed-anchor rule; (6) the agency has adequate resources to finance the committee operations; and (7) to the extent practicable, the agency will use the consensus of the committee as the basis for a proposed rule.

Having considered the recommendations of the convener in the January 26, 1999, report, the Secretary has decided that the establishment of the committee is in the public interest in connection with the Forest Service's responsibility to administer congressional designated wilderness areas in accordance with the Wilderness Act. The Committee meetings will serve as a forum in which committee members, with input from other interested parties, can discuss issues involved in regulating the use of fixed anchors for recreational climbing purposes in wilderness areas administered by the Forest Service. The Secretary believes that this process will enable the agency to develop and promulgate effective regulations governing the use of these devices within wilderness areas on National Forest System lands.

Key Issues To Be Considered for Negotiation

Among the issues that may be considered by the Committee during the course of their deliberations are the following:

- What type of rock climbing-related equipment should be allowed in wilderness areas and under what circumstances;
- What process should be used to decide whether the insertion or removal of a fixed anchor should take place and who should be party to the decision;
- Who should be responsible for the insertion and removal of fixed anchors; and
- What is the impact on the Forest Service and the climbing industry if the agency assumes an active role in regulating the use, the insertion, and the removal of fixed anchors.

Proposed Committee Membership

The January 26, 1999, convening report identified the interest most likely to be directly affected by a fixed anchor in wilderness regulation as including the following: climbers, outfitters, education/experience providers; environmental organizations, and conservation organizations. The following parties have been identified as potential participants on the Negotiated Rulemaking Committee: Access Fund; American Alpine Club; American Mountain Guide Association; Idaho Conservation League; National Outdoor Leadership School; National Parks and Conservation Association; Outdoor Recreation Coalition of America; Outward Bound; Recreation Equipment Incorporated; Sierra Club; Wild Wilderness; Wilderness Society; Wilderness Watch; and Steve Wolper, an active climber as well as an advocate for wilderness conservation. The report also mentioned that Native Americans may have concerns about fixed-anchor issues that are different from the concerns of the other interests and, therefore, should be represented on the Committee.

The Forest Service representative, Larry Gadt, Director of Minerals and Geology, will participate in the deliberations and activities of the Committee with the same rights and responsibilities as other Committee members. This official will be authorized to fully represent the agency in the discussions and negotiations of the Committee. Three other Federal land management agencies, the National Park Service, the Bureau of Land Management, and the Fish and Wildlife Service, will have representatives who will serve as consultants to the Forest Service to provide their perspective on the issues. These Federal agencies will not participate as members on the Committee.

The Forest Service will consider nominations for Committee membership from organizations or interests that believe they may be substantially affected by the subject of the negotiations. Each application or nomination for membership or nomination to the Committee should include: (1) The name, address, telephone number(s), and e-mail address(s) of the nominee; (2) the organization the nominee will represent; (3) written documentation from the organization providing evidence that the applicant or nominee is authorized to represent that organization or interest and participate in the negotiated rulemaking process; (4) a promise from the nominee to participate in the negotiated rulemaking proceedings in good faith, and (5) the reasons that the interests or persons specified in this notice do not adequately represent this applicant's interest.

It is not necessary that every concerned organization be represented on the Committee as long as every significant interest is represented. In addition, the Negotiated Rulemaking Act restrict the total number of representatives on a committee to twenty-five (25). Nonetheless, the Department will carefully consider any and all nominations received from individuals or organizations not included on the Proposed Committee Membership list.

Schedule of Meetings

After the 30-day comment period for this notice ends, the Forest Service will review the comment received on establishment of the committee and the nominations and provide the information to the Secretary. Following appointment of members by the Secretary, the agency will publish a notice announcing the names of the individuals and the interests that represent and give notice of the first meeting's location and time. The agency expects to hold three meetings, with each meeting consisting of two to three 8-hour days for the committee to negotiate the issues raised at the convening stage and other issues relevant to the use of fixed anchors in wilderness. The first meeting is to be held within 60 days of the establishment of the committee and appointment of its membership. The meetings and their agendas will be announced in the **Federal Register**. Administrative staff support for the meetings will be provided by the Forest Service. Assuming that the committee reaches consensus, the agency would attempt to publish a proposed rule in the **Federal Register** reflecting that consensus within six months following submission of the committee's report to the Secretary.

Dated: October 20, 1999.

Sally Thompson,

Acting Assistant Secretary for Administration.

[FR Doc. 99–28219 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD081–3043b; FRL–6449–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Enhanced Inspection & Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to convert our conditional approval of the Maryland's State Implementation Plan (SIP) revision for an enhanced vehicle inspection and maintenance (I/M) program to a full approval. In the Final Rules section of this **Federal Register**, EPA is converting its conditional approval to a full approval as a direct final rule without prior proposal because the Agency views this as noncontroversial and anticipates no adverse comments. A detailed rationale for the full approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 29, 1999.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. Please contact Christopher Cripps at (215) 814–2179 if you wish to arrange an appointment to view the docket at the Philadelphia office.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 20, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–27198 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400140B; FRL–6391–6]

RIN 2070–AD38

Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 3, 1999, EPA issued a proposed rule to lower the reporting thresholds for lead and lead compounds which are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). The proposed rule also included a limitation on the reporting of lead when contained in certain alloys and proposed modifications to certain reporting exemptions and requirements for lead and lead compounds. On September 21, 1999, EPA issued a **Federal Register** document extending the comment period 45 days until November 1, 1999. The purpose of today's action is to inform interested parties that, in an effort to ensure adequate opportunities for input from all affected parties, including small businesses, EPA is extending the comment period by another 45 days until December 16, 1999. The comment period for the proposed rule was initially scheduled to close on September 17, 1999, and was extended 45 days to November 1, 1999.

DATES: Written comments, identified by the docket control number OPPTS–400140, must be received by EPA on or before December 16, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For technical information on this action contact: Daniel R. Bushman, Petitions Coordinator, Environmental Protection Agency, Mail Code 7408, 401 M St., SW., Washington, DC 20460; telephone number 202–260–3882, e-mail address: bushman.daniel@epa.gov. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, or otherwise use lead or lead compounds. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	Facilities that: process copper ores, lead and zinc ores; operate pulp mills, petroleum refineries, primary copper smelters, primary and secondary nonferrous metal smelters, gray/ductile iron foundries, steel foundries, blast furnaces, steel mills, petroleum bulk stations and terminals, industrial boilers that burn coal, wood, petroleum products, and electric utilities that combust coal and/or oil for distribution of electricity in commerce; facilities that manufacture, process, or use inorganic pigments, small arms ammunition, asphalt paving mixtures and blocks, storage batteries, motor vehicles and motor vehicle equipment; manufacture electronic components and accessories.
Federal Government	Federal facilities that: manufacture, process, or use lead or lead compounds; burn coal or petroleum products.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov//fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–400140. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., "OPPTS–400140") in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in the East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is: 202–260–7093.

3. *Electronically.* Submit your comments electronically by E-mail to: "oppt.ncic@epamail.epa.gov." Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–400140. Electronic comments on this proposal may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

II. Background Information

A. What Does this Notice Do and What Action Does this Notice Affect?

This document extends the comment period for EPA's August 3, 1999 proposed rule (64 FR 42222) (FRL–6081–4) to lower the reporting thresholds for lead and lead compounds which are subject to reporting under EPCRA section 313 and PPA section 6607. EPA proposed the lowering of the reporting thresholds for lead and lead compounds pursuant to its authority under EPCRA section 313(f)(2) to revise reporting thresholds. The August 3, 1999 proposed rule also included a limitation on the reporting of lead when contained in certain alloys and proposed modifications to certain reporting exemptions and requirements for lead and lead compounds.

B. Why and for How Long is EPA Extending the Comment Period?

EPA noted in the initial extension (64 FR 51093, September 21, 1999) (FRL–6382–9) that it had received requests from a number of groups to extend the comment period for the August 3, 1999 proposed rule. Since that time, EPA has received requests for an additional extension from a number of groups, including small businesses. In order to ensure adequate opportunities for input from all affected parties, including small businesses, EPA has determined that extending the comment period is an appropriate action and will not cause significant delay in the evaluation of the proposed rule. Therefore, EPA is extending the comment period on the August 3, 1999 proposed rule by another 45 days. All comments must be received by December 16, 1999.

III. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. As indicated previously, this action merely announces the extension of the comment period for the proposed rule. This action does not impose any new requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Nor does it require prior consultation with State, local, and Tribal government officials as specified by Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The

Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying proposed rule, is discussed in the preamble to the proposed rule (64 FR 42222).

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: October 25, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–28487 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

49 CFR Part 392

[Docket No. OMCS–98–4202]

Railroad-Highway Grade Crossing; Safe Clearance; Public Meeting

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Proposed rule; public meeting.

SUMMARY: This document announces a public meeting to discuss the problem of railroad-highway grade crossing crashes involving commercial motor vehicles (CMVs) in general, and specifically crashes in which the CMV was struck by a train because the driver of the CMV, for whatever reason, stopped the vehicle prior to clearing the railroad track. The meeting is intended to promote the sharing of information between the Office of Motor Carrier Safety (OMCS), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA); State agencies with responsibilities related to railroad-highway grade crossing safety; motor carriers, and rail carriers; and interested parties concerning the adequacy of current Federal and State laws and regulations governing the operation of CMVs at grade crossings, and devices and technologies that could be installed at these locations to help reduce the incidence of CMV-train crashes. The meeting will include presentations by the OMCS, the FHWA, and the FRA explaining their respective roles. The agencies would provide all interested parties with an opportunity to voice their concerns about the adequacy of current Federal and State requirements and present suggestions or recommendations for practical ways to reduce the incidence of railroad-highway grade crossing crashes.

DATES: The meeting will be held on Tuesday, November 9, 1999. The meeting will begin at 9:30 a.m. and end at 4:30 p.m.

ADDRESSES: The meeting will be held in Room 2230, Nassif Building, DOT Headquarters, 400 Seventh Street, SW., Washington, DC. 20590

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lehrman, Office of Motor Carrier Safety (202) 366–0994; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Creation of New Agency

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act prohibits the expenditure of any funds appropriated by that Act "to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration" (Public Law 106–69, October 9, 1999, 113 Stat. 986, at 1022). Section 338 further provides that, if the authority of the Secretary of Transportation on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that Office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999).

The new OMCS includes the following headquarters offices of the FHWA's former Office of Motor Carrier and Highway Safety (OMCHS): the Office of Motor Carrier Research and Standards, the Office of Data Analysis and Information Systems, the Office of Motor Carrier Enforcement, the Office of Policy and Program Management, the Office of National and International Safety Programs, the Office of Technology Evaluation and Deployment, and the Office of Program Evaluation. However, the Office of Highway Safety Infrastructure remains part of the FHWA. In addition, the motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement and other activities of the OMCHS while part of the FHWA will be continued by the new OMCS. The redelegation will cause no changes in the motor carrier functions and operations of the offices or resource centers listed above. For the time being, all phone numbers and addresses are unchanged.

Background

On August 26, 1994, the President signed the Hazardous Materials Transportation Authorization Act of 1994 (Public Law 103–311, 108 Stat. 1673) the Act). Section 112 of the Act requires the Secretary of Transportation to amend the Federal Motor Carrier Safety Regulations to prohibit the driver of any CMV from driving a motor vehicle onto a railroad-highway grade crossing without having sufficient space to drive completely through the crossing without stopping.

On July 30, 1998 (63 FR 40691), the OMCS published a notice of proposed rulemaking (NPRM) to implement the statutory mandate. The NPRM also sought comments and information about the number of railroad grade crossings that lacked sufficient clearance for some CMVs to be driven completely across the tracks before stopping.

The OMCS believes a public meeting is necessary to establish dialogue among Federal and State agencies, motor and rail carriers, safety groups, and interested parties concerning practical approaches for reducing the incidence of CMV crashes with trains, especially crashes in which the CMV was struck by the train because the driver of the CMV, for whatever reason, stopped the vehicle prior to clearing the railroad track.

Magnitude of the Problem of Railroad-Highway Grade Crossing Crashes

The OMCS believes that it is important to address accidents at railroad-highway grade crossings because they are numerous, as can clearly be seen in the figures set forth below. While the downward trend is encouraging, in that the overall total number of railroad-highway grade crossing fatalities and nonfatalities both dropped between 1997 and 1998, some segments of the population having accidents, for example, pickup trucks, have actually increased. Furthermore, motor vehicle property damage, as a result of railroad-highway grade crossing accidents remains at over $15 million annually. Yet, another important factor is maintaining the confidence of the public in our ability to promote safety at railroad-highway grade crossings. That confidence will grow by initiating a vigorous program to prevent these accidents. The Office of Motor Carrier Safety is committed to proactively continuing the 1998 decline in railroad-highway grade crossing accidents. This public meeting scheduled for Tuesday, November 9, 1999, is an important step in soliciting engineering and other technological ideas to achieve that goal.

1997 INCIDENTS

	Incidents		Motor vehicle damage
Truck	681	17.6%	$3,982,275.00
Truck-trailer	490	12.7%	6,139,783.00
Pickup truck	335	8.7%	1,264,135.00
Truck total	1506	39.0%	11,386,193.00
Overall Total	3865	100%	18,675,374.00
Car	2078	53.8%	5,968,309.00

1997 FATALS/NONFATAL

	Fatals		Nonfatal	
Truck	89	19.3%	275	17.9%
Truck-trailer	21	4.6%	232	15.1%
Pickup truck	28	6.0%	120	7.7%
Truck total	138	29.9%	627	40.7%
Overall Total	461	100%	1540	100%
Car	247	53.6%	795	51.6%

1998 INCIDENTS

	Incidents		Motor Vehicle Damage
Truck	460	13.1%	$2,149,600.00
Truck-trailer	477	13.6%	6,423,570.00
Pickup truck	444	12.6%	1,993,971.00
Truck total	1381	39.3%	10,567,141.00
Overall Total	3508	100%	16,790,748.00
Car	1810	51.6%	5,318,227.00

1998 FATAL/NONFATAL

	Fatal		Nonfatal	
Truck	57	13.2%	188	14.4%
Truck-trailer	17	3.9%	185	14.2%
Pickup truck	60	13.9%	147	11.3%
Truck total	134	31.0%	520	39.9%
Overall Total	431	100%	1303	100%
Car	206	47.8%	668	51.3%

Topics of Discussion During the Meeting

OMCS NPRM Concerning Storage Space

1. What are the potential problems facing CMV drivers at railroad-highway grade crossings?

2. What would a rule, if promulgated, require?

3. How would a driver or motor carrier ensure compliance? Note that irrespective of whatever signs are posted concerning the space between the rails and the traffic control device, etc., the driver must make a judgment call on whether the vehicle can clear the tracks completely. Is there current technology available to help make this determination? If not, can industry develop the necessary technology to determine adequate storage space?

4. Would a sign showing how much space exists between the rails and the next traffic control device help? If so, where should such a sign be placed? Would it suffice for a sign to indicate, perhaps through a universal graphic symbol, that vehicle storage at an at-grade highway-rail crossing is shorter that the longest legal CMV?

5. Are there disadvantages to safety arising out of the proposed rule of July 30, 1998? For example, consider the following scenario: A truck makes a right turn onto railroad tracks. After completing the turn, the driver then realizes that there is insufficient storage space available—it is occupied on the other side of the tracks by a truck which the driver could not see prior to making his turn. The driver now has to back up onto a street at right angles to the front of his truck or tractor. The driver may find it difficult to see oncoming traffic on the street from which the vehicle has just turned. In what ways could a spotter, or flagman help in complying with a rule prohibiting entering storage space without ability to clear the tracks?

6. Would it be helpful for CMVs to be detoured around routes containing at-grade railroad-highway crossings with insufficient space to accommodate the vehicle ?

7. Is there anything else that would help drivers comply with the law?

Final Rule on Commercial Driver Disqualification Provision

On September 2, 1999 the OMCS published a final rule adopting new disqualification periods for holders of commercial drivers' licenses (CDLs) who are convicted of railroad-highway grade crossing violations (64 FR 48104).

1. Do we know enough about the configurations of all the railroad-highway grade crossings to effectively develop a solution for this problem if a rule were promulgated addressing storage space? For example, at railroad-highway grade crossings where tracks cross each other at right angles, is it possible to determine whether storage space considerations can be accommodated safely? Would there be a potential problem with traffic control devices?

2. What are the penalties? Answer: Disqualification of the driver for certain periods, and up to $10,000 civil penalty for employers who knowingly allow, require, permit, or authorize a driver to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

FRA Initiatives To Reduce Grade Crossing Crashes

Infrastructure Changes To Improve Grade Crossing Safety

Other Topics (Time Available for Interested Parties To Give Presentations)

Meeting Information

The meeting will be held on Tuesday, November 9, 1999, in Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC. Since access to the DOT building is controlled, all visitors must sign in with the security office located at the entrance of the lobby and wear a visitor's badge at all times while in the building.

Individuals who wish to make a formal presentation should contact Mr.

David M. Lehrman at (202) 366–0994 no later than November 4, 1999, to ensure that sufficient time is allotted for the presentation and to identify any audio-visual equipment needed for the presentation.

Authority: 49 U.S.C. 31136, 31502; and 49 CFR 1.73.

Julie Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–28233 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register
Vol. 64, No. 209
Friday, October 29, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting in November of the Commission on 21st Century Production Agriculture. The purpose of this meeting will be to address issues regarding small farms. This meeting is open to the public.

PLACE, DATE, AND TIME OF MEETINGS: This meeting will be held November 15, 1999 in Room 201 at the Georgia Department of Agriculture, Capital Square, Atlanta, Georgia 30334–4201 from 12:00 EST—5:00 PM EST; and on November 16, 1999, the Commission will be touring small farms and small farm cooperatives throughout rural Georgia.

FOR FURTHER INFORMATION CONTACT: Timothy M. Peters (202–720–4860), Assistant Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: October 20, 1999.

Keith J. Collins,

Chief Economist.

[FR Doc. 99–28300 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Patent No. 5,919,446 (S.N. 08/958,475 filed October 27, 1997, entitled "Control of Fire Blight on Pome Fruit Trees with Erwinia herbicola" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Northwest Agricultural Products of Wasco, Washington, an exclusive license to Serial No. 08/958,475.

DATES: Comments must be received on or before January 27, 2000.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Northwest Agricultural Products has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–28379 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Approval of a New Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: Commodity Credit Corporation (CCC) is seeking approval from the Office of Management and Budget (OMB) for use of the forms necessary to implement the Total Quality Systems Audit (TQSA) program.

This information collection will allow CCC to determine compliance with TQSA standards. This program is being implemented to ensure that CCC purchases meet customer requirements and needs. Vendors offering processed commodities covered by TQSA for sale to CCC will have to meet quality control standards to assure the quality of the end product to be purchased by CCC.

DATES: Comments on this notice must be received on or before December 28, 1999 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Tim Mehl, Chief, Warehouse License and Examination Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–6843, fax (816) 926–1774.

SUPPLEMENTARY INFORMATION:

Title: Total Quality Systems Audit Program.

OMB Control Number: 0560–NEW.

Type of Request: Approval of a new information collection.

Abstract: TQSA is a fee for service program open to food processors and other food related manufacturers of certain products purchased by CCC. Participation in the TQSA program may be required by CCC. Such requirement will be included in the applicable CCC commodity purchase announcement or invitation. A TQSA team has been organized in the Farm Service Agency (FSA) from personnel in FSA's Commodity Operations Division and the Department's Kansas City Commodity Office (KCCO).

During a TQSA audit, the participating vendor must make available to the audit team records pertaining to organization, production, work procedures, quality testing, shipping, sub-supplier certifications, proof of U.S. origin, and all USDA contract documents. The vendor will make available key personnel and production workers for interview.

The TQSA team coordinates the audit with the vendor's management. The team makes detailed assessments of the vendor's production facilities, equipment, and procedures. Quality procedures and documentation are reviewed and assessed for compliance to TQSA standards. Records pertaining to purchasing, production, shipping, and safety are appraised. A review of CCC contracted products is made.

Four types of TQSA audits are performed:

1. Baseline audits are done for new or potential TQSA participants. The audit provides the company with guidelines to meet the TQSA standards.
2. Full audits are mandatory for those vendors that have previously met the TQSA standards and wish to remain in compliance with the TQSA program.
3. Surveillance audits are limited in scope to confirm corrective actions, found during full audits, are complete and successfully implemented.
4. Destination reviews are conducted at a point in the commodity distribution chain to verify the product conforms to standards. The review is usually conducted as part of an audit program to check product quality, but may be conducted in response to a customer complaint.

To be compliant with TQSA standards the vendor must completely conform to Good Manufacturing Practices (21 CFR Part 110), Applicable Federal or State food safety requirements, and current commodity announcement/invitations, if applicable. Vendors must also demonstrate an acceptable level of conformance with ISO/ANSI/ASQ 9001–1994 Quality Systems Model for Quality Assurance in Design, Development, Production, Installation, and Servicing Standards.

All observations and findings of non-conformance will be recorded on the Audit Summary (KC–1TQ). Evidence of major non-conformance or system failures will be reported on the Corrective Actions Request (KC–3TQ).

At the conclusion of the audit a score is determined according to established procedures. This score is also used to determine the frequency of future audits. The score, the audit results on the KC–1TQ, the KC–3TQ, and the billable hours are discussed with the vendor's representative at an exit meeting. Any disputes will be settled during this meeting and the results and the score revised if necessary. The score finalized during this meeting cannot be disputed at a later date.

The Audit Summary (KC–1TQ) and the Corrective Action Request (KC–3TQ) require the signature of the vendor's representative. The signature constitutes agreement with the results and score of the audit. The signed forms are provided to KCCO. This information may be used to determine the eligibility for and awarding of contracts.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Food vendors participating in the TQSA Program.

Respondents: 250.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Total Annual Burden Per Respondent: 1 hour.

Total Annual Responses: 500.

Total Annual Burden Hours: 250.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for USDA, Washington, DC 20503, and to Timothy P. Mehl, Chief, Warehouse Licensing and Examination Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–6843, fax (816) 926–1774.

All comments will become a matter of public record.

Signed at Washington, DC, on October 25, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–28378 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection in support of the Public Law 480, Title I program, found at 7 CFR part 17.

DATES: Comments on this notice must be received by December 28, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Acting Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250–1033. Telephone: (202) 720–3664.

SUPPLEMENTARY INFORMATION:

Title: Declaration of Sale, Form FAS–359.

OMB Number: 0551–0009.

Expiration Date of Approval: February 29, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Public Law 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 *et seq.* Commodity suppliers must report details of sales for price approval. Form FAS–359, "Declaration of Sale," is the written record, signed by the commodity supplier, of the terms of sale as reported by telephone. When signed for the General Sales Manager, it provides evidence of the USDA price approval required for CCC financing.

Estimate of Burden: The public reporting burden is 15 minutes per response for commodity suppliers reporting details of sales.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 15.

Estimated Total Annual Burden on Respondents: 30.25 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Acting Director, Public law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250–1033 and the desk officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on October 21, 1999.

Richard Fritz,

General Sales Manager, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 99–28298 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection in support of the Public Law 480, Title I program, found at 7 CFR part 17.

DATES: Comments on this notice must be received by December 28, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Acting Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250–1033. Telephone: (202) 720–3664.

SUPPLEMENTARY INFORMATION:

Title: Regulations-Financing Commercial Sales of Agricultural Commodities under Title, Public Law 480.

OMB Number: 0551–0005.

Expiration Date of Approval: February 29, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Public Law 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 et seq. Suppliers of commodities and ocean transportation must retain records for three years. Prospect commodity suppliers must provide information for the Department to determine eligibility. Commodity suppliers must report details of sales for price approval and to submit to USDA, for approval, information on any amendments to the sales. Shipping agents nominated by importing countries must submit information to allow identification of possible conflicts of interest.

Estimate of Burden: CCC estimates the public reporting burden to be eight hours per year per supplier for the recordkeeping requirements; two hours for new suppliers that need to develop the information necessary for eligibility under Public Law 480, Title I program; 15 minutes for commodity suppliers to prepare telephonic notices of sale and requests for approval of sale amendments; and, one hour for shipping agents to prepare a complete package of information required by the regulations each fiscal year and 15 minutes to prepare each subsequent submission updating information as changes occur.

Respondents: Suppliers of commodities and ocean transportation; prospective commodity suppliers; shipping agents.

Estimated Number of Respondents: 64.

Estimated Total Annual Burden on Respondents: 441.75 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Acting Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250–1033 and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on October 21, 1999.

Richard Fritz,

General Sales Manager, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 99–28299 Filed 10–28–99; 8:45 am]

BILLING CODE 3410–10–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 29, 1999

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Tab, Hanging File Folder
  7510–01–375–0502
  7510–01–375–4510
NPA: Lions Club Industries, Inc., Durham, North Carolina

Services

Administrative Services, U.S. Army District Corp of Engineers, 696 Virginia Road, Concord, Massachusetts.
NPA: Minute Man Arc for Human Services, Inc., Concord, Massachusetts
Base Supply Center and Operation of Individual Equipment Element Store, Langley Air Force Base, Virginia.
NPA: Virginia Industries for the Blind, Richmond, Virginia.
Management Services
  U.S. Department of Housing and Urban Development, 611 W. Sixth Street, Los Angeles, California.
NPA: Pacific Coast Community Services, Truckee, California.
Management Services
  U.S. Department of Housing and Urban Development, 450 Golden Gate Avenue, San Francisco, California.
  NPA: Pacific Coast Community Services Truckee, California.
Operation of Individual Equipment Element Store and HAZMART
  McGuire Air Force Base, New Jersey
  NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Operation of Warehouse, Supply Room Operations and Seasonal Grounds Maintenance
  Software Development Center, Fort Lee, Virginia,
  NPA: Richmond Area Association for Retarded Citizens, Richmond, Virginia

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Binder, Pilot's
  7510–00–NSH–0010
Calendar Pad
  7510–01–363–4999
  Executive/Personal Time Management System
  7530–01–444–7740
  7530–01–444–7741
  7530–01–444–7742
  7530–01–444–7743
  7530–01–444–7744
  7530–01–444–7745
  7530–01–444–7746
  7530–01–444–7747
  7530–01–444–7748
  7530–01–444–7749
  7530–01–444–7750
  7530–01–444–7751
  7530–01–444–7752
  7530–01–444–7702
  7530–01–444–7703
  7510–01–444–7704
  7510–01–444–7706
  7510–01–444–7707
  7510–01–444–7709
  7510–01–444–7710
  7510–01–444–7711
  7530–01–445–0719
  7530–01–445–0720
  7510–01–445–0721
  7520–01–429–7411
Pocket Planning Set
  7510–01–363–5003
Refill, Appointment Book
  7530–01–363–6709

Beverly L. Milkman,
Executive Director.

[FR Doc. 99–28358 Filed 10–28–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to and Deletions from the Procurement List

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity and services previously furnished by such agencies.

EFFECTIVE DATE: November 29, 1999

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 12, and 26, July 9, August 6 and 13, and September 17, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 12284, 14687, 37098, 42902, 44198 and 50485) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center, Columbus Air Force Base, Mississippi
Base Supply Center and Operation of Individual Equipment Element Store, Beale Air Force Base, California
Base Supply Center and Operation of Individual Equipment Element Store, Cannon Air Force Base, New Mexico
Food Service, Marine Corps Base, Mess Halls 31611, 210702, 53502, 62502 and 22186, Camp Pendleton, California
Food Service, Marine Corps, Mess Hall #569 and 1620, San Diego, California
Janitorial/Custodial, Basewide, Picatinny Arsenal, New Jersey
Operation of Individual Equipment Element Store, Pope Air Force Base, North Carolina
Operation of Individual Equipment Element Store, Brooks Air Force Base, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and services.

3. The action may result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity and services are hereby deleted from the Procurement List:

Commodity

Cleaner, Water Soluble, 7930–01–367–2962
Bus Service, Veterans Affairs Medical Center, Outpatient Clinic, Tomah, Wisconsin
Document Processing, U.S. Coast Guard Institute, 5900 SW 64th Street, Oklahoma City, Oklahoma

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–28359 Filed 10–28–99; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:30 p.m. on November 18, 1999, at the Radisson Hotel, 4728 Constitution, Baton Rouge, Louisiana 70808. The purpose of the meeting is to hold new member orientation and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 14, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–28385 Filed 10–28–99; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Business and Professional Classification Report.

Form Number(s): SQ–CLASS.

Agency Approval Number: 0607–0189.

Type of Request: Revision of a currently approved collection.

Burden: 9,448 hours.

Number of Respondents: 43,600.

Avg Hours Per Response: 13 minutes.

Needs and Uses: The Bureau of the Census conducts the Business and Professional Classification Report to collect sales and other information from a sample redrawn every quarter of retail, wholesale, service, and unclassified businesses recently assigned Federal Employer Identification numbers (EIN). We are informed of the existence of these new businesses from lists provided by the Internal Revenue Service and the Social Security Administration. From the information we collect in this survey, we determine an appropriate measure of size, company organization and establishment information, taxable or tax-exempt status, wholesale inventories, type of operation, and assign a new or more refined kind-of-business classification. We use this information to include these businesses in our retail, wholesale, and service surveys. This keeps the samples for our current business surveys up-to-date with the business universe.

In this request, we are revising the data collection form to improve the kind-of-business codes based on the new North American Industry Classification System (NAICS). This includes the collection of additional information on method of selling which is a key component of ensuring correct NAICS classification. We do not expect these inquiries to increase overall reporting burden.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions.

Frequency: One time only.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 26, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–28421 Filed 10–28–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

2000 Evaluation of DARPA Communicator Systems

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before December 28, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gregory A. Sanders, Ph.D., National Institute of Standards and Technology (NIST), 100 Bureau Drive, Stop 8940, Gaithersburg, MD 20899–8940.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 2000, NIST will perform evaluations of Communicator implementations, as part of the Defense Advanced Research Project Agency (DARPA) Communicator program. Using the Communicator involves task-based spoken dialogue with the system. The evaluations that are to be performed are intended to achieve three goals. First, to help implementors of Communicator programs to identify the successes and weaknesses of their implementations. Second, to enable the research sponsors to identify and measure progress in order to assess the success of the program. Third, to advance the state of research knowledge about metrics and evaluation of task-based dialogue systems. The proposed evaluations will be performed with paid research subjects, who will each use the implementations to perform tasks representative of the tasks that Communicator systems are intended to perform. As part of the evaluation, the paid research subjects will be asked to respond to a user questionnaire that is intended to assess the subjects' user-satisfaction and their subjective opinions about various aspects of each system that are being objectively measured. The subjects are being paid to complete the questionnaire, and they will not be paid if they do not complete the questionnaire.

The user-questionnaire will enable us to study correlations of various objective metrics with the users' satisfaction and the users' subjective opinions.

II. Method of Collection

Most questions will be Likert-scale type items (items consisting of a statement with the requested response being a choice on a scale running from "fully agree" through "fully disagree"). We anticipate that the research subject users will read and respond to the questions on paper or else by using a web browser.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: The research subjects (who will be adult persons, with any American accent and no speech impediment, who are familiar with the task domain).

Estimated Number of Respondents: 360.

Estimated Time per Response: Less than 10 minutes per questionnaire.

Estimated Total Annual Burden Hours: 60 Hours.

Estimated Total Annual Cost to the Public: $0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to the notice will be summarized and/or included in the request for OMB approval of the information collection; they also will become a matter of public record.

Dated: October 22, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–28422 Filed 10–28–99; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101399F]

New England Fishery Management Council; Public Meetings; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of correction to a public meeting notice.

SUMMARY: The New England Fishery Management Council (Council) has

scheduled a public meeting of its Scientific and Statistical Committee (SSC) and Social Sciences Advisory Committee (SSAC) in November, 1999. The SSC meeting days were incorrectly listed in the October 20, 1999 Federal Register notice. There has also been an addition to the SSC meeting agenda. The October 20, 1999 Federal Register notice also did not include the meeting location of the SSAC meeting.

DATES: The meeting for the SSC will be held on Thursday, November 4, 1999, at 10 a.m. and Friday, November 5, 1999, at 8:30 a.m. The meeting for the SSAC will be held on Friday, November 5, 1999, at 10 a.m.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for location of the SSAC meeting.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council's SSC and SSAC notice of public meetings was published in the Federal Register on October 20, 1999 (64 FR 56487).

The original notice stated that the SSC meeting would be held on Monday, November 4, 1999. The correct date should read Thursday, November 4, 1999.

In addition to the agenda items in the original meeting notice, the SSC will receive a presentation on the scientific basis of management measures in the joint Mid-Atlantic/New England Fishery Management Council Monkfish Fishery Management Plan. No formal action will be taken at this meeting on the information presented.

Friday, November 5, 1999, 10 a.m.– SSAC Meeting

Location was omitted and should read as follows: Holiday Inn, One Newbury Street, Route 1, Peabody, MA; telephone: (978) 535–4600.

All other information previously published remains unchanged.

Dated: October 25, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28275 Filed 10–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101599B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of photography permit no. 867–1525

SUMMARY: Notice is hereby given that Moana Productions, Inc., 311 Portlock Road, Honolulu, Hawaii 96825, has been issued a permit to take by Level B harassment several species of non-threatened, non-endangered marine mammals for purposes of commercial photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213

(310/980–4001);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Bin C15700, Building 1, Seattle, WA 98115–0070 (206/526–6150); and

Regional Administrator, Alaska Region, 709 W. 9th Street, Federal Building Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7235).

SUPPLEMENTARY INFORMATION: On September 7, 1999, notice was published in the **Federal Register** (64 FR 48607) that the above-named applicant had submitted a request for a permit to take several species of marine mammals by Level B harassment during the course of commercial photographic activities in Hawaii and South Carolina waters. The requested permit has been issued, under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: October 22, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–28424 Filed 10–28–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, November 9, 1999, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Hydrocarbons

The staff will brief the Commission on options concerning whether the Commission should issue a proposed rule to require child-resistant packaging for low-viscosity liquid hydrocarbons.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 27, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–28548 Filed 10–27–99; 3:36 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Broward County Beach Erosion Control Project in Broward County, FL

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement for construction of appropriate reaches of Segments II (Hillsboro Inlet to Port Everglades) and III (Port Everglades to South County Line) of the Broward County Beach Erosion Control Project. The Project is a cooperative effort between the U.S. Army Corps of Engineers (lead Federal agency) and Broward County Department of Planning and Environmental Protection (cooperating agency).

FOR FURTHER INFORMATION CONTACT: Kenneth Dugger, 904–232–1686, Environmental Branch, Planning

Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

SUPPLEMENTARY INFORMATION: The Broward County, Florida, Beach Erosion Control and Navigation Project was authorized by Public Law (Pub. L.), Public Works—River and Harbor (79 Stat. 1073) passed 27 October 1965 in accordance with the recommendations of the Chief of Engineers in House Document 91, 89th Congress. Authorization for periodic beach nourishment of the Project was extended to 50 years from the date of original construction by Section 506(a)(1) of the Water Resources Development Act of 1996. The Project will involve placement of approximately 3.5 million cubic yards of material along 17.35 miles of Broward County's coastline. The authorized Project includes two segments. In Segment II (Hillsboro Inlet to Port Everglades), fill will be placed along beaches in southern Pompano Beach, Lauderdale-By-The-Sea, and northern and central Fort Lauderdale. In Segment III (Port Everglades to the south County line), fill will be placed along the entire segment, including John U. Lloyd Beach State Recreation Area, Dania Beach, Hollywood, and Hallandale Beach. Fill will be obtained from seven discrete borrow areas located offshore of the central and northern portion of the County. Previous beach fill construction, totaling approximately twelve miles of beach length, has occurred twice in Segment II (Pompano Beach/Lauderdale-By-The-Sea in 1970 and 1983) and twice each in two areas of Segment III (John U. Lloyd Beach State Recreation Area in 1976 and 1989, and Hollywood/Hallandale in 1979 and 1991). Authorization for Federal participation in periodic beach nourishment of Segment II expires in 2020 and in Segment III in 2030.

Alternatives: Alternatives considered include no action, continued nourishment of previously restored areas, initial restoration of previously unconstructed areas, modifications to beach fill amounts, widths, elevations, and/or extent, construction of groins and/or breakwaters, and beach fill/groin combination. Alternative sand sources in addition to the use of a borrow area for nourishment, include the use of other sand sources such as upland sources, Bahamian sand, other foreign sands, or other distant sources.

Issues: The EIS will consider impacts on coral reefs and other hardbottom communities, protected species, shore protection, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, energy conservation, socio-economic resources, and other impacts identified through scoping, public involvement, and interagency coordination.

Scoping: The scoping process will involve Federal, State, County and municipal agencies and other interested persons and organizations. A scoping letter will be sent to interested organizations and individuals and to Federal, State, County, and municipal agencies, requesting their comments and concerns.

Public Involvement: We invite the participation of affected Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties. At this time, we have no plans to hold a public scoping meeting.

Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements,and rights of way; and determination of Coastal Zone Management Act consistency.

Agency Role: As cooperating agency, non-Federal sponsor, and leading local expert; The Broward County Department of Planning and Environmental Protection, Biological Resources Division, will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

DEIS Preparation: It is estimated that the DEIS will be available to the public by January 2000.

Dated: October 1, 1999.

James C. Duck,

Chief, Planning Division.

[FR Doc. 99–28308 Filed 10–28–99; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement (DEIS) for the Transfer and Reuse of Naval Weapons Industrial Reserve Plant (NWIRP), Bethpage, NY

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency (EPA) a DEIS for the transfer and reuse of NWIRP Bethpage, New York. A public hearing will be held for the purpose of receiving oral and written comments on the DEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing.

DATES: The public hearing will be held on November 18, 1999, beginning at 7:00 p.m.

ADDRESSES: The meeting will be held at the Bethpage High School, Cherry Street, Bethpage, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ostermueller (Code 202) at Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Lester, Pennsylvania 19113, telephone (610) 595–0759, facsimile (610) 595–0778).

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy has prepared and filed with the EPA a DEIS for the transfer and reuse of NWIRP Bethpage, New York. A Notice of Intent for this DEIS was published in the **Federal Register** on March 8, 1999 and a public scoping meeting was held in Bethpage, New York, on March 23, 1999.

The proposed action is the U.S. Navy's transfer of the NWIRP Bethpage to the County of Nassau, New York. The transfer of NWIRP Bethpage was authorized by the Department of Defense Authorization Act for fiscal year 1998. The legislation authorizes the Secretary of the Navy to convey NWIRP Bethpage to Nassau County, New York for economic redevelopment purposes or such other public purposes. The NWIRP Bethpage property consists of two non-contiguous land parcels encompassing approximately 109.5 acres and an individual building (Plant 5) located within the former 605-acre Northrop Grumman manufacturing campus in the hamlet of Bethpage, Town of Oyster Bay, Nassau County, New York. Currently, the property is developed with manufacturing, light industrial, and administrative land uses. In December 1998, Nassau County, through the Grumman Master Planning Council, identified a Preferred Reuse Plan for NWIRP Bethpage, described in Navy/Grumman Site Reuse Plan-Alternative Report. This plan is presented as the preferred reuse alternative that, along with its alternatives, is analyzed in the DEIS.

The DEIS evaluates three reuse alternatives. The Reuse Plan Alternative (preferred alternative) proposes a mix of light industry and office, with some warehousing on the 105-acre parcel and commercial use on the 4.5-acre parcel. The Preferred Reuse Plan would result in an estimated 5,410 full-time jobs. "Reuse Alternative A" comprises a mix of light industry and warehousing with limited office use. "Reuse Alternative B would develop the properties entirely for office use. A "No Action Alternative" was also evaluated that assumes no disposal, and therefore, retention of the property by the U.S. Navy in caretaker status.

Potential impacts evaluated in the DEIS include, but are not limited to: Land use, socioeconomics, community facilities, transportation, air quality, noise, infrastructure, cultural resources, natural resources, hazardous wastes and soils contamination. Analysis includes the evaluation of direct, indirect, short-term, and cumulative impacts; and irreversible and irretrievable commitment of resources associated with the proposed action. No decision on the proposed action will be made until the NEPA process has been completed and a Record of Decision is signed.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups and public libraries. The DEIS is also available for public review at the Bethpage Public Library located at 47 Powell Avenue, Bethpage, New York 11714.

Navy will conduct a public hearing to receive oral and written comments concerning the DEIS. A brief presentation will precede a request for public information and comments. Navy representatives will be available at the hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be heard and transcribed by a stenographer. To ensure accuracy of the record, all statements should also be submitted in writing. All statements, both oral and written, will become part of the public record in the study. Equal weight will be given to both oral and written comments. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Code 202, 10 Industrial Highway, Lester, Pennsylvania 19113, (Attn. Mr. Robert Ostermueller, telephone (610) 595-0759, facsimile (610) 595-0778). Written comments must be received not later than Monday, December 13, 1999.

Dated: October 26, 1999.

C.G. Carlson,

Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 99-28403 Filed 10-28-99; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be reviewing the fiscal plan for next year and the status of the University's accreditation process with the Southern Association of Colleges and Schools. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Monday and Tuesday, November 15-16, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Marine Corps University Research Center, 2040 Broadway Street, Room 164, Quantico, Virginia 22134.

FOR FURTHER INFORMATION CONTACT: Garry Smith, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, (703) 784-4037.

Dated: October 19, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 99-28286 Filed 10-28-99; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 99-1 of the Defense Nuclear Facilities Safety Board, Safe Storage of Fissionable Material called "Pits".

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 99-1, concerning the safe storage of fissionable material called "pits," on August 27, 1999 (64 FR 46894). Under section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Department of Energy was required to transmit a response to the Defense Nuclear Facilities Safety Board by October 12, 1999. The Secretary's response follows.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before November 29, 1999.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Beck, Deputy Assistant Secretary for Military Application and Stockpile Operations, Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington DC, 20585.

Issued in Washington, DC, on October 25, 1999.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

Dear Mr. Chairman: The Department of Energy acknowledges receipt of Recommendation 99-1, issued on August 11, 1999, and published in the **Federal Register** on August 27, 1999, and accepts the Board's recommendations.

The Department has initiated activities to develop and implement improved pit storage programs and to develop a shipping container for transporting pits to the plutonium disposition facility. We also implemented a pit repackaging program to ensure that pits are stored in accordance with applicable specifications.

In support of nuclear material disposition activities, departmental program offices have been working together to ensure that timely actions are completed to accomplish defined programmatic end states. Actions include a systems analysis study to generate programmatic requirements for a pit shipping container, a review of pit surveillance data to characterize pit integrity in current environments, and increasing the pit repackaging rate to 200 pits per month. The Department will continue these efforts to ensure the adequacy of complex-wide pit management.

The Department accepts the recommendations contained in Recommendation 99–1 and will develop an implementation plan to accomplish the following:

1. Expeditiously resolve the compatibility issues that have the potential to impact the long-term safe storage of pits. Through a container surveillance program, the Department will monitor the AL–R8 Sealed Insert container to ensure its continued quality and reliability.

2. Ensure that repackaging takes place at an accelerated rate so that pits are expeditiously placed into containers suited to safe storage. The actions undertaken in the implementation plan will focus on ensuring a safe and timely repackaging program. A process to develop a resource-loaded repackaging schedule will be established with an initial baseline repackaging rate of 200 per month.

3. Develop a system of statistical sampling for the AL–R8 Sealed Insert containers to assess container integrity and to provide horizons for future repackaging and repackaging rate requirements.

4. Assign a single individual the responsibility and accountability, along with the necessary resources and authority for accomplishment of the above.

Mr. David E. Beck, Deputy Assistant Secretary for Military Application and Stockpile Operations, Defense Programs, (202) 586–4879, is appointed the manager responsible for preparation of the implementation plan in accordance with sub-recommendation 4 of the Defense Nuclear Facilities Safety Board letter. He will work with you to develop a plan that meets our mutual expectations.

Yours sincerely,

Bill Richardson

[FR Doc. 99–28318 Filed 10–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Fire Protection Systems Upgrade at the Oak Ridge National Laboratory

AGENCY: Office of Science, DOE.

ACTION: Floodplain statement of findings.

SUMMARY: This is a Floodplain Statement of Findings for upgrading the fire suppression and life safety systems in selected facilities at the Oak Ridge National Laboratory (ORNL), Roane and Anderson Counties, Tennessee, in accordance with 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. Fire suppression and life safety systems in many ORNL facilities are over 30 years old, obsolete, and do not provide adequate fire protection for personnel, equipment, and research activities. The installation of below ground waterlines would include disturbances of the 100-year floodplain of White Oak Creek (WOC). DOE has prepared a floodplain assessment describing the possible effects, alternatives, and measures designed to avoid or minimize potential harm to floodplains or their flood storage potential. DOE will allow 15 days of public review after publication of the Statement of Findings before implementation of the proposed action.

FOR FURTHER INFORMATION CONTACT: Stanley D. Frey, U.S. Department of Energy, Post Office Box 2008, Oak Ridge, TN 37831–6269, (423) 576–0136.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: A Notice of Floodplain Involvement was published in the **Federal Register** on September 16, 1999 (64 FR 50277), and subsequently a floodplain assessment was prepared. The floodplain assessment covers the installation of approximately 7,200 ft of underground water mains (16-in-diameter piping installed in a loop configuration) in the 6000 Area of ORNL and would include (as detailed in the September 16, 1999, notice), but is not limited to: (1) Constructing coffer dams or similar structures in WOC and its tributaries; (2) routing the stream water around the disturbed channel areas by constructing a bypass using a culvert or similar device; (3) removing stream bed rock in preparation for the under-creek, reinforced-concrete pipe trench; (4) pouring the concrete; (5) embedding the pipeline in the concrete structure; (6) covering the structure to the level of the original stream bed; and (7) routing the stream water back into the stream bed. Activities outside the creek/stream channel but within the floodplain area would include (1) excavating a trench approximately 5 ft wide and 4 ft deep, (2) installing the pipeline, and (3) covering the pipe with excavated fill. No aboveground structures (i.e., fire hydrants, valves, etc.) would be located in the floodplain area.

Alternatives considered in the assessment were (1) no action, (2) installing water mains above the floodplain, (3) installing water mains below ground by tunneling beneath the floodplain and creeks, and (4) installing water mains below ground to provide water in a dependable looped system. The no-action alternative would result in noncompliance with DOE Order 420.1 (Facility Safety) and the potential failure of fire suppression systems in the 6000 Area of ORNL. Installing water mains above the floodplain would require additional equipment and material (*e.g.*, force main, insulation, *etc.*), and the increased number of 90-degree turns will increase the possibility of pipe stress-failure. Tunneling beneath the floodplain, creeks, and wetlands was not considered practicable because of the shallow elevation of bed rock and the difficulties associated with tunneling when compared to the preferred alternative. Therefore, after considering the various alternatives and the area to install the water mains, no other practicable routes were available that would avoid the floodplain area of WOC. The activities addressed by the floodplain assessment will result in no measurable impact on floodplain cross-section or flood stage, and thus do not increase the risk of flooding.

Water quality within WOC and its tributaries will be protected during excavation to the extent practicable by several measures. Administrative controls will be used to stop work during major storm events. When excavations would remain exposed overnight, erosion controls will be installed to prevent the transport of silt downstream by stormwater flows. Additionally, silt dams will be constructed in areas where the existing drainage right-of-way route deviates significantly from the defined drainage channel. Restoration of excavated areas will include grading to avoid steep or vertical slopes, and to minimize ponding and backfilling. Areas of exposed soil outside the stream channels will be mulched and reseeded with an annual grass to minimize erosion and allow the natural seedbank to reestablish vegetative cover.

Equipment and personnel in the floodplain area will be limited in accordance with an approved Best Management Practices (BMP) plan, and excavated hydric soils will be placed next to the site and reused as fill material. In addition, silt fences will be installed to minimize runoff into the floodplain in accordance with the BMP.

Underground piping installation activities addressed in the floodplain assessment conform to applicable floodplain protection standards.

Issued in Oak Ridge, Tennessee on October 20, 1997.

James L. Elmore,

Alternate National Environmental Policy Act Compliance Officer.

[FR Doc. 99–28319 Filed 10–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 1999.

ACHARYA, SARBESWAR NMN
ACKERLY, LAWRENCE R
ADAMSON, DANIEL M
ALCOCK, ROBERT M
ALLARD III, EDWARD T
ANDERSON, BROOKE D
ARMSTRONG, M BRENT
ARTHUR III, WILLIAM JOHN
BACA, FRANK A
BACA, MARK C
BAJURA, RITA A
BAKER, KENNETH E
BAMBERGER, CRAIG S
BARKER JR, WILLIAM L
BARRETT, LAKE H
BAUER, CARL O
BAUER, LINDA K
BECKETT, THOMAS H
BEECY, DAVID J
BENEDICT, GEORGE W
BERGHOLZ JR, WARREN E
BERKOVITZ, DAN M
BERNARD, PETER A
BERUBE, RAYMOND P
BIELAN, DOUGLAS J
BLACK, RICHARD L
BLACKWOOD, EDWARD B
BLADOW, JOEL K
BORCHARDT, CHARLES A
BORGSTROM, CAROL M
BORGSTROM, HOWARD G
BORNHOFT JR, BUDD B
BOSTOCK, JUDITH L
BOWMAN, GERALD C
BOYD, GERALD G
BRADLEY JR, THERON M
BRADLEY, SAMUEL M
BRECHBILL, SUSAN R
BRENDLINGER, TERRY L
BREZNAY, GEORGE B
BRICE, JAMES F
BRODMAN, JOHN R
BROWN III, ROBERT J
BROWN JR, CHARLES H
BROWN, FREDERICK R
BROWN, RICHARD W
BURNS, ALLEN L
BURROWS, CHARLES W
CAMPBELL, ELIZABETH E
CARABETTA, RALPH A
CARDINALI, HENRY A
CARLSON , JOHN T
CARLSON, KATHLEEN ANN
CARLSON, LYNDA T
CASTELLI, BRIAN T
CAVANAGH, JAMES J
CHRISTENSEN, WILLIAM J
CHRISTOPHER, ROBERT K
CHUN, SUN W
CLARK, JOHN R
CLAUSEN, MAX JON
COBURN, LEONARD L
COMBS, MARSHALL O
COOK, BEVERLY ANN
COOK, JOHN S
COWAN, GWENDOLYN S
CRAIG JR, JACK R
CRANDALL, DAVID H
CRAWFORD, TIMOTHY S
CROSS, CLAUDIA A
CROWE, RICHARD C
CUMESTY, EDWARD G
CURTIS, JAMES H
CYGELMAN, ANDRE I
DALTON, HENRY F
DARUGH, DAVID G
DAVIES, NELIA A
DAVIS, JAMES T
DE LORENZO, RALPH H
DECKER, JAMES F
DEDIK, PATRICIA
DEGRASSE JR, ROBERT W
DEHANAS, THOMAS W
DEHMER, PATRICIA M
DEHORATIIS JR, GUIDO
DEIHL, MICHAEL A
DEMPSEY, ROBERT D
DENNISON, WILLIAM J
DER, VICTOR K
DEVER, GERTRUDE L
DIFIGLIO, CARMEN NMN
DIRKS, TIMOTHY M
DIVONE, LOUIS V
DIXON, ROBERT K
DOHERTY, DONALD P
DOMAGALA, MARTIN J
DOOLEY III, GEORGE J
DURNAN, DENIS D
DYER, J RUSSELL
EBERWEIN, CATHERINE D
EDMONDSON, JOHN J
EGGER, MARY H
EMMETT, ROBERT A
ENGEL, WALTER P
ERICKSON, LEIF
ESVELT, TERENCE G
FALLE, J GARY
FARIELLO, THERESA M
FELDT, ELISABETH G
FIDLER, SHELLEY N
FIORE, JAMES J
FITZGERALD JR, JOSEPH E
FITZGERALD, CHERYL P
FOLKER, ROBERT D
FORD, JAMES L
FOWLER, JENNIFER JOHNSON
FRANKLIN, JOHN R
FRAZIER, MARVIN E
FREI, MARK W
FRENCH, RICHARD T
FURIGA, RICHARD D
FYGI, ERIC J
GARSON, HENRY K
GEBUS, GEORGE R
GEIDL, JOHN C
GIBSON JR, WILLIAM C
GIBSON, JUDITH D
GIESSING, DANIEL F
GILBERTSON, MARK A
GILLIGAN, JOHN M
GINSBERG, MARK B
GLASS, RICHARD E
GLICK, RICHARD A.
GOLAN, PAUL M
GOLDENBERG, NEAL NMN
GOLDENBERG, RALPH D
GOLDMAN, DAVID TOBIAS
GOLDSMITH, ROBERT NMN
GOLLOMP, LAWRENCE A
GOODRUM, WILLIAM S
GOTTLIEB, PAUL A
GREENWOOD, JOHNNIE D
GROSS, THOMAS J
GRUENSPECHT, HOWARD K
GUIDICE, CARL W
GUNN JR, MARVIN E
GURULE, DAVID A
HABERMAN, NORTON NMN
HABIGER, EUGENE E
HACSKAYLO, MICHAEL S
HAMER JR, DAVID L
HANSEN, CHARLES A
HARDIN, MICHAEL G
HARDWICK JR, RAYMOND J
HARTMAN, JAMES K
HASPEL, ABRAHAM E
HAWKINS, FRANCIS C
HEADLEY, LARRY C
HEATH, CHARLES C
HEENAN, THOMAS F
HEINKEL, JOAN E
HENDERSON, LYNWOOD H
HENSLEY JR, WILLIE F
HEUSSER, ROGER K
HICKOK, STEVEN G
HIRAHARA, JAMES S
HIRNING, KATHLEEN M
HOFFMAN, ALLAN R
HOLBROOK, PHILLIP L
HOLGATE, LAURA S H
HOLMES, NANCY H
HOOPER, MICHAEL K
HOPF, RICHARD H
HOPKINS, T J
HORTON, DONALD G
HOWES, WALTER S
HUGHES, JEFFREY L
HUIZENGA, DAVID G

HUMPHREY, CALVIN R
HUNEMULLER, MAUREEN A
HUTZLER, MARY JEAN
INADOMI, LEEANN R
INLOW, RUSH O
IZELL, KATHY D
JAFFE, HAROLD
JOHANSEN, JUDITH A
JOHNSON, FREDERICK M
JOHNSON, MILTON D
JOHNSON, OWEN B
JOHNSON, SANDRA L
JOHNSTON, MARC
JONES, RICK
JONES, DAVID A
JOSEPH, ANTIONETTE GRAYSO
JUAREZ, LIOVA D
JUCKETT, DONALD A
JUDGE, GEOFFREY J
KELLY, CYNTHIA C
KENDERDINE, MELANIE ANNE
KENNEDY, JOHN P
KIGHT, GENE H
KILGORE, WEBSTER C
KILPATRICK, MICHAEL A
KING, GARY K
KINZER ,JACKSON E
KIRKMAN, LARRY D
KLAUS, DAVID M
KLEIN, KEITH A
KLEIN, SUSAN ELAINE
KNOLLMEYER, PETER M
KONOPNICKI, THAD T
KOVAR, DENNIS G
KRIPOWICZ, ROBERT S
KUSEK, JODY Z
LANDERS, JAMES C
LANE, ANTHONY R
LANGE, ROBERT G
LASH, TERRY R
LEITER, DAVID J
LEVIN JR, WILLIAM B
LEWIS JR, WILLIAM A
LEWIS, ROGER A
LIEN, STEPHEN CT
LIGHTNER, RALPH G
LINGLE, LINDA A
LIVINGSTON-BEHAN, ELLEN A
LOWE, DAVID C
LOWE, OWEN W
LYLE, JERRY L
MAGWOOD, IV WILLIAM D
MAHALEY, JOSEPH S
MAHARAY, WILLIAM S
MAHER, MARK W
MALOSH, GEORGE J
MANGENO, JAMES J
MANN, THOMAS O
MARIANELLI, ROBERT S
MARKEL JR, KENNETH E
MARLAY, ROBERT C
MASTERSON, MARY A
MAXEY, KENNETH G
MAZUR, MARK J
MCCALLUM, EDWARD J
MCCLARY, MICHAEL VANCE
MCCOY III, FRANK R
MCGUIRE, PADDY J
MCKEE, BARBARA N
MELLINGTON, SUZANNE P
MICHELSEN, STEPHEN J
MILLER, CLARENCE L
MILLER, DEBORAH C
MILLHONE, JOHN P
MILLMAN, WILLIAM S
MILNER, RONALD A
MONETTE, DEBORAH D
MOORER, RICHARD F
MORGAN, JEAN M
MORRIS, MARCIA L
MOSQUERA, JAMES P
MOURNIGHAN, STEPHEN D
MULHOLLAND, JOSEPH W
MURPHY, ALICE Q
MURPHY, ROBERT E
NAGURKA, STUART C
NEALY, CARSON L
NEILSEN, FINN K
NELSON, RODNEY R
NICHOLS, CLAYTON R
NOLAN, ELIZABETH A
NORMAN, PAUL E
NULTON, JOHN D
NULTY, TIMOTHY E
O BRIEN, BETSY K
O'FALLON, JOHN R
OLIVER, LAWRENCE R
OOSTERMAN, CARL H
OWENDOFF, JAMES M
PARNES, SANFORD J
PATIL, PANDIT G
PATRINOS, ARISTIDES A
PATTON, GLORIA S
PEARSON, ORIN F
PENRY, JUDITH M
PERIN, STEPHEN G
PETTENGILL, HARRY J
PETTIS, LAWRENCE A
PIPER II, LLOYD L
PODONSKY, GLENN S
POE, ROBERT W
PONCE, VICTORIA L
POWERS, JAMES G
POWERS, KENNETH W
PRAY, CHARLES P
PRICE JR, ROBERT S
PRUDOM, GERALD H
PRZYBYLEK, CHARLES S
PUMPHREY, DAVID L
PYE, DAVID B
RABBEN, ROBERT G
RHOADES, DANIEL R
RICHARDSON, HERBERT
RICHARDSON, STEVEN D
ROBERSON, JESSIE M
ROBERTS, MICHAEL NMN
ROBERTSON, JOHN S
ROBINSON, JOHN M
ROBISON, SALLY A
RODEHEAVER, THOMAS N
RODEKOHR, MARK E
RODGERS, STEPHEN J
ROHLFING, JOAN B
ROLLOW, THOMAS A
ROONEY, JOHN M
ROSEN, SIMON PETER
ROSSELLI, ROBERT M
RUDINS, GEORGE NMN
RUDY, GREGORY P
RYDER, THOMAS S
SALM, PHILIP E
SAN MARTIN, ROBERT L
SATO, WALTER N
SCHEPENS, ROY J
SCHMITT, EUGENE C
SCHMITT, WILLIAM A
SCHNAPP, ROBERT M
SCHNEIDER, SANDRA L
SCHWARTZ, MARK S
SCOTT, RANDAL S
SELLERS, ELIZABETH D
SENA, RICHARD F
SHELOR, DWIGHT E
SHERMAN, HELEN O
SIEBERT JR, ARLIE B
SILBERGLEID, STEVEN A
SINGER, MARVIN I
SISSON, BARBARA A
SITZER, SCOTT B
SKUBEL, STEPHEN C
SMEDLEY, ELIZABETH E
SMITH, ALAN C
SMITH, ALEXANDRA B
SOHINKI, STEPHEN M
SPECTOR, LEONARD S
SPIGAL, HARVARD P
STADLER, SILAS D
STAFFIN, ROBIN NMN
STALLMAN, ROBERT M
STARK, RICHARD M
STEWART JR, JAKE W
STEWART JR, FRANK M
STRAKEY JR, JOSEPH P
STRAUSS, NEAL J
STUART, CHARLES E.
SULAK, STANLEY R
SULLIVAN, JOHN R
SUMMERVILLE, SARAH J
SWEENEY II, JAMES R
SWINK, DENISE F
SYE, LINDA G
SYLVESTER, WILLIAM G
TABOAS, ANIBAL L
TAMURA, THOMAS T
TAVARES, ANTONIO F
TEDROW, RICHARD T
THOMAS, IRAN L
THROCKMORTON, RALPH R
TODD, G THOMAS
TOENYES, JERRY W
TOMFORD, NANCY W
TORKOS, THOMAS M
TRIAY, INES R
TRYON, ARTHUR E
TSENG, JOHN C
TURI, JAMES A
TURNER, JAMES M
VAGTS, KENNETH A
VANZANDT, VICKIE A
VASQUEZ, PHILIP D
WAGNER, M PATRICE
WAGNER, MARY LOUISE
WAISLEY, SANDRA L
WALDRON, ROBERT E
WALGREN, DOUGLAS NMN
WALSH, ROBERT J
WARNICK, WALTER L

WATKINS, ANTHONY LEE
WEGNER, GERALD C
WEIGAND, GILBERT G
WERNER, JAMES D
WHITAKER JR, MARK B
WHITE, JAMES K
WHITEMAN, ALBERT E
WIEKER, THOMAS L
WILKEN, DANIEL H
WILLIAMS, MARK H
WILLIS, JOHN W
WILMOT, EDWIN L
WISENBAKER JR, WILLIAM
WRIGHT, STEPHEN J
WYMER, NATALIE D
YUAN-SOO HOO, CAMILLE C
ZAMORSKI, MICHAEL J

Issued in Washington, DC, October 21, 1999.

David M. Klaus,

Director of Management and Administration.

[FR Doc. 99–28320 Filed 10–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of PRB Chair.

SUMMARY: This notice designates the Performance Review Board Chair for the Department of Energy.

EFFECTIVE DATE: The appointment is effective as of September 30,1999.

Performance Review Board Chair

David L. Hamer, Department of Energy.

Issued in Washington, DC, October 21, 1999.

David M. Klaus,

Director of Management and Administration.

[FR Doc. 99–28321 Filed 10–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–195–000]

Geysers Power Company, LLC; Notice of Filing

October 25, 1999.

Take notice that on October 14, 1999, Geysers Power Company, LLC filed an amendment to their quarterly report for the quarter ending June 30, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 3, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28329 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–6–000, CP00–7–000, and CP00–8–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Applications for Certificates

October 25, 1999.

Take notice that on October 15, 1999, Gulfstream Natural Gas System, L.L.C. (Gulfstream or Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed an application in Docket No. CP00–6–000 pursuant to and in accordance with Section 7(c) of the Natural Gas Act (NGA) and the optional certificate procedures of Part 157(E) of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline facilities. On that same date Gulfstream filed in Docket No. CPP00–7–000 for a blanket certificate of public convenience and necessity to render firm and interruptible transportation services on an open access basis pursuant to Part 284(G) of the Commission's regulations and for approval of initial rates. Also, Gulfstream requests in Docket No. CP00–8–000 the issuance of a blanket certificate of public convenience and necessity under Part 157(F) of the Commission's regulations authorizing certain facility construction, operation and abandonment, all as more fully set forth in the applications which are on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Mr. Richard H. Leehr, Vice President, Gulfstream Natural Gas System, L.L.C., 500 Renaissance Center, Detroit, Michigan 48243, or call (313) 496–3679.

Consistent with Section 157.102(b) of the Commission's regulations, Gulfstream requests that its application be considered under the optional procedures of part 157(E) and agrees to comply with all terms and conditions specified in Section 157.103.

Gulfstream requests that the Commission issue a preliminary determination on the non-environmental aspects of this proposal by April 15, 2000, and a final order granting the authorizations requested herein by February 2001. Gulfstream states that this timing is necessary to allow construction of the project can commence no later than June 2001 and be completed prior to June 2002, the proposed-in-service date for this project.

Gulfstream states that it does not currently own pipeline facilities and is not currently engaged in any natural gas transportation operations. Upon acceptance of the certificate requested in this application and commencement of operations, Gulfstream states that it will become a "natural gas company" within the meaning of Section 2(6) of the NGA and, as such, will be subject to the jurisdiction of the Commission.

Gulfstream states that the State of Florida is experiencing a substantial increase in the demand for electric power, which has led to an increasing need for natural gas as the fuel of choice for generating such power. Gulfstream contends that Florida will require more than 9,600 megawatts of generating capacity, equivalent to approximately 2 Bcf per day (Bcf/d) of natural gas demand, by the year 2007 to meet the needs of its growing population. To meet this need for natural gas, Gulfstream proposes to construct, own and operate approximately 744 miles of natural gas pipeline of varying diameter to transport up to 1.13 Bcf/d of natural gas from supply areas in Alabama and Mississippi across the Gulf of Mexico to new incremental markets in central and eastern Florida. It is stated that Gulfstream will serve electric utilities, gas distribution companies, municipalities and independent power generators. The project will include one compressor station, six gas receiving and sixteen delivery meter stations, a pressure regulator station, mainline valves, and other associated facilities, including pig launching and receiving facilities. Gulfstream estimates that the total capital cost of constructing the pipeline and appurtenant facilities will be $1,653,934,142.

Gulfstream states that its system consists of three interrelated geographic components: (1) Supply area facilities in Alabama and Mississippi; (2) transmission facilities in the gulf of Mexico; and (3) pipeline facilities located in and serving the State of Florida.

In the supply area, Gulfstream proposes several interconnections. In Alabama, Gulfstream proposes to interconnect with the Dauphin Island Gathering Partners (DIGP) 20-inch pipeline system, and with the Mobile Bay Processing Partners' Plant (known as the "DIGP Plant"). Gulfstream also proposes Alabama interconnections with Mobil's Mary Ann Plant, Williams' Mobile Bay Processing Plant, and Koch-Gateway Pipeline Company. In Mississippi, Gulfstream proposes to interconnect with the Pascagoula Gas Processing Plant (known as the "Destin Plant") which is operated by Amoco. Through the Koch-Gateway Interconnection, and the Destin and Williams' Plant connections, Gulfstream states that shippers will have access to several interstate natural gas pipeline systems.

According to Gulfstream, the six receipt points are designed to provide measurement capacity, in the aggregate, of approximately 2.2. Bcf/d, thus creating substantial flexibility for shippers acquiring gas supply to fully utilize the 1.13 Bcf/d of pipeline capacity. Gulfstream states that this gas supply will be commingled and transported to a central compressor station in Mobile County, Alabama (Station 100). It is stated that the compressor station will consist of 120,000–ISO rated horsepower (hp) of compression (three operating 30,000–ISO hp units plus one stand-by unit [1]). Gulfstream states that once compressed, the gas will be transported across the Gulf of Mexico using approximately 429.6 miles of 36-inch pipeline (Line 200), ending onshore at Station 200, a pressure regulator station in Manatee County, Florida.

Downstream of Station 200, Gulfstream proposes to construct a pipeline system that traverses Manatee, Hardee, Polk, Osceola, Highlands, Okeechobee, Martin and St. Lucie Counties and terminates in Palm Beach County, Florida. Gulfstream contends that the Florida mainline totals 173.3 miles of pipe and consists of Line 300 (46.2 miles of 36-inch pipe), Line 500 (89.4 miles of 30-inch pipe), and Line 700 (37.7 miles of 24-inch pipe). It is stated that three delivery meter stations (Nos. 505, 515, and 700) are located directly off of this mainline. In addition, it is stated that the mainline feeds four laterals, two of which include "sublaterals" that connect directly to specific plant sites. Gulfstream states that these lateral total 70.8 miles of pipe and are comprised of Line 330 (9.1 miles of 24-inch pipe), in Hardee and Polk Counties, Line 400 in Polk County (33.4 miles of 30-inch pipe), Line 600 (22 miles of 24-inch pipe), in Martin and St. Lucie Counties and Line 710 (6.1 miles of 16-inch pipe) in Palm Beach County. Lastly, the sublaterals include 41.7 miles of pipe and consist of: Line 320 (0.9 miles of 16-inch pipe) in Hardee County; Line 310 (0.7 miles of 16-inch pipe), in Polk and Hardee Counties; Line 410 (6.1 miles of 16-inch pipe); Line 430 (1.2 miles of 16-inch pipe), and Line 440 (6.9 miles of 16-inch pipe) all within Polk County; and Line 450 (25.9 miles or 24-inch pipe) in Polk and Osceola Counties, Florida. Gulfstream states that an additional 13 delivery points are proposed to be located off of the above laterals and sublateral. Gulfstream also proposes to construct pig launching and receiving facilities and mainline valves.

According the Gulfstream, the pipeline was designed to parallel existing rights-of-ways (ROW) as often as feasible. Gulfstream states that of the total 307.1 pipeline miles constructed onshore in Mississippi, Alabama, and Florida, approximately 77 percent, or 235 miles will follow existing ROW.

Gulfstream states that construction ROW for its pipeline typically will be: for 30-inch to 36-inch pipe, 110 feet wide; for 24-inch pipe, 95-feet wide; and for 16-inch pipe, 80 feet wide. It is stated that the pipeline will require 50 feet of permanent ROW for 24-inch to 36-inch pipe and 30 feet for 16-inch pipe and up to 30 to 60 feet of temporary ROW. Gulfstream states that during construction it will require pipe coating and storage yards, and contractor staging areas. It is further stated that additional workspace may be required at major road, rail and river crossings and under other special circumstances.

Gulfstream states that the pipeline facilities will be constructed, at a minimum, to meet the requirements of the Natural Gas Pipeline Safety Act of 1968 and 49 CFR Part 192, Transportation of Natural Gas and Other Gas by Pipeline: Minimum Federal Standards, as well as other applicable construction and safety requirements.

Gulfstream states that as a result on an open season it held from March 15, 1999 to March 29, 1999, it has negotiated, with non-affiliated shippers, 10 precedent agreements for firm transportation service for terms of 15 to 20 years. It is stated that two of these customers have options to increase their firm contractual volumes, which, if exercised, would increase the capacity contracted for. Gulfstream states that, overall, their firm commitments currently represent a significant percentage of the pipeline capacity. Gulfstream further states that because shippers negotiated confidentiality agreements as part of their precedent agreements, and since its application is filed under the optional certificate regulations, which do not require a showing of market support, Gulfstream is not filing the precedent agreements with its application.

Gulfstream proposes to offer firm and interruptible transportation services, and interruptible parking and lending services on a non-discriminatory, open-access basis, consistent with Commission policy. Gulfstream proposes to provide a firm transportation service under Rate Schedule FTS, an interruptible transportation service under Rate Schedule ITS and interruptible parking and lending services under Rate Schedule PALS, under rates, terms and conditions in its pro forma tariff included with the application. Gulfstream states that under Rate Schedule FTS, shippers will be entitled to elect a firm Maximum Hourly Quantity (MHQ) for delivery of gas at the shipper's primary delivery point. It is stated that this firm hourly quantity may be at the rate of 4.2 percent, 5.0 percent, 6.0 percent, 7.0 percent, or 8.0 percent of the shipper's maximum daily quantity. Gulfstream states that the firm hourly entitlement is designed to serve the fluctuating needs of electric generation customers and other shippers with similar requirements.

Gulfstream states that the shippers subscribing to its firm transportation service will be given the option of paying a negotiated rate or a cost-based recourse rate for service under its firm rate schedule. Gulfstream states that its recourse rates are based on a first year total annual cost of service of $273.2 million. It is stated that the cost of service includes an overall return on rate base of 9.8 percent, predicated on a capital structure of 70 percent debt and 30 percent equity, a propose return on common equity of 14 percent, and an 8 percent cost of debt. It is further stated that the initial net rate base used is $1,624.1 million.

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[1] Gulfstream intends to use the stand-by unit to enhance system reliability. The stand-by unit will only be used for back-up compression in the event of outages in other units.

Gulfstream states that its proposed rate design is intended to take into account the service flexibility which will be provided to its shippers while employing a rate structure which is consistent with Commission policies. Gulfstream contends that since the operational and contractual delivery characteristics of its system will be similar to those of a storage field, the rate design proposed for Gulfstream's recourse rates is based upon the *Equitable*[2] method used by the Commission to design rates for storage service.

Gulfstream seeks a limited waiver for certain aspects of its tariff. It states that Section 154.109 of the Commission's regulations requires that the general terms and conditions of a tariff must contain a statement of the order in which the pipeline discounts its rates and charges, and that this order must be in accordance with Commission policy. Gulfstream requests waiver of the requirement to included a discount recognition provision in its tariff. According to Gulfstream, this requirement is inapplicable to it because Gulfstream currently has no categories of costs other than the base rate reservation charge. Gulfstream claims that the Commission has granted this waiver to other new pipeline projects under similar circumstances.[3]

Gulfstream asserts that approval of its application is required by the public convenience and necessity. Gulfstream states that it has complied with the filing requirements of Section 157.102 and has satisfied the terms and conditions of Section 157.103. In that regard, Gulfstream states that the certificate which it seeks will be nonexclusive, and will in no way prejudice any other application for other certificates. It is stated that the certificate will also provide authority to construct and operate facilities to provide new service and the rates proposed for services comply with the objectives set forth in § 157.103(d) of the regulations.

In addition to satisfying the requirements of the optional certificate regulations, Gulfstream indicates that there is a substantial factual basis from which to conclude that the project is required by the present or future public convenience and necessity. First, it is stated that there is substantial market demand for the project. Second, Gulfstream states that the project is consistent with and promotes the policies and goals of the Commission. Finally, it is stated that there are substantial regional benefits which will occur as a result of constructing the project.

Any person desiring to be heard or to make protest with reference to said application should on or before November 15, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

Take further notice that pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Gulfstream to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–28324 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

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[2] Equitable Gas Company, 36 FERC ¶ 61,147 (1986).

[3] See Vector Pipeline, L.P., 85 FERC at p. 61,304; Alliance Pipeline L. P., 80 FERC at 61,598.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–111–000]

Little Bay Power Corporation; Notice of Filing

October 25, 1999.

Take notice that on October 14, 1999, Little Bay Power Corporation (Little Bay) tendered for filing a service agreement between Great Bay Power Corporation and Little Bay for service under Little Bay Rate Schedule No. 1. Little Bay's rate schedule was accepted for filing by the Commission on June 1, 1999, in Docket No. ER99–3050–000. Under the service agreement, Little Bay will provide Great Bay with energy and/or capacity on a short-term basis.

The service agreement is proposed to be effective November 1, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 3, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28326 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–176–000]

Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin); Notice of Filing

October 25, 1999.

Take notice that on October 8, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) tendered for filing a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Public Service Corporation.

NSP requests that the Commission accept the agreement effective September 30, 1999, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 3, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28328 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–11–00]

Tennessee Gas Pipeline Company; Notice or Request Under Blanket Authorization

October 25, 1999.

Take notice that on October 20, 1999, Tennessee Gas Pipeline (Tennessee), a Delaware Corporation, Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP00–11–000, pursuant to Sections 157.205 and 157.208(f)(2) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the maximum allowable operating pressure (MAOP) through an uprate of Tennessee's Grand Cheniere-N.W. Chalkey Line also designated as Line 507A–800 (Line 807A–800) and a delivery meter designated as Meter No. 02–0484 located in Calcasieu Parish, Louisiana, authorized in blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Tennessee proposes to increase the MAOP of Line 507A–800 from 800 p.s.i.g. to 999 p.s.i.g. Tennessee wishes to uprate Line 507A–800 and Meter No. 02–0484 in order to increase the operational efficiency of the lateral and to eliminate the manual efforts required to operate the lateral. Line 507A–800 is a lateral that consists of approximately 2.2 miles of six-inch diameter pipe. The lateral is used only to provide natural gas deliveries to a single agricultural end-user in Calcasieu Parish, Louisiana. Line 507A–800 is connected to Tennessee's mainline 507A–100 which operates at 999 p.s.i.g. To provide service to the delivery tap on the lateral, Meter No. 02–0484, Tennessee personnel must manually bleed gas into Line 507A–800 from Line 507A–100. Once Line 507A–800 and Meter No. 02–0484 are uprated to 999 p.s.i.g., the manual monitoring can be eliminated. The estimated cost of this uprate is $15,000.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 99–28325 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–115–000, ER00–116–000, and ER00–117–000]

West Georgia Generating Company L.P., Ameren Services Company, Central and South West Services, Inc., Notice of Filings

October 25, 1999.

Take notice that on October 14, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending March 31, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 3, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/

online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28327 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–11–000, et al.]

LSP-Kendall Energy, LC, et al.; Electric Rate and Corporate Regulation Filings

October 21, 1999.

Take notice that the following filings have been made with the Commission:

1. LSP-Kendall Energy, LC, et al.

[Docket No. EC00–11–000]

Take notice that, on October 13, 1999, LSP-Kendall Energy, LC, LSP Energy Limited Partnership and Denver City Energy Associates, L.P. filed a joint application pursuant to Section 203 of the Federal Power Act for approval of a reorganization of their company ownership structure. The proposed reorganization will not change the ultimate ownership or control of the joint Applicants or of their respective electric generation facilities nor will it affect the respective electric rate schedules of the joint Applicants on file with the Commission.

The joint Applicants have also requested that the Commission consider and approve the joint application on an expedited basis and grant waivers of the Commission's regulations so that the reorganization may be completed on the earliest possible date, but no later than November 25, 1999. A copy of the application has been served on the Illinois Commerce Commission, the Public Service Commission of Mississippi and the Public Utilities Commission of Texas.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. FortisUS Energy Corporation

[Docket No. EC00–13–000]

Take notice that on October 15, 1999, FortisUS Energy Corporation (FortisUS) submitted for filing, pursuant to Section 203 of the Federal Power Act, an application for authorization to acquire through purchase certain facilities that may be subject to the jurisdiction of the Commission. FortisUS seeks authorization for the acquisition of facilities associated with its purchase of hydroelectric projects in the state of New York with a total net capacity of not more than 35.5 MW of capacity.

FortisUS requested expedited action on its application.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. La Paloma Generating Company, LLC

[Docket No. EG00–5–000]

Take notice that on October 13, 1999, La Paloma Generating Company, LLC (La Paloma), a Delaware limited liability corporation with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for determination, on an expedited basis, of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

La Paloma proposes to own or lease and operate a nominally rated approximately 1,040 MW natural gas-fired, combined cycle power plant near the town of McKittrick, California. The proposed power plant is expected to commence commercial operation beginning in the winter of 2001. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its comments to those that concern the adequacy or accuracy of the application.

4. Colorado Power Partners

[Docket No. EG00–7–000]

Take notice that on October 8, 1999, Colorado Power Partners (CPP), 1001 Louisiana Street, Houston, Texas 77002, (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that CPP will maintain Exempt Wholesale Generator status after a transfer for financing purposes of certain upstream equity interests to Mesquite Investors, L.L.C., a newly-created entity, as described in the Application. CPP is a Colorado general partnership that owns the Brush Cogeneration Facility consisting of Brush 1 and Brush 3 (Facility), located in Brush, Colorado, and is engaged exclusively in the generation of electric energy for sale at wholesale. The Facility is a topping cycle cogeneration facility consisting of two gas turbines, a heat recovery steam generator, an extraction-condensing steam turbine, a waste-heat steam boiler, a steam-heat exchanger and waste-heat hot water boilers. The Facility is operated by Colorado Cogen Operators Limited Liability Company pursuant to an operation and maintenance agreement. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992.

Copies of this application have been served upon the Colorado Public Utility Commission and the Securities and Exchange Commission.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. BIV Generation Company, L.L.C.

[Docket No. EG00–8–000]

Take notice that on October 8, 1999, BIV Generation Company, L.L.C. (BIV), 350 Indiana Street, Suite 300, Golden, Colorado 80401, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application for Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that BIV will maintain exempt wholesale generator status after a transfer for financing purposes of the upstream equity interest in BIV to Mesquite Investors, L.L.C., a newly-created entity, as described in the Application. BIV leases, with an option to purchase, a 60 megawatt gas-fired generation plant located in Brush, Colorado (the Facility), and will be directly and exclusively engaged in the business of owning an eligible facility and selling electric energy at wholesale. Retail sales of electricity within the meaning of Section 32 of PUHCA will not be made from the Facility.

The Facility will be operated, under the direction of BIV, by Colorado Cogen Operators LLC, pursuant to an operation and maintenance agreement. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992. Copies of this application have been served upon the Colorado Public Utility Commission and the Securities and Exchange Commission.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Milford Power Company, LLC

[Docket No. EG00–9–000]

Take notice that on October 18, 1999, Milford Power Company, LLC (Milford Power), 301 Bic Drive, Milford, Connecticut, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that Milford Power will maintain Exempt Wholesale Generator status after a transfer for financing purposes of certain upstream equity interests to Mesquite Investors, L.L.C., a newly-created entity, and El Paso Power Holding Company, a direct subsidiary of El Paso Energy Corporation, as described in the Application. Milford Power is a Delaware limited liability company that was formed for the purpose of owning and operating the Milford Power Plant (Facility), a 544-megawatt gas-fired generation plant being constructed in Milford, Connecticut, and is directly and exclusively engaged in the generation of electric energy for sale at wholesale. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992. Copies of the Application have been served upon the Connecticut Department of Public Utility Control and the Securities and Exchange Commission.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling power Company, Consumers Energy Company, The Detroit Edison Company

FirstEnergy Corp. on behalf of; The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company, Virginia Electric and Power Company

[Docket Nos. ER99–3144–000 and EC99–80–000 (not consolidated)]

Take notice that on October 1, 1999, Alliance Companies filed a supplement to their pending applications in the above-referenced dockets.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER00–60–000]

Take notice that on October 12, 1999, Southern California Edison Company (SCE), tendered for filing letter confirming City of Riverside, California support for amendment to the Transmission Service Agreements with SCE.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER00–118–000]

Take notice that on October 14, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Edison Mission Marketing & Trading, Inc.
2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Edison Mission Marketing & Trading, Inc.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to Edison Mission Marketing & Trading, Inc., under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of October 14, 1999, the date of filing of the Service Agreements.

Copies of the filing were served upon Edison Mission Marketing & Trading, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Monroe Power Company

[Docket No. ER00–119–000]

Take notice that on October 14, 1999, Monroe Power Company (MPC), tendered for filing an executed Agreement with Municipal Electric Authority of Georgia under the provisions of MPC's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

MPC is requesting an effective date of December 15, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Georgia Public Service Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Kentucky Utilities Company

[Docket No. ER00–120–000]

Take notice that on October 14, 1999, Kentucky Utilities Company (KU), tendered for filing several executed contracts with its wholesale customers under which the customers are to receive the benefit of power made available to them from the South Eastern Power Administration.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Bangor Hydro-Electric Company

[Docket No. ER00–122–000]

Take notice that on October 14, 1999, Bangor Hydro-Electric Company tendered for filing an executed service agreement for non-firm point-to-point transmission service with FPL Energy Power Marketing, Inc.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Maine Public Service Company

[Docket No. ER00–123–000]

Take notice that on October 14, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with PDI New England, Inc.

Comment date: November 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Bangor Hydro-Electric Company

[Docket No. ER00–124–000]

Take notice that on October 14, 1999, Bangor Hydro-Electric Company tendered for filing an executed service agreement for short-term firm point-to-point transmission service with FPL Energy Power Marketing, Inc.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Central Illinois Light Company

[Docket No. ER00–125–000]

Take notice that on October 13, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Illinova Power Marketing, Inc. and Edison Mission Marketing & Trading, Inc., and three name changes, FirstEnergy Trading Services, Inc., which is the new name for FirstEnergy Trading and Power Marketing, Inc.; NewEnergy, Inc., which is the new name for New Energy Ventures, Inc., and Strategic Energy Ltd., which has changed its name to Strategic Energy L.L.C.

CILCO requested an effective date of October 2, 1999.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28334 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 7931–017.

c. *Date Filed:* August 27, 1999.

d. *Applicants:* Larry Hensley and Eugene Mark Souza.

e. *Name of Project:* 29 Mile Creek Project.

f. *Location:* The 29 Mile Creek project is located in El Dorado County, California. The project occupies lands of the United States within the El Dorado National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.. §§ 791(a)–825(r).

h. *Applicant Contact:* Eugene Mark Souza, 108 Dawn Lane, Placerville, California 95667.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385 or by e-mail at david.snyder@ferc.fed.us.

j. *Deadline for filing comments and or motions:* November 29, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (7931–017) on any comments or motions filed.

k. *Descrition of Transfer:* Larry Hensley, the licensee for Project No. 7931, and Eugene Mark Souza request approval of the transfer of the project license from Larry Hensley to Eugene Mark Souza and that the instrument of such approval by the commission be made effective as of the date of conveyance of the project properties.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located to 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28330 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

October 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to Amend License for the Black Bear Lake Project.

b. *Project No:* 10440–051.

c. *Date Filed:* March 12, 1999.

d. *Applicant:* BBL Hydro, Inc.

e. *Name of Project:* Black Bear Lake Project.

f. *Location:* The Project is located on Black Bear Lake, in the First Judicial District on Prince of Whales Island, Alaska. The project does utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Glen D. Martin, P.O. Box 222, Port Townsend, WA 98368, (360) 385–1733.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 219–3273 or by e-mail at vedula.sarma@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* November 29, 1999.

Please include the project number (10440–051) on any comments or motions filed.

k. *Description of Filing:* BBL Hydro, Inc. proposes to remove the Big Salt Road portion of the transmission line from the project's license. the licensee states the transmission line along the Big Salt Road is a regional distribution line transmitting power along its route from several other sources in addition to BBL's Black Bear Lake Project.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included in the Commission's mailing list should be indicated by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in ALL capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28331 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11813–000.

c. *Date filed:* September 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Cedar Falls Milldam Hydroelectric Project.

f. *Location:* At the existing Cedar Falls Dam located on the Cedar River, near the Town of Cedar Falls, Blackhawk County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Monte TerHaar (202) 219–2768 or E-mail address at monte.terhaar@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The proposed project would utilize the existing Cedar Falls Dam with lands owned by the town of Cedar Falls, and would consist of the following facilities: (1) four new rectangular steel penstocks, each about 20-foot-long: (2) a new 60-foot-by 30-foot powerhouse to be constructed on the downstream side of the dam; (3) 4 turbine/generator units having a total installed capacity of 2 megawatts; (4) a new 1,500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 12 gigawatthours per year. The cost of the studies under the permit will not exceed $800,000.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Gregory S.

Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comment, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28332 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing And Soliciting Motions To Intervene And Protests

October 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11824–000.

c. *Date filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Delta Dam Hydroelectric Project.

f. *Location:* At the existing Delta Dam located on the Mohawk River, near the Town of Rome, Oneida County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Monte TerHaar (202) 219–2768 or E-mail address at monte.terhaar@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The proposed project would utilize the existing Delta Dam with lands owned by the NYSCC, and would consist of the following facilities: (1) three new rectangular steel penstocks, each about 200-foot-long and 96 inches in diameter; (2) a new 90-foot- by 30- foot powerhouse to be constructed on the downstream side of the dam; (3) 3 turbine/generator units having a total installed capacity of 3.4 megawatts; (4) a new 1,000-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 20 gigawatthours per year. The cost of the studies under the permit will not exceed $1,200,000.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Gregory S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be reviewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing, application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28333 Filed 10–28–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6464–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; See List of ICRs Planned To Be Submitted in Section A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following seven continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

DATES: Comments must be submitted on or before December 28, 1999.

ADDRESSES: U.S. Environmental Protection Agency, Office of Compliance, Mail Code 2223A, 401 M Street SW, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the **SUPPLEMENTARY INFORMATION.** or download off the Internet at *http://www.epa.gov/icr/icr.htm.*

FOR FURTHER INFORMATION CONTACT: For specific information on the individual ICRs see Section B of the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

For All ICRs

The following information collection activities are mandatory. These ICRs are renewals of information collections associated with Clean Air Act regulations. The EPA is charged to establish standards of performance for new stationary sources. These New Source Performance Standards (NSPS) under Section 111 of the Clean Air Act, as amended, reflect:

> * * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every four years.

EPA is also charged under Section 112 of the Clean Air Act, as amended, to establish standards of performance for each category or subcategory of major sources and area sources of hazardous air pollutants. These standards are applicable to new or existing sources of hazardous air pollutants and shall require the maximum degree of emission reduction:

In addition, Section 114(a) states that:

> * * * the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), (D) sample such emissions, (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical, (F) submit compliance certifications, and (G) provide such other information as he may reasonably require.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. List of ICRs Planned To Be Submitted.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following seven continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) NSPS Subpart Dc, Small Industrial-Commercial-Institutional Steam Generating Units; EPA ICR Number 1564.05, and OMB Control Number 2060–0202, expires March 31, 2000.

(2) NSPS subpart KK, Lead Acid Battery Manufacturing Plants, EPA ICR No. 1072.06, OMB Control No. 2060–0081; expires April 30, 2000.

(3) NSPS subpart FFF, Flexible Vinyl and Urethane Coating and Printing, EPA ICR No. 1157.06, OMB No. 2060–0073, expires April 30, 2000.

(4) NSPS subpart OOO, Nonmetallic Mineral Processing; EPA ICR No. 1084.06, OMB Control No. 2060–0050, expires March 31, 2000.

(5) NSPS subpart PPP, Wool Fiberglass Insulation Manufacturing; EPA ICR No. 1160.06, OMB Control No. 2060–0114, expires March 31, 2000.

(6) NESHAP Subpart M, Dry Cleaning Facilities/Perchloroethylene (PCE), EPA ICR Number 1415.04, and OMB Control Number 2060.0234 expires 2/28/00.

(7) NESHAP subpart DD, Off-Site Waste and Recovery Operations, EPA ICR Number 1717.02, OMB Control Number 2060–0313, expires March 31, 2000.

B. Contact Individuals for ICRs

(1) NSPS Subpart Dc, Small Industrial-Commercial-Institutional Steam Generating Units; Chris Oh (202) 564–7004, *oh.christopher@epa.gov*, EPA ICR Number 1564.05, and OMB Control Number 2060–0202, expires March 31, 2000.

(2) NSPS subpart KK, Lead Acid Battery Manufacturing Plants, Deborah Thomas at (202)564-5041, *thomas.deborah@epa.gov* EPA ICR No. 1072.06, OMB Control No. 2060–0081; expires April 30, 2000.

(4) NSPS subpart OOO, Nonmetallic Minerals Processing; Gregory Fried, (202)564–7016/(202) 564–0050 (fax), *Fried.gregory@epa.gov*, EPA ICR No.1084, OMB Control No.2060–0050, expires March 31, 2000.

(5) NSPS subpart PPP, Wool Fiberglass Insulation Manufacturing Plants; Gregory Fried, (202)564–7016/(202) 564–0050 (fax), *Fried.gregory@epa.gov*, EPA ICR No.1160.06, OMB Control No. 2060–0114, expires March 31, 2000.

(6) NESHAP (National Emission Standard for Hazardous Air Pollutants) for Perchloroethylene (PCE) Dry Cleaning Facilities Subpart M Recordkeeping and Reporting, Joyce Chandler, 202-564–7073, fax 202–564–0009, *chandler.joyce@epa.gov;* EPA ICR No.1415.04, OMB Control No. 2060.0234 expires February 28, 2000.

(7) NESHAP (National Emission Standard for Hazardous Air Pollutants) subpart DD, Off-Site Waste and Recovery Operations, Walter Derieux, (202) 564–7067, *derieux.walter@epa.gov*, EPA ICR Number 1717.02, OMB Control Number 2060–0313, expires March 31, 2000.

C. Individual ICRs

(1) NSPS Subpart Dc, Small Industrial-Commercial-Institutional Steam Generating Units; EPA ICR Number 1564.05, and OMB Control Number 2060–0202, Expires March 31, 2000

Affected Entities: Entities affected by this action are those steam generating units for which construction, modification, or reconstruction is commenced after June 29, 1989, and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr).

Abstract: NSPS for Subpart Dc were proposed on June 9, 1989 and promulgated on September 12, 1990. These standards apply to steam generating units with a maximum design heat input of 29 megawatt (MW) (100 million Btu per hour (Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr) commencing construction, modification, or reconstruction after the date of proposal. The pollutants regulated under this subpart include sulfur dioxide (SO_2) and particulate matter (PM). Owners or operators of the affected facilities described must provide EPA or delegated State regulatory authority with the following one time-only reports specified in 40 CFR 60.7): notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are required, in general, of all sources subject to NSPS.

The standards require reporting of the results of the initial performance test to determine compliance with the applicable SO_2 and/or PM standards. For units using a continuous emission monitoring system (CEMS) to determine compliance with the SO_2 standard, the regulation requires submittal of the results of the CEMS demonstration. After the initial report, the standard for SO_2 requires each affected facility to submit quarterly compliance reports.

After the initial report, the standard for PM requires quarterly reports to be submitted to notify of any emissions exceeding the applicable opacity limit. If there are no excess emissions, a semiannual report stating that no exceedances occurred may be submitted.

The recordkeeping requirements for small industrial-commercial-institutional steam generating units consist of the occurrence and duration of any startup and malfunctions as described. They include the initial performance test results including information necessary to determine the conditions of the performance test, and performance test measurements and results, including the applicable sulfur dioxide and/or particulate matter results. Records of startups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements.

The reporting requirements for this type of facility currently include the initial notifications listed, the initial performance test results, and quarterly report of SO_2 emissions, and instances of excess opacity. Semiannual opacity reports are required when there is no excess opacity. Semiannual excess emission reports and monitoring system performance reports shall include the magnitude of excess emissions, the date and time of the exceedances or deviance, the nature and cause of the malfunction (if known) and corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs/adjustments).

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. The estimate was based on a assumption that there would be 71 new affected facilities each year, and that there were approximately 425 sources in existence for the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart Dc are summarized by the following information.

The reporting requirements are as follows: read instruction (1 person-hour); initial performance test (for 10–30 million Btu/hr: 8 person-hours) (for 30–100 million Btu/hr: 330 person-hours). Sources are required to write reports on: notification of construction/reconstruction (2 person-hours), notification of physical/operational change (8 person-hours), notification of anticipated startup (2 person-hours), notification of initial performance test for CEM (2 person-hours), Quarterly continuous compliance report, for SO_2 (16 person-hours), Quarterly reports of fuels fired (2 person-hours), Excess opacity emission reports, for quarterly (16 person-hours), for semi annually (16 person-hours). Recordkeeping requirements include the following: maintaining records of start-ups, shutdowns, and malfunctions (1.5 person-hours), and measurements (1.5 person-hours).

(2) NSPS Subpart KK, Lead Acid Battery Manufacturing Plants, EPA ICR No. 1072.06, OMB Control No. 2060–0081; Expires April 30, 2000

Affected Entities: Entities potentially affected by this action are lead-acid battery manufacturing plants that produce or have the capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons. Specifically, the affected facilities in each plant include grid casting, paste mixing, three-process operations, lead oxide manufacturing, lead reclamation, and other lead-emitting operations in lead acid battery manufacturing plants that commenced construction, modification, or reconstruction after the date of proposal.

Abstract: The largest single use of lead in the United States is in the manufacture of lead-acid, or secondary, storage batteries. Lead-acid battery manufacturing plants emit lead particulates in quantities that, in the Administrator's judgment, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as electrostatic precipitators or scrubbers.

In order to ensure compliance with the standards, adequate record-keeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (See 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

Industry Burden Statement: In the previously approved ICR, the average annual burden to the industry over the next three years to meet these record-keeping and reporting requirements was estimated at 320 person-hours. This is based on an estimated 48 respondents. The average annual burden for reporting only is projected to be 128 person-hours. EPA estimates a two hour burden for each of the following initial notifications; notification of the date of construction or reconstruction, notification of the date of actual startup, and notification of the date of the performance test. The initial performance tests requires 24 hours, and the Method 9 test 4 hours. The Agency also assumes that 20% of all affected facilities will have to repeat the performance test.

(3) NSPS Subpart FFF Supplementary Information NSPS Subpart FFF: Standards of Performance for Flexible Vinyl and Urethane Coating and Printing Industry, EPA ICR Number 1157.06, OMB Number 2060–0073, Expires April 30, 2000

Affected entities: Entities potentially affected by this action are those which are subject to NSPS Subpart FFF, or each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification, or reconstruction commenced after January 18, 1983.

Abstract: In the Administrator's judgment, VOC emissions from flexible vinyl and urethane coating and printing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) were promulgated for this source category. The NSPS for the Flexible Vinyl and Urethane Coating and Printing Industry were proposed on January 18, 1983, and promulgated on June 29, 1984. These standards apply to each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification or reconstruction commenced after the date of proposal. Volatile organic compounds (VOCs) are the pollutants regulated under this Subpart. The standards restrict the use of inks to those with a weighted average VOC content of less than 1.0 kilogram VOC per kilogram of ink solids, unless the source can otherwise reduce emissions to the atmosphere by 85 percent.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. For those facilities using solvent recovery systems, a notification of the date upon which demonstration of the continuous monitoring system performance standards must be sent in.

The recordkeeping requirements will be different for each facility based upon which method they use to meet the emissions standards. The following listing includes all the recordkeeping requirements for all methods. All of these requirements are not required for each facility.

The recordkeeping requirements for NSPS subpart FFF consist of the initial performance test results and other information necessary to determine the conditions of the performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Any owner or operator subject to the provisions of the part shall maintain a file of these measurements, and retain the file for at least two years following the date of those records.

Recordkeeping specific to flexible vinyl and urethane coating operations include: Recording the VOC content and amount of ink, any diluent solvent, and ink used and recovered (if using the inventory system) whenever emission control equipment is not used; the average temperature of control device exhaust gases (during performance tests of system using a thermal incinerator); the record made by the continuous monitoring device for temperature for a thermal or catalytic incinerator and for VOC concentration for solvent recovery systems; the average temperature of each 3-hour clock period of printing operations when the average temperature of the exhaust gases is more than 28 degrees C below the average temperature demonstrated during the most recent performance test of the thermal incinerator; the average gas temperature both upstream and downstream of the catalyst bed during performance testing of units using a catalytic incinerator; the average temperature for each 3-hour clock period of printing operation when the average temperature of the gas stream before the catalyst bed is more than 28 degrees C below the average temperature demonstrated during the most recent performance test or the average temperature difference across the catalytic bed is less than 80 percent of the average temperature difference of the device during the most recent performance test; the time periods of operation when emission control devices are not being used; the average exhaust vent VOC concentration in parts per million by volume (during the performance test for solvent recovery systems); record the average exhaust vent VOC concentration for each 3-hour clock period of printing operation when the average concentration is greater than 50 ppm and more than 20 percent greater than the average concentration value demonstrated during the most recent performance test of the solvent recovery system.

The reporting requirements for this industry currently include the initial notifications listed, the initial performance test results, and the semiannual reports. These reports are needed if the weighted average VOC is exceeded, if the average value of the exhaust vent VOC concentration solvent recovery controls are exceeded, and if drops in incinerator temperatures and drops in the average temperature of the gas stream immediately before the catalyst bed or drops in the average temperature across the catalyst bed occur. They are also needed when the continuous monitoring device registers an exceedance.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions (temperature of exhaust gases, VOC concentrations, and temperature across the catalytic bed) under which compliance was achieved. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1997 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act.

This estimate is based on the assumption that there would be one new affected facility over the three years of the existing ICR and that there were approximately 8 sources in existence at the start of the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart FFF are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (280 person-hours). It is assumed that 20% of tests are repeated due to failure. Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (1 person-hour), Notification of initial performance test (2 person-hours), Report of performance test (included in reporting requirements listed above), Semiannual report (4 person-hours). Records must be kept for a period of two years. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 73.5 person hours.

(4) NSPS Subpart OOO, Nonmetallic Mineral Processing; EPA ICR No. 1084.06, OMB Control No. 2060–0050, Expires March 31, 2000

Affected Entities: This standard applies to owners or operators of new, modified, or reconstructed facilities at nonmetallic mineral processing plants that commenced construction, modification, or reconstruction after August 1, 1985. Nonmetallic mineral processing includes the following affected facilities: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. This standard does not apply to facilities located in underground mines; stand-alone screening operations; operations that only involve recycled asphalt; fixed sand gravel, or crushed stone plants with capacities of 25 tons per hour or less; portable sand, gravel, or crushed stone plants with capacities of 150 tons per hour or less; common clay or pumice plants with capacities of 10 tons per hour or less. Additionally, when an existing facility is replaced by a piece of equipment of equal or smaller size it is not subject to the standard until all facilities in a production line are replaced. Affected facilities in the plant process that are subject to 40 CFR Part 60, Subpart F for Portland Cement NSPS, or Subpart I, Asphalt Concrete Plants NSPS, are not subject to this NSPS, Subpart OOO.

Abstract: Particulate matter is the pollutant regulated under this standard. Respondents must submit the following one-time-only reports: notification of the date of construction or reconstruction, notification of the actual date of initial startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of demonstration of the continuous emission monitor system (CMS) where the CMS is required (wet scrubber), notification of the date of the initial performance test, and the results of the initial performance test. Wet mining/screening operations are exempt from all requirements of the regulation, except an initial report and record describing the location of these operations. The general provision requirement to submit a notification of the anticipated date of initial startup is being waived for respondents subject to this standard.

Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Owners or operators of facilities using a wet scrubber must record the measurements of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flow rate and submit semiannual reports for occurrences when the measurements of the scrubber pressure loss (or gain) and liquid flow rate differ by more than ±30 percent from the averaged determined during the most recent performance test. All records shall be retained for at least two years.

Burden Statement: There are 2500 sources subject to this standard. It is estimated that 2 additional sources per year will become subject to the standard. The current ICR estimates an average annual burden to the industry of 6,586 person-hours. The following is a breakdown of burden used in the ICR. EPA estimates a two hour burden for each of the following notifications; notification of the date of construction or reconstruction, notification of the date of actual startup, and notification of the date of the performance test. EPA estimated a 330 hour burden for initial performance tests. The Agency also assumed that 20% of all affected facilities will have to repeat the performance test.

EPA estimated that 84 of the existing 2500 facilities use wet scrubbers. For these facilities, 8 burden hours are estimated for semiannual scrubber malfunction reports. In addition, the daily recordkeeping burden of scrubber operating parameters is estimated at 15 minutes daily. It is also assumed that 5 percent, or 42 facilities, will have wet screening operations. It is estimated that these facilities will incur a 20 minute annual burden to verify exemption from this standard.

(5) NSPS Subpart PPP, Wool Fiberglass Insulation Manufacturing; EPA ICR No. 1160.06, OMB Control No. 2060–0114, Expires March 30, 2000

Affected Entities: This standard applies to each rotary spin wool fiberglass insulation manufacturing line for which construction, modification or reconstruction commenced after February 2, 1984.

Abstract: This standard regulates particulate matter. Owners or operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping requirements specific to wool fiberglass insulation manufacturers include continuous measurements of control device operating parameters. Where a wet scrubbing control device is used, the owner or operator of an affected facility must measure the gas pressure drop across each scrubber and the scrubbing liquid flow rate to each scrubber no less than once every four hours. Owners or operators who comply using a wet electrostatic precipitator control device must measure the primary and secondary current and voltage in each electrical field and the inlet water flow rate no less than once every four hours. Daily records of this information shall be kept at the source for a period of two years.

The reporting requirements for this industry include the initial notifications listed, the initial performance test results, and semiannual reports of excess emissions. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test records are needed as these are the Agency's record of a source's initial capability to comply with the emission standard.

Burden Statement: There are 20 sources subject to this standard. It is estimated that no additional sources will become subject to the standard over the next three years. The current ICR estimates an average annual burden to the industry of 1,410 person-hours. The following is a breakdown of burden used in the ICR. EPA estimates a 15 minute burden for the daily measurements of the control devices. EPA also estimates a four hour burden for each semiannual report of exceedances of the control device operating parameters. In addition, the operation and maintenance costs for particular matter monitoring equipment is approximately $16,500 per year. Because no new sources are anticipated for this source category over the past three years, the capital startup costs, and the costs associated with performance testing were zero.

(6) NESHAP Subpart M, Dry Cleaning Facilities/Perchloroethylene (PCE), EPA ICR Number 1415.04, and OMB Control Number 2060.0234 Expires February 28, 2000

Affected Entities: Entities potentially affected by this action are those which are subject to NESHAP Subpart M, owners or operators of dry cleaning facilities using Perchloroethylene (PCE) as a solvent.

Abstract: The information collected is needed to determine which sources are subject to the regulation and whether these sources are in compliance with the standards. EPA is required under Section 112(d) of the Clean Air Act (Act) to regulate emissions of 189 hazardous air pollutants (HAPs) listed in Section 112(b) of the Act. One of these pollutants, PCE, is emitted from dry cleaning facilities. In the Administrator's judgement, PCE emitted from dry cleaning facilities causes, or contributes significantly, to the air pollution that may reasonably be anticipated to endanger public health. Consequently, National Emission Standards for Hazardous Air Pollutant (NESHAP) for this source category have been developed. Certain records and reports are necessary to enable the Administrator to identify sources subject to the standards and to ensure that standard, which is based on maximum achievable control technology (MACT) or generally achievable control technology (GACT), is being achieved. The Agency will use the information to identify sources subject to the standards to ensure that MACT or GACT is being properly applied, monitoring is being conducted on a weekly basis to ensure that the emission control devices are being properly operated and maintained on a continuous basis to reduce vented PCE emissions, and leak detection and repair are being conducted on a weekly basis to reduce fugitive PCE emissions. The records and reports are necessary to enable the EPA to identify facilities that may not be in compliance with the standard. Based on reported information, the EPA can decide which facilities should be inspected/receive compliance assistance, and what records or processors should be inspected at these facilities. The records that the facilities maintain would indicate to the EPA whether they are operating and maintaining equipment properly to control vented emissions and whether transfer emissions and other fugitive emissions are being properly controlled. To minimize the burden, much of the information the Agency needs to determine compliance would be recorded and retained on site at the facility. Such information would be reviewed by enforcement/compliance assistance personnel during an inspection and would not need to be routinely reported to the EPA.

The recordkeeping and reporting requirements under Subpart M are mandatory under 40 CFR 63.324. These requirements include the 5 year retention of records (40 CFR 63.324(d)). In addition to the general provision requirements there are records of solvent purchase per month (40 CFR 63.324(d)(1)), records of calculation and results of yearly PCE consumption (40 CFR 63.324(d)(2)), records of weekly or biweekly inspections (40 CFR 63.324(d)(3)), records of dates of repair or purchase orders (40 CFR 63.324(d)(4)), records of monitoring (40 CFR 63.324(d)(5) and (6)), initial report requirements (all) (40 CFR 63.324(a)), report on compliance (40 CFR 63.324(b)), report on facility status change to major source (40 CFR 63.324(c)), report on exceedance of low solvent consumption exemption level (40 CFR 63.324(c)).

Burden Statement: Since the dry cleaning industry is considered to be comprised primarily of small businesses, the EPA took special steps to ensure that the burdens imposed on the small businesses were reasonable. There are an estimated 25,090 affected facilities. The previous ICR estimated the annual public reporting burden for this collection of information as an average 9 hours per response for new dry cleaning facilities and zero hours per response for existing dry cleaning facilities. The public recordkeeping burden was estimated to average 48 hours per respondent for a total 1,192,879 hours.

(7) NESHAP (National Emission Standard for Hazardous Air Pollutants Subpart DD, Off-Site Waste and Recovery Operations, EPA ICR Number 1717.02, OMB Control Number 2060–0313, Expires March 31, 2000

Affected entities: Entities potentially affected by this action are certain types of waste management facilities that are "major sources," as defined in section 112(b) of the Clean Air Act (CAA), and receive from other facilities wastes containing specific organic compounds listed as hazardous air pollutants (HAPs).

Abstract: This ICR contains record keeping and reporting requirements that are specifically authorized by Section 14 of the CA (42 U.S.C. 7414) and set out in the NESHAP General Provisions. This information is used by Agency to: (1) identify major sources and newly constructed sources subject to the standards; (2) ensure that maximum achievable control technol (MACT) is being properly applied; and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis. The records that the facility is required to maintain would indicate to the Agency whether facility personnel are operating and maintaining control of equipment properly. Owners or operators of the affected facilities described must make the following one-time reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollution emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The standards require periodic record keeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operational conditions under which compliance was achieved.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 208 hours per response.

Dated: October 4, 1999.

Bruce R. Weddle,

Director, Office of Compliance.

[FR Doc. 99–28041 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6466–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension of Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies, OMB No. 2060–0264, ICR no. 1643.04, expiration date currently 3/31/2000. Before submitting this ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 28, 1999.

ADDRESSES: Send all comments on this ICR to Ms. Holly Reid, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Interested persons may obtain a copy of the ICR without charge by contacting Ms. Yulonda Thorpe, at (919) 541–5319.

FOR FURTHER INFORMATION CONTACT: Ms. Holly Reid, (919) 541–5344, or electronic mail at reid.holly@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those State, Territorial, Local, and Tribal agencies (S/L/Ts) participating in this voluntary program.

Title: Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies, OMB No. 2060–0264 (ICR No. 1643.04), Expiration date March 31, 2000.

Abstract: A rule developed under the authority of section 112(l) of the Clean Air Act, as amended in 1990, calls for us, EPA, to "publish guidance that would be useful to States in developing programs * * * allowing for delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements." Affected entities include S/L/Ts choosing to participate in this voluntary program. No industries are included among the respondents.

The ICR reflects the approval process codified in 40 CFR 63, subpart E, which we proposed to amend on January 12, 1999 (64 FR 1880). Under the amended process, the S/L/T can select one of five delegation options to implement and enforce the Federal section 112 rule, requirement, or program. These options include:

—Accepting straight delegation of the unchanged Federal standard;

—Requesting an adjustment to the Federal standard;

—Requesting to substitute S/L/T requirements or rules for the Federal standard;

—Requesting to substitute Title V permit or Title V general permit terms and conditions for the Federal standard; or,

—Requesting to substitute an S/L/T program for the Federal standard.

In addition, the S/L/T may also request delegation of the 40 CFR part 68 accidental release prevention program using subpart E. When the S/L/T requests to adjust or substitute requirements under subpart E, they must demonstrate that their changes are as least as stringent as the Federal standard they would replace.

The approval options vary in the types of changes allowed and in the level of demonstrations required for approval. Respondents interested in using this program must submit an application package to their EPA Regional Office. We will use this information to determine whether the S/L/T request is approvable according to the criteria specified in subpart E. The intent of this voluntary program is to encourage S/L/Ts to accept delegation of the Federal section 112 standards, and to allow them to adjust or substitute S/L/T requirements when they can be shown to be at least as stringent as the Federal requirements. These provisions for alternatives will help preserve existing S/L/T programs and prevent dual regulation of sources.

We also reserve the right to review and withdraw an approved S/L/T rule, program, or requirement if we decide it is not as stringent as the otherwise applicable Federal standard or if the S/L/T is failing to adequately implement or enforce it. In this case, the S/L/T would be asked to submit information regarding permits, monitoring, resources, etc. We will use this information to decide if the rule, program, or requirement should be withdrawn. Our ability to review and withdraw approval is needed to ensure we can satisfy our obligations under the Act to implement and enforce the section 112 requirements.

This collection of information is authorized under 42 U.S.C. 7401–7671q. We will safeguard any information we obtain for which a claim of confidentiality is made according to our policies outlined in title 40, chapter 1, part 2, subpart B, Confidentiality of Business Information.

Note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

We would like to solicit comments to:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; or,

—Minimize the burden of the collection of information on S/L/Ts, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

We estimate that the amended subpart E program will pose an overall average burden on all respondents of 130,198 hours and $5.3 million per year. We estimate that each of the 127 S/L/Ts subject to subpart E may request delegation for up to 35 section 112(d) standards per year during the 3-year approval period we are requesting for this collection. In addition to delegations of the section 112(d) standards, the total costs include the one-time request for approval to receive delegation, requests for up-front approval to use the equivalency by permit and State program approval options, the one-time request to take delegation of the accidental release prevention program during the 3-year period, and the effort for S/L/Ts to respond to our decision to withdraw up to two approved rules, programs, or requirements in year 3. Therefore, the average annual burden for each S/L/T is 29 hours and $1,194 per response.

The cost estimate is based on the labor costs for S/L/Ts to request delegation under the various options in subpart E and to respond to potential program withdrawal reviews by us. There are no separate capital/startup costs associated with the final rule.

Dated: October 15, 1999.

Richard A. Wayland,

Acting Director, Information Transfer and Program Integration Division.

[FR Doc. 99–28391 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6247–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 11, 1999 Through October 15, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J65308–UT Rating EC2, Wasatch Powderbird Guides Permit Renewal, Proposal to Conduct Guided Helicopter Skiing Activities on National Forest System Land, Issuance of a Special-Use-Permit, Wasatch-Cache National Forest, Uinta National Forest, Salt Lake County, UT.

Summary: EPA expressed concern regarding potential wildlife impacts, air quality impacts and human disturbance from helicopter noise. EPA requested that these issues be addressed in the final EIS.

ERP No. D–AFS–J65309–UT Rating EC2, Trout Slope East Timber Project, Timber Harvest and Associated Activities, Implementation, Vernal Ranger District, Ashley National Forest, Uintah County, UT.

Summary: EPA requested additional information on sediment control procedures and water quality to fully assess impacts from the Preferred Alternative.

ERP No. D–AFS–L65325–ID Rating EC2, Sloan-Kennally Timber Sale, Proposal to Harvest and Regenerate Timber Strands, Implementation, Payette National Forest, McCall Ranger District, Valley County, ID.

Summary: EPA expressed environmental concerns regarding lack of information with how this project relates to TMDL efforts and the construction of roads in a roadless area. EPA requested that information be provided on any expectations of the Payette National Forest to help implement any TMDL and that an explanation be provided on why entry into a roadless area cannot be avoided.

ERP No. D–AFS–L65327–WA Rating EC2, Stimson ANILCA Access Easement Project, Reconstruct and Construct, Colville National Forest, Sullivan Lake Ranger District, Pend Oreille County, WA.

Summary: EPA identified concerns with the purpose and need, the treatment of reasonably foreseeable actions. the characterization of impacts to grizzly bears from Alternative C, and the lack of baseline information. EPA recommended that a revised purpose and need statement be developed, and that additional baseline information and analyses be included in the final EIS.

ERP No. D–COE–E39037–TN Rating EC2, Reelfoot Lake Project, Implementation of Wetland Preservation, Waterfowl Habitat Restoration, Fishery Improvement, Lake and Obion Counties, TN and Fulton County, KY.

Summary: The restoration measures proposed should result in significant long term environmental benefits. EPA requested the collection of additional information to determine how design features will be installed.

ERP No. D–FHW–C40148–NY Rating EC2, Miller Highway Project (P.I.N. 103.27), Relocation of Miller Highway between West 59th Street to West 72nd Streets, on the Upper West Side of Manhattan, Funding and COE Section 404 Permit, New York County, NY.

Summary: EPA expressed environmental concerns about the lack of characterization of the contaminated materials at the areas of concern. EPA requested that these issues be address in the final document.

ERP No. D–FHW–G40152–LA Rating EC2, North-South Expressway Const. I–220 in Shreveport, LA to the Arkansas State Line, Funding and COE Section 404 Permit Issuance, Caddo Parish, LA.

Summary: EPA has environmental concerns in the areas of impacts on transportation, air quality, construction, induced growth/secondary economic impacts, impacts to oil and gas facilities, agriculture, property values, and other resources. EPA requested that these issues be clarified.

ERP No. D–FTA–C53004–NY Rating LO, Mid-Harlem Line Third Track Project, Construct a New 2.5 mile Third Track between Fleetwood and Crestwood Stations, Funding, Westchester County, NY.

Summary: EPA has no objection to the project as proposed.

ERP No. D–NPS–L65328–WA Vancouver National Historic Reserve Cooperative Management Plan, Preservation, Education and Public Use, Implementation, Clark County, City of Vancouver, WA.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based on this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–SFW–L64046–WA Rating LO, Little Pend Oreille National Wildlife Refuge, Implementation, Comprehensive Conservation Plan, Stevens and Pend Oreille Counties, WA.

Summary: EPA is pleased to see that the USFWS has developed a plan that incorporates better management and protection of the natural resources while maintaining and in some cases, enhancing the recreational uses within the refuge.

Final EISs

ERP No. F–AFS–J65298–CO South Fork Salvage Analysis Area, Implementation, Routt Divide Blowdown, Land and Resource Management Plan, Medicine Bow-Routt National Forests, Hahns Peak/Bears Ears Ranger District, Rounty County, CO.

Summary: EPA review finds the alternative selected can be implemented without significant impact to the environment, therefore EPA has no objection to the proposed action.

ERP No. F–BLM–J65294–UT Grand Staircase-Escalante National Monument Management Plan, Implementation, Cedar City, UT.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–H40155–MO MO–13 and MO–7 Highway/Freeway Improvements, MO–13 from US 24 in Lexington to Truman Reservoir south of Clinton and MO–7 in the immediate area of Clinton, Funding, Lafayette, Johnson and Henry Counties, MO.

Summary: EPA concerns expressed in 1995 have been adequately addressed in the FEIS.

ERP No. F-NPS-J61101-MT Glacier National Park, General Management Plan, Implementation, Waterton Glacier International Peace Park, Lake National Park, Flathead and Glacier, MT.

Summary: EPA supports the preferred alternatives for each of the issues in the Final EIS which have the potential for environmental impact. In each case, the selection of the preferred alternative would offer maximal environmental protection while also protecting the experiences of Park visitors.

ERP No. F-UMC-K11096-AZ Yuma Marine Corps Air Station (MCAS), To Improve Ordnance Handling and Storage, Construct a new Combat Aircraft Loading Area (CALA); New Station Ordnance Area and Relocation of MCAS Yuma, AZ.

Summary: No formal comments were sent to the preparing agency.

ERP No. FA-AFS-J65200-CO Telluride Ski Area Expansion Project, Implementation, New/Additional Information, Special-Use-Permit and COE Section 404 Permit, Grand Mesa Uncompahgre and Gunnison National Forests, Norwood Ranger District, San Miguel County, CO.

Summary: EPA continues to express concerns with proposed adverse impacts to wetlands from indirect and cumulative impacts from ski area expansion activities.

Dated: October 26, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99-28431 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6247-5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167.

Weekly receipt of Environmental Impact Statements

Filed October 18, 1999 Through October 22, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990388, Final EIS, FHW, ID, Sandpoint North and South (NH-IR-F-CM-5116(68) Projects, Construction, US 95 (Milepost 466.8 to Milepost 4786), Funding and COE Section 404 Permit, City of Sandpoint, Bonner County, ID, Due: November 29, 1999, Contact: Jack T. Coe (208) 334-1843.

EIS No. 990389, Draft EIS, AFS, ID, Brown Creek Timber Sale Project, Implementation, Payette National Forest, New Meadow Ranger District, Adam County, ID, Due: December 27, 1999, Contact: Jack Irish (208) 347-0300.

EIS No. 990390, Draft EIS, UAF, FL, Tyndall Air Force Base, Implementation, Proposed Conversion of Two F-15 Fighter Squadrons to F-22 Fighter Squadron, FL, Due: December 13, 1999, Contact: Herman Bell (850) 283-8572.

EIS No. 990391, Final EIS, AFS, LA, Kisatchie National Forest Revision Land and Resource Management Plan, Implementation, Claiborne, Grant, Natchitoches, Rapides, Vernon, Webster and Winn Parishes, LA, Due: November 29, 1999, Contact: Lynn C. Neff (318) 473-7160.

EIS No. 990392, Final EIS, FHW, NY, US-20/Broadway (Transit Road to Lancaster East Village Line) Reconstruction, Funding, COE Section 10 and 404 Permit, in the Villages of Depew and Lancaster, Erie County, NY, Due: November 29, 1999, Contact: Harold J. Brown (518) 431-4127.

EIS No. 990393, Final EIS, COE, WY, Little Snake Supplemental Irrigation Water Supply Project, Construction, Right-of-Way Permit and COE Section 404 Permit, Carbon County, WY, Due: November 29, 1999, Contact: Patsey Freeman (402) 221-3803.

EIS No. 990394, Final EIS, AFS, ID, North Fork St. Joe River Project, Implementation, Idaho Panhandles National Forest, St. Joe Ranger District, Shoshone County, ID, Due: November 29, 1999, Contact: Chuck Stock (208) 245-2531.

EIS No. 990395, Draft EIS, AFS, TX, Texas Blowdown Reforestation Project, Implementation, National Forests and Grasslands in Texas, Angeline and Sabine National Forests, San Augustine and Shelby Counties, TX, Due: December 15, 1999, Contact: Keith Baker (409) 344-6205.

EIS No. 990396, Final EIS, UAF, NV, Nellis Airforce Base, Proposal to Base or Beddown F-22 Aircraft Force Development Evaluation and Weapons School, Clark County, NV, Due: November 29, 1999, Contact: Langdon A. Kellogg (210) 536-4183.

EIS No. 990397, Draft EIS, FAA, OH, Cleveland Hopkins International l Airport, To Provide Capacity, Facilities, Highway Improvements, and Enhancement to Safety, Funding, Cuyahoga County, OH, Due: December 13, 1999, Contact: Ernest P. Guby (734) 487-7280.

EIS No. 990398, Draft EIS, USA, Programmatic EIS—Transportable Treatment Systems for Non-Stockpile Chemical Warfare Material (CWM), To Destroy Non-Stockpile (CWM) in order to Protect Human, Health, Safety and the Environment, To Comply with the International Treaty, Nationwide, Due: February 04, 2000, Contact: John K Gieseking (410) 436-3768.

EIS No. 990399, Final EIS, DOE, NM, Sandia National Laboratories/New Mexico (SNL), Continue Operation, Site-Wide (DOE/EIS-0281), Albuquerque, NM, Due: November 29, 1999, Contact: Julianne Levings (888) 635-7305.

EIS No. 990400, Draft EIS, USN, NY, Naval Weapons Industrial Reserve Plant Bethpage to Nassau County, Transfer and Reuse, Preferred Reuse Plan for the Property, Town of Oyster Bay, Nassau County, NY, Due: December 14, 1999, Contact: Robert K. Ostermueller (610) 595-0759.

EIS No. 990401, Final EIS, USN, CA, Alameda Naval Air Station and Fleet and Industrial Supply Center, Disposal and Reuse, Alameda Annex and Facility, City of Alameda and Alameda County, CA, Due: November 29, 1999, Contact: Jerry Hemstock (650) 244-3023.

EIS No. 990402, Final EIS, USN, PA, Philadelphia (Former) Naval Base Hospital Disposal and Reuse, Implementation, City of Philadelphia, PA, Due: November 29, 1999, Contact: Robert K. Ostermueller (610) 595-0759.

EIS No. 990403, Draft EIS, HUD, CA, City of Monterey Park Project, Construction and Operation of the Monterey Park Towne Plaza, North of the Pomona Freeway and west of Paramount Boulevard, Los Angeles County, CA, Due: December 13, 1999, Contact: Ray Hamada (626) 307-1463.

Dated: October 26, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99-28432 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6247-4]

Notice of Environmental Assessment and Preliminary Finding of No Significant Impact

AGENCIES: U.S. Department of Transportation (DOT) and U.S. Environmental Protection Agency.

ACTION: The U.S. Department of Transportation (DOT), Research and Special Programs Administration, Office of Pipeline Safety, and the U.S. Environmental Protection Agency (EPA), Region 6, completed an Environmental Assessment (EA) and Preliminary Finding of No Significant Impact (FNSI) on the proposed petroleum products pipeline to be operated by Longhorn Partners Pipeline, L.P. The purpose of this notice is to make the EA and preliminary FNSI available for agency and public review during the 30-day comment period, and to notify interested parties that EPA and DOT will hold the following public meetings to foster public discussions: November 9th, Cook Middle School, Houston, TX; November 16th, James Bowie High School, Austin, TX; November 17th, Gillespie County Agricultural Bldg, Fredericksburg, TX; November 18th, Bastrop Opera House, Bastrop, TX; and November 22, 1999, Neill Auditorium (UTEP), El Paso, TX. A copy of the EA/FNSI is available for public review at County Clerk Offices in counties along the pipeline route. Address comments and requests for copies of the EA/FNSI to Robert D. Lawrence (6EN-XP), EPA, 1445 Ross Avenue, Dallas, TX, 75202-2733.

Dated: October 26, 1999.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 99-28433 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00626; FRL-6390-2]

Antimicrobial Stakeholder Meeting; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Antimicrobial Division (AD) of the Office of Pesticide Programs of EPA is continuing its series of stakeholder meetings to keep the public, industry and other interested parties updated and informed about antimicrobial activities that may affect them.

DATES: The meeting will be held on Tuesday, November 16, 1999 from 1:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Crystal Gateway Marriott Hotel, 1770 Jefferson Davis Hwy, Arlington, VA 22215, on the first floor in the Grand Ballrooms J and K.

FOR FURTHER INFORMATION CONTACT: By mail: David Liem, Antimicrobial Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Third floor, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy, Arlington, VA 22215. Telephone number: (703) 305-1284; fax number: (703) 308-6467; e-mail address: liem.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to the antimicrobial community interested in regulatory changes/revisions in antimicrobial activities, policies, procedures and guidelines. While the meeting is open to the public and the agenda of the meeting will be available upon request, comments are not being solicited for this meeting. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

List of Subjects

Environmental protection; antimicrobial.

Dated: October 19, 1999.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

[FR Doc. 99-28048 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6467-1]

Culbertson Plastics Drum Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency

ACTION: Notice; request for public comment

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Culbertson Plastics Drum Site in Opa-Locka, Dade County, Florida with the following Settling Parties: the Culbertson-Pedigo Partnership and Joe M. Pedigo. The settlement requires the Settling Parties to pay up to $223,711.73 from the sale of the Site property to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division 61 Forsyth Street, S.W., Atlanta, Georgia 30303, 404/562-8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated October 8, 1999.

James Miller,

Acting Chief, Program Services Branch, Waste Management Division

[FR Doc. 99-28388 Filed 10-28-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6466–3]

Operating Industries, Inc. Landfill Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), the Environmental Protection Agency ("EPA") is hereby providing notice of a proposed administrative *de minimis* settlement concerning the Operating Industries, Inc. Landfill Superfund site in Monterey Park, California (the "OII Site"). Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative de minimis settlements. This settlement is intended to resolve the liabilities of 76 settling parties for the OII Site under CERCLA and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The settlement will also resolve OII Site-related claims by California Department of Toxic Substances Control against the settling parties. The settling parties will pay a total of $5,477,209 toward OII Site response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before November 29, 1999.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC–1), 75 Hawthorne Street, San Francisco, CA 94105, and should refer to: Operating Industries, Inc. Landfill Superfund Site, Monterey Park, CA, U.S. EPA Docket No. 99–09. The proposed settlement and additional background information relating to the settlement are available for inspection, and EPA's response to any comments received will be available for inspection, at the U. S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105; at the Bruggemeyer Memorial Library, 318 South Ramona Avenue, Monterey Park, CA 91754; the Montebello Regional Library, 1550 West Beverly Boulevard, Montebello, CA 90640; and the Chet Holifield Library, 1060 South Greenwood Avenue, Montebello, CA 90640. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

FOR FURTHER INFORMATION CONTACT: Arthur Haubenstock, Assistant Regional Counsel, U.S. EPA Region IX (ORC–3), 75 Hawthorne Street, San Francisco, CA 94105; E-Mail: haubenstock.arthur@epa.gov; Tel: (415) 744–1355.

Dated: October 19, 1999

Nancy Lindsey,

Acting Director, Superfund Division, Region IX.

[FR Doc. 99–28313 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6466–9]

San Gabriel Valley Superfund Sites; Notice of Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9600 *et seq.*, notice is hereby given that on September 30, 1999, the United States Environmental Protection Agency ("EPA") and the United States Department of Justice ("DOJ") executed a proposed Prospective Purchaser Agreement pertaining to a property transaction within the San Gabriel Valley Superfund Sites. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against the Industry Urban Development Agency (the "Purchaser") and the City of Industry, California. The Purchaser plans to acquire a 17 acre parcel located within the Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites near Los Angeles, California for the purposes of developing and operating a solid waste transfer and recycling station. The proposed settlement requires the Purchaser to make a one-time payment of $25,000, which would be used for response actions in the Puente Valley Operable Unit.

For thirty (30) calendar days following the date of publication of this document, EPA will receive written comments relating to this proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before November 29, 1999.

Availability

The proposed Prospective Purchaser Agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA, 94105. A copy of the proposed settlement may also be obtained from EPA at the address listed below. Comments should reference "Industry Urban-Development Agency Prospective Purchaser Agreement, Docket No. 99–11, San Gabriel Valley Superfund Sites" and should be directed to Brett Moffatt at the address below.

FOR FURTHER INFORMATION CONTACT: Brett Moffatt, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA, 94105; E-mail: moffatt.brett@epamail.epa.gov; Phone:(415) 744–1374.

Keith A. Takata,

Director, Superfund Division, Region IX.

[FR Doc. 99–28389 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62162; FRL–6386–8]

Asbestos-Containing Materials in Schools; State Request for Waiver from Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed waiver.

SUMMARY: EPA has received from Texas a request for a waiver from the Agency's asbestos-in-schools program. A waiver of these requirements will be granted if EPA determines, after notice and comment and opportunity for a public hearing, that Texas is implementing or intends to implement a program of asbestos inspection and management at least as stringent as EPA's program. This notice announces an opportunity for a public hearing on the Texas waiver request and solicits written comments.

DATES: Written comments under docket control number OPPTS–62162 must be received on or before December 28, 1999. Each comment must include the name and address of the submitter. Any request for a public hearing must be in writing, be received on or before December 28, 1999, and detail specific objections to the grant of the waiver. If, during the comment period, EPA receives such a request for a public hearing, EPA will schedule a public hearing in Texas following the comment period. EPA will announce the date of the public hearing in the **Federal Register**.

ADDRESSES: Written comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided under Unit I. of "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, you must identify docket control number OPPTS–62162 on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Neil Pflum, Asbestos Coordinator, (6PD-T), Region VI, Environmental Protection Agency, 1445 Ross Ave., Dallas, TX 75202; telephone: (214) 665–2295; e-mail: pflum.neil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of special interest to teachers and other school personnel, their representatives, and parents in Texas, and asbestos professionals working in Texas. Since other entities may also be interested, the Agency has not attempted to describe all entities that may be affected by this action. If you have any questions regarding the applicability of this action to any entity, contact the person under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

EPA has established an official record for this action under docket control number OPPTS–62162. The official record consists of the documents referenced in this action, as well as any public comments received during the comment period, and other related information. The official record, which includes printed versions of any electronic comments, is available for inspection in Rm. 12D13 (Library 12th floor), EPA Region VI, 1445 Ross Ave., Dallas, TX. The Library is open from 8 a.m. to noon, Monday through Friday, excluding legal holidays. The telephone number is (214) 665–6427.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPPTS–62162 on the first page of your response.

1. *By mail.* Submit your comments to: Neil Pflum, Region VI Asbestos Coordinator (6PD–T), Environmental Protection Agency, 1445 Ross Ave., Dallas, TX 75202.

2. *In person or by courier.* Deliver your comments to: Rm. 12D13 (Library 12th floor), EPA Region VI, 1445 Ross Ave., Dallas, TX. The Library is open from 8 a.m. to noon, Monday through Friday, excluding legal holidays. The telephone number is (214) 665–6427.

3. *Electronically.* You may submit your comments by e-mail to: pflum.neil@epa.gov, or mail your computer disk to the address identified above. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 5.1/6.1.

II. Background

A. What Action is the Agency Taking and under What Authority?

EPA is considering granting, with conditions, a waiver of the asbestos-in-schools program to Texas. This notice is issued, and the waiver, if granted, would be issued under section 203(m) of TSCA and 40 CFR 763.98. Section 203 is within Title II of TSCA, the Asbestos Hazard Emergency Response Act (AHERA).

In 1987, under TSCA section 203, the Agency promulgated regulations that require the identification and management of asbestos-containing material by local education agencies (LEAs) in the nation's elementary and secondary school buildings: the "AHERA Schools Rule" (40 CFR part 763, subpart E). Under section 203(m) of TSCA and 40 CFR 763.98, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, EPA may waive, in whole or in part, the requirements of the asbestos-in-schools program (TSCA section 203 and the AHERA schools rule) if EPA determines that the State has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as those in the Agency's asbestos-in-schools program. A State seeking a waiver must submit its request to the EPA Region in which the State is located.

The Agency recognizes that a waiver granted to any State would not encompass schools operated under the defense dependents' education system (the third type of LEA defined at TSCA section 202(7) and 40 CFR 763.83), which serve dependents in overseas areas, and other elementary and secondary schools outside a State's jurisdiction, which generally include schools in Indian country. Such schools would remain subject to EPA's asbestos-in-schools program.

B. When Did Texas Submit its Request for a Waiver and How is EPA Proposing to Respond?

On July 27, 1999, Texas Governor George W. Bush, submitted to Gregg A. Cooke, Regional Administrator, EPA Region VI, a letter requesting a full waiver of the requirements of EPA's asbestos-in-schools program.

EPA is hereby issuing a notice in the **Federal Register** announcing receipt of the complete Texas waiver request and an opportunity for comment and public hearing, and making the request and the supporting documentation available in the public record for this notice. The Agency is also describing the information submitted by Texas and the Agency's preliminary determinations as to how the waiver request meets the criteria for the grant of a waiver.

C. What was EPA's Determination with Regard to the Completeness of Texas' Waiver Request?

The Texas waiver request has been deemed complete by EPA and contains the following:

1. A copy of the Texas provisions that include its program of asbestos inspection and management in schools. These consist of: The Texas Asbestos Health Protection Act (Texas Revised Civil Statutes Article 4477–3a) and implementing regulations (Texas

Administrative Code, Title 25, Part I, Chapter 295, Subchapter C "Texas Asbestos Health Protection," Sections 295.31–295.71).

2. The name of the Texas agency responsible for administrating and enforcing the requirements of a waiver, namely the Texas Department of Health (TDH). Responsible officials include: John A. Jacobi, P.E., Chief, Bureau of Environmental Health; Claren Kotrla, Director, Toxic Substances Control Division; Todd F. Wingler, Chief, Asbestos Programs Branch; and Gordon Leeks, Inspector, PCB/AHERA program--telephone: (512) 834–6600.

3. Reasons, supporting papers, and the rationale for concluding that Texas' asbestos inspection and management programs, for which the waiver request is made, are at least as stringent as the requirements of EPA's program, as discussed in EPA's Preliminary Determinations in Units II.D.2. and 3.

4. A discussion of any special situations, problems, and needs pertaining to the waiver request accompanied by an explanation of how Texas plans to handle them, as discussed in EPA's Preliminary Determination in Unit II.D.6.

5. A statement of the resources that Texas intends to devote to the administration and enforcement of its program, as discussed in EPA's Preliminary Determination in Unit II.D.5.

6. Copies of Texas laws and regulations relating to the request, including provisions for assessing penalties, as referenced in Unit II.C.1.

7. Assurance from the legal counsel of TDH that the Department has the legal authority necessary to carry out the requirements relating to the waiver request, as indicated in a letter from Susan Steeg, General Counsel, to Gregg Cooke, dated February 22, 1999.

D. What are the Criteria for EPA's Grant of the Waiver and What are EPA's Preliminary Determinations Relating to These Criteria?

EPA may waive the requirements of the Agency's asbestos-in-schools program if the Agency determines that Texas has met the criteria set forth at 40 CFR 763.98. The criteria and EPA's preliminary determinations relating to the grant of the waiver to Texas are set forth below:

1. *Criterion*: Texas' lead agency has the legal authority necessary to carry out the provisions of asbestos inspection and management in schools relating to the waiver request.

EPA's Preliminary Determination: EPA has determined preliminarily that the statutory and regulatory provisions cited at Unit II.C.1. give TDH such legal authority.

2. *Criterion*: Texas' program is or will be at least as stringent as the EPA asbestos-in-schools program.

EPA's Preliminary Determination: Since Texas has adopted the AHERA schools rule by reference in its regulations, EPA has determined preliminarily that Texas' program is or will be at least as stringent as EPA's program. See EPA's Preliminary Determination in Unit II.D.6.

3. *Criterion*: Texas has an enforcement mechanism to allow it to implement the program described in the waiver request.

EPA's Preliminary Determination: EPA has determined preliminarily that the compliance and enforcement provisions of Texas' asbestos-in-schools program are adequate to run the program. Inspectors will use site visits to determine if the LEAs are complying with the program. Violations will be cited for enforcement action which can range from warning letters (notices of noncompliance) to administrative actions to civil actions.

4. *Criterion*: TDH has or will have qualified personnel to carry out the provisions relating to the waiver request.

EPA's Preliminary Determination: EPA has preliminarily determined that TDH has or will have qualified personnel to carry out the provisions of the waiver. An inspector currently employed by TDH has had experience in conducting asbestos inspections in schools. The Department also employs a number of individuals that have experience in asbestos program enforcement who are available to lend their expertise to the asbestos-in-schools program.

5. *Criterion*: Texas will devote adequate resources to the administration and enforcement of the asbestos inspection and management provisions relating to the waiver request.

EPA's Preliminary Determination: EPA has determined preliminarily that Texas has adequate resources to administer and enforce the provisions of the program. Texas plans to devote $114,311 to the program annually. It plans to match a Federal grant of $85,733, with $28,578 of State funds. The budget allows for two full-time employees, travel, supplies, and training.

6. *Criterion*: Texas gives satisfactory assurances that the necessary steps, including specific actions it proposes to take and a time schedule for their accomplishment, will be taken within a reasonable time to conform with applicable criteria in Units II.D.2.4.

EPA's Preliminary Determination: For EPA to grant a full waiver to Texas, the State, as a condition of the grant of the waiver, would need to give a written assurance satisfactory to EPA that, if following the grant of the waiver, any provision of either TSCA section 203 or the AHERA schools rule is changed, the State would, within a reasonable period of time, make appropriate changes, as necessary, to the statutory and regulatory provisions of its asbestos-in-schools program to ensure that the program remains at least as stringent as the EPA asbestos-in-schools program.

In addition, if a waiver is granted and as long as it remains in effect, Texas, utilizing adequate resources, would need to continue its asbestos-in-schools implementation and enforcement strategy. EPA may evaluate periodically the adequacy of Texas' program under 40 CFR 763.98, and, under circumstances set forth in the regulation, may, in whole or in part, rescind the waiver if the Agency determines the program to be inadequate.

E. What Recordkeeping and Reporting Burden Approvals Apply to the Texas Waiver Request?

The recordkeeping and reporting burden associated with waiver requests was approved by the Office of Management and Budget (OMB) under OMB control number 2070–0091. This document announces the Agency's receipt of the Texas waiver request and, therefore, imposes no additional burden beyond that covered under existing OMB control number 2070–0091.

III. Materials in the Official Record

The official record, under docket control number OPPTS–62162, contains the Texas waiver request, supporting documentation, and other relevant documents.

List of Subjects

Environmental protection, Administrative practice and procedure, Asbestos, Hazardous substances, Imports, Intergovernmental relations, Labeling, Occupational safety and health, Reporting and recordkeeping requirements, Schools.

Dated: October 19, 1999.

Jerry Clifford,

Acting Regional Administrator, Region VI.

[FR Doc. 99–28392 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–6466–6]

Notice of Intent To Revise Aquatic Life Criteria for Copper, Silver, Lead, Cadmium, Iron and Selenium; Notice of Intent To Develop Aquatic Life Criteria for Atrazine, Diazinon, Nonylphenol, Methyl Tertiary-Butyl Ether (MtBE), Manganese and Saltwater Dissolved Oxygen (Cape Cod to Cape Hatteras); Notice of Data Availability; Request for Data and Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to revise aquatic life criteria for copper, silver, lead, cadmium, iron and selenium; notice of intent to develop aquatic life criteria for atrazine, diazinon, nonylphenol, methyl tertiary-butyl ether (MtBE), manganese and saltwater dissolved oxygen (Cape Cod to Cape Hatteras); notice of data availability; request for data and information.

SUMMARY: Section 304(a)(1) of the Clean Water Act requires the Environmental Protection Agency (EPA) to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. Today, EPA is notifying the public of its intent to revise the current aquatic life criteria for copper, silver, lead, cadmium, iron and selenium and to develop new aquatic life criteria for atrazine, diazinon, nonylphenol, methyl tertiary-butyl ether (MtBE), manganese and saltwater dissolved oxygen (Cape Cod to Cape Hatteras). Lists of references available to the Agency for copper, silver, lead, cadmium, selenium, atrazine, diazinon, nonylphenol and saltwater dissolved oxygen (Cape Cod to Cape Hatteras) are available on the Office of Science and Technology's Home-page. References for iron, MtBE and manganese will be posted on the Office of Science and Technology's Home-page when they are available. EPA is soliciting any additional pertinent data or scientific views that may be useful in revising or developing these criteria.

ADDRESSES: Send an original and three copies of any data, references or information to W–99–15 Comment Clerk, Water Docket, MC 4104, US EPA, 401 M Street, S.W., Washington, D.C. 20460. Information may also be submitted electronically to *OW-Docket@epa.gov*. Information should be submitted as a WP5.1, 6.1 and/or 8.0 or an ASCII file with no form of encryption.

DATES: Submissions of information would be most useful if submitted within 60 days. Information submitted too long after that time, and too near the end of the document preparation process, may not receive the degree of consideration that information received earlier would.

FOR FURTHER INFORMATION CONTACT: Jennifer Mitchell, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–6101; *mitchell.jennifer@epa.gov* (copper, silver, iron) Cindy Roberts, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–2787; *roberts.cindy@epa.gov* (cadmium and lead) Frank Gostomski, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–1321; *gostomski.frank@epa.gov* (atrazine, diazinon, nonylphenol, MtBE and manganese) Keith Sappington, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–9898; *sappington.keith@epa.gov* (selenium) Erik Winchester, Health and Ecological Criteria Division (4304), US EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–6107; *erik.winchester@epa.gov* (saltwater dissolved oxygen (Cape Cod to Cape Hatteras).

SUPPLEMENTARY INFORMATION:

What Are Water Quality Criteria?

Section 304(a)(1) of the Clean Water Act requires the EPA to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments. They do not consider economic impacts or the technological feasibility of meeting the criteria in ambient water. Section 304(a) criteria provide guidance to States and Tribes in adopting water quality standards and provide a scientific basis for them to develop controls of discharges or releases of pollutants. The criteria also provide a scientific bases for EPA to develop federal regulations under section 303(c).

What Type of Information Does EPA Want From the Public?

Today, EPA is notifying the public of its intent to revise the current aquatic life criteria for copper, silver, lead, cadmium, iron and selenium and to develop new aquatic life criteria for atrazine, diazinon, nonylphenol, MtBE, manganese and saltwater dissolved oxygen (Cape Cod to Cape Hatteras). EPA has recently completed a comprehensive review of the available data for copper, silver, lead, cadmium, selenium, atrazine, diazinon, nonylphenol and saltwater dissolved oxygen (Cape Cod to Cape Hatteras). The lists of references identified by the Agency for these chemicals are available on the Office of Science and Technology's Home-page at: www.epa.gov/ost/standards/aqualife.html. EPA is soliciting any additional pertinent data or scientific views that may be useful in revising or developing the aquatic life criteria for copper, silver, lead, cadmium, iron, selenium, nonylphenol, MtBE and manganese. In particular, EPA is interested in acquiring from the public any new data, not identified by the Agency's literature review, on the acute or chronic toxicity of these chemicals to aquatic life and scientific views on the interpretation of data or on the application of the Agency's methodology for deriving water quality criteria for these chemicals. Any data submitted should be adequately documented and contain enough supporting information to indicate that acceptable test procedures were used and that the results are likely reliable.

The Agency is developing new criteria for atrazine, diazinon and saltwater dissolved oxygen (Cape Cod to Cape Hatteras); however, these criteria were under development prior to the Agency's revising its criteria development process. Consequently, the criteria for diazinon, atrazine and saltwater dissolved oxygen (Cape Cod to Cape Hatteras) are near completion, but were not developed totally in accordance with the Agency's new procedures. The availability of these criteria will be announced in the **Federal Register** around the same time as this notice. At that time the Agency plans to publish the atrazine, diazinon and saltwater dissolved oxygen (Cape Cod to Cape Hatteras) documents as EPA recommended criteria with an invitation to submit additional data and comments. Additional data and comments will be considered in any subsequent revisions to the criteria.

Biotic Ligand Model

EPA is assessing the biotic ligand model for copper, silver, lead and cadmium. The biotic ligand model describes and quantifies the bioavailability of certain metals to aquatic life. The model is based on the theory that toxicity is not only related to total aqueous metal concentration, but that metal complexation and interaction at the site of action (biotic ligand) of toxicity need to be considered. Mortality occurs in aquatic organisms when the concentration of metal bound to the biotic ligand (*e.g.*, fish gill) exceeds a certain threshold concentration. More detailed information on the biotic ligand model can be found in the document entitled, Integrated Approach to Assessing the Bioavailability and Toxicity of Metals in Surface Waters and Sediments (EPA–822–E–99–001).

To help assess the applicability of the biotic ligand model to the aquatic life criteria for these four metals, EPA is interested in receiving toxicity test data that include measurements of dissolved metal as well as: dissolved organic carbon (DOC), alkalinity or dissolved inorganic carbon (DIC), pH, calcium, magnesium, sodium, chloride, sulfate and sulfide. Additionally, studies that measure metal accumulation at the surface of the fish gill or at physiologically active receptor sites for invertebrates are particularly useful.

Where Can I Find More Information on EPA's Revised Process for Developing New or Revised Criteria?

The Agency published detailed information about its revised process for developing and revising criteria in the **Federal Register** on December 10, 1998 (63 FR 68354) and in the EPA document entitled, National Recommended Water Quality— Correction (EPA 822–Z–99–001, April 1999). The purpose of the revised process is to provide expanded opportunities for public input, and to make the criteria development process more efficient.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 99–28314 Filed 10–28–99; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan African Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan African Advisory Committee was established by Public Law 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: Wednesday, November 17, 1999, at 9:00 a.m. to 12:00 noon. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

Agenda: This meeting will include a discussion of the development and implementation of policies and programs designed to support the expansion of Ex-Im Bank's Financial commitments in Sub-Saharan Africa. The discussion will focus on themes raised over the course of the year and conclusions based on our successes and challenges presented to Ex-Im Bank in implementing the 1998 recommendations.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 3, 1999, Teri Stumpf, Room 1203, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW, Washington DC 20571, (202) 565–3502.

John M. Niehuss,

General Counsel.

[FR Doc. 99–28284 Filed 10–28–99; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–2294]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 25, 1999, the Commission released a public notice announcing the November 16 and 17, 1999, meeting and agenda of the North American Numbering Council (NANC).

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: October 25, 1999. The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, November 16, 1999, from 8:30 a.m., until 3:30 p.m., and on Wednesday, November 17, 1999, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW–C305, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

1. Approve October 19–20, 1999, meeting minutes.

2. North American Numbering Plan Administrator (NANPA) Report. Discussion of requirements for refinements to the NANP exhaust and pooling models assumptions, pursuant to paragraph 165 of the Numbering Resource Optimization, Notice of Proposed Rulemaking, CC Docket 99–200.

3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Presentation of the consensus Audit Framework document. Status of the 1999 NANPA performance evaluation remaining issues; discussion of the proposed 2000 NANPA performance evaluation process.

4. Numbering Resource Optimization (NRO) Working Group Report. Discussion of the proposed work plan, per discussion with the LNPA WG, NANPA, INC and State Public Service Commissions.

5. Local Number Portability Administration (LNPA) Working Group. Update on the impact of the billing and Call Detail Record (CDR) management to the timeline for wireless wireline

integration by November 2002. Status of NPAC Release 1.4 and 3.0 regarding number pooling.

6. Industry Numbering Committee (INC) Report. Summary of the unassigned number porting (Issue 177) activity. Discussion of possible delay of INC NANP Expansion (Issue 022) report until January 2000.

7. Number Pooling Issue Management Group (IMG) Report. Status update on Year 2000 pooling effort.

8. Oversight of the Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activities.

Wednesday, November 17, 1999

9. Steering Group Report.

10. Cost Recovery Working Group Report. North American Billing and Collection (NBANC) update.

11. Public participation, if any.

12. Other Business.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–28439 Filed 10–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, October 26, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days, notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters In a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW, Washington, DC.

Dated: October 26, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–28437 Filed 10–26–99; 4:48 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3140–EM]

California; Amendment No. 4 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3140–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: October 21, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is re-opened as a result of the continuing fires in the State of California. The incident period is August 24, 1999, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–28394 Filed 10–28–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3150–EM]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3150–EM), dated October 15, 1999, and related determinations.

EFFECTIVE DATE: October 15, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 15, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the emergency conditions in certain areas of the State of Florida, resulting from Hurricane Irene on October 14, 1999, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Florida.
>
> You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the emergency. I have further authorized direct Federal assistance, at 75 percent Federal funding. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act, as you may deem appropriate. However, this assistance would exclude regular time costs for subgrantees regular employees.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared emergency:

FEMA intends to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency. FEMA is further authorized to provide direct Federal assistance, at 75 percent Federal funding.

This assistance is for the counties of Brevard, Broward, Charlotte, Collier, Dade, DeSoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Lucie, Sarasota, Seminole, and Volusia.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–28395 Filed 10–28–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3150–EM]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida, (FEMA–3150–EM), dated October 15, 1999, and related determinations.

EFFECTIVE DATE: October 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of October 15, 1999, :

Flagler County for direct Federal assistance and Categories A and B (debris removal and emergency protective measures) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–28396 Filed 10–28–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3150–EM]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida (FEMA–3150–EM), dated October 15, 1999, and related determinations.

EFFECTIVE DATE: October 19, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 19, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–28397 Filed 10–28–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1305–DR]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1305–DR), dated October 18, 1999, and related determinations.

EFFECTIVE DATE: October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 18, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of New Hampshire, resulting from Tropical Storm Floyd on September 16–18, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act").
>
> I, therefore, declare that such a major disaster exists in the State of New Hampshire.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster:

Belknap, Cheshire, and Grafton Counties for Public Assistance.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–28393 Filed 10–28–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Opening Meeting, National Dam Safety Review Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 8(h) of the National Dam Safety Program Act (P.L. 104–303), the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Interagency Committee on Dam Safety.

Date of Meeting: November 3, 1999.

Place: Federal Emergency Management Agency, 500 C Street, S.W., Room 345, Washington, D.C. 20472.

Time: 9:00 a.m.–12:00 noon.

Proposed Agenda: Review initiatives for FY2000.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Donald Bathurst, Director, National Dam Safety Program, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, S.W., Room 416, Washington, D.C. 20472, telephone (202) 646–2753 or by facsimile at (202) 646–3990.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first served basis. Members of the general public who plan to attend the meeting should contact Rita Henry, Federal Emergency Management Agency, 500 C Street, S.W., Room 416, Washington, D.C. 20472, Telephone (202) 646–2704 or Bud Andress at (202) 646–2801 or by facsimile at (202) 646–3990 on or before November 2, 1999.

Minutes of the meeting will be prepared and available upon request 30 days after they have been approved by the Interagency Committee on Dam Safety.

Dated: October 22, 1999.

Craig Wingo,

Director, National Earthquake Program, Mitigation Directorate.

[FR Doc. 99–28398 Filed 10–28–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: November 10, 1999.

Place: The FEMA Conference Operator in Washington, DC will administer the teleconference. Individuals interested in participating should call 1–800–320–4330 at the time of the teleconference. Callers will be prompted for the conference code, #11, and they will then be connected through to the teleconference.

Time: 2:00 p.m. to 4:00 p.m., EST.

Proposed Agenda:

1. Call to order.
2. Announcements.
3. Action on minutes from September 1999 meeting.
4. Discuss agenda for December 1999 meeting in Washington, DC.
5. New business.
6. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting in December 1999.

Craig S. Wingo,

Director, National Earthquake Program.

[FR Doc. 99–28399 Filed 10–28–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 15, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *John Walter Ratliff,* Tazewell, Virginia; to acquire additional voting shares of GNB Bankshares Corporation, Grundy, Virginia, and thereby indirectly acquire Grundy National Bank, Grundy, Virginia.

Board of Governors of the Federal Reserve System, October 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28360 Filed 10–28–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Wilson & Muir Bancorp, Inc.*, Bardstown, Kentucky; to acquire 100 percent of the voting shares of Farmers Bank of Vine Grove, Vine Grove, Kentucky. Comments regarding this application must be received not later than November 22, 1999.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *Glacier Bancorp, Inc.*, Kalispell, Montana; to acquire 100 percent of the voting shares of Mountain West Bank, Coeur d'Alene, Idaho.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Marion Bancshares, Inc., Marion, Kansas*, Marion, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Marion National Bank, Marion, Kansas.

Board of Governors of the Federal Reserve System, October 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-28362 Filed 10-28-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engage in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99-27727) published on page 57458 of the issue for Monday, October 25, 1999.

Under the Federal Reserve Bank of New York heading, the entry for UBS AG, Zurich, Switzerland, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *UBS AG*, Zurich, Switzerland; to acquire 100 percent of the voting shares of ARI Acquisition Corporation, Hartford, Connecticut, and thereby acquire managing membership interests in Allegis Realty Investors LLC, AgriVest LLC, and Allegis Capital LLC, all of Hartford, Connecticut, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y, and in securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y. These activities will be conducted worldwide.

Comments on this application must be received by November 8, 1999.

Board of Governors of the Federal Reserve System, October 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-28361 Filed 10-28-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 3, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-28486 Filed 10-27-99; 11:12 am]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 9:00 a.m. (EST) November 8, 1999.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 12, 1999, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit report: Pension and Welfare Benefits Administration Review of Thrift Savings Plan C and F Fund Investment Management Operations at Barclays Global Investors, N.A.
4. Labor Department audit briefing.
5. Semiannual review of status of audit recommendations.
6. Quarterly Investment policy review.
7. Annual ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: October 26, 1999.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99-28436 Filed 10-26-99; 4:48 pm]

BILLING CODE 6760-01-M

FEDERAL TRADE COMMISSION

[File No. 991-0319]

VNU N.V.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 23, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Ann Malester, FTC/S–2308, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, (202) 326–2574 or 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 22, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from VNU N.V. ("VNU"), which is designed to remedy the anticompetitive effects resulting from VNU's acquisition of Nielsen Media Research, Inc. ("Nielsen"). Under the terms of the agreement, VNU will be required to divest its division, Competitive Media Reporting ("CMR"), which supplies advertising expenditure measurement services, to a Commission-approved buyer no later than six (6) months from the date VNU signed the Consent Agreement. If the sale of CMR is not made within six (6) months, the Commission may appoint a trustee to divest CMR.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (3) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision & Order.

Pursuant to an August 16, 1999 cash tender offer, VNU agreed to acquire 100 percent of the issued and outstanding voting securities of Nielsen for approximately $2.5 billion. The Commission's Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the market for advertising expenditure measurement services.

Nielsen, through its Monitor Plus division, and VNU, through its CMR division, are the only providers of advertising expenditure measurement services in the United States. Both companies track the occurrence of commercial advertisements across numerous media, including: national and local broadcast television; national and local syndication; national and local cable; national and local radio; national, local, trade and Sunday magazines; national and local newspapers; outdoor advertising; and the Internet. This information is typically integrated with other data, such as estimated advertising costs and television ratings, in order to create advertising expenditure measurement reports. Customers, such as advertising agencies, use these reports to create advertising strategies for their clients, to study the advertising strategies of their clients' competitors, and to monitor what their clients' competitors are spending on advertising. Monitor Plus and CMR are the only providers of advertising expenditure measurement services across multiple media in the United States.

The United States advertising expenditure measurement services market is highly concentrated, and the proposed acquisition would combine the only providers of these services. For many years, CMR was the only supplier of advertising expenditure measurement services. Monitor Plus's entry into this market in the mid-1990's and its subsequent head-to-head competition with CMR has provided customers with significant price savings and innovations, including better methods of tracking the occurrence of advertisements. By eliminating competition between the only two competitors in this highly concentrated market, the proposed acquisition would allow VNU to exercise market power unilaterally, thereby increasing the likelihood that purchasers of advertising expenditure measurement services would be forced to pay higher prices and that innovation in the advertising expenditure measurement services market would decrease.

Substantial barriers to new entry exist in the advertising expenditure measurement services market. A new entrant into this market would need to undertake the difficult, expensive, and time-consuming process of obtaining access to the technology required for television, cable, and radio advertising monitoring; developing or acquiring at least two years of historical advertising expenditure data; hiring employees to manually track advertising in print and outdoor media; establishing a track record for data quality, depth, and accuracy; developing software that would permit customers to access and manipulate data; creating a knowledgeable sales force; and forming a service and support network. In addition, entry into the advertising expenditure measurement market is made more unlikely because of long-term contracts that may reduce the amount of sales opportunities available to new entrants. Because of the difficulty of accomplishing these tasks, new entry into the advertising expenditure measurement services market could not be accomplished in a timely manner and is therefore unlikely to deter or counteract the anticompetitive effects resulting from the transaction.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the advertising expenditure measurement services market by requiring VNU to divest its CMR Division. CMR is the dominant firm in the market, with an approximate market share of 70 percent. Pursuant to the Consent Agreement, VNU is required to divest CMR no later than six (6) months from the date VNU signed the Consent Agreement. In the event that VNU fails to divest CMR within this six-month time frame, the commission may appoint a trustee to divest CMR. The Consent Agreement also ensures that the acquirer of CMR will continue to have access to Nielsen's television ratings data by extending the duration of CMR's contract with Nielsen for the supply of television ratings information.

In order to ensure that CMR remains a viable, independent competitor pending its divestiture, the Commission has issued an Order to Hold Separate. Under the Order to Hold Separate, the Commission may appoint an Independent Auditor to monitor VNU's compliance with its obligation to hold CMR separate and independent. In addition, in order to ensure that the acquirer of the divested assets has access to key employees currently involved in CMR's advertising expenditure measurement services business, the Order to Hold Separate requires VNU to provide financial incentives for these individuals to accept employment with the acquirer. The Order to Hold Separate also requires VNU to provide to the Commission a report of compliance with the divestiture provisions of the Order to Hold Separate within thirty (30) days following the date the Consent Agreement becomes final, and every thirty (30) days thereafter until VNU has completed the required divestiture.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify in any way its terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–28357 Filed 10–28–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The following Standard Form is cancelled because of nonuse:

SF 335, Summary Worksheet for Estimating Forms Cost.

DATES: Effective October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: October 21, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99–28406 Filed 10–28–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry (ATSDR)

[ATSDR–155]

Notice of the Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles; Correction

A notice announcing the availability of the Revised CERCLA Priority List of 275 Hazardous Substances based on the most recent information available to ATSDR and EPA was published in the **Federal Register** on October 21, 1999, (64 FR 56792). This notice is corrected as follows:

On page 56792, in the third column, under the heading of: **FOR FURTHER INFORMATION CONTACT,** the telephone number should read: 1–888–422–8737.

All other information and requirements of the October 21, 1999, notice remain the same.

Dated: October 25, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–28305 Filed 10–28–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Risk Perceptions Among Youth of Environmental Hazards—New—Agency for Toxic Substances and Disease Registry (ATSDR). In 1996, the Agency for Toxic Substances and Disease Registry (ATSDR) launched a child health initiative to investigate knowledge and awareness of environmental hazards among children and youth. ATSDR is designing a new study, Risk Perceptions Among Youth of Environmental Hazards, to evaluate whether an educational intervention influences risk perceptions and knowledge of environmental toxins among middle school-aged students in a large metropolitan area. The results of this study will shed light on the ways young people learn about and use new information on environmental hazards. The results of this study will also be used to develop targeted environmental health education campaigns and

improve communication strategies aimed at young people, and inform and guide ATSDR partners who may be planning similar educational interventions.

An educational intervention will be designed and implemented in a school-based setting to see if and how three communication variables influence young people's knowledge and behavior of environmental hazards. The key variables in this study are the source of the message, the contaminant, and the individual's perception of risk. A study population of 360 male and female students will be randomly selected from 7th and 8th grade science classes in a large metropolitan school district. Each study participant will complete two written surveys (*e.g.*, a pre-test and post-test) administered prior to and immediately after listening to risk and hazard information. The results will be evaluated to determine the impact of different types and sources of information on the risk perceptions of participants. The total cost to the respondents is $0.

Type of respondents	Number of respondents per year	Number of responses/respondent	Avg. burden per response (in hrs.)	Total annual burden (in hrs.)
Middle school students (male and female)—7th and 8th grade	360	2	12/60=0.2	144

Dated: October 25, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–28302 Filed 10–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Telephone Survey of Chronic Fatigue Syndrome—New—National Center for Infectious Disease (NCID). In 1997, OMB approved the information collection "Chronic Fatigue Syndrome Surveillance and Related Studies, Prevalence and Incidence of Fatiguing Illness in Sedgwick County, Kansas" under OMB Number 09200401. Data from this cross-sectional, random-digit-dial survey of prolonged fatiguing illness in Sedgwick County (Wichita), Kansas concluded that prolonged fatigue affects over 6% of the population, the prevalence of chronic fatigue syndrome (CFS) was 0.24%, and that CFS prevalence was highest in white females (0.36%).

The proposed study replicates the Sedgwick County study using identical methodology and data collection instruments. Beginning with a random-digit-dial telephone survey to identify fatigued and non-fatigued individuals followed by a detailed telephone interview to obtain additional data on participants' health status. Study objectives are to refine estimates of the magnitude of fatiguing illness and CFS in the United States, with special consideration of under-served populations (children and racial/ethnic minorities), and to determine if the occurrence of fatiguing illness exhibits metropolitan, urban, and rural differences. Prevalence estimates from this proposed cross-sectional study of the U.S. population will be compared to those obtained for Sedgwick County to determine if the Sedgwick County findings can be generalized to the U.S. The total cost to the respondent is $0.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden hours
Screener interview	51,000	1	0.083	4,233
Telephone interview	12,500	1	0.25	3,125
Total				7,358

Dated: October 25, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–28304 Filed 10–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–02–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

1. Proposed Project

Methodological Study of the Youth Risk Behavior Survey (YRBS)—New—The National Center for Chronic Disease and Health Promotion, Division of Adolescent and School Health. The purpose of this study (1) the test-retest reliability of the questions contained on the YRBS questionnaire and (2) the validity of selected YRBS items. The YRBS is a biennial survey administered to students attending public and private schools in grades 9–12 nationwide. The questionnaire measures priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and adults in the U.S. OMB clearance to conduct the national YRBS will expire in January, 2000 (OMB No. 0920–0258, expiration 1/00). Data on the health risk of adolescents is the focus of at least 26 national health objectives in Healthy People 2000: Midcourse Review and 1995 Revisions. The YRBS is providing end-of-decade data to help measure these objectives as well as baseline data to measure many new national health objectives for 2010. A study of the test-retest reliability of the original YRBS questionnaire was conducted several years ago. In 1997–1998 an extensive review of the YRBS was undertaken and then a modified YRBS questionnaire was fielded nationally in 1999. This psychometric study will provide data on the test-retest reliability of the new modified questionnaire and provide data on the validity of selected questions (such as self-reported height and weight). The results will be used to improve the widely-used YRBS questionnaire. The total annual burden hours are 7,882.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)
Students—time 1 survey	5,280	1	0.75
Students—height and weight measurement	5,280	1	0.05
Students—time 2 survey	4,800	1	0.75
School administrators	116	1	0.50

Dated: October 25, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC)

[FR Doc. 99–28303 Filed 10–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0299]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New; *Title of Information Collection:* A Project to Develop an Outcome-Based Continuous Quality Improvement System for PACE; *Form No.:* HCFA–R–0299 (OMB# 0938–NEW); *Use:* The purpose of this project is to develop an out-come based continuous quality improvement (OBCQI) approach for the PACE program by (a) developing and testing potential outcome measures, (b) testing risk adjustment methods so that each site's outcomes can be appropriately evaluated, and (c) designing an OBCQI approach to improve quality in a systematic, evolutionary manner; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions and Individuals or households: *Number of Respondents:* 8,298; *Total Annual Resonses:* 26,402; *Total Annual Hours:* 7,203.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 19, 1999.

John Parmigiani,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–28382 Filed 10–28–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3026–N]

Medicare Program; Open Town Hall Meeting To Discuss Transplant Center Criteria

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to convene all parties interested in providing input to our Medicare coverage policy pertaining to criteria for approving organ transplant facilities. This meeting represents one aspect of the evolving process for making the coverage reviews more open and responsive to the public.

DATES: The meeting is scheduled for Wednesday, December 1, 1999 from 8:30 a.m. until 5 p.m., eastern standard time.

ADDRESSES: The meeting will be held in the Health Care Financing Administration Main Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Jacqueline Sheridan, (410) 786–4635.

SUPPLEMENTARY INFORMATION:

Background

Medicare currently covers heart, liver, and lung transplants only in facilities that meet the following specified criteria, which are similar for the three organ types: Patient selection criteria, patient management protocols, commitment of resources and planning, facility resources, experience and survival, agreement to maintain data, agreement with organ procurement organizations, and laboratory services. (We published three notices in the **Federal Register** related to our criteria for Medicare coverage of heart, liver, and lung transplants, respectively, as follows: April 6, 1987 (52 FR 10935); April 12, 1991 (56 FR 15006); and February 2, 1995 (60 FR 6537).) These criteria have been in place for many years and need to be reevaluated because of advancements in the area of organ transplants.

The purpose of the Town Hall meeting is to convene dialogue on criteria for Medicare coverage of facilities to perform organ transplants, including the possibility of additional rulemaking. Discussion of other controversial transplant-related issues, such as organ allocation policies, organ donation policies, or standards for organ procurement organizations, will not be permitted at this meeting due to time constraints. We anticipate attendance by national professional medical organizations; staff of hospitals that currently perform transplants; experts in technology assessment, health policy, and clinical research; other Federal agencies; managed care organizations; transplant recipients and their families; and other members of the public with an interest in transplants.

The format for the meeting will be four subject-related panel presentations followed by an opportunity for comments from the audience. The panel topics will include (1) aspects of center performance that should be considered in determining coverage; (2) methodology for outcome measures; (3) data; and (4) target thresholds. It is our intent for invited panelists to stimulate further discussion based on the presentations. This discussion will be free-flowing and will not result in consensus statements or a set of advisory recommendations.

The meeting is open to the public, but attendance is limited to space available. We encourage individuals to register early to secure availability and allow time for receipt of background materials. Individuals must register in advance as described below.

Registration

Casals and Associates, Incorporated in Alexandria, Virginia will handle registration for the meeting. Individuals may register by contacting Alison Holder at Casals and Associates, Incorporated by FAX at (703) 920–5750, or by mail at Casals and Associates, Incorporated, 1199 North Fairfax Street, Alexandria, Virginia 22314. Registrants must provide their name, title, firm name, address, telephone number, FAX number, and Internet electronic mail address (if applicable).

Casals and Associates, Incorporated will provide all registrants with a confirmation packet and background papers before the meeting.

Participants who wish to display an exhibit or make a presentation at the meeting must contact Connie Conrad at (410) 786–4631 or via e-mail at cconrad@hcfa.gov, or Jacqueline Sheridan at (410) 786–4635 or via e-mail at jsheridan@hcfa.gov, no later than November 15, 1999.

We will accept written questions, comments, or other materials from individuals or individual organizations either before the meeting, or up to 14 days after the meeting. Individuals who wish to submit comments must do so by mail to the Health Care Financing Administration, Attention: Jacqueline Sheridan, Office of Clinical Standards and Quality/CAG, Room S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850; or by FAX at (410) 786–9286; or by e-mail at jsheridan@hcfa.gov.

There is no special format for the materials; however, we request that commenters be clear about the issue or aspect of the proposed process on which they have a question, comment, or suggestion.

Individuals may access information regarding the agenda and schedule of presentations on our home page (www.hcfa.gov/quality/8b.htm).

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No.93.774, Medicare—Supplementary Medical Insurance)

Dated: October 13, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–28400 Filed 10–28–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Draft OIG Compliance Program Guidance for Nursing Facilities

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and comment period.

SUMMARY: This **Federal Register** notice seeks the comments of interested parties on draft compliance guidance developed by the Office of Inspector General (OIG) for nursing facilities. Through this notice, the OIG is setting forth its general views on the value and fundamental principles of nursing facilities' compliance programs, and the specific elements that nursing facilities should consider when developing and implementing an effective compliance program.

DATE: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on November 29, 1999.

ADDRESSES: Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–5P–CPG, Room 5246, Cohen Building, 330 Independence Avenue, SW, Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmissions. In commenting, please refer to file code OIG–5P–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue SW., Washington, DC 20201 on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Lewis Morris, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidance is a major initiative of the OIG in its effort to engage the private health care community in combating fraud and abuse. In the last several years, the OIG has developed and issued compliance program guidance directed at the following segments of the health care industry: the hospital industry; home health agencies; clinical laboratories; third-party medical billing companies; the durable medical equipment, prosthetics, orthotics and supply industry; and hospices. The development of these types of compliance program guidance is based on our belief that a health care provider can use internal controls to more efficiently monitor adherence to applicable statutes, regulations and program requirements.

Copies of these compliance program guidances can be found on the OIG website at http://www.hhs.gov/oig.

Developing Draft Compliance Program Guidance for Nursing Facilities

On December 18, 1998, the OIG published a solicitation notice seeking information and recommendations for developing formal guidance for nursing facilities (63 FR 70137). In response to that solicitation notice, the OIG received 16 comments from various outside sources. In developing this notice for formal public comment, we have considered those comments, as well as previous OIG publications, such as other compliance program guidances and Special Fraud Alerts. In addition, we have also taken into account past and recent fraud investigations conducted by the OIG's Office of Investigations and the Department of Justice, and have consulted with the Health Care Financing Administration.

This draft guidance for nursing facilities contains seven elements that the OIG has determined are fundamental to an effective compliance program:

- Implementing written policies;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Conducting internal monitoring and auditing;
- Enforcing standards through well-publicized disciplinary guidelines; and
- Responding promptly to detected offenses and developing corrective action.

These elements are contained in previous guidances issued by the OIG. As with previously issued guidances, this draft compliance program guidance represents the OIG's suggestions on how nursing facilities can best establish internal controls and prevent fraudulent activities. The contents of this guidance should not be viewed as mandatory or as an exclusive discussion of the advisable elements of a compliance program; the document is intended to present voluntary guidance to the industry and not represent binding standards for nursing facilities.

Public Input and Comment in Developing Final Guidance

In an effort to ensure that all parties have an opportunity to provide input into the OIG's guidance, we are publishing this guidance in draft form. We welcome any comments from interested parties regarding this document. The OIG will consider all comments that are received within the above-cited time frame, incorporate any specific recommendations as appropriate, and prepare a final version of the guidance thereafter for publication in the **Federal Register**.

Draft Compliance Program Guidance for Nursing Facilities

I. INTRODUCTION

The Office of Inspector General (OIG) of the Department of Health and Human Services (DHHS) continues in its efforts to promote voluntarily implemented compliance programs for the health care industry.[1] This compliance guidance is intended to assist nursing facilities[2] develop and implement internal controls and procedures that promote adherence to applicable statutes and regulations of the Federal health care programs[3] and private insurance program requirements. Compliance programs strengthen Government efforts to prevent and reduce fraud and abuse, as well as further the mission of all nursing facilities to provide quality care to their residents.

Through this document, the OIG provides its views on the fundamental elements of nursing facility compliance programs, as well as the principles that each nursing facility should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in and of itself a compliance program. Rather, it is a set of guidelines that nursing facilities should consider when developing and implementing a compliance program.

Implementing an effective compliance program in a nursing facility may require a significant commitment of time and resources by all parts of the organization. However, superficial efforts or programs that are hastily constructed and implemented without a long-term commitment to a culture of compliance will likely be ineffective and may expose the nursing facility to greater liability than if it had no program at all.[4] Although an effective compliance program may require a reallocation of existing resources, the long-term benefits of establishing a compliance program significantly outweigh the initial costs. In short, compliance measures are an investment that advances the goals of the nursing facility, the solvency of the Federal health care programs, and the quality of care provided to the nursing home resident.

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[1] Currently, the Office of Inspector General has issued compliance program guidances for the following six industry sectors: hospitals, clinical laboratories, home health agencies, durable medical equipment suppliers, third-party medical billing companies and hospices. Over the next year, the OIG plans to issue compliance guidances for Medicare+Choice organizations offering coordinated care plans, ambulance companies and small group physician practices.

[2] For the purpose of this guidance, the term "nursing facility" includes a skilled nursing facility (SNF) and a nursing facility (NF) organization that meet the requirements of sections 1819 and 1919 of the Social Security Act (Act), respectively, 42 U.S.C. 1395i-3 and 42 U.S.C. 1396r. Where appropriate we distinguish between SNFs and other facilities.

[3] The term "Federal health care programs," as defined in 42 U.S.C. 1320a–7b(f), includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (*i.e.*, via programs such as Medicare, Federal Employees Health Benefits Act, Federal Employees' Compensation Act, Black Lung, or the Longshore and Harbor Worker's Compensation Act) or any State health plan (*e.g.*, Medicaid, or a program receiving funds from block grants for social services or child health services). In this document, the term "Federal health care program requirements" refers to the statutes, regulations and other rules governing Medicare, Medicaid, and all other Federal health care programs.

In a continuing effort to collaborate closely with health care providers and the private sector, the OIG placed a notice in the **Federal Register** soliciting comments and recommendations on what should be included in this compliance program guidance.[5] In addition to considering these comments in drafting this guidance, we reviewed previous OIG publications, including OIG Special Fraud Alerts and OIG Medicare Advisory Bulletins, as well as reports issued by OIG's Office of Audit Services (OAS) and Office of Evaluation and Inspections (OEI) affecting the nursing home industry.[6] In addition, we relied on the experience gained from fraud investigations of nursing home operators conducted by OIG's Office of Investigations, the Department of Justice, and the Medicaid Fraud Control Units.

A. Benefits of a Compliance Program

The OIG believes a comprehensive compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, improving operational functions, improving the quality of health care services, and reducing the cost of health care. Attaining these goals provides positive results to the nursing facility, the Government, and individual citizens alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to Government and private payers, a nursing facility may gain numerous additional benefits by voluntarily implementing a compliance program. The benefits may include:

- The formulation of effective internal controls to assure compliance with statutes, regulations and rules;
- A concrete demonstration to employees and the community at large of the nursing facility's commitment to responsible corporate conduct;
- The ability to obtain an accurate assessment of employee and contractor behavior;
- An increased likelihood of identifying and preventing unlawful and unethical behavior;
- The ability to quickly react to employees' operational compliance concerns and effectively target resources to address those concerns;
- Improvement of the quality, efficiency, and consistency of providing services;
- A mechanism to encourage employees to report potential problems and allow for appropriate internal inquiry and corrective action;
- A centralized source for distributing information on health care statutes, regulations and other program directives;[7]
- A mechanism to improve internal communications;
- Procedures that allow the prompt, thorough investigation of alleged misconduct; and
- Through early detection and reporting, minimizing loss to the Government from false claims, and thereby reducing the nursing facility's exposure to civil damages and penalties, criminal sanctions, and administrative remedies.[8]

The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud and abuse from the operations of a nursing facility. However, a sincere effort by the nursing facility to comply with applicable statutes and regulations as well as Government and private payer health care program requirements, through the establishment of a compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

Given the diversity within the long-term care industry, there is no single "best" nursing facility compliance program. The OIG recognizes the complexities of this industry and is sensitive to the differences among large national chains, regional multi-facility operators, and small independent homes. However, the elements of this guidance can be used by all nursing facilities to establish a compliance program, regardless of size (in terms of employees and gross revenue), number of locations, or corporate structure. Similarly, a corporation that provides long term care as part of an integrated health care delivery system may incorporate these elements into its structure.[9]

We recognize that some nursing facilities may not be able to adopt certain elements to the same degree that others with more extensive resources may achieve. At the end of several sections of this document, the OIG has offered suggestions to assist these smaller nursing facility providers in implementing the principles expressed in this guidance. Regardless of size, structure or available resources, the OIG recommends that every nursing facility should strive to accomplish the objectives and principles underlying all of the compliance polices and procedures in this guidance.

By no means should the contents of this guidance be viewed as an exclusive or complete discussion of the advisable elements of a compliance program. On the contrary, the OIG strongly encourages nursing facilities to develop and implement compliance elements that uniquely address the areas of potential problems, common concerns, or high risk areas that apply to their own facilities. Furthermore, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the statutes, regulations and rules of the Federal, State, and private health plans occur. New compliance practices also may be incorporated into this guidance if the OIG discovers enhancements that promote effective compliance.

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[4] Recent case law suggests that the failure of a corporate director to attempt in good faith to institute a compliance program in certain situations may be a breach of a director's fiduciary obligation. *See, e.g., In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Ct. Chanc. Del. 1996).

[5] *See* 63 FR 70137 (December 12, 1998) "Notice for Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for the Nursing Home Industry."

[6] The OIG periodically issues advisory opinions responding to specific inquiries concerning the application of the OIG's authorities and Special Fraud Alerts setting forth activities that raise legal and enforcement issues. These documents, as well as reports from OAS and OEI can be obtained on the Internet at: http://www.hhs.gov/oig. We also recommend that nursing home providers regularly review the Health Care Financing Administration (HCFA) website on the Internet at: http://www.hcfa.gov, for up-to-date regulations, manuals, and program memoranda related to the Medicare and Medicaid programs.

[7] Counsel to the nursing facility should be consulted as appropriate regarding interpretation and legal analysis of laws related to the Federal health care programs and laws related to fraud, abuse and other legal requirements.

[8] The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. However, the burden is on the nursing facility to demonstrate the operational effectiveness of the compliance program. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government within 30 days of detection, in certain circumstances will be subject to not less than double, as opposed to treble, damages. *See* 31 U.S.C. 3729(a). In addition, criminal sanctions may be mitigated by an effective compliance program that was in place at the time of the criminal offense. *See* note 11.

[9] For example, this would include providers that own hospitals, skilled nursing facilities, long-term care facilities and hospices.

II. Compliance Program Elements

A. The Seven Basic Compliance Elements

The OIG believes that every effective compliance program must begin with a formal commitment[10] by the nursing facility's governing body to address all of the applicable elements listed below, which are based on the seven steps of the Federal Sentencing Guidelines.[11] The OIG recognizes that full implementation of all elements may not be immediately feasible for all nursing facilities. However, as a first step, a good faith and meaningful commitment on the part of nursing facility management will substantially contribute to the program's successful implementation. As the compliance program is effectuated, that commitment should cascade down through management to every employee and contractor of the nursing facility.

At a minimum, a comprehensive compliance program should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies, procedures and protocols that promote the nursing facility's commitment to compliance (*e.g.*, by including adherence to the compliance program as an element in evaluating managers and employees) and address specific areas of potential fraud and abuse, such as claims development and submission processes, quality of care issues facing residents, and financial arrangements with physicians and outside contractors that may affect the health care provided to beneficiaries;

(2) The designation of a compliance officer and other appropriate bodies (*e.g.*, a corporate compliance committee), charged with the responsibility for developing, operating and monitoring the compliance program, and who reports directly to the owner(s), governing body and/or CEO;[12]

(3) The development and implementation of regular, effective education and training programs for all affected employees;[13]

(4) The creation and maintenance of an effective line of communication between the compliance officer and all employees, including a process, such as a hotline or other reporting system, to receive complaints, and the adoption of procedures to protect the anonymity of complainants and to protect whistle blowers from retaliation;

(5) The use of audits and/or other risk evaluation techniques to monitor compliance, identify problem areas, and assist in the reduction of identified problems;[14]

(6) The development of policies and procedures addressing the non-employment or retention of excluded individuals or entities; and the enforcement of appropriate disciplinary action against employees or contractors who have violated corporate or compliance policies and procedures, applicable statutes, regulations, or Federal, State, or private payor health care program requirements; and

(7) The development of policies and procedures with respect to the investigation of identified systemic problems, which include direction regarding the prompt and proper response to detected offenses, such as the initiation of appropriate corrective action, repayments and preventive measures.

B. Written Policies and Procedures

Every compliance program should develop and distribute written compliance standards, procedures and practices that guide the nursing facility and the conduct of its employees throughout day-to-day operations. These policies and procedures should be developed under the direction and supervision of the compliance officer, the compliance committee, and operational managers. At a minimum, they should be provided to all employees who are affected by these policies, as well as physicians, suppliers, nursing facility agents, and contractors who may affect or be affected by the nursing facility's billing and care functions.[15] In addition to general corporate policies and procedures, an effective compliance program should include specific policies and procedures for the different clinical, financial, and administrative functions of a nursing facility.

1. Code of Conduct

While a clear statement of policies and procedures is at the core of a compliance program, the OIG recommends that nursing facilities start the process with the development of a corporate statement of principles that will guide the operations of the provider. One common expression of this statement of principles is the code of conduct.[16]

The code should function in the same fashion as a constitution, *i.e.*, as a foundational document that details the fundamental principles, values, and framework for action within an organization. The code of conduct for a nursing facility should articulate the organization's expectations of employees, as well as summarize the basic legal principles under which the organization must operate. Unlike the more detailed policies and procedures, the code of conduct should be brief, easily readable and cover general principles applicable to all employees.

The code of conduct should be distributed to, and comprehensible by, all affected employees.[17] Depending on the facility's work force, this may mean that the code should be translated into other languages when necessary and written at appropriate reading levels. Further, any employee handbook delineating the standards of conduct should be regularly updated to reflect developments in applicable Government and private health care program requirements. Finally, the OIG recommends that current employees, as well as those newly hired, should certify that they have received and read the organization's code of conduct. These certifications should be updated on a regular basis, possibly as part of an annual training program, retained in the employee's personnel file and made available for review.[18]

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[10] A formal commitment may include a resolution by the board of directors, owner(s), or president, where applicable. Evidence of that commitment should include the allocation of adequate resources, a timetable, and the identification of an individual to serve as a compliance officer or coordinator to ensure that each of the recommended and adopted elements is addressed. Once a commitment has been established, a compliance officer should immediately be chosen to oversee the implementation of the compliance program.

[11] *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8 A1.2, Application Note 3(k). The Federal Sentencing Guidelines are detailed policies and practices for the Federal criminal justice system that prescribe the appropriate sanctions for offenders convicted of Federal crimes.

[12] The roles of the compliance officer and the corporate compliance committee in implementing an effective compliance program are discussed throughout this guidance. However, the OIG recognizes that the differences in the sizes and structures of nursing facilities may result in differences in the way in which compliance programs function.

[13] Training and educational programs for nursing facilities should be detailed, comprehensive and at the same time targeted to address the needs of specific employees based on their responsibilities within the facility. Existing in-service training programs can be expanded to address general compliance issues, as well as the risk areas identified in that part of nursing home operations.

[14] For example, periodically spot-checking the work of coding and billing personnel should be part of a compliance program. In addition, procedures to regularly monitor the care provided nursing facility residents and to ensure that deficiencies identified by surveyors are corrected should be incorporated into the compliance program's evaluation and monitoring functions.

[15] According to the Federal Sentencing Guidelines, an organization must have established compliance standards and procedures to be followed by its employees and other agents in order to receive sentencing credit for an "effective" compliance program. The Federal Sentencing Guidelines define "agent" as "any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization." *See* United States Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(d).

[16] The OIG strongly encourages the participation and involvement of the nursing facility's owner(s), governing board, CEO, as well as other personnel from various levels of the organizational structure in the development of all aspects of the compliance program, especially the standards of conduct. Management and employee involvement in this process communicates a strong and explicit commitment to all employees of the need to comply with the organization's standards of conduct.

[17] The code also should be distributed, or at least available, to the residents and their families, as well

The OIG believes that *all* nursing facilities should operate under the guidance of a code of conduct. While the OIG recognizes that some nursing facilities may not have the resources to establish a comprehensive compliance program, we believe that every nursing facility can design a program that addresses the seven elements set out in this guidance, albeit at different levels of sophistication and complexity. In its most fundamental form, a facility's code of conduct is a basic set of standards that articulate the organization's philosophy, summarizes basic legal principles, and teaches employees how to respond to practices that may violate the code of conduct and standards. These standards should be posted and distributed to every employee. Further, even a small nursing facility should obtain written attestation from its employees to confirm their understanding and commitment to the nursing facility's code of conduct.

2. Specific Risk Areas

As part of their commitment to a compliance program, nursing facilities should prepare a comprehensive set of written policies and procedures that are in place to prevent fraud and abuse in facility operations and to ensure the appropriate care of their residents. These policies and procedures should educate and alert all affected managers and employees of the Federal health care program requirements, the consequences of noncompliance, and the specific procedures that nursing facility employees should follow to report problems, to ensure compliance, and to rectify any prior noncompliance.

The OIG recognizes that most facilities have in place policies and procedures to prevent fraud and abuse in their institutions. These providers may not need to develop a new, comprehensive set of policies as part of their compliance program if existing policies encompass the provider's operations and relevant rules. However, the nursing home industry is subject to numerous Federal and State statutes, rules, regulations and manual instructions.[19] Because these program requirements are frequently modified, the OIG recommends that all nursing facilities evaluate their current compliance policies and procedures by conducting a baseline assessment of risk areas, as well as subsequent reevaluations.[20] The OIG also recommends that these internal compliance reviews be undertaken on a regular basis to ensure compliance with current program requirements.

To assist nursing facilities in performing this internal assessment, the OIG has developed a list of potential risk areas affecting nursing facility providers. These risk areas include quality of care and residents' rights, employee screening, vendor relationships, billing and cost reporting, and recordkeeping and documentation. This list of risk areas is not exhaustive, nor all encompassing. Rather, it should be viewed as a starting point for an internal review of potential vulnerabilities within the nursing facility.[21] The objective of this assessment should be to ensure that the employees, managers and directors are aware of these risk areas and that steps are taken to minimize, to the extent possible, the types of billing and quality of care problems identified. While there are many ways to accomplish this objective, the OIG has observed that comprehensive, clear written standards, policies and procedures that are communicated to all appropriate employees and contractors are the first step in an effective compliance program.

The OIG believes that sound operating compliance policies are essential to all nursing facilities, regardless of size and capability. If a lack of resources to develop such policies is genuinely an issue, the OIG recommends that those nursing facilities focus first on those risk areas most likely to arise in their business operations. At a *minimum*, resources should be directed to analyze the results of annual surveys,[22] and to verify that the facility has effectively addressed any deficiencies cited by the surveyors. An effective and low-cost means to accomplish this is through the use of the facility's Quality Assessment and Assurance Committee. The committee should consist of facility staff members, including the Director of Nursing and the facility physician. On a periodic basis, the committee should meet to identify compliance issues affecting the quality of care provided to the residents and to develop and implement appropriate corrective actions. The time commitment required for this collaborative effort will vary according to the magnitude of the facility's quality assessment and assurance issues.

Creating a resource manual from publicly available information may be a cost-effective approach for developing policies and procedures to improve the quality of each resident's life. For example, a simple binder that contains a facility's written policies and procedures, the most recent survey findings and plan of correction, relevant HCFA instructions and bulletins, and summaries of key OIG documents (*e.g.*, Special Fraud Alerts, Advisory Bulletins, inspection and audit reports) can be regularly updated and made accessible to all employees. Particularly in the case of more technical materials, it may be advisable to provide summaries in the handbook and make the source documents available upon request. If individualized copies of this handbook are not made available to all employees, then a reference copy should be available in a readily accessible location, as well as from the designated compliance officer.

a. Quality of Care. The OIG believes that a nursing facility's compliance policies should start with a statement that affirms the facility's commitment to

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as the physicians and contractors associated with the facility.

[18] Documentation of employee training and other compliance efforts is important in conducting internal assessments of the compliance program, as well as during any third-party evaluation of facility's efforts to comply with Federal health care program requirements. *See* section II.F.

[19] *See* http://www.hcfa.gov for a set of all Medicare and Medicaid manuals.

[20] In addition, all providers should be aware of the enforcement priorities of Federal and State regulators and law enforcement agencies. OIG periodically issues Special Fraud Alerts and Special Advisory Bulletins that identify activities believed to raise enforcement concerns. These documents and other materials that provide insight into the nursing home enforcement priorities of the OIG are referenced throughout this guidance.

[21] The OIG recommends that, in addition to the list set forth below, the provider review the OIG's Work Plan to identify vulnerabilities and risk areas on which the OIG will focus during the following year. In addition, it is recommended that the nursing facility routinely review the OIG's semiannual reports, which identify program vulnerabilities and risk areas that the OIG has targeted during the preceding six months. All of these documents are available on the OIG's webpage at http://www.hhs.gov/oig.

[22] State and local agencies enter into agreements with DHHS under which they survey and make recommendations regarding whether providers meet the Medicare conditions of participation or other requirements for SNFs and NFs (*See* 42 CFR 488.10).

providing the care necessary to attain or maintain the resident's "highest practicable physical, mental and psychosocial well-being."[23] To achieve the goal of providing quality care, nursing facilities should continually measure their performance against comprehensive standards, which at a minimum should include the Medicare conditions of participation.[24] In addition to these regulations, a facility should develop its own standards of quality care and the mechanisms for evaluating its performance.

As noted above, current and past surveys are a good place to begin to identify specific risk areas and regulatory vulnerabilities at the individual facility. Any deficiencies discovered by annual State agency or Federal validation surveys may reflect noncompliance with the program regulations and can be the basis for enforcement actions.[25] Those deficiencies identified by the State health agency survey instrument should be addressed and, where appropriate, the corrective action should be incorporated into the facility's policies and procedures as well as reflected in its training and educational programs. In addition to responding promptly to deficiencies identified through the survey and certification process, nursing facilities should take proactive measures to identify, anticipate and respond to quality of care risk areas identified by the nursing home ombudsman or other sources.

As noted throughout this guidance, each provider must assess its vulnerability to particular abusive practices in light of its unique circumstances. However, the OIG, HCFA, the Department of Justice, and State enforcement agencies have substantial experience in identifying quality of care risk areas. Some of the special areas of concern include:

- Absence of a comprehensive, accurate assessment of each resident's functional capacity and a comprehensive care plan that includes measurable objectives to meet the resident's medical, mental and psychosocial needs;[26]
- Inappropriate or insufficient treatment and services to address residents' clinical conditions, including pressure ulcers, dehydration, malnutrition, incontinence of the bladder, and mental or psychosocial problems;[27]
- Failure to properly prescribe, administer and monitor drug medication usage, including psychotropic and anti-depressant medications;[28]
- Inadequate or insufficiently trained staff to provide medical, nursing, and related services;[29]
- Failure to provide appropriate therapy services;[30]
- Failure to provide appropriate services to assist residents with activities of daily living (*e.g.*, feeding, dressing, bathing, etc.); and
- Failure to report incidents of mistreatment, neglect, or abuse to the administrator of the facility and other officials as required by law.[31]

As noted previously, a nursing facility that has a history of serious deficiencies should use those survey results as a starting point for implementing a comprehensive plan to improve its quality of care. Effectively addressing these risk areas with written policies and procedures, which are then implemented through effective training programs, can most directly improve the quality of the nursing home residents's life.

b. *Residents' Rights.* The Budget Reconciliation Act (OBRA) of 1987, Public Law 100–203, established a number of requirements to protect and promote the rights of each resident.[32] In addition, many States have adopted specific lists of residents' rights.[33] The nursing facility's policies should address the residents' right to a dignified existence that promotes freedom of choice, self-determination, and reasonable accommodation of individual needs. To protect the rights of each resident, the OIG recommends that a provider address the following risk areas as part of its compliance policies:

- Discriminatory admission or improper denial of access to care;[34]

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[23] 42 CFR 483.25. *See* OIG report OEI–02–98–00331 "Quality of Care in Nursing Homes: An Overview," in which the OIG found that, although the overall number of deficiencies identified through the survey and certification process was decreasing, the number of "quality of care" and other serious deficiencies was increasing.

[24] *See* 42 CFR part 483, which establishes requirements for long-term care facilities. HCFA's regulations establish conditions that must be met for a nursing facility to qualify to participate in the Medicare and Medicaid programs. State licensure laws may impose additional requirements for the establishment and certification of a nursing facility.

[25] *See* 42 CFR part 488, subparts A, B, C, E, and F. The survey instrument is used to identify deficiencies, such as: failure to notify residents of their rights; improper use of restraints for discipline purposes; lack of a clean and safe environment; failure to provide care for basic living activities, including failing to prevent and/or treat pressure sores, urinary incontinence, hydration; and failing to properly feed residents.

[26] As stated above, each resident must receive the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the resident's assessment and plan of care (*see* 42 CFR 483.25). The OIG recognizes that this standard does not always lend itself to easy, objective evaluation. The matter is further complicated by the right of the resident, or his or her legal representative, to decide on a course of treatment that may be contra-in-dicated. The Patient Self-Determination Act (P.L. 103–413) requires health care institutions to educate patients about advance directives and to document their decision on life-sustaining treatments.

[27] HCFA has created a repository of best practice guidelines for the care of residents at risk of pressure ulcers, dehydration and malnutrition. In addition, the Food and Nutrition Board of the National Research Council, National Academy of Sciences, has established recommended dietary allowances.

[28] The OIG has conducted a series of reviews that focused on prescription drug use in nursing homes. *See* OIG reports OEI–06–96–00080, OEI–06–96–0008, OEI–06–96–00082, "Prescription Drug Use in Nursing Homes." The OIG found that patients experienced adverse reactions to various drugs as a result of inappropriate prescribing and inadequate monitoring of medication usage. The reviews revealed serious concerns, including residents receiving drugs for which their medical records lacked evidence of a prescription; and the prescription of drugs judged inappropriate for use by elderly persons. The studies also found that medication records were often incomplete and not readily accessible, making it difficult for a pharmacist to identify or confirm drug regimens or problems.

[29] For example, Federal regulations require that the medical care of each resident should be supervised by a physician, who must see the resident at least once every 30 days for the first 90 days after admission and at least once every 60 days thereafter (*see* 42 CFR 483 40(c)). The facility also must retain the services of a registered nurse, 42 CFR 483.30, as well as a qualified dietitian. 42 CFR 483.35. In addition to these basic Federal requirements, the OIG strongly believes that the facility should conform to State-mandated staffing levels where they exist and adopt its own minimum "hours per patient" staffing standards in any case. At the heart of many quality of care deficiencies is a lack of adequate staff needed to provide basic nursing services.

[30] *See* OIG report OEI–09–97–00120 "Medical Necessity of Physical and Occupational Therapy in Skilled Nursing Facilities," which found a high rate of medically unnecessary therapies in a number of nursing facilities; such unnecessary services lead to inappropriate care. With the introduction of the prospective payment system, nursing facilities should ensure that financial pressures do not create incentives to *underutilize* medically necessary therapeutic services.

[31] In addition to providing the facility's management important information about the state of care in the facility, the self-reporting of resident abuse, including injuries of unknown sources, is a condition of participation (*See* 42 CFR 483.13(c)(2)). Although State surveyors conduct complaint surveys when they receive a complaint, these surveys can only occur if the surveyors are aware of the problem.

[32] *See* generally, 42 U.S.C. 1395i–3 and 42 CFR part 483.

[33] In OIG report OEI–02–98–00350 "Long Term Ombudsman Program: Complaint Trends," the OIG points out that complaints about resident care and resident rights have been increasing. Resident care concerns included complaints about personal care, such as a pressure and hygiene, lack of rehabilitation, the inappropriate use of restraints, abuse and neglect, problems with admissions and eviction, and the exercise of personal rights.

[34] Nursing facilities should offer care to all patients who are eligible in accordance with Federal and State laws governing admissions (*See*

- Verbal, mental or physical abuse, corporal punishment and involuntary seclusion; [35]
- Inappropriate use of physical or chemical restraints; [36]
- Failure to ensure that residents have access to their personal records upon request and that the privacy and confidentiality of those records are protected; [37]
- Denial of a resident's right to participate in his or her care and treatment; [38]
- Failure to safeguard residents' financial affairs.[39]

c. *Billing and Cost Reporting.* Abusive and fraudulent billing practices in the Federal health care programs drain the public fisc of the funds needed to provide program beneficiaries medically necessary items and services. Over the last twenty years, the OIG has identified patterns of improper and fraudulent activities that cover the spectrum of health care services and have cost taxpayers billions of dollars.[40] These fraudulent billing practices, as well as abuses in other risk areas that are described in these compliance program guidances, have resulted in criminal, civil and administrative enforcement actions. Because the consequences of these enforcement actions can have a profound adverse impact on a provider, the identification of risk areas associated with billing and cost reporting should be a major part of a nursing facility's compliance program.

The introduction of a prospective payments system (PPS) for Medicare SNFs and implementation of consolidated billing create additional issues to be addressed when designing billing and cost reporting compliance policies and procedures.[41] In the following discussion of billing risk areas, the OIG has attempted to identify issues that pose concerns under the current systems of reimbursement, the transition period to consolidated billing, as well as anticipate potential compliance issues stemming from these program changes. As is the case with all aspects of compliance, the nursing facility must continually reassess its billing procedures and policies to ensure that unanticipated problems are promptly identified and corrected. Listed below are some of the reimbursement risk areas a nursing facility should consider addressing as part of its written compliance policies and procedures:

- Billing for items or services not rendered or provided as claimed; [42]
- Submitting claims for equipment, medical supplies and services that are medically unnecessary; [43]
- Submitting claims to Medicare Part A for residents who are not eligible for Part A coverage; [44]
- Duplicate billing; [45]
- Failing to identify and refund credit balances; [46]

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42 CFR 483.12(d)). The provider also should maintain identical policies regarding "transfer, discharge, and provision of services under the State plan" for all residents, regardless of payment source (*See* 42 CFR 483.12(c)). *See also* OIG report OEI–02–99–00400 "Early Effects of the Prospective Payment System on Access to Skilled Nursing Facilities."

[35] *See California Nursing Homes: Care Problems Persist Despite Federal and State Oversight* (GAO/HEHS–98–202, July, 1998). As noted previously, the facility must establish a process by which the facility administrator is informed of incidents of abuse and an investigation is conducted within 5 days of the incident (*See* 42 CFR 483.13(c)(4)).

[36] *See* OIG Report OEI–01–91–00840 "Minimizing Restraints in Nursing Homes: A Guide to Action."

[37] It is a violation of the Medicare conditions of participation to make unauthorized disclosures from the resident's medical records (*See* 42 CFR 483.10(e)). The facility should also establish policies that respect each resident's right to privacy in personal communications, including the right to receive mail that is unopened and to the use of a telephone where calls can be made in privacy.

[38] The right of self-determination includes the resident's right to choose a personal physician, to be fully informed of his or her health status, and participate in treatment decisions, including the right to refuse treatment, unless adjudged incompetent or incapacitated (*See* 42 CFR 483.10(d)).

[39] This includes preserving the resident's right to manage his or her financial affairs or permit the facility to hold and manage personal funds. The resident should receive a full and complete accounting of personal funds held by the facility (*See* 42 CFR 483.10 (c)). If a misappropriation of a resident's property is uncovered, the facility administrator should be notified immediately and an investigation conducted. Finally, the provider should take measures to ensure that personal funds have not been used to pay for items or services paid for by Medicare or Medicaid.

[40] *See* OIG Report A–17–99–00099 "Improper Fiscal Year 1998 Fee-for-Service Payments" in which the OIG estimated that improper Medicare benefit payments made during FY 1998 totaled $12.6 billion in processed fee-for-service payments. SNF payment errors were a result of claims for services lacking medical necessity and represented 7 percent of the total estimated improper payments. The OIG could not and did not quantify what percentage of the improper payments was the result of fraud. Significantly, it was only through a review of medical records that the majority of these billing errors were detected, since when the claims were submitted to the Medicare contractor, they contained no visible errors.

[41] The Balanced Budget Act of 1997 (BBA), Public Law 105–33, established PPS for SNFs. Under PPS, all costs (routine, ancillary, and capital) related to services furnished to beneficiaries covered under Part A, including certain Part B services, are paid a predetermined amount based on the medical condition and needs of the resident, as reflected in the Resource Utilization Group (RUG) code assigned to that resident. Other Part B services will continue to be reimbursed separately to the providers of such services pending implementation of a new consolidated billing system.

[42] For example, the OIG has investigated suppliers of ancillary services that improperly bill for an hour of therapy when only a few minutes were provided. Similarly, vendors that knowingly submit a claim for an expensive prosthetic device when the resident only received non-covered adult diapers have been the subject of enforcement actions. When consolidated billing is implemented, vendors will not submit bills directly to Medicare for such services. As the entity submitting the claim, the nursing facility will need to have any certifications or orders necessary to provide the service, as well as supporting documentation required, to receive payment.

[43] Billing for medically unnecessary services, supplies and equipment involves seeking reimbursement for a service that is not warranted by a resident's documented medical condition. *See* 42 U.S.C. 1395i(a)(1)(A) ("no payment may be made under part A or part B [of Medicare] for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member"). In the Special Fraud Alert "Fraud and Abuse in the Provision of Services in Nursing Facilities" (June 1996), the OIG identified several types of fraudulent arrangements through which health care providers inappropriately billed Medicare and Medicaid for unnecessary or non-rendered items and services.

Under PPS, the provision of unnecessary services may take a different form. As discussed below, manipulation of the Minimum Data Set (MDS) to fit a resident into a higher RUG can result in the provision of medically unnecessary services. In addition, a nursing facility may not enter into arrangements with providers of ancillary services through which the facility overutilizes services reimbursed under Part B in return for an offset in the cost of items or services covered under Part A.

[44] Medicare Part A benefits in skilled nursing facilities are limited to beneficiaries who require services rendered by technical or professional personnel in a skilled nursing setting (*See* 42 CFR 409.30). Knowingly misrepresenting the nature or level of services provided to a Medicare beneficiary to circumvent the program's limitation is fraudulent.

[45] Duplicate billing occurs when the nursing facility bills for the same item or service more than once or when a vendor bills the Federal health care program for an item or service also billed by the facility. Although duplicate billing can occur due to simple error, the knowing submission of duplicate claims—which is sometimes evidenced by systematic or repeated double billing—can create liability under criminal, civil, or administrative law. When Medicare Part B implements consolidated billing, facilities should modify all agreements with vendors to require that the vendor bill the facility for those services covered under consolidated billing requirements and not submit bills directly to Medicare for such services.

[46] A credit balance is an excess payment made to a health care provider as a result of patient billing or claims processing error. Nursing facilities should institute procedures to provide for the timely identification, accurate reporting and repayment of credit balances. In addition, the provider should promptly repay if a resident is also entitled to a credit. *See* OIG report OEI–07–09–00910 "Medicare Credit Balances in Skilled Nursing Facility Patient Accounts" and OEI–07–09–00911 "Medicaid Credit Balances in Skilled Nursing Facility Patient Accounts," in which the OIG found that skilled nursing facilities were not accurately or completely adjusting and reporting credit balance amounts due to the Medicare and Medicaid programs. Significantly, the intentional concealment of a known overpayment may expose a provider to criminal sanctions (*See* 42 U.S.C. 1320a–7b(a)(3)), and civil liability under the False Claims Act.

- Submitting claims for items or services not ordered;[47]
- Knowingly billing for inadequate or substandard care;[48]
- Providing misleading information about a resident's medical condition on the MDS or otherwise providing inaccurate information used to determine the RUG assigned to the resident;
- Upcoding the level of service provided;[49]
- Billing for individual items or services when they either are included in the facility's per diem rate or are of the type of item or service that must be billed as a unit and may not be unbundled;[50]
- Billing residents for items or services that are included in the per diem rate or otherwise covered by the third-party payor;
- Forging physician or beneficiary signatures on documents used to verify that services were ordered and/or provided;[51]
- Failing to maintain sufficient documentation to establish that the services were ordered and/or performed; and
- False cost reports.[52]

The OIG recommends that a nursing facility, through its policies and procedures, take all reasonable steps to ensure compliance with the Federal health care programs when submitting information that affects reimbursement decisions. The risk areas associated with billing and cost reporting have been among the most frequent subjects of investigations and audits by the OIG. In addition to facing criminal sanctions and significant monetary penalties, providers that have failed to adequately ensure the accuracy of their claims and cost report submissions can be excluded from program participation, or in lieu of exclusion, be required by the OIG to execute a corporate integrity agreement (CIA).[53]

d. Employee Screening. Nursing facilities are required by Federal, and in some cases State, law to investigate the background of certain employees. Nursing facilities should conduct a reasonable and prudent background investigation and reference check before hiring those employees who have access to patients or their possessions, or who have discretionary authority to make decisions that may involve compliance with the law. The employment application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a–7; or exclusion from participation in the Federal health care programs.

This pre-employment screening is critical to ensuring the integrity of the facility's work force and safeguarding the welfare of its residents. Because providers of nursing care have frequent, relatively unsupervised access to vulnerable people and their property, a nursing facility also should seriously consider whether to employ individuals who have been convicted of crimes of neglect, violence, theft or dishonesty, or financial misconduct.[54]

Nursing facility policies should prohibit the continued employment of individuals who have been convicted of a criminal offense related to health care or who are debarred, excluded, or otherwise become ineligible for participation in Federal health care programs.[55] In addition, if the facility has notice that an employee or contractor is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, the facility shall take all appropriate actions to ensure that the responsibilities of that employee or contractor do not adversely affect the quality of care rendered to any patient or resident, or the accuracy of any claims submitted to any Federal health care program.[56] If resolution of the matter results in conviction, debarment, or exclusion, the nursing facility should terminate its employment or other contract arrangement with the individual.

In order to ensure that nursing facilities undertake background checks of all employees to the extent required by law, the OIG recommends that the following measures be incorporated into the compliance program's policies and procedures:

- Investigate the background of employees by checking with all applicable licensing and certification authorities to verify that requisite licenses and certifications are in order;[57]

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[47] Billing for services or items not ordered involves seeking reimbursement for services provided but not ordered by the treating physician or other authorized person.

[48] *See* discussion on quality of care standards in nursing facilities in section II.B.2.a above and the accompanying notes. Knowingly billing for inadequate or substandard care may create liability under administrative, civil and criminal law.

[49] Upcoding involves the selection of a Billing code that is not the most appropriate descriptor of the service or condition, in order to maximize reimbursement. Under PPS, upcoding may take the form of "RUG creep." RUG creep occurs when a provider falsely or fraudulently completes the MDS, which results in assigning a resident to a higher RUG category.

[50] A related risk area involves bill splitting schemes. This billing abuse usually takes the form of manipulating the billing for procedures to create the appearance that the services were rendered over a period of days when all treatment occurred during one visit.

[51] The OIG has investigated a number of cases where signatures were forged, either to fabricate evidence that a physician ordered equipment or services or to create a paper trail in support of items or services that were never provided.

[52] Nursing homes are required to submit various reports to Federal and State agencies in connection with facility operations and to receive reimbursement for the care provided to program beneficiaries. Because program payments are in part based on self-reported operating costs, providers must implement procedures to ensure that these reports are prepared as accurately as possible. This should include measures to ensure that adequate documentation exists to support information provided in the report, non-allowable costs are appropriately identified and removed, and related party transactions are treated consistent with program requirements (*See* 42 CFR part 413). If the provider intends to claim costs in non-conformity with program rules, those items should be flagged in a letter accompanying the cost report. Prior enforcement actions involving nursing home cost reports have focused on nursing facilities that claimed salary expenses for employees who do not exist, inflated the number of residents served, included non-reimbursable costs with nursing home-related expenses, inappropriately shifted costs to cost centers that are below the reimbursement cap, and shifted non-Medicare related costs to Medicare cost centers.

[53] The CIA imposes reporting requirements, independent audits, and other procedures on providers who have demonstrated an inability or unwillingness to independently adopt these measures. It is clearly in a provider's best interest to avoid the implementation of a CIA by instituting its own prevention, detection, and disclosure mechanisms.

[54] In OIG report A–12–97–0003 "Safeguarding Long Term Care Residents," it was noted that although no Federal requirement exists for criminal background checks on nursing home staff, 33 States currently require that such checks occur. However, there appears to be great diversity in the way States identify, investigate, and report suspected abuse of nursing home residents.

[55] The effect of an OIG exclusion from Federal health care programs is that no Federal health care program payment may be made for any items or services: (1) furnished by an excluded individual or entity; or (2) directed or prescribed by an excluded physician (*See* 42 CFR 1001.1901). An excluded individual or entity that submits a claim for reimbursement to a Federal health care program, or causes such a claim to be submitted, may be subject to a civil money penalty of $10,000 for each item or service furnished during the period that the person or entity was excluded (*See* 42 U.S.C. 1320a–7a(a)(1)(D)). The individual or entity may also be subject to treble damages for the amount claimed for each item or service (*See* 42 U.S.C. 1320a–7a(a)). *Also see* OIG Special Advisory Bulletin "The Effect of Exclusion From Participation in Federal Health Care Programs" (September 1999).

[56] Likewise, the facility should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded, or otherwise ineligible for participation in Federal health care programs. Prospective employees or contractors that have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

- Require all potential employees to certify that they have not been convicted of an offense that would preclude employment in a nursing facility and that they are not excluded from participation in the Federal health care programs;
- Check available public sources, including the OIG's List of Excluded Individuals/Entities and the GSA's list of debarred contractors, to verify that employees are not excluded from participating in the Federal health care programs;[58] and
- Periodically check the OIG and GSA web sites to verify the participation/exclusion status of independent contractors and retain on file the results of that query.[59]

Regardless of the size or resources of the nursing facility, employee screening is a critical component of compliance policies and procedures. Nursing facilities, like all corporations, must act through their employees and are held accountable for their actions. One of the best ways to ensure that the organization will act in conformance with the law is to hire employees and contractors who can be trusted to embrace a culture of compliance. While the resources required to check the OIG List of Excluded Individuals/Entities are minimal, the absence of an accessible centralized site for criminal background checks may result in inefficiencies and expense. While large providers may elect to outsource the screening process, this may not be a realistic option for smaller nursing facilities. Nevertheless, the OIG recommends that all nursing facilities implement a policy to undertake background checks of all employees.

e. Kickbacks, Inducements and Self-Referrals. A nursing facility should have policies and procedures to ensure compliance with the anti-kickback statute,[60] the Stark physician self-referral law[61] and other relevant Federal and State laws by providing guidance in situations that could lead to a violation of these laws.[62] In particular, arrangements with hospitals, hospices, physicians and vendors are vulnerable to abuse. For example, in the case of hospitals, physicians and hospital staff exert influence over the patient and can influence the choice of a nursing facility. In addition, his or her roles as medical director and/or attending physician, a physician frequently can influence the utilization of ancillary services.[63] Moreover, by contrast, a nursing facility operator can influence the selection of which hospices will provide hospice services and which vendors will deliver equipment and services to the facility's residents. In addition to developing policies to address arrangements with other health care providers and suppliers, nursing facilities also should implement measures to avoid offering inappropriate inducements to residents. Possible risk areas that should be addressed in the policies and procedures include:

- Routinely waiving coinsurance or deductible amounts without a good faith determination that the resident is in financial need, or absent reasonable efforts to collect the cost-sharing amount;[64]
- Agreements between the facility and a hospital, home health agency, or hospice that involve the referral or transfer of any resident to or by the nursing home;[65]
- Soliciting, accepting or offering any gift or gratuity of more than nominal value to or from residents, potential referral sources, and other individuals and entities with which the nursing facility has a business relationship;[66]
- Conditioning admission or continued stay at a facility on a third-party guarantee of payment, or soliciting payment for services covered by Medicaid, in addition to any amount

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[57] Among the sources of information on prospective employees are the State registry of nurse's aides, which provides a list of nurse aides that have successfully completed training and competency evaluations and the National Practitioner Data Bank. The Data Bank is a data base that contains information about medical malpractice payments, sanctions by boards of medical examiners or State licensing boards, adverse clinical privilege actions, and adverse professional society membership actions. Health care entities can have access to this data base to seek information about their own medical or clinical staff, as well as prospective employees or physician contractors.

[58] The OIG "List of Excluded Individuals/Entities" provides information to health care providers, patients, and others regarding individuals and entities that are excluded from participation in Medicare and Medicaid, and other Federal health care programs. This report, in both an on-line searchable and downloadable database, can be located on the Internet at www.hhs.gov/oig. In addition, the General Services Administration maintains a monthly listing of debarred contractors, "List of Parties Excluded From Federal Procurement and Nonprocurement Programs," at www.arnet.gov/epls.

The OIG sanction information is readily available to users in two formats on over 15,000 individuals and entities currently excluded from program participation through action taken by the OIG. The on-line searchable database allows users to obtain information regarding excluded individuals and entities sorted by: (1) the legal bases for exclusions; (2) the types of individuals and entities excluded by the OIG; and (3) the States where excluded individuals reside or entities do business.

[59] The introduction of PPS and consolidated billing for Medicare Part B services means that vendors and their subcontractors no longer submit bills directly to Medicare for their services. Instead, the nursing facility will be submitting consolidated bills for certain services provided to residents. Because of the new responsibilities that are imposed on nursing facilities under these reimbursement schemes, the facility may be held responsible if it claims reimbursement for items or services provided by a contractor that has been excluded.

[60] The anti-kickback statute provides criminal penalties for individuals and entities that knowingly offer, pay, solicit or receive bribes or kickbacks or other remuneration in order to induce business reimbursable by Federal health care programs (*See* 42 U.S.C. 1320a–7b(b)). Civil penalties and exclusion from participation in the Federal health care programs may also result from a violation of the prohibition (*See* 42 U.S.C. 1320a–7a(a)(5) and 1320a–7(b)(7)).

[61] The Stark physician self-referral law, 42 U.S.C. 1395nn, prohibits a physician from making a referral to an entity with which the physician or any member of the physician's immediate family has a financial relationship, if the referral is for the furnishing of designated health services.

[62] The OIG has issued several advisory opinions applying the Federal statutes to arrangements that affect nursing facilities. The opinions are available on the Internet at http://www.hhs.gov/oig.

[63] Contracts between the facility and any entity in which the facility's medical director has a financial interest may be subject to the Stark law and should be reviewed and approved by legal counsel.

[64] In the OIG Special Fraud Alert "Routine Waiver of Part B Co-payments/Deductibles" (May 1991), the OIG describes several reasons why routine waivers of these cost-sharing amounts pose abuse concerns. The Alert sets forth the circumstances under which it may be appropriate to waive these amounts.

[65] In the Special Fraud Alert "Fraud and Abuse in Nursing Home Arrangements With Hospices" (March 1998), the OIG sets out the vulnerabilities in nursing home arrangements with hospices. The Alert provides several examples of questionable arrangements between hospices and nursing homes that could inappropriately influence the referral of patients. Examples include the offering of free goods or goods at below fair market value to induce a nursing home to refer patients to the hospice. Other examples demonstrating vulnerability to fraud and abuse include: (1) a hospice paying for room and board in excess of the amounts the nursing home would normally charge or receive from Medicaid; (2) a hospice paying for additional services that should be already included in the room and board payment; (3) a hospice referring patients to the nursing home in return for the nursing home's referral to the hospice. While the Special Fraud Alert focused on arrangements with hospices, nursing facilities should adopt policies that prohibit similar questionable arrangements with all health care providers.

[66] Providers should establish clear policies governing gift-giving, because such exchanges may be viewed as inducements to influence business decisions. Offering or providing any gift of more than nominal value to any beneficiary may be done with the intent to inappropriately influence health care decisions of the beneficiary or his or her family. Similarly, accepting gifts, hospitality, or entertainment from a source that is in a position to benefit from the referral of business, raises concerns that the gift may influence the employee's independent judgment. If the provider decides to allow employees to accept gifts or other gratuities below a certain nominal value or in an aggregate amount below an established amount per year, the provider should consider requiring employees to report those gifts.

required to be paid under the State Medicaid plan; [67]

- Arrangements between a nursing facility and a hospital under which the facility will only accept a Medicare beneficiary on the condition that the hospital pays the facility an amount over and above what the facility would receive through PPS; [68]
- Financial arrangements with physicians, including the facility's medical director; [69]
- Arrangements with vendors that result in the nursing facility receiving non-covered items (such as disposable adult diapers) at below market prices or no charge, provided the facility orders Medicare-reimbursed products; [70]
- Soliciting or receiving items of value in exchange for providing the supplier access to residents' medical records and other information needed to bill Medicare; [71]
- Joint ventures with entities supplying goods or services; [72] and
- Swapping.[73]

In order to keep current with this area of the law, a nursing facility should obtain copies of all relevant OIG and HCFA regulations, Special Fraud Alerts, and Advisory Opinions that address the application of the anti-kickback and Stark self-referral laws to ensure that the policies reflect current positions and opinions. Further, nursing facility policies should provide that all nursing facility contracts and arrangements with actual or potential sources of referrals are reviewed by counsel and comply with applicable statutes and requirements.

3. Retention of Records

Nursing facilities that implement a compliance program should provide for the development and implementation of a records retention system. This system should establish policies and procedures regarding the creation, distribution, retention, and destruction of documents. In designing a records systems, privacy concerns and regulatory requirements should be taken into consideration. In addition to maintaining appropriate and thorough medical records on each resident, the OIG recommends that the system should include the following types of documents:

- All records and documentation (*e.g.*, billing and claims documentation) required for participation in Federal State, and private health care programs, including the resident assessment instrument, the comprehensive plan of care and all corrective actions taken in response to surveys;
- All records and documentation required by private payors and other governmental institutions;
- All records, documentation, and audit data that support and explain cost reports and other financial activity, including any internal or external compliance monitoring activities; and
- All records necessary to demonstrate the integrity of the nursing facility compliance process and to confirm the effectiveness of the program.[74]

While conducting its compliance activities, as well as its daily operations, a nursing facility should document its efforts to comply with applicable statutes, regulations, and Federal health care program requirements. For example, where a nursing facility requests advice from a Government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the nursing facility should document and retain a record of the request and any written or oral response. This step is extremely important if the nursing facility intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals. A log of oral inquiries between the nursing facility and third parties will help the organization document its attempts at compliance. In addition, these records may become relevant in a subsequent investigation to the issue of whether the facility's reliance was "reasonable" and whether it exercised due diligence in developing procedures and practices to implement the advice.

In short, all nursing facilities, regardless of size, must retain appropriate documentation. Further, the OIG recommends that the nursing facility:

- Secure this information in a safe place;
- Maintain hard copies of all electronic or database documentation; and
- Limit access to such documentation to avoid accidental or intentional fabrication or destruction of records.[75]

As the Government increases its reliance on electronic data interchange to conduct business and gather information more quickly and efficiently, it is important that the nursing facility develops the capacity to ensure that all informational systems maintained by the facility are in working order, secured, and capable of accessing Federal and State databases.

4. Compliance as an Element of Employee Performance

Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees.

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[67] See 42 U.S.C. 1320a–7b(d)(2) which prescribes criminal penalties for knowingly and willfully charging for services provided to a Medicaid patient in excess of the rates established by the State; see *also* 42 CFR 483.12(d).

[68] Under PPS, the payment rates represent payment in full, subject to applicable coinsurance. This includes payment for all costs associated with furnishing covered SNF services to Medicare beneficiaries. It is impermissible for a hospital to pay for SNF services if it were to do so only for those residents who are Medicare beneficiaries discharged from that hospital. However, it would be permissible for a hospital to provide or pay for items or services that are furnished to SNF residents generally, if such payments are made without regard to the payment source for the individual resident. In addition, a hospital and a SNF can enter into a permissible bed reservation agreement (*See* HCFA *Provider Reimbursement Manual*, Part I, section 2105.3).

[69] All physician contracts and agreements should be reviewed to avoid violation of the anti-kickback, self-referral, and other relevant Federal and State laws. The OIG has published safe harbors that define practices not subject to the anti-kickback statute, because such arrangements would be unlikely to result in fraud or abuse. Failure to comply with a safe harbor provision does not make an arrangement per se illegal. Rather, the safe harbors set forth specific conditions that, if fully met, would assure the entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. One such safe harbor applies to personal services contracts (See 42 CFR 1001.952(d)).

[70] *See* OIG Special Fraud Alert "Fraud and Abuse in the Provision of Medical Supplies to Nursing Facilities" (August 1995). As well as violating the anti-kickback statute, both the supplier and the nursing facility may be liable for false claims if the medically unnecessary items are billed to Federal health care programs. *See* also OIG Advisory Opinion No.99–2 (February 1999).

[77] In addition to raising concerns related to the anti-kickback statute, the unauthorized disclosure of confidential records violates the resident's rights (See 42 CFR 10(e)).

[72] *See* OIG Special Fraud Alert "Joint Venture Arrangements" (August 1989); OIG Special Fraud Alert "Fraud and Abuse in the Provision of Services in Nursing Facilities" (May 1996).

[73] "Swapping" occurs when a supplier gives a nursing facility discounts on Medicare Part A items and services in return for the referrals of Medicare Part B business. With swapping, there is a risk that suppliers may offer a SNF an excessively low price for items or services reimbursed under PPS in return for the ability to service and bill nursing facility residents with Part B coverage. *See* OIG Advisory Opinion 99–2 (March 1999).

[74] Among the materials useful in documenting the compliance program are employee certifications relating to training and other compliance initiatives, copies of compliance training materials, and hotline logs and any corresponding reports of investigation, outcomes, and employee disciplinary actions. In addition, the facility should keep all relevant correspondence between carriers, fiscal intermediaries, private payor insurers, HCFA, and State survey and certification agencies.

[75] In addition to prohibiting the falsification and backdating of records, the provider should have clear guidelines, consistent with applicable professional and legal standards, that set out the circumstances when late entries may be made in a record.

Employees should be periodically trained in new compliance policies and procedures. In addition, policies should require that managers, especially those involved in the direct care of residents and in claims development and submission:

- Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements applicable to their function;
- Inform all supervised personnel that strict compliance with these policies and procedures is a condition of employment; and
- Disclose to all supervised personnel that the nursing facility will take disciplinary action up to and including termination for violation of these policies or requirements.

Managers and supervisors should be disciplined for failing to adequately instruct their subordinates or for failing to detect noncompliance with applicable policies and legal requirements, where reasonable diligence would have led to the discovery of any problems or violations and given the nursing facility the opportunity to correct them earlier. Conversely, those supervisors who have demonstrated leadership in the advancement of the company's code of conduct and compliance objectives should be singled out for recognition.

The OIG believes that all nursing facilities, regardless of resources or size, should ensure that its employees understand the importance of compliance with program requirements and the value the company places on its compliance program. If the small nursing facility does not have a formal employee evaluation system, it should informally convey to employees their compliance responsibilities whenever the opportunity arises. Positive reenforcement is generally more effective than sanctions in conditioning behavior and managers should be given mechanisms to reward employees who promote compliance.

C. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every nursing home provider should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the nursing facility and the complexity of the task. Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official with direct access to the nursing facility's president or CEO, governing body, all other senior management, and legal counsel.[76] The officer should have sufficient funding and staff to perform his or her responsibilities fully.

Coordination and communication are the key functions of the compliance officer with regard to planning, implementing, and monitoring the compliance program.

The compliance officer's primary responsibilities should include:

- Overseeing and monitoring implementation of the compliance program;[77]
- Reporting on a regular basis to the nursing facility's governing body, CEO, and compliance committee (if applicable) on the progress of implementation, and assisting these components in establishing methods to improve the nursing facility's efficiency and quality of services, and to reduce the facility's vulnerability to fraud, abuse, and waste;
- Periodically revising the program in light of changes in the organization's needs, and in the law and policies of Government and private payor health plans;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeking to ensure that all relevant employees and management understand and comply with pertinent Federal and State standards;
- Ensuring that independent contractors and agents who furnish physician, nursing, or other health care services to the residents of the nursing facility are aware of the requirements of the nursing facility's compliance program with respect to residents' rights, billing, and marketing, among other things;
- Coordinating personnel issues with the nursing facility's Human Resources/Personnel office (or its equivalent) to ensure that (i) the National Practitioner Data Bank[78] has been checked with respect to all medical staff and independent contractors (as appropriate) and (ii) the List of Excluded Individuals/Entities[79] has been checked with respect to all employees, medical staff, and independent contractors;[80]
- Assisting the nursing facility's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (*e.g.*, responding to reports of problems or suspected violations) and any resulting corrective action (*e.g.*, making necessary improvements to nursing facility policies and practices, taking appropriate disciplinary action, etc.) with all nursing facility departments, subcontracted providers, and health care professionals under the nursing facility's control;
- Participating with facility's counsel in the appropriate reporting of self-discovered violations of program requirements; and
- Continuing the momentum of the compliance program after the initial years of implementation.[81]

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, medical and billing records, and documents concerning the marketing efforts of the nursing facility and its arrangements with other health care providers, including physicians and independent contractors. This review authority enables the compliance officer to examine contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate the anti-kickback statute or regulatory requirements.

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[76] The OIG believes it is not advisable for the compliance function to be subordinate to the nursing facility's general counsel, or comptroller or similar financial officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analysis of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the nursing facility make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

[77] For multi-facility organizations, the OIG encourages coordination with each facility owned by the corporation through the use of a headquarter's compliance officer, communicating with parallel positions or compliance liaison in each facility or regional office, as appropriate.

[78] *See* note 60.

[79] *See* note 61.

[80] The compliance officer may also have to ensure that the criminal backgrounds of employees have been checked depending upon State requirements or nursing facility policy.

[81] There are many approaches the compliance officer may enlist to maintain the vitality of the compliance program. Periodic on-site visits of nursing facility operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, and circulation of recent health care articles covering fraud and abuse are some examples of approaches the compliance officer can employ.

A small nursing facility may not have the resources to hire or appoint a full time compliance officer. Multi-facility providers also may consider appointing one compliance officer at the corporate level and creating compliance liaisons officers at each facility. In any event, each facility should have a person in its organization (this person may have other functional responsibilities) who can oversee the nursing facility's compliance with applicable statutes, rules, regulations, and policies. The structure and comprehensiveness of the facility's compliance program will help determine the responsibilities of each individual compliance officer.

2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[82] When developing an appropriate team of people to serve as the nursing facility's compliance committee, a facility should consider a variety of skills and personality traits that are expected from those in such positions.[83] Once a nursing facility chooses the people that will accept the responsibilities vested in members of the compliance committee, the nursing facility needs to train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties.

The committee's functions should include:

- Analyzing the legal requirements with which the nursing facility must comply, and specific risk areas;
- Assessing existing policies and procedures that address these risk areas for possible incorporation into the compliance program;
- Working with appropriate departments to develop standards of conduct, and policies and procedures to promote compliance with legal and ethical requirements;
- Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's policies;
- Determining the appropriate strategies and approaches to promote compliance with program requirements and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;
- Developing a system to solicit, evaluate, and respond to complaints and problems; and
- Monitoring internal and external audits and investigations for the purpose of identifying deficiencies, and implementing corrective action.

The committee may also undertake other functions as the compliance concept becomes part of the overall nursing facility operating structure and daily routine. The compliance committee is an extension of the compliance officer and provides the organization with increased oversight. The OIG recognizes that some nursing facilities may not have the resources or the need to establish a compliance committee. However, when potential problems are identified, the OIG recommends these nursing facilities create a "task force," to address the particular problem. The members of the task force may vary depending upon the issue. For example, if problems are identified as a result of a State or Federal survey, the OIG recommends that a task force be created to examine the deficiencies identified by the survey and to develop plans of actions to correct the underlying causes of the deficiency.

D. Conducting Effective Training and Education

The proper education and training of corporate officers, managers and health care professionals, and the continual retraining of current personnel at all levels are critical elements of an effective compliance program. These training programs should include sessions summarizing the organization?s compliance program, fraud and abuse laws and Federal and private payor health care program requirements. More specific training on issues such as claims development and submission processes, resident rights, and marketing practices should be targeted at those employees and contractors whose job requirements make the information relevant.[84]

The organization must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors, and other significant agents by requiring participation in such training programs and by other means, such as disseminating publications that explain specific requirements in a practical manner.[85]

Managers of specific departments or groups can assist in identifying areas that require training and in carrying out such training.[86] Training instructors may come from outside or inside the organization, but must be qualified to present the subject matter involved and sufficiently experienced in the issues presented to adequately field questions and coordinate discussions among those being trained.

The nursing facility should train new employees soon after they have started working.[87] Training programs and materials should be designed to take into account the skills, experience, and knowledge of the individual trainees. The compliance officer should document any formal training undertaken by the nursing facility as part of the compliance program.

A variety of teaching methods, such as interactive training, and where a nursing facility has a culturally diverse staff, training in different languages, should be implemented so that all affected employees understand the institution's standards of conduct and procedures for alerting senior management to problems and concerns.[88]

In addition to specific training in the risk areas identified in section II.B.2, primary training for appropriate corporate officers, managers, and facility staff should include such topics as:

- Compliance with Medicare conditions of participation;

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[82] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, and clinical management (*e.g.*, the nursing facility physician), as well as employees and managers of key operating units. The compliance officer should be an integral member of the committee as well. All committee members should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes to policies and procedures as recommended by the committee.

[83] A health care provider should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of employees of the nursing facility. These interpersonal skills are as important as the professional experience of each member of the compliance committee.

[84] Specific compliance training should complement any "in-service" training sessions that a nursing facility may regularly schedule to provide an ongoing program for the training of employees as required by its conditions of participation.

[85] Some publications, such as OIG's Special Fraud Alerts, audit and inspection reports, and advisory opinions are readily available from the OIG and can provide a basis for educational courses and programs for appropriate nursing facility employees.

[86] Significant variations in the functions and responsibilities of different departments or groups may create the need for training materials that are tailored to compliance concerns associated with particular operations and duties.

[87] Certain positions, such as those that involve billing, coding and the submission of reimbursement data, create greater organizational legal exposure, and therefore require specialized training. Those hired to treat residents should undergo specialized training in residents' rights and survey and certification procedures.

[88] Post-training tests can be used to assess the success of training provided and employee comprehension of the nursing facility's policies and procedures.

- Appropriate and sufficient documentation;
- Prohibitions on paying or receiving remuneration to induce referrals;
- Improper alterations to clinical or financial records;
- Resident rights; and
- The duty to report misconduct.

The OIG suggests that all relevant personnel participate in the various educational and training programs of the nursing facility.[89] Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.[90] For example, for certain employees involved in the nursing facility admission functions, periodic training in applicable reimbursement coverage and eligibility requirements should be required. In nursing facilities with high employee turnover, periodic training updates are critical.

The OIG recognizes that the format of the training program will vary depending upon the resources of the nursing facility. For example, a nursing facility with limited resources may want to create a videotape for each type of training session so new employees can receive training in a timely manner. If videos are used for compliance training, the OIG suggests that a nursing facility make an individual available to field questions from video trainees.

The OIG recommends that participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, when such failure is serious. Adherence to the training requirements as well as other provisions of the compliance program should be a factor in the annual evaluation of each employee. The nursing facility should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

E. Developing Effective Lines of Communication

1. Access to the Compliance Officer

In order for a compliance program to work, employees must be able to ask questions and report problems. The first line supervisors play a key role in responding to employee concerns and it is appropriate that they serve as a first line of communications. In order to encourage communications, confidentiality and non-retaliation policies should be developed and distributed to all employees.[91]

Open lines of communication between the compliance officer and nursing facility employees is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud and abuse. In addition to serving as a contact point for reporting problems, the compliance officer should be viewed as someone to whom personnel can go to get clarification on the facility's policies. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards can be updated and improved to reflect any necessary changes or clarifications.[92]

2. Hotlines and Other Forms of Communication

The OIG encourages the use of hotlines,[93] e-mails, newsletters, suggestion boxes, and other forms of information exchange to maintain open lines of communication.[94] If the nursing facility establishes a hotline, the telephone number should be made readily available to all employees, independent contractors, residents, and family members by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas.[95] Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies or Federal health care program statutes and regulations should be documented and investigated promptly to determine their veracity. The compliance officer should maintain a log that records such calls, including the nature of any investigation and its results.[96] Such information, redacted of individual identifiers, should be included in reports to the governing body, the CEO, and compliance committee.[97] While the nursing facility should always strive to maintain the confidentiality of an employee's identity, it should also make clear that there may be a point where the individual's identity may become known or may have to be revealed in certain instances. The OIG recognizes that protecting anonymity may be infeasible for small nursing facilities. However, the OIG believes all facility employees, when seeking answers to questions or reporting potential instances of fraud and abuse, should know to whom to turn for attention and should be able to do so without fear of retribution.

F. Auditing and Monitoring

The OIG believes that an effective program should incorporate thorough monitoring of its implementation and an ongoing evaluation process. The compliance officer should document this ongoing monitoring, including reports of suspected noncompliance, and share these assessments with the nursing facility's senior management and the compliance committee. The extent and frequency of the compliance audits may vary depending on variables such as the nursing facility's available resources, prior history of noncompliance, and the risk factors particular to the facility.[98]

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[89] In addition, where feasible, the OIG recommends that a nursing facility give vendors and outside contractors the opportunity to participate in the nursing facility's compliance training and educational programs. Such training is particularly important for facilities that rely on agencies to provide temporary direct care staff. The introduction of consolidated billing gives added importance to educating vendors about the facility's compliance policies and procedures.

[90] Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. Additional training is required for specialty fields such as claims development and billing.

[91] In some cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when the employee brought a questionable, fraudulent, or abusive situation to the attention of senior corporate officials. Whistle blowers must be protected against retaliation, a concept embodied in the provisions of the False Claims Act (*See* 31 U.S.C. 3730(h)).

[92] Nursing facilities can also consider rewarding employees for appropriate use of established reporting systems. After all, the employee who identifies and helps stop an abusive practice can benefit the corporation as much as one who identifies cost-savings measures or increases corporate revenues.

[93] The OIG recognizes that it may not be financially feasible for a smaller nursing facility to maintain a telephone hotline dedicated to receiving calls about compliance issues. These companies may want to explore alternative methods, *e.g.*, outsourcing the hotline or establishing a written method of confidential disclosure.

[94] In addition, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of nursing facility policy and procedures.

[95] Nursing facilities should also post in a prominent area the HHS–OIG Hotline telephone number, 1–800–447–8477 (1–800–HHS–TIPS).

[96] To efficiently and accurately fulfill such an obligation, the nursing facility should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date that the potential problem was reported, the results of the internal investigation, and, as appropriate, the corrective action implemented, the disciplinary measures imposed, and/or any identified overpayments returned.

[97] Information obtained over the hotline may provide valuable insight into management practices and operations, whether reported problems are actual or perceived.

Although many assessment techniques are available, one effective tool is the performance of regular, periodic compliance audits by internal or external evaluators who have expertise in Federal and State health care statutes, regulations, and program requirements, as well as private payor rules. These assessments should focus both on the nursing facility's day-to-day operations, as well as its adherence to the rules governing claims development, billing and cost reports, and relationships with third parties. The reviews also should address the nursing facility's compliance with the Medicare conditions of participation and the specific rules and policies that have been the focus of particular attention by the Medicare fiscal intermediaries or carriers, survey agencies, and law enforcement.[99]

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established performance baseline.[100] Significant variations from the baseline should trigger an inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate reasons, the compliance officer and nursing facility management may want to take no action. If it is determined that the deviation was caused by a departure from or misunderstanding of the facility's policies, the nursing facility should take prompt steps to correct the problem. Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor,[101] with appropriate documentation and a sufficiently detailed explanation of the reason for the refund.[102]

In addition to evaluating the facility's conformance with program rules, an effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, *e.g.*, whether there has been appropriate dissemination of the program's standards, ongoing educational programs, and internal investigations of alleged non-compliance. This process will assess actual conformance by all departments with the compliance program and may identify areas for improvements in the program, as well as the nursing facility's general operations.

The OIG requires a provider operating under a CIA to conduct an annual assessment of its compliance with the elements of the CIA. A compliance officer may want to review several CIAs in designing the facility's self-audit protocol.[103]

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- On-site visits to all facilities owned and/or operated by the nursing home owner;
- Testing the billing and claims reimbursement staff on its knowledge of applicable program requirements and claims and billing criteria;
- Unannounced mock surveys and audits;
- Examination of the organization's complaint logs and investigative files;
- Legal assessment of all contractual relationships with contractors, consultants and potential referral sources;
- Reevaluation of deficiencies cited in past surveys for State requirements and Medicare conditions of participation;
- Checking personnel records to determine whether individuals who previously have been reprimanded for compliance issues are now conforming to facility policies;
- Questionnaires developed to solicit impressions of a broad cross-section of the nursing facility's employees and staff;
- Validation of qualifications of nursing facility physicians and other staff, including verification of applicable State license renewals;
- Trend analysis, or longitudinal studies, that uncover deviations in specific areas over a given period;
- Analyzing past survey reports for patterns of deficiencies to determine if the proposed corrective plan of action identified the underlying problem and was undertaken within the assigned time limits.

The reviewers should:

- Have the qualifications and experience necessary to adequately identify potential issues with the subject matter that is reviewed;
- Be objective and independent of line management to the extent reasonably possible;[104]
- Have access to existing audit and health care resources, relevant personnel, and all relevant areas of operation;
- Present written evaluative reports on compliance activities to the CEO, governing body, and members of the compliance committee on a regular basis, but no less often than annually; and
- Specifically identify areas where corrective actions are needed.

The extent and scope of a nursing facility's compliance self-audits will depend on the facility's identified risk areas, past history of deficiencies and enforcement actions, and resources. If the facility comes under Government scrutiny in the future, the Government will assess whether the facility developed a reasonable audit plan based upon identified risk areas and resources. If the Government determines that the nursing facility failed to develop an adequate audit program, the Government will be less likely to afford the nursing facility favorable treatment under the Federal Sentencing Guidelines.

G. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. Disciplinary Policy and Enforcement

An effective compliance program should include disciplinary policies that set out the consequences of violating the nursing facility's standards of conduct, policies and procedures. Intentional noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension, termination, or financial penalties, as appropriate. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Each situation must be considered on a case-by-case basis to determine the appropriate response.

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[98] Even when a nursing facility or group of facilities is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual facility must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent organization's senior staff and officers.

[99] *See also* section II.B.2.

[100] The OIG recommends that when a compliance program is established in a nursing facility, the compliance officer, with the assistance of department managers, should take a "snapshot" of their operations from a compliance perspective. This assessment can be undertaken by outside consultants or internal staff, provided they have knowledge of health care program requirements. This "snapshot" can serve as a baseline for the compliance officer and other managers to judge the nursing facility's progress in reducing potential areas of vulnerability.

[101] *See* Provider Reimbursement Manual 1, § 2836(D)(3), which sets out the MDS correction policy.

[102] In addition, when appropriate, as referenced in section H.2, below, reports of fraud or systemic problems should also be made to the appropriate governmental authority.

[103] Examples of CIA audit protocols can be obtained from the OIG by submitting a request pursuant to the Freedom of Information Act. In addition, the American Institute of Certified Public Accountants (AICPA) has issued a detailed guide for conducting an independent assessment of a health care provider's conformance to a CIA. *See* AICPA Statement of Position 99–1, "Guidance to Practitioners in Conducting and Reporting on an Agreed-Upon Procedures Engagement to Assist in Evaluating Compliance with a Corporate Integrity Agreement" (May 1999).

[104] The OIG recognizes that nursing facilities that have limited resources may not be able to use internal reviewers who are not part of line management or hire outside reviewers.

The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department or agency managers, while others may have to be resolved by a senior administrator. The nursing facility should advise personnel that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate employees regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be potentially subject to the same types of disciplinary action for the commission of similar offenses, because the commitment to compliance applies to all personnel within a nursing facility. This means that corporate officers, managers, and supervisors should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, and procedures.

H. Responding to Detected Offenses and Developing Corrective Action Initiatives

Violations of a nursing facility's compliance program, failures to comply with applicable Federal or State law, and other types of misconduct threaten a facility's status as a reliable, honest and trustworthy provider of health care. Detected but uncorrected misconduct can seriously endanger the reputation and legal status of the nursing facility. Consequently, upon receipt of reports or reasonable indications of suspected noncompliance, it is important that the compliance officer or other management officials immediately investigate the allegations to determine whether a material violation of applicable law or the requirements of the compliance program has occurred, and if so, take decisive steps to correct the problem.[105] As appropriate, such steps may include a corrective action plan,[106] the return of any overpayments, a report to the Government,[107] and/or a referral to criminal and/or civil law enforcement authorities.

Where potential fraud is not involved, the OIG recommends that the nursing facility use normal repayment channels to return overpayments as they are discovered. However, even if the nursing facility's billing department is effectively using the overpayment detection and return process, the OIG believes that the facility needs to alert the compliance officer to those overpayments that may reveal trends or patterns indicative of a systemic problem.

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Under some circumstances, the facility may need to consider engaging outside counsel, auditors, or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, *e.g.*, any disciplinary action taken, and the corrective action implemented. While any action taken as the result of an investigation will necessarily vary depending upon the situation, nursing facilities should strive for some consistency by using sound practices and disciplinary protocols.[108] Further, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If the nursing facility undertakes an investigation of an alleged violation and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, the facility should remove those individuals from their current responsibilities until the investigation is completed (unless there is an ongoing internal or Government-led undercover operation known to the nursing facility). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the nursing facility determines that disciplinary action is warranted, it should be promptly imposed in accordance with the facility's written standards of disciplinary action.

Reporting

Where the compliance officer, compliance committee, or a management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law, the facility should promptly report the existence of misconduct to the appropriate Federal and State authorities[109] within a reasonable period, but not more than 60 days[110] after determining that there is

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[105] Instances of noncompliance must be determined on a case-by-case basis. The existence or amount of a *monetary* loss to a health care program is not solely determinative of whether the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss, but corrective actions are still necessary to protect the integrity of the applicable program and its beneficiaries, *e.g.*, where services required by a plan of care are not provided.

[106] The nursing facility may seek advice from its in-house counsel or an outside law firm to determine the extent of the facility's liability and to plan the appropriate course of action.

[107] Nursing facilities are required to immediately report all alleged incidents of mistreatment, neglect, abuse and misappropriation of resident property to both the facility administrator and other officials in accordance with State law (*See* 42 CFR 483.13(c)(2)). The OIG also has established a provider self-disclosure protocol that encourages providers voluntarily to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems, and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG's web site at: http://www.hhs.gov/oig.

[108] The parameters of a claims review subject to an internal investigation will depend on the circumstances surrounding the issues identified. By limiting the scope of an internal audit to current billing, a nursing facility may fail to discover major problems and deficiencies in operations, and it may be subject to certain liability.

[109] Appropriate Federal and State authorities include the OIG, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in relevant districts, the Federal Bureau of Investigation, and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program). *See* note 107.

[110] In contrast, to qualify for the "not less than double damages" provision of the False Claims Act, the provider must provide the report to the

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credible evidence of a violation.[111] Prompt voluntary reporting will demonstrate the nursing facility's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (*e.g.*, penalties, assessments, and exclusion), if the reporting provider becomes the target of an OIG investigation.[112]

When reporting to the Government, a nursing facility should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, under advice of counsel and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal, civil or OIG violations have occurred, the nursing facility should immediately notify appropriate Federal and State authorities.

As previously stated, the nursing facility should take appropriate corrective action, including prompt identification of any overpayment to the affected payor. If potential fraud is involved, the nursing facility should return any overpayment during the course of its disclosure to the Government. Otherwise, the nursing facility should use normal repayment channels for reimbursing identified overpayments.[113] A knowing and willful failure to disclose overpayments within a reasonable period of time could be interpreted as an attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the nursing facility, as well as any individual who may have been involved.[114] For this reason, nursing facility compliance programs should emphasize that overpayments should be promptly disclosed and returned to the entity that made the erroneous payment.

III. Assessing the Effectiveness of a Compliance Program

Considering the financial and human resources needed to establish an effective compliance program, sound business principles dictate that the nursing home's management evaluate the return on that investment. In addition, a compliance program must be "effective" for the Government to view its existence as a mitigating factor when assessing culpability. How a nursing facility assesses its compliance program performance is therefore integral to its success. The attributes of each individual element of a compliance program must be evaluated in order to assess the program's "effectiveness" as a whole. Examining the comprehensiveness of policies and procedures implemented to satisfy these elements is merely the first step. Evaluating how a compliance program performs during the provider's day-to-day operations becomes the critical indicator.[115]

As previously stated, a compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability. One way to judge whether these policies, standards, and practices measure up is to observe how an organization's employees react to them. Do employees experience recurring pitfalls because the guidance on certain issues is not adequately covered in company policies? Do employees flagrantly disobey an organization's standards of conduct because they observe no sincere buy-in from senior management? Do employees have trouble understanding policies and procedures because they are written in legalese or at difficult reading levels? Does an organization routinely experience systematic billing failures because of poor instructions to employees on how to implement written policies and practices? Written compliance policies, standards, and practices are only as good as an organization's commitment to apply them in practice.

Every nursing facility needs to seriously consider whoever fills the integral roles of compliance officer and compliance committee members, and periodically monitor how the individuals chosen satisfy their responsibilities. Does a compliance officer have sufficient professional experience working with billing, clinical records, documentation, and auditing principles to perform assigned responsibilities fully? Has a compliance officer or compliance committee been unsuccessful in fulfilling their duties because of inadequate funding, staff, and authority necessary to carry out their jobs? Did the addition of the compliance officer function to a key management position with other significant duties compromise the goals of the compliance program (*e.g.*, chief financial officer who discounts certain overpayments identified to improve the company's bottom line profits)? Since a compliance officer and a compliance committee can have a significant impact on how effectively a compliance program is implemented, those functions should not be taken for granted.

As evidenced throughout this guidance, the proper education and training of corporate officers, managers, health care professionals, and other applicable employees of a provider, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. Accordingly, such efforts should be routinely evaluated. Are employees trained frequently enough? Do employees fail post-training tests that evaluate knowledge of compliance? Do training sessions and materials adequately summarize important aspects of the organization's compliance program, such as fraud and abuse laws,

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Government within 30 days after the date when the provider first obtained the information. 31 U.S.C. 3729(a).

[111] Some violations may be so serious that they warrant immediate notification to governmental authorities prior to, or simultaneous with, commencing an internal investigation. By way of example, the OIG believes a provider should report misconduct that: (1) is a clear violation of OIG administrative authorities, civil fraud, or criminal laws; (2) has a significant adverse effect on the quality of care provided to residents (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

[112] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1 320a-7(b)(7) for violations of various fraud and abuse laws. *See* 62 FR 67392 (December 24, 1997).

[113] A nursing facility should consult with its Medicare fiscal intermediary (FI) and the appropriate sections of the PRM for additional guidance regarding refunds under Medicare Part A. *See* note 101. The FI may require certain information (*e.g.*, alleged violation or issue causing overpayment, description of the internal investigative process with methodologies used to determine any overpayments, and corrective actions taken, etc.) to be submitted with return of any overpayments, and that such repayment information be submitted to a specific department or individual. When appropriate, interest may be assessed on the overpayment. *See* 42 CFR 405.376.

[114] *See* 42 U.S.C. 1320a–7b(a)(3) and 18 U.S.C. 669.

[115] Evaluation may be accomplished through techniques such as employee surveys, management assessments, and periodic review of benchmarks established for audits, investigations, disciplinary action, overpayments, and employee feedback. The nursing facility should evaluate all elements of its compliance program, including policies, training, practices, and compliance personnel.

Federal health care program and private payor requirements, and claims development and submission processes? Are training instructors qualified to present the subject matter and experienced enough to field questions? When thorough compliance training is periodically conducted, employees receive the reinforcement they need to ensure an effective compliance program.

An open line of communication between the compliance officer and a provider's employees is equally important to the success of a compliance program. In today's intensive regulatory environment, the OIG believes that a provider cannot possibly have an effective compliance program if it receives minimal feedback from its employees regarding compliance matters. For instance, if a compliance officer does not receive appropriate inquiries from employees: Do policies and procedures fail to adequately guide employees to whom and when they should be communicating compliance matters? Do employees fear retaliation if they report misconduct? Are employees reporting issues not related to compliance through the wrong channels? Do employees have bad-faith, ulterior motives for reporting? Regardless of the means that a provider uses, whether it be telephone hotline, email, or suggestion boxes, employees should seek clarification from compliance staff in the event of any confusion or question dealing with compliance policies, practices, or procedures.

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, health care professionals, and other employees who have failed to adhere to an organization's standards of conduct, Federal health care program requirements, or Federal or State laws. The number and caliber of disciplinary actions taken by an organization can be insightful. Have appropriate sanctions been applied to compliance misconduct? Are sanctions applied to all employees consistently, regardless of an employee's level in the corporate hierarchy? Have double-standards in discipline bred cynicism among employees? When disciplinary action is not taken seriously or applied haphazardly, such practices reflect poorly on senior management's commitment to foster compliance as well as the effectiveness of an organization's compliance program in general.

Another critical component of a successful compliance program is an ongoing monitoring and auditing process. The extent and frequency of the audit function may vary depending on factors such as the size and available resources, prior history of noncompliance, and risk factors of a particular nursing facility. The hallmark of effective monitoring and auditing efforts is how an organization determines the parameters of its reviews. Do audits focus on all pertinent departments of an organization? Does an audit cover compliance with all applicable laws, as well as Federal and private payor requirements? Are results of past audits, pre-established baselines, or prior deficiencies reevaluated? Are the elements of the compliance program monitored? Are auditing techniques valid and conducted by objective reviewers? The extent and sincerity of an organization's efforts to confirm its compliance often proves to be a revealing determinant of a compliance program's effectiveness.

It is essential that the compliance officer or other management officials immediately investigate reports or reasonable indications of suspected noncompliance. If a material violation of applicable law or compliance program requirements has occurred, a provider must take decisive steps to correct the problem. Nursing facilities that do not thoroughly investigate misconduct leave themselves open to undiscovered problems. When a provider learns of certain issues, does it knowingly disregard associated legal exposure? Is there a correlation between deficiency identified and the corrective action necessary to remedy? Are isolated overpayment matters properly resolved through normal repayment channels? Is credible evidence of misconduct that may violate criminal, civil or administrative law promptly reported to the appropriate Federal and State authorities? If the process of responding to detected offenses is circumvented, such conduct would indicate an ineffective compliance program.

Documentation is the key to demonstrating the effectiveness of a nursing facility's compliance program. For example, documentation of the following should be maintained: audit results; logs of hotline calls and their resolution; corrective action plans; due diligence efforts regarding business transactions; records of employee training, including the number of training hours; disciplinary action; and modification and distribution of policies and procedures. Because the OIG encourages self-disclosure of overpayments and billing irregularities, maintaining a record of disclosures and refunds to the health care programs is strongly endorsed. A documented practice of refunding of overpayments and self-disclosing incidents of non-compliance with Federal and private payor health care program requirements is powerful evidence of a meaningful compliance effort.

IV. Conclusion

Through this document, the OIG has attempted to provide a foundation for the process necessary to develop an effective and cost-efficient nursing facility compliance program. However, each program must be tailored to fit the needs and resources of a particular facility, depending upon its unique corporate structure, mission, and employee composition. The statutes, regulations, and guidelines of the Federal and State health insurance programs, as well as the policies and procedures of the private health plans, should be integrated into every nursing facility's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. The time is right for nursing facilities to implement a strong voluntary health care compliance program. Compliance is a dynamic process that helps to ensure that nursing facilities and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being placed upon them by Congress and private insurers. Ultimately, it is the OIG's hope that a voluntarily created compliance program will enable nursing facilities to meet their goals, improve the quality of resident care, and substantially reduce fraud, waste, and abuse, as well as the cost of health care to Federal, State, and private health insurers.

Dated: October 22, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99-28094 Filed 10-28-99; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4432-N-43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commission, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: October 21, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM—FEDERAL REGISTER REPORT FOR 10/29/99

Suitable/Available Properties

Buildings (by State)

Illinois

Homewood Natl Guard Facility
1300 West 187th Street
Homewood Co: Cook IL 60430–
Landholding Agency: GSA
Property Number: 54199940002
Status: Excess
Comment: 4 old barracks, 5 storage bldgs., 1 guard house, need major repairs
GSA Number: 5–D–IL–651

Wisconsin

Army Reserve Center
401 Fifth Street
Kewaunee Co: WI 54216–1838
Landholding Agency: GSA
Property Number: 54199940004
Status: Excess
Comment: 2 admin. bldgs. (15,593 sq. ft.), 1 garage (1325 sq. ft.), need repairs
GSA Number: 1–D–WI–597

Land (by State)

Puerto Rico

Bahia Rear Range Light
Ocean Drive
Catano Co: PR 00632
Landholding Agency: GSA
Property Number: 54199940003
Status: Excess
Comment: 0.167 w/skeletal tower, fenced, aid to navigation
GSA Number: 1–T–PR–508

Unsuitable Properties

Buildings (by State)

New Hampshire

Bldg. 55
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940020
Status: Unutilized
Reason: Secured Area

Bldg. 150
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940021
Status: Unutilized
Reason: Secured Area

North Carolina

Bldg. 1649

Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199940022
Status: Excess
Reasons:
Secured Area
Extensive deterioration

[FR Doc. 99–28002 Filed 10–28–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Charles Dennis Anderson, Anaheim, CA, PRT–018310.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Charles Walker, Gardena, CA, PRT–018622.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Brent Worth Holley, College Station, TX, PRT–018662.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained program of the Republic of South Africa for the purposes of enhancement of the survival of the species.

Applicant: David D. Flygare, Excelsior, MN, PRT–018720.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Theron Dewey Harden Jr., Chipley, FL, PRT–018721.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained program of the Republic of South Africa for the purposes of enhancement of the survival of the species.

Applicant: Triple S Game Farm, Edmond, OK, PRT–017888.

The applicant requests a permit to import two male and two female captive bred Cabot's tragopan (*Tragopan caboti*) from the Department of Biology, Beijing Normal University, China for the purpose of propagation for the enhancement of the survival of the species.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Harry S. Afflcek, Jr, San Antonio, TX, PRT–018704.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Marvin Vander Ark, Bryon Center, MI, PRT–018623.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–28297 Filed 10–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

Central Valley Project Improvement Act, California

AGENCY: Bureau of Reclamation and Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Final Programmatic Environmental Impact Statement (FPEIS). FES–99–36.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) and the Fish and Wildlife Service (Service) as co-lead agencies have prepared an FPEIS for the Central Valley Project Improvement Act (CVPIA). The alternatives provide a variety of means for implementing the CVPIA. The FPEIS includes comments received on the Draft Programmatic Environmental Impact Statement (DPEIS) and its supplement, and responses to these comments. Two appendices have been revised and errata sheets have been prepared for other appendices.

DATES: Reclamation and the Service will not make a decision on the proposed action until 30 days after release of the FPEIS. After the 30-day waiting period, Reclamation and the Service will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: For a copy of the FPEIS, contact Ms. Alisha Sterud, Bureau of Reclamation, 2800 Cottage Way, MP–120, Sacramento CA 95825, telephone: (916) 978–5190. Copies of the original appendices which were not revised are also available.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the FPEIS are available for public inspection.

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Alan Candlish, Bureau of Reclamation, 2800 Cottage Way, MP–120, Sacramento CA 95825, telephone: (916) 978–5190; or James McKevitt, Fish and Wildlife

Service, 2800 Cottage Way, Sacramento CA 95825, telephone: (916) 414–6535.

SUPPLEMENTARY INFORMATION: The Preferred Alternative represents broad actions and policies that may be implemented within a range of actions. These actions were included in alternatives evaluated in the DPEIS and its supplement. The Preferred Alternative was developed through a review of impact assessments of the DPEIS alternatives, comments received concerning the DPEIS, and its supplement and interim implementation actions assisted by an administrative process.

The Preferred Alternative includes provisions of the CVPIA that have been recognized as either "Core" Programs which were included in all of the alternatives evaluated or programs with multiple options which formed the basis for differentiating between the alternatives. Some of the Core Programs are renewal of CVP water service contracts, construction of the Shasta Temperature Control Device, fish and wildlife non-flow related habitat restoration, and improvements to Coleman National Fish Hatchery. Multiple Implementation Programs include the dedication of CVP yield and supplemental water acquisition to meet fish and wildlife needs, including the provision of Level 2 and 4 water supplies to refuges, and implementation of levels of tiered water pricing for CVP water contracts.

Copies of the FPEIS are available for public inspection and review at the following locations:

- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street NW, Washington DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 445–2072.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento CA 95825–1898; telephone: (916) 978–5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240–0001.

Copies will also be available for inspection at the following public libraries:

Alum Rock Library, Alturas Public Library, Amador County Library, Auburn-Placer County Library, Bakersfield Library, Burbank Public Library, Butte County Library, Calaveras County Library, California State Library, College of the Redwoods, Colusa County Free Library, Concord Library, Contra Costa Library, CSU—Chico, Meriam Library-Government Publications, CSU Long Beach, Library-Government Documents, CSU-Stanislaus, Del Norte County Library District, Dixon Unified School District Library, E.P. Foster and H.P. Wright Library, El Dorado County Library, Fresno County Public Library, Grass Valley-Sierra County Library, Humboldt County Library, Kern County Public Library, Kings County Library, Lake County Library, Lassen County Free Library, Lodi Public Library, Los Angeles Public Library, Los Banos City Library, Madera County Library, Marin County Civic Center Library, Mariposa County Library, Mendocino County Library, Mendota Unified School District, Merced Library, Modesto City Library, Monterey County Free Library, Napa City and County Library, Nevada City Library, Northwestern University, Oakland Public Library, Orange County Public Library, Plumas County Library, Red Bluff City Library, Redwood City-San Mateo County Library, Riverside City and County Library, Sacramento County Library, Sacramento Public Library, San Benito County Free Library, San Bernadino County Library, San Diego Public Library, San Diego State University, San Francisco Public Library, San Jose State University, San Luis Obispo City and County Library, San Rafael Civic Center Library, Santa Barbara Public Library, Santa Cruz Public Library, Shasta County Library, Siskiyou County Library, Solano County Library, Sonoma County Library, Stanford University Libraries, Stanislaus County Free Library, Stockton City Library, Stockton-San Joaquin County Public Library, Sutter County Library, Tehama County Library, Trinity County Library, Tulare County Free Library, Tulare Public Library, Tuolumne County Library, U.C. Berkeley Library, U.C. Davis Library, U.C. Hastings College of Law, U.C. Los Angeles, University Research Library, U.C. San Diego Government Documents/Maps Department, U.C. Santa Barbara, Library-Government Publications Section, U.C. Water Resources Center, Willows Public Library, Yolo County Library, Yuba County Library.

Dated: October 22, 1999.

Kirk C. Rodgers,

Acting Regional Director, Mid-Pacific Region, Bureau of Reclamation.

Dated: October 21, 1999.

Wayne White,

Operations Manager, California and Nevada Operations Office, Fish and Wildlife Service.

[FR Doc. 99–28425 Filed 10–28–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Resource Management Plans, CA

[CA–320–1220–MA]

AGENCY: Bureau of Land Management, Alturas Field Office Alturas, California.

ACTION: Notice of intent to amend land use plan notice of availability of environmental assessment.

SUMMARY: Pursuant to the authorities in National Environmental Policy Act (Public Law 91–190) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Alturas Field Office is proposing to amend the Alturas Resource Area Resource Management Plan through the Nelson Corral Reservoir Road and Delta Lake Road Access RMP Amendment.

SUPPLEMENTARY INFORMATION: The Nelson Corral Reservoir Road and the Delta Lake Road have been proposed for seasonal restrictions/closures to motorized vehicle access with limited exceptions. The proposed restrictions/closures would be in effect from March 1st to May 30th of each year. These dates would fluctuate depending on weather and site conditions. Alternatives to the proposed closures have been developed through public scoping, meetings and coordination with various county committees. The proposal and alternatives have been analyzed in the Nelson Corral Reservoir Road and Delta Lake Road Access RMP Amendment Environmental Assessment CA320–NEPA99–66. Copies of the environmental assessment are available for review at the Alturas Field Office.

LOCATION: Nelson Corral Reservoir Road, T. 38 N., R 12., Sections 24, 25, and 26 and T. 38 N., R 13., Sections 17, 19 and 20, M.D.M.; Delta Lake Road, T. 40 N., R 12., Section 32 M.D.M.

DATES: Comments and recommendations will be received until November 29, 1999.

FOR ADDITIONAL INFORMATION: Contact Field Manager, Alturas Field Office, 708 W. 12th St., Alturas, CA 96101. (530) 233–4666. tburke@ca.blm.gov.

Timothy J. Burke,

Alturas Field Manager.

[FR Doc. 99–28384 Filed 10–28–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–929–00–1420–HE]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams accepted October 13, 1999, of the following described lands, are scheduled to be officially filed in the Montana State Office,

Billings, Montana, thirty (30) days from the date of this publication.

Tps. 9, 10, and 12 N., Rs. 21 W. and Tps. 9 and 11 N., Rs. 22 W.

The plat, representing the Amended Protraction Diagram 20 Index of unsurveyed Townships 9, 10, and 12 North, Ranges 21 West and Townships 9 and 11 North, Ranges 22 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 9 N., R. 21 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 9 North, Range 21 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 9 N., R. 22 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 9 North, Range 22 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 10 N., R. 21 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 10 North, Range 21 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 11 N., R. 22 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 11 North, Range 22 West, Principal Meridian, Montana, was accepted October 13, 1999.

T. 12 N., R. 21 W.

The plat, representing Amended Protraction Diagram 20 of unsurveyed Township 12 North, Range 21 West, Principal Meridian, Montana, was accepted October 13, 1999.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams, accepted October 13, 1999, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted October 13, 1999, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive (59101), P.O. Box 36800, Billings, Montana 59107–6800.

Dated: October 15, 1999.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 99–28288 Filed 10–28–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 89384]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, proposes to withdraw approximately 2,244 acres of public land to protect resources in the Beaverhead River area acquired by the United States with Land and Water Conservation Fund and North American Wetlands Conservation Act funding. This notice segregates the land described below upon acquisition by the United States for up to 2 years from location and entry under the general land laws, including the mining laws, subject to valid existing rights.

DATES: Comments must be received by January 27, 2000.

ADDRESSES: Comments and meeting requests should be sent to the State Director, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Russ Sorensen, Dillon Field Office, 100 Selway Drive, Dillon, Montana 59725, (406) 683–2337.

SUPPLEMENTARY INFORMATION: On October 5, 1999, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described land from settlement, sale, location and entry under the general land laws, including location and entry under the mining laws, but not from leasing under the mineral leasing laws.

Tract 1—

Principal Meridian, Montana

T. 8 S., R. 10 W.,
  Sec. 35, lots 3 and 4, and NW¼SE¼.
T. 9 S., R. 10 W.,
  Sec. 1, lots 6 to 22, inclusive;
  Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
  Sec. 11, lot 1 and N½, Excepting Therefrom that tract of land described in Deed dated June 22, 1946, recorded in Book 110 of Deeds, Page 263, records of Beaverhead County, Montana;
  Sec. 12, NW¼NE¼, S½NE¼, NW¼, E½SW¼, NW¼SW¼, and SE¼.
  Sec. 13, N½NE¼ and NE¼NW¼. Excepting Therefrom, Certificate of Survey 889, all those portions conveyed to the State of Montana for State Highway purposes, those portions conveyed for railroad purposes, and those portions taken by the Declaration of Taking dated September 13, 1960.

Tract 2—

Certificate of Survey 889 which is a parcel of land located in the NW¼ of sec. 11,
  Sec. 2, and lots 9 and 10 of sec. 1, T. 9 S., R. 10 W., PMM.

The above described land contains approximately 2,244.00 acres in Beaverhead County.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above, subject to valid existing rights, unless the proposal is denied or canceled or the withdrawal is finalized prior to the end of the segregation. Further, the segregation does not preclude the issuance of land use permits, rights-of-way, or other authorizations that are needed to accommodate valid existing rights and previously authorized actions. All previously authorized activities and permitted uses of the segregated lands may be continued in accordance with the terms of the authorization.

Dated: October 19, 1999.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 99–28383 Filed 10–28–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/Fort Baker Plan Golden Gate National Recreation Area, Marin County, CA; Notice of Availability

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service (NPS), Department of the Interior, has prepared a Final Environmental Impact Statement for the proposed Fort Baker Plan (FEIS/Plan), Golden Gate National Recreation Area. The FEIS/Plan details and analyzes proposed implementation of future building use, site improvements, visitor services, and cultural and natural resource management actions related to converting Fort Baker from a military installation to a unit of the National Park System.

Alternatives and Proposed Action: Four alternatives were considered—a No Action Alternative, the 1980 General Management Plan Alternative, the Office and Cultural Center Alternative, and the Proposed Action. Each alternative is briefly described below.

Under the No Action Alternative, the buildings along the historic parade ground area would be occupied as residences. Non-residential structures would be stabilized for preservation with no new use. There would be minimal changes to the waterfront to provide for visitor safety, and no there would be no expansion by existing tenant U.S. Coast Guard (USCG) or Bay Area Discovery Museum (BADM) uses. The marina would be closed, the slips and docks removed, and the boat shop would be stabilized for preservation with no new use. Minimal preservation treatment of natural and cultural resources would be carried out to meet legislative requirements and to complete currently under way restoration efforts.

The 1980 General Management Plan Alternative would result in a 350-person conference center, artist-in-residence program and a hostel with no new construction. Non-historic buildings would be removed and replaced with a 700-car shuttle staging parking lot and NPS maintenance facility. The marina would be converted to a public facility with visitor services and short-term boat mooring. Urban landscape treatment would be applied to the waterfront area, and a ferry landing would be developed at the historic fishing pier. Roads and trails would be improved.

The Office and Cultural Center Alternative would use the historic buildings for meeting, program, restaurant, performance and program space needs for private and non-profit groups. Non-historic residences would be retained and some removed to provide parking for the center. The marina would continue to provide long-term boat mooring and some public boat mooring and visitor services. Other treatments would be the same as the Proposed Action.

The Proposed Action would create a retreat and conference center in a combination of historic buildings, non-historic buildings and new construction containing meeting space, dining facilities and overnight accommodations. The existing BADM and USCG tenants and their facilities would be retained and expanded under the Proposed Action. Public services and short-term boat moorings/slips would be provided in the historic boat shop and marina area; the maximum number of boats accommodated is set at 60. Recreational and interpretive trails and programs would be provided. The waterfront landscape would be improved, the beach restored, and natural and cultural resources of the site preserved and maintained. Approximately 40 acres of natural habitat would be restored, including habitat for the federally threatened mission blue butterfly.

Background: Public scoping activities were conducted during July 16-23, 1997. In addition, Advisory Commission workshops and presentations were held September 2 and November 12, 1997. The Draft Environmental Impact Statement (DEIS) was released for a 60-day public review period on October 6, 1998 which ended on December 6, 1998. A public hearing was held during the review period to receive oral comments from the public on November 18, 1998. A total of 127 written letters, e-mails, and oral comments were received. Both the DEIS and the FEIS/Plan evaluate the same Proposed Action and alternatives.

The FEIS/Plan is comprised of two volumes; Volume I: DEIS, as amended; and Volume II: Response to Comments. Changes made to the DEIS include typographical corrections or points of clarification, refinement of existing mitigation, and new mitigation. Traffic effects, environmental consequences associated with potential ferry service at Fort Baker, and projected demand for wastewater services were the primary areas of additional analysis. Based on a correction to the assumptions used (and mathematical errors occurring in) the DEIS, the maximum total square footage of net new construction is reduced to 85,000sf (from 119,891sf). All text changes made in response to a comment are clearly indicated in Volume II (with citation to relevant sections in Volume I).

SUPPLEMENTARY INFORMATION: Requests for information or copies of the FEIS/Plan should be directed to the Fort Baker Planning Team, Golden Gate National Recreation Area Headquarters, Fort Mason, Building 201, San Francisco, California, 94123; telephone (415) 561–3030 x2246. The FEIS/Plan will also be available for review at area libraries, and via the Internet at *www.nps.gov/goga/*. The no-action period for the FEIS/Plan will extend for thirty (30) days after the Environmental Protection Agency's notification of the filing of the document is published in the **Federal Register.** Subsequently, the National Park Service will publish a notice of the Record of Decision in the Federal Register. The official responsible for the decision is the Regional director, pacific West Region; the official responsible for implementation is the superintendent, Golden Gate National Recreation Area.

Dated: October 22, 1999.

Cynthia Ip,

Acting Regional Director, Pacific West Region.

[FR Doc. 99–28404 Filed 10–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement, Backcountry and Wilderness Management Plan For Joshua Tree National Park, California; Notice of Availability

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service (NPS), Department of Interior, has prepared a final environmental impact statement (FEIS) assessing the potential impacts of amending the current General Management Plan (GMP), which was approved in 1995. The FEIS includes the Backcountry and Wilderness Management Plan for Joshua Tree National Park and identifies and evaluates the environmental consequences of the new proposed action and four alternatives.

Proposal: As described under Alternative E (the new proposed action), the NPS proposes to amend the GMP for Joshua Tree National Park. These amendments would include, but not be limited to, the following changes. The NPS would designate a trail system with prescriptions for certain uses: foot, bicycle, equestrian, and would identify some of the unpaved in roads in lands added to the park in 1994 as part of the developed zone and thus, open to motor vehicle use. Alternative E would also designate management prescriptions for recreational climbing throughout the park and would indicate locations in the park where roadside auto camping would or would not be permitted. Alternative E would prescribe the analysis of major artificial water sources installed for wildlife in designated wilderness and if such sources should be removed or maintained. It would adopt areas limited to day use only or closed to public access seasonally or permanently. It would establish group size limits for overnight stays in the backcountry and wilderness, implement the Department of Interior's Desert Tortoise Recovery Plan, and analyze proposed additions to wilderness. Implementing Alternative E would result in the protection of park lands and the reclamation of previously disturbed lands. User conflicts would be minimized by providing for a variety of visitor experiences, group sizes, trail designations, and a recreational climbing management program.

Alternatives: Alternatives to the new proposed action include Alternative A (the old proposed action), Alternative B (no action), Alternative C (maximum protection), and Alternative D (minimum protection). Alternative A would establish wilderness experience classes, and would designate slightly fewer miles of equestrian trails and roads. It does not provide reclamation prescriptions for the closed trails and roads. Alternative A would prohibit the replacement of existing bolts or the placement of new bolts in wilderness and would analyze only three of the four artificial water sources placed in the park's wilderness.

Under Alternative B, the park would maintain existing programs and operations. Alternative C would impose greater restrictions upon all uses in the park and afford the most rigorous and strict protection to the resources, in particular the wilderness resource. Also, those lands in the natural zone that are not wilderness would be treated and managed as if they were so designated. Alternative D would impose no restrictions on use of the old monument lands other than those that already exist. The public could use the new lands much as they were used prior to their inclusion within the park. Only those public recreational activities that are illegal in NPS or other regulations, such as hunting or operating vehicles in wilderness, would be prohibited.

The potential environmental consequences of Alternative E (the new proposed action) and other alternatives were previously addressed in the Draft Environmental Impact Statement and the Supplement to the Draft Environmental Impact Statement. No significant adverse environmental impacts are anticipated.

Background: The NPS initiated scoping for the Wilderness and Backcountry Management Plan on January 30, 1995. A Draft Environmental Impact Statement was issued November 21, 1997 for a public review period which was extended from January 31, 1998 through February 28, 1998. Approximately 1,100 written comments were received. In addition, approximately 260 persons attended three public workshops held December 2 and December 11, 1997 and on January 16, 1998. A Supplemental Environmental Impact Statement was issued November 3, 1998 for a public review period which ended January 20, 1999. Approximately 200 written comments were received. Both documents were made widely available through direct mailings, distribution to area libraries, and via the internet.

SUPPLEMENTARY INFORMATION: Written comments or questions regarding the final Wilderness and Backcountry Management Plan and Environmental Impact Statement should be directed to the Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California 92277. Copies may be requested by contacting the park at (760) 367–5502. Copies are also available at libraries located in the park's vicinity, as well as on the park's website at *http://www.nps.gov/jotr.* The no-action period for the FEIS/MP will extend for thirty (30) days after the Environmental Protection Agency's notification of the filing of the document is published in the **Federal Register**. Subsequently, the National Park Service will publish a notice of the Record of Decision in the **Federal Register**. The official responsible for the decision is the Regional Director, Pacific West Region; the official responsible for implementation is the Superintendent, Joshua Tree National Park.

Dated: October 22, 1999.

Cynthia Ip,

Acting Regional Director, Pacific West Region.

[FR Doc. 99–28405 Filed 10–28–99; 8:45 am]

BILLING CODE 4310–70–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Request for Comment

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice and Request for Comments for Emergency Extension of the Expiration date on OPIC Form 139, Foreign Sponsor Disclosure Report in Support of an Application for Financing (OMB 3420–0017) which expires 11/30/99.

SUMMARY: Under the provisions of the Controlling Paperwork Burdens on the Public, The agency shall set forth in the **Federal Register** notice prescribed by § 1320.5(a)(1)(iv), unless waived or modified under this section, a statement that it is requesting emergency processing, and the time period so stated.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8563.

SUPPLEMENTARY INFORMATION:

Type of Request: Notice of request for emergency extension of the expiration date on the Foreign Shareholder Disclosure Report in Support of an Application for Financing, OPIC–139 (OMB 3420–0017) which expires 11/30/99. A ninety day extension to the expiration date is being requested.

Title: The Foreign Shareholder Disclosure Report in Support of an Application for Financing.

Form Number: OPIC–139.

Authority for Information Collection: Sections 231, 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Foreign Sponsor Disclosure Report is the principal document used by OPIC to gather information from project sponsors on whether a project might harm the U.S., and describes sponsor activities with the U.S. Government and other information for the underwriting and analysis of a project.

Dated: October 21, 1999.

James R. Offutt,

Assistant General Counsel for Administrative Affairs, Department of Legal Affairs.

[FR Doc. 99–28401 Filed 10–28–99; 8:45 am]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Request for Comment

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of Request for Emergency Extension of the Expiration date on OPIC Form 129, U.S. Sponsor Disclosure Report in Support of an Application for Financing (OMB 3420–0018) which expires 10/31/99.

SUMMARY: Under the provisions of the Controlling Paperwork Burdens on the Public, the agency shall set forth in the **Federal Register** notice prescribed by § 1320.5(a)(1)(iv), unless waived or modified under this section, a statement that it is requesting emergency processing, and the time period so stated.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527; 202/336–8563.

SUPPLEMENTARY INFORMATION:

Type of Request: Notice of request for emergency extension of the expiration date on the U.S. Sponsor Disclosure Report in Support of an Application for Financing, OPIC–129 (OMB 3420–0018) which expires 10/31/99. A ninety day extension to the expiration date is being requested.

Title: U.D. Sponsor Disclosure Report in Support of an Application for Financing.

Form Number: OPIC–129.

Authority for Information Collection: Sections 231, 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The U.S. Sponsor Disclosure Report is the principal document used by OPIC to gather information from project sponsors on whether a project might harm the U.S., and describes sponsor activities with the U.S. Government and other information for the underwriting and analysis of a project.

Dated: October 21, 1999.

James R. Offutt,

Assistant General Counsel for Administrative Affairs Department of Legal Affairs.

[FR Doc. 99–28402 Filed 10–28–99; 8:45 am]

BILLING CODE 3210–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–811 (Final)]

Drams of One Megabit and Above From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject antidumping investigation.

EFFECTIVE DATE: October 21, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Carr (202–205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On October 19, 1999, the Department of Commerce notified the Commission of its final determination. The Commission must make its final determination in antidumping investigations within 45 days after notification of Commerce's final determination, or in this case by December 2, 1999. The Commission is revising its schedule to conform with this statutory deadline.

The Commission's new schedule for the investigation is as follows: The Commission will make its final release of information on November 15, 1999; and final party comments are due on November 17, 1999.

For further information concerning this investigation see the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 25, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28364 Filed 10–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 303–TA–13 (Review); 701–TA–249 (Review); and 731–TA–262, 263, and 265 (Review)

Iron Metal Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order on heavy iron construction castings from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines [3] that revocation of the countervailing duty order on iron metal castings from India would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determines [4] that revocation of the antidumping duty orders on heavy iron construction castings from Brazil, Canada, and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines [5] that revocation of the antidumping duty orders on light iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on November 2, 1998 (63 FR 58758), and determined on February 4, 1999, that it would conduct full reviews (64 FR 9176, February 24, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Carol T. Crawford dissenting.

[3] Vice Chairman Marcia E. Miller and Commissioner Jennifer A. Hillman dissenting.

[4] Commissioner Carol T. Crawford dissenting with regard to heavy iron construction castings from Brazil and China.

[5] Commissioner Carol T. Crawford dissenting.

International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 8, 1999 (64 F.R. 11039). The hearing was held in Washington, DC, on August 5, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

By order of the Commission.

Issued: October 25, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28363 Filed 10–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–413]

Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing Same; Notice of Commission Determinatin Not To Review an Initial Determination Finding a Violation of Section 337; and Request for Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review a final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation finding a violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Cynthia Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 4, 1998, the Commission instituted an investigation based on a complaint filed by Magnequench International, Inc. (Magnequench) and Sumitomo Special Metals Co., Ltd. (SSMC). 63 *Fed. Reg.* 47319. The complaint alleged violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain rare-earth magnets or magnetic materials, or articles containing the same, that infringe claims 1, 4, 5, 8, 9, or 11 of U.S. Letters Patent 4,851,058, (the '058 patent); claims 1–6, 10, 14–16, or 18–20 of U.S. Letters Patent 4,802,931 (the '931 patent); claims 13–18 of U.S. Letters Patent 4,496,395 (the '395 patent); claims 1–9, 12–20, 23–27, or 29–34 of U.S. Letters Patent 4,770,723 (the '723 patent); claims 1–6, 8–10, 13–19, 21–24, 27–35, or 37–39 of U.S. Letters Patent 4,792,368 (the '368 patent); or claims 1–3, 5, 15, 18, 19, 21, or 22 of U.S. Patent Letters 5,645,651 (the '651 patent).

On September 22, 1999, the Commission determined not review an ID granting complainants motion to withdraw from the investigation claims 1, 12, 23, 29, 30, and 32 of the '723 patent and claims 1, 13, 14, 22, 27, 32, 33, 34, and 39 of the '368 patent. Hence the claims in issue of the '723 patent and '368 patent are claims 2–9, 13–20, 24–27, 31, 33, and 34 of the '723 patent and claims 2–6, 8–10, 15–19, 21, 23, 24, 28–31, 35, 37, and 38 of the '368 patent.

The following respondents were named in the notice of investigation: Houghes International, Inc. (Houghes) of New York; International Magna Products, Inc. (IMI) of Indiana; Multi-Trend International Corp. a/k/a MTI-Modern Technology Inc. (Multi-Trend) of California; American Union Group, Inc. (AUG) of Maryland; High End Metals Corp. (High End) of Taiwan; Harvard Industrial America Inc. (Harvard) of California; H.T.I.E., Inc. (H.T.I.E.) of Pennsylvania; and CYNNY Magnets (CYNNY) of New Jersey.

On January 11, 1999, the Commission determined not to review an ID granting complainants' motion to amend the complaint and notice of investigation to add A.R.E., Inc. (A.R.E.) of Pennsylvania; NEOCO, L.C. (NEOCO) of Michigan; Beijing Jing Ma Permanent Magnets Materials Factory (Jing Ma) of China; and Xin Huan Technology Development Co., Ltd. (Xin Huan) of China as respondents.

On February 1, 1999, the Commission determined not to review an ID terminating the investigation as to respondent IMI on the basis of a consent order. On February 9, 1999, the Commission determined not to review IDs terminating the investigation as to respondents AUG, CYNNY, H.T.I.E., and Houghes on the basis of consent orders.

On May 25, 1999, the Commission determined not to review an ID granting complainants' motion for partial summary determination on the importation issue. On May 28, 1999, the Commission determined not to review an ID granting complainants' motion for summary determination on the domestic industry issue.

On August 6, 1999, the Commission determined not to review an ID finding respondents A.R.E., Jing Ma, and Xin Huan in default. On September 27, 1999, the Commission determined not to review an ID finding respondent Multi-Trend in default.

The prehearing conference and evidentiary hearing were conducted on June 9 to 18, 1999. Complainants, respondent NEOCO, and the Commission investigative attorneys (IAs) participated at the hearing. Following the filing of post-hearing submissions, closing arguments were heard on July 27, 1999.

On September 7, 1999, the ALJ issued his final ID finding a violation of section 337. His determination is based on his findings that the patents in issue are valid and enforceable, and that the accused imported magnets infringed all of the asserted claims, with the exception of claims 13–20, 25–27 and 33 of the '723 patent and claims 15–19, 21, 23, 24, 28, 30, 31, and 35 of the '368 patent.

At final disposition of this investigation, the Commission may issue (1) an order that could result in exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action in the importation and sale of such articles. The Commission is therefore interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, entry for consumption from a foreign trade zone, or withdrawal from warehouse for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see In the Matter of: Certain Devices for Connecting Computers Via Telephone Lines, Inv. No. 337–TA–360, USITC Publication No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are the subject of this investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. Therefore, the Commission is interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation, interested Government agencies, and other interested persons or entities are encouraged to file written submissions on remedy, the public interest, and bonding.

The ALJ's final ID also contains the ALJ's recommended determination (RD) concerning remedy and bonding. The ALJ has recommended that the Commission issue a general exclusion order as well as cease and desist orders against domestic respondents A.R.E., Multi-Trend, and Harvard, and has further recommended that the Commission set the bond at 100 percent of the entered value of the infringing imports during the Presidential review period. The parties' written submissions on remedy, the public interest, and bonding should address the ALJ's RD. Complainants and the Commission investigative attorneys are requested to submit proposed remedial orders for the Commission's consideration.

All written submissions and proposed remedial orders must be filed with the Office of the Secretary no later than 5:15 p.m. on November 8, 1999. Reply submissions must be filed no later than 5:15 p.m. on November 15, 1999. No further submissions on remedy, the public interest, and bonding will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions and proposed remedial orders must file the original document and 14 true copies with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document or portion thereof in confidence must request confidential treatment unless the information contained in the document or portion thereof has already been granted such treatment during the investigation. All requests for confidential treatment should be directed to the Secretary of the Commission and must include a full statement of the reasons that the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Nonconfidential versions of the ID, including the RD on remedy and public interest, and all other nonconfidential documents filed in the investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, D.C. 20436, telephone 202–205–1802.

By order of the Commission.

Issued: October 25, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28365 Filed 10–28–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Partial Consent Decree in *United States of America* v. *Calderon, et al.*, No. 96–2451 RLA (D. Puerto Rico), was lodged with the United States District Court for the District of Puerto Rico on October 4, 1999.

The proposed Partial Consent Decree would resolve the United States' allegations in this enforcement action against Defendants Enrique Calderon and Eva Garnier ("Defendants") for their alleged violations of Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344 resulting from the unauthorized discharge of dredged or fill material into herbaceous wetlands in Mayaguez Puerto Rico without a permit.

The proposed Partial Consent Decree enjoins Defendants from discharging dredged or fill material into waters of the United States without a permit and requires Defendants to pay a $10,000 civil penalty to the United States Treasury.

The Department of Justice will receive written comments relating to the proposed Partial Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Melaine A. Williams, Trial Attorney, Environmental Defense Section, P.O. 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Calderon, et. al.*, DJ Reference No. 90–5–1–1–4413.

The proposed Partial Consent Decree may be examined at the Clerk's Office, United States District Court, District of Puerto Rico 00918–1756 (telephone number: 787–766–6160).

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 99–28293 Filed 10–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Title II of the Clean Air Act

Notice is hereby given that on September 30, 1999 to proposed Consent Decree ("Decree") in *United States* v. *Mazda Motor of America, Inc.*, Civil No. 1:99CV02618 (D.D.C.), was lodged with the United States District Court for the District of Columbia. The United States filed this action pursuant to Title II of the Clean Air Act, as amended, 42 U.S.C. 7521 *et seq.*, (the "Act"), and the regulations promulgated thereunder, relating to fuel evaporative emission standards applicable to new motor vehicles, and specifically the requirements that a manufacturer promptly report emission-related defects to EPA.

The Decree resolves civil claims against Mazda Motor of America, Inc. and Mazda (North America) Inc. (collectively "Mazda") that Mazda failed to timely notify EPA of an emission-related defect in the device, system, or assembly of a fuel liquid/vapor separator ("vapor separator") installed on 1989 to 1994 model year Mazda MPV minivans sold in the United States. Pursuant to the terms of the Decree, Mazda will: modify its defect investigation and reporting system; provide an extended warranty to vehicle owners; and notify all affected vehicle owners that they can have their MPVs repaired free of charge, and before the defective part might fail. The decree imposes a civil penalty in the amount of $900,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States* v. *Mazda Motor of America, Inc.*, Civil No. 1:99CV02618 (D.C.C.), and D.J. Ref. # 90–5–2–1–06038.

The Decree may be examined at the office of the U.S. Attorney for the District of Columbia, 555 Fourth Street, NW, Washington, DC 20001. A copy of the Decree may be obtained by mail from the Consent Decree Library, 13th Floor, 1425 New York Avenue, NW, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $14.50 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99-28292 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the CJIS Advisory Policy Board. The CJIS Advisory Policy Board is responsible for reviewing policy issues, Uniform Crime Reporting reports, and appropriate technical and operational issues related to the programs administered by the FBI CJIS Division and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include the status on future enhancements to the Integrated Automated Fingerprint Identification System (IAFIS), IAFIS latent fingerprint processing, the National Crime Prevention and Privacy Compact, the Wireless Applications Test Program, the NCIC Protection Order File, and other issues related to the IAFIS, National Crime Information Center (NCIC), Law Enforcement Online, National Instant Criminal Background Check System, and UCR Programs.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Don M. Johnson, Section Chief, Programs Development Section (304) 625-2740, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, and corporate designation, consumer affiliation or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed not more than 15 minutes to present a topic.

DATES AND TIMES: The Advisory Policy Board will meet in open session from 9 a.m. until 5 p.m. on December 14-15, 1999.

ADDRESSES: The meeting will take place at the Marriott Riverwalk Hotel, 711 East Riverwalk, San Antonio, Texas, telephone (210) 224-4555.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Jennifer Hoke, Management Analyst, Advisory Groups Management Unit, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Module C3, Clarksburg, West Virginia 23606-0149, telephone (304) 625-4347, facsimile (304) 625-5090.

Dated: October 25, 1999.

Roy G. Weise,

Acting Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 99-28306 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the first meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and four states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-state system to exchange such records.

The United States Attorney General will appoint fifteen persons from federal and state agencies to serve on the Compact Council. The Council will prescribe system rules and procedures for the effective and proper operation of the system.

Since this is the Compact Council's first meeting, the FBI will call the members to order for an organizational meeting to adopt bylaws and elect a chairman, followed by the regular meeting. Matters for discussion are expected to include the mission and responsibilities the Compact requires of the Council, compact officers, and the states; how committees will be used to accomplish council business; state qualification requirements for the National Fingerprint File; Violence Against Children Act; and procedures for adjudicating disputes.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Emmet A. Rathbun at (304) 625-2720, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed not more than 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. until 5 p.m. on November 17, 1999, and from 9 a.m. until noon on November 18, 1999.

ADDRESSES: The meeting will take place at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC, telephone (202) 484-1000.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Emmet Rathbun, Unit Chief, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147, telephone (304) 625-2720, facsimile (304) 625-5388.

Dated: October 25, 1999.

Roy G. Weise,

Acting Section Chief, Programs Development Section, Federal Bureau of Investigation.

[FR Doc. 99-28307 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Applicant survey.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47518, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: Applicant Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–942, Human Resources Branch, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: individuals or Households. This form is required to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

(5) An estimate of the total number of respondents and the amount of time estimate for an average respondent to respond: 75,000 responses at 4 minutes (.066 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments, and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time any also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 22, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28351 Filed 10–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Early release for removal of criminal aliens in State custody convicted of nonviolent offenses.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 14, 1999 at 64 FR 38018. A correction of this notice was notice was published in the **Federal Register** on August 3, 1999 at 64 FR 42146, allowing for a 60-day public comment period. The INS received no comments on the proposed information collection.

The purpose of this notice is to notify the public that INS is reinstating with change this information collection and to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestion regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *New Information collection.*

(2) Title of the Form/Collection: Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No Agency Form Number (File No. OMB–20). Office of

Investigations, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Governments. This information collection is contained in a MOU outlined in proposed rule 1848–97. The information will be used by the INS to identify those recommended by the state to receive consideration for early release prior to completion of sentence of imprisonment and to determine eligibility in accordance with relevant statute, regulation and policy.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 33,050 responses at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 33,050 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 22, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28352 Filed 10–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Nonimmigrant checkout letter.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 26, 1999 at 64 FR 46723, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: Nonimmigrant Checkout Letter.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–146, Detention and Deportation Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This form is used in making inquiries of persons in the United States or aboard concerning the whereabouts of aliens, and also requests departure information by the INS when initial investigation to locate the alien or verify his or her departure is unsuccessful.

(5) An estimate of the total number of respondents and the amount of time estimate for an average respondent to respond: 20,000 responses at 10 minutes (.166 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,320 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 22, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28353 Filed 10–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request.

ACTION: Notice of information collection under review: Application for posthumous citizenship.

The Department of Justice, Immigration and Naturalization Service

(INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47519, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Application for Posthumous Citizenship.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–644. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses at 1 hour and 50 minutes (1.83) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 92 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required to contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28426 Filed 10–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Arrival departure record (transit without visa).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47520, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Arrival Departure Record (Transit Without Visa).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–94T. Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The information collection is used to track the arrival and departure of aliens under the Transit Without Visa program to ensure compliance with 8 CFR 212.1(f) and 8 CFR 214.2(c).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 200,000 responses at 4 minutes (.066) per response.

(6) As estimate of the total public burden (in hours) associated with the collection: 13,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28427 Filed 10–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Guam visa waiver information.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47519, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Guam Visa Waiver Information.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–736. Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form is used to record an alien's application for a waiver of the nonimmigrant visa requirement for entry into Guam in compliance with 8 CFR 212.1(e).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 170,000 responses at 5 minutes (.083) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 14,110 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28428 Filed 10–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Monthly report naturalization papers.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Action of 1995. The information collection was previously published in the **Federal Register** on August 26, 1999 at 64 FR 46722, allowing for a 60-day public comment period. No comment were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evacuate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: Monthly Report Naturalization Papers.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N-4. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Federal Government. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the Immigration and Naturalization Service of all persons to whom the oath was administered.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,920 responses at approximately 30 minutes (.50) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99-28429 Filed 10-28-99; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Petition for Alien Finance(e).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 31, 1999 at 64 FR 47518, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Petition for Alien Fiance(e).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I-129F. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Through the filing of this form a United States citizen may facilitate the entry of his/her finance(e) into the United States so that a marriage may be concluded within 90 days of

entry between the United States citizen and the beneficiary.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 20,000 responses at 30 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 10,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28430 Filed 10–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Availability and Publication of the Supplemental Final Environmental Impact Statement (SFEIS)

AGENCY: Federal Bureau of Prisons, DOJ.

ACTION: Notice of Availability of the Supplemental Final Environmental Impact Statement.

SUMMARY:

Proposed Action

The Federal Bureau of Prisons announces the publication of a Supplemental Final Environmental Impact Statement (SFEIS) regarding the proposed medium-security federal correctional institution at the federal correctional complex located south of Forrest City in Saint Francis County, Arkansas .

The document is being made available to provide for timely public comment and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended.

The purpose of the document is to afford the public and local officials an opportunity to learn of the Bureau's proposed planning, construction, and operation of a medium-security federal correctional institution at the federal correctional complex located south of Forrest City in Saint Francis County, Arkansas. The document is available at local libraries or a copy of the SFEIS can be obtained by contacting the Bureau of Prisons.

Interested persons are encouraged to express their views and comments on the SFEIS by submitting written comments to the Bureau of Prisons.

Items addressed in the SFEIS include, but are not limited to: utilities, traffic, noise, cultural resources and socio-economic impacts.

Written statements will be accepted until November 29, 1999.

Written comments may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Washington, DC 20534, Telephone (202) 514–6470, Telefacsimile (202) 616–6024, *siteselection@bop.gov.*

Dated: October 8, 1999.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 99–26831 Filed 10–28–99; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Construction Records for Tests and Inspections for Personnel Hoists.

OMB Number: 1218–0231.

Frequency: On occasion; quarterly.

Affected Public: Business or other for-profit.

Number of Respondents: 14,400.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 15,840.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Following assembly and erection of hoists, and before being put in service, an inspection and test of all functions and safety devices shall be made under the supervision of a competent person. A similar inspection and test is required following major alteration of an existing installation. All hoists shall be inspected and tested at not more than 3-month intervals.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28336 Filed 10–28–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Construction Records for Blasting Operational.

OMB Number: 1218–0217.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 160 work sites with plans.

Estimated Time Per Respondent: 8 hours, once per work site.

Total Burden Hours: 1,280.

Total annual costs (operating/maintaining systems or purchasing services): $227,200.

Description: The construction standard for blasting operations (1926.903(k)(3)(I) requires employers to post warning signs or use other alternative means to prevent premature detonation of electric blasting caps and explosives attached to them by mobile radio transmitters.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28337 Filed 10–28–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Trucks Used Underground to Transport Explosives, Inspection Certifications (1926.903(e)).

OMB Number: 1218–0227.

Frequency: Weekly.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Estimated Time Per respondent: 10 minutes every week.

Total Burden Hours: 9 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The construction standard on underground transportation of explosives, 1926.903(e), requires certification of a weekly maintenance inspection of trucks used for this purpose. The inspection certification, which attests to the safety if the truck's electrical systems, is necessary to ensure compliance with the standards.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28338 Filed 10–28–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Rigging Equipment for Material Handling—29 CFR 1926.251.

OMB Number: 1218–0233.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 18,940.

Estimated Time Per respondent: 5 minutes.

Total Burden Hours: 1,515 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The construction standard on rigging equipment for material handling, 29 CFR 1926.251(c)(15)(ii), requires employers to retain a certificate of the proof-test performed on welded end wire rope attachments. The certification, prepared by the manufacturer or other equivalent entity, attest to the safety of the attachments after welding by testing them at twice their rated capacity.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28339 Filed 10–28–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Quarterly determinations, Allowance Activities, and Employment Services Under the Trade Act.

OMB Number: 1205–0016.

Frequency: Quarterly.

Affected Public: State, Local, or Tribal government.

Number of Respondents: 52.

Estimated Time Per respondent: 12 minutes.

Total Burden Hours: 3,420 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (opeating/maintaining systems or purchasing services): $0.

Description: Quarterly data on Trade Adjustment Assistance and NAFTA Transitional Assistance activity is needed for timely program evaluation necessary for competent administration and for providing legally mandated reports to the Congress on the Trade Adjustment Assistance Program.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28340 Filed 10–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer, for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Cognitive and Psychological Research.

OMB Number: 1220–0141.

Frequency: Other (as needed).

Affected Public: Individuals or households; business or for-profit; not-for-institutions; State, Local or Tribal Government.

Number of Respondents: 4,150.

Estimated Time Per respondent: 2.2 hours.

Total Burden Hours: 9,000 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The proposed laboratory research will be conducted from Fiscal Year (FY) 2000 through FY 2002 to enhance data quality in the Bureau of Labor Statistics' (BLS) surveys. Improvements will be made by examining psychological and cognitive aspects of the BLS data collection procedures, including questionnaire design, interviewing procedures, and administration technology.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28341 Filed 10–28–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wage for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute in the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified class engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined in prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.

Volume II

Pennsylvania:
  PA990002 (Mar. 12, 1999)
  PA990003 (Mar. 12, 1999)
  PA990017 (Mar. 12, 1999)
  PA990038 (Mar. 12, 1999)
  PA990042 (Mar. 12, 1999)
Virginia:
  VA990057 (Mar. 12, 1999)

Volume III

Florida:
  FL990001 (Mar. 12, 1999)
  FL990015 (Mar. 12, 1999)
  FL990049 (Mar. 12, 1999)
  FL990053 (Mar. 12, 1999)
  FL990055 (Mar. 12, 1999)

Volume IV

Michigan:
  MI990001 (Mar. 12, 1999)
  MI990002 (Mar. 12, 1999)
  MI990003 (Mar. 12, 1999)
  MI990004 (Mar. 12, 1999)
  MI990005 (Mar. 12, 1999)
  MI990012 (Mar. 12, 1999)
  MI990030 (Mar. 12, 1999)
  MI990031 (Mar. 12, 1999)
  MI990046 (Mar. 12, 1999)
  MI990047 (Mar. 12, 1999)
  MI990060 (Mar. 12, 1999)
  MI990062 (Mar. 12, 1999)
  MI990063 (Mar. 12, 1999)
  MI990066 (Mar. 12, 1999)
  MI990067 (Mar. 12, 1999)
  MI990068 (Mar. 12, 1999)
  MI990069 (Mar. 12, 1999)
  MI990070 (Mar. 12, 1999)
  MI990071 (Mar. 12, 1999)
  MI990072 (Mar. 12, 1999)
  MI990073 (Mar. 12, 1999)
  MI990074 (Mar. 12, 1999)
  MI990075 (Mar. 12, 1999)
  MI990076 (Mar. 12, 1999)
  MI990077 (Mar. 12, 1999)
  MI990078 (Mar. 12, 1999)
  MI990079 (Mar. 12, 1999)
  MI990080 (Mar. 12, 1999)
  MI990081 (Mar. 12, 1999)
  MI990082 (Mar. 12, 1999)
  MI990083 (Mar. 12, 1999)
  MI990084 (Mar. 12, 1999)
  MI990085 (Mar. 12, 1999)
  MI990086 (Mar. 12, 1999)
  MI990087 (Mar. 12, 1999)
  MI990088 (Mar. 12, 1999)

Volume V

Kansas:
  KS990006 (Mar. 12, 1999)
  KS990008 (Mar. 12, 1999)
  KS990009 (Mar. 12, 1999)
  KS990011 (Mar. 12, 1999)
  KS990012 (Mar. 12, 1999)
  KS990013 (Mar. 12, 1999)
  KS990025 (Mar. 12, 1999)
  KS990026 (Mar. 12, 1999)

KS990069 (Mar. 12, 1999)
KS990070 (Mar. 12, 1999)
Louisiana:
LA990005 (Mar. 12, 1999)
Texas:
TX990005 (Mar. 12, 1999)
TX990010 (Mar. 12, 1999)
TX990014 (Mar. 12, 1999)
TX990018 (Mar. 12, 1999)
TX990019 (Mar. 12, 1999)
TX990054 (Mar. 12, 1999)
TX990100 (Mar. 12, 1999)
TX990114 (Mar. 12, 1999)

Volume VI

None.

Volume VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 21st day of October 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–27996 Filed 10–28–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the information collection requests (ICR) incorporated in regulation pertaining to the required content of Summary Plan Descriptions under ERISA, 29 CFR 2520.102–3. A copy of the ICR may be obtained by contacting the office listed in the addressee section of this notice.

DATES: Written comments must be submitted to the office shown in the addressee section below on or before December 28, 1999.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 104(b)(1) of the Employee Retirement Security Act of 1974 (ERISA) requires that the administrator of an employee benefit plan furnish plan participants and beneficiaries with Summary Plan Description (SPDs) which describe, in language understandable to an average plan participants, the benefits, rights and obligations of the participants in the plan. Plan administrators are required to furnish SPDs to participants and beneficiaries within 90 days after the participant is covered by the plan. The information required to be contained in the SPD is set forth in section 102(b) of the statute. To the extent that there is a material modification in the terms of the plan or a change in the information required to be contained in the SPD, section 104(b)(1) requires that the administrator furnish participants and beneficiaries with a summary of such change within 210 days following the end of the plan year in which the change was adopted. Regulations published at 29 CFR 2520.102–3 provide guidance on the required contents of the SPD.

Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Current Actions: The Department is not proposing or implementing changes to the existing ICR at this time. Comments received in response to this notice will be incorporated in the submission to OMB for continued clearance of the ICR.

Type of Review: Extension of currently approved collections of information.

Agency: Pension and Welfare Benefits Administration.

Titles: Summary Plan Description Requirements under ERISA (SMM/SPD).

OMB Number: 1210–0039.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 2,027,293.

Frequency of Response: On occasion.

Responses: 160,703,000.

Estimated Total Burden Hours: 1,928,889.

Total Burden Cost (Operating and Maintenance): $216,316,365.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: October 26, 1999.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 99–28420 Filed 10–28–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date & Time: November 8, 1999; 8:00 a.m.–5:00 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lawrence E. Brandt, Digital Government Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Major Research Instrumentation proposals submitted in response to the program announcement (NSF 99–103).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28418 Filed 10–28–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date & Time: December 14–15, 1999; 8:00 a.m.–5:00 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lawrence E. Brandt, Digital Government Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Major Research Instrumentation proposals submitted in response to the program announcement (NSF 99–103).

Reason for Closing: the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28419 Filed 10–28–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[IA 99–049]

Randall G. Falvey; Order Prohibiting Involvement in NRC-Licensed Activities

I

Randall G. Falvey was employed from January 3, 1994 to October 30, 1998, as the training manager for the Wackenhut Corporation, the security contractor of the Wisconsin Public Service Corporation (Licensee). The Licensee holds license No. DPR–43 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on June 16, 1974. The license authorizes the operation of the Kewaunee Nuclear Power Plant (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site near Green Bay, Wisconsin.

II

From December 21, 1998 to June 21, 1999, an investigation of licensed activities was conducted by the NRC Office of Investigations (OI) in response to information provided to NRC Region III by the Licensee on October 14, 1998. The Licensee reported that information had been received which indicated the annual test firing of shotguns used by the security force at the Kewaunee Nuclear Power Plant was not performed when due. The Licensee conducted an investigation and determined that Mr. Randall G. Falvey, the training manager for the Wackenhut Corporation, was assigned the responsibility for ensuring that each firearm at this site, including shotguns, was test fired annually. The investigation by the Licensee determined that Mr. Falvey had not ensured that 11 shotguns during 1997 and nine shotguns during 1998 were tested. The investigation by the Licensee also established that Mr. Falvey falsified the records of those tests in order to show that the tests had been conducted. The Licensee also reported that two shotguns which Mr. Falvey had not tested and for which he had falsified test records, failed to properly cycle during the test firing following the identification of this issue.

The OI investigation also determined that during the Licensee's investigation of this matter, Mr. Falvey provided false information about the test firings to the Licensee's Security Director for the Kewaunee Nuclear Power Plant. In a written statement to the Security Director, Mr. Falvey wrote that he had completed the test firings on the shotguns. However, review of Kewaunee Plant security access records during the licensee's investigation for May 1997 and May and June 1998, on the dates that Mr. Falvey indicated that the shotguns were tested, showed both that Mr. Falvey had, in some instances, not entered areas where shotguns were stored and, in other instances, that Mr. Falvey had not stayed in an area long enough to retrieve a shotgun for testing and replace it with another. Security personnel were interviewed and none could recall retrieving or firing a shotgun at Mr. Falvey's request. Furthermore, Mr. Falvey could not provide the name of any individual who may have retrieved or test fired a shotgun at the direction of Mr. Falvey. Other records indicated that none of these firearms were taken to the firing range or cleaned after test firing.

Condition No. 2.C.(4) of the NRC operating license for the Kewaunee Nuclear Power Plant requires the Licensee to maintain in effect and fully implement all provisions of the Commission-approved Kewaunee Nuclear Power Plant Security Manual and the Licensee's Security Implementing Procedure (SIP) 30.02–10, "Testing, Inspection, and Maintenance of Security Equipment." The annual testing of site-assigned weapons, including shotguns, and the creation and maintenance of records of those tests are required by the NRC-approved Kewaunee Nuclear Power Plant Security Manual and the procedures implementing that manual. 10 CFR 50.9(a), "Completeness and Accuracy of Information," provides, in part, that information required by a condition of a Commission license to be maintained by a licensee must be complete and accurate in all material respects. 10 CFR 50.5(a)(2), "Deliberate Misconduct," provides in part that a contractor employee of a Commission licensee may not deliberately submit to a licensee or a licensee's contractor information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The records of the shotgun tests are material to the NRC because each record helps to demonstrate the Licensee's compliance with the requirements of the NRC-approved Kewaunee Nuclear Power Plant Security Manual. Based on the Licensee's and OI's investigations, it appears that Randall G. Falvey deliberately provided information to the Licensee that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 50.5. In particular, on October 12, 1998, Mr. Falvey created false records indicating that a number of shotguns had been tested during May 1997 and May—June 1998, and on October 14, 1998, Mr. Falvey told the Licensee's Security Director that the shotguns had been tested as required.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirements to provide information and maintain records that are complete and accurate in all material respects and to refrain from deliberate misconduct. The actions of Randall G. Falvey in causing the Licensee to violate 10 CFR 50.9 and his violation of 10 CFR 50.5 have raised serious doubt as to whether Mr. Falvey can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Randall G. Falvey were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Randall G. Falvey be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Randall G. Falvey is required to notify the NRC of his first employment in NRC-licensed activities for the three years following the prohibition period.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *It is hereby ordered that:*

1. Randall G. Falvey is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Randall G. Falvey is currently involved with a licensee in NRC-licensed activities, he must cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of three years after the three year period of prohibition has expired, Randall G. Falvey shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. In the first notification Randall G. Falvey shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Randall G. Falvey of good cause.

V

In accordance with 10 CFR 2.202, Randall G. Falvey must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Randall G. Falvey or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351, and to Randall G. Falvey if the answer or hearing request is by a person other than Mr. Falvey. If a person other than Randall G. Falvey requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Randall G. Falvey or a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated this 19th day of October 1999 Rockville, Maryland.

Frank J. Miraglia, Jr.,

Deputy Executive Director for Reactor Programs.

[FR Doc. 99–28414 Filed 10–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments involve the resolution of an unreviewed safety question (USQ) related to certain small-break loss-of-coolant accident scenarios for which there may not be sufficient containment recirculation sump water inventory to support continued operation of the emergency core cooling system and containment spray system pumps during and following switchover to cold leg recirculation. Resolution of this issue consists of a combination of physical plant modifications, new analyses of containment recirculation sump inventory, and resultant changes to the accident analyses to ensure sufficient water inventory in the containment recirculation sump. In addition, the licensee proposes to change the Technical Specifications (T/S) dealing with the refueling water storage tank (RWST) inventory and temperature, the required amount of ice in each ice basket in the containment, and the delay to start the containment air recirculation/hydrogen skimmer fans.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed T/S changes are a result of the planned modifications being performed to ensure the original design basis functional capability of the containment recirculation sump. These planned modifications, and the associated changes to input assumptions of related safety analyses, do not result in a condition where the material and construction standards that were applicable prior to the changes are altered. The integrity of safety-related systems, structures, and components is maintained within the limits previously approved. The planned modifications to the facility do not create any new initiators for any accident, nor do they create any new credible limiting single failure, nor do they result in any event previously deemed incredible being made credible. The existing separation of the control and protection functions for the reactor core and fuel, reactor coolant system, and the containment and containment systems are not adversely affected. In addition, the functional requirements of safety-related systems, structures, and components, which are related to accident mitigation, have not been altered.

The proposed T/S changes increasing the minimum RWST contained inventory have no impact on the initiation of an accident. The RWST is used to mitigate the consequences of an accident. There are no new failure modes involving the RWST that could differently initiate any of the previously evaluated accidents. This is because the RWST is located outside containment in an area where it is not credible for a failure of the RWST to affect the reactor core and fuel, reactor coolant system, and the containment and containment systems.

The proposed T/S changes reflect planned modifications to the ESFAS [engineered safety features actuation system] actuation logic and to the time delay for starting of the CEQ [containment air recirculation/hydrogen skimmer] fans, and opening of the component cooling water supply and return valves and hydrogen skimmer valves to the CEQ fans. The proposed changes have no impact on the initiation of an accident. The planned modifications do not introduce any new failure modes for the CEQ fans or associated valves.

The proposed T/S changes reflect the minimum ice weight used in the existing analyses of containment recirculation sump inventory and the associated analyses, plus an allowance for weighing uncertainty. The proposed changes have no impact on the initiation of an accident.

Therefore, the probability of an accident previously evaluated will not be increased by these changes.

The proposed T/S changes, and the associated modifications being performed, will ensure the capability of the containment recirculation sump, and the containment structures, systems, and components, to meet the original design basis requirements for the facility. The proposed changes will ensure that the minimum required water inventory is maintained in the containment recirculation sump at levels sufficient to prevent vortexing in the sump. Therefore, the original evaluation of the consequences of previously evaluated accidents as described in the Donald C. Cook Nuclear Plant (CNP) Updated Final Safety Analysis Report (UFSAR) will not be affected.

The proposed T/S changes do not affect the integrity of the fuel assembly or reactor internals, or any fission product barrier, such that their function in the control of radiological consequences is affected. In addition, the response of safety-related systems to mitigate previously evaluated accidents as described in the CNP UFSAR, will not be adversely affected or prevented. There is no effect on the assumptions previously made in the radiological consequence evaluations, and mitigation of the radiological consequences of the accidents described in the CNP UFSAR is not affected as further described below. The accident analyses performed to determine the effects of a LOCA demonstrate that decay heat is removed, and long-term core cooling is assured with these changes. As a result, design basis accident analyses affected by these T/S changes remain valid with the incorporation of the revised accident analyses input assumptions. Therefore, the consequences of an accident previously evaluated will not be increased by these changes.

The proposed T/S changes for the RWST do not increase the consequences of any previously evaluated accident. Increasing the minimum deliverable RWST volume of water provides assurance that the ECCS and CTS are capable of performing their design basis functions to mitigate the consequences of a LOCA or main steam line break (MSLB) by ensuring adequate containment recirculation sump inventory.

The proposed T/S changes for the CEQ fans and valves do not increase the consequences of any previously evaluated accident. The design basis functions of the CEQ fans and valves in maintaining containment integrity following a LOCA or MSLB continue to be met. In addition, the proposed change provides additional assurance that the ECCS and CTS remain capable of performing their design basis functions in mitigating the consequences of a LOCA or MSLB by ensuring adequate containment recirculation sump inventory. The planned modification to shorten the time delay for the CEQ fans and valves will delay initiation of CTS for a small break LOCA. Delaying CTS initiation results in a period when any fission products released from the reactor core due to possible fuel damage are not absorbed by CTS and held in solution in the containment recirculation sump. However, a small break LOCA does not result in reactor fuel damage of the magnitude that would increase offsite dose because of the lack of fission product removal by CTS. For a large break LOCA involving the possibility of more significant fuel damage, there will be no discernable delay in CTS initiation because of the proposed T/S changes. Therefore, the consequences of a LOCA will not be increased by the proposed T/S changes.

The proposed T/S changes for the ice condenser ice weight do not increase the consequences of a LOCA or MSLB. The minimum end-of-cycle ice weight is consistent with the assumptions in the accident analyses. Additional ice is loaded into the ice baskets based on sublimation of 10% over an eighteen-month period so that the minimum ice weight of 1132 pounds is available at the end of each operating cycle. At other times throughout the cycle, there is additional margin because the ice that is assumed to sublime later in the cycle is still in the ice basket. The 1% weighing allowance provides additional assurance that the actual weight of ice meets the analyses requirement of 1132 pounds.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Sufficient containment recirculation sump inventory is necessary during the mitigation of both MSLB and LOCA events. The proposed T/S changes do not create the possibility of any other type of accident. The proposed T/S changes are a result of the planned modifications being performed to ensure the original design basis functional capability of the containment recirculation sump. These planned modifications, and the associated changes to input assumptions of related safety analyses, do not result in a condition where the material and construction standards that were applicable prior to the changes are altered. The integrity of safety-related systems, structures, and components is maintained within the limits previously approved.

The planned modifications to the facility do not create any new initiators for any accident, nor do they create any new credible limiting single failure, nor do they result in any event previously deemed incredible being made credible. The existing separation of the control and protection functions for the reactor core and fuel, reactor coolant system, and the containment and containment systems are not adversely impacted. In addition, the functional requirements of safety-related systems, structures, and components, which are related to accident mitigation, have not been altered.

The proposed T/S changes for the RWST cannot create the possibility of an accident. There are no failure modes involving the RWST that could initiate an accident. This is because the RWST is located outside containment in an area where it is not credible for a failure of the RWST to affect the reactor core and fuel, reactor coolant system, and the containment and containment systems.

The proposed T/S changes for the CEQ fans and valves cannot create the possibility of an accident. The changes do not introduce any new failure modes for the CEQ fans or associated valves. Operation of the CEQ fans and valves cannot initiate an accident.

The proposed T/S changes for the ice condenser ice weight cannot create the possibility of an accident. The ice condenser has no function during normal operation. It is a passive system that functions after an accident has already occurred. The proposed T/S changes to the ice weight do not alter any other physical characteristics of the ice condenser, nor does it change the function of the ice condenser. The proposed ice weights are less than the maximum weight supported by the structural analyses for the ice baskets. No new failure mechanisms are introduced by this change.

Therefore, it is concluded that the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety pertinent to the proposed T/S changes includes providing assurance that emergency core cooling, containment cooling and pressure suppression, and containment spray functional requirements will be met following a design basis accident, specifically for LOCA or MSLB events. Assurance of minimum required containment recirculation sump inventory during and following switchover of suction for the ECCS and CTS pumps from the RWST to the containment recirculation sump provides this assurance.

The planned modifications have no adverse effect on the availability, operability, or functional performance of the safety-related systems, structures, and components required for mitigating the effects of design basis accidents. In fact, these planned modifications are intended to ensure the original design basis functional capabilities of the containment recirculation sump, and other containment systems, structures, and components, to support ECCS, ice condenser, and CTS operation, and to ensure that the containment structure and systems provide an effective fission product barrier. However, the planned modifications do require changes to the T/S, but they do not prevent the performance of any surveillance requirement currently specified in the CNP T/S.

The proposed T/S changes for the RWST provide assurance that sufficient water is available to support the ECCS and CTS in performance of their design basis functions to mitigate the consequences of a LOCA or MSLB. Therefore, the margin of safety provided by the ECCS and CTS associated with containment integrity and with assurance of post-LOCA long-term core cooling is preserved by these proposed changes.

The proposed T/S changes for the CEQ fans and valves provide assurance that the original design basis functional capabilities of the containment are preserved. In addition, by increasing ice melt rate in the early stages of a small break LOCA, the design basis functions of the ECCS and CTS during and after switchover to cold leg recirculation are preserved. Finally, the changes to containment pressure response resulting from starting the CEQ fans and opening the associated valves earlier in a LOCA than in previous analyses do not result in a reduction in the capability of ECCS during the reactor vessel reflood period. Therefore, the margin to safety provided by the CEQ fans and valves associated with containment integrity, assurance of post-LOCA long-term core cooling, and ECCS performance is preserved by these proposed changes.

The proposed T/S changes for the ice condenser ice weight provides assurance that the ice condenser will provide sufficient pressure suppression capability to limit the containment peak pressure transient to less than the design limit and will contain sufficient heat removal capability to condense the RCS volume released during a LOCA. The proposed T/S changes maintain the appropriate distribution of ice through the containment bays. The required concentration of sodium tetraborate in the ice bed is not changed. There is sufficient boron in the ice bed to ensure adequate boron concentration in the containment recirculation sump following a LOCA when combined with the water inventory from the RWST, RCS leakage, and safety injection accumulators. The increase in the allowance for ice sublimation does not reduce the margin of safety. The original allowance was conservatively estimated to be 10% over an eighteen-month period. There was no operating ice condenser plant data for determining actual sublimation at the time that allowance was made. Since that time, actual data obtained has demonstrated that 10% is a reasonable, bounding value. Stating the ice weight requirement as an end-of-cycle value does not impact the margin of safety because the allowance for sublimation will be verified during the as-found weighing of the ice baskets.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 29, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeremy J. Euto, Esquire, 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 1, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 25th day of October 1999.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28415 Filed 10–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Availability

The Nuclear Regulatory Commission has issued for public comment a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1094 (which should be mentioned in all correspondence concerning this draft guide) has been developed to provide a comprehensive fire protection guidance document, and to identify the scope and depth of fire protection that the staff has determined to be acceptable for operating nuclear plants. This guide may be used for licensee self-assessments and as the deterministic basis for future rulemaking. This guide has been developed from a compilation of fire protection regulations, generic communications, Branch Technical Positions, and other NRC guidance. In addition, as appropriate, new guidance is provided where the existing guidance is weak or non-existent. The specific NRC fire protection requirements applicable to any given operating reactor are a function of licensing dates, specific license conditions, rule applicability statements, approved exemptions/deviations, and individual plant Safety Evaluation Reports (SERs). It is not possible to capture in a single guide all the compliance alternatives that have been previously accepted by the NRC for a given plant. This guide presents the best available methods for meeting fire protection requirements and objectives that are acceptable to the Commission, and will be used in the evaluation of fire protection programs for operating nuclear power plants. Nothing in this guide prohibits a licensee from proposing an alternative method(s) for complying with specified portions of the Commission's regulations.

The draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to David L. Meyers, Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555–0001. Comments will be most helpful if received by January 7, 2000.

You may also provide comments via the NRC's Technical Conference website (http://techconf.llnl.gov/cgi-bin/topics). For information contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*. For information about the draft guide and the related documents, contact Mr. E.A. Connell, (301) 415–2838; e-mail *EAC@nrc.gov*.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC, and at *http://techconf.llnl.gov/cgi-bin/topics.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <Distribution@nrc.gov≤. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 25th day of October 1999.

For the Nuclear Regulatory Commission.

John N. Hannon,

Chief, Plant Systems Branch, Division of System Safety and Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28413 Filed 10–28–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) ("FAIR Act")

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Commercial Activities Inventories.

SUMMARY: The Office of Management and Budget (OMB) hereby announces that the FAIR Act Commercial Activities Inventories are now available to the public from the agencies listed below.

The "Federal Activities Inventory Reform Act of 1998" (Public Law 105–270) ("FAIR Act") requires that OMB publish an announcement of public availability of agency Commercial Activities Inventories upon completion of OMB's review and consultation process concerning the agencies' inventory submissions. OMB has completed this process for the agencies listed below. Further announcements will be published as OMB completes the review process for additional agencies. Commercial Activities Inventories are now available from the following agencies:

Agency and Contact

Advisory Council on Historic Preservation—Carol McLain, 202–606–8511
Armed Forces Retirement Home—Richard Conoboy, 202–722–3228.
Broadcasting Board of Governors—Dennis Sokol, 202–619–3988.
Commission on Fine Arts—Jeff Carson, 202–504–2200
Commodity Futures Trading Commission—Emory Bevill, 202–418–5187
Consumer Product Safety Commission—Edward E. Quist, 301–504–0029 ext. 2240
Defense Nuclear Facilities Safety Board—Andrew Thibadeau at 202–694–7000
Department of Energy—Mark R. Hively, 202–586–5655, e-mail: mark.hively@hq.doe.gov,web site:
Department of the Interior—Jennings Wong, 202–208–6704; web site: www.ios.doi.gov/pam/pamhome.html
Department of Labor—Al Stewart, 202–693–4021
Equal Employment Opportunity Commission—Allan Fisher, 202–663–4201
Federal Election Commission—John O'Brien, 202–694–1215
Federal Energy Regulatory Commission—Paul McKee, 202–208–1088
Federal Housing Finance Board—David A. Lee, 202–408–2514
Federal Financial Institutions Examination Council Appraisal Subcommittee—Marc L. Weinberg, General Counsel, 202–872–7520
Federal Mediation and Conciliation Service—Jame Lorber, 202–606–5444
Federal Trade Commission—Elliot Davis, 202–326–2022

Holocaust Memorial Council and Museum—Jay Gaglione, 202–314–0336

International Trade Commission—Charles W. Sole, Jr., 202–205–2746

Japan-United States Friendship Commission—Margaret Mihori, 202–418–9800

Kennedy Center for the Performing Arts—Jared Barlage, 202–416–8721

National Credit Union Administration—Michael J. McNeill, 703–518–6570

National Gallery of Art—Bill Roache, 202–842–6329

National Science Foundation—Mitch Crawford 703–306–1101

Nuclear Regulatory Commission—Ronald D. Thompson, 301–415–7305

Offices of Inspector General:

Agency for International Development—Wayne Watson, 202–712–1207 or 712–0010

Department of Housing and Urban Development—Stanley J. McLeod, 202–708–3444 ext. 156

Environmental Protection Agency—John C. Jones, 202–260–3137

Farm Credit Administration—Elizabeth Dean, 703–883–4036

Federal Communications Commission—Charles Willoughby, 202–418–0472

National Labor Relations Board—Emil George, 202–273–1960

National Aeronautics and Space Administration—Frank LaRocca, 202–358–2575

National Archives and Records Administration—James Springs, 301–713–7300, ext. 224 or Kat Grillo, 301–713–7300, ext. 221

Nuclear Regulatory Commission—David C. Lee, 301–415–5930

Securities and Exchange Commission—Walter Stachnik, Inspector Gneral, 202–942–4461

Social Security Administration—John Byrnes, 410–966–9136

Office of Personnel Management—Kenneth McMahill, 202–606–2494

Railroad Retirement Board—Henry M. Valiulis, 312–751–4520

Small Business Administration—James Van Wert, 202–205–6610

Securities and Exchange Commission—Donald Sherman, 202–942–4000

U.S. Commission on Civil Rights—George Harbison, 202–376–8356

Woodrow Wilson Center—Ronnie Dempsey, 202–691–4216

Clarence C. Crawford,

Associate Director for Administration.

[FR Doc. 99–28423 Filed 10–28–99; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments Are Invited On

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act; OMB 3220–0012.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA), as amended by the Railroad Unemployment Improvement Act of 1988 (Public Law 100–647), the amount of each employer's contribution is determined by the RRB, primarily on the basis of RUIA benefit payments make to the employees of that employer. These experienced based contributions take into account the frequency, volume and duration of RUIA benefits, both unemployment and sickness, attributable to a railroad's employees. Each employer's contribution rate includes a component for administrative expenses and a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments or underpayments of contributions are contained in 20 CFR 345.

RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Insurance Act, is utilized by the RRB for the reporting and remitting of quarterly contributions by railroad employers. One response is requested quarterly of each respondent. Completion is mandatory. The RRB proposes minor non-burden impacting editorial changes to Form DC–1.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.(s)	Annual response	Time (min)	Burden (mrs)
DC–1	2,200	25	917

FOR FURTHER INFORAMTION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald H. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–28287 Filed 10–28–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24110, 812–11754]

AIM Advisors, Inc., et al., Notice of Application

October 25, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares, and impose asset-based distribution fees and early withdrawal charges.

APPLICANTS: AIM Advisors, Inc. ("Advisers"), GT Global Floating Rate Fund, Inc., d/b/a/ AIM Floating Rate Fund ("Fund"), and AIM Distributors, Inc. ("Distributor").

FILING DATES: The application was filed on August 19, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609; Applicants, 11 Greenway Plaza, Suite 100, Houston, TX, 77046.

FOR FURTHER INFORMATION CONTACT: Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act and organized as a Maryland corporation. The Adviser is registered under the Investment Advisers Act of 1940 and will serve as investment adviser to the Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, will distribute the Fund's shares. Applicants request that the order also apply to any other registered closed-end investment company established in the future for which the Adviser, or any entity controlling, controlled by, or under common control (as the term "control" is defined in section 2(a)(9) of the Act) with the Adviser, acts as principal underwriter, investment adviser, or administrator.[1]

2. The Fund's investment objective is to provide a high level of current income and preservation of capital. The Fund invests primarily in senior secured floating and adjustable rate loans made by commercial banks, investment banks, finance companies and other lenders to commercial and industrial borrowers ("Loans"). Under normal circumstances, at least 80% of the Fund's total assets are invested in Loans. Up to 20% of the Fund's assets may be held in cash or cash equivalents, or invested grade, short-term debt obligations, or invested in unsecured loans.

3. The Fund continuously offers its shares to the public at net asset value. The Fund's shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium. The Fund intends to operate as an "interval fund" pursuant to rule 23c–3 under the Act and make periodic repurchase offers to its shareholders.[2]

4. The Fund seeks the flexibility to be structured as multiple-class fund and currently intends to offer two classes of shares. The Fund will offer Class B shares with no front-end sales charge but subject to an early withdrawal charge ("EWC") on shares that are repurchased by the Fund within four years from when they were purchased. The Fund will offer Class C shares with no front-end sales charge but subject to an EWC on shares that are repurchased by the Fund within one year from when they were purchased. Class B and Class C shares will be subject to an annual asset-based distribution fee of up to .25% and .75%, respectively, of average daily net assets. The Fund may in the future offer other classes of shares with different distribution structures, including Class A shares with a front-end sales charge but with no EWC. Applicants represent that the distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD") as if the Fund was an open-end investment company. Applicants also represent that the Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multi-class funds under Form N–1A.

5. All expenses incurred by the Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. The Fund may create additional classes of shares in the future that may have different terms from Class B and Class C shares. Applicants state that the Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

6. The Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, the Fund will comply with rule 22d–1 under the Act as if it were an open-end investment company.

7. The Fund will offer its shareholders an exchange feature under which shareholders of the Fund may, during the Fund's quarterly repurchase periods, exchange their shares for shares of the same class of other funds in the AIM group of investment companies. Fund shares so exchanged will be counted as part of the repurchase offer amount as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a–3, the Fund will treat the EWC as if it were a contingent deferred sales charge ("CDSC").

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting

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[1] Any registered closed-end investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application.

[2] Since it commenced operations in May, 1997, the Fund has been the sole feeder fund in a master-feeder structure and has invested all of its investable assets in the Floating Rate Portfolio, a master fund with the same investment objective as the Fund. Pursuant to a planned restructuring of the Fund, the master feeder structure will be collapsed and the Fund will own its portfolio securities directly. As part of the restructuring, the Fund intends to operate as an "interval fund," following receipt of shareholder approval.

rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to permit the Fund to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state the Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

5. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase any securities of which it is the issuer, except: (i) on a securities exchange or other open market; (ii) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (iii) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

6. Rule 23c–3 under the Act permits a registered closed-end investment company (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

7. Section 23(c)(3) provides that the SEC may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the SEC may exempt any person, security or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares submitted for repurchase that have been held for less than a specified period.

8. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c–10 under the Act. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs and that EWCs may discourage investors from moving their money quickly in and out of the Fund, a practice that applicants submit imposes costs on all shareholders. Applicants will comply with rule 6c–10 under the Act as if that rule applied to closed-end investment companies. The Fund also will disclose EWCs in accordance with the requirements of form N–1A concerning CDSCs. Applicants further state that the Fund will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

9. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the SEC issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the SEC considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, and 22d–1 under the Act and NASD conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28356 Filed 10–28–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Partnership Questionnaire—0960–0025. Form SSA–7104 is used to establish several aspects of eligibility for benefits, including accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for old age and disability benefits.

Number of Respondents: 12,350.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 6,175 hours.

2. Report of New Information in Disability Cases—0960–0071. The information collected on Form SSA–612 is used to update the disability records of respondents, based on changes reported. The respondents are applicants for and recipients of Title II Disability Benefits.

Number of Respondents: 27,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 2,700 hours.

3. Claimant's Recent Medical Treatment—0960–0292. The information collected on Form HA–4631 is used to provide an updated medical history for a disability claimant who requests a hearing and to afford claimants their statutory right to a hearing and decision under the Social Security Act. The respondents are claimants requesting hearings on entitlement to benefits based on disability under title II (Old-Age, Survivors and Disability Insurance) and/or title XVI (Supplemental Security Income) of the Social Security Act.

Number of Respondents: 309,490.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 51,582 hours.

4. Supplemental Security Income (SSI)—Quality Review Case Analysis—0960–0133. Form SSA–8508–BK is used with a sample of SSI recipients in a personal interview and covers all elements of SSI eligibility. The information obtained is used to assess the effectiveness of SSI policies and procedures and to establish payment accuracy rates. The respondents are SSI Recipients.

Number of Respondents: 15,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 15,000 hours.

5. Psychiatric Review Technique—0960–0413. The information collected on Form SSA–2506 is needed by the Social Security Administration to facilitate in the adjudication of claims involving mental impairments. The information is used to identify the need for additional evidence for the determination of impairment severity; to consider aspects of mental impairment relevant to the individual's ability to work; and to organize and present the findings in a clear, concise manner. The respondents are State Disability Determination Services administering titles II and XVI disability programs.

Number of Respondents: 1,005,804.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 251,451 hours.

6. Instructions for Completion of Federal Assistance Application Form SSA–96 for SSA Research and Demonstration Grant Programs—0960–0184. The information collected on Form SSA–96 is needed by the SSA to evaluate and select grant proposals for funding. The respondents are applicants for Federal assistance, including State and Local governments, educational institutions and other nonprofit and for-profit organizations.

Number of Respondents: 150.

Frequency of Response: 1.

Average Burden Per Response: 14 hours.

Estimated Annual Burden: 2,100 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Statement of Living Arrangements, In-Kind Support and Maintenance—0960–0174. Form SSA–8006 provides a nationally-uniform vehicle for collecting information from SSI applicants and recipients about whether they receive income from in-kind support and maintenance. Responses are used to determine eligibility for SSI benefits payable. The respondents are individuals applying for SSI or whose eligibility is being reevaluated.

Number of Respondents: 438,400.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 51,147 hours.

2. Quickstart Enrollment Form—0960–0564. The information collected on this form is needed by SSA to facilitate electronic transmission of data for direct deposit of funds to a payee's account. The respondents are Social Security and SSI recipients requesting direct deposit to their financial institutions.

Number of Respondents: 3,950,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 197,500 hours.

3. Supplemental Security Income Claim Information Notice—0960–0324. The information collected on Form SSA–L8050–U3 will be used by SSA to ensure that all sources of potential income which can be used to provide for an individual's own support and maintenance are utilized. The respondents are applicants for SSI and recipients who are potentially eligible for benefits from other public or private programs.

Number of Respondents: 7,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,250 hours.

4. Marital Relationship Questionnaire—0960–0460. The information collected on Form SSA–4178 is needed by SSA to determine whether unrelated individuals of the opposite sex who are living together, and present themselves to the public as husband and wife, should be paid as a couple or two eligible individuals. The information is used to determine whether correct payment is being made to SSI couples and individuals. The respondents are applicants for and recipients of SSI who are living together in a questionable relationship.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

5. Letter to Employer Requesting Information About Wages Earned by Beneficiary—0960–0034. The information on Form SSA–L725 is used by SSA to establish the exact amount of wages earned by a beneficiary and to determine the amount of benefit payment, should one be due. The

respondents are employers of the beneficiaries.

Number of Respondents: 150,000.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 100,000 hours.

(SSA Address)
Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235
(OMB Address)
Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

Dated: October 22, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–28434 Filed 10–28–99; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice No. 3146]

Shipping Coordinating Committee Assembly and Council; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:30 AM on Tuesday, November 2, in Room 6103, at U. S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 20th session of the Extraordinary Council, 83rd Session of Council and 21st Session of the Assembly of the International Maritime Organization (IMO) which is scheduled for 12–26 November 1999, at the IMO Headquarters in London. Discussions will focus on papers received and draft U.S. positions.

Among other things, the items of particular interest are:

—Reports of Committees;
—Reports on Diplomatic Conferences;
—Work Program and Budget for 1998–1999;
—Election of Members of the Council.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U.S. Coast Guard Headquarters, Commandant (G–CI), Room 2114, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–2280.

Susan K. Bennett,

Director, Office of Transportation Policy, U.S. Department of State.

[FR Doc. 99–28518 Filed 10–28–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–5895]

Burlington Northern Santa Fe Railway; Public Hearing

On July 29, 1999, FRA published a notice in the **Federal Register** announcing Burlington Northern Santa Fe Railway's (BNSF) request to obtain a permanent waiver of compliance from certain provisions of the Safety Appliance Standards, Title 49, Code of Federal Regulations (CFR), part 231, and the Power Brakes and Drawbars regulations, 49 CFR part 232, concerning RoadRailer® train operations over their railroad system. Specifically, BNSF requests relief from the requirements of 49 CFR part 231, which specifies the number, location and dimensional specifications for handholds, ladders, sill steps, uncoupling levers and handbrakes; and Section § 232.2, which regulates drawbar height.

As a result of comments received by the Federal Railroad Administration (FRA) concerning this waiver petition, FRA has determined that a public hearing is necessary before a final decision is made on this petition. Accordingly, a public hearing is hereby set for 10 a.m. on November 23, 1999, in the Minnesota/Michigan Conference Room at the FAA Building, 2300 E. Devon Avenue, Des Plaines, Illinois 60018. Interested parties are invited to present oral statements at this hearing. The hearing will be informal and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25) by a representative designated by FRA. The FRA representative will make an opening statement outlining the scope of the hearing, as well as any additional procedures for the conduct of the hearing. The hearing will be a non-adversarial proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition without cross-examination. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given an opportunity to do so in the same order in which initial statements were made.

Issued in Washington, DC on October 25, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–28349 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33809]

RailTex, Inc., North Carolina & Virginia Railroad Company, Inc., Chesapeake and Albemarle Railroad Company, Inc., Dallas, Garland & Northeastern Railroad, Inc., Mid-Michigan Railroad, Inc., and Indiana Southern Railroad, Inc.—Corporate Family Transaction; Exemption

RailTex, Inc. (RailTex),[1] North Carolina & Virginia Railroad Company, Inc. (NCVA), Chesapeake and Albemarle Railroad Company, Inc. (CA), Dallas, Garland & Northeastern Railroad, Inc., a Texas corporation (DGNO), Mid-Michigan Railroad, Inc. (MMRR), and Indiana Southern Railroad, Inc. (ISRR), have jointly filed a verified notice of exemption. As part of the proposed corporate restructuring: (1) the assets of DGNO and MMRR, including the assets of the Texas Northeastern Division, a division of MMRR, will be merged into Dallas, Garland & Northeastern Railroad, Inc., a Delaware Division (DGNO Delaware), with DGNO Delaware as the surviving entity; (2) the assets of NCVA and CA will be merged into North Carolina & Virginia Railroad Company, Inc., a Delaware corporation (NCVA Delaware), with NCVA Delaware as the surviving entity; and (3) ISRR will be reincorporated in the State of Delaware. After the transaction is consummated, RailTex will control 16 Class III railroads in the United States.

The transaction was scheduled to be consummated on or shortly after October 15, 1999.

The purpose of the transaction is to simplify RailTex's corporate structure and eliminate costs associated with separate accounting, tax, bookkeeping and reporting functions. The proposed transaction will also allow for the reincorporation of additional RailTex subsidiaries in the State of Delaware thereby simplifying RailTex's corporate governance.

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[1] RailTex is a noncarrier, which at the time of filing, directly controlled 18 Class III railroads operating in 20 states, as well as 3 rail carriers that operate in Canada.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33809, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, P.C., Ball Janik LLP, Suite 225, 1455 F Street, NW, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 25, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99-28412 Filed 10-28-99; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6-8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 5 percent for calendar year 2000.

DATES: The rate will be in effect for the period beginning on January 1, 2000 and ending on December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Program Compliance Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC. 20227 (Telephone: (202) 874-6630).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95-147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 2000 reflects the average investment rates for the 12-month period that ended September 30, 1999.

Dated: October 25, 1999.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 99-28317 Filed 10-28-99; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI-189-84]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI-189-84 (TD 8517), Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property (§§ 1.1272-3, 1.1273-2(h), 1.1274-3(d), 1.1274-5(b), 1.1274A-1(c), and 1.1275-3(b)).

DATES: Written comments should be received on or before December 28, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, nternal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property.

OMB Number: 1545-1353.

Regulation Project Number: FI-189-84.

Abstract: This regulation provides definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms and state, local or tribal governments.

Estimated Number of Respondents: 525,000.

Estimated Time Per Respondent: 21 minutes.

Estimated Total Annual Burden Hours: 185,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–28276 Filed 10–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–63–84; EE–96–85]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary regulation, EE–63–84 (TD 8073), and notice of proposed rulemaking, EE–96–85, Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984 (§§ 1.505(c)-1T, 1.1042–1T and 1.463–1T).

DATES: Written comments should be received on or before December 28, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.

OMB Number: 1545–0916.

Regulation Project Number: EE–63–84 (temporary regulation), and EE–96–85 (notice of proposed rulemaking).

Abstract: These regulations provide rules relating to effective dates and certain other issues arising under sections 91, 223 and 511–561 of the Tax Reform Act of 1984. The regulations affect qualified employee benefit plans, welfare benefit funds, and employees receiving benefits through such plans.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and individuals.

Estimated Number of Respondents: 12,800.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 6,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–28277 Filed 10–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–102–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–102–86 (TD 8316) Cooperative Housing Corporations (§ 1.216–1(d)(2)).

DATES: Written comments should be received on or before December 28, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Housing Corporations.

OMB Number: 1545–1041.

Regulation Project Number: PS–102–86.

Abstract: Section 1.216–1(d)(2) of this regulation allows cooperative housing corporations to make an election whereby the amounts of mortgage interest and/or real estate taxes allocated to tenant-stockholders of the corporation will be based on a reasonable estimate of the actual costs attributable to each tenant-stockholder's dwelling unit. In the absence of such a one-time election, such costs are allocated proportionally among the tenant-stockholders based on the number of shares held in the corporation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 625.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–28278 Filed 10–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–7–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–7–88(TD 8379), Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail (§§ 155.6011–1, 155.6001–1, 155.6081–1, and 155.6161–1).

DATES: Written comments should be received on or before December 28, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail.

OMB Number: 1545–1049.

Regulation Project Number: IA–7–88.

Abstract: The regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 4.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–28279 Filed 10–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Reporting, Alternative Commitment (Hairstyling Industry)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Reporting Alternative Commitment (Hairstyling Industry).

DATES: Written comments should be received on or before December 28, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tip Reporting Alternative Commitment (Hairstyling Industry).

OMB Number: 1545–1529.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,200.

Estimated Average Time Per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 47,733.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–28280 Filed 10–28–99; 8:45 am]

BILLING CODE 4830–01–P

federal register

Friday
October 29, 1999

Part II

Environmental Protection Agency

40 CFR Parts 85 and 86

Control of Emissions of Air Pollution From 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Revision of Light-Duty Truck Definition; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 86

[AMS–FRL–6456–3]

RIN 2060–AI12, 2060–AI23

Control of Emissions of Air Pollution From 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Revision of Light-Duty Truck Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We are proposing to take several actions relating to emission standards and test procedures for heavy-duty engines and vehicles intended for operation on roads and highways. The proposed provisions are for the 2004 and later model years. First, we are proposing new more stringent emissions standards and related provisions for all heavy-duty Otto-cycle (*e.g.*, gasoline-fueled) engines and vehicles. Vehicles in this category include large full size pick-up trucks, full size cargo and passenger vans, and the largest sport utility vehicles. For heavy-duty Otto-cycle engines and vehicles, today's proposal would reduce the standards for oxides of nitrogen and hydrocarbons by approximately 75 percent from current standards. Second, we propose to reaffirm that the NMHC+NO_X standard promulgated in October, 1997 for diesel heavy-duty engines is both necessary and feasible. This standard represents about a 50 percent reduction in emissions of nitrogen oxides, as well as reductions in hydrocarbons, from diesel trucks and buses. Third, we are proposing to require on-board diagnostics systems for all heavy-duty vehicles and engines at or below 14,000 lbs gross vehicle weight rating (GVWR), and to revise the on-board diagnostics requirements for diesel light-duty vehicles and trucks. These systems will identify the failure of components of the emissions control system. Fourth, we are proposing the addition of new test procedures and associated standards for heavy-duty diesel engines and vehicles. Fifth, we are proposing to include heavy models of gasoline and diesel-fueled sport-utility vehicles and similar heavy-duty vehicles used primarily for personal transportation in the Tier 2 program that EPA proposed earlier this year. Today's proposal would result in lower emissions of oxides of nitrogen and hydrocarbons, as well as lower particulate matter due to reductions in secondary particulate formation (secondary particulate matter is not emitted directly from the engine, but is formed when emissions of oxides of nitrogen react with ammonia in the atmosphere to produce ammonium nitrate particulates), and would assist states and regions facing ozone air quality problems that are causing a range of adverse health effects, particularly respiratory impairment and related illnesses.

DATES: We must receive your comments on this NPRM by December 2, 1999. A public hearing will be held on November 2, 1999 (EPA has published notice of this hearing on October 22, 1999 (64 FR 56985).). EPA requests that parties who want to testify notify the contact person listed in the **ADDRESSES** section of this document one week before the date of the hearing. More information about commenting on this action and on the public hearing may be found in section XI What are the Opportunities for Public Participation?

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: EPA Air and Radiation Docket, Attn: Docket No. A–98–32, Room M–1500 (Mail Code 6102), 401 M Street SW, Washington, DC 20460. EPA requests that a copy of the comments also be sent to the contact person listed below. Materials relevant to this proposal have been placed in Docket Nos. A–98–32 and A–95–27 and may be viewed in Room M–1500 between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket materials.

The public hearing will be held at Top of the Tower, 1717 Arch Street, 51st Floor, Philadelphia, PA 19103, telephone: 215–567–8787, fax: 215–557–5171.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. Environmental Protection Agency, Engine Programs and Compliance Division, 2000 Traverwood Drive, Ann Arbor, MI 48105–2498. Telephone (734) 214–4334; Fax (734) 214–4816; e-mail borushko.margaret@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture and sell new heavy-duty motor vehicles, new heavy-duty engines, and new diesel light-duty motor vehicles in the United States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of new heavy-duty motor vehicles and engines. Manufacturers of new diesel light-duty motor vehicles and engines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in §§ 86.001–1 and 86.1801–01. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Rulemaking Documents Through the Internet

The preamble, regulatory language, regulatory impact analysis, and other related documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature)
2. http://www.epa.gov/OMSWWW/ (Look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

TABLE OF ACRONYMS AND ABBREVIATIONS

ABT	Averaging, Banking, and Trading
AECD	Auxiliary Emission Control Device
ALVW	Adjusted Loaded Vehicle Weight
ANPRM	Advance Notice of Proposed Rulemaking
BSFC	Brake-Specific Fuel Consumption
CAA	Clean Air Act
CAP 2000	Compliance Assurance Program for the 2000 and later model years
CARB	California Air Resources Board

TABLE OF ACRONYMS AND ABBREVIATIONS—Continued

CASAC	Clean Air Scientific Advisory Committee
CFF	Clean Fuel Fleet
CO	Carbon Monoxide
DF	Deterioration Factor
DOC	Diesel Oxidation Catalyst
DRI	Desert Research Institute
EGR	Exhaust Gas Recirculation
EMA	Engine Manufacturers Association
EPA	Environmental Protection Agency
FEL	Family Emission Limit
g/bhp-hr	grams per brake-horsepower hour
g/mi	grams per mile
GVWR	Gross Vehicle Weight Rating
HC	Hydrocarbons
HD	Heavy-Duty
HDDE	Heavy-Duty Diesel Engine
HDE	Heavy-Duty Engine
HDEWG	Heavy-Duty Engine Working Group
HDV	Heavy-Duty Vehicle
HEUI	Hydraulically Actuated Electronic Unit Injection
HLDT	Heavy Light-Duty Truck
LDT	Light-Duty Truck
LDV	Light-Duty Vehicle
LEV	Low Emission Vehicle
LLDT	Light Light-Duty Truck
LRT	Load Response Test
MDV	Medium-Duty Vehicle
MEUI	Mechanically Actuated Electronic Unit Injection
MIL	Malfunction Indicator Light
MY	Model Year
NAAQS	National Ambient Air Quality Standards
NCP	Non-Conformance Penalty
NMHC	Non-Methane Hydrocarbon
NMOG	Non-Methane Organic Gas
NO$_X$	Nitrogen Oxides
NPRM	Notice of Proposed Rulemaking
OBD	On-Board Diagnostics
OEM	Original Equipment Manufacturer
ORVR	Onboard Refueling Vapor Recovery
PM	Particulate Matter
PM$_{10}$	Particulate Matter of 10 microns or less in diameter
PM$_{2.5}$	Particulate Matter of 2.5 microns or less in diameter
RIA	Regulatory Impact Analysis
SIP	State Implementation Plan
SOP	Statement of Principles
TW	Test Weight
UDDS	Urban Dynamometer Driving Schedule
ULEV	Ultra Low Emission Vehicle
VGT	Variable Geometry Turbocharger
VMT	Vehicle Miles Traveled
VNT	Variable Nozzle Turbocharger
VOC	Volatile Organic Compound

Table of Contents

I. What is EPA Proposing to Do?
A. Changes to the Engine-Based Program
B. Expanding the Otto-cycle Vehicle-based Program to Certain Heavy-duty Vehicles
C. Additional Changes Affecting Heavy-duty Vehicle and Heavy-duty Engine Programs
D. Heavy-duty Lead Time Issues and Voluntary Federal Standards
II. What is the Environmental Need for this Proposal?
A. Need for Additional NO$_X$ and NMHC Reductions
  1. Health and Welfare Effects from NMHC and NO$_X$
  2. Current Compliance with the Ozone NAAQS
  3. Future Compliance with the Ozone NAAQS
  4. Contribution of HD Diesel and Gasoline Engines to Total VOC and NO$_X$ Inventories
B. Need for Additional PM Reductions
  1. Health and Welfare Effects from PM
  2. Current and Future Compliance with the PM10 NAAQS
  3. Contribution of HD Diesel and Gasoline Vehicles to PM Inventories
  a. Contribution to National PM$_{10}$ Inventories
  b. Source-apportionment Studies for Diesel PM
C. Air Toxics from HD Engines and Vehicles
III. What is the Important Background Information for this Proposal?
A. Statement of Principles and Rulemaking History
B. 1999 Review of Heavy-duty Diesel Engine NMHC+NO$_X$ Standards
C. Proposal for Heavy-duty Gasoline Engine Standards
  1. Summary of Comments on 1996 NPRM
  2. Analysis Leading to Decision to not Finalize Otto-cycle Standards
D. Consent Decrees with Heavy-duty Diesel Engine Manufacturers
IV. What are the Details of this Proposal?
A. Reaffirmation of 2004 NMHC + NO$_X$ Standard for Heavy-duty Diesel Engines
B. Are Changes in Diesel Fuel Quality Necessary to Meet the 2004 Standards?
C. Otto-cycle Engine-based Program
  1. Engine Exhaust Emissions Standards
  2. Averaging, Banking, and Trading for Otto-Cycle Engines
D. Supplemental Exhaust Emission Standards and Test Procedures for HD Diesel Engines
  1. Introduction/Background
  2. Proposed Supplemental Test Procedures and Standards
  a. Supplemental Steady-State Test
  b. Not-To-Exceed Limits
  c. Diesel Supplemental Load Response Test
  d. Ambient Conditions, Temperature and Humidity, Laboratory and In-use Testing
  3. Access to On-board Computer Information
E. Otto-cycle Vehicle-based Program
  1. Moving to a Vehicle-based Test Procedure and Standards
  2. Vehicle Exhaust Emissions Standards
  3. Heavy-duty Vehicle Averaging, Banking and Trading
  a. Background
  b. Proposal
  c. Credit exchanges between the engine and chassis-based programs
  4. Evaporative standards/onboard refueling vapor recovery
  a. Enhanced evaporative emissions
  b. Onboard refueling vapor recovery
  5. Compliance Assurance Program
  a. CAP 2000 for HDVs
  b. Proposed Modifications to the CAP 2000 Program For Chassis-Based HDVs
  6. Useful Life
  7. Aftermarket Alternative Fuels Conversions
F. Proposal to Revise the Definition of Light-duty Truck
  1. Background
  2. Proposal
  3. Integration into Proposed Tier 2 Program
  a. Tier 2 Standards for New HLDTs
  b. Interim Standards for New HLDTs
  c. Technological Feasibility of Tier 2 Standards for New HLDTs
G. On-Board Diagnostics
  1. Background on OBD
  2. CARB OBDII Requirements
  3. Proposed Federal OBD Requirements
  4. Federal OBD Malfunction Thresholds and Monitoring Requirements
  5. Proposed Standardization Requirements
  6. Deficiency Provisions
  7. Applicability and Waivers
  8. Certification Provisions
H. Durability Procedures
I. Non-Conformance Penalties
V. Additional Heavy-Duty Engine Provisions Under Consideration
A. Revision to the Definition of Rated Speed
B. A Manufacturer-based In-use Testing Program for Heavy-duty Engines
C. On-board Diagnostics for Heavy-duty Engines and Vehicles Above 14,000 Pounds GVWR
D. Applying the Not-to-Exceed Approach and Emission Limits to Heavy-duty Otto-cycle Engines
VI. Are the Proposed Requirements Technologically Feasible?
A. 2004 Emission Standards for Heavy-duty Diesel Engines
  1. Probable Emission Control Strategies
  2. Feasibility of 2004 HD Diesel Standards
B. 2004 Emission Standards for Heavy-duty Otto-cycle Vehicles and Engines
  1. Current Technologies
  2. Chassis-based standards
  3. Engine-based standards
  4. Onboard Refueling Vapor Recovery
C. On-Board Diagnostics
VII. What are the Environmental Benefits of this Proposal?
A. 2004 Emission Standards for Heavy-Duty Diesel Engines
B. 2004 Emission Standards for Heavy-duty Otto-cycle Vehicles and Engines
C. Benefits of the Supplemental Standards and In-Use Control Measures of Today's Proposal
VIII. What are the Economic Impacts of the Proposal?
A. 2004 Emission Standards for Heavy-duty Diesel Engines
  1. Expected Technologies
  2. Per Engine Costs
  3. Aggregate Costs to Society
B. 2004 Emission Standards for Heavy-duty Otto-cycle Vehicles and Engines
  1. Expected Technologies
  2. Per Vehicle Costs
  3. Aggregate Cost to Society

IX. What is the Cost-Effectiveness of the Proposal?
- A. 2004 Emission Standards for Heavy-duty Diesel Engines
- B. 2004 Emission Standards for Heavy-duty Otto-cycle Vehicles and Engines

X. Are Future Reductions in HD Emissions Possible?
- A. Potential Future Standards for Heavy-duty Diesel Vehicles and Engines
  - 1. Potential Future Reductions in Heavy-duty Diesel NO_X and NMHC
  - 2. Potential Future Reductions in Heavy-duty Diesel Engine PM
  - 3. Potential Structure of Future Diesel Emission Standards
- B. Potential Future Standards for Heavy-duty Otto-cycle Vehicles
  - 1. Exhaust Emission Standards
  - 2. Evaporative standards

XI. What are the Opportunities for Public Participation?
- A. Comments and the Public Docket
- B. Public Hearing

XII. What Administrative Requirements Apply to this Proposal?
- A. Compliance with Executive Order 12866
- B. Impact on Small Entities
- C. Unfunded Mandates Reform Act
- D. Reporting and Recordkeeping Requirements
- E. Compliance with Executive Order 13045
- F. Enhancing Intergovernmental Partnerships
- G. Consultation and Coordination with Indian Tribal Governments
- H. National Technology Transfer and Advancement Act
- I. Compliance with Executive Order on Federalism

XIII. What is EPA's Statutory Authority for this Proposal?

I. What Is EPA Proposing To Do?

EPA (or, "the Agency") is proposing to take several actions relating to emission standards and test procedures for heavy-duty engines (HDEs) and heavy-duty vehicles (HDVs) intended for highway operation.[1] The proposed provisions would become effective starting with the 2004 model year (MY). These actions supplement a June 1996 proposed rule (61 FR 33421, June 27, 1996), in which we proposed new emission standards for heavy-duty diesel engines (HDDE) and heavy-duty Otto-cycle engines and vehicles, and a subsequent October 1997 final rule (62 FR 54694, October 21, 1997), in which we finalized new emission standards for heavy-duty diesel engines.[2]

Currently, EPA has a chassis-based regulatory program for light-duty vehicles (LDVs) and light-duty trucks (LDTs), meaning that the vehicle itself is subject to emission standards and testing. For all heavy-duty vehicles the engine alone is tested and must currently meet engine-based standards.[3] Engine testing currently applies to all diesel-cycle and Otto-cycle heavy-duty vehicles. One of the key elements of today's action is a proposal to begin regulating a subset of heavy-duty vehicles using chassis-based requirements. The heavy-duty vehicles that are proposed to be subject to chassis-based requirements are complete Otto-cycle heavy-duty vehicles with a gross vehicle weight rating (GVWR) below 14,000 pounds.[4,5] In addition, some complete gasoline and diesel-fueled heavy-duty vehicles between 8,500 and 10,000 pounds GVWR are proposed to be incorporated into the Tier 2 program proposed by EPA earlier this year (64 FR 26004, May 13, 1999). Today's proposal can generally be separated into those elements relating to the new chassis-based requirements and those elements that affect the engine-based requirements. The proposals listed below are explained in greater detail in the remainder of this document.

Some of these proposals would harmonize EPA's regulatory programs with California's current medium-duty vehicle (MDV) program (e.g., vehicle-based standards for complete Otto-cycle heavy-duty vehicles below 14,000 pounds GVWR), while others may differ from California's current requirements. These similarities and differences are outlined in the detailed discussion that follows. We request comments on the proposals described below, and encourage commenters to supply relevant data that would help us further assess the proposals.[6]

A. Changes to the Engine-Based Program

The first sections of this proposal describe the proposed revisions to the engine-based program. Some of these proposals would apply to both diesel and Otto-cycle engines, and others would apply uniquely to either diesel or Otto-cycle engines. Proposed requirements that affect the engine-based program include:

- Reaffirmation of the existing 2004 and later model year NMHC+NOx standard for heavy-duty diesel engines.
- New more stringent emission standards for 2004 and later model year Otto-cycle heavy-duty engines.
- A revised averaging, banking, and trading (ABT) program for Otto-cycle heavy-duty engines.
- Revised deterioration factor (DF) requirements for heavy-duty engines.
- New emission standards for heavy-duty diesel engines to improve the assurance that vehicles are emitting low levels of pollutants over a wide range of operation experienced in actual use.
- New supplemental test procedures for heavy-duty diesel engines associated with the proposed new emission standards.[7]

B. Expanding the Otto-Cycle Vehicle-Based Program to Certain Heavy-Duty Vehicles

Additional sections of this proposal describe the proposed chassis-based (or vehicle-based) program for certain heavy-duty vehicles. Many of these proposals result in harmonization with the California Air Resources Board (CARB) Medium-duty Vehicle (MDV)

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[1] Light-duty vehicles and light-duty trucks are defined as vehicles with a gross vehicle weight rating (GVWR) below 8,500 pounds. Heavy-duty vehicles are vehicles with a GVWR greater than or equal to 8,500 pounds. Heavy-duty engines are engines used in heavy-duty vehicles.

[2] The terms "diesel" and "Otto-cycle" generally refer to the type of combustion cycle employed by an engine. In a diesel-cycle engine combustion is brought about by the compression of the fuel mixture (compression ignition), whereas in an Otto-cycle engine combustion is achieved by providing a spark to the fuel mixture (spark ignition). Although a generalization for which there are exceptions, diesel-cycle vehicles are generally fueled with diesel fuel and Otto-cycle vehicles are generally fueled with standard gasoline.

[3] Engine-based standards are expressed in terms of emissions per unit of work, whereas chassis-based (or vehicle-based) standards are expressed in terms of amount of emissions per mile driven by the vehicle.

[4] "Complete" vehicles are those that are manufactured with their primary cargo carrying container or device attached, whereas "incomplete" vehicles are those that are manufactured without the primary cargo carrying container or device attached. Incomplete vehicles (basically the engine plus a chassis) are then manufactured into a variety of vehicles, such as recreational vehicles, panel trucks, dump trucks, fire trucks, and tow trucks.

[5] Gross Vehicle Weight Rating (GVWR) is defined by federal regulation in 40 CFR 86.082–2 as "The value specified by the manufacturer as the maximum design loaded weight of a single vehicle." In other words, it is the weight of the vehicle completely loaded with the maximum load that the manufacturer states the vehicle is capable of carrying.

[6] The current federal standards for Clean Fuel Vehicles are less stringent than the proposed Otto-cycle standards and the existing diesel standards for the 2004 and later model years. *See* 40 CFR 88.105–94. The 2004 and later model year standards proposed today would supercede the current Clean Fuel Vehicle standards, and, if EPA adopts the Otto-cycle standards proposed today and maintains the diesel standards for the 2004 and later model years, the Agency intends to undertake a rulemaking to revise the Clean Fuel Vehicle standards accordingly.

[7] We believe that our compliance program is fundamentally incomplete until a similar form of additional assurance that Otto-cycle engines will meet applicable emission standards in-use can be added to the compliance requirements, but such provisions are not specifically proposed today. Section V of today's proposal describes several important compliance program elements that are not included in today's proposal, but that we intend to finalize such that they can take effect in conjunction with those elements in today's proposal. See section V for more information.

Program. For the vehicle-based program, we are proposing the following elements:

- New standards for 2004 and later model year complete Otto-cycle heavy-duty vehicles with a GVWR below 14,000 pounds.
- The incorporation of certain complete Otto-cycle and diesel vehicles between 8,500 and 10,000 pounds GVWR into the Tier 2 light-duty program. These provisions would be limited to those vehicles designed primarily for personal transportation.
- Vehicle-based testing of all complete heavy-duty Otto-cycle vehicles below 14,000 pounds GVWR for these new standards.
- An averaging, banking, and trading program.
- On-board refueling vapor recovery (ORVR) requirements.
- CAP 2000 provisions.[8]
- Revised useful life requirements.

C. Additional Changes Affecting Heavy-Duty Vehicle and Heavy-Duty Engine Programs

Additional sections describe provisions or issues that apply to both heavy-duty vehicle and engine programs. These proposals include:

- On-board Diagnostics (OBD) requirements for heavy-duty diesel and Otto-cycle vehicles and engines up to 14,000 pounds GVWR.
- Non-Conformance Penalties (NCPs).

D. Heavy-Duty Lead Time Issues and Voluntary Federal Standards

One of the important concepts contained in the rulemaking record, is the need for harmonized, 50-state emission standards for the heavy-duty industry. Consistent national standards provide the states with the emission reductions they need, while providing manufacturers with the knowledge they can design and market one engine design regardless of what state the engine is sold to. Our proposal today would implement nationwide standards which would harmonize with California for the majority HD engines and vehicle in 2004 (the exception being incomplete HD Otto-cycle engines.)

Since the finalization of the 1997 rule for 2004 HD diesels, state and local air quality agencies have been counting on the emission reductions from the 2004 standards in order to meet their long-term air quality needs. In addition, as discussed previously in this proposal, the 2004 standards for HD Otto-cycle engines and vehicles will also provide state and local air quality agencies additional needed emission reductions. However, Section 202 of the Clean Air Act requires EPA to provide manufacturers of heavy-duty engines and vehicles four years of lead time between standards. This would require EPA to issue a final rule by the end of 1999 in-order to implement new standards in 2004. We are concerned due to the short amount of time between today's proposal and the end of the calendar year that the final rule for today's proposal may not be final until after December 31, 1999, which may prevent a model year 2004 implementation of the standards proposed today. This concern does not apply for the 2004 model year heavy-duty diesel engine standards which were promulgated in 1997 and meet the lead time requirements.

This four year lead time issue for the 2004 standards contained in today's proposal reflects a statutory requirement, not a technological feasibility issue. As demonstrated elsewhere in this proposal, technology is clearly available which will allow manufacturers to meet the proposed HD diesel and HD gasoline standards by 2004.

The lack of more stringent federal 49-state HD standards in 2004 may lead some states with incentive to exercise their rights under Section 177 of the Clean Air Act to adopt the California HD diesel and Otto-cycle standards in order to realize the emission reductions associated with covering vehicles produced in 2004. This could result in a patchwork of emission standards across the country and could present the manufacturers with significant difficulties.

In the event the Agency is unable to finalize the new standards contained in today's proposal by the end of calendar year 1999, we request comment on the appropriateness of EPA's efforts to manage the implementation of these standards and in particular, of establishing a program for those manufacturers willing to cooperate in meeting the requirements in today's proposal. We would expect that manufacturers participating in this program would merely certify their 2004 model year engines to meet all of the emission standards and requirements included in today's proposal. If the proposed standards are not finalized by the end of 1999, mandatory federal standards would apply in model year 2005, with the goal of putting in place all requirements contained in today's proposal. We request comment on whether manufacturers would need to opt-in to such a program, and how such opt-in would take place. In addition, EPA requests comment on incentives to encourage manufacturers to opt into the voluntary program.

II. What Is the Environmental Need for This Proposal?

This section presents information on the negative health and environmental impacts from air pollution from heavy-duty (HD) engines and vehicles, as well as EPA's assessment of the need for additional emission reductions from HD engines and vehicles in order to meet the air quality needs of the U.S. A detailed analysis and explanation of the health impacts and air quality needs was presented in the advanced notice of proposed rulemaking, as well as the preamble and the Regulatory Impact Analysis (RIA) for the proposal and final rule of the 1997 rulemaking for the 2004 standards.[9] The reader should refer to those documents for additional information on this topic.

A. Need for Additional NO_x and NMHC Reductions

1. Health and Welfare Effects From NMHC and NO_x

Oxides of Nitrogen (NO_x) and volatile organic compounds (VOC) are precursors in the photochemical reaction which forms tropospheric ozone. VOC emissions from mobile sources consist mostly of nonmethane hydrocarbons (NMHC). There is a large body of evidence showing that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, affecting people with compromised respiratory systems and children most severely. In addition, NO_x itself can directly harm human health. Beyond their human health effects, other negative environmental effects are also associated with ozone and NO_x. Ozone has been shown to injure plants and materials; NO_x contributes to the secondary formation of particulate matter (PM) (nitrates), acid deposition, and the overgrowth of algae in coastal estuaries. These environmental effects, as well as the health effects noted above, are described in the Regulatory Impact Analysis, and additional information may be found in EPA's "staff papers" and "air quality criteria" documents for ozone and nitrogen oxides.[10, 11, 12, 13]

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[8] The new compliance assurance program for light-duty vehicles and light-duty trucks, known as CAP 2000 (since manufacturers may opt-in for model year 2000), streamlines the existing vehicle certification program, enabling manufacturers to save significant time and money. In addition, it requires manufacturers to test customer-owned in-use vehicles for model year 2001 and beyond. The CAP 2000 program was proposed on July 23, 1998 (63 FR 36954), and finalized on May 4, 1999 (64 FR 23906).

[9] *See* "Control of Air Pollution for Heavy-Duty Engines, Advanced Notice of Proposed Rulemaking". Available in EPA Air Docket A–95–27, Docket Item # AMS–FRL, and "Draft Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines", available in EPA Air Docket A–95–27, Docket Item # III–B–01, and "Control of Emissions of Air Pollution from Highway Heavy-Duty Engines: Notice of Proposed Rulemaking" available in EPA Air Docket A–95–27, Docket Item # III–A–01, and "Final Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines", available in EPA Air Docket A–95–27, Docket Item # V–B–01, and "Control of Emissions of Air Pollution from Highway Heavy-Duty Engines; Final Rule," available in EPA Air Docket A–95–27, Docket Item # V–A–01.

2. Current Compliance With the Ozone NAAQS

Today, many states are finding it difficult to show how they can meet or maintain compliance with the current National Ambient Air Quality Standard (NAAQS) for ozone by the deadlines established in the Clean Air Act (CAA, or "the Act").[14] As of August, 1998, 72 million people outside of California lived in 36 metropolitan areas and two counties designated nonattainment under the 1-hour ozone NAAQS.

In July 1997, EPA established a new 8-hour ozone NAAQS to better protect against longer exposure periods at lower concentrations than the current 1-hour standard. Under the July 1997 rule, the 1-hour NAAQS would still be applicable in certain areas during the transition to the 8-hour standard (62 FR 38856; July 17, 1997). EPA reviewed ambient ozone monitoring data for the period 1993 through 1995 to determine which counties violated either the 1-hour or 8-hour NAAQS for ozone during this time period.[15, 16] Eighty-four counties violated the 1-hour NAAQS during this 3-year period, while 248 counties violated the 8-hour NAAQS. The 84 counties had a 1990 population of 47 million, while the 248 counties had a 1990 population of 83 million. EPA is reviewing more recent air quality data for 1996 and 1997. A preliminary assessment of 1994 through 1996 ozone monitoring data reveals only marginal changes in the number of counties experiencing a nonattainment problem with the 8-hour NAAQS, and essentially no change in the population levels impacted by nonattainment.

On May 14, 1999, a panel of the U.S. Court of Appeals for the District of Columbia Circuit found, by a 2–1 vote, that Clean Air Act sections 108 and 109, as interpreted by EPA in establishing the 8-hour ozone NAAQS (as well as the new NAAQS for $PM_{2.5}$ and PM_{10}), effect an unconstitutional delegation of Congressional power. *American Trucking Ass'ns, Inc., et al.*, v. *Environmental Protection Agency*, Nos. 97–1440, 1441 (D.C. Cir. May 14, 1999). The Court remanded the record to EPA. One judge dissented, finding that the majority's opinion "ignores the last half-century of Supreme Court nondelegation jurisprudence." *Id.*, slip op. at 31. The Court also ruled, regarding the 8-hour ozone NAAQS, that the statute permits EPA to promulgate a revised ozone NAAQS and to designate the attainment status of areas. However, the Court curtailed EPA's ability to require states to comply with the revised ozone NAAQS. Further the Court directed the Agency to determine whether tropospheric ozone has a beneficent effect, and if so, assess ozone's net adverse health effect. In general, the Court did not find fault with the scientific basis for EPA's determinations regarding adverse health effects from ozone. On June 28, 1999, EPA filed a petition for rehearing and petition for rehearing en banc seeking review of the panel's decision.

The Court's decision does not address the provisions of section 202(a), and does not change EPA's belief that the standards in today's proposal are lawful and appropriate under these criteria. We believe that the information provided in this proposal and the draft Regulatory Impact Analysis, as well as the information that EPA relied on in setting the NAAQS for ozone, support a conclusion that ozone can be reasonably anticipated to endanger the public health or welfare. EPA's belief that it is appropriate to seek reductions of NO_X and NMHCs from heavy duty vehicles and engines to protect public health or welfare is not changed by the decision of the court.

3. Future Compliance With the Ozone NAAQS

Local, state and federal organizations charged with delivering cleaner air have mounted significant efforts in recent years to reduce air quality problems associated with ground-level ozone, and there are signs of partial success. NO_X and VOCs appear to have been reduced, and average levels of ozone seem to have begun gradually decreasing. However, this progress is in jeopardy. EPA projects that reductions in ozone precursors that will result from the full implementation of current emission control programs will fall far short of what would be needed to offset the normal emission increases that accompany economic expansion. By the middle of the next decade, the Agency expects that the downward trends will have reversed, primarily due to increasing numbers of emission sources. By around 2020, EPA expects that NO_X levels will have returned to current levels in the absence of significant new reductions.[17] To the extent that some areas are seeing a gradual decrease in ozone levels in recent years, EPA believes that the expected increase in NO_X will likely result in an increase in ozone problems in the future.

The Agency has recently finalized a rulemaking requiring 22 States and the District of Columbia to submit State Implementation Plan (SIP) revisions to reduce specified amounts of emissions of NO_X for the purpose of reducing NO_X and ozone transport across State boundaries in the eastern half of the United States.[18] The specified NO_X reduction for each State varies. In making this decision EPA relied upon, among other items, ozone modeling studies for the eastern U.S. In the baseline scenario for these modeling runs EPA included the emission reductions expected from the 2004 HDDE standards. These modeling runs concluded that significant additional NO_X reductions beyond the baseline case were necessary from 22 eastern States in order to meet the ozone NAAQS standards. The NO_X emission reductions from the 2004 HDDE standards are assumed by these models to be part of the reductions that will be needed to meet the ozone NAAQS in these areas. The Agency did not analyze the specified reductions that would be required by the rule if the baseline did not include the 2004 HDDE standards.

The deadline for submission of SIPs was recently stayed by a panel of the Court of Appeals for the D.C. Circuit pending further review. EPA believes that the October 27, 1998 rule is fully consistent with the Clean Air Act and

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[10] U.S. EPA, 1996, Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–007.

[11] U.S.EPA, 1996, Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF.

[12] U.S. EPA, 1995, Review of National Ambient Air Quality Standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–95–005.

[13] U.S.EPA, 1993, Air Quality Criteria for Oxides of Nitrogen, EPA/600/8–91/049aF.

[14] See 42 U.S.C. 7401 *et seq.*

[15] This use of the term "nonattainment" in reference to a specific area is not meant as an official designation or future determination as to the attainment status of the area.

[16] See 63 FR 57356, October 27, 1998, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone."

[17] See Chapter 2 of the draft Regulatory Impact Analysis for this proposal.

[18] See 63 FR 57356, October 27, 1998, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone."

should be upheld. However, it should be noted that if the emission reductions sought by the SIP call are not achieved, it would be more difficult to attain the NAAQS for ozone.

In addition, many states (including western states) have also included the emission reductions projected from the 2004 HDDE standards in their State Implementation Plans. This demonstrates that these states are relying on these emission reductions to meet the ozone NAAQS.

4. Contribution of HD Diesel and Gasoline Engines to Total VOC and NO_X Inventories

HD engines and vehicles are important contributors to the national inventories of NO_X emissions, and they contribute moderately to national VOC pollution. The draft RIA for this proposal describes in detail recent emission inventory modeling completed by EPA for this proposal. Table 1 summarizes EPA's current estimates for national NO_X and VOC contributions from major source categories.

TABLE 1.—2000 NATIONAL NO_X AND VOC EMISSIONS

[thousand short tons per year]

Emission source	NO_X	NO_X %	VOC	VOC %
Light-Duty Vehicles	4,420	19	4,098	25
Heavy-Duty Diesel Vehicles	2,274	10	246	1
Heavy-Duty Gasoline Vehicles	318	1	198	1
Nonroad Engines and Vehicles	5,343	23	2,485	15
Other (Stationary Point and Area Sources)	10,656	47	9,567	58
Total Nationwide Emissions	22,831		16,594	

It should be noted that Table 1 does not include estimated NO_X emission impacts associated with the previously produced HD diesel engines at issue in the recent enforcement action involving the government and several HD diesel engine manufacturers. The relationship of these consent decrees to today's proposed rule is described in section III.D. The excess NO_X emissions from these engines are substantial, and would significantly increase the estimated contribution from HD diesel vehicles presented in Table 1. However, as discussed in section VI.A of this preamble, we did not update our emission inventory model to include the impact on these previously produced engines for this proposal.

Notwithstanding these excess emissions, Table 1 indicates that HD gasoline and diesel vehicles will represent approximately 11 percent of national NO_X emissions and two percent of national VOC emissions in the year 2000. The Regulatory Impact Analysis document for this proposal contains updated emission inventory modeling for HD vehicles. The results show that without additional HD NO_X control beyond the 1998 standards, national NO_X emissions from HD vehicles would decline between 2000 and 2005, but this trend would stop in 2005. After 2005, NO_X emissions from the HD vehicle fleet would increase as a result of future growth in the HD vehicle market without additional emission controls. A similar trend is seen for national NMHC emissions from HD vehicles; however, NMHC emissions are projected to decrease until approximately 2010, after which changes in the make-up of the fleet result in an increase in the NMHC emissions from HD vehicles (*see* Chapter 5 of the draft RIA).

We estimate that the HD diesel and gasoline standards contained in this proposal will result in a combined reduction by the year 2020 of 1,629,000 tons of NO_X per year and 54,000 tons of hydrocarbons (HC) per year. Section VI of this preamble ("What are the Environmental Benefits of this Proposal?") as well as the draft RIA for this proposal contain more detailed information on the Agency's projected benefits from today's proposal.

B. Need for Additional PM Reductions

1. Health and Welfare Effects From PM

Particulate matter is the general term for the mixture of solid particles and liquid droplets found in the air. Particulate matter includes dust, dirt, soot, smoke, and liquid droplets that are directly emitted into the air from natural and manmade sources, such as windblown dust, motor vehicles, construction sites, factories, and fires. Particles are also formed in the atmosphere by condensation or the transformation of emitted gases such as sulfur dioxide, nitrogen oxides, and volatile organic compounds. Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter in contributing to a series of health effects. The key health effects categories associated with particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), changes in lung function and increased respiratory symptoms, changes to lung tissues and structure, and altered respiratory defense mechanisms. PM also causes damage to materials and soiling. It is a major cause of substantial visibility impairment in many parts of the U.S.

Motor vehicle particle emissions and the particles formed by the transformation of motor vehicle gaseous emissions (secondary particulates) tend to be in the fine particle range. Fine particles (those less than 2.5 micrometers in diameter) are a health concern because they easily reach the deepest recesses of the lungs. Scientific studies have linked fine particles (alone or in combination with other air pollutants), with a series of significant health problems, including premature death; respiratory related hospital admissions and emergency room visits; aggravated asthma; acute respiratory symptoms, including aggravated coughing and difficult or painful breathing; chronic bronchitis; and decreased lung function that can be experienced as shortness of breath.

These effects are discussed further in the RIA for this proposal, as well as the RIA for the 1997 final rule for the 2004 standards, and additional information may be found in EPA's "staff paper" and "air quality criteria document" for particulate matter.[19]

2. Current and Future Compliance With the PM_{10} NAAQS

The first NAAQS for particulate matter regulated total suspended particulate in the atmosphere. In 1987, EPA replaced that standard with one for inhalable PM (PM_{10}—particles less than ten microns in size), because the smaller particles, due to their ability to reach the lower regions of the respiratory tract, are more likely responsible for the adverse health effects. The major source of PM_{10} is fugitive emissions from agricultural tilling, construction, fires, and unpaved roads. Some revisions to the PM_{10} standards were made in 1997. EPA has also recently added new fine particle standards for particles less than 2.5 microns in size ($PM_{2.5}$). Most of the particulate due to motor vehicles falls in the fine particle category. These standards have both an annual and a daily component. The annual component is set to protect against long-term exposures, while the daily component protects against more extreme short-term events.

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[19] U.S. EPA, 1996, Air Quality Criteria for Particulate Matter, EPA/600/P–95/001aF.

As noted above, on May 14, 1999, a panel of the U.S. Court of Appeals for the District of Columbia Circuit found, by a 2–1 vote, that Clean Air Act sections 108 and 109, as interpreted by EPA in establishing the new NAAQS for $PM_{2.5}$ and PM_{10}, effect an unconstitutional delegation of Congressional power. *American Trucking Ass'ns, Inc., et al.*, v. *Environmental Protection Agency*, Nos. 97–1440, 1441 (D.C. Cir. May 14, 1999). The Court remanded the record to EPA. The court vacated the new PM_{10} standard, but has not vacated the $PM_{2.5}$ standard. *See American Trucking Ass'ns, Inc., et al.*, v. *Environmental Protection Agency*, No. 97–1440 (D.C. Cir. June 18, 1999).

Compliance with the current PM_{10} standard continues to be a problem. According to the 1996 EPA Air Quality and Emissions Trends report, there were 7 million people living in 15 counties across the U.S. which exceeded the PM_{10} NAAQS in 1996.[20]

EPA recently projected ambient PM_{10} levels and the number of U.S. counties expected to be in violation of the revised PM_{10} NAAQS in 2010.[21] Based on the 1990 census, about 10 million people live in the 11 counties projected to be in nonattainment of the revised PM_{10} NAAQS.

3. Contribution of HD Diesel and Gasoline Vehicles to PM Inventories

a. Contribution to National PM_{10} Inventories

The national inventory of PM_{10} is dominated by natural sources (wind erosion) and so-called miscellaneous sources, which include paved and unpaved road dust, agricultural crops, fugitive dust, and dust from construction activities. Together natural and miscellaneous sources represented approximately 90 percent of national PM_{10} emissions in 1996. Since these sources are not readily amenable to regulatory standards and controls, it is appropriate to focus on more traditional "controllable" portions of the particulate pollution problem when considering the need for PM controls. Excluding natural and miscellaneous sources, HD vehicles (gasoline and diesel) represent approximately five percent of the remaining man-made sources of PM_{10} in 1996, virtually all (95 percent) of which is from diesel vehicles.[22]

In the proposal for the 1997 final rule for the 2004 standards, EPA presented data on future projections of mobile and stationary source PM_{10} national emission inventories out to the year 2010, as well as a break-down of mobile sources into on-highway light-duty, on-highway heavy-duty, and nonroad categories (*see* 61 FR 33432–33440, June 27, 1996). These projections showed that without additional future controls on PM or NO_X emissions, annual PM emissions (tons/year) for all mobile sources would begin to rise after the year 2000. The Regulatory Impact Analysis document for this proposal presents the results of updated emission modeling specifically for HD vehicles. These results show that the annual national PM_{10} emissions from HD vehicles (tons/year) are expected to decline between now and approximately the year 2010, after which increases in the size of the fleet will result in a steady increase into the future (*see* Chapter 5 of the draft RIA).

b. Source-apportionment Studies for Diesel PM

Discussion of PM inventories from HD vehicles, and in particular HD diesel vehicles which represent the vast majority of the HD PM emissions, can be discussed in terms other than just contributions to national yearly emission inventories. In recent years several research groups have been looking at the contribution of diesel PM in selected urban and rural areas. In several cases these studies indicate that the contribution from diesels in certain urban areas to PM emissions is much larger than is indicated by national PM inventories. Several studies have been performed in the past several years which have attempted to apportion particulate matter collected at specific sites to individual source categories, *i.e.*, source apportionment studies. These studies collect particulate matter samples in the ambient air which are subsequently analyzed using various chemical techniques in order to estimate what sources contributed to the sample.

There have been a number of source apportionment studies for mobile source particulate emissions. Among the most recent and thorough are studies by the state of Colorado (the Northern Front Range Air Quality Study [NFRAQS]) for the Denver area and the California Institute of Technology for the Los Angeles area. These studies emphasize particulate smaller than 2.5 microns. Also, EPA has a cooperative agreement with the Desert Research Institute (DRI); under this agreement, DRI is completing a detailed report on mobile source particulates; a major portion of this report summarizes source apportionment studies for particulates that include those from mobile sources.[23]

Source apportionment work involves collecting and analyzing a number of ambient particulate samples from a number of specific sources such as gasoline and diesel vehicles. Some samples of high molecular weight hydrocarbons are frequently also collected and analyzed, these hydrocarbons can be transformed to particulates in the ambient air; such compounds include polycyclic organic matter. These samples are analyzed in detail to determine what specific compounds are present including those in trace amounts that are more common from one source type than from others, these traces are called source signatures. From these analyses, a number of source signatures are developed including those for gasoline and diesel vehicles. Source apportionment work also involves collecting and analyzing a larger number of ambient particulate and, frequently, high molecular weight hydrocarbon. The compounds found in these samples can be compared to the source signatures to determine what and how much individual sources contribute to the ambient particulate.

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[20] U.S. EPA, January 1998, "National Air Quality and Emissions Trends Report, 1996", EPA 454/R–97–0013.

[21] Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C., July 16, 1997.

[22] U.S. EPA, December 1997, "National Air Pollutant Emission Trends, 1900–1996", EPA–454/R–97–011.

[23] Draft report for EPA from the Desert Research Institute, June 30, 1998, Available in EPA Air Docket A–98–32, Item #II–A–01.

Source apportionment work is subject to complications and uncertainty. Thus, no single study should be considered definitive. Additional information on source apportionment techniques, and the uncertainties associated with the techniques, can be found in Chapter 2 of the RIA for this proposal.

The NFRAQS study analyzed ambient particulate samples in the Colorado area including Denver using data it collected on the chemical speciation from specific source types to determine how much various mobile and stationary source types contribute to $PM_{2.5}$. Authorized by Colorado state legislation, the total study was funded by 37 government, industry, and trade association groups. The many outputs and conclusions from the NFRAQS will not be discussed here, only source apportionment results for diesel engines are summarized. Complete copies of the NFRAQS are available from the following World Wide Web site, http://charon.cira.colostate.edu/. The NFRAQS included several time periods and several locations in and around Denver. Two locations, Brighton and Welby, during the winter of 1997 included the most detailed sampling and analysis, which allowed the researchers to estimate very detailed source specific contributions, including the contributions to $PM_{2.5}$ from diesel exhaust (all diesel, nonroad and on-highway sources were not differentiated). Based on this work, it was estimated that diesel exhaust sources contributed 10 percent of the total mass of $PM_{2.5}$ in the areas of Brighton and Welby in the winter of 1997.

Similar work has been done for the Los Angeles area by a group of researchers at the California Institute of Technology. This work concluded that direct emissions from diesel exhaust represented approximately 30 percent of fine PM mass on an annual basis in downtown Los Angeles in 1982.[24] In follow-on work looking at the city of Claremont, California in 1987, direct diesel exhaust was found to represent approximately 13 percent of $PM_{2.5}$ mass, and 9 percent of PM_{10} mass.[25]

The California Institute of Technology has also collected ambient particulate in the Boston, MA and Rochester, NY areas. These samples, especially those for Boston, show that carbonaceous particulate is the largest single constituent in $PM_{2.5}$ for these areas. Mobile source particulate, including diesels, is an important contributor to carbonaceous particulate. The Boston and Rochester samples have not yet been used for source apportionment work.

Other ambient samples collected in the eastern U.S. such as Washington, DC show carbonaceous particulate to be an important constituent of $PM_{2.5}$, although sulfates is a somewhat larger constituent and nitrates a much smaller constituent. Particulate samples collected in the western U.S. such as in Spokane, WA, Phoenix, AZ and the San Joaquin Valley of California show that carbonaceous particulate is the major constituent with sulfates/nitrates being lesser constituents although nitrates are more important in southern California than elsewhere in the United States. This work is summarized in the EPA report "National Air Pollutant Emission Trends, 1900–1996."[26]

The reports on source apportionment summarized in this section indicate that the contribution of diesel engines to PM inventories in several local areas around the U.S. are much higher than what would be assumed from looking only at the estimates presented in national PM emission inventories. One possible explanation for this is the concentrated use of diesel engines in certain local or regional areas which is not well represented by the national, yearly average presented in national PM emission inventories.

C. Air Toxics From HD Engines and Vehicles

In addition to contributing to the health and welfare problems associated with exceedances of the National Ambient Air Quality Standards for ozone and PM_{10}, emissions from HD diesel and Otto-cycle vehicles include a number of air pollutants that increase the risk of cancer or have other negative health effects. These air pollutants include benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and diesel particulate matter. For several of these pollutants, motor vehicle emissions are believed to account for a significant proportion of total nation-wide emissions. All of these compounds are products of combustion; benzene is also found in nonexhaust emissions from gasoline-fueled vehicles. These reductions in hydrocarbon emissions from HD vehicles resulting from today's proposal will further reduce the potential cancer risk and other health risks from these air toxics (other than diesel PM) because many of these pollutants are themselves VOCs. Diesel engine particulate matter is also a potential concern because of its possible carcinogenic and mutagenic effects on people. Diesel PM is made of hundreds of chemical species, including many organic and metallic compounds. Researchers have been investigating the potential health hazards associated with exposure to diesel PM for many years.[27] EPA's Office of Research and Development is currently updating the EPA's diesel emission health assessment document. However, the document has only been released as a preliminary draft, and is currently undergoing review by the Clean Air Scientific Advisory Committee. A final version is not expected to be available until late 1999.[28]

The California Air Resources Board and the California Office of Environmental Health Hazard Assessment (COEHHA) have undertaken an assessment of the cancer and non-cancer effects from exposure to diesel exhaust, including the particulate matter component of diesel exhaust, to determine whether diesel exhaust should be classified as a Toxic Air Contaminant (TAC) under California law. The evaluation of diesel exhaust by CARB and COEHHA began in 1989, in June of 1998 a Staff Report was published which recommended that diesel exhaust be classified as a TAC.[29] In a CARB Board hearing held in August, the Board decided to identify diesel exhaust particulate matter as a TAC.[30]

EPA will be addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking that EPA is initiating in the near future under section 202(l)(2) of the Act. That rulemaking will address the emissions of hazardous air pollutants from motor vehicles and fuels, and the appropriate level of control of hazardous air pollutants from these sources.

III. What Is the Important Background Information for This Proposal?

Under EPA's classification system, heavy-duty vehicles are those with a

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[24] "Source Apportionment of Airborne Particulate Matter Using Organic Compounds as Tracers", J.J. Schauer, W.F. Rogge, L.M. Hildemann, M.A. Mazurek, and G.R. Cass, Atmospheric Environment, Vol. 30, No. 22, 1996.

[25] "Source Contributions to the Size and Composition Distribution of Urban Particulate Air Pollution", M.J. Kleeman and G.R. Cass, Atmospheric Environment, Vol. 32, No. 16, 1998.

[26] "National Air Pollutant Emission Trends, 1900–1996", EPA Report 454/R–97–011, December 1997.

[27] "Diesel Exhaust: A Critical Analysis of Emissions, Exposure, and Health Effects", Health Effects Institute, April, 1995.

[28] "Preliminary Draft—Health Assessment Document for Diesel Emissions", U.S. EPA, February 1998, EPA 600/8–90/057C.

[29] California Air Resources Board—Staff Report—"Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant", June 1998.

[30] California Air Resources Board, Resolution 98–35, August 27, 1998.

GVWR of 8,500 pounds or more.[31] The State of California classifies the lighter end of this class—up to 14,000 pounds GVWR—as "medium-duty vehicles." Heavy-duty engines are engines used in heavy-duty vehicles. Heavy-duty engines and vehicles are used in a wide range of applications, from large full size pick-up trucks to the largest commercial trucks. Because one type of heavy-duty engine may be used in many different applications, EPA emission standards for the heavy-duty class of vehicles have historically been based on the emissions performance of the engine (and any associated aftertreatment devices) as tested separately from the vehicle chassis.

Highway HDEs are categorized into diesel-cycle (compression-ignited) and Otto-cycle (spark-ignited) engines. Most diesel-cycle engines are fueled by diesel fuel, but heavy-duty diesel-cycle engines can also be fueled by methanol or natural gas. The heavy-duty diesel engine class is further subdivided by EPA into three subclassifications or "primary intended service classes"; light, medium, and heavy HDDEs (*see* 40 CFR 86.090–2). HDDEs are categorized into one of the three subclasses depending on the GVWR of the vehicles for which they are intended, the usage of the vehicles, the engine horsepower rating, and other factors. The subclassifications allow EPA to more effectively set requirements that are appropriate for the wide range of sizes and uses of HDDEs.

Most highway heavy-duty Otto-cycle vehicles and engines are gasoline-fueled, but may also be fueled with alternative fuels including methanol and gaseous fuels such as natural gas. Heavy-duty Otto-cycle vehicles and engines include large full size pick-up trucks, full size cargo and passenger vans, and the largest sport utility vehicles. Approximately 75 percent of heavy-duty Otto-cycle vehicles are in the 8,500–10,000 pound GVWR range, and the vast majority of these are sold as "complete" vehicles. The majority of heavy-duty Otto-cycle vehicles above 10,000 pounds GVWR are sold as "incomplete" vehicles, meaning that they are manufactured without their primary cargo carrying container or device attached. These incomplete vehicles (basically the engine plus a chassis) are then manufactured into a variety of vehicles, including recreational vehicles, panel trucks, tow trucks, and dump trucks.

EPA's NO_X standard for 1998 and later model year diesel and Otto-cycle heavy-duty engines is 4.0 grams per brake horsepower-hour (g/bhp-hr). The hydrocarbon standards for 1998 and later model year Otto-cycle engines are 1.1 g/bhp-hr for engines used in lighter vehicles (8500 to 14,000 pounds GVWR) and 1.9 g/bhp-hr for engines used in heavier vehicles (greater than 14,000 pounds GVWR), and the 1998 and later model year hydrocarbon standard for HDDEs is 1.3 g/bhp-hr. EPA currently requires testing of the engine (with emissions control systems in place) rather than the entire vehicle. Thus, the standards are in units of g/bhp-hr (i.e., grams of emissions per unit of work the engine performs over the test cycle), rather than the grams-per-mile unit currently used for testing passenger cars and light-duty trucks.

This proposed rulemaking is the continuation of a rulemaking process for heavy-duty engines which began in 1995 with an Advanced Notice of Proposed Rulemaking (ANPRM) (60 FR 45580, August 31, 1995). As discussed below, a 1996 Notice of Proposed Rulemaking proposed the same NMHC+NO_X standards for both Otto-cycle and diesel engines (61 FR 33421, June 27, 1996). However, EPA did not finalize the proposed NMHC+NO_X standard for Otto-cycle engines in the final rule published in October 1997 (62 FR 54694, October 21, 1997). EPA did finalize a new NMHC+NO_X emission standard for HDDEs, starting with the 2004 model year, but committed to review the appropriateness of this standard in 1999. This NPRM thus addresses two broad issues that remain from earlier rulemaking efforts—a review of the NMHC+NO_X standard for diesel engines and a supplemental proposal addressing new NMHC+NO_X standards for heavy-duty Otto-cycle engines and vehicles. The previous rulemaking documents, and the documents referenced therein (*see* EPA Air Docket No. A–95–27), contain extensive background on the engines and vehicles, the affected industry, and the need for lower emissions standards.

A. Statement of Principles and Rulemaking History

In July of 1995, EPA, the California Air Resources Board, and heavy-duty engine manufacturers representing over 90 percent of annual nationwide engine sales signed a Statement of Principles (SOP) that established a framework for a proposed rulemaking to address concerns regarding the growing contribution of heavy-duty engines to air pollution problems. The SOP contained levels for a new proposed standard for NMHC+NO_X that would become effective in model year 2004. The SOP also contained several key provisions in addition to the standards. The SOP discusses the need to review in 1999 the technological feasibility of the NMHC+NO_X standard and its appropriateness under the Clean Air Act. Also, the SOP outlines a plan for developing technology with the goal of reducing NO_X emissions to 1.0 g/bhp-hr and particulate matter to 0.05 g/bhp-hr while maintaining performance, reliability, and efficiency of the engines. EPA sought early comment on the general regulatory framework laid out in the SOP in an ANPRM on August 31, 1995 (60 FR 45580), then subsequently issued an NPRM on June 27, 1996 (61 FR 33421).

On October 21, 1997, EPA issued a final rule (62 FR 54694). The centerpiece of the final rule was the new NO_X + NMHC standard of 2.4 g/bhp-hr (or 2.5 g/bhp-hr with a 0.5 g/bhp-hr NMHC cap) for 2004 and later model year heavy-duty diesel-cycle engines. The rule also adopted other related compliance provisions for diesel-cycle heavy-duty engines beginning with the 2004 model year, as well as revisions to the useful life for the heavy heavy-duty diesel engine service class. As explained in the following section, no new standards were finalized for on-highway heavy-duty Otto-cycle engines.

The final rule also contained modified ABT provisions for heavy-duty diesel engines, allowing EPA to finalize a more stringent engine standard than might otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the NMHC+NO_X standard. The changes to the ABT program provide the manufacturers with additional product planning flexibility and the opportunity for a more cost-effective introduction of product lines meeting the new standard. We also believe that the ABT program can create an incentive for the early introduction of new emission control technology. EPA did not finalize new ABT provisions for Otto-cycle engines because EPA did not take action at that time on new standards for those engines. In summary, engine manufacturers will be able to generate credits under the new program beginning with the 1998 model year for use only in 2004 and later model years. The credits in the modified program will have unlimited life, as opposed to the three year credit life contained in the current HD program. Also, engines with certification levels at or below a certain cut point are able to generate undiscounted credits. Credits generated by engine families certified above the specified cut point are discounted by 10 percent for purposes of banking and trading. The pre-existing ABT program was retained for engine families using credits before 2004, and for Otto-cycle engines which cannot earn credits in the modified program, as noted above. In 2004, the certification level cut-point is adjusted to reflect the implementation of the new standard.

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[31] The Clean Air Act defines heavy-duty vehicles as those with a GVWR of 6,000 pounds. However, EPA has classified vehicles between 6,000 and 8,500 pounds GVWR as light-duty vehicles, while treating them as heavy-duty for statutory purposes. Vehicles weighing between 6,000 and 8,500 pounds GVWR are not addressed generally in this proposed rulemaking.

EPA also finalized several provisions to help ensure in-use durability. First, EPA increased the useful life period for heavy heavy-duty diesel engines to 435,000 miles. This new useful life represents a 50 percent increase and is more representative of the durability of current and future heavy heavy-duty diesel engines. In addition, longer allowable maintenance intervals were finalized for some critical emission-control components, including exhaust gas recirculation (EGR) systems, catalysts, and other add-on emissions control components. Generally, the maintenance intervals for the components are set at 100,000 miles for light heavy-duty diesel engines and 150,000 miles for medium and heavy heavy-duty diesel engines. Warranty regulations were also revised to better reflect current industry practices.

Other provisions of the October, 1997 final rule address the period after the manufacturer's responsibility for emission control ends, including engine rebuilding. One of those provisions requires engine manufacturers to establish a section in the owner's manual for add-on components that includes recommendations for maintenance and diagnosing malfunction. In addition, all on-board monitoring used to satisfy the engine's allowable maintenance must not be designed to turn off after the end of the useful life. Finally, EPA established provisions to address engine rebuilding which specify what actions are needed to ensure proper operation of emissions control components and ensure that rebuilding does not result in loss of emissions control. Removal or disabling of emissions related components, resulting in a higher emitting vehicle, are considered tampering.

B. 1999 Review of Heavy-Duty Diesel Engine NMHC+NO$_X$ Standards

In addition to the elements of the final rule described above, EPA finalized a regulatory provision providing for a 1999 review of the new NMHC+NO$_X$ emission standard for HDDEs. EPA committed to "reassess the appropriateness of the standards under the Clean Air Act, including the need for and technical and economic feasibility of the standards based on information available in 1999" (*See* 62 FR 54699, October 21, 1997). This provision was put in place because the technologies required to meet the 2004 NMHC+NO$_X$ standard for HDDEs were, at the time the standard was finalized, not yet fully developed and proven. This commitment was spelled out in regulatory language in the final rule in 40 CFR 86.004–11, paragraph (a)(1)(i)(E), which reads:

> No later than December 31, 1999, the Administrator shall review the emissions standards set forth in paragraph (a)(1)(i) of this section and determine whether these standards continue to be appropriate under the Act.

In the preamble to the 1997 final rule EPA outlined the three potential outcomes of the 1999 review: further tightening of the NMHC+NO$_X$ standard, no change to the standard, or a relaxation of the standard. The preamble noted that if EPA determined through the 1999 review process that a tighter standard was feasible and appropriate under the Clean Air Act, such tighter standard would be proposed. Conversely, if EPA's 1999 review process concluded that the 2004 NMHC+NO$_X$ standard was not technologically feasible, the 1997 preamble outlined alternative less stringent sets of standards that EPA would propose. These alternative less stringent standards would depend on EPA's conclusions regarding the necessity for diesel fuel changes and, if changes were found to be needed, whether or not EPA took action to require such changes. Specifically, the preamble stated that if EPA finds through the 1999 review process that the existing 2004 NMHC+NO$_X$ standard is not feasible, a standard no higher than 2.9 g/bhp-hr NMHC+NO$_X$ (or 3.0 g/bhp-hr NMHC+NO$_X$ with a limit of 0.6 g/bhp-hr NMHC) would be proposed. If EPA were to find that changes to diesel fuel would be necessary to meet the 2004 NMHC+NO$_X$ standards, and if EPA did not engage in a rulemaking to make such changes, then standards no higher than 3.4 g/bhp-hr NMHC+NO$_X$ (or 3.5 g/bhp-hr NMHC+NO$_X$ with a limit of 0.6 g/bhp-hr NMHC) would be proposed.

While the specific regulatory provision is limited to the NMHC+NO$_X$ standard for review in 1999, in the preamble to the final rule EPA committed to investigating or seeking comment on several other issues in the context of the 1999 review. These additional issues include:

- An evaluation of whether the appropriateness and technical feasibility of the 2004 standards depend upon changes to diesel fuel.
- A reassessment of the appropriateness of the 2004 NMHC+NO$_X$ standard in the context of the current PM standard.
- Non-conformance penalty provisions for the 2004 HDDE standards.

C. Proposal for Heavy-Duty Gasoline Engine Standards

1. Summary of Comments on 1996 NPRM

As was noted above, EPA proposed the same NMHC+NO$_X$ standard for diesel and Otto-cycle heavy-duty engines in the 1996 NPRM. In the comment period following the NPRM, several commenters urged the Agency to reconsider its proposal for Otto-cycle engines. The commenters argued that the proposal ignored the true low emissions capability of gasoline-powered vehicles equipped with advanced three way catalysts. Environmental groups provided comments highlighting manufacturers' certification data for the 1996 model year, which included some engine families with emission levels considerably below the standards proposed for the 2004 model year. One commenter recommended that the proposed standard be phased in earlier than 2004 for Otto-cycle engines since the emissions control technology capable of meeting the NMHC+NO$_X$ standard was more advanced for Otto-cycle engines than for diesel engines.

Manufacturers commented that the proposed standard was appropriate for Otto-cycle engines and that EPA should not use certification data as a basis for determining the feasibility of a lower standard. Manufacturers noted that due to the potential for in-use deterioration of catalysts and oxygen sensors, they must design to emissions targets and certification levels well below the standards. Catalysts experience wide variations in exhaust temperature due to the wide and varied usage of vehicles in the field. Some vehicles may experience more severe in-use operation than is represented by the durability testing conducted for engine certification. Manufacturers argued that this variation in in-use operation has an impact on emission system durability not represented by engine certification data and deterioration factors. They argued that it is necessary to certify engines to levels well below the standards to ensure in-use compliance of all engines. One manufacturer presented light-duty vehicle and light-duty truck data to demonstrate that certification levels were about half the standard while some vehicles' in-use emissions levels were higher although not above the standard.[32]

2. Analysis Leading to Decision To Not Finalize Otto-Cycle Standards

EPA, in deciding whether to finalize the NMHC+NO_X standard as originally proposed, had to determine if the proposed standards met the requirements of section 202(a)(3)(A) of the Clean Air Act.[33] For Otto-cycle engines, EPA examined 1997 model year certification data and found some engines certified to very low emissions levels. The certification data for 1997 showed a large number of engine families emitting at or below the 2004 levels as they were proposed, with some engines certified at emission levels only ten to twenty percent of the proposed 2004 emission standards. Examples of these engines are listed in Table 2.[34]

TABLE 2.—1997 MY HEAVY-DUTY OTTO-CYCLE ENGINE CERTIFICATION DATA

Engine size (liter)	NO_X certification level (g/bhp-hr)	HC certification level (g/bhp-hr)	NO_X + HC (g/bhp-hr)
4.3	1.2	0.3	1.5
5.4	0.2	0.1	0.4
5.7	1.4	0.1	1.5
6.8	0.1	0.1	0.2
7.4	1.2	0.4	1.6
8.0	2.2	0.1	2.3
Emission Standards	5.0	*1.3	N/A

*(1.9 above 14,000 pounds GVWR)

EPA also examined certification data for California vehicles. California's MDV program requires all complete heavy-duty vehicles (i.e., all vehicles that exit the manufacturer's assembly line with their cargo carrying device or container attached) up to 14,000 pounds GVWR to be certified on the chassis-based (vehicle) federal test procedure (EPA currently requires engine-based testing of vehicles in this class). Table 3 lists examples of model year 1997 California vehicle certification results for vehicles above 8,500 pounds GVWR.[35] These vehicles were required to meet the California Tier 1 standards which are listed on the table. Starting with the 1998 MY, California is requiring manufacturers to begin phase-in of vehicles meeting more stringent Low Emission Vehicle (LEV) standards which are also listed in Table 3 for these vehicles.

TABLE 3.—1997 MY CALIFORNIA MEDIUM-DUTY VEHICLE CERTIFICATION DATA

[120,000 mile]

Engine size (liter)	NO_X level (g/mile)	HC level (g/mile)	NO_X+HC (g/mile)
5.4	0.20	0.220	0.42
5.7	0.88	0.160	1.04
6.8	0.42	0.300	0.72
7.4	0.48	0.210	0.69
7.5	0.24	0.190	0.43
8.0	0.51	0.234	0.74
Tier 1 standards	1.53	0.560	N/A
LEV standards	0.90	0.280	N/A

EPA understands that manufacturers have established certification levels which represent typical vehicle usage and that manufacturers have given themselves a significant margin between the certification levels and the standards to account for variability including more severe usage and deterioration. However, EPA found that some 1997 model year engines were certified to very low levels even taking the need for a compliance margin into consideration. At the time, however, EPA did not believe it was appropriate, given the lack of a full opportunity for notice and comment, and the need for more thorough data and analyses, to proceed directly to finalizing standards tighter than those originally proposed for heavy-duty Otto-cycle engines. For these reasons, EPA did not finalize the proposed standards for Otto-cycle engines and asserted that more stringent standards might be reasonably achievable in the 2004 model year time frame. With the lead time available for the 2004 time frame and in the context of EPA's emission control program at the time, EPA concluded in 1997 that final action establishing an appropriate standard for Otto-cycle heavy-duty engines should be the subject of a future action that more thoroughly assessed whether a more stringent standard might be achievable and appropriate for some or all categories of Otto-cycle heavy-duty engines.

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[32] Comments from Kelly Brown, Ford Motor Company, to Margo Oge, Director OMS, U.S. EPA, September 9, 1996, Docket A–95–27, IV–D–26.

[33] Section 202(a)(3)(A) of the Clean Air Act specifies that regulations "shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology."

[34] Note that the text here is a brief assessment of the information EPA had available at the time a decision was made to refrain from finalizing heavy-duty Otto-cycle standards. However, today's proposal, and the accompanying analysis of feasibility in the RIA, uses more recent data.

[35] All of the vehicles and standards listed are categorized MDV3 in the medium duty vehicle program which includes vehicles with test weights between 5,751–8,500. Test weight is the average of the curb weight and gross vehicle weight.

D. Consent Decrees With Heavy-Duty Diesel Engine Manufacturers

The Department of Justice and EPA recently filed proposed consent decrees with seven of the largest heavy-duty diesel engine manufacturers in the U.S. in order to resolve the problems uncovered from current and past heavy-duty diesel engines which the government does not believe meet existing standards and defeat device rules. (*See* 63 FR 59330–59334; November 3, 1998). In these consent decrees with the Federal Government these manufacturers have agreed, among other things, to meet a 2.5g/bhp-hr limit on $NMHC+NO_X$ no later than October 1, 2002. The majority of these engine manufacturers have also agreed to produce engines by October 1, 2002 which meet a 1.25 not-to-exceed limit, a 1.0 Euro III limit (on which the Agency's proposed supplemental steady-state cycle is based), and to test engines over and eventually comply with a load response test and limit.[36] The fact that these engine manufacturers have agreed to meet the 2004 standards in 2002 gives the Agency additional confidence that the $NMHC+NO_X$ standard being reaffirmed in today's proposal is appropriate for the 2004 model year. Other elements of these consent decrees that are carried over to today's proposed rule include the addition of a new steady state certification test and a new "not-to-exceed" (NTE) approach to in-use testing. In addition, under the consent decrees the manufacturers are required to invest considerable resources to evaluate instrumentation and methodologies for on-road testing, providing an additional basis for EPA's expectations regarding the advancement of technology in this area.

The Agency believes these consent decrees will partially address the emission problems from these previously produced engines. However, we do not believe that relying on the current compliance program and the use of enforcement actions in the future is the most appropriate method to assure in-use compliance of heavy-duty engines under all operating conditions. We estimate that the more than 1,000,000 engines at issue in these consent decrees produced since 1988 will have resulted in excess NO_X emissions of more than 15 million tons over the lifetime of the engines, with an estimated 1.3 million excess tons of NO_X being emitted in 1998 alone. This level of NO_X emissions is enormous. To put this in perspective, the Agency's National Air Pollutant Emission Trends report for 1900–1996 estimates the total U.S. emission inventory for annual NO_X emissions was 23.3 million tons. These estimates do not include the previously unknown excess NO_X emissions from on-highway heavy-duty diesels. Assuming the total 1998 national NO_X emissions are similar to 1996, the 1.3 million tons excess NO_X emissions from heavy-duty diesels in 1998 represent approximately five percent of the national total. We believe the new compliance requirements proposed in this NPRM must be put in place in order to assure that the public's health and welfare are protected from these types of excess emissions in the future.

IV. What Are the Details of This Proposal?

A. Reaffirmation of 2004 NMHC + NO_X Standard for Heavy-Duty Diesel Engines

In today's proposal, the Agency is reaffirming the technological feasibility, cost-effectiveness, and appropriateness under the Clean Air Act of the 2004 $NMHC+NO_X$ standard for HDDEs, including the appropriateness of the current 0.1g/bhp-hr PM standard. In 1997, the Agency finalized on-highway heavy-duty diesel standards for model year 2004 of:

2.4 g/bhp-hr NMHC + NO_X

or

2.5 g/bhp NMHC + NO_X with a limit of 0.5 g/bhp-hr on NMHC

For today's proposal, the Agency has conducted a thorough analysis of information and data which has become available since the finalization of these standards in October of 1997. As discussed elsewhere in this preamble and in the RIA for this proposal, manufacturers have made significant progress toward meeting the 2004 standards, and in fact, the Agency believes a large number of manufacturers will be meeting the 2004 model year standards by the end of 2002. Manufacturers have made significant progress in several key technologies for HD diesels which will allow them to meet the 2004 $NMHC+NO_X$ standards. These areas included advanced fuel injection systems, EGR, advanced turbocharger systems, and advanced electronic controls. In the relatively short time frame since the finalization of the 1997 rule, manufacturers have either announced or begun to introduce second generation electronically controlled fuel injection systems, such as the Cummins Accumulator Pump system (CAPS), and the Navistar/Caterpillar second generation hydraulicly actuated electronic unit injections (HEUI) and mechanically actuated electronic unit injection (MEUI) systems.[37][38][39][40][41] These newer systems provide manufacturers with enormous capabilities to tailor-fit engine injection pressures, injection rate shaping, and pilot injection (or multiple pilot injections) to lower NO_X emissions while still complying with the current PM standard, and maintaining or improving upon the fuel efficiency, performance, and durability expected by HDDE users. These advanced fuel systems will be coupled with new, sophisticated EGR systems. As discussed in the RIA, considerable research has been done in the last few years on the application of EGR to heavy-duty diesels in order to meet the 2004 standards. Based on this relatively recent information, it now appears manufacturers will use a combination of hot and cooled EGR, sometimes at relatively high EGR flow rates, on the order of 40–50 percent under certain operating conditions, to achieve the 2004 $NMHC+NO_X$ standards. The Agency believes EGR is perhaps the single most significant advance in emission control technology for HD diesels which will enable the approximately 50 percent reduction in NO_X emissions required by the 2004 standards. As discussed in the draft RIA, cooled EGR is very effective at reducing NO_X emissions. Laboratory studies have shown that EGR can reduce NO_X emissions by up to 90 percent at light load and up to 60 percent at full load near rated speed.[42] Other studies have shown similar reductions at other speeds and loads.[43] In addition to fuel system changes and EGR, turbocharger manufacturers and engine manufacturers are in the process of developing new variable nozzle turbochargers (VNT, sometimes referred to as variable geometry turbochargers), as well as more advanced, electronically controlled wastegated turbochargers, for both performance and emission reasons. The new VNT systems will allow manufacturers more flexibility in how they design their EGR systems, and provide improved performance for engine users. Finally, engine manufacturers continue to develop and introduce highly sophisticated electronic control management systems based on the latest microprocessor technology available.[44] These next generation control systems integrate the complete engine/powertrain system, including the injection system, EGR, and turbocharger, which allows the manufacturer to maximize the engine performance as well as emission control system. The RIA for this proposal provides additional detail on these technologies, as well as the Agency's cost analysis for the combination of technologies which EPA expects will be used to meet the 2004 NMHC+NO_X standards. Based on the most recent information available, the Agency is confident that engine manufacturers are making sufficient progress in the development of technologies which will allow them to meet the 2004 NMHC+NO_X standards. As discussed below, the Agency does not believe changes in diesel fuel quality are needed for engines to meet these standards.

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[36] The Consent Decrees establish target limits for a load response test of 1.3 times the federal test procedure (FTP) standard for $NMHC+NO_X$ and 1.7 times the FTP standard for PM. These limits would take effect for affected manufacturers after October 1, 2002. However, the Consent Decrees establish a process to determine whether these limits should be modified to ensure that they are the lowest achievable given the technology available at the time. Under this process, manufacturers would submit load response test data with their certification applications starting with the 1999 model year, and by October 1, 2000, the parties to the Consent Decrees would review these data to determine appropriate emission limits.

[37] SAE paper 973182, "Advanced Technology Fuel System for Heavy-duty Diesel Engines".

[38] *Diesel Progress*, August 1998, "CAT Gears Up Next Generation Fuel Systems", available in EPA Air Docket A–98–32, Docket Item #II–D–03.

[39] *Diesel Progress*, August 1998, "Next Generation MEUI–B to Debut in 2001", available in EPA Air Docket A–98–32, Docket Item #II–D–03.

[40] *Diesel Progress*, October 1998, "No Mistaking New Cummins ISL Engine", available in EPA Air Docket A–98–32, Docket Item #II–D–04.

[41] "Cummins New Midrange Fuel System", presented by John Youngblood, Cummins Engine Company, at the SAE Diesel Technology TOPTEC, April 22, 1998, available in EPA Air Docket A–98–32, Docket Item #II–D–01.

In addition, as noted in section III.D, the fact that several heavy-duty diesel engine manufacturers have agreed to meet the 2004 standards in 2002 gives the Agency additional confidence that the NMHC+NO_X standard being reaffirmed in today's proposal is appropriate for the 2004 model year.

As discussed in section IX, and in the draft RIA, EPA does not believe more stringent standards for the 2004 model year are technologically feasible, giving appropriate consideration to cost, energy, and safety factors. Technologies which could reduce emissions significantly below the 2004 standards, such as NO_X absorber catalysts, are still in the research and development stage, and do not appear to be ready for the 2004 model year. The Agency has also examined technologies to reduce PM from HD diesel engines, including diesel oxidation catalysts and particulate traps. As discussed in the draft RIA, we believe the current PM standard of 0.1 g/bhp-hr (0.05 for urban buses) continues to be the appropriate standard for the 2004 time frame. However, in section X of today's proposal we discuss the possible feasibility of more stringent standards in later model years, although no specific proposals are made today.

B. Are Changes in Diesel Fuel Quality Necessary To Meet the 2004 Standards?

The purpose of this section is to assess the current understanding of the role diesel fuel quality plays in the ability of diesel engines to meet the 2004 NMHC+NO_X emission standards and to determine whether these standards can be met using currently available fuel. It has long been realized that diesel engine technology alone is not the only mechanism to lower NO_X emissions. Diesel fuel quality also plays an important role in emission formation, as well as engine performance. In addition, diesel fuel quality can play a role in the effectiveness of certain emission control technologies, and in some cases can be considered a technology enabler, i.e., some emission control devices may not function because of certain diesel fuel properties, such as sulfur content. In EPA's 1997 final rulemaking for the 2004 standards, we stated that we believed the 2004 standards were appropriate and technologically feasible through diesel engine technology modifications alone, without changes to diesel fuel quality (*see* 62 FR 54700, Oct. 21, 1997). However, we also stated that this issue would be revisited in the 1999 technology review rulemaking. "EPA will evaluate in light of any new information whether diesel fuel improvements are needed for the standards to be appropriate for 2004." (*See* 62 FR 54700, Oct. 21, 1997).

Section V.A. of this preamble ("2004 Emission Standards for Heavy-duty Diesel Engines") and Chapter 3 of the draft RIA for this proposal ("Technological Feasibility of HD Diesel and Otto-cycle Standards") discuss in detail the technologies we believe will enable HD diesel engines to meet the 2004 standards, on existing U.S. HD diesel fuel. These technologies include cooled EGR, advanced fuel injection systems with rate-shaping ability, advanced turbocharger designs (such as variable nozzle turbochargers), and electronic engine management. These technologies have been demonstrated to produce significant emission reduction, independent of changes in current U.S. diesel fuel quality. Based on the information discussed in section V.A. of this preamble and Chapter 3 of the draft RIA, and based on the fact that these emission control technologies can produce substantial emission reductions using current diesel fuel, we conclude no change in diesel fuel quality is necessary to meet the 2004 NMHC+NO_X standard. We request comment on this conclusion, and encourage commenters to supply any data and information that may support their comments.

Engine manufacturers have recently raised concerns to EPA regarding the potential negative effects of current diesel fuel sulfur levels on engine durability for 2004 technology engines for the full useful life of the engines. As discussed in Chapter 3 of the draft RIA for this rule, the use of cooled EGR systems to meet the 2004 standards can give rise to potentially significant concentrations of sulfuric acid formation in the recirculated exhaust if the EGR system cools the exhaust below the water vapor dew point. In addition, some HD diesel engine manufacturers have expressed specific concern regarding the extended useful life for the heavy-heavy duty diesel service class which goes into effect in 2004. In the 1997 final rulemaking for on-highway heavy-duty diesel engines, EPA revised and extended the useful life for the heavy-heavy service class from 290,000 miles to 435,000 miles (*see* 62 FR 54700, October 21, 1997). Several manufacturers have suggested EPA should reconsider this useful life extension due to their concerns with engine durability, diesel fuel sulfur, and cooled EGR systems. These manufacturers have suggested EPA implement the extended useful life contingent upon federal diesel fuel standards meeting some threshold maximum fuel sulfur content. However, the Agency believes manufacturers will design cooled EGR systems to limit sulfuric acid formation and to prevent in-use durability problems. As discussed in the RIA (section 3.II.B), EPA expects engine manufacturers to maintain EGR cooler systems slightly above the water vapor dew point, particularly at high load. In addition, EPA expects manufacturers to utilize EGR systems made of sulfuric acid corrosive resistant materials (such as specially treated stainless steel) to prevent deterioration of the EGR system. We request additional information and supporting data on the manufacturers' concerns regarding durability issues associated with the 2004 standards. We request specific comment and supporting data on the manufacturers' concerns, including any in-use or laboratory durability data, and any data which would support or refute the manufacturers' contentions regarding the need for a shorter useful life for the heavy-heavy service class.

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[42] Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO_X Control in Heavy-Duty Engines-What is the Limit?", SAE paper 980174, 1998. Dickey; and, Zelenka P., H. Aufinger, W. Reczek, W. Cartellieri: "Cooled EGR–A Key Technology for Future Efficient HD Diesels," SAE paper 980190, 1998.

[43] Kohketsu S., K. Mori, K. Sakai, T. Hakozaki: EGR Technologies for a Turbocharged and Intercooled Heavy-Duty Diesel Engine," SAE paper 970340, 1997; Baert R., D.E. Beckman, A.W.M.J. Veen: "EGR Technology for Lowest Emissions," SAE paper 964112, 1996; and, Heavy-duty Engine Working Group, Mobile Source Technical Advisory Subcommittee of the Clean Air Act Advisory Committee, "Phase 2 of the EPA HDEWG Program—Summary Document", available in EPA Air Docket A–98–32.

[44] See for example SAE paper 981035, "The Cummins Signature 600 Heavy-Duty Diesel Engine" T.R. Stover, D.H. Reichenbach, and E.K. Lifferth, Cummins Engine Co., Inc., Feb., 1998.

In the remainder of this section, we review the new information which has become available since the 1997 rulemaking through a study performed by the Heavy-duty Engine Working Group.

In anticipation of the need for new information regarding the influence of diesel fuel quality on future emission technologies and achievable levels, in December of 1995 a new Working Group called the Heavy-duty Engine Working Group (HDEWG) was formed under the Mobile Source Technical Advisory Subcommittee of the Clean Air Act Advisory Committee. The HDEWG consists of approximately 30 members, including representatives from EPA, heavy-duty engine original equipment manufacturers (OEMs), the oil industry, state air quality agencies, private consultants and members of academic institutions. The HDEWG formed a steering committee which consisted of representatives from EPA, Cummins, Caterpillar, Navistar, Ford, British Petroleum, Equilon, Mobil Oil, Phillips, the Engine Manufacturers Association, the American Petroleum Institute, and the National Petroleum Refinery Association. The HDEWG set as their research objective to contribute to EPA's 1999 technology review of the NMHC+NO_X emission standards for model year 2004 heavy-duty diesel engines by assessing relative merits of achieving 2.5 g/bhp-hr NMHC+NO_X level either through engine system modifications alone, or a combination of engine system and fuel modifications.

The HDEWG established a three phase process in order to meet their objective. In Phase 1, the goal was to determine whether the combined effects of diesel fuel properties on exhaust emissions of "black box",[45] advanced prototype engines being developed by engine manufacturers were large enough to warrant a Phase 2. However, the details of each black box engine would not be shared with the HDEWG. In addition, the HDEWG agreed to use one "transparent" engine at an independent test facility, Southwest Research Institute (SwRI). During Phase 1, testing was to be performed on the transparent engine at SwRI, as well as the black box engines at manufacturers' own testing facilities, to determine if the transparent engine was representative of the black box engines with respect to diesel fuel effects on NO_X emissions. Phase 2 of the program, which would occur upon successful completion of Phase 1, would be used to test a range of relevant fuel properties on the transparent engine at SwRI, in order to determine the effects of various fuel properties on emissions. Finally, Phase 3 of the test program would determine whether or not the results seen during Phase 2 on the transparent engine was in fact representative of black box engines, i.e., advanced prototype engines being developed by engine manufacturers to meet the 2004 standards. Phase 3 would be performed at engine manufacturers' laboratories using a subset of the fuel matrix from Phase 2.

At the time of the publication of this proposal, Phase 1 and Phase 2 of the program have been completed. Phase 3 is expected to be completed by the end of 1999. The RIA for this proposal contains a detailed discussion of the Phase 1 and Phase 2 portions of the HDEWG test program. The reader should see Chapter 3 of the draft RIA for this proposal for a detailed description.

The HDEWG's primary focus was on the effects of diesel fuel properties on HC and NO_X emissions, not on PM emissions, and therefore fuel sulfur level was not investigated. A significant amount of data exists on the effects of diesel fuel sulfur on engine emissions, and in fact this data was summarized recently in a paper published by members of the HDEWG.[46] Existing data on recent model year HD engines indicates diesel fuel sulfur level does have a statistically significant effect on PM emissions, but no statistically significant effect on HC, carbon monoxide (CO), or NO_X emissions for engines with no exhaust aftertreatment. For this reason, and because of the focus on NMHC and NO_X emissions, as well as the limitations of the prototype SwRI transparent engine, the HDEWG did not include fuel sulfur level as a variable in Phase 1, 2 or 3 of their test program, nor were PM emissions measured during Phase 1 or 2. The Phase 3 test program, done at individual engine manufacturers' facilities, will include PM measurement.

The HDEWG concluded two points based on the results of the Phase 1 testing. First, initial testing on a limited set of diesel fuel formulations (fuel batches with high cetane number and low aromatics) on advanced prototype engines by the engine manufacturers showed a change in NO_X emissions which warranted additional testing under Phase 2. Second, the "transparent" engine at SwRI performed in a way that was representative of engine manufacturers' advanced prototypes, and was therefore an adequate test engine for Phase 2.

The purpose of the Phase 2 component of the test program was to test a range of relevant fuel properties on the transparent engine at SwRI in order to determine the effects of various fuel properties on emissions. All testing during Phase 2 of the test program was done at SwRI on the transparent engine. Based on the results of the Phase 1 testing, as well as the literature review performed under Phase 1, the HDEWG selected four fuel properties for investigation under Phase 2: density, cetane (natural and "boosted"[47]), monoaromatic content and polyaromatic content. As mentioned previously, fuel sulfur level was not investigated. A test matrix was designed to decouple these fuel properties from each other. The design matrix included two levels of density, monoaromatic hydrocarbons, polyaromatic hydrocarbons, and three levels of cetane, with duplicate test points for both natural and "boosted" cetane. The final matrix included eighteen test fuels, with density varying from 830 to 860 kg/m^3, cetane numbers from 42 to 48 to 53, monoaromatic content from 10 to 25 percent, and polyaromatic content from 2.5 to 10 percent. The test cycle used by SwRI was the AVL 8-mode test. This steady-state test cycle, with associated weighting factors, has been shown in the past to correlate very well with NO_X emissions measured over the U.S. heavy-duty federal test procedure (FTP). All emission tests were performed at least in duplicate. The transparent engine used a SwRI is a modern, heavy-heavy duty diesel engine with electronically controlled unit injectors capable of meeting the U.S. 1998 model year emission standards. This engine was modified by SwRI with the addition of a prototype, low-pressure loop, cooled EGR system with manual control of EGR flow rates. For the Phase 2 test program, SwRI selected EGR rates necessary to approach an AVL 8-mode composite NO_X level of 2.5g/hp-hr.

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[45] "Black box" engines are advanced engines being designed by engine manufacturers to meet the 2004 standards.

[46] *See* Lee, R., Pedley, J., and Hobbs, C., "Fuel Quality Impact On Heavy-Duty Diesel Emissions:—A Literature Review", Society of Automotive Engineers paper number 982649, 1998.

[47] Boosted cetane is achieved by the addition of a fuel additive, in this case ethylhexyl nitrate.

The large quantity of test data generated by the test program was evaluated using statistical techniques in order to develop exhaust emission and fuel consumption prediction models based on the four fuel properties. All properties were evaluated using a significance level of five percent. The data generated during Phase 2 indicates that for engines utilizing advanced fuel injection and a cooled EGR system operating at emissions levels near the 2004 standards the effects of large changes in individual fuel properties on $HC+NO_X$ emissions are rather small, and for cetane number not statistically significant. A large decrease in fuel density, from 860 to 830 kg/m^3, or in monoaromatic content, from 25 to 10 percent, is predicted to result in a 4.3 percent decrease in $HC+NO_X$ emissions. A large decrease in polyaromatics content, from 10 to 2.5 percent, is predicted to result in a 2.3 percent decrease in $HC+NO_X$ emissions.

The Phase 2 data was also analyzed to predict the combined effects from diesel fuel changes on emissions, not just single property changes. The Phase 2 model was used to predict the effect of fuel modifications from current, average U.S. on-highway diesel fuel to a "cleaner", reformulated diesel fuel, one with low density (830 kg/m^3), high cetane (52), low monoaromatics (10 percent), and low polyaromatics (2.5 percent). The Phase 2 model predicts this significant change in U.S. diesel fuel formulation would result in a 8.4 percent decrease in $HC+NO_X$ emissions.

The Phase 3 results are currently not available. However, based on what has been seen in the Phase 1 and Phase 2 portions of this test program, we do not believe a change in diesel fuel formulation is required to make the 2004 model year $NMHC+NO_X$ standards technologically feasible and appropriate under the CAA. The data from the Phase 1 and 2 portions of the HDEWG does indicate that a change in diesel fuel formulation could provide for a small reduction in $HC+NO_X$ emissions from HD diesels, on the order of an 8 percent reduction. An assessment of the appropriateness of such a diesel fuel reformulation, beyond the 2004 standards with existing HD diesel fuel, is outside the scope of this rulemaking.

C. Otto-Cycle Engine-Based Program

We are proposing an $NMHC+NO_X$ standard for Otto-cycle engines for 2004 and later model years, but are limiting the applicability of this new standard to engines used in vehicles over 14,000 pounds GVWR and in incomplete vehicles.[48] (We are also proposing new vehicle standards for the remaining engines, as discussed in later sections.) We are not proposing to apply the vehicle standards to these engines at this time. Engines used in incomplete vehicles are manufactured for use in many different kinds of heavy-duty vehicles by many different manufacturers. Vehicles in the weight categories above 14,000 pounds GVWR tend to be quite large and varied compared to pick-up trucks and full-size vans, and most dynamometer test facilities are currently not equipped to accommodate vehicles in this size range. Additionally, this approach is consistent with California which allows engine-based testing for these vehicles in its Medium-duty Vehicle program.

1. Engine Exhaust Emissions Standards

We propose a $NMHC+NO_X$ standard of 1.0 g/bhp-hr for MY 2004 and later for those Otto-cycle engines in the engine-based program. The proposed standard represents a reduction in the NO_X and HC standards of over 75 percent. EPA believes that this standard represents the most stringent standard reasonably achievable for these engines, in keeping with the requirements of the CAA. EPA's analysis of the technological feasibility of a 1.0 g/bhp-hr $NMHC+NO_X$ standard is contained in Technological Feasibility section below. We also believe that the ABT program proposed for engines provides manufacturers with the needed flexibility to meet the new standard as their product lines become subject to the new engine standards. The ABT provisions are also described below. In their assessment of the feasibility of new engine-based standards, engine manufacturers recommended a standard of 2.0 g/bhp-hr $NMHC+NO_X$. The Technological Feasibility section also contains a discussion of the manufacturer's recommendations. EPA requests specific comment on a range of possible standards, from the proposed standard of 1.0 g/bhp-hr to 1.5 g/bhp-hr, and on the standard of 2.0 g/bhp-hr proposed by engine manufacturers.

2. Averaging, Banking, and Trading for Otto-Cycle Engines

As part of proposing more stringent engine-based standards, EPA is proposing a modified ABT program for these engines. The program is similar in design to the program adopted for diesel engines. EPA is proposing ABT modifications to allow more flexibility within the ABT framework to help meet the more stringent standards. ABT credits can help manufacturers with engine configurations that are more difficult to modify, where more time would help reduce costs. Credits can also allow manufacturers to continue with product plans that might call for the retirement of an engine family at some point shortly after 2004. By banking credits manufacturers can also reduce their uncertainty or risk associated with the new standards. In the Summary and Analysis of Comments for the Diesel Final Rule, EPA explained why the modified ABT program adopted in that rulemaking will not decrease emissions reductions associated with the new standards.[49] Similarly, EPA believes that the modified ABT program proposed in this rulemaking also will not decrease emissions reductions associated with the new standards.

The ABT program has been used for only one Otto-cycle engine family to meet the current 4.0 g/bhp-hr NO_X standard which went into effect in the 1998 model year. In other cases, advances in catalyst technology and engine/fuel system improvements have allowed manufacturers to meet the standard across their product line. Most engine families have certification levels of less than half the standard. However, with the proposed standard for 2004, EPA expects ABT to become a more important tool for Otto-cycle engine manufacturers.

An ABT program allows the Agency to propose and finalize a more stringent engine standard than might otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard. EPA is proposing changes to the ABT program with the intent that the changes would enhance the technological feasibility and cost-effectiveness of the new standard, and thereby help to ensure the new standard would be attainable earlier than would otherwise be possible. The changes would provide manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines meeting the new standard. Also, EPA believes that ABT creates an incentive for early introduction of new technology which allows certain engine families to act as trail blazers for new technology. This can help provide valuable information to manufacturers on the technology prior to manufacturers needing to apply the technology throughout their product line. This further improves the feasibility of achieving the standard. This early introduction can also provide valuable information for use in other regulatory programs that may benefit from similar technologies (e.g., nonroad programs). EPA views the effect of the ABT program itself as environmentally neutral because the use of credits by some engines is offset by the generation of credits by other engines. However, when coupled with the new standards, the ABT program would be environmentally beneficial because it would allow the new standards to be implemented earlier than would otherwise be appropriate under the Act.

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[48] Incomplete vehicles less than 14,000 lbs GVWR could optionally certify to the proposed new vehicle standards, as discussed in a later section.

[49] See EPA Air Docket No. A-95-27.

EPA proposes the following provisions for the modified ABT program for Otto-cycle engines:

- Manufacturers could bank NO_X credits beginning in MY 2000 for MYs 2004 and later.
- Credits would be earned up to a NO_X level of 2.0 g/bhp-hr.
- Credits would be discounted by 10 percent for engine families with FELs above the 1.0 g/bhp-hr NMHC+NO_X level (i.e., the proposed standard) and undiscounted for engine families with FELs at or below the 1.0 g cut point.
- For model year 2004 and later, engine families with FELs above 0.5 g/bhp-hr NMHC+NO_X (i.e., one-half of the proposed standard) would be discounted by 10 percent. Engine families with FELs at or below 0.5 g/bhp-hr would earn undiscounted credits.
- As with the diesel program, NO_X credits banked prior to 2004 would be used to meet the combined NMHC+NO_X standard in 2004 and later.
- Credits banked under the modified program would have unlimited credit life.
- Engine families using credits after MY 2004 may not exceed the previous NO_X standard of 4.0 g/bhp-hr.
- Engine families generating credits prior to 2004 must meet the revised requirements for deterioration factors noted above.

Prior to 2004, manufacturers could continue to use the current ABT program. EPA proposes that the current program would end in 2004 and the modified program would remain. Only credits banked under the modified program could be used in 2004 and later. EPA is proposing to end the current program with the 2003 model year because of concern that manufacturers could generate enough credits under the current program to significantly delay the 2004 standards. The current program allows manufacturers to earn credits up to the current NO_X standard of 4.0 g/bhp-hr. With most engines currently certified with NO_X levels below 2.0 g/bhp-hr, there is potential for substantial credit generation without the application of improved technology under the current ABT program. If manufacturers were to bank these credits, they could potentially use them to delay the introduction of engines meeting the 2004 standards for a large majority of their sales for up to three years. The proposed 2.0 g/bhp-hr ceiling for credit generation in the modified program provides opportunity for manufacturers to earn credits through the use of emissions controls that are superior to the average controls currently being used. EPA believes this approach is consistent with the goals of ABT. EPA requests comment on the proposed 2.0 g/bhp-hr ceiling and on other alternatives for transitioning from the current 4.0 g/bhp-hr NO_X standard to the 1.0 g/bhp-hr NO_X standard proposed for 2004. One such alternative could be a phase down of the credit generation trigger value during the model years prior to 2004, rather than a single trigger point of 2.0 g/bhp-hr.

The changes to credit life and discounting being proposed for Otto-cycle engines are conceptually consistent with the modifications finalized for diesel engines. EPA is proposing to discount credits by 10 percent if the engine has an FEL above a certain value or cut-point. EPA adopted cut points in the diesel program in order to identify the introduction of new technology as opposed to recalibrating or enhancing existing technology. EPA believes that adoption of cutpoints in the HD Otto-cycle engine program will provide similar technology forcing incentives. EPA selected cut-point levels which represent a clear step in emissions control rather than a marginal emissions reduction. The 10 percent discount selected for the HD Otto-cycle engine ABT program is consistent with the program finalized for diesel engines. In that final rule, EPA noted that a 10 percent discount strikes a balance between zero (which significantly reduces the incentive to develop and implement significantly cleaner technology) and 20 percent (which manufacturers indicated in comments was far too large and would create a disincentive for the introduction of cleaner technology). (*See* 62 FR 54708, October 21, 1997.) EPA requests comment on the selected levels of the cut-points and discount adjustment, including comments on whether a phased-in approach with a decreasing cut-point would be appropriate for this category of engines.

For diesels, EPA removed the three year credit life limit which allows manufacturers to earn credits to be used in 2004 and later as early as the 1998 model year. For Otto-cycle engines, MY 2000 will be the earliest model year in which the rule would be effective due to the timing of the rulemaking. Removing the credit life limit will provide an additional year of potential credit banking and allows manufacturers to retain credits after 2004 rather than having them expire after a certain year. We believe that having credits expire would simply encourage manufacturers to use the credits rather than save them; thus, removing the credit life limit should provide a net environmental benefit.[50]

We believe that our proposals detailed above for a modified ABT program will encourage the early use of cleaner technologies and provide manufacturers with valuable flexibility in transitioning to more stringent standards. EPA is proposing the modification to the ABT program in conjunction with the 1.0 g/bhp-hr NMHC+NO_X engine-based standards to provide the flexibility necessary to enable manufacturers to meet the standard across their product line. This flexibility may not be necessary in the context of a less stringent standard, in which case the proposed modifications to the ABT program might not be supportable. EPA requests comments on all aspects of the proposed ABT program.

D. Supplemental Exhaust Emission Standards and Test Procedures for HD Diesel Engines

1. Introduction/Background

EPA's goal is to ensure real-world emissions control over the broad range of in-use speed and load combinations that can occur, rather than just controlling emissions under certain laboratory conditions. EPA's 1997 HD diesel rule was based on the expectation that this would be the case. The 1997 rule's projected emissions benefit, expected control technology, cost, and cost-effectiveness were derived with the belief that the engines would be meeting the standards in-use under typical operating conditions. The supplemental provisions we are proposing today for HD diesel engines are intended to help ensure this is the case. Today's proposal includes a new set of supplemental emission standards and associated test procedures to more closely represent the range of real world driving conditions.

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[50] EPA presented a detailed analysis of its ABT program in the Summary and Analysis of Comments for the Diesel Final Rule, Docket A–95–27, document No. V–C–01.

EPA believes that an important tool for achieving an effective compliance program is an in-use program with an objective standard and easily implemented test procedure. Today's action does not include a proposal for a manufacturer in-use testing program for HD diesels and HD Otto-cycle engines. However, as discussed in section V, EPA believes a manufacturer in-use testing program is a critical component of a comprehensive compliance program, and EPA intends to work with interested parties towards the development of a proposal for an in-use testing program in the near future. We believe that the combination of supplemental standards and an effective in-use testing program will ensure that the environmental benefits resulting from the emission standards for model year 2004 and beyond will be achieved in-use.

Historically, EPA's approach to emission standard setting has been to set a numerical emission standard on a specified test procedure and rely on the prohibition of defeat devices to ensure in-use control over the range of operation not included in the test procedure. No single test procedure can cover all real world operation or conditions, particularly where certification is an engine-based test procedure rather than a vehicle-based procedure (i.e., heavy-duty diesel engines, heavy-duty Otto-cycle engines used in incomplete vehicles, and heavy-duty Otto-cycle engines used in vehicles with a GVWR greater than 14,000 pounds). For example, the same engine used in both a 9,000 pound and a 15,000 pound vehicle would likely see much higher speeds and loads, on average, in the 15,000 pound vehicle. The defeat device prohibition is designed to ensure that emissions controls are employed during real world operation and not just under laboratory or test procedure conditions. However, the defeat device prohibition is not a quantified numerical standard and does not have an associated test procedure. As a result, the current focus on a standardized test procedure makes it harder to ensure that engines will operate with the same level of control in the real world as in the test cell. To ensure that emission standards are providing the intended benefits in use, the Agency must have a reasonable expectation that emissions under real world conditions reflect those measured on the test procedure. The supplemental exhaust emission standards and test procedures for HD diesel engines are designed to supplement the current FTP standards and defeat device prohibition, and help ensure that the standards are providing the intended benefits in actual use.

The Agency also believes a supplemental standard and test procedure or an alternative mechanism is needed for HD Otto-cycle engines used in incomplete vehicles, and heavy-duty Otto-cycle engines used in vehicles with a GVWR greater than 14,000 pounds, in order to assure in-use compliance over a broad range of operating conditions. Today's proposal does not include supplemental standards for test procedures for this class of engines because more information is needed to allow determination of appropriate emission levels and resolution of other specific technical issues. As discussed in section V, the Agency intends to gather further information related to the appropriate levels and scope of such standards over the next several months and to release a subsequent proposal within the next year which would include supplemental standards and test procedures for HD Otto-cycle engines.

In the Statement of Principles,[51] signed by EPA, the California Air Resources Board and engine manufacturers, the signatories agreed to develop appropriate measures which ensure that emission controls are maintained throughout the engine's life. During the public comment period for the proposed 2004 standards for diesel heavy duty engines, several state and environmental organizations advocated establishing an in-use compliance program. (*See* 62 FR 54707–54708; October 21, 1997). Commenters urged EPA to develop an effective in-use compliance program to ensure that heavy-duty engines comply with emission standards over their useful lives. We also received comment that the current federal test procedure (FTP) does not reflect realistic driving conditions (for example, high speeds and loads), and that a more representative test cycle is needed. We acknowledged that it was essential to further understand in-use emissions and establish a comprehensive in-use compliance presence.

In the October 1997 final rule, EPA adopted a number of measures designed to improve in-use compliance for heavy-duty diesel engines. (*See* 62 FR 54700–54702; October 21, 1997). In summary, these measures included: (1) Extending the engines' useful life; (2) increasing the maintenance intervals for emissions-related components; (3) strengthening the warranty provisions for emissions defects and emission performance; (4) requiring that manufacturers provide owners with guidance on maintenance for emissions-related components and on responding to emission-related codes from on-board diagnostic systems; and (5) strengthening "anti-tampering" requirements for engine rebuilding. We also committed to further review and revise the compliance programs if needed to ensure that the emission reductions from more stringent standards are realized in-use. Since then, we have learned that many heavy-duty engines currently are not meeting emission standards in-use. EPA recently issued enforcement policy guidance to partially address this problem.[52]

2. Proposed Supplemental Test Procedures and Standards

We propose to add two supplemental sets of standards and test requirements for HD diesel engines: (1) A supplemental steady-state test and accompanying standards; and (2) Not-To-Exceed Limits. Like current standards, these new standards would apply to certification, production line testing, and vehicles in actual use. All existing provisions regarding standards (e.g., warranty, certification, recall) would be applicable to these new standards as well. The steady-state test is proposed because it represents a significant portion of in-use operation of heavy-duty diesel engines that is not adequately represented by the FTP. In addition, we are proposing a third supplemental test procedure for heavy-duty diesel engines—a Load Response Test—as a data submittal requirement only; we do not propose emission limits for this test procedure at this time. The proposed Load Response Test also represents operation not adequately represented by the current FTP (harder accelerations), and could eventually be used to ensure effective control of NO_X and PM during this type of operation. The combination of these supplemental test requirements and emission standards would provide assurance that engine emissions are designed to achieve the expected level of in-use emissions control over all expected operating regimes in-use. These test procedures and emission limits are described in greater detail in the following sections.

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[51] For more background on the Statement of Principles, see section III.A. of this preamble.

[52] Available in the public docket for review.

We believe that to ensure that emission standards actually achieve their intended environmental benefits, the emissions measured during engine test procedures must be indicative of emissions released during real world operation. Recent advances in engine technology have created the opportunity for a broader gap to exist between typical real world operating conditions and those conditions represented by the current EPA test cycle. The inconsistencies between lab and real world emissions reduce the certainty that emission standards will achieve their intended benefits. One approach to address this is enforcing compliance with the current regulations, including the defeat device prohibition, on a case-by-case basis. However, as discussed previously, given the potential magnitude of the emission impact, we believe it is more appropriate to address this concern through expanding the test procedures and related emission standards.

As discussed in more detail in the following sections, each of these supplemental proposed emission standards is expressed as a multiple of the existing FTP emission standards, or Family Emission Limit (FEL) if the engine is certified under the ABT program, whichever is applicable. For example, the diesel engine NTE limit for NO_X + NMHC is 1.25 times the current FTP emission standard, or 1.25 times the applicable FEL. When certifying engines under the ABT program, manufacturers must ensure that the FEL is set sufficiently high so that all of the new proposed emission standards will be met in-use. For example, there may be cases where the FTP and supplemental steady-state emission result is well below the standard, but setting the FEL is constrained by the Not-To-Exceed emission result.

For purposes of certification, actual test data for the steady state test and the Load Response Test would have to be submitted as part of the certification application (although only the steady state test data would require comparison to proposed emission limits). The Not-to-Exceed test limits would require only a statement of compliance at certification (with supporting details). The compliance statement would need to state explicitly that the engine will comply with the applicable NTE limits when operated under all conditions which may reasonably be expected to be encountered in normal vehicle operation and use. However, this statement must be founded upon emission test data, additional technical information, and good engineering judgement. The manufacturer's basis for making the compliance statement would be explained within the certificate application documentation, and the supporting information would be available for review by the Agency.

a. Supplemental Steady-State Test

We propose to add a steady-state test cycle to the current Federal test procedures for HD diesel engines. The proposed steady-state test cycle is consistent with the test cycle found in the European's "EURO III ESC Test"; however not all aspects of the proposed supplemental steady-state test are identical to the EURO III ESC Test.[53] Manufacturers would be required to meet the standards under this test cycle as well as continuing to meet the standards using the current test procedure (including the current transient test cycle) in 40 CFR part 86, subpart N.[54] The proposed supplemental steady-state test cycle is needed so that the FTP reflects a greater range of driving conditions experienced on the road. The current FTP does not fully represent the driving patterns of today's heavy-duty diesel vehicles, nor does it fully take into account the increased use of electronic engine management systems. These electronic systems have the ability to optimize fuel economy during real-world driving, but often at the expense of emissions. The proposed steady-state test cycle represents an important type of modern engine operation, in power and speed ranges that are typically used in practice. The mid-speeds and mid-to-high loads represented by the proposed steady-state test are the speeds and loads that these engines are designed to operate at for maximum efficiency and durability. Specifically, highway cruise speeds and loads fall into the operation represented by the proposed steady-state test.

The proposed supplemental steady-state test cycle consists of 13 modes of speed and power, covering the typical operating range of heavy-duty diesel engines. The cycle concentrates on the engine speed range bounded by 50 percent and 70 percent of rated power, which is the range most utilized by heavy-duty diesel engines. This speed range is then divided into bands (engine speeds A, B and C, as defined in proposed § 86.1360–2004(c)). The "control area" is defined by the area between engine speeds A and C, and between 25 to 100 percent load. During the test cycle, the engine is initially run at idle speed, then through a defined sequence of 12 modes at various speeds and engine loads of 25, 50, 75 and 100 percent. Each mode (except idle) is run for two minutes. During each mode of operation, the concentration of the gaseous pollutants is measured and weighted (according to the weighting factors in proposed § 86.1360–2004(b)(1)). The weighted average emissions for each pollutant, as calculated according to this steady-state test procedure, must not be greater than 1.0 times the applicable 2004 emission standards. (*See* proposed § 86.004–11(a)(3).)

Manufacturers would perform the supplemental steady-state test in the laboratory following all applicable test procedures in 40 CFR part 86, subpart N (*e.g.*, procedures for engine warm-up and exhaust emissions measurement). The test must be conducted with all emission-related engine control variables in the maximum NO_X producing condition which could be encountered for a 30 second or longer averaging period at the given test point.

In addition to the 13 modes of the test cycle, EPA would have the opportunity to select an additional three test points as a check to ensure the effectiveness of the engine's emission controls within the control area (*e.g.*, ensuring that emissions do not "peak" outside of the 13-mode test points). This requirement would ensure that an engine achieves emissions control throughout the typical operating range. EPA would notify the manufacturer of these three additional test points prior to the test. During the test, the regulated pollutants would be measured at each of these EPA-selected test points. The manufacturer also would determine an interpolated value of pollutant emissions at each EPA-selected test point, using the measured emissions of the closest four adjacent test points. See the illustration in Figure 2 of proposed § 86.1360–2004(g). EPA proposes a four-point linear interpolation procedure that is consistent with that of the European's "EURO III", referenced above. (See proposed § 86.1360–2004(g)(2).) The measured emissions value would then be compared to the interpolated emissions value. The measured pollutant value must not exceed the interpolated pollutant value by more than five percent. We request comment on the proposed interpolation methodology and on whether five percent is the appropriate value to use for comparison of interpolated values and measured emissions.

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[53] "Draft Proposal for a Directive of the European Parliament and the Council Amending Directive 88/77/EEC of 3 December 1987 on the Approximation of the Laws of the Member States Relating to the Measures to be Taken Against the Emission of Gaseous and Particulate Pollutants from Diesel Engines for Use in Vehicles", a proposal adopted by the Commission of the European Union on 3 December 1997, for presentation to the European Council and Parliament.

[54] These requirements are consistent with those in the Consent Decrees recently signed with several heavy-duty diesel engine manufacturers. (See 63 FR 59330–59334; November 3, 1998).

The emission levels at the 12 non-idle test points and the calculated emissions values from the four-point interpolation procedure for intermediate test points would establish an emissions "surface" of Maximum Allowable Emission Limits (MAELs), as illustrated in Figure 1 of proposed § 86.1360–2004(f). This surface would limit emissions levels during all normal operations, including transient operation, that occur within the control area defined above. Each point on this surface will have a MAEL associated with it for all engines in that engine family.[55] The MAEL for each point is calculated using the same four-point linear interpolation procedure used to determine the emission value for the EPA test points discussed above. For certification, production line and in-use engines, emissions generated within the control area may not exceed the MAEL for the corresponding speed and load point over a thirty second averaging period.

At certification, manufacturers would be responsible for testing the MAELs by performing the "check" described above for the three EPA-selected test points. Under its authorities in the Act, EPA could determine compliance with the MAELs under any conditions that may reasonably be expected to be encountered in normal vehicle operation and use, either in the laboratory or in actual use ("on-road"), under steady-state or transient conditions, and under varying ambient conditions. (*See* section IV.D.3 for a discussion of on-road testing). To determine compliance, test results from operation within the control area must comply with the MAEL established for that engine family at the same engine speed and load.

b. Not-To-Exceed Limits

To help ensure that heavy-duty engine emissions are controlled over the full range of speed and load combinations commonly experienced in-use, EPA is proposing to apply Not-To-Exceed (NTE) limits to HDDEs. The NTE approach establishes an area (the "NTE zone") under the torque curve of an engine where emissions must not exceed a specified value for any of the regulated pollutants.[56] The NTE standard would apply under any conditions that could reasonably be expected to be seen by that engine in normal vehicle operation and use. In addition, we propose that the whole range of real ambient conditions be included in NTE testing. The proposed NTE zones, limits, and ambient conditions and test procedures for HDDEs and HDGEs are described below. These requirements would take effect starting in the 2004 model year and would apply to new engines as well as in use throughout the useful life of the engine. We request comment on expanding the range of ambient conditions in this manner and on whether this expanded range is appropriate to begin with the 2004 model year, or whether a phased in approach is more appropriate.

In addition to helping to ensure emission benefits over the full range of in-use operating conditions, the NTE requirements are also expected to be an effective element of an in-use testing program. At the time of certification manufacturers would have to submit a statement that its engines will comply with these requirements under all conditions which may reasonably be expected to occur in normal vehicle operation and use. The manufacturer must provide a detailed description of all testing, engineering analysis, and other information that forms the basis for the statement. This certification statement must be based on testing and/or research reasonably necessary to support such a statement and on good engineering judgement. This supporting information would have to be submitted to EPA at certification upon request; manufacturers would not necessarily be required to submit NTE test data for compliance during certification.

EPA believes that there are significant advantages to taking this sort of approach for heavy-duty engines. The test procedure is very flexible so it can represent most in-use operation and ambient conditions. Therefore, the NTE approach takes all of the benefits of a numerical standard and test procedure and expands it to cover a broad range of conditions. Also, with the NTE approach, in-use testing and compliance become much easier since emissions may be sampled during normal vehicle use. A standard that relies on laboratory testing over a very specific driving schedule makes it harder to perform in-use testing, especially for engines, since the engines would have to be removed from the vehicle. Testing during normal vehicle use, using an objective numerical standard, makes enforcement easier and provides more certainty of what is occurring in use versus a fixed laboratory procedure.

Even with NTE requirements, EPA believes that it is still important to retain standards based on the current heavy-duty engine test procedure. This is the standard that EPA expects the certified engines to meet on average in use. The NTE testing is more focused on maximum limits on emissions for segments of operation or engines used in certain applications or geographic regions and should not require additional technology beyond what is used to meet the applicable FTP standards. EPA believes that basing the emissions standards on a distinct cycle and using the NTE zone to help ensure in-use control creates a comprehensive program. The existing duty cycle includes low speed and low torque operation that are not included in the NTE zone. In addition, the standardized test cycle gives a basis for calculating credits for use in the averaging, banking, and trading program.

The NTE requirements for heavy-duty diesel engines are proposed to include other provisions including ambient temperature and humidity ranges and corrections (discussed below). Start up conditions are excluded from NTE testing because start-up is sufficiently covered by the cold start in the FTP and would be expected to be significantly higher than the proposed NTE limits for a short period of time.

The NTE test procedure could be run in a vehicle on the road or in an emissions testing laboratory using an appropriate dynamometer.[57] The test itself does not involve a specific driving cycle of any specific length (mileage or time), rather it involves driving of any type that could occur within the bounds of the NTE control area. The vehicle (or engine) would be operated under conditions that may reasonably be expected to be encountered in normal vehicle operation and use, including operation under steady-state or transient conditions and under varying ambient conditions. Emissions would be averaged over a minimum time of thirty seconds and then compared to the applicable NTE emission limits. The applicable ambient conditions and the methodology for correcting emissions results for temperature and/or humidity are described in the following section. The proposed test procedure can be found in § 86.1370–2004 of the proposed regulations. We request comment on this test procedure and its applicability to HD diesel engines, particularly with respect to whether 30 seconds is an appropriate time over which to average emissions for comparison to the emission limits for HD diesel engines.

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[55] The emissions surface would include all points in the Supplemental Steady-State control area, as defined above.

[56] Torque is a measure of rotational force. The torque curve for an engine is determined by an engine "mapping" procedure specified in the Code of Federal Regulations. The intent of the mapping procedure is to determine the maximum available torque at all engine speeds. The torque curve is merely a graphical representation of the maximum torque across all engine speeds.

[57] Likewise, testing to determine compliance with the Maximum Allowable Emission Limits could be conducted in the laboratory or in a vehicle on the road.

The definition of defeat device is being modified slightly to account for the NTE limits. Under the previous definition of defeat device, an auxiliary emission control device would not be considered a defeat device if it reduced the effectiveness of the emission control system under conditions that are substantially included in the federal test procedure.

This definition is less appropriate for the NTE requirements. The potential testing surface for the NTE encompasses much of the operating range of the vehicle. Therefore, a definition of defeat device that would exclude this testing surface would leave little area in which a defeat device could be found. This, however, is not the intent of the NTE. The NTE is not intended to be the primary emission limit on an engine, but is intended instead as a "no worse than this" requirement that puts an absolute high limit on emissions under most operating conditions. It is not supposed to supplant the continuing obligation of manufacturers to design their engines without defeat devices. Nor is it supposed to provide a cushion for manufacturers to meet a less stringent standard off the testing cycles. Therefore, EPA has revised the definition of defeat device such that substantial inclusion in the federal test procedure does not extend to the NTE zone.

The proposed NTE zone is illustrated in Figures 1 and 2. With the exception of two limited regions under the torque curve (described below), the NTE zone for diesels includes all engine operation at or above 30 percent of the maximum torque value of the engine and all engine operation at or above a specific engine speed calculated based on the maximum power of the engine.[58] This zone covers the areas of operation that are of most concern to the Agency from an environmental perspective. Because engines do not operate frequently at speeds that occur below the maximum torque peak (heavy-duty diesel engines generally operate at speeds near or above their maximum torque), the emissions generated from operation at lower speeds are relatively insignificant. The same is generally true of operation at below 30 percent of maximum torque—heavy-duty diesel engines do not spend much time in this region and the emissions generated in this region of operation tend to be less of a concern for the Agency. Manufacturers are still forbidden from using defeat devices both inside and outside the NTE zone, however.

For the reasons described below, two small regions are excluded (or "carved out") from the NTE zone defined above. First, we propose to exclude from the NTE zone the area under the torque curve that falls below the curve representing 30 percent of the maximum power value of the engine (as distinguished from maximum torque). This excluded region contains low engine speed and torque operation for which we believe current heavy-duty engines spend an insignificant portion of their operating lives. In addition, at low loads and low-to-mid speeds (low total power), the measurement of grams per brake-horsepower emissions tends to balloon, even while emissions go down. This region is proposed to be carved out for all pollutants.

Second, a PM-specific region is "carved out" of the NTE control area. The PM-specific area of exclusion is generally in the area under the torque curve where engine speeds are high and engine torque is low, and can vary in shape depending upon several speed-related criteria and calculations detailed in the regulations. Controlling PM in this range of operation presents fundamental technical challenges which we believe cannot be overcome in the 2004 time frame. Specifically, the cylinder pressures created under these high speed and low load conditions are often insufficient to prevent lube oil from being ingested into the combustion chamber. High levels of PM emissions are the result. Furthermore, we do not believe that these engines spend a significant portion of their operating time in this limited speed and torque range.

The definition of the proposed NTE zone and the carve-out areas strives to place an effective cap on emissions over a broad area of in-use operation that includes the types of operation that are of the greatest environmental concern. The definition of the control area, the carve-outs, and the emissions limit must all be balanced to achieve the Agency's goals. We believe that the combination of the proposed zone and the proposed emission limits within the zone effectively accomplish the Agency's goals of ensuring that emissions are controlled over a wide range of in-use operation. We request comment on the proposed zone and emission limits.

Examples of the NTE zone, including the areas excluded from the zone, are shown below in Figures 1 and 2. The A, B, and C engine speeds are the same as those defined for the advanced steady state test and described above and in the proposed regulations. Note that there are two possible constructions of the PM "carve-out" detailed in the draft regulatory language. The example in Figure 1 shows the PM carve-out as it would look if the C speed is below 2400 revolutions per minute (rpm), while Figure 2 shows the construct of the PM carve-out if the C speed is above 2400 rpm.

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[58] The maximum torque value and maximum power of the engine are derived as part of the engine mapping procedures specified in 40 CFR 86.1332.

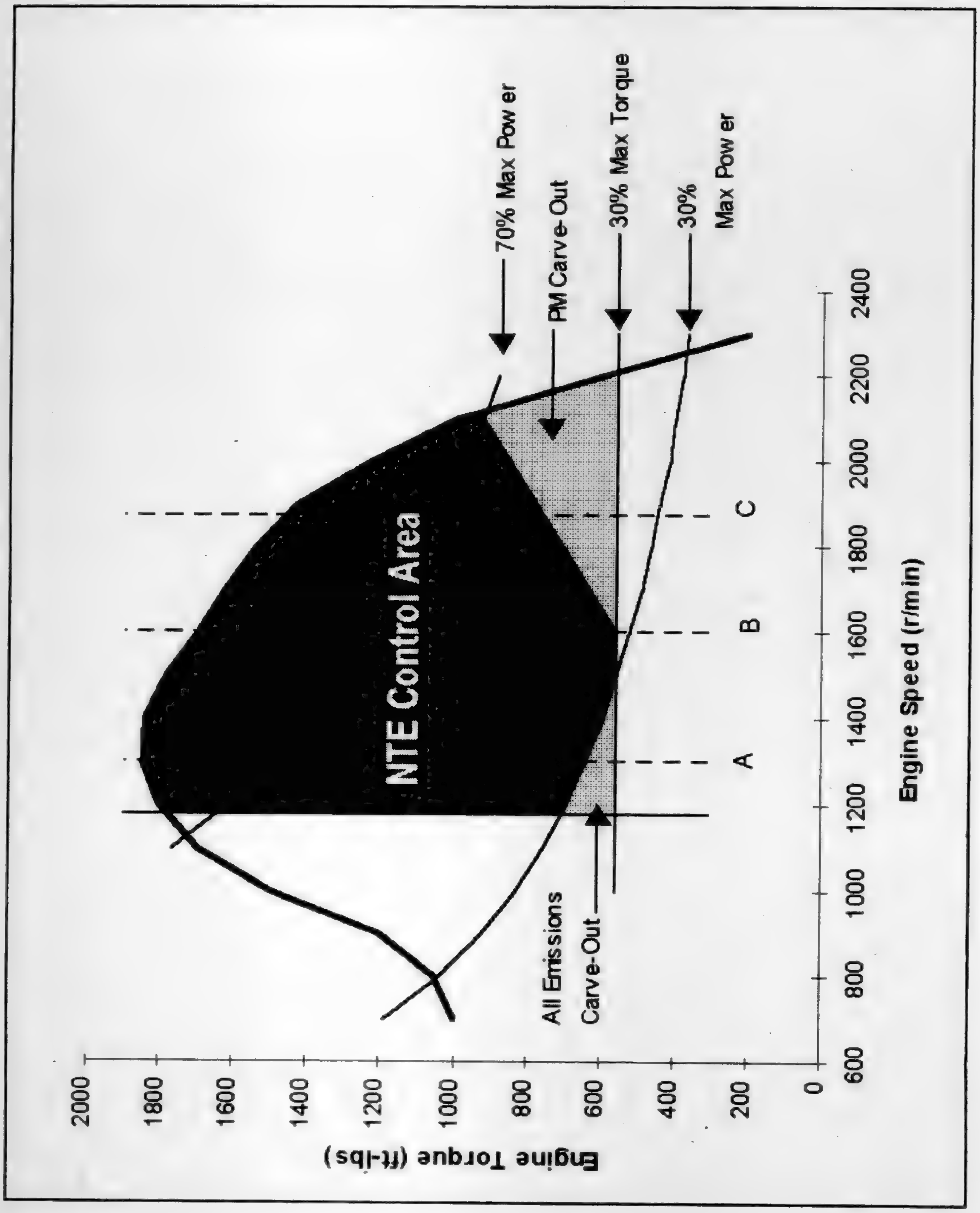

Figure 1 -- Proposed NTE Zone for Heavy-Duty Diesel Engines -- C Speed < 2400 rpm

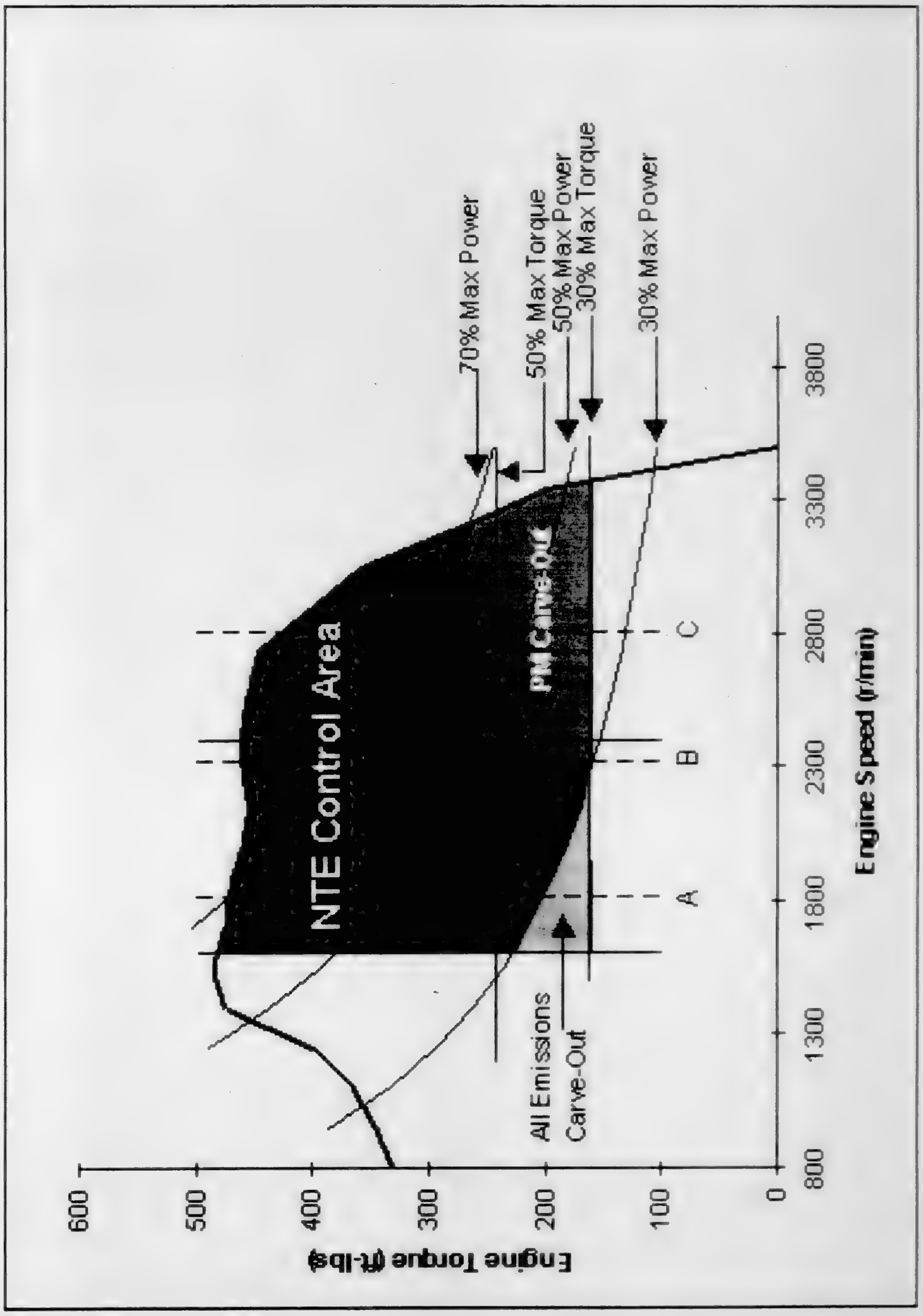

Figure 2 -- Proposed NTE Zone for Heavy-Duty Diesel Engines -- C Speed > 2400 rpm

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Within the NTE zone, EPA proposes that emissions of each of the regulated pollutants (NMHC+NO_X, CO, PM), when averaged over a minimum time of 30 seconds, must not exceed 1.25 times the applicable FTP standards (or FEL if ABT is used). A minimum 30 second average is proposed to ensure that a short transient does not produce high results. This 30 second sampling period should be long enough to allow an emissions spike to be averaged out while still retaining a short enough period to look at a specific type of operation. In addition, EPA proposes that within the NTE zone smoke and opacity must not exceed either a filter smoke limit of 1.0 (on the Bosch smoke number scale) or a thirty second average smoke opacity of four percent for a five inch path for transient testing and a ten second average smoke opacity of four percent for a five inch path for steady state testing.

c. Diesel Supplemental Load Response Test

Today we are also proposing a Supplemental Load Response Test (LRT) for heavy-duty diesel engines. This supplemental test is intended to represent a specific type of engine operation—rapid transient acceleration—that is not adequately represented in the current transient test procedure. Although the current transient test cycle does contain numerous transient operations, these transients are limited to the engine operating range exercised during the current FTP, not the broader range of operation which is covered by the Supplemental Load Response Test. Specifically, the Supplemental Load Response Test is intended to address diesel engine emissions performance during rapid transient accelerations from any speed within the NTE zone. As proposed, the test focuses on quantifying PM and NO_X emissions during the portion of a truck's operation where it accelerates rapidly and where certain engine emission controls can be inadequate. In addition, this type of operation can often produce visible smoke, which is frequently noticed by the public and can influence their opinions about the cleanliness of diesel engines.

We are not proposing specific emission limits for this test procedure at this time. Rather, we are proposing that manufacturers of heavy-duty diesel engines submit test results as part of their application for EPA certification. The test results to be submitted at certification would include testing, at a minimum, at a several engine speeds specified in the proposed regulations. As noted in section III.D, the Consent Decrees with most of the heavy-duty diesel engine manufacturers establish target limits for the Load Response Test of 1.3 times the FTP standard for NMHC+NO_X and 1.7 times the FTP standard for PM. We believe that these limits may be appropriate and technologically feasible, but we also recognize that under the Consent Decrees there is a process of data collection and evaluation that could result in modifications to these limits sometime in the latter half of the year 2000. The data submittal requirements proposed today are consistent with the requirements in the Consent Decrees.

We believe that establishing a future Load Response Test with appropriate emission limits may be a valuable addition to EPA's compliance program, particularly for in-use on-road testing using the equipment specified in a later section of this document, and when the process of evaluating the available data is complete we intend to evaluate the addition of specific Load Response Test emission limits to EPA's compliance program in a future supplemental proposal. The proposed data submittal requirement would enable a better understanding of the emissions that occur under this type of operation and would ensure that EPA establishes robust standards in a future action. Such a future action would consider including a requirement that manufacturers submit a statement of compliance at certification (similar to the approach proposed today for the NTE emission limits). We request comment on the proposed approach to a Load Response Test, as well as on the possibility of adding appropriate emission limits and certification requirements with a later action.

The test procedure as proposed is relatively straightforward. The engine fuel control is moved rapidly to the full fuel position and held at that point for a minimum of two seconds. As proposed, this sequence would be carried out in a laboratory environment at a constant speed setting, but in the future testing could be conducted using on-road equipment specified in a following section, in which case the vehicle speed would depend upon the characteristics and response of the vehicle being tested. The proposed regulations specify six different speeds, ranging from the lowest speed in the NTE control area to a high speed defined according to a calculation specified in the proposed regulations. The test sequence could be repeated if necessary to obtain an adequate sample for analysis (e.g., in the event that one cycle is inadequate for collecting enough particulate mass for gravimetric analysis). Although this could conceivably be carried out in several different ways, we encourage the use of methodologies that adequately represent the transient operation that is the true emphasis of this test procedure. The proposed test procedure can be found in proposed § 86.1380–2004.

d. Ambient Conditions, Temperature and Humidity, Laboratory and In-Use Testing

As stated above, our goal is to create a program that will ensure emission control over a wide range of in-use conditions, including ambient temperature and humidity. The FTP and Supplemental Steady State tests are laboratory-based test procedures that would be conducted under standard laboratory ambient conditions defined in the regulations, with emission results corrected according to existing regulations regarding laboratory testing procedures.[59] The NTE and verification of compliance with the Maximum Allowable Emission Limits could be conducted in the laboratory or during on-the-road driving, and the standards associated with these tests, where applicable, are proposed to apply under any ambient conditions. Within proposed temperature and humidity ranges, emissions from heavy-duty diesel engines must meet the requirements described above, without corrections for temperature and humidity. For situations in which the ambient conditions are outside these ranges, EPA proposes that NO_X be corrected for humidity and both NO_X and PM be corrected for temperature. Corrections would be to the end of the specified temperature or humidity range nearest the actual ambient conditions. We request comment on applying this expanded range of ambient conditions to the new supplemental test procedures, and on whether implementation of an expanded range should apply starting with the 2004 model year or some later model year.

For emission results to be compared to the NTE emission limits, we propose that the temperature range be from 55 to 95 degrees Fahrenheit (12.8 to 35.0 degrees Celsius) and that the humidity range be from 50 to 75 grains of water per pound of dry air (7.14 to 10.71 grams of water per kilogram of dry air). The proposed temperature range encompasses the conditions exhibited by most days on which an exceedance of the ozone NAAQS is observed.[60] In addition, EPA analyses pertaining to a recent rulemaking effort concluded that the "typical" ozone nonattainment day exhibits a maximum temperature between 90 and 95 degrees Fahrenheit. (*See* 61 FR 54852, October 22, 1996). The relative humidity range being proposed today reflects the current understanding of humidity corrections, in that higher humidity typically results in lower NO_X levels. Therefore, NO_X test results from a truly hot and humid day (e.g., a "typical" ozone exceedance day where the maximum temperature is in the 90's and the humidity is about 100 grains of water per pound of dry air, or 40 percent relative humidity) would be adjusted upward by the correction factor when correcting back to the drier conditions of the specified range, thus providing environmental protection during hot and humid conditions typical of ozone exceedance days. For emission results to be compared to the Maximum Allowable Emission Limits we propose that NO_X emissions be corrected to a standard level of 75 grains of water per pound of dry air and that NO_X and PM emissions be corrected to the nearest endpoint of the range from 68 to 86 degrees fahrenheit if tested outside this range. The proposed corrections for verifying compliance with the Maximum Allowable Emission Limits would correct emission results to standard laboratory conditions used for FTP testing because these emission limits are derived from testing under the standard laboratory conditions. We request comment on these proposed ranges.

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[59] The acceptable temperature range for FTP testing is defined by regulation as 68–86 degrees Fahrenheit. There is no specified humidity range, but NO_X emission results are to be corrected to 75 grains of water per pound of dry air.

At this time, EPA is working with HD diesel engine manufacturers on developing humidity and temperature correction factors. In the future, it is EPA's intent to adopt the correction factors that are developed through this effort. Because the correction factors are not yet developed, EPA proposes only that good engineering judgement be used when correcting for humidity and temperature outside of the proposed ranges.

3. Access to On-Board Computer Information

Modern HD diesel and gasoline engines make extensive use of electronics for engine control and management. HD engines make extensive use of on-board computers for fuel system control, and other emission-related component control, which in the future will likely include cooled EGR systems on HD diesel engines. Many of these newer systems make use of Controller Area Networks as a means of communicating information from the on-board electronic control module (ECM) to other on-board sensors and control devices (such as fuel injectors, rail pressure for common rail systems, boost-pressure sensors, coolant level sensors, coolant temperature sensors). These on-board systems control many aspects of emission related components, including fuel and air management components. EPA is concerned that electronic controls (or any other Auxiliary Emission Control Devices) not be used in such a way as to result in higher emissions from HD engines in use than would be seen during certification or laboratory testing. Therefore, EPA must have access to this information. We are proposing that, upon request from EPA, engine manufacturers must provide to EPA hardware and/or documentation necessary to read and easily interpret (in engineering units if applicable) any information broadcast by on-board computers and ECM's which relate in anyway to emission control devices and auxiliary emission control devices (AECD). This proposed requirement includes access to proprietary code information which could not otherwise be interpreted by parties other than the engine manufacturer. EPA would retain any legitimate confidential business information as such. This requirement could include the delivery, upon request from EPA, from the manufacturer to EPA the most up to date scantool hardware used by the engine manufacturer for monitoring, interpreting, and recording all emission related electronic input and output data broadcast on an engine's on-board controller network. The requirement could also include access to passwords which would enable a generic scan tool or personal computer to read and interpret proprietary codes, if such passwords exist. EPA requests comment on these requirements.

E. Otto-Cycle Vehicle-Based Program

Heavy-duty Otto-cycle vehicles can be split into two groupings, complete and incomplete vehicles. Complete vehicles are those that are manufactured with their cargo carrying container attached. Complete vehicles consist almost entirely of pick-up trucks, vans, and sport utility vehicles and account for about 75 percent of all Otto-cycle heavy-duty vehicle sales. All complete vehicles are currently below 14,000 pounds GVWR. Incomplete vehicles are those chassis that are manufactured without their cargo carrying container attached. These chassis may or may not have a cab attached. The incomplete chassis are then manufactured into a variety of vehicles such as recreational vehicles, tow trucks, dump trucks, and delivery vehicles. Currently, there are three original equipment manufacturers (GM, Ford, and Daimler Chrysler) of heavy-duty Otto-cycle engines and they also manufacturer all of the complete vehicles in which those engines are used.[61] These manufacturers also manufacture most incomplete chassis equipped with Otto-cycle engines.

Currently, EPA requires heavy-duty engines to be tested to engine-based standards. Light-duty vehicles and light-duty trucks are required to be tested over a vehicle-based test commonly known as the light-duty federal test procedure, or FTP. Heavy-duty vehicle manufacturers have the option of testing heavy-duty vehicles up to 14,000 pounds GVWR over the light-duty FTP to light-duty truck standards (EPA "heavy-as-light" testing provisions), rather than to EPA engine-based standards.

As part of their medium-duty vehicle program, California requires complete Otto-cycle vehicles between 8,500 and 14,000 pounds to be certified to vehicle-based standards rather than engine-based standards. Manufacturers test the vehicles in essentially the same manner light-duty trucks are tested. California has established Low Emission Vehicle (LEV and LEV-II) standards for these vehicles. In the MDV program, engines used in incomplete vehicles and vehicles above 14,000 pounds may be certified to engine-based standards rather than vehicle standards. Diesel powered vehicles are also allowed to be certified to engine-based standards as an alternative to the vehicle standards, and in fact, most if not all manufacturers choose the engine-based standards for their diesels.

Today's proposal recognizes that manufacturers have found the option to certify diesel vehicles to the California chassis-based standards not particularly useful, and as a result the ability to certify diesels to the chassis-based standards proposed below is not included in the proposal. However, we request comment on this issue, and if this option is indeed a desirable one, we would add the California MDV PM standard of 0.12 grams/mile to the regulations for manufacturers that select this option. In addition, we request comment on the possibility of *requiring* complete diesel heavy-duty vehicles under 14,000 pounds GVWR to be subject to chassis-based standards, and if so, whether the standards proposed for complete Otto-cycle vehicles or some other set of standards (perhaps the proposed Otto-cycle standards adjusted by an appropriate factor) would be appropriate for chassis-certified heavy-duty diesel vehicles.

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[60] Memorandum, Mark Wolcott, EPA, to Charles L. Gray, EPA, "Ambient Temperatures Associated With High Ozone Concentrations," September 6, 1984. Available in the public docket for review.

[61] There are also aftermarket alternative fuels conversion manufacturers, as discussed in section E.7, below.

1. Moving to a Vehicle-Based Test Procedure and Standards

EPA proposes to adopt vehicle-based standards and test procedures for complete Otto-cycle vehicles between 8,500 and 14,000 pounds GVWR. As in the California MDV program, these complete vehicles would be tested on the federal light-duty vehicle and light-duty truck test procedure.[62] EPA believes this approach is reasonable and offers several advantages over engine-based testing. In addition, EPA is proposing to refine the program further by incorporating some complete Otto-cycle vehicles between 8,500 and 10,000 pounds GVWR into the Tier 2 program proposed earlier this year (see Section IV.F for details regarding this aspect of the proposal). Many of the full size pick-up trucks, vans, and sport-utility vehicles which have a GVWR above 8,500 pounds are often used by owners for personal transportation, and a chassis-based test procedure incorporating the light-duty FTP cycle is representative of this type of transportation and operation. The harmonization of test procedures with California allows for certification data to be used for both federal and California certification requirements, reducing the testing burden for manufacturers. In addition, because vehicle testing is less resource intensive than engine testing, EPA and manufacturers will be better able to conduct in-use testing to verify emissions compliance.

In developing the proposal, EPA met with a number of stakeholders and during these discussions several stakeholders supported EPA's consideration of a chassis-based program, similar to California's MDV program.[63] Manufacturers presented EPA with a proposal for a chassis-based program after EPA expressed its substantial interest in moving to chassis-based testing. Manufacturers expressed interest in EPA's adoption of a program that would allow them to use one set of certification information for both California and EPA. Other stakeholders were also supportive of the move to a chassis-based requirement due to the benefits noted above.

2. Vehicle Exhaust Emissions Standards

EPA proposes to adopt the chassis-based standards contained in Table 4 below for model years 2004 and later. The numeric levels were selected to match the full life emissions standards in place for California's MDV program for LEV vehicles above 8,500 pounds GVWR. The standards would apply to complete vehicles in the weight categories shown. The standards are for emissions over the FTP and vehicles would be tested at adjusted loaded vehicle weight (ALVW), also known as test weight (TW).[64]

TABLE 4.—EPA PROPOSED FULL-LIFE EMISSION STANDARDS MODEL YEARS 2004 AND LATER

[Grams per mile]

Vehicle weight category (GVWR)	Nonmethane organic gas (NMOG)	NO_X	CO
8,500–10,000 lbs*	0.28	0.9	7.3
10,001–14,000 lbs	0.33	1.0	8.1

*Excluding those vehicles covered by the proposed Tier 2 program, as described in Section IV.F of this proposal.

We believe that these proposed standards reflect the most stringent standards achievable for the 2004 model year, considering cost and other appropriate factors, and are therefore consistent with the requirements of the CAA. As discussed in the Technological Feasibility section below, LEV technologies are being required in California beginning in 1998 and will be fully phased in beginning in 2004. By harmonizing the federal and California standards, this proposal would allow manufacturers to take advantage of the research and development that they have undertaken to meet the California requirements. While it is true that a small percentage of vehicles that have not been offered for sale in California would, under the proposal, be required to meet lower vehicle standard, EPA believes that the decision not to market such vehicles in California was typically related more to their very small sales volumes rather than for technological reasons. Manufacturers would have some flexibility in meeting the standards, and therefore some capability to deal with issues such as this, by today's proposal to apply an ABT program to heavy-duty Otto-cycle vehicles.

In a recent NPRM, we proposed to reduce the sulfur in federal test fuel to reflect the reductions in sulfur we proposed for commercial gasoline.[65] Currently, federal test gasoline is subject to a limit of 0.10 percent sulfur by weight. We proposed to amend that to an allowable range of 30 to 80 ppm (0.003 to 0.008 percent by weight). We also proposed that vehicles be certified and in-use tested using federal test fuel. However, where vehicles are certified for 50 state sale, and where other testing issues do not arise, we proposed to accept for purposes of certification the results of testing done for California certification on California Phase II fuel, but we would reserve the right to perform or require in-use testing on federal fuel. Where vehicles are only certified for non-California sale, we proposed to require certification and in-use testing on federal fuel. These provisions, if finalized as proposed, would apply to heavy-duty vehicles certified to the chassis-based provisions in this proposal.

EPA is proposing a hydrocarbon standard in the form of nonmethane organic gas (NMOG) in order to be consistent with California's MDV standards. EPA proposes to also accept hydrocarbon emissions in the form of NMHC or total hydrocarbons (THC) in lieu of NMOG. These are forms of hydrocarbon standards which are the standards typically used by EPA under the heavy-duty Otto-cycle control program. Accepting emissions in these various forms provides manufacturers with additional flexibility since establishing NMOG levels can be more complex than NMHC or total hydrocarbon levels. Manufacturers submitting California certification data would submit NMOG emissions data due to California requirements.

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[62] Test procedures contained in 40 CFR Part 86 subpart B, excluding the Supplemental FTP.

[63] Stakeholders involved in these discussions included representatives from states, environmental groups, emission control equipment manufacturers, and engine manufacturers. See Docket A–95–27. IV–E, for more information on these discussions.

[64] ALVW or TW is the actual weight of the vehicle, known as curb weight, plus half pay load. Its also the average of the curb weight and GVWR, which is curb weight plus full pay load.

[65] 64 FR 26003, May 13, 1999, "Control of Air Pollution From New Motor Vehicles: Proposed Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements".

The vehicle manufacturer would be responsible for determining whether a vehicle is a complete vehicle and subject to the vehicle-based standards or an incomplete vehicle and subject to engine-based standards. The manufacturer would make this determination based on the definition of incomplete vehicle described above. The vehicle manufacturer may request a determination from EPA when the status of a specific vehicle model is unclear. Manufacturers of complete vehicles are responsible for vehicle emissions certification, as is the case currently in EPA light-duty vehicle programs. More details on vehicle compliance are provided in section E.5 below. Although currently uncommon in this segment of the market, a vehicle manufacturer may purchase engines from another manufacturer to place in incomplete vehicles. In such cases, the vehicle manufacturer would be responsible for ensuring that the engines they purchase have been emissions certified to EPA's engine-based standards by the engine manufacturer. The engine manufacturer would be responsible for the engine certification and emissions performance of the engines, as is the case currently in EPA's engine programs.

The approach EPA is proposing is based on the technological feasibility of extending the use of LEV technologies from California to nationwide use in the 2004 MY time frame. The standards selected are based on the capabilities of technologies designed to meet the LEV standards. The approach of allowing the option of using California certification data is intended to avoid duplication of effort for the manufacturers. EPA requests comments on the proposed approach for chassis-based testing and the proposed standards.

3. Heavy-Duty Vehicle Averaging, Banking and Trading

a. Background

Averaging, Banking, and Trading is a long-established mechanism allowing the Agency to propose and finalize a more stringent standard than might otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard. Manufacturers are able to bank credits by certifying some engine families to emissions levels lower than applicable standards. The credits may be banked and then used to certify other engine families to levels higher than the emissions standards. For HD Otto-cycle engines, ABT is available for meeting NO_X standards. Under the current ABT program, banked credits are discounted by 20 percent and have a three year life, after which they expire.[66]

In the final rule for diesel engine standards for MY 2004 and later, EPA modified the ABT program for diesel engines with the intent that the changes would enhance the technological feasibility and cost-effectiveness of the new standard, and thereby to help to ensure that the new standard would be attainable earlier than would otherwise be possible.[67] EPA reduced the discount rate to 10 percent and established a cut point under which an engine family would earn undiscounted credits. Also, EPA removed the three year credit life limit which allows manufacturers to earn credits to be used in 2004 and later as early as the 1998 model year. EPA modified the HD diesel ABT program, among other reasons, because the Agency believes that the 2004 and later standards are stringent technology-forcing standards and the additional flexibility would improve the manufacturer's ability to comply with the standards cost effectively and in a manner that would not disrupt product planning.[68] EPA did not adopt the modified program for Otto-cycle engines at that time, however, because the Agency did not finalize the proposed standards for Otto-cycle engines.

The CAA requires that EPA set emission standards with appropriate consideration to feasibility and cost. We believe that the ABT programs in today's proposal are appropriate in the context of the technical feasibility and the cost of the proposed emission standards. For all of these reasons, we are proposing an ABT program for the vehicle-based standards.

b. Proposal

EPA is proposing separate averaging, banking, and trading programs for vehicles certified to the vehicle-based standards and engines certified to the engine-based standards. This section addresses the proposed ABT program for the vehicle-based standards. The proposed engine-based ABT program is discussed above in section IV.C. EPA is also requesting comment on the possibility of allowing credit exchanges between the engine and vehicle ABT programs. This issue is discussed below in the following section.

For vehicles, EPA proposes an ABT program structured similar to the modified ABT program described above for engines. EPA proposes the following provisions:

- Beginning in 2000, manufacturers could bank vehicle-based credits by choosing to certify vehicles rather than engines
- Manufacturers would earn NO_X credits up to the applicable 2004 NO_X standard by establishing an FEL below the 2004 standard
- Vehicles with FELs at or below 0.6 g/mile NO_X would earn undiscounted credits, engines with FELs above 0.6 g/mile would earn credits discounted by 10 percent
- 2004 and later model year vehicles using credits may not exceed a NO_X level 1.53 g/mile
- Heavy-duty Otto-cycle vehicles would be a single grouping or averaging set.

EPA recognizes that manufacturers would be required to achieve NO_X levels lower than the proposed 2004 NO_X standards in order to generate credits prior to 2004, and that this aspect of the program differs from the proposed program for engines. Based on current vehicle certification data from the California LEV program, some vehicle models have demonstrated the potential for very low NO_X emissions in the 0.2 to 0.5 g/mi range. We believe there would be the potential for credit generation in the proposed program if similar technologies were used nationwide prior to 2004. In addition, manufacturers are required to meet the proposed standards in California prior to 2004 and therefore will be well on their way to transitioning to the standards. They are already designing vehicles to meet the standards in California. Therefore, the importance of banked credits is likely to be diminished for vehicles compared to engines.

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[66] With ABT, manufacturers are able to establish a Family Emissions Limit (FEL) for an engine family which becomes the standard for that family. Manufacturers earn or use credits based on the difference between the FEL and the applicable standard. A full overview of the ABT program is contained in EPA's 1996 NPRM, 61 FR 33451.

[67] 62 FR 54694, October 21, 1997.

[68] For a more complete discussion of the ABT provisions relating to the 2004 model year heavy-duty diesel engine standards, see Summary and Analysis of Comments: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines, September 16, 1997, EPA Air Docket A–95–27, Doc. No. V–C–01.

The ABT program can help manufacturers certify especially difficult or low volume applications and help manufacturers comply across their full product line without having to restrict vehicle offerings. The Agency believes the proposed program offers sufficient flexibility in light of the technology and cost requirements associated with the proposed standards. Based on current certification data and technological capabilities we believe manufacturers will have opportunities to generate credits to help with meeting the proposed 2004 standards. Moreover, because these standards are required in California for several model years prior to 2004, EPA does not expect feasibility issues with the vast majority of vehicle models.

c. Credit Exchanges Between the Engine and Chassis-Based Programs

We believe that credit exchanges between the separate engine and chassis-based ABT programs might be appropriate, as well as desirable for manufacturers, but unresolved concerns and issues (described below) prevent a proposal to allow such exchanges at this time. If these concerns can be addressed prior to the final rulemaking we will consider finalizing provisions allowing credit exchanges between the two ABT programs. Specific concerns include derivation of engine and vehicle-specific conversion factors, the possibility of large quantities of credits effectively delaying the introduction of cleaner vehicles and/or engines, and the method for exchanging vehicle-based NO_X credits with engine-based NMHC+NO_X credits (or vice versa), and whether the emissions standards would continue to be appropriate if such a broader credit exchange program was allowed.

The chassis-based ABT program is based on emissions in units of grams per mile (g/mi) and the engine ABT program is based on emissions in units of grams per brake horsepower-hour (g/bhp-hr). Consequently, trading credits between the two programs would require a conversion factor. Although the Agency uses conversion factors to estimate g/mi emissions based on g/bhp-hr emissions rates for purposes of emissions inventory modeling, these conversion factors are estimates of a fleet average, not an engine- or vehicle-specific conversion factor. There is considerable variation in the conversion factors from vehicle to vehicle. Also, conversion factors that have been previously derived don't necessarily predict emissions over the specific test cycles. Both the emission standards and the ABT credits are based on emissions over specific test cycles. Conversion factors developed for specific engines and vehicles on specific test cycles could vary widely from an "average" conversion factor. EPA believes that vehicle and engine test cycle specific conversion factors would be needed in order to allow transfers of credits between the two Otto-cycle ABT programs.

In general, EPA believes that provisions allowing the exchange of credits between the two Otto-cycle ABT programs should include a conversion factor for each engine family for which the manufacturer intends to develop transferable credits. Each conversion factor would likely have to be based upon a number of engine and vehicle tests, and would have to be approved by EPA prior to use. To ensure adequate emissions control, EPA would consider requiring the conversion factors to be developed by testing engines and vehicles expected to generate "worst-case" emissions. EPA requests comment on how to structure a program that manufacturers would be required to use to develop appropriate conversion factors for each engine family.

The ability to trade credits between the engine and chassis-based ABT programs is not needed prior to the 2004 model year and would unnecessarily complicate the ABT programs, for the following reasons. Prior to the 2004 model year, EPA emission standards for heavy-duty Otto-cycle vehicles are engine-based standards. Absent any credit exchange provisions, manufacturers could still generate vehicle-based credits by voluntarily certifying engines to the vehicle-based program. These provisions already provide the flexibility for manufacturers to decide how many engine-based and vehicle-based credits to generate.

Manufacturers will have the opportunity to generate Otto-cycle engine-based credits prior to the 2004 model year due to the structure of the proposed Otto-cycle engine-based ABT program. These engine credits could be used by manufacturers to facilitate meeting the proposed engine standard. However, EPA is concerned that significant quantities of engine-based credits could flow to the chassis-based program, thus potentially having the effect of significantly postponing the introduction of vehicles with emission levels below the proposed vehicle standards. EPA would likely want to structure provisions for exchanging credits such that the exchanges would be limited for use in averaging and trading within a given model year, but banked credits could not be exchanged. EPA requests comment on structuring credit exchanges in this manner.

For the 2004 and later model years, the proposal would require manufacturers to certify a large portion of their Otto-cycle heavy-duty vehicles to the vehicle-based provisions (via chassis testing), thus reducing the opportunity to generate Otto-cycle engine-based credits. In addition, the proposed engine-based emission standards would be significantly more stringent starting with the 2004 model year, thus making generation of engine-based credits more difficult. For these reasons, exchanging credits earned starting in the 2004 model year between the chassis-based and engine-based ABT programs may be a desirable option for manufacturers.

Another issue for credit exchanges in 2004 and later model years is that vehicle credits would be based on NO_X only emissions and the engine credits would be based on NMHC+NO_X emissions. EPA believes that the NMHC portion of engine emissions compared to NO_X emissions is about 15 percent of total emissions, or between 0.1 and 0.2 g/bhp-hr. EPA requests comment on allowing credit exchanges without regard to this difference in the standards, or alternatively, requiring the use of an appropriate factor (e.g., the 15 percent factor noted above) to apply to exchanges of NO_X-only and NMHC+NO_X credits.

To summarize, EPA is not proposing allowing exchanges between the two Otto-cycle ABT programs at this time, but will consider finalizing provisions that would allow such exchanges if our concerns can be addressed. Specifically, EPA requests comments on the following issues:

- Allowing manufacturers to transfer credits between the Otto-cycle engine and vehicle ABT programs;
- Restricting the transfers of credits between the two ABT programs to credits earned in the 2004 and later model years;
- The derivation of conversion factors that would make transfers of credits appropriate, including the test methodology and appropriate engine and vehicle parameters used to derive the factors (horsepower, vehicle weight, etc.);
- Ensuring that credit exchanges do not effectively delay introduction of cleaner vehicles;
- How to address exchanging NMHC credits with NMHC+NO_X credits and vice versa;
- Limiting the exchange of credits to engines and vehicles below 14,000 pounds GVWR because engines rated for vehicles above this would not have any

counterparts certified to chassis-based provisions.

- Limiting the exchanges between the two Otto-cycle ABT programs to averaging and trading only.
- What impact the broader exchange program would have on the degree of the emission reduction of the standards and the appropriateness of such an approach.

4. Evaporative Standards/Onboard Refueling Vapor Recovery

Consistent with the proposal to move all complete vehicles 8,500 to 14,000 lbs GVWR from the current engine-based program to a chassis-based program, EPA is proposing that such vehicles also be certified according to the chassis-based enhanced evaporative test procedures. In addition, the Agency is proposing to require complete HDVs to meet an ORVR standard in a manner similar to that required of heavy light-duty trucks. Each of these provisions is discussed in depth in the following sections. The Agency is not proposing any changes to the current evaporative emission standards or test procedures for the engine-based program at this time.

a. Enhanced Evaporative Emissions

In 1993, EPA adopted enhanced evaporative test procedures for LDVs, LDTs and HDVs to be phased in beginning with the 1996 model year, with full compliance required by the 1999 model year (*see* 55 FR 16002, March 24, 1993). Under the enhanced evaporative requirements adopted in 1993 the provisions for LDVs and LDTs are essentially the same as those for HDVs with two main differences. The first difference is that the actual levels of the emission limits are higher for HDVs due to their typically larger fuel tanks. EPA is not proposing any changes to the HDV numerical evaporative limits in this proposed rule. The second difference is in the driving cycles used in the test sequence, as described in the next paragraph.

The urban dynamometer driving schedule (UDDS) used for HDVs is somewhat shorter than that used for light-duty, both in terms of mileage covered and minutes. What this means in practical terms is that, while the light-duty and heavy-duty procedures generally parallel each other, under the heavy-duty procedure there is considerably less driving time than under the light-duty procedure. This results in considerably less time for canister purge under the heavy-duty procedure than under the light-duty procedure.

EPA recognizes this discrepancy between its light-duty and heavy-duty programs, and has routinely provided waivers under the enhanced evaporative program which allow the use of the light-duty procedures for heavy-duty certification testing. The Agency does not believe that this approach impacts the stringency of the standards. Further, it is consistent with CARB's treatment of medium-duty vehicles. EPA is proposing that this approach be formally adopted for all complete vehicles which are certified according to the provisions of the chassis-based program discussed elsewhere in this notice. The Agency requests comment on this approach to evaporative emissions testing for complete HDVs, and also requests comment on whether it should be extended to those HDVs which will remain in the engine-based program.

b. Onboard Refueling Vapor Recovery

Onboard refueling vapor recovery systems prevent the fuel vapors which are displaced from a vehicle's fuel tank during refueling from entering the atmosphere. Typically, the displaced fuel vapors are routed to a charcoal canister where they are subsequently routed to the engine to be burned as fuel. EPA adopted ORVR requirements applicable to light-duty vehicles and light-duty trucks (*see* 59 FR 16262, April 6, 1994). These requirements are being phased in beginning with the 1998 model year for LDVs, the 2001 model year for light LDTs (6,000 lb and under GVWR), and 2004 for heavy LDTs (6,001 through 8,500 lb GVWR).

During the original ORVR rulemaking, EPA chose not to apply ORVR to HDVs for several reasons. First, a sizeable percentage of HDVs are sold as incomplete vehicles. In such cases EPA is concerned that secondary manufacturers may improperly modify or incorrectly complete the vehicle fuel system (which is usually not fully installed for incomplete vehicles). In such cases the primary manufacturer may have legal liability for potential problems. Second, the application of ORVR to HDVs could be more difficult than to LDVs and LDTs. This is because HDV fuel systems are sometimes configured differently than their LDV/LDT counterparts. This is especially true of the larger HDVs which tend to have large fuel tanks with short or almost nonexistent fillnecks. Finally, under the current HDV regulatory scheme, the engine would be certified separately from the ORVR system. This would result in additional challenges in matching the canister purge provided by the engine with the needs of each ORVR system.

EPA still believes that the above mentioned concerns are valid for some HDVs. However, the Agency also believes that, in light of the proposal to move to a chassis-based compliance program for complete vehicles, they are only valid for the larger, incomplete vehicles. The majority of HDVs are simply heavy-duty configurations of LDTs, with fuel systems similar to or the same as their light-duty counterparts. With this in mind EPA is proposing to require ORVR controls on all complete HDVs up to 10,000 GVWR in the same manner and on the same schedule as heavy LDTs. Thus, complete HDVs will be required to meet a refueling emission standard of 0.20 grams per gallon of fuel dispensed. For purposes of ORVR applicability, EPA is proposing that complete vehicle means a vehicle that leaves the primary manufacturer's control with its primary load carrying device or container attached.

The proposed ORVR standard would be phased in with 40 percent compliance required in the 2004 model year, 80 percent compliance in the 2005 model year, and 100 percent compliance in the 2006 model year. This phase-in is the same as that currently in place for heavy LDTs. EPA believes that using the same phase in schedule for heavy LDTs and HDVs will allow for a lower cost and easier phase in, since many HDVs are simply heavy duty versions of light duty configurations. Further, EPA is proposing that heavy LDTs and HDVs be considered a single category for the purposes of the phase in. In other words, the percent compliance requirements for a given model year would apply to heavy LDTs and HDVs as a single group, rather than to each group separately. EPA recognizes that combining these two categories into one may have the effect of modifying the stringency of the existing LDT requirements. However, EPA believes that this is appropriate because it will allow for additional flexibility in the implementation of ORVR systems that may be the same for heavy LDTs and HDVs. Also, given the proposed phase-in requirements, if less than the required percentage of heavy LDTs are certified to the ORVR requirement, it follows that greater than the required percentage of the heavy-duty vehicles would have to be certified to the ORVR requirements.

As was previously mentioned, EPA is proposing to phase in ORVR to HDVs in the same way as it is being phased in for heavy LDTs. This is because most covered HDVs are simply heavy-duty versions of light-duty configurations, and the ORVR systems developed for the light-duty configurations can be readily applied to their heavy-duty counterparts. However, EPA is aware that not all covered HDVs have light-duty counterparts. Given the number of other emission requirements taking effect in 2004, EPA believes that the manufacturers' development resources may be spread thin prior to 2004, making development of ORVR systems for HDVs which do not have a light-duty counterpart excessively burdensome in that time frame. Thus, EPA is considering alternative timing options for the application of ORVR to HDVs that do not have light-duty counterparts. One alternative is to simply require ORVR on these vehicles (those that do not have light-duty counterparts) in 2006, with no phase in prior to 2006. EPA requests comment on this option, as well as other alternatives. EPA also requests comment on how to best define which HDVs do not have light-duty counterparts for the purposes of determining which vehicles may be subject to the alternative implementation date. Finally, EPA requests comment on whether such a delay of ORVR for HDVs without light-duty counterparts is appropriate or needed.

EPA is proposing to limit the application of ORVR to HDVs of 10,000 lb GVWR and under because the vast majority of HDVs which have light-duty counterparts fall into this category. For the most part application to HDVs of 10,000 lbs GVWR and under should not present any new technological challenges. The technology applied for light-duty configurations should be readily transferrable to their heavy-duty counterparts. The Agency does not believe that limiting the ORVR provisions to vehicles 10,000 lbs and under results in any significant compromise in environmental benefits since almost all HD Otto-cycle complete vehicle sales are of vehicles 10,000 lb or less GVWR.

Currently, in the review of certification applications for ORVR-equipped LDVs and LDTs, EPA studies the design of the vehicle's ORVR system, its on-vehicle configuration and operation, and consults directly with the National Highway Traffic Safety Administration on these applications. EPA expects to extend this practice of consulting with NHTSA in the review of certification applications for ORVR-equipped HDVs as well.

EPA requests comment on all aspects of today's ORVR proposal. Specifically, the Agency requests comment on whether the proposed definition of complete vehicle for ORVR purposes adequately covers those vehicles for which ORVR application will present no substantial new challenges, while exempting those vehicles for which concerns expressed by EPA in the original ORVR rulemaking remain valid.

5. Compliance Assurance Program

On July 23, 1998, EPA proposed a new compliance assurance program for light-duty vehicles and light-duty trucks known as "CAP 2000" (*see* 63 FR 36954, July 23, 1998). The light-duty CAP 2000 program final rule was published on May 4, 1999 (*see* 64 FR 23906, May 4, 1999), with only minor changes from the proposed program. In brief, as compared with EPA's traditional chassis-based compliance program, CAP 2000 is designed to redirect manufacturer and Agency efforts towards in-use compliance and give manufacturers more control of certification timing, and yet maintain the integrity of the compliance assurance program. Aspects of the CAP 2000 program include streamlined certification, manufacturer in-use testing.

In today's action, EPA proposes that the CAP 2000 program would be the compliance assurance program for heavy-duty vehicles certified to chassis-based standards (hereafter referred to as "chassis-based HDVs").[69] EPA has proposed modifications to Part 86, Subpart S, that would extend the applicability of CAP 2000 to chassis-based HDVs. Key aspects of the proposed CAP 2000 program as it would apply to chassis-based HDVs are described below, followed by a discussion of issues and possible modifications to the light-duty CAP 2000 program considered by the Agency in the development of the proposal to extend the CAP 2000 program to chassis-based HDVs.

EPA believes that it is appropriate to extend the CAP 2000 program to chassis-based HDVs for the following reasons. First, CAP 2000 for HDVs would provide pre-production certification flexibilities, while providing an emphasis on checking real in-use emissions, as compared with the traditional light-duty chassis-based compliance program. As with light-duty vehicles, EPA believes that it is appropriate to improve pre-production compliance procedures, to reduce the manufacturer's certification burden, and to shift the focus of compliance assessment towards in-use testing, which is expected to generate significant amounts of in-use data that are currently not available. Second, applying CAP 2000 to chassis-based HDVs would align EPA's chassis-based compliance programs for light-duty vehicles, light-duty trucks, and heavy-duty vehicles. Third, EPA's proposal to extend CAP 2000 to chassis-based HDVs would further harmonize the EPA and ARB programs for this industry. The California Air Resources Board is adopting the CAP 2000 program for chassis-certified medium-duty vehicles in the 8,500 to 10,000 gross vehicle weight range, beginning in the 2001 model year.

a. CAP 2000 for HDVs

For the certification process, manufacturers would divide their product lines into new units called "durability groups", determined according to common emission deterioration elements. A vehicle with the "worst case" durability would be chosen from the durability group to establish the rate of emission deterioration expected from that group. The procedures used to determine durability would be developed by the manufacturer, with EPA approval. Durability groups would then be subdivided into "test groups", and a vehicle representative of each test group would be tested to show emission compliance. Once compliance has been demonstrated, certification could proceed. The CAP 2000 program provisions for information collection are streamlined from the traditional light-duty chassis-based compliance regulations. The timing of information submittal has been optimized to provide some flexibility for manufacturers, and the amount of information has been reduced, without compromising the Agency's information needs for future compliance or enforcement issues.

A second element of the proposed chassis-based HDV CAP 2000 requirements is manufacturer in-use testing. There are two parts to the program. Part one requires manufacturers to perform in-use emission testing on privately owned vehicles in an "as-received" state. This "in-use verification testing" would occur on low mileage and high mileage test fleets. The size of the low and high mileage fleets would be dictated by sales categories. Small volume manufacturers and small volume test groups would have little or no testing, depending on sales limits. In-use verification testing data would be used by the manufacturer to improve the predictive quality of its durability program, and by the Agency to target vehicle testing for a recall program. Part two requires manufacturers to conduct additional testing of a test group when the in-use verification program data for the test group equals or exceeds a mean of 1.3 times the standard, with a 50 percent or greater failure rate for the test group sample at either the low or high mileage test point. The second level of in-use testing, known as "in-use confirmatory testing", would be performed on "properly maintained and used" vehicles and could be used to determine the need for recall. The preambles of the July 23, 1998, CAP 2000 proposed rule and the May 4, 1999, CAP 2000 final rule provide further discussion of these and other aspects of the CAP 2000 program.

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[69] The compliance assurance program for heavy-duty engines subject to engine-based standards is discussed in section II.C.2 of this preamble.

b. Proposed Modifications to the CAP 2000 Program for Chassis-Based HDVs

In the development of the CAP 2000 proposal for chassis-based HDVs, EPA considered several issues and possible modifications to the light-duty vehicle CAP 2000 program. These issues are discussed below.

First, EPA proposes that the "heavy-as-light" provision in the current regulations (*see* 40 CFR 86.001–01(b) and 40 CFR 86.1801(c)(1)) would be available through the 2003 model year; starting with the 2004 model year, the "heavy-as-light" provision would no longer be available. EPA's "heavy-as-light" provision permits a manufacturer to certify a HDV of 14,000 pounds GVWR or less in accordance with the light-duty truck provisions. In effect, this provision allows manufacturers to certify these HDVs on a chassis dynamometer rather than on an engine dynamometer, as long as the HDVs comply with the more stringent light-duty truck standards. Today's action obviates the "heavy-as-light" provision after the 2003 model year. EPA is also proposing new provisions that would allow manufacturers flexibilities in grouping vehicles into test groups, as well as provisions allowing manufacturers to certify incomplete HDVs under the chassis-based HDV program.

Second, manufacturers have requested the ability to group vehicles from different test weight categories into the same test group for compliance purposes. For example, manufacturers would like the flexibility to group HDVs with LDT3s or LDT4s, or to group HDVs above and below 10,000 pounds GVWR together, for compliance purposes. In the light-duty CAP 2000 program, vehicles must be subject to the same emission standards to be grouped into the same test group (*see* 40 CFR 86.1827(a)(5)). However, EPA believes it is reasonable to allow manufacturers to voluntarily certify to more stringent standards. EPA is today proposing to allow manufacturers to request that vehicles from different weight categories be grouped together in the same test group, as long as the vehicles are then subject to the most stringent standards that would be applicable to any vehicles within that grouping. Voluntary certification to the more stringent emission standards means that the manufacturer would be subject to enforcement against the more stringent standards. EPA requests comment on the proposal to remove the "heavy-as-light" provision after the 2003 model year, the proposal to allow manufacturers to request to certify incomplete HDVs under the chassis-based HDV program, and the proposal that manufacturers be allowed to request that vehicles from different weight categories, which might be subject to different standards, be grouped together in one test group meeting the most stringent set of standards.

Third, in discussions about the application of CAP 2000 to chassis-based HDVs, manufacturers have questioned whether the light-duty "AMA" cycle would be allowed for durability testing.[70] In response, EPA is proposing that the AMA cycle would not be available as a durability procedure for chassis-based HDVs. (The CAP 2000 program likewise disallows the AMA durability procedure, but does allow for the carryover of AMA-based deterioration factors.) This proposal differs from the light-duty CAP 2000 program, in which under certain conditions the AMA cycle would be accepted during a transition period of three years, until the 2004 model year.[71] This transition period is reasonable for the light-duty CAP 2000 program, given that the light-duty compliance program had traditionally rested on use of the AMA cycle for durability demonstrations, and also that the use of the AMA cycle data is limited to the use of existing data generated for a 2000 model year or earlier certification (CAP 2000 requires that all new exhaust durability data be generated according to a manufacturer durability procedure approved by EPA). Manufacturers have long identified the AMA durability process as very costly and requiring extensive lead time for completion. EPA has been concerned about the ability of any fixed cycle, including the AMA cycle, to accurately predict in-use deterioration for all vehicles. In fact, EPA has particular concerns that the AMA does not represent the driving patterns of today and does not appropriately age current design vehicles. As a result, EPA believes that the AMA may have become outdated.[72]

Based on these concerns and also the fact that today's proposal includes provisions for averaging, banking and trading credits across test groups (in which FELs would be set based on durability procedures that would need to be comparable across test groups), EPA is proposing that the AMA cycle would not be automatically available as a durability procedure for chassis-based HDVs, unless a manufacturer were able to obtain approval for it. As in the light-duty CAP 2000 program, to obtain approval for a durability process, EPA is proposing to require that manufacturers provide data showing that the aging procedures would predict the deterioration of the significant majority of in-use vehicles over the breadth of their product line which would ultimately be covered by this procedure. This demonstration would be more than simply matching the average in-use deterioration; manufacturers would need to demonstrate to EPA's satisfaction that their durability processes would result in the same or more deterioration than is reflected by the in-use data for a significant majority of their vehicles. This approval process is the same as that already established for EPA's first phase of the light-duty revised durability program (RDP-I).[73] EPA requests comment on the proposal to not automatically allow the use of the AMA cycle for chassis-based HDVs.

Fourth, manufacturers have expressed several concerns about in-use testing for chassis-based HDVs, including potential difficulties in procuring vehicles for testing given the commercial use of many of these vehicles, and the appropriateness of in-use confirmatory testing for HDVs.[74] EPA believes that the provisions of the light-duty CAP 2000 program, when extended to chassis-based HDVs, are sufficient to address manufacturer concerns about possible difficulties in procuring vehicles for in-use testing. If a manufacturer or a manufacturer's test group qualifies for in-use testing under a small volume sampling plan, there may be no in-use testing requirements (for volumes up to 5000), or as few as two tests per test group (for volumes up to 15,000); also, vehicles for testing may be owned by or under the control of the manufacturer (as opposed to being procured form customers) (*see* 40 CFR 86.1838–01(c)). In addition, if any manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group, the manufacturer may request a smaller sample size for any test group, subject to advance EPA approval (*see* 40 CFR 86.1845–01(c)(3)). EPA requests comment on the proposed provisions of the HDV CAP 2000 program regarding procuring vehicles for in-use testing.

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[70] See Item # IV–E–24 in EPA Air Docket #A–95–27. The "AMA cycle" is a part of EPA's standard light-duty durability process prior to CAP 2000, which requires manufacturers to accumulate mileage on a pre-production vehicle over a prescribed mileage accumulation driving cycle, specified in 40 CFR Part 86 (commonly referred to as the "AMA cycle"), for 100,000 miles to simulate deterioration over the useful life of the vehicle.

[71] This is limited to only those products which qualify for carryover. New engine designs may not use the AMA carryover option.

[72] See the CAP 2000 NPRM (63 FR 39659, July 23, 1998) and Final Rule (64 FR 23913).

[73] In RDP-I manufacturers have typically shown that their durability programs cover ninety percent or higher of the distribution of deterioration rates experienced by vehicles in actual use. See EPA's guidance letter CD–94–13 dated July 29, 1994, available for review in the public docket.

[74] See Item #IV–E–24 in EPA Air Docket #A–95–27.

Manufacturers have also suggested that it would be desirable to have a transition to the in-use confirmatory testing requirements over a period of years, as was available in the light-duty vehicle CAP 2000 program, rather than requiring this testing in the same year that the chassis-based certification and in-use verification testing requirements go into effect.[75] EPA is proposing that in-use confirmatory testing would be required for chassis-based HDVs. However, EPA believes that a delay in the in-use confirmatory testing requirements is appropriate in order to allow manufacturers to gain experience with chassis-based certification and in-use verification testing for chassis-based HDVs. Thus, EPA is proposing that the in-use confirmatory requirements would be applicable to vehicles produced starting with the 2007 model year. While manufacturers would not be required to conduct in-use confirmatory testing for vehicles produced prior to the 2007 model year, EPA would be fully prepared to investigate any high emissions indicated through manufacturer in-use verification testing or any other means. EPA requests comment on this proposal to require in-use confirmatory testing starting with the 2007 model year.

Finally, certain aspects of the light-duty CAP 2000 program, as contained in 40 CFR part 86, subpart S, would not apply to chassis-based HDVs, since EPA is not proposing requirements for HDVs in these areas at this time. These areas include provisions relating to intermediate useful lives, certification short test, cold temperature CO requirements, fuel economy programs, and supplemental FTP requirements.

In summary, EPA is proposing to extend the light-duty CAP 2000 program to chassis-based HDVs, with the following minor modifications. First, the option to certify HDVs under "heavy-as-light" provisions would no longer be available after the 2003 model year; instead, manufacturers could request to certify incomplete HDVs under the chassis-based HDV program. Second, manufacturers could request to group vehicles from different weight categories or subject to different standards into the same test group, provided that they meet the most stringent standards applicable to vehicles within that test group. Third, the AMA cycle would not automatically be available for HDVs as a durability procedure. Fourth, the in-use confirmatory testing requirement would be delayed for HDVs until the 2007 model year. Fifth, certain elements of the CAP 2000 program would not apply to chassis-based HDVs.

EPA requests comment on all aspects of this proposal for a chassis-based HDV compliance assurance program.

6. Useful Life

Currently, the useful life mileage interval for Otto-cycle HD engines is 8 years or 110,000 miles, whichever occurs first. The useful life for these vehicles in the California MDV program is 120,000 miles, which is also the useful life of heavy light-duty trucks. EPA proposes to adopt the useful life mileage interval of 120,000 miles for the HD Otto-cycle vehicles program. This approach allows consistency across the programs and is consistent with the use of the vehicles.

7. Aftermarket Alternative Fuels Conversions

There are companies that convert heavy-duty engines originally designed to run on conventional fuel to run on an alternative fuel. These engines are subject to EPA standards and the conversion manufacturers certify the converted engines. It is possible that some of these vehicles could be considered incomplete by the original manufacturer and certified to engine-based standards. However, when they reach the aftermarket conversion manufacturer, they may have the cargo carrying container attached and could be considered complete vehicles. In discussions with the conversion manufacturers they expressed a general preference for vehicle-based testing due to the greater availability of test facilities and lower costs. However, the conversion manufacturers raised concerns that it may be infeasible or unreasonable for them to test very large vehicles, those well over 10,000 pounds GVWR, on a chassis dynamometer due to lack of available test facilities designed to handle these very large vehicles.

EPA proposes the following two provisions for vehicles over 10,000 pounds GVWR. EPA proposes that aftermarket conversion manufacturers can choose to test vehicles that are originally designed and considered by the original manufacturer to be incomplete vehicles to either the engine or vehicle-based standards. In addition, aftermarket conversion manufacturers may certify complete vehicles to the engine-based standards due to the lack of available test facilities upon pre-approval from EPA. EPA requests comments on these proposed provisions.

F. Proposal To Revise the Definition of Light-Duty Truck

1. Background

In May of 1999, EPA proposed stringent new Tier 2 standards for passenger cars and light-duty trucks beginning in the 2004 model year (64 FR 26004, May 13, 1999). We are now in the process of analyzing the many public comments we received on the Tier 2 proposal. The proposed Tier 2 program would require all passenger cars and light-duty trucks to meet the same Tier 2 exhaust emissions standards by model year 2009. The phase-in of the standards would begin in 2004 with passenger cars and lighter light-duty trucks and end in 2009 when all light-duty trucks would be required to meet the standards. We proposed the same emissions standards for both cars and light-duty trucks because of the increased use of light-duty trucks primarily for personal transportation. The Tier 2 proposal did not contain any specific regulatory proposals for heavy-duty vehicles. We did, however, request comment on several options discussed in the proposal to prevent manufacturers from redesigning LDT4s so that they would fall into the heavy-duty vehicle category in order to avoid Tier 2 standards.[76]

We received several comments strongly supporting including all passenger vehicles in the Tier 2 program, regardless of vehicle weight. These commenters were very concerned that the Tier 2 standards would not apply to any vehicles above 8,500 pounds GVWR. Commenters believe that a number of these vehicles categorized by EPA as heavy-duty are primarily used as personal transportation much like their light-duty counterparts. Many commenters cited the new Ford Excursion sport-utility vehicle (SUV) as an example of a vehicle designed primarily for passenger transportation that would currently be classified as heavy-duty. Commenters also expressed concern that a significant difference in the standards for light-duty trucks and heavy-duty vehicles would encourage manufacturers to redesign vehicles to make them fit the definition of heavy-duty vehicles.

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[75] See Item # IV–E–24 in EPA Air Docket #A–95–27. On the light-duty side, some manufacturers had experience with in-use testing through the RDP-I in-use verification testing, starting as early as the 1994 model year.

[76] The LDT4 category contains the largest of the LDTs. The category includes LDTs with a gross vehicle weight greater than 6,000 pounds and an adjusted loaded vehicle weight of greater than 5,750 pounds.

EPA also received comment stating that no heavy-duty vehicles should be included in the Tier 2 program. The Alliance of Automobile Manufacturers commented that full product line manufacturers currently offer light-duty and heavy-duty versions of vehicles such as pickups and vans and would not want to create a product void in the LDT4 market segment. They further commented that manufacturers would refrain from changing their vehicles in ways that would increase cost and decrease performance and marketability. Commenters also noted that heavy-duty vehicles are designed for a broad range of purposes. They are designed to be heavier, stronger, and more durable and it would be impossible for such vehicles to meet light-duty emissions standards, claimed some commenters.

After carefully considering all of the comments, we believe both general perspectives have merit depending on the type of vehicle being considered. A small minority of sales in the complete heavy-duty vehicle category consist of vehicles that are more clearly designed for personal use, such as SUVs and passenger vans. All of these vehicles are below 10,000 pounds GVWR. In addition, we are concerned that there will be an increase in new vehicle offerings marketed primarily for passenger transportation in this market segment in the future. As personal use passenger vehicles, they would be more likely to be used as personal transportation and operated under lightly loaded conditions more of the time. We propose that these passenger vehicles (both gasoline and diesel fueled) be included in the Tier 2 program, tested as light-duty trucks, and held to Tier 2 standards. The following sections provide our detailed proposal to capture these vehicles in the Tier 2 framework and provides an overview of the Tier 2 emissions standards that would apply.

For the remaining vehicles in the heavy-duty category (primarily traditional large pickup trucks, cargo vans, and incomplete vehicles), we continue to believe the heavy-duty standards and test procedures proposed in this rulemaking are most appropriate. Heavy-duty vehicles would be tested under more heavily loaded conditions compared with light-duty trucks in Tier 2. Considering this difference in test conditions, we believe that the heavy-duty vehicle standards we are proposing in this rule for 2004 would be similar in stringency to the Tier 2 standards that have been proposed for light-duty trucks in this time frame.

In addition, we are considering the need for more stringent heavy-duty vehicle standards for 2007 and later model years, as discussed in section X.C of this preamble.

2. Proposal

As noted above, we believe it is appropriate to consider including certain vehicles currently classified as heavy-duty vehicles in the proposed light-duty Tier 2 program. In order to accomplish this objective, the proposed regulations include a revised definition of "light-duty truck" designed to bring large models of SUVs and passenger vans into the proposed Tier 2 program. The proposed regulations also contain a parallel revision to the definition of "heavy-duty vehicle" in order to prevent an overlap in the vehicles covered by the two definitions.

Specifically, the proposed definition of light-duty trucks seeks to include the targeted vehicles by stating that a light-duty truck, in addition to those vehicles that meet the current definition, is also any complete vehicle between 8,500 and 10,000 pounds GVWR that is designed primarily for personal transportation and has a capacity of up to 12 persons. We expect that the proposed definition would exclude vehicles that have been designed for a legitimate work function as their primary use, such as the largest pick-up truck, the largest passenger vans, and cargo vans; these vehicles would continue to be categorized as heavy-duty and would be subject to applicable heavy-duty standards. However, we request comment on whether the proposed definition adequately excludes these vehicles, or whether additional criteria may be needed. If additional criteria are believed to be needed, we request comment on how such criteria might be used (i.e., what are appropriate cut points). For example, the definition could include the use of factors such as whether the vehicle's body is fully or almost fully enclosed (i.e., there is no significant exterior cargo space such as there is on a pick-up truck), the portion of the total payload that might be consumed by vehicle passengers, the portion of available chassis space consumed by passenger seating, the percent of the total GVWR comprised of the vehicle's curb weight, or other relevant factors. We believe that this definition will capture SUVs, such as the Chevrolet Suburban and the Ford Excursion, and bring them into the proposed Tier 2 program. Table 5 identifies the currently produced vehicles that we believe would be subject to the Tier 2 program according to the revised definition of light-duty truck.

TABLE 5.—PASSENGER VEHICLES BETWEEN 8,500 AND 10,000 POUNDS GVWR

Vehicle	Vehicle type	Manufacturer
Suburban	SUV	GM.
Excursion	SUV	Ford.
Express Wagon (G2500 and G3500)	Passenger van	GM.
Dodge Ram Wagon 3500	Passenger van	Daimler Chrysler.
Econoline Super-duty Wagon (E250 and E350)	Passenger van	Ford.

Vehicles meeting the proposed additional element to the light-duty truck definition would be classified as heavy light-duty trucks (HLDTs) according to definitions that already exist in the regulations, and therefore would be subject to the standards in EPA's proposed Tier 2 program.[77] The specifics of how these vehicles would be folded into the Tier 2 program are described below.

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[77] LDT3 and LDT4s are considered heavy light-duty trucks (HLDTs).

3. Integration Into Proposed Tier 2 Program

a. Tier 2 Standards for New HLDTs

We propose that for 8,500–10,000 pound GVWR vehicles covered under the revised definition of light-duty trucks discussed above, these vehicles would meet the same standards as the LDT3 and LDT4 vehicles in Tier 2, that is, this new category of vehicles would be part of the Tier 2 heavy-light duty truck program. That program is discussed in detail in the Tier 2 proposal, and will only be summarized here. The reader should review the entire Tier 2 proposal to gain a full understanding of the Tier 2 program for HLDTs. The new HLDTs covered by the proposed change in definition would be averaged in with a manufacturers' LDT3s and LDT4s so that 50 percent of the HLDTs would meet Tier 2 standards in 2008, and 100 percent would have to meet Tier 2 standards in 2009. As Tier 2 vehicles, these large SUVs and passenger vans would be included with other HLDTs in meeting the 0.07 g/mi average NO_X standard in 2008. In 2009, they would be included with all Tier 2 LDVs and LDTs in meeting the 0.07 g/mi NO_X average standard (see Table 6).

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Table 6.—Tier 2 and Interim Non-Tier 2 Phase-in and Exhaust Averaging Sets (Bold lines around shaded areas indicate averaging sets)

	2001	2002	2003	2004	2005	2006	2007	2008	2009 & later	NOx STD. (g/mi)
LDV/LLDT (INTERIM)	NLEV	NLEV	NLEV	75% max.	50% max.	25% max.				0.30 avg
LDV/LLDT (TIER 2 +evap)	*early banking* [b]	[b]	[b]	25%	50%	75%	100%	100%	100%	0.07 avg
HLDT (TIER 2 +evap)	[b, c]	[b, c]	[b, c]	*early banking* [b]	[b]	[b]	[b]	50%	100%	0.07 avg
HLDT (INTERIM)	TIER 1 [b, c]	TIER 1 [b, c]	TIER 1 [b, c]	25%	50%	75%	100%	50% max.		0.20[a] avg

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[a] 0.60 NO_X cap applies to balance of vehicles during the 2004–2006 phase-in years.

[b] Alternative phase-in provisions permit manufacturers to deviate from the 25/50/75% 2004–2006 and 50% 2008 phase-in requirements and provide credit for phasing in some vehicles during one or more of these model years.

[c] HLDT vehicles between 8,500 and 10,000 pound GVWR will be meeting the 1998 Heavy-duty standards during this time frame.

As described in the Tier 2 proposal, manufacturers would meet the Tier 2 NO_X standard by certifying to one of seven emission bins, and using averaging to meet the corporate average NO_X standard of 0.07 g/mi. The proposed Tier 2 exhaust emission standards for all bins are shown in Table 7 and Table 8.

TABLE 7.—TIER 2 LIGHT-DUTY FULL USEFUL LIFE (120,000 MILE) EXHAUST EMISSION STANDARDS

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM
7	0.20	0.125	4.2	0.018	0.02
6	0.15	0.090	4.2	0.018	0.02
5	0.07	0.090	4.2	0.018	0.01
4	0.07	0.055	2.1	0.011	0.01
3	0.04	0.070	2.1	0.011	0.01
2	0.02	0.010	2.1	0.004	0.01
1	0.00	0.000	0.0	0.000	0.00

TABLE 8.—TIER 2 LIGHT-DUTY INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST EMISSION STANDARDS

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM
7	0.14	0.100	3.4	0.015	
6	0.11	0.075	3.4	0.015	
5	0.05	0.075	3.4	0.015	
4	0.05	0.040	1.7	0.008	

b. Interim Standards for New HLDTs

Between 2004 and 2007, these new HLDT vehicles would have two options; to participate in early banking for the Tier 2 program, or be part of the Tier 2 HLDT Interim program along with LDT3 and LDT4 vehicles. The early banking option is described in detail for HLDT in the Tier 2 proposal.

The Interim program proposed in Tier 2 phases in between 2004 and 2007 (see Table 6). Our interim standards for HLDTs would begin in 2004. The Interim Program for HLDTs would set a corporate average NO_X standard of 0.20 g/mi that would be phased in between 2004 and 2007. The interim HLDT standards, like those for Tier 2 LDV/LLDTs would be built around a set of bins (see Tables 9 and 10). As shown in Table 6, the phase-in would be 25 percent in the 2004 model year, 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. The program would remain in effect through 2008 to cover those HLDTs not yet phased into the Tier 2 standards (a maximum of 50%). Vehicles not subject to the interim corporate average NO_X standard during the 2004–2006 phase-in years would be subject to the least stringent bin (Bin 5) so their NO_X emissions would be effectively capped at 0.60 lg/mi. These vehicles would be excluded from the calculation to determine compliance with the interim 0.20 g/mi average NO_X standard.

TABLE 9.—FULL USEFUL LIFE (120,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR HLDTS

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM
5	0.60	0.230	4.2	0.018	0.06
4	0.30	0.180	4.2	0.018	0.06
3	0.20	0.156	4.2	0.018	0.02
2	0.07	0.090	4.2	0.018	0.01
1	0.0	0.00	0.0	0.000	0.0

TABLE 10.—INTERMEDIATE USEFUL LIFE (50,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR HLDTS

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM
5	0.40	0.160	3.4	0.015	
4	0.20	0.140	3.4	0.015	
3	0.14	0.125	3.4	0.015	
2	0.05	0.075	3.4	0.015	

All other aspects of the Tier 2 proposal which covers HLDT vehicles would apply to those 8,500–10,000 pound GVWR vehicles classified as HLDTs according to the proposed definition described above. The reader is encouraged to examine the Tier 2 proposal for a full description of these provisions.

c. Technological Feasibility of Tier 2 Standards for New HLDTs

As discussed above, we believe this new definition of HLDTs between 8,500 and 10,000 pounds will capture vehicles designed for personal transportation purposes, principally sport-utility vehicles and passenger vans. Cargo vans and traditional pickups would not be classified as HLDTs by this new definition. Table 11 represents our estimates of the number of 8,500–10,000 pound GVWR vehicles which would be covered by the proposed revision to the light-duty truck definition, as well as sales estimates for the LDT3s and LDT4s which currently comprise the HLDT category.

TABLE 11.—EPA'S ESTIMATED 1998 SALES OF LDT3, LDT4, AND NEW HLDT VEHICLES BETWEEN 8,500 AND 10,000 POUNDS GVWR

	LDT3 and LDT4	New HLDTs between 8,500 and 10,000 pound GVWR
Gasoline Vehicle Sales	1.5 million	<70,000
Diesel Vehicle Sales	<1 percent of gasoline LDT3 and LDT4 sales	<5,000

As can be seen in Table 11, the revision of the LDT definition proposed today would increase the total number of HLDT vehicles by less than 5 percent. The proposed change in the definition of light-duty trucks would result in the diesel fraction being less than 0.5 percent of all HLDTs.

These new HLDT vehicles are similar in engine design to existing LDT4 vehicles, and we believe the technological feasibility arguments contained in the Tier 2 proposal apply to these vehicles as well. In addition to these arguments, Tables 3–9 in the draft RIA for this proposal contains a list of 1998 and 1999 model year gasoline vehicles certified to the California Medium Duty Vehicle program (using low sulfur California fuel). In the 8,500 to 10,000 pound GVWR range, a number of engine families have full useful life (120,000 miles) NO_X emissions in the 0.2 to 0.6 g/mile range, and a few families are certified in the 0.1 to 0.3 g/mile NO_X range. These vehicles are all tested at curb weight plus half-payload, while those captured by the new definition would be tested at curb weight plus 300 pounds, a less stringent test condition. Therefore, a large number of gasoline engine families between 8,500 and 10,000 are already capable of meeting the highest bin under the Tier 2 Interim program (0.6 g/mile), and a few are approaching the Tier 2 NO$_X$ standard of 0.07 g/mile, and are within the highest NO$_X$ bin under Tier 2 (0.2 g/mile NO$_X$). In addition, compared to the number of existing LDT3 and LDT4 vehicles, the number of vehicles captured by the new HLDT definition are relatively small (< 5 percent), and the averaging program proposed for Tier 2 will provide manufacturers with considerable lead time for applying control technology to these vehicles.

As noted above, these new HLDTs are similar in their engine types and designs to existing LDT4 vehicles, and because of this we expect that these new HLDTs will employ essentially the same types of technologies as existing LDT4 vehicles to meet EPA's proposed Tier 2 standards. Similarly, the costs EPA projected for bringing existing LDT4 vehicles into compliance with the Tier 2 standards can also be carried over to these new HLDTs. These costs are discussed in detail in EPA's proposal for Tier 2 standards, and the reader is urged to refer to that discussion for more information (see 64 FR 26070, May 13, 1999). EPA estimates that bringing these new HLDTs under the Tier 2 program would cost $270 per vehicle, i.e., the same as for other LDT4s. Based on an estimate of approximately 75,000 vehicles affected, annual costs would equal about $20 million when the program is fully phased-in by 2009. Per vehicle NO$_X$ emission reductions of 4.3 g/mi would be expected from the current standards. This is a significantly larger per vehicle reduction than expected for current LDT4s, so EPA anticipates the near term cost effectiveness would be more cost effective. We request comment on the application of these cost estimates to the vehicles that would be covered by the proposed change to the LDT definition. This issue will be analyzed more carefully as part of the final rulemaking.

As outlined above, Tier 2 standards are intended to be "fuel neutral." Under the principle of fuel neutrality, all cars and light trucks, including those using diesel engines, would be required to meet the proposed Tier 2 standards. EPA believes that the proposed program, including the phase-in periods, would facilitate the advancement of clean diesel engine technologies. EPA further believes that in the long term the standards would be within reach for diesel-fueled vehicles in combination with appropriate changes to diesel fuel to facilitate aftertreatment technologies.

As discussed in the Tier 2 proposal, the emission reduction technology needed to meet these levels for a diesel HLDT would likely require advanced diesel aftertreatment devices, such as NO$_X$ absorbers and PM traps. These technologies have the potential to provide emission reductions approaching 90 percent or greater. Considering the long lead time available to manufacturers, we believe these standards may be feasible for diesel HLDTs, including the vehicles that would be captured by the proposed change to the definition. In addition, the number of diesel powered vehicles between 8,500 and 10,000 pounds GVWR which would be classified as HLDTs by the proposed new definition is very small, as shown in Table 11. The total number of diesel HLDTs (including LDT3 and LDT4) would be less than 0.5 percent of all HLDTs. Averaging will likely provide the manufacturer with additional flexibility to meet both the interim and final Tier 2 standards.[78]

Considering all of these factors (long lead time, averaging program, similarity to LDT3s and LDT4s, and existing certification data) , we believe that these new HLDT vehicles will be able to meet the Tier 2 interim standards and the Tier 2 final standards. As discussed above, the number of these vehicles, compared to the existing LDT3 and LDT4 fleet, is relatively small, and averaging will likely provide the manufacturer with the needed flexibility to meet both the interim and final Tier 2 standards. The conclusion of all of our analyses is that the proposed Tier 2 standards for this new category of HLDT vehicles would be feasible for gasoline-fueled vehicles operated on low-sulfur gasoline. As gasoline-fueled vehicles represent the overwhelming majority of the HLDT population (>99.5 percent), including those covered by the proposed change in the HLDT definition, EPA proposes to find that the proposed standards would be feasible overall for HLDT vehicles.

The Agency is considering adding a bin for HLDTs greater than 8,500 pounds GVWR for the 2004 thru 2008 model year time frame. This interim bin would not be available in 2009 and beyond once the Tier 2 standards are fully phased-in. This approach would create an appropriate opportunity for flexibility during the phase-in years. We believe that appropriate standards for an interim bin for HLDTs above 8,500 pounds GVWR are the existing California Medium Duty Vehicle LEV–I standards for this category of vehicles (0.9 and 0.12 g/mile for NO$_X$ and PM, respectively). Under this proposal, these chassis-based standards would already be in place for the heavy-duty vehicles between 8,500 and 10,000 pounds GVWR that would not be classified as HLDTs (see section IV.E). In addition, manufacturers would already be meeting these standards in California, and could carry over California vehicles to the federal program. We request comment on whether such an approach should be pursued in the final rule.

We request comment on all aspects of this proposed change in the definition of HLDTs, and the inclusion of these HLDTs in the Tier 2 program. We specifically seek comments on the appropriateness of the 10,000 pound GVWR limit as the upper cap for this program and on the technological feasibility of the standards being proposed for these passenger vehicles. After considering all comments received on this proposed change in the definition of HLDTs, it is our intention to finalize a change in the definition of LDTs in the Tier 2 final rule, if timing permits. If this is deemed infeasible, we would likely finalize this provision in the final rule for the heavy-duty 2004 standards. The Agency requests that any comments on this specific issue be sent to the dockets for both this rulemaking and the Tier 2 rulemaking, A–97–10 (See Section XI for information on how to provide written comments on this rule).

G. On-Board Diagnostics

Today's notice also contains proposed requirements for on-board diagnostic systems on heavy-duty vehicles and engines up to 14,000 pounds GVWR, both Otto-cycle and diesel. The proposed OBD requirements are essentially equivalent to those already in place for light-duty vehicles and trucks,[79] including the optional provision that allows demonstration of compliance with California OBDII requirements[80] as a means of satisfying today's federal OBD requirements. The Agency is proposing to include OBD requirements in today's notice because OBD systems help ensure continued compliance with emission standards during in-use operation, and they help mechanics to properly diagnose and repair malfunctioning vehicles while minimizing the associated time and effort. The codification of OBD system requirements would also allow for potential inclusion of heavy-duty vehicles and engines in inspection/maintenance programs via a simple check of the OBD system.

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[78] We generally expect that manufacturers would take advantage of the flexibilities in the Tier 2 proposal to delay the need for diesel vehicles to meet the final Tier 2 levels until late in the phase-in period. Because diesel vehicles represent a very small percentage of the LDT market, diesel LDTs would not fall under the final Tier 2 standards until 2009, giving manufacturers a relatively large amount of leadtime. As noted in the Tier 2 proposal, some new diesel aftertreatment options may require lower sulfur diesel fuel than is currently available. We have issued an Advance Notice of Proposed Rulemaking intended to solicit comment on the need for reduced sulfur in diesel fuel in order to meet these standards. We also believe that the proposed interim standards would be feasible for diesels by 2004, with or without the fuel change, given the flexibilities associated with those standards.

1. Background on OBD

Section 202(m) of the CAA, 42 U.S.C. 7521(m), directs EPA to promulgate regulations requiring 1994 and later model year LDVs and LDTs to contain an OBD system that monitors emission-related components for malfunctions or deterioration "which could cause or result in failure of the vehicles to comply with emission standards established" for such vehicles. Section 202(m) also states that EPA may require such OBD systems for heavy-duty vehicles and engines.

On February 19, 1993, EPA published a final rule requiring manufacturers of light-duty applications to install such OBD systems on their vehicles beginning with the 1994 model year (*see* 58 FR 9468, February 19, 1993). The OBD systems must monitor emission control components for any malfunction or deterioration that could cause exceedance of certain emission thresholds. The regulation also requires that the driver be notified of any need for repair via a dashboard light, or malfunction indicator light (MIL), when the diagnostic system detects a problem. EPA also allows optional compliance with California's second phase OBD requirements, referred to as OBDII (13 CCR 1968.1), for purposes of satisfying the EPA OBD requirements.

Since publishing the 1993 OBD final rule, EPA has made several revisions to the OBD requirements. On March 23, 1995, EPA published a direct final rule that served largely to create more consistency between the California OBDII requirements and the EPA OBD requirements (*see* 60 FR 15242, March 23, 1995). The March 1995 rule also put into place deficiency provisions for EPA OBD systems that allowed for certification despite the presence of minor noncompliances that could not be resolved within the time constraints of production schedules. On August 30, 1996, EPA published another final rule to allow optional compliance with California's newly revised OBDII requirements (61 FR 45898). On December 22, 1998, EPA published a final rulemaking that achieved even further consistency with the California OBDII requirements (*see* 63 FR 70681, December 22, 1998). This recent final rulemaking results in essentially identical emission malfunction thresholds and identical component monitoring requirements as required by the California OBDII regulation.

However, none of these federal rules extended OBD requirements to heavy-duty vehicles and engines. Today's action proposes that the existing light-duty OBD provisions be broadened to include both Otto-cycle and diesel heavy-duty vehicles and engines up to 14,000 pounds GVWR. EPA is also proposing some revisions to existing light-duty OBD requirements applicable to diesel vehicles and trucks. These light-duty revisions are being proposed to maintain consistency across the existing light-duty diesel OBD requirements and today's proposed heavy-duty diesel OBD requirements.

The Agency believes it is appropriate to extend OBD requirements to include heavy-duty vehicles and engines for many reasons. In the past, heavy-duty diesel engines have relied primarily on in-cylinder modifications to meet emission standards. For example, emission standards have been met through changes in injection timing, piston design, combustion chamber design, use of four valves per cylinder rather than two valves, and piston ring pack design and location improvements. In contrast, the 2004 standards represent a significant technological challenge, and while manufacturers may make engine design changes to comply with those standards, EPA expects the 2004 standards will require EGR. Such "add on" devices can experience deterioration and malfunction that, unlike the engine design elements listed earlier, may go unnoticed by the driver. Because deterioration and malfunction of these "add-on" devices can go unnoticed by the driver, and because their sole purpose is emissions control, some form of detection is crucial. The Agency believes that such detection can be effectively achieved by employing a well designed OBD system.

The same argument is true for Otto-cycle heavy-duty vehicles and engines. While emission control is managed both with engine design elements and "add-on" devices, the "add-on" devices, particularly the catalytic converter, are the primary emission control features. The Agency believes it is critical that the emission control system, particularly the "add-on" type systems, be monitored for proper operation to ensure that new vehicles and engines certified to the standards proposed today continue to meet those standards throughout their full useful life.

Further, the industry trend is clearly toward increasing use of computer and electronic controls for both engine and powertrain management, and for emission control. In fact, the heavy-duty industry has already gone a long way, absent any government regulation, to standardize computer communication protocols.[81] Computer and electronic control systems, as opposed to mechanical systems, provide improvements in many areas including, but not limited to, improved precision and control, reduced weight, and lower cost. However, electronic and computer controls also create increased difficulty in diagnosing and repairing the malfunctions that inevitably occur in any engine or powertrain system. Today's proposed OBD requirements would build on the efforts already undertaken by the industry to ensure that key emission related components will be monitored in future heavy-duty vehicles and engines and that the diagnosis and repair of those components will be as efficient and cost effective as possible.

For these reasons, most manufacturers of vehicles, trucks, and engines have incorporated OBD systems that are capable of identifying when malfunctions occur, and in what systems. In the heavy-duty industry, those OBD systems traditionally have been geared toward detecting malfunctions causing driveability and/or fuel economy related problems. Without specific requirements for manufacturers to include OBD mechanisms to detect emission-related problems, those types of malfunctions that could result in high emissions without a corresponding adverse driveability or fuel economy impact could go unnoticed by both the driver and the repair technician. The resulting increase in emissions and detrimental impact on air quality could be avoided by incorporating an OBD system capable of detecting emission control system malfunctions.

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[79] See 40 CFR 86.099–17; 40 CFR 86.1806–01.

[80] *See, e.g.*, Title 13, California Code of Regulations (CCR) §1968.1, as modified pursuant to California Mail Out #97–24 (December 9, 1997).

[81] See "On-Board Diagnostics, A Heavy Duty Perspective," SAE 951947, and, "Recommended Practice for a Serial Control and Communications Vehicle Network," SAE J1939.

2. CARB OBDII Requirements

Current EPA OBD requirements apply only to light-duty vehicle and light-duty truck categories (less than 8500 pounds GVWR). In contrast, the CARB OBDII requirements include all light-duty categories and the CARB medium-duty category (vehicles/engines up to 14,000 pounds GVWR). As a result, while manufacturers of trucks and engines in the 8500 to 14,000 pound GVWR category have not certified federally to OBD regulations, they have certified to the CARB OBDII requirements on all their California applications beginning with the 1996 model year.[82]

Furthermore, while these manufacturer's federal certification applications have not covered OBD requirements, the trucks and engines nonetheless contain OBD systems with varying levels of sophistication. This appears to be particularly true for diesel applications.[83] While the sophistication of some of the OBD systems on existing federally certified heavy-duty vehicles and engines may be less than that required by today's proposal, EPA believes that the development work and lessons learned during implementation of CARB OBDII systems in California can be readily transferred to federal applications. With today's action, EPA proposes to implement OBD requirements for heavy-duty vehicles nationwide so that the benefits of OBD can be realized not only in California, but in the remaining 49 states as well.

3. Proposed Federal OBD Requirements

Today's proposed OBD requirements are discussed in detail below. The requirements for heavy-duty Otto-cycle vehicles and engines are identical to those already in place for light-duty Otto-cycle vehicles and trucks. However, the proposed OBD requirements for heavy-duty diesel vehicles and engines differ somewhat from the current light-duty diesel requirements, specifically with regard to engine misfire and aftertreatment monitoring requirements. As a result, and because the Agency believes that the diesel provisions proposed today are more appropriate for diesel applications, today's notice also proposes that the light-duty diesel requirements be revised to be consistent with today's proposed heavy-duty diesel requirements.

In general, the OBD system must monitor emission-related powertrain components for deterioration or malfunction causing emissions to exceed 1.5 times the applicable standards. Upon detecting a malfunction, a dashboard MIL must be illuminated informing the driver of the need for repair. To assist the repair technician in diagnosing and repairing the malfunction, the OBD system must also incorporate standardization features (e.g., the diagnostic data link connector; computer communication protocols; etc.) the intent of which is to allow the technician to diagnose and repair any OBD compliant truck or engine through the use of a "generic" hand-held OBD scan tool.

4. Federal OBD Malfunction Thresholds and Monitoring Requirements

EPA proposes that, beginning in the 2004 model year, heavy-duty vehicles and engines must be equipped with an OBD system capable of detecting and alerting the driver of the following emission-related malfunctions or deterioration as evaluated over the appropriate certification test procedure:[84]

(a) Catalyst or particulate trap deterioration or malfunction:

Otto-cycle—before it results in an increase in NMHC[85] emissions equal to or greater than 1.5 times the NMHC standard or FEL, as compared to the NMHC emission level measured using a representative 4000 mile catalyst system; for engine certified systems, $NMHC+NO_X$ would be used in place of NMHC.

Diesel-cycle—before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NO_X or PM. This monitoring would not need to be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold; however, the presence of the catalyst or particulate trap must still be verified. For engine certified systems, $NMHC+NO_X$ would be used in place of NO_X.

(b) Engine misfire:

Otto-cycle—before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC, CO or NO_X; for engine certified systems, this would be 1.5 times $NMHC+NO_X$ or CO.

Diesel-cycle—when lack of combustion occurs.

(c) If the vehicle or engine contains an oxygen sensor, then oxygen sensor deterioration or malfunction before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC, CO or NO_X; for engine certified systems, this would be 1.5 times $NMHC+NO_X$ or CO.

(d) If the vehicle or engine contains an evaporative emission control system, then any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator would be required to revise the size of the orifice to the feasibility limit, based on test data, if the most reliable monitoring method available was unable to reliably detect a system leak equal to a 0.040 inch diameter orifice.

(e) Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the EGR system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, NO_X, or diesel PM. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (f) below, may satisfy the proposed requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration would be subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system would be required to indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check.

(f) Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph would be satisfied by employing electrical circuit continuity checks and, wherever feasible, rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands); malfunctions would be defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

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[82] This includes heavy-duty diesel and Otto-cycle applications which fall into EPA's light heavy- duty category.

[83] See "On-Board Diagnostics, A Heavy Duty Perspective," SAE 951947; memo from T. Sherwood to Air Docket No. A–98–32, "Documentation of Sophisticated On-board Diagnostic (OBD) Systems on Current Heavy-duty Diesel Engines, dated March 17, 1999; and Internet websites for various heavy-duty diesel engine manufacturers: www.cummins.com; www.detroitdiesel.com; www.navistar.com.

[84] The FTP minus the Supplemental FTP for chassis certified systems; the engine certification test procedure minus any supplemental test procedures for engine certified systems. While malfunction thresholds are based on certification test procedure emissions, this does not mean that OBD monitors need operate only during the test procedure. All OBD monitors that operate continuously during the test procedure should operate in a similar manner during non-test procedure conditions. The prohibition against defeat devices in §86.004–16 applies to these OBD requirements.

[85] As a point of clarification, federal emissions standards are expressed in terms of NMHC. Therefore, in order to remain consistent, all references to HC will be referred to as NMHC.

Upon detection of a malfunction, the MIL would be required to illuminate and a fault code stored no later than the end of the next driving cycle during which monitoring occurs provided the malfunction is again detected. Alternatively, upon Administrator approval, a manufacturer would be allowed to use a diagnostic strategy that employs statistical algorithms for malfunction determination (e.g., Exponentially Weighted Moving Averages (EWMA)). The Administrator considers such strategies beneficial for some monitors because they reduce the danger of illuminating the MIL falsely since more monitoring events are used in making pass/fail decisions. However, the Administrator would only approve such strategies provided the number of trips required for a valid malfunction determination is not excessive (e.g., six or seven monitoring events). Manufacturers would be required to determine the appropriate operating conditions for diagnostic system monitoring with the limitation that monitoring conditions are encountered at least once during the applicable certification test procedure or a similar test cycle as approved by the Administrator. This is not meant to suggest that monitors be designed to operate only under test procedure conditions, as such a design would not encompass the complete operating range required for OBD malfunction detection.

As an option to the above requirements, EPA proposes to allow compliance demonstration according to the California OBDII requirements. This option has been available to light-duty vehicles and trucks since the implementation of the federal OBD program. This option allows manufacturers to concentrate on one set of OBD requirements for nationwide implementation (although federal OBD emission malfunction thresholds and monitoring requirements are essentially equivalent to those of the California OBDII regulation) and provides the highest level of OBD system effectiveness toward meeting nationwide clean air goals.

However, there are differences between the California OBDII requirements and today's proposed EPA OBD requirements. The California OBDII regulation does not require catalyst or particulate trap monitoring for diesel-cycle vehicles and engines. Today's notice proposes such monitoring for EPA OBD systems. Therefore, if a manufacturer chooses the California OBDII compliance option for a diesel vehicle or engine, that manufacturer would still be required to satisfy the catalyst or particulate trap OBD monitoring requirements of today's proposal.

The Agency requests comment on the above proposed OBD system requirements, the emission threshold levels, and the California OBDII compliance option. The Agency also wants to highlight and request comment on a very minor change meant to clarify and define the meaning behind rationality checks on applicable monitors. With this proposal, reflected in paragraph (f) above, and sections 86.004–17(b)(6) and 86.1806–04(b)(6) of the proposed regulatory language, this definition would be changed from "rationality checks for computer input components (input values within manufacturer specified ranges)," to read, "rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters)." This proposed change would apply to all OBD systems—light-duty, heavy-duty, chassis certified, engine certified, Otto-cycle, diesel—and only serves to clarify; it would not constitute a new OBD requirement.

5. Proposed Standardization Requirements

The light-duty OBD regulations contain requirements for standardization of certain critical aspects of the OBD system. These critical aspects include the design of the data link connector, protocols for on-board to off-board computer communication, formats for diagnostic trouble codes, and types of test modes the on-board system and the off-board scan tool must be capable of supporting. Today's action proposes that these standards, tabulated below, also be required for heavy-duty OBD systems. Today's action also proposes that, as an alternative, manufacturers have the option of standardizing their systems according to SAE J1939, "Recommended Practice for a Serial Controlled Communications Vehicle Network." This alternative standard, SAE J1939, is a standard developed by the Society of Automotive Engineers (SAE) specifically for heavy-duty applications.

PROPOSED STANDARDS FOR HEAVY-DUTY OBD SYSTEMS

Proposed standards[a]	Alternative proposed standards
SAE J1850: communications protocol	SAE J1939: communications protocol; data link connector; test modes and downloading protocols; format for diagnostics trouble codes.
ISO 9141–2: communications protocol	
SAE J1962: data link connector	
SAE J1979: test modes and downloading protocols	
SAE J2012: format for diagnostics trouble codes	

[a] SAE refers to the Society of Automotive Engineers; ISO refers to the International Organization of Standardization.

The Agency requests comment on the appropriateness of the above standards and the need to incorporate other standards not mentioned above.

6. Deficiency Provisions

Today's action proposes to apply the same deficiency provisions to heavy-duty OBD systems as currently apply to light-duty OBD systems. This would allow the Administrator to accept an OBD system as compliant even though specific requirements are not fully met. The deficiency provisions were first introduced on March 23, 1995 (60 FR 15242), and were recently revised on December 22, 1998 (63 FR 70681).

The Agency is proposing these deficiency provisions because, despite the best efforts of manufacturers, many will likely need to certify vehicles with some sort of deficiency when unanticipated problems arise that can not be remedied in time to meet production schedules. Given the considerable complexity of designing, producing, and installing the components and systems that make up the OBD system, manufacturers of light-duty vehicles and trucks have expressed and demonstrated difficulty in complying with every aspect of the OBD requirements. The same difficulty is expected for heavy-duty vehicles and engines. While we believe that 100 percent compliance can be achieved, we also believe that some sort of relief should be provided to allow for certification of engines that, despite the best efforts of the manufacturers, have deficient OBD systems.

The EPA "deficiency allowance" should only be seen as an allowance for minor deviations from the OBD requirements. In fact, EPA expects to implement this deficiency allowance primarily for software or calibration type problems, as opposed to cases where necessary hardware is at fault or is not present. EPA expects that manufacturers should have the necessary functioning OBD hardware in place, especially given the lead time afforded to OBD in this proposal, the extensive implementation of OBD that has already occurred on heavy-duty vehicles and engines absent any federal regulation, and the experience gained by those industry members affected by this proposal during several years of light-duty and California medium-duty OBD implementation.

Furthermore, EPA does not intend to certify vehicles with federal OBD systems that have more than one OBD system deficiency, and EPA would not allow carryover of any deficiency to the following model year unless it can be demonstrated that correction of the deficiency requires hardware modifications that absolutely cannot be accomplished in the time available, as determined by the Administrator. These limitations are intended to prevent a manufacturer from using the deficiency allowance as a means to avoid compliance or delay implementation of any OBD monitors or to compromise the overall effectiveness of the OBD program. The Agency proposes that the "deficiency allowance" be provided indefinitely, and requests comment on this proposal.

7. Applicability and Waivers

Today's proposed federal OBD requirements would be implemented beginning with the 2004 model year, as described below for all heavy-duty vehicles and engines for which emission standards are in place or are subsequently developed and promulgated by EPA. EPA proposes that there be a phase-in of the OBD requirements for heavy-duty vehicles up to 14,000 pounds GVWR, and for heavy-duty engines up to 14,000 pounds GVWR. The percentage phase-in schedule for such vehicles and engines will be 40/60/80/100 for the 2004/05/06/07 model years, respectively, based on projected sales. The phase-in percentages are determined separately for vehicles and for engines, but are not dependent on fuel.

Specific to Otto-cycle OBD, during model years 2004 through 2006, EPA believes that any non-California Otto-cycle vehicles and engines having essentially equivalent counterparts certified for sale in California as compliant with the LEV emission standards and the CARB OBDII requirements could be readily certified for sale in the remaining 49 states. That belief is based upon engineering judgement that such vehicles and engines will have essentially equivalent emission standards and OBD requirements. The sales mix of LEVs and ultra low emission vehicles (ULEVs) in California is 40 percent and 60 percent, respectively, with 100 percent of those in the less than 14,000 pound GVWR category in compliance with California's OBDII requirements. EPA considers the 40 percent LEV portion as easily certified for 49-state sales. The phased implementation of OBD compliance during the subsequent model years should provide sufficient lead time and flexibility to manufacturers.

In summary, the proposed applicability and phase-ins for heavy-duty OBD compliance are as follows:

COMPLIANCE PHASE-IN FOR TODAY'S PROPOSED OBD PROVISIONS

Model year	Heavy-duty up to 14,000 pounds GVWR	Diesel light duty
2004 MY	—40% compliance —deficiencies available —alternative fuel waivers available —CARB OBDII option available*	—100% compliance. —deficiencies available. —alternative fuel waivers available. —CARB OBDII option available.*
2005 MY	—60% compliance —deficiencies available —alternative fuel waivers available —CARB OBDII option available*	—100% compliance. —deficiencies available. —CARB OBDII option available.*
2006 MY	—80% compliance —deficiencies available —alternative fuel waivers available —CARB OBDII option available*	—same as 2005 MY.
2007+ MY	—100% compliance —deficiencies available —CARB OBDII option available*	—same as 2005 MY.

*But diesels must meet EPA aftertreatment monitoring requirements.

For heavy-duty vehicles and engines up to 14,000 pounds GVWR operating on alternative fuel, EPA would grant OBD waivers during alternative fuel operation through the 2006 model year to the extent that manufacturers can justify the inability to fully comply with any of today's proposed OBD requirements.[86] Such inability would have to be based upon technological infeasibility, not resource reasons. Further, any heavy-duty vehicles and engines that are subsequently converted for operation on alternative fuel would not be expected to comply with today's proposed OBD requirements if the non-converted vehicle or engine does not comply. In other words, if the vehicle or engine never completes any assembly stage in OBD compliance, it need not comply with today's proposed OBD requirements while operating on the alternative fuel. If the vehicle or engine does complete any assembly stage with a compliant OBD system, it would have to comply with today's OBD requirements while operating on the fuel of original intent and, to the extent feasible, while operating on the alternative fuel. For these latter situations, EPA could grant waivers through the 2006 model year if the manufacturer can show it is infeasible to meet the requirements. Beginning in the 2007 model year, all heavy-duty alternative fueled vehicles and engines up to 14,000 pounds GVWR would have to be fully compliant during both operation on the fuel of original intent and alternative fuel.

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[86] Note that this provision currently exists for light-duty vehicles and trucks operating on alternative fuel through the 2004 model year; that existing provision does not change with today's proposal.

EPA requests comments on all aspects of these OBD implementation and phase-in provisions. In particular, EPA requests comments on the phase-in percentages and their application to vehicles and engines separately. The phase-in is proposed in this way because the regulatory structure contains engine based OBD requirements in 40 CFR subpart A and chassis based OBD requirements in 40 CFR subpart S. Therefore, the phase-in percentages would have to be determined independently as they apply to the OBD systems certified according to the provisions of the specific subpart. If this creates unexpected burdens, or eliminates intended flexibilities, comments should explain how and suggest alternate phase-in language.

8. Certification Provisions

The OBD certification information requirements of today's proposal are consistent with the Compliance Assurance Programs 2000 (CAP 2000) rulemaking discussed above. The Part 1 Application must include, for each OBD system: A description of the functional operating characteristics of the diagnostic system; the method of detecting malfunctions for each emission-related powertrain component; and a description of any deficiencies including resolution plans and schedules. Anything certified to the California OBDII regulations would be required to comply with California ARB information requirements. EPA may consider abbreviating the OBD information requirements through rulemaking if it gains confidence that manufacturers are designing OBD systems that are fully compliant with all applicable regulations.

During EPA certification of vehicles optionally certified to the California OBDII regulation, EPA may conduct audit and confirmatory testing consistent with the provisions of the California OBDII requirements. Therefore, while the Agency will consider California certification in determining whether to grant a federal certificate, EPA may also elect to conduct its own evaluation of that OBDII system. While it is unlikely, EPA may make a compliance determination that is not identical to that of the California Air Resources Board.

Further, the Agency fully intends to allow a chassis certified and chassis demonstrated OBD system to fulfill any demonstration requirements of an engine certified OBD system (i.e., "drop-in" demonstration). Likewise, we fully intend to allow an engine certified and engine demonstrated OBD system to fulfill the demonstration requirements of a chassis certified OBD system. However, any chassis certified system would have to incorporate transmission diagnostics even though the "dropped-in" engine system may not have been certified with them.

In other words, if a manufacturer demonstrates OBD compliance using a chassis certified system, then wishes to employ engineering judgement in demonstrating compliance of an engine certified OBD system, the Agency would accept such a demonstration provided sound engineering judgement is employed. The same would be true for an engine to chassis situation (note the transmission diagnostic stipulation stated above). This allowance is perhaps most applicable to Otto-cycle OBD systems, but it would also apply for diesel systems. The Agency intends to make this allowance because OBD systems tend to be essentially identical in concept and approach across the product line of any given manufacturer, even though specific calibrations may change from engine to engine or model to model. The compliance allowance discussed here requires the manufacturer to rigorously demonstrate its OBD concept and approach on one engine or model, but allows the manufacturer to apply that demonstration via engineering judgement to the different engine and powertrain calibrations used across its fleet.

H. Durability Procedures

Under the current certification regulations, manufacturers develop deterioration factors based on testing of development engines and emissions control systems. Because emissions control efficiency generally decreases with the accumulation of service on the engine, the regulations require that a DF be used in conjunction with engine test results as the basis for determining compliance with the standards. The regulations require that the manufacturer develop an appropriate DF, which is then subject to review by EPA in the certification process. These deterioration factors are applied to low mileage emissions levels of certification engines in order to predict emissions at the end of the engines' useful life. The emissions level after the deterioration factor is applied is the engine certification level, which must be below the standard for the engine to be certified. For engines equipped with aftertreatment (*e.g.*, catalysts), the DF must be "multiplicative" (*i.e.*, a factor that can be multiplied by the low mileage emissions level of the certification engine to project emissions at the end of the engine useful life). For engines lacking aftertreatment (*e.g.*, most current diesels), the DF must be "additive" (*i.e.*, a factor that can be added to the low mileage emissions level of the certification engine to project emissions at the end of the engine useful life).

Manufacturers have argued that EPA should not propose a standard on the basis of current low engine certification levels, even though these levels are supposed to reflect anticipated emissions levels over the life of the engine. Manufacturers also noted that the deterioration factors capture deterioration for vehicles under typical use and not severe use. Thus, the manufacturers stated that they account for severe deterioration by targeting certification levels at half the standard. EPA has given full consideration to each of these concerns in developing the proposed standards.

EPA believes that the manufacturer's durability process should result in the same or greater level of deterioration than is observed in-use for a significant majority of their vehicles, rather than simply matching the average in-use deterioration. This is especially important considering that incomplete vehicles and vehicles over 14,000 pounds GVWR are more likely to be work vehicles and operated under more severe conditions a greater percentage of their useful lives. In recent certification applications (for the 1998 and 1999 model years, for example), manufacturers have reported NO_X DFs on the order of 1.2 to 1.6 for heavy-duty Otto-cycle engines. Manufacturers have indicated on several occasions that they certify at levels of half the standard to address more severe in-use operation than is represented by their deterioration factors. Based on manufacturer comments, if a durability process is designed to represent the deterioration of a significant majority of engines within an engine family, EPA would expect manufacturers to calculate a multiplicative deterioration factor which is higher than current DFs, on the order of 2.0 or more. Manufacturers also presented EPA with an analysis of engine emissions standards, which is discussed in detail in the Technological Feasibility section below. The catalyst deterioration rates used in that analysis indicate that the deterioration factor could be higher than two in some cases.

EPA believes that it is important for certification levels (emissions tests adjusted by the DF) to represent anticipated in-use emissions levels of a significant majority of in-use engines. This will continue to be a key aspect of EPA's compliance programs. Deterioration factors are also used during production line testing to verify the emissions performance of production engines. Finally, the ABT program relies on certification data as the basis for determining credits. Although Otto-cycle engine manufacturers have not made wide use of the ABT program to date, EPA expects more use of the program in future years due to the new more stringent emissions standards and new ABT flexibilities.

EPA is proposing today that the compliance provisions for heavy-duty engines contained in 40 CFR part 86, subpart A would continue to apply to HDVs subject to the engine-based standards, with modifications designed to ensure that the durability demonstration procedures used by manufacturers in the certification process, and deterioration factors calculated by means of these procedures, predict the emission deterioration of a significant majority of in-use engines to be covered by the procedure.

The deterioration factor determination procedures in the regulations are proposed to be modified to specify that emission control component aging procedures will predict the deterioration of the significant majority of in-use engines over the breadth of their product line which would ultimately be covered by this procedure (manufacturers would be expected to show that their durability programs cover on the order of ninety percent or higher of the distribution of deterioration rates experienced by vehicles in actual use). In addition, manufacturers would be required to calculate multiplicative DFs by dividing high mileage exhaust emissions by the low milage exhaust emissions (*e.g.*, emissions at the useful life mileage by exhaust emissions at 4,000 miles).[87] This change only adds specificity to the regulations so that DFs are calculated using a consistent and credible methodology. These proposed modifications to the engine-based HDV compliance procedures would be effective for any engine family generating ABT credits prior to the 2004 model year. EPA requests comment on the proposed modifications to the engine-based compliance program durability procedures.

I. Non-Conformance Penalties

Non-conformance penalties are monetary penalties that manufacturers can pay instead of complying with an emission standard. (*See* CAA section 206(g) and 40 CFR part 86, subpart L.) In the final rule for the 2004 standards for diesel heavy-duty engines, we stated that provisions related to NCPs would be addressed in the 1999 Review. (*See* 62 FR 54700; October 21, 1997.) In order to establish NCPs for a specific standard, EPA must find that: (1) Substantial work will be required to meet the standard for which the NCP is offered; and (2) there is likely to be a "technological laggard" (i.e., a manufacturer that cannot meet the standard because of technological (not economic) difficulties and, without NCPs, might be forced from the marketplace). We also must determine compliance costs so that appropriate penalties can be established.

For diesel heavy-duty engines, the most recent NCPs established were for the 1994 particulate standard (0.10 g/bhp-hr) and the 1998 NO_X standard (4.0 g/bhp-hr). NCPs have not been established to date for Otto-cycle heavy-duty engines. NCPs were used extensively by manufacturers of highway heavy-duty engines in the late 1980s, prior to the implementation of our averaging, banking and trading program. Since that time, however, their use has been rare. We believe manufacturers have taken advantage of the averaging, banking and trading program as a preferred alternative to incurring monetary losses.

At this time, EPA has insufficient information indicating that both of the criteria described above are met for diesel or Otto-cycle heavy-duty engines. While we believe that substantial work will be required to meet the 2004 standards, we have no information indicating that a technological laggard is likely to exist. We also believe that the existing NO_X and particulate averaging, banking and trading program already provides considerable flexibility to meet the emission standards. Therefore, we are not proposing NCPs as part of today's proposed program, but we request comment on whether NCPs are necessary for the 2004 standards for diesel or Otto-cycle heavy-duty engines. Particularly, commenters should address the two criteria described above for establishing NCPs ("substantial work" and "technological laggard"). We recognize that it may be premature for manufacturers to comment on these criteria, since implementation of the 2004 standards is still five years away. It may be more prudent to consider addressing NCPs in a future action as we approach implementation of the 2004 standards.

V. Additional Heavy-Duty Engine Provisions Under Consideration

In addition to the provisions proposed in this notice, EPA is currently reviewing several related regulatory issues concerning control of emissions from heavy-duty vehicles and engines. As discussed in section X below, EPA is reviewing the feasibility of more stringent standards for heavy-duty vehicles and engines in the future, and the impact of fuel quality on that question. In addition, EPA believes that there are several provisions related to the need for an effective emissions control program that will benefit from further evaluation and development prior to proposal. EPA intends to explore these provisions further in the coming months and publish a notice of proposed rulemaking dealing with these issues in a separate regulatory process within the next 12 months. We would expect to follow this with a final rule in early 2001.

In particular, there are four issues—a revised definition of rated speed, OBD requirements for engines used in vehicles above 14,000 GVWR, a manufacturer-based in-use test program, and application of the NTE approach to heavy-duty Otto-cycle engines—that we intend to deal with in the separate process. As explained below, EPA believes that there are several open issues and/or informational gaps that need to be reviewed regarding these issues prior to proposal of regulations.

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[87] Manufacturers are not required to accumulate actual mileage on vehicles or engines in order to determine a deterioration rate. In many cases, the accumulation of mileage (or "service") is simulated by various "bench aging" techniques that allow the process to consume less time and resources than accumulating actual mileage.

As EPA wishes to complete the current rulemaking process as quickly as possible, EPA believes that it is appropriate to proceed with the current rulemaking without addressing these four issues at this time. This will allow us to gather information and work with interested parties in a separate process regarding these issues.

In a letter to EPA dated July 1, 1999, the Engine Manufacturers Association (EMA) committed to "work diligently and cooperatively" with EPA and CARB to resolve the open questions in a timely fashion.[88] EMA's letter outlined a process that does not preclude implementation of these programs in the 2004 model year, and in fact, highlights model year 2004 implementation as a stated goal of this cooperative effort. A cooperative approach to data-collecting, analysis, and problem-solving can help in developing the proposals for these issues. EPA will work with all parties involved, including states and environmental organizations, to develop robust, creative, environmentally protective and cost-effective proposals addressing these issues.

A. Revision to the Definition of Rated Speed

The definition of rated speed, where speed is the angular velocity of an engine's crankshaft (usually expressed in revolutions per minute, or rpm) is an important aspect of the existing FTP for on-highway HD diesel engines. The rated speed definition is important to the FTP because it is used to define the range of engine speeds over which the engine will be exercised during the test. The regulations require engine manufacturers to declare rated speeds consistent with the regulation for their engines for the purpose of testing on the FTP cycle; however, past experience has raised our concern that selection of rated speed for the purpose of FTP testing is not being performed consistently across the entire HD industry. We are concerned that some manufacturers have declared rated speeds which result in the FTP test being run over a speed and torque range which are not representative of the operating characteristics of a particular engine family, in order to influence the parameters under which the engine family is certified. Under the existing transient HD FTP, manufacturers could receive a NO_X emission benefit if they declared a rated speed that was higher than that envisioned under the regulations.

The on-highway HD diesel regulation defines rated speed as the speed at which the manufacturer specifies the maximum rated horsepower from the engine. The torque and rpm points used on the FTP are determined in part from the measured rated rpm, which in turn is determined using the rated speed or the calculated speed, whichever yields the higher speed (*see* 40 CFR 1330–90(g)). The calculated rated speed is determined by averaging the minimum and maximum speeds at which 98 percent of maximum power is generated. This definition was sufficient when it was developed in the late 1970's for engines with mechanical fuel injection and mechanical speed governors. For these engines, the slope of the power *vs.* speed lug curve remained monotonic and positive as speed increased until the mechanical governor engaged. At this point of governor control, the slope of the curve rapidly became sharply negative as speed increased toward the maximum governed speed. Therefore, maximum power occurred at nearly only one speed, and this speed was clearly identifiable by the breakpoint in the lug curve where the governor caused a rapid change in slope from positive to sharply negative. Engine manufacturers typically reported this speed as rated speed for sales and service literature as well as for FTP testing. Furthermore, the calculated rated speed calculation returned nearly the same speed, because of the nature of these lug curves with respect to the calculation.

With the advent of electronically fuel injected and governed engines, manufacturers began to design engines with high torque rises to meet customer demands. High torque rise engines often have lug curves in which the maximum power-speed point occurs at a much lower speed than mechanical engines. This power point is often at the maximum, where to the left and right of the maxima, the slope is slightly positive and negative, respectively. As speed increases beyond this maximum, the power does not taper off sharply, as in the case of mechanical engines. The electronic engines, on the other hand, have gradually negative slopes, and sometimes they even have a slight inflection to zero slope before the electronic speed governor engages. These characteristics render the rated speed calculation less meaningful because the two 98 percent speed points are often at very different speeds along the gradual positive and negative slopes around the actual maximum power-speed. Because of these characteristics of electronic engines, EPA believes there now exists a need for an objective and singular definition of rated speed for the purposes of FTP testing.

We believe a new definition of rated speed is warranted, and that a new definition should be both objective and representative of in-use operation. The rated speed definition should be objective and should result in a single value for a given engine family. This would avoid inequitable testing. The rated speed definition should also result in an FTP test cycle which exercises the engine's emission control system over a range of engine speeds and loads that are representative of in-use operation.

The Agency is not proposing a new definition of HD rated speed in today's action. While the Agency believes there are issues associated with the current definition with rated speed, there are a number of issues with developing a new definition which have not yet been resolved. We intend to include a proposal for a new definition in a forthcoming proposal, and we intend to work with the industry, the California Air Resources Board, and other interested parties in the upcoming months to develop such a proposal. The Agency recently proposed a definition of rated speed for nonroad diesel marine engines which may be an appropriate blueprint for the on-highway industry (*see* 63 FR 68528, October 21, 1998). The reader is encouraged to examine the proposed nonroad diesel marine definition as one possible approach for the on-highway HD diesel industry.

B. A Manufacturer-Based In-Use Testing Program for Heavy-Duty Engines

To help ensure that heavy-duty engines meet applicable emission standards throughout their useful lives, the Agency must have reasonable certainty that the emissions measured in the laboratory during certification of prototype engines reflect those experienced during real world operation of actual in-use engines. We believe that a manufacturer-run in-use testing program is an important way to ensure that the 2004 emission standards for heavy-duty engines are achieved in actual use throughout their useful lives, as required by the Act. We believe that manufacturers are best suited to run such an in-use testing program for several reasons. First, we understand that manufacturers commonly evaluate in-use engines on the road to support their engine development process and troubleshoot customer concerns. For manufacturers already conducting such in-use engine performance testing, we see an in-use testing program as adding an emissions measurement component.

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[88] Letter from Mr. Jed R. Mandel, Neal Gerber & Eisenberg, to Margo Oge, Office of Mobile Sources, July 1, 1999. Available in the public docket for review.

Second, we also understand that, through these product development and customer service/product warranty activities, manufacturers maintain a close relationship with the purchasers of their engines. We believe that this close customer relationship makes engine manufacturers best suited to locate and obtain in-use vehicles for emissions testing. For anyone other than the manufacturer, it would be difficult to locate in-use vehicles powered by a particular engine family, because heavy-duty trucks travel throughout the country. Since these trucks often are integral to business operations, owners may be unwilling to part with them for testing by entities other than the manufacturer. However, we expect that some owners, especially those of larger fleets, will view participation of their vehicles in an in-use testing program as an opportunity to establish an even stronger relationship with the manufacturer. This arrangement with the manufacturer could lead to other benefits to the owner, such as an opportunity to better communicate product needs.

Such a program would require manufacturers to measure emissions from a sample of in-use vehicles. Several issues need to be reviewed prior to proposal. These include the test procedures used for the in-use testing, the number of vehicles or engines that would be required for testing, and whether such testing will be done on engines (or vehicles) run in a laboratory or vehicles tested on the road. In the past, the laboratory testing of HD engines has been difficult for a number of reasons, with cost being one of the most significant barriers. In recent years, important advancements have been made in a number of emission measurement technologies as well as on-board engine management technologies which could allow for the development of a new and innovative in-use testing program for HD engines.

Today's action does not contain a proposal for manufacturer in-use testing of HD engines, with the exception of those HD Otto-cycle chassis certified engines which would be covered by the CAP 2000 provisions of today's proposal (*see* section IV.E.5—Compliance Assurance Program). The Agency does not believe that it currently has enough information to determine the most appropriate parameters of a manufacturer-run in-use testing program. However, the Agency intends to work with the engine manufacturers, CARB, the emissions measurement industry, and other interested parties over the next several months to explore these issues in order to achieve the goal of a meaningful in-use testing program which would be run by the engine manufacturers.

C. On-Board Diagnostics for Heavy-Duty Engines and Vehicles Above 14,000 Pounds GVWR

Similar to the expected benefits of having OBD requirements on light-duty vehicles and trucks, and heavy-duty vehicles and engines up to 14,000 pounds GVWR, we believe that there are similar benefits to having OBD requirements for applications over 14,000 pounds GVWR. However, there are many potential issues associated with applying OBD requirements to applications above 14,000 pounds GVWR that have not been of similar concern regarding smaller vehicles. For example, trucks this large tend to be equipped with power take-off units that are operable a substantial portion of the time. Examples are refrigerator trucks, garbage trucks, or cement mixers. Such vehicles often use engine power to operate the refrigeration unit, the compactor, or the cement mixer, in addition to powering the vehicle as it drives down the road. Such devices, powered off the engine, are referred to as "power take-off units." Both CARB and EPA regulations currently allow disablement of most OBD monitors during power take-off unit operation. This has been of little concern for smaller vehicles, because of the very small percentage of vehicles in the 14,000 lb. GVWR and under weight range that use such units for a substantial portion of their operation. However, this approach to OBD monitoring during power take-off unit operation is difficult for larger engines that use power take-off units during substantial portions of their operation. It makes little sense to require a sophisticated OBD system on a vehicle if it's allowed to remain disabled during essentially its entire operation due to the power take-off unit.

This represents just one issue which, while it can be dealt with effectively, requires more time and cooperative efforts with industry and others to develop a meaningful and effective set of OBD regulations. Another such issue is the lack of vertical integration in the heavy-duty industry, particularly in the classes above 14,000 pounds GVWR. This lack of vertical integration creates increased difficulty associated with bringing together engine, transmission, chassis, and safety related diagnostics because so many different manufacturers are involved in creating the end product. For that reason, we are not proposing OBD requirements for engines above 14,000 pounds GVWR at this time. We will gather further information and work closely with interested parties during the coming months to develop proposed OBD requirements for such engines.

D. Applying the Not-To-Exceed Approach and Emission Limits to Heavy-Duty Otto-Cycle Engines

Though today's action contains supplemental standards for HD diesel engines (Not-to-Exceed test and associated standards, Supplemental Steady State Test and associated standards, and the Load Response Test) today's action does not include similar provisions for HD Otto-cycle engines. As noted earlier, EPA's primary interest is developing an effective means of controlling actual in-use emissions across a broad range of in-use operation, a concern that extends to Otto-cycle engines as much as it does diesel engines. We believe that the same concerns which necessitate supplemental standards and test procedures for HD diesel engines may also exist for HD Otto-cycle engines, and that measures similar to those proposed for diesels to assure effective in-use control may also be warranted for Otto-cycle engines. We believe that the NTE approach is a valuable concept for accomplishing this goal for heavy-duty Otto-cycle engines, just as it is for diesels. However, we have not had as much time to consider such an approach for Otto-cycle engines, and data collection enabling appropriate setting of an NTE emission limit and definition of an Otto-cycle NTE zone is still underway as of today's proposal. Like other issues described in this section, we intend to work with the engine manufacturers, CARB, and other interested parties over the next several months to develop an NTE or similar approach to achieve the goal of assuring effective in-use control of HD Otto-cycle engines over a broad range of in-use operation.

VI. Are the Proposed Requirements Technologically Feasible?

A. 2004 Emission Standards for Heavy-Duty Diesel Engines

Today's proposal contains a reaffirmation of the 2004 NMHC+NO_X standards as well as several supplemental standards and test cycles for 2004 model year HDDE:

—2.4 g/bhp-hr NMHC + NO_X or 2.5 g/bhp NMHC + NO_X with a limit of 0.5 g/bhp-hr on NMHC on the existing Federal Test Procedure

—Emission standards of 1.0 times the FTP standards on the new Supplemental Steady-state Test Cycle

—Emission standards of 1.25 times the FTP standards under the new Not-to-Exceed test zone

Based on the information currently available to EPA, we believe manufacturers are making significant progress towards meeting the 2004 standards contained in today's proposal, and we believe the standards are technologically feasible. Chapter 3 of the draft RIA for this proposal contains a detailed description of the technologies we expect engine manufacturers to utilize to meet the proposed 2004 standards. The discussion here is a summary of the draft RIA discussion; the reader should refer to the RIA for a more detailed discussion. We request comment on this discussion and on our proposed feasibility assessment.

HD diesel engines being certified to the 1998 U.S. standards are already utilizing several advanced technologies, including high-pressure fuel injection systems, redesigned combustion chambers, air-to-air aftercoolers, waste-gated turbochargers and electronic controls. These technologies have allowed engine manufacturers to meet the emission standards which went into effect in 1998, while continuing to provide end users with improved fuel economy, improved durability, and improved driveability. The Agency expects to see incremental improvements in some of these strategies between now and 2004, but these improvements alone will not lower NMHC+NO_X emissions to the levels needed to meet the 2004 standards, and also comply with the current PM standard. To meet the 2004 standards, EPA expects that, in addition to the aforementioned strategies, manufacturers will utilize EGR, variable geometry turbo-chargers, fuel injection rate shaping, and possibly exhaust aftertreatment.

1. Probable Emission Control Strategies

Exhaust Gas Recirculation. EGR is the recirculation of exhaust gas from a point in an engine's exhaust system to a point in the intake system. EGR is used to decrease nitric oxide (NO) emissions, the primary species in diesel oxides of nitrogen. EGR dilutes intake air with combustion products, namely carbon dioxide (CO_2) and water vapor. These diluents decrease the adiabatic stoichiometric flame temperature for a given mass of fuel and oxygen burned.[89] This decrease in temperature exponentially decreases the oxidation rate of dissociated nitrogen (N) to NO.[90] EGR also decreases the mole fraction of oxygen, which proportionally decreases the oxidation rate of N to NO.[91]

EGR is very effective at decreasing NO_X. Laboratory studies have shown that EGR can reduce NO_X emissions by up to 90 percent at light load and up to 60 percent at full load near rated speed.[92] Additional studies have shown similar reductions at other speeds and loads.[93] However, because EGR decreases the overall rate of combustion in the cylinder, EGR tends to increase PM emissions and brake specific fuel consumption (BSFC). Furthermore, if EGR is not cooled before it is introduced to the intake system, it will reduce the density of the intake charge, and thus decrease the volumetric efficiency of the engine, which will decrease maximum power and increase BSFC. Hot EGR also offsets EGR's beneficial effect on combustion temperature because hot EGR increases the initial temperature of the air charge. Finally, EGR without additional boost air can result in incomplete combustion and an increase in PM emissions. Through proper EGR system design, however, researchers have demonstrated that these undesirable effects of EGR can be minimized so that the 2004 emission standards can be met, including fully offsetting the potential increase in PM to enable engines to continue to comply with the 0.1 g/bhp-hr standard.[94] The draft RIA contains additional discussion of how these issues are being addressed.

From a design perspective, EGR poses several challenges for it to be technologically feasible. First, a sufficient positive pressure difference must exist between the point in the exhaust system where the exhaust gas is extracted and the point in the intake system where it is introduced. Second, under most conditions, EGR should be cooled for best performance. Third, the rate of EGR must be controlled accurately, and the control system must respond quickly to changes in engine operation.[95] As discussed in more detail in the draft RIA, the Agency believes engine and component manufacturers have either resolved these design challenges, or have made significant progress towards a resolution. EPA believes the remaining challenges can be resolved considering the lead time remaining to engine manufacturers, and the use of ABT to introduce the technology across the product line over a period of time.

Fuel Injection Rate-shaping. Another key emission control strategy that EPA expects heavy-duty diesel engine manufacturers to use to meet the 2004 emission standards is fuel injection rate shaping. Injection rate shaping has been shown to simultaneously reduce NO_X by 20 percent and PM by 50 percent under some conditions.[96] It has also been shown to reduce BSFC by up to 10 percent without increasing NO_X emissions.[97] However, it can also lead to increases in smoke emissions and may not be as effective on low-NO_X engines equipped with EGR. Fuel injection rate shaping refers to precisely controlling the rate of fuel injected into the cylinder on a crank-angle by crank-angle resolution. Specific rate-shaping methods include pilot injection where a pilot quantity of fuel, typically less than two percent of the total fuel charge, is injected at some crank angle before the main injection event.[98] Split fuel injection refers to splitting, more or less evenly, the main injection into two or more separate injections (split injection is also referred to as pilot injection). Other methods include ramping the main injection event so that it resembles a triangular profile, rather than a conventional, square-shaped profile. Effective injection rate-shaping systems modulate the fuel injection timing, pressure, rate, and duration independent of engine speed and load. This characteristic of the fuel system implies that it should be mechanically de-coupled from the engine. Timing is then achieved, presumably, by electronic control.

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[89] Heywood J.B.: Internal Combustion Engine Fundamentals, McGraw-Hill, Inc, New York, p. 590, 1988.

[90] Dodge L.G., D.M. Leone, D.W. Naegeli, D.W. Dickey, K.R. Swenson: "A PC-Based Model for Predicting NO_X Reductions in Diesel Engines," SAE paper 962060, p.149, 1996.

[91] *Ibid.*

[92] Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO_X Control in Heavy-Duty Engines—What is the Limit?", SAE paper 980174, 1998. Dickey; and, Zelenka P., H. Aufinger, W. Reczek, W. Cartellieri: "Cooled EGR—A Key Technology for Future Efficient HD Diesels," SAE paper 980190, 1998.

[93] Kohketsu S., K. Mori, K. Sakai, T. Hakozaki: "EGR Technologies for a Turbocharged and Intercooled Heavy-Duty Diesel Engine," SAE paper 970340, 1997; Baert R., D.E. Beckman, A.W.M.J. Veen: "EGR Technology for Lowest Emissions," SAE paper 964112, 1996; and, Heavy-duty Engine Working Group, Mobile Source Technical Advisory Subcommittee of the Clean Air Act Advisory Committee, "Phase 2 of the EPA HDEWG Program—Summary Document", available in EPA Air Docket A–98–32.

[94] Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO_X Control in Heavy-Duty Engines-What is the Limit?", SAE paper 980174, 1998.

[95] Zelenka P., H. Aufinger, W. Reczek, W. Cartellieri: "Cooled EGR—A Key Technology for Future Efficient HD Diesels," SAE paper 980190, 1998.

[96] Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO_X Control in Heavy-Duty Engines—What is the Limit?", SAE paper 980174, 1998.

[97] Boehner W., K. Hummel: "Common Rail Injection System for Commercial Diesel Vehicles", SAE paper 970345, 1997; and Uchida N. K. Shimokawa, Y. Kudo, M. Shimoda: "Combustion Optimization by Means of Common Rail Injection System for Heavy-Duty Diesel Engines", SAE paper 982679, 1998.

[98] Boehner W., K. Hummel, "Common Rail Injection System for Commercial Diesel Vehicles", SAE 970345, 1997.

Rate shaping is used to control the rate of combustion within the cylinder. By controlling combustion rate, the rate of pressure and temperature rise is controlled. Therefore, rate shaping controls NO_X formation by one of the same mechanisms as EGR; it is used to lower peak combustion temperatures. Rate shaping can affect the time and temperature at which combustion ends, therefore it can also lower PM emissions by enhancing the mechanisms of in-cylinder soot oxidation.[99]

Several manufacturers and fuel system suppliers have demonstrated fuel injection systems that can achieve effective rate shaping. The three most common systems are the common rail; the mechanically actuated electronically controlled unit injector (MEUI); and the hydraulically actuated, electronically controlled unit injector (HEUI). These systems are described in more detail in the draft RIA (see Chapter 3).

Several studies have suggested rate-shaping methods to achieve emissions benefits. Researchers have reported decreased NO_X and PM emissions at intermediate speeds and loads by optimizing reduced-rate pilot injection with a high-pressure main injection, and one report suggested a strategy at high loads.[100] [101] [102] At intermediate loads, burnt pilot fuel is used as a torch to decrease ignition delay of the main injection event. This lowers peak flame temperatures and, thus, NO_X formation. At high loads the ignition delay is not as significant, but a very early pilot event (>20° before top-dead center) can be used to distribute low-temperature burnt gas in the cylinder, similar to EGR. This method can be optimized to decrease NO_X, PM, and BSFC simultaneously. Other reports have suggested ramped main injection at high loads and high speeds to decrease NO_X, square main injection at peak torque to decrease PM, and split injection at idle to decrease volatile PM (*i.e.* white smoke).

EPA expects manufacturers to utilize fuel injection rate shaping to meet 2004 emission standards. EPA believes the strategy is technologically feasible because fuel injection rate shaping is used to a limited extent today to meet 1998 emissions standards, and several manufacturers have announced the introduction in the next few years of next-generation fuel injection systems with rate shaping ability. Furthermore, EPA expects even greater emission control through rate shaping as manufacturers continue to develop advanced fuel systems and control algorithms. We request comment on the feasibility of rate shaping and EGR in the 2004 time frame.

2. Feasibility of 2004 HD Diesel Standards

EPA expects manufacturers to utilize a combination of technologies in order to meet the proposed 2004 standards, such as cooled EGR systems with VNT and advanced fuel injection with rate shaping capability. The draft RIA for this rule, as well as the final RIA for the 1997 rule, contains a summary of the emission performance of a number of technology combinations which have been published in the referred literature in the past several years. These published results are on a variety of laboratory test cycles, including the U.S. transient heavy-duty FTP, the old European ECE–R49 13 mode steady-state cycle, and the new European Euro III steady-state cycle (which the U.S. EPA new supplemental steady-state cycle in this proposal is based on).

The published results referenced in the draft RIA show a waste-gated turbocharged engine with a high-pressure loop EGR system and a MEUI fuel system achieving NO_X levels on the new Euro III cycle at levels between 1.83 and 3.24 g/bhp-hr (the 1.83 level resulted in a 2.4 percent increase in fuel consumption), with corresponding PM levels between 0.15 and 0.06 g/bhp-hr. Results on a HD diesel engine equipped with a VNT, high-pressure loop EGR system, and high pressure fuel injection system achieved results on the older European ECE–R49 cycle for NO_X between 1.80 and 2.24 g/bhp-hr (the 1.80 level resulted in a 2.3 percent increase in fuel consumption). For both tests a PM level of 0.08g/bhp-hr was reported. Results referenced in the final RIA for the 1997 rule include a study which resulted in $HC+NO_X$ levels of 2.54 g/bhp-hr on the U.S. HD transient FTP, this engine was equipped with an EGR system, a rate-shaping fuel injection system, and an oxidation catalyst and was run on a low sulfur fuel.

The Agency believes the technologies described above and in the draft RIA will provide the emission reductions necessary to allow engine manufacturers to meet the proposed 2004 standards. These control technologies have been demonstrated to provide significant emission reductions under both transient and steady-state test conditions. Steady-state and transient operation are represented in this proposal by the existing FTP, and the new NTE, LRT, and supplemental steady-state cycle.

In order to meet the proposed NTE standards, manufacturers will need to perform emission mapping of each engine family in order to insure that over the NTE control zone, optimization of the emission control system provides sufficient control of the emission map for each pollutants which will maintain levels below the 1.25 times the FTP standard over a 30 second interval. EPA believes the emission control technologies discussed previously as well as in the RIA are capable of providing this level of emission control. The emission control capacities of these technologies are applicable to NTE and LRT test conditions in the same manner as they apply to the transient and steady-state test conditions. The less stringent levels for NTE should also provide a level of assurance to manufacturers.

As discussed, several publicly available studies have shown results which approach or surpass the proposed standards, though several indicate fuel economy penalties on the order of two percent. Significant development and demonstration of cooled EGR, VNT, and fuel injection systems has been performed in the past two years. Engine manufacturers have four years of lead time available in which to continue to fully develop and optimize these control technologies in order to meet the proposed standards, as well as to minimize or eliminate the fuel economy penalty associated with some technologies. Finally, the 1997 rulemaking put in place ABT provisions for HD diesel engines for the 2004 standards. These ABT provisions provide engine manufacturers with considerable flexibility in determining how they will meet the proposed standards on a corporate average, and thus provides the manufacturers with some level of flexibility in determining how to apply the range of technologies available across their product line.

Technology combinations of cooled EGR systems, VNTs, and advanced fuel injection systems have been demonstrated in the past several years which are capable of meeting the proposed 2004 standards. Engine manufacturers have an additional four years of lead time to develop and optimize these control systems. EPA has considered the well known inverse relationship between NO_X and PM. As discussed previously, integrated emission control technology packages (cooled EGR, VNT, and advanced fuel injection system) have been demonstrated to significantly reduce NO_X with a minimal increase in PM. Considering the several years of additional lead time available to manufacturers, achievement of the 2004 standards is clearly feasible. In addition, as discussed in the draft RIA, other control methods, such as aftertreatment, though unnecessary to meet the 2004 standards, could be used to further reduce emissions. The ABT provisions provide engine manufacturers some flexibility in determining the appropriate mix of technologies across their product line. For these reasons, EPA fully anticipates that engine manufacturers will meet the 2004 standards contained in today's proposal.

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[99] Heywood, J.B., Internal Combustion Engine Fundamentals, McGraw-Hill, Inc., New York, p. 643–644, 1988.

[100] Ikegami, M., K. Nakatani, S. Tanaka, K. Yamane: "Fuel Injection Rate Shaping and Its Effect on Exhaust Emissions in a Direct-Injection Diesel Engine Using a Spool Acceleration Type Injection System", SAE paper 970347, 1997.

[101] Uchida N, K. Shimokawa, Y. Kudo, M. Shimoda: "Combustion Optimization by Means of Common Rail Injection System for Heavy-Duty Diesel Engines", SAE paper 982679, 1998.

[102] Dickey D.W., T.W. Ryan III, A.C. Matheaus: "NO_X Control in Heavy-Duty Engines—What is the Limit?", SAE paper 980174, 1998.

B. 2004 Emission Standards for Heavy-Duty Otto-Cycle Vehicles and Engines

This section discusses the current technologies being used by manufacturers and the key technology changes we believe would be available to meet the proposed 2004 vehicle and engine standards. Technological feasibility of the exhaust emissions standards is presented first, followed by analyses for ORVR controls. Manufacturers would ultimately decide what is best for their individual product lines. Further information on the various available technologies and EPA's technological feasibility assessment is contained in the Technological Feasibility section of the Regulatory Impact Analysis. We request comment on the following discussion and on our feasibility assessment for heavy-duty Otto-cycle vehicles and engines.

1. Current Technologies

Gasoline engine manufacturers are already producing heavy-duty engines that achieve a level of emission control better than the control required by current standards. Table 12 provides a list of some key technologies currently being used for HD engine emissions control. Manufacturers have introduced improved systems as they have introduced new or revised engine models. These systems can provide very good emissions control and many engines are being certified to levels of less than half the current standards. Many of the technologies have been carried over from light-duty applications.

Table 12.—Key Technologies for Current Heavy-Duty Otto-Cycle Engines

- Sequential Fuel Injection/electronic control
    - 3 way catalyst
    - Pre and post catalyst heated oxygen sensors
- Electronic EGR
- Secondary air injection
- Improved electronic control modules

Improving fuel injection has been proven to be an effective and durable strategy for controlling emissions and reducing fuel consumption from gasoline engines. Improved fuel injection will result in better fuel atomization and a more homogeneous charge with less cylinder-to-cylinder and cycle-to-cycle variation of the air-fuel ratio. These engine performance benefits will increase as technology advances allow fuel to be injected with better atomization. Increased atomization of fuel promotes more rapid evaporation by increasing the surface area to mass ratio of the injected fuel. This results in a more homogeneous charge to the combustion chamber and more complete combustion. Currently, sequential multi-port fuel injection (SFI) is used in most, if not all, applications under the proposed standards because of its proven effectiveness.

One of the most effective means of reducing engine-out NO_X emissions is EGR. By recirculating spent exhaust gases into the combustion chamber, the overall air-fuel mixture is diluted, lowering peak combustion temperatures and reducing NO_X. Exhaust gas recirculation is currently used on heavy-duty Otto-cycle engines as a NO_X control strategy. Many manufacturers now use electronic EGR in place of mechanical back-pressure designs. By using electronic solenoids to open and close the EGR valve, the flow of EGR can be more precisely controlled.

EPA believes that the most promising overall emission control strategy for heavy-duty Otto-cycle engines is the combination of a three-way catalyst and closed loop electronic control of the air-fuel ratio. Control of the air-fuel ratio is important because the three-way catalyst is effective only if the air-fuel ratio is at a narrow band near stoichiometry. For example, for an 80 percent conversion efficiency of HC, CO, and NO_X with a typical three-way catalyst, the air-fuel ratio must be maintained within a fraction of one percent of stoichiometry. During transient operation, this minimal variation cannot be maintained with open-loop control. For closed-loop control, the air-fuel ratio in the exhaust is measured by an oxygen sensor and used in a feedback loop. The throttle position, fuel injection, and spark timing can then be adjusted for given operating conditions to result in the proper air-fuel ratio in the exhaust. Most if not all engines have already been equipped with closed loop controls. Some engines have been equipped with catalysts that achieve efficiencies in excess of 90 percent. This is one key reason engine and vehicle certification levels are very low. In addition, electronic control can be used to adjust the air-fuel ratio and spark timing to adapt to lower engine temperatures, therefore controlling HC emissions during cold start operation.

All HD Otto-cycle engines are already equipped with three-way catalysts. Engines may be equipped with a variety of different catalyst sizes and configurations. Manufacturers choose catalysts to fit their needs for particular vehicles. Typically, catalyst systems are a single converter or two converters in series or in parallel. A converter is constructed of a substrate, washcoat, and catalytic material. The substrate may be metallic or ceramic with a flow-through design similar to a honeycomb. A high surface area coating, or washcoat, is used to provide a suitable surface for the catalytic material. Under high temperatures, the catalytic material will increase the rate of chemical reaction of the exhaust gas constituents.

Significant changes in catalyst formulation have been made in recent years and additional advances in these areas are still possible. Platinum, Palladium and Rhodium (Pt, Pd, and Rh) are the precious metals typically used in catalysts. Historically, platinum has been widely used. Today, palladium is being used much more widely due to its ability to withstand very high exhaust temperatures. In fact, some HD vehicles currently are equipped with palladium-only catalysts. Other catalysts contain all three metals or contain both palladium and rhodium. Some manufacturers have suggested that they will use Pd/Rh in lieu of tri-metal or conventional Pt/Rh catalysts for underfloor applications. Improvements in substrate and washcoat materials and technology have also significantly improved catalyst performance.

2. Chassis-Based Standards

EPA is proposing to extend the California LEV–I MDV standards nationwide. California began requiring some vehicles to meet LEV standards in 1998 and the phase-in will be complete in 2001. The technological feasibility assessment and technology projections are based primarily on the mix of technologies being used to achieve California LEV emissions levels.

Of the anticipated changes, enhancements to the catalyst systems are expected to be most critical. Catalyst configurations are likely to continue to vary widely among the manufacturers because manufacturers must design the catalyst configurations to fit the vehicles. One potential change is that manufacturers may move the catalyst closer to the engine (close-coupled) or may place a small catalyst close to the engine followed by a larger underfloor catalyst. These designs provide lower cold start emissions because the catalyst is closer to the engine and warms up more quickly. Typically, the catalyst systems used in HD applications have a large total volume but with lower precious metal content per liter compared to light-duty catalyst systems. For 2004, EPA projects an increase in overall precious metal loading of about 50 percent. EPA does not expect significant increases in total catalyst volume.

Calibration changes will also be important. The engine and catalyst systems must be calibrated to optimize the performance of the systems as a whole. Post catalyst oxygen sensors will allow further air fuel control. Manufacturers are moving to more powerful computer systems and EPA expects this trend to continue. Other technologies such as insulated exhaust systems may also be used in some cases to reduce cold start emissions.

HD vehicles in California have typically been certified with full life emissions levels in the 0.3–0.5 g/mile range for NO_X and the 0.1–0.3 g/mile range for NMOG. These levels are well within the LEV standards and provide manufacturers with a compliance cushion. EPA expects manufacturers to sell these vehicles or very similar vehicles nationwide to meet the proposed EPA standards.

3. Engine-Based Standards

Currently, most engine families are certified with emissions levels of less than half the standard. Only one engine family is certified with NO_X emissions levels within 10 percent of the current 4.0 g/bhp-hr NO_X standards. Manufacturers have begun to apply advanced system designs to their heavy-duty applications. Recently introduced engine families have been certified with emissions levels of 0.5 g/bhp-hr combined NMHC+NO_X.[103] These engines and systems feature precise air/fuel control and superior catalyst designs comparable to the catalyst systems being used in the California LEV program. Based on industry input, we believe that manufacturers will continue the process of replacing their old engine families with advanced engines over the next several years. As new and more advanced engines are introduced, EPA anticipates that they will be capable of achieving the proposed standards.

Manufacturers have stated on several occasions that they target emissions certification levels of about half the standard, due to the potential for in-use deterioration of catalysts and oxygen sensors. Catalysts experience wide variations in exhaust temperature due to the wide and varied usage of vehicles in the field. Some vehicles may experience more severe in-use operation than is represented by the durability testing currently conducted for engine certification. Manufacturers have argued that EPA should not set new standards based on certification data because certification levels do not account for severe in-use deterioration. Based upon these comments EPA would expect that manufacturers would certify engines at about 0.5 g/bhp-hr NMHC+NO_X in order to ensure compliance with the 1.0 g/bhp-hr standard.

Catalyst systems with increased precious metal loading will be a critical hardware change for meeting the proposed engine standards. Optimizing and calibrating the catalyst and engine systems as a whole will also be important in achieving the proposed standards. Increased use of air injection to control cold start emissions may also be needed, especially to reduce NMHC emissions during cold start operation. Also, improved EGR systems and retarded spark timing may be needed to reduce engine out NO_X emissions levels.

Catalyst system durability is a key issue in the feasibility of the standards. Historically, catalysts have deteriorated when exposed to very high temperatures and this has long been a concern for heavy-duty work vehicles. Manufacturers have often taken steps to protect catalysts by ensuring exhaust temperatures remain in an acceptable range. Catalyst technologies in use currently are much improved over the catalysts used only a few years ago. The improvements have come with the use of palladium, which has superior thermal stability, and through much improved washcoat technology. The catalysts have been shown to withstand temperatures typically experienced in HD applications. Manufacturers also continue to limit exhaust temperature extremes not only to protect catalyst systems but also to protect the engine.

In addition to general comments noted above regarding the need for compliance cushion, manufacturers presented EPA with an analysis of the Otto-cycle engine emissions standards for 2004.[104] The analysis assumed:

- Worst-case NO_X catalyst efficiency of 90.9 percent at the end of the engine's useful life
- Worst-case engine-out NO_X level of 12 g/bhp-hr
- A cushion of .3 g/bhp-hr for engine variability and a safety margin of 20 percent of the standard
- Tailpipe NMHC levels of 15 percent of the NO_X level (.26 g/bhp-hr)

Based on these assumptions, manufacturers recommended a 2.0 g/bhp-hr NMHC plus NO_X standard, according to the following methodology.

Variability=0.3 g/bhp-hr (eq. 1)
Safety Margin=20% (NO_X level) (eq. 2)
NMHC Level=14.8 % (NO_X Level) (eq. 3)
Combined NMHC+NO_X Standard=NO_X Level+NMHC Level (eq. 4)
NO_X Level=Post-catalyst NO_X rate+Variability+Safety Margin (eq. 5)
(Step 1) Post-catalyst NO_X rate=(1 − conversion efficiency)×Engine-Out NO_X level=(1–0.91)×12 g/bhp-hr=1.09 g/bhp-hr (eq. 6)
(Step 2) Putting eq. (1), (2), and (6) into equation (5)—NO_X Level=1.09 g/bhp-hr+0.3 g/bhp-hr+0.2×NO_X Level (eq. 5b)
(Step 3) Solving Equation (5b) for NO_X Level gives—NO_X Level=(1.09 g/bhp-hr+0.3 g/bhp-hr)/(1–0.2)=1.74 g/bhp-hr
(Step 4) Placing the results from (Step 3) into Equation 5 gives—NMHC Level=14.8% NO_X Level=0.148×1.74 g/bhp-hr=0.26 g/bhp-hr
(Step 5) Placing the results from (Step 3) and (Step 4) into equation (1) gives: Combined NMHC+NO_X Standard=0.26 g/bhp-hr+1.74 g/bhp-hr=*2 g/bhp-hr*

Manufacturers noted that a catalyst efficiency of about 97 percent would be needed to meet a 1.0 g/bhp-hr standard and that their assessments of post-2000 catalysts indicate worst case performance well below this level. The 2.0 g/bhp-hr standard recommended by manufacturers seems to indicate that compliance cushions greater than half the standard are needed.

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[103] EPA is not proposing to set the standard at this level because EPA recognizes that a manufacturer needs to design their technology to build in sufficient compliance margin, based on the technology and standards at issue here.

[104] "September 15, 1998 Meeting with Engine Manufacturers Association (EMA)", EPA Memorandum from John W. Mueller, Mechanical Engineer, to docket A–95–27, November 4, 1998. Docket A–95–27, Docket # IV–E–26.

[105] [Reserved]

The deterioration factor for the engine and catalyst system in the above analysis would be on the order of four or five.[106] This is extremely high compared to the deterioration factors currently used for certification which are typically between one and two. While EPA understands that current deterioration factors may represent typical deterioration and not severe deterioration, EPA believes that deterioration factors of four or five are unreasonably high and unlikely. EPA would expect a deterioration factor representing more severe operation to be closer to two, which is consistent with manufacturers' previous statements of certifying with certification levels of half the standard to allow for needed compliance margin.

Manufacturers state that their catalyst assumptions represented catalyst deterioration based on worst case vehicle operation (highly loaded operation, high exhaust temperatures). Details of the catalyst were not available except that manufacturers stated that the catalyst represented post-2000 catalyst technology. Due to the lack of detail, it is difficult to evaluate the assumption. However, EPA believes that this assumption is somewhat conservative given the recent developments in catalyst technology, the lead time available, and methods available to protect catalysts under worst case vehicle operation.

Engine-out NO_X levels are also critical to the analysis. In their analysis, manufacturers assumed engine-out NO_X levels of 12 g/bhp-hr, based on manufacturer development data for one engine. EPA does not believe that the engine-out NO_X level of 12 g/bhp-hr is a reasonable or representative assumption. Other available data indicates that several engines have engine-out NO_X emissions well below this level in the 6 to 10 g/bhp-hr range. Also, a previous assessment of engine standards presented to EPA by one manufacturer assumed much lower engine-out NO_X levels.[107] EPA does not believe that the current standards have encouraged manufacturers to place a high priority on engine-out emissions levels. In fact, one manufacturer has removed EGR systems from its engines. For recent engines, catalysts have provided the majority of needed emissions control.

EPA also further considered the engine variability factor of 0.3 g/bhp-hr built into the manufacturers' analysis. The analysis as presented assumes a 12 g/bhp-hr engine-out NO_X level. Manufacturer data for the developmental engine suggests that 12 g/bhp-hr is the worst case engine-out level anticipated (the actual highest test point recorded was 12.65). It appears to EPA that manufacturers double counted engine variability by using the worst case engine data and an engine variability factor. Using engine-out NO_X levels of 12 g in the analysis but without the engine variability factor yields a NO_X + NMHC level of 1.6 g/bhp-hr. Without including a safety margin, which may be appropriate considering the analysis is already based on worst case engine and catalyst assumptions, the level would be 1.3 g/bhp-hr. To reach the 1.0 g/bhp-hr level with this engine and a 20 percent safety margin, a catalyst efficiency of 94 percent would be needed, according to the following assumptions and methodology.

Combined NMHC + NO_X Standard = 1.0 g/bhp-hr
Engine-Out NO_X level (worse-case) = 12 g/bhp-hr
Safety Margin = 20 % (NO_X level) (eq. 1)
NMHC Level = 14.8 % (NO_X Level) (eq. 2)
Combined NMHC + NO_X Standard = NO_X Level + NMHC Level (eq. 3)
NO_X Level = Post-catalyst NO_X rate + Safety Margin (eq. 4)
Post-catalyst NO_X rate = (1-Conversion Efficiency) x Engine-Out NO_X level (eq. 5)
(Step 1) Equation (3) can be solved for NO_X Level—Combined NMHC + NO_X Standard = NO_X Level + NMHC Level 1.0 g/bhp-hr = NO_X Level + 0.148 NO_X Level NO_X Level = 0.871 g/bhp-hr
(Step 3) Placing the results from Step (1) and Equation (1) into Equation (4), and solving for Post-catalyst NOx rate gives—NO_X Level = Post-catalyst NO_X rate + Safety Margin 0.871 g/bhp-hr = Post-catalyst NO_X rate + 0.2 × 0.871 g/bhp-hr Post-catalyst NO_X rate = 0.697 g/bhp-hr
(Step 4) Placing the results from Step (3) into Equation 5 and solving for Conversion Efficiency gives:
Post-catalyst NO_X rate = (1-Conversion Efficiency) × Engine-Out NO_X level
0.697 g/bhp-hr = (1—Conversion Efficiency) × 12 g/bhp-hr
Conversion Efficiency = 0.94 = 94%

EPA believes that the proposed standards would require manufacturers to focus some effort on engine-out emissions control and that engine-out NO_X levels in the 6 to 8 g/bhp-hr range are reasonably achievable. Some engines are already in this range. For other engines, some recalibration of engine systems including the EGR system and perhaps some modest hardware changes to those systems would be necessary. EGR plays a key role in reducing engine-out NO_X, and system redesign may allow more effective use of this technology.

When coupled with a catalyst with worst case efficiencies in the 91 to 93 percent range, these engines could achieve the proposed standards. Of course with higher catalyst efficiencies, manufacturers would not have to achieve lower NO_X engine-out levels. Catalyst efficiencies of about 93 percent would allow manufacturers to maintain compliance margins in the range of 25 and 45 percent of the standard. EPA believes these margins are sufficient considering the analysis is also based on worst case catalyst efficiencies.

To help address phase in concerns that could arise for manufacturers, EPA is proposing a modified ABT program for engines, as described above. The ABT program can be an important tool for manufacturers in implementing a new standard. The program allows manufacturers to comply with the more stringent standards by introducing emissions controls over a longer period of time, as opposed to during a single model year. Manufacturers plan their product introductions well in advance. With ABT, manufacturers can better manage their product lines so that the new standards don't interrupt their product introduction plans. Also, the program also allows manufacturers to focus on higher sales volume vehicles first and use credits for low sales volume vehicles. EPA believes manufacturers have significant opportunity to earn credits in the pre-2004 time frame.

Considering all of these factors, EPA believes that the 1.0 g/bhp-hr NMHC+NO_X standard is an appropriate standard for HD Otto-cycle engines in the 2004 time frame; however, we are requesting comment on a standard in the range of 1.0 to 1.5 g/bhp-hr. Certification levels of 0.5 g/bhp-hr NMHC+NO_X have been achieved on recently introduced engines of varied sizes. EPA believes that the proposed standard provides sufficient opportunity for manufacturers to maintain a reasonable compliance margin. As manufacturers continue with normal product plans between now and 2004, improved engines will continue to replace older models. The ABT program is available for manufacturers who have not completely changed over to new engine models by 2004. ABT provides manufacturers with the opportunity to earn credits prior to 2004 and use the credits to continue to offer older engine models that have not yet been redesigned or retired by 2004.

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[106] During developmental testing the deterioration factor is determined by dividing the full life emissions level for an engine by the low mileage emissions level. The low mileage level of the certification engine is then multiplied by the deterioration factor to predict full life emissions.

[107] The engine-out data and the details of this analysis are considered Confidential Business Information.

[108] [Reserved]

EPA requests comments on the above analyses and directs the reader to the Regulatory Impact Analysis for further detail on technological feasibility. EPA continues to seek further information on emissions control and engine system capability and durability. EPA requests comment on the feasibility of the proposed standards and requests data which would help the Agency further evaluate advanced system durability.

4. Onboard Refueling Vapor Recovery

EPA believes that today's proposed ORVR requirements are technologically feasible. In its previous ORVR rulemaking, EPA elected to apply ORVR requirements only to LDVs and LDTs (*see* 59 FR 16262, April 6, 1994). As previously discussed in the section on the proposed ORVR standards, EPA chose at the time of the original rulemaking not to apply ORVR to HDVs because of concerns over secondary manufacturers, different fuel tank designs for larger HDVs than for LDVs and LDTs, and the fact that HDVs are certified under an engine-based testing program. These three issues are addressed in section IV.E.4.b) of this preamble. In the original ORVR rule, however, EPA analyzed the potential application of ORVR to all HDVs. In that analysis EPA concluded that ORVR is technologically feasible for application to HDVs. EPA concluded that the systems which would be required for the covered subset of HDVs would be essentially the same as those for LDVs and LDTs. Such systems have already been successfully implemented on a portion of the LDV fleet. The Agency is aware of no information on fundamental changes to HDV fuel system design which would cause it to believe that the original analysis is no longer valid. EPA requests comment on this view.

ORVR systems must meet certain basic requirements in order to be effective at controlling refueling emissions. In general, they must provide for the routing of displaced vapors from the fuel tank to the engine rather than allowing them to escape uncontrolled to the atmosphere. This will likely be accomplished through the use of 1) a fillneck seal which prevents the vapors from escaping out the fillneck, 2) a fuel tank vent mechanism, to allow for the controlled routing of the vapors from the fuel tank, 3) vapor lines for transporting vapors, 4) a canister containing activated carbon to temporarily store the vapors, and 5) a purge system to regenerate the canister and route the vapors to the engine.

The major components of an ORVR system are already in place on HDVs in response to EPA's enhanced evaporative emission requirements (*see* 58 FR 16002, March 24, 1993). The primary differences between an enhanced evaporative control system and an ORVR system lie in the need to prevent vapors from escaping via the fillneck during a refueling event, and the fact that the vapor flow rates out of the fuel tank are much higher during refueling than during vehicle operation and diurnal events that enhanced evaporative systems are designed to control. A complete discussion of the major components of an ORVR system and how they differ from those in a system designed to comply with the enhanced evaporative requirements is contained in the Regulatory Impact Analysis.

C. On-Board Diagnostics

For Otto-cycle vehicles and engines, the most difficult monitors to implement are those for the catalyst system, the evaporative emission control system, and engine misfire. While each of these monitors poses technological challenges, none of them pose technological feasibility concerns. Rather than concerns over technological feasibility, EPA expects concerns, where today's proposal applies to Otto-cycle vehicles and engines, over resource constraints for OBD calibration and associated verification testing.

EPA does not consider resource constraints a feasibility issue, nor does EPA believe the manufacturers will be constrained by today's OBD provisions. EPA believes this is true for both the Otto-cycle and the diesel OBD requirements. Since the 1996 model year, manufacturers have been equipping their vehicles and engines with OBD systems essentially identical to those being proposed today. This is true federally for all vehicles above 8500 pounds GVWR, and in California for all vehicles and engines above 14,000 pounds GVWR. The Agency believes that the four year lead time within today's proposal matched with the OBD phase-in of 40/60/80/100 percent provides adequate lead time to apply the real world tested OBD system technology to their new sales fleet above 14,000 pounds GVWR without resource difficulties.

The transmission represents an area of potential concern for engine certified as opposed to chassis certified Otto-cycle and diesel engines. Typically, the engine manufacturer certifies and sells its engine, without an associated transmission, to a chassis manufacturer. The chassis manufacturer then "mates" the engine to a transmission purchased from a transmission manufacturer representing a third industry party. The regulations proposed today require that chassis certified systems employ transmission diagnostics, but would not require that engine certified systems employ transmission diagnostics.

EPA believes that it is reasonable to expect that electronically controlled transmissions will be designed with some level of diagnostics to ensure proper operation. In addition, the Agency expects that those transmissions will utilize industry standard communication protocols allowing the transmission and the engine control computers to communicate, and allowing any transmission-related OBD codes to be downloaded via the standard diagnostic data link connector without engine manufacturer involvement. If either of these expectations is inaccurate, EPA requests information concerning the likely operational characteristics of electronic transmissions. If EPA's expectations are accurate, we request comment on the appropriateness of the engine certified OBD requirements, Otto-cycle and diesel, being limited to engine diagnostics, and simply requiring that transmissions comply with industry standard communication protocols.

Specific to diesel vehicles and engines, the Agency believes there are three areas of concern associated with technological feasibility: EGR monitoring; misfire monitoring; and, aftertreatment monitoring. With respect to EGR monitoring, the primary concern is expected to be the cooling componentry of a cooled EGR system. Other aspects of the EGR system, such as activation of the EGR valve, verification of proper flow, etc., can be accomplished as is already being done on Otto-cycle and diesel vehicles and engines under 14,000 pounds GVWR.[109] However, the cooling system presents a new challenge. The Agency believes monitoring of the cooling system is feasible by employing temperature sensors to ensure proper EGR cooling (heat transfer) given existing engine conditions, and coolant flow. If the cooling system becomes fouled, its ability to transfer heat from the exhaust gases to the coolant will be diminished and a resultant temperature inconsistency should be observed. Likewise, if coolant ceases to flow through the cooling system, a resultant temperature inconsistency should be observed. In fact, EPA believes that manufacturers will monitor EGR cooling system performance absent a requirement to do so. As discussed in Chapter 3 of the Draft Regulatory Impact Analysis for today's proposal, manufacturers will be designing their EGR systems to cool the EGR to specific design targets to optimize engine performance and to minimize condensation of sulfuric acid. The only way to ensure that engine performance is being optimized is to monitor the performance of the EGR system and compare it to the specific design targets.

As for diesel misfire monitoring, the Agency believes that the proposed requirement is technologically feasible. In fact, manufacturers are certifying compliant diesel misfire monitors for sale in California on vehicles and engines under 14,000 pounds GVWR. We believe, like CARB, that diesel misfire is an air quality concern. Also, we believe that most users of diesel vehicles and engines under 14,000 pounds GVWR, particularly vehicles and engines less than 10,000 pounds GVWR, will not notice or may ignore diesel misfires. In contrast, we believe that most users of engines above 14,000 pounds GVWR will notice and not ignore misfires. We believe this is true because most of these engines are driven by professionals for whom minimizing fuel consumption and maximizing engine performance is a primary business concern. Conversely, most vehicles and engines under 14,000 pounds GVWR, particularly vehicles and engines under 10,000 pounds GVWR, are driven by individuals as personal transportation or for small business use. Such drivers are probably less familiar with the day-to-day operating characteristics of their engines and are probably less concerned with fuel consumption and engine performance. Nonetheless, we are interested in comments on the misfire monitoring requirements of today's proposal. In addition, we request data, such as warranty data, showing misfire rates and possible differences between engines above and below 14,000 pounds GVWR.

With respect to diesel catalyst monitoring, the Agency expects such monitoring to be conducted using temperature sensing devices to detect an exotherm within the aftertreatment device. The Agency requests comment on this expectation and on the probable magnitude of the exotherm. Comments should consider whether limiting the operating modes during which the exotherm is measured (for example, during steady-state operation at a specific engine load, etc.) might increase the accuracy of the monitoring method. Comments should also consider whether, given the provision for back pressure monitoring in lieu of performance monitoring provided test data demonstrate that emissions will not exceed today's proposed malfunction threshold, manufacturers will even have to employ diesel catalyst emission performance monitors. The Agency expects manufacturers to demonstrate that emissions will not exceed the malfunction thresholds, even with the aftertreatment device removed, and then employ the more basic back pressure sensor. This back pressure sensor is intended to indicate the presence of the aftertreatment device. While the back pressure sensor cannot directly detect the performance characteristics of the aftertreatment device, it nonetheless provides some level of assurance that emissions are being controlled due to the presence of the device. The Agency requests comment on the diesel aftertreatment monitoring requirements and data on feasibility, and comment on the appropriateness of the diesel aftertreatment presence detection requirement. The Agency also requests comments and supporting data on the durability of diesel aftertreatment devices.

Note that, for diesel vehicles and engines, the Agency considers the EGR system to be the primary emission control system that will be used to meet the 2004 standards. This makes the EGR system somewhat analogous to the catalyst in an Otto-cycle emission control system. Because the Otto-cycle catalyst is responsible for roughly 90 percent of emission control, the Agency considers it imperative that the catalyst be monitored via OBD to ensure its continued performance. Likewise, the diesel EGR system is expected to account for roughly 50 percent of the emission control, making it perhaps the single largest contributor to emission control on a diesel engine. Therefore, the Agency considers it imperative that the EGR system be monitored on a diesel vehicle or engine. This is especially true given what the Agency considers to be a rather low cost associated with today's proposed requirement for monitoring this critical emission control system.[110] The Agency fully expects that manufacturers will employ OBD techniques on their diesel EGR systems to ensure satisfactory engine performance for their customers. Today's proposal simply ensures that the monitoring will occur, and it ensures that the monitoring will consider not only engine performance, but also emission performance.

VII. What Are the Environmental Benefits of This Proposal?

A. 2004 Emission Standards for Heavy-Duty Diesel Engines

In Chapter 6 of the draft Regulatory Impact Analysis, EPA provides a detailed explanation of the methodology used to determine the environmental benefits from heavy-duty diesel engines associated with this proposal. EPA requests comment on all aspects of the emissions inventory analysis. The following discussion gives a general overview of the methodology and results.

In the 1997 rulemaking, EPA's emission inventory modeling assumed that all HDDE's which would certify to the future 2004 standards would be meeting those standards in-use, under all operating conditions, i.e., EPA was not aware of the high NO_X emissions being emitted by certain HDDE's under certain operating conditions. The supplemental standards and testing provisions will help assure that assumptions used for the 1997 rulemaking are realized. Therefore, the emission inventory modeling discussed below and in the draft RIA for today's rule uses the same methodology as the 1997 rule, including the same emission factors. For this reason, the emission benefits are similar in magnitude to the estimates from the 1997 rulemaking. In addition, the emission estimates presented here do not include the large, previously unknown, excess emissions from engines manufactured from 1988 to 1998.

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[109] Current EGR monitoring systems may use the existing intake air temperature sensor—opening the EGR valve should result in an increased intake air temperature. Systems may also use an intake air pressure sensor—opening the EGR valve will change the intake air pressure.

[110] The Agency estimates $3 to $7 per vehicle/engine for today's proposed OBD requirements, primarily for development and demonstration testing given that most of the diesel monitoring will be done by the manufacturer absent any requirement to do so.

We did not include the excess emissions in the modeling for this proposal. While the impact from these previously produced engines would affect the total estimate of the emission impact from the in-use fleet of HDDE in 2004 and beyond, it would not impact the predicted emission benefit resulting from the lowering of the 1998 standard to the 2004 standards, because the predictions for both standards properly do not include these excess emissions. It is this emission reduction which is important for this rulemaking. In the future, the Agency will be making the necessary changes to future versions of the official EPA mobile source emission factor model (currently known as MOBILE 5) to reflect the increased NO_X emission factors from the engines affected by the consent decrees.

The inventory analysis performed for this proposal builds on the inventory analysis associated with the 1997 FRM for heavy-duty diesel engines.[111] However, EPA made some modifications to the 1997 inventory analysis due to recent studies that have been performed with the intent of improving the understanding of the emissions impact of mobile sources. These modifications included new estimates for conversion factors (bhp-hr/mile), scrappage rates, and vehicle miles traveled. The Draft RIA discusses the recent studies and their effects on the calculated HDDE emissions inventories.

To determine total emissions by calendar year, EPA multiplied the emission factor times the total vehicle miles traveled (VMT) in that year. The emission factors were determined using EPA's emission factor model (MOBILE5) for NMHC and NO_X with adjustments for the new scrappage rates, conversion factors, and VMT distribution. Although NMHC and NO_X are proposed to be combined as a single standard, EPA believes that it is useful to model NMHC and NO_X separately. Given the technologies that are expected to be used on heavy-duty diesel engines to comply with the proposed standards, we believe it is reasonable to model the fleet-average impact of the proposed standards as being equivalent to a 2.0 g/bhp-hr NO_X standard and a 0.4 g/bhp-hr NMHC standard.

Table 13 shows the national projections of total NMHC and NO_X emissions and the estimated NO_X benefits for selected years. The emissions are projected to decline over the next several years, due to implementation of stricter controls, but then begin to increase due to growth in the number of vehicle miles traveled, unless there are additional controls. By the year 2015, without these additional controls, total national NO_X emissions are projected to exceed current levels. Figure 5 presents the national projections of total NMHC plus NO_X with and without the proposed engine controls.

TABLE 13.—ESTIMATED NATIONAL NMHC AND NO_X EMISSIONS AND PROPOSED BENEFITS FROM HEAVY-DUTY DIESEL VEHICLES

[Thousand short tons per year]

Year	NMHC			NO_X		
	Baseline	With controls	Benefit	Baseline	With controls	Benefit
2005	198	196	3	2,136	1,933	203
2010	184	174	10	2,191	1,504	686
2015	197	182	15	2,479	1,433	1,046
2020	225	205	20	2,900	1,535	1,365

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[111] "Control of Emissions of Air Pollution from Highway Heavy-Duty Engines; Final Rule," 62 FR 54694–54730, October 21, 1997.

Figure 5 – Projected National NMHC Plus NOx Emission Inventory for HDDEs

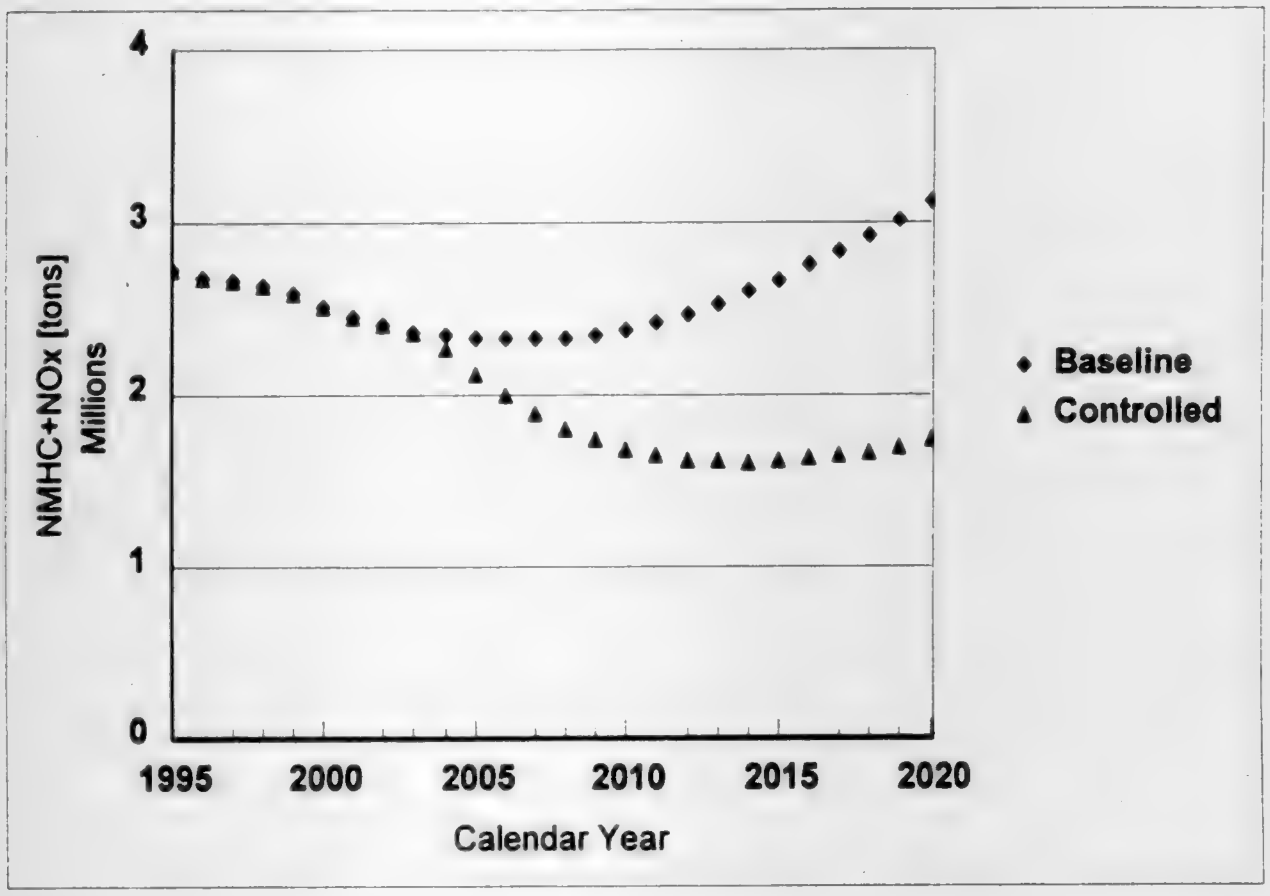

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Although this proposal does not require reductions in direct PM emissions, the proposed standards are expected to reduce the concentrations of secondary PM. Secondary PM is formed when NO_X reacts with ammonia in the atmosphere to yield ammonium nitrate particulate. EPA estimates that the 1.4 million tons per year total NO_X reduction projected for HDDEs in 2020 would result in about a 56,000 tons per year reduction in secondary PM. This calculation is described in the Draft RIA, Chapter 6, Section V.B. It should be noted that these estimates include a calculation involving weighting of the southern California conversion rate by VMT, but the Federal standards do not regulate new vehicles sold in California. Therefore, these nationwide estimates are somewhat over estimated. We intend to address this issue in the final rule.

The term "hydrocarbons" includes many different molecules. Speciation of the hydrocarbons would show that many of the molecules are those which are considered to be air toxics including benzene, formaldehyde, acetaldehyde, and 1,3-butadiene. Hydrocarbons from a HDDE include approximately 1.1 percent benzene, 7.8 percent formaldehyde, 2.9 percent acetaldehyde, and 0.6 percent 1,3-butadiene. Therefore, the 20,000 tons per year reduction in NMHC projected for 2020 would result in about a 2,400 tons per year reduction in air toxics. This is discussed in more detail in the Draft RIA.

EPA also believes the proposed regulations will tend to reduce noise. One important source of noise in diesel combustion is the sound associated with the combustion event itself. When a premixed charge of air and fuel ignites, the very rapid combustion leads to a sharp increase in pressure, which is easily heard and recognized as the characteristic sound of a diesel engine. The conditions that lead to high noise levels also cause high levels of NO_X formation. Fuel injection changes and other NO_X control strategies therefore typically reduce engine noise.

B. 2004 Emission Standards for Heavy-Duty Otto-Cycle Vehicles and Engines

In evaluating the environmental impact of the proposed heavy-duty gasoline engine and vehicle standards, EPA developed estimates of exhaust NO_X and NMHC inventories from HDGVs (excluding California, Alaska, and Hawaii) both with and without the effect of the proposed standards. Full details of the environmental impact analysis can be found in Chapter 7 of the draft RIA for today's proposal. The following paragraphs summarize the key results. The public is encouraged to read the full analysis and to comment on all aspects of the work.

Figure 6 shows the projections of nationwide exhaust NMHC+NO_x emissions from HDGVs both with and without the proposed controls. Table 14 contains the estimated NO_x and NMHC exhaust emission inventories and reductions due to the proposed heavy-duty gasoline engine and vehicle standards. The NO_x inventory for HDGVs is projected to increase from current levels without further controls. With implementation of the proposed standards, the exhaust NO_x emissions from HDGVs are expected to decrease from the baseline by 38 percent by the year 2010 and 61 percent by the year 2020. Exhaust NMHC emissions are projected to decline over the next several years, but then begin to increase beginning around 2010. With implementation of the proposed standards, the exhaust NMHC emissions from HDGVs are expected to decrease from the baseline by 8 percent by the year 2010 and 13 percent by the year 2020.

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Figure 6 – Projected NMHC plus NOx Emission Inventory for HDGVs

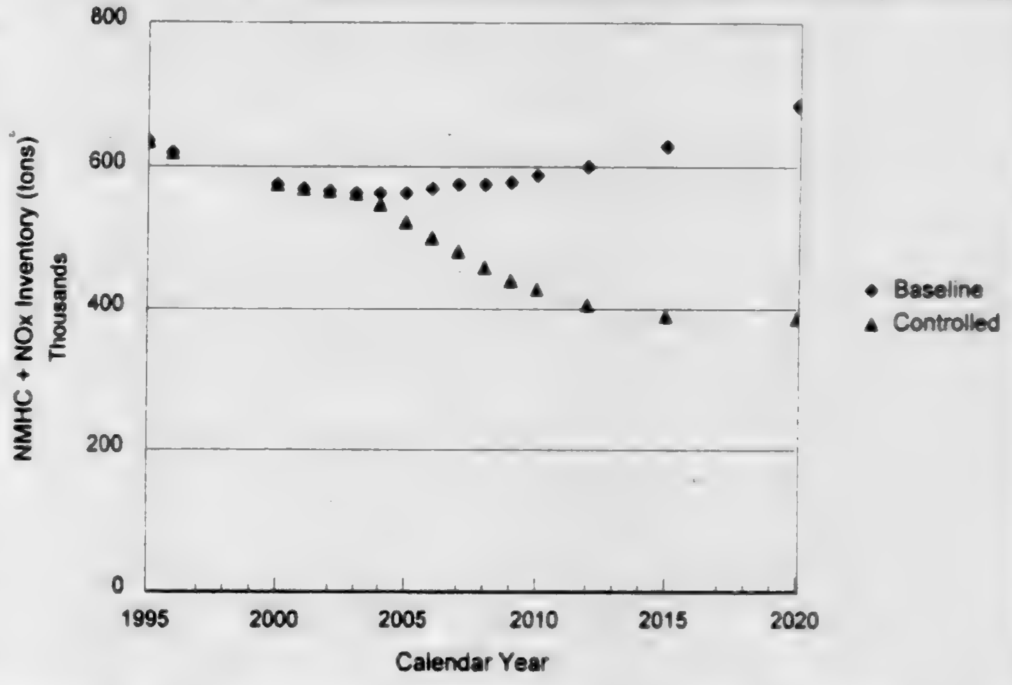

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TABLE 14.—ESTIMATED NO_X AND NMHC INVENTORIES AND REDUCTIONS FROM THE PROPOSED EXHAUST STANDARDS FOR HEAVY-DUTY GASOLINE ENGINES AND VEHICLES

[Thousand tons per year]

Year	NMHC			NO_X		
	Baseline	With controls	Reduction	Baseline	With controls	Reduction
2005	236	232	4	329	290	38
2010	225	208	17	365	223	142
2015	236	209	27	394	183	212
2020	255	221	34	432	168	264

In a similar fashion to that noted for the heavy-duty diesel engine standards, the NO_X reductions from HDGVs are expected to result in reduced secondary PM concentrations. EPA estimates that the 264,000 tons of NO_X reduction in 2020 would result in approximately a 10,000 tons per year reduction in secondary PM. This calculation is described in the draft RIA, Chapter 6, Section V(B), and Chapter 7, Section IV. As noted above, these estimates include a calculation involving weighting of the southern California conversion rate by VMT, but the Federal standards do not regulate new vehicles sold in California. Therefore, these nationwide estimates are somewhat over estimated. We intend to address this issue in the final rule.

C. Benefits of the Supplemental Standards and In-Use Control Measures of Today's Proposal

The supplemental standards and in-use control measures of today's proposal are expected to play an integral role in achieving the emission reductions expected from the 2004 diesel and Otto-cycle standards. These measures include the new supplemental standards and test procedure requirements for diesel engines, the OBD requirements for vehicles and engines below 14,000 lbs GVWR, and the in-use testing requirements for Otto-cycle vehicles below 14,000 lbs GVWR.

These measures are considered vital, as a whole, to assuring that the full benefits of the 2004 standards are being achieved. The new supplemental standards and test procedure requirements will ensure that engines are designed to meet the appropriate standards under a broad range of operating conditions. The in-use testing requirements will ensure that engines meet the appropriate standards throughout their useful lives. Finally, the OBD requirements will help ensure that engines in-use continue to operate according to design intent and that designs are durable and robust in the field. If vehicles and engines malfunction or deteriorate in ways that are not noticed by the driver, emissions may be far above the design intent of the engine or vehicle for thousands, if not tens of thousands of miles. On-board diagnostic systems are uniquely suited to identify such malfunctions. Such identification serves to ensure that the engines and vehicles continue to operate as designed, thereby ensuring they continue to provide the air quality benefits expected by the new standards.

For example, we expect widespread use of EGR to comply with the 2004 diesel standards. The emission reduction from the EGR system will likely be as high as 50 percent, that is, the engine out emissions will be cut in half as a result of the EGR system. Should the EGR system malfunction, the emissions could essentially double, and the driver would probably not be aware of the malfunction without an OBD detection. The same could be true for Otto-cycle vehicles and engines, in which case the primary emission control technology will be the catalyst, which is responsible for as much as 90 percent of the emission control. Should the catalyst deteriorate or fail, emissions could increase from 150 percent to 900 percent.[112] Similar statements can be made in regards to evaporative leak detection monitors. We know that emissions from leaking evaporative systems can be very large. In their most recent Staff Report on the OBDII program, the California Air Resources Board states that data from current evaporative system designs show that leaks approaching a 0.020 inch hole begin to rapidly generate excess evaporative emissions (up to 15 times the standard, which equates to 30 grams per test).[113] The emissions from a heavy-duty Otto-cycle vehicle, having a fuel tank well over 15 gallons, would likely be even higher. Without the OBD system, those emissions would probably never be identified and the malfunctions would probably never be repaired.

Further, the primary goal of OBD is to provide the industry with an additional incentive to improve emission control system durability. OBD serves that goal by encouraging durable components and systems in order to avoid the OBD detection and MIL illumination that will result upon their malfunction. Indeed, the light-duty industry has expressed on numerous occasions that their primary goal with respect to OBD is to avoid MIL illumination because of the adverse way they expect their customers to react.[114] Therefore, the presence of the OBD system is expected not only to identify malfunctions and deterioration, but also to minimize their occurrence.

Benefits such as those described above are not easily quantified, but are critical to the success of our program as a whole. Without any one of these compliance and in-use control measures, the benefits of today's proposal could be diminished.

VIII. What Are the Economic Impacts of the Proposal?

A. 2004 Emission Standards for Heavy-Duty Diesel Engines

1. Expected Technologies

In assessing the economic impact of the 2004 emission standards (including the standards finalized in 1997 and the standards proposed today), EPA has used a current best judgement of the combination of technologies that an engine manufacturer might use to meet the new standards at an acceptable cost. Full details of EPA's cost analysis, including information not presented here, can be found in the Draft

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[112] Assuming a properly operating catalyst conversion efficiency of 90 percent, and a deteriorated conversion efficiency of anywhere from 75 percent down to 0 percent, which would lead to a 150 percent to 900 percent emission increase, respectively.

[113] Staff Report: Initial Statement of Reasons for Rulemaking—Technical Status and Proposed Revisions to Malfunction and Diagnostic System Requirements for 1994 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD II); October 25, 1996.

[114] Stated more appropriately, their primary goal is to avoid MIL illumination while still complying with the OBD requirements.

Regulatory Impact Analysis in the public docket. The costs presented here were developed assuming that heavy-duty diesel engines would need high-flow cooled EGR, combustion chamber optimization, improved electronic fuel injection, and variable geometry turbochargers (except for light heavy-duty engines). The costs also include testing costs necessary to comply with the OBD and not-to-exceed requirements.

The analysis also assumes that manufacturers would introduce the improved electronic fuel injection systems and variable geometry turbochargers for some engine models even without the more stringent standard in 2004. Both of these technologies will provide significant performance benefits both directly, and by allowing manufacturers to reduce the use of injection timing retard to comply with the current 4.0 g/bhp-hr NO_X standard. The Agency believes that manufacturers may draw similar conclusions for using EGR on some of these same engines, however, as a conservative assumption, EPA is assuming that no EGR would be used to comply with the current 4.0 g/bhp-hr NO_X standard. For this analysis EPA is also assuming that only 50 percent of the costs for the improved electronic fuel injection and the use of variable geometry turbochargers are attributable to emission control. This is because EPA believes that manufacturers would make these improvements for many of their engines, even in the absence of these emission standards, to reduce fuel consumption and improve engine performance, a similar approach was used in the 1997 final rule. The docket for this rulemaking contains additional information on this aspect of the Agency's cost analysis, including a cost sensitivity analysis regarding the fifty percent assumption.[115] The Agency requests comment on this approach which we intend to revisit in the final rule if appropriate. In addition, Chapter 8, Section IV of the draft RIA for this proposal contains an estimate of the impact this 50 percent assumption has on the HD diesel cost-effectiveness. We recognize this 50 percent assumption is not a precise approach to characterizing the costs which could otherwise be attributed to our baseline assumptions. However, developing a more precise estimate is problematic due to the complexity of market demand as well as other uncertainties. Nevertheless, we intend to consider developing a more precise estimate of the baseline for the final rule analysis. In addition, it may be more appropriate to consider performance benefits (improved fuel economy, drive-ability) with the other secondary benefits rather than with costs, and we intend to reconsider this issue for the final rule. EPA also requests comment regarding how the early introduction of these technologies would affect compliance costs. EPA also requests comment on whether variable geometry turbochargers can serve the function of exhaust braking for heavy heavy-duty engines, and what cost savings this would provide for manufacturers.

2. Per Engine Costs

Estimated per engine cost increases are broken into purchase price and total life-cycle operating costs. The incremental purchase price for new engines is comprised of variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification). Total operating costs include expected increases in maintenance. Cost estimates based on these projected technology packages represent an expected incremental cost of engines in the 2004 model year. Costs in subsequent years would be reduced by several factors, as described below. Separate projected costs were derived for engines used in three service classes of heavy-duty diesel engines. All costs are presented in 1995 dollars. Life-cycle costs have been discounted to the year of sale.

The costs of the technologies necessary for meeting the 2004 model year standards are itemized in the Draft Regulatory Impact Analysis and summarized in Table 8. These estimated costs are higher than those estimated for the previous FRM because they include costs for variable geometry turbochargers and full use of high-flow cooled EGR, as well as small additional costs for the new OBD and compliance testing requirements. For light heavy-duty vehicles, the cost of a new 2004 model year engine is estimated to increase by $428 (compared to the previous estimate of $258). For medium heavy duty vehicles the purchase price of a new engine is estimated to increase by $593 (compared to the previous estimate of $397). Similarly, for heavy heavy-duty engines, the initial purchase price is expected to increase by $707 (compared to the previous estimate of $406).

For the long term, EPA has identified various factors that would cause cost impacts to decrease over time. First, the analysis incorporates the expectation that manufacturers will apply ongoing research to making emission controls more effective and less costly over time. This expectation is similar to manufacturers' stated goal of decreasing their reliance on catalysts to meet emission standards in the future. Second, research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts. The analysis incorporates the effects of this learning curve by projecting that the variable costs of producing the low-emitting engines decreases by 20 percent starting with the third year of production (2006 model year) and by reducing variable costs again by 20 percent starting with the sixth year of production. Chapter 4, Section III in the draft RIA for this proposal, as well as Chapter V, Section IV of the final RIA for the 1997 final rulemaking (*see* Docket A–95–27, Docket Item 35#V–B–01) contain additional discussion of the application of this learning curve. The 2004 HD diesel standards will require a fundamental change in technology for the engine manufacturers. Considering this change, we believe the learning curve concept is appropriate for this rulemaking. The Agency requests comments and data regarding the application of this learning curve approach to the heavy-duty diesel industry, including information regarding any observed reduction in manufacturer costs for the past application of similar technology changes for the heavy-duty on-highway industry, or other technology changes to the diesel engine industry as a whole. We also request comment on the learning curve theory. Specifically, we request comment and supporting data regarding the theory that manufacturing costs continues to decrease over time, possibly ad infinitum, albeit at a slower rate as time progresses.

Finally, since fixed costs (excluding in-use testing costs) are assumed to be recovered over a five-year period, these costs are not included in the analysis after the first five model years. Table 15 lists the projected schedule of costs for each category of vehicle over time.

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[115] See EPA Air Docket A–98–32, "Analysis of Costs and Benefits of VGT and Improved Fuel Injection", EPA Memorandum from Charles Moulis.

TABLE 15.—PROJECTED DIESEL ENGINE COST AND PRICE INCREASES

[1995 Dollars Discounted to Year of Sale]

Vehicle class	Model year	Purchase price increase	Life-cycle operating cost
Light heavy-duty	2004	$428	$7
	2009 and later	221	7
Medium heavy-duty	2004	593	45
	2009 and later	252	45
Heavy heavy-duty	2004	707	96
	2009 and later	324	96

3. Aggregate Costs to Society

The above analysis develops per-vehicle cost estimates for each vehicle class. Using current data for the size and characteristics of the heavy-duty vehicle fleet and making projections for the future, these costs can be used to estimate the total cost to the nation for the new emission standards in any year. The result of this analysis is a projected total cost starting at $424 million (1995 dollars) in 2004. Per-vehicle costs savings over time reduce projected costs to a minimum value of $223 million in 2009, after which the growth in truck population leads to an increase in costs to $285 million in 2020. Total costs for these years are presented by vehicle class in Table 16. The calculated total costs represent a combined estimate of fixed costs as they are allocated over fleet sales, variable costs assessed at the point of sale, and operating costs as they are incurred in each calendar year. Future sales are projected for years beyond 1995, sales are projected to increase each year by a constant value equal to 2 percent of the number of engines sold in 1995. EPA used a similar 2 percent growth estimate for the 1997 rulemaking for HD engines, we request comment and supporting data which would refine this estimate.[116] EPA also requests comment and supporting data on what impact, if any, costs associated with these new standards might have on the sales rate of HD diesel engines in the future. In addition, EPA requests comment on whether or not a 2 percent per year increase specifically for the light-heavy heavy duty diesel market is an appropriate estimate for future growth, considering the recent trend of increasing sales of sport-utility vehicles weighing over 8,500 pounds.

TABLE 16.—ESTIMATED ANNUAL COSTS FOR IMPROVED HEAVY-DUTY VEHICLES

[Millions of dollars])

Category	2004	2009	2020
Light heavy-duty	142	81	95
Medium heavy-duty	198	46	59
Heavy heavy-duty	185	97	130
Total	424	159	97

B. 2004 Emission Standards for Heavy-Duty Otto-Cycle Vehicles and Engines

This section contains a summary of the Agency's comprehensive analyses of the economic impacts of today's proposed regulations for heavy-duty Otto-cycle vehicles and engines. The following separate factors are analyzed: (1) The technologies expected to be used and their projected rates of application; (2) the costs of these technology packages incremental to today's vehicle designs (presented on a per-vehicle basis separately for chassis and engine certified configurations) and; (3) the aggregate cost to society of the proposed requirements. More information on these analyses can be found in the Regulatory Impact Analysis contained in the docket for this rule.

1. Expected Technologies

The various technologies that could be used to comply with today's proposed regulations were previously discussed in the section on technological feasibility. In developing costs for the associated technologies EPA looked at the current technology used on HDVs and compared that to the technology expected to be used to meet the proposed regulations. The incremental costs difference was then calculated based on the differences between the current (*i.e.*, baseline) technology packages and those expected to be used in 2004. Table 17 shows both the current baseline and expected technologies for complete vehicles. Table 18 shows the current baseline and expected technologies for the engine-based standards. These tables only show the technologies which are expected to change in some way from their current design or be applied to different percentages of the fleet than they are currently. Technologies such as sequential multi-port fuel injection and EGR, while important to meeting the proposed standards, are not expected to be fundamentally changed in their design, or be utilized in different percentages of the fleet than they currently are. Thus, such technologies are not included in these tables. However, in some cases the cost of optimizing such technologies is included in the cost estimates.

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[116] "Draft Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines", Chapter 7, Section II. Available in EPA Air Docket A–95–27, Item # III–B–01

TABLE 17.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR COMPLETE VEHICLE STANDARDS

Technology	Baseline Federal	Estimated 2004
Catalysts	60% single underfloor 40% dual underfloor	13% single enhanced underfloor. 50% dual enhanced underfloor. 37% dual close-coupled and dual enhanced underfloor.
Oxygen sensors	70% dual heated 10% triple heated 20% quadruple heated	13% dual heated. 87% quadruple heated.
ECM	50% 32 bit computers 50% 16 bit computers	100% 32 bit computers.
Adaptive learning	0%	80%
Individual cylinder A/F control	0%	10%
Leak free exhaust	90%	100%
Insulated exhaust	0%	40%
Secondary air injection	20%	30%
ORVR	0%	100%[A]

[A] ORVR is only proposed to apply to complete vehicles 10,000 lbs GVWR and under, and is proposed to be phased in over three years, with 100% application to those vehicles in 2006.

TABLE 18.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR ENGINE-BASED STANDARDS

Technology	Baseline Federal	Estimated 2004
Catalysts	60% single underfloor 40% dual underfloor	13% single enhanced underfloor. 87% dual enhanced underfloor.
Oxygen sensors[A]	70% dual heated 10% triple heated 20% four heated	13% triple heated. 87% quadruple heated.
ECM	50% 32 bit computers 50% 16 bit computers	100% 32 bit computers.
Improved fuel control	50%	100%
Secondary air injection	20%	50%

[A] The estimated breakdown for 2004 reflects OBD requirements for all HDGEs. However, at this time OBD is only proposed to apply to HDGEs under 14,000 lbs GVWR (approximately 60 percent of HDGEs).

2. Per Vehicle Costs

The costs of the projected technologies presented in the previous section are itemized and discussed in detail in the RIA. On a per-vehicle basis these costs are summarized in Table 14. They are presented in two components: purchase price and operating cost. The operating costs only apply to ORVR-equipped vehicles and include the combined effects of a small fuel economy penalty due to the increased weight of the ORVR hardware, and a larger fuel economy benefit resulting from the vehicle being able to utilize fuel vapors that would otherwise escape to the atmosphere in the absence of ORVR.

EPA believes that the manufacturers will recover the fixed costs associated with research and development, tooling and certification over the first five years of production. Thus, these fixed costs are not included in the analysis after the first five model years. We request comment on whether a five-years amortization period is a reasonable estimate. The fixed costs associated with the proposed in-use testing programs will continue indefinitely. The projected per vehicle costs impacts are summarized in Table 19.

TABLE 19.—PROJECTED HDV PRICE AND OPERATING COST INCREASES

Class	Model year	Purchase price increase	Lifetime operating cost
Complete Vehicles	2004[a]	$302	−$6
	2009 and later	297	−6
Engines	2004[b]	287	
	2009 and later	248	

[a] This cost includes both ORVR and OBD, which are phased inbeginning with the 2004 model year, but which are not proposed to be required on all complete vehicles until the 2006 model year for ORVR and the 2007 model year for OBD.

[b] This cost includes an OBD hardware cost. OBD requirements are phased in beginning with the 2004 model year, but are not proposed to be required on all engines under 14,000 lbs GVWR until the 2007 model year.

3. Aggregate Cost to Society

In addition to the per vehicle costs just described, EPA also calculated the aggregate cost to society. This was done by combining the per vehicle costs with assumed future sales of HDVs. The results of this analysis are summarized in Table 20. The recovery of most fixed costs results in slightly reduced costs beginning in 2009, after which costs begin to rise in accordance with projected increased sales. The aggregate costs represent a combined estimate of the fixed costs for research and development, tolling and certification as they are allocated over the first five years of sales, variable costs assessed at the point of sale, and operating costs (primarily in the form of fuel cost savings) for ORVR-equipped vehicles (calculated to net present value and applied at the point of sale). Future sales are projected for years beyond 1996, sales are projected to increase each year by a constant value equal to 2 percent of the number of engines sold in 1996. EPA used a similar 2 percent growth estimate for the 1997 rulemaking for HD engines, we request comment and supporting data which would refine this estimate.[117] EPA requests comment and supporting data on what impact, if any, costs associated with these proposed standards might have on the sales rate of HD Otto-cycle engines in the future. We also request comment on whether or not a 2 percent per year increase specifically for the light-heavy heavy duty Otto-cycle market is an appropriate estimate for future growth, considering the recent trend of increasing sales of sport-utility vehicles weighing over 8,500 pounds GVWR.

TABLE 20.—AGGREGATE COST TO SOCIETY OF THE PROPOSED HEAVY-DUTY OTTO-CYCLE REQUIREMENTS

Year	Cost ($million)
2004	$124
2009	151
2020	177

IX. What is the Cost-Effectiveness of the Proposal?

A. 2004 Emission Standards for Heavy-Duty Diesel Engines

EPA has estimated the per-vehicle cost-effectiveness (i.e., the cost per ton of emission reduction) of the model year 2004 NMHC+NO_X standards over the typical lifetime of heavy-duty diesel vehicles covered by today's rule. The RIA contains a more detailed discussion of the cost-effectiveness analyses. As described above in the cost section, the cost of complying with the standards will vary by model year. Therefore, the cost-effectiveness will also vary from model year to model year. For comparison purposes, the discounted costs, emission reductions and cost-effectiveness of the standards are shown in Table 21 for the same model years discussed above in the cost section. The cost-effectiveness results contained in Table 21 present the range in cost-effectiveness resulting from the two cost-effectiveness scenarios described above.

TABLE 21.—DISCOUNTED PER-VEHICLE COSTS, EMISSION REDUCTIONS AND COST-EFFECTIVENESS OF THE NMHC+NO_X Standard

Vehicle class	Model year	Discounted lifecycle costs	Discounted lifetime reductions (tons)		Discounted cost-effectiveness ($/ton)
			NO_X	NMHC	
Light Heavy-Duty Diesel vehicles	2004	$435	0.310	0.004	$1380
	2009 and later	228			725
Medium Heavy-Duty Diesel vehicles	2004	638	0.872	0.012	720
	2009 and later	296			335
Heavy-Duty Diesel Vehicles	2004	803	3.401	0.048	230
	2009 and later	420			120
Overall (For All Heavy-Duty	2004	....	....	....	400
	2009 and later				200

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the new engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forest health. Due to the difficulty in accurately quantifying the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to these additional benefits. EPA requests comments on all aspects of the cost-effectiveness analysis for heavy-duty diesel engines.

B. 2004 Emission Standards for Heavy-Duty Otto-Cycle Vehicles and Engines

EPA has estimated the per-vehicle cost-effectiveness (i.e., the cost per ton of emission reduction) of the proposed NMHC plus NO_X emission standards over the lifetime of typical heavy-duty gasoline vehicles. The RIA contains a more detailed discussion of the cost-effectiveness analysis. EPA requests comments on all aspects of the cost-effectiveness analysis for heavy-duty gasoline engines and vehicles. EPA plans to conduct cost-effectiveness analyses of alternatives to the proposed Otto-cycle standards in the final rule based on comments received as appropriate.

As described above, the cost of complying with the proposed standards will vary by vehicle category (i.e., a complete Class 2b heavy-duty gasoline vehicle, a complete Class 3 heavy-duty gasoline vehicle, or an incomplete heavy-duty gasoline vehicle) and model year. Therefore, the lifetime cost-effectiveness of the proposed standards will vary by model year. For comparison purposes, the discounted lifetime costs, emission reductions (in short tons), and cost-effectiveness of the proposed standards are shown in Table 22 for the same model years discussed in the Economic Impact section.

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[117] "Draft Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines", Chapter 7, Section II, Available in EPA Air Docket A–95–27, Item # III–B–01.

TABLE 22.—COST-EFFECTIVENESS OF THE PROPOSED STANDARDS FOR HEAVY-DUTY GASOLINE VEHICLES

HDGV category	Year of production	Discounted lifetime cost	Discounted lifetime NMHC+NO_X Reduction (tons)	Discounted lifetime cost-effectiveness ($/ton)
Class 2B Complete	1	$296	0.56 tons	$530
	6 and later	291		520
Class 3 Complete	1	296	0.55	530
	6 and later	291		520
Incomplete HDGV	1	287	0.61	480
	6 and later	248		410
All HDGVs	1	294	0.57	520
	6 and later	281		490

EPA has also estimated the cost-effectiveness of the proposed ORVR for Class 2B heavy-duty gasoline vehicles. Table 23 contains the discounted lifetime cost-effectiveness of the proposed ORVR requirements.

TABLE 23.—DISCOUNTED, LIFETIME COST-EFFECTIVENESS OF THE PROPOSED ORVR REQUIREMENTS FOR CLASS 2B HEAVY-DUTY GASOLINE VEHICLES

Year of production	Discounted lifetime cost	Discounted lifetime NMHC NO_X Emission Reductions (tons)	Discounted lifetime cost-effectiveness ($/ton)
1	$5	0.035	$130
6	2	0.035	50

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X emission reductions from the proposed heavy-duty gasoline vehicle and engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forest health. The cost-effectiveness values presented above do not assign any numerical value to these additional benefits. Based on existing studies that have estimated the value of such benefits in the past, EPA believes that the actual monetary value of the multiple environmental and public health benefits that would be produced by the NO_X reductions under this proposal will be greater than the estimated compliance costs.

X. Are Future Reductions in HD Emissions Possible?

A. Potential Future Standards for Heavy-Duty Diesel Vehicles and Engines

1. Possible Future Reductions in Heavy-Duty Diesel NO_X and NMHC

As discussed in section II (What is the Environmental Need for this Proposal?), heavy-duty vehicles are a major source of national NO_X emissions and a source of NMHC emissions in the U.S., both of which are precursors for tropospheric ozone. Despite the important reductions in NO_X and NMHC which will occur from HD diesel 2004 standards, it is possible that additional reductions in NO_X and NMHC from heavy-duty diesels will be necessary in the future in order for air quality goals to be achieved across the country.

The Agency received written comments from local and state air quality agencies and from several environmental organizations in response to the 2004 NMHC+NO_X proposal in the June 27,1996 NPRM urging the Agency to finalize more stringent NO_X standards for the 2004 model year, or to consider standards resulting in the largest NO_X reduction possible from HD engines. These organizations cited future air quality concerns which would require additional NO_X and NMHC reductions from HD engines and vehicles in the future.[116] Though the Agency did not finalize more stringent standards, the stakeholders' air quality concerns remain.

The HD SOP signed in July, 1995 included a discussion of future research goals for further reductions in NO_X and PM from on-highway HD diesel engines. As described in the SOP, these research goals suggested a target value of 1.0 g/bhp-hr NO_X. In addition, the Agency is aware that the European Union is currently considering a range of HD engine NO_X levels for potential Euro IV emission limits in 2005. At present, the European Union is considering Euro IV NO_X limits ranging from 1.5 to 2.6 g/bhp-hr.

The RIA for this proposal includes a discussion of several promising emission control technologies which may offer the potential for NO_X reductions down to, or even beyond the research goals identified in the SOP. These emission control technologies include lean NO_X adsorption catalysts and urea-based selective catalytic reduction systems (SCR). Each of these technologies have demonstrated significant NO_X reduction capability (up to 75 percent and some projections range up to 90 percent). However, each technology is still under development, and each has its own set of potential difficulties for wide-spread HD application in the U.S. For example, current generation NO_X adsorber catalysts have been shown to be susceptible to fuel sulfur poisoning, and urea-based SCR systems would likely require a national distribution system for urea. In addition, costs, durability, tamper resistance, and in-use emission performance associated with each technology have not been well defined. For this reason, EPA does not believe more stringent standards based on such technology is achievable for the 2004 model year, taking into consideration cost, energy, and safety factors. However, such more stringent standards may be appropriate in later model years, once these technologies are further developed. Furthermore improvement in diesel fuel quality, particularly lower sulfur levels, would likely be needed to enable these technologies. These issues were the subject of the Advance Notice of Proposed Rulemaking on "Control of Diesel Fuel Quality" that EPA published in May (64 FR 26142, May 13, 1999).

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[116] See EPA Air Docket A–95–27, Docket Item's IV-D–08, IV-D–15, and IV-D–16.

The Agency requests comment on the need for future reductions in NO_X and NMHC emissions from HD diesel engines, the time frame in which future standards should be considered, and what standards should be considered. In addition, the Agency requests comment and supporting data, including emission testing data, durability data, cost data, and other relevant information, on what technologies may be available for meeting more stringent HD diesel NO_X and/or NMHC levels. The Agency requests comment specifically on the feasibility of these advanced aftertreatment technologies to attain reductions cited above in the 2007 time frame. Finally, the Agency requests comment on what role, if any, diesel fuel quality plays in enabling additional reductions from HD diesel engines.

2. Potential Future Reductions in Heavy-Duty Diesel Engine PM

Section II of this preamble ("What is the Environmental Need for this Proposal?"), includes: a discussion of the adverse health consequences associated with particulate matter; a discussion of the contribution of HD diesel engine PM to national emission inventories; a discussion of several recent source apportionment studies for PM; and a discussion of the negative health impacts associated specifically with diesel exhaust PM, including the potential carcinogenicity of diesel PM. The Agency requests comment on whether additional control of HD diesel PM beyond the current 0.1g/bhp-hr level may be needed in the future to protect the public's health.

EPA received written comments from several state and local air quality agencies as well as several environmental organizations regarding the HDDE PM standard in response to the June 27, 1996 NPRM for on-highway heavy-duty engines.[119] In general, these organizations felt that maintaining the current PM standard of 0.1 g/bhp-hr in model year 2004 was not adequate for protection of human health. The commentors stressed the particularly harmful nature of diesel PM, and they believed technology was available to justify a lower PM standard in 2004.

The HD SOP signed in 1995 included a discussion of a HD diesel PM research goal of 0.05 g/bhp-hr. The Agency is also aware that the European Union is currently considering a range of PM levels for potential Euro IV emission limits for HD diesel in 2005. At present, the European Union is considering Euro IV PM limits ranging from 0.015 to 0.04 g/bhp-hr.

The RIA for this proposal includes a discussion of the current state of the art for HDDE control technologies for both NO_X and PM control, as well as the technologies the Agency expects manufacturers to use to meet the 2004 NMHC+NO_X standards. The inverse relationship between in-cylinder[120] NO_X and PM emissions is a well documented phenomenon; in-cylinder modifications which result in lower NO_X tend to result in an increase in PM. As discussed in the RIA, there are technologies available to minimize this inverse relationship, but there are limits to what can be done in-cylinder. Data available to date indicate the 2004 NMHC+NO_X standard and the 0.1g/hp-hr PM standard is near the limit of what can be done utilizing only known in-cylinder technologies (including EGR as an in-cylinder control technology). However, a number of promising aftertreatment technologies may be available for wide spread HD application which could allow manufacturers to meet a PM standard lower than 0.1g/bhp-hr while not negatively impacting NO_X emissions. As discussed in the RIA, these technologies include diesel oxidation catalysts (DOCs) and particulate traps. DOCs have the potential to offer modest levels of PM control (approximately 10–30 percent), and the level of control is dependent on the amount of volatile organic component present in the engine's exhaust PM. Particulate traps have the potential to achieve large reductions in exhaust PM, approaching 80–90 percent reduction. However, dependable regeneration techniques, in-use durability and reasonable cost are some of the important issues which still need to be addressed. In addition, NO_X control technologies such as NO_X adsorber catalysts and SCR systems could potentially allow manufacturers to favor the in-cylinder trade-offs between NO_X and PM for stringent in-cylinder PM control, and rely on aftertreatment to provide NO_X control.

As discussed in section IV.B ("Are Changes in Diesel Fuel Quality Necessary to Meet the 2004 Standards?"), and in more detail in the RIA for this proposal, diesel fuel quality, and in particular, diesel fuel sulfur level, can play an important role in enabling certain PM and NO_X control technologies. Some DOCs and continuously regenerable PM traps, as well as current generation lean NO_X adsorber catalysts can be poisoned by high sulfur levels. Some versions of passively regenerated catalyzed traps and DOCs are not poisoned at current fuel sulfur levels, but can produce large amounts of sulfate PM at current sulfur levels, decreasing their effectiveness. Given this information, EPA has not included more stringent PM standards for the 2004 model year or later in today's proposal. However, the Agency requests comment and supporting data on the air quality need, technical feasibility, and costs associated with implementing more stringent PM standards as early as the 2004 model year. The Agency requests comment specifically on the feasibility of the application of PM traps to achieve up to 90 percent reductions from today's levels. In addition, the Agency requests comment on the range of PM limits currently being considered by the European Union, namely 0.015 to 0.04 g/hp-hr. Finally, the Agency requests comment on what role, if any, diesel fuel quality plays in meeting a more stringent PM standard.

3. Potential Structure of Future Diesel Emission Standards

EPA regulations for heavy-duty vehicles (*i.e.*, vehicles with a GVWR greater than 8500 pounds) have historically been "fuel-neutral," meaning that the same standard applied to both gasoline and diesel vehicles. Today's proposal moves away from that historical approach because we believe there is a case to be made that heavy-duty Otto-cycle engines may be capable of significantly lower emissions than heavy-duty diesel engines given current technology and fuels. In addition to proposing tighter standards for heavy-duty Otto-cycle engines, however, we have also proposed to change the fundamental structure of the compliance program by requiring complete heavy-duty Otto-cycle vehicles up to 14,000 pounds GVWR to be certified to chassis-based standards, rather than the engine-based standards used historically for the entire heavy-duty category. We request comment on these changes to the structure of the EPA emission control program for heavy-duty vehicles and engines and on the desirability of fuel-neutral standards.

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[119] See EPA Air Docket A–95–27, Item's IV–D–03, IV–D–08, IV–D–15, IV–D–19

[120] In-cylinder-an engineering term which refers to engine design changes which affect emissions in the combustion chamber, as compared to aftertreatment device.

There are several structural options that we are likely to consider when we propose future tighter standards for heavy-duty vehicles. Having already taken the step of proposing to move complete heavy-duty Otto-cycle vehicles up to 14,000 pounds GVWR into a chassis-based program with chassis-based standards, we request comment on whether we should consider requiring complete diesel vehicles in the same weight range to meet chassis-based standards, and if so, what appropriate standards might be. Alternatively, the standards could be structured such that complete diesel vehicles up to 10,000 pounds GVWR might be subject to chassis-based standards, while those between 10,000 and 14,000 pounds GVWR could be subject to engine-based standards, as they are today. We request comment on limiting chassis-based standards to diesel vehicles in this manner.

In addition to the type of standards (vehicle- or engine-based) that we might consider in the future for diesel vehicles up to 14,000 pounds GVWR, another key issue is the level of the standards relative to those that apply to Otto-cycle vehicles. This issue is equally applicable to heavy-duty vehicles above and below 14,000 pounds GVWR. In addition to requesting comment on a chassis-based program for some heavy-duty diesel vehicles, we request comment on applying equivalent chassis-based standards to diesel and Otto-cycle vehicles, and on the role that diesel fuel quality might play in meeting such standards. In the context of possible future changes to diesel fuel quality, we believe that it may indeed be appropriate and technically feasible to require some heavy-duty diesel vehicles up to 14,000 pounds GVWR to be subject to the same standards as their Otto-cycle counterparts. In addition to the specific issues raised above, we request comment on general issues of fuel neutrality and structure of emission standards as they might apply to heavy-duty vehicles.

B. Potential Future Standards for Heavy-Duty Otto-Cycle Vehicles

1. Exhaust Emission Standards

California has adopted a new generation of standards for light-duty and medium-duty vehicles, referred to as the LEV-II standards. The new California standards for vehicles above 8,500 pounds GVWR are shown in Table 24. The light-duty standards are phased in beginning in 2004 according to an established phase-in schedule. For heavy-duty vehicles, there is no set phase-in schedule. California requires that 100 percent of HD vehicles comply with the standards shown in Table 24 beginning in MY 2007. While the focus of today's notice is on 2004 standards, EPA is exploring the appropriateness of adopting standards equivalent to those in Table 24 in a future rulemaking. Doing so would allow federal and California standards for heavy-duty Otto-cycle vehicles to continue to be harmonized beyond the 2007 model year. Thus, today EPA requests comment on the feasibility of, cost-effectiveness, and the need for standards such as those shown in Table 24, and on the issues noted above regarding the fuel-neutrality of future emission standards and the possibility of applying equivalent standards to diesel and Otto-cycle vehicles. In addition, any future rulemaking action would likely assess SFTP standards that would apply in conjunction with FTP standards. EPA requests comment on the application of SFTP standards to heavy-duty Otto-cycle vehicles under 14,000 pounds GVWR.

TABLE 24.—CALIFORNIA LEV II FULL-LIFE EMISSION STANDARDS FOR 2007 AND LATER MODEL YEAR VEHICLES OVER 8,500 POUNDS GVWR

[Grams per mile]

Vehicle weight category (GVWR)	Nonmethane organic gas	Oxides of nitrogen	Carbon monoxide
8,500—10,000 lbs	0.195	0.2	6.4
10,001—14,000 lbs	0.23	0.4	7.3

2. Evaporative standards

EPA is not proposing any changes to the Otto-cycle evaporative numerical emission standards in today's notice. However, the 1998 certification results show that, in general, heavy-duty Otto-cycle vehicles are meeting the current evaporative standards with a substantial safety margin. EPA is concerned that, in the absence of more stringent evaporative standards, manufacturers will reduce the safety margins they currently use in order to cut costs, resulting in rising evaporative emissions. The 1999 certification results appear to show this beginning to happen.

The California Air Resources Board recently proposed and adopted new evaporative emission standards applicable to all categories of Otto cycle vehicles and engines in the context of the LEV II standards discussed in the previous section. Those new evaporative standards call for dramatic reductions in the levels of emissions for both the three day diurnal plus hot soak and the supplemental two day diurnal plus hot soak measurements. In response to CARB's recent LEV II proposal, the vehicle manufacturers presented CARB with an alternate proposal for revised evaporative emission standards.[121] These proposed levels, while not as stringent as the standards CARB proposed and subsequently adopted, are significantly more stringent than the current federal standards. However, most 1998 model year HDVs were certified at levels below the manufacturers proposed standards, including comfortable safety margins. The current federal standards, CARB's new standards, and the manufacturers' proposed standards are all presented in the Table 25.

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[121] A copy of the handouts presented to CARB on October 8, 1998 are in the docket for this rule.

TABLE 25.—"Existing Federal and CARB, and Manufacturer-Proposed Evaporative Emission Standards

	Three day diurnal plus hot soak (g/test)	Two day diurnal plus hot soak (g/test)
8,500 lbs <GVWR≤14,000 lbs:		
Current federal standards	3.0	3.5
New CARB standards	1.0	1.25
Manufacturer-proposed standards	1.5	1.7
GVWR ≤ 14,000 lbs:		
Current federal standards	4.0	4.5
New CARB standards ^	1.0	1.25
Manufacturer-proposed standards ^	1.5	2.25

^ Note—These standards would be phased in as a % of sales at a rate of 25, 50, 75, and 100 percent beginning with the 2004 model year.

EPA requests comment whether more stringent evaporative emission standards for HDVs may be appropriate, especially considering the current certification levels. The Agency also requests comment on our belief that the manufacturer-proposed standards are feasible at little or no cost. EPA also requests comment on the feasibility and cost of other more stringent standards than those proposed by the manufacturers, including the standards recently adopted by CARB.

XI. What Are the Opportunities for Public Participation?

A. Comments and the Public Docket

EPA today opens a formal comment period for this NPRM and will accept comments through 30 days after the date of the public hearing. The Agency encourages all parties that have an interest in this proposal to offer comment on various topics. Of particular interest to the Agency are detailed comments in the following areas:

- The technical feasibility, cost-effectiveness, and appropriateness under the Clean Air Act of the 2004 NMHC+NO_X emission standard for heavy-duty diesel engines.
- The feasibility of the 2004 NMHC+NO_X standards with current diesel fuel, and the specific issue of full useful life durability and the impact of sulfuric acid formation on EGR systems.
- The technical feasibility, cost-effectiveness, and appropriateness under the Clean Air Act of the proposed 1.0 g/bhp-hr NMHC+NO_X standard for heavy-duty Otto-cycle engines.
- The appropriateness and design of the proposed ABT program for heavy-duty Otto-cycle engines.
- The technical feasibility, cost-effectiveness, and appropriateness of the proposed supplemental tests and associated emission limits for diesel-cycle heavy-duty engines.
- The technical feasibility, cost-effectiveness, and appropriateness of the proposed chassis-based emission standards for Otto-cycle heavy-duty vehicles under 14,000 pounds GVWR.
- The proposed ABT program for Otto-cycle heavy-duty vehicles under 14,000 pounds GVWR.
- The technical feasibility, cost-effectiveness, and appropriateness of the proposed ORVR requirements for complete Otto-cycle heavy-duty vehicles under 10,000 pounds GVWR.
- The technical feasibility, cost-effectiveness, and appropriateness of the proposed OBD requirements for heavy-duty engines and vehicles at or below 14,000 lbs GVWR.
- Fuel neutrality of emission standards for diesel and Otto-cycle heavy-duty vehicles and engines.

Although the Agency specifically requests comments on the identified topics, the Agency welcomes comments on any aspect of the proposal. The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. The Agency also encourages commenters that disagree with elements of the proposal to suggest and analyze alternate approaches to meeting the air quality goals of this proposal. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–98–32 before the date specified above. Information related to this rulemaking is also found in dockets A–95–27 and A–97–10.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a non-confidential version of the document that summarizes the key data or information should be sent to the docket. Any information or data that constitutes, in whole or in part, a basis of EPA's regulatory actions will be made public.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

B. Public Hearing

The Agency will hold a public hearing as noted in the **DATES** section above. Any person desiring to present testimony at the public hearing is asked to notify the contact person listed above at least one week prior to the date of the hearing. This notification should include an estimate of the time required for the presentation of the testimony and any need for audio/visual equipment. EPA suggests that sufficient copies of the statement or material to be presented be available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material prior to the hearing.

The hearing will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet will be available at the hearing for scheduling the order of testimony. A written transcript of the hearing will be prepared. The official record of the hearing will be kept open for 30 days after the hearing to allow submittal of supplementary information.

XII. What Administrative Requirements Apply to This Proposal?

A. Compliance With Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to review by the Office of Management and

Budget (OMB) and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposed rule is a "significant regulatory action" because the proposed regulatory provisions, if implemented, would have an annual effect on the economy in excess of $100 million. A Regulatory Impact Analysis has been prepared and is available in the docket associated with this rulemaking. This action was submitted to OMB for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this rule.

B. Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601) requires federal agencies to consider potential impacts of federal regulations upon small entities. If a preliminary analysis indicates that a regulation would have a significant adverse economic impact on a substantial number of small entities, then EPA must prepare a regulatory flexibility analysis.

The Agency has determined that this action would not have a significant adverse impact on a substantial number of small entities, and thus it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. Only two small entities are known to be affected by this rule. The entities are small businesses that certify alternative fuel engines or vehicles, either newly manufactured or modified from previously certified gasoline versions. EPA contacted these businesses and discussed the proposed rule with them, identifying their concerns. The concerns they expressed prompted revisions to the proposal, which are addressed elsewhere in the preamble. Rule revisions proposed by EPA are intended to minimize adverse impacts on the small entities affected by the proposed rule.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, as amended, I hereby certify that this regulation will not have a significant adverse impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement to accompany any proposed and final rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more for any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the program would significantly or uniquely affect small governments. EPA has determined that this rule contains federal mandates that may result in expenditures of $100 million or more in any one year for the private sector.

As explained in section III.B of this preamble ("1999 Review of Heavy-duty Diesel Engine NMHC+NO$_X$ Standards"), the 2004 heavy-duty diesel standards reaffirmed in this rulemaking were established in the Agency's 1997 final rulemaking for heavy-duty diesels, and the 1997 rulemaking laid the ground work for this proposal. Today's proposal for HD diesel engines is simply a review of the appropriateness under the Clean Air Act of the standard finalized in 1997, including the need for and technical and economic feasibility of the standard based on information available in 1999. Therefore, today's proposal does not contain any further analysis of other, alternative standards for heavy-duty diesel engines. The reader is directed to the rulemaking record for the 1997 rule, contained in EPA Air Docket A–95–27, for information on alternatives the Agency considered during that rulemaking.

Today's proposal includes an analysis of an alternative standard for HD Otto-cycle engines. Section VI.B of this preamble, and Chapter 3, Section III(H) of the draft RIA, contain a detailed description of the alternative standard proposed by the engine manufacturers. Section 202(a)(3) of the Clean Air Act requires that EPA must set emission standards for heavy-duty engines to reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the model year to which the standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

As indicated above, EPA believes the standards proposed reflect the greatest degree of emission reduction achievable by HD Otto-cycle engines in the 2004 model year and have a reasonable cost-effectiveness level. EPA is requesting comment on the proposed standard and alternatives. Based on comments received and information available at the time of the final rulemaking, EPA will make a final determination under § 202(a)(3) of the CAA. EPA will address the requirements of UMRA § 205 in connection with the final rule.

D. Reporting and Recordkeeping Requirements

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2060–0104) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The following ICR document has been prepared by EPA:

EPA ICR #	Title
0783.38	Heavy Duty Engine Emission Certification.

The Agency proposes to collect information related to certification results. This information will be used to ensure compliance with and enforce the provisions in this rule. Responses will be mandatory in order to complete the certification process. Section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. EPA will consider confidential all information meeting the requirements of § 208(c) of the Clean Air Act.

This collection of information affects an estimated 66 respondents with a total of 459 responses per year and a total hour burden of 65,859 hours, for an estimated 143 hours per response, with estimated total annualized costs of $1,599,684 per year. The hours and annual cost of information collection activities by a given manufacturer depends on manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 29, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by November 29, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Compliance With Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. Today's proposal falls into that category only in part: risk considerations may be taken into account only to the extent the Agency may consider the inherent toxicity of a regulated pollutant, and any differential impacts such a pollutant may have on children's health, in deciding how to take cost and other relevant factors into consideration.

This rulemaking will achieve important reductions of various emissions from heavy-duty trucks, primarily emissions of NO_X. The rulemaking also addresses NMHC and PM. These pollutants raise concerns about a disproportionately greater effect on children's health, such as impacts from ozone, PM, and certain toxic air pollutants. See section II of this proposal and the RIA for a further discussion of these issues. The effects of ozone and PM on children's health was addressed in detail in EPA's rulemaking to establish these NAAQS, and EPA is not revisiting those issues here. EPA also believes the emissions reductions from the proposed strategies will reduce air toxics and the related impacts on children's health. EPA will be addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking that EPA is initiating in the near future under section 202(l)(2) of the Act. That rulemaking will address the emissions of hazardous air pollutants from motor vehicles and fuels, and the appropriate level of control of hazardous air pollutants from these sources.

In this proposal EPA has evaluated several regulatory strategies for reductions in these emissions from heavy-duty engines. For the reasons described in this preamble, EPA believes that the strategies proposed are preferable under the Clean Air Act to other potentially effective and reasonably feasible alternatives considered by the Agency, for purposes of reducing emissions from these sources as a way of helping areas achieve and maintain the NAAQS for ozone and PM. Moreover, consistent with the Clean Air Act, the proposed levels of control are designed to achieve the greatest degree of reduction of emissions of these pollutants achievable through technology that will be available, taking cost and other factors into consideration.

F. Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The rule will be implemented at the Federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

G. Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule will be implemented at the Federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule involves technical standards. The Agency is incorporating by reference applicable standards previously finalized by the Society of Automotive Engineers and the International Standards Organization. For a complete listing of the SAE and ISO standards incorporated by reference in this final rule, please see § 86.1, "Reference Materials" in the regulatory language immediately following this preamble.

I. Compliance With Executive Order on Federalism

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, which will go into effect on November 2, 1999. In the interim, the current Executive Order 12612 on federalism is still applicable. Under this order, this rule does not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government. This rule directly regulates manufacturers of heavy duty vehicles and engines, and does not impose any duties or obligations on, or restrict the powers of, any state.

XIII. What Is EPA's Statutory Authority for This Proposal?

Section 202(a)(3) authorizes EPA to establish emission standards for heavy duty vehicles and engines.[122] These standards are to reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the model year to which the standards apply. EPA is to give appropriate consideration to cost, energy, and safety factors associated with the application of such technology. Section 202(a)(3)(C) requires that promulgated standards apply for no less than three years and go into effect no less than 4 years after promulgation. Section 202(m) authorizes regulations requiring installation of on-board diagnostics systems for light-duty and heavy-duty vehicles and engines. Pursuant to sections 202(a)(1) and 202(d), these emission standards must be met throughout the entire useful life of the engine or vehicle as determined by EPA's regulations. If the Administrator determines that a substantial number of vehicles do not conform to emission standards when in actual use throughout their useful lives, section 207(c) of the Act requires EPA to make a determination of nonconformity. Section 208 of the Act requires manufacturers to perform tests (where not otherwise reasonably available), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer is acting in compliance with the Act and regulations thereunder. The remainder of section 202, as well as sections 203, 206, 207, 208, and 301, provide additional authority for promulgation of these regulations.

List of Subjects

40 CFR Part 85

Confidential business information, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: October 6, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, and 7601(a).

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[122] U.S.C. 7521(a)(3).

Subpart F—[Amended]

2. Section 85.501 is revised to read as follows:

§ 85.501 General applicability.

(a) Sections 85.502 through 85.505 are applicable to aftermarket conversion systems for which an enforcement exemption is sought from the tampering prohibitions contained in section 203 of the Act.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

Subpart P—[Amended]

3. Section 85.1501 is amended by revising paragraph (c), to read as follows:

§ 85.1501 Applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

Subpart R—[Amended]

4. Section 85.1701 is amended by revising paragraph (c), to read as follows:

§ 85.1701 General applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

5. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

6. Section 86.1 is amended by adding an entry to the table in alphanumeric order in paragraphs (b)(2) and (b)(5), to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(2) * * *

Document No. and name	40 CFR part 86 reference
* * * * * *	*
SAE J1939, Recommended Practice for a Serial Control and Communications Vehicle Network	86.004–17; 86.1806–04

* * * * *

(5) * * *

Document No. and name	40 CFR part 86 reference
* * * * * *	*
ISO 14230–4 April 1996, Road Vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems.	86.004–17; 86.1806–04

Subpart A—[Amended]

7. A new § 86.000–15 is added to subpart A to read as follows:

§ 86.000–15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.

Section 86.000–15 includes text that specifies requirements that differ from § 86.094–15 or § 86.098–15. Where a paragraph in § 86.094–15 or § 86.098–15 is identical and applicable to § 86.000–15, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–15." or "[Reserved]. For guidance see § 86.098–15.".

(a) through (b) [Reserved] For guidance see § 86.094–15.

(c) [Reserved] For guidance see § 86.098–15.

(d) through (i) [Reserved] For guidance see § 86.094–15.

(j) *Optional program for early banking for diesel engines.* Provisions set forth in §§ 86.094–15 (a), (b), (d) through (i), and 86.098–15 (c) apply except as specifically stated otherwise in § 86.098–15 (j)(1) through (j)(3)(iii).

(j)(1) through (j)(3)(iii) [Reserved] For guidance see § 86.098–15.

(k) *Optional program for early banking for Otto-cycle engines.* Provisions set forth in §§ 86.094–15(a), (b), (d) through (i), and 86.098–15(c) apply except as specifically stated otherwise in this paragraph (k).

(1) To be eligible for the optional program described in this paragraph (k), the following must apply:

(i) Credits are generated from Otto-cycle heavy-duty engines.

(ii) During certification, the manufacturer shall declare its intent to include specific engine families in the program described in this paragraph. Separate declarations are required for each program and no engine families may be included in both programs in the same model year.

(2) *Credit generation and use.* (i) Credits shall only be generated by 2000 and later model year engine families.

(ii) Credits may only be used for 2004 and later model year heavy-duty Otto-cycle engines. When used with 2004 and later model year engines, NO_x credits may be used to meet the NO_x plus NMHC standard, except as otherwise provided in § 86.004–11(a)(1)(i)(D).

(iii) If a manufacturer chooses to use credits generated under this paragraph (k) prior to model year 2004, the averaging, trading, and banking of such credits shall be governed by the program provided in §§ 86.094–15(a), (b), (d) through (i) and 86.098–15(c) and shall be subject to all discounting, credit life limits and all other provisions contained therein. In the case where the manufacturer can demonstrate that the credits were discounted under the program provided in this paragraph (k), that discount may be accounted for in the calculation of credits described in § 86.098–15(c).

(3) *Program flexibilities.* (i) NO_X credits that are banked until model year 2004 under this paragraph (k) may be used in 2004 or any model year thereafter without being forfeited due to credit age. The requirement in this paragraph (k)(3) applies instead of the requirements in § 86.094–15(f)(2)(i).

(ii) There are no regional category restraints for averaging, trading, and banking of credits generated under the program described in this paragraph (k). This applies instead of the regional category provisions described in the introductory text of § 86.094–15 (d) and (e).

(iii) *Credit discounting.* (A) For NO_X credits generated under this paragraph (k) from engine families with NO_X FELs greater than 1.0 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 0.9 shall be used instead of 0.8 in the credit availability equation in § 86.098–15(c)(1).

(B) For NO_X credits generated under this paragraph (k) from engine families with NO_X FELs less than or equal to 1.0 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 1.0 shall be used in place of 0.8 in the credit availability equation in § 86.098–15 (c)(1).

(iv) *Credit calculation.* For NO_X credits generated under this paragraph (k), a Std value of 2.0 grams per brake horsepower-hour shall be used in place of the current and applicable NO_X standard in the credit availability equation in § 86.098–15(c)(1).

(l) *Credit apportionment.* At the manufacturer's option, credits generated under the provisions described in this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.098–10 or § 86.098–11, as applicable. For each engine family, the manufacturer may report engine sales in two categories, "ABT-only credits" and "non-manufacturer-owned credits".

(i) For engine sales reported as "ABT-only credits", the credits generated must be used solely in the ABT program described in this section.

(ii) The engine manufacturer may declare a portion of engine sales "non-manufacturer-owned credits" and this portion of the credits generated between the standard and the FEL, based on the calculation in § 86.098–15(c)(1), would belong to another party. For ABT, the manufacturer may not generate any credits for the engine sales reported as "nonmanufacturer-owned credits". Engines reported as "non-manufacturer-owned credits" shall comply with the FEL and the requirements of the ABT program in all other respects.

(2) Only manufacturer-owned credits reported as "ABT-only credits" shall be used in the averaging, trading, and banking provisions described in this section.

(3) Credits shall not be double-counted. Credits used in the ABT program may not be provided to an engine purchaser for use in another program.

(4) Manufacturers shall determine and state the number of engines sold as "ABT-only credits" and "non-manufacturer-owned credits" in the end-of-model year reports required under § 86.098–23.

8. Section 86.000–16 is amended by removing paragraphs (a) through (d) introductory text, adding paragraphs (a), (b), (c), and (d) introductory text, and revising paragraph (d)(1), to read as follows:

§ 86.000–16 Prohibition of defeat devices.

* * * * *

(a) No new light-duty vehicle, light-duty truck, heavy-duty vehicle, or heavy-duty engine shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle or engine at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purpose of investigating a potential defeat device.

(c) [Reserved]. For guidance see § 86.094–16.

(d) For vehicle and engine designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle or engine design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal emissions test procedure when the vehicle or engine is operated under conditions which may reasonably be expected to be encountered in normal operation and use.

* * * * *

9. Section 86.001–1 is amended by revising paragraph (b) to read as follows:

§ 86.001–1 General applicability.

* * * * *

(b) *Optional applicability.* (1) A manufacturer may request to certify any heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions located in subpart S of this part through the 2003 model year. Heavy-duty engine or vehicle provisions of this subpart A do not apply to such a vehicle.

(2) Beginning with the 2001 model year, a manufacturer may certify any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for complete Otto-cycle heavy-duty vehicles located in subpart S of this part for purposes of generating credits in the heavy-duty vehicle averaging, banking, and trading program contained in § 86.1817–04. Heavy-duty engine or heavy-duty vehicle provisions of this subpart A do not apply to such a vehicle.

* * * * *

10. A new § 86.004–1 is added to subpart A to read as follows:

§ 86.004–1 General applicability.

Section 86.004–1 includes text that specifies requirements that differ from § 86.001–1. Where a paragraph in § 86.001–1 is identical and applicable to § 86.004–1, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.001–1.".

(a) The provisions of this subpart generally apply to 2004 and later model year new Otto-cycle heavy-duty engines used in incomplete vehicles and vehicles above 14,000 pounds GVWR and new diesel-cycle heavy-duty engines. In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section or paragraph. The provisions of this subpart continue to generally apply to 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty vehicles, 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty trucks, and 2003 and earlier model year new Otto-cycle complete heavy-duty vehicles at or below 14,000 pounds GVWR. Provisions generally applicable to 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles, 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks, and 2004 and later model year Otto-cycle complete heavy-duty vehicles at or below 14,000 pounds GVWR are located in subpart S of this part.

(b) *Optional applicability.* For 2004 and later model years, a manufacturer may request to certify any incomplete heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for complete heavy-duty vehicles located in subpart S of this part. Heavy-duty engine or heavy-duty vehicle provisions of this subpart A do not apply to such a vehicle.

(c) [Reserved]

(d) [Reserved]

(e) through (f) [Reserved]. For guidance see § 86.001–1.

11. Section 86.004–2 is amended by adding definitions in alphabetical order for "defeat device," "heavy-duty vehicle," and "light-duty truck" to read as follows:

§ 86.004–2 Definitions.

* * * * *

Defeat device means an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the applicable Federal emission test procedure for heavy-duty vehicles and heavy-duty engines described in subpart N of this part, excluding the test procedure referred to as the "Not-To-Exceed Test Procedure" contained in § 86.1370, and excluding the Maximum Allowable Emission Limits contained in § 86.1370(f);

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

Heavy-duty vehicle means any motor vehicle rated at more than 8,500 pounds GVWR or that has a vehicle curb weight of more than 6,000 pounds or that has a basic vehicle frontal area in excess of 45 square feet, excluding vehicles with a GVWR greater than 8,500 pounds and less than or equal to 10,000 pounds that are defined as light-duty trucks.

Light-duty truck means: (1) Any motor vehicle rated at 8,500 pounds GVWR or less which has a curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

(i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or

(ii) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

(iii) Available with special features enabling off-street or off-highway operation and use; or

(2) Any motor vehicle rated at greater than 8,500 pounds GVWR and less than or equal to 10,000 pounds GVWR which is a complete vehicle designed primarily for transportation of persons and has a capacity of not more than 12 persons.

* * * * *

12. A new § 86.004–10 is added to subpart A to read as follows:

§ 86.004–10 Emission standards for 2004 and later model year Otto-cycle heavy-duty engines and vehicles.

Section 86.004–10 includes text that specifies requirements that differ from § 86.099–10. Where a paragraph in § 86.099–10 is identical and applicable to § 86.004–10, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.099–10.".

(a)(1) Exhaust emissions from new 2004 and later model year Otto-cycle HDEs shall not exceed:

(i)(A) *Oxides of Nitrogen plus Non-methane Hydrocarbons (NO_X + NMHC)* for engines fueled with either gasoline, natural gas, or liquefied petroleum gas. 1.0 grams per brake horsepower-hour (0.37 gram per megajoule), as measured under transient operating conditions.

(B) *Oxides of Nitrogen plus Non-methane Hydrocarbon Equivalent (NO_X + NMHCE)* for engines fueled with methanol. 1.0 grams per brake horsepower-hour (0.37 gram per megajoule), as measured under transient operating conditions.

(C) A manufacturer may elect to include any or all of its Otto-cycle HDE families in any or all of the emissions ABT programs for HDEs, within the restrictions described in § 86.098–15. If the manufacturer elects to include engine families in any of these programs, the NO_X plus NMHC (or NO_X plus NMHCE for methanol-fueled engines) FELs may not exceed 4.5 grams per brake horsepower-hour (1.7 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, banking, or trading programs.

(ii)(A) *Carbon monoxide for engines intended for use in all vehicles, except as provided in paragraph (a)(1)(ii)(B) of this section.* 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide for engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds.* 37.1 grams per brake horsepower-hour (13.8 grams per megajoule), as measured under transient operating conditions.

(C) *Idle carbon monoxide. For all Otto-cycle HDEs utilizing aftertreatment technology: 0.50 percent of exhaust gas flow at curb idle.*

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part.

(3)(i) A manufacturer may certify one or more Otto-cycle HDE configurations intended for use in all vehicles to the emission standard set forth in paragraphs (a)(1)(ii)(B) of this section: Provided, that the total model year sales of such configuration(s), segregated by fuel type, being certified to the emission standard in paragraph (a)(1)(ii)(B) of this section represent no more than five percent of total model year sales of each fuel type Otto-cycle HDE intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraphs (a)(1)(ii)(B) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in § 86.099–10(b)(1)(i), (b)(2)(i) and (b)(3)(i).

(4) [Reserved]

(b) [Reserved]. For guidance see § 86.099–10.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1998 or later model year Otto-cycle HDE.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart N or P of this part to ascertain that such test engines meet the requirements of this section.

13. Section 86.004–11 is amended by adding paragraphs (a)(3) and (a)(4) and (b)(1)(iv), and by revising paragraph (b)(2), to read as follows:

§ 86.004–11 Emission standards for 2004 and later model year diesel heavy-duty engines and vehicles.

(a) * * *

(3)(i) The weighted average exhaust emissions, as determined under § 86.1360–2004(e)(5) pertaining to the supplemental steady-state test cycle, for each regulated pollutant shall not exceed 1.0 times the applicable emission standards or FELs specified in paragraph (a)(1) of this section.

(ii) Exhaust emissions shall not exceed the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360–2004(f), when the engine is operated in the steady-state control area defined under § 86.1360–2004(d).

(4)(i) The weighted average emissions, as determined under § 86.1370 pertaining to the not-to-exceed test procedures, for each regulated pollutant shall not exceed 1.25 times the applicable emission standards or FELs specified in paragraph (a)(1) of this section, except as noted in paragraph (a)(4)(ii) of this section.

Exhaust emissions shall not exceed either the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360(f) or the exhaust emissions specified in paragraph (a)(4)(i) of this section, whichever is numerically lower, when the engine is operated in the steady-state control area defined under § 86.1360(d).

(b) * * *

(1) * * *

(iv) A filter smoke number of 1.0, or the following alternate opacity limits:

(A) A 30 second transient test average opacity limit of 4% for a 5 inch path; and

(B) A 10 second steady state test average opacity limit of 4% for a 5 inch path.

(2)(i) The standards set forth in paragraphs (b)(1)(i) through (iii) of this section refer to exhaust smoke emissions generated under the conditions set forth in subpart I of this part and measured and calculated in accordance with those procedures.

(ii) The standards set forth in paragraph (b)(1)(iv) of this section refer to exhaust smoke emissions generated under the conditions set forth in § 86.1380 and calculated in accordance with the procedures set forth in § 86.1372.

* * * * *

14. Section 86.004–15 is amended by revising the section heading and paragraphs (a)(1), (b) introductory text, (b)(1)(i), (b)(1)(ii), (c)(1) introductory text, (c)(1)(iii), (d) introductory text, (d)(1)(i), (d)(1)(ii), (f) heading, (f)(1)(i), (f)(2)(i), (f)(2)(ii), (f)(3)(ii), (f)(3)(iii), (g)(1), (g)(2) introductory text, (g)(2)(i), (g)(2)(ii), (g)(4), (j) introductory text, (j)(1) introductory text, (k) heading and introductory text, removing paragraphs (a)(2)(iii) and (d)(1)(iii), and adding paragraph (l), to read as follows:

§ 86.004–15 NO_X plus NMHC and particulate averaging, trading, and banking for heavy-duty engines.

(a)(1) Heavy-duty engines eligible for NO_X plus NMHC and particulate averaging, trading and banking programs are described in the applicable emission sandards sections in this subpart. All heavy-duty engine families which include any engines labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for these programs. Participation in these programs is voluntary.

* * * * *

(b) Participation in the NO_X plus NMHC and/or particulate averaging, trading, and banking programs shall be done as follows:

(1) * * *

(i) Declare its intent to include specific engine families in the averaging, trading and/or banking programs. Separate declarations are required for each program and for each pollutant (i.e., NO_X plus NMHC, and particulate).

(ii) Declare an FEL for each engine family participating in one or more of these two programs.

(A) The FEL must be to the same level of significant digits as the emission standard (one-tenth of a gram per brake horsepower-hour for NO_X plus NMHC emissions and one-hundredth of a gram per brake horsepower-hour for particulate emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable heavy-duty engine NO_X plus NMHC and particulate emission standards.

* * * * *

(c)(1) For each participating engine family, NO_X plus NMHC, and particulate emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a, to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

* * * * *

(iii) For purposes of the equation in paragraphs (c)(1)(i) and (ii) of this section:

Std = the current and applicable heavy-duty engine NO_X plus NMHC or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.

FEL = the NO_X plus NMHC, or particulate family emission limit for the engine family in grams per brake horsepower hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL = the useful life described in § 86.004–2, or alternative life as described in § 86.004–21(f), for the given engine family in miles.

Production = the number of engines produced for U.S. sales within the given engine family during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

Discount = a one-time discount applied to all credits to be banked or traded within the model year generated. Except as otherwise allowed in paragraphs (k) and (l) of this section, the discount applied here is 0.9. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

* * * * *

(d) *Averaging sets for NO_X plus NMHC emission credits.* The averaging and trading of NO_X plus NMHC emission credits will only be allowed between heavy-duty engine families in the same averaging set. The averaging sets for the averaging and trading of NO_X plus NMHC emission credits for heavy-duty engines are defined as follows:

(1) For NO_X+NMHC credits from Otto-cycle heavy-duty engines:

(i) Otto-cycle heavy-duty engines constitute an averaging set. Averaging and trading among all Otto-cycle heavy-duty engine families is allowed. There are no subclass restrictions.

(ii) Otto-cycle heavy-duty vehicles certified under the chassis-based provisions of Subpart S of this Part may not average or trade with heavy-duty Otto-cycle engines.

* * * * *

(f) *Banking of NO_X plus NMHC, and particulate emission credits.* (1) * * * (i) NO_X plus NMHC, and particulate emission credits may be banked from engine families produced in any model year.

* * * * *

(2) * * * (i) NO_X plus NMHC and particulate credits generated in 2004 and later model years do not expire.

(ii) Manufacturers withdrawing banked NO_X plus NMHC, and/or particulate credits shall indicate so during certification and in their credit reports, as described in § 86.091–23.

(3) * * *

(ii) Banked credits may not be used for NO_X plus NMHC or particulate averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the engine family if the manufacturer elects to recertify to a higher FEL.

(iii) Banked NO_X credits from 2003 and earlier model years may be used in place of NO_X plus NMHC credits after 2003 provided that they are used in the correct averaging set and the NO_X credits have not expired.

(g)(1) This paragraph (g) assumes NO_X plus NMHC, and particulate nonconformance penalties (NCPs) will be available for the 2004 and later model year HDEs.

(2) Engine families using NO_X plus NMHC and/or particulate NCPs but not involved in averaging:

(i) May not generate NO_X plus NMHC or particulate credits for banking and trading.

(ii) May not use NO_X plus NMHC or particulate credits from banking and trading.

* * * * *

(4) If a manufacturer has any engine family in a given averaging set which is using NO_X plus NMHC and/or particulate NCPs, none of that manufacturer's engine families in that averaging set may generate credits for banking and trading.

* * * * *

(j) *Credit apportionment.* At the manufacturer's option, credits generated under the provisions described in this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.004–10 or § 86.004–11. For each engine family, the manufacturer may report engine sales in two categories, "ABT-only credits" and "nonmanufacturer-owned credits'.

* * * * *

(k) *Additional flexibility for diesel-cycle engines.* If a diesel-cycle engine family meets the conditions of either paragraph (k)(1) or (2) of this section, a Discount of 1.0 may be used in the trading and banking calculation, for both NO_X plus NMHC and for particulate, described in paragraph (c)(1) of this section.

* * * * *

(l) *Additional flexibility for Otto-cycle engines.* If an Otto-cycle engine family meets the conditions of paragraph (l)(1) or (2) of this section, a discount of 1.0 may be used in the trading and banking credits calculation for NO_X plus NMHC described in paragraph (c)(1) of this section.

(1) The engine family has a FEL of 0.5 g/bhp-hr NO_X plus NMHC or lower;

(2) All of the following conditions are met:

(i) For model years 2004, 2005, and 2006 only;

(ii) An engine family is certified using carry-over certification data from a 2003 or earlier model year where the sum of the NO_X FEL plus the HC (or hydrocarbon equivalent where applicable) certification level is below 1.0 g/bhp-hr.

15. Section 86.004–16 is added to subpart A to read as follows:

§ 86.004–16 Prohibition of defeat devices.

(a) No new heavy-duty vehicle or heavy-duty engine shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle or engine at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purpose of investigating a potential defeat device.

(c) [Reserved]

(d) For vehicle and engine designs designated by the Administrator to be investigated for possible defeat devices:

(1) *General.* The manufacturer must show to the satisfaction of the Administrator that the vehicle or engine design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal emissions test procedures, described in subpart N of this part, excluding the test procedure referred to as the "Not-To-Exceed Test Procedure" contained in § 86.1370, and the Maximum Allowable Emission Limits contained in § 86.1360(f), when the vehicle or engine is operated under conditions which may reasonably be expected to be encountered in normal operation and use.

(2) *Information submissions required.* The manufacturer will provide an explanation containing detailed information (including information which the Administrator may request to be submitted) regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure described in subpart N of this part, excluding the test procedure referred to as the "Not-To-Exceed Test Procedure" contained in § 86.1370.

16. Section 86.004–17 is added to subpart A, to read as follows:

§ 86.004–17 On-board diagnostics.

(a) *General.* All heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must be equipped with an on-board diagnostic (OBD) system capable of monitoring all emission-related engine systems or components during the applicable useful life. Heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must meet the OBD requirements of this section according to the phase-in schedule in paragraph (k) of this section. All monitored systems and components must be evaluated periodically, but no less frequently than once per applicable certification test cycle as defined in Appendix I, paragraph (f), of this part, or similar trip as approved by the Administrator.

(b) *Malfunction descriptions.* The OBD system must detect and identify malfunctions in all monitored emission-related engine systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart N of this part (engine-based test procedures) excluding the test procedure referred to as the "Not-To-Exceed Test Procedure" contained in § 86.1370, and excluding the test procedure referred to as the "Load Response Test" contained in § 86.1380.

(1) *Catalysts and particulate traps. (i) Otto-cycle.* Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC+NO_X standard or FEL, as compared to the NMHC+NO_X emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* If equipped, catalyst or particulate trap deterioration or malfunction before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or PM. This monitoring need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold; however, the presence of the catalyst or particulate trap must still be monitored.

(2) *Engine Misfire.* (i) *Otto-cycle.* Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or CO; and any misfire capable of damaging the catalytic converter.

(ii) *Diesel.* Lack of cylinder combustion must be detected.

(3) *Oxygen sensors.* If equipped, oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO$_X$ or CO.

(4) *Evaporative leaks.* If equipped, any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. Where fuel tank capacity is greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) *Other emission control systems.* Any deterioration or malfunction occurring in an engine system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC+NO$_X$, CO or diesel PM. For engines equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph (b)(5) provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system must indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For engines equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) *Other emission-related engine components.* Any other deterioration or malfunction occurring in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph (b)(6) must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility. Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system must be detected and identified on vehicles so equipped.

(c) *Malfunction indicator light (MIL).* The OBD system must incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, the MIL must display "Check Engine," "Service Engine Soon," a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. More than one general purpose malfunction indicator light for emission-related problems should not be used; separate specific purpose warning lights (*e.g.* brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* The MIL must illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL must blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (*i.e.*, operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL must maintain a steady illumination when the misfire is not occurring and then remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL must also illuminate when the vehicle's ignition is in the "key-on" position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered and no new malfunctions have been detected. Similar conditions are defined as engine speed within 375 rpm, engine load within 20 percent, and engine warm-up status equivalent to that under which the malfunction was first detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, *i.e.*, three to six driving cycles would be considered acceptable.

(e) *Storing of Computer Codes.* The OBD system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code must be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code must identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (*i.e.*, MIL commanded "ON," MIL commanded "OFF").

(2) For a single misfiring cylinder, the diagnostic trouble code(s) must uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. For diesel engines only, the specific cylinder for which combustion cannot be detected need not be identified if new hardware would be required to do so. The diagnostic trouble

code must identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, must be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further engine operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (*e.g.*, misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to "not ready" status upon key-on or key-off; intentional setting of readiness codes to "not ready" status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (i.e., more than one) due to the continued presence of extreme operating conditions (*e.g.*, ambient temperatures below 40°F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to "ready" status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, "freeze frame" engine conditions present at the time must be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions must be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions must include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer must include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information must be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals must be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals must be clearly identified separately from default value or limp home signals.

(3) For all OBD systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, *etc.*), the results of the most recent test performed by the vehicle, and the limits to which the system is compared must be available through the standardized data link connector per the appropriate standardized specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) *Exceptions.* The OBD system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the OBD system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, *etc.*

(h) *Reference materials.* The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference (see § 86.1):

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 "Class B Data Communication Network Interface," (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 E/E Diagnostic Test Modes,"(July 1996).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 "Recommended Practices for Diagnostic Trouble Code Definitions," (July 1996).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 "Diagnostic Connector," (January 1995).

(v) As an alternative to the above standards, heavy-duty engines may conform to the specifications of SAE J1939 "Recommended Practice for a Serial Control and Communications Vehicle Network."

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4 "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems" may also be used as an alternative to SAE J1850.

(i) *Deficiencies and Alternate Fueled Engines.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor ("major" diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternate fueled engines. For alternate fueled heavy-duty engines (*e.g.* natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2006 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel. At a minimum, alternate fuel engines must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBDII Compliance Option.* For heavy-duty engines at or below 14,000 pounds GVWR, demonstration of compliance with California OBD II requirements (Title 13 California Code Sec. 1968.1), as modified pursuant to California Mail Out #97–24 (December 9, 1997), shall satisfy the requirements of this section, except that the exemption to the catalyst monitoring provisions of California Code Sec. 1968.1(b)(1.1.2) for diesel engines does not apply, and compliance with California Code Secs. 1968.1(b)(4.2.2), pertaining to 0.02 inch evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of California Code Secs. 1968.1(m)(6.1) and (6.2) do not apply.

(k) *Phase-in for Heavy-Duty Engines.* Manufacturers of heavy-duty engines must comply with the OBD requirements in this section according to the following phase-in schedule, based on the percentage of projected engine sales within each category:

OBD COMPLIANCE PHASE-IN HEAVY-DUTY ENGINES

[Intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less]

Model year	Phase-in based on projected sales
2004 MY	—40% compliance. —alternative fuel waivers available.
2005 MY	—60% compliance. —alternative fuel waivers available.
2006 MY	—80% compliance. —alternative fuel waivers available.
2007+ MY	—100% compliance.

17. Section 86.004–21 is amended by adding paragraphs (m) through (p), to read as follows:

§ 86.004–21 Application for certification.

* * * * *

(m) For diesel heavy-duty engines, the manufacturer must provide the following additional information pertaining to the supplemental steady-state test conducted under § 86.1360–2004:

(1) Weighted average emissions data, calculated according to § 86.1360–2004(e)(5), for all pollutants for which an emission standard is established in § 86.004–11(a);

(2) Brake specific gaseous emission data for each of the 13 test points (identified under § 86.1360–2004(b)(1)) and the 3 EPA-selected test points (identified under § 86.1360–2004(b)(2));

(3) Concentrations and mass flow rates of all regulated gaseous emissions plus carbon dioxide;

(4) Exhaust smoke opacity ("k" value);

(5) Values of all emission-related engine control variables at each test point;

(6) Weighted average particulate matter;

(7) A statement that the test results correspond to the maximum NO_X producing condition for a 30 second or longer averaging period reasonably expected to be encountered at each test point during normal engine operation and use. This statement corresponds to the test requirement under § 86.1360–2004(e)(3). The manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement;

(8) A statement that the engines will comply with the weighted average emissions standard and Maximum Allowable Emission Limits specified in § 86.004–11(a)(3) during all normal engine operation and use. The manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(n) The manufacturer must provide a statement in the application for certification that the diesel heavy-duty engine for which certification is being requested will comply with the applicable Not-To-Exceed Limits specified in § 86.004–11(a)(4) when operated under all conditions which may reasonably be expected to be encountered in normal vehicle operation and use. The manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(o) The manufacturer must provide in each application for certification of a heavy-duty diesel engine emission test results from the Load Response Test conducted according to § 86.1380, including at a minimum test results conducted at each of the speeds identified in § 86.1380.

(p) Upon request from EPA, a manufacturer must provide to EPA hardware (including scan tools), passwords, and/or documentation necessary for EPA to read and interpret (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in anyway to emission control devices and auxiliary emission control devices. Passwords include any information necessary to enable generic scan tools or personal computers access to proprietary emission related information broadcast by an engine's on-board computer, if such passwords exist. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read and interpret information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead center, fueling rates in cubic centimeters per stroke, vehicle speed in milers per hour or per kilometer.

18. Section 86.004–30 is amended by revising paragraph (f), to read as follows:

§ 86.004–30 Certification.

* * * * *

(f) For engine families required to have an OBD system, certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) *Otto-cycle*. A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC+NO_X standard or FEL above the NMHC+NO_X emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel*. If monitored for emissions performance—a catalyst or particulate trap is replaced with a deteriorated or defective catalyst or trap, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or PM. If not monitored for emissions performance—removal of the catalyst or particulate trap is not detected and identified.

(2)(i) *Otto-cycle*. An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards or FEL for NMHC+NO_X or CO.

(ii) *Diesel*. An engine misfire condition is induced and is not detected.

(3) If so equipped, any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or CO.

(4) If so equipped, a vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related engine system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC+NO_X, CO or PM.

(6) A malfunction condition is induced in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

20. Subpart B is amended by revising the heading of the subpart, to read as follows:

Subpart B—Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles and New Light-Duty Trucks and New Otto-Cycle Complete Heavy-Duty Vehicles; Test Procedures

21. Section 86.101 is amended by revising paragraphs (a) introductory text and (d), and by adding paragraph (e) to read as follows:

§ 86.101 General applicability.

(a) The provisions of this subpart are applicable to 1997 and later model year new light-duty vehicles and light duty trucks, and 2004 and later model year new Otto-cycle complete heavy-duty vehicles.

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of Subpart S of this part.

(e) References in this subpart to light-duty vehicles or light-duty trucks shall be deemed to apply to light-duty vehicles, light-duty trucks, or Otto-cycle complete heavy-duty vehicles as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of Subpart S of this part.

22. Section 86.129–94 is amended by revising paragraph (a) to read as follows:

§ 86.129–94 Road load power, test weight, inertia weight class determination, and fuel temperature profile.

* * * * *

(a) Flywheels, electrical, or other means of simulating test weight as shown in the following table shall be used. If the equivalent test weight specified is not available on the dynamometer being used, the next higher equivalent test weight (not to exceed 250 pounds) available shall be used:

Test weight basis [4,5]	Equivalent test weight (pounds)	Inertia weight class (pounds)
Road load power at 50 mi/hour—light-duty trucks [1,2,3]		
Up to 1062	1,000	1,000
1063 to 1187	1,125	1,000
1188 to 1312	1,250	1,250
1313 to 1437	1,375	1,250
1438 to 1562	1,500	1,500
1563 to 1687	1,625	1,500
1688 to 1812	1,750	1,750
1813 to 1937	1,875	1,750
1938 to 2062	2,000	2,000
2063 to 2187	2,125	2,000
2188 to 2312	2,250	2,250
2313 to 2437	2,375	2,250
2438 to 2562	2,500	2,500
2563 to 2687	2,625	2,500
2688 to 2812	2,750	2,750
2813 to 2937	2,875	2,750
2938 to 3062	3,000	3,000
3063 to 3187	3,125	3,000
3188 to 3312	3,250	3,000
3313 to 3437	3,375	3,500

Test weight basis[4,5]	Equivalent test weight (pounds)	Inertia weight class (pounds)
3438 to 3562	3,500	3,500
3563 to 3687	3,625	3,500
3688 to 3812	3,750	3,500
3813 to 3937	3,875	4,000
3938 to 4125	4,000	4,000
4126 to 4375	4,250	4,000
4376 to 4625	4,500	4,500
4626 to 4875	4,750	4,500
4876 to 5125	5,000	5,000
5126 to 5375	5,250	5,000
5376 to 5750	5,500	5,500
5751 to 6250	6,000	6,000
6251 to 6750	6,500	6,500
6751 to 7250	7,000	7,000
7251 to 7750	7,500	7,500
7751 to 8250	8,000	8,000
8251 to 8750	8,500	8,500
8751 to 9250	9,000	9,000
9251 to 9750	9,500	9,500
9751 to 10250	10,000	10,000
10251 to 10750	10,500	10,500
10751 to 11250	11,000	11,000
11251 to 11750	11,500	11,500
11751 to 12250	12,000	12,000
12251 to 12750	12,500	12,500
12751 to 13250	13,000	13,000
13251 to 13750	13,500	13,500
13751 to 14000	14,000	14,000

[1] For all light-duty trucks except vans, and for heavy-duty vehicles optionally certified as light-duty trucks, and for complete heavy-duty vehicles, the road load power (horsepower) at 50 mi/h shall be 0.58 times B (defined in footnote 3 of this table) rounded to the nearest ½ horsepower.

[2] For vans, the road load power at 50 mi/h (horsepower) shall be 0.50 times B (defined in footnote 3 of this table) rounded to the nearest ½ horsepower.

[3] B is the basic vehicle frontal area (square foot) plus the additional frontal area (square foot) of mirrors and optional equipment exceeding 0.1 ft^2 which are anticipated to be sold on more than 33 percent of the car line. Frontal area measurements shall be computed to the nearest 10th of a square foot using a method approved in advance by the Administrator.

[4] For model year 1994 and later heavy light-duty trucks not subject to the Tier 0 standards of § 86.094–9, test weight basis is as follows: for emissions tests, the basis shall be adjusted loaded vehicle weight, as defined in § 86.094–2; and for fuel economy tests, the basis shall be loaded vehicle weight, as defined in § 86.082–2, or, at the manufacturer's option, adjusted loaded vehicle weight as defined in § 86.094–2. For all other vehicles, test weight basis shall be loaded vehicle weight, as defined in § 86.082–2.

[5] Light-duty vehicles over 5,750 lb. loaded vehicle weight shall be tested at a 5,500 lb. equivalent test weight.

* * * * *

Subpart H—[Amended]

23. Section 86.701–94 is revised to read as follows:

§ 86.701–94 General applicability.

(a) The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines; and 2004 and later model year Otto-cycle complete heavy-duty vehicles. The provisions of subpart B of this part apply to this subpart.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

Subpart K—[Amended]

24. Section 86.1001–84 is amended by revising paragraph (b), to read as follows:

§ 86.1001–84 Applicability.

* * * * *

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

Subpart L—[Amended]

25. Section 86.1101–87 is revised to read as follows:

§ 86.1101–87 Applicability.

(a) The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated in excess of 6,000 pounds gross vehicle weight.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

Subpart N—[Amended]

26. Section 86.1304–90 is revised to read as follows:

§ 86.1304–90 Section numbering; construction.

(a) *Section numbering.* The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is applicable. The section continues to apply to subsequent model years unless a later model year section is adopted.

Example: Section 86.18xx–01 applies to the 2001 and subsequent model years. If a

Sec. 86.18xx–03 is promulgated it would apply beginning with the 2003 model year; Sec. 86.18xx-01 would apply to model years 2001 through 2002.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

27. A new § 86.1305–2004 is added to subpart N, to read as follows:

§ 86.1305–2004 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform exhaust emissions test on Otto-cycle and diesel heavy duty engines. Subpart A of this part sets forth the emission standards and general testing requirements to comply with EPA certification procedures.

(b) This subpart contains five key sets of requirements, as follows: specifications and equipment needs (§§ 86.1306 through 86.1314); calibration methods and frequencies (§§ 86.1316 through 86.1326); test procedures (§§ 86.1327 through 86.1341 and §§ 86.1360 through 86.1380); calculation formulas (§§ 86.1342 and 86.1343); and data requirements (§ 86.1344).

29. A new § 86.1360–2004 is added to subpart N to read as follows:

§ 86.1360–2004 Supplemental steady-state test; test cycle and procedures.

(a) *Applicability.* This section applies to diesel heavy duty engines.

(b) *Test cycle.* (1) The following 13-mode cycle must be followed in dynamometer operation on the test engine:

Mode No.	Engine speed	Percent load	Weighting factor	Mode length (minutes)
1	Idle		0.15	4
2	A	100	0.08	2
3	B	50	0.10	2
4	B	75	0.10	2
5	A	50	0.05	2
6	A	75	0.05	2
7	A	25	0.05	2
8	B	100	0.09	2
9	B	25	0.10	2
10	C	100	0.08	2
11	C	25	0.05	2
12	C	75	0.05	2
13	C	50	0.05	2

(2) In addition to the 13 test points identified in paragraph (b)(1) of this section, EPA may select, and require the manufacturer to conduct the test using, up to 3 additional test points within the control area (as defined in paragraph (d) of this section). EPA will notify the manufacturer of these supplemental test points in writing in a timely manner before the test.

(c) *Determining Engine Speeds.* (1) The engine speeds A, B and C, referenced in the table in paragraph (b)(1) of this section, and speeds D and E, referenced in § 86.1380, must be determined as follows:

Speed A = $n_{lo} + 25\% (n_{hi} - n_{lo})$
Speed B = $n_{lo} + 50\% (n_{hi} - n_{lo})$
Speed C = $n_{lo} + 75\% (n_{hi} - n_{lo})$
Speed D = $n_{lo} + 100\% (n_{hi} - n_{lo})$
Speed E = $n_{lo} + 15\% (n_{hi} - n_{lo})$

Where:

n_{hi} = High speed as determined by calculating 70% of the maximum power. The highest engine speed where this power value occurs on the power curve is defined as n_{hi}.

n_{lo} = Low speed as determined by calculating 50% of the maximum power. The lowest engine speed where this power value occurs on the power curve is defined as n_{lo}.

Maximum power = the maximum observed power calculated from the torque/speed ratios determined according to the engine mapping procedures defined in § 86.1332. Power = (speed × torque)/5252, where speed is in revolutions per minute and torque is in foot-pounds.

(2) If the measured engine speeds A, B, and C are within 3 % of the engine speeds as declared by the manufacturer, the declared engine speeds shall be used for the emissions test. If the tolerance is exceeded for any of the engine speeds, the measured engine speeds shall be used for the emissions test.

(d) *Determining the control area.* The control area is the area between the engine speeds A and C, as defined in paragraph (c) of this section, and between 25 to 100 percent load.

(e) *Test requirements.* (1) *Engine warm-up.* Prior to beginning the test sequence, the engine must be warmed-up according to the procedures in § 86.1332–90(d)(3).

(2) *Test sequence.* The test must be performed in the order of the mode numbers in paragraph (b)(1) of this section. The EPA-selected test points identified under paragraph (b)(2) of this section must be performed immediately upon completion of mode 13. The engine must be operated for the prescribed time in each mode, completing engine speed and load changes in the first 20 seconds of each mode. The specified speed must be held to within ±50 rpm and the specified torque must be held to within ±2 percent of the maximum torque at the test speed.

(3) The test must be conducted with all emission-related engine control variables in the highest brake-specific NO_X emissions state which could be encountered for a 30 second or longer averaging period at the given test point.

(4) *Exhaust emissions measurements and calculations.* (i) Manufacturers must follow the exhaust emissions sample analysis procedures under § 86.1340, and the calculation formulas and procedures under § 86.1342, for the 13-mode cycle and the 3 EPA-selected test points.

(ii) Prior to starting the measurements for the EPA-selected test points, the engine must be conditioned at mode 13 for a period of three minutes.

(5) *Calculating the weighted average emissions.* For each regulated gaseous pollutant, the weighted average emissions must be calculated as follows:

$$A_{WA} = \sum_{i=1}^{n} \left[A_{WM_i} \times WF_i \right]$$

Where:

A_{WA} = Weighted average emissions for each regulated gaseous pollutant, in grams per brake horse-power hour.

A_{WM} = Weighted mass emissions level, in grams per brake horse-power hour, as defined in § 86.1342.

W_F = Weighting factor corresponding to each mode of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

i = The modes of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

n = 13, corresponding to the 13 modes of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

(f) *Maximum Allowable Emission Limits.* (1) For gaseous emissions, the 12 non-idle test point results and the four-point linear interpolation procedure specified in paragraph (g) of this section for intermediate conditions, shall define Maximum Allowable Emission Limits for purposes of § 86.004–11(a)(3). The control area extends from the 25% to the 75% engine speeds, at engine loads of 25% to 100%, as defined in paragraph (d) of this section. Figure 1 of this paragraph (f)(1) depicts a sample Maximum Allowable Emission Limit curve, for illustration purposes only, as follows:

BILLING CODE 6560–50–P

Figure 1

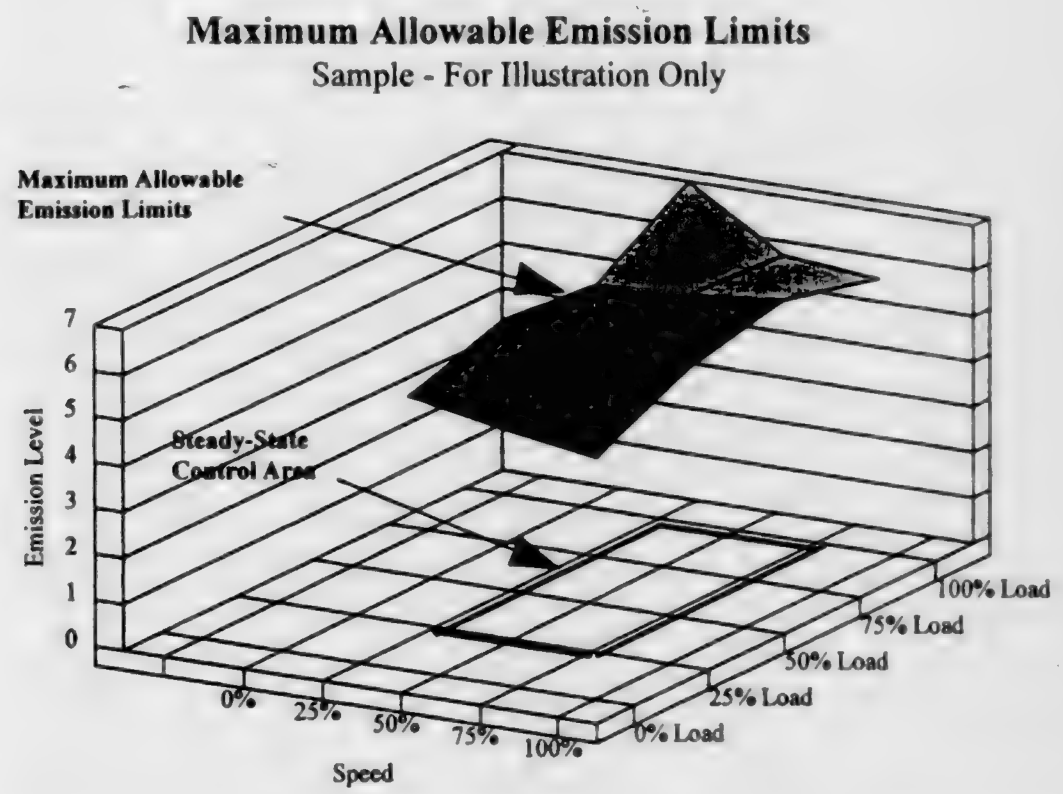

BILLING CODE 6560–50–C

(2) If the weighted average emissions, calculated according to paragraph (e)(5) of this section, for any gaseous pollutant is lower than required by § 86.004–11(a)(3), each of the 13 test values for that pollutant shall first be multiplied by the ratio of the applicable emission standard (under § 86.004–11(a)(3)) to the weighted average emissions value, and then by 1.05 for interpolation allowance, before determining the Maximum Allowable Emission Limits under paragraph (f)(1) of this section.

(3) If the Maximum Allowable Emission Limit for any point, as calculated under paragraphs (f)(1) and (2) of this section, is greater than the applicable Not-to-Exceed limit (if within the Not-to-Exceed control area defined in § 86.1370–2004(b)), then the Maximum Allowable Emission Limit for that point shall be defined as the applicable Not-to-Exceed limit.

(g) *Calculating intermediate test points.* (1) For the three test points selected by EPA under paragraph (b)(2) of this section, the emissions must be measured and calculated according to § 86.1342 and also determined by interpolation from the modes of the test cycle closest to the respective test point according to paragraph (g)(2) of this section. The measured values then must be compared to the interpolated values according to paragraph (g)(3) of this section.

(2) *Interpolating emission values from the test cycle.* The gaseous emissions for each regulated pollutant for each of the control points (Z) must be interpolated from the four closest modes of the test cycle that envelop the selected control point Z as shown in Figure 2 of this paragraph (g)(2).

(i) For these modes (R, S, T, U), the following definitions apply:

Speed (R) = Speed(T) = n_{RT}
Speed (S) = Speed(U) = n_{SU}
Per cent load (R) = Per cent load (S)
Per cent load (T) = Per cent load (U)

(ii) The gaseous emissions of the selected control point (Z) must be calculated as follows:

$E_Z = E_{RS} + (E_{TU} - E_{RS}) * (M_Z - M_{RS})/(M_{TU} - M_{RS})$

$E_{TU} = E_T + (E_U - E_T)*(n_Z - n_{RT})/(n_{SU} - n_{RT})$

$E_{RS} = E_R + (E_S - E_R)*(n_Z - n_{RT})/(n_{SU} - n_{RT})$

$M_{TU} = M_T+(M_U - M_T)*(n_Z - n_{RT})/(n_{SU} - n_{RT})$

(E) $M_{RS} = M_R+(M_S - M_R)*(n_Z - n_{RT})/(n_{SU} - n_{RT})$

Where:

E_R, E_S, E_T, E_U = for each regulated pollutant, specific gaseous emissions of the enveloping modes calculated in accordance with § 86.1342.

M_R, M_S, M_T, M_U = engine torque of the enveloping modes.

(iii) Figure 2 follows:

BILLING CODE 6560-50-P

Figure 2
Four-Point Linear Interpolation

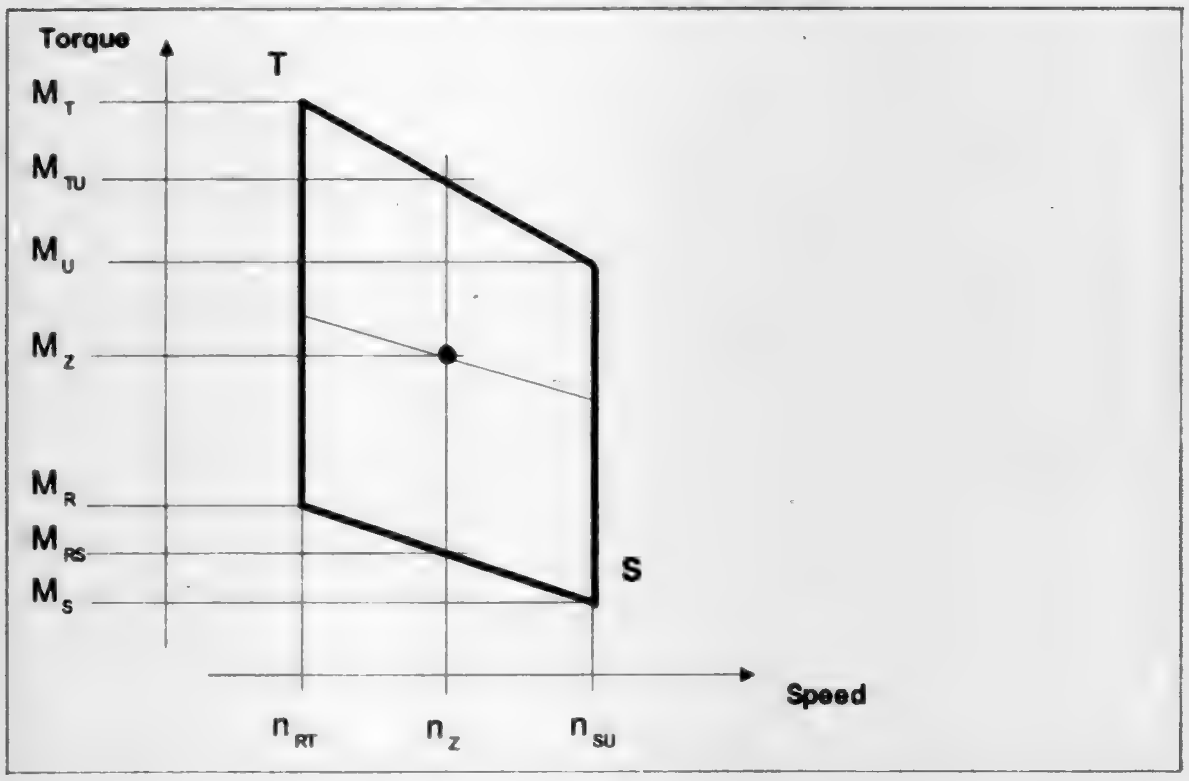

BILLING CODE 6560-50-C

(3) *Comparing calculated and interpolated emission values.* The measured specific gaseous emissions of the control point Z (X_Z) must be compared to the interpolated value (E_Z) as follows:

$X_{diff} = 100*(X_Z - E_Z)/E_Z$

30. A new § 86.1361–2004 is added to subpart N, to read as follows:

§ 86.1361–2004 Maximum allowable emission limits; compliance in actual operation.

(a) *Applicability.* This section applies to diesel heavy-duty engines.

(b) *General.* Compliance with the Maximum Allowable Emission Limits under § 86.004–11(a)(3)(ii) may be determined under any conditions that may reasonably be expected to be encountered in normal vehicle operation and use. The engine may be tested in a vehicle in actual use or on a dynamometer, under steady state or transient conditions, and under varying ambient conditions. To determine compliance, test results within the control area, defined in § 86.1360–2004(d), shall be compared to the Maximum Allowable Emission Limits, as determined in § 86.1360–2004(f), for the same engine speed and load. The engine, when operated within the control area, must comply with the Maximum Allowable Emission Limits.

(c) *Test conditions.* Where the test conditions identified in paragraph (b) of this section require departure from specific provisions of this subpart (*e.g.,* sampling time), testing shall be conducted using good engineering practices. The manufacturer shall submit a detailed description of any departures from the specific testing provisions of this subpart and the justification for modifying the test procedures, along with any test results submitted to EPA.

(1) If EPA requires engine dynamometer testing by the manufacturer outside of FTP conditions, such testing may be done at the manufacturer's facility on existing equipment, and must be carried out only within the limits of operation of the manufacturer's available test equipment with regard to ambient temperature, humidity and altitude. EPA may conduct its own testing at any ambient temperature, humidity or altitude.

(2) When tested under transient conditions, emission values to be compared to the Maximum Allowable Emission Limits shall represent an average of at least 30 seconds.

(3) NO_X emissions shall be corrected for humidity to a standard level of 75 grains of water per pound of dry air. Outside the temperature range of 68–86 degrees F, NO_X and PM emissions shall be corrected to 68 degrees F if below 68 degrees F, or to 86 degrees F if above 86 degrees F. Where a manufacturer test requires such correction factors, the manufacturer must use good engineering judgement and generally accepted engineering practice to determine the appropriate correction factors, subject to EPA review.

31. A new § 86.1370–2004 is added to subpart N, to read as follows:

§ 86.1370–2004 Not-To-Exceed test procedures.

(a) *General.* The purpose of this test procedure is to measure in-use emissions of heavy-duty diesel engines while operating within a broad range of speed and load points (the Not-To-Exceed Control Area) and under conditions which can reasonably be expected to be encountered in normal vehicle operation and use. Emission results from this test procedure are to be compared to the Not-To-Exceed Limits specified in § 86.004–11 (a)(4).

(b) *Not-To-Exceed Control Area for diesel heavy-duty engines.* The Not-To-Exceed Control Area for diesel heavy-duty engines consists of the following engine speed and load points:

(1) All operating speeds greater than the speed calculated using the following formula, where n_{hi} and n_{lo} are determined according to the provisions in § 86.1360(c):

$n_{lo}+0.15n_{hi}(n_{hi}-n_{lo})$

(2) All engine load points greater than or equal to 30% or more of the maximum torque value produced by the engine.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, all operating speed and load points with brake specific fuel consumption (BSFC) values within 5% of the minimum BSFC value of the engine. The manufacturer may petition the Administrator at certification to exclude such points if the manufacturer can demonstrate that the engine is not expected to operate at such points in normal vehicle operation and use. Engines equipped with drivelines with multi-speed manual transmissions or automatic transmissions with a finite number of gears are not subject the requirements of this paragraph (b)(3).

(4) Notwithstanding the provisions of paragraphs (b)(1) through (b)(3) of this section, speed and load points below 30% of the maximum power value produced by the engine shall be excluded from the Not-To-Exceed Control Area for all emissions.

(5) For particulate matter only, speed and load points determined by one of the following methods, whichever is applicable, shall be excluded from the Not-To-Exceed Control Area. B and C engine speeds shall be determined according to the provisions of § 86.1350 (c):

(i) If the C speed is below 2400 rpm, the speed and load points to the right of or below the line formed by connecting the following two points:

(A) 30% of maximum torque or 30% of maximum power, whichever is greater, at the B speed;

(B) 70% of maximum power at 100% speed (n_{hi});

(ii) If the C speed is above 2400 rpm, the speed and load points to the right of the line formed by connecting the two points in paragraphs (b)(5)(ii)(A) and (B) of this section and below the line formed by connecting the two points in paragraphs (b)(5)(ii)(B) and (C) of this section:

(A) 30% of maximum torque or 30% of maximum power, whichever is greater, at the B speed;

(B) 50% of maximum power at 2400 rpm;

(C) 70% of maximum power at 100% speed (n_{hi}).

(c) [Reserved]

(d) *Not-To-Exceed Control Area Limits.* (1) When operated within the Not-To-Exceed Control Area defined in paragraph (b) of this section, diesel engine emissions shall not exceed the applicable Not-To-Exceed Limits specified in § 86.004–11 (a)(4) when averaged over any period of time greater than or equal to 30 seconds.

(2) [Reserved]

(e) *Ambient Corrections.* The measured data shall be corrected based on the ambient conditions under which it was taken. The temperature and humidity correction factors will be based on good engineering practice.

(1) NO_X emissions shall be corrected for humidity to a standard humidity level of 50 grains (7.14 g/kg) if the humidity of the intake air was below 50 grains, or to 75 grains (10.71 g/kg) if above 75 grains.

(2) NO_X and PM emissions shall be corrected for temperature to a temperature of 55 degrees F (12.8 degrees C) for intake air temperatures below 55 degrees F or to 95 degrees F (35.0 degrees C) if the intake air is above 95 degrees F.

(3) No temperature or humidity correction factors shall be used within the ranges of 50–75 grains or 55–95 degrees F.

33. A new § 86.1372–2004 is added to subpart N, to read as follows:

§ 86.1372–2004 Measuring smoke emissions.

This section contains the measurement techniques to be used for determining compliance with the filter smoke limit or opacity limits in § 86.004–11(b)(1)(iv).

(a) For steady-state or transient smoke testing using full-flow opacimeters, equipment meeting the requirements of subpart I of this part or ISO/DIS–11614 "Reciprocating internal combustion compression-ignition engines—Apparatus for measurement of the opacity and for determination of the light absorption coefficient of exhaust gas' is required. This document is incorporated by reference (see § 86.1).

(1) All full-flow opacimeter measurements shall be reported as the equivalent percent opacity for a five inch effective optical path length using the Beer-Lambert relationship.

(2) Zero and full-scale (100 percent opacity) span shall be adjusted prior to testing.

(3) Post test zero and full scale span checks shall be performed. For valid tests, zero and span drift between the pre-test and post-test checks shall be less than two percent of full-scale.

(4) Opacimeter calibration and linearity checks shall be performed using manufacturer's recommendations or good engineering practice.

(b) For steady-state testing using a filter-type smokemeter, equipment meeting the requirements of ISO/FDIS–10054 "Internal combustion compression-ignition engines—Measurement apparatus for smoke from engines operating under steady-state conditions—Filter-type smokemeter" is recommended.

(1) All filter-type smokemeter results shall be reported as a filter smoke number (FSN) that is similar to the Bosch smoke number (BSN) scale.

(2) Filter-type smokemeters shall be calibrated every 90 days using manufacturer's recommended practices or good engineering practice.

(c) For steady-state testing using a partial-flow opacimeter, equipment meeting the requirements of ISO–8178–3 and ISO/DIS–11614 is recommended.

(1) All partial-flow opacimeter measurements shall be reported as the equivalent percent opacity for a five inch effective optical path length using the Beer-Lambert relationship.

(2) Zero and full scale (100 percent opacity) span shall be adjusted prior to testing.

(3) Post-test zero and full scale span checks shall be performed. For valid tests, zero and span drift between the pre-test and post-test checks shall be less than two percent of full scale.

(4) Opacimeter calibration and linearity checks shall be performed using manufacturer's recommendations or good engineering practice.

(d) Replicate smoke tests may be run to improve confidence in a single test or stabilization. If replicate tests are run, three additional valid tests shall be run, and the final reported test results must be the average of all the valid tests.

(e) A minimum of thirty seconds sampling time shall be used for average transient smoke measurements.

34. A new § 86.1380–2004 is added to subpart N, to read as follows:

§ 86.1380–2004 Load response test.

(a) *General.* The purpose of this test procedure is to measure the gaseous and particulate emissions from an engine as it is suddenly loaded, with its fueling lever, at a given engine operating speed. This procedure shall be conducted on a dynamometer.

(b) *Test sequence.* (1) At each of the following speeds, the engine fuel control shall be moved suddenly to the full fuel position and held at that point for a minimum of two seconds, while the specified speed is maintained constant:

(i) The lowest speed in the Not-To-Exceed Control area determined according to the provisions of § 86.1370;

(ii) Speed A as determined in § 86.1360(c);

(iii) Speed B as determined in § 86.1360(c);

(iv) Speed C as determined in § 86.1360(c);

(v) Speed D as determined in § 86.1360(c);

(vi) Speed E as determined in § 86.1360(c).

(2) This test sequence may be repeated if it is necessary to obtain sufficient sample amount for analysis.

(3) The exhaust emissions sample shall be analyzed according to the procedures under § 86.1340, and the exhaust emission shall be calculated according to the procedures under § 86.1342.

Subpart P—[Amended]

35. Section 86.1501–94 is revised to read as follows:

§ 86.1501–94 Scope; applicability.

(a) This subpart contains gaseous emission idle test procedures for light-duty trucks and heavy-duty engines for which idle CO standards apply. It applies to 1994 and later model years. The idle test procedures are optionally applicable to 1994 through 1996 model year natural gas-fueled and liquified petroleum gas-fueled light-duty trucks and heavy-duty engines.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks and Otto-cycle complete heavy-duty vehicles under the provisions of Subpart S of this part.

Subpart Q—[Amended]

36. Section 86.1601 is amended by revising paragraph (d), to read as follows:

§ 86.1601 General applicability.

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of Subpart S of this part.

37. Subpart S is amended by revising the subpart heading to read as follows:

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Complete Otto-Cycle Heavy-Duty Vehicles

38. Section 86.1801–01 is amended by revising paragraphs (a), (b), (c), and the last sentence of paragraph (d), to read as follows:

§ 86.1801–01 Applicability.

(a) *Applicability.* The provisions of this subpart apply to 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles, 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks, and 2004 and later model year Otto-cycle complete heavy-duty vehicles. These provisions also apply to 2001 model year and later new incomplete light-duty trucks below 8,500 Gross Vehicle Weight Rating, and to 2000 and later model year Otto-cycle complete heavy-duty vehicles participating in the early banking provisions of the averaging, trading, and banking program under the provisions of § 86.1817–04(n). In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section of this subpart.

(b) *Aftermarket conversions.* The provisions of this subpart apply to aftermarket conversions of all model year Otto-cycle and diesel-cycle light-duty vehicles, light-duty trucks, and complete Otto-cycle heavy-duty vehicles as defined in 40 CFR 85.502.

(c) *Optional applicability.* (1) A manufacturer may request to certify any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions through the 2003 model year. Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle.

(2) Beginning with the 2001 model year, a manufacturer may request to certify any incomplete Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for complete heavy-duty vehicles. Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle.

(3) A manufacturer may optionally use the provisions of this subpart in lieu of the provisions of subpart A beginning with the 2000 model year for light-duty vehicles and light-duty trucks. Manufacturers choosing this option must comply with all provisions of this subpart. Manufacturers may elect this provision for either all or a portion of their product line.

(4) Upon preapproval by the Administrator, a manufacturer may optionally certify an aftermarket conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part. Such preapproval will be granted only upon demonstration that chassis-based certification would be infeasible or unreasonable for the manufacturer to perform.

(5) A manufacturer may optionally certify an aftermarket conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part without advance approval from the Administrator if the vehicle was originally certified to the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part.

(d) * * * The small volume manufacturer's light-duty vehicle, light-duty truck and complete heavy-duty vehicle certification procedures are described in § 86.1838–01.

* * * * *

39. Section 86.1803–01 is amended by revising the definitions for "Car line," "Curb idle," "Durability useful life," and "Van," and by adding new definitions in alphabetical order, to read as follows:

§ 86.1803–01 Definitions.

* * * * *

Averaging for chassis-bases heavy-duty vehicles means the exchange of NO_X emission credits among test groups within a given manufacturer's product line.

Averaging set means a subcategory of complete heavy-duty vehicles within which test groups can average and trade emission credits with one another.

* * * * *

Banking means the retention of NO_X emission credits for complete heavy-duty vehicles by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

* * * * *

Car line means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roofline, number of doors, seats, or windows except for station wagons or light-duty trucks. Station wagons, light-duty trucks, and complete heavy-duty vehicles are considered to be different car lines than passenger cars.

* * * * *

Complete heavy-duty vehicle means any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less that is not an incomplete heavy-duty vehicle.

* * * * *

Curb-idle means, for manual transmission code motor vehicles, the engine speed with the transmission in neutral or with the clutch disengaged and with the air conditioning system, if present, turned off. For automatic transmission code motor vehicles, curb-idle means the engine speed with the automatic transmission in the park position (or neutral position if there is no park position), and with the air conditioning system, if present, turned off.

* * * * *

Durability useful life means the highest useful life mileage out of the set of all useful life mileages that apply to a given vehicle. The durability useful life determines the duration of service accumulation on a durability data vehicle. The determination of durability useful life shall reflect any light-duty truck or complete heavy-duty vehicle alternative useful life periods approved by the Administrator under § 86.1805–01(c). The determination of durability useful life shall exclude any standard and related useful life mileage for which the manufacturer has obtained a waiver of emission data submission requirements under § 86.1829–01.

* * * * *

Emission credits mean the amount of emission reductions or exceedances, by a complete heavy-duty vehicle test group, below or above the emission standard, respectively. Emission credits below the standard are considered as "positive credits," while emission credits above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected U.S. production volume of the test group. "Reserved credits" are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. "Actual credits" refer to emission credits based on actual U.S. production volumes as contained in the end-of-year reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end of year reports or any subsequent audit actions uncover problems or errors.

* * * * *

Family emission limit (FEL) means an emission level declared by the manufacturer which serves in lieu of an emission standard for certification purposes in the averaging, trading and banking program. FELs must be expressed to the same number of decimal places as the applicable emission standard.

* * * * *

Incomplete heavy-duty vehicle means any heavy-duty vehicle which does not have the primary load carrying device or container attached.

* * * * *

Non-methane organic gas means the sum of oxegenated and non-oxygenated hydrocarbons contained in a gas sample.

* * * * *

Trading means the exchange of complete heavy-duty vehicle NO_X emission credits between manufacturers.

* * * * *

Van means a light-duty truck or complete heavy-duty vehicle having an integral enclosure, fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

* * * * *

40. A new section 86.1803–04 is added to subpart S, to read as follows:

§ 86.1803–04 Definitions.

The definitions of § 86.1803–01 continue to apply to this subpart. The definitions listed in this section apply to this subpart beginning with the 2004 model year.

Heavy-duty vehicle means any motor vehicle rated at more than 8,500 pounds GVWR or that has a vehicle curb weight of more than 6,000 pounds or that has a basic vehicle frontal area in excess of 45 square feet, excluding vehicles with a GVWR greater than 8,500 pounds and less than or equal to 10,000 pounds that are defined as light-duty trucks.

Light-duty truck means:

(1) Any motor vehicle rated at 8,500 pounds GVWR or less which has a curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

(i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or

(ii) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

(iii) Available with special features enabling off-street or off-highway operation and use; or

(2) Any motor vehicle rated at greater than 8,500 pounds GVWR and less than or equal to 10,000 pounds GVWR which is a complete vehicle designed primarily for transportation of persons and has a capacity of not more than 12 persons.

41. Section 86.1804–01 is amended by adding "FEL," "NMOG," and "HDV" as new abbreviations in alphabetical order, to read as follows:

§ 86.1804–01 Acronyms and abbreviations.

* * * * *

FEL—Family Emission Limit

* * * * *

HDV—Heavy-duty vehicle

* * * * *

NMOG—Non-Methane Organic Gas

* * * * *

42. Section 86.1805–01 is amended by revising paragraph (a) and the first and last sentences of paragraph (c), and adding paragraph (b)(3), to read as follows:

§ 86.1805–01 Useful life.

(a) For light-duty vehicles and light-duty trucks, intermediate useful life is a period of use of 5 years or 50,000 miles, which ever occurs first.

(b) * * *

(3) For complete heavy-duty vehicles, the full useful life is a period of use of 11 years or 120,000 miles, which ever occurs first.

(c) Manufacturers may petition the Administrator to provide alternative useful life periods for light-duty trucks or complete heavy-duty vehicles when they believe that the useful life periods are significantly unrepresentative for one or more test groups (either too long or too short). * * * For light-duty trucks, alternative useful life periods will be granted only for THC, THCE, and idle CO requirements.

43. A new § 86.1806–04 is added to subpart S, to read as follows:

§ 86.1806–04 On-board diagnostics.

(a) *General.* All light-duty vehicles, light-duty trucks, and heavy-duty vehicles intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must be equipped with an on-board diagnostic (OBD) system capable of monitoring all emission-related powertrain systems or components during the applicable useful life. Heavy-duty vehicles intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must meet the OBD requirements of this section according to the phase-in schedule in paragraph (l) of this section. All monitored systems and components must be evaluated periodically, but no less frequently than once per applicable certification test cycle as defined in paragraphs (a) and (d) of Appendix I of this part.

(b) *Malfunction descriptions.* The OBD system must detect and identify malfunctions in all monitored emission-related powertrain systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart B of this part (chassis-based test procedures), excluding those test procedures defined as "Supplemental" test procedures in § 86.004–2 and codified in §§ 86.158, 86.159, and 86.160.

(1) *Catalysts and particulate traps.* (i) *Otto-cycle.* Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC standard or FEL, as compared to the NMHC emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* If equipped, catalyst or particulate trap deterioration or malfunction before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NO_X or PM. This monitoring need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold; however, the presence of the catalyst or particulate trap must still be monitored.

(2) *Engine misfire.* (i) *Otto-cycle.* Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or NO_X; and any misfire capable of damaging the catalytic converter.

(ii) *Diesel.* Lack of cylinder combustion must be detected.

(3) *Oxygen sensors.* If equipped, oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or NO_X.

(4) *Evaporative leaks.* If equipped, any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) *Other emission control systems.* Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, NO_X, or diesel PM. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system must indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For vehicles equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) *Other emission-related powertrain components.* Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility. Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system must be detected and identified on vehicles so equipped.

(c) *Malfunction indicator light (MIL).* The OBD system must incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, the MIL must display "Check Engine," "Service Engine Soon," a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. A vehicle should not be equipped with more than one general purpose malfunction indicator light for emission-related problems; separate specific purpose warning lights (e.g. brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* The MIL must illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL must blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (i.e., operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL must maintain a steady illumination when the misfire is not occurring and then remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL must also illuminate when the vehicle's ignition is in the "key-on" position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered and no new malfunctions have been detected. Similar conditions are defined as engine speed within 375 rpm, engine load within 20 percent, and engine warm-up status equivalent to that under which the malfunction was first detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, i.e., three to six driving cycles would be considered acceptable.

(e) *Storing of computer codes.* The OBD system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code must be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code must identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (i.e., MIL commanded "ON," MIL commanded "OFF").

(2) For a single misfiring cylinder, the diagnostic trouble code(s) must uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. For diesel vehicles only, the specific cylinder for which combustion cannot be detected need not be identified if new hardware would be required to do so. The diagnostic trouble code must identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, must be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further vehicle operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (e.g., misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to "not ready" status upon key-on or key-off; intentional setting of readiness codes to "not ready" status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (i.e., more than one) due to the continued presence of extreme operating conditions (e.g., ambient temperatures below 40°F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to "ready" status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, "freeze frame" engine conditions present at the time must be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions must be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions must include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer must include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information must be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals must be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals must be clearly identified separately from default value or limp home signals.

(3) For all OBD systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared must be available through the standardized data link connector per the appropriate standardized specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) *Exceptions.* The OBD system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the OBD system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Reference materials.* The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference (see § 86.1):

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 "Class B Data Communication Network Interface," (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 E/E Diagnostic Test Modes,"(July 1996).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 "Recommended Practices for Diagnostic Trouble Code Definitions," (July 1996).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 “Diagnostic Connector,” (January 1995).

(v) As an alternative to the above standards, heavy-duty vehicles may conform to the specifications of SAE J1939 “Recommended Practice for a Serial Control and Communications Vehicle Network.”

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 “Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,” (February 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4 “Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems” may also be used as an alternative to SAE J1850.

(i) *Deficiencies and alternate fueled vehicles.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor (“major” diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternate fueled vehicles. For alternate fueled vehicles (*e.g.* natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2004 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel; manufacturers may request this alternate fuel waiver for heavy-duty vehicles through the 2006 model year. At a minimum, alternate fuel vehicles must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBDII Compliance Option.* For light-duty vehicles, light-duty trucks, and heavy-duty vehicles at or below 14,000 pounds GVWR, demonstration of compliance with California OBD II requirements (Title 13 California Code Sec. 1968.1), as modified pursuant to California Mail Out #97–24 (December 9, 1997), shall satisfy the requirements of this section, except that the exemption to the catalyst monitoring provisions of California Code Sec. 1968.1(b)(1.1.2) for diesel vehicles does not apply, and compliance with California Code Secs. 1968.1(b)(4.2.2), pertaining to 0.02 inch evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of California Code Sec. 1968.1(m)(6.1) and (6.2) do not apply.

(k) *Certification.* For test groups required to have an OBD system, certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) *Otto-cycle.* A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC standard or FEL above the NMHC emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* If monitored for emissions performance—a catalyst or particulate trap is replaced with a deteriorated or defective catalyst or trap, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NO_X or PM. If not monitored for emissions performance—removal of the catalyst or particulate trap is not detected and identified.

(2)(i) *Otto-cycle.* An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards or FEL for NMHC, CO or NO_X.

(ii) *Diesel.* An engine misfire condition is induced and is not detected.

(3) If so equipped, any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or NO_X.

(4) If so equipped, a vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related powertrain system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, NO_X or PM.

(6) A malfunction condition is induced in an electronic emission-related powertrain system or component not otherwise described in this paragraph (k) that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

(l) *Phase-in for Heavy-Duty Vehicles.* Manufacturers of heavy-duty vehicles intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must comply with the OBD requirements in this section according to the following phase-in schedule, based on the percentage of projected vehicle sales within each category:

OBD COMPLIANCE PHASE-IN HEAVY-DUTY VEHICLES

[intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less]

Model year	Phase-in based on projected sales
2004 MY	—40% compliance
2005 MY	—60% compliance—alternative fuel waivers available
2006 MY	—80% compliance—alternative fuel waivers available
2007+ MY	—100% compliance—alternative fuel waivers available

44. Section 86.1807–01 is amended by adding paragraph (c)(3), and revising paragraphs (a)(3)(v), (d), (e), and (f), to read as follows:

§ 86.1807–01 Vehicle labeling.

(a) * * *

(3) * * *

(v) An unconditional statement of compliance with the appropriate model year U.S. EPA regulations which apply to light-duty vehicles, light-duty trucks, or complete heavy-duty vehicles;

* * * * *

(c) * * *

(3) The manufacturer of any complete heavy-duty vehicle subject to the emission standards of this subpart shall add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d)(1) Incomplete light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Light-Duty Trucks under the special provisions of § 86.1801–01(c)(1) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(2) Incomplete heavy-duty vehicles optionally certified in accordance with the provisions for complete heavy-duty vehicles under the special provisions of § 86.1801–01(c)(2) shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Complete Heavy-Duty Vehicles under the special provisions of § 86.1801–01(c)(2) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(e) The manufacturer of any incomplete light-duty vehicle, light-duty truck, or heavy-duty vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Safety Administration safety notification requirements published in 49 CFR part 568.

(f) All light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall comply with SAE Recommended Practices J1877 "Recommended Practice for Bar-Coded Vehicle Identification Number Label," (July 1994), and J1892 "Recommended Practice for Bar-Coded Vehicle Emission Configuration Label (May 1988). SAE J1877 and J1892 are incorporated by reference (see § 86.1).

* * * * *

45. Section 86.1809–01 is amended by revising paragraph (a), to read as follows:

§ 86.1809–01 Prohibition of defeat devices.

(a) No new light-duty vehicle, light-duty truck, or complete heavy-duty vehicle shall be equipped with a defeat device.

* * * * *

46. A new § 86.1810–04 is added to subpart S, to read as follows:

§ 86.1810–04 General standards; increase in emissions; unsafe conditions; waivers.

This section applies to model year 2004 and later light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) shall comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated. Section 86.1810–04 includes text that specifies requirements that differ from § 86.1810–01. Where a paragraph in § 86.1810–04 is identical and applicable to § 86.1810–01, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1810–01.".

(a) through (c) [Reserved] For guidance see § 86.1810–01.

(d) *Crankcase emissions prohibited.* No crankcase emissions shall be discharged into the ambient atmosphere from any 2004 and later model year light-duty vehicle, light-duty truck, or complete heavy-duty vehicle.

(e) *On-board diagnostics.* All light-duty vehicles, light-duty trucks and complete heavy-duty vehicles must have an on-board diagnostic system as described in § 86.1806–04.

(f) through (i) [Reserved] For guidance see § 86.1810–01.

(j) *Evaporative emissions general provisions.* (1) The evaporative standards in §§ 86.1811–01(d), 86.1812–01(d), 86.1813–01(d), 86.1814–04(d), 86.1815–04(d) and 86.1816–04(d) apply equally to certification and in-use vehicles and trucks. The spitback standard also applies to newly assembled vehicles.

(2) For certification testing only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from evaporative emission test results from certification vehicles if approved in advance by the Administrator.

(3) All fuel vapor generated in a gasoline-or methanol-fueled light-duty vehicle, light-duty truck, or complete heavy-duty vehicle during in-use operation shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge.) The only exception to this requirement shall be for emergencies.

(k) *Refueling emissions general provisions.* (1) *Implementation schedules.* Table S04–5 of this section gives the minimum percentage of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle heavy light-duty trucks and complete heavy-duty vehicles which shall be tested under the applicable procedures in subpart B of this part, and shall not exceed the standards described in §§ 86.1813–04(e), 86.1814–04(e), and

86.1816–04(e). Vehicles waived from the emission standards under the provisions of paragraphs (m) and (n) of this section shall not be counted in the calculation of the percentage of compliance. Either manufacturer sales or actual production intended for sale in the United States may be used to determine combined volume, at the manufacturers option. Table S04–5 follows:

TABLE S04–5—HEAVY LIGHT-DUTY TRUCKS AND COMPLETE HEAVY-DUTY VEHICLES

Model year	Percentage
2004	40
2005	80
2006	100

(2) *Determining sales percentages.* Sales percentages for the purposes of determining compliance with the applicable refueling emission standards for heavy light-duty trucks and complete heavy-duty vehicles shall be based on total actual U.S. sales of heavy light-duty trucks and complete heavy-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(3) *Refueling receptacle requirements.* Refueling receptacles on natural gas-fueled light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall comply with the receptacle provisions of the ANSI/AGA NGV1–1994 standard (as incorporated by reference in § 86.1(b)(3)). This requirement is subject to the phase-in schedules in Tables S01–3 and S01–4 in § 86.1810–01 (k)(1), and Table S04–5 in paragraph (k)(1) of this section.

(l) *Fuel dispensing spitback testing waiver.* (1) Vehicles certified to the refueling emission standards set forth in §§ 86.1811–01(e), 86.1812–01(e), 86.1813–01(e), 86.1814-04(e), 86.1815–04(e), and 86.1816–04(e) are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section provided that:

(i) The manufacturer certifies that the vehicle inherently meets the fuel dispensing spitback standard as part of compliance with the refueling emission standard; and

(ii) This certification is provided in writing and applies to the full useful life of the vehicle.

(2) EPA retains the authority to require testing to enforce compliance and to prevent noncompliance with the fuel dispensing spitback standard.

(m) *Inherently low refueling emission testing waiver.*

(1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in §§ 86.1811–01(e), 86.1812–01(e), 86.1813–01(e), 86.1814–04(e), and 86.1815–04(e), provided that:

(i) This provision is only available for petroleum diesel fuel. It is only available if the Reid Vapor Pressure of in-use diesel fuel is equal to or less than 1 psi (7 kPa) and for diesel vehicles whose fuel tank temperatures do not exceed 130 deg.F (54 deg. C); and

(ii) To certify using this provision the manufacturer must attest to the following evaluation: “Due to the low vapor pressure of diesel fuel and the vehicle tank temperatures, hydrocarbon vapor concentrations are low and the vehicle meets the 0.20 grams/gallon refueling emission standard without a control system.”

(2) The certification required in paragraph (m)(1)(ii) of this section must be provided in writing and must apply for the full useful life of the vehicle.

(3) EPA reserves the authority to require testing to enforce compliance and to prevent noncompliance with the refueling emission standard.

(n) Fixed liquid level gauge waiver. Liquefied petroleum gas-fueled vehicles which contain fixed liquid level gauges or other gauges or valves which can be opened to release fuel or fuel vapor during refueling, and which are being tested for refueling emissions, are not required to be tested with such gauges or valves open, as outlined in § 86.157–98(d)(2), provided the manufacturer can demonstrate, to the satisfaction of the Administrator, that such gauges or valves would not be opened during refueling in-use due to inaccessibility or other design features that would prevent or make it very unlikely that such gauges or valves could be opened.

47. Section 86.1811–01 is amended by adding paragraph (h), to read as follows:

§ 86.1811–01 Emission standards for light-duty vehicles.

* * * * *

(g) Manufacturers may request to group light-duty vehicles into the same test group as vehicles subject to more stringent standards, so long as those light-duty vehicles meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

48. Section 86.1812–01 is amended by adding paragraph (h), to read as follows:

§ 86.1812–01 Emission standards for light-duty trucks 1.

* * * * *

(h) Manufacturers may request to group light-duty truck 1's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 1's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and(d)(4).

49. Section 86.1813–01 is amended by adding paragraph (h), to read as follows:

§ 86.1813–01 Emission standards for light-duty trucks 2.

* * * * *

(h) Manufacturers may request to group light-duty truck 2's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 2's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

50. Section 86.1814–01 is amended by adding paragraph (h), to read as follows:

§ 86.1814–01 Emission standards for light-duty trucks 3.

* * * * *

(h) Manufacturers may request to group light-duty truck 3's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 3's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

51. Section 86.1814–02 is amended by adding paragraph (h), to read as follows:

§ 86.1814–02 Emission standards for light-duty trucks 3.

* * * * *

(h) Manufacturers may request to group light-duty truck 3's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 3's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

52. Section 86.1815–01 is amended by adding paragraph (h), to read as follows:

§ 86.1815–01 Emission standards for light-duty trucks 4.

* * * * *

(h) Manufacturers may request to group light-duty truck 4's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 4's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

53. Section 86.1815–02 is amended by adding paragraph (h), to read as follows:

§ 86.1815–02 Emission standards for light-duty trucks 4.

* * * * *

(h) Manufacturers may request to group light-duty truck 4's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 4's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

54. A new section 86.1816–04 is added to subpart S, to read as follows:

§ 86.1816–04 Emission standards for complete heavy-duty vehicles

This section applies to 2004 and later model year complete heavy-duty vehicles fueled by gasoline, methanol, natural gas and liquefied petroleum gas fuels except as noted. This section also applies to 2000 and later model year complete heavy duty vehicles participating in the early banking provisions of the averaging, trading and banking program as specified in § 86.1817–04(n). Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to hydrocarbons or total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from 2004 and later model year complete heavy-duty vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane organic gas.* 0.280 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 7.3 grams per mile.

(iv) *Oxides of nitrogen.* 0.9 grams per mile.

(v) [Reserved]

(2) Exhaust emissions from 2004 and later model year complete heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane organic gas.* 0.330 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 8.1 grams per mile.

(iv) *Oxides of nitrogen.* 1.0 grams per mile.

(v) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) *Evaporative emissions.* Evaporative hydrocarbon emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled complete heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(2) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.5 grams per test.

(3) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(4) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) *Refueling emissions.* (1) Refueling emissions from complete heavy-duty vehicles equal to or less than 10,000 pounds Gross Vehicle Weight Rating shall be phased in, in accordance with the schedule in Table S04–5 in § 1810–04 not to exceed the following emission standards:

(i) For gasoline-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(2) The provisions of § 86.1816–04(e) do not apply to incomplete heavy-duty vehicles optionally certified to complete heavy duty vehicle standards under the provisions of § 86.1801–01(c)(2).

(f) [Reserved]

(g) *Idle exhaust emission standards, complete heavy-duty vehicles.* Exhaust emissions of carbon monoxide from 2004 and later model year gasoline, methanol, natural gas- and liquefied petroleum gas-fueled complete heavy-duty vehicles shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

(h) Manufacturers may request to group complete heavy-duty vehicles into the same test group as vehicles subject to more stringent standards, so long as those complete heavy-duty vehicles meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

55. A new section 86.1817–04 is added to subpart S, to read as follows:

§ 86.1817–04 Complete heavy-duty vehicle averaging, trading, and banking program.

(a)(1) Complete heavy-duty vehicles eligible for the NO_X averaging, trading and banking program are described in the applicable emission standards section of this subpart. All heavy-duty vehicles which include an engine labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for this program. Participation in this averaging, trading, and banking program is voluntary.

(2)(i) Test groups with a family emission limit (FEL) as defined in § 86.1803–01 exceeding the applicable standard shall obtain emission credits as defined in § 86.1803–01 in a mass amount sufficient to address the shortfall. Credits may be obtained from averaging, trading, or banking, as defined in § 86.1803–01 within the averaging set restrictions described in paragraph (d) of this section.

(ii) Test groups with an FEL below the applicable standard will have emission credits available to average, trade, bank or a combination thereof. Credits may not be used for averaging or trading to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, credits may be used to allow subsequent production of vehicles for the test group in question if the manufacturer elects to recertify to a higher FEL.

(b) Participation in the NO_X averaging, trading, and banking program shall be done as follows:

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific test groups in the averaging, trading and banking program.

(ii) Declare an FEL for each test group participating in the program.

(A) The FEL must be to the same level of significant digits as the emission standard (one-hundredth of a gram per mile for NO_X emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable complete heavy-duty vehicle chassis-based NO_X emission standard.

(iii) Calculate the projected NO_X emission credits (positive or negative) as defined in § 86.1803–01 based on quarterly production projections for each participating test group, using the applicable equation in paragraph (c) of this section and the applicable factors for the specific test group.

(iv)(A) Determine and state the source of the needed credits according to quarterly projected production for test groups requiring credits for certification.

(B) State where the quarterly projected credits will be applied for test groups generating credits.

(C) Emission credits as defined in § 86.1803–01 may be obtained from or applied to only test groups within the same averaging set as defined in § 86.1803–01. Emission credits available for averaging, trading, or banking, may be applied exclusively to a given test group, or designated as reserved credits as defined in § 86.1803–01.

(2) Based on this information, each manufacturer's certification application must demonstrate:

(i) That at the end of model year production, each test group has a net emissions credit balance of zero or more using the methodology in paragraph (c) of this section with any credits obtained from averaging, trading or banking.

(ii) The source of the credits to be used to comply with the emission standard if the FEL exceeds the standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, each test group involved must state specifically the source (manufacturer/test group) of the credits being used. In cases where credits are being generated/supplied, each test group involved must state specifically the designated use (manufacturer/test group or reserved) of the credits involved. All such reports shall include all credits involved in averaging, trading or banking.

(3) During the model year, manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the emission standards is achieved at the end of the model year.

(ii) Provide the end-of-year reports required under paragraph (i) of this section.

(iii) For manufacturers participating in emission credit trading, maintain the quarterly records required under paragraph (l) of this section.

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other compliance measures deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year. Test groups without an adequate amount of NO_X emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided ab initio for test groups exceeding the emission standard.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative balances may be adjusted by EPA for retroactive use.

(i) If EPA review of a manufacturer's end-of-year report indicates a credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance for that test group to zero, at the ratio of 1.2 credits purchased for every credit needed to bring the balance to zero. If sufficient credits are not available to bring the credit balance for the test group in question to zero, EPA may void the certificate for that test group ab initio.

(ii) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (*i.e.* resulting in a positive credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(c) For each participating test group, NO_X emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a, to the nearest one-tenth of a Megagram (MG). Consistent units are to be used throughout the equation.

(1) For determining credit need for all test groups and credit availability for test groups generating credits for averaging only:

$$\text{Emission credits}=(\text{Std}-\text{FEL})\times(\text{UL})\times(\text{Production})\times(10^{-6})$$

(2) For determining credit availability for test groups generating credits for trading or banking:

$$\text{Emission credits}=(\text{Std}-\text{FEL})\times(\text{UL})\times(\text{Production})\times(10^{-6})\,(\text{Discount})$$

(3) For purposes of the equations in paragraphs (c)(1) and (c)(2) of this section:

Std=the current and applicable complete heavy-duty vehicle NO_X emission standard in grams per mile or grams per kilometer for model year 2004 and later vehicles.

Std=0.9 grams per mile for model year 2001 through 2003 heavy-duty vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds and 1.0 grams per mile for heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating.

FEL=the NO_X family emission limit for the test group in grams per mile or grams per kilometer.

UL=the useful life, or alternative life as described in paragraph (c) of § 86.1805–01, for the given test group in miles or kilometers.

Production=the number of vehicles produced for U.S. sales within the given test group during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

Discount=a one-time discount applied to all credits to be banked or traded within the model year generated. Except as otherwise allowed in paragraph (m) of this section, the discount applied here is 0.9. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

(d) *Averaging sets.* The averaging and trading of NO_X emission credits will be allowed between all test groups of complete heavy-duty vehicle excluding those vehicles produced for sale in California. Averaging, banking, and trading are not applicable to vehicles sold in California.

(e) *Banking of NO_X emission credits.* (1) *Credit deposits.* (i) NO_X emission credits may be banked from test groups produced in any model year.

(ii) Manufacturers may bank credits only after the end of the model year and after actual credits have been reported to EPA in the end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdrawals.* (i) NO_X credits generated in 2004 and later model years do not expire.

(ii) Manufacturers withdrawing banked emission credits shall indicate so during certification and in their credit reports, as described in paragraph (i) of this section.

(3) *Use of banked emission credits.* The use of banked credits shall be

within the averaging set and geographic restrictions described in paragraph (d) of this section, and only for the following purposes:

(i) Banked credits may be used in averaging, or in trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but not reported to EPA may also be used. However, if EPA finds that the reported credits can not be proven, they will be revoked and unavailable for use.

(ii) Banked credits may not be used for averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the test group if the manufacturer elects to recertify to a higher FEL.

(f) In the event of a negative credit balance in a trading situation, both the buyer and the seller would be liable.

(g) Certification fuel used for credit generation must be of a type that is both available in use and expected to be used by the vehicle purchaser. Therefore, upon request by the Administrator, the vehicle manufacturer must provide information acceptable to the Administrator that the designated fuel is readily available commercially and would be used in customer service.

(h) *Credit apportionment.* At the manufacturers option, credits generated from complete heavy-duty vehicles under the provisions described in this section may be sold to or otherwise provided to the another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per test group for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the test group is required to certify to under § 86.1816–04. For each test group, the manufacturer may report vehicle sales in two categories, "ABT-only credits" and "nonmanufacturer-owned credits".

(i) For vehicle sales reported as "ABT-only credits", the credits generated must be used solely in the averaging, trading and banking program described in this section.

(ii) The vehicle manufacturer may declare a portion of vehicle sales "nonmanufacturer-owned credits" and this portion of the credits generated between the standard and the FEL, based on the calculation in paragraph (c)(1) of this section, would belong to the vehicle purchaser. The manufacturer may not generate any credits for the vehicle sales reported as "nonmanufacturer-owned credits" for this averaging, trading and banking program. Vehicles reported as "nonmanufacturer-owned credits" shall comply with the FEL and the requirements of this averaging, trading and banking program in all other respects.

(2) Only manufacturer-owned credits reported as "ABT-only credits" shall be used in the averaging, trading, and banking provisions described in this section.

(3) Credits shall not be double-counted. Credits used in this averaging, trading and banking program may not be provided to a vehicle purchaser for use in another program.

(4) Manufacturers shall determine and state the number of vehicles sold as "ABT-only credits" and "nonmanufacturer-owned credits" in the end-of-model year reports required under paragraph (i) of this section.

(i) Manufacturers participating in the emissions averaging, trading and banking program, shall submit for each participating test group the items listed in paragraphs (i)(1) through (3) of this section.

(1) *Application for certification.* (i) The application for certification will include a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the averaging, trading and banking program, cause the applicable NO_X emissions standard to be exceeded.

(ii) The application for certification will also include identification of the section of this subpart under which the test group is participating in the averaging, trading and banking program (e.g., § 86.1817–04), the type (NO_X), and the projected number of credits generated/needed for this test group, the applicable averaging set, the projected U.S. production volumes (excluding vehicles produced for sale in California), by quarter, and the values required to calculate credits as given in the applicable averaging, trading and banking section. Manufacturers shall also submit how and where credit surpluses are to be dispersed and how and through what means credit deficits are to be met, as explained in the applicable averaging, trading and banking section. The application must project that each test group will be in compliance with the applicable emission standards based on the vehicle mass emissions and credits from averaging, trading and banking.

(2) [Reserved].

(3) *End-of-year report.* The manufacturer shall submit end-of-year reports for each test group participating in the averaging, trading and banking program, as described in paragraphs (i)(3)(i) through (iv) of this section.

(i) These reports shall be submitted within 90 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(ii) These reports shall indicate the test group, the averaging set, the actual U.S. production volume (excluding vehicles produced for sale in California), the values required to calculate credits as given in the applicable averaging, trading and banking section, and the resulting type and number of credits generated/required. Manufacturers shall also submit how and where credit surpluses were dispersed (or are to be banked) and how and through what means credit deficits were met. Copies of contracts related to credit trading must also be included or supplied by the broker if applicable. The report shall also include a calculation of credit balances to show that net mass emissions balances are within those allowed by the emission standards (equal to or greater than a zero credit balance). Any credit discount factor described in the applicable averaging, trading and banking section must be included as required.

(iii) The production counts for end-of-year reports shall be based on the location of the first point of retail sale (e.g., customer, dealer, secondary manufacturer) by the manufacturer.

(iv) Errors discovered by EPA or the manufacturer in the end-of-year report, including changes in the production counts, may be corrected up to 180 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180 days shall be corrected if credits are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 180 day correction period allowed.

(j) Failure by a manufacturer participating in the averaging, trading and banking program to submit any quarterly or end-of-year report (as applicable) in the specified time for all vehicles that are part of an averaging set is a violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522(a)(1)) for such vehicles.

(k) Failure by a manufacturer generating credits for deposit only in the complete heavy-duty vehicle banking program to submit their end-of-year reports in the applicable specified time period (i.e., 90 days after the end of the model year) shall result in the credits not being available for use until such reports are received and reviewed by EPA. Use of projected credits pending EPA review will not be permitted in these circumstances.

(l) Any manufacturer producing a test group participating in trading using reserved credits, shall maintain the following records on a quarterly basis for each test group in the trading subclass:

(1) The test group;
(2) The averaging set;
(3) The actual quarterly and cumulative U.S. production volumes excluding vehicles produced for sale in California;
(4) The values required to calculate credits as given in paragraph (c) of this section;
(5) The resulting type and number of credits generated/required;
(6) How and where credit surpluses are dispersed; and
(7) How and through what means credit deficits are met.

(m) *Additional flexibility for complete heavy-duty vehicles.* If a complete heavy-duty vehicle has a NO_X FEL of 0.6 grams per mile or lower, a discount of 1.0 may be used in the trading and banking credits calculation for NO_X described in paragraph (c)(2) of this section.

(n) *Early banking for complete heavy-duty vehicles.* Provisions set forth in paragraphs (a) through (m) of this section apply except as specifically stated otherwise in paragraph (n) of this section.

(1) To be eligible for the early banking program described in this paragraph, the following must apply:

(i) Credits are generated from complete heavy-duty vehicles.

(ii) During certification, the manufacturer shall declare its intent to include specific test groups in the early banking program described in this paragraph.

(2) *Credit generation and use.* (i) Credits shall only be generated by model year 2000 through 2003 test groups.

(ii) Credits may only be used for 2004 and later model year complete heavy-duty vehicles and shall be subject to all discounting, credit life, and all other provisions contained in paragraphs (a) through (m) of this section.

56. Section 86.1821–01 is amended by revising the first sentence of paragraph (a), and the introductory text of paragraph (b), to read as follows:

§ 86.1821–01 Evaporative/refueling family determination.

(a) The gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles described in a certification application will be divided into groupings which are expected to have similar evaporative and/or refueling emission characteristics (as applicable) throughout their useful life. * * *

(b) For gasoline-fueled or methanol-fueled light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles to be classed in the same evaporative/refueling family, vehicles must be similar with respect to the items listed in paragraphs (b)(1) through (9) of this section.

* * * * *

57. Section 86.1823–01 is amended by revising the introductory text, paragraph (c)(2) introductory text, and the first sentence of paragraph (h), to read as follows:

§ 86.1823–01 Durability demonstration procedures for exhaust emissions.

This section applies to light-duty vehicles, light-duty trucks, complete heavy-duty vehicles, and heavy-duty vehicles certified under the provisions of § 86.1801–01(c). Eligible small volume manufacturers or small volume test groups may optionally meet the requirements of §§ 86.1838–01 and 86.1826–01 in lieu of the requirements of this section. For model years 2001, 2002, and 2003 all manufacturers may elect to meet the provisions of paragraph (c)(2) of this section in lieu of these requirements for light-duty vehicles or light-duty trucks.

* * * * *

(c) * * *

(2) For the 2001, 2002, and 2003 model years, for light-duty vehicles and light-duty trucks the manufacturer may carry over exhaust emission DF's previously generated under the Standard AMA Durability Program described in § 86.094–13(c), the Alternate Service Accumulation Durability Program described in § 86.094–13(e) or the Standard Self-Approval Durability Program for light-duty trucks described in § 86.094–13(f) in lieu of complying with the durability provisions of paragraph (a)(1) of this section.

* * * * *

(h) The Administrator may withdraw approval to use a durability process or require modifications to a durability process based on the data collected under §§ 86.1845–01, 86.1846–01, and 86.1847–01 or other information if the Administrator determines that the durability processes have not been shown to accurately predict emission levels or compliance with the standards (or FEL, as applicable) in use on candidate vehicles (provided the inaccuracy could result in a lack of compliance with the standards for a test group covered by this durability process). * * *

* * * * *

58. Section 86.1824–01 is amended by revising the first sentence of the introductory text, redesignating paragraphs (d) through (f) as paragraphs (e) through (g), and by adding new paragraph (d), to read as follows:

§ 86.1824–01 Durability demonstration procedures for evaporative emissions.

This section applies to gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled light-duty vehicles, light-duty trucks, complete heavy-duty vehicles, and heavy-duty vehicles certified under the provisions of § 86.1801–01(c). * * *

* * * * *

(d) The durability process described in paragraph (a) of this section must be described in the application for certification under the provisions of § 86.1844–01.

* * * * *

59. Section 86.1825–01 is amended by revising the first two sentences of introductory text to read as follows:

§ 86.1825–01 Durability demonstration procedures for refueling emissions.

This section applies to light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles, and heavy-duty vehicles which are certified under light-duty rules as allowed under the provisions of § 86.1801–01(c) which are subject to refueling loss emission compliance. Refer to the provisions of §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–04, 86.1815–04, and 86.1816–04 to determine applicability of the refueling standards to different classes of vehicles for various model years. * * *

* * * * *

60. Section 86.1826–01 is amended by revising paragraphs (b)(2) introductory text and (b)(3) introductory text, to read as follows:

§ 86.1826–01 Assigned deterioration factors for small volume manufacturers and small volume test groups.

* * * * *

(b) * * *

(2) Manufacturers with aggregated sales from and including 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) certifying vehicles equipped with

proven emission control systems shall conform to the following provisions:

* * * * *

(3) Manufacturers with aggregated sales from 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) certifying vehicles equipped with unproven emission control systems shall conform to the following provisions:

* * * * *

61. Section 86.1827–01 is amended by revising paragraph (a)(5), removing "and" at the end of paragraph (d)(2), removing the period at the end of paragraph (d)(3) and adding "; and" in its place, and adding paragraph (d)(4), to read as follows:

§ 86.1827–01 Test group determination.

* * * * *

(a) * * *

(5) Subject to the same emission standards, except that a manufacturer may request to group vehicles into the same test group as vehicles subject to more stringent standards, so long as those all the vehicles within the test group are certified to the most stringent standards applicable to any vehicle within that test group. Light-duty trucks which are subject to the same emission standards as light-duty vehicles with the exception of the light-duty truck idle CO standard and/or total HC standard may be included in the same test group.

* * * * *

(d) * * *

(4) A statement that all vehicles within a test group are certified to the most stringent standards applicable to any vehicle within that test group.

62. Section 86.1829–01 is amended by revising paragraphs (b)(1)(ii)(B), (b)(2)(ii)(B), and (b)(5), to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(1)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of appropriate high-altitude emission testing, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with the emission standards at high altitude.

* * * * *

(2) * * *

(ii) * * *

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(2)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with the emission standards at high altitude.

* * * * *

(5) *Idle CO Testing.* To determine idle CO emission compliance for light-duty trucks and complete heavy-duty vehicles, the manufacturer shall follow one of the following two procedures:

(i) For test groups containing light-duty trucks and complete heavy-duty vehicles, each EDV shall be tested in accordance with the idle CO testing procedures of subpart B of this Part; or

(ii) In lieu of testing light trucks and complete heavy-duty vehicles for idle CO emissions, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such idle CO testing as the manufacturer deems appropriate, all light-duty trucks and complete heavy-duty vehicles comply with the idle CO emission standards.

* * * * *

63. Section 86.1834–01 is amended by redesignating paragraphs (b)(3)(i), (b)(5) and (b)(6) as paragraphs (b)(3)(i)(A), (b)(6) and (b)(7), respectively, revising paragraphs (b)(3) introductory text, (b)(3)(ii) introductory text, (b)(3)(iii), (b)(3)(iv), the first sentence of newly redesignated paragraph (b)(6)(iii), the seventh sentence of newly redesignated paragraph (b)(7)(ii), the first sentence of newly redesignated paragraph (b)(7)(iii), and the heading of paragraph (d), adding paragraphs (b)(3)(i)(B), (b)(3)(v), (b)(3)(vi), and (b)(6)(i)(H), and adding and reserving paragraph (b)(5), to read as follows:

§ 86.1834–01 Allowable maintenance.

* * * * *

(b) * * *

(3) Emission-related maintenance in addition to, or at shorter intervals than, that listed in paragraphs (b)(3)(i) through (vi) of this section will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i) * * *

(B) The cleaning or replacement of complete heavy-duty vehicle spark plugs shall occur at 25,000 miles (or 750 hours) of use and at 30,000-mile (or 750 hour) intervals thereafter, for vehicles certified for use with unleaded fuel only.

(ii) For light-duty vehicles and light-duty trucks, the adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles of use and at 50,000-mile intervals thereafter:

* * * * *

(iii) For complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (1,500 hour) intervals thereafter:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(E) Exhaust gas recirculation system related filters and coolers.

(iv) For light-duty trucks, light-duty vehicles, and complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the oxygen sensor shall occur at 80,000 miles (or 2,400 hours) of use and at 80,000-mile (or 2,400-hour) intervals thereafter.

(v) For light-duty trucks and light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles of use and at 100,000-mile intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative and/or refueling emission canister(s).

(F) Turbochargers.

(G) Carburetors.

(H) Superchargers.

(I) Exhaust gas recirculation system including all related filters and control valves.

(vi) For complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000 hour) intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative and/or refueling emission canister(s).

(F) Turbochargers.

(G) Carburetors.

(H) Exhaust gas recirculation system (including all related control valves and tubing) except as otherwise provided in paragraph (b)(3)(iii)(E) of this section.

* * * * *

(5) [Reserved]

(6) * * *

(i) * * *

(H) Any other add-on emissions-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emissions control and whose function is not integral to the design and performance of the engine.)

(iii) Visible signal systems used under paragraph (b)(6)(ii)(C) of this section are considered an element of design of the emission control system. * * *

(7) * * *

(ii) * * * For maintenance items established as emission-related, the Administrator will further designate the maintenance as critical if the component which receives the maintenance is a critical component under paragraph (b)(6) of this section. * * *

(iii) Any manufacturer may request a hearing on the Administrator's determinations in this paragraph (b)(7). * * *

(d) *Unscheduled maintenance on durability data vehicles.* * * *

* * * * *

64. Section 86.1835–01 is amended by revising the third sentence of paragraph (a)(1)(i), paragraph (b)(1) introductory text, and paragraph (b)(3) introductory text, to read as follows:

§ 86.1835–01 Confirmatory certification testing.

(a) * * *

(1) * * *

(i) * * * The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles, light-duty trucks, or complete heavy-duty vehicles. * * *

* * * * *

(b) * * * (1) If the Administrator determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, light-duty vehicle and light-duty truck manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the conditions listed in paragraph (b)(1)(i) through (v) of this section exist, and complete heavy-duty vehicles manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever the conditions listed in paragraph (b)(1)(i) or (b)(1)(ii) of this section exist.

* * * * *

(3) For light-duty vehicles, and light-duty trucks, the manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

* * * * *

65. Section 86.1840–01 is revised to read as follows:

§ 86.1840–01 Special test procedures.

(a) The Administrator may, on the basis of written application by a manufacturer, prescribe test procedures, other than those set forth in this part, for any light-duty vehicle, light-duty truck, or complete heavy-duty vehicle which the Administrator determines is not susceptible to satisfactory testing by the procedures set forth in this part.

(b) If the manufacturer does not submit a written application for use of special test procedures but the Administrator determines that a light-duty vehicle, light-duty truck, or complete heavy-duty vehicle is not susceptible to satisfactory testing by the procedures set forth in this part, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection in accordance with the provisions of § 86.1848(a)(2).

66. Section 86.1844–01 is amended by revising the fourth sentence of paragraph (d)(12), the fourth sentence of paragraph (e)(3), and paragraph (g)(5), and adding paragraph (g)(14) to read as follows:

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

* * * * *

(d) * * *

(12) * * * The description shall include, but is not limited to, information such as model name, vehicle classification (light-duty vehicle, light-duty truck, or complete heavy-duty vehicle), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc. and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. * * *

* * * * *

(e) * * *

(3) * * * The description shall include, but is not limited to, information such as model name, vehicle classification (light-duty vehicle, light-duty truck, or complete heavy-duty vehicle), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. * * *

* * * * *

(g) * * *

(5) Any information necessary to demonstrate that no defeat devices are present on any vehicles covered by a certificate including, but not limited to, a description of the technology employed to control CO emissions at intermediate temperatures, as applicable.

* * * * *

(14) For complete heavy-duty vehicles only, all hardware (including scan tools) and documentation necessary for EPA to read and interpret (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in anyway to emission control devices and auxiliary emission control devices. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read and interpret information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead center, fueling rates in cubic centimeters per stroke, vehicle speed in milers per hour or per kilometer.

* * * * *

67. Section 86.1845–01 is amended by revising paragraph (a), to read as follows:

§ 86.1845–01 Manufacturer in-use verification testing requirements.

(a) *General requirements.* A manufacturer light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall test, or cause to have tested a specified number of light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle shall include light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles.

* * * * *

68. Section 86.1845–04 is amended by revising paragraph (a), to read as follows:

§ 86.1845–04 Manufacturer in-use verification testing requirements.

(a) *General requirements.* A manufacturer light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall test, or cause to have tested a specified number of light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle shall include light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles.

* * * * *

69. A new section 86.1846–07 is added to subpart S, to read as follows:

§ 86.1846–07 Manufacturer in-use confirmatory testing.

(a) *General requirements.* A manufacturer of light-duty vehicles, light-duty trucks, and/or complete heavy-duty vehicles shall test, or cause testing to be conducted, under this section when the emission levels shown by a test group sample from testing under § 86.1845–04 exceeds the criteria specified in paragraph (b) of this section. The testing required under this section applies separately to each test group and at each test point (low and high mileage) that meets the specified criteria. The testing requirements apply separately for each model year, starting with model year 2006.

(b) *Criteria for additional testing.* A manufacturer shall test a test group or a subset of a test group as described in paragraph (j) of this section when the results from testing conducted under § 86.1845–04 show mean emissions for that test group of any pollutant(s) to be equal to or greater than 1.30 times the applicable in-use standard and a failure rate, among the test group vehicles, for the corresponding pollutant(s) of fifty percent or greater.

(1) This requirement does not apply to Supplemental FTP testing conducted under § 86.1845–04(b)(5)(i) or evaporative/refueling testing conducted under § 86.1845–04. Testing conducted at high altitude under the requirements of § 86.1845–04 will be included in determining if a test group meets the criteria triggering testing required under this section.

(2) The vehicle tested under the requirements of § 86.1845–04(c)(2)(i) with a minimum odometer miles of 75% of useful life will not be included in determining if a test group meets the triggering criteria.

(3) The SFTP composite emission levels shall include the IUVP FTP emissions, the IUVP US06 emissions, and the values from the SC03 Air Conditioning EDV certification test (without DFs applied). The calculations shall be made using the equations prescribed in § 86.164–01. If more than one set of certification SC03 data exists (due to running change testing or other reasons), the manufacturer shall choose the SC03 result to use in the calculation from among those data sets using good engineering judgment.

(c) *Useful life.* Vehicles tested under the provisions of this section must be within the useful life specified for the emission standards which were exceeded in the testing under § 86.1845–04. Testing should be within the useful life specified, subject to sections 207(c)(5) and (c)(6) of the Clean Air Act where applicable.

(d) *Number of test vehicles.* A manufacturer must test a minimum of ten vehicles of the test group or Agency-designated subset. A manufacturer may, at the manufacturer's discretion, test more than ten vehicles under this paragraph for a specific test group or Agency-designated subset. If a manufacturer chooses to test more than the required ten vehicles, all testing must be completed within the time designated in the testing completion requirements of paragraph (g) of this section. Any vehicles which are eliminated from the sample either prior to or subsequent to testing, or any vehicles for which test results are determined to be void, must be replaced in order that the final sample of vehicles for which test results acceptable to the Agency are available equals a minimum of ten vehicles. A manufacturer may cease testing with a sample of five vehicles if the results of the first five vehicles tested show mean emissions for each pollutant to be less than 75.0 percent of the applicable standard, with no vehicles exceeding the applicable standard for any pollutant.

(e) *Emission Testing.* Each test vehicle of a test group or Agency-designated subset shall be tested in accordance with the Federal Test Procedure and/or the Supplemental Federal Test Procedure (whichever of these tests performed under § 86.1845–04 produces emission levels requiring testing under this section) as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart.

(f) *Geographical limitations.* (1) Test groups or Agency-designated subsets certified to 50-state standards: For low altitude testing no more than 50 percent of the test vehicles may be procured from California. The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(2) Test groups or Agency-designated subsets certified to 49 state standards: For low-altitude testing all vehicles shall be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(3) Vehicles procured for high altitude testing may be procured from any area provided that the vehicle's primary area of operation was above 4000 feet.

(g) *Testing.* Testing required under this section must commence within three months of completion of the testing under § 86.1845–04 which triggered the confirmatory testing and must be completed within seven months of the completion of the testing which triggered the confirmatory testing. Any industry review of the results obtained under § 86.1845–04 and any additional vehicle procurement and/or testing which takes place under the provisions of § 86.1845–04 which the industry believes may affect the triggering of required confirmatory testing must take place within the three month period. The data and the manufacturers reasoning for reconsideration of the data must be provided to the Agency within the three month period.

(h) *Limit on manufacturer conducted testing.* For each manufacturer, the maximum number of test group(s)(or Agency-designated subset(s))of each model year for which testing under this section shall be required is limited to 50 percent of the total number of test groups of each model year required to be tested by each manufacturer as prescribed in § 86.1845–04 rounded to the next highest whole number where appropriate. For each manufacturer with only one test group under § 86.1845–04, such manufacturer shall have a maximum potential testing requirement under this section of one test group (or Agency-designated subset) per model year.

(i) Prior to beginning in-use confirmatory testing the manufacturer must, after consultation with the Agency, submit a written plan describing the details of the vehicle procurement, maintenance, and testing procedures (not otherwise specified by regulation) it intends to use.

(j) *Testing a subset.* EPA may designate a subset of the test group based on transmission type for testing under this section in lieu of testing the entire test group when the results for the entire test group from testing conducted under § 86.1845–04 show mean emissions and a failure rate which meet these criteria for additional testing.

70. Section 86.1848–01 is amended by revising paragraphs (c)(4) and the first sentence of paragraph (e) introductory text to read as follows:

§ 86.1848–01 Certification.

* * * * *

(c) * * *

(4) For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.1844–01.

* * * * *

(e) A manufacturer of new light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles must obtain a certificate of conformity covering such vehicles from the Administrator prior to selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing into the United States the new vehicle. * * *

* * * * *

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federal register

Friday
October 29, 1999

Part III

Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance; Proposed Rule

Nuclear Regulatory Commission
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Tennessee Valley Authority
Department of State
Agency for International Development
Department of Housing and Urban Development
Department of Justice
Department of Labor
Department of the Treasury
Department of Defense
National Archives and Records Administration
Department of Veterans Affairs
Environmental Protection Agency
General Services Administration
Department of the Interior
Federal Emergency Management Agency
National Science Foundation
National Foundation on the Arts and the Humanities
    National Endowment for the Arts
    National Endowment for the Humanities
    Institute for Museum and Library Services
Corporation for National and Community Service
Department of Transportation

NUCLEAR REGULATORY COMMISSION

10 CFR Part 5

SMALL BUSINESS ADMINISTRATION

13 CFR Part 113

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1253

DEPARTMENT OF COMMERCE

15 CFR Part 8a

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1317

DEPARTMENT OF STATE

22 CFR Part 146

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 229

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3

DEPARTMENT OF JUSTICE

28 CFR Part 54

DEPARTMENT OF LABOR

29 CFR Part 36

DEPARTMENT OF THE TREASURY

31 CFR Part 28

DEPARTMENT OF DEFENSE

32 CFR Part 196

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1211

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 23

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 5

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–4

DEPARTMENT OF THE INTERIOR

43 CFR Part 41

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 19

NATIONAL SCIENCE FOUNDATION

45 CFR Part 618

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1155

National Endowment for the Humanities

45 CFR Part 1171

Institute for Museum and Library Services

45 CFR Part 1182

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2555

DEPARTMENT OF TRANSPORTATION

49 CFR Part 25

Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance

AGENCIES: Nuclear Regulatory Commission; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Tennessee Valley Authority; Department of State; Agency for International Development; Department of Housing and Urban Development; Department of Justice; Department of Labor; Department of the Treasury; Department of Defense; National Archives and Records Administration; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Federal Emergency Management Agency; National Science Foundation; National Endowment for the Arts, National Endowment for the Humanities, Institute for Museum and Library Services, National Foundation on the Arts and the Humanities; Corporation for National and Community Service; Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation, presented as a common rule, provides for the enforcement of Title IX of the Education Amendments of 1972, as amended ("Title IX"), by the agencies identified above. Title IX prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance. The promulgation of this proposed regulation will provide guidance to recipients of Federal financial assistance who administer education programs or activities. The provisions of this proposed regulation will also promote consistent and adequate enforcement of Title IX by the agencies identified above.

DATES: Comments must be received on or before December 28, 1999.

ADDRESSES: Interested parties should submit written comments on this notice of proposed rulemaking to Merrily A. Friedlander, Chief, Coordination and Review Section, P.O. Box 65960, Washington, D.C. 20035–6560, facsimile (202) 307–0595. See Supplementary Information section for comments regarding the availability of this document in alternative formats.

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, (202) 307–2222.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed common rule is to provide for the enforcement of Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681, *et seq.*) ("Title IX"), as it applies to educational programs and activities that receive Federal financial assistance from the agencies participating in this notice. Because the proposed standards to be established for the enforcement of Title IX are the same for all of the participating agencies, they are publishing this notice of proposed rulemaking jointly. The procedures for how an agency will enforce Title IX, including the conduct of investigations and compliance reviews, also follow the same structure; all agencies except the Department of the Treasury ("Treasury") and the National Archives and Records Administration ("NARA") are referencing their respective procedures under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*), which are virtually identical among the agencies. Title IX is modeled after Title VI and the statutes have the same statutory enforcement mechanisms. Although Treasury and NARA do not have Title VI regulations, both entities are establishing enforcement procedures, as set forth below, that are akin to other agencies' Title VI procedures for enforcement.

The final rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations as indicated in this notice of proposed rulemaking.

In 1979 and 1980, two agencies published notices of proposed rulemaking for Title IX, but the proposed rules were never issued as final rules. On April 25, 1979, the Veteran's Administration published a notice of proposed rulemaking. See 44 FR 24320 (1979). On June 17, 1980, the Department of Justice published a notice of proposed rulemaking. See 45 FR 41001 (1980). By participating in this notice of proposed rulemaking, these agencies are initiating a new rulemaking proceeding.

Additional Comment Information

Copies of this notice of proposed rulemaking are available, upon request, in large print and electronic file on computer disk. Other formats will be considered upon request.

Overview

As set forth in this proposed rule, the substantive nondiscrimination obligations of recipients, for the most part, are identical to those established by the Department of Education ("ED") under Title IX. See 34 CFR Part 106. ED's regulations are the model for this notice of proposed rulemaking for several reasons: the history of public participation in the development and congressional approval of ED's regulations, ED's leadership role in Title IX enforcement, judicial interpretations of ED's regulations, recipients' familiarity with the regulations, and an interest in maintaining consistency of interpretation of regulations enforcing Title IX. The regulations, initially issued by the former Department of Health, Education, and Welfare ("HEW") (and adopted by ED upon its establishment in 1980), are the result of an extensive public comment process and congressional review. HEW received and considered more than 9700 comments before drafting its final regulations. 40 FR 24128 (1975). Further, after the final regulations were issued, but before they became effective, Congress held six days of hearings to determine whether the regulations were consistent with the statute. Sex Discrimination Regulations: Hearings before the Subcomm. on Postsecondary Education of the House Comm. on Education and Labor, 94th Cong., 1st Sess. (1975).

In addition, under Executive Order 12250, the Department of Justice is responsible for the "consistent and effective implementation" of several civil rights laws, including Title IX. Using the ED regulation as the basis for this common rule promotes consistency and efficiency not only for agencies but for the recipient community. ED is the lead agency for enforcement of Title IX through its guidance, interpretations, technical assistance, investigative expertise, and resources committed. As the vast majority of recipients of Federal assistance from the identified agencies also receive assistance from ED, recipients should be subject to a single set of obligations with respect to Title IX.

Further, both Congress and the courts have interpreted Title IX based on ED's regulations. For example, in 1974, Congress amended the statute after holding hearings on provisions in ED's proposed rule. *See* 20 U.S.C. 1681(a)(6). In 1982, the Supreme Court upheld that portion of ED's regulations that prohibits discrimination by a recipient on the basis of sex in its employment practices. *See* North Haven Bd. of *Educ.* v. *Bell*, 456 U.S. 512 (1982). As discussed below, Congress also passed the Civil Rights Restoration Act of 1987 ("CRRA"), in large part, to overrule the Supreme Court's decision in *Grove City College* v. *Bell*, 465 U.S. 555 (1984), and thus to make Title IX consistent with ED's pre-*Grove City* interpretation of the statute. *See* S. Rep. No. 100–64, at 2 (1987), *reprinted in* 1988 U.S.C.C.A.N. 3, 3–4. The recipient community, Federal agencies, and the courts should have the benefit of continued reliance on past interpretations of Title IX and its regulations, and using the ED regulation as the model for other agencies promotes that consistency.

As mentioned, the proposed regulations are not identical to ED's regulations. This proposal addresses several statutory changes that are not reflected in the existing (but soon to be modified) ED regulation, one modification in order to be consistent with Supreme Court precedent, and a few minor changes. A detailed discussion of these changes is set forth below.

Upon the issuance of final regulations by the participating agencies, beneficiaries and affected parties will have more opportunities to file complaints or seek information regarding Title IX enforcement from various agencies. The agencies intend to develop a means of sharing enforcement responsibilities and information to ensure that the most effective action is pursued, at the same time avoiding both duplication of inquiries by the Federal government and any undue burden on recipients due to multiple inquiries.

Summary of Regulation

As stated, Title IX prohibits discrimination on the basis of sex in educational programs or activities that receive Federal financial assistance. Specifically, the statute states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance," with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). This statute was modeled after Title VI, which prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance. The goal of Title IX is to ensure that Federal funds are not utilized for and do not support sex-based discrimination, and that individuals have equal opportunities, without regard to sex, to pursue, engage or participate in, and benefit from academic, extracurricular, research, occupational training, employment, or other educational programs and activities. For example (and without limitation), subject to exceptions described in these Title IX regulations, Title IX prohibits a recipient from discriminating on the basis of sex in: student admissions, scholarship awards and tuition assistance, recruitment of students and employees, the provision of courses and other academic offerings, the provision of and participation in athletics and extracurricular activities, and all aspects of employment, including, but not limited to, selection, hiring, compensation, benefits, job assignments and classification, promotions, demotions, tenure, training, transfers, leave, layoffs, and termination. *See North Haven*, 456 U.S. at 521 (stating that Title IX "must [be] accord[ed] * * * a sweep as broad as its language" to realize goals of eliminating discrimination and promoting equal opportunity); *Cannon* v. *University of Chicago*, 441 U.S. 677, 709 (1979) (concluding that an implied private right of action was necessary for Title IX's full enforcement); *Franklin* v. *Gwinnett County Pub. Schs.*, 503 U.S. 60 (1992) (concluding that sexual harassment violates Title IX's proscription against sex discrimination).[1] Of course, Title IX prohibits discrimination on the basis of sex in the operation of, and the provision or exclusion of benefits by, education and training programs conducted by noneducational institutions, including, but not limited to, prisons, museums, job training institutes, and for profit and nonprofit organizations.

Thus, for example, these proposed Title IX regulations will apply to such diverse activities as a forestry workshop run by a state park receiving funds from the Department of Interior; a boater education program sponsored by a county parks and recreation department receiving funding from the Coast Guard; a local course concerning how to start a small business, sponsored by the state department of labor that receives funding from the Small Business Administration; and, state and local courses funded by the Federal Emergency Management Agency in planning how to deal with disasters. It will also apply to a museum lecture series when the museum receives a grant from the Institute for Museum and Library Services, or a lecture series on the history of dance given at a local school of ballet receiving funding from the National Endowment for the Arts. Vocational training for inmates in prisons receiving assistance from the Department of Justice is another example of the type of program this proposed regulation will cover. In short, these proposed regulations will apply to the educational programs or activities of any entity receiving financial assistance from the agencies promulgating this proposed regulation.

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[1] See Office for Civil Rights, Dep't of Educ., *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 62 FR 12034 (1997).

It should be noted that we have retained sections from the ED regulation that impose deadlines for action by recipients. For example, section ______.110 includes a deadline for educational institutions to conduct a self-evaluation and section ______.225 includes a timetable for completion of transitions by an educational institution eliminating its single-sex status. We have included these and other provisions to allow for the possible but rare instance where such sections may continue to be relevant for certain recipients. If a recipient of assistance from a participating agency also receives funding from ED or another agency with an existing Title IX regulation, however, the deadlines, as interpreted by ED or the other agency's regulation, as applicable, continue to govern. Further, to the extent a recipient has conducted an evaluation or established procedures to conform to the ED or another agency's Title IX regulation, the recipient need not repeat such action in order to conform to the regulations adopted by the participating agencies. For example, if a recipient has established grievance procedures, it need not modify such procedures or establish other procedures to comply with these regulations in the absence of guidance or instructions from a participating agency that modification or other action is necessary. Similarly, if a recipient already has conducted a self-evaluation under Title IX, it need not conduct a new self-evaluation as a result of receiving funds from a participating agency, but need only take action if such evaluation or implementation is found to be incomplete or not in compliance with the regulations.

Subpart A sets forth definitions as well as provisions concerning remedial action and affirmative action, required assurances, adoption of grievance procedures, and notification of nondiscrimination policies. The effect of State and other laws and other requirements is also explained.

The definition of "educational institution" refers to a "local educational agency." The term "local educational agency" has been recodified at 20 U.S.C. 8801(18), and this change has been made to the definition of "educational institution."

The reference in the definition of "Federal financial assistance" to "agreements" includes "cooperative agreements" by agencies.

Section ______.110; entitled "Remedial and affirmative action and self-evaluation," is modified slightly by adding the phrase "consistent with law." This entire regulation, of course, should be interpreted consistent with governing legal decisions. Given recent, numerous decisions by the Supreme Court and lower courts concerning affirmative action, agencies should consult with the Department of Justice regarding interpretations of this section.

A few matters should be noted with respect to assurances. First, the method or practice of awarding Federal financial assistance varies among the participating agencies. Some, but not all, agencies require a formal application for Federal assistance prior to any award, and such applications will contain the assurances required by section ______.115 of the proposed regulation. Other agencies award assistance through instruments where the formal agreement or contract of assistance is the only document executed by the recipient. In the latter instance, the agreement or contract will include, *as a condition of the award*, the required assurances of .115. The presence of an assurance in a contract, agreement, or document other than "application," wherein the execution of such document includes the assurance of compliance as a condition of the award, satisfies ______.115. Second, ______.115(b)'s reference to Federal financial assistance "extended to provide real property or structures thereon, * * * or to provide personal property," should be understood to include the provision of assistance to aid in the acquisition and/or improvement of such property. Finally, in order to maintain consistency among agencies regarding the text of the assurance for compliance with Title IX, we modified ______.115(c) to include the uniform text of the assurance. This text may be modified at the discretion of the Office of Management and Budget ("OMB"), or upon application by an agency and approval by OMB. In addition, the actual text may be included in, as mentioned, a final contract or agreement, or in a standard form that includes assurances relating to other obligations.

Subpart B addresses the scope or coverage of Title IX. Subject to specific exceptions for institutions or activities, any educational program or activity, any part of which receives Federal financial assistance, is subject to Title IX.

Modifications of ED's existing regulations to conform to the statutory amendments to Title IX are addressed in this subpart. Section ______.205 is amended to incorporate the expanded exemption for entities controlled by religious institutions. Under the CRRA, the exemption is no longer limited to educational institutions that are controlled by religious organizations with tenets contrary to Title IX. Instead, any educational operation of an entity may be exempt from Title IX due to control by a religious organization with tenets that are not consistent with the provisions of Title IX. *See* 20 U.S.C. 1687. Further, the exemption would apply to a particular education program operated by a recipient if this separate program is subject to religious tenets that are not consistent with Title IX. If a recipient has obtained an exemption from ED, such exemption also may be submitted to another funding agency as a basis for an exemption from the second funding agency.

While it is not expected that many educational institutions will have a transition plan, we have retained the text of sections ______.225 and ______.230. In addition, the text of ______.225 has been slightly modified to require that any transition plans be submitted solely to the Department of Education.

A new section, ______.235, addresses all other statutory amendments. See 20 U.S.C. 1681(a)(7)–(9), 1687, 1688. Three exemptions to Title IX's coverage are identified in ______.235(b) based on amendments passed in 1976. 20 U.S.C. 1681(a)(7)–(9). Congress exempts activities undertaken by the American Legion to operate Boys State, Girls State, Boys Nation, and Girls Nation, and any promotional activity or selection of participants for such programs by educational institutions. 20 U.S.C. 1681(a)(7). In addition, father-son and mother-daughter activities that are sponsored by educational institutions are similarly exempt from coverage, with the condition that if such activities are conducted, reasonably comparable activities must be provided for students of the opposite sex. 20 U.S.C. 1681(a)(8). Third, educational institutions may provide scholarships or other benefits to persons who participate in single-sex contests where personal appearance is a basis for reward, commonly referred to as "beauty pageants." 20 U.S.C. 1681(a)(9).

As part of the CRRA, Congress also added a definition of "program or activity." *See* 20 U.S.C. 1687. Congress took this action in order to reverse the meaning and consequences of the Supreme Court's decision in *Grove City College*, which defined "program or activity" in restrictive terms. 465 U.S. at 572–74; S. Rep. No. 100–64, at 11–16, reprinted in 1988 U.S.C.C.A.N. at 13–18. The Court concluded in *Grove City College* that Federal student financial assistance provided to a college established Title IX jurisdiction only over the college's financial aid program, not the entire college. *Ibid.* This interpretation significantly narrowed the prohibitions of Title IX and its counterparts, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*, the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. *See* S. Rep. No. 100–64, at 2–3, 11–16, *reprinted in* 1988 U.S.C.C.A.N. at 3–4, 13–18.

By statutory amendment, and as set forth in ______.235(c), Congress restored the broad interpretation accorded the phrase "program or activity" prior to *Grove City College*. The provision addresses the scope of coverage for four broad categories of recipients: State or local entities, educational institutions, private entities, and entities that are a combination of any of those groups. The scope of coverage is no longer limited to the exact purpose or nature of the Federal funding. If, for example, a State or local agency receives Federal assistance for one of many functions of the agency, all of the operations of the entire agency are subject to the nondiscrimination provisions of Title IX. 20 U.S.C. 1687(1)(A). Further, if the aid is distributed to an entity or unit of government that subsequently distributes the assistance to a second agency, the entire agency to which the assistance was initially allocated is subject to Title IX. *See* 20 U.S.C. 1687(1)(B); S. Rep. No. 100–64, at 16, *reprinted in* 1988 U.S.C.C.A.N. at 18. With respect to educational institutions, it is critical to remember that all of the operations of the institution, whether or not an operation is educational or academic in nature, are subject to Title IX's prohibition on discrimination. Thus, for example, housing programs, a shuttle service, food service, and other commercial operations are covered by Title IX if any part of the entity is a recipient of Federal funds. The degree of coverage of private entities, such as private corporations and partnerships, will vary depending on how the funding is provided, the principal purpose or objective of the entity, and/or how the entity is structured (e.g., physically separate offices or plants). All of the operations of private businesses that are principally engaged in education, health care, housing, social services, or parks and recreation are considered a "program or activity" for purposes of Title IX. 20 U.S.C. 1687(3)(A)(ii). S. Rep. No. 100–64 provides numerous other examples of the scope of coverage with regard to each category of recipient, and readers are referred to this material. S. Rep. No. 100–64, at 16–20, reprinted *in* 1988 U.S.C.C.A.N. at 18–22.

Moreover, regulatory language made superfluous by the enactment of the CRRA has been omitted in the proposed rule. The Department of Education's Title IX regulations, promulgated in 1975, defined "recipient" as an entity "to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives or benefits from such assistance." At that time, the words "or benefits from" were necessary to clarify that *all* of the operations of a university or other educational institution that receives Federal funds—not just the particular programs receiving financial assistance—are covered by Title IX's nondiscrimination requirements. As noted above, this interpretation was rejected by the Supreme Court in 1984 in *Grove City College* v. *Bell*, which held that Federal student aid established Title IX jurisdiction only over the financial aid program, and not the entire institution. However, Congress' 1988 enactment of the CRRA counteracted this decision by defining "program or activity" to provide expressly that Title IX covers all educational programs of a recipient institution. Because of this statutory change, the words "or benefits from" are no longer necessary as a regulatory matter and have thus been omitted in the proposed common rule as superfluous. This deletion does not affect the reach of Title IX.

Finally, it is important to note that the restored, broad interpretation of "program or activity" does not in any way alter the requirement of 20 U.S.C. 1682 that a proposed or effectuated fund termination be limited to the particular program(s) "or part thereof" that discriminate(s), or, as appropriate, to all of the programs that are infected by the discriminatory practices. *See* S. Rep. No. 100–64, at 20, *reprinted in* 1988 U.S.C.C.A.N. at 22 ("The bill defines 'program' in the same manner as 'program or activity,' and leaves intact the "or part thereof" pinpointing language.").

Section ______.235(d) reflects the "abortion neutrality" provision in the CRRA, commonly referred to as the Danforth amendment, which provides: "Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion." 20 U.S.C. 1688.

The first sentence of the Danforth amendment is incorporated in subsection ______.235(d)(1), which states that recipients are not required to provide or pay for any benefit or service related to an abortion. Consistent with congressional intent,[2] however, this provision does *not* allow recipients of Federal assistance to deny medical procedures, benefits, services, or the use of facilities if necessary to save the life of a pregnant woman, or for medical complications arising from or related to an abortion.

The second sentence of the Danforth amendment is incorporated in ______.235(d)(2). In addition, this subsection makes it clear that, consistent with the Danforth amendment, the regulations prohibit discrimination against, exclusion of, or denial of benefits to, a person because that person has obtained, sought, or will seek an abortion. This prohibition applies to any service or benefit for an applicant (for enrollment or employment), student, or employee.[3]

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[2] *See* 134 Cong. Rec. 353 (1988) (In response to Sen. Metzenbaum's charge that discriminatory treatment would follow adoption of the Danforth amendment, and criticism that the amendment failed to account for abortions that are necessary to save the life of the woman, Sen. Danforth replied that Sen. Metzenbaum's characterizations were "completely erroneous and totally without foundation at all."); 134 Cong. Rec. 2931 (1988) (statement of Rep. Hawkins); *id.* at 2935 (statement of Rep. Jeffords); *id.* at 2945 (statement of Rep. AuCoin) ("Equally important is the fact that the bill clearly prohibits denial of provision of services related to complications arising from abortion under the terms of title IX."); *id.* at 2948 (statement of Rep. Edwards) ("Under its provisions, a covered institution does not have to include the costs of an abortion procedure in insurance for its students or employees. But [it] does not mean that it can exclude, for example, medical complications related to an abortion. Under the Danforth Amendment, Title IX still requires those complications to be covered.").

Finally, in order to conform ED's existing text to that aspect of the Danforth amendment that does not require or prohibit a recipient from providing services or payment for an abortion, a specific reference to .235(d) is added to the following provisions: ______.300(c)(3), ______.440, ______.445(b)(4), and ______.530(c).

Subpart C addresses nondiscrimination on the basis of sex in admission and recruitment practices with respect to students. For example, recipients may not impose numerical limits on the number or proportion of persons of either sex who may be admitted. In addition, a recipient may not give preference to one sex by separately ranking applicants on the basis of sex, or otherwise treat individuals differently because of their sex. Additional prohibitions of discrimination on the basis of parental and marital status are also identified.

Subpart D addresses nondiscrimination on the basis of sex in education programs and activities. Specific areas covered in this subpart are housing, access to course offerings, access to schools operated by local education agencies, counseling, financial assistance, employment assistance to students, health and insurance benefits and services, consideration of marital and parental status, and athletics. The proposed regulations do not cover a recipient's use of particular textbooks or curricular materials. The time frames identified in section ______.450(d), which address athletic programs, apply only if the recipient also does not receive funding from the Department of Education; otherwise, such recipient is expected to have complied within the time frames established by the ED regulation.

Subpart E covers the prohibitions of discrimination on the basis of sex in employment in educational programs and activities. Specific aspects of employment that are addressed include hiring and employment criteria, recruitment, compensation, job classification and structure, promotion and termination, fringe benefits, consideration of marital or parental status, leave practices, advertising, and preemployment inquiries as to parental and marital status. The subpart also includes a provision to exempt actions where sex is a bona fide occupational qualification. Section ______.525(b)(2), which concerns the provision of fringe benefits, is modified slightly in order to conform to principles established by the Supreme Court under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.*. The Supreme Court has held that fringe benefit plans may not require higher contributions from women than from men to receive the same benefits. *See City of Los Angeles Dept. of Water and Power* v. *Manhart*, 435 U.S. 702 (1978). Further, benefit plans may not provide lower benefits to women who made the same contributions as men. *See Arizona Governing Comm.* v. *Norris*, 463 U.S. 1073 (1983).

Subpart F addresses the agencies' respective procedures for implementation and enforcement of Title IX. Within 60 days of the publication of these Title IX regulations as a final rule, each agency will publish a notice in the **Federal Register** that identifies its respective programs that are covered by these Title IX regulations. Each agency will supplement or modify its notice of covered programs, as appropriate, to reflect changes in coverage.

For those agencies that have regulations to enforce Title VI, such procedures will be adopted and referenced. Titles VI and IX address discrimination in Federally assisted programs and have identical statutory enforcement schemes. The administrative enforcement procedures in Title VI regulations are virtually identical among the participating agencies, and differences are minor. For the Department of the Treasury and NARA, the specific text is set forth herein since neither has a Title VI regulation. The Corporation for Community and National Service, which is the successor to ACTION, is subject to the Title VI regulations promulgated by ACTION. *See* National and Community Service Trust Act of 1993, Public Law 103–82, section 203(c)(2), 107 Stat. 785, 892; 45 CFR Part 1203. It also should be noted that some agencies, based on other Federal laws, have promulgated regulations that similarly prohibit discrimination on the basis of sex in programs that receive Federal financial assistance. In the absence of a specific agency adoption, it should be understood that such existing regulations remain in force and are unaffected by this proposed regulation.

Applicable Executive Orders and Regulatory Certifications

This proposed Title IX regulation has been reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

This proposed Title IX regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The participating agencies have determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, yet it is not "economically significant" as defined in section 3(f)(1), and, therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive order 12866, this rule has been reviewed by OMB.

The participating agencies have determined that this Title IX regulation is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. All of the entities that are subject to these regulations are already covered by Title IX. While these regulations address standards of liability and require that recipients establish grievance procedures and take other action, a substantial number of entities already are subject to other agencies' Title IX regulations that impose the same requirements. Accordingly, these regulations will not impose new obligations on many recipients.

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[3] This provision is consistent with the Danforth amendment and congressional intent. Statements of numerous senators and representatives, including Sen. Danforth and other sponsors, reiterate the plain meaning of the prohibition, and treat the imposition of penalties as one form of discriminatory treatment against women who have sought or will seek an abortion. *See* 134 Cong. Rec. 242 (1988) (statement of Sen. Danforth) ("In fact, it is prohibited—*hospitals, colleges, universities*—from *discriminating* against people who have had abortions or who are seeking abortions. So it does not intend to authorize, in fact, it prohibits, *penalties* against people who have made their own choice for abortion.") (emphasis added); *id.* at 353 (statement of Sen. Wilson) ([The second sentence of the Danforth amendment] was language which I and others insisted be in there, precisely to ensure that there could not be *discrimination* against women who either are seeking or have received abortion-related services.") (emphasis added).

Other members of Congress agreed with the Danforth amendment because of the specific inclusion of language prohibiting discrimination. *E.g.*, 134 Cong. Rec. 2945 (1988) (statement of Rep. AuCoin) ("And with their statements [by Sen. Danforth and Wilson, as quoted above] clarifying that this legislation before us today expressly prohibits, and does not in any way permit, discrimination against women who have had or are seeking abortions, I can support this bill."); *id.* at 2948 (statement of Rep. Edwards). *See also id.* at 2935 (statement of Rep. Jeffords) ("The second sentence of the amendment will ensure that a woman is not denied scholarships, promotions, extracurricular activities, student employment or any other benefits because she has received or is seeking an abortion."); *id.* at 2945 (statement of Rep. AuCoin) ("With assurances from the authors of the Danforth amendment, and with the clarification provided by the floor leaders today, it is now clear that this legislation prohibits discrimination based on a person's decision regarding abortion—in scholarships, in housing, in extracurricular activities, in student or faculty hire and tenure, and in other benefits offered to students or employees under title IX."); *id.* at 2948 (statement of Rep. Edwards) ("Whether it be scholarships, promotions, extracurricular activities, student employment or any other benefits offered to students or employees, under title IX benefits cannot be withheld from a student or employees because she received or is seeking an abortion.").

These Title IX regulations enforce a statutory prohibition on discrimination on the basis of sex and, therefore, the participating agencies certify that no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995. Furthermore, these regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

The participating agencies, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), have reviewed these Title IX regulations and by approving certify that these regulations will not have a significant economic impact on a substantial number of small entities because all of the entities that are subject to these regulations are already subject to Title IX, and a substantial number of entities already are subject to the Title IX regulations of other agencies.

This is not a "major rule," nor will it have a significant economic impact on a substantial number of small entities, in large part because these regulations do not impose any new substantive obligations on Federal funding recipients. All recipients of Federal funding that operate educational programs or activities have been bound by Title IX's antidiscrimination provision since 1972. Individual participants in such programs have thus long had the right to be free from sex discrimination, and have enjoyed the corollary ability to file an administrative complaint and/or a private lawsuit when they believe their rights to have been violated. The common rule merely ensures that such individuals receive notice regarding their rights under Title IX and outlines a process for handling administrative complaints for those agencies that do not yet have such a process in place for Title IX. Indeed, by identifying a coherent scheme for resolving complaints administratively, this proposal may help prevent costly private litigation.

Entities receiving funding from one of the four Federal agencies that already have Title IX regulations will face no new requirements under the common rule. Those entities receiving funding from an agency that does not currently have Title IX regulations will now be required to notify their students and employees that sex discrimination is prohibited and to adopt and publish grievance procedures outlining the process for filing an administrative complaint.

To the extent these requirements will be new for some entities, they are not burdensome. Indeed, Federal funding recipients are already required to have most of these procedures under other civil rights statutes, and would generally fulfill the requirements of the common rule by including Title IX within their existing processes. Similarly, the common rule also requires a covered recipient to designate an employee to coordinate Title IX compliance efforts. In many, if not most, cases, that person would be the same person currently responsible for handling complaints under the other antidiscrimination laws.

Paperwork Reduction Act of 1995

Sections ______.110, ______.115, and ______.230 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Department of Justice, on behalf of the participating agencies, has submitted a copy of these sections to OMB for its review.

Collection of Information: Self-Evaluations

A recipient educational institution is required within one year of the effective date of these regulations to evaluate its current services, policies, and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel in connection with the recipient's education program or activity to determine whether they meet the requirements of Title IX, and to the extent the requirements are not met, to make the required modifications. In addition, recipients are to maintain this self-evaluation on file for at least three years following completion of the evaluation, and to provide to the designated agency official upon request, a description of any modifications and remedial steps made under the self-evaluation requirements. These requirements are the most efficient means of self-evaluation and recordkeeping.

Nearly all educational institutions affected by this provision have already complied or are required to comply with this provision under Title IX regulations promulgated by the U.S. Department of Education. The number of recipient educational institutions that have not previously complied or are required to comply is estimated as fewer than ten. The public reporting and recordkeeping burden for this collection of information for those remaining recipients is estimated to be thirty hours in order to conduct self-evaluations. This burden is incurred when a recipient is required to evaluate their current services, policies, and practices for compliance with Title IX. It should be noted that this calculation does not include the number of recipients which are already required to do self-evaluations under Title IX regulations promulgated by the U.S. Department of Education.

Based on data provided by all participating agencies, the estimated burden for reading and completing this form was calculated as follows:

Respondents	5
Responses (times)	1
Hours per respondent (times)	6
Annual reporting burden (hours)	30

Collection of Information: Assurances of Compliance

These regulations require applications for Federal financial assistance for an education program or activity to be accompanied by an assurance from the applicant or recipient that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these regulations. Completing this form is the clearest, most effective, and least burdensome means of placing a recipient on notice of its obligations to comply with Title IX.

The public reporting and recordkeeping burden for this collection of information for all participating agencies is estimated to be 22,738 hours in order to read and complete the assurance form. This burden is incurred when an applicant or recipient completes an application for Federal financial assistance from a participating agency for the first time or if there is a break in continuity of assistance from such agency. It is estimated that approximately 25% of recipients seek assistance from more than one Federal agency; thus, the Department of Justice estimates that assurances would be required an average of 1.25 times rather than once, per recipient. It should be noted that this calculation does not include the number of recipients at agencies, including the Departments of Commerce, Interior, and Labor, which already use OMB assurance forms or other assurance forms previously approved by OMB that include text regarding compliance with Title IX.

Based on data provided by all participating agencies, the estimated burden for reading and completing this form was calculated as follows:

Respondents	107,000
Responses (times)	1.25
Hours per respondent (times 10 minutes)	.17
Annual reporting burden (hours)	22,738

Collection of Information: Transition Plans

A recipient educational institution is required to submit a transition plan if it has admitted students of only one sex as regular students as of June 23, 1972, or admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965. The transition plan requirements listed in this rule are the most efficient means of preparing transition plans and related recordkeeping.

All educational institutions affected by this provision have already complied or are required to comply with this provision under Title IX regulations promulgated by the U.S. Department of Education. There are no new educational institutions anticipated that would fall into this category. The public reporting and recordkeeping burden for this collection of information for recipient educational institutions is therefore estimated to be zero hours in order to develop transition plans. This burden is incurred when a recipient is required to develop and implement a transition plan. It should be noted that this calculation does not include the number of recipients which are already required to do transition plans under Title IX regulations promulgated by the U.S. Department of Education.

Based on data provided by all participating agencies, the estimated burden for reading and completing this form was calculated as follows:

Respondents	0
Responses (times)	1
Hours per respondent (times)	8
Annual reporting burden (times hour)	0

Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Justice.

The Department of Justice will consider comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the participating agencies, including whether the information will have a practical use;
- Evaluating the accuracy of the participating agencies' collective estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department of Justice or participating agencies on the proposed regulation.

Text of the Proposed Common Rule

The text of this common rule as proposed in this document appears below:

[PART/Subpart] ______—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
______.100 Purpose and effective date
______.105 Definitions
______.110 Remedial and affirmative action and self-evaluation
______.115 Assurance required
______.120 Transfers of property
______.125 Effect of other requirements
______.130 Effect of employment opportunities
______.135 Designation of responsible employee and adoption of grievance procedures
______.140 Dissemination of policy

Subpart B—Coverage

______.200 Application
______.205 Educational institutions and other entities controlled by religious organizations
______.210 Military and merchant marine educational institutions
______.215 Membership practices of certain organizations
______.220 Admissions
______.225 Educational institutions eligible to submit transition plans
______.230 Transition plans
______.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

______.300 Admission
______.305 Preference in admission
______.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

______.400 Education programs and activities
______.405 Housing
______.410 Comparable facilities
______.415 Access to course offerings
______.420 Access to schools operated by LEAs
______.425 Counseling and use of appraisal and counseling materials
______.430 Financial assistance
______.435 Employment assistance to students
______.440 Health and insurance benefits and services
______.445 Marital or parental status
______.450 Athletics
______.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

______.500 Employment
______.505 Employment criteria
______.510 Recruitment
______.515 Compensation
______.520 Job classification and structure
______.525 Fringe benefits
______.530 Marital or parental status
______.535 Effect of state or local law or other requirements
______.540 Advertising
______.545 Pre-employment inquiries
______.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

______.600 Notice of covered programs

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

Subpart A—Introduction

Section ______.100 Purpose and Effective Date

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be [30 days after publication of the final rule].

Section ______.105 Definitions

As used in these Title IX regulations, the term:

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

Designated agency official means [to be inserted by agency].

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681–1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93–568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94–482, 90 Stat. 2234, and by Section 3 of Pub. L. 100–259, 102 Stat. 28, 28–29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Title IX regulations means the provisions set forth at [to be inserted by agency].

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

Section ______.110 Remedial and Affirmative Action and Self-Evaluation

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of [the effective date of these Title IX regulations]:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

Section ______.115 Assurance Required

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as a condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § ______.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient "will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: * * * Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688)."

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

Section ______.120 Transfers of Property

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ ______.205 through ______.235(a).

Section ______.125 Effect of Other Requirements

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

Section ______.130 Effect of Employment Opportunities

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

Section ______.135 Designation of Responsible Employee and Adoption of Grievance Procedures

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

Section ______.140 Dissemination of Policy

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless §§______.300 through 310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to §______.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of [the effective date of these Title IX regulations] or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Local newspapers;

(ii) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(iii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

Section ______.200 Application

Except as provided in §§______.205 through ______.235(a) of this subpart, these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

Section ______.205 Educational Institutions and Other Entities Controlled by Religious Organizations

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

Section ______.210 Military and Merchant Marine Educational Institutions

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

Section ______.215 Membership Practices of Certain Organizations.

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

Section______.220 Admissions

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§______.225 and ______.230, and §§______.300 through ______.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§______.300 through ______.310.* Except as provided in paragraphs (d) and (e) of this section, §§______.300 through ______.310 apply to each recipient. A recipient to which §§______.300 through ______.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§______.300 through ______.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§______.300 through ______.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§______.300 through ______.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

Section ______.225 Educational Institutions Eligible To Submit Transition Plans

(a) *Application.* This section applies to each educational institution to which §§ ______.300 through .310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ ______.300 through ______.310.

Section ______.230 Transition Plans

(a) *Submission of plans.* An institution to which § ______.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § ______.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ ______.300 through ______.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § ______.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

Section ______.235 Statutory Amendments

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or (ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity* or *program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a "program or activity" subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

Section ______.300 Admission

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ ______.300 through ______.310 apply, except as provided in §§ ______.225 and ______.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ ______.300 through ______.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ ______.300 through ______.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § ______.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

Section ______.305 Preference in Admission

A recipient to which §§ ______.300 through ______.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ ______.300 through ______.310.

Section ______.310 Recruitment

(a) *Nondiscriminatory recruitment.* A recipient to which §§ ______.300 through ______.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § ______.110(a), and may choose to undertake such efforts as affirmative action pursuant to § ______.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ ______.300 through ______.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ ______.300 through ______.310.

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

Section ______.400 Education Programs and Activities

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections ______.400 through ______.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ ______.300 through ______.310 do not apply, or an entity, not a recipient, to which §§ ______.300 through ______.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ ______.400 through ______.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

Section ______.405 Housing

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

Section ______.410 Comparable Facilities

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

Section ______.415 Access to Course Offerings

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from [the effective date of these Title IX regulations]. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from [the effective date of these Title IX regulations].

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

Section ______.420 Access to Schools Operated By LEAs

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

Section ______.425 Counseling and Use of Appraisal and Counseling Materials

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

Section ______.430 Financial Assistance

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided,* that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and §______.450.

Section ______.435 Employment Assistance to Students

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§______.500 through ______.550.

Section ______.440 Health and Insurance Benefits and Services

Subject to §______.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§______.500 through ______.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

Section ______.445 Marital or parental status

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) Subject to §______.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

Section ______.450 Athletics

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from [the effective date of these Title IX regulations]. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from [the effective date of these Title IX regulations].

Section ____.455 Textbooks and Curricular Material

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

Section ____.500 Employment

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§____.500 through ____.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* The provisions of §§____.500 through ____.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

Section ____.505 Employment Criteria

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

Section ____.510 Recruitment

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ ____.500 through ____.550.

Section ____.515 Compensation

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

Section ____.520 Job Classification and Structure

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § ____.550.

Section ____.525 Fringe Benefits

(a) *"Fringe benefits" defined.* For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § ____.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

Section ____.530 Marital or Parental Status

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to § ____.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

Section ____.535 Effect of State or Local Law or Other Requirements

(a) *Prohibitory requirements.* The obligation to comply with §§ ____.500 through ____.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

Section ____.540 Advertising

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

Section ____.545 Pre-employment Inquiries

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

Section ____.550 Sex as a Bona Fide Occupational Qualification

A recipient may take action otherwise prohibited by §§ ____.500 through ____.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

Section ____.600 Notice of Covered Programs

Within 60 days of [the publication as a final rule of these Title IX regulations], each Federal agency that awards Federal financial assistance shall publish in the **Federal Register** a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

Proposed Adoption of the Common Rule

The proposed adoption of the common rule by the participating agencies, as modified by agency-specific text, is set forth below:

NUCLEAR REGULATORY COMMISSION

10 CFR Part 5

FOR FURTHER INFORMATION CONTACT: Irene P. Little, Office of Small Business and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 415–7380.

List of Subjects in 10 CFR Part 5

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education of individuals with disabilities, Education, Educational facilities, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Graduate fellowship program, Grant programs—education, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, Sex discrimination, State agreement program, Student aid, Women.

Dated: January 8, 1999.

William D. Travers,
Executive Director for Operations.

For the reasons stated in the preamble, the Nuclear Regulatory Commission proposes to amend 10 CFR, chapter I, as follows:

1. Part 5 is added as set forth at the end of the common preamble to read as follows:

PART 5—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
5.100 Purpose and effective date
5.105 Definitions
5.110 Remedial and affirmative action and self-evaluation
5.115 Assurance required
5.120 Transfers of property
5.125 Effect of other requirements
5.130 Effect of employment opportunities
5.135 Designation of responsible employee and adoption of grievance procedures
5.140 Dissemination of policy

Subpart B—Coverage

5.200 Application
5.205 Educational institutions and other entities controlled by religious organizations
5.210 Military and merchant marine educational institutions
5.215 Membership practices of certain organizations
5.220 Admissions
5.225 Educational institutions eligible to submit transition plans
5.230 Transition plans
5.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

5.300 Admission
5.305 Preference in admission
5.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

5.400 Education programs and activities
5.405 Housing
5.410 Comparable facilities
5.415 Access to course offerings
5.420 Access to schools operated by LEAs
5.425 Counseling and use of appraisal and counseling materials
5.430 Financial assistance
5.435 Employment assistance to students
5.440 Health and insurance benefits and services
5.445 Marital or parental status
5.450 Athletics
5.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

5.500 Employment
5.505 Employment criteria
5.510 Recruitment
5.515 Compensation
5.520 Job classification and structure
5.525 Fringe benefits
5.530 Marital or parental status
5.535 Effect of state or local law or other requirements
5.540 Advertising
5.545 Pre-employment inquiries
5.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

5.600 Notice of covered programs
5.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 5.105 [Amended]

2. In § 5.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Program Manager, Civil Rights Program" is added in its place.

3. In § 5.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 5.100 through 5.605" is added in its place.

4. Section 5.605 is added to read as follows:

§ 5.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 10 CFR 4.21 through 4.75.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 113

FOR FURTHER INFORMATION CONTACT: Erline M. Patrick, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance, U.S. Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416, (202) 205–6750.

List of Subjects in 13 CFR Part 113

Administrative practice and procedure, Civil rights, Educational facilities, Grant programs—education, Loan programs—education, Sex discrimination, Women.

Aida Alvarez,
Administrator.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 113 as follows:

PART 113—NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS OF SBA—EFFECTUATION OF POLICIES OF FEDERAL GOVERNMENT AND SBA ADMINISTRATOR

1. The authority for part 113 is revised to read as follows:

Authority: 15 U.S.C. 633, 634, 687, 1691; 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688; 29 U.S.C. 794; Sec. 5, Pub. L. 85–536, 72 Stat. 385, as amended; Sec. 308, Pub. L. 85–699, 72 Stat. 694, as amended.

§§ 113.1 through 113.8 [Redesignated as Subpart A]

2. Sections 113.1 through 113.8 are designated as subpart A and the subpart heading is added to read as follows:

Subpart A—General Provisions

Appendix A to Part 113 [Redesignated as Appendix A to Subpart A of Part 113]

3. Appendix A to part 113 is redesignated as Appendix A to subpart A of part 113 and the heading is revised to read as follows:

Appendix A to Subpart A of Part 113

4. Subpart B, consisting of §§ 113.100 through 113.605, is added to part 113 as set forth at the end of the common preamble to read as follows:

Subpart B—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance

Sec.

Introduction

113.100 Purpose and effective date
113.105 Definitions
113.110 Remedial and affirmative action and self-evaluation
113.115 Assurance required
113.120 Transfers of property
113.125 Effect of other requirements
113.130 Effect of employment opportunities
113.135 Designation of responsible employee and adoption of grievance procedures
113.140 Dissemination of policy

Coverage

113.200 Application
113.205 Educational institutions and other entities controlled by religious organizations
113.210 Military and merchant marine educational institutions
113.215 Membership practices of certain organizations
113.220 Admissions
113.225 Educational institutions eligible to submit transition plans
113.230 Transition plans
113.235 Statutory amendments

Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

113.300 Admission
113.305 Preference in admission
113.310 Recruitment

Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

113.400 Education programs and activities.
113.405 Housing
113.410 Comparable facilities
113.415 Access to course offerings
113.420 Access to schools operated by LEAs
113.425 Counseling and use of appraisal and counseling materials
113.430 Financial assistance
113.435 Employment assistance to students
113.440 Health and insurance benefits and services
113.445 Marital or parental status
113.450 Athletics
113.455 Textbooks and curricular material

Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

113.500 Employment
113.505 Employment criteria
113.510 Recruitment
113.515 Compensation
113.520 Job classification and structure
113.525 Fringe benefits
113.530 Marital or parental status
113.535 Effect of state or local law or other requirements
113.540 Advertising
113.545 Pre-employment inquiries
113.550 Sex as a bona fide occupational qualification

Procedures

113.600 Notice of covered programs
113.605 Enforcement procedures

Subpart B—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

Subparts A through F [Removed]

5. The designations for Subparts A through F as set forth in the common rule are removed.

§ 113.105 [Amended]

6. In § 113.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Assistant Administrator for Equal Employment and Civil Rights Compliance" is added in its place.

7. In § 113.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 113.100 through 113.605" is added in its place.

8. Section 113.605 is added to read as follows:

§ 113.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 13 CFR part 112.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1253

FOR FURTHER INFORMATION CONTACT: Fred Dalton, Office of Equal Opportunity Programs, NASA Headquarters (Code EI), Washington, D.C. 20546, (202) 358–0941.

List of Subjects in 14 CFR Part 1253

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Marital status discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Daniel S. Goldin,
Administrator.

For the reasons stated in the preamble, the National Aeronautics and Space Administration proposes to amend 14 CFR, chapter V, as follows:

1. Part 1253 is added as set forth at the end of the common preamble to read as follows:

PART 1253—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
1253.100 Purpose and effective date
1253.105 Definitions
1253.110 Remedial and affirmative action and self-evaluation
1253.115 Assurance required
1253.120 Transfers of property
1253.125 Effect of other requirements
1253.130 Effect of employment opportunities
1253.135 Designation of responsible employee and adoption of grievance procedures
1253.140 Dissemination of policy

Subpart B—Coverage

1253.200 Application
1253.205 Educational institutions and other entities controlled by religious organizations
1253.210 Military and merchant marine educational institutions
1253.215 Membership practices of certain organizations
1253.220 Admissions
1253.225 Educational institutions eligible to submit transition plans
1253.230 Transition plans
1253.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

1253.300 Admission
1253.305 Preference in admission
1253.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

1253.400 Education programs and activities
1253.405 Housing
1253.410 Comparable facilities
1253.415 Access to course offerings
1253.420 Access to schools operated by LEAs
1253.425 Counseling and use of appraisal and counseling materials
1253.430 Financial assistance
1253.435 Employment assistance to students
1253.440 Health and insurance benefits and services
1253.445 Marital or parental status
1253.450 Athletics
1253.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

1253.500 Employment
1253.505 Employment criteria
1253.510 Recruitment
1253.515 Compensation
1253.520 Job classification and structure
1253.525 Fringe benefits
1253.530 Marital or parental status
1253.535 Effect of state or local law or other requirements
1253.540 Advertising
1253.545 Pre-employment inquiries
1253.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

1253.600 Notice of covered programs
1253.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 1253.105 [Amended]

2. In § 1253.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Associate Administrator for Equal Opportunity Programs" is added in its place.

3. In § 1253.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 1253.100 through 1253.605" is added in its place.

4. Section 1253.605 is added to read as follows:

§ 1253.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 14 CFR 1250.105 through 1250.110.

DEPARTMENT OF COMMERCE

15 CFR Part 8a

RIN 0690–AA28

FOR FURTHER INFORMATION CONTACT: Kimberly H. Walton, Director, Office of Civil Rights, Department of Commerce, Room 6010, Washington, D.C. 20230 (202) 482–0625.

List of Subjects in 15 CFR Part 8a

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Reporting and recordkeeping requirements, Sex discrimination, Women.

Kimberly H. Walton,
Director, Office of Civil Rights, Department of Commerce.

For the reasons stated in the preamble, the Department of Commerce proposes to amend 15 CFR, subtitle A, as follows:

1. Part 8a is added as set forth at the end of the common preamble to read as follows:

PART 8a—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
8a.100 Purpose and effective date
8a.105 Definitions
8a.110 Remedial and affirmative action and self-evaluation
8a.115 Assurance required
8a.120 Transfers of property
8a.125 Effect of other requirements
8a.130 Effect of employment opportunities
8a.135 Designation of responsible employee and adoption of grievance procedures
8a.140 Dissemination of policy

Subpart B—Coverage

8a.200 Application
8a.205 Educational institutions and other entities controlled by religious organizations
8a.210 Military and merchant marine educational institutions
8a.215 Membership practices of certain organizations
8a.220 Admissions
8a.225 Educational institutions eligible to submit transition plans
8a.230 Transition plans
8a.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

8a.300 Admission
8a.305 Preference in admission
8a.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

8a.400 Education programs and activities
8a.405 Housing
8a.410 Comparable facilities
8a.415 Access to course offerings
8a.420 Access to schools operated by LEAs
8a.425 Counseling and use of appraisal and counseling materials
8a.430 Financial assistance
8a.435 Employment assistance to students
8a.440 Health and insurance benefits and services
8a.445 Marital or parental status
8a.450 Athletics
8a.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

8a.500 Employment
8a.505 Employment criteria
8a.510 Recruitment
8a.515 Compensation
8a.520 Job classification and structure
8a.525 Fringe benefits
8a.530 Marital or parental status
8a.535 Effect of state or local law or other requirements
8a.540 Advertising
8a.545 Pre-employment inquiries
8a.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

8a.600 Notice of covered programs
8a.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 8a.105 [Amended]

2. In § 8a.105 in the definition of "designated agency official," the brackets and text within brackets are removed and the following text is added in its place: "with respect to any program receiving Federal financial assistance, the Secretary or other official of the Department who by law or by delegation has the principal authority within the Department for the administration of a law extending such assistance. *Designated agency official* also means any officials so designated by due delegation of authority within the Department to act in such capacity with regard to any program under these Title IX regulations".

3. In § 8a.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 8a.100 through 8a.605" is added in its place.

4. Section 8a.605 is added to read as follows:

§ 8a.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 15 CFR 8.7 through 8.15, and 13 CFR part 317.

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1317

FOR FURTHER INFORMATION CONTACT: Franklin E. Alford, Manager, Supplier and Diverse Business Relations, 1101 Market Street, WR 3J, Chattanooga, Tennessee 37402, (423) 751-7203.

List of Subjects in 18 CFR Part 1317

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Equal educational opportunity, Equal employment opportunity, Marital status discrimination, Reporting and recordkeeping requirements, Sex discrimination, Women.

Franklin E. Alford,

Manager, Supplier and Diverse Business Relations.

For the reasons stated in the preamble, the Tennessee Valley Authority proposes to amend 18 CFR, chapter XIII, as follows:

1. Part 1317 is added as set forth at the end of the common preamble to read as follows:

PART 1317—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.

1317.100 Purpose and effective date
1317.105 Definitions
1317.110 Remedial and affirmative action and self-evaluation
1317.115 Assurance required
1317.120 Transfers of property
1317.125 Effect of other requirements
1317.130 Effect of employment opportunities
1317.135 Designation of responsible employee and adoption of grievance procedures
1317.140 Dissemination of policy

Subpart B—Coverage

1317.200 Application
1317.205 Educational institutions and other entities controlled by religious organizations
1317.210 Military and merchant marine educational institutions
1317.215 Membership practices of certain organizations
1317.220 Admissions
1317.225 Educational institutions eligible to submit transition plans
1317.230 Transition plans
1317.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

1317.300 Admission
1317.305 Preference in admission
1317.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

1317.400 Education programs and activities
1317.405 Housing
1317.410 Comparable facilities
1317.415 Access to course offerings
1317.420 Access to schools operated by LEAs
1317.425 Counseling and use of appraisal and counseling materials
1317.430 Financial assistance
1317.435 Employment assistance to students
1317.440 Health and insurance benefits and services
1317.445 Marital or parental status
1317.450 Athletics
1317.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

1317.500 Employment
1317.505 Employment criteria
1317.510 Recruitment
1317.515 Compensation
1317.520 Job classification and structure
1317.525 Fringe benefits
1317.530 Marital or parental status
1317.535 Effect of state or local law or other requirements
1317.540 Advertising
1317.545 Pre-employment inquiries
1317.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

1317.600 Notice of covered programs
1317.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 1317.105 [Amended]

2. In § 1317.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Manager, Supplier and Diverse Business Relations" is added in its place.

3. In § 1317.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 1317.100 through 1317.605" is added in its place.

4. Section 1317.605 is added to read as follows:

§ 1317.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 18 CFR part 1302.

DEPARTMENT OF STATE

22 CFR Part 146

FOR FURTHER INFORMATION CONTACT: Paul M. Coran, Attorney Advisor, Office of Equal Employment Opportunity and Civil Rights, Department of State, Room 4216, Washington, D.C. 20520, (202) 647-9295.

List of Subjects in 22 CFR Part 146

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Sex discrimination, Women.

Dated: December 8, 1997.

Bonnie R. Cohen,

Under Secretary of State for Management.

For the reasons stated in the preamble, the Department of State proposes to amend 22 CFR, chapter I, subchapter O, as follows:

1. Part 146 is added as set forth at the end of the common preamble to read as follows:

PART 146—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.

146.100 Purpose and effective date
146.105 Definitions
146.110 Remedial and affirmative action and self-evaluation
146.115 Assurance required
146.120 Transfers of property
146.125 Effect of other requirements
146.130 Effect of employment opportunities
146.135 Designation of responsible employee and adoption of grievance procedures
146.140 Dissemination of policy

Subpart B—Coverage

146.200 Application
146.205 Educational institutions and other entities controlled by religious organizations
146.210 Military and merchant marine educational institutions
146.215 Membership practices of certain organizations
146.220 Admissions
146.225 Educational institutions eligible to submit transition plans
146.230 Transition plans
146.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

146.300 Admission
146.305 Preference in admission
146.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

146.400 Education programs and activities
146.405 Housing
146.410 Comparable facilities
146.415 Access to course offerings
146.420 Access to schools operated by LEAs
146.425 Counseling and use of appraisal and counseling materials
146.430 Financial assistance
146.435 Employment assistance to students
146.440 Health and insurance benefits and services
146.445 Marital or parental status
146.450 Athletics
146.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

146.500 Employment
146.505 Employment criteria
146.510 Recruitment
146.515 Compensation
146.520 Job classification and structure
146.525 Fringe benefits
146.530 Marital or parental status
146.535 Effect of state or local law or other requirements
146.540 Advertising
146.545 Pre-employment inquiries
146.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

146.600 Notice of covered programs
146.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 146.105 [Amended]

2. In § 146.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Deputy Assistant Secretary for the Office of Equal Employment Opportunity and Civil Rights" is added in its place.

3. In § 146.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 146.100 through 146.605" is added in its place.

4. Section 146.605 is added to read as follows:

§ 146.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 22 CFR part 141.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 229

FOR FURTHER INFORMATION CONTACT: Jessalyn L. Pendarvis, Director, Office of Equal Opportunity Programs, Agency for International Development, Washington, D.C. 20523, (202) 712–1110.

List of Subjects in 22 CFR Part 229

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Jessalyn L. Pendarvis,
Director, Office of Equal Opportunity Programs.

For the reasons stated in the preamble, the Agency for International Development proposes to amend 22 CFR, chapter II, as follows:

1. Part 229 is added as set forth at the end of the common preamble to read as follows:

PART 229—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
229.100 Purpose and effective date
229.105 Definitions
229.110 Remedial and affirmative action and self-evaluation
229.115 Assurance required
229.120 Transfers of property
229.125 Effect of other requirements
229.130 Effect of employment opportunities
229.135 Designation of responsible employee and adoption of grievance procedures
229.140 Dissemination of policy

Subpart B—Coverage

229.200 Application
229.205 Educational institutions and other entities controlled by religious organizations
229.210 Military and merchant marine educational institutions
229.215 Membership practices of certain organizations
229.220 Admissions
229.225 Educational institutions eligible to submit transition plans
229.230 Transition plans
229.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

229.300 Admission
229.305 Preference in admission
229.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

229.400 Education programs and activities
229.405 Housing
229.410 Comparable facilities
229.415 Access to course offerings
229.420 Access to schools operated by LEAs
229.425 Counseling and use of appraisal and counseling materials
229.430 Financial assistance
229.435 Employment assistance to students
229.440 Health and insurance benefits and services
229.445 Marital or parental status
229.450 Athletics
229.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

229.500 Employment
229.505 Employment criteria
229.510 Recruitment
229.515 Compensation
229.520 Job classification and structure
229.525 Fringe benefits
229.530 Marital or parental status
229.535 Effect of state or local law or other requirements
229.540 Advertising
229.545 Pre-employment inquiries
229.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

229.600 Notice of covered programs
229.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 229.105 [Amended]

2. In § 229.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Director, Office of Equal Opportunity Programs" is added in its place.

3. In § 229.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 229.100 through 229.605" is added in its place.

4. Section 229.605 is added to read as follows:

§ 229.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 22 CFR part 209.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3

[Agency Docket No. FR–4301–P–01]

RIN 2501–AC42

FOR FURTHER INFORMATION CONTACT: Juan E. Milanes, Acting Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, Washington, D.C. 20410–0500, (202) 708–0836, ext. 6962. (This telephone number is not toll-free.) Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

List of Subjects in 24 CFR Part 3

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Andrew Cuomo,
Secretary of Housing and Urban Development.

For the reasons stated in the preamble, the Department of Housing and Urban Development proposes to amend 24 CFR, subtitle A, as follows:

1. Part 3 is added as set forth at the end of the common preamble to read as follows:

PART 3—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
3.100 Purpose and effective date
3.105 Definitions
3.110 Remedial and affirmative action and self-evaluation
3.115 Assurance required
3.120 Transfers of property
3.125 Effect of other requirements
3.130 Effect of employment opportunities
3.135 Designation of responsible employee and adoption of grievance procedures
3.140 Dissemination of policy

Subpart B—Coverage

3.200 Application
3.205 Educational institutions and other entities controlled by religious organizations
3.210 Military and merchant marine educational institutions
3.215 Membership practices of certain organizations
3.220 Admissions
3.225 Educational institutions eligible to submit transition plans
3.230 Transition plans
3.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

3.300 Admission
3.305 Preference in admission
3.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

3.400 Education programs and activities
3.405 Housing
3.410 Comparable facilities
3.415 Access to course offerings
3.420 Access to schools operated by LEAs
3.425 Counseling and use of appraisal and counseling materials
3.430 Financial assistance
3.435 Employment assistance to students
3.440 Health and insurance benefits and services
3.445 Marital or parental status
3.450 Athletics
3.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

3.500 Employment
3.505 Employment criteria
3.510 Recruitment
3.515 Compensation
3.520 Job classification and structure
3.525 Fringe benefits
3.530 Marital or parental status
3.535 Effect of state or local law or other requirements
3.540 Advertising
3.545 Pre-employment inquiries
3.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

3.600 Notice of covered programs
3.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 3.105 [Amended]

2. In § 3.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Assistant Secretary for Fair Housing and Equal Opportunity" is added in its place.

3. In § 3.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 3.100 through 3.605" is added in its place.

4. Section 3.605 is added to read as follows:

§ 3.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 24 CFR part 1.

DEPARTMENT OF JUSTICE

28 CFR Part 54

[AG Order No. 2265–99]

RIN 1190–AA28

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, P.O. Box 66560, Washington, D.C. 20036–6560, (202) 307–2222.

List of Subjects in 28 CFR Part 54

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Individuals with disabilities, Investigations, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: October 4, 1999.

Janet Reno,
Attorney General.

For the reasons stated in the preamble, the Department of Justice proposes to amend 28 CFR, chapter I, as follows:

1. Part 54 is added as set forth at the end of the common preamble to read as follows:

PART 54—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
54.100 Purpose and effective date
54.105 Definitions
54.110 Remedial and affirmative action and self-evaluation
54.115 Assurance required
54.120 Transfers of property
54.125 Effect of other requirements
54.130 Effect of employment opportunities
54.135 Designation of responsible employee and adoption of grievance procedures
54.140 Dissemination of policy

Subpart B—Coverage

54.200 Application
54.205 Educational institutions and other entities controlled by religious organizations
54.210 Military and merchant marine educational institutions

54.215 Membership practices of certain organizations
54.220 Admissions
54.225 Educational institutions eligible to submit transition plans
54.230 Transition plans
54.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

54.300 Admission
54.305 Preference in admission
54.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

54.400 Education programs and activities
54.405 Housing
54.410 Comparable facilities
54.415 Access to course offerings
54.420 Access to schools operated by LEAs
54.425 Counseling and use of appraisal and counseling materials
54.430 Financial assistance
54.435 Employment assistance to students
54.440 Health and insurance benefits and services
54.445 Marital or parental status
54.450 Athletics
54.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

54.500 Employment
54.505 Employment criteria
54.510 Recruitment
54.515 Compensation
54.520 Job classification and structure
54.525 Fringe benefits
54.530 Marital or parental status
54.535 Effect of state or local law or other requirements
54.540 Advertising
54.545 Pre-employment inquiries
54.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

54.600 Notice of covered programs
54.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 54.105 [Amended]

2. In § 54.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "the Assistant Attorney General, Civil Rights Division" is added in its place.

3. In § 54.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 54.100 through 54.605" is added in its place.

4. Section 54.605 is added to read as follows:

§ 54.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 28 CFR 42.106 through 42.111.

DEPARTMENT OF LABOR

29 CFR Part 36

FOR FURTHER INFORMATION CONTACT: Bud West, Senior Policy Advisor, Civil Rights Center, Department of Labor, 200 Constitution Avenue, N.W., Room N–4123, Washington, D.C. 20210, (202) 219–8927 (voice), (202) 219–6118, or (202) 326–2577 (TTY/TTD).

List of Subjects in 29 CFR Part 36

Administrative practice and procedure, Civil rights, Equal educational opportunity, Equal employment opportunity, Grant programs—labor, Investigations, Reporting and recordkeeping requirements, Sex discrimination, Women.

Dated: January 14, 1999.

Alexis M. Herman,
Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR, subtitle A, as follows:

1. Part 36 is added as set forth at the end of the common preamble to read as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
36.100 Purpose and effective date
36.105 Definitions
36.110 Remedial and affirmative action and self-evaluation
36.115 Assurance required
36.120 Transfers of property
36.125 Effect of other requirements
36.130 Effect of employment opportunities
36.135 Designation of responsible employee and adoption of grievance procedures
36.140 Dissemination of policy

Subpart B—Coverage

36.200 Application
36.205 Educational institutions and other entities controlled by religious organizations
36.210 Military and merchant marine educational institutions
36.215 Membership practices of certain organizations
36.220 Admissions
36.225 Educational institutions eligible to submit transition plans
36.230 Transition plans
36.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

36.300 Admission
36.305 Preference in admission
36.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

36.400 Education programs and activities
36.405 Housing
36.410 Comparable facilities
36.415 Access to course offerings
36.420 Access to schools operated by LEAs
36.425 Counseling and use of appraisal and counseling materials
36.430 Financial assistance
36.435 Employment assistance to students
36.440 Health and insurance benefits and services
36.445 Marital or parental status
36.450 Athletics
36.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

36.500 Employment
36.505 Employment criteria
36.510 Recruitment
36.515 Compensation
36.520 Job classification and structure
36.525 Fringe benefits
36.530 Marital or parental status
36.535 Effect of state or local law or other requirements
36.540 Advertising
36.545 Pre-employment inquiries
36.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

36.600 Notice of covered programs
36.605 Enforcement procedures
36.610 Compliance with 29 CFR part 34

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 36.105 [Amended]

2. In § 36.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Director, Civil Rights Center" is added in its place.

3. In § 36.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 36.100 through 36.610" is added in its place.

4. Sections 36.605 and 36.610 are added to read as follows:

§ 36.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 29 CFR 31.5, 31.7 through 31.11.

§ 36.610 Compliance with 29 CFR Part 34.

Compliance with section 167 of the Job Training Partnership Act, as amended (JTPA), 29 U.S.C. 1577, and implementing regulations at 29 CFR part 34 shall satisfy the obligation of recipients of Federal financial assistance from the Department of Labor under JTPA to comply with these Title IX regulations.

DEPARTMENT OF THE TREASURY

31 CFR Part 28

FOR FURTHER INFORMATION CONTACT: Marcia H. Coates, Director, Office of Equal Opportunity Program, 1500 Pennsylvania Avenue, N.W., Room 5110 Annex, Washington, D.C. 20220, (202) 622–1160.

List of Subjects in 31 CFR Part 28

Administrative practice and procedure, Age discrimination, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Individuals with disabilities, Investigations, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: December 9, 1997.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR, Subtitle A, as follows:

1. Part 28 is added as set forth at the end of the common preamble to read as follows:

PART 28—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.

28.100 Purpose and effective date
28.105 Definitions
28.110 Remedial and affirmative action and self-evaluation
28.115 Assurance required
28.120 Transfers of property
28.125 Effect of other requirements
28.130 Effect of employment opportunities
28.135 Designation of responsible employee and adoption of grievance procedures
28.140 Dissemination of policy

Subpart B—Coverage

28.200 Application
28.205 Educational institutions and other entities controlled by religious organizations
28.210 Military and merchant marine educational institutions
28.215 Membership practices of certain organizations
28.220 Admissions
28.225 Educational institutions eligible to submit transition plans
28.230 Transition plans
28.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

28.300 Admission
28.305 Preference in admission
28.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

28.400 Education programs and activities
28.405 Housing
28.410 Comparable facilities
28.415 Access to course offerings
28.420 Access to schools operated by LEAs
28.425 Counseling and use of appraisal and counseling materials
28.430 Financial assistance
28.435 Employment assistance to students
28.440 Health and insurance benefits and services
28.445 Marital or parental status
28.450 Athletics
28.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

28.500 Employment
28.505 Employment criteria
28.510 Recruitment
28.515 Compensation
28.520 Job classification and structure
28.525 Fringe benefits
28.530 Marital or parental status
28.535 Effect of state or local law or other requirement
28.540 Advertising
28.545 Pre-employment inquiries
28.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

28.600 Notice of covered programs
28.605 Compliance information
28.610 Conduct of investigations
28.615 Procedure for effecting compliance
28.620 Hearings
28.625 Decisions and notices
28.630 Judicial review
28.635 Forms and instructions; coordination

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

2. In § 28.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Assistant Secretary for Management and Chief Financial Officer" is added in its place.

3. In § 28.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 28.100 through 28.635" is added in its place.

4. In § 28.105 add new definitions in alphabetical order to read as follows:

§ 28.105 Definitions.

* * * * *

Department means Department of the Treasury.

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Reviewing authority means that component of the Department delegated authority to review the decisions of hearing officers in cases arising under these Title IX regulations.

Secretary means Secretary of the Treasury.

* * * * *

5. Sections 28.605, 28.610, 26.615, 28.620, 28.625, 28.630, and 28.635 are added to read as follows:

§ 28.605 Compliance information.

(a) *Cooperation and assistance.* The designated agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with these Title IX regulations and shall provide assistance and guidance to recipients to help them comply voluntarily with these Title IX regulations.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the designated agency official (or designee) timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the designated agency official (or designee) may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with these Title IX regulations. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under these Title IX regulations.

(c) *Access to sources of information.* Each recipient shall permit access by the designated agency official (or designee) during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with these Title IX regulations. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with these Title IX regulations. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of these Title IX regulations and their applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations.

§ 28.610 Conduct of investigations.

(a) *Periodic compliance reviews.* The designated agency official (or designee) shall from time to time review the practices of recipients to determine whether they are complying with these Title IX regulations.

(b) *Complaints.* Any person who believes himself or herself or any specific class of individuals to be subjected to discrimination prohibited by these Title IX regulations may by himself or herself or by a representative file with the designated agency official (or designee) a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency official (or designee).

(c) *Investigations.* The designated agency official (or designee) will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with these Title IX regulations. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with these Title IX regulations occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with these Title IX regulations.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with these Title IX regulations, the designated agency official (or designee) will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 28.615.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the designated agency official (or designee) will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or these Title IX regulations, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under these Title IX regulations. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of these Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under these Title IX regulations.

§ 28.615 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with these Title IX regulations, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with these Title IX regulations may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 28.115.* If an applicant fails or refuses to furnish an assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to § 28.115, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under paragraph (c) of this section except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to [the effective date of these Title IX regulations].

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* (1) No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

(i) The designated agency official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to these Title IX regulations; and

(iii) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* (1) No action to effect compliance by any other means authorized by law shall be taken until:

(i) The designated agency official has determined that compliance cannot be secured by voluntary means;

(ii) The recipient has been notified of its failure to comply and of the action to be taken to effect compliance; and

(iii) The expiration of at least 10 days from the mailing of such notice to the recipient.

(2) During this period of at least 10 days additional efforts shall be made to persuade the recipient to comply with these Title IX regulations and to take such corrective action as may be appropriate.

§ 28.620 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 28.615(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the designated agency official that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under 20 U.S.C. 1682 and § 28.615(c) and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the designated agency official unless the official determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing officer designated in accordance with 5 U.S.C. 556(b).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by these Title IX regulations, may be reimbursed for his or her travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to these Title IX regulations, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these Title IX regulations with respect to two or more programs to which these Title IX regulations apply, or noncompliance with these Title IX regulations and the regulations of one or more other Federal departments or agencies issued under Title IX, the designated agency official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with these Title IX regulations. Final decisions in such cases, insofar as these Title IX regulations are concerned, shall be made in accordance with § 28.625.

§ 28.625 Decisions and notices.

(a) *Decisions by hearing officers.* After a hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing officer, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the designated agency official, file with the reviewing authority exceptions to the initial decision, with the reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing officer pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 28.620, the reviewing authority shall make its final decision on the record or refer the matter to a hearing officer for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to these Title IX regulations with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Secretary of the Treasury.* If the Secretary has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the reviewing authority in accordance with rules of procedure issued by the designated agency official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part.

The Secretary may also review such a decision upon his own motion in accordance with rules of procedure issued by the designated agency official. In the absence of a review under this paragraph, a final decision referred to in paragraph (a), (b), or (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under 20 U.S.C. 1682. Failure of an applicant or recipient to file an exception with the reviewing authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which these Title IX regulations apply, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Title IX and these Title IX regulations, including provisions designed to assure that no Federal financial assistance to which these Title IX regulations apply will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to these Title IX regulations, or to have otherwise failed to comply with these Title IX regulations unless and until it corrects its noncompliance and satisfies the designated agency official that it will fully comply with these Title IX regulations.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with these Title IX regulations and provides reasonable assurance that it will fully comply with these Title IX regulations. An elementary or secondary school or school system which is unable to file an assurance of compliance shall be restored to full eligibility to receive Federal financial assistance if it files a court order or a plan for desegregation which meets the applicable requirements and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the designated agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the designated agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

(3) If the designated agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the designated agency official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g) are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 28.630 Judicial review.

Action taken pursuant to 20 U.S.C. 1682 is subject to judicial review as provided in 20 U.S.C. 1683.

§ 28.635 Forms and instructions; coordination.

(a) *Forms and instructions.* The designated agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating these Title IX regulations.

(b) *Supervision and coordination.* The designated agency official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title IX and these Title IX regulations (other than responsibility for review as provided in § 28.625(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title IX and these Title IX regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the designated official of this Department.

DEPARTMENT OF DEFENSE

32 CFR Part 196

FOR FURTHER INFORMATION CONTACT: William E. Leftwich, III, Deputy Assistant Secretary of Defense (Equal Opportunity), Room 3A272, The Pentagon, Washington, D.C. 20301–4000, (703) 695–0105.

List of Subjects in 32 CFR Part 196

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Investigations, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

For the reasons stated in the preamble, the Department of Defense proposes to amend 32 CFR, chapter I, subchapter M, as follows:

1. Part 196 is added as set forth at the end of the common preamble to read as follows:

PART 196—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
196.100 Purpose and effective date
196.105 Definitions
196.110 Remedial and affirmative action and self-evaluation
196.115 Assurance required
196.120 Transfers of property
196.125 Effect of other requirements
196.130 Effect of employment opportunities
196.135 Designation of responsible employee and adoption of grievance procedures
196.140 Dissemination of policy.

Subpart B—Coverage

196.200 Application
196.205 Educational institutions and other entities controlled by religious organizations
196.210 Military and merchant marine educational institutions
196.215 Membership practices of certain organizations
196.220 Admissions
196.225 Educational institutions eligible to submit transition plans
196.230 Transition plans
196.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

196.300 Admission
196.305 Preference in admission
196.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

196.400 Education programs and activities
196.405 Housing
196.410 Comparable facilities
196.415 Access to course offerings
196.420 Access to schools operated by LEAs
196.425 Counseling and use of appraisal and counseling materials
196.430 Financial assistance
196.435 Employment assistance to students
196.440 Health and insurance benefits and services
196.445 Marital or parental status
196.450 Athletics.
196.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

196.500 Employment.
196.505 Employment criteria
196.510 Recruitment
196.515 Compensation
196.520 Job classification and structure
196.525 Fringe benefits
196.530 Marital or parental status
196.535 Effect of state or local law or other requirements
196.540 Advertising
196.545 Pre-employment inquiries
196.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

196.600 Notice of covered programs
196.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688

§ 196.105 [Amended]

2. In § 196.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Assistant Secretary of Defense (Force Management Policy)" is added in its place.

3. In § 196.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 196.100 through 196.605" is added in its place.

4. Section 196.605 is added to read as follows:

§ 196.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 32 CFR 195.7 through 195.12.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1211

FOR FURTHER INFORMATION CONTACT: Nancy Allard, Policy and Communications Staff (NPOL), 8601 Adelphi Road, College Park, Maryland 20740-6001, (301) 713–7360 ext. 226

List of Subjects in 36 CFR Part 1211

Administrative practice and procedure, Civil rights, Colleges and universities, Discrimination, Discrimination in Education, Education, Educational study programs, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs—archives and records, Grant programs—education, Nondiscrimination, Reporting and recordkeeping requirements, Sex discrimination.

Dated: February 5, 1999.

John W. Carlin,
Archivist of the United States.

For the reasons stated in the preamble, the National Archives and Records Administration proposes to amend 36 CFR, chapter XII, subchapter A, as follows:

1. Part 1211 is added as set forth at the end of the common preamble to read as follows:

PART 1211—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec
1211.100 Purpose and effective date
1211.105 Definitions
1211.110 Remedial and affirmative action and self-evaluation
1211.115 Assurance required
1211.120 Transfers of property
1211.125 Effect of other requirements
1211.130 Effect of employment opportunities
1211.135 Designation of responsible employee and adoption of grievance procedures
1211.140 Dissemination of policy.

Subpart B—Coverage

1211.200 Application
1211.205 Educational institutions and other entities controlled by religious organizations
1211.210 Military and merchant marine educational institutions
1211.215 Membership practices of certain organizations
1211.220 Admissions
1211.225 Educational institutions eligible to submit transition plans
1211.230 Transition plans
1211.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

1211.300 Admission
1211.305 Preference in admission
1211.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

1211.400 Education programs and activities
1211.405 Housing
1211.410 Comparable facilities
1211.415 Access to course offerings
1211.420 Access to schools operated by LEAs
1211.425 Counseling and use of appraisal and counseling materials
1211.430 Financial assistance
1211.435 Employment assistance to students
1211.440 Health and insurance benefits and services
1211.445 Marital or parental status
1211.450 Athletics
1211.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

1211.500 Employment
1211.505 Employment criteria
1211.510 Recruitment
1211.515 Compensation
1211.520 Job classification and structure
1211.525 Fringe benefits
1211.530 Marital or parental status
1211.535 Effect of state or local law or other requirements
1211.540 Advertising
1211.545 Pre-employment inquiries
1211.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

1211.600 Notice of covered programs
1211.605 Compliance information
1211.610 Conduct of investigations
1211.615 Procedure for effecting compliance
1211.620 Hearings
1211.625 Decisions and notices
1211.630 Judicial review
1211.635 Forms and instructions; coordination

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 1211.105 [Amended]

2. In § 1211.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Executive Director, National Historical Publications and Records Commission" is added in its place.

3. In § 1211.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "36 CFR 1211.100 through 1211.635" is added in its place.

4. Sections 1211.605, 1211.610, 1211.615, 1211.620, 1211.625, 1211.630 and 1211.635 are added to read as follows:

§ 1211.605 Compliance information.

(a) *Cooperation and assistance* The designated agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with these Title IX regulations and shall provide assistance and guidance to recipients to help them comply voluntarily with these Title IX regulations.

(b) *Compliance reports* Each recipient shall keep such records and submit to the designated agency official (or designee) timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the designated agency official (or designee) may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with these Title IX regulations. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under these Title IX regulations.

(c) *Access to sources of information.* Each recipient shall permit access by the designated agency official (or designee) during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with these Title IX regulations. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the agency from evaluating or seeking to enforce compliance with these Title IX regulations. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of these Title IX regulations and their applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations.

§ 1211.610 Conduct of investigations.

(a) *Periodic compliance reviews.* The designated agency official (or designee) shall from time to time review the practices of recipients to determine whether they are complying with these Title IX regulations.

(b) *Complaints.* Any person who believes himself or herself or any specific class of individuals to be subjected to discrimination prohibited by these Title IX regulations may by himself or herself or by a representative file with the designated agency official (or designee) a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency official (or designee).

(c) *Investigations.* The designated agency official (or designee) will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with these Title IX regulations. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with these Title IX regulations occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with these Title IX regulations.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with these Title IX regulations, the designated agency official (or designee) will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1211.615.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the designated agency official (or designee) will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or these Title IX regulations, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under these Title IX regulations. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of these Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under these Title IX regulations.

§ 1211.615 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with these Title IX regulations, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with these Title IX regulations may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to,

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 1211.115.* If an applicant fails or refuses to furnish an assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to § 1211.115, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The agency shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under paragraph (c) of this section except that the agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to [the effective date of these Title IX regulations].

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* (1) No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

(i) The designated agency official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to these Title IX regulations; and

(iii) The expiration of 30 days after the Archivist has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* (1) No action to effect compliance by any other means authorized by law shall be taken until:

(i) The designated agency official has determined that compliance cannot be secured by voluntary means;

(ii) The recipient has been notified of its failure to comply and of the action to be taken to effect compliance; and

(iii) The expiration of at least 10 days from the mailing of such notice to the recipient.

(2) During this period of at least 10 days additional efforts shall be made to persuade the recipient to comply with these Title IX regulations and to take such corrective action as may be appropriate.

§ 1211.620 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1211.615(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the designated agency official that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request ■ hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under 20 U.S.C. 1682 and § 1211.615(c) and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the agency in Washington, DC, at a time fixed by the designated agency official unless the official determines that the convenience of the applicant or recipient or of the agency requires that another place be selected. Hearings shall be held before a hearing officer designated in accordance with 5 U.S.C. 556(b).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5 through 8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by these Title IX regulations, may be reimbursed for his or her travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to ■ Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to these Title IX regulations, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these Title IX regulations with respect to two or more programs to which these Title IX regulations apply, or noncompliance with these Title IX regulations and the regulations of one or more other Federal departments or agencies issued under Title IX, the designated agency official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with these Title IX regulations. Final decisions in such cases, insofar as these Title IX regulations are concerned, shall be made in accordance with § 1211.625.

§ 1211.625 Decisions and notices.

(a) *Decisions by hearing officers.* After a hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing officer, the applicant or recipient or the counsel for the agency may, within the period provided for in the rules of procedure issued by the designated agency official, file with the reviewing authority exceptions to the initial decision, with the reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing officer pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1211.620, the reviewing authority shall make its final decision on the record or refer the matter to a hearing officer for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to these Title IX regulations with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Archivist of the United States.* If the Archivist has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for the agency may request the Archivist to review a decision of the reviewing authority in accordance with rules of procedure issued by the designated agency official. Such review is not a matter of right and shall be granted only where the Archivist determines there are special and important reasons therefor. The Archivist may grant or deny such request, in whole or in part. The Archivist may also review such a decision upon his own motion in accordance with rules of procedure issued by the National Archives and Records Administration. In the absence of a review under this paragraph, a final decision referred to in paragraph (a), (b), or (c) of this section shall become the final decision of the agency when the Archivist transmits it as such to Congressional committees with the report required under 20 U.S.C. 1682. Failure of an applicant or recipient to file an exception with the reviewing authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which these Title IX regulations apply, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Title IX and these Title IX regulations, including provisions designed to assure that no Federal financial assistance to which these Title IX regulations apply will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to these Title IX regulations, or to have otherwise failed to comply with these Title IX regulations unless and until it corrects its noncompliance and satisfies the designated agency official that it will fully comply with these Title IX regulations.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with these Title IX regulations and provides reasonable assurance that it will fully comply with these Title IX regulations. An elementary or secondary school or school system which is unable to file an assurance of compliance shall be restored to full eligibility to receive Federal financial assistance if it files a court order or a plan for desegregation which meets the applicable requirements and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the designated agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the designated agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

(3) If the designated agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the designated agency official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g) are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1211.630 Judicial review.

Action taken pursuant to 20 U.S.C. 1682 is subject to judicial review as provided in 20 U.S.C. 1683.

§ 1211.635 Forms and instructions; coordination.

(a) *Forms and instructions.* The designated agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for implementing these Title IX regulations.

(b) *Supervision and coordination.* The Archivist or his designee may from time to time assign to officials of the agency, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title IX and these Title IX regulations (other than responsibility for review as provided in § 1211.625(e)), including the achievements of effective coordination and maximum uniformity within the agency and within the Executive Branch of the Government in the application of Title IX and these Title IX regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the designated official of this agency.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 23

RIN 2900–AJ11

FOR FURTHER INFORMATION CONTACT: Ventris C. Gibson, Deputy Assistant Secretary for Resolution Management (08), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202) 273-9437.

List of Subjects in 38 CFR Part 23

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Approved: March 3, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR, chapter I, as follows:

1. Part 23 is added as set forth at the end of the common preamble to read as follows:

PART 23—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.

23.100 Purpose and effective date
23.105 Definitions
23.110 Remedial and affirmative action and self-evaluation
23.115 Assurance required
23.120 Transfers of property
23.125 Effect of other requirements
23.130 Effect of employment opportunities
23.135 Designation of responsible employee and adoption of grievance procedures
23.140 Dissemination of policy

Subpart B—Coverage

23.200 Application
23.205 Educational institutions and other entities controlled by religious organizations
23.210 Military and merchant marine educational institutions
23.215 Membership practices of certain organizations
23.220 Admissions
23.225 Educational institutions eligible to submit transition plans
23.230 Transition plans
23.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

23.300 Admission
23.305 Preference in admission
23.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

23.400 Education programs and activities
23.405 Housing
23.410 Comparable facilities
23.415 Access to course offerings
23.420 Access to schools operated by LEAs
23.425 Counseling and use of appraisal and counseling materials
23.430 Financial assistance
23.435 Employment assistance to students
23.440 Health and insurance benefits and services
23.445 Marital or parental status
23.450 Athletics
23.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

23.500 Employment
23.505 Employment criteria
23.510 Recruitment
23.515 Compensation
23.520 Job classification and structure
23.525 Fringe benefits
23.530 Marital or parental status
23.535 Effect of state or local law or other requirements
23.540 Advertising
23.545 Pre-employment inquiries
23.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

23.600 Notice of covered programs
23.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 23.105 [Amended]

2. In § 23.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Deputy Assistant Secretary for Equal Opportunity" is added in its place.

3. In § 23.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 23.100 through 23.605" is added in its place.

4. Section 23.605 is added to read as follows:

§ 23.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 38 CFR 18.6 through 18.11.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 5

FOR FURTHER INFORMATION CONTACT: Ann Goode, Office of Civil Rights, Environmental Protection Agency, 401 M Street, S.W. (1201), Washington, D.C. 20460, (202) 260–4575.

List of Subjects in 40 CFR Part 5

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Environmental protection, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: January 15, 1998.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR, chapter I, subchapter A, as follows:

1. Part 5 is added as set forth at the end of the common preamble to read as follows:

PART 5—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.

5.100 Purpose and effective date
5.105 Definitions
5.110 Remedial and affirmative action and self-evaluation
5.115 Assurance required
5.120 Transfers of property
5.125 Effect of other requirements
5.130 Effect of employment opportunities
5.135 Designation of responsible employee and adoption of grievance procedures
5.140 Dissemination of policy

Subpart B—Coverage

5.200 Application
5.205 Educational institutions and other entities controlled by religious organizations
5.210 Military and merchant marine educational institutions
5.215 Membership practices of certain organizations
5.220 Admissions
5.225 Educational institutions eligible to submit transition plans
5.230 Transition plans
5.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

5.300 Admission
5.305 Preference in admission
5.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

5.400 Education programs and activities
5.405 Housing
5.410 Comparable facilities
5.415 Access to course offerings
5.420 Access to schools operated by LEAs
5.425 Counseling and use of appraisal and counseling materials
5.430 Financial assistance
5.435 Employment assistance to students
5.440 Health and insurance benefits and services
5.445 Marital or parental status
5.450 Athletics
5.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

5.500 Employment
5.505 Employment criteria
5.510 Recruitment
5.515 Compensation
5.520 Job classification and structure
5.525 Fringe benefits
5.530 Marital or parental status
5.535 Effect of state or local law or other requirements
5.540 Advertising
5.545 Pre-employment inquiries
5.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

5.600 Notice of covered programs
5.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 5.105 [Amended]

2. In § 5.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "the Director, Office of Civil Rights" is added in its place.

3. In § 5.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 5.100 through 5.605" is added in its place.

4. Section 5.605 is added to read as follows:

§ 5.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 40 CFR 7.105 through 7.135.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–4

RIN 3090–AG58

FOR FURTHER INFORMATION CONTACT: James M. Taylor, Director, Office of Civil Rights, General Services Administration, 1800 F Street, N.W., Room 5127, Washington, D.C. 20405, (202) 501–0767.

List of Subjects in 41 CFR Part 101–4

Civil rights, Government property management, Sex discrimination, Women.

James M. Taylor,
Director, Office of Civil Rights.

For the reasons stated in the preamble, the General Services Administration proposes to amend 41 CFR, chapter 101, subchapter A, as follows:

1. Part 101–4 is added as set forth at the end of the common preamble to read as follows:

PART 101–4—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
101–4.100 Purpose and effective date
101–4.105 Definitions
101–4.110 Remedial and affirmative action and self-evaluation
101–4.115 Assurance required
101–4.120 Transfers of property
101–4.125 Effect of other requirements
101–4.130 Effect of employment opportunities
101–4.135 Designation of responsible employee and adoption of grievance procedures
101–4.140 Dissemination of policy

Subpart B—Coverage

101–4.200 Application
101–4.205 Educational institutions and other entities controlled by religious organizations
101–4.210 Military and merchant marine educational institutions
101–4.215 Membership practices of certain organizations
101–4.220 Admissions
101–4.225 Educational institutions eligible to submit transition plans
101–4.230 Transition plans
101–4.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

101–4.300 Admission
101–4.305 Preference in admission
101–4.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

101–4.400 Education programs and activities
101–4.405 Housing
101–4.410 Comparable facilities
101–4.415 Access to course offerings
101–4.420 Access to schools operated by LEAs
101–4.425 Counseling and use of appraisal and counseling materials
101–4.430 Financial assistance
101–4.435 Employment assistance to students
101–4.440 Health and insurance benefits and services
101–4.445 Marital or parental status
101–4.450 Athletics
101–4.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

101–4.500 Employment
101–4.505 Employment criteria
101–4.510 Recruitment
101–4.515 Compensation
101–4.520 Job classification and structure
101–4.525 Fringe benefits
101–4.530 Marital or parental status
101–4.535 Effect of state or local law or other requirements
101–4.540 Advertising
101–4.545 Pre-employment inquiries
101–4.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

101–4.600 Notice of covered programs
101–4.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 101–4.105 [Amended]

2. In § 101–4.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "the Associate Administrator for Equal Employment Opportunity" is added in its place.

3. In § 101–4.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 101–4.100 through 101–4.605" is added in its place.

4. Section 101–4.605 is added to read as follows:

§ 101–4.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 41 CFR part 101–6, subpart 101–6.2.

DEPARTMENT OF THE INTERIOR

43 CFR Part 41

RIN 1090–AA64

FOR FURTHER INFORMATION CONTACT: Melvin C. Fowler, Office for Equal Opportunity, MS 5221, U.S. Department of the Interior, Washington, D.C. 20240, (202) 208–3455.

List of Subjects in 43 CFR Part 41

Adult education, Athletics, Civil rights, Colleges and universities, Counseling, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Marital status discrimination, Religious discrimination, Reporting and recordkeeping requirements, Research, Sex discrimination, Scholarships, Student aid, Training, Vocational education, Vocational training, Women.

Dated: September 21, 1999.

John Berry,

Assistant Secretary—Policy, Management, and Budget.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR, subtitle A, as follows:

1. Part 41 is added as set forth at the end of the common preamble to read as follows:

PART 41—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
41.100 Purpose and effective date
41.105 Definitions
41.110 Remedial and affirmative action and self-evaluation
41.115 Assurance required
41.120 Transfers of property
41.125 Effect of other requirements
41.130 Effect of employment opportunities
41.135 Designation of responsible employee and adoption of grievance procedures
41.140 Dissemination of policy

Subpart B—Coverage

41.200 Application
41.205 Educational institutions and other entities controlled by religious organizations
41.210 Military and merchant marine educational institutions
41.215 Membership practices of certain organizations
41.220 Admissions
41.225 Educational institutions eligible to submit transition plans
41.230 Transition plans
41.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

41.300 Admission
41.305 Preference in admission
41.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

41.400 Education programs and activities
41.405 Housing
41.410 Comparable facilities
41.415 Access to course offerings
41.420 Access to schools operated by LEAs
41.425 Counseling and use of appraisal and counseling materials
41.430 Financial assistance
41.435 Employment assistance to students
41.440 Health and insurance benefits and services
41.445 Marital or parental status
41.450 Athletics
41.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

41.500 Employment
41.505 Employment criteria
41.510 Recruitment
41.515 Compensation
41.520 Job classification and structure
41.525 Fringe benefits
41.530 Marital or parental status
41.535 Effect of state or local law or other requirements
41.540 Advertising
41.545 Pre-employment inquiries
41.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

41.600 Notice of covered programs
41.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 41.105 [Amended]

2. In § 41.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Deputy Assistant Secretary for Workforce Diversity" is added in its place.

3. In § 41.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 41.100 through 41.605" is added in its place.

4. Section 41.605 is added to read as follows:

§ 41.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 43 CFR 17.5 through 17.11 and 43 CFR part 4, subpart I.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 19

RIN 3067–AC71

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Federal Emergency Management Agency, 500 C Street, SW., Room 407, Washington, DC 20472, (202) 646–4122.

List of Subjects in 44 CFR Part 19

Administrative practice and procedure, Civil rights, Colleges and universities, Discrimination, Discrimination in education, Discrimination in employment, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Employment, Equal educational opportunity, Equal employment opportunity, Federal aid programs, Grant programs—education, Investigations, Marital status discrimination, Nondiscrimination, Reporting and recordkeeping requirements, Schools, Secondary education, Sex discrimination, Student aid, Universities, Women.

Pauline C. Campbell,

Director, Office of Equal Rights.

For the reasons stated in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR, chapter I, subchapter A, as follows:

1. Part 19 is added as set forth at the end of the common preamble to read as follows:

PART 19—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
19.100 Purpose and effective date
19.105 Definitions
19.110 Remedial and affirmative action and self-evaluation
19.115 Assurance required
19.120 Transfers of property
19.125 Effect of other requirements
19.130 Effect of employment opportunities
19.135 Designation of responsible employee and adoption of grievance procedures
19.140 Dissemination of policy

Subpart B—Coverage

19.200 Application
19.205 Educational institutions and other entities controlled by religious organizations
19.210 Military and merchant marine educational institutions
19.215 Membership practices of certain organizations
19.220 Admissions
19.225 Educational institutions eligible to submit transition plans
19.230 Transition plans
19.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

19.300 Admission
19.305 Preference in admission
19.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

19.400 Education programs and activities
19.405 Housing
19.410 Comparable facilities
19.415 Access to course offerings
19.420 Access to schools operated by LEAs
19.425 Counseling and use of appraisal and counseling materials
19.430 Financial assistance
19.435 Employment assistance to students

19.440 Health and insurance benefits and services
19.445 Marital or parental status
19.450 Athletics
19.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

19.500 Employment
19.505 Employment criteria
19.510 Recruitment
19.515 Compensation
19.520 Job classification and structure
19.525 Fringe benefits
19.530 Marital or parental status
19.535 Effect of state or local law or other requirements
19.540 Advertising
19.545 Pre-employment inquiries
19.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

19.600 Notice of covered programs.
19.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 19.105 [Amended]

2. In § 19.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Director, Office of Equal Rights" is added in its place.

3. In § 19.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 19.100 through 19.605" is added in its place.

4. Section 19.605 is added to read as follows:

§ 19.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 44 CFR 7.10 through 7.15.

NATIONAL SCIENCE FOUNDATION

45 CFR Part 618

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Assistant General Counsel, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230, (703) 306–1060.

List of Subjects in 45 CFR Part 618

Civil rights, Colleges and universities, Education, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Individuals with disabilities, Sex discrimination, Women.

Lawrence Rudolph,
General Counsel.

For the reasons stated in the preamble, the National Science Foundation proposes to amend 45 CFR, chapter VI, as follows:

1. Part 618 is added as set forth at the end of the common preamble to read as follows:

PART 618—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
618.100 Purpose and effective date
618.105 Definitions
618.110 Remedial and affirmative action and self-evaluation
618.115 Assurance required
618.120 Transfers of property
618.125 Effect of other requirements
618.130 Effect of employment opportunities
618.135 Designation of responsible employee and adoption of grievance procedures
618.140 Dissemination of policy

Subpart B—Coverage

618.200 Application
618.205 Educational institutions and other entities controlled by religious organizations
618.210 Military and merchant marine educational institutions
618.215 Membership practices of certain organizations
618.220 Admissions
618.225 Educational institutions eligible to submit transition plans
618.230 Transition plans
618.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

618.300 Admission
618.305 Preference in admission
618.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

618.400 Education programs and activities
618.405 Housing
618.410 Comparable facilities
618.415 Access to course offerings
618.420 Access to schools operated by LEAs
618.425 Counseling and use of appraisal and counseling materials
618.430 Financial assistance
618.435 Employment assistance to students
618.440 Health and insurance benefits and services
618.445 Marital or parental status
618.450 Athletics
618.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

618.500 Employment
618.505 Employment criteria
618.510 Recruitment
618.515 Compensation
618.520 Job classification and structure
618.525 Fringe benefits
618.530 Marital or parental status
618.535 Effect of state or local law or other requirements
618.540 Advertising
618.545 Pre-employment inquiries
618.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

618.600 Notice of covered programs
618.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 618.105 [Amended]

2. In § 618.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "General Counsel and head of the policy office, Division of Contracts, Policy, and Oversight" is added in its place.

3. In § 618.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 618.100 through 618.605" is added in its place.

4. Section 618.605 is added to read as follows:

§ 618.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR part 611.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1155

FOR FURTHER INFORMATION CONTACT: Hope O'Keeffe, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, (202) 682–5418 (voice), (202) 682–5496 (TDD), (202) 682–5572 (facsimile).

List of Subjects in 45 CFR Part 1155

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Education of individuals with disabilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Individuals with disabilities, Investigations, Marital status discrimination, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Hope O'Keeffe,

Deputy General Counsel.

For the reasons stated in the preamble, the National Endowment for the Arts proposes to amend 45 CFR, chapter XI, subchapter B, as follows:

1. Part 1155 is added as set forth at the end of the common preamble to read as follows:

PART 1155—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
1155.100 Purpose and effective date
1155.105 Definitions
1155.110 Remedial and affirmative action and self-evaluation
1155.115 Assurance required
1155.120 Transfers of property
1155.125 Effect of other requirements
1155.130 Effect of employment opportunities
1155.135 Designation of responsible employee and adoption of grievance procedures
1155.140 Dissemination of policy

Subpart B—Coverage

1155.200 Application
1155.205 Educational institutions and other entities controlled by religious organizations
1155.210 Military and merchant marine educational institutions
1155.215 Membership practices of certain organizations
1155.220 Admissions
1155.225 Educational institutions eligible to submit transition plans
1155.230 Transition plans
1155.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

1155.300 Admission
1155.305 Preference in admission
1155.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

1155.400 Education programs and activities
1155.405 Housing
1155.410 Comparable facilities
1155.415 Access to course offerings
1155.420 Access to schools operated by LEAs
1155.425 Counseling and use of appraisal and counseling materials
1155.430 Financial assistance
1155.435 Employment assistance to students
1155.440 Health and insurance benefits and services
1155.445 Marital or parental status
1155.450 Athletics
1155.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

1155.500 Employment
1155.505 Employment criteria
1155.510 Recruitment
1155.515 Compensation
1155.520 Job classification and structure
1155.525 Fringe benefits
1155.530 Marital or parental status
1155.535 Effect of state or local law or other requirements
1155.540 Advertising
1155.545 Pre-employment inquiries
1155.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

1155.600 Notice of covered programs
1155.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 1155.105 [Amended]

2. In § 1155.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Director, Office of Civil Rights" is added in its place.

3. In § 1155.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 1155.100 through 1155.605" is added in its place.

4. Section 1155.605 is added to read as follows:

§ 1155.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR part 1110.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Part 1171

RIN 3136–AA11

FOR FURTHER INFORMATION CONTACT: Virginia R. Canter, General Counsel, 1100 Pennsylvania Avenue, NW, Suite 530, Washington, DC 20506, (202) 606–8322.

List of Subjects in 45 CFR Part 1171

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Equal educational opportunity, Grant programs—education, Investigations, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Virginia R. Canter,

General Counsel.

For the reasons stated in the preamble, the National Endowment for the Humanities proposes to amend 45 CFR, chapter XI, subchapter D as follows:

1. Part 1171 is added as set forth at the end of the common preamble to read as follows:

PART 1171—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
1171.100 Purpose and effective date
1171.105 Definitions
1171.110 Remedial and affirmative action and self-evaluation
1171.115 Assurance required
1171.120 Transfers of property
1171.125 Effect of other requirements
1171.130 Effect of employment opportunities
1171.135 Designation of responsible employee and adoption of grievance procedures
1171.140 Dissemination of policy

Subpart B—Coverage

1171.200 Application
1171.205 Educational institutions and other entities controlled by religious organizations
1171.210 Military and merchant marine educational institutions
1171.215 Membership practices of certain organizations
1171.220 Admissions
1171.225 Educational institutions eligible to submit transition plans
1171.230 Transition plans
1171.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

1171.300 Admission
1171.305 Preference in admission
1171.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

1171.400 Education programs and activities
1171.405 Housing
1171.410 Comparable facilities
1171.415 Access to course offerings
1171.420 Access to schools operated by LEAs
1171.425 Counseling and use of appraisal and counseling materials
1171.430 Financial assistance
1171.435 Employment assistance to students

1171.440 Health and insurance benefits and services
1171.445 Marital or parental status
1171.450 Athletics
1171.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

1171.500 Employment
1171.505 Employment criteria
1171.510 Recruitment
1171.515 Compensation
1171.520 Job classification and structure
1171.525 Fringe benefits
1171.530 Marital or parental status
1171.535 Effect of state or local law or other requirements
1171.540 Advertising
1171.545 Pre-employment inquiries
1171.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

1171.600 Notice of covered programs
1171.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 1171.105 [Amended]

2. In § 1171.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "General Counsel" is added in its place.

3. In § 1171.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 1171.100 through 1171.605" is added in its place.

4. Section 1171.605 is added to read as follows:

§ 1171.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR part 1110.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Part 1182

RIN 3137–AA09

FOR FURTHER INFORMATION CONTACT: Mary Ann Bittner, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, N.W., Room 510, Washington, D.C. 20506, (202) 606–8536.

List of Subjects in 45 CFR Part 1182

Administrative practice and procedure, Civil rights, Education, Equal educational opportunity, Grant programs—education, Investigations, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Mary Ann Bittner,
Director of Legislative and Public Affairs.

For the reasons stated in the preamble, the Institute of Museum and Library Services proposes to amend 45 CFR, chapter XI, subchapter E, as follows:

1. Part 1182 is added as set forth at the end of the common preamble to read as follows:

PART 1182—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
1182.100 Purpose and effective date
1182.105 Definitions
1182.110 Remedial and affirmative action and self-evaluation
1182.115 Assurance required
1182.120 Transfers of property
1182.125 Effect of other requirements
1182.130 Effect of employment opportunities
1182.135 Designation of responsible employee and adoption of grievance procedures
1182.140 Dissemination of policy

Subpart B—Coverage

1182.200 Application
1182.205 Educational institutions and other entities controlled by religious organizations
1182.210 Military and merchant marine educational institutions
1182.215 Membership practices of certain organizations
1182.220 Admission
1182.225 Educational institutions eligible to submit transition plans
1182.230 Transition plans
1182.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

1182.300 Admission
1182.305 Preference in admission
1182.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

1182.400 Education programs and activities.
1182.405 Housing
1182.410 Comparable facilities
1182.415 Access to course offerings
1182.420 Access to schools operated by LEAs
1182.425 Counseling and use of appraisal and counseling materials
1182.430 Financial assistance
1182.435 Employment assistance to students
1182.440 Health and insurance benefits and services
1182.445 Marital or parental status
1182.450 Athletics
1182.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

1182.500 Employment
1182.505 Employment criteria
1182.510 Recruitment
1182.515 Compensation
1182.520 Job classification and structure
1182.525 Fringe benefits
1182.530 Marital or parental status
1182.535 Effect of state or local law or other requirements
1182.540 Advertising
1182.545 Pre-employment inquiries
1182.550 Sex as a bona fide occupational qualification

Subpart F-Procedures

1182.600 Notice of covered programs
1182.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 1182.105 [Amended]

2. In § 1182.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Director, Policy, Planning and Budget" is added in its place.

3. In § 1182.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 1182.100 through 1182.605" is added in its place.

4. Section 1182.605 is added to read as follows:

§ 1182.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR part 1110.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2555

FOR FURTHER INFORMATION CONTACT: Nancy B. Voss, Director, Equal Opportunity, Corporation for National and Community Service, 1201 New York Avenue, N.W., Washington, D.C. 20525, (202) 606–5000, extension 308.

List of Subjects in 45 CFR Part 2555

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Thomasenia P. Duncan,
General Counsel.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend 45 CFR, chapter XXV, as follows:

1. Part 2555 is added as set forth at the end of the common preamble to read as follows:

PART 2555—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
2555.100 Purpose and effective date
2555.105 Definitions
2555.110 Remedial and affirmative action and self-evaluation
2555.115 Assurance required
2555.120 Transfers of property
2555.125 Effect of other requirements
2555.130 Effect of employment opportunities
2555.135 Designation of responsible employee and adoption of grievance procedures
2555.140 Dissemination of policy

Subpart B—Coverage

2555.200 Application
2555.205 Educational institutions and other entities controlled by religious organizations
2555.210 Military and merchant marine educational institutions
2555.215 Membership practices of certain organizations
2555.220 Admission
2555.225 Educational institutions eligible to submit transition plans
2555.230 Transition plans
2555.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

2555.300 Admission
2555.305 Preference in admission
2555.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

2555.400 Education programs and activities
2555.405 Housing
2555.410 Comparable facilities
2555.415 Access to course offerings
2555.420 Access to schools operated by LEAs
2555.425 Counseling and use of appraisal and counseling materials
2555.430 Financial assistance
2555.435 Employment assistance to students
2555.440 Health and insurance benefits and services
2555.445 Marital or parental status
2555.450 Athletics
2555.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

2555.500 Employment.
2555.505 Employment criteria
2555.510 Recruitment
2555.515 Compensation
2555.520 Job classification and structure
2555.525 Fringe benefits
2555.530 Marital or parental status
2555.535 Effect of state or local law or other requirements
2555.540 Advertising
2555.545 Pre-employment inquiries
2555.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

2555.600 Notice of covered programs
2555.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 2555.105 [Amended]

2. In § 2555.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Director, Equal Opportunity" is added in its place.

3. In § 2555.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 2555.100 through 2555.605" is added in its place.

4. Section 2555.605 is added to read as follows:

§ 2555.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR 1203.6 through 1203.12.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 25

FOR FURTHER INFORMATION CONTACT: Marc Brenman, Department Office of Civil Rights, Room 10217, 400 7th Street, S.W., Washington, D.C. 20590, (202) 366–1119 or Nancy Dunham, Senior Attorney-Advisor; Civil Rights, Office of Environmental, Civil Rights, and General Law, Room 5432, 400 7th Street, S.W., Washington, D.C. 20590, (202) 366–8072.

List of Subjects in 49 CFR Part 25

Administrative practice and procedure, Civil rights, Colleges and universities, Discrimination, Education of individuals with disabilities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Equal opportunity, Gender discrimination, Grant programs—education, Individuals with disabilities, Investigations, Loan Programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Training, Women.

Rodney Slater,
Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation proposes to amend 49 CFR, subtitle A, as follows:

1. Part 25 is added as set forth at the end of the common preamble to read as follows:

PART 25—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
25.100 Purpose and effective date
25.105 Definitions
25.110 Remedial and affirmative action and self-evaluation
25.115 Assurance required
25.120 Transfers of property
25.125 Effect of other requirements
25.130 Effect of employment opportunities
25.135 Designation of responsible employee and adoption of grievance procedures
25.140 Dissemination of policy

Subpart B—Coverage

25.200 Application
25.205 Educational institutions and other entities controlled by religious organizations
25.210 Military and merchant marine educational institutions
25.215 Membership practices of certain organizations
25.220 Admission
25.225 Educational institutions eligible to submit transition plans
25.230 Transition plans
25.235 Statutory amendments

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

25.300 Admission
25.305 Preference in admission
25.310 Recruitment

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

25.400 Education programs and activities
25.405 Housing
25.410 Comparable facilities
25.415 Access to course offerings
25.420 Access to schools operated by LEAs
25.425 Counseling and use of appraisal and counseling materials
25.430 Financial assistance

25.435 Employment assistance to students
25.440 Health and insurance benefits and services
25.445 Marital or parental status
25.450 Athletics
25.455 Textbooks and curricular material

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

25.500 Employment
25.505 Employment criteria
25.510 Recruitment
25.515 Compensation
25.520 Job classification and structure
25.525 Fringe benefits
25.530 Marital or parental status
5.535 Effect of state or local law or other requirements
25.540 Advertising
25.545 Pre-employment inquiries
25.550 Sex as a bona fide occupational qualification

Subpart F—Procedures

25.600 Notice of covered programs
25.605 Enforcement procedures

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 25.105 [Amended]

2. In § 25.105 in the definition of "designated agency official," the brackets and text within brackets are removed and "Director, Departmental Office of Civil Rights" is added in its place.

3. In § 25.105 in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 25.100 through 25.605" is added in its place.

4. Section 25.605 is added to read as follows:

§ 25.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 49 CFR part 21.

[FR Doc. 99–27372 Filed 10–28–99; 8:45 am]

BILLING CODES 7590–01–P, 8025–01–P, 7510–01–P, 3510–BP–P, 8120–08–P, 4710–10–P, 6116–01–P, 4210–28–P, 4410–13–P, 4510–23–P, 4810–25–P, 5000–04–P, 7515–01–P, 8320–01–P, 6560–50–P, 6820–34–P, 4310–RE–P, 6718–01–P, 7555–01–P, 7537–01–P, 7536–01–P, 7036–01–P, 6050–28–P, 4910–62–P

federal register

Friday
October 29, 1999

Part IV

Department of Education

34 CFR Parts 600 and 668

Institutional Eligibility Under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1845–AA08

Institutional Eligibility Under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: We amend the regulations that govern institutional eligibility for and participation in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) programs, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly known as the State Student Incentive Grant (SSIG) Program).

These final regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments). Many of the final regulatory changes merely conform current regulatory provisions to the statutory changes.

DATES: *Effective Date:* These final regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), at their discretion institutions can choose to implement the provisions of certain sections of these regulations on or after October 29, 1999. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Cheryl Leibovitz, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3045, Washington, DC 20202–5344. Telephone: (202) 708–9900. If you use a telecommunications device for the deaf (TDD), you may call the Federal information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 38272–38282) proposing to amend the regulations governing institutional eligibility for and participation in the Title IV, HEA Programs. In the preamble to the NPRM, we discussed the following proposed changes:

- Amending § 600.2, the definition of "State" to include the "Freely Associated States," which are the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
- Amending §§ 600.4(c), 600.5(h), and 600.6(d) to require an institution to agree to submit any dispute involving the final denial, withdrawal, or termination of accreditation to "initial" rather than "binding" arbitration.
- Amending § 600.5(a)(8) to conform the provisions previously referred to as the "85/15 rule" to the new "90/10 rule".
- Amending § 600.5(d) to make explicit that institutions must use the cash basis of accounting in determining whether they satisfy the 90/10 rule, and by clarifying how institutional loans and scholarships must be treated under the cash basis of accounting.
- Amending § 600.5(e) to provide that an institution could presume that a student's institutional charges were not paid with Title IV, HEA program funds if they were paid with funds received from a prepaid State tuition plan.
- Amending § 600.7(c) to expand the waiver provision for an institution whose enrollment of incarcerated students exceeds 25 percent to include a nonprofit institution that provides a two- or four-year program for which it awards a "postsecondary diploma."
- Amending § 600.8, as well as §§ 600.5(b)(3)(i) and 600.6(b)(3)(iii) to clarify that a branch campus must exist as a branch campus for at least two years after the Secretary certifies it as a branch campus before seeking to be certified as a main or free-standing campus.
- Amending §§ 600.31 and 668.12 to allow an institution undergoing a change in ownership that results in a change in control to continue to participate in the Title IV, HEA programs on a provisional basis if the institution meets certain requirements.
- Amending § 600.55(a)(5)(i)(A) to provide criteria for determining the comparability of foreign graduate medical schools to domestic graduate medical schools.
- Amending § 600.56 to subject foreign veterinary schools to many, but not all, of the special eligibility requirements that the statute previously applied to foreign medical schools.
- Amending § 668.13 to expand the maximum period of time that an institution may be certified to participate in the Title IV, HEA programs from four years to six years.
- Amending § 668.14 to exempt an institution that has undergone a change in ownership/control from the requirement that it use a Default Management Plan during the first two years of its participation in the FFEL or Direct Loan programs if certain conditions are met.
- Amending § 668.14 by removing §§ 668.14(d) and (e), which govern collection and reporting of information concerning athletically-related aid, because those requirements will be revised and incorporated in § 668.47.
- Amending § 668.14(b)(24) to clarify that an institution agrees to comply with the requirements of § 668.22, which relates to refunds and the return of Title IV, HEA program funds.
- Amending § 668.14(d) to require that an institution make a good faith effort to distribute mail voter registration forms to its students. (The 1998 Amendments included this requirement but prohibited any officer of the Executive Branch from instructing an institution in the manner in which this provision is to be carried out. Therefore, proposed § 668.14(d) incorporated the provisions of section 487(a)(23) of the HEA *verbatim* into § 668.14(d) with minor changes to incorporate plain language requirements.)
- Amending § 668.27 to allow for a waiver for up to three years of the requirement that an institution submit annually, a compliance audit and audited financial statement if certain conditions are met.
- Amending § 668.92 to reflect that an individual who exercises substantial control over an institution and willfully fails to pay refunds on student loans is subject to the penalty established under section 6672(a) of the Internal Revenue Code of 1986 with respect to nonpayment of taxes.
- Amending §§ 668.95 and 668.113 to allow an institution to correct or cure an error that results from an administrative, accounting, or recordkeeping error, if that error was not part of a pattern of errors and there is no evidence of fraud or misconduct related to the error, and to clarify that the Secretary will not

limit, suspend, terminate, or fine the institution if such an error is cured.

There are no significant differences between the NPRM and these final regulations.

Implementation Date of These Regulations

Section 482(c) of the HEA, 20 U.S.C. 1089(c), provides that if we publish these regulations before November 1, 1999, the regulations will become effective on July 1, 2000. However, that section also permits us to designate any of these regulations as one that an entity subject to the regulation may choose to implement earlier. If we designate a regulation for early implementation, we may specify when and under what conditions the entity may implement it. Under this authority, we have designated the following regulations for early implementation:

Upon publication, institutions have the discretion to implement §§ 600.4(c), 600.5(h), 600.6(d), 600.55, and § 600.56.

Upon publication, institutions have the discretion to implement the provisions of §§ 600.5(d) and (e). However, if an institution chooses to implement any of the provisions in those sections, it must implement all of them.

Upon publication, institutions have the discretion to implement the provisions dealing with a change of ownership that results in a change in control in §§ 600.20, 600.31, and 668.12.

Note: The changes to §§ 600.2, 600.5(a), 600.5(b)(3)(i), 600.6(b)(3)(iii), 600.7(a)(1)(iii) and (iv), 600.7(c), 600.8, 668.13, 668.14(b)(24), 668.14(d), and 668.92 reflect statutory provisions that already are in effect. Institutions may use these regulations prior to July 1, 2000 as guidance in complying with those statutory provisions.

The changes to §§ 668.95 and 668.13 merely clarify our current practices with regard to initiating compliance actions and assessing liabilities.

Section 668.27 will not become effective until July 1, 2000. However, we will begin to accept applications for waivers from institutions as of January 3, 2000 so that we can begin to grant waivers on July 1, 2000.

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 15, 1999. With the exception of provisions relating to the "90/10 rule" in the definition of "proprietary institution of higher education" at § 600.5, the proposed regulations reflected the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 13, 1999 and approximately 60 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

Analysis of Comments and Changes

Part 600—Institutional Eligibility Under the Higher Education Act of 1965, as amended

Section 600.5 Proprietary Institution of Higher Education

Comments: A number of commenters registered support of the Secretary's proposals for implementing the 90/10 rule as reasonable and compliant with the HEA.

Discussion: We appreciate the support for these changes.

Changes: None.

Comments: Several commenters disagreed with the requirement contained in proposed § 600.5(d)(2) that a proprietary institution of higher education must use the cash basis of accounting in determining whether it satisfies the 90/10 rule. These commenters believed that all revenue should be recognized when earned (accrual basis of accounting), and not when received (cash basis of accounting.)

Discussion: We set forth in the preamble to the proposed regulations at 64 FR 38272, 38275 the history and rationale for the decision to use the cash basis of accounting in reporting revenue for the purpose of the 85/15 and now 90/10 rule. In summary an institution must report and account for its expenditure of Title IV, HEA program funds on the cash basis of accounting, and therefore, it must report all its revenues on that basis in order to make a meaningful determination of compliance with the 90/10 requirement.

Changes: None.

Comments: Two commenters requested clarification on the treatment of institutional loans in proposed § 600.5(d)(3)(i). That section provided that under the cash basis of accounting, when calculating the amount of revenue generated by the institution from institutional loans, an institution may include only loan repayments received during the relevant fiscal year.

Discussion: An institution may not count in the denominator of the fraction in § 600.5(d)(1) the loan proceeds from institutional loans that were disbursed to students; it may include only loan repayments it received during the relevant fiscal year for previously disbursed institutional loans.

Changes: None.

Comments: A number of commenters objected to the treatment of "institutional scholarships" as proposed in § 600.5(d)(3)(ii). That section provided that under the cash basis of accounting, when calculating the amount of revenue generated by the institution from institutional scholarships, an institution may include only the amount of funds it disbursed during the fiscal year from an established restricted account, and only to the extent that the funds in the account represent designated funds from an outside source or from fund earnings.

Commenters who objected to our treatment of institutional scholarships indicated that contributions to proprietary institutions are not tax deductible, and therefore proprietary institutions generally do not receive funds from outside sources for scholarship funds. Other commenters indicated that the tax laws preclude a proprietary institution from setting up a tax exempt entity for that purpose. Thus, the commenters noted that scholarship endowments are virtually non-existent in the proprietary sector.

The commenters noted that it would take years to amass the principal necessary to create a substantial endowment program. They also believed it would take even longer to earn enough interest to make tangible scholarship distributions to students. In addition, the commenters said that as a result of this proposed requirement, many institutions would have no choice but to limit or forgo making scholarships to deserving students.

On the other hand, several other commenters supported our treatment of institutional scholarship funds under the cash basis of accounting.

Discussion: We understand that the tax laws preclude individuals and entities from making tax deductible contributions to proprietary institutions, and therefore it would be unlikely that these institutions would have restricted funds to make scholarship awards. However, this result is consistent with our view, as expressed in the NPRM preamble, that institutional scholarships are not revenue generated by the institution but are expenses of the institution, and should not be included, except in unusual circumstances, in the denominator of the fraction in § 600.5(d)(1).

We specified in the initial NPRM on this topic in 1994 (59 FR 6446, February 10, 1994) that we wished to encourage proprietary institutions to obtain support from sources outside of and independent of the institution. Accordingly, funds donated to the institution by related parties may not count for purposes of the 90/10 calculation. An institution could, however, use such donations to create restricted accounts for institutional scholarships. Those scholarships would count in the 90/10 calculation, but only to the extent of earnings on the restricted account.

We disagree with the commenter's assertion that proprietary institutions will reduce the funding of institutional scholarships to their students. We believe that institutions award these scholarships to benefit their students, not as an artifice to avoid the consequences of the 90/10 rule.

Changes: None.

Comments: Some commenters stated that Federal Work-Study (FWS) program funds that an institution uses to pay institutional charges should be included in the 90/10 formula.

Discussion: Prior the 1998 Amendments, we did not include FWS funds in the 90/10 formula because the institution was required to pay those funds directly to the student; the institution was not permitted to use those funds to pay the student's institutional charges. The 1998 Amendments now allow an institution to credit FWS funds against a student's institutional charges if the student gives his or her permission. As a result, we believe that FWS funds must now be included in the 90/10 formula to the extent that a student takes advantage of this new authority and authorizes FWS funds to be used to pay his or her institutional charges.

Changes: Section 600.5(e)(1)(i) is revised to include FWS funds that an institution uses to pay a student's tuition, fees, and other institutional charges.

Comments: Several commenters requested that we address how credit balances should be treated with regard to the 90/10 rule.

Discussion: In general, funds held as credit balances in institutional accounts do not get counted in the 90/10 formula in § 600.5(d)(1). However, once funds held as credit balances are used to satisfy institutional charges, they would be counted in both the numerator and denominator of the formula. For example, an institution's fiscal year is a calendar year. On December 30, 1999, the institution disburses $100,000 of Title IV, HEA program funds to students on their accounts, and credit balances occur because the institution has not yet charged those accounts with related tuition and fees. On January 3, 2000, the institution charges tuition and fees to the students' accounts, and uses all of those previously disbursed funds to pay the students' tuition and fee charges.

For purposes of the 90/10 formula in § 600.5(d)(1), none of the $100,000 would be included in the institution's 90/10 calculation for its 1999 fiscal year because none of the funds had been used for tuition, fees, and other institutional charges; all of the $100,000 would be included in the institution's 90/10 calculation for its 2000 fiscal year calculation, when the funds were used to satisfy tuition, fees, and other institutional charges.

A similar result would apply if the institution drew down $100,000 of Title IV, HEA program funds from the Department on December 30, 1999 but did not pay those funds to students for institutional charges until January 3, 2000.

We note that under an extremely literal interpretation of the principles underlying the cash basis of accounting, it would be possible to determine that none of the $100,000 in the above example would be included in the numerator or denominator for any year because the regulation applies to cash received used to satisfy tuition, fees and other institutional charges. Under this interpretation, an institution would count only the funds it received in a particular fiscal year used to satisfy institutional charges for that fiscal year's determination of the 90/10 rule. In the above example, the $100,000 was received by the institution in fiscal year 1999. Therefore, when the institution used those funds to pay institutional charges in fiscal year 2000, it did not use any funds it received in fiscal year 2000 to pay institutional charges in that fiscal year.

We believe that this extremely literal interpretation is an impermissible interpretation of the principles governing the cash basis of accounting because it ignores the context of the 90/10 rule and produces an absurd result where the funds would never be counted.

Changes: None.

Comments: One commenter asked how the Secretary would treat the sale of institutional loans for the purpose of the 90/10 calculation.

Discussion: Revenue generated from the sale of non-recourse institutional loans to unrelated parties would be counted as revenue in the denominator of the 90/10 calculation to the extent of actual proceeds.

The sale of institutional loan receivables is distinguishable from the sale of an institution's other assets because the receivables from institutional loans were produced by a transaction that generates tuition revenue. Tuition revenue represents income from the major service provided by an institution. That would not be true in the case of the sale of other institutional assets.

An institution may use the proceeds from the sale of other assets in the creation of a restricted account and awarding of institutional scholarships. However, for 90/10 purposes, only the portion of proceeds that represents a gain on the sale of the asset counts as institutional scholarships. An institution may use the amount of the proceeds that equal the historical cost of the asset to establish the restricted account.

Changes: None.

Comments: Several commenters expressed concern at the provision contained in proposed § 600.5(e)(2) that presumes that all Title IV, HEA program funds disbursed or delivered to students are used to pay tuition, fees, or other institutional charges, regardless of whether those funds are paid directly to students or credited to their institutional accounts. These commenters believed that this presumption ignored the cash contributions made by students and their families toward the student's educational costs. These commenters further indicated that the exceptions to the presumption in proposed § 600.5(e)(3) should be expanded to include certain savings vehicles, such as educational IRAs.

Discussion: From the very first attempts to develop regulations to implement the 85/15 rule in 1993 and 1994, we and the regulation negotiators recognized the necessity of this presumption, in order, as stated by the Secretary in the preamble to the NPRM that was issued for the 85/15 rule, "[t]o avoid inappropriate manipulation of information under the 85 percent rule." 59 FR 6446, 6449 (Feb. 10, 1994). For example, without the presumption, an institution could disburse Title IV, HEA programs funds directly to students and then have the students write checks to the institution for tuition, fees, and other institutional charges. Under this approach, an institution could contend that none of the Title IV, HEA program funds were used to pay institutional charges.

On the other hand, we agree with the commenters that in certain instances, the presumption would not take into account cash contributions made by students and their parents toward the student's educational costs. However, we believe that these instances are ameliorated by the fact that an institution can obtain up to 90 percent of its tuition and fee revenue from Title IV, HEA program funds, and by the exceptions provided in § 600.5(e)(3).

When we created the presumption, we also created exceptions. Thus, in the original 85/15 rule, we provided that the presumption should not apply to the extent that a student's tuition and fee charges were paid with grant funds provided by third parties, or to the extent that those charges were paid under contracts with governmental agencies. In the proposed rule for these final regulations, the Secretary added another exemption—tuition and fee charges that were paid from a State prepaid tuition plan.

These three exceptions are consistent in that funds come to the institution directly from an outside third party source and are easily accounted for. The commenter's suggestions for additional exceptions would satisfy neither condition, because the suggested additions would not come from an outside third party source, and an institution would not be able to document that a payment came from such a source. In addition, the proposed additional sources of funds, including education IRA funds, can be used to pay non-institutional charges as well as an institutional charges.

Changes: None.

Section 600.7 Conditions of Institutional Ineligibility

Comments: Several commenters requested that the Secretary define the term "postsecondary diploma" in proposed § 600.7(c)(1). That section provides that an institution whose enrollment of incarcerated students exceeds 25 percent will not become ineligible for that reason if the institution offers a two or four-year program of study for which it awards a * * * "postsecondary diploma."

Discussion: This change reflects a statutory change to the HEA that was enacted at the behest of institutions in the State of Louisiana. The term "postsecondary diploma" has a specific meaning in that State for those institutions, and as a result, we do not believe that it is useful to define that term for purposes of this section. Consequently, we recognize that if a nonprofit institution in another State offer a two or four year program that leads to a credential specifically called a "postsecondary diploma," that institution may be eligible for a waiver of the incarcerated student limitation.

Changes: None.

Section 600.30 Institutional Notification Requirements

Comments: One commenter asks that we change the 10 day notice requirement in § 600.30(a) to 10 business days because § 668.12(f) gives an institution undergoing a change in ownership/control 10 business days after the sale date to submit a "materially complete application."

Discussion: The 10 business day deadline date for submitting a "materially complete application is required by statute. The notice requirements in § 600.30 refer to calendar days and we see no need to change them merely because of the special statutory rule for the change of ownership situation.

For institutions undergoing a change in ownership/control that wish to continue participating in the Title IV, HEA programs, the critical deadline is, of course, the one requiring the submission of the materially complete application under § 668.12(f). The deadline in § 600.30 would be relevant only if the institution did not wish to continue participating in those programs.

Changes: None.

Section 668.12 Application Procedures

Comments: Several commenters asked whether the documents which are required as part of an institution's "materially complete application" must be submitted "promptly" (as indicated in the preamble to the NPRM) or prior to the expiration date of the provisional PPA as reflected in the proposed regulatory language.

Discussion: The commenters have confused our statement in the preamble and the proposed regulations. As indicated in § 668.12(f)(1) in both its proposed and final form, documents that must be submitted as part of a "materially complete application" must be submitted to the Department no later than 10 business days after the change in ownership/control takes place. These documents are described in § 668.12(f)(2).

The preamble reference to "promptly" refers to the documents that are described in § 668.12(g)(3), which are, for example, "same day" balance sheets, that an institution must submit to have its provisional Program Participation Agreement (PPA) extended and its change of ownership/control application fully approved.

Changes: None.

Comments: Several commenters asked if a "materially complete application" has to be submitted before or after the change of ownership takes place.

Discussion: With the deletion of § 600.31(f), institutions now have the option of submitting materially complete applications before the date of sale. If an institution submits a materially complete application before the date of sale, the institution must then notify the Department of the date the sale actually took place. We need that date because, if the institution's materially complete application is approved, the sale date is used in determining the expiration date of the provisional PPA.

We will also allow an institution to submit an application for a change in ownership/control before the change occurs without the documents required to make the application an official "materially complete application." We will review these applications if they are submitted no later than 45 days before the expected sale date. We consider our review of this application to be a "preacquisition review".

As part of our preacquisition review, we will determine whether the institution has answered all the questions on the application completely and accurately, and will notify the institution of the results of that review. In this way, if some questions have not been answered or have not been adequately answered, the institution would have an opportunity to correct its application before the actual date of the change in ownership/control. Thus, our response in a preacquisition review will not be an official approval or denial of the application; it will notify the institution that its application is approvable, or it will alert the institution of any problems that need to be addressed before the application can be approvable.

Changes: None.

Comments: One commenter asked if all institutions undergoing a change of ownership/control must provide a same-day balance sheet to the Secretary, either to "continue" uninterrupted participation in Title IV, HEA programs by satisfying the requirements of §§ 668.12(f) and (g), or to "resume" participation in Title IV programs after a loss of eligibility resulting from the ownership change.

Discussion: Yes, it must.

Changes: None.

Comments: Several commenters asked exactly which audited financial statements would a new owner be required to provide. The commenters also asked for clarification as to what constitutes "equivalent information" for a new owner as a substitute for the audited financial statements. The commenters asked whether the new owner has the option of providing "equivalent information" or if that determination is up to the Department.

Discussion: One of the conditions that we have to evaluate when deciding whether to approve a materially complete application is whether the institution under its new ownership will be financially responsible. To make that determination, it is necessary to evaluate the financial condition of the purchaser.

Corporate purchasers will submit audited financial statements of their two most recently completed fiscal years. Similarly, if the new owner is a partnership or a single individual, the partnership and individual must submit those audited financial statements.

However, we realize that there may be situations where a new owner does not have two years of audited financial statements. For example, the new corporate owner may not have been in business for two years or a single individual or partnership may not have had these audits performed. Under these circumstances, we require the new ownership to provide equivalent documentation that would allow us to evaluate the new owners' financial strength.

This equivalent documentation could take the form of an audited personal financial status report that would show the new owners' net worth. It could include letters of reference or personal guarantees. In many instances, we will request the new owners to suggest the equivalent documentation.

Finally, as noted above, it is not the new owner's option to provide equivalent documentation. That option is available only if the two required audited financial statements are not available. Moreover, we make the final determination as to whether equivalent documentation proposed by an owner is acceptable.

Changes: None.

Comments: One commenter suggested that we make conforming changes to §§ 600.20 and 600.31 to reflect the continued eligibility of an institution that changed ownership/control to participate in the Title IV, HEA programs.

Discussion: We concur with the commenters' suggestions.

Changes: We added § 600.20(c)(8) and amended § 600.31(a).

Comments: One commenter questioned if the Secretary considered the potential impact of the new institutional waiver provisions regarding annual audit submission requirements on the change of ownership provisional certification requirements.

Discussion: The audit waiver provisions in § 668.27 generally do not have an impact on the change of ownership/control certification requirements in § 668.12(f). Under the regulatory scheme of § 668.27, an institution may not receive a waiver if it has undergone a change in ownership/control within three years of its application for a waiver. Moreover, if an institution received a waiver, that waiver is rescinded if the institution undergoes that ownership/control change.

There is, however, a facial conflict between §§ 668.12(f) and 668.27 involving the submission of audited financial statements. Under the former provision, an applicant institution for a change of ownership must submit audited financial statements for its two most recently completed fiscal years even though the latter provision may have provided the institution with a waiver of that submission requirement. However, if the institution changes ownership/control and wants to keep participating in the Title IV, HEA programs, it must follow the requirements of § 668.12(f). Consequently, if an institution received a waiver and is then sold, and the new owners wish to continue the institution's participation in the Title IV, HEA programs, the new owners must submit audited financial statements of the institution's last two completed fiscal years as part of a "materially complete application," even though the institution may not have had to submit those audited financial statements under § 668.27.

We believe that this requirement is consistent with normal business practice, because we believe that an institution's potential purchaser would require the seller to provide such audits, as well as compliance audits of the institution's administration of the Title IV, HEA programs, before buying the institution.

Changes: None.

Section 668.14 Program Participation Agreement.

Comments: One commenter noted that an institution that has undergone a change in ownership/control does not have to implement an approved default management plan if "The owner of the institution does not, and has not, owned any other institution with a cohort default rate in excess of 10 percent." The commenter wanted to know when the Secretary makes this determination, which cohort default rate will be used for the institution that the owner just purchased and which will be used for any of the other institutions the owner owns or owned.

Discussion: For the institution being purchased, we will use the latest published cohort default rate. For any other institution that the new owner owns or owned, we will use all published cohort default rates for the period that coincides with the period that the institution was owned by that individual.

Changes: None.

Comments: Some institutions with cohort default rates under the FFEL or Direct Loan programs that exceed 25 percent are not subject to the default management plan requirements provided in appendix D of Part 668, but are subject to a separate set of the default management plans that will be contained in § 668.17(k). One commenter suggested that this section be expanded to reflect that fact.

Discussion: Section 668.14 generally includes all the provisions that section 487(a) of the HEA requires to be included in a program participation agreement, and does not include other requirements outside of section 487(a) that an institution may have to undertake.

Changes: None.

Comments: Several commenters opposed the requirement in proposed § 668.14(d) that institutions make a good faith effort to distribute mail voter registration forms to its students. These commenters indicated that this requirement would place a tremendous burden on institutions. Commenters also suggested that the Secretary provide guidance on acceptable methods for distributing the voter registration materials.

Discussion: The language provided in this section is copied from the statute. Moreover, the statute (section 487(b)(2) of the HEA) specifically prohibits the Secretary from instructing institutions in the manner in which this provision is carried out.

Changes: None.

Section 668.27 Waiver of Annual Audit Submission Requirement.

Comments: Commenters generally supported our proposed rules dealing with waivers of the annual audit submission requirement. Some commenters indicated there was some confusion regarding the timelines involved in these procedures, particularly with regard to the fiscal years that may be included in a waiver.

Discussion: We recognize that the proposed regulation did not specifically identify which fiscal year could be included in a waiver request. We are rectifying that omission by providing that an institution's waiver request may include the fiscal year in which that request is made, plus the next two fiscal years. That request may not include an already completed fiscal year.

For example, if an institution's fiscal year is based upon an award year (July 1–June 30), and the institution requests a waiver on May 1, 2000, that waiver request may include its 1999–2000 fiscal year (July 1, 1999 through June 30, 2000) plus its 2000–2001 and 2001–2002 fiscal years. If that institution's fiscal year was a calendar year, the institution's waiver request could include its calendar 2000 fiscal year plus its 2001 and 2002 fiscal years. In the latter example, the waiver would not include the institution's 1999 fiscal year, and therefore, it would be required to submit its compliance audit and audited financial statement to the Department by June 30, 2000.

Changes: Section 668.27(a)(3) is added to provide that the first fiscal year that may be included in a waiver request is the fiscal year in which the institution submits that waiver.

Comments: One commenter asked about liabilities that might accrue to an institution for a fiscal year if that fiscal year was one of the fiscal years included in a waiver.

Discussion: An institution is liable to repay title IV, HEA program funds because it improperly expends those funds. A compliance audit is the vehicle for discovering that improper expenditure.

These regulations do not waive the requirement that an institution audit its administration of the title IV, HEA programs; they waive the requirement that these audits be performed and submitted on an annual basis. Thus, the institution will pay that liability when the institution eventually submits a compliance audit for the fiscal year in which it made an improper expenditure, we resolve that audit, and request that payment.

Changes: None.

Comments: One commenter requested clarification of the reporting requirements for institutions granted a waiver of the requirement that an institution submit annually, a compliance audit and audited financial statement with regard to the 90/10 rule and the institutional ineligibility requirements of § 600.7.

Discussion: Under the 90/10 rule and § 600.7, at the end of each fiscal year, an institution must report to the Department if it fails to satisfy the 90/10 rule or if it fails one of the ineligibility provisions in § 600.7 for that year. An institution is still required to make these annual determinations even if it is not required to submit audits annually. This also means, of course, that if an institution fails to comply with the 90/10 rule or one of the ineligibility provisions in § 600.7 it immediately loses its eligibility. The institution would be liable for any funds it disbursed subsequent to the end of the fiscal year in which it failed to meet one of these requirements.

If an institution determines that it satisfies those requirements, its auditor is required to indicate agreement with that determination and report that agreement when the auditor submits that fiscal year's audited financial statement. The auditor may also indicate agreement with the institution's determination of eligibility under § 600.7 with the institution's compliance audit.

If an institution receives a waiver, it need not submit a statement from its auditor regarding its compliance with the 90/10 rule or the provisions of § 600.7 until its audited financial statement and compliance audit are submitted. When those audits are submitted, the auditor must note his or her agreement with the institution's determinations of eligibility for each of the fiscal years covered by the audits. For example, if the institution received a waiver and did not have to submit an audit for the 2000–2001 and 2001–2002 fiscal years, when the next audits are submitted on December 31, 2003, the auditor must indicate agreement with the institution's eligibility determinations for the 2000–2001 fiscal year, the 2001–2002 fiscal year, and the 2002–2003 fiscal year.

The auditor must indicate agreement with the institution's 90/10 determination for each of those three years even though the auditor need only submit an audited financial statement for the 2002–2003 fiscal year.

Changes: None.

Comment: One commenter wondered whether the criteria for a waiver renewal were the same as the criteria for the initial waiver.

Discussion: The criteria we use to grant waivers applies equally to requests for initial and renewal waivers.

Changes: None.

Comments: Several commenters wanted clarification on whether the Secretary would base an action to grant or rescind a waiver on a limitation, suspension, fine, or termination action that had only been initiated and was not final.

Discussion: We will not grant a waiver and we will rescind a waiver based upon the initiation of a limitation, suspension, fine, or termination action. We initiate one of those actions because we receive information that the subject institution has not been properly administering the Title IV, HEA programs. We believe that an institution under those circumstances should not have its audit requirements waived. Moreover, under the procedures available to an institution, a final decision in such an action may take a long period of time, and a hearing official or the Secretary may decide not impose the sanction requested even though the institution has been improperly administering the Title IV, HEA programs.

Changes: None.

Comments: Two commenters noted a difference in wording on the monetary threshold for granting a waiver. At § 668.27(c)(2) the regulation states the institution "did not disburse $200,000 or more of Title IV." At § 668.27(e)(1), the criteria for rescinding the waiver, the regulation states the institution "disburses more than $200,000." The commenters recommended that the two sections be made parallel.

Discussion: We agree.

Changes: Section 668.27(e)(1) is changed to read "Disburses $200,000 or more of Title IV, HEA program funds for an award year."

Comments: One commenter wanted to know if two waivers for three years each were granted one after the other whether this meant that the institution would only need one audit for the six-year period.

Discussion: No, the institution would need two sets of audits to cover the six-year period. However, since the institution has up to six months after the last fiscal year to be covered to submit the second set of audits, the second set of audits would not have to be received by the Department until six months after the expiration of the six year period.

Changes: None.

Comments: One commenter wanted to know whether the requirement that "no individual audit disclosed liabilities in excess of $10,000" referred to the final audit liability. The commenter based his comment on the new statutory provision that allows an institution to cure administrative, accounting, and recordkeeping errors, and the proposed regulations in § 668.113, that provides that the Department will not charge an institution a liability for such an error if it cures the error and the cure eliminates the basis of the liability.

Discussion: We will use the best information available to us when making a decision on whether to grant a waiver. Therefore, if the latest information is the audit report submitted by the institution's auditor, we will use that report in our waiver determination. However, if an institution requests a waiver and its request is denied because of audit findings that show a liability in excess of $10,000, and those findings are subsequently revised to show liabilities of $10,000 or less for any reason, including a cure of the error, the institution can reapply for the waiver.

Changes: None.

Comments: One commenter asked whether the commenter was correct in assuming that the Secretary was not going to consider an institution's administrative capability in determining whether to grant an audit waiver.

Discussion: We believe that the criteria we proposed for granting waivers is a proxy for administrative capability.

Changes: None.

Discussion: In the course of responding to the commenter's question, we realized that we did not provide any rules in the proposed regulations that address the situation when an institution's waiver is rescinded, *vis a vis* when the institution must submit audits, and what years must be covered by the audits. Accordingly, we have revised § 668.27 to provide that if an institution has its waiver rescinded in a fiscal year, the effective date of the rescission is the last day of that fiscal year.

Under this approach, the institution must submit compliance audits for the fiscal year(s) that were completed and unaudited, and an audited financial statement of the last completed fiscal year. The institution must submit these audits no later than six months after the end of the fiscal year in which its waiver was rescinded. We chose this approach to save the institution money, because the institution will not have to enter into more than one engagement agreement with an auditor to perform all the required audit work.

To illustrate this new provision, we use the example given in the preamble of the NPRM for § 668.12(f). An institution's fiscal year coincides with an award year (July 1–June 30). It submits its compliance and financial statement audit for the 1999–2000 award year, applies for a waiver, and receives that waiver so that its next compliance audit and audited financial statement must be submitted six months after the end of its 2002–2003 fiscal year.

If the institution's waiver is rescinded during the 2000–2001 fiscal year, the first fiscal year of its waiver period, it has not completed any fiscal year for which the audit requirement was waived. Therefore, it must submit its compliance audit and audited financial statement for that fiscal year in the regular course, *i.e.,* no later than six months after the end of that fiscal year, December 31, 2001.

If the institution's waiver was rescinded during the 2001–2002 fiscal year, the waiver applied to its submission of audits for the 2000–2001 fiscal year. Therefore, it must submit a compliance audit for the 2000–2001 and 2001–2002 fiscal years, and must submit an audited financial statement only for the 2001–2002 fiscal year. These audits must be submitted no later than December 31, 2002, six months after the end of its 2001–2002 fiscal year.

If the institution's waiver was rescinded during the 2002–2003 fiscal year, the waiver applied to its submission of audits for the 2000–2001 and 2001–2002 fiscal years. Therefore, it must submit a compliance audit for the 2000–2001, 2001–2002, and 2002–2003 fiscal years, and an audited financial statement only for the 2002–2003 fiscal year. These audits must be submitted no later than December 31, 2003, six months after the end of its 2002–2003 fiscal year.

Changes: As indicated above, we have revised § 668.27 to provide that if an institution has its waiver rescinded in a fiscal year, the effective date of the rescission is the last day of that fiscal year.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM at 64 FR 38276–38277.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program;

84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program.)

List of Subjects

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: October 21, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099(c), unless otherwise noted.

2. In § 600.2, the definition of the term "State" is revised to read as follows:

§ 600.2 Definitions.

* * * * *

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

* * * * *

3. In § 600.4, paragraph (c) is revised to read as follows:

§ 600.4 Institution of higher education.

* * * * *

(c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

* * * * *

4. In § 600.5, paragraph (h) is removed; paragraph (i) is redesignated as paragraph (h); paragraph (e) is added; and paragraphs (a)(8), (b)(3)(i), (d), (f), (g), and redesignated paragraph (h) are revised to read as follows:

§ 600.5 Proprietary institution of higher education.

(a) * * *

(8) Has no more than 90 percent of its revenues derived from title IV, HEA program funds, as determined under paragraph (d) of this section.

(b) * * *

(3) * * *

(i) Counts any period during which the applicant institution has been certified as a branch campus; and

* * * * *

(d)(1) An institution satisfies the requirement contained in paragraph (a)(8) of this section by examining its revenues under the following formula for its latest complete fiscal year:

Title IV, HEA program funds the institution used to satisfy its students' tuition, fees, and other institutional charges to students

The sum of revenues including title IV, HEA program funds generated by the institution from: tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in 34 CFR 668.8; and activities conducted by the institution, to the extent not included in tuition, fees, and other institutional charges, that are necessary for the education or training of its students who are enrolled in those eligible programs.

(2) An institution must use the cash basis of accounting when calculating the amount of title IV, HEA program funds in the numerator and the total amount of revenue generated by the institution in the denominator of the fraction contained in paragraph (d)(1) of this section.

(3) Under the cash basis of accounting—

(i) In calculating the amount of revenue generated by the institution from institutional loans, the institution must include only the amount of loan repayments received by the institution during the fiscal year; and

(ii) In calculating the amount of revenue generated by the institution from institutional scholarships, the institution must include only the amount of funds it disbursed during the fiscal year from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(e) With regard to the formula contained in paragraph(d)(1) of this section—

(1) The institution may not include as title IV, HEA program funds in the numerator nor as revenue generated by the institution in the denominator—

(i) The amount of funds it received under the Federal Work-Study (FWS) Program, unless the institution used those funds to pay a student's institutional charges in which case the FWS program funds used to pay those charges would be included in the numerator and denominator.

(ii) The amount of funds it received under the Leveraging Educational Assistance Partnership (LEAP) Program. (The LEAP Program was formerly called the State Student Incentive Grant or SSIG Program.);

(iii) The amount of institutional funds it used to match title IV, HEA program funds;

(iv) The amount of title IV, HEA program funds that must be refunded or returned under § 668.22; or

(v) The amount charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) In determining the amount of title IV, HEA program funds received by the institution under the cash basis of accounting, except as provided in paragraph (e)(3) of this section, the institution must presume that any title IV, HEA program funds disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, and therefore must include those funds in the numerator and denominator.

(3) In paragraph (e)(2) of this section, the institution may not presume that title IV, HEA program funds were used to pay tuition, fees, and other institutional charges to the extent that those charges were satisfied by—

(i) Grant funds provided by non-Federal public agencies, or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement described in § 600.7(d), or

(iii) Funds provided by State prepaid tuition plans.

(4) With regard to the denominator, revenue generated by the institution from activities it conducts, that are

necessary for its students' education or training, includes only revenue from those activities that—

(i) Are conducted on campus or at a facility under the control of the institution;

(ii) Are performed under the supervision of a member of the institution's faculty; and

(iii) Are required to be performed by all students in a specific educational program at the institution.

(f) An institution must notify the Secretary within 90 days following the end of the fiscal year used in paragraph (d)(1) of this section if it fails to satisfy the requirement contained in paragraph (a)(8) of this section.

(g) If an institution loses its eligibility because it failed to satisfy the requirement contained in paragraph (a)(8) of this section, to regain its eligibility it must demonstrate compliance with all eligibility requirements for at least the fiscal year following the fiscal year used in paragraph (d)(1) of this section.

(h) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

* * * * *

5. In § 600.6, paragraphs (b)(3)(iii) and (d) are revised to read as follows:

§ 600.6 Postsecondary vocational institution.

* * * * *

(b) * * *

(3) * * *

(iii) Counts any period during which the applicant institution has been certified as a branch campus; and

* * * * *

(d) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

* * * * *

6. In § 600.7, paragraphs (a)(1)(iii), (a)(1)(iv), and (c) are revised to read as follows:

§ 600.7 Conditions of institutional ineligibility.

(a) * * *

(1) * * *

(iii) More than twenty-five percent of the institution's regular enrolled students were incarcerated;

(iv) More than fifty percent of its regular enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor's degree or an associate degree, respectively;

* * * * *

(c) *Special provisions regarding incarcerated students*—(1) *Exception.* The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma.

(2) *Waiver for entire institution.* If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

(3) *Other waivers.* If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section—

(i) For the four-year and two-year programs for which it awards a bachelor's degree, an associate degree or a postsecondary diploma; and

(ii) For the other programs the institution provides, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

* * * * *

7. Section 600.8 is revised to read as follows:

§ 600.8 Treatment of a branch campus.

A branch campus of an eligible institution must be in existence for at least two years as a branch campus after the branch is certified as a branch campus before seeking to be designated as a main campus or a free-standing institution.

(Authority: 20 U.S.C. 1099c)

8. Section 600.20 is amended by adding a new paragraph (c)(8) to read as follows:

§ 600.20 Application procedures.

* * * * *

(c) * * *

(8) Continue to be eligible following a change in ownership that results in a change in control according to the provisions of § 668.12(f).

* * * * *

9. In § 600.31, paragraph (a)(1) is revised to read as follows:

§ 600.31 Change of ownership resulting in a change in control.

(a)(1) Except as provided in § 668.12(f), an institution that undergoes a change in ownership that results in a change of control ceases to qualify as an eligible institution upon the change in ownership and control. A change in ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns this institution or the parent corporation of that entity, acquires or loses the ability to control the institution.

* * * * *

§ 600.31 [Amended]

10. In § 600.31, paragraph (f) is removed.

11. In § 600.55, paragraph (a)(5)(i)(A) is revised to read as follows:

§ 600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs.

(a) * * *

(5) * * *

(i) * * *

(A) During the academic year preceding the year for which any of the school's students seeks an FFEL program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class were persons who did not meet the citizenship and residency criteria contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); and

* * * * *

§ 600.56 [Redesignated as § 600.57]

12. Section 600.56 is redesignated as § 600.57.

13. A new § 600.56 is added to read as follows—

§ 600.56 Additional criteria for determining whether a foreign veterinary school is eligible to apply to participate in the FFEL programs.

(a) The Secretary considers a foreign veterinary school to be eligible to apply to participate in the FFEL programs if, in addition to satisfying the criteria in § 600.54 (except the criterion that the institution be public or private nonprofit), the school satisfies all of the following criteria:

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom veterinary instruction that is supervised closely by members of the school's faculty, and that is provided either—

(i) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction; or

(ii) In the United States, through a training program for foreign veterinary students that has been approved by all veterinary licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(2) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(3) The school employs for the program described in paragraph (a)(1) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at veterinary schools in the United States.

(4) Either—

(i) The veterinary school's clinical training program was approved by a State as of January 1, 1992, and is currently approved by that State; or

(ii) The veterinary school's students complete their clinical training at an approved veterinary school located in the United States.

(b) [Reserved]

(Authority: 20 U.S.C. 1082 and 1088)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

14. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

15. In § 668.12, paragraphs (f) and (g) are added and the authority citation is revised to read as follows:

§ 668.12 Application procedures.

* * * * *

(f)(1) *Application for provisional extension of certification.* If an institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control as described in § 600.31, the Secretary may continue the institution's participation in those programs on a provisional basis, if the institution under the new ownership submits a "materially complete application" that is received by the Secretary no later than 10 business days after the day the change occurs.

(2) For purposes of this section, an institution submits a materially complete application if it submits a fully completed application form designated by the Secretary supported by—

(i) A copy of the institution's State license or equivalent document that—as of the day before the change in ownership—authorized or will authorize the institution to provide a program of postsecondary education in the State in which it is physically located;

(ii) A copy of the document from the institution's accrediting association that—as of the day before the change in ownership—granted or will grant the institution accreditation status, including approval of the non-degree programs it offers;

(iii) Audited financial statements of the institution's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of § 668.23; and

(iv) Audited financial statements of the institution's new owner's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of § 668.23, or equivalent information for that owner that is acceptable to the Secretary.

(g) *Terms of the extension.* (1) If the Secretary approves the institution's materially complete application, the Secretary provides the institution with a provisional Program Participation Agreement (PPA). The provisional PPA extends the terms and conditions of the program participation agreement that were in effect for the institution before its change of ownership.

(2) The provisional PPA expires on the earlier of—

(i) The date on which the Secretary signs a new program participation agreement;

(ii) The date on which the Secretary notifies the institution that its application is denied; or

(iii) The last day of the month following the month in which the change of ownership occurred, unless the provisions of paragraph (f)(3) of this section apply.

(3) If the provisional PPA will expire under the provisions of paragraph (f)(2)(iii) of this section, the Secretary extends the provisional PPA on a month-to-month basis after the expiration date described in paragraph (f)(2)(iii) of this section if, prior to that expiration date, the institution provides the Secretary with—

(i) A "same day" balance sheet showing the financial position of the institution, as of the date of the ownership change, that is prepared in accordance with "GAAP" (Generally Accepted Accounting Principles published by the Financial Accounting Standards Board) and audited in accordance with "GAGAS" (Generally Accepted Government Auditing Standards published by the U.S. General Accounting Office);

(ii) If not already provided, approval of the change of ownership from the State in which the institution is located by the agency that authorizes the institution to legally provide postsecondary education in that State;

(iii) If not already provided, approval of the change of ownership from the institution's accrediting agency; and

(iv) A default management plan unless the institution is exempt from providing that plan under 34 CFR 668.14(b)(15).

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

§ 668.13 [Amended]

16. In § 668.13, paragraph (b)(1) is amended by removing "four years" in the second sentence, and adding, in its place, "six years".

17. Section 668.14 is amended by removing paragraphs (d) and (e); by redesignating paragraphs (f), (g), (h), and (i) as paragraphs (e), (f), (g), and (h), respectively; by removing and reserving paragraph (b)(16); by revising paragraphs (b)(15), (b)(20), and (b)(24); and by adding a new paragraph (d), to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(15)(i) Except as provided under paragraph (b)(15)(ii) of this section, the institution will use a default management plan approved by the Secretary with regard to its administration of the FFEL or Direct Loan programs, or both for at least the first two years of its participation in those programs, if the institution—

(A) Is participating in the FFEL or Direct Loan programs for the first time; or

(B) Is an institution that has undergone a change of ownership that results in a change in control and is participating in the FFEL or Direct Loan programs.

(ii) The institution does not have to use an approved default management plan if—

(A) The institution, including its main campus and any branch campus, does not have a cohort default rate in excess of 10 percent; and

(B) The owner of the institution does not own and has not owned any other institution that had a cohort default rate in excess of 10 percent while that owner owned the institution.

(iii) The Secretary approves any default management plan that incorporates the default reduction measures described in appendix D to this part

* * * * *

(20) In the case of an institution that is co-educational and has an intercollegiate athletic program, it will comply with the provisions of § 668.48;

* * * * *

(24) It will comply with the requirements of § 668.22;

* * * * *

(d)(1) The institution, if located in a State to which section 4(b) of the National Voter Registration Act (42 U.S.C. 1973gg–2(b)) does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make those forms widely available to students at the institution.

(2) The institution must request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution is not liable for not meeting the requirements of this section during that election year.

(3) This paragraph applies to elections as defined in section 301(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1)), and includes the election for Governor or other chief executive within such State.

* * * * *

18. A new § 668.27 is added to subpart B to read as follows:

§ 668.27 Waiver of annual audit submission requirement.

(a) *General.* (1) At the request of an institution, the Secretary may waive the annual audit submission requirement for the period of time contained in paragraph (b) of this section if the institution satisfies the requirements contained in paragraph (c) of this section and posts a letter of credit in the amount determined in paragraph (d) of this section.

(2) An institution requesting a waiver must submit an application to the Secretary at such time and in such manner as the Secretary prescribes.

(3) The first fiscal year for which an institution may request a waiver is the fiscal year in which it submits its waiver request to the Secretary.

(b) *Waiver period.* (1) If the Secretary grants the waiver, the institution need not submit its compliance or audited financial statement until six months after—

(i) The end of the third fiscal year following the fiscal year for which the institution last submitted a compliance audit and audited financial statement; or

(ii) The end of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits if the award year in which the institution will apply for recertification is part of the third fiscal year.

(2) The Secretary does not grant a waiver if the award year in which the institution will apply for recertification is part of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits.

(3) When an institution must submit its next compliance and financial statement audits under paragraph (b)(1) of this section—

(i) The institution must submit a compliance audit that covers the institution's administration of the title IV, HEA programs for the period for each fiscal year for which an audit did not have to be submitted as a result of the waiver, and an audited financial statement for its last fiscal year; and

(ii) The auditor who conducts the audit must audit the institution's annual determinations for the period subject to the waiver that it satisfied the 90/10 rule in § 600.5 and the other conditions of institutional eligibility in § 600.7 and § 668.8(e)(2), and disclose the results of the audit of the 90/10 rule for each year in accordance with § 668.23(d)(4).

(c) *Criteria for granting the waiver.* The Secretary grants a waiver to an institution if the institution—

(1) Is not a foreign institution;

(2) Did not disburse $200,000 or more of title IV, HEA program funds during each of the two completed award years preceding the institution's waiver request;

(3) Agrees to keep records relating to each award year in the unaudited period for two years after the end of the record retention period in § 668.24(e) for that award year;

(4) Has participated in the title IV, HEA programs under the same ownership for at least three award years preceding the institution's waiver request;

(5) Is financially responsible under § 668.171, and does not rely on the alternative standards of § 668.175 to participate in the title IV, HEA programs;

(6) Is not on the reimbursement or cash monitoring system of payment;

(7) Has not been the subject of a limitation, suspension, fine, or termination proceeding, or emergency action initiated by the Department or a guarantee agency in the three years preceding the institution's waiver request;

(8) Has submitted its compliance audits and audited financial statements for the previous two fiscal years in accordance with and subject to § 668.23, and no individual audit disclosed liabilities in excess of $10,000; and

(9) Submits a letter of credit in the amount determined in paragraph (d) of this section, which must remain in effect until the Secretary has resolved the audit covering the award years subject to the waiver.

(d) *Letter of credit amount.* For purposes of this section, the letter of credit amount equals 10 percent of the amount of title IV, HEA program funds the institution disbursed to or on behalf of its students during the award year preceding the institution's waiver request.

(e) *Rescission of the waiver.* (1) The Secretary rescinds the waiver if the institution—

(i) Disburses $200,000 or more of title IV, HEA program funds for an award year;

(ii) Undergoes a change in ownership that results in a change of control; or

(iii) Becomes the subject of an emergency action or a limitation, suspension, fine, or termination action initiated by the Department or a guarantee agency.

(2) If the Secretary rescinds a waiver, the rescission is effective on the last day of the fiscal year in which the rescission takes place.

(f) *Renewal.* An institution may request a renewal of its waiver when it submits its audits under paragraph (b) of this section. The Secretary grants the waiver if the audits and other information available to the Secretary show that the institution continues to satisfy the criteria for receiving that waiver.

(Authority: 20 U.S.C. 1094)

19. In § 668.92, a new paragraph (d) is added and the authority citation is revised to read as follows:

§ 668.92 Fines.

* * * * *

(d)(1) Notwithstanding any other provision of statute or regulation, any individual described in paragraph (d)(2) of this section, in addition to other penalties provided by law, is liable to the Secretary for amounts that should have been refunded or returned under § 668.22 of the title IV program funds not returned, to the same extent with respect to those funds that such an individual would be liable as a responsible person for a penalty under section 6672(a) of Internal Revenue Code of 1986 with respect to the nonpayment of taxes.

(2) The individual subject to the penalty described in paragraph (d)(1) is any individual who—

(i) The Secretary determines, in accordance with § 668.174(c), exercises substantial control over an institution participating in, or seeking to participate in, a program under this title;

(ii) Is required under § 668.22 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower, or was required under § 668.22 in effect on June 30, 2000 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower; and

(iii) Willfully fails to return those funds or willfully attempts in any manner to evade that payment.

(Authority: 20 U.S.C. 1094 and 1099c)

20. In § 668.95, a new paragraph (d) is added and the authority citation is revised to read as follows:

§ 668.95 Reimbursements, refunds and offsets.

* * * * *

(d) If an institution's violation in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error. If the institution corrects or cures the error, the Secretary does not limit, suspend, terminate, or fine the institution for that error.

(Authority: 20 U.S.C. 1094 and 1099c–1)

21. In § 668.113, a new paragraph (d) is added and the authority citation is revised to read as follows:

§ 668.113 Request for review.

* * * * *

(d)(1) If an institution's violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

(2) If the institution is charged with a liability as a result of an error described in paragraph (d)(1) of this section, the institution cures or corrects that error with regard to that liability if the cure or correction eliminates the basis for the liability.

* * * * *

(Authority: 20 U.S.C. 1094 and 1099c–1)

[FR Doc. 99–28171 Filed 10–28–99; 8:45 am]

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Friday
October 29, 1999

Part V

Department of Education

34 CFR Part 682

Federal Family Education Loan (FFEL) Program; Final Rules

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1845–AA06

Federal Family Education Loan (FFEL) Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program regulations. These final regulations implement changes made to the Higher Education Act of 1965 by the Higher Education Amendments of 1998 (the 1998 Amendments). The regulations cover many areas of the FFEL Program, including changes to the financial structure of guaranty agencies.

DATES: These regulations are effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. George Harris, U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB–3, Washington, DC 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These regulations implement changes to the Higher Education Act of 1965 (the HEA) made by the 1998 Amendments, Public Law 105–244, enacted October 7, 1998.

On August 3, 1999 the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (64 FR 42176). In the preamble to the NPRM, the Secretary discussed on pages 42177—42185 the major changes to the regulations resulting from the 1998 Amendments.

In addition to minor technical revisions, these regulations contain a few significant changes from the NPRM that we fully explain in the Analysis of Comments and Changes that follows.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 3, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999, and 26 parties submitted comments. An analysis of the comments and of the changes in the proposed regulations follows. We did not receive any substantive comments on the following sections: §§ 682.208, 682.215, 682.302, 682.400, 682.409, 682.410, 682.412, 682.413, 682.414, 682.417, 682.418, 682.420, 682.421, 682.422, 682.423, 682.800, and Appendix D.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Section 682.205 Disclosure Requirements for Lenders

Comments: One commenter believed that lenders should not be required to provide a toll-free telephone number accessible within the United States for borrowers to use to obtain additional loan information. The commenter stated that a requirement to have a toll-free telephone number would impose significant burdens and costs on small lenders who do not have a toll-free telephone number. The commenter asked if, instead of having a toll-free telephone number, it would be permissible for the lender to allow borrowers to make collect calls to the lender.

Discussion: We agree with the commenter, but no changes to the regulation are necessary. For the purpose of meeting this requirement, a lender that discloses to borrowers the phone number at which it will accept collect calls will be considered to have complied with the regulatory requirement for a toll-free telephone number.

Changes: None.

Comments: Several commenters recommended that lenders be permitted to meet their disclosure requirements and obligations to notify borrowers of their rights and responsibilities by using the plain language disclosure in § 682.205(g).

Discussion: We agree that the disclosure referred to in § 682.205(g) will satisfy the lender's disclosure requirements for subsequent loans made under a Master Promissory Note.

Changes: For subsequent loans made under a Master Promissory Note, § 682.205(a)(3) has been revised to permit a lender to use either the Borrower's Rights and Responsibilities statement approved by the Secretary or the plain language disclosure referred to in § 682.205(g).

Section 682.207 Due Diligence in Disbursing a Loan

Comments: Several commenters representing lenders recommended that schools not be required to request the second or subsequent disbursement of a loan when they return a borrower's unneeded first disbursement to a lender and the school knows that the borrower will need the subsequent loan disbursements. The commenters believed it is logical to assume that the school wanted the subsequent disbursements to be made unless it notifies the lender to the contrary. The commenters believed that if schools had to specifically request subsequent disbursements, that requirement would impose unnecessary and significant burdens and costs on schools and lenders. In addition, the commenters believed the authorization to disburse subsequent loan funds in these situations should not be limited to the Federal Stafford Loan Program, but should be expanded to include the Federal PLUS Loan Program. The commenters noted that PLUS disbursements are sent to schools, and like Stafford Loan borrowers, some PLUS borrowers also may not need the first disbursement, but may need the loan funds later in the school year. One commenter recommended that this provision of the regulations should not be limited to the first disbursement, but should apply to any disbursement returned to a lender by a school if there were future disbursements scheduled to be made.

Discussion: We agree with the commenters who recommended an expansion of this authority to include any disbursement of a Federal Stafford or Federal PLUS loan. We also agree that this provision should apply to any future disbursement following the return of a disbursement. We do not agree, however, to authorize lenders to make subsequent disbursements following the return of a previous disbursement without first receiving a request from the school for the subsequent disbursement. We believe it is logical to assume that the school does not want the subsequent disbursements to be made unless it notifies the lender to the contrary.

Changes: We have revised § 682.207(b)(1)(vii) so that it includes any future disbursement of a Federal Stafford or Federal PLUS loan following the return of a disbursement.

Section 682.210 Deferment

Comments: One commenter who agreed with the removal of the 6-month limit for making in-school (student) deferments effective retroactively advocated a similar removal of the 6-month limit for other types of deferments.

Discussion: Removing the 6-month retroactive effective date limit for a student deferment was extensively discussed during the negotiated rulemaking sessions. During those discussions, it was generally agreed that the 6-month limit on establishing retroactive effective dates for deferments did not present a serious problem for other deferments. Aside from the student deferment, the two most common types of deferments are economic hardship and unemployment, both of which rely upon documentation that the borrower already has or can readily obtain. In those cases, the borrower has the ability to ensure the submission of the deferment application on a timely basis. In contrast, the documentation needed to support a student deferment requires another party (the school) to certify the borrower's in-school status. Many borrowers in school erroneously assume that they do not need to notify their lenders that they are in school, believing that their enrollment status automatically has been transmitted to the lender or loan servicer by some other party. By the time the borrower discovers that the lender is unaware that the borrower is in school, the loan may already be seriously delinquent, and a delay of just another month or two in obtaining and providing in-school documentation at that late point could result in a default claim being filed by the lender. To address this problem, we believe that the 6-month limit on the period of time by which a student deferment may be applied retroactively should be removed. Unlike many other deferments, the borrower's enrollment status and effective dates for a student deferment are readily determinable retroactively.

Changes: None.

Section 682.211 Forbearance

Comments: Several commenters recommended that lenders be allowed to grant administrative forbearances to eliminate borrower delinquencies that existed at the time the lender granted an optional natural disaster administrative forbearance under § 682.211(f)(10). The commenters noted that the NPRM proposed to allow this option only if the borrower received a mandatory administrative forbearance under § 682.211(i)(2). The commenters believed that lenders should be permitted to assist all borrowers who had pre-existing delinquencies when the natural disaster occurred, regardless of whether the disaster forbearance is mandatory or optional.

Discussion: We agree with the commenters.

Changes: We have revised § 682.211(f)(2) to include the administrative forbearances that lenders are authorized to grant under § 682.211(f)(10) to assist borrowers who have been harmed by natural disasters.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance and Collection of Origination and Loan Fees

Comments: Some commenters believed that the restrictions in § 682.305(a)(4) have been rendered obsolete due to the changes made to § 682.305(a)(3). The commenters believed that the 1998 Amendments, and the changes made to § 682.305(a)(3), make it clear that the new holder of a loan will be responsible if the origination fees were not paid by the previous holder or holders.

Discussion: The commenters appear to have misunderstood the purpose of these changes. The changes to § 682.305(a)(3) do not eliminate the originating lender's liability to pay the fees owed on the loans. That liability still exists. The changes simply add another party who is liable for paying the fees and who may be required to pay them if the originating lender does not pay them on a timely basis.

Changes: None.

Section 682.401 Basic Program Agreement

Comments: One commenter recommended that a guaranty agency be permitted to receive Federal funds to operate as a lender-of-last-resort in another guaranty agency's designated area of service only if the designated guaranty agency has waived its right to provide lender-of-last-resort loans in its designated area, or was unable to provide those loans.

Discussion: The commenter's recommendation suggests a misunderstanding of a guaranty agency's statutory obligation. A guaranty agency has a statutory obligation to provide for lender-of-last-resort loans. This obligation is not a "right" that the guaranty agency can waive. If it is able to provide for lender-of-last-resort loans in its designated State, it must do so. If necessary, the Secretary may provide Federal funds in accordance with § 682.401(c)(5)(i) to assist the agency in providing those loans. The Secretary may provide Federal funds to another guaranty agency, to make lender-of-last-resort loans in the State, if the Secretary determines that the designated guaranty agency does not have the capacity to do so or the Secretary determines that providing the designated guaranty agency with Federal funds would not be cost effective.

Changes: None.

Section 682.402 Death, Disability, Closed School, False Certification, and Bankruptcy Payments

Comments: Some commenters stated their belief that the provisions of bankruptcy law require the immediate suspension of collection activities against all parties to a loan (borrower, co-maker, endorser) whenever any one of those parties files for a Chapter 12 or Chapter 13 bankruptcy. The commenters recommended that the regulations be revised accordingly.

Discussion: We agree with the commenters' interpretation of 11 U.S.C. 1201(a) and 1301(a).

Changes: The regulations have been revised to require the immediate suspension of collection activities against all parties to a loan (maker, co-maker, endorser) if the lender is informed that any of those individuals has filed for Chapter 12 or Chapter 13 bankruptcy. For a bankruptcy petition filed by a borrower, co-maker, or endorser on a loan under Chapters 7 or 11, lenders may suspend collection activities against all parties to the loan.

Section 682.404 Federal Reinsurance Agreement

Comments: Several commenters recommended that guaranty agencies be permitted to establish specific deadlines within the 60th to 120th day of delinquency during which lenders must submit requests for default aversion assistance. The commenters stated that many guaranty agencies have successful default prevention systems designed to initiate default prevention activities at a specific point in delinquency, *e.g.*, on the 75th day. The commenters believed that allowing lenders to submit default aversion assistance requests at any time from the 60th day through the 120th day of the borrower's delinquency would complicate the effective default prevention systems that guaranty agencies currently have in place.

Discussion: The lender has primary responsibility for curing delinquencies by borrowers. We believe lenders should have flexibility within the 60th–120th day of delinquency to determine when to seek assistance from the guaranty agency. Many guaranty agencies have informed us that having more than one party contacting a delinquent borrower may confuse the borrower and contribute to default. We have also been told that many delinquencies cure themselves during the early stages of delinquency. We believe a lender should be given the discretion to request assistance from a guaranty agency within the 60th–120th day of delinquency at the point that the lender believes the assistance will be most effective in complimenting the default aversion activities being pursued by the lender. If a lender believes that the guaranty agency can add value to its efforts early in the delinquency, it may request assistance as early as the 60th day of delinquency.

Changes: Section 682.404(k)(1) has been revised to clarify that guaranty agencies are prohibited from establishing specific deadlines within the 60th–120th day of delinquency by which lenders must request default aversion assistance.

Section 682.406 Conditions For Claim Payments From the Federal Fund and for Reinsurance Coverage

Comments: One commenter noted an inconsistency between the skip-tracing requirements in this section and in § 682.411(h)(1) with respect to contacting the schools the student attended.

Discussion: We agree with the commenter that the requirement to contact the schools the student attended should be the same in § 682.406(a)(14) and § 682.411(h)(1).

Changes: We have revised § 682.411(h)(1) to make it consistent with the guaranty agency's certification in § 682.406(a)(14) that diligent attempts were made to locate the borrower, including attempts to contact the schools the student attended.

Section 682.411 Lender Due Diligence in Collecting Guaranty Agency Loans

Comments: Some commenters noted an error in § 682.411(a) that had the effect of excluding the first 15 days of delinquency from the 270-day period of required lender collection activities.

Discussion: The commenters are correct. The intention of the negotiators during the development of the NPRM was to apply the existing 45-day gap rule to the new 270-day delinquency period by simply extending the period covered by the rule to 270 days of delinquency.

Changes: We have revised § 682.411(a) so that the initial delinquency period (days 1–15) is included in the overall 270-day period of required lender collection activities. We have also made a conforming change in § 682.411(b)(2) so that the initial delinquency period is included in the determination of whether a gap of more than 45 days (or more than 60 days in the case of a transfer) in collection activity had occurred. The definition of "gap in collection activity" found in § 682.411(j) remains accurate and needs no modification.

Section 682.419 Guaranty Agency Federal Fund

Comments: A few commenters stated that they believe that a guaranty agency should be permitted to deposit default collections into the agency's Operating Fund for a reasonable period before transferring the Federal share of those collections to the Federal Fund. The commenters believed this would give the agency time to ensure that the borrower's payment does not need to be reversed because of insufficient funds or a stop payment order and that the collected funds are correctly posted to the borrower's account. One commenter stated that a reasonable delay in transferring funds to the Federal Fund would conform to sound accounting practices that recommend a clean cutoff period for reconciliation purposes.

Discussion: The Federal Government has a beneficial interest in loans that are held by guaranty agencies and on which claims have been paid using Federal funds. The guaranty agency's role in regard to these loans is that of a trustee. Accordingly, a guaranty agency that receives collections on those loans has a fiduciary obligation to the Secretary with respect to the Secretary's share of those collections. As a fiduciary, a guaranty agency may not use Federal funds or assets for any purpose not authorized by the HEA or the Secretary. To ensure that the Secretary's interest in those loans is protected, we have revised the regulations to require guaranty agencies to deposit the Federal share of collections into the Federal Fund within 48 hours of receipt of those funds. A guaranty agency may elect to comply with this requirement by initially depositing all collections into the Federal Fund. If this option is selected by the guaranty agency, we will provide the guaranty agency with authorization to promptly withdraw its portion from the Federal Fund for deposit into its Operating Fund.

We believe that the requirements in these regulations are consistent with sound accounting practices as well as the guaranty agency's obligation to act as a fiduciary. We understand that the common business practices among lenders and servicers who collect on loans is to credit the amount of collections received to the appropriate accounts within 24 hours. In fact, the Department's own collection contractors for student loans are not permitted to hold funds for any period before depositing them directly to the appropriate Department account. We have been assured by some guaranty agencies, that they already meet the 24-hour standard. In light of these practices and standards, we believe the 48-hour period provided in these regulations will provide guaranty agencies with more than enough time to insure that the proper amount is deposited to the Federal Fund.

A guaranty agency can, if necessary, reverse a credit applied to the Federal Fund if a borrower's payment is rejected because of insufficient funds or a stop payment order. We do not believe that it will be any more difficult for a guaranty agency to make the needed changes to the Federal Fund than it would have been to the Operating Fund and, in the meantime, the Federal Government's interest in the funds is protected.

Changes: We have revised § 682.419(b)(6) of the regulations to require a guaranty agency to deposit the Federal share of all funds received on loans on which a claim has been paid, including default collections, into its Federal Fund within 48 hours of receipt of those funds.

Section 682.420 Federal Nonliquid Assets

Comments: Some commenters asked for clarification of the treatment of revenue derived from a Federal nonliquid asset.

Discussion: In reviewing the language referenced by the commenters, we determined that the proposed regulations did not fully reflect the details discussed in the preamble to the NPRM. This inconsistency may have contributed to the commenters' request for clarification.

Changes: We have revised the regulations to specify the requirements that apply when a guaranty agency uses the Federal portion of a nonliquid asset.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM under the following headings: Payment of Special Allowance on FFEL Loans (page 42185) and Federal Reinsurance Agreement (page 42186).

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and our own review, we have determined that these final regulations do not require transmission of information any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 22, 1999.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.205 is amended by:

A. Revising paragraphs (a)(1) and (a)(2)(i).

B. Redesignating paragraphs (a)(2)(ii) through (a)(2)(xvii) as paragraphs (a)(2)(v) through (a)(2)(xx), respectively.

C. Adding new paragraphs (a)(2)(ii) through (a)(2)(iv).

D. Adding a new paragraph (a)(3).

E. Revising paragraphs (b), (c)(1), (c)(2)(i), (d), and (e).

F. Adding new paragraphs (f), (g), and (h).

§ 682.205 Disclosure requirements for lenders.

(a) * * *

(1) A lender must disclose the information described in paragraph (a)(2) of this section to a borrower, in simple and understandable terms, before or at the time of the first disbursement on a Federal Stafford or Federal PLUS loan. The information given to the borrower must prominently and clearly display, in bold type, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(2) * * *

(i) The lender's name;

(ii) A toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information;

(iii) The address to which correspondence with the lender and payments should be sent;

(iv) Notice that the lender may sell or transfer the loan to another party and, if it does, that the address and identity of the party to which correspondence and payments should be sent may change;

* * * * *

(3) With the exception of paragraphs (a)(2)(i) through (a)(2)(iii), (a)(2)(v) through (a)(2)(vii), and (a)(2)(xx) of this section, a lender's disclosure requirements are met if it provides the borrower with either—

(i) The borrower's rights and responsibilities statement approved by the Secretary under paragraph (b) of this section; or

(ii) The plain language disclosure approved by the Secretary under paragraph (g) of this section for subsequent loans made under a Master Promissory Note.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender must provide the borrower with a separate written statement, using simple and understandable terms, at or prior to the time of the first disbursement, that summarizes the rights and responsibilities of the borrower with respect to the loan. The statement must also warn the borrower about the consequences described in paragraph (a)(2)(xvi) of this section if the borrower defaults on the loan. The Borrower's Rights and Responsibilities statement approved by the Secretary satisfies this requirement.

(c) * * *

(1) The lender must disclose the information described in paragraph (c)(2) of this section, in simple and understandable terms, in a statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Federal Stafford or Federal SLS loan, the disclosures required by this paragraph must be made not less than 30 days nor more than 240 days before the first payment

on the loan is due from the borrower. If the borrower enters the repayment period without the lender's knowledge, the lender must provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period.

(2) * * *

(i) The lender's name, a toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information, and the address to which correspondence with the lender and payments should be sent;

* * * * *

(d) *Exception to disclosure requirement.* In the case of a Federal PLUS loan, the lender is not required to provide the information in paragraph (c)(2)(viii) of this section if the lender, instead of that disclosure, provides the borrower with sample projections of the monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the student is in school. Sample projections must disclose the cost to the borrower of principal and interest, interest only, and capitalized interest. The lender may rely on the PLUS promissory note and associated materials approved by the Secretary for purposes of complying with this section.

(e) *Borrower may not be charged for disclosures.* The lender must provide the information required by this section at no cost to the borrower.

(f) *Method of disclosure.* Any disclosure of information by a lender under this section may be through written or electronic means.

(g) *Plain language disclosure.* The plain language disclosure text, as approved by the Secretary, must be provided to a borrower in conjunction with subsequent loans taken under a previously signed Master Promissory Note. The requirements of paragraphs (a) and (b) of this section are satisfied for subsequent loans if the borrower is sent the plain language disclosure text and an initial disclosure containing the information required by paragraphs (a)(2)(i) through (iii), (a)(2)(v), (a)(2)(vi), (a)(2)(vii), and (a)(2)(xx) of this section.

(h) *Notice of availability of income-sensitive repayment option.*

(1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive repayment. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower—

(i) That the borrower is eligible for income-sensitive repayment, including through loan consolidation;

(ii) Of the procedures by which the borrower can elect income-sensitive repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive repayment.

(2) The promissory note and associated materials approved by the Secretary satisfy the loan origination notice requirements provided for in paragraph (h)(1) of this section.

* * * * *

3. Section 682.207 is amended by revising paragraph (b)(1)(vi) and adding a new paragraph (b)(1)(vii) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(vi) Except as provided in paragraph (f)(1) of this section, may not disburse a second or subsequent disbursement of a Federal Stafford loan to a student who has ceased to be enrolled; and

(vii) May disburse a second or subsequent disbursement of an FFEL loan, at the request of the school, even if the borrower or the school returned the prior disbursement, unless the lender has information that the student is no longer enrolled.

* * * * *

4. Section 682.208 is amended by adding a new paragraph (c)(3) to read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(c) * * *

(3)(i) If the borrower disputes the terms of the loan in writing and the lender does not resolve the dispute, the lender's response must provide the borrower with an appropriate contact at the guaranty agency for the resolution of the dispute.

(ii) If the guaranty agency does not resolve the dispute, the agency's response must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

* * * * *

5. Section 682.210 is amended by revising paragraph (a)(5) to read as follows:

§ 682.210 Deferment.

(a) * * *

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists; however, except for the deferments described in paragraphs (b)(1)(i), (b)(4), (c), and (s)(2) of this section, a deferment cannot begin more than six months before the date the lender receives a request and documentation required for the deferment.

* * * * *

6. Section 682.211 is amended by revising paragraph (f)(2), and adding a new paragraph (f)(10) to read as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(2) Upon the beginning of an authorized deferment period under § 682.210, or an administrative forbearance period as specified under paragraph (f)(10) or (i)(2) of this section;

* * * * *

(10) For a period not to exceed 3 months for a borrower who is affected by a natural disaster.

* * * * *

§ 682.215 [Removed]

7. Section 682.215 is removed.

8. Section 682.302 is amended by:

A. Revising paragraph (b)(1) and the introductory text of paragraph (b)(2).

B. In paragraph (b)(2)(ii), removing the word "or" that appears after the semi-colon.

C. In paragraph (b)(2)(iii), removing the period and adding, in its place, "; or".

D. Adding a new paragraph (b)(2)(iv).

E. Redesignating paragraphs (c)(1)(iii)(A) through (E) as paragraphs (c)(1)(iii)(C) through (G), respectively.

F. Revising redesignated paragraph (c)(1)(iii)(C).

G. Adding new paragraphs (c)(1)(iii)(A) and (B).

H. Revising paragraph (c)(3)(i)(A).

I. Adding a new paragraph (c)(4).

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(b) * * *

(1) Except for non-subsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraphs (b)(2) through (b)(4), or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 and prior to July 1, 1994, and for any Federal PLUS loan made on or after July 1, 1998 or under § 682.209(e) or (f), no special allowance

is paid for any period for which the interest rate calculated prior to applying the interest rate maximum for that loan does not exceed—

* * * * *

(iv) 9 percent in the case of a Federal PLUS loan made on or after October 1, 1998.

(c) * * *

(1) * * *

(iii) * * *

(A)(*1*) 2.8 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998; or

(*2*) 2.2 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998 during the borrower's in-school, grace, and authorized period of deferment;

(B) 2.5 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1995 for interest that accrues during the borrower's in-school, grace, and authorized period of deferment;

(C) Except as provided in paragraph (c)(1)(iii)(B) of this section, 3.1 percent to the resulting percentage for a Federal Stafford Loan made on or after October 1, 1992 and prior to July 1, 1998, and for any Federal SLS, Federal PLUS, or Federal Consolidation Loan made on or after October 1, 1992;

* * * * *

(3)(i) * * *

(A) The proceeds of tax-exempt obligations originally issued prior to October 1, 1993, the income from which is exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C.);

* * * * *

(4) Loans made or purchased with funds obtained by the holder from the issuance of obligations originally issued on or after October 1, 1993, and loans made with funds derived from default reimbursement collections, interest, or other income related to eligible loans made or purchased with those tax-exempt funds, do not qualify for the minimum special allowance rate specified in paragraph (c)(3)(iii) of this section, and are not subject to the 50 percent limitation on the maximum rate otherwise applicable to loans made with tax-exempt funds.

* * * * *

9. Section 682.305 is amended to read as follows by:

A. Revising the heading and paragraph (a)(1).

B. Adding new paragraphs (a)(3)(iii) through (v).

C. Revising paragraph (c)(1).

D. Revising the Office of Management and Budget control number.

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

(a) * * *

(1) If a lender owes origination fees or loan fees under paragraph (a) of this section, it must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary, even if the lender is not owed, or does not wish to receive, interest benefits or special allowance from the Secretary.

* * * * *

(3) * * *

(iii) The Secretary collects from an originating lender the amount of origination fees the originating lender was authorized to collect from borrowers during the quarter whether or not the originating lender actually collected those fees. The Secretary also collects the fees the originating lender is required to pay under paragraph (a)(3)(ii) of this section. Generally, the Secretary collects the fees from the originating lender by offsetting the amount of interest benefits and special allowance payable to the originating lender in a quarter, and, if necessary, the amount of interest benefits and special allowance payable in subsequent quarters may be offset until the total amount of fees has been recovered.

(iv) If the full amount of the fees cannot be collected within two quarters by reducing interest and special allowance payable to the originating lender, the Secretary may collect the unpaid amount directly from the originating lender.

(v) If the full amount of the fees cannot be collected within two quarters from the originating lender in accordance with paragraphs (a)(3)(iii) and (iv) of this section and if the originating lender has transferred the loan to a subsequent holder, the Secretary may, following written notice, collect the unpaid amount from the holder by using the same steps described in paragraphs (a)(3)(iii) and (iv) of this section, with the term "holder" substituting for the term "originating lender".

* * * * *

(c) * * *

(1) If a lender originates or holds more than $5 million in FFEL loans during its fiscal year, it must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person. The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit within the time period prescribed in paragraph (c)(2) of this section.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

§ 682.400 [Amended]

10. Section 682.400 is amended by:

A. In paragraph (b)(1)(i), adding the word "and" after the semi-colon.

B. In paragraph (b)(1)(ii), removing "; and" and adding, in its place, a period.

C. Removing paragraph (b)(1)(iii).

11. Section 682.401 is amended by:

A. Revising paragraph (b)(11).

B. In the introductory text of paragraph (b)(23)(i), removing the words "as defined in § 682.800(d)".

C. Adding a heading to paragraph (c).

D. Revising paragraphs (c)(1), (c)(2), and (c)(3).

E. Adding a new paragraph (c)(5).

F. Revising paragraphs (e)(1) and (e)(3).

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(11) *Inquiries.* The agency must be able to receive and respond to written, electronic, and telephone inquiries.

* * * * *

(c) *Lender-of-last-resort.* (1) The guaranty agency must ensure that it, or an eligible lender described in section 435(d)(1)(D) of the Act, serves as a lender-of-last-resort in the State in which the guaranty agency is the designated guaranty agency. The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made under paragraph (c)(2) of this section to be made by another eligible lender. As used in this paragraph, the term "designated guaranty agency" means the guaranty agency in the State for which the Secretary has signed a Basic Program Agreement under this section.

(2) The lender-of-last-resort must make subsidized Federal Stafford loans and unsubsidized Federal Stafford loans to any eligible student who—

(i) Qualifies for interest benefits pursuant to § 682.301;

(ii) Qualifies for a combined loan amount of at least $200; and

(iii) Has been otherwise unable to obtain loans from another eligible lender for the same period of enrollment.

(3) The lender-of-last resort may make unsubsidized Federal Stafford and Federal PLUS loans to borrowers who have been otherwise unable to obtain those loans from another eligible lender.

* * * * *

(5)(i) Upon request of the guaranty agency, the Secretary may advance Federal funds to the agency, on terms and conditions agreed to by the Secretary and the agency, to ensure the availability of loan capital for subsidized and unsubsidized Federal Stafford and Federal PLUS loans to borrowers who are otherwise unable to obtain those loans if the Secretary determines that—

(A) Eligible borrowers in a State who qualify for subsidized Federal Stafford loans are seeking and are unable to obtain subsidized Federal Stafford loans;

(B) The guaranty agency designated for that State has the capability for providing lender-of-last-resort loans in a timely manner, either directly or indirectly using a third party, in accordance with the guaranty agency's obligations under the Act, but cannot do so without advances provided by the Secretary; and

(C) It would be cost-effective to advance Federal funds to the agency.

(ii) If the Secretary determines that the designated guaranty agency does not have the capability to provide lender-of-last-resort loans, in accordance with paragraph (c)(5)(i) of this section, the Secretary may provide Federal funds to another guaranty agency, under terms and conditions agreed to by the Secretary and the agency, to make lender-of-last-resort loans in that State.

* * * * *

(e) * * *

(1) Offer directly or indirectly any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for FFEL loans, except that a guaranty agency is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program;

* * * * *

(3) Mail or otherwise distribute unsolicited loan applications to students enrolled in a secondary school or a postsecondary institution, or to parents of those students, unless the potential borrower has previously received loans insured by the guaranty agency;

* * * * *

12. Section 682.402 is amended to read as follows by:

A. Revising the heading.

B. Revising the introductory text following the heading of paragraph (d)(3).

C. Adding a new paragraph (d)(8).

D. Revising paragraph (f)(2).

E. Revising the Office of Management and Budget control number.

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(d) * * *

(3) * * * Except as provided in paragraph (d)(8) of this section, in order to qualify for a discharge of a loan under paragraph (d) of this section, a borrower must submit a written request and sworn statement to the holder of the loan. The statement need not be notarized, but must be made by the borrower under the penalty of perjury, and, in the statement, the borrower must state—

* * * * *

(8) *Discharge without an application.* A borrower's obligation to repay an FFEL Program loan may be discharged without an application from the borrower if the—

(i) Borrower received a discharge on a loan pursuant to 34 CFR 674.33(g) under the Federal Perkins Loan Program, or 34 CFR 685.213 under the William D. Ford Federal Direct Loan Program; or

(ii) The Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

* * * * *

(f) * * *

(2) *Suspension of collection activity.* (i) If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower and—

(A) Must suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) May suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief under Chapters 7 or 11 of the Bankruptcy Code.

(ii) If the lender is notified that a co-maker or endorser has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the co-maker or endorser and—

(A) Must suspend collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) May suspend any collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief under Chapters 7 or 11 of the Bankruptcy Code.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

13. Section 682.404 is amended to read as follows by:

A. Revising the introductory text of paragraph (a)(1).

B. Redesignating paragraph (a)(1)(ii) as (a)(1)(iii).

C. Revising paragraph (a)(1)(i), adding a new paragraph (a)(1)(ii), and revising redesignated paragraph (a)(1)(iii) introductory text, and paragraph (a)(1)(iii)(A).

D. Removing paragraphs (a)(2)(iii) and (a)(3), and revising paragraph (a)(2)(ii).

E. Redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(3) and (a)(4), respectively.

F. Revising the redesignated paragraph (a)(4).

G. Revising the heading for paragraph (b), and removing the word "or" at the end of paragraph (b)(1)(i).

H. Revising paragraphs (b)(1)(i) and (b)(1)(ii).

I. Adding a new paragraph (b)(1)(iii).

J. Removing the word "or" after the semi-colon in paragraph (b)(2)(i).

K. Revising paragraphs (b)(2)(i) and (b)(2)(ii).

L. Adding a new paragraph (b)(2)(iii).

M. Revising the heading for paragraph (g).

N. Revising paragraphs (g)(1) and (g)(2), and removing paragraph (g)(3).

O. Redesignating paragraph (i) as paragraph (l).

P. Adding new paragraphs (i), (j), and (k).

Q. Revising the Office of Management and Budget control number.

§ 682.404 Federal reinsurance agreement.

(a) * * *

(1) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement, the Secretary reimburses the guaranty agency for—

(i) 95 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998;

(ii) 98 percent of its losses on default claim payments to lenders for loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 100 percent of its losses on default claim payments to lenders—

(A) For loans for which the first disbursement is made prior to October 1, 1993;

* * * * *

(2) * * *

(ii) *Default aversion assistance* means the activities of a guaranty agency that are designed to prevent a default by a borrower who is at least 60 days delinquent and that are directly related to providing collection assistance to the lender.

* * * * *

(4) If a lender has requested default aversion assistance as described in paragraph (a)(2)(ii) of this section, the agency must, upon request of the school at which the borrower received the loan, notify the school of the lender's request. The guaranty agency may not charge the school or the school's agent for providing this notification and must accept a blanket request from the school to be notified whenever any of the school's current or former students are the subject of a default aversion assistance request. The agency must notify schools annually of the option to make this blanket request.

(b) *Reduction in reinsurance rate.* (1) * * *

(i) 90 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(ii) 88 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 85 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

(2) * * *

(i) 80 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(ii) 78 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 75 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

* * * * *

(g) *Share of borrower payments returned to the Secretary.* (1) After an agency pays a default claim to a holder using assets of the Federal Fund, the agency must pay to the Secretary the portion of payments received on those defaulted loans remaining after—

(i) The agency deposits into the Federal Fund the amount of those payments equal to the applicable complement of the reinsurance percentage that was in effect at the time the claim was paid; and

(ii) The agency has deducted an amount equal to—

(A) 30 percent of borrower payments received before October 1, 1993;

(B) 27 percent of borrower payments received on or after October 1, 1993, and before October 1, 1998;

(C) 24 percent of borrower payments received on or after October 1, 1998, and before October 1, 2003; and

(D) 23 percent of borrower payments received on or after October 1, 2003.

(2) Unless the Secretary approves otherwise, the guaranty agency must pay to the Secretary the Secretary's share of borrower payments within 45 days of its receipt of the payments.

* * * * *

(i) *Account maintenance fee.* A guaranty agency is paid an account maintenance fee based on the original principal amount of outstanding FFEL Program loans insured by the agency. For fiscal years 1999 and 2000, the fee is 0.12 percent of the original principal amount of outstanding loans. After fiscal year 2000, the fee is 0.10 percent of the original principal amount of outstanding loans.

(j) *Loan processing and issuance fee.* A guaranty agency is paid a loan processing and issuance fee based on the principal amount of FFEL Program loans originated during a fiscal year that are insured by the agency. The fee is paid quarterly. No payment is made for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed. For fiscal years 1999 through 2003, the fee is 0.65 percent of the principal amount of loans originated. Beginning October 1, 2003, the fee is 0.40 percent.

(k) *Default aversion fee.*—(1) *General.* If a guaranty agency performs default aversion activities on a delinquent loan in response to a lender's request for default aversion assistance on that loan, the agency receives a default aversion fee. The fee may not be paid more than once on any loan. The lender's request for assistance must be submitted to the guaranty agency no earlier than the 60th day and no later than the 120th day of the borrower's delinquency. A guaranty agency may not restrict a lender's choice of the date during this period on which the lender submits a request for default aversion assistance.

(2) *Amount of fees transferred.* No more frequently than monthly, a guaranty agency may transfer default aversion fees from the Federal Fund to its Operating Fund. The amount of the fees that may be transferred is equal to—

(i) One percent of the unpaid principal and accrued interest owed on loans that were submitted by lenders to the agency for default aversion assistance; minus

(ii) One percent of the unpaid principal and accrued interest owed by borrowers on default claims that—

(A) Were paid by the agency for the same time period for which the agency transferred default aversion fees from its Federal Fund; and

(B) For which default aversion fees have been received by the agency.

(3) *Calculation of fee.* (i) For purposes of calculating the one percent default aversion fee described in paragraph (k)(2)(i) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the default aversion assistance request is submitted by the lender.

(ii) For purposes of paragraph (k)(2)(ii) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the agency paid the default claim.

(4) *Prohibition against conflicts.* If a guaranty agency contracts with an outside entity to perform any default aversion activities, that outside entity may not—

(i) Hold or service the loan; or

(ii) Perform collection activities on the loan in the event of default within 3 years of the claim payment date.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

14. Section 682.406 is amended by revising the heading, the introductory text of paragraph (a), and paragraph (a)(14) to read as follows:

§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) A guaranty agency may make a claim payment from the Federal Fund and receive a reinsurance payment on a loan only if—

* * * * *

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the

guaranty agency under § 682.411(h) to locate the borrower through the use of effective skip-tracing techniques, including contact with the schools the student attended.

* * * * *

15. Section 682.409 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a)(1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary directs a guaranty agency to promptly assign to the Secretary any loans held by the agency on which the agency has received payment under § 682.402(f), 682.402(k), or 682.404. The collection of unpaid loans owed by Federal employees by Federal salary offset is, among other things, deemed to be in the Federal fiscal interest. Unless the Secretary notifies an agency, in writing, that other loans must be assigned to the Secretary, an agency must assign any loan that meets all of the following criteria as of April 15 of each year:

* * * * *

16. Section 682.410 is amended by adding a new paragraph (b)(5)(vii) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(5) * * *

(vii) As part of the guaranty agency's response to a borrower who appeals an adverse decision resulting from the agency's administrative review of the loan obligation, the agency must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

* * * * *

17. Section 682.411 is revised to read as follows:

§ 682.411 Lender due diligence in collecting guaranty agency loans.

(a) *General.* In the event of delinquency on an FFEL Program loan, the lender must engage in at least the collection efforts described in paragraphs (c) through (n) of this section, except that in the case of a loan made to a borrower who is incarcerated, residing outside a State, Mexico, or Canada, or whose telephone number is unknown, the lender may send a forceful collection letter instead of each telephone effort required by this section.

(b) *Delinquency.* (1) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment that is not later made. The due date of the first payment is established by the lender but must occur by the deadlines specified in § 682.209(a) or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns, except as provided in § 682.209(a)(2)(v) and (a)(3)(ii)(E). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment that is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.

(2) At no point during the periods specified in paragraphs (c), (d), and (e) of this section may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (j) of this section, of more than 45 days (60 days in the case of a transfer).

(3) As part of one of the collection activities provided for in this section, the lender must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

(c) *1–15 days delinquent.* Except in the case in which a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period must send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency. The notice or collection letter sent during this period must include, at a minimum, a lender or servicer contact, a telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

(d) *16–180 days delinquent (16–240 days delinquent for a loan repayable in installments less frequently than monthly).* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender must engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur on or before, and another one must occur after, the 90th day of delinquency. Collection letters sent during this period must include, at a minimum, information for the borrower regarding deferment, forbearance, income-sensitive repayment and loan consolidation, and other available options to avoid default.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that, if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower or to garnish the borrower's wages, or to assign the loan to the Federal Government for litigation against the borrower.

(3) Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only—

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent for a loan repayable in installments less frequently than monthly) upon receipt of the payment, correct address, correct telephone number, or returned check, or expiration of the deferment or forbearance; or

(ii) One diligent effort to contact the borrower by telephone during this period if the loan is 91–120 days delinquent (121–180 days delinquent for a loan repayable in installments less frequently than monthly) upon receipt of the payment, correct address, correct telephone number, or returned check, or expiration of the deferment or forbearance.

(4) A lender need not attempt to contact by telephone any borrower who is more than 120 days delinquent (180 days delinquent for a loan repayable in installments less frequent than monthly) following the lender's receipt of—

(i) A payment on the loan;

(ii) A correct address or correct telephone number for the borrower;

(iii) A dishonored check received from the drawee as a payment on the loan; or

(iv) The expiration of an authorized deferment or forbearance.

(e) *181–270 days delinquent (241–330 days delinquent for a loan repayable in installments less frequently than monthly).* During this period the lender must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.

(f) *Final demand.* On or after the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly) the lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender must allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(g) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower as required by paragraph (m) of this section, the lender is excused from any further efforts to contact the borrower by telephone, unless the borrower's number is obtained before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly).

(h) *Skip-tracing.* (1) Unless the letter specified under paragraph (f) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender must begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, relative, reference, individual, and entity, identified in the borrower's loan file, including the schools the student attended. For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator, and may be in writing or by phone calls. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender must discontinue the collection efforts described in paragraphs (c) through (f) of this section.

(3) If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in paragraph (h)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c) through (f) and (l)(1) through (l)(3) and (l)(5) of this section unless it receives communication indicating the borrower's address before the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly).

(4) The activities specified by paragraph (m)(1)(i) or (ii) of this section (with references to the "borrower" understood to mean endorser, reference, relative, individual, or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower's loan file.

(i) *Default aversion assistance.* Not earlier than the 60th day and no later than the 120th day of delinquency, a lender must request default aversion assistance from the guaranty agency that guarantees the loan.

(j) *Gap in collection activity.* For purposes of this section, the term *gap in collection activity* means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The due date of a payment unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives a dishonored check submitted as a payment on the loan;

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or

(vii) The day the lender receives information indicating it does not know the borrower's current address; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;

(ii) The day on which the lender begins the first subsequent collection activity;

(iii) The day on which the lender receives written communication from the borrower relating to his or her account; or

(iv) Default.

(k) *Transfer.* For purposes of this section, the term *transfer* with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(l) *Collection activity.* For purposes of this section, the term *collection activity* with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address a collection letter or final demand letter that satisfies the timing and content requirements of paragraph (c), (d), (e), or (f) of this section;

(2) Making an attempt to contact the borrower by telephone to urge the borrower to begin or resume repayment;

(3) Conducting skip-tracing efforts, in accordance with paragraph (h)(1) or (m)(1)(iii) of this section, to locate a borrower whose correct address or telephone number is unknown to the lender;

(4) Mailing or otherwise transmitting to the guaranty agency a request for default aversion assistance available from the agency on the loan at the time the request is transmitted; or

(5) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.

(m) *Diligent effort for telephone contact.* (1) For purposes of this section, the term *diligent effort* with respect to telephone contact means—

(i) A successful effort to contact the borrower by telephone;

(ii) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and sending a letter to or making a diligent effort to contact each reference, relative, and individual identified in the most recent loan application or most recent school certification for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address or telephone number.

(2) If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities described in paragraph (m)(1)(iii) of this section, the lender is excused thereafter from attempting to contact the borrower by telephone unless it receives a communication

indicating the borrower's current telephone number before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly).

(3) The activities specified by paragraph (m)(1) (i) or (ii) of this section (with references to "the borrower" understood to mean endorser, reference, relative, or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative, or individual identified on the borrower's most recent loan application or most recent school certification.

(n) *Due diligence for endorsers.* (1) Before filing a default claim on a loan with an endorser, the lender must—

(i) Make a diligent effort to contact the endorser by telephone; and

(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to "the borrower" understood to mean the endorser).

(2) On or after the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly) the lender must send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender must allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (n)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of effective commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(o) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087)

§ 682.412 [Amended]

18. Section 682.412 is amended by removing "§ 682.411(e)" in paragraph (a) and adding, in its place, "§ 682.411(f)".

19. Section 682.413 is amended by revising paragraph (e)(1) to read as follows:

§ 682.413 Remedial actions.

* * * * *

(e)(1)(i) The Secretary's decision to require repayment of funds, withhold funds, or to limit or suspend a lender, guaranty agency, or third party servicer from participation in the FFEL Program or to terminate a lender or third party from participation in the FFEL Program does not become final until the Secretary provides the lender, agency, or servicer with written notice of the intended action and an opportunity to be heard. The hearing is at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the lender, agency, or servicer requests the hearing.

(ii) The Secretary's decision to terminate a guaranty agency's participation in the FFEL Program after September 24, 1998 does not become final until the Secretary provides the agency with written notice of the intended action and provides an opportunity for a hearing on the record.

* * * * *

20. Section 682.414 is amended by:

A. Revising paragraph (a)(4)(iii).

B. Revising the Office of Management and Budget control number.

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(4) * * *

(iii) Except as provided in paragraph (a)(4)(iv) of this section, a lender must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than five years following the date the lender receives payment in full from any other source. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

21. Section 682.417 is revised to read as follows:

§ 682.417 Determination of Federal funds or assets to be returned.

(a) *General.* The procedures described in this section apply to a determination by the Secretary that—

(1) A guaranty agency must return to the Secretary a portion of its Federal Fund that the Secretary has determined is unnecessary to pay the program expenses and contingent liabilities of the agency; and

(2) A guaranty agency must require the return to the agency or the Secretary of Federal funds or assets within the meaning of section 422(g)(1) of the Act held by or under the control of any other entity that the Secretary determines are necessary to pay the program expenses and contingent liabilities of the agency or that are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

(b) *Return of unnecessary Federal funds.* (1) The Secretary may initiate a process to recover unnecessary Federal funds under paragraph (a)(1) of this section if the Secretary determines that a guaranty agency's Federal Fund ratio under § 682.410(a)(10) for each of the two preceding Federal fiscal years exceeded 2.0 percent.

(2) If the Secretary initiates a process to recover unnecessary Federal funds, the Secretary requires the return of a portion of the Federal funds that the Secretary determines will permit the agency to—

(i) Have a Federal Fund ratio of at least 2.0 percent under § 682.410(a)(10) at the time of the determination; and

(ii) Meet the minimum Federal Fund requirements under § 682.410(a)(10) and retain sufficient additional Federal funds to perform its responsibilities as a guaranty agency during the current Federal fiscal year and the four succeeding Federal fiscal years.

(3)(i) The Secretary makes a determination of the amount of Federal funds needed by the guaranty agency under paragraph (b)(2) of this section on the basis of financial projections for the period described in that paragraph. If the agency provides projections for a period longer than the period referred to in that paragraph, the Secretary may consider those projections.

(ii) The Secretary may require a guaranty agency to provide financial projections in a form and on the basis of assumptions prescribed by the Secretary. If the Secretary requests the agency to provide financial projections, the agency must provide the projections within 60 days of the Secretary's request. If the agency does not provide the projections within the specified time period, the Secretary determines the amount of Federal funds needed by the agency on the basis of other information.

(c) *Notice.* (1) The Secretary or an authorized Departmental official begins a proceeding to order a guaranty agency to return a portion of its Federal funds, or to direct the return of Federal funds or assets subject to return, by sending the guaranty agency a notice by certified mail, return receipt requested.

(2) The notice—

(i) Informs the guaranty agency of the Secretary's determination that Federal funds or assets must be returned;

(ii) Describes the basis for the Secretary's determination and contains sufficient information to allow the guaranty agency to prepare and present an appeal;

(iii) States the date by which the return of Federal funds or assets must be completed;

(iv) Describes the process for appealing the determination, including the time for filing an appeal and the procedure for doing so; and

(v) Identifies any actions that the guaranty agency must take to ensure that the Federal funds or assets that are the subject of the notice are maintained and protected against use, expenditure, transfer, or other disbursement after the date of the Secretary's determination, and the basis for requiring those actions. The actions may include, but are not limited to, directing the agency to place the Federal funds in an escrow account. If the Secretary has directed the guaranty agency to require the return of Federal funds or assets held by or under the control of another entity, the guaranty agency must ensure that the agency's claims to those funds or assets and the collectability of the agency's claims will not be compromised or jeopardized during an appeal. The guaranty agency must also comply with all other applicable regulations relating to the use of Federal funds and assets.

(d) *Appeal.* (1) A guaranty agency may appeal the Secretary's determination that Federal funds or assets must be returned by filing a written notice of appeal within 20 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination. If the agency files a notice of appeal, the requirement that the return of Federal funds or assets be completed by a particular date is suspended pending completion of the appeal process. If the agency does not file a notice of appeal within the period specified in this paragraph, the Secretary's determination is final.

(2) A guaranty agency must submit the information described in paragraph (d)(4) of this section within 45 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination unless the Secretary agrees to extend the period at the agency's request. If the agency does not submit that information within the prescribed period, the Secretary's determination is final.

(3) A guaranty agency's appeal of a determination that Federal funds or assets must be returned is considered and decided by a Departmental official other than the official who issued the determination or a subordinate of that official.

(4) In an appeal of the Secretary's determination, the guaranty agency must—

(i) State the reasons the guaranty agency believes the Federal funds or assets need not be returned;

(ii) Identify any evidence on which the guaranty agency bases its position that Federal funds or assets need not be returned;

(iii) Include copies of the documents that contain this evidence;

(iv) Include any arguments that the guaranty agency believes support its position that Federal funds or assets need not be returned; and

(v) Identify the steps taken by the guaranty agency to comply with the requirements referred to in paragraph (c)(2)(v) of this section.

(5)(i) In its appeal, the guaranty agency may request the opportunity to make an oral argument to the deciding official for the purpose of clarifying any issues raised by the appeal. The deciding official provides this opportunity promptly after the expiration of the period referred to in paragraph (d)(2) of this section.

(ii) The agency may not submit new evidence at or after the oral argument unless the deciding official determines otherwise. A transcript of the oral argument is made a part of the record of the appeal and is promptly provided to the agency.

(6) The guaranty agency has the burden of production and the burden of persuading the deciding official that the Secretary's determination should be modified or withdrawn.

(e) *Third-party participation.* (1) If the Secretary issues a determination under paragraph (a)(1) of this section, the Secretary promptly publishes a notice in the **Federal Register** announcing the portion of the Federal Fund to be returned by the agency and providing interested persons an opportunity to submit written information relating to the determination within 30 days after the date of publication. The Secretary publishes the notice no earlier than five days after the agency receives a copy of the determination.

(2) If the guaranty agency to which the determination relates files a notice of appeal of the determination, the deciding official may consider any information submitted in response to the **Federal Register** notice. All information submitted by a third party is available for inspection and copying at the offices of the Department of Education in Washington, D.C., during normal business hours.

(f) *Adverse information.* If the deciding official considers information in addition to the evidence described in the notice of the Secretary's determination that is adverse to the guaranty agency's position on appeal, the deciding official informs the agency and provides it a reasonable opportunity to respond to the information without regard to the period referred to in paragraph (d)(2) of this section.

(g) *Decision.* (1) The deciding official issues a written decision on the guaranty agency's appeal within 45 days of the date on which the information described in paragraphs (d)(4) and (d)(5)(ii) of this section is received, or the oral argument referred to in paragraph (d)(5) of this section is held, whichever is later. The deciding official mails the decision to the guaranty agency by certified mail, return receipt requested. The decision of the deciding official becomes the final decision of the Secretary 30 days after the deciding official issues it. In the case of a determination that a guaranty agency must return Federal funds, if the deciding official does not issue a decision within the prescribed period, the agency is no longer required to take the actions described in paragraph (c)(2)(v) of this section.

(2) A guaranty agency may not seek judicial review of the Secretary's determination to require the return of Federal funds or assets until the deciding official issues a decision.

(3) The deciding official's written decision includes the basis for the decision. The deciding official bases the decision only on evidence described in the notice of the Secretary's determination and on information properly submitted and considered by the deciding official under this section. The deciding official is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(h) *Collection of Federal funds or assets.* (1) If the deciding official's final decision requires the guaranty agency to return Federal funds, or requires the guaranty agency to require the return of Federal funds or assets to the agency or to the Secretary, the decision states a new date for compliance with the decision. The new date is no earlier than the date on which the decision becomes the final decision of the Secretary.

(2) If the guaranty agency fails to comply with the decision, the Secretary may recover the Federal funds from any funds due the agency from the Department without any further notice or procedure and may take any other action permitted or authorized by law to compel compliance.

(Approved by the Office of Management and Budget under control number 1845–0020).

22. Section 682.418 is amended by revising the heading and paragraph (a)(1), and removing the words "reserve fund" and adding, in their place, the words "Operating Fund", respectively, wherever they appear. The revised heading and text follows:

§ 682.418 Prohibited uses of the assets of the Operating Fund during periods in which the Operating Fund contains transferred funds owed to the Federal Fund.

(a) * * *

(1) During periods in which the Operating Fund contains transferred funds owed to the Federal Fund, a guaranty agency may not use the assets of the Operating Fund to pay costs prohibited under paragraph (b) of this section and may not use the assets of the Operating Fund to pay for goods, property, or services provided by an affiliated organization unless the agency applies and demonstrates to the Secretary, and receives the Secretary's approval, that the payment would be in the Federal fiscal interest and would not exceed the affiliated organization's actual and reasonable cost of providing those goods, property, or services.

* * * * *

23. A new § 682.419 is added to subpart D to read as follows:

§ 682.419 Guaranty agency Federal Fund.

(a) *Establishment and control.* A guaranty agency must establish and maintain a Federal Student Loan Reserve Fund (referred to as the "Federal Fund") to be used only as permitted under paragraph (c) of this section. The assets of the Federal Fund and the earnings on those assets are, at all times, the property of the United States. The guaranty agency must exercise the level of care required of a fiduciary charged with the duty of protecting, investing, and administering the money of others.

(b) *Deposits.* The agency must deposit into the Federal Fund—

(1) All funds, securities, and other liquid assets of the reserve fund that existed under § 682.410;

(2) The total amount of insurance premiums collected;

(3) Federal payments for default, bankruptcy, death, disability, closed school, false certification, and other claims;

(4) Federal payments for supplemental preclaims assistance activities performed before October 1, 1998;

(5) 70 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) All funds received by the guaranty agency from any source on FFEL Program loans on which a claim has been paid, within 48 hours of receipt of those funds, minus the portion the agency is authorized to deposit in its Operating Fund;

(7) Investment earnings on the Federal Fund;

(8) Revenue derived from the Federal portion of a nonliquid asset, in accordance with § 682.420; and

(9) Other funds received by the guaranty agency from any source that are specifically designated for deposit in the Federal Fund.

(c) *Uses.* A guaranty agency may use the assets of the Federal Fund only—

(1) To pay insurance claims;

(2) To transfer default aversion fees to the agency's Operating Fund;

(3) To transfer account maintenance fees to the agency's Operating Fund, if directed by the Secretary;

(4) To refund payments made by or on behalf of a borrower on a loan that has been discharged in accordance with § 682.402;

(5) To pay the Secretary's share of borrower payments, in accordance with § 682.404(g);

(6) For transfers to the agency's Operating Fund, pursuant to § 682.421;

(7) To refund insurance premiums related to loans cancelled or refunded, in whole or in part;

(8) To return to the Secretary portions of the Federal Fund required to be returned by the Act; and

(9) For any other purpose authorized by the Secretary.

(d) *Prohibition against prepayment.* A guaranty agency may not prepay obligations of the Federal Fund unless it demonstrates, to the satisfaction of the Secretary, that the prepayment is in the best interests of the United States.

(e) *Minimum Federal Fund level.* The guaranty agency must maintain a minimum Federal Fund level equal to at least 0.25 percent of its insured original principal amount of loans outstanding.

(f) *Definitions.* For purposes of this section—

(1) *Federal Fund level* means the total of Federal Fund assets identified in paragraph (b) of this section plus the amount of funds transferred from the Federal Fund that are in the Operating Fund, using an accrual basis of accounting.

(2) *Original principal amount of loans outstanding means*—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

(C) Payment in full has been made by the borrower;

(D) Reinsurance coverage has been lost and cannot be regained; and

(E) The agency paid claims.

(Authority: 20 U.S.C. 1072–1)

24. A new § 682.420 is added to subpart D to read as follows:

§ 682.420 Federal nonliquid assets.

(a) *General.* The Federal portion of a nonliquid asset developed or purchased in whole or in part with Federal reserve funds, regardless of who held or controlled the Federal reserve funds or assets, is the property of the United States. The ownership of that asset must be prorated based on the percentage of the asset developed or purchased with Federal reserve funds. In maintaining and using the Federal portion of a nonliquid asset under this section, the guaranty agency must exercise the level of care required of a fiduciary charged with protecting, investing, and administering the property of others.

(b) *Treatment of revenue derived from a nonliquid Federal asset.* If a guaranty agency derives revenue from the Federal portion of a nonliquid asset, including its sale or lease, the agency must promptly deposit the percentage of the net revenue received into the Federal Fund equal to the percentage of the asset owned by the United States.

(c) *Guaranty agency use of the Federal portion of a nonliquid asset.* (1)(i) If a guaranty agency uses the Federal portion of a nonliquid asset in the performance of its guaranty activities (other than an intangible or intellectual property asset or a tangible asset of nominal value), the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(ii) If a guaranty agency uses the Federal portion of a nonliquid asset for purposes other than the performance of its guaranty activities, the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(2) Payments to the Federal Fund required by paragraph (c)(1) of this section must be made not less frequently than quarterly.

(Authority: 20 U.S.C. 1072–1)

25. A new § 682.421 is added to subpart D to read as follows:

§ 682.421 Funds transferred from the Federal Fund to the Operating Fund by a guaranty agency.

(a) *General.* In accordance with this section, a guaranty agency may request the Secretary's permission to transfer a limited amount of funds from the Federal Fund to the Operating Fund. Upon receiving the Secretary's approval, the agency may transfer the requested funds at any time within 6 months following the date specified by the Secretary. If the Secretary has not approved or disapproved the agency's request within 30 days after receiving it, the agency may transfer the requested funds at any time within the 6-month period beginning on the 31st day after the Secretary received the agency's request. The transferred funds may be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Transferring the principal balance of the Federal Fund.*—(1) *Amount that may be transferred.* Upon receiving the Secretary's approval, an agency may transfer an amount up to the equivalent of 180 days of cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments) for normal operating expenses to be deposited into the agency's Operating Fund. The amount transferred and outstanding at any time during the first 3 years after establishing the Operating Fund may not exceed the lesser of 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments), or 45 percent of the balance in the Federal reserve fund that existed under § 682.410 as of September 30, 1998.

(2) *Requirements for requesting a transfer.* A guaranty agency that wishes to transfer principal from the Federal Fund must provide the Secretary with a proposed repayment schedule and evidence that it can repay the transfer according to its proposed schedule. The agency must provide the Secretary with the following:

(i) A request for the transfer that specifies the desired amount, the date the funds will be needed, and the agency's proposed terms of repayment;

(ii) A projected revenue and expense statement, to be updated annually during the repayment period, that demonstrates that the agency will be able to repay the transferred amount within the repayment period requested by the agency; and

(iii) Certifications by the agency that during the period while the transferred funds are outstanding—

(A) Sufficient funds will remain in the Federal Fund to pay lender claims during the period the transferred funds are outstanding;

(B) The agency will be able to meet the reserve recall requirements of section 422 of the Act;

(C) The agency will be able to meet the statutory minimum reserve level of 0.25 percent, as mandated by section 428(c)(9) of the Act; and

(D) No legal prohibition exists that would prevent the agency from obtaining or repaying the transferred funds.

(c) *Transferring interest earned on the Federal Fund.* (1) *Amount that may be transferred.* The Secretary may permit an agency that owes the Federal Fund the maximum amount allowable under paragraph (b) of this section to transfer the interest income earned on the Federal Fund during the 3-year period following October 7, 1998. The combined amount of transferred interest and the amount of principal transferred under paragraph (b) of this section may exceed 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments), but may not exceed 45 percent of the balance in the Federal reserve fund that existed under § 682.410 as of September 30, 1998.

(2) *Requirements for requesting a transfer.* To be allowed to transfer the interest income, in addition to the items in paragraph (b)(2) of this section, the agency must demonstrate to the Secretary that the cash flow in the Operating Fund will be negative if the agency is not authorized to transfer the interest, and, by transferring the interest, the agency will substantially improve its financial circumstances.

(Authority: 20 U.S.C. 1072–1)

(Approved by the Office of Management and Budget under control number 1845–0020)

26. A new § 682.422 is added to subpart D to read as follows:

§ 682.422 Guaranty agency repayment of funds transferred from the Federal Fund.

(a) *General.* A guaranty agency must begin repayment of money transferred from the Federal Fund not later than the start of the 4th year after the agency establishes its Operating Fund. All amounts transferred must be repaid not later than five years after the date the Operating Fund is established.

(b) *Extension for repaying the interest transferred.*—(1) *General.* The Secretary may extend the period for repayment of interest transferred from the Federal Fund from two years to five years if the Secretary determines that the cash flow of the Operating Fund will be negative if the transferred interest had to be repaid earlier or the repayment of the interest would substantially diminish the financial circumstances of the agency.

(2) *Agency eligibility for an extension.* To receive an extension, the agency must demonstrate that it will be able to repay all transferred funds by the end of the 8th year following the date of establishment of the Operating Fund and that the agency will be financially sound upon the completion of repayment.

(3) *Repayment of interest earned on transferred funds.* If the Secretary extends the period for repayment of interest transferred from the Federal Fund for a guaranty agency, the agency must repay the amount of interest during the 6th, 7th, and 8th years following the establishment of the Operating Fund. In addition to repaying the amount of interest, the guaranty agency must also pay to the Secretary any income earned after the 5th year from the investment of the transferred amount. In determining the amount of income earned on the transferred amount, the Secretary uses the average investment income earned on the agency's Operating Fund.

(c) *Consequences if a guaranty agency fails to repay transfers from the Federal Fund.* If a guaranty agency fails to make a scheduled repayment to the Federal Fund, the agency may not receive any other Federal funds until it becomes current in making all scheduled payments, unless the Secretary waives this restriction.

(Authority: 20 U.S.C. 1072–1)

27. A new § 682.423 is added to subpart D to read as follows:

§ 682.423 Guaranty agency Operating Fund.

(a) *Establishment and control.* A guaranty agency must establish and maintain an Operating Fund in an account separate from the Federal Fund. Except for funds that have been transferred from the Federal Fund, the Operating Fund is considered the property of the guaranty agency. During periods in which the Operating Fund contains funds transferred from the Federal Fund, the Operating Fund may be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Deposits.* The guaranty agency must deposit into the Operating Fund—

(1) Amounts authorized by the Secretary to be transferred from the Federal Fund;

(2) Account maintenance fees;

(3) Loan processing and issuance fees;

(4) Default aversion fees;

(5) 30 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund;

(7) The agency's share of the payoff amounts received from the consolidation or rehabilitation of defaulted loans; and

(8) Other receipts as authorized by the Secretary.

(c) *Uses.* A guaranty agency may use the Operating Fund for—

(1) Guaranty agency-related activities, including—

(i) Application processing;

(ii) Loan disbursement;

(iii) Enrollment and repayment status management;

(iv) Default aversion activities;

(v) Default collection activities;

(vi) School and lender training;

(vii) Financial aid awareness and related outreach activities; and

(viii) Compliance monitoring; and

(2) Other student financial aid-related activities for the benefit of students, as selected by the guaranty agency.

(Authority: 20 U.S.C. 1072–2)

Subpart H—[Amended]

28. Sections 682.800 through 682.839 are removed, § 682.840 is redesignated as § 682.800, and the term "handicapped status" in the redesignated § 682.800(a) is removed and "disability status" is added in its place.

29. Appendix D to part 682 is revised to read as follows:

Appendix D to Part 682—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay Interest Benefits, Special Allowance, and Reinsurance on Stafford, Plus, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88–G–138]

Note: The following is a reprint of Bulletin 88–G–138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until 3 years after the default claim filing deadline. For the purpose of determining the 3-year deadline, reinsurance is lost on the later of (a) 3 years from the last date the claim could have been filed for claim payment with the guaranty agency for a claim that was not filed; or (b) 3 years from the date the guaranty agency rejected the claim, for a claim that was filed. These deadlines are extended by periods during which collection activities are suspended due to the filing of a bankruptcy petition.

Introduction

(1) This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a)(5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of the Secretary's rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guaranty agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the FFEL Program.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guaranty agency.

(2) The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Program. As a part of this effort, the Secretary published final regulations on November 10, 1986, requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, § 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guaranty agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. *See* 34 CFR 682.406(a)(3), (a)(5), (a)(6), and 682.413(b). The regulations also specify that a lender must comply with § 682.411 and with the applicable filing deadline as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. *See* 34 CFR 682.300(b)(2)(vi), 682.300(b)(2)(vii), 682.413(a)(1).

(3) The Department has received inquiries regarding the procedures by which a lender may cure a violation of § 682.411 regarding diligent loan collection, or of the 90-day deadline for the filing of default claims found in § 682.406(a)(3) and (a)(5), in order to reinstate the agency's right to reinsurance and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guaranty agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§ 682.406(b) and 682.413(f), the Secretary—not the guaranty agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation or any other violation of Federal regulations. A lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. *See* §§ 682.406(a)(7) and 682.413(b). As §§ 682.406(a)(7) and 682.413(b) make clear, a guaranty agency's cure procedures are relevant to reinsurance coverage only insofar as they allow for cure of violations of requirements established by the agency affecting the loan insurance it provides to lenders. In addition, all those requirements must be submitted to the Secretary for review and approval under 34 CFR 682.401(d).

(4) References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guaranty agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guaranty Agency To Enforce Its Standards

As noted above, a lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guaranty agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below. In other words, for violations of a guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a FFEL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 270 days for loans payable in monthly installments, or for 330 days for loans payable in less frequent installments. The 270/330-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment 3 months late (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on December 27th, when the April payment becomes 270 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. Timely Filing

(1) The 90-day filing period applicable to FFEL Program default claims is described in 34 CFR 682.406(a)(5). The 90-day filing period begins at the end of the 270/330-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 360th day of delinquency (270-day default period plus 90-day filing period) if the borrower brings the account less than 270 days delinquent before the 360th day. Thus, in the above example, if the borrower makes the April 1st payment on December 28th, that payment makes the loan 241 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 270 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 270 days delinquent prior to the end of that 90-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if those payments are sufficient to make the loan less than 270 days delinquent.

(2) Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower defaulted in making the reduced payments, a full payment would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a full payment only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

Earliest unexcused violation means:

(a) In cases when reinsurance is lost due to a failure to timely establish a first payment due date, the earliest unexcused violation would be the 46th day after the date the first payment due date should have been established.

(b) In cases when reinsurance is lost due to a gap of 46 days, the earliest unexcused violation date would be the 46th day following the last collection activity.

(c) In cases when reinsurance is lost due to three or more due diligence violations of 6 days or more, the earliest unexcused violation would be the day after the date of default.

(d) In cases when reinsurance is lost due to a timely filing violation, the earliest unexcused violation would be the day after the filing deadline.

Reinstatement with respect to reinsurance coverage means the reinstatement of the guaranty agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. Reinstatement with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

Gap in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;

(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);

(c) The period between the last collection activity and default; or

(d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

Note: The concept of "gap" is used herein simply as one measure of collection activity. This definition applies to loans subject to the FFEL and PLUS programs regulations published on or after November 10, 1986. For those loans, not all gaps are violations of the due diligence rules.

Violation with respect to the due diligence requirements in § 682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaims assistance), or the failure to timely engage in a required skip-tracing activity. If during the delinquency period a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinsurance to be reinstated. The day after the 45-day gap (or 60 for loans with a transfer) will be considered the date that the violation occurred.

Transfer means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. *General*

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary's Right to Strict Enforcement. While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules and in cases where the best interests of the United States otherwise require strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority. The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

a. The guaranty agency and lender must ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1., by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guaranty agency's responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

b. The guaranty agency, on or before October 1, 1988, must repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1. Pending completion of the repayment described above, a lender or guaranty agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier. Of course, a lender or guaranty agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans. The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day or 270/330-day default period (as applicable) that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence or timely filing requirements or both. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until 3 years after the default claim filing deadline.

5. Excuse of Certain Due Diligence Violations. Except as noted in section II, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. Guarantors must review the due diligence for the 180/270 or 270/330-day period (as applicable) prior to the default date ensuring the due date of the first payment not later made is the correct payment due date for the borrower.

6. Excuse of Timely Filing Violations Due to Performance of a Guaranty Agency's Cure Procedures. If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guaranty agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guaranty agency and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on "Cured" Claims. For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., for the agency to receive a reinsurance payment, the Secretary will not reimburse the guaranty agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim. Some cures will not reinstate coverage. For treatment of accrued interest in those cases, see section I.E.1.c.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411)

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made. The special provisions for transfers apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A.

1. Retrospective Period. For one or more due diligence violations occurring during the period March 10, 1987–April 30, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46–60 days (61–75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (*See* section I.E.1.d., for a description of acceptable evidence of location.) In addition, if the loan is held by the lender or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period. For due diligence violations occurring on or after May 1, 1988 based on due dates prior to October 6, 1998—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exist not more than two violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

3. *Post 1998 Amendments.* For due diligence violations based on due dates on or after October 6, 1998—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer).

b. If there exist not more than two violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a default aversion assistance request must be made before the 330th day of delinquency. If the lender fails to make this request by the 330th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 270 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1. or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1. for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations.

1. Cures. In the case of a loan involving violations described in section I.C.2.d. or I.C.3.d., the lender may utilize either of the two procedures described in section I.D.1.a or I.D.1.b. for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guaranty agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. Borrower Deemed Current as of Date of Cure. On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., reinsurance coverage on the loan is reinstated, and the borrower must be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender must then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. Default Claims.

a. Reinstatement of Insurance Coverage. Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c. or I.C.3.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (*See* section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed. If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender must, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5–10 days after completing these efforts, the lender must again diligently attempt to contact the borrower by telephone. Finally, within 5–10 days after completing these efforts, the lender must send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

b. Borrower Deemed Current Under Certain Circumstances. If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., or the 270th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower must be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., or the 270th day of delinquency, whichever is later, the lender must deem the borrower to be in default. The lender must then file a default claim on the loan, accompanied by acceptable evidence of location (*see* section I.E.1.d.), within 30 days after the end of the 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of those loans, on unpaid interest as provided in section I.B.7., and for reimbursement of eligible supplemental preclaims assistance costs. In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender, that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims. The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (*See* 34 CFR 682.402(g)(2)(i)). However, the Secretary will not reimburse the guaranty agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period. The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§ 682.402(g)(2)(iv)) causes irreparable harm to the guaranty agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender must return the borrower to the appropriate status that existed prior to the filing of the bankruptcy claim unless the status has changed due solely to passage of time. In the latter case, the lender must place the borrower in the status that would exist had no bankruptcy claim been filed. If the borrower is delinquent after the loan is determined nondischargeable, the lender should grant administrative forbearance to bring the borrower's account current as provided in § 682.211(f)(4). The Secretary will not reimburse the guaranty agency for interest for the period beginning on the filing deadline for the bankruptcy claim and ending on the date the loan becomes eligible again for reinsurance. Reinsurance is reinstated on the date the bankruptcy action concludes and the loan is not discharged or on the date a previous discharge is reversed.

II. *Due Date of First Payment.* Section 682.411(b)(1) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on an FFEL Program loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment (unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E)).

1. In cases where the lender learns that the borrower has entered the repayment period after the fact, current § 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice (unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E)). In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period," or section I.C.3.a., for the "post 1998 amendment period," a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by § 682.411(c) to be sent within the first 30 days of delinquency and will thus have committed two violations of more than five days of that rule.

2. If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., that only violations occurring during the most recent 180 or 270 days (as applicable) of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

Please Note: References to the "65th day after receipt of the notice" and "66th day" in the preceding paragraphs should be amended to read "95th day" and "96th day" respectively for lenders subject to § 682.209(a)(3)(ii)(E).

III. *Questions and Answers*

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guaranty agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions follow.

Note: The answer to questions 1 and 4 are applicable only to loans subject to § 682.411 of the FFEL and PLUS program regulations published on or after November 10, 1986.

1. Q: Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, etc. For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

2. Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

3. Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan. the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

4. Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender must treat the payment as having never been made for purposes of determining the number of days that the borrower is delinquent at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with § 682.411, commencing with the first 30-day delinquency period described in § 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result occurs when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

[FR Doc. 99–28172 Filed 10–28–99; 8:45 am]

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Friday
October 29, 1999

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 21, et al.

Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 25, 91, 121, 125, and 129

[Docket No. FAA–1999; Notice No. 99–18]

RIN 2120–AG62

Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rulemaking would require design approval holders of certain turbine-powered transport category airplanes to submit substantiation to the FAA that the design of the fuel tank system of previously certificated airplanes precludes the existence of ignition sources within the airplane fuel tanks. It would also require the affected design approval holders to develop specific fuel tank system maintenance and inspection instructions for any items in the fuel tank system that are determined to require repetitive inspections or maintenance, to assure the safety of the fuel tank system. In addition, the proposed rule would require certain operators of those airplanes to incorporate FAA-approved fuel tank system maintenance and inspection instructions into their current maintenance or inspection program. Three amendments to the airworthiness standards for transport category airplanes are also proposed. The first would define new requirements, based on existing requirements, for demonstrating that ignition sources could not be present in fuel tanks when failure conditions are considered. The second would require future applicants for type certification to identify any safety critical maintenance actions and develop limitations to be placed in the instructions for continued airworthiness for the fuel tank system. The third would require means to minimize development of flammable vapors in fuel tanks, or means to prevent catastrophic damage if ignition does occur. These actions are the result of information gathered from accident investigations and adverse service experience, which has shown that unforeseen failure modes and lack of specific maintenance procedures on certain airplane fuel tank systems may result in degradation of design safety features intended to preclude ignition of vapors within the fuel tank.

DATES: Comments must be received on or before January 27, 2000.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation, Dockets, Docket No. FAA–1999–6411, 400 Seventh Street SW., Room Plaza 401, Washington DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments in the information docket may be examined between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael E. Dostert, FAA, Propulsion/Mechanical/Crashworthiness Branch (ANM–112), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320; e-mail: mike.dostert@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Docket address specified above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the docket. All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received. The Docket is available for public inspection before and after the comment closing date.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–1999–6411." The postcard will be date stamped and mailed to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the *Government Printing Office's* electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800) 322–2722 or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the *Government Printing Office's* webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On July 17, 1996, a 25-year old Boeing 747–100 series airplane was involved in an inflight breakup after takeoff from Kennedy International Airport in New York, resulting in 230 fatalities. The accident investigation conducted by the National Transportation Safety Board (NTSB) indicated that the center wing fuel tank exploded due to an unknown ignition source. The NTSB has issued recommendations intended to reduce heating of the fuel in the center wing fuel tanks on the existing fleet of transport airplanes, reduce or eliminate operation with flammable vapors in the fuel tanks of new type certificated airplanes, and also to reevaluate the fuel system design and maintenance practices on the fleet of transport airplanes. The accident investigation has now focused on mechanical failure as providing the energy source that ignited the fuel vapors inside the tank. This accident has prompted the FAA to examine the underlying safety issues surrounding fuel tank explosions, the adequacy of the existing regulations, the service history of airplanes certificated to these regulations, and existing fuel tank system maintenance practices.

Flammability Characteristics

The flammability characteristics of the various fuels approved for use in transport airplanes results in the presence of flammable vapors in the vapor space of fuel tanks at various times during the operation of the airplane. Vapors from Jet A fuel (the typical commercial turbojet engine fuel) at temperatures below approximately 100°F are too lean to be flammable at sea level; at higher altitudes the fuel vapors become flammable at temperatures above approximately 45°F (at 40,000 feet altitude). However, the regulatory authorities and aviation industry have always presumed that a flammable fuel air mixture exists in the fuel tanks at all times and have adopted the philosophy that the best way to ensure airplane fuel tank safety is to preclude ignition sources within fuel tanks. This philosophy has been based on the application of fail-safe design requirements to the airplane fuel tank system to preclude ignition sources from being present in fuel tanks when component failures, malfunctions, or lightning encounters occur. Possible ignition sources that have been considered include electrical arcs, friction sparks, and autoignition. (The autoignition temperature is the temperature at which the fuel/air mixture will spontaneously ignite due to heat in the absence of an ignition source.) Some events that could produce sufficient electrical energy to create an arc include lightning, electrostatic charging, electromagnetic interference (EMI), or failures in airplane systems or wiring that introduce high-power electrical energy into the fuel tank system. Friction sparks may be caused by mechanical contact between certain rotating components in the fuel tank, such as a steel fuel pump impeller rubbing on the pump inlet check valve. Autoignition of fuel vapors may be caused by failure of components within the fuel tank, or external components or systems that cause components or tank surfaces to reach a high enough temperature to ignite the fuel vapors in the fuel tank.

Existing Regulations/Certification Methods

The current 14 CFR part 25 regulations that are intended to require designs that preclude the presence of ignition sources within the airplane fuel tanks are as follows:

Section 25.901 is a general requirement that applies to all portions of the propulsion installation, which includes the airplane fuel tank system. It requires, in part, that the propulsion and fuel tank systems be designed to ensure fail-safe operation between normal maintenance and inspection intervals, and that the major components be electrically bonded to the other parts of the airplane.

Airplane system fail-safe requirements are provided in §§ 25.901(c) and 25.1309. Section 25.901(c) requires that "no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane." In general, the FAA's policy has been to require applicants to assume the presence of foreseeable latent (undetected) failure conditions when demonstrating that subsequent single failures will not jeopardize the safe operation of the airplane. Certain subsystem designs must also comply with § 25.1309, which requires airplane systems and associated systems to be "designed so that the occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane is extremely improbable, and the occurrence of any other failure conditions which would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions is improbable." Compliance with § 25.1309 requires an analysis, and testing where appropriate, considering possible modes of failure, including malfunctions and damage from external sources, the probability of multiple failures and undetected failures, the resulting effects on the airplane and occupants, considering the stage of flight and operating conditions, and the crew warning cues, corrective action required, and the capability of detecting faults.

This provision has the effect of mandating the use of "fail-safe" design methods which require that the effect of failures and combinations of failures be considered in defining a safe design. Detailed methods of compliance with §§ 25.1309(b), (c), and (d) are described in Advisory Circular (AC) 25.1309–1A, "System Design Analysis," and are intended as a means to evaluate the overall risk, on average, of an event occurring within a fleet of aircraft. The following guidance involving failures is offered in that AC:

1. In any system or subsystem, a single failure of any element or connection during any one flight must be assumed without consideration as to its probability of failing. This single failure must not prevent the continued safe flight and landing of the airplane.

2. Additional failures during any one flight following the first single failure must also be considered when the probability of occurrence is not shown to be extremely improbable. The probability of these combined failures includes the probability of occurrence of the first failure.

As described in the AC, the FAA fail-safe design concept consists of the following design principles or techniques intended to ensure a safe design. The use of only one of these principles is seldom adequate. A combination of two or more design principles is usually needed to provide a fail-safe design (*i.e.*, to ensure that catastrophic failure conditions are not expected to occur during the life of the fleet of a particular airplane model).

- Design integrity and quality, including life limits, to ensure intended function and prevent failures.
- Redundancy or backup systems that provide system function after the first failure (e.g., two or more engines, two or more hydraulic systems, dual flight controls, etc.)
- Isolation of systems and components so that failure of one element will not cause failure of the other (sometimes referred to as system independence).
- Detection of failures or failure indication.
- Functional verification (the capability for testing or checking the component's condition).
- Proven reliability and integrity to ensure that multiple component or system failures will not occur in the same flight.
- Damage tolerance that limits the safety impact or effect of the failure.
- Designed failure path that controls and directs the failure, by design, to limit the safety impact.
- Flightcrew procedures following the failure designed to assure continued safe flight by specific crew actions.
- Error tolerant design that considers probable human error in the operation, maintenance, and fabrication of the airplane.
- Margins of safety that allow for undefined and unforeseeable adverse flight conditions.

These regulations, when applied to typical airplane fuel tank systems, lead to a requirement for prevention of ignition sources inside fuel tanks. The approval of the installation of mechanical and electrical components inside the fuel tanks was typically based on a qualitative system safety analysis and component testing which showed: (1) that mechanical components would not create sparks or high temperature surfaces in the event of any failure, and (2) that electrical devices would not create arcs of sufficient energy to ignite a fuel-air mixture in the event of a single failure or probable combination of failures.

Section 25.901(b)(2) requires that the components of the propulsion system be "constructed, arranged, and installed so as to ensure their continued safe operation between normal inspection or overhauls." Compliance with this regulation is typically demonstrated by substantiating that the propulsion installation, which includes the fuel tank system, will safely perform its intended function between inspections and overhauls defined in the maintenance instructions.

Section 25.901(b)(4) requires electrically bonding the major components of the propulsion system to the other parts of the airplane. The affected major components of the propulsion system include the fuel tank system. Compliance with this requirement for fuel tank systems has been demonstrated by showing that all major components in the fuel tank are electrically bonded to the airplane structure. This precludes accumulation of electrical charge on the components and the possible arcing in the fuel tank that could otherwise occur. In most cases, electrical bonding is accomplished by installing jumper wires from each major fuel tank system component to airplane structure. Advisory Circular 25–8, "Auxiliary Fuel Tank Installations," also provides guidance for bonding of fuel tank system components and means of precluding ignition sources within transport airplane fuel tanks.

Section 25.954 requires that the fuel tank system be designed and arranged to prevent the ignition of fuel vapor within the system due to the effects of lightning strikes. Compliance with this regulation is typically shown by incorporation of design features such as minimum fuel tank skin thickness, location of vent outlets out of likely lightning strike areas, and bonding of fuel tank system structure and components. Guidance for demonstrating compliance with this regulation is provided in AC 20–53A, "Protection of Aircraft Fuel Systems Against Fuel Vapor Ignition Due to Lightning."

Section 25.981 requires that the applicant determine the highest temperature allowable in fuel tanks that provides a safe margin below the lowest expected autoignition temperature of the fuel that is approved for use in the fuel tanks. No temperature at any place inside any fuel tank where fuel ignition is possible may then exceed that maximum allowable temperature. This must be shown under all probable operating, failure, and malfunction conditions of any component whose operation, failure, or malfunction could increase the temperature inside the tank. Guidance for demonstrating compliance with this regulation has been provided in AC 25.981–1A, "Guidelines For Substantiating Compliance With the Fuel Tank Temperature Requirements." The AC provides a listing of failure modes of fuel tank system components that should be considered when showing that component failures will not create a hot surface that exceeds the maximum allowable fuel tank component or tank surface temperature for the fuel type for which approval is being requested. Manufacturers have demonstrated compliance with this regulation by testing and analysis of components to show that design features, such as thermal fuses in fuel pump motors, preclude an ignition source in the fuel tank when failures such as a seized fuel pump rotor occur.

Airplane Maintenance Manuals and Instructions for Continued Airworthiness

Historically, manufacturers have been required to provide maintenance related information for fuel tank systems in the same manner as for other systems. Prior to 1970, most manufacturers provided manuals containing maintenance information for large transport category airplanes, but there were no standards prescribing minimum content, distribution, and a timeframe in which the information must be made available to the operator. Section 25.1529, as amended by Amendment 25–21 in 1970, required the applicant for a type certificate (TC) to provide airplane maintenance manuals (AMM) to owners of the airplanes. This regulation was amended in 1980 to require that the applicant for type certification provide Instructions for Continued Airworthiness (ICA) prepared in accordance with Appendix H to part 25. In developing the ICA, the applicant is required to include certain information such as a description of the airplane and its systems, servicing information, and maintenance instructions, including the frequency and extent of inspections necessary to provide for the continuing airworthiness of the airplane (including the fuel tank system). As required by Appendix H to part 25, the ICA must also include an FAA-approved Airworthiness Limitations section enumerating those mandatory inspections, inspection intervals, replacement times, and related procedures approved under § 25.571, relating to structural damage tolerance. Currently the Airworthiness Limitations section of the ICA applies only to airplane structure and not to the fuel tank system.

One method of establishing initial scheduled maintenance and inspection tasks is the Maintenance Steering Group (MSG) process, which develops a Maintenance Review Board (MRB) document for a particular airplane model. Operators may incorporate those provisions, along with other maintenance information contained in the ICA, into their maintenance or inspection program.

Section 21.50 requires the holder of a design approval, including the TC or supplemental type certificate (STC) for an airplane, aircraft engine, or propeller for which application was made after January 28, 1981, to furnish at least one set of the complete ICA to the owner of the product for which the application was made. The ICA for original type certificated products must include instructions for the fuel tank system. A design approval holder who has modified the fuel tank system must furnish a complete set of the ICA for the modification to the owner of the product.

Type Certificate Amendments Based on Major Change in Type Design

Over the years, many design changes have been introduced into fuel tank systems that may affect their safety. There are three ways in which major design changes can be approved: (1) the TC holder can apply for an amendment to the type design; (2) any person, including the TC holder, wanting to alter a product by introducing a major change in the type design not great enough to require a new application for a TC, may apply for an STC; and (3) in some instances a person may also make a major alteration to the type design through a field approval. The field approval process is a streamlined method for obtaining approval of relatively simple modifications to airplanes. An FAA Flight Standards Inspector can approve the alteration using Form FAA–337.

Maintenance and Inspection Program Requirements

Airplane operators are required to have extensive maintenance or inspection programs that include provisions relating to fuel tank systems.

Section 91.409(e), which generally applies to other than commercial operations, requires an operator of a large turbojet multiengine airplane or a turbopropeller-powered multiengined airplane to select one of the following four inspection programs:

1. A continuous airworthiness inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier operating certificate, or an operating certificate issued under part 119 for operations under parts 121 or 135, and operating that make and model of airplane under those parts;
2. An approved airplane inspection program approved under § 135.419 and currently in use by a person holding an operating certificate and operations specifications issued under part 119 for part 135 operations;
3. A current inspection program recommended by the manufacturer; or
4. Any other inspection program established by the registered owner or operator of that airplane and approved by the Administrator.

Section 121.367, which is applicable to those air carrier and commercial operations covered by part 121, requires operators to have an inspection program, as well as a program covering other maintenance, preventative maintenance, and alterations.

Section 125.247, which is generally applicable to operation of large airplanes, other than air carrier operations conducted under part 121, requires operators to inspect their airplanes in accordance with an inspection program approved by the Administrator.

Section 129.14 requires a foreign air carrier and each foreign operator of a U.S. registered airplane in common carriage, within or outside the U.S., to maintain the airplane in accordance with an FAA-approved program.

In general, the operators rely on the TC data sheet, MRB reports, ICA's, the Airworthiness Limitations section of the ICA, other manufacturers' recommendations, and their own operating experience to develop the overall maintenance or inspection program for their airplanes.

The intent of the rules governing the inspection and/or maintenance program is to ensure that the inherent level of safety that was originally designed into the system is maintained and that the airplane is in an airworthy condition.

Historically, for fuel tank systems these required programs include operational checks (*e.g.*, preflight and enroute), functional checks following maintenance actions (*e.g.*, component replacement), overhaul of certain components to prevent dispatch delays, and general zonal visual inspections conducted concurrently with other maintenance actions, such as structural inspections. However, specific maintenance instructions to detect and correct conditions that degrade fail-safe capabilities have not been deemed necessary because it has been assumed that the original fail-safe capabilities would not be degraded in service.

Design and Service History Review

The FAA has examined the service history of transport airplanes and performed an analysis of the history of fuel tank explosions on these airplanes. While there were a significant number of fuel tank fires and explosions that occurred during the 1960's and 1970's on several airplane types, in most cases the fire or explosion was found to be related to design practices, maintenance actions, or improper modification of fuel pumps. Some of the events were apparently caused by lightning strikes. In most cases, an extensive design review was conducted to identify possible ignition sources and actions were taken that were intended to prevent similar occurrences. However, recent fuel tank system related accidents have occurred in spite of these efforts.

On May 11, 1990, the center wing fuel tank of a Boeing 737–300 exploded while the airplane was on the ground at Nimoy Aquino International Airport, Manila, Philippines. The airplane was less than one year old. In the accident, the fuel-air vapors in the center wing tank exploded as the airplane was being pushed back from a terminal gate prior to flight. The accident resulted in 8 fatalities and injuries to an additional 30 people. Accident investigators considered a plausible scenario in which damaged wiring located outside the fuel tank may have created a short between 115 volt airplane system wires and 28 volt wires to a fuel tank level switch. This, in combination with a possibly defective fuel level float switch, was investigated as a possible source of ignition. However, a definitive ignition source was never confirmed during the accident investigation. This unexplained accident occurred on a newer airplane, in contrast to the July 17, 1996, accident which occurred on an older Boeing 747 airplane that was approaching the end of its initial design life. These two accidents indicate that the development of an ignition source inside the fuel tank may be related to both the design and maintenance of the fuel tank systems.

National Transportation Safety Board (NTSB) Recommendations

Since the July 17, 1996, accident, the FAA, NTSB, and aviation industry have been reviewing the design features and service history of the Boeing 747 and certain other transport airplane models. Based upon its review, the NTSB has issued the following recommendations to the FAA intended to reduce the exposure to operation with flammable vapors in fuel tanks and address possible degradation of the original type certificated fuel tank system designs on transport airplanes.

Reduced Flammability Exposure

A–96–174: Require the development of and implementation of design or operational changes that will preclude the operation of transport-category airplanes with explosive fuel-air mixtures in the fuel tanks:

Long Term Design Modifications:

(a) Significant consideration should be given to the development of airplane design modification, such as nitrogen-inerting systems and the addition of insulation between heat-generating equipment and fuel tanks. Appropriate modifications should apply to newly certificated airplanes and, where feasible, to existing airplanes.

A–96–175: Require the development of and implementation of design or operational changes that will preclude the operation of transport-category airplanes with explosive fuel-air mixtures in the fuel tanks:

Near Term Operational

(b) Pending implementation of design modifications, require modifications in operational procedures to reduce the potential for explosive fuel-air mixtures in the fuel tanks of transport-category aircraft. In the B–747, consideration should be given to refueling the center wing fuel tank (CWT) before flight whenever possible from cooler ground fuel tanks, proper monitoring and management of the CWT fuel temperature, and maintaining an appropriate minimum fuel quantity in the CWT.

A–96–176: Require that the B–747 Flight Handbooks of TWA and other operators of B–747s and other aircraft in which fuel tank temperature cannot be determined by flightcrews be immediately revised to reflect the increases in CWT fuel temperatures found by flight tests, including operational procedures to reduce the potential for exceeding CWT temperature limitations.

A–96–177: Require modification of the CWT of B–747 airplanes and the fuel tanks of other airplanes that are located near heat sources to incorporate temperature probes and cockpit fuel tank temperature displays to permit determination of the fuel tank temperatures.

Ignition Source Reduction

A–98–36: Conduct a survey of fuel quantity indication system probes and wires in Boeing 747's equipped with systems other than Honeywell Series 1–3 probes and compensators and in other model airplanes that are used in Title 14 Code of Federal Regulations Part 121 service to determine whether potential fuel tank ignition sources exist that are similar to those found in the Boeing 747. The survey should include removing wires from fuel probes and examining the wires for damage. Repair or replacement procedures for any damaged wires that are found should be developed.

A–98–38: Require in Boeing 747 airplanes, and in other airplanes with fuel quantity indication system (FQIS) wire installations that are co-routed with wires that may be powered, the physical separation and electrical shielding of FQIS wires to the maximum extent possible.

A–98–39: Require, in all applicable transport airplane fuel tanks, surge protection systems to prevent electrical power surges from entering fuel tanks through fuel quantity indication system wires.

Service History

The FAA has also reviewed service difficulty reports for the transport airplane fleet and evaluated the certification and design practices utilized on these previously certificated airplanes. In addition, an inspection of fuel tanks on Boeing 747 airplanes was initiated. Representatives from the Air Transport Association (ATA), Association of European Airlines (AEA), the Association of Asia Pacific Airlines (AAPA), the Aerospace Industries Association of America, and the Association Europeenne de Constructeurs de Materiel Aerospatial (AECMA) initiated a joint effort to inspect and evaluate the condition of the fuel tank system installations on a representative sample of airplanes within the transport fleet. Data from initial inspections conducted as part of this effort and shared with the FAA have assisted in establishing a basis for developing corrective action for airplanes within the transport fleet. In addition to the results from these inspections, the FAA has received reports of anomalies on in-service airplanes that have necessitated actions to preclude development of ignition sources in or adjacent to airplane fuel tanks. The following provides a summary of findings from design evaluations, service difficulty reports, and a review of current airplane maintenance practices.

Aging Airplane Related Phenomena

Fuel tank inspections initiated as part of the Boeing 747 accident investigation identified aging of fuel tank system components, contamination, corrosion of components and copper-sulfur deposits on components as possible conditions that could contribute to development of ignition sources within the fuel tanks. Results of detailed inspection of the fuel pump wiring on several Boeing 747 airplanes showed debris within the fuel tanks consisting of lockwire, rivets, and metal shavings. Debris was also found inside scavenge pumps. Corrosion and damage to insulation on FQIS probe wiring was found on wiring of 6 out of 8 probes removed from in-service airplanes. In addition, inspection of airplane fuel tank system components from out-of-service (retired) airplanes, initiated following the accident, revealed damaged wiring and corrosion buildup of conductive copper-sulfur deposits on the FQIS wiring on some Boeing 747 airplanes. The conductive deposits or damaged wiring may result in a location where arcing could occur if high power electrical energy was transmitted to the FQIS wiring from another airplane source. While the effects of corrosion on fuel tank system safety have not been fully evaluated, the FAA is developing a research program to obtain a better understanding of the effects of copper-sulfur deposits and corrosion on airplane fuel tank system safety.

Wear or chafing of electrical power wires routed in conduits that are located inside fuel tanks can result in arcing through the conduits. On December 9, 1997, the FAA issued Airworthiness Directive (AD) 96–26–06, applicable to certain Boeing 747 airplanes, which required inspection of electrical wiring routed within conduits to fuel pumps located in the wing fuel tanks and replacement of any damaged wiring. Inspection reports indicated that many instances of wear had occurred on Teflon sleeves installed over the wiring to protect it from damage and possible arcing to the conduit.

Inspections of wiring to fuel pumps on Boeing 737 airplanes with over 35,000 flight hours have shown significant wear to the insulation of wires inside conduits that are located in fuel tanks. In nine reported cases, wear resulted in arcing to the fuel pump wire conduit on airplanes with greater than 50,000 flight hours. In one case, wear resulted in burnthrough of the conduit into the interior of the 737 main tank fuel cell. On May 14, 1998, the FAA issued a telegraphic AD, T98–11–52, which required inspection of wiring to Boeing 737 airplane fuel pumps routed within electrical conduits and replacement of any damaged wiring. Results of these inspections showed that wear of the wiring occurred in many instances, particularly on those airplanes with high numbers of flight cycles and operating hours.

The FAA has also received reports of corrosion on bonding jumper wires within the fuel tanks on one in-service Airbus A300 airplane. The manufacturer investigating this event did not have sufficient evidence to determine conclusively the level of damage and corrosion found on the jumper wires. Although the airplane was in long-term storage, it does not explain why a high number of damaged/corroded jumper wires were found concentrated in a specific area of the wing tanks. Further inspections of a limited number of other Airbus models did not reveal similar extensive corrosion or damage to bonding jumper wires. However, they did reveal evidence of the accumulation of copper-sulfur deposits around the outer braid of some jumper wires. Tests by the manufacturer have shown that these deposits did not affect the bonding function of the leads. Airbus has developed a one-time-inspection service bulletin for all its airplanes to ascertain the extent of the copper-sulfur deposits and to ensure that the level of jumper wire damage found on the one A300 airplane is not widespread.

On March 30, 1998, the FAA received reports of three recent instances of electrical arcing within fuel pumps installed in fuel tanks on Lockheed L-1011 airplanes. In one case, the electrical arc had penetrated the pump and housing and entered the fuel tank. Preliminary investigation indicates that features incorporated into the fuel pump design that were intended to preclude overheating and arc-through into the fuel tank may not have functioned as intended due to discrepancies introduced during overhaul of the pumps. Emergency AD 98–08–09 was issued April 3, 1998, to specify a minimum quantity of fuel to be carried in the fuel tanks for the purpose of covering the pumps with liquid fuel and thereby precluding ignition of vapors within the fuel tank until such time as terminating corrective action could be developed.

Unforeseen Fuel Tank System Failures

After an extensive review of the Boeing 747 design following the July 17, 1996, accident, the FAA determined that during original certification of the fuel tank system, the degree of tank contamination and the significance of certain failure modes of fuel tank system components had not been considered to the degree that more recent service experience indicates is needed. For example, in the absence of contamination, the FQIS had been shown to preclude creating an arc if FQIS wiring were to come in contact with the highest level of electrical voltage on the airplane. This was shown by demonstrating that the voltage needed to cause an arc in the fuel probes due to an electrical short condition was well above any voltage level available in the airplane systems. However, recent testing has shown that if contamination, such as conductive debris (lock wire, nuts, bolts, steel wool, corrosion, copper-sulfur deposits, metal filings, etc.) is placed within gaps in the fuel probe, the voltage needed to cause an arc is within values that may occur due to a subsequent electrical short or induced current on the FQIS probe wiring from electromagnetic interference caused by adjacent wiring. These anomalies, by themselves, could not lead to an electrical arc within the fuel tanks without the presence of an additional failure. If any of these anomalies were combined with a subsequent failure within the electrical system that creates an electrical short, or if high-intensity radiated fields (HIRF) or electrical current flow in adjacent wiring induces EMI voltage in the FQIS wiring, sufficient energy could enter the fuel tank and cause an ignition source within the tank.

On November 26, 1997, in Docket No. 97–NM–272–AD, the FAA proposed a requirement for operators of Boeing 747–100, -200, and -300 series airplanes to install components for the suppression of electrical transients and/or the installation of shielding and separation of fuel quantity indicating system wiring from other airplane system wiring. After reviewing the comments received on the proposed requirements, the FAA issued AD 98–20–40 on September 23, 1998 that requires the installation of shielding and separation of the electrical wiring of the fuel quantity indication system. On April 14, 1998, the FAA proposed a similar requirement for Boeing 737–100, -200, -300, -400, and -500 series airplanes in Docket No. 98–NM–50–AD, which led to the FAA issuing AD 99–03–04 on January 26, 1999. The FAA action required in those two airworthiness directives is intended to preclude high levels of electrical energy from entering the airplane fuel tank wiring due to electromagnetic interference or electrical shorts. All later model Boeing 747 and 737 FQIS's have wire separation and fault isolation features that may meet the intent of these AD actions. This proposed rulemaking will require evaluation of these later designs.

Other examples of unanticipated failure conditions include incidents of parts from fuel pump assemblies impacting or contacting the rotating fuel pump impeller. The first design anomaly was identified when two incidents of damage to fuel pumps were reported on Boeing 767 airplanes. In both cases objects from a fuel pump inlet diffuser assembly were ingested into the fuel pump, causing damage to the pump impeller and pump housing. The damage could have caused sparks or hot debris from the pump to enter the fuel tank. To address this unsafe condition, the FAA issued AD 97–19–15. This AD requires revision of the airplane flight manual to include procedures to switch off the fuel pumps when the center tank approaches empty. The intent of this interim action is to maintain liquid fuel over the pump inlet so that any debris generated by a failed fuel pump will not come in contact with fuel vapors and cause a fuel tank explosion.

The second design anomaly was reported on Boeing 747–400 series airplanes. The reports indicated that inlet adapters of the override/jettison pumps of the center wing fuel tank were found to be worn. Two of the inlet adapters had worn down enough to cause damage to the rotating blades of the inducer. The inlet check valves also had significant damage. Another operator reported damage to the inlet adapter that was so severe that contact had occurred between the steel disk of the inlet check valve and the steel screw that holds the inducer in place. Wear to the inlet adapters has been attributed to contact between the inlet check valve and the adapter. Such excessive wear of the inlet adapter can lead to contact between the inlet check valve and inducer, which could result in pieces of the check valve being ingested into the inducer and damaging the inducer and impellers. Contact between the steel disk of the inlet check valve and the steel rotating inducer screw can cause sparks. To address this unsafe condition, the FAA issued an immediately adopted rule, AD 98–16–19, on July 30, 1998.

Another design anomaly was reported in 1989 when a fuel tank ignition event occurred in an auxiliary fuel tank during refueling of a Beech 400 airplane. The auxiliary fuel tank had been installed under an STC. Polyurethane foam had been installed in portions of the tank to minimize the potential of a fuel tank explosion if uncontained engine debris penetrated those portions of the tank. The accident investigation indicated that electrostatic charging of the foam during refueling resulted in ignition of fuel-air vapors in portions of the adjacent fuel tank system that did not contain the foam. The fuel vapor explosion caused distortion of the tank and fuel leakage from a failed fuel line. Modifications to the design, including use of more conductive polyurethane foam and installation of a standpipe in the refueling system, were incorporated to prevent reoccurrence of electrostatic charging and resulting fuel tank ignition source.

Review of Fuel Tank System Maintenance Practices

In addition to the review of the design features and service history of the Boeing 747 and other airplane models in the transport airplane fleet, the FAA has also reviewed the current fuel tank system maintenance practices for these airplanes.

Typical transport category airplane fuel tank systems are designed with redundancy and fault indication features such that single component failures do not result in any significant reduction in safety. Therefore, fuel tank systems historically have not had any life-limited components or specific detailed inspection requirements, unless mandated by airworthiness directives. Most of the components are "on condition," meaning that some test, check, or other inspection is performed to determine continued serviceability, and maintenance is performed only if the inspection identifies a condition requiring correction. Visual inspection of fuel tank system components is by far the predominant method of inspection for components such as boost pumps, fuel lines, couplings, wiring, etc. Typically these inspections are conducted concurrently with zonal inspections or internal or external fuel tank structural inspections. These inspections normally do not provide information regarding the continued serviceability of components within the fuel tank system, unless the visual inspection indicates a potential problem area. For example, it would be difficult, if not impossible, to detect certain degraded fuel tank system conditions, such as worn wiring routed through conduit to fuel pumps, debris inside fuel pumps, corrosion to bonding wire interfaces, etc., without dedicated intrusive inspections that are much more extensive than those normally conducted.

Listing of Deficiencies

The list provided below summarizes fuel tank system design features, malfunctions, failures, and maintenance related actions that have been identified through service experience to result in a degradation of the safety features of airplane fuel tank systems. This list was developed from service difficulty reports and incident and accident reports. These anomalies occurred on in-service transport category airplanes contrary to the intent of regulations and policies intended to preclude the development of ignition sources within airplane fuel tank systems.

1. *Pumps:*

- Ingestion of the pump inducer into the pump impeller and generation of debris into the fuel tank.
- Pump inlet case degradation, allowing the pump inlet check valve to contact the impeller.
- Stator winding failures during operation of the fuel pump. Subsequent failure of a second phase of the pump resulting in arcing through the fuel pump housing.
- Deactivation of thermal protective features incorporated into the windings of pumps due to inappropriate wrapping of the windings.
- Omission of cooling port tubes between the pump assembly and the pump motor assembly during fuel pump overhaul.
- Extended dry running of fuel pumps in empty fuel tanks, which was contrary to the manufacturer's recommended procedures.
- Use of steel impellers that may produce sparks if debris enters the pump.
- Debris lodged inside pumps.
- Arcing due to the exposure of electrical connections within the pump housing that have been designed with inadequate clearance to the pump cover.
- Thermal switches resetting over time to a higher trip temperature.
- Flame arrestors falling out of their respective mounting.
- Internal wires coming in contact with the pump rotating group, energizing the rotor and arcing at the impeller/adapter interface.
- Poor bonding across component interfaces.
- Insufficient ground fault current protection capability.
- Poor bonding of components to structure.

2. *Wiring to pumps in conduits located inside fuel tanks:*

- Wear of Teflon sleeving and wiring insulation allowing arcing from wire through metallic conduits into fuel tanks.

3. *Fuel pump connectors:*

- Electrical arcing at connections within electrical connectors due to bent pins or corrosion.
- Fuel leakage and subsequent fuel fire outside of the fuel tank caused by corrosion of electrical connectors inside the pump motor which lead to electrical arcing through the connector housing (connector was located outside the fuel tank).
- Selection of improper materials in connector design.

4. *FQIS wiring:*

- Degradation of wire insulation (cracking), corrosion and copper-sulfur deposits at electrical connectors.
- Unshielded FQIS wires routed in wire bundles with high voltage wires.

5. FQIS probes:

- Corrosion and copper-sulfur deposits causing reduced breakdown voltage in FQIS wiring.
- Terminal block wiring clamp (strain relief) features at electrical connections on fuel probes causing damage to wiring insulation.
- Contamination in the fuel tanks causing reduced arc path between FQIS probe walls (steel wool, lock wire, nuts, rivets, bolts; mechanical impact damage to probes).

6. Bonding straps:

- Corrosion to bonding straps.
- Loose or improperly grounded attachment points.
- Static bonds on fuel tank system plumbing connections inside the fuel tank worn due to mechanical wear of the plumbing from wing movement and corrosion.

7. Electrostatic charge:

- Use of non-conductive reticulated polyurethane foam that holds electrostatic charge buildup.
- Spraying of fuel into fuel tanks through inappropriately designed refueling nozzles or pump cooling flow return methods.

Fuel Tank Flammability

In addition to the review of potential fuel tank ignition, the FAA has undertaken a parallel effort to address the threat of fuel tank explosions by eliminating or significantly reducing the presence of explosive fuel air mixtures within the fuel tanks of new type designs, in-production, and the existing fleet of transport airplanes. On April 3, 1997, the FAA published a notice in the **Federal Register** (62 FR 16014) that requested comments concerning the 1997 NTSB recommendations regarding reduced flammability listed earlier in this notice. That notice provided significant discussion of service history, background, and issues relating to reducing flammability in transport airplane fuel tanks. Comments received from that notice indicated that additional information was needed before the FAA could initiate rulemaking action to address the recommendations.

On January 23, 1998, the FAA published a notice in the **Federal Register** that established an Aviation Rulemaking Advisory Committee (ARAC) working group, the Fuel Tank Harmonization Working Group (FTHWG), tasked to achieve this goal. The ARAC consists of interested parties, including the public, and provides a public process for advice to be given to the FAA concerning development of new regulations. The FTHWG evaluated numerous possible means of reducing or eliminating hazards associated with explosive vapors in fuel tanks. On July 23, 1998, the ARAC submitted its report to the FAA. The full report has been placed in a docket that was created for this ARAC working group (Docket No. FAA–1998–4183). That docket can be reviewed on the U.S. Department of Transportation electronic Document Management System on the Internet at http://dms.dot.gov. The full report has also been placed in the docket for this rulemaking.

The report provided a recommendation for the FAA to initiate rulemaking action to amend § 25.981, applicable to new type design airplanes, to include a requirement to limit the time transport airplane fuel tanks could operate with flammable vapors in the vapor space of the tank. The recommended regulatory text proposed, "Limiting the development of flammable conditions in the fuel tanks, based on the intended fuel types, to less than 7 percent of the expected fleet operational time, or providing means to mitigate the effects of an ignition of fuel vapors within the fuel tanks such that any damage caused by an ignition will not prevent continued safe flight and landing." The report discussed various options of showing compliance with this proposal, including managing heat input to the fuel tanks, installation of inerting systems or polyurethane fire suppressing foam, and suppressing an explosion if one occurred, etc.

The level of flammability defined in the proposal was established based upon comparison of the safety record of center wing fuel tanks that, in certain airplanes, are heated by equipment located under the tank, and unheated fuel tanks located in the wing. The FTHWG concluded that the safety record of fuel tanks located in the wings was adequate and that if the same level could be achieved in center wing fuel tanks, the overall safety objective would be achieved. Results from thermal analyses documented in the report indicate that center wing fuel tanks that are heated by air conditioning equipment located beneath them are flammable, on a fleet average basis, for up to 30 percent of the fleet operating time.

During the ARAC process it was also determined that certain airplane types do not locate heat sources adjacent to the fuel tanks. These airplanes provide significantly reduced flammability exposure, near the 5 percent value of the wing tanks. The group therefore determined that it would be feasible to design new airplanes such that fuel tank operation in the flammable range would be limited to near that of the wing fuel tanks. The primary method of compliance with the requirement proposed by the ARAC would likely be to control heat transfer into and out of fuel tanks such that heating of the fuel would not occur. Design features such as locating the air conditioning equipment away from the fuel tanks, providing ventilation of the air conditioning bay to limit heating and cool fuel tanks, and/or insulating the tanks from heat sources, would be practical means of complying with the regulation proposed by the ARAC.

In addition to its recommendation to revise § 25.981, the ARAC also recommended that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks to determine whether other alternatives, such as ground based inerting of fuel tanks, could be shown to be cost effective.

Discussion of the Proposal

The FAA review of the service history, design features, and maintenance instructions of the transport airplane fleet indicates that aging of fuel tank system components and unforeseen fuel tank system failures and malfunctions have become a safety issue for the fleet of turbine-powered transport category airplanes. The FAA proposes to amend the current regulations in four areas.

The first area of concern encompasses the possibility of the development of ignition sources within the existing transport airplane fleet. Many of the design practices used on airplanes in the existing fleet are similar. Therefore anomalies that have developed on specific airplane models within the fleet could develop on other airplane models. As a result, the FAA considers that a one-time design review of the fuel tank system for transport airplane models in the current fleet is needed.

The second area of concern encompasses the need to require the design of future transport category airplanes to more completely address potential failures in the fuel tank system that could result in an ignition source in the fuel tank system.

Third, certain airplane types are designed with heat sources adjacent to the fuel tank, which results in heating of the fuel and a significant increase in the formation of flammable vapors in the tank. The FAA considers that fuel tank safety can be enhanced by reducing the time fuel tanks operate with flammable vapors in the tank and is therefore proposing a requirement to provide means to minimize the development of flammable vapors in fuel tanks or provide means to prevent catastrophic damage if ignition does occur.

Fourth, the FAA considers that it is necessary to impose operational requirements so that any required maintenance or inspection actions will be included in each operator's FAA-approved program.

Proposed SFAR

Historically, the FAA has worked together with the TC holders when safety issues arise to identify solutions and actions that need to be taken. Some of the safety issues that have been addressed by this voluntary cooperative process include those involving aging aircraft structure, thrust reversers, cargo doors, and wing icing protection. While some manufacturers have aggressively completed these safety reviews, others have not applied the resources necessary to complete these reviews in a timely manner, which delayed the adoption of corrective action. Although these efforts have frequently been successful in achieving the desired safety objectives, a more uniform and expeditious response is considered necessary to address fuel tank safety issues.

While maintaining the benefits of FAA–TC holder cooperation, the FAA considers that a Special Federal Aviation Regulation (SFAR) provides a means for the FAA to establish clear expectations and standards, as well as a timeframe within which the design approval holders and the public can be confident that fuel tank safety issues on the affected airplanes will be uniformly examined.

This proposed rulemaking is intended to ensure that the design approval holder completes a comprehensive assessment of the fuel tank system and develops any required inspections, maintenance instructions, or modifications.

Safety Review

The proposed SFAR would require the design approval holder to perform a safety review of the fuel tank system to show that fuel tank fires or explosions will not occur on airplanes of the approved design. In conducting the review, the design approval holder would be required to demonstrate compliance with the standards proposed in this notice for § 25.981(a) and (b) (discussed below) and the existing standards of § 25.901. As part of this review, the design approval holder would be required to submit a report to the cognizant FAA Aircraft Certification Office (ACO) that substantiates that the fuel tank system is fail-safe.

The FAA intends that those failure conditions listed previously in this notice, and any other foreseeable failures, should be assumed when performing the system safety analysis needed to substantiate that the fuel tank system design is fail-safe. The system safety analysis should be prepared considering all airplane inflight, ground, service, and maintenance conditions, assuming that an explosive fuel air mixture is present in the fuel tanks at all times, unless the fuel tank has been purged of fuel vapor for maintenance. The design approval holder would be expected to develop a failure modes and effects analysis (FMEA) for all components in the fuel tank system. Analysis of the FMEA would then be used to determine whether single failures, alone or in combination with foreseeable latent failures, could cause an ignition source to exist in a fuel tank. A subsequent quantitative fault tree analysis should then be developed to determine whether combinations of failures expected to occur in the life of the affected fleet could cause an ignition source to exist in a fuel tank system.

Because fuel tank systems typically have few components within the fuel tank, the number of possible sources of ignition is limited. The system safety analysis required by this proposed rule would include all components or systems that could introduce a source of fuel tank ignition. This may require analysis of not only the fuel tank system components, (e.g., pumps, fuel pump power supplies, fuel valves, fuel quantity indication system probes, wiring, compensators, densitometers, fuel level sensors, etc.), but also other airplane systems that may affect the fuel tank system. For example, failures in airplane wiring or electromagnetic interference from other airplane systems could cause an ignition source in the airplane fuel tank system under certain conditions and therefore would have to be included in the system safety analysis. A proposed revision to AC 25.981–1A, discussed later in this document, is being developed to provide guidance on performing the safety review.

The intent of the design review proposed in this notice is to assure that each fuel tank system design that is affected by this action will be fully assessed and that the design approval holder identifies any required modifications, added flight deck or maintenance indications, and/or maintenance actions necessary to meet the fail-safe criteria.

Maintenance Instructions

The FAA anticipates that the safety review would identify critical areas of the fuel tank and other related systems that would require maintenance actions to account for the affects of aging, wear, corrosion, and possible contamination on the fuel tank system. For example, service history indicates that copper-sulfur deposits may form on fuel tank components, including bonding straps and FQIS components, which could degrade the intended design capabilities by providing a mechanism by which arcing could occur. Therefore, it might be necessary to provide maintenance instructions to identify and eliminate such deposits.

The proposed SFAR would require that the design approval holder develop any specific maintenance and inspection instructions necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tank system. These instructions would have to be established to ensure that an ignition source will not develop throughout the remaining operational life of the airplane.

Possible Airworthiness Directives

The design review may also result in identification of unsafe conditions on certain airplane models that would require issuance of airworthiness directives. For example, as discussed previously in this notice, the FAA has required or proposed requirements for design changes to the Boeing 737, 747, and 767; Boeing Douglas Products Division DC–10 and Lockheed L–1011 airplanes. Design practices utilized on these models may be similar to those of other airplane types; therefore, the FAA expects that modifications to airplanes with similar design features may also be required.

The number and scope of any possible AD's may vary by airplane type design. For example, wiring separation and shielding of FQIS wires on newer technology airplanes significantly reduces the likelihood of an electrical short causing an electrical arc in the fuel tank; many newer transport airplanes do not route electrical power wiring to fuel pumps inside the airplane fuel tanks. Therefore, some airplane models may not require significant modifications or additional dedicated maintenance procedures. Other models may require significant modifications or more maintenance. For example, the FQIS wiring on some older technology airplanes is routed in wire bundles with high voltage power supply wires. The original failure analyses conducted on these airplane types did not consider the possibility that the fuel quantity indication system may become degraded allowing a significantly lower voltage level to produce a spark inside the fuel tank. Causes of degradation observed in service include aging, corrosion, or undetected contamination of the system. As previously discussed, the FAA has issued AD actions for certain Boeing 737 and 747 airplanes to address this condition. Modification of similar types of installations on other airplane models may be required to address this unsafe condition and to achieve a fail-safe design.

It should be noted that any design changes may, in themselves, require maintenance actions. For example, transient protection devices typically require scheduled maintenance in order to detect latent failure of the suppression feature. As a part of the required design review, the manufacturer would define the necessary maintenance procedures and intervals for any required maintenance actions.

Applicability of the Proposed SFAR

As proposed, the SFAR would apply to holders of TCs, and STCs for modifications that affect the fuel tank systems of turbine-powered transport category airplanes, for which the TC was issued after January 1, 1958, and the airplane has a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more. The SFAR would also apply to applicants for type certificates, amendments to a type certificate, and supplemental type certificates affecting the fuel tank systems for those airplanes identified above if the application was filed before the effective date of the proposed SFAR and the certificate was not issued before the effective date of the SFAR. The FAA has determined that turbine-powered airplanes, regardless of whether they are turboprops or turbojets, should be subject to the rule, because the potential for ignition sources in fuel tank systems is unrelated to the engine design. This would result in the coverage of the large transport category airplanes where the safety benefits and public interest are greatest. This action would affect approximately 6,000 U.S. registered airplanes in part 91, 121, 125, and 129 operations.

The date January 1, 1958, was chosen so that only turbine-powered airplanes, except for a few 1953–1958 vintage Convair 340s and 440s converted from reciprocating power, would be included. No reciprocating-powered transport category airplanes are known to be used currently in passenger service, and the few remaining in cargo service would be excluded. Compliance is not proposed for those older airplanes because their advanced age and small numbers would likely make compliance impractical from an economic standpoint. This is consistent with similar exclusions made for those airplanes from other requirements applicable to existing airplanes, such as the regulations adopted for flammability of seat cushions (49 FR 43188, October 24, 1984); flammability of cabin interior components (51 FR 26206, July 21, 1986); cargo compartment liners (54 FR 7384, February 17, 1989); access to passenger emergency exits (57 FR 19244, May 4, 1992); and Class D cargo or baggage compartments (63 FR 8032, February 17, 1998).

In order to achieve the benefits of this rulemaking for large transport airplanes as quickly as possible, the FAA has decided to proceed with this rulemaking with the applicability of the SFAR limited to airplanes with a maximum certificated passenger capacity of at least 30 or at least 7,500 pounds payload. Compliance is not proposed for smaller airplanes because it is not clear at this time that the possible benefits for those airplanes would be commensurate with the costs involved. However, the FAA intends to undertake a full regulatory evaluation of applying these requirements to small transport category and commuter category airplanes to determine the merits of subsequently extending the rule to airplanes with a passenger capacity of fewer than 30 and less than 7,500 pounds payload. Therefore, the FAA specifically requests comments as to the feasibility of requiring holders of type certificates issued prior to January 1, 1958, or for airplanes having a passenger capacity of fewer than 30 and less than 7,500 pounds payload, to comply and the safety benefits likely to be realized.

Supplemental Type Certificates (STC)

The FAA considers that this rule should apply to STC holders as well, because a significant number of STCs effect changes to fuel tank systems, and the objectives of this proposed rule would not be achieved unless these systems are also reviewed and their safety ensured. The service experience noted in the background of this proposed rule indicates modifications to airplane fuel tank systems incorporated by STCs may affect the safety of the fuel tank system.

Modifications that could affect the fuel tank system include those that could result in an ignition source in the fuel tank. Examples include installation of auxiliary fuel tanks and installation of, or modification to, other systems such as the fuel quantity indication system, the fuel pump system (including electrical power supply), airplane refueling system, any electrical wiring routed within or adjacent to the fuel tank, and fuel level sensors or float switches. Modifications to systems or components located outside the fuel tank system may also affect fuel tank safety. For example, installation of electrical wiring for other systems that was inappropriately routed with FQIS wiring could violate the wiring separation requirements of the type design. Therefore, the FAA intends that a fuel tank system safety review be conducted for any modification to the airplane that may affect the safety of the fuel tank system. The level of evaluation that is intended would be dependent upon the type of modification. In most cases a simple qualitative evaluation of the modification in relation to the fuel tank system, and a statement that the change has no effect on the fuel tank system, would be all that is necessary. In other cases where the initial qualitative assessment shows that the modification may affect the fuel tank system, a more detailed safety review would be required.

Design approvals for modification to airplane fuel tank systems approved by STCs require the applicant to have knowledge of the airplane fuel tank system in which the modification is installed. The majority of these approvals are held by the original airframe manufacturers or airplane modifiers that specialize in fuel tank system modifications, such as installation of auxiliary fuel tanks. Therefore, the FAA expects that the data needed to complete the safety review proposed in this notice would be available to the STC holder.

Compliance

This notice proposes a 12-month compliance time from the effective date of the final rule, or within 12 months after the issuance of a certificate for which application was filed before the effective date of this SFAR, whichever is later, for design approval holders to conduct the safety review and develop the compliance documentation and any required maintenance and inspection instructions. The FAA would expect each design approval holder to work with the cognizant FAA Aircraft Certification Office (ACO) and Aircraft Evaluation Group (AEG) to develop a plan to complete the safety review and develop the required maintenance and inspection instructions within the 12 month period. The plan should include periodic reviews with the ACO and AEG of the ongoing safety review and the associated maintenance and inspection instructions.

During the proposed 12-month compliance period, the FAA is committed to working with the affected design approval holders to assist them in complying with the requirements of this proposed SFAR. However, failure to comply within the specified time would constitute a violation of the proposed requirements and may subject the violator to certificate action to amend, suspend, or revoke the affected certificate in accordance with 49 U.S.C. § 44709. It may also subject the violator to a civil penalty of not more than $1,100 per day until the SFAR is complied with, in accordance with 49 U.S.C. § 46301.

Proposed Operating Requirements

This proposed rule would require that affected operators incorporate FAA-approved fuel tank system maintenance and inspection instructions in their maintenance or inspection program within 18 months of the effective date of the proposed rule. If the design approval holder has complied with the SFAR and developed an FAA-approved program, the operator could incorporate that program to meet the proposed requirement. The operator would also have the option of developing its own program independently, and would be ultimately responsible for having an FAA-approved program, regardless of the action taken by the design approval holder.

The proposed rule would prohibit the operation of certain transport category airplanes operated under parts 91, 121, 125, and 129 beyond a specified compliance time, unless the operator of those airplanes has incorporated FAA-approved fuel tank maintenance and inspection instructions in its maintenance or inspection program, as applicable. The proposed regulation would require that the maintenance and inspection instructions be approved by the Administrator; for the purposes of this rule, the Administrator is considered to be the manager of the cognizant FAA ACO.

The operator would need to consider the following:

1. The fuel tank system maintenance and inspection instructions that would be incorporated into the operator's existing maintenance or inspection program would need to be approved by the FAA ACO having cognizance over the TC of the airplane. If the operator can establish that the existing maintenance and inspection instructions fulfill the requirements of this proposed rule, then the ACO may approve the operator's existing maintenance and inspection instructions without change.

2. The means by which the FAA-approved fuel tank system maintenance and inspection instructions would be incorporated into a certificate holder's FAA-approved maintenance or inspection program would be subject to approval by the certificate holder's principal maintenance inspector (PMI) or other cognizant airworthiness inspector. The FAA intends that any escalation to the FAA-approved inspection intervals would require the operator to receive FAA approval of the amended program. Any request for escalation to the FAA approved inspection intervals would need to include data to substantiate that the proposed interval will provide the level of safety intended by the original approval. If inspection results and service experience indicate that additional or more frequent inspections are necessary, the FAA may issue AD's to mandate such changes to the inspection program.

3. This rule would not impose any new reporting requirements; however, normal reporting required under 14 CFR §§ 121.703 and 125.409 would still apply.

4. This rule would not impose any new FAA recordkeeping requirements. However, as with all maintenance, the current operating regulations (e.g., 14 CFR §§ 121.380 and 91.417) already impose recordkeeping requirements that would apply to the actions required by this proposed rule. When incorporating the fuel tank system maintenance and inspection instructions into its

approved maintenance or inspection program, each operator should address the means by which it will comply with these recordkeeping requirements. That means of compliance, along with the remainder of the program, would be subject to approval by the cognizant PMI or other cognizant airworthiness inspector.

5. The maintenance and inspection instructions developed by the TC holder under the proposed rule generally would not apply to fuel tank systems modified by an STC, including any auxiliary fuel tank installations or other modifications. The operator, however, would still be responsible to incorporate specific maintenance and inspection instructions applicable to the entire fuel tank system that meet the requirements of this proposed rulemaking. This means that the operator should evaluate the fuel tank systems and any alterations to the fuel tank system and then develop, submit, and gain FAA approval of the maintenance and inspection instructions to evaluate repairs to such fuel tank systems.

The FAA recognizes that operators may not have the resources to develop maintenance or inspection instructions for the airplane fuel tank system. The proposed rule would therefore require the TC and STC holders to develop fuel tank system maintenance and inspection instructions that may be used by operators. If however, the STC holder is out of business or otherwise unavailable, the operator would independently have to acquire the FAA-approved inspection instructions. To keep the airplanes in service, operators, either individually or as a group, could hire the necessary expertise to develop and gain approval of maintenance and inspection instructions. Guidance on how to comply with this aspect of the proposed rule would be provided in the planned revision to AC 25.981–1A.

After the PMI having oversight responsibilities is satisfied that the operator's continued airworthiness maintenance or inspection program contains all of the elements of the FAA-approved fuel tank system maintenance and inspection instructions, the airworthiness inspector would approve the maintenance or inspection program revision. This approval would have the effect of requiring compliance with the maintenance and inspection instructions.

Applicability of the Proposed Operating Requirements

This proposed rule would prohibit the operation of certain transport category airplanes operated under 14 CFR parts 91, 121, 125, and 129 beyond a specified compliance time, unless the operator of those airplanes has incorporated FAA-approved specific maintenance and inspection instructions applicable to the fuel tank system in its approved maintenance or inspection program, as applicable. The operational applicability was established so that all airplane types affected by the SFAR, regardless of type of operation, would be subject to FAA approved fuel tank system maintenance and inspection procedures. As discussed earlier, this proposed rulemaking would include each turbine-powered transport category airplane model, provided its TC was issued after January 1, 1958, and it has a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more.

Field Approvals

A significant number of changes to other transport category airplane fuel tank systems have been incorporated through field approvals issued to the operators of those airplanes. These changes may also significantly affect the safety of the fuel tank system. The operator of any airplane with such changes would be required to develop the fuel tank system maintenance and inspection program instructions and submit it to the FAA for approval, together with the necessary substantiation of compliance with the design review requirements of the SFAR.

Compliance

This notice proposes an 18 month compliance time from the effective date of the final rule for operators to incorporate FAA-approved long term fuel tank system maintenance and inspection instructions into their approved program. The FAA would expect each operator to work with the airplane TC holder or STC holder to develop a plan to implement the required maintenance and inspection instructions within the 18 month period. The plan should include periodic reviews with the cognizant ACO and AEG that would approve the associated maintenance and inspection instructions.

Proposed Changes to Part 25

Currently, § 25.981 defines limits on surface temperatures within transport airplane fuel tank systems. In order to address future airplane designs, the FAA proposes to revise § 25.981 to address both prevention of ignition sources in fuel tanks and reduction in the time fuel tanks contain flammable vapors. The first proposal would explicitly include a requirement for effectively precluding ignition sources within the fuel tank systems of transport category airplanes. The second proposal would require minimizing the formation of flammable vapors in the fuel tanks.

Fuel Tank Ignition Source Proposal

The title of § 25.981 would be changed from "Fuel tank temperature" to "Fuel tank ignition prevention." The FAA proposes to retain the substance of existing paragraph (a), which requires the applicant to determine the highest temperature that allows a safe margin below the lowest expected auto ignition temperature of the fuel; and the existing paragraph (b), which requires precluding the temperature in the fuel tank from exceeding the temperature determined under paragraph (a). These requirements are redesignated as (a)(1) and (2) respectively.

Compliance with these paragraphs requires the determination of the fuel flammability characteristics of the fuels approved for use. Fuels approved for use on transport category airplanes have differing flammability characteristics. The fuel with the lowest autoignition temperature is JET A (kerosene), which has an autoignition temperature of approximately 450 °F at sea level. The autoignition temperature of JP–4 is approximately 470 °F at sea level. Under the same atmospheric conditions the autoignition temperature of gasoline is approximately 800 °F. The autoignition temperature of these fuels increases at increasing altitudes (lower pressures). For the purposes of this rule the lowest temperature at which autoignition can occur for the most critical fuel approved for use should be determined. The FAA intends that a temperature providing a safe margin is at least 50 °F below the lowest expected autoignition temperature of the fuel throughout the altitude and temperature envelopes approved for the airplane type for which approval is requested.

This proposal would also add a new paragraph (a)(3) to require that a safety analysis be performed to demonstrate that the presence of an ignition source in the fuel tank system could not result from any single failure, from any single failure in combination with any latent failure condition not shown to be extremely remote, or from any combination of failures not shown to be extremely improbable.

These new requirements define three scenarios that must be addressed in order to show compliance with the proposed paragraph (a)(3). The first scenario is that any single failure, regardless of the probability of occurrence of the failure, must not cause an ignition source. The second scenario is that any single failure, regardless of the probability occurrence, in combination with any latent failure condition not shown to be at least extremely remote (i.e., not shown to be extremely remote or extremely improbable), must not cause an ignition source. The third scenario is that any combination of failures not shown to be extremely improbable must not cause an ignition source.

For the purpose of this proposed rule, "extremely remote" failure conditions are those not anticipated to occur to each airplane during its total life, but which may occur a few times when considering the total operational life of all airplanes of the type. This definition is consistent with that proposed by the Aviation Rulemaking Advisory Committee (ARAC) for a revision to FAA AC 25.1309–1A and that currently used by the Joint Aviation Authorities (JAA) in AMJ 25.1309. "Extremely improbable" failure conditions are those so unlikely that they are not anticipated to occur during the entire operational life of all airplanes of one type. This definition is consistent with the definition provided in FAA AC 25.1309–1A and retained in the draft revision to AC 25.1309–1A proposed by the ARAC.

The severity of the external environmental conditions that should be considered when demonstrating compliance with this proposed rule are those established by certification regulations and special conditions (e.g., HIRF), regardless of the associated probability. The proposed regulation would also require that the effects of manufacturing variability, aging, wear, and likely damage be taken into account when demonstrating compliance.

The proposed requirements are consistent with the general powerplant installation failure analysis requirements of § 25.901(c) and the systems failure analysis requirements of § 25.1309 as they have been applied to powerplant installations. This proposal is needed because the general requirements of §§ 25.901 and 25.1309 have not been consistently applied and documented when showing that ignition sources are precluded from transport category airplane fuel tanks. Compliance with the proposed revision to § 25.981 would require analysis of the airplane fuel tank system using analytical methods and documentation currently used by the aviation industry in demonstrating compliance with §§ 25.901 and 25.1309. In order to eliminate any ambiguity as to the necessary methods of compliance, the proposed rule explicitly requires that the existence of latent failures be assumed unless they are extremely remote, which is currently required under § 25.901, but not under § 25.1309. The analysis should be conducted assuming design deficiencies listed in the background section of this notice, and any other failure modes identified within the fuel tank system functional hazard assessment.

Based upon the evaluations required by paragraph (a), a new requirement would be added to paragraph (b) to require that critical design configuration control limitations, inspections, or other procedures be established as necessary to prevent development of ignition sources within the fuel tank system, and that they be included in the Airworthiness Limitations section of the ICA required by § 25.1529. This requirement would be similar to that contained in § 25.571 for airplane structure. Appendix H to part 25 would also be revised to add a requirement to provide any mandatory fuel tank system inspections or maintenance actions in the limitations section of the ICA.

Critical design configuration control limitations include any information necessary to maintain those design features that have been defined in the original type design as needed to preclude development of ignition sources. This information is essential to ensure that maintenance, repairs or alterations do not unintentionally violate the integrity of the original fuel tank system type design. An example of a critical design configuration control limitation for current designs discussed previously would be maintaining wire separation between FQIS wiring and other high power electrical circuits. The original design approval holder must define a method of ensuring that this essential information will be evident to those that may perform and approve such repairs and alterations. Placards, decals or other visible means must be placed in areas of the airplane where these actions may degrade the integrity of the design configuration. In addition, this information should be communicated by statements in appropriate manuals, such as Wiring Diagram Manuals.

Flammability Proposal

The FAA agrees with the intent of the recommended regulatory text recommended by the ARAC. However, due to the short timeframe that the ARAC was provided to complete the tasking, sufficient detailed economic evaluation was not completed to determine if practical means, such as ground based inerting, were available to reduce the exposure below the specific value of 7 percent of the operational time included in the ARAC proposal. In addition the 7 percent level of flammability proposed by the FTHWG does not minimize flammability on certain applications, while in other applications, such as very short haul operations, it may not be practical to achieve. Therefore, the FAA is proposing a more objective regulation that is intended to minimize exposure to operation with flammable conditions in the fuel tanks.

As discussed previously, the ARAC has submitted a recommendation to the FAA that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks. Development of a definitive standard to address this recommendation will require a significant research effort that will likely take some time to complete. In the meantime, however, the FAA is aware that historically certain design methods have been found acceptable that, when compared to readily available alternative methods, increase the likelihood that flammable vapors will develop in the fuel tanks. For example, in some designs, including the Boeing 747, air conditioning packs have been located immediately below a fuel tank without provisions to reduce transfer of heat from the packs to the tank.

Therefore, in order to preclude the future use of such design practices, this proposal would revise § 25.981 to add a requirement that fuel tank installations be designed to minimize the development of flammable vapors in the fuel tanks. Alternatively, if an applicant concludes that such minimization is not advantageous, it may propose means to mitigate the effects of an ignition of fuel vapors in the fuel tanks. For example, such means might include installation of fire suppressing polyurethane foam or installation of an explosion suppression system.

This proposal is not intended to prevent the development of flammable vapors in fuel tanks because total prevention has currently not been found to be feasible. Rather, it is intended as an interim measure to preclude, in new designs, the use of design methods that result in a relatively high likelihood that flammable vapors will develop in fuel tanks when other practicable design methods are available that can reduce the likelihood of such development. For example, the proposal would not prohibit installation of fuel tanks in the cargo compartment, placing heat exchangers in fuel tanks, or locating a fuel tank in the center wing. The proposal would, however, require that practical means, such as transferring heat from the fuel tank (e.g., use of ventilation or cooling air), be incorporated into the airplane design if heat sources were placed in or near the fuel tanks that significantly increased the formation of flammable fuel vapors in the tank, or if the tank is located in an area of the airplane where little or no cooling occurs. The intent of the proposal is to require that fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated. This may require incorporating design features to increase or provide ventilation means for fuel tanks located in the center wing box, horizontal stabilizer, or auxiliary fuel tanks located in the cargo compartment. At such time as the FAA has completed the necessary research and identified an appropriate definitive standard to address this issue, new rulemaking would be considered to revise the standard proposed in this rulemaking.

Applicability of Proposed Part 25 Change

The proposed amendments to part 25 would apply to all transport category airplane models for which an application for type certification is made after the effective date of the rule, regardless of passenger capacity or size. In addition, as currently required by the provisions of § 21.50, applicants for any future changes to existing part 25 type certificated airplanes, including STCs, that could introduce an ignition source in the fuel tank system would be required to provide any necessary Instructions for Continued Airworthiness, as required by § 25.1529 and the proposed change to the Airworthiness Limitations section, paragraph H25.4 of Appendix H. In cases where it is determined that the existing ICA are adequate for the continued airworthiness of the altered product, then it should be noted on the STC, PMA supplement, or major alteration approval.

FAA Advisory Material

In addition to the amendments proposed in this notice, the FAA is developing a proposed revision to AC 25.981–1A, "Guidelines for Substantiating Compliance With the Fuel Tank Temperature Requirements." The proposed revision will include consideration of failure conditions that could result in sources of ignition of vapors within fuel tanks. The revised AC will provide guidance on how to substantiate that ignition sources will not be present in airplane fuel tank systems following failures or malfunctions of airplane components or systems. This AC will also include guidance for developing any limitations for the ICA that may be generated by the fuel tank system safety assessment. Public comments concerning the proposed AC will be requested by separate notice published in the **Federal Register**.

Future Regulatory Actions

The ARAC report discussed earlier does not recommend specific actions to eliminate or significantly reduce the flammability of fuel tanks in current production and the existing fleet of transport airplanes. The report, however, recommends that the FAA continue to investigate means to achieve a cost-effective reduction in flammability exposure for these airplanes. The FAA has reviewed the report and established research programs to support the further evaluation needed to establish the practicality of methods for achieving reduced flammability exposure for newly manufactured and the existing fleet of transport airplanes. The FAA intends to initiate rulemaking to address these airplanes if practical means are established.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). In conducting these analyses, the FAA has determined that this proposed rulemaking: (1) would generate benefits that justify its costs as required by Executive Order 12866 and would be a "significant regulatory action" as defined in DOT's Regulatory Policies and Procedures; (2) would have a significant economic impact on a substantial number of small entities; (3) would have minimal effects on international trade; and (4) would not contain a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized as follows.

Affected Industries

Based on 1996 data, the proposal would affect 6,006 airplanes, of which 5,700 airplanes are operated by 114 air carriers under part 121 service, 193 airplanes are operated by 7 carriers that operate under both part 121 and part 135, 22 airplanes are operated by 10 carriers under part 125 service, and 91 airplanes are operated by 23 carriers operating U.S.-registered airplanes under part 129. At this time, the FAA does not have information on airplanes operating under part 91 that would be affected by the proposed rulemaking; however, the FAA believes that very few airplanes operating under part 91 would be affected by the proposal.

The proposed rule would also affect 12 manufacturers holding 35 type certificates (TCs) and 26 manufacturers and airlines holding 168 supplemental type certificates (STCs). The proposed rule would also affect manufacturers of future, new part 25 type certificated airplane models and holders of future, new part 25 supplemental type certificates for new fuel tank systems. At this time, the FAA cannot predict the number of new airplane models. Based on the past 10 years average, the FAA anticipates that about 17 new fuel tank system STCs would be granted annually. The FAA requests comments on these estimates and requests that commenters provide clear supporting additional information.

Benefits

In order to quantify the benefits from preventing future fuel tank explosions, the FAA assumes that the potential U.S. fuel tank explosion rate due to an unknown internal fuel tank ignition source is similar to the worldwide fleet explosion rate over the past 10 years. On that basis, the FAA estimates that if no preventative actions were to be taken, between one and two (the expected value would be 1.25) fuel tank explosions would be expected to occur during the next 10 years in U.S. operations.

By way of illustrating the potential effectiveness of an enhanced fuel tank system inspection program, on May 14, 1998, the FAA issued AD T98–11–52 requiring the inspection of fuel boost pump wires in the center wing tank of all Boeing 737's with more than 30,000 hours. Of the 599 airplanes inspected as of June 30, 1998, 273 wire bundles had noticeable chafing to wire insulation, 33 had significant (greater than 50 percent) insulation chafing, 8 had arcing on the cable but not through the conduit, while 2 had arcing through the conduit into the fuel tank.

In light of the findings from these inspections, the FAA believes that better fuel tank system inspections would be a significant factor in discovering potential fuel tank ignition sources. The FAA anticipates that compliance with the proposal would prevent between 75 percent and 90 percent of the potential future fuel tank explosions from unknown ignition sources.

Using a value of $2.7 million to prevent a fatality, a value of the destroyed airplane of $20 million, an average of $30 million for an FAA investigation of an explosion, and assuming the proposal would prevent between 75 percent and 90 percent of these potential fuel tank explosions from an unknown ignition source, the potential present value of the expected benefits discounted over 10 years at 7 percent would be between $260 million and $520 million.

In addition, the proposed part 25 change would reduce the length of time that an explosive atmosphere would exist in the fuel tank during certain operations for new part 25 type certificated airplanes and for new fuel tank system STCs. At this time, the FAA cannot quantify these potential benefits, but they are not expected to be considerable in the immediate future. The FAA expects that these benefits would increase over time as new part 25 type certificated airplanes replace the older part 25 type certificated airplanes in the fleet.

Compliance Costs

The proposal consists of three parts. The first two are separate but interrelated parts, each of which would impose costs on the industry. The first is the proposed SFAR. The second is the proposed operational rules changes from the recommendations following the SFAR. The third part is the proposed part 25 change.

The compliance costs for the proposed SFAR would be due to the requirement for the design approval holder to complete a comprehensive fuel tank system design assessment and to provide recommendations for the inspections and model-specific service instructions within one year from the SFAR's effective date. The assessment may identify conditions that would be addressed by specific service bulletins or unsafe conditions that would result in FAA issuance of an airworthiness directive (AD). However, those future costs would be the result of compliance with the service bulletin or the AD and are not costs of compliance with the proposed rulemaking. Those costs would be estimated for each individual AD, when proposed. In addition, the compliance costs do not include the compliance costs from an existing fuel tank AD.

The compliance costs for the proposed operational rule changes would be due to the requirement for the air carrier to incorporate these recommendations into its fuel tank system inspection and maintenance program within 18 months from the proposal's effective date. These compliance costs do not include the costs to repair and replace equipment and wiring that is found to need repair or replacement during the inspection. Although these costs are likely to be substantial, they are attributable to existing FAA regulations that require such repairs and replacements be made to assure the airplane's continued airworthiness.

The FAA anticipates that the proposed part 25 change would have a minimal effect on the cost of future type certificated airplanes because compliance with the proposed change would be done during the design phase of the airplane model before any new airplanes would be manufactured.

In addition, the FAA determines, after discussion with industry representatives, that the proposed part 25 changes would have a minimal impact on future fuel tank system STCs because current industry design practices could be adapted to allow compliance with the proposed requirement.

Costs of Fuel Tank System Design Assessments—New SFAR

The FAA has determined that 35 TCs and 68 fuel tank system STCs (many of the 168 STCs duplicate other STCs) would need a fuel tank system design assessment. Depending upon the complexity of the fuel tank system and the number of tanks, the FAA has estimated that a fuel tank system design assessment would take between 0.5 to 2 engineer years for a TC holder and an average of 0.25 engineer years for an STC holder. The FAA estimates that developing manual revisions and service bulletins would take between 0.25 to 1 engineer years for a TC holder and an average of 0.1 engineer years for an STC holder. In addition, the FAA and the TC or STC holder would each spend between 1 day and 5 days to review, revise, and approve the assessment and the changes to the manual.

Using a total engineer compensation rate (salary and fringe benefits plus a mark-up for hours spent by management, legal, etc. on the assessment) of $100 an hour, the FAA estimates that the one-time fuel tank system design assessment would cost TC holders a total of $9.5 million, it would cost STC holders a total of $4.9 million, and it would cost the FAA about $220,000.

The FAA requests comments on the assumptions and the methodology and also requests that commenters provide additional data.

Costs of Fuel Tank System Inspections—Operational Rule Changes

Methodology: The costs to air carriers of complying with the operational requirements proposed for Parts 91, 121, 125, and 129 would be the additional (incremental) labor hours and additional airplane out-of-service time to perform the enhanced fuel tank system maintenance and inspections. However, the costs of the fuel tank system inspections that have been required by recent ADs are not included as a cost of complying with the proposed operational amendments.

The FAA intends that any additional fuel tank system inspection and maintenance actions resulting from the SFAR review would occur during an airplane's regularly scheduled major maintenance checks. From a safety standpoint, repeated entry increases the risk of damage to the airplane. Thus, the proposal would not require air carriers to alter their maintenance schedules, and the FAA anticipates that few or no airplanes would be taken out of service solely to comply with the proposal unless an immediate safety concern is identified. In that case, corrective action would be mandated by an AD.

The FAA anticipates that the proposal would require additional time out of service and man-hours to complete a fuel tank system inspection and equipment and wiring testing.

The FAA-estimated number of additional hours (for both man-hours and time out of service) to perform each of the various inspections is derived primarily from the available service bulletins and from discussions with airline maintenance engineers. For those turbojet models that have not been the subject of a fuel tank system inspection service bulletin, the FAA adopted the estimated hours from existing service bulletins of similar types of turbojet models. Although there have been no fuel tank system inspection service bulletins for turboprops, the FAA received information concerning the estimated fuel tank system inspection time for a turboprop from commuter airline maintenance personnel. Based on this information and an FAA analysis that turboprop fuel tanks are smaller and have less equipment than turbojet fuel tanks, the FAA estimates that a turboprop fuel tank system inspection would take between one-third to one-half of the time it would take for the turbojet fuel tank system inspections defined in available bulletins.

The FAA requests comments on these estimates and that commenters provide supporting data.

Estimated Compliance Costs: The following cost and hour estimates are summaries of the Regulatory Evaluation of the proposal. The detailed estimated compliance costs, including all assumptions and the spreadsheet used for the calculations, are in that document, which is available in the docket.

The incremental cost of complying with the operational proposals would consist of the following four components: (1) the labor hours to incorporate the recommendations into the inspections manual; (2) the labor hours needed to perform the fuel tank system inspection; (3) the cost of the additional downtime required to complete the inspection; and (4) the increased documentation and reporting of the inspection and subsequent findings.

The FAA estimates that it would take an average of 5 engineer days to incorporate the recommendations into the inspections manual, for a cost of about $4,000 per airplane model per operator, with a total cost of about $1.16 million.

The FAA estimates that the increased number of labor hours per airplane resulting from the enhanced fuel tank system inspection and maintenance would range from 19 hours to 110 hours in the first three years, and would decline to 9 hours to 60 hours beginning in the fourth year. Using a total compensation rate (wages plus fringe benefits) of $70 an hour for maintenance personnel, the FAA estimates that the annual per airplane costs of compliance would range from $1,330 to $7,700 in each of the first 3 years and from $630 to $4,200 in each year thereafter.

The FAA estimates that the total annual inspection costs would be about $21.1 million during the first year, increasing by 4.3 percent per year from the projected increase in airline operations until the fourth year, when it would decline to about $10.1 million increasing by 4.3 percent each year thereafter. The present value of the total operational cost, discounted at 7 percent over 10 years, would be about $100 million.

As noted earlier, equipment costs would not be attributed to the proposal but rather to the existing FAA airworthiness requirements. For example, inspecting fuel boost pump wiring may involve its disassembly and then reinstallation. Regardless of the wiring's condition, the cost of complying with the proposal would include reinstallation time. However, if the inspection or testing revealed the need for new wiring, the new wiring cost is not attributed to the proposal.

The proposal would increase out-of-service time because only a limited number of maintenance employees can work inside of a fuel tank at any point in time, and thereby would not allow air carriers the flexibility to perform the fuel tank system inspections during regularly scheduled major maintenance checks. Thus, the time to open the tank, drain the fuel, vent the tank, and close the tank are not costs attributed to the proposal because those activities are necessary to complete a scheduled maintenance check. On that basis, the FAA estimates that this annual increase in out-of-service time would be between 11.5 hours and 32 hours per airplane for each of the first 3 years and then decline to 10 to 25 hours per airplane in each year thereafter.

The economic cost of out-of-service time is lost net revenue, which is computed using the Office of Management and Budget (OMB) determination that the average annual risk-free productive rate of return on capital is 7 percent of the average value of that airplane model. Thus, out-of-service lost net revenue per fuel tank system inspection ranges from $50 to $9,750 per airplane, depending upon the airplane model. Assuming one major inspection per year, the total annual out-of-service lost net revenue would be about $6.4 million during the first year, increasing by 4.3 percent per year until the fourth year when it would decline to about $2.95 million but increase by 4.3 percent each year thereafter. The present value of this total lost net revenue, discounted at 7 percent over 10 years, would be about $35.6 million.

The FAA estimates that the increased annual documentation and reporting time would be one hour of recordkeeping for every 8 hours of labor time in the first three years, and one hour of recordkeeping for every 10 hours of labor time in every year thereafter. Thus, the per airplane annual documentation cost would be between $150 and $850 in the first three years becoming $100 to $540 each year thereafter.

To estimate the total documentation cost, it is noted that there is a voluntary industry program to inspect certain airplane model fuel tanks and report the findings and corrective actions taken to the manufacturer. The reporting costs of compliance associated with the proposal would not include these airplanes. On that basis, the FAA estimates that the present value of the total recordkeeping cost discounted at 7 percent for 10 years would be about $17.4 million.

Costs of Future Fuel Tank System Design Changes—Revised Part 25

The FAA anticipates that these discounted costs would be minimal for new type certificated airplanes because these design costs would be incurred in the future by airplane models yet to be designed. After consultation with industry, the FAA also anticipates that these discounted costs would be minimal for future fuel tank system design supplemental type certificates because the existing systems would largely be in compliance. The FAA requests comments and supporting data on these determinations.

Total Costs of Proposed SFAR and Proposed Operational Rules Changes

Thus, the FAA estimates that the present value of the total cost of complying with the proposed SFAR and the proposed operational rules changes discounted over 10 years at 7 percent would be about $170 million.

Benefit-Cost Comparison of the Proposed Part 25 Change

Although the FAA does not have quantified costs and benefits from the proposed part 25 changes at this time, the FAA believes that the future benefits would likely be greater than the future costs. The FAA requests comments and additional data on this determination.

Benefit-Cost Comparison of the Proposed SFAR and the Proposed Operational Rules Changes

In comparing the estimated benefits and costs, the FAA determines that using the lowest expected benefit estimate, the expected present value of the benefits ($260 million) would be about 50 percent greater than the present value of the total compliance costs ($170 million). Thus, the FAA concludes that the proposed SFAR and the proposed operational rules changes would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination finds that it will, the agency must prepare a Regulatory Flexibility Analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify, and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. Recently, the Office of Advocacy of the Small Business Administration (SBA) published new guidance for Federal agencies in responding to the requirements of the Regulatory Flexibility Act, as amended.

Application of that guidance to the proposed part 25 change would only affect future airplane manufacturers; and currently all manufacturers of part 25 type certificated airplanes are considered to be large manufacturers. Although the proposed changes to part 25 would also affect future fuel tank system STCs, industry sources indicate that current industry designs would meet the proposed requirement. Thus, the FAA certifies that the proposed part 25 change would not have a significant economic impact on a substantial number of small airplane manufacturing entities.

However, application of that guidance to the proposed SFAR and to the proposed operational rule changes indicates that it would have a significant economic impact on a substantial number of small air carrier entities that have one to nineteen airplanes. Accordingly, a complete preliminary regulatory flexibility analysis was conducted for those two elements of the proposal and is summarized as follows.

1. *Reasons why the FAA is considering the proposed rule.* This proposed action is being considered in order to prevent airplane explosions and the resultant loss of life (as evidenced by TWA Flight 800). Existing fuel tank system inspection programs may not provide comprehensive, systematic prevention and control of ignition sources in airplane fuel tanks.

2. *The objectives and legal basis for the proposal.* The objective of the proposal is to ensure the continuing airworthiness of airplanes certificated with 30 or more passengers or with a payload of 7,500 pounds or more. The design approval holder [including type certificates (TC) and supplemental type certificates (STC)] would be required to perform a design fuel tank system assessment and provide recommendations and instructions concerning fuel tank system inspections and equipment and wiring testing to the operators of those airplanes, as well as to create service bulletins and provide data to the FAA to support any needed ADs. An operator working under part 91, under part 121, under part 125, and all U.S.-registered airplanes used in scheduled passenger carrying operations under part 129, would be required to incorporate these recommendations or other approved instructions into the inspection manual and to perform these inspections and tests. The legal basis for the proposal is found in 49 U.S.C. 44901 *et seq.* As a matter of policy, the FAA must, as its highest priority (49 U.S.C. 40101(d)), maintain and enhance safety and security in air commerce.

3. *All relevant federal rules that may duplicate, overlap, or conflict with the proposal.* The FAA is unaware of any federal rules that would duplicate, overlap, or conflict with the proposal.

4. *A description and an estimate of the number of small entities to which the proposal would apply.* The proposal would apply to the operators of all airplanes certificated with 30 or more passengers or a 7,500 pound or more payload operated under part 91, part 121, part 125, and all U.S.-registered airplanes operated under part 129. Standard industrial classification (SIC) coding does not exactly coincide with the subsets of operators who could be affected by the proposal. Nevertheless, using data from the SBA, the distributions of employment size and estimated receipts for all scheduled air transportation firms (SIC Code 4512), given in Table 1 below, are representative of the operators who would be affected by the proposal.

5. *The projected reporting, recordkeeping, and other compliance requirements of the proposal.* The proposal would not impose any incremental recordkeeping authority. Existing 14 CFR part 43, in part, already prescribes the content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records for any aircraft having a U.S. airworthiness certificate or any foreign registered aircraft used in common carriage under part 121. The FAA recognizes, however, that the proposal would necessitate additional inspection and testing work, and consequently would also require the completion of the additional recordkeeping associated with that additional work.

The FAA estimates that each 8 additional hours of actual inspection and testing required under the proposal would require one additional hour for reporting and recordkeeping (7.5 recordkeeping minutes per inspection hour). This recordkeeping would be performed by the holder of an FAA-approved repairman or maintenance certificate. The projected recordkeeping and reporting costs of the proposal are included as part of the overall costs computed in the evaluation and included below in the Regulatory Flexibility Cost Analysis.

TABLE 1.

Operator Category (No. of employees)	Number of firms	Estimated receipts (in $1,000)
0–4	153	193,166
5–9	57	145,131
10–19	56	198,105
20–99	107	1,347,711
101–499	74	3,137,624
500+	73	112,163,942
Total	520	117,185,679

Table 2 categorizes the estimated number of operators by number of airplanes that would be affected by the proposal and provides an estimate of the total number of affected airplanes in that operator category. Based on existing operator/airplane distributions, the FAA estimates that 131 U.S. operators would be subject to the proposal. (Note that this excludes the 19 non-U.S. owners of U.S.-registered airplanes that would be affected by the proposal. It should also be noted that Table 2 excludes Boeing 747 models, and, therefore, operators who exclusively fly Boeing 747s.)

TABLE 2.

Operator category	No. of operators	Total No. of airplanes
0–4	48	93
5–9	17	108
10–19	22	271
20–29	13	277
30–39	4	145
40–49	5	220
Total 0–50	109	1,114
50+	22	4,594
U.S. Total	131	5,708
Non-U.S.	23	62
Total	154	5,770

6. *Regulatory Flexibility Cost Analysis.* The proposal would consist of two actions affecting small business expenses. The first action, the proposed SFAR, would require all design approval TC holders and fuel tank system STC holders: (1) to complete a fuel tank system design assessment and to generate future service bulletins and provide data to the FAA; and (2) to provide operators with recommendations for fuel tank system inspections, testing, and maintenance. The second action, the proposed operational rules changes, would require that operators incorporate these recommendations for an enhanced fuel tank system inspection and equipment and wiring testing into the inspection and maintenance manuals. This proposal would apply to both existing and future production airplanes and to future TCs and STCs. This Regulatory Flexibility Cost Analysis focuses on the costs to operators of existing and future production airplanes, because almost 99 percent of the estimated costs of the proposal would be incurred by operators of those airplanes.

Table 3 summarizes the results for the total annualized compliance costs for U.S. operators only and also provides the estimated cost per operator and per airplane by each operator size category.

TABLE 3.

Operator category (No. of airplanes)	Total costs	Per operator cost	Per airplane cost
0–4	$293,000	$6,100	$3,150
5–9	275,000	16,175	2,550
10–19	1,123,000	51,050	4,150
20–29	784,000	60,300	2,825
30–39	234,000	58,500	1,600
40–49	262,000	52,400	1,200
Total 0–4	2,971,000	27,250	2,675
50+	17,820,000	810,000	3,775
Total	20,791,000	158,700	3,650

7. *Affordability Analysis.* Although the FAA lacks financial data for most of the smallest operators, if the average operating revenues, calculated to be about $1.25 million for the category of 0 to 4 employees from Table 1, are compared to the average annualized compliance costs from Table 3 (an admittedly crude method), it appears that the average operator would pay no more than 0.5 percent of operating revenues, based on an average annual risk-free return of 7 percent of the value of the airplane, to comply with the proposal. On that basis, most small entities would be able to offset the incremental compliance costs. Nevertheless, it is likely that there would be some of the very small operators (those with 1 to 9 affected airplanes) that may have difficulties in offsetting these incremental costs. However, due to the unavailability of current financial data from the Department of Transportation on these smallest operators, the FAA cannot more definitively determine the potential impact on these smallest affected operators. The FAA solicits comments on these costs and requests that all comments be accompanied with clear supporting data.

8. *Disproportionality analysis.* The principle factors determining the compliance cost for an operator would be the type of airplane model in the operator's fleet and the number of airplanes that would be affected by the proposal. As noted in the compliance cost section, the cost to inspect the fuel tank system of larger transport category airplane models would be 3 to 4 times more than the cost for a small transport category turboprop. Consequently, as seen in Table 3, the average per airplane compliance cost for operators with more than 50 airplanes is generally higher than the average cost per airplane for operators with fewer than 50 airplanes. This is due to the predominance of turboprops in the 30–50 airplane fleets, which would have the lowest compliance costs. However the per airplane cost for operators with 1 to 29 airplanes is higher than for the 30 to 50 airplane operators. Many of the smallest operators with fewer airplanes are cargo

operators utilizing larger and older turbojets, and they have fewer airplanes available to average the fixed costs associated with compliance with the proposal. Nevertheless, in general, the average compliance cost per airplane is relatively consistent for operators with fewer than 50 affected airplanes. Further, the compliance cost relative to these airplanes operating revenues would be relatively small. As a result, the FAA does not believe that small entities, as a group, would be disadvantaged relative to large air carriers due solely to the slight disproportionate cost effects from compliance with the proposal.

9. *Competitiveness Analysis.* The proposal would likely impose significant costs on some of the smallest air carriers (those with 1 to 19 airplanes) and, as a consequence, may affect the relative position of these carriers in their markets. However, most of these smallest air carriers operate in "niche" markets in which the competition that occurs arises from other small operators using largely similar equipment and often competing on the basis of service rather than on the basis of price. In such markets, the number of competitors is very limited. For example, Atlas Air specializes in supplying international air cargo by using large all-cargo airplanes to carry bulky cargo, like oil rig equipment. Similarly, Northern Air Cargo specializes in mail and air cargo to rural Alaska.

The FAA believes that most of the markets served by these smallest air carriers are low-volume niche markets that larger air carriers have in many cases abandoned, because the larger air carriers' fleets have been designed for high-volume markets. Further, larger air carriers would not be interested in servicing most of these markets because they cannot compete on a cost basis. Thus, these smallest operators would be able to avoid direct competition with larger air carriers. As a result, to the extent that there would be adverse competitiveness effects, they would likely be minimal and they would occur with other similar-sized (1 to 19) air carriers. On that basis, the FAA concludes that small air carriers would not lose market share to larger air carriers.

The proposal would not impose significant compliance costs on a substantial number of small operators that have 20 or more airplanes that would be affected by the proposal. These operators include large regionals, medium regionals, commuter airlines, and air cargo carriers. To some extent, these operators avoid direct competition with major carriers. However, in those markets where there is competition between the small entities and the larger air carriers, the proposal would have minimal competitive impact, because the per airplane compliance cost for a given airplane model would be roughly the same for a large and a small operator.

10. *Business Closure Analysis.* The FAA is unable to determine with certainty the extent to which small entities that would be significantly affected by the proposal would have to close their operations. Many of the very small operations (1 to 4 airplanes) operate very close to the margin, as evidenced by the constant exit from and entry into air carrier service of these types of air carriers. Consequently, in the absence of financial data, it is difficult to determine the extent to which the proposal would make the difference in an entity's remaining in business.

11. *Description of Alternatives.* In the general course of promulgating the proposed rule, the FAA has considered four approaches. The three alternatives to the proposed rule are described below. In formulating the alternatives, the FAA focused on its responsibility for aviation safety and its particular obligation under 49 U.S.C. 44717 to ensure the continuing airworthiness of airplanes. The three primary alternatives to the proposal considered by the FAA varied with respect to the number of airplanes to be included in the proposal. The proposed rule would limit the potential impact on airplanes most likely to be used by small entities, while meeting the Agency's safety responsibility.

Alternative 1: Require all airplanes in commercial service with more than 10 seats to be covered by the proposal.

Alternative 1 would require all airplanes operating under part 91, 121, 125, and 129 to comply with the proposal. This would also include operators supplying on-demand service under part 135. The FAA estimates that about 45 additional airplane models, about 2,360 additional airplanes, and about 550 additional operators would be covered by this proposed alternative. The airplane operation is not the principal business for many of these additional operators. In estimating these potential compliance costs, the FAA assumes that, due to their small fuel tanks and relative straightforward fuel systems, these airplanes would need one-half of the time reported for the smallest part 25 turboprop to complete the fuel tank system design assessment. In addition, the FAA assumes that it would also take one-quarter of the time reported for the smallest part 25 turboprop to complete the enhanced fuel tank system inspection and maintenance and wiring testing. Further, the FAA assumes that the out-of-service time would be one-half of the labor time to complete the inspection and testing. However, there would be no out-of-service time for part 135 on-demand airplanes because those operators would normally schedule maintenance when there was no activity. For the other operators, the FAA estimates the value of the average airplane would be about $750,000.

The FAA estimates that the total additional compliance costs of including these operators (including the fuel tank system design assessment cost) would be about $7.4 million in the first-year, becoming about $1.1 million in the fourth year. The total compliance cost, discounted over 10 years at 7 percent, would be about $17.1 million. The annualized cost, discounted over 10 years at 7 percent, would be about $2.4 million.

This proposed alternative would not significantly increase the expected quantitative benefits because there have been no in-flight fuel tank explosions of these airplanes. In light of the absence of a fuel tank explosion accident history, the FAA does not believe at this time that the increased cost from including these smaller airplanes would be met with a commensurate level of benefits.

The FAA requests comments on these estimates and requests commenters to provide supporting data for the comments.

Alternative 2: Require all airplanes in commercial service with 30 or more seats (the proposed rule), plus all airplanes with 10 or more seats in scheduled commercial service, to be covered by the proposal.

Alternative 2 would add the requirement for all airplanes with 10 or more seats in scheduled commercial service operating under part 91, part 121, part 125, and part 129 to comply with the proposal. The FAA estimates that 30 additional airplane models, 724 additional airplanes, and about 84 additional operators would be covered by this proposed alternative. However, 35 of the 84 additional operators would already have airplanes that would be covered by the proposal. In estimating these potential compliance costs, the FAA makes the same assumptions that were described under Alternative 1.

On that basis, the FAA estimates that the additional compliance costs of including these operators (including the fuel tank system design assessment cost) would be about $2.7 million in the first-year and about $340,000 in the fourth year. The total compliance cost, discounted over 10 years at 7 percent, would be about $5.7 million. The annualized cost, discounted over 10 years at 7 percent, would be about $806,000. However, as also described under Alternative 1, this proposed alternative would not significantly increase the expected quantitative benefits because there have been no in-flight fuel tank explosions of these airplanes.

The FAA requests comments on these estimates and requests commenters to provide supporting data for the comments.

Alternative 3: Require that only turbojet airplanes in commercial service be covered by the proposal.

This alternative would allow 1,034 turboprop airplanes certificated under part 25 to be exempt from the proposal's requirements. By doing so, it would reduce the first year cost of compliance to all of these exempted airplanes by about $1.8 million, becoming about $545,000 in the fourth year. The total compliance cost savings, discounted over 10 years at 7 percent, would be about $8.3 million. The total annualized cost savings, discounted over 10 years at 7 percent, would be about $1.2 million.

Although there have been no in-flight fuel tank explosions associated with these part 25 turboprop airplane models, the FAA believes that the underlying fuel tank system risk is similar to those of the larger turbojets. On that basis, as the FAA's estimated overall benefits are larger than its estimated overall costs, by extrapolation, removing 20 percent of the population at risk from the proposed rule would remove 20 percent of both the benefits and costs. As the benefits are estimated to be greater than the costs, the result would be a reduction in the net dollar benefits and higher safety risk. Finally, these airplanes are part 25 certificated and the FAA considers that the same level of safety should be applied to all part 25 certificated airplanes. Thus, as a result of performing the regulatory flexibility analysis and addressing the concerns of the SBA, the FAA believes that, in comparison to the two higher cost alternatives and the one lower cost alternative evaluated by the FAA, the proposal would provide the necessary level of safety in the most cost-effective manner.

12. *Special Considerations.* As seen in Table 3, on a proportional basis the proposal would have a slightly greater impact on larger air carriers. The per airplane annualized cost for a large operator with 50 or more airplanes would be $3,775, where it would be about $2,675 for a smaller operator. However, this difference is relatively small, and the FAA concludes that the proposal would not alter the competitiveness of small air carriers relative to larger air carriers.

13. *Conclusion.* For a small operator with an airplane worth $5 million, an annualized cost of $2,675 would be equal to about three days of lost net revenue, based on an average annual risk-free productive rate of return on capital of 7 percent. However, the FAA also considers that even for small operators of these affected airplanes, the safety benefits would be greater than the compliance costs. The FAA requests comments on this analysis and requests commenters to supply supporting data for the comments.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to American companies doing business in foreign markets, and foreign companies doing business in the United States.

This proposed rule would have little or no impact on international trade. The proposed part 25 change would equally affect all future part 25 airplanes, wherever manufactured, that would be registered in the United States. Although the proposed operational rules changes would affect only U.S. registered airplanes, the net effect is expected to be small and the European Joint Aviation Authorities may consider similar regulations.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this proposed rule would not contain a significant intergovernmental or private sector mandate as defined by the Act.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of the government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule would not conflict with any international agreement of the United States.

Paperwork Reduction Act

There are no new requirements for information collection associated with this proposed rule that would require approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the operation of certain transport category airplanes under parts 91, 121, 125, and 129 of Title 14, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

List of Subjects

14 CFR Parts 21, 25, 91, 125 and 129

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 21, 25, 91, 121, 125, and 129 of Title 14, Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 40105; 40113; 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

2. In part 21, add SFAR No. XX to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. XX—Fuel Tank System Fault Tolerance Evaluation Requirements

1. *Applicability.* This SFAR applies to the holders of type certificates, and supplemental type certificates affecting the airplane fuel tank system, for turbine-powered transport category airplanes, provided the type certificate was issued after January 1, 1958, and the airplane has a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more. This SFAR also applies to applicants for type certificates, amendments to a type certificate, and supplemental type certificates affecting the fuel tank systems for those airplanes identified above, if the application was filed before the effective date of this SFAR and the certificate was not issued before the effective date of this SFAR.

2. *Compliance:* No later than [12 months after the effective date of the final rule], or within 12 months after the issuance of a certificate for which application was filed before [effective date of the final rule], whichever is later, each type certificate holder, or supplemental type certificate holder of a modification affecting the airplane fuel tank system, must accomplish the following:

(a) Conduct a safety review of the airplane fuel tank system to determine that the design meets the requirements of §§ 25.901 and 25.981(a) and (b) of this chapter. If the current design does not meet these requirements, develop all design changes necessary to the fuel tank system to meet these requirements.

(b) Develop all maintenance and inspection instructions necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tank system of the airplane.

(c) Submit a report for approval of the Administrator that:

(1) Provides substantiation that the airplane fuel tank system design, including all necessary design changes, meets the requirements of §§ 25.901 and 25.981(a) and (b) of this chapter; and

(2) Contains all maintenance and inspection instructions necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tank system throughout the full operational life of the airplane.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

4. Section 25.981 is revised to read as follows:

§ 25.981 Fuel tank ignition prevention.

(a) No ignition source may be present at each point in the fuel tank or fuel tank system where catastrophic failure could occur due to ignition of fuel or vapors. This must be shown by:

(1) Determining the highest temperature allowing a safe margin below the lowest expected autoignition temperature of the fuel in the fuel tanks.

(2) Demonstrating that no temperature at each place inside each fuel tank where fuel ignition is possible will exceed the temperature determined under paragraph (a)(1) of this section. This must be verified under all probable operating, failure and malfunction conditions of each component whose operation, failure or malfunction could increase the temperature inside the tank.

(3) Demonstrating that an ignition source could not result from each single failure, from each single failure in combination with each latent failure condition not shown to be extremely remote, and from all combinations of failures not shown to be extremely improbable. The effects of manufacturing variability, aging, wear, corrosion, and likely damage must be considered.

(b) Based on the evaluations required by this section, critical design configuration control limitations, inspections or other procedures must be established as necessary to prevent development of ignition sources within the fuel tank system and must be included in the Airworthiness Limitations section of the ICA required by § 25.1529. Placards, decals or other visible means must be placed in areas of the airplane where maintenance, repairs or alterations may violate the critical design configuration limitations.

(c) The fuel tank installation must include—

(1) Means to minimize the development of flammable vapors in the fuel tanks; or

(2) Means to mitigate the effects of an ignition of fuel vapors within fuel tanks such that no damage caused by an ignition will prevent continued safe flight and landing.

5. Paragraph H25.4 of Appendix H is revised to read as follows:

Appendix H To Part 25—Instructions for Continued Airworthiness

H25.4 *Airworthiness Limitations section.*

(a) The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth—

(1) Each mandatory replacement time, structural inspection interval, and related structural inspection procedures approved under § 25.571; and

(2) each mandatory replacement time, inspection interval, related inspection procedure, and all critical design configuration control limitations approved under § 25.981 for the fuel tank system.

(b) If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principle manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA-approved and specifies maintenance required under §§ 43.16 and 91.403 of the Federal Aviation Regulations, unless an alternative program has been FAA approved."

PART 91—GENERAL OPERATING AND FLIGHT RULES

6. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

7. By adding a new § 91.410 to read as follows:

§ 91.410 Fuel tank system maintenance and inspection instructions.

After [18 months after the effective date of the final rule], no person may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated into its inspection program. Those instructions must be approved by the Administrator. Thereafter, the approved instructions can be revised only with the approval of the Administrator.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

8. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

9. By adding a new § 121.370 to read as follows:

§ 121.370 Fuel tank system maintenance and inspection instructions.

After [18 months after the effective date of the final rule], no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its maintenance program. Those instructions must be approved by the Administrator. Thereafter, the approved instructions can be revised only with the approval of the Administrator.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

10. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

11. By adding a new § 125.248 to read as follows:

§ 125.248 Fuel tank system maintenance and inspection instructions.

After [18 months after the effective date of the final rule], no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more unless instructions for maintenance and inspection of the fuel tank system are incorporated in its inspection program. Those instructions must be approved by the Administrator. Thereafter, the approved instructions can be revised only with the approval of the Administrator.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRPLANE ENGAGED IN COMMON CARRIAGE

12. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

13. By amending § 129.14 by adding a new paragraph (c) to read as follows:

§ 129.14 Maintenance program and minimum equipment list requirements for U.S.-registered airplanes.

* * * * *

(c) For turbine-powered transport category airplanes with a type certificate issued after January 1, 1958, and a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7500 pounds or more, no later than [18 months after the effective date of the final rule], the program required by paragraph (a) of this section must include instructions for maintenance and inspection of the fuel tank systems. Those instructions must be approved by the Administrator. Thereafter the approved instructions can be revised only with the approval of the Administrator.

Issued in Washington, D.C., on October 26, 1999.

Elizabeth Erickson,

Director, Aircraft Certification Service.

[FR Doc. 99–28348 Filed 10–28–99; 8:45 am]

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Friday
October 29, 1999

Part VII

Environmental Protection Agency

40 CFR Part 372

Persistent Bioaccumulative Toxic (PBT) Chemicals; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400132C; FRL–6389–11]

RIN 2070–AD09

Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is lowering the reporting thresholds for certain persistent bioaccumulative toxic (PBT) chemicals that are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA is also adding a category of dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals and establishing a 0.1 gram reporting threshold for the category. In addition, EPA is adding certain other PBT chemicals to the EPCRA section 313 list of toxic chemicals and establishing lower reporting thresholds for these chemicals. EPA is removing the fume or dust qualifier from vanadium and adding all forms of vanadium with the exception of vanadium when contained in alloys. EPA is also adding vanadium compounds to the EPCRA section 313 list of toxic chemicals. However, EPA is not lowering the reporting thresholds for either vanadium or vanadium compounds. EPA is taking these actions pursuant to its authority under EPCRA section 313(f)(2) to revise reporting thresholds and pursuant to its authority to add chemicals and chemical categories that meet the EPCRA section 313(d)(2) toxicity criteria. The additions of these chemicals are based on their carcinogenicity or other chronic human health effects and/or their significant adverse effects on the environment. Today's actions also include modifications to certain reporting exemptions and requirements for those toxic chemicals that are subject to the lower reporting thresholds. This document also announces the effective date of § 372.27 of the Code of Federal Regulations, which contained information collection requirements and which was originally published in the **Federal Register** on November 30, 1994.

DATES: 40 CFR 372.27 became effective on March 17, 1995, when the Office of Management and Budget approved its information collection requirements. This rule shall take effect on December 31, 1999. For purposes of EPCRA section 313(d)(4), the chemical additions shall be considered made as of November 30, 1999, and shall apply for the reporting year beginning January 1, 2000.

FOR FURTHER INFORMATION CONTACT: For technical information on this final rule contact: Daniel R. Bushman, Petitions Coordinator, Environmental Protection Agency, Mail Code 7408, 401 M St., SW., Washington, DC 20460; telephone number 202–260–3882, e-mail address: bushman.daniel@epa.gov. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture, process, or otherwise use aldrin, chlordane, dioxin and certain dioxin-like compounds, heptachlor, hexachlorobenzene, isodrin, mercury, mercury compounds, methoxychlor, octachlorostyrene, pendimethalin, pentachlorobenzene, polychlorinated biphenyls, certain polycyclic aromatic compounds, tetrabromobisphenol A, toxaphene, trifluralin, and vanadium (except alloys) or vanadium compounds. See Table 1 in Unit V.C. for a more detailed listing. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis)
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–400132. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and any other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the

documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Statutory Authority

EPA is finalizing these actions under sections 313(d)(1) and (2), 313(f)(2), 313(g), 313(h), and 328 of EPCRA, 42 U.S.C. 11023(d)(1)-(2), 11023(f)(2), 11023(g), 11023(h) and 11048; PPA section 6607, 42 U.S.C. 13106.

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using a listed toxic chemical in amounts above reporting threshold levels, to report certain facility specific information about such chemicals, including the annual quantity entering each environmental medium. These reports must be filed by July 1 of each year for the previous calendar year. Such facilities also must report pollution prevention and recycling data for these chemicals, pursuant to section 6607 of PPA.

A. What is the Authority for the Addition of Chemicals?

Section 313 established an initial list of toxic chemicals comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list on the basis of the criteria in subparagraph (A), (B) and/or (C) of subsection (d)(2) of EPCRA section 313. Under section 313(e)(1), any person may petition EPA to add chemicals to, or delete chemicals from, the list on the grounds that it does or does not meet the criteria at 313(d)(2)(A) or (B). Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied. EPCRA section 313(d)(2) states that a chemical may be added to the list if any of the three listing criteria set forth there are met. Therefore, in order to add a chemical, EPA must find that at least one criterion is met, but does not need to examine whether all other criteria are also met. EPA has published a statement elaborating its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 list (at 59 FR 61432, November 30, 1994) (FRL–4922–2).

B. What is the Authority for the Lowering of Reporting Thresholds?

EPA is finalizing these actions pursuant to its authority under EPCRA section 313(f)(2) to revise reporting thresholds. EPCRA section 313 establishes default reporting thresholds, which are set forth in section 313(f)(1). Section 313(f)(2), however, provides that EPA:

> may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established by EPA may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

This provision provides EPA with broad, but not unlimited, authority to establish thresholds for particular chemicals, classes of chemicals, or categories of facilities, and commits to EPA's discretion the determination that a different threshold is warranted. Congress also committed the determination of the levels at which to establish any alternate thresholds to EPA's discretion, requiring only that any "revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements" of section 313. 42 U.S.C. 11023(f)(2).

For purposes of determining what constitutes a "substantial majority of total releases," EPA interprets the language in section 313(f)(2), "facilities subject to the requirements of [section 313]," to refer to those facilities that fall within the category of facilities described by sections 313(a) and (b), i.e., the facilities currently reporting. Subsection (a) lays out the general requirement that "the owner or operator of facilities subject to the requirements of this section shall" file a report under EPCRA section 313. Subsection (b) then defines the facilities subject to the requirements of this section:

> [t]he requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20-39, . . . and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a toxic chemical release form is required under this section.

Thus, in revising the reporting thresholds, EPA must ensure that, under the new thresholds, a substantial majority of releases currently being reported will continue to be reported. No further prerequisites for exercising this authority appears in the statute.

C. What is the Authority for Modifications to Other EPCRA Section 313 Reporting Requirements?

Today's actions also include modifications to certain reporting exemptions and requirements for those toxic chemicals that are subject to the lower reporting thresholds. Congress granted EPA rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 provides that the "Administrator may prescribe such regulations as may be necessary to carry out this chapter" (28 U.S.C. 11048).

III. Background Information

A. What is the General Background for this Action?

Under EPCRA section 313, Congress set the initial parameters of the Toxic Release Inventory, but also gave EPA clear authority to modify reporting in various ways, including authority to change the toxic chemicals subject to reporting, the facilities required to report, and the threshold quantities that trigger reporting. By providing this authority, Congress recognized that the TRI program would need to evolve to meet the needs of a better informed public and to refine existing information. EPA has, therefore, undertaken a number of actions to expand and enhance TRI. These actions include expanding the number of reportable toxic chemicals by adding 286 toxic chemicals and chemical categories to the EPCRA section 313 list in 1994. Further, a new category of facilities was added to EPCRA section 313 on August 3, 1993, through Executive Order 12856, which requires Federal facilities meeting threshold requirements to file annual EPCRA section 313 reports. In addition, in 1997 EPA expanded the number of private sector facilities that are required to report under EPCRA section 313 by adding seven new industrial groups to the list of covered facilities. At the same time, EPA has sought to reduce the burden of EPCRA section 313 reporting by actions such as delisting chemicals it has determined do not meet the statutory listing criteria and establishing an alternate reporting threshold of 1 million pounds for facilities with 500 pounds or less of production-related releases and other wastes. Facilities meeting the requirements of this alternate threshold may file a certification statement (Form A) instead of reporting on the standard EPCRA section 313 form, the Form R.

In today's actions, EPA is finalizing enhanced reporting requirements that focus on a unique group of toxic chemicals. These toxic chemicals which persist and bioaccumulate in the environment are commonly referred to as persistent bioaccumulative toxic chemicals or PBT chemicals. To date, with the exception of the alternate threshold certification on Form A, EPA has not altered the statutory reporting threshold for any listed chemicals. However, as the TRI program has evolved over time and as communities identify areas of special concern, thresholds and other aspects of the EPCRA section 313 reporting requirements may need to be modified to assure the collection and dissemination of relevant, topical information and data. Towards that end, EPA is increasing the utility of TRI to the public by adding a number of chemicals to the section 313 list of toxic chemicals that persist and bioaccumulate in the environment and by lowering the reporting thresholds for a number of toxic chemicals that have these properties. Toxic chemicals that persist and bioaccumulate are of particular concern because they remain in the environment for significant periods of time and concentrate in the organisms exposed to them. EPA believes that the public understands that these PBT chemicals have the potential to cause serious human health and environmental effects resulting from low levels of release and exposure (Refs. 75 and 76). Lowering the reporting thresholds for PBT chemicals will ensure that the public has important information on the quantities of these chemicals released or otherwise managed as waste, that would not be reported under the 10,000 and 25,000 pound/year thresholds that apply to other toxic chemicals.

B. What Outreach Has EPA Conducted?

EPA has engaged in a comprehensive outreach effort. This outreach served to inform interested parties, including industry groups affected by the rule, state regulatory officials, environmental organizations, labor unions, community groups, and the general public of EPA's intention to add certain PBT chemicals to the list of toxic chemicals under EPCRA section 313 and lower the applicable reporting thresholds for a subset of PBT chemicals. For all interested parties, EPA held three public meetings (in Chicago, IL (February 23, 1999); San Francisco, CA (March 5, 1999); and Washington, DC (February 16, 1999)) during the comment period for the proposal. Participants included a range of industry representatives, trade associations (representing both small and large businesses), law firms representing industry groups, environmental groups, the general public, plus other groups and organizations. For state and tribal governments, EPA attended the regularly-held public meetings of the Forum on State and Tribal Toxics Action (FOSTTA) to discuss the PBT proposal. EPA also received substantial public comment on this proposal, to which EPA is responding in this Final Rule and the Response to Comments document (Ref. 69). In response to the strong interest by the public, and to allow more individuals and groups to submit their comments, EPA extended the public comment period to April 7, 1999 (at 64 FR 9957, March 1, 1999) (FRL–6066–1). Additional information regarding EPA's outreach may be found in supporting documents included in the public version of the official record.

IV. Summary of Proposal

A. What Chemicals Did EPA Propose to Add to the EPCRA Section 313 List of Toxic Chemicals?

In an initial screening of PBT chemicals that appear on the list of chemicals of concern in the various chemical initiatives, EPA identified seven chemicals and one category of chemicals that persist and bioaccumulate in the environment but that were not on the list of EPCRA section 313 toxic chemicals. Although identification of these chemicals for initial consideration prior to this rulemaking was based on their status as PBT chemicals, their proposed addition in this rulemaking was based solely on the determination that they meet the EPCRA section 313(d)(2) listing criteria. All of the chemicals proposed for addition were found to be reasonably anticipated to cause serious or irreversible chronic human health effects at relatively low doses or ecotoxicity at relatively low concentrations, and thus are considered to have moderately high to high chronic toxicity or high ecotoxicity. The chemicals and chemicals categories EPA proposed to add to the list of EPCRA section 313 toxic chemicals include: Dioxin and dioxin-like compounds category, benzo(g,h,i)perylene, benzo(j,k)fluorene (fluoranthene), 3-methylcholanthrene, octachlorostyrene, pentachlorobenzene, tetrabromobisphenol A (TBBPA), vanadium (except alloys) and vanadium compounds.

B. What Persistence and Bioaccumulation Issues Did EPA Consider?

As noted above, for purposes of the proposed rule, EPA conducted its first, limited review of chemicals for their persistence and bioaccumulation properties under EPCRA section 313. EPA first established criteria to be used under section 313 for determining if a chemical persists or bioaccumulates in the environment. These criteria were then applied to determine whether the chemicals included in the review have the potential to persist and bioaccumulate in the environment. The initial group of chemicals reviewed were the result of EPA's screening assessment of two lists of persistent and bioaccumulative chemicals: (1) The Great Lakes Binational Level 1 list (Ref. 24); and (2) chemicals that received high scores for persistence and bioaccumulation in the initial version of the Waste Minimization Prioritization Tool (WMPT) developed by EPA's Office of Solid Waste (Ref. 74). Finally, included in this initial review were the chemicals included in the dioxin and dioxin-like compounds category that EPA had proposed for addition to the section 313 list in 1997 (at 62 FR 24887, May 7, 1997) (FRL–5590–1).

1. *Persistence.* A chemical's persistence refers to the length of time the chemical can exist in the environment before being destroyed (i.e., transformed) by natural processes. The proposal discussed those aspects of persistence that are important to consider in determining a chemical's persistence in the environment and set forth the criteria that EPA used for determining whether a chemical is persistent for purposes of reporting under EPCRA section 313. Numerous organizations and internationally negotiated agreements have set numerical criteria for environmental persistence, many of which have been developed through consensus processes (Ref. 68). Of those reviewed, the criteria for persistence in water, soil, and sediment tend to cluster around two half-lifes, 1 to 2 months and 6 months while the persistence criterion for air was either a half-life of 2 or 5 days. A half-life of 6 months for water, soil, and sediment and half-lifes of either 2 or 5 days for air were chosen by the international organizations as criteria for chemicals that are being banned or

severely restricted. However, EPCRA section 313 is an information collection and dissemination program. EPA believes that persistence criteria consistent with the criteria applied to chemicals that are of global or regional (e.g., Europe and the Great Lakes) concern and that are targeted for ban, restriction, or phase-out are inappropriate for such a program. Chemicals that meet the persistence criteria used in the international agreements are the extremely persistent chemicals. Applying these strict criteria to EPCRA section 313 would result in a very narrow list of chemicals that would focus on only extremely persistent chemicals. This is inconsistent with one of the fundamental tenets of right-to-know which is to provide the public with information on toxic chemicals that have the potential to cause adverse effects in their community. Further, persistence criteria of half-lifes of 6 months and 5 days have not been used to establish whether a chemical is a PBT chemical but rather whether a chemical should have restrictions on its uses. The Agency stated in the proposal its belief that half-life criteria of 2 months for water, sediment, and soil and 2 days for air will include a better representative sample of chemicals that persist in the environment. Therefore, EPA used a half-life criterion of 2 months for water, sediment, and soil and a half-life of 2 days for air for the purposes of determining under EPCRA section 313 whether a toxic chemical is persistent in the environment. Under these criteria, if a toxic chemical meets any one of the media-specific criteria, it is considered to be persistent.

2. *Bioaccumulation.* Bioaccumulation is a general term that is used to describe the process by which organisms may accumulate chemical substances in their bodies. The term refers to both uptake of chemicals from water (bioconcentration) and from ingested food and sediment residues. The discussions and data on bioaccumulation in the proposed rule dealt strictly with aquatic organisms because most of the bioaccumulation data are from aquatic studies. The proposal also discussed, in detail, those aspects of determining bioaccumulation that are important to consider in assessing whether a particular chemical will bioaccumulate in the environment.

A chemical's potential to bioaccumulate can be quantified by measuring or predicting a chemical's bioaccumulation factor (BAF) or a chemical's bioconcentration factor (BCF). Sources of BAF and BCF data for the chemicals included in the proposed rule included a mixture of both predicted and measured BAF and BCF values. The record for the proposed rule includes a document that explains the origin of the BAF or BCF value selected for each PBT chemical (Ref. 71). Most data were retrieved from the U.S. EPA's AQUIRE data base (Ref. 58) and the Japanese Chemicals Inspection and Testing Institute (CITI) data base (Ref. 18a).

As with persistence, a number of organizations and internationally negotiated agreements have set numerical criteria for bioaccumulation, many of which have been developed through a consensus processes. Of those reviewed, the criteria used for bioaccumulation was a BAF/BCF numerical value of either 5,000 or 1,000 or, in some cases, 500. The bioaccumulation criteria chosen by the international organizations as criteria for chemicals that are being banned or severely restricted was 5,000. However, for the same reasons discussed in Unit IV.B.1., EPA stated that the criteria used by the international organizations would not be appropriate for purposes of EPCRA section 313. Therefore, EPA used a BAF/BCF numerical criterion of 1,000 for determining if a chemical is bioaccumulative for purposes of EPCRA section 313.

3. *Persistence and bioaccumulation data.* In the proposal, EPA presented the bioaccumulation and persistence data for the PBT chemicals being considered. More detailed discussions of the sources of these data are provided in the support documents (Refs. 7 and 71). When considering the bioaccumulation and persistence potential of chemical categories, EPA reviewed the individual bioaccumulation and persistence data for the category members and determined in which tier the entire chemical category should be placed. For chemicals that had half-life ranges that bracketed the persistence tiers, EPA considered the types of studies supporting the half-life ranges and determined the most appropriate tier for each chemical.

C. How Did EPA Propose to Address Dioxin and Dioxin-Like Compounds?

In response to a petition from Communities For A Better Environment, EPA issued a proposed rule (at 62 FR 24887) to add a category of dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals. As part of that action, EPA proposed to move 11 co-planar polychlorinated biphenyls (PCBs) from their listing under Chemicals Abstract Service Registry (CAS) Number 1336–36–3 to the dioxin and dioxin-like compounds category. However, since PCBs persist and bioaccumulate, EPA stated its belief in the proposed rule that PCBs should be subject to lower reporting thresholds. Thus EPA believed there was no need to move the 11 co-planar PCBs to the proposed dioxin and dioxin-like compounds category. Therefore, EPA withdrew its original proposal to modify the listing for PCBs and instead proposed to lower the reporting thresholds for the current PCB listing which covers all PCBs (at 64 FR 710). Because of this change, the proposed dioxin and dioxin-like compounds category included only the 7 polychlorinated dibenzo-*p*-dioxins and the 10 polychlorinated dibenzofurans identified in the proposed rule. In order to focus reporting on those facilities that actually add to the environmental loading of the dioxin and dioxin-like compounds and to reduce reporting burden, EPA proposed to add the activity qualifier "manufacture only" to the category. This qualifier would have limited reporting to those dioxin and dioxin-like compounds that are manufactured at the facility, including those coincidentally manufactured.

D. What Proposed Changes to Reporting Requirements for PBT Chemicals Did EPA Consider?

1. *Changes to reporting thresholds.* In evaluating potential lower reporting thresholds for PBT chemicals, EPA considered not only their persistence and bioaccumulation and the purposes of EPCRA section 313, but also the potential burden that might be imposed on the regulated community. Because all PBT chemicals persist and bioaccumulate in the environment, they have the potential to pose greater exposure to humans and the environment over a longer period of time (Refs. 75 and 76). The nature of PBT chemicals indicates that small quantities of such chemicals are of concern, which provides strong support for setting lower reporting thresholds than the current section 313 thresholds of 10,000 and 25,000 pounds. For determining the levels at which reporting thresholds should be set for these chemicals, EPA adopted a two-tiered approach. EPA made a distinction between persistent bioaccumulative toxic chemicals and highly persistent, highly bioaccumulative toxic chemicals by proposing to set lower reporting thresholds based on two levels of persistence and bioaccumulation potential. EPA proposed to set a manufacture, process and otherwise use threshold of 100 pounds for PBT chemicals and a threshold of 10 pounds for that subset of PBT chemicals that are highly persistent and highly

bioaccumulative toxic chemicals. One exception to this is the reporting threshold for the dioxin and dioxin-like compounds category, see the discussion in Unit IV.D.2.

In determining the appropriate reporting thresholds to propose for PBT chemicals, EPA started with the premise that low or very low reporting thresholds may be appropriate for these chemicals based on their persistence and bioaccumulation potentials only. EPA then considered the burden that would be imposed by lower reporting thresholds and the distribution of reporting across covered facilities. Considering the factors described above, in addition to the purposes of EPCRA section 313, EPA proposed to lower the manufacture, process, and otherwise use thresholds to 100 pounds for PBT chemicals and to 10 pounds for that subset of PBT chemicals that are highly persistent and highly bioaccumulative. EPA presented the proposed section 313 reporting thresholds for each of the PBT chemicals considered. For purposes of section 313 reporting, threshold determinations for chemical categories are based on the total of all toxic chemicals in the category (see 40 CFR 372.25(d)).

2. *Special reporting threshold for dioxin and dioxin-like compounds.* The category of dioxin and dioxin-like compounds are highly persistent and highly bioaccumulative toxic chemicals. However, this category of chemicals poses unique problems with regard to setting section 313 reporting thresholds because these chemicals are generally produced in extremely small amounts compared to other section 313 chemicals. In response to EPA's original proposal to add dioxin and dioxin-like compounds, EPA received numerous comments suggesting that the reporting threshold for this category be set at zero. EPA stated its belief that rather than setting a zero reporting threshold it would be better to set a very low threshold that provides facilities with a clear indicator of when they are required to report. EPA proposed a manufacture threshold of 0.1 gram for the category. EPA expressed its intent to develop reporting guidance for industries that may fall within this reporting category. In addition to the proposed lower reporting threshold for the dioxin and dioxin-like compounds category, EPA requested comment on an alternative way of reporting release and other waste management data for this category. This alternative included reporting release and other waste management data for the dioxin and dioxin-like compounds category in terms of grams of toxicity equivalents (TEQs).

E. What Other Reporting Issues Did EPA Consider for PBT Chemicals?

1. *De minimis exemption.* In 1988, EPA promulgated the *de minimis* exemption because: (1) The Agency believed that facilities newly covered by EPCRA section 313 would have limited access to information regarding low concentrations of toxic chemicals in mixtures that are imported, processed, otherwise used or manufactured as impurities; (2) the Agency did not believe that these low concentrations would result in quantities that would significantly contribute to threshold determinations and release calculations at the facility (53 FR 4509, February 16, 1988); and (3) the exemption was consistent with information collected by the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS). However, given that: (1) Covered facilities currently have several sources of information available to them regarding the concentration of PBT chemicals in mixtures; (2) even minimal releases of persistent bioaccumulative chemicals may result in significant adverse effects and can reasonably be expected to significantly contribute to exceeding the proposed lower thresholds; and (3) the concentration levels chosen, in part, to be consistent with the OSHA HCS are inappropriately high for PBT chemicals, EPA's original rationale for the *de minimis* exemption does not apply to PBT chemicals. EPA therefore proposed to eliminate the *de minimis* exemption for PBT chemicals. EPA did not propose, however, to modify the applicability of the *de minimis* exemption to the supplier notification requirements (40 CFR 372.45(d)(1)) because the Agency believed there was sufficient information available.

2. *Use of the alternative threshold and Form A.* EPA stated its belief that use of the existing alternate threshold and reportable quantity for Form A would be inconsistent with the intent of expanded PBT chemical reporting. The general information provided in the Form A on the quantities of the chemical that the facility manages as waste is insufficient for conducting analyses on PBT chemicals and would be virtually useless for communities interested in assessing risk from releases and other waste management of PBT chemicals. EPA, therefore, proposed excluding all PBT chemicals from the alternate threshold of 1 million pounds.

3. *Proposed changes to the use of range reporting.* EPA stated its belief that use of ranges could misrepresent data accuracy for PBT chemicals because the low or the high end range numbers may not really be that close to the estimated value, even taking into account its inherent error (i.e., errors in measurements and developing estimates). EPA believed this uncertainty would severely limit the applicability of release information where the majority of releases, particularly for PBT chemicals, are expected to be within the amounts eligible for range reporting. Given EPA's belief that the large uncertainty that would be part of these data would severely limit their utility, EPA proposed to eliminate range reporting for PBT chemicals.

4. *Proposed changes to the use of the half-pound rule and whole numbers.* EPA currently allows facilities to report whole numbers and to round releases of 0.5 pound or less to zero. EPA explained its concern that the combination of requiring the reporting of whole numbers and allowing rounding to zero would result in a significant number of facilities reporting their releases of some PBT chemicals as zero. EPA, therefore, proposed that all releases or other waste management quantities greater than $\frac{1}{10}$ of a pound of PBT chemicals (except dioxins) be reported, provided that the appropriate activity threshold has been exceeded. For the category of dioxin and dioxin-like compounds, which have a proposed reporting threshold of 0.1 gram, EPA proposed that facilities report all releases and other waste management activities greater than 100 micrograms (ug) (i.e., 0.0001 gram).

5. *Proposed changes to other EPCRA section 313 reporting requirements.* The alkyl lead compounds tetraethyl lead (CAS No. 78–00–2) and tetramethyl lead (CAS No. 75–74–1) are currently reportable under the EPCRA section 313 category listing for lead compounds. However, these two chemicals specifically appear on the Binational Level 1 list of chemicals that have been identified for virtual elimination from the Great Lakes and thus are of special concern. EPA, therefore, proposed that separate reports be filed for these two members of the lead compounds category, which would allow better tracking of these specific lead compounds. In addition, EPA proposed to list "vanadium" and "vanadium compounds" and delete the EPCRA section 313 listing for "vanadium (fume or dust)." Since vanadium without the fume or dust qualifier would be a new section 313 listing, EPA did not propose to include additional reporting on alloys containing vanadium. In the proposal, EPA deferred making a final decision on

vanadium contained in alloys until the Agency could complete a scientific review of issues pertinent to some alloys. EPA proposed to include the qualifier "except when contained in an alloy" in the vanadium listing. EPA also requested comment on the adequacy of existing studies for determining the bioaccumulation potential of cobalt and cobalt compounds.

V. Summary of the Final Rule

A. Which Chemicals is EPA Adding to the List of Toxic Chemicals Under EPCRA Section 313?

In this action, EPA is adding seven chemicals and two chemical compound categories to the list of toxic chemicals subject to reporting under EPCRA section 313. These chemicals include: benzo(g,h,i)perylene, benzo(j,k)fluorene (fluoranthene), 3-methylcholanthrene, octochlorostyrene, pentachlorobenzene, TBBPA, vanadium (except when in an alloy), vanadium compounds, and a category consisting of 17 specified dioxin and dioxin-like compounds. EPA has determined that each of these chemicals and chemical compound categories meets the listing criteria under EPCRA section 313(d)(2). Two of these chemicals, 3-methylchloanthrene and benzo(j,k)fluorene (fluoranthene), are being added as members of the polycyclic aromatic compounds (PACs) category. Vanadium, with the qualifier "fume or dust," has been on the list of toxic chemicals since the program's inception in 1987. In today's action, however, the Agency is removing the "fume or dust" qualifier from the vanadium listing. However, EPA is not including reporting on vanadium when contained in alloys. EPA is finalizing the proposed qualifier "except when contained in an alloy" to the vanadium listing. Therefore all elemental vanadium, unless it is in an alloy, is now reportable under EPCRA section 313. In addition to modifying the qualifier, EPA is also adding a new vanadium compounds category. Thus, all chemical compounds that contain vanadium are reportable under this listing. Further, EPA is finalizing its proposal (62 FR 24887) to add dioxins and 16 dioxin-like compounds. However, the Agency is modifying the qualifier that it originally included with this listing. In the PBT proposed rule, EPA proposed to add the dioxin and dioxin-like compounds category with the qualifier "manufacturing only." However, based on comments the Agency received, EPA is changing this qualifier to include: Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical.

B. Which Chemicals is EPA Including as PBT Chemicals Under EPCRA Section 313?

EPA has made the final determination that 18 of the chemicals and chemical categories proposed meet the EPCRA section 313 criteria for persistence and bioaccumulation. Thus EPA is lowering the reporting threshold for all of these toxic chemicals. These chemicals and their final thresholds are listed in Table 1 below:

Table 1.—Reporting Thresholds for EPCRA Section 313 Listed PBT Chemicals

Chemical Name or Chemical Category Name	CASRN	Section 313 Reporting Threshold (in pounds unless noted otherwise)
Aldrin	309-00-2	100
Benzo(g,h,i)perylene	191-24-2	10
Chlordane	57-74-9	10
Dioxin and dioxin-like compounds category (manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical)	NA	0.1 grams
Heptachlor	76-44-8	10
Hexachlorobenzene	118-74-1	10
Isodrin	465-73-6	10
Methoxychlor	72-43-5	100
Octachlorostyrene	29082-74-4	10
Pendimethalin	40487-42-1	100
Pentachlorobenzene	608-93-5	10
Polycyclic aromatic compounds category	NA	100
Polychlorinated biphenyl (PCBs)	1336-36-3	10
Tetrabromobisphenol A	79-94-7	100
Toxaphene	8001-35-2	10
Trifluralin	1582-09-8	100
Mercury	7439-97-6	10

Table 1.—Reporting Thresholds for EPCRA Section 313 Listed PBT Chemicals—Continued

Chemical Name or Chemical Category Name	CASRN	Section 313 Reporting Threshold (in pounds unless noted otherwise)
Mercury compounds	NA	10

EPA is deferring its decision for two chemicals and one chemical category. Specifically, EPA is deferring a determination on dicofol while the Agency continues to review the available persistence data. EPA is also deferring its decision on cobalt and cobalt compounds because it needs to further investigate the bioaccumulative potential of these chemicals.

C. What Thresholds Has EPA Established for PBT chemicals?

EPA is finalizing the thresholds it proposed for PBT chemicals in the January 5, 1999 (64 FR 688) **Federal Register**. Specifically, EPA is finalizing two thresholds based on the chemicals' potential to persist and bioaccumulate in the environment. The two levels include setting section 313 manufacture, process, and otherwise use thresholds at 100 pounds for PBT chemicals and at 10 pounds for that subset of PBT chemicals that are highly persistent and highly bioaccumulative. One exception is the dioxin and dioxin-like compounds category. The dioxin and dioxin-like compounds category threshold determination required special consideration because these highly persistent and highly bioaccumulative compounds are manufactured in extremely small amounts compared to other section 313 chemicals. In order to capture release and other waste management data, EPA is setting the threshold for the dioxin and dioxin-like compound category at 0.1 gram.

D. What Exemptions and Other Reporting Issues is EPA Addressing?

EPA is eliminating the *de minimis* exemption for the PBT chemicals included in today's final rule. However, this action will not affect the applicability of the *de minimis* exemption to the supplier notification requirements (40 CFR 372.45(d)(1)). During the inter-agency review process, it was suggested that EPA consider constructing an exemption for facilities in SIC code 5171, i.e., Petroleum Bulk Plants and Terminals. Specifically, it was suggested that EPA exempt the processing of PBT chemicals in petroleum products. Before EPA can consider this exemption, EPA must determine that these facilities process and release and otherwise manage as waste very small aggregate quantities of PBT chemicals. The Agency is soliciting comments and information on this suggestion, particularly any information that could provide a factual basis for such an exemption. Please send your comments to the person listed in the "FOR FURTHER INFORMATION CONTACT" section within the next 60 days. EPA will evaluate this suggestion, and provide a response within approximately 180 days.

In today's action, EPA is also excluding all PBT chemicals from eligibility for the alternate threshold of 1 million pounds and eliminating for PBT chemicals range reporting for on-site releases and transfers off-site for further waste management. This will not affect the applicability of the range reporting of the maximum amount on-site as required by EPCRA section 313(g). EPA is addressing the alkyl lead compounds, tetraethyl lead (CAS No. 78–00–2), and tetramethyl lead (CAS No. 75–74–1), in a separate rulemaking for lead and lead compounds (64 FR 42222, August 3, 1999) (FRL–6081–4). Therefore, EPA is not finalizing any action with respect to these two lead compounds in today's action.

EPA proposed to require reporting of all releases and other waste management quantities greater than $\frac{1}{10}$ of a pound of PBT chemicals (except dioxin), provided that the accuracy in the underlying data on which the estimate is based supports this level of precision. Also, EPA stated that releases and other waste management quantities would continue to be reported to two significant digits. In addition, EPA stated that for quantities of 10 pounds or greater, only whole numbers would be required to be reported. For the category of dioxin and dioxin-like compounds, which have a proposed reporting threshold of 0.1 gram, EPA proposed that facilities report all releases and other waste management activities greater than 100 µg (i.e., 0.0001 gram). After reviewing all the comments on this issue, EPA is providing additional guidance on the level of precision at which facilities should report their releases and other waste management quantities of PBT chemicals. Facilities should still report releases and other waste management quantities greater than 0.1 pound (except dioxins) provided the accuracy and the underlying data on which the estimate is based supports this level of precision. Rather than reporting in whole numbers and to two significant digits, if a facility's release or other waste management estimates support reporting an amount that is more precise than whole numbers and two significant digits, then the facility should report that more precise amount. The Agency believes that, particularly for PBT chemicals, facilities may be able to calculate their estimates of releases and other waste management quantities to $\frac{1}{10}$ of a pound and believes that such guidance is consistent with the reporting requirements of sections 313(g) and (h).

E. What is the Relationship Between This Rule and the Clean Air Act Mercury Information Collection Request?

Throughout calendar year 1999, EPA has been using authority under section 114 of the Clean Air Act to require all coal-fired power plants over 25 mega watts to submit to EPA the results of analyses of the mercury content of their coal. A representative sample of these plants, stratified by type of plant and type of coal burned, have been required to perform stack testing to determine the amount (and species) of mercury emitted. The stack testing will allow EPA to develop a set of emissions factors that can be applied to the mercury in coal analysis to generate mercury emissions estimates for each coal-fired plant. EPA does not intend to continue to require plants to submit either the coal analysis or the stack testing beyond the current requirement. Therefore for the purpose of reporting mercury releases to the TRI, EPA expects coal-fired power plants that do not have monitoring or stack test data for the reporting year to use the emissions factors that EPA will develop and make available to the public in the summer of 2000.

VI. Summary of Public Comments and EPA Responses

A. What Comments Did EPA Receive on its Statutory Authority to Add Chemicals and Lower the Reporting Threshold and What is EPA's Response?

Several commenters assert that EPCRA section 313(f)(2) only grants EPA the authority to raise the statutory thresholds, but not to lower them. They agree that the substantial majority test is met "as a matter of logical necessity" when EPA lowers the reporting threshold, and argue that this makes the "substantial majority" test essentially meaningless when thresholds are lowered. They argue that this demonstrates that Congress did not intend for EPA to lower reporting thresholds, only to raise them.

These commenters also rely on the language of other provisions of EPCRA section 313 to support their argument that Congress did not grant EPA authority to lower thresholds. They rely on the fact that section 313(f)(2) does not provide that EPA can "raise or lower" thresholds, unlike section 313(d), under which EPA can "add or delete" chemicals from the list, and section 313(b), under which EPA can "add or delete" industry sectors. In addition, the commenters argue that section 313(f)(2) is analogous to section 313(l), where, despite the use of the otherwise neutral term "modify," Congress clearly meant for EPA only to make the reporting requirements less frequent (i.e., less stringent). Based on these provisions, they also argue that, where Congress intended EPA to have the authority to both expand and restrict reporting, the statute explicitly provides the authority, but where Congress only intended to authorize EPA to reduce the reporting burden, it provided a neutral term, and then restricted it. The commenters argue that in section 313(f)(2), Congress qualified EPA's authority with a substantial majority restriction that only makes sense if EPA raises the thresholds.

EPA disagrees with the commenters' interpretations. Section 313(f)(2) clearly authorizes EPA to lower thresholds, as well as to raise them. The plain language of this provision provides that "the Administrator may establish a threshold different from the amount established by paragraph (1)." It clearly does not state that the Administrator may only establish a higher threshold than the amount established by paragraph (1), which appears to be the commenters' interpretation. Moreover, in the House debate on the conference report, Representative Edgar, one of EPCRA's sponsors, noted:

> The EPA is authorized to revise these thresholds, but only if such revised thresholds obtain reporting on a substantial majority of total releases, *especially if such revised thresholds raise the statutory levels*.. . . (A Legislative History of the Superfund Amendments and Reauthorization Act of 1986, Committee Print, vol. 6, 5315) (emphasis added).

The clear implication of this statement is that Congress intended EPA to have the authority to lower, as well as to raise, the statutory thresholds.

The commenters' interpretation that EPA lacks the authority to lower the thresholds conflicts with Congressional intent in other ways. During debate on the Conference Report, Representative Edgar noted that "This act is intended to provide a *comprehensive view of toxic chemical exposure* and, hopefully, provide a basis for more sensible and effective local, State, and national policies." *Legislative History* at 5316. See, also, *Legislative History* at 5313 and 5338. And yet without the authority to lower the thresholds, EPA cannot ensure that this objective is achieved. For example, Congress included PCBs on the original list of EPCRA section 313 chemicals, thereby indicating an intent to provide the public with a "comprehensive view of exposure" to PCBs; but under the original reporting requirements, EPA only received 6 reports. Under no interpretation can six reports be characterized as obtaining "a comprehensive view of toxic chemical exposure." *Legislative History* at 5315.

EPA also disagrees with the comment that the Agency's interpretation has rendered this provision meaningless. This argument is based on a logical fallacy; a standard need not constrain agency action to the same degree in all circumstances to be meaningful. Congress may impose a standard that constrains actions to varying degrees in different circumstances. In this case, the Congressional debate on this provision indicates that Congress was most concerned with the loss of publicly available information that may result from raising the thresholds. See, e.g., *Legislative History* at 5315-16. It is therefore reasonable to assume that Congress chose to impose a standard that presented a greater constraint on the Agency's ability to raise thresholds, and therefore created a ceiling beyond which the Agency was not authorized to modify thresholds.

Further, notwithstanding the fact that under EPA's interpretation of section 313(f)(2), the Agency can meet the statutory standard without the need for quantitative support when it lowers the threshold, EPA does not believe that Congress has granted it unfettered discretion to establish a different threshold. As discussed at length in Unit VI.E., Congress provided significant guidance in other provisions of the statute and the legislative history, to guide the Agency's exercise of discretion under this provision. Moreover, as noted above, the substantial majority requirement establishes a ceiling beyond which the Agency is not authorized to modify thresholds.

EPA also disagrees with the commenters' interpretation of other provisions of EPCRA section 313. In general, Congress established the basic framework of right-to-know reporting in EPCRA section 313, and selectively granted EPA carefully qualified authority to adjust individual parameters as appropriate. For example, EPA is authorized to modify the chemicals on the EPCRA section 313 list, the SIC codes and facilities covered by section 313, the reporting frequency, and the reporting thresholds, but each grant of authority is constrained to varying degrees by the standards contained in each respective provision. As the commenters have correctly noted, where Congress intended to restrict the Agency's authority to modify the original requirements, it did so explicitly. For example section 313(l) specifically limits EPA's authority to modify the reporting frequency: ". . .but the Administrator may not modify the frequency to be any more often than annually." Similarly Congress included no provision authorizing any amendments to the generally applicable employee threshold. It is therefore reasonable to assume that had Congress intended to only permit EPA to raise the thresholds, they would have included such an explicit restriction in the provision. Moreover, as noted earlier in this unit, the little legislative history that exists on this provision indicates that Congress intended EPA to have the discretion to both raise and lower the reporting thresholds. Further, EPA disagrees with the commenters' interpretation that Congress relied on different statutory construction to indicate its decision not to grant the Agency authority to decrease reporting thresholds, rather than relying on an explicit restriction in the plain language of the statute. EPA is aware of no indication of such Congressional intent in the legislative history, nor have the commenters cited to any. More to the point, the commenters' interpretation is clearly refuted by the inclusion in section 313(l) of an explicit restriction, demonstrating that where Congress intended to restrict EPA's authority, it did so explicitly.

One commenter argues that EPA lacks authority to lower the thresholds based on a comparison of the language in EPCRA sections 311 and 312 authorizing EPA to revise the section 311 and section 312 thresholds, with the language of section 313(f)(2). The commenter states that Congress could have used this same broad and simple language in section 313, and argues that because it did not, but instead chose to impose the “substantial majority” requirement, this demonstrates that Congress did not intend EPA to have the authority to lower the thresholds. Instead, the commenter argues, Congress was concerned with reporting burden when it crafted section 313, and so declined to grant EPA authority to lower the thresholds.

EPA disagrees. There is no significant difference between the language in sections 311, 312, and 313 that supports the commenter's interpretation. Unlike section 313, Congress did not establish thresholds in sections 311 and 312, but granted the Administrator broad discretion to determine whether a threshold was even appropriate; at what level to establish the threshold; and to modify it as appropriate. The language with which Congress conferred this authority provides that “the Administrator may establish threshold quantities. . . .” This is almost identical to the language of section 313(f)(2), which simply provides that “the Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1).” The commenter's argument turns wholly on the inclusion of the “substantial majority” requirement, and as explained above, EPA does not believe that this standard either precludes EPA from lowering thresholds or demonstrates Congressional intent to do so.

Several commenters challenged EPA's finding that its alternate thresholds would capture a substantial majority of total releases, contending that the Agency had impermissibly relied on an increase in the number of reports submitted. The commenters assert that EPA is required to estimate releases at these facilities and determine, on a percentage basis, whether a “substantial majority” of all releases of each chemical, from all facilities subject to EPCRA section 313, will be captured. One commenter noted that, even if lowering the threshold for an EPCRA section 313 chemical results in an increase in the number of reports on the chemical, this does not necessarily mean that the additional reports will capture a substantial majority of the total releases from all facilities subject to EPCRA section 313 reporting. In order for the lower threshold to meet the statutory test, the threshold must result in capturing at least two thirds of all releases of the chemical at covered facilities. The commenter contended that the number of reports is irrelevant to the percentage of releases captured by the reports. If a certain chemical were present at only one facility in the country subject to EPCRA section 313, the submission of one report on the chemical accounting for at least 66% of the releases from that facility would satisfy the “substantial majority” test. By contrast, if a lower threshold generated 1,000 new reports on a EPCRA section 313 chemical, the “substantial majority” test would not be met if those reports did not account for at least 66% of the total releases from all facilities subject to EPCRA section 313. This may be the case, for example, if a large percentage of releases of the EPCRA section 313 chemical occurred at facilities otherwise subject to EPCRA section 313 that do not meet the threshold for that particular chemical that triggers the obligation to report the releases.

EPA disagrees with the commenter's interpretation. As noted in the proposed rule, EPA interprets the language in 313(f)(2), “facilities subject to the requirements of [section 313],” to refer to those facilities that fall within the category of facilities described by sections 313(a) and (b). Subsection (a) lays out the general requirement that “the owner or operator of facilities subject to the requirements of this section” file an EPCRA section 313 report. Subsection (b) then further defines the facilities subject to the requirements of this section:

> [t]he requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20-39, . . . and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a toxic chemical release form is required under this section.

Thus, to be subject to the requirements, a facility must meet all three of the requirements laid out in subsection (b). This means that the class of facilities subject to reporting under section 313 will vary according to the individual chemical. Moreover, facilities that have not exceeded a threshold for a particular chemical are not “subject to the requirements” of EPCRA section 313 for that chemical.

To determine whether a particular threshold, either higher or lower, for an individual chemical meets the substantial majority test, one would compare the total national aggregate of releases of the chemical by covered facilities at the existing thresholds with the estimated total national aggregate of releases at the proposed alternate threshold, and determine whether a substantial majority of releases reported under the original thresholds would be reported. Logically, the universe of facilities subject to the requirements under a lower threshold will always be either equivalent to, or greater, than the universe of facilities that are subject to the requirements under the existing thresholds. Moreover, because facilities subject to the requirements of section 313 must report “the annual quantity of the toxic chemical entering each environmental medium,” EPA can meet the substantial majority standard when lowering the thresholds, without the need for quantitative support; i.e., facilities that report, must report their releases and other waste management quantities. In this instance, the number of reports serves as an adequate surrogate for releases because essentially all releases (and other waste management quantities) will be reported by facilities subject to the requirements of this section.

In other words, facilities “subject to the requirements of this section” are those that must file EPCRA section 313 reports. Thus, the baseline against which the “substantial majority of total releases” is measured is the category of facilities that currently submit reports. Consequently, if quantitative support for its finding were necessary, EPA would be justified in relying on the number of reports to make its finding.

By contrast, although it is not clear exactly how the commenters interpret the phrase “facilities subject to the requirements of this section,” it is clear that they do so without reference to all of the requirements in subsections (a) and (b). And essentially, any interpretation that ignores any portion of subsection (b), results in an interpretation of EPCRA section 313(f)(2) as “facilities *otherwise* or *potentially* subject to the requirements of this section.” This is inconsistent with the plain language of section 313(f)(2). The commenters can only support their argument that EPA has not met the “substantial majority” test by assuming that all facilities, irrespective of whether they are in a covered SIC code or they exceed the existing thresholds, are subject to EPCRA section

313, and that EPA must ensure that it captures a substantial majority of releases from the universe of those facilities. If this were correct, the addition of certain SIC codes could be a prerequisite to lowering thresholds for certain chemicals. Such a requirement is not currently included in section 313. The commenters have provided no support in either the statute or legislative history for these interpretations. Nor have the commenters provided any support for the interpretation that "substantial majority" equates to a particular percentage, such as 66%.

Finally, EPA notes, as it noted in the proposed rule, that, for several reasons, it does not believe that it has the necessary information to develop even reasonably accurate estimates of the potential releases that would be reported at an average facility at each of the identified options for a lowered threshold. Specifically, EPA believes that: (1) Sufficient information is not currently available for these chemicals, and (2) there is insufficient information on the numerous processes employed by all the sectors involved to calculate a comprehensive release estimate for each sector. While there are some data available, comprehensive data are not available for all sectors and chemicals. EPA further notes that none of the commenters provided either any information or methodology to address this issue, notwithstanding EPA's specific request.

Two commenters rely on excerpts from the debate on the Conference Report with respect to section 313(f)(2) to argue that EPA is only authorized to revise the thresholds if EPA presents a convincing analysis that revisions to the threshold will capture a substantial majority of the releases while also ensuring that it is not placing undue burdens on facilities which contribute little to such releases. The commenters argue that EPA has not satisfied the substantial majority requirement, and to do so, must conduct a more thorough assessment of the burden imposed on industry focused on the volume of releases that will be captured, not the number of reports. Another commenter compares the legislative history of sections 311 and 312 with 313, and concludes that Congress clearly intended EPA to factor burden into section 313 threshold questions.

EPA disagrees. Ultimately, EPA must comply with the statutory language, and section 313(f)(2) does not impose any requirement on the Agency to rely on the type of analyses described by the commenter. In addition, the commenters' reliance on the statements made during the Conference Report debate are misplaced. The commenter only quotes part of Representative Edgar's statement; the full quotation indicates only that EPA must present a convincing case, "based on verifiable, historical data" that the statutory thresholds warrant revision. As discussed below in Unit VI.E., EPA believes it has presented a convincing case that the thresholds should be lowered for PBT chemicals. The commenter also failed to include the portion of Representative Edgar's statement explaining that a convincing case was particularly necessary if the effect of the modification was to raise the thresholds. See, *Legislative History* at 5315.

Nonetheless, as discussed in greater detail in Unit VI.E., EPA considered the burden that lower thresholds would impose on industry in selecting the PBT thresholds. EPA believes that the levels it has adopted will capture significantly more information about PBT chemicals than current thresholds, but will not be unduly burdensome on industry. In addition, as discussed in the Response to Comments document (Ref. 69), EPA believes that the number of reports filed is a more accurate measure of burden than the volume of releases.

A commenter alleges that EPA's interpretation of section 313(f)(2) contradicts its prior statements regarding threshold changes. The commenterstates that EPA was clear in the original EPCRA section 313 rulemaking that the statute requires a substantial majority finding supported by actual data. For example, in the June 1987 proposed rule, EPA stated: "The Agency is interested in data that would support the necessary finding that a modified threshold would still generate reporting on a substantial majority of total releases, as the statute requires." And in the February 16, 1988 final rule promulgating EPCRA section 313 requirements, EPA stated

> . . .the first few years' data should be evaluated to determine whether modifications of the threshold would meet the statutory test of obtaining reporting on a substantial majority of the releases (i.e., pounds released per year) of each chemical from subject facilities. EPA may consider changing the reporting thresholds based on several years of data collection.

The commenter also notes that in neither the proposed nor final rule establishing EPCRA section 313 requirements did EPA specifically assert that it had the authority to lower thresholds.

EPA disagrees that its statements in this rulemaking contradict its prior statements in the 1988 rulemaking. As a preliminary matter, EPA has never denied that the requirement that a revised threshold obtain reporting on a substantial majority of total releases applies to any action lowering the reporting thresholds. Specifically, EPA's discussion in the 1987 proposed rule was in the context of a response to proposals from the Small Business Administration (SBA) that the Agency raise the thresholds to capture only larger facilities. EPA's statements in the 1988 final rule also need to be evaluated with SBA's proposals in mind. Moreover, while it is true that the discussion to which the commenter cited did not distinguish between lowering and raising the thresholds (it was intended as a response to comments on both sides of the issue), EPA notes that the majority of the comment summary focuses on requests to raise the thresholds. Finally, while it is true that EPA did not specifically assert its authority to lower the thresholds in either rule, neither did EPA deny that EPCRA section 313(f)(2) grants it this authority. However, it is worth noting that in the final rule, EPA responded to comments from environmental and public interest groups requesting that the Agency lower the thresholds, and that EPA never stated or implied that it lacked the authority to lower thresholds.

One commenter states that EPA's authority to lower reporting thresholds is not limitless. The commenter argues that a decision to lower the thresholds must be tied to the overall purpose of the Act, namely, to inform the public of potential health risks posed by the presence of toxic chemicals released to the environment in their communities. A regulatory decision to capture more reports under EPCRA section 313 must be based on the need to inform the public of health risks associated with the releases captured in those reports. Otherwise, the usefulness of the TRI data base begins to diminish. EPA needs to demonstrate that the releases of the PBTs at such small amounts pose a meaningful risk to the public health. Another commenter asserts that EPA is relying on the purposes of EPCRA to support its interpretation of section 313(f), and argues that, although section 313(h) does describe intended uses for TRI data, section 313(h) itself does not describe the purposes or intention of section 313. The commenter instead relies on several provisions of section 313 and argues that the purpose and intention of Congress to make information available to the public was balanced by concerns about the potential burden of the TRI program. The commenter also states that the uses

Congress anticipated for TRI data do not outweigh the balance that Congress intended between generating information and minimizing burden, and do not grant EPA blanket authority to expand the reporting requirements.

EPA agrees with the commenter that its authority to lower reporting thresholds is not limitless, and that its decision to lower the thresholds must be tied to EPCRA's overall purposes. However, EPA believes that Congress granted the Agency broad, but not unfettered, discretion to determine when it is appropriate to lower thresholds, and to determine the specific thresholds that are appropriate. As discussed in greater detail in Unit VI.E., EPA believes that its decision to lower the thresholds, and the thresholds it has chosen, reflect these principles.

However, EPA generally disagrees with the remainder of the commenter's conclusions. As discussed in more detail in Unit VI.F., EPA is not required to base its decisions under EPCRA section 313 on the need to inform the public of health risks associated with reported releases and other waste management quantities. And as discussed elsewhere in this preamble and the Response to Comments document (Ref. 69), EPA believes that the information that will be reported as a result of this rulemaking will provide useful information to the public.

In large measure, the issues raised in the second comment closely relate to the specific thresholds and EPA's rationale for choosing them, and this issue is discussed in more detail in Unit VI.E. However, to the extent it relates to EPA's interpretation of section 313(f)(2), some response is also provided here.

As a preliminary matter, while it is true that EPCRA section 313 does not explicitly identify the purposes of the section, the Conference Report makes clear that subsection (h) of section 313:

> Describes the intended uses of the toxic chemical release forms required to be submitted by this section and expresses the purposes of this section. The information collected under this section is intended to inform the general public and the communities surrounding covered facilities about releases of toxic chemicals, to assist in research, to aid in development of regulations, guidelines, and standards, and for other similar purposes. (Conference Report at 299).

Contrary to the commenter's assertion, the Agency never indicated that it was relying on section 313(h) to expand its authority under section 313(f)(2). Rather, EPA noted that it was relying on the purposes of section 313 as an additional source of Congressional direction to guide the Agency's exercise of discretion under this provision. EPA relied on section 313(h), in part, because the Agency believes that its implementation of EPCRA generally should be guided by EPCRA section 313's purposes. In addition, section 313(h) shares certain elements with the Congressional guidance on section 313(f)(2) in the legislative history. As discussed in greater detail in Unit VI.E., EPA has distilled those common elements, and relied on them to guide its discretion in establishing the specific thresholds under section 313(f)(2).

EPA also disagrees with the commenter's assertion that the purpose of EPCRA is to achieve a balance between the public's right to information about their potential exposures to toxic chemicals and the reporting burden imposed on industry. EPCRA section 313(f)(2) does not require EPA to consider burden in establishing revised thresholds. Although EPA has included the reporting burdens imposed on industry as one consideration in determining the appropriate thresholds, the Agency is also mindful that the authors of EPCRA, while sensitive to the burdens EPCRA section 313 reporting placed on industry, never intended this consideration to outweigh the public's need for access to information concerning release and waste management, and thus their potential exposure to toxic chemicals. See, e.g., *Legislative History* at 5315–16 and 5338–39. And with respect to the assertion that the general purposes of section 313 are to balance the public's right-to-know about toxic chemical releases and other waste management in their communities against the reporting burdens EPCRA section 313 imposes, EPA notes that reporting burden is not included anywhere in section 313(h). Nor does the strong policy directive underlying EPA's overall implementation of EPCRA section 313 support such an interpretation. Representative Edgar, one of the bill's primary architects noted:

> The heart of the Federal Right-to-Know Program is its reporting requirements, which are intended to provide a comprehensive picture of the community's and the Nation's exposure to toxic chemicals. As the Environmental Protection Agency, the States, and localities implement this program, they should be guided by several general principles.
>
> First, Congress recognizes a compelling need for more information about the Nation's exposure to toxic chemicals. Until now, the success of such regulatory programs such as the Clean Air Act, the Resource Conservation and Recovery Act, and the Clean Water Act has been impossible to measure because no broad-based national information has been compiled to indicate increases or decreases in the amounts of toxic pollutants entering our environment. As a result, the reporting provision in this legislation should be construed expansively to require the collection of the most information permitted under the statutory language. Any discretion to limit the amount of information reported should be exercised only for compelling reasons. . . . *Legislative History* at 5313.

Significantly, Representative Edgar did not include reporting burden as one of the general principles that should guide the Agency's implementation of EPCRA section 313. Rather, he stated:

> This is a new Federal initiative, and I recognize the desire of some of my colleagues to move ahead cautiously to ensure that burdens imposed on industry are not excessive. Frankly, my concerns rest with the families that live in the shadows of these chemical and manufacturing plants. I have put myself in their shoes and have fought for a program that looks after their needs. This legislation gets us well on the path to the full disclosure they deserve. *Id* at 5316.

Nonetheless, EPA has considered the legislative history on section 313(f)(2), including the excerpts cited by the commenter, and determined it would be reasonable to include some consideration of the reporting burdens in selecting its revised thresholds. The degree to which EPA included burden in its selection of the thresholds established in this rulemaking is discussed at length in Unit VI.E. and the Response to Comments document (Ref. 69).

EPA agrees that section 313(h) does not grant EPA unfettered discretion to expand EPCRA's reporting requirements; as noted in a previous response, Congress established the basic parameters of the EPCRA section 313 reporting requirements, and selectively granted EPA carefully qualified authority to modify certain of them. In this action, for example, EPA is only affecting the activity thresholds, but Congress established other limitations that govern whether a facility is subject to reporting. For example, facilities with fewer than 10 employees are not subject to reporting under subsection 313(b)(1).

B. What Comments Did EPA Receive on Persistence Criteria, Bioaccumulation Criteria, and Toxicity Criteria, and What Are EPA's Responses?

1. *Comments on EPA's general approach.* Several commenters contend that only chemicals which are globally recognized as persistent bioaccumulative toxic chemicals should form the foundation of the EPCRA section 313 PBT chemical list and criteria. The application of the criteria in this manner is consistent with several existing international agreements and

programs, such as the Great Lakes Binational Strategy, the North American Commission on Environmental Cooperation (NACEC), the United Nations Economic Commission for Europe's (UNECE) agreement to address persistent organic pollutants (POPs), and the United Nations Environmental Programme (UNEP). These programs have prompted widely accepted numerical values for persistence and bioaccumulation and defined parameters for assessing toxicity. These criteria have also been adopted with U.S. support and leadership and the commenters contend that it is not clear why EPA is now taking a vastly different approach to identifying PBT criteria in the proposed rule. The commenters suggest that EPA conform the criteria for PBT chemicals on EPCRA section 313 with the criteria and chemicals that are part of the programs being implemented by the NACEC, UNECE, and UNEP. By doing so, EPA would harmonize the U.S. program with similar international programs that focus on a narrow set of PBT chemicals.

EPA believes that it would be inappropriate to merely adopt the criteria and list of chemicals managed under the international programs cited because the purposes of the TRI program are different than the purposes of the cited international programs. The TRI was established by Congress under EPCRA section 313 in response to public demand for information on toxic chemicals being released in their communities. The TRI program is national in scope, but a significant part of its overriding goal is to provide information on releases to local communities so that they can determine if the releases result in potential risks. The entire concept of TRI, and indeed other, similar Pollutant Release and Transfer Registries (PRTRs) since established in several nations, is founded on the belief that the public has the right to know about chemical use, release, and other waste management in the areas in which they live, as well as the hazards associated with these chemicals. This emphasis is fundamentally different from the global focus of the UNEP negotiation and its concept of residual risk. It is EPA's position that the domestic, community-based purposes of EPCRA section 313 have important implications with regard to the criteria used to identify toxic chemicals as persistent and/or bioaccumulative, as well as the methods and models used to evaluate persistence and/or bioaccumulation.

EPCRA section 313 charges EPA with collecting and disseminating information on releases, among other waste management data, so that communities can estimate local exposure and local risks. One intent of EPCRA section 313 is to provide information to the public so that they can take an active role in determining what risks resulting from toxic chemical releases in their community are acceptable. This basic local empowerment is a cornerstone of the right-to-know program.

EPCRA section 313(h) states that:

> The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 11044(a) of this title, to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

EPCRA section 313 establishes an information collection and dissemination program. EPA interprets EPCRA section 313(g)(2) to require facilities to use readily available information to prepare each chemical-specific EPCRA section 313 report. The statute does not require that the facility conduct additional monitoring or emissions measurements to determine these quantities. A facility must only use readily available data or reasonable estimation methods in preparing the quantitative information it reports.

The purpose of EPCRA section 313 is not to ban the manufacture or use of a chemical, to restrict releases of the chemical, or to dictate how it should be used or released. As a result, the burden and control EPCRA section 313 imposes is significantly less than that imposed by a statute that controls the manufacture, use, and/or release of a chemical. The focus of EPCRA section 313 is not equivalent to the focus of a statute or international agreements in which chemicals are to be banned, phased-out, or restricted.

In contrast, the international agreements cited by the commenters are intended to ban, restrict, or phase-out the manufacture, use and/or release of a limited set of persistent organic pollutants and certain heavy metals that are highly persistent and highly bioaccumulative. Descriptions of the purposes of the Protocol on Persistent Organic Pollutants (POPs); Convention on Long-Range Transboundary Air Pollution (LRTAP), UNECE, UNEP on POPs, North American Commission for Environmental Cooperation's Sound Management of Chemicals (NACEC SMOC), as well as the International Council of Chemical Associations' (ICCA) position on POPs are presented below. The following quotes clearly illustrate that the intent of the international agreements is to narrowly focus on that subset of toxic chemicals which are of regional (e.g., North America and Europe) or global concern.

UNECE LRTAP

> The ultimate objective is to eliminate any discharges, emissions and losses of POPs. The Protocol bans the production and use of some products outright (aldrin, chlordane, chlordecone, dieldrin, endrin, hexabromobiphenyl, mirex and toxaphene). Others are scheduled for elimination at a later stage (DDT, heptachlor, hexachlorobenzene, PCBs). Finally, the Protocol severely restricts the use of DDT, HCH (including lindane) and PCBs. The Protocol includes provisions for dealing with the wastes of products that will be banned. (The 1998 Aarhus Protocol on Persistent Organic Pollutants (POPs); Convention on Long-Range Transboundary Air Pollution, United Nations Economic Commission for Europe (UNECE) at http://www.unece.org/env/lrtap) (Ref. 54)

UNEP

> International action to protect health and the environment through measures which will reduce and/or eliminate emissions and discharges of persistent organic pollutants, including the development of an international legally binding instrument. (Governing Council Decisions 20/24, 1999; United Nations Environmental Programme at http://irptc.unep.ch/pops/newlayout/negotiations.htm) (Ref. 57)

NACEC SMOC

> NACEC SMOC has developed action plans for PCBs, DDT, chlordane, and mercury. The action plans include 1) for PCBs "work toward the virtual elimination of PCBs in the environment, which the task force is interpreting as no measurable release to the environment", 2) for DDT "gradual reduction of DDT use for malaria control" and "additional reductions," 3) for chlordane "phase-out of chlordane use", and 4) for mercury "reduce sources of anthropogenic mercury pollution." The longer-term goal of the plan is to reduce the presence of mercury in the environment to achieve naturally occurring levels." (North American Cooperation for the Sound Management of Chemicals (June 1998); North American Commission for Environmental Cooperation at http://www.cec.org/english/profile/coop/Pollute—f.cfm?format=1) (Ref. 40)

ICCA

> *ICCA Position*: ICCA member associations have demonstrated their commitment to sound chemicals management, and to the goal of reducing the potential human health and environmental risks that may be associated with POPs. Many POPs are already subject to considerable voluntary risk management by chemical companies, and the uses of most substances identified as POPs has been discontinued or extremely limited

by chemical companies within the countries represented by ICCA member associations. (International Council of Chemical Associations (ICCA) Briefing Note on Persistent Organic Pollutants (POPs) (April 21, 1998) at http://www.icca-chem.org/issues.htm) (Ref. 26)

In addition, as directed under EPCRA section 313(h), EPA makes the TRI data available to various groups, including international organizations, that, in turn, use the information to decide whether to ban, restrict, or phase-out chemicals.

For the same reasons, EPA also disagrees that only substances globally recognized as POPs should provide the basis of persistence criteria for this rulemaking. POPs are organic chemicals whose characteristics of persistence in the environment, accumulation in biological organisms and toxicity make them priority pollutants that cause significant environmental risks to humans and ecosystems. The substances or substance categories being considered for implementation of global controls through the UNEP negotiations (UNEP/GC.18/32, 1995: aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex, toxaphene, hexachlorobenzene, PCBs, polychlorinated dibenzo-*p*-dioxins and furans) (Refs. 44 and 45) were selected largely because they or their degradation products pose risks that may occur far from their sites of initial entry into the environment. The UNEP action is the global counterpart to similar, regional negotiations, most notably the UNECE Convention on Long-Range Transboundary Air Pollution (LRTAP) (Ref. 54); the North American Free Trade Agreement (NAFTA) CEC Initiative on the Sound Management of Chemicals (Ref. 39); and the bilateral US/Canada agreement to control discharge or release of POPs in the Great Lakes basin (Ref. 23). A central theme of the UNEP action, consistent with its global scope, is the notion of residual risk, meaning specifically that to be subject to the negotiations, it is not sufficient for a substance to pose risks within a nation or regionally, rather it must pose risks to populations and nations distant from release sites.

2. *Comments on EPA's individual criteria.* The same commenters state that EPA should use the international criteria being applied by UNEP, UNECE LRTAP, NACEC SMOC, for persistence, bioaccumulation, and toxicity. Some of these commenters also include the criteria developed by CMA (CMA, PTB Policy Implementation Guidance: Product Risk Management Guidance for PTBs (February 1996)). One commenter includes the criteria developed by the ICCA for POPs. Another commenter states that there is no reason to adopt criteria that are significantly more stringent than those used in other programs. One commenter states that EPA should consider the degree of toxicity and focus on the most toxic chemicals. Some commenters state that EPA should couple the persistence and bioaccumulation criteria to each other. They believe that these criteria should not be considered independently. The numerical criteria presented by some of the commenters are provided below:

Table 2.—Numerical Persistence and Bioaccumulation Criteria Suggested by Commenters

	CMA PTB Policy	NACEC SMOC	UNECE (LRTAP) POPs	UNEP POPs/CEG FRAMEWORK	Environment Canada Toxic Substances Management Policy (June 1995)	ICCA
Persistence	Half-life = 6 months in water or 1 year in soil	Half-life > = 2 days air; 6 months water/soil; or 1 year sediment	Half-life> 2 months water or 6 months soils/sediment; or otherwise sufficiently persistent to be of concern	Half-life > [2 or 6] months soil/sediment; or other evidence that substance is sufficiently persistent to be of concern	Half-life > = 2 days air; 6 months water/soil; 1 year sediment	Half-life = 6 months water, 1 year soil sediments, or 5 days air
Bioaccumulation	BAF/BCF > = 5,000 or estimation techniques	BAF/BCF >= 5,000 or Log K_{ow} > = 5	BAF/BCF > 5,000 or Log K_{ow} > 5 or factors such as high toxicity	BCF/BAF > 5,000 or Log K_{ow}> [4 or 5]; evidence that substance with significantly lower BCF/BAF is of concern, e.g., due to high toxicity/ecotoxicity; or monitoring data in biota indicating sufficient bioaccumulation to be of concern	Half-life > 2 months water or 6 months soils/sediment (or otherwise sufficiently persistent to be of concern)	BCF > 5,000 or log Log K_{ow} > 5 and <7.5, MW<700 and substance is not metabolized

Table 2.—Numerical Persistence and Bioaccumulation Criteria Suggested by Commenters—Continued

	CMA PTB Policy	NACEC SMOC	UNECE (LRTAP) POPs	UNEP POPs/CEG FRAMEWORK	Environment Canada Toxic Substances Management Policy (June 1995)	ICCA
Toxicity	Professional judgment in evaluation of aquatic toxicity, wildlife toxicity, oral/dermal/inhalation toxicity (mammals and birds), reproductive toxicity, neurological toxicity; carcinogenicity, mutagenicity, and/or teratogenicity	Acute and chronic (including toxicity of breakdown products, if appropriate)	Potential to affect human health and/or the environment adversely	Evidence that (chronic) toxicity or ecotoxicity data indicate a potential for damage to human health or the environment caused by the substance resulting or anticipated from long-range transport	CEPA - toxic	Expert judgment that acute aquatic lethality, subchronic and chronic aquatic toxicity, acute wildlife toxicity, oral/dermal/inhalation toxicity in mammals and birds, carcinogenicity, mutagenicity, teratogenicity, reproductive toxicity, neurological toxicity, and immune system effects must be demonstrated or expected to occur at the concentrations observed in the environment

EPA is establishing criteria in this rulemaking for the TRI program for persistence and bioaccumulation. EPCRA section 313(d)(2) already provides toxicity criteria for the TRI program. While EPA chose in this rulemaking to focus on chemicals that are toxic and persistent and bioaccumulative, EPA did not state that the persistence criterion could only be applied in conjunction with the bioaccumulation criterion and vice versa. EPA has not tied the criteria together because there is no scientific rationale to define persistence criteria in terms of both bioaccumulation and persistence and to define bioaccumulation both in terms of persistence and bioaccumulation. As illustrated by the descriptions of persistence and bioaccumulation provided in the proposed rule, persistence and bioaccumulation are separate chemical and/or biological processes. They are not by definition dependent upon the other.

> A chemical's persistence refers to the length of time the chemical can exist in the environment before being destroyed. (at 64 FR 698)

and

> Bioaccumulation is a general term that is used to describe the process by which organisms may accumulate chemical substances in their bodies. (at 64 FR 703)

A chemical is not considered to be persistent if it is only bioaccumulative. For example, a chemical may be extremely persistent and yet not bioaccumulate appreciably. For example, metals cannot be destroyed in the environment and thus are extremely persistent. Some metals bioaccumulate appreciably while others do not. However, the degree to which a metal can bioaccumulate does not affect the metal's persistence in the environment. The connection suggested by the commenters is not scientifically justified. Thus, EPA does not believe that persistence criteria can be applied only in conjunction with the bioaccumulation criteria. EPA reiterates that in this rulemaking the Agency chose to focus on those toxic chemicals that meet both the persistence and bioaccumulation criteria proposed for EPCRA section 313. In the future, the Agency may focus on toxic chemicals that are either persistent or bioaccumulative.

A discussion of the individual criteria is presented in the remainder of this unit.

a. *Persistence.* EPA proposed persistence criteria for the TRI program of half-lifes of 2 months in water, soil, and sediment and 2 days in air. As discussed in Unit VI.B.1., EPA disagrees that it must choose persistence criteria for EPCRA section 313, an information collection and dissemination program, consistent with the international criteria being applied to chemicals that are of global or regional (e.g., Europe and the Great Lakes) concern and that are being targeted for ban, restriction, or phase-out. Chemicals that meet the persistence criteria used in the international agreements are extremely persistent chemicals. Applying these criteria to EPCRA section 313 would result in a very narrow list of chemicals that would focus on only extremely persistent chemicals. This is inconsistent with both the purposes of EPCRA section 313 and with EPA's technical judgment. There is no "bright line" that separates what is persistent from what is not persistent. The degree of persistence is a continuum. Chemicals with a half-life of 2 to 6 months are not non-persistent. They are less than chemicals with a half-life of greater than 6 months. The degree of persistence that should be used as criteria is not an absolute scientific determination. Rather it is a combination of science and policy. As discussed in the proposed rule and the remainder of this section, organizations have generally used as persistence criteria half-lifes of 2 months and/or 6 months for water, soil, and sediment.

The determination of which set of numerical criteria to apply will depend on the final intent: for example, providing communities with information on persistent chemicals that can build up in their environment versus banning the manufacture and use and eliminating releases of a chemical that has global impacts. For EPCRA section 313, which provides information on toxic chemicals to communities, researchers, and governments, the criteria should be in keeping with both science and the intent of the statute.

Long-range transport (LRT) and residual risk are relevant domestically, since chemical substances may be transported regionally and transcontinentally, resulting in exposures at sites distant from releases but still within U.S. borders. Nevertheless, as a general rule, the closer the sources and receptor are, the more likely it is that released material will reach that receptor. The 12 UNEP POPs or their degradation products all meet or exceed the half-life criterion of 6 months for soil, water, or sediment, often by large margins (Refs. 44 and 45), and the 6 months criterion thus acts to isolate these substances for international attention aimed at limiting LRT. But a shorter half-life criterion is necessary to protect communities from bioaccumulative toxicants derived from sources closer to home, since, all other things being equal, a pollutant reaches nearby populations in less time than distant ones.

An article by Wania and Mackay (Ref. 81) is often cited in discussions of "global distillation" of relatively mobile POPs such as hexachlorobenzene and lindane, which tend to have inverted concentration profiles such that concentrations increase with distance from the source (i.e., from temperate to polar regions) rather than the reverse. What may be less obvious is that the converse is also true; namely, that less volatile substances show no significant latitudinal dependence; that low-mobility POPs such as mirex and the more highly chlorinated PCBs tend to undergo *rapid deposition and retention* close to their sources; and that all but high or relatively high mobility chemicals are expected to show "normal" concentration profiles, such that concentrations decline with distance from warmer sources to colder remote regions (Ref. 81). A recent study of organochlorine contaminants in sea otters illustrates this point. Although the levels of total DDTs observed were not considered toxicologically significant, Bacon *et al.* (Ref. 8) found the highest levels in California sea otters (ca. 850 micrograms per kilogram (μg/kg)) but much lower levels in Aleutian otters (40 μg/kg) and southeast Alaska otters (1 μg/kg), and attributed the higher levels in the California otters to extensive DDT use and production in this region from the 1950s to the 1970s. Even UNEP's Criteria Expert Group (CEG), which is charged with developing criteria and procedures for addition of substances beyond the original 12 POPs, has highlighted the importance of "near-field" exposures:

> In warmer climates exposures may occur closer to the source; e.g., occupational exposure during use, or local exposure caused by runoff from use or leaking from stockpiles. Food, such as fish, may be a major route of intake also in warmer climates [in contrast to Arctic and sub-Arctic regions] and POPs may accumulate in the food chain and reach high levels in predatory species in these conditions. (UNEP/POPS/INC/CEG/1/2: 1998) (Ref. 56)

An additional factor that argues for adopting the more protective persistence criterion is the need for communities with vulnerable populations to have access to data on release and other waste management quantities. Examples of such populations include toddlers who play in contaminated soil, local farmers who consume their own produce, and subsistence as well as sport fishers, who often consume large quantities of what they catch. The relative importance of any of these pathways depends on the properties of the substance, rates and media of release and other factors, but ingestion of bioaccumulating substances may occur by all of these routes. The Organization for Economic Cooperation and Development (OECD) guidance on the assessment of indirect human exposure to chemical toxicants is consistent with EPA policy, and states that in the case of local, site-specific emissions, one or more of these subgroups may be particularly endangered (Ref. 53).

From a scientific perspective there is no one best persistence criterion. However, it is simply not accurate to state that there is no precedent or basis for using a persistence criterion of 2 months. As outlined in the proposed rule (64 FR 701), similar values have been proposed by several authorities, including the Ontario, Canada Ministry of Environment and Energy (MOEE) for its Candidate Substances List for Bans or Phaseouts (Ref. 36); the Canadian initiative for Accelerated Reduction/Elimination of Toxics (ARET) (Refs. 1 and 2); the International Joint Commission's (IJC) Great Lakes Water Quality Agreement (GLWQA) (Ref. 27); and the UNECE's LRTAP Convention, which did adopt 2 months as the persistence criterion of record for water (Ref. 54). In each of these programs the focus was on persistent, bioaccumulative and toxic substances, and it is noteworthy that all are national or regional, not global, in scope. Thus, a trend exists in which authorities with domestic or regional mandates to take action to reduce risks from indirect exposure to PBT chemicals have recommended half-life criteria substantially lower than 6 months.

EPA's Office of Water maintains a Listing of Fish and Wildlife Advisories (LFWA) for the U.S. and territories, which listed 2,299 advisories in 1997 (Ref. 29). U.S. states and territories and Native American tribes have primary responsibility for issuing advisories for the general population, which include recommendations to limit or avoid consumption of certain fish and wildlife from specific water bodies. The overwhelming majority of the advisories are for well recognized PBT chemicals (chlordane, mercury, PCBs, etc.), but many less familiar substances are also represented. The number and content of advisories in LFWA clearly indicate that toxicologically significant levels of chemical contaminants, specifically PBT chemicals, are often found in fish and wildlife that are caught noncommercially and consumed by the U.S. population. It is generally impossible to determine the exact source(s) of exposure for the species and locations included in any given advisory, but it seems highly unlikely that the majority of listed contaminants in U.S. waters could be derived from non-U.S. (i.e., geographically distant) sources. The LFWA thus lends further support to the contention that concern for exposure to PBT chemicals is not limited to situations where the exposure results primarily from LRT. It should be noted that the fact that no advisories have been issued for a particular chemical does not mean that it does not persist. Not all species of aquatic organisms are tested nor are all water bodies, in addition, each state determines what it will use as the level of concern for issuing an advisory.

A series of Toxic Substances Control Act (TSCA) section 5 Premanufacture Notifications (PMNs) submitted to EPA in 1990 also illustrates that exposure to PBT chemicals is not limited to LRT (Refs. 37 and 38), and also demonstrates: (i) Why EPA believes that the persistence criterion for bioaccumulating substances in soil, water, or sediment should be set substantially lower than 6 months; and (ii) that for purposes of EPCRA section 313, concern for potential exposures to persistent and bioaccumulative toxics must extend beyond the UNEP's 12 widely acknowledged POPs. The substances in question were alkylated diphenyls for use as solvents, and for which EPA expected discharge to receiving streams and rivers. The submitter supplied data on use and disposal, aquatic toxicity, and biodegradability. The submitted environmental fate data and EPA estimates of biodegradability based on structural analogs suggested that half-lifes in water would be well below 6 months, but not necessarily lower than 2 months. As a result of concerns expressed by EPA, use was limited to sites where resulting water concentrations could be limited to 1 microgram per liter (μg/L) or less; concomitantly, the submitter was also informed of EPA's belief that a potential for *long-term risk* existed, but that EPA could not quantify this risk since assessments typically evaluated releases over only 1 year. In 1998, results of monitoring were announced by the State EPA and revealed that the alkylated biphenyls had been found in fish fillets and sediment samples from the receiving stream.

One commenter contends that the persistence criteria of half-lifes of 2 months for water, soil, and sediment and 2 days for air may not be sufficiently protective (i.e., the criteria may be too high).

EPA disagrees with the comment. EPA believes that it should adopt criteria that focus on toxic chemicals that will build up in the environment, while at the same time not limiting the list of persistent toxic chemicals to only those that are of global concern. As discussed earlier in this section, EPA believes that 2 months is a reasonable half-life criterion given the purposes of EPCRA section 313. EPA believes that application of lower criteria would include so many substances as to be impractical. Further, given the uncertainties that often exist regarding physical properties and environmental behavior of chemicals, caution is especially appropriate for substances with shorter half-lifes, since they are (all other things being equal) less likely to build up in the environment than more persistent substances. EPA believes that the adoption of criteria of half-lifes of 2 months in water, soil, and sediment and a half-life of 2 days in air allows EPA to balance the need to provide communities and other data users with information on toxic chemicals that persist in their environment without being overly inclusive or restrictive.

One commenter contends that a half-life criterion for air of 2 days should be considered sufficient in and of itself for designating substances as persistent.

EPA agrees with the comment. EPA made the following statements in the proposed rule regarding the 2–day air half-life criterion and its use in the determination as to whether a chemical was a PBT under EPCRA section 313:

> For the purposes of determining whether a toxic chemical is persistent in the environment under section 313, EPA used a half-life criterion of 2 months for water/sediment and soil and a half-life of 2 days for air. Given the above discussions, EPA believes that, for purposes of reporting under section 313, these values are appropriate for determining whether a toxic chemical is persistent in the environment and will persist long enough in the environment to bioaccumulate or be transported to remote locations. Under these criteria, if a toxic chemical meets any one of the media specific criteria, then it is considered to be persistent. Thus if a toxic chemical's half-life in water or sediment or soil is equal to or greater than 2 months or greater than 2 days for air then the toxic chemical is considered to be persistent for purposes of section 313. Note that when considering persistence in connection with the potential for a toxic chemical to bioaccumulate, meeting the air half-life criteria alone would not be sufficient, since a chemical's potential to bioaccumulate is usually dependent on it being persistent in either water, sediment, or soil. In determining whether the chemicals in this proposal were persistent, EPA did not rely solely on the persistence in air. (at 64 FR 702)

It is clear from the discussion above that EPA agrees with the commenter that when considering persistence alone an air half-life of 2 days would be considered sufficient to classify a chemical as persistent under EPCRA section 313. However, for the reasons explained above, if a chemical only meets the 2–day air half-life persistence criteria, EPA does not believe that would be sufficient for classifying a chemical as a PBT under EPCRA section 313.

Some commenters contend that EPA's two-tiered approach to the persistence criteria is confusing.

EPA notes that it proposed only one set of persistence criteria for EPCRA section 313, half-lifes of 2 months or greater in water, soil, and sediment and 2 days in air. The Agency did not propose to use half-lifes of 6 months or greater in water, soil, and sediment and 2 days in air as a second set of persistence criteria for EPCRA section 313. However, for purposes of setting reporting thresholds in this rulemaking, the Agency did choose to focus on the subset of PBT chemicals that have half-lifes of 6 months or greater in water, soil, or sediment (and BCF/BAFs greater than 5,000) by proposing a 10 pound reporting threshold.

For the reasons given above, EPA reaffirms its intention to use a half-life of 2 months as the criterion for persistence in water, soil, and sediment and a half-life of 2 days as the criterion for air when characterizing a chemical as persistent for purposes of EPCRA section 313.

b. *Bioaccumulation*. EPA proposed as bioaccumulation criteria for the TRI program bioaccumulation/bioconcentration factors of 1,000. As discussed in Unit VI.B.1., EPA disagrees that it must choose for EPCRA section 313, bioaccumulation criteria consistent with the international criteria. Applying these strict criteria to EPCRA section 313 would result in a very narrow list of chemicals that would focus on only extremely bioaccumulative chemicals. This is inconsistent with the purposes of EPCRA section 313 and with EPA's technical judgment. There is no "bright line" that separates what is bioaccumulative from what is not bioaccumulative. The degree of bioaccumulation is a continuum. Chemicals with BCFs or BAFs of 1,000 to 5,000 are not non-bioaccumulative. They are less bioaccumulative than chemicals with BCFs or BAFs greater than 5,000. The degree of bioaccumulation that should be used as a criterion is not an absolute scientific determination. Rather it is a combination of science and policy. As discussed in the proposed rule and below, organizations have generally used as bioaccumulation criteria BAFs/BCFs of 1,000 and 5,000. The determination of which numerical criterion to apply will depend on the final intent: for example, providing communities with information on bioaccumulative chemicals that can accumulate in organisms versus banning the manufacture and use and eliminating releases of a chemical that has global impacts. For EPCRA section 313 which provides information on toxic chemicals to communities, researchers, and governments, the criteria should be in keeping with both the Agency's scientific judgment and the intent of the statute.

From a scientific perspective there is no one bioaccumulation criterion. However, it is simply not accurate to state that there is no precedent or basis for using a bioaccumulation criterion of 1,000. As noted in the proposed rule, for a number of years EPA scientists and programs have used a BCF of 1,000 or more to indicate a high level of concern for bioaccumulation. In addition, this value has been used in some Canadian projects, many dealing with the Great

Lakes basin. Also, Germany proposed a BAF/BCF criterion of 1,000 during negotiation of the LRTAP Protocol. Support for a BAF criterion of 1,000 also comes from the Final Water Quality Guidance for the Great Lakes System (FWQGGLS) (60 FR 15366, March 23, 1995) (FRL–5173–7). In this document, EPA stated that bioaccumulation of persistent pollutants is a serious environmental threat to the Great Lakes Basin Ecosystem and that chemicals identified as bioaccumulative chemicals of concern (BCCs) (i.e., with BAF values greater than 1,000) would receive increased attention and more stringent controls. The final guidance designated as BCCs those chemicals with human health BAFs greater than 1,000 that were derived from certain field-measured BAFs. One commenter believed that the BAF criteria used in the FWQGGLS did not provide support for the use of a BAF of 1,000 since a more strenuous methodology taking more factors into account was used. However, EPA believes that this does provide support for the criteria established for the purposes of EPCRA section 313 because, although the underlying technical assessments may be more stringent, the bioaccumulation level of concern is still a BAF of 1,000. Also, as noted by some commenters, EPA has proposed to use a BCF/BAF of 1,000 to trigger testing under TSCA section 5(e) (63 FR 53417). Specifically, for chemicals subject to TSCA section 5 that have a BAF of 1,000 or greater and that meet certain toxicity and persistence criteria (similar to the EPCRA section 313 persistence criteria) testing would be "triggered" by specific production limits. While the manufacturer of the chemical would be allowed to commercialize the substance, certain controls could be stipulated, including specific limits on exposures, releases, or uses. EPA notes that in the same **Federal Register** document, the Agency has proposed that chemicals that have a bioaccumulation factor of 5,000 and that meet certain toxicity and persistence criteria (e.g., half-life of 6 months or greater in soil) be placed in a "Ban Pending Testing," bin. Chemicals meeting these criteria could be subject to more stringent control up to a ban on commercial production.

Not only is there precedent for the use a BCF/BAF of 1,000, but EPA believes that the purposes of the statute argue for the use of the more expansive criterion. Data on PBT chemicals are the type of information that will be of particular use to specific communities such as those that consist of subsistence fishers. Subsistence fishers (as well as sports fishers) are more highly exposed to PBT chemicals than the general population. Subsistence fishers consume large quantities of what they catch. In addition, children are affected by lower doses of certain PBTs than are adults. Children of both subsistence fishers and sport fishers will consume larger quantities of lake food and seafood than children in other communities. As discussed in Unit VI.B.2., EPA's Office of Water maintains a Listing of Fish and Wildlife Advisories (LFWA) for the U.S. and its territories, which listed 2,299 advisories in 1997 (Ref. 29). The overwhelming majority of the advisories are for well-recognized PBT chemicals (chlordane, mercury, PCBs, etc.), but many less familiar substances are also represented. The number and content of advisories in LFWA clearly indicate that toxicologically significant levels of chemical contaminants, specifically PBTs, are often found in fish and wildlife that are caught noncommercially and consumed by the U.S. population. It should be noted that the fact that no advisories have been issued for a particular chemical does not mean that the chemical does not bioaccumulate. Not all species of aquatic organisms are tested nor are all water bodies. In addition, each state determines what it will use as the level of concern for issuing an advisory. EPA believes that it would be inconsistent with the intent of EPCRA section 313 to limit the information on bioaccumulative toxic chemicals to only information for the most bioaccumulative.

One commenter contends that EPA did not provide scientific justification for its choice of the bioaccumulation criterion of a BCF/BAF of 1,000. The commenter states the EPA's discussion of the origin of the 1,000 BCF/BAF value at a 1976 meeting sponsored by the American Society of Testing and Materials, and its reaffirmation in 1995 in a research article by two of the original authors, the use of the value by scientists in EPA's Office of Research and Development's Duluth Laboratories, by EPA's Office of Pollution Prevention and Toxics in the review of chemicals under TSCA sections 4 and 5, by EPA's Office of Water in the Final Water Quality Guidance for the Great Lakes System, and the use by other authorities, such as the German government, to identify chemicals of high concern for bioaccumulation do not provide a technical basis for choosing a value of 1,000 as a criterion for bioaccumulation. The commenter contends that a criterion of 5,000 is scientifically supportable because chemicals with a BCF/BAF of 5,000 have a high potential to biomagnify.

As discussed above, there is no scientifically "best" bioaccumulation criterion. The degree of bioaccumulation is a continuum. A chemical does not bioaccumulate only if it has a BCF that is 5,000 or greater. A chemical that has a BCF of 1,000 will bioaccumulate, specifically the chemical will be present in an organism at a concentration that is 1,000 times greater than its concentration in the surrounding aqueous environment. Rather the choice of a value along the bioaccumulation spectrum is based to a large degree on how the criterion is to be used, e.g., to track chemicals entering a particular environment, or to restrict the use of chemicals, etc. As such the choice of a bioaccumulation criterion is a combination of science and policy.

The commenter did not provide support for the contention that 5,000 was scientifically the "best" bioaccumulation criterion. Specifically, the commenter did not indicate why as a scientific matter a BCF of 5,000 was preferable to a BCF of, for example 4,000 or a BCF of 15,500. While the commenter did note that chemicals that have a BCF of 5,000 tend to have a high potential to biomagnify, the commenter did not indicate in what way this factored into his determination that a BCF of 5,000 is the scientifically "best" bioaccumulation criterion. In addition, EPA does not agree that a BAF or BCF of 5,000 indicates that a chemical will be more likely to biomagnify since biomagnification is a much more complex process. Biomagnification is not a separate process from bioaccumulation or bioconcentration, but is instead a specific example or subset of both. Biomagnification has been defined as: The result of the processes of bioconcentration and bioaccumulation by which tissue concentrations of bioaccumulated chemicals increase as the chemical passes up through two or more trophic levels (Ref. 43). The difference between bioaccumulation and biomagnification is that for a chemical to biomagnify its level of bioaccumulation must increase as it moves up the food chain. The whole concept of biomagnification can be viewed as controversial (Ref. 9) and biomagnification has been studied for only a few chemicals. Most importantly, biomagnification is not required in order to have a concern for chemicals that bioaccumulate. This is because bioaccumulation in even one species can have a serious impact on that species or any other species that feeds on it. For example, if a chemical only bioaccumulates in fish then the fish will be exposed to higher concentrations of the chemical as will anything that eats the fish. Therefore, EPA believes that there is no reason to establish biomagnification as a criterion for PBT chemicals since bioaccumulation is of more than sufficient concern in and of itself.

None of the other commenters who believe that the bioaccumulation criterion of 1,000 is too expansive suggested that EPA adopt another value, other than the 5,000 value used in international agreements, addressed in previous responses in this unit. At most, several commenters took issue with the fact that the EPCRA section 313 bioaccumulation criterion (BCF/BAF of 1,000) is 5 fold less than the international bioaccumulation criterion of a BCF/BAF or 5,000. Given that for each of these programs the focus was on PBT chemicals that are of global concern, EPA believes that as a matter of public policy, it is more appropriate for a reporting program to use a more protective criterion than that used in international agreements that seek to ban or severely restrict the use and/or release of chemicals.

One commenter believes that EPA should not adopt a bioaccumulation criterion (BCF/BAF of 1,000) for EPCRA section 313 that is more stringent than the criterion for a Great Lakes BCCs (a human health BAF of 1,000). EPA notes that BCCs will receive stringent controls which is not the case for toxic chemicals identified as bioaccumulative (and persistent) under EPCRA section 313.

Many commenters supported the proposed bioaccumulation criterion of a BCF/BAF or 1,000. However, one of these commenters believes that 1,000 should be the criterion only if the BCF or BAF is a measured value. If the BCF is an estimated value, then the criterion should be 500.

EPA believes that such a two-tiered approach will add confusion. Further, estimated or predicted BCFs are often based on measured data and equations that have been found to correlate well with measured data. In addition, EPA believes that a BCF of 500 is overly expansive. EPA believes that expanding the criteria to include estimated BCFs of 500 would label so many chemicals as bioaccumulative as to be impractical. EPA believes that the adoption of the criterion of BCF/BAF of 1,000 allows EPA to balance the need to provide communities with information on toxic chemicals that bioaccumulate without being overly inclusive or restrictive.

Some commenters contend that EPA's two-tiered approach to the bioaccumulation criteria is confusing. EPA notes that it proposed only one bioaccumulation criterion for EPCRA section 313, a BCF/BAF of 1,000. The Agency did not propose to use a BCF/BAF of greater 5,000 as a second bioaccumulation criterion for EPCRA section 313. However, for purposes of setting reporting thresholds in this rulemaking, the Agency did choose to focus on the subset of PBT chemicals that have a BCF/BAF greater than 5,000 (and half-lifes greater than 6 months) by proposing an even lower reporting threshold.

For the reasons given above, EPA reaffirms its intention to use a BCF/BAF of 1,000 as the criterion for characterizing a chemical as bioaccumulative under EPCRA section 313.

c. *Toxicity*. A number of commenters contend that EPA should set a separate toxicity criteria for PBT chemicals. EPA disagrees. EPCRA section 313 provides toxicity criteria at section 313(d)(2) to be used in adding a chemical to or deleting a chemical from the EPCRA section 313 list of toxic chemicals. These criteria are:

> (A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
>
> (B) The chemical is known to cause or can reasonably be anticipated to cause in humans-
>
> (i) cancer or teratogenic effects, or
>
> (ii) serious or irreversible-
>
> (I) reproductive dysfunctions,
>
> (II) neurological disorders,
>
> (III) heritable genetic mutations, or
>
> (IV) other chronic health effects.
>
> (C) The chemical is known to cause or can reasonably be anticipated to cause, because of-
>
> (i) its toxicity,
>
> (ii) its toxicity and persistence in the environment, or
>
> (iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

Given that Congress has provided EPA with specific toxicity criteria, and that listed chemicals are statutorily defined as "toxic chemicals," the Agency does not believe that additional "toxicity" criteria would be appropriate. One reason is that the Agency is concerned that this would imply that TRI data on the toxic chemicals that meet the statutory toxicity criteria are of less value than TRI data that meet both the statutory toxicity criteria and some additional toxicity criteria that would be developed by EPA. EPA believes that bifurcating the list with an additional, non-statutory toxicity criteria would be inconsistent with the intent of Congress. In addition, it is worth noting that some of the toxicity criteria presented by the commenters are fundamentally consistent with the toxicity criteria outlined in the statute. However, EPA notes that some of the criteria provided by the commenters are risk criteria rather than hazard criteria. For example, see ICCA Briefing Note on POPs (April 21, 1998) (Ref. 26). As discussed at length in the final rule adding 286 chemicals to the EPCRA section 313 list (59 FR 61432), the EPCRA section 313(d)(2)(B) toxicity criteria (chronic toxicity) are hazard criteria, not risk criteria. The EPCRA section 313(d)(2)(C) criteria are primarily hazard based with only a limited exposure component. To impose additional toxicity criteria for purposes of defining a PBT or a PT or BT chemical based on risk rather than hazard would be inconsistent with EPCRA section 313. See, e.g., *Legislative History* at 5186. Risk assessment may be appropriate for use under statutes that control the manufacture, use and/or release of a chemical. However, EPCRA section 313 is an information collection provision that is fundamentally different from other environmental statutes that control or restrict chemical activities. For these reasons, EPA believes that it is inappropriate to add toxicity criteria, beyond the criteria provided by Congress at EPCRA section 313(d)(2).

3. *Persistence and bioaccumulation consideration under EPCRA section 313(d)(2)(C)(ii) and (iii).* The criteria that EPA has laid out in this rule for determining if a chemical is a persistent and/or bioaccumulative chemical are not the same criteria EPA uses when conducting assessments for listing chemicals pursuant to EPCRA section 313(d)(2)(C)(ii) and (iii). These sections of EPCRA allow EPA to consider whether a chemical meets the listing criteria based on "its toxicity and persistence in the environment" or "its toxicity and tendency to bioaccumulate in the environment." Including consideration of persistence and/or bioaccumulation modifies the way in which EPA assesses a chemical's toxicity for purposes of listing. EPA interprets the results of the toxicity data in light of a chemical's persistence and/or bioaccumulation, and adjusts its concerns for the chemical's toxicity in accordance with the degree to which a chemical persists or bioaccumulates. For example, standard aquatic toxicity tests provide toxicity results in time frames that range from hours to a few weeks. For aquatic toxicity that results

from such short exposure times, a chemical with a persistence half-life of even 2 weeks will result in a greater potential for exposure and therefore increased concern for the concentration at which toxicity is expressed. In this case, EPA would be concerned about the chemical's persistence at levels well below a half-life of 2 months or more. Because EPA's concern under these provisions is with the interrelationship between two chemical properties and how that affects whether the chemical can reasonably be anticipated to cause a significant adverse effect on the environment, EPA believes that it needs to be able to consider a broader range of values. By contrast, the persistence and bioaccumulation criteria established in today's rulemaking serve a different purpose; they are intended to operate independent of a chemical's toxicity, to identify a fixed class of chemicals. EPA has provided this explanation to clarify the different purposes of the persistence and bioaccumulation criteria established in this rule, and the use of persistence and bioaccumulation in assessments pursuant to EPCRA section 313(d)(2)(C)(ii) and (iii).

C. Criteria as they Apply to Metals

Many commenters contend that the persistence criteria proposed by EPA were developed for organic chemicals and cannot be applied to metals, or if applied, are not useful in screening for hazard. The critical parameter in determining risk is bioavailability, not persistence. This has been recognized by international organizations of which EPA is a member, so it is unclear why it is now necessary for EPA to deviate from these policies. Metals are not harmful if they are not in a bioavailable form. Moreover, metals are natural components of the earth's crust and many are accumulated by living organisms because they are essential nutrients. Two of the commenters state that because persistence is defined as "the failure of a substance to readily biodegrade," this concept has no relevance for metals.

EPA disagrees. The scientific literature contains many definitions of persistence which vary in detail, but center on a common theme: persistence is the *ability of a chemical substance to remain in a particular environment in an unchanged form*. This definition makes no mention whatsoever of any specific processes that may impact a substance's environmental fate, such as biodegradation. According to this definition, specific metal compounds may or may not be persistent depending on the form of the metal and environmental conditions, but the elemental metal itself obviously meets the definition, and this was acknowledged in the majority of comments received.

That elemental metals are persistent by definition is widely accepted. While they may take different oxidation states that can be interconverted, the elemental metal itself cannot be destroyed. For example, chromium (VI) may convert to chromium (III). Both are simply different forms of chromium. All elemental metals therefore meet the 2 months half-life criterion automatically. Given this, it is obviously false to assert, as did the majority of commenters on this issue, that EPA's proposed persistence criteria *cannot be applied* to metals. The position of many commenters was that in determining whether a metal or metal compound may actually pose a risk if released to the environment, bioavailability is much more important than the fact that a substance meets the formal "definition" of persistence. EPA agrees that bioavailability is important in determining the potential for the metal to be accumulated in organisms, but parent metals do have the potential to become available from metal compounds under common environmental conditions. Availability of the metal ion may be the result of biotic or abiotic processes. There are a number of environmental factors which EPA considers in determining the availability of the metal ion. These include hydrolysis, pH effects on solubility, photolysis, aerobic and anaerobic transformations, and *in vivo* transformations. As outlined in the remainder of this section, it is realistic to expect that, in general, metals when released into the environment can encounter conditions in which they are available at levels sufficient to exert toxicity and bioaccumulate.

EPA also disagrees with the commenters' claims, direct or implied, that metals released to the environment as a result of human activity must be of negligible concern because they:

- Cannot be converted to bioavailable forms; or even if initially bioavailable are rapidly sequestered in such a way that subsequent exposure is impossible; or
- If bioavailable, are naturally wholesome and good because organisms need them to function.

EPA disagrees with this simplistic view. Metals can enter the environment in bioavailable forms or can be converted in the environment into bioavailable forms. As shown below, metals and metal compounds may be available to bioaccumulate under many realistic and common environmental conditions.

The commenters are correct in stating that metals released to the environment from anthropogenic sources are affected by prevailing environmental conditions, meaning broadly the wide variety of physical, chemical and biological processes that act upon them, and these collectively determine the form in which the metal ultimately exists.

According to Klein (Ref. 28), interconversion of inorganic metal compounds can be quite rapid, especially for ionic forms, and as a result the chemical form in which an elemental metal is released may not be the predominant form post-release. Generally, the ionic forms of inorganic metals are the most available. Availability is affected by many factors and its determination is complex. For metals environmental conditions can affect their availability. A detailed scientific discussion of the environmental fate of lead, which is representative of other metals, and that is illustrative of many of the more important environmental variables that affect availability is provided in Refs. 14, 28, 30, 50, 66a, 72, and 84. See also the preamble to EPA's recent proposal to lower the EPCRA section 313 reporting thresholds for lead and lead compounds (64 FR 42222). The same basic chemical properties and environmental variables will affect the degree of availability of a metal in the environment regardless of the specific metal. There is no metal that is unavailable under all conditions.

EPA recognizes that lead and lead compounds are the subject of an EPA proposal under EPCRA section 313 (64 FR 42222). The inclusion of the discussion of the environmental fate of lead and lead compounds does not predetermine EPA's decision on the appropriate thresholds that should be set for lead and lead compounds. That determination will be based on a number of factors, including the bioaccumulation of lead.

Microbial transformations in soil, water, and sediment are often important in determining the overall fate of metals and metal compounds, and therefore the potential for formation of bioavailable forms. Metals known to undergo microbial oxidation/reduction processes include, antimony, arsenic, iron, mercury, selenium, and tellurium (Ref. 11). Arsenic microbiology illustrates the importance of environmental conditions in the interconversion of inorganic forms of arsenic. Microbial populations in activated sludge can oxidize arsenite to arsenate under aerobic conditions, but under anaerobic conditions such as often predominate in sediments, arsenate can be reduced to arsenite and beyond. Both arsenites and arsenates can be available in the environment (Ref. 11). Microorganisms can reduce mercury in the form of mercuric chloride to elemental mercury, and are also capable of producing elemental mercury from organomercurials such as phenylmercuric acetate and methylmercuric chloride. Although the reduction of Hg^{2+} to elemental mercury can be regarded as decreasing availability, the elemental mercury formed is volatile and more likely to enter the global atmospheric circulation.

Mercury is perhaps better known for its potential to be biomethylated by bacteria in the environment (Ref. 11). Mercury has very high stability constants with organic ligands and can form true organometallic compounds (Ref. 6). As indicated by Stumm and Morgan (Ref. 49), metals and metalloids that form stable alkyl compounds are of special concern because they may be volatile; may accumulate in cells; and are toxic to the central nervous system of higher organisms. Methylmercury is highly bioaccumulative and is by far the best studied example of microbial bioalkylation. However, methylation of arsenic is also fairly well-characterized, involves the replacement of substituent oxygen atoms by methyl groups (e.g., arsenate is biomethylated to form dimethylarsine), and is important in the transfer of arsenic from sediment to the atmosphere (Ref. 11). Lead, germanium, selenium, tellurium, tin, and several other metals can also be biomethylated (Ref. 49).

Many of the commenters noted that certain metals are indeed micronutrients (e.g., cobalt, copper, and iron), and are accumulated precisely because they are required for certain cellular functions. It does not follow, however, that any amount of the same metal is acceptable or desirable. Accumulation of essential elements is usually governed by homeostatic mechanisms that control uptake (Ref. 28), but excessive uptake is possible and can be toxic to an organism. For example, selenium which is a micronutrient can cause selenosis at doses as low as 0.023 milligrams per kilogram per day (mg/kg/day). Clinical signs of selenosis include the characteristic "garlic odor" of excess selenium excretion in the breath and urine, thickened and brittle nails, hair and nail loss, lowered hemoglobin levels, mottled teeth, skin lesions, and central nervous system (CNS) abnormalities (peripheral anesthesia, acroparesthesia, and pain in the extremities) (Ref. 61). Similarly, copper, which is an essential nutrient, at high doses can cause vascular injury and hemolytic anemia. It should also be noted that copper exhibits high acute and chronic toxicity to aquatic organisms that results in the death of the organism (61 FR 54381, October 18, 1996) (FRL–5396–9), and inhalation of hexavalent chromium is known to cause cancer in humans (Ref. 60), even though chromium in very small oral doses is a micronutrient (Ref. 25). Moreover, the commenters freely cite Allen (Ref. 4), Chapman (Ref. 18) and other authors to the effect that metals are accumulated "deliberately" depending on the physiological needs of the organism, but it is clear that this applies only to metals that are essential nutrients. Metals are generally taken into cells by nutrient metal transport systems, and these are not sufficiently specific to completely exclude nonessential metals, some of which may be toxic and/or bioaccumulative. In this situation nutrient metals can be displaced from their binding sites by undesirable, toxic metals, which then gain access to the cell interior with concomitant exclusion of the essential metal (Ref. 49). Toxic metal ions are then free to react with critical enzymes or otherwise disrupt cellular functions if they reach certain levels. Often this toxicity occurs at relatively low doses. For example, inorganic arsenic is a known human carcinogen and causes chronic toxicity at doses as low as 0.014 mg/kg/day (Ref. 59). Lead has no known biological function in humans but is readily absorbed and has been shown to cause various toxic effects. For example, children can suffer permanent damage from lead poisoning, resulting in lowered intelligence, learning disabilities, hearing loss, reduced attention span, and behavioral abnormalities (Ref. 66).

EPA concludes that under many environmental conditions, metals and metal compounds may be available to express toxicity and to bioaccumulate, and that these effects are not necessarily limited to metals that are not essential nutrients. It is appropriate, therefore, to be concerned about the potential adverse effects, and one step in this direction is to more accurately assess emissions from anthropogenic activities. EPCRA section 313 provides that opportunity. Precedent for this concern exists at the international level in the form of a protocol for heavy metals under the UNECE LRTAP, which is currently being negotiated. The draft protocol expresses concern ". . .that emissions of certain heavy metals are transported across national boundaries and may cause damage to ecosystems. . .and may have harmful effects on human health. . .," and specifically advocates assessing and controlling emissions caused by human activities (Ref. 54).

Several commenters raised the issue of EPA participation in various international organizations, claiming that any attempt to apply EPA's proposed persistence and bioaccumulation criteria and/or assessment approach to metals would violate the policies of these organizations, whose positions EPA has previously endorsed. These claims are false because the commenters either misunderstand or misstate the aforementioned policies. The main focus of the commenter's attention is two documents, the OECD's *Harmonized Integrated Hazard Classification System for Human Health and Environmental Effects of Chemical Substances* (Ref. 41), and the North American Agreement on Environmental Cooperation (NAAEC)'s *Process for Identifying Candidate Substances for Regional Action under the Sound Management of Chemicals Initiative* (Ref. 39). A report from a joint Canada/European Union Technical Workshop on metals (Ref. 17) was also cited by commenters and reached similar conclusions.

The OECD document's pronouncements on metals are contained in paragraphs 22 and 23 of that document. Paragraph 22 reads as follows:

> For inorganic compounds and metals, the concept of degradability as applied to organic compounds has limited or no meaning. Rather the substance may be transformed by normal environmental processes to either increase or decrease the bioavailability of the toxic species. Equally, the use of bioaccumulation data should be treated with care. Specific guidance will be [but has not yet been] provided on how these data for such materials may be used in meeting the requirements of the classification criteria. (Ref. 41)

By "degradability as applied to organic compounds" OECD means molecular degradation, most often by microbial degradation and/or hydrolysis or other abiotic processes, to progressively simpler organic chemical structures, leading eventually to inorganic substances like carbon dioxide and water. But, note, paragraph 22 does not in any way suggest that metals are not persistent. Moreover, it does not suggest that OECD hazard classification criteria cannot be applied, only that "care" (i.e., professional judgment) is required in the interpretation of data relative to the classification criteria. In fact, EPA agrees that bioavailability is important in determining the potential for the metal to be accumulated in organisms.

The Agency has analyzed information on the environmental fate of metals, and, as noted above, asserts its professional judgment that the parent metals do have the potential to become available from metal compounds under commonly encountered environmental conditions. Therefore, the Agency's treatment of metals is consistent with the OECD's intent.

The same holds with respect to NAAEC's pronouncements under the SMOC (Ref. 39). The focus of NAAEC/SMOC (Ref. 39) is the development of North American Regional Action Plans (NARAPs) for substances that pose significant risk to human health and the environment in all three member countries (namely, Mexico, Canada, and the United States). To date, NARAPs have been established for DDT/chlordane, PCBs, and mercury (note: a metal). NAAEC/SMOC (Ref. 39) acknowledges the persistence of metals, but highlights the role of expert judgment in assessing potential bioavailability of metals and metal compounds:

> For naturally occurring substances such as metals and minerals, the Task Force understands that the direct application of the persistence and bioaccumulation criteria proves very difficult.....Organometals can behave like other persistent organic pollutants in their metallic form, and as certain compounds, metals tend to be infinitely persistent though not necessarily in a form that is bioavailable, and in some cases, they naturally bioaccumulate for beneficial purposes in organisms (i.e., essential elements). Expert judgment is essential for a meaningful evaluation of these substances.

Further, an earlier section of the document (Ref. 39) states,

> It is understood that expert scientific judgment plays a significant role in acknowledging and addressing the difficulties posed by quantitative criteria for persistence and bioaccumulation, particularly in relation to naturally-occurring substances like metals and minerals where the potential for transformation to complexes or metallic species which are more or less bioavailable, are emerging as important considerations.

It is difficult to read into the preceding any intention to *exclude* metals and metal compounds from consideration, as many commenters imply, and more specifically, to declare that these substances have no potential to pose risk because they are never released in bioavailable forms; cannot be converted to bioavailable forms under any foreseeable circumstances, etc. On the contrary, it is clear from the preceding language as well as the inclusion of mercury among the NARAPs developed to date that any substance judged to be potentially bioavailable and that otherwise meets the SMOC criteria, whether organic or inorganic, should not be excluded as a candidate for action. As outlined above, it is realistic to expect that, in general, released metals can encounter conditions in which they are available at levels sufficient to exert toxicity and bioaccumulate. Therefore, the Agency's treatment of metals is consistent with international policy under NAAEC/SMOC (Ref. 39).

Finally, EPA reminds commenters that a mechanism already exists to address concerns for any metal compound for which the data show that the metal cannot become available. The issue of bioavailability was addressed previously for EPCRA section 313 chemical assessments through EPA's policy and guidance concerning petitions to delist individual members of the metal compound categories listed under EPCRA section 313 (56 FR 23703, May 23, 1991). This policy states that if the metal in a metal compound cannot become available as a result of biotic or abiotic processes, then the metal will not be available to express its toxicity, and by extension, to bioaccumulate. If the intact metal compound is not toxic and the metal is not available from the metal compound, then such a chemical is a potential candidate for delisting. EPA has received fewer than 10 petitions to delete individual metal compounds because the petitioner contended that the metal portion of the metal compound would not be available under environmental conditions or *in vivo*.

D. Multimedia Modeling

One commenter contends that EPA should clarify how and when multimedia models will be used in the evaluation of PBT chemicals. EPA should not use the EQC model or other multimedia models as the sole determinant of potential risk. If exposure and use information is available, a detailed technical evaluation based on these data is preferred over modeling based on hypothetical exposure and loading scenarios.

The purpose of this rulemaking is to lower reporting thresholds for certain EPCRA section 313 substances that are being designated as persistent and bioaccumulative, and to list several additional substances that meet EPCRA section 313 listing criteria and are also persistent and bioaccumulative. Although neither quantitative risk nor exposure assessments have been performed, nor are they required under EPCRA, designation as a PBT does imply the existence of *potential* risk. However, contrary to the comment, EPA has not proposed that multimedia models be used as the sole factor in determining persistence. As clearly stated in the proposed rule, EPA intends to use such modeling "as an additional factor, in conjunction with reaction half-lifes for individual media, bioaccumulation/bioconcentration factors, etc., in justifying [the] actions proposed."

In the proposed rule EPA did explain in a general way (at 64 FR 703) how models would be used in PBT evaluation, and stated that results of multimedia modeling may be used to override compartment (medium)-specific degradation half-lifes, but only if all model inputs are judged sufficiently accurate. This leaves unspecified what specific value(s) might be used for overall environmental persistence *criteria* (expressed either as an overall residence time or overall half-life). To date no international scientific or regulatory authority has proposed any such criterion for POPs/PBT chemicals, and the complex relationship between compartment-specific and overall persistence criteria is in fact a major topic of current research.

One commenter raises concerns regarding the modification EPA made to the EQC III model that deleted advective losses and sediment burial.

EPA modified the model to exclude advective losses and sediment burial because if these processes are included the persistence based on destruction will be underestimated. In multimedia modeling, advection can be viewed as the flow into or out of the evaluative environment or "box." These include processes such as downstream flow in surface waters, dispersion downwind in air, and burial in sediments. The model considers these non-destructive processes to result in loss from the evaluative environment in the same way that destruction does. However, these processes simply result in the transport of a chemical to another part of the environment downwind or downstream from where it is released, or its deposition into sediments, but not the destruction of the chemical.

The persistence of a chemical calculated when the model is run considering advective losses include non-destructive transport processes which remove the chemical from the evaluative environment. For example, the environmental persistence of a chemical released to water which does not significantly partition to sediments, degrade, or volatilize will reflect the rate at which the water to which it is released flows out of the evaluative environment. In this example, the relative rate of non-destructive transport out of the evaluative environment may be more rapid than the processes which result in the destruction of the chemical. Thus, the persistence calculated by the model will be less than if advective transport from the evaluative environment was not considered.

EPA used the model to evaluate persistence based on destruction in a multimedia environment. This is consistent with EPCRA section 313 persistence criteria in that the criteria are based on destruction, not transport of the chemical. The Level III (non-equilibrium partitioning, steady state mass balance) models are preferred for developing qualitative and quantitative predictions of chemical distribution, pathways, and relative concentrations (Ref. 16). Level III models can also be used to assess persistence (Ref. 33). At steady state (level III) conditions the amount of chemical is unchanging with time and the input and output rates for a compartment are equal. The overall residence time of the chemical is the mass of the chemical in the compartment divided by the input or output rates. This represents the average time the chemical will reside in the compartment. Output may be by reactions that result in the destruction of the chemical or by advective flow (non-destructive) usually in air or water. When the model is modified to eliminate advective flow, the persistence of a chemical based on the rates of reactions that result in the destruction of the chemical can be assessed. Webster et al (Ref. 82) used this approach in evaluating the environmental persistence of chemicals using a multimedia fate model and noted that if advective loss is included, the residence time is reduced and can give a misleading impression of a short persistence. It was also noted that these advective losses "...merely relocate the chemical; they do not destroy it." EPA also used a modified version of the EQC level III model as a tool to assist on the characterization of the persistence of the chemicals subject to this rule. In this version of the model only irreversible transformation contributes to net loss of a chemical. In other words, the model was modified to represent a "closed box" in which the effect of processes that serve only to move the chemical from within the evaluative environment to outside of it, primarily in air and water (advective losses) were nullified. Sediment processes responsible for transport of the chemical from the evaluative environment such as sediment burial were similarly treated. The intent of this modification was to make sure that only processes responsible for the destruction of the chemical were considered in evaluating its persistence in a multimedia environment. EPA supports the use of level III multimedia models modified, as described, for their ability to simultaneously consider reaction rates and partitioning so as to give a reasonable assessment of the persistence of chemicals in the multimedia environment.

However, EPA notes that its reliance on the multimedia modeling was limited. As discussed in the proposed rule (at 64 FR 703) and in Unit VI.B.2., EPA primarily considered media-specific data and made a case-by-case determination about the persistence of each chemical.

E. Thresholds

The issue most frequently raised by commenters was the Agency's choice of thresholds and the factors that EPA considered in lowering the thresholds. Many commenters contended that EPA should not consider burden in choosing thresholds. They believe that EPA should set a threshold of 10 pounds for PBT chemicals and 1 pound for that subset of PBT chemicals that are both highly persistent and highly bioaccumulative. Some commenters believe that EPA should set a threshold of 1 pound for all chemicals that are PBT chemicals. Numerous commenters believe that the threshold for reporting should be zero. Other commenters believe that burden should have been a greater consideration in EPA's choice of reporting thresholds. Many of these commenters believe that EPA should set thresholds based on some percentage of releases that would be reported.

EPA disagrees with these commenters. As explained in the proposal, the Agency considered a number of factors to determine the appropriate thresholds that should be established for these chemicals. EPA relied on the language of EPCRA sections 313(f)(2) and (h), and the legislative history to elicit the following principles to guide its exercise of discretion in lowering the thresholds, and in selecting the specific thresholds for PBT chemicals: (1) The purposes of EPCRA section 313; (2) the "verifiable, historical data" that convinces EPA of the need to lower the thresholds; (3) the chemical properties shared by the members of the class of toxic chemicals for which EPA is lowering the thresholds i.e., the degree of persistence and bioaccumulation; and (4) the reporting burden imposed by revised thresholds to the extent that such consideration would not deny the public significant information from a range of covered industry sectors. Further, EPA believes that in the language of EPCRA section 313, and its legislative history, Congress provided direction on the appropriate weight to allocate to each of these considerations in implementing EPCRA section 313(f)(2). These considerations underlay the entire process by which EPA determined the appropriate thresholds. But, as noted below, the Agency's choice of revised thresholds was governed, and ultimately constrained, by EPCRA section 313's overriding purpose, which is to provide government agencies, researchers, and local communities, with a comprehensive picture of toxic chemical releases and potential exposures to humans and ecosystems.

In general, EPA's implementation of EPCRA section 313 is guided by the statutory purposes described by EPCRA section 313(h), which provides:

> The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available. . .to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

In addition to section 313(h), EPA was also guided by several statements on the principles intended to guide EPA's implementation of EPCRA section 313 made by Representative Edgar, one of EPCRA section 313's principal architects, during debate on the Conference Report. See, *Legislative History* at 5313–16. In the course of his statement, Representative Edgar also articulated EPCRA section 313's overriding purpose, which is:

> to provide a *comprehensive view of toxic chemical exposure* and, hopefully, provide a basis for more sensible and effective local, State, and national policies. *Legislative History* at 5316 (emphasis added).

Based on the existing reporting requirements, the Agency believes that there are still significant gaps in the picture the TRI data provides local communities, government agencies, and researchers. One of the most significant of these gaps is a comprehensive picture of the releases and potential exposure of PBT chemicals to humans and the environment. Currently, only a very limited picture of releases and other waste management of PBT chemicals is available from the TRI data, in part, as a result of the current thresholds. For example, under the current reporting thresholds, in 1997, EPA received only 29 reports on mercury and mercury compounds, and 6 reports on PCBs. This does not present a "comprehensive view of toxic chemical exposure." In addition, information on the releases and other waste management of PBT chemicals is particularly significant because these chemicals both persist and bioaccumulate. Individually, each of these attributes has the potential to pose increased exposures to humans and the environment. Toxic chemicals possessing both attributes have the potential to pose *significant* exposures to humans and ecosystems over a longer period of time; even small amounts of PBT chemicals that enter the environment can accumulate to elevated concentrations in the environment and in organisms, and therefore have a greater potential to result in adverse effects on human health and the environment.

As a first step in addressing the significant gap of information on PBT chemical releases and waste management, EPA considered whether to lower the reporting thresholds for PBT chemicals. EPA then looked to section 313(f)(2) for further guidance on how to proceed. Since lowering the thresholds ensures that "all facilities subject to the requirements of [section 313]" will continue to report, the requirement in section 313(f)(2) that a revised threshold obtain a "substantial majority of total releases of each chemical at all facilities subject to the requirements of this section" can be met without the need for quantitative support. Consequently, EPA looked to other sources of Congressional direction in the statute and legislative history to guide its exercise of discretion in establishing revised thresholds.

Given that there is no guidance on implementing section 313(f)(2) in the Conference Report, EPA looked to the debate on the Conference Report. In this context, Representative Edgar, stated:

> It is also important to clarify the intent of Congress in establishing thresholds for reporting under this section. . . .These thresholds were designed to obtain reporting on both *a substantial majority of the Nation's toxic chemical releases and to obtain reporting from a large number of firms*. These thresholds reflect Congress' judgement that such thresholds appropriately balance the need for information against the burden on facilities required to provide such information. The EPA is authorized to revise these thresholds, but only if such revised thresholds continue to obtain reporting on a substantial majority of total releases. Any determination by the EPA regarding the ability of revised thresholds to obtain reporting on a substantial majority of releases, especially if such revised thresholds raise the statutory levels, *must be based on verifiable, historical data which presents a convincing case that the statutory levels must be revised. Legislative History* at 5313 (emphasis added).

And during the House debate, Representative Swift noted that any revised threshold "should be *designed to improve the usefulness of the reports*. It must be structured to obtain reporting on a substantial majority of the *total nationwide releases* of the toxic chemical at *all facilities covered by section 313*." *Id.* at 5338 (emphasis added).

In determining how to structure its threshold revisions, and particularly how it would improve the usefulness of the reports, EPA also consulted EPCRA's purposes, laid out in subsection (h). In this context, EPA also considered the statements made by Senator Stafford during debate on the Conference Report:

> This section also requires the Administrator to computerize the data reported on the required forms and to make these data public by various means. Successful implementation of this requirement is vital to the basic purpose of the program. *The data should be managed in the computer in such a way as to allow a wide variety of analyses. For example, it should be possible to retrieve data, not only about individual facilities, but also aggregate data organized by type of chemical, type of effect, geographic location, company name, etc. as well as combinations of these parameters. . . . Legislative History* at 5186 (emphasis added).

Based on this Congressional guidance, EPA reached several conclusions. First, ample "verifiable, historical data" exists to support EPA's conclusions that PBT chemicals persist for long periods of time in the environment and bioaccumulate in organisms, including humans; that this persistence and bioaccumulation can result in higher exposures to humans and the environment; and that to "obtain a substantial majority of the Nation's toxic chemical releases," lower thresholds for PBT chemicals are warranted. For example, PCBs have been found throughout the Great Lakes in sediments, water, and aquatic organisms. Multimedia analyses indicate that the majority (80–90%) of human exposure to chlorinated organic compounds, such as PCBs comes from the food pathway, a lesser amount (5–10%) from air, and minute amounts (less than 1%) from water. Most of the data available on human exposure to PCBs in the Great Lakes come from the analyses of contaminant levels in drinking water and sport fish. The consumption of contaminated sport fish and wildlife can significantly increase human exposure to the Great Lakes critical pollutants, such as PCBs. The sport fish are exposed to PCBs by consumption of sediments and through water (Ref. 76). See also Refs. 75 and 77.

Further, EPA strongly believes that increased reporting on PBT chemicals will improve the usefulness of the data on these chemicals. There are currently very few reports for some of the PBT chemicals, such as mercury, mercury compounds and PCBs. The currently available data provide a distorted picture of potential exposures to humans and the environment, because at the current thresholds only a fraction of the releases from facilities otherwise subject to EPCRA section 313 are reported. This limited reporting results in a significant underestimation of the releases from the industry sectors covered by EPCRA section 313. As such, the current data are of limited use for evaluating the potential exposures to humans and the environment of toxic chemicals that persist and bioaccumulate. Expanding the picture of releases, and therefore potential exposures, will increase the utility of all the TRI data on these chemicals. See, e.g., Economic Analysis, Chapter 6.4 (Ref. 67).

On these bases, EPA determined that revising the thresholds would be an important first step in closing the information gap on PBT chemicals. The Agency then began the process of determining the appropriate levels at which to establish the revised thresholds. For a number of technical and policy reasons, EPA chose an approach focused on two classes of PBT chemicals: (1) Toxic chemicals that meet the EPCRA section 313 persistence and bioaccumulation criteria discussed in Unit VI.B., i.e., those toxic chemicals that have half-lifes of 2 months or greater in water/sediment or soil and that have bioaccumulation or bioconcentration factors of 1,000 and (2) the subset of PBT chemicals that are highly persistent and highly bioaccumulative, i.e., those toxic chemicals that have half-lifes of 6 months or greater in water/sediment or soil and that have bioaccumulation or bioconcentration factors of 5,000 or greater.

First, for the most persistent and bioaccumulative toxic chemicals any release will lead to elevated concentrations in the environment and in organisms. EPA believes that such highly persistent and highly bioaccumulative toxic chemicals are of international, as well as national concern, because of the extent of their persistence and bioaccumulation. As discussed elsewhere in this preamble, these facts have been widely recognized; there are a number of international agreements that ban, restrict, or phase out the manufacture, use and/or release of highly persistent and highly bioaccumulative toxic chemicals.

Similarly, toxic chemicals that are persistent and bioaccumulative are of national, regional, and local concern. As discussed elsewhere in this preamble, toxic chemicals that are persistent and bioaccumulative present a significant concern to many local communities due to the proximity of the communities to industrial sources. All other things being equal, a pollutant reaches nearby populations in less time than distant ones. Thus, toxic chemicals that persist and bioaccumulate can pose significant exposures to communities and ecosystems that immediately surround industrial sources as well as those communities that are subject to regional transport.

Given the international support for the extreme limitations on the use and release of toxic chemicals that are highly persistent and highly bioaccumulative, and the significant exposures that persistent and bioaccumulative toxic chemicals can pose to both local communities and broader regions of the United States and North America, EPA believes that it is appropriate to lower the reporting thresholds for *both* (1) Persistent and bioaccumulative toxic chemicals and (2) for highly persistent and highly bioaccumulative toxic chemicals. In addition, EPA believes this information is important to the public, government agencies, and researchers; for example, the information reported by facilities under the lower thresholds will help these groups assess the loading of the PBT chemicals in both local and regional ecosystems, e.g., a small lake or river or a larger ecosystem such as the Great Lakes or the Chesapeake Bay. See also, Economic Analysis at Chapter 6, pages 32–50 for examples of other uses of TRI data (Ref. 67).

Second, EPA considered how the revised thresholds would provide the information on PBT chemicals needed to assist the public to obtain "a comprehensive view of toxic chemical exposure," as well as to assist government agencies, researchers, and other persons to conduct research and to establish appropriate regulations, guidelines and standards, in accordance with the directives laid out in subsection (h). EPA determined that providing greater information on two identifiable classes of chemicals best achieved these ends. It is consistent with the actions of a significant number of the groups that would use this information; for example, as discussed in Unit VI.B., UNEP is in the process of negotiating an international agreement on the class of persistent organic pollutants with half-lifes of 6 months and BCF/BAF values of 5,000. See also Economic Analysis at Chapter 6, pages 46–48 for examples of how TRI data will be used (Ref. 67). Moreover, EPA determined that data on members within the same class are more easily comparable; the members of the classes EPA established in this rulemaking share a qualitatively comparable level of concern based on their potential for increased exposure. The Agency believed that creating two distinct classes of comparable chemicals would significantly enhance the ability of researchers, government agencies, and other similar persons, to use the reports. Establishing distinct classes of comparable chemicals normalizes the subsequent years' data, providing a baseline against which data users can ascertain trends over time. Consequently researchers can more easily distinguish, and therefore track, the releases and other waste management of highly PBT chemicals, to evaluate the efficacy and progress of the policy strategies intended to address the risks of PBT chemicals, such as the Binational Great Lakes Water Quality Initiative. Finally, administrative convenience argued for establishing a limited number of alternate thresholds. As a practical matter, it would be burdensome for both the Agency and the regulated community to track a variety of individual thresholds for separate chemicals. In addition, because this was only the Agency's initial rulemaking to lower thresholds for certain PBT chemicals, EPA intended that the revised thresholds establish a set of categories that would be generally applicable to future designated PBT chemicals. All of these considerations led the Agency to conclude that it should establish two sets of revised thresholds based on two classes of PBT chemicals.

Thus, having concluded it was appropriate to focus the rulemaking on two classes of chemicals, persistent and bioaccumulative toxic chemicals and that subset of PBT chemicals that are highly persistent and highly bioaccumulative, EPA began the process of determining the specific thresholds that would achieve the purposes of subsections (f)(2) and (h). The intrinsic properties of PBT chemicals argue for very low thresholds. The subset of PBT chemicals that are highly persistent and highly bioaccumulative warrant, in the absence of other considerations, a threshold approaching zero. Any release of these toxic chemicals is of global concern because they can persist for long periods of time, can maintain their identity even after undergoing long range transport, and can bioaccumulate to a significant degree. As discussed above, and at length in Unit VI.B., the potential impacts that can result from any release of toxic chemicals that are highly persistent and highly bioaccumulative have been widely recognized. There are a number of international agreements that ban, restrict, or phase out the manufacture, use and/or release of the most persistent and bioaccumulative toxic chemicals.

However, EPA believes that a zero threshold would be impractical. Attempting to require facilities to determine if they manufacture, process, or otherwise use any amount whatsoever of these chemicals would be extremely burdensome and perhaps technically impossible. Without an actual numerical threshold, many facilities might report some amount of these chemicals in a misguided attempt to assure compliance. This could lead to misleading and inaccurate data on the actual sources of these chemicals. EPA believes that rather than setting a zero reporting threshold it would be better to set a very low threshold that provides facilities with a clear indicator of when they are required to report. In general for purposes of EPCRA section 313, 1 pound is the practical equivalent of zero for these chemicals. EPA explained these considerations in the proposed rule (64 FR 712) and has received no information from commenters that convinces the Agency to pursue a different approach.

EPA then considered the relative degree of persistence and bioaccumulation between the two classes of chemicals. EPA wanted to establish two sets of revised thresholds with the same approximate relationship to each other, as the relative exposure potentials of PBT chemicals to that subset of highly persistent and highly bioaccumulative PBT chemicals. Simply stated, chemicals with half-lifes of 6 months or greater and a BAF/BCF of 5,000 or greater have a higher exposure potential than chemicals with half-lifes of 2 months or greater and a BAF/BCF of 1,000 or greater. However, although, as discussed below, EPA could establish a qualitative relationship, the Agency could not reliably quantify the relative exposure potential across the board for all of the members of both classes. Therefore, in attempting to translate the qualitative exposure potential of PBT chemicals to that subset of PBT chemicals that are highly persistent and highly bioaccumulative into a qualitative threshold relationship, EPA considered both the attributes of these chemicals and factors specific to thresholds.

The manufacture, process, and otherwise use thresholds are not equivalent to release thresholds although, in many cases, the quantity manufactured or otherwise used will be very similar to the quantity released. Thus, even if EPA were able to quantify the relative exposure potential of PBT chemicals and that subset of PBT chemicals that are highly persistent and highly bioaccumulative, based on their degrees of persistence and bioaccumulation, and their interrelationship, the Agency would not rely solely on this to select a quantitative threshold relationship between these two classes of chemicals because: (1) The manufacturing, processing, and otherwise use thresholds are not equivalent to release thresholds, and (2) the quantity released, not the quantity manufactured, processed or otherwise used, is a critical factor in determining exposure.

Nonetheless, EPA believes that the relative reporting thresholds should be based to some extent upon the qualitative differential between the potential exposures that may result from releases of PBT chemicals and that subset of PBT chemicals that are highly persistent and highly bioaccumulative.

There is not a direct quantifiable relationship between the potential exposures that can result from equivalent releases of a toxic chemical that persists in the environment with a half-life of 6 months and that has a bioaccumulation factor of 5,000 and releases of a toxic chemical that persists in the environment with a half-life of 2 months and that has a bioaccumulation factor of 1,000. The potential exposure to humans and the environment will depend upon a number of factors, including release patterns, environment variables such as soil type, surface water chemistry, the types and distribution of flora and fauna, and fish consumption patterns. However, EPA did consider the relative differences in the potential exposures between these two classes. For example, after 1 year, there will be more than 15 times as much of a highly persistent chemical that remains in the environment than of a persistent chemical, all other things being equal. Similarly, fish will accumulate more than 5 times as much of the highly bioaccumulative chemical than of the bioaccumulative chemical, all other things being equal. While EPA believes that it can qualitatively describe the relative relationship of highly persistent chemicals to persistent chemicals and the relative relationship of highly bioaccumulative chemicals to bioaccumulative chemicals, the Agency cannot at the present time, define the relative relationship of persistence and bioaccumulation between the two classes of chemicals. This is in large part due to the many variables that must be considered in determining the potential exposures both due to the interaction of these chemical attributes and the large number of environmental factors that must be considered when evaluating persistence and bioaccumulation together.

Although EPA could not develop an exact quantitative threshold relationship between the two classes of chemicals, the Agency did consider the factors discussed above and did rely to some extent on the numerical relationships between the highly persistent and persistent chemicals and the highly bioaccumulative and bioaccumulative chemicals. Therefore, given that: (1) Highly bioaccumulative toxic chemicals will accumulate approximately 5 times greater than bioaccumulative toxic chemicals, (2) highly persistent toxic chemicals will remain in the environment after 1 year, at a level about 15 times greater than persistent toxic chemicals, (3) the fact that the EPCRA section 313 reporting thresholds are not release thresholds but that in some instances the quantities manufactured or otherwise used will be very similar to the quantity released, and (4) toxic chemicals that persist in the environment with half-lifes of 2 months and bioaccumulation factors of 1,000 or greater can be of both local and regional concern, EPA believes that the threshold for PBT chemicals should be a factor of 10 greater than the threshold for that subset of PBT chemicals that are highly persistent and highly bioaccumulative. EPA believes that this ratio balances the uncertainties and factors, including numerical factors, that the Agency considered. Therefore, based on the chemicals' intrinsic characteristics, EPA would establish thresholds of 1 pound for that subset of PBT chemicals that are highly persistent and highly bioaccumulative and 10 pounds for PBT chemicals.

However, the legislative history of section 313(f)(2) indicates that in establishing the original thresholds, Congress recognized the burden imposed on the regulated community. Lowering thresholds necessarily will increase that burden. Therefore, EPA determined it would be reasonable to include some consideration of reporting burden in selecting thresholds for PBT chemicals. But EPA accorded less weight to burden than to the other considerations discussed above. First, neither section 313(f)(2), section 313(h), nor any other provision of EPCRA requires EPA to consider burden. Second, EPA was mindful of the fact that in several places in the legislative history Congress made clear it never intended impacts on reporting facilities to outweigh the public's right-to-know about their potential exposures to toxic chemicals. For example, although Representative Edgar recognized that Congress had considered burden in establishing the statutory thresholds, he did not include reporting burden as one of the general principles that should guide the Agency's implementation of EPCRA section 313 as a whole. Rather, he stated:

> This is a new Federal initiative, and I recognize the desire of some of my colleagues to move ahead cautiously to ensure that burdens imposed on industry are not excessive. Frankly, my concern rest with the families that live in the shadows of these chemical and manufacturing plants. I have put myself in their shoes and have fought for a program that looks after their needs. This legislation gets us well on the path to the full disclosure they deserve. *Legislative History* at 5316. See also, *Legislative History* at 5185–86 (Senate debate on the Conference Report).

As noted in Unit VI.A, one of the major pieces of Congressional guidance on the establishment of alternate thresholds was to obtain a comprehensive picture of "total nationwide releases of the toxic chemical at all facilities covered by section 313." This language, plus other Congressional directives on implementing section 313 generally, such as section 313(h), reflect an interest in obtaining information from a broadly representative range of sources. Consequently, EPA determined that the Agency should consider burden only to the extent that it would not deny the public significant information from a range of covered industry sectors.

Therefore, EPA estimated the number of reports that would be submitted by each industry sector for four groups of thresholds, 1 and 10 pounds, 10 and 100 pounds, 100 and 1,000 pounds, and 1,000 pounds for both classes of chemicals. These options were selected for the following reasons. EPA needed a reasonable but finite number of options to evaluate, and the options described above represent a reasonable picture of the entire range of potential revised thresholds. Data limitations on the manufacturing, processing, and otherwise use of PBT chemicals in the numerous industries, processes, and uses covered by EPCRA section 313 constrained EPA's ability to make meaningful and reliable distinctions between threshold options that are less than an order of magnitude apart. For example, while EPA believes it can reliably estimate the difference in the number of reports from a 10 pound reporting threshold and a 100 pound reporting threshold, EPA believes that the data are insufficient to allow it to make a meaningful and reliable distinction in estimates of options that are closer than an order of magnitude such as 35 pounds and 50 pounds. EPA explained its data limitations in the proposal, and commenters provided no information that would allow the Agency to increase the resolution of its analysis. Consequently, for the final rule, EPA analyzed options that were orders of magnitude apart from the two thresholds identified through its technical review: 1 pound for highly persistent and highly bioaccumulative chemicals, and 10 pounds for persistent and bioaccumulative chemicals.

Based on information provided in the economic analysis for this rulemaking, at the technical reporting thresholds EPA would obtain information from a broad range of facilities (Ref. 67a). The analysis showed that at a threshold of 1 pound, the public would obtain information from all industry sectors that are currently subject to EPCRA section 313, and that have been identified as manufacturing, processing, or otherwise using those highly persistent highly bioaccumulative toxic chemicals that are part of this rulemaking (except dioxin and dioxin-like compounds which are discussed below). At a threshold of 10 pounds, the public would obtain information from all industry sectors that are currently subject to EPCRA section 313, and that have been identified as manufacturing, processing, or otherwise using those PBT chemicals that are part of this rulemaking. At the technical reporting thresholds, the estimated costs of the additional reports filed would have totaled $355 million in the first year, and $193 million in subsequent years (Ref. 67). EPA considered these costs, even though it cannot quantify the value of the information obtained or lost at the various thresholds, and cannot quantify the relationship between the reporting costs and the value of the information reported, or lost, at a particular threshold.

At thresholds of 10 pounds for highly persistent and highly bioaccumulative chemicals and 100 pounds for persistent and bioaccumulative chemicals, EPA is still able to obtain a significant amount of information on both classes of PBT chemicals from a wide range of industry sectors and sources. For example, no reporting on TBBPA would be lost from any sources or industry sectors at 100 pounds, and some information on octachlorostyrene would be potentially lost from only one industry sector, pesticide manufacturing facilities. At these thresholds, EPA does, however, lose information significant to local communities; for example, EPA loses considerable reporting on mercury and mercury compounds at 10 pounds, but the loss of information is localized in a limited number of industry sectors, and the public will still obtain some reporting from all of the currently covered industry sectors (Ref. 67a). For this threshold option, EPA estimated the total burden at these thresholds to be $191 million for the first year, and $105 million for subsequent years (Ref. 67).

At thresholds of 100 and 1,000 pounds and higher, EPA's analysis indicated that the public, government agencies, and researchers would lose information on many of the PBT chemicals from certain industry sectors and sources. For example, at a threshold of 100 pounds for toxic chemicals that are highly persistent and highly bioaccumulative, the Agency would not obtain reporting on mercury and mercury compounds generated in boilers in the manufacturing sector or information on octachlorostyrene from the primary metal industries (Ref. 67a). However, at these thresholds, EPA estimated the total first year costs to be $99 million and $55 million in subsequent years (Ref. 67).

These analyses led EPA to several conclusions. First, thresholds of 10 pounds for highly persistent and highly bioaccumulative chemicals and 100 pounds for persistent and bioaccumulative chemicals, achieve a significant reduction in reporting burden. Second, at these thresholds EPA obtains information from a broad distribution of industry sectors. Although EPA also loses information significant to local communities at these thresholds, it maintains the overall distribution of reporting from a broad range of industry sectors nationally. EPA could have attempted to compensate for the community-level loss of information on individual members of the classes of PBT chemicals (i.e., by establishing separate thresholds of 1 pound or 10 pounds for individual chemicals), but only by failing to take reporting burden into account for those individual chemicals. As explained previously, the availability of the data limited EPA's ability to distinguish meaningfully between thresholds separated by less than an order of magnitude. In addition, establishing separate thresholds would sacrifice many of the benefits of receiving information from comparable facilities using comparable chemicals, discussed earlier in this unit. Thus greater information for local communities would be achieved at the expense of the increased utility of the reports for other purposes established under EPCRA section 313(h)--e.g., assisting governmental agencies, researchers, agencies and other persons in the conduct of research and data gathering; and aiding in the development of appropriate regulations, guidelines, and standards. EPA believes that, to be consistent with the overriding policy directive in subsection (h), it must achieve a balance between improving the utility of the reports for all of the groups that rely on TRI data. Finally, as noted earlier in this Unit, administrative convenience argues against the establishment of individual thresholds. Among other issues, it would be burdensome on both EPA and the regulated community to track a variety of separate thresholds. Moreover, EPA intends the revised thresholds established in this rulemaking for the two classes of PBT chemicals to be generally applicable to future members of the two classes; absent a strong technical or policy concern to the contrary, it would ultimately be inconsistent with the purposes of EPCRA section 313 for chemicals that share such common characteristics to have vastly different thresholds.

Therefore, EPA believes its selection of thresholds of 100 pounds for PBT chemicals and 10 pounds for that subset of PBT chemicals that are highly persistent and highly bioaccumulative, balances the purposes of EPCRA section 313 and the Agency's desire to provide a comprehensive picture on releases and potential exposures of PBT chemicals, while factoring in an appropriate degree of the consequent impact on the regulated community.

Dioxin and dioxin-like compounds are highly persistent and highly bioaccumulative toxic chemicals. As discussed above, toxic chemicals that are highly persistent and highly bioaccumulative warrant, in the absence of other considerations, a threshold approaching zero. But, for the reasons discussed previously in this section, EPA does not believe that a zero threshold would be practical. However, because the dioxin and dioxin-like compounds are manufactured in extremely small amounts, EPA needed to select a threshold lower than that for the other highly persistent and highly bioaccumulative chemicals in order to obtain any reporting.

In choosing reporting thresholds for these chemicals, the Agency considered the extent of the information on dioxin and dioxin-like compounds that would be made available to the public, government agencies and researchers. EPA considered whether this level of information would provide them with "a comprehensive view of toxic chemical exposure," given the attributes of dioxin and dioxin-like compounds, and with "broad-based national information." At a threshold of 0.1 gram, the public would obtain information from all industry sectors that are subject to EPCRA section 313 and that have been identified in the *Inventory of Sources of Dioxin in the United States* (Ref. 3). EPA does not believe that a higher threshold, i.e., 1.0 grams, would provide the public with broad-based national information because there would be no information on the manufacture and release and other waste management of certain sectors. For example, at a higher threshold, EPA anticipates that there would be no reporting from hazardous waste incinerators, pulp mills, non high ferrous foundry industries, and secondary lead smelters (Ref. 67a). At thresholds lower than 0.1 gram, there is greater coverage *within* certain industry sectors, with a concomitant significant increase in burden. EPA believes its selection of a threshold of 0.1 gram for dioxin and dioxin-like compounds balances the purposes of EPCRA section 313 and the Agency's desire to provide a comprehensive picture on releases and exposures of dioxin and dioxin-like compounds while factoring in an appropriate degree of the resultant impact on the regulated community.

F. What Comments Did EPA Receive on Exposure and Risk Considerations and What Are EPA's Responses?

One of the most significant issues raised by commenters relates to the Agency's lack of consideration of quantitative risk in modifying the section 313(f) reporting thresholds. Specifically, a number of commenters believe that EPA should use quantitative risk as a criterion in determining whether to lower the reporting thresholds and in choosing a particular reporting threshold for each PBT chemical. The commenters contend that EPA should conduct risk assessments and make a formal determination that at a particular threshold releases of the PBT chemical pose a risk before lowering the reporting threshold. While the majority of commenters who commented on the issue believe that EPA should make a risk determination before modifying the reporting thresholds, the rationale for their conclusions varied. Some commenters state that a risk determination is required by EPCRA because the intent of EPCRA is to provide information to the public of potential risks posed by the presence of toxic chemicals released to the environment in their communities. Some commenters state that in addition to addressing the substantial majority test, EPCRA section 313(f)(2) requires EPA to use the degree of risk that releases will pose to communities as a determinant in choosing new thresholds. Other commenters state that consideration of risk is a required component of any action under EPCRA section 313. In support of this position, one of the commenters cites two D.C. Circuit Court decisions. Other commenters contend that it would be good public policy to choose a threshold based on risks. Some commenters contend that EPA should lower the reporting thresholds only for those chemicals that present the highest risks to the public. One commenter, however, believes that the Agency should not consider the degree of risk in making a determination to lower the reporting thresholds for PBT chemicals because the consideration of risk in past actions taken by EPA under other environmental statutes have not resulted in a decrease of human health or environmental risks due to PBT chemicals. The commenter states that the increasing number of fish advisories and the lingering and, in some cases, increasing levels of PBT chemicals in the environment and in fish, wildlife, and human tissue demonstrates the magnitude of the failure of the "risk management strategy."

EPA disagrees with the commenters' assertion that evidence of risk is required prior to lowering the threshold for any EPCRA section 313 chemical. Section 313(f)(2) addresses revisions to the reporting thresholds. It does not require EPA to establish, prior to the lowering of reporting thresholds, that releases at a particular threshold will result in specific quantitative risks. That section expressly provides that the Administrator may establish a threshold amount for a toxic chemical different from the 25,000 pound threshold for manufacturing and processing activities and the 10,000 pound threshold for otherwise use activities. The only prerequisite for revising the reporting threshold for a toxic chemical is that the revised threshold obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of EPCRA section 313. As discussed in Units II.B. and VI.A., EPA believes that it has satisfied the requirements of EPCRA section 313(f)(2) without the need for quantitative support.

EPA believes that the commenters attribute a purpose to EPCRA that is inconsistent with that clearly intended by Congress. Specifically, Congress stated in EPCRA section 313(h) that:

> The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available,. . .to inform persons about releases of toxic chemicals to the environment; to assist government agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes. 42 U.S.C. section 11023(h).

Neither EPCRA section 313(h) nor its legislative history directs EPA to limit the collection of information on releases to those releases that, from the Federal government's perspective, pose significant local human and environmental exposure and human health and environmental risks. See, e.g., *Legislative History* at 5186.

Federal and local perspectives on what may be an acceptable risk are likely to be very different. The roles of local government and the Federal government differ significantly in terms of ensuring environmental quality. In passing EPCRA, Congress determined that it is for the public to take the information reported on the use and releases and other waste management of toxic chemicals, and to determine whether these releases result in potential risks that the community determines warrant further action given other factors, such as economic and environmental conditions, or particularly vulnerable human or ecological populations. Congress did not intend the Federal government to consider these specific local factors prior to determining whether certain information should be made public or prior to determining whether a different threshold should be established for one or more toxic chemicals.

The intent of EPCRA section 313 is to move the determination of what risks are acceptable from EPA to the communities in which the releases occur. This basic local empowerment is a cornerstone of the right-to-know program. EPCRA section 313 establishes an information collection and dissemination program. The burden it imposes is significantly less than the burden imposed by a statute which controls the manufacture, use, and/or disposal of a chemical. EPCRA section 313 requires that a facility use readily available data, or if such data are not available, reasonable estimates to prepare each chemical-specific report. The statute does not require that the facility conduct monitoring or emissions measurements to determine these quantities. This is in contrast to other environmental statutes that may require a facility to monitor releases, change its manufacturing process, install a specific waste treatment technology, or dispose of wastes in a certain manner. As such, the Agency believes that as a matter of policy the standard that must be met to require information pursuant to EPCRA section 313 is less than that required to regulate a chemical under a statute such as the Clean Air Act. See, e.g., *Legislative History* at 5186.

Further, contrary to assertions by some commenters, EPCRA section 313 does not require the collection of quantitative risk data nor does the statute require that risk data be disseminated to the public. Rather TRI data provide communities with information on releases and other waste management quantities. TRI data cannot, in themselves, provide information on quantitative risks to individual communities. A determination of the potential risk that a chemical release may pose is dependent upon a number of factors, including the toxicity of the chemical, the physical chemical properties of the chemical, the specific media to which the chemical is released, and site-specific information that will determine the estimated exposures. While TRI data are not in themselves measures of risk, they are an important input that local communities can use along with the factors described in this section to determine potential risks to themselves, their children, their communities, and their environment that may result from releases of toxic chemicals.

EPA's decision to lower the reporting threshold for PBT chemicals is rationally related to the EPCRA section 313 goals of informing communities, assisting research and data gathering, and aiding the development of regulations and guidelines. Because PBT chemicals persist in the environment for a significant period of time and bioaccumulate in animal tissues, PBT chemicals have the potential to be pervasive in the environment, in the food chain, and often in humans. In short, for PBT chemicals, releases and other waste management activities for relatively small amounts of PBT chemicals are of concern. Accordingly, pursuant to the intended purposes of EPCRA, even relatively small releases and other waste management activities for PBT chemicals need to be reported in order to inform communities, assist those engaged in research and data gathering, and to aid the development of regulations and guidelines. Lowered reporting thresholds for PBT chemicals are needed to obtain reporting on these relatively small releases and other waste management activities for PBT chemicals. Consequently, EPA believes that including consideration of the quantitative risk in establishing the thresholds would be poor public policy that would be inconsistent with the overall principles of EPCRA.

Finally, the reference by one of the commenters to two D.C. Circuit Court decisions is misplaced. In support of its position that EPA must undertake a risk assessment of any toxic chemical it is considering for lower reporting thresholds, the commenter cites *American Petroleum Institute* v. *Costle*, 665 F.2d 1176, 1187 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 1034 (1982), and *Milwaukee Metropolitan Sewerage District* v. *EPA*, 40 F.3d 392 (D.C. Cir. 1994). Neither case cited by the commenter addresses EPCRA. Nor do these cases establish a generally applicable principle of law that risk assessments are required prior to any government action. In *Milwaukee Metropolitan Sewerage* the court reviewed standards adopted by EPA in a Clean Water Act regulation. In *American Petroleum Institute* the court reviewed the primary and secondary national ambient air quality standards for ozone promulgated by EPA under the Clean Air Act. Both the Clean Air Act and the Clean Water Act have no bearing on EPCRA section 313. Unlike the statutes at issue in the cases cited by the commenter, consideration of risk is not a requirement of section 313(f)(2) for modifying the reporting thresholds for EPCRA section 313 listed chemicals, and, in fact, the consideration of risk is generally not required for any rulemaking under section 313. *Troy Corporation* v. *EPA*, 120 F.3d 277 (D.C. Cir. 1997).

Some commenters further state that in proposing to change EPCRA section 313 reporting thresholds, EPA has not addressed any of the factors the Agency mentioned when it originally promulgated EPCRA section 313 regulations. In the February 16, 1988 final rule, EPA stated:

> EPA may consider a number of factors for threshold modification including exposure factors such as population density, the distance of population from covered facilities, and the types of releases. Threshold modifications could also take into account the relative potency of the chemical or class of chemicals and effects of concern. (53 FR 4508).

In this statement, the commenters contend that EPA correctly mentions factors that relate to risk (i.e., exposure and relative toxicity). The current proposal to change reporting thresholds under EPCRA section 313 fails to address these factors.

As is clearly evident in the quote from the February 16, 1988 final rule, EPA stated that these were things that it "may consider" or that could be taken into account. These statements do not require that the possible factors mentioned above be a basis for any change in the reporting thresholds nor do they preclude the consideration of factors such as the persistence and/or bioaccumulation of toxic chemicals in modifying the reporting thresholds. This statement was not a commitment that EPA would consider risk in any decision to modify reporting thresholds. It merely provided examples of things that the Agency may consider.

As explained in previous responses, EPA does not believe that it would be good public policy to consider factors related to quantitative risk with respect to establishing thresholds for PBT chemicals. Given the degree of persistence and bioaccumulation that these toxic chemicals exhibit, EPA believes that the value of this information to the public outweighs the policy considerations presented in favor of considering risk factors in establishing revised thresholds. Any other decision would be inconsistent with the legislative intent underlying EPCRA section 313.

Finally, EPA notes that this decision is consistent with the approach adopted in modifying the thresholds to establish a 1 million pound manufacture, process, or otherwise use threshold for facilities that have 500 pounds or less of production-related waste (59 FR 61488, November 30, 1994) (FRL–4920–5). Any decision to include risk considerations in establishing modified thresholds under section 313(f)(2) would compel the Agency to re-examine the thresholds established for facilities with less than 500 pounds of production-related waste.

Several commenters contend that a chemical's degree of persistence and bioaccumulation are unrelated to the chemical's exposure potential. They disagree that persistence and bioaccumulation are necessarily indicators of exposure or exposure potential. As an example, the commenter states that many of the compounds EPA is targeting are highly lipophilic, non-water soluble compounds, and the greatest potential for bioaccumulative effects is through uptake from the water column. EPA should evaluate how these compounds partition in the environment. Those that are not bioavailable have limited exposure potential, and therefore limited risk. Thus, the commenter believes that EPA must consider exposure in conjunction with persistence and bioaccumulation.

EPA disagrees with the commenters. All other things being equal, the chemical with a higher degree of persistence and bioaccumulation will have a greater exposure potential than the chemical with a lower degree of persistence and bioaccumulation. For example, all other things being equal, a chemical that has a half-life in water of 4 months will have a higher exposure potential to aquatic organisms than a chemical with a half-life in water of 1 month. Fifty percent of the first chemical will remain in the water after 4 months while only 12.5% of the second chemical will remain in the water after 4 months. After 4 months, aquatic organisms will be exposed to 4 times more of the first chemical than the second chemical. Clearly the chemical with the greater persistence has the higher exposure potential.

EPA does not believe that the commenter's example supports their contention that persistence and bioaccumulation are unrelated to exposure potential. As EPA understands the commenter's example, chemicals that have the greatest bioaccumulation potential will not be bioavailable in water because they are highly lipophilic and non-water soluble. Thus, because they are not bioavailable in water, they cannot bioaccumulate in aquatic organisms. A well-studied example that clearly contradicts the commenter's claim is the bioaccumulation of polychorinated biphenyls (PCBs) in the Great Lakes. PCBs have BAFs as high as 141,000,000 (Table 1, at 64 FR 707–8) and very, very low water solubility. PCBs have been found throughout the Great Lakes in sediments, water, and aquatic organisms. Multimedia analyses indicate that the majority (80–90%) of human exposure to chlorinated organic compounds, such as PCBs comes from the food pathway, a lesser amount (5–10%) from air, and minute amounts (less than 1%) from water. Most of the data available on human exposure to toxic substances in the Great Lakes come from the analyses of contaminant levels in drinking water and sport fish. The consumption of contaminated sport fish and wildlife can significantly increase human exposure to the Great Lakes critical pollutants. The sport fish are exposed to PCBs by consumption of sediments and in water, from which they bioaccumulate the PCBs (Ref. 62).

Some commenters contend that EPCRA requires that EPA consider the risks that a chemical may pose when making determinations to add a chemical to the EPCRA section 313 list of toxic chemicals. In support of this position, one commenter cites two D.C. Circuit Court decisions.

As discussed in detail in the final rule adding 286 chemicals to EPCRA section 313 (59 FR 61432), EPA disagrees with commenters that the Agency must include a risk assessment component to EPCRA section 313 determinations. While the Agency believes that there are limited circumstances where it may be appropriate to consider risk in making listing determinations, e.g., acute human health effects, EPA does not believe that the intent of EPCRA, the EPCRA section 313 toxicity criteria, or the legislative history support the contention that risk assessment is a required component of all EPCRA section 313 listing determinations.

The EPCRA section 313 toxicity criteria require that exposure and risk factors be considered only when determining if the toxic chemical should be listed on EPCRA section 313 based on its acute human health effects, but even then in only a very limited manner. The statute mandates that EPA consider whether "a chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries." EPA has, and will continue to look at exposures reasonably likely to exist beyond facility site boundaries when making a listing determination pursuant to EPCRA section 313(d)(2)(A). However, EPA notes that none of the toxic chemicals added in today's action were added pursuant to paragraph (A) of that section.

The statute is silent on the issue of exposure considerations for the section 313(d)(2)(B) and (C) criteria. The language of section 313 does not prohibit EPA from considering exposure factors when making a finding under either section 313(d)(2)(B) or section 313(d)(2)(C). However, the language of sections 313(d)(2)(B) and (C) does not require the type of exposure assessment and/or risk assessment argued by the commenters. EPA believes that it has the discretion under both section 313(d)(2)(B) and section 313(d)(2)(C) to consider, where appropriate, those exposure factors that may call into question the validity of listing of any specific chemical on EPCRA section 313.

EPA believes that its position regarding the limited use of risk in listing decisions is consistent with the purpose and legislative history of EPCRA section 313, as illustrated in the following passage from the Conference report:

> The Administrator, in determining to list a chemical under any of the above criteria, may, but is not required to, conduct new studies or risk assessments or perform site-specific analyses to establish actual ambient concentrations or to document adverse effects at any particular location. (H. Rep. 99-962, 99th Cong., 2nd Sess., p. 295 (October 3, 1986)). See also *Legislative History* at 5186.

This passage indicates that Congress did not intend to require EPA to conduct new studies, such as exposure studies, or to perform risk assessments. Therefore, Congress did not consider these activities to be mandatory components of all section 313 decisions. EPA believes that this statement combined with the plain language of the statutory criteria clearly indicate that Congress intended that the decision of whether and how to consider exposure under EPCRA section 313(d)(2)(B) and (C) should be left to the Agency's discretion. EPA has carefully considered when and how to use exposure to fully implement the right-to-know provisions of EPCRA. The Agency believes that exposure should be considered only in very limited circumstances when adding a chemical to EPCRA section 313(d)(2)(B) or (C). The Agency's interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals is discussed in the final rule adding 286 chemicals to EPCRA section 313 (at 59 FR 61440–2). And in fact, EPA's interpretation was upheld by the D.C. Circuit in *Troy* v. *EPA*, 120 F.3d 277. The addition of chemicals pursuant to EPCRA section 313(d)(2)(B) and (C) in today's rulemaking is consistent with this interpretation.

The intent of EPCRA section 313 is to move the determination of which risks are acceptable from EPA to the communities in which the releases occur. This basic, local empowerment is a cornerstone of the right-to-know program. EPCRA section 313 establishes an information collection and dissemination program. It provides the public with information that can be used with other site-specific factors to determine if releases into their communities result in risks that the community determines warrant further action given other factors, such as economic and environmental conditions, or particularly vulnerable human or ecological populations.

In addition, the reference by one of the commenters to two D.C. Circuit Court decisions is misplaced. In support of its position that EPA must undertake a risk assessment of any toxic chemical it is considering to add to EPCRA section 313, the commenter cites *American Petroleum Institute* v. *Costle*, 665 F.2d 1176, 1187 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 1034 (1982), and *Milwaukee Metropolitan Sewerage District* v. *EPA*, 40 F.3d 392 (D.C. Cir. 1994). As discussed in a previous response in this unit, neither case cited by the commenter addresses EPCRA. In addition, since both cases were decided prior to *Troy*, by the same court, that decided the specific issue raised by the commenter, nothing in the two earlier cases cited by the commenter can overrule that decision.

G. Which Chemicals is EPA Adding to the List of EPCRA Section 313 Toxic Chemicals?

EPA is adding the following chemicals to the EPCRA section 313 list of toxic chemicals: dioxin and dioxin-like compounds, benzo(g,h,i)perylene, benzo(j,k)fluorene (fluoranthene), 3-methylcholanthrene, octachlorostyrene, pentachlorobenzene, tetrabromobisphenol A, vanadium (except alloys) and vanadium compounds. EPA conducted a hazard assessment on each chemical being added to the EPCRA section 313 list of toxic chemicals today. This assessment was separate and independent from the review conducted to determine each chemical's persistence and bioaccumulation potential, although EPA considered some of the same data in certain of its hazard assessments. EPA finds that each chemical being added today meets the criteria for chronic human toxicity and/or environmental toxicity, as set forth at EPCRA sections 313(d)(2)(B) and (C). A summary discussion of the basis for listing each of these chemicals as well as other related issue are presented in the remainder of this unit. A more extensive discussion of these issues is included in the Response to Comments document (Ref. 69) and supporting documents.

1. *Dioxin and dioxin-like compounds category*. There were a number of comments received on the addition of the dioxin and dioxin-like compounds category and these are addressed in detail in the Response to Comments document (Ref. 69). Most of the comments on the toxicity data that EPA presented in support of the addition of the category concern the dioxin-like compounds since most commenters seemed to agree that 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (dioxin or 2,3,7,8-TCDD) meets the criteria for listing under EPCRA section 313(d)(2)(B). A number of commenters did not believe that there was sufficient information to add any of the dioxin-like compounds while several commenters argue that the data on the octa- and heptachlorodibenzo-*p*-dioxins in particular were not sufficient. Commenters also argue that reliance on established toxicity equivalence factors (TEFs) does not provide sufficient support for determining that the dioxin-like compounds meet the EPCRA section 313(d)(2)(B) criteria.

EPA disagrees with the commenters that contend that there are not sufficient data to add the dioxin-like compounds pursuant to EPCRA section 313(d)(2)(B). 2,3,7,8-TCDD is generally recognized as one of the most studied toxic compounds found in the environment. To require the degree of documentation supporting toxicological classification of 2,3,7,8 -TCDD as a necessary criterion for determining that other dioxin-like compounds exhibit dioxin-like toxicity or for listing under EPCRA section 313 is an arbitrary and unrealistic criteria. As discussed in more detail in the Response to Comments document (Ref. 69), a more scientifically supportable set of criteria for determining if compounds exhibit dioxin-like toxicity was proposed by the World Health Organization European Centre for Environmental Health (WHO-ECEH) and the International Programme on Chemical Safety (IPCS) consultation group. These criteria include: (1) A compound must show a structural relationship to TCDD; (2) a compound must bind to the Ah receptor; (3) a compound must elicit Ah receptor-mediated biochemical and toxic responses; and (4) a compound must be persistent and accumulate in the food chain. Each of the 2,3,7,8 substitute dioxins and furans included in the dioxin TEQ approach meet these criteria (Ref. 3).

The commenters often quoted from the EPA Science Advisory Board (SAB) review of EPA's draft dioxin reassessment, to help support the claim that dioxin-like compounds other than 2,3,7,8-TCDD should not be included in the toxic release inventory. The SAB report is a complex document containing a number of contrasting observations. Care must be taken to accurately capture the SAB's concerns. For example, in their Executive Summary, the SAB concluded that, "The use of the TEFs as a basis for developing an overall index of public health risk is clearly justified"; they caution, however, "that practical application depends on the reliability of the TEFs and the availability of representative and reliable data." In their summary conclusions, the SAB stated:

> The document (EPA Draft Reassessment) represents a departure from the earlier EPA risk assessment for dioxin, which dealt primarily with 2,3,7,8-TCDD. In addressing a broad range of dioxin-like compounds having the common property of binding to the Ah receptor and producing related responses in cells and whole animals, it creates opportunities for a holistic assessment of the cumulative impacts of these broadly distributed anthropogenic pollutants. Thus, while the environmental concentrations of each compound alone may be too low to produce effects of concern, the combined exposure may be producing effects that warrant concern. The use of the concept of TEFs and the concentrations of the compounds in foods and environmental media to produce an overall index of public health risk is clearly justifiable.

The character and thrust of these statements made by the SAB are significantly different from those selectively chosen by many of the commenters opposing the addition of some or all of the dioxin-like compounds. The apparent contradiction between these broad concluding statements by the SAB and those cited by several commenters is due, in part, to commenters confusing the SAB criticisms of the text of the draft reassessment with statements about the general state of scientific knowledge. The SAB clearly felt that EPA needed to do a more rigorous job of discriminating between the inferences it drew about the toxicity of 2,3,7,8-TCDD, other 2,3,7,8 substitute dioxins and furans, and dioxin-like PCBs. Many of the comments cited were intended to help EPA generate a more rigorous scientific discussion in its final reassessment document rather than to represent substantive conclusions reached by the SAB on the nature of dioxin toxicology. Fully taking these concerns into consideration it was still the SAB's overall judgment, as stated above, that "the use of the TEFs as a basis for developing an overall index of public health risk is clearly justified."

Some commenters argue that there are qualitative differences in the toxicity of the different 2,3,7,8-substituted isomers of polychlorinated dioxins (PCDDs) and furans (PCDFs). Specifically, there are structural differences between the more toxic, lower chlorinated isomeric PCDDs and PCDFs and the higher chlorinated cogeners to the extent that the octa- and hepta-PCDDs and PCDFs should not be added to the list of EPCRA section 313 toxic chemicals. These arguments are not valid for several reasons. First, there are data from subchronic studies for both octa- and hepta-PCDDS and PCDFs which demonstrate dioxin-like effects (Refs. 19, 21, 79, and 80). The new WHO TEFs are based on these subchronic studies (Ref. 78). While short-term studies indicate limited dioxin-like effects of these chemicals, these contrasting results are readily explained by the structural differences between the octa- and hepta-PCDDS and PCDFs compared to the lower chlorinated PCDDs and PCDFs. The relative potency of the dioxin-like compounds is related to both their ability to bind to the Ah receptor and their pharmacokinetic properties (Ref. 20). The water solubility of PCDDs and PCDFs decrease with increasing chlorine substitution. Hence the octa- and hepta-PCDDS and PCDFs are significantly less soluble in aqueous solutions compared to the lower chlorinated PCDDs and PCDFs. These solubility problems limit the amount of chemical that can be absorbed in high dose acute toxicity studies. The lack of effect observed in the high dose acute studies is consistent with the limited aqueous solubility of these compounds. However, low dose subchronic studies allow the chemicals to be better absorbed and bioaccumulate to concentrations which produce biochemical and toxic effects (Refs. 19, 21, 79, and 80). Once again this is consistent with the evidence of dioxin-like effects of these chemicals observed in the low-dose subchronic studies. Although not legally required to determine that a chemical meets the listing criteria under EPCRA section 313(d)(2)(B), it should be noted that human exposure to octa- and hepta-PCDDs and PCDFs are subchronic low dose exposures, similar to the experimental studies which demonstrate dioxin-like effects of these chemicals (Refs. 19, 21, 79, and 80).

While there are structural differences between the octa- and hepta- PCDDs and PCDFs compared to the lower chlorinated PCDDs and PCDFs, these differences result in quantitative not qualitative differences in the toxicity of these chemicals. The quantitative differences are demonstrated by the lower potency of the octa- and hepta-congeners compared to TCDD. In addition, the TEFs reflect these quantitative differences by assigning lower TEF values to the octa- and hepta-PCDDS and PCDFs. While there is limited evidence that the shape of the dose-response curve for induction of CYP1A1 activity *in vitro* for octachlorodibenzo-*p*-dioxin (OCDD) is different from TCDD, *in vivo* evidence indicates that the dose response for CYP1A1 induction by octachlorodibenzofuran (OCDF) in three tissues is equivalent to TCDD (Ref. 20). However, it should be noted that these are quantitative not qualitative differences.

Commenters also argue that octa- and hepta-PCDDs and PCDFs should not be listed because "there is a growing consensus in the scientific community that the potential risks posed by dioxins are largely driven by a limited number of dioxin and dioxin-like compounds (tetra-, penta-, and hexa-PCDDs and PCDFs and certain coplanar PCBs)." It is important to remember that, as discussed in Unit VI.F., EPCRA section 313 is primarily a hazard-based rather than a risk-based statute. The "growing consensus" on dioxin toxicity is probably best captured by the revised TEFs recently established by the WHO (Ref. 78). In this review the scientific evidence for ascribing values of relative toxicity to octa- and hepta-PCDDs and PCDFs was specifically reviewed, as evidenced by the lowering of the TEF for OCDD and OCDF by a factor of 10. In the course of the deliberations by the WHO panel of internationally distinguished scientists, there was the opportunity to remove both octa- and hepta-PCDDs and PCDFs from the TEF listings. However, the WHO panel concluded that the best scientific interpretation of the data available was to leave hepta-PCDDs and PCDFs unchanged and reduce but not eliminate OCDD from TEQ calculations. Even with this reduced toxicity, OCDD and OCDF clearly meet the listing criteria of EPCRA section 313(d)(2)(B).

EPA disagrees with the commenters that contend that TEFs are not adequate support for listing chemicals under EPCRA section 313. The development of TEFs has been a rigorous scientific effort involving a number of international panels of scientific experts and has involved the careful review of all relevant scientific literature. EPA believes that the development and review processes used for the generation of the TEFs was sound and represents a reasoned and reliable judgment on the dioxin toxicity of each of the 17 dioxin and dioxin-like compounds. The Response to Comments document (Ref. 69) includes an extensive discussion of the history of the development of dioxin TEFs which demonstrates why EPA believes that the TEFs are well supported scientifically and consequently have been openly adopted by the international scientific and regulatory community. In addition, as EPA has previously explained (59 FR 61432), the Agency believes that EPCRA section 313 allows a chemical category to be added to the list, where EPA identifies the toxic effects of concern for at least one member of the category and then shows why those effects can reasonably be expected to be caused by all other members of the category. Here, individual toxicity data are not available for all members of the category; however, there is sufficient information to conclude based on generally accepted scientific principles, that all of these chemicals are highly toxic based on structural and physical/chemical property similarities to those members of the category for which data are available.

Thus, EPA reaffirms that there is sufficient evidence for adding dioxin and dioxin-like compounds on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available cancer and other serious chronic health effects data for these compounds. Therefore, EPA is finalizing the listing of dioxin and dioxin-like compounds on the EPCRA section 313 list.

a. *Manufacturing only qualifier for dioxins and dioxin-like compound category.* Comments were mixed with regard to EPA's proposal to add a manufacture only qualifier to the dioxin and dioxin-like compounds category. Some commenters agree with EPA's statements in the proposed rule concerning the burden reduction aspects of the qualifier and the fact that as a result, the dioxin reporting would focus on facilities that manufacture dioxin and dioxin-like compounds rather than those that process or otherwise use raw materials containing dioxin and dioxin-like compounds that have accumulated in those raw materials. Some commenters state that the qualifier would avoid duplicative testing and administrative costs among many processing and using industries which do not necessarily discharge dioxins or furans into the environment. Some commenters state that all releases of dioxin and dioxin-like compounds must be reported, not just those resulting from the manufacture of these chemicals. Other commenters note that a significant gap is created by the manufacture only qualifier because it would exclude the processing and otherwise use of chemicals than contain dioxin and dioxin-like compounds as a result of the processes used to manufacture them. Commenters specifically cite pentachlorophenol as an example of a chemical that is contaminated with dioxin and dioxin-like compounds from its manufacturing process. Commenters state that the processing and use of such chemicals result in the release of dioxin and dioxin-like compounds that would go unreported under the manufacture only qualifier. One commenter states that if the qualifier is finalized the commenter would like to see language that requires facilities to report if the background levels of dioxin are modified, concentrated, or somehow added to in the manufacturing process. Another commenter states that if the Agency wants to exempt animal sources of dioxin, such as dioxin contained in meat and other animal products, it should craft the rule to do so and not cut out other significant sources of dioxin in the environment by exempting all facilities that process material containing dioxin.

EPA believes that in order to obtain any reporting on dioxin and dioxin-like compounds a very low threshold is required, which is several orders of magnitude lower than the thresholds for other PBT chemicals. At such a low reporting threshold it is estimated that thousands of reports could potentially be filed by facilities, mainly food processing facilities, due to the amount of dioxins in the raw materials they process. The dioxins found in the meat and dairy products that food processors handle have been previously released, circulated in the environment, and bioaccumulated in animals; thus these are not additional loadings to the environment but loadings that have already occurred and cycled through the environment due to the persistence and bioaccumulative properties of these compounds. The unique combination of very low thresholds, the number of food processors that would be required to file, and the fact that they would be filing because of the bioaccumulation of previously released material, led EPA to add the manufacture only qualifier to the dioxins category. The qualifier was added in response to the unique set of conditions that apply to the reporting of dioxin and dioxin-like compounds. The manufacture only qualifier was added to reduce reporting burden on facilities, mainly in the food processing industry, that results from the unique combination of circumstances related to the reporting for these chemicals and to focus on those activities that add to the loading of dioxins in the environment rather than on activities dealing with previously released and bioaccumulated chemicals.

However, EPA acknowledges that the commenters who noted that the processing and otherwise use of chemicals contaminated with dioxin and dioxin-like compounds as a result of their manufacturing process, are correct that these would be newly created and thus any releases of dioxin and dioxin-like compounds that are due to the processing and otherwise use of such chemicals would be new loadings on the environment. In addition, EPA agrees, and has never stated otherwise, that the processing or use of chemicals contaminated with dioxin and dioxin-like compounds could result in the release of these chemicals to the environment. Given the fact that the manufacture of certain chemicals also results in the manufacture of dioxin and dioxin-like compounds that remain with those chemicals as impurities, EPA believes that releases and other waste management quantities for the dioxin and dioxin-like compounds found as impurities with those chemicals should be reported under the dioxin and dioxin-like compounds category. Thus, EPA's original proposal would have created an exemption that was too broad. Consequently, EPA is modifying the qualifier to read as follows:

> Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical)

EPA believes that narrowing its proposal in this fashion is consistent with EPA's intention to focus on new loadings to the environment for dioxin and dioxin-like compounds.

One commenter states that the activity qualifier for dioxin and dioxin-like compounds is intended to minimize the burden of reporting on naturally-occurring constituents of raw materials and that this qualifier would be consistent with the PBT criteria set forth by Canada's Department of the Environment in their Toxic Substances Management Policy. The commenter states that the Canadian policy requires a chemical to be "predominantly anthropogenic" to be considered a PBT chemical. The commenter states that EPA's assumption that these compounds are ubiquitous in raw materials may be incorrect. The commenter further states that these compounds may be formed in combustion processes due to the ubiquitous presence of *precursor* chemicals in coal, such as natural hydrocarbons and chlorine. The commenter argues that it is not reasonable to expect the hydrocarbon nor the chlorine to be removed from the raw material prior to combustion. Thus, the "incidental manufacture" of extremely minute amounts of these chemicals may be unavoidable.

EPA disagrees that the sole basis for its qualifier was to minimize the burden of reporting. The qualifier was added in response to the unique set of conditions that apply to the reporting of dioxin and dioxin-like compounds. As noted above, EPA was, and remains, concerned that, because dioxin is ubiquitous in the environment, the reporting be focused on those facilities that actually add to the environmental loading of these chemicals. EPA did not state that dioxin and dioxin-like compounds would be ubiquitous in all raw material and did not intend to imply that all raw materials contain these compounds. EPA stated that these compounds are ubiquitous in the environment and, thus, facilities that process raw materials containing these compounds might have to report because of the very low reporting threshold necessary to obtain reports from any sources, including those facilities that coincidentally manufacture them. In addition, although the qualifier may be consistent with Canada's Toxic Substances Management Policy, EPA has not proposed any requirement that a chemical must be "predominantly anthropogenic" to be considered a PBT chemical under EPCRA section 313. The commenter is correct that dioxin and dioxin-like compounds may be manufactured in combustion processes due to the "ubiquitous presence of precursor chemicals" and that such "incidental manufacture" may be unavoidable. However, the mere presence of the dioxin precursors will not guarantee dioxin production. There are well documented conditions that favor the formation of dioxins during combustion, and in some cases it may be possible to stringently control fuel composition, flow times, temperature, and other conditions in order to substantially reduce or even eliminate the incidental manufacture of dioxins during combustion processes.

b. *Withdrawal of the proposal to include dioxin-like PCBs in the dioxin category.* Several commenters support EPA's decision to withdraw the proposal to modify the current PCB listing and move the 11 co-planar PCBs to the proposed dioxin and dioxin-like compounds category and retain the co-planar PCBs as part of the current PCB listing. Two commenters support EPA's decision to leave co-planar PCBs out of the dioxin and dioxin-like compounds category since the structure, metabolism, gene regulation, and toxicities of PCBs are substantially different from those of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin. One commenter takes exception to the use of the term "dioxin-like" as a way of describing PCBs and other chlorinated compounds and agrees that the PCBs should be kept out of the "dioxin-like" class. Other commenters also argue that PCBs are more appropriately classified as PCBs, not dioxin-like compounds.

One commenter contends that since these chemicals are no longer allowed to be distributed in commerce, maintaining a separate EPCRA section 313 chemical category for these chemicals will streamline data management. This approach will also enable EPCRA section 313 reporting for this category of chemicals to be more consistent with existing data already collected for the purposes of complying with TSCA. Further the commenter asserts that approach is also consistent with EPA's Reinvention Policy and will enable "one-stop" reporting.

Another commenter asserts that it is unclear just how many grams of dioxin-like compounds would be excluded from this reporting since there are conflicting Agency proposals at work: the first is a much lower threshold for dioxins. The second includes only dioxins manufactured on site. Since PCBs are not generally manufactured on site, these 11 dioxin-like compounds would not be reported under the proposal if they were included as dioxins. On the other hand, if all dioxins (manufactured, processed, and otherwise used) are included in the EPCRA section 313 threshold determination, these 11 PCBs could make the difference between a facility's reporting or not reporting dioxins. If the dioxin threshold remains as proposed, then the 11 PCBs should remain with the PCB category. Further the commenter argues that if the threshold is expanded to include sources other than those that manufacture dioxin on-site, then the PCBs should be part of the dioxin-like compounds category. If EPA does not modify the dioxin threshold to include all dioxin uses, the 11 dioxin-like PCBs should remain with the PCB category.

While EPA agrees with the commenters that the co-planar PCBs should remain as part of the current PCB listing, the Agency does not agree with all of the reasons the commenters have presented. As EPA stated in the proposed rule:

> . . .EPA has determined that all PCBs persist and bioaccumulate. Since PCBs persist and bioaccumulate, EPA believes that they should be subject to lower reporting thresholds, and thus there is no need to move the 11 co-planar PCBs to the proposed dioxin and dioxin-like compounds category. Therefore, EPA has decided to withdraw its proposal to modify the current listing for PCBs and instead proposes to lower the reporting thresholds for the current PCB listing which covers all PCBs. EPA believes that, since all PCBs persist and bioaccumulate, it is appropriate to lower the reporting threshold for this class of chemicals and that this proposal is less burdensome than requiring separate reporting on the dioxin-like PCBs as part of the proposed dioxin and dioxin-like compounds category (at 64 FR 710).

EPA did not base its decision on a determination that co-planar PCBs were not "dioxin-like" and keeping them under the current PCB listing should not be interpreted as such a determination. Also, since EPA is not expanding the qualifier for the dioxin and dioxin-like compounds category to include all processing and otherwise use activities, the amounts of co-planar PCBs that might be reportable under the category would not be expected to contribute significantly to threshold determinations for the category at most facilities.

Four commenters specifically do not support EPA's decision to withdraw the proposal to modify the current PCB listing. Commenters assert that the aggregation of dioxin-like PCBs together with other PCBs will fail to provide reporting of useful information on dioxin-like PCBs. The commenters either contend that the PCBs should be included in the dioxin-like compounds category or the PCBs and all dioxin-like compounds should be reported separately. One commenter argues that the aggregate reporting of dioxin-like PCBs and other PCBs fails to provide any information on the release of dioxin-like PCBs to meet the research, regulatory, or public information goals of EPA's proposal. This commenter raises several points. The commenter contends that specifically, even if some facilities releasing dioxin-like PCBs reported these releases as a portion of their total PCBs production of 10 pounds annually or greater, information on dioxin-like PCBs releases would still be unobtainable. The commenter asserts that aside from the food chain, where some dioxin-like PCBs tend to concentrate disproportionately, available measurements indicate that these dioxin compounds are only a small portion of the mass of all PCB compounds. The commenter further argues that some of these dioxin compounds such as PCB-126 are far more toxic than other dioxin-like and non dioxin-like PCBs. Thus, the commenter asserts that in addition to all of the problems of dioxin-like chemical aggregate reporting, one would not know what, if any, portion of the total PCBs reported were dioxin-like. The commenter contends that the dioxin-like co-planar PCBs also should be reported individually so that a TEQ for all 28 dioxin and dioxin-like compounds can be calculated. Another commenter argues that based on information about current body burdens of co-planar PCBs, they compose as much or an even greater percentage of one's overall exposure than the 17 dioxin and dioxin-like compounds. This commenter cites an EPA document that stated that: "[e]stimates of exposure to dioxin-like CDDs and CDFs based on dietary intake are in the range of 1-3 pg TEQ/kg/day. Estimates based on the contribution of dioxin-like PCBs to toxicity equivalents raise the total to 3-6 pg TEQ/kg/day." Some commenters contend that reporting the co-planar PCBs differently from the 17 dioxin and dioxin-like compounds would make any assessment of the overall release and potential health impact of these types of compounds difficult. One commenter argues that PCBs are currently contaminating sediments and industrial sites nationally and have ruined fish as a natural resource for human consumption across the nation and that the distinction between dioxin-like PCBs and dioxin-like compounds made under this rule is a distinction without a difference. This commenter urges EPA to include all dioxin-like compounds, including PCBs, in the dioxin-like compounds category and to require strict accounting from all sources which release these compounds and which manufacture them, incidentally or by design.

One commenter contends that the failure to report dioxin-like PCBs as a distinct entity separate from other PBT chemicals may hold back information on a significant portion of the total dioxin-like hazard from releases by facilities that report under EPCRA section 313, even if all dioxin and furan releases were reported. The commenter argues that environmental exposure measurements, such as those from fish in San Francisco Bay and from human tissues nationally, indicate that dioxin-like PCBs contribute a very significant portion of the total toxicity hazard from exposure to all dioxin-like chemicals. The commenter also asserts that PCB releases might in some cases represent an inadequately measured yet significant portion of the ongoing dioxin release hazard. If, for example, PCB-126 comprises even 1/10 of the PCBs release measured from San Francisco Bay Area sources, it would contribute substantially to total dioxin-like toxicity emission from some of these facilities. The commenter contends that the failure to provide release information on dioxin-like PCBs under EPA's proposal may result in failure to inform the public about a significant portion of the total dioxin toxicity that is still released.

EPA agrees that PCBs are toxic chemicals of concern that have caused significant contamination of the environment and that co-planar PCBs may have dioxin-like health effects. However, this does not, in itself, create a requirement that the co-planar PCBs must be moved from their current PCB listing to the dioxin and dioxin-like compounds category. EPA does not believe that the co-planar PCBs must be reported separately from the non co-planar PCBs because they may be more toxic than other PCBs. In general, chemical categories consist of chemicals that vary in their level of toxicity but this variability alone does not mean that release information must be reported separately for each chemical in the category. EPA believes that all PCBs are of concern and that leaving the co-planar PCBs under the current PCB listing will still provide the public with useful and important information. In deciding not to move the co-planar PCBs to the dioxin category, EPA also considered any potential additional burden associated with splitting the reporting for PCBs into two different listings, as well as the fact that facilities are not likely to be able to determine quantities of the specific co-planar PCBs in question. Specifically, EPA considered the lack of readily available estimation techniques for determining quantities of co-planar PCBs, as opposed to other PBT chemicals and the PCB listing as a whole (co-planar PCBs will be included in the estimation of PCBs). EPA determined that since all PCBs are of concern and since the reporting threshold for all of the PCBs under the PCB listing would be lowered substantially, that requiring separate reporting on the co-planar PCBs was not warranted.

One commenter contends that the failure to report dioxin-like PCBs would fail to provide information on that subgroup of dioxin-like compounds for which there is the greatest need for additional information. The commenter argues that EPA's evaluation of the emission of dioxin-like chemicals nationwide shows that there is less information on releases of dioxin-like PCBs than there is for other dioxin compounds. The commenter asserts that similarly, their survey of source information in the San Francisco Bay Area shows that, despite many measurements of dioxin and furan releases, and despite a handful of source measurements confirming PCBs, there are few or no source measurements for dioxin-like PCBs. The commenter argues that the information on releases from facilities is even less available for the dioxin-like PCBs than it is for the other dioxin-like chemicals and that EPA's analysis in the proposed rule fails to consider adequately this extreme need for source release information.

EPA agrees that there is far less information available on co-planar PCBs than for dioxin and other dioxin-like compounds. Much less testing and analysis has been conducted for these chemicals. This would pose an additional problem for reporting on the co-planar PCBs separately from the other PCBs. EPA considered the ability to estimate quantities of specific co-planar PCBs and determined that there is a lack of readily available estimation techniques for co-planar PCBs. In fact, at this time, the Agency would not be able to provide guidance for making a reasonable estimate of quantities of co-planar PCBs that may be manufactured in certain processes. In addition, EPCRA section 313 does not require any additional monitoring beyond that required by other provisions of law so listing the co-planar PCBs separately would not mean that additional source measurements would be developed. Thus, listing under EPCRA section 313 will not require the development of additional monitoring data that could be used to make reasonable estimations of thresholds or releases and other waste management quantities. Given the lack of information available for estimating quantities of co-planar PCBs and the potential additional burden associated with splitting the reporting for PCBs into two different listings, EPA decided to leave the co-planar PCBs under the current PCB listing.

One commenter asserts that the burden on industrial producers of dioxin-like PCBs is not an appropriate reason for excluding dioxin-like PCBs from the dioxin and dioxin-like compounds category because this will not meet EPCRA's right-to-know goal for dioxin-like PCBs. The commenter contends that EPA's cost analysis does not address dioxin-like PCBs specifically and thus, EPA's rationale in Unit VI. of the preamble of the proposed rule (64 FR 688) that "this proposal is less burdensome than requiring separate reporting on the dioxin-like PCBs" is not based on any cost analysis in EPA's proposal. The commenter argues further that in any case, aggregate reporting of dioxin-like PCBs with a 10 pound threshold will fail to obtain the required reporting on a substantial majority of dioxin-like PCBs or to provide needed information about dioxin-like PCB releases and therefore, EPA's perceptions regarding reporting burden cannot properly outweigh the public's need for the information which is denied under EPA's new proposal. The commenter refers to the proposal to retain dioxin-like PCBs under the PCB listing as the "less than 10 pounds exemption." The commenter asserts that existing evidence demonstrates that many dioxin producing processes such as waste incinerators, oil-fired boilers, and other processes also produce potentially significant amounts of PCBs which are released to the environment from these facilities. The commenter argues that this evidence suggests that at least some facilities reporting under EPCRA section 313 are likely to be releasing dioxin-like PCBs as a portion of these PCB releases. The commenter contends that the evidence also suggests that most or all releases of dioxin-like PCBs at these facilities may be associated with total annual PCB production of less than 10 pounds per facility and thus, EPA may not meet the requirement that a substantial majority of dioxin-like PCBs be reported under this exemption.

Reporting burden was not the sole or even most important factor in EPA's decision not to move the co-planar PCBs to the dioxin and dioxin-like compounds category. In reaching its final decision, EPA considered the fact that additional information would be collected on all PCBs by lowering the threshold for the PCB listing and that the additional information that would be collected was sufficient for EPCRA section 313 purposes, as well as less burdensome. Even in its proposal EPA did not conclude that reporting burden alone outweighed the public's right-to-know about chemical releases. As stated in other responses to this issue, EPA is also concerned about the ability to estimate quantities of specific co-planar PCBs since there is a lack of readily available estimation techniques for co-planar PCBs. It is correct that EPA did not attempt to quantify the reduction in burden that would result from not including the co-planar PCBs in the dioxin and dioxin-like compounds category. However, EPA believes that it would be inherently less burdensome since facilities would not have to attempt to determine if they can estimate co-planar PCBs separately and filing one form would obviously be easier and less confusing than attempting to track and adjust the amounts that must be applied to two different listings and filing two reports. With regard to the issue of obtaining reporting on a substantial majority of "dioxin-like PCB" releases, as stated in EPCRA section 313(f)(2), the determination of whether a revised threshold meets the "substantial majority" standard is measured against the "total releases of the chemical at all facilities subject to the requirements of this section." As EPA stated in the proposed rule:

> For purposes of determining what constitutes a "substantial majority of total releases", EPA interprets "facilities subject to the requirements" of section 313 as the facilities currently reporting, ... (at 64 FR 689).

Currently, facilities required to report on PCBs must report on all PCBs, not just the co-planar PCBs or any other individual PCBs. The current listing includes all PCBs. Consequently EPA does not believe that the requirements of section 313(f)(2) function as an impediment to its decision to withdraw its proposal to include the co-planar PCBs in the dioxin and dioxin-like compounds category. As discussed in Units II.B. and VI.A., EPA believes that it has satisfied the requirements of EPCRA section 313(f)(2), without the need for quantitative support.

c. *Listing dioxin and dioxin-like compounds as a category versus individual listing of each chemical.* Some commenters contend that reporting dioxin and dioxin-like compounds as one category would not provide useful information and asked that the individual compounds be reported. One commenter recommends that reporting on individual chemical species should be required when the information is available. One commenter who supports the individual reporting of all of the dioxin and dioxin-like compounds, states that the amounts of individual dioxin compounds released from facilities is part of the important public information needed to assist research and policy development. The commenter claims that reporting as a category will not provide the public with the information to assess the relative hazards of releases since one dioxin-like compound can have a relative hazard several orders of magnitude less than 2,3,7,8-tetrachlorodibenzo-*p*-dioxin. This commenter also states that different sources often emit a different mix of dioxin compounds and that this information is widely used to trace dioxin contamination to specific root causes. The commenter states that the relative amounts of the many different dioxin-like chemicals in a sample are compared to create a "profile" which might match the profile created by emission from a particular source. The commenter did not support the reporting of the category based on toxic equivalents (TEQs) but thought it important for the users of the data to be able to determine TEQs. Some other commenters make the same general argument that individual isomer reporting is needed to facilitate risk characterization including transport and fate of the different isomers.

Some commenters contend that certain dioxin-like compounds such as octachlorodibenzo-*p*-dioxin and octachlorodibenzofuran should not be reported since they are ubiquitous in the environment and are the least toxic under the toxic equivalent factors (TEFs). One commenter states that EPA should require reporting only for the most toxic congeners: the tetra-, penta-, and hexa-congeners and not the hepta- and octa-congeners which are less toxic and less relevant from a risk standpoint. Other commenters state that only 2,3,7,8-tetrachlorodibenzo-*p*-dioxin should be reported. Some commenters contend that reporting for these compounds should not be required at the same reporting threshold as the other dioxin and dioxin-like compounds. Most commenters who would like to exclude certain dioxin-like compounds did not indicate that they wanted individual reporting of the remaining compounds. Some commenters support the reporting of dioxin and dioxin-like compounds as a category, as EPA proposed. One commenter states that if reporting is not limited to just 2,3,7,8-tetrachlorodibenzo-*p*-dioxin, then the commeter supports EPA's proposal to limit the category to only the 7 dioxins and 10 furans listed in the proposed rule.

After consideration of all of the comments on this issue, EPA has decided that the best way to report on dioxin and dioxin-like compounds is to report them as a category. This is consistent with the way EPA has addressed other groups of chemicals that share the same toxic effect and in this case are also generated as complex mixtures. As discussed in Units VI.G.1.d. and e., reporting as a category and based on TEQs would not provide users of the data with information on which compounds contribute the most to the TEQ total. In addition, requiring facilities to report each compound individually would impose an additional burden on the industries that will be required to report. However, EPA agrees that being able to determine the amounts of the individual dioxin and dioxin-like compounds would make the data more useful. Therefore EPA will add a section to the Form R that will require the reporting facility to provide the distribution of dioxin and each dioxin-like compound for the total quantity that the facility is reporting. If a facility has information on the distribution of the dioxin and dioxin-like compounds, the facility must report either the distribution that best represents the distribution of the total quantity of dioxin and dioxin-like compounds released to all media from the facility; or its one best media-specific distribution. This information is only required if it is available from the data used to calculate thresholds, releases, and other waste management quantities, no additional analysis is required. As with all other reporting under EPCRA section 313, this information will only be required if the facility has information that can be used to make a reasonable estimate of the distribution from the available data. With the distribution of congeners reported on each Form R, the user of the data can determine the grams of dioxin and each individual dioxin-like compound that makes up the total quantity reported on the Form R. Under this reporting mechanism, all of the information that the commenters have stated is important to determining the significance of quantities reported under this category will be provided to the public but the reporting facilities will still only have to file one report. Any of the other possible options, such as reporting in terms of TEQs or reporting each individual compound separately, either do not provide all of the information the commenters would like to have, or impose too great an additional reporting burden without providing the public with significant additional information.

d. *Using mass versus TEQs for reporting releases and other waste management quantities.* Most of the commenters on this issue suggest that EPA should require that release and other waste management data for the dioxin and dioxin-like compounds category be reported in terms of TEQs rather than in terms of absolute grams. The following list is a summary of the various reasons provided by the commenters in support of reporting dioxin and dioxin-like compounds in terms of TEQs: (1) All dioxin data reported under other EPA programs as well as other Federal and state regulatory programs are reported in terms of toxicity equivalents; (2) the public is familiar with dioxin data reported in terms of TEQs and reporting in other units would cause confusion and be misleading; (3) TEQs provide more meaningful information than total weights since they take into account the relative toxicities of the various dioxin-like compounds; (4) facilities that report under other regulatory programs are likely to rely upon TEQ data that they already have; (5) use of absolute mass may cause misleading comparisons between grams and grams TEQ; (6) releases reported in absolute mass make it difficult to assess the impacts these compounds may have on the environment due to the differences in their toxicities; and (7) reports based on TEQs would provide far more useful information about potential community risks than reports based on the total mass of compounds in the category since more risk information would be provided.

One commenter argues that EPA's justification for adding the category is based on assumptions about the toxicity of the other dioxin-like compounds relative to dioxin itself and that given these assumptions the reporting of TEQs makes sense. The commenter states that under current TEQ schemes, these dioxin-like compounds are all less toxic than dioxin, as much as 1,000 times less, and that facilities should not simply sum emissions on the Form R for compounds with such drastically different toxicities. One commenter suggests that EPA require the reporting of both grams and TEQs and if not both, then just grams. This commenter asserts that if only grams are reported, the data will be somewhat difficult to interpret without any further information, but if only TEQs are required to be reported, then there are uncertainties about what and how much is discharged.

Another commenter states that if EPA is going to require dioxin reporting as a group and not by specific chemicals, TEQ reporting is an unnecessary complication. The commenter states that the TEFs used to formulate the TEQs are constantly reviewed and changed, which would necessitate EPA review and possible reissuance of new TEFs each year. The commenter argues that this would make previous years' TRI data impossible to compare once the changes were made.

While EPA recognizes that TEQs are a common way of expressing quantities of dioxin-like compounds, EPA does not believe that reporting in these units would be the best or most appropriate way to report for the dioxin and dioxin-like compounds category under EPCRA section 313. Although some commenters believe that TEQ reporting should be used since not all of the dioxin-like compounds are as toxic as dioxin itself, EPA has determined that all of the dioxin-like compounds meet the listing criteria of EPCRA section 313. Since all of these compounds meet the listing criteria, the actual mass of each member of the category should be reported. To do otherwise would deny the public information on the actual quantities of toxic chemicals entering the environment. It would also be inconsistent with all other reporting of EPCRA section 313 toxic chemicals since none of them are reported based on relative toxicities. In addition, this would be inconsistent with EPCRA section 313(g)(1)(C)(iv) which requires that "the annual quantity of the toxic chemical entering each environmental medium" be reported.

Some of the commenters state that TEQs should be used because they provide more risk information to the public than just reporting mass. While TEQs do provide information on relative toxicity, EPA does not believe that increasing the amount of risk information is a basis for changing the EPCRA section 313 method for reporting from mass-based to relative toxicity-based. As discussed in Unit VI.F., EPCRA section 313 is not a risk-based program, and reporting is not intended to communicate information about relative risks. Rather it provides local communities with data on release and other waste management quantities on listed toxic chemicals, so that they may use the data in conjunction with information on chemical properties (e.g., persistence and bioaccumulation) and site-specific information to determine if releases present a potential risk. It is also not clear, as some commenters state, that the public is more familiar with dioxin data reported in terms of TEQs or that they will understand TEQs any better than grams.

EPA does not believe that the fact that other programs require reporting in TEQs and that facilities will already have TEQ information is a significant reason to require TEQ reporting under EPCRA section 313. Since the first piece of information that is required to determine TEQs is the grams of dioxin and each dioxin-like compound, these facilities should already have the gram-based information they would need. In addition, as stated above, EPCRA section 313 reporting serves the purposes of EPCRA section 313; other programs, e.g., the CWA, are risk-based command and control programs.

Several commenters also disagree with the concerns that EPA raised in the proposed rule, which were:

> . . .there are three significant disadvantages to reporting in TEQs. First, revisions in TEF factors for individual dioxin-like compounds in future years would require changes to the calculations in the reported release and other waste management quantities, thus making year to year comparisons more difficult, unless the particular dioxin-like compounds are identified. Second, some facilities may not be able to report in TEQs, since, although they may be able to estimate a mass quantity for the category as a whole, they may not have enough information to estimate the relative distribution of all category members. Third, TEQ reporting would be different from all other TRI reporting, which is mass-based, and may cause additional confusion. (at 64 FR 712-713)

Some commenters contend that EPA's first concern is not valid since the EPCRA section 313 reporting requirements have been changed several times in the past in spite of difficulties in comparing future reports to past performance. Two commenters state that this same logic could be applied to the use of AP–42 factors which EPA acknowledges have been revised and refined over the years, and that this also diminishes the value of year-to-year reporting comparisons. One commenter suggests that EPA could minimize any confusion that might be caused by a subsequent change in one or more TEFs by each year specifically publishing or cross referencing the TEFs that must be used for that reporting period.

One commenter contends that EPA's second and third concerns appeared weak in light of the much greater risk information provided by a TEQ approach. Some commenters contend that EPA's third concern is not valid since the reporting requirement being proposed for dioxin and dioxin-like compounds is different whether TEQs are used or not. One commenter states that the third concern is clearly dwarfed by the confusion that would ensue if all dioxin-like compounds were reported as equivalent, when the hazards vary by a factor of 500. One commenter states that reporting dioxin on a TEQ basis will cause more rather than less confusion if the public mistakenly compares data in grams with data presented in grams TEQ. Some commenters agreed with the concerns EPA expressed in the preamble. One commenter states that it agreed with these concerns but that the concern about year-to-year comparisons being more difficult also applies to the reporting of a single mass value for the entire category. The commenter contends that since the amounts of the individual dioxin-like compounds would not be known, if TEFs change, one cannot adjust previously reported values to reflect the changes in TEFs. This commenter suggests that in order to make the information reported of greatest use, the mass of dioxin and each of the dioxin-like compounds should be reported once a TEQ threshold is exceeded.

One commenter argues that while TEQs are a valid and scientifically sound metric for reporting the likely health hazard of a compound, that was not the intended purpose of the EPCRA section 313 reporting requirement. The commenter claims that reporting dioxin and dioxin-like compounds in TEQs will cause confusion, since all other reporting under EPCRA is done in terms of mass and does not take toxicity into account.

EPA believes, as do some of the commenters, that the concerns that were expressed in the proposed rule for reporting dioxin and dioxin-like compounds in terms of TEQs under EPCRA section 313 are valid. EPA disagrees with those commenters who claim that since other changes in reporting have occurred, such as revisions to AP-42 emission factors, there should be no concern for the changes that might occur in TEFs and the resulting TEQs. The fact that certain changes have occurred in reporting requirements or methods of estimation and that those changes may make certain year-to-year comparisons more difficult does not reduce the concern for knowingly selecting reporting units, based on relative toxicity as opposed to emission factors, that have changed in the past and may well change in the future. Also, EPA would be required to choose a particular set of TEFs (i.e., as of 1999) and would need to amend them by rulemaking each time the TEFs were revised. Changes in TEFs and the resulting TEQs would be unlike any of the past changes in EPCRA section 313 reporting since none of these reporting changes were related to the relative toxicity of chemicals that meet the listing criteria of EPCRA section 313. The cross referencing or publishing of the TEFs that must be used for each reporting period would still not allow year-to-year comparisons since without knowing a facility's distribution of each of the category members the TEQ cannot be recalculated. EPA's concerns that some facilities may not be able to report in terms of TEQs are also valid. Although most facilities that will be able to make reasonable estimations for the dioxin and dioxin-like compounds category should be able to report in terms of TEQs, there may be some that can only report in actual mass units and they should not be exempt from reporting. EPA is also still concerned that TEQs would be different than other EPCRA section 313 reporting units, since they are not based on absolute mass, and that this could cause confusion. EPA does not agree with the commenters that state that this does not matter since the reporting for the dioxin and dioxin-like compounds category is going to be different anyway. The only real reporting difference for the dioxin and dioxin-like compounds category is that the reporting units are in grams rather than pounds. To determine the amounts in pounds all that one would have to do is multiply the grams by 0.002204. However, TEQ reporting would be much different since in order to understand the reported value one would need to understand the basis for TEFs, what they are, how they relate to dioxin, and how TEQs are calculated from the individual TEFs. This obviously requires more knowledge on the part of the data user than simply understanding different units of mass and does have the potential to cause some confusion.

One commenter contends that neither total mass nor TEQ reporting provides sufficient information on reduction in potential exposure and risk. The commenter asserts that it is possible that a facility could reduce its dioxin TEQ while releasing a greater mass of dioxin-like compounds, but neither total mass nor TEQ reporting would really provide a good picture of what a facility was doing. The commenter suggests that if EPA wants to provide TEQ information to the public, it should also require facilities to report dioxins by individual chemical, rather than as a group.

Another commenter that favors the reporting of dioxin and dioxin-like compounds as individual chemicals claims that reporting as a category but in TEQs would still fail to reveal the amounts of individual dioxin compounds released. The commenter argues that this alternative would provide no information on individual compounds for use in tracing dioxin source profiles. The commenter contends that reporting in TEQs would provide better information on the relative toxicity hazard based upon today's toxicity information but that information on the relative toxicity of the many dioxin-like chemicals is improving and thus toxicity factors for some of these compounds will change in the future. The commenter claims that in future years the Inventory would have to choose between keeping the old toxicity calculation (and becoming irrelevant in comparison with other research data), or changing the toxicity calculation (and becoming irrelevant for tracking changes in dioxin release rates over time). The commenter contends that the need to aid research and policy development based on current science and the need to track release rates over time are fundamental to the Inventory's purpose and that this alternative must be rejected as just another ill-advised aggregate reporting scheme. The commenter recommends that EPA require the reporting of dioxin and dioxin-like compounds in the way these compounds are measured and analyzed by scientists and government agencies, as individual chemicals, and consider an additional service by EPA to calculate and report dioxin toxicity as TEQ for the year-to-year data using the most recent toxicity information which becomes available.

Several commenters make the point that for dioxin and dioxin-like compounds neither reporting total mass nor reporting in terms of TEQs provides sufficient information on potential exposures and risks, and that neither would allow for the tracing of dioxin source profiles. EPA agrees that neither approach would provide all of the data that the commenters would like to have reported and that being able to determine TEQs would provide additional useful information. A common solution to the TEQ issue that the commenters suggest, was to report dioxin and each individual dioxin-like compound separately rather than as a category. However, EPA believes that this approach would be overly burdensome and unnecessary to get the kind of data that would be the most useful. As discussed in the previous section of this unit, many other commenters requested that dioxin and dioxin-like compounds be reported separately rather than as a category. After consideration of all of the comments on this issue, EPA has determined that the best way to report for the dioxin and dioxin-like compounds category is to report in terms of absolute grams for the entire category. This is consistent with all other reporting under EPCRA section 313 and will provide the most consistent information from year-to-year. However, EPA agrees with most of the commenters that being able to determine TEQs from the reported data and being able to determine which individual chemicals are include in a facilities report would make the data more useful to the public. Therefore, as discussed in the previous section of this unit, EPA will add a section to the Form R that will require the reporting facility to provide the distribution of dioxin and each dioxin-like compound for the total quantity that the facility is reporting. If a facility has information on the distribution of the dioxin and dioxin-like compounds, the facility must report either the distribution that best represents the distribution of the total quantity of dioxin and dioxin-like compounds released to all media from the facility; or its one best media-specific distribution. This information is only required if it is available from the data used to calculate thresholds, releases, and other waste management quantities, no additional analysis is required. As with all other reporting under EPCRA section 313, this information will only be required if the facility has information that can be used to make a reasonable estimate of the distribution from the available data. With the distribution of the individual members of the category reported on each Form R, the user of the data can determine the grams TEQ that correspond to the absolute grams reported and can adjust the grams TEQ as TEF values change over time. Under this reporting mechanism, all of the information that the commenters state is important to determining the significance of quantities reported for this category will be provided to the public on one Form R. This way all parties can express the data in whichever format they believe is best, and since the first thing that must be determined under any reporting method is the mass of each member of the category, there should be little, if any, additional burden associated with including the distribution.

e. *Using TEQs as the basis for reporting thresholds.* All of the commenters on this issue requested that the reporting threshold for the dioxin and dioxin-like compounds be set in terms of TEQs. Most of the commenters indicate that the reasons they support a TEQ-based threshold were the same as the reasons they support reporting release and other waste management quantities in terms of TEQs (see the first paragraph of the preceding section of this unit). Two commenters argue that since EPA proposed to use TEQs for reporting release and other waste management quantities, that not basing the reporting threshold on TEQs would be inconsistent. The commenters contend that a facility may trigger reporting by having emissions that exceed the threshold (in terms of absolute weight) but have no significant reporting quantity (in terms of TEQ equivalent weight) and, therefore, no significant health risk. The commenters recommend the use of a consistent approach where TEQs are used for both threshold determinations and release and other waste management quantities. The commenters state that such an approach would be consistent with the health risk rationale for EPCRA reporting, yet not rely on site-specific risk approaches that may evolve over time. Another commenter had similar concerns suggesting that it would be extremely burdensome and unnecessarily complex to have thresholds based on absolute grams and release and other waste management quantities reported in TEQs and recommends that EPA should use TEQs for both.

One commenter claims that it may ease the reporting burden somewhat to base the EPCRA section 313 reporting threshold on a TEQ basis rather than attempting to develop mass-based estimates. Another commenter contends that in order to determine the sum of the mass of the 17 dioxin and dioxin-like compounds, one already will have determined the mass of each compound individually and that with data reported by compound, a TEQ can easily be calculated. The commenter also suggests that there are short-term screening bioassays for determining the TEQ of a sample that are less expensive, more sensitive, and can be done more rapidly than traditional analytical chemistry methods. The commenter states that rather than facilities trying to guess what their releases may be, in an attempt to avoid spending money on expensive analytical chemistry methods, if the reporting threshold were based on TEQs, a facility can readily and more inexpensively screen its releases. The commenter argues that having a reporting threshold based on TEQ is more representative of potential health risks and recommends that EPA consider using some amount of TEQs as the reporting threshold. Another commenter suggests that one option would be to report releases of each dioxin-like compound if the total, in TEQ, exceeds some chosen threshold.

One commenter that suggests that TEQs should be used for thresholds, notes that reporting dioxin on a mass basis is quite different from reporting on a TEQ basis. The commenter asserts that since some of the dioxin-like compounds have TEFs of 0.001 then the 0.1 gram threshold could require facilities that produce 0.0001 gram TEQ of dioxin to report. The commenter claims that when compared to the estimate that there are 2,973 grams TEQ of U.S. dioxin emissions such amounts are insignificant and meaningless. The commenter maintains that using TEQs instead of the mass of each compound for determining whether an EPCRA reporting threshold for dioxin and dioxin-like compounds is exceeded would not deprive EPA or the public of information regarding meaningful releases of dioxin. The commenter also recommends that whatever units EPA decides to use should be the same for thresholds and for release and other waste management quantities.

One commenter suggests that EPA should require sources to use toxicity factors in calculating the manufacturing threshold for dioxin and dioxin-like compounds to avoid triggering the threshold based solely on non-detection. The commenter states that the 17 dioxin-like compounds to which the 0.1 gram proposed reporting threshold would apply vary in toxicity by a factor of 1,000 but that EPA does not take this variation in toxicity into consideration for the purpose of determining the manufacturing threshold.

EPA did not propose to use TEQs as the units of measurement for the EPCRA section 313 reporting threshold for dioxin and dioxin-like compounds. EPA has the same concerns for using TEQs for EPCRA section 313 thresholds as it does for reporting releases and other waste management quantities in terms of TEQs, and most of the issues raised here have been addressed in the preceding section of this unit. Most importantly, since EPA has determined that each of the dioxin-like compounds meets the listing criteria of EPCRA section 313, the actual mass of each member of the category should be included in threshold determinations. Also, the fact that the TEFs and thus the TEQs can change over time, is even more important for thresholds since TEF changes would in effect change the threshold, because for example, the same mass quantity that would have exceeded the threshold before the change may not exceed the threshold after the change.

As one of the commenters pointed out, using TEQs as the units for the reporting threshold is much different than using actual mass. The commenter showed how a 0.1 gram threshold for a dioxin-like compound with a TEF of 0.001 would be equivalent to a 0.0001 gram TEQ threshold. The opposite of this is that if the 0.1 gram threshold were in units of TEQ, then for dioxin-like compounds with a 0.001 TEF, it would take 100 grams to reach the reporting threshold. Using TEQs as the units for the reporting threshold would thus be equivalent to establishing separate thresholds for each member of the dioxin and dioxin-like compounds category based on their relative toxicity. EPA does not believe that any of the reporting requirements of EPCRA section 313 should be based on relative toxicities since, as discussed in Unit VI.F., EPCRA section 313 is not a risk-based program and reporting is not intended to communicate information about the Federal government's risk determinations for individual chemicals. Rather it provides local communities with data on release and other waste management quantities on listed toxic chemicals, so that they may use the data in conjunction with information on chemical properties (e.g. persistence and bioaccumulation) and site-specific information to determine if releases present a potential risk.

Several commenters express concern about consistency between the units of measurement for the threshold for the dioxin and dioxin-like compounds category and the units of measurement used to report releases and other waste management quantities. While EPA is not adopting the use of TEQ as some commenters requested, EPA is being consistent since absolute gram quantities will be used for both thresholds and the reporting of releases and other waste management quantities.

EPA does not agree with those commenters who state that the information collected under a 0.1 gram threshold would, in some cases, represent such a small portion of the estimated national amount of dioxin TEQs that the data would not be useful. On a facility-by-facility basis, the amounts reported may be a small percentage of the national total, but that does not mean that it will not be useful or meaningful to the public. One of the purposes of EPCRA section 313 is to provide information to communities about releases into their community. A small percentage of national releases may pose potential risks to local communities. Further, even information that shows little or no releases helps communities to understand what risks may be or may not be present in their communities and helps government agencies to target resources. In addition, since not all of the sources of dioxin and dioxin-like compounds will be reporting under EPCRA section 313, the amount reported will be a larger portion of the total amount reported under EPCRA section 313 than it will be on a national basis. The issue of how many sources of dioxin and dioxin-like compounds are captured by EPCRA section 313 are addressed in the Response to Comments document (Ref. 69) for this rulemaking.

EPA does not agree that reporting in terms of TEQs would necessarily be less burdensome. As one commenter states, in order to determine the sum of the mass of the 17 dioxin and dioxin-like compounds, one already will have determined the mass of each compounds individually and that with data reported by compound, a TEQ can easily be calculated. Since the TEQs are calculated from the relative amounts of dioxin and each dioxin-like compound that is present, it is an additional step to present the data in terms of TEQs and therefore it should not be less burdensome.

f. *Reporting guidance for dioxin and dioxin-like compounds.* A number of commenters requested that EPA develop reporting guidance for the dioxin and dioxin-like compounds category.

EPA agrees that guidance should be provided to assist facilities in determining threshold and release quantities for the dioxin and dioxin-like compounds category. As EPA stated in the proposed rule:

> EPA intends to develop reporting guidance for industries that may fall within this reporting category. The guidance developed will be consistent with the methods and procedures that EPA has developed for determining if dioxin and dioxin-like compounds are present in various industrial processes, including Method 23 (Ref. 77) developed for electric utilities. In developing the reporting guidance for the dioxin and dioxin-like compounds category EPA will work with interested parties to provide the best possible guidance for reporting facilities (at 64 FR 712).

EPA will provide a guidance document to assist certain facilities in making thresholds and release determinations for the dioxin and dioxin-like compounds category. The guidance document will be consistent with EPA established methods of measuring or estimating quantities of dioxin and dioxin-like compounds, including Method 23.

2. *Benzo(g,h,i)perylene (CAS No. 191-24-2) (Ref. 70).* EPA proposed to add benzo(g,h,i)perylene to EPCRA section 313 pursuant to EPCRA section 313 (d)(2)(C). One commenter states that EPA should not add benzo(g,h,i)perylene to the EPCRA section 313 list of toxic chemicals because there are insufficient data to support the EPCRA section 313(d)(2)(C) determination. The commenter states that EPA used predicted aquatic toxicity values based on quantitative structure activity relationship (QSAR) analysis but did not provide any toxicity data. The commenter contends that EPA did not provide any evidence to support the statement that aquatic QSAR equations show a high correlation between predicted and measured toxicity values, and did not provide any other information to support use of QSAR for this type of chemical.

EPA disagrees with the commenter's statements. EPA provided the following discussion in the proposed rule:

> Three of the chemicals being proposed for listing (benzo(g,h,i)perylene, 3-methylcholanthene, and octachlorostyrene) have been found to meet the EPCRA section 313(d)(2)(C) criteria for ecotoxicity based on predicted aquatic toxicity values generated from quantitative structure activity relationship (QSAR) equations and other predictive techniques. As previously stated (58 FR 63500, December 1, 1993), EPA believes that, where no or insufficient actual measured aquatic toxicity data exist upon which to base a decision, toxicity predictions generated by QSARs and other predictive techniques may constitute sufficient evidence that a chemical meets the section 313 listing criteria. EPA's authority to use such predictive techniques derives from section 313(d)(2) of the statute, which states that EPA shall base its listing determinations on, inter alia, "generally accepted scientific principles." EPA believes that the aquatic QSAR equations that are in widespread use and show a high correlation between predicted and measured aquatic toxicity values can be considered to be "generally accepted scientific principles" and can appropriately form the basis of a listing determination (Ref. 70). (at 64 FR 693)

EPA believes that QSAR data is valid predicted aquatic toxicity data and the fact that no actual toxicity studies were provided does not mean that the available data were insufficient to determine that benzo(g,h,i)perylene met the listing criteria of EPCRA section 313(d)(2)(C). In addition, EPA did provide support for the statement that aquatic QSAR equations are in widespread use and show a high correlation between predicted and measured aquatic toxicity values. The docket for the proposed rule contained a document titled "SAR/QSAR in the Office of Pollution Prevention and Toxics" In: Environmental Toxicology and Risk Assessment: 2nd Volume, STP 1216. One of the articles in this reference was titled *Validation of Structure Activity Relationships Used By the USEPA's Office of Pollution Prevention and Toxics for the Environmental Hazard Assessment of Industrial Chemical.* This includes the methods of SAR for the class of neutral organic chemicals which, as discussed in the support document, was used for benzo(g,h,i)perylene since it is a neutral organic chemical. Thus, EPA did provide support for its conclusions about QSAR analysis and for the use of QSAR for benzo(g,h,i)perylene.

This commenter also states that EPA uses an estimated Log K_{ow} in its aquatic toxicity prediction and argues that Log K_{ow} is an inaccurate predictor for many chemicals particularly if it is estimated rather than measured. The commenter contends that EPA's basis for the listing of benzo(g,h,i)perylene is a prediction based upon a prediction, with no actual data and that this is not a sufficient basis for listing under EPCRA section 313 and it does not meet the statutory requirements for listing that a chemical is "known to cause or can reasonably be anticipated to cause" a significant adverse effect.

EPA disagrees with the commenter's conclusions. The majority of the SAR calculations in the ECOSAR Class Program are based upon the octanol/water partition coefficient (K_{ow} or Log P) since there is a correlation between Log P and toxicity. Using the measured aquatic toxicity values and estimated Log P values, regression equations can be developed for a class of chemicals. Toxicity values for a chemical within that class may then be calculated by inserting the estimated K_{ow} into the class regression equation and correcting the resultant value for the molecular weight of the compound. The ecological assessment guidelines for predicting the toxicity of chemicals with limited measured aquatic toxicity data have been used for over a decade (Ref. 35). The commenter has not provided the Agency with any concrete information or data indicating that this approach either is not a generally accepted scientific approach or is unreliable, and the Agency finds no reasonable basis to change these techniques at this time. In addition, the commenter did not provide any data to indicate that the predicted Log K_{ow} for benzo(g,h,i)perylene was inaccurate.

This commenter also contends that EPA's failure to consider exposure in this proposed rule is particularly important for benzo(g,h,i)perylene. The commenter argues that given the properties of benzo(g,h,i)perylene, any release into water will result in the vast majority (more than 99%) of the compound being partitioned to sediment or adsorbed onto suspended particulates and organics in the water column and thus the potential for this chemical to be in a toxic form and pose risk in natural systems is low.

EPA disagrees with the commenters' contention that EPA should consider exposure in its determination that benzo(g,h,i)perylene meets the EPCRA section 313(d)(2)(C) listing criteria. As discussed in Unit VI.F., EPA is only required to consider exposure under a limited set of circumstances. In the final chemical expansion rule (59 FR 61432), EPA further explained its policy on the use of exposure considerations under EPCRA section 313(d)(2)(C) and the fact that the Agency does not consider exposure for chemicals that are highly ecotoxic. As EPA explained in the final rule:

> The Agency believes that exposure considerations are not appropriate in making determinations (1) under section 313(d)(2)(B) for chemicals that exhibit moderately high to high human toxicity (These terms, which do not directly correlate to the numerical screening values reflected in the Draft Hazard Assessment Guidelines, are defined in unit II.) based on a hazard assessment, and (2) under section 313(d)(2)(C) for chemicals that are highly ecotoxic or induce well-established adverse environmental effects (at 59 FR 61441).

Although EPA does not believe that it would be appropriate to consider exposure, EPA also disagrees with the commenter's characterization of the fate of benzo(g,h,i) perylene. Environmental fate models show that the chemical will only partition about 60% to the sediment. Also, the Agency cannot rely on the environment to serve as a sink for this chemical. Other environmental conditions such as turbidity, biological activity, or the chemical activity in water could cause redistribution of the chemical into the water column again.

Based upon QSAR equations and other predictive techniques, EPA has concluded that benzo(g,h,i)perylene is toxic. It has the potential to kill fish, daphnia, and algae, among other adverse effects, based on chemical and/or biological interactions. Benzo(g,h,i)perylene can cause these toxic effects at relatively low concentrations. The predicted aquatic toxicity values for benzo(g,h,i)perylene, based upon QSAR analysis using the equation for neutral organics and an estimated Log K_{ow} of 6.7, included calculated values of 0.030 milligrams per liter (mg/L) for the fish 96–hour LC_{50} (i.e., the concentration that is lethal to 50% of test organisms) and 0.0002 mg/L for fish chronic toxicity; 0.012 mg/L for daphnia 48–hour LC_{50} and 0.027 mg/L for the daphnid 16–day chronic LC_{50}; and 0.03 mg/L for the algae 96–hour EC_{50} (i.e., the concentration that is effective in producing a sublethal response in 50% of tests organisms) with an algal chronic toxicity of 0.012 mg/L.

Benzo(g,h,i)perylene can cause its toxic effects at relatively low concentrations, therefore EPA considers it to be highly toxic. Since benzo(g,h,i) perylene is toxic at relatively low concentrations EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish, daphnia, and algae kills, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

EPA reaffirms that there is sufficient evidence for listing benzo(g,h,i)perylene on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available ecotoxicity information for this chemical. Therefore, EPA is finalizing the addition of benzo(g,h,i)perylene on the EPCRA section 313 list.

3. *Benzo(j,k)fluorene (fluoranthene) (CAS No. 206–44–0) (Ref 70).* EPA proposed to add fluoranthene to EPCRA section 313 pursuant to EPCRA sections 313 (d)(2)(B) and (C). EPA received no comments specific to the carcinogenicity data that EPA presented in the proposed rule in support of the addition of fluoranthene to the EPCRA section 313 list of toxic chemicals. Thus, EPA reaffirms that there is sufficient evidence for adding fluoranthene to this list of EPCRA section 313 toxic chemicals pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

One commenter argues that EPA should refrain from listing fluoranthene pending additional assessment of the data. The commenter contends that EPA's reported toxicity values for fluoranthene span a range of about two orders of magnitude and that for such a wide range, it is necessary to evaluate potential exposure to determine which scenarios, and therefore which types of data, are most relevant to this compound following a release. The commenter argues that fluoranthene is a highly lipophilic compound that will bind primarily to sediment and suspended organics, so it is not clear whether the reported toxicity values on which EPA relies for the listing are applicable to this compound in the environment. EPA assumes the commenter was referring to data used to support EPA's proposal to list fluoranthene pursuant to EPCRA section 313(d)(2)(C).

As discussed in Unit VI.F., EPA does not believe that it is appropriate to consider exposure for chemicals that are highly ecotoxic as the data for fluoranthene clearly shows it is. However, even if EPA were to consider exposure, the commenter provided no data to support the assumption that fluoranthene will bind primarily to sediments and suspended organics, and EPA believes that fluoranthene will partition to water as well as sediment. While the ecotoxicity data for fluoranthene does range over about two orders of magnitude that does not, in itself, form a basis for conducting an exposure assessment. There are data that clearly show that fluoranthene is highly ecotoxic. Thus, an exposure assessment is not required. While it does not impact EPA's assessment, EPA notes that of the ecotoxicity values presented in the proposed rule, 9 were within the same order of magnitude, 4 were one order of magnitude higher, and 2 were two orders of magnitude higher. Thus, 60% are within the same order of magnitude and 87% are within one order of magnitude. EPA does not believe that this represents a very wide distribution as the commenter implies.

Based on the available toxicity data, EPA has concluded that fluoranthene is toxic. It has the potential to kill mysid shrimp, a variety of freshwater benthic species and various saltwater species and it can also cause other adverse effects on fish and mysids, based on chemical and/or biological interactions. Fluoranthene can cause these toxic effects at relatively low concentrations. Ecotoxicity values for fluoranthene include a calculated 96–hour LC_{50} of 0.04 mg/L for mysid shrimp. Using standard acute toxicity tests, fluoranthene has been tested in 12 freshwater species from 11 genera. For freshwater benthic species, the acute 96–hour LC_{50} calculated values are 0.032 mg/L for an amphipod (*Gammarus minus*), 0.070 mg/L for a hydra (*Hydra americana*), 0.17 mg/L for an annelid (*Lumbriculus variegatus*), and 0.17 mg/L for a snail (*Physella virgata*). For saltwater species, the 96–hour LC_{50} values are 0.051 mg/L for a mysid (*Mysidopsis bahia*), 0.066 mg/L for an amphipod (*Ampelisca abdita*), 0.14 mg/L for a grass shrimp (*Palaemonetes pugio*), and 0.50 mg/L for an annelid (*Neanthes arenaceodentata*). Fathead minnows exposed to fluoranthene at a concentration of 0.0217 mg/L for 28 days in a chronic early life-stage test showed a reduction of 67% in survival and a 50.2% reduction in growth relative to the controls. In a 28–day chronic study, mysids exposed to 0.021 mg/L of fluoranthene showed a 26.7% reduction in survival and a 91.7% reduction in reproduction; at 0.043 mg/L all mysids died. In a 31–day study, mysids showed a reduction of 30% in survival, 12% in growth, and 100% in reproduction relative to controls at a concentration of 0.018 mg/L of fluoranthene.

Fluoranthene can cause its toxic effects at these relatively low concentrations, therefore EPA considers it to be highly toxic. Since fluoranthene is toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., kills of mysid shrimp, a variety of freshwater benthic species, and various saltwater species, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

Thus, EPA reaffirms that there is sufficient evidence for adding fluoranthene on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available ecotoxicity information for this chemical.

Therefore, EPA is finalizing the listing of fluoranthene on the EPCRA section 313 list.

4. *3-Methylcholanthrene (CAS No. 56–49–5) (Ref. 70).* EPA proposed to add 3-methylcholanthrene to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C). EPA received no comments on the carcinogenicity data that EPA presented in the proposed rule in support of the addition of 3-methylcholanthrene to the EPCRA section 313 list of toxic chemicals. Thus, EPA reaffirms that there is sufficient evidence for adding 3-methylcholanthrene to the list of EPCRA section 313 toxic chemicals pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

No comments were received concerning the ecotoxicity data that EPA presented for 3-methylcholanthrene in the proposed rule. Based upon quantitative structure activity relationship (QSAR) equations and other predictive techniques, EPA has concluded that 3-methylcholanthrene is toxic. It has the potential to kill fish and daphnia as well as cause other adverse effects on fish, daphnia, and algae based on chemical and/or biological interactions. 3-Methylcholanthrene can cause these toxic effects at relatively low concentrations. The predicted aquatic toxicity values for 3-methylcholanthrene, based on QSAR analysis using the equation for neutral organics and an estimated Log K_{ow} of 7.05, include a calculated fish 96–hour LC_{50} of 0.009 mg/L and a chronic fish toxicity value of 0.003 mg/L, a daphnia 48–hour LC_{50} of 0.005 mg/L and a 16–day chronic LC_{50} of 0.015 mg/L, and an algae 96–hour EC_{50} of 0.0105 mg/L with a calculated chronic toxicity value of 0.014 mg/L.

3-Methylcholanthrene can cause its toxic effects at these relatively low concentrations; therefore, EPA considers it to be highly toxic. Since 3-methylcholanthrene is toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish and daphnia kills, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

Thus, EPA reaffirms that there is sufficient evidence for listing 3-methylcholanthrene on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available ecotoxicity information for this chemical.

Therefore, EPA is finalizing the listing of 3-methylcholanthrene on the EPCRA section 313 list.

5. *Octachlorostyrene (CAS No. 29082–74–4) (Ref. 70).* EPA proposed to add octachlorostyrene to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C). One commenter argues that octachlorostyrene (OCS) should not be included in the EPCRA section 313 PBT chemicals list. The commenter contends that OCS was included as a PBT chemical simply because it appears on several lists of persistent and bioaccumulative chemicals and not based on a thorough evaluation of its toxicity. The commenter argues that there is limited toxicity data for OCS and cited two statements that were in EPA's support document for the addition of OCS and the other chemicals being added in this rulemaking. The two statements the commenter cited were:

> The health hazard data which support TRI listing are very limited. Human health data were not located. (Ref. 70 p. 48)

EPA disagrees with the commenters' conclusions. The commenter did not comment on the actual toxicity data that EPA provided as the basis for listing OCS pursuant to EPCRA section 313(d)(2)(B). Rather the commenter takes two statements that were contained in the support document out of context to support their apparent contention that there are insufficient data to list OCS under EPCRA section 313(d)(2)(B). The fact that the commenter has taken these statements out of context is demonstrated by the content of the rest of the paragraph that contained the statements the commenter cited:

> Laboratory studies on rats suggest OCS may have acute and chronic effects on the liver, kidneys, and thyroid. In a long-term study (one year) of rats a LOAEL of 0.31 mg/kg/day was determined based on significant histological effects on these organs. (Ref. 70)

The statements the commenter cited only acknowledged that there was not a vast amount of toxicity data for OCS and specifically, that there were no human studies; they do not support the commenters' conclusion that OCS does not meet listing criteria of EPCRA section 313(d)(2)(B). In addition, these statements were from the summary section of the discussion on OCS, more detailed discussion of the toxicity data for OCS was contained in the other sections on OCS toxicity but the commenter provided no comments on this information.

EPA reaffirms that there is sufficient evidence for adding OCS to the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, nephric, and thyroid toxicity data for this chemical.

The same commenter also claims that the toxicity comparisons to hexachlorobenzene are not supported and that no references or rationale are provided to support basing the aquatic toxicity of OCS on that of hexachlorobenzene. As with the human health data, the commenter argues that there are limited environmental toxicity data for OCS and cited some statements that were in EPA's support document. The statements the commenter cited were:

> So far as is known, after a search of former EEB chemical files, the ecological hazard of OCS has never been formally reviewed under TSCA section 4 or in the OPPT Risk Management (RM) process. OCS was briefly reviewed for aquatic toxicity in August 1986, as part of an OTS (now OPPT) chemical scoring project. Thus, available information on OCS is very limited. (Ref. 70, p. 52)

EPA disagrees with the commenter's conclusions. The commenter has not commented on the actual toxicity data but rather states that the data are limited and that hexachlorobenzene is not an appropriate analogue for predicting the aquatic toxicity data for OCS. The statements the commenter cited only acknowledged that there was not a vast amount of toxicity data for OCS, they do not support the commenter's conclusion that OCS does not meet the listing criteria of EPCRA section 313(d)(2)(C). Contrary to the commenter's statement, EPA did provide a reference to the use of hexachlorobenzene as an appropriate analogue for OCS. As EPA stated in the same section of the support document the commenter cited:

> OCS is one of 7 compounds in this chemical class (chlorinated styrenes) with the generic formula $C_8H_{8-x}Cl_x$, where x equals 8 for OCS. This class is analogous to the chlorinated benzenes; for example hexachlorobenzene (HCB), is considered to be an appropriate analogue chemical for OCS (2). (Ref. 70, page 52).

The reference EPA cited is a previous EPA analysis of this class of chemicals that also used hexachlorobenzene as an appropriate analogue for OCS. EPA believes that since OCS and hexachlorobenzene are both highly chlorinated derivatives of benzene they can reasonably be anticipated to have similar toxicities. However, in addition to aquatic toxicity data on hexachlorobenzene, EPA provided the results of a QSAR analysis of OCS, using a measured Log K_{ow} of 7.7, that gave a predicted 14–day LC_{50} value of 6 μg/L for guppies.

Based upon QSAR equations and analogue data, EPA has concluded that OCS is toxic. It has the potential to kill fish and inhibit photosynthesis in algae, among other adverse effects, based on chemical and/or biological interactions. OCS can cause these toxic effects at relatively low concentrations. The predicted aquatic toxicity value for OCS, based upon QSAR analysis using a measured Log K_{ow} of 7.7, is an estimated 14–day LC_{50} of 6 μg/L for guppies. Based on the chemical analogue hexachlorobenzene, OCS can reasonably be anticipated to inhibit photosynthesis in algae at a concentration of 30 μg/L and have a calculated subchronic EC_{50} value of 16 μg/L for daphnids.

OCS can cause its toxic effects at these relatively low concentrations; therefore, EPA considers it to be highly toxic. Since OCS is toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish kills, and inhibition of photosynthesis in algae and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

EPA reaffirms that there is sufficient evidence for listing OCS on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available ecotoxicity information for this chemical.

Therefore, EPA is finalizing the addition of OCS on the EPCRA section 313 list.

6. *Pentachlorobenzene (CAS No. 609–93–5) (Ref. 70).* EPA proposed to add pentachlorobenzene to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C). No comments were received concerning the human health toxicity data that EPA presented in the proposed rule. Thus, EPA reaffirms that there is sufficient evidence for adding pentachlorobenzene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, nephric, hematological, and developmental toxicity data for this chemical.

No comments were received concerning the ecotoxicity data that EPA presented for pentachlorobenzene in the proposed rule. Based on the available toxicity data, EPA has concluded that pentachlorobenzene is toxic. It has the potential to kill fish and mysid shrimp as well as cause other adverse effects on algae and daphnia, based on chemical and/or biological interactions. Pentachlorobenzene can cause these toxic effects at relatively low concentrations. Aquatic acute toxicity calculated values for pentachlorobenzene include a sheepshead minnow 96–hour LC_{50} of 0.83 mg/L, bluegill sunfish 96–hour LC_{50}s of 0.25 mg/L and 0.3 mg/L, a guppy 96–hour LC_{50} of 0.54 mg/L, and a mysid shrimp 96–hour LC_{50} of 0.16 mg/L. Because pentachlorobenzene can cause these toxic effects at these relatively low concentrations, EPA considers it to be highly toxic. Additional acute toxicity calculated values include algae 96–hour EC_{50}s of 1.98 mg/L and 6.78 mg/L, and daphnia 48–hour EC_{50}s of 1.3 mg/L and 5.28 mg/L. Considering pentachlorobenzene's persistence and bioaccumulation potential pentachlorobenzene is considered highly toxic to aquatic organism at these higher concentrations.

As discussed above, pentachlorobenzene is highly toxic. Because pentachlorobenzene is highly toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish and mysid shrimp kills as well as other adverse effects on algae and daphnia, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

Thus, EPA reaffirms that there is sufficient evidence for adding pentachlorobenzene on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i), (ii), and (iii) based on the available ecotoxicity information for this chemical.

Therefore, EPA is finalizing the listing of pentachlorobenzene on the EPCRA section 313 list.

7. *Tetrabromobisphenol A (CAS No. 79–94–7) (Ref. 70).* EPA proposed to add TBBPA to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C). One commenter claims that the study cited by EPA in support of its

conclusion that TBBPA meets the EPCRA section 313(d)(2)(B) criteria for listing based on developmental toxicity was not a study on TBBPA. The study in question was submitted to EPA by ICI Americas Inc. with a cover letter identifying Saytex 111, the product tested, as being TBBPA. The product was identified as TBBPA by both name and CAS number.

EPA has determined that the product tested was not TBBPA as claimed by the submitter but has been unable to determine why it was misidentified by the submitter. ICI Americas is now Zeneca at the Delaware location that submitted the study. A Zeneca staff member researched the submission and found that the report was originally from Ethyl Corporation and that no other report on TBBPA was submitted to EPA on that date. Without the misidentified developmental study, no adequate toxicology studies or other data were located by EPA that support the addition of TBBPA pursuant to EPCRA section 313(d)(2)(B). Thus, EPA is not adding TBBPA based on concerns for developmental toxicity or any other human health effects.

The same commenter provides comments on the persistence and bioaccumulation of TBBPA and contends that there are insufficient data to conclude that TBBPA meets the listing criteria of EPCRA section 313(d)(2)(C)(ii) and 313(d)(2)(C)(iii). These two sections deal with EPA's authority to add a chemical based on its "toxicity and persistence in the environment" and its "toxicity and tendency to bioaccumulate in the environment" respectively. However, the commenter does not contend that TBBPA does not meet the listing criteria of EPCRA section 313(d)(2)(C)(i) which addresses EPA's authority to add a chemical based on its "toxicity" without consideration of persistence and bioaccumulation. EPA believes that TBBPA is persistent and bioaccumulative as discussed in Unit VI.H. However, EPA did not propose to add TBBPA to the EPCRA section 313 list of toxic chemicals based on its persistence or bioaccumulation data, and neither of these properties were mentioned in the toxicity discussion of TBBPA in the proposed rule. Rather, EPA based its listing decision on the ecotoxicity data alone which indicated that TBBPA was highly toxic even without consideration of persistence or bioaccumulation.

Based the available toxicity data, EPA has concluded that TBBPA is toxic. It has the potential to kill fish, daphnid, and mysid shrimp, among other adverse effects, based on chemical and/or biological interactions. TBBPA can cause these toxic effects at relatively low concentrations. Aquatic acute toxicity calculated values for TBBPA include a fathead minnow 96–hour LC_{50} of 0.54 mg/L, a rainbow trout 96–hour LC_{50} of 0.40 mg/L, a bluegill sunfish 96–hour LC_{50} of 0.51 mg/L, and a daphnid 48–hour LC_{50} of 0.96 mg/L; mysid shrimp 96–hour LC_{50} values ranged from 0.86 to 1.2 mg/L depending on the age of the shrimp. Aquatic chronic toxicity calculated values from a daphnia 21–day study resulted in a Maximum Acceptable Toxicant Concentration (MATC) that was between 0.30 and 0.98 mg/L (geometric mean 0.54 mg/L) based on a significant reduction in reproduction rates; a fathead minnow 35–day study resulted in a MATC that was calculated to be between 0.16 and 0.31 mg/L (geometric mean 0.22 mg/L) based on adverse effects on embryo and larval survival.

TBBPA can cause its toxic effects at these relatively low concentrations; therefore, EPA considers it to be highly toxic. Since TBBPA is toxic at relatively low concentrations, EPA believes that it causes or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish, daphnid, and mysid shrimp kills, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

EPA reaffirms that there is sufficient evidence for listing TBBPA on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) based on the available ecotoxicity information for this chemical. Therefore, EPA is finalizing the addition of TBBPA on the EPCRA section 313 list.

8. *Vanadium and vanadium compounds*. EPA proposed to add vanadium and vanadium compounds to EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(C). One commenter cited the following statement from the proposed rule, "However, very few toxicity tests have been conducted with invertebrates." The commenter argues that, beyond vanadium pentoxide, the Agency appears to have very little toxicity data on vanadium compounds. The commenter contends that the paucity of toxicity data on many different forms of vanadium compounds in the proposal, as well as in the literature, does not appear to support the Agency's belief that "the evidence is sufficient to list vanadium and vanadium compounds on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information on vanadium and vanadium compounds" (at 64 FR 698).

EPA disagrees with the commenters' conclusions. Although there is limited information on vanadium's toxicity on invertebrates, data that were available for invertebrates shows that vanadium is toxic to these species. Furthermore, EPA's assessment of vanadium's toxicity included algae and vertebrates, and showed that the chemical is highly toxic to aquatic organisms. The data on vanadium are not limited to vanadium pentoxide, the ecological data provided in the proposed rule for vanadium evaluates vanadium toxicity based on data for other vanadium compounds including: sodium metavanadate, sodium orthovanadate, vanadyl sulfate, and ammonium vanadate. In assessing the ecological toxicity of vanadium and vanadium compounds, EPA evaluated the parent metal (vanadium) and determined that it is highly toxic to some aquatic species and anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting. Thus, vanadium, the parent metal in vanadium compounds, is the concern, not the other components of each vanadium compound. Many metals are tested in the salt form because these forms are readily soluble in aqueous solutions. The toxicity data for vanadium shows that the metal is highly toxic (aquatic toxicity < 1 mg/L) to the most sensitive species. This evaluation of vanadium's toxicity is acceptable according to traditional guidelines for the assessment of toxic substances as conducted by the Agency for over 2 decades. In addition, when consideration is given to vanadium's persistence it is also considered highly toxic at higher concentrations.

Three commenters contend that since most vanadium compounds are practically insoluble, they consequently have very low bioavailability, and thus it is likely that they could qualify for delisting. The commenters argue that the delisting process is extremely cumbersome, time-consuming and costly. One of these commenters contends that it is inappropriate to list all of vanadium compounds based on aquatic toxicity of the few compounds cited in the proposed rule. The bioavailability of metals such as vanadium was also raised as an issue at the public meetings held for this rulemaking. It was suggested that the parent metal will not be bioavailable from certain metal compounds that may be released into the environment and that therefore the compounds cannot be properly characterized as a PBT chemicals.

EPA disagrees with these comments. First, it should be noted that EPA has not addressed whether vanadium and vanadium compounds can properly be classified as PBT chemicals in this rulemaking. The sole issue, therefore, is whether vanadium and vanadium compounds meet the EPCRA section 313(d)(2)(C) listing criteria. EPA's analysis of the environmental fate of vanadium and vanadium compounds shows that under many environmental conditions vanadium will be available and thus is able to express its toxicity. The commenters have not provided EPA with any data or acceptable scientific studies indicating that vanadium in any particular compound will not become available in the environment. In fact, at least one commenter appears to indicate that these vanadium compounds may merely have low solubility. In these compounds, the parent metal vanadium can become available. While water soluble vanadium compounds would obviously provide vanadium in an immediately bioavailable form, solubility is not the only factor to consider in determining the bioavailability of vanadium from a vanadium compound. In addition to solubility, processes such as: hydrolysis at various pHs; solubilization in the environment at various pHs; photolysis; aerobic transformations (both abiotic and biotic); anaerobic transformation (both abiotic and biotic); and bioavailability when the compounds are ingested (solubilization in and/or absorption from the gastrointestinal tract and solubilization in various organs) need to be considered. In Unit VI.C., EPA discusses in detail the persistence and bioavailability of metals in general.

The issue of bioavailability has been addressed for EPCRA section 313 chemical assessments through EPA's policy and guidance concerning petitions to delist individual members of the metal compound categories on the EPCRA section 313 toxic chemical list (56 FR 23703). This policy states that if the metal in a metal compound cannot become available as a result of biotic or abiotic processes then the metal will not be available to express its toxicity. If the intact metal compound is not toxic and the metal is not available from the metal compound then such a chemical is a potential candidate for delisting.

One commenter argued that the lowest toxicity value cited by EPA for a marine algal species was for *Dunaliella marina* with a 9–day LC_{50} of 0.5 mg/L but that EPA omitted a study which tested the same species and reported no significant adverse effects at a concentration of 50 mg/L.

EPA believes that the study that reported the 9–day LC_{50} of 0.5 parts per million (ppm) on *Dunaliella marina*, is accurate and was acceptably conducted within the guidelines for ecological assessments of hazardous chemicals. This study shows the most sensitive species' response to the chemical. There are differences in the two studies that could explain the range of toxicity between the two. They are: (1) Differences in the exposure times, (2) the species used in the experiments, and (3) the form of vanadium that was exposed to the organisms. The exposure time in the study EPA cited reported a 9–day LC_{50} of 0.5 mg/L. However, the study the commenter cites did not report an LC_{50} duration. Also, the species for the study EPA cited reported the test species to be *Dunaliella marina* (*salina*), but the study the commenter cited only reported the genus name for this organism. Furthermore, the study EPA cited reported the form of vanadium as sodium vanadate, but the study the commenter cites only reported using the vanadium compound without reporting the specific salt form. It is clear that any one of the three factors mentioned, or some combination of these factors, likely accounts for the variation in toxicity between the two studies.

One commenter argues that a study, omitted in EPA's review of vanadium toxicity, on nine algal species showed no significant reduction in productivity (as measured by chlorophyll synthesis) at vanadium concentrations in excess of 10 mg/L. The commenter also contends that the authors of the study also demonstrated that phosphate concentrations were critical in the toxicity of vanadium to algae.

The Agency has not neglected to review the study cited by the commenter. However, EPA interprets the study cited by the commenter as describing the competition uptake between vanadium and phosphorus in an algal medium containing two different kinds of phosphorus concentrations (i.e., phosphorus deficient and phosphorus sufficient). Also, this study was performed only on freshwater algae and one form of vanadium (orthovanadate) which only exists in a pH range of 3 to 6. This study did report a moderately high toxicity value for *Scenedesmus acutus* between 5 and 177 M, which continues to support EPA's findings that vanadium is toxic to algae. Furthermore, EPA is aware that there are studies that were not included in the assessment that showed that the chemical was more toxic than the values reported in EPA's assessment. However, each study was carefully reviewed based on EPA's extensive evaluation process which reviews studies for conformance with generally accepted scientific standards and tests. The studies that were reported in EPA's assessment used generally accepted, validated scientific methods for evaluating aquatic toxicity. The toxicity values that were reported in the ecological assessment of vanadium toxicity were from well-conducted studies.

One commenter argues that it appears from a review of the data that the contention that vanadium is highly toxic to algae has no basis. The commenter contends that with the exception of one study on a single species, *Ceratium hirundinella*, none of the studies on freshwater algae showed significant toxicity at concentrations below 10 mg/L. The commenter states that the lowest level of toxicity reported for a marine species (*Dunaliella marina*) was an LC_{50} of 0.5 mg/L, but that there is conflicting evidence that the threshold of toxicity for this species may be higher than 50 mg/L. The commenter concludes that there appears to be little evidence that vanadium is a highly toxic agent to algae. The commenter also argues that evaluating the toxicity of a compound based on the response of individual algal species can be misleading. The commenter contends that algae never exist within either marine or freshwater environments as monocultures, but rather as dynamic mixed populations. The commenter concludes that unless a compound can be shown to have a broad effect over an entire assemblage or over numerous species of either freshwater or marine species, it is not likely to have a significant effect within the natural environment.

EPA's assessment on algae toxicity shows that vanadium is highly toxic based on the most sensitive species' response to the chemical. There is no conflict in the threshold of toxicity of *Dunaliella marina*. As stated above, there are three factors that most probably account for the differences between the study EPA cited and the study the commenter cites. After careful review of the available data, it is EPA's professional judgment that the study EPA cited provides accurate and valid data.

Algae studies have been included in ecological risk assessments for over 2 decades. Several guidelines on different species have been written to show that these genera are important in the environment and show sensitivity in how chemicals affect the biota. EPA agrees that algae usually do not exist in monocultures in the marine or freshwater environment. However, testing monocultures species is the most accurate method to determine whether a chemical is directly harmful to that species. Therefore, if a compound is highly toxic to a particular species of algae or any species, its effects can be extrapolated to represent other species exposed to that chemical. This evaluation process has been used by the Agency and accepted by OECD for over two decades, and used on thousands of chemicals. Vanadium's toxicity ranges from highly toxic to moderately toxic for algae in EPA's assessment. It is reasonable from the evidence in EPA's assessment of vanadium that the species that is the most sensitive to the chemical can represent the toxicity for all other species based on this narrow range. EPA's final evaluation of any chemical's toxicity is based on the most sensitive species' response.

One commenter contends that the study EPA cited that reported the 144–hour LC_{50} of 0.4 and 0.5 mg/L for vanadyl sulfate ($VOSO_4$) and ammonium metavanadate (NH_4VO_3), respectively, were actually values for $VOSO_4$ and sodium metavanadate ($NaVO_3$) respectively. The commenter contends that the 144–hour LC_{50} for NH_4VO_3 was 1.5 mg/L. The commenter also argues that EPA neglected to report from the same study a 144–hour LC_{50} of 1.1 mg/L for vanadate pentoxide (V_2O_5) for this species. The commenter also contends that the findings of 144–hour LC_{50}s of 2.5 to 8.1 mg/L in goldfish (*Carassius auratus*) for the same four vanadium species were also omitted.

The comment concerning the vanadium compounds for the 144–hour LC_{50}s of 0.4 and 0.5 mg/L is correct. EPA inadvertently cited to the incorrect compound in the study. The correct vanadium compounds will be reflected in an update to the support document. However, sodium metavanadate, is still a vanadium compound and the study therefore continues to support EPA's findings that vanadium is highly toxic to fish. The other values of 2.5 and 8.1 mg/L merely provide further support for EPA's finding that the vanadium is moderately toxic to fish. However, considering vanadium's persistence in the environment, EPA believes that it is highly toxic at concentrations between 1 and 10 mg/L. Thus the goldfish values provide further support to EPA's finding that vanadium is highly toxic to some aquatic organisms.

One commenter contends that in assessing the toxicity of vanadium to fish, EPA neglected to review the following studies: (1) Hamilton and Buhl (1997), who reported a 96–hour LC_{50} for the flannelmouth sucker (*Catostomus latipinnis*) of 11.7 mg/L; (2) Taylor et al. (1985), who reported a 96–hour LC_{50} for English sole (*Limanda limanda*) of 26.8 mg/L; (3) Ernst and Garside (1987), who reported a 96–hour LC_{50} for the brook trout (*Salvelinus fontinaliis*) alevins of 24 mg/L and for yearlings of 7–15 mg/L (the authors also reported that the method by which stock solutions are formulated could have a dramatic effect on the toxicity of vanadium through its effects on the polymeric form of the metal in the test study); and (4) Hamilton and Buhl (1990), who reported a 96–hour LC_{50} for chinook salmon (*Oncorhynchus tshawytscha*) fry of 16.5 mg/L.

EPA undertook an exhaustive review of vanadium toxicity. The studies the commenter has listed show that vanadium compounds are moderately toxic to fish, which further support EPA's findings on the toxicity of vanadium. EPA's review of the studies cited in the proposed rule are not contradicted or undermined by the studies provided by the commenter, and continue to support the Agency's conclusion that vanadium and vanadium compounds are highly toxic to some aquatic species.

One commenter states that the background document to support EPA's proposal to list vanadium and vanadium compounds indicates that the proposed listing is based on data for five vanadium compounds: vanadium pentoxide, sodium metavanadate, sodium orthovanadate, vanadyl sulfate, and ammonium vanadate. The commenter contends that EPA may consider listing under EPCRA section 313 for the individual compounds for which the Agency has data, but EPA is not justified in listing a broad "vanadium and vanadium compounds" category based on data for only five compounds. The commenter suggests that EPA consider individual listings for these compounds, or a category consisting only of the compounds for which the Agency has data.

EPA disagrees with the commenter's characterization of the Agency's assessment of vanadium and vanadium compounds. In assessing the ecological toxicity of vanadium and vanadium compounds, EPA evaluated the parent metal (vanadium) and determined that it is highly toxic to some aquatic organisms and can reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting pursuant to EPCRA section 313(d)(2)(C). Thus, vanadium, the parent metal in vanadium compounds, is the concern, not the other components of each compound. Many metals are tested in the salt form because they are readily soluble in aqueous solutions. The toxicity data for vanadium shows that the metal is highly toxic (aquatic toxicity < 1 mg/L) to the most sensitive species. In addition, because vanadium is persistent, EPA considers any toxicity values between 1 and 10 mg/L as indicating high ecotoxicity. This evaluation of vanadium's toxicity is acceptable according to traditional guidelines for the assessment of toxic substances conducted by the Agency for over two decades.

EPA has also provided sufficient basis for the inclusion of all vanadium compounds in the category. As EPA stated in the 1994 chemical expansion final rule:

> The Agency believes it satisfies the statutory criteria to add a category to the list by identifying the toxic effect of concern for at least one member of the category and then showing why that effect may reasonably be expected to be caused by all other members of the category. (at 59 FR 61442) See also, *Troy, supra* at 277.

EPA developed a hazard assessment for vanadium which reviewed the toxicity data for several vanadium compounds. The assessment indicated that the vanadium from these compounds is highly toxic to aquatic organisms. Since it is the vanadium from these compounds that is highly toxic rather than the intact chemical compound, EPA believes that all chemicals that are a source of vanadium meet the EPCRA section 313(d)(2)(C) listing criteria. Thus, EPA has established the toxic effect of concern, the chemical species that causes the effect, and the basis for why it may reasonably be expected that all members of the vanadium compounds category can cause the effects of concern.

Based on the available toxicity data, EPA has concluded that vanadium and vanadium compounds are toxic. They have the potential to kill fish, algae, and invertebrates as well as causing a range of other adverse effects on fish, algae, and invertebrates, based on chemical and/or biological interactions. Vanadium and vanadium compounds can cause these toxic effects at relatively low concentrations. Toxicity data for vanadium and vanadium compounds include for algae, a 9–day LC_{50} of 0.5 mg/L, a 15–day LC_{50} of 0.5 mg/L, inhibition of growth at 0.1 ppm, adverse effects on cell division at 3 ppb, 20 ppb, and 0.5 ppm; and for fish, a 96–hour LC_{50} of 0.62 ppm, and growth and survival depression of larvae at 0.17 ppm. Because vanadium and vanadium compounds can cause these toxic effects at these relatively low concentrations, EPA considers these chemicals to be highly toxic. Additional toxicity values include for algae, 9–day LC_{50}s of 2 and 3 ppm, and a 15–day LC_{50} of 2 mg/L; for invertebrates, a 9–day LC_{50} of 10 ppm; and for fish, 96–hour LC_{50}s of 6.4 ppm, 10 ppm, and 7 mg/L, an LC_{50} of 5.6 mg/L, an 11–day LC_{50} of 1.99 mg/L, 14–day LC_{50}s from 1.95 to 4.34 mg/L, and 7–day LC_{50}s from 1.9 to 6.0 ppm. Considering vanadium's persistence, vanadium and vanadium compounds are considered highly toxic to aquatic organism at these higher concentrations.

As discussed above, vanadium and vanadium compounds are highly toxic. Because vanadium and vanadium compounds are toxic at relatively low concentrations, EPA believes that they cause or can reasonably be anticipated to cause a significant adverse effect on the environment. In addition, because of the nature of the potential significant adverse effects, e.g., fish, algae, and invertebrate kills as well as a range of other adverse effects on fish, algae, and invertebrates, and the impacts such effects can have on ecological communities and ecosystems, EPA has determined that they are of sufficient seriousness to warrant reporting.

Thus, EPA reaffirms that there is sufficient evidence for adding vanadium and vanadium compounds on the EPCRA section 313 list of toxic chemicals pursuant to EPCRA section 313(d)(2)(C)(i) and (ii), based on the available ecotoxicity information for vanadium and vanadium compounds.

Therefore, EPA is finalizing the listing of vanadium and vanadium compounds on the EPCRA section 313 list.

a. *Reporting limitation of alloys.* A number of commenters support EPA's proposed determination to defer the reporting of vanadium when contained in alloys (64 FR 717). Many commenters also suggest that the Agency adopt a reporting limitation for the other metals such as chromium, copper, manganese, and nickel which are commonly found in alloys. The commenters assert that alloys have significantly different bioavailability, bioaccumulation, and toxicity characteristics than other forms of metals, and thus should be treated separately. The commenters argue that alloys are inherently more stable than unalloyed materials, do not enter the environment as readily as unalloyed materials and hence do not interact as greatly with organisms, and should be considered safer from an environmental and human health perspective. The commenters suggested that alloys should be treated separately not only for threshold changes, but also for EPCRA section 313 listings in general and recommend excluding alloys from general EPCRA section 313 listings for metals.

One commenter states in regard to the reporting of metals in alloys that it makes little or no sense to require the reporting of such "useless" information, since the information does not serve the purpose of informing the community. The commenter contends that not adding vanadium when contained in alloys would help to achieve EPCRA section 313's underlying purpose, i.e., to provide the public with meaningful information, while at the same time reducing the burden on reporting facilities. Another commenter argues that the proposed alloys exemption correctly recognizes that metals in alloys are not generally available for exposure or for toxic effects. The commenter argues that expansion of the exemption would improve the TRI data base by reporting only releases that may pose risks to human health and the environment, thereby providing the public with more meaningful data.

Two commenters state that the definition of vanadium alloys should include "fused alloy slag" in the qualifier as well. The commenters contend that the state of the vanadium in a ferroalloy form is one of intimate chemical combination on the atomic level, not a simple mixture of individual components and it is inherently stable and cannot be dissociated by ordinary means. The commenters argue that likewise, the fused alloy slag formed represents an intimate chemical combination of materials as a result of the smelting operation. The commenters assert that these elemental materials may include various components such as gangue or ore, ash of fuel, refractory lining, or other stable oxides with the ultimate characterization resting upon the chemical stability of the resultant fused alloy bearing slag. Thus, the commenters argue, vanadium contained in either alloy or alloy slag form is fused in a stable compound and therefore, no releases of vanadium into the environment would occur from either substance. The commenters state that the true environmental issue to consider in the formulation of an activity qualifier is the leachability of the material in that state, and since in both of the aforementioned cases the vanadium is in a stable compound, leaching would not be expected. The commenters assert that without allowing an exemption for fused alloy slag, large volumes of steelmaking and ferroalloy slag will unnecessarily fall under this reporting requirement. The commenters request that EPA reconsider its position and expand the definition of alloy to include both vanadium alloys and vanadium alloy slags.

EPA agrees with those commenters that support EPA's belief that it would be inappropriate, at this time, to change the status quo regarding reporting vanadium when contained in an alloy. As EPA stated in the proposed rule, the Agency is reviewing the issue of whether there should be any changes to the reporting requirements for metals contained in alloys.

In the proposed rule, EPA did not state, and did not intend to imply, that EPA considers alloys to be "safe," or as some commenters suggested, that EPA had "correctly" recognized that metals in alloys are not generally available for exposure or to express their toxic effects. EPA has not completed its review of the alloys issue and has made no conclusions regarding whether there should or should not be any type of limitation or exemption for any metals contained in alloys. EPA's proposal merely recognized that while this issue was under review, it would not be appropriate to add alloy forms of vanadium.

The commenters contend that alloys have significantly different bioavailability, bioaccumulation, toxicity characteristics than other forms of metals and are inherently more stable than unalloyed materials and do not enter the environment as readily as unalloyed materials. EPA believes that the issue with alloys is primarily bioavailability, i.e., do the metals contained in alloys become available. This issue is the focus of EPA's current review. At this point in time, while EPA is in the process of a scientific review of the issues pertinent to alloys, the Agency is not prepared to make a final determination on whether vanadium in vanadium alloys meet the EPCRA section 313(d)(2) toxicity criteria.

The commenters did not provide any data to support their contention. The Agency does not believe that a metal compound in a slag necessarily will be environmentally unavailable; rather, the Agency's experience with a previous EPCRA section 313(d) review of manganese slags, indicates that at least in some cases the metal will be available (60 FR 44000, August 24, 1995) (FRL–4954–6).

Some commenters suggested that EPA create an alloys reporting limitation for all metals contained in alloys. However, as EPA has stated, the review of whether any kind of exemption or reporting limitation should be granted for certain metals in alloys is still under review and until the Agency has thoroughly reviewed the available data, EPA is not prepared to extend the reporting limitation to any other metals. For example, EPA is not lowering the reporting threshold for cobalt and cobalt compounds, and therefore the Agency is taking no action with respect to a reporting limitation for cobalt when contained in alloys.

One commenter asserts that for reasons of consistency--which helps ensure data quality--with existing EPCRA section 313 metal compound categories, they oppose adding the qualifier "except when contained in an alloy" in any new listing for vanadium.

EPA has not completed its review of the alloys issue and has made no conclusions regarding whether there should be any type of general limitation or exemption for any metals contained in alloys. EPA merely recognized that while this issue was under review it would not be appropriate to increase the reporting requirements for those facilities that would otherwise submit reports for vanadium contained in alloys. Therefore, as discussed earlier in this section, EPA has expanded the EPCRA section 313 listing for vanadium by removing the "fume or dust" qualifier for vanadium, but has not added the alloy forms of vanadium. Until EPA has the opportunity to fully evaluate the available data, the Agency is not prepared to make a final determination whether vanadium contained in alloys meets the EPCRA section 313(d)(2) listing criteria and should therefore be added. EPA believes that consistency, in this context, does not provide a sufficient basis to require reporting of vanadium contained in alloys.

H. Persistence and Bioaccumulation

The persistence and bioaccumulation data for the PBT chemicals covered by this final rule are listed in Table 3. A discussion of these data follows Table 3.

Table 3.—Persistence and Bioaccumulation Data

Chemical Category/Chemical Name	CASRN	BCF	BAF	Air Half-life	Surface Water Half-life	Soil Half-life
Dioxin/Dioxin-Like Compounds						
Polychlorinated dibenzo-p-dioxins						
1,2,3,4,6,7,8-heptachlorodibenzo-*p*-dioxin	35822–46–9	1,466		12.2–4.2 hrs		~20 yrs
1,2,3,4,7,8-hexachlorodibenzo-*p*-dioxin	39227–28–6	5,176		12.4–2.7 hrs		~20 yrs
1,2,3,6,7,8-hexachlorodibenzo-*p*-dioxin	57653–85–7	3,981		12.4–2.7 hrs		~20 yrs
1,2,3,7,8,9-hexachlorodibenzo-*p*-dioxin	19408–74–3	1,426		12.4–2.7 hrs		~20 yrs
1,2,3,4,6,7,8,9-octachlorodibenzo-*p*-dioxin	3268–87–9	2,239		20.4–4.8 hrs		~20 yrs
1,2,3,7,8-pentachlorodibenzo-*p*-dioxin	40321–76–4	10,890		14.8–2.0 hrs		~20 yrs
2,3,7,8-tetrachlorodibenzo-*p*-dioxin	1746–01–6	5,755		9.6–1.2 hrs		20–1.5 yrs
Polychlorinated dibenzofurans						
1,2,3,4,6,7,8-heptachlorodibenzofuran	67562–39–4	3,545		25.0–4.3 hrs		~20 yrs
1,2,3,4,7,8,9-heptachlorodibenzofuran	55673–89–7	3,545		25.0–4.3 hrs		~20 yrs
1,2,3,4,7,8-hexachlorodibenzofuran	70648–26–9	3,586		13.3–3 hrs		~20 yrs
1,2,3,6,7,8-hexachlorodibenzofuran	57117–44–9	3,586		13.3–3 hrs		~20 yrs
1,2,3,7,8,9-hexachlorodibenzofuran	72918–21–9	10,300		13.3–3 hrs		~20 yrs
2,3,4,6,7,8-hexachlorodibenzofuran	60851–34–5	3,586		13.3–3 hrs		~20 yrs
1,2,3,4,6,7,8,9-octachlorodibenzofuran	39001–02–0	1,259		29.4–13.7 hrs		~20 yrs
1,2,3,7,8-pentachlorodibenzofuran	57117–41–6	33,750		11.6–1.2 hrs		~20 yrs
2,3,4,7,8-pentachlorodibenzofuran	57117–31–4	42,500		11.6–1.2 hrs		~20 yrs
2,3,7,8-tetrachlorodibenzofuran	51207–31–9	2,042		11.5–2.1 hrs		~20 yrs
Pesticides						
Aldrin	309–00–2	3,715		10 hrs–1 hr	24 days[1]	9 yrs–291 days
Chlordane	57–74–9	11,050	>6,000,000[2]	5 days–12 hrs	239 days	8-0.4 yrs
Heptachlor	76–44–8	19,953		10.5 hrs–1 hr	129.4–23.1 hrs	4 yrs–8 days
Isodrin	465–73–6	20,180		10 hrs–1 hr		5 yrs–180 days
Methoxychlor	72–43–5	8,128		12 hrs–1 hr	15.2–5 days	136–81 days
Pendimethalin	40487–42–1	1,944		21–2 hrs		1300–54 days
Toxaphene	8001–35–2	34,050		16 days–19 hrs	5 yrs–1 yr	11–1 yrs
Trifluralin	1582–09–8	5,674		3.2–0.42 hrs	36.5–4.5 days[1]	394–99 days
Polycyclic Aromatic Compounds						

Table 3.—Persistence and Bioaccumulation Data—Continued

Chemical Category/Chemical Name	CASRN	BCF	BAF	Air Half-life	Surface Water Half-life	Soil Half-life
Benzo(a)pyrene	50–32–8	912		2.4 hrs	17.3–5.4 yrs	14.6 yrs–151 days
Benzo(b)fluoranthene	205–99–2	5,631		1.4 days–3.4 hrs	≥100 days	14.2 yrs–87 days
Benzo(r,s,t)pentaphene	189–55–9	26,280		13 hrs–1 hr		371–232 days
Benzo(a)anthracene	56–55–3	800		13 hrs–1 hr	3-1.2 yrs	2.0 yrs–240 days
7,12-Dimethylbenz(a)anthracene	57–97–6	5,834		4–0.4 hrs	6 yrs–1 yr	28–20 days
Dibenzo(a,h)anthracene	53–70–3	31,440		13 hrs–1 hr	≥100 days	2 yrs–240 days
3-Methylcholanthrene	56–49–5	17,510		3–0.3 hrs	3.8–1.7 yrs	
7H-Dibenzo(c,g)carbazole	194–59–2	16,900		23–2 hrs		>160 days
Benzo(k)fluoranthene	207–08–9	10,090		12 hrs–1 hr		11 yrs–139 days
Benzo(j)fluoranthene	205–82–3	10,090		12 hrs–1 hr		10.5 yrs
Dibenzo(a,e)pyrene	192–65–4	6,875		13 hrs–1 hr		371–232 days
Dibenzo(a,h)pyrene	189–64–4	26,280		13 hrs–1 hr		371–232 days
Indeno(1,2,3-cd)pyrene	193–39–5	28,620		7.6–0.34 hrs		730–58 days
Dibenz(a,h)acridine	226–36–8	3,500		13 hrs–1 hr		>160 days
Dibenz(a,j)acridine	224–42–0	18,470		23–2 hrs		>160 days
Benzo(g,h,i)perylene	191–24–2	25,420		10.0–0.31 hrs	≥100 days	1.8 yrs–173 days
Dibenzo(a,e)fluoranthene	5385–75–1	26,280		10 hrs–1 hr		371–232 days[1]
5-Methylchrysene	3697–24–3	9,388		5–0.5 hrs	3.8 yrs–79 days[4]	2.7 yrs–255 days[4]
Dibenzo(a,l)pyrene	191–30–0	6,875		13 hrs–1 hr		371–232 days
Benzo(a)phenanthrene	218–01–9	800		13 hrs–1 hr	3.8 yrs–79 days	2.7 yrs–255 days
1-Nitropyrene	5522–43–0	908		4 days–10 hrs	44 yrs–16 yrs	
Benzo(j,k)fluorene (fluoranthene)	206–44–0	5,100		20–2 hrs		13 yrs–110 days
Metals/Metal Compounds Mercury[5] and Mercury compounds	7439–97–6	7,000-36,000		see footnote 5	see footnote 5	see footnote 5
Polychlorinated Biphenyl (PCBs)	1336–36–3		>200,000[2,6]			
2,3,3′,4,4′,5,5′-heptachlorobiphenyl	39635–31–9	4,922		191–19 days	>56 days	>5–3.92 yrs
2,3,3′,4,4′,5-hexachlorobiphenyl	38380–08–4	37,590		127–13 days	>56 days	>5–3.42 yrs
2,3,3′,4,4′,5′-hexachlorobiphenyl	69782–90–7	37,590		114–11 days	>56 days	>5–3.42 yrs

Table 3.—Persistence and Bioaccumulation Data—Continued

Chemical Category/Chemical Name	CASRN	BCF	BAF	Air Half-life	Surface Water Half-life	Soil Half-life
2,3′,4,4′,5,5′-hexachlorobiphenyl	52663–72–6	37,590		114–11 days	>56 days	>5–3.42 yrs
3,3′,4,4′,5,5′-hexachlorobiphenyl	32774–16–6	73,840		88–9 days	>56 days	>5–3.42 yrs
2,3,3′,4,4′-pentachlorobiphenyl	32598–14–4	196,900	>134,000,000[2]	80-8 days	>56 days	7.25–0.91 yrs
2,3,4,4′,5-pentachlorobiphenyl	74472–37–0	196,900		67–7 days	>56 days	7.25–0.91 yrs
2,3′,4,4′,5-pentachlorobiphenyl	31508–00–6	184,300	>141,000,000[2]	80–8 days	>56 days	7.25–0.91 yrs
2′,3,4,4′,5-pentachlorobiphenyl	65510–44–3	196,900		50–5 days	>56 days	7.25–0.91 yrs
3,3′,4,4′,5-pentachlorobiphenyl	57465–28–8	196,900		57–6 days	>56 days	7.25–0.91 yrs
3,3′,4,4′-tetrachlorobiphenyl	32598–13–3	105,900		37–4 days	>98 days	4.83–0.91 yrs
Other Chemicals						
Hexachlorobenzene	118–74–1	29,600-66,000	>2,500,000[2]	1,582–158 days		5.7–2.7 yrs
Octachlorostyrene	29082–74–4	33,113	>117,000,000[2]	10 hrs–1 hr		5.7–2.7 yrs7
Pentachlorobenzene	608–93–5	8,318	>640,000[2]	460–46 days		194 days–>22 yrs
Tetrabromobisphenol A	79–94–7	780; 1,200; 3,200		9 days–1 day	84–48 days	44–179 days

[1] The reported half-life data for water are suspected to include significant removal from the medium by processes other than degradation (e.g., volatilization).

[2] Values are for Piscivorous Fish.

[3] Since data could not be found for this chemical, the data for the dibenzopyrenes (192–65–4; 189–64–0; 191–30–0), which are structural analogues, was used.

[4] Since data could not be found for this chemical, the data for benzo(a)phenanthrene (218–01–9), a structural analogue was used.

[5] The bioaccumulation potential for the parent metals is assumed to be equivalent to the associated metal compounds since in the environment the parent metals may be converted to a metal compound. Since metals are not destroyed in the environment they persist longer than 6 months.

[6] Lowest value reported for a dichlorinated PCB.

[7] Since no data could be found for this chemical, the data for the structural analogues hexachlorobenzene (118–74–1) and pentachlorobenzene (608–93–5) was used.

1. *Persistence*—a. *Dioxin and dioxin-like compounds.* In the proposal, EPA preliminarily determined that dioxin and dioxin-like compounds have persistence half-life values in soil that ranged from 1.5 years to more than 20 with all but one chemical having a soil half-life of more than 20 years. EPA has reviewed information and all comments received on dioxin and dioxin-like compounds' persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that dioxin and dioxin-like compounds persist in the environment with half-lives of 2 months or greater and therefore meet the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, dioxin and dioxin-like compounds persist in the environment with a half-life of greater than 6 months making it highly persistent. This, plus other factors, supports EPA's decision to lower the threshold to 0.1 gram.

b. *Aldrin.* In the proposal, EPA preliminarily determined that aldrin has persistence half-life values in soil of 291 days to 9 years and a persistence half-life value in water of 24 days. EPA has reviewed information and all comments received on aldrin's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that aldrin persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

c. *Chlordane.* In the proposal, EPA preliminarily determined that chlordane has persistence half-life values in soil of 0.4–8 years and a persistence half-life value in water of 239 days. EPA has reviewed information and all comments received on chlordane's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that chlordane persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, chlordane persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

d. *Heptachlor*. In the proposal, EPA preliminarily determined that heptachlor has persistence half-life values in soil of 8 days to 4 years and a persistence half-life value in water of 23.1–129.4 hours. EPA has reviewed information and all comments received on heptachlor's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that heptachlor persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, heptachlor persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

e. *Isodrin*. In the proposal, EPA preliminarily determined that isodrin has persistence half-life values in soil of 180 days to 5 years. EPA has reviewed information and all comments received on isodrin's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that isodrin persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, isodrin persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

f. *Methoxychlor*. In the proposal, EPA preliminarily determined that methoxychlor has persistence half-life values in soil of 81 to 136 days and a persistence half-life value in water of 5 to 15.2 days. EPA has reviewed information and all comments received on methoxychlor's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that methoxychlor persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

g. *Pendimethalin*. In the proposal, EPA preliminarily determined that pendimethalin has a persistence half-life value in soil of 54 to 1,300 days. EPA received several significant comments addressing pendimethalin's persistence potential which are addressed below. EPA has reviewed information and all comments received on pendimethalin's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that pendimethalin persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

One commenter contends that EPA has miscategorized pendimethalin as a PBT chemical based on limited screening data which conflicts with conclusions reached by EPA in its risk assessment under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The commenter believes that the characterization of pendimethalin is inaccurate and will lead to misplaced effort and misplaced focus on listed chemicals, and that there will be no benefit to the public or the environment in lowering the reporting threshold for pendimethalin.

EPA disagrees with the commenter. EPA did not base its determination that pendimethalin meets the EPCRA section 313 persistence criteria, nor that pendimethalin is highly persistent on "screening" data. EPA's conclusion that pendimethalin persists with a half-life greater than 6 months is based on a well-conducted study in which pendimethalin degrades in soil with a half-life of 1,322 days. Further, even if these data were discounted, there are numerous data submitted in support of reregistration of pendimethalin under FIFRA that provide strong evidence that pendimethalin meets the EPCRA section 313 persistence criteria, i.e., a half-life greater than 2 months. A more detailed discussion of these data is presented in the following responses. Contrary to the assertion by the commenter, the categorization of pendimethalin as a PBT chemical as described in the proposed rule is not in conflict with the conclusions reached by EPA during the FIFRA assessment. In addition, EPA disagrees that there will be no benefits to the public or the environment from lowering the thresholds for pendimethalin. EPA believes that pendimethalin, like all PBT chemicals, is of special concern because it has the potential to cause adverse effects even when released to the environment in small quantities because it can bioaccumulate in organisms to levels much greater than those present in the environment. EPA believes that lowering the reporting threshold for pendimethalin will provide information to the public that will increase their awareness of low levels of releases to the environment which have the potential to concentrate in organisms and cause adverse effects, which is fully consistent with the purposes of EPCRA section 313.

The commenter states that EPA has ignored bioavailability in designating pendimethalin as a PBT chemical and argues that the true bioaccumulation potential for pendimethalin is greatly overestimated based on the results of the standard laboratory fish bioconcentration study. The commenter asserts that when data on bioavailability, degradation, and depuration are all considered, the "real world" bioconcentration potential for pendimethalin is low and, therefore pendimethalin should not be mischaracterized as a PBT chemical.

The bioavailability data the commenter refers to was not specifically identified. Bioavailability of a chemical will vary from environment to environment and soil type to soil type. Caution must be taken, however, not to draw the erroneous conclusion that because a chemical has been shown to have a high affinity to sorb to sediments in aquatic environments that it will not be available for uptake by aquatic organisms. Examples like the PCBs (see Unit VI.F. for a further discussion on this issue) indicate that although some of these compounds have sorption coefficients much greater than pendimethalin, they are still widely found in the tissues of aquatic organisms in contaminated waters. Further, it would be erroneous to state that pendimethalin is not bioavailable because if it were not bioavailable it could not function as an herbicide.

The commenter claims that using EPA's own criteria (half-lifes longer than 2 months in water, sediment, or soil, or a half-life longer than 2 days in air) pendimethalin cannot be classified as persistent. Rather the commenter contends that pendimethalin has "low" or "low to moderate" persistence.

The commenter is incorrect. The Agency has set persistence criteria of half-lifes for soil, sediment, and water greater than 2 months and a half-life in air of greater than 2 days. Chemicals meeting these criteria are considered persistent for purposes of EPCRA section 313. There are, in fact, no qualifiers such as "low," "moderate," or "high" associated with the persistence criteria. The commenter's characterization of the persistence of pendimethalin as "low" or "low to moderate" is thus not particularly relevant. It appears, based on the comments, that the commenter defines low to moderate persistence as a half-life of greater than 2 days in air and greater than 2 months in soil, sediment, or water. If this is the case, then the commenter in fact concurs with EPA's assessment of pendimethalin as persistent (half-life greater than 2 months in soil or water and greater than 2 days in air).

If the commenter, instead, meant that pendimethalin has half-lifes of less than 2 months in soil or water, and 2 days in air, EPA notes that the commenter has failed to provide data to support that assertion, and that EPA's review of the data support the Agency's conclusion.

A commenter cites numerous laboratory and field dissipation studies in support of the claim that pendimethalin does not meet the persistence criteria.

EPA disagrees that the degree of persistence of pendimethalin can be characterized by the field dissipation studies cited by the commenter. Field dissipation studies are not equivalent to the studies which measure the half-life for destruction of a chemical in a specific medium (i.e., soil, water, or air). Field dissipation studies are designed to measure the rate or extent of chemical loss from the medium after application of the chemical. The processes by which the chemical is lost may include not only those that result in destruction of the chemical, but those which only transport the chemical from one medium to another such as volatilization. The studies cited by the commenter measure the dissipation of pendimethalin from soil. For a relatively volatile chemical such as pendimethalin, field dissipation studies are of limited use in assessing persistence because an unknown amount of pendimethalin will be transported from soil to air, resulting in a measured loss from that medium, but not destruction. Thus, the field dissipation studies cited by the commenter will underestimate the persistence of pendimethalin in soil.

The commenter cites several laboratory experiments on the degradation of pendimethalin in soil to support the argument that pendimethalin does not meet the persistence criteria. For example, they state that laboratory aerobic soil degradation studies have been conducted in which pendimethalin was applied to soil grab samples and incubated under controlled conditions. Pendimethalin degraded in laboratory soil studies with half-lifes ranging from 31 to 1,322 days. In the *Reregistration Eligibility Decision (RED) for Pendimethalin* (Ref 63) document, EPA explained that 172 days was used instead of 1,322 days because:

> The half-lifes for aerobic soil metabolism ranged from 42-563 days in the literature studies referenced below with a guideline study reporting a half-life of 1,322 days for a total of 27 total observations. Because of the range of half-life values, statistical analyses of the available data were performed. The mean, median, and modal half-lifes are 126, 122, and 122 days, respectively, with a standard deviation of 66 days (n=24). The half-life values of 409, 563, and 1,322 days were not included in the final statistical analyses because they were greater than three standard deviations from the mean. Based on soils and crops that are normally treated with pendimethalin, the reviewer assumed that temperatures would likely range from 20–30 °C and soil moisture contents from 50-75% Field Capacity (FC). The range of observed half-lifes in the above experimental conditions was 72–172 days.

The commenter contends that the 1,322–day half-life value is assumed to be an outlier (Ref. 5), the range was 31 to 172 days. Thus, it is claimed that laboratory studies also indicate that pendimethalin has a low to moderate persistence according to the EPCRA section 313 persistence criteria.

EPA believes that the guideline study that reported a half-life of 1,322 days represents an accurate and representative value for the assessment of the persistence of pendimethalin in the environment. In situations where multiple values for half-lifes are submitted under FIFRA to EPA's Office of Pesticide Program (OPP), statistical analysis may be conducted to determine mean values and standard deviations. The analysis permits the use of a value for exposure assessment modeling that takes into account the variability in data, and allows the exclusion of values more than three standard deviations outside the mean as "outliers." The designation as an outlier does not invalidate the study, and in fact, EPA maintains that even a study designated as an "outlier," if valid, gives useful half-life information.

In their assessment of the persistence of chemicals in soils, OPP focuses on studies using soil types, soil moisture contents, and temperatures consistent with the field application of the chemical in its intended use. In the OPP review of the studies, the reviewer assumed that in the field application of the chemical, temperatures would likely range from 20-30 °C and that soil moisture would range from 50 to 75% field capacity. The consideration of data from studies conducted under these conditions resulted in a half-life range of 72 to 172 days for pendimethalin. It should be noted that even after the elimination of outliers and consideration of studies relevant to normal field application, the entire half-life range is above 2 months, clearly meeting the criteria for persistence in soil, i.e., a half-life of 2 months.

The releases of pendimethalin subject to EPCRA section 313 reporting, in many cases, will not be to agricultural soils under typical application scenarios. EPA, therefore, contends that even though some soil half-life values were not considered by OPP, either because they were derived using studies that did not represent the desired field conditions, or because they were labeled as statistical outliers, the study conditions still represent realistic scenarios for releases reported under EPCRA section 313 and are valid for use in the determination of persistence.

The commenter cites studies conducted using flooded soils to support the argument that pendimethalin does not meet the persistence criteria. The commenter asserts that the studies involved the use of pendimethalin spiked into soil grab samples covered with a shallow layer of water and incubated in the laboratory under controlled conditions. In laboratory flooded soil studies, pendimethalin degradation half-lifes ranged from seven to 104 days with the majority of studies giving half-lifes of less than 2 months. Degradation of pendimethalin was more rapid in flooded soils than in nonflooded soils in most instances. The commenter asserts that these results demonstrate that pendimethalin has a low to moderate persistence in flooded soils according to the EPCRA section 313 persistence criteria.

EPA agrees that the reported degradation half-lifes in laboratory flooded soils studies range from 7 to 104 days. The studies were reviewed for quality and preferred methodologies. Of the studies that are of acceptable quality, EPA chose the highest value (most protective) of the range to determine if the chemical meets the EPCRA section 313 persistence criteria. In this case, the value of 104 days would be used to characterize pendimethalin as persistent in flooded soils. However, there is not a separate persistence criterion for flooded soils, nor are data on flooded soils preferable to other soil data. EPA notes that other soil studies, as discussed above in this section, indicate a half-life of 1,322 days in soils.

The commenter states that while pendimethalin is stable to hydrolysis, it will degrade in natural water and water/sediment systems under laboratory conditions with degradation half-lifes ranging from 4 to 22 days. Photodegradation is also rapid with half-lifes of approximately 3.5 days. The commenter concludes that these results indicate that pendimethalin has a low persistence in both water and its underlying sediment according to the EPCRA section 313 persistence criteria.

Two of the aerobic aquatic degradation studies cited by the commenter were not provided to the Agency or are not publicly available, (i.e., they are internal American Cyanamid studies). It is unclear from the summary provided whether the cited studies measured destruction of pendimethalin or its loss from the medium by non-destructive water to air transport processes. If the latter is the case, the ''dissipation half-lifes'' cited cannot be used to characterize persistence. EPA agrees that if the half-lifes reported for aerobic aquatic degradation represent half-lifes for destruction of the chemical, they do not meet the criteria for persistence in water. However, as noted, the full studies were not available for review and as such, EPA cannot assume that the studies followed destruction of pendimethalin, or that the studies meet the quality criteria outlined in this rule.

The commenter cites a half-life range of 6 to 22 days derived from an anaerobic aquatic degradation study to support the argument that pendimethalin has a low persistence in both water and its underlying sediment according to the EPCRA section 313 persistence criteria. EPA agrees that the persistence half-life values cited by the commenter do not meet the EPCRA section 313 persistence criteria, but points out that additional data submitted in support of the reregistration of pendimethalin indicated that half-lifes in aquatic environments could be longer. OPP used flooded soil degradation studies to assess the persistence of pendimethalin under anaerobic aquatic conditions. Half-lifes in these studies ranged from 6 to 105 days. In its discussion of the potential impact of pendimethalin on water resources, OPP in the RED notes that pendimethalin has an anaerobic aquatic metabolism half-life of 60 days. EPA believes that after review of the available data on its persistence in water pendimethalin meets the EPCRA section 313 persistence criteria.

EPA agrees that rapid aqueous photodegradation under laboratory studies has been reported for pendimethalin. However, the photolysis screening tests used are designed to allow the determination of rates of photolysis at shallow depths in pure water as a function of lattitude and season. EPA believes that the environmental relevence of these tests should be considered in their use to determine persistence, and that the results are most applicable to shallow, clear waters. EPA believes that the application of the results beyond these environments is tenuous due to the attenuation of light by suspended matter and increasing depth in the aquatic environment. EPA believes that pendimethalin's tendency to sorb to soil and sediments may result, under some circumstances, in its deposition in benthic environments beyond the effects of aqueous photolysis. Therefore, EPA does not believe that the half-life for pendimethalin in water should be based on aqueous photolysis.

The commenter claims pendimethalin will not persist in air according to the EPCRA section 313 persistence criteria for air since it has a half-life of less than 2 days. The commenter discusses the estimation of pendimethalin's atmospheric half-life and a study on its photodegradation in air. The commenter cites the results of a calculation according to the method of Atkinson performed to determine the rate constant for reaction of pendimethalin with OH radicals in the gas phase (Ref 42). A tropospheric half-life of 3.4 hours was calculated using the method. The photolysis of pendimethalin was investigated by Bossan, *et al.*, 1995 (Ref. 15), who reported on the photoreactivity of pendimethalin on airborne fly ash and kaolin using simulated sunlight. Approximately 70% of applied pendimethalin degraded within 30 minutes when adsorbed to fly ash but little degradation was observed after 100 minutes when pendimethalin was bound to kaolin.

EPA agrees that pendimethalin does not meet the persistence half-life criteria for air of greater than 2 days, but because it meets the persistence criteria for soil and water, this does not affect EPA's conclusion. As noted in the proposed final rule (at 64 FR 702), a chemical need only meet one of the media-specific criteria to be considered persistent.

The commenter cites EPA's pendimethalin RED document and cites its conclusion in support of the argument that pendimethalin does not meet the persistence criteria. The commenter describes the RED conclusions as follows:

> Pendimethalin dissipates in the environment by binding to soil, microbially-mediated metabolism and volatilization. It is essentially immobile in soil.
>
> Based on laboratory studies and limited field study information, pendimethalin is slightly to moderately persistent in aerobic soil environments. Persistence decreases with increased temperature, increased moisture and decreased soil organic carbon.

EPA disagrees with the commenters' suggestion that the OPP RED for pendimethalin concludes that it does not meet the EPCRA 313 persistence criteria. As stated in an earlier response, ''moderate'' persistence has no relevance in the context of the proposed rule. A chemical is considered persistent if it has half-lifes of 2 days in air or 2 months in soil, sediment, or water, respectively.

The commenter implies that OPP has concluded that pendimethalin does not meet the persistence criteria by selectively citing the OPP RED while failing to acknowledge other information OPP discussed in the document confirming the persistence of pendimethalin. OPP did not make any formal summary conclusions regarding the overall environmental persistence of pendimethalin. The commenter has selectively cited from the RED by taking a few comments out of context while ignoring additional findings which demonstrate that pendimethalin meets the persistence criteria.

The first statement cited by the commenter addresses dissipation in the environment. Two of the three processes (soil binding and volatilization) responsible for dissipation do not result in the destruction of the chemical and cannot be directly related to persistence. Volatilization results in the relocation of the chemical to the atmosphere. Binding to soil does not destroy pendimethalin and under some soil conditions has been shown to increase persistence. While microbial metabolism of pendimethalin can result in its destruction, it has been shown to be a slow process under many environmental conditions.

The commenter cites OPP's qualitative description of the persistence of pendimethalin in aerobic soil environments as slight to moderate. This does not serve as, nor did OPP intend for this statement to represent, a quantitative description of pendimethalin's persistence in soil. OPP does not attempt to relate this characterization to a numeric range of persistence values in the RED, and the commenter does not provide a rationale for concluding that OPP's language indicates that pendimethalin does not meet the EPCRA section 313 persistence criteria.

The final sentence of the citation points out factors that decrease persistence, but a more detailed reading of the RED on the subject of pendimethalin persistence in aerobic soils reveals that its persistence increases as temperature and soil moisture decrease, and soil organic carbon increase.

The commenter performed a Level III EQC Multimedia Modeling assessment for pendimethalin assuming "best case, reasonable case, and worst case" scenarios. The calculated overall environmental persistence was determined for pendimethalin to be 5 days, 58 days, and 142 days under the "best, reasonable, and worst case" scenarios, respectively. The results of the multimedia model indicated that pendimethalin will have a persistence in the environment of less than 2 months, assuming a reasonable case scenario. The commenter claims that multimedia modeling results indicate that pendimethalin will not be persistent according to the EPCRA section 313 persistence criteria.

The commenter notes that the values it calculated using the EQC model are much lower than the 30 days and 487 days calculated for EPA (Ref. 51) assuming best case and worst case scenarios. The commenter alleges that EPA assumed that half-lifes in soil, sediment and water were identical, 54 days and 1,322 days, respectively (Ref. 7). The data presented above, however, indicate that these were erroneous assumptions. The half-lifes for pendimethalin dissipation in water, soil, and sediment are not identical, and the 1,322 day half-life is an outlier.

The commenter concludes that pendimethalin will have a low to moderate persistence whether found in the air, water, soil, or sediment compartments of the environment. The commenter asserts that this is supported by field and laboratory degradation studies, multimedia modeling, and EPA's FIFRA registration environmental assessment of pendimethalin. Therefore, pendimethalin should not be classified as persistent for purposes of inclusion on the EPCRA section 313 list of PBT chemicals.

EPA disagrees that pendimethalin will have low persistence in the environment whether laboratory and field studies or multimedia modeling are considered. Multimedia mass balance models offer the most convenient means to estimate overall environmental persistence from information on sources and loadings, chemical properties and transformation processes, and intermedia partitioning. For the chemicals included in the proposed rule, EPA used a modified version of the EQC model (Ref. 33) to estimate overall environmental persistence. Overall persistence estimated in this way is used as an additional factor, in conjunction with reaction half-lifes for individual media, bioaccumulation/bioconcentration factors, in justifying the determination made by EPA in this rule.

The EQC model is based on the fugacity approach first delineated by Mackay (Ref. 31) and subsequently applied to numerous environmental processes (Ref. 32). It uses an "evaluative environment" in which environmental parameters such as bulk compartment dimensions and volumes (e.g., total area, volume of soil and sediment, etc.) are standardized, so that overall persistence for chemicals with different properties and rates of transformation may be compared on an equal basis (Ref. 15). EPA used a version of the EQC level III model (Ref. 33) which was modified to focus on net losses by deleting model terms for advective losses (movement out of the evaluative environment of air and water potentially containing a chemical) and sediment burial (Ref. 82). In this version of the model only irreversible transformation contributes to net loss of a chemical.

The overall persistence obtained from this model is calculated as the total amount in the evaluative environment when steady state is achieved, divided by the total loss rate. The results thus obtained are neither an overall environmental half-life nor a compartment (or transformation)-specific half-life; rather they are equivalent to an environmental residence time. When only irreversible transformation contributes to net loss--i.e., under the conditions of this version of the EQC model--overall environmental persistence times can be converted to half-lifes by multiplying the former by ln 2 (i.e., 0.693). The overall half-life calculated in this way is for dissipation in the environment as a whole and cannot be related directly to any individual compartment.

The commenter selected media-specific environmental half-lifes for use as input to the EQC model. The values were characterized as "best," "reasonable" and "worst" case. No justification was given for this classification. It appeared that the shortest half-lives were categorized as "best case." Based on the information provided by the commenter, it was not always possible to determine whether the half-lifes for soil or water selected by the commenter for use as input to the EQC model were for destruction of chemical, or its dissipation from the medium. As noted previously, dissipation half-lifes do not necessarily represent destruction of the chemical since non-destructive transport processes such as volatilization can be responsible for loss from the medium. Their use in multimedia modeling could potentially underestimate overall environmental persistence. This is particularly important since the modified EQC model predicted that greater than 90% of the pendimethalin would partition to soil at steady state. If a soil half-life based on loss from soil by nondestructive processes was used rather than one based on the destruction of pendimethalin, its persistence would have been underestimated.

In its modeling of the overall environmental persistence of pendimethalin EPA used the highest, lowest and mean values for the ranges of media-specific half-lifes from valid studies as inputs to the modified EQC model, not the highest and lowest as stated by the commenter. These included a half-life for pendimethalin in soil of 1,322 days. EPA determined that the study was properly conducted and chose the half-life value of 1,322 days for soil because it represented the most environmentally protective half-life derived from a valid study. The calculated overall environmental persistence half-lifes were 1 month, 8 months, and 16 months based on the highest, mean, and lowest half-lifes, respectively. For chemicals in this rulemaking, EPA considered the multi-media modeling EQC results in characterizing persistence in the overall environment. EPA only intended to use multimedia modeling results to override the medium-specific persistence data in limited circumstances, e.g., only if all model inputs are judged to be accurate (and, as noted above, the commenter's inputs cannot be determined to be accurate). But even if EPA were to use the EQC model to assess persistence, pendimethalin would be considered persistent because, with the EPA inputs described above, EQC overall environmental persistence half-lifes were calculated to be greater than 6 months using the mean and maximum air, soil, and water half-lifes calculated.

In response to this comment (even though it was unclear whether the commenter was basing its assertion on degradation data or dissipation data), EPA conducted a new EQC assessment for pendimethalin using the same half-life inputs selected by the commenter. The calculated overall environmental persistence half-life was greater than 2 months using the longest half-lifes provided by the commenter for air, soil, water, and sediment. These results support EPA's assertion that the persistence of pendimethalin in the environment meets the EPCRA section 313 persistence criteria.

The commenter argues that the scientifically-based risk assessments conducted on pendimethalin as a part of the pesticide registration process should not be ignored, and that EPA should review pesticide PBT chemical classifications with EPA registration information to ensure an accurate analysis has been performed.

The commenter notes that EPA has determined through the review of a complete set of studies that this material used at an approximate rate of 1.0 to 2.0 pounds of active ingredient per acre does not present an unreasonable risk to human health or the environment, that low levels of pendimethalin in manufacturing wastewater releases do not pose an unacceptable risk to the environment, and that reported EPCRA section 313 air releases do not pose a significant risk to human health or the environment.

The commenter concludes that based on the weight of evidence it is clear that releases of pendimethalin from manufacturing do not pose a significant threat to human health and the environment and that pendimethalin should not be branded as having a high potential for harm as indicated by the proposed listing as a PBT chemical and lowering of the reporting threshold.

EPA disagrees that the risk assessments cited by the commenter are relevant to the characterization of pendimethalin as a PBT chemical. The characterization of chemicals as PBT chemicals for the purpose of this rule are based on intrinsic physical-chemical properties. Risk is not an intrinsic property of a substance, but rather the result of the combination of intrinsic hazard (toxicity) a substance possesses and the exposure to a target organism under a defined set of circumstances. It is possible for a substance to present a risk under one set of exposure conditions, but not another. In contrast, a substance characterized as a PBT chemical will remain a PBT chemical, regardless of the exposure to it or its levels in the environment. (See Unit VI.C.)

Toxic chemicals that persist and bioaccumulate are of particular concern because they remain in the environment for significant periods of time and concentrate in the organisms exposed to them. Furthermore, these PBT chemicals can have serious human health and environmental effects resulting from low levels of release and exposure.

EPA believes that the substances subject to this rule have been characterized as PBT chemicals using scientifically sound indicators based on the intrinsic properties of the substances. The PBT characterization is independent of the risk the substance may pose under a given set of circumstances. These substances have been characterized as persistent, bioaccumulative and toxic and, therefore, meet the criteria for lowered reporting thresholds.

Further, FIFRA requires the Agency to determine that pesticidal uses of a chemical do not cause "unreasonable adverse effects on the environment," which is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment taking into account the economic, social, and environmental costs and benefits of the use of pesticides" (7 U.S.C. section 136(bb)). FIFRA is a regulatory statute, and the impacts of regulation can be immediate and direct (e.g., banning of a chemical), and as such EPA examines not only the hazards presented by the chemical, but also the specific exposure scenarios, and weighs the risks against the benefits of the chemical. The "unreasonable adverse effects" determination under FIFRA is specific to the intentional use of the chemical as a pesticide and does not address other uses or releases of the chemical that may result from manufacture, processing, or other use. Furthermore, a determination under FIFRA that the use of a chemical will not result in an "unreasonable adverse effect" is not a determination that the chemical is not hazardous or persistent or that the use of the chemical is without risk, but merely that the benefits of agricultural use as a pesticide outweigh its risks as an agricultural pesticide or that the pesticide chemical residues on food or feed meet the standards of section 408 of the Federal Food, Drug, and Cosmetic Act. EPCRA section 313 was not enacted to serve the same purpose as FIFRA. Listing on EPCRA section 313 provides communities with some of the information required to determine what risks may result from the manufacture, processing, and use of a chemical, and to allow local communities to determine for themselves whether such risks are acceptable, information not provided under FIFRA.

h. *Toxaphene*. In the proposal, EPA preliminarily determined that toxaphene has persistence half-life values in soil of 1 to 11 years and a persistence half-life value in water of 1 to 5 years. EPA has reviewed information and all comments received on toxaphene's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that toxaphene persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking. (Ref. 7). In addition, toxaphene persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

i. *Trifluralin*. In the proposal, EPA preliminarily determined that trifluralin has persistence half-life values in soil of 99 to 394 days and a persistence half-life value in water of 5 to 37 days. EPA has reviewed information and all comments received on trifluralin's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that trifluralin persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

j. *Polycyclic aromatic compounds*. In the proposal, EPA preliminarily determined that PACs have persistence half-life values in soil that ranged from 20 days to 13 years. All but a few had half-lifes well in excess of 6 months. These chemicals had persistence half-life values in water that ranged from 79 days to 44 years. EPA received one significant comment addressing the persistence potential of PACs, which is discussed below. EPA has reviewed information and all comments received on PACs' persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that PACs persist in the environment with half-lives of 2 months or greater and therefore meet the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

One commenter contends that EPA has incorrectly ignored biotreatment studies in evaluating persistence for PACs. EPA has also ignored a large body of recent research on sequestration and other phenomena that collectively act to reduce the bioavailability of soil contaminants, such as PACs.

Biotreatment studies include activated sludge or other wastewater treatment studies. As EPA stated in the proposed rule (at 64 FR 700), the reason for excluding such studies is that wastewater treatment in general and activated sludge in particular represent conditions that are far removed from ambient (surface) waters, soils, and sediments. Data on environmental fate and persistence of substances in wastewater and activated sludge normally cannot be extrapolated to the other conditions. The commenter seems most concerned about land biotreatment (bioremediation) studies, but in fact goes well beyond the concept of treatability, appearing to infer that EPA has ignored all biodegradation studies of PACs. However, this is incorrect because all mixed-culture biodegradation studies other than activated sludge tests--i.e., field tests as well as lab studies that used authentic soil, water and/or sediment grab samples--were considered in determining persistence for all of the listed substances.

The commenter also discusses recent research indicating that bioavailability of a substance may decline with time of incubation in soil, and suggests that EPA should include "reasonable bioavailability factors" in its determination of persistence. As an example of why this is relevant, there has been a concern that Superfund site remediation actions may be mistargeted if they are based on residues released from the soils by vigorous extraction procedures, since chemical substances in soil may become nonbioavailable yet still be extractable for analytical purposes. Additionally, bioremediation may fail to destroy all of a substance that such analysis shows is present, if some portion is sequestered in a non-bioavailable state. Further, the commenter contends that chemicals (including many PACs) are not bioavailable if the bioavailability is considerably less than 100%. The commenter does further specify a numerical bioavailability criteria.

The commenter over-generalizes from the research findings, using selective citation and quotation from the literature to give the impression that all is now known and any substance released to soil is as good as gone toxicologically speaking. Other reports can be quoted to the effect that the many factors determining bioavailability, sequestration, etc. are far from completely resolved, and deserve much further research. Moreover, sequestration does not necessarily imply non-bioavailability. For example, in a study of PAC sequestration and bioremediation, Tang et al. (Ref. 51a) state that:

> The results of the present study suggest that extensive biodegradation by microorganisms does not necessarily remove all of the fraction of an aged compound that is bioavailable since some uptake by worms occurred even after the laboratory-scale bioremediation. . . .it is also possible that a portion of a compound that is sequestered is available to different degrees to dissimilar organisms. . . .It may be that the mass of material that becomes sequestered should be considered as existing in two forms. One form may be unavailable to all organisms because it is physically remote and thus inaccessible. The second form may be differentially available, and its assimilation, toxicity, and/or biodegradation may depend on the properties of the species and its ability to mobilize the molecules from this non-remote location.
>
> [There is] danger if it is assumed that the disappearance of lethality denotes the absence of bioavailability....The point is reinforced by the case of DDT, which is sequestered in soil (13) and whose lethality to insects totally disappears as a result of such sequestration (5), yet a portion of that insecticide was still assimilated by earthworms introduced into soil that was treated in the field with DDT *more than 40 years before the bioassay was performed*. . . .(emphasis added)

And in a similar paper on DDT and dieldrin, Robertson and Alexander (Ref. 43a) state that:

> The significance of soil properties in controlling sequestration is evident in the early observation that the degree of sequestration of lindane after 22 months was greatest in a muck, intermediate in extent in a loam, and least in a sandy loam (11). Thus, *soil properties must be considered in attempting to predict the bioavailability of persistent compounds.* It is also evident from the data presented herein that the bioavailability of a sequestered toxicant varies with the exposed species. Thus, the declines in toxicity of aged DDT and dieldrin to the three test insects were quite different; whereas the lethality of the sequestered compound to one species had almost disappeared, it still was effective against a second. (emphasis added)

The conclusion is manifest: it is that although chemical substances released to soil may become sequestered over time, it cannot be assumed that this process necessarily leads to nonbioavailability even when the time horizon is years. Site- and species-specific factors, as well as substance properties, are important in determining bioavailability. Therefore, it is appropriate to be concerned about the bioavailability in soil and sediment of PACs and other substances that meet the PBT criteria established for this rulemaking.

Further, there is no scientific reason why a chemical can only be considered bioavailable if its bioavailability approaches 100%. The degree of bioavailability will vary depending upon the environmental conditions. In addition, as noted above the degree of bioavailability will also be species dependent. Therefore, EPA believes that the commenter's approach is overly simplistic.

k. *Benzo(g,h,i)perylene.* In the proposal, EPA preliminarily determined that benzo(g,h,i)perylene has persistence half-life values in soil of 173 days to 1.8 years and persistence half-life values in water of greater than 100 days. EPA has reviewed information and all comments received on benzo(g,h,i)perylene's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that benzo(g,h,i)perylene persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking. (Ref. 7). In addition, benzo(g,h,i)perylene persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

l. *Mercury and mercury compounds.* Because metals may convert to different oxidation states but can never be destroyed, all metals meet the 6 months half-life criterion automatically. EPA received a few significant comments addressing mercury and mercury compounds' persistence. These are discussed below. EPA has reviewed information and all comments received on mercury and mercury compounds' persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that mercury and mercury compounds persist in the environment with half-lives of 2 months or greater and therefore meet the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and in EPA's support documents for this rulemaking (Ref. 7). In addition, mercury and mercury compounds persist in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

One commenter asserts that EPA should not classify all forms of mercury as persistent. The commenter agrees that Hg (0) is properly characterized as persistent. However, the commenter contends that EPA is incorrect in characterizing Hg (II) as persistent because it is removed rapidly from the atmosphere via wet and dry deposition.

EPA believes that the commenter confuses residence time with half-life; these terms do not represent equivalent processes. There is a distinction between atmospheric "half-life," which is the amount of time necessary for half of the chemical present to be destroyed in the medium, and atmospheric "residence time" which is the length of time a chemical resides in a particular environmental medium. For the purposes of this rule "half-life" includes only irreversible chemical transformations resulting in the destruction of chemical whereas "residence time" includes factors such as transport of the substance to another medium, for example, wet and dry deposition, sorption, complexation or sequestration; and reversible changes in speciation (i.e., oxidation reduction reactions). EPA agrees that Hg (0) has an average "residence time" in the atmosphere of about 1 year and that Hg (II) may be deposited relatively quickly by wet and dry deposition processes, leading to a "residence time" of hours to months (Ref. 42a). But the shorter residence times noted for Hg (II) are due to physical transport from the medium, rather than irreversible transformations resulting in the destruction of chemical. Hg (0) released to the atmosphere is rapidly converted to Hg (II) through ozone-mediated oxidation. However, this is not an irreversible reaction, nor does it result in the destruction of the substance since the Hg (II) produced from oxidation of Hg (0) by ozone can be reduced back to Hg (0) by sulfite (Ref. 28a). The persistence of mercury will not be mitigated simply by redox reactions of Hg (0) to and from Hg (II). Whether as Hg (0) or as Hg (II), mercury persists in the environment. Environmental processes may cause it to change oxidation states or to be transported from one environmental medium to another; however, these processes will not destroy it.

EPA agrees that the report cited provides reasonable estimates of the fraction of mercury emissions from each source category that is likely to be in the form of Hg (II) versus the fraction as Hg (0). However, this information is not relevant to the assessment of the persistence of mercury and mercury compounds because persistence considers destruction only.

m. *Polychlorinated biphenyls.* In the proposal, EPA preliminarily determined that polychlorinated biphenyls (PCBs) have persistence half-life values in soil that ranged from 1 to 7 years and persistence half-life values in water that ranged from 56 to 98 days. EPA has reviewed information and all comments received on PCBs' persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that PCBs persist in the environment with half-lifes of 2 months or greater and therefore meet the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical listing can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, all of the PCBs persist in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

n. *Hexachlorobenzene.* In the proposal, EPA preliminarily determined that hexachlorobenzene has persistence half-life values in soil of 3 to 6 years. EPA has reviewed information and all comments received on hexachlorobenzene's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that hexachlorobenzene persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and in EPA's support documents for this rulemaking (Ref. 7). In addition, hexachlorobenzene persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

o. *Octachlorostyrene.* In the proposal, EPA preliminarily determined that OCS has persistence half-life values in soil of 3 to 6 years. EPA received one significant comment addressing OCS's persistence potential which is discussed below. EPA has reviewed information and all comments received on OCS's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that OCS persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, OCS persists in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

One commenter believes that OCS should not be considered to be a PBT chemical. The commenter admits that OCS has the potential to bioaccumulate and may theoretically persist in the environment, but cites falling environmental levels of OCS and the lack of evidence of human and environmental toxicity as justification for why OCS should not be considered to be a persistent, bioaccumulative and toxic chemical. The commenters contend that pentachlorobenzene and hexachlorobenzene are not good analogs for OCS.

EPA disagrees. As discussed in Unit VI.G., EPA believes that OCS meets the EPCRA section 313 toxicity criteria. Further, EPA believes that OCS is highly persistent. No measured half-life data for soil or water that met the standards for data acceptability could be located for octachlorostyrene (CAS No. 29082–74–4). Therefore, EPA used half-lifes for the structural analogs pentachlorobenzene (CAS No. 608–93–5) and hexachlorobenzene (CAS No. 118–74–1) for estimating half-lifes for OCS. EPA believes that pentachlorobenzene and hexachlorobenzene are good analogs for OCS because they, like OCS, are highly chlorinated benzene derivatives, which are structurally very similar. By analogy, OCS is expected to have a half-life in soil of greater than 6 months and greater than 2 days in air (Ref. 7). These half-lifes are sufficient to designate OCS as persistent using the criteria described in the proposed rule. EPA believes that its use of analog data is scientifically supportable because like OCS both analogs are highly chlorinated monocyclic aromatics.

EPA believes that the degree of toxicity as well as the degree of persistence and bioaccumulation are inherent to a chemical. The absolute level of a chemical in the environment does not affect its degree of persistence, bioaccumulation, or whether or not it has been shown to cause adverse effects to aquatic organisms. The absolute level in the environment is a factor of both how much is entering the environment and the persistence of the chemical in the environment. The degree to which a chemical is present in aquatic organisms is not only a measure of the BAF, but also inputs into the environment and persistence. The assertions made by the commenter do not support their contentions concerning the toxicity, persistence, or bioaccumulation of OCS.

p. *Pentachlorobenzene*. In the proposal, EPA preliminarily determined that pentachlorobenzene has persistence half-life values in soil of 194 days to more than 22 years. EPA received no significant comments addressing pentachlorobenzene's persistence potential. EPA has reviewed information and all comments on pentachlorobenzene's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that pentachlorobenzene persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7). In addition, pentachlorobenzene persist in the environment with a half-life of greater than 6 months which supports EPA's decision to lower the threshold to 10 pounds.

q. *Tetrabromobisphenol A*. In the proposal, EPA preliminarily determined that TBBPA has persistence half-life values in soil of 44 to 179 days and persistence half-life values in water of 48 to 84 days. EPA received several significant comments addressing TBBPA's persistence and discusses them below. EPA has reviewed information and all comments received on TBBPA's persistence characteristics. Taking into account this information, as indicated in Table 3, EPA finds that TBBPA persists in the environment with a half-life of 2 months or greater and therefore meets the persistence criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 7).

One commenter states that EPA's determination that TBBPA is persistent in the environment appears to be based upon a model which uses default data, that it is difficult to interpret EPA's methodology for applying its *EQC Model Output for Toxics Release Inventory PBT Rule Chemicals*, and it therefore is not clear how EPA arrived at the conclusion that TBBPA is persistent.

EPA disagrees that it is unclear how the EQC model was used in the assessment of chemical persistence and that EPA used only default data. EPA provided discussion on the conduct of the multimedia modeling in the document titled *EQC Model Output for Toxics Release Inventory PBT Rule Chemicals* (Ref. 33). EPA used chemical-specific input data (i.e., half-lifes in air, soil, water, and sediment and chemical properties) where available in all multimedia modeling runs. No default data were used in lieu of chemical-specific inputs. All chemical-specific inputs for each chemical were listed in this document. Further, EPA explained its use of the modified EQC model not only in the support document identified earlier, but also in the preamble to the proposed rule. In its description of the modeling EPA stated:

> Multimedia mass balance models offer the most convenient means to estimate overall environmental persistence from information on sources and loadings, chemical properties and transformation processes, and intermedia partitioning. For the chemicals included in this proposed rule EPA used the [modified] EQC model. . .to estimate overall environmental persistence. Overall persistence estimated in this way is used as an additional factor, in conjunction with reaction half-lifes for individual media, bioaccumulation/ bioconcentration factors, etc., in justifying actions proposed in this rule.

The EQC model is based on the fugacity approach first delineated by Mackay (Ref. 31) and subsequently applied to numerous environmental processes (Ref. 32). It uses an "evaluative environment" in which environmental parameters such as bulk compartment dimensions and volumes (e.g., total area, volume of soil and sediment) are standardized, so that overall persistence for chemicals with different properties and rates of transformation may be compared on an equal basis (Ref. 15). EPA used a version of the EQC level III model (Ref. 33) which was modified to focus on net losses by deleting model terms for advective losses (movement out of the evaluative environment of air and water potentially containing a chemical) and sediment burial (Ref. 82). In this version of the model only irreversible transformation contributes to net loss of a chemical.

The overall persistence obtained from this model is calculated as the total amount in the evaluative environment when steady state is achieved, divided by the total loss rate. The results thus obtained are neither an overall environmental half-life nor a compartment (or transformation)-specific half-life; rather they are equivalent to an environmental residence time. When only irreversible transformation contributes to net loss--i.e., under the conditions of this version of the EQC model--overall environmental persistence times can be converted to half-lifes by multiplying the former by ln 2 (i.e., 0.693). The overall half-life calculated in this way is for dissipation in the environment as a whole and cannot be related directly to any individual compartment.

In the analysis EPA used the highest, lowest and mean values for the ranges of half-lifes for soil, air, and water as inputs to the model. These half-lifes were collected from the literature from scientifically sound studies and were subject to data quality standards. The overall environmental persistence half-life for TBBPA calculated based on the EQC model was greater than 2 months but less than 6 months using the longest half-lifes for air, soil, water, and sediment. These results support EPA's assertion that the persistence of TBBPA in the environment will meet the EPCRA section 313 persistence criteria.

The commenter believes that TBBPA does not meet the persistence criteria for air. To support this contention the commenter refers to a study cited in a World Health Organization (WHO) document (Ref. 83). Specifically the commenter cites photodegradation studies that demonstrated that the half-life of TBBPA absorbed onto silica gel exposed to ultraviolet (UV) radiation was 0.12 day in air. In addition, the commenter contends that studies of the photolysis of TBBPA in the presence of UV light and hydroxyl radicals show that TBBPA was totally degraded within 5 to 6 days with an estimated 33–hour half-life. The commenter did not provide these studies or provide references to the original studies.

Further, the same commenter cites WHO EHC 172 (Ref. 83) for data on photodegradation to support the claim that TBBPA does not meet the persistence criteria for air. A review of the citation provided by the commenter reveals that it is a secondary reference taken from unpublished data from Bayer (Ref. 10). EPA was unable to review the full unpublished study to determine the quality of the data, only the summary found in the WHO document was available. In the WHO summary of the Bayer study TBBPA adsorbed onto silica gel and was exposed to ultraviolet irradiation at the 254 nanometer (nm) wavelength. Eight metabolites were detected and a half-life value of 0.12 days obtained. WHO noted that "[i]t is difficult to derive environmental conclusions from the results of these experiments."

EPA believes that the environmental relevance of the test results is doubtful.

While the experiment may demonstrate the potential for TBBPA to undergo photodegradation under laboratory conditions, the experimental conditions, to the extent they could be determined from the short summary provided, were not environmentally relevant.

In order for a molecule to undergo photochemical change it must absorb light. It is well known that only the transitions corresponding to ultraviolet/visible light absorption are inherently energetic enough to lead to chemical reactions. The wavelengths of importance for photochemical transformations is thus ultraviolet/visible light with a wavelength of 110 - 750 nm. When environmental photochemistry at or near the earth's surface is considered, the wavelengths of light of importance are further narrowed because the stratospheric ozone layer effectively prevents UV irradiation of less than 290 nm from reaching the earth's surface. Thus, only the light of the 290-750 nm wavelength absorbed by a molecule can potentially lead to photochemical changes of that molecule in the environment near the earth's surface. EPA believes that because the subject study utilized UV irradiation at the 254 nm wavelength, a wavelength that does not reach the earth's surface due to mitigation by stratospheric ozone, the half-life derived is not relevant and, therefore, cannot be used to determine the persistence of TBBPA in air.

The commenter also refers to studies of the photolysis of TBBPA in the presence of UV light and hydroxyl radicals in which TBBPA was shown to totally degrade within 5 to 6 days with an estimated 33–hour half-life. No additional information or references were provided to enable EPA to evaluate these findings for use in the characterization of the atmospheric half-life TBBPA.

The commenter contends that TBBPA's molecular structure makes it inherently biodegradable. The hydroxyl moiety on the TBBPA molecule can be readily transformed by organisms in the environment. The parent TBBPA molecule is no longer present once this biotransformation takes place. Therefore, based on TBBPA's structure alone, the Agency should consider TBBPA as unlikely to be environmentally persistent.

EPA disagrees with the statement that based on structure alone, the Agency should consider TBBPA as unlikely to be environmentally persistent. While EPA generally believes that measured values from well conducted studies are preferable to structure activity relationships (SAR) as an indicator of persistence, the Agency believes that it is possible to make some general statements about the biodegradability of TBBPA based on its structure.

Current knowledge of structure biodegradability relationships suggests that the presence of multiple bromines on an aromatic molecule adversely effects biodegradation. In fact, when the biodegradability of TBBPA is assessed with EPA structure activity relationship tools for predicting biodegradation from structure (Refs. 46 and 47), the presence of multiple aromatic bromines, a carbon with four single bonds, and the molecular weight of TBBPA are all structural features that reduce biodegradability. Therefore, even if EPA were to base its assessment of the persistence of TBBPA on its molecular structure, the Agency would conclude that it is not readily biodegradable.

The commenter contends that TBBPA will not meet the persistence criteria for water, soil, and sediment because TBBPA will biodegrade in these media. The commenter cites the results of several biodegradation studies as demonstrating that TBBPA is not persistent in these media. The commenter states that even though degradation studies have shown that TBBPA is not "readily biodegradable" (i.e., TBBPA is not mineralized to a significant extent by sewage sludge within 28 days) there are studies that indicate it is not persistent. Specifically, in studies submitted to EPA in 1989, TBBPA has been shown to be subject to biodegradation both in soil and sediment under aerobic or anaerobic conditions; TBBPA's estimated half-life derived from these studies is 50 days. In studies submitted by the Brominated Flame Retardants Industry Panel to EPA, TBBPA also was shown to undergo degradation in a sediment/water system with an estimated half-life of 48 to 84 days. (These data were reported under the Agency's TSCA Section 4 test rule.) The commenter argues that these data demonstrate that TBBPA does not meet most widely (and internationally) accepted criteria for persistence in soil or sediments (See Unit VI.B.) Therefore, TBBPA should not be considered to be persistent for purposes of EPCRA Section 313.

The commenter cites additional research conducted on the biodegradation of TBBPA under aerobic and anaerobic conditions in soil (Refs. 47) and asserts that the data indicate that "TBBPA does not meet the most widely and internationally accepted criteria." EPA discusses its assessment of the Springborn soil biodegradation studies elsewhere in the Response to Comments document (Ref. 69). As explained earlier, the international persistence criteria are not relevant to the classification of persistence under the criteria adopted by the Agency, and EPA disagrees that TBBPA should not be considered persistent because it does not meet the "most widely (and internationally) accepted" criteria. (See Unit VI.B.)

The commenter makes the argument that TBBPA has been shown to be subject to biodegradation in soil and sediment under aerobic and anaerobic conditions with "estimated" half-lifes of 50 days. Although the commenter derived a biodegradation half-life, the method used to do so and the validity of the value could not be determined because no supporting information was provided. EPA questions the validity of the 50–day half-lifes estimated by the commenter on those grounds.

The commenter refers to two soil grab sample studies and a sediment/water microbial system study. These studies investigated the biodegradation of TBBPA in three different soil types in the presence (aerobic) and absence (anaerobic) of oxygen, and the biodegradation of TBBPA in a system containing sediment and river water in the presence of oxygen. In the aerobic soil studies less than 6% ultimate biodegradation (complete biodegradation to CO_2) was observed over the 64–day test period. The major portion of TBBPA remained in the soil. Analysis showed after 64 days 74 to 82% TBBPA remained in a Massachusetts sandy loam soil, 36 to 40% remained in an Arkansas silt loam, and 41 to 43% remained in a California clay loam soil. Over the course of the experiments, TBBPA either remained in soil undegraded, underwent minor structural changes (primary biodegradation), or to a very small extent (<6%), underwent complete biodegradation to CO_2. Individual values for evolved CO_2 in each soil type over time were not reported and biodegradation half-life values were not calculated. If it is assumed in the absence of values for CO_2 evolution at sampling times spaced evenly over the test period reported data, that TBBPA underwent a steady rate of degradation over the duration of the experiments, approximate half-lifes of 44 to 179 days can be estimated (Ref. 7).

Biodegradation half-lifes from the aerobic soil biodegradation experiments can be approximated. The half-life is defined as the amount of time necessary for the destruction of half of the chemical present in the medium. Given that the duration of the soil biodegradation test is 64 days (equivalent to greater than 2 months), a chemical that undergoes less than 50% biodegradation by the end of the test period would have a half-life of greater than 2 months and meet the EPCRA 313 persistence criteria for soil. In one of the soils in which TBBPA was tested (a Massachusetts sandy loam soil) 74 to 82% of the original TBBPA applied remained in the soil unchanged at the end of the 64–day test period. Thus, in this study, TBBPA was shown to have a half-life in soil of greater than 2 months since less than 50% degradation of TBBPA occurred in 64 days.

The biodegradation of TBBPA in the same three soils as above under anaerobic conditions in a 64–day test has also been studied. The results showed that 44 to 57% of the TBBPA applied to soil remained undegraded in the Massachusetts sandy loam soil after a 64–day test period, 53–65% in an Arkansas silt loam soil, and 90% in a California clay loam soil. Less than 50% destruction of the test chemical occurred over a 64–day (> 2 month) test period in all soils tested. Thus, in this study, TBBPA was shown to have a half-life in soil of greater than 2 months since less than 50% degradation of TBBPA occurred in 64 days.

Aerobic sediment water microbial test systems containing natural sediments and river water were used to measure degradation half-lifes for TBBPA in 56–day experiments. Half-lifes calculated for the biodegradation of TBBPA ranged from 48 to 84 days. Researchers found an apparent correlation between half-lifes and TBBPA concentration, and half-lifes and microbial concentrations. Thus, in this study, TBBPA was shown to have a half-life in sediment water systems of greater than 2 months when either the larger value or the mean of the two values is considered.

Further, the commenter claims that abiotic degradation of TBBPA in water also is expected. The calculated half-life of decomposition of TBBPA by UV radiation in water was 10.2 days in spring, 6.6 in summer, 25.9 in autumn, and 80.7 days in winter. Therefore, TBBPA is not expected to be persistent in water. No other information was provided.

The commenter cites WHO EHC 172 (Ref. 83) for data on photodegradation to support the claim that TBBPA does not meet the persistence criteria for water. In its review of the literature to evaluate the persistence of TBBPA, EPA found no information on its photodegradation in water. A review of the citation provided by the commenter reveals that it is a secondary reference taken from an unpublished study from Bayer (Ref. 10). EPA was unable to review the full unpublished study to determine the quality of the data. Only the summary found in the WHO document was available. The Bayer study on photodegradation in water yielded calculated half-lifes ranging from 6.6 days to 80.7 days with the longest half-life calculated during the winter, when solar irradiation is least intense and the shortest half-life occurring in the summer, when the solar irradiation is most intense. The commenter did not include the fact that the effect of cloud cover lengthened the calculated half-life by a factor of 2. Water depth was also found to influence the direct photodegradation of TBBPA. At the surface of a water body, solar irradiation is fairly uniform; however, as depth increases, both the water itself and materials in it can attenuate the transmission of solar energy through the water column. Irradiance has been shown to decrease by greater than 90% for both ultraviolet and visible light at a depth of 5 meters in a eutrophic lake (Ref. 52). EPA disagrees with the commenter's conclusion that TBBPA photodegradation in water will be sufficiently rapid that it will not meet the persistence criteria. Based on the study cited by the commenter which includes an 80–day (> 2 month) half-life for photodegradation of TBBPA in winter, and the mitigating effects of water depth and cloud cover on rates of photodegradation, EPA believes that a half-life of greater than 2 months in water is supported. EPA, therefore asserts that based on these findings, TBBPA meets the EPCRA section 313 persistence criteria of greater than 2 months in soil and water.

2. *Bioaccumulation*—a. *Dioxin and dioxin-like compounds*. In the proposal, EPA preliminarily determined that dioxin and dioxin-like compounds have BCF values that range from 1,259–42,500 with 6 chemicals over 5,000 and 6 chemicals between 3,500 and 5,000. EPA has reviewed information and all comments received on dioxin and dioxin-like compounds' bioaccumulation characteristics. As indicated in Table 3, EPA finds that dioxin and dioxin-like compounds bioaccumulate in the environment with BAF/BCF values greater than 1,000 and therefore meet the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, most of the members of the dioxin and dioxin-like compounds category bioaccumulate in the environment with a value close to, or well above, 5,000, which supports EPA's decision to lower the threshold to 0.1 gram.

b. *Aldrin*. In the proposal, EPA preliminarily determined that aldrin has a BCF value of 3,715. EPA has reviewed information and all comments received on aldrin's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that aldrin bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

c. *Chlordane*. In the proposal, EPA preliminarily determined that chlordane has a BCF value of 11,050. EPA has reviewed information and all comments received on chlordane's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that chlordane bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, chlordane bioaccumulates in the environment with a BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

d. *Heptachlor*. In the proposal, EPA preliminarily determined that heptachlor has a BCF value of 19,953. EPA has reviewed information and all comments received on heptachlor's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that heptachlor bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and in EPA's support documents for this rulemaking (Ref. 71). In addition, heptachlor bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

e. *Isodrin.* In the proposal, EPA preliminarily determined that isodrin has a BCF value of 20,180. EPA has reviewed information and all comments received on isodrin's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that isodrin bioaccumulates in the environment with a BAF/BCF value greater than1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, isodrin bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

f. *Methoxychlor.* In the proposal, EPA preliminarily determined that methoxychlor has a BCF value of 8,128. EPA has reviewed information and all comments received on methoxychlor's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that methoxychlor bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

g. *Pendimethalin.* In the proposal, EPA preliminarily determined that pendimethalin has a BCF value of 1,944. EPA has reviewed information and all comments received on pendimethalin's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that pendimethalin bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

h. *Toxaphene.* In the proposal, EPA preliminarily determined that toxaphene has a BCF value of 34,050. EPA has reviewed information and all comments received on toxaphene's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that toxaphene bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, toxaphene bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

i. *Trifluralin.* In the proposal, EPA preliminarily determined that trifluralin has a BCF value of 5,674. EPA has reviewed information and all comments received on trifluralin's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that trifluralin bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

j. *Polycyclic aromatic compounds.* In the proposal, EPA preliminarily determined that PACs have BCF values that ranged from 800 to 31,440 with 16 of the 21 members of the category having BCF values greater than 5,000. EPA received several comments concerning the PACs category listing and the bioaccumulation data which are addressed below. EPA has reviewed information and all comments received on PACs' bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that PACs bioaccumulate in the environment with BAF/BCF values greater than 1,000 and therefore meet the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

Three of the commenters support the retention of a single PACs category while one commenter believes that splitting the category into two categories would be the most appropriate option. Additional specific comments were as follows. One commenter stated that PACs are typically found as mixtures in incoming natural organic raw materials, such as coal and that it would be difficult to separate information into two reporting categories. Another commenter stated that reporting as one category is also more consistent with the Great Lakes Binational Toxics Strategy Level 2 listing for these chemicals. A commenter stated that the alternate proposal to create two PAC categories would be unnecessarily burdensome for the regulated community since reporting facilities would be required to speciate their PAC releases, and, if chemicals from both categories exceeded reporting thresholds, file two Form R reports, instead of one. One commenter stated that use of a single PACs category will simplify the reporting requirements; thus, it will reduce reporting burden. Several commenters stated that according to the proposed rule, 16 of the 21 members of the category had BCF values greater than 5,000 and that one proposal would regard the entire PACs category to be highly persistent and bioaccumulative, regardless of each individual PAC's actual persistence and bioaccumulative properties. Several commenters stated that they believed that splitting the category into two categories would be the most appropriate course. Another commenter stated that no chemical should be added to the highly persistent/bioaccumulative category when it does not fit the criteria and that in order to gain the most accurate information, two separate categories would be the superior solution. The commenter stated that lowering the reporting threshold for the PACs category to 10 pounds is unjustified considering that, according to EPA data, many of the individual PACs within the category do not meet the PBT criteria.

EPA considered splitting the PACs category into two or three categories or listings, but EPA believes, as do most of the commenters, that the most appropriate option is to retain a single PACs category. The PACs category was created because the members of the category are chemically and structurally very similar, share the same toxicological effect (carcinogenicity), and typically are produced, released, and otherwise managed as waste as complex mixtures rather than individual chemicals. As such it would be more difficult to estimate releases if the category were split into two or three categories based on the currently available bioaccumulation data. These reasons support retaining a single PACs category. EPA agrees with those commenters that stated that the retention of a single PACs category would be the simpler and less burdensome option. EPA also recognizes that, based on currently available information, not all members of the PACs category meet the highly persistence and highly bioaccumulative criteria. Of the 21 chemicals in the PACs category proposed for a lower threshold, 5 have BCF values that nominally do not meet the highly bioaccumulative criteria, while the rest exceed the highly bioaccumulative criteria. Given the structural similarities of the members of this category and the higher bioaccumulation values for 16 of the 21 PACs, the 5 BCF values below 5,000 may underestimate, to some extent, the bioaccumulation potential of these compounds. For purposes of this rulemaking, EPA is classifying the PACs category as persistent and bioaccumulative rather than highly persistent and highly bioaccumulative. Thus, the PACs category will have a reporting threshold of 100 pounds. However, the Agency will continue to assess the bioaccumulation potential of this category and specifically whether the lower bioaccumulation values for 5 members of the category are appropriate.

k. *Benzo(g,h,i)perylene.* In the proposal, EPA preliminarily determined that benzo(g,h,i)perylene has a BCF value of 25,420. EPA has reviewed information and all comments received on benzo(g,h,i)perylene's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that benzo(g,h,i)perylene bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, benzo(g,h,i)perylene bioaccumulates in the environment with a BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

l. *Mercury and mercury compounds.* In the proposal, EPA preliminarily determined that mercury and mercury compounds have BCF values that ranged from 7,000 to 36,000. EPA has reviewed information and all comments received on mercury and mercury compounds' bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that mercury and mercury compounds bioaccumulate in the environment with BAF/BCF values greater than 1,000 and therefore meet the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical category can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, mercury and mercury compounds bioaccumulate in the environment with a value above 5,000, which supports EPA's decision to lower the threshold to 10 pounds.

m. *Polychlorinated biphenyls.* In the proposal, EPA preliminarily determined that PCBs have BCF values that ranged from 4,922 to 196,900. All of the PCBs, except one, had BCF values far exceeding 5,000. The one exception, 2,3,3',4,4',5,5' heptachlorobiphenyl, had a BCF value of 4,922. EPA has reviewed information and all comments received on PCBs' bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that PCBs bioaccumulate in the environment with BAF/BCF values greater than 1,000 and therefore meet the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical listing can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, with one exception, all of the PCBs listed bioaccumulate in the environment with a value far exceeding 5,000, which supports EPA's decision to lower the threshold to 10 pounds.

n. *Hexachlorobenzene.* In the proposal, EPA preliminarily determined that hexachlorobenzene has a BCF value of 29,600 to 66,000. EPA has reviewed information and all comments received on hexachlorobenzene's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that hexachlorobenzene bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, hexachlorobenzene bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

o. *Octochlorostyrene.* In the proposal, EPA preliminarily determined that OCS has a BCF value of 33,113. EPA received one significant comment addressing OCS's bioaccumulation potential which is discussed below. EPA has reviewed this comment and information on OCS's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that OCS bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking. (Ref. 71). In addition, OCS bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

One commenter argued that OCS should not be included in the EPCRA section 313 PBT chemicals list. The commenter contends that OCS was included as a PBT chemical simply because it appears on several lists of persistent and bioaccumulative chemicals and not based on a thorough evaluation of its bioaccumulation. The commenter states that OCS has the potential to bioaccumulate, but nonetheless, OCS levels in fish and aquatic species in the Great Lakes continue to decline. The commenter provides a report on the Great Lakes region and argues that OCS should not be considered a PBT chemical since environmental concentration data show OCS levels in the environment are decreasing at a rate of 8% to 30% per year.

EPA disagrees with the commenter's conclusions. The commenter does not dispute the bioaccumulation values EPA presented in the proposed rule. Rather the commenter agrees that OCS has the potential to bioaccumulate but contends that since environmental concentrations are declining in the Great Lakes region OCS should not be considered a PBT chemical. The fact that OCS levels in the Great Lakes region may be declining is not a basis for concluding that OCS is not a PBT chemical or that it cannot bioaccumulate. There are a number of reasons that could explain a decrease in environmental concentrations of OCS but they do not change the fact that OCS has been shown to be highly bioaccumulative. OCS was included as a PBT chemical because it meets the EPCRA section 313 criterion for bioaccumulation laid out in the proposed rule, not simply because it has appeared on several other lists of PBT chemicals.

p. *Pentachlorobenzene.* In the proposal, EPA preliminarily determined that pentachlorobenzene has a BCF value of 8,318. EPA has reviewed information and all comments received on pentachlorobenzene's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that pentachlorobenzene bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71). In addition, pentachlorobenzene bioaccumulates in the environment with a BAF/BCF value greater than 5,000 which supports EPA's decision to lower the threshold to 10 pounds.

q. *Tetrabromobisphenol A*. In the proposal, EPA preliminarily determined that TBBPA was found to have BCF values of 780; 1,200; and 3,200. EPA received one significant comment addressing TBBPA's bioaccumulation which is discussed below. EPA has reviewed the comments and information on TBBPA's bioaccumulation characteristics. Taking into account this information, as indicated in Table 3, EPA finds that TBBPA bioaccumulates in the environment with a BAF/BCF value greater than 1,000 and therefore meets the bioaccumulation criterion established in this rulemaking. A complete discussion of EPA's findings on this chemical can be found in EPA's Response to Comments document for this rulemaking (Ref. 69) and/or in EPA's support documents for this rulemaking (Ref. 71).

One commenter contends that the available data on TBBPA do not support its classification as a PBT chemical. The commenter argues that the oyster BCF value of 780 does not support the proposed criterion of 1,000. The commenter also notes that EPA fails to consider that TBBPA is not retained in the body once dosing stops in a BCF test and that TBBPA is rapidly eliminated. The commenter states that rapid elimination limits any potential for biomagnification. The commenter notes that only the highest chironomid BCF value (3,200) was cited by EPA and not the fact that this is from a range of 650–3,200.

EPA believes that the available data do support classification of TBBPA as a PBT chemical. Measured BCF values of 780, 1,200, and 3,200 were obtained from TSCA section 4 tests with oysters, fish and chironomids, respectively. The measured BCF values of 1,200 and 3,200 for fish and chironomids respectively, clearly satisfy the EPCRA section 313 bioaccumulatioin criterion of 1,000. EPA is aware that TBBPA will be eliminated from the body eventually once exposure to the chemical is halted; however, continuous or intermittent exposures of TBBPA to organisms may result in significant tissue residues depending on the exposure or release scenarios. The issue of biomagnification of TBBPA is not relevant to determining if TBBPA is a PBT chemical. As discussed in Unit VI.B.3., biomagnification is not required in order to have a concern for chemicals that bioaccumulate. The highest chironomid BCF value was listed because it is considered as a worst case indication of bioaccumulation in sediment-dwelling invertebrates.

I. Exemptions and Other Reporting Requirements

1. *De minimis exemption*. Many of the commenters assert that the initial reasons for adopting the *de minimis* exemption are still valid and that this exemption should be maintained for PBT chemicals. Specifically, several commenters contend that the *de minimis* exemption was initially adopted to alleviate undue burden on reporting facilities and that the elimination of this exemption for PBT chemicals will significantly increase the reporting burden for this rulemaking.

EPA disagrees with the commenters' contention that the initial reasons for adopting the *de minimis* exemption are valid for PBT chemicals. As originally explained in the 1988 final rule implementing the reporting provisions of EPCRA section 313, reiterated in the 1997 final rule adding seven new industry sectors, and discussed in the proposal to this final rule, EPA promulgated the *de minimis* exemption for several reasons, of which burden was only one. In addition to burden reduction, EPA promulgated the *de minimis* exemption because: (1) The Agency believed that facilities newly covered by EPCRA section 313 would have limited access to information regarding low concentrations of toxic chemicals in mixtures that are imported, processed, otherwise used or manufactured as impurities; (2) the Agency did not believe that these low concentrations would result in quantities that would significantly contribute to threshold determinations and release calculations at the facility (53 FR 4509); and (3) the exemption was consistent with information collected under the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS). If EPA had adopted the exemption only to reduce burden, the exemption would have covered all uses of *de minimis* quantities of the toxic chemical in mixtures. The exemption, however, includes only limited uses of the toxic chemical in mixtures (i.e., importing, processing, otherwise use, and manufacturing impurities) that were roughly tailored to whether EPA expected that facilities were reasonably likely to have information that would allow them to determine thresholds and make release calculations.

The purpose of the PBT rulemaking, however, is different from past rulemakings in that it is intended to capture information on significantly smaller quantities of releases and other waste management associated with these chemicals. Most of the PBT chemicals addressed in this rule have been shown to cause adverse effects at concentrations far less than the *de minimis* levels. For example, dioxins have been shown to cause adverse effects at levels in the parts per trillion. In addition, after 10 years of experience with the program, the Agency believes there are many sources of information in addition to material safety data sheets (MSDSs), readily available to reporters to use in making EPCRA section 313 determinations. Some of these sources of information include EPA guidance documents (e.g., *EPCRA Section 313 Industry Guidance: Electricity Generating Facilities* (EPA 745–B–99–003)) and trade association guidance documents (e.g., National Council of the Paper Industry for Air and Stream Improvement (NCASI) Technical Bulletins and NCASI's *Handbook of Chemical Specific Information for SARA Title III Section 313 Form R Reporting*). In addition, relevant information has become much more accessible to covered facilities over the past 10 years. For example, although the United States Geological Survey's U.S. Coal Quality Database has been in existence since the mid 1970s, only more recently has it been made available on the Internet. (http://energy.er.usgs.gov/products/databases/UScoal/index.htm). Further, the Agency believes that it underestimated how much information covered facilities had available to them in 1988 regarding small concentrations of toxic chemicals in mixtures. Therefore, given that: (1) Covered facilities have several sources of information available to them regarding the concentration of PBT chemicals in mixtures; (2) even minimal releases of persistent bioaccumulative chemicals may result in significant adverse effects and these small quantities can reasonably be expected to significantly contribute to the lower thresholds; and (3) the concentration levels originally chosen, in part, to be consistent with the OSHA HCS are inappropriately high for PBT chemicals. EPA believes that the reasons for the *de minimis* exemption that the Agency held for previous rulemakings do not apply to PBT chemicals.

A few commenters assert that reviewing each MSDS, when a facility may have many MSDSs for mixtures used on-site, to see if it includes trace quantities of PBT chemicals will be very time consuming. They contend that they do not have the manpower to track products on an individual basis looking for trace quantities of PBT chemicals and that these activities will be very burdensome.

EPA disagrees that eliminating the *de minimis* exemption for PBT chemicals will greatly increase burden under EPCRA section 313. Covered facilities are not required to report on toxic chemicals in mixtures and trade name products for which they have no concentration information or such information that is not reasonably known. However, if facilities do have information concerning the concentration of PBT chemicals in mixtures, such as on MSDSs, EPA does not believe it is more burdensome for facilities to identify and evaluate process streams containing relatively small quantities of PBT chemicals than for larger quantities of chemicals. Although some burden is associated with the identification and evaluation of process streams, EPA disagrees that the elimination of the *de minimis* exemption would vastly increase the extent of this required effort. Covered facilities will need to identify and evaluate process streams when considering a PBT chemical in concentrations below the *de minimis* level in the same manner they already do for toxic chemicals found in process streams in concentrations above the *de minimis* level. The additional burden can be attributed to resources spent considering and reporting on information they currently are allowed to disregard. Further, as explained above, EPA adopted the *de minimis* exemption for several reasons, of which burden reduction was only one, and EPA does not believe that these original reasons apply to this PBT rulemaking.

Some commenters assert that it is unrealistic for EPA to assume that industry will report only on what they know without making an effort to fill the data gaps and that enforcement actions could arise from reports based on only what is known to a facility.

EPA disagrees, however, because covered facilities are expected to have reasonable knowledge of the toxic chemicals present at their site and need only document their considerations concerning threshold determinations and release and other waste management calculations. As stated in EPCRA section 313(g)(2):

> [i]n order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. *Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation.* . . . (emphasis added)

Further, as stated previously, covered facilities are not required to report on toxic chemicals in mixtures and trade name products for which they have no concentration information, or for which such information is not readily available. Therefore, it is unlikely that facilities will have additional enforcement concerns.

Several commenters argue that the need to be consistent with the OSHA HCS that EPA cited in the 1988 final rule continues to be relevant with regards to collecting information on very small quantities.

EPA disagrees that the need to be consistent with OSHA to reduce burden is sufficient to justify retaining the *de minimis* exemption for PBT chemicals. EPA is not required to be consistent with the OSHA HCS. In 1988, EPA chose to be consistent with the OSHA HCS as part of its rationale for the exemption, because the Agency expected facilities to be familiar with these levels and thought that covered facilities might only have access to MSDSs for information on the content and percentage composition of toxic chemicals in mixtures. (See 53 FR 4509) However, EPA has never instructed facilities to stop looking if information concerning a toxic chemical is not on an MSDS. Rather, EPA has consistently instructed facilities to use their best readily available data in determining compliance with EPCRA section 313. As EPA explained earlier, given 10 years of experience with the program, the Agency believes that facilities may have other sources of information, in addition to MSDSs, available to them. Therefore, if a facility has better information regarding the concentration of a toxic chemical in a mixture, for example, that the chemical is above the *de minimis* level, the facility should be using that information to comply with EPCRA section 313. Further, EPA is consistent in some respects because under the OSHA HCS, if an employer has reason to believe that a permissible exposure limit for a component may be exceeded under the mixture's normal circumstances of use, the HCS also requires employers to list chemicals that are below the 1.0% and 0.1% thresholds. Therefore, OSHA adopted exceptions to the 1.0% and 0.1% limits under the HCS. Similarly, PBT chemicals are different from other toxic chemicals in that they may pose a more significant concern to the environment in much smaller quantities than other toxic chemicals. Furthermore, as explained in other responses in this unit, EPA believes the remainder of its rationale for the *de minimis* exemption is not applicable to PBT chemicals. For example, contrary to the commenter's statement, the small concentrations subject to the *de minimis* exemption are not necessarily small quantities and may contribute significantly to exceeding the lowered reporting thresholds.

Some commenters argue that the Agency has not justified why the exemption will result in increased health risk to the public or the environment. One commenter specifically argues that given the extremely low levels of these PBT chemicals in coal, the risk to the general public from these releases, which they believe is the original purpose of the legislation, is not apparent. Another commenter asserts that EPA must demonstrate that the removal of the exemption for specific PBT chemicals will have a public health or environmental benefit. Yet another commenter argues that the concentration of toxic chemicals contained in mixtures is irrelevant to public health concerns when the compounds of concern remain chemically bound within benign compounds.

EPA strongly disagrees with those commenters who indicated that EPA must consider risk to the general public when determining whether to eliminate the *de minimis* exemption. A primary purpose of the TRI program is to provide data on the releases (and other waste management activities) of listed toxic chemicals to communities so that they may use these data in conjunction with toxicity information for the chemical and site-specific information to determine if releases present a potential risk. They can also use TRI data in other ways. For example, an individual can use TRI data as a factor in choosing a neighborhood in which to live. The purpose of TRI, however, is not to make a national determination of risk, nor did EPA consider risk in its original adoption of the *de minimis* exemption under EPCRA section 313.

Moreover, as previously explained, EPA originally promulgated the *de minimis* exemption based on several considerations that are inapplicable to PBT chemicals. Where, as here, the rationale and factual bases underlying an exemption no longer exist with respect to a particular class, the Agency believes it cannot justify retaining the exemption for that class. Further, the Agency has received no information from any commenters that contradicts the Agency's factual and legal conclusions, or that would otherwise present a basis for retention of the *de minimis* exemption.

EPA also disagrees with the comment that because there are very low levels of PBT chemicals (e.g., mercury) in coal that the risk to the general public is not apparent. EPA believes that the commenter misunderstands the concept of risk. Because a chemical is in a low concentration in coal does not in itself control the level of risk that can result when coal is combusted. For example, mercury compounds are found in very low concentrations in coal. When coal is combusted, mercury compounds are either converted into mercury chloride or reduced to elemental mercury. Some of the mercury/mercury chloride is released to air and some remains in the bottom ash. The concentration of the mercury/mercury chloride in the air wastestream will not be the same as the concentration originally present in the coal. Once the mercury/mercury chloride is released, it will be carried varying distances before it is deposited. Mercury can be transported over large distances, while mercury chloride may be deposited relatively rapidly by wet and dry deposition processes. The amount of mercury in a community or ecosystem will depend upon sources both local and distant. Once mercury has been deposited, it will bioaccumulate in organisms and will also persist in the environment as a sink for exposure and bioaccumulation. The amount of mercury that a human, animal, or plant will be exposed to is related more closely to exposure pathways and the quantity that is present in an ecosystem rather than the concentration in the coal that is combusted. Thus, EPA believes that the commenter is incorrect.

One commenter asserts that the elimination of the *de minimis* thresholds would not yield meaningful additional information. The commenter argues that the proposed rule vastly overstates the significance of TRI data and therefore incorrectly concludes that the *de minimis* thresholds would "deprive communities of important information on PBT chemicals" (at 64 FR 714). Instead, the commenter contends, TRI data only provide a snapshot view of releases from the chemical industry and the few other industry sectors subject to TRI reporting and that many potential release sources are not subject to TRI reporting. The commenter argues that these sources overwhelm the limited additional information that will be reported by eliminating the *de minimis* exemption.

EPA disagrees that the proposed rule vastly overstates the significance of the TRI data. The public, all levels of government, and the regulated community have come to rely on TRI data in improving decision-making, measuring pollution prevention, and understanding the environmental and health consequences of toxic chemical releases and other waste management activities. Although the Toxics Release Inventory does not contain a complete inventory of every release, EPA believes it does provide one of the most comprehensive and accessible sources of release and other waste management information available. EPA also disagrees with the commenter's assertion that the data base only contains information from the chemical industry and a few others. In fact, all 20 manufacturing industry groups as well as an additional 7 other industries including metal and coal mining facilities and hazardous waste management facilities are subject to EPCRA section 313. Further, with the addition of these 7 newly covered industries, EPA expects over 27,500 facilities to submit over 110,000 reports on more than 630 toxic chemicals to the TRI for the 1998 reporting year. Currently no other sources of information can provide releases and information on other waste management quantities and qualitative source reduction data with the scope, level of detail, and chemical coverage as data currently included in TRI.

Further, as EPA has previously explained, PBT chemicals can remain in the environment for a significant amount of time and can bioaccumulate in animal tissues. Even relatively small releases of such chemicals have the potential to accumulate over time and cause significant adverse impacts on human health and the environment. Therefore, EPA believes it is particularly important to gather and disseminate to the public relevant information on even relatively small amounts of releases and other waste management of PBT chemicals. Under the 10,000 and 25,000 pound/year reporting thresholds, a significant amount of the releases and other waste management activities involving PBT chemicals are not being captured and thus the public does not have the information needed to determine if these chemicals are present in their communities at levels that may pose a significant risk.

Several commenters argue that the *de minimis* exemption already does not apply to the manufacture of a toxic chemical unless the toxic chemical is manufactured as an impurity or is imported. Therefore, any incidental manufacturing of a PBT chemical as a by-product would not be eligible for the *de minimis* exemption and would be subject to reporting. Thus, they argue, the elimination of the exemption will provide little additional information and will not provide added value.

The commenters are correct in stating that there are instances where PBT chemicals are manufactured as by-products and would, therefore, not be affected by the elimination of the *de minimis* exemption. However, as EPA explained in the PBT proposal, there are also many instances where a PBT chemical may exist in a mixture or trade name product at a concentration below the 1% or 0.1% *de minimis* limit but where the processing or otherwise use of the PBT chemical in that mixture would otherwise contribute significantly to or in itself exceed the reporting thresholds (at 64 FR 714). For example, mercury can be found at very low concentrations in steel. A resmelting facility could process and release more than 100 pounds of mercury a year from its resmelting activities. However, although this total quantity is greater than the 10 pound proposed threshold for mercury, if the concentration of mercury in the steel is less than the *de minimis* limit, none of the mercury would be reportable if the *de minimis* level is retained for PBT chemicals. Releases and other waste management associated with these exempt activities would be absent from the TRI data base. Because even minimal releases of PBT chemicals may result in elevated concentrations in the environment or in an organism and can have the potential to cause an adverse effect, EPA believes that all releases of these chemicals are of concern and that such information is significant and of value to the public.

a. *Readily available data.* Some commenters assert that the elimination of the *de minimis* exemption will conflict with the condition that reporters obtain data from readily available sources. They argue that because concentrations below 1% (and 0.1% for carcinogens) are not required on MSDSs, reporters will no longer be able to use MSDSs to screen for products containing PBT chemicals below these concentrations. They further contend that AP-42 guidance, Air CHIEF CD-ROM, TANKS, CHEMDAT8 and WATER8 would provide additional assistance in estimating the amount of a PBT coincidentally manufactured in wastestreams or released; however, these tools will not help quantify the amount of chemical in materials which are distributed in commerce or used as feedstock. They assert that there are no other consistent sources of information on whether a product contains a PBT chemical below *de minimis* levels. They also assert that the elimination of the *de minimis* exemption will cause additional burden for the regulated community because covered facilities will struggle with how to comply in the absence of information.

The Agency believes that since reporting first began in 1988, new sources of information have become available to covered facilities to use to determine concentrations of toxic chemicals in mixtures. In addition to the data bases and information sources cited by the commenter, EPA believes there are other sources of data that can and should be used in making threshold determinations and release and other waste management calculations for PBT chemicals. Examples of these sources of information include EPA guidance documents (e.g., *EPCRA Section 313 Industry Guidance: Electricity Generating Facilities* (EPA 745–B–99–003)) and trade association guidance documents (e.g., National Council of the Paper Industry for Air and Stream Improvement (NCASI) Technical Bulletins and NCASI's *Handbook of Chemical Specific Information for SARA Title III Section 313 Form R Reporting*). In addition, relevant information has become much more accessible to covered facilities over the past 10 years. For example, the United States Geological Survey's U.S. Coal Quality Database has been in existence since the mid 1970s, but only more recently has it been made available on the Internet. (http://energy.er.usgs.gov/products/databases/UScoal/index.htm) EPA believes that these tools, in addition to the ones cited by the commenter, will help covered facilities quantify the amount of chemical in materials which are distributed in commerce or used as feedstock and will allow covered facilities to make reasonable calculations to comply with EPCRA section 313. Further, the Agency believes that it underestimated how much information covered facilities had available to them in 1988 regarding small concentrations of toxic chemicals in mixtures. Therefore, EPA believes that facilities have sufficient information to make threshold determinations and release and other waste management calculations for PBT chemicals below *de minimis* concentrations. However, as EPA explained above, if a covered facility has no information, including no reasonable estimates or other reasonably known information, on the concentration of the toxic chemical in the mixture, they need not consider the chemical in that mixture for threshold determinations and release and other waste management calculations (at 53 FR 4511). Therefore if the only source of information on a toxic chemical in a mixture is from an MSDS, and the MSDS does not indicate if the chemical is contained in the mixture, the facility is not required to consider the toxic chemical towards threshold determinations or release and other waste management calculations.

Because some facilities covered under EPCRA section 313 have more extensive information available to them than they did in 1988, or EPA underestimated how much information they had available in 1988, and because these facilities are not required to report if they have no information on the concentration of the toxic chemical, the Agency believes that in these cases retention of the *de minimis* exemption would allow facilities to avoid reporting when information is available to them that would otherwise permit them to report.

Some commenters assert that facilities will have to begin monitoring for trace quantities of chemicals in mixtures if the *de minimis* exemption is eliminated for PBT chemicals. One commenter argues that the only way facilities would be able to estimate the levels of dioxin in combustion products and wastewater treatment "would be to undertake the costly burden of monitoring what comes off at a series of concentrations and temperatures." Another commenter asserts that if the *de minimis* level is eliminated, industry would be subject to increased enforcement action because exhaustive testing may be insufficient to detect the chemicals.

EPA disagrees with the commenters because, as stated previously, EPCRA section 313(g)(2) limits monitoring requirements under EPCRA section 313. Under this section, facilities are not required to perform any additional monitoring or analysis of production, process or use other than that already collected under other requirements. However, if a facility is required to monitor toxic chemicals under another statute, this data must be considered in determining thresholds and release and other waste management calculations under EPCRA section 313. EPCRA section 313(g)(2) requires that facilities use readily available data, or in absence of such data, facilities are required to use reasonable estimates. If no monitoring data are available, the facility should use other readily available information in making threshold determinations and release and other waste management calculations. Further, if the facility believes that it has other, more representative data than its monitoring data, the facility should use that information instead.

As to specifically tracking PBT chemicals in wastewater, the commenter does not specify whether the toxic chemicals discussed in the comment are manufactured as by-products, are processed, or otherwise used. As discussed above, the *de minimis* exemption does not apply to toxic chemicals manufactured as by-products. Therefore, if PBT chemicals are coincidentally manufactured during on-site wastewater treatment, covered facilities would be required to consider those PBT toxic chemicals for threshold determinations and release and other waste management calculations even if the *de minimis* exemption were retained for PBT chemicals. Similarly, PBT chemicals manufactured as a result of burning fuel would not be exempt even if the *de minimis* exemption were retained because manufactured by-products are not eligible for this exemption. PBT chemicals in below *de minimis* concentrations in mixtures that are imported, processed, or otherwise used will be affected by the elimination of the *de minimis* exemption. Covered facilities will need to consider these quantities towards threshold determinations and release and other waste management calculations. These calculations would include the amounts contained in combustion by-products and wastewater treatment units. Additional monitoring of these quantities, however, would not be required under EPCRA section 313. Finally, EPA has limited the dioxin listing with the qualifier "manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical." Therefore, not all processing or otherwise use activities of the dioxin and dioxin-like compounds category must be considered towards a facility's threshold determinations.

Some commenters assert that EPA should maintain the *de minimis* exemption for PBT chemicals present as impurities. They argue that information on PBT chemicals present as impurities is not readily available and that obtaining the relevant data, conducting the initial reviews to determine what information is available, and identifying data gaps would impose a huge burden on industry. They argue that even developing estimates with any accuracy entails a significant amount of time. In the instance of impurities, they assert that the absence of data and the difficulty in developing estimates will result in a heavy burden with little information of value being reported. These commenters believe that the elimination of the *de minimis* level is a requirement to provide new data when utilizing the *de minimis* exemption.

EPA disagrees with these commenters. Although there are burdens associated with obtaining relevant data, determining available information and identifying data gaps, EPA disagrees that the elimination of the *de minimis* exemption for PBT chemicals present as impurities would vastly increase the extent of this required effort. From the comment, it is unclear why requiring facilities to identify and evaluate process streams containing small quantities of PBT chemicals as impurities is more burdensome than for larger quantities of these chemicals manufactured, processed, or otherwise used at a covered facility in excess of the activity thresholds. For example, a facility monitors for chemical A at a concentration of greater than 0.001% and monitors for chemical B at a concentration of greater than 1.5%. The monitoring is done for the same wastestream and the same frequency. There is no differential in effort or burden. Currently, the only difference is that facilities can ignore available data when utilizing the *de minimis* exemption.

One commenter asserts that the *de minimis* exemption should be retained for PBT chemicals present at mining facilities. The commenter argues that the burden upon the mining industry is even greater in the context of the low thresholds proposed for PBT chemicals. Further, the commenter asserts that although EPCRA does not require covered facilities to conduct tests concerning the amount of listed chemicals processed, most reporters rely upon their knowledge of their manufacturing processes and raw materials to produce meaningful data for EPCRA section 313 reporting purposes. The commenter contends that this is not true of the mining industry. Due to the volume of materials moved in the extraction process and the heterogeneous nature of the materials mined, process knowledge often is inadequate to produce a meaningful picture of the minute levels of PBT chemicals that may be present in mining operations. The commenter asserts that inadequate process knowledge combined with the enormous expense of constantly testing the processed materials makes the elimination of the *de minimis* exemption for PBT chemicals unworkable as applied to mining operations.

EPA disagrees with the commenter. As the commenter points out, under EPCRA section 313(g)(2), facilities are not required to perform any additional monitoring or analysis of production, process, or use other than that already collected under other statutory or regulatory requirements. Therefore, there should be no added cost due to testing to comply with EPCRA section 313. However, EPA believes that in many cases mining facilities have the information needed to make reasonable estimates regarding small concentrations of PBT chemicals in the ores mined. In addition, as EPA explained in the 1988 final rule, if a covered facility has no information on the concentration of the toxic chemical in the mixture, including no reasonable estimates, the facility need not consider the chemical in that mixture for threshold determinations and release and other waste management calculations. If a mining facility does have information regarding the concentration of a toxic chemical in a mixture or trade name product, the facility must consider all non-exempted sources of the chemical for threshold determinations. If an activity threshold is exceeded for the chemical, the facility must then calculate release and other waste management quantities. Covered mining facilities will need to identify and evaluate process streams when considering a PBT chemical in concentrations below the *de minimis* level just as they already do for toxic chemicals found in process streams in concentrations above the *de minimis* level. Therefore, given that covered facilities: (1) Are not required to perform additional monitoring; (2) are not required to consider concentrations of toxic chemicals for which they have no information; and (3) need only consider readily available data, EPA disagrees that identifying and evaluating mining activities involving mixtures containing less than 1.0% or 0.1% concentrations of PBT chemicals will be more burdensome than for larger quantities of these chemicals manufactured, processed, or otherwise used at a mining facility in excess of the activity thresholds.

b. *Alternate de minimis level.* Several commenters argue that in lieu of eliminating the *de minimis* exemption for PBT chemicals, it would make more sense to change the level for the *de minimis* exemption for these chemicals. Some commenters argue that a more appropriate approach would be to compare the current thresholds and the current *de minimis* levels and use the same ratio to create a new *de minimis* level for the lowered PBT chemical thresholds. Therefore, they argue, the existing level is 1% for a threshold of 10,000 pounds, so an analogous reduction of the *de minimis* level would be 0.01% for the new proposed threshold of 100 pounds and 0.001% for the new proposed threshold of 10 pounds per year and 1 ppb for dioxins. One commenter argues that the current *de minimis* level of 0.1% for known or suspected carcinogens is not appropriate for dioxins. They suggest that EPA lower the *de minimis* exemption for dioxins proportionally to the lower reporting threshold EPA sets in the final rule. They assert that a reporting threshold for dioxins of 0.002 pound TEQ (not the threshold in the PBT proposal nor the one that EPA is finalizing today), is approximately seven orders of magnitude less than the current 10,000 pound threshold. Therefore, they argue, the 0.1% *de minimis* exemption should be lowered proportionally to 1×10^{-8}%. This translates to a concentration of 100 parts per trillion.

EPA disagrees with these commenters. As explained previously, EPA adopted the *de minimis* exemption for several reasons including the desire to be consistent with information mandated by the OSHA HCS. This OSHA standard requires the listing of hazardous chemicals on MSDSs but allows chemical suppliers to omit from the MSDSs hazardous chemicals that are below certain concentrations: Specifically, levels of 0.1% for OSHA carcinogens and 1.0% for other hazardous chemicals. However, the rationale for the OSHA HCS *de minimis* exemption is not relevant to PBT chemicals and therefore, is insufficient by itself to support an alternative *de minimis* exemption for PBT chemicals.

As explained in the 1983 final rule, OSHA chose the 1.0% concentration limit based on comments that this level seemed to be sufficiently protective of workers and was considered to be reasonable by a number of commenters (48 FR 53280, at 53290, November 25, 1983). OSHA was also persuaded by comments that in some instances the 1.0% cut-off levels may not be protective enough with respect to certain health hazards and adopted the 0.1% level for carcinogens (at 48 FR 53292). Specifically, PBT chemicals are of concern because they persist and bioaccumulate in the environment. Persistence and bioaccumulation were not considered as a part of the OSHA rulemaking. In addition, as explained in other responses in this unit, EPA's original rationale for this exemption is inapplicable to PBT chemials, and the commenters have provided no alternate rationale to support an exemption based on extrapolating new *de minimis* levels from the proposed thresholds. Therefore, given the different intents between the OSHA HCS and EPCRA section 313, EPA does not believe that creating alternative *de minimis* levels for PBT chemicals based on a ratio between the lowered threshold and the OSHA HCS levels is appropriate.

Several commenters support EPA's elimination of the *de minimis* exemption for PBT chemicals. They assert that retention of the *de minimis* exemption would undermine the changes to the reporting threshold and would allow an unnecessary loophole from reporting. They assert that the rule does not require any additional testing for impurities and that the only additional reporting would be for those facilities that use sufficient quantities of mixtures or trade name products containing PBT chemicals as impurities. One commenter asserts that one of the original reasons for the *de minimis* exemption levels, that it was based on OSHA HCS thresholds of 1.0% for hazardous chemicals in mixtures and 0.1% for carcinogens in mixtures, does not apply to raw materials that are not manufactured chemicals, such as crude oil, coal, and mining inputs.

EPA agrees with these commenters and is eliminating the *de minimis* exemption for PBT chemicals addressed in today's rule. As discussed above, the reasons EPA indicated for originally adopting the *de minimis* exemption are not applicable to PBT chemicals. In addition, EPA has received no compelling arguments from commenters to extend the *de minimis* exemption to PBT chemicals. Because the purpose of today's rulemaking is different from past rulemakings in that it is intended to capture information on significantly smaller quantities of releases and other waste management associated with these chemicals, the *de minimis* exemption could significantly limit the amount of reporting on PBT chemicals. Therefore, given that: (1) Covered facilities have several sources of information available to them regarding the concentration of PBT chemicals in mixtures; (2) even minimal releases of persistent bioaccumulative chemicals may result in significant adverse effects and can reasonably be expected to significantly contribute to the proposed lower thresholds; and (3) the concentration levels chosen, in part, to be consistent with the OSHA HCS are inappropriately high for PBT chemicals, EPA believes that the reasons for the *de minimis* exemption that the Agency held for previous rulemakings do not apply to PBT chemicals. EPA is therefore eliminating the *de minimis* exemption for PBT chemicals.

c. *Supplier notification.* Several commenters were confused by EPA's failure to modify the *de minimis* exemption for PBT chemicals under the supplier notification requirements. As explained in the PBT proposal, the Agency believes that covered facilities have sufficient information available to them on PBT chemicals. The requirement of additional information under the supplier notification requirements would result in redundancies. Commenters that correctly understood EPA's inaction on this topic support the retention of the *de minimis* exemption for purposes of Subpart C Supplier Notification Requirements under 40 CFR 372.45(d)(1). EPA agrees with these commenters and has therefore taken no action on the supplier notification requirements for PBT chemicals.

2. *Other exemptions.* Although the Agency received several comments regarding the existing exemptions, EPA is not modifying any of these exemptions in this rule. Any changes to these exemptions would require additional rulemaking, and any comments submitted to EPA during this rulemaking will be considered as part of EPA's evaluation of these exemptions.

3. *Use of alternate threshold and Form A.* One issue that commenters raise relates to EPA's proposal to exclude all PBT chemicals from the alternate threshold of 1 million pounds for PBT chemicals. Several commenters argue that EPA should retain the alternate threshold of 1 million pounds for PBT chemicals. EPA disagrees. As stated in detail in the proposal, EPA believes that use of the existing alternate threshold and reportable quantity for Form A would be inconsistent with the intent of expanded PBT chemical reporting. The general information provided on the Form A, on the quantities of the chemical that the facility manages as waste is insufficient for conducting meaningful analyses on PBT chemicals.

A commenter states that because PACs in fuel are destroyed during combustion, EPA should retain the alternate threshold or provide a new alternate threshold. First, the commenter did not provide any information to support the contention that PACs in fuel are destroyed during combustion. And, to the contrary, EPA believes that, even if some or all of the PACs in fuel are destroyed during combustion, additional PACs may be created during the combustion process. Consequently, absent any information to support the basis for such an option, or the need for an alternate threshold, EPA does not believe it would be appropriate at this time to provide a new alternate Form A threshold. Although EPA solicited comments on this issue in the proposal, at this time, the Agency believes that it is appropriate to collect and analyze several years worth of data at the lowered thresholds before EPA considers developing a new alternate threshold and reportable quantity appropriate for PBT chemicals.

In addition, the commenter also appears to be raising a broader issue than just the destruction of PACs during combustion. The commenter implies that when a facility estimates its releases to be zero, the facility should be eligible to use the Form A. However, the commenter appears to misunderstand how to calculate the amounts required to determine eligibility for the Form A. Facilities may use the Form A provided that they do not exceed 500 pounds for the total annual reportable amount for a chemical, and that their amounts manufactured or processed or otherwise used do not exceed 1 million pounds. The annual reportable amount is equal to the combined total quantities released at the facility, treated at the facility, recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. The commenter only appears to consider their releases as reportable amounts and does not appear to consider quantities generated from their other waste management activities as reportable amounts. This additional waste management information on PBT chemicals is very important to communities because it helps them understand the quantities of EPCRA section 313 chemicals that are being transported through their communities, the destination of these EPCRA section 313 chemicals, as well as the reported waste management activity at the receiving facility. In conclusion, EPA has not proposed to disregard this waste management information in calculating the annual reportable amount, therefore the commenter's approach is not consistent with current reporting under Form A or appropriate as an approach for reporting on PBT chemicals.

The commenter also states that the alternate threshold should be retained in order to ensure that only meaningful amounts of substances are reported under EPCRA section 313. EPA disagrees that retention of the alternate threshold would ensure that only meaningful information is reported under EPCRA section 313. The 500 pound waste eligibility could be interpreted by some data users, as a worst case, to mean that greater than 500 pounds of the chemical has been released into the environment (i.e., 500 pounds of production-related waste as release and some quantity of catastrophic release). Other data users may assume that the facility had no catastrophic releases and all of the toxic chemical in waste was managed in a manner other than as a release, e.g., the toxic chemical in waste was recycled. For PBT chemicals where any release is a concern, an uncertainty level of 500 pounds may result in data that is virtually unusable. As a result, EPA does not agree with the commenter that the alternate threshold will ensure that only meaningful amounts of substances will be reported under EPCRA section 313.

In addition, the commenter argues elimination of the alternate threshold for PBT chemicals will cause reporting burdens to increase while failing to provide for the collection of substantial additional release information. EPA's economic analysis used reporting costs for the Form R to estimate the costs to those facilities that would not be able to use the alternate threshold. The economic analysis also evaluated the benefits of the collection of additional release and other waste management of PBT chemicals (Ref. 67). The commenter does not dispute those estimates. As a result, EPA sees no compelling argument to revise its decision to exclude all PBT chemicals from the alternate threshold of 1 million pounds.

A number of commenters argue that EPA should eliminate the alternate threshold of 1 million pounds for all PBT chemicals on the EPCRA section 313 list. One commenter asserts that in light of the relatively small quantities of concern for PBT chemicals, particularly those with no deliberate commercial manufacture, it makes little sense to retain the Form A. The commenter further states that it believes that a modified Form A would be inappropriate due to the concern over releases of these chemicals at low levels. Another commenter adds that the Form A is clearly inappropriate for chemicals that will now have thresholds significantly lower than the 500 pound waste generation level. The commenter further contends that it is not appropriate for EPA to set a new Form A threshold for PBT chemicals, given the need to collect more information on these substances.

EPA agrees with the commenters that all PBT chemicals should be excluded from the alternate threshold of 1 million pounds. As stated in detail in the proposal, EPA believes that use of the existing alternate threshold and reportable quantity for Form A would be inconsistent with the intent of expanded PBT chemical reporting (at 64 FR 715–716). The general information provided in the Form A on the quantities of the chemical that the facility manages as waste is insufficient for conducting meaningful analyses on PBT chemicals.

EPA also agrees that a new alternate threshold for PBT chemicals would be inappropriate due to the concern over releases and other waste management of these chemicals at low levels. As stated in the proposal, even small quantities of persistent bioaccumulative chemicals may cause elevated concentrations in the environment and organisms that may cause significant adverse effects. Given the persistent and bioaccumulative nature of these chemicals and the need for the public to have information about smaller amounts of these PBT chemicals, EPA believes it would be inappropriate at this time to allow an option that would exclude significant information on some releases and other waste management of these chemicals.

In response to EPA's proposal to exclude all PBT chemicals from the alternate threshold of 1 million pounds, one commenter argues that EPA should consider establishing a new alternate reporting threshold for these chemicals. The commenter states that, at a minimum, an alternate reporting threshold of 10 to 100 pounds would be consistent with the throughput-reporting threshold proposed for all PBT chemicals except dioxins. The commenter further states that the SBA's analysis suggests significant reductions in burden associated with alternate reporting thresholds of 50 pounds for PBT chemicals. The commenter states that, based on an SBA study commissioned of petroleum bulk plants, which it estimates will be the largest group of reporters under this proposal, it finds that most of the reports avoided by this alternate threshold would reflect zero releases.

EPA disagrees with the comment suggesting that a new alternate threshold be established for PBT chemicals. As stated in the proposal, even small quantities of persistent bioaccumulative chemicals may cause elevated concentrations in the environment and organisms that may cause significant adverse effects. Given the persistent and bioaccumulative nature of these chemicals and the need for the public to have information about smaller amounts of these PBT chemicals, EPA believes it would be inappropriate at this time to allow an option that would exclude significant information on some releases and other waste management of these chemicals. The general information provided in the Form A on the quantities of the chemical that the facility manages as waste is insufficient for conducting meaningful analyses on PBT chemicals. Therefore, EPA does not agree that a new alternate threshold for PBT chemicals should be established.

The commenter also suggests that reporting burdens will increase while failing to provide for the collection of substantial additional release information. EPA's economic analysis used reporting costs for the Form R to estimate the costs to those facilities that would not be able to use the alternate threshold. The economic analysis also evaluated the benefits of the collection of additional release and other waste management of PBT chemicals (Ref. 67). The commenter does not dispute those estimates. As a result, EPA sees no compelling argument to revise its decision to exclude all PBT chemicals from the alternate threshold of 1 million pounds.

4. *Data precision issues*—a. *Use of significant digits, half pound and whole numbers*. EPA proposed to require reporting of all releases and other waste management quantities of PBT chemicals (except dioxin) that are greater than 1/10 of a pound, provided that the accuracy in the underlying data on which the estimate is based supports this level of precision. EPA further stated that releases and other waste management quantities would continue to be reported to two significant digits. In addition, EPA stated that for quantities of 10 pounds or greater, only

whole numbers would be required to be reported. For the category of dioxin and dioxin-like compounds, which have a proposed reporting threshold of 0.1 gram, EPA proposed that facilities report all releases and other waste management activities greater than 100 μg (i.e., 0.0001 gram).

After reviewing all comments on this issue, EPA is providing the following guidance on the level of precision covered facilities should use to report their releases and other waste management quantities of PBT chemicals. Facilities should continue to report releases and other waste management amounts greater than 1/10 of a pound (except dioxin), at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based.

This approach is consistent with the statutory reporting requirements when estimating reportable amounts. The statute requires facilities to, among other things, report "[t]he annual quantity of the toxic chemical entering each environmental medium." (42 U.S.C. 11023(g)(1)(C)(iv)). To determine this "annual quantity," the statute directs facilities to use readily available data (including monitoring data). When such data are not readily available, the statute directs facilities to use reasonable estimates. (42 U.S.C. 11023(g)(2)). However, while the statute allows for some level of imprecision regarding reportable amounts, it does not create an exemption or exception that would allow facilities to report less precisely than provided for by their data or estimation techniques. Therefore, facilities should report PBT chemicals as precisely as their estimation techniques or readily available data allow. If a facility's release or other management calculations support reporting an amount that is more precise than two significant digits, then the facility should report that more precise amount.

b. *Use of range reporting.* In the preamble to the proposed rule, EPA requested comments on its proposal to eliminate the use of range reporting in Form Rs for PBT chemicals. Commenters disagree with the proposal for a number of reasons outlined below.

Commenters argue that applying different reporting conventions for PBT chemicals would complicate EPCRA section 313 reporting, cause compliance difficulty, and introduce data inconsistencies (i.e., ranges for some chemicals but not for others). Commenters also argue that eliminating the use of range reporting for PBT chemicals has the potential to mislead the public and divert attention from actual risks.

EPA disagrees that the elimination of the use of range reporting for PBT chemicals will cause insurmountable obstacles to EPCRA section 313 reporting and cause compliance difficulties and data inconsistencies. There are already many different industries that report to EPA for 643 chemicals. EPA provides numerous guidance documents and training opportunities to reporting industries. With the finalization of the PBT rule, EPA will provide updated guidance documents, will prepare and provide, in those cases where it is appropriate, chemical-specific guidance documents, and will continue to offer training in order to assist facilities in reporting under EPCRA section 313. EPA also believes that the Agency will be able to adequately explain to the public the different reporting requirements for PBT chemicals so that they are put in context of other TRI data. EPA currently does this for other types of chemicals on the EPCRA section 313 list such as metals and pesticides.

Additionally, EPA believes that the elimination of range reporting is a critical part of this rulemaking, of which the ultimate intent is to provide useful information on PBT chemicals to assist communities in determining if PBT chemicals are present in their communities at levels that may pose an unacceptable risk. This information on PBT chemicals can also be used by government agencies and others to identify problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Consequently, the information collected about these PBT chemicals will inform the public rather than mislead the public and will actually assist the public in determining the risk of PBT chemicals in their communities.

Commenters also argue that reporting numerical values for PBT chemicals assumes a level of accuracy that generally does not exist in the measurement of releases. In addition, commenters state that estimating numerical values would require the use of material balances, which are difficult to apply and essentially inaccurate for chemicals used in low concentrations. Commenters contend that, especially where reports are estimates, ranges may in fact provide more information than point estimates. Commenters argue that, for these reasons, elimination of range reporting will result in inaccurate estimates. Commenters also state that eliminating the use of range reporting for PBT chemicals would give the false impression of precise data, where uncertainty inherently exists.

As stated in the proposal, EPA believes that the use of ranges could misrepresent data accuracy because the low or the high end range numbers may not really be that close to the estimated value, even taking into account its inherent error (i.e., error in measurements and developing estimates) (at 64 FR 716). The user of the data must make a determination on whether to use the low end of the range, the mid-point, or the upper end. For example, a release of 501 pounds could be misinterpreted as 999 pounds if reported as a range of 500–999. This represents nearly a 100% error. This uncertainty severely limits the applicability of release information where the majority of releases, particularly for PBT chemicals, are expected to be within the amounts eligible for range reporting. The utility of these data would be severely limited given the uncertainty associated with data reported using ranges. Therefore, due to this uncertainty, EPA believes that facilities should report numerical values, not ranges, for PBT chemicals.

In addition, EPA believes that the information available to the typical EPCRA section 313 reporter is generally greater and/or more accessible than it was 10 years ago. Because of this improved information availability, EPA believes that many facilities will be able to accurately estimate releases and off-site transfers for further waste management of PBT chemicals in quantities of less than 1,000 pounds without the use of range codes. Although it may be true that some facilities will be better able to make those estimates than others, EPA does not believe this justifies not collecting the more specific and useful information from those facilities that can provide it.

Further, the Form R and Instructions and annual TRI data release provide information on the methods used to generate information reported and characterize many of the limitations that may apply to the data. This aids the data user in understanding the overall nature of the information available under EPCRA section 313. Facilities are required, for each release or transfer amount, to indicate on the the principal method used to determine the amount of release reported. There are codes which allow the facility to indicate whether the estimate is based on monitoring data, mass balance calculations, published emission factors, or other approaches such as engineering calculations or best engineering judgment. By looking at the information provided through the use of these codes, users of the data can gain an understanding of the degree of accuracy or uncertainty in any particular number reported by a facility. Thus, EPA believes that false impressions will not be communicated to the data user about the accuracy of the information filed.

Finally, EPCRA permits facilities to use reasonable estimates in the absence of readily available data to calculate reportable amounts. Compliance with EPCRA section 313 does not require that additional monitoring or sampling be done. Thus, the statute contemplates some level of imprecision in the data that may be filed, yet, by authorizing reporting based on reasonable estimates, affirms the community right-to-know purposes relative to information based on such reasonable estimates. Reporting releases of low volumes of PBT chemicals based on such reasonable estimates is no different than reporting on other toxic chemicals based on the same kind of information. The TRI data that has been reported since 1987 is a blend of estimates based on monitoring data, mass balance calculations, published emissions factors, and engineering calculations or engineering judgment.

The commenters contend that eliminating the use of range reporting for PBT chemicals would be extremely burdensome to facilities. EPA explained in the proposal that the original intent of providing the range reporting option was primarily as a burden reducing measure focused on small businesses. In past expansion activities, EPA has tried to retain burden reducing options wherever feasible. However, EPA does not expect the elimination of range reporting to significantly affect the unit cost of reporting because many facilities that could use range reporting are not choosing to do so. An analysis of the 1997 data reported under EPCRA section 313 reveals that the number of instances in which a range code was used for reporting quantities in sections 5 and 6 of the Form R was 37,168. These 37,168 instances included 7,605,305 pounds of releases and transfers using the median of the range code reported. However, there were 66,842 instances in which range reporting could have been used (i.e., the amounts reported where below 1,000 pounds), but the reporting facility chose instead to report a number rather than a range. These 66,842 instances included 13,662,758 pounds of releases and transfers. Thus, in 64% of the instances where range reporting could have been used facilities reported a number instead. The fact that in a majority of the instances in which range reporting could have been used facilities opted to report specific numbers would appear to indicate that the elimination of range reporting for PBT chemicals is unlikely to impose any significant additional burden on facilities. Therefore, EPA does not expect the elimination of range reporting to have any significant effect on unit reporting costs.

Commenters also argue that the elimination of the use of range reporting for PBT chemicals could result in an increase in the threat to confidential information and a possible increase in trade secret claims. Commenters maintain that Congress considered the need to protect trade secret information in the discussion of reporting chemical use and presence in ranges for EPCRA section 313:

> The conference substitute provides for reporting categories of use and ranges of chemicals present because the exact use of an identified chemical at a facility or the exact amount present may disclose secret processes. In some circumstances, this information may need to be reported in terms of broad 43 categories of use or amount ranges. . . . (H.R. Report No 99–962, 298)

However, EPA believes that the conference report language cited by the commenter clearly refers only to the use of range reporting for the data element entitled "maximum amount of the toxic chemical on-site at any time during the calendar year." EPA is not precluding range reporting for maximum amounts on-site. Contrary to the notion expressed by the commenter, Congress did not expressly direct EPA to allow range reporting for the reporting of releases and transfers off-site for further waste management. Additionally, in the statute, Congress provided the only means and mechanism for facilities to protect confidential business information (CBI) through the statute's trade secret provisions. If the commenter believes that any report filed might reveal confidential information as to the identity of the chemical, the commenter may choose to file a CBI claim by following the procedures as outlined in 40 CFR part 350. In addition, the statute is clear that trade secret claims may only be made for the identity of the chemical. Therefore, EPA believes that Congress adequately provided procedures for the protection of CBI and that a possible increase in CBI claims does not outweigh the need for increased information on releases and other waste management of PBT chemicals. See, *Legislative History* at 5185.

Commenters also argue that eliminating the use of range reporting for PBT chemicals will not result in the collection of substantial additional release information. EPA disagrees. The issue of range reporting is closely tied to the lowering of the reporting thresholds for PBT chemicals. As EPA noted in the proposal,

> Since PBT chemicals can remain in the environment for a significant amount of time and can bioaccumulate in animal tissues, even relatively small releases of such chemicals from individual facilities have the potential to accumulate over time to higher levels and cause significant adverse impacts on human health and the environment.

EPA also noted in the proposal that,

> Under current reporting thresholds, a significant amount of the releases and other waste management activities involving PBT chemicals are not being captured and thus the public does not have the information needed to determine if PBT chemicals are present in their communities and at levels that may pose a significant risk.

Therefore, by the lowering of reporting thresholds, EPA will receive important information on the quantities of PBT chemicals being released or otherwise managed as waste. Given the lowering of the reporting thresholds, continued use of ranges could misrepresent data accuracy because the low or the high end range numbers may not really be that close to the estimated value, even taking into account any inherent error (i.e., errors in measurements and developing estimates). The user of the data must make a determination on whether to use the low end of the range, the mid-point, or the upper end. For example, a release of 501 pounds could be misinterpreted as 999 pounds if reported as a range of 500–999. This represents a nearly 100% error. This uncertainty severely limits the applicability of release information where the majority of releases, particularly for PBT chemicals, are expected to be within the amounts eligible for range reporting. Given that the large uncertainty would be part of these data and would severely limit their utility, EPA has concluded that facilities must report numerical values, not ranges, for PBT chemicals.

In addition to the above comments, several commenters recommend the use of multiple ranges rather than total elimination of ranges just for PBT chemicals. One commenter generally agrees with EPA's position that reporting ranges "B" (11 to 499 pounds) and "C" (500 to 999 pounds), as they currently exist, may be too broad to provide meaningful information for PBT chemicals. Because the proposal does not impose any new obligation to measure or test beyond what is currently required, however, the commenter believes it is still appropriate to retain the "A" reporting range of 1 to 10 pounds for PBT chemicals. The commenter contends that the use of a specific number conveys a sense of precision that may not actually exist. The commenter argues that the retention of the "A" reporting range in its current form, coupled with the new reporting range of "greater than zero, but less than 1 pound," will provide meaningful and valuable information to the public on PBT chemical transfers or releases.

Another commenter agrees with the purpose underlying the EPA's proposal to prohibit the use of range reporting for PBT chemicals and believes the ranges authorized under the current rules are too broad to be useful for PBT chemicals. However, the commenter believes that EPA should recognize that reporting in ranges is often necessary because uncertainty makes the selection of a single number arbitrary.

Another commenter argues that EPA should retain range reporting for PBT chemicals, even if the ranges are lower than those allowed for non-PBT chemicals. The commenter further contends that they believe that range reporting helps to correct some of the error introduced to EPCRA section 313 reporting through the use of estimates.

EPA disagrees that the Agency should retain the "A" reporting range of 1 to 10 pounds for PBT chemicals or that the Agency should retain some form of range reporting for PBT chemicals. As stated in the proposal, EPA believes that the use of ranges could misrepresent data accuracy because the low or the high end range numbers may not really be that close to the estimated value, even taking into account its inherent error (i.e., error in measurements and developing estimates). The user of the data must make a determination on whether to use the low end of the range, the mid-point, or the upper end. For example, a release of 501 pounds could be misinterpreted as 999 pounds if reported as a range of 500–999. This represents a nearly 100% error. Even with a lower range such as 1 to 10 pounds, the uncertainty associated with range reporting could severely limit the applicability of release information for PBT chemicals. Numerical values are particularly important since PBT chemicals can remain in the environment for a significant amount of time and can bioaccumulate in animal tissues. This means that even relatively small releases of such chemicals from individual facilities have the potential to accumulate over time to higher levels and cause adverse impacts on the environment and organisms. The utility of these data would be limited given the uncertainty associated with data reported using ranges. Therefore, due to this uncertainty, EPA is requiring that facilities report numerical values, not ranges, for PBT chemicals.

In addition, EPA believes that the information available to the typical EPCRA section 313 reporter is generally greater and more accessible than it was 10 years ago. Because of this improved information availability, EPA believes that facilities will be able to accurately estimate releases and off-site transfers for further waste management of PBT chemicals in quantities of less than 1,000 pounds without the use of range codes. Although it may be true that some facilities will be better able to make those estimates than others, EPA does not believe this justifies not collecting the more specific and useful information from those facilities that can provide it. Further, in the Form R, facilities are required, for each release or transfer amount, to indicate the principal method used to determine the amount of release reported. There are codes which allow the facility to indicate whether the estimate is based on monitoring data, mass balance calculations, published emission factors, or other approaches such as engineering calculations or best engineering judgment. By looking at the information provided through the use of these codes, users of the data can gain an understanding of the degree of accuracy or uncertainty in any particular number reported by a facility. Thus, EPA does not believe that false impressions will be communicated to the data user about the accuracy of the information filed.

Finally, as noted earlier EPCRA permits facilities to use reasonable estimates in the absence of readily available data to calculate reportable amounts. EPCRA does not require that additional monitoring or sampling be done in order to report. Thus, the statute contemplates some level of imprecision in the data that may be filed, yet, by authorizing reporting based on reasonable estimates, affirms the community right-to-know purposes relative to information based on such reasonable estimates.

A number of commenters agreed with EPA's proposal that range reporting be eliminated for all PBT chemicals on the EPCRA section 313 list. The commenters agreed with EPA's belief that the use of ranges could misrepresent data accuracy and significantly impact the usefulness of the data.

J. Other Issues

1. *Placing reported data into context.* Several commenters make the same general comment that EPCRA section 313 does not capture all sources of PBT chemical releases and therefore will not provide a complete or accurate picture of the releases of these chemicals. Commenters criticize the proposal for not putting the PBT releases from EPCRA section 313 covered facilities into context, in terms of either risk or the amount of PBT releases expected from non-covered facilities or sources. EPA disagrees with the implication by several commenters that simply because EPCRA section 313 may not capture all the sources of releases of PBT chemicals EPA should not attempt to capture more information from the facilities that do report under EPCRA section 313. This comment has been voiced in every major rulemaking under EPCRA section 313 but, as EPA has stated in the past, this is not an argument that EPA believes should restrict any efforts to collect additional data under EPCRA section 313. The mere fact that for some chemicals significant release sources are not captured does not in any way diminish the importance of the information that can be provided by those facilities that are required to report under EPCRA section 313. There is currently no one single reporting requirement that captures all of the releases of PBT chemicals and makes that information available to the public. For those chemicals that do have large release sources not captured under EPCRA section 313, EPA will use all available data to aid its actions and those of other international and national organizations and the public in efforts to address concerns on PBT chemicals. For example, all data will be considered to aid EPA's PBT strategy or other EPA PBT related programs; EPA will not rely solely on the data collected under EPCRA section 313. In addition, if there are significant sources of PBT chemicals that are not reported under EPCRA section 313, EPA will attempt to let the public know that some sources are not captured. In fact, in the most recent TRI data release documents, EPA has been providing information to the pubic on other sources of releases for certain EPCRA section 313 chemicals. In addition, EPA will continue to improve and augment public information materials so that users of the data will have information available to put in context the releases and other waste management of PBT chemicals by industries reporting under EPCRA section 313 versus those industries that do not report under EPCRA section 313.

In fact, rather than an argument against lowering the reporting thresholds for PBT chemicals, EPA believes that the argument the commenters are making is one that supports expanding the types of facilities that should be required to report under EPCRA section 313 and not an argument that supports denying the public the right-to-know about PBT chemical releases from EPCRA section 313 covered facilities.

Some commenters stated that since EPA did not use exposure or risk considerations, the data on PBT chemical releases will be misleading to the public by indicating risks where none exist. EPCRA section 313 is not a risk-based reporting system, and, as discussed in Unit VI.F., EPA believes that a risk-based approach to EPCRA section 313 reporting is at odds with the overriding policy of EPCRA section 313, which is to get information about the use, disposition, and management of toxic chemicals into the public domain, enabling the users of this information to evaluate the information and draw their own conclusions about risk. The intent of EPCRA section 313 is to move the determination of which risks are acceptable from EPA to the communities in which the releases occur. This basic, local empowerment is a cornerstone of the right-to-know program. In addition, EPA will continue to improve its annual public data release as well as its outreach and education efforts to assist users in understanding the data. Consequently, EPA disagrees with the commenters that the information reported on releases and other waste management of PBT chemicals will be misleading to the public.

Another commenter states that the quantities of PBT chemicals reported in the TRI will be far smaller than the quantities of other chemicals which pose far less significant health risks. The commenter is concerned that the small quantities could lead members of the public to overlook the data on PBT chemicals. Therefore, the commenter argues that EPA should present PBT data in a way that draws the public's attention to it. The commenter states that it sees a danger that without sufficient education and guidance, the public may either overestimate or underestimate the health risks from PBT chemicals. The commenter believes that EPA should make a commitment to ensuring that the public is given the necessary education and guidance. EPA understands that the quantities of PBT chemicals may be reported in smaller quantities than other chemicals under EPCRA section 313 and that these quantities have the potential to be overlooked. EPA is also sensitive to the issue that data on PBT chemicals must be presented clearly to assist data users in understanding how the information on PBT chemicals is different from that reported on other chemicals under EPCRA section 313. EPA will continue to improve its annual public data release as well as its outreach and education efforts to assist users in understanding the data. Despite the concerns voiced by the commenters, EPA still believes that it is important to collect and disseminate this information so that communities can use the information with other site-specific factors to determine if releases into their communities result in risks that the community determines warrant further action given other factors, such as economic and environmental conditions, or particularly vulnerable human or ecological populations.

Another commenter expresses concern that release numbers for PBT chemical will not be comparable to those for other chemicals with higher reporting thresholds or to releases of the PBT chemical in previous years. The commenter adds that the lower thresholds may mislead the public into thinking that releases are rising or that a new chemical has been introduced at a facility. EPA understands the commenter's concern but does not believe this is a justification for not collecting additional information about PBT chemicals. EPA believes that it will be able to adequately explain to the public the different reporting requirements for PBT chemicals so that they are put in context of other TRI data. EPA will make clear which PBT chemicals were reportable prior to the finalization of this rule and what the reporting threshold was for these chemicals. Finally, EPA will continue to improve its annual public data release as well as its outreach and education efforts to assist users in understanding the data.

2. *Manufacture only qualifier for chemicals other than dioxin.* Many commenters request that EPA add a "manufacture only" qualifier to all PBT chemicals, not just the dioxin and dioxin-like compounds category. The commenters assert that the addition of the manufacture only qualifier to all PBT chemicals would greatly reduce the burden of the rule. Some commenters suggest that at a minimum the manufacture only qualifier should apply to polychlorinated biphenyls (PCBs), since EPA's rationale for applying the qualifier to dioxin and dioxin-like compounds is equally applicable to PCBs. One commenter contends that EPA's statement that the manufacture qualifier is appropriate for chemicals that are "ubiquitous in the environment" because otherwise many facilities would be required to report simply due to background levels in raw materials applies to PCBs as well. Some commenters suggest that unintentionally manufactured by-products such as hexachlorobenzene and octachlorostyrene should also have the manufacture only qualifier. Some commenters argue that the burden of the rule could be significantly reduced if EPA focused the reporting effort on the manufacturing sector, which should help concentrate EPA's pollution prevention efforts on the sector most likely to be able to make reductions. Some commenters contend that the primary source for PBT chemicals within the EPCRA section 313 reporting sectors is from manufacturing, and these are the sources that should be focused on for tracking PBT chemicals. Some commenters assert that EPA has acknowledged that many chemicals identified as persistent and bioaccumulative are not imported, processed, or otherwise used, but are manufactured as by-products (at 64 FR 715). Some commenters assert that they agree that manufacturing is the primary source for environmental loading of PBT chemicals from EPCRA section 313 facilities, and thus the effort for reporting should be concentrated on the sources where PBT chemicals are generated and data can be gathered. Some commenters argue that concentration on the manufacturing of PBT chemicals provides an efficient focus for meaningful pollution prevention efforts. Some commenters assert that they are concerned that data from importing, processing, or otherwise use of PBT chemicals will be inaccurate and misleading since processors and users may not have the resources to conduct the analyses required to provide accurate estimates. One commenter contends that the fear of enforcement might motivate those importing, processing, or otherwise using PBT chemicals to report "some amount" and that such information is likely to be inaccurate, and will not accurately reflect the true level of concern. Some commenters assert that instead of requiring reports from the many sources where effective emissions reductions may not be possible, that the addition of a manufacture only activity qualifier for all PBT chemicals will provide the public with the most accurate information on PBT chemical emissions and the best opportunity to monitor EPCRA section 313-related

environmental loading of these chemicals.

EPA believes that in order to obtain any reporting on dioxin and dioxin-like compounds a very low threshold is required, which is several orders of magnitude lower than the thresholds for other PBT chemicals. At such a low reporting threshold it is estimated that thousands of reports could potentially be filed by facilities, mainly food processing facilities, due to the amount of dioxins in the raw materials they process. The dioxins found in the meat and dairy products that food processors handle have been previously released, circulated in the environment, and bioaccumulated in animals, thus these are not additional loadings to the environment but loadings that have already occurred and cycled through the environment due to the persistence and bioaccumulative properties of these compounds. The unique combination of very low thresholds, the number of food processors that would be required to file, and the fact that they would be filing because of the bioaccumulation of previously released material led EPA to propose to add only dioxin and dioxin-like compounds that are manufactured. EPA is finalizing the addition of dioxin with a revised qualifier in response to the unique set of conditions that apply to the reporting of dioxin and dioxin-like compounds. EPA proposed and is finalizing the addition of dioxin with a qualifier to reduce reporting burden on facilities, mainly in the food processing industry, that results from the unique combination of circumstances related to the reporting for these chemicals and to focus on those activities that add to the loading of dioxins in the environment rather than on activities dealing with previously released and bioaccumulated chemicals.

EPA did not conclude and does not believe that the manufacturing activity is the only important source of PBT chemical releases to the environment and believes that other activities such as processing or use can result in significant releases of PBT chemicals, including chemicals released to the environment for the first time. As discussed in Unit VI.G., EPA has modified the dioxin qualifier to reflect this. The unique combination of circumstances that exists for dioxin and dioxin-like compounds does not exists for any of the other PBT chemicals being added by this rule. EPA did not conclude that the manufacture qualifier is generally appropriate for other chemicals that are being added and that are "ubiquitous in the environment." The full statement in the proposal was "These dioxin and dioxin-like compounds are ubiquitous in the environment and thus under the very low reporting thresholds necessary to get reports from any sources (see discussion in Unit VII.A.2.), facilities that process raw materials would be required to report simply because the raw material contains background levels of these chemicals" (at 64 FR 710). Clearly EPA made this statement in the context of the "very low reporting thresholds necessary to get reports [for the dioxin and dioxin-like compounds category] from any sources." This statement is consistent with the unique combination of circumstances that exists for dioxin and dioxin-like compounds and was not intended to apply to all PBT chemicals.

Neither did EPA conclude that the manufacturing activity is the activity for which facilities would be most likely to be able to make reductions or that EPA's pollution prevention efforts should focus solely on the manufacturing of PBT chemicals. Commenters provided no basis for such a conclusion and EPA believes that processors and users of PBT chemicals also have the opportunity to make effective emissions reductions by using less of a PBT chemical, by not using materials that contain PBT chemicals as contaminants, etc. In addition, the purposes of reporting under EPCRA section 313 are not limited to the collection of information from sources where effective reductions in release and other waste management quantities are possible. Data collected under EPCRA section 313 can serve a variety of information purposes that do not depend on how easy it is for the source to achieve reduction in releases and other waste management. The commenter statement that EPA has acknowledged that many chemicals identified as persistent and bioaccumulative are not imported, processed, or otherwise used, but are manufactured as by-products, is incorrect. The actual statement was: "[m]any of the chemicals identified as persistent and bioaccumulative in today's action are not imported, processed, or otherwise used but are manufactured as by-products" (at 64 FR 715). As the words "today's action" clearly demonstrate, this statement was not a broad statement about all PBT chemicals but simply an acknowledgment that many of the PBT chemicals in the proposed rule were by-products. In addition, this statement was made in the context of the discussion on the *de minimis* exemption about how removing the exemption for PBT chemicals would affect the chemicals in the proposed rule; it was not a statement made in connection with the discussion on the manufacture only qualifier. EPA also did not state that manufacturing is the primary source for environmental loading of PBT chemicals from facilities covered under EPCRA section 313. The discussion on the loading of chemicals in the environment from manufacturing was in relation to the reporting of dioxin which, as discussed above, presents a unique combination of circumstances that EPA considered to determine how to focus its listing decision and does not apply to all PBT chemicals. EPA disagrees with the statements that data from facilities that import, process, or otherwise use PBT chemicals will be inaccurate and misleading or that such facilities will report some quantity out of fear of enforcement and that such information is likely to be inaccurate, and will not accurately reflect the true level of concern. EPA believes that facilities that import, process, or otherwise use PBT chemicals will be just as able to report as facilities that manufacture PBT chemicals. It is no more difficult to do calculations regarding small numbers than it is to do calculations on larger numbers, so if a facility that imports, processes, or otherwise uses PBT chemicals has information that allows them to make a reasonable estimation of quantities then they should be just as able to report as any manufacturing facility would be able to report on small quantities manufactured as by-products. If facilities that import, process, or otherwise use PBT chemicals do not have data available that allows them to make a reasonable estimation of quantities then they are not required to report. As for fear of enforcement, EPA can take enforcement actions both for under reporting and over reporting so facilities should not report an amount of a PBT chemical in order to avoid an enforcement action.

EPA does not believe that the unique combination of circumstances that exists for dioxin and dioxin-like compounds exists for any of the other PBT chemicals being added by this rule nor does EPA believe that reduced burden or any of the other reasons suggested by the commenters provide a sufficient reason to focus on manufacturing activity only for the other PBT chemicals in this rule. Therefore, EPA does not believe that it is appropriate to add a manufacture only qualifier to any of the other PBT chemicals in this rule.

3. *Waste management issues.* Some commenters contend that because activities such as recycling, approved

waste disposal, and treatment are incorporated into reported volumes, the EPCRA section 313 reported releases will be substantial overestimates of the actual quantities released to the ambient environment. They further argue that although this information may be useful to source reduction efforts, merging of reporting requirements under section 313 of EPCRA and section 6607 of PPA has resulted in information which is misleading to the public's desire to know the actual exposures that are occurring. Another commenter asserts that by requiring electricity generating facilities to report transfers off-site for treatment and disposal of PCBs from transformers, EPA has established a disincentive to properly dispose of PCB transformers and remove them from use because most PCB wastes transferred to off-site facilities are destroyed in regulated units which destroy at least 99.9999% of the PCBs. They are concerned that because the casual reader may conclude additional releases of PCBs to the environment have occurred, companies would have a disincentive to voluntarily remove PCBs.

The commenters are incorrect in stating that EPCRA section 313 release quantities include recycling and treatment amounts. Under EPCRA section 313, if a chemical activity threshold is met for the chemical, covered facilities are required to report the quantity of the toxic chemical entering each environmental medium; this includes "releases." The definition of release pursuant to EPCRA section 329(8) means:

> any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

There is no language in this definition, any other provision of EPCRA, or in the regulations promulgated pursuant to EPCRA section 313, that limit this definition to ambient releases to the environment which may result in public exposure. In fact the definition specifically includes disposing of toxic chemicals as well as the abandonment of closed receptacles. In addition, neither the statute nor the regulations limit this definition to on-site releases. Therefore, the statutory definition of release under EPCRA section 313 is significantly broader than the commenter seems to believe.

In addition to release reporting, under section 6607(b)(1) of the PPA, if a covered facility meets the reporting thresholds under EPCRA section 313, the facility is required to report the "quantity of the chemical entering any wastestream (or otherwise released to the environment). . . ." This quantity includes amounts of the toxic chemical released, treated, and recycled. However, this quantity does not include:

> [t]he amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one time event, *and is not associated with production processes during the reporting year.* (PPA 6607 (b)(7)) (emphasis added)

Therefore, the quantity of the toxic chemical entering the wastestream as collected under section 6607(b)(1) of the PPA, is the amount of the toxic chemical in production related waste. Covered facilities currently report the amount of the toxic chemical in production related waste as quantities of the toxic chemical released, treated, combusted for energy recovery and recycled. These quantities are collected as separate data elements in section 8 of the Form R. Further, facilities report the ultimate disposition of toxic chemicals in waste such that these quantities (i.e., amounts released, treated, combusted for energy recovery, and recycled) are mutually exclusive. Collectively, then, these quantities are the amount entering the waste stream or the quantity of the toxic chemical in production related waste. For example, a covered facility transfers 1,000,000 pounds of PCBs to an incinerator for treatment. The covered facility knows that 999,999 pounds are destroyed in the incinerator and the remaining 1 pound is disposed in a landfill. The facility reports 999,999 pounds as transferred off-site for treatment and 1 pound as transferred off-site for disposal. These two quantities are reported as separate data elements on the Form R. The quantity reported as disposed off-site is considered released because, as explained previously, disposal is a type of release. The entire quantity (1,000,000 pounds) is the amount of production related waste.

Once collected, EPA presents the TRI data to the public in a number of formats. In its annual data release documents, EPA highlights different aspects of the quantities of toxic chemicals released and otherwise managed as waste. For example, EPA presents total on-site releases and, as subsets, presents the quantities released to air, surface water, underground injection and on-site land releases. (See *1997 Toxics Release Inventory* (EPA 745–R–99–003) Figure 2-3 "TRI On-site Releases") EPA also presents the quantity of total releases in the public data release. As discussed earlier, under EPCRA section 313, release quantities are not limited to quantities released to the ambient environment. Therefore, total releases, as presented in the public data release include both on and off-site releases as well as a variety of disposal methods. For example, in Table 2-20A of the 1997 public data release, EPA presents TRI on-site and off-site releases by chemical and type of release (e.g., air emissions, underground injection, etc.) (*1997 Toxics Release Inventory*; EPA 745–R–99–003).

In addition to TRI release data, EPA presents production related waste quantities in the public data release. Because production related waste includes releases, EPA includes release quantities with other waste management quantities. However, in this document, the Agency generally distinguishes quantities of the toxic chemical released from other types of waste management. EPA does not count the quantities of toxic chemicals treated, combusted for energy recovery or recycled as quantities released. (See, for example, 1997 Toxics Release Inventory (EPA 745-R-99-003) Table 2-20A "TRI On-site and Off-site Releases, by Chemical, 1997" and Table 2-20B "TRI Chemicals in Waste, by Chemical, 1997")

Further, EPA does not believe that the TRI program provides a disincentive for the proper and safe handling of PCBs in transformers managed as waste. As explained earlier, covered facilities are required under EPCRA section 313 and section 6607 of the PPA to report quantities of toxic chemicals released or otherwise managed as waste if they meet a chemical activity threshold. Quantities of toxic chemicals sent off-site for treatment are described as such. These transfers are not included as releases. In addition, EPA disagrees that quantities of PCBs sent off-site for treatment will be misunderstood by the public because these quantities are accurately represented in the TRI data base and in the public data release as a separate type of waste management.

Another commenter asserts that the proposed rule will not encourage waste minimization because facilities will not be able to modify process designs to accomodate such minimization simply on the basis of data generated from guidance documents or reasonable estimates. The commenter asserts that although industry has made substantial minimization gains, the technology is not available to treat or remove chemicals of concern from manufactured products or waste (prior to generation) at such low concentrations and that any future improvements will be enormously expensive due to the low concentrations that would likely be involved.

EPA disagrees with the commenter. In the preamble to the proposed rule, EPA did not assert that covered facilities will begin performing waste minimization activities as a direct result of this rulemaking. Rather, the Agency stated that the PBT chemical rulemaking will provide data on PBT chemicals to EPA, industry, and the public. For example, several EPA offices have ongoing projects and programs that deal with issues concerning PBT chemicals. EPA has established the PBT planning group which is a coordinating body consisting of representatives from various program offices throughout EPA that are dealing with PBT chemicals. This group has developed a strategy to reduce pollution from PBT chemicals through the application of regulatory and nonregulatory authorities, with a strong emphasis on pollution prevention. The availability of that data, in turn, can allow all parties to identify and track releases of PBT chemicals and monitor the progress of the programs designed to reduce the amount of PBT chemicals entering the environment. The data will also allow EPA and others to design prevention strategies that are focused and effective.

In addition, EPA disagrees with the commenter's last assertion concerning the available technology and its costs. Although there are some processes that might not, at present, be amenable to source reduction in terms of PBT chemicals, some processes may be. For example, it may be possible to stringently control fuel composition, flow times, temperature, and other conditions in order to substantially reduce or even eliminate the incidental manufacture of dioxins during combustion processes. Therefore, EPA continues to believe that in some cases, opportunities for pollution prevention will present themselves resulting from information reported under EPCRA section 313 and section 6607 of the PPA.

4. *Modulated reporting thresholds.* The majority of commenters contend that modulating thresholds for reporting so that lower reporting thresholds are used every other year (with current thresholds used in alternate years) would introduce confusion for the regulated community and data users and would not significantly reduce burden. Further it could discourage facilities from establishing common standard procedures for data collection. Modulation will also result in data gaps, undermining data consistency and tracking. Many commenters believe that annual reporting is a fundamental attribute of TRI.

EPA agrees that modulating the reporting thresholds would introduce confusion for both the regulated community and data users. For data users, EPA believes that modulating the reporting thresholds would limit the usefulness of the TRI data because there would be poor data consistency and poorer data quality. For the regulated community, EPA believes that the burden reduction would not be significant and would possibly be offset by the confusion that would be introduced by different thresholds in alternate years.

VII. What Were the Results of EPA's Economic Analysis?

EPA has prepared an economic analysis of the impact of this action, which is contained in a document entitled *Economic Analysis of the Final Rule to Modify Reporting of Persistent Bioaccumulative Toxic Chemicals under EPCRA Section 313* (Ref. 67). This document is available in the public docket for this rulemaking. The analysis assesses the costs, benefits, and associated impacts of the rule, including potential effects on small entities. The major findings of the analysis are briefly summarized here.

A. What is the Need for the Rule?

Federal regulations exist, in part, to address significant market failures. Markets fail to achieve socially efficient outcomes when differences exist between market values and social values. Two causes of market failure are externalities and information asymmetries. In the case of negative externalities, the actions of one economic entity impose costs on parties that are "external" to any market transaction. For example, a facility may release toxic chemicals without accounting for the consequences to other parties, such as the surrounding community, and the prices of that facility's goods or services thus will fail to reflect those costs. The market may also fail to efficiently allocate resources in cases where consumers lack information. For example, where information is insufficient regarding toxic releases, individuals' choices regarding where to live and work may not be the same as if they had more complete information. Since firms ordinarily have little or no incentive to provide information on their releases and other waste management activities involving toxic chemicals, the market fails to allocate society's resources in the most efficient manner.

This rule is intended to address the market failures arising from private choices about PBT chemicals that have societal costs, and the market failures created by the limited information available to the public about the release and other waste management activities involving PBT chemicals. Through the collection and distribution of facility-specific data on toxic chemicals, TRI overcomes firms' lack of incentive to provide certain information, and thereby serves to inform the public of releases and other waste management of PBT chemicals. This information enables individuals to make choices that enhance their overall well-being. Choices made by a more informed public, including consumers, corporate lenders, and communities, may lead firms to internalize into their business decisions at least some of the costs to society relating to their releases and other waste management activities involving PBT chemicals. In addition, by helping to identify areas of concern, set priorities and monitor trends, TRI data can also be used to make more informed decisions regarding the design of more efficient regulations and voluntary programs, which also moves society towards an optimal allocation of resources.

If EPA were not to take this action adding certain PBT chemicals to EPCRA section 313 and lowering reporting thresholds, the market failure (and the associated social costs) resulting from the limited information on the release and other waste management of PBT chemicals would continue. EPA believes that today's action will improve the scope of multi-media data on the release and other waste management of PBT chemicals. This, in turn, will provide information to the public, empower communities to play a meaningful role in environmental decision-making, and improve the quality of environmental decision-making by government officials. In addition, this action will serve to generate information that reporting facilities themselves may find useful in such areas as highlighting opportunities to reduce chemical use or release or other waste management and thereby lower costs of production and/or waste management. EPA believes that these are sound rationales for adding chemicals to the EPCRA section 313 list of toxic chemicals and lowering reporting thresholds for PBT chemicals.

B. What Are the Costs Associated With This Rule?

This action will result in the expenditure of resources that, in the absence of the regulation, could be used for other purposes. The cost of the rule is the value of these resources in their best alternative use. Most of the costs of the rule result from requirements on industry. Approximately 11,300 facilities are expected to submit approximately 20,000 additional Form R reports annually. The estimated composition of this reporting, by chemical, is shown in Table 4.

Table 4.—Summary of Chemical Reporting as Estimated for Proposed and Final Rules

Chemical or Chemical Category	Estimated Number of Reports (Annual)	
	Proposed Rule	Final Rule
Alkyl lead (tetraethyl lead and tetramethyl lead)	134	N/A
Benzo(g,h,i)perylene	353	909
Dioxin and dioxin-like compounds category	1,863	1,475
Hexachlorobenzene	778	778
Mercury; mercury compounds category	5,230	5,346
Octachlorostyrene	230	230
Pentachlorobenzene	707	707
Pesticides (aldrin, chlordane, heptachlor, isodrin, methoxychlor, pendimethalin, toxaphene, trifluralin)	264	264
Polycyclic aromatic compounds (PACs) category	4,699	7,166
Polychlorinated biphenyls (PCBs)	2,267	2,310
Tetrabromobisphenol A	150	150
Vanadium; vanadium compounds category	654	655
Total	17,329	19,990

Table 5 displays the industry costs for this action based on the estimated number of facilities affected and the estimated number of additional reports. Aggregate industry costs in the first year for the rule are estimated to be $145 million; in subsequent years they are estimated to be $80 million per year. Industry costs are lower after the first year because facilities will be familiar with the reporting requirements, and many will be able to update or modify information from the previous year's report. EPA is expected to expend $2.0 million in the first year, and $1.6 million in subsequent years as a result of the rule.

Table 5.—Summary of Reporting and Associated Costs as Estimated for Proposed and Final Rules

	Proposed Rule	Final Rule
Number of new facilities	2,600	3,114
Total number of facilities	9,515	11,257
Number of Form Rs submitted	17,329	19,990
First year industry costs	$126 million	$145 million
Subsequent year industry costs	$70 million	$80 million
EPA costs	$1.4 million	$1.6 million

The estimated cost of the final rule differs from the estimated cost of the proposed rule as shown in Table 5. There are six major reasons for this change. First, EPA received new data during the comment period on the concentrations of PACs and benzo(g,h,i)perylene in distillate fuel oil. Since approximately 18,000 manufacturing facilities subject to EPCRA 313 reporting use distillate fuel oil, this change had a significant positive effect on the estimated number of reports for PACs and benzo(g,h,i)perylene as shown in Table 4. Second, the methodology for estimating reporting from facilities in SIC 5171 (Bulk Petroleum Stations and Terminals) was revised to account for the mix of products containing PBT chemicals that are processed at these facilities. This revision also had a positive effect on the estimated number of reports. Third, because facility-level dioxin emission factors for coal- and oil-burning manufacturing facilities have not been developed, the estimated number of reporting facilities was reduced. Fourth, the reporting qualifier for dioxin was changed from "manufacture only" to "manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical" in the final rule. This resulted in additional expected reporting from facilities that process or otherwise use chemicals with dioxin impurities. Fifth, the Agency is not lowering EPCRA section 313 reporting thresholds for alkyl leads as part of this rulemaking. Therefore, no additional EPCRA section 313 reporting on alkyl leads is expected at this time. Sixth, the threshold for the PACs category was changed from 10 pounds in the proposed rule to 100 pounds in the final rule.

C. What Are the Benefits of This Rule?

In enacting EPCRA and PPA, Congress recognized the significant benefits of providing the public with information on toxic chemical releases and other waste management practices. EPCRA section 313 has empowered the Federal government, State governments, industry, environmental groups, and the general public to fully participate in an informed dialogue about the environmental impacts of toxic chemicals in the United States. EPCRA section 313's publicly available data base provides quantitative information on toxic chemical releases and other waste management practices. Since the TRI program's inception in 1987, the public, government, and the regulated community have had the ability to understand the magnitude of chemical releases in the United States, and to assess the need to reduce the uses, releases and other waste management of toxic chemicals. TRI enables all interested parties to establish credible baselines, to set realistic goals for environmental progress over time, and to measure progress in meeting these goals over time. The TRI program is a neutral yardstick by which progress can be measured by all stakeholders.

The information reported under EPCRA section 313 increases knowledge of the amount of toxic chemicals released and waste management practices, and thus aids in the evaluation of the potential pathways of exposure, improves scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate leaders and purchasers to more accurately gauge a facility's potential environmental liabilities; provides reporting facilities with information that can be used to save money as well as reduce emissions; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxic chemicals in the environment.

There are two types of benefits associated with EPCRA section 313 reporting, those resulting from the actions required by the rule (such as reporting and recordkeeping), and those derived from follow-on activities that are not required by the rule. Benefits of activities required by the rule include the value of improved knowledge about the release and waste management of toxic chemicals, which leads to improvements in understanding, awareness, and decision-making. It is expected that this rule will generate such benefits by providing readily accessible information that otherwise would not be available to the public. The rule will benefit ongoing research efforts to understand the risks posed by PBT chemicals and to evaluate policy strategies that address the risks.

The second type of benefits derive from changes in behavior that may result from the information reported under EPCRA section 313. These changes in behavior, including reductions in releases of and changes in the waste management practices for toxic chemicals may yield health and environmental benefits. These changes in behavior come at some cost, and the net benefits of the follow-on activities are the difference between the benefits of decreased chemical releases and transfers and the costs of the actions needed to achieve the decreases.

Because the state of knowledge about the economics of information is not highly developed, EPA has not attempted to quantify the benefits of adding chemicals to EPCRA section 313 or changing reporting thresholds. Furthermore, because of the inherent uncertainty in the subsequent chain of events, EPA has also not attempted to predict the changes in behavior that result from the information, or the resultant net benefits (i.e., the difference between benefits and costs). EPA does not believe that there are adequate methodologies to make reasonable monetary estimates of either the benefits of the activities required by the rule, or the follow-on activities. The economic analysis of the rule, however, does provide illustrative examples of how the rule will improve the availability of information on PBT chemicals (Ref. 67).

A number of commenters asserted that information on the magnitude of PBT chemical releases that would be reported as a result of this rule is required for EPA and commenters to evaluate the benefit of EPA's proposed alternatives. EPA disagrees with these commenters for the following reasons.

Existing data do not support estimates of releases to multiple environmental media from the full range of facilities that may be affected by the rule because most of the data required for the analysis would only be available after the rule is in place. For most PBT chemicals and industry sectors, up-to-date multi-media release and other waste management estimates for affected facilities do not exist. Even where release estimates are available for an industry sector, most are derived from national activity levels rather than from facility-level information. To the extent that release estimates are available, they tend to cover only a single medium such as air. EPA does not believe that there is sufficient information to make reasonable predictions of the multi-media releases and other waste management information that will be reported as a result of EPCRA section 313 rulemakings.

Some commenters note that EPA has estimated releases of certain PBT chemicals in recent reports such as the Mercury Study Report to Congress (Ref. 65) and the Inventory of Source of Dioxin in the United States (Ref. 73). In fact, EPA reported the results of these reports in its economic analysis for this proposal. These studies do not provide community- or facility-level release estimates. The estimates in these studies are derived using a "top-down" methodology in which emission factors are applied to activity levels for entire industries. While having an estimate of multi-media PBT releases for a specific industry sector is a first step, other information would also be required to estimate the releases that would be reported as a result of each proposed alternative. Assuming that multi-media release estimates were available for an entire industry sector, these releases would still have to be divided among individual facilities according to some currently unknown distribution. In addition, there is the complication that EPCRA section 313 reporting thresholds are based on chemical throughput (manufacture, process, or use) rather than chemical release. The relationship between a chemical throughput that triggers the submission of a report, and the releases reported will vary in some currently unknown manner among industries, as well as among facilities within an industry.

Therefore, EPA does not believe that there is sufficient information to make reliable release estimates for this rule, when considering all the affected chemicals and industries. The uncertainties in the estimated values that go into such a calculation make predictions of facility level reporting extremely imprecise. Historical attempts to estimate the releases expected to be reported under EPCRA section 313 would have been imprecise to the point of being misleading, particularly in respect to estimates of releases per report or per facility (which some commenters have suggested that EPA should make). Further information on the feasibility of *ex ante* release estimates is available in the Response to Comments document (Ref. 69).

Aside from the general issue of uncertainty in the estimates of aggregate releases, predictions of releases per facility or per report (or dollars of reporting cost per pound of releases reported) are likely to be misleading due to the biases built into the estimates. The predicted number of reports (and thus costs) is generally an overestimate, since EPA's economic analyses use conservative estimates to avoid underestimating true costs. On the other hand, predictions of releases will tend to underestimate emissions, because while there may be information available on releases of some chemicals from some sectors, such estimates will not include other sources where releases are not identified until more detailed data (such as TRI data) are collected. Combining the two sets of estimates compounds the problem. Since estimated pounds of releases are underestimated and reports are overestimated, pounds per report would be biased significantly downward. Likewise, estimates of dollars of reporting cost per pound of releases (which varies as the inverse of pounds per report) would be biased significantly upward.

EPA notes that there were various reports and studies about air emissions of toxic chemicals prior to EPCRA section 313, but the collection of facility-level data provided significant new information on releases as well as other waste management. EPA cannot predict, at this stage, the quantity of releases and other waste management that will be reported as the result of this action any more accurately than it could have predicted when it proposed the original EPCRA section 313 rule.

Aside from the issue of whether EPA can predict releases and other waste management quantities prior to TRI reporting, EPA notes that pounds of releases (even if known) are not a reasonable proxy for the benefits of the information being provided. This is because the benefits of an informational regulation are not a linear function of the magnitude of the information being reported. EPA disagrees with the implicit assumption by commenters that the benefits of information from different facilities is strictly and systematically related to the quantity reported as being released. Calculations such as the commenters have suggested presume that the benefit to the public of knowing about a release of 20,000 pounds is twice as large as the benefit of knowing about a release of 10,000 pounds; and that the benefit of knowing about a 40,000 pound release is twice the benefit of knowing about a 20,000 pound release and four times the benefit of knowing about a 10,000 pound release. EPA does not believe this characterization to be accurate.

One of the central purposes of TRI data is to inform the public about releases and other waste management of EPCRA section 313 listed toxic chemicals in their community so that the public can form its own conclusions about risks. The amount of releases and waste management quantities that a community may find relevant or useful will vary depending on numerous factors specific to that community, such as the toxicity of the various chemicals, potential exposure to these toxic chemicals, and the number of other facilities in the area that release EPCRA section 313 listed toxic chemicals. Section 313(h) of EPCRA states that the data are "to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes" (See Unit VI.E. for a more detailed discussion on the purposes of EPCRA section 313). Pounds of releases reported does not measure how the data perform these functions, and thus is not a measure of benefits.

Finally, EPA notes that commenters on this rule did not provide information on approaches or methodologies for estimating releases and/or throughput, or on estimating releases from throughput data, for the spectrum of industries, chemicals, and facilities covered by the rule. Instead, some commenters submitted data from EPA studies (that EPA had already reviewed in the context of this rule and used as references for the economic analysis of the proposed rule) for very narrow slices of the regulated universe (for example, estimated mercury releases from electric utilities or estimated dioxin releases from the vinyl industry). EPA considered these data and determined that they are not sufficient to predict the releases and/or throughput that will be reported as a result of this rule. Other commenters simply stated that EPA should consider releases without referencing any data. None of the commenters suggested new methodologies or approaches, or provided information from any sources that EPA had not already reviewed and considered. As a result, EPA continues to conclude that while there are data available to estimate national releases for some chemicals for some sectors, comprehensive, reliable data for all sectors and chemicals are unavailable, resulting in an incomplete data set. Furthermore, as stated previously, the quantity of releases reported are not a measure of the benefits of the rule. EPA does not believe that inaccurate or incomplete estimates of releases would aid the decision-making process for the rule. Therefore, EPA has not estimated the releases that would be reported as a result of the rule.

D. What are the Potential Impacts on Small Entities?

In accordance with the Regulatory Flexibility Act (RFA) and the Agency's longstanding policy of always considering whether there may be a potential for adverse impacts on small entities, the Agency has evaluated the potential impacts of this rule on small entities. The Agency's analysis of potentially adverse economic impacts is included in the Economic Analysis for this rule (Ref. 67). The following is a brief overview of EPA's findings.

1. *Overall methodology.* This rule may affect both small businesses and small governments. For the purpose of its analysis for the rule, EPA defined a small business using the small business size standards established by the Small Business Administration (SBA) at 13 CFR part 121. EPA defined small governments using the RFA definition of jurisdictions with a population of less than 50,000. No small organizations are expected to be affected by the rule.

Only those small entities that are expected to submit at least one report are considered to be affected for the purpose of the small entity analysis, although EPA recognizes that other small entities will conduct compliance determinations under lower thresholds. The number of affected entities will be smaller than the number of affected facilities, because many entities operate more than one facility. Impacts were calculated for both the first year of reporting and subsequent years. First year costs are typically higher than continuing costs because firms must familiarize themselves with the requirements. Once firms have become familiar with how the reporting requirements apply to their operations, costs fall. EPA believes that subsequent year impacts present the best measure to judge the impact on small entities because these continuing costs are more representative of the costs firms face to comply with the rule.

EPA analyzed the potential cost impact of the rule on small businesses and governments for the manufacturing sector and in each of the recently added industry sectors separately in order to obtain the most accurate assessment for each. EPA then aggregated the analyses for the purpose of determining whether it could certify that the rule will not, if promulgated, have a "significant economic impact on a substantial number of small entities." RFA section 605(b) provides an exemption from the requirement to prepare a regulatory flexibility analysis for a rule where an agency makes and supports the certification statement quoted above. EPA believes that the statutory test for certifying a rule and the statutory consequences of not certifying a rule all indicate that certification determinations may be based on an aggregated analysis of the rule's impact on all of the small entities subject to it.

2. *Small businesses.* EPA used annual compliance costs as a percentage of annual company sales to assess the potential impacts on small businesses of this rule. EPA believes that this is a good measure of a firm's ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of a company's business volume. Where regulatory costs represent a small fraction of a typical firm's revenue (for example, less than 1%, but not greater than 3%), EPA believes that the financial impacts of the regulation may be considered not significant. As discussed above, EPA also believes that it is appropriate to apply this measure to subsequent year impacts.

Based on its estimates of additional reporting as a result of the rule, the Agency estimates that approximately 6,300 businesses will be affected by the rule, and that approximately 4,400 of these businesses are classified as small based on the applicable SBA size standards. For the first reporting year, EPA estimates that approximately 17 small businesses may bear compliance costs between 1% and 3% of revenues, and that no small businesses will bear costs greater than 3%. In subsequent years, EPA estimates that approximately 5 small businesses may bear compliance costs between 1% and 3% of revenues, and that no small businesses will bear costs greater than 3%. As stated above, EPA believes that subsequent-year impacts are the appropriate measure of small business impacts.

3. *Small governments.* To assess the potential impacts on small governments, EPA used annual compliance costs as a percentage of annual government revenues to measure potential impacts. Similar to the methodology for small businesses, this measure was used because EPA believes it provides a reasonable indication of the magnitude of the regulatory burden relative to a government's ability to pay for the costs, and is based on readily available data.

EPA estimates that 39 municipalities operate 49 publicly owned electric utility facilities. Of these facilities, 44 are expected to file additional reports as a result of this action. Of these affected facilities, 15 are operated by 15 small governments (i.e., those with populations under 50,000). It is estimated that none of these small governments will bear annual costs greater than 1% of annual government revenues.

4. *All small entities.* As discussed above, approximately 5 small businesses are expected to bear annual costs between 1% and 3% of annual revenues after the first year of reporting. None of the affected small governments are estimated to bear annual costs greater than 1% of annual revenues. No small organizations are expected to be affected by the rule. Thus, the total number of small entities with impacts above 1% of revenues does not change when the results are aggregated for all small entities (i.e., small businesses, small governments, and small organizations).

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IX. Which Regulatory Assessment Requirements Apply to This Action?

A. What is the Determination under Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this is an economically "significant regulatory action" because it is likely to have an annual effect of $100 million or more. This action was submitted to the Office of Management and Budget (OMB) for review, and any substantive comments or changes made during that review have been documented in the public version of the official record.

EPA has prepared an economic analysis of the impact of this action, which is contained in a document entitled *Economic Analysis of the Final Rule to Modify Reporting of Persistent Bioaccumulative Toxic Chemicals under EPCRA Section 313* (Ref. 67). This document is available as a part of the public version of the official record for this action (instructions for accessing this document are contained in Unit I.B.) and is discussed in Unit VII.

B. What is the Determination under the Regulatory Flexibility Act?

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the EPA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is presented in the small entity impact analysis prepared as part of the Economic Analysis for this final rule (Ref. 67), which is also discussed in detail in Unit VII. and contained in the public version of the official record for this rule. The following is a brief summary of the Agency's factual basis for this certification.

For the purpose of analyzing potential impacts on small entities, EPA used the RFA definition of small entities in section 601(6) of the RFA. Under this section, small entities include small governments, small non-profit organizations, and small businesses. No small organizations are expected to be affected by this final rule. EPA defined small governments using the RFA definition of jurisdictions with a population of less than 50,000, and defined a small business using the small business size standards established by the Small Business Administration (SBA), which are generally based on the number of employees or annual sales/revenue a business in a particular industrial sector has.

Based on EPA's economic analysis, approximately 11,300 facilities are expected to submit approximately 20,000 additional Form R reports annually. Of these facilities, approximately 3,100 are expected to file TRI reports for the first time as a result of today's action. EPA estimates that the cost for collecting this information averages $5,079 per Form R in the first reporting year, and $3,557 in subsequent years. EPA estimates that there are 15 small governments that may be affected by the rule (i.e., EPA analysis estimates that these entities may have to file one or more reports under the final rule). EPA estimates that none of these small governments will bear annual costs greater than 1% of annual government revenues. EPA estimates that 5 small businesses of the approximately 4,400 small businesses potentially affected by the rule will experience annual compliance costs between 1% and 3% of annual sales after the first year of reporting. Given the relatively small estimated impacts on small entities, EPA believes that the rule will not have a significant economic impact on a substantial number of small entities. This determination is for the entire population of small entities potentially affected by this rule, since the test for certification is whether the rule as a whole has a significant economic impact on a substantial number of small entities.

Notwithstanding the Agency's certification of this rule under section 605(b) of the RFA, EPA remains committed to minimizing real impacts on small entities where this does not unacceptably compromise the informational benefits of the rule. Although not required, EPA intends to prepare guidance for reporting on dioxin that will assist facilities in determining their compliance needs and in properly completing the form, which will help ensure that small entities receive assistance to ease their burden of compliance. EPA has prepared such documents for current reporters and has received positive feedback on their utility from the targeted facilities. In addition, the Agency is always interested in any comments regarding the economic impacts that this regulatory action would impose on small entities, particularly suggestions for minimizing that impact. Such comments may be submitted to the Agency at any time, to the address listed in Unit I.B.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the public version of the official record for this rulemaking.

C. What is the Determination under the Paperwork Reduction Act?

The information collection requirements contained in this final rule have been submitted to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and in accordance with the procedures at 5 CFR 1320.11. OMB has approved the existing reporting and recordkeeping requirements EPA Toxic Chemical Release Inventory Form R (EPA Form No. 9350-1), supplier notification, and petitions under OMB Control No. 2070–0093 (EPA ICR No. 1363). An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1363.10) to amend the existing ICR to include the burden associated with the lower reporting thresholds, and a copy may be obtained from Sandy Farmer, Office of Information Collections (OIC); U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460, by calling (202) 260–2740, or electronically by sending an e-mail message to "farmer.sandy@epa.gov." An electronic copy has also been posted with this **Federal Register** document on EPA's Homepage with other information related to this action as described in Unit I.B., and may also be downloaded from the Internet at http://www.epa.gov.icr/.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9. The information requirements contained in this final rule are not effective until OMB approves them.

EPCRA section 313 requires owners or operators of certain facilities manufacturing, processing, or otherwise using any of over 600 listed toxic chemicals and chemical categories in excess of the applicable threshold quantities, and meeting certain requirements (i.e., at least 10 Full Time Employees or the equivalent), to report environmental on-site releases and transfers off-site for release and treatment. Under section 6607 of the PPA, facilities must also provide information on the quantities of the toxic chemicals in certain waste streams, and the efforts made to manage those waste quantities. The regulations codifying the EPCRA section 313 reporting requirements appear at 40 CFR part 372. Respondents may designate the specific chemical identity of a substance as a trade secret, pursuant to EPCRA section 322 (42 U.S.C. 11042). Regulations codifying the trade secret provisions can be found at 40 CFR part 350. Under the final rule, all facilities reporting under EPCRA section 313 on PBT chemicals would have to use the Form R (EPA Form No. 9350-1), which is currently approved by OMB.

For Form R, EPA estimates the industry reporting burden for collecting this information (including recordkeeping) to average 74 hours per report in the first year, at an estimated cost of $5,079 per Form R. In subsequent years, the burden is estimated to average 52.1 hours per report, at an estimated cost of $3,557 per Form R. These estimates include the time needed to review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden on any specific facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility.

This final rule is estimated to result in reports from 11,300 respondents. Of these, 3,100 facilities are estimated to be reporting under EPCRA section 313 for the first time as a result of the rule, while 8,200 are currently reporting facilities that will be submitting additional reports. These facilities will submit an estimated additional 20,000 Form Rs. This rule therefore results in an estimated total burden of 2.1 million hours in the first year, and 1.2 million hours in subsequent years, at a total estimated industry cost of $145 million in the first year and $80 million in subsequent years. The existing ICR will be amended to include an additional annual burden of 1.5 million hours (annual average burden for the first 3 years of ICR approval).

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes, where applicable, the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. EPA's burden estimates for the rule take into account all of the above elements, considering that under section 313, no additional measurement or monitoring may be imposed for purposes of reporting.

D. What are the Determinations under the Unfunded Mandates Reform Act and Executive Orders 12875 and 13084?

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), EPA has determined that this action contains a Federal mandate that may result in expenditures of $100 million or more for the private sector in any 1 year, but that it will not result in such expenditures for State, local, and tribal governments, in the aggregate. Accordingly, EPA has prepared a written statement for this rule pursuant to section 202 of UMRA, and that statement is available in the public version of the official record for this rulemaking (Ref. 71a). The costs associated with this action are estimated in the economic analysis prepared for this rule (Ref. 67), which is also included in the public version of the official record and summarized in Unit VII. The following is a brief summary of the UMRA statement for the rule.

This rule is being promulgated pursuant to sections 313(d)(1) and (2), 313(f)(2), 313(g), 313(h), and 328 of EPCRA, 42 U.S.C. 11023(d)(1)–(2), 11023(f)(2), 11023(g), 11023(h) and

11048; PPA section 6607, 42 U.S.C. 13106. The economic analysis contains an analysis of the benefits and costs of this rule, which estimates that the total industry costs of the rule will be $145 million in the first year and $80 million per year thereafter, and concludes that the benefits will be significant but cannot be assigned a dollar value due to the lack of adequate methodologies. EPA believes that the benefits provided by the information to be reported under this rule will significantly outweigh the costs imposed by today's action. The benefits of the information will in turn have positive effects on health, safety, and the natural environment through the behavioral changes that may result from that information.

EPA has not identified any Federal financial resources that are available to cover the costs of this rule. As set forth in the economic analysis, EPA has estimated the future industry compliance costs (after the first year) of this rule to be $80 million annually. Of those entities affected by today's action, EPA has not identified any disproportionate budgetary impact on any particular region, government, or community, or on any segment of the private sector. Based on the economic analysis, EPA has concluded that it is highly unlikely that this rule will have an appreciable effect on the national economy.

EPA has determined that it is not required to develop a small government agency plan as specified by section 203 of UMRA or to conduct prior consultation with State, local, or tribal governments under section 204 of UMRA, because the rule will not significantly or uniquely affect small governments and does not contain a significant Federal intergovernmental mandate.

Finally, EPA believes this rule complies with section 205(a) of UMRA. The objective of this rule is to expand the public benefits of the TRI program by exercising EPA's discretionary authority to add chemicals to the program and to lower reporting thresholds, thereby increasing the amount of information available to the public regarding the use, management, and disposition of PBT chemicals and enabling a more comprehensive view of PBT chemical exposures. In making additional information available through TRI, the Agency increases the utility of TRI data as an effective tool for empowering local communities, the public sector, industry, other agencies, and State and local governments to better evaluate risks to public health and the environment.

As described in Unit IV.D., EPA considered burden in the threshold selection. Existing burden-reducing measures (e.g., the laboratory exemption and the otherwise use exemptions, which include the routine janitorial or facility grounds maintenance exemption, motor vehicle maintenance exemption, structural component exemption, intake air and water exemption and the personal use exemption) will continue to apply to the facilities that file new reports as a result of this rule. EPA also will be assisting small entities subject to the rule, by such means as providing meetings, training, and compliance guides in the future, which also will ease the burdens of compliance. Many steps have been and will be taken to further reduce the burden associated with this rule, and to EPA's knowledge there is no available alternative to the rule that would obtain the equivalent information in a less burdensome manner. For all of these reasons, EPA believes the rule complies with UMRA section 205(a).

In addition, today's rule does not create an unfunded Federal mandate on State, local or tribal governments, nor does it significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), and section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), do not apply to this proposed rule.

E. What are the Determinations under Executive Orders 12898 and 13045?

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. Pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the Agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children.

By lowering the section 313 reporting thresholds for PBT chemicals, EPA will provide communities across the United States (including low-income populations and minority populations) with access to data that may assist them in lowering exposures and consequently reducing chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

F. What are the Determinations under Executive Orders 13132 and 12612?

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987) still applies. This action is expected to have a limited impact on municipal governments which operate electric utilities. EPA estimates that 39 municipalities operate 49 publicly owned electric utility facilities. Of these facilities, 44 are expected to file additional reports as a result of this action. Therefore EPA concludes that this rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612.

G. What are the Determinations under the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards, nor did EPA consider the use of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation."

H. What are the Determinations under the Congressional Review Act?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 31, 1999.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: October 25, 1999.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.22 [Amended]

2. In § 372.22(c), remove the phrase "§ 372.25 or § 372.27." and add in its place "§ 372.25, § 372.27, or § 372.28.".

§ 372.25 [Amended]

3. Section 372.25 is amended as follows:

i. In the introductory text of § 372.25, remove the first clause "Except as provided in § 372.27," and add in its place "Except as provided in §§ 372.27 and 372.28,".

ii. In paragraphs (f), (g), and (h), remove the reference "§ 372.25" and add in its place "§ 372.25, § 372.27, or § 372.28".

4. In § 372.27, add a new paragraph (e) to read as follows:

§ 372.27 Alternate threshold and certification.

* * * * *

(e) The provisions of this section do not apply to any chemicals listed in § 372.28.

5. Add a new § 372.28 to subpart B to read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

(a) Notwithstanding § 372.25 or § 372.27, for the toxic chemicals set forth in this section, the threshold amounts for manufacturing (including importing), processing, and otherwise using such toxic chemicals are as set forth in this section.

(1) Chemical listing in alphabetic order.

Chemical name	CAS No.	Reporting threshold
Aldrin	00309–00–2	100
Benzo(g,h,i)perylene	00191–24–2	10
Chlordane	00057–74–9	10
Heptachlor	00076–44–8	10
Hexachlorobenzene	00118–74–1	10
Isodrin	00465–73–6	10
Mercury	07439–97–6	10
Methoxychlor	00072–43–5	100
Octachlorostyrene	29082–74–4	10
Pendimethalin	40487–42–1	100
Pentachlorobenzene	00608–93–5	10
Polychlorinated biphenyl (PCBs)	01336–36–3	10
Tetrabromobisphenol A	00079–94–7	100
Toxaphene	08001–35–2	10
Trifluralin	01582–09–8	100

(2) Chemical categories in alphabetic order.

Category name	Reporting threshold
Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical) (This category includes only those chemicals listed below).	0.1 grams
67562–39–4 1,2,3,4,6,7,8-Heptachlorodibenzofuran	

Category name		Reporting threshold
55673–89–7	1,2,3,4,7,8,9-Heptachlorodibenzofuran	
70648–26–9	1,2,3,4,7,8-Hexachlorodibenzofuran	
57117–44–9	1,2,3,6,7,8-Hexachlorodibenzofuran	
72918–21–9	1,2,3,7,8,9-Hexachlorodibenzofuran	
60851–34–5	2,3,4,6,7,8-Hexachlorodibenzofuran	
39227–28–6	1,2,3,4,7,8-Hexachlorodibenzo-*p*-dioxin	
57653–85–7	1,2,3,6,7,8-Hexachlorodibenzo-*p*-dioxin	
19408–74–3	1,2,3,7,8,9-Hexachlorodibenzo-*p*-dioxin	
35822–46–9	1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin	
39001–02–0	1,2,3,4,6,7,8,9-Octachlorodibenzofuran	
03268–87–9	1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin	
57117–41–6	1,2,3,7,8-Pentachlorodibenzofuran	
57117–31–4	2,3,4,7,8-Pentachlorodibenzofuran	
40321–76–4	1,2,3,7,8-Pentachlorodibenzo-*p*-dioxin	
51207–31–9	2,3,7,8-Tetrachlorodibenzofuran	
01746–01–6	2,3,7,8 Tetrachlorodibenzo-*p*-dioxin	
Mercury compounds		10
Polycyclic aromatic compounds (PACs) (This category includes only those chemicals listed below).		100
00056–55–3	Benz(a)anthracene	
00205–99–2	Benzo(b)fluoranthene	
00205–82–3	Benzo(j)fluoranthene	
00207–08–9	Benzo(k)fluoranthene	
00206–44–0	Benzo(j,k)fluorene	
00189–55–9	Benzo(r,s,t)pentaphene	
00218–01–9	Benzo(a)phenanthrene	
00050–32–8	Benzo(a)pyrene	
00226–36–8	Dibenz(a,h)acridine	
00224–42–0	Dibenz(a,j)acridine	
00053–70–3	Dibenzo(a,h)anthracene	
00194–59–2	7H-Dibenzo(c,g)carbazole	
05385–75–1	Dibenzo(a,e)fluoranthene	
00192–65–4	Dibenzo(a,e)pyrene	
00189–64–0	Dibenzo(a,h)pyrene	
00191–30–0	Dibenzo(a,l)pyrene	
00057–97–6	7,12-Dimethylbenz(a)anthracene	
00193–39–5	Indeno[1,2,3-cd]pyrene	
00056–49–5	3-Methylcholanthrene	
03697–24–3	5-Methylchrysene	
05522–43–0	1-Nitropyrene	

(b) The threshold determination provisions under § 372.25(c) through (h) and the exemptions under § 372.38(b) through (h) are applicable to the toxic chemicals listed in paragraph (a) of this section.

§ 372.30 [Amended]

6. Section 372.30 is amended as follows:

i. In paragraph (a), remove the phrase "in § 372.25 at" and add in its place "in § 372.25, § 372.27, or § 372.28 at".

ii. In paragraphs (b)(1), the introductory text of (b)(3), (b)(3)(i), and (b)(3)(iv), remove the reference "§ 372.25" and add in its place "§ 372.25, § 372.27, or § 372.28".

§ 372.38 [Amended]

7. Section 372.38 is amended as follows:

i. In paragraph (a), add the following sentence at the end of the paragraph to read as follows: "This exemption does not apply to toxic chemicals listed in § 372.28, except for purposes of § 372.45(d)(1).".

ii. In paragraphs (b), (c) introductory text, (d) introductory text, and (f), remove the reference "§ 372.25" and add in its place "§ 372.25, § 372.27, or § 372.28".

iii. In paragraphs (g) and (h), remove the phrase "§ 372.25 or § 372.27" and add in its place "§ 372.25, § 372.27, or § 372.28".

8. Section 372.65 is amended as follows:

i. In the table in paragraph (a), revise the entry for "Vanadium" and alphabetically add four chemicals.

ii. In the table in paragraph (b), revise the CAS no. entry "7440–62–2" and add four chemicals in numerical CAS no. sequence.

iii. In the table in paragraph (c), alphabetically add two categories, "dioxin and dioxin-like compounds" and "vanadium", and alphabetically add two chemicals, "benzo(j,k)fluorene" and "3-methylcholanthrene", under the polycyclic aromatic compounds (PACs) category.

The revisions and additions read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
* * * *	* * *	
Benzo(g,h,i)perylene	00191–24–2	1/00
* * * *	* * *	
Octachlorostyrene	29082–74–4	1/00
* * * *	* * *	
Pentachlorobenzene	00608–93–5	1/00
* * * *	* * *	
Tetrabromobisphenol A	00079–94–7	1/00
* * * *	* * *	
Vanadium (except when contained in an alloy)	7440–62–2	1/00
* * * *	* * *	

(b) * * *

CAS No.	Chemical name	Effective date
	* * * * * * *	
7440–62–2	Vanadium (except when contained in an alloy)	1/00
	* * * * * * *	
00079–94–7	Tetrabromobisphenol A	1/00
00191–24–2	Benzo(g,h,i)perylene	1/00
00608–93–5	Pentachlorobenzene	1/00
	* * * * * * *	
29082–74–4	Octachlorostyrene	1/00
	* * * * * * *	

(c) * * *

Category name	Effective date
* * * * * * *	
Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical) (This category includes only those chemicals listed below) 67562–39–4 1,2,3,4,6,7,8-Heptachlorodibenzofuran 55673–89–7 1,2,3,4,7,8,9-Heptachlorodibenzofuran 70648–26–9 1,2,3,4,7,8-Hexachlorodibenzofuran 57117–44–9 1,2,3,6,7,8-Hexachlorodibenzofuran 72918–21–9 1,2,3,7,8,9-Hexachlorodibenzofuran 60851–34–5 2,3,4,6,7,8-Hexachlorodibenzofuran 39227–28–6 1,2,3,4,7,8-Hexachlorodibenzo-*p*-dioxin 57653–85–7 1,2,3,6,7,8-Hexachlorodibenzo-*p*-dioxin 19408–74–3 1,2,3,7,8,9-Hexachlorodibenzo-*p*-dioxin 35822–46–9 1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin 39001–02–0 1,2,3,4,6,7,8,9-Octachlorodibenzofuran 03268–87–9 1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin 57117–41–6 1,2,3,7,8-Pentachlorodibenzofuran 57117–31–4 2,3,4,7,8-Pentachlorodibenzofuran 40321–76–4 1,2,3,7,8-Pentachlorodibenzo-*p*-dioxin 51207–31–9 2,3,7,8-Tetrachlorodibenzofuran 01746–01–6 2,3,7,8-Tetrachlorodibenzo-*p*-dioxin	1/00

Category name		Effective date
* * * * * * *		
Polycyclic aromatic compounds (PACs): This category includes only those chemicals listed below).		
* * * * * * *		
00206–44–0	Benzo(j,k)fluorene	1/00
* * * * * * *		
00056–49–5	3-Methylcholanthrene	1/00
* * * * * * *		
Vanadium compounds		1/00

9. In § 372.85, revise the introductory text of paragraph (b)(15)(i), add a new paragraph (b)(15)(ii), and revise paragraphs (b)(16)(i)(B) and (b)(16)(ii)(B) to read as follows:

§ 372.85 Toxic chemical release reporting form and instructions.

* * * * *

(b) * * *

(15) * * *

(i) An estimate of total releases in pounds (except for dioxin and dioxin-like compounds, which shall be reported in grams) per year (releases of less than 1,000 pounds per year may be indicated in ranges, except for chemicals set forth in § 372.28) from the facility plus an indication of the basis of estimate for the following:

* * * * *

(ii) Report a distribution of the chemicals included in the dioxin and dioxin-like compounds category. Such distribution shall either represent the distribution of the total quantity of dioxin and dioxin-like compounds released to all media from the facility; or its one best media-specific distribution.

(16) * * *

(i) * * *

(B) An estimate of the amount of the chemical transferred in pounds (except for dioxin and dioxin-like compounds, which shall be reported in grams) per year (transfers of less than 1,000 pounds per year may be indicated as a range, except for chemicals set forth in § 372.28) and an indication of the basis of the estimate.

* * * * *

(ii) * * *

(B) An estimate of the amount of the chemical in waste transferred in pounds (except for dioxin and dioxin-like compounds, which shall be reported in grams) per year (transfers of less than 1,000 pounds may be indicated in ranges, except for chemicals set forth in § 372.28) to each off-site location, and an indication of the basis for the estimate and an indication of the type of treatment or disposal used.

* * * * *

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Vol. 64, No. 209

Friday, October 29, 1999

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

53179–53580	1
53581–53882	4
53883–54198	5
54199–54498	6
54499–54758	7
54759–55114	8
55115–55404	12
55405–55614	13
55615–55808	14
55809–56130	15
56131–56250	18
56251–56398	19
56399–56668	20
56669–56944	21
56945–57360	22
57361–57548	25
57549–57768	26
57769–57966	27
57967–58322	28
58323–58754	29

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
4865 (*See* Memorandum of April 16, 1999)	53883
(*See* Memorandum of September 24, 1999)	55809
6763 (See Proclamation 7235)	55611
7227	53877
7228	54193
7229	54195
7230	54197
7231	54755
7232	54757
7233	54759
7234	55405
7235	55611
7236	55613
7237	55615
7238	55617
7239	55619
7240	56393
7241	56397
7242	56665
7243	57767
7244	57967
Executive Orders:	
11145 (Amended by EO 13138)	53879
11183 (Amended by EO 13138)	53879
11287 (Amended by EO 13138)	53879
12131 (Amended by EO 13138)	53879
12196 (Amended by EO 13138)	53879
12216 (Amended by EO 13138)	53879
12345 (Amended by EO 13138)	53879
12367 (Amended by EO 13138)	53879
12382 (Amended by EO 13138)	53879
12473 (Amended by EO 13140)	55115
12484 (See EO 13140	55115
12550 (See EO 13140)	55115
12586 (See EO 13140)	55115
12708 (See EO 13140)	55115
12767 (See EO 13140)	55115
12852 (Revoked by EO 13138)	53879
12871 (Amended by EO 13138)	53879
12876 (Amended by EO 13138)	53879
12882 (Amended by EO 13138)	53879
12888 (See EO 13140)	55115
12900 (Amended by EO 13138)	53879
12905 (Amended by EO 13138)	53879
12936 (See EO 13140)	55115
12960 (See EO 13140)	55115
12961 (Revoked by EO 13138)	53879
12978 (See Notice of October 19, 1999)	56667
12994 (Amended by EO 13138)	53879
13010 (Revoked in part by EO 13138)	53879
13017 (Revoked by EO 13138)	53879
13021 (Amended by EO 13138)	53879
13037 (Revoked by EO 13138)	53879
13038 (Revoked by EO 13138)	53879
13050 (Revoked by EO 13138)	53879
13062 (Superseded in part by EO 13138)	53879
13086 (See EO 13140)	55115
13115 (Amended by EO 13138)	53879
13138	53879
13139	54175
13140	55115
Administrative Orders:	
Memorandums:	
April 16, 1999	53883
September 24, 1999	55809
Notices:	
Notice of October 19, 1999	56667
Presidential Determinations:	
No. 99–38 of September 21, 1999	53573
No. 99–39 of September 21, 1999	53575
No. 99–40 of September 21, 1999	53577
No. 99–41 of	

September 22, 1999 ... 53579
No. 99–42 of September 29, 1999 ... 54499
No. 99–43 of September 30, 1999 ... 54501
No. 99–44 of September 30, 1999 ... 54503
No. 99–45 of September 30, 1999 ... 53505

5 CFR

532 ... 53179
831 ... 53581
842 ... 53581
870 ... 54761
1201 ... 54507

7 CFR

56 ... 56945
210 ... 55407
215 ... 55407
220 ... 55407
235 ... 55407
245 ... 55407
246 ... 56669
301 ... 55811, 56948, 57969
735 ... 54508
915 ... 53181
923 ... 53885
930 ... 58323
944 ... 53181
966 ... 57361
984 ... 56131, 58325
997 ... 56133
998 ... 56133
999 ... 56133
1000 ... 53885
1001 ... 53885
1002 ... 53885
1004 ... 53885
1005 ... 53885
1006 ... 53885
1007 ... 53885
1012 ... 53885
1013 ... 53885
1030 ... 53885
1032 ... 53885
1033 ... 53885
1036 ... 53885
1040 ... 53885
1044 ... 53885
1046 ... 53885
1049 ... 53885
1050 ... 53885
1064 ... 53885
1065 ... 53885
1068 ... 53885
1076 ... 53885
1079 ... 53885
1106 ... 53885
1124 ... 53885
1126 ... 53885
1131 ... 53885
1134 ... 53885
1135 ... 53885
1137 ... 53885
1138 ... 53885
1139 ... 53885
1755 ... 53886
2003 ... 56399
3570 ... 56399

Proposed Rules:
46 ... 57405
75 ... 58358
932 ... 57597

8 CFR

3 ... 56135

Proposed Rules:
Ch. 1 ... 54794

9 CFR

3 ... 56142
77 ... 56399
94 ... 55812, 55813
303 ... 56400
304 ... 56400
307 ... 56400
308 ... 56400
312 ... 56400
314 ... 56400
317 ... 53186
327 ... 56400
331 ... 56400
350 ... 56400
381 ... 53186, 56400
416 ... 56400

10 CFR

20 ... 54543, 55524
50 ... 53582
71 ... 57769
72 ... 53582, 56114
431 ... 54114
600 ... 56418

Proposed Rules:
2 ... 55176
5 ... 58584
20 ... 56274
30 ... 57785
50 ... 53270, 56476
63 ... 57409

11 CFR

110 ... 55125

Proposed Rules:
100 ... 55440
102 ... 55440
104 ... 55440

12 CFR

4 ... 56949
204 ... 53617
211 ... 56949
262 ... 53188
347 ... 56949
602 ... 54511
612 ... 55621
614 ... 55621
615 ... 56675
618 ... 55621
701 ... 56953, 57363
703 ... 57363
704 ... 57363
709 ... 57363
712 ... 57363
713 ... 57363
741 ... 56148
790 ... 57363
791 ... 57363
792 ... 57363
910 ... 55125

Proposed Rules:
202 ... 57409
205 ... 57409
213 ... 57409
226 ... 57409
230 ... 57409
714 ... 55866
724 ... 55871
745 ... 55871
1750 ... 56274

13 CFR

121 ... 57366
125 ... 57366

Proposed Rules:
Ch. IV ... 57932
Ch. V ... 57946
113 ... 58584
121 ... 55873, 57188

14 CFR

25 ... 54761
36 ... 55598
39 ... 53189, 53191, 53193, 53620, 53621, 53623, 53625, 54199, 54200, 54202, 54512, 54513, 54515, 54517, 54518, 54763, 54767, 54769, 54770, 54773, 54774, 55407, 55409, 55411, 55413, 55414, 55416, 55621, 55624, 55815, 56151, 56158, 56158, 56159, 56161, 56163, 56420, 56422, 56424, 56426, 56957, 56959, 56960, 56962, 56963, 57549, 57551, 575553,, 57555, 57556, 57971, 57972, 58328
71 ... 53627, 53887, 53888, 53889, 53890, 53891, 53892, 53893, 53894, 53895, 53896, 53898, 53899, 54203, 54204, 54205, 54206, 55131, 55815, 55816, 55817, 55818, 55819, 55820, 56251, 56428, 56429, 56676, 57557, 57558, 58329, 58331, 58332
93 ... 53558
97 ... 55132, 55133, 55135, 57555, 57560, 57562

Proposed Rules:
Ch. 1 ... 56275
11 ... 56708
21 ... 58644
25 ... 58644
39 ... 53275, 53951, 53953, 54227, 54229, 54230, 54232, 54234, 54237, 54239, 54240, 54242, 54246, 54248, 54249, 54580, 54582, 54584, 54587, 54589, 54591, 54594, 54596, 54598, 54795, 54797, 54799, 54801, 54804, 54808, 54811, 54815, 54818, 54822, 54826, 54829, 54833, 55177, 55181, 55184, 55188, 55191, 55195, 55196, 55197, 55200, 55204, 55207, 55211, 55440, 55636, 55638, 55640, 55642, 55644, 56276, 56279, 56281, 56709, 56712, 56715, 57409, 57600, 57602, 57606, 57608, 57787, 57789, 57790, 57792, 57794, 57796, 57798, 57800, 57802, 57806, 57808, 57810, 57811, 57814, 57816, 57818, 57820, 57822, 57823, 58359
71 ... 53956, 53957, 57609, 57610, 57995, 58362, 58363
91 ... 56708, 58644
121 ... 56708, 58644
125 ... 58644
129 ... 58644
135 ... 56708
145 ... 56708
193 ... 53958
450 ... 54448
1253 ... 58585

15 CFR

774 ... 54520
902 ... 54732, 55821
2014 ... 56429

Proposed Rules:
8a ... 58586
30 ... 53861
732 ... 53854
740 ... 53854
743 ... 53854
748 ... 53854
750 ... 53854
752 ... 53854
758 ... 53854
762 ... 53854
772 ... 53854

16 CFR

241 ... 57372

Proposed Rules:
4 ... 57825
436 ... 57294
453 ... 56717

17 CFR

210 ... 53900
228 ... 53900
229 ... 53900
230 ... 53900
232 ... 56430
239 ... 53900, 56430
240 ... 53900
249 ... 53900, 56430
259 ... 56430
260 ... 53900
269 ... 56430
274 ... 56430

Proposed Rules:
210 ... 55648
228 ... 55648
229 ... 55648
240 ... 55648, 57996

18 CFR

2 ... 54522
153 ... 57374
157 ... 54522, 57374
284 ... 54522
380 ... 54522, 57374
385 ... 54522, 56172

Proposed Rules:
281 ... 56982
385 ... 53959
1317 ... 58587

19 CFR

19 ... 57564
24 ... 56433
122 ... 53627
159 ... 56433
174 ... 56433

20 CFR

404 ... 57774

Proposed Rules:
404 ... 55214
422 ... 55216

718..........54966
722..........54966
725..........54966
726..........54966
727..........54966

21 CFR

Ch. II..........54794
3..........56441
5..........56441
10..........56441
20..........56441
25..........56454
26..........57776
50..........54180, 56441
56..........56441
58..........56441
74..........57974
101..........57700
172..........57974
173..........56172
177..........57976
178..........53925
207..........56441
310..........56441
312..........54180, 56441
316..........56441
558..........53926
600..........56441
601..........56441
607..........56441
610..........56441
640..........56441
660..........56441
878..........53927
900..........53195

Proposed Rules:

5..........53281
25..........53281
314..........53960
500..........53281
510..........53281
558..........53281
601..........53960
801..........58004
878..........58004
880..........53294, 58004

22 CFR

Ch. V..........54538
40..........55417
42..........55417
171..........54538
514..........53928

Proposed Rules:

40..........58004
42..........58004
146..........58587
194..........53632
229..........58588

24 CFR

200..........53930, 55828
203..........56108
234..........56108
882..........53868
888..........53450, 56894
902..........56676
903..........56844
964..........56870
982..........56882, 56894

Proposed Rules:

3..........58589
964..........56890

25 CFR

516..........54541

Proposed Rules:

151..........55878

26 CFR

1..........55137
54..........57520
301..........56246

Proposed Rules:

1..........54836, 56246, 56718, 58006
25..........56179
301..........58006

27 CFR

1..........54776
47..........55625
55..........55625

Proposed Rules:

4..........57413
5..........57413
7..........57413

28 CFR

Ch. I..........54794

Proposed Rules:

54..........58589
571..........53872

29 CFR

1604..........58333
1606..........58333
2590..........57520
4044..........55828

Proposed Rules:

36..........58590
2510..........57611

30 CFR

46..........58334
48..........58334
202..........56454
206..........56454
250..........53195
914..........57565
924..........57567
925..........57978
948..........53200
950..........53202

Proposed Rules:

250..........53298
901..........55878
904..........56179
915..........54840
916..........56982
936..........56983
946..........54843
948..........54845

31 CFR

Proposed Rules:

28..........58591
380..........58364

32 CFR

700..........56062
1800..........53769

Proposed Rules:

196..........58594
199..........56283
806..........56181

33 CFR

100..........53208, 53628, 55829, 55830
117..........53209, 54776, 55137, 55419, 55831, 56252, 56677
165..........55138, 55420, 57981
187..........56965

Proposed Rules:

Ch. I..........56286
20..........53970
100..........54847, 54849
117..........55217
165..........54242, 54963, 57418, 57419, 58366
175..........53971
181..........56287
183..........56287
207..........55441

34 CFR

600..........58608
602..........56612
668..........57356, 58284, 58608
673..........58284
674..........57528, 58284, 58298
675..........58284
676..........58284
682..........57528, 58622
685..........57960
690..........58284

Proposed Rules:

75..........54254
614..........57288

36 CFR

13..........56455
1275..........56678

Proposed Rules:

217..........59074, 56293
219..........59074, 56293

Proposed Rules:

Ch. II..........58368
1211..........58595

37 CFR

Proposed Rules:

1..........53772
3..........53772
5..........53772
10..........53772

38 CFR

3..........54206
17..........54207

Proposed Rules:

20..........53302
23..........58598

39 CFR

776..........56253
3001..........58335
3002..........58335
3003..........57982
3004..........58335

Proposed Rules:

111..........54255, 57419, 57571

40 CFR

52..........53210, 53931, 54559, 55139, 55141, 55421, 55831, 57777, 57983, 57989, 57991, 583401, 58344, 58347
60..........57392
61..........53212
62..........55141, 57781
63..........56173, 57572
76..........55834
81..........55421, 58347
180..........54218, 54777, 54779, 55838, 56464, 56678, 56681, 56690, 56697
201..........55141
261..........56256, 56469
262..........56469
268..........56469
271..........55142, 55153, 55629, 56173
300..........53213, 53629, 56966
372..........58666

Proposed Rules:

2..........57421
5..........58599
49..........54851
50..........57424
52..........53303, 53973, 54600, 54601, 54851, 55219, 55220, 55442, 55662, 55667, 55879, 56181, 57826, 58006, 58007, 58008, 58011, 58018, 58369
62..........57827
76..........55880
80..........57827
81..........55442, 58018
85..........56985, 57827, 58472
86..........56985, 57827, 58472
122..........53304, 57834
123..........53304, 57834
124..........53304, 57834
130..........53304, 57834
131..........53304, 57834
132..........53632
144..........57430
146..........57430
147..........56986
165..........56918
180..........56477
194..........56185
197..........53304
258..........53976
261..........55443, 55880, 58022
264..........54604
271..........55222, 55671
300..........56992
372..........58370
710..........56998

41 CFR

51-2..........55841
51-5..........55841

Proposed Rules:

101-4..........58600

42 CFR

36..........58318
36a..........58318
121..........56650

Proposed Rules:

8..........56294
57..........54263
58..........54263
72..........58022
405..........57431
409..........57612, 58134
410..........57612, 58134
411..........57612, 58134
413..........57612, 58134
424..........57612, 58134
447..........54263
484..........57612, 58134

43 CFR

1820..........53213
3500..........53512
3510..........53512
3520..........53512

3530	53512
3540	53512
3550	53512
3560	53512
3570	53512
3800	53213

Proposed Rules:

41	58600
2730	57613
2800	55452
2880	55452
3800	57613
3820	57613
3830	57613
3840	57613
3850	57613

44 CFR

62	56174
64	56256
65	53931, 53933, 53936
67	53938, 53939
206	55158

Proposed Rules:

19	58601
67	53980, 53982

45 CFR

96	55843
61	57740
144	57520
146	57520

Proposed Rules:

5b	57619
302	55074
303	55074
304	55074
305	55074
308	55102
618	58602
1155	58602
1171	58603
1182	58604
2555	58604

46 CFR

1	53220
2	53220
4	53220
10	53220, 53230
12	53230
15	53220
27	56257
31	53220
34	53220
38	53220
52	53220
53	53220
54	53220
56	53220
57	53220
58	53220
59	53220
61	53220
63	53220
64	53220
67	53220
68	53220
69	53220
76	53220
91	53220
95	53220
98	53220
105	53220
107	53220
108	53220
109	53220
118	53220
125	53220
133	53220
147	53220
151	53220
153	53220
160	53220
161	53220
162	53220
167	53220
169	53220
177	53220
181	53220
189	53220
193	53220
197	53220
199	53220
204	54782

Proposed Rules:

5	53970
15	56720

47 CFR

Ch. I	54561, 55671
0	55161, 55425, 56269, 57585
1	53231
13	53231
20	54564
22	53231, 54564
64	53242, 53944, 54577, 55163, 55164, 56177, 57994
73	54224, 54225, 54783, 54784, 54785, 54786, 55172, 55173, 55174, 55434, 56703, 56704, 56974
80	53231
87	53231
90	53231
95	53231
97	53231
101	53231

Proposed Rules:

54	53648
61	53648
69	53648
73	53655, 54268, 54269, 54270, 55222, 55223, 55452, 55453, 56723, 56724, 56999, 57835, 57836, 57837, 57838
76	54854

48 CFR

Ch. 19	54538
1	53264
15	53264
19	53264
52	53264
201	56704
209	55632
211	55632
213	56704
214	55632
237	53447
252	55632
415	54963

Proposed Rules:

26	57964
28	58282
52	57964, 58282
204	56724
252	56724
909	55453
970	55453
1804	54270
1812	54270
1825	58031
1852	54270, 58031
9903	56296

49 CFR

Ch. III	56478, 58355
1	56270, 58356
71	56705
172	54730
192	56878
544	57393
1002	53264
1003	53264
1007	53264
1011	53264
1012	53264
1014	53264
1017	53264
1018	53264
1019	53264
1021	53264
1034	53264
1039	53264
1100	53264
1101	53264
1103	53264
1104	53264
1105	53264
1113	53264
1133	53264
1139	53264
1150	53264
1151	53264
1152	53264
1177	53264
1180	53264
1184	53264

Proposed Rules:

25	58605
71	55892
192	56725
195	56725
392	58372
661	54855

50 CFR

17	56582, 56590, 56596
216	53269
222	55858, 55860, 57397
223	55434, 55858, 55860, 57397
226	57399
600	54786
622	57403, 57585
635	53949, 54577, 55633, 56472
648	54732, 55821, 57586, 57587
660	54786, 56177
679	53630, 53950, 54225, 54578, 54791, 54792, 55438, 55634, 55865, 56271, 56272, 56473, 56474, 56475, 57595

Proposed Rules:

17	53655, 55892, 56297, 57534, 57620
216	56298, 57010, 57026
227	56297
622	57436, 57623
648	55688
660	54272, 55689, 56479
679	53305, 56481

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 29, 1999

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
- International fisheries regulations:
  - Pacific halibut—
    - Sitka Sound; local area management plan; published 9-29-99

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
- Sex discrimination and national origin discrimination guidelines; employer liability standard for harassment by supervisors; rescission; published 10-29-99

FEDERAL COMMUNICATIONS COMMISSION
- Common carrier services:
  - Telecommunications Act of 1996; implementation—
    - Telemessaging, electronic publishing, and alarm monitoring services; clarification; published 9-29-99

OFFICE OF MANAGEMENT AND BUDGET
Management and Budget Office
- Prompt Payment Act; implementation:
  - Prompt payment procedures; Circular A-125 replacement; published 9-29-99

POSTAL SERVICE
- Domestic Mail Manual:
  - Mailing Online market test termination; changes in domestic classifications and fees; published 10-26-99

SECURITIES AND EXCHANGE COMMISSION
- Investment companies:
  - Personal investment activities fraud prevention; adoption of policies and codes of ethics; published 8-27-99
- Securities:
  - Equity securities purchases by issuer or affiliated purchaser; published 9-29-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
- Airworthiness directives:
  - Airbus; published 9-24-99
  - Eurocopter France; published 10-14-99
  - Pratt & Whitney; published 9-24-99

TRANSPORTATION DEPARTMENT
Office of Motor Carrier Safety
- Organization, functions, and authority delegations:
  - Office of Motor Carrier Safety; CFR chapter revision; published 10-29-99

RULES GOING INTO EFFECT OCTOBER 30, 1999

COMMERCE DEPARTMENT
Patent and Trademark Office
- Trademark Law Treaty Implementation Act; implementation; published 9-8-99
  - Correction; published 9-22-99

RULES GOING INTO EFFECT OCTOBER 31, 1999

TRANSPORTATION DEPARTMENT
- Standard time zone boundaries:
  - Nevada; published 10-21-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
- Air traffic operating and flight rules, etc.:
  - High density airports; takeoff and landing slots and slot allocation procedures; published 10-1-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
- Onions (Vidalia) grown in—
  - Georgia; comments due by 11-2-99; published 9-3-99
- Oranges and grapefruit grown in—
  - Texas; comments due by 11-1-99; published 8-31-99

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
- Plant-related quarantine, domestic:
  - Mediterranean fruit fly; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT
Food and Nutrition Service
- Food stamp program:
  - Balanced Budget Act of 1997; implementation—
    - Time-limit exemptions and employment and training programs; comments due by 11-2-99; published 9-3-99

AGRICULTURE DEPARTMENT
Forest Service
- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
- Meat and poultry inspection:
  - Accurate weights, repairs, adjustments, and replacement after inspection; scale requirements; comments due by 11-1-99; published 10-1-99

AGRICULTURE DEPARTMENT
- Acquisition regulations:
  - Contracting by negotiation; part 415 reorganization; comments due by 11-1-99; published 9-30-99

COMMERCE DEPARTMENT
Export Administration Bureau
- Export administration regulations:
  - Syrian civilian passenger aircraft safety of flight; export and reexport of aircraft parts and components; license review policy; comments due by 11-1-99; published 9-16-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
- Fishery conservation and management:
  - West Coast States and Western Pacific fisheries—
    - West Coast salmon; comments due by 11-2-99; published 10-18-99

COMMODITY FUTURES TRADING COMMISSION
- Privacy Act; implementation; comments due by 11-1-99; published 9-30-99

ENVIRONMENTAL PROTECTION AGENCY
- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-1-99; published 9-30-99
  - District of Columbia; comments due by 11-1-99; published 9-30-99
- Air quality implementation plans; \A\approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Tennessee; comments due by 11-1-99; published 9-30-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Chlorfenapyr; comments due by 11-1-99; published 9-1-99
  - Cymoxanil; comments due by 11-1-99; published 9-1-99
  - Difenoconazole; comments due by 11-1-99; published 9-1-99
- Solid wastes:
  - Municipal solid waste landfill permit programs; adequacy determinations—
    - Rhode Island; comments due by 11-4-99; published 10-5-99
- Superfund program:
  - Toxic chemical release reporting; community-right-to-know—
    - Lead and lead compounds; lowering of reporting thresholds; comments due by 11-1-99; published 9-21-99

FEDERAL COMMUNICATIONS COMMISSION
- Digital television stations; table of assignments:
  - Texas; comments due by 11-1-99; published 9-15-99
- Radio stations; table of assignments:
  - Arizona; comments due by 11-1-99; published 9-22-99

  - Arkansas; comments due by 11-1-99; published 9-22-99
  - Colorado; comments due by 11-1-99; published 10-6-99
  - Kansas; comments due by 11-1-99; published 9-22-99
  - Louisiana; comments due by 11-1-99; published 9-22-99
  - Pennsylvania and New York; comments due by 11-1-99; published 9-22-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Human drugs:
  - Abbreviated new drug applications; 180-day generic drug exclusivity; comments due by 11-4-99; published 8-6-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Fish and wildlife; subsistence taking; comments due by 11-5-99; published 9-10-99
- Endangered and threatened species:
  - Aleutian Canada goose; comments due by 11-1-99; published 8-3-99
  - Findings on petitions, etc.—
    - Black-tailed prairie dog; comments due by 11-3-99; published 10-4-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Alabama; comments due by 11-1-99; published 10-15-99

NUCLEAR REGULATORY COMMISSION

- Production and utilization facilities; domestic licensing:
  - Noncombustible fire barrier penetration seal materials; requirement eliminated, etc.; comments due by 11-1-99; published 8-18-99

POSTAL SERVICE

- Domestic Mail Manual:
  - Special services labels; barcode requirements; comments due by 11-5-99; published 10-6-99

SECURITIES AND EXCHANGE COMMISSION

- Investment advisers:
  - Political contributions; comments due by 11-1-99; published 8-10-99

TRANSPORTATION DEPARTMENT

Coast Guard

- Drawbridge operations:
  - New Jersey; comments due by 11-1-99; published 9-1-99
- Ports and waterways safety:
  - Tampa Bay, FL; safety zone; comments due by 11-1-99; published 9-1-99
- Regattas and marine parades:
  - Puerto Rico International Cup; comments due by 11-1-99; published 8-31-99
- Vessel documentation and measurement:
  - Standard measurement system exemption from gross tonnage; comments due by 11-1-99; published 8-31-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Airbus; comments due by 11-1-99; published 10-5-99
  - Aircraft Belts, Inc.; comments due by 11-1-99; published 9-1-99
  - AlliedSignal Inc.; comments due by 11-3-99; published 8-5-99
  - Boeing; comments due by 11-1-99; published 8-31-99
  - Dowty Aerospace Propellers; comments due by 11-1-99; published 9-1-99
  - Empresa Brasileira de Aeronautica S.A.; comments due by 11-1-99; published 10-1-99
  - General Electric Co.; comments due by 11-2-99; published 9-3-99
  - Raytheon; comments due by 11-1-99; published 9-15-99
  - Rolls-Royce plc.; comments due by 11-1-99; published 8-31-99
  - Short Brothers; comments due by 11-5-99; published 10-6-99
  - Short Brothers and Harland Ltd.; comments due by 11-3-99; published 9-28-99
- Aviation safety:
  - Voluntarily submitted information; confidentiality protection; comments due by 11-4-99; published 10-5-99
- Class E airspace; comments due by 11-4-99; published 9-23-99

TRANSPORTATION DEPARTMENT

Federal Highway Administration

- Motor carrier safety standards:
  - Commercial motor vehicle; definition; comments due by 11-2-99; published 9-3-99
  - Small passenger-carrying commercial motor vehicles; operator requirements; comments due by 11-2-99; published 9-3-99
- Transportation Equity Act for 21st Century; implementation:
  - Federal lands highway program; transportation planning procedures and management systems—
    - Fish and Wildlife Service and refuge roads program; comments due by 11-1-99; published 9-1-99
    - Forest Service and forest highway program; comments due by 11-1-99; published 9-1-99
    - Indian Affairs Bureau and Indian reservation roads program; comments due by 11-1-99; published 9-1-99
    - National Park Service and park roads and parkways program; comments due by 11-1-99; published 9-1-99

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H.R. 2561/P.L. 106–79

Department of Defense Appropriations Act, 2000 (Oct. 25, 1999; 113 Stat. 1212)

S. 322/P.L. 106–80

To amend title 4, United States Code, to add the Martin Luther King Jr. holiday to the list of days on which the flag should especially be displayed. (Oct. 25, 1999; 113 Stat. 1285)

S. 800/P.L. 106–81

Wireless Communications and Public Safety Act of 1999 (Oct. 26, 1999; 113 Stat. 1286)

Last List October 26, 1999

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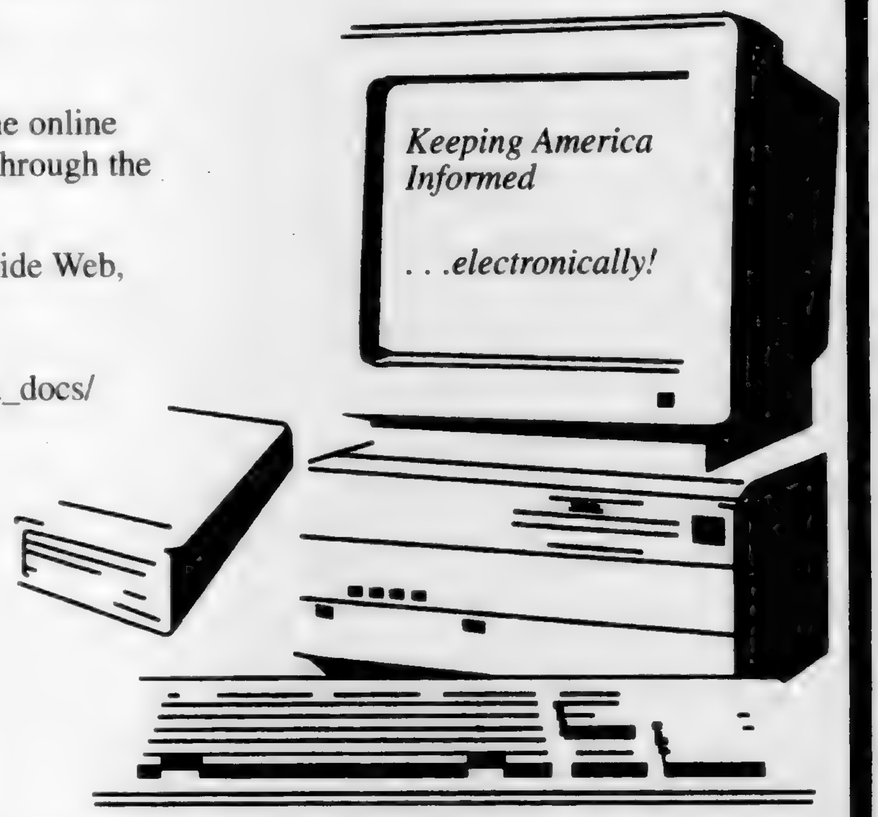

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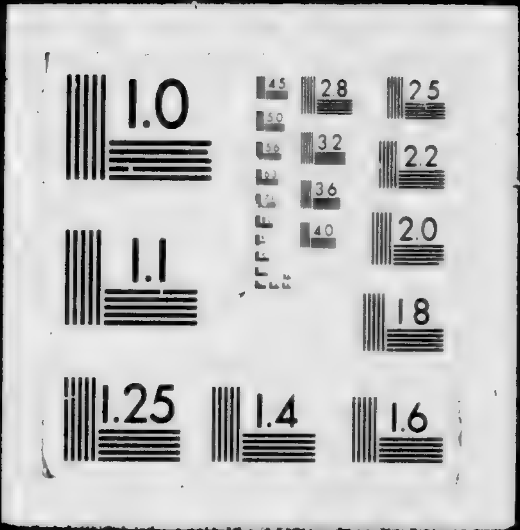
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Contents

Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

Agency for Health Care Policy and Research
NOTICES
Meetings:
  Health Care Policy, Research, and Evaluation National Advisory Council, 58850

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
  Scientific Counselors Board et al., 58850–58851

Agricultural Marketing Service
RULES
Almonds grown in—
  California, 58763–58766
Oranges, grapefruit, tangerines, and tangelos grown in Florida and imported, 58759–58763

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Forest Service

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
  Tuberculosis in cattle and bison—
    State and area classifications, 58769–58780

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
  South Carolina, 58807

Commerce Department
See Export Administration Bureau
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, waivers, etc.:
  China, 58823–58824

Commodity Credit Corporation
RULES
Loan and purchase programs:
  Livestock Indemnity Program and Single-Year and Multi-Year Crop Loss Disaster Assistance Program, 58766–58769

Community Development Financial Institutions Fund
RULES
Community Development Financial Institutions Program; implementation, 59075–59093
NOTICES
Grants and cooperative agreements; availability, etc.:
  Community Development Financial Institutions Program—
    Core Component, 59094–59096
    Intermediary Component, 59096–59099

Defense Department
RULES
Acquisition regulations:
  Overseas use of purchase card
    Correction, 58908

Education Department
RULES
Postsecondary education:
  Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program, 58937–58970
  Student assistance general provisions—
    Institutional and financial assistance information disclosure, 59059–59073
    Loan default reduction and prevention measures, 58973–58984
  Student assistance general provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 59015–59044

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
  Environmental Management Site-Specific Advisory Board—
    Paducah Gaseous Diffusion Plant, KY, 58824

Energy Efficiency and Renewable Energy Office
NOTICES
Grants and cooperative agreements; availability, etc.:
  Hydrogen technologies; research, development, and demonstration, 58824–58825
  Renewable energy and energy efficiency technologies; information dissemination, public outreach, training, and related technical activities, 58825–58827

Environmental Protection Agency
RULES
Clean Air Act:
  Interstate ozone transport reduction—
    Connecticut, Massachusetts, and Rhode Island; nitrogen oxides budget trading program; significant contribution and rulemaking findings; withdrawn, 58792
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  Propargite, 58792–58793
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 58834–58837
Air pollution control; new motor vehicles and engines:
  State implementation plans; adequacy status for transportation conformity purposes, 58837
Grants and cooperative agreements; availability, etc.:
  State and Tribal Environmental Justice Program, 58837–58840
Meetings:
  Science Advisory Board, 58840–58841

- Reports and guidance documents; availability, etc.:
  - Great Lakes Binational Toxics Strategy; Canada-U.S. Strategy for Virtual Elimination of Persistent Toxic Substances in Great Lakes; various response reports, 58841
- Superfund; response and remedial actions, proposed settlements, etc.:
  - Raymark Industries, Inc. Site, CT, 58841–58842
- Toxic and hazardous substances control:
  - New chemicals; receipt and status information, 58842–58846
- Water pollution control:
  - Clean Water Act—
    - Class I administrative penalty assessments, 58846–58847
- Water supply:
  - Public water supply supervision program—
    - South Carolina, 58847

Executive Office of the President

See Management and Budget Office
See Presidential Documents

Export Administration Bureau

NOTICES

- Meetings:
  - President's Export Council, 58807–58808

Federal Aviation Administration

NOTICES

- Civil penalty actions; Administrator's decisions and orders; index availability, 58879–58895
- Passenger facility charges; applications, etc.:
  - Monroe County, Key West, FL, et al., 58895–58897
  - Western Nebraska Regional Airport, NE, 58897

Federal Communications Commission

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request, 58847–58848

Federal Emergency Management Agency

NOTICES

- Disaster and emergency areas:
  - California, 58848
  - Florida, 58848–58849
  - North Carolina, 58849
- Meetings:
  - Emergency Medical Services Federal Interagency Committee, 58849

Federal Energy Regulatory Commission

NOTICES

- Electric rate and corporate regulation filings:
  - Berkshire Power Co., LLC, et al., 58829–58830
  - Great Bay Power Corp. et al., 58831–58833
- Hydroelectric applications, 58833–58834
- Meetings; Sunshine Act, 58834
- *Applications, hearings, determinations, etc.:*
  - Destin Pipeline Co., L.L.C., 58827
  - Midwestern Gas Transmission Co.; correction, 58908
  - Natural Gas Pipeline Co. of America, 58827
  - North American Energy Consevation, Inc., 58827–58828
  - Southern Natural Gas Co., 58828
  - South Georgia Natural Gas Co., 58828
  - TransColorado Gas Transmission Co., 58828–58829

Federal Financial Institutions Examination Council

PROPOSED RULES

- Freedom of Information Act; implementation, 58800–58806

Federal Highway Administration

NOTICES

- Environmental statements; notice of intent:
  - Teton and Pondera Counties, MT, 58897–58898
- Transportation Equity Act for 21st Century; implementation:
  - Federal-aid highway construction projects; use of uniformed police officers, 59011–59013

Federal Railroad Administration

PROPOSED RULES

- Railroad safety enforcement procedures:
  - Light rail transit operations on general railroad system; safety jurisdiction; joint agency policy statement with Federal Transit Administration, 59045–59058

NOTICES

- Exemption petitions, etc.:
  - Connecticut Transportation Department et al., 58898
  - CSX Transportation, 58898–58899
  - Santa Clara County Transit District, 58899–58905

Federal Reserve System

RULES

- International banking operations (Regulation K):
  - Data processing provisions; interpretation, 58780–58782

NOTICES

- Banks and bank holding companies:
  - Change in bank control, 58849
  - Formations, acquisitions, and mergers, 58849–58850

Fish and Wildlife Service

RULES

- Endangered and threatened species:
  - Bull trout, 58909–58933

PROPOSED RULES

- Endangered and threatened species:
  - Bull trout, 58934–58936

NOTICES

- Meetings:
  - Aquatic Nuisance Species Task Force, 58854–58855

Foreign Assets Control Office

RULES

- Sudanese and Libyan sanction regulations, and Iranian transaction regulations:
  - Licensing of commercial sales, exportation and reexportation of agricultural commodities and products, etc., 58789–58792

Forest Service

NOTICES

- Environmental statements; availability, etc.:
  - White River National Forest, CO, 58807

Geological Survey

NOTICES

- Map products; new prices, 58855
- Map separates; new prices, 58855–58856

Health and Human Services Department

See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Health Care Financing Administration

See Inspector General Office, Health and Human Services Department
See National Institutes of Health

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58851

Inspector General Office, Health and Human Services Department
NOTICES
Health care program; fraud and abuse:
  Health Insurance Portability and Accountability Act—
    Healthcare Integrity and Protection Data Bank; opening date for reporting and self-query fee, 58851–58852

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Income taxes, etc.:
  Partnerships and branches; guidance under Subpart F; regulations removed
    Correction, 58782

Justice Department
RULES
Whistleblower protection for FBI employees, 58782–58788

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Classification of public lands:
  Idaho, 58856
Withdrawal and reservation of lands:
  California, 58856
  New Mexico, 58856–58857

Management and Budget Office
NOTICES
Hospital and medical care and treatment furnished by United States, costs; rates regarding recovery from tortiously liable third persons (Circular A-25), 58862–58870

Maritime Administration
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 58905

Merit Systems Protection Board
PROPOSED RULES
Practice and procedure:
  Employee choice between appeal procedure and grievance procedure; agency requirement to provide notice when it takes appealable action against employee, 58798–58800

National Archives and Records Administration
NOTICES
Electronic copies previously covered by General Records Schedule 20; records schedules availability and comment request, 58859–58861

National Institute of Standards and Technology
NOTICES
Meetings:
  Key management using public key cryptography; workshop, 58808
  Malcolm Baldrige National Quality Award—
    Panel of Judges, 58808–58809

National Institutes of Health
NOTICES
Meetings:
  National Human Genome Research Institute, 58852
  National Institute of Mental Health, 58852–58853
  National Library of Medicine, 58853
  Scientific Review Center, 58853–58854

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
  Alaska; fisheries of Exclusive Economic Zone—
    Pollock, 58796–58797
  Atlantic highly migratory species—
    Atlantic bluefin tuna, 58793–58796
NOTICES
Grants and cooperative agreements; availability, etc.:
  National Sea Grant College Program—
    Marine biotechnology application to assess health of coastal ecosystems, 58817–58823
    National Fisheries Habitat Program, 58812–58817
    National Marine Fisheries Service joint graduate fellowship programs in population dynamics and marine resource economics, 58809–58812
Meetings:
  Caribbean Fishery Management Council, 58823

National Park Service
NOTICES
Native American human remains and associated funerary objects:
  Oakland Museum of California, CA; inventory from Siskiyou County, CA, 58857
  State Historical Society of Wisconsin, WI; HoChunk Nation brass kettle water drum, carved gourd rattle, and Yellow Thunder pipe, 58857
Oil and gas plans of operations; availability, etc.:
  Lake Meredith National Recreation Area, TX, 58858

Nuclear Regulatory Commission
NOTICES
Meetings:
  Reactor Safeguards Advisory Committee, 58861
Regulatory guides; issuance, availability, and withdrawal, 58862
Applications, hearings, determinations, etc.:
  Fansteel, Inc., 58861

Office of Management and Budget
See Management and Budget Office

Pension and Welfare Benefits Administration
NOTICES
Meetings:
  Medical Child Support Working Group, 58858–58859

Presidential Documents

PROCLAMATIONS

Special observances

Adoption Month, National (Proc. 7245), 59101–59104

ADMINISTRATIVE ORDERS

Australia; proposed agreement on uranium (Presidential Determination No. 00-3 of October 25, 1999), 58757

Palestine Liberation Organization; U.S. relations (Presidential Determination No. 00-2 of October 21, 1999), 58755

Sudan; continuation of state of emergency (Notice of October 29, 1999), 59105

Public Health Service

See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See National Institutes of Health

Reclamation Bureau

RULES

Colorado River Water Quality Improvement Program:
  Colorado River water offstream storage, and interstate redemption of storage credits in Lower Division States, 58985–59009

Research and Special Programs Administration

NOTICES

Pipeline safety:
  Advisory bulletins—
    High pressure aluminum seamless and aluminum composite hoop-wrapped cylinders; correction, 58906

Securities and Exchange Commission

NOTICES

Meetings; Sunshine Act, 58870

Self-regulatory organizations; proposed rule changes:
  Chicago Stock Exchange, Inc., 58870–58875
  National Association of Securities Dealers, Inc., 58875–58876
  Pacific Exchange, Inc., 58876–58877
  Philadelphia Stock Exchange, Inc., 58877–58878

State Department

NOTICES

Art objects; importation for exhibition:
  Raphael and Titian: The Renaissance Portrait, 58878–58879

Territory of Afghanistan controlled by the Taliban; modification of description (EO 13129), 58879

Surface Transportation Board

NOTICES

Railroad services abandonment:
  Fox Valley & Western Ltd., 58906
  Grand Trunk Western Railroad Inc., 58906–58907

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Thrift Supervision Office

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 58907

Toxic Substances and Disease Registry Agency

See Agency for Toxic Substances and Disease Registry

Transportation Department

See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department

See Community Development Financial Institutions Fund
See Foreign Assets Control Office
See Internal Revenue Service
See Thrift Supervision Office

Separate Parts In This Issue

Part II
Department of Interior, Fish and Wildlife Service, 58909–58936

Part III
Department of Education, 58937–58972

Part IV
Department of Education, 58973–58984

Part V
Department of Interior, Reclamation Bureau, 58985–59009

Part VI
Department of Transportation, Federal Highway Administration, 59011–59013

Part VII
Department of Education, 59015–59044

Part VIII
Department of Transportation, Federal Railroad Administration, 59045–59058

Part IX
Department of Education, 59059–59073

Part X
Department of the Treasury, Community Development Financial Institutions Fund, 59075–59099

Part XI
The President, 59101–59105

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3CFR	
Proclamations:	
7245	59103
Executive Orders:	
13067 (See Notice of October 29, 1999)	59105
Administrative Orders:	
Presidential Determinations:	
No. 00–2 of October 21, 1999	58755
No. 00–3 of October 25, 1999	58757
5 CFR	
Proposed Rules:	
1201	58798
7 CFR	
905	58759
944	58759
981	58763
1439	58766
1477	58766
9 CFR	
77	58769
12 CFR	
211	58780
1805	59076
Proposed Rules:	
1102	58800
26 CFR	
1	58782
301	58782
28 CFR	
0	58782
27	58782
31 CFR	
538	58789
550	58789
560	58789
34 CFR	
668 (3 documents)	58974, 59016, 59060
682 (2 documents)	58938, 59016
685(2 documents)	58938, 59016
40 CFR	
51	58792
180	58792
43 CFR	
414	58986
48 CFR	
201	58908
213	58908
49 CFR	
Proposed Rules:	
Ch. II	59046
209	59046
50 CFR	
17	58910
635	58793
679	58796
Proposed Rules:	
17	58934

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Title 3—

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Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

Presidential Documents

Title 3—

The President

Presidential Determination No. 00–2 of October 21, 1999

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 540(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (Public Law 105–277), as provided for in the Joint Resolution Making Continuing Appropriations for the Fiscal Year 2000, and for Other Purposes, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 21, 1999.

[FR Doc. 99–28608
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Presidential Documents

Presidential Determination No. 00–3 of October 25, 1999

Presidential Determination on the Proposed Agreement for Cooperation Between the United States of America and Australia Concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and Australia Concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 25, 1999.

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Rules and Regulations

Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV99–905–6 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes the minimum size requirement for red seedless grapefruit grown in Florida and for red seedless grapefruit imported into the United States from size 48 ($3\frac{9}{16}$ inches diameter) to size 56 ($3\frac{5}{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended the change for Florida grapefruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 12, 2000, and is expected to maximize grapefruit shipments to fresh market channels.

DATES: Effective November 8, 1999, through November 12, 2000; comments received by January 3, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket.clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade requirement for red seedless grapefruit is U.S. No. 1. The current minimum size requirement for domestic shipments is size 56 (at least $3\frac{5}{16}$ inches in diameter) through November 7, 1999, and size 48 ($3\frac{9}{16}$ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This interim final rule invites comments on a change to the order's rules and regulations relaxing the minimum size requirement for domestic shipments of red seedless grapefruit. This action allows for the continued shipment of size 56 red seedless grapefruit. This rule relaxes the minimum size from size 48 ($3^{9}/_{16}$ inches in diameter) to size 56 ($3^{5}/_{16}$ inches in diameter) through November 12, 2000. Absent this change, the minimum size would revert to size 48 ($3^{9}/_{16}$ inches in diameter) on November 8, 1999. The Committee met on August 31, 1999, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule adjusts Table I to establish a minimum size of 56 through November 12, 2000. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This rule also adjusts § 944.106 to establish a minimum size of 56 through November 12, 2000. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and demand. While the official crop estimate will not be available until October, the supply of red seedless grapefruit is expected to be below last year's production of 28.7 million $1^{3}/_{5}$ bushel boxes. Acreage has declined in recent years from 81,348 acres in 1996, to 76,025 acres in 1998, to 71,731 acres in 1999. Losses are due to groves being abandoned due to economic reasons, unhealthy groves being removed and replanted, and sick and diseased trees being removed from healthy, productive groves and not being replanted.

The Committee anticipates that fresh shipments of red seedless grapefruit will be at or below last season's level of 14.6 million $^{4}/_{5}$ bushel cartons. The quality of this year's crop is anticipated to be normal to above normal. However, the fruit is expected to be misshapen more than normal. All growing districts appear to be affected by poorly shaped fruit, which could reduce the packout percentages for the 1999–2000 crop. The individual fruit size for the upcoming crop is projected to be a little smaller than normal, but not as small as last season. The Committee reports that it expects fresh market demand to be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1999–2000 season.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, because it will permit Florida grapefruit handlers to make available the sizes of fruit needed to meet consumer needs. Matching the sizes with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will maximize shipments to fresh market channels.

The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season. The largest market for size 56 small red seedless grapefruit is for export.

Committee members stated that during the first 11 weeks of the season (September 20 through December 5), there will likely be a volume regulation in effect to limit the volume of small red seedless grapefruit that can enter the fresh market. The Department has since issued such a rule, which was published on September 17, 1999 (64 FR 50419). The Committee believes that the percentage size regulation has been helpful in reducing the negative effects of size 56 on the domestic market, and that no additional restrictions are needed for the upcoming season.

In addition, the currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

Based on available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 12, 2000. This rule will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1999–2000 season. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106. This rule relaxes the minimum size requirement for imported red seedless grapefruit to $3^{5}/_{16}$ inches in diameter (size 56) until November 12, 2000, to reflect the relaxation being made under the order for red seedless grapefruit grown in Florida.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 80 grapefruit handlers subject to regulation under the order, approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on the industry and Committee data for the 1998–99 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 1998–99 season was around $7.60 per $^{4}/_{5}$ bushel carton, and total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red seedless grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of the Florida grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of grapefruit handlers, growers, and importers may be classified as small entities.

Handlers in Florida shipped approximately 37,395,000 $\frac{4}{5}$ bushel cartons of grapefruit to the fresh market during the 1998–99 season. Of these cartons, about 22,123,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 16,720,000 cartons. During the period 1994 through 1998, imports have averaged about 600,000 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule relaxes the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 ($3\frac{9}{16}$ inches in diameter) to size 56 ($3\frac{5}{16}$ inches in diameter) through November 12, 2000. No change is being made in the minimum size 56 requirement for export shipments. Absent this rule, the minimum size requirement for domestic shipments would have reverted to size 48 on November 8, 1999. The motion to allow shipments of size 56 red seedless grapefruit through November 12, 2000, was passed by the Committee unanimously. In addition, there is a volume regulation in effect for the first 11 weeks of the 1999–2000 season (September 22 through December 5) that limits the volume of small red seedless grapefruit that can enter the fresh market (64 FR 50419, September 17, 1999).

This rule will have a positive impact on affected entities. This action allows for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements, or the grapefruit import regulation.

This rule relaxes the minimum size from size 48 ($3\frac{9}{16}$ inches in diameter) to size 56 ($3\frac{5}{16}$ inches in diameter) through November 12, 2000. This change will allow handlers to continue to ship size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. Matching the sizes that can be shipped with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will provide for the maximization of shipments to fresh market channels.

The currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to handlers to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

This change will allow for the continued shipment of size 56 red seedless grapefruit. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

During the period October 1, 1998, through June 30, 1999, imports of grapefruit totaled 15,500 metric tons (approximately 800,000 cartons). Recent yearly data indicate that imports during July, August, and September are typically negligible. Therefore, the 1998–99 season imports should not vary significantly from 15,500 metric tons. The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Most imported grapefruit enters the United States from October through May.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change must also be applicable to imported grapefruit. This rule relaxes the minimum size for imported grapefruit to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 12, 2000.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 on a permanent basis rather than just for a year. Members said that each season is different, and they prefer to consider this issue on a yearly basis. Therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 31, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section of this document.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the size requirement currently prescribed under the marketing order for Florida citrus and the grapefruit import regulation. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the minimum size requirement for red seedless grapefruit grown in Florida and red seedless grapefruit imported into the United States; (2) this action is similar to actions taken in past seasons and grapefruit handlers and importers need no additional time to comply with the relaxed size requirement; (3) Florida grapefruit handlers are aware of this action which was unanimously recommended by the Committee; (4) shipments of the 1999–2000 season Florida red seedless grapefruit crop are underway; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR Parts 905 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. In § 905.306, Table I in paragraph (a) is amended by revising the entry for "Seedless, red" to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
* *	* *	* *	*
	GRAPEFRUIT		
* *	* *	* *	*
Seedless, red	11/8/99–11/12/00	U.S. No. 1	$3\frac{5}{16}$
	On and after 11/13/00	U.S. No. 1	$3\frac{9}{16}$
* *	* *	* *	*

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

4. In § 944.106(a), the table is amended by revising the entry for "Seedless, red" to read as follows:

§ 944.106 Grapefruit import regulation.

(a) * * *

Grapefruit classification (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
* *	* *	* *	*
Seedless, red	11/8/99–11/12/00	U.S. No. 1	$3\frac{5}{16}$
	On and after 11/13/00	U.S. No. 1	$3\frac{9}{16}$
* *	* *	* *	*

* * * * * * *

Dated: October 25, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28372 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–4 IFR]

Almonds Grown in California; Revisions to Requirements Regarding Credit For Promotion and Advertising Activities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The changes are intended to encourage and support almond product development and thus increase the demand for almonds. The changes also clarify existing regulations.

DATES: This interim final rule becomes effective November 2, 1999; comments received by January 3, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the requirements regarding credit for promotion and advertising activities prescribed under § 981.441 of the administrative rules and regulations of the order. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The changes also clarify existing regulations. The changes are intended to encourage and support almond product development and thus increase the demand for almonds. This rule was unanimously recommended by the Board at a meeting on July 12, 1999, with additional justification approved via facsimile vote during the week of August 30, 1999.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 981.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising, that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion, including paid advertising activities. Those regulations are prescribed in § 981.441.

The Department implemented several Board-recommended changes to the regulations regarding the criteria that must be met in order for handlers to receive credit for their promotional activities in July 1999 (64 FR 41023, July 29, 1999). However, the Department did not implement one Board recommendation concerning credit for promoting almond products at that time because of concerns regarding the lack of specified criteria to be used in reviewing claims and concerns about the claims review process. The Board and its staff reconsidered the issue, further developed the concept, and submitted a revised recommendation addressing the Department's concerns.

This rule implements the revised recommendation.

Current regulations crediting handlers' promotion of almond products limit any such credit to the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. This limitation, as specified in § 981.441(e)(iv), was included because it was believed that while promoting almond products was important, such activity might also promote and increase sales of other ingredients in the product. Therefore, the amount of credit handlers could receive was established at less than the maximum of 66⅔ percent. This maximum level is specified in § 981.441(a).

The almond industry has historically been one of rapid growth. Recent years have been no exception, as almond acreage has increased substantially in the last decade. When coupled with increasing yields, production is expected to achieve record levels in coming years. The industry is faced with the prospect of selling these larger crops at a profitable return to producers. In order to achieve this, it is recognized that consumption and demand for almonds must be increased. Because a substantial portion of almonds are used as ingredients, an important method of increasing almond consumption is through increasing the consumption of almond products.

The current regulations allowing only partial credit for promotion of all almond products are believed to have created a disincentive for handlers to develop, create and promote almond products. Therefore, the Board recommended and the Department is implementing revised regulations to allow maximum credit-back to handlers for promoting almond products, under certain conditions.

After the effective date of this interim final rule, handlers will be able to receive credit against their assessment obligations in an amount not to exceed 66⅔ percent of their proven expenditures for qualified activities for promotion of almond products. In order to receive this level of credit, the product must be owned or distributed by the handler and such ownership or distributorship must be stated on the package. Handler ownership or distributorship is required in order to eliminate the possible occurrence of utilizing industry funds to promote businesses outside the almond industry.

In addition, the product must display the handler's brand, or the words "California Almonds" on the primary, face label. This requirement is intended to ensure that the clear intent is to promote the consumption and use of California almonds, which is the basic requirement for all promotion under the almond order.

Under the rule, maximum credit is not allowed for promotion of mixed nut products. In the case of mixed nuts, and for other promotional activities of almond products that do not meet the aforementioned criteria, the amount of credit allowed continues to be the lesser of 66⅔ percent of the handler's actual payment or that portion of the product weight represented by almonds. Mixed nuts do not qualify for the maximum credit because the thrust of eligible credit-back promotion activities is to promote the consumption and use of California almonds, not other nuts. Also, many almond handlers are involved in handling and marketing other nuts, and almond funds could possibly be used to promote other nut industries and other nuts. Therefore, mixed nuts continue to be subject to the reduced level of credit-back based on the portion of the product weight represented by almonds. Accordingly, appropriate changes have been made to § 981.441(e)(4).

Finally, this rule adds specific language to the introductory text of § 981.441(e)(4) clarifying that no promotion of almonds or almond products shall be eligible for credit-back if the promotion results in price discounting of the handler's product. An example of price discounting is as follows. A retail store routinely places advertisements in a local newspaper for various products in an attempt to attract customers. The advertisement includes a handler's almonds. The handler makes arrangements with the retailer to pay for the advertisement. In essence, this "discounts" the price of the product to the retailer. While these types of arrangements occur, it is not the intent of promotion under the almond order to subsidize such activities through the credit-back program. Price discounting has not been allowed under the program, and this rule adds specific language to the regulations for clarity.

The Board recommended that this rule be applied retroactively to August 1, 1999. This would allow the revised regulations to apply to all promotional activities conducted from the beginning of the 1999–2000 crop year forward. The crop year began August 1, 1999, and ends July 31, 2000. Section 981.441 specifies the procedures that the Board follows in granting credit and billing handlers. The effective date of the rule is one day after publication in the **Federal Register**, and the provisions of this revised regulation will be applied at that time. Handler activities were conducted under program parameters in effect prior to the effective date of this interim final rule. Therefore, those parameters for activities conducted prior to this rule's effective date should be followed. Accordingly, handlers promoting products containing almonds prior to the effective date of this rule will be eligible to receive Credit-Back based on the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. For activities conducted on or after the effective date of this rule, the activities must meet the revised criteria, and handlers will be eligible to receive Credit-Back at the maximum of 66⅔ percent for promoting almond products, if the percent for promoting almond products, if the activities meet the revised criteria in this rule. Submission of documentation should continue to be made in accordance with the provisions of the regulations as amended by the final rule that appeared in the July 29, 1999, **Federal Register** at 64 FR 41023.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule revises the requirements regarding credit for promotion and advertising activities prescribed under § 981.441 of the administrative rules and regulations of the order, and clarifies the intent of one aspect of the existing regulations. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The revisions also clarify existing regulations regarding disallowing promotional activities that result in price discounting. The changes are intended to encourage and support almond product development and thus increase the demand for almonds.

Current regulations concerning crediting handlers' promotion of almond products limit any such credit to the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. This limitation was included because it was believed that while promoting almond products was important, such activity may also promote and increase sales of other ingredients in the product. Therefore, the amount of credit handlers could receive was established at less than the maximum of 66⅔ percent. It is now believed that the potential for increasing demand for almonds by providing incentive through allowing maximum credit alleviates the prior concerns regarding promoting other ingredients.

Regarding the impact of this rule on affected entities, the changes specified herein regarding credit for product development are designed to provide incentive to almond handlers to create, develop, and promote almond products. Almonds are widely used as ingredients in other products, thus an important method of increasing almond consumption and demand is through increasing sales of almond products. Handlers in the almond industry will be rewarded for their innovation in developing almond products, while the entire industry will benefit from the resulting increased demand. Thus, the impact on all growers and handlers in the almond industry is expected to be positive. This is an additional tool for the industry to use to increase demand for their product in the face of increasing supplies.

The changes regarding price discounting clarify that handlers can not receive credit-back for promotional activities that result in price discounting of product. This activity has not been allowed under the regulations as it does not meet the intent of the program; the changes merely clarify the existing regulations. Disallowing price discounting results in a more efficient and effective use of industry promotion funds.

Alternatives to the changes were considered. One alternative was to leave the regulations as they currently exist. However, this does not address the issue of providing incentive and encouragement to handlers to promote almond products. Another alternative was to allow maximum credit only for new or unique products, with the Board to determine what products fit that description. This alternative was initially recommended by the Board but was not implemented by the Department because of concerns regarding the lack of specified criteria to be used in reviewing claims, and concerns about the claims review process. A third alternative considered was to allow maximum credit-back for all promotions concerning almond products. However, it was determined that certain criteria should be applied to product promotions to meet the intent of the program, for the following reasons. To receive maximum credit-back, the product must be owned or distributed by the handler, to ensure that credit is not granted for promoting products or businesses outside the almond industry. Packages must be labeled with the handler's name or the words "California Almonds" to help ensure the intent is to promote the consumption and use of California almonds, which is the basic requirement for all promotion under the order. Mixed nuts are subject to a reduced level of credit-back because handlers are and can be involved in handling and marketing other nuts, and if maximum credit were allowed, this could result in almond industry funds being used to promote other nut industries and other nuts. Moreover, the thrust of eligible credit-back promotion activities is to promote the consumption of California almonds, not other nuts, and it would not be appropriate to give mixed nut products the full 66⅔ credit.

This rule imposes no additional reporting or recordkeeping requirements on either small or large almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Additionally, the Board meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the July 12, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board formed a task force in July 1998 to review its credit-back advertising program. The task force met periodically during the following months to review the program and consider appropriate changes. The task force presented its recommendations to the Board's Public Relations and Advertising Committee on November 13, 1998, and that committee presented its recommendations to the Board on December 2, 1998, and March 5, 1999. The Department subsequently implemented all of the Board's recommended changes, except for those relating to almond products. The Board again recommended the changes associated with almond products on July 12, 1999, and its Public Relations and Advertising Committee and staff developed further clarification and justification for those changes which were approved by a Board facsimile vote during the week of August 30, 1999. All of these meetings were open to the public, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab/.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the credit-back promotional requirements prescribed under the California almond marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The almond crop year began on August 1, 1999, and this rule should be in effect as closely as possible to that time so handlers can avail themselves of the additional opportunities for receiving promotional credit; (2) these changes were unanimously recommended by the Board and interested persons had an opportunity to provide input; (3) handlers are aware of these changes which were recommended at a public meeting; and (4) a 60-day comment period is provided for in this rule and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 981.441, the introductory text of paragraph (e)(4) and paragraph (e)(4)(iv) are revised and a new paragraph (e)(4)(v) is added to read as follows:

§ 981.441 Credit for market promotion activities, including paid advertising.

* * * * *

(e) * * *

(4) Credit-Back shall be granted for those qualified activities specified below, except that Credit-Back will not be allowed in any case for travel expenses, or for any promotional activities that result in price discounting.

* * * * *

(iv) Except as otherwise provided in paragraph (e)(4)(v) of this section, when products containing almonds are promoted, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less: *Provided*, That, except for mixed nut products, the amount of Credit-Back for qualified promotional activities for products containing almonds shall be granted at 66⅔ percent of proven expenditures, if the product is owned or distributed by the handler and such ownership or distributorship is stated on the package: *Provided Further*, That to receive any level of credit, the product must display the handler's name, the handler's brand, or the words "California Almonds" on the primary, face label.

(v) When products containing almonds are promoted prior to November 2, 1999, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less.

* * * * *

Dated: October 25, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28373 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1439 and 1477

RIN 0560–AF82

1999 Livestock Indemnity Program; 1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule sets forth the terms and conditions for the 1999 Livestock Indemnity Program, authorized by the 1999 Emergency Supplemental Appropriations Act. The program will provide monetary assistance to producers for livestock losses due to natural disasters occurring between May 2, 1998, and May 21, 1999. Also, this rule sets out a clarifying change regarding offsets and withholdings from payments made in the crop disaster program operated under 7 CFR Part 1477.

DATES: Effective November 1, 1999. Comments on this rule and information collection must be received by January 3, 2000, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to: Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517, telephone (202) 720–7641, or send by e-mail to: rebecca__davis@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PECD, FSA, USDA, Room 4752 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rebecca Davis at (202) 720–7641.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Title: Livestock Indemnity Program

OMB Control Number: 0560–0179

Type of Request: Reinstatement and revision of a previously approved information collection.

Abstract: The information collected under OMB Control Number 0560–0179, as identified above, is all that is currently demanded by FSA to meet administrative and statutory requirements for the Livestock Indemnity Program. Information collected from livestock producers will be used by CCC to approve or determine the eligibility and amount of assistance in accordance with this subpart. The CCC considers the information collected essential to prudent eligibility and assistance determinations. Failure to make sound decisions in providing livestock indemnity program payments would result in inaccurate payments to livestock producers and losses to the Government.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Livestock Producers

Estimated number of Respondents: 3,600

Estimated Number of Responses per Respondent: 2

Estimated Total Annual Burden on Respondents: 7,200 hours

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC. 20250–0517, telephone (202) 720–7641.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Livestock Indemnity Program

This interim rule sets forth regulations that implement the livestock indemnity provisions contained in the 1999 Emergency Supplemental Appropriations Act ("1999 Act"), enacted on May 21, 1999. The 1999 Act appropriated $3,000,000 to the Secretary of Agriculture to implement a livestock indemnity program for qualifying livestock losses occurring in the period beginning on May 2, 1998, and ending on May 21, 1999. The losses must be due to natural disasters declared by the President or Secretary of Agriculture. The 1999 Act specifies that to qualify the declaration request must have been submitted by May 21, 1999, and that, to the extent practicable, benefits must be provided in a manner similar to that used for the livestock indemnity programs carried out by the Secretary during 1997 and 1998. Also, the 1999 Act specifies that benefits under the new program will be subject, to the extent practicable, to the gross income means test and payment limitations of the 1996-crop Disaster Reserve Assistance Program (DRAP). Under the 1996 DRAP, no person could receive more than $50,000 in payments and no person could receive any payment at all if that person's annual gross revenue exceeded $2.5 million.

Rules for the 1999 livestock indemnity program will be codified in 7 CFR part 1439.301, *et seq.*, which was recently reorganized by a rule published on March 19, 1999, 64 FR 13497. Consistent with the operation of the 1997 and 1998 livestock indemnity programs, payment rates will vary by class of livestock involved and the payment rate will be a percentage of the assigned market price for the class. Should eligible claims exceed the available funds, the claims will, to the extent practicable, be prorated. Losses will be compensable only to the extent that they were caused by the disaster and were in excess of normal losses for the operation for the particular livestock category involved.

Crop Disaster Regulations

In addition, this rule makes slight changes to the crop loss disaster regulations that were published on April 15, 1999, at 64 FR 18553. The rules for that program are codified in 7 CFR part 1477. The changes are intended to make it clear that the agency can take withholding action based on a request by another agency and to insure that there is maximum flexibility with respect to offset and withholding issues to insure that funds are not released in a manner which would be contrary to the public interest, as determined by the Secretary. On a related issue, the rule would also add a reference to 28 U.S.C. 2301 to waive a prohibition on eligibility for federal benefits by persons with a judgment lien against their property under the crop loss disaster program (although such a payment might be applied against their outstanding debt to the government).

Effective Date of the Rule

Because the livestock indemnity program was provided for by emergency legislation and is designed to provide emergency relief to farmers, it has been determined that to delay the effective date of the rule, and hence the date on which payments could be made, pending further procedure, including any Congressional review as might otherwise be required by the Small Business Regulatory Enforcement Act, would be contrary to the public interest. Accordingly, with respect to the portion of the rule dealing with the livestock indemnity program, it has been determined that this rule should be effective on publication. This same determination had been made with respect to changes in the offset and withholding provisions of part 1477 as those changes involve claims adjustments for current debts which are owing or may be owing to the government. To the extent that there is a change in the adopted rule for part

1477 as a result of the comments, the claims could be repaid or adjusted as needed.

List of Subjects for 7 CFR Part 1439

Animal feed, Disaster assistance, Livestock, Reporting and Recordkeeping Requirements.

Accordingly, 7 CFR Chapter XIV is amended as follows:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

1. The Authority citation for part 1439 is amended to read as follows:

Authority: 7 U.S.C 1427a; 15 U.S.C. 714b, and 714c; Sec. 1102 and 1103, Pub. L. 105–277; Pub. L. 106–31.

2. Part 1439 is amended by adding Subpart—Livestock Indemnity Program to read as follows:

Subpart—Livestock Indemnity Program

Sec.

1439.301 Applicability
1439.302 Administration
1439.303 Definitions
1439.304 Sign-up period
1439.305 Proof of loss
1439.306 Indemnity benefits
1439.307 Availability of funds
1439.308 Limitations on payments

§ 1439.301 Applicability

This subpart sets forth the terms and conditions applicable to the 1999 Livestock Indemnity Program. Benefits will be provided under this subpart only for losses (deaths) of livestock occurring in the period from May 2, 1998 through May 21, 1999, as a result of a natural disaster in a county included in the geographic area covered by a qualifying natural disaster declaration issued by the President of the United States or the Secretary of Agriculture of the United States. Losses in contiguous counties, or any other counties not the subject of the declaration, will not be compensable. To be a qualifying declaration, the declaration must have been issued upon a request submitted prior to May 21, 1999. Producers will be compensated by livestock category as established by CCC. The producer's loss must be the result of the declared disaster and in excess of the normal losses, established by CCC, for the producer's livestock operation.

§ 1439.202 Administration

Where circumstances preclude compliance with § 1439.304 due to circumstances beyond the applicant's control, the county or State committee may request that relief be granted by the Deputy Administrator under this section. In such cases, except for statutory deadlines and other statutory requirements, the Deputy Administrator may, in order to more equitably accomplish the goals of this subpart, waive or modify deadlines and other program requirements if the failure to meet such deadlines or other requirements does not adversely affect operation of the program.

§ 1439.303 Definitions

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The terms defined in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Application means the Form CCC–661, Livestock Indemnity Program Application.

Livestock means beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food and buffalo and beefalo when maintained on the same basis and in the same manner as beef cattle maintained for commercial slaughter.

Livestock producer means one who possesses a beneficial interest in eligible livestock as defined in this subpart, has a financial risk in the eligible livestock, and is a citizen of, or legal resident alien in, the United States. A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation owns or jointly owns eligible livestock or poultry, will be considered livestock producers. Any Native American tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); any Native American organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 will be considered livestock producers.

§ 1439.304 Sign-up period

A request for benefits under this subpart must be submitted to the Commodity Credit Corporation (CCC) at the Farm Service Agency county office serving the county where the livestock loss occurred. All applications and supporting documentation must be filed in the county office prior to the close of business on October 31, 1999, or such other date as established by CCC.

§ 1439.305 Proof of loss

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the:

(1) Loss of eligible livestock occurred in an eligible county in the area of Presidential designation or Secretarial declaration;

(2) That the death of the eligible livestock was reasonably related to the recognized natural disaster; and

(3) The death of the livestock occurred between May 2, 1998, and May 21, 1999, inclusive.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee, or as requested by the county committee, in verifying the loss and quantity of eligible livestock that perished in the natural disaster. Examples of supporting documentation include, but are not limited to: Purchase records, veterinarian receipts, bank loan papers, rendering truck certificates, Federal Emergency Management Agency and National Guard records, auction barn receipts, and any other documents available to confirm the presence of the livestock and subsequent losses. Certifications by third parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer may be submitted, subject to review and approval by the county committee. Third-party verifications may be accepted only if the producer certifies in writing that there is no other documentation available. Third-party verification must be signed by the party that is verifying the information. Failure to provide documentation that is satisfactory to the county committee will result in the disapproval of the application by the county committee.

(c) Livestock producers shall certify the accuracy of the information provided. All information provided is subject to verification and spot checks by the CCC. A failure to provide information requested by the county committee or by agency officials is cause for denial of any application filed under this part.

§ 1439.306 Indemnity benefits

(a) Livestock indemnity payments for losses of eligible livestock as determined by CCC are authorized to be made to livestock producers who file an application for the specific livestock category in accordance with instructions issued by the Deputy Administrator, if the:

(1) Livestock producer submits an approved proof of loss in accordance with § 1439.305; and

(2) County or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific livestock category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the producer's inventory at the time of the disaster.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of livestock that shall be used in making a payment shall be the number of animal losses in the animal category that exceed the normal mortality threshold established by CCC.

(c) Payments shall be calculated by multiplying the national payment rate for the livestock category as determined by CCC, by the number of qualifying animals determined under (b) of this section. Adjustments, if necessary, shall apply in accordance with § 1439.307.

(d) Payments which are earned by a person under the livestock indemnity program may be assigned in accordance with the provisions of part 1404 of this chapter.

§ 1439.307 Availability of funds

In the event that the total amount of eligible claims submitted under this subpart exceeds the $3,000,000 appropriation, then each payment shall be reduced by a uniform national percentage. Such payment reductions shall be applied after the imposition of applicable payment limitation provisions.

§ 1439.308 Limitations on payments

No person, as determined in accordance with part 1400 of this chapter, may receive benefits under this subpart in excess of $50,000 for any year and no person may receive payments under this subpart for losses for the producer has received or will receive compensation under any other program provided for in this part. Payments under this part for other losses shall not, however, reduce the amount payable under this part. As provided for in § 1439.11, no person shall be eligible to receive any payment under this subpart if such person's annual gross revenue exceeds $2.5 million.

PART 1477—1998 SINGLE-YEAR AND MULTI-YEAR CROP LOSS DISASTER ASSISTANCE PROGRAM

3. The authority citation for part 1477 continues to read as follows:

Authority: Sec. 1101 and 1102 of Pub. L. 105–277, 112 Stat. 2681; 15 U.S.C 714b and 714c.

§ 1477.109 [Amended]

4. Section 1477.109 is amended by:

a. Removing the phrase "in accordance with § 1403.8" in paragraph (a) and adding the phrase "using the standard set forth in § 1403.8(b) (1)–(7)" in its place,

b. Removing the phrase "will be made" in paragraph (k) and adding the phrase "may be made" in its place,

c. Removing the second sentence of paragraph (k) and,

d. By adding a new paragraph (m) to read as follows:

* * * * *

(m) For the purposes of 28 U.S.C. 3201(e), the restriction on receipt of funds or benefits under this program is waived; however, this waiver shall not preclude withholding or offsetting where it is deemed by the Deputy Administrator to be appropriate.

Signed at Washington, DC, on October 20, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–28369 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–008–1]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations to allow zones within a State to be assigned different risk statuses and to clarify the conditions for assigning a particular risk status for bovine tuberculosis. We are also amending the regulations to increase the amount of testing that must be done before certain cattle and bison may be moved interstate. These changes are necessary to help prevent the spread of tuberculosis and to further the progress of the domestic bovine tuberculosis eradication program.

DATES: This interim rule is effective October 20, 1999. We invite you to comment on this docket. We will consider all comments that we receive by January 3, 2000.

The incorporation by reference listed in this rule is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–008–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–008–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by Mycobacterium bovis. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of this century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), and in the "Uniform

Methods and Rules—Bovine Tuberculosis Eradication" (UMR), which is incorporated by reference into the regulations. (This interim rule updates the edition that is incorporated, as discussed below under the heading "UMR.") The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis.

Restrictions on the interstate movement of cattle and bison not known to be affected with or exposed to tuberculosis have been based on whether the animals are moved from States designated as accredited-free States, accredited-free (suspended) States, modified accredited States, or nonmodified accredited States. Although the restrictions on the interstate movement of captive cervids are currently not based on the tuberculosis status of a State, we are developing regulations that would establish such a relationship.

The status of a State is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. Currently, a State's tuberculosis status is not determined or affected by evidence of tuberculosis in cervids.

Section 77.1 of the regulations has defined and listed accredited-free, accredited-free (suspended), modified accredited, and nonmodified accredited States. Prior to this interim rule, these terms were defined in the regulations as follows:

Accredited-free State. An accredited-free State was defined as a State that has had no findings of tuberculosis in any cattle or bison anywhere in the State for at least 5 years. (As noted above, there are currently no defined State tuberculosis statuses with regard to cervids.) The definition also provided that a State must comply with all the provisions of the UMR regarding accredited-free States. These provisions include a requirement that the State demonstrate annually that an adequate amount of testing and slaughter surveillance is done in that State to discover any bovine tuberculosis that might be present. The definition of accredited-free State provided that detection of tuberculosis in any cattle or bison in the State would result in suspension of the State's accredited-free status, and that, if tuberculosis were detected in two or more herds anywhere in the State within a 48-month period, the State's accredited-free status would be downgraded.

Accredited-free (suspended) State. An accredited-free (suspended) State was defined as an accredited-free State in which tuberculosis has been detected in any cattle or bison.

Modified accredited State. A modified accredited State was defined as a State that complies with all the provisions of the UMR regarding modified accredited States. The UMR requires that, to retain modified accredited status, a State must demonstrate annually that an adequate amount of testing and slaughter surveillance is done in that State to discover any bovine tuberculosis that might be present. The UMR also provides that disclosure of tuberculosis in the State or failure of the State to take progressive steps to comply with the UMR to seek out and eliminate bovine tuberculosis will be cause for downgrading of the modified accredited status. Further, the regulations provided that if any livestock other than cattle or bison were included in a newly assembled herd on a premises where a tuberculous herd had been depopulated, the State must apply the UMR herd test requirements for such newly assembled herds to those other livestock as well as to cattle and bison in the new herd.

Nonmodified accredited State. A nonmodified accredited State was defined as a State that has not received accredited-free status or modified accredited status.

Need for this Interim Rule

Prior to this interim rule, the regulations did not provide for different areas, or zones, within a State to be assigned different tuberculosis risk statuses. There have historically been a number of reasons for not considering areas smaller than a State for regulatory purposes. Generally, the legal authority to issue and enforce regulations concerning tuberculosis under the animal quarantine laws is limited to interstate, rather than intrastate, movement of regulated products and animals. Additionally, each State has in place its own administrative and veterinary infrastructure and legal authority for monitoring, detecting, recording, controlling, and eradicating animal diseases in that State. This centralization of veterinary efforts at the State level has made it natural to consider one uniform disease status for each State. Further, because State borders are clearly defined legal boundaries, they have lent themselves to delineating a readily identifiable area for disease risk.

However, just as the United States has recently begun to recognize regions smaller than a country when considering the risk of disease from imports from a foreign country,[1] there are compelling reasons for considering areas smaller than a State when considering tuberculosis risk in the United States.

Under the regulations prior to this interim rule, if tuberculosis was determined to exist in any part of a State, the entire State was designated as being at risk. This "all or nothing" approach did not always provide sufficient incentive for a State to restrict movement of tuberculosis-susceptible animals from high-risk areas within the State and to otherwise rapidly contain the disease and move toward eradication. Failure to rapidly identify and address high-risk areas significantly increased the risk of tuberculosis spread among livestock.

In this interim rule, we establish requirements (discussed below) for achieving APHIS recognition of zones within a State for the purpose of tuberculosis status. Providing for zones will allow for APHIS recognition of distinct tuberculosis risk levels within a State. For example, a State that contains several herds that are affected with tuberculosis in an identifiable area might nonetheless qualify for accredited-free status in the rest of the State, provided it meets certain conditions, discussed below, to ensure containment and eradication of the disease in the affected area. This will give States the incentive to isolate affected areas from the rest of the State and to implement effective containment and eradication measures, thereby decreasing tuberculosis risk intrastate and interstate.

The key criteria in establishing a "zone" for the purpose of tuberculosis risk status are that the boundary of the zone be identifiable and that it be located where factors such as physical barriers, distance, lack of livestock, or animal movement controls make it unlikely that tuberculosis will be transmitted across the boundary. The criteria we will apply to identify a zone within a State are the same criteria we use to identify regions in foreign countries.

In § 77.1 of this interim rule, we define zone as a defined geographic land area identifiable by geological, political, manmade, or surveyed boundaries, with mechanisms of disease spread, epidemiological characteristics, and the ability to control the movement of animals across the boundaries of the zone taken into account. By "mechanisms of disease spread," we mean the ways in which tuberculosis can be transmitted to animals, such as in aerosol fashion or through ingestion of contaminated food or water. "Epidemiological characteristics" include factors such as the presence or absence of livestock in a zone, the distance between animals within and outside a zone, the prevalence of disease within a zone, and the density of potential wildlife hosts within a zone.

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[1] See, for example, "64 FR 34155–34168, Docket No. 97–086–2, Recognition of Animal Disease Status of Regions in the European Union," published June 25, 1999, and "64 FR 8755–8761, Docket No. 97–079–1, Importation of Pork and Pork Products from Yucatan and Sonora, Mexico," published February 23, 1999.

We consider mechanisms of disease spread and epidemiological characteristics important components in how the boundaries of a zone will be determined, because a zone by its nature should present a different level of disease risk than the zone from which it is distinguished. Therefore, the distance between livestock in two different zones and the manner in which the disease is transmitted need to be considered in determining where to draw a boundary that clearly divides two areas with differing tuberculosis risks.

In § 77.8 of this interim rule, we set forth conditions and procedures for requesting that the Administrator of APHIS designate part of a State as a zone that has a different tuberculosis status than the rest of the State. We provide that a State animal health official may request such designation of a distinct zone if the State has the legal and financial resources to implement and enforce a tuberculosis eradication program; has the infrastructure, laws, and regulations to require and ensure tuberculosis cases are reported to State and Federal regulatory authorities; and maintains or will maintain clinical and epidemiological surveillance of animal species at risk of tuberculosis at a rate that allows detection of tuberculosis in the overall population of livestock herds in each zone at a 2 percent prevalence rate (the average prevalence in a herd containing infected animals) with 95 percent confidence. We require that the zone being requested be delineated by State animal health authorities, subject to approval of the zone by the Administrator. Because of the amount of monitoring and movement controls necessary for a State to adequately administer different status zones, we are limiting the number of zones allowable in each State to two.

Definitions

The definitions for terms used in part 77 are contained in § 77.1. We are revising the definitions of accredited-free State, accredited-free (suspended) State, modified accredited State, and nonmodified accredited State, so that each category applies to zones as well as to entire States. Additionally, we are making some formatting changes to those definitions, such as moving lists of States and the requirements for applying for status redesignation or renewal from the definitions section to other sections of the regulations. We are also including in the definition of accredited-free State or zone a provision that was previously set forth in the UMR and that was incorporated by reference into the regulations. Under this provision, a modified accredited or nonmodified accredited State or zone that was previously accredited-free can regain accredited-free status in 2 years provided it meets the following requirements: The State or zone has zero prevalence of affected cattle and bison herds; all herds of cattle and bison affected with tuberculosis have been depopulated; there have been no findings of tuberculosis in cattle or bison for 2 years from the depopulation of the last infected herd in the State or zone; and the State or zone complies with the provisions of the UMR. Because this provision was included in the UMR, which has been incorporated by reference into the regulations, it was in effect prior to this interim rule. We are also making certain substantive changes to the definitions, which we discuss below.

Accredited-free State or zone. The definition of accredited-free State until now has provided that to establish or maintain such status, a State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years and must comply with all of the provisions of the UMR. In this interim rule, we are retaining that requirement and are further defining an accredited-free State or zone as one that has zero percent prevalence of affected cattle and bison herds. Although zero percent prevalence may be self-evident in a State or zone in which no affected herds have been diagnosed, we consider it useful to include such a criterion to be consistent with our use of disease prevalence in defining modified accredited State or zone, discussed below. In this interim rule, we add a definition of zero percent prevalence in § 77.1 to mean "no finding of tuberculosis in any cattle or bison herd in the State or zone."

Accredited-free (suspended) State or zone. We are not revising the definition of accredited-free (suspended) State, except to apply it to zones as well as States and to move the requirements for regaining accredited-free status to § 77.3.

Modified accredited State or zone. The regulations until now defined a modified accredited State as one that complies with all of the provisions of the UMR regarding modified accredited States. Under the regulations prior to this interim rule, it was not always clear what standards a State needed to meet to achieve modified accredited status. With the establishment of zones under this interim rule, it is essential to the prevention of tuberculosis spread in States that this lack of clarity be rectified so that States are clear regarding the standards for achieving status and, consequently, regarding the restrictions they must impose on the movement of livestock from zones that do not meet the standards for modified accredited or accredited-free status.

In this interim rule, we are specifying that, in addition to complying with the UMR, a modified accredited State or zone is one in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for the most recent 2 years. However, because it is likely that some zones will contain a relatively small number of herds, we are also providing, as discussed below, that in a State or zone with fewer than 30,000 herds, the Administrator, upon his or her review, may allow the State or zone to have up to 3 affected herds for each of the most recent 2 years, if the Administrator determines that the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone are adequate to prevent the spread of tuberculosis.

We are using 0.01 percent of the total number of herds in the State or zone as the standard maximum allowable percentage of affected herds. This number represents a progression from the requirements of the tuberculosis eradication program of the 1940's, when 0.5 percent was considered an acceptable maximum percentage of prevalence of affected herds. Since that time, significant gains in the tuberculosis eradication program have consistently reduced the national percentage of herds affected with tuberculosis, so that today the national percentage stands at approximately 0.0002 percent. With such minimal tuberculosis prevalence, we consider it appropriate to set the allowable maximum prevalence percentage at 0.01 percent, which we believe will contribute to continued progress in the tuberculosis program, while not being so impractically stringent that States will lose incentive to achieve or retain modified accredited status.

Although we consider a maximum of 0.01 percent to be appropriate in most cases, we recognize there are situations where the circumstances in a State or zone might warrant some deviation from that standard. For instance, the requirement for less than 0.01 percent prevalence means that, for every 10,000 herds in the State or zone, no more than 1 herd can be affected. In a State or zone with fewer than 10,000 herds, even the presence of 1 affected herd would cause the prevalence rate to exceed the allowable maximum. We do not necessarily consider one affected herd to pose a disease risk significant enough to disqualify a State or zone from modified accredited status. Additionally, in some States or zones that do not have a relatively large number of herds (by comparison, some States have as many as 140,000 herds), it is possible that circumstances might warrant a modified accredited State or zone having up to 3 affected herds. The factors the Administrator will consider in determining whether a prevalence level in excess of 0.01 percent is acceptable include (1) how effectively the veterinary infrastructure in the State or zone could respond to the discovery of an affected herd and (2) the risk of transmission of the disease from an affected herd to other herds, based on factors such as the density of the livestock population and patterns of herd distribution. If the Administrator determines that such factors in a State or zone are adequate to prevent the spread of tuberculosis, a State or zone with fewer than 30,000 herds will qualify for modified accredited status even if the percentage of affected herds exceeds 0.01 percent of the total number of herds.

Nonmodified accredited State or zone. We are making no substantive changes to the definition of nonmodified accredited State, other than to make the definition applicable to zones as well as to States.

In addition to the changes to the definitions in § 77.1 that are described above, we are revising that section by adding other definitions. We discuss each of these added terms below as part of our discussion of the regulatory requirements in which they appear.

Designation of Bovine Tuberculosis Status: § 77.2

In § 77.2 of this interim rule, we provide that the Administrator will designate the tuberculosis status of each State according to the criteria listed in subpart A of part 77. The section also provides that the Administrator will give only part of a State a particular designation, upon request of the State, if the Administrator determines that the State meets the requirements of the regulations for establishing zones (discussed below) and enforces restrictions on the intrastate movement of cattle and bison that are substantially the same as our restrictions on the interstate movement of those animals. Additionally, § 77.2 provides that designation of partial State status is dependent on the Administrator's determination that such designation will otherwise be adequate to prevent the interstate spread of tuberculosis.

It is essential that a State that is requesting recognition of a zone have in place effective regulations governing intrastate movement because, in most cases, our authority to regulate the movement of animals and animal products is limited to interstate movement. Therefore, we must be confident that the State will effectively enforce movement between zones within State borders.

Accredited-Free State or Zone Status: § 77.3

In § 77.3(a), we list those States and zones designated as accredited-free. The list of States is the same as that in the regulations in effect prior to this interim rule, except for the addition of an accredited-free zone in Michigan. We discuss below our rationale for designating the zone in Michigan as accredited-free. (See "Recognition of Tuberculosis Status Zones in Michigan.")

In § 77.3(c), we include the provision that formerly appeared in the definition of accredited-free State that the accredited-free status of a State will be suspended if tuberculosis is detected in any one cattle or bison herd in the State and are expanding it to apply to zones as well as States. Similarly, we are moving from the definitions section to § 77.3(c) the provision that if two or more affected herds are detected in an accredited-free State within a 48-month period, the State will be removed from the list of accredited-free States. We are also amending that provision to include zones. We are also amending the requirements for renewing accredited-free status to include zones and are moving the renewal requirements from the definitions in § 77.1 to § 77.3(f).

We are providing in § 77.3(e) that if tuberculosis is diagnosed within an accredited-free State or zone in an animal not specifically included in the regulations and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock and wildlife, the prevention of the spread of the disease to other wildlife and livestock, increased surveillance of tuberculosis in wildlife, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not adopt such a plan within the required 6 months, the State or zone will lose its accredited-free status. We consider this requirement necessary because of the risk of wildlife coming into contact with domestic livestock, both through free-ranging wildlife and wildlife held by the growing number of exhibitors in the United States.

Modified Accredited States or Zones: § 77.4

In § 77.4, we list those States and zones designated as modified accredited and provide the criteria for renewing modified accredited status. The list of States is the same as the list in the regulations in effect prior to this interim rule. The criteria for renewing modified accredited status are also the same, except that they apply to zones as well as States. However, we are adding a provision that if tuberculosis is diagnosed within a modified accredited State or zone in an animal not specifically included in the regulations and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. If a State or zone does not adopt such a plan within the required 6 months, the State or zone will be reclassified as nonmodified accredited.

Nonmodified Accredited States or Zones: § 77.5

Any nonmodified accredited States or zones will be listed in § 77.5. In this interim rule, we are listing one zone in Michigan as nonmodified accredited (discussed below under the heading "Recognition of Tuberculosis Status Zones in Michigan").

Interstate Movement from Accredited-Free States and Zones: § 77.6

Consistent with the regulations in § 77.3 in effect prior to this interim rule, we are providing in new § 77.6 that cattle and bison that are not known to be infected with or exposed to tuberculosis and that originate in a State or zone listed as accredited-free, accredited-free (suspended), or modified accredited may be moved interstate without restriction.

Interstate Movement from Nonmodified Accredited States and Zones: § 77.7

Under § 77.4 of the regulations in effect prior to this interim rule, cattle and bison not known to be affected with or exposed to tuberculosis that originated in a nonmodified accredited State could be moved interstate only if they met one of the following conditions:

1. The cattle and bison were certified as testing negative to an official tuberculin test conducted within 30 days prior to movement and were identified as specified in the regulations;
2. The cattle and bison were certified as coming from an accredited herd; or
3. The cattle and bison were moved directly to a qualifying slaughtering establishment.

In § 77.7 of this interim rule, we are retaining the second two conditions regarding movement from an accredited herd and movement to slaughter. However, we are revising and clarifying the condition regarding the testing of animals intended for movement and are making testing requirements dependent on the type of animal involved, as discussed below, in order to help prevent the spread of tuberculosis and to further the progress of the tuberculosis eradication program.

As set forth in this interim rule, if the cattle or bison to be moved interstate from a nonmodified accredited State or zone are breeding animals that are not from an accredited herd, they will need to be individually identified and be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 30 days prior to the date of movement. Until now, such animals had to be tested only once within 30 days prior to the date of movement. However, we consider one test to be insufficient because of the combination of the high or unknown risk of tuberculosis in a nonmodified accredited State or zone and the possibility that an animal that tested negative to one tuberculosis test may have been incubating the disease agent at the time of testing and could develop clinical signs of the disease following the first test.

Under this interim rule, if the cattle or bison are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot, they must be accompanied by a certificate stating they have been classified negative to an official tuberculin test that was conducted within 30 days prior to the date of movement. Because of the high or unknown risk of the presence of tuberculosis in a nonmodified accredited State or zone, we consider it necessary that such animals test negative to an official tuberculin test before they are moved interstate so that if they are later found to be infected with the disease, they can be traced back to the source herd. However, we consider one negative test to be sufficient for animals moved through slaughter channels, which reduces the risk of disease spread.

Although our statutory authority is generally limited to interstate movement, one of the conditions for APHIS recognition of zones within a State is that the State has adopted and is enforcing regulations that impose restrictions on the intrastate movement of cattle and bison that are substantially the same as those in the regulations for the interstate movement of cattle and bison. Therefore, for a State to achieve and retain APHIS recognition of zones, it will need to impose requirements on intrastate movement from any nonmodified zone that are substantially the same as the testing requirements described above. We consider such requirements within a State necessary to control any outbreaks of tuberculosis.

In § 77.1, we define *approved feedlot* as a confined area approved jointly by the State animal health official and the Administrator for feeding cattle and bison for slaughter, with no provisions for pasturing or grazing. We define *State animal health official* as the State official responsible for livestock and poultry disease control and eradication programs.

In the condition for movement described above, we refer to heifers that are "officially identified." In the definitions in § 77.1, we define *officially identified* to mean identified by means of an official eartag, individual tattoo, or individual hot brand. We define official eartag to mean an eartag approved by the Administrator as providing unique identification for each individual animal by conforming to the alpha-numeric National Uniform Eartagging System.

Movement of Captive Cervids

The regulations in subpart A of part 77 with regard to tuberculosis apply to cattle and bison. The regulations in subpart B of part 77 apply to captive cervids. As noted above, under § 77.2(b) of this interim rule, one of the conditions for a State to be eligible for APHIS recognition of zones is that it imposes restrictions on the intrastate movement of cattle and bison that are substantially the same as those in the regulations for the interstate movement of cattle and bison. However, as evidenced by the regulations regarding captive cervids in part 77, subpart B, in addition to cattle and bison, captive cervids infected with tuberculosis also pose a significant risk of transmitting tuberculosis to other livestock. Therefore, in § 77.2(b) of this interim rule, we provide that, as a condition for APHIS recognition of zones, a State must also impose intrastate restrictions on the movement of captive cervids that are substantially the same as those in place in part 77, subpart B, for the interstate movement of captive cervids.

Classes or Species of Greater Risk

Although at this time we are applying the provisions of this interim rule in the same way to all cattle and bison, it is possible the Administrator will in the future determine that a specific breed or usage type of cattle or bison poses a significantly greater risk of being a reservoir of tuberculosis than other cattle or bison. For instance, regulations in 9 CFR 93.427(c)(5) prohibit the importation of Holstein steers and Holstein spayed heifers from Mexico. This is because APHIS determined that such dairy cattle pose a greater risk than other cattle of being infected with tuberculosis. In any case where a particular breed or usage type of cattle or bison presents a greater tuberculosis risk than other cattle or bison, it may be necessary to establish requirements for interstate movement for that breed or usage type that are more restrictive than those for other cattle and bison, or it may be necessary to prohibit interstate movement altogether. If such restrictions are necessary, we will publish a rulemaking document to that effect in the **Federal Register**.

Application for Recognition of Tuberculosis Status Zones

In § 77.8(a) of this interim rule, we set forth conditions a State must meet to receive APHIS recognition of an area in the State as a separate zone for tuberculosis status. Unless requested otherwise by a State, we will continue to designate entire States with regard to tuberculosis status. However, we provide that a State animal health official may request at any time that the Administrator designate part of the State as having a different tuberculosis status than the rest of the State, with the limitation that each State may be divided into no more than two different zones (i.e., one area that differs in status from the rest of the State).

Under the procedures in this interim rule for requesting recognition of a zone, the State will be responsible for delineating the boundaries of the requested zone, subject to approval by the Administrator. As defined in § 77.1, a zone is a defined geographic land area identifiable by geological, political, manmade, or surveyed boundaries, with mechanisms of disease spread, epidemiological characteristics, and the ability to control the movement of animals across the boundaries of the zone taken into account.

To qualify for APHIS recognition of a zone, the State must demonstrate in its request that it has in place an infrastructure, laws, and regulations that require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife. Additionally, the State in which the zone is located must have the legal and financial resources to implement and enforce a tuberculosis eradication program.

Further, the State must maintain clinical and epidemiological surveillance of animal species at risk of tuberculosis in each zone in the State, at a rate that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. Because 2 percent is the average prevalence in a herd that contains animals infected with tuberculosis, being able to detect such prevalence with 95 percent certainty gives adequate assurance that herds in which tuberculosis is present will be identified. The designated tuberculosis epidemiologist must review reports of all testing for each zone within the State within 30 days of the testing. (In the definitions in § 77.1, we define designated tuberculosis epidemiologist to mean "a State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds.")

In § 77.8(a)(3) of this interim rule, we provide that a State seeking APHIS recognition of a zone with regard to tuberculosis must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request. Such a memorandum of understanding is necessary to address epidemiological circumstances that apply to that particular State. For instance, in a State in which free-ranging wildlife may be a reservoir of tuberculosis, it may be necessary to conduct baseline surveillance among such wildlife; whereas in a State with less of a risk of tuberculosis in wildlife, such surveillance may not be necessary.

Retention of Recognition of Tuberculosis Status Zones

In § 77.8(b) we provide that designation of zones within a State will be subject to annual review by the Administrator and that, in order to retain APHIS recognition of a zone, a State must continue to meet the requirements for achieving recognition of the zone and must retain for 2 years all certificates that are required by the regulations for the movement of cattle, bison, and captive cervids.

Recognition of Tuberculosis Status Zones in Michigan

The conditions for obtaining APHIS recognition of a tuberculosis status zone within a State are discussed above. In this interim rule, we are recognizing such zones in Michigan. Michigan has demonstrated to APHIS that it has the resources to enforce a tuberculosis eradication program and to ensure that diagnoses of tuberculosis are reported to State and Federal authorities. Additionally, Michigan has demonstrated it is capable of maintaining surveillance that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. Michigan will enter into a memorandum of understanding with APHIS regarding any conditions for zone recognition particular to that State's circumstances.

Michigan: In Michigan, the smaller of two zones in the State is bounded as follows: Starting at the juncture of State Route 55 and Interstate 75, head northwest and north along Interstate 75 to the Straits of Mackinac, then southeast and south along the shoreline of Michigan to the eastern terminus of State Route 55, then west along State Route 55 to Interstate 75. The second zone in Michigan is comprised of the rest of the State.

State animal health officials in Michigan have demonstrated to APHIS that, except for the smaller zone, the State meets the criteria for accredited-free status set forth in the definition of *accredited free* in this interim rule. Except for the smaller zone, Michigan has zero percent prevalence of affected cattle or bison herds and has had no findings of tuberculosis in any cattle or bison for the past 5 years. Additionally, the State complies with the provisions of the UMR. Because the smaller zone in Michigan does not meet the requirements for either accredited-free or modified accredited, it is being listed as nonmodified accredited.

UMR

Among the definitions in § 77.1 is a definition of *Uniform Methods and Rules—Bovine Tuberculosis Eradication*. The edition of the UMR referred to in that definition was approved by APHIS on February 3, 1989, and was approved for incorporation by reference into the Code of Federal Regulations (CFR) by the Director of the Federal Register. On January 22, 1999, an updated edition of the UMR was approved by APHIS. Among other provisions, the updated edition includes changes to the tuberculosis eradication program discussed in this interim rule with regard to split-State tuberculosis status. This interim rule revises the definition of Uniform *Methods and Rules—Bovine Tuberculosis Eradication* to reflect the incorporation by reference of the January 22, 1999, edition of the UMR.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. We believe that failure to provide the option for "split-State status" would hinder the progress of the tuberculosis eradication program in this country and increase the likelihood of the spread of the disease. Under the regulations prior to this interim rule, if tuberculosis was determined to exist in any part of a State, the entire State was designated as being at risk. This "all or nothing" approach did not always provide sufficient incentive for a State to stringently restrict movement of tuberculosis-susceptible animals from high-risk areas within the State and to otherwise rapidly contain the disease and move toward eradication. Failure to rapidly identify and address high-risk areas has significantly increased the risk of tuberculosis spread among livestock.

In this interim rule, we establish requirements for achieving APHIS recognition of zones within a State for the purpose of tuberculosis status. Providing for zones will allow APHIS to recognize areas of distinct tuberculosis risk levels within a State. This will encourage States to rapidly isolate affected areas from the rest of the State and to implement effective containment and eradication measures, thereby decreasing tuberculosis risk in the State.

The regulations until now defined a modified accredited State as one that complies with all of the provisions of the UMR regarding modified accredited States. Under the regulations prior to this interim rule, it was not always clear what standards a State needed to meet to achieve modified accredited status. With the establishment of zones under this interim rule, it is essential to the prevention of tuberculosis spread in States that this lack of clarity be rectified so that States are clear regarding the standards for achieving status and, consequently, regarding the restrictions they must impose on the movement of livestock from zones that do not qualify for modified accredited or accredited-free status.

As set forth in this interim rule, if cattle or bison to be moved interstate from a nonmodified accredited State or zone are breeding animals that are not from an accredited herd, they will need to be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests. Based on our experience enforcing the regulations, we have determined that requiring less than two negative tests before such potentially high-risk animals may be moved interstate creates an unacceptable risk that the animals will transmit tuberculosis to other livestock, due to the possibility that an animal that tests negative to one test could be incubating the tuberculosis disease agent at the time of that first test.

Under this interim rule, if the cattle or bison to be moved from a nonmodified accredited State or zone are steers or spayed heifers or are officially identified sexually intact heifers moved to an approved feedlot, they must be accompanied by a certificate stating they have been classified negative to an official tuberculin test that was conducted within 30 days prior to the date of movement. Because of the high or unknown risk of the presence of tuberculosis in a nonmodified accredited State or zone, we consider it necessary that such animals test negative to an official tuberculin test before they are moved interstate so that if they are found to be infected with the disease, they can be traced back to the source herd. Inclusion of this requirement in the interstate regulations will ensure that States seeking recognition of zones impose like requirements on intrastate movement of livestock and thus more rapidly control any outbreaks of tuberculosis within the State.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Statutory authorities including 21 U.S.C. 111, 114, 114a, and 120 authorize the Secretary of Agriculture to conduct programs and promulgate regulations to prevent the dissemination of any contagious, infectious, or communicable disease of animals from one State to another.

In this interim rule, we are allowing for APHIS recognition of zones within a State that have different risk statuses for tuberculosis, are clarifying the conditions for assigning a particular risk status, and are increasing the amount of testing that must be done before certain cattle and bison may be moved interstate.

In considering this rulemaking, we considered three options. The first was to retain the regulations already in place and make no changes. We did not consider this an acceptable option because it would have had the effect of increasing the risk of the interstate transmission of tuberculosis, while at the same time retaining unnecessarily stringent disease status designations for parts of some States. A second option would have been to expand the number of possible tuberculosis status levels for States and zones to more precisely reflect the potential gradations of eradication efforts and disease risk among different areas. We believe this option is one that should be pursued, and we are in the process of developing rulemaking that would propose such changes to the regulations. However, because we believe such substantive changes to the tuberculosis eradication program should be presented to the public for comment before being implemented, we did not include such extensive changes in this interim rule. The option we chose was to implement the provisions of this interim rule that establish criteria for our recognition of two zones within a State for tuberculosis status and to address immediately those provisions of the regulations that, because of lack of clarity or insufficient safeguards, unacceptably increased the risk of the spread of tuberculosis among livestock in this country.

Below is an analysis of the potential effects of this rule on small entities as required by the Regulatory Flexibility Act. We do not have enough data for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this rule. We are inviting comments about this rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this rule and the economic effects of those benefits or costs.

Economic Analysis

In 1998, the total number of cattle and bison in the United States was approximately 99.5 million, valued at approximately $58.6 billion. There were 1,115,650 U.S. operations with cattle and bison. Over 99 percent of these operations had gross cash value of less than $500,000. These holdings vary in size and degree of commercialization, with many producers relying on other sources of income.

The cattle industry plays a very significant role in international trade. In 1998, the total earnings from exports of live cattle, beef, and veal was approximately $2.6 billion. The competitiveness of the United States in international markets depends to a great degree upon its reputation for producing high quality animals, a reputation that would be enhanced if bovine tuberculosis were permanently eradicated. The actual product, as well as the purchasers' perception of the quality of the product, contribute to continued world market acceptance. Thus, efforts to maintain an effective tuberculosis program, to clarify the regulations, and to secure the health of the cattle industry will continue to serve the best economic interests of the Nation.

Under the regulations, each State is designated as having one of the following tuberculosis statuses: Accredited-free, accredited-free (suspended), modified accredited, and nonmodified accredited. Prior to this rule, there were 48 accredited-free States (including Puerto Rico and the

Virgin Islands of the United States), 2 States that were modified accredited States, and one State that was accredited-free (suspended). There were no nonmodified accredited States.

We are changing the testing requirements for moving breeding animals interstate from a nonmodified accredited State or zone. Under this interim rule, breeding animals from a nonmodified accredited State or zone require a certificate stating that the animals tested negative twice to an official tuberculin test. This represents one more test than has been required and, therefore, will result in additional cost for owners moving breeding animals from a nonmodified accredited State or zone. The average cost of the test is about $380 per herd. The per animal cost varies depending on the size of the herd. For an average-sized herd of 90 animals, the average cost per animal would be approximately $4.22. The total cost for testing will depend on the number of animals that are being moved interstate.

Prior to this interim rule, there were no States or zones designated as nonmodified accredited. In this interim rule, we are listing a small portion of Michigan as being a nonmodified accredited zone. This zone includes approximately 100 herds of cattle and bison. Breeding animals from this zone will have to test negative twice to an official tuberculin test prior to interstate movement. However, we do not anticipate this testing will impose a significant burden on entities in that zone because very few animals are moved from that area of Michigan.

The provisions of this interim rule establishing mechanisms for defining "zones" within a State with regard to tuberculosis will benefit the United States at minimal or no cost because they will allow quicker response to tuberculosis outbreaks and will establish a way to manage the disease in regional zones, rather than penalize entire States. It is expected that enhanced international trade will result from establishing a regionalized approach to tuberculosis in the United States.

Prior to this interim rule, the accredited-free (suspended) State was Michigan. As of result of this rule, Michigan will assume a split status, with a small section of Michigan being assigned nonmodified accredited status, and the remainder of Michigan being assigned accredited-free status. We expect that the assignment of accredited-free status to most of the area of Michigan will have a positive economic effect on the State. Many States impose movement restrictions on livestock from States that are not accredited-free. Under this rule, of 15,000 cattle herds in Michigan, only 100 herds will be located in a nonmodified accredited zone. All other herds will be located in an accredited-free zone.

The changes to the regulations in this interim rule will result in new information collection or recordkeeping requirements, as described below under the heading "Paperwork Reduction Act."

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have received emergency approval from the Office of Management and Budget (OMB). OMB has assigned control number 0579–0146 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 99–008–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. Please state that your comments refer to Docket No. 99–008–1 and send your comments within 60 days of publication of this rule.

This interim rule amends the bovine tuberculosis regulations to allow zones within a State to be assigned different risk statuses and to clarify the conditions for assigning a particular risk status for bovine tuberculosis. Additionally, it amends the regulations to increase the amount of testing that must be done before certain cattle and bison may be moved interstate.

In order to apply for APHIS designation of zones within a State, a State animal health official submits a request to the APHIS Administrator demonstrating that the State complies with the criteria for recognition of a zone. Additionally, the State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request. To retain recognition of zones, the State must retain for 2 years a certificate that documents the movement of cattle, bison, and captive cervids into and out of the zones.

In accordance with this interim rule, if tuberculosis is diagnosed within an accredited-free State or zone or a modified accredited State or zone and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the APHIS Administrator.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .575 hours per response.

Respondents: State animal health authorities, including State veterinarians and designated State tuberculosis epidemiologists.

Estimated annual number of respondents: 56.

Estimated annual number of responses per respondent: 3.785.

Estimated annual number of responses: 212.

Estimated total annual burden on respondents: 122 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Incorporation by reference, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 77.1 is amended as follows:

a. The following definitions are revised to read as set forth below: *Accredited herd, Negative cattle and bison, Official tuberculin test, Reactor cattle and bison, Suspect cattle and bison,* and *Uniform Methods and Rules—Bovine Tuberculosis Eradication.*

b. The following definitions are removed: *Accredited-free state, Accredited-free (suspended) State, Modified accredited State,* and *Nonmodified accredited state.*

c. The following definitions are added in alphabetical order to read as set forth below: *Accredited-free State or zone, Accredited-free (suspended) State or zone, Approved feedlot, Designated tuberculosis epidemiologist, Modified accredited State or zone, Nonmodified accredited State or Zone, Official eartag, Officially identified, State animal health official, Zero percent prevalence,* and *Zone.*

§ 77.1 Definitions.

* * * * *

Accredited-free State or zone. A State or zone that has zero percent prevalence of affected cattle and bison herds, that has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years, and that complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," except that the requirement of freedom from tuberculosis is 2 years from the depopulation of the last infected herd in States or zones that were previously accredited-free and in which all herds affected with tuberculosis were depopulated.

Accredited-free (suspended) State or zone. A State or zone with the status of an accredited-free State is designated as accredited-free (suspended) if tuberculosis is detected in any cattle or bison in the State or zone.

Accredited herd. To establish or maintain accredited herd status, the herd owner must comply with all of the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited herds. All cattle and bison in a herd must be free from tuberculosis.

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Approved feedlot. A confined area approved jointly by the State animal health official and the Administrator for feeding cattle and bison for slaughter, with no provisions for pasturing or grazing.

* * * * *

Designated tuberculosis epidemiologist. A State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds.

* * * * *

Modified accredited State or zone. A State or zone that complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for the most recent 2 years, except that the Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

* * * * *

Negative cattle and bison. Cattle and bison that are classified negative for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," based on the results of an official tuberculin test.

Nonmodified accredited State or zone. A State or zone that has not received accredited-free State or zone status or modified accredited State or zone status.

Official eartag. An eartag approved by the Administrator as providing unique identification for each individual animal by conforming to the alpha-numeric National Uniform Eartagging System.

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Official tuberculin test. Any test for tuberculosis conducted on cattle or bison in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

Officially identified. Identified by means of official eartag, individual tattoo, or individual hot brand.

* * * * *

Reactor cattle and bison. Cattle and bison that are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

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State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

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Suspect cattle and bison. Cattle and bison that are classified as suspects for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

* * * * *

Uniform Methods and Rules—Bovine Tuberculosis Eradication. Uniform methods and rules for eradicating bovine tuberculosis in the United States approved by APHIS on January 22, 1999. The Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition was approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[1]

Zero percent prevalence. No finding of tuberculosis in any cattle or bison herd in a State or zone.

Zone. A defined geographic land area identifiable by geological, political, manmade, or surveyed boundaries, with mechanisms of disease spread, epidemiological characteristics, and the ability to control the movement of animals across the boundaries of the zone taken into account.

3. Section 77.2 is revised to read as follows:

§ 77.2 Bovine tuberculosis status of States and zones.

The Administrator shall designate each State in accordance with this subpart according to its tuberculosis status. A defined zone comprised of a portion of an entire State will be given a particular status designation upon request of the State only if the Administrator determines that:

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[1] Copies may be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231. You may inspect a copy [illegible] the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(a) The State meets the requirements of this subpart for establishment of disease status zones;

(b) The State has adopted and is enforcing regulations that impose restrictions on the intrastate movement of cattle and bison that are substantially the same as those in place under this subpart for the interstate movement of cattle and bison, and has adopted and is enforcing regulations that impose restrictions on the intrastate movement of captive cervids that are substantially the same as those in place under subpart B of this part for the interstate movement of captive cervids; and

(c) The designation of part of a State as a zone will otherwise be adequate to prevent the interstate spread of tuberculosis.

4. Section 77.3 is revised to read as follows:

§ 77.3 Accredited-free States or zones.

(a) The following are accredited-free States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, the Virgin Islands of the United States, Washington, West Virginia, Wisconsin, and Wyoming.

(b) The following are accredited-free zones: A zone in Michigan consisting of that part of the State outside the zone in Michigan described in § 77.5(b).

(c) Detection of tuberculosis in any one herd of cattle or bison in an accredited-free State or zone will result in suspension of accredited-free State or zone status. If two or more accredited herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as either a modified accredited State or zone or a nonmodified accredited State or zone.

(d) If the accredited-free status of a State or zone has been suspended, the State or zone may qualify for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed. If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" January 22, 1999, edition, which was approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[2] for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Failure to do so will result in reclassification of the State or zone as either a modified accredited State or zone or a nonmodified accredited State or zone.

(e) If tuberculosis is diagnosed within an accredited-free State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock and wildlife, the prevention of the spread of the disease to other wildlife and livestock, increased surveillance of tuberculosis in wildlife, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not adopt such a plan within the required 6 months, the State or zone will lose its accredited-free status and will be reclassified as either a modified accredited State or zone or a nonmodified accredited State or zone.

(f) Accredited-free State or zone status must be renewed annually. To qualify for renewal of accredited-free State or zone status, a State must submit an annual report to APHIS certifying that the State or zone within the State complies with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States. The report must be submitted to APHIS each year between October 1 and November 30.

5. Section 77.4 is revised to read as follows:

§ 77.4 Modified accredited States or zones.

(a) The following are modified accredited States: New Mexico and Texas.

(b) The following are modified accredited zones: None.

(c) If tuberculosis is diagnosed within a modified accredited State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock and wildlife, the prevention of the spread of the disease to other wildlife and livestock, increased surveillance of tuberculosis in wildlife, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not adopt such a plan within the required 6 months, the State or zone will be reclassified as nonmodified accredited.

(d) If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999 edition," which was approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[3] for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Failure to do so will result in the removal of the State or zone from the list of modified accredited States or zones and its being reclassified as a nonmodified accredited State or zone.

(e) Modified accredited State or zone status must be renewed annually. To qualify for renewal of a modified accredited State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding modified accredited States. The report must be submitted to APHIS each year between October 1 and November 30.

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[2] Copies may be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231. You may inspect a copy at the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Ave., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[3] Copies may be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231. You may inspect a copy at the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Ave., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) To qualify for accredited-free status, a modified accredited State or zone must demonstrate to the Administrator that it has zero percent prevalence of affected cattle and bison herds, has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years, and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," except that the requirement of freedom from tuberculosis is 2 years from the depopulation of the last infected herd in States or zones that were previously accredited-free and in which all herds affected with tuberculosis were depopulated.

§§ 77.10 and 77.14 [Amended]

6. Section 77.10 is amended by redesignating footnote 3 as footnote 5, and § 77.14 is amended by redesignating footnote 4 as footnote 6.

§§ 77.5–77.18 [Redesignated §§ 77.9–77.22]

7. Sections 77.5, 77.6, 77.7, 77.8, 77.9, 77.10, 77.11, 77.12, 77.13, 77.14, 77.15, 77.16, 77.17, and 77.18 are redesignated as §§ 77.9, 77.10, 77.11, 77.12, 77.13, 77.14, 77.15, 77.16, 77.17, 77.18, 77.19, 77.20, 77.21, and 77.22, respectively, and new §§ 77.5, 77.6, 77.7, and 77.8 are added to read as follows:

§ 77.5 Nonmodified accredited States or zones.

(a) The following are nonmodified accredited States: None.

(b) The following are nonmodified accredited zones: A zone in Michigan delineated by starting at the juncture of State Route 55 and Interstate 75, then heading northwest and north along Interstate 75 to the Straits of Mackinac, then southeast and south along the shoreline of Michigan to the eastern terminus of State Route 55, then west along State Route 55 to Interstate 75.

(c) To qualify for accredited-free status, a nonmodified accredited State or zone must demonstrate to the Administrator that it has zero percent prevalence of affected cattle and bison herds, has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years, and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999 edition," which was incorporated by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[4] except that the requirement of freedom from tuberculosis is 2 years from the depopulation of the last infected herd in States or zones that were previously accredited-free and in which all herds affected with tuberculosis were depopulated.

(d) To qualify for modified accredited status, a nonmodified accredited State or zone must demonstrate that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," and that tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for the most recent 2 years, except that the Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

§ 77.6 Interstate movement from accredited-free, accredited-free (suspended), and modified accredited States and zones.

Cattle and bison that originate in an accredited-free State or zone, an accredited-free (suspended) State or zone, or a modified accredited State or zone and that are not known to be infected with or exposed to tuberculosis may be moved interstate without restriction.

§ 77.7 Interstate movement from nonmodified accredited States and zones.

Cattle or bison that originate in a nonmodified accredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under the following conditions:

(a) The cattle or bison are moved interstate directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State-inspected slaughtering establishment that has inspection by a State inspector at the time of slaughter;

(b) If the cattle or bison are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot, they must be accompanied by a certificate stating that they have been classified negative to an official tuberculin test that was conducted within 30 days prior to the date of movement. All cattle and bison so moved that are not individually identified by a registration name and number must be individually identified by an APHIS-approved metal eartag or tattoo;

(c) Cattle and bison that are breeding animals from an accredited herd may be moved interstate if they are accompanied by a certificate showing the cattle or bison are from such a herd; or

(d) If the cattle or bison are breeding animals that are not from an accredited herd, they must be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 30 days prior to the date of movement. All cattle and bison so moved that are not individually identified by a registration name and number must be individually officially identified.

§ 77.8 Application for and retention of recognition of tuberculosis status zones.

(a) A State animal health official may request at any time that the Administrator designate part of a State as having a different tuberculosis status under this subpart than the rest of the State, except that each State may be divided into no more than two different zones. The requested zone must be delineated by the State animal health authorities, subject to approval by the Administrator. The request from the State must demonstrate that the State complies with the following requirements:

(1) The State must have the legal and financial resources to implement and enforce a tuberculosis eradication program and must have in place an infrastructure, laws, and regulations that require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife;

(2) The State in which the intended zones are located must maintain, in each intended zone, clinical and epidemiological surveillance of animal species at risk of tuberculosis, at a rate that allows detection of tuberculosis in

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[4] Copies may be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231. You may inspect a copy at the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Ave., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. The designated tuberculosis epidemiologist must review reports of all testing for each zone within the State within 30 days of the testing; and

(3) The State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request.

(b) Retention of APHIS recognition of a tuberculosis status zone is subject to annual review by the Administrator. To retain recognition of a zone, a State must continue to comply with the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this section, and must retain for 2 years all certificates required under this part for the movement of cattle, bison, and captive cervids.

§ 77.12 [Amended]

8. Newly redesignated § 77.12 is amended as follows:

a. In the definition of Accredited herd, by removing the reference to "§ 77.10(f)" and adding in its place a reference to "§ 77.14(f)", and by removing the reference to "§ 77.12" and adding in its place a reference to "§ 77.16".

b. In the definition of *Affected herd*, by removing the reference to "§ 77.16(d)" and adding in its place a reference to "§ 77.20(d)".

c. In the definition of *Monitored herd*, by removing the reference to "§ 77.14" and adding in its place a reference to "§ 77.18".

d. In the definition of *Qualified herd*, by removing the reference to "§ 77.10(f)" and adding in its place a reference to "§ 77.14(f)".

§ 77.13 [Amended]

9. Newly redesignated § 77.13 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 77.12" and adding in its place a reference to "§ 77.16".

b. In paragraph (b), by removing the reference to "§ 77.17" and adding in its place a reference to "§ 77.21".

c. In paragraph (c), by removing the reference to "§ 77.17" and adding in its place a reference to "§ 77.21".

§ 77.14 [Amended]

10. Newly redesignated § 77.14 is amended as follows:

a. In paragraph (a)(1), by removing the reference to "§ 77.11(a)(2)" and adding in its place a reference to "§ 77.15(a)(2)", and by removing the reference to "§ 77.16(e)" and adding in its place a reference to "§ 77.20(e)".

b. In paragraph (e)(1), by removing the reference to "§ 77.11(a)" and adding in its place a reference to "§ 77.15(a)"

c. In paragraph (e)(2), by removing the reference to "§ 77.11(b)" and adding in its place a reference to "§ 77.15(b)".

d. In paragraph (e)(3), by removing the reference to "§ 77.11(c)" and adding in its place a reference to "§ 77.15(c)".

e. In paragraph (f), by removing the reference to "§ 77.12(a)(1)" and adding in its place a reference to "§ 77.16(a)(1)", and by removing the reference to "§ 77.13(a)(1)" and adding in its place a reference to "§ 77.17(a)(1)".

§ 77.15 [Amended]

11. In newly redesignated § 77.15, paragraph (c)(2) is amended by removing the reference to "§ 77.16(e)" and replacing it with a reference to "§ 77.20(e)".

§ 77.16 [Amended]

12. In newly redesignated § 77.16, paragraph (a)(1) is amended by removing the reference to "§ 77.10(f)" and adding in its place a reference to "§ 77.14(f)", and paragraph (b) is amended by removing the reference to "§ 77.9(c)" and adding in its place a reference to "§ 77.13(c)".

§ 77.17 [Amended]

13. In newly redesignated § 77.17, paragraph (a)(1) is amended by removing the reference to "§ 77.10(f)" and adding in its place a reference to "§ 77.14(f)", and paragraph (b)(2) is amended by removing the reference to "§ 77.9(c)" and adding in its place a reference to "§ 77.13(c)".

§ 77.18 [Amended]

14. In newly redesignated § 77.18, paragraph (b)(2) is amended by removing the reference to "§ 77.9(c)" and adding in its place a reference to "§ 77.13(c)".

§ 77.20 [Amended]

15. Newly redesignated § 77.20 is amended as follows:

a. In paragraph (a)(2), by removing the reference to "§ 77.16(b)" and adding in its place a reference to "§ 77.20(b)".

b. In the introductory text to paragraph (b), by removing the reference to "§ 77.16(e)" and adding in its place a reference to "§ 77.20(e)".

c. In paragraph (b)(2), by removing the reference to "§ 77.17" and adding in its place a reference to "§ 77.21".

d. In paragraph (b)(2)(i), by removing the reference to "§ 77.16(c)" and adding in its place a reference to "§ 77.20(c)".

e. In paragraph (b)(2)(ii), by removing the reference to "§ 77.16(d)" and adding in its place a reference to "§ 77.20(d)".

f. In paragraph (c), by removing the reference to "§ 77.16(a)" and adding in its place a reference to "§ 77.20(a)".

g. In paragraph (d), by removing the reference to "§ 77.15" and adding in its place a reference to "§ 77.19".

h. In paragraph (e), by removing the reference to "§ 77.16(d)" and adding in its place a reference to "§ 77.20(d)".

i. In paragraph (e)(1), by removing the reference to "§ 77.16(d)" and adding in its place a reference to "§ 77.20(d)".

j. In paragraph (g)(2), by removing the reference to "§ 77.16(a)" and adding in its place a reference to "§ 77.20(a)".

§ 77.21 [Amended]

16. In newly redesignated § 77.21, paragraph (a)(3) is amended by removing the reference to "§ 77.8" and adding in its place a reference to "§ 77.12".

Done in Washington, DC, this 20th day of October 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–27746 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–1048]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board of Governors of the Federal Reserve System has issued an interpretation concerning the scope of the data processing provision of Regulation K. The interpretation clarifies that a banking organization may not engage in a broader range of data processing activities outside the United States under Regulation K than is permissible under Regulation Y, without the Board's approval.

EFFECTIVE DATE: November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), or Jonathan D. Stoloff, Counsel (202/452–3269), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Regulation K provides that a bank holding company or Edge corporation may control a foreign company that engages in activities usually in connection with the transaction of banking or other financial operations abroad. 12 CFR 211. Section 211.5(d)(10) of Regulation K states:

> "*Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad: Data processing".

Section 211.5(d)(10) of Regulation K was adopted in 1979. 12 CFR 211 (1980). It was intended to incorporate into the regulation earlier decisions that had allowed an Edge corporation to engage in somewhat broader data processing activities abroad than were permitted domestically, although the activity was intended to consist predominately of processing financial information. At that time, Regulation Y significantly restricted the ability of a bank holding company to engage in data processing activities in the United States. Since 1979, the provision of Regulation Y that encompasses data processing has been amended several times and in some respects can be considered a broader grant of authority than under Regulation K (for example, with respect to the manufacture of hardware, the provision of software, and related activities). Regulation Y also now specifically authorizes a company to derive up to 30 percent of its revenues from processing non-financial data. 12 CFR 225.28(b)(14).

The Board has never specifically considered the scope of activities permitted by section 211.5(d)(10) of Regulation K. A recent prior notice received under Regulation K raised the issue of the scope of this provision. A bank holding company proposed to acquire a foreign data processing company that engaged in a small amount of data processing and related activities that did not otherwise qualify under the standards set out in Regulation Y. The bank holding company assumed there were no restrictions on its ability to engage in any type of data processing or related activities under Regulation K.

Given the potential for misinterpretation of the data processing provision of Regulation K, the Board believes it would be appropriate to clarify the situation and issue this interpretation.

Prior to the issuance of Regulation K in 1979, the Board approved applications to engage in data processing activities abroad. At the time, Regulation Y authorized only "(i) providing bookkeeping or data processing services for the internal operations of the holding company and its subsidiaries and (ii) storing and processing other banking, financial, or related economic data, such as performing payroll, accounts receivable or payable, or billing services."[1]

Initially, the Board authorized data processing services abroad subject to the same limitations in Regulation Y. Subsequently, the Board authorized a limited expansion of data processing services abroad beyond that permissible under Regulation Y. The Board approved this expansion with the expectation that, as indicated in the application materials, data processing activities overseas would primarily be financial in nature.

The Board subsequently codified the data processing authority under Regulation K in 1979. This authority was based upon the conditions the Board had customarily imposed on such activities. Accordingly, the scope of data processing under Regulation K continued to be somewhat broader than that permitted under Regulation Y.

As noted above, during this period Regulation Y did not permit *any* nonfinancial data processing for non-affiliates, other than as an incidental activity on a very limited basis. In the revisions to Regulation Y in the 1980s and 1990s, however, the Board substantially expanded the scope of domestic data processing and related activities, which now include data transmission services, manufacture of certain hardware, provision of software, and the ability to derive up to 30 percent of their data processing revenues from nonfinancial data processing activities. Regulation K does not specifically describe these activities. The Board wishes to clarify that such activities are authorized under Regulation K and that the scope of the data processing activity permissible under Regulation K is coextensive with those activities permitted under section 225.28(b)(14) of Regulation Y, as amended. If a banking organization wishes to engage outside the United States in data processing or related activities beyond those permitted in Regulation Y, it should apply to the Board under Regulation K.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation K, 12 CFR part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*

2. Part 211 is amended by adding a new § 211.604 to read as follows:

§ 211.604. Data processing activities.

(a) *Introduction.* As a result of a recent proposal by a bank holding company to engage in data processing activities abroad, the Board has considered the scope of permissible data processing activities under Regulation K (12 CFR part 211). This question has arisen as a result of the fact that § 211.5(d)(10) of Regulation K does not specifically indicate the scope of data processing as a permissible activity abroad.

(b) *Scope of data processing activities.* (1) Prior to 1979, the Board authorized specific banking organizations to engage in data processing activities abroad with the expectation that such activity would be primarily related to financial activities. When Regulation K was issued in 1979, data processing was included as a permissible activity abroad. Although the regulation did not provide specific guidance on the scope of this authority, the Board has considered such authority to be coextensive with the authority granted in specific cases prior to the issuance of Regulation K, which relied on the fact that most of the activity would relate to financial data. Regulation K does not address related activities such as the manufacture of hardware or the provision of software or related or incidental services.

(2) In 1979, when the activity was included in Regulation K for the first time, the data processing authority in Regulation K was somewhat broader than that permissible in the United States under Regulation Y (12 CFR part 225) at that time, as the Regulation K authority permitted limited non-financial data processing. In 1979, Regulation Y authorized only financial data processing activities for third parties, with very limited exceptions. By 1997, however, the scope of data processing activities under Regulation Y was expanded such that bank holding

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[1] 12 CFR 222.4(a)(8) (1971). At the time, the Board also authorized limited incidental activities pursuant to section 222.123 of Regulation Y; however, the Board noted that the authority to engage in data processing was "not intended to permit holding companies to engage in automated data processing activities by developing programs either upon their own initiative or upon request, unless the data involved are financially oriented." 12 CFR 222.123 (1971).

companies are permitted to derive up to 30 percent of their data processing revenues from processing data that is not financial, banking, or economic. Moreover, in other respects, the Regulation Y provision is broader than the data processing provision in Regulation K.

(3) In light of the fact that the permissible scope of data processing activities under Regulation Y is now equal to, and in some respects, broader than the activity originally authorized under Regulation K, the Board believes that § 211.5(d)(10) should be read to encompass all of the activities permissible under § 225.28(b)(14) of Regulation Y. In addition, the limitations of that section would also apply to § 211.5(d)(10).

(c) *Applications.* If a U.S. banking organization wishes to engage abroad in data processing or data transmission activities beyond those described in Regulation Y, it must apply for the Board's prior consent under § 211.5(d)(20) of Regulation K. In addition, if any investor has commenced activities beyond those permitted under § 225.28(b)(14) of Regulation Y in reliance on Regulation K, it should consult with staff of the Board to determine whether such activities have been properly authorized under Regulation K.

By order of the Board of Governors, October 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28380 Filed 10–29–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8827]

Removal of Regulations Providing Guidance Under Subpart F, Relating to Partnerships and Branches; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction of temporary and final regulations.

SUMMARY: This document contains corrections to the temporary and final regulations (TD 8827), which were published in the **Federal Register** on Tuesday, July 13, 1999, (64 FR 37677). The regulations relate to the treatment under subpart F of certain payments involving branches of a controlled foreign corporation that are treated as separate entities for foreign tax purposes or partnerships in which CFC's are partners.

DATES: These corrections are effective July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Mark, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary and final regulations that are the subject of these corrections are under sections 904, 954, and 7701.

Need for Correction

As published, the temporary and final regulations (TD 8827) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary and final regulations (TD 8827), which are the subject of FR Doc. 99–17369, is corrected as follows:

§ 1.904–5 [Corrected]

1. On page 37677, column 3, amendatory instructions "**Par. 2.**", last line, the language "amended by removing the last sentence" is corrected to read "amended by removing the last two sentences".

2. On page 37678, column 1, amendatory instruction "**Par. 7.**", the language "**Par. 7.**" is corrected to read "**Par. 6.**".

3. On page 37678, column 1, amendatory instruction "**Par. 9.**", the language "**Par. 9.**" is corrected to read "**Par. 7.**".

4. On page 37678, column 1, amendatory instruction "**Par. 10.**", the language "**Par. 10.**" is corrected to read "**Par. 8.**".

§ 301.7701–3 [Corrected]

5. On page 37678, column 1, the amendatory instruction for "**Par. 11.**" is corrected to read as follows:

Par. 9. In § 301.7701–3, the last two sentences in paragraph (f)(1) are removed.

6. On page 37678, column 1, amendatory instruction "**Par. 12.**", the language "**Par. 12.**" is corrected to read "**Par. 10.**".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–28037 Filed 10–29–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 27

[A.G. Order No. 2264–99]

RIN 1105–AA60

Whistleblower Protection For Federal Bureau of Investigation Employees

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (Department) adopts as final, with certain changes discussed below, the interim rule published last year in the **Federal Register** establishing procedures under which employees of the Federal Bureau of Investigation (FBI) may make disclosures of information protected by the Civil Service Reform Act of 1978 and the Whistleblower Protection Act of 1989. The interim rule also established procedures under which the Department will investigate allegations by FBI employees of reprisal for making such protected disclosures, and under which it will take appropriate corrective action.

DATES: This rule is effective November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Stuart Frisch, General Counsel, or John Caterini, Attorney-Advisor, Office of the General Counsel, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530; telephone: (202) 514–3452; e-mail: John.Caterini@usdoj.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On November 10, 1998, the Department issued an interim rule establishing procedures under which FBI employees may make disclosures of information protected by the Civil Service Reform Act of 1978, Pub. L. 95–454, and the Whistleblower Protection Act of 1989, Pub. L. 101–12, codified at 5 U.S.C. 2303. The interim rule also established procedures under which the Department will investigate allegations by FBI employees of reprisal for making such protected disclosures and under which it will take appropriate corrective action.

Under sections 1214 and 1221 of title 5 of the United States Code, most federal employees who believe they have been subjected to a prohibited personnel practice, including reprisal for whistleblowing, may request an investigation by the Office of Special Counsel (OSC) (section 1214) or, in appropriate circumstances, pursue an individual right of action before the

Merit Systems Protection Board (MSPB) (sections 1214(a)(3) and 1221). Although Congress expressly excluded the FBI from the scheme established by those provisions, see 5 U.S.C. 2302(a)(2)(C)(ii), section 2303(a) of title 5 contains a separate provision that prohibits reprisals against whistleblowers in the FBI. Section 2303(b) directs the Attorney General to prescribe regulations to ensure that such reprisal not be taken, and section 2303(c) directs the President to provide for the enforcement of section 2303 "in a manner consistent with applicable provisions of section 1214 and 1221." On April 14, 1997, the President delegated to the Attorney General the "functions concerning employees of the Federal Bureau of Investigation vested in (him) by * * * section 2303(c) of title 5, United States Code," and directed the Attorney General to establish "appropriate processes within the Department of Justice to carry out these functions." See 62 FR 23123 (1997).

The interim rule implements section 2303(b) and (c) and the President's April 1997 directive, superseding and replacing 28 CFR 0.39c, which gave the Counsel for the Department's Office of Professional Responsibility authority to request a stay of a personnel action against an FBI employee when he determined that there were reasonable grounds to believe that the action was taken as a reprisal for whistleblowing. The interim rule designates specific offices—the Department's Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), and the FBI's Office of Professional Responsibility (FBI OPR) (collectively, Receiving Offices)—to which an FBI employee (or applicant for employment with the FBI) may disclose information that the employee or applicant reasonably believes evidences violation of any law, rule or regulation; mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. (Such disclosures are referred to herein as "whistleblower disclosures.") In accordance with section 2303(a), the interim rule prohibits reprisals against persons who make such disclosures.

The interim rule further provides that OPR or OIG (the Conducting Office) will investigate whistleblower reprisal claims and may recommend corrective action, where appropriate, to the Director, Office of Attorney Personnel Management (the Director). Under the interim rule, the Director may decide whistleblower reprisal claims presented to her by OPR or OIG (or, in appropriate circumstances, by a complainant directly). The Director may also, among other things, authorize a temporary stay, rule on evidentiary matters, and hold a hearing. Under the interim rule, the roles and functions of the Conducting Office and the Director are thus analogous to those of the OSC and MSPB, respectively, in whistleblower cases involving federal employees generally. In addition, the interim rule imports time frames specified in the statute for the OSC/MSPB system whenever possible.

One fundamental difference, however, between the two systems is that the procedures provided in the interim rule are entirely internal to the Department. This is because section 2303 (the source of authority for the interim rule) identifies the Attorney General or her designee as recipients of protected whistleblower disclosures, rather than any outside person or entity. In addition, the President's April 1997 directive, consistent with the statute and its legislative history, directs that the Attorney General establish appropriate processes within the Department of Justice. See, *e.g.*, 124 Cong. Rec. 28770 (1978) ("We gave (the FBI) special authority * * * to let the President set up their own whistle-blower (sic) system so that appeals would not be to the outside but to the Attorney General.") (statement of Representative Udall).

Although the interim rule was effective upon publication in the **Federal Register**, the Department invited post-promulgation comments. The Department received three sets of comments, which are discussed below.

B. Discussion of Comments and Changes to the Interim Rule

1. Definition of Protected Disclosure

Unlike section 2303, section 2302 (which sets forth the scheme for federal employees generally) creates two types of protected disclosures. Section 2302(b)(8)(A) protects whistleblower disclosures, regardless of whom they are made to, provided that they are not otherwise specifically prohibited by law or required by Executive Order to be kept secret. Section 2302(b)(8)(B), by contrast, protects whistleblower disclosures, without qualification or exception, only if they are made to certain specific persons or entities—the OSC, an agency Inspector General, or other designee appointed by the head of the agency. Section 2303 adopts the approach set forth in 2302(b)(8)(B), in that it protects whistleblower disclosures that are made to particular persons or entities (namely, the Attorney General or her designee).

One commenter suggested that the final rule should follow the approach set forth in section 2302(b)(8)(A), under which disclosures that do not otherwise violate law or Executive Order would be protected regardless of to whom they are made. We have not adopted this suggestion. The operative statutory provision, section 2303(a), protects whistleblowing disclosures only if they are made to the Attorney General or an employee whom she designates. Section 2303(a) thus treats FBI whistleblowing activity differently from other agency whistleblowing by channeling whistleblowers to designated agency officials.

2. Recipients of Protected Disclosures

As stated earlier, the interim rule designates three entities to receive whistleblower disclosures: OPR, OIG, and FBI OPR. All three commenters suggested expanding the list of recipients for protected disclosures. In particular, the commenters proposed the following additional recipients: The FBI Director and Deputy Director; the FBI Inspection Division; supervisors in the chain of command; co-workers; and members of Congress.

We agree that whistleblower disclosures made to the head of an employee's agency should be protected, and the final rule therefore includes the FBI Director and Deputy Director, as well as the Attorney General and Deputy Attorney General, as recipients for such disclosures. We have also decided to designate the highest-ranking official in each FBI field office as recipients of protected disclosures. The highest-ranking official in each FBI field office is generally a Special Agent in Charge (SAC). The exceptions are the FBI's field offices in Los Angeles, CA, New York, NY, and Washington, DC, where the highest-ranking official is an Assistant Director in Charge (ADIC). These senior officials—whether SACs or ADICs—are generally in a position to take action against and to correct management and other problems within their respective field offices. In addition, designating the heads of field offices as recipients of protected disclosures permits employees in the field to have an opportunity to make protected disclosures to officials with whom they may be more familiar, and without the necessity of contacting officials at FBI headquarters.

In response to suggestions that the Inspection Division, supervisors, and co-workers also be designated recipients for whistleblower disclosures, we note, as an initial matter, that section 2303(a) limits the universe of recipients of protected disclosures to the Attorney

General "or an employee designated by the Attorney General for such purpose." This statutory directive suggests that Congress contemplated that recipients for whistleblower disclosures would be a relatively restricted group. Given the size of the FBI, as well as the many demands on the Attorney General's time, we believe that it is appropriate, as well as within the Attorney General's authority, to designate more than one employee of the Department as a recipient. On the other hand, to designate a large (and in the case of supervisors, arguably ill-defined) group of employees as recipients would be inconsistent with Congress's decision, given the sensitivity of information to which FBI employees have access, not to protect *all* legal disclosures of wrongdoing, see 5 U.S.C. 2302(a)(2)(C)(ii), the way it did with employees of other agencies, see 5 U.S.C. 2302(b)(8) (discussed above).

Given these concerns, we do not believe Congress intended to include all FBI employees in the class of those to whom protected whistleblowing disclosures may be made. Moreover, there is a difference between complaining to a fellow employee about alleged misconduct, on the one hand, and affirmatively bringing an allegation of wrongdoing to the attention of one in a position to do something about it, on the other. Even supervisors in the chain of command—though a subset of all employees—comprise a sufficiently large group in the aggregate that we do not believe Congress intended to include them as recipients of protected disclosures. Designating supervisors as recipients of protected disclosures raises the additional problem of including as recipients the very individuals against whom the prohibition on reprisal is directed, *i.e.*, individuals who have authority to take, direct others to take, recommend, or approve personnel actions against whistleblowers. Designating the highest ranking official in each field office, but not all supervisors, as recipients of protected disclosures (as discussed above) provides a way to channel such disclosures to those in the field who are in a position to respond and to correct management and other problems, while also providing an on-site contact in the field for making protected disclosures. We therefore decline to adopt the suggestion that all employees and supervisors be designated recipients of protected disclosures.

The FBI Inspection Division conducts periodic inspections of FBI offices and workplaces and, as part of those inspections, conducts extensive interviews of employees at those locations. Virtually all FBI employees must therefore, as part of their duties, participate from time to time in interviews with the Inspection Division and provide requested information. Required participation in such inspections is, however, distinct from whistleblowing. The provisions that apply to other federal employees recognize this distinction by providing for separate protection for required participation in an investigation: employees are protected under section 2302(b)(8) from reprisal for whistleblowing, but are protected under section 2302(b)(9)(C) from reprisal for cooperating in an Inspector General or OSC investigation. Federal employees of applicable agencies who claim reprisal under section 2302(b)(9) for cooperating in an investigation may report their allegations to the OSC, which may investigate and pursue those allegations. *See* 5 U.S.C. 1212, 1214. Such employees, however, are not entitled to bring an individual right of action under section 1221. Likewise, it is the FBI's policy that if an employee is subject to reprisal for any disclosure made during an inspection interview, the matter is referred to FBI OPR for review and appropriate action. Thus, there is already in place within the FBI a procedure, analogous to that provided to federal employees generally, to protect FBI employees from reprisal for disclosures made during an inspection. We therefore decline to adopt the suggestion that the FBI Inspection Division be included as a recipient of protected disclosures.

One commenter suggested that the procedures set forth in the rule should apply to disclosures made to Congress, citing several statutes relating to the right of federal employees to communicate with Congress—the Lloyd-Lafollette Act of 1912, 5 U.S.C. 7211; section 625 of the Treasury, Postal Service and General Government Appropriations Act of 1998, Pub. L. 105–61; and the Intelligence Community Whistleblower Protection Act of 1998, Pub. L. 105–272. Section 2303 (the enabling statute), however, protects whistleblower disclosures only to the extent they are made to the Attorney General or to an employee designated by the Attorney General for such purposes. As stated earlier, this indicates that, for purposes of section 2303, Congress specifically intended that protected FBI disclosures be internal to the Department. We have therefore not adopted this suggestion. We note, however, that individuals remain free to report violations by a Department official of any of the above-listed statutes to OPR, OIG, or FBI OPR. These offices are authorized to investigate the alleged violation and to recommend appropriate corrective action.

The final rule has been changed to incorporate the additional designated recipients discussed above. We anticipate that the designated recipients, upon receiving a whistleblower disclosure, will take appropriate action within their discretion and authority, including, where appropriate, forwarding the disclosure to one of the Receiving Offices.

3. Protection Against Threats To Take a Personnel Action and From "Other Significant Change in Duties, Responsibilities or Working Conditions"

Section 2303(a) prohibits "tak(ing), or fail(ing) to take" a personnel action as a reprisal for a protected disclosure. By contrast, section 2302(b)(8), the statute applicable to federal employees generally, also prohibits "threaten(ing)" to take or fail to take personnel action. All three commenters urged that the rule also protect FBI employees from threats to take or fail to take personnel action. The Department accepts this suggestion and has revised § 27.2(a) accordingly.

A related comment, made by all commenters, involves the definition of "personnel action." Section 2303(a) defines "personnel action" to mean any action described in subsections (i) through (x) of section 2302(a)(2)(A). When Congress enacted section 2303, section 2302(a)(2)(A) contained only ten subsections, the last of which, (x), defined "personnel action" to include "any other significant change in duties, responsibilities, or working conditions." Later, in 1994, Congress added another personnel practice to section 2302(a)(2)(A): "a decision to order psychiatric testing or examination." This new provision was made subsection (x), and the "other significant change" provision became subsection (xi). Because Congress did not also change section 2303(a), the net effect was to substitute the psychiatric testing provision (the new subsection (x)) for the "other significant change" provision (the old subsection (x)) in the definition of "personnel action," as it applied to the FBI. All commenters suggested that the final rule make the "other significant change" provision applicable to FBI employees. We believe that the Attorney General has authority under 5 U.S.C. 301 to expand the definition of "personnel action" for purposes of these regulations. Section 301 authorizes the Attorney General to "prescribe regulations for the government of (her) department (and) the conduct of its employees." Accordingly, the Department accepts this suggestion and has revised § 27.2(b).

4. Absence of Confidentiality Provisions Analogous to Those Found in Sections 1212(g) and 1213(h)

One commenter expressed concern that the interim rule does not contain "confidentiality provisions," such as those found in sections 1212(g) and 1213(h). Section 1212(g) prohibits OSC from disclosing information about a person who alleges a reprisal, except in accordance with the Privacy Act or as required by other applicable federal law. Section 1213(h) prohibits OSC from disclosing the identity of a person making a disclosure, unless necessary because of imminent danger to public health or safety or imminent violation of any criminal law.

As an initial matter, section 2303(c) requires the procedures set forth in the rule to be "consistent with the applicable provisions of sections 1214 and 1221." Because section 2303(c) is silent as to sections 1212 and 1213, we decline to adopt the suggestion that the rule include the confidentiality provisions of those sections. We note in passing, however, that nothing in the interim rule suggests that a Conducting Office, the Director, or anyone else may release the identity of a whistleblower, or any other information, to the public in contravention of the Privacy Act or any other federal non-disclosure statute. To the extent the comment may have been prompted in part by § 27.4(c)(1) of the interim rule, which provided for release of Conducting Office memoranda of interview in certain circumstances, we have removed that provision.

5. Proof of Reprisal

One commenter suggested that the regulations should not require proof of reprisal, noting that section 2302(b)(8) prohibits taking certain personnel actions "because of" a protected disclosure, without explicitly mentioning reprisals. Section 2302(a), however, does not contain the "because of" construction of section 2302(b)(8). Rather, it specifically prohibits taking or failing to take personnel action "as a reprisal" for a protected disclosure. In any event, the interim rule incorporates the same standard of proof for reprisal as that set forth in section 1221(e) for the OSC/MSPB scheme. We therefore believe we have adopted the appropriate standard of proof.

6. Absence of Conflict of Interest Provisions for Receiving Offices

One commenter asserted that having OPR or OIG investigate whistleblower disclosures raised the potential for conflicts of interest, because those offices also may be responsible for investigating sources of leaks, which could themselves be protected whistleblower disclosures. A protected disclosure could not be a "leak," however, because protected disclosures, by definition, are made to designated offices and officials that are internal to the Department. Moreover, to the extent one of these offices may have a conflict in investigating the substance of a whistleblower disclosure because of an ongoing leak investigation, § 27.1(b) of the rule provides that "(w)hen a Receiving Office receives a protected disclosure, it shall proceed in accordance with existing procedures establishing jurisdiction among the respective Receiving Offices." Those existing procedures include consideration of conflicts of interest.

7. Absence of Provisions for Disciplinary Proceedings

One commenter suggested that the rule should provide for disciplinary proceedings in accordance with section 1215. Section 2303 (the source of authority for the rule) requires implementation of its substantive protections "in a manner consistent with applicable provisions of sections 1214 and 1221," but is silent as to section 1215. Moreover, the Department retains its own independent authority to take appropriate disciplinary action if it determines such action to be necessary. The interim rule does not prohibit or preclude the Department from taking appropriate disciplinary action under its existing authority. We do not believe, therefore, that the rule needs to address disciplinary action.

8. Availability of a Hearing

Section 27.4(d) of the interim rule provides that "(w)here a Complainant has presented a request for corrective action directly to the Director under paragraph (c)(1) of this section, the Director may hold a hearing." One commenter noted that this language makes hearings discretionary and suggested that complainants should have a right to a hearing. We have not adopted this suggestion. Although an employee who makes a proper appeal to the MSPB has a right "to a hearing for which a transcript will be kept," this provision appears in 5 U.S.C. 7701(a)(1). Section 2303 (the source of authority for the rule) requires the rule to implement applicable provisions of only sections 1214 and 1221. Because sections 1214 and 1221 are silent on the right to a hearing, the interim rule does not require (though it permits) the Director to hold a hearing where a complainant presents a request for corrective action directly to her. Accordingly, although the interim rule gives the Director discretion to hold a hearing when a complainant presents a request for corrective action under § 27.4(d), it does not provide for a right to a hearing in that circumstance.

The interim rule does not address whether the Director has discretion to hold a hearing when a Conducting Office reports findings and recommendations to the Director pursuant to § 27.4(a). Although sections 1214 and 1221 are silent on this issue, we believe the Director should have discretion to hold a hearing in those circumstances if doing so would assist in her decisionmaking. Accordingly, the final rule has been modified to give the Director discretion to hold a hearing without regard to whether a whistleblower reprisal matter is before the Director as a result of a complainant's request (under § 27.4(c)(1)) or as a result of a Conducting Office recommendation (under § 27.4(a)). The procedures for such hearings are to be determined by the Director in the first instance (see § 27.4(e)(3)).

9. Performance of OSC and MSPB Functions by External Entities; Judicial Review

One commenter suggested that the interim rule is invalid in its entirety, because it fails to establish entities external to and independent of the Department to perform the functions of the OSC and MSPB (whose functions, under the rule, are performed by the Conducting Offices and the Director, respectively). Adopting this suggestion, however, would require the Attorney General to take an action that is beyond her authority. The President's April 1997 directive ordered the Attorney General to establish "appropriate processes within the Department of Justice," 62 FR 23123 (1997) (emphasis added). We do not believe that section 2303 requires the creation of external entities to carry out the OSC/MSPB functions. If Congress had wanted to provide FBI employees with fora outside the Department to address their whistleblower reprisal claims, it could have included them in the OSC/MSPB scheme. The fact that Congress did not do so, *see* 5 U.S.C. 2302(a)(2)(C)(ii), strongly suggests that Congress, in enacting section 2303, did not envision the creation of external entities to perform the OSC/MSPB functions.

Two commenters requested that we provide for judicial review of decisions made under the rule, because sections 1214(c)(1) and 1221(h) provide for it. We have not accepted this suggestion. Section 2302 (the source of authority for the rule) does not provide for judicial review, and Congress has therefore not waived sovereign immunity for this purpose. Under the doctrine of separation of powers, neither the President nor the Attorney General has the authority to waive sovereign immunity; only Congress has that authority.

10. Other Changes to the Interim Rule

a. For the sake of clarity, we changed the order of paragraphs (d), (e) and (f) of § 27.4, and divided the former paragraph (f) (now paragraph (e)) into subparagraphs.

b. In § 27.1(b), to reflect current practice and policy *see* 28 CFR 0.29d(a), we added a sentence regarding the referral of whistleblowing allegations by OPR and OIG to FBI OPR.

c. In § 27.3(f), to be consistent with an applicable provision of section 1214, we added language to clarify that a complainant may agree to extend the 240-day time limit for the Conducting Office to make its determination of whether there are reasonable grounds to determine that there has been or will be a reprisal for a protected disclosure.

d. In § 27.4(a), to be consistent with an applicable provision of section 1214 (section 1214(b)(2)(E)), we added the following sentence: "A determination by the Conducting Office that there are reasonable grounds to believe a reprisal has been or will be taken shall not be cited or referred to in any proceeding under these regulations, without the Complainant's consent." We did not incorporate the provision in section 1214(b)(2)(E) relating to "any other administrative or judicial proceeding," because we lack authority to prescribe what courts and other agencies may or may not cite or reference. In addition, because the Conducting Office may continue to investigate any violation of law, rule, or regulation (see § 27.4(c)) and may report its findings to appropriate Department officials, the restriction in § 27.4(a) does not apply to such further proceedings conducted by OIG or OPR.

e. In § 27.4(b), we have added language to permit the Director, when considering comments on a Conducting Office request for an extension of a stay, to request additional information as the Director deems necessary. The interim rule did not preclude the Director from seeking additional information in those circumstances. We believe that the Director has such authority and therefore made it explicit.

f. We modified § 27.4(c)(1) to make it more consistent with applicable provisions of section 1214.

g. We revised § 27.4(e)(3) to clarify the process by which assertions of privilege are to be decided.

h. In the second sentence of § 27.5, to clarify a potential ambiguity, we have stricken "(or a designee)" after "Deputy Attorney General." The Deputy Attorney General may designate a Department official to assist or advise him in conducting a review. We do not, however, believe that the authority of the Deputy Attorney General to conduct a review should be delegated. We also clarified a possible ambiguity in the first sentence of that section concerning the time within which a complainant or the FBI may seek review of a determination or corrective action order by the Director.

C. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely establishes procedures under which FBI employees or applicants for employment with the FBI may make certain protected disclosures of information and establishes procedures under which the Department will investigate allegations of reprisal against such individuals.

D. Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

E. Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

F. Unfunded Mandates Reform Act of 1995

This rule will not, in the aggregate, result in the expenditure by State, local and tribal governments, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 27

Government employees; Justice Department; Organization and functions (Government agencies); Whistleblowing.

For the reasons stated in the preamble, the interim rule amending 28 CFR part 0 and adding 28 CFR Part 27, which was published at 63 FR 62937, November 10, 1998, is adopted as a final rule with the following changes:

1. Revise Part 27 to read as follows:

PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES

Subpart A—Protected Disclosures of Information

Sec.
27.1 Making a protected disclosure.
27.2 Prohibition against reprisal for making a protected disclosure.

Subpart B—Investigating Reprisal Allegations and Ordering Corrective Action

27.3 Investigations: The Department of Justice's Office of Professional Responsibility and Office of the Inspector General.
27.4 Corrective action and other relief: Director, Office of Attorney Personnel Management.
27.5 Review.
27.6 Extensions of time.

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519; 5 U.S.C. 2303; President's Memorandum to the Attorney General, Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 3 CFR p. 284 (1997).

Subpart A—Protected Disclosures of Information

§ 27.1 Making a protected disclosure.

(a) When an employee of, or applicant for employment with, the Federal Bureau of Investigation (FBI) (FBI employee) makes a disclosure of information to the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR) (collectively, Receiving Offices), the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office, the disclosure will be a "protected disclosure" if the person making it reasonably believes that it evidences:

(1) A violation of any law, rule or regulation; or

(2) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) When a Receiving Office receives a protected disclosure, it shall proceed in accordance with existing procedures establishing jurisdiction among the respective Receiving Offices. OPR and OIG shall refer such allegations to FBI OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made.

§ 27.2 Prohibition against reprisal for making a protected disclosure.

(a) Any employee of the FBI, or of any other component of the Department, who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action, as defined below, with respect to any FBI employee as a reprisal for a protected disclosure.

(b) Personnel action means any action described in clauses (i) through (xi) of 5 U.S.C. 2302(a)(2)(A) taken with respect to an FBI employee other than one in a position which the Attorney General has designated in advance of encumbrance as being a position of a confidential, policy-determining, policy-making, or policy-advocating character.

Subpart B—Investigating Reprisal Allegations and Ordering Corrective Action

§ 27.3 Investigations: The Department of Justice's Office of Professional Responsibility and Office of the Inspector General.

(a)(1) An FBI employee who believes that another employee of the FBI, or of any other Departmental component, has taken or has failed to take a personnel action as a reprisal for a protected disclosure (reprisal), may report the alleged reprisal to either the Department's OPR or the Department's OIG (collectively, Investigative Offices). The report of an alleged reprisal must be made in writing.

(2) For purposes of this subpart, references to the FBI include any other Departmental component in which the person or persons accused of the reprisal were employed at the time of the alleged reprisal.

(b)The Investigative Office that receives the report of an alleged reprisal shall consult with the other Investigative Office to determine which office is more suited, under the circumstances, to conduct an investigation into the allegation. The Attorney General retains final authority to designate or redesignate the Investigative Office that will conduct an investigation.

(c) Within 15 calendar days of the date the allegation of reprisal is first received by an Investigative Office, the office that will conduct the investigation (Conducting Office) shall provide written notice to the person who made the allegation (Complainant) indicating—

(1) That the allegation has been received; and

(2) The name of a person within the Conducting Office who will serve as a contact with the Complainant.

(d) The Conducting Office shall investigate any allegation of reprisal to the extent necessary to determine whether there are reasonable grounds to believe that a reprisal has been or will be taken.

(e) Within 90 calendar days of providing the notice required in paragraph (c) of this section, and at least every 60 calendar days thereafter (or at any other time if the Conducting Office deems appropriate), the Conducting Office shall notify the Complainant of the status of the investigation.

(f) The Conducting Office shall determine whether there are reasonable grounds to believe that there has been or will be a reprisal for a protected disclosure. The Conducting Office shall make this determination within 240 calendar days of receiving the allegation of reprisal unless the Complainant agrees to an extension.

(g) If the Conducting Office decides to terminate an investigation, it shall provide, no later than 10 business days before providing the written statement required by paragraph (h) of this section, a written status report to the Complainant containing the factual findings and conclusions justifying the termination of the investigation. The Complainant may submit written comments on such report to the Conducting Office. The Conducting Office shall not be required to provide a subsequent written status report after submission of such comments.

(h) If the Conducting Office terminates an investigation, it shall prepare and transmit to the Complainant a written statement notifying him/her of—

(1) The termination of the investigation;

(2) A summary of relevant facts ascertained by the Conducting Office;

(3) The reasons for termination of the investigation; and

(4) A response to any comments submitted under paragraph (g) of this section.

(i) Such written statement prepared pursuant to paragraph (h) of this section may not be admissible as evidence in any subsequent proceeding without the consent of the Complainant.

(j) Nothing in this part shall prohibit the Receiving Offices, in the absence of a reprisal allegation by an FBI employee under this part, from conducting an investigation, under their pre-existing jurisdiction, to determine whether a reprisal has been or will be taken.

§ 27.4 Corrective action and other relief: Director, Office of Attorney Personnel Management.

(a) If, in connection with any investigation, the Conducting Office determines that there are reasonable grounds to believe that a reprisal has been or will be taken, the Conducting Office shall report this conclusion, together with any findings and recommendations for corrective action, to the Director, Office of Attorney Personnel Management (the Director). If the Conducting Office's report to the Director includes a recommendation for corrective action, the Director shall provide an opportunity for comments on the report by the FBI and the Complainant. The Director, upon receipt of the Conducting Office's report, shall proceed in accordance with paragraph (e) of this section. A determination by the Conducting Office that there are reasonable grounds to believe a reprisal has been or will be taken shall not be cited or referred to in any proceeding under these regulations, without the Complainant's consent.

(b) At any time, the Conducting Office may request the Director to order a stay of any personnel action for 45 calendar days if it determines that there are reasonable grounds to believe that a reprisal has been or is to be taken. The Director shall order such stay within three business days of receiving the request for stay, unless the Director determines that, under the facts and circumstances involved, such a stay would not be appropriate. The Director may extend the period of any stay granted under this paragraph for any period that the Director considers appropriate. The Director shall allow the FBI an opportunity to comment to the Director on any proposed extension of a stay, and may request additional information as the Director deems necessary. The Director may terminate a stay at any time, except that no such termination shall occur until the Complainant and the Conducting Office shall first have had notice and an opportunity to comment.

(c)(1) The Complainant may present a request for corrective action directly to the Director within 60 calendar days of receipt of notification of termination of an investigation by the Conducting Office or at any time after 120 calendar days from the date the Complainant first notified an Investigative Office of an alleged reprisal if the Complainant has not been notified by the Conducting Office that it will seek corrective action. The Director shall notify the FBI of the receipt of the request and allow the FBI 25 calendar days to respond in writing. If the Complainant presents a request for corrective action to the Director under this paragraph, the Conducting Office may continue to seek corrective action specific to the Complainant, including the submission of a report to the Director, only with the Complainant's consent. Notwithstanding the Complainant's refusal of such consent, the Conducting Office may continue to investigate any violation of law, rule, or regulation.

(2) The Director may not direct the Conducting Office to reinstate an investigation that the Conducting Office has terminated in accordance with § 27.3(h).

(d) Where a Complainant has presented a request for corrective action to the Director under paragraph (c) of this section, the Complainant may at any time request the Director to order a stay of any personnel action allegedly taken or to be taken in reprisal for a protected disclosure. The request for a stay must be in writing, and the FBI shall have an opportunity to respond. The request shall be granted within 10 business days of the receipt of any response by the FBI if the Director determines that such a stay would be appropriate. A stay granted under this paragraph shall remain in effect for such period as the Director deems appropriate. The Director may modify or dissolve a stay under this paragraph at any time if the Director determines that such a modification or dissolution is appropriate.

(e)(1) The Director shall determine, based upon all the evidence, whether a protected disclosure was a contributing factor in a personnel action taken or to be taken. Subject to paragraph (e)(2) of this section, if the Director determines that a protected disclosure was a contributing factor in a personnel action taken or to be taken, the Director shall order corrective action as the Director deems appropriate. The Director may conclude that the disclosure was a contributing factor in the personnel action based upon circumstantial evidence, such as evidence that the employee taking the personnel action knew of the disclosure or that the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.

(2) Corrective action may not be ordered if the FBI demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(3) In making the determinations required under this subsection, the Director may hold a hearing at which the Complainant may present evidence in support of his or her claim, in accordance with such procedures as the Director may adopt. The Director is hereby authorized to compel the attendance and testimony of, or the production of documentary or other evidence from, any person employed by the Department if doing so appears reasonably calculated to lead to the discovery of admissible evidence, is not otherwise prohibited by law or regulation, and is not unduly burdensome. Any privilege available in judicial and administrative proceedings relating to the disclosure of documents or the giving of testimony shall be available before the Director. All assertions of such privileges shall be decided by the Director. The Director may, upon request, certify a ruling on an assertion of privilege for review by the Deputy Attorney General.

(f) If the Director orders corrective action, such corrective action may include: placing the Complainant, as nearly as possible, in the position he would have been in had the reprisal not taken place; reimbursement for attorneys fees, reasonable costs, medical costs incurred, and travel expenses; back pay and related benefits; and any other reasonable and foreseeable consequential damages.

(g) If the Director determines that there has not been a reprisal, the Director shall report this finding in writing to the complainant, the FBI, and the Conducting Office.

§ 27.5 Review.

The Complainant or the FBI may request, within 30 calendar days of a final determination or corrective action order by the Director, review by the Deputy Attorney General of that determination or order. The Deputy Attorney General shall set aside or modify the Director's actions, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence. The Deputy Attorney General has full discretion to review and modify corrective action ordered by the Director, provided, however that if the Deputy Attorney General upholds a finding that there has been a reprisal, then the Deputy Attorney general shall order appropriate corrective action.

§ 27.6 Extensions of time.

The Director may extend, for extenuating circumstances, any of the time limits provided in these regulations relating to proceedings before him and to requests for review by the Deputy Attorney General.

Dated: October 6, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–27898 Filed 10–29–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538, 550 and 560

Sudanese Sanctions Regulations; Libyan Sanctions Regulations; Iranian Transactions Regulations: Licensing of Commercial Sales, Exportation and Reexportation of Agricultural Commodities and Products, Medicine, and Medical Equipment; Iranian Accounts on the Books of U.S. Depository Institutions; Informational Materials; Visas

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is amending provisions relating to the financing of agricultural and medical sales appearing in the Sudanese Sanctions Regulations, the Libyan Sanctions Regulations, and the Iranian Transactions Regulations. While general licenses continue to prohibit financing of sales by entities of the Governments of Sudan, Libya or Iran, the amendments remove language prohibiting the issuance of specific licenses authorizing financing by entities of those governments. New appendices are added to identify approved eligible procurement bodies of the Governments of Libya and Iran. Technical changes are made in all three sets of regulations with respect to licensing requirements of other Federal agencies. Technical changes are made in the Iranian Transactions Regulations concerning debits and credits to Iranian accounts on the books of U.S. depository institutions and concerning eligible purchasers. Finally, technical changes are made to the Iranian Transactions Regulations to revise language on informational materials and on "H" (temporary worker) visas.

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480) or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

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Background

On April 28, 1999, President Clinton announced that existing unilateral economic sanctions programs would be amended to modify licensing policies to allow specific licensing of the commercial sale of agricultural commodities and products, medicine and medical equipment where the United States Government has the discretion to issue such licenses. On August 2, 1999, the Treasury Department's Office of Foreign Assets Control ("OFAC") published in the **Federal Register** (64 FR 41784) amendments to the Sudanese Sanctions Regulations, 31 CFR part 538 (the "SSR"), the Libyan Sanctions Regulations, 31 CFR part 550 (the "LSR"), and the Iranian Transactions Regulations, 31 CFR part 560 (the "ITR") (collectively, the "Regulations"), to make available both general and specific licenses governing commercial sales of such goods.

The amendments permitted sellers, pursuant to an OFAC general license, to negotiate and sign executory contracts for commercial sales and exportation or reexportation of these agricultural or medical items to the target countries or their governments. Performance under such executory contracts was to be made contingent upon receipt of an OFAC specific license. Regulations, §§ 538.523, 550.569 and 560.530. Persons wishing to make commercial sales of certain bulk agricultural commodities to the target countries or their governments could apply for specific licenses to permit future entry into and performance of contracts for such sales. Regulations, § 538.524 and SSR, appendix A; § 550.570 and LSR, appendix A; § 560.531 and ITR, appendix B. The Regulations made all sales to the target countries subject to a series of requirements intended to ensure that such sales did not improperly benefit the target countries' governments.

With respect to payment for and financing of sales of agricultural and medical items, the Regulations provided by general license that parties were authorized, among other things, to utilize financing by third-country financial institutions that were not U.S. persons or target-country government banks. U.S. financial institutions were authorized by general license to advise or confirm such financing by third-country financial institutions, but specific licenses were required for alternate payment terms. Regulations, §§ 538.525, 550.571, and 560.532.

OFAC is amending provisions relating to payment for and financing of sales of agricultural and medical items. The general licenses in §§ 538.525(a), 550.571(a), and 560.532(a) of the Regulations continue to prohibit financing of sales by entities of the Governments of Sudan, Libya or Iran. Sections 538.525(b), 550.571(b), and 560.532(b), which provide for the specific licensing of alternative financing terms, are amended to remove language prohibiting the issuance of specific licenses authorizing financing by entities of those governments.

Technical revisions are made to language on licensing requirements of other Federal agencies in §§ 538.523(b)(4), 538.524(b)(4), and 538.526(b)(3) of the SSR; 550.569(b)(4), 550.570(b)(4) and 550.572(b)(3) of the LSR; and 560.530(b)(4), 560.531(b)(4), and 560.533(b)(3) of the ITR. Approved eligible procurement bodies of the Governments of Libya and Iran are identified in new appendices to the LSR and ITR.

Sections 550.569(a) of the LSR and 560.530(a) of the ITR are revised to conform the language on executory contracts to that in § 538.523(a) of the SSR. Technical changes are made to §§ 560.532(c) and 560.533(c) of the ITR to clarify that the prohibition on debits and credits to Iranian accounts refers only to accounts of persons located in Iran or of the Government of Iran maintained on the books of a U.S. depository institution.

OFAC is making technical changes to the ITR unrelated to the August 1999 amendments. Section 560.210(c)(2), with respect to informational materials, is amended to remove a reference to royalties. Section 560.505(c) is amended to revise the reference from "H-1b (temporary worker)" to "H (temporary worker)."

Paperwork Reduction Act

As authorized in the APA, the Regulations are being issued without prior notice and public comment procedure. The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget ("OMB") under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the APA requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

List of Subjects

31 CFR Part 538

Administrative practice and procedure, Agricultural commodities, Banks, banking, Blocking of assets, Drugs, Exports, Foreign trade, Humanitarian aid, Imports, Medical devices, Penalties, Reporting and recordkeeping requirements, Specially designated nationals, Sudan, Terrorism, Transportation.

31 CFR Part 550

Administrative practice and procedure, Agricultural commodities, Banks, banking, Blocking of assets, Drugs, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Medical devices, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions.

31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, banking, Drugs, Exports, Foreign trade, Imports, Information, Investments, Iran, Loans, Medical devices, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR parts 538, 550 and 560 are amended as set forth below:

PART 538—SUDANESE SANCTIONS REGULATIONS

1. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. In § 538.523, revise the section heading and the first sentence of paragraph (b)(4) to read as follows:

§ 538.523 Commercial sales, exportation and reexportation of agricultural commodities and products, medicine, and medical equipment.

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

3. In § 538.524, revise the section heading and the first sentence of paragraph (b)(4) to read as follows:

§ 538.524 Commercial sales, exportation and reexportation of bulk agricultural commodities.

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

4. In § 538.525, revise the first sentence of paragraph (b) to read as follows:

§ 538.525 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to §§ 538.523 and 538.524. * * *

* * * * *

5. In § 538.526, revise the first sentence of paragraph (b)(3) to read as follows:

§ 538.526 Brokering sales of bulk agricultural commodities.

* * * * *

(b) * * *

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c, 2349aa–8 and 2349aa–9; 31 U.S.C. 321(b); 49 U.S.C. 40106(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12543, 51 FR 875, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, 3 CFR, 1992 Comp., p. 294.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. In § 550.569, revise the section heading, paragraph (a) introductory text, and the first sentence of paragraph (b)(4) to read as follows:

§ 550.569 Commercial sales, exportation and reexportation of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for executory contracts.* Except as provided in paragraph (c) of this section, entry into executory contracts is authorized for the following transactions with individuals in Libya acting for their own account, nongovernmental entities in Libya or procurement bodies of the Government of Libya identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or with persons in third countries purchasing specifically for resale to any of the foregoing, provided that performance of the executory contracts (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

3. In § 550.570, revise the section heading and the first sentence of paragraph (b)(4) to read as follows:

§ 550.570 Commercial sales, exportation and reexportation of bulk agricultural commodities.

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

4. In § 550.571, revise the first sentence of paragraph (b) to read as follows:

§ 550.571 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to §§ 550.569 and 550.570. * * *

* * * * *

5. In § 550.572, revise the first sentence of paragraph (b)(3) to read as follows:

§ 550.572 Brokering sales of bulk agricultural commodities.

* * * * *

(b) * * *

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

6. Appendix B is added to part 550 to read as follows:

Appendix B to Part 550—Eligible Procurement Bodies

This Appendix B sets forth eligible procurement bodies of the Government of Libya identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state. See § 550.570(e).

National Supply Corporation (a.k.a. National Supplies Corporation; a.k.a. NASCO)

PART 560—IRANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 2349aa-9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart B—Prohibitions

2. In § 560.210, revise the last sentence of paragraph (c)(2) to read as follows:

§ 560.210 Exempt transactions.

* * * * *

(c) * * *

(2) * * * Transactions that are prohibited notwithstanding this section include, but are not limited to, payment of advances for information and informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications), and provision of services to market, produce or co-produce, create or assist in the creation of information and informational materials.

* * * * *

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 560.505 [Amended]

3. In § 560.505, amend paragraph (c) by revising the phrase "H–1b (temporary worker)" to read "H (temporary worker)".

4. In § 560.530, revise the section heading, paragraph (a) introductory text, and the first sentence of paragraph (b)(4) to read as follows:

§ 560.530 Commercial sales, exportation and reexportation of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for executory contracts.* Except as provided in paragraph (c) of this section, entry into executory contracts is authorized for the following transactions with individuals in Iran acting for their own account, nongovernmental entities in Iran or procurement bodies of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or with persons in third countries purchasing specifically for resale to any of the foregoing, provided that performance of the executory contracts (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

5. In § 560.531, revise the section heading and the first sentence of paragraph (b)(4) to read as follows:

§ 560.531 Commercial sales, exportation and reexportation of certain bulk agricultural commodities.

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

6. In § 560.532, revise the first sentence in paragraph (b) and paragraph (c) to read as follows:

§ 560.532 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to §§ 560.530 and 560.531. * * *

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Nothing in this section authorizes payment terms or trade financing involving a debit or credit to an account of a person located in Iran or of the Government of Iran maintained on the books of a U.S. depository institution.

* * * * *

7. In § 560.533, revise the first sentence of paragraph (b)(3) and paragraph (c) to read as follows:

§ 560.533 Brokering sales of bulk agricultural commodities.

* * * * *

(b) * * *

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Payment for any brokerage fee earned pursuant to this section may not involve a debit or credit to an account of a person located in Iran or of the Government of Iran maintained on the books of a U.S. depository institution.

* * * * *

8. Appendix C is added to part 560 to read as follows:

Appendix C to Part 560—Eligible Procurement Bodies

This Appendix C sets forth eligible procurement bodies of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state. See § 560.531(e).

Government Trading Corporation (a.k.a. GTC).

State Livestock and Logistics Co. (a.k.a. State Livestock Affairs Logistics; a.k.a. SLAL).

Dated: October 27, 1999.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 27, 1999.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 99–28470 Filed 10–27–99; 2:25 pm]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6468–4]

Revisions to Emissions Budgets Set Forth in EPA's Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone for the States of Connecticut, Massachusetts and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of adverse comments, EPA is withdrawing a September 15, 1999 direct final rule (64 FR 49987) which would have revised the emissions budgets set forth in EPA's finding of significant contribution for purposes of reducing regional transport of ozone. Having withdrawn the direct final rule, EPA will take action on a proposed rule to revise the emissions budgets set forth in EPA's finding of significant contribution for purposes of reducing regional transport of ozone also published on September 15, 1999 (64 FR 50036) after EPA has evaluated the comments received.

DATES: The direct final rule to revise the emissions budgets in EPA's finding of significant contribution, which was published on September 15, 1999 (64 FR 49987), is hereby withdrawn as of November 1, 1999.

ADDRESSES: Docket No. A–99–13 is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, excluding holidays. The docket is located in the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 401 M Street, SW, Washington, DC 20460, or by calling (202)260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kathryn Petrillo, Acid Rain Division (6204J) U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460, telephone number (202) 564–9093; e-mail: petrillo.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION: On September 15, 1999, EPA published a direct final rule (64 FR 49987) and a parallel proposal (64 FR 50036) to revise the emissions budgets set forth in EPA's finding of significant contribution for purposes of reducing regional transport of ozone (63 FR 57356). These revisions would redistribute the total combined electricity generating unit portion of the state NO_X emissions budgets for Connecticut, Massachusetts, and Rhode Island in accordance with the Memorandum of Understanding signed by the three States and EPA in February 1999. The total combined electric generating unit budget for Connecticut, Massachusetts and Rhode Island would remain unchanged under the revisions. Additionally, the three States each agreed to retire 5% of the electric generating unit portion of their budgets for the benefit of the environment after the revisions are complete.

The EPA stated in the direct final rule that if adverse comments were received by October 5, 1999, EPA would publish a notice withdrawing the direct final rule before its effective date of November 1, 1999. The EPA received adverse comments on October 5, 1999 and is, therefore, withdrawing the direct final rule. The EPA will address these comments in a final rule addressing the emissions budgets for Connecticut, Massachusetts, and Rhode Island at a later date.

Dated: October 29, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–28519 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300891A; FRL–6390–4]

RIN 2070–AB78

Propargite; Partial Stay of Order Revoking Certain Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay of final rule.

SUMMARY: EPA is staying the revocation of tolerances for propargite on apples; and plums (fresh prunes) and is reinstating the tolerances for those commodities existing on October 18, 1999 until November 18, 1999. A final rule, subject to objections, revoking the tolerances for apples; and plums (fresh prunes) was published in the **Federal Register** on July 21, 1999 (64 FR 39068) (FRL–6089–7). EPA received an objection to the July 21, 1999 rule, which requested that the Agency modify the October 19, 1999 effective date for the final rule as it applied to the removal of the commodities apples; and plums (fresh prunes). EPA is staying the removal of the tolerances for apples, and plums (fresh prunes) effective from October 19, 1999 until November 18, 1999 in order to determine whether to grant the request for modification and if so, for what length of time. Revocations for the remaining tolerances in § 180.259 for apricots; beans, succulent; cranberries; figs; peaches; pears; and strawberries, subject to the July 21, 1999 rule remain effective October 19, 1999.

DATES: The reinstatement amendments are effective from October 19, 1999 until November 18, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, CM#2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300891A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

In the **Federal Register** of July 21, 1999 (64 FR 39068), EPA issued an order by final rule revoking tolerances in § 180.259 for the use of propargite on apples; apricots; beans, succulent; cranberries; figs; peaches; pears; plums (fresh prunes); and strawberries. EPA revoked the tolerances on the grounds that previous cancellation of the underlying uses for propargite rendered the tolerances unnecessary. In the final rule, EPA set an effective date of October 19, 1999 for the revocations.

Any person adversely affected by the July 21, 1999 Order was allowed 60 days to file written objections to the order and a written request for an evidentiary hearing on the objections.

EPA received an objection from Uniroyal Chemical Company requesting EPA to modify the effective date of revocation for propargite on apples; and plums (fresh prunes). Uniroyal also requested an evidentiary hearing.

By this document, in § 180.259(a)(1), EPA is staying the removal of the tolerances for apples; and plums (fresh prunes) from October 19, 1999 until November 18, 1999 in order to allow EPA to determine whether to grant the request for modification and if so, for what length of time. The addition of the entries for hops, dried; and tea, dried into the table under paragraph (a)(2) is not affected by this stay. Revocations for the remaining tolerances, apricots; beans, succulent; cranberries; figs; peaches; pears; and strawberries, subject to the July 21, 1999 rule remain effective October 19, 1999.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended to read as follows:

PART 180— [AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

b. In § 180.259, the table to paragraph (a)(1) is amended, effective from October 19, 1999 until November 18, 1999, by reinstating the entries for "apples" and "plums (fresh prunes)," to read as follows:

§ 180.259 Propargite; tolerances for residues.

(a) *General*. (1) * * *

Commodity	Parts per million
* * * *	*
Apples	3
* * * *	*
Plums (fresh prunes)	7
* * * *	*

* * * * *

[FR Doc. 99–28488 Filed 10–27–99; 3:01 pm]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 990811217–9286–02; I.D. 061899A]

RIN 0648–AM82

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Fishery; Regulatory Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the Atlantic highly migratory species (HMS) fisheries to remove the 250 metric ton (mt) limit on allocating Atlantic bluefin tuna (BFT) landings quota to the Purse Seine category. Without this restriction, the annual allocation of BFT to the Purse Seine category will be 18.6 percent of the total landings quota available to the United States. This regulatory amendment is necessary to achieve domestic management objectives for HMS fisheries as set forth in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). NMFS also amends the regulations governing the Atlantic HMS fisheries to reinstate the transferability of partial purse seine vessel quota allocations from one vessel to another, which was inadvertently dropped from the regulations when NMFS published the final consolidated rule to implement the HMS FMP.

DATES: Effective December 1, 1999.

ADDRESSES: Copies of supporting documents, including a Final Environmental Assessment (EA), which includes a Regulatory Impact Review (RIR), are available from Pat Scida, Highly Migratory Species Management Division, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the Office of Sustainable Fisheries, and is administered by the HMS Management Division.

Background information about the need for revisions to the HMS regulations was provided in the preamble to the proposed rule (64 FR 44885, August 18, 1999) in the HMS FMP, and in the final consolidated rule to implement the HMS FMP (64 FR 29090, May 28, 1999) and is not repeated here. The final EA contains further detail on the consequences of this action and alternatives. Copies of the final EA can be obtained from NMFS (see **ADDRESSES**).

By this final rule, NMFS removes the purse seine allocation cap under the framework provisions described in the FMP, and reinstates the transferability of Purse Seine category vessel allocations on a partial basis.

Comments and Responses

NMFS conducted two public hearings on the proposed rule and received written and oral comments over a 45-day comment period. The majority of the comments received were in support of the proposed rule, although NMFS did receive comments in opposition. Responses to the comments on the Purse Seine category allocation issue are provided here.

Opposed to the Proposed Rule

Comment 1: The Purse Seine category allocation gives too much quota to too few people, even with the cap. This is a misappropriation of a public resource.

Response: As described in the HMS FMP, NMFS bases the quota allocations on consideration of several factors, including the collection of the broadest possible array of scientific data and the optimization of social and economic benefits. When NMFS established the current limited entry system with non-transferable individual vessel quotas (IVQs) for purse seining in 1982, NMFS considered the relevant factors outlined in section 303(b)(6) of the Magnuson-Stevens Act. In 1992, NMFS established "baseline" quotas for all categories, which were based on the historical share of landings in each of these categories from 1983 through 1991 and were consistent with the need to collect scientific information required to monitor the stock. In 1995, NMFS reduced the Purse Seine category base quota by 51 mt, in large part because the West Atlantic BFT quota was a scientific monitoring quota at the time, and the Purse Seine category does not contribute to a catch per unit effort time series used to estimate trends in stock size, and other categories that do provide this information were subject to premature closures. This reduced quota was the basis for the allocations to the Purse Seine category from 1996 through 1998. Considering the historical participation of those in the purse seine fishery, NMFS does not believe that the 18.6 percent allocation to the Purse Seine category, with respect to the FMP objectives, constitutes an excessive share of the bluefin tuna quota.

Comment 2: The Purse Seine category cap should be maintained for the time being, and, eventually, the Purse Seine category quota should be reduced because there would be greater economic benefits to the Nation by distributing more quota to the recreational sector.

Response: Although reallocation of quota from the commercial sector to the recreational sector may provide greater economic benefits to the Nation, the Magnuson-Stevens Act requires allocations to be fair and equitable, to take into consideration traditional fishing patterns, and to minimize economic displacement. In addition, overfishing restrictions and recovery benefits (i.e., quota decreases or increases) must be shared by all sectors of a fishery. In fact, National Standard 5 states that no conservation and management measure should have economic allocation as its sole purpose. Considering all relevant factors, removal of the cap is justified.

Comment 3: The Purse Seine category should be eliminated, and the fishery should only be for rod and reel fishermen.

Response: NMFS disagrees. The purse seine fishery is a historical sector of the U.S. BFT fishery. As mentioned earlier, based on consideration of the historical participation of those in the fishery, NMFS does not believe that the allocation to the Purse Seine category constitutes an excessive share of the bluefin tuna quota.

Comment 4: The cap on the Purse Seine category should remain in place so long as the Purse Seine category is closed to new participants and other categories are open access.

Response: The fact that the Purse Seine category is managed under a limited access IVQ system and purse seine vessels remain somewhat isolated from competition while the other quota categories are not, was part of the justification for NMFS adopting the purse seine allocation cap in the HMS FMP. However, NMFS did note that the HMS Advisory Panel (AP) did not have an opportunity to address the Purse Seine quota in the context of a quota increase from ICCAT, and further noted that the agency would consider the future input of the AP on this issue. After extensive discussion, a clear majority of the AP favored removal of the cap on the Purse Seine category. Removal of the cap is consistent with the Magnuson-Stevens Act; otherwise, one quota category would have a cap while others do not. Thus, removing the cap contributes to the goal of fair and equitable allocation of restrictions needed to prevent overfishing. Furthermore, NMFS continues to investigate limited access in the other BFT quota categories (limited access has already been implemented for the Longline category) and will assess whether limited access in these other categories would be more effective in reducing the derby nature of these fisheries than increased allocations.

In Support of the Proposed Rule

Comment 5: Removal of the cap is consistent with the Magnuson-Stevens Act and the objectives of the HMS FMP. Specifically, allocations should be fair and equitable, should take into consideration traditional fishing patterns, and should minimize economic displacement. In addition, overfishing restrictions and recovery benefits (i.e., quota decreases or increases) must be shared by all sectors of a fishery. The Purse Seine category cap precludes one fishing sector from sharing the benefits of stock recovery.

Response: NMFS agrees. In this instance, limiting the quota allocation of one fishing sector while not limiting others is inconsistent with the

Magnuson-Stevens Act requirement of allocating overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery. This action is also consistent with the objectives of the FMP to preserve traditional fisheries and historical fishing patterns. The purse seine fishery is a historical part of the overall U.S. BFT fishery, having participated in the fishery since the 1950's.

Comment 6: The purse seiners have already had their quota reduced by a significant amount over the last decade and should not have their quota decreased further. Maintaining the cap would require greater allocation to other sectors, allowing smaller fish to be caught - the opposite of what stock rebuilding requires.

Response: NMFS agrees that the Purse Seine category BFT quota has been reduced over the past decade, as described. However, NMFS disagrees that, at current catch levels, maintaining the purse seine cap would negatively affect stock rebuilding. The amount of quota reallocated to other categories (8 mt under current quotas) if the cap were maintained would not significantly affect the size-composition of catch in order to effect rebuilding.

Comment 7: The AP supported removal of the cap, and NMFS should follow the AP's advice; otherwise, the AP process is undermined.

Response: As mentioned earlier and in the EA/RIR, the AP met in June 1999, and, after extensive discussion of the Purse Seine category cap issue, a clear majority favored removal of the cap. Given the considerations stated, it is appropriate in this instance to follow the AP's advice.

Comment 8: Elimination of the cap is inconsistent with the policy of promoting limited access. By capping only one sector of the fishery, citing the fact that it is limited access as a reason for the cap, sends a message that limiting access in a fishery may result in a category having its quota capped or reduced.

Response: The purpose of the purse seine cap was not related to promoting or discouraging limited access. NMFS continues to investigate limited access in the other BFT quota categories (limited access has already been implemented for the Longline category) and will assess whether limited access in these other categories may be more effective at reducing the derby nature of these fisheries than increased allocations.

Other

Comment 9: The removal of the cap on the Purse Seine category BFT allocation should not be tied by regulation or other administrative action to restrictions on current or future participation by purse seine vessels in the yellowfin tuna fishery. Through a 1995 rulemaking, the United States has already implemented the 1993 ICCAT recommendation to cap fishing effort on yellowfin tuna, with respect to purse seine gear, by limiting the number of vessels authorized to fish for yellowfin tuna.

Response: While action to limit access (vessel permits) to the purse seine fishery for yellowfin and other Atlantic tunas was taken in 1995 to implement the 1993 ICCAT recommendation, NMFS clarifies that no additional action is being taken at this time to restrict purse seine effort targeting Atlantic tunas other than bluefin. However, it is recognized that removing the cap on BFT allocation may contribute to limiting purse seine effort on yellowfin tuna by increasing purse seine effort in the BFT fishery. Further action may be necessary to implement the ICCAT yellowfin tuna recommendation in the future, including action affecting the purse seine fishery.

Classification

This rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The AA has determined that the regulations contained in this final rule are consistent with the FMP, the Magnuson-Stevens Act, and the 1998 ICCAT recommendation (ICCAT Rebuilding Program).

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The reasons this action is being adopted and the objectives of, and legal basis for, the final rule are as stated in the EA/RIR and the preamble to the proposed rule. There are no relevant Federal rules which duplicate, overlap, or conflict with the final rule. NMFS considered alternatives to the final action, including: no action (maintaining cap of 250 mt for the Purse Seine category) and reduction of the Purse Seine category share by 50 percent.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule restates an information collection requirement relating to purse seine landings quota allocations. Written requests for purse seine allocations for Atlantic tunas and notification of transfers as required under § 635.27 are not currently approved by OMB. However, requests for purse seine allocations and transfer notifications are not subject to the PRA because, under current regulations, a maximum of five vessels could be subject to reporting under this requirement. Since it is impossible for 10 or more respondents to be involved, the information collection is exempt from the PRA clearance requirement.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for this determination. Therefore, no Regulatory Flexibility Analysis was prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS initiated formal consultation on the HMS and billfish fisheries on May 12, 1998. The consultation request concerned the possible effects of management measures in the HMS FMP and Billfish Amendment. On April 23, 1999, NMFS issued a Biological Opinion (BO) under section 7 of the Endangered Species Act. The BO applies to the Atlantic pelagic fisheries for tunas, sharks, swordfish, and billfish.

The BFT purse seine fishery is currently listed as a category III fisheries under the Marine Mammal Protection Act. The BO states that it is NMFS' opinion that the continued operation of the purse seine fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS' Office of Protected Resources has concluded that this rulemaking would not cause any effect on listed species not previously considered in the BO and that reinitiation of consultation on the HMS FMP due to this rulemaking is not required.

The area in which purse seine fishing for BFT takes place has been identified as essential fish habitat for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council and the Highly Migratory Species Division of NMFS. It is not anticipated that this action will have any adverse impacts to

EFH and therefore no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: October 26, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

2. In § 635.27, introductory paragraph (a) and paragraphs (a)(4)(i) and (iii) are revised to read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas. BFT landings quotas are specified in whole weight.

* * * * *

(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota. The Purse Seine fishery under this quota commences on August 15 each year.

* * * * *

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (mt) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not altered by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether retained.

* * * * *

[FR Doc. 99–28464 Filed 10–27–99; 11:33 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 102699D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment closing the season for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This adjustment is necessary to prevent the underharvest of the 1999 pollock total allowable catch (TAC) specified to the inshore component in the Bering Sea subarea of the BSAI.

DATES: Effective 1800 hrs, Alaska local time (A.l.t.),October 26, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with section 206(b)(1) of the American Fisheries Act, 50 percent of the remainder of the pollock TAC in the BSAI after the subtraction of the allocation to the pollock Community Development Quota and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species shall be allocated as a directed fishing allowance to catcher vessels harvesting pollock for processing by the inshore component. The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999), and subsequent reallocation (64 FR 56474, October 20, 1999), established the final 1999 amount of pollock allocated for processing by the inshore component of the Bering Sea subarea as 424,187 metric tons.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI.

Current information shows the catching capacity of vessels catching pollock for processing by the inshore component is in excess of 5,000 mt per day.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The Administrator, Alaska Region, NMFS, has determined that the remaining portion of the allocation to the inshore component would be underharvested if a 1200 hrs closure were allowed to occur.

NMFS, therefore, in accordance with § 679.25(a)(1)(i), is adjusting the season for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea by closing directed fishing at 1800 hrs, A.l.t., October 26, 1999. NMFS is taking this action to prevent the underharvest of the pollock allocation to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI as authorized by § 679.25(a)(2)(i)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing the season at 1800 hrs on October 26, 1999 is the least restrictive management adjustment to harvest the pollock allocated to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI and will allow other fisheries to continue in noncritical areas and time periods.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the TAC limitations and other restrictions on the fisheries established in the 1999 harvest specifications for groundfish for the BSAI. Without this inseason adjustment, the pollock allocation for vessels catching pollock for processing by the inshore component in the Bering Sea of the BSAI could be underharvested, by 5,000 mt, resulting in an economic loss of more than five hundred thousand dollars.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 12, 1999.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 26, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28438 Filed 10–27–99; 10:21 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) proposes to amend its rules of practice and procedure with respect to the notice an agency must provide when it takes an appealable action against an employee who has both a right to appeal to the Board and a right to file a grievance under a grievance procedure. The proposed amendment is intended to ensure that such an employee understands the consequences of making a choice between the MSPB appeal procedure and the grievance procedure. It also is intended to ensure that, where an employee may pursue both procedures (as in the case of preference eligible employees of the United States Postal Service), the employee understands that the Board's time limit for filing an appeal will not be modified or extended if the employee files a grievance. The proposed amendment would also clarify that preference eligible employees of the United States Postal Service and other employees excluded from the coverage of the Federal Labor-Management Relations Statute may not seek MSPB review of a final arbitration decision.

DATES: Submit comments by January 3, 2000.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board is proposing this amendment to its rules of practice and procedure as part of its continuing effort to ensure that its customers understand the procedural rights to which they are entitled and the procedures they are required to follow to ensure full and fair adjudication of their claims.

Many Federal employees who may appeal an agency personnel action to the Board may also have the right to pursue the matter under a statutory grievance procedure or a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA). Where an employee is affected by a personnel action that can either be appealed to MSPB or grieved in accordance with a grievance procedure, it is especially important that the agency notice of MSPB appeal rights required by 5 CFR 1201.21 fully explain the consequences of choosing the appeal or grievance procedure. Given the various laws and CBAs that come into play, it is essential that agency notices of appeal and grievance rights state the situation clearly with respect to the particular employee against whom the action is being taken.

Most Executive Branch agencies and their employees are subject to the Federal Labor-Management Relations Statute (5 U.S.C. 7101, et. seq., hereafter the Statute). Under 5 U.S.C. 7121, most matters appealable to the Board that are also covered under the NGP of a CBA may only be challenged through the NGP (5 U.S.C. 7121(a)(1)). There are certain exceptions, however.

- If the employee is challenging an adverse action under 5 U.S.C. 7512 or an action based on unacceptable performance under 5 U.S.C. 4303, the employee may choose to appeal to the Board or file a grievance but may not do both (5 U.S.C. 7121(e)).
- If the employee raises a claim of prohibited discrimination in connection with an action that is appealable to the Board, the employee may choose to appeal to the Board (or to raise the matter under any other applicable statutory procedure, such as an EEO complaint filed with the agency under the regulations of the Equal Employment Opportunity Commission) or file a grievance but may not do both (5 U.S.C. 7121(d)).
- If the employee raises a claim that an action appealable to the Board was based on a prohibited personnel practice other than discrimination, the employee may choose to appeal to the Board, file a prohibited personnel practice complaint with the Special Counsel, or file a grievance but may choose only one of these procedures (5 U.S.C. 7121(g)).

The employee's choice of procedure is determined by his first filing. If he chooses to file a grievance, he may not subsequently file an appeal with the Board. Once the grievance procedure is chosen, there is no further opportunity for Board consideration of the matter, except that in matters that include a claim of prohibited discrimination, the employee may obtain Board review of the final decision of an arbitrator in accordance with 5 U.S.C. 7121(d) and 5 U.S.C. 7702. It is essential that agency notices to employees covered by the Statute clearly convey these statutory requirements governing the choice between the MSPB appeal procedure (and any other applicable statutory procedure) and the grievance procedure.

For employees not covered by the Statute (see 5 U.S.C. 7103(a)(2)–(3) and (b)), the rules governing the choice between appeal and grievance procedures are far less uniform. The choices of such employees may be governed by statute, the NGP in a CBA, or both. The provisions of CBAs, of course, are particularly subject to change as new agreements are negotiated. The following are three examples of the different rules that apply outside the coverage of the Statute.

- A preference eligible employee in the U.S. Postal Service (which is excluded from the coverage of the Statute pursuant to the Postal Reorganization Act) may be able to file both an MSPB appeal and a grievance on the same matter under the terms of the applicable CBA. If an appeal is filed first, a grievance may still be filed as long as a hearing on the MSPB appeal has not begun or the record has not been closed if there was no hearing. If a grievance is filed first, an appeal may still be filed with MSPB but must be filed within the Board's filing time limit.
- Employees in the Tennessee Valley Authority (TVA) may appeal certain RIF actions to MSPB. TVA preference eligible employees may also appeal adverse actions. Under the terms of the current CBAs at TVA, if an employee files an appeal with MSPB and

subsequently files a grievance, the grievance will not be accepted. If the employee files a grievance and subsequently files an appeal with MSPB, the processing of the grievance will terminate. As is the case with the USPS, filing a grievance has no effect on the time limit for filing a MSPB appeal.

- Foreign Service employees in the State Department and other designated agencies are also excluded from the Statute. Career and career-candidate Foreign Service employees have the right to appeal RIF actions to MSPB. Such employees also have the option but only under specific circumstances to file a grievance on a RIF matter with the Foreign Service Grievance Review Board (FSGRB). If the employee files a grievance with the FSGRB first, the Board has no jurisdiction over any subsequent MSPB appeal. If the employee appeals to MSPB first, a grievance is precluded. (20 U.S.C. 4010a(c).) Again, filing a grievance has no effect on the time limit for filing a MSPB appeal.

Two recent cases—both involving employees not covered by the Statute—illustrate the problems that can result from incomplete or ambiguous agency notices regarding appeal and grievance rights. In *Lourie* v. *United States Postal Service,* 82 M.S.P.R. 119 (1999), the appellant (a preference eligible employee in the Postal Service), relying on a statement in the agency's decision letter (DL) that he could file with MSPB after his grievance went to arbitration, filed his appeal after the 30-day time limit had passed and was, therefore, untimely. The Board found that while the DL correctly informed the appellant that he could file an appeal with the Board and also file a grievance on the same matter, and while it described the circumstances under which one could be filed after the filing of the other, it failed to advise the appellant that filing a grievance would not relieve him from complying with the 30-day time limit for filing an appeal with MSPB. The Board ruled, therefore, that the appellant showed good cause for the untimely filing of his MSPB appeal because the notice language in the DL was ambiguous.

In *Delaney* v. *Agency for International Development,* 80 M.S.P.R. 146 (1998), the appellant (a career Foreign Service employee) filed an appeal of his separation by RIF with MSPB after having first filed a grievance with the Foreign Service Grievance Review Board, which ruled that the grievance did not come within its limited review authority. As a result, the MSPB appeal was untimely and also raised an issue of Board jurisdiction because of the prior election of the grievance procedure. The Board found that the agency's notice regarding the appellant's appeal and grievance rights did not adequately inform him of the limitations on the scope of his grievance rights ("cases of reprisal, interference in the conduct of an employee's official duties, or similarly inappropriate use of the authority of this section," 22 U.S.C. 4010a(c)) and therefore precluded an informed election of procedures. The Board ruled, as a result, that the appeal was within its jurisdiction and that the appellant had shown good cause for his untimely filing.

Because of the problems illustrated by these cases, and the multiplicity of circumstances that apply depending on the agency and employee involved, the Board has concluded that its rule at 5 CFR 1201.21 should be expanded to include specific criteria that an agency notice of appeal and grievance rights must meet. Therefore, the Board proposes to amend that section to require that a notice of any applicable grievance right include information as to:

- Whether choosing the grievance procedure will result in waiver of the employee's right to file an appeal with the Board;
- Whether both an appeal and grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board; and
- Whether there is any right to request Board review of a final arbitration decision in accordance with 5 CFR 1201.154(d).

The Board also proposes to amend 5 CFR 1201.154(d). Although this provision applies by its plain language only to employees covered by the Statute, some employees who are not covered by the Statute (particularly in USPS) continue to file requests with the Board to review a final arbitration decision. The proposed amendment would qualify the term "appellant" to clarify that it does not include any USPS employee or any other employee excluded from the Statute.

The Board is publishing this rule as a proposed rule pursuant to 5 U.S.C. 1204(h). The Board has made a determination under the Regulatory Flexibility Act, Pub. L. 96–354, 95 Stat. 1164, 5 U.S.C. 601–612, that this proposed regulatory action would not have a significant impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board proposes to amend 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 would continue to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Amend § 1201.21 by revising paragraph (d) to read as follows:

§ 1201.21 Notice of appeal rights.

* * * * *

(d) Notice of any right the employee has to file a grievance, including:

(1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board; and

(3) Whether there is any right to request Board review of a final arbitration decision in accordance with 5 CFR 1201.154(d).

3. Amend § 1201.154 by revising the introductory text paragraph (d) to read as follows:

§ 1201.154 Time for filing appeal; closing record in cases involving grievance decisions.

* * * * *

(d) If the appellant, *other than an employee of the Postal Service or any other employee excluded from the coverage of chapter 71 of title 5, United States Code,* has filed a grievance with the agency under its negotiated grievance procedure in accordance with 5 U.S.C. 7121, he may ask the Board to review the final decision under 5 U.S.C. 7702 within 35 days after the date of issuance of the decision or, if the appellant shows that the decision was received more than 5 days after the date of issuance, within 30 days after the date the appellant received the decision. The appellant must file the request with the Clerk of the Board, Merit Systems Protection Board, Washington, DC 20419. The request for review must contain:

* * * * *

Dated: October 25, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–28285 Filed 10–29–99; 8:45 am]

BILLING CODE 7400–01–U

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS99–1]

Appraisal Subcommittee; Appraiser Regulation; Disclosure of Information

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council ("ASC").

ACTION: Proposed rules.

SUMMARY: The ASC proposes to amend its regulations governing the public disclosure of information to reflect changes to the Freedom of Information Act ("FOIA") as a result of the enactment of the Electronic Freedom of Information Act Amendments of 1996 ("E–FOIA"). Among other things, the proposed rules implement expedited FOIA processing procedures; implement processing deadlines and appeal rights created by E–FOIA; and describe the expanded range of records available to the public through the ASC's Internet World Wide Web site (http://www.asc.gov).

DATES: Comments must be received on or before December 1, 1999.

ADDRESSES: Send written comments to Ben Henson, Executive Director, Attention: Docket No. AS99–1; ASC, 2000 K Street, NW, Suite 310; Washington, DC 20006. Comments may be faxed to the ASC at (202) 872–7501 or sent via Internet e-mail at benhl@asc.gov. Comments may be inspected and photocopied at the ASC's office between 9:00 a.m. and 4:30 p.m. on business days. Comments also will be posted on the ASC's Web site for review and downloading.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, at (202) 872–7520 or marcwl@asc.gov; Appraisal Subcommittee; 2000 K Street, NW, Suite 310; Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

Section-by-Section Analysis

E–FOIA, Public Law 104–231, amended the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Among other things, E–FOIA requires agencies to promulgate regulations that provide for expedited processing of certain requests for records. Changes are proposed to 12 CFR part 1102, subpart D ("subpart") to comply with the E–FOIA requirements for expedited processing. In addition, the ASC is proposing changes to the subpart on fees and fee waivers, and portions of this subpart have been reorganized.

Section 1102.300 has been expanded to clarify the purpose and scope of the various sections found within the subpart. Section 1102.301 has been amended to incorporate several E–FOIA definitions. Section 1102.302 remains unchanged. Section 1102.303 has been updated to reflect changes in the ASC's office address and staff organization. Current § 1102.304, which incorporated by reference the FOIA regulations of the Federal Financial Institutions Examination Council ("FFIEC"), has been deleted. New § 1102.304 specifies records that must be published in the **Federal Register** under FOIA. Section 1102.305 identifies the ASC's Internet World Wide Web site as the primary source of ASC information and describes the information that is made available over the Internet as required by E–FOIA. The section also sets out the categories of information that are publicly available upon request. The ASC notes that the records provided over the Internet cover a much smaller scope than those available by request. E–FOIA only requires the ASC to place on the Internet records created after November 1, 1996. The ASC, however, is increasing the resources available over the Internet on its World Wide Web site.

Section 1102.306 describes the ASC's procedures for processing FOIA requests. This section essentially is new because it no longer incorporates by reference the FFIEC's FOIA rules. It also reflects the changes required by E–FOIA. Because of the small size of the ASC and the dearth of FOIA requests received, the ASC has determined not to provide multitrack processing. The proposal, however, would provide expedited processing where a requester has demonstrated a compelling need for the records, or where the ASC has determined to expedite the response. The time limit for expedited processing is set at ten business days, with expedited procedures available for an appeal of the ASC's determination not to provide expedited processing. Under E–FOIA, there are only two types of circumstances that can meet the compelling need standard: Where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the proposal uses the term "representative of the news media" to describe a person primarily engaged in disseminating information. To demonstrate a compelling need, a requester must submit a certified statement, a sample of which may be obtained from the ASC.

All information requests that do not meet expedited processing standards will be handled under regular processing procedures, as required by FOIA and E–FOIA. The statutory time limit for regular-track processing would be extended to twenty business days, pursuant to E–FOIA, from the previous ten business days.

Section 1102.306(e) contains the FOIA fees and the standards for waiver of fees. The fee provisions have been revised to clarify that the processing time of a FOIA request does not begin until: (1) Payment is received when payment in advance is required, or (2) a person has requested a fee waiver and has not agreed to pay the fees if the waiver request is denied.

New Section 1102.307 covers the disclosure of exempt records. The section prohibits the disclosure of exempt records, and, at the same time, authorizes the ASC, through its Chairman or Executive Director, to release certain types of otherwise exempt records upon receipt of a written request specifically identifying the subject records and providing sufficient information for the ASC to evaluate whether good cause for disclosure exists.

The next two sections, 1102.308 and 1102.309, carry over unchanged current §§ 1102.30 and 1102.306, respectively.

The final section, 1102.310, is new. The section describes the procedures for serving subpoenas or other legal process on the ASC.

The ASC notes that the substantive portions of these proposals are based on 12 CFR part 309, the Federal Deposit Insurance Corporation's regulations concerning the disclosure of information.

Regulatory Flexibility Act Analysis

Pursuant to § 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the ASC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose apply to the ASC; therefore, they should not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

The collection of information contained in this proposed rule is found at 12 CFR part 1102, subpart D and has been submitted to the Office of Management and Budget ("OMB") for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*). Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the ASC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be addressed to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Desk Officer Alexander Hunt; New Executive Office Building, Room 3208; Washington, DC 20503, with copies of such comments to Marc L. Weinberg, General Counsel; Appraisal Subcommittee; 2000 K Street NW., Suite 310; Washington, DC 20006. All comments should refer to part 1102, subpart D. OMB is required to make a decision concerning the collections of information contained in the proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. This does not affect the deadline for the public to comment to the ASC on the proposed regulation.

Title of collection: Requests for records pursuant to the Freedom of Information Act.

Summary of the collection: The name, address and telephone number of the requester; a statement whether the requester is an educational institution, noncommercial scientific institution, or news media representative; a statement agreeing to pay applicable fees or requesting a waiver or reduction of fees; and the form or format of responsive information requested, if other than paper copies.

Respondents—Persons who desire to obtain records pursuant to the Freedom of Information Act.

Estimate of Annual Burden—

Number of requests—24.

Time required to prepare a request—15 minutes.

Total annual burden hours—6 hours.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, banking, Freedom of Information, Mortgages, Reporting and recordkeeping requirements.

Text of the Proposed Rule

For the reasons set forth in the preamble, the ASC is proposing to amend title 12, chapter XI of the Code of Federal Regulations as follows:

PART 1102—APPRAISER REGULATION

Subpart D—Description of Office, Procedures, Public Information

1. The authority citation for part 1102, subpart D continues to read as follows:

Authority: 5 U.S.C. 552, 553(e); and Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p 235).

2. Section 1102.300 is revised to read as follows:

§ 1102.300 Purpose and scope.

This part sets forth the basic policies of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") regarding information it maintains and the procedures for obtaining access to such information. This part does not apply to the Federal Financial Institutions Examination Council. Section 1102.301 sets forth definitions applicable to this part 1102, subpart D. Section 1102.302 describes the ASC's statutory authority and functions. Section 1102.303 describes the ASC's organization and methods of operation. Section 1102.304 describes the types of information and documents typically published in the **Federal Register**. Section 1102.305 explains how to access public records maintained on the ASC's World Wide Web site and at the ASC's office and describes the categories of records generally found there. Section 1102.306 implements the Freedom of Information Act ("FOIA") (5 U.S.C. 552). Section 1102.307 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 1102.308 provides anyone with the right to petition the ASC to issue, amend, and repeal rules of general application. Section 1102.309 sets out the ASC's confidential treatment procedures. Section 1102.310 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the ASC.

3. Section 1102.301 is revised to read as follows:

§ 1102.301 Definitions.

For purposes of this subpart:

(a) *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(b) *Commercial use request* means a request from, or on behalf of, a requester who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the ASC will determine the use to which a requester will put the records requested and seek additional information as it deems necessary.

(c) *Direct costs* means those expenditures the ASC actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing records in response to a request for records.

(d) *Disclose* or *disclosure* mean to give access to a record, whether by producing the written record or by oral discussion of its contents. Where the ASC member or employee authorized to release ASC documents makes a determination that furnishing copies of the documents is necessary, these words include the furnishing of copies of documents or records.

(e) *Duplication* means the process of making a copy of a record necessary to respond to a request for records or for inspection of original records that contain exempt material or that cannot otherwise be directly inspected. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (*e.g.*, magnetic tape or computer disk).

(f) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(g) *Field review* includes, but is not limited to, formal and informal investigations of potential irregularities occurring at State appraiser regulatory agencies involving suspected violations of Federal or State civil or criminal laws, as well as such other investigations as may conducted pursuant to law.

(h) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in paragraph (b) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(i) *Record* includes records, files, documents, reports correspondence, books, and accounts, or any portion thereof, in any form the ASC regularly maintains them.

(j) *Representative of the news media* means any person primarily engaged in gathering news for, or a free-lance journalist who can demonstrate a reasonable expectation of having his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the general public.

(k) *Review* means the process of examining documents located in a response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually and/or by computer using existing programming.

(m) *State appraiser regulatory agency* includes, but is not limited to, any board, commission, individual or other entity that is authorized by State law to license, certify, and supervise the activities of persons authorized to perform appraisals in connection with federally related transactions and real estate related financial transactions that require the services of a State licensed or certified appraiser.

4. Section 1102.303 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1102.303 Organization and methods of operation.

(a) * * *

(b) *ASC members and staff.* The ASC is composed of six members, each being designated by the head of their respective agencies: the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and the Department of Housing and Urban Development. Administrative support and substantive program, policy, and legal guidance for ASC activities are provided by a small, full-time, professional staff supervised by an Executive Director.

(c) * * *

(d) *ASC Address.* ASC offices are located at 2000 K Street, NW, Suite 310; Washington, DC 20006.

5. Section 1102.304 is revised to read as follows:

§ 1102.304 Federal Register publication.

The ASC publishes the following information in the **Federal Register** for the guidance of the public:

(a) Descriptions of its organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the ASC;

(e) Every amendment, revision or repeal of the foregoing; and

(f) General notices of proposed rulemaking.

6. Section 1102.305 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 1102.305 Publicly available records.

(a) *Records available on the ASC's World Wide Web site*—(1) *Discretionary release of documents.* The ASC encourages the public to explore the wealth of resources available on the ASC's Internet World Wide Web site, located at: *http://www.asc.gov.* The ASC has elected to publish a broad range to materials on its Web site.

(2) *Documents required to be made available via computer telecommunications.* (i) The following types of documents created on or after November 1, 1996, and required to be made available through computer telecommunications, may be found on the ASC's Internet World Wide Web site located at: *http://www.asc.gov:*

(A) Final opinions, including concurring and dissenting opinions, as well as final orders, made in the adjudication of cases;

(B) Statements of policy and interpretations adopted by the ASC that are not published in the **Federal Register**;

(C) Administrative staff manuals and instructions to staff that affect a member of the public;

(D) Copies of all records (regardless of form or format), such as correspondence relating to field reviews or other regulatory subjects, released to any person under § 1102.306 that, because of the nature of their subject matter, the ASC has determined are likely to be the subject of subsequent requests;

(E) A general index of the records referred to in paragraph (a)(2)(i)(D) of this section.

(ii) To the extent permitted by law, the ASC may delete identifying details when it makes available or publishes any records. If redaction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction.

* * * * *

(c) *Applicble fees.* (i) If applicable, fees for furnishing records under this section are as set forth in § 1102.306(e).

(ii) Information on the ASC's World Wide Web site is available to the public without charge. If, however, information available on the ASC's World Wide Web site is provided pursuant to a Freedom of Information Act request processed under § 1102.306 then fees apply and will be assessed pursuant to § 1102.306(e).

7. Sections 1102.306 and 1102.307 are redesignated as §§ 1102.309 and 1102.308 respectively.

8. A new § 1102.306 is added to read as follows:

§ 1102.306 Procedures for requesting records.

(a) *Making a request for records.* (1) The request shall be submitted in writing to the Executive Director:

(i) By facsimile clearly marked "Freedom of Information Act Request" to (202) 872–7501;

(ii) By letter to the Executive Director marked "Freedom of Information Act Request"; 2000 K Street, NW, Suite 301; Washington, DC 20006; or

(iii) By sending Internet e-mail to the Executive Director marked "Freedom of Information Act Request" at his or her e-mail address listed on the ASC's World Wide Web site.

(2) The request shall contain the following information:

(i) The name and address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(ii) Whether the requester is an educational institution, non-commercial scientific institution, or news media representative;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying a maximum fee that is acceptable to the requester, or a request for a waiver or reduction of fees that satisfies paragraph (e)(1)(x) of this section; and

(iv) The preferred form and format of any responsive information requested, if other than paper copies.

(3) A request for identifiable records shall reasonably describe the records in a way that enables the ASC's staff to identity and produce the records with reasonable effort and without unduly burdening or significantly interfering with any ASC operations.

(b) *Defective requests.* The ASC need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this subpart. The ASC may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(c) *Processing requests.* (1) *Receipt of requests.* Upon receipt of any request that satisfies paragraph (a) of this section, the Executive Director shall assign the request to the appropriate processing track pursuant to this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred by another agency, is the date the Executive Director actually receives the request.

(2) *Expedited processing.* (i) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the ASC has determined to expedite the response, the ASC shall process the request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(A) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) The requester can establish that it is primarily engaged in information dissemination as its main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the request; and

(C) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(ii) The formality of the certification required to obtain expedited treatment may be waived by the Executive Director as a matter of administrative discretion.

(3) A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the request for expedited processing is denied, the requester may file an appeal pursuant to the procedures set forth in paragraph (g) of this section, and the ASC shall respond to the appeal within ten (10) working days after receipt of the appeal.

(4) *Priority of responses.* Consistent with sound administrative process, the ASC processes requests in the order they are received. However, in the ASC's discretion, or upon a court order in a matter to which the ASC is a party, a particular request may be processed out of turn.

(5) *Notification.* (i) The time for response to requests will be twenty (20) working days except:

(A) In the case of expedited treatment under paragraph (c)(2) of this section;

(B) Where the running of such time is suspended for the calculation of a cost estimate for the requester if the ASC determines that the processing of the request may exceed the requester's maximum fee provision or if the charges are likely to exceed $250 as provided for in paragraph (e)(1)(v) of this section;

(C) Where the running of such time is suspended for the payment of fees pursuant to the paragraph (c)(5)(i)(B) and (e)(1) of this section; or

(D) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and further described in paragraph (c)(5)(iii) of this section.

(ii) In unusual circumstances as referred to in paragraph (c)(5)(i)(D) of this section, the time limit may be extended for a period of:

(A) Ten (10) working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(B) Such alternative time period as agreed to by the requester or as reasonably determined by the ASC when the ASC notifies the requester that the request cannot be processed in the specified time limit.

(iii) Unusual circumstances may arise when:

(A) The records are in facilities that are not located at the ASC's Washington office;

(B) The records requested are voluminous or are not in close proximity to one another; or

(C) There is a need to consult with another agency or among two or more components of the ASC having a substantial interest in the determination.

(6) *Response to request.* In response to a request that satisfies the requirements of paragraph (a) of this section, a search shall be conducted of records maintained by the ASC in existence on the date of receipt of the request, and a review made of any responsive information located. To the extent permitted by law, the ASC may redact identifying details when it makes available or publishes any records. If redaction is appropriate, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The ASC shall notify the requester of:

(i) The ASC's determination of the request;

(ii) The reasons for the determination;

(iii) If the response is a denial of an initial request or if any information is withheld, the ASC will advise the requester in writing:

(A) If the denial is in part or in whole;

(B) The name and title of each person responsible for the denial (when other than the person signing the notification);

(C) The exemptions relied on for the denial; and

(D) The right of the requester to appeal the denial to the Chairman of the ASC within 30 business days following receipt of the notification, as specified in paragraph (h) of this section.

(d) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the ASC or makes other acceptable arrangements, or the ASC deems it appropriate to send the documents by another means.

(2) The ASC shall provide a copy of the record in any form or format requested if the record is readily reproducible by the ASC in that form or format, but the ASC need not provide more than one copy of any record to a requester.

(3) By arrangement with the requester, the ASC may elect to send the responsive records electronically if a substantial portion of the request is in electronic format. If the information requested is made pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, it

will not be sent by electronic means unless reasonable security measures can be provided.

(e) *Fees* (1) *General rules.* (i) Persons requesting records of the ASC shall be charged for the direct costs of search, duplication, and review as set forth in paragraphs (e)(2) and (e)(3) of this section, unless such costs are less than the ASC's cost of processing the requester's remittance.

(ii) Requesters will be charged for search and review costs even if responsive records are not located or, if located, are determined to be exempt from disclosure.

(iii) Multiple requests seeking similar or related records from the same requester or group of requesters will be aggregated for the purposes of this section.

(iv) If the ASC determines that the estimated costs of search, duplication, or review of requested records will exceed the dollar amount specified in the request, or if no dollar amount is specified, the ASC will advise the requester of the estimated costs. The requester must agree in writing to pay the costs of search, duplication, and review prior to the ASC initiating any records search.

(v) If the ASC estimates that its search, duplication, and review costs will exceed $250, the requester must pay an amount equal to 20 percent of the estimated costs prior to the ASC initiating any records search.

(vi) The ASC ordinarily will collect all applicable fees under the final invoice before releasing copies of requested records to the requester.

(vii) The ASC may require any requester who has previously failed to pay charges under this section within 30 calendar days of mailing of the invoice to pay in advance the total estimated costs of search, duplication, and review. The ASC also may require a requester who has any charges outstanding in excess of 30 calendar days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the ASC initiating any additional records search.

(viii) The ASC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the invoice was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the invoice.

(ix) The time limit for the ASC to respond to a request will not begin to run until the ASC has received the requester's written agreement under paragraph (e)(1)(iv) of this section, and advance payment under paragraph (e)(1)(v) or (vii) of this section, or payment of outstanding charges under paragraph (e)(1)(vii) or (viii) of this section.

(x) As part of the initial request, a requester may ask that the ASC waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Determinations as to a waiver or reduction of fees will be made by the Executive Director (or designee), and the requester will be notified in writing of his or her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the ASC's Chairman pursuant to the procedure set forth in paragraph (g) of this section.

(2) *Chargeable fees by category of requester.* (j) Commercial use requesters shall be charged search, duplication, and review costs.

(ii) Educational institutions, non-commercial scientific institutions, and news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not described in paragraph (e)(2)(i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) *Fee schedule.* The dollar amount of fees which the ASC may charge to records requesters will be established by the Executive Director. The ASC may charge fees that recoup the full allowable direct costs it incurs. Fees are subject to change as costs change. The fee schedule will be published periodically on the ASC's Internet World Wide Web site (*http://www.asc.gov*) and will be effective on the date of publication. Copies of the fee schedule may be obtained by request at no charge by contacting the Executive Director by letter, Internet email or facsimile.

(i) *Manual searches for records.* The ASC will charge for manual searches for records at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs.

(ii) *Computer searches for records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator's time apportioned to the search multiplied by the operator's basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents is $.25.

(B) For other methods of reproduction or duplication, the ASC will charge the actual direct costs of reproducing or duplicating the documents, including each involved employee's basic rate of pay plus 16 percent to cover employee benefit costs.

(iv) *Review of records.* The ASC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. The ASC will not charge at the administrative appeal level for review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the ASC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) *Other services.* Complying with requests for special services, other than a readily produced electronic form or format, is at the ASC's discretion. The ASC may recover the full costs of providing such services to the requester.

(4) *Use of contractors.* The ASC may contract with independent contractors to locate, reproduce, and/or disseminate records; provided, however, that the ASC has determined that the ultimate cost to the requester will be no greater than it would be if the ASC performed these tasks itself. In no case will the ASC contract our responsibilities which FOIA provides that the ASC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees.

(f) *Exempt information.* A request for records may be denied if the requested record contains information that falls into one or more of the following categories.[1] If the requested record contains both exempt and nonexempt information, the nonexempt portions, which may reasonably be segregated from the exempt portions, will be released to the requester. If redaction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The categories of exempt records are as follows:

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[1] Classification of a record as exempt from disclosure under the provisions of this paragraph (f) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the Privacy Act of 1974 (5 U.S.C. 552a) or other Federal statute, any applicable regulation of ASC or any other Federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.

(1) Records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the ASC;

(3) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the ASC;

(6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the ASC or any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(h) *Appeals.* (1) Appeals should be addressed to the Executive Director; ASC; 2000 K Street, NW, Suite 310; Washington, DC 20006.

(2) A person whose initial request for records under this section, or whose request for a waiver of fees under paragraph (e)(1)(x) of this section, has been denied, either in part or in whole, has the right to appeal the denial to the ASC's Chairman (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal.

(3) Except in the case of an appeal for expedited treatment under paragraph (c)(3) of this section, the ASC will notify the appellant in writing within 20 business days after receipt of the appeal and will state:

(i) Whether it is granted or denied in whole or in part;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(4) If a requester is appealing for denial of expedited treatment, the ASC will notify the appellant within ten business days after receipt of the appeal of the ASC's disposition.

(5) Complete payment of any outstanding fee invoice will be required before an appeal is processed.

(i) *Records of another agency.* If a requested record is the property of another Federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the ASC will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

9. A new § 1102.307 is added to read as follows:

§§ 1102.307 Disclosure of exempt records.

(a) *Disclosure prohibited.* Except as provided in paragraph (b) of this section or by 12 CFR part 1102, subpart C, no person shall disclose or permit the disclosure of any exempt records, or information contained therein, to any persons other than those officers, directors, employees, or agents of the ASC or a State appraiser regulatory agency who has a need for such records in the performance of their official duties. In any instance in which any person has possession, custody or control of ASC exempt records or information contained therein, all copies of such records shall remain the property of the ASC and under no circumstances shall any person, entity or agency disclose or make public in any manner the exempt records or information without written authorization from the Executive Director, after consultation with the ASC General Counsel.

(b) *Disclosure authorized.* Exempt records or information of the ASC may be disclosed only in accordance with the conditions and requirements set forth in this paragraph (b). Requests for discretionary disclosure of exempt records of information pursuant to this paragraph (b) may be submitted directly to the Executive Director. Such administrative request must clearly state that it seeks discretionary disclosure of exempt records, clearly identify the records sought, provide sufficient information for the ASC to evaluate whether there is good cause for disclosure, and meet all other conditions set forth in paragraph (b)(1) through (3) of this section. Authority to disclose or authorize disclosure of exempt records of the ASC is delegated to the Executive Director, after consultation with the ASC General Counsel.

(1) *Disclosure by Executive Director.* (i) The Executive Director, or designee, may disclose or authorize the disclosure of any exempt record in response to a valid judicial subpoena, court order, or other legal process, and authorize any current or former member, officer, employee, agent of the ASC, or third party, to appear and testify regarding an exempt record or any information obtained in the performance of such person's official duties, at any administrative or judicial hearing or proceeding where such person has been served with a valid subpoena, court order, or other legal process requiring him or her to testify. The Executive Director shall consider the relevancy of such exempt records or testimony to the litigation, and the interests of justice, in determining whether to disclose such records or testimony. Third parties seeking disclosure of exempt records or testimony in litigation to which the ASC is not a party shall submit a request for discretionary disclosure directly to the Executive Director. Such request shall specify the information sought with reasonable particularity and shall be

accompanied by a statement with supporting documentation showing in detail the relevance of such exempt information to the ligitation, justifying good cause for disclosure, and a commitment to be bound by a protective order. Failure to exhaust such administrative request prior to service of a subpoena or other legal process may, in the Executive Director's discretion, serve as a basis for objection to such subpoena or legal process.

(ii) The Executive Director, or designee, may in his or her discretion and for good cause, disclose or authorize disclosure of any exempt record or testimony by a current or former member, officer, employee, agent of the ASC, or third party, sought in connection with any civil or criminal hearing, proceeding or investigation without the service of a judicial subpoena, or other legal process requiring such disclosure or testimony, if he or she determines that the records or testimony are relevant to the hearing, proceeding or investigation and that disclosure is in the best interests of justice and not otherwise prohibited by Federal statute. Where the Executive Director or designee authorizes a current or former member, officer, director, employee or agent of the ASC to testify or disclose exempt records pursuant to this paragraph (b)(1), he or she may, in his or her discretion, limit the authorization to so much of the record or testimony as is relevant to the issues at such hearing, proceeding or investigation, and he or she shall give authorization only upon fulfillment of such conditions as he or she deems necessary and practicable to protect the confidential nature of such records or testimony.

(2) *Authorization for disclosure by the Chairman of the ASC.* Except where expressly prohibited by law, the Chairman of the ASC may, in his or her discretion, authorize the disclosure of any ASC records. Except where disclosure is required by law, the Chairman may direct any current or former member, officer, director, employee or agent of the ASC to refuse to disclose any record or to give testimony if the Chairman determines, in his or her discretion, that refusal to permit such disclosure is in the public interest.

(3) *Limitations on disclosure.* All steps practicable shall be taken to protect the confidentiality of exempt records and information. Any disclosure permitted by paragraph (b) of this section is discretionary and nothing in paragraph (b) of this section shall be construed as requiring the disclosure of information. Further, nothing in paragraph (b) of this section shall be construed as restricting, in any manner, the authority of the ASC, the Chairman of the ASC, the Executive Director, the ASC General Counsel, or their designees, in their discretion and in light of the facts and circumstances attendant in any given case, to require conditions upon, and to limit, the form, manner, and extent of any disclosure permitted by this section. Wherever practicable, disclosure of exempt records shall be made pursuant to a protective order and redacted to exclude all irrelevant or non-responsive exempt information.

10. Section 1102.310 is added as follows:

§ 1102.310 Serivce of process.

(a) *Service.* any subpoena or other legal process to obtain information maintained by the ASC shall be duly issued by a court having jurisdiction over the ASC, and served upon the Chairman; ASC; 2000 K Street, NW, Suite 310; Washington, DC 20006. Where the ASC is named as a party, service of process shall be made pursuant to the Federal Rules of Civil Procedure upon the Chairman at the above address. The Chairman shall immediately forward any subpoena, court order or legal process to the General Counsel. If consistent with the terms of the subpoena, court order or legal process, the ASC may require the payment of fees, in accordance with the fee schedule referred to in § 1102.306(e) prior to the release of any records requested pursuant to any subpoena or other legal process.

(b) *Notification by person served.* If any current or former member, officer, employee or agent of the ASC, or any other person who has custody of records belonging to the ASC, is served with a subpoena, court order, or other process requiring that person's attendance as a witness concerning any matter related to official duties, or the production of any exempt record of the ASC, such person shall promptly advise the Executive Director of such service, the testimony and records described in the subpoena, and all relevant facts that may assist the Executive Director, in consultation with the ASC General Counsel, in determining whether the individual in question should be authorized to testify or the records should be produced. Such person also should inform the court or tribunal that issued the process and the attorney for the party upon whose application the process was issued, if known, of the substance of this section.

(c) *Appearance by person served.* Absent the written authorization of the Executive Director or designee to disclose the requested information, any current or former member, officer, employee, or agent of the ASC, and any other person having custody of records of the ASC, who is required to respond to a subpoena or other legal process, shall attend at the time and place therein specified and respectfully decline to produce any such record or give any testimony with respect thereto, basing such refusal on this section.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Counsel.

Dated: October 22, 1999.

Ben Henson,

Executive Director.

[FR Doc. 99–28131 Filed 10–29–99; 8:45 am]

BILLING CODE 6201–01–M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest, CO; Extension of Comment Period

AGENCY: Forest Service, USDA.

ACTION: Extension of the comment period for the Proposed Revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement.

SUMMARY: The comment period has been extended for the proposed revised Land and Resource Management Plan (Forest Plan), the Draft Environmental Impact Statement (DEIS), and associated documents. The original Notice of Availability was published in the **Federal Register**, Vol. 64, No. 151 on August 6, 1999 as FR Doc. 99–19922.

DATES: Public comment began on August 6, 1999, and will end February 9, 2000.

ADDRESSES: Interested parties are invited to send written comments regarding the proposed revised Forest Plan and Draft EIS to the address below: Forest Supervisor, Forest Plan Revision Comments, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81602.

FOR FURTHER INFORMATION CONTACT: Questions about this action or requests for the documents listed above should be addressed to: Carolyn Upton, Team Leader, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81602, Telephone Number: (970) 945–3226.

SUPPLEMENTARY INFORMATION: The public comment period was extended to February 9, 2000 to respond to requests from elected officials, organizations and individuals who have requested more time to review and comment upon the documents. The public comment extension will help ensure people have access to the planning documents and sufficient time to offer informed opinions.

Dated: October 18, 1999.

Martha Ketelle,

Forest Supervisor.

[FR Doc. 99–28461 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–BW–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on November 18, 1999, at the Adam's Mark Hotel, 1200 Hampton Street, Columbia, South Carolina 29201. The purpose of the meeting is to meet with the State superintendent of schools or her representative to speak on the implementation of the South Carolina Education Accountability Act of 1998.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 25, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–28441 Filed 10–29–99; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held November 17, 1999, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Export Administration, 15th St. & Pennsylvania Ave., NW, Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the

PECSEA to the public on the basis of 5 U.S.C. 552(c)(1) was approved October 25, 1999, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: October 26, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–28523 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Workshop on Key Management Using Public Key Cryptography

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of Public Workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) announces a workshop to examine public key-based management techniques as specified in ANSI X9.42 (Agreement of Symmetric Keys Using Discrete Logarithm Cryptography), ANSI X9.44 (Key Establishment Using Factoring-Based Public Key Cryptography for the Financial Services Industry), and ANSI X9.63 (Public Key Cryptography for the Financial Services Industry: Key Agreement and Key Transport Using Elliptic Curve Cryptography). The purpose of the workshop is to review the many options and techniques contained in these standards and to discuss other related issues.

DATES: The Key Management Standard (KMS) Workshop will be held on Thursday, February 10 and Friday, February 11, 2000, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The KMS workshop will be held in the Administration Building (Bldg. 101), National Institute of Standards and Technology, Gaithersburg, Maryland. For planning purposes, advance registration is encouraged. To register, please fax your name, address, telephone, fax and e-mail address, telephone, fax and e-mail address to 301–948–1233 (Attn: KMS Workshop) by January 31, 2000. Registration questions should be addressed to Vickie Harris on 301–975–2920. Registration will also be available at the door, space permitting. The workshop will be open to the public and is free of charge.

FOR FURTHER INFORMATION: Further information may be obtained from the KMS web site at http://www.nist.gov/kms or by contacting Morris Dworkin, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–2354; Fax 301–948–1233, or email Morris.Dworkin@nist.gov.

SUPPLEMENTARY INFORMATION: This work effort is being initiated pursuant to NIST's responsibilities under the computer Security Act of 1987, the Information Technology Management Reform Act of 1996, Executive Order 13011, and OMB Circular A–130.

The explosion in the use of electronic media to expedite commerce in recent years has led to the need for well-established schemes that can provide such services as data integrity and confidentiality. Symmetric encryption schemes such as Triple DES, as defined in FIPS 46–3, and the Advanced Encryption Standard (AES), which is currently under development, make an attractive choice for the provision of these services. Systems using symmetric techniques are efficient, and their security requirements are well understood. Furthermore, these schemes have been or will be standardized to facilitate interoperability between systems. However, the implementation of such schemes requires the establishment of a shared secret key in advance. As the size of a system or the number of entities using a system explodes, key establishment can lead to a key management problem. An attractive solution to this problem is to employ key establishment techniques that employ public key cryptography.

The Federal Government currently has no standard of keys for unclassified applications using a public key cryptographic methods. A number of techniques have been defined in voluntary consensus industry standards; however, the proliferation of techniques has lead to a concern that some techniques may not provide suitable security to meet the needs of the Federal Government and may not promote interoperability between agencies of the government. In anticipation of the development of a standard for key establishment, a **Federal Register** Notice was published by NIST on May 13, 1997, (Vol. 62, No. 92) requesting comments from the public concerning the development of such a standard, and concerning the availability, security, and adequacy of existing standards for public key-based key agreement and exchange. Comments were received recommending the use of RSA, Diffie-Hellman, MQV and elliptic curves, and several comments recommended the adoption of ANSI X9.42, X9.44 and X9.62.

This workshop will discuss the security and interoperability requirements of the Federal government, the options available in the above referenced voluntary consensus standards to address those needs, and the planned development of a Federal Information Processing Standard (FIPS) that will address those needs by including the appropriate techniques from the voluntary consensus standards referenced above. As with other FIPS, it is NIST's intention that the proposed standard would be published for public review and comment.

Dated: October 22 1999.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 99–28495 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldridge National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Monday, November 15, 1999, 9:00 a.m. to 5:30 p.m.; Tuesday, November 16, 1999, 8:00 a.m. to 5:30 p.m.; Wednesday, November 17, 1999, 8:00 a.m. to 5:30 p.m.; Thursday, November 18, 8:00 a.m. to 3:00 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the site visit process, review the final judging process and meeting procedures, and final judging of the 1999 applicants. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene November 15, 1999 at 9:00 a.m. and adjourn at 3:00 p.m. on November 18, 1999. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administrative Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 26, 1999, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: October 22, 1999.

Karen H. Brown,
Deputy Director.

[FR Doc. 99–28494 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990810211–9211–01]

RIN 0648–ZA69

National Sea Grant College Program—National Marine Fisheries Service Joint Graduate Fellowship Programs in Population Dynamics and Marine Resource Economics

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice is to announce that the National Sea Grant College Program Office (NSGO), in fulfilling its broad educational responsibilities and to strengthen its collaboration with the National Marine Fisheries Service (NMFS), and NMFS, in fulfilling its responsibilities to manage, conserve, and protect the Nation's living marine resources within the U.S. Exclusive Economic Zone and to provide the sound scientific information and analyses necessary for those purposes, have jointly established and are accepting applications for two new Graduate Fellowship Programs in (1) Population Dynamics and (2) Marine Resource Economics. Each program will provide grants to support two graduate students enrolled in relevant PhD degree programs in any university in the United States. Fellows would work on thesis problems of public interest and relevance and have summer internships under the guidance of a NMFS mentor at participating NMFS Science Centers, Laboratories, or Regional Offices. Applications must be submitted through one of the state Sea Grant Programs (see below).

DATES: Applications must be received by February 15, 2000 by a state Sea Grant Program.

ADDRESSES: Applications should be addressed to a state Sea Grant Program. Contact the appropriate state Sea Grant Program from the list below to obtain the mailing address.

FOR FURTHER INFORMATION CONTACT: Information can be obtained from Dr. Emory D. Anderson, Program Director for Fisheries, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910, tel: (301) 713–2435 ext. 144, e-mail: emory.anderson@noaa.gov; from any state Sea Grant Program (see below); or from any participating NMFS facility (see below).

Sea Grant Programs

University of Alaska, (907) 474–7086
University of California, (619) 534–4440
University of Connecticut, (860) 405–9128
University of Delaware, (302) 831–2841
University of Florida, (352) 392–5870
University of Georgia, (706) 542–6009
University of Hawaii, (808) 956–7031
University of Illinois, (765) 494–3593
Louisiana State University, (225) 388–6710
University of Maine, (207) 581–1436
University of Maryland, (301) 405–6209
Massachusetts Institute of Technology, (617) 253–7131
University of Michigan, (734) 763–1437
University of Minnesota, (218) 726–8106
Mississippi-Alabama Sea Grant Consortium, (228) 875–9341
University of New Hampshire, (603) 862–0122
New Jersey Marine Science Consortium, (732) 872–1300
State University of New York, (516) 632–6905
University of North Carolina, (919) 515–2454
Ohio State University, (614) 292–8949
Oregon State University, (541) 737–2714
University of Puerto Rico, (787) 832–3585
Purdue University, (765) 494–3593
University of Rhode Island, (401) 874–6800
South Carolina Sea Grant Consortium, (843) 727–2078
University of Southern California, (213) 740–1961
Texas A&M University, (409) 845–3854
Virginia Graduate Marine Science Consortium, (804) 924–5965
University of Washington, (206) 543–6600
University of Wisconsin, (608) 262–0905
Woods Hole Oceanographic Institution, (508) 289–2557

Participating NMFS Facilities (for Population Dynamics Program)

- Alaska Fisheries Science Center
  - Auke Bay Laboratory, Juneau, AK; Contact person: Phillip Rigby; Tel: (907) 789–6653; E-mail: phillip.rigby@noaa.gov
  - National Marine Mammal Laboratory, Seattle, WA; Contact person: Douglas DeMaster; Tel: (206) 526–4047; E-mail: douglas.demaster@noaa.gov
  - Resource Ecology and Fisheries Management Division, Seattle, WA; Contact person: Richard Marasco; Tel: (206) 526–4172; E-mail: rich.marasco@noaa.gov
- Northwest Fisheries Science Center
  - Montlake Laboratory, Seattle, WA; Contact person: Linda Jones; Tel: (206) 860–3200; E-mail: linda.jones@noaa.gov
  - Mark O. Hatfield Marine Science Center, Newport, OR; Contact person: Linda Jones; Tel: (206) 860–3200; E-mail: linda.jones@noaa.gov
- Northeast Fisheries Science Center
  - Woods Hole Laboratory, Woods Hole, MA; Contact person: Fredric Serchuk; Tel: (508) 495–2245; E-mail: fred.serchuk@noaa.gov
- Southeast Fisheries Science Center
  - Miami Laboratory, Miami, FL; Contact person: Joseph Powers; Tel: (305) 361–4295; E-mail: joseph.powers@noaa.gov
  - Beaufort Laboratory, Beaufort, NC; Contact person: Douglas Vaughan; Tel: (252) 728–8761; E-mail: doug.vaughan@noaa.gov
- Southwest Fisheries Science Center
  - La Jolla Laboratory, La Jolla, CA; Contact person: Russell Vetter; Tel: (619) 546–7125; E-mail: russ.vetter@noaa.gov
  - Pacific Fisheries Environmental

Laboratory, Pacific Grove, CA; Contact person: George Boehlert; Tel: (831) 648–8447; E-mail: george.boehlert@noaa.gov
Honolulu Laboratory, Honolulu, HI; Contact person: Jerry Wetherall; Tel: (808) 983–5386; E-mail: jerry.wetherall@noaa.gov
Santa Cruz/Tiburon Laboratory, Tiburon, CA; Contact person: Churchill Grimes; Tel: (415) 435–3149; E-mail: churchill.grimes@noaa.gov

Participating NMFS Facilities (for Marine Resource Economics Program)

Northeast Fisheries Science Center
Woods Hole Laboratory, Woods Hole, MA; Contact person: Philip Logan; Tel: (508) 495–2354; E-mail: phil.logan@noaa.gov
Southeast Regional Office
St. Petersburg, FL; Contact person: Richard Raulerson; Tel: (727) 570–5335; E-mail: richard.raulerson@noaa.gov
Southwest Fisheries Science Center
La Jolla Laboratory, La Jolla, CA; Contact persons: Cindy Thomson; Tel: (831) 459–3068; E-mail: cthomson@cats.ucsc.edu; Samuel Herrick; Tel: (619) 546–7111; E-mail: sam.herrick@noaa.gov
Northwest Regional Office
Seattle, WA; Contact person: Steve Freese; Tel: (206) 526–6117; E-mail: steve.freese@noaa.gov
Alaska Fisheries Science Center
Resource Ecology and Fisheries Management Division, Seattle, WA; Contact person: Joseph Terry; Tel: (206) 526–4253; E-mail: joe.terry@noaa.gov

SUPPLEMENTARY INFORMATION:

National Sea Grant College Program—National Marine Fisheries Service Joint Graduate Fellowship Programs in Population Dynamics and Marine Resource Economics

I. Program Authority

Authority: 33 U.S.C. 1127. (Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.)

II. Introduction

The National Sea Grant College Program Office (NSGO) and the National Marine Fisheries Service (NMFS) have established a new Population Dynamics Fellowship Program and a new Marine Resource Economics Fellowship Program.

Beginning in the summer of 2000, each program will support two students interested in careers related to (1) the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status, and (2) the economics of the conservation and management of living marine resources. Two additional students will be supported by each program in each subsequent year up to a maximum of six students per program at a given time.

The Population Dynamics Program will provide support for up to three years for two highly qualified graduate students working towards a PhD in population dynamics or related fields of study. The Marine Resource Economics Program will provide support for up to two years for two highly qualified graduate students working towards a PhD in marine resource economics, natural resource economics, or environmental economics. In addition to their major professor, Fellows are required to work closely with an expert (mentor) from NMFS who will provide data for their theses, serve on each Fellow's committee, and host an annual summer internship at the participating NMFS facility.

The goals of these fellowships are to (1) encourage qualified applicants to pursue careers in (a) population dynamics and stock assessment methodology or (b) marine resource economics; (2) increase available expertise related to (a) the population dynamics and assessment of stock status of living marine resources or (b) economic analysis of living marine resource conservation and management decisions; (3) foster closer relationships between academic scientists and NMFS; and (4) provide real-world experience to graduate students and accelerate their career development.

III. Eligibility

Any student may apply who is a United States citizen or lawfully admitted to the United States for permanent residence. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at a university in the United States, and prospective Marine Resource Economics Fellows must be in the process of completing at least two years of course work in a PhD degree program in natural resource economics or a related field at a university in the United States.

IV. Application

An application must be received by February 15, 2000 by the director of the state Sea Grant program nearest to the university in which the student is enrolled. The state Sea Grant director then forwards the application to the NSGO. Applicants are strongly encouraged to contact participating NMFS facilities before submitting their application. Each application must include: (1) Complete curriculum vitae from both student and major professor; (2) an education and career goal statement from the applicant with emphasis on the applicant's interest in (a) marine population dynamics or the development and implementation of quantitative methods for assessing stock status of living marine resources, or (b) in marine resource economics (not to exceed two pages); (3) three letters of recommendation, with at least one from the student's major professor (a summary of the proposed thesis may be included if available); (4) official copies of all undergraduate and graduate student transcripts; and (5) (only for the Population Dynamics Program) proof of application, acceptance, and enrollment in the case of students entering graduate school (i.e., who have not yet completed one semester of graduate work) if they are selected for a fellowship.

Each application must be accompanied by a written matching commitment, equal to half of the NSGO amount (see below), from the university to support the budget for the period of the award. Allocation of matching funds must be specified in the budget. In addition to stipend and tuition for the applicant, the budget should include funds for equipment, supplies, and travel necessary to carry out the proposed thesis research. Funds should also be allocated for one trip per year to the NOAA offices in Silver Spring, MD, for a meeting of all Fellows, mentors, and NSGO/NMFS Fellowship Program Managers.

V. Award

The award for each fellowship will be in the form of a grant of $38,000 per year, 50% ($19,000) of which will be contributed by NMFS, 33⅓% ($12,667) by the NSGO, and 16⅔% ($6,333) by the university as the required 50% match of NSGO funds. The portion of the award provided to each Fellow for salary (stipend), living expenses (per diem), tuition, and travel necessary to carry out the proposed thesis research and to attend the annual Fellows meeting in Silver Spring, MD, will be determined and distributed by the state Sea Grant program/university in accordance with its guidelines. Indirect costs are not allowable for either the fellowship or for any costs associated with the fellowship, according to 15 CFR 917.11(e), Guidelines for Sea Grant Fellowships.

VI. Selection Criteria

Selection criteria will include (1) academic ability (25%), (2) demonstrated research ability and interest in the field (25%), (3) diversity and appropriateness of academic background (particularly quantitative skills in the case of the Population Dynamics Program) (25%), (4) additional qualifying experience such as work (15%), (5) expertise of major professor (5%), and (6) ability to work well with others (5%).

VII. Selection

Selection is competitive. A selection team for each program consisting of experts in that discipline and representatives from the NSGO and NMFS will evaluate and rank the candidates using the above criteria. Two Fellows will be selected for each program by the NSGO/NMFS Fellowship Program Managers based in part on rankings provided by the selection teams. In addition, Program Managers will base the selections on: (a) ascertaining which candidates best meet the program goals and whose proposed work will not substantially duplicate other projects currently funded or approved for funding by NOAA, and (b) ensuring that an appropriate NMFS mentor is available to work with the candidate. Accordingly, awards may not necessarily be made to the two highest-scoring candidates in each program.

VIII. Timetable

Applications must be received by February 15, 2000, by the state Sea Grant Program, and must be received by February 21, 2000, by the NSGO. Successful Fellows may expect to be notified by April 1, 2000. Fellowships, when initially awarded, will commence on or about June 1, 2000, pending completion of the Fellow's spring semester.

IX. Participating NMFS Facilities

Mentors will be from participating NMFS Science Centers, Laboratories, or Regional Offices. Each Fellow will be required to work as a summer intern at the participating NMFS facility either on his/her thesis or on appropriate related problems. Remuneration for the summer internship will be part of the annual award. Population Dynamics Fellows will also be expected to spend 10–20 days at sea per year learning about sampling techniques and problems, commercial fishing, fishery biology, and local and regional issues of importance to fisheries management. Fellows may also work, as necessary, at the participating NMFS facility during some or all of the academic year at the mutual discretion of mentor, major professor, and Fellow. After selection, but before the fellowship is awarded, each Fellow will be required to provide a one-page description of his/her assignment based on discussions among mentor, major professor, and Fellow. These discussions will be facilitated by the NSGO/NMFS Fellowship Program Managers and will be completed by April 30, 2000. The assignment description will reflect a clear mutual understanding of the substantive dimensions of the project and its expected results.

X. Reporting Requirements

Fellows will, for each year of their fellowship, provide a written annual summary of their accomplishments and activities during the preceding year to the NSGO/NMFS Fellowship Program Managers. This summary is due no later than one month following the anniversary of the start of the fellowship. Fellows will be expected to present a review of their research during the annual Fellows meeting in Silver Spring, MD.

XI. Other Requirements

(A) Federal Policies and Procedures—Recipients and sub-recipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying", and the following explanations are hereby provided:

(1) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities", as required under 15 CFR part 28, appendix B.

(H) Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities". Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

(I) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(J) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

(K) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(L) Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains a collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Budget Form has been approved under control number 0648–0362 with an average response estimated to take 15 minutes. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on this estimate or any other aspect of this collection to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: October 27, 1999.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

Dated: October 27, 1999.

Lamarr B. Trott,

Deputy Director, Office of Science and Technology, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 99–28572 Filed 10–29–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990927267–9267–01]

RIN 0648–ZA71

National Fisheries Habitat Program: Request for Proposals for FY 2000

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining preliminary proposals and subsequently full proposals for innovative research, education, and outreach projects that address critical and high priority problems related to Fisheries Habitat in U.S. coastal and Great Lakes waters. Preference will be given to proposals that involve collaboration with multiple investigators and various Federal agencies and focus on regional and national issues with broad application. Proposals with narrow focus from single investigators are not encouraged and will have a minimal likelihood of being funded. In FY 2000 and 2001, Sea Grant expects to make available about $1,500,000 per year to support such projects. Proposals may request up to $300,000 per year for a maximum of two years, and each proposal must include additional matching funds equivalent to at least 50% of the Federal funds requested. Successful projects will be selected through national competitions.

DATES: Preliminary proposals must be received before 5 pm (local time) on December 1, 1999 by the nearest state Sea Grant College Program or the National Sea Grant Office (NSGO). After evaluation at the NSGO, some proposers will be encouraged to prepare full proposals, which must be received before 5 pm (local time) on February 15, 2000 by the nearest state Sea Grant College Program or the NSGO.

ADDRESSES: Preliminary proposals and full proposals must be submitted through the nearest state Sea Grant Program. The addresses of the Sea Grant College Program directors may be found at the following Internet website: (http://www.nsgo.seagrant.org/SGDirectors.html) or may be obtained by contacting the Program Manager at the NSGO (see below). Investigators from non-Sea Grant states may submit their preliminary proposals and proposals directly to the National Sea Grant Office at: National Sea Grant College Program, R/SG, Attn: Mrs. Geraldine Taylor, Fisheries Habitat Competition, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Emory D. Anderson, Program Director for Fisheries, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2435 ext. 144, facsimile (301) 713-0799, e-mail: (emory.anderson@noaa.gov).

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1121–1131. (Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.)

II. Program Description

Background

Human and non-anthropogenic activities threaten the environments of our marine and Great Lakes waters. Habitats important to stocks of finfish and shellfish species exist in riverine, estuarine, coastal, and offshore continental shelf waters within the U.S. Exclusive Economic Zone as well as in waters of the Great Lakes. A long-term threat to the viability of commercial and recreational fisheries is the continuing adverse impacts of various human activities and natural hazards on our marine and Great Lakes aquatic habitats.

The U.S. Congress, in re-authorizing the Magnuson-Stevens Fishery Conservation and Management Act through the Sustainable Fisheries Act (SFA) (16 U.S.C. 1801 *et seq.*) in October 1996, mandated the identification of habitats essential to Federally managed marine finfish and shellfish species and the identification of measures to conserve and enhance these habitats. The SFA defined essential fish habitat (EFH) as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." This has been further interpreted by NOAA to include aquatic areas and their associated physical, chemical, and biological properties needed to support sustainable fisheries and healthy ecosystems involving managed species.

Since Congressional intent in the SFA was to prevent further loss of marine, estuarine, and other aquatic habitats, the eight regional Fishery Management Councils (Councils) have had to amend their fishery management plans (FMPs) to describe and identify EFH for all life stages of managed species, provide information on fishing and non-fishing activities that may adversely impact EFH, recommend measures to conserve and enhance EFH, and minimize, to the extent practicable, adverse impacts on EFH caused by fishing activities. The SFA also requires consultations between the National Marine Fisheries Service (NMFS) and any Federal agency whose actions may adversely affect EFH.

Although the EFH mandate in the SFA was directed towards the conservation and management of habitat for Federally managed fisheries, it has served to heighten awareness and stimulate similar efforts by state resource agencies and interstate Marine Fisheries Commissions responsible for near-shore and estuarine waters and by state, Federal, and international bodies responsible for Great Lakes waters.

Huge gaps in knowledge exist regarding habitat preferences and requirements of the life stages of many finfish and shellfish species, the role played by various habitats in the fishery production process, and the impacts of various anthropogenic and natural activities on habitat structure and function. In order for Fishery Management Councils, NMFS, interstate Marine Fisheries Commissions, and other Federal and state regulatory bodies and agencies responsible for either marine or Great Lakes waters to adequately manage habitats, these gaps in knowledge must be filled through expanded research and extension efforts.

The importance of addressing the requirement for and present deficiency in knowledge regarding fisheries habitat, and the need to consider habitat to a greater extent in fisheries management, has recently received considerable national attention in scientific symposia and conferences and popular and peer-reviewed publications. This new research initiative will help to address the lack in knowledge.

Funding Availability and Priorities

The National Sea Grant College Program encourages proposals that address the topical fisheries habitat issues listed below. Proposals are particularly encouraged that: (1) Involve collaboration with multiple investigators and various Federal agencies (e.g., National Marine Fisheries Service, National Undersea Research Program, Environmental Research Laboratories, National Ocean Service, U.S. Geological Survey, Environmental Protection Agency) in which the cooperating agencies provide additional funding, personnel, specialized equipment, research vessel time, and the like; (2) Address regional or national issues with broad application; (3) Demonstrate local and regional resource manager and stakeholder involvement in the planning and development process; (4) provide results in digital, metadata, GIS-capable format; and (5) incorporate applied areas of education, outreach, socioeconomic, and management components and applications of direct benefit to stakeholders. Proposals with narrow focus from single investigators are not encouraged and will have a minimal likelihood of being funded.

Proposals are requested that address the following issues, which are not listed in any implied order of priority:

(1) Identification, quantification, synthesis of existing information, and understanding of the linkage between fisheries and their habitats: completion of life history inventories of managed species (e.g., distribution and abundance of egg, larval, and juvenile stages); habitat factors (*e.g.*, temperature, salinity, flow regimes, currents, turbidity, habitat structure, habitat location or quality, prey abundance) influencing distribution, abundance, growth, species interactions, and survival for prediction of fisheries abundance trends and yields; development of conceptual ecosystem models and their functional attributes incorporating habitat; establish and quantify linkages between habitat and fisheries production.

(2) The effects of anthropogenic activities on habitat of managed fisheries: fishing (*e.g.*, gear-specific, spatial and geographic extent, mapping of fishing and non-fishing areas, intensity and frequency gradients, seasonality, differential habitat types, recovery rates following disturbance by gear, predictive models linking impacts with species population dynamics, gear design to minimize impacts); aquaculture and stock enhancement (*e.g.*, physical, nutrient, contaminant, genetic, and disease impacts); point and non-point source pollution; coastal and urban development (*e.g.*, land-use practices, water flow diversion, buffer zones, loss or alteration of habitat).

(3) Impacts of natural hazards on fisheries habitat: relative scales of natural variability; global climate variation; storm activity, flooding, drought, and erosion.

(4) Restoration of habitat: artificial reefs; estuarine dredging; salt marsh ecology; marine reserves; area management strategies (*e.g.*, open and closed areas for commercial fisheries, rotational systems); wetland rehabilitation; shoreline and streambank stabilization; spawning habitat rehabilitation (*e.g.*, anadromous finfish species).

About $1,500,000 is available from the National Sea Grant College Program to support these projects in FY 2000; an additional $1,500,000 may be available in FY 2001 depending on the overall funding appropriation for the National Sea Grant College Program. Project activities should include identified milestones for each project year, and the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress. Proposals may request up to $300,000 per year for a maximum of two years, and each proposal must include additional matching funds equivalent to at least 50% of the Federal funds requested; for example, a proposal requesting a total of $300,000 in Federal support for two years would have to include at least an additional $150,000 in matching funds. Proposals involving collaboration with any non-Sea Grant Federal agency or agencies must include documentation and verification of the nature and value of the support being provided by such agency or agencies. Any additional funding contributed by collaborating agencies could be provided either to the participating investigators from such agencies or directly to the participating university investigators. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

III. Eligibility

The National Sea Grant College Program is a network of 29 university-based programs in coastal and Great Lake states involving more than 300 institutions nationwide in research, outreach, and education. Applications may be submitted by individuals associated with these institutions and also by individuals, public or private corporations, partnerships, or other associations or entities (including non-Sea Grant institutions of higher education, institutes, or non-Federal laboratories), or any State, political subdivision of a State, or agency or officer thereof. Applications by individuals not affiliated with Sea Grant institutions should preferably be collaborative efforts with Sea Grant university investigators.

Awards will be in the form of grants or cooperative agreements, the latter being the case if the project involves substantial involvement by investigators from a partnering Federal agency. Awards to successful applicants from Sea Grant institutions will be issued through the local Sea Grant Programs. Awards to successful applicants from institutions from non-Sea Grant states will be issued through the National Sea Grant Office.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under the Fisheries Habitat Program are as follows:

(1) Impact of Proposed Project (55%): Significance of the problem addressed or the effect this activity will have on improving the understanding and management of fisheries habitats; and the degree to which potential users of the results of the proposed activity have been involved in planning the activity and/or will be involved in the execution of the activity.

(2) Scientific or Professional Merit (35%): Degree to which the activity will advance the state of the science or discipline through synthesis of existing information and use or extension of state-of-the-art methods, employ new approaches to solving problems and exploiting opportunities in resource management or development or in public outreach, focus on new types of important or potentially important resources and issues, be executed by investigators qualified by education, training, and/or experience; and record of achievement with previous funding.

(3) Collaboration (10%): Degree to which multiple investigators and other non-Sea Grant Federal agencies are involved in the activity.

V. Selection Procedures

Preliminary proposals must be submitted in order to be eligible to submit a full proposal. Preliminary proposals will be reviewed at the NSGO by a panel composed of government, academic, and industry experts according to the evaluation criteria listed above. The panel will make individual recommendations to the Director of the NSGO regarding which preliminary proposals may be suitable for further consideration. On the basis of the panel's recommendations, the Director of the NSGO will advise proposers whether or not the submission of full proposals is encouraged. Invitation to submit a full proposal does not constitute an indication that the proposal will be funded. Interested parties who are not invited to submit full proposals will not be precluded from submitting full proposals if they have submitted a preliminary proposal in accordance with the procedures described below.

Full proposals will be received at the individual state Sea Grant Programs (or at the National Sea Grant Office, if from a non-Sea Grant state) and sent to peer reviewers for written reviews which will be based on the evaluation criteria listed above. The National Sea Grant Office will obtain the written reviews for proposals from non-Sea Grant states. Complete full proposals and their written reviews will be sent by the state Sea Grant programs to the National Sea Grant Office to be ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel consisting of government, academic, and industry experts. The panel members will provide individual evaluations on each proposal, but there will be no consensus advice. The National Sea Grant Office will consider their recommendations and evaluations in the final selection. Only those proposals rated by the panel as either Excellent, Very Good, or Good are eligible for funding. For those proposals, the National Sea Grant Office will: (a) Ascertain which proposals best meet the program priorities, giving consideration to geographical distribution and representation, and do not substantially duplicate other projects that are currently funded or are approved for funding by NOAA and other Federal agencies; hence, awards may not necessarily be made to the highest-scored proposals; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

Timetable

December 1, 1999, 5 pm (local time)—Preliminary proposals due at state Sea Grant Programs or at NSGO for proposals from non-Sea Grant states.

December 6, 1999, 5 pm EST—Preliminary proposals submitted to state Sea Grant Programs should be transmitted by those Programs to the NSGO so as to be received by the NSGO on this date.

February 15, 2000, 5 pm (local time)—Full proposals due at state Sea Grant Programs or at NSGO for proposals from non-Sea Grant states.

February 21, 2000, 5 pm EST—Full proposals submitted to state Sea Grant Programs should be transmitted by those Programs to the NSGO so as to be received by the NSGO on this date.

March 29, 2000, 5 pm EST—Reviewed full proposals due at NSGO.

July 1, 2000 (approximate)—Funds awarded to selected recipients; projects begin.

General Guidelines

The ideal proposal attacks a well-defined problem that will be or is a significant societal issue. The organization or people whose task it will be to make related decisions, or who will be able to make specific use of the projects results, will have been identified and contacted by the Principal Investigator(s). The project will show an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and will show how that information will be provided by the proposed activity, or in concert with other planned activities.

Research projects are expected to have: a rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address an engineering problem; a strong rationale for the proposed research; and a clear and established relationship with the ultimate users of the information. Research undertaken jointly with industry, business, multiple investigators, or other agencies with interest in the problem will be seen as being meritorious. Their contribution to the research may be in the form of collaboration, in-kind services, or dollar support. Projects with narrow focus from single investigators are not encouraged and will have a minimal likelihood of being funded. Projects that are solely monitoring efforts are not appropriate for funding.

Proposals which incorporate educational, outreach, socioeconomic, and management components and applications will be seen as being meritorious.

What to Submit

Preliminary Proposal Guidelines

To prevent the expenditure of effort that may not be successful, proposers must first submit preliminary proposals. Preliminary proposals must be single-or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8.5″ × 11″ paper. The following information should be included:

(1) Signed Title Page: The title page should be signed by the Principal Investigator and should clearly identify the program area being addressed by starting the project title with "Fisheries Habitat". Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds and matching funds being requested should be listed for each budget period, as well as the source of the matching funds; the total should include all subrecipient's budgets on projects involving multiple institutions. Preliminary proposals must include matching funds equivalent to at least 50% of the Federal funds requested.

(2) A concise (2-page limit) description of the project, its expected output or products, the anticipated users of the information, and its anticipated impact. Proposers may wish to use the Evaluation Criteria for additional guidance in preparing the preliminary proposals.

(3) Resumes (1-page limit) of the Principal Investigators.

(4) Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

Full Proposal Guidelines

Each full proposal should include the first six items listed below; the standard forms indicated under Item 7 will only be required for proposals selected for funding. All pages should be single or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8.5″ × 11″ paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs, and other pictorial presentations are included in the 15-page limitation; literature citations and support letters, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title "Fisheries Habitat". The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each budget period; the total should include all subrecipient's budgets on projects involving multiple institutions.

(2) Project Summary: This information is very important. Prior to attending the peer review panel meetings, some of the panelists may read only the project summary. Therefore, it is critical that the project summary accurately describes the research being proposed and conveys all essential elements of the research. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: 1. Title: Use the exact title as it appears in the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding request for each year of the project, including matching funds if appropriate. 4. Project Period: Start and completion dates. Proposals should request a start date of July 1, 2000, or later. 5. Project Summary: This should include the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of work to be completed.

(3) Project Description (15-page limit):

(a) Introduction/Background/Justification: Subjects that the investigator(s) may wish to include in this section are: (i) Current state of knowledge; (ii) Contributions that the study will make to the particular discipline or subject area; and (iii) Contributions the study will make toward addressing the problem of fisheries habitat.

(b) Research or Technical Plan: (i) Objectives to be achieved, hypotheses to be tested; (ii) Plan of work—discuss how stated project objectives will be achieved; and (iii) Role of project personnel.

(c) Output: Describe the project outputs that will enhance the Nation's ability to understand and manage fisheries habitat.

(d) Coordination with other Program Elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

(e) Literature Cited: Should be included here, but does not count against the 15-page limit.

(4) Budget and Budget Justification: There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Successful applicants whose awards would be made through a state Sea Grant Program must consult with that state Sea Grant Program budget office to ensure that all necessary

overhead costs are included. Subcontracts should have a separate budget page. Matching funds must be indicated if required; failure to provide adequate matching funds will result in the proposal being rejected without review. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For all applications, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) the Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(5) Current and Pending Support: Applicants must provide information on all current and pending support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. All current project support from whatever source (*e.g.*, Federal, State, or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the principal investigator and other senior personnel should be included, even if they receive no Federal salary support from the project(s). The number of person-months per year to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within NOAA.

(6) Vitae (2 pages maximum per investigator).

(7) Standard Application Forms: Applicants may obtain all required application forms at the following Internet website: (http://www.nsgo.seagrant.org/research/rfp/index.html#3), from the state Sea Grant Programs, or from Dr. Emory D. Anderson at the National Sea Grant Office (phone: 301–713–2435 x144 or e-mail: emory.anderson@noaa.gov). For proposals selected for funding, the following forms must also be submitted:

(a) Standard Forms 424, Application for Federal Assistance, and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Applications should clearly identify the program area being addressed by starting the project title with "Fisheries Habitat". Please note that both the Principal Investigator and an administrative contact should be identified in section 5 of the SF–424. For section 10, applicants should enter "11.417" for the CFDA Number and Sea Grant Support for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying", and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities", as required under 15 CFR Part 28, Appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, S–LLL, "Disclosure of Lobbying Activities". Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

VII. How To Submit

Preliminary proposals and proposals must be submitted to the state Sea Grant Programs or, for investigators in non-Sea Grant states, directly to the National Sea Grant Office (NSGO), according to the schedule outlined above. Although investigators are not required to submit more than 3 copies of either pre-proposals or full proposals, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5" × 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. The addresses of the Sea Grant College Program directors may be found at the following Internet website: (http://www.nsgo.seagrant.org/SGDirectors.html) or may be obtained by contacting the Program Manager, Dr. Emory D. Anderson, at the National Sea Grant Office (phone: 301–713–2435 x144 or e-mail: emory.anderson@noaa.gov). Pre-proposals and proposals sent to the National Sea Grant Office should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Fisheries Habitat Competition, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone number for express mail applications is 301–713–2445).

Applications received after the December 1, 1999 and February 15, 2000 deadlines and applications that deviate from the format described above will be returned to the sender without review. Facsimile transmissions and electronic mail submission of preliminary and full proposals will not be accepted.

VIII. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

(I) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(J) Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

(K) For awards receiving funding for the collection or production of geospatial data (*e.g.*, GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906 "Coordinating Geographic Data Acquisition and Access" The National Spatial Data Infrastructure", 59 Fed. Reg. 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (http://www.fgdc.gov/standards/standards/html).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Budget Form (90–4), Sea Grant Project Summary Form (90–2), and Standard Forms 424 and 424B have been approved under control numbers 0648–0362, 0648–0362, 0348–0043, and 0348–0040, respectively, with average responses estimated to take 15, 20, 45, and 15 minutes, respectively. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: October 27, 1999.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 99–28573 Filed 10–29–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 991027290–9290–01]

RIN 0648–ZA74

Application of Marine Biotechnology to Assess the Health of Coastal Ecosystems: Request for Proposals for FY 2000

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining preliminary proposals and subsequently full proposals for innovative research, education and outreach projects that develop and utilize molecular and cellular biology and its applications to assess the levels and effects of contaminants, and pathogens on the health of the coastal ecosystem. In FY 2000 and 2001, Sea Grant expects to make available about $1,500,000 per year to support projects which utilize marine biotechnology (molecular or cellular biology) to address environmental issues effecting the coast. Proposals may request up to $300,000 per year for a maximum of two years, and each proposals must include additional matching funds equivalent to at least 50% of the Federal funds requested.

DATES: Preliminary proposals must be received before 5 p.m. (local time) on December 1, 1999 by the nearest state Sea Grant College Program or the National Sea Grant Office (NSGO). After evaluation at the NSGO, some proposers will be encouraged to prepare full proposals, which must be received before 5 p.m. (local time) on February 15, 2000 at the nearest state Sea Grant College Program or NSGO.

ADDRESSES: Preliminary proposals and full proposals must be submitted through the nearest state Sea Grant Program. The addresses of the Sea Grant College Program directors may be found on Sea Grant's home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting the Program Manager at the NSGO (see below). Investigators from non-Sea Grant states may submit their preliminary proposals and proposals directly to the NSGO at: National Sea Grant College Program, R/SG, ATTN: Mrs. Geri Taylor, Environmental Marine Biotechnology, Room 11841, NOAA, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Linda E. Kupfer, Biotechnology Program Manager, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, or Mary Robinson, Secretary, NSGO, 301–713–2435; facsimile 301–713–0799; e-mail: linda.kupfer@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1121–1131. Catalog of Federal Assistance Number: 11.417, Sea Grant Support.

II. Program Description

Background

Preservation of coastal ecosystems is critically important to the American public. There are growing concerns with the status and health of vital marine resources. Increasing development of coastal areas and pollution from variety of sources now exert relentless pressure upon these environments. Recognition that widespread threats to coastal ecosystems impact human health as well as traditional and emerging economic interests resonates throughout the scientific and management communities. The National Research Council's Ocean Studies Board recently reported in "Challenges on the Horizon," that improving the health of the coastal oceans and sustaining ocean ecology in the face of mounting anthropogenic impacts represent key challenges for ocean research. Realization of the close link between the oceans and human health has sparked interest and involvement from scientists, health care professional and other stakeholders as cited in the Ocean Studies Board's report, "From Monsoons to Microbes."

There are numerous chemical and biological threats to the health of the marine environment, which can effect its potential to sustain essential biodiversity, its ability to fuel valuable economic interests and its effect on human health. These range from severe impacts of point-source contamination and diseases to far more subtle stress imposed by sublethal and non-point source contamination exposure over long time frames. Development of coastal areas and the associated changes in land use patterns apply additional impacts to the coastal ecosystem. The response of the biota to the cumulative stress is now evident in a variety of compelling ways. Specific examples of the widespread nature and ramifications of environmental stress in the coastal environment include:

(1) 75% of U.S. commercial fisheries are dependent upon estuaries at some point in their life cycle; however, it is estimated that 40% of estuarine and coastal waters are unfit for swimming or fishing due to excess nutrients, wastewater discharge, viruses and bacteria.

(2) Chemicals of anthropogenic origin have been found in coastal waters throughout the United States. In many areas, contaminants such as metals (cadmium, copper and mercury) and organic chemicals (PCBs, PAHs, pesticides) are found in sufficient concentrations to pose major concerns to managers.

(3) Human diseases are increasing in part due to anthropogenic causes such as sewage disposal and farming practices.

(4) It is estimated that currently 60% of the world population lives in the coastal zones. This is expected to increase significantly in the next decade.

While these problems have continued to mount, our understanding of the concurrent biological and ecological ramifications have not followed in step. Consequently, we are poorly equipped to evaluate these problems and to adequately suggest and implement remedies. Historically, a number of factors have prevented this. We are using for the most part the tools of early twentieth century biology when better ones are available. Techniques with sufficient resolution to discern the mechanisms underlying these problems have rarely been applied within the context of the health of the marine environment. In addition, the highly interdisciplinary nature of these problems have been difficult to support by traditional funding paths. Also there is a significant lack of understanding in the public domain regarding biotechnology and its applications in the marine environment. An accelerated program of biotechnology education, communication and outreach is critical to public acceptance and trust in the use of marine biotechnology tools.

Overcoming these barriers is the emphasis of this Request for Proposal (RFP). This RFP is meant to support the application of innovative, state of the art molecular and cellular biotechnology research, education and outreach, including interdisciplinary efforts, designed specifically to address tractable problems pertaining to the health of the marine ecosystem.

The same innovative technology that has yielded such profound changes in the way that biomedical research is conducted and has become commonplace in virtually all modern biology laboratories will be applied in the critical area of environmental research. Techniques utilized in a typical molecular and cellular biology laboratory can now be viewed as an accessible biological toolbox that enables researchers to answer insightful questions relating to stress detection and monitoring methodologies. Marine biotechnology has become a mature and powerful driving force that is poised to lead to new developments in our understanding of how marine organisms and the coastal ecosystems respond to pollution, disease and environmental stress.

This RFP builds upon the success of the first two marine biotechnology initiatives funded by Sea Grant. These programs were instrumental in focusing university molecular and cellular biology research on marine issues. The benefits of previously funded research in marine biotechnology include new natural products, new pharmaceuticals, and new tools for fisheries management as well as development of new research systems for fundamental research and new insights into ocean dynamics. This RFP will focus the considerable power of molecular and cellular biology on the marine area, an area of strategic importance that to date has been poorly represented despite its great national importance.

Funding Availability and Priorities

This RFP will fund a nationwide research, education and outreach program that is designed to foster innovative approaches to the study of health of the marine environment. It is designed to encourage collaboration among academics and key resource decision makers to insure that results are distributed in an appropriate fashion among a variety of key user groups ranging from the research and management communities to the general public.

The focus of the research conducted in this initiative addresses a topic of pressing national importance to better understand the marine ecosystem and the impact of contaminants and pathogens on this system. The overarching goal is to add new focus and direction to Sea Grant funded research and to enhance its impact through innovative research studies, interdisciplinary studies, educational programs and outreach efforts. Research proposals should focus on tractable problems and specific, identifiable outcomes which impact the problem. An advisory board of noted scientists, managers and industry representatives was convened to help refine the focus of this RFP.

Research areas may include the application of cellular and molecular biological techniques for the:

(1) Detection and Characterization of Pollutants and Disease on the coastal ecosystem.

(a) Development of novel biosensors (including in situ biosensors) for major groups of pollutants and contaminants (toxics; heavy metals such as cadmium, copper and mercury; organics such as PCBs, PAHs, and pesticides; and endocrine disrupters).

(b) Detection and characterization of sublethal effects of pollutants, contaminants, and pathogens (excluding effects of harmful algal blooms) in ecologically and economically important stocks in the natural environment (excluding aquacultured animals and oysters as these are covered under other competitions).

(c) Identification and detection of biomarkers for the purpose of health and environmental quality assessment.

II. Education and Outreach

(1) Public outreach, extension and educational support for understanding and applying marine biotechnology concepts and tools as they relate to sustaining the health of the marine environment through an informed citizenry.

(2) Interdisciplinary workshops and meetings linking marine biotechnology science with scientists, managers, industry representatives and other stakeholders.

About $1,500,000 is available from the National Sea Grant College Program to support these projects in FY2000; an additional $1,500,000 may be available in FY 2001 depending on the overall funding appropriation for the National Sea Grant College Program. Researchers are encouraged to include outreach in their proposals as appropriate. Project activities should include identified milestones for each project year, and the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress. Projects may request up to $150,000 per year for a maximum of two years and each proposal must include additional matching funds equivalent to at least 50% of the Federal funds requested; for example, a proposal requesting a total of $200,000 in Federal support for two years would have to include at least an additional $100,000 in matching funds. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of: (a) the Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

III. Eligibility

The National Sea Grant College Program is a network of 29 university-based programs in coastal and Great Lake states involving more than 300 institutions nationwide in research, outreach, and education. Applications may be submitted by individuals associated with these institutions and also by individuals, public or private corporations, partnerships, or other associations or entities (including non-Sea Grant institutions of higher education, institutes, or non-Federal laboratories), or any State, political subdivision of a State, or agency or officer thereof. Applications by individuals not affiliated with Sea Grant institutions should preferably be collaborative efforts with Sea Grant university investigators.

Awards to successful applicants from Sea Grant institutions will be issued through the local Sea Grant Programs. Awards to successful applicants from institutions from non-Sea Grant states will be issued through the NSGO.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under the "Application of Marine Biotechnology to Assess the Health of the Coastal Ecosystems" are as follows:

(1) Impact of Proposed Project (50%): Significance of the problem addressed or the effect and impact the proposal will have on understanding or solving this problem and supporting the health of the coastal environment; or the need for this activity as a necessary step for the assessment and understanding of the health of the coastal ecosystem; and the degree to which potential users of the results of the proposed activity have been involved in planning the activity and will be involved in the execution of the activity as appropriate.

(2) Scientific or Professional Merit (50%): Degree to which the activity will advance the state of the science or discipline through synthesis of existing information and use and extension of cutting edge as well as state-of-the-art methods; degree to which new approaches to solving problems and exploiting opportunities in resource management or development, or in public outreach on such issues will be employed; degree to which the activity will focus on new types of important or potentially important resources and issues; degree to which investigators are qualified by education, training and/or experience to execute the proposed activity; and record of achievement with previous funding.

V. Selection Procedures

Preliminary proposals must be submitted in order to be eligible to submit a full proposal. Preliminary proposals will be reviewed at the NSGO by a panel composed of government, academic, and industry experts according to the evaluation criteria listed above. The panel will make individual recommendations to the Director of the NSGO regarding which preliminary proposals may be suitable for further consideration. On the basis of the panel's recommendations, the Director of the NSGO will advise proposers whether or not the submission of full proposals is encouraged. Invitation to submit a full proposal does not constitute an indication that the proposal will be funded. Interested parties who are not invited to submit full proposals will not be precluded from submitting full proposals if they have submitted a preliminary proposal in accordance with the procedures described below.

Full proposals will be received at the individual state Sea Grant Programs (or at the NSGO, if from a non-Sea Grant state) and sent to peer reviewers for written reviews which will be based on the evaluation criteria listed above. The NSGO will obtain the written reviews for proposals from non-Sea Grant states. Complete full proposals and their written reviews will be sent by the state Sea Grant programs to the NSGO to be ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel consisting of government, academic, and industry experts. Panel members will provide individual evaluations on each proposal, but there will be no consensus advice. The NSGO will consider their recommendations and evaluations in the final selection. Only those proposal rated by the panel as either Excellent, Very Good or Good are eligible for funding. For those proposals, the NSGO will: (a) Ascertain which proposals best meet the program priorities, as described in Section II under Funding Availability and Priorities, giving consideration to geographic distribution and representation, maintaining a balanced program of research, and not substantially duplicating other projects that are currently funded or are approved for funding by NOAA and other federal agencies, hence, awards may not necessarily be made to the highest-scored proposal; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

Timetable

December 1, 1999, 5 pm (EST)—Preliminary proposals due at state Sea Grant Program or at NSGO for proposals from non Sea Grant states.

December 6, 1999, 5 pm (EST)—Preliminary proposals that were submitted to the state Sea Grant Programs should be transmitted by those programs to the NSGO so as to be received on this date.

February 15, 2000, 5 pm (EST)—Full proposals due at state Sea Grant Program or at NSGO for proposals from non Sea Grant states.

February 21, 2000, 5 pm (EST)—Full proposals submitted to state Sea Grant Program should be transmitted by those programs to the NSGO so as to be received on this date.

March 29, 2000, 5 pm (EST)—Reviewed full proposals due at NSGO.

July 1, 2000, PM EST (approximate)—Funds awarded to selected recipients projects begin.

General Guidelines

The ideal proposal attacks a well-defined, tractable problem that will be or is a significant societal issue. Ideally the outcome of the proposal will make a tangible impact on that issue. The organization or people whose task it will be to make related decisions, or who will be able to make specific use of the projects results, will have been identified and contacted by the Principal Investigator(s). The project will show an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and will show how that information will be provided by the proposed activity, or in concert with other planned activities.

Research projects are expected to have: a rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address a problem; a strong rationale for the proposed research; and a clear and established relationship with the ultimate users of the information. Projects that are solely monitoring efforts using existing technologies are unlikely to be funded.

What To Submit

Preliminary Proposal Guidelines

To prevent the expenditure of effort that may not be successful, proposers must first submit preliminary proposals. Preliminary proposals must be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½" x 11" paper. The following information should be included:

(1) Signed title page: The title page should be signed by the Principal Investigator and should clearly identify the program area being addressed by starting the project title with "Environmental Marine Biotechnology". Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds and matching funds being requested should be listed for each budget period, as well as the source of the matching funds; the total should include all subrecipient's budgets on projects involving multiple institutions. Preliminary proposals must include matching funds equivalent to at least 50% of the Federal funds requested.

(2) A concise (2-page limit) description of the project, its expected output or products, the anticipated users of the information, and its anticipated impact. Proposers may wish to use the Evaluation Criteria for additional guidance in preparing the preliminary proposals.

(3) Resumes (1-page limit) of the Principal Investigators.

(4) Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

Full Proposal Guidelines

Each full proposal must include the first six items listed below: the standard forms included as Item 7 will only be required for proposals selected for funding. All pages should be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½" x 11" paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title "Environmental Marine Biotechnology". The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each budget period; the total should include all subrecipient's budgets on projects involving multiple institutions.

(2) Project Summary: This information is very important. Prior to attending the peer review panel meetings, some of the panelists may read only the project summary. Therefore, it is critical that the project summary accurately describes the research being proposed and conveys all essential elements of the research. Applicants are encouraged to use Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the

Sea Grant form. The project summary should include: 1. Title: Use the exact title as it appears in the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding: Funding request for each year of the project, including matching funds if appropriate. 4. Project Period: Start and completion dates. Proposals should request a start date of July 1, 2000, or later. 5. Project Summary: This should include the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of work to be completed.

(3) Project Description (15-page limit):

(a) Introduction/Background/Justification: Subjects that the investigator(s) may wish to include in this section are: (i) Current state of knowledge; (ii) Contributions that the study will make to the particular discipline or subject area; (iii) Contributions and impacts the study will make toward addressing the health of the marine ecosystem utilizing marine biotechnology; and (iv) As appropriate, contributions of investigator's previously funded research results to current proposal.

(b) Research or Technical Plan: (i) Objectives to be achieved, hypotheses to be tested; (ii) Plan of work—discuss how stated project objectives will be achieved; and (iii) Role of project personnel.

(c) Output: Describe the project outputs and impacts that will enhance the Nation's ability in utilizing marine biotechnology to understand and assess the health of the marine ecosystem.

(d) Coordination with other Program Elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

(e) Literature Cited: Should be included here, but does not count against the 15-page limit.

(4) Budget and Budget Justification: There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Successful applicants whose awards would be made through a state Sea Grant Program must consult with that state Sea Grant Program budget office to ensure that all necessary overhead costs are included. Subcontracts should have a separate budget page. Matching funds must be indicated if required; failure to provide adequate matching funds will result in the proposal being rejected without review. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For all applications, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) the Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(5) Current and Pending Support: Applicants must provide information on all current and pending support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. All current project support from whatever source (*e.g.*, Federal, State, or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the Principal Investigator and other senior personnel should be included, even if they receive no Federal salary support from the project(s). The number of person-months per year to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within NOAA.

(6) Vitae (2 pages maximum per investigator).

(7) Standard Application Forms: Applicants may obtain all required application forms at the following Internet website: (http://www.nsgo.seagrant.org/research/rfp/index.html#3), from the state Sea Grant Programs, or from Dr. Linda Kupfer at the NSGO (phone: 301–713–2435 x154 or e-mail: linda.kupfer@noaa.gov). For proposals selected for funding, the following forms must also be submitted:

(a) Standard Forms 424, Application for Federal Assistance, and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Applications should clearly identify the program area being addressed by starting the project title with Environmental Marine Biotechnology. Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, applicants should enter "11.417" for the CFDA Number and Sea Grant Support for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying", and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities", as required under 15 CFR Part 28, Appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities". Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to

DOC in accordance with the instructions contained in the award document.

VII. How To Submit

Preliminary proposals and proposals must be submitted to the state Sea Grant Programs or, for investigators in non Sea Grant states, directly to the National Sea Grant Office (NSGO), according to the schedule outlined above. Although investigators are not required to submit more than 3 copies of either pre-proposals or full proposals, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5" x 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. The addresses of the Sea Grant College Program directors may be found at the following Internet website: (http://www.nsgo.seagrant.org/SGDirectors.html) or may be obtained by contacting the Program Manager, Dr. Linda Kupfer at the NSGO (phone: 301–713–2435 x154 or e-mail: linda.kupfer@noaa.gov). Pre-proposals and proposals sent to the NSGO should be addressed to: NSGO, R/SG, Attn.: Mrs. Geraldine Taylor, Environmental Marine Biotechnology, 1315 East-West Highway, Room 11806, Silver Spring, MD 20910 (phone number for express mail applications is 301–713–2435).

Applications received after the deadline and applications that deviate from the format described above will be returned to the sender without review. Facsimile transmissions and electronic mail submission of pre-proposals and full proposals will not be accepted.

VIII. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

(I) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(J) Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

(K) For awards receiving funding for the collection or production of geospatial data (e.g., GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 Fed. Reg. 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (http://www.fgdc.gov/standards/standards/html).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Budget Form, 90–4, Sea Grant Summary Form, 90–2, and Standard Forms 424, and 424b have been approved under control numbers 0648–0362, 0648–0362, 0348–0043, and 0348–0040 with average responses estimated to take 15, 20, 45, and 15 minutes, respectively. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: October 27, 1999.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 99–28574 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102699A]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held November 17–18, 1999.

ADDRESSES: All meetings will be held at the Caravelle Hotel, 44A, Queen Cross Street, Christiansted, St. Croix, U.S.V.I. 00820

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 99th regular public meeting to discuss the items contained in the following agenda:

Call to Order
Adoption of Agenda
Consideration of 98th Council Minutes
Executive Director's Report
Proposal for Rapid Assessment of Fish Kills
Update on Marine Conservation District
Sustainable Fisheries Act
Change to Sustainable Fisheries Act Document
Marine Recreational Fisheries Statistics Survey
Essential Fish Habitat Amendment
Trap Impact Studies
Reef Fish FMP
Subcommittee Meeting Report and Consideration of Statistical and Scientific Committee (SSC) and Advisory Panel (AP) Recommendations
Queen Conch FMP
Subcommittee Meeting Report and Consideration of SSC and AP Recommendations
Coastal Pelagics FMP (Wahoo/Dolphin)
Subcommittee Meeting Report and Consideration of SSC and AP Recommendations
Enforcement
-Federal Government
-Puerto Rico
-U.S. Virgin Islands

Administrative Committee Recommendations
Meetings Attended by Council Members and Staff
Other Business

Next Council Meeting

The Council will convene on Wednesday, November 17, 1999, from 1:00 p.m. to 5:00 p.m., through Thursday, November 18, 1999, from 9:00 a.m. until noon, approximately. The Administrative Committee will meet on Wednesday, November 17, 1999, from 5:00 p.m. to 6:00 p.m., to discuss administrative matters regarding Council operation.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: October 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28537 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 25, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new textile export license/commercial invoice printed on light blue guilloche patterned background paper.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Governments of the United States and the People's Republic of China have agreed to amend the existing export visa requirements to provide for the use of a new textile export license/commercial invoice, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 2000. The new license/invoice shall be printed on light blue guilloche patterned background paper with the map of the People's Republic of China in the middle. The light blue form replaces the jade green form currently in use. The visa stamp is not being changed at this time.

Shipments of textile and apparel products which are produced or manufactured in China and exported from China during the period January 1, 2000 through January 31, 2000 may be accompanied by a visa printed on either the jade green background paper or the light blue background paper as described above. Both the jade green and the light blue forms have a map of the People's Republic of China in the middle.

See 62 FR 15465, published on April 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 2000, for products exported from China on or after January 1, 2000, you are directed to amend the March 27, 1997 directive to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which are printed on light blue guilloche patterned background paper with a map of the People's Republic of China in the middle. The light blue form will replace the jade green form currently being used.

To facilitate implementation of this amendment to the export licensing system, you are directed to permit entry of textile products, produced or manufactured in China and exported from China during the period January 1, 2000 through January 31, 2000, for which the Government of the People's Republic of China has issued an export license/commercial invoice printed on either the jade green background paper or the light blue background paper as described above. Both the jade green and light blue forms have a map of the People's Republic of China in the middle.

Products exported on and after February 1, 2000 must be accompanied by an export visa issued by the Government of the People's Republic of China on the light blue license/invoice form.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–28462 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

Notice of Open Meeting

AGENCY: Department of Energy (DOE).

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, November 8, 1999: 6:00 p.m.–8:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

OTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

6:00 p.m.—Call to order
6:05 p.m.—Discussion with Environmental Health Investigation Team
7:00 p.m.—Review of Site Corrective Action Plan
8:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to a request by the DOE Paducah site office that the EM–SSAB, Paducah, advise DOE on the corrective action plan prepared to address the draft Environmental Health Report. The final corrective action plan is due in late November. In order for the comments of the EM–SSAB, Paducah, to be incorporated in the final report, an SSAB meeting has to be scheduled for November 8, 1999.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on October 27, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–28524 Filed 10–29–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[DE–PS36–00GO10482]

Supplemental Announcement Number 01, Hydrogen Technologies, to the Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration

AGENCY: The Department of Energy (DOE).

ACTION: Request for applications for research and development projects in support of the DOE Hydrogen Program.

SUMMARY: The DOE Office of Power Technologies is funding a competitive financial assistance program in support of the DOE Hydrogen Program. Proposals are requested under a DOE Broad Based Solicitation that is anticipated to result in the award of one or more cooperative agreements in Fiscal Year 2000.

SUPPLEMENTARY INFORMATION:

Background Information

The Office of Power Technologies (OPT) of the DOE Office of Energy Efficiency and Renewable Energy (EERE) is supporting the issuance of this

Supplemental Announcement to the EERE Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–00GO10482. The Broad Based Solicitation contains information that must be used in conjunction with this Supplemental Announcement when applying for an award. Thus, in order to prepare a complete application, it is mandatory to comply with the requirements of the overall Broad Based Solicitation document, DE–PS36–00GO10482 (found on the Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicitations.html) as well as the requirements of this Supplemental Announcement 01 document.

Under this Supplemental Announcement, DOE is seeking research and development (R&D) proposals that can advance hydrogen production, storage, and utilization technologies. It is anticipated that projects may be selected for initial awards with a possible continuation into subsequent years. DOE is proposing to undertake this effort under the Hydrogen Future Act of 1996, Public Law 104–271.

This solicitation is for Financial Assistance Applications, and the Statement of Work (SOW) and budget information requested under this Supplemental Announcement should only address the initial period of up to 12 months. The objective is to develop detailed R&D plans to validate the proposed hydrogen concept, along with necessary preliminary R&D and the development of other supporting documentation. Awards, if any will result from a merit review process applied to the applications.

DATES: Applications should be submitted as described in the Supplemental Announcement by December 15, 1999.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401. The Project Engineer is Doug Hooker, at (303) 275–4780 or e-mail at doug_hooker@nrel.gov. The Contracting Officer is Beth Peterman, at FAX: (303) 275–4788 or e-mail at beth_peterman@nrel.gov. The Supplemental Announcement can be obtained from the GFO website at *www.eren.doe.gov/golden/solicitations.html* as of the week of October 25, 1999. If unable to access the internet, you may obtain a copy of the Solicitation by calling Amy Castelli at (303) 275–4716, FAX (303) 275–4788.

Issued in Golden, Colorado, on October 25, 1999.

Matthew A. Barron,

Contracting Officer, GO.

[FR Doc. 99–28526 Filed 10–29–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Competitive Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice of Competitive Financial Assistance Solicitation.

SUMMARY: The Department of Energy (DOE) announces a competitive solicitation for applications for grants and cooperative agreements for information dissemination, public outreach, training, and related technical analysis and technical assistance activities involving renewable energy and energy efficiency. It is estimated that funding of approximately $4 to $6 million will be available under renewable energy programs, and $3.5 to $4.5 million will be available under energy efficiency programs for awards under this solicitation in fiscal year 2000. Areas of interest involving renewable energy include wind, photovoltaic, hydrogen, and bioenergy technologies. Energy efficiency areas of interest include energy efficiency in the transportation, buildings, and industrial sectors. The awards may be for a period of six months to three years. Proposals will be subject to the objective merit review procedures for the Office of Energy Efficiency and Renewable Energy (EERE). Eligible applicants for this solicitation are profit organizations, non-profit institutions and organizations, state and local governments, universities, individuals, Native American organizations, and Alaskan Native Corporations.

ADDRESSES: The formal solicitation document, which will include greater detail about specific program areas of interest, application instructions, and evaluation criteria, is expected to be issued mid-November 1999. The solicitation will include specific funding totals for each program area of interest. Application due dates for the various program areas will be staggered throughout January 2000, and applications will be processed by three DOE procurement offices to expedite awards. Prospective applicants under Program Area 6A, Technology and Systems Integration: Information Dissemination, Outreach, and Related Analysis, will be encouraged to submit a pre-application, not longer than two pages, on or around December 10th, 1999. A response to the pre-application encouraging or discouraging a formal application will be communicated to the applicant.

The formal solicitation document will be disseminated electronically as solicitation number DE–PS01–00EE10722 through the Department's Current Business Opportunities of the Headquarters Procurement Services Homepage located at *www.pr.doe.gov/solicit.html* and the *Industry Interactive Procurement System (IIPS)* Homepage located at *http://doe-iips.pr.doe.gov.* Effective October 1st, 1999, the IIPS system will become the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment.

To get more information about IIPS and to register your organization, go to *http://doe-iips.pr.doe.gov.* Follow the link on the IIPS home page to the Secure Services page. Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. A help document, which describes how IIPS works, can be found at the bottom of the Secure Services page.

FOR FURTHER INFORMATION: Contact the U.S. Department of Energy, Office of Headquarters Procurement Services, Attention MA–542 (Demer, EERE–2000), 1000 Independence Ave., SW, Washington, DC 20585, telephone number 800–683–0751, or e-mail at: eere.grants@pr.doe.gov. Questions or comments should be categorized as *administrative or financial assistance related.* Administrative questions or comments relate only to the operation of IIPS. All questions or comments should be directed to the attention of Mr. Nickolas A. Demer. The preferred method of submitting questions and/or comments is through e-mail. Only questions and comments submitted to Mr. Demer will be considered. Questions and/or comments requiring coordination with EERE program officials will be directed by DOE personnel to the cognizant offices internally through IIPS.

SUPPLEMENTARY INFORMATION: The Office of EERE supports DOE's strategic objectives of increasing the efficiency and productivity of energy use, while limiting environmental impacts; reducing the vulnerability of the U.S. economy to disruptions in energy supplies; ensuring that a competitive electric utility industry is in place that can deliver adequate and affordable supplies with reduced environmental impacts; supporting U.S. energy, environmental, and economic interests in global markets; and delivering leading-edge technologies. A key component of this program is the support of information dissemination, public outreach, training and related technical analysis and technical assistance activities to: (1) stimulate increased energy efficiency in transportation, buildings, and industry and increased use of renewable energy; and (2) accelerate the adoption of new technologies to increase energy efficiency and the use of renewable energy. The purpose of this solicitation is to further these objectives through financial assistance in the following areas:

Office of Power Technologies (OPT)—The primary mission of this Office is to lead the national effort to develop solar and other renewable energy technologies and to accelerate their acceptance and use on a national and international level. Also, OPT develops advanced high temperature superconducting power equipment and energy storage systems, addresses advanced technology needs for transmission and distribution systems, and provides information and technical assistance on electric utility restructuring issues. Financial assistance applications will be requested for information dissemination, public outreach, and related technical analysis activities involving several specific renewable technologies such as wind, photovoltaic, and hydrogen technologies. Also, proposals will be requested to perform the following activities: information dissemination, technical assistance, and outreach relating to electric utility restructuring; export market analysis, development, promotion, education, communication, and outreach for U.S. energy efficiency technologies; co-sponsorship of conferences involving the power technologies sector; the development of interdisciplinary undergraduate course curriculum on renewable energy; and Internet-based dissemination of information on Federal, State, and Local government incentives for renewable energy technologies. In addition, a draft request for proposals will be included for the development of energy project proposals for submission to the U.S. Initiative on Joint Implementation. This draft will be finalized early in calendar year 2000 following the completion of the United Nations Fifth Conference of the Parties and subsequent interagency negotiations in the United States.

Office of Industrial Technologies (OIT)—The mission of this Office is to improve the energy efficiency and pollution prevention performance of U.S. industry. The Office has a particular focus on nine industries, including the aluminum, steel, metal casting, glass, forest and paper products, chemicals, petroleum refining, agriculture, and mining industries. At the national level, the Office has successfully facilitated the development of industry visions and technology roadmaps with these nine industries. Financial assistance applications will be requested to support information dissemination and outreach to facilitate multi-States implementation of the Industries of the Future program.

Office of Transportation Technologies (OTT)—The mission of this Office is to support the development and use of advanced transportation vehicles and alternative fuel technologies which will reduce energy demand, particularly for petroleum; reduce criteria pollutant emissions and greenhouse gas emissions; and enable the U.S. transportation industry to sustain a strong competitive position in domestic and world markets. Financial assistance applications will be requested to support training for local Clean Cities Coalitions; workshops and conferences related to the Clean Cities Program; and technical assistance and outreach to Western Hemispheric countries to promote the adoption of Clean Cities Programs or similar volunteer programs to expand the use of alternative fuels and alternative fuel technologies.

Office of Building Technology, State and Community Programs (BTS)—The mission of this Office is to develop, promote, and integrate energy technologies and practices to make buildings more efficient and affordable and communities more livable. Financial assistance applications will be requested to support information dissemination, public outreach, and related technical analysis activities for the following BTS priorities: addressing the efficient and renewable energy technology information deficit among commercial building constructors, owners, and managers; promoting energy efficiency and renewable energy utilization as a public value for residential builders and home buyers; increasing the availability of energy efficient school design, retrofit and technical resource information for school board members and school administrators; preparing the building trades, building operators, and building managers for the new generation of efficient and renewable energy technologies; promoting the widespread installation of dedicated compact fluorescent lamp fixtures; and strengthening the *Rebuild America Program* through outreach activities with stakeholder organizations representing facility managers, business officials, and policy makers at colleges and universities, State and Local governments, elementary and secondary schools, and public and other low-income housing.

Bioenergy Initiative—The purpose of the Bioenergy Initiative is to assure coordination and integration of biomass related activities. A major goal of the Initiative is to triple U.S. use of bioenergy and biobased products by 2010. Applications will be requested for projects involving outreach about the benefits and useful applications of bioenergy and biobased products to one or more of the following types of entities: national environmental organizations, national agricultural organizations, State environmental and community development agencies, and other State policy makers.

The Office of the Assistant Secretary for EERE has the overall management responsibility for the entire Office of EERE, including the OPT, OTT, OIT, BTS, and the *Federal Energy Management Program (FEMP)*. Financial assistance applications will be requested to support information dissemination, outreach, and related analysis activities under Program Area 6A, *Technology and Systems Integration: Information Dissemination, Outreach, and Related Analysis*, for projects which have the objectives to:

(1) encourage the design, development, and adoption of energy efficiency and/or renewable energy systems that incorporate two or more technologies, or incorporate technology(ies) supported by at least two DOE program offices (including at least one from EERE), and that have identified potential for multiple applications across sectors;

(2) stimulate greater technology integration and systems integration activities, including multi-application product development (a) within the energy efficiency and renewable energy sector (e.g., multi-feedstock/multi-product biorefineries; distributed power generation technologies, applications, and grid interface issues; combined heat-and-power systems; industrial, commercial, and district-energy concepts; on-site clean fuel production and automotive fueling systems; and active/passive commercial building energy management systems); and (b) between EERE and the fossil energy sector (e.g., coal/biomass co-firing; higher efficiency

natural gas technologies; multi-fuel micro-turbines; carbon extraction and sequestration technologies);

(3) encourage the design, development, and adoption of EERE technology-based strategies for accomplishing environmental and human health objectives under the Clean Air Act and other environmental laws and policies, particularly at the State and Local government level;

(4) encourage the use of Geographical Information Systems (GIS) and other computer-assisted analytical, planning, and decision-support tools to assist communities to evaluate the energy, environmental, and economic impacts and costs of various options for energy generation, distribution, and use; and

(5) develop financial risk and liability models for investments in EERE technologies and systems in order to assist investors and other stakeholders to evaluate financial risk exposure resulting from energy investment choices.

In addition, financial assistance applications will be requested to support region-wide technical assistance activities in developing countries and countries in transition to support the development of human and institutional capabilities related to EERE by governmental entities, not-for-profit organizations, and industry organizations. The region-wide activities must encompass one of the following regions: Latin America, Africa, South Asia, or Eastern Europe, and encompass several countries within that region.

Million Solar Roofs Initiative (MSRI)—The purpose of the MSRI is to spur the installation of solar energy systems on one million U.S. buildings by 2010. The initiative seeks to catalyze market demand through the elimination of barriers to the use of solar energy systems on buildings and the establishment of State and Community Partnerships. Applications will be requested under this solicitation to develop information, training, and workshops to assist in the elimination of specific barriers. A separate solicitation providing direct support to Million Solar Roofs State and Community Partnerships will be issued by the Golden Field Office not later than January 2000. Additional information about the programs of the Office of EERE can be obtained at the Office's Internet site at *http://www.eren.doe.gov/ee.html*.

Issued in Washington, D.C. on October 26th, 1999.

Arnold A. Gjerstad,

Acting Director, Program Services Division, Office of Headquarters Procurement Services.

[FR Doc. 99–28525 Filed 10–29–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–254–003]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

October 26, 1999.

Take notice that on October 19, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) one original and five copies of First Revised Sheet No. 94a to become effective November 1, 1999.

Destin states that the purpose of this filing is to comply with the Commission's letter order dated October 4, 1999 in the above-referenced docket. Destin states that it will provide shippers with individual notice by facsimile or electronic mail of any scheduled quantities that are being bumped. Destin has requested that this sheet be made effective as of November 1, 1999. Destin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28447 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–613–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

October 26, 1999.

Take notice that on October 18, 1999, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Second Revised Volume No. 2, certain tariff sheets to be effective October 18, 1999.

Natural states that these tariff sheets were filed to cancel gas exchange agreements between Natural and Transcontinental Gas Pipe Line Corporation (Transco) under Natural's Rate Schedules X–59, X–71, X–117 and X–135. Natural states that the tariff sheets were filed in compliance with Ordering Paragraph (A) of the Federal Energy Regulatory Commission's (Commission) order issued October 6, 1999 in Docket No. CP99–613–000.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective October 18, 1999, the date of this filing, pursuant to current Commission policy.

Natural states that it mailed a copy of this filing to the affected party, Transco.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28445 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–477–002]

North American Energy Conservation, Inc. v. CNG Transmission Corporation; Notice of Compliance Filing

Octobr 26, 1999.

Take notice that on October 18, 1999, CNG Transmission Corporation (CNG) tendered a filing in the above referenced docket to comply with the Commission's order dated September 17, 1999 in this proceeding, 88 FERC 61,255 (1999) ("September 17 Order").

CNG included its compliance as part of another document which included its request for rehearing of the September 18, 1999 order, in Docket No. RP99–477–001.

CNG states that the Commission Order directed CNG to respond to several questions about CNG's capacity reservation and posting practices. CNG states the Commission outlined three specific issues with respect to CNG's practices: (1) reservation of capacity; (2) minimum term posting; and (3) an August 2, 1999 posting. CNG states that its filings addresses these issues.

CNG requests confidential treatment for shipper agreements submitted as Attachments A and B of said filing. As explained in the filing, CNG asserts that public disclosure of this information would put one of CNG's customers at a competitive disadvantage.

Any party desiring to comment in this filing should file comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, on or before November 8, 1999. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28446 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–364–004 and RP99–251–004]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

October 26, 1999.

Take notice that on October 19, 1999, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, (Tariff) one original and five copies of Second Revised Sheet No. 88 to become effective November 1, 1999.

South Georgia states that the purpose of this filing is to comply with the Commission's letter order dated October 4, 1999 in the above-referenced docket. South Georgia states that it will provide shippers with individual notice by facsimile or electronic mail of any scheduled quantities that are being bumped. South Georgia has requested that these sheets be made effective as of November 1, 1999. South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood. A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28443 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–363–004 and RP99–253–006]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

October 26, 1999.

Take notice that on October 19, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, (Tariff) Second Revised Sheet No. 155 to become effective November 1, 1999.

Southern states that the purpose of this filing is to comply with the Commission's letter order dated October 4, 1999 in the above-referenced docket. Southern states that it will provide shippers with individual notice by facsimile or electronic mail of any scheduled quantities that are being bumped. Southern requested that this sheet be made effective as of November 1, 1999. Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28442 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–26–000]

TransColorado Gas Transmission Company; Notice of Request for Limited Waiver

October 26, 1999.

On October 15, 1999, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, TransColorado Gas Transmission Company (TransColorado) hereby petitions the Commission for a limited waiver of Section 284.10(b) of the Commission's Regulations and the nomination procedures in TransColorado's FERC Gas Tariff.

Specifically, TransColorado seeks waiver of certain nomination cycles during the period between the end of 1999 and the beginning of 2000 (Y2K rollover period). The limited waiver is intended to diminish the potential for business disruptions and to promote stability of business transactions during the Y2K rollover period. The requested waiver is consistent with the limited waiver that Southern Natural Gas Company (Southern) and its affiliate pipelines filed on or about October 12, 1999 (Southern model), except that TransColorado does not request waiver for capacity-release transactions as did Southern.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28444 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–10–000, et al.]

Berkshire Power Company, LLC, et al; Electric Rate and Corporate Regulation Filings

October 22, 1999.

Take notice that the following filings have been made with the Commission:

1. Berkshire Power Company, LLC

[Docket No. EG00–10–000]

Take notice that on October 18, 1999, Berkshire Power Company, LLC (Berkshire Power), 200 High Street, 5th Floor, Boston, Massachusetts 02110, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that Berkshire Power will maintain Exempt Wholesale Generator Status after a transfer for financing purposes of certain upstream equity interests to Mesquite Investors, L.L.C., a newly-created entity, and El Paso Power Holding Company, a direct subsidiary of El Paso Energy Corporation, as described in the Application. Berkshire Power is a Massachusetts limited liability company that was formed for the purpose of owning and operating the Berkshire Power Plant (Facility), a 272-megawatt gas-fired generation plant being constructed in Agawam, Massachusetts, and is directly and exclusively engaged in the generation of electric energy for sale at wholesale. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge that represents recovery of the cost of wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992.

Copies of this application have been served upon the Massachusetts Department of Telecommunications and Energy and the Securities and Exchange Commission.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments those that concern the adequacy or accuracy of the application.

2. Public Service Company of New Hampshire

[Docket Nos. EL96–53–005 and EL95–37–000]

Take notice that on October 15, 1999, Public Service Company of New Hampshire (PSNH) filed a settlement between PSNH and the New Hampshire Electric Cooperative, Inc. (NHEC), which restructures electric services provided by PSNH to NHEC and terminates pending agreements, a letter agreement and notice of cancellation, is being made pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Part 35 of the Commission';s Regulations, 18 CFR Part 35. Because this filing terminates pending FERC proceedings, Docket Nos. EL96–53–000 and EL95–37–000, it also is being submitted pursuant to Rule 602 (18 CFR 385.602).

The requested effective date for the agreements is January 1, 2000.

The Applicant states that copies of this filing have been sent to the New Hampshire Public Utilities Commission and the parties to Docket No. EL96–53–000.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Yadkin, Inc.

[Docket No. ER96–2603–002]

Take notice that on October 15, 1999, Yadkin, Inc., tendered for filing an updated generation market power analysis.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Indiana Gas and Electric Company

[Docket No. ER96–2734–002]

Take notice that on October 15, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing an updated market power study in compliance with an order issued by the Federal Energy Regulatory Commission on October 15, 1996, in the above-referenced docket. See Southern Indiana Gas and Electric Company, 77 FERC ¶ 61,024 (1996).

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Reliable Energy, Inc.

[Docket No. ER98–3261–002]

Take notice that on October 18, 1999, the above-mentioned power marketer filed its quarterly report with the Commission in the above-mentioned proceeding for information only.

6. Carolina Power & Light Company, Monroe Power Company

[Docket Nos. ER99–2311–002 and ER99–2324–002 (not consolidated)]

Take notice that on October 19, 1999, Carolina Power and Light Company (CP&L) and Monroe Power Company (MPC) notified the Commission of a change in status associated with CP&L's proposed share exchange with the Florida Progress Corporation.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. CMS Generation Michigan Power, LLC, Front Range Energy Associates, LLC, Central Maine Power Company, Deseret Generation & Transmission Co-operative

[Docket Nos. ER00–121–000, ER00–141–000, ER00–142–000, ER00–145–000]

Take notice that on October 18, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. North Atlantic Energy Corporation

[Docket No. ER00–126–000]

Take notice that on October 15, 1999, North Atlantic Energy Corporation (North Atlantic), pursuant to Section 205 of the Federal Power Act, tendered for filing proposed changes to charges for decommissioning Seabrook Unit 1 to be collected under North Atlantic Federal Energy Regulatory Commission Rate Schedules Nos. 1 and 3. These charges are recovered under a formula rate that is not changed by the filing. The proposed adjustment in charges is necessitated by a ruling of the New Hampshire Nuclear Decommissioning Finance Committee adjusting the funding requirements for decommissioning Seabrook Unit 1.

North Atlantic has requested waiver of the notice and filing requirements to accept a retroactive effective date of June 8, 1999 (including adjusted decommissioning funding amounts due from January 1, 1999 to June 30, 1999 under the new funding requirements as billed by NAESCO to North Atlantic in accordance with the Final Order).

Copies of this filing were served upon North Atlantic's jurisdictional customer and the New Hampshire Public Utilities Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER00–127–000]

Take notice that on October 15, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Citizens Utilities Company Vermont Electric Division. (Citizens Utilities VED) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Citizens Utilities VED as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to Citizens Utilities VED and to the Pennsylvania Public Utility Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER00–128–000]

Take notice that on October 15, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with NUI Energy Brokers, Inc. (NUIEB) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NUIEB as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to NUIEB and to the Pennsylvania Public Utility Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER00–129–000]

Take notice that on October 15, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Enron Energy Services, Inc. (EESI), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds EESI as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to EESI and to the Pennsylvania Public Utility Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Wolverine Power Supply Cooperative, Inc. Atlantic City Electric Company, Delmarva Power & Light Company, Delmarva Power & Light Company,Arizona Public Service Company

[Docket No. ER00–130–000, ER00–132–000, ER00–131–000, ER00–133–000, ER00–137–000]

Take notice that on October 15, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. FortisUS Energy Corporation

[Docket No. ER00–136–000]

Take notice that on October 15, 1999, FortisUS Energy Corporation (FortisUS) tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of electric capacity and energy, including certain ancillary services, at market-based rates and for related waivers and blanket authorizations.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER00–138–000]

That notice that on October 15, 1999, Arizona Public Service Company (APS), tendered for filing a revised Contract Demand Exhibit A to APS–FERC Rate Schedule No. 170 between APS and the Town of Wickenburg (Wickenburg) for the Operating Year 1999–2000 through 2003–2004.

Current rate and revenue levels are unaffected. No other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on the Town of Wickenburg and the Arizona Corporation Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER00–139–000]

Take notice that on October 15, 1999, Commonwealth Edison Company (ComEd), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of Service Agreement No. 22 between ComEd and Upper Peninsula Power Company (UPP) under ComEd's Market-Based Rate Schedule (FERC Electric Tariff, Original Volume No. 6).

ComEd requests an effective date of December 14, 1999, for the cancellation.

ComEd served copies of the filing upon UPP.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28492 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–726–003, et al.]

Great Bay Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

October 26, 1999.

Take notice that the following filings have been made with the Commission:

1. Great Bay Power Corporation

[Docket No. ER96–726–003]

Take notice that on October 18, 1999, Great Bay Power Corporation (Great Bay), tendered for filing an updated generation market power analysis.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Indiana Gas and Electric Company

[Docket No. ER96–2734–002

Take notice that on October 15, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing an updated market power study in compliance with an order issued by the Federal Energy Regulatory Commission on October 15, 1996, in the above-referenced docket. See Southern Indiana Gas and Electric Company, 77 FERC ¶61,024 (1996).

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Dayton Power and Light Company

[Docket No. ER98–1292–001]

Take notice that on October 18, 1999, Dayton Power and Light Company (Dayton), tendered for filing a refund compliance report in accordance with the Commission's Order approving the settlement in Docket Nos. ER98–1292–000 and EL98–20–000.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. California Power Exchange Corporation

[Docket No. ER99–2229–002]

Take notice that on October 18, 1999, the California Power Exchange Corporation (PX), tendered for filing a compliance filing in response to the Commission's September 17, 1999 order in this proceeding. The compliance filing addresses the allocation of costs between CalPX and its division known as CalPx Trading Services (CTS).

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Corporation

[Docket No. ER99–2331–002]

Take notice that on October 18, 1999, Duke Electric Transmission, a division of Duke Energy Corporation (Duke), tendered for filing a compliance filing in the above-referenced docket involving generation imbalance charges.

Duke states that a copy of the filing has been served on the Service List in this proceeding.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER99–3468–002]

Take notice that on October 18, 1999, Delmarva Power & Light Company (Delmarva), tendered a compliance filing to comport with the Commission's Order issued on September 17, 1999. The filing revises an unexecuted Interconnection Agreement between Delmarva and the Commonwealth Chesapeake Company, LLC.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company AmerGen Energy Company, L.L.C.

[Docket No. ER99–4034–000]

Take notice that on October 19, 1999 AmerGen Energy Company, L.L.C. and Illinois Power Company jointly tendered for filing an amendment to their filing submitted in this docket on August 9, 1999. The amendment is intended to address the deficiency letter issued in this docket on September 13, 1999 by the Director, Division of Rate Applications.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Metropolitan Edison Company

[Docket No. ER00–134–000]

Take notice that on October 15, 1999, Metropolitan Edison Company (doing business and referred to as GPU Energy), tendered for filing a Generation Facility Transmission Interconnection Agreement between GPU Energy and Solar Turbines Incorporated.

GPU Energy requests an effective date of October 18, 1999, for the agreement.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER00–135–000]

Take notice that on October 15, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 12 executed service agreements for transmission service under the PJM Open Access Transmission Tariff. The agreements are as follows: 4 umbrella agreements for firm point-to-point transmission service agreements with Energy America L.L.C., Shell Energy Services Company, L.L.C., Sithe Power Marketing, L.P., and Utility.com, Inc.; 4 umbrella non-firm point-to-point transmission service agreements with Energy America L.L.C., Shell Energy Services Company, L.L.C., Sithe Power Marketing, L.P., and Utility.com, Inc.; and 4 umbrella agreements for network integration transmission service under state required retail access programs with Energy America L.L.C., Reliant Energy Retail, Inc., Shell Energy Services Company, L.L.C., and Utility.com, Inc.

Copies of this filing were served upon the parties to the service agreements.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. SmartEnergy.Com, Inc.

[Docket No. ER00–140–000]

Take notice that on October 15, 1999, SmartEnergy.Com, Inc. (SmartEnergy), petitioned the Commission for acceptance of SmartEnergy Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

SmartEnergy intends to engage in wholesale electric power and energy purchases and sales as a marketer. SmartEnergy is not in the business of generating or transmitting electric power. SmartEnergy has no members who own or control any electric generation, transmission, franchised retail service territories, generation sites, natural gas fuel supplies, or any other potential barriers to entry.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Ohio Power Company

[Docket No. ER00–144–000]

Take notice that on October 18, 1999, Ohio Power Company (Ohio Power), tendered for filing Amendment No. 8, to the Station Agreement among Ohio Power Company, Buckeye Power, Inc., and Cardinal Operating Company.

Ohio Power requests that the amendment be made effective as soon as possible, but in no event later than 60 days from the date of filing.

Copies of the filing were served upon Buckeye Power, Inc., and the Public Utilities Commission of Ohio.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. South Carolina Electric & Gas Company

[Docket No. ER00–146–000]

Take notice that on October 18, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing an unsigned service agreement establishing Statoil Energy Inc. as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Statoil Energy Inc., and the South Carolina Public Service Commission.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Pool

[Docket No. ER00–147–000]

Take notice that on October 18, 1999, the New England Power Pool Participants Committee (NEPOOL), tendered for filing a Special Y2K Transitional Rule (Y2K Transitional Rule) in the above-captioned docket.

NEPOOL has requested that the Commission permit the Y2K Transitional Rule to become effective as of December 17, 1999.

NEPOOL states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER00–148–000]

Take notice that on October 19, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Network Integration Transmission Service Agreement with MidAmerican Energy Company (MidAmerican, as a retail merchant) dated September 24, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of September 24, 1999, for the Network Integration Transmission Service Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER00–149–000]

Take notice that on October 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 8, 1999, between KCPL and Northern States Power Company. This Agreement provides for the rates and charges for Short-term Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of September 22, 1999 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER00–150–000]

Take notice that on October 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 8, 1999, between KCPL and El Paso Power Services. This Agreement provides for the rates and charges for Non-Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

KCPL proposes an effective date of September 22, 1999 and requests waiver of the Commission's notice requirement.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Green Mountain Power Corporation

[Docket No. ER00–151–000]

Take notice that on October 19, 1999, Green Mountain Power Corporation tendered for filing a Notice of Cancellation of Electric Service Agreement between Green Mountain Power Corporation and Northfield Electric Department of Northfield, Vermont and Power Sales Agreement between Green Mountain Power Corporation and Northfield Electric Department.

Copies of the Notice of Cancellation were served on the Northfield Electric Department and on the Vermont Public Service Board. Vermont and Power Sales Agreement between Green Mountain Power Corporation and Northfield Electric Department.

Copies of the Notice of Cancellation were served on the Northfield Electric Department and on the Vermont Public Service Board.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–152–000]

Take notice that on October 18, 1999, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between the Companies and Illinova Power Marketing, Inc., under the Companies Open Access Transmission Tariff.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–153–000]

Take notice that on October 18, 1999, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing an unexecuted unilateral Service Agreement between the Companies and Reliant Energy Services, Inc., under the Companies Rate Schedule MBSS.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–154–000]

Take notice that on October 18, 1999, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and Illinova Power Marketing, Inc., under the Companies Open Access Transmission Tariff.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER00–155–000]

Take notice that on October 18, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated October 15, 1999 with Duquesne

Light Power Marketing under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Duquesne Light Power Marketing as a customer under the Tariff.

DLC requests an effective date of October 15, 1999 for the Service Agreement.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. North American Electric Reliability Council

[Docket No. ER00–157–000]

Take notice that on October 19, 1999, the North American Electric Reliability Council (NERC), tendered for filing a proposal for a new transmission service, Next Hour Market (NHM) Service. The filing includes a proposed set of standard revisions to the pro forma tariff for adoption into the tariff of each transmission provider that elects to offer the service.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. PSI Energy, Inc.

[Docket No. ER00–188–000]

Take notice that on October 22, 1999, PSI Energy, Inc. (PSI), tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1 (15th Revision) and Original Volume No. 2 (13th Revision), and its Electric Rate Schedule FERC Nos. 233, 234, 241 and 256.

The proposed changes would increase annual revenues from jurisdictional sales and service by $5,004,000 based on the twelve (12)-month period ending December 31, 2000.

PSI has indicated that the filing of new tariffs and rates has been mandated by inadequate earnings on its jurisdictional sales. The average rate of return on such sales is, in its opinion, inadequate to attract the capital required by PSI to pay for necessary expansion of its electric plant and increased operating expenses. PSI also indicated that the filing has been made to satisfy the requirements of the Federal Energy Regulatory Commission in Docket Nos. EC93–6–000, EC93–6–001 and ER94–1015–000.

Copies of the filing were served upon the Indiana Utility Regulatory Commission; the City of Logansport, Indiana; Jackson County Rural Electric Membership Corporation; the Indiana Municipal Power Agency; the Wabash Valley Power Association, Inc.; and the Indiana municipalities of Brooklyn, Coatesville, Dublin, Dunreith, Hagerstown, Knightstown, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spiceland, Straughn, Thorntown, Veedersburg and Williamsport.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28491 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

October 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 1934–011.

c. *Date Filed:* September 20, 1999.

d. *Applicant:* Southern California Edison Company (SCE).

e. *Name of Project:* Mill Creek Nos. 2 and 3 Hydroelectric Project.

f. *Location:* On Mill/Creek in San Bernardino County, California near the town of Yucaipa. The project is located within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant's Contact:* Daryl Fryer, 300 N. Lone Hill Ave., San Dimas, CA, 91773, (909) 394–8700.

i. *FERC Contact:* Any questions on this notice should be addressed to Doan Pham at (202) 219–2851 or e-mail address *doan.pham@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, or protests:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (1934–011) on any comments, protests, or motions filed.

k. *Description of Amendment:* SCE filed an application to reflect changes in transmission facilities and project as-built conditions. Certain electrical facilities and transmission lines would be removed from the project boundary because they are part of SCE's interconnected system and are no longer necessary for project's operation and maintenance. SCE also proposes to remove from the project boundary, two access roads and one foot trail that are no longer in existence or not used exclusively for the project. The changes will reduce the project area by about 0.84 acres of lands which are managed by the U.S. Forest Service.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/ online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title

“COMMENTS”, “RECOMMENDATIONS FOR TERMS AND CONDITIONS”, “PROTEST”, OR “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A.Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28448 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATION COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: October 20, 1999, 64 FR 57449.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 27, 1999, 10 a.m.

CHANGE IN THE MEETING: The following Docket No. has been added to Item CAG–46 on the Agenda scheduled for the October 27, 1999 meeting.

Item No.	Docket No. and company
CAG–46	RP99–500–000, Maritimes & Northeast Pipeline, L.L.C.

David P. Boergers,

Secretary.

[FR Doc. 99–28600 Filed 10–28–99; 12:05 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Standards of Performance for New Stationary Sources Lime Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart HH, Standards of Performance for New Stationary Sources—Lime Manufacturing Plants, OMB Control Number 2060–0063, expiration date 12/31/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, by E-Mail at *Farmer.Sandy@epamail.epa.gov* or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1167.06.

SUPPLEMENTARY INFORMATION: *Title:* NSPS Subpart HH, Standards of Performance for New Stationary Sources—Lime Manufacturing, OMB Control Number 2060–0063, EPA ICR No. 1167.06, expiration date 12/31/99. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Lime Manufacturing Plants were proposed on May 3, 1977 and promulgated on April 26, 1984. These standards apply to each rotary lime kiln used in lime manufacturing, which commenced construction, modification or reconstruction after May 3, 1977. The standards do not apply to facilities used in the manufacture of lime at kraft pulp mills. The purpose of this NSPS is to control the emissions of particulate matter from lime manufacturing plants, specifically from the operation of the rotary lime kilns. The standards limit particulate emissions to 0.30 kilogram per megagram (0.60 lb/ton) of stone feed, and limit opacity to 15% when exiting from a dry emission control device. This information is being collected to assure compliance with 40 CFR part 60, subpart HH.

There are three types of reporting requirements for owners or operators of facilities under this NSPS; (1) notifications (e.g., notice for new construction or reconstruction, anticipated and actual startup dates, initial performance test, and demonstration of the CMS); (2) a report on the results of the performance test; and (3) semiannual reports of instances of occurrence and duration of any startup, shutdown, or malfunctions. The purpose of the notifications are to inform the Agency or delegated authority when a source becomes subject to this standard. Performance tests are conducted to ensure that the new plants operate within the boundaries outlined in the standard. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. Under this standard the data collected by the affected industry is retained at the facility for a minimum of two years and made available for inspection by the Administrator.

The Administrator has judged that PM emissions from lime manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of lime manufacturing plants must notify EPA of construction, modification, startups, shutdowns, malfunctions and performance test dates, as well as provide reports on the initial performance test and annual excess emissions. The industry costs associated with the information collection activity in the standards are capital costs and O&M costs associated with continuous emissions monitoring and labor costs associated with recordkeeping and reporting. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 4, 1999.

Burden Statement: The initial burden regarding notifications (40 CFR 60.7) and performance testing (40 CFR 60.8) for a new source subject to this subpart is estimated to average 349.8 hours. The annual public reporting and recordkeeping burden for this collection of information on existing facilities is estimated to average 41 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Lime Manufacturing Plants.

Estimated Number of Respondents: 49.

Frequency of Response: Semi-annually, Initial.

Estimated Total Annual Hour Burden: 4,190.

Estimated Total Annualized Capital, O&M Cost Burden: $95,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1167.06 and OMB Control No. 2060–0063 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 25, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–28502 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Construction Grants Delegation to States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Construction Grants Delegation to States, EPA ICR No. 0909.06 and OMB Control No. 2040–0095, expiration date December 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0909.06.

SUPPLEMENTARY INFORMATION: *Title:* Construction Grants Delegation to States; OMB Control No. 2040–0095; EPA ICR No. 0909.06; expiring 12/31/99. This is a request for extension of a currently approved collection.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the Construction Grants Delegation to States, 40 CFR part 35, subpart J, and Title II of the Clean Water Act (CWA). While the Construction Grants Program is being phased out and replaced by the State Revolving Loan Fund (SRF) program, collection activities for the Construction Grants Program must continue until program completion. The program includes reporting, monitoring and program requirements for municipalities and delegated States.

The information collection activities described in this ICR are authorized under Section 205(g) of the Clean Water Act as amended, 33 U.S.C. 1251 *et seq.*, and under 40 CFR part 35, subpart J. The requested information provides the minimum data necessary for the Federal government to maintain appropriate fiscal accountability for use of section 205(g) construction grant funds. The information is also needed to assure an adequate management overview of those State project review activities that are most important to fiscal and project integrity, design performance, Federal budget control, and attainment of national goals.

Managers at the State and Federal levels both rely on the information described in this ICR. State managers rely on the information for their own program and project administration. Federal managers rely on this information to assess, control, and predict the impacts of the construction grants program on the Federal Treasury and future budget requirements. Federal managers also use this information to respond to OMB and Congressional requests and to maintain fiscal accountability.

In addition, builders of wastewater treatment plants use the information discussed in this ICR. The builders of these plants assess and use the information in the Innovative/Alternative Technology Data Base File to obtain technical information on innovative or alternative wastewater treatment systems.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7/6/99 (64 FR 36350); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 59.4 hours and 20 hours per response respectively. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and municipalities.

Estimated Number of Respondents: 32.

Frequency of Response: On occasion and annually.

Estimated Total Annual Hour Burden: 6016 hours.

Estimated Total Annualized Non-labor Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0909.06 and OMB Control No. 2040–0095 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 25, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–28503 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Recycling and Emissions Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Recycling and Emissions Reduction Program, OMB Control Number: 2060–0256, expiration date: 12/31/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1626.07.

SUPPLEMENTARY INFORMATION: *Title:* National Recycling and Emissions Reduction Program (OMB Control No. 2060–0256; EPA ICR No. 1626.07) expiring 12/31/99. This is a request for an extension of a currently approved collection.

Abstract: During 1993, EPA promulgated regulations under section 608 of the Clean Air Act Amendments of 1990 (Act) for the recycling of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) in air-conditioning and refrigeration equipment. These regulations were published in 58 FR 28660 and are codified at 40 CFR subpart F (section 82.150 *et seq.*).

The continued collection of this information will allow the Agency to carry on enforcement of the Act by reducing emissions of class I and class II refrigerants to the lowest achievable level during the service, maintenance, repair, and disposal of appliances in accordance with section 608 of the Act. The Act (40 CFR subpart F (section 82.166)) requires affected entities to maintain records and report requested information to the Agency. The ICR renewal does not include any burden for third-party or public disclosures not previously reviewed and approved by OMB.

Entities affected by this action are refrigeration and air-conditioning contractors, refrigerated transport service dealers, scrap metal recyclers, and automobile dismantlers and recyclers. Additional entities affected include Clean Air Act section 608 technician certification programs, equipment testing organizations, refrigerant wholesalers and purchasers, refrigerant reclaimers, and other establishments that perform refrigerant removal, service, or disposal.

Affected entities are required to maintain records and submit reports. Recordkeeping requirements and submission of reports to EPA vary depending on the entity and the length of time that the entity has been in service. Specific reporting and record keeping requirements were published in 58 FR 28660 and are codified under 40 CFR subpart F (section 82.166).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. the OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 05/21/99 (99 FR 12941); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 0.18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 2,342,047.

Estimated Number of Respondents: 2,342,047.

Frequency of Response: Varies (occasional, annual, and semiannual).

Estimated Total Annual Hour Burden: 419,546 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1626.07 and OMB Control No. 2060–0256 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division

(2137), 401 M Street, SW,
Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 26, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–28504 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[AZNV017–FOI; FRL–6467–9]

Inadequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy determination.

SUMMARY: In this document, Region IX is augmenting the national list of adequacy determinations for State Implementation Plans (SIP) submittals for transportation conformity purposes as identified in 64 FR 31217–31219 (June 10, 1999). This notice describes a finding of inadequacy for the PM_{10} attainment submittals with respect to emissions budget criteria for Clark County, Nevada and Yuma County, Arizona.

DATES: These budgets are effective November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1247 or *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR Part 93, requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

On March 2, 1999, the D.C. Circuit Court of Appeals ruled that submitted SIPs cannot be used for conformity determinations unless EPA has affirmatively found the conformity budget adequate through a process providing for public notice and comment. Where EPA finds a budget inadequate, it cannot be used for conformity determinations.

The new process for determining the adequacy of submitted SIP budgets is contained in a May 14, 1999, memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." EPA will be revising the conformity rule to codify this guidance. You can obtain this guidance at *http://www.epa.gov/oms/traq* from this website, click on the conformity button and look for "Adequacy Review of SIP Submissions for Conformity."

Status of Submitted Budgets

In Las Vegas, Nevada, the serious PM_{10} attainment plan did not establish any PM_{10} emission budgets for the annual or 24 hour PM_{10} standard. Thus the plan does not contain emission budgets that are adequate for use in conformity determinations. In a letter dated July 12, 1999, from EPA to the Nevada Division of Environmental Protection, Region IX determined that the area's budgets are inadequate and we are publishing that finding in this notice.

In Yuma, AZ, the only submitted budgets for transportation conformity purposes pertain to the area's moderate attainment demonstration for the pollutant PM_{10}. In a letter dated July 12, 1999, from EPA to the Arizona Department of Environmental Quality, Region IX determined that the area's budgets are inadequate and we are publishing that finding in this notice.

As stated in the May 14, 1999, guidance, EPA's adequacy review is not to be used to prejudge EPA's ultimate approval or disapproval of the submitted SIPs. Approvability of the two SIPs mentioned in this notice will be addressed in a future rulemaking.

Because both areas have performed certain other emissions analyses, their transportation programs may continue despite this finding of inadequacy regarding submitted budgets. Furthermore, the areas can continue to use these alternative emission analyses for future conformity determinations.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 21, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–28499 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–2]

State and Tribal Environmental Justice Grants Program; Request for Applications Guidance—FY 2000

Purpose of Notice

The purpose of this notice is to solicit applications from eligible candidates under the State and Tribal Environmental Justice (STEJ) Grants Program, sponsored by the U.S. Environmental Protection Agency, Office of Environmental Justice.

For FY 1998 and FY 1999, EPA awarded five STEJ grants each fiscal year totaling $500,000 to (4) states and (1) tribe. Thus, there have been ten grants awarded totaling $1,000,000. A list of the recipients and their project descriptions are provided in Appendix E.

For FY 2000, EPA expects to once again award a total of $500,000 to states and tribes to demonstrate how to effectively address environmental justice issues. A maximum of $100,000 will be awarded to each recipient, contingent upon the availability of funds. A total of five grants are expected to be awarded. The standard project and budget periods are for one year. The grantee can request that the project and budget periods be extended up to three years, with the total budget of $100,000 provided during the first year. This guidance outlines the purpose, authorities, eligibility, and general procedures for application and award of the FY 2000 STEJ Grants.

The application must be postmarked no later than Friday, January 28, 2000.

Grants Program Overview

The STEJ Grants Program was created to provide financial assistance to state and tribal environmental departments that are working to address environmental justice issues, and to support efforts to establish environmental justice programs.

A. Program Goals

The STEJ Grants Program is intended to assist states and tribes in ultimately achieving the following environmental justice goals and objectives:

- Reduce or prevent disproportionately high and adverse human health or environmental effects on low-income communities and/or minority communities.

- Integrate environmental justice goals into a state's or tribe's policies, programs, operations and activities.
- Provide financial and technical resources to help build the capacity to address environmental justice issues at the state/local community level and tribal/tribal community level.
- Set up model programs to address enforcement and compliance issues in affected communities.
- Integrate measurable environmental justice goals within the annual Performance Partnership Agreement (PPAs) and Memoranda of Understanding (MOUs) between a state and EPA, or within the Tribal Environmental Agreement (TEAs) between EPA and a tribe.
- Improve public participation in the decision-making processes (*e.g.* permitting processes, development of regulations and policies).

B. Background on Environmental Justice

EPA considers environmental justice to be the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, or income with respect to the development, implementation, enforcement and compliance of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies.

On February 11, 1994, President Clinton issued Executive Order (EO) 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (Appendix A). Environmental justice focuses attention on the need to ensure equal environmental protection, and the equal enforcement of protective environmental laws, rules, regulations, and policies for all.

Eligible Applicants and Activities

C. Who May Submit an Application?

Any state or tribal agency may submit an application if it manages, or is eligible to manage, an EPA program and expressed interest in working with community-based grassroots organizations and other environmental justice stakeholders to address environmental justice concerns in communities. EPA requests that only one application be submitted from each state or tribe interested in receiving assistance. The project can be a partnership involving more than one state department, or if from a tribe, more than one tribal department. The project may also involve a consortium of state or tribal governments. The degree of support provided by top government officials from either the state or tribe will be an important factor in the selection process.

D. May an Individual or Organization Apply?

No. Only a state or federally-recognized tribal government may apply. However, the applying states or tribes should work with community-based grassroots organizations when developing their proposals. Preference will be given to the states or tribes who involve community-based grassroots organizations in the development of their proposals.

E. What Types of Projects Are Eligible for Funding?

Funds are to be used for activities authorized by the appropriate statutory provisions listed in paragraph F below, to accomplish the following: The development of a model state or tribal environmental justice executive order, strategic plan, and/or conduct studies, analyses, and training in the development of a state or tribal environmental justice program.

Preferences

Preference will be given to the states or tribes which have not received a STEJ grant in the past and which include the following in their application:

(1) A description of how environmental justice/community-based grassroots organizations were involved in the development of the proposal, and

(2) Identification of the matching or cost sharing funds to be provided by the state or tribe for the project.

F. What Activities Are Authorized To Be Conducted by Grant Recipients?

The State and Tribal Environmental Justice Grants are for multimedia environmental justice activities. For this reason, each project must include activities which are authorized by two or more of the following environmental statutes.

a. *Clean Water Act*, Section 104(b)(3): Conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

b. *Safe Drinking Water Act*, Sections 1442(b)(3): develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

c. *Solid Waste Disposal Act*, Section 8001(a): Conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste management and hazardous waste management.

d. Clean Air Act, Section 103(b)(3): conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

e. Toxic Substances Control Act, Section 10(a): conduct research, development, and monitoring activities on toxic substances.

f. Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a): conduct research on pesticides.

g. Comprehensive Environmental Response, Compensation, and Liability Act, Section 311(c): conduct research related to the detection, assessment, and evaluation of the effects on, and risks to, human health from hazardous substances.

h. Marine Protection, Research, and Sanctuaries Act, Section 203: conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

G. What Regulations Apply to These Grants?

The STEJ Grants will be governed by 40 CFR Part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments, and OMB Circular A–87. Note, in particular, that there are restrictions on the use of grant funds for lobbying and that grant funds may not be used for intervention in federal regulatory or adjudicatory proceedings.

Funding

H. Are Matching Funds Required?

Matching funds are not required, but are strongly encouraged. EPA may give preference to those states or tribes which provide matching funds, since this would demonstrate a greater commitment.

Application Requirements

I. What Is Required for Applications?

In order to be considered for funding under this program, proposals must have the following: (Note—the points identified after the specific criteria will be used to quantitatively evaluate the proposal, with a maximum of 100 points)

1. Completed Federal Standard Forms (5 Points)

a. Application for Federal Assistance (SF 424) the official form required for all federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application, and one additional copy, signed by a person duly authorized.

b. Federal Standard Form (SF 424A) and budget detail, which reflects the total budget for the entire duration of the project. Budget figures/projections should support your work plan/narrative. The EPA portion of these grants will not exceed $100,000, therefore your budget should reflect this upper limit on federal funds.

c. Signed "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" form, and "Certification Regarding Lobbying" form.

2. Clear and Concise Narrative/Work Plan

The Narrative/Work Plan must:

a. effectively describe the project and how it addresses the Eligible Projects, as defined in Section E, (35 points)

b. discuss how the proposed project will meet the Program Goals, as described in Section A, (10 Points)

c. describe how the project addresses issues related to at least two of the environmental statutes listed in Section F, and (10 Points)

d. discuss how the project will be evaluated, what will be the measures of success, and describe how the project/program will be sustained. (25 Points)

The pages of the Work Plan must be letter size (8½" x 11"), with normal type size (12 cpi), and at least 1" margins. The narrative/work plan should be no more than five pages.

3. A letter of commitment from the department head or government head (e.g. governor, president, chairperson, commissioner). (10 Points)

4. State and Tribal applicants should establish working relationships with local community-based organizations in developing their proposals.(*) A list of the organizations who participated in the development of the grant proposal, along with contact names and numbers, is required. (5 Points)

(*) Many community-based organizations across the nation have already begun implementing environmental justice programs at the local level, which states and tribes may want to use as examples to help build their environmental justice programs. By asking those who are most impacted by environmental injustices to participate in building the state's or tribe's environmental justice program, the states and tribes will be more likely to obtain broad support for the concept and the partnership it reflects.

J. When and Where Must Applications Be Submitted?

The applicant must submit one signed original application with the required attachments and one additional copy to the primary contact of the appropriate EPA regional office (see page 8 and Appendix D). The application must be postmarked no later than Friday, January 28, 2000.

Process for Awarding Grants

Proposals are to be developed by states or tribes (EPA encourages the involvement of community-based/grassroots organizations) and submitted to their respective EPA Regional Offices. The initial review will be conducted by each Region through a Regional panel, which will select the top proposals for submission to EPA Headquarters, for final review and selection. The grants will be processed for award and managed by the Regions. The plan is to fund the five best State and/or Tribal environmental justice project proposals. *Note*: Among the proposals receiving the highest rating, EPA may take into account the geographic location and diversity of the proposed projects when making final selections.

STEJ Grant Program Schedule

Nov. 1–January 28	States and Tribes Develop Proposals and Submit to EPA Regions
February 2–March 3	EPA Regions Review Proposals and Provide Recommendations to Headquarters
March 10–April 14	OEJ Headquarters Convenes Review Panel and Receives Recommendations
April 14–May 12	Headquarters Completes Selections and Submits Final Selections to EPA Regional Offices
June 12–July 14	EPA Regional Grants Management Offices Process Applications and Award Grants
August 1	National and Regional Announcements of Awards

Reporting

State and Tribal agencies that are awarded the State and Tribal Environmental Justice (STEJ) grants will be required to submit semi-annual reports, in accordance with 40 CFR sections 31.40 and 31.41, to the appropriate Regional Environmental Justice Coordinator and Project Officer. Reports will include, but not be limited to, information on:

- Funds expended
- Tasks accomplished
- Issues/problems encountered and method of resolution
- Results achieved

A final summary report is required by 40 CFR section 31.40(b) at the end of the project period. This final report should include a discussion on the continuation and institutionalization of the state's and/or tribe's efforts to provide for environmental justice.

If you have any questions regarding the interpretation of this guidance, please call your regional contact listed below, or Daniel Gogal, STEJ Grants Manager, Office of Environmental Justice, at (202) 564–2576 or 1–800–962–6215.

EPA Regional STEJ Contact Names and Addresses

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Primary Contact: Ronnie Harrington (617) 918–1703, USEPA Region 1, One Congress Street, Suite 1100 (SAA), Boston, MA 02114
Secondary Contact: Ngozi Oleru (617) 918–1120; Pat O'Leary (617) 918–1978

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Primary Contact: Melva Hayden (212) 637–5027 USEPA Region II, 290 Broadway, 26th Floor, New York, NY 10007
Secondary Contact: Doug Roberts (212) 637–3408

Region III—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Primary Contact: Reginald Harris (215) 814–2988, USEPA Region III—(3EC00), 1650 Arch Street, Philadelphia, PA 19103–2029
Secondary Contact: Kathy Duran (215) 814–5441

Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Primary Contact: Gloria Love (404) 562–9672, USEPA Region IV 61 Forsyth Street, Atlanta, GA 30303

Secondary Contact: Connie Raines (404) 562–9671

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Primary Contact: Ethel Crisp (312) 353–1442, USEPA Region V, 77 West Jackson Boulevard (DM–7J), Chicago, IL 60604–3507

Secondary Contact: Karla Johnson (312) 886–5993

Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Primary Contact: Shirley Augurson (214) 665–7401, USEPA Region VI (6E-N), 1445 Ross Avenue, 12th Floor, Dallas, TX 75202–2733

Secondary Contact: Teresa Cooks (214) 665–8145

Region VII—Iowa, Kansas, Missouri, Nebraska

Primary Contact: Althea Moses (913) 551–7649 or 1–800–223–0425, USEPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101

Secondary Contact: Kim Olson (913) 551–7539

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Primary Contact: Marcella Devargas (303) 312–6161, USEPA Region VIII (8ENF-EJ), 999 18th Street, Suite 500, Denver, CO 80202–2466

Secondary Contact: Deldi Reyes (303) 312–6055

Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Guam

Primary Contact: Diane Uribi (415) 744–1597, USEPA Region IX (CMD–6), 75 Hawthorne Street, San Francisco, CA 94105

Secondary Contact: Romel Pascual (415) 744–1212

Region X—Alaska, Idaho, Oregon, Washington

Primary Contact: Mike Letourneau (206) 553–1687, USEPA Region X (CEJ–163), 1200 Sixth Avenue, Seattle, WA 98101

Secondary Contact: Victoria Plata (206) 553–8580

Note: To obtain copies of the appendices referenced in this document, please contact the individuals identified above for a complete application.

Dated: October 25, 1999.

Barry E. Hill,

Director, Office of Environmental Justice.

[FR Doc. 99–28505 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–8]

Science Advisory Board Executive Committee; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee (EC) will conduct two meetings as described below. Both meetings will be held in Conference Room 6013 in the Ariel Rios North Building at the U.S. Environmental Protection Agency (EPA) located at 1200 Pennsylvania Avenue, NW, Washington, DC 20004 (the building entrance is adjacent to the Federal Triangle Metro Stop on 12th Street). For directions and further information concerning the meetings, please contact the individuals given below. The meetings are open to the public; however, seating is limited and available on a first-come basis.

1. Executive Committee Teleconference

The Executive Committee (EC) will hold a public teleconference meeting on Monday, November 22, 1999, between the hours of 11 am–1 pm (Eastern Standard Time). The meeting will be coordinated through a conference call connection located in Room 6013 of the Ariel Rios Building (see above for address). The public is welcome to attend the meeting physically or through telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 564–4533, or via e-mail at: *<tillery.priscilla@epa.gov>* by November 18, 1999.

At this meeting, the Executive Committee tentatively plans to review reports from at least two of its Committees/Subcommittee: (a) EC Subcommittee's Review of the "EPA's Per Capita Water Ingestion Estimates for the United States" and (b) Research Strategies Advisory Committee's Review of the Agency's Peer Review Process.

2. Executive Committee Meeting

The Executive Committee (EC) will conduct a public meeting on Monday and Tuesday, November 29–30, 1999. The meeting will convene each day at 8:30 am and will adjourn no later than 5:30 pm (Eastern Standard Time). At this meeting, the EC will receive updates from its Committees and Subcommittees concerning their recent and planned activities. As part of these updates, some Committees will present draft reports for EC review and approval. Tentatively anticipated drafts include, but are not limited to the following:

(a) Executive Subcommittee: Review of the Treatment of Children in EPA's Cancer Risk Assessment Guidelines.

(b) Ecological Processes and Effects Committee: (1) Review of Methodology for Assessing Metals in Sediments; and (2) Review of Biotic Ligand Model for Metals in Water Column.

Other items on the agenda tentatively include, but are not limited to the following:

(c) Discussions with the Deputy Administrator, Assistant Administrator for Research and Development, and Director of the Office of Science and Policy Coordination.

(d) Discussion with Dr. Mark Powell of Resources for the Future regarding his recent publication: "Science at EPA."

(e) Procedural matters, including conflict-of-interest regulations, production of timely reports, interaction with non-Panel members during reviews, and iterative approach to providing advice.

(f) Planning considerations, including further reviews of peer review process, increased involvement of social sciences in SAB activities, and possible participation in multi-agency conference on the impact of the environment on human health.

(g) An extended discussion with Agency leaders about the role of science in the agency's new approaches to environmental protection; e.g., stakeholder processes, place-based projects, Common Sense Initiative, etc.

FOR FURTHER INFORMATION—Any member of the public wishing further information concerning either meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer (DFO) for the Executive Committee, Science Advisory Board (1400A), U.S. EPA, 401 M Street, SW., Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at: *<barnes.don@epa.gov>*. Copies of the draft meeting agendas and the draft reports will be available on the SAB Website *(http://www.epa.gov/sab)* at least one week prior to the meetings.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes (three minutes each and a total time of 15 minutes for teleconferences). Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website *(http://www.epa.gov/sab)* and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 26, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–28500 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6466–8]

Draft Mercury, Polychlorinated Biphenyls, Alkyl Lead, and Benzo(a)Pyrene and Hexachorobenzene Reports Published in Response to the United States' Commitments in "The Great Lakes Binational Toxics Strategy; Canada—United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes"

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and the opportunity to comment.

SUMMARY: The Great Lakes Binational Toxics Strategy; Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes (the Strategy), was signed on April 7, 1997. The Strategy set forth a number of challenges to be met on the path toward virtual elimination of the Level I Strategy substances.

In addition, the Strategy identifies a four-step analytical process that Environment Canada and the United States Environmental Protection Agency, in cooperation with their partners, will use in working toward virtual elimination of the Level I Strategy substances. The four step process addresses technical and source-related information about the substances (step 1); the analysis of current regulations, initiatives and programs which manage or control the substances (step 2); the identification of cost-effective options to achieve further reductions (step 3); and the implementation of actions toward the goal of virtual elimination (step 4).

The draft reports on Polychlorinated Biphenyls, and Benzo(a)Pyrene and Hexachorobenzene being made available for public comment relate to steps 1 and 2 of the analytical process. The draft reports on Mercury, and Alkyl Lead relate to steps 1, 2, and 3.

DATES: The preliminary draft reports will be made available to the public by November 1, 1999.

Comment period: Comments on the reports must be submitted no later than December 30, 1999.

ADDRESSES: All of these reports can be found on the internet at the following address: http://www.epa.gov/bns/. Commenters may transmit their comments electronically by following the directions provided on the website, or may send written comments to Dan Hopkins at the following address: U.S. EPA, Great Lakes National Program Office, 77 West Jackson Boulevard, T–16J, Chicago, Illinois, 60604. Comments may also be sent to Mr. Hopkins via facsimile at (312) 886–2737.

FOR FURTHER INFORMATION CONTACT: Additional information on the draft reports, may be obtained by contacting Dan Hopkins by telephone (312) 886–5994, facsimile (312) 886–2737, or by e-mail *hopkins.dan@epa.gov.*

Dated: October 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–28347 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6468–1]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Raymark Industries, Inc. Superfund Site; Stratford, CT

AGENCY: Environmental Protection Agency.

ACTION: Extended notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of the purchaser who obtains title to the former Raymark Facility property located in Stratford, Connecticut through the judicial sale process and certain successors in interest for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the Raymark Industries, Inc. Superfund Site in Stratford, Connecticut.

DATES: Comments must be provided on or before December 1, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214, and should refer to: Agreement and Covenant Not to Sue Re: Raymark Industries, Inc. Superfund Site, Stratford, Connecticut, U.S. EPA Docket No. CERCLA–1–99–0066.

FOR FURTHER INFORMATION CONTACT: Robin Ruhlin, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1784.

SUPPLEMENTARY INFORMATION: This document is an extension of the previous notice published in the **Federal Register**, on Wednesday, September 29, 1999, 64 FR 52505.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed administrative settlement may be obtained in person or by mail from Constance Dewire, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode HBT, Boston, Massachusetts 02214, (617) 918–1346.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214 (U.S. EPA Docket No. CERCLA 1–99–0066).

Dated: October 25, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 99–28544 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–51935; FRL–6390–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of the Toxic Substances Control Act (TSCA), EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 6, 1999 to September 24, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** -- Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

B. In person. The Agency has established an official record for this action under docket control number OPPTS–51935. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from [September 6, 1999] to [September 24, 1999], consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 83 Premanufacture Notices Received From: 09/06/99 to 09/24/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1305	09/07/99	12/06/99	Henkel Corporation	(G) Rheology modifier for coatings, inks and adhesives	(S) Oxirane, (chloromethyl)-, polymer with α-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl), ether with α-(nonylphenyl)-omega-hydroxypoly(oxy-1,2-ethanediyl) (1:2)*

I. 83 Premanufacture Notices Received From: 09/06/99 to 09/24/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1306	09/07/99	12/06/99	CBI	(G) Additive in yarn production	(G) Copolymer of methyl methacrylate, styrene and cyclohexyl maleimide
P–99–1307	09/08/99	12/07/99	CBI	(G) Open non-dispersive use	(G) Polymer modified rosin
P–99–1308	09/08/99	12/07/99	CBI	(G) Open, non-dispersive (resin)	(G) Blocked aliphatic polyisocyanate
P–99–1309	09/07/99	12/06/99	The Dow Chemical Company	(G) Grinding aid	(S) 2-propanol, 1-[bis(2-hydroxyethyl)amino]-*
P–99–1310	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1311	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1312	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1313	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1314	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1315	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1316	09/09/99	12/08/99	CBI	(G) An open non-dispersive use	(G) Rosin modified phenolic resin
P–99–1317	09/09/99	12/08/99	CBI	(G) Open non-dispersive (coatings)	(G) Aliphatic isocyanate
P–99–1318	09/10/99	12/09/99	CBI	(G) Coating component	(G) Substituted bisphenol a derivative
P–99–1319	09/10/99	12/09/99	CBI	(G) Open, non-dispersive (additive)	(G) Poly etherpoly siloxane
P–99–1320	09/13/99	12/12/99	CBI	(G) Polymer precursor	(G) Alkyl polysaccharide derivative
P–99–1321	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1322	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1323	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1324	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1325	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1326	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1327	09/10/99	12/09/99	CBI	(G) Chemical feedstock	(G) Halogenated alkane
P–99–1328	09/13/99	12/12/99	Vianova Resins Incorporated	(S) Additive in automotive oem paint; additive in industrial paint	(G) Modified melamine resin
P–99–1329	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1330	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1331	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1332	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1333	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1334	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1335	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1336	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1337	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate

I. 83 Premanufacture Notices Received From: 09/06/99 to 09/24/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1338	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1339	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1340	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1341	09/17/99	12/16/99	CBI	(G) Open - non dispersive use	(G) Metallic salt of 2 naphthalene carboxylic acid 4,4′ methylene bis [3-hydroxy
P–99–1342	09/17/99	12/16/99	CBI	(G) Open - non dispersive use	(G) Metallic salt of 2 naphthalene carboxylic acid 4,4′ methylene bis [3-hydroxy
P–99–1343	09/16/99	12/15/99	3M Company	(S) Chemical intermediate	(S) Propanoyl fluoride, 2,2,3,3-tetrafluoro-3-(trifluoromethoxy)-*
P–99–1344	09/16/99	12/15/99	CBI	(S) Ingredient in (fragrance) compounds	(S) Benzenepentanenitrile, beta-methyl*
P–99–1345	09/16/99	12/15/99	3M Company	(S) Chemical intermediate	(S) Propanoyl fluoride, 2,3,3,3-tetrafluoro-2-[1,1,2,2,3,3-hexafluoro-3-(trifluoromethoxy)propoxy]-*
P–99–1346	09/16/99	12/15/99	Sivento Inc.	(S) Anti-graffiti coatings	(S) 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyltriethoxy silane*
P–99–1347	09/16/99	12/15/99	CBI	(S) Ingredient in (fragrance) compounds	(S) Carbonic acid, 2-hydroxyethyl [2-(1-methylethyl)-5-methyl cyclohex-1-yl] ester*
P–99–1348	09/20/99	12/19/99	CBI	(G) Open - non dispersive use	(G) Metallic salt of b-oxynaphthoic acid
P–99–1349	09/17/99	12/16/99	CBI	(G) Coating component	(G) Non-volatile emulsion silicone polyurethane polymer
P–99–1350	09/17/99	12/16/99	Solvay Interox Inc	(S) Cast elastomers; prepolymer for cast elastomers	(S) 2-oxepanone, polymer with alpha.-hydro-.omega.-hydroxypoly(oxy-1,4-butanediyl)*
P–99–1351	09/17/99	12/16/99	CBI	(G) Dispersing resin	(G) Polycarboxylate
P–99–1352	09/17/99	12/16/99	CBI	(G) Dispersing resin	(G) Polycarboxylate
P–99–1353	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Racemic substituted dimethyl zironocene
P–99–1354	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Potassium salt of substituted malonic acid
P–99–1355	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted malonic acid
P–99–1356	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted propionic acid
P–99–1357	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted indene
P–99–1358	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Lithium salt of substituted indene
P–99–1359	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted bis-indenylsilane
P–99–1360	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Lithium salt of substituted bis-indenylsilane
P–99–1361	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted zirconocene dichloride, rac and meso isomer mixture
P–99–1362	09/15/99	12/14/99	Callaway Chemical Company	(S) Fertilizer/macro nutrient	(S) Phosphonic acid, monopotassium salt*
P–99–1363	09/20/99	12/19/99	Hercules Incorporated	(G) Precursor used in the production of a papermaking chemical	(G) Aminopolyamide
P–99–1364	09/20/99	12/19/99	Hercules Incorporated	(G) Papermaking chemical	(G) Aminopolyamide
P–99–1365	09/20/99	12/19/99	CBI	(S) Laminating adhesive	(G) Aromatic polyurethane
P–99–1366	09/20/99	12/19/99	CBI	(G) Chemical intermediate	(G) 4,6-disubstituted pyrimidine
P–99–1367	09/20/99	12/19/99	Percy International ltd.	(S) Modifying resin used in the manufacture of primers/ coatings for plastics substrates.	(S) A polymer of: bayer desmophen c-200; dimethylolpropionic acid; polyoxypropylene diglycidylether; di-*n*-butylamine; isophorone diisocyanate; diethanolamine; meta-tetramethylxylylene diisocyanate; triethylamine; 2-methyl-1,5 pentanediamine*
P–99–1368	09/20/99	12/19/99	CBI	(G) Wax crystal modifier for petroleum and petroleum products	(G) Alpha olefin - maleic anhydride copolymer, alkyl esters
P–99–1369	09/20/99	12/19/99	Wacker Biochem Corporation	(S) Additive for household products	(S) Beta-cyclodextrin, 2-hydroxypropyl ethers*
P–99–1370	09/20/99	12/19/99	CBI	(S) Laminating adhesive	(G) Aromatic polyester polyurethane
P–99–1371	09/21/99	12/20/99	CBI	(S) For uv cure industrial coatings	(G) Nco-acrylate reaction product
P–99–1372	09/21/99	12/20/99	CBI	(S) Colorant for crack detection solutions	(S) 2-naphthalenamine, *n*-(2-ethylhexyl)-1-((3-methyl-4-((3-methylphenyl)azo)phenyl)azo)-*

I. 83 Premanufacture Notices Received From: 09/06/99 to 09/24/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1373	09/23/99	12/22/99	Ricon Resins, Inc.	(S) Adhesives; inks; sealants; coatings for metal, plastic, glass; adhesion promoter	(S) 2-butendioic acid, (2*z*)-, mono[2-[(2-methyl-1-oxo-2 propenyl)oxy]ethyl]ester*
P–99–1374	09/23/99	12/22/99	Dsm Copolymer	(G) Reaction aid in polymer synthesis	(S) Monochlorodiphenylacetic acid ethyl ester*
P–99–1375	09/23/99	12/22/99	BASF Corporation	(S) Plasticizer for pvc	(S) Hexanedioic acid, di C_{7-11} branched and linear alkyl esters*
P–99–1376	09/23/99	12/22/99	GE Silicones	(G) Silicone adhesive	(G) Polydimethylsiloxane resin
P–99–1377	09/23/99	12/22/99	GE Silicones	(G) Silicone adhesive	(G) Polydimethylsiloxane resin
P–99–1378	09/23/99	12/22/99	GE Silicones	(G) Silicone adhesive	(G) Polydimethyldiphenylsiloxane resin
P–99–1379	09/23/99	12/22/99	Ge Silicones	(G) Silicone adhesive	(G) Polydimethyldiphenylsiloxane resin
P–99–1380	09/23/99	12/22/99	CBI	(S) Water and oil repellent finish for clothes of cotton, polyester, and others	(G) Poly-beta-fluoroalkyl acrylate and alkyl acrylate
P–99–1381	09/23/99	12/22/99	CBI	(S) Water and oil repellent finish for clothes of cotton, polyester, and others	(G) Poly-beta-fluoroalkyl acrylate and alkyl acrylate
P–99–1382	09/24/99	12/23/99	CBI	(G) Destructive use	(G) Disubstituted fluorene
P–99–1383	09/24/99	12/23/99	CBI	(G) Destructive use	(G) Methane bridged bis(substituted cyclopentadiene)
P–99–1384	09/24/99	12/23/99	CBI	(G) Destructive use	(G) Lithium salt of disubstituted fluorene
P–99–1385	09/24/99	12/23/99	CBI	(G) Destructive use	(G) Substituted bis cyclopentadienyl metallocene
P–99–1386	09/24/99	12/23/99	CBI	(G) Destructive use	(G) .Dimethyl bis(substituted cylopentadienyl) metallocene
P–99–1388	09/24/99	12/23/99	CIBA Specialty Chemicals Corporation	(S) Binder resin for coatings	(G) Styrene acrylic polymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 Test Marketing Exemption Notice Received From: 09/06/99 to 09/24/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–99–0004	09/13/99	10/28/99	Fiber source inc.	(S) Used for optical device manufacture	(S) Sulfonium, (thiodi-4, 1-phenylene) bis [4-(2-hydroxyethoxy)phenyl]-, bis[hexafluorophosphate (1-)] (9ci)*

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 37 Notices of Commencement From: 09/06/99 to 09/24/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–0140	09/20/99	08/29/99	(G) Polyepichlorohydrin derivative
P–94–0141	09/20/99	09/01/99	(G) Polyepichlorohydrin diol
P–96–1578	09/14/99	08/17/99	(G) Poly(alkylene oxides), polyester with maleic anhydride and 1,2-propanediol, 2-methyl-1,3-propanediol modified
P–97–0587	09/20/99	07/25/97	(G) Polyurethane adhesive
P–97–0981	09/17/99	09/10/99	(G) Hydro philic aliphatic polyisocyanate
P–98–0648	09/09/99	08/19/99	(G) Substituted heterocyclic alkylamino alkyl benzoic acid ester
P–98–0675	09/20/99	09/01/99	(G) Aqueous amine salt
P–98–1033	09/16/99	08/16/99	(G) Halogen-substituted oxetane
P–98–1127	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–98–1129	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–98–1131	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–99–0042	09/07/99	08/24/99	(G) Aliphatic polyurethane prepolymer

III. 37 Notices of Commencement From: 09/06/99 to 09/24/99—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–99–0111	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–99–0112	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–99–0175	09/20/99	09/09/99	(G) 1-naphthalenesulfonic acid, substituted-3-[[substituted phenyl]azo]-, salt*
P–99–0200	09/20/99	08/16/99	(G) Fatty acid imidazolium alkyl sulfate
P–99–0310	09/23/99	09/10/99	(G) Vanillin ester
P–99–0334	09/07/99	08/26/99	(S) 2,5-cyclohexadien-1-one, 4-[bis(4-hydroxyphenyl)methylene]*
P–99–0470	09/13/99	08/17/99	(G) Substituted sulfonaphthalenylazo substituted phenylazo substituted phenyl, salt
P–99–0507	09/21/99	09/08/99	(G) Aliphatic polyoxyethylene ethers
P–99–0508	09/21/99	09/08/99	(G) Aliphatic polyoxyethylene ethers
P–99–0526	09/20/99	08/17/99	(G) Blocked isocyanate
P–99–0547	09/20/99	09/09/99	(S) Fatty acids, soya, compounds with 2-(2-aminoethoxy) ethanol*
P–99–0585	09/20/99	08/27/99	(S) Neodecanoic acid, compd. with 2-(2-aminoethoxy)ethanol (1:1)*
P–99–0668	09/13/99	09/03/99	(G) Substituted sulfonyl isocyanate
P–99–0685	09/09/99	08/26/99	(G) Sodium salt of a triazinyl monoazo dyestuff
P–99–0718	09/20/99	09/03/99	(S) 5-nonanol, 4-methyl-*
P–99–0719	09/13/99	08/30/99	(G) Copolymer of acrylic acrylates, methacrylates and acid
P–99–0745	09/07/99	08/30/99	(S) Phosphine, tricyclopenyl*
P–99–0756	09/07/99	08/25/99	(G) Aqueous polyurethane dispersion
P–99–0762	09/08/99	08/26/99	(G) Polyetherdiol polymer with an aliphatic isocyanate and hydroxyethyl methacrylate
P–99–0772	09/07/99	08/31/99	(S) 2-propenoic acid, 2-methyl-, methyl ester, telomer with 1,6-diisocyanatohexane, 2-ethylhexyl 2-propenoate and 2-mercaptoethanol*
P–99–0776	09/23/99	08/25/99	(G) Alkyl methacrylate copolymer
P–99–0796	09/09/99	08/27/99	(S) Carbonic acid, methyl 2-[2-(1-methylethyl)-3-oxazolidinyl]ethyl ester*
P–99–0814	09/13/99	08/20/99	(G) Poly(oxy-1,4-butanediyl), α-hydro-omega-hydroxy-polymer with a substituted alcohol and 1,1′-methylenebis[4-isocyanatocyclohexane], 2-hydroxyethyl acrylate-blocked
P–99–0854	09/20/99	09/07/99	(G) Acrylate copolymer
P–99–0884	09/22/99	09/02/99	(G) Polyurethane prepolymer; polyurethane adhesive

List of Subjects

Environmental protection, Premanufacture notices.

Dated: October 22, 1999.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–28493 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6466–2]

Clean Water Act Class I: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding The Gates Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding The Gates Corporation.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment of an administrative penalty against The Gates Corporation. Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing administrative penalties for violations of the Act. EEA may issue such orders after filing a Complaint commencing a Class I penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class I proceedings are conducted under subpart I of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 64 FR 40138, July 23, 1999 (effective August 23, 1999). The procedures by which the public may submit written comments on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class I order is thirty (30) days after issuance of public notice.

On September 29, 1999, EPA commenced the following Class I proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7630, the following complaint: In the Matter of The Gates Corporation; EPA Docket No, CWA–7–99–0018.

The Complaint proposes a penalty of Eleven Thousand Dollars ($11,000) for the discharge of wastewater with a pH factor of less than 5 s.u. to the City of Versailles, Missouri publicly owned treatment plant (POTW) on or about November 11, 1998, and for causing pass though of low pH effluent from the City of Versailles POTW in violation of the city's permit on or about November 12, 1998, in violation of section 307(d) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA

Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by The Gates Corporation is available as part of the administrative record subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: October 8, 1999.

Diane K. Callier,

Acting Regional Administrator, Region 7.

[FR Doc. 99–28463 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–6]

Public Water System Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved Public Water System Supervision Program. South Carolina has adopted drinking water regulations requiring consumer confidence reports from all community water systems. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by December 1, 1999, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 1, 1999, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 1, 1999. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

South Carolina Department of Health and Environmental Control, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201

Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Janine Morris, EPA Region 4, Drinking Water Section at the Atlanta address given above (telephone 404–562–9480).

Authority: (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: October 21, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–28501 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 25, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Public Notice—Medical Telemetry Equipment Operating in the 450–460 MHz Band.

Type of Review: New collection.

Respondents: Business or not for profit institutions.

Number of Respondents: 20.

Estimated Hours Per Response: 8.

Frequency of Response: Recordkeeping; one time reporting requirement.

Estimated Total Annual Burden: 160 hours.

Total Annual Cost: $2,160.00.

Needs and Uses: The Commission released a public notice on October 20, 1999, requesting that parties operating medical telemetry equipment in the 450–460 MHz Band assist the Commission by providing certain information on their operation. Our equipment authorization records show that the majority of medical telemetry equipment operating under Part 90 is authorized in the 460–470 MHz portion of the PLMRS bands, and that very little operates in the 450–460 MHz portion of the band. We are requesting that parties operating medical telemetry equipment in the 450–460 MHz band provide certain information on their operation to the Commission. This information could help prevent serious interference problems in the future.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28484 Filed 10–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3140–EM]

California; Amendment No. 5 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of California, (FEMA–3140–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 1, 1999:

> Humboldt, Napa and Yuba Counties for emergency protective measures, including the limited removal of debris which poses a health and safety hazard to the general public, as authorized under Title V. This assistance excludes regular time costs for subgrantees regular employees.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–28473 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1306–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1306–DR), dated October 20, 1999, and related determinations.

EFFECTIVE DATE: October 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 20, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Florida, resulting from Hurricane Irene beginning on October 14, 1999, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

> Brevard, Broward, Collier, Dade, Glades, Hendry, Highlands, Indian River, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Polk, St. Lucie, Seminole, and Volusia Counties for Individual Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–28471 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1306–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1306–DR), dated October 20, 1999, and related determinations.

EFFECTIVE DATE: October 24, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 24, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–28472 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1292–DR]

North Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1292–DR), dated September 16, 1999, and related determinations.

EFFECTIVE DATE: October 21, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is re-opened as a result of the continued flooding caused by Hurricanes Floyd and Irene in the State of North Carolina. The incident period is September 15, 1999, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–28469 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

NAME: Federal Interagency Committee on Emergency Medical Services (FICEMS).

DATE OF MEETING: December 2, 1999.

PLACE: Commissioner's Conference Room, room 1129, Crystal Mall #4, 1941 Jefferson Davis Highway, in Arlington, Virginia 22202.

TIME: 10:30 a.m.

PROPOSED AGENDA: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; presentation of member agency reports; reports of other interested parties; briefing on Emergency Medical Services Response Training Programs for Weapons of Mass Destruction Incidents; briefing on United States Fire Administration Emergency Medical Services Team.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact William Troup, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, (301) 447-1231, on or before Monday, November 29, 1999.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 2, 2000.

Carrye B. Brown,

U.S. Fire Administrator.

[FR Doc. 99–28468 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Russell James Guidry, Jr.; James Marvin Cunningham; Jack Badoui Koury; Ulysses Joseph Prevost; and Roland Joseph Guidry*, all of Rayne, Louisiana; to retain voting shares of Security Acadia Bancshares, Inc., Rayne, Louisiana, and thereby indirectly retain voting shares of Rayne State Bank & Trust Company, Rayne, Louisiana.

Board of Governors of the Federal Reserve System, October 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28546 Filed 10–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *China Trust Capital A/S*, Denmark; to become a bank holding company by acquiring shares of China Trust Capital B.V., Netherlands, and thereby indirectly acquiring Chinatrust Bank, Torrance, California. China Trust Holdings N.V., Curacao, Netherlands Antilles, will control China Trust Capital A/S, Denmark, and its subsidiaries, upon its formation.

Board of Governors of the Federal Reserve System, October 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28545 Filed 10–29–99; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research; DHHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be held on Friday, November 5, 1999, from 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland, 20852.

FOR GENERAL INFORMATION CONTACT: Jackie Eder, Coordinator of the Advisory Council, at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–6662. For press-related information, please contact Karen Migdail at 301/594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6662 no later than November 4, 1999.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Health Care Policy, Research, and Evaluation. In accordance with its statutory mandate, the Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. Donald M. Berwick, M.D., the Council chairman, will preside.

II. Agenda

On Friday, November 5, 1999, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Administrator, AHCPR, will present the status of the Agency's current research, programs and initiatives. Tentative agenda items include issues on future programs and initiatives, information technology, health care errors, and role of qualitative methods in health services research. The official agenda will be available to AHCPR's website at *www/ahcpr.gov* no later than October 20, 1999. The meeting will adjourn at 4:00 p.m.

Dated: October 26, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–28536 Filed 10–29–99; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee and the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee and committee meetings.

Name: Community/Tribal Subcommittee (CTS).

Times and Dates: 8:30 a.m.–4 p.m., November 16, 1999; 9 a.m.–5 p.m., November 17, 1999.

Place: Sheraton/Buckhead Hotel, 3405 Lenox Road, N.E., Atlanta, Georgia 30326.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 60 people.

Purpose: This subcommittee will bring to the Board of Scientific Counselors advice and citizen input, as well as recommendations on community and tribal programs, practices, and policies of the Agency. The subcommittee will report directly to the Board of Scientific Counselors.

Matters To Be Discussed: Agenda items include an update on Action Items from previous meetings; discussion of suggested meeting procedures; discussion of Revised Draft Roles, Functions, and Operational Guidelines; research agenda building update; health technical assistance grant mechanism; and an overview of the Agency's activities regarding chemical mixtures. The CTS will discuss public health assessment and sensitivity training; CTS proposals, and recommendations and responses to ATSDR.

Name: Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry.

Times and Dates: 8:30 a.m.–5 p.m., November 18, 1999; 8:30 a.m.–12 p.m., November 19, 1999.

Place: Sheraton/Buckhead Hotel, 3405 Lenox Road, N.E., Atlanta, Georgia 30326.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 60 people.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Secretary; the Assistant Secretary for Health; and the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize. In addition, the Board recommends research programs and conference support for which the Agency seeks to make grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

Matters To Be Discussed: Agenda items will include an update on building ATSDR's research agenda; an overview of current research activities; an update on NIEHS and EPA Superfund research programs; an update on NIOSH and NCEH research programs. The BSC will discuss ATSDR plans and progress; research and plans for other agencies; potential for collaborative research; and additional needs for environmental public health research. The CTS will discuss the Community/Tribal Subcommittee update, Operational Guidelines and recommendations. ATSDR staff will provide program updates on the expert panel review of the PCB toxicological profile, Paducah Gaseous Diffusion Plant, and mercury in vaccines.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

An unavoidable administrative delay prevented meeting the 15 day publication requirement.

CONTACT PERSON FOR MORE INFORMATION: Robert F. Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: October 27, 1999.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–28582 Filed 10–29–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0096]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Emergency and Foreign Hospital Services—Beneficiary Statement in Canadian Travel Claims and Supporting Regulations in 42 CFR, Section 424.123.

Form No.: HCFA–R–0096 (OMB# 0938–0484).

Use: Payment may be made for certain Part A inpatient hospital services and Part B outpatient hospital services provided in a nonparticipating U.S. or foreign hospital when services are necessary to prevent the death or serious impairment of the health of the individual. In these situations, the threat to the life or health of the individual necessitates the use of the most accessible hospital available and equipped to furnish such services. Section 3698.4, requires a beneficiary statement indication that after a medical emergency occurred, the beneficiary was traveling between Alaska and another State through Canada by the most direct route without unreasonable delay to acquire medical care.

Frequency: On occasion.

Affected Public. Individuals or Households.

Number of Respondents: 1,100.

Total Annual Responses: 1,100.

Total Annual Hours: 275.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 21, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–28514 Filed 10–29–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Healthcare Integrity and Protection Data Bank: Announcement of Opening Date for Reporting and Self-Query Fee

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

In accordance with final regulations implementing the Healthcare Integrity and Protection Data Bank (HIPDB) published in the **Federal Register** on October 26, 1999 (64 FR 57740), the Office of Inspector General (OIG) is announcing that the data bank will become operational for purposes of reporting information on November 22, 1999. In addition, the Department now is exercising its authority to impose a fee for self-queries to the data bank and is announcing a ten dollar fee for health care practitioners, providers or suppliers who request information about themselves (self-queries) from the HIPDB.

1. Reportable Actions

All reportable actions taken since August 21, 1996, the date of passage of the HIPDB's authorizing statute, section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, must be reported to the HIPDB beginning November 22, 1999—the opening operational date for the data bank. To submit reports, registered entities must use the HIPDB web site at www.npdb-hipdb.com. Specific guidelines for reporting also can be found on this web site.

2. Self-query User Fee Amount

In conjunction with the opening of the HIPDB for reporting and as part of its obligations under the Privacy Act, the Department is offering at this time self-querying to health care practitioners, providers and suppliers.

Section 1128E(d)(2) of the Social Security Act, as added by section 221(a) of HIPAA, specifically authorizes the establishment of fees for the costs of processing requests for disclosure and for providing such information, and the final regulations at 45 CFR part 61 set forth the criteria and procedures for information to be reported to and disclosed by the HIPDB. The Act requires that the Department recover the full costs of operating the HIPDB through user fees. In determining any changes in the amount of the user fee, the Department is employing the criteria set forth in * 61.13(b) of the HIPDB regulations.

Specifically, § 61.13(b) states that the amount of each fee will be determined based on the following criteria:

- direct and indirect personnel costs;
- physical overhead, consulting, and other indirect costs including rent and depreciation on land, buildings and equipment;
- agency management and supervisory costs;
- costs of enforcement, research and establishment of regulations and guidance;
- use of electronic data processing equipment to collect and maintain information—the actual cost of the service, including computer search time, runs and printouts; and
- any other direct or indirect costs related to the provision of services.

The HIPDB incurs substantial labor costs for manual data input, sorting and responding to calls for Helpline assistance in order to process self-queries, as well as substantial postage and packaging costs for mailing self-query results to practitioners. As a result, based on an analysis of the costs of processing self-queries, the Department is establishing a ten dollar fee for each self-query.

In order to minimize administrative costs, the Department will accept payment for self-queries only by credit card. The HIPDB accepts Visa, MasterCard, and Discover. This fee is effective beginning November 19, 1999.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and its effective date will be announced in the **Federal Register**. We will also announce the fee structure and the opening date for queriers *submitted by authorized entities* through a separate **Federal Register** notice to be published shortly.

Dated: October 26, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99–28497 Filed 10–29–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The Meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL HUMAN GENOME RESEARCH INSTITUTE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: November 8–10, 1999.

Open: November 8, 1999, 6:00 p.m. to 6:30 p.m.

Agenda: To discuss program issues.

Place: Airlie House, 6809 Airlie Road, Warrenton, VA 20187.

Closed: November 8, 1999, 6:30 pm to Adjournment on November 10, 1999.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Airlie House, 6809 Airlie Road, Warrenton, VA 20187.

Contact Person: Claire Rodgaard, Assistant to the Scientific Director, Division of Intramural Research, Office of the Director, National Human Genome Research Institute, 45 Convent Drive, Building 49, Room 4A06, Bethesda, MD 20892, 301–435–5802.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28451 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 16–17, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael J Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–3367.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 22, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Asikiya Walcourt, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6138, MSC 9606, Bethesda, MD 20892–9609, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 2, 1999.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 6, 1999.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.

Contact Person: Jean G. Noronha, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28450 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Library Review Committee, November 2, 1999, 8:30 a.m. to November 3, 1999, 12 p.m., National Library of Medicine, 8600 Rockville Pike, board room, Bethesda, MD, 20894 which was published in the **Federal Register** on September 29, 1999, Vol. 64, No. 188.

The Biomedical Library Review Meeting is scheduled to be held November 1, 1999, 2:30 pm to November 3, 1999, 12:00 pm. An Orientation Session for new members on November 1, 1999, 2:30 pm to 5:00 pm has been added to the agenda. The meeting is partially Closed to the public.

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28452 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3–5, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 535–1278.

This notice is being published less than 15 days prior to the meeting due to the timing limitations, imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparable Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28449 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 1999.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eugene Vigil, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15–16, 1999.

Time: 7:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Cheryl M. Corsaro, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045 corsaroc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 1999.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Julian L. Azorlosa, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Patricia H. Hand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Genetic Sciences Initial Review Group, Biological Sciences Subcommittee 1.

Date: November 18–19, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street NW, Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1999.

Time: 11:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1999.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipe@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1999.

Time: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7618, Bethesda, MD 20892, (301) 435–1169, (301) 435–1169, dowellr@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 1999.

Time: 2:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1999.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22–23, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.

Contact Person: Ron Manning, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22, 1999.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22, 1999.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22, 1999.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lawrence N. Yager, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National institutes of Health, HHS)

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28453 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ballast Water Effectiveness and Adequacy Criteria Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the third meeting of the Ballast Water Effectiveness and Adequacy Criteria Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The Committee meeting will be held 10 am to 4 pm, Thursday, November 18, 1999.

ADDRESSES: The meeting will be held at the National Oceanic and Atmospheric Administration (NOAA) complex, SSMC–IV, Science Center (first floor), 1305 East-West Highway, Silver Spring, Maryland.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance (ANS) Species Task Force, at 703–358–2308 or by e-mail at: sharon__gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ballast Water Program Effectiveness and Adequacy Criteria Committee. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Committee was established in 1997 to establish and periodically resolve criteria for assessing the effectiveness and adequacy of the national ballast water management program in reducing the introduction and spread of nonindigenous species. The ANS Task Force is required to develop criteria for determining the adequacy and effectiveness of the voluntary ballast water management guidelines and subsequent regulations promulgated by the U.S. Coast Guard. The focus of this meeting will be to review and discuss draft discussion papers on compliance and effectiveness criteria and review the timeframe for developing the criteria and providing recommendations to the ANS Task Force.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 26, 1999.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director-Fisheries.

[FR Doc. 99–28459 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

New Prices for USGS Map Products

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey (USGS) will implement a new price structure for map products on November 1, 1999.

The USGS will raise the handling fee for all product orders to $5.00 per order. International orders will include a $20.00 shipping fee plus the $5.00 handling fee. All international orders exceeding 50 items will be charged actual shipping costs. The new price structure for the USGS published maps is described below.

(1) The price for the USGS Primary Series topographic quadrangle maps (7.5 minute—1:24,000, 1:25,000, 1:20,000; 7.5 × 15 minute—1:25,000, 1:63,360 scales) will remain $4.00 per sheet.

(2) The price for National Earthquake Information Center (NEIC) maps being a private sector copyright will be $10.00 per sheet.

(3) The price for all other map titles and scales (including 1:100,000-scale series, 1:250,000-scale series and small scale topographic maps, as well as thematic maps) will be $7.00 per sheet.

(4) Prices for maps published by other federal agencies and sold by the USGS may vary.

Unlike the 1995 price change to $4.00 for all maps regardless of size or scale, the new price structure is designed to reflect the higher publishing and distribution costs for thematic and small-scale maps while maintaining the $4.00 charge for the Primary Series maps. These changes are consistent with the guidance contained in the Office of Management and Budget Circular A–130, which permits government agencies to recover only reproduction and distribution costs from the sales of their products.

For more information about maps or other USGS products and series, visit any Earth Science Information Center, call 1–888–ASK–USGS, Email: *esicmail@usgs.gov,* or use the fax-on-demand system, which is available 24 hours a day at 703–648–4888. The USGS WWW home page address is *http://www.usgs.gov.*

As the Nation's largest water, earth and biological science and civilian mapping agency the USGS works in cooperation with more than 2,000 organizations across the country to provide reliable, impartial scientific information to resource managers, planners, and customers. This information is gathered in every state by USGS scientists to minimize the loss of life and property from natural disasters, contribute to sound economic and physical development of the nation's natural resources, and enhance the quality of life by monitoring water, biological, energy, and mineral resources.

This press release and in-depth information about USGS programs may be found on the USGS home page: *http://www.usgs.gov.* To receive the latest USGS news releases automatically by email, send a request to *listproc@listserver.usgs.gov.* Specify the listserver(s) of interest from the following names: water-pr: geologic-hazards-pr; biological-pr; mapping-pr; products-pr; lecture-pr. In the body of the message write: subscribe (name of listserver) (your name). Example: subscribe water-pr joe smith.

Dated: October 21, 1999.

Dan Cavanaugh,

Acting Chief, National Mapping Division.

[FR Doc. 99–27999 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

New Prices for USGS Map Separates

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey (USGS) will implement a new price structure for map separates on November 1, 1999. USGS map separate products are copies of the film positives or negatives used in the USGS published map production process. Prices for this product line have not been revised since April 1, 1984.

Prior to the November 1 price change, a customer had to order and pay for each map separate individually. Now, the USGS will offer two pricing options, standard and custom. The standard product will be a full set of final combined negatives for each map title. Each set will cost $180. Customers may still purchase individual separates as custom orders using the following price structure: The base price for a custom product is $100 per order. Added to this base price is a $59 charge per color separate. A customer may add more than one color group on a separate for an additional charge of $9 each.

All map separate orders received or postmarked before November 1, 1999, will be subject to the current ordering and pricing structure. All map separate orders received on or after November 1, 1999, will be offered according to the new ordering and pricing structure. The handling fee for all product orders will be $5.

As the Nation's largest water, earth and biological science and civilian mapping agency the USGS works in cooperation with more than 2,000 organizations across the country to provide reliable, impartial scientific information to resource managers, planners, and customers. This information is gathered in every state by USGS scientists to minimize the loss of life and property from natural disasters, contribute to sound economic and physical development of the nation's natural resources, and enhance the quality of life by monitoring water, biological, energy, and mineral resources.

This press release and in-depth information about USGS programs may be found on the USGS home page: *http:www.usgs.gov.* To receive the latest USGS news release automatically by email, send a request to *listproc@listserver.usgs.gov.* Specify the listserver(s) of interest from the following names: water-pr: geologic-hazards-pr; biological-pr; mapping-pr; products-pr; lecture-pr. In the body of the message write: subscribe (name of listserver) (your name). Example: subscribe water-pr joe smith.

Dated: October 21, 1999.

Dan Cavanaugh,

Acting Chief, National Mapping Division.

[FR Doc. 99–28000 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–AG ; IDI–18881 C]

Termination of Desert Land Entry and Carey Act Classifications and Opening Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a suitable Desert Land Entry and Carey Act Classification on 15 acres and a non-suitable Desert Land Entry and Carey Act Classification on 5 acres, so the land can be patented under the Recreation and Pubic Purposes Act (Act of June 14, 1926, as amended).

EFFECTIVE DATE: November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: On May 16, 1982, 15 acres were classified suitable for entry, and 5 acres were classified unsuitable for entry under the authority of the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321, et. seq.) and the Carey Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641 *et seq.*). The classifications are hereby terminated and the segregation for the following described lands are hereby terminated:

T. 6 S., R.5 E., B.M.
Section 26, W½SW¼NW¼NW¼, NW¼SW¼NW¼.
Section 27, E½NE¼SE¼NE¼.

The area described above aggregates 20 acres in Owyhee County.

At 9:00 a.m. on November 1, 1999, the Desert Land Entry and Carey Act classification identified above will be terminated. The lands will remain closed to location and entry under the public land laws and the general mining laws, as the lands are currently segregated under the Recreation and Public Purposes Act.

Dated: October 26, 1999.

Cathie Foster,

Acting Branch Chief, Lands and Minerals.

[FR Doc. 99–28521 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1430–00; CACA–39853]

Notice of Extension of Public Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the public comment period for the Proposed Indian Pass Withdrawal is extended.

DATES: Comments must be received by the new deadline of December 1, 1999 at the address below.

FOR FURTHER INFORMATION CONTACT: Lynda Kastoll, BLM, El Centro Field Office, 1661 So. 4th Street, El Centro, CA 92243, (760) 337–4421.

SUPPLEMENTARY INFORMATION: On October 26, 1998, a petition was approved allowing the BLM to file an application to withdraw 9,360.74 acres of public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The lands have been and will remain open to the operation of the mineral leasing, geothermal leasing, and material sales laws. No private lands or valid existing mineral rights would be affected by the proposed withdrawal. The purpose of the proposed withdrawal is to protect the archaeological and cultural resources in the Indian Pass area. Public comments were solicited at the time of the original publication (63 FR 58752, November 2, 1998); and again upon publication of the Notice of Public Meeting (64 FR 42960, August 6, 1999). In response to public requests, the BLM decided to provide more time for public comments. The new deadline for public comment is now extended to December 1, 1999.

Dated: October 26, 1999.

Greg Thomsen,

Field Manager.

[FR Doc. 99–28474 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–080–1430–ET; NMNM–102308 & NMNM–103446]

Notice of Public Meeting; Proposed Withdrawals for Cave Protection Area; New Mexico

AGENCY: Bureau of Land Management, Interior, and Department of Agriculture, Forest Service.

ACTION: Notice.

SUMMARY: This notice announces the time and place for a public meeting that will provide an opportunity for public involvement regarding the Department of the Interior and the Department of Agriculture's proposed withdrawals for a cave protection area, Eddy County.

DATES: December 7, 1999.

FOR FURTHER INFORMATION CONTACT: Bobbe Young, BLM Carlsbad Field Office, P.O. Box 1778, Carlsbad, NM 88220, 505–234–5963 or Johnny Wilson, Lincoln National Forest, 505–434–7230.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public involvement regarding the applications by the Departments of Interior and Agriculture for land withdrawals for a cave protection area. The notice of Proposed Withdrawals were published in the **Federal Register** 64 FR 18932–18933, April 16, 1999, 64 FR 24713, May 7, 1999 (correction), 64 FR 25063, May 10, 1999, and 64 FR 185, September 24, 1999.

The meeting will be held on Tuesday, December 7, 1999, to the Pecos River Conference Center, Room 3, 701 N. Muscatel, Carlsbad, NM. An open house will begin at 4:00 p.m. and continue until 5:00 p.m. The purpose of the open house is for people to gather information on the proposed land withdrawals and ask questions. Anyone interested in speaking at the formal public hearing will sign up at this time or can sign up prior to this at the Carlsbad Field Office at 620 E. Greene St., Carlsbad, NM 88220. A formal public hearing will begin at 7:00 p.m. and continue until 9:00 p.m. People interested in the proposed land withdrawals will have the opportunity to read or submit written statements or remarks. All comments must be submitted in written form for the record. Reading of comments will be limited to 5 minutes or less.

Dated: October 22, 1999.

Leslie A. Theiss,

Field Manager.

[FR Doc. 99–28515 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Oakland Museum of California, Oakland, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Oakland Museum of California, Oakland, CA.

A detailed assessment of the human remains was made by Oakland Museum of California professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon.

At an unknown date, human remains representing one individual was recovered from an unknown location within Siskiyou County, CA by person(s) unknown; and are currently in the collections of the Oakland Museum of California. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology and geographic location, this individual has been identified as Native American of possible Modoc or Shasta affiliation. Historic documents, ethnographic sources, and oral history indicate that Klamath and Modoc peoples have occupied the area of south-central Oregon and northeastern California, including Siskiyou County, CA since precontact times.

Basedon the above mentioned information, officials of the Oakland Museum of California have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Oakland Museum of California have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Klamath Indian Tribe of Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon and the Modoc Tribe of Okalahoma. Representives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Ms. Carey Caldwell, Chief Curator of History, Oakland Museum of California, 1000 Oak Street, Oakland, CA 94607–4892; telephone: (510) 238–3842, before December 1, 1999. Repatriation of the human remains to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

Dated: October 18, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–28289 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of the State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10(a)(3), of the intent to repatriate cultural items in the possession of the State Historical Society of Wisconsin, Madison, WI which meet the definition of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

The two cultural items consist of one brass kettle water drum and one carved gourd rattle with a wooden handle.

In 1958, this drum and rattle were purchased by the State Historical Society of Wisconsin, along with other related objects, from Mr. Sam Blowsnake (Carley) of Linden Station, WI.

Consultation evidence presented by representatives of the HoChunk Nation of Wisconsin confirms that both these cultural items are used in traditional peyote ceremonies of the Native American Church. Representatives of the HoChunk Nation have also stated that these items are needed by traditional religious leaders for the practice of traditional Native American religion by their present-day adherents. Representatives of the HoChunk Nation have also indicated that these items are owned communally and no individual had the right to sell or otherwise alienate these items.

The one cultural item consists of a pipe with stem.

In 1922, this pipe was donated to the State Historical Society of Wisconsin by W.J. Langdon of Sumner, WA. Associated documentation state that this pipe is the "Pipe used by the Wisconsin Winnebago chief, Yellow Thunder (Wau-kaun-chah-zee-kah)."

Consultation evidence presented by representatives of the HoChunk Nation of Wisconsin confirms that this is the Yellow Thunder pipe used in traditional lodge ceremonies. Representatives of the HoChunk Nation have also stated that this item is needed by traditional religious leaders for the practice of traditional Native American religion by their present-day adherents.

Based on the above-mentioned information, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2(d)(3), these three cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2(d)(4), these two cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Lastly, officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these items and the HoChunk Nation of Wisconsin.

This notice has been sent to officials of the HoChunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Ms. Jennifer Kolb, Director, Museum Archeology Program, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706; telephone (608) 264–6560; e-mail: jlkolb@mail.shsw.wisc.edu, before December 1, 1999. Repatriation of these objects to the HoChunk Nation of Wisconsin may begin after that date if no additional claimants come forward.

Dated: October 21, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–28290 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of a Plan of Operations and Environmental Assessment for Two Existing Natural Gas Wells Submitted by Momentum Operating Company, Inc., Lake Meredith National Recreation Area, Hutchinson County, TX

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Momentum Operating Company, Inc. a Plan of Operations for the continuing operation of two natural gas wells located at Lake Meredith National Recreation Area, Hutchinson County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area, 419 E. Broadway, Fritch, Texas. Copies are available, for a duplication fee, from the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, Texas 79306–1460.

If you wish to comment, you may submit comments by mailing them to the post office address provided above, or you may hand-deliver comments to the park at the street address provided above. Our practice is to make comments, including names and home addresses of responders, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the decision-making record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the decision-making record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: October 19, 1999.

Laurant Pingree,

Superintendent, Lake Meredith National Recreation Area.

[FR Doc. 99–28507 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Medical Child Support Working Group

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the sixth and seventh meetings of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The sixth meeting of the MCSWG will be held on Wednesday, November 17, 1999 and on Thursday, November 18, 1999, from 8:30 a.m. to approximately 6 p.m., and on Friday, November 19, 1999 from 8:30 a.m. to approximately noon. The seventh meeting of the MCSWG will be held on Monday, December 13, 1999 and on Tuesday, December 14, 1999, from 8:30 to approximately 6 p.m.

ADDRESSES: Both meetings will be held in the Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, N.W., Washington, DC 20037, telephone number (202) 955–6400. All interested parties are invited to attend these public meetings. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**. However, it is expected these will be the last two meetings.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of two meetings of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (P.L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

Agenda

The agenda for these meetings includes a discussion of the issues to be included in the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting the MCSWG formed four (4) subcommittees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next two meetings (August, 1999 and October, 1999), the subcommittees presented their draft recommendations to the full MCSWG for further discussion and consideration. At the November, 1999, meeting the four subcommittees will present additional issues and amended recommendations to the full MCSWG for discussion and consideration. At the December, 1999, meeting the MCSWG will discuss the recommendations in their report to the Secretaries.

Public Participation

Members of the public wishing to present oral statements to the MSCWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DOL, these documents will be available at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DOL should be directed to Ms. Ellen Goodwin, Plan Benefits Security Division, Office of the Solicitor, Department of Labor (telephone (202) 219–4600, ext. 119). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Signed at Washington, DC, this 26th day of October, 1999.

Richard McGahey,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 99–28508 Filed 10–29–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99–04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before December 16, 1999. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

In the past, NARA approved the disposal of electronic copies of records created using electronic mail and word processing via General Records Schedule 20, Items 13 (word processing documents) and 14 (electronic mail). However, NARA has determined that a different approach to the disposition of electronic copies is needed. In 1998, the Archivist of the United States established an interagency Electronic Records Work Group to address this issue and pursuant to its recommendations, decided that agencies must submit schedules for the electronic copies of program records and administrative records not covered by the GRS. On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which tells agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component, and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: Name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Federal Communications Commission, Office of Engineering and Technology (N9–173–00–1, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that relate to the development and administration of policies and programs for the gathering of information on telecommunication techniques and equipment, testing and certification of new equipment, and conducting studies on terrestrial and space communications. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. NC1–173–82–3, N1–173–87–4, N1–173–88–4, N1–173–92–1, and N1–173–94–1.

2. Federal Communications Commission, Mass Media Bureau (N9–173–00–2, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that relate to the development of regulations for mass media broadcast services. Included are electronic copies of records pertaining to such matters as budget proposals, educational broadcasting, station interference complaints, frequency coordination, bulk mailings, broadcast complaints, network affiliation agreements, rulemaking proceedings, station renewals and deletions, dismissed applications, and returned applications. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. NC1–173–79–3, NC1–173–85–5, N1–173–86–2, N1–173–89–1, N1–173–98–2, N1–173–98–3, and N1–173–98–4.

3. National Aeronautics and Space Administration, Agency-wide (N9–255–00–1, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to organizational and administrative matters. Included are electronic copies of records pertaining to such subjects as emergency planning, activities of committees and boards, legislation, releases, records management, guard services, safety, health, and standards of conduct. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. N1–255–90–8, N1–255–92–4, and N1–255–94–1, and in Schedule 1 of the NASA Records Retention Schedules.

4. National Aeronautics and Space Administration, Agency-wide (N9–255–00–2, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to legal and technical matters. Included are electronic copies of records pertaining to the management and operation of

NASA's legal and patent functions and of NASA's scientific and technical information programs, including technology utilization offices. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Record-keeping copies of these files are included in Disposition Job Nos. N1–255–94–1 and N1–255–94–3, and in Schedule 2 of the NASA Records Retention Schedules.

5. National Aeronautics and Space Administration, Agency-wide (N9–255–00–3, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to human resources. Included are electronic copies of records pertaining to such subjects as interagency personnel agreements, manpower surveys and reports, civilian service emblems, Ph.D. theses, training, awards, publicity, and monetary benefits. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. N1–255–89–4, N1–255–92–10, N1–255–92–16, and N1–255–92–11, and in Schedule 3 of the NASA Records Retention Schedules.

Dated: October 21, 1999.

Michael J. Kurtz

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–28454 Filed 10–29–99; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580–MLA; ASLBP No. 00–772–01–MLA]

Fansteel, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.1201 and 2.1207 of Part 2 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Fansteel, Inc. (Muskogee, Oklahoma Facility)

The hearing, if granted, will be conducted pursuant to 10 CFR Part 2, Subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by the Attorney General of the State of Oklahoma. The request was filed in response to a notice of consideration by the Nuclear Regulatory Commission of an amendment request of Fansteel, Inc., for construction of a containment cell at the Fansteel Facility in Muskogee, Oklahoma. The notice of the amendment request was published in the **Federal Register** at 64 FR 49,823 (Sept. 14, 1999).

The Presiding Officer in this proceeding is Administrative Judge Thomas S. Moore. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judge Moore and Judge Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Thomas S. Moore, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 26th day of October 1999.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–28533 Filed 10–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on November 18, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 18, 1999—8:30 a.m.–12:00 Noon

The Subcommittee will discuss the staff's proposed shutdown risk insights report and efforts to develop a low-power and shutdown risk program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 26, 1999.

Richard P. Savio,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–28534 Filed 10–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–9001 (which should be mentioned in all correspondence concerning this draft guide), is a proposed Revision 1 of Regulatory Guide 9.3 and is titled "Information Needed for an Antitrust Review of Initial Operating License Applications for Nuclear Power Plants." This proposed revision is being developed to identify the type of information that the NRC staff considers germane for a decision as to whether a second antitrust review is required at the initial operating license stage.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by January 14, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. M.J. Davis at (301) 415–1016; e-mail MJD1@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 20th day of October 1999.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 99–28535 Filed 10–29–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care Treatment Furnished by The United States

Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by Section 2(a) of Pub. L. 87–693 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the three sets of rates outlined below are hereby established. These rates are for use in connection with the recovery, from tortiously liable third persons, of the cost of hospital and medical care and treatment furnished by the United States (Part 43, Chapter I, Title 28, Code of Federal Regulations) through three separate Federal agencies. The rates have been established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided. The rates are established as follows:

1. Department of Defense

The FY 2000 Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Section 1095 of title 10, United States Code. Due to size, the sections containing the Drug Reimbursement Rates (Section III.E) and the rates for Ancillary Services Requested by Outside Providers (Section III.F) are not included in this package. The Office of the Assistant Secretary of Defense (Health Affairs) will provide these rates upon request. The medical and dental service rates in this package (including the rates for ancillary services, prescription drugs or other procedures requested by outside providers) are effective October 1, 1999. Pharmacy rates are updated on an as-needed basis.

2. Health and Human Services

The development of FY 2000 tortiously liable rates for Indian Health Service health facilities incorporate a refinement in the method used in the development of the FY 1999 rates. This year the Department has elected to use Medicare cost reports to develop the FY 2000 tortiously liable rates.

The obligations for the Indian Health Service hospitals participating in the cost report project were identified and combined with applicable obligations for area offices costs and headquarters costs. The hospital obligations were summarized for each major cost center providing medical services and distributed between inpatient and outpatient. Total inpatient costs and outpatient costs were then divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In calculation of the rates, the Department's unfunded retirement liability cost and capital and equipment depreciation costs were incorporated to conform to requirements set forth in OMB Circular A–25.

In addition, the obligations for each cost center include obligations from certain other accounts, such as Medicare and Medicaid collections and Contract Health fund, that were used to support direct program operations. Obligations were excluded for certain cost centers that primarily support workloads outside of the directly operated hospitals or clinics (public health nursing, public health nutrition, health education).

These obligations are not a part of the traditional cost of hospital operations and do not contribute directly to the inpatient and outpatient visit workload. Overall, these rates reflect a more accurate indication of the cost of care in the Department's hospital facilities.

Separate rates per inpatient day and outpatient visit were computed for

Alaska and the rest of the United States. This gives proper weight to the higher cost of operating medical facilities in Alaska.

3. Department of Veterans Affairs

Actual direct and indirect costs are compiled by type of care for the previous year, and facility overhead costs are added. Adjustments are made using the budgeted percentage changes for the current year and the budget year to compute the base rate for the budget year. The budget year base rate is then adjusted by estimated costs for depreciation of buildings and equipment, central office overhead, Government employee retirement benefits, and return on fixed assets (interest on capital for land, buildings, and equipment (net book value)), to compute the budget year tortiously liable reimbursement rates. Also shown for the tortiously liable inpatient per diem rates are breakdowns into three cost components: Physician; Ancillary; and Nursing, Room and Board. As with the total per diem rates, these breakdowns are calculated from actual data by type of care.

The tortiously liable rates shown will be used to seek recovery for VA medical care or services provided or furnished to persons in the following situations: tort feasor, humanitarian emergency, VA employee, family member, ineligible person, and allied beneficiary.

The interagency rates shown will be used when VA medical care or service is furnished to a beneficiary of another Federal agency, and that care or service is not covered by an applicable local sharing agreement. Government employee retirement benefits and return on fixed assets are not included in the interagency rates, but in all other respects the interagency rates are the same as the tortiously liable rates. When the medical care or service is obtained at the expense of the Department of Veterans Affairs from a non-VA source, the charge for such care or service will be the actual amount paid by the VA for that care or service.

Inpatient charges will be at the per diem rates shown for the type of bed section or discrete treatment unit providing the care. Prescription Filled charge in lieu of the Outpatient Visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. This charge applies whether the patient receives the prescription in person or by mail.

1. Department of Defense

For the Department of Defense, effective October 1, 1999 and thereafter:

Medical and Dental Services

Fiscal Year 2000—Inpatient, Outpatient and Other Rates and Charges

I. Inpatient Rates [1] [2]

Per inpatient day	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
A. Burn Center	$3,080.00	$5,529.00	$5,840.00
B. Surgical Care Services (Cosmetic Surgery)	1,411.00	2,533.00	2,675.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG) [3])			

1. FY 2000 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Interagency	Other (full/third party)
Large Urban	$2,921.00	$5,498.00	$5,775.00
Other Urban/Rural	3,236.00	6,532.00	6,883.00
Overseas	3,606.00	8,520.00	8,941.00

2. Overview

The FY 2000 inpatient rates are based on the cost per DRG, which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1. above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. The published ASAs will be adjusted for area wage differences and indirect medical education (IME) for the discharging hospital. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital in a Large Urban Area.

a. The cost to be recovered is DoD's cost for medical services provided in the non-teaching hospital located in a large urban area. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.3446. (DRG statistics shown are from FY 1998).

c. The DoD adjusted standardized amount to be charged is $5,775 (i.e., the third party rate as shown in the table).

d. DoD cost to be recovered at a non-teaching hospital with area wage index of 1.0 is the RWP factor (2.3446) in 3.b., above, multiplied by the amount ($5,775) in 3.c., above.

e. Cost to be recovered is $13,540

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020 ...	Nervous System Infection Except Viral Meningitis	2.3446	8.1	5.7	1	29

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	Applied ASA
Non-teaching Hospital	Large Urban	1.0	1.0	$5,775	$5,775

Patient	Length of stay	Days above threshold	Relative weighted product			TPC
			Inlier*	Outlier**	Total	Amount***
#1	7 days	0	2.3446	000	2.3446	$13,540
#2	21 days	0	2.3446	000	2.3446	$13,540
#3	35 days	6	2.3446	0.8144	3.1590	$18,243

* DRG Weight

** Outlier calculation = 33 percent of per diem weight × number of outlier days = .33 (DRG Weight/Geometric Mean LOS) × (Patient LOS—Long Stay Threshold)
= .33 (2.3446/5.7) × (35 − 29)
= .33 (.41133) × 6 (take out to five decimal places)
= .13574 × 6 (take out to five decimal places)
= .8144 (take out to four decimal places)

*** Applied ASA × Total RWP

II. Outpatient Rates [1] [2] Per Visit

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
	A. Medical Care			
BAA	Internal Medicine	$104.00	$194.00	$204.00
BAB	Allergy	53.00	99.00	105.00
BAC	Cardiology	87.00	163.00	172.00
BAE	Diabetic	61.00	114.00	121.00
BAF	Endocrinology (Metabolism)	102.00	190.00	201.00
BAG	Gastroenterology	146.00	272.00	287.00
BAH	Hematology	179.00	334.00	352.00
BAI	Hypertension	106.00	198.00	208.00
BAJ	Nephrology	208.00	387.00	409.00
BAK	Neurology	121.00	225.00	238.00
BAL	Outpatient Nutrition	42.00	79.00	83.00
BAM	Oncology	134.00	250.00	264.00
BAN	Pulmonary Disease	153.00	285.00	301.00
BAO	Rheumatology	101.00	188.00	199.00
BAP	Dermatology	78.00	146.00	154.00
BAQ	Infectious Disease	178.00	332.00	350.00
BAR	Physical Medicine	83.00	155.00	163.00
BAS	Radiation Therapy	128.00	238.00	251.00
BAT	Bone Marrow Transplant	115.00	214.00	226.00
BAU	Genetic	367.00	683.00	721.00
	B. Surgical Care			
BBA	General Surgery	148.00	276.00	291.00
BBB	Cardiovascular and Thoracic Surgery	320.00	595.00	628.00
BBC	Neurosurgery	173.00	323.00	341.00
BBD	Ophthalmology	90.00	168.00	177.00
BBE	Organ Transplant	399.00	742.00	783.00
BBF	Otolaryngology	106.00	197.00	207.00
BBG	Plastic Surgery	131.00	244.00	258.00
BBH	Proctology	84.00	157.00	165.00

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BBI	Urology	112.00	209.00	221.00
BBJ	Pediatric Surgery	167.00	311.00	328.00
BBK	Peripheral Vascular Surgery	78.00	146.00	154.00
BBL	Pain Management	97.00	180.00	190.00

C. Obstetrical and Gynecological (OB–GYN) Care

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BCA	Family Planning	57.00	106.00	112.00
BCB	Gynecology	89.00	165.00	175.00
BCC	Obstetrics	74.00	138.00	146.00
BCD	Breast Cancer Clinic	184.00	342.00	361.00

D. Pediatric Care

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BDA	Pediatric	62.00	115.00	121.00
BDB	Adolescent	65.00	122.00	129.00
BDC	Well Baby	42.00	79.00	83.00

E. Orthopaedic Care

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BEA	Orthopaedic	93.00	174.00	183.00
BEB	Cast	59.00	110.00	117.00
BEC	Hand Surgery	69.00	129.00	136.00
BEE	Orthotic Laboratory	67.00	125.00	132.00
BEF	Podiatry	56.00	105.00	111.00
BEZ	Chiropractic	25.00	47.00	50.00

F. Psychiatric and/or Mental Health Care

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BFA	Psychiatry	124.00	230.00	243.00
BFB	Psychology	93.00	174.00	184.00
BFC	Child Guidance	57.00	105.00	111.00
BFD	Mental Health	104.00	194.00	204.00
BFE	Social Work	102.00	190.00	200.00
BFF	Substance Abuse	99.00	184.00	195.00

G. Family Practice/Primary Medical Care

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BGA	Family Practice	74.00	138.00	146.00
BHA	Primary Care	77.00	143.00	151.00
BHB	Medical Examination	80.00	148.00	156.00
BHC	Optometry	50.00	93.00	98.00
BHD	Audiology	35.00	65.00	69.00
BHE	Speech Pathology	101.00	188.00	199.00
BHF	Community Health	66.00	123.00	130.00
BHG	Occupational Health	73.00	136.00	143.00
BHH	TRICARE Outpatient	56.00	104.00	109.00
BHI	Immediate Care	107.00	200.00	211.00

H. Emergency Medical Care

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BIA	Emergency Medical	126.00	234.00	247.00

I. Flight Medical Care

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BJA	Flight Medicine	88.00	164.00	173.00

J. Underseas Medical Care

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BKA	Underseas Medicine	43.00	79.00	84.00

K. Rehabilitative Services

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BLA	Physical Therapy	41.00	77.00	81.00
BLB	Occupational Therapy	61.00	114.00	120.00

III. Ambulatory Procedure Visit (APV)[6] Per Visit

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
	Medical Care			
BB	Surgical Care	937.00	1,740.00	1,836.00
BD	Pediatric Care	233.00	430.00	454.00
BE	Orthopaedic Care	1,179.00	2,192.00	2,313.00
	All other B clinics not included above (BA, BC, BF, BG, BH, BI, BJ, BK and BL).	430.00	797.00	841.00

IV. Other Rates and Charges[1,2] Per Visit

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
FBI	A. Immunization	$16.00	$30.00	$32.00
DGC	B. Hyperbaric Chamber[5]	153.00	285.00	301.00
	C. Family Member Rate (formerly Military Dependents Rate)	10.85		
	D. Reimbursement Rates For Drugs Requested By Outside Providers[7]			

The FY 2000 drug reimbursement rates for drugs are for prescriptions requested by outside providers and obtained at a Military Treatment Facility. The rates are established based on the cost of the particular drugs provided based on the DoD-wide average per National Drug Code (NDC) number. Final rule 32 CFR Part 220, which has still not been published when this package was prepared, eliminates the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." The phrase "high cost ancillary service" will be replaced with the phrase "ancillary services requested by an outside provider" on publication of final rule 32 CFR Part 220. The list of drug reimbursement rates is too large to include here. These rates are available on request from OASD (Health Affairs)—see Tab O for the point of contact.

E. Reimbursement Rates for Ancillary Services Requested By Outside Providers[8]

Final rule 32 CFR Part 220, which has still not been published when this package was prepared, eliminates the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." The phrase "high cost ancillary service" will be replaced with the phrase "ancillary services requested by an outside provider" on publication of final rule 32 CFR Part 220. The list of FY 2000 rates for ancillary services requested by outside providers and obtained at a Military Treatment Facility is too large to include here. These rates are available on request from OASD (Health Affairs)—see Tab O for the point of contact.

F. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International Classification Diseases (ICD–9)	Current Procedural Terminology (CPT)[9]	FY 2000 charge[10]	Amount of charge
Mammaplasty—augmentation.	85.50, 85.32, 85.31	19325, 19324, 19318	Inpatient Surgical Care Per Diem Or APV	(a) (b)
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Facial	86.82	15824	Inpatient Surgical Care Per Diem Or APV	(a b)
Rhytidectomy	86.22			
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Mentoplasty	76.68	21208	Inpatient	(a)
(Augmentation/Reduction).	76.67	21209	Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(b c)
Abdominoplasty	86.83		Inpatient Surgical Care Per Diem	(a)
Lipectomy Suction per region[11].	86.83	15876, 15877, 15878, 15879.	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Scar Revisions beyond CHAMPUS.	86.84	1578__	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Mandibular or Maxillary Repositioning.	76.41		Inpatient Surgical Care Per Diem	(a)
Dermabrasion		15780	APV or applicable Outpatient Clinic Rate	(b c)
Hair Restoration		15775	APV or applicable Outpatient Clinic Rate	(b c)
Removing Tattoos		15780	APV or applicable Outpatient Clinic Rate	(b c)
Chemical Peel		15790	APV or applicable Outpatient Clinic Rate	(b c)
Arm/Thigh Dermolipectomy.	86.83	15836/15832	Inpatient Surgical Care Per Diem Or APV	(a b)

Cosmetic surgery procedure	International Classification Diseases (ICD–9)	Current Procedural Terminology (CPT) [9]	FY 2000 charge [10]	Amount of charge
Refractive surgery			APV or applicable Outpatient Clinic Rate	([b c])
Radial Keratotomy		65771		
Other Procedure (if applies to laser or other refractive surgery).		66999		
Otoplasty		69300	APV or applicable Outpatient Clinic Rate	([a b c])
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem Or APV	([a b])

G. Dental Rate [12] Per Procedure

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
Dental Services	 ADA code and DoD established weight..	$45.00	$109.00	$115.00

H. Ambulance Rate [13] Per Visit

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
FEA	Ambulance	$62.00	$116.00	$122.00

I. Ancillary Services Requested by an Outside Provider [8] Per Procedure

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Laboratory procedures requested by an outside provider CPT '99 Weight Multiplier.	$13.00	$20.00	$21.00
	Radiology procedures requested by an outside provider CPT '99 Weight Multiplier.	$57.00	$86.00	$90.00

J. AirEvac Rate [14] Per Visit

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	AirEvac Services—Ambulatory	$195.00	$364.00	$384.00
	AirEvac Services—Litter	$567.00	$1,056.00	$1,114.00

K. Observation Rate [15] Per hour

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Observation Services—Hour	$17.00	$31.00	$32.00

Notes on Cosmetic Surgery Charges

[a] Per diem charges for inpatient surgical care services are listed in Section I.B. (See notes 9 through 11, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in Section III.C. (See notes 9 through 11, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in Sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

Notes on Reimbursable Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 98 percent hospital and 2 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the sub account within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

MEPRS CODE
  Outpatient Care (Functional Category)—B
  Medical Care (Summary Account)—BA
  Internal Medicine (Subaccount)—BAA

[5] Hyperbaric service charges shall be based on hours of service in 15-minute increments. The rates listed in Section III.B. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) of service. Fractions of an hour shall be rounded to the next 15-minute increment (*e.g.*, 31 minutes shall be charged as 45 minutes).

[6] Ambulatory procedure visit is defined in DOD Instruction 6025.8, "Ambulatory Procedure Visit (APV)," dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). An APU is a location or organization within an MTF (or freestanding outpatient clinic) that is specially equipped, staffed and designated for the purpose of providing the intensive level of care associated with APVs. Care is required in the facility for less than 24 hours. All expenses and workload are assigned to the MTF-established APU associated with the referring clinic. The BB, BD and BE APV rates are only to be used by clinics that are subaccounts under these summary accounts (see ([4]) for an explanation of MEPRS hierarchical arrangement). The All Other APV rate is to be used only by those clinics that are not a subaccount under BB, BD or BE.

[7] Prescription services requested by outside providers (*e.g.*, physicians or dentists) that are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from a Military Treatment Facility (MTF) that are prescribed by providers external to the MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider that includes the cost of the drugs plus a dispensing fee per prescription. The prescription cost is calculated by multiplying the number of units (*e.g.*, tablets or capsules) by the unit cost and adding a $6.00 dispensing fee per prescription. Final rule 32 CFR Part 220, which has still not been published when this package was prepared, eliminates the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." The phrase "high cost ancillary service" will be replaced with the phrase "ancillary services requested by an outside provider" on publication of final rule 32 CFR Part 220. The elimination of the threshold also eliminates the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR Part 220.

[8] Charges for ancillary services requested by an outside provider (physicians, dentists, etc.) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical insurance obtain services from the MTF which are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD established weight for the Physicians' Current Procedural Terminology (CPT '99) code by either the laboratory or radiology multiplier (Section III.J). Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for ancillary services.

Final rule 32 CFR Part 220, which has still not been published when this package was prepared, eliminates the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." The phrase "high cost ancillary service" will be replaced with the phrase "ancillary services requested by an outside provider" on publication of final rule 32 CFR Part 220. The elimination of the threshold also eliminates the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR Part 220.

[9] The attending physician is to complete the CPT '99 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[10] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in Section III.G. The patient shall be charged the rate as specified in the FY 2000 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the "Other" rate) for inpatient per diem surgical care services in Section I.B., ambulatory procedure visits as contained in Section III.C, or the appropriate outpatient clinic rate in Sections II.A-K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[11] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[12] Dental service rates are based on a dental rate multiplier times the American Dental Association (ADA) code and the DoD established weight for that code.

[13] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in Section III.I are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (*e.g.*, 31 minutes shall be charged as 45 minutes).

[14] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC). These charges are only for the cost of providing medical care. Flight charges are billed by GPMRC separately using the commercial rate effective the date of travel plus $1.

[15] Observation Services are billed at the hourly charge. Begin counting when the patient is placed in the observation bed and round up to the nearest hour. If a patient status changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not billed separately. If a patient is released from Observation status and is sent to an APV, the charges for Observation services are not billed separately but are added to the APV rate to recover all expenses.

2. Department of Health and Human Services

For the Department of Health and Human Services, Indian Health Service, effective October 1, 1999 and thereafter:

	Hospital Care Inpatient Day	
General Medical Care	Alaska	$1,925
	Rest of the United States	1,313
	Outpatient Medical Treatment	
Outpatient Visit	Alaska	308
	Rest of the United States	211

3. Department of Veterans Affairs

Effective October 1, 1999, and thereafter:

	Tortiously liable rates	Interagency rates
Hospital Care, Rates Per Inpatient Day		
General Medicine:		
Total	$1610	$1476
Physician	193	
Ancillary	420	
Nursing, Room, and Board	997	
Neurology:		
Total	1927	1757
Physician	282	
Ancillary	509	
Nursing, Room, and Board	1136	
Rehabilitation Medicine:		
Total	1065	974
Physician	121	
Ancillary	325	
Nursing, Room, and Board	619	
Blind Rehabilitation:		
Total	1009	928
Physician	81	
Ancillary	501	
Nursing, Room, and Board	427	
Spinal Cord Injury:		
Total	970	885
Physician	120	
Ancillary	244	
Nursing, Room, and Board	606	
Surgery:		
Total	3023	2788
Physician	333	
Ancillary	917	
Nursing, Room, and Board	1773	
General Psychiatry:		
Total	640	577
Physician	60	
Ancillary	101	
Nursing, Room, and Board	479	
Substance Abuse (Alcohol and Drug Treatment):		
Total	339	308
Physician	32	
Ancillary	78	
Nursing, Room, and Board	229	
Intermediate Medicine:		
Total	491	446
Physician	24	
Ancillary	72	
Nursing, Room, and Board	395	
Nursing Home Care, Rates Per Day		
Nursing Home Care:		
Total	339	307
Physician	11	
Ancillary	46	
Nursing, Room, and Board	282	

	Tortiously liable rates	Interagency rates
Outpatient Medical and Dental Treatment		
Outpatient Visit (other than Emergency Dental)	254	236
Emergency Dental Outpatient Visit	157	140
Prescription Filled	36	35

For the period beginning October 1, 1999, the rates prescribed herein superseded those established by the Director of the Office of Management and Budget October 16, 1998 (61 FR 56360).

Jacob J. Lew,
Director, Office of Management and Budget.
[FR Doc. 99–28115 Filed 10–29–99; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 1, 1999.

A closed meeting will be held on Wednesday, November 3, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 3, 1999, will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 27, 1999.

Jonathan G. Katz,
Secretary.
[FR Doc. 99–28607 Filed 10–28–99; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42056; File No. SR–CHX–99–22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2 and 3 by the Chicago Stock Exchange, Inc., Relating to Listing Standards for Trust Issued Receipts

October 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 7, 1999, the Chicago Stock Exchange, Inc., ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment Nos. 1, 2, and 3 were filed on October 13, 15, and 20, 1999, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1, 2, and 3 from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new Rule 27 to Article XXVIII of the Exchange's rules to adopt listing standards for trust receipts. Once these listing standards have been approved, the Exchange intends to trade Internet Holding Company Depository Receipts ("Internet HOLDRs"), a trust issued receipt. The Exchange also proposes to trade Internet HOLDRs pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at the Office of the Secretary, CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing listing criteria to allow the Exchange to list trust issued receipts, and to trade Internet HOLDRs, a type of trust issued receipt, pursuant to UTP. The Exchange represents that trust issued receipts provide investors with a flexible, cost-effective way to purchase, hold and transfer the securities of one or more specified companies.

a. *Trust Issued Receipts Generally.—Description.* Trust issued receipts are negotiable receipts which are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts allow investors to hold securities investments from a variety of companies throughout a particular industry in a single, exchange-listed and traded instrument that represents their beneficial ownership of each of the deposited securities. Holders of trust issued receipts maintain beneficial ownership of each of the deposited securities evidenced by trust issued receipts. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 added new text regarding the arbitrage process and the trust issued receipt's trading price. Amendment No. 2 added additional minimum listing requirements for securities to qualify for inclusion in a trust issued receipt. Amendment No. 3 changed the figure for initial distribution of Internet HOLDRs from 150,000 to approximately 3.7 million. *See* Letters from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, to Heather Traeger, Attorney, Division of Market Regulation, SEC, dated October 13, 1999, October 15, 1999 and October 20, 1999.

Beneficial owners of the receipts have the same rights, privileges and obligations as they would have if they benefically owned the deposited securities outside of the trust issued receipt program. For example, holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts; will receive reports, proxies and other information distributed by the issuers of the deposited securities to their security holders; and will receive dividends and other distributions if any are declared and paid by the issuers of the deposited securities to the trustee.

Creation of a trust. Trust issued receipts will be issued by a trust created pursuant to a depository trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts and to deposit such securities to receive trust issued receipts.

b. *Criteria for Initial and Continued Listing.* The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the "Other Securities" criteria currently found in Article XXVIII, Rule 13 of the CHX Rules as well as the trust issued receipt listing criteria currently used by the American Stock Exchange.[4]

Initial Listing. Under the proposed rule, if trust issued receipts are to be listed on the Exchange, the Exchange will establish a minimum number of trust issued receipts required to be outstanding at the time trading commences on the Exchange and will include that number in any required submission to the Commission.

Continued Listing. The Exchange will consider the suspension of trading in, or removal from listing of, a trust upon which a series of trust issued receipts is based when any of the following circumstances arise: (1) If the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the trust issued receipts for 30 or more consecutive trading days; (2) if the trust has fewer than 50,000 receipts issued and outstanding; (3) if the market value of all receipts issued and outstanding is less than $1,000,000; or (4) if any other event occurs, or any other condition exists, which, in the opinion of the Exchange, makes further trading on the Exchange inadvisable. These flexible criteria allow the Exchange to avoid delisting trust issued receipts (leading to a possible termination of the trust) because of relatively brief fluctuations in market conditions that may cause the number of holders to vary.

The Exchange will not, however, be required to suspend or delist from trading, based on the above factors, any trust issued receipts for a period of one year after the initial listing of such trust issued receipts for trading on the Exchange. Notwithstanding, in the first year and thereafter, if the number of companies represented by the deposited securities drops to less than nine, and each time thereafter the number of companies is reduced, the Exchange will consult with the Commission to confirm the appropriateness of continued listing of the trust issued receipts.

c. *Exchange Rules Applicable to the Trading of Trust Issued Receipts.* Trust issued receipts are considered "securities" under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of Article XX, Rule 40, ITS Trade-Throughs and Locked Markets, which prohibit CHX members from initiating trade-throughs for ITS securities, as well as rules governing priority, parity and precedence of orders, market volatility-related trading halt provisions and responsibilities of the assigned specialist firm.[5] Exchange equity margin rules will apply.

Trust issued receipts will trade in the minimum fractional increments described in CHX Article XX, Rule 22. If the trust issued receipts are also traded on the American Stock Exchange, those receipts will trade at a minimum variation of 1/16th of $1.00 for trust issued receipts selling at or above $.25 and 1/32nd of $1.00 for those selling below $.25. If the trust issued receipts are traded on any other exchange or are exclusively listed on the CHX, different minimum fractional increments may apply.

The Exchange's surveillance procedures for trust issued receipts will be similar to the procedures used for portfolio depositary receipts and will incorporate and rely upon existing CHX surveillance systems.

Prior to the commencement of trading of each new trust issued receipt, the Exchange will distribute a circular to its members and member organizations alerting them to the unique characteristics of trust issued receipts, including the fact that trust issued receipts are not individually redeemable. The circular will also confirm that trust issued receipts are subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (Article IX, Rule 10A) and that the underlying securities included in the trust are subject to the Exchange's rule which allows Exchange officials to halt trading in specific securities, under certain circumstances (Article IX, Rule 10(b)). The circular will advise members that, in exercising the discretion described in Article IX, Rule 10(b), appropriate Exchange officials may consider a variety of factors, including the event to which trading is not occurring in an underlying security and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

d. *Disclosure to Customers.* The Exchange will require its members to provide all purchasers of newly issued trust issues receipts with a prospectus for that series of trust issued receipts.

e. *Trading of Internet HOLDRs.* As noted above, upon approval of the CHX's listing standards for trust issued receipts, the Exchange intends to begin trading a particular series of trust issued receipts, Internet HOLDRs pursuant to UTP privileges. The following section of this submission contains information about Internet HOLDRs. This information is based upon descriptions included in the Internet HOLDRs prospectus, the Internet HOLDRs depositary trust agreement, the Amex submissions relating to its trust issued receipt listing proposal and the

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[4] The American Stock Exchange's ("Amex") listing criteria were approved by the Commission on September 21, 1999. *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

[5] There are two possible exceptions to this general rule. First, if trust issued receipts are traded only in round lots (or round-lot multiples), the Exchange's rules relating to odd-lot executions will not apply. Additionally, the Exchange understands that application for exemption from the short sale rule, Rule 10a–1 under the Act, 17 CFR 240.10a–1, has been made with respect to Internet HOLDRs and is currently pending with the Commission. If that request is granted and if it applies to trust issued receipts traded on the Exchange, the Exchange will issue a notice to its members detailing the terms of the exemption and confirming that applicable CHX rules relating to short sales do not apply.

Commission's order approving the Amex proposal.[6]

Creation of Internet HOLDRs. Internet HOLDRs will be issued by the Internet HOLDRs Trust, which was created pursuant to a depositary trust agreement dated September 2, 1999, among The Bank of New York, as trustee, Merrill Lynch Pierce Fenner & Smith Incorporated, other depositors and the owners of the Internet HOLDRs. The Exchange understands that approximately 3.7 million trust issued receipts were issued in connection with the initial distribution of Internet HOLDRs.

The deposited securities underlying Internet HOLDRs are: America Online (AOL), Yahoo Inc. (YHOO), Amazon.com Inc. (AMZN), eBay Inc. (EBY), At Home Corp. (ATHM), PricelineCom Inc. (PCLIN), CMGI Inc. (CMGI), Inktomi Corporation (INKT), RealNetworks, Inc. (RNWK), Exodus Communications, Inc. (EXDS), E*TRADE Group Inc. (EGRP), DoubleClick Inc. (DCLK), Ameritrade Holding Corp. (AMTD), Lycos, Inc. (LCOS), CNET, Inc. (CNET), PSINet Inc. (PSIX), Network Associates, Inc. (NETA), Earthlink Network, Inc. (ELNK), Mindspring Enterprises, Inc. (MSPG), and Go2NET, Inc. (GNET).

The twenty companies represented by the securities in the portfolio underlying the Internet HOLDRs trust were required to meet the following minimum criteria when they were selected on August 31, 1999: (1) each company's common stock must be registered under Section 12 of the Exchange Act; (2) the minimum public float of each company included in the portfolio must be at least $150 million; (3) each security must be either listed on a national securities exchange or traded through the facilities of Nasdaq and reported national market system securities; (4) the average daily trading volume must be at least 100,000 shares during the preceding sixty-day period; and (5) the average daily dollar value of the shares traded during the preceding sixty-day period must be at least $1 million. the initial weighting of each security in the portfolio was based on its market capitalization as of August 31, 1999; however, any security that represented more than 20% of the overall value of the receipt on the date the weighting was determined, was reduced to no more than 20% of the receipt value.

In addition, each of the companies whose common stock is included in the Internet HOLDRs also met the following criteria: (1) the market capitalization for each company was equal to or greater than $1 billion; (2) the average daily trading volume for each security was at least 1.2 million shares over the 60 trading days prior to August 31, 1999; (3) the average daily dollar volume of the shares traded for each company during the sixty-day trading period prior to August 31, 1999 was at least $60 million; and (4) each company was traded on a national securities exchange or Nasdaq/NM for at least ninety days prior to August 31, 1999.

Trading Issues. A round lot of 100 Internet HOLDRs represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. Because Internet HOLDRs may be acquired held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts, orders for less than a round lot will be rejected, while orders for greater than a round lot (but not a round-lot multiple) will be filled to the extent of the largest round lot multiple, rejecting the remaining odd lot.[7]

The Exchange believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust. The Exchange represents that the arbitrage process—which provides the opportunity to profit from differences in prices of the same or similar securities (*e.g.*, the trust issued receipts and the portfolio of deposited securities), increases the efficiency of the markets and serves to prevent potentially manipulative efforts—should promote correlative pricing between the trust issued receipts and the deposited securities. If the price of the trust issued receipt deviates enough from the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the trust issued receipt at a discount, immediately cancel them in exchange for the deposited securities and sell the shares in the cash market at a profit, or sell the trust issued receipts short at a premium and buy the securities represented by the receipts to deposit in exchange for the trust issued receipts to deliver against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

Maintenance of the Internet HOLDRs Portfolio. Except when a reconstitution event occurs, as described below, the securities represented by a trust issued receipt will not change.[8] According to the Internet HOLDRs prospectus, under no circumstances will a new company be added to the group of issuers of the underlying securities and weightings of component securities will not be adjusted after they are initially set.

Reconstitution Events. As described in the Internet HOLDRs prospectus, the securities underlying the trust issued receipts will be automatically distributed to the beneficial owners of the receipts in four circumstances:

(1) If the issuer of the underlying securities no longer has a class of common stock registered under Section 12 of the Act, then its securities will no longer be an underlying security and the trustee will distribute the shares of that company to the owners of the trust issued receipts;

(2) If the Commission finds that an issuer of underlying securities should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the shares of that company to the owners of the trust issued receipts;

(3) If the underlying securities of an issuer cease to be outstanding as a result of a merger, consolidation or other corporate combination, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of the trust issued receipts, unless the acquiring company's securities are already included in the trust issued receipts as deposited securities and the consideration paid is additional underlying securities, in which case the additional securities will be deposited into the trust; and

(4) If an issuer's underlying securities are delisted from trading on a national securities exchange or Nasdaq and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the securities are delisted.

As described in the prospectus, if a reconstitution event occurs, the trustee will deliver the underlying security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

Issuance and Cancellation of Internet HOLDRs. The trust will issue and cancel, and an investor may obtain, hold, trade and surrender, Internet

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[6] *See supra*, note 4.

[7] For example, an order for 50 trust issued receipts will be rejected and an order for 1050 trust issued receipts will be executed in part (1,000) and rejected in part (50).

[8] Even if a reconstitution event does not occur, the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the deposited securities and the relative weightings among the deposited securities may change based on the current market price of the deposited securities.

HOLDRs only in a round lot of 100 trust issued receipts and round-lot multiples. Nevertheless, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain trust issued receipts by either purchasing them on an exchange or by delivering to the trustee the underlying securities evidencing a round lot of trust issued receipts. The trustee will charge investors an issuance fee of up to $10 for each round lot of 100 trust issued receipts. An investor may cancel trust issued receipts and withdraw the deposited securities by delivering a round lot or round-lot multiple of the trust issued receipts to the trustee, during normal business hours. The trustee will charge investors a cancellation fee of up to $10 for each round lot of 100 trust issued receipts. Lower charges may be assigned based on the volume, frequency and size of issuances and cancellations. According to the prospectus, the trustee expects that, in most cases, it will deliver the deposited securities within one business day of the withdrawal request.

Termination of the Trust. As described in the Internet HOLDRs prospectus, the trust will terminate on the earliest of the following occurrences: (1) If the trustee resigns and no successor trustee is appointed by the initial depositor within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (2) If the trust issued receipts are delisted from the Amex and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the receipts are delisted; (3) If 75% of the beneficial owners of outstanding trust issued receipts (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (4) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to beneficial owners as promptly as practicable after the termination event.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[9] of the Act is that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–22 and should be submitted by November 22, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

A. Generally

The Commission finds that the proposed rule change,as amended, is consistent with the requirements of Section 6(b)(5) of a the Act[10] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds, as it did in the Amex order approving the listing and trading of trust issued receipts and Internet HOLDRs,[11] that the proposal establishing listing standards for trust issued receipts and to trade Internet HOLDRs will provide investors with a convenient and less expensive way of participating in the securities markets. The proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[12]

As noted in the Amex approval order, the Commission believes that trust issued receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade trust issued receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions negotiated prices. Trust issue receipts will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investors owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts.

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.[13] Nevertheless, the

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra*, note 4.

[12] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] The Commission has concerns about continued trading of the trust receipts whether listed or pursuant to UTP, if the number of component securities falls to a level below nine securities, because the receipts may not longer adequately reflect a cross section of the selected industry. Accordingly, the CHX has agreed to consult the Commission concerning continued trading, once

Continued

Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading, and other issues.

B. Trading of Trust Issued Receipts—Listing and UTP

The Commission finds that the CHX's proposal contains adequate rules and procedures to govern the trading of trust issued receipts whether by listing or pursuant to UTP. Trust issued receipts are equity securities that will be subject to the full panoply of CHX rules governing the trading of equity securities on the CHX, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.[14]

In addition, the CHX has developed specific listing and delisting criteria for trust issued receipts that will help to ensure that a minimum level of liquidity will exist for trust issued receipts to allow for the maintenance of fair and orderly markets. The delisting criteria also allows the CHX to consider the suspension of trading and the delisting of a trust issued receipt if an event occurred that made further dealings in such securities inadvisable. This will give the CHX flexibility to delist trust issued receipts if circumstances warrant such action. CHX's proposal also provides procedures to halt trading in trust issued receipts in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes the Exchange's belief that trust issued receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Furthermore, the Commission believes that the Exchange's proposal to trade trust issued receipts in minimum fractional increments of 1/16th of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in trust issued receipts.

Finally, the CHX will apply surveillance procedures for trust issued receipts that will be similar to the procedures used for portfolio depositary receipts and will incorporate and rely upon existing CHX surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading trust issued receipts, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of trust issued receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading trust issued receipts. The prospectus will address the special characteristics of a particular trust issued receipt basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in trust issued receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all CHX member firms who purchase trust issued receipts from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any trust issued receipts, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of purchases in trust issued receipts. The circular also will inform members of Exchange policies regarding trading halts in trust issued receipts.

CHX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the Exchange's proposal to trade trust issued receipts, and specifically Internet HOLDRs pursuant to UTP privileges, will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of trust issued receipts, and in particular Internet HOLDRs, as an investment tool, the CHX's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. The Commission notes, however, that notwithstanding approval of the listing standards for trust issued receipts, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. Additional series cannot be listed by the Exchange prior to contacting Division staff. In addition, the CHX may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

As noted above, the Commission has approved the listing and trading of trust issued receipts, including Internet HOLDs, at the Amex, under rules that are substantially similar to CHX Article XXVII, rule 27. The trading requirements of trust issued receipts at the CHX will be substantially similar to the trading requirements of trust issued receipts at the Amex. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.[15] The Commission does not believe that trading of this product raises novel regulatory issues that were not addressed in the previous filing. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CHX–99–22),

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the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter.

[14] Trading rules pertaining to the availability of odd-lot trading do not apply because trust issued receipts only can be traded in round-lots.

[15] *See* Securities Exchange Act Release No. 48192 (September 21, 1999), 64 FR 52559 (September 29, 1999).

[16] 15 U.S.C. 78s(b)(2).

as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28457 Filed 10–29–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42057; File No. SR–NASD–99–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., to Delay Implementation of 90–Second Trade Reporting as Part of a Pilot Program Extending the Availability of Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

October 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 1999, the National Association of Securities Dealers, Inc., ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc., ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Also on October 22, 1999, the NASD filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to defer, until November 15, 1999, the imposition of 90-second trade reporting rules between the hours of 5:15 p.m. and 6:30 p.m. Eastern Time that are part of a pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. Eastern Time. This pilot was approved by the Commission[6] and is set to commence on October 25, 1999. The text of the proposal is available upon request from the Office of the Secretary, the NASD, or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments is received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 13, 1999, the Commission approved a pilot program expanding the operating hours of certain Nasdaq services and facilities until 6:30 p.m. Eastern Time.[7] The pilot is set to commence on October 25, 1999, and will expand until 6:30 p.m. Eastern Time the operation times of the following services: (1) SelectNet Service ("SelectNet"); (2) Automated Confirmation Transaction Service ("ACT"); (3) Nasdaq Quotation Dissemination Service ("NQDS"); and (4) Nasdaq Trade Dissemination Service ("NTDS"). Subsequent to the Commission's approval of the pilot, Nasdaq and the Commission received numerous expressions of concern from NASD members regarding their ability to convert their internal automated systems in time to comply with the October 25, 1999 start of the pilot, and in particular with the imposition of new 90-second trade reporting obligations between the hours of 5:15 p.m. and 6:30 p.m. Eastern Time.

Upon review of these concerns, the determination was made to defer imposition of 90-second trade reporting until November 15, 1999 between the hours of 5:15 p.m. and 6:30 p.m. Eastern Time. All member firms are expected, however, to report trades as soon as possible after execution, and to the extent they are able to do so before November 15, 1999, within 90 seconds. In addition, Nasdaq has requested that the Commission staff expand its previous grant of no-action relief concerning SEC Rules 11Ac1–1(c)(5),[8] 11Ac1–4[9] and 301(b)(3)[10] to December 6, 1999, the date on which Nasdaq expects to be able to provide an inside quote. Pursuant to this relief, the NASD will likewise defer enforcement of NASD IM 2110–2 (Trading Ahead of Customer Limit Order) until December 6, 1999.

Finally, Nasdaq will soon amend SR–NASD–99–62, currently pending with the Commission, which seeks to mandate 90-second trade reporting is listed securities from 5:15 p.m. to 6:30 p.m., to seek a delay in imposing that obligation on NASD member firms until November 15, 1999, to allow firms additional time to modify their internal systems and make uniform the start date for 90-second trade reporting.

These modifications will allow the expanded availability of Nasdaq's SelectNet/ACT/NQDS/NTDS systems and services to 6:30 p.m. Eastern Time to commence on October 25, 1999, as scheduled, while at the same time giving NASD member firms sufficient time to make internal systems changes.

Nasdaq believes that the proposal will provide firms with a reasonable opportunity to enhance their internal systems prior to the November 15, 1999 start date of expanded 90-second trade reporting. Nasdaq believes this approach strikes a prudent balance between investors' need for enhanced quote and trade collection and dissemination after the regular close of the Nasdaq market and constraints faced by the industry with the implementation of system solutions to what would otherwise will be the manual processing of trades and trade reports.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* October 22, 1999 letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, Nasdaq requested that the proposed rule change be filed under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6). Nasdaq also requested that the Commission waive the 5-day notice of its intent to file the proposal and the 30-day period before the proposal becomes operative pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 42003 (October 13, 1999)(SR–NASD–99–57).

[7] *Id.*

[8] 17 CFR 240.11Ac1–1(c)(5).

[9] 17 CFR 240.11Ac1–4.

[10] 17 CFR 242.301(b)(3).

[11] 15 U.S.C. 78o–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the operative date be accelerated, and that the Commission waive the requirement that it provide written notice of its intent to file the proposed rule change more than five business days prior to the date of filing of the proposed rule change.

The Commission finds that it is appropriate to designate the proposal to become operative today because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date of the proposed rule change will allow NASD members additional time to covert their internal automated system to comply with the imposition of new 90-second trade reporting obligations between the hours of 5:15 p.m. and 6:30 p.m. Eastern Time, and to make uniform the start date 90-second trade reporting. For these reasons, the Commission finds good cause to waive the requirement that Nasdaq provide written notice of its intent to file the proposed rule change prior to the date of filing the proposal, and to designate that the proposal become operative today.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–64 and should be submitted November 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28458 Filed 10–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42051; File No. SR–PCX–99–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Increase Lead Market Maker Concentration Levels From 10% to 15%

October 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] notice is hereby given that on September 15, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations's Statement of the Terms of Substance of the Proposed Rule Change

Currently, PCX Rule 6.82(e)(3) states that in the absence of extraordinary circumstances, as determined by the PCX's Options Allocation Committee, no Lead Market maker ("LMM") may be allocated more than 10% of the number of issues traded on the options floor. The PCX proposes to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the Options Allocation Committee may allocate to an LMM from 10% to 15% of the number of issues traded on the options floor. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are brackets.

* * * * *

Rule 6.82

(a)–(d)—No Change.

(e)(1)–(2)—No Change.

(3) Concentration of Issues. In the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than [10%] *fifteen percent (15%)* of the number of issues traded on the Options Floor.

(e)(4)—No Change.

(f)–(h)—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 87c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, PXC rule 6.82(e)(3) states that in the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than 10% of the number of issues traded on the options floor. The Exchange proposes to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the Options Allocation Committee may allocate to an LMM from 10% to 15% of the number of issues traded on the options floor.

The Exchange proposes this change for several reasons. First, the Exchange recently filed with the Commission a proposed rule change which the Exchange anticipates will reduce the total number of issues traded on the options floor.[2] The Exchange believes that the Continued Listing Fee will cause a significant number of issues to be delisted, thus lowering the total number of issues that an LMM may hold.[3]

Second, the Exchange believes that it is necessary in today's competitive environment to provide flexibility to LMMs to allow them to be allocated additional issues. The Exchange proposes this change to allow its LMMs to be on equal footing with specialists and Designated Primary Market Makers ("DPMs") on other options exchanges with respect to the number of issues that may be allocated to them.[4] The Exchange believes that the current 10% cap is unnecessarily low and that an increase in concentration levels is consistent with rules and guidelines of other options exchanges.

2. Statutory Basis

The PCX believes that proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to facilitate transactions in securities, perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–35 and should be submitted by November 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28455 Filed 10–29–99; 8:45 am]

BILLING CODE 8010–01–M

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[2] *See* File No. SR–PCX–99–32. The proposal establishes a Continued Listing Fee that is designed to more fairly allocate the costs and expenses involved in supporting the trading of all listed options and to eliminate unfair burdens on options issues that generate revenue above the threshold of $500 per month. Under the proposal, the PCX will calculate all volume-based, trading-related revenues generated by each option issue over a trailing average of three calendar months to determine whether an option issue meets the $500 threshold. The PCX will assess a Continued Listing Fee on each option issue that fails to produce revenue of more than $500 per month through a combined total of transaction, comparison and data entry fees over the trailing average of three calendar months. The proposal is pending with the Commission.

[3] For example, if the Exchange lists 800 issues, then under current PCX rule 6.82(e)(3) an LMM may be allocated up to 80 (10% of 800) of those issues. If the Exchange delists 200 of those issues, leaving a total of 600 issues listed on the Exchange, then an LMM may be allocated up to 60 issues (10% of 600).

[4] In this regard, the PCX represents that it is not aware of any limitations under American Stock Exchange ("Amex") rules in the number of issues in which an Amex specialist may be registered. In addition, the PCX notes that Chicago Board Options Exchange ("CBOE") Regulatory Circular RG99–135 states that CBOE's Modified Trading System Appointment Committee will review the number of options classes allocated to a DPM if the DPM meets two of the following three criteria: (1) the number of classes allocated to the DPM is 25% or more of the total number of classes traded on the CBOE (excluding DJX, NDX, OEX, and SPX); (2) the volume in the classes allocated to the DPM is 25% or more of the total volume of CBOE (excluding DJX, NDX, OEX, and SPX); and (3) the number of appointments held by the DPM is 25% or more of the total number of DPM appointments effective on CBOE.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42058; File No. SR–Phlx–99–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Assessment of a Capital Funding Fee

October 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx is proposing to amend its schedule of dues, fees, and charges to charge the owners of each of the 505 Exchange memberships a monthly capital funding fee of $1,500 per membership.[3] This fee will remain in effect for 36 consecutive months and will provide funding for capital improvements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx is prosing to amend its fee schedule to include a monthly fee of $1,500, per membership, charged to each owner of the Exchange's 505 memberships.[4] The monthly fee will be due on the last business day of the previous calendar month. Thus, the owner is responsible for paying the entire subsequent month's fee on the last business day of the prior month. The Exchange intends to segregate the funds generated from this $1,500 fee from Phlx's general funds. This fee will remain in effect for 36 consecutive months. At the end of the 36-month period, the Exchange will reevaluate its long-term financing plan to determine whether this fee should continue.

This monthly fee will be treated like a contribution to capital and will provide funding for technological improvements and other capital needs.[5] Specifically, it is intended to fund capital purchases, including hardware for capacity upgrades, development efforts for decimalization, trading floor expansion, and communication enhancements. The revenue from the fees will assist in allowing the Exchange to remain competitive in the current capital markets environment.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[6] in general, and with Section 6(b)(4),[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members. The Exchange believes that the capital funding fee is reasonable and equitable because it is imposed on every seat owner and will provide important funding for capital improvements. In reviewing this proposal, the Commission has considered its impact of efficiency, competition, and capital formation.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that it does not believe that the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become immediately effective upon filing pursuant to Rule 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder because it establishes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–43 and should be submitted by November 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28456 Filed 10–29–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3150]

Culturally Significant Objects Imported for Exhibition Determinations: "Raphael and Titian: The Renaissance Portrait"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition

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[3] Telephone conversation between Marla Chidsey, Law Clark, Division of Market Regulation, Commission, and Cynthia Hoekstra, Counsel, Phx (October 20, 1999).

[4] For the purposes of this proposal, an "owner" means any person or entity who holds equitable title to a membership in the Exchange.

[5] This fee is distinguished from the technology fee that the Exchange implemented in 1997. The technology fee was intended to cover system software modifications, upgrades to the operating systems on the Exchange's trading floors, Year 2000 modifications, specific system development costs, hardware upgrades to handle expected increased trading volumes, and anticipated increases due to SIAC and OPRA communication changes. *See* Securities Exchange Act Release No. 38394 (March 12, 1997) 62 FR 13204 (March 19, 1997) SR–Phlx–97–09).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

"Raphael and Titian: The Renaissance Portrait," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with a foreign lender. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, Illinois, from on or about December 15, 1999, to on or about March 19, 2000, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Lorie J. Nierenberg, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6084). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: October 26, 1999.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 99–28540 Filed 10–29–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3151]

Modification of Description of "Territory of Afghanistan Controlled by The Taliban" in Executive Order 13129

Executive Order 13129 of July 4, 1999 blocks property and prohibits transactions with the Taliban. Under section 4(d) of this Order, the Secretary of State, in consultation with the Secretary of the Treasury, is authorized the modify the description of the term "territory of Afghanistan controlled by the Taliban." Acting under the authority delegated to me by the Secretary of State on October 14, 1999, and in consultation with the Secretary of the Treasury, I hereby modify the description of the term "territory of Afghanistan controlled by the Taliban" to include the City of Kabul.

This notice shall be published in the **Federal Register**.

Dated: October 21, 1999.

Thomas R. Pickering,

Under Secretary of State for Political Affairs, U.S. Department of State.

[FR Doc. 99–28541 Filed 10–29–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders of Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on September 30, 1999. This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW, Suite PL 200–A, Washington, DC 20590: telephone: (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number.

The indexes are published on a quarterly basis (*i.e.*, January, April, July, and October.) This publication represents the quarter ending on March 31, 1999.

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91
1/1/91–3/31/91	56 FR 20250; 5/2/91
4/1/91–6/30/91	56 FR 31984; 7/21/91
7/1/91–9/30/91	56 FR 51735; 10/15/91
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92
1/1/92–3/31/92	57 FR 12359; 4/9/92
4/1/92–6/30/92	57 FR 32825; 7/23/92
7/1/92–9/30/92	57 FR 48255; 10/22/92
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93
1/1/93–3/31/93	58 FR 21199; 4/19/93
4/1/93–6/30/93	58 FR 42120; 8/6/93
7/1/93–9/30/93	58 FR 58218; 10/29/93
10/1/93–12/31/93 ..	59 FR 5466; 2/4/94
1/1/94–3/31/94	59 FR 22196; 4/29/94
4/1/94–6/30/94	59 FR 39618; 8/3/94
7/1/94–12/31/94	60 FR 4454; 1/23/95
1/1/95–3/31/95	60 FR 19318; 4/17/95
4/1/95–6/30/95	60 FR 36814; 7/18/95
7/1/95–9/30/95	60 FR 53228; 10/12/95
10/1/95–12/31/95 ..	61 FR 1972; 1/24/96
1/1/96–3/31/96	61 FR 16955; 4/18/96
4/1/96–6/30/96	61 FR 37526; 7/18/96
7/1/96–9/30/96	61 FR 54833; 10/22/96
10/1/96–12/31/96 ..	62 FR 2434; 1/16/97
1/1/97–3/31/97	62 FR 24533; 5/2/97
4/1/97–6/30/97	62 FR 38339; 7/17/97
7/1/97–9/30/97	62 FR 53856; 10/16/97
10/1/97–12/31/97 ..	63 FR 3373; 1/22/98
1/1/98–3/31/98	63 FR 19559; 4/20/98
4/1/98–6/30/98	63 FR 37914; 7/14/98
7/1/98–9/30/98	63 FR 57729; 10/28/98
10/1/98–12/31/98 ..	64 FR 1855; 1/12/99
1/1/99–3/31/99	64 FR 24690; 5/7/99
4/1/99–6/30/99	64 FR 43236; 8/9/99

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice.)

Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet is also set forth at the end of this notice.

Civil Penalty Actions—Orders Issued by the Administrator

Order Number Index

(This index includes all decisions and orders issued by the Administrator from July 1, 1999, to September 30, 1999)

99–4—Warbelow's Air Ventures
7/1/99—CP97AL0012
99–5—Africa Air Corp.
8/31/99—CP96EA0044
99–6—James K. Squire
8/31/99—CP97WP0007
99–7—Premier Jets
8/31/99—CP97NM0005
99–8—Michael McDermott
8/31/99—CP98WP0055
99–9—Lifeflite Medical Air Transport
8/31/99—CP98WP0062
99–10—Azteca Aviation
8/31/99—CP97SW0024, CP98SW0015
99–11—Evergreen Helicopters
8/31/99—CP97AL0001

Civil Penalty Actions—Orders Issued by the Administrator

Subject Matter Index

(Current as of September 30, 1999)

Administrative Law Judges—Power and Authority:	
Continuance of hearing	91–11 Continental Airlines; 92–29 Haggland.
Credibility findings	90–21 Carroll; 92–3 Park; 93–17 Metcalf; 94–3 Valley Air; 94–4 Northwest Aircraft Rental; 95–25 Conquest; 95–26 Hereth; 97–20 Werle; 97–30 Emergy Worldwide Airlines; 97–32 Florida Propeller; 98–18 General Aviation; 99–6 Squire.
Default Judgment	91–11 Continental Airlines; 92–47 Cornwall; 94–8 Nunez; 94–22 Harkins; 94–28 Toyota; 95–10 Diamond; 97–28 Continental Airlines; 97–33 Rawlings; 98–13 Air St. Thomas.
Discovery	89–6 American Airlines; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter; 93–10 Costello.
Expert Testimony	94–21 Sweeney.
Granting extensions of time	90–27 Gabbert.
Hearing location	92–50 Cullop.
Hearing request	93–12 Langton; 94–6 Strohl; 94–27 Larsen; 94–37 Houston; 95–19 Rayner.
Initial Decision	92–1 Costello; 92–32 Barnhill.
Lateness of	97–31 Sanford Air.
Should include requirement to file appeal brief in decision	98–5 Squire.
Jurisdiction:	
Generally.	90–20 Degenhardt; 90–33 Cato; 92–1 Costello; 92–32 Barnhill.
After issuance of order assessing civil penalty	94–37 Houston; 95–19 Rayner; 97–33 Rawlings.
When complaint is withdrawn	94–39 Kirola.
Motion for Decision	92–73 Wyatt; 92–75 Beck; 92–76 Safety Equipment; 93–11 Merkley; 96–24 Horizon; 98–20 Koenig.
No authority to extend due date for late Answer without showing of good cause. (See also Answer).	95–28 Atlantic World Airways; 97–18 Robinson; 98–4 Larry's Flying Service.
Notice of Hearing	92–31 Eaddy.
Regulate proceedings	97–20 Werle.
Sanction	90–37 Northwest Airlines; 91–54 Alaska Airlines; 94–22 Harkins; 94–28 Toyota.
Service of law judges by parties	97–18 Robinson.
Vacate initial decision	90–20 Degenhardt; 92–32 Barnhill; 95–6 Sutton.
Aerial Photograph	95–25 Conquest Helicopters.
Agency Attorney	93–13 Medel.
Air Carrier:	
Agent/independent contractor of	92–70 USAir.
Careless or Reckless	92–48 & 92–70 USAir; 93–18 Westair Commuter.
Duty of care:	
Non-delegable	92–70 USAir; 96–16 Westair Commuter; 96–24 Horizon; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 99–12 TWA.
Employee	93–18 Westair Commuter; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 99–12 TWA.
Ground Security Coordinator, Failure to provide	96–16 WestAir Commuter.
Intoxicated Passenger:	
Allowing to board	98–11 TWA.
Serving alcohol to	98–11 TWA.
Liability for acts/omissions of employees in the scope of employment.	98–11 TWA, 99–12 TWA.
Aircraft Maintenance (See also Airworthiness, Maintenance Manual):	
Generally	90–11 Thunderbird Accessories; 91–8 Watts Agricultural Aviation; 93–36 & 94–3 Valley Air; 94–38 Bohan; 95–11 Horizon; 96–3 America West Airlines; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 97–10 Alphin; 97–11 Hampton; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 98–18 General Aviation; 99–5 Africa Air.
Acceptable methods, techniques, and practices	96–3 America West Airlines.
After certificate revocation	92–73 Wyatt.
Airworthiness Directive, compliance with	96–18 Kilrain; 97–9 Alphin.
Inspection	96–18 Kilrain; 97–10 Alphin.
Major alterations: Failed to prove	99–5 Africa Air.

Major/minor repairs	96–3 America West Airlines.
Minimum Equipment List (MEL)	94–38 Bohan; 95–11 Horizon; 97–11 Hampton; 97–21 Delta; 97–30 Emery Worldwide Airlines.
Aircraft Records:	
Aircraft Operation	91–8 Watts Agricultural Aviation.
Flight and Duty Time	96–4 South Aero.
Maintenance Records	91–8 Watts Agricultural Aviation; 94–2 Woodhouse; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 98–18 General Aviation.
"Yellow tags"	91–8 Watts Agricultural Aviation.
Aircraft-Weight and Balance (See Weight and Balance)	
Airmen:	
Pilots	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp; 93–17 Metcalf.
Airline Transport Pilot certificates requirement in foreign aviation by Part 135 operator.	99–11 Evergreen Helicopters.
Altitude deviation	92–49 Richardson & Shimp.
Careless or Reckless	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp; 92–47 Cornwall; 93–17 Metcalf; 93–29 Sweeney; 96–17 Fenner.
Flight time limitations	93–11 Merkley.
Flight Time records	99–7 Premier Jets.
Follow ATC Instruction	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp.
Low Flight	92–47 Cornwall; 93–17 Metcalf.
Owner's responsibility	96–17 Fenner.
See and Avoid	93–29 Sweeney.
Air Operations Area (AOA):	
Air Carrier Responsibilities	90–19 Continental Airlines; 91–33 Delta Air Lines; 94–1 Delta Air Lines.
Airport Operator Responsibilities	90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 98–7 LAX.
Badge Display	91–4 [Airport Operator]; 91–33 Delta Air Lines; 99–1 American Airlines.
Definition of	90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator].
Exclusive Areas	90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator]; 98–7 LAX.
Airport Security Program (ASP):	
Compliance with	91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 94–1 Delta Air Lines; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan; 98–7 LAX; Airport Operator.
Responsibilities	90–12 Continental Airlines; 91–4 [Airlines Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan.
Air Traffic Control (ATC):	
Error as mitigating factor	91–12 & 91–31 Terry & Menne.
Error as exonerating factor	91–12 & 91–31 Terry & Menne; 92–40 Wendt.
Ground Control	91–12 Terry & Menne; 93–18 Westair Commuter.
Local Control	91–12 Terry & Menne.
Tapes & Transcripts	91–12 Terry & Menne; 92–49 Richardson & Shimp.
Airworthiness	91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 92–48 & 92–70 USAir; 94–2 Woodhouse; 95–11 Horizon; 96–3 America West Airlines; 96–18 Kilrain; 94–25 USAir; 97–8 Pacific Av. d/b/a/ Inter-Island Helicopters; 97–9 Alphin; 97–10 Alphin; 97–11 Hampton; 97–21 Delta; 97–30 Emery Worldwide Airlines; 97–32 Florida Propeller; 98–18 General Aviation.
Amicus Curiae Briefs	90–25 Gabbert.
Answer:	
ALJ may not extend due date for late answer unless good cause shown.	95–28 Atlantic World Airways; 97–18 Robinson; 97–33 Rawlings; 98–4 Larry's Flying Service.
Reply to each numbered paragraph in the complaint required	98–21 Blankson.
Timeliness of answer	90–3 Metz; 90–15 Playter; 92–32 Barnhill; 92–47 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 94–5 Grant; 94–29 Sutton; 94–30 Columna; 94–43 Perez; 95–10 Diamond; 95–28 Atlantic World Airways; 97–18 Robinson; 97–19 Missirlian; 97–33 Rawlings; 97–38 Air St. Thomas; 98–4 Larry's Flying Service; 98–13 Air St Thomas; 99–8 McDermott; 99–9 Lifeflite Medical Air Transport.
What constitutes	92–32 Barnhill; 92–75 Beck; 97–19 Missirlian.
Appeals (See also Filing; Timeliness; Mailing Rule):	
Briefs, Generally	89–4 Metz; 91–45 Park; 92–17 Giuffrida; 92–19 Cornwall; 92–39 Beck; 93–24 Steel City Aviation; 93–28 Strohl; 94–23 Perez; 95–13 Kilrain.

Additional Appeal Brief	92–3 Park; 93–5 Wendt; 93–6 Westair Commuter; 93–28 Strohl; 94–4 Northwest Aircraft; 94–18 Luxemburg; 94–29 Sutton; 97–22 Sanford Air; 97–34 Continental Airlines; 97–38 Air St. Thomas; 98–18 General Aviation; 99–11 Evergreen Helicopter.
Appeal dismissed as premature	95–19 Rayner.
Appeal dismissed as moot after complaint withdrawn	92–9 Griffin.
Appellate arguments	92–70 USAir.
Court of Appeals, appeal to (See Federal Courts)	
Good Cause for Late-Filed Brief or Notice of Appeal	90–3 Metz; 90–27 Gabbert; 90–39 Hart; 91–10 Graham; 91–24 Esau; 91–48 Wendt; 91–50 & 92–1 Costello; 92–3 Park; 92–17 Giuffrida; 92–39 Beck; 92–41 Moore & Sabre Associates; 92–52 Beck; 92–57 Detroit Metro Wayne Co. Airport; 92–69 McCabe; 93–23 Allen; 93–27 Simmons; 93–31 Allen; 95–2 Meronek; 95–9 Woodhouse; 95–25 Conquest, 97–6 WRA Inc.; 97–7 Stalling; 97–28 Continental; 97–38 Air St. Thomas; 98–1 V. Taylor; 98–13 Air St. Thomas; 99–4 Warbelow's Air Ventures.
Motion to Vacate construed as a brief	91–11 Continental Airlines.
Perfecting an Appeal, generally	92–17 Giuffrida; 92–19 Cornwall; 92–39 Beck; 94–23 Perez; 95–13 Kilrain; 96–5 Alphin Aircraft; 98–20 Koenig.
Extension of Time for (good cause for)	89–8 Thunderbird Accessories; 91–26 Britt Airways; 91–32 Bargen; 91–50 Costello; 93–2 & 93–3 Wendt; 93–24 Steel City Aviation; 93–32 Nunez, 98–5 Squire; 98–15 Squire; 99–3 Justice; 99–4 Warbelow's Air Ventures.
Failure to	89–1 Gressani; 89–7 Zenkner; 90–11 Thunderbird Accessories; 90–35 P. Adams; 90–39 Hart; 91–7 Pardue; 91–10 Graham; 91–20 Bargen; 91–43, 91–44, 91–46 & 91–47 Delta Air Lines; 92–11 Alilin; 92–15 Dillman; 92–18 Bargen; 92–34 Carrell, 92–35 Bay Land Aviation; 92–36 Southwest Airlines; 92–45 O'Brien; 92–56 Montauk Caribbean Airways; 92–67 USAir; 92–68 Weintraub; 92–78 TWA; 93–7 Dunn; 93–8 Nunez; 93–20 Smith; 93–23 & 93–31 Allen; 93–34 Castle Aviation; 93–35 Steel City Aviation; 94–12 Bartusiak; 94–24 Page; 94–26 French Aircraft; 94–34 American International Airways; 94–35 American International Airways; 94–36 American International Airways; 95–4 Hanson; 95–22 & 96–5 Alphin Aircraft; 96–2 Skydiving Center; 96–13 Winslow; 97–3 [Airport Operator], 97–6 WRA, Inc.; 97–15 Houston & Johnson County; 97–35 Gordon Air Services; 97–36 Avcon; 97–37 Roush; 98–10 Rawlings; 99–2 Oxygen Systems.
Notice of appeal construed as appeal brief	92–39 Beck; 94–15 Columna; 95–9 Woodhouse; 95–23 Atlantic World Airways; 96–20 Missirlian; 97–2 Sanford Air; 98–5 Squire; 98–17 Blue Ridge Airlines; 98–23 Instead Balloon Services; 99–3 Justice; 99–8 McDermott.
What Constitutes	90–4 Metz; 90–27 Gabbert; 91–45 Park; 92–7 West; 92–17 Giuffrida; 92–39 Beck; 93–7 Dunn; 94–15 Columna; 94–23 Perez; 94–30 Columna; 95–9 Woodhouse; 95–23 Atlantic World Airways; 96–20 Missirlian; 97–2 Sanford Air.
Service of brief: Failure to serve other party	92–17 Guiffrida; 92–19 Cornwall.
Timeliness of Notice of Appeal	90–3 Metz; 90–39 Hart; 91–50 Costello; 92–7 West; 92–69 McCable; 93–27 Simmons; 95–2 Meronek; 95–9 Woodhouse; 95–15 Alphin Aviation; 96–14 Midtown Neon Sign Corp; 97–7 & 97–17 Stallings; 97–28 Continental; 97–38 Air St. Thomas; 98–1 V. Taylor; 98–13 Air St. Thomas; 98–16 Blue Ridge Airlines; 98–17 Blue Ridge Airlines; 98–21 Blankson.

Withdrawal of	89–2 Lincoln-Walker; 89–3 Sittko; 90–4 Nordrum; 90–5 Sussman; 90–6 Dabaghian; 90–7 Steele; 90–8 Jenkins; 90–9 Van Zandt; 90–13 O'Dell; 90–14 Miller; 90–28 Puleo; 90–29 Sealander; 90–30 Steidinger; 90–34 D. Adams; 90–40 & 90–41 Westair Commuter Airlines; 91–1 Nestor; 91–5 Jones; 91–6 Lowery; 91–13 Kreamer; 91–14 Swanton; 91–15 Knipe; 91–16 Lopez; 91–19 Bayer; 91–21 Britt Airways; 91–22 Omega Silicone Co.; 91–23 Continental Airlines; 91–25 Sanders; 91–27 Delta Air Lines; 91–28 Continental Airlines; 91–29 Smith; 91–34 GASPRO; 91–35 M. Graham; 91–36; Howard; 91–37 Vereen; 91–39 America West; 91–42 Pony Express; 91–49 Shields; 91–56 Mayhan; 91–57 Britt Airways; 91–59 Griffin; 91–60 Brinton; 92–2 Koller; 92–4 Delta Air Lines; 92–6 Rothgeb; 92–12 Bertetto; 92–20 Delta Air Lines; 92–21 Cronberg; 92–22, 92–23, 92–24, 92–25, 92–26 & 92–28 Delta Air Lines; 92–33 Port Authority of NY & NJ; 92–43 Delta Air Lines; 92–44 Owens; 92–53 Humble; 92–54 & 92–55 Northwest Airlines; 92–60 Costello; 92–61 Romerdahl; 92–62 USAir; 92–63 Schaefer; 92–64 & 92–65 Delta Air Lines; 92–66 Sabre Associates & Moore; 92–79 Delta Air Lines; 93–1 Powell & Co.; 93–4 Harrah; 93–14 Fenske; 93–15 Brown; 93–21 Delta Air Lines; 93–22 Yannotone; 93–26 Delta Air Lines; 93–33 HPH Aviation; 94–9 B & G Instruments; 94–10 Boyle; 94–11 Pan American Airways; 94–13 Boyle; 94–14 B & G Instruments; 94–16 Ford; 94–33 Trans World Airlines; 94–41 Dewey Towner; 94–42 Taylor; 95–1 Diamond Aviation; 95–3 Delta Air Lines; 95–5 Araya; 95–6 Sutton; 95–7 Empire Airlines; 95–20 USAir; 95–21 Faisca; 95–24 Delta Air Lines; 96–7 Delta Air Lines; 96–8 Empire Airlines; 96–10 USAir; 96–11 USAir, 96–12 USAir; 96–21 Houseal; 97–4 [Airport Operator]; 97–5 WestAir; 97–25 Martin & Jaworski; 97–26 Delta Air Lines; 97–27 Lock Haven; 97–39 Delta Air Lines; 98–9 Continental Express;
Assault (See also Battery, and Passenger Misconduct)	96–6 Ignatov; 97–12 Mayer.
"Attempt"	89–5 Schultz.
Attorney Conduct: Obstreperous or Disruptive	94–39 Kirola.
Attorney Fees (See EAJA)	
Aviation Safety Reporting System	90–39 Hart; 91–12 Terry & Menne; 92–49 Richardson & Shimp.
Baggage Matching	98–6 Continental; 99–12 TWA.
Balloon (Hot Air)	94–2 Woodhouse.
Bankruptcy	91–2 Continental Airlines.
Battery (See also Assault and Passenger Misconduct)	96–6 Ignatov; 97–12 Mayer.
Certificates and Authorizations: Surrender when revoked	92–73 Wyatt.
Civil Air Security National Airport Inspection Program (CASNAIP)	91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].
Civil Penalty Amount (See Sanction)	
Closing Argument (See Final Oral Argument)	
Collateral Estoppel	91–8 Watts Agricultural Aviation.
Complaint:	
Complainant Bound By	90–10 Webb; 91–53 Koller.
No Timely Answer to (See Answer)	
Partial Dismissal/Full Sanction	94–19 Pony Express; 94–40 Polynesian Airways.
Staleness (See Stale Complaint Rule)	
Statute of Limitations (See Statute of Limitations)	
Timeliness of complaint	91–51 Hagwood; 93–13 Medel; 94–7 Hereth; 94–5 Grant.
Withdrawal of	94–39 Kirola; 95–6 Sutton.
Compliance & Enforcement Program:	
(FAA Order No. 2150.3A)	89–5 Schultz; 89–6 American Airlines; 91–38 Esau; 92–5 Delta Air Lines
Compliance/Enforcement Bulletin 92–3	96–19 [Air Carrier].
Sanction Guidance Table	89–5 Schultz; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines; 91–3 Lewis; 92–5 Delta Air Lines; 98–18 General Aviation.
Concealment of Weapons (See Weapons Violations):	
Consolidation of Cases	90–12, 90–18 & 90–19 Continental Airlines.
Constitutionality of Regulations (See also Double Jeopardy)	90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines; 96–1 [Airport Operator]; 90–25 USAir; 97–16 Mauna Kea; 97–34 Continental Airlines; 98–6 Continental Airlines; 98–11 TWA; 99–1 American; 99–12 TWA
Continuance of Hearing	90–25 Gabbert; 92–29 Haggland.
Corrective Action (See Sanction)	
Counsel:	
Leave to withdraw	97–24 Gordon.
No right to assigned counsel (See Due Process)	
Credibility of Witnesses:	
Generally	95–25 Conquest Helicopters; 95–26 Hereth; 97–32 Florida Propeller.
Bias	97–9 Alphin.

Defer to ALJ determination of	90–21 Carroll; 92–3 Park; 92–17 Metcalf; 95–26 Hereth; 97–20 Werle; 97–30 Emery Worldwide Airlines; 97–32 Florida Propeller; 98–11 TWA; 98–18 General Aviation; 99–6 Squire.
Experts	(See also Witness) 90–27 Gabbert; 93–17 Metcalf; 96–3 America West Airlines.
Impeachment	94–4 Northwest Aircraft Rental.
Reliability of Identification by eyewitnesses	97–20 Werle.
De facto answer	92–32 Barnhill.
Delay in initiating action	90–21 Carroll.
Deliberative Process Privilege	89–6 American Airlines; 90–12, 90–18 & 90–19 Continental Airlines.
Deterrence	89–5 Schultz; 92–10 Flight Unlimited; 95–16 Mulhall; 95–17 Larry's Flying Service; 97–11 Hampton.
Discovery:	
Deliberative Process Privilege	89–6 American Airlines; 90–12, 90–18 & 90–19 Continental Airlines.
Depositions, generally	91–54 Alaska Airlines.
Notice of deposition	91–54 Alaska Airlines.
Failure to Produce	90–18 & 90–19 Continental Airlines; 91–17, KDS Aviation; 93–10 Costello.
Sanction for	91–17 KDS Aviation; 91–54 Alaska Airlines.
Regarding Unrelated Case	92–46 Sutton-Sautter.
Double Jeopardy	95–8 Charter Airlines; 96–26 Midtown.
Due Process:	
Generally	89–6 American Airlines; 90–12 Continental Airlines; 90–37 Northwest Airlines; 96–1 [Airport Operator]; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 99–12 TWA.
Before finding a violation	90–27 Gabbert.
Mutiple violations	96–26 Midtown; 97–9 Alphin.
No right to assigned counsel	97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphine; 99–6 Squire.
Violation of	89–6 American Airlines; 90–12 Continental Airlines; 90–37 Northwest Airlines; 96–1 [Airport Operator]; 97–8 Pacific Av. d/b/a Inter-Island Helicopter; 98–19 Martin & Jaworski.
EAJA:	
Adversary Adjudication	90–17 Wilson; 91–17 & 91–52 KDS Aviation; 94–17 TCI; 95–12 Toyota.
Amount of award	95–27 Valley Air.
Appeal from ALJ decision	95–9 Woodhouse.
Expert witness fees	95–27 Valley Air.
Final disposition	96–22 Woodhouse.
Further proceedings	91–52 KDS Aviation.
Jurisdiction over appeal	92–74 Wendt; 96–22 Woodhouse.
Late-filed application	96–22 Woodhouse.
Other expenses	93–29 Sweeney.
Position of agency	95–27 Valley Air.
Prevailing party	91–52 KDS Aviation.
Special circumstances	95–18 Pacific Sky.
Substantial justification	91–52 & 92–71 KDS Aviation; 93–9 Wendt; 95–18 Pacific Sky; 95–27 Valley Air; 96–15 Valley Air; 98–19 Martin & Jaworski.
Supplementation of application	95–27 Valley Air.
Evidence (See Proof & Evidence)	
Ex Parte Communications	93–10 Costello; 95–16 Mulhall; 95–19 Rayner.
Expert Witnesses (See Witness)	
Extension of Time:	
By Agreement of Parties	89–6 American Airlines; 92–41 Moore & Sabre Associates.
Dismissal by Decisionmaker	89–7 Zenkler; 90–39 Hart.
Good Cause for	89–8 Thunderbird Accessories.
Objection to	89–8 Thunderbird Accessories; 93–3 Wendt.
Who may grant	90–27 Gabbert.
Federal Courts	92–7 West; 97–1 Midtown Neon Sign; 98–8 Carr; 99–12 TWA.
Federal Rules of Civil Procedure	91–17 KDS Aviation.
Federal Rules of Evidence (See also Proof & Evidence):	
Admissions	96–25 USAir, 99–5 Africa Air.
Evidentiary admissions are rebuttable	99–5 Africa Air.
Settlement Offers (Rule 408)	95–16 Mulhall; 96–25 USAir; 99–5 Africa Air.
Admissions contained as part of settlement offers excluded	99–5 Africa Air.
Subsequent Remedial Measures	96–24 Horizon; 96–25 USAir.
Final Oral Argument	92–3 Park.
Firearms (See Weapons)	
Ferry Flights	95–8 Charter Airlines.
Filing (See also Appeals; Timeliness)	
Burden to prove date of filing	97–11 Hampton Air; 98–1 V. Taylor.
Discrepancy between certificate of service and postmark	98–16 Blue Ridge Airlines.
Service on designated representative	98–19 Martin & Jaworski.

Flight & Duty Time:	
Circumstances beyond crew's control	
Generally	95–8 Charter Airlines.
Foreseeability	95–8 Charter Airlines.
Late freight	95–8 Charter Airlines.
Weather	95–8 Charter Airlines.
Competency check flights	96–4 South Aero.
Limitation of Duty Time	95–8 Charter Airlines; 96–4 South Aero.
Limitation of Flight Time	95–8 Charter Airlines.
"Other commercial flying"	95–8 Charter Airlines.
Recordkeeping:	
Individual flight time records for each Part 135 pilot	99–7 Premier Jets.
Flights	94–20 Conquest Helicopters.
Freedom of Information Act	93–10 Costello.
Fuel Exhaustion	95–26 Hereth.
Guns (See Weapons)	
Ground Security Coordinator. (See also Air Carrier; Standard Security Program) Failure to provide.	96–16 WestAir Commuter.
Hazardous Materials:	
Transportation of, generally	90–37 Northwest Airlines; 92–76 Safety Equipment; 92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota; 95–16 Mulhall; 96–26 Midtown.
Civil Penalty, generally	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
Corrective Action	92–77 TCI; 94–28 Toyota.
Culpability	92–77 TCI; 94–28 Toyota; 94–31 Smalling.
Financial hardship	95–16 Mulhall.
Installment plan	95–16 Mulhall.
First-time violation	92–77 TCI; 94–28 Toyota; 94–31 Smalling.
Gravity of violation	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown; 98–2 Carr.
Minimum penalty	95–16 Mulhall; 98–2 Carr.
Number of violations	95–16 Mulhall; 96–26 Midtown Neon Sign; 98–2 Carr.
Redundant violations	95–16 Mulhall; 96–26 Midtown Neon Sign; 98–2 Carr.
Criminal Penalty	92–77 TCI; 94–31 Smalling.
EAJA, applicability of	94–17 TCI; 95–12 Toyota.
Individual violations	95–16 Mulhall.
Judicial review	97–1 Midtown Neon Sign; 98–8 Carr.
Knowingly	92–77 TCI; 94–19 Pony Express; 94–31 Smalling.
Specific hazard class transported:	
Combustible Paint	95–16 Mulhall.
Corrosive:	
Wet Battery	94–28 Toyota Motor Sales.
Other	92–77 TCI.
Explosive Fireworks	94–31 Smalling; 98–2 Carr.
Flammable:	
Paint	96–26 Midtown Neon Sign.
Turpentine	95–16 Mulhall.
Radioactive	94–19 Pony Express.
Hearing: Failure of party to attend	98–23 Instead Balloon Services.
Informal Conference	94–4 Northwest Aircraft Rental.
Initial Decision: What constitutes	92–32 Barnhill.
Interference with crewmembers (See also Passenger Misconduct; Assault).	92–3 Park; 96–6 Ignatov; 97–12 Mayer; 98–11 TWA; 98–12 Stout.
Interlocutory Appeal	89–6 American Airlines; 91–54 Alaska Airlines; 93–37 Airspect; 94–32 Detroit Metropolitan; 98–25 Gotbetter.
Internal FAA Policy &/or Procedures	89–6 American Airlines; 90–12 Continental Airlines; 92–73 Wyatt.
Jurisdiction:	
After initial decision	90–20 Degenhardt; 90–33 Cato; 92–32 Barnhill; 93–28 Strohl.
After Order Assessing Civil Penalty	94–37 Houston; 95–19 Rayner.
After withdrawal of complaint	94–39 Kirola.
$50,000 Limit	90–12 Continental Airlines.
EAJA cases	92–74 Wendt; 96–22 Woodhouse.
HazMat cases	92–76 Safety Equipment.
NTSB	90–11 Thunderbird Accessories.
Statutory authority to regulate flights entirely outside of U.S. questioned.	99–11 Evergreen Helicopters.
Knowledge of concealed weapon (See also Weapons Violation)	89–5 Schultz; 90–20 Degenhardt.
Laches (See Delay in initiating action):	
Mailing Rule, generally	89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart; 98–20 Koenig.
Overnight express delivery	89–6 American Airlines.
Maintenance (See Aircraft Maintenance):	
Maintenance Instruction	93–36 Valley Air.
Maintenance Manual	90–11 Thunderbird Accessories; 96–25 USAir.
Air carrier maintenance manual	96–3 America West Airlines.

Approved/accepted repairs	96–3 America West Airlines.
Manufacturer's maintenance manual	96–3 America West Airlines; 97–31 Sanford Air; 97–32 Florida Propeller.
Minimum Equipment List (MEL) (See Aircraft Maintenance)	
Mootness, appeal dismissed as moot	92–9 Griffin; 94–17 TCI.
National Aviation Safety Inspection Program (NASIP)	90–16 Rocky Mountain.
National Transportation Safety Board Administrator not bound by NTSB case law.	91–12 Terry & Menne; 92–49 Richardson & Shimp; 93–18 Westair Commuter.
Lack of jurisdiction	90–11 Thunderbird Accessories; 90–17 Wilson; 92–74 Wendt.
Notice of Hearing Receipt	92–31 Eaddy.
Notice of Proposed Civil Penalty:	
Initiates Action	91–9 Continental Airlines.
Signature of agency attorney	93–12 Langton.
Withdrawal of	90–17 Wilson.
Operate, generally	91–12 & 91–31 Terry & Menne; 93–18 Westair Commuter; 96–17 Fenner.
Responsibility of aircraft owner/operator for actions of pilot	96–17 Fenner.
Oral Argument before Administrator on appeal:	
Decision to hold	92–16 Wendt.
Instructions for	92–27 Wendt.
Order Assessing Civil Penalty:	
Appeal from	92–1 Costello; 95–19 Rayner.
Timeliness of request for hearing	95–19 Rayner.
Withdrawal of	89–4 Metz; 90–16 Rocky Mountain; 90–22 USAir; 95–19 Rayner; 97–7 Stalling.
Parachuting	98–3 Fedele.
Parts Manufacturer Approval (PMA): Failure to obtain	93–19 Pacific Sky Supply.
Passenger Misconduct	92–3 Park.
Assault/Battery	96–6 Ignatov; 97–12 Mayer; 98–11 TWA.
Interference with a crewmember	96–6 Ignatov; 97–12 Mayer; 98–11 TWA; 98–12 Stout.
Smoking	92–37 Giuffrida; 99–6 Squire.
Hearing loss and failure to obey instructions re: not smoking.	99–6 Squire.
Stowing carry-on items	97–12 Mayer.
Penalty (See Sanction; Hazardous Materials)	
Person	93–18 Westair Commuter.
Prima Facie Case (See also Proof & Evidence)	95–26 Hereth; 96–3 America West Airlines.
Proof & Evidence (See also Federal Rules of Evidence):	
Admissions	99–5 Africa Air.
Evidentiary admission is rebuttable	99–5 Africa Air.
Affirmative Defense	92–13 Delta Air Lines; 92–72 Giuffrida; 98–6 Continental Airlines.
Burden of Proof	90–26 & 90–43 Waddell; 91–3 Lewis; 91–30 Trujillo; 92–13 Delta Air Lines; 92–72 Giuffrida; 93–29 Sweeney; 97–32 Florida Propeller.
Circumstantial Evidence	90–12, 90–19 & 91–9 Continental Airlines; 93–29 Sweeney; 96–3 America West Airlines; 97–10 Alphin; 97–11 Hampton; 97–32 Florida Propeller; 98–6 Continental Airlines.
Credibility (See Administrative Law Judges; Credibility of Witnesses)	
Criminal standard rejected	91–12 Terry & Menne.
Closing Arguments (See also Final Oral Argument)	94–20 Conquest Helicopters.
Extra-record material	95–26 Hereth; 96–24 Horizon.
Hearsay	92–72 Giuffrida; 97–30 Emery Worldwide Airlines; 98–11 TWA.
Offer of proof	97–32 Florida Propeller.
Preponderance of evidence	90–11 Thunderbird Accessories; 90–12 Continental Airlines; 91–12 & 91–31 Terry & Menne; 92–72 Giuffrida; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 97–32 Florida Propeller; 98–3 Fedele; 98–6 Continental Airlines; 98–11 TWA.
Presumption that message on ATC tape is received as transmitted.	91–12 Terry & Menne; 92–49 Richardson & Shimp.
Presumption that a gun is deadly or dangerous	90–26 Waddell; 91–30 Trujillo.
Presumption that owner gave pilot permission	96–17 Fenner.
Prima facie case	95–26 Hereth, 96–3 America West; 98–6 Continental Airlines.
Settlement offer	95–16 Mulhall; 96–25 USAir; 99–5 Africa Air.
Admission as part of settlement offer excluded	99–5 Africa Air.
Subsequent remedial measures	96–24 Horizon; 96–25 USAir.
Substantial evidence	92–72 Giuffrida.
Pro Se Parties:	
Special Considerations	90–11 Thunderbird Accessories; 90–3 Metz; 95–25 Conquest.
Prosecutorial Discretion	89–6 American Airlines; 90–23 Broyles; 90–38 Continental Airlines; 91–41 [Airport Operator]; 92–46 Sutton-Sautter; 92–73 Wyatt; 95–17 Larry's Flying Service.
Administrator does not review Complainant's decision not to bring action against anyone but respondent.	98–2 Carr.
Reconsideration:	
Denied by ALJ	89–4 & 90–3 Metz.

Granted by ALJ	92–32 Barnhill.
Late request for	97–14 Pacific Aviation; 98–14 Larry's Flying Service.
Petition based on new material	96–23 Kilrain.
Repetitious petitions	96–9 [Airport Operator].
Stay of order pending	90–31 Carroll; 90–32 Continental Airlines.
Redundancy, enhancing safety	97–11 Hampton.
Remand	89–6 American Airlines; 90–16 Rocky Mountain; 90–24 Bayer; 91–51 Hagwood; 91–54 Alaska Airlines; 92–1 Costello; 92–76 Equipment; 94–37 Houston.
Repair Station	90–11 Thunderbird Accessories; 92–10 Flight Unlimited; 94–2 Woodhouse; 97–9 Alphin; 97–10 Alphin; 97–31 Sanford Air; 97–32 Florida Propeller.
Request for Hearing	94–37 Houston; 95–19 Rayner.
Constructive withdrawal of	97–7 Stalling; 98–23 Instead Balloon Services.
Rules of Practice (14 CFR Part 13, Subpart G):	
Applicability of	90–12, 90–18 & 90–19 Continental Airlines; 91–17 KDS Aviation.
Challenges to	90–12, 90–18 & 90–19 Continental Airlines; 90–21 Carroll; 90–37 Northwest Airlines.
Effect of Changes in	90–21 Carroll; 90–22 USAir; 90–38 Continental Airlines.
Initiation of Action	91–9 Continental Airlines.
Runway incursions	92–40 Wendt; 93–18 Westair Commuter.
Sanction:	
Ability to pay	89–5 Schultz; 90–10 Webb; 91–3 Lewis; 91–38 Esau; 92–10 Flight Unlimited; 92–32 Barnhill; 92–10 Flight Unlimited; 92–32 Barnhill; 92–37 & 92–72 Giuffrida; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 93–10 Costello; 94–4 Northwest Aircraft rentall 94–20 Conquest Helicopters; 95–16 Mulhall; 95–16 Mulhall; 95–17 Larry's Flying Service; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–11 Hampton; 97–16 Mauna Kea; 98–4 Larry's Flying Service; 98–11 TWA; 99–112 TWA.
Agency policy:.	
ALJ bound by	90–37 Northwest Airlines; 92–46 Sutton-Sautter; 96–19 [Air Carrier].
Changes after complaint	97–7 & 97–17 Stallings.
Statements of (*e.g.*, FAA Order 2150.3A, Sanction Guidance Table, memoranda pertaining to).	90–19 Continental Airlines; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines; 92–46 Sutton-Sautter; 96–4 South Aero; 96–19 [Air Carrier]; 96–25 USAir.
Compliance Disposition	97–23 Detroit Metropolitan.
Consistency with Precedent	96–6 Ignatov; 96–26 Midtown; 97–30 Emery Worldwide Airlines; 98–12 Stout; 98–18 General Aviation.
But when precedent is based on superceded sanction policy	96–19 [Air Carrier].
Corrective Action	91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 92–5 Delta Air Lines; 93–18 Westair Commuter; 94–28 Toyota; 96–4 South Aero; 96–19 [Air Carrier]; 97–16 Mauna Kea; 97–23 Detroit Metropolitan; 98–6 Continential Airlines; 98–22 Northwest Airlines; 99–12 TWA.
Discovery (See Discovery)	
Factors to consider	89–5 Schultz; 90–23 Broyles; 90–37 Northwest Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 94–28 Toyota; 95–11 Horizon; 96–19 [Air Carrier]; 96–26 Midtown; 97–16 Mauna Kea; 98–2 Carr.
First-Time Offenders	89–5 Schultz; 92–5 Delata Air Lines; 92–51 Koblick.
HazMat (See Hazardous Materials).	
Inexperience	92–10 Flight Unlimited
Installment Payments	95–16 Mulhall; 95–17 Larry's Flying Service
Maintenance	95–11 Horizon; 96–3 America West Airlines; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 97–10 Alphin; 97–11 Hampton; 97–30 Emery Worldwide Airlines.
Maximum	90–10 Webb; 91–53 Koller; 96–19 [Air-Carrier].
Minimum (HazMat)	95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
Modified	89–5 Schultz; 90–11 Thunderbird Accessories; 91–38 Esau; 92–10 Flight Unlimited; 92–13 Delta Air Lines; 92–32 Barnhill.
Partial Dismissal of Complaint/Full Sanction (See also Complaint).	94–19 Pony Express; 94–40 Polynesian Airways.
Sanctions in specific cases:	
Failure to comply with Security Directives	98–6 Continental Airlines; 99–12 TWA.
Passenger/baggage matching	98–6 Continental Airlines; 99–12 TWA.
Passenger Misconduct	97–12 Mayer; 98–12 Stout.
Person evading screening (See also Screening)	97–20 Werle.
Pilot Deviation	92–8 Watkins.
Test object detection	90–18 & 90–19 Continental Airlines; 96–19 [Air Carrier].
Unairworthy aircraft	97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 98–18 General Aviation.
Unauthorized access	90–19 Continental Airlines; 90–37 Northwest Airlines; 94–1 Delta Air Lines; 98–7 LAX.

Weapons violations	90–23 Broyles; 90–33 Cato; 91–3 Lewis; 91–38 Esau; 92–32 Barnhill; 92–46 Sutton-Sautter; 92–51 Koblick; 94–5 Grant; 97–7 & 97–17 Stallings.
Screening of Persons:	
Air carrier failure to detect weapon Sanction	94–44 American Airlines.
Air carrier failure to match bag with passenger	98–6 Continental Airlines; 99–12 TWA.
Entering Sterile Areas	90–24 Bayer; 92–58 Hoedl; 97–20 Werle; 98–20 Koenig.
Sanction for individual evading screening (See also Sanction)	97–20 Werle; 98–20 Koenig.
Security (See Screening of Persons, Standard Security Program, Test Object Detection, Unauthorized Access, Weapons Violations):	
Agency directives, violation of	99–12 TWA.
Giving false information about carrying a weapon or explosive on board an aircraft.	98–24 Stevens.
Sealing of Record	97–13 Westair Commuter; 97–28 Continental Airlines.
Separation of Functions	90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines; 93–13 Medel.
Service (See also Mailing Rule; Receipt):	
Of NPCP	90–22 USAir; 97–20 Werle.
Of FNPCP	93–13 Medel.
Receipt of document sent by mail	92–31 Eaddy.
Return of certified mail	97–7 & 97–17 Stallings.
Valid Service	92–18 Bargen; 98–19 Martin & Jaworski.
Settlement	91–50 & 92–1 Costello; 95–16 Mulhall; 99–10 Azteca.
Request for hearing not withdrawn	99–10 Azteca.
Skydiving	98–3 Fedele.
Smoking	92–37 Giuffrida; 94–18 Luxemburg; 99–6 Squire.
Stale Complaint Rule: If NPCP not sent	97–20 Werle.
Standard Security Program (SSP):	
Compliance with	90–12, 90–18 & 90–19 Continental Airlines; 91–33 Delta Air Lines; 91–55 Continental Airlines; 92–13 & 94–1 Delta Air Lines; 96–19 [Air Carrier]; 98–22 Northwest Airlines; 99–1 American.
Checkpoint Security Coordinator	98–22 Northwest Airlines.
Ground Security Coordinator	96–16 Westair Commuter.
Statute of Limitations	97–20 Werle.
Stay of Orders	90–31 Carroll; 90–32 Continental Airlines.
Pending judicial review	95–14 Charter Airlines.
Strict Liability	89–5 Schultz; 90–27 Gabbert; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator]; 97–23 Detroit Metropolitan; 98–7 LAX.
Test Object Detection	90–12, 90–18, 90–19, 91–9 & 91–55 Continental Airlines; 92–13 Delta Air Lines; 96–19 [Air Carrier].
Proof of violation	90–18, 90–19 & 91–9 Continental Airlines; 92–13 Delta Air Lines.
Sanction	90–18 & 90–19 Continental Airlines; 96–19 [Air Carrier].
Timeliness (See also Complaint; Filing; Mailing Rule; and Appeals):	
Burden to prove date of filing	97–11 Hampton Air; 98–1 V. Taylor.
Of response to NPCP	90–22 USAir.
Of complaint	91–51 Hagwood; 93–13 Medel; 94–7 Hereth.
Of initial decision	97–31 Sanford Air.
OF NPCP	92–73 Wyatt.
Of reply brief	97–11 Hampton.
Of request for hearing	93–12 Langton; 95–19 Rayner.
Of EAJA application (See EAJA-Final disposition, EAJA-Jurisdiction)	
Unapproved Parts (See also Parts Manufacturer Approval)	93–19 Pacific Sky Supply.
Unauthorized Access:	
To aircraft	90–12 & 90–19 Continental Airlines; 94–1 Delta Air Lines.
To Air Operations Area (AOA)	90–37 Northwest Airlines; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator]; 94–1 Delta Air Lines.
Visual Cues Indicating Runway, Adequacy of	92–40 Wendt.
Weapons Violations, generally	89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–23 Broyles; 90–33 Cato; 90–26 & 90–43 Waddell; 91–3 Lewis; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–46 Sutton-Sautter; 91–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant; 94–44 American Airlines.
Concealed weapon	89–5 Schultz; 92–46 Sutton-Sautter; 92–51 Koblick.
"Deadly or Dangerous"	90–26 & 90–43 Waddell; 91–30 Trujillo; 91–38 Esau.
First-time Offenders	89–5 Schultz.
Intent to commit violation	89–5 Schultz; 90–20 Degenhardt; 90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 91–53 Koller.
Knowledge Of Weapon Concealment (See also Knowledge)	89–5 Schultz; 90–20 Degenhardt.
Sanction (See Sanction)	
Weight and Balance	94–40 Polynesian Airways.
Witnesses (See also Credibility):	
Absence of, Failure to subpoena	92–3 Park; 98–2 Carr.
Expert testimony Evaluation of	93–17 Metcalf; 94–3 Valley Air; 94–21 Sweeney; 96–3 America West Airlines; 96–15 Valley Air; 97–9 Alphin; 97–32 Florida Propeller.

Expert witness fees (See EAJA)

Regulations (Title 14 CFR, unless otherwise noted)

1.1 (maintenance)	94–38 Bohan; 97–11 Hampton.
1.1 (major alteration)	99–5 Africa Air.
1.1 (major repair)	96–3 America West Airlines.
1.1 (minor repair)	96–3 America West Airlines.
1.1 (operate)	91–12 & 91–31 Terry & Menne; 93–18 Westair Commuter; 96–17 Fenner.
1.1 (person)	93–18 Westair Commuter.
1.1 (propeller)	96–15 Valley Air.
13.16	90–16 Rocky Mountain; 90–22 USAir; 90–37 Northwest Airlines; 90–38 & 91–9 Continental Airlines; 91–18 [Airport Operator]; 91–51 Hagwood; 92–1 Costello; 92–46 Sutton-Sautter; 93–13 Medel; 93–28 Strohl; 94–27 Larsen; 94–37 Houston; 94–31 Smalling; 95–19 Rayner; 96–26 Midtown Neon Sign; 97–1 Midtown Neon Sign; 97–9 Alphin; 98–18 General Aviation.
13.201	90–12 Continental Airlines.
13.202	90–6 American Airlines; 92–76 Safety Equipment.
13.203	90–12 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines.
13.204	
13.205	90–20 Degenhardt; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–32 Barnhill; 94–32 Detroit Metropolitan; 94–39 Kirola; 95–16 Mulhall; 97–20 Werle.
13.206	
13.207	94–39 Kirola.
13.208	90–21 Carroll; 91–51 Hagwood; 92–73 Wyatt; 92–76 Safety Equipment; 93–13 Medel; 93–28 Strohl; 94–7 Hereth; 97–20 Werle; 98–4 Larry's.
13.209	90–3 Metz, 90–15 Playter; 91–18 [Airport Operator]; 92–32 Barnhill; 92–47 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 94–8 Nunez; 94–5 Grant; 94–22 Harkins; 94–29 Sutton; 94–30 Columna; 95–10 Diamond; 95–28 Atlantic World Airways; 97–7 Stalling; 97–18 Robinson; 97–33 Rawlings; 98–21 Blankson.
13.210	92–19 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 93–7 Dunn; 93–28 Strohl; 94–5 Grant; 94–30 Columna; 95–28 Atlantic World Airways; 96–17 Fenner; 97–11 Hampton; 97–18 Robinson; 97–38 Air St. Thomas; 98–16 Blue Ridge Airlines.
13.211	89–6 American Airlines; 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart; 91–24 Esau; 92–1 Costello; 92–9 Griffin; 92–18 Bargen; 92–19 Cornwall; 92–57 Detroit Metro. Wayne County Airport; 92–74 Wendt; 92–76 Safety Equipment; 93–2 Wendt; 94–5 Grant; 94–18 Luxemburg; 94–29 Sutton; 95–12 Toyota; 95–28 Valley Air; 97–7 Stalling; 97–11 Hampton; 98–4 Larry's Flying Service; 98–19 Martini & Jaworski; 98–20 Koenig; 99–2 Oxygen Systems.
13.212	90–11 Thunderbird Accessories; 91–2 Continental Airlines; 99–2 Oxygen Systems.
13.213	
13.214	91–3 Lewis.
13.215	93–28 Strohl; 94–39 Kirola.
13.216	
13.217	91–17 KDS Aviation
13.218	89–6 American Airlines; 90–11 Thunderbird Accessories; 90–39 Hart; 92–9 Griffin; 92–73 Wyatt; 93–19 Pacific Sky Supply; 94–6 Strohl; 94–27 Larsen; 94–37 Houston; 95–18 Rayner; 96–16 WestAir; 96–24 Horizon; 98–20 Koenig.
13.219	89–6 American Airlines; 91–2 Continental; 91–54 Alaska Airlines; 93–37 Airspect; 94–32 Detroit Metro. Wayne County Airport; 98–25 Gotbetter.
13.220	89–6 American Airlines; 90–20 Carroll; 91–8 Watts Agricultural Aviation; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter.
13.221	92–29 Haggland; 92–31 Eaddy; 92–52 Cullop.
13.222	92–72 Giuffrida; 96–15 Valley Air.
13.223	91–12 & 91–31 Terry & Menne; 92–72 Giuffrida; 95–26 Hereth; 96–15 Valley Air; 97–11 Hampton; 97–31 Sanford Air; 97–32 Florida Propeller; 98–3 Fedele; 98–6 Continental Airlines.
13.224	90–26 Waddell; 91–4 [Airport Operator]; 92–72 Giuffrida; 94–18 Luxemburg; 94–28 Toyota; 95–25 Conquest; 96–17 Fenner; 97–32 Florida Propeller; 98–6 Continental Airlines.
13.225	97–32 Florida Propeller.
13.226	

13.227	90–21 Carroll; 95–26 Hereth.
13.228	92–3 Park.
13.229	
13.230	92–19 Cornwall; 95–26 Hereth; 96–24 Horizon.
13.231	92–3 Park.
13.232	89–5 Schultz; 90–20 Degenhardt; 92–1 Costello; 92–18 Bargen; 92–32 Barnhill; 93–28 Strohl; 94–28 Toyota; 95–12 Toyota; 95–16 Mulhall; 96–6 Ignatov; 98–18 General Aviation.
13.233	89–1 Gressani; 89–4 Metz; 89–5 Schultz; 89–7 Zenkner; 89–8 Thunderbird Accessories; 90–3 Metz; 90–11 Thunderbird Accessories; 90–19 Continental Airlines; 90–20 Degenhardt; 90–25 & 90–27 Gabbert; 90–35 P. Adams; 90–19 Continental Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–7 Pardue; 91–8 Watts Agricultural Aviation; 91–10 Graham; 91–11 Continental Airlines; 91–12 Bargen; 91–24 Esau; 91–26 Britt Airways; 91–31 Terry & Menne; 91–32 Bargen; 91–43 & 91–44 Delta; 91–45 Park; 91–46 Delta; 91–47 Delta; 91–48 Wendt; 91–52 KDS Aviation; 91–53 Koller; 92–1 Costello; 92–3 Park; 92–7 West; 92–11 Alilin; 92–15 Dillman; 92–16 Wendt; 92–18 Bargen; 92–19 Cornwall; 92–27 Wendt; 92–32 Barnhill; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines; 92–39 Beck; 92–45 O'Brien; 92–52 Beck; 92–56 Montauk Caribbean Airways; 92–57 Detroit Metro. Wayne Co. Airport; 92–67 USAir; 92–69 McCabe; 92–72 Giuffrida; 92–74 Wendt; 92–78 TWA; 93–5 Wendt; 93–6 Westair Commuter; 93–7 Dunn; 93–8 Nunez; 93–19 Pacific Sky Supply; 93–23 Allen; 93–27 Simmons; 93–28 Strohl; 93–31 Allen; 93–32 Nunez; 94–9 B & G Instruments; 94–10 Boyle; 94–12 Bartusiak; 94–15 Columna; 94–18 Luxemburg; 94–23 Perez; 94–24 Page; 94–26 French Aircraft; 94–28 Toyota; 95–2 Meronek; 95–9 Woodhouse; 95–13 Kilrain; 95–23 Atlantic World Airways; 95–25 Conquest; 95–26 Hereth; 96–1 [Airport Operator]; 96–2 Skydiving Center; 97–1 Midtown Neon Sign; 97–2 Sanford Air; 97–7 Stalling; 97–22 Sanford Air; 97–24 Gordon Air; 97–31 Sanford Air; 97–33 Rawlings; 97–38 Air St. Thomas; 98–4 Larry's Flying Service; 98–3 Fedele; 98–6 Continental Airlines ; 98–7 LAX ; 98–10 Rawlings; 98–15 Squire; 98–18 General Aviation; 98–19 Martin & Jaworski; 98–20 Koenig; 99–2 Oxygen Systems; 99–11 Evergreen Helicopters.
13.234	90–19 Continental Airlines; 90–31 Carroll; 90–32 & 90–38 Continental Airlines; 91–4 [Airport Operator]; 95–12 Toyota; 96–9 [Airport Operator]; 96–23 Kilrain.
13.235	90–11 Thunderbird Accessories; 90–12 Continental Airlines; 90–15 Playter; 90–17 Wilson; 92–7 West.
Part 14	92–74 & 93–2 Wendt; 95–18 Pacific Sky Supply.
14.01	91–17 & 92–71 KDS Aviation.
14.04	91–17, 91–52 & 92–71 KDS Aviation; 93–10 Costello; 95–27 Valley Air.
14.05	90–17 Wilson.
14.12	95–27 Valley Air.
14.20	91–52 KDS Aviation; 96–22 Woodhouse.
14.22	93–29 Sweeney.
14.23	98–19 Martin & Jaworski.
14.26	91–52 KDS Aviation; 95–27 Valley Air.
14.28	95–9 Woodhouse.
21.181	96–25 USAir.
21.303	93–19 Pacific Sky Supply; 95–18 Pacific Sky Supply.
25.787	97–30 Emery Worldwide Airlines.
25.855	92–37 Giuffrida; 97–30 Emery Worldwide Airlines.
39.3	92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental.
43.3	92–73 Wyatt; 97–31 Sanford Air; 98–18 General Aviation.
43.5	96–18 Kilrain; 97–31 Sandford Air.
43.9	91–8 Watts Agricultural Aviation; 97–31 Sandford Air; 98–4 Larry's Flying Service.
43.13	90–11 Thunderbird Accessories; 94–3 Valley Air; 94–38 Bohan; 96–3 America West Airlines; 96–25 USAir; 97–9 Alphin; 97–10 Alphin; 97–30 Emery Worldwide Airlines; 97–31 Sandford Air; 97–32 Florida Propeller.
43.15	90–25 & 90–27 Gabbert; 91–8 Watts Agricultural Aviation; 94–2 Woodhouse; 96–18 Kilrain.
61.3	99–11 Evergreen Helicopters.
65.15	92–73 Wyatt.
65.92	92–73 Wyatt.
91.7	97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–16 Mauna Kea; 98–18 General Aviation; 99–5 Africa Air.
91.8 (91.11 as of 8/18/90)	92–3 Park .

91.9 (91.13 as of 8/18/90)	90–15 Playter; 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–48 USAir; 92–49 Richardson & Shimp; 92–47 Cornwall; 92–70 USAir; 93–9 Wendt; 93–17 Metcalf; 93–18 Westair Commuter; 93–29 Sweeney; 94–29 Sutton; 95–26 Hereth; 96–17 Fenner.
91.11	96–6 Ignatov; 97–12 Mayer; 98–12 Stout.
91.29 (91.7 as of 8/18/90)	91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental.
91.65 (91.111 as of 8/18/90)	91–29 Sweeney; 94–21 Sweeney.
91.67 (91.113 as of 8/18/90)	91–29 Sweeney.
91.71	97–11 Hampton.
91.75 (91.123 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–49 Richardson & Shimp; 93–9 Wendt.
91.79 (91.119 as of 8/18/90)	90–15 Playter; 92–47 Cornwall; 93–17 Metcalf.
91.87 (91.129 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins.
91.103	95–26 Hereth.
91.111	96–17 Fenner.
91.113	96–17 Fenner.
91.151	95–26 Hereth.
91.173 (91.417 as of 8/18/90)	91–8 Watts Agricultural Aviation.
91.203	99–5 Africa Air.
91.205	98–18 General Aviation.
91.213	97–11 Hampton.
91.403	97–8 Pacific Av. d/b/a/ Inter-Island Helicopters; 97–31 Sanford Air.
91.405	97–16 Mauna Kea; 98–4 Larry's Flying Service; 98–18 General Aviation; 99–5 Africa Air.
91.407	98–4 Larry's Flying Service; 99–5 Africa Air.
91.417	98–18 General Aviation.
91.517	98–12 Stout.
91.703	94–29 Sutton.
105.29	98–3 Fedele; 98–19 Martin & Jaworski.
107.1	90–19 Continental Airlines; 90–20 Degenhardt; 91–4 [Airport Operator]; 91–58 [Airport Operator]; 98–7 LAX.
107.9	98–7 LAX.
107.13	90–12 & 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan; 98–7 LAX.
107.20	90–24 Bayer; 92–58 Hoedl; 97–20 Werle; 98–20 Koenig.
107.21	89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant; 94–31 Smalling; 97–7 Stalling.
107.25	94–30 Columna.
108.5	90–12, 90–18, 90–19, 91–2 & 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 & 94–1 Delta Airlines; 94–44 American Airlines; 96–16 WestAir; 96–19 [Air Carrier]; 98–22 Northwest Airlines; 99–1 American; 99–12 TWA.
108.7	90–18 & 90–19 Continental Airlines; 99–1 American.
108.9	98–22 Northwest Airlines.
108.10	96–16 WestAir.
108.11	90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 92–46 Sutton Sautter; 94–44 American Airlines.
108.13	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines.
108.18	98.6 Continental Airlines; 99–12 TWA.
121.133	90–18 Continental Airlines.
121.153	92–48 & 92–70 USAir; 95–11 Horizon; 96–3 America West Airlines; 95–24 Horizon; 96–25 USAir; 97–21 Delta; 97–30 Emery Worldwide Airlines.
121.221	97–30 Emery Worldwide Airlines.
121.317	92–37 Giuffrida; 94–18 Luxemburg; 99–6 Squire.
121.318	92–37 Giuffrida.
121.367	90–12 Continental Airlines; 96–25 USAir.
121.571	92–37 Giuffrida.
121.575	98–11 TWA.
121.577	98–11 TWA.
121.589	97–12 Mayer.
121.628	95–11 Horizon; 97–21 Delta; 97–30 Emery Worldwide Airlines.
135.1	95–8 Charter Airlines; 95–25 Conquest.
135.5	94–3 Valley Air; 94–20 Conquest Helicopters; 95–25 Conquest; 95–27 Valley Air; 96–15 Valley Air.
135.25	92–10 Flight Unlimited; 94–3 Valley Air, 95–27 Valley Air; 96–15 Valley Air.

135.63	94–40 Polynesian Airways; 95–17 Larry's Flying Service; 95–28 Atlantic; 96–4 South Aero; 99–7 Premier Jets.
135.87	90–21 Carroll.
135.95	95–17 Larry's Flying Service.
135.179	97–11 Hampton.
135.185	94–40 Polynesian Airways.
135.243	99–1 Evergreen Helicopters.
135.263	95–9 Charter Airlines; 96–4 South Aero.
135.267	95–8 Charter Airlines; 95–17 Larry's Flying Service; 96–4 South Aero.
135.293	95–17 Larry's Flying Service; 96–4 South Aero.
135.343	95–17 Larry's Flying Service.
135.411	97–11 Hampton.
135.413	94–3 Valley Air 96–15 Valley Air; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–16 Mauna Kea.
135.421	93–36 Valley Air; 94–3 Valley Air; 96–15 Valley Air.
135.437	94–3 Valley Air; 96–15 Valley Air.
141.101	98–18 General Aviation.
145.1	97–10 Alphin.
145.3	97–10 Alphin.
145.25	97–10 Alphin.
145.45	97–10 Alphin.
145.47	97–10 Alphin.
145.49	97–10 Alphin.
145.53	90–11 Thunderbird Accessories.
145.57	94–2 Woodhouse; 97–9 Alphin; 97–32 Florida Propeller.
145.61	90–11 Thunderbird Accessories.
191	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines; 98–6 Continental Airlines; 99–12 TWA.
298–1	92–10 Flight Unlimited.
302.8	90–22 USAir.

49 CFR

1.47	92–76 Safety Equipment.
171 et seq.	95–10.Diamond.
171.2	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
171.8	92–77 TCI.
172.101	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown.
172.200	92–77 TCI; 94–28 Toyota; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
171 et seq	95–10 Diamond.
171.2	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
171.8	92–77 TCI.
172.101	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown.
172.200	92–77 TCI; 94–28 Toyota; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.202	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.203	94–28 Toyota.
172.204	92–77 TCI 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.300	94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.301	94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.304	92–77 TCI; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.400	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.402	94–28 Toyota.
172.406	92–77 TCI.
173.1	92–77 TCI: 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
173.3	94–28 Toyota; 94–31 Smalling; 98–2 Carr.
173.6	94–28 Toyota.
173.22	94–28 Toyotal; 94–31 Smalling; 98–2 Carr.
173.24	94–28 Toyota; 95–16 Mulhall;
173.25	94–28 Toyota.
173.27	92–77 TCI.
173.62	98–2 Carr.
173.115	92–77 TCI.
173.240	92–77 TCI.
173.243	94–28 Toyota.
173.260	94–28 Toyota.
173.266	94–28 Toyota; 94–31 Smalling.
175.25	94.31 Smalling.

191.5	97–13 Westair Commuter.
191.7	97–13 Westair Commuter.
821.30	92–73 Wyatt.
821.33	90–21 Carroll.
Statutes	
5 U.S.C.:	
504	90–17 Wilson; 91–17 & 92–71 KDS Aviation; 92–74, 93–2 & 93–9 Wendt; 93–29 Sweeney; 94–17 TCI; 95–27 Valley Air; 96–22 Woodhouse; 98–19 Martin & Jaworski.
552	90–12, 90–18 & 90–19 Continental Airlines; 93–10 Costello.
554	90–18 Continental Airlines; 90–21 Carroll; 95–12 Toyota.
556	90–21 Carroll; 91–54 Alaska Airlines.
557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines; 94–28 Toyota.
705	95–14 Charter Airlines.
5332	95–27 Valley Air.
11 U.S.C.:	
362	91–2 Continental Airlines.
28 U.S.C.	
2412	93–10 Costello; 96–22 Woodhouse.
2462	90–21 Carroll.
49 U.S.C.:	
5123	95–16 Mulhall; 96–26 & 97–1 Midtown Neon Sign; 98–2 Carr.
40102	96–17 Fenner.
41706	99–6 Squire.
44701	96–6 Ignatov; 96–17 Fenner; 99–12 TWA.
44704	96–3 America West Airlines; 96–15 Valley Air.
46110	96–22 Woodhouse; 97–1 Midtown Neon Sign.
46301	97–1 Midtown Neon Sign; 97–16 Mauna Kea; 97–20 Werle.
46302	98–24 Stevens.
46303	97–7 Stalling.
49 U.S.C. App.:	
1301(31) (operate)	93–18 Westair Commuter.
(32) (person)	93–18 Westair Commuter.
1356	90–18 & 90–19, 91–2 Continental Airlines.
1357	91–41 [Airport Operator]; 91–58 [Airport Operator].
1421	92–10 Flight Unlimited; 92–48 USAir; 92–70 USAir; 93–9 Wendt.
1429	92–73 Wyatt.
1471	89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12, 90–18 & 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt; 92–76 Safety Equipment; 94–20 Conquest Helicopters; 94–40 Polynesian Airways; 96–6 Ignatov; 97–7 Stalling.
1472	96–6 Ignatov.
1475	90–20 Degenhardt; 90–12 Continental Airlines; 90–18, 90–19 & 91–1 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 94–40 Polynesian Airways.
1486	90–21 Carroll; 96–22 Woodhouse.
1809	92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota.

Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of September 30, 1999)

The digests of the Administrator's final decisions and orders are arranged by order number, and summarize briefly key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from July 1, 1999, to September 20, 1999. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested person should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Warbelow's Air Ventures, Inc.

Order No. 99–4 (7/1/99)

Motion to Dismiss Denied. Good cause exists to excuse Respondent's late-fling (by 8 days) of an appeal brief. Counsel had no prior experience with FAA civil penalty appeals and simply calculated the deadline starting from the wrong date (the service date of the notice of appeal rather than that of the initial decision). Counsel took steps to protect against the danger of default. Counsel has committed no previous defaults in this case, and the appeal brief was only 9 days late. Complainant has neither alleged nor shown any prejudice resulting from the delay. Complainant is granted 30 days from the service date of this order, plus an additional 5 days under 14 CFR 13.211(e), to file a reply brief.

In the Matter of Africa Air Corporation

(Order No. 99–5 (8/31/99)

Settlement offers. Federal Rule of Evidence 408's public policy purpose of encouraging frank settlement discussions is as compelling in FAA civil penalty proceedings as it is in Federal trials. Hence, its guidance will be followed in these proceedings. Not only was it appropriate for the law to exclude the offer to settle in the last paragraph of the letter but it was also appropriate to exclude any admissions contained elsewhere in the letter.

Evidentiary admissions rebuttable. It is unclear whether a conciliatory letter on behalf of Respondent should be regarded as a settlement offer and therefore excluded. It is unlikely that the law judge would have found the evidentiary admission contained this other letter as compelling an outcome favoring Complainant in light of other rebutting evidence that the law judge found to be persuasive. Evidentiary admissions, unlike judicial admissions, are rebuttable through the introduction of other evidence.

Failure to prove that the oil lines in the wings constituted a major alteration. Inspector's testimony was too vague, as a result of the fact that he never looked in the wings, to be persuasive on the issue of whether the oil lines in the wings constituted a major alteration.

In the Matter of James K. Squire

Order No. 99–6 (8.31/99)

Smoking in aircraft lavatory. The law judge made credibility assessments in favor of the flight attendants who testified that the smell of smoke intensified when Mr. Squire opened the door of the lavatory. The Administrator deferred to that assessment. None of Mr. Squire's arguments compelled a reversal of the law judge's findings that Mr. Squire had been smoking in the aircraft lavatory. To sustain its burden of proof, Complainant did not have to resolve the question why the smoke alarm had not gone off in the lavatory if Mr. Squire had been smoking in there.

No right to appointed counsel. Mr. Squire's argument that the case should be dismissed because the law judge failed to appoint counsel for him (because he could not afford to hire counsel) was rejected. There is no right to assigned counsel in FAA civil penalty proceedings.

Mr. Squire was assessed $719 civil for violations of 14 C.F.R. 121.317 (g), (h) and (i).

In the Matter of the Premier Jets, Inc.

Order No. 99–7 (8/31/99)

Appeal Denied. In its appeal of the law judge's decision finding that it committed several violations of a flight time recordkeeping rule, Respondent argues that the FAA inspectors should not have examined its flight logs because they were not part of the "individual record" of each pilot under 14 CFR 135.63. Without the flight logs, FAA inspectors would not have been able to determine conclusively that the crew duty time sheets contained errors. Contrary to Respondent's contentions, the inspectors acted appropriately when they examined the flight logs. Indeed, if the inspectors had chosen to ignore or overlook any compliance concerns raised by their examination of the crew duty time sheets, they would have been abrogating their critical safety duties.

Second, Respondent argues that it committed no violation because the flight logs were part of the "individual record" of each pilot's flight time. Respondent did not, however, keep the flight logs as part of the individual record of each pilot. Instead, the flight logs for all of Respondents' pilots for a single month were kept in the same file. Where there was more than one pilot for a flight, multiple pilots appeared on a single flight log. Moreover, when Respondent gave the inspectors its individual records, it gave them only the crew duty time sheets and not the flight logs.

This decision denies Respondent's appeal and affirms the law judge's decision assessing $1,125.

In the Matter of Michael McDermott

Order No. 99–8 (8/3/99)

DMS No. FAA–1999–5516

Notice of appeal construed as appeal brief; appeal denied. Mr. McDermott filed a notice of appeal but no appeal brief. The notice of appeal was construed as an appeal brief because it was sufficiently detailed. However, the argument presented by Mr. McDermott was not compelling. Mr. McDermott argued that he had moved several times during the precomplaint stages of these proceedings. That argument does not excuse Mr. McDermott's failure to file to an answer.

In the Matter of Lifeflite Medical Air Transport, d/b/a American Native Medical Air

Order No. 99–9 (8/31/99)

Remand to law judge. The law judge issued an order assessing civil penalty against Lifeflite Medical Air Transport based on his belief that Lifeflite has not filed an answer. However, Lifeflite had filed an answer. The law judge's order is reversed, and the case is remanded to the Office of Hearings. The law judge must decide whether good cause existed for Lifeflite's failure to file a timely answer.

In the Matter of Azteca Aviation, Inc.

Order No. 99–10 (8/31/99)

Complainant is ordered to withdraw the orders assessing civil penalty. The law judge dismissed these cases and terminated these proceedings based on his understanding that the parties had settled the case. However, Respondent never filed any document indicating that it agreed to the settlement or to withdraw its requests for hearing. Respondent wrote to the law judge that neither he nor his attorney had ever agreed to withdraw. Complainant was ordered to withdraw the orders assessing civil penalty. Cases remanded to the law judge.

In the Matter of Evergreen Helicopters of Alaska, Inc.

Order No. 99–11 (8/31/99)

Parties Granted Opportunity to Brief New Issues. Evergreen, a U.S. air carrier, holds an FAA-issued certificate to conduct commuter and on-demand operations under 14 C.F.R. Part 135. In February 1996, under contract with the United Nations, Evergreen transported passengers on a U.S.-registered airplane, using Angolan pilots on approximately 20 flights inside Angola. The pilots held only Angolan airline transport pilot certificates; they did not hold U.S. airline transport pilot certificates.

Complainant alleged that Evergreen violated 14 CFR 135.243(a) by using pilots who lacked U.S. airline transport pilot certificates. The law judge, however, dismissed Complainant's case, holding that Complainant had failed to meet its burden of proof. Complainant has appealed.

Complainant is granted 30 days from the service date of this order, plus the 5 additional days provided by 14 CFR § 13.211(e), to brief the following issues:

1. What is the FAA's specific statutory authority for bringing the instant civil penalty action against Evergreen, given that neither the departure nor arrival points of any of the flights in question involved a point inside the U.S., and there is no evidence in the record that the flights at issue had any contact with other flights to or from the U.S.?

2. A letter of interpretation issued on January 28, 1985, issued by the FAA Assistant Chief Counsel for Regulations and Enforcement indicates that a holder of a foreign pilot license may indeed

operate a U.S.-registered airplane for compensation or hire inside the foreign country, even if the pilot does not hold a U.S. airline transport pilot certificate. Is Complainant's position in this case consistent with the 1985 interpretation, or is it distinguishable?

Evergreen is granted 35 days from the service date of Complainant's documents briefing the new issues to reply to Complainant's briefing of the new issues.

Commercial Reporting Services of the Administrators

Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications.

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publication, P.O. 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA).
- LEXIS [Transportation (TRANS) Library, FAA file].
- Compuserve.
- FedWord.

Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, 926A, Washington, DC, 20591 (tel. no. 202–267–3641). The clerk of the FAA Hearing Docket is Ms. Stephanie McCain. All documents that are required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210). Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL–401, Washington, DC 20590, (tel. no. 202–366–9329.) While the originals will be retained in the FAA Hearing Docket, the DOT Docket will scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address; http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and coping at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW, Room 926A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Regional Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Regional Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Regional Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7)), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (425) 227–2007.

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Regional Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Regional Counsel for the Western-Pacific Region (AWP–7, Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100.

Issued in Washington, DC on October 26, 1999.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 99–28510 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 1999, there were five applications approved. This notice also includes information on one application, approved in August 1999, inadvertently left off the August 1999 notice. Additionally, eight approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Monroe County, Key West, Florida.

Application Number: 99–04–C–00–EYW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $946,503.

Earliest Charge Effective Date: November 1, 1999.

Estimated Charge Expiration Date: May 1, 2001.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection at Key West International Airport (EYW) and Use at EYW:

Construct electrical vault including installation of equipment and standby generator.
Acquire rapid response vehicle.
Environmental mitigation.
Replace existing runway 9/27 lighting.
Replace existing taxiway lighting.
Resurface runway 9/27 including grooving and marking.
Resurface taxiway A and connecting taxiways.
Implement Part 150 noise study recommendations—phase 1.

Brief Description of Projects Approved for collection at EYW and Use at Marathon Airport:

Construct service road including landscaping.
Replace medium intensity taxiway lights on parallel and connecting taxiways.
Resurface taxiway A and connecting taxiways.
Construct and mark two taxiway extensions.
Environmental mitigation.
Construct general aviation apron.
Construct general aviation apron expansion.

Decision Date: August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Miguel A. Martinez, Orlando Airports District Office, (407) 812–6331, extension 23.

Public Agency: Jackson Municipal Airport Authority, Jackson, Mississippi.

Application Number: 99–03–C–00–JAN.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $5,577,870.

Earliest Charge Effective Date: March 1, 2000.

Estimated Charge Expiration Date: January 1, 2003.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jackson International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal renovations.
Rehabilitate east parallel taxiway.

Decision Date: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: David Shumate, Jackson Airports District Office, (601) 965–4628.

Public Agency: Capital Region Airport Commission, Richmond, Virginia.

Application Number: 99–03–C–00–RIC.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $75,846,839.

Earliest Charge Effective Date: November 1, 2000.

Estimated Charge Expiration Date: July 1, 2015.

Class of Air Carriers not Required to Collect PFC'S: Part 135 on-demand air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Richmond International Airport.

Brief Description of Project Approved for Collection and Use: Terminal roadways and elevated platform.

Brief Description of Project Approved for Collection Only: Terminal building addition and modifications.

Decision Date: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: Port of Bellingham, Bellingham, Washington.

Application Number: 99–04–C–00–BLI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,400,000.

Earliest Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: March 1, 2004.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bellingham International Airport.

Brief Description of Project Approved for Collection and Use: Terminal design.

Brief Description of Project Approved for Collection Only: Terminal rehabilitation and expansion.

Brief Description of Project Approved for Use Only: Alpha taxiway pullout on north.

Decision Date: September 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mary E. Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: Metropolitan Airport Authority of Rock Island County, Moline, Illinois.

Application Number: 99–03–C–00–MLI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $12,879,837.

Earliest Charge Effective Date: July 1, 2009.

Estimated Charge Expiration Date: July 1, 2023.

Class of Air Carriers not Required to collect PFC'S: Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Quad City International Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 9/27 rejuvenation.
Passenger terminal/concourse reconstruction and expansion.

Decision Date: September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Richard A. Pur, Chicago Airports District Office, (847) 284–7527.

Public Agency: City of Morgantown, West Virginia.

Application Number: 99–05–C–00–MGW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $192,739.

Earliest Charge Effective Date: July 1, 2001.

Estimated Charge Expiration Date: July, 1, 2005.

Classes of Air Carriers Not Required to Collect PFC'S:

(1) Part 135 air carriers, (2) Part 91 air carriers, and (3) any unscheduled carriers operating under part 121.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Morgantown Municipal Airport.

Brief Description of Projects Approved for Collection and use:

Rehabilitate access road.
Install lights on access road.
Acquire aircraft rescue and firefighting (ARFF)
communication equipment.
Design rehabilitation of runway 18/36.
Rehabilitation of runway 18.36.

Brief Description of Projects Approved for Collection Only:

Install perimeter fence.
Design and contruct ARFF/maintenance building.

Decision Date: September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Elonza Turner, Beckley Airports Field Office, (304) 252–6212.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
94–01–C–05–CVG, Covington, KY	08/12/99	37,146,000	$32,718,000	02/01/96	11/01/95
95–02–C–02–CVG, Covington, KY	08/12/99	85,441,000	80,752,000	05/01/99	05/01/99
98–03–C–01–CVG, Covington, KY	08/12/99	21,097,000	21.923,000	01/01/00	09/01/99
98–04–C–01–CVG, Covington, KY	08/12/99	32.911,000	32,580,000	05/01/00	02/01/00
92–01–C–02–AOO, Altoona, PA	08/27/99	118,500	156,054	12/01/99	10/01/99
96–02–C–01–AOO, Altoona, PA	08/27/99	NA	NA	12/01/99	10/01/99
98–03–C–02–CVG, Covington, KY	09/07/99	21,923,000	22,005,000	09/01/99	09/09/99
98–04–C–02–CVG, Covington, KY	09/07/99	32,580,000	33,233,000	02/01/00	03/01/00

Issued in Washington, DC. on October 25, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–28511 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[99–01–I–00–BFF]

Notice of Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at the Western Nebraska Regional Airport, Scottsbluff, Nebraska

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Western Nebraska Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158.

DATES: Comments must be received on or before December 1, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rick A. Meter, Director of Public Works, Scotts Bluff Country, at the following address: Western Nebraska Regional Airport, P.O. Box 690, Gering, Nebraska 69341.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Scotts Bluff County under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Western Nebraska Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 7, 1999, the FAA determined that the application to impose a PFC submitted by Scotts Bluff County was not substantially complete within the requirements of § 158.25 of Part 158. The County of Scotts Bluff submitted supplemental information on September 24, 1999, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than January 22, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 2000.

Proposed charge expiration date: April 2003.

Total estimated PFC revenue: $108.000.

Brief description of proposed project(s): Renovate terminal to improve disability access, baggage handling and passenger flow.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Western Nebraska Regional Airport.

Issued in Kansas City, Missouri on October 15, 1999.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 99–28512 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Teton and Pondera Counties, Montana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway improvement project in Teton County and Pondera County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Program Development Engineer, Federal Highway Administration, 2880 Skyway Drive, Helena, Montana 59602; Telephone: (406) 449–5306 ext 239; or Joel M. Marshik, Manager, Environmental Services, Montana Department of Transportation, 2701 Prospect Avenue, Helena, Montana 59620; Telephone: (406) 444–7632.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's electronic Bulletin Board Service at

(202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Background

The FHWA, in cooperation with the Montana Department of Transportation (MDT) will prepare an environmental impact statement (EIS) on the proposal to reconstruct, widen, and realign US 89 from Fairfield to Dupuyer.

Comments are being solicited from appropriate Federal, State, and local agencies and from private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public scoping meetings at two different locations will be held in November 1999. Additional information meetings will be scheduled during the course of the study. In addition, a formal public hearing will be held after the draft EIS has been prepared. Public notice will be given of the time and place of the public scoping meetings, information meetings, and the formal public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

Comments and/or suggestions from all interested parties are requested to ensure that the full range of all issues, and significant environmental issues in particular, are identified and reviewed. Comments or questions concerning this proposed action and/or its EIS should be directed to the FHWA or the MDT at the addresses listed previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 21, 1999.

Dale Paulson,

Program Development Engineer.

[FR Doc. 99–28460 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

State of Connecticut

Department of Transportation

National Railroad Passenger Corporation

(Waiver Petition Docket Number FRA–1999–6167)

The Connecticut Department of Transportation and the National Railroad Passenger Corporation jointly seeks a temporary waiver of compliance with Passenger Equipment Safety Standards, Title 49 CFR Part 238.235, which requires that by December 31, 1999, each power operated door that is partitioned from the passenger compartment shall be equipped with a manual override adjacent to that door. The petitioners request that the temporary waiver extend the December 31, 1999 compliance date to July 1, 2001. The petitioners state that they need this added time to meet this requirement. They seek this waiver for ten Bombardier Project 34, push-pull coaches.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g. Waiver Petition Docket Number FRA–1999–6167) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on October 25, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–28466 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation

[Docket Number FRA–1999–6252]

CSX Transportation (CSXT) seeks a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR Part 229. Specifically, CSXT requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, as solely applicable to all present and future installations of the New York Air Brake Corporation (NYAB) Computer Controlled Brake (CCB) Systems on CSXT locomotives. Part 229.27(a)(2) requires that, "Brake cylinder relay valve portions, main reservoir safety valves, brake pipe vent valve portions, feed and reducing valve portions in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested" at intervals that do not exceed 368 calendar days. Part 229.29(a) requires in part that "* * * all valves, valve portions, MU locomotive brake cylinders and electric-pneumatic master controllers in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired , and tested at intervals that do not exceed 736 calendar days." CSXT requests these provisions be temporarily waived to accommodate the implementation of a Test Plan to prove the new technology incorporated in this brake system is more reliable and safer in the Rail Transportation Industry, with the intent of moving to a component repair as required, performance-based COT&S criterion.

The time interval for the requirements of Part 229.29(a) was extended to 1,104 calendar days in 1985 for 26L Brake equipment, based on proven service reliability with the evolution of improved components. The time interval for CCB equipment was extended to 1,840 calendar days in 1996, per FRA Test Waiver, H–95–3.

CSXT states that the CCB equipment used on their locomotives provides reliable operation based upon the availability of diagnostics, which continuously monitors the function of all critical components. When the CCB diagnostics detects operational characteristics outside allowed limits, the system automatically takes appropriate action to assure safety. Because failures are detected and fault action is automatically initiated, CSXT believes that COT&S intervals can be increased without any impact on safety.

CSXT bases their Test Plan on the following: (1) The reduction of mechanical devices through the use of micro-processor logic; (2) the replacement of "O" ring technology with "poppet" technology; (3) the immediate detection of faults or improper operation through the vigilance of a microcomputer; (4) the control of faults to a known safe condition; (5) emergency brake initiation and brake cylinder pressure development is accomplished mechanically as well as electronically under any condition; and (6) the performance of CCB equipment during current FRA Waiver H–95–3.

The Test Plan is designed to determine the feasibility of a "performance-based" COT&S. The initial duration of the test shall be six years from the in-service date of the locomotives listed in the control group. At the end of the six years, an evaluation and review will be made to assess whether an extension of an additional year for the test will be granted. Data collection for this test shall be accomplished within the present structure of the CSXT Mechanical Operations group, with assistance of NYAB Field Service Engineering. The test plan has specific requirements to tag and record detailed information on all faulty brake components removed from locomotives equipped with the CCB system and covered by this waiver. Data analysis for confirmation of failures will be determined by CSXT, NYAB Field Service Engineering and/or NYAB Service Department. A "criticality rating" will be assigned to each component failure and all information will be compiled for an evaluation of performance.

The periodic (92-day) test, per § 229.23, will be performed on all locomotives in the test group and replacement of all filtering devices and dirt collectors will be done annually. CSXT, NYAB, and FRA will perform an annual test of the CCB system, per NYAB Test ABT–2771, on select locomotives from the control group. The results of the tests and the information gathered throughout the year will be used to determine if the test plan can be extended for another year.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–6252) and must be submitted to the Docket Management Facility, Room PL–401, (Plaza Level) 400 Seventh Street, SW, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC. on October 25, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance; Petition for Exemption for Technological Improvements

In accordance with Title 49 Code of Federal Regulations (CFR) Sections 211.9 and 211.41, and 49 U.S.C. 20306, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations and a request for exemption of certain statutory provisions. The individual petition is described below, including the party seeking relief, the regulatory and statutory provisions involved, the nature of the relief being sought and the petitioner's arguments in favor of relief.

Santa Clara County Transit District

[FRA Waiver Petition No. FRA–1999–6254]

The Santa Clara County Transit District, also known as the Santa Clara Valley Transportation Authority ("VTA") seeks a permanent waiver of compliance from certain CFR parts of Title 49, specifically: part 214, Railroad Workplace Safety; part 217, Railroad Operating Rules; part 219, Control of Alcohol and Drug Use; part 220, Railroad Communications; part, 221 Rear End Marking Device—Passenger, Commuter and Freight Trains; part 223, Safety Gazing Standards—Locomotives, Passenger Cars and Cabooses; part 225, Railroad Accidents/Incidents—Report Classification, and Investigations; part 228, Hours of Service of Railroad Employees; part 229, Railroad Locomotive Safety Standards; part 231 Railroad Safety Appliance Standards; part 234, Grade Crossing Signal System Safety; part 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; part 238, Passenger Equipment Safety Standards; part 239, Passenger Train Emergency Preparedness; part 240, Qualification and Certification of Locomotive Engineers; and the statutory requirements 49 U.S.C. §§ 20301 through 20305.

Initial service began on the VTA light rail system in 1987, and by 1991 the 21-mile system was operational. With 33 stations and free parking at 11 park-and-ride lots, the light rail system currently provides service in California to the residential area of South San Jose, the industrial area of Santa Clara, the San Jose Civic Center, the North First Street industrial area and downtown San Jose.

VTA's Tasman West Extension, scheduled to open on December 17, 1999, is a 7.6-mile extension of VTA's light rail system. Adding 11 new stations between Old Ironsides Station in Santa Clara and downtown Mountain View, the Tasman West Extension will extend VTA's light rail system further into Silicon Valley and provide transit accessibility to major high technology employers.

The Tasman West Extension includes approximately 1.6 miles of track that

VTA acquired from the Southern Pacific Transportation Company ("SP") in 1994, known as the "Moffett Drill Track." This short segment of track (hereinafter referred to as the "Drill Track") constitutes a middle section of the Tasman West Extension. It also will be used on an occasional basis by the Union Pacific Railroad (UPRR), the successor by merger with SP, for freight deliveries to the National Aeronautics and Space Administration ("NASA") and other federal agencies that may be located in the Ames Research Center at the Moffett Federal Airfield; Moffett Federal Airfield is located at one end of the Drill Track.

VTA seeks approval of shared use and waiver of regulations from the Federal Railroad Administration ("FRA") for light rail passenger operations on the Drill Track. FRA has jurisdiction over this portion of the VTA because it will be connected to the general railroad system of transportation.

In each section entitled "Justification," FRA merely sets out VTA's justifications which are included in its petition. In doing so, VTA references the proposed Joint Policy Statement on Shared Used of the General Railroad System issued by FRA and the Federal Transit Administration (FTA) (64 FR 28238; May 25, 1999) ("Policy Statement"). The proposed policy statement suggests that regulation of light rail service on the general rail system, under conditions of temporal separation from conventional rail movements, be handled through application of complementary strategies. FRA regulations would generally be employed to address hazards common to light rail and conventional operations for which consistent handling is necessary, while other hazards would be handled under FTA's program of State Safety Oversight (49 CFR part 659). See proposed Policy Statement for details. Since FRA has not yet concluded its investigation of the planned VTA operation, the agency takes no position at this time on the merits of VTA's stated justifications. As part of FRA's review of the petition, the FTA will appoint a non-voting liaison to FRA's Safety Board, and that person will participate in the board's consideration of VTA's waiver petition.

Part 214 Roadway Worker Protection

Subpart C of part 214 sets forth requirements for the protection of roadway workers along railroad rights-of-way. These requirements are intended to help prevent accidents and injuries to railroad employees engaged in roadway maintenance activities.

Justification

VTA requests a waiver of the subpart C requirements during its period of operations over the Drill Track because VTA will be following its standard operating procedures and safety rules, as required by § 13.01 of California Public Utilities Commission (CPUC) General Order 143–A, § 3 of CPUC General Order 164–A, § 5 of the VTA Safety Plan and the Rulebook. Specifically, § 7 of the VTA Rulebook, entitled "Protection of Employees on Right of Way," sets forth the safety equipment, blue flag, and operating practice requirements designed to ensure the safety of VTA employees working along the right of way.

Under those rules, employees working along the right of way must wear visible safety vests. After dark, work crews also must have and use lanterns to alert trains to their presence. If emergency or repair work is done to vehicles on the main track, such vehicles must be tagged with blue flags or blue lights to alert workers. In addition to the required safety equipment, employees on the right of way are often working in a Work Zone or Reduced Speed Zone, established by the Operation Control Center (OCC), which gives the workers either the exclusive right to be on the track or requires trains moving through such zones to do so at reduced speed. When a train approaches a work zone, the operator is required to sound an audible warning of its approach. The work crew is then required to respond to the warning by either clearing the track and permitting the train to proceed, or by giving the train a stop signal until the crew can clear and permit the train to proceed. All work crews are required to call into OCC every 30 minutes to apprize OCC of their status and movements (if any). This allows OCC to notify trains of any changes in work crew locations. When performing work of 20 minutes or less, and when done without pneumatic tools, employees may be protected by "simple protection." In these circumstances, employees must report to OCC upon entering and exiting the right of way. OCC relays that information to trains in the area. If work extends beyond 20 minutes, permission to remain on the right-of-way must be renewed with OCC. The Rule 7 protections are similar to the FRA requirements, but tailored to the VTA operating environment. Currently in practice over the rest of the VTA light rail system, the rules have been effective at preventing injuries to employees working in the right of way.

Part 217 Railroad Operating Rules

Part 217 requires each railroad to provide training to employees on the operating rules and perform periodic operational tests to monitor compliance with the operating rules. Under this part, each railroad must also file copies of its operating rules with FRA. These requirements are intended to ensure the safety of railroad operations through employee knowledge of and compliance with operating rules.

Justification

VTA requests a waiver from all of the requirements of this part because VTA operating rule training and compliance monitoring will be carried on as required by § 13 of General Order 143–A. Under General Order 143–A, VTA is required to submit its operating rules to the CPUC, conduct initial and biennial training to employees on the operating rules, and conduct operational testing on a periodic basis. Section 5 of the VTA Safety Plan, and SOPs 1.5 and 1.9, contain additional operator training and testing requirements. These requirements will ensure that the VTA employees know and comply with VTA operating rules. This request is consistent with the FRA's position on the appropriate treatment of this part as stated in the Policy Statement (see Policy Statement at 28422).

Part 219 Control of Alcohol and Drug Use

Part 219, Control of Alcohol and Drug Use, prescribes minimum Federal safety standards for the control of alcohol and drug use by railroad workers for the purpose of preventing accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

Justification

VTA requests a waiver of all of the requirements of part 219 because all of the employees assigned to the VTA light rail system who would otherwise be covered employees under this part, are already covered employees subject to VTA's existing drug and alcohol program under the FTA rules at 49 CFR part 653, Prevention of Prohibited Drug Use in Transit Operations, and part 654, Prevention of Alcohol Misuse in Transit Operations. Subjecting certain employees to FRA regulations would create an administrative burden for VTA, both in terms of cost and recordkeeping, and in determining which employees were subject to which regulations on a given day.

The FTA regulations apply to recipients of Federal mass transit funds except those "specifically excluded" because those recipient operating railroads regulated by the FRA. 49 CFR §§ 653.5 and 654.5. In such cases, a recipient is to follow FRA regulations in 49 CFR part 219 for its "railroad operations." However, such a recipient is still required to certify that it is in compliance with applicable rules and comply with parts 653 and 654 for its "non-railroad operations."

VTA is a recipient of Federal mass transit funds, and therefore, would be subject to the compliance certification provision of FTA's regulations at parts 653 and 654 for any railroad operations otherwise covered by FRA's regulations at 49 CFR part 219, and is currently subject to all of the requirements of parts 653 and 654 for VTA's bus and current light rail operations. If granted a waiver from the requirements of part 219, the subject light rail operations would automatically fall under the regulatory jurisdiction of FTA. Thus, all of the employees assigned to the LRT operation who would otherwise be covered employees under this part, would be subject to FTA's rules at parts 653 and 654.

Application of the FTA drug and alcohol rules, when implemented in compliance with the FTA rule, would provide a level of safety consistent with the policy underlying part 219. A basic review of the respective FRA and FTA regulations reveals that the regulations are quite similar in purpose, structure and substance. Both regulations are intended to enhance safety by prohibiting and eliminating misuse of drugs and alcohol which might otherwise result in accidents and injuries to employees and the traveling public. Both regulations provide for procedural and recordkeeping requirements to safeguard the integrity of the program, and provide privacy and due process protections for covered employees. Finally, both sets of regulations prohibit impaired employees from performing safety-sensitive functions and require testing of essentially the same personnel under the similar circumstances (*i.e.*, random, post-accident, reasonable suspicion, and return-to-duty testing, and in the case of drugs, pre-employment testing).

Although there are differences between the regulations, there are no major policy differences with respect to the need to eliminate drug and alcohol misuse or the primary importance of safety in transportation operations. The most obvious difference involves the application of penalties for non-compliance. Under FRA rules, a regulated entity found to be in violation of the rule may be subject to the assessment of civil penalties in accordance with a published schedule. The FTA regulations do not contain such a civil penalty structure. However, under the FTA regulations, compliance is a condition for eligibility for receipt of Federal funds. Non-compliance can result in suspension of eligibility for applicable Federal funding altogether. Thus, the severity of the potential penalty serves as a deterrent in the same way as the FRA civil penalty program.

Application of the FTA regulations will provide a level of safety similar to that provided by the FRA regulations. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Part 220 Radio and Wireless Communication Procedures

Part 220 sets forth minimum requirements governing the use of radios and other wireless communications equipment in connection with railroad operations. These requirements are intended to enhance operational safety by facilitating communications among railroad employees and offices through the availability of radios and the use of standardized communications protocols.

Justification

VTA requests a waiver from all of the requirements of this part because radio communications on VTA light rail operations are conducted according to the requirements of § 4 of the Rulebook, "Radio Procedures" and SOPs 2.1, "Standard Two-Way Radio Procedures" and 2.5 "Radio Failure." Under the Rules and SOPs, light rail vehicles are equipped with radios and all personnel requiring two-way communications are provided with radios. The Rules and SOPs specify communication protocols addressing identification of speakers, proper use of radios, emergency communications, and procedures for communication in the event of radio failure. SOP 6.2 provides that all radio transmissions are governed and monitored by the Federal Communications Commission. In addition, compliance with these Rules and SOPs is monitored, as required in § 7 of the Safety Plan and Sections 3 and 4 of CPUC General Order 164–A. The VTA Rules and SOPs provide for an equivalent level of safety as the FRA rules. This request is consistent with FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Part 221 Rear End Marking Device—Passenger, Commuter and Freight Trains

Part 221 contains requirements that passenger, commuter, and freight trains be equipped with and display rear end marking devices. Part 221 also sets forth requirements related to the inspection of such devices and the movement of vehicles with defective rear end marking devices. The requirements are intended to reduce the likelihood of rear-end collisions due to the inconspicuity of the rear-end of a leading train.

Justification

VTA seeks a waiver from all of the requirements of part 221 because the VTA light rail vehicles are designed in conformance with the requirements of § 5 of CPUC General Order 143–A. The VTA light rail cars have two red taillights that are designed to be visible for a distance of 500 feet from the rear-end of the train and that are located 45 inches above the top of rail. Because the rear lights on the VTA vehicles will make them conspicuous to any trailing train, the VTA vehicle lighting will provide an equivalent level of safety to that provided by the FRA regulation.

Part 223 Section 223.9(c)—Glazing Requirements; Section 223.17—Identification

Section 223.9(c) requires that passenger cars be equipped with FRA-certified glazing in all windows. These requirements are intended to reduce the likelihood of injury to passengers and/or employees from breakage and shattering of windows (including windshields). Section 223.17 requires each passenger car that is fully equipped with FRA compliant glazing material to have a notice of compliance stenciled on an interior wall of the car. This serves the purpose of providing notice about the glazing material in the car.

Justification

VTA requests a waiver of these requirements because the VTA light rail vehicle will conform instead to the windshield and window requirements of § 6.04 of CPUC General Order 143–A. Under § 6.04, windshields and other windows must be made of laminated safety glass or shatter-proof or tempered glazing material. Glass meeting this standard is break-resistant in normal usage, but if broken, will "crumble" into pebble-like pieces, posing no significant hazard to passengers, employees, or rescue personnel. The use of such safety glass windows is standard throughout the rail transit industry for (among other applications) in-street light rail operations, where it has proved both durable and safe. In addition, the interior side of the window surfaces will have a carbonate coating. While the primary purpose of the coating is to render the windows resistant to graffiti, the coating also serves to provide additional protection against spalling in the event the window is broken. This extra protection adds to the safety of the windows. Finally, the risk associated with vandalism (such as by rocks thrown against the windows) is addressed from an operational standpoint in the security portions of the Safety Plan. There is no reason to believe that the VTA light rail vehicle windows will pose any safety hazard in conventional railroad corridor operations. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28421).

Part 225 Railroad Accidents/Incidents: Reports Classification, and Investigations

Part 225 prescribes reporting requirements for accidents and injuries meeting specified materiality thresholds. Part 225 also provides for recordkeeping and record retention policies. These requirements support FRA's enforcement efforts and provide information to detect trends on an industry-wide basis.

Justification

VTA requests a waiver of the reporting and investigation requirements for injuries because VTA will be following the injury reporting requirements prescribed in Sections 5 and 6 of CPUC General Order 164–A and § 4.10 of the VTA Safety Plan. In addition, VTA is responsible for compliance with applicable Occupational Safety and Health Administration workplace injury reporting requirements. Compliance with FRA regulations just for injuries on the Drill Track segment would require the creation of a separate administrative structure for injury reporting, which would place an unnecessary administrative burden on VTA without enhancing safety (see Policy Statement at 28422).

Part 228 Records and Reporting

Subsections 228.17(a)(2)–(10) of part 228 contain train movement recordkeeping requirements to be maintained by persons performing dispatcher functions. These requirements are intended to aid FRA in enforcing the statutory hours of service requirements by providing a detailed record of train movements and crew locations.

Justification

VTA requests a waiver of these requirements because they will create an unnecessary paperwork burden for VTA, while providing little of the benefit they do in the freight railroad operating environment. The requirements of §§ 228.17(a)(2)–(10) are designed for freight railroad operations, where there are often: multiple dispatching districts; varying train consists, routes and locomotive power units; changing train schedules; and unscheduled trains. On freight railroads, dispatcher and train crew working hours may vary and reporting stations may change. Usually work is not confined to a short segment of rail line and overnight time away from home is common. In this environment, the FRA-required dispatcher records are useful for keeping track of trains and train crews, which is essential to assuring compliance with the hours of service requirements without disruption to service.

VTA service, however, is vastly different. VTA light rail dispatchers operate out of a single Operations Control Center, directing the movement of regularly scheduled trains, with regularly scheduled station stops over a fixed route on a day-in, day-out basis. Dispatchers and vehicle operators work fixed schedules, with many of the same dispatchers and vehicle operators working the same hours each week. Moreover, dispatcher and vehicle operator responsibilities do not require them to be away from home during non-duty hours. Thus, in the VTA operating environment, the standard records maintained by VTA on train and train crew movements and operator attendance will provide sufficient information to determine service hours worked.

Part 229 Railroad Locomotive Safety Standards

Part 229 sets forth standards related to operation and maintenance of railroad locomotives. These requirements are intended to ensure that locomotives and locomotive components are and remain in good working order to permit the proper function of the locomotive and to reduce the likelihood of accidents due to failures of locomotive system components.

Justification

VTA requests a waiver of the requirements of part 229 because the VTA light rail vehicles are operated and maintained in accordance with the requirements of Sections 1.08 and 14 of CPUC General Order 143–A, § 5 of the VTA Safety Plan and § 3 of the Rulebook and SOPs 5.1–5.6, 6.1–6.11, 8.7, 8.10 and 8.12. Under these requirements, all light rail cars and component systems must be maintained in proper working condition, inspected and tested on a periodic basis, and operated in a safe manner.

VTA understands that FRA is particularly concerned that locomotives have alerting lights in a triangular pattern at the front end of each vehicle (as required by § 229.125). While the VTA light rail vehicles do not have lights that create a triangular pattern, VTA believes that the front-end lighting on the cars will provide a sufficiently distinctive profile that motor vehicle traffic and pedestrians will be alerted to the presence of an oncoming VTA train. The VTA cars, in accordance with § 5.01 of CPUC General Order 143–A, will have two headlights capable of revealing a person or motor vehicle in clear weather at a distance of 350 feet. They also will have yellow marker lights in the top corners of the cars. These high-mounted yellow lights are distinctive to the light rail vehicle and render the VTA trains clearly identifiable to motorists and pedestrians.

The features of the VTA light rail vehicles, combined with the CPUC, Safety Plan, Rulebook, and SOP inspection, testing, maintenance and operating requirements, will ensure that the VTA vehicles are maintained and operated in safe working order. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28421).

§ 231.14 Passenger Cars without End Platforms

Section 231.14 specifies the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (*e.g.*, hand brakes, ladders, handholds, steps), directly implementing a number of statutory requirements found in 49 U.S.C. §§ 20301–05.

The statute contains specific standards for automatic couplers, sill steps, hand brakes, and secure ladders and running boards. Where ladders are required, the statute mandates compliant handholds or grab irons for the roof of the vehicle at the top of each ladder. Compliant grab irons or handholds also are required for the ends and sides of the vehicles, in addition to standard height drawers. In addition, the statute requires trains to be equipped with a sufficient number of vehicles with power or train brakes so that the engineer may control the train's speed without the use of a common hand brake. At least 50 percent of the vehicles in the train must be equipped with power or train brakes, and the engineer must use the power or train brakes on those vehicles and all other vehicles equipped with such brakes that are associated with the equipped vehicles in the train.

Aside from these statutory-based requirements, the regulations provide additional and parallel specifications for hand brakes, sill steps, side handholds, end handholds, end handrails, side-door steps, and uncoupling levers. More specifically, each passenger vehicle must be equipped with an efficient hand brake that operates in conjunction with the power brake on the train. The hand brake must be located so that it can be safely operated while the passenger vehicle is in motion. Passenger cars must have four sill steps and side-door steps, and prescribed tread length, dimensions, material, location, and attachment devices for sill steps and side-door steps. In addition, there are requirements for the number, composite material, dimensions, location, and other characteristics for side and end handholds and end handrails. Finally, this section requires the presence of uncoupling attachments that can be operated by a person standing on the ground.

These very detailed regulations are intended to ensure that sufficient safety appliances are available and that they will function safely and securely as intended.

Justification

As noted above, some of the requirements in § 231.14 are required by statute and, therefore, are not subject to waiver under FRA's regulatory waiver provisions. FRA does, however, have the statutory authority to provide exemptions from these statutory requirements. 49 U.S.C. § 20306. Consequently, VTA requests exemption from and/or waiver of these requirements, as appropriate, because the VTA light rail vehicles will be equipped with their own array of safety devices resulting in equivalent safety. These are discussed below in greater detail.

The VTA light rail vehicles have only three steps for entry. The risk of falling while climbing aboard the train is minimal, and therefore most of the listed appliances are not necessary for safety. The VTA light rail vehicles do, however, have equivalent versions of some of the safety appliances that are tailored to VTA operations (§ 3 of CPUC General Order 143–A). For example, to ensure passenger and crew safety during the embarking/disembarking process and during operation of the vehicles, the VTA light rail vehicles are equipped with grab handles and bars. In addition, each vehicle is equipped with an appliance running the length of the front of the vehicle to provide protection against foreign objects being caught under the car body while the vehicle is in motion. Also, the VTA light rail vehicles are equipped with automatic couplers, rendering uncoupling levers unnecessary.

The VTA light rail vehicles will have brakes as required by § 4 of CPUC General Order 143–A and will be inspected, tested, and maintained as required by §§ 4 and 14 of the General Order, § 5 of the VTA Safety Plan and SOPs 5.1 and 5.3. Therefore, the VTA light rail vehicle brake system will be equivalent to a standard air brake system, and thus provide an equivalent level of safety.

VTA is aware that it may obtain exemption from the statutory safety appliance requirements mentioned above only if application of such requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." 49 U.S.C. § 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that "other types of railroad equipment might similarly benefit." S. Rep. 96–614, at 8, (1980), reprinted in 1980 U.S.C.C.A.N. 1156, 1164.

FRA has recognized the potential public benefits of temporally-separated transit use on segments of the general railroad system. Light rail transit systems "promote more livable communities by serving those who live and work in urban areas without adding congestion to the Nation's overcrowded highways" (see Policy Statement at 28238). They "take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right of way, would be prohibitively expensive" (Id. at 28238). There have been many technological advances in types of equipment used for passenger rail operations, such as the use of light rail transit vehicles that will be used for the VTA light rail system. Light rail transit equipment is energy efficient for passenger rail operations because it is lighter than conventional passenger equipment. Most light rail vehicles are electric, which reduces air pollution. Light rail vehicles are able to quickly accelerate or decelerate, which makes them more suitable than other equipment types in systems with closely-configured stations. Denying VTA's request for an exemption from certain safety appliance requirements would preclude the implementation of light rail transit for shared use/temporal separation operations. Moreover, compliance with the statutory requirements is not necessary for safe operations.

With regard to the regulatory requirements of § 231.14, the VTA light rail vehicles will be equipped with safety appliances that are more appropriate for light rail transit vehicles, thus achieving an equivalent or superior level of safety in the VTA operating environment. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28421).

Section 234.105(c)(3) Activation Failure

Section 234.105 sets forth procedures to be followed in the event of a failure of the activating mechanism of a highway-rail grade crossing warning system. Section 234.105(c) provides for alternative means of actively warning highway users of approaching trains during periods of warning system activation failure. These requirements are intended to prevent collisions between motor vehicles and trains at grade crossings due to failure of the grade crossing warning system by providing for alternate means of controlling traffic at such crossings.

Justification

VTA requests a waiver from this requirement because this procedure is not compatible with VTA operations. In cases of grade crossing warning system activation failures, VTA will deploy flaggers or request the deployment of uniformed law enforcement officers to provide traffic control services, in accordance with the requirements of this section. However, there may be times at which no flagger or uniformed law enforcement officer is available. In such instances, VTA will not be able to follow the procedure in § 234.105(c)(3) to move the train through the crossing because the VTA light rail vehicles will be operated by one person crews, and that crew member cannot leave the train to flag the crossing. Instead, VTA proposes to bring the train to a full stop at the crossing, sound an appropriate audible warning device on the vehicle, then proceed through the crossing at restricted speed as conditions permit (in any case less than 15 mph). The proposed procedure will provide a level of safety equivalent to that provided by the FRA rule, while causing less disruption to VTA light rail service.

Part 236 Track Circuit Requirements

Section 236.51 requires broken rail protection such that track circuits generally must be de-energized or in their most restrictive state when a rail is broken. This requirement is intended to reduce the likelihood of an accident caused by broken rails by restricting train movement over such rails.

Justification

VTA requests a waiver of this requirement because audio frequency overlay ("AFO") track circuits are in use over the Drill Track. AFO track circuits were chosen because they eliminate the need for insulated joints and impedance bonds at the insulated joints, making them more cost effective than conventional track circuits. In addition, it was considered preferable to avoid insulated joints because they provide weak spots in the track. Although AFO circuits are not as sensitive to broken rail conditions as conventional power frequency track circuits, VTA believes that safety will not be compromised by their use.

AFO track circuits do provide some broken rail protection; some broken rail situations (where the rail is physically separated) are detected by AFO track circuits, which then show an occupancy to prohibit the entry of trains into the affected block.

While AFO circuits may not detect cracks, VTA maintenance practices make it unlikely that a crack not detected by the AFO track circuits would result in an accident. VTA conducts formal visual inspection of its tracks on a weekly basis. In addition, because of the local and urbanized nature of the system, it is unlikely that erosion, earth movement or some other occurrence which would affect the track would go unnoticed and unremedied between weekly inspections.

Part 238 Passenger Equipment Standards

These standards deal with structural requirements for passenger rail vehicles and vehicle equipment, along with inspection and maintenance standards for such equipment. These standards are intended to enhance the safety of passenger rail operations in the case of accidents by ensuring that passenger rail vehicles have certain crashworthiness and emergency exit features.

Justification

VTA requests a waiver from the requirements of part 238 because the VTA light rail vehicles have been manufactured to comply with the requirements of CPUC General Order 143–A. VTA believes that these standards will provide a sufficient level of safety in the VTA operating environment.

Sections 3, 6 and 10 of the General Order contain standards for light rail vehicle equipment, brakes, lighting, emergency exits, windows, structural components (i.e., anti-climbers, collision posts and end sills), and traction power systems. These sections cover both equipment design and performance requirements. More specifically, the Order sets forth requirements that light rail vehicles be equipped with certain pieces of safety equipment (such as deadman controls, audible warning devices, emergency brakes, etc.), along with performance specifications for brake systems and construction requirements for vehicles (CPUC General Order 143–A). These requirements are intended to lower the risk of injury to occupants, both through structural capacity of the vehicles to protect the occupant compartment and through safety precautions against secondary hazards resulting from initial collisions (i.e., fire, lack of egress, etc.). Compliance with the more stringent FRA requirements is not necessary because VTA's light rail operations will be completely separated from UPRR's infrequent freight operations, eliminating the risk that VTA light rail vehicles will enter into collisions with heavier freight trains.

The VTA vehicles will be operated, inspected, tested and maintained, as required by § 5 of the VTA Safety Plan, § 3 of the Rulebook and SOPs 5.1–5.6, 6.1–6.11, 8.7, 8.10 and 8.12. Under these requirements all light rail vehicles and component systems must be maintained in proper working order, inspected and tested on a periodic basis, and must be operated in a safe manner. These provisions also include instructions for marking and moving defective equipment. Compliance with these Rules and SOPs is monitored, as required by § 7 of the Safety Plan and §§ 3 and 4 of General Order 164–A.

The CPUC and VTA requirements will provide for a level of safety at least equivalent to FRA requirements. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Part 239 Emergency Preparedness

Part 239 contains standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. It is intended that by providing sufficient emergency egress capability and information to passengers, and by having emergency preparedness plans calling for coordination with local emergency response officials, the risk of death or injury to passengers, employees, and others in the case of accidents or other incidents, will be lessened.

Justification

VTA requests a waiver from the part 239 requirements because VTA will be following CPUC and VTA emergency preparedness requirements. VTA believes that compliance with these emergency preparedness requirements will provide a level of safety equivalent to the FRA standards.

Sections 5.05 and 6.05 of CPUC General Order 143–A contain emergency lighting and emergency exit requirements, respectively. In addition, the VTA vehicles are each equipped with four (4) emergency window exits and fire extinguishers.

Section 3.1 of CPUC General Order 164–A requires VTA to adopt an emergency response plan and procedures which must provide for emergency situation training and coordination with external emergency response agencies. Sections 4.3, 4.12, 5.2, 5.5, 5.7 and 5.8 of the Safety Plan set forth the responsibility of the various VTA divisions and personnel for emergency planning and response activities. Section 2.6 of the Security Portion of the Safety Plan also addresses emergency response issues. SOPs 9.1–9.20 prescribe detailed operating procedures in the event of emergency, including coordination with police and fire departments, and passenger evacuation procedures. There are specific SOPs for a variety of emergency situations from derailments and collisions to natural disasters to civil disorders or terrorist activities.

These emergency preparedness standards will provide a level of safety equivalent to the FRA requirements. Compliance with FRA regulations just for emergencies on the Drill Track would require the creation of a separate administrative structure for emergency planning and response, which would place an unnecessary administrative burden on VTA without enhancing safety. This request is consistent with FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Part 240 Qualification and Certification of Locomotive Engineers

Part 240 contains regulations relating to the qualification and certification of locomotive engineers. The locomotive engineer shoulders significant responsibility for the safety of him/herself and others in the railroad operating environment. Through the regulation's training, eligibility, testing, and monitoring standards, FRA seeks to ensure that only sufficiently qualified individuals are entrusted with those unique responsibilities.

Justification

VTA requests a waiver from these requirements because VTA will be following CPUC and VTA operator training and qualification standards. VTA believes that compliance with the CPUC/VTA operator qualification and training requirements will provide at least an equivalent level of safety. SOPs 1.5 and 1.9 set forth specific training and certification requirements for VTA light rail operators, in accordance with the requirements of Sections 12.02, 13 and 14.03 of CPUC General Order 143–A and § 5.2 of the Safety Plan. Moreover, compliance with FRA regulations for operators whose routes take them over the Drill Track would require the creation of a separate administrative structure for locomotive engineer training and qualification, which would place an unnecessary administrative burden on VTA without enhancing safety. This request is consistent with FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with either the request for a waiver of certain regulatory provisions or the request for an exemption of certain statutory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA 1999–6254) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, D.C. on October 26, 1999.

Michael Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 99–28467 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–6414]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, Office of Ship Financing, Room 8122, 400 7th St., S.W., Washington, D.C. 20590. Telephone 202–366–5744, FAX 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Capital Construction Fund and Exhibits.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0027.

Form Numbers: None.

Expiration Date of Approval: June 30, 2000.

Summary of Collection of Information: This information collection consists of application for a Capital Construction Fund (CCF) agreement under section 607 of the Merchant Marine Act, 1936 as amended, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Need and Use of the Information: The collected information is necessary for MARAD to determine an applicant's eligibility to enter into a CCF Agreement.

Description of Respondents: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Annual Responses: 140.

Annual Burden: 2130 hours total.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. Dot Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: October 27, 1999.

Michael J. McMorrow,

Acting Secretary.

[FR Doc. 99–28539 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143 (Notice No. 99–11)]

Safety Advisory; High Pressure Aluminum Seamless and Aluminum Composite Hoop-Wrapped Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice; correction.

SUMMARY: On October 18, 1999, RSPA published a safety advisory notice in the **Federal Register** to alert owners, users, and other persons responsible for the maintenance of certain cylinders made of aluminum alloy 6351–T6 of potential safety problems and to advise them to follow the precautionary measures outlined in that notice. This document corrects the telephone numbers shown in that notice for Luxfer (USA).

FOR FURTHER INFORMATION CONTACT: Mark Toughiry or Stanley Staniszewski, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590–001; telephone number (202)366–4545; or by E-mail to "rules@rspa.dot.gov" and refer to the Docket and Notice numbers set forth above.

Correction

In the **Federal Register** issue of October 18, 1999, in FR Doc. 99–27113, on page 56244, in the first column, last paragraph, correct the third sentence to read:

"For guidance on inspecting Luxfer gas cylinders, contact Luxfer (USA), 3016 Kansas Avenue, Riverside, CA 92507; web site at *www.luxfercylinders.com;* telephone (909) 684–5110; fax (909) 341–9266."

Issued in Washington, D.C. on October 25, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–28516 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–402 (Sub–No. 7X)]

Fox Valley & Western Ltd.—Abandonment Exemption—in Washington and Fond du Lac Counties, WI

On October 12, 1999, Fox Valley & Western Ltd. (FVW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 24.64-mile line of railroad, known as the West Bend-Eden Line, extending from milepost 114.42 south of West Bend to milepost 139.06 in Eden, in Washington and Fond du Lac Counties, WI. The line traverses U.S. Postal Service ZIP Codes 53095, 53010, 53040 and 53099, and includes the stations of West Bend (milepost 117.6), BR Siding (milepost 122.0), Kewaskum (milepost 125.1), and Campbellsport (milepost 131.1).

The line does not contain federally granted rights-of-way. Any documentation in FVW's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 28, 2000.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 22, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–402 (Sub-No. 7X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Michael J. Barron, Jr., P.O. Box 5062, Rosemont, IL 60017–5062. Replies to the FVW petition are due on or before November 22, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–28123 Filed 10–29–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–31 (Sub–No. 36X]

Grand Trunk Western Railroad Incorporated—Abandonment Exemption—Rail Line in Detroit, MI

On October 12, 1999, Grand Trunk Western Railroad Incorporated (GTW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 [1] to abandon a 1.31-mile segment of its line of railroad, known as the Dequindre Line, extending between milepost 1.77 and milepost 0.46, in Detroit, Wayne County, MI. The line traverses U.S. Postal Service Zip Code 48226 and has no stations.

The line does not contain federally granted rights-of-way. Any documentation in GTW's possession will be made available promptly to those requesting it.

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[1] GTW seeks exemptions from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and from the public use provisions of 49 U.S.C. 10905. These exemption requests will be addressed in the final decision.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 28, 2000.

Unless an exemption is granted, as sought, from the OFA provisions of 49 U.S.C. 10904, any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless an exemption is granted, as sought, from the public use provisions of 49 U.S.C. 10905, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 22, 1999.[2] Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–31 (Sub-No. 36X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Robert P. vom Eigen, Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–28249 Filed 10–29–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on Outside Borrowings.

DATES: Submit written comments on or before January 3, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0061. Hand deliver comments to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). E-mail to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Office of Supervision and Examination, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Outside Borrowings.

OMB Number: 1550–0061.

Abstract: Information is collected from thrift institutions that do not meet capital requirements. These institutions must give ten days prior notification before making long-term borrowings. Information submitted by the institutions is used to monitor their safety and soundness.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Extension of a Currently Approved Collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1.

Estimated Total Annual Burden Hours: 4.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency=s estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 26, 1999.

John E. Werner,

Director, Information Management and Services.

[FR Doc. 99–28498 Filed 10–29–99; 8:45 am]

BILLING CODE 6720–01–P

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[2] Upon obtaining abandonment authority, GTW has contractually agreed to transfer the property to Jefferson Holdings, LLC, for development as a transportation corridor; specifically, a four-lane roadway and possible mass transit in the future. Therefore, it is unlikely that GTW will be willing to negotiate with any party for transfer of the line for trail use.

Corrections

Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 201 and 213

[DFARS Case 99–D002]

Defense Federal Acquisition Regulation Supplement; Overseas Use of the Purchase Card

Correction

In rule document 99–27278 beginning on page 56704, in the issue of Thursday, October 21, 1999, the heading is corrected to read as set forth above.

[FR Doc. C9–27278 Filed 10–29–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–5–000]

Midwestern Gas Transmission Company; Notice of Request Under Blanket Authorization

Correction

In notice document 99–27852 appearing on page 57635 in the issue of Tuesday, October 26, 1999, the docket number is added to read as set forth above.

[FR Doc. C9–27852 Filed 10–29–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Monday
November 1, 1999

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Bull Trout in the Coterminous United States; Final Rule

Notice of Intent To Prepare a Proposed Special Rule Pursuant to Section 4(d) of the Endangered Species Act for the Bull Trout; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF01

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Bull Trout in the Coterminous United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine threatened status for all populations of bull trout (*Salvelinus confluentus*) within the coterminous United States, with a special rule, pursuant to the Endangered Species Act of 1973, as amended (Act). This determination is based on our finding that the Coastal-Puget Sound and St. Mary-Belly River population segments are threatened, coupled with our earlier findings of threatened status for the Klamath River, Columbia River, and Jarbidge River population segments. These population segments are disjunct and geographically isolated from one another with no genetic interchange between them due to natural and man-made barriers. These population segments collectively encompass the entire range of the species in the coterminous United States. Therefore, for the purposes of consultation and recovery, we recognize these five distinct population segments as interim recovery units. With this final rule, the bull trout will now be listed as threatened throughout its entire range in the coterminous United States.

The Coastal-Puget Sound bull trout population segment encompasses all Pacific coast drainages within Washington, including Puget Sound. The St. Mary-Belly River bull trout population segment occurs in northwest Montana. Bull trout are threatened by the combined effects of habitat degradation, fragmentation and alterations associated with dewatering, road construction and maintenance, mining, and grazing; the blockage of migratory corridors by dams or other diversion structures; poor water quality; incidental angler harvest; entrainment (process by which aquatic organisms are pulled through a diversion or other device) into diversion channels; and introduced non-native species. This final determination was based on the best available scientific and commercial information including current data and new information received during the comment period.

EFFECTIVE DATE: December 1, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the above address (telephone 208/378–5243; facsimile 208/378–5262) to make an appointment to inspect the complete file for this rule or for information pertaining to the Columbia River population segment; Gerry Jackson, Manager, Western Washington Office (telephone 360/753–9440; facsimile 360/753–9008) for information pertaining to the Coastal-Puget Sound population segment; Kemper McMaster, Field Supervisor, Montana Field Office (telephone 406/449–5225; facsimile 406/449–5339) for information pertaining to the St. Mary-Belly River population segment; Steven Lewis, Field Supervisor, Klamath Falls Fish and Wildlife Office (telephone 541/885–8481; facsimile 541/885–7837) for information pertaining to the Klamath River population segment; Robert D. Williams, Field Supervisor, Nevada State Office (telephone 775/861–6300; facsimile 775/861–6301) for information pertaining to the Jarbidge River population segment.

SUPPLEMENTARY INFORMATION:

Background

Bull trout (*Salvelinus confluentus*), members of the family Salmonidae, are char native to the Pacific northwest and western Canada. They historically occurred in major river drainages in the Pacific northwest from about 41° N to 60° N latitude, from the southern limits in the McCloud River in northern California and the Jarbidge River in Nevada, north to the headwaters of the Yukon River in Northwest Territories, Canada (Cavender 1978; Bond 1992). To the west, bull trout range includes Puget Sound, various coastal rivers of Washington, British Columbia, Canada, and southeast Alaska (Bond 1992; Leary and Allendorf 1997). Bull trout are relatively dispersed throughout tributaries of the Columbia River Basin, including its headwaters in Montana and Canada. Bull trout also occur in the Klamath River Basin of south-central Oregon. East of the Continental Divide, bull trout are found in the headwaters of the Saskatchewan River in Alberta and the MacKenzie River system in Alberta and British Columbia (Cavender 1978; Brewin and Brewin 1997).

Bull trout were first described as *Salmo spectabilis* by Girard in 1856 from a specimen collected on the lower Columbia River, and subsequently described under a number of names such as *Salmo confluentus* and *Salvelinus malma* (Cavender 1978). Bull trout and Dolly Varden (*Salvelinus malma*) were previously considered a single species (Cavender 1978; Bond 1992). Cavender (1978) presented morphometric (measurement), meristic (counts), osteological (bone structure), and distributional evidence to document specific distinctions between Dolly Varden and bull trout. Subsequently, bull trout and Dolly Varden were formally recognized as separate species by the American Fisheries Society in 1980 (Robins *et al.* 1980). Although bull trout and Dolly Varden co-occur in several northwestern Washington River drainages, there is little evidence of introgression and the two species appear to be maintaining distinct genomes (Leary and Allendorf 1997).

Bull trout exhibit both resident and migratory life-history strategies through much of the current range (Rieman and McIntyre 1993). Resident bull trout complete their life cycles in the tributary streams in which they spawn and rear. Migratory bull trout spawn in tributary streams, and juvenile fish rear from 1 to 4 years before migrating to either a lake (adfluvial), river (fluvial), or in certain coastal areas, saltwater (anadromous), to mature (Fraley and Shepard 1989; Goetz 1989). Anadromy is the least studied life-history type in bull trout, and some biologists believe the existence of true anadromy in bull trout is still uncertain (McPhail and Baxter 1996). However, historical accounts, collection records, and recent evidence suggests an anadromous life-history form for bull trout (Suckley and Cooper 1860; Cavender 1978; McPhail and Baxter 1996; Washington Department of Fish and Wildlife (WDFW) *et al.* 1997—formerly the Washington Department of Wildlife (WDW)). Resident and migratory forms may be found together, and bull trout may produce offspring exhibiting either resident or migratory behavior (Rieman and McIntyre 1993).

Compared to other salmonids, bull trout have more specific habitat requirements (Rieman and McIntyre 1993) that appear to influence their distribution and abundance. Critical parameters include water temperature, cover, channel form and stability, valley form, spawning and rearing substrates, and migratory corridors (Oliver 1979; Pratt 1984, 1992; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Howell and Buchanan 1992; Rieman and

McIntyre 1993, 1995; Rich 1996; Watson and Hillman 1997). Watson and Hillman (1997) concluded that watersheds must have specific physical characteristics to provide the necessary habitat requirements for bull trout spawning and rearing, and that the characteristics are not necessarily ubiquitous throughout watersheds in which bull trout occur. Because bull trout exhibit a patchy distribution, even in undisturbed habitats (Rieman and McIntyre 1993), fish would not likely occupy all available habitats simultaneously (Rieman *et al.* 1997).

Bull trout are typically associated with the colder streams in a river system, although fish can occur throughout larger river systems (Fraley and Shepard 1989; Rieman and McIntyre 1993, 1995; Buchanan and Gregory 1997; Rieman *et al.* 1997). For example, water temperature above 15° C (59° F) is believed to negatively influence bull trout distribution, which partially explains the generally patchy distribution within a watershed (Fraley and Shepard 1989; Rieman and McIntyre 1995). Spawning areas are often associated with cold-water springs, groundwater infiltration, and the coldest streams in a given watershed (Pratt 1992; Rieman and McIntyre 1993; Rieman *et al.* 1997).

All life history stages of bull trout are associated with complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Oliver 1979; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Pratt 1992; Thomas 1992; Rich 1996; Sexauer and James 1997; Watson and Hillman 1997). Jakober (1995) observed bull trout overwintering in deep beaver ponds or pools containing large woody debris in the Bitterroot River drainage, Montana, and suggested that suitable winter habitat may be more restrictive than summer habitat. Maintaining bull trout populations requires stream channel and flow stability (Rieman and McIntyre 1993). Juvenile and adult bull trout frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997). These areas are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period, and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

Preferred spawning habitat generally consists of low gradient stream reaches often found in high gradient streams that have loose, clean gravel (Fraley and Shepard 1989) and water temperatures of 5 to 9° C (41 to 48° F) in late summer to early fall (Goetz 1989). Pratt (1992) reported that increases in fine sediments reduce egg survival and emergence. High juvenile densities were observed in Swan River, Montana, and tributaries characterized by diverse cobble substrate and a low percent of fine sediments (Shepard *et al.* 1984).

The size and age of maturity for bull trout is variable depending upon life-history strategy. Growth of resident fish is generally slower than migratory fish; resident fish tend to be smaller at maturity and less fecund (productive) (Fraley and Shepard 1989; Goetz 1989). Resident adults range from 150 to 300 millimeters (mm) (6 to 12 inches (in)) total length and migratory adults commonly reach 600 mm (24 in) or more (Pratt 1985; Goetz 1989). The largest verified bull trout is a 14.6 kilogram (kg) (32 pound (lb)) specimen caught in Lake Pend Oreille, Idaho, in 1949 (Simpson and Wallace 1982).

Bull trout normally reach sexual maturity in 4 to 7 years and can live 12 or more years. Biologists report repeat and alternate year spawning, although repeat spawning frequency and post-spawning mortality are not well known (Leathe and Graham 1982; Fraley and Shepard 1989; Pratt 1992; Rieman and McIntyre 1996). Bull trout typically spawn from August to November during periods of decreasing water temperatures. However, migratory bull trout may begin spawning migrations as early as April, and move upstream as far as 250 kilometers (km) (155 miles (mi)) to spawning grounds in some areas of their range (Fraley and Shepard 1989; Swanberg 1997). In the Blackfoot River, Montana, bull trout began spawning migrations in response to increasing temperatures (Swanberg 1997). Temperatures during spawning generally range from 4 to 10° C (39 to 51° F), with redds (spawning beds) often constructed in stream reaches fed by springs or near other sources of cold groundwater (Goetz 1989; Pratt 1992; Rieman and McIntyre 1996). Depending on water temperature, egg incubation is normally 100 to 145 days (Pratt 1992), and juveniles remain in the substrate after hatching. Time from egg deposition to emergence may surpass 200 days. Fry normally emerge from early April through May depending upon water temperatures and increasing stream flows (Pratt 1992; Ratliff and Howell 1992).

Bull trout are opportunistic feeders, with food habits primarily a function of size and life-history strategy. Resident and juvenile bull trout prey on terrestrial and aquatic insects, macro-zooplankton, amphipods, mysids, crayfish, and small fish (Wyman 1975; Rieman and Lukens 1979 in Rieman and McIntyre 1993; Boag 1987; Goetz 1989; Donald and Alger 1993). Adult migratory bull trout are primarily piscivorous, known to feed on various trout and salmon species (*Onchorynchus* spp.), whitefish (*Prosopium* spp.), yellow perch (*Perca flavescens*) and sculpin (*Cottus* spp.) (Fraley and Shepard 1989; Donald and Alger 1993).

In the Coastal-Puget Sound and St. Mary-Belly River population segments, bull trout co-evolved with, and in some areas, co-occur with native cutthroat trout (*Oncorhynchus clarki* subspecies (ssp.)), migratory rainbow trout (*O. mykiss* ssp.), chinook salmon (*O. tshawytscha*), coho salmon (*O. kisutch*), sockeye salmon (*O. nerka*), mountain whitefish (*Prosopium williamsoni*), pygmy whitefish (*P. coulteri*), and various sculpin, sucker (Catastomidae) and minnow (Cyprinidae) species (Rieman and McIntyre 1993; R2 Resource Consultants, Inc. 1993). Bull trout habitat within the coterminous United States overlaps with the range of several fishes listed as threatened or endangered, and proposed or petitioned for listing under the Act, including endangered Snake River sockeye salmon (November 20, 1991; 56 FR 58619); threatened Snake River spring and fall chinook salmon (April 22, 1992; 57 FR 14653); endangered Kootenai River white sturgeon (*Acipenser transmontanus*) (September 6, 1994; 59 FR 45989); threatened and endangered steelhead (August 18, 1997; 62 FR 43937); threatened Puget Sound chinook salmon (March 9, 1998; 63 FR 11481); threatened Hood Canal summer-run chum salmon and Columbia River chum salmon (March 25, 1999; 64 FR 14507); proposed threatened status for southwestern Washington/Columbia River coastal cutthroat trout (April 5, 1999; 64 FR 16397); and westslope cutthroat trout in northern Idaho, eastern Washington, and northwest Montana (*O. c. lewisi*) for which a status review is currently underway (June 10, 1998; 63 FR 31691).

Widespread introductions of non-native fishes, including brook trout (*Salmo fontinalis*), lake trout (*S. namaycush*) (west of the Continental Divide), and brown trout (*Salmo trutta*) and hatchery rainbow trout (*Oncorhynchus mykiss*), have also occurred across the range of bull trout. These non-native fishes are often associated with local bull trout declines and extirpations (Bond 1992; Ziller

1992; Donald and Alger 1993; Leary *et al.* 1993; Montana Bull Trout Scientific Group (MBTSG) 1996a,h). East of the Continental Divide, in the St. Mary-Belly River drainage, bull trout co-evolved with lake trout and westslope cutthroat trout (Fredenberg 1996). In this portion of their range, bull trout and lake trout have apparently partitioned habitat with lake trout dominating lentic (i.e., lake) systems, relegating bull trout to riverine systems and the fluvial life-history form (Donald and Alger 1993).

Bull trout habitat in the coterminous United States is found in a mosaic of land ownership, including Federal, State, Tribal, and private lands. For the Coastal-Puget Sound population segment, over half of the bull trout habitat occurs on non-Federal lands. For the St. Mary-Belly River population segment, about two-thirds of the habitat occurs on Federal land (Glacier National Park) and about a third on Tribal lands of the Blackfeet Indian Nation.

Migratory corridors link seasonal habitats for all bull trout life-history forms. The ability to migrate is important to the persistence of local bull trout subpopulations (Rieman and McIntyre 1993; Mike Gilpin, University of California, *in litt.* 1997; Rieman and Clayton 1997; Rieman *et al.* 1997). Migrations facilitate gene flow among local subpopulations if individuals from different subpopulations interbreed when some return to non-natal streams. Migratory fish may also reestablish extirpated local subpopulations.

Metapopulation concepts of conservation biology theory may be applicable to the distribution and characteristics of bull trout (Rieman and McIntyre 1993; Kanda 1998). A metapopulation is an interacting network of local subpopulations with varying frequencies of migration and gene flow among them (Meffe and Carroll 1994). Metapopulations provide a mechanism for reducing risk because the simultaneous loss of all subpopulations is unlikely. Although local subpopulations may become extinct, they can be reestablished by individuals from other local subpopulations. However, because bull trout exhibit strong homing fidelity when spawning and their rate of straying appears to be low, natural re-establishment of extinct local subpopulations may take a very long time. Habitat alteration, primarily through construction of impoundments, dams, and water diversions, has fragmented habitats, eliminated migratory corridors, and isolated bull trout, often in the headwaters of tributaries (Rieman *et al.* 1997).

Distinct Population Segments

Using the best available scientific and commercial information, we identified five distinct population segments (DPSs) of bull trout in the coterminous United States—(1) Klamath River, (2) Columbia River, (3) Coastal-Puget Sound, (4) Jarbidge River, and (5) St. Mary-Belly River. The final listing determination for the Klamath River and Columbia River bull trout DPSs on June 10, 1998 (63 FR 31647), includes a detailed description of the rationale behind the DPS delineation for those two population segments. The Jarbidge River DPS final listing determination was made on April 8, 1999 (64 FR 17110). However, the DPS policy, published on February 7, 1996 (61 FR 4722), is intended for cases where only a segment of a species' range needs the protections of the Act, rather than the entire range of a species. Although the bull trout DPSs are disjunct and geographically isolated from one another with no genetic interchange between them due to natural and man-made barriers, collectively, they include the entire distribution of the bull trout in the coterminous United States. In accordance with the DPS policy, our authority to list DPSs is to be exercised sparingly. Thus a coterminous listing is appropriate in this case. In recognition of the scientific basis for the identification of these bull trout population segments as DPSs, and for the purposes of consultation and recovery planning, we will continue to refer to these populations as DPSs. These DPSs will serve as interim recovery units in the absence of an approved recovery plan.

Coastal-Puget Sound Population Segment

The Coastal-Puget Sound bull trout DPS encompasses all Pacific Coast drainages within the coterminous United States north of the Columbia River in Washington, including those flowing into Puget Sound. This population segment is discrete because it is geographically segregated from other subpopulations by the Pacific Ocean and the crest of the Cascade Mountain Range. The population segment is significant to the species as a whole because it is thought to contain the only anadromous forms of bull trout in the coterminous United States, thus, occurring in a unique ecological setting. In addition, the loss of this population segment would significantly reduce the overall range of the taxon.

St. Mary-Belly River Population Segment

The St. Mary-Belly River DPS is located in northwest Montana east of the Continental Divide. Both the St. Mary and Belly rivers are tributaries of the Saskatchewan River Basin in Alberta, Canada. The population segment is discrete because it is segregated from other bull trout by the Continental Divide and is the only bull trout population found east of the Continental Divide in the coterminous United States. The population segment is significant because its loss would result in a significant reduction in the range of the taxon within the coterminous United States. Bull trout in this population segment migrate across the international border with Canada (Clayton 1998).

Status and Distribution

To facilitate evaluation of current bull trout distribution and abundance for the Coastal-Puget Sound and St. Mary-Belly River population segments, we analyzed data on a subpopulation basis within each population segment because fragmentation and barriers have isolated bull trout. A subpopulation is considered a reproductively isolated bull trout group that spawns within a particular area(s) of a river system. In areas where two groups of bull trout are separated by a barrier (*e.g.*, an impassable dam or waterfall, or reaches of unsuitable habitat) that may allow only downstream access (*i.e.*, one-way passage), both groups were considered subpopulations. In addition, subpopulations were considered at risk of extirpation from natural events if they were: (1) Unlikely to be reestablished by individuals from another subpopulation (*i.e.*, functionally or geographically isolated from other subpopulations); (2) limited to a single spawning area (*i.e.*, spatially restricted); and (3) characterized by low individual or spawner numbers; or (4) consisted primarily of a single life-history form. For example, a subpopulation of resident fish isolated upstream of an impassable waterfall would be considered at risk of extirpation from natural events if it had low numbers of fish that spawn in a relatively restricted area. In such cases, a natural event such as a fire or flood could eliminate the subpopulation, and, subsequently, reestablishment of the subpopulation from fish downstream would be prevented by the impassable waterfall. However, a subpopulation residing downstream of the waterfall would not be considered at risk of extirpation because of potential reestablishment by fish from upstream. Because resident bull trout may exhibit limited downstream movement (Nelson 1996), our estimate of subpopulations at risk of natural extirpation may be underestimated. The status of subpopulations was based on modified criteria of Rieman *et al.* (1997), including the abundance, trends in abundance, and the presence of life-history forms of bull trout.

We considered a bull trout subpopulation "strong" if 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears stable or increasing, and life-history forms historically present were likely to persist. A subpopulation was considered "depressed" if less than 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears to be declining, or a life-history form historically present has been lost (Rieman *et al.*1997). If there was insufficient abundance, trend, and life-history information to classify the status of a subpopulation as either "strong" or "depressed," the status was considered "unknown." It should be noted that the assignment of "unknown" status implies only a deficiency of available data to assign a subpopulation as "strong" or "depressed," not a lack of information regarding the threats. Section 4 of the Act requires us to make a determination solely on the best scientific and commercial data available.

Coastal-Puget Sound Population Segment

The Coastal-Puget Sound bull trout population segment encompasses all Pacific coast drainages within Washington, including Puget Sound. No bull trout exist in coastal drainages south of the Columbia River. Within this area, bull trout often occur with (*i.e.*, are sympatric) Dolly Varden. Because the two species are virtually impossible to visually differentiate, the WDFW currently manages bull trout and Dolly Varden together as "native char." Previously, we delineated a total of 35 subpopulations of "native char" (bull trout, Dolly Varden, or both species) within the Coastal-Puget Sound population segment published on June 10, 1998 (63 FR 31693). Upon further review, we revised the total number of subpopulations to 34. In order to be fully consistent with the defined subpopulation criteria, we concluded that the Puyallup River Basin only has two subpopulations as opposed to three, which are the upper Puyallup River and the lower Puyallup (includes Carbon River and White River).

Bull trout and Dolly Varden can be differentiated by both genetic and morphological-meristic (measurements and counts) analyses, of which biologists have conducted one or both analyses on 15 of the 34 subpopulations. To date, we have documented bull trout in 12 of 15 subpopulations investigated (five with only bull trout, three with only Dolly Varden, and seven with both species), and it is likely that bull trout occur in the majority of the remaining 19 subpopulations (Service 1998a). Although we only documented three of the tested "native char" subpopulations as containing Dolly Varden at this time, we are not yet confident in excluding these subpopulations from the listing. We believe it would be premature to conclude that bull trout do not exist in these subpopulations given the limited sample sizes used in the analyses, the location of the subpopulations, and the evidence that bull trout and Dolly Varden can frequently co-exist together. In order to identify trends that may be specific to certain geographic areas, the 34 "native char" subpopulations were grouped into five analysis areas—Coastal, Strait of Juan de Fuca, Hood Canal, Puget Sound, and Transboundary.

Coastal Analysis Area

Ten "native char" subpopulations occur in five river basins in the Coastal analysis area (number of subpopulations)—Chehalis River-Grays Harbor (1), Coastal Plains-Quinault River (5), Queets River (1), Hoh River-Goodman Creek (2), and Quillayute River (1). Recent efforts to determine species composition in three subpopulations documented bull trout in at least two, the upper Quinault River and Queets River (Leary and Allendorf 1997; WDFW 1997a). Biologists identified only Dolly Varden in the upper Sol Duc River to date (Cavender 1978, 1984; WDFW 1997a).

Subpopulations of "native char" in the southwestern portion of the coastal area appear to be in low abundance based on anecdotal information (Mongillo 1993). Because this is the southern extent of coastal bull trout and Dolly Varden, abundance may be naturally low in systems like the Chehalis, Moclips, and Copalis rivers (WDFW 1997a). In recent years, there have been even fewer reports of incidental catches of "native char" in the Chehalis River Basin. In 1997, a single juvenile was captured in a downstream migrant trap on the mainstem of the Chehalis River (WDFW 1998a). Although little historical and current information is known concerning bull trout in these river basins, habitat degradation in the past has adversely affected other salmonids (Phinney and Bucknell 1975; Hiss and Knudsen 1993; WDFW 1997a). Habitat degradation in these basins is assumed to have similarly affected bull trout. Although "native char" are believed to be relatively more abundant in the Quinault River, extensive portions of the Basin have been degraded by past forest management (Phinney and Bucknell 1975; WDFW 1997a).

Most "native char" subpopulations in the northwestern coastal area occur partially within Olympic National Park, which contains relatively undisturbed habitats. However, outside Olympic National Park, "native char" habitat has been severely degraded by past forest practices in the Queets River and Hoh River basins (Phinney and Bucknell 1975; WDFW 1997a). Non-native brook trout have been stocked in many of the high lakes and streams in the Olympic National Park. Brook trout are present in the upper Sol Duc subpopulation and threaten this subpopulation from competition and hybridization (Service 1998a). Data collected while seining for outmigrating salmon smolts on the Queets River indicate a decline in "native char" catch rate from 3.3 fish/day in 1977 to 1 fish/day by 1984 (WDFW 1997a). From 1985 to the time seining was discontinued in 1991, catch rate remained relatively stable at approximately 1.5 fish/day. The WDFW believes that the Hoh River may have the largest subpopulation of "native char" on the Washington coast, although their numbers have greatly declined since 1982 (WDFW *in litt.* 1992; WDFW 1997a). Reasons for the decline are unknown, but overfishing is believed to be a contributing factor (WDFW 1997a; WDFW, *in litt.* 1997). Forty-one and 31 adult "native char" were observed during snorkel surveys of a 17.6-km (11-mi) section of the South Fork Hoh River in 1994 and 1995, respectively (WDFW 1997a). We consider the Hoh River subpopulation "depressed." The status of the remaining nine "native char" subpopulations in the coastal analysis area is "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998a). Although the status of these subpopulations is unknown, we believe that anecdotal information, such as described for the Chehalis River-Grays Harbor and Queets River subpopulations, indicate declines in abundance in other subpopulations within the coastal analysis area.

Strait of Juan de Fuca Analysis Area

Five "native char" subpopulations occur in three river basins in the Strait of Juan de Fuca analysis area (number of subpopulations)—Elwha River (2), Angeles Basin (1), and Dungeness River (2). Recent efforts to determine species composition in three subpopulations have documented bull trout in at least two, the upper Elwha River and lower Dungeness River-Gray Wolf River (Leary and Allendorf 1997; WDFW 1997a). Only Dolly Varden have been identified in the upper Dungeness River subpopulation to date (WDFW 1997a).

The two subpopulations in the Dungeness River Basin occur partially within Olympic National Park and Buckhorn Wilderness Area, and likely benefit from the relatively undisturbed habitats located there. However, non-native brook trout occur in some streams in the park. Large portions of the Dungeness River Basin lie outside of Olympic National Park, and have been severely degraded by past forest and agricultural practices (Williams *et al.* 1975; WDFW 1997a). Within Olympic National Park, the lower and upper Elwha River subpopulations are isolated by dams. Biologists have observed few "native char" in the lower Elwha subpopulation in recent years. Since 1983, one or two individuals have been seen each year in a chinook salmon rearing channel located in the lower Elwha River (WDFW 1997a). A creel census, conducted in 1981 and 1982 on the Elwha River reservoirs of the upper Elwha River subpopulation, reported that "native char" were found in low numbers (WDFW 1997a). Although "native char" are believed to be widespread in some basins within the analysis area, such as the Dungeness and Gray Wolf rivers, fish abundance is thought to be "greatly reduced in numbers" (WDW, *in litt.* 1992; WDFW 1997a). Electrofishing surveys conducted in four sections of the upper Dungeness River subpopulation during 1996 recorded an overall "native char" density of 0.78 fish/meter (2.56 fish/foot) for the four sections (WDFW 1997a). These preliminary surveys indicate that the upper Dungeness River subpopulation may be "strong." We consider the lower Elwha River subpopulation "depressed" because less than 500 spawners likely occur in the subpopulation, and the lower Dungeness River-Gray Wolf River "depressed" because abundance has declined. The remaining three "native char" subpopulations in the Strait of Juan de Fuca coastal analysis area have "unknown" status because insufficient abundance, trend, and life-history information is available (Service 1998a).

Hood Canal Analysis Area

Three "native char" subpopulations occur in the Skokomish River Basin in the Hood Canal analysis area. Surveys by Brown (1992) and Brenkman (1996 in WDFW 1997) documented bull trout in Cushman Reservoir, and Leary and Allendorf (1997) and WDFW (1997a) documented bull trout in the South Fork-lower North Fork Skokomish River. Due to the construction of Cushman Dam on the North Fork Skokomish River, bull trout in Cushman Reservoir are isolated and restricted to an adfluvial life-history form. Spawner surveys, which began in 1973, indicate a decline in adult bull trout through the 1970s, subsequent increases from 4 adults in 1985 to 412 adults in 1993, and relatively stable numbers of 250 to 300 spawning adults in recent years (WDFW 1997a). The increase in adult bull trout from 1985 to 1993 is likely related to harvest closure on Cushman Reservoir and upper North Fork Skokomish River in 1986 (Brown 1992). Recent surveys indicate low numbers of bull trout in tributaries of the South Fork Skokomish River such as Church, Pine, Cedar, LeBar, Brown, Rock, Flat, and Vance creeks, as well as in the mainstem (Larry Ogg, Olympia National Forest (ONF), *in litt.* 1997). Past forest and agricultural practices and hydropower development have severely degraded habitat in the South Fork-lower North Fork Skokomish River (Williams *et al.* 1975; Hood Canal Coordinating Council (HCCC) 1995; WDFW 1997a). The upper North Fork Skokomish River subpopulation occurs within Olympic National Park and habitat is relatively undisturbed. We consider the South Fork-lower North Fork Skokomish River subpopulation "depressed," because fewer than 500 spawners and fewer than 5,000 individuals likely occur in the subpopulation. Although the number of spawning adult bull trout appears to have been relatively stable in the Cushman Reservoir subpopulation since 1990, under our analysis, this population is consider "depressed" based on the criteria used to determine subpopulation status (*i.e.*, less than 500 spawning adults). The status of the upper North Fork Skokomish subpopulation is considered "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998a).

Puget Sound Analysis Area

Fifteen "native char" subpopulations occur in eight river basins in the Puget Sound analysis area (number of subpopulations)—Nisqually River (1), Puyallup River (2), Green River (1), Lake Washington Basin (2), Snohomish River-Skykomish River (1), Stillaguamish River (1), Skagit River (4), and Nooksack River (3). Recent surveys of seven "native char" subpopulations have documented bull trout in at least six—lower Puyallup (Carbon River), Green River, Chester Morse Reservoir, Snohomish River-Skykomish River, lower Skagit River, and upper Middle Fork Nooksack River (R2 Resource Consultants, Inc. 1993; Samora and Girdner 1993; Kraemer 1994; Michael Barclay, Cascades Environmental Services, Inc., pers. comm. 1997; Leary and Allendorf 1997; Eric Warner, Muckleshoot Indian Tribe, pers. comm. 1997). Leary and Allendorf (1997) identified only Dolly Varden in the Canyon Creek (tributary to the Nooksack River) subpopulation.

The current abundance of "native char" in southern Puget Sound is likely lower than occurred historically and declining (Tom Cropp, WDW, *in litt.* 1993; Fred Goetz, U.S. Army Corps of Engineers (COE), pers. comm. 1994a,b). Historical accounts from southern Puget Sound indicate that anadromous "native char" entered rivers there in "vast numbers" during the fall and were harvested until Christmas (Suckley and Cooper 1860). "Native char" are now rarely collected in the southern drainages of the area (T. Cropp, *in litt.* 1993; F. Goetz, pers. comm. 1994a,b). There is only one recent record of a "native char" being collected in the Nisqually River. A juvenile char was collected during a stream survey for salmon in the mid-1980s (George Walter, Nisqually Indian Tribe, pers. comm. 1997; WDFW 1997a). In the Puyallup River (lower Puyallup subpopulation), "native char" are occasionally caught by steelhead anglers (WDW, *in litt.* 1992; WDFW 1997a). In the White River (lower Puyallup subpopulation), counts of upstream migrating "native char" at the Buckley diversion dam have averaged 23 adults since 1987. Although trapping effort has varied during the past 11 years, annual counts have generally been poor to moderate, ranging from a low of 8 to a high of 46 adult "native char" (WDFW 1998a). In the Green River, "native char" are rarely observed (T. Cropp, *in litt.* 1993; F. Goetz, pers. comm. 1994a,b; E. Warner, pers. comm. 1997). Aquatic habitat in the Nisqually, Puyallup, and Green rivers has been variously degraded by logging, agriculture, road construction, and urban development. In the Chester Morse Reservoir subpopulation, biologists observed fewer than 10 redds as recently as 1995 and 1996; and fry abundance was low in spring 1996 and 1997 (Dwayne Paige, Seattle Water Department, *in litt.* 1997). Logging and extensive road construction have occurred within the Basin (Foster Wheeler Environmental 1995; WDFW 1997a), and likely affected bull trout in Chester Morse Reservoir. Only two "native char" have been observed during the past 10 years in the Issaquah Creek drainage and none have been observed in the Sammamish River system, which are occupied by the Sammamish River-Issaquah Creek subpopulation. It is questionable whether a viable subpopulation remains. Habitat in the Sammamish River and Issaquah Creek drainages has been negatively affected by urbanization, road building and associated poor water quality (Williams *et al.* 1975; Washington Department of Ecology (WDOE) 1997). We consider the Nisqually River, Green River, Chester Morse Reservoir, Sammamish River-Issaquah Creek, and lower Puyallup subpopulations "depressed" based on fewer than 500 spawning adults and a decline in general abundance.

Drainages in the northern Puget Sound area appear to support larger subpopulations of "native char" than the southern portion (F. Goetz, pers. comm. 1994a, b; Steve Fransen, Service, pers. comm. 1997). The WDFW conducts redd counts in two index reaches of the northern Puget Sound; a reach in the upper South Fork Sauk River that is included in the lower Skagit River subpopulation, and a reach in the upper North Fork Skykomish River that is included in the Snohomish River-Skykomish River subpopulation. These areas are said to have healthy habitats supporting stable numbers of "native char" (Kraemer 1994). Biologists have conducted redd surveys since 1988 in both index reaches. In the upper South Fork Sauk River, WDFW (1997a) observed a substantial increase in redds in 1991, a year after a minimum 508-mm (20-in) harvest restriction was implemented; and redd numbers have remained relatively stable at or above 34. The State implemented harvest restrictions in the Skagit River and its tributaries in 1990. "Native char" in the lower Skagit River subpopulation have access to at least 38 documented or suspected spawning tributaries (WDFW *et al.* 1997) with the number of adults estimated to be 8,000 to 10,000 fish (Curt Kraemer, WDFW, pers. comm. 1998). The number of redds in the upper North Fork Skykomish River index reach have averaged 78 redds (range 21 to 159) during 1988 through 1996, with 75 or fewer redds observed between 1993 and 1996 (WDFW 1997a). A total of 170 redds were counted in 1997 (WDFW 1998a). Redd counts in the North Fork Skykomish River index reach have been more variable between years than the South Fork Sauk River index reach. The upper Skagit River is fragmented into three reservoirs from the construction of Gorge, Diablo, and Ross dams (WDFW 1997a). The primary spawning area for the Gorge Reservoir subpopulation is said to be the lower Steattle Creek and a portion of the Skagit River below Diablo Dam (WDFW 1997a). The primary spawning areas for the Diablo Reservoir subpopulation is thought be in the Thunder Arm area, including Fisher Creek (WDFW 1997a), although WDFW *et al.* (1997) did not locate any "native char" adults or juveniles upstream of the mouth of Thunder Creek during snorkel and electrofishing surveys. Within Ross Reservoir, it is reported that spawning occurs in lower reach areas of at least six tributaries, in addition to a portion of the upper Skagit River in Canada (WDFW 1997a). Biologists have documented "native char" spawning in at least seven creeks in the Stillaguamish River subpopulation and in five creeks and several mainstem areas of the Lower Nooksack River subpopulation. Biologists have also observed "native char" in at least four creeks in the upper Middle Fork Nooksack River subpopulation. Neither adult count data nor redd count data is available for these six subpopulations (WDFW 1997a). Within the Puget Sound analysis area, we consider the lower Skagit River subpopulation "strong," based on a large number of spawning adults and high overall abundance. We consider five subpopulations within the Puget Sound analysis area "depressed" and the status of the remaining nine "native char" subpopulations in the Puget Sound analysis area "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998a).

Transboundary Analysis Area

One "native char" subpopulation occurs in the Chilliwack River Basin in the Transboundary analysis area. The Chilliwack River is a transboundary system flowing into British Columbia, Canada. We have not determined the species composition of this subpopulation. In Washington, portions of the Chilliwack River are within the North Cascades National Park and a tributary, Selesia Creek, are within the Mount Baker Wilderness where the habitat is relatively undisturbed (WDFW 1997a). Little information is available for "native char" in the Chilliwack River-Selesia Creek subpopulation (Service 1998a). The current status of the "native char" subpopulations in the Transboundary analysis area is "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998a).

St. Mary-Belly River Population Segment

Much of the historical information regarding bull trout in the St. Mary-Belly River DPS is anecdotal and abundance information is limited. Bull trout probably entered the system via postglacial dispersal routes from the Columbia River through either the Kootenai River or Flathead River systems (Fredenberg 1996). The St. Mary River system historically contained native bull trout, lake trout, and westslope cutthroat trout. Although abundance of these fishes is unknown, the presence of lake trout suggests that migratory bull trout were restricted primarily to streams and rivers and not common in lakes (Donald and Alger 1993). Within the St. Mary River system, historic accounts of bull trout date to the 1930s (Fredenberg 1996). In the Belly River, historic distribution of bull trout in the Basin is limited but migratory bull trout from Canada likely spawned in the North Fork and mainstem Belly rivers.

Both migratory (fluvial) and resident life-history forms are present (Fredenberg 1996), although bull trout within the St. Mary-Belly River DPS are isolated and fragmented by irrigation dams and diversions (Fredenberg 1996; Clayton 1998; Robin Wagner, Service, pers. comm. 1998). Bull trout that migrate across the international border are dependent upon the relatively undisturbed water quality and spawning habitat located in the upper St. Mary and Belly rivers and their tributaries within the coterminous United States (Fredenberg 1996).

Based on natural and artificial barriers to fish passage within the St. Mary-Belly River DPS, we identified four bull trout subpopulations—(1) Upper St. Mary River (from the U.S. Bureau of Reclamation (USBR) diversion structure on lower St. Mary Lake upstream to St. Mary Falls, including Swiftcurrent and Boulder creeks below Lake Sherburne, and Red Eagle and Divide creeks); (2) Swiftcurrent Creek (including tributaries and Lake Sherburne and Cracker Lake); (3) lower St. Mary River (St. Mary River downstream of the USBR diversion structure including Kennedy, Otatso, and Lee creeks); and (4) Belly River (mainstem and North

Fork Belly River) (Service 1998b). Based on 1997 and 1998 trapping of post-spawning adults, fewer than 100 fish existed in the Boulder Creek and Kennedy Creek spawning populations (Lynn Kaeding, Service, *in litt.* 1998). These two streams include the strongest known spawning runs in the upper St. Mary River and lower St. Mary River subpopulations, respectively, and evaluation of these streams is continuing. Based on studies conducted in 1996 and 1997, the Belly River drainage is thought to contain fewer than 100 adult bull trout (Clayton 1998). The status of the upper St. Mary River, lower St. Mary River, and North Fork Belly River bull trout subpopulations is "depressed" because fewer than 500 spawning adults or 5,000 total bull trout occur in the subpopulations. The status of the Swiftcurrent Creek subpopulation is "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998b).

In summary, we considered the information received during the public comment period on the abundance, trends in abundance, and distribution of bull trout in the Coastal-Puget Sound and St. Mary-Belly River population segments. The Coastal-Puget Sound population segment includes the only anadromous bull trout found in the coterminous United States. The population segment is composed of 34 "native char" subpopulations of which bull trout have been documented in 12 of 15 subpopulations examined. The remaining 19 subpopulations consist of "native char" that may include bull trout, Dolly Varden, or both species. At this time, the only "native char" documented in three of the subpopulations is Dolly Varden. Of the 34 subpopulations, we believe one is "strong," 10 are "depressed," and insufficient abundance, trends in abundance, and life-history information exists to assign either category to the remaining 23 subpopulations.

The St. Mary-Belly River population segment of bull trout is composed of four subpopulations and represents the only area of bull trout range east of the Continental Divide within the coterminous United States. Migratory fish occur in three of the subpopulations and the life-history form in the fourth subpopulation is unknown. Bull trout subpopulations in the St. Mary River Basin are isolated by impassable diversion structures. Three of the four subpopulations are "depressed" due to low abundance of fish, and the status of one subpopulation is "unknown" because insufficient abundance, trends in abundance, and life-history information exists to categorize the subpopulations as "strong" or "depressed."

Previous Federal Action

On October 30, 1992, we received a petition to list the bull trout as an endangered species throughout its range from the following conservation organizations in Montana: Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition (petitioners). The petitioners also requested an emergency listing and concurrent critical habitat designation for bull trout populations in select aquatic ecosystems where the biological information indicated that the species was in imminent danger of extinction. In our 90-day finding, published on May 17, 1993 (58 FR 28849), we determined that the petitioners had provided substantial information indicating that listing of the species may be warranted. We initiated a rangewide status review of the species concurrent with publication of the 90-day finding.

In our June 10, 1994, 12-month finding (59 FR 30254), we concluded that listing the bull trout throughout its range was not warranted due to unavailable or insufficient data regarding threats to, and status and population trends of, the species within Canada and Alaska. However, we determined that sufficient information on the biological vulnerability and threats to the species was available to support a warranted 12-month finding to list bull trout within the coterminous United States, but this action was precluded due to higher priority listings.

On November 1, 1994, Friends of the Wild Swan, Inc. and Alliance for the Wild Rockies, Inc. (plaintiffs) filed suit in the U.S. District Court of Oregon (Court) arguing that the warranted but precluded finding was arbitrary and capricious. After we recycled the petition and issued a new warranted but precluded 12-month finding for the coterminous population of bull trout on June 12, 1995 (60 FR 30825), the Court issued an order declaring the plaintiffs' challenge to the original finding moot. The plaintiffs declined to amend their complaint and appealed to the Ninth Circuit Court of Appeals, which found that the plaintiffs' challenge fell "within the exception to the mootness doctrine for claims that are capable of repetition yet evading review." On April 2, 1996, the Circuit Court remanded the case back to the District Court. On November 13, 1996, the Court issued an order and opinion remanding the original finding to us for further consideration. Included in the instructions from the Court were requirements that we limit our review to the 1994 administrative record, and incorporate any emergency listings or high magnitude threat determinations into current listing priorities. We delivered the reconsidered 12-month finding based on the 1994 Administrative Record to the Court on March 13, 1997. We concluded in the finding that two populations of bull trout warranted listing (Klamath River and Columbia River population segments).

On March 24, 1997, the plaintiffs filed a motion for mandatory injunction to compel us to issue a proposed rule to list the Klamath River and Columbia River bull trout populations within 30 days based solely on the 1994 Administrative Record. On April 4, 1997, we requested 60 days to prepare and review the proposed rule. In a stipulation between us and plaintiffs filed with the Court on April 11, 1997, we agreed to issue a proposed rule within 60 days to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened based solely on the 1994 record.

We proposed the Klamath River population of bull trout as endangered and Columbia River population of bull trout as threatened on June 13, 1997 (62 FR 32268). The proposal included a 60-day comment period and gave notice of five public hearings in Portland, Oregon; Spokane, Washington; Missoula, Montana; Klamath Falls, Oregon; and Boise, Idaho. The comment period on the proposal, which originally closed on August 12, 1997, was extended to October 17, 1997 (62 FR 42092), to provide the public with more time to compile information and submit comments.

On December 4, 1997, the Court ordered us to reconsider several aspects of the 1997 reconsidered finding. On February 2, 1998, the Court gave us until June 12, 1998, to respond. The final listing determination for the Klamath River and Columbia River population segments of bull trout and the concurrent proposed listing rule for the Coastal-Puget Sound, St. Mary-Belly River, and Jarbidge River DPSs constituted our response.

We published a final rule listing the Klamath River and Columbia River population segments of bull trout as threatened on June 10, 1998 (63 FR 31647). On the same date, we also published a proposed rule to list the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments of bull trout as threatened (63 FR 31693). On August 11, 1998 (63 FR 42757), we issued an emergency rule listing the Jarbidge River population segment of bull trout as endangered due to river channel alteration associated with unauthorized road construction on the West Fork of the Jarbidge River, which we found to imminently threaten the survival of the distinct population segment. On April 8, 1999 (64 FR 17110), we published the final rule to list the Jarbidge River population segment as threatened in the **Federal Register**.

Summary of Comments and Recommendations

In the June 10, 1998 (63 FR 31693), proposed rule, we requested interested parties to submit comments or information that might contribute to the final listing determination for bull trout. The proposed rule included the Coastal-Puget Sound, St. Mary-Belly River, and Jarbidge River bull trout DPSs. We sent announcements of the proposed rule and notice of public hearings to at least 800 individuals, including Federal, State, county and city elected officials, State and Federal agencies, interested private citizens, and local area newspapers and radio stations. We also published announcements of the proposed rule in 10 newspapers, which included the Idaho Statesman, Boise, Idaho; the Times-News, Twin Falls, Idaho; the Glacier Reporter, Browning, Montana; the Daily Inter Lake; Kalispell, Montana; the Great Falls Tribune, Great Falls, Montana; the Elko Daily Free Press, Elko, Nevada; the Bellingham Herald, Bellingham, Washington; the Olympian, Olympia, Washington; the Spokesman-Review, Spokane, Washington, and the Seattle Post-Intelligencer, Seattle, Washington. We held public hearings on July 7, 1998, in Lacey, Washington; July 9, 1998, in Mount Vernon, Washington; July 14, 1998, in East Glacier, Montana; and July 21, 1998, in Jackpot, Nevada. The comment period on the proposed rule closed on October 8, 1998.

We received 12 oral and 40 written comments on the proposed rule. These included comments from two Federal agencies, one Native American Tribe, three State agencies, one county in Nevada, three cities in Washington, and two private companies. In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review. We requested six individuals, who possess expertise in bull trout biology and salmonid ecology, and whose affiliations include academia and Federal, State, and provincial agencies, to review the proposed rule by the close of the comment period. One individual responded to our request and we have addressed their comments in this section of the rule.

We considered all comments for the proposed rule for the Coastal-Puget Sound, St. Mary-Belly River, and Jarbidge River population segments, including oral testimony presented at the public hearings and the comments from the peer reviewer who responded to our request to review the proposed rule. The majority of comments supported the listing proposal and nine comments were in opposition. Opposition was based on several concerns, including possible negative economic effects from listing bull trout; potential restrictions on activities; lack of solutions to the bull trout decline that would result from listing; and interpretation of data concerning the status of bull trout and their threats in the three population segments. The U.S. Forest Service (USFS) (B. Siminoe, USFS, *in litt.* 1998); National Park Service (NPS) (David Morris, NPS, *in litt.* 1998), Idaho Department of Fish and Game (IDFG) (F. Partridge, IDFG, *in litt.* 1998; Partridge and Warren 1998), Nevada Division of Wildlife (NDOW) (T. Crawforth, NDOW, *in litt.* 1998; R. Haskins, NDOW, *in litt.* 1998), (Bruce Crawford, WDFW, *in litt.* 1998; WDFW 1998a), and Alberta Environmental Protection (AEP) (Duane Radford, AEP, *in litt.* 1998) provided us with information on respective agency efforts to assess, evaluate, monitor, and conserve bull trout in habitats affected by each agency's management for the three DPSs. Comments specific to the Jarbidge River population segment were addressed in the final rule determination for that DPS (April 8, 1999; 64 FR 17110). Comments specific to the Coastal-Puget Sound and St. Mary-Belly River population segments are addressed in this rule. Because multiple respondents offered similar comments, we grouped comments of a similar nature or point. These comments and our responses are presented below.

Issue 1: Several respondents opposed the Federal listing, while others supported it. Some respondents requested that we delay or preclude Federal listing until additional data on the Coastal-Puget Sound population segment are collected and considered, and one respondent based this on the belief that some subpopulations within the north Puget Sound region and the Olympic Peninsula appear to be stable or increasing, and other subpopulations occur in excellent or pristine habitat. A respondent asked if complete status and trend information is not available, whether changes in habitat or threats are sufficient to list a species, even if there is no indication that a population is in trouble. Another respondent noted we did not evaluate listing criteria with objective and quantitative methods, making it difficult to interpret new information in a consistent manner. The respondent also said that, although quantitative data are lacking for many local populations of bull trout, sufficient information exists to design an inventory program to describe their current distribution, relative abundance, and population structure.

Our Response: A species may be determined to be an endangered or threatened species due to the five factors identified in section 4(a)(1) of the Act and addressed in the "Summary of Factors Affecting the Species" section. The Act requires us to base listing determinations on the best available commercial and scientific information. Data are often not available to make statistically rigorous inferences about a species' status (*e.g.*, abundance, trends in abundance, and distribution). Overall, we found that sufficient evidence exists in each of the population segments that demonstrate they are threatened by a variety of past and ongoing threats, and are likely to become endangered in the foreseeable future.

In making this final determination, we took into account the overall status of bull trout in the coterminous United States. We acknowledge that three north Puget Sound subpopulations of bull trout (lower Skagit River, Stillaguamish River, and Snohomish River-Skykomish River supopulations) appear to be in better condition than subpopulations in other areas of the Coastal-Puget sound population segment. We determined that the lower Skagit subpopulation was "strong." The WDFW has identified "native char" spawning areas in a number of tributaries in the Stillaguamish River subpopulation, and reported them as stable or expanding based on limited spawner surveys of Boulder Creek and the upper Stillaguamish River (WDFW 1997a). However, Mongillo (1993) and WDFW (1997a) identified other areas of the Stillaguamish subpopulation, specifically Deer Creek and Canyon Creek, as declining. Although the 1997 redd count for the Snohomish-Skykomish River subpopulation was the highest since an index reach was established in 1988 (WDFW 1998a). redd counts have been highly variable over this time period, possibly indicating an unstable population. There is scant evidence that subpopulations within the Nooksack River are increasing or stable, although much of the habitat within the Nooksack River drainage has been

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severely degraded (WDFW 1998a). The Cushman Reservoir subpopulation, on the Olympic Peninsula, appears to have an adult spawner return that has stabilized around 300 fish for the past 7 years (WDFW 1998a). The available spawning habitat for this subpopulation lies primarily within Olympic National Park and WDFW considers it to be in excellent condition (WDFW 1998a). In contrast, bull trout in the South Fork-lower North Fork Skokomish River occur in low numbers with no known spawning sites. Habitat in the south Fork and lower North fork Skokomish River is severely degraded (WDFW 1998a).

Conversely, we have ample information regarding threats to the Coastal-Puget Sound population segments. Many of the threats are similar to those described for the threatened Klamath River and Columbia River bull trout population segments (June 10, 1998; 63 FR 31647). We acknowledge that available information is insufficient to designate many of the subpopulations within the Coastal-Puget Sound population segment as "strong" or "depressed." However, because bull trout display a high degree of sensitivity to environmental disturbance and are referred to as an indicator species, we believe that bull trout are significantly impacted by past and current habitat degradation within the Coastal-Puget Sound population segment, similar to other listed and sensitive species (i.e., salmon). Habitat loss and degradation is acknowledged as a significant factor limiting salmon and trout populations within Washington (Washington Department of Fisheries (WDF) *et al.* 1993; Weitkamp *et al.* 1995; Busby *et al.* 1996; Spence *et al.* 1996; WDFW 1997a, b). Although a number of subpopulations have documented spawning and rearing habitat in protected areas of watersheds, the spawning and rearing habitats of many other subpopulations are not identified. In addition, habitats used by other life-history stages for migration, overwintering, sub-adult rearing, are degraded, and all life-history stages are required for a species to persist. See the "Summary of Factors Affecting the Species" section for a more complete discussion of threats affecting bull trout.

Because the location of spawning areas for many bull trout subpopulations are not well known for the Coastal-Puget Sound population segment, we have been funding efforts to determine the distribution of spawning areas in various Coastal-Puget Sound subpopulations. Although estimates of bull trout abundance based on redd counts will provide information on which to evaluate the status of "native char" subpopulations, the method should be used with caution. For example, in analyzing counts of bull trout redds in Idaho and Montana, Rieman and Myers (1997) found that variability of counts in individual streams reduces the ability to detect trends, especially with data sets for relatively short periods. They caution that detection of trends will often require more than 10 years of sampling, even where declines could be large, and for many bull trout spawning reaches, declining trends may not be statistically evident until numbers drop to critically low levels. Given the lack or limitations of statistically rigorous data for bull trout in the Coastal-Puget Sound population segment, our review of the status of "native char" subpopulations is based on the generally low number of individuals observed in several subpopulations throughout the population segment, and the apparent declines reported in others.

Issue 2: A respondent noted that the proposed rule considered that loss of the St. Mary-Belly River population segment would constitute a significant reduction in the range of the taxon. They asked what portion of the range is significant, and would the statement be true for the St. Mary-Belly River population segment if fish in Canada were considered. They also inquired whether bull trout in the population segment are distinct from fish east of the Continental Divide in Canada. Because a large portion of the St. Mary-Belly River population segment occurs on the Blackfeet Reservation, another respondent requested that we establish government-to-government relations with the Blackfeet Tribe, expressing concern that Tribal comments and interactions with us were considered similarly to those from the general public and not on a government-to-government basis.

Our Response: We considered both biological (available data) and administrative (international boundary) issues in determining distinct population segments. Policy used to guide determination of distinct population segments is described in the joint National Marine Fisheries Service (NMFS) and Service policy for recognizing distinct vertebrate population segments under the Act (February 7, 1996; 61 FR 4722). Although we are not including bull trout in Canada in the St. Mary-Belly River population segment, fish are believed to migrate across the international boundary. Determination of a significant reduction in range was based only on bull trout occurring within the coterminous United States, of which loss of the population segment would result in elimination of all bull trout east of the Continental Divide. Mogen (1998) noted genetic work that indicated bull trout from the upper St. Mary River drainage in Glacier National Park and the Belly River in Alberta form a genetically similar group, and bull trout collected from other areas in southern Alberta form another (Thomas *et al.* 1997, cited in Mogen 1998). Genetic analysis of tissue samples collected in the St. Mary River drainage during 1997 is not complete (Mogen 1998).

Regarding governmental relations, a June 1997 Secretarial Order on Federal-Tribal trust responsibilities and the Act, clarifies responsibilities of agencies relative to Tribal lands, rights, and trust resources in implementing the Act. A cooperative agreement among us, the Blackfeet Tribe, and Bureau of Reclamation establishes a partnership focused on the conservation and restoration of native salmonids and habitat in the St. Mary River drainage. Mogen (1998) presents results of a study to investigate bull trout spawning areas and fish abundance conducted pursuant to the cooperative agreement. We have met with representatives of the Blackfeet Tribe to address concerns about bull trout and government-to-government relations.

Issue 3: One respondent noted that criteria we used to determine the status of subpopulations were adopted from Rieman *et al.* (1997), who originally developed them to apply to 6th field watersheds in the Interior Columbia Basin Ecosystem Management Project (ICBEMP). Because fish in 6th field watersheds are roughly equivalent to local populations (see Rieman and McIntyre 1995), using the criteria may be inconsistent with subpopulations as defined in the proposed rule. Also, several respondents were concerned about applying the criteria to the Coastal-Puget Sound population segment for evaluating whether a subpopulation is "strong" or "depressed." One respondent asked whether our definition of subpopulation designation required absolute reproductive isolation or only some level of structuring that means reduced gene flow and some local adaptation, and whether subpopulations can compose a larger metapopulation or if a metapopulation is equivalent to a subpopulation. Another respondent contended that some dams were not isolating mechanisms for subpopulations (Middle Fork Nooksack, Skagit, and Nisqually rivers) because they believe the dams were constructed at natural barriers.

Our Response: In adopting the criteria, we considered a bull trout subpopulation "strong" if 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears stable or increasing, and life-history forms historically present were likely to persist; and "depressed" if less than 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears to be declining, or a life-history form historically present has been lost (see Rieman *et al.* 1997). If there was insufficient abundance, trend, and life-history information to classify the status of a subpopulation as either "strong" or "depressed," we considered status as "unknown."

We used these criteria because they represent the best available information and were used in evaluating bull trout in the Klamath River and Columbia River population segments. We acknowledge the criteria were originally developed for application to salmonids in the Columbia River Basin, but their underlying premises are based on concepts of conservation biology. Whether a subpopulation is "strong" or "depressed" relative to its potential may vary among population segments. However, we were unable to refine these criteria, either higher or lower, based on the available data. Designating a subpopulation as "strong" or "depressed" is only one of several factors that we considered in evaluating the overall status of a bull trout subpopulation in a given population segment.

Regarding the use of 6th field watersheds, we acknowledge the different spatial scales used in applying criteria developed by Rieman *et al.* (1997) for ICBEMP in our evaluation of bull trout subpopulations. Subpopulations identified in the population segments for bull trout in the coterminous United States (see June 10, 1998; 63 FR 31647) ranged in size from a portion of a single watershed unit used by ICBEMP to several watersheds. For example, the best available information concerning bull trout and "native char" in the Coastal-Puget Sound population segment was based on a spatial scale consisting of up to several ICBEMP watershed units. Although the spatial scale of most subpopulations identified in the proposed rule occupy multiple ICBEMP watershed units, we believe that the criteria offered useful information in evaluating the status of bull trout.

We selected subpopulations as a convenient unit on which to analyze bull trout within population segments, and defined subpopulation as "a reproductively isolated group of bull trout that spawns within a particular area of a river system." We identified subpopulations based on documented or likely barriers to fish movement (*e.g.*, impassable barriers to movement and unsuitable habitat). To be considered a single subpopulation, two-way passage at a barrier is required, otherwise bull trout upstream and downstream of a barrier are each considered a subpopulation. Because it is likely that fish above a barrier could pass downstream and mate with fish downstream, absolute reproductive isolation was not required to be considered a subpopulation.

We viewed metapopulation concepts (see Rieman and McIntyre 1993) as useful tools in evaluating bull trout, but, in querying biologists both within the Service and elsewhere, we found considerable variability in the definition of a metapopulation and the types of data suggestive of a metapopulation. Some biologists may consider a subpopulation, as defined by us, as a metapopulation if it has multiple spawning areas. Likewise, subpopulations without reciprocal interactions (*i.e.*, individuals from upstream of a barrier may mingle with individuals downstream, but not vice versa) may be considered components of a metapopulation consisting of more than one subpopulation. Because little genetic and detailed movement information exists throughout bull trout range in the population segments addressed in the proposed rule, we believe that barriers to movement is an appropriate consideration for identifying subpopulations.

Relative to dams, the WDFW (1998a) believes that bull trout were able to commingle on both the Middle Fork Nooksack River and the Skagit River prior to construction of the dams. There may have been a natural barrier between La Grande and Alder dams on the Nisqually River. Because the existence of "native char" above Alder Dam is not established, we chose not to identify this area as a separate subpopulation. Regardless, the DPS discreteness criterion can be satisfied by natural or man-made barriers.

Issue 4: Several respondents believed the Federal listing was not necessary due to current and recently improved regulations related to forest land management.

Our Response: We believe that implementation of the Northwest Forest Plan (NFP) and Washington Department of Natural Resources (WDNR) Habitat Conservation Plan (HCP) should limit further degradation to aquatic habitats from future forest management practices for the Coastal-Puget Sound population segment. Only about 32 percent of the Coastal-Puget Sound population segment is covered by either one of these two plans. An additional 15 percent of the population segment resides on National Park lands. Bull trout in this population segment will continue to be negatively affected by severely degraded habitats in many subbasins where "native char" occur (*e.g.*, increased stream temperatures and sedimentation, altered stream flows, and lack of instream cover). These effects are expected to continue because many river basins affected by past, poor forest practices that contain "native char" will take decades to fully recover.

Approximately 45 percent of the Coastal-Puget Sound population segment occurs on lands under private ownership. Timber harvest activities on lands in forest production are subject to Washington State Forest Practice Rules (WFPR). Although State rules and regulations governing forested land management activities on private lands are improving, we believe they are not adequate to conserve and recover bull trout or remedy the effects of past damage to bull trout habitats (U.S. Department of Interior (USDI) et al. 1996a). The WFPR are currently being renegotiated, and it is anticipated that there will be some improvements over past rules. Because the State has not issued new rules, we are unable to evaluate their adequacy to conserve and recover bull trout on private lands within the Coastal-Puget Sound area. If improved sufficiently, these rules could form the basis for a delisting, 4(d) rule, or HCP.

Issue 5: The U.S. Forest Service proposed that we issue a special rule pursuant to section 4(d) of the Act that would relax the prohibition against incidental take associated with Federal actions consistent with the NFP. Another respondent requested that we develop a special rule that was sufficiently protective to address any threat to bull trout from a specific development project.

Our Response: Under section 4(d) of the Act, we have the authority to issue regulations as deemed necessary and advisable to provide for the conservation of a species listed as threatened. We recognize that on-going and future land-use activities will occur on non-Federal lands and that these activities may result in take of bull trout. Elsewhere in today's **Federal Register** we have published a Notice of Intent to prepare another special rule pursuant to section 4(d) of the Act for bull trout within the coterminous

United States (see "Special Rule" section). The special rule would address two categories of non-Federal activities affecting bull trout: (1) Habitat restoration; and (2) regulations that govern land and water management activities. Special regulations addressing both categories would provide for the conservation of bull trout. We have already issued two special rules, one for Jarbidge River population segment on April 8, 1999, and the other for the Klamath and Columbia River population segments on June 10, 1998. In general, these special rules exempt from the take prohibition fishing and activities that are conducted in accordance with State, Tribal, and NPS laws and regulations governing fish and wildlife conservation. The special rule for the Coastal Puget-Sound and St. Mary-Belly population segments, described in the "Special Rule" section, will also exempt from the take prohibition fishing and activities conducted in accordance with State, Tribal, and NPS laws and regulations.

A proposal to relax the prohibition against incidental taking of bull trout associated with Federal actions consistent with the NFP Aquatic Conservation Strategy (ACS) is an option we may address in the future. There are a number of issues regarding the interpretation of ACS objectives and ACS components that are being discussed at an interagency level, but currently remain unresolved. It would not be prudent for us to consider a 4(d) rule until these discussions are concluded and the issues are satisfactorily resolved. The NFP applies to Federal lands in the Coastal-Puget Sound population segment. Although we have not finalized a programmatic biological opinion, we have re-initiated programmatic consultations with three National Forests, including conferencing on bull trout with the USFS regional office for those three National Forests. Thus, we will address Federal actions consistent with the NFP either through section 7 of the Act or through a 4(d) rule.

Issue 6: One respondent felt it was inappropriate to include in the final rule those streams or stream segments where only "native char" or both bull trout and Dolly Varden are documented to date. One respondent suggested the listing of bull trout will be a (de facto) listing of Dolly Varden, due to their similarities in appearance and life-history characteristics.

Our Response: It is true that species composition is not yet known in many streams in Washington containing "native char." However, bull trout are documented in most streams that biologists have investigated (12 of 15 subpopulations). We are funding WDFW to collect and analyze bull trout tissue samples in an effort to determine the genetic identity of "native char" in the 19 subpopulations that biologists have not evaluated. Information from these studies may eventually be used to exclude stream systems with only Dolly Varden from the listing, if we are satisfied that bull trout are not present in the system. Based on the available evidence, we believe there is a high likelihood that bull trout occur in the majority of the remaining 19 subpopulations. For subpopulations that contain both bull trout and Dolly Varden it is completely appropriate to include those subpopulations in the listing.

Bull trout and Dolly Varden are virtually indistinguishable based upon physical appearance (Service 1998a) and share similar life-history strategies and habitat requirements. Because of these similarities, the WDFW manage the two species as one (WDFW 1998a), and we can evaluate the threats to subpopulations currently known only as "native char." Although the listing currently does not include Dolly Varden under the similarity of appearance rule, the coexistence of Dolly Varden and bull trout within a certain subpopulation would not be justification to preclude listing of bull trout in that particular subpopulation. Finally, there is no evidence demonstrating strong Dolly Varden subpopulations coexisting with depressed bull trout subpopulations.

Issue 7: One respondent said we failed to identify and properly address other threats to bull trout, primarily the reduction in the bull trout forage base as a result of the commercial and recreational harvest of returning salmon and steelhead.

Our Response: Ratliff and Howell (1992) suggest that due to its highly piscivorous nature, bull trout may have been adversely affected by declines in prey species. They present the example of declining bull trout populations occurring above Hells Canyon Dam, where there is no longer anadromous salmon and steelhead production. We acknowledge that the depressed status or declining abundance of anadromous fish stocks in some river basins may have negatively affected bull trout through a decreased prey base. However, we are unable to determine from the available information whether this is a threat or just a suppressing factor to bull trout since they are opportunistic feeders and forage on a wide variety of prey. In addition, we are unable to determine whether current escapement goals set for anadromous salmon and steelhead are at levels that may limit bull trout. A threat would clearly exist where anadromous fish stocks are no longer accessible to a bull trout subpopulation, and it is determined that an alternative forage base does not exist.

Issue 8: One respondent questioned the rationale of our exclusion of bull trout in Canada in delineating distinct population segments. The respondent stated that bull trout in Canada were excluded because fish there are outside the jurisdiction of the Act or that listing would not have much effect on the Canadian government, as opposed to the explanation in the proposed rule that data for bull trout in Canada are limited and suggested we should clarify the issue.

Our Response: We acknowledge that additional information concerning the status and threats to bull trout in Canada has been compiled in recent years. Some of the available data indicate a decline of bull trout in several areas in Canada. Although we recognize that more data on bull trout in Canada currently exist than we originally considered, this new information did not lead us to conclude that listing the bull trout in Canada is necessary at this time. We believe that addressing bull trout only in the coterminous United States relative to the Act is appropriate. We acknowledge that for threatened or endangered species that cross international boundaries, recovery is more complex. For areas where bull trout subpopulations cross international boundaries, we intend to work with all appropriate jurisdictional entities, Tribal, provincial and Federal Canadian agencies and all entities in the United States, in developing and implementing a recovery plan for bull trout.

Issue 9: One respondent noted that critical habitat is presently not determinable. They noted that consistent patterns in juvenile fish distribution, primarily with respect to stream elevation and water temperature, is useful in predicting patches of spawning and rearing habitats, which are probably sensitive to land use and important for the overall productivity of local populations. Another respondent asked us to consider including as critical habitat, streams that contribute to the water quality of Puget Sound, but are not part of the current known distribution of bull trout. Several respondents encouraged us to consider several issues, such as designating all historic and existing bull trout habitat as critical, protecting roadless and riparian areas, establishing standards for water temperature, sediment delivery, and other habitat parameters and other management activities.

Our Response: The definition of critical habitat as stated in section 3 of the Act holds that critical habitat may include specific areas outside of the geographical area occupied by the species at the time it is listed, upon determination that such areas are essential for the conservation of the species. At this time, we find that critical habitat is not determinable for the Coastal-Puget Sound and St. Mary-Belly River population segments. We appreciate the comments and believe that patterns in fish distribution will likely be useful in determining future critical habitat designations. This and other habitat considerations will be important issues to be considered during development of the recovery plan.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determine the Coastal-Puget Sound and St. Mary-Belly River population segments of bull trout to be threatened species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Coastal-Puget Sound and St. Mary-Belly River population segments of bull trout (Salvelinus confluentus) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Land and water management activities that degrade bull trout habitat and continue to threaten all of the bull trout population segments in the coterminous United States include dams, forest management practices, livestock grazing, agriculture and agricultural diversions, roads, and mining (Beschta *et al.* 1987; Chamberlin *et al.* 1991; Furniss *et al.* 1991; Meehan 1991; Nehlsen *et al.* 1991; Sedell and Everest 1991; Craig and Wissmar 1993; Frissell 1993; Henjum *et al.* 1994; McIntosh *et al.* 1994; Wissmar *et al.* 1994; USDA and USDI 1995, 1996, 1997; Light *et al.* 1996; MBTSG 1995a–e, 1996a–h).

Coastal-Puget Sound Population Segment

Barriers, timber harvesting, agricultural practices, and urban development are thought to be major factors affecting "native char" in the Coastal-Puget Sound DPS (Service 1998a). Bull trout are often migratory (Fraley and Shepard 1989; Pratt 1992; Rieman and McIntyre 1993; Oregon Department of Fish and Wildlife (ODFW) 1995; McPhail and Baxter 1996), and migratory "native char" exhibit anadromous, adfluvial, and fluvial strategies in the Coastal-Puget Sound DPS. Factors affecting "native char" may preclude or inhibit migratory behavior or contribute to degradation of aquatic habitats used by "native char" (Rieman and McIntyre 1993; Spence *et al.* 1996; WDFW 1997a).

Past forest management activities have contributed to degraded watershed conditions, including increased sedimentation of bull trout habitat (Salo and Cundy 1987; Meehan 1991; Bisson *et al.* 1992; USDA *et al.* 1993; Henjum *et al.* 1994; Spence *et al.* 1996). Past activities continue to negatively affect "native char" in the Coastal-Puget Sound population segment. Timber harvest and road building in riparian areas reduce stream shading and cover, channel stability, large woody debris recruitment, and increase sedimentation and peak stream flows (Chamberlin *et al.* 1991). These can alternatively lead to increased stream temperatures and bank erosion, and decreased long-term stream productivity. Over 35 percent of natural forested areas in Puget Sound have been eliminated (WDFW 1997b).

Strict cold water temperature requirements make bull trout particularly vulnerable to activities that warm spawning and rearing waters (Goetz 1989; Pratt 1992; Rieman and McIntyre 1993). Increased temperature reduces habitat suitability, which can exacerbate fragmentation within and between subpopulations (Rieman and McIntyre 1993). Of the 34 "native char" subpopulations in the Coastal-Puget Sound population segment, 11 are likely affected by elevated stream temperatures resulting from past forest practices (lower Nooksack River, Stillaguamish River, Snohomish River-Skykomish River, Green River, lower Puyallup, Nisqually River, South Fork-lower North Fork Skokomish, River, Goodman Creek, Copalis River, Moclips River, and Chehalis River-Grays Harbor) (Phinney and Bucknell 1975; Williams *et al.* 1975; Hiss and Knudsen 1993; WDFW 1997a; WDOE 1997). Bull trout are documented in three of these "native char" subpopulations (Green River, South Fork-lower North Fork Skokomish River, and Snohomish River-Skykomish River).

The effects of road construction and associated maintenance account for a majority of sediment loads to streams in forested areas (Shepard et al. 1984; Cederholm and Reid 1987; Furniss *et al.* 1991). Sedimentation affects streams by reducing pool depth, altering substrate composition, reducing interstitial space, and causing braiding of channels (Rieman and McIntyre 1993), which reduce carrying capacity. Sedimentation negatively affects bull trout embryo survival and juvenile bull trout rearing densities (Shepard *et al.* 1984; Pratt 1992). In National Forests in Washington, large deep pools have been reduced 58 percent due to sedimentation and loss of pool-forming structures such as boulders and large wood (USDA *et al.* 1993). The effects of sedimentation from roads and logging are prevalent in 10 basins containing "native char" subpopulations (Nooksack, Skykomish, Stillaguamish, Puyallup, upper Cedar, Skokomish, Dungeness, Hoh, Queets, and Coastal Plain-Quinault basins) (HCCC 1995; Olympic National Forest 1995a,b; Sandra Noble and Shelley Spalding, Service, *in litt.* 1995; WDFW 1997a, WDOE 1997). Bull trout are documented in six of these basins (upper Cedar, Skokomish, Dungeness, Queets, Quinault, and Skykomish basins). We consider five subpopulations within these basins to be "depressed". These are the Chester Morse Reservoir, lower Puyallup River, South Fork-lower North Fork Skokomish River, lower Dungeness-Gray Wolf, and Hoh River subpopulations. The remaining six affected subpopulations found in Canyon Creek, upper Middle Fork Nooksack River, Snohomish River-Skykomish River, Stillaguamish River, Queets River, and lower Quinault River are considered "unknown."

A recent assessment of the interior Columbia Basin ecosystem revealed that increasing road densities were associated with declines in four non-anadromous salmonid species (bull trout, Yellowstone cutthroat trout, westslope cutthroat trout, and redband trout) within the Columbia River Basin, likely through a variety of factors associated with roads (Quigley and Arbelbide 1997). Bull trout were less likely to use highly roaded basins for spawning and rearing, and if present, were likely to be at lower population levels (Quigley and Arbelbide 1997). Quigley *et al.* (1996) demonstrated that when average road densities were between 0.4 to 1.1 km/km^2 (0.7 and 1.7 mi/mi^2) on USFS lands, the proportion of subwatersheds supporting "strong" populations of key salmonids dropped substantially. Higher road densities were associated with further declines.

When USFS lands were compared to lands administered by all other entities at a given road density, the proportion of lands supporting "strong" bull trout populations was lower on lands administered by other entities. Although this assessment was conducted east of the Cascade Mountain Range, some effects from high road densities may be more severe in western Washington. Higher precipitation west of the Cascade Mountains increases the frequency of surface erosion and mass wasting (USDI *et al.* 1996b). Limited data concerning road densities are available for the Coastal-Puget Sound DPS. It is known, however, that two bull trout subpopulations (lower Dungeness River-Gray Wolf River and Chester Morse Reservoir) occur in basins with road densities greater than 1.1 km/km^2 (1.7 mi/mi^2), and the effects of sedimentation from high road density on aquatic habitat is likely a contributing factor to the "depressed" status of these two "native char" subpopulations. Because basins in portions of the Queets River drainage contain high road densities, ranging from 1.5 to 3.0 km/km^2 (2.4 to 4.8 mi/mi^2) (ONF 1995a; Cederholm and Reid 1987), we believe that the Queets River "native char" subpopulation is affected by high road density.

At least 22 "native char" subpopulations within the Coastal-Puget Sound DPS are affected by past or present forest management activities. Remaining subpopulations not affected by such activities occur primarily within National Parks or Wilderness Areas. For example, five "native char" subpopulations lie completely within National Parks and Wilderness Areas withdrawn from timber harvest. These include the upper Quinault River, upper Sol Duc River, Gorge Reservoir, Diablo Reservoir, and Ross Reservoir subpopulations. Although the status of these "native char" subpopulations is considered "unknown" at this time, all except the upper Quinault River subpopulation are threatened by non-native brook trout (see Factor E).

Agricultural practices and associated activities also affect "native char" and their aquatic habitats. Irrigation withdrawals including diversions can dewater spawning and rearing streams, impede fish passage and migration, and cause entrainment. Discharging pollutants such as nutrients, agricultural chemicals, animal waste and sediment into spawning and rearing waters is also detrimental (Spence *et al.* 1996). Agricultural practices regularly include stream channelization and diking, large woody debris and riparian vegetation removal, and bank armoring (Spence *et al.* 1996). Improper livestock grazing can promote streambank erosion and sedimentation, and limit the growth of riparian vegetation important for temperature control, streambank stability, fish cover, and detrital input. In addition, grazing often results in increased organic nutrient input in streams (Platts 1991). Eight "native char" subpopulations in the Coastal-Puget Sound DPS (lower Puyallup, Stillaguamish River, lower Skagit River, lower Nooksack River, Green River, South Fork-lower North Fork Skokomish River, Dungeness River-Gray Wolf River, and Chehalis River-Grays Harbor) are subject to the effects of past or ongoing agricultural or livestock grazing practices (Williams *et al.* 1975; Hiss and Knudsen 1993; WDF *et al.* 1993; HCCC 1995; ONF 1995b; WDFW 1997a). Species composition has been examined in five of these subpopulations, and bull trout are documented in four (Green River, lower Puyallup, South Fork-lower North Fork Skokomish River, and Dungeness River-Gray Wolf River).

Dams constructed with poorly designed fish passage or without fish passage create barriers to migratory "native char," precluding access to suitable spawning, rearing, and migration habitats. Dams disrupt the connectivity within and between watersheds essential for maintaining aquatic ecosystem function (Naiman *et al.*1992; Spence *et al.* 1996) and bull trout subpopulation interaction (Rieman and McIntyre 1993). Natural recolonization of historically occupied sites can be precluded by migration barriers (e.g., McCloud Dam in California (Rode 1990)). Within the Coastal-Puget Sound DPS, there are at least 41 existing or proposed hydroelectric projects regulated by the Federal Energy Regulatory Commission (FERC) within watersheds supporting "native char" (Gene Stagner, Service, *in litt.* 1997). Of the 41 existing or proposed projects, 17 are currently operating and most are run-of-the-river small hydroelectric projects. Negotiated instream flows for these projects are based primarily on resident cutthroat trout or rainbow trout flow requirements, and may not meet seasonal migratory flow requirements of bull trout (Tim Bodurtha, Service, *in litt.* 1995). Fish passage has not been addressed for 28 of the existing or proposed projects (G. Stagner, *in litt.* 1997). We are aware of at least seven water diversions or other dams currently operating in watersheds with "native char," and none currently providing for upstream fish passage. These diversions and dams are located on the Middle Fork Nooksack, Skagit, Green, Puyallup, and Nisqually rivers. These seven facilities currently affect the lower Nooksack River, upper Middle Fork Nooksack River, lower Skagit River, Gorge Reservoir, Diablo Reservoir, Ross Reservoir, lower Puyallup, upper Puyallup River subpopulations. Projects in the Green and Nisqually rivers block fish passage in the upper stream reaches of these basins, although "native char" use of the river areas above the facilities remains unconfirmed. Various fish surveys conducted in the upper Green River watershed above the facility, did not detect "native char" (Ed Connor and Phil Hilgert, R2 Resource Consultants, Inc., *in litt.* 1998). Surveys of the upper Nisqually River watershed are underway (WDFW 1998a). Dams on the Skokomish and Elwha rivers are also barriers to upstream fish migration and have fragmented populations of "native char" within the Coastal-Puget Sound DPS. FERC published an Environmental Impact Statement (EIS) for three proposed hydroelectric projects on Skagit River tributaries. The final EIS recommends two proposed hydroelectric projects on the lower Nooksack River, affecting two subpopulations, the lower Skagit River and the lower Nooksack River. We consider the status of these subpopulations "strong" and "unknown," respectively.

Urbanization has led to decreased habitat complexity (uniform stream channels and simple nonfunctional riparian areas), impediments and blockages to fish passage, increased surface runoff (more frequent and severe flooding), and decreased water quality and quantity (Spence *et al.* 1996). In the Puget Sound area, human population growth is predicted to increase by 20 percent between 1987 and 2000, requiring a 62 percent increase in land area developed (Puget Sound Water Quality Authority (PSWQA) 1988 in Spence *et al.*1996). The effects of urbanization, concentrated at the lower most reaches of rivers within Puget Sound, primarily affect "native char" migratory corridors and rearing habitats. Five "native char" subpopulations in the Coastal-Puget Sound DPS (lower Dungeness River-Gray Wolf River, lower Puyallup River, Green River, Sammamish River-Issaquah Creek, and Stillaguamish River) are negatively affected by urbanization (Williams *et al.* 1975; WDFW 1997a).

Mining can degrade aquatic systems by generating sediment and heavy metals pollution, altering water pH levels, and changing stream channels and flow (Martin and Platts 1981). Although not currently active, mining in the Nooksack River Basin, where "native char" occur, has adversely affected streams. For example, the Excelsior Mine on the upper North Fork Nooksack River was active at the turn of the century and mining spoils were placed directly into Wells Creek (Mt. Baker-Snoqualmie National Forest (MBSNF) 1995), a known spawning stream for "native char." Spoils in and adjacent to the stream may continue to be sources of sediment and heavy metals.

St. Mary-Belly River Population Segment

Forest management practices, livestock grazing, and mining are not thought to be major factors affecting bull trout in the St. Mary-Belly River DPS. However, bull trout subpopulations are fragmented and isolated by dams and diversions (Fredenberg 1996; Clayton 1998; Mogen 1998). Specifically, the USBR diversion at the outlet of lower St. Mary Lake is an unscreened trans-Basin diversion (*i.e.*, transferring water to the Missouri River drainage via the Milk River) that threatens the species in the St. Mary River Basin (upper St. Mary River, lower St. Mary River, and Swiftcurrent Creek subpopulations). This diversion restricts upstream bull trout passage into the upper St. Mary River. Consequently, migratory (fluvial) bull trout are prevented from reaching suitable spawning habitat in Divide and Red Eagle creeks (Fredenberg 1996; R. Wagner, pers. comm. 1998). Similarly, the irrigation dam on Swiftcurrent Creek (Lake Sherburne) physically blocks bull trout passage into the upper watershed (Fredenberg 1996; R. Wagner, pers. comm. 1998), affecting the three St. Mary River subpopulations. In the Belly River drainage, two adult bull trout implanted with radio transmitters that spawned in the North Fork Belly River near the international border in 1997 were subsequently passed down the Mountain View Irrigation District Canal and captured (Terry Clayton, Alberta Conservation Association (ACA), *in litt.* 1998).

In addition to the dams physically isolating subpopulations, the associated diversions seasonally dewater the streams, effectively decreasing available habitat for migratory and resident bull trout (Fredenberg 1996). The diversion at the outlet of lower St. Mary Lake may result in a reduction (up to 50 percent) of instream flow of the St. Mary River, possibly affecting juvenile and adult bull trout (R. Wagner, pers. comm. 1998). The diversion is unscreened and recent information suggests downstream loss through entrainment of bull trout (R. Wagner, pers. comm. 1998). Similarly, the irrigation dam on Swiftcurrent Creek (Lake Sherburne) seasonally dewaters the creek downstream, effectively eliminating habitat (Fredenberg 1996; R. Wagner, pers. comm. 1998).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Declines in bull trout abundance have prompted States to institute restrictive fishing regulations and eliminate the harvest of bull trout in most waters in Idaho, Oregon, Montana, Nevada, and Washington. These more restrictive regulations resulted in an increase in recent observations of adult bull trout in some areas of their range. However, illegal harvest and incidental hook and release of "native char" in fisheries targeting other species still threaten bull trout in some areas.

Coastal-Puget Sound Population Segment

Fishing for "native char" is currently closed in most of the waters within the Coastal-Puget Sound population segment. The State of Washington implemented most of these closures in 1994. Harvest of "native char" is still allowed in the area of the lower Skagit River subpopulation in the mainstem Skagit River and several of its tributaries (Cascade, Suiattle, Whitechuck and Sauk rivers) (508 mm (20 in.) minimum size limit and two fish daily bag limit); the Snohomish River-Skykomish River subpopulation in the Snohomish River mainstem and the Skykomish River below the forks (508 mm (20 in.) minimum size limit and two fish daily bag limit) (WDFW 1997a); and portions of the Quinault and Queets rivers that are within the Quinault Indian Reservation (QIN) boundary (4 fish daily bag limit with no minimum size restriction) (Scott Chitwood, Quinault Indian Nation, pers. comm. 1997; WDFW 1997a). Olympic National Park has recently closed fishing for "native char" in all park waters (D. Morris, *in litt.* 1998). Fishing for bull trout in Mount Rainier National Park is prohibited. There is likely some mortality from incidental hook and release of "native char" in fisheries targeting other species, especially in streams where restrictive angling regulations (*i.e.*, artificial flies or lures with barbless single hook, bait prohibited) are not established.

The objective of the 508 mm (20 in.) minimum size limit in the Skagit River and Snohomish-Skykomish River systems is to allow most females to spawn at least once before harvest (WDFW 1997a), and evidence suggests that more females are allowed to spawn in these two systems where the regulation is in place (WDFW 1998b). However, the minimum size limit allows the selective harvest of larger, mature fish that are more fecund (Jim Johnston, WDFW, pers. comm. 1995).

Regulations on the Quinault Indian Reservation in the lower Quinault River and Queets River systems offer less bull trout conservation opportunity because there is no minimum size limit to allow most females to reach maturity before being subject to harvest. Consistent with the June 1997 Secretarial Order on Tribal-Federal Trust responsibilities and the Act, we will continue to assess the effects of these regulations and work with the Tribes to assure that the conservation needs of bull trout are met. The State of Washington has closed areas of the lower Quinault River and Queets River watersheds outside of the Quinault Indian Reservation to harvest of "native char" (WDFW 1997a).

In 1993, WDFW increased the catch limit for brook trout in order to reduce interactions with bull trout (WDFW 1995). The increased brook trout catch has the potential to increase the incidental harvest of bull trout due to misidentification by anglers. For example, only 40 percent of Montana anglers surveyed correctly identified bull trout out of six species of salmonids found locally (Mack Long and Sean Whalen, Montana Fish Wildlife and Parks, *in litt.* 1997).

Poaching is still a factor that threatens "native char" in nine drainages within the Coastal-Puget Sound population segment. These are the South Fork Nooksack River, North Fork Nooksack River (above and below the falls), Sauk River and tributaries, North Fork Skykomish River, Chester Morse Reservoir, lower Dungeness River-Gray Wolf River, Hoh River, Goodman Creek, and Morse Creek (WDW, *in litt.* 1992; Mongillo 1993; WDFW 1997a; Service 1998a).

St. Mary-Belly River Population Segment

Historically, the harvest of bull trout in the St. Mary-Belly River DPS was considered "extensive" (Fredenberg 1996). Currently, legal angler harvest in the St. Mary-Belly River DPS occurs only on the Blackfeet Indian Reservation, which has a five fish per day limit with only one fish over 508 mm (20 in.) (Fredenberg 1996).

In 1994, the Blackfeet Tribe reported harvest of at least 19 adult and subadult bull trout in gill nets set for a commercial fishery for lake whitefish

(*Coregonus clupeaformis*) in lower St. Mary Lake (Blackfeet Tribe, *in litt.* 1998). Given the apparent low abundance of adult bull trout in the upper St. Mary Lake subpopulation and restricted migration opportunities over the USBR diversion on lower St. Mary Lake, any harvest of bull trout from this subpopulation represents a threat. Record-keeping by the two commercial fishers is a requirement of the Blackfeet Tribal Fish and Game Commission, but is not strictly enforced. As discussed in Issue 2 in the "Summary of Comments and Recommendations section", a cooperative agreement exists among us, the Blackfeet Tribe, and the Bureau of Reclamation which establishes a partnership focused on the conservation and restoration of native salmonids and habitat in the St. Mary River drainage. We have recently met with the Blackfeet Tribe to address our concerns about bull trout. We will continue to assess the effects of their harvest regulations and, in accordance with the June 1997 Secretarial Order on Tribal-Federal Trust responsibilities and the Act, we will continue work with the Tribe to assure that the conservation needs of bull trout are met. Specifically, the ongoing research carried out under the cooperative agreement is evaluating movement patterns, population status, and genetic structure of the bull trout in the St. Mary River drainage. We will utilize the results as a basis to develop future management recommendations.

C. Disease or Predation

Diseases affecting salmonids are present or likely present in both population segments, but are not thought to be a factor threatening bull trout. Instead, interspecific interactions, including predation, likely negatively affect bull trout where non-native salmonids are introduced (Bond 1992; Ziller 1992; Donald and Alger 1993; Leary *et al.* 1993; MBTSG 1996a; J. Palmisano and V. Kaczynski, Northwest Forestry Resources Council, *in litt.* 1997).

Coastal-Puget Sound Population Segment

Disease is not believed to be a factor in the decline of bull trout in the Coastal-Puget Sound DPS. Outbreaks of the parasite *Dermocystidium salmonis* in the lower Elwha River may negatively affect "native char" in years of high chinook salmon returns (Kevin Amos, WDFW, pers. comm. 1997). The susceptibility of bull trout to the parasite is unknown. There is concern about whirling disease (*Myxobolus cerebralis*), which occurs in wild trout waters of western states, and though this may be a potential threat to bull trout, we do not have specific information on it at this time.

Predation is not considered a primary factor in the decline of Coastal-Puget Sound "native char." The only exception may be largemouth bass (*Micropterus salmoides*) in Cushman Reservoir on the Skokomish River that may potentially affect the bull trout subpopulation (Sam Brenkman, Oregon State University, pers. comm. 1997; WDFW 1997a).

St. Mary-Belly River Population Segment

Disease and predation are not known to be factors affecting the survival of bull trout in the St. Mary-Belly River Basin. Whirling disease has been documented in numerous Missouri River watersheds in central Montana, though not in the Saskatchewan River drainage where the St. Mary-Belly River bull trout subpopulations occur.

D. The Inadequacy of Existing Regulatory Mechanisms

Although varying efforts are underway to assist in conserving bull trout throughout the coterminous United States (*e.g.*, Batt 1996; Light *et al.* 1996; Robert Joslin, USFS, *in litt.* 1997; Allan Thomas, BLM, *in litt.* 1997; Montana Bull Trout Restoration Team 1997), the implementation and enforcement of existing Federal and State laws designed to conserve fishery resources, maintain water quality, and protect aquatic habitat have not been sufficient to prevent past and ongoing habitat degradation leading to bull trout declines and isolation. Statutory mechanisms, including the National Forest Management Act, the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Clean Water Act, the National Environmental Policy Act, Federal Power Act, State Endangered Species Acts and numerous State laws and regulations oversee an array of land and water management activities that affect bull trout and their habitat.

Coastal-Puget Sound Population Segment

In April 1994, the Secretaries of Agriculture and Interior adopted the Northwest Forest Plan for management of late-successional forests within the range of the northern spotted owl (*Strix occidentalis caurina*) (USDA and USDI 1994a). This plan set forth objectives, standards, and guidelines to provide for a functional late-successional and old-growth forest ecosystem. Included in the plan is an aquatic conservation strategy involving riparian reserves, key watersheds, watershed analysis, and habitat restoration. Approximately 35 percent of the total acreage within the Coastal-Puget Sound bull trout population segment are Federal lands subject to Northwest Forest Plan standards and guidelines (U.S. Geological Survey (USGS), *in litt.* 1996). In 1994, an assessment panel determined that the proposed standards and guidelines in the Northwest Forest Plan would result in an 85 percent future likelihood of attaining sufficient aquatic habitat to support well-distributed populations of bull trout on Federal lands (USDA and USDI 1994b). Prior to 1997, most projects developed under the Northwest Forest Plan in this DPS were determined to have "no impact" on bull trout and its habitat. However, these determinations were made prior to the development of specific criteria (Service 1998c) to evaluate the effects of Forest Service activities on bull trout and their habitat. Because existing aquatic habitat conditions are severely degraded in many subbasins, the effects from past land management activities can be expected to continue into the foreseeable future in the form of increased stream temperatures, altered stream flows, sedimentation, and lack of instream cover. These effects are often exacerbated by landslides, road failures, and debris torrents. Many of these aquatic systems will require decades to fully recover (USDA *et al.* 1993). Until then, future habitat losses can be expected due to past activities, potentially resulting in local extirpations, migratory barriers, and reduced reproductive success (Spence *et al.* 1996).

Washington State Forest Practice Rules (WFPR) apply to all State, city, county, and private lands not currently covered under a Habitat Conservation Plan (HCP) or other conservation agreement in Washington. Approximately 45 percent of the Coastal-Puget Sound population segment is held under private ownership and 1.5 percent under city or county ownership. Bull trout and their habitats continue to face threats from ongoing and future timber harvest activities on many of these lands. The WFPR set forth timber harvest regulations for non-Federal and non-Tribal forested lands in the State of Washington. These rules set standards for timber harvest activities in and around riparian areas, in an effort to protect aquatic resources. These riparian management zone widths, as specified by the WFPR, do not ensure protection of the riparian components, because the minimum buffer widths are likely insufficient to fully protect riparian ecosystems (USDI *et al.* 1996a).

In January 1997, the Washington State Department of Natural Resources (WDNR) developed a multispecies HCP under section 10 of the Act, covering all WDNR-owned lands within the range of the northern spotted owl. The WDNR HCP primarily addresses the conservation needs for old-growth forest-dependent species, such as the northern spotted owl and marbled murrelet (*Brachyramphus marmoratus marmoratus*), while allowing WDNR to meet its trust responsibilities to the State. The HCP also addresses the conservation needs of other terrestrial and aquatic species on WDNR lands. Approximately 10 percent of the Coastal-Puget Sound population segment is in State ownership and is covered by the HCP. The HCP specifically provides Riparian Conservation Strategies designed to maintain the integrity and function of freshwater stream habitat necessary for the health and persistence of aquatic species, especially salmonids. Road maintenance and network planning strategies included in the HCP also play important roles in protecting aquatic habitats, but are often reliant on the Riparian Conservation Strategy stream buffers for complete protection. If fully and properly implemented, the HCP should aid in the restoration and protection of freshwater salmonid habitat on the Olympic Peninsula and the areas on the west slope of the Cascades. There are still "legacy" threats to bull trout subpopulations on State lands even with the HCP in place. For example, the HCP states, "Adverse impacts to salmonid habitat will continue to occur because past forest practices have left a legacy of degraded riparian ecosystems, deforested unstable hillslopes, and a poorly planned and maintained road network" (WDNR 1997). Areas logged in the past will take decades to fully recover. In addition, "Some components of the riparian conservation strategy require on-site management decisions, and adverse impacts to salmonid habitat may occur inadvertently." For example, timber harvesting in the riparian buffer must "maintain or restore salmonid habitat," but, at present, the amount of timber harvesting in riparian ecosystems compatible with high quality salmonid habitat is unknown (WDNR 1997).

In 1992, the WDFW (formerly the WDW) developed a draft bull trout-Dolly Varden management and recovery plan. In 1995, WDFW released a draft EIS for the management plan. The plan establishes a goal of restoring and maintaining the health and diversity of "native char" stocks and their habitats in the State of Washington (WDFW 1995). In 1998, WDFW distributed a revised draft of the bull trout and Dolly Varden management plan to us for review (WDFW 1998b). Although commendable goals and strategies are presented in the new draft plan, specific guidance on how these goals and strategies would be accomplished is not provided. Our review of the plan determined that it does not fully address all elements necessary to conserve and restore bull trout populations (Nancy Gloman, Service, *in litt.* 1998). Because all elements necessary for conservation and restoration of bull trout are not fully addressed and there are uncertainties concerning implementation of the plan, the effect of the plan on future bull trout conservation in Washington is unknown.

Since 1994, WDFW has been developing a Wild Salmonid Policy (WSP) to address management of all native salmonids in the State. In September 1997, WDFW released the final EIS for the WSP. The policy establishes a goal to protect, restore, and enhance the productivity, production, and diversity of wild salmonids and their ecosystems to sustain ceremonial, subsistence, commercial, and recreational fisheries; non-consumptive fish benefits; and related cultural and ecological values well into the future (WDFW 1997b). The WSP, in its current form, may not adequately protect bull trout because the primary focus is restoring wild salmon and steelhead. Although other wild salmonids, including bull trout, are referred to in the document, the proposed policy does not address the unique requirements of bull trout. As a result, proposed habitat and water quality standards (current State surface water quality standards), originally developed with a focus on salmon, may fall short in protection for bull trout. The final EIS is not considered a policy document to direct WDFW. The EIS describes a set of alternatives presented to the Washington State Fish and Wildlife Commission (Commission). The Commission has the final responsibility for taking action on the preferred alternative and recommending policy direction. When implemented, the policy would present guidelines for actions that WDFW must follow, but would not be binding on other State, Tribal, or private entities. The publication of a WSP will likely occur in the near future, but the format and exact content of the document is unknown. Given the uncertainties surrounding implementation of the plan and lack of specificity concerning bull trout, including funding, possible benefits to bull trout can not be evaluated.

Section 305(b) of the 1972 Federal Clean Water Act requires States to identify water bodies biennially that are not expected to meet State surface water quality standards (WDOE 1996). These waters are reported in the section 303(d) list of water quality limited streams. The Washington State 303(d) list (WDOE 1997) reflects the poor condition of lower stream reaches of some systems containing bull trout and Dolly Varden. At least 30 stream reaches within habitat occupied by 13 subpopulations of "native char" are listed on the Washington State proposed 1998 303(d) list of water quality impaired streams (WDOE 1997). Eight of these subpopulations are "depressed," one is "strong," and four are "unknown." Waters included on the 303(d) list due to temperature exceedances are found in areas where the Chehalis River-Grays Harbor, lower Quinault River, Hoh River, lower Elwha River, Nisqually River, lower Puyallup, Green River, Sammamish River-Issaquah Creek, Stillaguamish River, and lower Nooksack River subpopulations occur. We have identified bull trout in two of these subpopulations (Green River and lower Puyallup). The State temperature standards are likely inadequate for bull trout because temperatures in excess of 15° C (59° F) are thought to limit bull trout distribution (Rieman and McIntyre 1993) and the State temperature standard for the highest class of waters is 16° C (61° F).

Subpopulations that occur in waters on the 303(d) list not meeting instream flow standards include the Dungeness River-Gray Wolf River, South Fork-lower North Fork Skokomish River, lower Puyallup River, lower Skagit River, and lower Nooksack River "native char" subpopulations. Bull trout are known to occur in four of these subpopulations (Dungeness River-Gray Wolf River; South Fork-lower North Fork Skokomish River; lower Puyallup; and lower Skagit River). Although no minimum instream flow requirements exist for bull trout, variable stream flows and low winter flows are thought to negatively influence the embryos and alevins (a young fish which has not yet absorbed its yolk sac) of bull trout (Rieman and McIntyre 1993).

The Chehalis River-Grays Harbor and Sammamish River-Issaquah Creek "native char" subpopulations occur in waters on the 303(d) list for not meeting the standards for dissolved oxygen. Although no dissolved oxygen standards exist for bull trout, poor water quality and highly degraded migratory corridors may hinder or interrupt migration (Spence *et al.* 1996), leading to the further fragmentation of habitat and isolation of bull trout.

Surface waters are assigned to one of five classes under the Water Quality Standards for Surface Waters of the State of Washington (WAC 173–201A–130). These classes are AA (extraordinary), A (excellent), B (good), C (fair) and Lake class. These classes of criteria are established for the following water quality parameters: temperature, fecal coliform, turbidity, dissolved oxygen, and toxic deleterious material concentrations. With the exception of dissolved oxygen, parameters are not to exceed specified maximum levels for each class. Maximum water temperature criteria range from 16° C (60.8° F) (Class AA), 18° C (64.4° F) (Class A), 21° C (69.8° F) (Class B), to 22° C (71.6° F) (Class C). Bull trout streams within the Coastal-Puget Sound population segment have stream segments that fall in classes AA, A, and B. Given the apparent low temperature requirements of bull trout (Rieman and McIntyre 1993), these temperature standards are likely inadequate to protect bull trout spawning, rearing or migration. Segments of the Quinault, Queets, Elwha, Skokomish, Nisqually, White, Green, and Snohomish rivers do not meet existing State standards for their respective classes. It is unknown whether the current standards established for other water quality parameters (fecal coliform, turbidity, dissolved oxygen, toxic deleterious material concentrations) within the various classes, are adequate to protect bull trout. See Factor A for additional discussion of water quality.

St. Mary-Belly River Population Segment

Two USBR structures likely affect bull trout by dewatering stream reaches, acting as passage barriers or exposing fish to entrainment (Service 1998b). We are not aware that the effects of the structures were considered in their construction (1902 and 1921) or operation. Currently, operators attempt to minimize passage and entrainment problems by staging the fall dewatering of the canal and removing boards in the dam during winter. USBR has not evaluated the effectiveness of the operations and has not established formal guidelines to minimize the effects of the structures' operations on bull trout. The draft Montana Bull Trout Restoration Plan (1998) does not address or incorporate recommendations for bull trout conservation found in the St. Mary-Belly River population segment.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade factors affecting the continued existence of bull trout include: previous introductions of non-native species that compete and hybridize with "native char;" subpopulation habitat fragmentation and isolation caused by human activities; and the risk of local extirpations due to natural events such as droughts and floods.

Introductions of non-native species by the Federal government, State fish and game departments and unauthorized private parties across the range of bull trout have resulted in declines in abundance, local extirpations, and hybridization of bull trout (Bond 1992; Howell and Buchanan 1992; Leary *et al.* 1993; Donald and Alger 1993; Pratt and Huston 1993; MBTSG 1995b,d; 1996g; Platts *et al.*1995; John Palmisano and V. Kaczynski, *in litt.* 1997). Non-native species may exacerbate stresses on bull trout from habitat degradation, fragmentation, isolation, and species interactions (Rieman and McIntyre 1993). In some lakes and rivers, introduced species including rainbow trout and kokanee may benefit large adult bull trout by providing supplemental forage (Faler and Bair 1991; Pratt 1992; ODFW, *in litt.* 1993; MBTSG 1996a). However, the same introductions of game fish can negatively affect bull trout due to increased angling and subsequent incidental catch, illegal harvest of bull trout, and competition for space (Rode 1990; Bond 1992; WDW 1992; MBTSG 1995d).

Coastal-Puget Sound Population Segment

Competition and hybridization with introduced brook trout threatens the persistence of some "native char" subpopulations in the Coastal-Puget Sound DPS. The State of Washington has introduced brook trout into several headwater areas occupied by "native char;" however, the distribution of brook trout within many of these areas appears to be limited. Brook trout can affect bull trout even in areas with undisturbed habitats (e.g., National Parks). Brook trout normally have a reproductive advantage (earlier maturation) over resident bull trout, which can lead to species replacement (Leary *et al.* 1993; Thomas 1992). At present, the distribution of 14 "native char" subpopulations partially overlap with brook trout in the upper Sol Duc River, upper Elwha River, lower Dungeness River-Gray Wolf River, upper North Fork Skokomish River, South Fork-lower North Fork Skokomish River, Green River, lower Puyallup (Carbon River), Snohomish River, Skykomish River, Gorge Reservoir, Diablo Reservoir, Ross Reservoir, Lower Skagit River, upper Middle Fork Nooksack River, and Canyon Creek (Reed Glesne, North Cascades National Park, *in litt.* 1993; Mongillo and Hallock 1993; John Meyer, Olympic National Park, pers. comm. 1995; Morrill and McHenry 1995; S. Brenkman, pers. comm. 1997; Brady Green, MBSNF, pers. comm. 1997).

"Native char" subpopulations that have become geographically isolated may no longer have access to migratory corridors. First- and second-order streams in steep headwaters tend to be hydrologically and geomorphically more unstable than large, low-gradient streams. Thus, salmonids are being restricted to habitats where the likelihood of extirpation because of random environmental events is greatest" (Spence *et al.* 1996). "Native char" subpopulations that are likely to be negatively affected by natural events as a result of isolation are Cushman Reservoir, South Fork-lower North Fork Skokomish River, Gorge Reservoir, Diablo Reservoir, Ross Reservoir, upper Middle Fork Nooksack River, upper Quinault River, upper Sol Duc River, upper Dungeness River, and Chester Morse Reservoir (Service 1998a). Of these 10 "native char" subpopulations, we have examined species composition in seven and bull trout have been confirmed in five (Cushman Reservoir, South Fork-lower North Fork Skokomish River, upper Quinault River, Chester Morse Reservoir, and upper Middle Fork Nooksack River), of which three are "depressed" (Service 1998a).

St. Mary-Belly Population Segment

Non-native species are pervasive throughout the St. Mary and Belly rivers (Fitch 1994; Fredenberg 1996; Clayton 1997). Brook, brown, and rainbow trout have been widely introduced in the area. We are not aware of any studies conducted in the DPS evaluating the effects of introduced non-native fishes on bull trout. However, because brook trout occur in the four bull trout subpopulations, competition and hybridization are threats in the St. Mary and Belly rivers (Service 1998b), especially on resident bull trout (R. Wagner, pers. comm. 1998).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Coastal-Puget Sound and St. Mary-Belly River population segments of bull trout in determining this rule. Based on this evaluation, we have determined to list the bull trout as threatened in both population segments as summarized below.

Coastal-Puget Sound Population Segment

Bull trout and "native char" in the Coastal-Puget Sound population segment have declined in abundance and distribution within many individual river basins. Bull trout and "native char" currently occur as 34 separate subpopulations, which indicates the level of habitat fragmentation and geographic isolation. Seven subpopulations are isolated above dams or other diversion structures, with at least 17 dams proposed in streams inhabited by other bull trout or "native char" subpopulations. Bull trout and "native char" are threatened by the combined effects of habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, harvest, and introduced non-native species. Although several subpopulations lie completely or partially within National Parks or Wilderness Areas, these subpopulations are threatened by the presence of brook trout, or from habitat degradation that is occurring outside of these restricted land use areas. Based on the best available information, we have concluded that at least 10 subpopulations are currently "depressed," one subpopulation is "strong," and the status of the remaining 23 subpopulations is "unknown." Some subpopulations in the north Puget Sound have relatively greater abundance compared to other areas of the Coastal-Puget Sound population segment. However, we remain concerned over the reported declines in abundance in other north Puget Sound subpopulations, and the documented threats present in these subpopulation basins. Available anecdotal information indicates additional subpopulations within the population segment have declined in abundance.

St. Mary-Belly River Population Segment

The St. Mary-Belly population segment contains the only bull trout found east of the Continental Divide in the coterminous United States. We identified four subpopulations isolated primarily by irrigation dams and diversions. Recent surveys indicate that bull trout occur in relatively low abundance, with three subpopulations "depressed" and the status of one subpopulation "unknown." Migratory bull trout are known to occur in three subpopulations, but these subpopulations are isolated by irrigation dams and unscreened diversions. We consider the dams and unscreened diversions a major factor affecting bull trout in the population segment by inhibiting fish movement and possibly entrainment into diversion channels and habitat alterations associated with dewatering. There are no formal guidelines to minimize the effects of the operation of the structures on bull trout. Bull trout are also threatened by negative interactions with non-native brook trout that occur with the four subpopulations.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species.

We find that the designation of critical habitat is not determinable for bull trout in the coterminous United States, based on the best available information. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent. We reached a "not determinable" critical habitat finding in the proposed rule, and we specifically requested comments on this issue. While we received a number of comments advocating critical habitat designation, none of these comments provided information that added to our ability to determine critical habitat. Additionally, we did not obtain any new information regarding specific physical and biological features essential for bull trout during the open comment period, including the five public hearings. The biological needs of bull trout is not sufficiently well known to permit identification of areas as critical habitat. Insufficient information is available on the number of individuals or spawning reaches required to support viable subpopulations throughout each of the distinct population segments. In addition, we have not identified the extent of habitat required and all specific management measures needed for recovery of this fish. This information is considered essential for determining critical habitat for these population segments. In addition, within the Coastal-Puget Sound bull trout are sympatric with Dolly Varden. These two species are virtually impossible to visually differentiate and genetic and morphological-meristic analyses to determine the presence or absence of bull trout and Dolly Varden have only been conducted on 15 of the 35 "native char" subpopulations. The presence of bull trout in the remaining 20 subpopulations in the Coastal-Puget Sound along with the information noted above is considered essential for determining critical habitat for these population segments. Therefore, we find that designation of critical habitat for bull trout in the coterminous United States is not determinable at this time. We will protect bull trout habitat through the recovery process and through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by

Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Coastal-Puget Sound and St. Mary-Belly River population segments occur on lands administered by the USFS, NPS, and BLM; various State- and privately-owned properties in Washington (Coastal-Puget Sound population segment) and Montana (St. Mary-Belly River population segment); Blackfeet Tribal lands in Montana, and various Tribal lands in Washington. Federal agency actions that may require consultation as described in the preceding paragraph include COE involvement in projects such as the construction of roads and bridges, and the permitting of wetland filling and dredging projects subject to section 404 of the Clean Water Act; Federal Energy Regulatory Commission licensed hydropower projects authorized under the Federal Power Act; USFS and BLM timber, recreation, mining, and grazing management activities; Environmental Protection Agency authorized discharges under the National Pollutant Discharge System of the Clean Water Act; and U.S. Housing and Urban Development projects.

On January 27, 1998, an interagency memorandum between the USFS, BLM and us outlined a process for bull trout section 7 conference and consultation in recognition of the possibility of an impending listing of bull trout in the Klamath River and Columbia River basins. The process considers both programmatic actions (*e.g.*, land management plans) and site-specific actions (*e.g.*, timber sales and livestock grazing allotments) and incorporates conference and consultation at the watershed level. The process uses a matrix (Service 1998c) to determine the environmental baseline and the effects of actions on the environmental baseline of bull trout. The USFS and BLM provided a Biological Assessment (BA) to us on June 15, 1998, which evaluated the effects of implementing the land management plans, as amended by PACFISH and INFISH strategy, in the Klamath River and Columbia River basins. PACFISH is the Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California, developed by the USFS and BLM. PACFISH is intended to be an ecosystem-based, aquatic habitat and riparian-area management strategy for Pacific salmon, steelhead, and sea-run cutthroat trout habitat on lands administered by the two agencies that are outside the area subject to implementation of the NFP. INFISH is the Inland Native Fish Strategy, which was developed by the USFS to provide an interim strategy for inland native fish in eastern Oregon and Washington, Idaho, western Montana, and portions of Nevada. The BA concluded the plans, as amended, would not jeopardize the Klamath River and Columbia River DPSs of bull trout. In addition, in a June 19, 1998, letter, the land management agencies provided commitments in implementing the PACFISH and INFISH aquatic conservation strategies to ensure the USFS and BLM management plans and associated actions would conserve federally listed bull trout. The commitments addressed: restoration and improvement; standards and guidelines of PACFISH and INFISH; key and priority watershed networks; watershed analysis; monitoring; long-term conservation and recovery; and section 7 consultation at the watershed level. The BA and additional commitments were part of the materials we evaluated in developing a biological opinion on the management plans. The non-jeopardy biological opinion, issued August 14, 1998, endorsed implementation of those commitments in the Klamath River and Columbia River basins, in addition to identifying further actions to help ensure conservation of bull trout in those DPSs. The NFP applies to Federal lands in the Coastal-Puget Sound population segment. Although we have not finalized a programmatic biological opinion, programmatic consultations with three National Forests have been re-initiated, including conferencing on bull trout with the USFS regional office for the Olympic, Mount Baker-Snoqualmie, and Gifford Pinchot National Forests.

The Act and implementing regulations found at 50 CFR 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (which includes to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies. In this case, a special rule tailored to this particular species takes the place of the regulations in 50 CFR 17.31; the special rule, though, incorporates most requirements of the general regulations, although with additional exceptions.

We may issue permits under section 10(a)(1) of the Act to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.32 for threatened species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act. For copies of the regulations concerning listed plants and animals, and general inquiries regarding prohibitions and permits, contact the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species list, listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. We believe the following actions would not be likely to result in a violation of section 9, provided the activities are carried out in accordance with all existing regulations and permit requirements:

(1) Actions that may affect bull trout and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act;

(2) Possession of bull trout caught legally in accordance with authorized State, NPS, and Tribal fishing regulations (see "Special Rule" section);

(3) State, local and other activities approved by us under section 4(d), section 6(c)(1), or section 10(a)(1) of the Act;

(4) The planting of native vegetation within riparian areas, using hand tools or mechanical auger. This does not include any site preparation that involves the removal of native vegetation (such as deciduous trees and shrubs) or goes beyond that necessary to plant individual trees, shrubs, etc.;

(5) The installation of fences to exclude livestock impacts to the riparian area and stream channel. The installation of new off-channel livestock watering facilities where livestock use streams for watering, and the operation and maintenance of existing off-channel livestock watering facilities. These watering facilities must consist of low volume pumping, gravity feed or well systems, and in-water intakes must be screened consistent with National Marine Fisheries Service (NMFS) Juvenile Fish Screen Criteria For Pump Intakes. This does not include the potential impacts associated with the grazing activity itself or negative effects attributable to depleting stream flow due to water withdrawal;

(6) The placement of human access barriers, such as gates, fences, boulders, logs, vegetative buffers, and signs to limit use- and disturbance-associated impacts. These impacts include timber theft, disturbance to wildlife, poaching, illegal dumping of waste, erosion of soils, and sedimentation of aquatic habitats, particularly in sensitive areas such as riparian habitats or geologically unstable zones. This does not include road maintenance or the potential impacts associated with the road itself;

(7) The current operation and maintenance of fish screens on various water facilities that meet the current NMFS Juvenile Fish Screen Criteria and Juvenile Fish Screen Criteria For Pump Intakes. This does not include the use of traps or other collection devices at screen installations, operation of the diversion structure, or negative effects attributable to depleting stream flow due to water diversion;

(8) The installation, operation, and maintenance of screens where the existing canal or ditch is located off the main stream channel. The canal or ditch must be dewatered prior to screen and bypass installation and prior to fish entering the canal or ditch. Installed screens and bypass structures must meet the current NMFS Juvenile Fish Screen Criteria. Bypass must be accomplished through free (volitional) access, with adequate velocities, construction materials and stream re-entry conditions that will not result in harm or death to fish. This does not include the use of traps or other collection devices at screen installations, placement or operation of the diversion structure, or negative effects attributable to depleting stream flow due to water diversion;

(9) The general maintenance of existing structures (such as homes, apartments, commercial buildings) which may be located in close proximity to a stream corridor, but outside of the stream channel. This does not include potential impacts associated with sediment or chemical releases that may adversely affect bull trout or their habitat, nor does this include those activities that may degrade existing riparian areas or alter streambanks (such as removal of streamside vegetation and streambank stabilization); and

(10) The lawful use of existing State, county, city, and private roads. This does not include road maintenance and the potential impacts associated with the road itself that may destroy or alter bull trout habitat (such as grading of unimproved roads, stormwater and contaminant runoff from roads, failing road culverts, and road culverts that block fish migration), unless authorized by us through section 7 or 10 of the Act.

The following actions likely would be considered a violation of section 9:

(1) Take of bull trout without a permit or other incidental take authorization from us. Take includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State, NPS, and Tribal fish and wildlife conservation laws and regulations;

(2) To possess, sell, deliver, carry, transport, or ship illegally taken bull trout;

(3) Unauthorized interstate and foreign commerce (commerce across State and international boundaries) and import/export of bull trout (as discussed in the prohibition discussion earlier in this section);

(4) Intentional introduction of non-native fish species that compete or hybridize with, or prey on bull trout;

(5) Destruction or alteration of bull trout habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, grading of unimproved roads, stormwater and contaminant runoff from roads, failing road culverts, and road culverts that block fish migration or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, turbidity, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting bull trout that result in death or injury of the species; and

(7) Destruction or alteration of riparian or lakeshore habitat and adjoining uplands of waters supporting bull trout by timber harvest, grazing, mining, hydropower development, road construction or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. We do not consider these lists to be exhaustive and provide them as information to the public.

Direct your questions regarding whether specific activities may constitute a violation of section 9 to the Supervisor, Western Washington Office, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503 (telephone 360/753–9440; facsimile 360/753–9518) for the Coastal-Puget Sound population segment; the Montana Field Office, 100 N. Park, Suite 320 Helena, Montana 59601 (telephone 406/449–5225; facsimile 406/449–5339) for the St. Mary-Belly River population segment.

Special Rule

Section 4(d) of the Act provides that when a species is listed as threatened, we are to issue such regulations as are necessary and advisable to provide for the conservation of the species. We have generally done so by adopting regulations (50 CFR 17.31) applying with respect to threatened species the same prohibitions that under the Act apply with respect to endangered species. Those prohibitions generally make it illegal to import, export, take, possess, ship in interstate commerce, or sell a member of the species. The "take" that is prohibited includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting the wildlife, or attempting to do any of those things. However, we may also issue a special rule tailored to a certain threatened species, establishing with respect to it only those particular prohibitions that are necessary and advisable for its conservation. In that case, the general prohibitions in 50 CFR 17.31 do not apply to that species, and the special rule contains all the prohibitions and exceptions that do apply. Typically, such special rules incorporate all the prohibitions contained in 50 CFR 17.31, with additional exceptions for certain forms of take that we have determined are not necessary and advisable to prohibit in order to provide for the conservation of that particular species.

The special rule in this final determination for bull trout will apply to bull trout wherever found in the coterminous lower 48 States, except in the Jarbidge River basin in Nevada and Idaho. The principal effect of the special rule is to allow take in accordance with State, NPS, and Native American Tribal permitted fishing activities. Since we are finalizing the listing of bull trout as a coterminous listing, we are essentially adding the special rule we had proposed for the Coastal-Puget Sound and St. Mary-Belly River population segments to the existing special rule for the Klamath and Columbia River population segments published on June 10, 1998 (63 FR 31647). The resultant special rule is effectively identical to the proposed rule for the Coastal-Puget Sound and St. Mary-Belly population segments and does not change the existing special rule for the Klamath and Columbia River population segments. The special rule for the Jarbidge River population segment is effectively identical to the special rule for the other four population segments except that it is only valid until April 9, 2001, and thus, will remain separate.

We believe that statewide angling regulations have become more restrictive in an attempt to protect bull trout in Washington, Idaho, Oregon, California, and Montana, and are adequate to provide continued conservation benefits for bull trout in the Klamath River, Columbia River, Coastal-Puget Sound and the St. Mary-Belly River population segments. The State of Washington closed fishing in 1994 for "native char" in most waters within the Coastal-Puget Sound population. Legal angler harvest in the St. Mary-Belly River DPS in Montana occurs only on the Blackfeet Indian Reservation. Legal harvest of bull trout in the Klamath River basin was eliminated in 1992 when the Oregon Department of Fish and Wildlife imposed a fishing closure. State management agencies in Idaho, Oregon, Montana, and Washington have suspended harvest of bull trout in the Columbia River basin, except in Lake Billy Chinook (Oregon) and Swan Lake (Montana). Since the States and many Tribal governments have demonstrated a willingness to adjust their regulations to reduce fishing pressures where needed, we do not believe it is necessary and advisable for the conservation of the species to prohibit take through regulated fishing of subpopulations of bull trout that are exhibiting stable or increasing numbers of individuals and where habitat conditions are not negatively depressing local fish stocks. Using discretion when applying 4(d) exemptions can foster incentives for States and Tribes to expedite conservation efforts by providing rewards for restoring stocks and allowing regulated harvest prior to delisting. For example, Washington has only two systems in the Coastal-Puget Sound population segment that are open for bull trout fishing. These systems have a two fish limit with a minimum 508 mm (20 in.) size limit to allow females to spawn at least once. Also, as long as these systems are closely monitored, we are gaining valuable information about the life history, relative abundance, and distribution of bull trout, which will be important for working towards the recovery of the species. We intend to continue to work with the States and Tribes in assessing whether current fishing regulations are adequate to protect bull trout, and in developing management plans and agreements with the objective of recovery and eventual delisting of the species.

In accordance with the June 1997 Secretarial Order on Federal-Tribal trust responsibilities and the Act, we will work with Tribal governments that manage bull trout streams to restore ecosystems and enhance Tribal management plans affecting the species. We believe that the special rule is consistent with the Secretarial Order designed to enhance Native American participation under the Act and will allow more efficient management of the species on Tribal lands.

Elsewhere in today's **Federal Register** we have published a Notice of Intent which outlines our intent to develop, through section 4(d) of the Act, another special rule for bull trout that would provide conservation benefits to the species, while ensuring the future continuation of land management actions. The special rule would address two categories of activities affecting bull trout: (1) Habitat restoration; and (2) regulations that govern land and water management activities. Please refer to the notice for further information and if you wish to provide comments to us.

Similarity of Appearance

Section 4(e) of the Act authorizes the listing of a non-threatened or endangered species based on similarity of appearance to a threatened or endangered species if—(A) the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between the listed and unlisted species; (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (C) such treatment will substantially facilitate the enforcement and further the policy of the Act.

Within the Coastal-Puget Sound population segment, bull trout occur sympatrically within the range of the Dolly Varden. These two species so closely resemble one another in external appearance that it is virtually impossible for the general public to visually differentiate the two. Currently, WDFW manages bull trout and Dolly Varden together as "native char." Fishing for bull trout and Dolly Varden is open in four subpopulations within the Coastal-Puget Sound population segment, two under WDFW regulations, and two under Native American Tribal regulations. These "native char" fisheries may adversely affect these subpopulations of bull trout. However, under current harvest management, there is no evidence that the specific harvest for Dolly Varden creates an additional threat to bull trout within this population segment. Therefore, a similarity of appearance rule is not being issued for Dolly Varden at this time. However, if bull trout and Dolly Varden are managed in Washington State as separate species in the future, we may consider, at that time, the merits of proposing Dolly Varden under the similarity of appearance provisions of the Act.

Section 7 Consultation

Although this rule consolidates the five bull trout DPSs into one listed taxon, based on conformance with the DPS policy for purposes of consultation under section 7 of the Act, we intend to retain recognition of each DPS in light of available scientific information relating to their uniqueness and significance. Under this approach, these DPSs will be treated as interim recovery units with respect to application of the jeopardy standard until an approved recovery plan is developed. Formal establishment of bull trout recovery units will occur during the recovery planning process.

Paperwork Reduction Act for the Listing

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

Required Determinations for the Special Rule

Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness Act

The special rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

This special rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. Therefore, a cost-benefit and full economic analysis is not required.

Section 4(d) of the Act provides authority for us to issue regulations necessary to provide for the conservation of species listed as threatened. We find that State, NPS, and Native American Tribal angling regulations have become more restrictive in an attempt to protect bull trout in the coterminous United States. We believe that existing angling regulations developed independently by the States, National Park Service, and Native American Tribes are adequate to provide continued conservation benefits for the bull trout in the coterminous United States. As a result, the special rule will allow angling to take place in the river systems within the Klamath River, Columbia River, Coastal-Puget Sound, and St. Mary-Belly River DPSs under existing State regulations. The Jarbidge River DPS has a separate special rule that was made final on April 8, 1999 (64 FR 17110), and continues to remain in effect for that DPS. The economic effects discussion addresses only the economic benefits that will accrue to the anglers who can continue to fish in river systems within the Klamath River, Columbia River, Coastal-Puget Sound and St. Mary-Belly River population segments. Although the special rule for the Klamath River and Columbia River DPSs was finalized on June 10, 1998 (63 FR 31647), and continues to remain in effect, they are included in this "Required Determinations for the Special Rule" section since the special rule applies to all four DPSs (see "Special Rule" section for further discussion of this issue).

This special rule will allow continued angling opportunities in Washington, Idaho, Oregon, California, and Montana under existing State, NPS, and Native American Tribal regulations. Data on the number of days of trout fishing under new State regulations are available by State from the 1996 National Survey of Fishing, Hunting, and Wildlife Associated Recreation. These data pertain to total trout fishing in each State. In order to develop an estimate of angling days preserved by this rule, we used the proportion of the river miles in this rule to total river miles of coldwater running rivers and streams in each State to estimate the portion of total trout angling days affected by this rule. Because of the lack of definitive data, we decided to do a worst case analysis. We analyzed the economic loss in angling satisfaction, measured as consumer surplus, if all trout fishing were prohibited in the Klamath, Columbia, St. Mary-Belly rivers and the Coastal-Puget Sound. Since there are substitute sites in each State where fishing is available, this measure of consumer surplus is a conservative estimate and would be a maximum estimate. The total estimated angling days affected is 266,490 annually. We used a consumer surplus of $19.35 (1999$) per day for trout fishing to get an estimated benefit of slightly over $5 million annually. If the assumption that the affected rivers receive an average amount of angling pressure does not hold true, and the angling pressure is twice the average for the affected rivers, then the annual consumer surplus will be in the range of $10 million annually. Consequently, this rule will have a small measurable economic benefit on the United States economy, and even in the event that fishing pressure is twice the State average in the affected rivers, this rule will not have an annual effect of $100 million or more for a significant rule-making action.

This special rule will not create inconsistencies with other agencies' actions.

The special rule allows for continued angling opportunities in accordance with existing State, NPS, and Native American Tribal regulations.

This special rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This special rule does not affect entitlement programs.

This special rule will not raise novel legal or policy issues. There is no indication that allowing for continued angling opportunities in accordance with existing State, NPS, and Native American Tribal regulations would raise legal, policy, or any other issues.

The Department of the Interior certifies that the final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. We recognize that some affected entities are considered "small" in accordance with the Regulatory Flexibility Act, however, no individual small industry within the United States will be significantly affected by allowing for continued angling opportunities in accordance with existing State, NPS, and Tribal regulations.

The special rule is not a major rule under 5 U.S.C. 801 *et seq.*, the Small Business Regulatory Enforcement Fairness Act.

This special rule does not have an annual effect on the economy of $100 million or more. Trout fishing in the Klamath River, Columbia River, the Coastal-Puget Sound, and the St. Mary-Belly River generates expenditures by local anglers of an estimated $8.7 million per year. Consequently, the maximum benefit of this rule for local sales of equipment and supplies is no more than $8.7 million per year and most likely smaller because all fishing would not cease in the area even if the Klamath River, Columbia River, the Coastal-Puget Sound, and the St. Mary-Belly River were closed to trout fishing. The availability of numerous substitute sites would keep anglers spending at a level probably close to past levels.

This special rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This special rule allows the continuation of fishing in the Klamath River, Columbia River, Coastal-Puget Sound and St. Mary-Belly River population segments and, therefore, allows for the usual sale of equipment and supplies by local businesses. This special rule will not affect the supply or demand for angling opportunities in Washington, Idaho, Oregon, California, and Montana, and therefore, should not affect prices for fishing equipment and supplies, or the retailers that sell equipment. Trout fishing in the affected rivers accounts for less than 2 percent of the available trout fishing in the States.

This special rule does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises. Because this rule allows for the continuation of spending of a small number of affected anglers, approximately $8.6 million for trout fishing, there will be no measurable economic effect on the freshwater sportfish industry which has annual sales of equipment and travel expenditures of $24.5 billion nationwide.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

This special rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required; and

This special rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings Implication

We have determined that this special rule has no potential takings of private property implications as defined by Executive Order 12630. The special rule would not restrict, limit, or affect property rights protected by the Constitution.

Federalism

This special rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, we have determined that this special rule does not have sufficient federalism implications to warrant a Federalism Assessment.

Civil Justice Reform

The Department of the Interior has determined that this special rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Snake River Basin Office (see **ADDRESSES** section).

Author(s)

The primary authors of this final rule are Jeffrey Chan, Western Washington Fishery Resource Office, Olympia, Washington; Wade Fredenberg, Creston Fish and Wildlife Center, Kalispell, Montana; Samuel Lohr, Snake River Basin Office, Boise, Idaho; and Shelley Spalding, Western Washington State Office, Olympia, Washington.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by revising the entries for "trout, bull" under FISHES, in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Trout, bull	*Salvelinus confluentus* ..	U.S.A. (AK, Pacific NW into CA, ID, NV, MT), Canada (NW Territories).	U.S.A, coterminous (lower 48 states).	T	637, 659, 670	NA	17.44(w) 17.44(x)
*	*	*	*	*	*	*	

3. Amend § 17.44 by revising paragraph (w) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(w) What species are covered by this special rule? Bull trout (*Salvelinus confluentus*), wherever found in the coterminous lower 48 States, except in the Jarbidge River Basin in Nevada and Idaho (see 50 CFR 17.44(x)).

(1) What activities do we prohibit? Except as noted in paragraph (w)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the bull trout in the coterminous United States as defined in paragraph (w) of this section.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable State, National Park Service, and Native American Tribal fish and conservation laws and regulations.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense listed in this special rule.

(2) What activities do we allow? In the following instances you may take this species in accordance with applicable State, National Park Service, and Native American Tribal fish and wildlife conservation laws and regulations, as constituted in all respects relevant to protection of bull trout in effect on November 1, 1999:

(i) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) Fishing activities authorized under State, National Park Service, or Native American Tribal laws and regulations;

(3) How does this rule relate to State protective regulations? Any violation of applicable State, National Park Service, or Native American Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

* * * * *

Dated: October 14, 1999.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–28295 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF71

Endangered and Threatened Wildlife and Plants; Notice of Intent to Prepare a Proposed Special Rule Pursuant to Section 4(d) of the Endangered Species Act for the Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are considering proposing additional special regulations under the authority of section 4(d) of the Endangered Species Act (Act) of 1973, as amended, that would promote the conservation of bull trout (*Salvelinus confluentus*). The Act prohibits take of species that are listed as endangered, except where authorized by permit. We have extended the Act's take prohibition to species that are listed as threatened under the authority of the Act. For some threatened species, we have issued special rules that exempt from the take prohibition certain activities that are consistent with conservation of the species. Published elsewhere in today's **Federal Register** is the final rule listing bull trout within the coterminous United States as threatened. In the final listing rule we have included a special rule that exempts from the take prohibition fishing activities authorized under State, National Park Service, or Native American Tribal laws and regulations and take for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

We are considering amending this special rule to also exempt two categories of activities affecting bull trout: Habitat restoration; and other land and water management activities that are governed by enforceable regulations that provide substantial protection for bull trout.

Habitat restoration activities designed to enhance riparian and stream habitat conditions for salmonids can provide major contributions to the conservation of bull trout. However, some of these activities may cause short-term impacts, such as sediment entering streams from culvert removal or bank restoration, that result in take of bull trout. We are considering amending the special rule to exempt such activities, both Federal and non-Federal, from the take prohibitions of the Act, where the activities meet criteria for minimizing adverse impacts to bull trout. We would require some, as yet to be defined, minimal annual level of reporting to help us monitor restoration efforts and accomplishments.

We are also considering amending the special rule to exempt other land and water management activities from the take prohibitions of the Act when they are conducted in accordance with enforceable regulations that provide substantial protection for bull trout. Activities considered for coverage under the amended special rule would be non-Federal activities, and would be implemented under locally prepared, Service-approved, Conservation Enhancement Plans (CEPs). Activities that would be exempted under a special rule could involve some level of impact, but would have to fall within an overall framework that would contribute to the conservation of the species.

DATES: Send your comments to reach us on or before December 16, 1999.

ADDRESSES: You should send your comments to the U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive, Lacey, Washington 98503.

FOR FURTHER INFORMATION CONTACT: Gerry Jackson, Supervisor, Western Washington Office, (see **ADDRESSES** section) (telephone 360/753–9440; facsimile 360/753–9405).

SUPPLEMENTARY INFORMATION:

Background

Recent listings of several salmon species in Oregon and Washington have raised concern for the status of salmon and related fish species such as bull trout (*Salvelinus confluentus*) in the Northwest. State agencies and local governments have been working with us, the National Marine Fisheries Service, and other Federal agencies to develop strategies to protect and recover salmon species in the Pacific Northwest. Some of these efforts include the development of conservation strategies for bull trout.

We are responding to the need to conserve the bull trout throughout its range by promoting activities that contribute to the conservation of species. Restoration activities that clearly enhance the quantity and quality of habitat required by bull trout can provide major contributions toward its conservation. However, restoration activities that cause short-term sedimentation of a stream, such as culvert removal or bank restoration, may result in take of bull trout. An amended special rule would exempt such activities from the take prohibitions of the Act where the activities meet criteria for minimizing adverse impacts and provide conservation benefits to bull trout. We would require some, as yet to be defined, minimal annual level of reporting to help us monitor restoration efforts and accomplishments.

We see an opportunity for State agencies and county and local governments (collectively referred to as the Jurisdictions) to provide substantial protection for bull trout. Jurisdictions would be able gain exemptions from the Act's prohibitions against incidental take for thousands of their citizens, including small landowners. Jurisdictions could utilize their authorities to implement existing regulations, or promulgate new regulations that comply with the provisions of the Act. The Jurisdictions would enforce those regulations covering a variety of land and water management activities. A few of these existing authorities include growth management acts, shoreline management acts, State environmental policy acts, timber harvest regulations, and instream construction and water discharge permits. The benefit of an amended 4(d) rule to these Jurisdictions is that it provides an expedient process for obtaining generic approval in advance of ongoing and proposed actions requiring compliance with the take prohibitions of the Act. The amended 4(d) rule would provide take coverage and cost savings to thousands of small land owners, and others, who are conducting activities that may take bull trout. Once established, it is anticipated that Jurisdictions could obtain generic Service approval for State and local regulated activities faster than through the section 10(a)(1)(B) process for habitat conservation plans (HCPs). Section 10(a)(1)(B) requires applicants to prepare a HCP, and some applicants must also prepare either an environmental assessment or environmental impact statement to comply with the National Environmental Policy Act (NEPA). This can be costly and time consuming, thus an amended 4(d) rule could be a preferred alternative for many individuals whose activities may incidentally take bull trout. Additionally, a Jurisdiction may already be undertaking efforts to protect salmon and bull trout habitat (see examples below), that may qualify as a CEP without additional efforts on its part. This would prove to be a more expedient and cost-effective means of obtaining compliance with the Act than the 10(a)(1)(B) permitting process. All benefits to the bull trout derived from conservation contributions as a result of an amended 4(d) rule would expedite its recovery and advance the time at which the protective measures of the Act are no longer required.

Jurisdictions would develop CEPs to be approved by us for coverage under the special rule. Regulations or other protective measures may be incorporated in whole or in part in a CEP. In general, the CEPs would address baseline conditions and current and projected impacts to bull trout within the vicinity of activities to be covered under the special rule. The Jurisdictions would identify future actions and protective measures to be undertaken to protect or enhance bull trout populations. We would require the Jurisdictions to ensure that their CEPs have a high level of certainty of implementation, and that they include a comprehensive monitoring program and an adaptive management component with the flexibility to respond to new scientific knowledge. We would authorize activities under the CEP as long as the provisions of the special rule are met and the protective measures undertaken contribute to the long-term survival and recovery of the bull trout in the wild.

Currently, the Jurisdictions have three options for compliance with the Act—the avoidance of all take, incidental take authorization under section 7, or incidental take authorization through an HCP under section 10(a)(1)(B) of the Act. We envision that an amended special rule for bull trout would provide a fourth option for the Jurisdictions to ensure that their land and water management activities comply with the Act. The Jurisdictions could attain compliance with the Act through the adoption of approved CEPs for the bull trout. Once established, it is anticipated that this regulatory process would proceed faster in obtaining our approval for State and local regulated activities than the section 10(a)(1)(B) process for HCPs. Although a 4(d) rule offers a single species approach for compliance under the Act, approved activities may provide the basis for a broader, more comprehensive multi-species HCP for listed and unlisted species. Therefore, a 4(d) rule may, in some instances, serve as a bridge to producing a comprehensive, watershed-based HCP.

As an example of a Jurisdiction benefitting from an amended 4(d) rule, the Washington State Forest Practices Board is currently developing regulations for State and private timber harvest that would also protect salmon and bull trout habitat along streams. Once the Board develops and adopts these regulations, they may be presented to us in the form of a CEP for coverage under the 4(d) rule. Non-Federal timber harvest activities would be in compliance with the Act as long as the activities approved by us under the CEP are conducted in accordance with State Forest Practices Regulations.

As another example of a potential application of the 4(d) rulemaking process and the benefits derived from an amended 4(d) rule, the Tri-Counties of King, Pierce and Snohomish, in Washington (including the cities and municipalities within these counties) have formed a coalition to develop conservation strategies for listed salmonids, including bull trout. These conservation strategies will address critical area ordinances, herbicide and pesticide use, shoreline management, storm water management, road maintenance, and watershed planning. Once developed, these strategies would be implemented through the use of existing authorities, such as the State Environmental Policy Act, Shoreline Protection Act and the Growth Management Act, and through administrative permitting authorities, including grading and building permits, tree permits and other permits. Here again, an amended 4(d) rule governing specific activities that, while part of an overall protective framework, may result in take of bull trout would provide compliance under the Act when conducted under an approved CEP that is regulated and enforced by the Jurisdictions.

We would require CEPs to appropriately address relevant effects of activities under the control of the non-Federal landowner or Jurisdiction as they relate to the following threats identified in the final listing rule for the bull trout:

(1) Introduction of non-native fish species that compete with, hybridize with, or prey on bull trout;

(2) Dredging, channelization, diversion, instream vehicle operation or rock removal, or other activities that destroy or significantly alter cover, channel stability, substrate composition or temperature in areas used by the bull trout for foraging, cover, migration or spawning;

(3) Discharging or dumping toxic chemicals, silt, or other pollutants into waters or onto land in a manner that would allow these substances to enter into waters supporting bull trout;

(4) Recreational activities, timber harvest, grazing, mining, hydropower development, or other developmental activities that destroy or significantly alter cover, channel stability, substrate composition, or temperature in areas used by the bull trout for foraging, cover, migration or spawning;

(5) Instream or shoreline recreational and commercial activities that significantly disrupt behavioral patterns and harass migrating or spawning bull trout.

We would announce in the **Federal Register** and solicit public comment on CEPs prior to any approval. We will comply with NEPA in implementing the provisions of the proposed special rule. Since some States require a NEPA like review, a CEP may have an associated environmental review document already prepared by the Jurisdiction. In these cases, we will consider this information in our NEPA review; however, a review from a national perspective rather than a local review may be needed to fully comply with the requirements of NEPA.

We request comments on whether we should propose special regulations that would provide the opportunity for the Jurisdictions to attain compliance under the Act through their authorities to regulate and enforce land and water management activities. In addition, we request specific information and comment from Federal and State agencies, local municipalities and private individuals or organizations on the following:

Habitat Restoration Activities

(1) The types of habitat restoration activities we should address under an amendment to the special rule;

(2) The standards or criteria for habitat restoration activities that must be met in order to be exempted from take prohibitions; and

(3) Comments on the nature and scope of minimal monitoring and reporting programs for habitat restoration activities.

Regulated Activities

(1) The types of regulated activities we should address in an amendment to the special rule;

(2) The standards or criteria for regulated activities that must be met in order to be exempted from the take prohibitions;

(3) The appropriate components of a CEP or similar plan;

(4) Appropriate monitoring and reporting programs for regulated activities; and

(5) Information on how habitat for the bull trout should be identified and how it should be protected or enhanced.

Dated: September 1, 1999.

John G. Rogers,
Director, Fish and Wildlife Service.
[FR Doc. 99–28296 Filed 10–29–99; 8:45 am]
BILLING CODE 4310–55–P

federal register

Monday
November 1, 1999

Part III

Department of Education

34 CFR Parts 682 and 685
Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1845–AA00

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These final regulations are needed to implement recently enacted changes to the Higher Education Act of 1965, as amended (HEA) made by the Higher Education Amendments of 1998 (1998 Amendments). The final regulations deal with provisions of the 1998 Amendments that affect FFEL borrowers, schools, lenders, and guaranty agencies and Direct Loan borrowers and schools. These final regulations seek to improve the efficiency of Federal student aid programs, and, by so doing, to improve their capacity to enhance opportunities for postsecondary education.

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that FFEL and Direct Loan program participants may, at their discretion, choose to implement certain provisions of §§ 682.102, 682.200, 682.202, 682.206, 682.401, 682.402, 682.406, 682.409, 682.414, 682.604, 682.610, 685.102, 685.201, 685.304, and 685.402 on or after November 1, 1999. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Ms. Patsy Beavan, or for the Direct Loan Program, Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These regulations implement certain changes made to the HEA by the 1998 Amendments (Pub. L. 105–244) that affect the FFEL and Direct Loan programs.

On August 10, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL and Direct Loan programs in the **Federal Register** (64 FR 43428). In the preamble to the NPRM, the Secretary discussed on pages 43429 to 43438 the following proposed changes:

FFEL Program Changes

- Amending § 682.102(a) to require the use of the Free Application for Federal Student Aid (FAFSA) as the application for FFEL subsidized and unsubsidized Stafford loans beginning in academic year 1999–2000 and to reflect the use of a Master Promissory Note (MPN) that would allow borrowers to receive, in addition to an initial loan, additional loans for the same or subsequent periods.
- Amending § 682.200(b) to revise the definition of "Lender" to permit lenders to provide assistance to schools that is comparable to the kinds of assistance provided by the Secretary under, or in furtherance of, the Direct Loan Program.
- Amending § 682.201(c)(1)(i)(D) and (E) to prohibit a borrower from receiving an FFEL Consolidation loan to repay a loan made under the HEA on which the borrower is subject to a judgment secured through litigation or to an administrative wage garnishment order.
- Amending § 682.201(c)(1)(iv)(B) to permit a borrower who has multiple FFEL Program holders to apply to any eligible FFEL lender for an FFEL Consolidation loan.
- Amending § 682.201(d)(2) to expand the universe of loans that may be included in an FFEL Consolidation loan.
- Amending § 682.202(a) to include the interest rate formulas that apply to subsidized Stafford, unsubsidized Stafford, and PLUS loans that are first disbursed on or after October 1, 1998 and before July 1, 2003 and interest rate formulas for Consolidation loans.
- Amending § 682.202(b) to reflect that a lender may add accrued interest to the principal (capitalization) of an unsubsidized Stafford loan only when the loan enters repayment, at the expiration of a period of authorized deferment, at the expiration of a period of authorized forbearance, and when the borrower defaults. This section also provides that, for loans first disbursed on or after July 1, 2000, periods of forbearance on both subsidized and unsubsidized Stafford loans would be covered by the new capitalization rules.
- Amending § 682.202(c) to permit a lender to assess a lower origination fee to a borrower demonstrating "greater financial need," as determined by the borrower's adjusted gross income and to allow a lender to consider a borrower as demonstrating greater financial need if—
  - The borrower's expected family contribution (EFC) used to determine eligibility for the loan is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified;
  - The borrower qualifies for a subsidized Stafford loan; or
  - The borrower qualifies according to a comparable alternative standard approved by the Secretary.
- Amending § 682.206 to conform to changes made in § 682.603 related to loan certification of borrower eligibility by the school and § 682.401 related to the use of the MPN.
- Amending § 682.207 to require lenders to disburse loans in a single installment (rather than in multiple installments as generally required) if so directed by a school that meets the criteria specified in § 682.604.
- Amending § 682.209(a)(7)(ix) to require a lender to offer new FFEL borrowers, including FFEL Consolidation loan borrowers, whose total outstanding FFEL loans exceed $30,000, an extended repayment plan with fixed or graduated repayment amounts to be paid over a period not to exceed 25 years.
- Amending § 682.301(a)(3) to include the authority for payment of interest subsidy during a period of authorized deferment on the portion of an FFEL Consolidation loan that repaid a subsidized FFEL or Direct Loan program loan.
- Amending § 682.402(h)(1)(iv) to provide that a lack of evidence of a borrower's confirmation for subsequent loans made under an MPN will not lead to a denial of claim payment to the lender unless the loan is found to be unenforceable.
- Amending § 682.402(i)(1)(i) to reflect amendments to the Bankruptcy Code that eliminated the seven-year repayment standard for discharge of FFEL Program loans for bankruptcy petitions filed on or after October 8, 1998 and establish undue hardship as the only criteria for a bankruptcy discharge.
- Amending § 682.402(i)(1)(iv) to revise lender and guaranty agency claim filing procedures related to loans for which bankruptcy petitions are filed.

- Amending § 682.414(a)(4) and (5) to require lenders to maintain documentation of the confirmation processes the lender and the school used for subsequent loans under an MPN and specify that a lender or guaranty agency may, to accommodate the MPN process, retain a true and exact copy of the promissory note rather than the original note.
- Amending § 682.603(b) to require a school to certify only the loan amount for which the borrower is eligible and to provide a disbursement schedule to the lender.

FFEL and Direct Loan Program Changes

- Amending §§ 682.200(b) and 685.102(b) to—
  - Reflect that the length of time a borrower is delinquent before a default occurs on an FFEL or Direct Loan program loan is 270 days for a loan repayable in monthly installments and 330 days for FFEL Program loans repayable less frequently than monthly;
  - Reflect that schools now are required to include veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code and national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (Americorps) as estimated financial assistance for the purpose of determining a borrower's eligibility for unsubsidized FFEL and Direct Loan program loans; and
  - Define the term "master promissory note" (MPN) as a promissory note under which a borrower may receive loans for a single academic year or multiple academic years.
- Amending §§ 682.204 and 685.203 to modify the method for calculating the reduced annual loan limits that apply to FFEL and Direct Loan borrowers enrolled in programs of study or remaining balances of programs of study that are less than an academic year in length and to specify annual loan limits for non-degree preparatory and teaching credential coursework.
- Amending §§ 682.207(e), 682.603(g), 682.604(c), 685.301(b) and 685.303(b) to reflect that an FFEL or Direct loan program school is exempt from the multiple disbursement requirement for single-term loans and the delayed delivery requirement if—
  - The school's FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate is less than 10 percent for each of the three most recent fiscal years for which data are available; or
  - The school is certifying or originating a loan to cover the cost of attendance in a study abroad program and has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the single most recent fiscal year for which data are available.
- Amending §§ 682.209(a)(6) and 685.207(b) and (c) to exclude certain periods of service by a borrower in the Armed Forces from the six-month grace period for FFEL and Direct Loan program borrowers.
- Amending §§ 682.210(c) and 685.204(b) to reflect that FFEL lenders and the Secretary may determine a borrower's eligibility for an in-school deferment when—
  - The borrower submits a request for deferment along with documentation verifying the borrower's eligibility for the deferment to the borrower's FFEL lender, or the Secretary for a Direct Loan;
  - The borrower's FFEL lender, or the Secretary for a Direct Loan, receives either a newly completed loan certification or, as part of the MPN process, information from the borrower's school indicating that the borrower is eligible to receive a new loan; or
  - The borrower's FFEL lender, or the Secretary for a Direct Loan, receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.
- Amending § 682.210(h) to permit borrowers who are eligible for unemployment insurance benefits to submit evidence of their eligibility for the benefits to their FFEL lender, or to the Secretary for a Direct Loan (see § 685.204(b)(2)), to qualify for initial and subsequent periods of an unemployment deferment.
- Amending §§ 682.211(f)(9) and 685.205(b)(9) to permit an FFEL lender, and the Secretary for a Direct Loan, to grant a forbearance to a borrower for a period not to exceed 60 days after the borrower requests a deferment, a forbearance, a change in repayment plan, or a consolidation loan.
- Amending §§ 682.401(d) and 685.402 to state the requirements that a school must meet to be authorized to use a single MPN as the basis for multiple loans obtained by a borrower.
- Amending §§ 682.402, 685.212, and 685.215 to provide for discharge of the amount of a borrower's FFEL or Direct Loan program loan disbursed on or after January 1, 1986 that should have been refunded by the borrower's school.
- Amending §§ 682.604(f) and (g) and 685.304(a) and (b) to permit schools to use electronic means to provide initial counseling and exit counseling to borrowers and to require two additional counseling elements based on new statutory initiatives.
- Amending § 685.300 to provide schools the option to participate in one or more of the loan programs (subsidized, unsubsidized, and PLUS) under the FFEL and Direct Loan programs.

These final regulations contain several changes from the NPRM. We fully explain these changes in the Analysis of Comments and Changes elsewhere in this preamble.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year (which begins July 1) in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

§§ 682.102, 682.200, 682.206, 682.401, 682.402, 682.406, 682.409, 682.414, 682.604, 682.610, 685.102(b), 685.201(a), and 685.402(f)—Upon publication, the provisions in these regulations related to the Master Promissory Note (MPN) may be implemented by borrowers, schools, lenders, and guaranty agencies in the FFEL Program and borrowers and schools in the Direct Loan Program at their discretion. This means that participants in both the FFEL and Direct Loan programs may begin using a single MPN as the basis for multiple loans obtained by a borrower as long as they do so consistent with all regulatory provisions and accompanying discussion related to use of the MPN that are included in this final rule.

Section 682.200(b) Definition of Lender—Upon publication, these regulations may be implemented by FFEL lenders at their discretion. This means that FFEL lenders may provide assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Direct Loan Program.

Section 682.202(c)—Upon publication, these regulations may be implemented by FFEL lenders at their discretion. This means that FFEL lenders may assess a lower origination fee to a borrower demonstrating "greater financial need" as provided in these regulations.

Section 682.604(f)(2)(i), 682.604(g)(2)(vii), 685.304(a)(3)(i), and 685.304(b)(4)(vii)—Upon publication, these regulations may be implemented by FFEL and Direct Loan program schools at their discretion. This means that schools may explain the use of an MPN during initial counseling and review information on the availability of the Department's Student Loan Ombudsman's office during exit counseling.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 10, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999 and several comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

These final regulations address changes that are specific to the FFEL Program and changes that are common to both the FFEL and Direct Loan programs. The following analysis begins with comments and changes that affect only the FFEL Program, followed by comments and changes that affect both the FFEL and Direct Loan programs.

Federal Family Education Loan Program

Section 682.102—Consolidation Loan Application

Comment: Several commenters representing guaranty agencies, lenders, and servicers recommended that we clarify § 682.102(d) to explain which holder(s) must be contacted for a Consolidation loan when a married couple wants to jointly consolidate their loans. The commenters suggested that the proposed language appears to require a married couple seeking a joint Consolidation loan to contact all the holders for one of the applicant's loans before being able to consolidate if either or both applicants have multiple holders.

Discussion: We agree that this language needs to be revised to be consistent with § 682.201(c)(2)(ii). If each of the applicants has only one holder, then only the holder for one of the applicants must be contacted. If either or both applicants have multiple loan holders, the applicants are permitted to submit the application to any lender participating in the Consolidation Loan Program.

Change: We have revised § 682.102(d) to clarify the application requirements for married borrowers who want a joint Consolidation loan.

Section 682.200—Definitions

Lender-Prohibited Inducements

Comment: A commenter representing a guaranty agency suggested that we clarify that the inducement provision applies only to originating lenders.

Discussion: We do not believe that the inducement prohibition applies only to originating lenders. The HEA clearly states that the term "eligible lender" does not include any lender that offers, directly or indirectly, points, premiums, payments or other inducements, to any educational institution or individual in order to secure applicants. The statute does not distinguish between originating lenders and other loan holders.

Change: None.

Repayment Period

Comment: Some commenters recommended that we clarify that the 25-year extended repayment schedule is available to PLUS loan borrowers.

Discussion: We agree with the commenters.

Change: We have revised the definition of "Repayment period" in § 682.200(b) to specifically reference PLUS loan borrowers.

Section 682.201—Eligible Borrowers

Consolidation Loans

Comment: Some commenters suggested that § 682.201(c)(1) should be restructured to clarify that loans subject to litigation or administrative wage garnishment are eligible for inclusion in a Consolidation loan (including during the 180-day period for adding loans to a Consolidation loan) once the judgment or wage garnishment order is vacated, even if the judgment or order is in place at the time the borrower applies for the Consolidation loan. The commenters pointed out that the restriction in section 428C(a)(3)(A)(ii) of the HEA need not be read to apply to the prohibition against consolidating loans which are subject to a judgment or wage garnishment order contained in section 428C(a)(3)(A)(i) of the HEA. Instead, the restriction applies only to defining an eligible borrower's status on the loans to be consolidated. The commenters believe this clarification will ensure that a borrower is not prevented from consolidating a loan which was subject to a judgment or wage garnishment order at the time of application, provided the order is vacated prior to consolidating the loan and will also protect the federal fiscal interest by allowing the guarantor to ensure that the borrower has completed the application process before the guarantor cancels the judgment or garnishment order.

Discussion: We agree with the commenters that this change will preserve a borrower's eligibility to consolidate while protecting the federal fiscal interest. We agree with the commenters that it is prudent for the holder to delay vacating a judgment or canceling a wage garnishment order until after the borrower has completed the consolidation process. We understand the commenters' concern that if a borrower applies for a Consolidation loan and the holder vacates the loan prior to the consolidation, the borrower may not follow through.

Change: We have revised § 682.201(c)(1) to permit lenders to consolidate loans based on the status of the loans at the time of consolidation, not the time of application.

Comment: Some commenters stated that they believed that proposed § 682.201(d), that specifies when a borrower's eligibility to receive a Consolidation loan terminates, conflicts with § 682.201(e) that specifies when a Consolidation loan borrower may consolidate an existing Consolidation loan. The commenters believe it is unclear whether the permission to consolidate a Consolidation loan in paragraph (e) overrides paragraph (d)(1), which states that a borrower's eligibility to obtain a new Consolidation loan is terminated upon receipt of a Consolidation loan except where the borrower receives a new loan after the date of the original consolidation. The commenters also suggested that we clarify that a married couple may consolidate their individual Consolidation loans into a single joint Consolidation loan.

Discussion: As reflected in § 682.201(e), a Consolidation loan borrower may obtain a new Consolidation loan if the borrower consolidates the outstanding Consolidation loan with at least one other eligible loan. A borrower is not required to obtain a new loan in order to consolidate. Also, as the commenters noted, a married couple may consolidate their respective Consolidation loans into a single joint Consolidation loan without either borrower being required to obtain a new loan.

Change: We have restructured § 682.201(d) and (e) to clarify the circumstances under which borrowers may consolidate an outstanding Consolidation loan to address the commenters' concerns.

Section 682.202—Permissible Charges by Lenders to Borrowers Interest Rates

Comment: Several commenters recommended that § 682.202(a)(1)(vii) be revised to specify that the interest rate formula included in this paragraph applies to a Stafford loan for which the first disbursement was made on or after July 1, 1995 and prior to July 1, 1998 without reference to the period of enrollment for which the loan was made. The commenters pointed out that although Dear Colleague Letter 93–L–161 (dated November 1993), which summarized the interest rate change for the period July 1, 1995 and prior to July 1, 1998, included a reference to the period of enrollment for Stafford loans made on or after July 1, 1995 (as well as for loans made on or after July 1, 1998), subsequent guidance issued by the Department (e.g., annual memoranda regarding applicable interest rates) did not include this reference for the 1995–1998 period.

Discussion: We agree with the commenters.

Change: We have revised § 682.202(a)(1)(vii) to delete reference to a period of enrollment that includes or begins on or after July 1, 1995.

Comment: Several commenters suggested that § 682.202(a)(3)(iii) be revised to delete the reference in the SLS interest rate formula to "the period of enrollment that began prior to July 1, 1994" because this paragraph applied to SLS loans made on or after October 1, 1992 through the cessation of the SLS Program on July 1, 1994. The commenters pointed out that Dear Colleague Letter 93–L–161 (dated November 1993), summarizing Public Law 103–66, specified that the termination of the SLS program was effective for periods of enrollment that began on or after July 1, 1994, without regard to the loan disbursement date.

Discussion: We agree with the commenters.

Change: We have removed the technical change proposed in § 682.202(a)(3)(iii) in the NPRM referencing loans disbursed prior to July 1, 1994.

Comment: In response to the Secretary's request for comments on how to make these proposed regulations easier to understand, a major association representing credit unions suggested that for clarity, we provide an example to clarify the regulatory requirement to use weighted average interest rates for Consolidation loans.

Discussion: The weighted average interest rate used for Consolidation loans in both the FFEL and Direct Loan programs should be calculated based on the interest rates that apply to the loans being consolidated at the time the loan holders complete the verification certificates. In making the calculation, it is important to note that an interest rate that is lower than the repayment period rate applies to most subsidized and unsubsidized Stafford loans in the FFEL and Direct Loan programs during the in-school, grace, and deferment periods. This affects the calculation of the weighted average interest rate. If, for example, a loan is in a grace period at the time the loan holder completes the verification certificate, the lower grace period interest rate would be used in the calculation of the weighted average interest rate on the Consolidation loan. Conversely, if the borrower applies for a Consolidation loan after entering repayment on a loan, the higher repayment interest rate of the loan being consolidated would be used in calculating the weighted average interest rate on the Consolidation loan.

The weighted average interest rate is a single interest rate that is calculated by using the borrower's loan balances and the current annual interest rate for each of the borrower's loans.

For example: A borrower has two subsidized Federal Stafford Loans, one for $10,000 and the other for $5,000, both with an interest rate of 8.25 percent. The borrower also has a $3,500 unsubsidized Federal Stafford Loan with an interest rate of 7.46 percent and a $3,000 Federal Perkins Loan with a 5.0 percent interest rate. The borrower consolidates these loans.

The following steps outline one way to calculate the weighted average interest rate:

1. Multiply the balance of each loan being consolidated by the interest rate that applies to that loan at the time the verification certificate is completed.
2. Add the calculated interest amounts for all loans being consolidated ($1,648.60).
3. Add the loan balances for all loans being consolidated ($21,500).
4. Divide the sum of the calculated interest amounts by the sum of the loan balance amounts (7.66%).
5. Round the quotient (the answer to Step 4) to the nearest higher one-eighth of one percent (7.75%).
6. Compare the result in Step 5 to the 8.25% maximum interest rate and determine which is lower. The lower of the two rates is the borrower's fixed interest rate for the Consolidation loan.

The weighted average interest rate for the borrower in this example is 7.75%.

Change: None.

Origination Fee

Comment: Several commenters pointed out that in § 682.202(c)(2)(i) the term "minimum" was incorrectly used rather than "maximum" when referencing the criteria for charging a lower origination fee to some borrowers.

Discussion: We agree with the commenters that the term "minimum" was inadvertently used and is not consistent with the language in the preamble to the NPRM. To be eligible for a lower origination fee under this provision, the borrower's EFC used to determine the eligibility for the loan must be equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified.

Change: We have revised § 682.202(c)(2)(i) to replace "minimum" with "maximum."

Comment: Two commenters representing national lenders objected to proposed § 682.202(c)(4) that would provide that, for purposes of determining whether a lender is charging all similarly situated borrowers the same origination fee, all lenders under common ownership, including ownership by a common holding company, constitute a single lender. The commenters argued that this provision violates the plain language of the HEA and conflicts with Congressional intent and settled administrative policy underlying the Federal banking laws. They further stated that this provision is not needed to prevent manipulation of bank subsidiaries of bank holding companies to circumvent the nondiscrimination provision. They stated that it unfairly places subsidiaries of large bank holding companies at a competitive disadvantage in specific geographic areas in which they provide loans. The commenters also argued that the proposed regulations will eliminate competition in the FFEL program, providing some state secondary markets or primary lenders a stranglehold in certain states. They contended that subsidiaries that previously have maintained separate origination fee discount policies to compete in state or regional markets would be required to apply one fee policy across the country, leaving them no choice but to withdraw from certain markets. One of the commenters noted that they had maintained a system-wide policy for their subsidiaries which was geographically based, allowing the particular subsidiary to establish its policy in its geographical area and they recommended that the Secretary not disregard such systems, particularly those that predate the enactment of the nondiscrimination provision.

Discussion: In light of the commenters' concerns, we have reconsidered the manner in which the proposed regulation would have applied the origination fee non-discrimination provisions. We do not believe that implementing this provision of the law to ensure greater equality in the origination fees assessed to similarly situated FFEL borrowers should have the unintended negative consequence of reducing competition in the FFEL Program and limiting a borrower's choice of a lender. We believe that another approach to applying the provision could be used to prevent manipulation with intent to circumvent the law while preserving lender choice, access, and competition. Therefore, we have decided that a state-based rather than a nationwide approach to applying the origination fee non-discrimination provision should be used. We believe that a state-based approach to applying the provision will prevent manipulation by lenders with the intent to circumvent the law while preserving lender choice, access, and competition in the FFEL Program. Moreover, we believe that a state-based application of the requirements addresses the commenters' concerns that national and multi-state lenders will be prevented from competing effectively and may be forced to leave certain markets.

Change: Section 682.202(c) has been revised to clarify the definition of lender to provide that any lending entity, including any multi-state lending entity, that makes loans in a particular state, must apply any policy of lower origination fees consistently to all borrowers residing in that state or who attend school in that state.

Comment: One commenter recommended that we clarify the documentation a lender should use to demonstrate the borrower's "greater financial need" for origination fee discount purposes.

Discussion: We believe that it is important to provide lenders with flexibility in this area and therefore decline to regulate documentation standards that a lender must use to determine greater financial need.

Change: None

Section 682.206—Due Diligence in Making a Loan

Comment: Some commenters recommended that § 682.206(a)(1) be revised to clarify that the lender's responsibilities and obligations in the loan making process with respect to having a borrower complete and sign the promissory note applies only to a borrower with subsequent loans (rather than "multiple" loans) made under a "valid" MPN.

Discussion: We agree with the commenters that the use of the term "subsequent" loans is more appropriate than using the term "multiple" loans. However, we believe it is unnecessary to specify that the MPN is "valid" because a lender has no basis for relying on an invalid or expired MPN for any reason.

Change: We have revised § 682.206(a) by substituting "subsequent" for "multiple."

Section 682.209—Repayment of a Loan

Comment: Several commenters recommended that § 682.209(a)(7)(ix) be restructured to clarify that only those borrowers who first obtained an FFEL Program loan on or after October 7, 1998 and with outstanding debt totaling more than $30,000 qualify for the extended repayment plan. The commenters suggested that, as proposed, the regulations do not fully define the eligibility criteria for an extended repayment plan.

Discussion: We agree with the commenters.

Change: We have revised § 682.209(a)(7)(ix) to clearly provide that, under an extended repayment schedule, a new borrower whose total outstanding principal and interest in FFEL loans exceeds $30,000 may repay the loan on a fixed annual or graduated repayment plan for a period that may not exceed 25 years.

Comment: Several commenters suggested that § 682.209(a)(8)(i) and (ii), governing the period of time to repay a loan, be revised to include reference to the 25-year extended repayment plan.

Discussion: We agree with the commenters.

Change: We have revised both paragraphs to provide for repayment of 25 years under an extended repayment plan.

Comment: Several commenters suggested that § 682.209(h)(3)(ii) be revised to clarify that defaulted Title IV loans on which satisfactory repayment arrangements have not been made may not be taken into consideration when determining the maximum repayment period on a Consolidation loan.

Discussion: We believe that the regulations clearly state that only a defaulted Title IV loan on which satisfactory repayment arrangements have been made may be included for purposes of establishing the maximum repayment period for a Consolidation loan. Otherwise, the regulations specify that all defaulted loans, including non-Title IV loans, may not be included in the determination of the maximum repayment period. However, to clarify this point, we will specify in the regulations that the balance used in making this determination may not include "any defaulted loans."

Change: We have inserted the word "any" before "defaulted loans" in § 682.209(h)(3)(ii).

Section 682.210—Deferment

Comment: Several commenters noted that proposed § 682.210(a)(3) indicates that interest may be paid by the Secretary for all or a portion of a qualifying Consolidation loan that meets the requirements under § 682.301 when the loan is made. These commenters recommended that the reference to "when the loan is made" be deleted. The commenters stated their belief that this phrase was carried over from the existing provision which addresses Stafford loans only and could be misunderstood as an indication that loans added within the 180-day period following the date a Consolidation loan is made may not be eligible for interest benefits.

Discussion: We agree with the commenters that the phrase "when the loan is made" could be misunderstood to exclude from interest subsidy loans added to a Consolidation loan within the 180-day period following the date the Consolidation loan is made.

Change: We have revised § 682.210(a)(3) by deleting the phrase "when the loan is made."

Comment: Some commenters stated that the parenthetical phrase "(unless based on the dependent's status)" following reference to the PLUS program in § 682.210(c)(5) is irrelevant and should be removed. The commenters suggested this deletion is appropriate because borrowers serving in a medical internship or residency program are prohibited by law from receiving an in-school deferment, regardless of whether the deferment is on the borrower's loan based on his or her own service, or on a parent borrower's loan based on his or her dependent's service in the internship or residency program.

Discussion: We disagree with the commenters. The parenthetical exception relates to the eligibility of a parent PLUS borrower to defer a PLUS loan based on their dependent son or daughter's attendance in school. We have never interpreted the prohibition to apply to an intern's or resident's eligibility to defer a parent PLUS loan based on the intern's or resident's dependent's in-school status.

Change: None.

Section 682.301—Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

Comment: Several commenters suggested that § 682.301(a)(3)(ii) should be revised to clarify that to qualify for interest benefits, a Consolidation loan made on or after August 10, 1993, but prior to November 13, 1997, must have been comprised solely of subsidized loans. The commenters believe that this provision might be misinterpreted to include Consolidation loans that include but are not solely comprised of subsidized Stafford loans.

Discussion: We do not agree that the term "solely" needs to be added to provide clarity. However, we have determined that moving the word "only" would clarify the regulations.

Change: We have revised § 682.301(a)(3)(ii) to clarify that a Consolidation loan borrower qualifies for interest benefits if the loan application was received on or after August 10, 1993, but prior to November 13, 1997 and if the loan consolidates only subsidized Stafford loans.

Comment: Numerous commenters representing lenders, guaranty agencies, servicers, and secondary markets recommended that § 682.301(a)(iii) be restructured to separately reflect the statutory provision governing the eligibility of Consolidation loans made on or after November 13, 1997 and on or after July 1, 2000 for interest subsidies. The commenters indicated that conflicting guidance has been disseminated since November 13, 1997 regarding the loan types that may comprise the subsidized portion of a Consolidation loan for interest subsidy purposes, specifically whether it includes all subsidized FFEL loans or only subsidized Stafford loans. These commenters suggest that the final regulations should clarify that lenders are permitted to follow either of these two approaches for loans made on or after November 13, 1997 and prior to July 1, 2000. The commenters further recommended that the final regulations should clarify that any regulatory provision authorizing use of either approach may be implemented earlier than July 1, 2000.

Discussion: We understand that lenders may have received differing guidance on the scope of the interest subsidy available to FFEL Consolidation loan borrowers after the enactment of the Emergency Student Loan Consolidation Act of 1997 (Pub. L. 105–78). However, we have identified only a small subset of borrowers, specifically subsidized Consolidation loan borrowers who include their Consolidation loans in a subsequent Consolidation loan, as potentially affected by the difference in guidance. The commenters did not present any evidence that the differing guidance for this very small group of borrowers represents a problem. We do not believe that this speculative small problem necessitates making a change in the regulations. However, we remind lenders that we are available to provide technical assistance on a case-by-case basis should it be necessary.

Change: None.

Section 682.401—Basic Program Agreement

Comment: Several commenters recommended that § 682.401(b)(5)(i) be revised to remove reference to an "application" as it regards the borrower's right to indicate a preferred lender and instead include a reference to other information submitted during the loan origination process. The commenters pointed out that there is not, under the MPN process, a specific document entitled "application."

Discussion: We agree with the commenters. The item allowing the borrower to indicate a preferred lender is now contained on the MPN.

Change: We have revised § 682.401(b)(5)(i) to delete the word "application" and replace it with "in other written or electronic documentation submitted during the loan origination process."

Comment: Several commenters recommended that § 682.401(b)(5)(ii)(D) be removed to eliminate the requirement that the borrower provide information from the school demonstrating the borrower's eligibility for the loan and providing the maximum loan amount that the student may borrow. The commenters noted that this data flow is inconsistent with changes made to the HEA by the 1998 Amendments.

Discussion: Although the HEA no longer requires the student to provide, through the school, information on the student's eligibility for the loan, the school must still provide the loan amount. We will revise the regulations to reflect this change.

Change: We have revised § 682.401(b)(5)(C) (formerly § 682.401(b)(5)(D)) to indicate that the borrower must provide to the lender information from the school on the maximum amount that may be borrowed by or on behalf of the student.

Section 682.406—Conditions of Reinsurance Coverage

Comment: One commenter representing a guaranty agency pointed out that this section does not reference the reduced rebate fee on Consolidation loans that was effective for Consolidation loans based on applications received on or after October 1, 1998 through January 31, 1999. The commenter noted that the current regulations indicate that the interest payment rebate fee of 1.05 percent applies to all Consolidation loans disbursed on or after October 1, 1993. The 1998 Amendments reduced the fee to 0.62 percent for loans made on applications received from October 1, 1998 through January 31, 1999.

Discussion: We agree with the commenter that the regulations should reflect the reduced rebate fee that applied to Consolidation loans based on applications received from October 1, 1998 through January 31, 1999.

Change: We have revised § 682.406 to incorporate the reduced fee of 0.62 percent on Consolidation loans for this period.

Section 682.414—Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Comment: Many commenters representing lenders, guaranty agencies, servicers, and secondary markets recommended that the regulations be changed to clearly state that returning a true and exact copy of the original promissory note to the borrower has the same standing as the original promissory note. The commenters suggested that the regulations should be revised to indicate that the true and exact copy shall be admissible as evidence in all state and federal courts notwithstanding any provision of state law to the contrary. The commenters further suggested that the regulations reflect that the lender may send a notice to the borrower in place of the original MPN when a loan made under an MPN is paid in full by or on behalf of the borrower. The commenters stated that they believe that sending the notice effectively preempts any state law requiring the lender to send the borrower the original or a copy of the promissory note and recommended that the Secretary provide an explanation of this position in the final regulations to ensure that this preemption is fully understood.

Discussion: Section 432(m)(1)(D) of the HEA, as added by the 1998 Amendments, specifically states that notwithstanding any other provision of law, each loan made under an MPN shall be separately enforceable in all Federal and State courts on the basis of an original or copy of the MPN. Therefore, the statute itself has the effect of preempting state law and it is not necessary for the Secretary to regulate further in this area. The regulations also allow the lender to send a notice to a borrower that informs the borrower that the loan is paid in full. Indeed, this approach must be used with the MPN process, which provides for the making of multiple loans with different repayment dates and which may be held by different loan holders using a single note.

Change: None.

FFEL and Direct Loan Programs

Sections 682.200 and 685.102—Definition of Estimated Financial Assistance

Comment: One commenter representing a school stated that the different treatment of veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code and national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (Americorps) in determining a student's eligibility for subsidized FFEL and Direct Loan program loans and in determining a student's eligibility for unsubsidized loans is administratively burdensome to schools. To reduce the administrative burden on schools, the commenter recommended that we treat all resources the same way for all Title IV programs. Another commenter representing FFEL guaranty agencies noted the discrepant treatment between subsidized and unsubsidized loans as it applies to Americorps benefits and encouraged the Secretary to pursue a legislative change that would allow schools to exclude Americorps benefits when determining a borrower's eligibility for unsubsidized, as well as subsidized, FFEL and Direct Loan program loans.

Discussion: We realize that the different treatment of veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code and Americorps benefits in determining a student's eligibility for subsidized FFEL and Direct Loan program loans and in determining a student's eligibility for unsubsidized loans complicates award packaging and may be administratively burdensome to schools. However, this different treatment is required by Section 480(j) of the HEA.

Change: None.

Comment: A commenter pointed out that there are two versions of the Montgomery GI Bill—active duty and reserve—and suggested that it would be helpful to clarify that Chapter 30 of Title 38 of the United States Code is the active duty version.

Discussion: We agree with this suggestion.

Change: We have revised the definition of estimated financial assistance in §§ 682.200(b) and 685.102(b) to clarify that Chapter 30 of Title 38 of the United States Code is the active duty version of the Montgomery GI Bill.

Sections 682.204 and 685.203—Loan Limits

Comment: One commenter representing a school suggested an alternative method for determining prorated loan amounts instead of the method proposed in the NPRM. The alternative method recommended by the commenter included looking at the maximum annual loan limit, dividing by the number of terms in the year, and then multiplying by the number of terms during which the borrower was enrolled half time or more.

Another school commenter believed that the rationale for prorating the loan amounts of graduating seniors in a program of undergraduate education is unclear. This commenter noted that the statute indicates that "if such student is enrolled in a program of undergraduate education which is less than one academic year," proration is required. The commenter did not believe that a student who is in the final term of a program of undergraduate education that is greater than one academic year meets this criteria. This commenter also pointed out that borrowers other than graduating seniors may be eligible to receive up to the full applicable annual loan limit depending upon costs and other financial assistance regardless of whether or not the borrower is enrolled less than full-time or for one term only. The commenter believes that the Department should be concerned about overborrowing before the borrower reaches the final term if the rationale for prorating the loan amounts of graduating seniors is to ensure that loan amounts do not unnecessarily inflate debt levels.

Another commenter representing a school observed that the proposed regulations do not provide for consistent treatment of loan proration for programs or remainder of programs of less than an academic year. The commenter believes the regulations contradict the language in the 1998 Amendments that specifically requires the use of semester, trimester, quarter, or clock hours when prorating the loan limits for programs or portions of programs that are less than a full academic year. This commenter stated that the regulations should reflect the HEA by prorating the total amount the student may borrow for a program of study that is less than a full academic year in length or a portion of a program that is less than a full academic year in length by using the relationship of the program credit to that of a full academic year. The commenter believes that this simplified proration should be used for all years of undergraduate students applied to the appropriate full academic year limits.

Discussion: Although we appreciate the suggestion of an alternative method for loan proration, the loan proration requirements, including the method of calculating prorated loan amounts, is statutory. As a result, the regulations mirror the statute as closely as possible, and alternative methods of calculation cannot be considered without statutory change. The application of loan proration to borrowers in their final term of their undergraduate programs is also statutory and was retained by the 1998 Amendments. The approach to loan proration for programs or portions of programs of less than an academic year recommended by the final commenter would result in some students receiving a full annual loan limit for a program that is less than an academic year as that term is defined in statute. The 1998 Amendments clarified that annual loan limits are authorized for an academic year as that term is defined in section 481(a)(2) of the HEA. The definition contains a minimum standard of instructional time and academic coursework. A program that does not meet both of these statutory standards for an academic year is clearly less than an academic year, and students enrolled in such a program are not eligible to receive a full annual loan amount. The strictly proportional calculation recommended by the commenter would result in a full annual loan amount for students in programs that meet the academic coursework standard of the definition in section 481(a)(2) of the HEA, but do not meet the standard for instructional time. We do not believe that this result would be consistent with Congressional intent. A proportional loan amount calculated as a ratio of the academic credit to the academic year is used for remaining portions of programs of less than an academic year. Under these circumstances, the borrower is completing a program that is longer than an academic year and therefore examining the remaining portion of the program against both standards of the academic year is not applicable.

Change: None

Comment: Several commenters pointed out that § 682.204 (a)(2) of the proposed regulations addressed students enrolled in one-year programs with less than a full academic year remaining, but did not cover remaining balances of less than an academic year for other programs.

Discussion: The commenters are correct that this section does not address students enrolled in programs of study with less than a full academic year remaining. Rather, it addressed only students in one-year programs of study with less than an academic year remaining. We believe that revising the regulations to include a provision for students in remaining balances of programs, as the commenters suggest, will satisfactorily address both groups of students.

Change: We have revised §§ 682.204(d)(2) and 685.203(c)(2) to provide for an additional unsubsidized annual Stafford loan amount for students enrolled in programs of study with less than a full academic year remaining to complete the program. We have deleted reference to a one-year program with less than a full academic year remaining in §§ 682.204(d)(2) and 685.203(c)(2).

Sections 682.209 and 685.207—Grace Period for Military Service

Comment: Several commenters representing FFEL lenders, servicers, and guaranty agencies pointed out that the preamble discussion in the NPRM indicated that borrowers who qualified for the exclusion of certain periods of service in the Armed Forces from the six-month grace period would be required to re-enroll within 12 months of their return from active duty service. While the commenters agreed that 12 months may be a reasonable amount of time to re-enroll, they noted that the requirement was not included in the proposed regulations and requested that we not limit the period to 12 months in the final regulations. A commenter representing a school supported our acknowledgement that some borrowers may need more time than others to re-enroll in the next available regular enrollment period and the proposal to restore the full six-month grace period to borrowers whose loans were in the grace period when the borrowers were called to active duty.

Discussion: The commenters are correct that the proposed regulations did not include the requirement that the period necessary for a borrower to resume enrollment at the next available regular enrollment period when the borrower returns from active duty service be limited to 12 months. As discussed in the preamble to the NPRM, the time period in which a borrower needs to re-enroll in the "next available regular enrollment period" after returning from active duty service may need to be longer for some borrowers than others, especially if the borrower is pursuing a non-traditional academic program, and given the fact that the borrower may not re-enroll in the same program when returning from active duty. The Secretary generally believes that twelve months allows more than ample time for the majority of borrowers to re-enroll and provides a reasonable limit (within the three-year total exclusion limitation) on the amount of time that may be excluded from a borrower's six-month grace period. However, in keeping with the agreement reached during negotiated rulemaking, the Secretary has not included this limitation in the regulations.

Change: None.

Sections 682.210 and 685.204—Deferment

In-School Deferment

Comment: Commenters representing FFEL lenders and guaranty agencies suggested that the rules regarding the end date for an in-school deferment be removed from § 682.210(a) because paragraph (a) provides general information applicable to all deferments and should not contain information specific to a particular deferment. The commenters believed that information related to the in-school deferment end date should be contained within the in-school deferment section in § 682.210(c)(3). The commenters also requested that we revise § 682.210(c)(3) to reflect that valid enrollment information may be received by lenders using an electronic format rather than a form as the proposed regulatory language suggests.

Discussion: We do not agree with the commenters that information about the end date for an in-school deferment should be removed from § 682.210(a). We believe this information is correctly placed because it is contained in a provision that outlines when authorized deferment periods end. However, we agree that the process information included in the proposed regulatory language would be better placed in § 682.210(c)(3). We also agree with the commenters that the proposed regulatory language in § 682.210(c)(3) should be revised to reflect that valid enrollment information may be received by lenders electronically.

Change: We have moved the in-school deferment process information from § 682.210(a)(6)(iv) to § 682.210(c)(3). We also believe that the revisions to § 682.210(c)(3) accommodate the use of electronics to provide valid enrollment information.

Comment: A commenter representing a guaranty agency requested clarification that both FFEL lenders, and the Secretary for Direct Loans, may process an in-school deferment based on student status information that does not come directly from the borrower's school. The commenter pointed out that the proposed regulatory language did not make it clear that the student status information may be received directly or indirectly from the school.

Discussion: As stated in the preamble to the NPRM, a borrower's FFEL lender, or the Secretary for Direct Loans, may determine that a borrower is eligible for an in-school deferment based upon student status information received from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis. The lender or the Secretary could receive school-provided information directly, through the SSCR process of the National Student Loan Data System (NSLDS), or from a third-party servicer. Regardless of whether the lender or the Secretary receives the student status information directly or indirectly, the information must originate with the school. We agree with the commenter that the regulations should reflect the fact that student status information may be received directly or indirectly from the school.

Change: We have revised §§ 682.210(c)(1)(iii) and 685.204(b)(1)(iii)(A)(*3*) to reflect that student status information received directly or indirectly from a school may be used to determine a borrower's in-school deferment eligibility.

Comment: A commenter representing a school supported the proposal to require notice to borrowers of their option while they are in school to pay the interest that accrues on an unsubsidized loan during an in-school deferment period or cancel the deferment entirely and pay on the loan. The commenter requested that we also require that the notice include information about the consequences of selecting those options—in particular that paying accruing interest during the deferment or paying on the loan rather than taking the deferment may result in lower total payments over the life of the loan. Another commenter representing a guaranty agency stated that the proposed regulatory language did not provide sufficient guidance to lenders about how to deal with what may appear to be due diligence gaps that may result from a borrower electing to cancel an in-school deferment that was automatically applied by the lender and then not making the required payments on the loan. The commenter noted that during the negotiated rulemaking sessions we stated that lenders were not allowed to apply an administrative forbearance in these situations and requested that we make this point more explicit in the regulations.

Discussion: We agree with the commenter that it would be helpful to borrowers if information about the consequences of the options was included in the notice sent to borrowers when an in-school deferment is applied automatically. For example, the notice should explain to borrowers that unpaid interest that accrues on their unsubsidized loans will be capitalized at the end of the deferment period and inform them that by paying the interest during the deferment period they may reduce the total amount they pay over the life of the loan.

In response to the commenter who requested that we state more explicitly how lenders should deal with possible due diligence gaps that may result from a borrower electing to cancel an in-school deferment that was automatically applied by the lender and then not making the required payments on the loan, we defer to the agreement reached by the negotiated rulemaking committee that we not regulate the action lenders must take in this situation. As discussed during negotiations, this decision seems appropriate given the infrequent nature of these situations. We expect lenders to take actions appropriate to the unique circumstances of each borrower's situation and remind lenders that we are available to provide technical assistance on a case-by-case basis should it be necessary.

Change: We have revised § 682.210(c)(2) to reflect that the notice a lender sends to a borrower when an in-school deferment is applied automatically must include an explanation of the consequences of the options presented to the borrower in the notice.

Unemployment Deferment

Comment: Several commenters responded to the Secretary's request for comment as to whether the minimum documentation items for determining a borrower's eligibility for an unemployment deferment based on the borrower's eligibility for unemployment insurance benefits should be included in the final regulations. Generally, commenters representing FFEL lenders, servicers, and guaranty agencies did not believe that minimum documentation requirements should be prescribed in regulations and supported no change to the proposed regulations. One of the commenters representing servicers stated that unless there is evidence showing that all states include certain data elements on check stubs or other types of documentation related to eligibility for unemployment insurance benefits, the final regulations should not include minimum documentation requirements. A commenter representing a guaranty agency did, however, support prescribing minimum documentation requirements in regulations provided that the requirements were developed with community involvement. Another commenter representing credit unions stated that the minimum documentation items discussed by the negotiated rulemaking committee and presented in the preamble to the NPRM appeared reasonable, but did not comment on whether the items should be prescribed in regulations.

Discussion: In response to the overwhelming support for not prescribing minimum documentation requirements in the regulations, we have decided not to make changes in the final regulations. We are basing this decision on the fact that a borrower must provide evidence of his or her eligibility for unemployment insurance benefits to his or her lender, or the Secretary for Direct Loans, in order to qualify for an unemployment deferment based on eligibility for unemployment insurance benefits. As agreed during negotiations, the evidence of a borrower's eligibility for unemployment insurance benefits must prove that the borrower is eligible to receive unemployment insurance benefits for the period for which he or she is requesting an unemployment deferment. We acknowledge that there are no uniform documentation requirements for unemployment insurance benefits. However, to fulfill the documentation requirement for the unemployment deferment, we believe that, at a minimum, the documentation should include the borrower's name, address, and social security number and the effective dates of the borrower's eligibility to receive unemployment insurance benefits.

Change: None.

Comment: Commenters representing FFEL lenders, servicers, and guaranty agencies expressed their belief that the regulatory requirement that the unemployment deferment end date be within six months of the certification date should apply regardless of whether the deferment is being granted as a result of the borrower submitting evidence of his or her eligibility for unemployment insurance benefits or as a result of the borrower submitting a written certification of eligibility (i.e., a completed unemployment deferment request form).

Discussion: We agree with the commenters. However, we note that the reference to "certification date" is not applicable if a deferment is granted based on a borrower's submission of evidence of his or her eligibility for unemployment insurance benefits. In this case, the unemployment deferment end date would be within six months of the date the borrower submits evidence of his or her eligibility for unemployment insurance benefits.

Change: We have revised § 682.210(h) to reflect that the unemployment deferment end date provision applies to both methods by which a borrower may qualify for an unemployment deferment.

Sections 682.211 and 685.205—Forbearance

Comment: Commenters representing FFEL lenders, servicers, and guaranty agencies expressed their belief that the final regulations should accurately and consistently reflect the elimination of the requirement that forbearance terms be agreed to in writing. The commenters pointed out that the requirement had been removed from § 682.211(b) but had not been removed from § 682.211(c) of the proposed regulations.

Discussion: The 1998 Amendments eliminated the requirement that the borrower's request for forbearance be in writing; however, the 1998 Amendments did not eliminate the requirement that forbearance terms be agreed to in writing. Section 428(c)(3)(A)(i) of the HEA continues to require that forbearance terms be agreed to in writing. A forbearance changes the repayment terms on the borrower's loan and therefore needs to be agreed to in writing. The change we proposed to § 682.211(b) to remove the requirement that forbearance terms be agreed to in writing is incorrect. Both § 682.211(b) and § 682.211(c) need to accurately reflect that forbearance terms must be agreed to in writing. The only reference in the regulations to a borrower's written request for a forbearance, contained in § 682.211(h), is being deleted from the regulations.

Change: We have revised §§ 682.211(b) and (c) to accurately and consistently reflect that forbearance terms must be agreed to in writing.

Sections 682.401 and 685.402—Master Promissory Note

Comment: A commenter representing a guaranty agency requested that we change the proposed regulatory language in § 682.401(b)(5) to ensure that if a student or parent borrower does not indicate a choice of lender on the promissory note or application a lender will not be assigned automatically to the borrower. The commenter was concerned that borrowers would not be entitled to choose their lenders.

Discussion: The FFEL promissory notes and applications have always given the borrower the option to choose a lender. That option will not be impacted by the implementation of the Master Promissory Note (MPN). If a borrower does not provide a choice of lender on the promissory note, a lender will not be assigned. The borrower must work with the school to choose a lender. Section 432(m)(1)(B) of the HEA requires that the borrower be permitted to choose his or her lender.

Change: None.

Comment: A commenter representing servicers in the FFEL Program requested that we make a conforming change in § 682.401(d)(3) to reflect that under the MPN process guaranty agencies are no longer bound to the use of a common application form.

Discussion: While it is true that an application form is no longer required for Stafford loans in the FFEL Program, section 432(m)(1)(A) of the HEA retains a reference to common application forms, as well as including references to promissory notes and the MPN. We believe that the regulations should retain reference to common application forms because a common PLUS loan application remains in use until an approved MPN for PLUS loans can be developed and a common Consolidation loan application will be used indefinitely. By mirroring the statutory language in the final regulations, we believe that all possible options are covered.

Change: We have revised § 682.401(d)(3) to more closely reflect the statutory language that governs the forms guaranty agencies must use.

Comment: A commenter representing a consumer organization expressed the view that the proposed regulations related to the criteria a school must meet to be authorized to use the multi-year feature of the MPN were too broadly stated and suggested changes that included requiring the Secretary's written authorization for multi-year use of the MPN by a school. A commenter representing a two-year public institution wanted to know what other criteria the Secretary would use to approve the use of the MPN by schools other than four-year and graduate/professional schools. Another commenter representing a credit union suggested that this criteria should be the same as that used for four-year and graduate/professional schools.

Discussion: We have carefully considered the suggested language recommended by the commenter who believed that the proposed regulations governing the criteria a school must meet to be authorized to use the multi-year feature of the MPN are too broad and agree with a couple of the commenter's proposed changes. Specifically, we agree with more explicitly linking approval to use the multi-year feature of the MPN to the required criteria listed in the regulations and reinforcing the fact that the criteria are not all inclusive and will be applied, as appropriate, for the type of institution. However, we do not agree with the proposal to require the Secretary's written authorization for multi-year use of the MPN by every school.

In response to the request for information about the criteria we will use to approve the use of the MPN by schools other than four-year and graduate/professional schools, we repeat our statement in the preamble to the NPRM stating our intention to establish and announce criteria and a process that we will use after publication of these final regulations.

Change: We have revised §§ 682.401(d)(4)(ii) to more specifically link approval to use the multi-year feature of the MPN to the required criteria and reinforce the fact that the listed criteria are not all inclusive. The Direct Loan regulations already reflect these policies and do not need to be changed.

Comment: A commenter representing a consumer organization requested that we confirm that borrowers are entitled to assert a defense against repayment of any one of the loans made under an MPN. This commenter also expressed concern that the 10-year limit on the use of a single MPN established in the proposed regulations is too long a period from a consumer standpoint and requested that we change the maximum period to five years. The commenter expressed the belief that the 10-year period may serve the financial community well but does not serve young student borrowers well because they are subject to making unwise decisions, uneducated about how to cancel promissory notes, and potential targets for fraud and abuse. The commenter believed that the minimal bother of signing a new MPN after five years was far outweighed by the benefit of ensuring better borrower control of the loan process and education about the loan obligation.

Discussion: As the regulations specify, each loan made under an MPN is enforceable in accordance with the terms of the MPN. Therefore, a borrower would be entitled to assert a defense against repayment on each loan made under the MPN, based on any act or omission of a school attended by the student that would give rise to a cause of action against the school under applicable state law.

In response to the commenter's concern about the fact that an MPN may be valid for a period of up to 10 years, we agree with the commenter that ensuring borrower control of the loan process and understanding of the loan obligation are of utmost importance and that lengthy gaps in time between obtaining loans under an MPN may not always support these objectives. The Secretary is committed to monitoring use of the MPN with regard to these concerns and to evaluating options for changes to the 10-year MPN standard that is in these final regulations.

Change: None.

Comment: A commenter representing servicers in the FFEL Program requested that we change the proposed regulations to allow the 10-year MPN period to be based on either the date the borrower signs the MPN or the date the lender receives the MPN for processing if the borrower fails to date the MPN.

Discussion: We do not agree with the commenter's proposed change because we do not believe it is desirable for lenders or the Secretary to accept a signed MPN that has not been dated by the borrower. Acceptance of an MPN that has not been dated by the borrower may negatively affect the borrower and possibly threaten the legal enforceability of the MPN.

Change: None.

Comment: A commenter representing a guaranty agency noted that the proposed MPN regulatory language indicated that we have begun development of an MPN for PLUS loans and encouraged us to work with FFEL Program participants to clarify provisions and maximize benefits for borrowers. The commenter also asked if it is our intention to allow a PLUS MPN to cover all loans that a parent borrower obtains on behalf of all of that parent's dependent children or require a separate MPN for loans made on behalf of each dependent child. Another commenter representing a different guaranty agency requested that references to parent borrowers in the provisions related to the MPN in the Direct Loan Program regulations be removed until an MPN for PLUS loans is approved.

Discussion: Development of an MPN for PLUS loans has begun. To date, work groups have been involved in the initial tasks associated with developing a PLUS MPN; however, as the development expands beyond this stage, we intend that FFEL and Direct Loan program participants and other interested parties will have input into the process. We acknowledge that there are special operational considerations that need to be taken into account with an MPN for PLUS loans. As we work with program participants and others to develop the PLUS MPN, we will address issues such as the applicability of the PLUS MPN to loans made for one or more dependent children of a parent borrower. We believe that it is appropriate to include reference to parent borrowers in the regulations related to the MPN since approval of an MPN for PLUS loans will occur in the near future.

Change: None.

Comment: Commenters representing two different guaranty agencies requested changes in the proposed regulations that prescribe when an FFEL or Direct Loan program school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from the borrower. One commenter suggested that the FFEL provision indicates that a borrower must complete a new promissory note for each academic year. The other commenter wanted the Direct Loan provision to indicate that a borrower must complete a new promissory note for each period of enrollment.

Discussion: In the FFEL program, loans are made in accordance with the period of enrollment certified by the school, and an MPN is defined as a promissory note under which a borrower may receive loans for a single period of enrollment or multiple periods of enrollment. Therefore, at an FFEL Program school that is not authorized by the Secretary for multi-year use of the MPN, a borrower must complete a new promissory note for each period of enrollment. In the Direct Loan Program, however, loan origination can be tracked to an academic year, and an MPN is defined as a promissory note under which a borrower may receive loans for a single academic year or multiple academic years. Therefore, at a Direct Loan Program school that is not authorized by the Secretary for multi-year use of the MPN, a borrower must complete a new promissory note for each academic year. We believe that the operational differences in the FFEL and Direct Loan programs necessitate differences in the regulations in this area.

Change: None.

Comment: We received several comments related to the confirmation process or processes that schools which are authorized to use a single MPN as the basis for multiple loans obtained by a particular borrower must develop and document along with the FFEL lender or the Secretary to ensure that a borrower wants subsequent loans made under the MPN.

Commenters representing the legal services negotiators on the negotiated rulemaking committee, a consumer organization, and a school association expressed their strong opposition to authorizing the implementation of confirmation processes that allow passive notification with a negative option (i.e., the borrower must take the initiative to reject a new loan under an MPN based on a notice) and requested that we reconsider our approval of passive confirmation processes. The commenters requested that we require confirmation processes that mandate a positive act by the borrower that, at a minimum, identifies the borrower as the initiator of the loan and confirms the type and amount of the new loan, as well as the total amount borrowed. The commenters suggested that properly implemented electronic signatures and written signatures would be acceptable confirmation methods. These commenters expressed their belief that failure to affirmatively solicit a borrower's authorization before originating new loans is an open invitation for abuse and counters the collective goal of encouraging responsible borrowing by informed students. The commenters stated that the technology necessary to develop active confirmation processes that impose a minimal burden on borrowers, schools, lenders, and the Secretary exists, and in some cases (i.e.; PIN numbers), has been in use for 20 years. The commenters also suggested that the legal enforceability of loans made using the multi-year feature of the MPN without active confirmation processes may be questioned in the future when courts will be faced with whether to permit enforcing collection of loans that were neither actively requested nor clearly and affirmatively confirmed by the borrower.

A commenter representing servicers in the FFEL Program requested that we clarify that schools and lenders may utilize passive confirmation (i.e., notification) until such time as the proper processes and systems enhancements can be made by schools and lenders to implement active confirmation processes. Another commenter representing a school suggested that we practice restraint in the area of confirmation. This commenter stated that requiring confirmation once a year should be sufficient since borrowers always have the option of canceling or returning all or a portion of a loan.

Discussion: We are aware that there are strong differing views related to the implementation of the confirmation process required by statute that schools and lenders or the Secretary must develop and document to ensure that a borrower wants subsequent loans under an MPN. We also acknowledge the concerns of the commenters representing consumers regarding confirmation processes that do not require a positive action by a borrower to obtain subsequent loans under the MPN. While we do not agree necessarily that the legal enforceability of loans made in connection with a confirmation process that does not require a positive action by the borrower could be open to challenge, it is the Secretary's goal to maintain and enhance a borrower's control over the lending process in the MPN environment. To achieve this goal, we would like to reiterate our intention to work with students, schools, lenders, guaranty agencies, and other interested parties to develop and implement confirmation processes that make use of the best available technology in order to maintain and enhance borrower control over the lending process, at the same time minimizing burden to schools and lenders. While it is true that much of the technology needed to develop enhanced borrower-control mechanisms exists today; lenders, schools, servicers, and the Department need time to evaluate and determine how best to integrate available technologies into the current student loan delivery systems and procedures. Shortly after these final regulations are published, we will begin discussions with the affected parties to meet these goals.

At this time, lenders and schools may follow the guidance in the Department's Dear Colleague Letters—GEN–98–25, November 1998 and GEN–99–08, February 1999—in developing and documenting confirmation processes. As technologies that enhance borrower control over the lending process are developed or adapted for implementation, and different methods of confirmation are tested, we will continue to issue guidance regarding confirmation processes. Any guidelines will be issued in accordance with applicable requirements of the Administrative Procedure Act. As stated in the preamble to the NPRM, after evaluating various confirmation processes, it is our ultimate plan to develop regulations governing confirmation processes.

Change: None.

Sections 682.402 and 685.215—Unpaid Refund Discharge

Comment: One commenter representing a guaranty agency suggested that the use of the term "initial determination" in the provision that describes the additional documentation a borrower must provide when requesting a review of a guaranty agency's determination on an unpaid refund discharge request could be problematic if the borrower appeals the guaranty agency's decision more than once. The commenter believed that the wording of the proposed regulation could leave a guaranty agency vulnerable to repeatedly having to examine the same documentation submitted on second and subsequent appeals. The commenter requested that we change the term "initial determination" to "any prior determination" to clarify that in all cases a borrower may only appeal a determination when the borrower has new documentation that was not previously reviewed by the guaranty agency.

Discussion: We agree with the commenter.

Change: We have revised § 682.402(l)(5)(vii)(A) to reflect that a borrower may request a review of a guaranty agency's prior determination on an unpaid refund discharge request only if the borrower has additional documentation supporting the borrower's eligibility that was not considered in any prior determination.

Comment: None.

Discussion: We have identified an inadvertent omission in the provisions governing how a guaranty agency or the Secretary would determine the amount eligible for discharge in cases in which information showing the exact refund amount that was not made by the school or the refund formula that should have been used by the school to calculate a refund is not available. The guaranty agency or the Secretary would use one of two surrogate formulas to calculate the amount eligible for discharge depending on when the student failed to attend, withdrew, or was terminated. In the proposed regulations, both surrogate formulas neglected to take into account that, according to refund policy, borrowers who completed 60 percent or more of the loan period would not have been entitled to a refund and in turn would not be eligible for an unpaid refund discharge.

Change: We have revised §§ 682.402(o)(2) and 685.215(d)(2) to correctly reflect in the surrogate formulas used to determine discharge amounts that borrowers who completed 60 percent or more of the loan period would not be eligible for an unpaid refund discharge.

Sections 682.603, 682.604, 685.301, and 685.303—Disbursement Exemptions

Comment: Commenters representing FFEL guaranty agencies suggested that we change the proposed regulations to reflect that a school must cease to certify or originate loans based on authorized cohort default rate related disbursement exemptions no later than 30 days after the date the school receives notification that the school does not meet the qualifications for the exemptions rather than 30 days after the date the school is notified that it does not meet the qualifications for the exemptions. The commenters believe that the phrase "receives notification" is preferable to the phrase "is notified" because it eliminates issues of timing.

Discussion: In either case, schools would have more than ample time within which to comply with the provision. However, making the change the commenters requested would be consistent with the regulations in § 668.17 governing cohort default rates and which use the date the school receives the notification.

Change: We have revised §§ 682.603(g), 685.301(b)(8)(ii), and 685.303(b)(4)(ii) to reflect that a school must cease to certify or originate loans based on authorized cohort default rate related disbursement exemptions no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to longer meet the qualifications for the exemptions.

Comment: One commenter representing a guaranty agency requested that we clarify what we mean by the term "study abroad program" in the provisions describing the disbursement exemptions that apply to schools certifying or originating loans to cover a student's cost of attendance in a study abroad program. Another commenter representing FFEL servicers suggested that we change the term "postsecondary home school" to "home institution." The commenter stated that the term "home school," even in conjunction with the term "postsecondary," is misleading and suggested that we use the term "home institution" because it has a long established meaning for purposes of student financial assistance in connection with approved study abroad programs in § 682.207(b)(1)(v)(C). A third commenter representing a higher education association that promotes study abroad programs stated that there is confusion over the applicability of the disbursement exemptions for schools certifying or originating loans to cover the cost of attendance in study abroad programs. Specifically, the commenter requested that we clarify that schools certifying or originating loans to cover the cost of attendance in study abroad programs may qualify for disbursement exemptions under either of the two cohort default rate criteria included in the proposed regulations.

Discussion: The disbursement exemption provisions govern all participating schools that meet specific criteria. Included under these provisions are schools certifying or originating loans to cover the cost of attendance for students participating in study abroad programs. As pointed out by one of the commenters, these schools have been consistently referred to in regulations as "home institutions." Students in study abroad programs complete a portion or portions of their study in a country other than the United States.

The commenter representing a higher education association that promotes study abroad programs is correct that a school that is a home institution certifying or originating a loan to cover the cost of attendance in a study abroad program may qualify for the multiple disbursement and delayed disbursement or delivery exemptions based on either of the two cohort default rate criteria included in the proposed regulations. Under the multiple disbursement exemption, the school would be eligible to disburse loan proceeds in one installment if—

- The loan period is equal to or shorter than one semester, one trimester, one quarter, or, for nonterm-based schools or schools that use non-standard terms, four months; and
- The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available.

Additionally, the school would be eligible to disburse loan proceeds in one installment to cover the cost of attendance in a study abroad program for a loan period of any length if the school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available. Under the exemption for delayed delivery or for disbursement for first-year, first-time borrowers, a school certifying or originating a loan to cover the cost of attendance in a study abroad program may deliver or disburse loan proceeds to first-year, first-time borrowers without a 30-day delay if—

- The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available; or
- The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available.

Change: We have revised §§ 682.604(c)(5), 682.604(c)(10), 685.301(b)(8)(i)(B), and 685.303(b)(4)(i)(B) to reflect consistent use of the term "home institution" when referring to a school certifying or originating a loan to cover a student's cost of attendance in a study abroad program.

Comment: To be consistent with statutory language, commenters representing guaranty agencies recommended that we replace the term "loan period" with the term "enrollment period" in the regulation that specifies the conditions for an exemption to the multiple disbursement requirement for schools with an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available. Another commenter representing a guaranty agency suggested that we clarify in the same provision that the reference to a loan period that is four months in length applies only to non term-based schools.

Discussion: While the commenters are correct that statute uses the term "enrollment period," we have used the term "loan period" to be consistent with the wording in the other provisions of the FFEL and Direct Loan program regulations into which this provision has been added and therefore, decline to make the commenters' suggested change. We also note that the terms "enrollment period" and "loan period" are interchangeable.

We agree with the suggestion that we clarify that loan periods that are four months or less in length apply in the case of non term-based schools. We also note that this provision would apply to schools that use non-standard terms.

Change: We have revised §§ 682.604(c)(10)(i)(A) and 685.301(b)(8)(i)(A)(*1*) to reflect that loan periods that are four months or less in length apply in the case of non term-based schools and schools that use non-standard terms.

Sections 682.604 and 685.304—Counseling Borrowers

Comment: A commenter representing a guaranty agency requested that the proposed regulations be changed to reflect that schools are not required to conduct exit counseling with all student borrowers. The commenter maintained that only student borrowers who have a loan or loans entering repayment when the borrower ceases at least half-time enrollment are required to complete exit counseling and that borrowers who return to school but do not receive a new loan or loans are not subject to required exit counseling. This same commenter also suggested that the final regulations should allow a school to conduct exit counseling by mail at the request of a student borrower. The commenter believed that such a provision would accommodate student borrowers who know in advance that they will not be able to fulfill the exit counseling requirement.

Discussion: The commenter is correct in pointing out that there may be student borrowers in a school's population who reenroll in school after they have entered repayment on their subsidized and unsubsidized loans, and who do not obtain new subsidized and unsubsidized loans. While it's true that these student borrowers already have entered repayment on their subsidized and unsubsidized loans, we believe that it would be beneficial for most student borrowers in this position to complete exit counseling again because they would receive up-to-date repayment information and refresh their knowledge about options such as forbearance, deferment, and consolidation. However, we acknowledge that it may not be possible for schools to identify these student borrowers. We believe that the regulations offer the flexibility to permit schools that can identify these student borrowers and choose to require exit counseling for these borrowers to do so.

We do not agree with the commenter's suggestion that schools should be allowed to mail counseling materials to student borrowers at their request. While we appreciate that attending an in-person exit counseling session may be difficult for some student borrowers, we believe that allowing them the option to forgo participating in exit counseling conducted by their schools in person, by audiovisual presentation, or by interactive electronic means conflicts with the statute. The variety of authorized exit counseling methods provides schools with the necessary flexibility to accommodate the specific needs of their student population and meet the statutory requirements. Further, an alternative to conducting exit counseling in person, by audiovisual presentation, or by interactive electronic means is allowed for two categories of student borrowers who generally may not be able to complete exit counseling through one of the authorized methods. Schools may mail written counseling materials to student borrowers who are enrolled in a correspondence program or a study-abroad program approved for credit at the home institution. Schools also may provide exit counseling either through interactive electronic means or by mailing written counseling materials to student borrowers who withdraw without a school's knowledge or who fail to complete the exit counseling.

Change: None.

Comment: We received several comments related to schools providing exit counseling through interactive electronic means. One commenter representing a school requested that we reexamine the requirement that counseling through electronic means be interactive. The commenter believed that this was a very high standard and expressed uncertainty as to how electronically the school could ensure that the student borrower did anything more than open the message. This same commenter also requested that we explain what we mean by "electronic receipt" and questioned its necessity when a receipt is not required if a school sends counseling materials via U.S. mail. Another commenter representing a school recommended that student borrowers should have some allowance for errors in the final evaluation of whether or not they have successfully completed exit counseling through interactive electronic means. A third commenter representing another school suggested that we should provide web-based exit counseling for FFEL and Direct Loan program borrowers that would be linked to the NSLDS. In the commenter's proposal, student borrowers would benefit by being presented with a more complete and accurate picture of their total loan indebtedness and borrowers and schools would benefit by being relieved of the burdens of completing, collecting, and submitting the required personal data.

Discussion: As we discussed in the preamble to the NPRM, we purposely did not prescribe specific electronic means by which schools can provide initial and exit counseling to FFEL and Direct Loan program borrowers. During negotiated rulemaking, committee members representing schools pointed out that there were many different electronic means that schools could use to provide counseling and that new and improved electronic means are continually becoming available. At the same time, the committee agreed that it was important to ensure that the quality of the counseling that schools provide to student borrowers is enhanced rather than diminished by advancing technology. For these reasons, the proposed regulations specified that the electronic means a school uses to provide initial and exit counseling must be interactive, which at a minimum, requires a school to take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the counseling.

We believe that electronic counseling is equivalent to counseling that a school conducts in person—it is not equivalent to mailing written counseling materials, which is authorized as an alternative only in specific situations. Therefore, we do not consider it sufficient simply to ensure that the student borrower received and "opened" an electronic message that contained loan counseling materials. At the same time, we do not want to dictate to schools how they must design their electronic counseling so as to fulfill the regulatory requirement that the counseling be interactive other than to say that, by definition, the term "interactive" implies that feedback is provided by the student borrower at some point or points during the course of the counseling.

In response to the questions about electronic receipts, we would like to clarify that any time a school conducts initial and exit counseling by interactive electronic means, the school's documentation that it fulfilled the initial and exit counseling requirements for each student borrower must include proof that the borrower received the materials. As stated in the preamble to the NPRM, this does not mean that the school must receive a personal response from the student borrower. Instead, the school can accept an automatic electronic response acknowledging that the materials were received by the person to whom they were addressed. These automatic electronic responses, often called "receipts," are a feature of most electronic mail systems and are returned automatically to the sender when the recipient receives the message. As discussed during negotiated rulemaking, it is necessary to require proof that the student borrower received the materials sent electronically because, unlike materials sent via U.S. mail, there is no basic legal assumption that materials sent via electronic mail are delivered to the person to whom the materials were addressed.

We appreciate the interesting proposal for improving electronic exit counseling submitted by one of the school commenters. As we work to improve and integrate our systems, as well as service to our customers, we will consider the commenter's proposal that we provide web-based exit counseling for FFEL and Direct Loan program borrowers that would be linked to NSLDS.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations on pages 43438 and 43439 in the preamble to the NPRM.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.032, Federal Family Education Loan Program, and 84.268, William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising parts 682 and 685 as follows:

PART—682 FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.100 [Amended]

2. Section 682.100 paragraph (a)(2) is amended by removing "encourages", and by adding, in its place, "encouraged"; in paragraph (a)(4) by removing "other loans, including loans:,", and by adding, in its place, "loans"; by removing "and" before "Nursing"; and by adding "including Loans for Disadvantaged Students (LDS)", after "(HPSL)".

3. Section 682.100 paragraph (b)(2)(C) is amended by removing the semi-colon before "as".

4. Section 682.102 paragraph (a) is revised; paragraph (b) is removed and reserved; paragraph (d) is revised; and the Office of Management and Budget control number is revised to read as follows:

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan a student requests a loan by completing the Free Application for Federal Student Aid (FAFSA), or contacting the school, lender or guarantor. The school determines and certifies the student's eligibility for the loan. Prior to loan disbursement, the lender obtains a loan guarantee from a guaranty agency or the Secretary and the student completes a promissory note, unless the student has previously completed a Master Promissory Note (MPN) that the lender may use for the new loan.

(b) [Reserved]

* * * * *

(d) *Consolidation loan application.* To obtain a Consolidation loan, a borrower completes an application and submits it to the lender holding the borrower's FFEL Program loan or loans. If the borrower has multiple holders of FFEL Program loans, or if the borrower's single loan holder declines to make a Consolidation loan, or declines to make one with income-sensitive repayment terms, the borrower may submit the application to any lender participating in the Consolidation Loan Program. In the case of a married couple seeking a Consolidation loan, if at least one of the applicants has multiple holders, the applicants may submit the application to any lender participating in the Consolidation Loan Program. If both applicants have a single holder, only the holder for one of the applicants must be contacted for consolidation. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

§ 682.103 [Amended]

5. Section 682.103 paragraph (a) is amended by removing the first use of the term "programs".

6. Section 682.200(b) is amended as follows:

A. By amending the definitions of *Default* by revising paragraphs (1) and (2); *Estimated financial assistance* by revising paragraphs (1)(i), (2)(i)(B) and (C), and (2)(ii) and by adding (2)(iii).

B. By revising the definition of *Holder.*

C. In the definition of "Lender," by revising paragraph (5)(i) and by renumbering the second paragraph (5) as paragraph (6).

D. By adding a new definition "Master promissory note (MPN)" in alphabetical order.

E. In the definition of "Repayment period," in paragraph (1), by adding ",or 25 years under an extended repayment schedule,", after "10 years"; in paragraph (2), by adding "or 25 years under an extended repayment schedule,", after "10 years"; in paragraph (4), by adding ", or 25 years under an extended repayment schedule", after "10 years".

F. By adding the Office of Management and Budget control number.

§ 682.200 Definitions.

* * * * *

(b) * * *

Default.

* * * * *

(1) 270 days for a loan repayable in monthly installments; or

(2) 330 days for a loan repayable in less frequent installments.

* * * * *

Estimated financial assistance.

(1) * * *

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 and veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

* * * * *

(2) * * *

(i) * * *

(A) * * *

(B) PLUS loan amounts; and

(C) Private and state-sponsored loan programs;

(ii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined; and

(iii) For the purpose of determining eligibility for a subsidized Stafford loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code (Montgomery GI Bill—Active Duty) and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Holder. An eligible lender owning an FFEL Program loan including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

* * * * *

Lender.

* * * * *

(5) * * *

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any school or other party to secure applicants for FFEL loans, except that a lender is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program.

* * * * *

Master promissory note (MPN). A promissory note under which the borrower may receive loans for a single period of enrollment or multiple periods of enrollment.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

7. Section 682.201 is amended as follows:

A. By revising paragraph (a)(2).

B. By revising paragraph (c)(1); in paragraph (c)(2)(iii) by removing "(c)(1)(vi)", and by adding in its place, "(c)(1)(iv)"; and by removing paragraphs (c)(3) and (c)(4).

C. By adding a new paragraph (d).

D. By adding a new paragraph (e).

§ 682.201 Eligible borrowers.

(a) * * *

(2) In the case of any student who seeks an unsubsidized Stafford loan for

the cost of attendance at a school that participates in the Stafford Loan Program, the student must—

(i) Receive a determination of need for a subsidized Stafford loan; and

(ii) If the determination of need is in excess of $200, have made a request to a lender for a subsidized Stafford loan;

* * * * *

(c) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if the individual—

(i) On the loans being consolidated—

(A) Is, at the time of application for a Consolidation loan—

(*1*) In a grace period preceding repayment;

(*2*) In repayment status;

(*3*) In a default status and has either made satisfactory repayment arrangements as defined in applicable program regulations or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in § 682.209(a)(7)(viii);

(B) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(C) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted;

(ii) Certifies that no other application for a Consolidation loan is pending;

(iii) Agrees to notify the holder of any changes in address; and

(iv)(A) Certifies that the lender holds at least one outstanding loan that is being consolidated; or

(B) Applies to any eligible consolidation lender if the borrower—

(*1*) Has multiple holders of FFEL loans; or

(*2*) Has been unable to receive from the holder of the borrower's outstanding loans, a Consolidation loan or a Consolidation loan with income-sensitive repayment.

* * * * *

(d) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except that—

(1) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made;

(2) A borrower who receives an eligible loan after the date a Consolidation loan is made may receive a subsequent Consolidation loan; and

(3) A Consolidation loan borrower may consolidate an existing Consolidation loan only if the borrower has at least one other eligible loan made before or after the existing Consolidation loan that will be consolidated.

(e) In the case of a married couple, the loans of a spouse that are to be included in a Consolidation loan are considered eligible loans for the other spouse.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, and 1091)

8. Section 682.202 is amended as follows:

A. In paragraph (a)(1)(i) by removing "If" and by adding, in its place, "For loans made prior to July 1, 1994, if,".

B. In paragraph (a)(1)(ii)(B) by adding "and prior to July 1, 1994," after "October 1, 1992".

C. In paragraph (a)(1)(iii)(A) by removing "evidencing the loan".

D. In paragraph (a)(1)(iv) by adding "but before December 20, 1993," after "October 1, 1992".

E. By adding new paragraphs (a)(1)(v) through (a)(1)(viii).

F. In paragraph (a)(2)(iii) introductory text, by adding "and prior to July 1, 1994," after "October 1, 1992".

G. By adding new paragraphs (a)(2)(iv) and (a)(2)(v).

H. In paragraph (a)(4) by adding "(i)" at the beginning of the sentence before "A Consolidation", by adding "made before July 1, 1994" after "loan", by designating paragraph "(i)" as "(A)", by designating paragraph "(ii)" as "(B)", by adding new paragraphs (a)(4)(ii) through (a)(4)(v).

I. In paragraph (b)(1), by removing "paragraph (b)(2) of"; and by revising paragraph (b)(2).

J. In paragraph (b)(3) by removing ", except that capitalization", and by adding in its place, ". Capitalization".

K. By removing paragraph (b)(5).

L. By redesignating paragraph (b)(4) as paragraph (b)(5); and by adding a new paragraph (b)(4).

M. By revising the newly redesignated paragraph (b)(5).

N. By revising paragraphs (c)(1) and (c)(2).

O. By redesignating paragraphs (c)(3) through (c)(5) as paragraphs (c)(5) through (c)(7); and by adding new paragraphs (c)(3) and (c)(4).

P. In redesignated paragraph (c)(5), by removing, "an SLS or".

§ 682.202 Permissible charges by lenders to borrowers.

(a) * * *

(1) * * *

(v) For a Stafford loan for which the first disbursement is made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that includes or begins on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10; or

(B) 8.25 percent.

(vii) For a Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 2.5 percent during the in-school, grace and deferment period and 3.10 percent during repayment; or

(B) 8.25 percent.

(viii) For a Stafford loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period plus 1.7 percent during the in-school, grace and deferment periods and 2.3 percent during repayment; or

(B) 8.25 percent.

* * * * *

(2) * * *

(iv) For a loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1998, the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

(v) For a loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

* * * * *

(4) * * *

(ii) A Consolidation loan made on or after July 1, 1994, for which the loan application was received by the lender before November 13, 1997, bears interest at the rate that is equal to the weighted average of interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(iii) For a Consolidation loan for which the loan application was received by the lender on or after November 13, 1997 and before October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1 of each year plus 3.10 percent; or

(B) 8.25 percent.

(iv) For a Consolidation loan for which the application was received by the lender on or after October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a fixed rate that is the lesser of—

(A) The weighted average of interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

(B) 8.25 percent.

(v) For a Consolidation loan for which the application was received by the lender on or after November 13, 1997, the annual interest rate applicable to the portion of each consolidation loan that repaid HEAL loans is a variable rate adjusted annually on July 1 and must be equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending June 30, plus 3 percent. There is no maximum rate on this portion of the loan.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(4) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

* * * * *

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest—

(A) When the loan enters repayment;

(B) At the expiration of a period of authorized deferment;

(C) At the expiration of a period of authorized forbearance; and

(D) When the borrower defaults.

(5) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest provided that the lender has notified the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Fees for FFEL Program loans.*

(1) A lender may charge a borrower an origination fee on a Stafford loan not to exceed 3 percent of the principal amount of the loan. Except as provided in paragraph (c)(2) of this section, a lender must charge all borrowers the same origination fee.

(2)(i) A lender may charge a lower origination fee than the amount specified in paragraph (c)(1) of this section to a borrower whose expected family contribution (EFC), used to determine eligibility for the loan, is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified or to a borrower who qualifies for a subsidized Stafford loan. A lender must charge all such borrowers the same origination fee.

(ii) With the approval of the Secretary, a lender may use a standard comparable to that defined in paragraph (c)(2)(i) of this section.

(3) If a lender charges a lower origination fee on unsubsidized loans under paragraph (c)(1) or (c)(2) of this section, the lender must charge the same fee on subsidized loans.

(4)(i) For purposes of this paragraph (c), a lender is defined as:

(A) All entities under common ownership, including ownership by a common holding company, that make loans to borrowers in a particular state; and

(B) Any beneficial owner of loans that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf in a particular state.

(ii) If a lender as defined in paragraph(c)(4)(i) charges a lower origination fee to any borrower in a particular state under paragraphs (c)(1) or (c)(2) of this section, the lender must charge all such borrowers who reside in that state or attend school in that state the same origination fee.

* * * * *

9. Section 682.204 is amended as follows:

A. By revising paragraphs (a), (b), (c), (d), and (e).

B. In paragraph (f)(2)(i) by adding "the following", after "exceed".

C. In paragraph (f)(2)(ii) by adding "the following" after "exceed".

D. In paragraph (f)(2)(ii)(B) by removing "and", and by adding, in its place, "or".

E. In paragraph (j), by removing the first "or" before "HEAL".

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks in program}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $3,500 for a program whose length is at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $5,500 for a program whose length is at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Federal Direct Stafford/Ford Loan Program, may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or certificate, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed $5,500.

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Stafford Loan Program loans in combination with loans received by the student under the Federal Direct Stafford/Ford Loan Program, but excluding the amount of capitalized interest may not exceed the following:

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Unsubsidized Stafford Loan Program.* (1) In the case of a dependent undergraduate student, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program.

(2) In the case of an independent undergraduate student, a graduate or

professional student, or certain dependent undergraduate students, the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Federal Direct Unsubsidized Stafford/Ford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraphs (a) and (c) of this section, an independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (b) and (c) of this section for any academic year of study—

(1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, may not exceed the following:

(i) $4,000 for a program of study of at least a full academic year.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $4,000 as the lesser of—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education may not exceed the following:

(i) $4,000 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of a student who has successfully completed the second year of a program of undergraduate education, but has not completed the remainder of the program, may not exceed the following:

(i) $5,000 for a program of study of at least a full academic year.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (d)(3) of this section.

(5) In the case of a graduate or professional student, may not exceed $10,000.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

(i) $4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,000 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

(e) *Combined Federal Stafford, SLS and Federal Unsubsidized Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of Stafford Loans, Federal Direct Stafford/Ford Loans, Unsubsidized Stafford Loans, Federal Direct Unsubsidized Stafford/Ford Loans and SLS Loans, but excluding the amount of capitalized interest, may not exceed the following:

(1) $46,000 for an undergraduate student.

(2) $138,500 for a graduate or professional student.

* * * * *

10. Section 682.206 is amended as follows:

A. By revising paragraph (a)(1).

B. By removing "on the application form or data electronically transmitted to the lender" in paragraph (c)(1).

C. By revising paragraph (c)(2).

D. By removing paragraph (c)(3).

E. By revising paragraph (d)(1).

F. By revising the Office of Management and Budget control number.

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include determining the borrower's loan amount, approving the borrower for a loan, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note (except with respect to subsequent loans made under an MPN).

* * * * *

(c) * * *

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, in no case may the loan amount exceed the lesser of the amount the borrower requests, the amount certified by the school under § 682.603, or the loan limits under § 682.204.

* * * * *

(d)(1) The lender must ensure that each loan is supported by an executed legally-enforceable promissory note as proof of the borrower's indebtedness.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

11. Section 682.207 is amended as follows:

A. In paragraph (b)(1)(v)(B)(*3*), by removing "eligible institution", and by adding, in its place, "institution of higher education".

B. By revising the introductory sentence in paragraph (c).

C. By removing paragraph (c)(5).

D. By redesignating paragraph (c)(4) as paragraph (d).

E. By redesignating paragraph (d) as paragraph (f).

F. By adding a new paragraph (e).

G. By revising the newly redesignated paragraph (f).

H. By revising the Office of Management and Budget control number.

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) Except as provided in paragraph (e) of this section, a lender must disburse any Stafford or PLUS loan in accordance with the disbursement schedule provided by the school as follows:

* * * * *

(e) A lender must disburse the loan in one installment if the school submits a schedule for disbursement of loan proceeds in one installment as authorized by § 682.604(c)(10).

(f)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis only if—

(i) The school certified the borrower's loan eligibility before the date the student became ineligible and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible;

(ii) The student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in § 682.604(c)(5); and (iii) In the case of a second or subsequent disbursement, the student graduated or successfully completed the period of enrollment for which the loan was intended.

(2) The lender must give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (f)(1) of this section at the time the lender sends the loan proceeds to the school.

(Approved by the Office of Management and Budget under control number 1845–0020)

12. Section 682.209 is amended as follows:

A. By revising paragraph (a)(4).

B. By redesignating paragraphs (a)(6), (a)(7), and (a)(8) as paragraphs (a)(7), (a)(8), and (a)(9), respectively.

C. By adding a new paragraph (a)(6).

D. In the newly redesignated paragraph (a)(7)(i)(B), by removing "Sec. 682.211(j)(5)", and adding, in its place, "§ 682.211(i)(5)".

E. By revising the newly redesignated paragraph (a)(7)(iii).

F. In the newly redesignated paragraph (a)(7)(v), by removing "(a)(6)(vi)" and adding, in its place, "(a)(7)(vi)".

G. In newly redesignated paragraph (a)(7)(v)(A) by removing "income-sensitive or a graduated repayment", and adding, in its place, "income-sensitive, a graduated, or if applicable, an extended repayment".

H. In the newly redesignated paragraph (a)(7)(v)(B), by removing "(a)(6)(viii)(C)", and adding, in its place, "(a)(7)(viii)(C)".

I. In the newly redesignated paragraph (a)(7)(vii)(A)(*2*), by removing, "(a)(6)(i)", and by adding, in its place, "(a)(7)(i)".

J. In newly redesignated paragraph (a)(7)(viii)(A)(*2*), and by removing "(a)(6)(i)", and by adding, in its place, "(a)(7)(i)".

K. In newly redesignated paragraph (a)(7)(viii)(D), by removing "Sec. § 682.211(j)(5)", and by adding, in its place, "§ 682.211(i)(5)".

L. In newly redesignated paragraph (a)(7)(viii)(E), by removing "(a)(7)", and by adding, in its place, "(a)(8)".

M. By redesignating paragraph (a)(7)(ix) as paragraph (a)(7)(xi).

N. By adding new paragraphs (a)(7)(ix) and (x).

O. In the newly redesignated paragraph (a)(8)(i), by removing "(a)(7)(ii)", and by adding, in its place "(a)(8)(ii)"; by adding, "and except as provided in paragraph (a)(7)(ix)", after "section,"; by adding, "or 25 years under an extended repayment plan" after "10 years,".

P. In newly redesignated paragraph "(a)(8)(ii)", by removing "and 15-year", and by adding, in its place, "15- and 25-year".

Q. In the newly redesignated paragraph "(a)(8)(iv)", by removing "(a)(7)(iii)", and by adding, in its place, "(a)(8)(iii)".

R. By revising paragraph (c)(1)(i).

S. In paragraph (e)(2)(i), by adding, "as appropriate" after "(3)(ii)".

T. In paragraph (e)(2)(ii), by removing "(a)(7)(i)", and adding, in its place, "(a)(8)(i)".

U. In paragraph (f)(2)(ii), by removing "(a)(7)(i)", and adding, in its place, "(a)(8)(i)".

V. By removing paragraph (h)(3); by redesignating paragraphs (h)(4), (h)(5), and (h)(6), as paragraphs (h)(3), (h)(4), and (h)(5), respectively; by revising the newly redesignated paragraph (h)(3); and by removing redesignated paragraph (h)(4)(ii) and redesignating paragraph (h)(4)(iii) as paragraph (h)(4)(ii).

W. By revising the Office of Management and Budget control number.

§ 682.209 Repayment of a loan.

(a) * * *

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of—

(i) The day after the borrower completes the program;

(ii) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(iii) 60 days following the last day for completing the program as established by the school.

* * * * *

(6) For purposes of establishing the beginning of the repayment period for Stafford and SLS loans, the grace periods referenced in paragraphs (a)(2)(iii) and (a)(3)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Stafford or SLS borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a full grace period upon completion of the excluded period.

(7) * * *

(iii) Not more than six months prior to the date that the borrower's first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, graduated, or, if applicable, an extended repayment schedule.

* * * * *

(ix) Under an extended repayment schedule, a new borrower whose total outstanding principal and interest in FFEL loans exceed $30,000 may repay the loan on a fixed annual repayment amount or a graduated repayment amount for a period that may not exceed 25 years. For purposes of this section, a "new borrower" is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of October 7, 1998, or on the date he or she obtains an FFEL Program loan after October 7, 1998.

(x) A borrower may request a change in the repayment schedule on a loan. The lender must permit the borrower to change the repayment schedule no less frequently than annually.

* * * * *

(c) *Minimum annual payment.* (1)(i) Subject to paragraph (c)(1)(ii) of this section and except as otherwise provided by a graduated, income-sensitive, or extended repayment plan selected by the borrower, during each year of the repayment period, a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

* * * * *

(h) * * *

(3) For the purpose of paragraph (h)(2) of this section, the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and

(ii) With the exception of the defaulted title IV loans on which the borrower has made satisfactory repayment arrangements with the holder of the loan, does not include the unpaid balance on any defaulted loans.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

13. Section 682.210 is amended as follows:

A. By revising paragraphs (a)(3), (a)(4), and (a)(6)(iv); in paragraph (a)(7) by removing "180- or 240-day" and adding, in its place, "270- or 330-day".

B. In paragraph (b)(1)(i), by removing "(c)(4)" and adding, in its place, "(c)(5)".

C. By revising paragraph (b)(4).

D. By revising the heading in paragraph (c); by revising paragraph (c)(1); by redesignating paragraphs (c)(2) through (c)(4) as paragraphs (c)(3) through (c)(5), respectively; and by adding a new paragraph (c)(2).

E. By revising redesignated paragraph (c)(3).

F. In redesignated paragraph (c)(4) by removing, "Stafford, SLS or PLUS" both times it appears and adding, in its place, "FFEL", by removing "the", before "certified", and by adding, in its place, "a", and by removing "a student", and by adding, in its place, "an in-school".

G. In redesignated paragraph (c)(5), by adding "or a PLUS (unless based on the dependent's status)" after "Stafford,".

H. By revising paragraph (h).

I. In paragraph (s)(2), by removing the heading, "Student deferment", and by adding, in its place, "In-school deferment".

J. By revising the Office of Management and Budget control number.

§ 682.210 Deferment.

(a) * * *

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary for a Stafford loan and for all or a portion of a qualifying Consolidation loan that meets the requirements under § 682.301.

(4) As a condition for receiving a deferment, except for purposes of paragraphs (c)(1)(ii) and (iii) of this section, the borrower must request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

* * * * *

(6) * * *

(iv) In the case of an in-school deferment, the student's anticipated graduation date as certified by an authorized official of the school; or

* * * * *

(b) * * *

(4) For a "new borrower," as defined in paragraph (b)(7) of this section, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

* * * * *

(c) *In-school deferment.* (1) Except as provided in paragraph (c)(5) of this section, the lender processes a deferment for full-time study or half-time study at a school, when—

(i) The borrower submits a request and supporting documentation for a deferment;

(ii) The lender receives information from the borrower's school about the borrower's eligibility in connection with a new loan; or

(iii) The lender receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower's enrollment status supports eligibility for a deferment.

(2) The lender must notify the borrower that a deferment has been granted based on paragraph (c)(1)(ii) or (iii) of this section and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL Program loan or to cancel the deferment and continue paying on the loan. The lender must include in the notice an explanation of the consequences of these options.

(3) The lender must consider a deferment granted on the basis of a certified loan application or other information certified by the school to cover the period lasting until the anticipated graduation date appearing on the application, and as updated by notice or SSCR update to the lender from the school or guaranty agency, unless and until it receives notice that the borrower has ceased the level of study (*i.e.*, full-time or half-time) required for the deferment.

* * * * *

(h) *Unemployment deferment.* (1) A borrower qualifies for an unemployment deferment by providing evidence of eligibility for unemployment benefits to the lender.

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification—

(i) Describing the borrower's conscientious search for full-time employment during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer's address and phone number; and

(C) The name or title of the person contacted;

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, specifying the agency's name and address and date of registration.

(3) For purposes of obtaining an unemployment deferment under paragraph (h)(2) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(iv) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(2)(i) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, if it shows the same number of contacts and contains the same information the borrower would be required to provide under this section.

(4) A lender may not grant a deferment based on a single certification under paragraph (h)(1) or (h)(2) of this section beyond the date that is six months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (h)(1) of this section or the date the borrower provides the written certification under paragraph (h)(2) of this section.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

14. Section 682.211 is amended as follows:

A. By revising paragraph (a)(4);

B. In paragraph (c) by adding, "the terms of" after "writing to".

C. By adding a new paragraph (f)(9).

D. In paragraphs (h)(l) and (h)(2), by removing the word "written".

E. By removing paragraph (h)(2)(ii)(B) and designating paragraph (h)(2)(ii)(C) as paragraph (h)(2)(ii)(B).

F. By removing paragraph (h)(3)(ii); by redesignating paragraph (h)(3)(iii) as paragraph (h)(3)(ii); and in redesignated paragraph (h)(3)(ii), by removing "(h)(2)(ii)(C)", and by adding, in its place "(h)(2)(ii)(B)".

G. By revising the Office of Management and Budget control number.

§ 682.211 Forbearance.

(a) * * *

(4) Except as provided in paragraph (f)(9) of this section, if payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

* * * * *

(f) * * *

(9) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

15. Section 682.300 is amended by revising paragraph (a) to read as follows:

§ 682.300 Payments of interest benefits on Stafford and Consolidation loans.

(a) *General.* The Secretary pays a lender, on behalf of a borrower, a portion of the interest on a subsidized Stafford loan and on all or a portion of a qualifying Consolidation loan that meets the requirements under § 682.301. This payment is known as interest benefits.

* * * * *

16. Section 682.301 is amended as follows:

A. By revising paragraph (a)(3).

B. By removing paragraph (a)(4).

C. By revising paragraphs (b) and (c).

D. By revising the Office of Management and Budget control number.

§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) * * *

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender—

(i) On or after January 1, 1993 but prior to August 10, 1993;

(ii) On or after August 10, 1993, but prior to November 13, 1997 if the loan consolidates only subsidized Stafford loans; and

(iii) On or after November 13, 1997, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a statement to the lender pursuant to § 682.603. The student must qualify for interest benefits if the eligible institution has determined and documented the student's amount of need for a loan based on the student's estimated cost of attendance, estimated financial assistance, and expected family contribution as determined under part F of the Act.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a PLUS, unsubsidized Stafford loan, State sponsored loan, or private program loan obtained for a period of enrollment to replace the expected family contribution for that period of enrollment.

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

17. Section 682.401 is amended as follows:

A. By revising paragraphs (b)(5)(i) and (ii).

B. In the heading in paragraph (b)(15), by removing "Guarantee", and by adding, in its place, "Guaranty".

C. In paragraph (b)(24), by adding a comma after "shall".

D. By revising paragraph (d)(3).

E. By designating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively.

F. By adding a new paragraph (d)(4).

G. By revising the Office of Management and Budget control number.

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(5) *Borrower responsibilities.* (i) The borrower must indicate his or her

preferred lender on the promissory note or other written or electronic documentation submitted during the loan origination process if he or she has such a preference.

(ii) The borrower must give the lender, as part of the promissory note or application process for a Stafford or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(C) Information from the school providing the maximum amount that may be borrowed by or on behalf of the student.

* * * * *

(d) * * *

(3) The guaranty agency must use common application forms, promissory notes, Master Promissory Notes (MPN), and other common forms approved by the Secretary.

(4)(i) The Secretary authorizes the use of the multi-year feature of the MPN—

(A) For students and parents for attendance at four-year or graduate/professional schools; and

(B) For students and parents for attendance at other institutions meeting criteria or otherwise designated at the sole discretion of the Secretary.

(ii) The Secretary may prohibit use of the multi-year feature of the MPN at specific schools described under paragraph (4)(i) of this section under circumstances including, but not limited to, the school being subject to an emergency action or a limitation, suspension, or termination action, or not meeting other performance criteria determined by the Secretary.

(iii) A borrower attending a school for which the multi-year feature of the MPN has not been authorized must complete a new promissory note for each period of enrollment.

(iv) Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

(v) A lender's ability to make additional loans under an MPN will automatically expire upon the earliest of—

(A) The date the lender receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;

(B) Twelve months after the date the borrower signed the MPN if no disbursements are issued by the lender under that MPN; or

(C) Ten years from the date the borrower signed the MPN or the date the lender receives the MPN. However, if a portion of a loan is made on or before 10 years from the signature date, remaining disbursements of that loan may be made.

(vi) The lender and school must develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of the MPN.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

18. Section 682.402 is amended as follows:

A. By revising the section heading; by revising paragraph (a)(1); in paragraph (a)(3), by adding "and as provided in paragraph (h)(1)(iv) of this section," before "only".

B. In paragraph (f)(1) by removing "(f) through (m)", and adding, in its place, "(h) through (k)"; by revising paragraph (f)(3); in paragraph (f)(5)(i)(B) by adding "before October 8, 1998" after "Code".

C. By revising paragraphs (g)(1)(i) and (ii).

D. In paragraph (h)(1)(i), by removing "paragraph (g)", and adding, in its place, "paragraph (h)"; by adding a new paragraph (h)(1)(iv).

E. By revising paragraph (i)(1); and by removing paragraph (i)(3) in its entirety.

F. In paragraph (j)(1)(ii), by removing "(B)"; and by revising paragraph (j)(1)(iii).

G. By revising paragraph (k)(1)(i)(A).

H. By redesignating paragraphs (l) and (m) as paragraphs (r) and (s); and by adding new paragraphs (l) through (q).

I. By revising the Office of Management and Budget control number.

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

* * * * *

(f) * * *

(3) *Determination of filing.* The lender must determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other proof of filing provided by the debtor's attorney or the bankruptcy court.

* * * * *

(g) * * *

(1) * * *

(i) The original promissory note or a copy of the promissory note certified by the lender as true and accurate.

(ii) The loan application, if a separate loan application was provided to the lender.

* * * * *

(h) * * *

(1) * * *

(iv) In reviewing a claim under this section, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of the confirmation process or processes, insurance benefits must be repaid.

* * * * *

(i) *Guaranty agency participation in bankruptcy proceedings*—(1) *Undue hardship claims.* (i) In response to a petition filed prior to October 8, 1998 with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8) on the grounds of undue hardship, the guaranty agency must, on the basis of reasonably available information, determine whether the first payment on the loan was due more than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of that petition and, if so, process the claim.

(ii) In all other cases, the guaranty agency must determine whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(iii) If the guaranty agency determines that repayment would not constitute an undue hardship, the guaranty agency must then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iv) The guaranty agency must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. Unless discharge would be more effectively opposed by not taking the following actions, the agency must—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(v) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

* * * * *

(j) * * *

(1) * * *

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8) on grounds of undue hardship.

* * * * *

(k) * * *

(1) * * *

(i) * * *

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8) with respect to a proceeding initiated under chapter 7 or chapter 11; or

* * * * *

(l) *Unpaid refund discharge.*

(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary reimburses the guarantor of a loan and discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL Program loan (disbursed on or after January 1, 1986) equal to the refund that should have been made by the school under applicable Federal law and regulations, including this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.* In the case of a school that is open, the guarantor discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL loan (disbursed on or after January 1, 1986) equal to the amount of the refund that should have been made by the school under applicable Federal law and regulations, including this section, if—

(i) The borrower (or the student on whose behalf a parent borrowed) has ceased to attend the school that owes the refund; and

(ii) The guarantor receives documentation regarding the refund and the borrower and guarantor have been unable to resolve the unpaid refund within 120 days from the date the borrower submits a complete application in accordance with paragraph (l)(4) of this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the amount of the unpaid refund amount are also discharged.

(3) *Relief to borrower (and any endorser) following discharge.* (i) If a borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest, late charges, collection costs, origination fees, and insurance premiums) owed by the borrower at the time of discharge.

(ii) The holder of the loan reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the holder of the loan previously reported the status of the loan.

(4) *Borrower qualification for discharge.* To receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the holder or guaranty agency except as provided in paragraph (l)(5)(iv) of this section. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan on or after January 1, 1986 to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as a holder of a performance bond or a tuition recovery program.

(ii) State whether the borrower has any other application for discharge pending for this loan; and

(iii) State that the borrower—

(A) Agrees to provide upon request by the Secretary or the Secretary's designee other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for an unpaid refund discharge under this section; and

(B) Agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (d) of this section.

(5) *Unpaid refund discharge procedures.* (i) Except for the requirements of paragraph (l)(5)(iv) of this section related to an open school, if the holder or guaranty agency learns that a school did not pay a refund of loan proceeds owed under applicable law and regulations, the holder or the guaranty agency sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan.

(ii) If the borrower returns the application, specified in paragraph (l)(4) of this section, the holder or the guaranty agency must review the application to determine whether the application appears to be complete. In the case of a loan held by a lender, once the lender determines that the application appears complete, it must provide the application and all pertinent information to the guaranty agency including, if available, the borrower's last date of attendance. If the borrower returns the application within 60 days, the lender must extend the period during which efforts to collect on the affected loan are suspended to the date the lender receives either a denial of the request or the unpaid refund amount from the guaranty agency. At the conclusion of the period during which the collection activity was suspended, the lender may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iii) If the borrower fails to return the application within 60 days, the holder of the loan resumes collection efforts and grants forbearance of principal and interest for the period during which the collection activity was suspended. The holder may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iv) The guaranty agency may, with the approval of the Secretary, discharge a portion of a loan under this section without an application if the guaranty agency determines, based on information in the guaranty agency's possession, that the borrower qualifies for a discharge.

(v) If the holder of the loan or the guaranty agency determines that the information contained in its files conflicts with the information provided by the borrower, the guaranty agency must use the most reliable information available to it to determine eligibility for and the appropriate payment of the refund amount.

(vi) If the holder of the loan is the guaranty agency and the agency determines that the borrower qualifies for a discharge of an unpaid refund, the guaranty agency must suspend any efforts to collect on the affected loan and, within 30 days of its determination, discharge the appropriate amount and inform the borrower of its determination. Absent documentation of the exact amount of refund due the borrower, the guaranty agency must calculate the amount of the unpaid refund using the unpaid refund calculation defined in paragraph (o) of this section.

(vii) If the guaranty agency determines that a borrower does not qualify for an unpaid refund discharge, (or, if the holder is the lender and is informed by the guarantor that the borrower does not qualify for a discharge)—

(A) The agency must notify the borrower in writing of the reason for the determination and of the borrower's right to request a review of the agency's determination within 30 days of the borrower's submission of additional documentation supporting the borrower's eligibility that was not considered in any prior determination. During the review period, collection activities must be suspended; and

(B) The holder must resume collection if the determination remains unchanged and grant forbearance of principal and interest for the period during which collection activity was suspended. The holder may capitalize any interest accrued and not paid during the review period in accordance with § 682.202(b).

(viii) If the guaranty agency determines that a current or former borrower at an open school may be eligible for a discharge under this section, the guaranty agency must notify the lender and the school of the unpaid refund allegation. The notice to the school must include all pertinent facts available to the guaranty agency regarding the alleged unpaid refund. The school must, no later than 60 days after receiving the notice, provide the guaranty agency with documentation demonstrating, to the satisfaction of the guarantor, that the alleged unpaid refund was either paid or not required to be paid.

(ix) In the case of a school that does not make a refund or provide sufficient documentation demonstrating the refund was either paid or was not required, within 60 days of its receipt of the allegation notice from the guaranty agency, relief is provided to the borrower (and any endorser) if the guaranty agency determines the relief is appropriate. The agency must forward documentation of the school's failure to pay the unpaid refund to the Secretary.

(m) *Unpaid refund discharge procedures for a loan held by a lender.* In the case of an unpaid refund discharge request, the lender must provide the guaranty agency with documentation related to the borrower's qualification for discharge as specified in paragraph (l)(4) of this section.

(n) *Payment of an unpaid refund discharge request by a guaranty agency.* (1) *General.* The guaranty agency must review an unpaid refund discharge request promptly and must pay the lender the amount of loss as defined in paragraphs (l)(1) and (l)(2) of this section, related to the unpaid refund not later than 45 days after a properly filed request is made.

(2) *Determination of the unpaid refund discharge amount to the lender.* The amount of loss payable to a lender on an unpaid refund includes that portion of an FFEL Program loan equal to the amount of the refund required under applicable Federal law and regulations, including this section, and including any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund.

(o)(1) *Determination of amount eligible for discharge.* The guaranty agency determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the guaranty agency. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (o)(1) of this section is not available, the guaranty agency uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the lesser of the institutional charges unearned or the loan amount. The guaranty agency determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the loan amount unearned. The guaranty agency determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or if unknown, the loan amount.

(iii) In the case of a student who completes 60 percent or more of the loan period, the guaranty agency does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

(p) *Requests for reimbursement from the Secretary on loans held by guaranty agencies.* The Secretary reimburses the guaranty agency for its losses on unpaid refund request payments to lenders or borrowers in an amount that is equal to the amount specified in paragraph (n)(2) of this section.

(q) *Payments received after the guaranty agency's payment of an unpaid refund request.* (1) The holder must promptly return to the sender any payment on a fully discharged loan, received after the guaranty agency pays an unpaid refund request unless the sender is required to pay (as in the case of a tuition recovery fund) in which case, the payment amount must be forwarded to the Secretary. At the same time that the holder returns the payment, it must notify the borrower that there is no obligation to repay a loan fully discharged.

(2) If the holder has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (q)(1) of this section, and the borrower (or representative) continues to send payments to the holder, the holder must remit all of those payments to the Secretary.

(3) If the loan has not been fully discharged, payments must be applied to the remaining debt.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

19. Section 682.406 is amended by revising paragraph (a)(12); by adding a

new paragraph (c); and by revising the Office of Management and Budget control number to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;

(ii) For Consolidation loans disbursed on or after October 1, 1993, and prior to October 1, 1998, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 1.05 percent of the unpaid principal and accrued interest on the loan;

(iii) For Consolidation loans for which the application was received by the lender on or after October 1, 1998 and prior to February 1, 1999, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 0.62 percent of the unpaid principal and accrued interest on the loan;

(iv) For Consolidation loans disbursed on or after February 1, 1999, payment of an interest payment rebate fee in accordance with paragraph (a)(12)(ii) of this section; and

(v) Compliance with all preclaims assistance requirements in § 682.404(a)(2)(ii).

* * * * *

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

20. Section 682.409 is amended as follows:

A. By revising paragraph (c)(2).

B. In paragraph (c)(4)(i) by adding "original or a true and exact copy of the" after "The".

C. In paragraph (c)(4)(iv) by adding ", if a separate application was provided to the lender", after "application".

D. In paragraph (c)(5) by removing "certified", and by removing "if no originals exist".

E. By revising the Office of Management and Budget control number.

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

* * * * *

(c) * * *

(2) The guaranty agency must execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section. If more than one loan is made under an MPN, the assignment of the note only applies to the loan or loans being assigned to the Secretary.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

21. Section 682.414 is amended as follows:

A. In paragraph (a)(4)(ii)(A) by adding "if a separate application was provided to the lender" after "application".

B. In paragraph (a)(4)(ii)(B) by removing ", including the repayment instrument" after "note".

C. In paragraph (a)(4)(ii)(J) by removing "and" at the end of sentence.

D. By redesignating paragraph (a)(4)(ii)(K) as paragraph (a)(4)(ii)(L).

E. By adding a new paragraph (a)(4)(ii)(K).

F. In paragraph (a)(5)(i) by removing "(K)", and adding, in its place, "(L)".

G. By revising paragraph (a)(5)(ii).

H. By removing paragraph (a)(5)(iii).

I. By revising the Office of Management and Budget control number.

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(4) * * *

(ii) * * *

(K) Documentation of any MPN confirmation process or processes; and

* * * * *

(5) * * *

(ii) A lender or guaranty agency holding a promissory note must retain the original or a true and exact copy of the promissory note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency must return either the original or a true and exact copy of the note to the borrower or notify the borrower that the loan is paid in full, and retain a copy for the prescribed period.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

22. Section 682.603 is amended as follows:

A. By revising paragraph (b).

B. By adding a new paragraph (c).

C. By redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively.

D. By adding a new paragraph (g).

E. By revising the Office of Management and Budget control number.

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201 and § 682.204;

(2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with § 682.301; and

(3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in § 682.604(c).

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower's request or the loan limits determined under § 682.204.

* * * * *

(g) A school must cease certifying loans based on the exceptions in § 682.604(c)(5)(i) and (c)(5)(ii) and § 682.604(c)(10)(i) and (ii) that allow for the disbursement of loans in one installment and exempt the school from delayed release of loan proceeds no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to no longer meet the qualifications outlined in those paragraphs.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

23. Section 682.604 is amended as follows:

A. In paragraph (a)(3), by removing, ", as provided in § 668.167" at the end of the sentence.

B. In paragraph (c)(3), by adding, or "MPN", after "loan application".

C. By revising paragraph (c)(5).

D. By revising the introductory text of paragraph (c)(6).

E. By adding a new paragraph (c)(10).

F. By revising paragraphs (f) and (g).

G. By revising the Office of Management and Budget control number.

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(5) A school may not release the first installment of a Stafford loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford, SLS, Direct Subsidized, or Direct Unsubsidized loan until 30 days after the first day of the student's program of study unless—

(i) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(ii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

(6) Unless the provision of § 682.207(d) applies—

* * * * *

(10) Notwithstanding the requirements of paragraphs (c)(6)–(c)(9) of this section, a school is not required to deliver loan proceeds in more than one installment if—

(i)(A) The student's loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(B) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(ii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

* * * * *

(f) *Initial counseling.* (1) A school must conduct initial counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the student borrower has received a prior Stafford, SLS, or Direct loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the school may provide the counseling through written materials, prior to releasing those loan proceeds.

(2) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iv) In the case of a student borrower of a Stafford loan (other than a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

(5) A school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(g) *Exit counseling.* (1) A school must conduct exit counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must conduct this counseling shortly before the student borrower ceases at least half-time study at the school. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, the school may provide written counseling materials by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Stafford or SLS loans for attendance at that school or in the student borrower's program of study;

(ii) Review for the student borrower available repayment options (e.g., loan consolidation, refinancing of SLS loans);

(iii) Suggest to the student borrower debt-management strategies that the school determines would best assist repayment by the student borrower;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review with the student borrower the conditions under which the student borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vi) Require the student borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer, that will then be provided within 60 days to the guaranty agency or agencies listed in the student borrower's records; and

(vii) Review with the student borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts exit counseling by electronic interactive means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

(5) The school must maintain documentation substantiating the

school's compliance with this section for each student borrower.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

24. Section 682.610 is amended by revising paragraph (b) and the Office of Management and Budget control number to read as follows:

§ 682.610 Administrative and fiscal requirements for participating schools.

* * * * *

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school must maintain—

(1) A copy of the loan certification or data electronically submitted to the lender, that includes the amount of the loan and the period of enrollment for which the loan was intended;

(2) The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount;

(3) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(4) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower;

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under § 682.604(c)(3) to deliver the initial and subsequent disbursements of each FFEL program loan; and

(6) Documentation of any MPN confirmation process or processes the school may have used.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

25. Sections 682.205, 682.208, 682.214, 682.405, 682.410, 682.411, 682.507, 682.508, 682.511, 682.515, 682.601, 682.605, 682.711, 682.712, 682.713, 682.802, and 682.803 are amended by revising the Office of Management and Budget control number to read "1845–0020".

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

26. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

27. Section 685.102 is amended in paragraph (b) as follows:

A. By revising the definitions of "Default" and "Estimated financial assistance."

B. By adding after "Loan fee" a new definition of "Master promissory note (MPN)."

§ 685.102 Definitions.

* * * * *

(b) * * *

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for 270 days.

Estimated financial assistance: (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, financial need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of a Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loan; and

(viii) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Direct PLUS Loan amounts;

(B) Direct Unsubsidized Loan amounts; and (C) Non-Federal loan amounts;

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined; and

(iii) For the purpose of determining eligibility for a Direct Subsidized Loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code (Montgomery GI Bill—Active Duty) and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Master promissory note (MPN): A promissory note under which the borrower may receive loans for a single academic year or multiple academic years. Loans for multiple academic years may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement except that a remaining portion of a loan may be disbursed after this date.

* * * * *

28. Section 685.201 is revised to read as follows:

§ 685.201 Obtaining a loan.

(a) *Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan.* (1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled must perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions:

(i) A school participating under school origination option 2 must create a loan origination record, ensure that the loan is supported by a completed Master Promissory Note (MPN), draw down funds, and disburse the funds to the student.

(ii) A school participating under school origination option 1 must create a loan origination record, ensure that the loan is supported by a completed MPN, and transmit the record and MPN (if required) to the Servicer. The Servicer initiates the drawdown of funds. The school must disburse the funds to the student.

(iii) If the student is attending a school participating under standard origination, the school must create a loan origination record and transmit the record to the alternative originator, which either confirms that a completed MPN supports the loan or prepares an MPN and sends it to the student. The Servicer receives the completed MPN from the student (if required) and initiates the drawdown of funds. The school must disburse the funds to the student.

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent must complete the application and promissory note and submit it to the school at which the student is enrolled. The school must complete its portion of the application and promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions: A school participating under school origination option 2 must draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

(c) *Application for a Direct Consolidation Loan*

(1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Servicer. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Servicer. The Servicer answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application and promissory note to the Servicer, the Secretary makes the Direct Consolidation Loan under the procedures specified in § 685.216.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

29. Section 685.203 is amended by revising paragraphs (a) and (c)(2); and by revising the introductory text of paragraphs (d) and (e) to read as follows:

§ 685.203 Loan limits.

(a) *Direct Subsidized Loans.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $3,500 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $5,500 for a program of study of at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $5,500.

* * * * *

(c) * * *

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Stafford/Ford Loan Program and the Federal Unsubsidized Stafford Loan Program for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first year of a program of undergraduate education—

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(D) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $4,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(ii) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education—

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) In the case of a student who has successfully completed the second year of a program of undergraduate education but has not completed the remainder of the program of study—

(A) $5,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iv) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (c)(2)(iii) of this section.

(v) In the case of a graduate or professional student, $10,000.

(vi) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate—

(A) $4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(B) $5,000 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(vii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

(d) *Federal Direct Stafford/Ford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

* * * * *

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans but excluding the amount of capitalized interest may not exceed the following:

* * * * *

30. Section 685.204 is amended by adding a new paragraph (b)(1)(iii) and revising the Office of Management and Budget control number to read as follows:

§ 685.204 Deferment.

* * * * *

(b) * * *

(1) * * *

(iii)(A) For the purpose of paragraph (b)(1)(i) of this section, the Secretary processes a deferment when—

(*1*) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(*2*) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan; or

(*3*) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.

(B)(*1*) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(*2*) or (*3*) of this section, the borrower has the option to continue paying on the loan.

(*2*) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0021)

31. Section 685.205 is amended as follows:

A. By revising the introductory text of paragraph (a); by removing the "period" at the end of paragraph (a)(2) and adding, in its place, ";"; by revising paragraph (a)(4); and by removing paragraph (a)(5) and redesignating paragraph (a)(6) as paragraph (a)(5).

B. By revising paragraph (b)(6); by removing "or" at the end of paragraph (b)(7); by removing the "period" at the end of paragraph (b)(8) and adding, in its place, "; or"; and by adding a new paragraph (b)(9).

§ 685.205 Forbearance.

(a) *General.* "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—

* * * * *

(4) The borrower is serving in a national service position for which the borrower is receiving a national service education award under title I of the National and Community Service Act of 1990; or

* * * * *

(b) * * *

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.213;

(ii) Under § 685.214;

(iii) Under § 685.215; or

(iv) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

32. Section 685.207 is amended as follows:

A. By redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii).

B. By adding a new paragraph (b)(2)(ii).

C. By revising the redesignated paragraph (b)(2)(iii).

D. By redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii).

E. By adding a new paragraph (c)(2)(ii).

§ 685.207 Obligation to repay.

* * * * *

(b) * * *

(2) * * *

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (b)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Subsidized Loan.

* * * * *

(c) * * *

(2) * * *

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (c)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

* * * * *

33. Section 685.212 is amended by revising paragraphs (d), (e), (f), and (g); and by revising the Office of Management and Budget control number to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(d) *Closed schools.* If a borrower meets the requirements in § 685.213, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the requirements in § 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(f) *Unpaid refunds.* If a borrower meets the requirements in § 685.215, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the amount of the loan equal to the unpaid refund and any accrued interest and other charges associated with the unpaid refund. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the unpaid refund owed on any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(g) *Payments received after eligibility for discharge.* (1) *For the discharge conditions in paragraphs (a)–(e) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, those payments received after the date that the eligibility requirements for discharge were met but prior to the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

(2) *For the discharge condition in paragraph (f) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender payments received in excess of the amount owed on the loan after applying the unpaid refund.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

34. Section 685.215 is redesignated as § 685.216, a new § 685.215 is added to read as follows:

§ 685.215 Unpaid refund discharge.

(a)(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.*

(i) In the case of a school that is open, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section, if—

(A) The borrower (or the student on whose behalf a parent borrowed) has ceased to attend the school that owes the refund;

(B) The borrower has been unable to resolve the unpaid refund with the school; and

(C) The Secretary is unable to resolve the unpaid refund with the school within 120 days from the date the borrower submits a complete application in accordance with paragraph (c)(1) of this section regarding the unpaid refund. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the Secretary documentation demonstrating that the refund was made by the school or that the refund was not required to be made by the school.

(b) *Relief to borrower following discharge.* (1) If the borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest and other charges) owed by the borrower at the time of discharge.

(2) The Secretary reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* (1) Except as provided in paragraph (c)(2) of this section, to receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the Secretary. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan on or after January 1, 1986 to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as the holder of a performance bond or a tuition recovery program;

(ii) State whether the borrower (or student) has any other application for discharge pending for this loan; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.213(d) and to transfer any right to recovery against a third party to the Secretary as described in § 685.213(e).

(2) The Secretary may discharge a portion of a loan under this section without an application if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(d) *Determination of amount eligible for discharge.*

(1) The Secretary determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the Secretary. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (d)(1) of this section is not available, the Secretary uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the lesser of the institutional charges unearned or the loan amount. The Secretary determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the loan amount unearned. The Secretary determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or, if unknown, the loan amount.

(iii) In the case of a student who completes 60 percent or more of the loan period, the Secretary does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

(e) *Discharge procedures.* (1) Except as provided in paragraph (c)(2) of this section, if the Secretary learns that a school did not make a refund of loan proceeds owed under applicable law and regulations, the Secretary sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If a borrower who is sent a discharge application fails to submit the application within 60 days of the Secretary's sending the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If a borrower qualifies for a discharge, the Secretary notifies the borrower in writing. The Secretary resumes collection and grants forbearance of principal and interest on the portion of the loan not discharged for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(4) If a borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of the reasons for the determination. The Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

35. The newly redesignated § 685.216 is amended by revising paragraphs (d), (g), (l)(1), (l)(2), and (l)(3); and by revising the Office of Management and Budget control number to read as follows:

§ 685.216 Consolidation.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(E) In default but has made satisfactory repayment arrangements, as defined in applicable program regulations, on the defaulted loan; or

* * * * *

(g) *Interest rate.* The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established in § 685.202(a)(3)(i). The interest rate on a Direct PLUS Consolidation Loan is the rate established in § 685.202(a)(3)(ii).

* * * * *

(l) * * *

(1) *Deferment.* To obtain a deferment on a joint Direct Consolidation Loan under § 685.204, both borrowers must meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Direct Consolidation Loan under § 685.205, both borrowers must meet the requirements of that section.

(3) *Discharge.* (i) To obtain a discharge of a joint Direct Consolidation Loan under § 685.212, each borrower must meet the requirements for one of the types of discharge described in that section.

(ii) If a borrower meets the requirements for discharge under § 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan and the borrower's spouse does not meet the requirements for any type of discharge described in § 685.212, the Secretary discharges a portion of the consolidation loan equal to the amount of the loan that would have been eligible for discharge under the provisions of § 685.212(d), (e), or (f) as applicable.

(Approved by the Office of Management and Budget under control number 1845–0021)

36. Section 685.300 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) * * *

(1) * * *

(ii) Enter into a written program participation agreement with the Secretary that identifies the loan program or programs in which the school chooses to participate.

* * * * *

37. Section 685.301 is amended by revising paragraphs (b)(2), (b)(3), (b)(8), and (c)(2); and by revising the Office of Management and Budget control number to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(b) * * *

(2) Unless paragraph (b)(5) or (6) of this section applies, an institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (b)(4), (5), (6), or (8) of this section applies—

* * * * *

(8)(i) A school is not required to make more than one disbursement if—

(A)(*1*) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(*2*) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(8)(i)(A) and (B) of this section, which allow the disbursement of loans in one installment, do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to no longer meet the qualifications outlined in those paragraphs.

* * * * *

(c) * * *

(2) A school that originates a loan must ensure that the loan is supported by a completed promissory note as proof of the borrower's indebtedness.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0021)

38. Section 685.303 is amended by revising paragraph (b)(4) to read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(4)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Direct Subsidized, or Direct Unsubsidized Loan, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study unless—

(A) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(4)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to no longer meet the qualifications outlined in those paragraphs.

* * * * *

39. Section 685.304 is amended as follows:

A. By revising paragraphs (a)(1), (a)(2), and (a)(3) introductory text; by redesignating paragraphs (a)(3)(i)-(iv) as paragraphs (a)(3)(ii)-(v), respectively; by adding a new paragraph (a)(3)(i); by revising newly redesignated paragraphs (a)(3)(ii), (iv), and (v); by revising paragraphs (a)(5)(i) and (ii); and by adding new paragraphs (a)(6) and (a)(7).

B. By redesignating paragraphs (b)(1)(ii), (b)(2) introductory text, (b)(2)(i) through (vi); (b)(2)(vii), (b)(3), and (b)(4) as paragraphs (b)(3), (b)(4) introductory text, (b)(4)(i) through (vi), (b)(4)(viii), (b)(5), and (b)(7), respectively; by revising paragraph (b)(1) and newly redesignated paragraphs (b)(3), (b)(4) introductory text, (b)(4)(i) through (viii), and (b)(7); and by adding new paragraphs (b)(2), (b)(4)(vii), and (b)(6).

C. By adding the Office of Management and Budget control number.

§ 685.304 Counseling borrowers.

(a) *Initial counseling.* (1) Except as provided in paragraph (a)(5) of this section, a school must conduct initial counseling prior to making the first disbursement of the proceeds of a Direct Subsidized or Direct Unsubsidized Loan to a borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, Federal Unsubsidized Stafford, or Federal SLS Loan.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the school may provide the student borrower with written counseling materials prior to disbursing the loan proceeds.

(3) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

* * * * *

(iv) Provide the student borrower with general information with respect to the average indebtedness of student borrowers who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the student borrower's program of study;

(v) Inform the student borrower as to the average anticipated monthly repayment for those student borrowers based on the average indebtedness provided under paragraph (a)(3)(iv) of this section.

(5) * * *

(i) Ensure that each student borrower subject to initial counseling under paragraph (a)(1) of this section is provided written counseling materials that contain the information described in paragraph (a)(3) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

* * * * *

(6) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes initial counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(b) *Exit counseling.* (1) A school must conduct exit counseling with each Direct Subsidized or Direct Unsubsidized Loan borrower shortly before the student borrower ceases at least half-time study at the school.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title

IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the school may provide the student borrower with written counseling materials within 30 days after the student borrower completes the program.

(3) If a student borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, the school must provide exit counseling either through interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) In conducting the exit counseling, the school must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the student borrower's program of study;

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation;

(iii) Provide options to the student borrower concerning those debt-management strategies that the school determines would facilitate repayment by the student borrower;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3)(ii) and (iii) of this section;

(vi) Review with the student borrower the conditions under which the student borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vii) Review with the student borrower information on the availability of the Department's Student Loan Ombudsman's office; and

(viii) Require the student borrower to provide corrections to the school's records concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must provide this information to the Secretary within 60 days.

* * * * *

(6) A school that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes exit counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(Approved by the Office of Management and Budget under control number 1845–0021)

40. Section 685.402 is amended by adding a new paragraph (f) to read as follows:

§ 685.402 Criteria for schools to originate loans.

* * * * *

(f) *Determination of eligibility for multi-year use of the Master Promissory Note.* (1) A school must be authorized by the Secretary to use a single Master Promissory Note (MPN) as the basis for all loans borrowed by a student or parent borrower for attendance at that school. A school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from a student or parent borrower for each academic year.

(2) To be authorized for multi-year use of the MPN, a school must—

(i) Be a four-year or graduate/professional school, or other institution meeting criteria or otherwise designated at the sole discretion of the Secretary; and

(ii)(A) Not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act; and

(B) Meet other performance criteria determined by the Secretary.

(3) A school that is authorized by the Secretary for multi-year use of the MPN must develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of the MPN.

(Authority: 20 U.S.C. 1087a *et seq.*)

§§ 685.206, 685.209, 685.213, 685.214 and 685.302 [Amended]

41. Sections 685.206, 685.209, 685.213, 685.214, and 685.302 are amended by revising the Office of Management and Budget control number to read "1845–0021".

[FR Doc. 99–28170 Filed 10–29–99; 8:45 am]

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Monday
November 1, 1999

Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845–AA04

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the loan default reduction and prevention measures in the Student Assistance General Provisions regulations in 34 CFR part 668. These regulations reflect changes made by the Higher Education Amendments of 1998 to the Higher Education Act of 1965, as amended (HEA).

DATES: These regulations are effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Higher Education Amendments of 1998 (Pub. L. 105–244, enacted October 7, 1998, and referred to in the preamble to these final regulations as the "1998 Amendments") changed some requirements relating to the calculation of a school's Federal Family Education Loan (FFEL) Program cohort default rate, William D. Ford Federal Direct Loan (Direct Loan) Program cohort rate, or weighted average cohort rate. The Secretary is revising 34 CFR 668.17 of the Student Assistance General Provisions regulations to reflect these changes.

On July 30, 1999, we published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions in the **Federal Register** (64 FR 41752). In the preamble to the NPRM, we discussed on pages 41753 through 41758 the major changes proposed in that document for the loan default reduction and prevention measures in the Student Assistance General Provisions:

- Amending § 668.17(a)(1) and 668.17(j) to change the process that schools use to identify and challenge or request an adjustment to incorrect data.
- Amending § 668.17(b)(4) to reflect the amendment to the HEA that makes a school ineligible to participate in the Federal Pell Grant Program when it becomes ineligible to participate in the FFEL or Direct Loan Program due to excessive rates.
- Amending § 668.17(b)(5)(ii) and 668.17(b)(6) to implement the statutory amendments that make a school liable for the loans it certifies and delivers or originates and disburses while it is appealing a loss of participation.
- Amending § 668.17(c)(1)(ii)(A) and 668.17(j)(4) to reflect the statutory changes that modify the requirements for a school's appeal on the basis of its participation rate index (PRI).
- Amending § 668.17(c)(1)(ii)(B) and 668.17(c)(7) to reflect the amendments that modify requirements for a school's mitigating circumstances appeal based on its economically disadvantaged rate and completion or placement rate.
- Adding § 668.17(c)(1)(ii)(C) and (D) to permit a school to appeal its loss of participation on the basis of two new mitigating circumstances.
- Amending § 668.17(e), 668.17(f), and 668.17(h)(2)(iii) to conform to statutory changes in the definition of "default."
- Adding § 668.17(k) and Appendix H to implement the statutory changes relating to the treatment of special institutions.

Except for minor editorial and technical revisions and revisions that provide clarification, there are no differences between the NPRM and these final regulations. As in the NPRM, to avoid confusion in the preamble to these final regulations, we use the word "rate" by itself to refer to an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate. We use the complete term if we are referring to another type of "rate": an "economically disadvantaged rate," a "completion rate," a "placement rate," or a "participation rate."

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 30, 1999, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999, and 23 comments were received. An analysis of the comments follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

Analysis of Comments and Changes

General

Comments: In general, the commenters supported the proposed regulations and appreciated the Department's responsiveness to the student aid community.

Discussion: We appreciate the commenters' support for the proposed regulations and the work of the members of the negotiated rulemaking committee that resulted in the proposed regulations.

Changes: None.

Challenges and Adjustments to Inaccurate Data Used To Calculate Rates (§ 668.17(a)(1) and 668.17(j))

Comments: The commenters supported the proposed changes to the process for a school to challenge its draft data, especially the extension of the time limit for schools to submit the challenge, from 30 to 45 days. One commenter, while applauding the proposed change, recommended extending the time limit further, to 60 days. The commenter reasoned that this extension is necessary because the data review process usually takes place when schools are beginning their processing for the next academic year and when their State reports are due. The commenter also reasoned that the extension was necessary because formatting or other software changes may be needed to accommodate the electronic supporting data.

Several other commenters noted that the proposed regulations did not include a change to the 30-day timeframe under which a guaranty agency must respond to a school's challenge. The commenters reasoned that new benefits associated with low cohort default rates may increase the number of challenges to draft rates and that it may be difficult for guaranty agencies to respond to challenges within the current 30-day timeframe. Commenters asked us to revise the regulations to allow the Secretary to extend a guaranty agency's response period if there are extenuating circumstances, acceptable to the Secretary, that will impair the agency's ability to respond within the required timeframe.

Discussion: Because of statutory requirements for the issuance and review of draft data and the issuance of final rates by September 30, the time period for the draft data review process is necessarily short. Extending the period for schools to challenge their draft rates from 30 to 45 days will further shorten the period. Under the process included in the regulations, schools must challenge their draft rates within 45 days, and guaranty agencies will have 30 days to respond to those challenges. An additional 2 months are needed for the guaranty agencies to submit corrected data to the National Student Loan Data System (NSLDS). At least two submission cycles are needed to ensure that NSLDS data has been updated and that any rejected data is corrected. In addition, we use this 2-month period to review guaranty agencies' responses to schools.

We intend to issue draft rates by late March. Final rates must be calculated by late August to ensure that they are published by September 30. Thus, the timeframes for the review process are very tight, and we do not believe it is possible to further extend the deadlines for individual actions. Allowing an option to extend timeframes for guaranty agencies on a case-by-case basis is not a workable alternative. Delayed responses from one or two guaranty agencies could significantly affect the accuracy of many schools' rates.

Changes: None.

Comments: In the preamble to the NPRM, the Department announced administrative changes to the process used by a school to request an adjustment to a published rate: supporting data will be provided to more schools with their published rates, a school will have more time to request an adjustment, and a school will be able to request an adjustment of the data used to calculate its published rate that was not used to calculate its draft rate ("new data"). Commenters generally expressed appreciation for all of these changes. Several commenters asked for clarification in the preamble to these final regulations concerning the types of adjustments to new data that a school would be able to request.

Discussion: The "new data adjustment," which will be available to schools beginning with receipt of the fiscal year (FY) 1998 published rates, will be used only to adjust rates based on incorrect new data. "New data" are data that were reported one way in the draft rate and a different way in the published rate. Schools may not use this process to correct data that were used to calculate their draft rates: a school must have challenged its draft rate to correct the data on which the draft rate was based.

For example, if a borrower was included in the denominator of the calculation of a school's draft rate but was not included in the calculation of its final rate, the school may use a new data adjustment to correct the data that resulted in the removal of the borrower, incorrectly, from the calculation of the published rate. However, if a borrower was not included in both the draft and published rates, the school may not use a new data adjustment to correct data that resulted in the borrower's exclusion from its published rate.

Changes: None.

Comments: The NPRM's preamble announced other administrative changes to the process used to challenge and adjust rates. These changes included making supporting data available to schools in an electronic format and allowing schools to view, year round, "real-time" loan repayment and default data that will be used to calculate their rates. These changes will affect the process for both draft and published rates and will be implemented under the timelines announced in the preamble to the NPRM.

Several commenters asked for clarification in this preamble concerning the process for providing electronic supporting data and real-time data. Two commenters recommended that we make electronic data available to all schools and guaranty agencies, in a format compatible with schools' software, and that eventually we provide electronic data automatically to all schools. Commenters recommended that we provide real-time data via a system to which schools currently have access, and they suggested the use of the National Student Loan Data System (NSLDS) for this purpose. The commenters reasoned that these provisions would reduce the administrative and financial burden for schools.

Discussion: We intend to meet the implementation timeframes described in the preamble to the NPRM for providing supporting data to schools electronically and for providing data on a real-time basis. After those deadlines are met, we expect eventually to provide supporting data electronically to all schools and to guaranty agencies. We are also working with schools to ensure that the format of the electronic supporting data is compatible with schools' computer hardware and software. In addition, we plan to provide real-time data to schools via NSLDS.

Changes: None.

Deadline for Publishing Rates (§ 668.17(b)(3))

Comments: In the preamble to the NPRM, we addressed the concerns expressed by some non-Federal negotiators during negotiated rulemaking about the possible consequences of our issuing rates after the date required by statute, September 30 of a year. Four commenters noted that the Department's guidance is not currently included in regulations or other guidance issued by the Department and recommended that the guidance be provided more formally. Two commenters reasoned that, without this formal guidance, a school's eligibility may be challenged by a party critical of the guidance. Commenters recommended that the guidance be provided in the Student Financial Aid Handbook and in the Cohort Default Rate Guide. One commenter recommended including the guidance in regulations.

Discussion: We have already published the Department's view of the effect of a later publication of rates in the FY 1997 Official Cohort Default Rate Guide and in the 1999–2000 Student Financial Aid Handbook. It is not appropriate or necessary to include this guidance in regulations because the Department intends to meet the statutory requirements and publish rates by September 30 of each year.

Changes: None.

Loss of Pell Eligibility (§ 668.17(b)(4))

Comments: One commenter stated that the compromise reached during negotiated rulemaking was fair in allowing a school with excessive rates to continue participating in the Federal Pell Grant Program if it had not certified an FFEL loan or originated a Direct Loan on or after July 7, 1998. Several commenters asked us to clarify in this preamble whether a school could meet this criteria if it delivered FFEL funds or disbursed Direct Loan funds after July

7, 1998, for a loan certified or originated before that date.

Another commenter recommended removing this provision entirely. The commenter reasoned that, as the process to develop the statute was lengthy, schools had adequate time to withdraw formally from the FFEL and Direct Loan programs before its enactment. The commenter believed that the basis provided for including this provision was speculative and that its inclusion in regulations would lead to the loss of Federal funds.

Discussion: Under § 668.17(b)(4)(iii), a school with excessive rates would be allowed to continue participating in the Federal Pell Grant Program if it has not certified an FFEL loan or originated a Direct Loan on or after July 7, 1998. Because this criterion is specific to the certification or origination of loans, a school's delivery or disbursement of funds after July 7, 1998, for a loan that was certified or originated before that date does not affect a school's satisfaction of the criterion.

We do not agree with the recommendation that the provision allowing continued participation in the Federal Pell Grant Program be removed from the regulations. The Department is satisfied that there were cases in which schools that intended to withdraw from the FFEL or the Direct Loan Program were not aware that they needed to notify the Department in writing and instead simply stopped certifying or originating loans. The Department believes that these schools should not lose the opportunity to participate in the Federal Pell Grant Program based on their rates.

Changes: None.

Comments: One commenter recommended that a school be allowed to continue participating in the Federal Pell Grant Program, despite loss of participation in the FFEL or Direct Loan Program due to excessive rates, if the school: (1) Is in good standing with the community and its accreditation organization, (2) was not aware of the provisions in the 1998 Amendments for loss of eligibility to participate in the Federal Pell Grant Program, and (3) returns all FFEL Program and Direct Loan Program funds received after the date of enactment of the 1998 Amendments. The commenter reasoned that this provision would allow schools to continue participating in the Federal Pell Grant Program and providing an education to needy students.

Discussion: The commenter's recommendations are inconsistent with statutory requirements. The HEA provides only two exceptions to the loss of participation in the Federal Pell Grant Program based on excessive rates: (1) The school did not have the opportunity to appeal its rate under the appropriate regulations, and (2) the school did not participate in the FFEL or Direct Loan Program on or after the date of enactment.

Changes: None.

Liability for Unsuccessful Appeals (§ 668.17(b)(5)(ii) and 668.17(b)(6))

Comments: Several commenters asked for clarification of the regulations for establishing a school's liability on loans made during an unsuccessful appeal. In particular, the commenters requested that we provide further explanation of—

(1) Whether the liability determination would apply to schools that are subject to loss of participation based on three rates over 25 percent, for schools with one rate over 40 percent, or for special institutions that are continuing to participate by complying with the requirements of § 668.17(k);

(2) The formula that will be used to calculate a school's liability;

(3) The beginning and ending date of the period during which a school would be liable;

(4) Whether a school that suspends its participation to avoid a liability may resume its participation 45 days after the submission of its completed appeal, without incurring a liability, if we have not made a determination on the appeal; and

(5) Whether the repayment terms for a liability will be flexible enough to ensure a school's repayment without causing serious financial problems for the school and its students.

Discussion: Responses to each of the commenters' issues follow:

(1) The liability for loans made during the appeal process only applies to a school with rates of 25 percent or more for 3 consecutive years that is subject to an action under § 668.17 (a)(3), (b)(1), or (b)(2). The 1998 Amendments do not require a similar liability determination for a school subject to termination from all of the Title IV programs based on a rate over 40 percent. In addition, a special institution would only be subject to this type of liability if it is *not* in compliance with § 668.17(k) and its rates for the 3 most recent fiscal years are 25 percent or more. If a special institution is in compliance with § 668.17(k), and thus not subject to an action under § 668.17 (a)(3), (b)(1), or (b)(3), it may challenge its rate without incurring a potential liability.

(2) A more detailed description of the estimated loss formula is available to the public on the Internet at the following site: http://ifap.ed.gov/csb__html/procmemo.htm.

The current guidance on the estimated loss formula is provided on that site, under "Procedure Memos Sorted by Memo Number," in IRB Memo 92–3, which is listed as "I92–3."

(3) The period during which a school would be liable begins 30 calendar days after it receives its published rate and ends on the 45th calendar day after the school submits its completed appeal.

(4) The final regulations have been changed to clarify that a school's suspension of its participation need not continue longer than 45 days after it submits its completed appeal to the Department. Like other schools, a school that suspends its participation would not incur this type of liability for funds delivered or disbursed more than 45 calendar days after it submits its completed appeal to the Department.

(5) We will consider a school's request for more time to repay a liability, over a period greater than the 45 days allowed in the regulations, on a case-by-case basis. A determination to extend a school's repayment period may include a consideration of the school's circumstances, its students' circumstances, and the best method to ensure that funds are recovered.

Changes: We have revised § 668.17(b)(6) to clarify that, if a school suspends its participation in order to avoid a liability, the suspension may end 45 days after the school submits its completed appeal. We have also revised the regulations to clarify that a school is subject to a potential liability for loans certified and delivered or originated and disbursed during the appeal process if the school is subject to an action under § 668.17(a)(3), (b)(1), or (b)(2).

Comments: One commenter stated that the use of the Department's "Estimated Loss Formula" to determine a school's liability for loans made during an unsuccessful appeal, as described in the NPRM, exaggerates the potential loss to the Government and would make appeals prohibitively expensive. The commenter stated that the intent of Congress was to focus on the amount of interest and special allowance for loans made during the appeals period, rather than on the amounts calculated under the "Estimated Loss Formula." The commenter did not believe that the issue is adequately addressed by allowing a school to avoid a liability by suspending its participation.

Discussion: Under the amendments to section 435(a)(2)(A) of the HEA, a school's liability is not limited to the amount of the interest and special allowance on the loans made during its appeal. Rather, the HEA requires an institution to pay "an amount equal to the amount of interest, special allowance, reinsurance, and any related payments." Thus, the amount of the Government's costs for reinsurance and any related payments must be included in the calculation of the school's liability.

We also do not agree that the Department's "Estimated Loss Formula" exaggerates potential losses to the Government. As described in the NPRM, the formula uses the school's most recent published rate to estimate the principal amount of the loans that would be expected to default and estimates the costs that will be incurred for interest, special allowance, and other losses on the loans. These amounts are equivalent to the amounts that the HEA requires a school to pay. The formula is used by the Department to calculate schools' liabilities in other, similar circumstances, and it has proven to be a reliable and supportable measure of potential losses to the government.

Assessing a liability does not make appeals prohibitively expensive because any school may avoid a liability by suspending its participation in the loan program or programs during the appeal process. If a school has confidence in the basis for its appeal, it will be able to continue to participate during the appeal process with the same confidence. The regulations ensure that the school, rather than the Government, assumes the risk for the cost of the loans made during an unsuccessful appeal.

Changes: None.

Comments: The proposed § 668.17(b)(6)(ii)(C)(*1*) would permit a school to appeal, under subpart H of 34 CFR part 668, a liability calculated for loans made during an unsuccessful appeal. As the provisions in subpart H are used by schools to appeal final audit and program review determinations, one commenter asked for clarification of the procedures that a school would use to file this type of appeal. The commenter did not understand how or why subpart H could be used to appeal the calculation of this liability.

Discussion: In appealing a calculation of a liability for loans under these regulations, under subpart H, the calculation will be treated as a program review determination.

Changes: We have revised § 668.17(b)(6)(ii)(C)(*1*) to clarify the procedures for the appeal of a liability.

Participation Rate Index (PRI) (§ 668.17(c)(1)(ii)(A) and 668.17(j)(4))

Comments: None.

Discussion: On further review, we have determined that the language in § 668.17(c)(1)(ii)(A)(*2*), explaining the method for calculating a PRI, could be misinterpreted. We have modified the language to avoid confusion. The new language does not change the substance of the calculation.

Changes: We have revised § 668.17(c)(1)(ii)(A)(*2*) to more clearly describe the calculation of a school's PRI for a fiscal year.

Comments: Several commenters recommended that the regulations be revised to clarify the procedures that may be used by schools to challenge an anticipated loss of participation, on the basis of a participation rate index (PRI), during the draft rate process. The commenters stated that the proximity of the proposed regulations in § 668.17(j)(4) to the provisions for a challenge of incorrect data may cause confusion. They were especially concerned that schools may send their PRI challenges to guaranty agencies, rather than to the Department.

Discussion: Though the two paragraphs contain separate requirements, we agree that their proximity in the regulations could cause some confusion.

Changes: We have revised § 668.17(j)(4) to distinguish more clearly between the procedures and requirements for a challenge of inaccurate data and those for a PRI challenge.

Comments: One commenter asked us to clarify the consequences of a school's successful PRI appeal based on a draft rate, if the school's published rate for the same fiscal year would not result in a successful PRI appeal. Another commenter noted that under the proposed regulations, if a school successfully challenges an anticipated loss of participation during the draft rate process, the school would have to appeal again the following year to continue participating, even if the draft rate upon which the school based its original challenge is equal to or higher than the same fiscal year's published rate. The commenter stated that this type of second appeal is unnecessarily burdensome and recommended that it be required only if the draft rate upon which a school bases its PRI challenge is lower than the published rate.

Discussion: Since a PRI challenge or appeal may be based on the PRI for any of the 3 most recent fiscal years for which data are available, the same PRI may be a criterion for a school's challenge or appeal in more than one year. A school that successfully challenges or appeals a loss of participation, based on its PRI, does not need to challenge or appeal again in a subsequent year as long as the same, successful PRI could be used as a basis for the subsequent appeal. An example is provided in the preamble to the NPRM.

If a school's PRI challenge based on a draft rate is successful, and the school's published rate for the same fiscal year would not result in a successful appeal, the school has still successfully challenged its loss of participation for that year. However, when rates are published the following year, the prior, successful PRI challenge, based on a draft rate, cannot be used to continue the school's participation, because a prior year's draft rate is not a basis for a challenge or appeal of a school's current loss of participation.

We agree with the comment suggesting that we should not require a school to appeal a second time if it successfully appealed the previous year on the basis of a PRI calculated using its draft rate and its published rate for the same fiscal year was equal to or lower than its draft rate. In that case, there is no need for the school to submit another appeal because we already have enough information to determine that the school's appeal would be successful.

The administrative procedure used to make the determination that the school's appeal would be successful will be similar to the procedure used for the new mitigating circumstances appeals provided in § 668.17(c)(1)(ii)(C) and (D). There is no need to include this procedure in the regulations. If information we maintain can be used to determine that a school's PRI appeal would be successful, we will calculate the results and notify the school. In addition to the circumstances noted by the commenter, this calculation would also be performed if a school's challenge during the draft rate process is unsuccessful, its published rate for the same fiscal year is lower than its draft rate, and an appeal based on the published rate would be successful. In that case, we would also calculate the results of the school's PRI appeal and notify the school.

Changes: None.

Mitigating Circumstances Appeals (§ 668.17(c)(1)(ii)(B) and 668.17(c)(7))

Comments: Previously, the economically disadvantaged rates, completion rates, and placement rates used to determine a school's mitigating circumstances appeal were calculated as percentages of all of the school's regular students. The NPRM proposed to limit the groups of students for whom the percentages are calculated to include only students who are enrolled in programs eligible for Title IV aid. This change was requested by some of the negotiators during negotiated rulemaking because they believed it was unlikely that the records needed to determine a school's economically disadvantaged rate would be available for students not in Title IV eligible programs.

In general, commenters supported this change. They reasoned that if the change were not made, it would be difficult for schools to obtain the information necessary to determine eligibility for this type of appeal. One commenter stated that this change was also appropriate because it focused on the completion and placement outcomes for students attending classes supported by Title IV funds.

Several other commenters suggested that only the economically disadvantaged rate should be based on students enrolled in programs eligible for Title IV aid and that a school should have an option to base its completion rate or placement rate on either its regular students or on the students in Title IV eligible programs. They reasoned that, as the same problem with records does not apply to completion and placement rates, giving a school this option may provide a small degree of assistance for schools to satisfy the criteria for a successful appeal and to continue to serve economically disadvantaged students.

Discussion: All of the commenters' suggestions were considered and rejected during the negotiated rulemaking process. As one commenter noted, one of the reasons for restricting the calculation to students in Title IV eligible programs was that, in doing so, the calculation would be restricted to the loan programs that are actually serving the low-income population. Basing the economically disadvantaged rate and the completion and placement rates on different populations would not ensure that the benefit shown in the school's completion or placement rate was actually received by economically disadvantaged students.

Changes: None.

Comments: One commenter asked for clarification concerning our intent to explain to a school the reasons that we have determined an independent auditor's report or an institution's management's assertion to be "contradicted or otherwise refuted." Another commenter recommended that we define "independent auditor" in these final regulations and that we include provisions for rejecting an auditor's certification that a school meets the criteria for the appeal if the facts demonstrate that the auditor's opinion is fraudulent or inaccurate. The commenter also recommended that we use more than just the information we maintain when making a determination on an appeal. The commenter recommended that these final regulations be revised to allow us to routinely obtain information for making our determinations, reasoning that limiting ourselves to the information that we maintain invites abuses and that we have no reason to believe that auditors will always act honestly and truthfully.

Discussion: If a school's appeal is not accepted because we determine an independent auditor's report or an institution's management's assertion to be "contradicted or otherwise refuted" by the information we maintain, the reasons for our determination will be explained in the notification we send to the school.

We agree with the commenter's recommendation that a definition of "independent auditor" should be referenced in these regulations. "Independent auditor" is already defined in § 668.23(a)(1), and we have incorporated that definition into this section of the regulations.

The additional requirements that the commenter recommends to prevent fraud or inaccuracies are not needed.

The proposed regulations allow us to deny an institution's appeal if we determine that the independent auditor's report does not meet the requirements of § 668.17 or that it is contradicted or otherwise refuted by information that we maintain. The standards for the engagement that forms the basis for an independent auditor's opinion, in § 668.17(c)(7)(ii)(B), include criteria that address an auditor's proficiency and independence. Also, as we noted in the NPRM's preamble, if improprieties are suspected in a school's appeal, an investigation could be pursued under other legal authority.

We also do not agree with the commenter's recommendation that we routinely obtain information to evaluate the validity of the auditor's certification for these appeals. As we discussed in the preamble to the NPRM, it would be inappropriate for us to ignore information we maintain or any contradictions in the data of an independent auditor's report when deciding whether a school meets the appeal's criteria. However, we believe that it would be inconsistent with congressional intent for us to routinely duplicate the work of an independent auditor by conducting investigations to gather additional information.

Changes: We have revised § 668.17(c)(1)(ii)(B)(*1*) to incorporate the definition of "independent auditor" from § 668.23.

Other Mitigating Circumstances Appeals (§ 668.17(c)(1)(ii)(C) and (D))

Comments: Many commenters strongly supported the two new mitigating circumstances that were included in the NPRM, which will allow schools to appeal based on the total number of borrowers in the 3 most recent fiscal years and will allow schools with "average" rates to appeal based on the rate for a single fiscal year only. The commenters stated that these new mitigating circumstances are a significant improvement toward eliminating sanctions based on statistically insignificant percentages and that they represent movement in a positive direction toward reducing unnecessary regulatory penalties. Commenters asked that the Secretary revisit these and other issues related to schools' rates in future negotiations.

One commenter noted that, under the 1998 Amendments, the Secretary is required to conduct a study of the effectiveness of rates for certain schools at which a small percentage of students receive loans. The commenter asked the Department to further address these schools' circumstances after conducting the required study. The commenter felt that this is necessary because a school's excessive rates may cause it to suffer from public criticism or to be placed on a provisional certification status, regardless of its being allowed to continue its participation in the Title IV programs as the result of a successful appeal.

Discussion: We appreciate the commenters' support for the proposed regulations, and their interest in this issue and in the study of the effectiveness of rates. We will consider these issues and the results of the study during the ongoing review of the regulations for the Title IV programs.

Changes: None.

Comments: Several commenters stated that the language in the preamble to the NPRM and in the proposed regulations was in error when it used the phrase "30 or fewer." They noted that an average rate, as described in § 668.17(d), (e), and (f), is calculated for a school with "fewer than 30" borrowers entering repayment in that fiscal year. The commenters asked us to correct the language in the NPRM.

Discussion: There is no error. The phrases "30 or fewer" and "fewer than 30," as used in the preamble to the NPRM and in the proposed regulations, apply to separate, unrelated requirements. As the commenters note, an "average" rate is calculated for a school with "fewer than 30" borrowers entering repayment during a fiscal year.

However, the proposed regulations would add a new mitigating circumstance that allows a school to appeal its loss of participation if the total number of its borrowers entering repayment in the 3 most recent fiscal years for which data are available is "30 or fewer." The former standard is used in determining how a school's rate is calculated. The latter standard is used in determining a school's eligibility to appeal a loss of participation. However, we do recognize the value of making terms in these regulations consistent, and we will reconsider this issue during the ongoing review of the regulations for the Title IV programs.

Changes: None.

Definition of "Default" (§ 668.17(e), 668.17(f), and 668.17(h)(2)(iii))

Comments: Several commenters were concerned that readers might be confused by the NPRM's explanation of the date on which a loan is considered to be in default for the purpose of calculating a rate. They stated that some readers might believe, based on the preamble's language, that the actual definition of "default" for an FFEL Program loan was changing from 270 days of delinquency to 360 days and asked us to provide clarification in the preamble to these final regulations.

Discussion: The 1998 Amendments changed the definition of a default on an FFEL or a Direct Loan Program loan from 180 days to 270 days past due for a loan that is repayable in monthly installments and from 240 days to 330 days past due for loans repayable in less frequent installments. The definition of "default" that is used in § 668.17 for the purpose of calculating rates is *based* on this general definition. It is not the same as the definition provided in the statute for the date of a borrower's default.

For the purposes of calculating an FFEL Program cohort default rate, a default is generally considered to have occurred on the date that a claim for insurance is paid on the loan by a guaranty agency. Since there is generally a 90-day period between the date that a borrower defaults and the date that an insurance claim is paid, an FFEL Program loan would not normally be considered in default for the purposes of calculating a school's rate until it is at least 360 days past due (270 days + 90 days = 360 days). For consistency, because Direct Loans do not go through a claims payment process, these final regulations change from 270 to 360 the number of days past due after which a Direct Loan borrower is considered in default for purposes of calculating a school's rate.

Changes: None.

Comments: Several commenters expressed concerns about the impact of the change in the definition of "default," from 180 days to 270 days, upon the calculation of a school's rate. The commenters were concerned that, using the current method to calculate rates, the change in the timeframe may remove a significant number of defaulted borrowers from the calculation of rates, decreasing their consistency and accuracy as a reflection of the borrowing history of a school and affecting the effectiveness of default prevention activities conducted by schools. Some commenters stated that it is appropriate for the Department to consider the impact of the change in the definition of "default" on schools' rates and to communicate its intentions concerning anticipated future changes, if any, to the calculation of rates. One commenter asked the Department to devise a calculation that would address the lengthened default period.

Discussion: The calculation of a school's rate is defined in section 435(m) of the HEA.

Changes: None.

Special Institutions (§ 668.17(k) and Appendix H)

Comments: One commenter stated that historically black colleges or universities, tribally controlled community colleges, and Navajo community colleges ("special institutions") have already had an adequate length of time to reduce their rates to acceptable levels. The commenter objected to continuing a double standard and asked to either eliminate the provisions that allow special institutions with excessive rates to continue to participate or to apply the same criteria to all schools with excessive rates.

Another commenter questioned the creation of a new Appendix H when Appendix D of 34 CFR part 668 already addresses default management plans. The commenter suggested that, since Appendix D needs to be updated, the two appendices should be combined, updated, and applied to all schools. The commenter also asked that regulations specify whether a special institution would be subject to loss of participation in the Federal Pell Grant Program if it is not in compliance with § 668.17(k).

Discussion: The provisions that provide a different treatment for special institutions with excessive rates are statutory and cannot be changed by regulations. Also, it is not necessary to specify in § 668.17(k) that a school is subject to loss of participation in the Federal Pell Grant Program if it is not in compliance with that paragraph. If any school is subject to a loss of participation in the FFEL or Direct Loan Program under § 668.17, it is also subject to loss of participation in the Federal Pell Grant Program if it meets the criteria in § 668.17(b)(4).

The requirements reflected in § 668.17(k) are limited to a 3-year transition period, after which the consequences of excessive rates will become fully applicable to special institutions. As other schools do not have the same transition period, these criteria are not appropriate for them.

Finally, we believe it would be inappropriate to revise, in these final regulations, the current Appendix D to include some or all of the guidance in Appendix H, because the revision would go beyond the scope of the proposed regulations. However, the updates to Appendix D suggested by the commenter will be considered during the ongoing review of the regulations for the Title IV programs.

Changes: None.

Comments: The criteria for determining whether a special institution has made substantial improvement are listed in paragraphs (A) through (H) of § 668.17(k)(4)(i). One commenter stated that while it is appropriate to use either paragraph (A) or (B), by itself, to determine a school's substantial improvement, the commenter did not believe that any of the remaining criteria, alone, would adequately reduce a school's rate. The commenter suggested that, if a school cannot show that it has met the criterion in either paragraph (A) or (B), a school should be required to meet more than one of the remaining criteria in order for the Secretary to determine that the school has made substantial improvement.

The commenter also suggested the following changes to Appendix H: (1) to include, under "Core Default Reduction Strategies," the design of procedures to reduce a school's rate by identifying and implementing alternative financial aid award policies and developing alternative financial resources; (2) to provide for monthly, rather than annual, targets for reductions in a school's rate; (3) to make item 7 the first item under "Additional Default Reduction Strategies," reasoning that this item is the most effective long-term solution; (4) to remove item 1 under "Statistics for Measuring Progress;" and (5) to provide for the tracking of sub-categories of borrowers under items 2 and 7 under "Additional Default Reduction Strategies." The commenter felt that these changes would assist schools in identifying potential problems and reacting to them more quickly and effectively.

Discussion: The requirements in § 668.17(k) and the sample plan in Appendix H are provided to ensure that a school that is subject to those provisions will, no later than July 1, 2002, have a rate that is less than 25 percent. To regulate the requirements in more detail, as the commenter suggests, or to provide more detailed guidance in the sample plan in Appendix H, may tend to limit a school's choices and make a school less able to devote its resources effectively to the task at hand. Each school needs the flexibility to implement a plan that addresses its individual circumstances.

The same flexibility is needed in making a determination of a school's substantial improvement under § 668.17(k)(4)(i). The criteria in that paragraph are the bases for a determination of substantial improvement, but the criteria will be applied to schools as appropriate to their individual circumstances, as described in § 668.17(k)(4)(ii). If a school's performance under any one of the criteria is adequate to determine that it has made substantial improvement, there is no reason to require the school to meet another criterion under that paragraph.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (64 FR 41752).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected section of the regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program and the State Student Incentive Grant Program are subject to Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of our specific plans and actions for these programs.

The Federal Family Education Loan, Federal Supplemental Loans for Students, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Income Contingent Loan, and William D. Ford Federal Direct Loan programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.226 Income Contingent Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 20, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.17 is amended to read as follows by—

A. Revising paragraph (a)(1).

B. In the introductory language for paragraph (b)(3), removing the word "institution's" and adding, in its place, "institution whose"; removing the word "respectively"; and removing the words "section and continuing" and adding, in their place, "section. The loss of participation continues".

C. Revising paragraphs (b)(4) through (b)(6).

D. In the introductory text for paragraph (c)(1), after "except that an institution may submit an appeal under", removing the word "section" and adding, in its place, "paragraph"; removing the words "the information required by paragraph (c)(7) may be submitted in accordance with that paragraph" and adding, in their place, "an institution submits an appeal under paragraph (c)(1)(ii)(B) of this section in accordance with paragraph (c)(7) of this section"; and removing the sentence, "The additional 30-day period specified in paragraph (c)(7) of this section is an extension for the submission of the auditor's statement only and does not affect the date by which the appeal data must be submitted."

E. Revising paragraphs (c)(1)(ii), (c)(2), and (c)(7).

F. In paragraphs (e)(1)(ii)(A), (e)(1)(ii)(B), (f)(1)(ii)(A), and (f)(1)(ii)(B), removing the number "270" and adding, in its place, "360".

G. In paragraphs (e)(3) and (f)(3), removing "270 days" and adding, in its place, "360 days (or for 270 days, if the borrower's delinquency began before October 7, 1998)".

H. In paragraph (h)(2)(ii), adding, at the end of the paragraph, "In excluding loans from the calculations of these rates, the Secretary removes them from both the number of students who entered repayment and the number of students who defaulted."

I. In paragraph (h)(2)(iii), removing the number "270" and adding, in its place, "360".

J. In the introductory language for paragraph (h)(3)(ii)(B), removing the words "with a representative sample" and adding, in their place, "with access, for a reasonable period of time not to exceed 30 days, to a representative sample"; and removing the words "records submitted by the lender to the guaranty agency to support the lender's submission of a default claim and included in the claim file" and adding, in their place, "collection and payment history records provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan".

K. In the introductory language for paragraph (h)(3)(iii)(B), removing the words "with a representative sample" and adding, in their place, "with access, for a reasonable period of time not to exceed 30 days, to a representative sample"; and removing the words "records maintained by the Department's Direct Loan Servicer with respect to the servicing and collecting of delinquent loans prior to the default" and adding, in their place, "collection and payment history records maintained by the Department's Direct Loan Servicer that are used in determining an institution's Direct Loan Program cohort rate or weighted average cohort rate".

L. Revising paragraph (j)(1)(ii).

M. Removing paragraph (j)(1)(iii).

N. Redesignating paragraphs (j)(2), (j)(3), (j)(4), (j)(5), and (j)(7) as paragraphs (j)(3)(i), (j)(3)(ii), (j)(3)(iii), (j)(3)(iv), and (j)(3)(v), respectively.

O. Redesignating paragraph (j)(6) as (j)(2).

P. In the redesignated paragraph (j)(2), removing the cross-reference "(h)(1)" and adding, in its place, "(j)(1)".

Q. In the redesignated paragraph (j)(3)(i), removing the number "30" and adding, in its place, "45".

R. In the redesignated paragraph (j)(3)(ii), removing the citation "(h)(2)" and adding, in its place, "(j)(3)(i)".

S. In the redesignated paragraph (j)(3)(v), removing the citation "(d)(1)" and adding, in its place, "(c)(1)(i)"; removing the word "preliminary" and adding, in its place, "draft"; and removing the citation "(h)" and adding, in its place, "(j)(3)".

T. Adding a new paragraph (j)(4).

U. Adding a new paragraph (k).

V. Revising the OMB control number following the section.

§ 668.17 Default reduction and prevention measures.

(a) * * *

(1)(i) If the Secretary calculates an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate for an institution, the Secretary notifies the institution of that rate.

(ii) If an institution has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of 10 percent or more, the Secretary includes a copy of the supporting data used in the calculation of the rate with the notice of the rate.

(iii) An institution with an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent may request a copy of the supporting data used in the calculation of the rate. The institution's request must be sent to the Secretary within 10 working days of receiving the Secretary's notice. Upon receiving the institution's request, the Secretary sends a copy of the data to the institution.

* * * * *

(b) * * *

(4) If an institution loses eligibility to participate in the FFEL or Direct Loan Program under this section, it also loses eligibility to participate in the Federal Pell Grant Program for the same period of time, except that the institution may continue to participate in the Federal Pell Grant Program if the Secretary determines that the institution—

(i) Was ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and the institution's eligibility was not reinstated;

(ii) Requested in writing, before October 7, 1998, to withdraw its participation in the FFEL and Direct Loan programs, and the institution did not subsequently re-apply to participate; or

(iii) Has not certified an FFEL loan or originated a Direct Loan on or after July 7, 1998.

(5) An institution whose participation in the FFEL, Direct Loan, or Federal Pell Grant Program ends under paragraph (a)(3), (b)(1), (b)(2), or (b)(4) of this section may not participate in that program until the institution—

(i) Demonstrates to the Secretary that it meets all requirements for participation in the FFEL, Direct Loan, or Federal Pell Grant Program;

(ii) Has paid any amount owed to the Secretary under paragraph (b)(6)(ii) of this section or is meeting that obligation under an agreement satisfactory to the Secretary; and

(iii) Executes a new agreement with the Secretary for participation in that program following the period described in paragraph (b)(3) of this section.

(6)(i) An institution may, notwithstanding § 668.26, continue to participate in the FFEL, Direct Loan, and Federal Pell Grant programs until the Secretary issues a decision on the institution's appeal if the Secretary receives an appeal that is complete, accurate, and timely in accordance with paragraph (c) of this section.

(ii) If an institution subject to an action under paragraph (a)(3), (b)(1), or (b)(2) of this section files a complete, accurate, and timely appeal under paragraph (c) of this section and the institution's appeal is unsuccessful—

(A) The Secretary estimates the amount of interest, special allowance, reinsurance, and any related or similar payments made by the Secretary (or which the Secretary is obligated to make) on any FFEL or Direct Loan Program loan for which the institution certified and delivered or originated and disbursed funds more than 30 calendar days after the date the institution received its most recent notification under paragraph (a)(1)(i) of this section;

(B) The Secretary excludes from the estimate calculated under paragraph (b)(6)(ii)(A) of this section any amount that is attributable to funds delivered or disbursed by the institution more than 45 calendar days after the date on which the institution submitted its completed appeal to the Secretary; and

(C) The institution must pay the Secretary the amount estimated under paragraph (b)(6)(ii) of this section within 45 days of the date of the Secretary's notification, unless—

(*1*) The institution files an appeal under the procedures established in subpart H of this part, for which the calculation of the institution's liability is considered a final program review determination; or

(*2*) The Secretary permits a longer repayment period.

(iii) An institution may suspend its participation in the FFEL or Direct Loan Program during the period in which it would otherwise be subject to a liability under paragraph (b)(6)(ii) of this section.

(iv) An institution may also continue to participate in the FFEL Program or Direct Loan Program if it is in compliance with paragraph (k) of this section.

(c) * * *

(1) * * *

(ii) The institution meets one of the following exceptional mitigating circumstances:

(A)(*1*) The institution's participation rate index, as determined under paragraph (c)(1)(ii)(A)(*2*) of this section, is equal to or less than 0.0375 for any of the 3 most recent fiscal years for which data are available.

(*2*) For the purpose of paragraph (c)(1)(ii)(A)(*1*) of this section, an institution's participation rate index for a fiscal year is determined by multiplying its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate for that fiscal year by the percentage that is calculated by dividing—

(*i*) The number of students who received an FFEL or Direct Loan to attend the institution during a loan period that coincided with any part of a 12-month period that ended during the 6 months immediately preceding that fiscal year; by

(*ii*) The number of regular students, as defined in 34 CFR 600.2, who were enrolled at the institution on at least a half-time basis during any part of the same 12-month period.

(B)(*1*) The report of an independent auditor (as defined in § 668.23(a)(1)), submitted under paragraph (c)(7) of this section, certifies that the institution's economically disadvantaged rate is two-thirds or more, as determined under paragraph (c)(1)(ii)(B)(*2*) of this section, and—

(*i*) If the institution offers an associate, baccalaureate, graduate or professional degree, the institution's completion rate is 70 percent or more, as determined under paragraph (c)(1)(ii)(B)(*3*) of this section; or

(*ii*) If the institution does not offer an associate, baccalaureate, graduate or professional degree, the institution's placement rate is 44 percent or more, as determined under paragraph (c)(1)(ii)(B)(*4*) of this section.

(*2*) For the purpose of paragraph (c)(1)(ii)(B)(*1*) of this section, an institution's economically disadvantaged rate is the percentage of its students, enrolled on at least a half-time basis in an eligible program at the institution during any part of a 12-month period that ended during the 6 months immediately preceding the fiscal year for which the cohort of borrowers (used to calculate the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate) is determined, who—

(*i*) Are eligible to receive a Federal Pell Grant award of at least one-half the maximum Federal Pell Grant award for which the student would be eligible based on the student's enrollment status; or

(*ii*) Have an adjusted gross income that, if added to the adjusted gross income of the student's parents (unless the student is an independent student), is less than the poverty level as determined by the Department of Health and Human Services.

(*3*) For the purpose of paragraph (c)(1)(ii)(B)(*1*) of this section, an institution's completion rate is the percentage of its regular students, initially enrolled on a full-time basis in an eligible program and scheduled to complete their programs, as described in paragraph (c)(2) of this section, during the same 12-month period used to determine its economically disadvantaged rate under paragraph (c)(1)(ii)(B)(*2*) of this section, who—

(*i*) Completed the educational programs in which they were enrolled;

(*ii*) Transferred from the institution to a higher level educational program;

(*iii*) Remained enrolled and making satisfactory progress toward completion of the student's educational programs at the end of the 12-month period; or

(*iv*) Entered active duty in the Armed Forces of the United States within 1 year after their last day of attendance at the institution.

(*4*)(*i*) Except as provided in paragraph (c)(1)(ii)(B)(*4*)(*ii*) of this section, for the purpose of paragraph (c)(1)(ii)(B)(*1*) of this section, an institution's placement rate is the percentage of its former students, as described in paragraph (c)(1)(ii)(B)(*4*)(*iii*) of this section, who are employed, in an occupation for which the institution provided training, on the date following 1 year after their last date of attendance at the institution; were employed, in an occupation for which the institution provided training, for at least 13 weeks before the date following 1 year after their last date of attendance at the institution; or entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at the institution.

(*ii*) If a former student's employer is the institution, the student is not considered employed for the purposes of paragraph (c)(1)(ii)(B) of this section.

(*iii*) The former students who are used to determine an institution's placement rate under paragraph (c)(1)(ii)(B)(*4*) of this section include only students who were initially enrolled in eligible programs on at least a half-time basis; were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to determine the institution's economically disadvantaged rate under paragraph (c)(1)(ii)(B)(*2*) of this section; and remained in the program beyond the point at which a student would have received a 100 percent tuition refund from the institution. A student is not included in the calculation of the placement rate if that student, on the date that is 1 year after the student's scheduled completion date, remains enrolled in the same program at the institution and is making satisfactory progress.

(C) At least two of the rates that result in a loss of eligibility under paragraph (a)(3), (b)(1), or (b)(2) of this section—

(*1*) Are calculated using data for the 3 most recent fiscal years, pursuant to paragraph (d)(1)(i)(B), (e)(1)(i)(B), (e)(1)(ii)(B), (f)(1)(i)(B), or (f)(1)(ii)(B) of this section; and

(*2*) Would be less than 25 percent if calculated using data for only the fiscal year for which the institution received its rate, pursuant to paragraph (d)(1)(i)(A), (e)(1)(i)(A), (e)(1)(ii)(A), (f)(1)(i)(A), or (f)(1)(ii)(A) of this section, respectively.

(D) During the 3 most recent fiscal years for which the Secretary has determined the institution's rate, a total of 30 or fewer borrowers entered repayment on a loan or loans included in a calculation of the institution's rate.

(2) For the purposes of the completion rate and placement rate described in paragraphs (c)(1)(ii)(B)(*3*) and (*4*) of this section, a student is scheduled to complete an educational program on the date on which—

(i) If the student is initially enrolled full-time, the student will have been enrolled in the program for the amount of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student; or

(ii) If the student is initially enrolled less than full-time, the student will have been enrolled in the program for the amount of time that it would take the student to complete the program if the student remained enrolled at that level of enrollment throughout the program.

* * * * *

(7)(i) An institution that appeals on the grounds that it meets the exceptional mitigating circumstances criteria in paragraph (c)(1)(ii)(B) of this section must submit to the Secretary—

(A) Within 30 calendar days of the date that it was notified of its loss of participation, notice of its intent to appeal under that paragraph, in a format prescribed by the Secretary; and

(B) Within 60 calendar days of the date that it was notified of its loss of participation, the independent auditor's compliance attestation report, as described in paragraph (c)(7)(ii) of this section, including the specific institution's management's written assertions for which the independent auditor opines, all in a format prescribed by the Secretary.

(ii)(A) The report of the independent auditor, required for an institution's appeal under paragraph (c)(1)(ii)(B) of this section, must state whether, in the auditor's opinion, the institution's management's assertion met the exceptional mitigating circumstances criteria specified in paragraph (c)(1)(ii)(B) of this section, as provided to the auditor to examine, and is fairly stated in all material respects.

(B) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with the American Institute of Certified Public Accountant's (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended, and Government Auditing Standards issued by the Comptroller General of the United States.

(iii) The Secretary denies an institution's appeal under paragraph (c)(1)(ii)(B) of this section if—

(A) The independent auditor does not opine that the institution meets the criteria for the appeal; or

(B) The Secretary determines that the independent auditor's report or institution's management's assertion described in paragraph (c)(7)(i) of this section—

(*1*) Demonstrates that the independent auditor's report or examination does not meet the requirements of this section; or

(*2*) Is contradicted or otherwise refuted, to an extent that would render the auditor's report unacceptable, by information maintained by the Secretary.

* * * * *

(j) * * *

(1) * * *

(ii) The Secretary's notice to an institution of its draft cohort default rate includes a copy of the supporting data used in the calculation of that draft rate.

* * * * *

(4)(i) An institution may challenge an anticipated loss of participation under paragraph (a)(3), (b)(1), or (b)(2) of this section using the criteria in § 668.17(c)(1)(ii)(A).

(ii) In meeting the requirements of § 668.17(c)(1)(ii)(A) during a challenge under this paragraph, the institution's draft rate is considered to be its most recent rate.

(iii) An institution's challenge under paragraph (j)(4)(i) of this section must be submitted to the Secretary, in writing, no more than 30 calendar days after the date that the institution receives the draft default rate information from the Secretary.

(iv) The Secretary notifies an institution of the determination on its challenge before the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate is published.

(k) *Special institutions.* (1) *Applicability of requirements.* For each 1-year period beginning on July 1 of 1999, 2000, or 2001, the Secretary may determine that the provisions of paragraph (a)(3), (b)(1), or (b)(2) of this section and the provisions of § 668.16(m) do not apply to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act if the institution submits to the Secretary—

(i) By July 1, 1999—

(A) A default management plan; and

(B) A certification that the institution has engaged an independent third party, as described in paragraph (k)(3) of this section; and

(ii) By July 1, 2000 and 2001—

(A) Evidence that it has implemented its default management plan during the preceding 1-year period;

(B) Evidence that it has made substantial improvement in the preceding 1-year period in the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate; and

(C) A certification that it continues to engage an independent third party, as described in paragraph (k)(3) of this section.

(2) *Default management plan.* (i) An institution's default management plan must provide reasonable assurance that it will, no later than July 1, 2002, have an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that is less than 25 percent. Measures that an institution must take to provide this assurance include but are not limited to—

(A) Establishing a default management team by engaging the chief executive officer and relevant senior executive officials of the institution and enlisting the support of representatives from offices other than the financial aid office;

(B) Identifying and allocating the personnel, administrative, and financial resources appropriate to implement the default management plan;

(C) Defining the roles and responsibilities of the independent third party;

(D) Defining evaluation methods and establishing a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans;

(E) Establishing annual targets for reductions in the institution's rate; and

(F) Establishing a process to ensure the accuracy of the institution's rate.

(ii) An institution's default management plan must be acceptable to the Secretary, after consideration of that institution's history, resources, dollars in default, and targets for default reduction.

(iii) If the Secretary determines that an institution's proposed default management plan is unacceptable, the institution must consult with the Secretary to develop a revised plan, and the institution must submit the revised plan to the Secretary within 30 calendar days of notice from the Secretary that the plan is unacceptable.

(iv) If the Secretary determines, based on evidence submitted under paragraph (k)(1)(ii) of this section, that an institution's default management plan is no longer acceptable, the institution must develop a revised plan in consultation with the Secretary, and it must submit the revised plan to the Secretary within 60 calendar days of notice from the Secretary.

(v) A sample default management plan is provided in appendix H to this part. The sample is included to illustrate additional components of an acceptable default management plan. Because institutions' family income profiles, student borrowing patterns, histories, resources, dollars in default, and targets for default reduction are different, an institution must consider its own, individual circumstances in developing and submitting its plan.

(3) *Independent third party.* (i) An independent third party may be any individual or entity that—

(A) Provides technical assistance in developing and implementing the institution's default management plan; and

(B) Is not substantially controlled by a person who also exercises substantial control over the institution.

(ii) An independent third party need not be paid by the institution for its services.

(iii) The services of a lender, guaranty agency, or secondary market as an independent third party under paragraph (k) of this section are not considered to be inducements under 34 CFR 682.200 or 682.401(e).

(4) *Substantial improvement.* (i) For purposes of this section, an institution's substantial improvement is determined based upon—

(A) A reduction in the institution's most recent draft or published FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate;

(B) An increase in the percentage of delinquent borrowers who avoid default by using deferments, forbearances, and job placement assistance;

(C) An increase in the academic persistence of student borrowers;

(D) An increase in the percentage of students pursuing graduate or professional study;

(E) An increase in the percentage of borrowers for whom a current address is known;

(F) An increase in the percentage of delinquent borrowers contacted by the institution;

(G) The implementation of alternative financial aid award policies and development of financial resources that reduce the need for student borrowing; or

(H) An increase in the percentage of accurate and timely enrollment status changes submitted by the institution to the National Student Loan Data System (NSLDS) on the Student Status Confirmation Report (SSCR).

(ii) When making a determination of an institution's substantial improvement, the Secretary considers the institution's performance in light of—

(A) Its history, resources, dollars in default, and targets for default reduction;

(B) Its level of effort in meeting the terms of its approved default management plan during the previous 1-year period; and

(C) Any other mitigating circumstance at the institution during the 1-year period.

(5) *Secretary's determination.* (i) If the Secretary determines that an institution is in compliance with paragraph (k) of this section, the provisions of paragraph (a)(3), (b)(1), or (b)(2) of this section and the provisions of § 668.16(m) do not apply to the institution for that 1-year period, beginning on July 1, 1999, 2000, or 2001.

(ii) If the Secretary determines that an institution is not in compliance with paragraph (k) of this section, the institution is subject to the provisions of paragraph (a)(3), (b)(1), or (b)(2) of this section and the provisions of § 668.16(m). The institution's participation in the FFEL and Direct Loan programs ends on the date that the institution receives notice of the Secretary's determination.

(Approved by the Office of Management and Budget under control number 1845–0022)

3. A new appendix H is added to part 668 to read as follows:

Appendix H to Part 668—Default Management Plans for Special Institutions

This appendix is provided as a sample plan for those schools developing a default management plan in accordance with 34 CFR 668.17(k). It describes some measures schools may find helpful in reducing the number of students that default on federally funded loans. These are not the only measures a school could implement when developing a default management plan. In developing a default management plan, each school must consider its own history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to the students and the school.

Core Default Reduction Strategies (from § 668.17(k)(2)(i))

(1) Establish a default management team by engaging the chief executive officer and relevant senior executive officials of the school and enlisting the support of representatives from offices other than the financial aid office.

(2) Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default management plan.

(3) Define the roles and responsibilities of the independent third party.

(4) Define evaluation methods and establish a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans.

(5) Establish annual targets for reductions in the school's rate.

(6) Establish a process to ensure the accuracy of the school's rate.

Additional Default Reduction Strategies

(1) Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.

(2) Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.

(3) Maintain contact with the borrower after he or she leaves the school by using activities such as skip-tracing to locate the borrower.

(4) Track the borrower's delinquency status by obtaining reports from lenders and guaranty agencies for FFEL Program loans and from the Secretary for Direct Loan Program loans.

(5) Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and lender for FFEL Program loans and the borrower and the Secretary for Direct Loan Program loans.

(6) Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.

(7) Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.

(8) Familiarize the parent, or other adult relative or guardian, with the student's debt profile, repayment obligations, and loan status by increasing, whenever possible, the communication and contact with the parent or adult relative or guardian.

Defining the Roles and Responsibilities of Independent Third Party

(1) Specifically define the role of the independent third party.

(2) Specify the scope of work to be performed by the independent third party.

(3) Tie the receipt of payments, if required, to the performance of specific tasks.

(4) Assure that all the required work is satisfactorily completed.

Statistics for Measuring Progress

(1) The number of students enrolled at the school during each fiscal year.

(2) The average amount borrowed by a student each fiscal year.

(3) The number of borrowers scheduled to enter repayment each fiscal year.

(4) The number of enrolled borrowers that received default prevention counseling services each fiscal year.

(5) The average number of contacts the school or its agent had with a borrower who was in deferment/forbearance or repayment status during each fiscal year.

(6) The number of borrowers at least 60 days delinquent each fiscal year.

(7) The number of borrowers who defaulted in each fiscal year.

(8) The type, frequency, and results of activities performed in accordance with the default management plan.

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Monday
November 1, 1999

Part V

Department of the Interior

Bureau of Reclamation

43 CFR Part 414

Offstream Storage of Colorado River Water; Development and Release of Intentionally Created Unused Apportionment in the Lower Division States; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 414

RIN 1006–AA40

Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This rule establishes a procedural framework for the Secretary of the Interior (Secretary) to follow in considering, participating in, and administering Storage and Interstate Release Agreements among the States of Arizona, California, and Nevada (Lower Division States). The Storage and Interstate Release Agreements would permit State-authorized entities to store Colorado River water offstream, develop intentionally created unused apportionment (ICUA), and make ICUA available to the Secretary for release for use in another Lower Division State. This rule provides a framework only and does not authorize any specific activities. The rule does not affect any Colorado River water entitlement holder's right to use its full water entitlement, and does not deal with intrastate storage and distribution of water. The rule only facilitates voluntary interstate water transactions that can help satisfy regional water demands by increasing the efficiency, flexibility, and certainty in Colorado River management.

EFFECTIVE DATE: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Ensminger, (702) 293–8659 or Ms. Erica Petacchi (202) 208–3368.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted
III. Tribal Issues
IV. Responses to Comments
V. Procedural Matters

I. Background

This final rule was preceded by a proposed rule that we published in the **Federal Register** on December 31, 1997 (62 FR 68491). The proposed rule provided for a public comment period that ran from December 31, 1997 through April 3, 1998. In addition to oral comments submitted at one public hearing and one public meeting, we received 47 letters during the comment period on the proposed rule. Two letters commented only on the draft programmatic environmental assessment (DPEA). The respondents included two irrigation districts, three water districts, two water authorities, two water user associations, three individuals, one municipal utility, one city, one farmer's organization, one safe drinking water organization, four environmental organizations, 11 State agencies, nine Indian tribes, and seven Federal agencies. We reviewed and analyzed all comments and revised the final rule based on these comments.

The DPEA provided for a comment period that ran from December 31, 1997 through April 3, 1998. Oral comments on the DPEA were submitted at the same public hearing and the same public meeting for the proposed rule. In addition to those oral comments, we received 25 letters from 26 respondents during the comment period. The respondents included one water district, one water authority, one individual, five environmental organizations, five State agencies, six Indian tribes, and seven Federal agencies. As with the rule, we reviewed and analyzed all comments and revised the final programmatic environmental assessment based on these comments.

As a result of receiving differing comments on the definition of authorized entity and several other technical matters, we reopened the comment period on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998. We asked interested parties to comment on three specific questions. We received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all comments and revised the final rule based on these comments.

Following the apportionment of water between the Upper and Lower Basins in the Colorado River Compact, Congress, by passing the Boulder Canyon Project Act of December 21, 1928 (BCPA), made a permanent apportionment of Colorado River water among the Lower Division States for use within those States. Congress also authorized the Secretary to allocate and distribute Colorado River water within these apportionments to users in the Lower Division States through contracts. Congress put the Secretary in charge of managing and operating the Colorado River in the Lower Basin of the Colorado River system (Lower Basin). This rule establishes a framework under which the Secretary will implement the contractual distribution of Colorado River water in the Lower Division States on an interstate basis.

If water apportioned for use in a Lower Division State is not consumed in that State in any year, the Secretary may release the unused water for use in another Lower Division State. Offstream storage of Colorado River water and release of intentionally created unused apportionment (ICUA) can help the Lower Division States use available Colorado River water more effectively. This rule establishes a process for the Secretary to release ICUA. The Secretary's authority to issue this final rule stems from various Federal laws and executive orders, court decisions, and decrees, particularly the BCPA, the Supreme Court opinion (Opinion) rendered June 3, 1963 (373 U.S. 546) and the decree entered March 9, 1964 (376 U.S. 340) (Decree), in *Arizona* v. *California*, as supplemented and amended. A thorough description of these authorities may be found in the Background section of the proposed rule published December 31, 1997, at 62 FR 68493.

Several State agencies commented that the narrative should be changed. In response to these comments, we are correcting two statements that were contained in the first paragraph of the preamble to the proposed rule under II. Background.

First, the statement that: "The compact defined the Colorado River Basin and divided the seven States into two basins, an Upper Basin and a Lower Basin," was incorrect and should have read: "The compact defined the Colorado River Basin and divided it into two sub-basins, an Upper Basin and a Lower Basin. The compact further specified which States are Upper Division States and which States are Lower Division States."

Second, the proposed rule preamble cited the Colorado River Compact, approved August 19, 1921, as the source of the definition for "consumptive use." The correct source of this definition is the Decree.

Several respondents, particularly State agencies, expressed concern that some of the terms in the preamble and the proposed rule could be interpreted in ways that are contrary to existing law because of imprecise wording. These respondents stated the rule should facilitate more efficient use of unused apportionment and surpluses within the existing authority of the Secretary under the Law of the River. We agree that this rule only formalizes the procedures for the Secretary to follow in considering, participating in, and administering Storage and Interstate Release Agreements and does not expand or create authority to do so. The Secretary has the authority, under the Law of the River, to allocate and distribute waters of the mainstream of the Colorado River in the Lower Basin consistent with the Decree.

II. Final Rule as Adopted

Changes Made in This Final Rule

We have concluded that a number of changes from the proposed rule are necessary and appropriate to respond to comments. These revisions clarify the basic intent of the proposed rule and are summarized in the following paragraphs.

- *Restatement of Title and Purpose of the Rule.* We have clarified the purpose of this rule in § 414.1. This rule establishes a procedural framework for the Secretary to follow in considering, participating in, and administering Storage and Interstate Release Agreements among the Lower Division States that would permit State-authorized entities to store Colorado River water offstream, develop ICUA, and make ICUA available to the Secretary for release and use in another Lower Division State utilizing Storage and Interstate Release Agreements. Colorado River water stored in order to develop ICUA will always be put to use in the Storing State.

Under this rule, the authorized entity in the Storing State (storing entity) will not redeem storage credits for delivery to the Consuming State. For this reason, the terms "storage credits" and "redemption" are not necessary and have been deleted. Instead, when the authorized entity in the Consuming State (consuming entity) requests water under a Storage and Interstate Release Agreement, the storing entity will reduce the Storing State's consumptive use of Colorado River water, thereby developing ICUA. The Secretary will release the ICUA to the consuming entity for use in the Consuming State.

- *Definitions.* We added several definitions from the Compact, including "Colorado River Basin," "Colorado River System," and "Upper Division States," and added, deleted, or modified several other definitions in this rule to clarify the intent where necessary. New definitions were also added for "BCPA," "consuming entity," "storing entity," and "water delivery contract." The following definitions were deleted: "Contractor," "Federal entitlement holder," "Present perfected right or PPR," "storage credit," and "unused entitlement." The definition for "Interstate Storage Agreement" was revised and the term used in the rule was renamed "Storage and Interstate Release Agreement."

We redefined "authorized entity" creating a two-part definition. As to a Storing State, for purposes of this rule, an authorized entity is defined as an entity in the Storing State that is expressly authorized by the laws of that state to enter into Storage and Interstate Release Agreements and to develop ICUA. As to a Consuming State, for purposes of this rule, an authorized entity is defined as an entity in the Consuming State that has authority under the laws of that State to enter into Storage and Interstate Release Agreements and to acquire the right to use ICUA.

- *Storage of Water.* In the proposed rule, we did not clearly describe the type of water that is eligible to be stored under a Storage and Interstate Release Agreement. This rule, in § 414.3(a)(2), explains that the water stored within a Storing State for future use under a Storage and Interstate Release Agreement is water that would otherwise be unused in the Storing State, but that is within the Storing State's basic or surplus apportionment. It is important, as a policy matter, that water be offered to all entitlement holders in a Storing State before it is stored for interstate purposes so that, as one commenting State noted, a State-authorized entity will not be put in a position of "competition with the legal right to deprive lower priority entitlement holders (in the Storing State) of their Colorado River water." Accordingly, in order to qualify as unused apportionment, the water within the Storing State's basic or unused apportionment that is stored for interstate transactions under this rule must be offered first to all entitlement holders within the Storing State.

The rule, in a new § 414.3(a)(3), explains that the Consuming State's unused basic or unused surplus apportionments may also be stored in the Storing State to support an interstate water transaction. We also clarified in this section that unused apportionment of the Consuming State may be made available for storage in the Storing State only in accordance with Article II(B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the rule provides that the Secretary will make unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement. This rule also has a new § 414.3(a)(6) that provides that a Storage and Interstate Release Agreement must identify a procedure for the Secretary to follow to verify and account for the quantity of water stored in accordance with the Storage and Interstate Release Agreement.

- *Development of ICUA.* We added a requirement in § 414.3(a)(9) that the Storage and Interstate Release Agreement must describe the notice given to entitlement holders, including Indian tribes, of opportunities to participate in the development of ICUA. We added a requirement in § 414.3(a)(10) that the storing entity must identify the quantity, the means, and the entity by which ICUA will be developed. We also added a paragraph in § 414.3(a)(11) to require the Storage and Interstate Release Agreement to specify the procedure for verification of the development of the ICUA. Both the means by which ICUA will be developed and the method of verification will be set forth in the Storage and Interstate Release Agreement and may vary according to the transaction. However, the means to develop ICUA must be consistent with the laws of the Storing State. Finally, under the final rule, nothing in the Storage and Interstate Release Agreement shall limit the Secretary's authority to use independent means to verify the existence of ICUA.

- *Release of ICUA.* We modified § 414.3(a) to reflect that the Secretary will be a party to Storage and Interstate Release Agreements. We added a new § 414.3(a)(12) that states that the Storage and Interstate Release Agreement will specify that the Secretary will only release ICUA to the consuming entity and will not release it to other entitlement holders. This section requires the release of ICUA be done in accordance with the terms of the Storage and Interstate Release Agreement, the BCPA, Article II(B)(6) of the Decree, and all other applicable laws and executive orders. We added a requirement in § 414.3(a)(13) that the Storage and Interstate Release Agreement specify that ICUA will be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity. We added a requirement in § 414.3(a)(14) that the Secretary would only release ICUA after determining that all necessary actions have been taken under the rule. We added a requirement in § 414.3(a)(15) that the Secretary, before releasing ICUA, must first determine that the storing entity stored water in sufficient quantities to support the development of ICUA requested by the consuming entity and be satisfied that the storing entity either (i) has developed the quantity of ICUA requested by the consuming entity, or (ii) will develop the quantity of ICUA requested by the consuming entity under § 414.3(f). We renumbered § 414.3(a)(9) as § 414.3(a)(16) and changed the indemnification to relate to actions of the non-Federal parties to a Storage and Interstate Release Agreement. We renumbered § 414.3(a)(10) as § 414.3(a)(17).

This final rule also includes a new § 414.3(e) that addresses the need for a valid contract with the Secretary in accordance with Section 5 of the BCPA. The release or diversion of Colorado River water for storage under this part must be supported by a Section 5 water delivery contract, except for the storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part must also be supported by a Section 5 water delivery contract. This section states that the Section 5 water delivery contract requirement of the BCPA may be satisfied by direct contracts with the Secretary, or by valid subcontracts with entitlement holders authorized to enter into subcontracts, or in the case of a consuming entity, by the Storage and Interstate Release Agreement itself. When a valid contract is in place to support the release or diversion of Colorado River water for storage, no additional authority will be required by the Secretary to authorize the storage, through a Storage and Interstate Release Agreement or otherwise.

We also have added a new § 414.3(f) that allows anticipatory releases of ICUA before the actual development of ICUA by the storing entity. This addition was made based on comments received that the demand patterns for Colorado River water in the lower basin vary widely. The times when the storing entity and the consuming entity demand water will not necessarily be concurrent. Thus, the consuming entity may have a need for ICUA before the storing entity would decrease its diversions of Colorado River water in order to develop the ICUA. We added § 414.3(f) to the rule to allow the consuming entity to have the use of ICUA before its development by the storing entity. These anticipatory releases can only be made in the same year in which ICUA will be developed. Additionally, before an anticipatory release, the storing entity must certify to the Secretary that ICUA will be developed before the end of the year in order to support an early release.

- *Financial considerations.* We added a new § 414.3(b) which states that the Secretary will not execute a Storage and Interstate Release Agreement that has adverse impacts on the financial interests of the United States. This section also provides that financial arrangements between and among non-Federal parties relating to the Storage and Interstate Release Agreement need not be included in the Storage and Interstate Release Agreement. Those financial arrangements can be set forth in separate agreements to which the Secretary will not be a party, should the parties so desire.
- *Involvement of the Secretary.* As noted above, we modified § 414.3(a) to provide that the Secretary will be a party to Storage and Interstate Release Agreements. We modified § 414.3(c) to specify:

(1) That the Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) has the authority to execute a Storage and Interstate Release Agreement on behalf of the Secretary;

(2) That the Secretary will notify the public of the Secretary's intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input;

(3) That the factors to be considered in reviewing a proposed Storage and Interstate Release Agreement include potential impacts on tribal interests, including trust resources, and potential impacts on the Upper Division States and comments from the State agency responsible for Colorado River matters; and

(4) That after consideration of the listed factors, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.

- *Stored water.* We modified former § 414.3(c) to conform the wording to changes made in other parts of the rule and separated the concepts that now appear in § 414.3(a)(6) and § 414.3(a)(10).

Section-by-Section Analysis of the Rule

Section 414.1 Purpose

This section explains that part 414 contains the procedures for authorized entities in the Lower Division States to follow for entering into Storage and Interstate Release Agreements with the Secretary for offstream storage of Colorado River water and for the development and release of ICUA on an interstate basis in the Lower Division States. This rule is expected to be a first step toward improving the efficiency associated with management of the Colorado River in the Lower Basin. The rule is intended to be permissive in nature and facilitate voluntary water transactions.

Section 414.2 Definitions of Terms Used in This Part

This section defines terms that are used in part 414. The following terms are based on and are to be interpreted consistent with the Decree: basic apportionment, Colorado River water, consumptive use, Decree, mainstream, surplus apportionment, and unused apportionment. The terms Colorado River Basin, Colorado River System, Lower Division States, and Upper Division States are defined in the compact. Most of the other terms were defined for the purposes of this rule to establish a common understanding.

Section 414.3 Storage and Interstate Release Agreements

This section identifies the details that must be specified in a Storage and Interstate Release Agreement regarding the storage of Colorado River water off of the mainstream and the development and release of ICUA. This section provides for verification of the quantity of water stored under a Storage and Interstate Release Agreement and verification of the quantity of ICUA developed. It also commits the Secretary to release ICUA to the consuming entity after the storing entity has certified to the Secretary, and the Secretary has verified, that the quantity of ICUA requested by the consuming entity has been developed or will be developed in that year. The release must be in accordance with the terms of the agreement and as permitted by law.

This section also specifies the factors that the Secretary will consider in determining whether to execute a Storage and Interstate Release Agreement. This section allows the assignment of all or a portion of an authorized entity's interest in a Storage and Interstate Release Agreement to other authorized entities and provides for the satisfaction of the water delivery contract requirement of Section 5 of the BCPA.

This section prescribes the limited circumstances under which ICUA can be released to a consuming entity before the development of ICUA by the storing entity.

Section 414.4 Reporting Requirements and Accounting Under Storage and Interstate Release Agreements

This section specifies the reporting requirements that storing entities must follow and stipulates that this water will be accounted for in the records maintained under Article V of the Decree.

Section 414.5 Water Quality

This section states that the Secretary does not guarantee the quality of water released under Storage and Interstate Release Agreements and further states that the United States is not liable for damages that result from water quality problems. The section states that the United States is not responsible for maintaining or improving water quality unless Federal law provides otherwise. This section also states that any entity who diverts, uses, and returns Colorado River water must comply with all applicable water pollution laws and regulations of the United States and the Storing and Consuming States, and must obtain all applicable permits or licenses regarding water quality and water pollution matters.

Section 414.6 Environmental Compliance

This section states that the Secretary will ensure environmental compliance with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and other applicable laws and executive orders. This section states that authorized entities must prepare and fund all necessary environmental compliance documents. This section also specifies that the authorized entities must fund the costs incurred by the United States in considering, participating in, and administering the proposed agreement.

III. Tribal Issues

As explained in more detail in the following section of the preamble (Responses to Comments), a number of Indian tribes have expressed reservations and/or opposition to this rule. In particular, the Colorado River Tribal Partnership, often referred to as the Ten Tribe Partnership, composed of ten Indian tribes (Chemehuevi Indian Tribe, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Jicarilla Indian Tribe, Navaho Nation, Quechan Tribe, Northern Ute Indian Tribe, Southern Ute Indian Tribe and Ute Mountain Indian Tribe) with decreed and/or claimed water rights in the Colorado River, has expressed opposition to this rule on the ground that it does not provide specific and express protection of the Tribes' interests both in making water transfers and developing tribal water on or off their reservations.

The Department believes that this rule should and will benefit Indian tribes, but it acknowledges that the rule has a limited scope. The final rule provides a framework under which State-authorized entities can request Secretarial approval to implement voluntary interstate water transactions. The rule does not address or preclude independent actions by the Secretary regarding Tribal storage and water transfer activities. With regard to the activities covered by this final rule, the Department encourages Lower Division States to enact measures and take actions that will allow Tribes to participate in opportunities covered by this rule. Also, the Secretary's approval of specific transactions under the rule will be based, in part, on an analysis of the impacts that such a transaction may have on the interests of Indian tribes. The Department provides a fuller discussion of these issues in the Responses to Comments section below.

IV. Responses to Comments

The following is a discussion of the comments received on the proposed rule and the DPEA, and our responses. First, we will address general comments and our responses. Second, we will address comments on specific provisions in the proposed rule. Third, we will address comments on the DPEA. Fourth, we will respond to specific comments received during the second comment period.

Public Comments on Proposed Rule and Responses on General Issues

The following section presents public comments on the proposed rule that are general in nature. This section includes comments on the scope of the rule, Secretarial discretion, eligibility to be an "authorized entity," the method for development of ICUA, the timing for the completion of the rule, tribal water rights, ground water issues, subsidies, power issues, concerns of California entities, potential impacts on the Upper Division States, concerns over deliveries to Mexico, environmental concerns, and economic impacts of the rule.

Scope of the Rule

Comment: Reclamation did not hold public scoping meetings on the rule.

Response: We have conducted this rulemaking in accordance with the Administrative Procedure Act. The Department expanded the public comment period for the proposed rule from 61 to 93 days. In addition to oral comments submitted at one public hearing and one public meeting, we received 49 comment letters from 47 respondents. Of these letters, 24 commented only on the rule, 23 commented on both the proposed rule and the draft programmatic environmental assessment (DPEA), and 2 commented only on the DPEA.

As a result of receiving differing comments on the definition of authorized entity and several other technical matters, we reopened the comment period on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998. We asked interested parties to provide comments on three specific questions. The Department received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all pertinent comments and revised the rule based on these comments. Thus, the public has influenced the scope and formulation of this rule.

Secretarial Discretion

Comment: Does the Secretary of the Interior have the authority to enter into an agreement that binds future Secretaries to commit unused apportionment to a specific user in a particular State over a multiple-year period?

Response: Yes. The Secretary's release of ICUA in any year will be under Article II(B)(6) of the Decree. The Decree does not preclude the Secretary from releasing unused apportionment to a specific user in a particular State. The Secretary will agree to release ICUA only during the year in which it is developed by the storing entity. Moreover, under § 414.3(a)(12) of the rule, the Secretary will commit in the Storage and Interstate Release Agreement to release ICUA after the storing entity has certified to the Secretary, and the Secretary has verified in accordance with § 414.3(a)(15), that the quantity of ICUA requested by the consuming entity has been developed or will be developed in that year. Further, the ICUA released by the Secretary will be limited to the quantity developed by a storing entity during that year.

Eligibility To Be an Authorized Entity

Note: There is also a discussion on the contractual requirements necessary to qualify as an authorized entity in the section of this preamble addressing comments received during the reopened comment period.

Comment: The most frequently mentioned comment concerned the definition for the term "authorized entity." Some thought "authorized entity" should be defined broadly to enable the widest possible participation and others thought the term should be defined very narrowly to limit participation to State agencies. Indian tribes commented that the definition should be expanded to include the tribes pursuant to the Secretary's authority under the BCPA. Tribes further commented that the proposed definition of "authorized entity" will give State government a virtual monopoly on water marketing.

Response: We agree with the general suggestion made by a State agency that "authorized entity" should be a two-part definition. This concept was supported by several other State agencies and water districts. As to a Storing State, for purposes of this rule, an authorized entity is defined as an entity that is expressly authorized by the laws of that State to: (i) Enter into Storage and Interstate Release Agreements; and (ii) develop ICUA. As to a Consuming State, for purposes of this rule, an authorized entity is defined as an entity that has authority under the laws of that State to: (i) enter into Storage and Interstate Release Agreements; and (ii) acquire the right to use ICUA. In this way the rule is intended to be permissive in nature but consistent with State law. We believe this two part definition captures comments from several State agencies that while express authority is needed to store water for use in interstate water transactions and make ICUA available, express authority is not necessary for a consuming State to receive and use ICUA. We reiterate that we fully expect the Lower Division States to enact measures that will allow the tribes to participate in opportunities covered by this rule. Moreover, this rule does not specifically address or preclude independent actions by the Secretary regarding tribal storage and water transfer activities under other authorities.

We have also expanded this rule to require that non-Federal parties to the Storage and Interstate Release Agreement provide at the Secretary's request any additional supporting data necessary to clearly set forth the details of the proposed transaction and the eligibility of the parties to participate as State-authorized entities in the proposed transaction.

Comment: It is important to acknowledge that the apportionments of Colorado River water are made specifically to the individual States. Therefore, it is important for the States to specifically designate the authorized entities who are entitled to enter into Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") to ensure use of Colorado River water remains within a State's apportionment during any year.

Response: Apportionments of Colorado River water are made for use within each specific Lower Division State. This rule requires that the authorized entity in the Storing State be an entity that is expressly authorized under the laws of that State to: (i) enter into Storage and Interstate Release Agreements; and (ii) develop ICUA. As to an authorized entity in a Consuming State, the rule requires that it be an entity that has authority under the laws of that State to: (i) enter into Storage and Interstate Release Agreements; and (ii) acquire the right to use ICUA.

Method for Development of ICUA (Forbearance)

Comment: Several respondents commented on whether the final definition of ICUA should specify what types of measures or actions the Secretary will approve for the development of ICUA.

Response: The measures that will be used to develop ICUA are to be specified in each Storage and Interstate Release Agreement and must be verifiable. The method used to develop ICUA and the appropriate method of verification may vary according to the transaction.

The Timing for the Completion of the rule

Comment: Several respondents asked for additional time to review the proposed rule and DPEA and questioned why the completion of the rulemaking process appeared to be on a "fast track."

Response: In developing this rule we have followed the mandates of the Administrative Procedure Act. In fact, we extended the time for public review and comment from 61 to 93 days despite the fact that this rule only formalizes the existing authority of the Secretary to enter into Storage and Interstate Release Agreements and does not expand or create this authority. Moreover, we reopened the comment period for an additional 30 days to obtain further comments. This extended review period has given the public numerous opportunities to review this rule. In addition, we reviewed and analyzed the comments submitted during the reopened comment period and revised the rule as needed. Finally, the Secretary will notify the public of the Secretary's intent to participate in negotiations to develop a Storage and Interstate Release Agreement and give the public further opportunity to comment before any specific transaction is implemented.

Tribal Water Rights

Comment: The rule should include an introductory section that recognizes Indian holders of present perfected rights are not required to beneficially use their water, are not subject to a loss or reduction in their water for non-use or non-beneficial use, and are not subject to State law or State regulatory control for the on-reservation use of their entitlements.

Response: We recognize the unique status of present perfected rights holders under the Decree and agree that tribal present perfected rights holders are not subject to a loss or reduction in their water rights for non-use. The 1979 supplemental decree entered March 9, 1979 (439 U.S. 419) by the Supreme Court in *Arizona* v. *California* quantifies and prioritizes tribal rights to the use of Colorado River water. The 1979 supplemental decree states that: "Any water right listed herein may be exercised only for beneficial uses." We do not believe it is necessary that the information be included in an introductory section for the rule. We agree that Indian holders of present perfected rights are not subject to State law or State regulatory control for the on-reservation use of their entitlements.

Comment: Indian tribes should be permitted to enter into intrastate or interstate agreements for offstream storage and marketing of their unused water off the reservation under the statutory and contractual authority vested in the Secretary.

Response: This rule does not apply to intrastate transactions. This rule applies only to interstate transactions. As explained in more detail below, we believe that Storage and Interstate Release Agreements under this rule can be implemented in a manner that will provide opportunities for tribes to benefit.

Comment: Several tribes commented that they have been unable to fully benefit from their water rights because of the Federal government's failure to provide the tribes with the necessary financial, technical, and political assistance to fully develop their water resources.

Response: We acknowledge this concern and recognize that a number of tribes have been unable to use their entitlement due to the lack of distribution and delivery systems. We are committed to making progress to help tribes make better use of their water rights. For example, a Central Arizona Project (CAP) distribution system has been built for the Ak-Chin Tribe. A distribution system for the Fort McDowell Tribe is under construction and we have entered into a repayment contract with the Gila River Indian Community for construction of a CAP distribution system. Five of the ten

Indian tribes with contracts for delivery of CAP water have utilized their statutory right to lease or transfer water. More specifically, the Ak Chin, Fort McDowell, Tohono O'odham, Salt River, and Yavapai Prescott tribes have leased or transferred CAP water.

Comment: Indian tribes should receive compensation for their unused or undeveloped tribal water resources because of the Federal government's failure to provide the tribes with the necessary assistance to fully develop their water resources.

Response: The issue of compensating the tribes in connection with the development of tribal water rights is beyond the scope of this rule.

Comment: The Department should permit tribal governments to market their Central Arizona Project allocations on the same basis as the State. Central Arizona Water Conservation District's (CAWCD) non-Indian subcontractors have the capability to take direct delivery of CAP water but have not taken delivery of substantial quantities, primarily for economic reasons. Tribes with CAP allocations, with the exception of the Ak-Chin Indian Community, are not able to take delivery or put to use any substantial quantity of CAP water because the distribution and delivery systems that are needed to allow the tribes to put this water to use have not been constructed.

Response: We reiterate that we are encouraging the Lower Division States to enact measures and take actions that will allow the tribes to participate in opportunities covered by this rule. One such example of tribal participation in a Storage and Interstate Release Agreement would be affording tribes the opportunity to develop underground storage facilities where Colorado River water could be stored. In addition, we note that the State of Arizona is exploring the use of facilities on tribal lands for storage of Colorado River water. Thus, tribes could participate by leasing the use of these facilities to the storing entity. Moreover, this rule does not specifically address or preclude independent actions by the Secretary regarding tribal storage and water transfer activities. As stated above, we feel that there has been progress in helping the tribes create irrigation infrastructure or otherwise put their CAP water to use and is committed to moving forward with this program. Only authorized entities can store water under this rule to support an interstate water transaction. No holders of CAP allocations have a right to store this water for an interstate transaction unless they can qualify as an authorized entity under this rule. Only unused water that is not requested by an entitlement holder (including tribes) can be stored to support a Storage and Interstate Release Agreement. With respect to the development of ICUA, the rule requires the Storage and Interstate Release Agreement to describe the notice given to entitlement holders, including Indian tribes, of opportunities to participate in the development of ICUA.

Ground Water Issues

Comment: Because banked water is fungible, the rule should address both intrastate and interstate water storage to preclude a Storing State from circumventing any restrictions that the Department might impose on the storage or recovery of water stored under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). Several respondents expressed concern that an authorized entity may store water in an aquifer that is hydraulically connected to an aquifer that holds tribal water.

Response: The rule specifies in § 414.3(c) that the Secretary will consider various factors in reviewing a proposed Storage and Interstate Release Agreement, including potential effects on trust resources, potential effects on entitlement holders, which includes Indian tribes, and environmental impacts. We reiterate that intrastate transactions are not covered under this rule.

Comment: One respondent stated that the rule should expressly address the legal status of banked CAP water. The respondent is concerned that the banked water will be considered CAP water under Federal law and non-Indian water users in Arizona will accrue millions of acre-feet of credits with the sanction of Reclamation. The subsequent recovery of the stored water will result in significant increases in ground water pumping over and above that currently authorized in accordance with State law and the tribes might be precluded from pumping the remaining ground water reserves because those reserves will increasingly take on the character of CAP water.

Response: As noted in § 414.3(c), the potential effects of the proposed measures on the environment, the economy, and trust resources are among the factors the Secretary will consider when reviewing the proposed Storage and Interstate Release Agreement.

Comment: Revise the rule to incorporate the acre-foot for acre-foot ground water pumping restrictions from the amended CAP master repayment contract and the CAP agricultural subcontracts. Reclamation has a trust responsibility to protect Indian ground water from continued ground water mining by non-Indian interests.

Response: Nothing in this regulation modifies the ground water protections found in the CAP contracts or limits the Department's ability to protect trust resources. Also, as noted in § 414.3(c), the potential effects of the proposed measures on the environment, the economy, and trust resources are among the factors the Secretary will consider when reviewing a Storage and Interstate Release Agreement.

Subsidies

Comment: Several respondents stated that the Department should not allow extra non-reimbursable expenses to occur in storing water or delivering it to a new location. There were also suggestions that, with respect to Arizona, revenue from the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") should be collected to help repay CAWCD's debt to the United States for the CAP.

Response: We agree that a proposed Storage and Interstate Release Agreement cannot obligate the United States to incur extra non-reimbursable expenses to store water or deliver it to new locations. The Secretary will review the provisions of every proposed Storage and Interstate Release Agreement for its financial impacts on the United States and will not execute any agreements that may have adverse financial impacts on the United States. In addition, the United States is currently seeking to resolve the recovery of CAWCD's debt to the United States.

Power Issues

Comment: Several respondents stated that Reclamation should analyze the impacts of the rule on power customers in the State of Arizona. When water passes through the Hoover and Davis generators on the way to storage in Arizona, there will be additional power production but CAWCD will incur increased pumping costs to move the water to storage. When stored water is withdrawn by a Nevada entity in the future, less water will pass through the Hoover and Davis generators, resulting in less power production at those dams. When Arizona ground water pumpers who take CAP water through in-lieu storage are required to go back to ground water pumping, they may require more power during years when stored water is withdrawn from the bank and generation is reduced at Hoover and Davis Dams. The rule should provide for compensation of power customers to protect them from subsidizing water banking.

Response: Under this rule, the offstream storage of Colorado River water and the Secretary's release of ICUA may influence the timing of power generation at the Hoover, Parker, and Davis powerplants. Reclamation conducted an analysis to evaluate the potential impacts of this rule on Hoover and Parker-Davis power customers. The analysis reflects that under this rule the quantity of energy foregone in any one year between 1998 and 2017 will result in a loss of less than 0.5 percent. Between 1998 and 2017, the quantity of Colorado River water released from mainstream reservoirs will be equivalent to the quantity that otherwise would have been released without the implementation of this rule.

Section 6 of the BCPA notes "That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power." The Secretary manages and operates these reservoirs for multiple, often conflicting purposes, through powers vested by Congress. The principal source of the Secretary's power is the contract power under Section 5 of the BCPA to allocate and distribute mainstream water within the boundaries established by that Act. Each year, the Secretary develops and adopts an Annual Operating Plan (AOP) for the Colorado River reservoirs. During the AOP process, the Secretary consults with the Basin States and other interested parties, including the power users. The Secretary is mindful of the Federal contracts with power users for supply of electric service from hydroelectric powerplants on the Colorado River and will seek to minimize changes in power production that result from the Secretary's activities regarding river operations. However, because of Section 6 of the BCPA, power users are a junior priority for use of Colorado River water.

Concerns of California Entities

Comment: Several California entities expressed concern that the rule should acknowledge and be consistent with the comprehensive plan being developed by California water agencies to reduce California's future use of Colorado River water (California 4.4 Plan).

Response: The Department places great emphasis on the necessity for the implementation of a California 4.4 Plan. We do not, however, believe that this rule needs to address the California 4.4 Plan. This rule is intended to be of general application and to apply equally to each of the three Lower Division States.

Comment: Some respondents asked for assurance that the rule will provide for storage of conserved water, such as water that is anticipated to result from water conservation in the Imperial Irrigation District (IID) that is proposed to be transferred to the San Diego County Water Authority (SDCWA).

Response: The proposed transfer of water from IID to SDCWA is an intrastate transaction that is not covered by the rule. For conserved water to be stored by an authorized entity for purposes of an interstate water transaction under this rule, it must first be offered to all entitlement holders in the State in which it was conserved.

Comment: In years when surplus water is needed to keep Metropolitan Water District's Colorado River Aqueduct full, a conflict will arise among entities who claim surplus water if the Secretary does not make a sufficient level of surplus water available to satisfy both Metropolitan Water District's demand and diversions for offstream storage under Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements").

Response: Surplus is divided among the Lower Division States under the Decree. Surplus apportioned to the State of California under the Decree, and thus available for use consistent with the priority system applicable to California, is not subject to storage under this rule by authorized entities in Nevada or Arizona unless entitlement holders in California choose not to exercise their rights to use surplus water.

Potential Impacts on the Upper Division States

Comment: The rule should not be allowed to impact the water supplies available to the Upper Basin and the Upper Basin should not lose any yield or take increased risks because of increased equalization that might occur as a result of interstate water storage agreements.

Response: We agree with this comment from a State agency and notes that this rule will not be used to justify more liberalized surplus determinations that will allow an increase in equalization releases from Lake Powell. Section 414.3(b) of this rule was modified to include potential impacts on the Upper Division States among the factors that the Secretary will consider in considering, participating in, and administering a Storage and Interstate Release Agreement.

Comment: The rule should be modified to include a statement that the rule does not change or expand the authorities under the Law of the River or the apportionments made to the individual States under the Law of the River. The rule should also state that its intent is to provide for efficient use of unused apportionment and surpluses but that each State should keep its consumptive use of Colorado River water within the apportionments made to it under the Law of the River.

Response: We agree with this comment from a State agency that this rule does not change or expand existing authorities under the Law of the River or change the apportionments for use of water within the individual States. We modified § 414.1 Purpose to state this. We also agree that each Lower Division State must operate within the limits of the apportionment of Colorado River water made for use within that State but do not believe it is necessary to include this statement in the rule.

Concerns over Deliveries to Mexico

Comment: The DPEA states that a minor reduction will occur in the quantity of surplus water available for delivery to Mexico over the long term without explaining what a minor reduction is or what studies have been done to quantify this.

Response: The quantity of water available for delivery to Mexico is expected to decrease by an average of 23 thousand acre-feet (kaf)/year from 1999–2015 when storage is occurring with the rule. This is about a one percent decrease annually in the total quantity of water projected to reach Mexico (2.487 million acre-feet (maf) without this rule and 2.464 maf with this rule). In addition, this decrease would affect flood control releases only during this same time and would have only a very minimal effect on projected surplus flow in years beyond 2015.

These projections are based on analysis completed by Reclamation using the Colorado River Simulation Model, which is used to project long-term conditions relating to water supply on the Colorado River from Lake Mead to Mexico. The analysis used historical virgin runoff data from 1906–1995 and water use or demand schedules that have been provided by the Colorado River Basin States for the simulated future period 1999–2015. In addition the model includes requirements in the long-range operating criteria for the Colorado River.

Environmental Concerns

Comment: Efficiency improvements in river management and the storage of

Colorado River water in underground aquifers means less water is available for environmental purposes, such as the riparian and aquatic ecosystems of the river, including the river and delta region in Mexico.

Response: Offstream storage of Colorado River water under Storage and Interstate Release Agreements should not have a measurable effect on riparian and/or aquatic ecosystems of the river or the delta region of Mexico. During the next few years, releases from Hoover Dam are expected to continue to be about 10 maf/year for downstream use in the United States and Mexico. In addition, flood control releases are projected to average 788 kaf/year during the period 1999–2015. Offstream storage could decrease flood control releases reaching Mexico by an average of 23 kaf/year.

At present, Reclamation has no authority or discretion over the type of use or location of use of Colorado River water once it reaches Mexico. The Mexican Water Treaty of 1944 and the Opinion and Decree control and limit Reclamation's releases from Hoover Dam to amounts that meet the conditions within each. Water delivered to meet Treaty requirements is diverted at Morelos Dam where Mexican law governs how it is put to use. In times of flood control operations, Colorado River water entering Mexico in excess of treaty requirements is under Mexico's jurisdiction. Once flows reach the Republic of Mexico, any uses for environmental purposes would have to be authorized by Mexico.

It is possible that implementation of this rule may create additional flexibility to potentially make water available for fish and wildlife purposes as part of the ongoing Lower Colorado River Multi-Species Conservation Program (MSCP). Under this concept, water stored offstream one year could potentially be used to meet fish and wildlife purposes in a later year.

Comment: The level of environmental compliance proposed by Reclamation is inadequate and Reclamation should complete a full environmental impact statement (EIS) on the proposed rule as well as the entire operation of the Colorado River.

Response: The programmatic environmental assessment (PEA) was prepared to identify and clarify issues, describe the level of environmental impacts associated with implementation of the proposed rule, and to determine whether to prepare a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS). Compliance for each Storage and Interstate Release Agreement will reference and tier off from the PEA for this rule. Based on the analysis in the PEA, consultation and coordination with the Fish and Wildlife Service, and public input and comments, we have concluded that implementation of the proposed rule will not have a significant effect on the human environment. As a result, a FONSI has been prepared to complete NEPA compliance for the rule.

As explained previously, this rule develops a framework that the Secretary will utilize in reviewing and evaluating whether to execute a specific transaction for offstream storage of Colorado River water under a Storage and Interstate Release Agreement. This rule does not increase nor abrogate the existing authority of the Secretary. When the storing and consuming entities enter into negotiations with the Secretary for the development of a Storage and Interstate Release Agreement, the Secretary will have the specific details needed to determine the potential impacts of the proposed action and can then determine the appropriate level of NEPA compliance required for that action.

In addition, the Department believes the preparation of an EIS on the entire operation of the Colorado River is not required. Movement of water will be through existing facilities on the Colorado River and is within the current and projected routine operations of the lower Colorado River. Thus, it is not necessary to complete a comprehensive EIS on river operations.

Comment: Implementation of the rule may potentially impact fish and wildlife resources along the Colorado River downstream from Lake Mead.

Response: The DPEA evaluated the potential impact to fish and wildlife resources for a proposed scenario in which 1.2 maf would be stored in Arizona under a Storage and Interstate Release Agreement to allow an authorized entity in Nevada to meet its future water needs. The effects of placing Colorado River water in offstream storage were evaluated at two incremental storage rates, 100 kaf/year and 200 kaf/year with future development of ICUA and the associated release of water from Lake Mead limited to a maximum of 100 kaf, in accordance with Arizona law, in any year.

No significant impacts were identified on fish and wildlife resources as a result of this analysis. Consultation with the Fish and Wildlife Service concluded that fluctuations in water surface elevations associated with the most likely case storage and retrieval scenarios are not likely to adversely affect listed species or their designated critical habitat.

Economic Impacts of the Rule

Comment: The Initial Regulatory Flexibility Analysis states that the future cost burden of obtaining alternative supplies for Southern California water users is not attributable to or the result of the proposed rule. The rule may reduce the quantity of Colorado River water available for diversion to Southern California that is apportioned for consumptive use in Arizona and/or Nevada but not consumed in those States, making California expend funds sooner than planned to obtain alternative water supplies.

Response: Absent the rule, each Lower Division State may store its unused basic apportionment and surplus apportionment offstream for future intrastate use. Arizona is currently taking all of the 2.8 maf basic apportionment of Colorado River water available for use in Arizona. Therefore, the only water that California may no longer be able to use is Nevada unused basic apportionment. Nevada's consumptive use was 245.3 kaf in 1998, resulting in 54.7 kaf of unused apportionment. Projections show Nevada utilizing its full basic apportionment by 2007. This rule may impact southern California in that it enables Nevada to store its declining quantity of unused apportionment in Arizona for the short period it may be available. To the extent surplus is available during this time, impacts on California are lessened. In the long run, the rule should have little net impact on the expenditure of funds by California water users to obtain alternative water supplies.

We reiterate that California must reduce its reliance on the Colorado River by conserving water or obtaining alternative water sources. California must continue moving forward in its efforts to implement a California 4.4 Plan to live within the 4.4 maf of Colorado River water apportioned for use in California and this rule will add flexibility that may be of help in implementing the California 4.4 Plan.

Comment: Some tribes asserted that the rule allocates to the States water that is reserved to the tribes and has a disproportionate, significant, and detrimental economic impact on the tribes in the Lower Basin.

Response: We do not agree with this view. Under the rule, only water within a State's apportionment that is not used by entitlement holders within that State may be stored offstream for interstate purposes. Nothing in this rule precludes any entitlement holder, including a Tribe, from using its Colorado River water entitlement. The potential effects of the proposed measures on the environment, the economy, and trust resources are among the factors the Secretary will consider when evaluating the Storage and Interstate Release Agreement. This review process will help ensure that tribal rights will be protected under this regulation.

Comment: The Benefit-Cost Analysis shows that the overall impact of the proposed rule is not significant. Please explain how this was determined and what the threshold was or refer the reader to a specific page of the Benefit-Cost Analysis for the information.

Response: The threshold for whether a proposed rule is significant is defined in both the Small Business Regulatory Enforcement Fairness Act and the Unfunded Mandates Reform Act of 1995. The Benefit-Cost Analysis reflects that the proposed rule is not a major rule (impacts are not significant) because the economic impact upon the regional and United States economy in any one year does not exceed the threshold; i.e., it is never greater than or equal to $100 million. However, even though the rule does not have a significant annual economic effect on the economy, it is still considered a significant rule because it raises novel legal or policy issues. See pages 38–42 and 44–46 of the Benefit-Cost Analysis to see the findings that led to the determination of no significant economic impact.

Comment: The Executive Summary of the Benefit-Cost Analysis refers to two water supply models, "A70" and "P80." To better understand the potential effects of both A70 and P80 criteria, state the water supply benefits resulting from the P80 criterion and indicate the incremental quantity of additional surplus water made available under P80.

Response: The benefit-cost analysis shows that the benefits of AWBA's banking program are smaller under P80 (a more liberal surplus criterion that will tend to increase the risk of shortages) than A70 (a more conservative surplus criterion that will tend to reduce the risk of shortages). Under P80 surplus criteria, it is more likely that all valid water demands within the Lower Division States will be met from instream flows. Therefore, demand for ICUA by a Consuming State is lower than under A70. Total net economic benefits for the study period (1998–2017) at the regional level are shown at the bottom of page 2 of the executive summary for the Benefit-Cost Analysis. Because surplus conditions are likely to continue for several years, we did not further analyze that alternative in the Biological Assessment (BA) that we prepared for the proposed rule.

Comment: There were a number of editorial comments on the Benefit-Cost Analysis and the Initial Regulatory Flexibility Analysis.

Response: We have reviewed and considered the comments submitted by a water district and have adopted many of the suggestions into the text of the final Benefit-Cost Analysis and the final Regulatory Flexibility Analysis.

Comment: Some tribes commented that allowing States to use "unused tribal water" and imposing limitations on the tribes' ability to use their reserved water potentially interfere with the tribes' protected property rights.

Response: We do not agree with this statement. All Colorado River water available to the Lower Division States is apportioned for use in the individual States. Any water within a State's apportionment that is unused by tribes or non-Indian entitlement holders is available to junior entitlement holders in that State under the Secretary's priority system for the Colorado River. Only water that is not used by entitlement holders is eligible to be used for an interstate transaction under this rule. Thus, there is no interference with tribal property rights.

Comment: One tribe asserted that the tribes' lack of opportunity to participate in interstate transactions on the same basis as the States under the rule violates Title VI of the Civil Rights Act of 1964, which states that "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Response: We do not agree that the tribes will be denied an opportunity to participate under this rule or that this rule results in discrimination within the meaning of the Civil Rights Act. We will require that all entitlement holders, whether tribal or non-tribal, are treated equally under the rule. We will monitor efforts by the States and authorized entities to extend benefits to the tribes under this rule and will, in the future, assess whether we need to review or revise this rule to provide additional opportunities to the tribes.

Public Comments on Proposed Rule and Responses on Specific Provisions

The following section presents public comments on the proposed rule that apply to specific provisions in the rule.

Comments Concerning the Title of the Rule

Comment: The title of the rule should not mention the "redemption of storage credits" because this term lack clarity and is ambiguous. The rule should provide that Colorado River water stored offstream under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will be used in the State in which the water is stored and that the Secretary will release ICUA rather than deliver storage credits.

Response: We agree with the concept suggested by several State agencies, a water district, and a water authority and have modified the title to read, "Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States."

Comments Concerning § 414.1—Purpose

Comment: The purpose section should not use terminology that is vague and implies that a Storing State will create and redeem storage credits because the Colorado River water that is stored offstream will always belong to the Storing State. Amend the language to establish the intent that Storage credits will be redeemed in the State in which water will be stored and the Secretary will release ICUA rather than deliver storage credits under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement").

Response: We have adopted the suggestions from several State agencies, a water district, and a water authority to describe the proposed transactions under this rule in terms that are clear and unambiguous. In lieu of developing and redeeming storage credits, we have changed this rule to reflect that the Secretary will release ICUA to consuming entities under Storage and Interstate Release Agreements.

Comment: Because the Secretary's approval of Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") could delay approvals, the Secretary's authority for the Department's responsibilities under the rule should be delegated to Reclamation, subject to the right to appeal the Regional Director's decisions through the Department.

Response: Under the rule, the Secretary will not approve the Storage and Interstate Release Agreement but will instead be a party to the agreement. The rule provides that the Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional

Director) shall have the authority to develop, negotiate, and execute a Storage and Interstate Release Agreement on behalf of the Secretary.

Comment: The rule should use precise terminology that cannot be interpreted in ways that are contrary to existing law. The rule should contain a narrative that states the actions contemplated under this rule are deemed within the authority of the Secretary under the Law of the River and that the rule does not change or expand the Secretary's authorities. This narrative should emphasize the intent of the rule is to provide for more efficient use of unused apportionment and surpluses within the "Law of the River."

Response: We revised this rule in several places to clarify the intent. In addition, we agree with the suggestion from several State agencies and clarified the rule to state that it does not change or expand the Secretary's authority under the Law of the River. This rule only formalizes the existing authority of the Secretary to develop, negotiate, and execute Storage and Interstate Release Agreements and does not expand or create this authority. As stated in the preamble to the proposed rule that was published on December 31, 1997, this rule will increase the efficiency, flexibility, and certainty in Colorado River management.

Comments Concerning § 414.2—Definitions

Comment: As addressed above in the discussion of general issues, the most frequently mentioned comment was regarding the definition for the term "authorized entity."

Response: As discussed previously under general issues, we have changed the definition of "authorized entity" to consist of two parts, with different definitions for Consuming States and Storing States. Please refer to that discussion. As a result of receiving differing comments on the definition of authorized entity and several other technical matters, we reopened the comment period for a 30-day period. We requested interested parties to provide comments on three specific questions. We received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all comments and revised the rule based on these comments. Please refer to that discussion.

Comment: Modify the rule to include the definitions for "Colorado River Basin" and "Colorado River System" as defined and used in the Colorado River Compact.

Response: We have adopted these suggestions from a State agency and included these definitions in this rule.

Comment: Modify the definition of "Consuming State" to clarify that this means the State where ICUA is or will be used.

Response: This suggestion from several entities, including State agencies, was adopted to clarify the actual way the proposed water transactions will work.

Comment: The narrative in the preamble for the proposed rule incorrectly attributed the definition of "consumptive use" to the Colorado River Compact of November 24, 1922.

Response: We agree with several State agencies, a water authority, and a water district that the definition was incorrectly attributed to the Compact. As the respondents explained, the term "consumptive use" is defined by Articles I(A) and I(C) of the Decree.

Comment: Modify the definition of "Interstate Storage Agreement" (now termed a "Storage and Interstate Release Agreement") to delete reference to "redemption of storage credits" and make other changes consistent with the incorporation of changes to other definitions.

Response: We agree with the suggestions from several entities, including State agencies, that the definition should emphasize that the Storage and Interstate Release Agreement provides terms for offstream storage of Colorado River water by a storing entity, the subsequent development of ICUA by the Storing State consistent with the laws of the Storing State, a request by the storing entity to the Secretary to release ICUA to the consuming entity, and the release of ICUA by the Secretary to the consuming entity.

Comment: The definition for "Interstate Storage Agreement" (now termed a "Storage and Interstate Release Agreement") in the proposed rule states that the agreement may include other entities determined to be appropriate to the performance and enforcement of the agreement without indicating who those entities might be or who makes the determination that their inclusion is appropriate.

Response: This rule has been revised to clarify that the decision to include other entities will be determined by the consuming and storing entities and the Secretary during the negotiation of a Storage and Interstate Release Agreement.

Comment: Delete the term "storage credit" from the proposed rule as it lacks clarity.

Response: We have adopted this change, suggested by several entities, including State agencies, a water authority, and a water district.

Comment: Modify the definition of "Storing State" to clarify that water stored offstream under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will be used in the Storing State in place of water within the Storing State's apportionment that the Storing State otherwise would have diverted from the mainstream.

Response: We have modified the definition of Interstate Storage Agreement and renamed it "Storage and Interstate Release Agreement" in this rule. The modified definition reflects that water stored offstream under a Storage and Interstate Release Agreement will be used in the Storing State.

Comment: Delete the definition of "unused apportionment" and in its place, insert definitions for "unused basic apportionment" and "unused surplus apportionment." The intent of the suggestion is to clarify that, with the determination of a water supply condition by the Secretary, a State is receiving either a normal, surplus, or shortage apportionment. Also, revise the definition to clarify that to be unused, the water otherwise would not have been diverted and that water conserved or saved through an agreement between two entitlement holders is eligible for storage.

Response: The Department did not adopt these changes that were suggested by a water district. The AOP determines whether a State is receiving a normal, surplus, or shortage apportionment, and that decision is unaffected by this rule. Also, only water that is not used by entitlement holders in the applicable State's priority system for purposes other than storage for use in interstate transactions is eligible for storage for use in interstate transactions under this rule.

Comment: Delete the term "unused entitlement" from the proposed rule.

Response: We have adopted this change, suggested by several entities, including State agencies and a water district.

Comments Concerning § 414.3—Storage and Interstate Release Agreements and Redemption of Storage Credits

Comment: As discussed earlier under Purpose, there should be a statement that the actions contemplated under this rule are within the Secretary's authority under the Law of the River and that it is not the intent of this rule to change or expand the Secretary's authorities. This narrative should also emphasize an intent to provide for more efficient use of unused apportionment and surpluses within the "Law of the River" but specify that water users in the Lower Division States must plan to live within the apportionments made to them under the "Law of the River."

Response: We agree with this suggestion from a State Agency to clarify that this rule is deemed to be within but does not expand the Secretary's authority. The preamble to this rule includes a section to provide further explanation of the purpose of this part. This rule is not intended to change or expand the Secretary's authorities under the "Law of the River." This rule is intended to facilitate more efficient use of unused apportionment and surpluses within the "Law of the River" in the Lower Division States.

We also believe that this rule, in conjunction with the implementation of the California 4.4 Plan and the development of surplus criteria, will provide a framework for the Lower Division States to hold consumption within the apportionments available for use within those States.

Comment: Conform this section of the rule with previous changes that delete the reference to the term, "redemption of storage credits."

Response: We have adopted this change, suggested by several entities, including State agencies, a water authority, and a water district. As discussed previously, this rule will provide for offstream storage of Colorado River water in a Storing State, the subsequent development of ICUA by the storing entity for release by the Secretary to a consuming entity, and the recovery of the stored water for use in the Storing State.

Comment: Delete the reference to Article II(B)(6) of the Decree in the first sentence under § 414.3(a) because the Decree does not cite a legal authority for entering into Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements").

Response: We agree that "Storage and Interstate Release Agreements" are not referenced in the Decree and have modified § 414.3(a) of the rule. However, Article II(B)(6) of the Decree provides authority for the Secretary to (1) make an annual determination under this rule of the availability of ICUA and (2) release any such water in accordance with the terms of a Storage and Interstate Release Agreement.

Comment: Delete the last sentence of § 414.3(a), that reads, "An Interstate Storage Agreement (now termed an "Storage and Interstate Release Agreement") will allow a storing entity to store unused entitlement and/or unused apportionment for the credit of an authorized entity located in a Consuming State and will provide for the subsequent redemption of the credit."

Response: We agree with this comment from a State agency and have modified this rule to incorporate this change.

Comment: A senior priority holder in California should not be allowed to agree to make available unused apportionment for storage in another State without first obtaining the agreement of California's junior priority holders.

Response: Under this rule, only water that is unused by all entitlement holders in the applicable State's priority system is eligible for storage by an authorized entity for use in an interstate transaction.

Comment: One respondent noted that its contract with the Secretary allows it to request Reclamation to approve an exchange, lease, or transfer of its water entitlement. The respondent further stated its intent to pursue interstate marketing opportunities and position its Colorado River water supply as an unused apportionment that may be released annually for use in the other Lower Division States under the Decree.

Response: The Department recognizes that the entitlement holder's contract allows it to request approval of an exchange, lease, or transfer and notes that any change in the place of use or type of use of the entitlement is subject to the Secretary's approval. The development of ICUA under a Storage and Interstate Release Agreement may involve the exchange, lease, or transfer of Colorado River water under an individual entitlement holder's contract. Any such exchange, lease, or transfer would be subject to Secretarial approval unless the entitlement holder's contract specifies otherwise. Moreover, to participate under this rule as an authorized entity in a Storing State, that entity must be expressly authorized under State law.

Comment: The rule should be modified to allow authorized entities in California and Nevada to have equal access to store that portion of Arizona's Colorado River apportionment that is not otherwise put to use by entitlement holders within Arizona. Also, authorized entities in California and Nevada should have equal access to the quantity of ICUA that Arizona will make available to consuming entities when those entities request it.

Response: We recognize these concerns expressed by a State agency and a water district but do not believe it is appropriate to establish an allocation method in this rule. Storage and Interstate Release Agreements are voluntary interstate water transactions. The Secretary will not require authorized entities of one State to enter into Storage and Interstate Release Agreements with authorized entities in another State. We encourage each storing entity to consider the needs of all consuming entities under prospective Storage and Interstate Release Agreements.

Comment: Modify § 414.3(a) to allow a more general description of the entities by which Colorado River water will be stored and the storage facilities in which it will be stored.

Response: We did not accept this recommendation. It is necessary to clearly identify the actual entity that will store Colorado River water under the Storage and Interstate Release Agreement and the facility where it will be stored so that a thorough review of the impacts of the storage on environmental and trust resources can be performed.

Comment: Specify in § 414.3(a) that the water to be stored will be within the basic apportionment or the surplus apportionment of the Storing State or unused basic apportionment or unused surplus apportionment of the Consuming State. Any unused apportionment of the Consuming State may only be made available by the Secretary to the Storing State under Article II(B)(6).

Response: We agree with this suggestion from several State agencies and a water district, and have modified this rule to incorporate this change.

Comment: Specify in § 414.3(a) the maximum quantity of ICUA that will be available for release to the consuming entity under the agreement.

Response: We agree with this suggestion from several State agencies, a water authority, and a water district. We have modified this rule to incorporate this change.

Comment: Specify in § 414.3(a), by January 31, the maximum quantity of ICUA that will be available for release and delivery to the consuming entity under the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") in that current year.

Response: We did not accept this suggestion from a water district. The rule leaves the determination of this detail to the Storage and Interstate

Release Agreement that will be negotiated among the parties to that agreement. Further, this subject involves accounting matters that are set forth in § 414.4.

Comment: Specify in § 414.3(a) that the consuming entity may not request ICUA in a quantity that exceeds the quantity of water then in storage under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") in the Storing State. Several respondents suggested deleting the statement from the proposed rule that water then in storage under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") may not be recovered within the same calendar year in which the water was stored offstream. Another respondent suggested retaining this statement.

Response: We agree with the suggestion from several State agencies, a water authority, and a water district that the Storage and Interstate Release Agreement must specify that the consuming entity may not request a quantity of ICUA in excess of the quantity of water then in storage under a Storage and Interstate Release Agreement. The quantity of water stored under a Storage and Interstate Release Agreement serves as the basis for the quantity of ICUA that may be developed under the Storage and Interstate Release Agreement. This rule allows Colorado River entitlement holders in the Storing State the option to use the water previously stored under a Storage and Interstate Release Agreement, under a direct contract with the Secretary, or under a valid subcontract with an entitlement holder authorized to enter into subcontracts. However, the rule also allows other means consistent with Storing State law to develop ICUA. We do not agree with the suggestion from a water district to retain the requirement that water stored under a Storage and Interstate Release Agreement may not be recovered within the same year the water is stored offstream. The parties may agree to permit the consuming entity to request and receive ICUA during the same year water is stored under a Storage and Interstate Release Agreement. However, the applicable law of the Storing State may not permit a consuming entity to request the delivery of a quantity of ICUA that exceeds the quantity of unused apportionment that was stored offstream for that consuming entity under a Storage and Interstate Release Agreement as of the end of the prior year.

Comment: Modify § 414.3(a) to specify that, by a date certain to be specified in the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"), the consuming entity will provide notice to the Lower Division States and to the Secretary of its request for a specific quantity of ICUA in the following calendar year.

Response: We agree with this suggestion from two State agencies and a water authority and have modified this rule to incorporate this intent. The revised provision is now renumbered § 414.3(a)(7). The rule will allow the parties and the Secretary to reach a mutually acceptable date for the notice in the Storage and Interstate Release Agreement.

Comment: Modify § 414.3(a) to specify that the date when the consuming entity will provide notice to the Lower Division States and to the Secretary will be the later of (i) November 30 or (ii) within 45 days after the AOP has been transmitted to the Governors of the Colorado River Basin States. This change will allow more flexibility in case the AOP is not transmitted by the Secretary to the Governors before November 30, as has occurred sometimes in the past.

Response: We did not incorporate this suggestion from a water district into this rule. It is possible that the processes for the Secretary to send the AOP to the Governors and the Colorado River entitlement holders to complete their annual water orders may not be completed until late in the year, beyond November 30. However, we agree with several respondents that the date when the authorized entity is to provide notice is better incorporated into the Storage and Interstate Release Agreement.

Comment: Modify § 414.3(a) to clarify that a storing entity, after receiving a notice of a request for a specific quantity of ICUA, will take actions to ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop the requested quantity of ICUA to be released for use in the Consuming State.

Response: We agree with this suggestion from a State agency, a water authority, and a water district and have modified this rule to incorporate this change. The revised provision is now renumbered § 414.3(a)(8).

Comment: Modify § 414.3(a) to provide that the Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement will specify which types of actions may be taken in the Storing State to develop ICUA.

Response: We agree with this suggestion from a State agency, a water authority, and a water district and have modified this rule to incorporate this change. The modified rule also requires the storing entity to specify the means by which the development of the ICUA will be enforceable by the storing entity. The revised provision is now renumbered § 414.3(a)(9).

Comment: The rule should be modified to specify that an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will require the storing entity to certify that ICUA is developed that otherwise would not exist and to specify the quantity, the means, and the entity by which the unused apportionment will be developed.

Response: We agree with this suggestion by a State agency, a water authority, and a water district and have modified and renumbered this provision § 414.3(a)(10) to incorporate this change into this rule. We do not agree with the comment from a State agency that it is necessary to specify the procedure by which certification is provided to the Secretary. However, the Secretary and the authorized entities may specify the certification procedure in the Storage and Interstate Release Agreement if they so choose.

Comment: The rule should provide guidance as to how the development of ICUA will be verified.

Response: We agree with the suggestion from a State agency and a water authority that this rule should require a Storage and Interstate Release Agreement to specify a procedure for verification of the ICUA appropriate to the manner in which it is developed. This rule has been modified to incorporate this requirement into a new § 414.3(a)(11). In addition, a new § 414.3(a)(6) was included in this rule to require the Storage and Interstate Release Agreement to specify a procedure for verification of the quantity of water stored in the Storing State under a Storage and Interstate Release Agreement. Further, § 414.3(a)(10) specifies that the storing entity must certify to the Secretary that ICUA has been or will be developed that would not otherwise exist. The Secretary may use independent means to verify the existence of ICUA.

Comment: The Secretary should review the water orders and release the AOP before actions are taken to develop or release ICUA.

Response: We do not agree with this suggestion from a State agency. The respondent raised a concern that this rule might allow a storing entity to increase its water order to include the quantity of requested ICUA. The authorized entity could then decrease its order, pump ground water or release surface water that it otherwise would have used anyway, claim credit for developing ICUA, and receive payment for actions it would not have taken. We do not believe it is necessary for the consuming entity to postpone its request for ICUA until after the annual water orders and the AOP are completed. We believe that information on water orders should be shared openly and up front in the interest of better regional cooperation. The open nature of these water schedules will help ensure that an initial water order is legitimate and that it is not intentionally increased in order that a Storing entity could get credit for ICUA without taking the actions necessary to develop that ICUA.

Comment: Modify § 414.3(a) to include a requirement for the storing entity to provide evidence that the stored water has not migrated out of the State, out of the United States, to a saline sink, or returned to the mainstream.

Response: We do not agree with the comment from a water district that this provision is necessary in this rule. We will require full environmental compliance on all Storage and Interstate Release Agreements and will consider the potential migration of ground water storage when evaluating the effects of storage on the environment and trust resources.

Comment: Modify § 414.3(a) to clarify that the parties to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") other than the United States will indemnify the United States from actions taken by parties to the agreement other than the United States, not for the broader actions of the United States.

Response: We agree that the United States is covered by the Federal Tort Claims Act and other laws and have revised this paragraph, now designated § 414.3(a)(16), to incorporate this comment by a water district and an irrigation district.

Comment: The Department should protect the water in Indian tribes' ground water basins by not allowing the storage or recovery of water from ground water basins that are hydraulically connected to the tribes' ground water basins.

Response: The Department acknowledges its obligation to protect tribal resources. Section 414.3(b) provides that the Secretary will consider potential effects on trust resources and entitlement holders, which include Indian tribes with rights to the use of Colorado River water, in considering, participating in, and administering a Storage and Interstate Release Agreement.

Comment: Modify the following elements of § 414.3(b), now renumbered § 414.3(c), to require the Secretary to notify the public of a request to approve an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"), provide a more definitive time for the Secretary to respond to the request, provide for execution of necessary contracts to authorize the diversion and use of Colorado River water, and provide an appeals process.

Response: We have modified the rule to provide in § 414.3(a) that the Secretary will be a party to a Storage and Interstate Release Agreement. We modified § 414.3(c) to specify that the Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) shall have the authority to negotiate, execute, and administer a Storage and Interstate Release Agreement on behalf of the Secretary. The rule does not provide for an appeal of the Regional Director's decision whether to execute a particular Storage and Interstate Release Agreement. The necessity of contracts to authorize the diversion of water under a Storage and Interstate Release Agreement, except for storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders, is addressed in § 414.3(e) of the rule. The rule allows for the storage of Colorado River water either through a direct contract with the Secretary or through a valid subcontract with an entitlement holder authorized by the Secretary to enter into such subcontracts. The Storage and Interstate Release Agreement to which the Secretary will be a party satisfies the Section 5 requirement for the release or diversion of ICUA to the consuming entity in the Consuming State.

Comment: Amend § 414.3 (c) to conform the wording to other changes made that delete use of the term "redemption of storage credits."

Response: We agree with the suggestions from several State agencies, a water authority, and a water district, and have modified this rule to more clearly describe the intent of the Storage and Interstate Release Agreements. The revised wording specifies that, after receiving a notice of a request for release of ICUA, the storing entity will certify to the Secretary that sufficient water has been stored for the Storing State to support the development of the requested quantity of ICUA. The revised paragraph is designated § 414.3(a)(10).

Comment: Amend § 414.3(d) to conform the wording to other changes that delete use of the term redemption of storage credits. Also, specify that ICUA is available only for use by the consuming entity.

Response: We agree with the suggestions from several State agencies, a water authority, and a water district and has modified this rule to more clearly describe the intent of the Storage and Interstate Release Agreements. The revised wording substitutes the term "intentionally created unused apportionment" ("ICUA") for the less definitive term "redemption of storage credits." In addition, the revised rule clarifies that ICUA will be released only for use by the consuming entity.

Comment: The rule should provide for a contractual commitment by the Secretary to release to a consuming entity ICUA that exists as a consequence of implementation of the Interstate Storage Agreement.

Response: We modified the rule in § 414.3(a) to provide that the Secretary will be a party to Storage and Interstate Release Agreements. Sections 414.3(a)(12) through 414.3(a)(15) provide, among other things, that the Secretary will commit in the Storage and Interstate Release Agreement to release ICUA but only if all necessary actions are taken under the rule, if all laws and executive orders have been complied with, and if the Secretary has first determined that ICUA has been developed or will be developed by a storing entity.

Comment: A Federal agency has commented as to whether actual storage of Colorado River water must take place in those instances where both storage and recovery take place in the same year.

Response: The rule does allow for the release and delivery of ICUA in the same year in which it is developed. Consistent with the laws of the storing state, if recovery and development occur in the same year, and section 414.3(f) (Anticipatory Release of ICUA) is invoked, the Secretary will not require actual storage of water subsequent to the release of ICUA.

Comments Concerning § 414.4—Reporting Requirements and Accounting Under Storage and Interstate Release Agreements

Comment: Amend § 414.4 to provide more flexibility in the reporting date and to clarify the intent that water stored under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will be recovered and used in the State in which water will be stored and it will be ICUA water rather than credits that the Secretary will release under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). The language should reference the Interstate Storage

Agreements (now termed "Storage and Interstate Release Agreements") that establish the basis for the accounting for the water to be released by the Secretary for use in the Consuming State.

Response: We agree with this suggestion from several State agencies, a water authority, and a water district, and have revised this rule to more clearly describe the intent of the Storage and Interstate Release Agreements. The reporting date was made more flexible by allowing the date to be agreed upon by the parties to the Storage and Interstate Release Agreement and specified in the Storage and Interstate Release Agreement. To be consistent with other changes made in this rule, this provision refers to the water stored under a Storage and Interstate Release Agreement as water that is available to the storing entity. The Secretary will account for water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA. The Secretary will release ICUA for use by a consuming entity when the provisions of this rule and the Storage and Interstate Release Agreement have been satisfied.

Comment: It is not clear how the "cut to the aquifer" or losses from storage or transportation are determined or if they are arbitrary or based on actual data. It is not clear whether this detail is specific to a State's regulation or the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement").

Response: A storing entity will determine how much stored water must remain in an aquifer based on the Storing State's applicable law and/or the policy of the authorized entity. In Arizona, that decision is based on State law which requires that 5 percent of water placed in offstream storage remain in the ground to replenish the aquifer. The authorized entity will determine, consistent with applicable State law, how much stored water can be recovered when that authorized entity decreases its diversions and consumptive use of Colorado River water in the future to develop ICUA that the Secretary will release for use by a consuming entity.

Comments Concerning § 414.5—Water Quality

Comment: Modify § 414.5(a) to clarify that the interstate agreements referred to are Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements"). Clarify which water is being referred to and recognize the Secretary's responsibilities under the Colorado River Basin Salinity Control Act.

Response: We agree with these suggestions from several State agencies, a water authority, and a water district, and have modified § 414.5(a). This rule clarifies that the referenced agreements are Storage and Interstate Release Agreements. In addition, the last sentence of § 414.5(a) was modified to qualify that the United States has no obligation to construct or furnish water treatment facilities to maintain or improve water quality except as otherwise provided in relevant Federal law. Implementation of this rule will not modify the Secretary's responsibilities under the Colorado River Basin Salinity Control Act of June 24, 1974 (88 Stat. 266).

Comments Concerning § 414.6—Environmental Compliance and Funding of Federal Costs

Comment: Modify § 414.6(b) to clarify that the interstate agreements referred to are Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") and that the costs incurred by the United States in evaluating, processing, and approving an Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement") will be funded by the parties to that agreement.

Response: We agree with these suggestions from several State agencies, a water authority, and a water district, and have modified § 414.6(b) to require that the authorized entities that are parties to a Storage and Interstate Release Agreement must fund the United States costs of considering, participating in, and administering that agreement.

Public Comments on DPEA and Responses

The following is a discussion of the comments received on the DPEA and our responses. This section includes comments on the scope of the DPEA, Secretarial discretion, adequacy of the environmental assessment, potential effects on plants and wildlife, water available for instream flows and habitat enhancement, concerns over deliveries to Mexico, efficiency improvements, storage alternatives, consultations, sunset clause, economic impacts of the rule, effects on ground water storage, and general comments.

Scope of the DPEA

Comment: The description of proposed interstate transactions in the draft programmatic environmental assessment is overly broad and the draft environmental assessment is therefore unnecessarily broad in its scope.

Response: We recognize, from comments on the proposed rule and DPEA, that prospective transactions are not described the way prospective authorized entities will intend them to work. Colorado River water stored offstream under a Storage and Interstate Release Agreement will be available for use in the Storing State. When a consuming entity requests water stored under a Storage and Interstate Release Agreement, it will receive ICUA, not storage credits. The storing entity will take actions to reduce its State's consumptive use of Colorado River water, thereby developing ICUA. When the Secretary is satisfied that ICUA has been or will be developed, an equivalent quantity of ICUA will be released by the Secretary for use by the consuming entity. Based on a reformulation of the prospective transactions that may take place under the rule, we believe that the final programmatic environmental assessment (FPEA) is appropriate.

Secretarial Discretion

Comment: Several respondents commented that the rule should not be finalized or surplus water stored offstream before the Department clarifies exactly what discretion the Secretary has in providing water for habitat enhancement and how the proposed rule would affect that discretion.

Response: In the Lower Colorado River area (LCR), the Decree apportions surplus among the Lower Division States as follows: 50 percent to California, 46 percent to Arizona, and 4 percent to Nevada. Entities with surplus contracts are currently using surplus and may store it offstream for intrastate use without the proposed Rule. We recognize that the Secretary's management of the LCR to accommodate endangered and sensitive species and their critical habitat is being reviewed as part of the MSCP. FWS developed a Reasonable and Prudent Alternative (RPA) in the Biological and Conference Opinion (BCO) for the current and projected routine operations and maintenance of the LCR. The RPA contains a number of provisions, one of which, 13(a), addresses the type and extent of the Secretary's discretionary action flexibility for all operations and maintenance activities on the Colorado River. Reclamation has provided a summary of its discretion to FWS. Reclamation complied with RPA provision 13(b) by providing a report to FWS on December 30, 1998, that identifies opportunities to increase the Secretary's discretion in Colorado River operations in order to provide water for fish and wildlife purposes. We believe that this rule can be implemented without compromising the MSCP process.

Adequacy of the Environmental Assessment

Comment: The level of environmental compliance proposed by Reclamation is inadequate and Reclamation should complete a programmatic EIS on the proposed rule and the entire operation of the Colorado River.

Response: Please refer to the previous discussion of adequacy of the environmental assessment under the Environmental Concerns section of the Public Comments on Proposed Rule and Responses on General Issues.

Potential Effects on Plants and Wildlife

Comment: Compliance with the ESA for the proposed rule was not accomplished through the biological opinions for Central Arizona Project (CAP) or Lower Colorado River Operations and Maintenance Activity and Reclamation cannot defer them until a later date.

Response: We do not agree with this view expressed by several environmental groups. Reclamation has prepared a biological assessment (BA) for the proposed rule and entered into informal consultation with FWS. Please refer to the response to the following comment for more details about those consultations. Reclamation has incorporated by reference into its BA for the proposed rule the 1996 Biological Assessment for Description and Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River (LCRBA). The LCRBA analyzed the potential effects to listed species and designated critical habitat from current and projected routine LCR operations and maintenance where Reclamation has discretionary involvement or control. Reclamation also incorporated by reference FWS's 1997 BCO based on the LCRBA. These documents provide the baseline for current and projected routine LCR operations. More information on the BA prepared for this rule is contained in the next few responses.

The BCO and prior consultations with FWS for physical facilities and water delivery contracts with the Central Arizona Water Conservation District and Southern Nevada Water Authority cover the effects of both mainstream and offstream areas that would be involved in the scope of proposed actions under the rule.

Comment: The offstream storage and retrieval of water under the proposed rule is likely to have adverse direct, indirect, and cumulative effects on wildlife and critical habitat, particularly for threatened and endangered species.

Response: We do not agree with the view by several environmental groups that proposed actions under the proposed rule will adversely affect threatened and endangered species and critical habitat. Reclamation has met with FWS and engaged in informal consultations under the ESA. In the course of those consultations, Reclamation prepared a BA that analyzed the potential effects of operations under the proposed rule on listed species and designated habitat in the LCR action area. This analysis was based upon the most likely storage and retrieval scenarios of water from Lakes Mead or Havasu and associated river reaches to obtain ICUA under the proposed rule. At the request of FWS, several worst case scenarios were formulated by Reclamation for purposes of comparison with Colorado River operations that are most likely to occur under the proposed rule. These worst case scenarios were given detailed analysis and discussed with FWS but were later eliminated because they are not realistic and will not be allowed under proposed Storage and Interstate Release Agreements.

The BA analyzed several scenarios, one of which was a proposed action in which 1.2 maf would be stored in Arizona under a Storage and Interstate Release Agreement to allow an authorized entity in Nevada to meet its future water needs. Maximum conveyance capacity expected to be made available on the CAP to store water for interstate water transactions is 200 kaf/year. An authorized entity in Nevada will make future diversions of water from Lake Mead, in addition to Nevada's normal basic and surplus apportionments, to use ICUA released by the Secretary. This additional diversion of ICUA will be limited, under Arizona law, to a maximum of 100 kaf in any year. The BA analyzed the effects of this and other scenarios for storage of Colorado River water and future release of ICUA on listed species and their designated habitat. Effects to each species were determined for the most likely and low probability case scenarios. Habitat requirements for breeding, nesting, and foraging of some species are not dependent on the LCR. Fluctuations in water surface elevations associated with most likely and low probability storage and retrieval scenarios on reservoirs and riverine reaches on the LCR are very small and are not likely to adversely affect bonytail chub, razorback sucker, Yuma clapper rail, or southwestern willow flycatcher. Based upon the available information regarding the critical habitats for the razorback sucker and bonytail chub, storage and release of ICUA under this rule will not adversely modify critical habitat for these fish species. Other listed and sensitive species will not be affected by implementation of the rule. Reclamation did not consult with FWS on species in Mexico because the United States has no authority or discretion regarding Mexico's use of its treaty water or flood control releases.

Reclamation has notified the National Marine Fisheries Service that a section 7 consultation for Mexican species under its administration is not required.

Water Available for Instream Flows and Habitat Enhancement

Comment: Concern was expressed that Colorado River stream flows downstream from Lake Mead would first increase when water is put into storage in Arizona and then decrease in the future as more water is diverted from Lake Mead when Nevada recovers stored water.

Response: No significant changes are expected in stream flows downstream from Lake Mead as a result of implementation of a Storage and Interstate Release Agreement between Arizona and Nevada under the rule. The Biological Assessment for this rule evaluated the effects of storage of 100 and 200 kaf/year of Colorado River water in Arizona and subsequent diversion in a later year of up to 100 kaf by Nevada from Lake Mead. Very small changes in water surface elevations would occur in the riverine and reservoir areas below Lake Mead. The largest increase or decrease in average monthly water surface elevation when storing or using water was 0.12 feet. These changes fall within the range of increases and decreases in water surface elevations below Lake Mead and Hoover Dam under current river operations.

Concerns over Deliveries to Mexico

Comment: The DPEA states that a minor reduction will occur in the quantity of surplus water available for delivery to Mexico over the long term without explaining what a minor reduction is or what studies have been done to quantify this.

Response: Please refer to the previous discussion of adequacy of the environmental assessment under the Environmental Concerns section of the Public Comments on Proposed Rule and Responses on General Issues.

Comment: Offstream storage of surplus water will decrease the likelihood that water from flood control releases will reach the Gulf of

California, thereby reducing the quantity of water that otherwise would be available for environmental restoration in the delta.

Response: Flood control releases are projected to average 788 kaf/year during the period 1999–2015. Offstream storage could decrease flood control releases reaching Mexico by an average of 23 kaf/year during this time. The probability of occurrence of flood control releases could decrease by 0.83 percent. These decreases fall within the range of flood control projections previously consulted on in the 1996 Biological Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River.

Please refer to the previous discussion of adequacy of the environmental assessment under the Environmental Concerns section of the Public Comments on Proposed Rule and Responses to General Issues.

Efficiency Improvements

Comment: Efficiency improvements in river management and the storage of Colorado River water in underground aquifers mean less water is available for environmental purposes, such as the riparian and aquatic ecosystems of the river, including the river and delta region in Mexico.

Response: Please refer to the previous discussion of efficiency improvements under Public Comments on Proposed Rule and Responses on General Issues.

Storage Alternatives

Comment: It is not clear what storage options are available under the rule, or how the rule would apply if there are changes in Arizona's laws or if California or Nevada enact conflicting laws.

Response: We have modified this rule in response to comments from several State agencies, a water district, and a water authority. This rule now provides in § 414.3(a)(2) and § 414.6(a)(3), respectively, for the storage of basic or surplus apportionment of the Storing State, not otherwise put to use by entitlement holders within the Storing State, or storage of the unused basic or surplus apportionment of the Consuming State. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the rule provides that the Secretary will make that water available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders. The rule has been drafted to apply uniformly to all three Lower Division States and the Department will not speculate about potential changes in Arizona's laws or whether California or Nevada may enact conflicting laws.

Comment: Banking in Lake Mead is illegal and it should not be listed as an alternative to the rule.

Response: We do not agree with the comment from a State agency that banking in Lake Mead is illegal. Moreover, under NEPA, Reclamation is charged with the responsibility to analyze reasonable alternatives, and the Department believes that it has appropriately complied with NEPA in this regard.

Comment: The DPEA misstates Arizona law with regard to the ability to create ICUA during a shortage year.

Response: We agree with the comment from a State agency that the statement in the DPEA that "Interstate recovery of storage credits in Arizona for California and Nevada will not be allowed in a shortage year" is not accurate. The FPEA has been revised to clarify that AWBA has discretion to decide whether it is in Arizona's best interests to enter into a Storage and Interstate Release Agreement that would require decreased diversions of mainstream water by Arizona during years when the Secretary has declared a shortage on the Colorado River.

Consultations

Comment: The requirement for consultation under the Fish and Wildlife Coordination Act is broader than described and consultation is required with the State wildlife agencies on an equal footing with FWS.

Response: We do not agree with this comment from a State agency that Reclamation is required to consult with State wildlife agencies. Reclamation's responsibility under the Fish and Wildlife Coordination Act is to coordinate with FWS who in turn is expected to interface and represent fish and wildlife concerns based on, among other things, coordination with State game and fish agencies. In addition, the Fish and Wildlife Coordination Act requirements will be met through both ESA and NEPA consultations. The Fish and Wildlife Coordination Act requires Reclamation to consider fish and wildlife resource needs in operation and management of water projects.

Sunset Clause

Comment: The need for a permanent rule was questioned and it was suggested that the rule should have a termination date, such as the end of the time that storage is anticipated. It was suggested that a sunset date will allow the Department an opportunity to do a programmatic reevaluation of how the rule is being used.

Response: We do not agree with the suggestion from a Federal agency that there should be a sunset date. Under this rule, a consuming entity will be able to enter into Storage and Interstate Release Agreements and pay for storage of water that the Storing State will use in the future when the consuming entity calls for ICUA. However, there is no way to accurately predict the future and unanticipated changes in the rate of population growth or the occurrence of droughts or surplus conditions will affect how much water can be stored or when ICUA will be needed. The parties to a Storage and Interstate Release Agreement would not agree to subject any water already in storage to new terms and conditions under new rules. A consuming entity that invests significant sums of money into funding water storage in a Storing State is not likely to agree to subject itself to limited term storage or revised terms and conditions for the right to receive ICUA under an already signed Storage and Interstate Release Agreement. The storage and retrieval period between Arizona and Nevada is projected to run from years 1999 to 2030 and may run longer if both California and Nevada enter into Storage and Interstate Release Agreements with Arizona. Under Arizona law no more than a total of 100 kaf of water stored in Arizona may be retrieved by California and Nevada in any given year. If Nevada is limited to retrieving a maximum of 50 kaf of ICUA from Arizona because California is also retrieving ICUA, the water stored under a Storage and Interstate Release Agreement could be retrieved at this rate beyond the year 2030.

Economic Impacts of the Rule

Comment: Some respondents commented that the proposed rule may impact the southern California water rates if less water that is apportioned to but unused by Arizona and Nevada is made available to California.

Response: Please refer to the previous discussion of potential economic impacts of the rule on southern California water rates that is included in the discussion of economic impacts of this rule under Public Comments on Proposed Rule and Responses on General Issues.

Comment: The DPEA provides little information regarding potential environmental justice concerns regarding minority and low-income communities, such as Indian tribes, communities along the Mexican border, and communities near the Gulf of California.

Response: We have reevaluated the section of the DPEA on environmental justice and has included additional analysis. Based on this additional analysis, we do not find that this rule will have an effect on minority or low-income communities. As discussed in previous responses, this rule is not intended as a mechanism to compensate tribes.

Because Mexico is a sovereign nation, we have no control over how Colorado River water is used once it reaches the international border. Thus while we have determined that there may be minimal effects of this rule on flood control deliveries to the international border, we cannot determine the potential effects that any potential reduction in the deliveries of flood control water may have within the Republic of Mexico.

Effects on Ground Water Storage

Comment: Some respondents, including Indian tribes, commented that the rule would result in a net loss in ground water over time to "indirect storage" and that this is a significant indirect effect of the rule but the DPEA shows no analysis of this effect.

Response: We do not agree that actions under this rule will result in a loss of ground water to indirect storage. The method by which Colorado River water is stored by indirect storage allows water to remain in the ground in lieu of being pumped. When Arizona is the Storing State, the development of ICUA is limited to only 95 percent of the water previously stored under a Storage and Interstate Release Agreement. Therefore, the ground water will gain by 5 percent of the water that would have been pumped anyway if it were left in the ground through in lieu storage actions. Further, although Arizona law currently does not allow the development of ICUA by any means other than pumping water that was stored under a Storage and Interstate Release Agreement, this rule allows additional flexibility. If Arizona changes its laws or policy in the future to allow other means of developing ICUA, it is possible that the alternative means could help preserve Arizona's ground water. Finally, as stated previously, this rule allows Colorado River entitlement holders in the Storing State the option to use the water previously stored under a Storage and Interstate Release Agreement or other means consistent with Storing State law to develop ICUA.

Comment: Reclamation should clarify how the rule fits within the regulatory framework for ground water protection in each State, as well as the federal role in ground water protection. The preamble to the proposed rule contains a statement that, "Water quality will be monitored by the Environmental Protection Agency . . ." It is not clear to what extent Reclamation expects the Environmental Protection Agency (EPA) to be involved in offstream storage authorized under the rule.

Response: We do not anticipate a need for EPA to evaluate data collected through any offstream storage of Colorado River water. The purpose of the statement was to declare that the Department, and more specifically Reclamation, does not have the responsibility to regulate ground water quality.

General Comments

Comment: There were a number of editorial comments on the DPEA that suggested clarification or additional explanation on various points.

Response: We have reviewed and considered the comments and has adopted many of the suggestions into the text of the FPEA. In addition, the previously mentioned informal consultations between Reclamation and FWS resulted in Reclamation's incorporation of numerous suggestions made by FWS into the BA and FPEA.

Public Comments on Definition of Authorized Entity and Several Other Technical Matters and Responses

As a result of receiving differing comments on the definition of authorized entity and several other technical matters, the Department reopened the comment period on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998. We asked interested parties to provide comments on three specific questions:

Question 1: Should the definition of "authorized entity" be revised to clarify that an authorized entity, including a water bank, must hold an entitlement to Colorado River water in order to ensure consistency with the Law of the River, including specifically Section 5 of the BCPA as interpreted by the Decree?

Question 2: Should an approved Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement) and a contract under Section 5 of the BCPA be combined into one document, thus making the parties entitlement holders upon execution of the agreement?

Question 3: If not combined, should the Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement) and any separate Section 5 contract (or amendments to an existing contract) be processed and approved simultaneously to eliminate duplication of any administrative and compliance procedures?

The Department received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all pertinent comments and revised the rule based on these comments. Four respondents, including one water users association and three environmental organizations, did not address the issues on which comments were solicited during the reopened comment period. One water users association resubmitted its comments from the original comment period. Three environmental organizations reiterated the same environmental concerns addressed in their respective responses in the original comment period. Two respondents jointly submitted a report that addresses potential effects of water flows from the United States on the riparian and marine ecosystems of the Colorado River delta in Mexico.

The remaining seven respondents provided comments on issues pertinent to the reopened comment period, although one State agency and one water district also resubmitted their respective comments from the original comment period.

The following is a discussion of the comments received on the issues pertinent to the reopened comment period and our responses.

Comments on Question 1

Comment: One State agency and two water districts cite the BCPA and the Decree to support their view that an authorized entity must have a contract with the Secretary. Two State agencies, one water district, and one water authority commented that an authorized entity need not be an entitlement holder to store water and make it available to a Consuming State under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). The latter group recognizes that the BCPA and the Decree require all diversions of Colorado River water from the mainstream to be based on an entitlement. However, these respondents believe there is no statutory requirement for the authorized entity to have a direct contract with the Secretary in order to fulfill its responsibilities to store its own State's unused apportionment. Under their reasoning, the authorized entity can arrange for storage and ensure the availability of unused apportionment in the future through existing contractual arrangements with other parties that have entitlements through contracts with the Secretary.

Response: With the exception of Federal and tribal rights identified in Article II(D) of the Decree, all diversions of water from the Colorado River for use within the Lower Division States require a contract with the Secretary. This is specified in Section 5 of the BCPA and confirmed by the Decree in *Arizona* v. *California.* Under this rule diversions of Colorado River water will occur in two circumstances. The first is when water is taken from the river and stored off-stream by the storing entity and the second is when ICUA has been developed and that water is released by the Secretary for use by the consuming entity.

For authorized entities that do not hold a Federal or tribal entitlement recognized in Article II(D) of the Decree, the rule allows for the storage of Colorado River water either through a direct contract with the Secretary or through a valid subcontract with an entitlement holder. For the release or diversion of ICUA to the consuming entity, the Storage and Interstate Release Agreement, to which the Secretary will be a party, satisfies the Section 5 requirement.

Comments on Question 2

Comment: One State agency and one water district believe that sufficient statutory and contractual authorities exist to allow the authorized entity to take water for banking purposes that otherwise would be unused in that State. These parties believe the authorized entity does not need to hold its own entitlement because sufficient legal authority already exists under applicable laws and contracts. The State agency states that not all end users of Colorado River water are required to have entitlements or contracts with the Secretary. The State agency further contends that the Colorado River Basin Project Act [43 U.S.C. 1524(b)] makes a direct contract between the Secretary and end-users of Colorado River water in Arizona discretionary.

Response: The Department recognizes in new § 414.3(e) that storage of Article II(D) water by Federal or tribal entitlement holders or existing contracts may allow for the delivery of water under this rule. These include direct contracts between authorized entities and the Secretary. These also include subcontracts between authorized entities and an entitlement holder that has been authorized by the Secretary to enter into subcontracts for the delivery of Colorado River water. Authorized entities that are Federal or tribal entitlement holders identified in Article II(D) of the Decree are not subject to the Section 5 contract requirement in the Decree. Section 414.3(e) also provides that the Storage and Interstate Release Agreement, to which the Secretary is a party, can be a water delivery contract. We agree that when existing contracts or valid subcontracts provide for delivery of Colorado River water under this rule, there is no need to combine these contracts with the Storage and Interstate Release Agreement.

Comment: Another State agency and one water authority, in a joint response, believe an additional contract, beyond the contract necessary to fulfill the requirements of Section 5 of the BCPA, is necessary with the Secretary for the release of water based on the development of ICUA by a storing entity. However, those parties do not see a need for new and additional Section 5 contracts beyond those that now exist.

Response: The Department modified the rule in § 414.3(a) to provide that the Secretary will be a party to Storage and Interstate Release Agreements. Sections 414.3(a)(12) through 414.3(a)(15) provide, among other things, that the Secretary will commit in the Storage and Interstate Release Agreement to release ICUA but only if all necessary actions are taken under the rule, if all laws and executive orders have been complied with, and if the Secretary has first determined that ICUA has been developed or will be developed by a storing entity.

Comment: One State agency and two water districts commented that whether or not the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") and Section 5 contract are combined is discretionary and that this should be determined by the particular situation.

Response: We have modified § 414.3(a) to provide that the Secretary will be a party to the Storage and Interstate Release Agreement. The Storage and Interstate Release Agreement can serve as a water delivery contract within the meaning of Section 5 of the BCPA. We recognize in § 414.3(e) that, in certain circumstances, existing contracts or subcontracts can satisfy the requirements of Section 5 for the delivery of water under a Storage and Interstate Release Agreement. In such circumstances, the rule does not anticipate the need for the execution of any further Section 5 contracts in order to implement a Storage and Interstate Release Agreement. Storage of water by authorized entities that hold Article II(D) of the Decree entitlements will not be subject to a Section 5 contract requirement.

Comment: One water district suggested that while there is no legal requirement for the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") and Section 5 contract to be combined, it was suggested that such an action would have the effect of making the Secretary a party to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). It was asserted that making the Secretary party to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") may give the authorized entities a greater sense of security that future obligations will be performed.

Response: The Department recognizes in new § 414.3(e) that existing contracts may allow for the delivery of water under this rule. These include direct contracts between authorized entities and the Secretary. These also include subcontracts between authorized entities and an entitlement holder that has been authorized by the Secretary to enter into subcontracts for the delivery of Colorado River water. Section 414.3(e) also provides that the Storage and Interstate Release Agreement, to which the Secretary is a party, can serve as a water delivery contract. We agree that when existing contracts or valid subcontracts provide for delivery of Colorado River water under this rule, there is no need to combine these contracts with the Storage and Interstate Release Agreement.

Comment: Another water district stated that if one of the parties to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") already holds an entitlement for delivery of Colorado River water under a BCPA Section 5 contract, a new or amended water delivery contract may not be necessary.

Response: The Department recognizes in the new § 414.3(e) that in certain circumstances existing contracts may satisfy the Section 5 requirement of the BCPA so that additional Section 5 authority would be unnecessary to perform activities under a Storage and Interstate Release Agreement. Section 5 authority is also unnecessary for the storage of Article II(D) of the Decree water by Federal or tribal entitlement holders. In circumstances where additional Section 5 authority is unnecessary, the Storage and Interstate Release Agreement would only cover the specific details of a transaction between the Secretary and the other parties to the Storage and Interstate Release Agreement.

Comments on Question 3

Comment: One State agency and one water district stated that sufficient statutory and contractual authorities already exist under applicable laws and contracts to allow the authorized entity to take water for banking purposes. Therefore there would be no need for a new or amended contract. Another State agency and one water authority believe that an additional contract is necessary with the Secretary to ensure the Secretary's commitment to release water based on the development of ICUA by a storing entity. That contract could be executed concurrently with an Interstate Storage Agreement. However, as noted under comments on Question 2, those parties do not see a need for new and additional Section 5 contracts beyond those that now exist. One State agency responded that if there are two separate agreements, they should be processed, reviewed, and approved simultaneously. The two water districts commented that any necessary Section 5 contract, whether or not combined with an Interstate Storage Agreement, should be processed and approved simultaneously with the Interstate Storage Agreement.

Response: Question 3 asked whether Storage and Interstate Release Agreements and Section 5 contracts, if not combined, should be processed simultaneously. We have modified the rule in § 414.3(a) to provide that the Secretary will be a party to a Storage and Interstate Release Agreement. The Department also recognizes in § 414.3(e) that, in certain circumstances, existing contracts or subcontracts satisfy the requirements of Section 5 for the delivery of water under a Storage and Interstate Release Agreement. The rule does not anticipate the need for the execution of any further Section 5 contracts in order to implement a Storage and Interstate Release Agreement. Question 3 is moot in light of these modifications to the rule. Comments by the parties in response to Question 3 primarily address issues raised by Questions 1 and 2 and are responded to above.

V. Procedural Matters

- Environmental Compliance
- Paperwork Reduction Act
- Regulatory Flexibility Act
- Small Business Regulatory Enforcement Fairness Act (SBREFA)
- Unfunded Mandates Reform Act of 1995
- Executive Order 12612, Federalism Assessment
- Executive Order 12630, Takings Implications Analysis
- Executive Order 12866, Regulatory Planning and Review
- Executive Order 12988, Civil Justice Reform

Environmental Compliance

We prepared a DPEA and placed it on file in the Reclamation Administrative Record. We received comments on the DPEA (discussed above in III. Responses to Comments), and carefully considered those comments in preparing the final programmatic environmental assessment (FPEA). We have accepted many of these comments and incorporated them into the FPEA, which is on file in the Reclamation Administrative Record. Based on the FPEA, we have determined that a Finding of No Significant Impact is warranted.

We have also, under the ESA, consulted with FWS on potential impacts of this rule on listed species and designated habitat. Based on the analysis contained in the BA that we prepared for the rule, we have determined that operations under this rule are not likely to adversely affect listed species or designated habitat in the action area. FWS has concurred with this finding. We have also determined that we have no Section 7 obligations for species within Mexico due to our inability to control the use of water once it reaches Mexico.

Compliance with NEPA, the ESA, and other relevant statutes, laws, and executive orders will be completed for future Federal actions taken under this rule to ensure that any action authorized or carried out by the Secretary does not jeopardize the continued existence of any threatened or endangered species, does not adversely modify or destroy critical habitat, and is analyzed by an appropriate environmental document. Consultation and coordination between Reclamation, FWS, other agencies, and interested parties will be completed on a case-by-case basis.

Paperwork Reduction Act

This rule is geographically limited to the States of Arizona, California, and Nevada. The collection of information contained in the rule covers storing entities that would store Colorado River water off the mainstream of the Colorado River. The information we would collect would be compiled by these storing entities in the course of their normal business, and the annual reports to the Secretary will not impose any significant time or cost burden. We will submit the information collection requirements in this rule to the Office of Management and Budget for approval as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We will not require collection of this information until the Office of Management and Budget has given its approval.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any direct cost on small entities. Financial costs associated with the development and release of intentionally created unused apportionment will be borne by the parties who voluntarily enter into offstream storage and release agreements. A benefit-cost analysis was completed and concludes that this rule does not impose significant or unique impact upon small governments (including Indian communities), small entities such as water purveyors, water districts, or associations, or individual entitlement holders. From a financial perspective, since the rule may provide an opportunity for authorized entities in the Lower Division States to secure additional supplies of Colorado River water, Colorado River water users may experience a cost savings. The rule will not affect any Colorado River entitlement holder's right to use its full water entitlement. Further, in times of shortage on the Colorado River, numerous small water users with senior water rights, which are determined by an earlier priority date, will retain their seniority and will be served before less senior users regardless of size.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(1) Does not have an annual effect on the economy of $100 million or more. The Department prepared a benefit-cost analysis, which estimated that this rule would cause net economic benefits on a State and regional level using different water supply models and discount rates. Under a conservative water supply scenario characterized by 19 years of normal conditions on the Colorado River and one surplus year, discounted net economic benefits at the regional level ranged from $12.8 to $61.2 million at 5.75 per cent and $9.5 to $47.7 million at 8.27 per cent. Under a water supply scenario characterized by 10 years of surplus conditions on the Colorado River, the net economic benefits range from $550,255 to $4.8 million at 5.75 per cent and $350,789 to $3.1 million at 8.27 per cent. Under the scenario characterized by 10 surplus

years, demand for banked water is relatively low because water users in the Lower Division States can meet most of their water needs with diversions from the mainstream within the basic and surplus apportionments for use within those States.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

This rule facilitates the creation of an additional alternative for water agencies to secure water supplies. However, entering into Storage and Interstate Release Agreements for the offstream storage of Colorado River water and the release of ICUA provided for in this rule is voluntary. Should the costs of the procedures to facilitate these transactions, provided for in the rule, be greater than the cost of other alternative water supplies, the States would probably select the cheaper alternatives.

This rule may create an opportunity for the total cost of alternative water supplies to decrease, thereby reducing the cost burden on all water users in southern California.

Water users in southern Nevada are just now approaching use of the entire 300 kaf basic annual apportionment of Colorado River for use in Nevada. Like California, Nevada will also need alternative water supplies to satisfy the increasing demands of economic development and population growth. The cost of securing alternative supplies will be greater than the cost of obtaining Colorado River water under the State's basic or surplus apportionment. This rule may provide an opportunity for Colorado River water users in Nevada to experience a cost savings in securing additional supplies of Colorado River water.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule is facilitating voluntary water transactions that may confer benefits on a national basis in many economic sectors.

(i) Voluntary water transactions can promote economic efficiency gains. These gains accrue to the parties in a given transaction and to the wider regional and national economy. The gains result due to greater flexibility in how and where water is used.

(ii) Voluntary water transactions offer a cost effective way to increase water supplies without constructing new mainstream facilities such as dams.

(iii) Voluntary water transactions may stimulate investment and development in conservation technology that is currently economically infeasible given the returns to water in its present use.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The range of benefits and costs associated with the rule are constrained because the amount of water that can be released under an offstream storage agreement in any one year is constrained by State law and immediate demand. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule provides a framework under which authorized entities could voluntarily store Colorado River water offstream for future interstate use. The publication of this rule does not authorize specific activities, and will not impose costs on any State, local, or tribal government, or the private sector. A statement (benefit-cost analysis) containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) has been prepared and is summarized below in the section relating to Executive Order 12866.

We received comments on the benefit-cost analysis that were editorial in nature or asked for clarification or revision of information in the analysis. We accepted approximately 85 percent of the comments and revised the text or footnotes as necessary to include those changes where requested.

The benefit-cost analysis concluded that this rule does not impose significant or unique impact upon small governments (including Indian communities), small entities such as water districts, or individual entitlement holders. The rule will not affect the priority of water use on the Colorado River. Therefore benefits received by water users, regardless of size, associated with the right to divert Colorado River water will remain. Costs of storage and release of unused apportionment water will be borne by authorized entities in the Storing State and the Consuming State who voluntarily enter into storage and release agreements. All Colorado River water users may experience a decrease in water costs since the rule will enable authorized entities in the Lower Division States to secure additional water supplies. The adoption of 43 CFR part 414 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612, Federalism Assessment

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required. This rule does not alter the relationship between the Federal Government and the States under the Decree nor does it alter the distribution of power and responsibilities among the various levels of government.

Executive Order 12630, Takings Implications Analysis

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule does not represent a government action capable of interfering with constitutionally protected property rights. This rule does not impose additional fiscal burdens on the public and would not result in physical invasion or occupancy of private property or substantially affect its value or use. This rule would not result in any Federal action that would place a restriction on a use of private property and does not affect a Colorado River water entitlement holder's right to use its full water entitlement. Under this rule, an authorized entity may store unused Colorado River water available from an entitlement holder's water rights only if the water right holder does not use or store that water on its own behalf. When the Storing State must reduce its diversions to develop ICUA, an entity that reduces its consumptive use of Colorado River water to develop that unused apportionment will do so voluntarily under an appropriate agreement. Therefore, the Department of the Interior has determined that this rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866, Regulatory Planning and Review

This rule is a significant regulatory action under section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues. Executive Order 12866 requires an assessment of potential costs and benefits under section 6(a)(3). The Department's benefit-cost analysis determines that this rule does not impose significant or unique impacts upon small governments (including Indian communities), small entities such as water purveyors or associations, or even individual water entitlement holders.

California and Nevada are looking for alternative water supplies to satisfy the increasing demands of economic development and population growth. This rule may provide an opportunity for Colorado River water users in Nevada to experience a marginal cost savings in securing alternative supplies. Offstream storage of Colorado River water and making available ICUA are voluntary actions. Should the costs of the procedures in this rule to facilitate these transactions be greater than the costs of other alternative water supplies, California and Nevada would probably select the lower cost alternatives.

The benefit-cost analysis estimated net economic benefits of this rule on a State and regional level using different water supply models and discount rates. The different water supply models represent potential water supply conditions on the Colorado River that affect interstate demand for water from an Arizona water bank and the magnitude of economic benefits obtained from that water. The discount rates used in the analysis were 5.75 per cent (the average rate on municipal bonds in 1996, which is a rate faced by major water purveyors in California and Nevada) and 8.27 per cent (the prime rate in 1996, which more accurately represents the cost of money).

Under a conservative water supply scenario characterized by 19 years of normal conditions on the Colorado River and one surplus year, discounted net economic benefits at the regional level ranged from $12.8 to $61.2 million at 5.75 per cent and $9.5 to $47.7 million at 8.27 per cent. Under a water supply scenario characterized by 10 years of surplus conditions on the Colorado River, the net economic benefits range from $550,255 to $4.8 million at 5.75 per cent and $350,789 to $3.1 million at 8.27 per cent. Under the scenario characterized by 10 surplus years, demand for banked water is relatively low because water users in the Lower Division States can meet most of their water needs with diversions from the mainstream within the basic and surplus apportionments for use within those States.

We have placed the full analysis on file in the Reclamation Administrative Record at Bureau of Reclamation, Administrative Record, Lower Colorado Regional Office, P.O. Box 61470, Boulder City, NV 89006–1470, Attention: BC00–4451.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

List of Subjects in 43 CFR Part 414

Environmental compliance, Public lands, Water bank program, Water resources, Water storage, Water supply, and Water quality.

Dated: October 26, 1999.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation adds a new part 414 to title 43 of the Code of Federal Regulations as follows:

PART 414—OFFSTREAM STORAGE OF COLORADO RIVER WATER AND DEVELOPMENT AND RELEASE OF INTENTIONALLY CREATED UNUSED APPORTIONMENT IN THE LOWER DIVISION STATES

Sec.

Subpart A—Purposes and Definitions

414.1 Purpose.
414.2 Definitions of terms used in this part.

Subpart B—Storage and Interstate Release Agreements

414.3 Storage and Interstate Release Agreements.
414.4 Reporting Requirements and accounting under storage and interstate release agreements.

Subpart C—Water Quality and Environmental compliance

414.5 Water Quality.
414.6 Environmental Compliance and funding of Federal costs.

Authority: 5 U.S.C. 553; 43 U.S.C. 391, 485 and 617; 373 U.S. 546; 376 U.S. 340.

Subpart A—Purposes and Definitions

§ 414.1 Purpose.

(a) *What this part does.* This part establishes a procedural framework for the Secretary of the Interior (Secretary) to follow in considering, participating in, and administering Storage and Interstate Release Agreements in the Lower Division States (Arizona, California, and Nevada) that would:

(1) Permit State-authorized entities to store Colorado River water offstream;

(2) Permit State-authorized entities to develop intentionally created unused apportionment (ICUA);

(3) Permit State-authorized entities to make ICUA available to the Secretary for release for use in another Lower Division State. This release may only take place in accordance with the Secretary's obligations under Federal law and may occur in either the year of storage or in years subsequent to storage; and

(4) Allow only voluntary interstate water transactions. These water transactions can help to satisfy regional water demands by increasing the efficiency, flexibility, and certainty in Colorado River management in accordance with the Secretary's authority under Article II (B) (6) of the Decree entered March 9, 1964 (376 U.S. 340) in the case of *Arizona* v. *California,* (373 U.S. 546) (1963), as supplemented and amended.

(b) *What this part does not do.* This part does not:

(1) Affect any Colorado River water entitlement holder's right to use its full water entitlement;

(2) Address or preclude independent actions by the Secretary regarding Tribal storage and water transfer activities;

(3) Change or expand existing authorities under the body of law known as the "Law of the River';

(4) Change the apportionments made for use within individual States;

(5) Address intrastate storage or intrastate distribution of water;

(6) Preclude a Storing State from storing some of its unused apportionment in another Lower Division State if consistent with applicable State law; or

(7) Authorize any specific activities; the rule provides a framework only.

§ 414.2 Definitions of terms used in this part.

Authorized entity means:

(1) An entity in a Storing State which is expressly authorized pursuant to the laws of that State to enter into Storage and Interstate Release Agreements and develop ICUA ("storing entity"); or

(2) An entity in a Consuming State which has authority under the laws of that State to enter into Storage and Interstate Release Agreements and acquire the right to use ICUA ("consuming entity").

Basic apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary of the Interior, to satisfy 7.5 million acre-feet (maf) of annual consumptive use in the Lower Division States. The United States Supreme Court, in *Arizona* v. *California,* confirmed that the annual basic apportionment for the Lower Division States is 2.8 maf of consumptive use in the State of Arizona, 4.4 maf of consumptive use in the State of California, and 0.3 maf of consumptive use in the State of Nevada.

BCPA means the Boulder Canyon Project Act, authorized by the Act of Congress of December 21, 1928 (45 Stat. 1057).

Colorado River Basin means all of the drainage area of the Colorado River System and all other territory within the United States to which the waters of the Colorado River System shall be beneficially applied.

Colorado River System means that portion of the Colorado River and its tributaries within the United States.

Colorado River water means water in or withdrawn from the mainstream.

Consuming entity means an authorized entity in a Consuming State.

Consuming State means a Lower Division State where ICUA will be used.

Consumptive use means diversions from the Colorado River less any return flow to the river that is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation.

(1) Consumptive use from the mainstream within the Lower Division States includes water drawn from the mainstream by underground pumping.

(2) The Mexican treaty obligation is set forth in the February 3, 1944, Water Treaty between Mexico and the United States, including supplements and associated Minutes of the International Boundary and Water Commission.

Decree means the decree entered March 9, 1964, by the Supreme Court in *Arizona* v. *California*, 373 U.S. 546 (1963), as supplemented or amended.

Entitlement means an authorization to beneficially use Colorado River water pursuant to:

(1) The Decree;

(2) A water delivery contract with the United States through the Secretary; or

(3) A reservation of water from the Secretary.

Intentionally created unused apportionment or ICUA means unused apportionment that is developed:

(1) Consistent with the laws of the Storing State;

(2) Solely as a result of, and would not exist except for, implementing a Storage and Interstate Release Agreement.

Lower Division States means the States of Arizona, California, and Nevada.

Mainstream means the main channel of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs behind dams on the main channel, and Senator Wash Reservoir off the main channel.

Offstream storage means storage in a surface reservoir off of the mainstream or in a ground water aquifer. Offstream storage includes indirect recharge when Colorado River water is exchanged for ground water that otherwise would have been pumped and consumed.

Secretary means the Secretary of the Interior or an authorized representative.

Storage and Interstate Release Agreement means an agreement, consistent with this part, between the Secretary and authorized entities in two or more Lower Division States that addresses the details of:

(1) Offstream storage of Colorado River water by a storing entity for future use within the Storing State;

(2) Subsequent development of ICUA by the storing entity, consistent with the laws of the Storing State;

(3) A request by the storing entity to the Secretary to release ICUA to the consuming entity;

(4) Release of ICUA by the Secretary to the consuming entity; and

(5) The inclusion of other entities that are determined by the Secretary and the storing entity and the consuming entity to be appropriate to the performance and enforcement of the agreement.

Storing entity means an authorized entity in a Storing State.

Storing State means a Lower Division State in which water is stored off the mainstream in accordance with a Storage and Interstate Release Agreement for future use in that State.

Surplus apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary, to satisfy in excess of 7.5 maf of annual consumptive use in the Lower Division States.

Unused apportionment means Colorado River water within a Lower Division State's basic or surplus apportionment, or both, which is not otherwise put to beneficial consumptive use during that year within that State.

Upper Division States means the States of Colorado, New Mexico, Utah, and Wyoming.

Water delivery contract means a contract between the Secretary and an entity for the delivery of Colorado River water in accordance with section 5 of the BCPA.

Subpart B—Storage and Interstate Release Agreements

§ 414.3 Storage and Interstate Release Agreements.

(a) *Basic requirements for Storage and Interstate Release Agreements.* Two or more authorized entities may enter into Storage and Interstate Release Agreements with the Secretary in accordance with paragraph (c) of this section. Each agreement must meet all of the requirements of this section.

(1) The agreement must specify the quantity of Colorado River water to be stored, the Lower Division State in which it is to be stored, the entity(ies) that will store the water, and the facility(ies) in which it will be stored.

(2) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Storing State. For water from the Storing State's apportionment to qualify as unused apportionment available for storage under this part, the water must first be offered to all entitlement holders within the Storing State for purposes other than interstate transactions under proposed Storage and Interstate Release Agreements.

(3) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Consuming State. If the water to be stored will be unused apportionment of the Consuming State, the agreement must acknowledge that any unused apportionment of the Consuming State may be made available from the Consuming State by the Secretary to the Storing State only in accordance with Article II(B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the Secretary will make the unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders.

(4) The agreement must specify the maximum quantity of ICUA that will be developed and made available for release to the consuming entity.

(5) The agreement must specify that ICUA may not be requested by the consuming entity in a quantity that exceeds the quantity of water that had been stored under a Storage and Interstate Release Agreement in the Storing State.

(6) The agreement must specify a procedure to verify and account for the quantity of water stored in the Storing State under a Storage and Interstate Release Agreement.

(7) The agreement must specify that, by a date certain, the consuming entity will:

(i) Notify the storing entity to develop a specific quantity of ICUA in the following calendar year;

(ii) Ask the Secretary to release that ICUA; and

(iii) Provide a copy of the notice or request to each Lower Division State.

(8) The agreement must specify that when the storing entity receives a request to develop a specific quantity of ICUA:

(i) It will ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop the requested quantity of ICUA; and

(ii) Any actions that the storing entity takes will be consistent with its State's laws.

(9) The agreement must include a description of:

(i) The actions the authorized entity will take to develop ICUA;

(ii) Potential actions to decrease the authorized entity's consumptive use of Colorado River water;

(iii) The means by which the development of the ICUA will be enforceable by the storing entity; and

(iv) The notice given to entitlement holders, including Indian tribes, of opportunities to participate in development of this ICUA.

(10) The agreement must specify that the storing entity will certify to the Secretary that ICUA has been or will be developed that otherwise would not have existed. The certification must:

(i) Identify the quantity, the means, and the entity by which ICUA has been or will be developed; and

(ii) Ask the Secretary to make the ICUA available to the consuming entity under Article II(B)(6) of the Decree and the Storage and Interstate Release Agreement.

(11) The agreement must specify a procedure for verifying development of the ICUA appropriate to the manner in which it is developed.

(12) The agreement must specify that the Secretary will release ICUA developed by the storing entity:

(i) In accordance with a request of the consuming entity;

(ii) In accordance with the terms of the Storage and Interstate Release Agreement;

(iii) Only for use by the consuming entity and not for use by other entitlement holders; and

(iv) In accordance with the terms of the Storage and Interstate Release Agreement, the BCPA, Article II(B)(6) of the Decree and all other applicable laws and executive orders.

(13) The agreement must specify that ICUA shall be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity by reducing Colorado River water use within the Storing State.

(14) The agreement must specify that the Secretary will release ICUA only after the Secretary has determined that all necessary actions have been taken under this part.

(15) The agreement must specify that before releasing ICUA the Secretary must first determine that the storing entity:

(i) Stored water in accordance with the Storage and Interstate Release Agreement in quantities sufficient to support the development of the ICUA requested by the consuming entity; and

(ii) Certified to the satisfaction of the Secretary that the quantity of ICUA requested by the consuming entity has been developed in that year or will be developed in that year under § 414.3(f).

(16) The agreement must specify that the non-Federal parties to the Storage and Interstate Release Agreement will indemnify the United States, its employees, agents, subcontractors, successors, or assigns from loss or claim for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of the actions taken by the non-federal parties to the Storage and Interstate Release Agreement under this part.

(17) The agreement must specify the extent to which facilities constructed or financed by the United States will be used to store, convey, or distribute water associated with a Storage and Interstate Release Agreement.

(18) The agreement must include any other provisions that the parties deem appropriate.

(b) *How to address financial considerations.* The Secretary will not execute an agreement that has adverse impacts on the financial interests of the United States. Financial details between and among the non-Federal parties need not be included in the Storage and Interstate Release Agreement but instead can be the subject of separate agreements. The Secretary need not be a party to the separate agreements.

(c) *How the Secretary will execute storage and interstate release agreements.* The Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) may execute and administer a Storage and Interstate Release Agreement on behalf of the Secretary. The Secretary will notify the public of his/her intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input. In considering whether to execute a Storage and Interstate Release Agreement, the Secretary may request, and the non-Federal parties must provide, any additional supporting data necessary to clearly set forth both the details of the proposed transaction and the eligibility of the parties to participate as State-authorized entities in the proposed transaction. The Secretary will also consider: applicable law and executive orders; applicable contracts; potential effects on trust resources; potential effects on entitlement holders, including Indian tribes; potential impacts on the Upper Division States; potential effects on third parties; potential environmental impacts and potential effects on threatened and endangered species; comments from interested parties, particularly parties who may be affected by the proposed action; comments from the State agencies responsible for consulting with the Secretary on matters related to the Colorado River; and other relevant factors, including the direct or indirect consequences of the proposed Storage and Interstate Release Agreement on the financial interests of the United States. Based on the consideration of the factors in this section, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.

(d) *Assigning interests to an authorized entity.* Non-Federal parties to a Storage and Interstate Release Agreement may assign their interests in the Agreement to authorized entities. The assignment can be in whole or in part. The assignment can only be made if all parties to the agreement approve.

(e) *Requirement for contracts under the Boulder Canyon Project Act.* Release or diversion of Colorado River water for storage under this part must be supported by a water delivery contract with the Secretary in accordance with Section 5 of the BCPA. The only exception to this requirement is storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part also must be supported by a Section 5 water delivery contract.

(1) An authorized entity may satisfy the requirement of this section through a direct contract with the Secretary. An authorized entity also may satisfy the Section 5 requirement of the BCPA, for purposes of this part, through a valid subcontract with an entitlement holder that is authorized by the Secretary to subcontract for the delivery of all or a portion of its entitlement.

(2) For storing entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be stored, the Storage and Interstate Release Agreement will serve as the vehicle for satisfying the Section 5 requirement for the release or diversion of that water.

(3) For consuming entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be released by the Secretary as ICUA, the Storage and Interstate Release Agreement will serve as the vehicle for

satisfying the Section 5 requirement for the release or diversion of that water.

(f) *Anticipatory release of ICUA.* The Secretary may release ICUA to a consuming entity before the actual development of ICUA by the storing entity if the storing entity certifies to the Secretary that ICUA will be developed during that same year that otherwise would not have existed.

(1) These anticipatory releases will only be made in the same year that the ICUA is developed.

(2) Before an anticipatory release, the Secretary must be satisfied that the storing entity will develop the necessary ICUA in the same year that the ICUA is to be released.

(g) *Treaty obligations.* Prior to executing any specific Storage and Interstate Release Agreements, the United States will consult with Mexico through the International Boundary and Water Commission under the boundary water treaties and other applicable international agreements in force between the two countries.

§ 414.4 Reporting requirements and accounting under Storage and Interstate Release Agreements.

(a) *Annual report to the Secretary.* Each storing entity will submit an annual report to the Secretary containing the material required by this section. The report will be due on a date to be agreed upon by the parties to the Storage and Interstate Release Agreement. The report must include:

(1) The quantity of water diverted and stored during the prior year under all Storage and Interstate Release Agreements; and

(2) The total quantity of stored water available to support the development of ICUA under each Storage and Interstate Release Agreement to which the storing entity is a party as of December 31 of the prior calendar year.

(b) *How the Secretary accounts for diverted and stored water.* The Secretary will account for water diverted and stored under Storage and Interstate Release Agreements in the records maintained under Article V of the Decree.

(1) The Secretary will account for the water that is diverted and stored by a storing entity as a consumptive use in the Storing State for the year in which it is stored.

(2) The Secretary will account for the diversion and consumptive use of ICUA by a consuming entity as a consumptive use in the Consuming State of unused apportionment under Article II(B)(6) of the Decree in the year the water is released in the same manner as any other unused apportionment taken by that State.

(3) The Secretary will maintain individual balances of the quantities of water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA. The appropriate balances will be reduced when ICUA is developed by the storing entity and released by the Secretary for use by a consuming entity.

Subpart C—Water Quality and Environmental Compliance

§ 414.5 Water quality.

(a) *Water Quality is not guaranteed.* The Secretary does not warrant the quality of water released or delivered under Storage and Interstate Release Agreements, and the United States will not be liable for damages of any kind resulting from water quality problems. The United States is not under any obligation to construct or furnish water treatment facilities to maintain or improve water quality except as may otherwise be provided in relevant Federal law.

(b) *Required water quality standards.* All entities, in diverting, using, and returning Colorado River water, must:

(1) Comply with all applicable water pollution laws and regulations of the United States, the Storing State, and the Consuming State; and

(2) Obtain all applicable permits or licenses from the appropriate Federal, State, or local authorities regarding water quality and water pollution matters.

§ 414.6 Environmental compliance and funding of Federal costs.

(a) *Ensuring environmental compliance.* The Secretary will complete environmental compliance documentation, compliance with the National Environmental Policy Act of 1969, as amended, and the Endangered Species Act of 1973, as amended; and will integrate the requirements of other statutes, laws, and executive orders as required for Federal actions to be taken under this part.

(b) *Responsibility for environmental compliance work.* Authorized entities seeking to enter into a Storage and Interstate Release Agreement under this part may prepare the appropriate documentation and compliance document for a proposed Federal action, such as execution of a proposed Storage and Interstate Release Agreement. The compliance documents must meet the standards set forth in Reclamation's national environmental policy guidance before they can be adopted.

(c) *Responsibility for funding of Federal costs.* All costs incurred by the United States in evaluating, processing, and/or executing a Storage and Interstate Release Agreement under this part must be funded in advance by the authorized entities that are party to that agreement.

[FR Doc. 99–28417 Filed 10–29–99; 8:45 am]

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Part VI

Department of Transportation

Federal Highway Administration

Transportation Equity Act for the 21st Century; Use of Uniformed Police Officers on Federal-Aid Highway Construction Projects; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–1999–5387]

Transportation Equity Act for the 21st Century; Use of Uniformed Police Officers on Federal-Aid Highway Construction Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice invites public comments on issues relating to the legislative requirement to conduct a study and report to the Congress on the extent and effectiveness of use by States of uniformed police officers on Federal-aid highway construction projects. This is provided in section 1213 (c) of the Transportation Equity Act for the 21st Century (TEA–21).

DATES: In order for comments responding to issues raised by this notice to be considered during the critical early stages of the study, they should be submitted no later than January 3, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Robinson, Office of Highway Safety Infrastructure (HMHS–20), (202) 366–2193; or Ms. Grace Reidy, Office of the Chief Counsel (HCC–32), (202)366–6226, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

Some States use uniformed police officers very extensively on their highway construction projects, while other States use virtually no police officers for work zone traffic control. Work zone safety has been a high priority issue for the FHWA, traffic engineering professionals and highway agencies. Section 1213 (c) of TEA–21, Public Law 105–178, 112 Stat. 107, 200(1998), Use of Uniformed Police Officers on Federal-aid Highway Construction Projects, requires the Department of Transportation to submit a report to Congress on the results of the study concerning use of uniformed police officers on Federal-aid highway construction sites no later than two years after the date of this section. Specific provisions are as follows:

(1) STUDY.—The Secretary of Transportation is required to conduct a study with States, State transportation departments, and law enforcement organizations, on the extent and effectiveness of use of uniformed police officers on Federal-aid highway construction projects.

(2) REPORT.—A report on the results of the study is to be submitted to Congress by June 9, 2000.

Although this study is mandated to be conducted with States, State transportation departments, and law enforcement organizations, other interested parties may comment where applicable. Comments received in response to this notice will constitute the informational basis for the study required by Section 1213(c). The results of this study will be used in the formulation of a report to Congress as to effectiveness of uniformed police officers on Federal-aid highway construction projects.

Comments and suggestions are invited concerning the extent and effectiveness of the use by States of uniformed police officers on Federal-aid highway construction projects. Of particular concern are safety, operational, and financial factors. Comments are requested specifically on the following questions; however, interested persons are encouraged to provide any information relevant to their experience and in whatever format proves most effective for conveying such information.

To the extent feasible, we encourage commenters to formulate their responses with reference to the questions provided below. This will assist the FHWA in evaluating study results and formulating an effective report to Congress. We recognize, however, that certain interested persons or organizations may wish to introduce information that is useful to our study but not conducive to the question/answer format prescribed here. We encourage and will actively consider any information responsive to the issue of stationing uniformed police officers on Federal-aid highway construction projects.

Questions

1. Please provide the name of a person in your agency that we might contact to obtain follow-up information.

NAME/RANK/ (OPTIONAL) ______

2. Law enforcement agencies please provide the following information:

ORGANIZATION ______

SIZE OF YOUR LAW ENFORCEMENT AGENCY ______

(No. of Officers)

NAME OF JURISDICTION ______

TYPE OF JURISDICTION ☐ State ☐ County ☐ Municipal ☐ Other *(please provide description)*

POPULATION of JURISDICTION (Check One):

☐ Less than 25,000 ☐ 25–50,000 ☐ 50–100,000 ☐ 100,000 or more

APPROXIMATE NUMBER OF HIGHWAY CONSTRUCTION PROJECTS IN WHICH YOUR AGENCY HAS BEEN INVOLVED (per year) ______

3. Does your agency have a policy to provide uniformed police officers to increase safety and operation on Federal-aid highway construction projects?

____YES ____NO

4. If you responded YES to Question 3, please answer the following:

☐ Please explain the policy and provide a copy.

☐ Who developed the policy?

☐ What has been the effect of the policy on the following: crashes, deaths, injuries, operations and public relations?

5. Since implementation of the policy, what has been the effect on injuries and fatalities on Federal-aid highway construction projects?

6. How many citations have been issued on Federal-aid highway construction projects in the last year?

7. Does your State conduct a training program for uniformed police officers regarding construction projects?

8. Does the training program include recognition and proper placement of

traffic control devices and other safety and operational factors?

9. Do uniformed police officers use marked police vehicles along/on highway construction projects? If yes, are the officers required to be out of the vehicles and visible to traffic?

10. Are only off-duty uniformed police officers used on Federal-aid highway construction projects or can on-duty police officers be used as well?

11. Who determines the number of uniformed police officers to be used in Federal-aid highway construction projects?

☐ Highway agency
☐ Law enforcement agency
☐ Joint effort (*please state between whom*)
☐ Other (*please describe*)

12. How is the number of uniformed police officers determined and deployed in Federal-aid construction projects?

13. Do you believe that the use of uniformed police officers on/along Federal-aid highway construction projects improves the safety and operations in work zones?

14. In addition to being in uniform, do police officers on Federal-aid construction projects wear any protective or high visibility clothing?

15. Do you believe that the use of uniformed police officers reduces the liability of the highway construction contractor?

16. Are there certain circumstances when uniformed police officers are always used (*e.g.*, nighttime construction, high-speed/high volume highways, etc.)? Please describe those circumstances.

17. Are other law enforcement activities effective due to the use of uniformed police officers on Federal-aid highway construction projects?

18. What is the source of funding for the use of uniformed police officers on Federal-aid highway construction projects?

☐ Highway construction funds
☐ Highway Administration funds
☐ Law enforcement appropriation funds
☐ Other (Please identify funding sources)

19. Have studies been conducted by your agency on the use of uniformed police officers in work zones?

20. Are uniformed police officers included during the planning process of a construction project?

Authority: 23 U.S.C. 315; sec. 1213(c), Pub. L. 105–178, 112 Stat. 107, 200(1998); 49 CFR 1.48.

Issued on: October 15, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–28517 Filed 10–29–99; 8:45 am]

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November 1, 1999

Part VII

Department of Education

34 CFR Parts 668, 682, and 685

Student Assistance General Provisions, Federal Family Education Loan Program, the William D. Ford Federal Direct Loan (Direct Loan) Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, and 685

RIN 1845–AA02

Student Assistance General Provisions, Federal Family Education Loan Program, the William D. Ford Federal Direct Loan (Direct Loan) Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: We amend the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs) and the Federal Family Education Loan (FFEL) Program regulations. The student financial assistance programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The Federal Family Education Loan Program regulations govern the Federal Stafford Loan Program (subsidized and unsubsidized), the Federal Supplemental Loans for Students Program (no longer active), the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly collectively known as the Guaranteed Student Loan Programs).

These regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (Public Law 105–244, enacted October 7, 1998) (the 1998 Amendments) for the treatment of Title IV, HEA program funds when a student withdraws from an institution.

EFFECTIVE DATE: These regulations are effective July 1, 2000.

IMPLEMENTATION DATE: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA, that institutions may, at their discretion, choose to implement in their entirety all provisions in § 668.22 and related provisions in §§ 668.8, 668.14, 668.16, 668.24, 668.25, 668.26, 668.83, 668.92, 668.95, 668.164, 668.171, 668.173, 682.207, 682.209, 682.604, 682.605, 682.607, 685.211, 685.215, 685.305, and 685.306 on or after November 1, 1999. Furthermore, pursuant to Section 484B(e) of the HEA, institutions are not required to implement these provisions until October 7, 2000 (two years from the enactment of the 1998 Amendments). If an institution chooses to implement the provisions of section 484B of the HEA after publication of these final regulations but before October 7, 2000, the institution—

- Must implement these regulations in their entirety;
- Must apply these regulations to all students who withdraw on or after the institution's implementation of these regulations (*i.e.*, not on a student-by-student basis); and
- Cannot revert back to the old provisions of § 668.22.

For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dan Klock or Wendy Macias, U.S. Department of Education, 400 Maryland Avenue, S.W., ROB–3, Room 3045, Washington, DC 20202–5344. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On August 6, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 43024) proposing to implement statutory changes made to the HEA, by the 1998 Amendments for the treatment of Title IV, HEA program funds when a student withdraws from an institution. In the preamble to the NPRM, we discussed major changes to § 668.22 in the following areas:

- The conditions under which Title IV, HEA program funds would be required to be returned and the conditions under which a student would be owed a disbursement of Title IV, HEA program funds upon withdrawal of a student.
- The requirements for making a post-withdrawal disbursement to a student.
- The determination of a withdrawal date for a student who withdraws.
- The treatment of a leave of absence for Title IV, HEA program purposes.
- The calculation of the amount of Title IV, HEA program funds that a student has earned upon withdrawal, including differences in the calculation for clock-hour programs and credit-hour programs, and non-term programs and term programs.
- The responsibility of the institution to return Title IV, HEA program funds when a student withdraws.
- The responsibility of the student to return Title IV, HEA program funds upon withdrawal.
- The order in which Title IV, HEA program funds must be returned to the Title IV, HEA programs.
- A timeframe for the return of Title IV, HEA program funds by an institution, and a timeframe for an institution to determine a withdrawal date for a student who withdraws without notifying the institution.
- The consumer information that an institution must provide to a student regarding the results of a student's withdrawal.

In addition, in the preamble to the NPRM we discussed a proposed change to § 682.207(b)(1)(v) of the FFEL program regulations to require a lender that is making a direct disbursement to a student attending a foreign school to notify the foreign school that the disbursement was made.

These final regulations contain a few significant changes from the NPRM. These changes are explained fully in the *Analysis of Comments and Changes* elsewhere in this preamble.

Conforming changes have been made to the following sections: §§ 668.8, 668.14, 668.16, 668.24, 668.25, 668.26, 668.83, 668.92, 668.95, 668.164, 668.171, 668.173, 682.207, 682.209, 682.604, 682.605, 682.607, 685.211, 685.215, 685.305, and 685.306.

Implementation Date of These Regulations

Section 482(c) of the HEA (20 U.S.C. 1089(c)) requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. The sections designated by the Secretary and the corresponding conditions for early implementation are set out under the heading IMPLEMENTATION DATE, above.

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the

Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 6, 1999. With the exception of provisions relating to the "50% discount" on Title IV grant funds that a student must return, which are located in § 668.22(h)(3)(ii), the proposed regulations reflected the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999, and 176 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

Analysis of Comments and Changes

General

Comments: A few commenters believed that the proposed rules were too complicated. Some commenters requested that we prepare and distribute worksheets to clarify the application of the final regulations. A few commenters thought that we should distribute or make available a software program that institutions could use to calculate the treatment of Title IV, HEA program funds when a student withdraws. A couple of the commenters requested that we provide institutions with examples of how the regulations should be applied when a student withdraws during a summer term. A few commenters believed that the proposed rules simplified the process of returning Title IV, HEA program funds when a student withdraws.

Discussion: We believe that some of the commenters' general concerns about the complexity of the proposed rules may be caused by statutory provisions. We have responded throughout the *Analysis of Comments and Changes* to commenters' specific concerns about complexity caused by particular provisions of the proposed regulations. Prior to the effective date of these final regulations, we will provide worksheets and software that may be used to calculate the treatment of Title IV, HEA program funds when a student withdraws. We will provide examples of and guidance on the applicability of the final regulations after publication through appropriate Department publications and training.

Changes: None.

Comments: Several commenters contended that these proposed rules would have a negative financial impact on institutions. Several of these commenters suggested changes to the "50 percent discount" requirement of § 668.22(h) to alleviate some of the financial burden. Seven of the commenters stated that, because two calculations were now necessary, one to determine the treatment of Title IV, HEA program funds, and one to determine earned institutional charges under the institution's refund policy, their institution would have to expend funds to hire additional personnel. Two of the commenters contended that institutions would have to expend funds to purchase software in order to perform the calculation correctly.

Discussion: To the extent that there is any financial burden, we believe that it is due to the statutory changes made to the requirements for determining the amount of Title IV, HEA program funds that must be returned to the Title IV, HEA programs. Commenters' more specific concerns with the financial implications of this rule, including the concern that institutions will now have to perform two calculations and comments on the "50 percent discount," are discussed in detail in the *Analysis of Comments* and Changes for § 668.22(g) and § 668.22(h). As noted above, we will assist institutions with the calculation of earned Title IV, HEA program funds when a student withdraws by providing worksheets, software, and examples of the calculation.

Changes: None.

Comments: A couple of commenters felt that the proposed rules are unfair to clock hour institutions. One commenter, a federation representing the professional beauty industry, believed that the rules unfairly penalize students who attend clock hour institutions, such as cosmetology schools. The commenter was concerned that, as a result, students would be discouraged from pursuing cosmetology careers.

Discussion: We believe that the provisions that specifically affect clock-hour institutions are in keeping with statutory intent. These provisions are an attempt to recognize the manner in which clock-hour programs operate. We have responded throughout the *Analysis of Comments and Changes* to commenters' concerns in this area.

Changes: None.

Effective Date

Coments: A few commenters requested that we delay implementation of the final rules in order to establish pilot programs to evaluate the impact of the rules on students and institutions, and to allow institutions the time necessary to properly implement the final regulations. One commenter suggested that institutions that choose to implement section 484B of the HEA prior to the required implementation date of October 7, 2000 be used as the pilot sites. Specifically, one of these commenters contended that the rules should be delayed because institutions have been, and will continue to be, focused on Year 2000 (Y2K) issues, and will not be able to focus on the implementation of the new rules. One commenter recommended that these rules be effective for students who begin an enrollment period on or after October 7, 2000 and withdraw from the institution on or after October 7, 2000. One commenter requested that institutions be permitted to implement early (prior to the required effective date of October 7, 2000) one portion of the requirements of § 668.22 without having to implement the entire requirements.

Discussion: We believe that the statutorily required implementation date of October 7, 2000 provides institutions with sufficient time to assess the impact of these requirements, to make any necessary administrative and systems changes, and to notify all potentially affected students of the changes. As these provisions of section 484B of the HEA apply to students who withdraw from an institution, we believe that these regulations should apply to any student who withdraws on or after October 7, 2000, rather than to any student who begins an enrollment period on of after that date and subsequently withdraws. Because the provisions of section 484B of the HEA, as revised by the 1998 Amendments, are a significant departure from the requirements of section 484B prior to the 1998 Amendments, we do not believe that it is reasonable to permit an institution to implement select portions of the implementing final regulations prior to October 7, 2000. If an institution chooses to implement these final regulations prior to October 7, 2000, it must implement them in their entirety.

Changes: None.

Section 668.22(a) General

Definition of a Title IV Recipient

Comments: A few commenters asked us to clarify who is a "recipient of Title IV grant or loan assistance" for purposes of the requirements for the treatment of Title IV, HEA program funds when a student withdraws. Some of these commenters believed that a student should be counted as a Title IV, HEA program recipient only if the student receives a disbursement of Title IV, HEA program funds before he or she withdraws. One commenter felt that a student should also be considered a Title IV, HEA program recipient if the student is entitled to a late disbursement. One commenter maintained that a student who received only Federal Work-Study funds should not be considered a Title IV, HEA program recipient. A couple of the commenters contend that it is hard to identify students who withdraw if they have not received aid. One of these commenters asserted that most institutional processing systems identify only students who have received Title IV, HEA program assistance and alert the financial aid or bursar office when those students withdraw. One commenter asked whether the rules would apply to a student who withdrew if the student had applied for a Title IV, HEA loan, but the institution had not yet certified the loan.

Discussion: We believe that it is consistent to define a Title IV, HEA program recipient for purposes of this section as a student who has met the requirements of § 668.164(g)(2). When a student withdraws or makes certain other changes to his or her enrollment status, the student is no longer eligible for a regular disbursement of Title IV, HEA program funds. Section 668.164(g)(2) lists the conditions that must have been met prior to such a change in enrollment status in order for the institution to make a late disbursement. For example, for a student to receive a Direct loan, the institution must have created the electronic origination record for the loan; for the student to receive a FFEL Program loan, the institution must have certified the loan. The conditions listed in § 668.164(g)(2) are also used for purposes of determining when a post-withdrawal disbursement of Title IV, HEA funds may be disbursed. Therefore, we have defined in the regulations a Title IV grant or loan recipient for purposes of this section as a student who has met the requirements of § 668.164(g)(2). In keeping with section 484B(a)(1) of the HEA, which provides that the requirements of section 484B of the HEA are not applicable to recipients of Federal Work-Study funds, a student would not be considered a Title IV, HEA program recipient under this section if the only Title IV, HEA program assistance that the student had received or could have received, was Federal Work-Study funds. Therefore, a Title IV, HEA program recipient for purposes of this section is a student who has met the requirements of § 668.164(g)(2).

Changes: The definition of a "recipient of Title IV grant or loan assistance" has been added to § 668.22(l).

LEAP Program Funds

Comments: One commenter believed that it is unfair to require an institution to count the entire amount of Leveraging Education Assistance Partnership (LEAP) funds in the calculation of the amount of Title IV, HEA program assistance that a student has earned upon withdrawal, rather than just the Federal share of the grant. The commenter stated that their institution's State Student Aid Commission identifies their State grant program as containing LEAP funds. The commenter noted that the State Student Aid Commission expects the institution to return any unearned portion of the grant, based on the institution's refund policy, to the State. The commenter is concerned that if the institution complies with both the requirements for the treatment of Title IV, HEA program funds when a student withdraws and the State's return requirements, it will end up returning more than the original amount of the grant. One commenter supported the position that LEAP funds that are not identified as LEAP funds do not need to be included in the calculation of the treatment of Title IV, HEA program funds if a student withdraws.

Discussion: Section 484B of the HEA excludes only Federal Work-Study funds from the calculation of earned Title IV, HEA program funds when a student withdraws. Once a State agency identifies a grant as LEAP funds, the entire amount of the grant is considered a LEAP grant and is subject to the Federal regulations governing the LEAP program. Therefore, if a State agency specifically identifies a grant as LEAP funds, the entire amount of the grant must be included in the calculation of earned Title IV, HEA funds. This guidance is consistent with the guidance in Dear Colleague Letter GEN–89–38. We acknowledge that the interplay between the requirements of this section and State requirements for the handling of LEAP funds may cause some difficulties for institutions. We will work with the States to attempt to resolve these difficulties.

Changes: None.

Title IV Aid Disbursed

Comments: A few commenters objected to our assertion in the preamble to the proposed rule that a pattern or practice of inadvertent overpayments—where an institution disbursed Title IV, HEA program funds to a student who has withdrawn because the institution was unaware of the student's withdrawal—would be questioned in a program review. A few commenters contended that what we refer to as "inadvertent overpayments" are late disbursements and, therefore, are permissible. The commenters believed that it is inconsistent to allow an institution to count inadvertent overpayments as Title IV, HEA program aid disbursed, and then sanction an institution for making the overpayments.

One commenter felt that our assertion is inconsistent with preamble language that "some aspects of the withdrawal process cannot occur until the institution is aware that the student has withdrawn." One commenter believed that an institution should not be sanctioned for the practice of disbursing funds to withdrawn students if the institution had no evidence to the contrary that the student was still enrolled at the time the funds were disbursed. The commenter believed that an institution has fulfilled its obligation to ensure that a student is eligible by looking at the institution's data to ensure that the student is an active, current, student who meets satisfactory academic progress and other eligibility requirements. One commenter asserted that institutions increasingly rely on computer processing of Title IV, HEA program funds in order to process those funds as expeditiously and efficiently as possible. The commenter noted that if a student withdraws from an institution without notification, there is no way to prevent such inadvertent overpayments unless the institution takes attendance for every class; an option that the commenter felt was unduly burdensome. One commenter questioned how many inadvertent overpayments would be considered a "pattern or practice" of making inadvertent overpayments.

Discussion: As we noted in the preamble to the proposed rule, we agreed to permit an institution to include inadvertent overpayments in the calculation of total aid disbursed only for the administrative ease of the institution. Specifically, the inclusion of these inadvertent overpayments in total aid disbursed would prevent the burden of an institution having to return Title IV, HEA program funds, only to have to disburse them again if a post-withdrawal disbursement was due. As stated in the NPRM, if we were to sanction a practice of inadvertent overpayments we would be sanctioning violations of other Title IV, HEA program regulations that require that an institution may disburse Title IV, HEA program funds only if the student is eligible to receive those funds.

We note that these disbursement requirements are not new. As such, an institution would be expected to already have had in place a mechanism for making the necessary eligibility determinations prior to the disbursement of any Title IV, HEA program funds, such as a process by which withdrawals are reported immediately to those individuals at the institution who are responsible for making Title IV, HEA program disbursements. If an institution does not have the proper mechanisms in place, the institution must make the necessary changes to the way it currently disburses Title IV, HEA program funds to come into compliance.

We do not agree with the commenters who believe that these inadvertent overpayments are legitimate late disbursements. We note that these overpayments are not late disbursements either; late disbursements are made in accordance with specific regulatory requirements *after* the institution is aware that the student has withdrawn.

We do not believe that it is appropriate to define a set number or percentage of inadvertent overpayments that would constitute a pattern or practice of making inadvertent overpayments. The determination of a pattern or practice must be made in conjunction with an assessment of a specific institution's demonstrated willingness and ability to prevent inadvertent overpayments.

Changes: None.

Comments: A couple of commenters believed that institutions should be permitted to replace a withdrawn student's Title IV, HEA loan funds with Title IV, HEA grant funds that the student was otherwise eligible to receive before performing the calculation for the treatment of Title IV, HEA program funds when a student withdraws. The commenters felt that it is always in the best interest of the student and the Federal government to reduce student indebtedness, particularly for students who have not completed their education.

Discussion: We continue to believe that it is inappropriate for an institution to disburse Title IV, HEA program funds to a student who has withdrawn unless the institution has determined under these regulations that the student has earned more funds than were disbursed. Therefore, an institution may not alter the amounts of Title IV, HEA grant and loan funds that were disbursed prior to the institution's determination that the student withdrew.

Changes: None.

Post-Withdrawal Disbursements

Comments: Some commenters confused the requirements for late disbursements that are made to students who have withdrawn from an institution with the late disbursements requirements that regulate how and when late disbursements are made to students for other reasons, such as a change in enrollment status to less than half-time.

Discussion: We believe that this confusion may be alleviated if disbursements that are made to students who have withdrawn from an institution are referred to as "post-withdrawal disbursements," rather than "late disbursements."

Changes: References to "late disbursements" have been changed to "post-withdrawal disbursements" where appropriate.

Comments: Several commenters did not believe that Title IV, HEA program funds should be disbursed directly to a student who has withdrawn. Some of these commenters did not believe that this was the intent of Congress. In particular, many of these commenters did not believe that it was ever appropriate to disburse Title IV, HEA program funds to a withdrawn student if the student owed any money to the institution.

Several of the commenters specifically questioned whether an institution must disburse a post-withdrawal disbursement check if a student no longer has any institutional charges. One commenter asserted that disbursements to withdrawn students will result in Title IV, HEA funds being used for noneducationally-related expenses. A few commenters believed that direct disbursements of loans to withdrawn students would imprudently increase a withdrawn student's indebtedness and chance of default. To mitigate this, and to reduce institutional burden, a few commenters recommended that an institution be permitted to determine when a post-withdrawal disbursement of Title IV, HEA program funds should be disbursed directly to a student.

A few commenters believed that the existing late disbursement regulations should be used instead of the proposed rules for post-withdrawal disbursements. One commenter suggested that earned Title IV, HEA program funds in excess of money owed to the institution should be used to reduce any Title IV, HEA program loan debt of the student. Another commenter alleged that the post-withdrawal disbursement requirements conflict with other statutory requirements that allow the institution to be the custodian of the Title IV, HEA program funds and control whether late disbursements are made and how they are used.

Discussion: We believe that the commenters' contention that it was not the intent of Congress to directly provide withdrawn students with earned Title IV, HEA program funds is unfounded. Section 484B(a)(4)(A) of the HEA requires that disbursements of earned funds be provided to a student if the student has received less grant or loan assistance than the amount he or she has earned. The statute does not require that the disbursement of earned aid can only be applied to unpaid charges at the institution. As stated in the preamble to the NPRM, the determination of the amount of Title IV, HEA program assistance that the student has earned has no relationship to a student's actual incurred educational costs. The amount of earned Title IV, HEA program funds is based on the amount of time that the student spent in attendance and is a determination of aid that is earned by the student, not money earned by the institution. Therefore, we believe that it would be in direct violation of the statute to permit an institution to decrease this amount.

We continue to believe that it is appropriate to be consistent with the cash management requirements for disbursing Title IV, HEA program funds, which do not permit an institution to credit a student's account with Title IV, HEA program funds other than for tuition, fees, and room and board (if the student contracts with the institution)—without the student's permission. If an institution does not have permission from the student (or parent for a PLUS loan) prior to the student's withdrawal and does not obtain that permission after the student's withdrawal, the undisbursed earned funds *must* be offered to the student and cannot be used by the institution to pay remaining institutional charges other than for tuition, fees, and room and board (if the student contracts with the institution).

Changes: None.

Comments: A few commenters felt that the proposed post-withdrawal disbursement procedures are too burdensome and costly for institutions to implement. One commenter noted that it would be impossible to process a post-withdrawal disbursement in a timely manner for a student when the institution cannot locate the student immediately. The commenter suggested that it would be less burdensome to permit an institution to credit a student's account with earned Title IV, HEA program funds for current charges for educationally-related activities other than tuition, fees, and room and board (if the student contracts with the institution) unless the student or parent specifically denied permission to the institution within a certain number of days. One commenter supported the proposed timeframes for notification, response to, and disbursement of post-withdrawal disbursements. Two commenters agreed that 90 days after the date of the institution's determination that the student withdrew was an appropriate amount of time for institutions to have to make any accepted post-withdrawal disbursements to a student (or parent for a PLUS loan). A couple of commenters felt that it was unreasonably burdensome to require institutions to notify a student or parent of the outcome of any post-withdrawal disbursement request if the student's or parent's authorization was not received at all, or was not received within the 14 day timeframe. One of the commenters thought that this second notification that simply restated that the student had lost the opportunity to accept a post-withdrawal disbursement would be confusing to a student who had never responded to the original notification. A couple of commenters applauded our determination that a single notification could be used for all of the notification requirements for post-withdrawal disbursements, except for the institution's notification to inform the student or parent electronically or in writing concerning the outcome of any post-withdrawal disbursement request.

Discussion: The statute requires that earned funds be provided to the student. We recognize that it may be difficult to locate a student who has left the institution. This was addressed in negotiated rulemaking and it was concluded that the requirements for making a post-withdrawal disbursement to a student provide that the institution must offer in writing to the student (or parent for PLUS loan funds) any amount of a post-withdrawal disbursement that is not credited to the student's account. If a response is not received from the student or parent, is not received within the permitted timeframe, or the student declines the funds, the institution would return any earned funds that the institution was holding to the Title IV, HEA programs. As stated previously in the *Analysis of Comments and Changes,* we continue to believe that it is appropriate to be consistent with the cash management requirements for disbursing Title IV, HEA program funds, which do not permit an institution to credit a student's account with Title IV, HEA program funds for current charges for educationally-related activities—other than tuition, fees, and room and board (if the student contracts with the institution)—without the student's permission.

We agree with the commenters who believe that it is sometimes unreasonably burdensome or redundant to require institutions to notify a student or parent of the outcome of any post-withdrawal disbursement request. Therefore, if an authorization from the student (or parent for a PLUS loan) is never received, or if the post-withdrawal disbursement is accepted, the institution does not need to notify the student of the outcome of the post-withdrawal disbursement request. Presumably, a student (or parent for PLUS loan funds) who has never responded will understand that the post-withdrawal disbursement will not be made. Further, a student (or parent for PLUS loan funds) who has accepted the funds will likely understand that the amount of the post-withdrawal disbursement that he or she accepts will be provided, and any unaccepted amount will be returned. However, in the case of a student (or parent for PLUS loan funds) whose acceptance was not received within the 14 day timeframe and the institution does not otherwise choose to make the post-withdrawal disbursement, the student (or parent for a PLUS loan) may assume incorrectly that his or her acceptance of a post-withdrawal disbursement has been received within the timeframe and that the post-withdrawal disbursement will be made. Therefore, if a student's (or parent's for PLUS loan funds) acceptance was not received within the 14 day timeframe and the institution does not otherwise choose to make the post-withdrawal disbursement, the institution must notify the student (or parent for PLUS loan funds) that the post-withdrawal disbursement will not be made and why.

Changes: Section 668.22(a)(4)(ii)(E) has been changed to reflect that an institution must notify a student (or parent for PLUS loan funds) if the student's (or parent's for PLUS loan funds) acceptance was received after the 14 day timeframe and the institution does not otherwise choose to make the post-withdrawal disbursement.

Comments: Several commenters questioned how an institution could verify the identity of the person claiming to be the student or parent if the student or parent calls the institution to accept earned Title IV, HEA program funds. Several commenters recommended that an institution be allowed to refuse to mail a check of earned Title IV, HEA program funds based on a phone call requesting that the check be sent to a particular address. A few commenters questioned whether the institution could insist that a student or parent come into the institution to pick up any post-withdrawal disbursements due.

Discussion: Obviously, we would not want an institution to disburse Title IV, HEA program funds to anyone other than the intended recipient. We do not regulate how an institution should ensure that Title IV, HEA program funds are disbursed to the proper individual. However, we do not believe that it would be reasonable to require a student who has withdrawn from an institution (or a parent of such a student, for PLUS loan funds) to pick up a post-withdrawal disbursement in person. Because the student is no longer attending the institution, it would not be unlikely that the student has moved out of the area and would not be able to return to the institution to pick up a post-withdrawal disbursement. Presumably, in the scenario presented by the commenters, the student or parent is calling in response to the notification the institution mailed to the student or parent about the funds available from a post-withdrawal disbursement. We believe that it is reasonable to assume that a check mailed to the same address will reach the proper party.

Changes: None.

Comments: A few commenters felt that post-withdrawal disbursements should be available to pay prior year charges. The commenters maintained that this would meet the intent of the negotiating committee to mirror the cash management rules as closely as possible.

Discussion: We agree that it is desirable to mirror the cash management regulations as closely as possible. Therefore, we agree that an institution should be allowed to credit a student's account for minor prior award year charges. Institutions should make every effort to explain to a student that all or a portion of his or her post-withdrawal disbursement has been used to satisfy any charges from prior award years.

Changes: Section 668.22(a)(4)(i)(A) has been amended to permit an institution to credit a student's account to pay minor prior year charges in accordance with § 668.164(d)(2)(ii).

Comments: One commenter maintained that the requirement that an institution must offer a post-withdrawal disbursement to a student within 30 days of the date that the institution determines that the student withdrew is inconsistent with regulations that require an institution to disburse loans within three business days of the institution's receipt of the funds.

Discussion: Because an institution must disburse Title IV, HEA program funds as soon as possible, but no later than three business days after receipt of the funds, we believe that in most cases, an institution will not possess undisbursed funds for a student as of the date that the institution determines that the student withdrew. An institution should not request Title IV, HEA program funds for a post-withdrawal disbursement unless and until it has determined: (1) That a post-withdrawal disbursement is due, (2) the amount of the post-withdrawal disbursement, and (3) that the post-withdrawal disbursement can be disbursed within three business days of receipt.

Changes: None.

Section 668.22(b) Withdrawal Date for a Student Who Withdraws From an Institution That Is Required To Take Attendance

General Withdrawal Issues

Comments: A few commenters asserted that the provisions in the NPRM for determining a student's withdrawal date favor institutions that do not take attendance. In particular, a couple of commenters noted that, because of the difference in requirements for determining withdrawal dates for institutions that do not take attendance, in some circumstances, two students who cease attendance on the same day, one at an institution that is required to take attendance and one at an institution that is not required to take attendance, may have different withdrawal dates. The commenters noted that this would result in the students earning different amounts of Title IV, HEA program aid. The commenters believed that the NPRM will encourage institutions that do take attendance to stop taking it, which the commenters felt would be harmful to students. One commenter thought that it was particularly unfair for students who withdraw without notification from institutions that are not required to take attendance to earn 50 percent of their Title IV, HEA program aid.

Discussion: The provisions that the commenters referred to are those that are prescribed by the statute. Extending the provisions in the statute that apply to institutions that are not required to take attendance to institutions that are required to take attendance would not be permitted under the law.

Changes: None.

Comments: Some commenters questioned how an institution would determine a student's withdrawal date if the student withdrew from some, but not all of his or her classes.

Discussion: The provisions of section 484B of the HEA and these implementing regulations apply to a student who began attending an institution and withdrew from all classes at the institution. They do not apply to a student who withdraws from some classes but continues to be enrolled in other classes, or a to student who leaves an institution prior to the student's first day of class.

Changes: None.

Required To Take Attendance

Comments: Several commenters asked for clarification of the definition of an institution that is required to take attendance for purposes of this section. A few commenters supported the position in the NPRM that an institution that opts to take attendance would not be considered an institution that is required to take attendance for Title IV, HEA program purposes. One commenter believed that all institutions that are required to take attendance, whether required by an outside entity or not, should be considered institutions that are required to take attendance for Title IV, HEA purposes.

A few commenters asked if an institution must use attendance records to determine a student's withdrawal date if the institution is not required to take attendance, but some faculty members do take attendance. One commenter asked if an institution would be considered an institution that is required to take attendance if the institution's State licensing agency or accrediting agency provided institutions with the option of taking attendance and the institution opts to take attendance. One commenter wanted to know if an institution would be considered to be required to take attendance by an outside entity if the institution's State licensing agency does not directly require an institution to take attendance, but requires the institution to track students, so in effect, the institution has to take attendance. For example, the commenter noted that some institutions are required to follow the State agency's refund policy regulations which require the institution to refund tuition and fees based on the student's last date of class attendance. The commenter also provided the example of an institution's State licensing agency regulations that require the institution to drop a student if the student misses more than a certain number of days or hours in a term.

Two commenters believed that an institution's State licensing agency and accrediting agency should be considered the only outside entities that can require the institution to take attendance for purposes of the treatment of Title IV, HEA program funds when a student withdraws. Some commenters asked what requirements would apply for determining a student's withdrawal date if an institution is required to take attendance by an outside entity, such as the Department of Veterans Affairs, that requires the institution to take attendance for recipients of the entity's assistance only.

Discussion: We believe that only an institution that is required to take attendance by an outside entity should be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date. Therefore, an institution that elects to take attendance, including an institution that voluntarily complies with an optional attendance requirement of an outside entity, would not be considered an institution that is required to take attendance. However, we believe that if any requirements of an outside entity result in an institution having to take attendance, the institution would be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date. So, in the two examples provided by the commenter (one where the state agency requires the institution to refund tuition and fees based on the student's last date of class attendance and the other where state agency regulations require the institution to drop a student if the student misses more than a certain number of days or hours in a term) the institution would be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date.

We do not agree that State licensing agencies and accrediting agencies should be considered the only outside entities that can require the institution to take attendance for purposes of the treatment of Title IV, HEA program funds when a student withdraws. We believe that if an institution has attendance records as the result of the requirements of any outside entity, those attendance records must be used to determine a student's withdrawal date. We also believe that if an institution is required to take attendance for only some students by an outside entity, the institution must use those attendance records for only those students to determine the student's withdrawal date (the last date of academic attendance). The institution would not be required to take attendance for any of its other students, or to use attendance records to determine any of its other students' withdrawal dates, unless the institution is required to take attendance for those students by another outside entity. For example, 10 students at Peabody University receive assistance from the Veterans Administration (VA). The VA requires the institution to take attendance for the recipients of the VA education benefits. Peabody University is not required by any other outside entity to take attendance for any of its other students. Seven of the 10 students who receive VA benefits are also Title IV, HEA program recipients. If any of those seven students withdraw from the institution, the institution must use the VA required attendance records for those students. For all other Title IV, HEA program recipients at Peabody University that withdraw, the institution must determine the withdrawal date in accordance with the requirements for students who withdraw from an institution that is not required to take attendance (§ 668.22(c)). We believe that requiring an institution to use its attendance records to determine the withdrawal date of a student for which another outside entity requires that attendance be taken is consistent with our view that the goal in defining a student's withdrawal date is to identify the date that most accurately reflects the point when the student ceased academic attendance, and should be based on the best information available.

Changes: We have changed § 668.22(b)(3) to clarify that if an institution is required by an outside entity to take attendance for only some of its students, the institution must use those attendance records for those students to determine the withdrawal date.

Comments: Several of the commenters asked what an institution's official attendance record would be. The commenters noted that an institution may have a master attendance record in addition to the roll books kept by the instructors. Several commenters asked how an institution would determine a student's withdrawal date if one of the student's instructors took attendance, but the others did not. A couple of commenters wanted to know how to determine a student's withdrawal date if faculty members' attendance records differed.

Discussion: If an institution is required to take attendance, it is up to institution to ensure that accurate attendance records are kept for purposes of identifying a student's last date of academic attendance. An institution must also determine which attendance records most accurately support its determination of a student's withdrawal date and support its use of one date over another if the institution has conflicting information.

Changes: None.

Comments: One commenter agreed that the withdrawal date for a student who withdraws from an institution that is required to take attendance should be the last date of academic attendance. A couple of commenters believed that an institution should have the discretion to use a student's last date of academic attendance as the *basis* for determining the students withdrawal date, rather than as the *actual* withdrawal date.

One commenter asserted that Title IV, HEA program assistance earned is not a reflection of time in academic attendance but, rather, is a reflection of institutional costs. As such, the commenter believed that the student's withdrawal date should reflect that the costs are incurred by the student after the student's last date of academic attendance. The commenter stated that using as a student's withdrawal date a point beyond the student's last date of attendance would be consistent with some institutional policies. The commenter contended that Congress did not intend that a student's withdrawal date at an institution that is required to take attendance be limited to the last date of academic attendance.

One commenter believed that an institution that is required to take attendance should be allowed to use as a student's withdrawal date the student's last date of attendance at an academically-related activity as documented by the institution. The commenter believed that it would be unfair to allow institutions that are not required to take attendance to count a student's subsequent academic activity, while not extending this option to institutions that are required to take attendance.

A couple of commenters also maintained that the provision for institutions that are not required to take attendance that provides that the withdrawal date for a student that withdrew without notification is the midpoint of the payment period or period of enrollment, should be extended to institutions that are required to take attendance. One commenter noted that this extension may be necessary if an institution that is required to take attendance has a student who takes a portion of their program at an institution that is not required to take attendance under a consortium agreement. The commenter believed that if the student withdrew from the non-attendance taking institution without providing notification, the student's withdrawal date should be the midpoint of the payment period or period of enrollment.

Discussion: Section 484B(c)(1)(B) of the HEA provides that institutions that are required to take attendance must determine a student's withdrawal date from its attendance records. We believe that the interpretation of the statute that is most in line with our goal of determining the date that most accurately reflects the point when a student ceased academic attendance defines a student's withdrawal date as the last date of academic attendance, as determined by the institution from its attendance records. We note that if a student continues to reside at the institution and consume goods and services past this point, the institution is not precluded from charging the student for these expenses. We believe that the statute makes clear that an institution that is required to take attendance and, therefore, has an established mechanism for tracking a student's attendance, must use that mechanism to determine the point when the student ceased academic attendance. We believe that a student's last date of academic attendance, as determined by the institution from its attendance records, accurately reflects the point when a student ceased academic attendance. The option of using a last date of attendance at an academically-related activity as documented by the institution has been extended to institutions that do not take attendance in order to permit the institutions to meet more precisely the goal of identifying as accurately as possible the point when the student ceased academic attendance.

The statute does not permit an institution that is required to take attendance to use the midpoint of the payment period or period of enrollment as the withdrawal date for a student that withdrew without notification. In the case of a student who is attending both an institution that is required to take attendance and an institution that is not required to take attendance through a consortium agreement, in accordance with § 600.9 of the Institutional Eligibility regulations and § 690.9 of the Federal Pell Grant Program regulations, the institutions must specify as part of the consortium agreement which institution will handle the administration of Title IV, HEA program funds, which would include the determination of Title IV, HEA program funds earned by students upon withdrawal. The designated institution must take on all aspects of the administration of Title IV, HEA program funds.

Changes: None.

Comments: A few commenters believed that institutions that take attendance for only a short period of time should be considered institutions that are required to take attendance for Title IV, HEA purposes. Some of these commenters believed that if other agencies can require attendance for specific periods for their purposes, so can the Department. A few commenters supported the position taken in the NPRM that an institution that is required to take attendance for a portion of the payment period or period of enrollment should not be considered an institution that is required to take attendance for Title IV, HEA purposes. One of these commenters contended that attendance records that are kept for census purposes would not be appropriate for determining a student's withdrawal date for Title IV, HEA purposes.

Discussion: Although we believe that in some instances, the use of attendance records for an institution that is required to take attendance for a portion of the payment period or period of enrollment may meet our goal of using the best date available, we understand that in other instances, these records may not be appropriate for determining a student's withdrawal date.

Changes: None.

Comments: Some commenters believe that it would be unfair to use the student's last date of academic attendance as the withdrawal date for a student that does not return from an approved leave of absence.

Discussion: This issue is discussed under the *Analysis of Comments and Changes* for § 668.22(c).

Changes: None.

Section 668.22(c) Withdrawal Date for a Student Who Withdraws From an Institution That Is Not Required To Take Attendance

Official Notification

Comments: Several commenters asked for clarification of the meaning of "intent to withdraw." The commenters wanted to know if a student who is only discussing and exploring the option of withdrawing would be considered a student who is providing the institution with his or her intent to withdraw. A couple of commenters suggested that only written submissions from the student specifying that the student intended to withdraw should be accepted. One of the commenters felt that oral notifications should not be allowed because they are subject to disagreement over what was said and when it was said. The commenter also believed that oral notifications are subject to abuse because an individual other than the student could phone the institution and withdraw the student.

Several commenters wanted to know if a student would be considered to have provided official notification to the institution of the student's intent to withdraw if a student runs into an employee of the designated office for official notification of intent to withdraw out in the community and mentions that they might not be returning to school.

A few commenters did not believe that the date that a student notifies the institution of his or her intent to withdraw is an accurate withdrawal date for a student who never actually withdraws, for a student who does not withdraw until a future date, or for a student who ceased attendance prior to the notification. One commenter suggested that an institution be permitted to use the earlier of the last date of class attendance as certified by the student, or the date the student officially submits paperwork to begin the withdrawal process.

One commenter supported the position taken in the NPRM that an institution may designate the office or offices that a student must notify in order for the notification to count as official notification.

Discussion: Intent to withdraw, as provided for in section 484B(c)(1)(A) of the HEA, means that the student indicates that he or she has either ceased to attend the institution and does not plan to resume academic attendance, or believes at the time he or she provides notification that he or she will cease to attend the institution. A student who contacts an institution and only requests information on aspects of the withdrawal process, such as the potential consequences of withdrawal, would not be considered a student who is indicating that he or she plans to withdraw. However, if the student indicates that he or she is requesting the information because he or she plans to cease attendance, the student would be considered to have provided official notification of his or her intent to withdraw.

At negotiated rulemaking, it was discussed and understood that notification of intent to withdraw that a student provided orally would be sufficient. We believe that a student's oral notification to an institution is a legitimate means of communicating to the institution his or her intent to withdraw. We believe that requiring all students to provide a written notice of intent to withdraw would unfairly limit and possibly delay notifications of withdrawal. The responsibility for documenting oral notifications is the institution's; however, the institution may request, but not require, that the student confirm his or her oral notification in writing.

Official notification of intent to withdraw is notice that a student provides to an office designated by the institution. If a student provides notification to an employee of that office while that person is acting in his or her official capacity, the student has provided official notification. If the student provides notification to an employee of that office while that person is not acting in his or her official capacity, we would expect the employee to inform the student of the appropriate means for providing official notification of his or her intent to withdraw.

The statute provides that the withdrawal date for a student who withdraws by providing notification to an institution that is not required to take attendance is the date that the student began the institution's withdrawal process or otherwise provided official notification of his or her intent to withdraw. Although stated in the NPRM, we believe that it is important to emphasize that an institution that is not required to take attendance may always use a last date of attendance at an academically-related activity as a student's withdrawal date. Therefore, if a student begins the institution's withdrawal process or notifies the institution of his or her intent to withdraw and continues to attend the institution before actually withdrawing, the attendance subsequent to the student's notification may be taken into account by the documentation of a last date of attendance at an academically-related activity. Likewise, an institution could use an earlier last documented date of attendance at an academically-related activity if this date is a more accurate reflection of the student's withdrawal date than the date that the student begins the institution's withdrawal process or notifies the institution of his or her intent to withdraw. We would also like to emphasize that the requirements of these regulations for the treatment of Title IV, HEA program funds when a student withdraws do not apply to a student who does not actually cease attendance at the institution.

Section 484B(c) of the HEA makes clear that the determination of a student's withdrawal date is the responsibility of the institution. Therefore, the institution, not the student, must document a student's attendance at an academically-related activity in order to be able to use the date of that attendance as the student's withdrawal date. A student's certification of attendance that is not supported by documentation by the institution would not be acceptable documentation of the student's last date of attendance at an academically-related activity.

Changes: We have changed § 668.22(c)(1)(ii) to make clear that a student has provided official notification to the institution of his or her intent to withdraw if the student indicates an intent in writing or orally.

Resolving Instances Where a Student Triggers Two Dates

Comments: One commenter believed that it is unnecessary to define the withdrawal date for a student that both begins the institution's withdrawal process and also provides official notification to the institution of his or her intent to withdraw, as the earlier of these two dates, because a student cannot otherwise provide official notification to the institution without having already begun the institution's withdrawal process.

Discussion: The commenter's assertion that a student cannot otherwise provide official notification to the institution without having already begun the institution's withdrawal process is incorrect. The example given in the preamble to the NPRM illustrates one scenario where a student may otherwise provide official notification to the institution prior to beginning the institution's withdrawal process. In that example, a student calls the institution's designated office and states his or her intent to withdraw on November 1. On December 1, the student begins the institution's withdrawal process by submitting a withdrawal form.

Changes: None.

Withdrawals Without Notification

Comments: One commenter believed that use of the midpoint as the withdrawal date for a student who does not begin the institution's withdrawal process or otherwise provide official notification to the institution of his or her intent to withdraw penalizes students who provide notification of withdrawal. The commenter asserted that this provision provides students with an incentive to leave without notification, which will only add to the institution's administrative burden. The commenter believed that the withdrawal date for an unofficial withdrawal should be the student's last date of attendance or the date of the last homework assignment submitted by the student.

One commenter contended that an institution cannot determine until the end of the term that a student has really dropped out because the student would always have the right to return. A couple of commenters maintained that there is no reliable way to determine that a student has dropped out of the institution. For example, one commenter noted that all failing grades for a student would not necessarily mean that the student stopped attending. The commenter questioned how a program reviewer would identify students that have dropped out of the institution. Another commenter believed that other institutions often conclude that some students have completed a semester even though the students may have transferred to another institution. The commenter believed that the add-drop periods established by the institution could be used to more fairly interpret when students withdrew.

Discussion: Section 484B(c)(1)(iii) of the HEA provides that the withdrawal date for a student who does not begin the institution's withdrawal process or otherwise provide official notification to the institution of his or her intent to withdraw is the midpoint of the period for which assistance was disbursed. However, these regulations provide that an institution may always use an earlier or later last date of attendance at an academically-related activity as the student's withdrawal date.

It is the responsibility of the institution to develop a mechanism for determining whether a student who is a recipient of Title IV, HEA grant or loan funds has ceased attendance without notification during a payment period or period of enrollment. The requirement that an institution identify students that have dropped out of the institution during a payment period or period of enrollment is not new. Under the Title IV, HEA refund requirements an institution has been required to identify drop outs. Among other things, a reviewer may look to see if an institution has a mechanism in place for identifying and resolving instances where attendance through the end of the period could not be confirmed for a student. These regulations provide institutions with flexibility to establish their own add-drop periods and institutional refund policies. The basis for measuring the amount the student earns is the student's attendance, and the law requires that the funds be earned on a pro-rata basis through the 60 percent point of the payment period or period of enrollment.

Changes: None.

Student Does Not Return From an Approved Leave of Absence

Comments: A few commenters believed that, for a student who does not return from an approved leave of absence, the institution should be able to use the scheduled return date as the student's withdrawal date, rather than the date that the student began the leave of absence (for a student who withdraws from an institution that is not required to take attendance) or the last date of academic attendance as determined by the institution from its attendance records (for a student who withdraws from an institution that is required to take attendance). One commenter felt that the withdrawal date should be the date of the institution's determination of the student's withdrawal. One commenter contended that the law states that the student's withdrawal date is the date that the student withdrew; therefore, for a student who notifies the institution that he or she will not be returning to the institution, the date of the student's notification should be the withdrawal date.

A few commenters were concerned that the withdrawal date for a student who does not return at the expiration of an approved leave of absence as proposed in the NPRM would penalize students and institutions if the student was a Title IV, HEA program loan recipient. The commenters noted that if a student had been granted the full 180 days for an approved leave of absence, the student will have exhausted all of his or her grace period and will be required to begin repayment of the loan immediately, which would increase the likelihood that the student would default.

A couple of commenters contended that the proposed withdrawal date will not provide institutions with enough time to comply with the requirements for the treatment of Title IV, HEA program funds when a student withdraws within the required timeframes. One commenter noted that when a student does not return from an approved leave of absence, the institution would like the opportunity to work with the student to properly prepare them for repayment.

Discussion: We do not agree with the commenters' suggested alternative withdrawal dates for a student who does not return from an approved leave of absence because we continue to believe that the date that best reflects the point when the student ceased academic attendance for this student is the date that the student began the leave of absence (for a student who withdraws from an institution that is not required to take attendance) or the last date of academic attendance as determined by the institution from its attendance records (for a student who withdraws from an institution that is required to take attendance).

Section 484B(a)(2)(B) of the HEA states that the withdrawal date for a student who does not return to the institution at the expiration of an approved leave of absence is the withdrawal date as determined in accordance with section 484B(c). However, section 484B(c) does not specifically address the circumstance of a student who does not return to the institution at the expiration of an approved leave of absence. Therefore, as noted in the NPRM, we have promulgated the withdrawal date that we believe best meets our goal to accurately reflects the point when the student ceased attendance by treating the start of the leave of absence as a withdrawal date documented by the institution.

We acknowledge that this withdrawal date will result in the exhaustion of some or all of a student's grace period for Title IV, HEA program loan recipients. We believe this is an appropriate result because the student was not in academic attendance for that period. However, we note that a student who has exhausted his or her grace period and is unable to begin repayment of a loan may apply for a deferment or forbearance of payment. Taking into account the concerns of the commenters, we believe that a student must be informed of the possible consequences of withdrawal on a loan grace period before he or she is granted an approved leave of absence. Therefore, we have changed these regulations to require an institution to provide information to a loan recipient prior to the granting of a leave of absence about the possible effects that the student's failure to return from the leave of absence may have on the student's loan repayment terms. These issues related to a student's Title IV, HEA program loan repayment status when the student does not return from an approved leave of absence are discussed in more detail in the *Analysis of Comments and Changes* for § 668.22(d).

We note that the timeframes and requirements for the handling of post-withdrawal disbursements, maintaining documentation of a student's withdrawal, and returning Title IV, HEA program funds for which the institution is responsible all begin as of the date of the institution's determination that the student withdrew, not as of the student's withdrawal date. Therefore, the withdrawal date for a student should have no effect on an institution's ability to meet these requirements and deadlines.

Changes: Section 668.22(d)(1) has been changed to provide that a leave of absence is not an approved leave of absence for purposes of the Title IV, HEA programs unless the institution explains at or prior to granting the leave of absence the effects that the student's failure to return from an approved leave of absence may have on the student loan repayment terms, including the exhaustion of some or all of the student's grace period.

Unapproved Leave of Absence

Comments: One commenter contended that there would never be any unapproved leaves of absence because a leave of absence would not be allowed unless it is approved by the institution. One commenter believed that a withdrawal that results because a student is granted an unapproved leave of absence should be treated as a withdrawal without official notification so that the student's withdrawal date would be the midpoint of the payment period or period of enrollment.

Discussion: We would like to make clear that an institution may grant a student for academic reasons a leave of absence that does not meet the conditions of these regulations for an "approved" leave of absence. However, this "unapproved" leave of absence must be treated as a withdrawal for Title IV, HEA purposes. We do not agree that a student who is granted an unapproved leave of absence should be treated as an unofficial withdrawal. An unofficial withdrawal is one where the institution has not received notice from the student that the student has ceased or will cease attending the institution. If an institution has granted a student an unapproved leave of absence, the institution would be aware of when the student will cease attendance. In keeping with our stated goal of identifying the date that most accurately reflects the point when the student ceased academic attendance, we have defined the withdrawal date for a student who takes an unapproved leave of absence at an institution that is not required to take attendance as the date that the institution determines that the student began the leave of absence. The withdrawal date at an institution that is required to take attendance is the last date of academic attendance as determined by the institution from its attendance records. We have also added a conforming change to define the date of the institution's determination that the student withdrew for a student who is granted an unapproved leave of absence as the first day of the student's leave of absence.

Changes: We have amended §§ 668.22(b)(1) and (c)(1)(vi) to specify the withdrawal date for a student who takes an unapproved leave of absence at an institution that is required to take attendance and at an institution that is not required to take attendance, respectively. We have added § 668.22(l)(3)(v) to define the date of the institution's determination that the student withdrew for a student who takes an unapproved leave of absence.

Rescission of Intent To Withdraw

Comments: A few commenters did not agree that the withdrawal date for a student who withdraws from an institution after rescinding an intent to withdraw should be the date that the student first provided notification to the institution or began the withdrawal process, unless the institution chooses to document a last date of attendance at an academically-related activity. A couple of commenters believed that an intent to withdraw that is rescinded is completely cancelled and cannot be referred to again. The commenters maintain that the appropriate withdrawal date would be the date that the student subsequently notifies the institution and actually withdraws. One commenter was unhappy about our insinuation that an institution may abuse this area. The commenter felt that the institution is being held responsible for the student's actions. A couple of the commenters contended that the original date of the student's notification was not an accurate withdrawal date because it does not take into account the additional charges that the student has incurred for the additional period of attendance. One commenter asserted that it would be difficult to get a written statement from the student that indicated that he or she will remain in attendance. One commenter believed that the proposed requirements for handling rescissions of withdrawal notices are too complicated and penalize the student for deciding to remain enrolled.

Discussion: We continue to believe that the appropriate withdrawal date for a student who does not complete the payment period or period of enrollment after rescinding his or her first notification of withdrawal is the date when the student first began the institution's withdrawal process or otherwise provided official notification to the institution. The Department is responsible for identifying and responding to areas of potential abuse to the Title IV, HEA programs in the development of regulations. The potential abuses that we identified in the NPRM were not addressed by the alternative withdrawal dates suggested by the commenters. We do not believe that this requirement is onerous because an institution may always use the last date of attendance at an academically-related activity to take into account attendance by the student subsequent to the student's first notification of withdrawal. For example, Dave notifies his institution of his intent to withdraw on January 5. On January 6, Dave notifies the institution that he has changed his mind and has decided to continue to attend the institution, and provides the required written statement to that effect. On February 15, Dave notifies the institution that he is withdrawing, and actually does. The institution has a record of an exam that Dave took on February 9. The institution may use February 9 as Dave's withdrawal date. If the institution could not or did not choose to document a last date of attendance at an academically-related activity for Dave (in this case, the record of the exam), his withdrawal date would be January 5, the date of Dave's original notification of his intent to withdraw, not February 15.

We do not believe that it will be unduly burdensome for an institution to obtain a statement from the student that he or she intends to remain in academic attendance for the remainder of the payment period or period of enrollment. Presumably, the institution is aware that the student has changed his or her mind about withdrawing because the student has contacted the institution to inform the institution that he or she has changed his or her mind and are not withdrawing. The institution may inform the student of the certification requirement at that time.

Changes: None.

Last Date of Attendance at an Academically-Related Activity

Comments: One commenter contended that the law makes no mention of a last date of attendance or academically-related activities, so the regulations should only use the language of the law which states that a later date documented by the institution may be used for a student who withdraws without notification to the institution. The commenter did not agree that the concept of using the last date of attendance at an academically-related activity is a longstanding one for the Title IV, HEA programs because it has never been included in previous laws and was only introduced in the regulations about eight years ago. One commenter requested clarification of the documentation required to verify a student's attendance at an academically-related activity. One commenter contended that using the last date of attendance at an academically-related activity is not a realistic option because it is difficult for an institution to track attendance.

Discussion: As stated in the preamble to the NPRM, the statute does not specifically allow an institution to use as a withdrawal date a student's last date of attendance at an academically-related activity, except in the case of a student who withdraws without providing notification (in which case the institution may use a date that is later than the midpoint of the period). However, we continue to believe that we have the discretion under the statute to promulgate regulations that permit an institution that is not required to take attendance to document a date other than the specified withdrawal dates if that date more accurately reflects the point when the student ceased academic attendance.

We note that the use of a last date of attendance at an academically-related activity has been a part of the guidance for the definition of a student's Title IV, HEA program withdrawal date for over eight years. We believe that this qualifies as longstanding Title IV, HEA program policy. Just as there is a wide variety in the types of educational programs offered by institutions, there appears to be a lot of variation in ways that institutions have been able to identify a last date of attendance at an academically-related activity. We believe that the guidance provided in the preamble to the NPRM is sufficient for an institution to determine how the institution should properly document a student's last date of attendance at an academically-related activity without being overly prescriptive. This flexibility permits institutions to control the process used to verify the student's attendance in these activities. We will continue to provide guidance in this area through Department publications to address specific concerns that are not addressed by this guidance.

Changes: None.

Acceptable Documentation

Comments: One commenter supported the position in the NPRM that acceptable documentation for a student's withdrawal date should not be specified in the regulations.

Discussion: None.

Changes: None.

Section 668.22(d) Approved Leaves of Absence

Comments: A few commenters supported the position in the NPRM that an institution would be allowed to grant more than one leave of absence to a student. In response to the Secretary's specific request for comment, commenters suggested the following additional categories of unforeseen circumstances that the commenters believe warrant the granting of more than one approved leave of absence: jury duty; incarceration; unexpected loss of child care; the need to care for children during the children's school breaks; changes in work schedules (for example, a part-time employee is required to work full-time for a few weeks); protection in cases of domestic abuse where a student has been forced to go into hiding; dependent care outside the parameters of the Family and Medical Leave Act of 1993 (FMLA) (no specifics provided); financial reasons; death or illness of a family member; student suffers injury or major illness; snow days; travel.

A few commenters believed that a list of circumstances could not address every unforeseen circumstance that should warrant an approved leave of absence. A couple of these commenters believed that institutions should have the discretion to grant an approved leave of absence, as long as the institution maintained the appropriate documentation. One commenter suggested limiting the number of leaves of absence to two, rather than defining all unforeseen circumstances. One commenter thought that unforeseen circumstances should be defined, but only two leaves of no more than 60 days each should be permitted for these reasons. One commenter felt that one leave of absence in a 12-month period is sufficient.

Discussion: We continue to believe that more than one leave of absence should only be granted for limited, well-documented circumstances due to unforeseen circumstances. As stated in the NPRM, we believe this interpretation is supported by the language of the statute, which refers to a student who takes "a" leave of absence from an institution. This interpretation also recognizes the fact that it is often not in the best interest of a student to have multiple interruptions in their education.

We believe that jury duty, like military duty, is a circumstance that would warrant multiple leaves of absence. We believe that some of the circumstances suggested by the commenters, such as illness of a family member or an injury or major illness of the student, are adequately covered by the FMLA. We do not believe that the additional circumstances suggested by the commenters would warrant multiple leaves of absence, either because they are not unforeseen, are difficult to document, or are likely to be adequately addressed by one leave of absence. However, we recognize that some of these circumstances, as well as other circumstances that have not been identified by either the Department or the commenters, may force a student who would otherwise continue their education to withdraw. We believe that the institution is in the best position to determine if one additional leave of absence is necessary for unforeseen circumstances that are not specifically mentioned in the regulations. However, in keeping with our intention to limit interruptions to a student's education, we believe that this leave of absence should be limited to 30 days and can only be granted if a student has already been granted an approved leave of absence at the institution's discretion. Therefore, consistent with the NPRM, the regulations would not specify the circumstances that would warrant one leave of absence; rather, the institution would determine if the student's reason for requesting a single leave of absence is appropriate. An institution may grant subsequent leaves of absence if:

- The student's circumstances meet one of the following conditions for multiple leaves of absence: military reasons, circumstances covered by the FMLA, or jury duty, or
- For one additional leave of absence not to exceed 30 days, the institution determines that the additional leave of absence is necessary. This type of leave of absence would have to be subsequent to the granting of the single leave of absence that is granted at the institution's discretion.

In accordance with the statute, the total number of days of all leaves of absence cannot exceed 180 days in any 12-month period.

Changes: Section 668.22(d)(2) is amended to provide that for one additional leave of absence not to exceed 30 days, the institution may determine that the additional leave of absence is necessary due to unforeseen circumstances. This type of leave of absence would have to be subsequent to the granting of the single leave of absence. Section 668.22(d)(2) is amended to provide that jury duty is another circumstance, in addition to military reasons or circumstances covered by the FMLA, for which an institution may grant a student subsequent leaves of absence.

Comments: One commenter asked if leaves of absence granted for "military reasons" includes the National Guard.

Discussion: We believe that leaves of absence that are granted for military reasons include training and service requirements of the National Guard.

Changes: None.

Comments: One commenter noted that some of the circumstances covered by the Family and Medical Leave Act of 1993 (FMLA) are covered for a 12-month period. The commenter asked us to clarify the interplay of the 12-month period for FMLA with the 180 days restriction of leaves of absence.

Discussion: Two of the circumstances that are covered under the FMLA, birth and care of a child, and adoption or foster care placement, are covered for up to 12 months for purposes of the FMLA. For purposes of the Title IV, HEA programs, this means that a student may be granted an approved leave of absence for these circumstances, as long as (1) the entire leave of absence will occur sometime during this 12 month period of time, and (2) the total number of days of all leaves of absence for the student does not exceed 180 days in the 12-month period that began on the first day of the student's first leave of absence. For example, a student has a child who is born on February 1, 2000. The student has never taken an approved leave of absence before. The student may be granted an approved leave of absence for the birth of and/or care of the child for up to 180 days during the period of February 1, 2000 through February 1, 2001, 12 months from the birth of the child. If the student requests a subsequent leave of absence to care for the child that would begin on January 1, 2001, the leave of absence could be no longer than 31 days, because the circumstance that triggered the leave of absence would no longer be covered under the FMLA after February 1, 2001.

Changes: None.

Comments: One commenter believed that it was unreasonable to require that a student be permitted to complete the coursework begun before the leave of absence. Since a leave of absence can be up to 180 days, the commenter noted that this period of time exceeded the limits most institutions permit before having a grade of "incomplete" turn into a failing grade. The commenter suggested that it would be more consistent with existing academic requirements for the term 'coursework' to be changed to 'course of study or major'. One commenter suggested that the requirement to exclude periods of excused absences from the calendar days used in the return calculation does not work because any leave of absence that extended beyond the end of the payment period or period of enrollment would automatically qualify the student to earn 100 percent of the Title IV, HEA program funds.

Discussion: Approved leaves of absence are viewed as interruptions in a student's academic attendance. Therefore, when a student returns from a leave of absence, the student should be continuing the academic program where it left off. Approved leaves of absence must conform to the institution's policy, and institutions are expected to play an active role in evaluating whether a requested leave of absence should be granted and how it can be structured to permit a student to complete the payment period or period of enrollment. Although a leave of absence may extend for up to 180 days, we anticipate that most requests will be for shorter periods that will conform to an institution's requirements for completing courses within specified time limits. Furthermore, the scenario provided by the commenter is one where a student has not ceased to perform academically if the student is completing the course work through independent study rather than by taking classes at the institution. Therefore, this would not be considered a leave of absence for Title IV, HEA program purposes. When a student returns from an approved leave of absence the payment period or period of enrollment used for a return calculation would be adjusted to reflect the new ending date. In order to prevent a situation where a student is able to earn funds simply by taking a leave of absence, those days must be excluded from the return calculation.

Changes: None.

Comments: One commenter believed that retroactive requests for leaves of absence should be permitted because students often do not know that they will need a leave of absence until they have been absent from the institution for a few days.

Discussion: We continue to believe that it is reasonable to expect an institution to collect a written request for an approved leave of absence from the student prior to the leave of absence, unless the student is unable to provide the written request prior to the leave of absence due to unforeseen circumstances. In such cases, the institution must document the reason for its decision to grant the leave of absence prior to receiving a written request and collect the written request from the student at a later date.

Changes: None.

In-School Status for Title IV Loans

Comments: Several commenters believed that a student should be considered to have in-school status for Title IV, HEA loan purposes during an approved leave of absence. The commenters argued that considering a student to have in-school status for Title IV, HEA loan purposes is consistent with the assertion that a student on an approved leave of absence is still considered to be enrolled at the institution. The commenters contended that the inconsistency of placing a student in an out-of-school status for loan purposes, while the student is still considered enrolled in the institution, would be too confusing and burdensome to students and their families, institutions, lenders, and guaranty agencies. Some commenters noted that leaves of absence are granted to encourage a student to continue his or her education. The commenters believed that guaranteeing that a student will not exhaust any or all of their grace period will be an added incentive to return and avoid immediate repayment. One commenter noted that most loan servicing systems generate letters to a borrower beginning in the first month of the borrower's grace period. The commenter contended that these notices will confuse students who are considered to be in enrollment for other Title IV, HEA purposes.

Discussion: We agree with the commenters' arguments that the inconsistency of treating a student on an approved leave of absence as a withdrawn student for purposes of terminating a student's in-school status would not be in the best interest of the student and would possibly create undue burden for institutions, lenders and guaranty agencies. We agree that a student who is granted an approved leave of absence should be considered to remain in an in-school status for Title IV, HEA loan repayment purposes. However, as discussed previously, if a student does not return from an approved leave of absence, the student's withdrawal date, and the beginning of the student's grace period, is the date that the student began the leave of absence (for a student who withdraws from an institution that is not required to take attendance) or the last date of academic attendance as determined by the institution from its attendance records (for a student who withdraws from an institution that is required to take attendance). Therefore, an institution must report to the loan holder the student's change in enrollment status as of the withdrawal date.

Changes: Section 668.22(d)(1) has been changed to reflect that if a Title IV, HEA program loan borrower has been granted an approved leave of absence, the borrower is considered to be enrolled in the institution for purposes of reporting the student's in-school status for Title IV, HEA program loans.

Scheduled Breaks

Comments: A few commenters supported the position that a student would not have to be granted an approved leave of absence for periods of nonattendance for a scheduled break. The commenters assumed that this position would apply to summer sessions when the student is not scheduled to be in attendance.

Discussion: The commenters are correct that an approved leave of absence would not be necessary for a summer session for which the student was not scheduled to be in attendance. However, if a scheduled break falls within a payment period or period of enrollment and the student does not return at the end of the scheduled break, the withdrawal date would reflect that the scheduled break was a period of non-attendance.

Changes: None.

§ 668.22(e) Calculation of the Amount of Title IV Assistance Earned by the Student

Use of Payment Period or Period of Enrollment

Comments: A few commenters suggested that institutions that use period of enrollment for the calculation should be allowed to use aid awarded rather than the aid that was disbursed or could have been disbursed as of the date of the student's withdrawal. The commenters said that the use of aid awarded was provided for in the law, and that the option of using period of enrollment is made void unless an institution is allowed to use the aid awarded in the calculation. The commenters explained that the proposed requirement to only use the amount of aid disbursed or that could have been disbursed at the time of the student's withdrawal is unfair because students who withdraw during the first payment period will not have been enrolled long enough for the institution to have disbursed all aid awarded for the period of enrollment. The commenters believe that institutions will be acting against the interests of their students by using the period of enrollment in the calculation rather than the payment period because less aid could be considered in the calculation.

Discussion: Although the commenters point out that the law refers to aid awarded when describing the institution's option to use either payment period or period of enrollment in the calculation, that reference simply describes the relevant period to use in the calculation. The law gives institutions the option to use either the payment period or period of enrollment "for which assistance was awarded" in the calculation, but specifies that the percentage of assistance earned is applied to the assistance that "was disbursed (and that could have been disbursed). . . as of the day the student withdrew".

Changes: None.

Comments: A small number of commenters pointed out that the requirement for an institution to consistently use either the payment period or period of enrollment measure poses a problem in some circumstances, particularly for students that are transferring to the institution or are re-entering to complete their program. Some of those commenters said that they read the law to allow institutions to choose on a student-by-student basis to address differences in student circumstances. The commenters noted that many institutions would decide to use the payment period as a basis for doing most return calculations, because that calculation would be better for most students. The commenters said that the choice in the law to use payment period or period of enrollment was supposed to give them flexibility to use a calculation that matched the way they charged for their programs.

Discussion: Institutions must choose between using payment period or period of enrollment on a program by program basis. This requirement promotes consistency in administration of the programs and makes it simpler for schools to explain the return of funds provision to students. Students enrolling in a program at an institution will also be subject to the same period of measure for return of unearned aid calculations throughout their attendance. We therefore reject the suggestion that institutions should be able to choose the appropriate period for this calculation on a student by student basis for the students that regularly enroll in their programs. Some different treatment is being permitted for students that transfer into an institution or re-enter, and this is discussed below.

Changes: None.

Comments: A few commenters said that the proposed regulation is confusing because it does not distinguish between financial aid awarded (which is subject to the student meeting certain criteria to receive any amount awarded) and financial aid that the student was eligible to receive. The commenters illustrated this by explaining that a first time borrower must attend 30 days before being awarded the financial aid for the first loan disbursement. The student must then continue attending into the second payment period in order to receive the second disbursement of the loan proceeds. The commenters recommended revising the regulation to provide that the amount to be returned may never exceed the difference of the amount disbursed and the amount earned.

Discussion: The calculation in the NPRM determines whether more aid was actually disbursed than the student earned. If so, the unearned portion must be returned. The proposed language has already been written to clarify that the only amount that needs to be returned is the amount of aid that was actually disbursed that exceeded the amount of earned aid. We believe that the proposed language accurately describes the steps needed to perform the calculation, and believe that this language better describes the processes that institutions will use when performing these calculations.

Changes: None.

Comments: A few commenters asked how to determine tuition and fee costs to be paid in a payment period or period of enrollment when the program is longer than those periods. These commenters pointed out that some institutions charge for equipment and supplies up front, even though that equipment may be used throughout a program that could last for two years or perhaps longer. Other questions dealt with whether such charges could be pro-rated, and asked how registration fees or book charges would be handled in the calculation. The commenters suggested that deference should be given to the recommendations made by the schools and their students who are affected by this provision. Some of these commenters said that the Department has a longstanding policy to include up-front charges in the first period of enrollment so that there would be no tuition and fee costs for subsequent periods.

Discussion: An institution would be permitted to pro-rate the total program charges for the program to correspond to the payment period if the institution has elected to use payment period rather than period of enrollment for the return calculations. If the institution retained a higher amount of charges to the student for the payment period for any reason, including allocating costs for equipment and supplies to the front of the program, the funds retained by the institution are attributed to that payment period because they are a better measure of the institutional charges paid by the student for that period.

Changes: None.

Comments: A few commenters raised concerns about the statutory requirements of the return calculation. For example, one commenter argued that forcing institutions to return unearned Title IV, HEA program funds through 60 percent of the period could cause the institutions to delay disbursing funds to their students until after this point. Those schools pointed out that students that withdraw after the beginning of a payment period cannot be replaced, and the cost to the institution of providing that program does not decrease. Another commenter pointed out that his state required a shorter refund policy that the commenter believed was fairer than the return calculation. Other commenters complained about the additional costs institutions would face from adding additional staff and returning larger amounts of unearned funds. Other commenters objected to having students earn funds on a pro-rata basis because it does not correspond to the costs incurred by the student for attending the institution, and complained that the statutory formula does not round the percentages earned in 10 percent portions like the prior version of the law did.

Discussion: The commenters address components of the return calculation that are statutory and cannot be changed by regulation.

Changes: None.

Re-Entry and Transfer Students

Comments: Some institutions pointed out that it was impossible for an institution to use a consistent number of hours in a payment period for students that transferred into the institution or re-entered it, because the first payment period for those students will be whatever portion of a payment period remains to be completed before the student can begin a subsequent full payment period. A few commenters pointed out that the Title IV, HEA program funds at issue during this partial payment period are, in effect, discounted twice, once at entry, due to the Federal Pell Grant proration requirements, and once at the time of withdrawal for the return calculation. Other schools also complained that this problem was further complicated because institutions are not allowed to use aid awarded in the calculation. Another commenter noted that the benefit of using payment periods for the regularly enrolled students would be negated if the institution used payment periods for the transfer and re-entry students as well. The commenter believed that it may be fairer for those students to have their period of enrollment used in a return calculation.

Discussion: We acknowledge that students transferring to an institution or re-entering a nonstandard term or non-term based program are more likely to have a short, non-standard payment period that would have to be completed before their schedules could fit into the standard payment periods at the institution. Both these groups of students are distinct from students who have attended a program from the beginning of the payment period or period of enrollment, and it may be appropriate for an institution to choose to use either a payment period or period of enrollment basis for a return calculation for one of these groups of students, even if a different period is used for the students who have been in attendance from the beginning of the payment period or period of enrollment in that program.

Changes: Section 668.22(e)(5)(ii) has been modified to permit an institution to make a separate selection of payment period or period of enrollment for return of unearned aid calculations for students that transfer to the institution and for those who reenter the institution for students who attend a nonterm-based or a nonstandard term-based educational program.

Comments: A small number of commenters pointed out that the return calculation does not provide for treatment of aid that was awarded but not disbursed, including situations where the institution elects to do multiple disbursements. The commenters suggested that the multiple disbursements should not be treated as funds that would be applied to institutional charges, but that institutional charges should be applied against the amount the student and the institution must repay. Another commenter said that the return calculation does not adequately address how undisbursed funds should be treated because of the many different scenarios that can occur at a college where a student withdraws before receiving all funds that have been disbursed to him.

Discussion: As discussed above, the law determines the amount of funds earned by the student in the return calculation by applying the percentage the student completed of the payment period or period of enrollment to the funds that were disbursed, or could have been disbursed, as of the day the student withdrew. Students that have not received aid that could have been disbursed to them at the time they withdrew are entitled to receive any additional sum earned that is greater than the amount already disbursed to them. This snapshot approach to considering whether additional aid may be awarded will provide a consistent set of procedures that will prevent post-withdrawal disbursements of unearned aid. Even though multiple disbursements may have been scheduled for a student at the time he or she withdrew, the return calculation will limit those disbursements to actual amounts earned. A student receiving a post-withdrawal disbursement will have earned all aid that had been disbursed, and the subsequent disbursement will only be for the additional amount earned. A student receiving a post-withdrawal disbursement will therefore never have any unearned funds that would be the responsibility of the student in the return calculation, as might be the case if all of the student's disbursements were made at the beginning of the period. This rule will prevent institutions from making post-withdrawal disbursements of aid that could be manipulated to alter the grant/loan mix of funds used in the return calculation. We believe it is consistent with the law to base the return calculation on the actual aid that had been disbursed at the time the student withdrew.

Changes: None.

§ 668.22(f) Percentage of Payment Period or Period of Enrollment Completed

Credit Hour Programs

Comments: Several commenters questioned how holidays and weekends should be treated in the calculation of days completed, particularly when combined with a short break. One commenter suggested that the calendar days used in the calculation should be defined as school days, and exclude weekends and holidays from the calculation. The commenter argued that this treatment would provide consistency among terms and would comport with the current method of determining repayments. Other commenters agreed that including weekends and short breaks complicates the calculation and does not accurately reflect the actual course completion. Conversely, other commenters pointed out that students are often studying during weekends and during short breaks, and they argued that all calendar days should count in the return calculation. Another commenter preferred basing the calculation on weeks completed, and suggested that some rounding of calendar days completed be permitted in order to simplify the calculation.

A few commenters argued that the proposed exclusion of 5 day breaks was too short if the weekend days would be considered a part of that period. The commenter noted that every break of 3 days or more occurring prior to or after a weekend would create a period that would be excluded from the return calculation, and recommended that the number of days of closure be increased to more accurately reflect the expenses incurred by the institution during short-term closure. One commenter pointed out that most colleges have a one week Spring break in the Spring term, but only one-day or two-day holidays in the Fall even though the number of teaching days are the same. The commenter believed that this disparity in breaks would require students withdrawing in the Spring to have to return more funds than students that withdraw at a comparable point in the Fall payment period.

Discussion: The law generally requires the use of calendar days in the return calculation. The proposed rule would exclude breaks of five or more consecutive days in order to provide for more equitable treatment to students that withdraw near each end of a scheduled break. In those instances, the student that withdrew after the break would not be given credit for earning an additional week of funds during the scheduled break, but would instead earn only an additional day or two more funds than a student that withdrew right before the start of the break. We intend for institutions to exclude all days between the last scheduled day of classes before a scheduled break and the first day that classes resume. For example, where classes end on a Friday and do not resume until Monday following a one-week break, both weekends would be excluded from the return calculation. If classes were taught on either weekend for the programs that were subject to the scheduled break, those days would be counted.

Changes: None. Comments: One commenter pointed out that the proposed regulation does not fully address non-term credit hour programs and nontraditional program formats, especially those non-term credit hour programs that consist of consecutive courses where students may be scheduled to attend one or two days a week or every other weekend. In those instances, five or more days would routinely occur between class meetings, and the commenter asked if those days would be treated as scheduled breaks. Another comment suggested that we should continue to work with the financial aid community to identify the best way to measure the period used in the return calculation for these non-traditional programs.

Discussion: We note that the proposed rule excludes scheduled breaks of at least five consecutive days. For a program that regularly met each weekend for its entirety, the days between classes would not be excluded because they were not part of any regularly scheduled break. If classes were not held on at least one of the scheduled days during a weekend, the period from the last scheduled day of class before the scheduled break until the next scheduled day of class after the break would be excluded from the return calculation. We believe that this result is consistent with the application of this rule to traditional institutions, since a program that usually offered classes on Saturday and Sunday would be taking a break from half of a week's classes if it did not meet on one of those days.

Changes: None.

Clock Hour Programs

Comments: One commenter said that the proposed regulations for clock hour institutions were too complex. A few commenters argued that the return calculations for clock hour institutions should use scheduled clock hours to determine the amount of aid earned rather than considering the actual clock hours completed in the program, because this is more consistent with the requirement to use calendar days as the measure of aid earned at credit hour institutions. Other commenters argued that the law was intended to create similarity between rules for credit hour and clock hour institutions by permitting the use of scheduled hours. These commenters pointed out that credit hour students can attend the first day of classes and not again until the 30th day and receive aid for that 30-day enrollment if they withdraw. Furthermore, if the student unofficially withdrew, he would receive aid through the midpoint of the payment period.

A small number of commenters also argued that the proposed regulations did not correctly interpret the law concerning when scheduled clock hours are used instead of completed clock hours. These commenters believe the law permits the Secretary to establish a threshold of minimum hours such as 10 percent of the payment period that, when completed, would entitle a student to be paid for scheduled hours from that point on whenever he or she withdraws.

Other commenters recommended a number lower than 70 be used for the percentage of completed hours that would allow a student to be paid for scheduled hours, or argued that it was punitive to limit some students to being paid for completed hours if they only completed 69 percent of the hours they were scheduled to take when a student completing 70 percent would get the bonus of being paid for all scheduled hours. A few commenters also suggested that the 70 percent number be changed to 66 percent in order to correspond with our satisfactory academic progress measures that require a student to complete a program in no more than 150 percent of the scheduled time, so that a student could be paid for up to 150 percent of the actual hours completed at the time of withdrawal.

Discussion: The law provides clear authority for the Secretary to establish the percentage of attendance a student must achieve in order to be paid for scheduled hours rather than completed hours. Under the new regulation, that measure will be based upon the student's success at completing at least 70 percent of the hours scheduled to be completed at the time he or she withdrew. The 70 percent requirement is a bright line, and students that meet the attendance threshold will be paid for scheduled hours, while students with lower attendance rates will not. The 70 percent attendance requirement was reached after numerous meetings with a work group that were held during the negotiated rulemaking process. We reject the suggestion that the number be lowered in order to mirror our satisfactory academic progress provisions, which serve the very different purpose of providing students that remain enrolled beyond the scheduled length of their program with additional time to complete their studies.

Changes: None.

Comments: A few commenters objected to the proposed requirement that a student in a clock hour program actually complete 60 percent of the program before earning 100 percent of the funds. The commenters argued that the 60 percent measure identified in the law should be based on the student's scheduled hours if the student were entitled to be paid for scheduled hours, as discussed above. The commenters said that there is no specific statutory basis for imposing this restriction, and they asserted that it discriminates against clock hour students because no comparable restrictions are imposed on students enrolled in credit hour programs. One commenter pointed out that some states approve clock hour programs that permit students to attend with accelerated schedules, so that a student would withdraw with more completed hours than scheduled. The commenter sought either clarification or a change in language to provide that a student could be paid for completed hours if they exceeded the amount of scheduled hours.

Discussion: The law permits a student to earn 100 percent of the funds when completing 60 percent of a program, and we view the actual completion of that amount of the program as a substantive requirement. We refuse to dilute this measure by treating a student that completes 42 percent (70 percent of 60 percent) of a program as having earned 100 percent of his or her Title IV, HEA program aid. We note that the student completing 42 percent of the program in this example will still get the substantial benefit of having earned aid for 60 percent of the scheduled hours because the student met the 70 percent attendance requirement when he withdrew. We note that the language in the regulation permits the institution to use either the hours completed or the scheduled hours (subject to the 70 percent attendance requirement) in the calculation, so that a student completing more hours than were scheduled to be completed at the time he or she withdrew could be paid for the completed hours.

Changes: None.

Excused Absences

Comments: Many commenters suggested that excused absences should be treated as completed hours, because we currently permit clock hour institutions to count up to 10 percent of the missed hours in the program as completed hours. The commenters noted that this was also consistent with higher education community practice.

A few commenters further suggested that the 10 percent limit on excused absences should be raised to 15 percent or whatever standard was permitted in state regulations. Some commenters also suggested that excused absences should include jury duty, military service, court appearances, sickness, medical reasons and family emergencies since these are all circumstances beyond the student's control.

One commenter claimed that not counting excused absences as completed hours would create potential problems for transfer students and re-entry students because the state would recognize hours for excused absences as completed even though the Department would not. Other commenters said it was not fair to exclude excused absences from being treated as completed hours because credit hour institutions are allowed to count weekends and holidays in the return calculation.

One commenter supported the proposed regulation because the 70 percent completion measure used to permit students to be paid for scheduled hours rather than completed hours would already include these absences.

Discussion: Excused absences will not count as completed hours in the return calculation. For students that withdraw from their programs, the absences will be classified as scheduled hours that were not completed. In order to be paid for those hours, the student must satisfy the 70 percent attendance measure. We believe that the allowance of up to 30 percent of the scheduled hours to be missed is sufficient to cover most of the situations for unexpected absences that were posed by the commenters. We also note that some of the suggestions for reasons to recognize excused absences would appear to come within the criteria an institution could use to give a student a leave of absence. For students that do not withdraw from their programs, the existing policy in the cash management regulations, § 668.164(b)(3), of not requiring clock hours to be completed for excused absences of up to 10 percent of the program will be retained.

Changes: None.

Rounding

Comments: Some commenters pointed out that there was no mention of rounding the numbers used in the return calculation, and they requested guidance.

Discussion: The return calculation should use the following rounding procedures. Use three decimal places for most steps in the calculation, rounding the third decimal place up one if the fourth decimal place is 5 or above. For example, .4486 would be rounded to .449, or 44.9 percent. There is one exception to this general rule. Monetary amounts may be reported in dollars and cents using normal rounding rules to round to the nearest penny. Final repayment amounts that the institution and student are each responsible to return may be rounded to the nearest dollar.

Changes: None.

Section 668.22(g) Return of Unearned Aid, Responsibility of the Institution

Comments: A few commenters believed that it was unduly financially burdensome to hold an institution responsible for repaying Title IV, HEA program funds that were disbursed directly to the student. The commenters contended that the assumption of the proposed rules that an institution has retained Title IV, HEA program funds to cover institutional charges before disbursing any Title IV, HEA program funds to the student is incorrect.

A few commenters argued that it would be unfair to include institutional charges that are paid by other sources of aid that are restricted to institutional charges—such as State funding programs, State grant programs or veteran's grants—in the amount of institutional charges that is used for purposes of determining the portion of unearned Title IV, HEA program funds that the institution must return. One commenter noted that in the case of restricted funding, when a student withdraws, the institution will have to refund a portion of the aid to the other source. The commenter believed that it would be financially burdensome for the institution to have to also return funds for the same institutional charges to the Title IV, HEA programs. A few of the commenters contended that if the amount of restricted aid was removed from the amount of institutional charges, the student would be able to repay the same amount under the more beneficial repayment terms of a Title IV, HEA program loan.

A few commenters contended that an institution would have to take undesirable actions to mitigate their financial loss. A few of these commenters maintained that an institution will have to pass on the bill to the student for the amount of Title IV, HEA program funds that the institution had to return in excess of the Title IV, HEA program funds that were actually received by the institution. A few commenters maintained that an institution will have to change its refund policy so that the institution will earn more institutional charges when a student withdraws. A few commenters asserted that institutions will have to delay some loan disbursements to avoid having to repay Title IV, HEA program funds they never received. One commenter, a state community college trustees association, believed that requiring institutions to return Title IV, HEA program funds that were given to the student will force the community colleges in the commenters State to discourage thousands of students from enrolling if they believe that the student may not complete the term. The commenter believed that state community college enrollment could be reduced by more than 10 percent.

A few commenters contended that institutions with low or no institutional charges, such as many community colleges, should be exempt from the requirement that the institution return Title IV, HEA program funds that it has not received because of the enormous negative effects that this provision would have on these institutions and their students.

A couple of the commenters believed that there should be an exemption for institutions like those in the California community college system, when institutional charges are paid or waived by a State program. The commenters asserted that because Title IV, HEA program funds are never used to pay the fees for these students, it would be unfair to require the institution to return Title IV, HEA program funds that were never received by the institution to cover these fees. The commenter noted that any funds returned by the institution will come at the expense of other programs or services to students.

A few of the commenters maintained that students at low- or no-cost institutions will be the hardest hit by this provision. The commenters noted that the students who enroll at these institutions have the greatest chance of owing a large overpayment because the amount of Title IV, HEA program funds that the institution will be responsible for returning—which is capped at the lesser of the total unearned amount of aid or the student's institutional charges multiplied by the percentage of unearned Title IV, HEA program assistance—will be quite small.

Discussion: We do not agree with the suggestion that these regulations should take into consideration whether other sources of aid were actually used to pay a student's institutional charges when allocating repayment responsibilities between the institution and the student. The proposed regulation implements the statutory framework that divides responsibility for repaying unearned Title IV, HEA program funds between the institution and the student under a new system that no longer controls the actual charges assessed by the institution. In the statute, the allocation of repayment responsibilities looks first to the institution to repay unearned Title IV, HEA program funds because the Title IV, HEA program funds are provided under the presumption embodied in the current regulations that they are used to pay institutional charges ahead of all other sources of aid. The regulations do not provide for institutions to adjust this allocation by taking into consideration other sources of aid that might be used to pay institutional charges for a student. We believe that it would be administratively burdensome to try and take into consideration when other sources of aid would be deemed to have paid some portion of institutional costs for a student, particularly given the variations in timing and conditions that may be associated with those sources of aid.

The commenters noted that institutions will have to change their institutional refund policies to adjust to the new provisions. The new provisions of section 484B of the HEA for the return of unearned Title IV, HEA program funds have freed institutions to make such changes. The law requires institutions to disclose and explain their refund policies to students, and this should include some discussion of how the institution might adjust a student's charges to take into account repayments that the institution was required to make under these provisions. As noted by some commenters, institutions may also consider changing the disbursement schedules for students in order to have the disbursements better match the rate at which the student is earning the funds.

In response to the predictions by some commenters that some community colleges may discourage enrollments by students that are less likely to complete the term, we note that many options are available to institutions to screen their applicants and actively work with them to keep them enrolled. An institution should only admit students who have an intention of completing the program in which they enroll. Institutions should inform students of their responsibilities under these rules to repay unearned funds if they withdraw.

The law does not permit exemptions of any institutions that are participating in the Title IV, HEA grant or loan programs from the requirements of section 484B, as implemented by these final regulations. We note that institutions may instead waive the institutional charges for their students rather than paying them state scholarships, provided that the waiver of those fees is taken into consideration when calculating the student's cost of attendance. This would result in no institutional responsibility for repayment of unearned Title IV, HEA program funds because there would be no institutional charges. As pointed out by the commenters, the students receiving the largest grant payments for living expenses are the students most likely to have a large grant overpayment if they withdraw from the program. These students are also, therefore, the ones that will derive the largest benefit from having 50 percent of their grant overpayment eliminated under the return calculation. In addition, we have developed repayment terms for overpayments of Title IV, HEA grants that we believe will mitigate some of the possible negative effects of these requirements on students. Institutions that are particularly concerned about the impact of these provisions on their students may wish to consider alternative disbursement schedules or at least making additional disclosures to students at the time the grant funds are disbursed to them.

Changes: None.

Comments: Commenters asked for clarification of, and suggested a few changes to, the guidance in effect on the definition of institutional charges. One commenter encouraged us to continue to include the financial aid community in any revision efforts. One commenter suggested that institutions be permitted to define institutional charges based on the regulatory language proposed in the NPRM.

Discussion: As stated in the preamble to the NPRM, we will revisit the current guidance of the January 7, 1999 policy bulletin on the definition of institutional charges to determine if revisions would be appropriate given the changes to section 484B of the HEA. We will take into account the comments received in response to the NPRM as part of a larger effort to include the financial aid community in the evaluation of the current guidance. Until further guidance is issued, the guidance of the January 7, 1999 policy bulletin remains in effect.

Changes: None.

Comments: A few commenters believed that "institutional charges incurred by the student" should be the institutional charges for which the student is held responsible by the institution at the time the student withdrew. The commenters maintain that this definition will take into account revisions to a student's institutional charges based on changes in the student's enrollment status or in the number of classes in which the student is enrolled. One commenter explained that some institutions will assess housing charges throughout the payment period, and that the institutions do not withhold Title IV, HEA program funds to pay those costs. The commenter suggested that, in this situation, the institution's repayment responsibilities should only consider the initial charges that were assessed to the student because the subsequent housing charges were paid by the student throughout the payment period. A student that withdrew could, therefore, cause the institution to repay institutional charges that had never actually been collected from the student.

One commenter asked which amounts of Title IV, HEA program funds would be used in the calculation of earned aid, the original amounts or the net amounts after an institution adjusts the student's aid because of an enrollment change. One commenter believed that aid received to pay for tuition, fees, and books, should be considered fully earned by the institution on the day that the institution no longer considers students eligible for refunds. One commenter questioned whether Federal Work-Study funds that are credited to a student's account for institutional charges would be included in determining the amount of Title IV, HEA program assistance retained for institutional charges. One commenter questioned whether Title IV, HEA program aid retained by the institution as of the withdrawal date must be considered in determining the amount of Title IV, HEA program assistance retained for institutional charges for a non-term program where the institution chooses to calculate the treatment of Title IV, HEA program funds when a student withdraws using the payment period basis, but institutional charges are for a longer period, or only the Title IV, HEA program aid that is retained by the institution to cover the charges the institution imposed under its refund policy as of the student's withdrawal date.

Discussion: We do not agree that the return calculation should be based upon the student's enrollment status at the time of withdrawal, or reduced to reflect whatever adjusted institutional charges were assessed by the institution after the student withdrew. The allocation of repayment responsibilities is based upon the institutional charges that were initially assessed. Unless the institution had processed a change in enrollment status for a student prior to his or her withdrawal and made any attendant changes in the amount of institutional charges at that point, the institution would be required to use in the return calculation the charges that were initially assessed to the student. While we understand that the actual charging practices at some institutions may not conform to the standard practice of assessing all charges to the student for the payment period, we believe that it would not be feasible to create exceptions because of the potential for abuse. Since the Title IV, HEA program funds are provided to the student for the entire payment period or the period of enrollment, it follows that repaying the unearned institutional charges assessed throughout that period should be deemed to be the responsibility of the institution.

Since the basis for earning Title IV, HEA program funds is the time that the student was in attendance at the institution, the time periods covered by the institution's refund policy are not taken into consideration. For that reason, there is no separate measure used to determine when a student has earned specific amounts of funds for particular charges. The institution's refund policy will govern what charges a student may owe after withdrawing, but that policy will not affect the amount of aid the student has earned under the return calculation. An institution's refund policy is also not taken into consideration for establishing the repayment obligations of the institution and the student. Furthermore, we note that the institution's refund policy is not required to take into consideration the formula in the return calculation when establishing whether the student owes any funds to the institution.

The return calculation does not take into consideration the individual requirements of an institution's refund policy. The repayment responsibilities for the Title IV, HEA program aid is allocated between the institution and the student based upon the total institutional charges that were initially assessed to the student.

Because Federal Work-Study funds are not included in the calculation of earned Title IV, HEA program funds when a student withdraws, Federal Work-Study funds that are credited to a student's account would not be included as Title IV, HEA program assistance retained for institutional charges.

Section 668.22(h) Return of Unearned Aid, Responsibility of the Student

General

Comments: Several commenters were concerned about the financial burden and the consequences of that burden that the proposed rules would place on students and institutions. The commenters contended that the proposed rules will result in the availability of less Title IV, HEA funds for a withdrawn student than under former provisions of section 484B of the

HEA. As a result, the commenters maintained that in many cases, students will owe both the institution (for unpaid institutional charges under the institution's refund policy) and the Title IV, HEA programs (for the return of unearned Title IV, HEA program funds).

The commenters noted that many of these students will have limited funds to make these payments and will have to choose whether to pay the institution or the Title IV, HEA programs. The commenters contended that, either way, a student will not be able to re-enroll in the institution or attend another institution, either because the student chooses to pay the institution rather than the Title IV, HEA programs and defaults on their Title IV, HEA program loans thereby losing eligibility for additional Title IV, HEA program funds, or because the student chooses to pay the Title IV, HEA programs rather than the institution, thereby being denied the opportunity to re-enroll or obtain transcripts to attend another institution. A couple of commenters believed that because students would not be able to re-enroll and complete their education, the institution will lose its relationship with employers in the community because the institution will not be able to provide employers with qualified candidates.

A few commenters suggested that institutions be permitted to change the way that they disburse Title IV, HEA program funds so that the institution can lessen or eliminate the occurrence of grant or loan repayment for a student. For example, one commenter suggested that, to decrease the chance of a student owing a repayment of Title IV, HEA program funds, an institution should be permitted to disburse Title IV, HEA program funds as the aid is earned in accordance with the schedule for determining the amount of aid a student has earned upon withdrawal. One commenter suggested that an institution be permitted to establish disbursement dates based on withdrawal patterns at the institution.

One commenter argued that the return calculation will encourage students to borrow to avoid possible grant overpayments if they withdraw, and another commenter said that the return of unearned Title IV, HEA program funds under the proposed rules did not provide for equitable treatment for students receiving Title IV, HEA program funding compared to students that did not receive such funding. The commenters also reasoned that, because students will have less Title IV, HEA program funds to cover the institutional charges that the students will owe the institution under the institution's refund policy, the institution will be forced to increase costs for all students. One commenter believed that an institution should be allowed to pay the amount the student is responsible for returning to the Title IV, HEA programs and then be allowed to bill the student. A couple of the commenters believed that an institution could not resolve a debt owed by a student that is difficult or impossible to collect by writing-off the debt because the institution would be considered fiscally irresponsible under the 90/10 rules and other regulations if they did not pursue payment.

Many of the commenters believed that many, if not all, of the negative effects delineated here could be mitigated by requiring a student to return 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed to the student.

Discussion: The commenters are correct that these new statutory provisions may result in more aid being returned to the Title IV, HEA programs. The difference will be primarily due to the absence of rounding in 10 percent segments as done under the prior pro-rata refund provisions, and to the use of the same refund formula for successive payment periods rather than switching to a different schedule that permits institutions to earn Title IV, HEA program funds faster. It will be incumbent upon institutions to work closely with their students to ensure that they understand their responsibilities for earning the aid being provided for the payment period or period of enrollment.

Other steps can also be taken to minimize the potential hardships to students that withdraw. We note that institutions already have some flexibility in holding back some portion of disbursements of Title IV, HEA program funds if they work with the student to set up a budget. For example, an institution may disburse Federal Pell Grant program funds at such times and in such installments as it determines will best meet the student's needs. We believe that this flexibility permits an institution to tailor Title IV, HEA program disbursements to meet the circumstances of the institution's student body. Institutions will also be able to work with a student that owes a grant repayment in order to preserve the student's eligibility for additional Title IV, HEA program funds, or the student may also enter into a repayment agreement with the Department. These flexibilities provide institutions and students with opportunities to either avoid substantial repayment obligations or to minimize the impact of the repayment burden when a student withdraws.

We question the statement that students may minimize their exposure to grant overpayments by increasing their borrowing. In some instances, such borrowing could actually increase the amount of a grant overpayment if the institution is responsible for returning funds toward the student's Title IV, HEA loan, leaving the student with the entire Title IV, HEA grant repayment. Situations where a grant overpayment is required are also instances where a direct benefit was conferred upon the student because half of the repayment amount is forgiven. Under these scenarios, it is not clear how there is any disfavorable treatment of a Title IV, HEA program funds recipient when compared to a student that does not receive Title IV, HEA program funds. We also note that the impact of these new rules will vary among institutions based upon the relative numbers of students that withdraw and the points at which those withdrawals occur, as well as the relative ability of their students to repay the institutions for amounts owed under the institution's refund policies. Institutions will, over time, adjust to these new rules by changing their policies, by working more closely with their students that are considering withdrawing, and by adjusting their charges.

As requested by a commenter, we note that an institution may repay a Title IV, HEA program grant overpayment on a student's behalf and collect the debt from the student. The student will no longer be considered to owe an overpayment and will be eligible for Title IV, HEA program funds provided that all other eligibility requirements are met. An institution that repaid a grant overpayment and then forgave the student's debt to the institution would not be considered fiscally irresponsible under the 90/10 rule or other regulations. The 90/10 rule, which requires that an institution may derive no more than 90 percent of its revenues from the Title IV, HEA programs, does not require an institution to pursue payment of debts. However, if an institution does not collect a student debt for institutional charges, the institution may not include the amount of the debt as non-federal revenue in its 90/10 calculations.

The commenters' belief that the negative effects could be mitigated by requiring a student to return 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed is discussed in detail in the *Analysis of Comments and Changes* for the "Grant Overpayments" portion of § 668.22(h).

Changes: None.

Grant Overpayments

Comments: Several commenters believed that Title IV, HEA grant overpayment amounts should be minimized as much as possible. To this end, many of these commenters supported the non-federal negotiators' interpretation of the law that the statute should be read to relieve the student of 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed to the student, rather than the Secretary's interpretation of the statute that would provide that a student does not have to repay 50 percent of the student's grant repayment amount. A few commenters believe that 50 percent of a student's Pell Grant funds should be protected up-front and not included at all in the calculation of earned aid.

The commenters opposed the Secretary's position for the following reasons:

- Grant recipients, who are the students who are least able to repay an overpayment, will lose eligibility for future Title IV, HEA program aid if they do not repay the grant. A loss of Title IV, HEA program eligibility will prevent these students from re-enrolling in a postsecondary institution because they will not have the financial resources to do so. This will deny education to the people who need it most.
- Disadvantaged students will be discouraged from enrolling. They will not want to risk assuming an overpayment if they are forced to withdraw for reasons beyond their control.
- Grant recipients will be prevented from transferring to another postsecondary institution that may better meet their needs.
- Defaults will increase. Students will be forced to take out Title IV, HEA program loans to avoid possible Title IV, HEA grant overpayments if they withdraw. Many of the students will not have the resources to repay the loans and will default. The same will be true for students who owe both a grant overpayment and a loan debt and do not have the resources to satisfy both. A student may also owe the institution under the institution's refund policy, further limiting the student's ability to repay a loan.
- Up-front costs are not sufficiently acknowledged.
- The proposed rules are punitive to students who withdraw from an institution, regardless of the reason. The implication that Title IV, HEA grant recipients are trying to take advantage of the Title IV, HEA programs is unfounded. Our position is not in line with stated goal for negotiated rulemaking which is, "to develop policies that promote opportunity with responsibility."
- Our position undercuts the intent of the Pell Grant program, which is to give financially disadvantaged students the opportunity to succeed. The Pell Grant Program is an incentive program, an access program and a second chance program.
- Students at low-cost institutions would be the hardest hit because most of a student's Title IV, HEA grant funds are given directly to student.
- Every Title IV, HEA grant recipient who withdraws should not have a grant overpayment, as our position would require. Although a Title IV, HEA grant recipient who withdraws should not be considered to have completely earned the funds, the amount of the student's overpayment should be minimized as much as possible.
- Society will be impacted negatively. There will be a greater need for social programs for the students who are not able to continue their education because of a loss of Title IV, HEA program eligibility. The number of educated citizens to fill technical jobs will decrease.

A few commenters specifically argued that the statute can be read to support the nonfederal negotiators' interpretation. Some maintained that the statutory language is ambiguous. One commenter asserted that the phrase "that is the responsibility of the student to repay" refers to the grant programs to which repayments must be attributed, and it does not limit the 50 percent discount to 50 percent of the student's grant repayment amount. A few commenters noted that other similar aid recipients, such as scholarship recipients, are not asked to return any aid funds upon withdrawal. Some of these commenters asserted that monthly social security payments are not repaid if a recipient does not live out the entire month for which the payment has been received. The commenters noted that other entitlement aid sources recognize that the aid generally only funds a small portion of the expenses for which they are intended. A few commenters noted that the requirements for students to maintain satisfactory academic progress has safeguards to prevent students from abusing Title IV, HEA program funds through frequent withdrawals, because students not maintaining satisfactory academic progress will lose eligibility for Title IV, HEA program funds. A few commenters asked how to treat a situation where a grant repayment is owed and the student has a credit balance on his or her account, including whether a student would get the full benefit of a 50 percent reduction in the repayment amount in those circumstances.

Some commenters requested changes to the existing repayment terms for students who owe a grant overpayment to ensure that students who cannot repay remain eligible for additional Title IV, HEA program funds. The commenters made the following points:

- It is inequitable to allow a student to repay loan funds under the terms of a promissory note, but insist on repayment of a grant overpayment under more immediate and punitive terms.
- We should provide terms that are similar to loan repayment terms, such as a grace period, periods of deferment and forbearance, and the ability to repay over a longer period of time.
- The institutional collection effort would be too burdensome and costly to an institution. An institution should not have to collect Title IV, HEA program overpayments for us.
- We should consider community service as an alternative to repayment of an overpayment.

Several commenters requested clarification of the applicable requirements for repaying a Title IV, HEA grant overpayment. Specifically, the commenters wanted to know how long a student will lose eligibility if he or she owes an overpayment. One commenter urged us to not overregulate the repayment process and let institutions work with students to provide satisfactory repayment arrangements.

Discussion: We continue to believe that 50 percent of the student's grant repayment amount provides the level of relief to the student that the statute intended, while it requires a student to return a portion of the unearned grant assistance. As stated in the preamble to the NPRM, we believe that the conference report language for the 1998 Amendments supports this interpretation.

We note that the difference in position between the commenters and the Secretary for purposes of the proposed rules is limited to the question of how much grant overpayment should be forgiven, with the Secretary proposing to forgive half of the grant repayment amount rather than half of the total grant amount the student received. The suggestions from commenters arguing against holding students accountable for making any grant repayments are not permitted under the law. To the extent that the law could be read to support either position, we believe that we have adopted the better reading. We also note that the proposal to discount by half the amount of any grant repayment is simpler to explain to students and consistent with the principle that the repayment is a shared responsibility.

The commenters suggestion to reduce grant overpayments by half of the total grant amounts would instead create a fixed amount of grant funds that the student was never required to earn, regardless of when the student withdrew. For example, a student who was disbursed or could have been disbursed $2,000 in Title IV, HEA grant funds would be given $1,000 of the grant funds in addition to whatever amounts were earned regardless of whether he or she withdrew after 5 days of attendance or 25 days.

In response to the observation from commenters that other sources of aid are not subject to repayment requirements, such as scholarships or monthly social security benefits, the statutory basis for this grant repayment requirement distinguishes it from those programs.

We note that the requirements for students to maintain satisfactory academic progress further the goals of the Title IV, HEA programs by establishing maximum timeframes for students to complete their program, but these requirements do not replace the proposed repayment structure that is designed to allow students to earn over time the aid provided for a payment period or period of enrollment.

When a student owes a grant overpayment and there are funds available on the student's account as a credit balance, the institution would be expected to use those funds to apply toward repaying the student's grant overpayment. The actual amount of the grant repayment would still be determined under the return calculation by applying the 50 percent discount to the amount of unearned grant funds. Any funds left as a credit balance after satisfying the grant repayment would be handled in accordance with Subpart K-Cash Management of the Student Assistance General Provisions regulations.

We agree with the commenters who suggest that we revise the existing repayment terms for students who owe a grant overpayment to ensure that students who cannot repay have the opportunity to continue their eligibility for Title IV, HEA program funds. Under changes that are included in these final regulations, a student who owes an overpayment as a result of withdrawal will retain his or her eligibility for Title IV, HEA program funds for 45 days from the earlier of the date the institution sends a notification to the student of the overpayment, or the date the institution was required to notify the student of the overpayment. During those 45 days, the student will have the opportunity to take action that can continue his or her eligibility for Title IV, HEA program funds. A student may do this in one of three ways: (1) the student may repay the overpayment in full to the institution, (2) the student may sign a repayment agreement with the institution, or (3) the student may sign a repayment agreement with the Department. If a student does not take one of these three actions during the 45 day period, the student becomes ineligible for Title IV, HEA program funds on the 46th day from the earlier of the date that the institution sends a notification to the student of the overpayment, or the date the institution was required to notify the student of the overpayment. The student will remain ineligible until the student enters into a repayment agreement with the Department that re-establishes the student's eligibility.

We are sensitive to the concerns of some commenters that collection on behalf of the Department may be unduly burdensome and costly to the institution. We note that an institution is never required to enter into a repayment agreement with a student, and may refer an overpayment to the Department at any time after the student has had the opportunity to pay off the overpayment in full to the institution or sign an agreement with the Department. Because we are concerned with an institution's ability to continue to track a student to obtain payment, these final regulations provide that an institution's repayment arrangement must provide for repayment of the entire overpayment within two years of the date of the institution's determination that the student withdrew. Any amount of the overpayment that remains at the end of the two years must be referred to the Department. Other times that an institution *must* refer an overpayment to the Department are: (1) If the student did not satisfy any of the required actions for extending his or her eligibility during the 45 day period; and (2) if at any time a student does not meet the requirements of his or her repayment agreement with the institution.

A student who wishes to sign a repayment agreement with the Department will do so by contacting the Department directly. We acknowledge that an institution may not know if a student chooses to sign a repayment agreement with the Department within the 45 days. Therefore, if a student does not repay the overpayment in full to the institution or sign a repayment agreement with the institution within the 45 days, when the institution refers the overpayment to the Department, it must report the overpayment to the National Student Loan Data System (NSLDS) as a referred overpayment (an institution can refer to Dear Colleague Letter GEN–98–14 for more information on reporting overpayment information to NSLDS). We will check to see if the student signed an agreement with the Department and report the final status of the overpayment to NSLDS.

A repayment agreement with the Department will include terms that permit the student to repay the overpayment while maintaining his or her eligibility for Title IV, HEA program funds. We will seek to develop terms that will include a grace period and are sensitive to a student's financial situation. We encourage institutions that choose to enter repayment agreements with students to do the same.

We would like to stress that any overpayment resulting from a student's withdrawal remains an overpayment until the overpayment is repaid in full. We will provide further guidance on the repayment of overpayments through appropriate Department publications.

Changes: Section 668.22(h)(4) has been revised to provide repayment terms for students who owe a grant overpayment to ensure that students who cannot repay have the opportunity to continue their eligibility for Title IV, HEA program funds.

Section 668.22(j) Timeframe for the Return of Title IV, HEA Program Funds

Comments: A few commenters support the 30-day timeframe for an institution to return all Title IV, HEA program funds for which it is responsible. In particular, the commenters felt that it is reasonable to expect that FFEL Program funds be returned at the same time as all other Title IV, HEA program funds. The commenters believed that this should not be significantly burdensome to institutions because most FFEL Program funds are delivered electronically. A couple of commenters contended that an institution should be allowed 45 days, rather than 30 days to return all Title IV, HEA program funds for which it is responsible. The commenters asserted that 30 days is not enough time for an institution to adjust a student's account and perform all of the administrative functions necessary to process funds. A few commenters believed that 30 days is not a sufficient amount of time to determine if a student has unofficially withdrawn from the institutions. The commenter felt that more time was needed to permit the institution to contact professors and students.

Discussion: We agree with the commenters who believe that it is not unduly burdensome for an institution to return Title IV, HEA program funds, including FFEL Program funds, within 30 days of the date of the institution's determination that the student withdrew because these funds are often delivered electronically. This 30 day period should also be enough time for the institution to contact professors and students, as needed, to meet these responsibilities.

Changes: None.

Section 668.22(k) Consumer Information

Comments: A few commenters felt that the requirements for determining a student's earned Title IV, HEA program aid upon withdrawal would be too difficult for a student or potential student to understand, especially since the student is likely to be subject to an institutional refund policy as well. Two commenters believe that it will be difficult to communicate to a student the actual amount of Title IV, HEA program assistance that they will receive because it will vary depending on if and when a student withdraws. One commenter asked if information on determining a student's earned Title IV, HEA program aid upon withdrawal would be in *The Student Guide*, our publication for students that provides general information on Title IV, HEA program assistance. One commenter felt that the requirements for determining a student's earned Title IV, HEA program aid upon withdrawal will be more easily explained to students than the current Title IV, HEA refund requirements.

Discussion: We do not agree that the requirements for determining the treatment of Title IV, HEA program funds when a student withdraws will be too difficult for a student to understand. We note that a general write-up on the treatment of a student's Title IV, HEA program funds when he or she withdraws is contained in *The Student Guide* for the 2000–2001 award year.

Changes: None.

Section 682.207 Due Diligence in Disbursing a Loan

Comments: One commenter believed that the social security number of a parent borrower should be added to the information that a lender must provide to an institution when the lender disburses a loan directly to a borrower for attendance at a foreign institution, if the loan disbursed is a PLUS loan. The commenter felt that a parent's social security number is necessary for recordkeeping and access purposes. The commenter noted that if the institution must return funds to the lender or correspond with lender regarding an inquiry about the PLUS loan, the institution will need the parent's social security number to ensure proper identification and/or application of the funds.

Discussion: We agree that a parent's social security number is information that an institution must have for proper recordkeeping and identification of PLUS loan funds.

Changes: Section 682.207(b)(1)(v)(E)(2) has been amended to require that a lender must provide the social security number of a parent borrower that was provided on the PLUS loan application to an institution when the lender disburses a loan directly to a borrower for attendance at a foreign institution, if the loan disbursed is a PLUS loan.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (34 FR 43037–43038).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program.)

List of Subjects in 34 CFR Parts 668 and 682

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements, education, Loan programs—education, vocational education.

Dated: October 25, 1999.

Richard W. Riley,
Secretary of Education.

The Secretary amends parts 668, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is amended to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c–1, unless otherwise noted.

2. Section 668.8 is amended by revising paragraph (f)(2) to read as follows:

§ 668.8 Eligible program.

* * * * *

(f) * * *

(2) Subtract from the number of students determined under paragraph (f)(1) of this section, the number of regular students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received, in a timely manner a refund of 100 percent of their tuition and fees.

* * * * *

3. Section 668.14 is amended by revising paragraph (b)(25)(ii) to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(25) * * *

(ii) Returns of title IV, HEA program funds that the institution or its servicer may be required to make; and

* * * * *

4. Section 668.16 is amended by revising paragraphs (h)(3) and (l)(2) to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(h) * * *

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

* * * * *

(l) * * *

(2) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees;

* * * * *

5. Section 668.22 is revised to read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

(a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance (not including Federal Work-Study or the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method) that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

(2) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—

(i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and

(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.

(3) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(4) of this section and § 668.164(g)(2).

(4)(i)(A) If outstanding charges exist on the student's account, the institution may credit the student's account in accordance with § 668.164(d)(1), (d)(2), and (d)(3) with all or a portion of the post-withdrawal disbursement described in paragraph (a)(3) of this section, up to the amount of the outstanding charges.

(B) If Direct Loan, FFEL, or Federal Perkins Loan Program funds are used to credit the student's account, the institution must notify the student, or parent in the case of a PLUS loan, and provide an opportunity for the borrower to cancel all or a portion of the loan, in accordance with § 668.165(a)(2), (a)(3), (a)(4), and (a)(5).

(ii)(A) The institution must offer any amount of a post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section to the student, or the parent in the case of a PLUS loan, within 30 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section, by providing a written notification to the student, or parent in the case of PLUS loan funds. The written notification must—

(*1*) Identify the type and amount of the title IV funds that make up the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section;

(*2*) Explain that the student or parent may accept or decline some or all of the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section; and

(*3*) Advise the student or parent that no post-withdrawal disbursement will be made to the student or parent if the student or parent does not respond within 14 days of the date that the institution sent the notification, unless the institution chooses to make a post-withdrawal disbursement in accordance with paragraph (a)(4)(ii)(D) of this section.

(B) If the student or parent submits a timely response that instructs the institution to make all or a portion of the post-withdrawal disbursement, the institution must disburse the funds in the manner specified by the student or parent within 90 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(C) If the student or parent does not respond to the institution's notice, no portion of the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section may be disbursed.

(D) If a student or parent submits a late response to the institution's notice, the institution may make the post-withdrawal disbursement as instructed by the student or parent or decline to do so.

(E) If a student or parent submits a late response to the institution and the institution does not choose to make the post-withdrawal disbursement in accordance with paragraph (a)(4)(ii)(D) of this section, the institution must inform the student or parent electronically or in writing concerning the outcome of the post-withdrawal disbursement request.

(iii) A post-withdrawal disbursement must be made from available grant funds before available loan funds.

(b) *Withdrawal date for a student who withdraws from an institution that is required to take attendance.* (1) For purposes of this section, for a student who ceases attendance at an institution that is required to take attendance, including a student who does not return from an approved leave of absence, as defined in paragraph (d) of this section, or a student who takes a leave of absence that does not meet the requirements of paragraph (d) of this section, the student's withdrawal date is the last date of academic attendance as determined by the institution from its attendance records.

(2) An institution must document a student's withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(3)(i) An institution is "required to take attendance" if the institution is required to take attendance for some or all of its students by an entity outside of the institution (such as the institution's accrediting agency or state agency).

(ii) If an outside entity requires an institution to take attendance for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

(c) *Withdrawal date for a student who withdraws from an institution that is not required to take attendance.* (1) For purposes of this section, for a student who ceases attendance at an institution that is not required to take attendance, the student's withdrawal date is—

(i) The date, as determined by the institution, that the student began the withdrawal process prescribed by the institution;

(ii) The date, as determined by the institution, that the student otherwise provided official notification to the institution, in writing or orally, of his or her intent to withdraw;

(iii) If the student ceases attendance without providing official notification to the institution of his or her withdrawal in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the mid-point of the payment period (or period of enrollment, if applicable);

(iv) If the institution determines that a student did not begin the institution's withdrawal process or otherwise provide official notification (including notice from an individual acting on the student's behalf) to the institution of his or her intent to withdraw because of illness, accident, grievous personal loss, or other such circumstances beyond the student's control, the date that the institution determines is related to that circumstance;

(v) If a student does not return from an approved leave of absence as defined in paragraph (d) of this section, the date that the institution determines the student began the leave of absence; or

(vi) If a student takes a leave of absence that does not meet the requirements of paragraph (d) of this section, the date that the student began the leave of absence.

(2)(i)(A) An institution may allow a student to rescind his or her official notification to withdraw under paragraph (c)(1)(i) or (ii) of this section by filing a written statement that he or she is continuing to participate in academically-related activities and intends to complete the payment period or period of enrollment.

(B) If the student subsequently ceases to attend the institution prior to the end of the payment period or period of enrollment, the student's rescission is negated and the withdrawal date is the student's original date under paragraph (c)(1)(i) or (ii) of this section, unless a later date is determined under paragraph (c)(3) of this section.

(ii) If a student both begins the withdrawal process prescribed by the institution and otherwise provides official notification of his or her intent to withdraw in accordance with paragraphs (c)(1)(i) and (c)(1)(ii) of this section respectively, the student's withdrawal date is the earlier date unless a later date is determined under paragraph (c)(3) of this section.

(3)(i) Notwithstanding paragraphs (c)(1) and (2) of this section, an institution that is not required to take attendance may use as the student's withdrawal date a student's last date of attendance at an academically-related activity provided that the institution documents that the activity is academically related and documents the student's attendance at the activity.

(ii) An "academically-related activity" includes, but is not limited to, an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment or attending a study group that is assigned by the institution.

(4) An institution must document a student's withdrawal date determined in accordance with paragraphs (c)(1), (2), and (3) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(5)(i) "Official notification to the institution" is a notice of intent to withdraw that a student provides to an office designated by the institution.

(ii) An institution must designate one or more offices at the institution that a student may readily contact to provide official notification of withdrawal.

(d) *Approved leave of absence.* (1) For purposes of this section (and, for a title IV, HEA program loan borrower, for purposes of terminating the student's in-school status), an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

(i) The institution has a formal policy regarding leaves of absence;

(ii) The student followed the institution's policy in requesting the leave of absence;

(iii) The institution determines that there is a reasonable expectation that the student will return to the school;

(iv) The institution approved the student's request in accordance with the institution's policy;

(v) The leave of absence does not involve additional charges by the institution;

(vi) It is the only leave of absence granted to the student in a 12-month period, except as provided for in paragraph (d)(2) of this section;

(vii) The leave of absence does not exceed 180 days in any 12-month period;

(viii) Upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

(ix) If the student is a title IV, HEA program loan recipient, the institution explains to the student, prior to granting the leave of absence, the effects that the student's failure to return from a leave of absence may have on the student's loan repayment terms, including the exhaustion of some or all of the student's grace period.

(2) Notwithstanding paragraph (d)(1)(vi) of this section, provided that the total number of days of all leaves of absence does not exceed 180 days in any 12-month period, an institution may treat—

(i) One leave of absence subsequent to a leave of absence that is granted in accordance with (d)(1)(vi) of this section as an approved leave of absence if the subsequent leave of absence does not exceed 30 days and the institution determines that the subsequent leave of absence is necessary due to unforeseen circumstances; and

(ii) Subsequent leaves of absence as approved leaves of absence if the institution documents that the leaves of absence are granted for jury duty, military reasons, or circumstances covered under the Family and Medical Leave Act of 1993.

(3) If a student does not resume attendance at the institution on or before the end of a leave of absence that meets the requirements of this section, the institution must treat the student as a withdrawal in accordance with the requirements of this section.

(4) For purposes of this paragraph—

(i) The number of days in a leave of absence are counted beginning with the first day of the student's initial leave of absence in a 12-month period.

(ii) A "12-month period" begins on the first day of the student's initial leave of absence.

(iii) An institution's leave of absence policy is a "formal policy" if the policy—

(A) Is in writing and publicized to students; and

(B) Requires students to provide a written, signed, and dated request for a leave of absence prior to the leave of absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence, if the institution documents its decision and collects the written request at a later date.

(e) *Calculation of the amount of title IV assistance earned by the student.*

(1) *General.* The amount of title IV grant or loan assistance that is earned by the student is calculated by—

(i) Determining the percentage of title IV grant or loan assistance that has been earned by the student, as described in paragraph (e)(2) of this section; and

(ii) Applying this percentage to the total amount of title IV grant or loan assistance that was disbursed (and that could have been disbursed, as defined in paragraph (l)(1) of this section) to the student, or on the student's behalf, for the payment period or period of enrollment as of the student's withdrawal date.

(2) *Percentage earned.* The percentage of title IV grant or loan assistance that has been earned by the student is—

(i) Equal to the percentage of the payment period or period of enrollment that the student completed (as determined in accordance with paragraph (f) of this section) as of the student's withdrawal date, if this date occurs on or before completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours; or

(B) Clock hours scheduled to be completed for the payment period or period of enrollment for a program that is measured in clock hours; or

(ii) 100 percent, if the student's withdrawal date occurs after completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours; or

(B) Clock hours scheduled to be completed for the payment period or period of enrollment for a program measured in clock hours.

(3) *Percentage unearned.* The percentage of title IV grant or loan assistance that has not been earned by the student is calculated by determining the complement of the percentage of title IV grant or loan assistance earned by the student as described in paragraph (e)(2) of this section.

(4) *Total amount of unearned title IV assistance to be returned.* The unearned amount of title IV assistance to be returned is calculated by subtracting the amount of title IV assistance earned by the student as calculated under paragraph (e)(1) of this section from the amount of title IV aid that was disbursed to the student as of the date of the institution's determination that the student withdrew.

(5) *Use of payment period or period of enrollment.* (i) The treatment of title IV grant or loan funds if a student withdraws must be determined on a payment period basis for a student who attended a standard term-based (semester, trimester, or quarter) educational program.

(ii)(A) The treatment of title IV grant or loan funds if a student withdraws may be determined on either a payment period basis or a period of enrollment basis for a student who attended a non-term based educational program or a nonstandard term-based educational program.

(B) An institution must consistently use either a payment period or period of enrollment for all purposes of this section for each of the following categories of students who withdraw from the same non-term based or nonstandard term-based educational program:

(*1*) Students who have attended an educational program at the institution from the beginning of the payment period or period of enrollment.

(*2*) Students who re-enter the institution during a payment period or period of enrollment.

(*3*) Students who transfer into the institution during a payment period or period of enrollment.

(f) *Percentage of payment period or period of enrollment completed.* (1) For purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined—

(i) In the case of a program that is measured in credit hours, by dividing the total number of calendar days in the payment period or period of enrollment into the number of calendar days completed in that period as of the student's withdrawal date; and

(ii) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours—

(A) Completed by the student in that period as of the student's withdrawal date; or

(B) Scheduled to be completed as of the student's withdrawal date, if the clock hours completed in the period are not less than 70 percent of the hours that were scheduled to be completed by the student as of the student's withdrawal date.

(2)(i) The total number of calendar days in a payment period or period of enrollment includes all days within the period, except that scheduled breaks of at least five consecutive days are excluded from the total number of calendar days in a payment period or period of enrollment and the number of calendar days completed in that period.

(ii) The total number of calendar days in a payment period or period of enrollment does not include days in which the student was on an approved leave of absence.

(g) *Return of unearned aid, responsibility of the institution.* (1) The institution must return, in the order specified in paragraph (i) of this section, the lesser of—

(i) The total amount of unearned title IV assistance to be returned as calculated under paragraph (e)(4) of this section; or

(ii) An amount equal to the total institutional charges incurred by the student for the payment period or period of enrollment multiplied by the percentage of title IV grant or loan assistance that has not been earned by the student, as described in paragraph (e)(3) of this section.

(2) For purposes of this section, "institutional charges" are tuition, fees, room and board (if the student contracts with the institution for the room and board) and other educationally-related expenses assessed by the institution.

(3) If, for a non-term program an institution chooses to calculate the treatment of title IV assistance on a payment period basis, but the institution charges for a period that is longer than the payment period, "total institutional charges incurred by the student for the payment period" is the greater of—

(i) The prorated amount of institutional charges for the longer period; or

(ii) The amount of title IV assistance retained for institutional charges as of the student's withdrawal date.

(h) *Return of unearned aid, responsibility of the student.* (1) After the institution has allocated the unearned funds for which it is responsible in accordance with paragraph (g) of this section, the student must return assistance for which the student is responsible in the order specified in paragraph (i) of this section.

(2) The amount of assistance that the student is responsible for returning is calculated by subtracting the amount of unearned aid that the institution is required to return under paragraph (g) of this section from the total amount of unearned title IV assistance to be returned under paragraph (e)(4) of this section.

(3) The student (or parent in the case of funds due to a PLUS Loan) must return or repay, as appropriate, the amount determined under paragraph (h)(1) of this section to—

(i) Any title IV loan program in accordance with the terms of the loan; and

(ii) Any title IV grant program as an overpayment of the grant; however, a student is not required to return 50 percent of the grant assistance that is the responsibility of the student to repay under this section.

(4)(i) A student who owes an overpayment under this section remains eligible for title IV, HEA program funds through and beyond the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment if, during those 45 days the student—

(A) Repays the overpayment in full to the institution;

(B) Enters into a repayment agreement with the institution in accordance with repayment arrangements satisfactory to the institution; or

(C) Signs a repayment agreement with the Secretary, which will include terms that permit a student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds.

(ii) Within 30 days of the date of the institution's determination that the student withdrew, an institution must send a notice to any student who owes a title IV, HEA grant overpayment as a result of the student's withdrawal from the institution in order to recover the overpayment in accordance with paragraph (h)(4)(i) of this section.

(iii) If an institution chooses to enter into a repayment agreement in accordance with paragraph (h)(4)(i)(B) of this section with a student who owes an overpayment of title IV, HEA grant funds, it must—

(A) Provide the student with terms that permit the student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds; and

(B) Require repayment of the full amount of the overpayment within two years of the date of the institution's determination that the student withdrew.

(iv) An institution must refer to the Secretary, in accordance with procedures required by the Secretary, an overpayment of title IV, HEA grant funds owed by a student as a result of the student's withdrawal from the institution if—

(A) The student does not repay the overpayment in full to the institution, or enter a repayment agreement with the institution or the Secretary in accordance with paragraph (h)(4)(i) of this section within the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment;

(B) At any time the student fails to meet the terms of the repayment agreement with the institution entered into in accordance with paragraph (h)(4)(i)(B) of this section; or

(C) The student chooses to enter into a repayment agreement with the Secretary.

(v) A student who owes an overpayment is ineligible for title IV, HEA program funds—

(A) If the student does not meet the requirements in paragraph (h)(4)(i) of this section, on the day following the 45-day period in that paragraph; or

(B) As of the date the student fails to meet the terms of the repayment agreement with the institution or the Secretary entered into in accordance with paragraph (h)(4)(i) of this section.

(vi) A student who is ineligible under paragaraph (h)(4)(v) of this section regains eligibility if the student and the Secretary enter into a repayment agreement.

(i) *Order of return of title IV funds.* (1) *Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraph (g) or (h) of this section respectively, must be credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Those funds must be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Unsubsidized Federal Stafford loans.

(ii) Subsidized Federal Stafford loans.

(iii) Unsubsidized Federal Direct Stafford loans.

(iv) Subsidized Federal Direct Stafford loans.

(v) Federal Perkins loans.

(vi) Federal PLUS loans received on behalf of the student.

(vii) Federal Direct PLUS received on behalf of the student.

(2) *Remaining funds.* If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess must be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Federal Pell Grants.

(ii) Federal SEOG Program aid.

(iii) Other grant or loan assistance authorized by title IV of the HEA.

(j) *Timeframe for the return of title IV funds.* (1) An institution must return the amount of title IV funds for which it is responsible under paragraph (g) of this section as soon as possible but no later than 30 days after the date of the institution's determination that the student withdrew as defined in paragraph (l)(3) of this section.

(2) An institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 30 days after the end of the earlier of the—

(i) Payment period or period of enrollment, as appropriate, in accordance with paragraph (e)(5) of this section;

(ii) Academic year in which the student withdrew; or

(iii) Educational program from which the student withdrew.

(k) *Consumer information.* An institution must provide students with information about the requirements of this section in accordance with § 668.43.

(l) *Definitions.* For purposes of this section—

(1) Title IV grant or loan funds that "could have been disbursed" are determined in accordance with the late disbursement provisions in § 668.164(g).

(2) A "period of enrollment" is the academic period established by the institution for which institutional charges are generally assessed (i.e. length of the student's program or academic year).

(3) The "date of the institution's determination that the student withdrew" is—

(i) For a student who provides notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;

(ii) For a student who did not provide notification of his of her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance;

(iii) For a student who does not return from an approved leave of absence, the earlier of the date of the end of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

(iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.

(v) For a student who takes a leave of absence that is not approved in accordance with paragraph (d) of this section, the date that the student begins the leave of absence.

(4) A "recipient of title IV grant or loan assistance" is a student for whom the requirements of § 668.164(g)(2) have been met.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1091b)

6. Section 668.24 is amended by revising paragraph (c)(1)(iv)(C) and (c)(1)(iv)(D) to read as follows:

§ 668.24 Record retention and examinations.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(C) The amount, date, and basis of the institution's calculation of any refunds or overpayments due to or on behalf of the student, or the treatment of title IV, HEA program funds when a student withdraws; and

(D) The payment of any overpayment or the return of any title IV, HEA program funds to the title IV, HEA program fund, a lender, or the Secretary, as appropriate;

* * * * *

7. Section 668.25 is amended by revising paragraph (c)(4)(ii) to read as follows:

§ 668.25 Contracts between an institution and a third-party servicer.

* * * * *

(c) * * *

(4) * * *

(ii) Calculate and return any unearned title IV, HEA program funds to the title IV, HEA program accounts and the student's lender, as appropriate, in accordance with the provisions of §§ 668.21 and 668.22, and applicable program regulations; and

* * * * *

8. Section 668.26 is amended by revising paragraph (b)(7) to read as follows:

§ 668.26 End of an institution's participation in the title IV, HEA programs.

* * * * *

(b) * * *

(7) Continue to comply with the requirements of § 668.22 for the treatment of title IV, HEA program funds when a student withdraws.

* * * * *

9. Section 668.83 is amended by revising paragraph (c)(2)(ii)(C) to read as follows:

§ 668.83 Emergency action.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) The institution, or servicer, as applicable, lacks the administrative or financial ability to make all required payments under § 668.22; and

* * * * *

10. Section 668.92 is amended by revising paragraph (b)(2) to read as follows:

§ 668.92 Fines.

* * * * *

(b) * * *

(2) Required refunds, including the treatment of title IV, HEA program funds when a student withdraws under § 668.22.

* * * * *

11. Section 668.95 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 668.95 Reimbursements, refunds, and offsets.

* * * * *

(b) * * *

(2) * * *

(i) Refunds or returns of title IV, HEA program funds required under program regulations when a student withdraws.

* * * * *

12. Section 668.164 is amended by revising paragraph (g)(1) to read as follows:

§ 668.164 Disbursing funds.

* * * * *

(g) * * *

(1) *Ineligible students who may receive a late disbursement.* (i) An institution may make a late disbursement under paragraph (g)(2) of this section, if the student became ineligible solely because—

(A) For purposes of the Direct Loan and FFEL programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; and

(B) For purposes of the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(ii) Notwithstanding paragraph (g)(1)(i) of this section, a student who withdraws from an institution during a payment period or period of enrollment can receive additional disbursements of title IV, HEA program funds in accordance with the requirements of § 668.22 only.

* * * * *

13. Section 668.171 is amended by revising paragraph (b)(4)(i) to read as follows:

§ 668.171 General.

* * * * *

(b) * * *

(4) * * *

(i) Refunds that it is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under § 668.22 and the payment of post-withdrawal disbursements under § 668.22; and

* * * * *

14. Section 668.173 is amended by revising paragraphs (a) introductory text, (b) introductory text, (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 668.173 Refund reserve standards.

(a) *General.* The Secretary considers that an institution has sufficient cash reserves (as required under § 668.171(b)(2)) to make refunds that it is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under § 668.22 and the payment of post-withdrawal disbursements under § 668.22 if the institution—

* * * * *

(b) *Timely refunds.* An institution demonstrates that it makes required refunds, including payments required under § 668.22, if the auditor or auditors who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years—

(1) * * *

(i) The institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have received a refund or for whom a repayment of unearned title IV, HEA program funds was made or should have been made under § 668.22; or

(ii) The institution made only one late refund or repayment of unearned title IV, HEA program funds for a student in that sample; and

* * * * *

Appendix A to Part 668 [Removed]

15. Remove and reserve appendix A to part 668.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

16. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071, to 1087–2, unless otherwise noted.

17. Section 682.207 is amended as follows by:

A. Adding a new paragraph (b)(1)(v)(E).

B. Revising the OMB control number following the section.

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(E) If a lender disburses a loan directly to the borrower for attendance at an eligible foreign school, as provided in paragraph (b)(1)(v)(D)(*1*) of this section, the lender must, at the time of disbursement, notify the school of—

(*1*) The name and social security number of the student;

(*2*) The name and social security number of the parent borrower, if the loan disbursed is a PLUS loan;

(*3*) The type of loan;

(*4*) The amount of the disbursement, including the amount of any fees assessed the borrower;

(*5*) The date of the disbursement; and

(*6*) The name, address, telephone and fax number or electronic address of the lender, servicer, or guaranty agency to which any inquiries should be addressed.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0022)

18. Section 682.209 is amended by revising paragraph (i) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(i) *Treatment by a lender of borrowers' title IV, HEA program funds received from schools if the borrower withdraws.* (1) A lender shall treat a refund or a return of title IV, HEA program funds under § 668.22 when a student withdraws received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund or a return of title IV, HEA program funds under § 668.22 when a student withdraws from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under § 682.209(f) or by a Consolidation loan, the lender must transmit the amount of the payment, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund or a return of title IV, HEA program funds transmitted under paragraph (i)(2)(i) of this section, the holder of the loan promptly must provide written notice to the borrower that the holder has received the return of title IV, HEA program funds.

* * * * *

19. Section 682.604 is amended by revising paragraph (c)(4) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(4) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 668.22(d).

* * * * *

20. Section 682.605 is amended by revising paragraphs (a) and (b) to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, which includes any summer term or terms in which classes are offered but students are not generally required to attend, a school must follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal. In the case of a student who does not return from a summer break, the school must follow the procedures in § 668.22(b) or (c), as applicable, except that the school shall determine the student's withdrawal date no later than 30 days after the first day of the next scheduled term.

(b) The school must use the withdrawal date determined under § 668.22(b) or (c), as applicable for the purpose of reporting to the lender the date that the student has withdrawn from the school.

* * * * *

21. Section 682.607 is amended to read as follows:

§ 682.607 Payment of a refund or a return of title IV, HEA program funds to a lender upon a student's withdrawal.

(a) *General.* By applying for a FFEL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund or return of title IV, HEA program funds from the school that is allocable to the loan upon the borrower's withdrawal. A school—

(1) Must pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a FFEL loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Must provide simultaneous written notice to the borrower if the school makes a payment of a refund or a return of title IV, HEA program funds to a lender on behalf of that student.

(b) *Allocation of a refund or returned title IV, HEA program funds.* In determining the portion of a refund or the return of title IV, HEA program funds upon a student's withdrawal for an academic period that is allocable to a FFEL loan received by the borrower for that academic period, the school must follow the procedures established in part 668 for allocating a refund or return of title IV, HEA program funds.

(c) *Timely payment.* A school must pay a refund or a return of title IV, HEA program funds that is due in accordance with the timeframe in § 668.22(j).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

22. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

23. Section 685.211 is amended by revising paragraph (c) to read as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(c) Refunds and returns of title IV, HEA program funds from schools. The Secretary applies any refund or return of title IV, HEA program funds that the Secretary receives from a school under § 668.22 against the borrower's outstanding principal and notifies the borrower of the refund or return.

* * * * *

24. Section 685.215 is amended by revising paragraph (k) to read as follows:

§ 685.215 Consolidation.

* * * * *

(k) Refunds and returns of title IV, HEA program funds received from schools. If a lender receives a refund or return of title IV, HEA program funds from a school on a loan that has been consolidated into a Direct Consolidation Loan, the lender shall transmit the refund or return and an explanation of the source of the refund or return to the Secretary within 30 days of receipt.

* * * * *

25. Section 685.305 is amended to read as follows:

§ 685.305 Determining the date of a student's withdrawal.

(a) Except as provided in paragraph (b) of this section, a school shall follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal.

(b) For a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school shall follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal except that the school must determine the student's date of withdrawal no later than 30 days after the start of the next scheduled term.

(c) The school shall use the date determined under paragraph (a) or (b) of this section for the purpose of reporting to the Secretary the student's date of withdrawal and for determining when a refund or return of title IV, HEA program funds must be paid under § 685.306.

(Authority: 20 U.S.C. 1087 *et seq.*)

26. Section 685.306 is amended to read as follows:

§ 685.306 Payment of a refund or return of title IV, HEA program funds to the Secretary.

(a) *General.* By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that of a refund or return of title IV, HEA program funds from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund or return of title IV, HEA program funds to the Secretary on behalf of that student.

(b) *Determination, allocation, and payment of a refund or return of title IV, HEA program funds.* In determining the portion of a student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan, the school shall follow the procedures established in 34 CFR 668.22 for allocating and paying a refund or return of title IV, HEA program funds that is due.

(Authority: 20 U.S.C. 1087a *et seq.*)

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Part VIII

Department of Transportation

Federal Railroad Administration

49 CFR Chapter II and Part 209

Proposed Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Chapter II and Part 209

[FRA Docket No. FRA–1999–5685, Notice No. 4]

RIN 2130–AB33

Proposed Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Operations

AGENCY: Federal Railroad Administration (FRA), Transportation (DOT).

ACTION: Proposed rule and policy statement.

SUMMARY: The Federal Railroad Administration (FRA) and the Federal Transit Administration are jointly developing a policy concerning safety issues related to light rail transit operations taking place on the general railroad system. That policy will describe how the two agencies will coordinate use of their respective safety authorities over shared use operations. FRA is issuing this proposed policy statement to describe the extent of its statutory jurisdiction over railroad passenger operations (which covers all railroads except urban rapid transit operations not connected to the general railroad system) and explain how it will exercise that jurisdiction. The proposal also explains FRA's waiver process and discusses factors that should be addressed in any petition submitted by light rail operators and other railroads seeking approval of shared use of the general railroad system.

FRA is not required by law to provide notice and opportunity for comment on a statement of policy. However, given the number of shared use operations being planned around the nation and the level of interest in how the safety of those operations will be assured, the agency concluded that it could benefit from receiving comments before drafting its policy in final. FRA does not plan to hold a hearing, but will discuss the proposed statement with interested groups.

DATES: Submit written comments on this document on or before January 14, 2000.

ADDRESSES: Procedures for written comments: Submit one copy to the Department of Transportation Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. All docket material on the proposed statement will be available for inspection at this address and on the Internet at *http://doms.dot.gov*. (Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.) Persons desiring notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

FOR FURTHER INFORMATION CONTACT: Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6029) or David H. Kasminoff, Trial Attorney, FRA, RCC'12, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6043).

Proposed Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations

Introduction

In many areas of the United States, local communities are planning or developing passenger operations that will operate over the lines of new or existing railroads. Many of the new operations will use rail equipment commonly referred to as "light rail" due to its generally lighter construction than equipment ordinarily used by freight and most passenger railroads. Some of these light rail operations will operate over lines also used by conventional freight and passenger railroads.

The Department of Transportation (DOT) fully supports the development of railroad passenger operations as an important means of expanding transportation services in this country as we enter the new millennium, without adding additional congestion to the nation's crowded highways and airports. DOT's Federal Transit Administration (FTA) will play a critical role in financing many of these new and expanded rail systems.

DOT's most important mission is ensuring safe transportation. DOT's Federal Railroad Administration (FRA) has primary responsibility for the safety of railroad passenger operations. Consistent with FRA's safety role, in a final rule published in the **Federal Register** on December 27, 1995, FTA announced that it would begin requiring states to oversee the safety of rail fixed guideways systems not regulated by FRA. 60 FR 67034; see 49 U.S.C. 5530, 49 CFR part 659. Under its statutory scheme, FTA does not directly enforce safety statutes or regulations against rail fixed guideway systems, nor does FTA have safety inspectors who enter upon the regulated properties to perform inspections.

On May 25, 1999, FRA and FTA published a "Proposed Joint Statement of Agency Policy Concerning Shared Use of the General Railroad System by Conventional Railroads and Light Rail Transit Systems" (Proposed Joint Policy Statement), in which the two agencies explained how they intend to coordinate use of their respective safety authorities with regard to shared use operations. 64 FR 28238. The document also summarized how the process of obtaining waivers of FRA's safety regulations may work, especially where the light rail and conventional rail operations occur at different times of day. As discussed in the Proposed Joint Policy Statement, FRA is now issuing this proposed statement of agency policy concerning its safety jurisdiction over railroad passenger operations in order to provide "a thorough discussion of the extent and exercise of [its] jurisdiction and guidance on which of FRA's safety rules are likely to apply in particular operational situations." 64 FR at 28239. Because the proposed joint FRA/FTA statement provided some guidance on FRA's waiver process and this proposed statement amplifies that guidance, the two statements overlap somewhat and to some degree are repetitious. However, when final statements are issued, the guidance on the FRA waiver process will be found in FRA's statement, and the joint statement will focus only on the two agencies' plans for coordination of their respective authorities. The joint policy statement and FRA's separate statement are being handled under the same docket number, and the same comment deadline (January 14, 2000) applies to both, so there is no need for commenters to file duplicative comments. Comments can focus on both proposed statements. (The comment period on the joint policy statement was extended further to January 14, 2000 in Notice No. 3 so that the comment periods for both notices would coincide.)

Purpose of FRA's Separate Statement

The current proliferation of railroad passenger operations, especially those involving shared use of trackage by a conventional railroad and a light rail operator, creates a need for FRA to clarify the extent to which it will exercise its jurisdiction over those operations. As explained below, FRA's safety jurisdiction is very broad and extends to all entities that can be construed as railroads by virtue of their providing non-highway ground transportation over rails or electromagnetic guideways (and will extend to future railroads using other technologies not yet in use), but excludes urban rapid transit operations not connected to the general railroad system. While FRA believes its safety jurisdiction extends to nearly the entire universe of railroads, for reasons of policy it sometimes chooses not to exercise its authority over certain types of operations. For example, because of the limitations on its inspection resources and its assessment of the practical limitations of its role, FRA does not currently exercise its jurisdiction over railroads whose operations are confined to the boundaries of an industrial plant or over insular tourist operations.

FRA's issuance of final rules on passenger train emergency preparedness (63 FR 24630, May 4, 1998) and passenger equipment safety standards (64 FR 25540, May 12, 1999) makes it all the more timely for FRA to provide clarification on how it exercises its jurisdiction. This clarification will help the developers and operators of passenger systems plan their activities accordingly. As set forth in the text of the applicability sections to FRA's regulations (e.g., 49 CFR 239.3), all of FRA's regulations already apply under their own terms to passenger operations on the general railroad system of transportation; this proposed policy statement does not alter any of those requirements, but rather explains the ramifications of FRA's regulations for the various kinds of railroad passenger operations. Also, this proposed statement offers further explanation of FRA's waiver process and how FRA is likely to respond to waiver petitions under certain circumstances.

While passenger railroads offer the traveling public one of the safest forms of transportation available, passenger trains are exposed to a variety of safety hazards. Some of these hazards are endemic to the nation's rail passenger operating environment, involving the operation of passenger trains commingled with freight trains, often over track with frequent grade crossings used by heavy highway equipment. Collisions with a wide range of objects may occur at various speeds under a number of different circumstances. In addition to freight trains and highway vehicles, these objects include maintenance-of-way equipment and other passenger trains. Although most of these collisions occur at the front or rear of the train, impact into the side of the train can occur, especially at the junction of rail lines and at highway-rail grade crossings. The possibility of a passenger train collision with another train or a highway vehicle greatly concerns FRA because of the potential for significant harm, as demonstrated by actual accidents.

For example, on February 9, 1996, a near head-on collision occurred between two New Jersey Transit Rail Operations, Inc. trains on the borderline of Secaucus and Jersey City, New Jersey. Two crewmembers and one passenger were fatally injured, and 35 other individuals sustained injuries. The passenger fatality and most of the nonfatal injuries to passengers occurred on a train that was operating with the cab car (a car which provides passenger seating, as well as a location from which the train is operated) at the front of the train, followed by four passenger coaches and a locomotive pushing the train consist. (FRA Accident Investigation Report B-2-96.)

One week later, on February 16, 1996, a near-head-on collision occurred between a Maryland Rail Commuter Service (MARC) train and an Amtrak train on track owned by CSX Transportation, Inc. (CSXT) at Silver Spring, Maryland. The MARC train was operating with a cab car as the lead car in the train, followed by two passenger coaches and a locomotive pushing the consist. The collision separated the left front corner of the cab car from the roof to its sill plate, and tore off much of the forward left side of the car body. Three crewmembers and eight passengers were fatally injured, and 13 occupants of the MARC train sustained injuries. (FRA Accident Investigation Report B-3-96.)

On March 15, 1999, a southbound Amtrak train traveling 79 miles per hour and operating from Chicago, Illinois, to New Orleans, Louisiana, struck a flatbed semi-tractor trailer in Bourbonnais, Illinois, while the truck was occupying a highway-rail grade crossing. Due to the impact, two locomotives and 11 of the 14 cars in the train derailed. The train had continued upright until reaching a switch leading into a siding, where it struck two freight cars parked on the adjacent siding west of the main track. The nearest car was a gondola car loaded with steel bars and angle iron, and the second car was a covered hopper loaded with smoke stack emission fly ash. These cars were also derailed, destroying the gondola. The first six passenger cars of the Amtrak train piled up along with the tenth car, a coach. Of those cars, only the second car (a transition sleeper) was not destroyed. Fire from ruptured locomotive fuel tanks broke out, gutting the interior of the third car, a sleeping car. All but the last three cars derailed. The derailment and fire resulted in the deaths of 11 passengers, all of whom were located in the sleeping car, and injuries to 122 other passengers. (FRA Accident Investigation Report B-02-99.)

While none of these accidents involved light rail equipment, the accidents all illustrate the risks to passengers and crew presented by operations on the general railroad system. Those risks are at least as great where light rail equipment is used, especially if any potential exists for a collision with substantially heavier and structurally stronger conventional trains.

FRA's Legal Authority Over Railroad Safety

The Statutory Definition of "Railroad"

By delegation from the Secretary of Transportation, FRA administers the Federal railroad safety statutes that are codified at 49 U.S.C. 20101 through 21311 (chapters 201 through 213 of Title 49 of the United States Code) and also exercises enforcement authority in the rail mode under the hazardous materials transportation laws (49 U.S.C. Chapter 51). Under the railroad safety statutes, "railroad" is defined as follows:

> In this part—
>
> (1) "railroad"—
>
> (A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—
>
> (i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and
>
> (ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but
>
> (B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.
>
> (2) "railroad carrier" means a person providing railroad transportation.
>
> 49 U.S.C. 20102.

This definition, added by the Rail Safety Improvement Act of 1988 ("1988 Safety Act") Pub. L. No. 100-342, makes certain elements of FRA's safety jurisdiction quite clear:

- FRA, with one exception, has jurisdiction over any type of railroad regardless of the kind of equipment it uses, its connection to the general railroad system of transportation, or its status as a common carrier engaged in interstate commerce.
- Commuter and other short-haul railroad passenger operations in a metropolitan or suburban area (except for one type of short-haul operation, i.e., urban rapid transit) are railroads within FRA's jurisdiction whether or not they

are connected to the general railroad system.

- Rapid transit operations in an urban area that are not connected to the general railroad system are not within FRA's jurisdiction. This is the sole exception to FRA's jurisdiction over railroads. There is no exception for "light rail," a term not found in the statute.
- Rapid transit operations in an urban area that are connected to the general railroad system of transportation are within FRA's jurisdiction.

The statutory definition, however, also leaves some important questions unanswered. The statute does not provide a definition of either "commuter or other short-haul railroad passenger service" or "rapid transit operations in an urban area." The statute does not state clearly whether urban rapid transit is a sub-category of "other short-haul" service or is a completely separate category. The statute distinguishes commuter from rapid transit service, but does not provide the characteristics of each or indicate whether the two types of service share some characteristics. The statute does not define "connected to" but makes connection the critical issue in determining whether rapid transit operations are within FRA's jurisdiction. Nor does the statute define "the general railroad system of transportation," another critical element in determining whether urban rapid transit operations are covered.

These unanswered questions are not academic. For example, if "commuter" and "rapid transit" were defined in the statute, distinguishing between the two types of service would be easier, and FRA would merely have to determine if there is a connection to the general railroad system in order to know if it had jurisdiction. However, it is possible for a railroad system in a metropolitan area to have characteristics of both commuter rail and rapid transit. In those cases, assuming there is no clear connection to the general system, what criteria should FRA use to determine whether it has jurisdiction and, if it does, whether to assert it? A brief review of the legislative history of the definition of the term "railroad" helps to provide some answers.

Legislative History of Definition of "Railroad"

Prior to 1970, FRA administered a variety of railroad safety statutes that applied only to common carriers engaged in interstate or foreign commerce by rail. For example, FRA administered the Safety Appliance Acts, formerly 45 U.S.C. 1–16 (1982), now 49 U.S.C. 20301-20306. However, in 1970, Congress determined that there was a need for more comprehensive and uniform safety regulations in all areas of railroad operations and concluded that FRA needed to reach beyond common carriers to other types of railroads. Congress enacted the Federal Railroad Safety Act of 1970 ("FRSA"), Pub. L. No. 91–458, which (at § 202(a)) gave FRA authority to regulate "all areas of railroad safety," and conferred all powers necessary to detect and penalize violations of any rail safety law. Although that statute did not define the word "railroad," its legislative history made clear the breadth that Congress intended the word to convey. For example, the House Committee on Interstate and Foreign Commerce stated:

> The Secretary's authority to regulate extends to all areas of railroad safety. This legislation is intended to encompass all those means of rail transportation as are commonly included within the term. Thus "railroad" is not limited to the confines of "common carrier by railroad" as that language is used in the Interstate Commerce Act.

H.R. Rep. No. 91–1194, 91st Cong., 2d Sess. at 16 (1970). Congress clearly expected that this expanded jurisdiction would reach commuter and other short-haul passenger operations. The House Committee report stated: "the Secretary's jurisdiction would extend to rail operations in areas presently governed by compacts and other municipal authorities such as the Metropolitan Transit Authority in New York." *Id.*

FRA attempted to administer this broad mandate literally until the Chicago Transit Authority (CTA) successfully challenged FRA's assertion of jurisdiction over its rapid transit operations in 1977. In *Chicago Transit Authority* v. *Flohr* ("*CTA*"), 570 F.2d 1305 (7th Cir. 1977), the Seventh Circuit held that Congress did not intend the word "railroad" to apply to "urban rapid transit" such as CTA's. The court noted, in pertinent part, that:

> The CTA's rapid transit equipment consists of electrically self-powered units, substantially smaller and lighter than railroad cars; CTA rapid transit cars do not use the rails of any [conventional] railroad nor conversely, can [conventional] railroads use the CTA rails.

Id. at 1307.

The *CTA* decision did not address FRA's jurisdiction over commuter operations, and left FRA with little guidance about precisely what systems were outside of its jurisdiction. In 1982, FRA expressed to Congress a degree of doubt about the extent of its safety jurisdiction, particularly over a commuter line (Fox Chase-Newtown) operated by the Southeastern Pennsylvania Transportation Authority (SEPTA). Congress responded by including in the Rail Safety and Service Improvement Act of 1982 ("1982 Safety Act"), Pub. L. No. 97–468, a provision that made very clear its intention that FRA assert jurisdiction over commuter operations. Section 702(c) of that act stated that "all areas of railroad safety" in the FRSA includes "the safety of commuter or other short-haul rail passenger service in a metropolitan or suburban area, including any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979." The House Committee explained its intention as follows:

> This amendment is merely designed to clarify that commuter rail operations, such as the Fox Chase-Newtown line, are indeed subject to the FRSA. This clarification of FRA's jurisdiction specifically includes service operated by a common carrier by railroad or a successor operator (such as a commuter agency), but excludes rail service operated by street railways or rapid transit systems unless they are operated as a part of, or over the lines of, the general system of rail transportation.

H.R. Rep. No. 97–571, 97th Cong., 2d Sess. at 41–42 (1982). The report went on to note that "this amendment does not extend FRSA jurisdiction to rail rapid transit operations such as subways or trolley lines." *Id.*

After enactment of the 1982 Safety Act, therefore, it was clear that Congress expected FRA to assert jurisdiction over commuter operations but not over rapid transit operations unless they were connected to the general railroad system, i.e., operated as a part of, or over the lines of, that system. Rather than overturn *CTA* and direct FRA to assert authority over stand-alone rapid transit lines, Congress incorporated the basic holding of that court decision by excluding rapid transit operations that, like CTA's, did not share any trackage with the general railroad system. Although the commuter/rapid transit line was not clearly drawn, FRA knew from the legislative history that street railways, subways, and trolley lines were the kinds of operations Congress considered to be rail rapid transit. However, Congress did not incorporate the *CTA* court's distinctions about the jurisdictional relevance of types of equipment; rather, Congress clearly conferred jurisdiction even over trolleys and street railways if they were connected to the general system by virtue of operating as a part of, or over the lines of, that system.

In 1986, FRA became concerned that there could be confusion about whether its jurisdiction would extend to certain high speed transportation systems that were being contemplated. Some would-be stand-alone systems having only incidental connections with other railroads for the delivery of cars and equipment, and others would use technologies (*e.g.*, magnetic levitation) not among those traditionally used by a railroad. Jurisdictional confusion could impede the development of such systems. FRA drafted proposed legislation to eliminate any potential confusion.

In February 1987, the Secretary of Transportation submitted to Congress the proposed rail safety reauthorization legislation that FRA had recommended and drafted. That bill included a provision that would define "railroad" in the FRSA to include all forms of nonhighway ground transportation except urban rapid transit operations not connected to the general railroad system. Commuter and other short-haul passenger operations in a metropolitan or suburban area would continue to be included. High speed systems would be included even if they used technologies (such as magnetic levitation) not traditionally associated with railroads. This provision, which provided the first definition in the railroad safety statutes of the term "railroad," incorporated the 1982 Safety Act text on commuter and other short-haul systems and the 1982 legislative history on urban rapid transit. With regard to rapid transit, the bill used the phrase "connected to" the general system as an abbreviated substitute for the 1982 legislative history's direction to exclude rapid transit systems unless "operated as a part of, or over the lines of, the general system of rail transportation." H.R. Rep. No. 97–571, 97th Cong., 2d Sess. at 41–42 (1982). The provision made clear that a connection to the general system was relevant only in determining whether an urban rapid transit operation was within FRA's jurisdiction. The bill also made clear that, in the safety statutes, "railroad" was not confined to any traditional definition of the term that limited it to certain types of technology and equipment.

With only immaterial changes, Congress enacted the provision drafted and recommended by FRA in the1988 Safety Act. This is the current definition of "railroad" codified at 49 U.S.C. 20102, set forth above. The Conference Report accompanying the 1988 Safety Act stated that the definition of "railroad" was intended to clarify the Secretary's jurisdiction in the rail safety area. *See* H.R. Rep. No. 100–637, 100th Cong., 2d Sess. at 24 (1988). The Senate Report noted that, in addition to ensuring FRA's jurisdiction over high speed rail systems and emerging technologies, the provision incorporates the 1982 language concerning commuter and other short-haul passenger service. Sen. Rep. No. 100–153, 100th Cong., 2d Sess. at 13 (1988). Shortly after passage of the 1988 Safety Act, FRA issued a statement of agency policy and interpretation, found at 49 C.F.R. Part 209, Appendix A. That statement of policy included a brief explanation of the extent and exercise of FRA's safety jurisdiction in light of the statutory amendments, noting that the only exception to that jurisdiction was for "self-contained urban rapid-transit systems." *Id.*

FRA's Policy on the Exercise of Its Safety Jurisdiction

FRA distinguishes between the extent of its statutory jurisdiction (*i.e.*, the furthest reach of its authority under the safety laws, which cover all railroads except urban rapid transit operations not connected to the general system) and its exercise of that jurisdiction (the degree to which it asserts its jurisdiction). *See* 49 CFR part 209, Appendix A. FRA believes that, based on its resource limitations and the relative degree of safety risk posed by certain operations, it makes sense in some situations to limit the exercise of its jurisdiction to something less than the entire universe of railroads that could be regulated. Thus, many of its regulations exclude operations not connected to the general railroad system, and its policies exclude certain other operations (such as insular tourist operations). However, nothing precludes FRA from subsequently expanding the reach of a regulation or policy to the maximum extent permitted by statute, or from using its emergency authority under 49 U.S.C. 20104 at any time to address imminent hazards involving death or personal injury arising in operations otherwise excluded from its exercise of jurisdiction.

FRA currently exercises jurisdiction over all railroad passenger operations in the nation except: (1) Urban rapid transit operations not operated on or over the general railroad system; and (2) tourist, scenic, or excursion operations that are not operated on or over the general system and are insular. Thus, in addition to intercity passenger service, FRA exercises jurisdiction over all commuter operations (whether or not connected to other railroads in the general system), all tourist operations operated on or over the general system and those off the general system that are not insular, and all other passenger operations that are operated on or over the general system. FRA will assert jurisdiction over high speed intercity rail service even if completely separated from the general railroad system that now exists and magnetic levitation systems that are not urban rapid transit.

Some current and planned passenger operations in metropolitan areas are often referred to as "light rail." In the transit industry, this term usually refers to lightweight passenger cars operating on rails in a right-of-way that is not separated from other traffic, such as street railways and trolleys. "Heavy rail" generally refers to cars operating on rails that are in separate rights-of-way from which all other vehicular traffic is excluded. In transit terms, heavy rail is also known as "rapid rail," "subway," or "elevated railway." Conventional rail equipment such as that used by freight railroads, Amtrak, and many commuter railroads is different from, and considerably heavier and structurally stronger than, either light or heavy rail equipment, as those terms are used in the transit industry. Although this equipment is sometimes referred to as "heavy" rail, we will use the term "conventional" to avoid confusion between the different ways "heavy" is used in the transit and general railroad communities. The greatest risk inherent in the shared use of the trackage is a collision between the light rail equipment and conventional equipment. The light rail vehicles are not designed to withstand such a collision with far heavier equipment. Were such a crash to occur with either or both trains operating at high speeds, the results for passengers in the light rail vehicle could be catastrophic. (Mixing of heavy rail transit and conventional railroad operations is not likely, but would present most of the same concerns associated with light rail. Those concerns could be more or less acute, depending on operating speeds and other factors. Although heavy rail transit is not directly addressed in this notice, FRA would expect to apply similar principles to such a shared use situation.)

Rapid transit operations may involve use of either light or heavy transit equipment. However, it is the nature and location of the operation, not the nature of the equipment, that determines whether FRA has jurisdiction under the safety statutes. The sole statutory exception is for "rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. 20102. The first jurisdictional question is whether the operations are in the nature of rapid transit. If the operation is a commuter railroad, FRA has jurisdiction regardless of its connection to other railroads, and in fact considers the operation itself to be part of the general railroad system. To assist in making these determinations, FRA has devised definitions of "commuter" and "rapid transit" operations, which are set forth below in the proposed revision to its statement of policy in 49 CFR part 209, appendix A. If the operation is rapid transit, the next question is whether it is connected to the general railroad system. If so, FRA has jurisdiction despite the rapid transit nature of the system. As explained fully below, however, in the revisions to its published statement of policy, FRA considers some connections to the general system to be insufficient to warrant exercise of its jurisdiction over a transit operation. Moreover, FRA intends to exercise jurisdiction over a transit operation that does have significant connections to the general system only to the extent it is connected, not over the entire transit system.

Only two light rail operations (in San Diego and Baltimore) currently share trackage with conventional equipment. In exercising jurisdiction over these lines jointly used by light rail and a freight railroad, FRA has made specific accommodations for the differences in equipment and operations that distinguish these systems from more conventional intercity or commuter operations. We have generally addressed these joint use arrangements by exercising jurisdiction over just those elements of the system also used by the freight line, such as the track, signals, grade crossing warning devices, and dispatching. The leading example is the San Diego Trolley line. FRA has not actively exercised jurisdiction over the time-separated passenger operations on the freight line or over any aspects of the trolley's operation on its separate street trackage. There, the fact that the passenger operations are completely separated in time from the limited period during which freight operations occur was very persuasive in FRA's policy determination not to exercise its jurisdiction more aggressively.

Of course, most of FRA's regulations apply on their face to all railroads that operate on the general railroad system (as do the light rail lines in San Diego and Baltimore). In the absence of a waiver, these rules technically apply. As a policy matter, FRA has decided, up to this point, not to insist on the filing of waiver applications for the time-separated light rail operations. However, various factors call for a more clearly defined policy with regard to light rail operations on the general system. First, the number of such operations being planned is increasing quickly across the nation. The informal arrangements currently in place for the two current operations will not suffice for a wide variety of light rail operations in many locations.

Second, FRA's recent issuance of two rules (passenger train emergency preparedness and passenger equipment) dealing directly with passenger operations makes it imperative that all current or planned passenger operations to which those rules would apply have a plan for either complying with the rules or seeking a waiver from them. For example, in issuing its passenger equipment rules (49 CFR part 238) in May 1999, FRA made clear that they will apply to light rail operations on the general system, encouraged the filing of waiver applications as early as possible, and noted that the two light rail shared use operations currently in existence were covered by the rule, subject to an appropriate period of consultation and adjustment. 64 FR 25543–25544. It is clear that light rail equipment will not meet many of the passenger equipment standards, such as the 800,000 pound buff strength requirement. In that regard, FRA stated: "Light rail operators will have to seek a waiver of the requirement and will have to plan their operations in such a way as to maximize the likelihood of obtaining such a waiver." *Id.* at 25545.

Finally, from the point of view of regulatory compliance at the Federal and State levels, rail transit operators can presumably benefit from a comprehensive summary of what standards and procedures apply. This will assist in governing current conduct as well as aiding planners of such operations.

FRA's existing published statement of agency policy (49 CFR part 209, Appendix A) does not address light rail operations on the general system. Revising that published statement will provide timely guidance, especially in light of the number of joint use passenger/freight operations currently under development or being contemplated. The proposed changes to Appendix A are shown at the end of this document.

Waiver Petitions Concerning Shared Use of the General System by Light Rail and Other Railroads

Light rail operators who intend to share use of the general railroad system with conventional equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. By statute, FRA may grant a waiver of any rule or order if the waiver "is in the public interest and consistent with railroad safety." 49 U.S.C. 20103(d). Waiver petitions are reviewed by FRA's Railroad Safety Board (the "Safety Board") under the provisions of 49 CFR Part 211. Waiver petitions must contain the information required by 49 CFR 211.9. The Safety Board can, in granting a waiver, impose any conditions it concludes are necessary to assure safety or are in the public interest. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

FRA asks that the light rail operator and all other affected railroads jointly file a Petition for Approval of Shared Use. Like all waiver petitions, a Petition for Approval of Shared Use will be reviewed by the Safety Board. FTA will appoint a non-voting liaison to the Safety Board, and that person will participate in the Safety Board's consideration of all such petitions. This close cooperation between the two agencies will ensure that FRA benefits from the insights, particularly with regard to operational and financial issues, that FTA can provide about light rail operations, as well as from FTA's knowledge of and contacts with state safety oversight programs. This working relationship will also ensure that FTA has a fuller appreciation of the safety issues involved in each specific shared use operation and a voice in shaping the safety requirements that will apply to such operations.

In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. It is the intention of FTA and FRA to maintain the level of safety typical of conventional rail passenger operations while accommodating the character and needs of light rail transit operations.

General Factors To Address in a Petition for Approval of Shared Use

FRA resolves each waiver request on its own merits based on the information presented and the agency's own investigation of the issues. While FRA cannot state in advance what kinds of waivers will be granted or denied, we can provide guidance to those who may likely be requesting waivers to help ensure that their petitions address factors that FRA will no doubt consider important.

FRA's procedural rules give a general description of what any waiver petition should contain, including an explanation of the nature and extent of the relief sought; a description of the persons, equipment, installations, and locations to be covered by the waiver; an evaluation of expected costs and benefits; and relevant safety data. 49 CFR 211.9. The procedural rules, of course, are not specifically tailored to situations involving light rail operations over the general system, where waiver petitions are likely to involve many of FRA's regulatory areas. In such situations, FRA suggests that a Petition for Approval of Shared Use address the following general factors.

Description of operations. Explain the frequency and speeds of all operations on the line and the nature of the different operations. Explain the nature of any connections between the light rail and conventional operations.

- If the light rail line will operate on any segments that are not part of the general railroad system (*e.g.*, a street railway portion), describe those segments and their connection with the general system segments. In such situations, explain, using the criteria of this statement of policy, whether the light rail operation is, in the petitioner's view, a commuter operation or urban rapid transit. The petition need not address the commuter/rapid transit issue if the light rail operations will be conducted entirely as part of or over the lines of the general system.
- If the light rail and conventional operations will share any trackage, describe precisely what the respective hours of operation will be for each type of equipment. If light rail and conventional operations will occur only at different times of day, describe what means of protection will ensure that the different types of equipment are not operated simultaneously on the same track, and how protection will be provided to ensure that, where one set of operations begins and the other ends, there can be no overlap that would possibly result in a collision.
- If the light rail and conventional operations will share trackage during the same time periods, the petitioners will face a steep burden of demonstrating that extraordinary safety measures will be taken to adequately reduce the likelihood and/or severity of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable. Explain the nature of such simultaneous joint use. Describe the system of train control, the frequency and proximity of both types of operations, and all methods that would be used to prevent collisions. Include a quantitative risk assessment concerning the risk of collision between the light rail and conventional equipment under the proposed operating scenario.

Description of Equipment. Describe all equipment that will be used by the light rail and conventional operations. Where the light rail equipment does not meet the standards of 49 CFR part 238, provide specifics on the crash survivability of the light rail equipment, such as static end strength, sill height, strength of corner posts and collision posts, side strength, etc.

Given the structural incompatibility of light rail and conventional equipment, FRA has grave concerns about the prospect of operating these two types of equipment simultaneously on the same track. If the light rail and conventional operations will share trackage during the same time periods, provide an engineering analysis of the light rail equipment's resistance to damage in various types of collisions, including a worst case scenario involving a failure of the collision avoidance systems resulting in a collision between light rail and conventional equipment at track speeds.

Alternative safety measures to be employed in place of each rule for which waiver is sought. The petition should specify exactly which rules the petitioner desires to be waived. For each rule, the petition should explain exactly how a level of safety at least equal to that afforded by the FRA rule will be provided by the alternative measures the petitioner proposes.

Most light rail operations that entail some shared use of the general system will also have segments that are not on the general system. FTA's rules on rail fixed guideway systems will probably apply to those other segments. If so, the petition for waiver of FRA's rules should explain how the system safety program plan adopted under FTA's rules may affect safety on the portions of the system where FRA's rules apply. Under certain circumstances, effective implementation of such a plan may provide FRA sufficient assurance that adequate measures are in place to warrant waiver of certain FRA rules. In its petition, the light rail operator may want to certify that the subject matter addressed by the rule to be waived is addressed by the system safety plan and that the light rail operation will be monitored by the state safety oversight program. That is likely to expedite FRA's processing of the petition. FRA will analyze information submitted by the petitioner to demonstrate that a safety matter is addressed by the light rail operator's system safety plan. Alternately, conditional approval may be requested at an early stage in the project, and FRA would thereafter review the system safety program plan's status to determine readiness to commence operations. Where FRA grants a waiver, the state agency will oversee the area addressed by the waiver, but FRA will actively participate in partnership with FTA and the state agency to address any safety problems.

Factors to Address Related To Specific Regulations and Statutes

Operators of light rail systems are likely to apply for waivers of many FRA rules. FRA offers the following suggestions on factors petitioners may want to address concerning specific areas of regulation. (All "part" references are to title 49 CFR.) Parts 209 (Railroad Safety Enforcement Procedures), 211 (Rules of Practice), 212 (State Safety Participation), and 216 (Special Notice and Emergency Order Procedures) are largely procedural rules that are unlikely to be the subject of waivers, so those parts are not discussed further.

Track, Structures, and Signals

Track Safety Standards (Part 213)

For segments of a light rail line not involving operations over the general system, assuming the light rail operation meets the definition of "rapid transit," the track safety standards do not apply. However, for general system track used by both the conventional and light rail lines, the standards apply and a waiver is very unlikely. A light rail operation that owns track over which the conventional railroad operates may wish to consider assigning responsibility for that track to the other railroad. If so, the track owner must follow the procedure set forth in 49 CFR 213.5(c). Where such an assignment occurs, the owner and assignee are responsible for compliance.

Signal Systems Reporting Requirements (Part 233)

This part contains reporting requirements with respect to methods of train operation, block signal systems, interlockings, traffic control systems, automatic train stop, train control, and cab signal systems, or other similar appliances, methods, and systems. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of "rapid transit," the reporting requirements of this part do not apply. However, if a signal system failure occurs on general system track which is used by both conventional and light rail lines, and triggers the reporting requirements of this part, the light rail operator must file, or cooperate fully in the filing of, a signal system report. The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the signal system. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the signal system, that entity is the logical choice to file each signal failure report, and a waiver is very unlikely. Moreover, since a signal failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. Even if the conventional railroad is responsible for maintaining the signal systems, the light rail operator must still assist the railroad in reporting all signal failures by notifying the conventional railroad of such failures.

Grade Crossing Signal System Safety (Part 234)

This part contains minimum standards for the maintenance, inspection, and testing of highway-rail grade crossing warning systems, and also prescribes standards for the reporting of system failures and minimum actions that railroads must take when such warning systems malfunction. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of "rapid transit," the reporting requirements of this part do not apply. However, if a grade crossing accident or warning activation failure occurs on general system track which is used by both conventional and light rail lines, and triggers the reporting requirements of this part, the light rail operator must file, or cooperate to ensure the filing of, a report to FRA within 24 hours of such an accident or a grade crossing signal system failure report concerning any failure that occurs during its operations. The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the grade crossing devices. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the grade crossing devices, that entity is the logical choice to file each grade crossing signal failure report, and a waiver is very unlikely. Moreover, since a grade crossing warning device failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. However, if the conventional railroad is responsible for maintaining the grade crossing devices, the light rail operator will still have to assist the railroad in reporting all grade crossing signal failures. Moreover, regardless of which railroad is responsible for maintenance of the grade crossing signals, any railroad (including a light rail operation) operating over a crossing that has experienced an activation failure, partial activation, or false activation must take the steps required by this rule to ensure safety at those locations. While the maintaining railroad will retain all of its responsibilities in such situations (such as contacting train crews and notifying law enforcement agencies), the operating railroad must observe requirements concerning flagging, train speed, and use of the locomotive's audible warning device.

Approval of Signal System Modifications (Part 235)

This part contains instructions governing applications for approval of a discontinuance or material modification of a signal system or relief from the regulatory requirements of part 236. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of "rapid transit," the application requirements of this part do not apply, and no waiver would be necessary. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operator) owns or has responsibility for maintaining the signal system. If the conventional railroad does the maintenance, then that railroad would file any application submitted under this part; the light rail operation would have the right to protest the application under § 235.20. The petition should discuss whether the light rail operator or conventional railroad is responsible for maintaining the signal system.

Standards for Signal and Train Control Systems (Part 236)

This part contains rules, standards, and instructions governing the installation, inspection, maintenance, and repair of signal and train control systems, devices, and appliances. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of "rapid transit," the requirements of this part do not apply, and no waiver would be necessary. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operation) owns or has responsibility for installing, inspecting, maintaining, and repairing the signal system. If the light rail operation has these responsibilities, a waiver would be unlikely because a signal failure would jeopardize the safety of both the light rail operation and the conventional railroad. If the conventional railroad assumes all of the responsibilities under this part, the light rail operation would not need a waiver, but it would have to abide by all operational limitations imposed on this part and by the conventional railroad. The petition should discuss whether the light rail operator or conventional railroad has responsibility for installing, inspecting, maintaining, and repairing the signal system.

Motive Power and Equipment

Railroad Noise Emission Compliance Regulations (Part 210)

If the light rail equipment would normally meet the standards in this rule, there would be little reason to seek a waiver of it. This part has an exception for "street, suburban, or interurban electric railways unless operated as a part of the general railroad system of transportation." 49 CFR 210.3(b)(2). The petition should address whether this exception may apply to the light rail operation. The greater the integration of the light rail and conventional operations, the less likely this exception would apply. If it appears that the light rail system would neither meet the standards nor fit within the exception, the petition should address noise mitigation measures used on the system, especially as part of a system safety program.

Railroad Freight Car Safety Standards (Part 215)

A light rail operator is likely to move freight cars only in connection with maintenance-of-way work. As long as such cars are properly stenciled in accordance with section 215.305, this part does not otherwise apply, and a waiver would seem unnecessary.

Rear End Marking Devices (Part 221)

This part requires that each train occupying or operating on main line track be equipped with a display on the trailing end of the rear car of that train, and continuously illuminate or flash a marking device. The device, which must be approved by FRA, must have specific intensity, beam arc width, color, and flash rate characteristics. A light rail operation seeking a waiver of this part will need to explain how other marking devices with which it equips its vehicles, or other means such as train control, will provide the same assurances as this part of a reduced likelihood of collisions attributable to the inconspicuity of the rear end of a leading train. The petition should describe the light rail vehicle's existing marking devices (*e.g.*, headlights, brakelights, taillights, turn signal lights), and indicate whether the vehicle contains reflectors. If the light rail system will operate in both a conventional railroad environment and in streets mixed with motor vehicles, the petition should discuss whether adapting the design of the vehicle's lighting characteristics to conform to FRA's regulations would adversely affect the safety of its operations in the street environment. A light rail system that has a system safety program developed under FTA's rules may choose to discuss how that program addresses the need for equivalent levels of safety when its vehicles operate on conventional railroad corridors.

Safety Glazing Standards (Part 223)

This part provides that passenger car windows be equipped with FRA-certified glazing materials in order to reduce the likelihood of injury to railroad employees and passengers from the breakage and shattering of windows and avoid ejection of passengers from the vehicle in a collision. This part, in addition to requiring the existence of at least four emergency windows, also requires window markings and operating instructions for each emergency window, as well as for each window intended for emergency access, so as to provide the necessary information for evacuation of a passenger car. FRA will not permit operations to occur on the general system in the absence of effective alternatives to the requirements of this part that provide an equivalent level of safety. The petition should explain what equivalent safeguards are in place to provide the same assurance as part 223 that passengers and crewmembers are safe from the effects of objects striking a light rail vehicle's windows. The petition should also discuss the design characteristics of its equipment when it explains how the safety of its employees and passengers will be assured during an evacuation in the absence of windows meeting the specific requirements of this part. A light rail system that has a system safety program plan developed under FTA's rule may be able to demonstrate that the plan satisfies the safety goals of this part.

Locomotive Safety Standards (Part 229)

This part contains minimum safety standards for all locomotives, except those propelled by steam power. FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail equipment, and that others may not fit properly in the context of light rail operations. To the extent that the light rail operation encompasses the safety risks addressed by the provisions of this part, a waiver petition should explain precisely how the light rail system's practices will provide for the safe condition and operation of its locomotive equipment. In order to reduce the risk of grade crossing accidents, it is important that all locomotives used by both conventional railroads and light rail systems present the same distinctive profile to motor vehicle operators approaching grade crossings. If uniformity is sacrificed by permitting light rail systems to operate locomotives with varying levels of illumination, or with lights placed in different locations on the equipment, safety could be compromised. Accordingly, although light rail headlights are likely to be of lower candela, the vehicle design should maintain the triangular pattern required of other locomotives and cab cars to the extent practicable.

Safety Appliance Laws (49 U.S.C. 20301–20305)

Since certain safety appliance requirements (*e.g.*, automatic couplers) are statutory, they can only be "waived" by FRA under the exemption conditions set forth in 49 U.S.C. 20306. Because exemptions requested under this statutory provision do not involve a waiver of a safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for an exemption under § 20306 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

FRA may grant exemptions from the statutory safety appliance requirements in 49 U.S.C. 20301–20305 only if application of such requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." 49 U.S.C. 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that "other types of railroad equipment might similarly benefit." S. Rep. 96–614 at 8 (1980), reprinted in 1980 U.S.C.C.A.N. 1156,1164.

FRA recognizes the potential public benefits of allowing light rail systems to take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right-of-way, would be prohibitively expensive. Any petitioner requesting an exemption for technological improvements should carefully explain how being forced to comply with the existing statutory safety appliance requirements would conflict with the exemption exceptions set forth at 49 U.S.C. 20306. The petition should also show that granting the exemption is in the public interest and is consistent with assuring the safety of the light rail operator's employees and passengers.

Safety Appliance Standards (Part 231)

The regulations in this part specify the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (*e.g.*, handbrakes, ladders, handholds, steps), and directly implement a number of the statutory requirements found in 49 U.S.C. 20301–20305. These very detailed regulations are intended to ensure that sufficient safety appliances are available and able to function safely and securely as intended.

FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail operation, and that others may not fit properly in the context of light rail operations (*e.g.*, crewmembers typically do not perform yard duties from positions outside and adjacent to the light rail vehicle or near the vehicle's doors). However, to the extent that the light rail operation encompasses the safety risks addressed by the regulatory provisions of this part, a waiver petition should explain precisely how the light rail system's practices will provide for the safe operation of its passenger equipment. The petition should focus on the design specifications of the equipment, and explain how the light rail system's operating practices, and its intended use of the equipment, will satisfy the safety purpose of the regulations while providing at least an equivalent level of safety.

Passenger Equipment Safety Standards (Part 238)

This part prescribes minimum Federal safety standards for railroad passenger

VOL 64 ISS 210 NO 1 1999 UMI

equipment. Since a collision on the general railroad system between light rail equipment and conventional rail equipment could prove catastrophic, because of the significantly greater mass and structural strength of the conventional equipment, a waiver petition should describe the light rail operation's system safety program that is in place to minimize the risk of such a collision. The petition should discuss the light rail operation's operating rules and procedures, train control technology, and signal system. If the light rail operator and conventional railroad will operate simultaneously on the same track, the petition should include a quantitative risk assessment that incorporates design information and provide an engineering analysis of the light rail equipment and its likely performance in derailment and collision scenarios. The petitioner should also demonstrate that risk mitigation measures to avoid the possibility of collisions, or to limit the speed at which a collision might occur might occur, will be employed in connection with the use of the equipment on a specified shared-use rail line. This part also contains requirements concerning power brakes on passenger trains, and a petitioner seeking a waiver in this area should refer to these requirements, not those found in 49 CFR part 232.

Operating Practices

Railroad Workplace Safety (Part 214)

This part contains standards for protecting bridge workers and roadway workers. The petition should explain whether the light rail operator or conventional railroad is responsible for bridge work on shared general system trackage. If the light rail operator does the work and does similar work on segments outside of the general system, it may wish to seek a waiver permitting it to observe OSHA standards throughout its system.

There are no comparable OSHA standards protecting roadway workers. The petition should explain which operator is responsible for track and signal work on the shared segments. If the light rail operator does this work, the petition should explain how the light rail operator protects these workers. However, to the extent that protection varies significantly from FRA's rules, a waiver permitting use of the light rail system's standards could be very confusing to train crews of the conventional railroad who follow FRA's rules elsewhere. A waiver of this rule is unlikely. A petition should address how such confusion would be avoided and safety of roadway workers would be ensured.

Railroad Operating Rules (part 217)

This part requires filing of a railroad's operating rules and that employees be instructed and tested on compliance with them. A light rail operation would not likely have difficulty complying with this part. However, if a waiver is desired, the light rail system will need to explain how other safeguards it has in place provide the same assurance that operating employees are trained and periodically tested on the rules that govern train operation. A light rail system that has a system safety program plan developed under FTA's rules may be in a good position to give such an assurance.

Railroad Operating Practices (Part 218)

This part requires railroads to follow certain practices in various aspects of their operations (protection of employees working on equipment, protection of trains and locomotives from collisions in certain situations, prohibition against tampering with safety devices, protection of occupied camp cars). Some of these provisions (*e.g.*, camp cars) may be irrelevant to light rail operations. Others may not fit well in the context of light rail operations. To the extent the light rail operation presents the risks addressed by the various provisions of this part, a waiver provision should explain precisely how the light rail system's practices will address those risks. FRA is not likely to waive the prohibition against tampering with safety devices, which would seem to present no particular burden to light rail operations. Moreover, blue signal regulations, which protect employees working on or near equipment, are not likely to be waived to the extent that such work is performed on track shared by a light rail operation and a conventional railroad, where safety may best be served by uniformity.

Control of Alcohol and Drug Use (Part 219)

FRA will not permit operations to occur on the general system in the absence of effective rules governing alcohol and drug use by operating employees. FTA's own rules may provide a suitable alternative for a light rail system that is otherwise governed by those rules. However, to the extent that light rail and conventional operations occur simultaneously on the same track, FRA is not likely to apply different rules to the two operations, particularly with respect to post-accident testing, for which FRA requirements are more extensive.

Railroad Communications (Part 220)

A light rail operation is likely to have an effective system of radio communication that may provide a suitable alternative to FRA's rules. However, the greater the need for radio communication between light rail personnel (*e.g.*, train crews or dispatchers) and personnel of the conventional railroad (*e.g.*, train crews, roadway workers), the greater will be the need for standardized communication rules and, accordingly, the less likely will be a waiver.

Railroad Accident/Incident Reporting (Part 225)

FRA's accident/incident information is very important in the agency's decisionmaking on regulatory issues and strategic planning. A waiver petition should indicate precisely what types of accidents and incidents it would report, and to whom, under any alternative it proposes. FRA is not likely to waive its reporting requirements concerning train accidents or highway-rail grade crossing collisions that occur on the general railroad system. Reporting of accidents under FTA's rules is quite different and would not provide an effective substitute. However, with regard to employee injuries, the light rail operation may, absent FRA's rules, otherwise be subject to reporting requirements of FTA and OSHA and may have an interest in uniform reporting of those injuries wherever they occur on the system. Therefore, it is more likely that FRA would grant a waiver with regard to reporting of employee injuries.

Hours of Service Laws (49 U.S.C. 21101–21108)

The hours of service laws apply to all railroads subject to FRA's jurisdiction, and govern the maximum work hours and minimum off-duty periods of employees engaged in one or more of the three categories of covered service described in 49 U.S.C. 21101. If an individual performs more than one kind of covered service during a tour of duty, then the most restrictive of the applicable limitations control. Under current law, a light rail operation could request a waiver of the substantive provisions of the hours of service laws only under the "pilot project" provision described in 49 U.S.C. 21108, provided that the request is based upon a joint petition submitted by the railroad and its affected labor organizations. Because waivers requested under this statutory provision do not involve a waiver of a safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for a waiver under § 21108 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

If such a statutory waiver is desired, the light rail system will need to assure FRA that the waiver of compliance is in the public interest and consistent with railroad safety. The waiver petition should include a discussion of what fatigue management strategies will be in place for each category of covered employees in order to minimize the effects of fatigue on their job performance. However, FRA is unlikely to grant a statutory waiver covering employees of a light rail operation who dispatch the trains of a conventional railroad or maintain a signal system affecting shared use trackage.

Hours of Service Recordkeeping (Part 228)

This part prescribes reporting and recordkeeping requirements with respect to the hours of service of employees who perform the job functions set forth in 49 U.S.C. 21101. As a general rule, FRA anticipates that any waivers granted under this part will only exempt the same groups of employees for whom a light rail system has obtained a waiver of the substantive provisions of the hours of service laws under 49 U.S.C. 21108. Since it is important that FRA be able to verify that a light rail operation is complying with the on- and off-duty restrictions of the hour of service laws for all employees not covered by a waiver of the laws' substantive provisions, it is unlikely that any waiver granted of the reporting and recordkeeping requirements would exclude those employees. However, in a system with fixed work schedules that do not approach 12 hours on duty in the aggregate, it may be possible to utilize existing payroll records to verify compliance.

Passenger Train Emergency Preparedness (Part 239)

This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. FRA's expectation is that by requiring affected railroads to provide sufficient emergency egress capability and information to passengers, along with mandating that these railroads coordinate with local emergency response officials, the risk of death or injury from accidents and incidents will be lessened. A waiver petition should state whether the light rail system has an emergency preparedness plan in place under a state system safety program developed under FTA's rules for the light rail operator's separate street railway segments. Under a system safety program, a light rail operation is likely to have an effective plan for dealing with emergency situations that may provide an equivalent alternative to FRA's rules. To the extent that the light rail operation's plan relates to the various provisions of this part, a waiver petition should explain precisely how each of the requirements of this part is being addressed. The petition should especially focus on the issues of communication, employee training, passenger information, liaison relationships with emergency responders, and marking of emergency exits.

Qualification and Certification of Locomotive Engineers (Part 240)

This part contains minimum Federal safety requirements for the eligibility, training, testing, certification, and monitoring of locomotive engineers. Those who operate light rail trains may have significant effects on the safety of light rail passengers, motorists at grade crossings, and, to the extent trackage is shared with conventional railroads, the employees and passengers of those railroads. The petition should describe whether a light rail system has a system safety plan developed under FTA's rules that is likely to have an effective means of assuring that the operators, or "engineers," of its equipment receive the necessary training and have proper skills to operate a light rail vehicle in shared use on the general railroad system. The petition should explain what safeguards are in place to ensure that light rail engineers receive at least an equivalent level of training, testing, and monitoring on the rules governing train operations to that received by locomotive engineers employed by conventional railroads.

Waivers That May be Appropriate for Time-Separated Light Rail Operations

The foregoing discussion of factors to address in a petition for approval of shared use concerns all such petitions and, accordingly, is quite general. FRA is willing to provide more specific guidance on where waivers may be likely with regard to light rail operations that are time-separated from conventional operations. FRA's greatest concern with regard to shared use of the general system is a collision between light rail and conventional trains on the same track. Because the results could well be catastrophic, FRA places great emphasis on avoiding such collisions. The surest way to guarantee that such collisions will not occur is to strictly segregate light rail and conventional operations by time of day so that the two types of equipment never share the same track at the same time. This is not to say that FRA will not entertain waiver petitions that rely on other methods of collision avoidance such as sophisticated train control systems. However, petitioners who do not intend to separate light rail from conventional operations by time of day will face a very steep burden of demonstrating an acceptable level of safety. FRA does not insist that all risk of collision be eliminated. However, given the enormous severity of the likely consequences of a collision, the demonstrated risk of such an event must be extremely remote.

There are various ways of providing such strict separation by time. For example, freight operations could be limited to the hours of midnight to 5 a.m. when light rail operations are prohibited. Or, there might be both a nighttime and a mid-day window for freight operation. The important thing is that the arrangement not permit simultaneous operation on the same track by clearly defining specific segments of the day when only one type of operation may occur. Mere spacing of train movements by a train control system does not constitute this temporal separation.

FRA is very likely to grant waivers of many of its rules where complete temporal separation between light rail and conventional operations is demonstrated in the waiver request. The chart below, which differs only slightly from the one published in the joint FRA/FTA policy statement issued in May 1999, lists each of FRA's railroad safety rules and provides FRA's early thinking on whether the operator of a light rail system that shares trackage with a conventional railroad should expect to comply with the rule on the shared track or may receive a waiver. This chart assumes that the operations of the local rail transit agency on the general railroad system are completely separated in time from conventional railroad operations, and that the light rail operation poses no atypical safety hazards. FRA's procedural rules on matters such as enforcement (49 CFR parts 209 and 216), and its statutory authority to take emergency action to address an imminent hazard of death or injury, would apply to these operations in all cases.

Where waivers are granted, a light rail operator would be expected to operate under a system safety plan developed in accordance with the FTA state safety oversight program. The state safety oversight agency would be responsible for the safety oversight of the light rail operation, even on the general system, with regard to aspects of that operation for which a waiver is granted. FRA will actively participate in partnership with the state agency to address any safety problems. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

TIME-SEPARATED LIGHT RAIL OPERATIONS: POSSIBLE WAIVERS

Title 49 CFR part	Subject of rule	Likely treatment	Comments
	Track, Structures, and Signals		
213	Track Safety Standards	Comply (assuming light rail operator owns track or has been assigned responsibility for it).	If the conventional RR owns the track, light rail will have to observe speed limits for class of track.
233, 235, 236.	Signal and train control	Comply (assuming light rail operator or its contractor has responsibility for signal maintenance).	If conventional RR maintains signals, light rail will have to abide by operational limitations and report signal failures.
234	Grade Crossing Signals	Comply (assuming light rail operator or its contractor has responsibility for crossing devices).	If conventional RR maintains devices, light rail will have to comply with sections concerning activation failures and false activations.
213, Appendix C.	Bridge safety policy	Not a rule. Compliance voluntary	
	Motive Power and Equipment		
210	Noise emission	Waive	State safety oversight.
215	Freight car safety standards	Waive	State safety oversight.
221	Rear end marking devices	Waive	State safety oversight.
223	Safety glazing standards	Waive	State safety oversight.
229	Locomotive safety standards	Waive, except perhaps for alerting lights, which are important for grade crossing safety.	State safety oversight.
231*	Safety appliance standards	Waive	State safety oversight; see note below on statutory requirements.
238	Passenger equipment standards	Waive	State safety oversight.
	Operating Practices		
214	Bridge Worker	Waive	OSHA standards.
214	Roadway Worker Safety	Comply	
217	Operating Rules	Waive	State safety oversight.
218	Operating Practices	Waive, except for prohibition on tampering with safety devices related to signal system, and blue signal rules on shared track.	State safety oversight.
219	Alcohol and Drug	Waive if FTA rule otherwise applies	FTA rule may apply.
220	Radio communications	Waive, except to extent communications with freight trains and roadway workers are necessary.	State safety oversight.
225	Accident reporting and investigation	Comply with regard to train accidents and crossing accidents; waive as to injuries.	Employee injuries would be reported under FTA or OSHA rules.
228**	Hours of service recordkeeping	Waive (in concert with waiver of statute); waiver not likely for personnel who dispatch conventional RR or maintain signal system on shared use track.	See note below on possible waiver of statutory requirements.
239	Passenger train emergency preparedness	Waive	State safety oversight.
240	Engineer certification	Waive	State safety oversight.

*Certain safety appliance requirements (*e.g.*, automatic couplers) are statutory and can only be waived under the conditions set forth in 49 U.S.C. 20306, which permits exemptions if application of the requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." If consistent with employee safety, FRA could probably rely on this provision to address most light rail equipment that could not meet the standards.

**Currently, 49 U.S.C. 21108 permits FRA to waive substantive provisions of the hours of service laws based upon a joint petition by the railroad and affected labor organizations, after notice and an opportunity for a hearing. This is a "pilot project" provision, so waivers are limited to two years but may be extended for additional two-year periods after notice and an opportunity for comment.

In light of the foregoing, FRA proposes to amend its published statement of agency policy in the manner explained below.

List of Subjects in 49 CFR Part 209

Railroad safety, Reporting and recordkeeping requirements.

The Proposed Policy Statement

In consideration of the foregoing, 49 CFR part 209 is amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114, and 49 CFR 1.49.

2. Appendix A to 49 CFR part 209 is amended as follows.

A. Under the heading "The Extent and Exercise of FRA's Safety Jurisdiction," the seventh paragraph (which begins, "For example, all of FRA's regulations") is removed, and the following paragraphs are added in its place:

Appendix A to Part 209—Interim Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

* * * * *

For example, all of FRA's regulations exclude from their reach railroads whose entire operations are confined to an industrial installation (*i.e.*, "plant railroads"), such as those in steel mills that do not go beyond the plant's boundaries. *E.g.*, 49 CFR 225.3(a)(1) (accident reporting regulations). Other regulations exclude not only plant railroads but all other railroads that are not operated as a part of, or over the lines of, the general railroad system of transportation. *E.g.*, 49 CFR 214.3 (railroad workplace safety). By "general railroad system of transportation," FRA refers to the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas. Much of this network is interconnected, so that a rail vehicle can travel across the nation without leaving the system. However, mere physical connection to the system does not bring trackage within it. For example, trackage within an industrial installation that is connected to the network only by a switch for the receipt of shipments over the system is not a part of the system.

Moreover, portions of the network may lack a physical connection but still be part of the system by virtue of the nature of operations that take place there. For example, the Alaska Railroad is not physically connected to the rest of the general system but is part of it. The Alaska Railroad exchanges freight cars with other railroads by car float and exchanges passengers with interstate carriers as part of the general flow of interstate commerce. Similarly, an intercity high speed rail system with its own right of way would be part of the general system although not physically connected to it. The presence on a rail line of any of these types of railroad operations is a sure indication that such trackage is part of the general system: the movement of freight cars in trains outside the confines of an industrial installation, the movement of intercity passenger trains, or the movement of commuter trains within a metropolitan or suburban area. Urban rapid transit operations are ordinarily not part of the general system, but may have sufficient connections to that system to warrant exercise of FRA's jurisdiction (*see* discussion of passenger operations, below). Tourist railroad operations are not inherently part of the general system and, unless operated over the lines of that system, are subject to few of FRA's regulations.

The boundaries of the general system are not static. For example, a portion of the system may be purchased for the exclusive use of a single private entity and all connections, save perhaps a switch for receiving shipments, severed. Depending on the nature of the operations, this could remove that portion from the general system. The system may also grow, as with the establishment of intercity service on a brand new line. However, the same trackage cannot be both inside and outside of the general system depending upon the time of day. If trackage is part of the general system, restricting a certain type of traffic over that trackage to a particular portion of the day does not change the nature of the line—it remains the general system.

* * * * *

B. Appendix A to 49 CFR part 209 is further amended by adding the following paragraphs immediately before the section called "Extraordinary Remedies:"

* * * * *

FRA'S Policy on Jurisdiction Over Passenger Operations

Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except urban rapid transit operations not connected to the general railroad system of transportation. 49 U.S.C. 20102. Within the limits imposed by this authority, FRA exercises jurisdiction over all railroad passenger operations, regardless of the equipment they use, unless FRA has specifically stated below an exception to its exercise of jurisdiction for a particular type of operation. This policy is stated in general terms and does not change the reach of any particular regulation under its applicability section. That is, while FRA may generally assert jurisdiction over a type of operation here, a particular regulation may exclude that kind of operation from its reach. Therefore, this statement should be read in conjunction with the applicability sections of all of FRA's regulations.

Intercity Passenger Operations

FRA exercises jurisdiction over all intercity passenger operations. Because of the nature of the service they provide, they are all considered part of the general railroad system, even if not physically connected to other portions of the system.

Commuter Operations

FRA exercises jurisdiction over all commuter operations. Congress apparently intended that FRA do so when it enacted the Federal Railroad Safety Act of 1970, and made that intention very clear in the 1982 and 1988 amendments to that act. FRA has attempted to follow that mandate consistently. A commuter system's connection to other railroads is not relevant under the rail safety statutes. In fact, FRA considers commuter railroads to be part of the general railroad system regardless of such connections.

In general, FRA considers an operation to be a commuter railroad if its primary purpose is transporting commuters to and from work within a metropolitan area and no substantial portion of its operations is devoted to moving people within a city's boundaries. Examples of commuter railroads include Metra and the Northern Indiana Commuter Transportation District in the Chicago area; Virginia Railway Express and MARC in the Washington area; and Metro-North, the Long Island Railroad, New Jersey Transit, and the Port Authority Trans Hudson (PATH) in the New York area. Incidental service from point to point within a an urban area does not make an operation something other than a commuter railroad if the primary purpose is serving commuters within the broader metropolitan and suburban area.

Other Short Haul Passenger Service

The federal railroad safety statutes give FRA authority over "commuter or other short-haul railroad passenger service in a metropolitan or suburban area." 49 U.S.C. 20902. This means that, in addition to commuter service, there are other short-haul types of service that Congress intended that FRA reach. For example, a passenger system designed primarily to move intercity travelers from a downtown area to an airport, or from an airport to a resort area, would be one that does not have the transportation of commuters within a metropolitan area as its primary purpose. FRA would ordinarily exercise jurisdiction over such a system as "other short-haul service" unless it meets the definition of urban rapid transit and is not connected in a significant way to the general system.

Urban Rapid Transit Operations

One type of short-haul passenger service requires special treatment under the safety statutes: rapid transit operations in an urban area. Only these operations are excluded from FRA's jurisdiction, and only if they are not connected to the general system. FRA considers an operation to be urban rapid transit if one of its major purposes is, and a substantial portion of its operations is devoted to, moving people from point to point within an urban area where there are multiple stops within the city for that purpose. Such an operation could still have the transportation of commuters within the larger metropolitan area as one of its major purposes without being considered a commuter railroad. For example, the Washington Metro system carries large numbers of people to and from the suburbs daily, but one of its primary functions is to provide transportation within the city, where a large proportion of its station stops are located. Other examples of urban rapid transit systems include the CTA in Chicago and the subway systems in New York, Boston, and Philadelphia. The type of equipment used by such a system is not determinative of its status. However, the kinds of vehicles ordinarily associated with street railways, trolleys, subways, and elevated railways are the types of vehicles most often used for urban rapid transit operations.

FRA can exercise jurisdiction over a rapid transit operation only if it is connected to the general railroad system, but need not exercise jurisdiction over every such operation that is so connected. FRA is aware of several different ways that rapid transit operations can be connected to the general system. Our policy on the exercise of jurisdiction will depend upon the nature of the connection(s). In general, a connection that involves operation of transit equipment as a part of, or over the lines of, the general system will trigger FRA's exercise of jurisdiction. Below, we review some of the more common types of connections and their effect on the agency's exercise of jurisdiction. This is not meant to be an exhaustive list of connections.

Rapid Transit Connections Sufficient To Trigger FRA's Exercise of Jurisdiction

Certain types of connections to the general railroad system will cause FRA to exercise jurisdiction over the rapid transit line to the extent it is connected. FRA will exercise jurisdiction over the portion of a rapid transit operation that is conducted as a part of or over the lines of the general system. For example, rapid transit operations are conducted on the lines of the general system where the rapid transit operation and other railroad use the same track, and where the rapid transit operation and other railroad have a railroad crossing at grade. In the first example, FRA will exercise its jurisdiction over the operations conducted on the general system. In the second example, FRA will exercise its jurisdiction sufficiently to assure safe operations over the at-grade railroad crossing. FRA will also exercise jurisdiction to a limited extent over a rapid transit operation that, while not operated on the same tracks as the conventional railroad, is connected to the general system by virtue of operating in a shared right of way involving joint control of trains. For example, if a rapid transit line and freight railroad were to operate over a movable bridge and were subject to the same authority concerning its use (*e.g.*, the same tower operator controls trains of both operations), FRA will exercise jurisdiction in a manner sufficient to ensure safety at this point of connection. FRA believes these connections present sufficient intermingling of the rapid transit and general system operations to pose significant hazards to one or both operations.

In situations involving joint use of the same track, it does not matter that the rapid transit operation occupies the track only at times when the freight, commuter, or intercity passenger railroad that shares the track is not operating. While such time separation could provide the basis for waiver of certain of FRA's rules, it does not mean that FRA will not exercise jurisdiction. However, FRA will exercise jurisdiction over only the portions of the rapid transit operation that are conducted on the general system. For example, a rapid transit line that operates over the general system for a portion of its length but has significant portions of street railway that are not used by conventional railroads would be subject to FRA's rules only with respect to the general system portion. The remaining portions would not be subject to FRA's rules. If the non-general system portions of the rapid transit line are considered a "rail fixed guideway system" under 49 CFR part 659, those rules, issued by the Federal Transit Administration, would apply to them. Similarly, geographically isolated connections such as rail-rail crossings and common control of bridges will warrant exercise of jurisdiction only with regard to the safety of operations at those locations. However, FRA will apply its equipment, track, signal, and other regulatory requirements at this location as benchmark levels against which safety conditions in waiver applications can be tested.

Rapid Transit Connections Not Sufficient To Trigger FRA's Exercise of Jurisdiction

Although FRA could exercise jurisdiction over a rapid transit operation based on any connection it has to the general railroad system, FRA believes there are certain connections that are too minimal to warrant the exercise of its jurisdiction. For example, a rapid transit system that has a switch for receiving shipments from the general system railroad is not one over which FRA would assert jurisdiction. This assumes that the switch is used only for that purpose. In that case, any entry onto the rapid transit line by the freight railroad would be for a very short distance and solely for the purpose of dropping off or picking up cars. In this situation, the rapid transit line is in the same situation as any shipper or consignee; without this sort of connection, it cannot receive goods by rail.

Mere use of a common right of way in which the conventional railroad and rapid transit operation do not share any means of train control would not trigger FRA's exercise of jurisdiction. In this context, the presence of intrusion detection devices to alert one or both carriers to incursions by the other one would not be considered a means of common train control. These common rights of way are often designed so that the two systems function completely independently of each other. However, where transit operations share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions. *See* 49 CFR part 234. In addition, FRA and FTA will coordinate with rapid transit agencies and railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit trains and conventional equipment.

Where these very minimal connections exist, and except with regard to shared highway-rail grade crossings, FRA will not exercise jurisdiction unless and until an emergency situation arises involving such a connection, which is a very unlikely event. However, if such a system is properly considered a rail fixed guideway system, FTA's rules (49 CFR part 659) will apply to it.

Coordination of the FRA and FTA Programs

FTA's rules on rail fixed guideway systems (49 CFR part 659) apply to any such systems or portions thereof not subject to FRA's rules. On rapid transit systems that are not sufficiently connected to the general railroad system to warrant FRA's exercise of jurisdiction (as explained above), FTA's rules will apply exclusively. On those rapid transit systems that are connected to the general system in such a way as warrant exercise of FRA's jurisdiction, only those portions of the rapid transit system that entail operations over the lines of the general system will be subject to FRA's rules.

A rapid transit railroad may apply to FRA for a waiver of any FRA regulations. See 49 CFR part 211. FRA will seek FTA's views whenever a rapid transit operation petitions FRA for a waiver of its safety rules. In granting or denying any such waiver, FRA will make clear whether its rules do not apply to any segments of the operation so that it is clear where FTA's rules do apply.

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Issued in Washington, D.C., on September 30, 1999.

Jolene M. Molitoris,

Federal Railroad Administrator.

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Part IX

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845–AA03

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: We amend the regulations governing the disclosure of institutional and financial assistance information under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). These regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998.

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The changes to certain sections, particularly §§ 668.41 (b) and (c) and 668.46(c) (1)–(4) and (f), reflect changes made by Public Law 105–244 that already are in effect. Sections 668.41 (b) and (c) concern the distribution of information through electronic media and the distribution to enrolled students of a list of the information to which they are entitled upon request. Sections 668.46(c) (1)–(4) and (f) concern the reporting of crime statistics and the maintenance of a crime log. You may use these regulations prior to July 1, 2000 as guidance in complying with the relevant statutory provisions. You can find the full text of Public Law 105–244 at http://www.access.gpo.gov/nara/publaw/105publ.html.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann (Paula_Husselmann@ed.gov) or Lloyd Horwich (Lloyd_Horwich@ed.gov), U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, room 3045, Washington, DC 20202–5344. Telephone (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On August 10, 1999, we published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions in the **Federal Register** (64 FR 43582). In the preamble to the NPRM, we discussed the following proposed changes:

- Amending § 668.41 to make the information disclosure process more understandable and less burdensome, to require institutions to provide enrolled students a list of the information to which the students are entitled upon request, and to provide for institutions' use of Internet and Intranet websites for the disclosure of information.
- Amending § 668.42 by incorporating it into § 668.41.
- Amending § 668.43 to require institutions to disclose their requirements and procedures for a student to officially withdraw from the institution.
- Amending § 668.45 regarding the disclosure of completion/graduation and transfer-out rate information by implementing changes made by the 1998 Amendments, providing for a July 1 annual disclosure date, limiting the required disclosure of transfer-out rates to certain institutions, achieving greater consistency between term and nonterm-based institutions in establishing a cohort, and adding optional disclosures.
- Amending § 668.46 regarding the disclosure of campus security information to define terms (including campus, noncampus buildings or property, and public property), by excluding pastoral or professional counselors from the definition of a campus security authority, by adding new categories of crimes to be reported and new policies to be disclosed, by clarifying how to compile and depict crime statistics, by changing the date for disclosure of the annual security report to October 1, by requiring certain institutions to maintain a publicly available crime log, and by requiring institutions annually to submit their crime statistics to the Department.
- Amending § 668.47 by providing for the disclosure of additional data about revenues and expenses attributable to an institution's intercollegiate athletic activities, by clarifying the meaning of various terms, and by requiring institutions annually to submit their Equity in Athletics Disclosure Act (EADA) report to the Department.
- Amending § 668.48 to correspond with § 668.45 concerning the disclosure of completion/graduation and transfer-out rates.

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, we obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, we must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless we reopen that process or explain any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 10, 1999, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. We invited comments on the proposed regulations by September 15, 1999, and 132 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

These regulations reflect the following changes to the proposed regulations in response to public comment:

- In § 668.43(a)(3), we clarified that the requirement that institutions disclose when a student must officially withdraw from the institution includes the disclosure of the procedures for a student to officially withdraw.
- In § 668.46(a) we revised the definition of a professional counselor to no longer require that the counselor be an employee of the institution. In addition, we revised the definition by replacing the term "psychological counseling" with the term "mental health counseling."
- We moved the definition of "prospective employee" from § 668.46(a) to § 668.41(a).

We added § 668.46(c)(2) to require institutions to record a crime statistic in their annual security reports for the calendar year in which the crime was reported to a campus security authority.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make.

Analysis of Comments and Changes

Subpart D—Institutional and Financial Assistance Information for Students

These regulations (1) retitle Subpart D from "Student Consumer Information Services" to "Institutional and Financial Assistance Information for Students," to conform the title to that of section 485 of the HEA, and (2) renumber the sections.

These regulations remove current § 668.42 and incorporate it into § 668.41. Therefore, these regulations renumber current §§ 668.43–49 as §§ 668.42–48; the preamble to these regulations refers to the new section numbers.

Questions and Recommendations:

Commenters requested guidance on implementation of the requirements of this subpart and made recommendations concerning how we should interpret these regulations or apply them to particular circumstances. As these comments did not request any changes in the proposed regulations, we will provide separate guidance at a later date.

General Comments

The Secretary should clarify the record retention requirements that apply to these regulations.

Discussion: Section 668.24 of the Student Assistance General Provisions outlines the record retention requirements for the student financial assistance programs. Generally, a record must be maintained for three years following the end of the award year for which the record was established. With respect to the disclosure of institutional and financial assistance information provided under Subpart D of the Student Assistance General Provisions, the purpose is for the disclosure of certain information to students and other parties. Therefore, the institution must retain any record related to the disclosure for three years following the date of disclosure.

Using the campus security records as an example, an institution's annual security report to be disclosed on October 1, 2000 must include crime statistics for calendar years 1997, 1998, and 1999. The record retention regulations require the institution to retain records to substantiate the information in its 2000 report for three years from October 1, 2000. Therefore, calendar year 1997 records must be retained until October 1, 2003.

Changes: None.

Section 668.41 Reporting and Disclosure of Information-

Comments: Section 668.41 should address any information institutions participating in Title IV, HEA programs are required to disclose by any Department of Education regulation, not just information institutions are required to disclose by these regulations (34 CFR Part 668, Subpart D).

Discussion: Section 668.41 only is intended to address information that institutions are required to disclose by section 485 of the HEA. We believe that including in § 668.41 all information that institutions must disclose under any Department regulation is impractical and would be confusing.

Changes: None.

Comments: The Department should provide a chart listing all information that institutions must disclose under these regulations and the persons to whom they must disclose the information.

Discussion: We believe that § 668.41 adequately provides the information sought by this comment. However, we will provide continuing technical assistance, including the requested chart, to institutions to help them understand and comply with these regulations.

Changes: None.

Comments: The Department should clarify the level of description of required information it expects institutions to provide in the various notices of the availability of information that are required by § 668.41.

Discussion: As stated in the preamble to the NPRM (64 FR 43583), the description should be sufficient to allow students and others to understand the nature of the information and to make informed decisions about whether to request the information. We do not believe there is a need to be more prescriptive in this area.

Changes: None.

Comments: Remove the word "freshman" from the definition "first-time, freshman student" in § 668.41(a), which identifies those students that institutions must include in their cohorts for calculating completion or graduation rates, and if applicable, transfer-out rates.

Discussion: As described in § 668.45, institutions must include in their cohorts first-time, certificate- or degree-seeking, full-time undergraduate students who never have attended any institution of higher education (including in the cohort those who enroll in the fall term having attended a postsecondary institution for the first time in the prior summer term or having earned college credit in high school) regardless of their class standing. As some members of the cohort may have advanced standing, we agree that the use of the word "freshman" in the definition could cause confusion.

Changes: The term "first-time freshman student" is replaced by the term "first-time, undergraduate student" wherever it appears in these regulations (§§ 668.41(a), 668.45(a)(3)(iii), and 668.45(a)(4)(i)–(ii)).

Comments: The definition of "notice" in § 668.41(a) should not require institutions, in providing the various notices of the availability of information required by § 668.41, to provide the notices on a one-to-one basis to persons to whom the information need only be provided upon request.

Discussion: We do not believe that students and others entitled to the information will be adequately notified of its availability if the notification of its availability is made through means that do not ensure that each person who is entitled to the notification receives it. The regulation does not prescribe the method by which institutions must notify students and others of the information's availability; the regulation simply prescribes that the method used must provide individualized notice.

Changes: None.

Comments: Change §§ 668.41(c) and (d) to include completion and graduation rates, and if applicable, transfer-out rates, for athletes under § 668.48, among the required disclosures of information.

Discussion: Section 485(a)(1) of the HEA does not include completion and graduation rates of athletes in the list of information institutions must provide upon request to enrolled and prospective students. Although section 485(e) of the HEA only requires institutions to provide the report concerning athletes' graduation rates to prospective student-athletes and their parents, high school coaches, and guidance counselors, we encourage institutions to provide the report to others who request it.

Changes: None.

Comments: Rather than requiring institutions under § 668.41(c) annually to provide all enrolled students a notice listing the information to which they are entitled upon request, allow institutions to tell students, at the time the institutions distribute the notice, how often they will publish the list and how students can obtain interim changes to the list.

Discussion: Section 485(a) of the HEA specifically requires that institutions provide the list annually to all enrolled students.

Changes: None.

Comments: The Department should clarify that § 99.7, which is referenced in § 668.41(c)(1), refers to the notification requirements under the Family Educational Rights and Privacy Act of 1974 (FERPA).

Discussion: We agree.

Changes: Section 668.41(c)(1) is amended to include a reference to FERPA.

Comments: The requirement for disclosure of information about the terms and conditions of deferral of loan repayments for service under the Peace Corps Act, the Domestic Volunteer Service Act of 1973, or for comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service should be moved from § 668.41(d)(4) to § 668.42 (Financial assistance information), which addresses, among other subjects, loan repayment.

Discussion: We agree with the commenters.

Changes: Section 668.41(d)(4) in the NPRM is moved to § 668.42(c)(7).

Comments: If the purpose of the revised § 668.41 is to put all of an institution's disclosure responsibilities under subpart D in a single section, the requirement that an institution must report its crime statistics to the Department should be moved from § 668.46(g) to § 668.41.

Discussion: We agree with the commenters.

Changes: Section 668.46(g) in the NPRM is moved to § 668.41(e)(5).

Comments: The Department should clarify that the prohibition on using the Internet to provide the information required by § 668.41(f)(1)(i) to prospective student-athletes and their parents does not prohibit a national collegiate athletic association from obtaining a waiver for its members under § 668.41(f)(1)(ii) for providing the information to prospective student-athletes' high school coaches and guidance counselors by distributing the information to all secondary schools in the United States through the Internet or other electronic means.

Discussion: We did not intend the prohibition referred to above to address the means by which a national collegiate athletic association must provide the information to secondary schools in order to obtain a waiver under § 668.41(f)(1)(ii). We would be pleased to work with any such association seeking a waiver for its members to determine whether the association's proposed method of providing the information to secondary schools is sufficient to qualify for a waiver.

Changes: None.

Section 668.43 Institutional and Financial Assistance Information

Comments: The requirement in § 668.43(a)(2) and (4) that an institution disclose any refund policy with which the institution is required to comply should make clear that the requirement refers to any refund policy required by the institution's accrediting agency or State agency, not to the requirements for determining the amount of Title IV HEA program assistance that a student has earned upon withdrawal.

Discussion: Institutions are required to disclose any refund policy that requires the return of unearned funds to their source. This information includes the determination of amounts returned to the title IV programs and all other provisions of § 668.22, as well as any refund policy required by the State or the school's accrediting agency, or any institutional refund policy.

Changes: None.

Comments: In addition to an institution's disclosure of when a student must officially withdraw from the institution, the disclosure should include the institution's procedures for that withdrawal.

Discussion: Any disclosure of the requirements for withdrawal must necessarily include sufficient information for a student to know how to go about withdrawing from the institution.

Changes: We revised § 668.43(a)(3) to clarify that the requirement that an institution disclose its requirements for withdrawal includes a requirement that an institution disclose the procedures a student must follow to officially withdraw.

Section 668.45 Information on Completion or Graduation Rates

Comments: Term-based institutions whose students enroll before September 1 of a given year should continue to include these students in their fall cohort for that year.

Discussion: These regulations do not change how a term-based institution establishes its fall cohort. A term-based institution may include in its fall cohort students who enroll for the fall term before September 1 of a given year, and continue to include students who attended the institution for the first time during the summer preceding the fall term.

Changes: We revised § 668.45(a)(3)(i) to clarify that an institution's fall cohort must include all students who enter a term-based institution during the fall term, regardless of whether they enter before or after September 1.

Comments: Institutions should be allowed to disclose graduation or completion and, if applicable, transfer-out rates for their 1996 and 1997 cohorts based on a September 1 though August 31 year.

Discussion: We agree. The 1998 Amendments changed the year during which institutions must determine whether students for whom 150% of normal time for completion of their programs has elapsed have completed or graduated from the program from July 1 through June 30 to September 1 through August 31. These regulations reflect the statutory change.

Changes: None.

Comments: In determining its fall cohort, a term-based institution should be able to consider who is enrolled on another official fall reporting date other than October 15 or the end of the drop-add period to make the reporting date consistent with the Department's Integrated Postsecondary Education Data System's (IPEDS) Fall Enrollment (EF) report.

Discussion: We agree that a term-based institution's establishment of its fall cohort under this regulation should be consistent with the IPEDS data on fall enrollment.

Changes: We revised § 668.45(a)(4) to include as an entering student a first-time, full-time, certificate or degree-seeking undergraduate who is enrolled on another official fall reporting date. Also, we added to § 668.41(a) the definition of "official fall reporting date" used by the IPEDS EF report.

Comments: Transfer-out rates should be optional for all institutions for a number of reasons, including the greater regulatory burden placed on institutions that consider "substantial preparation" as part of their mission—for example, community colleges.

Discussion: The HEA requires institutions to report the rate at which students who receive substantial preparation transfer out of the institution. Therefore, the transfer-out rate cannot be made optional in all cases. These regulations limit the requirement to institutions that determine that their missions include providing substantial preparation for their students to enroll in other eligible institutions. Institutions with substantial numbers of transfers-out may have a lower graduation and completion rate than other institutions and thus may find it desirable to report a transfer-out rate. We anticipate that the required transfer-out rate will not apply to most four-year institutions. Consistent with the treatment of transfer-out students by IPEDS Graduation Rate Survey (GRS), an institution only is required to report on students whom the institution knows transferred to another institution.

Changes: None.

Comments: The Secretary should clarify that a student who leaves an undergraduate institution for study at a graduate institution is not a transfer-out under these regulations.

Discussion: For purposes of these regulations, a student who leaves an undergraduate program for study in a graduate program is not considered a transfer-out. Normally, such a student would have completed his or her program and be included in the institution's completion/graduation rate.

Changes: None.

Comments: A term-based institution should be defined as an institution at which more than fifty percent of the programs are term-based.

Discussion: Section 668.45(a)(3)(i) defines a term-based institution as an institution at which a predominant number of the programs are based on semesters, trimesters, or quarters.

Changes: None.

Comments: The Secretary should indicate that an institution's compliance with the IPEDS GRS ensures compliance with the methodological requirements of § 668.45.

Discussion: We agree. An institution's compliance with the GRS constitutes compliance with the methodological provisions of §§ 668.45 and 668.48.

Changes: None.

Section 668.46 Institutional Security Policies and Crime Statistics

Comments: Numerous commenters requested that we specifically exclude certain types of employees from the definition of a campus security authority—for example, lay counselors, dormitory rectors, physicians, access monitors, rape crisis counselors, doctoral counselor trainees, campus ombudsmen, and teaching faculty. Other commenters requested clarification about whether student security personnel organized by student governments and concert security employees who work for the institution are campus security authorities. Still other commenters asked us to define who is an "official" of the institution, and what "significant responsibility" for student and campus activities means.

Discussion: To determine if an institution must collect crime statistics from a particular employee or official, or provide a timely warning report based on crimes reported or known to the employee or official, an institution must first determine if that official is a campus security authority. In addition to campus law enforcement staff, a campus security authority is someone with "significant responsibility for student and campus activities." Absent this responsibility, an employee is not a campus security authority.

For example, a dean of students who oversees student housing, a student center, or student extra-curricular activities, has significant responsibility for student and campus activities. Similarly, a director of athletics, team coach, and faculty advisor to a student group also have significant responsibility for student and campus activities.

A single teaching faculty member is unlikely to have significant responsibility for student and campus activities, except when serving as an advisor to a student group. A physician in a campus health center or a counselor in a counseling center whose only responsibility is to provide care to students are unlikely to have significant responsibility for student and campus activities. Also, clerical staff are unlikely to have significant responsibility for student and campus activities.

Since official responsibilities and job titles vary significantly from campus to campus, we believe that including a list of specific titles in the regulation is not practical. However, as stated above, we will provide additional guidance at a later date concerning interpretation of these regulations.

Changes: None.

Comments: The definition of campus security authority should include only individuals working for the institution's campus security office or expressly performing a campus security function at the institution's request.

Discussion: We believe that the new definition and guidance reflect the reality that on colleges campuses, officials who are not police officials or acting as event security at student or campus events nevertheless are responsible for students' or campus security. We also believe the new definition and guidance will better enable institutions to determine who is a campus security authority and thereby to comply with these regulations.

Changes: None.

Comments: Commenters asked a number of questions regarding our interpretation of the definitions of campus, noncampus building or property, and public property, such as what it means for an institution to "control" property, what "adjacent to and accessible from the campus" means, and whether remote classrooms or remote research stations are included in the definition of campus. Commenters also asked how different institutions that occupy the same general geographic area and different campuses of an institution should report crimes.

Discussion: We will respond to commenters' questions concerning implementation of the proposed regulations, and will post our answers on our Information for Financial Assistance Professionals (IFAP) website: http://ifap.ed.gov

Changes: None.

Comments: Generally, the commenters expressed much satisfaction with the compromises made during negotiated rulemaking regarding the definitions in § 668.46(a). In particular, many commenters agreed with the negotiators' decision to exclude professional and pastoral counselors from being required to report crimes discussed with them in their role as counselor. Some commenters disagreed with this exclusion, on the belief that reporting a statistic cannot identify the victim. Other commenters believed that the process of reporting statistics and avoiding double-counting can lead to identification of the victim. Many commenters stressed the importance of ensuring that students' ability to obtain confidential counseling not be compromised.

Discussion: We agree with the commenters about the importance of victims' being able to obtain confidential counseling. We also agree that although reporting a statistic is not likely, of itself, to identify the victim, the need to verify the occurrence of the crime and the need for additional information about the crime to avoid double-counting can lead to identification of the victim.

Representatives of psychological counselors informed us that counselors would, as a matter of professional obligation, be required to inform a patient at the beginning of any session that detailed information may be disclosed to other parties for statistical reporting purposes. In their experience, this disclosure has a chilling effect on access to professional counseling by causing a victim to decline or be wary of professional assistance. Given the importance of access to counseling, the availability of statistics from other sources on campus, and the provisions we included in this regulation concerning confidential reporting, we believe this regulation strikes the appropriate balance between individuals' need for counseling and the community's need for complete statistics.

Changes: None.

Comments: The definition of professional counselor should refer to mental health counseling instead of psychological counseling because the job description of a professional counselor other than a psychologist or psychiatrist might refer to mental health counseling or crisis counseling, but would be unlikely to refer to psychological counseling. This definition also should refer to independent contractors who perform professional counseling for institutions.

Discussion: We agree with the commenters that changing the definition to refer to mental health counseling rather than psychological counseling provides a clearer, more precise definition, but emphasize that the change does not expand the definition to include non-professional or informal counselors.

We believe that changing the definition by eliminating the reference to employee would clarify that the definition refers to the nature of the counselor, not the counselor's employment relationship with the institution.

Changes: We changed the definition of professional counselor in § 668.46(a) to refer to mental health counseling and to exclude the requirement that a professional counselor be an employee of the institution.

Comments: The requirement that institutions provide notice of the availability of the annual security report to each prospective employee is overly burdensome as that term is defined (an individual who has contacted an eligible institution requesting information concerning employment with the institution). The definition should be limited to individuals who apply for employment. Also, the definition should be moved from § 668.46 to § 668.41, because it applies to both sections, and the definitions in § 668.41 apply to the entire subpart, while those in § 668.46 only apply to that section.

Discussion: We do not believe that the definition is unduly burdensome, especially given the importance of prospective employees being able to make fully informed choices. The requirement applies only when an individual requests information from an institution and the institution, presumably, either will mail the individual the information or tell the individual where to obtain the information. The institution simply can include in whatever information it provides the individual a brief notice of the availability of the annual security report.

We agree that the definition should be moved to § 668.41.

Changes: The definition of prospective employee is moved from § 668.46(a) to § 668.41(a).

Comments: Some commenters objected to the requirement in § 668.46(b)(2)(ii) that institutions disclose their policies for preparing the annual disclosure of crime statistics and requested clarification of what this disclosure entails.

Discussion: This disclosure serves two important purposes. It informs the students about how and from what sources the report is prepared. Many students may not be aware that a formal police report or investigation is not needed in order for a crime report to be included in the statistics. This disclosure also requires an institution to consider what officials or offices must be canvassed in order to prepare a complete report. Incorrectly, some institutions believe that only formal police reports need be included; the disclosure allows the reader to conclude that all of the proper offices have been canvassed. The disclosure need only provide a general description of the process for preparing the report, including the offices surveyed. There is no requirement to disclose every detailed step in the report's preparation.

Changes: None.

Comments: The endorsement of anonymous crime reporting procedures is a valuable addition to the regulations. Although incomplete anonymous reports raise a number of statistical reporting questions, it is a valuable alternative for some crime victims. In some States confidential reporting of crime is illegal.

Discussion: Institutions should note that the regulations refer to confidential reporting, not anonymous reporting. The regulations do not require institutions to allow confidential reporting. Rather, § 668.46(b)(2)(iii) and (4)(iii) require institutions to state whether they allow confidential reporting, and if so, to describe their procedures for that reporting, including whether the institution encourages pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of those procedures. An institution prohibited by State law from allowing confidential reporting simply would be required to state that in its annual security report.

Changes: None.

Comments: Campus judicial processes do not determine whether a crime occurred, but rather determine only whether the accused person committed an act that violates the institution's rules, policies, or code of conduct. Therefore, the Secretary should clarify that referrals for alcohol, drug, and weapons law violations are limited to a breach of institutional policy, not law.

Discussion: The requirement that institutions report statistics for referrals for campus disciplinary action for alcohol, drug and weapons possession refers to violations of law only. For example, if a student of legal drinking age in the State in which an institution is located violates the institution's "dry-campus" policy and is referred for campus disciplinary action, that statistic should not be included in the institution's crime statistics. We believe that campus judicial officials and campus police are capable of determining whether a particular alcohol, drug, or weapons violation is a violation of law.

Changes: None.

Comment: Most commenters responded to our question regarding whether a crime should be recorded for the calendar year in which the crime was reported to the institution or the calendar year in which the crime occurred. The commenters were largely in favor of recording the crime on the date the crime was reported to the institution. The commenters indicated that for statistical purposes the FBI collects crime data based on when crimes are reported to the police, not on the date crimes occur. One reason for this standard is that crimes generally are discovered after they occur, making the date of occurrence unknown or uncertain. The commenters explained that using the date of occurrence creates additional burden for institutions.

Discussion: We appreciate the responses to our solicitation for comment on this issue. We previously have required institutions to report crime statistics according to the year in which the crimes occurred. However, we are convinced by the weight of the comments that we would eliminate a considerable burden on institutions by making this reporting requirement consistent with FBI reporting practices, and that no crime statistics will go unreported as a result of this change.

Changes: Section 668.46(c)(2) is revised to require an institution to record crime data based on when the crime was reported to a campus security authority.

Comments: The problem with reporting which crimes are hate crimes is an institution's reliance on municipal police departments to provide this information. Hate crimes are often a political issue in municipalities, which may be reluctant to release information concerning hate crimes to an institution.

Discussion: We recognize that some institutions must rely on data, including hate crime data, from outside agencies. In complying with the statistical reporting requirements, an institution must make a reasonable, good-faith effort to obtain statistics from outside agencies. An institution that makes such an effort is not responsible for the agencies' failure to provide the statistics or for verifying the accuracy of statistics the agencies provide.

Changes: None.

Comments: The requirement that institutions report hate crimes related to "any crime involving bodily injury" is inconsistent with other statistical reporting requirements. To require an institution to search for every crime that may have involved personal injury is overly burdensome.

Discussion: The requirement that institutions report hate crimes related to any crime involving bodily injury is mandated by the HEA.

Changes: None.

Comments: The Secretary should clarify that institutions are not required to report statistics for public property that surrounds noncampus buildings or property.

Discussion: These regulations do not require an institution to report crime statistics for public property surrounding noncampus buildings or property.

Changes: None.

Comments: The commenters asked that the preamble make clear that an institution must use both the UCR definitions and standards when reporting crime.

Discussion: We reiterate the language of § 668.46(c)(7) that requires an institution to use UCR guidance when defining and classifying crimes.

Changes: None.

Comments: The commenters strongly supported the use of a map to aid in the disclosure of crime statistics, and believe that a map would be very effective in indicating the areas to be considered in compiling these statistics. Some commenters believe that the Department will receive complaints or queries from the campus community that a map disclosed by an institution does not accurately depict the reporting area of a campus and recommended that the Department establish a uniform review process for the review of maps so that questions can be handled in a timely and efficient manner.

Discussion: We agree with the commenters that using a map in disclosing crime statistics can be very helpful; students and others will be able to visualize the areas covered by an institution's annual security report. We will not establish a uniform process to review institutions' maps. Anyone who believes that an institution is not in compliance with the campus security regulations may contact the Office of Student Financial Assistance regional office for the State in which the institution is located. The addresses and telephone numbers for the regional Case Team Managers are at the following Internet address: http://ed.gov/about.html.

Changes: None.

Comments: The regulations should define what is meant, for purposes of crime log entries, by the nature, date, time and general location of each crime. The Department should emphasize that institutions may withhold this information only when it is absolutely necessary to prevent a breach of victim's confidentiality.

Discussion: We believe these terms are straightforward and there is no need for more prescriptive regulation. However, we emphasize that an institution may only withhold this information when it is sufficiently clear that the victim's confidentiality is in jeopardy.

Changes: None.

Section 668.47 Report on Athletic Program Participation Rates and Financial Support Data

Comments: Section 668.47 should include a separate audit requirement for the data it requires institutions to report.

Discussion: As discussed in the preamble to the NPRM (64 FR 43588–89), the primary change to the EADA made by the 1998 Amendments was the relocation of informational requirements concerning revenues and expenses attributable to institutions' intercollegiate athletic activities from section 487(a) of the HEA (Program Participation Agreements) to section 485(g). In relocating those requirements, Congress repealed the audit requirement under section 487(a). We believe Congress' intent is clear that there should not be a separate audit requirement for the data required by § 668.47.

Changes: None.

Comments: Institutions annually submit an audited financial statement to the Department. The requirement in § 668.47 to report intercollegiate athletics financial data separately requires reformatting the data, causes the data to appear differently than in the financial statement, and is administratively burdensome. The Department should consider whether the benefit to students, parents, and others from this report outweighs the cost to institutions.

Discussion: The requirements in § 668.47 concerning the disclosure of intercollegiate athletics financial data are statutory requirements.

Changes: None.

Comments: When and to which office of the Department should institutions submit their EADA reports?

Discussion: We are developing a process for receiving the reports. When the process is complete, we will inform institutions on the Department's IFAP website: http://ifap.ed.gov. Institutions should have made the reports available to students and others by October 15, 1999.

Changes: None

Section 668.48 Report on Completion or Graduation Rates for Student-Athletes

Comments: Allow term-based institutions, in determining their athletic cohorts under § 668.48(a), to include athletes who receive athletically related student aid at any time during the academic year in which their cohorts are established, rather than only allowing those institutions to include athletes who receive aid by the end of the institution's drop-add period or by October 15.

Discussion: We stated in the preamble to the NPRM (64 FR 43589) that institutions should include in their athletic cohorts students who receive athletically related student aid by the end of the institution's drop-add period or by October 15 because we believed that would lessen institutions' burden. However, based on the weight of the comments, and because the Department's Integrated Postsecondary Education Data System's (IPEDS) Graduation Rate Survey allows term-based institutions to use the entire academic year to determine their athletic cohorts, we now change the guidance we gave in the preamble to the NPRM and allow term-based institutions to use the entire academic year to determine their athletic cohorts.

Further, we clarify that "drop-add period," in this context, refers to institutions' fall drop-add periods.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (64 FR 43589–43590).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area, at (202) 512–1530.

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(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094, 1099c and 1141, unless otherwise noted.

2. The title of subpart D is revised to read as follows:

Subpart D—Institutional and Financial Assistance Information for Students

3. Section 668.41 is revised to read as follows:

§ 668.41 Reporting and disclosure of information.

(a) *Definitions.* The following definitions apply to this subpart:

Athletically related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student-athlete simply happens to be the recipient, is not athletically related student aid.

Certificate or degree-seeking student means a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

First-time undergraduate student means an entering undergraduate who has never attended any institution of higher education. It includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

Notice means a notification of the availability of information an institution is required by this subpart to disclose, provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet website or an Intranet website does not constitute a notice.

Official fall reporting date means that date (in the fall) on which an institution must report fall enrollment data to either the State, its board of trustees or governing board, or some other external governing body.

Prospective employee means an individual who has contacted an eligible institution for the purpose of requesting information concerning employment with that institution.

Prospective student means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Undergraduate students, for purposes of §§ 668.45 and 668.48 only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate.

(b) *Disclosure through Internet or Intranet websites.* Subject to paragraphs (c)(2), (e)(2) through (4), or (g)(1)(ii) of this section, as appropriate, an institution may satisfy any requirement to disclose information under paragraph (d), (e), or (g) of this section for—

(1) Enrolled students or current employees by posting the information on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the information must be disclosed; and

(2) Prospective students or prospective employees by posting the information on an Internet website.

(c) *Notice to enrolled students.* (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to 34 CFR 99.7 (§ 99.7 sets forth the notification requirements of the Family Educational Rights and Privacy Act of 1974). The notice must list and briefly describe the information and tell the student how to obtain the information.

(2) An institution that discloses information to enrolled students as required under paragraph (d), (e), or (g) of this section by posting the information on an Internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

(i) The exact electronic address at which the information is posted; and

(ii) A statement that the institution will provide a paper copy of the information on request.

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student, on request, through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42);

(2) The institution (pursuant to § 668.43); and

(3) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(e) *Annual security report.* (1) *Enrolled students and current employees—annual security report.* By October 1 of each year, an institution must distribute, to all enrolled students and current employees, its annual security report described in § 668.46(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet website or an Intranet website, subject to paragraphs (e)(2) and (3) of this section.

(2) *Enrolled students—annual security report.* If an institution chooses to distribute its annual security report to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) *Current employees—annual security report.* If an institution chooses to distribute its annual security report to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report.* The institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report, upon request, to a prospective student or prospective employee. If the institution chooses to provide its annual security report to prospective students and prospective employees by posting the disclosure on an Internet website, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(5) *Submission to the Secretary—annual security report.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by § 668.46(c) to the Secretary.

(f) *Prospective student-athletes and their parents, high school coach and guidance counselor—report on completion or graduation rates for student-athletes.*

(1)(i) Except under the circumstances described in paragraph (f)(1)(ii) of this section, when an institution offers a prospective student-athlete athletically related student aid, it must provide to the prospective student-athlete, and his or her parents, high school coach, and guidance counselor, the report produced pursuant to § 668.48(a).

(ii) An institution's responsibility under paragraph (f)(1)(i) of this section with reference to a prospective student athlete's high school coach and guidance counselor is satisfied if—

(A) The institution is a member of a national collegiate athletic association;

(B) The association compiles data on behalf of its member institutions, which data the Secretary determines are substantially comparable to those required by § 668.48(a); and

(C) The association distributes the compilation to all secondary schools in the United States.

(2) By July 1 of each year, an institution must submit to the Secretary the report produced pursuant to § 668.48.

(g) *Enrolled students, prospective students, and the public—report on athletic program participation rates and financial support data.*

(1)(i) An institution of higher education subject to § 668.47 must, not later than October 15 of each year, make available on request to enrolled students, prospective students, and the public, the report produced pursuant to § 668.47(c). The institution must make the report easily accessible to students, prospective students, and the public and must provide the report promptly to anyone who requests it.

(ii) The institution must provide notice to all enrolled students, pursuant to paragraph (c)(1) of this section, and prospective students of their right to request the report described in paragraph (g)(1) of this section. If the institution chooses to make the report available by posting the disclosure on an Internet website or an Intranet website, it must provide in the notice the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report on request. For prospective students, the institution may not use an Intranet website for this purpose.

(2) An institution must submit the report described in paragraph (g)(1)(i) of this section to the Secretary within 15 days of making it available to students, prospective students, and the public.

(Approved by the Office of Management and Budget under control number 1845–0004 and 1845–0010)

(Authority: 20 U.S.C. 1092)

4. Section 668.42 is removed, and §§ 668.43 through 668.49 are redesignated as §§ 668.42 through 668.48, respectively.

5. Newly redesignated § 668.42 is amended by removing the word "and" at the end of paragraph (c)(5); by removing the period at the end of paragraph (c)(6), and adding, in its place, "; and"; by adding a new paragraph (c)(7) and revising the OMB control number to read as follows:

§ 668.42 Financial assistance information.

* * * * *

(c) * * *

(7) The terms and conditions under which students receiving Federal Family Education Loan or William D. Ford Federal Direct Loan assistance may obtain deferral of the repayment of the principal and interest of the loan for—

(i) Service under the Peace Corps Act (22 U.S.C. 2501);

(ii) Service under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951); or

(iii) Comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service.

(Approved by the Office of Management and Budget under control number 1845–0022)

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6. Newly redesignated § 668.43 is revised to read as follows:

§ 668.43 Institutional information.

(a) Institutional information that the institution must make readily available upon request to enrolled and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the institution;

(3) The requirements and procedures for officially withdrawing from the institution;

(4) A summary of the requirements under § 668.22 for the return of title IV grant or loan assistance;

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(6) The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(7) A description of any special facilities and services available to disabled students;

(8) The titles of persons designated under § 668.44 and information regarding how and where those persons may be contacted; and

(9) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs.

(b) The institution must make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1092)

7. Newly redesignated § 668.45 is revised to read as follows:

§ 668.45 Information on completion or graduation rates.

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, full-time undergraduate students, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, full-time undergraduate students, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of its programs based on semesters, trimesters, or quarters must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the cohort of first-time, certificate- or degree-seeking, full-time undergraduate students who enter the institution during the fall term of each year.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(iii) For purposes of the completion or graduation rate and, if applicable, transfer-out rate calculations required in paragraph (a) of this section, an institution must count as entering students only first-time undergraduate students, as defined in § 668.41(a).

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time undergraduate student who is enrolled as of October 15, the end of the institution's drop-add period, or another official reporting date as defined in § 668.41(a).

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time undergraduate student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) An institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the 12-month period ending August 31 during which 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated by the end of the 12-month period ending August 31 during which 150% of the normal time for completion or graduation from their program has lapsed; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, by the end of the 12-month period ending August 31 during which 150% of normal time for completion from that program has lapsed.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who by the end of the 12-month period ending August 31 during which 150% of the normal time for completion or graduation from the program in which they were enrolled has lapsed, have not completed or graduated but have subsequently enrolled in any program of an eligible institution for which its program provided substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may exclude students who—

(1) Have left school to serve in the Armed Forces;

(2) Have left school to serve on official church missions;

(3) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(4) Are totally and permanently disabled; or

(5) Are deceased.

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate and transfer-out rate for students described in paragraphs (d)(1) through (4) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Approved by the Office of Management and Budget under control number 1845–0004)

(Authority: 20 U.S.C. 1092)

8. Newly redesignated § 668.46 is revised to read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) *Additional definitions that apply to this section.*

Business day: Monday through Friday, excluding any day when the institution is closed.

Campus: (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

Campus security authority: (1) A campus police department or a campus security department of an institution.

(2) Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (1) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

(3) Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

(4) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined below, the official is not considered a campus security authority when acting as a pastoral or professional counselor.

Noncampus building or property: (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

(2) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

Pastoral counselor: A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Professional counselor: A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification.

Public property: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

Referred for campus disciplinary action: The referral of any student to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

(b) *Annual security report.* An institution must prepare an annual security report that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c) of this section.

(2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—

(i) Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section;

(ii) Policies for preparing the annual disclosure of crime statistics; and

(iii) A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures.

(3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of current policies concerning campus law enforcement that—

(i) Addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals;

(ii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies; and

(iii) Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

(5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.

(10) A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

(11) A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include—

(i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;

(iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;

(v) Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

(c) *Crime statistics.* (1) *Crimes that must be reported.* An institution must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of the following that are reported to local police agencies or to a campus security authority:

(i) Criminal homicide:

(A) Murder and nonnegligent manslaughter.

(B) Negligent manslaughter.

(ii) Sex offenses:

(A) Forcible sex offenses.

(B) Nonforcible sex offenses.

(iii) Robbery.

(iv) Aggravated assault.

(v) Burglary.

(vi) Motor vehicle theft.

(vii) Arson.

(viii) (A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.

(B) Persons not included in paragraph (c)(1)(viii)(A) of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

(2) *Recording crimes.* An institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority.

(3) *Reported crimes if a hate crime.* An institution must report, by category of prejudice, any crime it reports pursuant to paragraphs (c)(1)(i) through (vii) of this section, and any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

(4) *Crimes by location.* The institution must provide a geographic breakdown of the statistics reported under paragraphs (c)(1) and (3) of this section according to the following categories:

(i) On campus.

(ii) Of the crimes in paragraph (c)(4)(i) of this section, the number of crimes that took place in dormitories or other residential facilities for students on campus.

(iii) In or on a noncampus building or property.

(iv) On public property.

(5) *Identification of the victim or the accused.* The statistics required under paragraphs (c)(1) and (3) of this section may not include the identification of the victim or the person accused of committing the crime.

(6) *Pastoral and professional counselor.* An institution is not required to report statistics under paragraphs (c)(1) and (3) of this section for crimes reported to a pastoral or professional counselor.

(7) *UCR definitions.* An institution must compile the crime statistics required under paragraphs (c)(1) and (3) of this section using the definitions of crimes provided in Appendix E to this part and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS EDITION, except that in determining how to report crimes committed in a multiple-offense situation an institution must use the UCR Reporting Handbook. Copies of the UCR publications referenced in this paragraph are available from: FBI, Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306 (telephone: 304–625–2823).

(8) *Use of a map.* In complying with the statistical reporting requirements under paragraphs (c)(1) and (3) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(9) *Statistics from police agencies.* In complying with the statistical reporting requirements under paragraphs (c)(1) through (4) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police

agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

(d) *Separate campus.* An institution must comply with the requirements of this section for each separate campus.

(e) *Timely warning.* (1) An institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

(i) Described in paragraph (c)(1) and (3) of this section;

(ii) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(2) of this section or local police agencies; and

(iii) Considered by the institution to represent a threat to students and employees.

(2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

(f) *Crime log.* (1) An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

(3)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would—

(A) Jeopardize an ongoing criminal investigation or the safety of an individual;

(B) Cause a suspect to flee or evade detection; or

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

(5) The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1092)

9. Newly redesignated § 668.47 is revised to read as follows:

§ 668.47 Report on athletic program participation rates and financial support data.

(a) *Applicability.* This section applies to a co-educational institution of higher education that—

(1) Participates in any title IV, HEA program; and

(2) Has an intercollegiate athletic program.

(b) *Definitions.* The following definitions apply for purposes of this section only.

(1) *Expenses.*—(i) *Expenses* means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.

(ii) *Operating expenses* means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as "game-day expenses"), for—

(A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and

(B) Officials.

(iii) *Recruiting expenses* means all expenses an institution incurs attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.

(2) *Institutional salary* means all wages and bonuses an institution pays a coach as compensation attributable to coaching.

(3)(i) *Participants* means students who, as of the day of a varsity team's first scheduled contest—

(A) Are listed by the institution on the varsity team's roster;

(B) Receive athletically related student aid; or

(C) Practice with the varsity team and receive coaching from one or more varsity coaches.

(ii) Any student who satisfies one or more of the criteria in paragraphs (b)(3)(i)(A) through (C) of this section is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (*i.e.*, a redshirt), or for academic, medical, or other reasons.

(4) *Reporting year* means a consecutive twelve-month period of time designated by the institution for the purposes of this section.

(5) *Revenues* means revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.

(6) *Undergraduate students* means students who are consistently designated as such by the institution.

(7) *Varsity team* means a team that—

(i) Is designated or defined by its institution or an athletic association as a varsity team; or

(ii) Primarily competes against other teams that are designated or defined by their institutions or athletic associations as varsity teams.

(c) *Report.* An institution described in paragraph (a) of this section must annually, for the preceding reporting year, prepare a report that contains the following information:

(1) The number of male and the number of female full-time undergraduate students that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants as of the day of its first scheduled contest of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated.

(ii) Total operating expenses attributable to the team, except that an institution may report combined operating expenses for closely related teams, such as track and field or swimming and diving. Those combinations must be reported separately for men's and women's teams.

(iii) In addition to the data required by paragraph (c)(2)(ii) of this section, an institution may report operating expenses attributable to the team on a per-participant basis.

(iv)(A) Whether the head coach was male or female, was assigned to the team on a full-time or part-time basis, and, if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the institution.

(B) The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(v)(A) The number of assistant coaches who were male and the number of assistant coaches who were female, and, within each category, the number who were assigned to the team on a full-time or part-time basis, and, of those assigned on a part-time basis, the number who were full-time and part-time employees of the institution.

(B) The institution must consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for purposes of this report.

(3) The unduplicated head count of the individuals who were listed under paragraph (c)(2)(i) of this section as a participant on at least one varsity team, by gender.

(4)(i) Revenues derived by the institution according to the following categories (Revenues not attributable to a particular sport or sports must be included only in the total revenues attributable to intercollegiate athletic activities, and, if appropriate, revenues attributable to men's sports combined or women's sports combined. Those revenues include, but are not limited to, alumni contributions to the athletic department not targeted to a particular sport or sports, investment interest income, and student activity fees.):

(A) Total revenues attributable to its intercollegiate athletic activities.

(B) Revenues attributable to all men's sports combined.

(C) Revenues attributable to all women's sports combined.

(D) Revenues attributable to football.

(E) Revenues attributable to men's basketball.

(F) Revenues attributable to women's basketball.

(G) Revenues attributable to all men's sports except football and basketball, combined.

(H) Revenues attributable to all women's sports except basketball, combined.

(ii) In addition to the data required by paragraph (c)(4)(i) of this section, an institution may report revenues attributable to the remainder of the teams, by team.

(5) Expenses incurred by the institution, according to the following categories (Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses attributable to intercollegiate athletic activities.):

(i) Total expenses attributable to intercollegiate athletic activities.

(ii) Expenses attributable to football.

(iii) Expenses attributable to men's basketball.

(iv) Expenses attributable to women's basketball.

(v) Expenses attributable to all men's sports except football and basketball, combined.

(vi) Expenses attributable to all women's sports except basketball, combined.

(6) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, aggregately for men's teams, and aggregately for women's teams.

(7) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(8) The total amount of recruiting expenses incurred, aggregately for all men's teams, and aggregately for all women's teams.

(9)(i) The average annual institutional salary of the non-volunteer head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer head coaches of all women's teams, across all offered sports, on a per person and a per full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If a head coach has responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(10)(i) The average annual institutional salary of the non-volunteer assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer assistant coaches of women's teams, across all offered sports, on a per person and a full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If an assistant coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(Approved by the Office of Management and Budget under control number 1845–0010)

(Authority: 20 U.S.C. 1092)

§ 668.48 [Amended]

10. Newly redesignated § 668.48 is amended as follows:

A. In paragraph (a)(1), by removing "By July 1, 1997, and by every July 1 every year thereafter, each" and adding, in its place, "Annually, by July 1, an"; by removing "shall" and adding in its place "must"; and by removing "an annual" and adding, in its place "a".

B. In paragraph (a)(1)(iii), by adding ", if applicable," before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)";

C. In paragraph (a)(1)(iv), by adding ", if applicable," before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)";

D. In paragraph (a)(1)(v), by adding ", if applicable," before "transfer-out" both times it appears; by removing " § 668.46(a)(2), (3), and (4)" and adding, in its place, "§ 668.45(a)(1)"; and by removing "shall" and adding, in its place, "must";

E. In paragraph (a)(1)(vi), by adding ", if applicable," before "transfer-out" both times it appears; by adding after "recent," "completing or graduating"; by removing "§ 668.46(a)(2), (3), and (4)" and adding in its place "§ 668.45(a)(1)"; and by removing "shall" and adding in its place "must"; and

F. In paragraph (b), by removing "§ 668.46" and adding in its place "§ 668.45"; by removing "(a)(1)(iii), (a)(1)(iv), and (a)(1)(v)" and adding in their place "(a)(1)(iii) through (vi)"; and by adding ", if applicable," before "transfer-out."

G. At the end of the section, by replacing the OMB control number "1840–0719" with the number "1845–0004."

11. Appendix E is amended by removing the definition of "Murder," and by adding the following definitions before the definition of "Robbery:"

Appendix E to Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

* * * * *

Crime Definitions From the Uniform Crime Reporting Handbook

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

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Part X

Department of the Treasury

Community Development Financial
Institutions Fund

12 CFR Part 1805

Community Development Financial Institutions Program; Interim Rule and Funds Availability Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Core and Intermediary Components; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

RIN 1505–AA71

Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program) administered by the Community Development Financial Institutions Fund (Fund). The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the Fund provides financial and technical assistance in the form of grants, loans, equity investments and deposits to competitively selected CDFIs. The Fund provides such assistance to CDFIs to enhance their ability to make loans and investments, and to provide services for the benefit of designated investment areas, targeted populations, or both. After selection for such assistance, each CDFI will enter into an assistance agreement with the Fund that will include performance goals, matching funds requirements and reporting requirements. This revised interim rule: Revises, clarifies and streamlines CDFI certification and funding eligibility requirements; affords CDFIs greater flexibility in meeting matching funds requirements; clarifies the funding and certification applications' content requirements and evaluation criteria; reduces the frequency of previously approved collections of information by replacing some of the quarterly reporting requirements with semi-annual reporting requirements and other quarterly reporting requirements with annual reporting requirements; and makes other technical and clarifying changes that the Fund believes will inure to the benefit of CDFIs and entities proposing to become CDFIs.

DATES: Revised interim rule effective November 1, 1999; comments must be received in the offices of the Fund on or before January 14, 2000.

ADDRESSES: All comments concerning this interim rule should be addressed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's web site at http://www.treas.gov/cdfi.

FOR FURTHER INFORMATION CONTACT: Maurice A. Jones, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. The initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left out of the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people. Over the past several decades, community-based financial institutions have proven that strategic lending and investment activities tailored to the unique characteristics of underserved markets are highly effective in improving the economic well being of communities and the people who live there.

The Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to community development financial institutions (CDFIs), which specialize in serving underserved markets and the people who live there. CDFIs—while highly effective—are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Under the CDFI Program, the Fund provides CDFIs with financial and technical assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Applicants participate in the CDFI Program through a competitive application and selection process in which the Fund makes funding decisions based on pre-established evaluation criteria. Program participants generally receive monies from the Fund only after being certified as a CDFI and entering into an assistance agreement with the Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

This issue of the **Federal Register** contains two separate Notices of Funds Availability (NOFAs) for the CDFI Program, one for the fifth round of the Core Component of the CDFI Program and another for the fourth round of the Intermediary Component of the CDFI Program. Under the Core Component, the Fund provides financial and technical assistance to CDFIs that directly serve their Target Markets through loans, investments and other activities, rather than primarily through the financing of other CDFIs. Under the Intermediary Component, the Fund provides financial and technical assistance to CDFIs that primarily provide assistance to other CDFIs and/or support the formation of CDFIs. In January 2000, the Fund expects to issue a NOFA for the third round of the Technical Assistance Component of the CDFI Program. Under the Technical Assistance Component, the Fund provides CDFIs with technical assistance in the form of grants that may be used to enhance the capacity of CDFIs through the acquisition of training services, consulting services, and/or technology. Since these regulations were last amended, the Fund has identified a number of provisions that need to be updated, clarified, expanded, and simplified.

II. Summary of Changes

Authorities

The current rule contains a list of authorities. This interim rule updates the list by adding 31 U.S.C. 321, which governs the promulgation of regulations. The current rule lists 12 U.S.C. 4703 note with a reference to Public Law

104–19. The Fund is deleting the reference to this public law, for purposes of regulatory economy and because there is more than one public law underlying the § 4703 note.

Relationship to Other Fund Programs

Section 1805.102(a) of the current rule prohibits, under certain circumstances, an Insured CDFI from receiving funding under both the Bank Enterprise Award (BEA) Program and the CDFI Program. This interim rule revises § 1805.102(a) to conform more closely with the counterpart provision contained in the BEA Program regulations (12 CFR 1806.102(a)) and the Bank Enterprise Act of 1991, as amended, (12 U.S.C. 1834a(g)).

Definitions

Section 1805.104 of the current rule contains a list of definitions. This interim rule revises § 1805.104 by amending several definitions and adding new definitions. First, § 1805.104(h) adds a new definition for "Community Development Financial Institution Intermediary" in recognition of the CDFI Program's Intermediary Component.

Second, § 1805.104(p) of the current rule contains a definition of "Development Investment." In § 1805.104(r) of this interim rule, the Fund is renaming "Development Investment" as "Equity Investment" and is adding an inclusive list of items that comprise "Equity Investments." This inclusive list is largely derived from the BEA Program regulation definition of equity investment at 12 CFR 1806.103(t). Under this interim rule, Equity Investments can comprise loans made on such terms that they have sufficient characteristics of equity and are considered as such by the Fund. Specifically, the Fund will generally consider a loan to be equity-like where: (1) the repayment of loan principal and/or interest is payable only out of available cash flow, so nonpayment of principal and/or interest will not automatically result in a default; (2) the maturity date of the loan is indeterminate in that the debtor is required to repay the principal on the maturity date only if it has sufficient resources; and (3) the loan is subordinated to payment obligations due all other creditors of the debtor, except other holders of similar type loans. The Fund also interprets "Equity Investment" to comprise secondary capital accounts established with low-income designated credit unions under 12 CFR 701.34. In order to distinguish "equity investments" made by the Fund from "Equity Investments" made by CDFIs, this interim rule distinguishes the two by capitalizing "Equity Investments" made by CDFIs.

Third, § 1805.104(q) of the current rule defines "Development Services" as activities that promote community development and are integral to lending and Development Investment activities and which prepare potential borrowers or investees to utilize the lending or investment products of the Awardee, its Affiliates, or its Community Partners. Section 1805.104(q) of this interim rule defines "Development Services" as activities that promote community development and are integral to the Applicant's provision of Financial Products and which prepare current or potential borrowers or investees to utilize the Financial Products of the Applicant. This interim rule replaces "Awardee" with "Applicant" because the provision of Development Services is necessary, as a threshold matter, for an institution to be eligible to apply for and receive assistance under the CDFI Program. This interim rule deletes references to the Awardee's Affiliates, or its Community Partners, because the Fund believes that the provision of Development Services must prepare the Awardee's current or potential borrowers or investees to utilize the Financial Products of the Awardee itself and not those of its Affiliates or its Community Partners. "Financial Products" is a new term defined in § 1805.104(s) of this interim rule, and is discussed below.

Fourth, § 1805.104(s) of this interim rule adds a definition of "Financial Products." This interim rule defines "Financial Products" as loans and Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs. The Fund is adding this definition as a shorthand definition for loans and Equity Investments made by CDFIs. The rationale for the Fund's expansion of the definition for CDFI Intermediaries is explained below under *Applicant Eligibility*.

Fifth, § 1805.104(ii) of this interim rule adds a definition of "Target Market" as comprising an Investment Area(s) and/or Targeted Population(s). The Fund is adding this definition to clarify the meaning of such term, which is contained throughout this interim rule.

Applicant Eligibility

Section 1805.200 of the current rule contains eligibility requirements for an entity to qualify as a CDFI and apply for assistance under the CDFI Program. Section 1805.200(a)(2) of the current rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if the Fund determines that such entity will meet the CDFI eligibility requirements within two years of entering into an Assistance Agreement with the Fund or such lesser period as may be set forth in an applicable Notice of Funds Availability (NOFA). The Fund believes that the time frame contained in the current rule is too indeterminate and is a frequent source of confusion for Applicants. The Fund believes that a clearer and more measurable time frame for determining eligibility is appropriate and will better serve the interests of the affected community. As a result, § 1805.200(a)(2) of this interim rule requires an entity to meet the CDFI eligibility requirements within 24 months from September 30 of the calendar year in which the applicable NOFA application deadline falls or such other period as may be set forth in the applicable NOFA. Under this interim rule, such other period can be a period lesser or greater than the 24 months described above.

Sections 1805.200(b)–(g) of the current rule contains six criteria that an entity must meet to qualify as a CDFI. In addition, §§ 1805.701(b)(1)–(8) of the current rule contains the application content requirements governing how an entity applying for assistance under the CDFI Program is to demonstrate that it meets the CDFI eligibility requirements described in § 1805.200 of the current rule. The Fund believes that the segregation of these two sections is too diffuse and too confusing for Applicants. The Fund also believes that §§ 1805.200(b)–(g) and 1805.701(b)(1)–(8) of the current rule should be consolidated for purposes of regulatory economy and efficiency. As a result, the Fund has decided to consolidate these sections into § 1805.201(b) of this interim rule.

Section 1805.200(b) of the current rule provides that in order to qualify as a CDFI, an entity must have a primary mission of community development. Section 1805.701(b)(1) of the current rule provides that in determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant and its Affiliates are principally directed toward serving an Investment Area(s), a Targeted Population(s), or a combination of the two. The Fund has decided to revise the primary mission test, because the Fund believes the current test to be: (1) partially duplicative of the Target Market eligibility test under §§ 1805.200(c) and 1805.701(b)(2) of the current rule, which requires an Applicant to establish that its total activities (excluding information on any Affiliates) are principally directed toward serving an Investment Area(s), Targeted Population(s), or both; and (2) unduly burdensome on Applicants in terms of providing the requisite level of data. As a result, § 1805.201(b)(1) of this interim rule provides that in determining whether an Applicant meets the primary mission eligibility test, the Fund will consider whether the activities of the Applicant and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas). The Fund believes that § 1805.201(b)(1) of this interim rule will reduce burdens associated with meeting the primary mission eligibility test, because the market that an Applicant (and its Affiliates) must serve in order to meet this test is no longer restricted to Investment Areas or Targeted Populations. However, the Fund is still requiring Applicants to meet the same Target Market eligibility test of the current rule as described in § 1805.201(b)(3) of this interim rule.

The Fund intends to implement the primary mission eligibility test as follows. The Fund will review the incorporating documents, bylaws, annual reports, and/or other organizational documents of an Applicant and its Affiliates to determine whether the activities of the Applicant and its Affiliates, as a whole, are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of distressed communities. In circumstances where the organizational documents do not, in the judgment of the Fund, demonstrate such a primary mission, the Fund will examine whether the actual activities of the Applicant and its Affiliates, combined, demonstrates such a primary mission.

Sections 1805.200(d) and 1805.701(b)(4) of the current rule contain the Financing entity eligibility test, which provides that in order for an entity to qualify as a CDFI, such entity's predominant business activity must be, through arms-length transactions, the provision of loans, Development Investments, and/or other similar financing. Because the Act provides that a CDFI must provide Development Services in conjunction with loans and Equity Investments (12 U.S.C. 4702(5)(A)(iii)) and because Development Services support an Applicant's financing activities, § 1805.201(b)(2) of this interim rule provides that an entity's predominant business activity must be the provision, in arms-length transactions, of Financial Products, Development Services and/or other similar financing. The Fund interprets "other similar financing" as including: (1) pre-development grants, provided that, in the opinion of the Fund, they are offered to the entity's borrowers or potential borrowers; and (2) loan packaging, provided that, in the opinion of the Fund, the entity finances more than a nominal portion of the loan that is being packaged for another entity.

The Fund intends to implement the Financing entity eligibility test in § 1805.201(b)(2) of this interim rule as follows. First, the Fund will determine whether an entity's provision of Financial Products and Development Services, combined, comprise a simple majority of its activities (i.e., greater than 50 percent). If so, the entity will be deemed to have met the Financing entity eligibility test. If not, the Fund will then consider the extent to which the entity engages in other similar financing activities. If an entity's provision of Financial Products, Development Services and other similar financing activities, combined, comprises a simple majority of its activities, the entity will be deemed to have met the Financing entity eligibility test. If not, the Fund will then consider whether an entity's provision of Financial Products, Development Services and other similar financing activities, combined, comprise a plurality (the largest component) of the entity's activities. If an entity's provision of Financial Products, Development Services, and other similar financing activities, combined, comprise a plurality of its activities, the entity will be deemed to have met the Financing entity eligibility test.

Section 1805.701(b)(4)(ii)(C) of the current rule requires a Non-Regulated Applicant to demonstrate that it meets the Financing entity eligibility test by submitting, among other things, as many as three years of year-end financial statements. The Fund believes that this requirement is unduly burdensome on Applicants. Accordingly, § 1805.201(b)(2)(ii)(C) of this interim rule requires each Applicant to submit only its most recent year-end financial statements. However, the Fund reserves the right, consistent with § 1805.600 of this interim rule, to require Applicants to submit prior years' financial statements, if the Fund deems it appropriate. Furthermore, the Fund believes that in order to more effectively and accurately determine whether an Applicant's predominant business activity is the provision of Financial Products, Development Services, and/or other similar financing, the Fund needs to examine an Applicant's allocation of staff resources. Accordingly, § 1805.201(b)(2)(ii)(C) requires an Applicant to provide qualitative and quantitative information on the percentage of Applicant staff time dedicated to the provision of Financial Products, Development Services and/or other similar financing.

As discussed above, Financial Products comprise loans and Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs. The Fund's rationale for including the aforementioned grants and deposits of CDFI Intermediaries is that said grants and deposits will, consistent with § 1805.100 of this interim rule, facilitate the creation of a national network of financial institutions dedicated to community development. In some cases, grants and deposits constitute the primary means by which a CDFI Intermediary fulfills its role of supporting the creation and development of CDFIs. Further, grants constitute the most attractive form of capital to enable CDFIs to expand or to facilitate the start-up of new or emerging CDFIs. Deposits in insured credit union CDFIs in the form of Share Certificates constitute one of the most effective ways to provide capital to a credit union CDFI. The Fund believes that encouraging CDFI Intermediaries to provide capital to CDFIs and CDFIs in formation in the most effective and attractive forms possible furthers the purposes of the Act by enhancing the liquidity of CDFIs so that they may pursue economic revitalization in communities throughout the United States.

Section 1805.200(e) of the current rule contains the Development Services eligibility test, which provides that in order for an entity to qualify as a CDFI, the entity must directly, or through an Affiliate, provide Development Services. The Fund believes that this language should be expanded to reflect the fact that an entity may provide Development Services through a contractual agent. Accordingly, § 1805.201(b)(4) of this interim rule provides that the entity must directly, through an Affiliate or through a contract with another provider, provide Development Services.

Certification as a Community Development Financial Institution

Section 1805.201 of the current rule provides that an entity may apply for certification as a CDFI and also provides that the Fund may decertify a certified entity after a determination that it no longer meets the eligibility requirements of §§ 1805.200(b) through (h). The Fund believes that this language should be expanded to include the additional eligibility requirements that the Fund may impose in accordance with § 1805.200(a)(3) of the current rule. Accordingly, § 1805.201(a) of this interim rule provides that the Fund may decertify a certified CDFI after a determination that it no longer meets the eligibility requirements of § 1805.201(b), § 1805.200(b), or § 1805.200(a)(3).

Sections 1805.300 through 1805.302 of the current rule discuss in greater detail the Target Market eligibility test contained in § 1805.200(c) of the current rule. The Fund has decided to consolidate these sections into § 1805.201(b) of this interim rule for purposes of regulatory economy and efficiency. The Fund also has made numbering changes to the subsequent sections to conform with this consolidation.

Section 1805.301(d) of the current rule contains a listing of objective criteria of economic distress necessary for geographic unit(s) to qualify as an eligible Investment Area. These criteria include the percentage of the population living in poverty, the percentage of Low-Income households, the unemployment rate, the percentage of occupied distressed housing, and the county population loss. These criteria conform with the Act (12 U.S.C. 4702(16)(A)(i)), which confers upon the Fund the authority to expand these distress criteria to include rural population outmigration. Accordingly, the Fund has decided to add rural population net migration loss to the list of objective criteria of economic distress. This new objective criterion is found in § 1805.201(b)(3)(ii)(D)(5)(ii) of this interim rule, and provides that for areas located outside of a Metropolitan Area, the county net migration loss (outmigration less immigration) over the five year period preceding the most recent decennial census is at least 5 percent.

Section 1805.302(c) of the current rule provides that an Applicant shall provide its products and services in a manner consistent with the Equal Credit Opportunity Act, to the extent that the Applicant is subject to such Act. The Fund is deleting this language from this interim rule for purposes of regulatory economy and efficiency inasmuch as this requirement is already reflected in § 1805.905 of the current rule (§ 1805.805 of this interim rule), which provides that an Awardee shall comply with all applicable Federal laws.

Section 1805.302(a) of the current rule provides that a Targeted Population may include an identifiable group of individuals that lack adequate access to loans or equity investments. Section 1805.701(b)(3)(ii)(B) of the current rule provides that in order for such an identifiable group to meet the Target Market/Targeted Population eligibility test, an Applicant must submit to the Fund studies or analyses that evidence lack of adequate access to loans or equity investments. The Fund believes that the current rule needs to be clarified to reflect that the identifiable group of individuals must be drawn from the Applicant's service area, and to more accurately reflect the information the Fund needs in determining whether an identifiable group of individuals lacks adequate access to loans or Equity Investments. Accordingly, § 1805.201(b)(3)(iii)(B)(2) of this interim rule provides that an Applicant must submit: (1) A description of the Applicant's service area from which the Targeted Population is drawn; (2) studies, analyses or other information demonstrating that the identifiable group of individuals, either on a national basis or on a localized basis in the Applicant's service area, lacks adequate access to loans and Equity Investments; and (3) studies, analyses or other information demonstrating that the Applicant's clients, who comprise the identifiable group of individuals, lack adequate access to loans or Equity Investments.

Technical Assistance

Section 1805.403(d) of the current rule provides that applications for technical assistance will be evaluated pursuant to the competitive review criteria contained in the evaluation provisions of the current rule (§ 1805.802(b)). The Fund believes that, in the interest of economy and efficiency, it needs the flexibility to streamline the competitive review and evaluation of applications for technical assistance, particularly those received under the CDFI Program Technical Assistance Component in which the maximum amount of technical assistance typically awarded is $50,000. Section 1805.303(d) of this interim rule accomplishes this by providing that applications for technical assistance will be evaluated pursuant to the competitive review criteria contained in the evaluation provisions of this interim rule (§ 1805.701(b)), except as otherwise may be provided in the applicable NOFA. Section 1805.303(d) of this interim rule confers upon the Fund the discretion to select the specific evaluation criteria contained in § 1805.701(b) of this interim rule that it intends to utilize in evaluating applications for technical assistance. However, this discretion is constrained by the Act, which expressly prescribes specific evaluation criteria that also are contained in § 1805.701(b) of this interim rule. As a result, the Fund's selection of evaluation criteria for applications for technical assistance will, without exception, include all statutorily prescribed evaluation criteria.

Matching Funds Requirements

Section 1805.600 of the current rule provides that funds used to satisfy a legal requirement for obtaining funds under another Federal grant or award program cannot be used to satisfy the matching requirements set forth in this section of the current rule. The Fund has decided to clarify this section by providing that in the case of an applicant that is a previous Awardee under the CDFI Program, such applicant cannot reuse matching funds used to satisfy the matching funds requirements for its prior CDFI Program award. Accordingly, § 1805.500 of this interim rule provides that funds used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements.

Section 1805.600 of the current rule provides that funds spent by an Applicant for operating expenses prior to the calendar year in which the applicable application deadline falls cannot be used to meet the matching funds requirements. The Fund has decided to eliminate this provision from § 1805.500 of this interim rule to ease the burden on Applicants of substantiating that such matching funds were not used for operating expenses. However, the Fund will continue to determine, under § 1805.500 of this interim rule, whether matching funds expended prior to the execution of an Assistance Agreement promoted the purposes of the Comprehensive Business Plan that the Fund is supporting through its assistance.

Section 1805.602 of the current rule contains a "severe constraints waiver" in which Applicants with severe constraints on available sources of matching funds may seek a reduction in the matching funds requirements.

Section 1805.602(b) of the current rule limits the Fund's availability to grant severe constraints waivers to not more than 25 percent of the total funds available for "obligation" in any fiscal year. The Fund is adding an additional sentence to this section, in conformance with the Act, which specifically provides that not more than 25 percent of the total funds "disbursed" in any fiscal year may receive a severe constraints waiver (12 U.S.C. 4707(e)(3)). Accordingly, the second sentence of § 1805.502(b) of this interim rule provides that not more than 25 percent of the total funds disbursed in any fiscal year may be matched under a severe constraints waiver.

Section 1805.603 of the current rule provides that Applicants may use as matching funds monies that have been obtained or legally committed for up to one year prior to the publication of a NOFA, or such earlier date or period specified in the NOFA, for an applicable funding round. The current rule also provides that an Applicant shall raise the balance of its matching funds within the period set forth in the applicable NOFA. For purposes of regulatory economy and efficiency, the Fund has decided to streamline this section. As a result, § 1805.503 of this interim rule provides that Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

Section 1805.604 of the current rule authorizes Applicants to utilize retained earnings as matching funds. Section 1805.604(d) of the current rule describes how retained earnings may be used by Insured Credit Unions to meet matching funds requirements. Insured Credit Unions are credit unions in which the member accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF). When the Fund originally promulgated the current rule it did not intend to exclude those credit unions whose member accounts are insured but not by the NCUSIF from § 1805.604(d) of the current rule. As a result, the Fund has revised § 1805.504(d) of this interim rule to cover all credit unions whose member accounts are insured and not just Insured Credit Unions.

Section 1805.604(d)(4)(i)(B) of the current rule requires Insured Credit Unions seeking to meet their matching funds requirements by utilizing retained earnings in the form of net capital accumulated since inception to increase their shares fourfold "within 18 months of the last day of the month prior to the month in which the Applicant is selected to receive assistance." The Fund believes that the time frame contained in the current rule is too indeterminate, too short and a frequent source of confusion for Applicants. The Fund believes that a longer, clearer and more measurable time frame is appropriate and would better serve the interests of the affected community. As a result, § 1805.504(d)(4)(i)(B) of this interim rule provides that the fourfold increase in shares must be achieved "within 24 months from September 30 of the calendar year in which the applicable application deadline falls."

Section 1805.604(d)(4)(i)(C) of the current rule requires that the fourfold increase in shares be maintained for the period of time covered by the Comprehensive Business Plan. The Fund is deleting this requirement in recognition of periodic fluctuations in share levels.

Section 1805.604(d)(4)(iii) of the current rule prescribes a bifurcated methodology for determining the appropriate baseline from which the fourfold increase in shares is measured. The Fund believes that the current bifurcated methodology is a frequent cause of confusion for Applicants. As a result, the Fund has decided to simplify this methodology through a fixed and more easily determinable baseline. Specifically, § 1805.504(d)(4)(iii) of this interim rule provides that the baseline will be as of September 30 of the calendar year in which the applicable application deadline falls.

Section 1805.604(e) of the current rule provides that an Applicant may only use retained earnings to meet matching funds requirements if it has liquidity (as determined by the Fund) in amounts equal to or greater than the amount of retained earnings that is proposed to be used to meet matching funds requirements. For purposes of regulatory economy and efficiency, the Fund has decided to eliminate this requirement.

Applications for Assistance

Section 1805.701 of the current rule provides that an Applicant may present its application in an order and format that it believes to be the most appropriate. The Fund has found that affording Applicants such flexibility makes it considerably more difficult for the Fund to evaluate applications. The Fund also believes that requiring all applications to be in the same order and format will inure to the benefit of all Applicants by ensuring a more efficient evaluation process. As a result, § 1805.601 of this interim rule deletes this provision.

Section 1805.701 of the current rule contains the application content requirements. The Fund has decided to revise this section (§ 1805.601 of this interim rule) to reduce burdens on Applicants.

For example, § 1805.701(d)(2)(iii)(B) of the current rule requires an Applicant to submit financial statements that utilize accrual based accounting methods. Section 1805.601(d)(4) of this interim rule continues to require the submission of financial statements but eliminates the requirement that such financial statements reflect accrual based accounting methods. The Fund believes that the elimination of this requirement will reduce burdens on those Applicants that currently utilize cash-based accounting methods. In addition, § 1805.701(e)(2) of the current rule requires an Applicant to submit a description of matching funds previously obtained or legally committed and related matching funds documentation in the form of agreements, letters of intent, and memoranda of understanding. Section 1805.601(d)(8)(ii) of this interim rule continues to require an Applicant to submit a description of matching funds previously obtained or legally committed, but deletes the requirement that an Applicant submit with its application related matching funds documentation. The Fund will only request such matching funds documentation from those Applicants that advance to the second phase of the Fund's substantive review process.

The Fund also has decided to reformat § 1805.601 of this interim rule to conform more closely with the Fund's new application packet. The new application packet contains several changes that also are intended to reduce burdens on Applicants. For example, the new application packet is a stand-alone document that identifies all application content requirements. Previous application packets directed Applicants to the current rule to ascertain the application content requirements. Applicants thus had to refer to two discrete documents in order to complete their applications. Such process has proven to be burdensome for Applicants in that it increased the amount of time it took them to complete the applications. The new application packet also contains clearer instructions, and identifies for each component part of the application the evaluation criteria and the points allocated for each evaluation criteria.

Furthermore, in accordance with the authority conferred to the Fund under the Act (12 U.S.C. 4704(b)(6)), the Fund is adding a new application content requirement to better ensure that the Fund's resources promote economic revitalization and community development. Specifically,

§ 1805.601(d)(13) of this interim rule requires each Applicant to describe the extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan.

Evaluation and Selection of Applications

Section 1805.800 of the current rule provides that part of the Fund's evaluation process may include an interview(s). In the past two funding rounds of the CDFI Program, the Fund has conducted interviews telephonically and in the offices of the Applicant. Section 1805.700 of this interim rule clarifies that the Fund may conduct not only telephonic interviews but also interviews in the form of site visits to an Applicant's and/or an Applicant's clients', borrowers', or investees' places of business.

Section 1805.802(b) of the current rule contains an inclusive listing of application evaluation factors. The Fund has reformatted and revised these factors to better reflect the Fund's intention to achieve maximum community impact under the CDFI Program and to conform with the Fund's new application packet. Section 1805.802(b)(1) of the current rule includes as an evaluation factor the quality of an Applicant's Comprehensive Business Plan. The Fund is deleting this specific evaluation factor from § 1805.701(b) of this interim rule, because the Fund believes this factor is already captured in other evaluation factors. The deletion of this factor is not intended by the Fund to have any substantive effect.

Consistent with its authority under the Act (12 U.S.C. 4706(a)(14)), the Fund has decided to add a new evaluation factor. Specifically, § 1805.701(b)(9) of this interim rule provides that the Fund will consider the extent of need for its assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market, and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan. In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) between the Fund and the Applicant, and whether the Applicant will expand the scope and volume of its activities with the help of additional assistance from the Fund. In the case of an Applicant that previously received funding under the CDFI Program, the Fund reserves the right to consider the extent to which the Applicant timely delivered its required reports to the Fund.

Notwithstanding these changes to § 1805.701(b) of this interim rule, the Fund reserves the right per § 1805.701(b)(10) of this interim rule to consider other evaluation factors in evaluating applications. The Fund anticipates that it will publish such other evaluation factors in the applicable NOFA and/or the applicable application packet.

Data Collection and Reporting

Section 1805.903(b) of the current rule requires Awardees to compile user profile information to assist the Fund in determining whether the Awardee's Target Market is adequately served. Section 1805.803(b) of this interim rule adds a provision that the Awardee's compilation of user profile information will assist the Fund in evaluating the impact of the CDFI Program. Specifically, the Fund will request that the Awardee report user profile information as part of the reporting requirement that will assist the Fund in evaluating the impact of the CDFI Program. This impact reporting requirement is contained in § 1805.903(c) of the current rule (§§ 1805.803(c) and 1805.803(e)(5) of this interim rule), and has been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1505–0154.

Section 1805.903(e)(2) of the current rule requires each Awardee to submit a quarterly report with information on the performance of its loans, Development Investments, Development Services, and Financial Services, unaudited financial statements, and information on portfolio performance. The Fund believes that these quarterly reporting requirements are unduly burdensome, and has decided to reduce the frequency of such reporting. In addition, the Fund has decided to narrow the scope of such reports. Specifically, § 1805.803(e)(2) of this interim rule requires each Awardee to submit a semi-annual report (i.e., two per year) consisting of its internal (unaudited) financial statements and information on compliance with its financial soundness covenants. The Fund is adding to the semi-annual report a requirement that the Awardee report on its compliance with its financial soundness covenants. This requirement is similar to an existing requirement contained in each Assistance Agreement and does not impose any additional burdens on Awardees. Awardees will still be required to report on the performance of their Financial Products, Development Services, Financial Services, and portfolio performance; however, such reporting requirements will be added to the impact reporting requirement described in § 1805.803(c) of this interim rule.

Section 1805.903(e)(3) of the current rule requires each Awardee to submit an annual report consisting of: (1) information on the Awardee's customer profile and the performance of its products and services; (2) information on its portfolio performance; (3) qualitative and quantitative information on the Awardee's performance goals; (4) information describing the manner in which Fund assistance and any corresponding matching funds were used; (5) certification that the Awardee continues to meet the eligibility requirements described in § 1805.200; and (6) its most recent audited financial statements prepared by an independent certified public accountant. The Fund has decided to remove several of the reporting requirements from the annual report and add them to the impact reporting requirement. In addition, the Fund is adding to the annual report a requirement that the Awardee provide a narrative description of the Awardee's activities in support of its Comprehensive Business Plan. This requirement is similar to an existing requirement contained in each Assistance Agreement, and does not impose any additional reporting burdens on Awardees. As a result, § 1805.803(e)(3) of this interim rule requires each Awardee to submit an annual report consisting of: (1) a narrative description of an Awardee's activities in support of its Comprehensive Business Plan; (2) qualitative and quantitative information on an Awardee's compliance with its performance goals; (3) information describing the manner in which Fund assistance and any corresponding matching funds were used; and (4) certification that the Awardee continues to meet the eligibility requirements described in § 1805.200.

In addition, the Fund has decided to bifurcate the due dates for submission of the audited statements of financial condition and the other reporting requirements contained in the annual report. The Fund understands that a longer period of time is required for an Awardee's independent certified public accountant to conduct and complete an audit of the Awardee than is required for an Awardee to prepare and submit to the Fund the other reporting requirements contained in the annual report. As a result, § 1805.803(e)(4) of this interim rule generally affords an Awardee 120 days after the end of its fiscal year to submit its audited financial statements to the Fund, as opposed to § 1805.803(e)(3) of this interim rule which generally affords an Awardee 60 days to submit its annual report to the Fund.

III. Rulemaking Analysis

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1505–0154. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

Catalog of Federal Domestic Assistance Number

Community Development Financial Institutions Program—21.020.

List of Subjects in 12 CFR Part 1805

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 12 CFR part 1805 is revised to read as follows:

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Subpart A—General Provisions

Sec.
1805.100 Purpose.
1805.101 Summary.
1805.102 Relationship to other Fund programs.
1805.103 Awardee not instrumentality.
1805.104 Definitions.
1805.105 Waiver authority.
1805.106 OMB control number.

Subpart B—Eligibility

1805.200 Applicant eligibility.
1805.201 Certification as a Community Development Financial Institution.

Subpart C—Use of Funds/Eligible Activities

1805.300 Purposes of financial assistance.
1805.301 Eligible activities.
1805.302 Restrictions on use of assistance.
1805.303 Technical assistance.

Subpart D—Investment Instruments

1805.400 Investment instruments—general.
1805.401 Forms of investment instruments.
1805.402 Assistance limits.
1805.403 Authority to sell.

Subpart E—Matching Funds Requirements

1805.500 Matching funds—general.
1805.501 Comparability of form and value.
1805.502 Severe constraints waiver.
1805.503 Time frame for raising match.
1805.504 Retained earnings.

Subpart F—Applications for Assistance

1805.600 Notice of Funds Availability.
1805.601 Application contents.

Subpart G—Evaluation and Selection of Applications

1805.700 Evaluation and selection—general.
1805.701 Evaluation of Applications.

Subpart H—Terms and Conditions of Assistance

1805.800 Safety and soundness.
1805.801 Assistance Agreement; sanctions.
1805.802 Disbursement of funds.
1805.803 Data collection and reporting.
1805.804 Information.
1805.805 Compliance with government requirements.
1805.806 Conflict of interest requirements.
1805.807 Lobbying restrictions.
1805.808 Criminal provisions.
1805.809 Fund deemed not to control.
1805.810 Limitation on liability.
1805.811 Fraud, waste and abuse.

Authority: 12 U.S.C. 4703, 4703 note, 4717; and 31 U.S.C. 321.

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to facilitate the creation of a national network of financial institutions that is dedicated to community development.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a competitive application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application pending for assistance under the Community Development Financial Institutions Program;

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a Bank Enterprise Award Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that controls, is controlled by, or is under common control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements described in § 1805.200;

(h) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(i) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(j) *Community Facility* means a facility where health care, child care, educational, cultural, or social services are provided;

(k) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(l) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(m) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(n) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, Equity Investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(o) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described under § 1805.601(d);

(p) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(q) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(r) *Equity Investment* means an investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), or any other investment deemed to be an Equity Investment by the Fund;

(s) *Financial Products* means loans, Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs;

(t) *Financial Services* means checking, savings accounts, check-cashing, money orders, certified checks, automated teller machines, deposit-taking, and safe deposit box services;

(u) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(v) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(w) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(x) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(y) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(z) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(aa) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(bb) *Investment Area* means a geographic area meeting the requirements of § 1805.201(b)(3);

(cc) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and,

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(dd) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(ee) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(ff) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(gg) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(b)(4);

(hh) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.201(b)(3); and

(ii) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0154.

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in § 1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within 24 months from September 30 of the calendar year in which the applicable application deadline falls or such other period as may be set forth in an applicable NOFA. The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section.

(3) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in paragraph (b) of this section. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, § 1805.200(b), or § 1805.200(a)(3) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) and § 1805.200 by providing the information requested in paragraphs (b)(1) through (b)(7) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and

persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas).

(2) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(A) Depository Institution Holding Company;

(B) Insured Depository Institution or Insured Credit Union; or

(C) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(ii) An Applicant described under:

(A) Paragraph (b)(2)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(2)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and

(C) Paragraph (b)(2)(i)(C) of this section shall submit a copy of its most recent year-end financial statements (and any notes or other supplemental information to its financial statements) documenting its assets dedicated to Financial Products, Development Services and/or other similar financing, and an explanation of how such assets support these activities. An Applicant also shall provide qualitative and quantitative information on the percentage of Applicant staff time dedicated to the provision of Financial Products, Development Services, and/or other similar financing.

(3) *Target Market.* (i) *General.* An Applicant shall provide a description of one or more Investment Areas and/or Targeted Populations that it serves, and shall demonstrate that its total activities are principally directed to serving the Investment Areas, Targeted Populations, or both. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) of this section.

(ii) *Investment Area.* (A) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(*1*) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands); and either

(*2*) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans or Equity Investments as described in paragraph (b)(3)(ii)(E) of this section; or

(*3*) Encompasses or is located in an Empowerment Zone or Enterprise Community designated under § 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (b)(3)(ii)(B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(*1*) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(*2*) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(*1*) The percentage of the population living in poverty is at least 20 percent;

(*2*) In the case of an Investment Area located:

(*i*) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(*ii*) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(*3*) The unemployment rate is at least 1.5 times the national average;

(*4*) The percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent; or

(*5*) In areas located outside of a Metropolitan Area:

(*i*) The county population loss in the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(*ii*) The county net migration loss (outmigration minus immigration) over the five year period preceding the most recent decennial census is at least 5 percent.

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if studies or other analyses provided by the Applicant adequately demonstrate a pattern of unmet needs for loans or Equity Investments within such area(s).

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents. To demonstrate that it is serving an Investment Area, an Applicant shall submit:

(*1*) A completed Investment Area Designation worksheet referenced in the application packet;

(*2*) A map of the designated area(s); and

(*3*) Studies or other analyses as described in paragraph (b)(3)(ii)(E) of this section.

(iii) *Targeted Population.* (A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to loans or Equity Investments in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust

Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members. To demonstrate that it is serving a Targeted Population, an Applicant shall submit:

(*1*) In the case of a Low-Income Targeted Population, a description of the service area from which the Low-Income Targeted Population is drawn (which could be, for example, a local, regional or national service area); or

(*2*) In the case of a Targeted Population defined other than on the basis of Low-Income—

(*i*) A description of the service area from which the Targeted Population is drawn;

(*ii*) Studies, analyses or other information demonstrating that the identifiable group of individuals, either on a national basis or on a localized basis in the Applicant's service area, lacks adequate access to loans or Equity Investments; and

(*iii*) Studies, analyses or other information demonstrating that the Applicant's clients, who comprise the identifiable group of individuals, lack adequate access to loans or Equity Investments.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products. An Applicant shall submit a description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise. An Applicant shall describe how it has and will maintain accountability to the residents of the Investment Area(s) or Targeted Population(s) it serves.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. An Applicant shall submit copies of its articles of incorporation (or comparable organizing documents), charter, bylaws, or other legal documentation or opinions sufficient to verify that it is not a government entity.

(7) *Ownership.* An Applicant shall submit information indicating the portion of shares of all classes of voting stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

Subpart C—Use of Funds/Eligible Activities

§ 1805.300 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to provide Financial Products and Financial Services.

§ 1805.301 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.302 Restrictions on use of assistance.

(a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.303 Technical assistance.

(a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.601.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the competitive review criteria in subpart G of this part, except as otherwise may be provided in the applicable NOFA. In addition, the requirements for matching funds are not applicable to technical assistance requests.

Subpart D—Investment Instruments

§ 1805.400 Investment instruments—general.

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will provide financial assistance to an

Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.401 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Capital grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

§ 1805.402 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

§ 1805.403 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart E—Matching Funds Requirements

§ 1805.500 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance.

§ 1805.501 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.502). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.502 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section. Additionally, not more than 25 percent of the total funds disbursed under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a "severe constraints waiver" as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a "severe constraints waiver" only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.503 Time frame for raising match.

Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

§ 1805.504 Retained earnings.

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.501(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (*e.g.*, retained earnings at the end of fiscal year 1999 less retained earnings at the end of fiscal year 1998); or

(ii) The annual average of such increases that have occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than a Credit Union), retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an insured credit union Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that has occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire retained earnings that has been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, retained earnings shall be comprised of "Regular Reserves", "Other Reserves" (excluding reserves specifically dedicated for losses), and "Undivided Earnings" as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares by an amount that is at least equal to four times the amount of retained earnings that is committed as matching funds; and

(B) Such increase be achieved within 24 months from September 30 of the calendar year in which the applicable application deadline falls;

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares;

(iii) The level from which the increases in shares described in paragraph (d)(4)(i) of this section will be measured will be as of September 30 of the calendar year in which the applicable application deadline falls; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

Subpart F—Applications for Assistance

§ 1805.600 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the regulations in this subpart and the applicable NOFA published in the **Federal Register**. The NOFA will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

§ 1805.601 Application contents.

An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. Unless otherwise specified in an applicable NOFA, each application must contain the information specified in the application packet including the items specified in this section.

(a) *Award request.* An Applicant shall indicate:

(1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and

(2) Any technical assistance needs for which it is requesting assistance.

(b) *Previous Awardees.* In the case of an Applicant that has previously received assistance under this part, the Applicant shall demonstrate that it:

(1) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(c) *Time of operation.* At the time of submission of an application, an Applicant that has been in operation for:

(1) Three years or more shall submit information on its activities (as described in § 1805.201(b)(1) and (2) and paragraphs (d)(2) and (d)(9)(v) of this section) and financial statements (as described in paragraph (d)(4) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in § 1805.201(b)(1) and (2) and paragraphs (d)(2) and (d)(9)(vi) of this section) and financial statements (as described in paragraph (d)(4) of this section) for each full fiscal year since its inception; or

(3) For less than one year, shall submit information on its activities and financial statements as described in paragraph (d) of this section.

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph (d). The Comprehensive Business Plan shall demonstrate that the Applicant shall have the capacity to operate as a CDFI upon receiving financial assistance from the Fund pursuant to this part.

(1) *Executive summary.* The executive summary shall include a description of the institution, products and services, markets served or to be served, accomplishments to date and key points of the Applicant's five year strategy, and other pertinent information.

(2) *Community development track record.* The Applicant shall describe its

community development impact over the past three years, or for its period of operation if less than three years. In addition, an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall describe its activities, operations and community benefits created for residents of the Investment Area(s) or Targeted Population(s) for such periods as described in paragraph (c) of this section.

(3) *Operational capacity and risk mitigation strategies.* An Applicant shall submit information on its policies and procedures for underwriting and approving loans and investments, monitoring its portfolio and internal controls and operations. An Applicant shall also submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.806.

(4) *Financial track record and strength.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. An Applicant shall submit:

(i) Audited financial statements;

(ii) Financial statements that have been reviewed by a certified public accountant; or

(iii) Financial statements that have been reviewed by the Applicant's Appropriate Federal Banking Agency. Such statements should include balance sheets or statements of financial position, income and expense statements or statements of activities, and cash flow statements. The Applicant shall also provide information necessary to assess trends in financial and operating performance.

(5) *Capacity, skills and experience of the management team.* An Applicant shall provide information on the background and capacity of its management team, including key personnel and governing board members. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the organization to successfully carry out its Comprehensive Business Plan.

(6) *Market analysis.* An Applicant shall provide an analysis of its Target Market, including a description of the Target Market, and the extent of economic distress, an analysis of the needs of the Target Market for Financial Products, Financial Services and Development Services, and an analysis of the extent of demand within such Target Market for the Applicant's products and services. The Applicant also shall provide an assessment of any factors or trends that may affect the Applicant's ability to deliver its products and services within its Target Market.

(7) *Program design and implementation plan.* An Applicant shall:

(i) Describe the products and services it proposes to provide and analyze the competitiveness of such products and services in the Target Market;

(ii) Describe its strategy for delivering its products and services to its Target Market;

(iii) Describe how its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s);

(iv) Describe its plan to coordinate use of assistance from the Fund with existing government assistance programs and private sector resources;

(v) Describe how it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) which will provide Equity Investments, loans, secondary markets, or other services in the Target Market; and

(vi) Discuss the extent of community support (if any) within the Target Market for its activities.

(8) *Financial projections and resources.* An Applicant shall provide :

(i) *Financial projections.* (A) Projections for each of the next five years which include pro forma balance sheets or statements of financial position, income and expense statements or statements of activities, and a description of any assumptions that underlie its projections; and

(B) Information to demonstrate that it has a plan for achieving or maintaining sustainability within the five-year period;

(ii) *Matching funds.* (A) A detailed description of its plans for raising matching funds, including funds previously obtained or legally committed to match the amount of financial assistance requested from the Fund; and

(B) An indication of the extent to which such matching funds will be derived from private, nongovernment sources. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, if applicable, the extent to which, and for what purpose, such matching funds have been used to date, and terms and restrictions on use for each matching source, including any restriction that might reasonably be construed as a limitation on the ability of the Applicant to use the funds for matching purposes; and

(iii) *Severe constraints waiver.* If the Applicant is requesting a "severe constraints waiver" of any matching requirements, it shall submit the information requested in § 1805.502.

(9) *Projected community impact.* An Applicant shall provide:

(i) Estimates of the volume of new activity to be achieved within its Target Market assuming that assistance is provided by the Fund;

(ii) A description of the anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds within the Target Market;

(iii) An estimate of the benefits expected to be created within its Target Market over the next five years;

(iv) The extent to which the Applicant will concentrate its activities within its Target Market;

(v) A description of how the Applicant will measure the benefits created as a result of its activities within its Target Market; and

(vi) In the case of an Applicant with a prior history of serving a Target Market, an explanation of how the Applicant will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(10) *Risks and assumptions.* An Applicant shall identify and discuss critical risks (including strategies to mitigate risk) and assumptions contained in its Comprehensive Business Plan, and any significant impediments to the Plan's implementation.

(11) *Schedule.* An Applicant shall provide a schedule indicating the timing of major events necessary to realize the objectives of its Comprehensive Business Plan.

(12) *Community Partnership.* In the case of an Applicant submitting an application with a Community Partner, the Applicant shall:

(i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);

(ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;

(iii) Provide information necessary to evaluate such an application as described under § 1805.701(b)(6);

(iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

(v) Provide information to demonstrate that the Applicant meets the eligibility requirements described in § 1805.200 and satisfies the selection criteria described in subpart G of this part. (A Community Partner shall not be required to meet the eligibility requirements described in § 1805.200.)

(13) *Effective use of Fund resources.* An Applicant shall describe the extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan.

(e) *Community ownership and governance.* An Applicant shall provide information to demonstrate the extent to which the Applicant is, or will be, Community-Owned or Community-Governed.

(f) *Environmental information.* The Applicant shall provide sufficient information regarding the potential environmental impact of its proposed activities in order for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter.

(g) *Applicant certification.* The Applicant and Community Partner (if applicable) shall certify that:

(1) It possesses the legal authority to apply for assistance from the Fund;

(2) The application has been duly authorized by its governing body and duly executed;

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.807; and

(4) It will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

Subpart G—Evaluation and Selection of Applications

§ 1805.700 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s) and/or site visit(s), that is intended to:

(a) Ensure that Applicants are evaluated on a competitive basis in a fair and consistent manner;

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact; and

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

§ 1805.701 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (e.g., in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Solid understanding of its market context, including its analysis of current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Quality program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan. In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, and whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities;

(10) The Fund may consider any other factors, as it deems appropriate, in reviewing an application.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

Subpart H—Terms and Conditions of Assistance

§ 1805.800 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.801 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardees application. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.802 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a binding written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§ 1805.803 Data collection and reporting.

(a) *Data—General.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Review.* (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement.

(2) An Awardee shall submit within 60 days after the end of each semi-annual period, or within some other period as may be agreed to in the Assistance Agreement, internal financial statements covering the semi-annual reporting period (i.e., two periods per year) and information on its compliance with its financial soundness covenants.

(3) An Awardee shall submit a report within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following:

(i) A narrative description of an Awardee's activities in support of its Comprehensive Business Plan;

(ii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals;

(iii) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such information to verify that assistance was used in a manner consistent with the Assistance Agreement; and certification that an Awardee continues to meet the eligibility requirements described in § 1805.200.

(4) An Awardee shall submit within 120 days after the end of its fiscal year, or within some other period as may be agreed to in the Assistance Agreement, fiscal year end statements of financial condition audited by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Offices Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations), as applicable.

(5) An Awardee shall submit a report within 120 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following information:

(i) The Awardee's customer profile;

(ii) Awardee activities including Financial Products and Development Services;

(iii) Awardee portfolio quality;

(iv) The Awardee's financial condition; and

(v) The Awardee's community development impact.

(6) The Fund shall make reports described in paragraphs (e)(2) and (e)(3) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f) (1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institutions implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of a Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (http://www.whitehouse.gov/OMB/grants/index.html); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

§ 1805.804 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

§ 1805.805 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

§ 1805.806 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.807 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.808 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Awardees and Insiders.

§ 1805.809 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.810 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.811 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: October 25, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–28281 Filed 10–29–99; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Core Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) (the "Act") authorizes the Community Development Financial Institutions Fund (the "Fund") of the U.S. Department of the Treasury to select and provide financial and technical assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. The interim rule (12 CFR part 1805), most recently published in the **Federal Register** on April 4, 1997 (62 FR 16444), and now revised and published elsewhere in this issue of the **Federal Register**, provides guidance on the contents of the necessary application materials, evaluation criteria and other program requirements. More detailed application content requirements are found in the application packet. While the Fund encourages applicants to review the interim rule, all of the application content requirements and the evaluation criteria contained in the interim rule are also contained in the application packet. Subject to funding availability, the Fund intends to award up to $50 million in appropriated funds under this NOFA and expects to issue approximately 45 to 65 awards. The Fund reserves the right to award in excess of $50 million in appropriated funds under this NOFA provided that the funds are available and the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

This NOFA is issued in connection with the Core Component of the CDFI Program. The Core Component provides direct assistance to CDFIs that serve their target markets through loans, investments and other activities. (These activities generally do not include the financing of other CDFIs. Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the fourth round of the Intermediary Component of the CDFI Program. The Intermediary Component provides financial assistance and technical assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs.)

DATES: Applications may be submitted at any time following November 1, 1999. The deadline for receipt of an application is 6:00 p.m. EST on January 20, 2000. Applications received in the offices of the Fund after that date and time will be rejected and returned to the sender.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Applications sent electronically or by facsimile will not be accepted.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the CDFI Program Manager. Should you wish to request an application package or have questions regarding application procedures, contact the Awards Manager. The CDFI Program Manager and the Awards Manager may be reached by e-mail at cdfihelp@cdfi.treas.gov, by telephone at (202) 622–8662, by facsimile at (202) 622–7754 or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's web site at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients for creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program funds and supports a national network of financial institutions that is specifically dedicated to funding and supporting community development. This strategy builds strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act authorizes the Fund to select entities to receive financial and technical assistance. This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities.

The program connected with this NOFA constitutes the Core Component of the CDFI Program, involving direct financial assistance and technical assistance (TA) to CDFIs that serve their target markets through loans, investments and other activities. Under this Core Component NOFA, the Fund anticipates a maximum award amount of $2.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

Previous awardees under the CDFI Program are eligible to apply under this NOFA, but such applicants must be aware that success in a previous round should not be considered indicative of success under this NOFA. In addition, organizations will not be penalized for having received awards in previous funding rounds, except to the extent that:

(1) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its subsidiaries and affiliates during any three year period; and

(2) An applicant that is a previous awardee has failed to meet its performance goals, financial soundness covenants (if applicable) and/or other requirements contained in the previously executed assistance agreement(s).

This NOFA is not intended to support Intermediary CDFIs (those CDFIs that primarily fund other CDFIs). Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the fourth round of the Intermediary Component of the CDFI Program. The Intermediary Component NOFA is issued in recognition of the fact that Intermediary CDFIs can reach specialized niches in their financing of CDFIs that the Fund itself cannot reach as effectively under the Core Component.

II. Eligibility

The Act and the interim rule, as revised, specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this Core Component NOFA. At the time an entity submits its application, the entity must be a duly organized and validly existing legal entity under the laws of the jurisdiction in which it is incorporated or otherwise established. An entity must meet, or propose to meet, CDFI eligibility requirements. In general, a CDFI and its affiliates must collectively have a primary mission of promoting community development. In addition, the applicant organization must: provide lending or equity investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a non-government entity. If an applicant is an insured depository institution holding company or an affiliate of an insured depository holding company, the applicant and its affiliates must collectively meet all of the aforementioned requirements. If an applicant is a subsidiary of an insured depository institution, the insured depository institution and all of its subsidiaries must collectively meet all of the aforementioned requirements.

If the applicant does not meet the CDFI eligibility requirements, the application shall include a realistic plan for the applicant to meet the criteria by September 30, 2002 (which period may be extended at the sole discretion of the Fund). In no event will the Fund disburse financial assistance to the applicant until the applicant can be certified as a CDFI. Further details regarding eligibility and other program requirements are found in the application packet.

III. Types of Assistance

An applicant may submit an application for financial assistance, TA, or both, under this Core Component NOFA. Financial assistance may be provided through an equity investment (including, in the case of certain insured credit unions, secondary capital accounts), a grant, loan, deposit, credit union shares, or any combination thereof. Applicants for financial assistance shall indicate the dollar amount, form, and terms and conditions of the assistance requested. Applicants for TA under this NOFA shall describe the type(s) of TA requested, the provider(s) of the TA, the cost of the TA, and a narrative justification for their TA request.

IV. Application Packet

An applicant under this NOFA, whether applying for financial assistance, TA, or both, must submit the materials described in the application packet.

V. Matching Funds

Applicants responding to this NOFA must obtain matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of financial assistance provided by the Fund (matching funds are not required for TA). Matching funds must be at least comparable in form and value to the financial assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1998, and before August 31, 2001, may be considered when determining matching funds availability. The Fund reserves the right to recapture and reprogram funds if an applicant fails to raise the required matching funds by August 31, 2001, or to grant an extension of such matching funds deadline for specific applicants selected for assistance, if the Fund deems it appropriate. Funds used by an applicant as matching funds for a previous award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement.

VI. Evaluation

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, applications will be evaluated by the Fund on a competitive basis in accordance with the criteria described in this NOFA. In conducting its substantive review, the Fund will evaluate the following criteria:

(1) The applicant's ability to carry out its Comprehensive Business Plan and create community development impact (the Ability criterion);

(2) The quality of the applicant's strategy for carrying out its Comprehensive Business Plan and for creating community development impact (the Strategy criterion); and

(3) the extent to which an award to the applicant will maximize the effective use of the Fund's resources (the Effective Use criterion).

In addition, the Fund will consider the institutional and geographic diversity of applicants in making its funding determinations.

Phase One

In Phase One of the substantive review, each Fund reader(s) will evaluate applications using a 100-point scale, as follows:

(a) Ability to Carry Out the Comprehensive Business Plan and Create Community Development Impact: 50-point maximum, with a minimum score of 25 points required to be passed on for Phase Two review. The score of the Ability criterion is based on a composite assessment of an applicant's organizational strengths and weaknesses under the four sub-criteria listed below. Such scoring reflects different weighting of the sub-criteria depending on whether an applicant is a start-up organization or an established organization. The Fund defines a start-up organization as an entity that has been in operation two years or less, as of the date of this NOFA (meaning, for purposes of this NOFA, having incurred initial operating expenses on or after November 1, 1997). For purposes of this NOFA, start-up organizations will not be evaluated under the Ability criterion on their previous community development and financial track records. Instead, start-up organizations will be scored entirely on operational and management capacity.

Under the Ability section of the application, the Fund will evaluate the following four sub-criteria:

(1) Community development track record: 12-point maximum (established organizations only);

(2) Operational capacity and risk mitigation strategies: 12-point maximum (established organizations), 20-point maximum (start-ups);

(3) Financial track record and strength: 12-point maximum (established organizations only); and

(4) Capacity, skills and experience of the management team: 14-point maximum (established organizations), 30-point maximum (start-ups).

Quality of the Strategy for Carrying out the Comprehensive Business Plan and for Creating Impact: 40-point maximum with a minimum of 20 points required to be passed on for Phase Two review. Under the Strategy section of the application, the Fund will evaluate the following four sub-criteria:

(1) The applicant's understanding of its market: 10-point maximum;

(2) Program design and implementation plan: 10-point maximum;

(3) Projections for financial performance and raising needed resources: 10-point maximum; and

(4) Projections for generating, measuring and evaluating community development impact: 10-point maximum.

In the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider whether the applicant will expand its operations into a new target market, offer more products or services, and/or increase the volume of its activities.

Maximizing Effective Use of Fund Resources: 10-point maximum, with no minimum score required to be passed on for Phase Two review. The Fund will consider:

(1) The extent to which the applicant needs the Fund's assistance to carry out its Comprehensive Business Plan; and

(2) The extent of economic distress in the applicant's target market.

In addition, in the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider the applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable) and other requirements contained in the assistance agreement(s) with the Fund, and the benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance.

Phase Two

Once the initial evaluation is completed, the Fund will determine which applications will receive further consideration for funding based on application scores (standardized if deemed appropriate), recommendations of individuals performing initial reviews and the amount of funds available. Applicants that advance to Phase Two may receive a site visit and/or telephone interview(s) conducted by a Fund reviewer for the purpose of obtaining clarifying or confirming information. At this point in the process, applicants will be required to submit additional information, as set forth in detail in the application packet. After conducting such site visits/telephone interview(s), the Fund reviewer will evaluate applications in accordance with the evaluation criteria outlined above and prepare a recommendation memorandum containing recommendations on the type and amount of assistance that should be provided to the applicant.

A final review panel comprised of Fund staff will consider the Fund reviewer's recommendation memorandum and make a final recommendation to the Fund's selecting official. In making its recommendations, the final review panel also may consider the institutional diversity and geographic diversity of applicants (e.g., recommending a CDFI from a State in which the Fund has not previously made an award over a CDFI in a State in which the Fund has already made numerous awards).

The Fund's selecting official will make a final funding determination based on the applicant's file, including, without limitation, reader(s)/reviewer(s) recommendations and the panel's recommendation, and the amount of funds available. In the case of regulated CDFIs, the selecting official will also take into consideration the views of the appropriate Federal banking agencies.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate.

VII. Information Sessions

In connection with this NOFA and the NOFA for the Intermediary Component, the Fund will conduct Information Sessions to disseminate information to organizations contemplating applying for, and other organizations interested in learning about, the CDFI Program. Registration is required and registration in advance is preferred. The Fund will conduct 12 in-person Information Sessions, beginning November 8, 1999, as follows:

Atlanta, GA, November 9, 1999;
Boston, MA, November 15, 1999;
Chicago, IL, November 8, 1999;
Cleveland, OH, November 9, 1999;
Dallas, TX, November 9, 1999;
Memphis, TN, November 8, 1999;
Miami, FL, November 8, 1999;
New York, NY, November 16, 1999;
Salt Lake City, UT, November 16, 1999
San Diego, CA, November 19, 1999;
San Francisco, CA, November 22, 1999; and
Seattle, WA, November 15, 1999.

In addition to the in-person sessions listed above, the Fund will broadcast an Information Session using interactive video-teleconferencing technology on November 16, 1999, from 1:00 p.m. to 4:00 p.m EST. Registration is required and registration in advance is preferred. This Information Session will be produced in Washington, DC, and will be downlinked via satellite to the local Department of Housing and Urban Development (HUD) offices located in the following 73 cities: Albany, NY; Albuquerque, NM; Anchorage, AK; Atlanta, GA; Baltimore, MD; Bangor, ME; Beaumont, TX; Birmingham, AL; Boise, ID; Buffalo, NY; Burlington, VT; Casper, WY; Charleston, WV; Chicago, IL; Cincinnati, OH; Columbia, SC; Columbus, OH; Denver, CO; Des Moines, IA; Detroit, MI; Fargo, ND; Flint, MI; Fresno, CA; Grand Rapids, MI; Greensboro, NC; Hartford, CT; Helena, MT; Honolulu, HI; Houston, TX; Indianapolis, IN; Jackson, MS; Jacksonville, FL; Kansas City, KS; Knoxville, TN; Lanham, MD; Las Vegas, NV; Little Rock, AR; Los Angeles, CA; Louisville, KY; Lubbock, TX; Manchester, NH; Miami, FL; Milwaukee, WI; Minneapolis/St. Paul, MN; Nashville, TN; New Orleans, LA; Newark, NJ; Oklahoma City, OK; Omaha, NE; Orlando, FL; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Portland, OR; Providence, RI; Reno, NV; Richmond, VA; Sacramento, CA; St. Louis, MO; San Antonio, TX; San Francisco, CA; San Juan, PR; Santa Ana, CA; Shreveport, LA; Sioux Falls, SD; Spokane, WA; Springfield, IL; Syracuse, NY; Tampa, FL; Tucson, AZ; Tulsa, OK; Washington, DC; and Wilmington, DE.

For more information, or to register for an Information Session, please contact the Fund at (202) 622–8662 or visit the Fund's web site at www.treas.gov/cdfi.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.

Dated: October 25, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–28282 Filed 10–29–99; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Intermediary Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the "Act") authorizes the Community Development Financial Institutions Fund ("the Fund") to select and provide assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. The interim rule (12 CFR part 1805), most recently published in the **Federal Register** on April 4, 1997 (62 FR 16444), and now revised and published elsewhere in this issue of the **Federal Register**, provides guidance on the contents of application materials, evaluation criteria and other program requirements. More detailed application content requirements are found in the application packet. While the Fund encourages applicants to review the interim rule, all of the application content requirements and the evaluation criteria contained in the interim rule are also contained in the application packet. Subject to the availability of funds, the Fund currently anticipates making awards of up to $6 million in appropriated funds under this NOFA and expects to make four to ten awards. The Fund reserves the right to award in

excess of $6 million in appropriated funds under this NOFA provided that funds are available and the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

This NOFA is issued in connection with the Intermediary Component of the CDFI Program. The Intermediary Component provides financial assistance and technical assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the fifth round of the Core Component of the CDFI Program, with respect to which the Fund intends to make available up to $50 million in appropriated funds. The Core Component provides assistance to CDFIs that directly serve their target markets through loans, investments and other activities, not including the financing of other CDFIs.

DATES: Applications may be submitted at any time after November 1, 1999. The deadline for receipt of an application is 6:00 p.m. EST on January 18, 2000. Applications received in the offices of the Fund after that date and time will be rejected and returned to the sender.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street NW., Suite 200 South, Washington, DC 20005. Applications sent to the Fund electronically or by facsimile will not be accepted.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the CDFI Program Manager. Should you wish to request an application package or have any questions regarding application procedures, contact the Awards Manager. The CDFI Program Manager and the Awards Manager may be reached by e-mail at cdfihelp@cdfi.treas.gov, by telephone at (202) 622–8662, by facsimile on (202) 622–7754 or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's web site at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients for creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program funds and supports a national network of financial institutions that is specifically dedicated to community development. This strategy builds strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act authorizes the Fund to select entities to receive financial and technical assistance. This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities.

The program connected with this NOFA constitutes the Intermediary Component of the CDFI Program, involving financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. Under this Intermediary Component NOFA, the Fund anticipates a maximum award amount of $1.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

Previous awardees under the CDFI Program are eligible to apply under this NOFA, but such applicants must be aware that success in a previous round should not be considered indicative of success under this NOFA. In addition, organizations will not be penalized for having received awards in previous funding rounds, except to the extent that:

(1) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its subsidiaries and affiliates during any three year period; and

(2) An applicant that is a previous awardee has failed to meet its performance goals, financial soundness covenants (if applicable) and/or other requirements contained in the previously executed assistance agreement(s).

The Fund recognizes that there are in existence certain intermediary CDFIs, and that others may be created over time, that focus their financing activities primarily on financing other CDFIs. Such institutions may have knowledge and capacity to develop and implement a specialized niche or niches in their financing of CDFIs and/or CDFIs in formation. The Fund believes that providing financial assistance to such intermediaries can be an effective way to enhance its support of the CDFI industry by reaching CDFIs that the Fund itself cannot reach as effectively under the Core Component. An intermediary CDFI may, for example, have a specialized niche or niches focusing on financing a specific type or types of CDFIs, providing small amounts of capital per CDFI, financing CDFIs with specialized risk levels, or financing institutions seeking to become CDFIs. By providing financial assistance to specialized intermediaries, the Fund believes it can leverage the expertise of such intermediaries and strengthen the Fund's capacity to support the development and enhancement of the CDFI industry. This NOFA invites applications from CDFIs, and organizations seeking to become CDFIs, that are or plan to become a specialized CDFI intermediary, focusing on providing loans to, or investments in, other CDFIs and/or to support the formation of CDFIs. This NOFA is not intended and should not be construed to allow an applicant to file a joint application on behalf of a group of other CDFIs, but rather to provide financial assistance to intermediaries that provide financing, in arms-length transactions, to other CDFIs and/or to support the formation of CDFIs.

This NOFA implements the fourth round of the Intermediary Component.

II. Eligibility

The Act and the interim rule, as revised, specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this Intermediary Component NOFA. At the time an entity submits its application, the entity must be a duly organized and validly existing legal entity under the laws of the jurisdiction in which it is incorporated or otherwise established. An entity must meet, or propose to meet, the CDFI eligibility requirements. In general, a CDFI and its affiliates must collectively have a primary mission of promoting community development. In addition, the applicant organization must provide lending or equity investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a non-governmental entity.

In addition, this NOFA is limited to applicants that satisfy the following requirements:

(1) The applicant's financial products (loans, equity investments, grants, and deposits) must primarily focus on financing other CDFIs and/or supporting the formation of CDFIs; or

(2) If (a) the applicant does not meet the CDFI eligibility requirements; or

(b) if the applicant's financial products do not primarily focus on financing and/or supporting the formation of CDFIs at the time of application, the application shall include a realistic plan for the applicant to meet both criteria (a) and (b) by September 30, 2001 (which period may be extended at the sole discretion of the Fund). In no event will the Fund disburse financial or technical assistance to the applicant until the applicant can be certified as a CDFI and demonstrates that its products primarily focus on other CDFIs and/or the formation of CDFIs. Further details regarding eligibility and other program requirements are found in the application packet.

III. Types of Assistance

An applicant may submit an application for financial assistance or technical assistance (TA) under this NOFA. Financial assistance may be provided in the form of an equity investment, loan, or grant (or a combination of these financial assistance instruments). Applicants for financial assistance shall indicate the dollar amount, form, terms, and conditions of the assistance requested. Applicants for TA under this NOFA shall describe the type(s) of TA requested, the provider(s) of the TA, the cost of the TA, and a narrative justification for their TA request.

IV. Application Packet

An applicant under this NOFA, whether applying for financial assistance, TA, or both, must submit the materials described in the application packet.

V. Matching Funds

Applicants responding to this NOFA must obtain matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of assistance provided by the Fund. Matching funds must be at least comparable in form and value to the assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1998, and before August 31, 2001, may be considered when determining matching funds availability. The Fund reserves the right to recapture and reprogram funds if an applicant fails to raise the required matching funds by August 31, 2001, or to grant an extension of such matching funds deadline for specific applicants selected for assistance, if the Fund deems it appropriate. Funds used by an applicant as matching funds for a previous award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement.

VI. Evaluation

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, applications will be evaluated by the Fund on a competitive basis in accordance with the criteria described in this NOFA. In conducting its substantive review, the Fund will evaluate the following criteria:

(1) The applicant's ability to carry out its Comprehensive Business Plan and create community development impact (the Ability criterion);

(2) The quality of the applicant's strategy for carrying out its Comprehensive Business Plan and for creating community development impact (the Strategy criterion); and

(3) The extent to which an award to the applicant will maximize the effective use of the Fund's resources (the Effective Use criterion).

In addition, the Fund will consider the institutional and geographic diversity of applicants in making its funding determinations.

Phase One

In Phase One of the substantive review, each Fund reader(s) will evaluate applications using a 100-point scale, as follows:

Ability to Carry Out the Comprehensive Business Plan and Create Community Development Impact: 50-point maximum, with a minimum score of 25 points required to be passed on for Phase Two review. The score of the Ability criterion is based on a composite assessment of an applicant's organizational strengths and weaknesses under the four sub-criteria listed below. Such scoring reflects different weighting of the sub-criteria depending on whether an applicant is a start-up organization or an established organization. The Fund defines a start-up organization as an entity that has been in operation for two years or less, as of the date of this NOFA (meaning, for purposes of this NOFA, having incurred initial operating expenses on or after November 1, 1997). For purposes of this NOFA, start-up organizations will not be evaluated under the Ability criterion on their previous community development and financial track records. Instead, start-up organizations will be scored entirely on operational and management capacity.

Under the Ability section of the application, the Fund will evaluate the following four sub-criteria:

(1) Community development track record: 12-point maximum (established organizations only);

(2) Operational capacity and risk mitigation strategies: 12-point maximum (established organizations), 20-point maximum (start-ups);

(3) Financial track record and strength: 12-point maximum (established organizations only); and

(4) Capacity, skills and experience of the management team: 14-point maximum (established organizations), 30-point maximum (start-ups).

Quality of the Strategy for Carrying Out the Comprehensive Business Plan and for Creating Impact: 40-point maximum with a minimum of 20 points required to be passed on for Phase Two review. Under the Strategy section of the application, the Fund will evaluate the following four sub-criteria:

(1) The applicant's understanding of its market: 10-point maximum;

(2) Program design and implementation plan: 10-point maximum;

(3) Projections for financial performance and raising needed resources: 10-point maximum; and

(4) Projections for generating, measuring and evaluating community development impact: 10-point maximum.

In the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider whether the applicant will expand its operations into a new target market, offer more products or services, and/or increase the volume of its activities.

Maximizing Effective Use of Fund Resources: 10-point maximum, with no minimum score required to be passed on for Phase Two review. The Fund will consider:

(1) The extent to which the applicant needs the Fund's assistance to carry out its Comprehensive Business Plan; and

(2) The extent of economic distress in the applicant's target market.

In addition, in the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider the applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable) and other requirements contained in the assistance agreement(s) with the Fund, and the benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance.

Phase Two

Once the initial evaluation is completed, the Fund will determine which applications will receive further consideration for funding based on application scores (standardized if deemed appropriate), recommendations of individuals performing initial reviews and the amount of funds available. Applicants that advance to Phase Two may receive a site visit and/or telephone interview(s) conducted by a Fund reviewer for the purpose of obtaining clarifying or confirming information. At this point in the process, applicants will be required to submit additional information, as set forth in detail in the application packet. After conducting such site visits/telephone interview(s), the Fund reviewer will evaluate applications in accordance with the evaluation criteria outlined above and prepare a recommendation memorandum containing recommendations on the type and amount of assistance that should be provided to the applicant.

A final review panel comprised of Fund staff will consider the Fund reviewer's recommendation memorandum and make a final recommendation to the Fund's selecting official. In making its recommendations, the final review panel also may consider the institutional diversity and geographic diversity of applicants (e.g., recommending a CDFI from a State in which the Fund has not previously made an award over a CDFI in a State in which the Fund has already made numerous awards).

The Fund's selecting official will make a final funding determination based on the applicant's file, including, without limitation, reader(s)/reviewer(s) recommendations and the panel's recommendation, and the amount of funds available. In the case of regulated CDFIs, the selecting official will also take into consideration the views of the appropriate Federal banking agencies.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate.

VII. Information Sessions

In connection with this NOFA and the NOFA for the Core Component, the Fund will conduct Information Sessions to disseminate information to organizations contemplating applying for, and other organizations interested in learning about, the CDFI Program. Registration is required and registration in advance is preferred. The Fund will conduct 12 in-person Information Sessions, beginning November 8, 1999, as follows:

Atlanta, GA, November 9, 1999;
Boston, MA, November 15, 1999;
Chicago, IL, November 8, 1999;
Cleveland, OH, November 9, 1999;
Dallas, TX, November 9, 1999;
Memphis, TN, November 8, 1999;
Miami, FL, November 8, 1999;
New York, NY, November 16, 1999;
Salt Lake City, UT, November 16, 1999;
San Diego, CA, November 19, 1999;
San Francisco, CA, November 22, 1999; and
Seattle, WA, November 15, 1999.

In addition to the in-person sessions listed above, the Fund will broadcast an Information Session using interactive video-teleconferencing technology on November 16, 1999, from 1:00 p.m. to 4:00 p.m. EST. Registration is required and registration in advance is preferred. This Information Session will be produced in Washington, DC, and will be downlinked via satellite to the local Department of Housing and Urban Development (HUD) offices located in the following 73 cities: Albany, NY; Albuquerque, NM; Anchorage, AK; Atlanta, GA; Baltimore, MD; Bangor, ME; Beaumont, TX; Birmingham, AL; Boise, ID; Buffalo, NY; Burlington, VT; Casper, WY; Charleston, WV; Chicago, IL; Cincinnati, OH; Columbia, SC; Columbus, OH; Denver, CO; Des Moines, IA; Detroit, MI; Fargo, ND; Flint, MI; Fresno, CA; Grand Rapids, MI; Greensboro, NC; Hartford, CT; Helena, MT; Honolulu, HI; Houston, TX; Indianapolis, IN; Jackson, MS; Jacksonville, FL; Kansas City, KS; Knoxville, TN; Lanham, MD; Las Vegas, NV; Little Rock, AR; Los Angeles, CA; Louisville, KY; Lubbock, TX; Manchester, NH; Miami, FL; Milwaukee, WI; Minneapolis/St. Paul, MN; Nashville, TN; New Orleans, LA; Newark, NJ; Oklahoma City, OK; Omaha, NE; Orlando, FL; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Portland, OR; Providence, RI; Reno, NV; Richmond, VA; Sacramento, CA; St. Louis, MO; San Antonio, TX; San Francisco, CA; San Juan, PR; Santa Ana, CA; Shreveport, LA; Sioux Falls, SD; Spokane, WA; Springfield, IL; Syracuse, NY; Tampa, FL; Tucson, AZ; Tulsa, OK; Washington, DC; and Wilmington, DE.

For more information, or to register for an Information Session, please contact the Fund at (202) 622–8662 or visit the Fund's web site at www.treas.gov/cdfi.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.

Dated: October 25, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–28283 Filed 10–29–99; 8:45 am]

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VOL
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federal register

Monday
November 1, 1999

Part XI

The President

Proclamation 7245—National Adoption Month, 1999

Notice of October 29, 1999—Continuation of Sudanese Emergency

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Federal

Vol. 64

Monday

Title

The

Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

Presidential Documents

Title 3—

The President

Proclamation 7245 of October 28, 1999

National Adoption Month, 1999

By the President of the United States of America

A Proclamation

This month, as families across America look forward to the holiday season that is fast approaching, we remember with special concern the thousands of children in our Nation who are growing up without the unconditional love and security of a permanent home. Our Nation's foster care system plays an invaluable role in providing temporary safe and caring homes to children who need them, but permanent homes and families are vital to giving these children the stability and sustained love they need to reach their full potential.

My Administration has worked hard to promote adoption by assisting adoptive families and breaking down barriers to adoption. We have helped remove many economic barriers to adoption by providing tax credits to families adopting children, and the Family and Medical Leave Act that I signed into law in 1993 gives workers job-protected leave to care for their newly adopted children. The Adoption and Safe Families Act I signed in 1997 reformed our Nation's child welfare system, made clear that the health and safety of children must be the paramount concern of State child welfare services, and expedited permanent placement for children. It also ensured health coverage for children with special needs and created new financial incentives for States to increase adoption. We also took important steps to help ensure that the adoption process remains free from discrimination and delays on the basis of race, culture, and ethnicity. We are now working to break down geographic barriers to adoption by using the Internet to link children in foster care to possible adoptive families.

We have new evidence that our efforts are bearing fruit: the first significant increase in adoptions since the National Foster Care Program was created almost 20 years ago. A new report from the Department of Health and Human Services shows that from 1996 to 1998, the number of adoptions nationwide rose 29 percent—from 28,000 to 36,000—and should meet our national goal of 56,000 adoptions by the year 2002. In addition, the First Lady and I were pleased to announce this past September the first-ever bonus awards to States that have increased the number of adoptions from the public foster care system. We also announced additional grants to public and private organizations that remove barriers to adoption.

To follow through on this record of achievement, I have urged the Congress to safeguard the interests and well-being of young people who reach the age of 18 without being adopted or placed in a permanent home. Under the current system, Federal financial assistance for young people in foster care ends just as they are making the critical transition to independence. We must ensure that when these young people are old enough to leave the foster care system, they have the health care, life skills training, and educational opportunities they need to succeed personally and professionally.

As we observe National Adoption Month this year, we can take pride in our progress, but we know there is more work to be done. Let us take this opportunity to rededicate ourselves to meeting those challenges, and let us honor the many adoptive parents whose generosity and love have made such an extraordinary difference in the lives of thousands of our Nation's children.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1999 as National Adoption Month. I urge all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent, loving homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–28716
Filed 10–29–99; 11:31 am]
Billing code 3195–01–P

Presidential Documents

Notice of October 29, 1999

Continuation of Sudanese Emergency

On November 3, 1997, by Executive Order 13067, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan. By Executive Order 13067, I imposed trade sanctions on Sudan and blocked Sudanese government assets. Because the Government of Sudan has continued its activities hostile to United States interests, the national emergency declared on November 3, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond November 3, 1999. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency for 1 year with respect to Sudan.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J Clinton

THE WHITE HOUSE,
October 29, 1999.

[FR Doc. 99–28717
Filed 10–29–99; 11:31 am]
Billing code 3195–01–P

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Reader Aids

Federal Register

Vol. 64, No. 210

Monday, November 1, 1999

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

58755–59106	1

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 1, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Walnuts grown in—
  - California; published 10-29-99

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

- Loan and purchase programs:
  - Single-Year and Multi-Year Crop Loss Disaster Assistance Program
    - 1999 Livestock Indemnity Program; published 11-1-99

COMMERCE DEPARTMENT

International Trade Administration

- Antidumping and countervailing duty orders; revocation; published 9-22-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Marine mammals:
  - Commercial fishing operations; incidental taking—
    - Atlantic large whale take reduction plan; published 4-9-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - Alaska; published 9-1-99
  - California; published 8-31-99
  - Delaware; published 9-30-99
  - Massachusetts; published 9-2-99
  - North Dakota; published 8-31-99
  - North Dakota; correction; published 9-28-99
- Clean Air Act:
  - Interstate ozone transport reduction—
    - Connecticut, Massachusetts, and Rhode Island; nitrogen oxides budget trading program; significant contribution and rulemaking findings; published 9-15-99
- Hazardous waste program authorizations:
  - Louisiana; published 9-2-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Fenbutatin oxide, etc.; published 8-2-99
  - Formaldehyde; published 8-2-99

FEDERAL COMMUNICATIONS COMMISSION

- Radio services, special:
  - Amateur services—
    - Spread spectrum communication technologies; published 9-23-99
- Radio stations; table of assignments:
  - Nebraska; published 10-12-99
  - New Mexico; published 10-12-99

FEDERAL RESERVE SYSTEM

- International banking operations (Regulation K):
  - Data processing provisions; interpretation; published 11-1-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Medical devices:
  - Mammography quality standards; published 6-17-99

INTERIOR DEPARTMENT

Land Management Bureau

- General management:
  - Public administrative procedures—
    - Application procedures; published 10-1-99
- Minerals management:
  - Leasing of solid minerals other than coal and oil shale; published 10-1-99

INTERIOR DEPARTMENT

Minerals Management Service

- Outer Continental Shelf; oil, gas, and sulphur operations:
  - Coastal zone consistency review of exploration plans and development and production plans; published 10-1-99
- Royalty management:
  - Electronic submission of royalty and production reports; published 7-15-99

JUSTICE DEPARTMENT

- Whistleblower protection for FBI employees; published 11-1-99

PENSION BENEFIT GUARANTY CORPORATION

- Single employer plans:
  - Allocation of assets—
    - Interest assumptions for valuing benefits; published 10-15-99

PERSONNEL MANAGEMENT OFFICE

- Prevailing rate systems; published 10-1-99

POSTAL SERVICE

- Practice and procedure:
  - Environmental regulations—
    - Floodplain and wetland procedures; published 10-19-99

TREASURY DEPARTMENT

Community Development Financial Institutions Fund

- Community Development Financial Institutions Program; implementation; published 11-1-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Electronic benefit transfer system; adjustments; comments due by 11-8-99; published 9-9-99

AGRICULTURE DEPARTMENT

Forest Service

- National Forest System land and resource management planning; comments due by 11-9-99; published 10-5-99

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

- Americans with Disabilities Act; implementation:
  - Accessibility guidelines—
    - Recreation facilities; comments due by 11-8-99; published 7-9-99

COMMERCE DEPARTMENT

Economic Analysis Bureau

- International services surveys:
  - U.S. direct investments abroad—
    - BE-10; benchmark survey-1999; reporting requirements; comments due by 11-8-99; published 9-7-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Endangered and threatened species:
  - Sea turtle conservation; shrimp trawling requirements—
    - Cape Lookout, NC, offshore waters affected by Hurricanes Dennis and Floyd; limited tow times use as alternative to turtle excluder devices; comments due by 11-12-99; published 10-15-99

DEFENSE DEPARTMENT

- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

ENERGY DEPARTMENT

- Acquisition regulations:
  - Management and operating contracts; purchasing from contractor affiliated sources; comments due by 11-12-99; published 10-13-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-8-99; published 9-23-99
  - Colorado; comments due by 11-8-99; published 10-7-99
  - Delaware; comments due by 11-12-99; published 10-12-99
  - New York; comments due by 11-8-99; published 10-8-99
  - Source-specific plans—
    - Navajo Nation, AZ and NM; comments due by 11-8-99; published 10-8-99
- Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Texas; comments due by 11-12-99; published 10-13-99
- Hazardous waste program authorizations:
  - Washington; comments due by 11-12-99; published 10-12-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Avermectin B1 and its delta-8,9-isomer; comments due

- by 11-8-99; published 9-7-99
- Processing fees; comments due by 11-8-99; published 9-24-99

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Wireless telecommunications services—
    - Extension to Tribal lands; comments due by 11-9-99; published 9-10-99
- Digital television stations; table of assignments:
  - Illinois; comments due by 11-9-99; published 9-29-99
- Radio stations; table of assignments:
  - New York; comments due by 11-8-99; published 10-12-99
  - Texas; comments due by 11-8-99; published 9-29-99
  - Wisconsin; comments due by 11-8-99; published 9-29-99

FEDERAL DEPOSIT INSURANCE CORPORATION

- Resolution and receivership rules:
  - Financial assests transferred by insured depository institution in connection with securitization or participation; comments due by 11-8-99; published 9-9-99

FEDERAL ELECTION COMMISSION

- Rulemaking petitions:
  - Project on Government Oversight; comments due by 11-12-99; published 10-13-99

FEDERAL RESERVE SYSTEM

- Equal credit opportunity (Regulation B):
  - Revision; comments due by 11-10-99; published 8-16-99

GENERAL SERVICES ADMINISTRATION

- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Medical devices:
  - Cardiovascular, orthopedic, and physical medicine diagnostic devices—
    - Cardiopulmonary bypass accessory equipment, goniometer device, and electrode cable devices; comments due by 11-8-99; published 8-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

- Medicaid:
  - Tuberculosis-related services to TB-infected individuals; optional coverage; comments due by 11-9-99; published 9-10-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

- Risk-based capital:
  - Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 11-10-99; published 6-14-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

- Land and water:
  - Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 11-12-99; published 10-15-99

INTERIOR DEPARTMENT

Land Management Bureau

- Land resource management:
  - Rights-of-way—
    - Principles and procedures under Mineral Leasing Act; comments due by 11-12-99; published 10-13-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

- National Wildlife Refuge System:
  - Land usage; compatibility policy; comments due by 11-8-99; published 9-9-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Virginia; comments due by 11-8-99; published 10-8-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

- Acquisition regulations:
  - Foreign proposals to NASA research announcements; implementation on no-exchange-of-funds basis; comments due by 11-8-99; published 9-7-99
- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

NUCLEAR REGULATORY COMMISSION

- Rulemaking petitions:
  - Angel, Jeffery C.; comments due by 11-8-99; published 8-23-99
- Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
  - Approved spent fuel storage casks; list additions; comments due by 11-8-99; published 8-23-99

TRANSPORTATION DEPARTMENT

Coast Guard

- Regattas and marine parades:
  - Patapsco River, MD; New Year's Celebration Fireworks; comments due by 11-8-99; published 10-8-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Advisory circulars; availability, etc.:
  - Aircraft products and parts—
    - Brakes and braking systems certification tests and analysis; comments due by 11-8-99; published 8-10-99
- Airworthiness directives:
  - Airbus; comments due by 11-8-99; published 10-8-99
  - AlliedSignal Inc.; comments due by 11-8-99; published 9-8-99
  - British Aerospace; comments due by 11-8-99; published 10-8-99
  - General Electric Co.; comments due by 11-8-99; published 9-8-99
- Airworthiness standards:
  - Transport category airplanes—
    - Braking systems; harmonization with European standards; comments due by 11-8-99; published 8-10-99
    - Braking systems; harmonization with European standards; correction; comments due by 11-8-99; published 8-20-99
- Technical standard orders:
  - Transport airplane wheels and wheel and brake assemblies; comments due by 11-8-99; published 8-10-99

TREASURY DEPARTMENT

Customs Service

- Merchandise entry:
  - Anticounterfeiting Consumer Protection Act; Customs entry documentation; comments due by 11-12-99; published 9-13-99

TREASURY DEPARTMENT

Internal Revenue Service

- Income taxes, etc.:
  - Partnerships and branches; guidance under Subpart F; withdrawal and new guidance involving hybrid branches; comments due by 11-10-99; published 7-13-99
- Income taxes:
  - Capital gains, partnership, Subchapter S, and trust provisions; comments due by 11-8-99; published 8-9-99
    - Correction; comments due by 11-8-99; published 9-10-99
  - Income tax return preparer; identifying number; cross reference; comments due by 11-10-99; published 8-12-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1663/P.L. 106–83

National Medal of Honor Memorial Act (Oct. 28, 1999; 113 Stat. 1293)

H.R. 2841/P.L. 106–84
To amend the Revised Organic Act of the Virgin Islands to provide for greater fiscal autonomy consistent with other United States jurisdictions, and for other purposes. (Oct. 28, 1999; 113 Stat. 1295)

H.J. Res. 73/P.L. 106–85
Making further continuing appropriations for the fiscal year 2000, and for other purposes. (Oct. 29, 1999; 113 Stat. 1297)

Last List October 28, 1999

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-038-00001-6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869-038-00002-4)	20.00	[1] Jan. 1, 1999
4	(869-038-00003-2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869-038-00004-1)	37.00	Jan. 1, 1999
700–1199	(869-038-00005-9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869-038-00006-7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869-038-00007-5)	25.00	Jan. 1, 1999
27–52	(869-038-00008-3)	32.00	Jan. 1, 1999
53–209	(869-038-00009-1)	20.00	Jan. 1, 1999
210–299	(869-038-00010-5)	47.00	Jan. 1, 1999
300–399	(869-038-00011-3)	25.00	Jan. 1, 1999
400–699	(869-038-00012-1)	37.00	Jan. 1, 1999
700–899	(869-038-00013-0)	32.00	Jan. 1, 1999
900–999	(869-038-00014-8)	41.00	Jan. 1, 1999
1000–1199	(869-038-00015-6)	46.00	Jan. 1, 1999
1200–1599	(869-038-00016-4)	34.00	Jan. 1, 1999
1600–1899	(869-038-00017-2)	55.00	Jan. 1, 1999
1900–1939	(869-038-00018-1)	19.00	Jan. 1, 1999
1940–1949	(869-038-00019-9)	34.00	Jan. 1, 1999
1950–1999	(869-038-00020-2)	41.00	Jan. 1, 1999
2000–End	(869-038-00021-1)	27.00	Jan. 1, 1999
8	(869-038-00022-9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869-038-00023-7)	42.00	Jan. 1, 1999
200–End	(869-038-00024-5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869-038-00025-3)	42.00	Jan. 1, 1999
51–199	(869-038-00026-1)	34.00	Jan. 1, 1999
200–499	(869-038-00027-0)	33.00	Jan. 1, 1999
500–End	(869-038-00028-8)	43.00	Jan. 1, 1999
11	(869-038-00029-6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869-038-00030-0)	17.00	Jan. 1, 1999
200–219	(869-038-00031-8)	20.00	Jan. 1, 1999
220–299	(869-038-00032-6)	40.00	Jan. 1, 1999
300–499	(869-038-00033-4)	25.00	Jan. 1, 1999
500–599	(869-038-00034-2)	24.00	Jan. 1, 1999
600–End	(869-038-00035-1)	45.00	Jan. 1, 1999
13	(869-038-00036-9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869-038-00037-7)	50.00	Jan. 1, 1999
60–139	(869-038-00038-5)	42.00	Jan. 1, 1999
140–199	(869-038-00039-3)	17.00	Jan. 1, 1999
200–1199	(869-038-00040-7)	28.00	Jan. 1, 1999
1200–End	(869-038-00041-5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869-038-00042-3)	25.00	Jan. 1, 1999
300–799	(869-038-00043-1)	36.00	Jan. 1, 1999
800–End	(869-038-00044-0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869-038-00045-8)	32.00	Jan. 1, 1999
1000–End	(869-038-00046-6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869-038-00048-2)	29.00	Apr. 1, 1999
200–239	(869-038-00049-1)	34.00	Apr. 1, 1999
240–End	(869-038-00050-4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869-038-00051-2)	48.00	Apr. 1, 1999
400–End	(869-038-00052-1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869-038-00053-9)	37.00	Apr. 1, 1999
141–199	(869-038-00054-7)	36.00	Apr. 1, 1999
200–End	(869-038-00055-5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869-038-00056-3)	30.00	Apr. 1, 1999
400–499	(869-038-00057-1)	51.00	Apr. 1, 1999
500–End	(869-038-00058-0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869-038-00059-8)	24.00	Apr. 1, 1999
100–169	(869-038-00060-1)	28.00	Apr. 1, 1999
170–199	(869-038-00061-0)	29.00	Apr. 1, 1999
200–299	(869-038-00062-8)	11.00	Apr. 1, 1999
300–499	(869-038-00063-6)	50.00	Apr. 1, 1999
500–599	(869-038-00064-4)	28.00	Apr. 1, 1999
600–799	(869-038-00065-2)	9.00	Apr. 1, 1999
800–1299	(869-038-00066-1)	35.00	Apr. 1, 1999
1300–End	(869-038-00067-9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869-038-00068-7)	44.00	Apr. 1, 1999
300–End	(869-038-00069-5)	32.00	Apr. 1, 1999
23	(869-038-00070-9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869-038-00071-7)	34.00	Apr. 1, 1999
200–499	(869-038-00072-5)	32.00	Apr. 1, 1999
500–699	(869-038-00073-3)	18.00	Apr. 1, 1999
700–1699	(869-038-00074-1)	40.00	Apr. 1, 1999
1700–End	(869-038-00075-0)	18.00	Apr. 1, 1999
25	(869-038-00076-8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869-038-00077-6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869-038-00078-4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869-038-00079-2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869-038-00080-6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869-038-00081-4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869-038-00083-1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869-038-00084-9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869-038-00085-7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869-038-00086-5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869-038-00087-3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869-038-00088-1)	55.00	Apr. 1, 1999
2–29	(869-038-00089-0)	39.00	Apr. 1, 1999
30–39	(869-038-00090-3)	28.00	Apr. 1, 1999
40–49	(869-038-00091-1)	17.00	Apr. 1, 1999
50–299	(869-038-00092-0)	21.00	Apr. 1, 1999
300–499	(869-038-00093-8)	37.00	Apr. 1, 1999
500–599	(869-038-00094-6)	11.00	Apr. 1, 1999
600–End	(869-038-00095-4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869-038-00096-2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200-End	(869-038-00097-1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869-038-00098-9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0-99	(869-038-00100-4)	28.00	July 1, 1999
100-499	(869-038-00101-2)	13.00	July 1, 1999
500-899	(869-038-00102-1)	40.00	[8] July 1, 1999
900-1899	(869-038-00103-9)	21.00	July 1, 1999
1900-1910 (§§ 1900 to 1910.999)	(869-038-00104-7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869-038-00105-5)	28.00	July 1, 1999
1911-1925	(869-038-00106-3)	18.00	July 1, 1999
1926	(869-038-00107-1)	30.00	July 1, 1999
1927-End	(869-038-00108-0)	43.00	July 1, 1999
30 Parts:			
1-199	(869-038-00109-8)	35.00	July 1, 1999
200-699	(869-038-00110-1)	30.00	July 1, 1999
700-End	(869-038-00111-0)	35.00	July 1, 1999
31 Parts:			
0-199	(869-038-00112-8)	21.00	July 1, 1999
200-End	(869-038-00113-6)	48.00	July 1, 1999
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-038-00114-4)	46.00	July 1, 1999
*191-399	(869-038-00115-2)	55.00	July 1, 1999
400-629	(869-038-00116-1)	32.00	July 1, 1999
630-699	(869-038-00117-9)	23.00	July 1, 1999
700-799	(869-038-00118-7)	27.00	July 1, 1999
800-End	(869-038-00119-5)	27.00	July 1, 1999
33 Parts:			
1-124	(869-034-00120-3)	29.00	July 1, 1998
125-199	(869-038-00121-7)	41.00	July 1, 1999
200-End	(869-038-00122-5)	33.00	July 1, 1999
34 Parts:			
1-299	(869-038-00123-3)	28.00	July 1, 1999
300-399	(869-038-00124-1)	25.00	July 1, 1999
400-End	(869-034-00125-4)	44.00	July 1, 1998
35	(869-034-00126-2)	14.00	July 1, 1998
36 Parts			
1-199	(869-038-00127-6)	21.00	July 1, 1999
200-299	(869-038-00128-4)	23.00	July 1, 1999
300-End	(869-038-00129-2)	38.00	July 1, 1999
37	(869-038-00130-6)	29.00	July 1, 1999
38 Parts:			
0-17	(869-038-00131-4)	37.00	July 1, 1999
18-End	(869-038-00132-2)	41.00	July 1, 1999
39	(869-038-00133-1)	24.00	July 1, 1999
40 Parts:			
1-49	(869-038-00134-9)	33.00	July 1, 1999
50-51	(869-038-00135-7)	25.00	July 1, 1999
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998
52 (52.1019-End)	(869-038-00137-3)	37.00	July 1, 1999
53-59	(869-038-00138-1)	19.00	July 1, 1999
60	(869-034-00139-4)	53.00	July 1, 1998
61-62	(869-038-00140-3)	19.00	July 1, 1999
63 (63.1-63.1119)	(869-038-00141-1)	58.00	July 1, 1999
64-71	(869-038-00143-8)	11.00	July 1, 1999
72-80	(869-034-00143-2)	36.00	July 1, 1998
81-85	(869-034-00144-1)	31.00	July 1, 1998
86	(869-034-00144-9)	53.00	July 1, 1998
87-135	(869-034-00146-7)	47.00	July 1, 1998
*136-149	(869-038-00148-9)	40.00	July 1, 1999
150-189	(869-034-00148-3)	34.00	July 1, 1998
190-259	(869-038-00150-1)	23.00	July 1, 1999
260-265	(869-038-00151-9)	32.00	July 1, 1999
266-299	(869-038-00152-7)	33.00	July 1, 1999
*300-399	(869-038-00153-5)	26.00	July 1, 1999
400-424	(869-034-00153-0)	33.00	July 1, 1998
425-699	(869-034-00154-8)	42.00	July 1, 1998
700-789	(869-034-00155-6)	41.00	July 1, 1998
790-End	(869-038-00157-8)	23.00	July 1, 1999
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-034-00157-2)	13.00	July 1, 1998
101	(869-038-00159-4)	39.00	July 1, 1999
102-200	(869-038-00160-8)	16.00	July 1, 1999
201-End	(869-038-00161-6)	15.00	July 1, 1999
42 Parts:			
1-399	(869-034-00161-1)	34.00	Oct. 1, 1998
400-429	(869-034-00162-9)	41.00	Oct. 1, 1998
430-End	(869-034-00163-7)	51.00	Oct. 1, 1998
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-034-00166-1)	48.00	Oct. 1, 1998
45 Parts:			
1-199	(869-034-00167-0)	30.00	Oct. 1, 1998
200-499	(869-034-00168-8)	14.00	Oct. 1, 1998
500-1199	(869-034-00169-6)	30.00	Oct. 1, 1998
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
1-40	(869-034-00171-8)	26.00	Oct. 1, 1998
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-034-00174-2)	26.00	Oct. 1, 1998
140-155	(869-034-00175-1)	14.00	Oct. 1, 1998
156-165	(869-034-00176-9)	19.00	Oct. 1, 1998
166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
47 Parts:			
0-19	(869-034-00180-7)	36.00	Oct. 1, 1998
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
40-69	(869-034-00182-3)	24.00	Oct. 1, 1998
70-79	(869-034-00183-1)	37.00	Oct. 1, 1998
80-End	(869-034-00184-0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1-51)	(869-034-00185-8)	51.00	Oct. 1, 1998
1 (Parts 52-99)	(869-034-00186-6)	29.00	Oct. 1, 1998
2 (Parts 201-299)	(869-034-00187-4)	34.00	Oct. 1, 1998
3-6	(869-034-00188-2)	29.00	Oct. 1, 1998
7-14	(869-034-00189-1)	32.00	Oct. 1, 1998
15-28	(869-034-00190-4)	33.00	Oct. 1, 1998
29-End	(869-034-00191-2)	24.00	Oct. 1, 1998
49 Parts:			
1-99	(869-034-00192-1)	31.00	Oct. 1, 1998
100-185	(869-034-00193-9)	50.00	Oct. 1, 1998
186-199	(869-034-00194-7)	11.00	Oct. 1, 1998
200-399	(869-034-00195-5)	46.00	Oct. 1, 1998
400-999	(869-034-00196-3)	54.00	Oct. 1, 1998
1000-1199	(869-034-00197-1)	17.00	Oct. 1, 1998
1200-End	(869-034-00198-0)	13.00	Oct. 1, 1998
50 Parts:			
1-199	(869-034-00199-8)	42.00	Oct. 1, 1998
200-599	(869-034-00200-5)	22.00	Oct. 1, 1998
600-End	(869-034-00201-3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-038-00047-4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 1999

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
November 1	November 16	December 1	December 16	January 3	January 31
November 2	November 17	December 2	December 17	January 3	January 31
November 3	November 18	December 3	December 20	January 3	February 1
November 4	November 19	December 6	December 20	January 3	February 2
November 5	November 22	December 6	December 20	January 4	February 3
November 8	November 23	December 8	December 23	January 7	February 7
November 9	November 24	December 9	December 27	January 10	February 7
November 10	November 26	December 10	December 27	January 10	February 8
November 12	November 29	December 13	December 27	January 11	February 10
November 15	November 30	December 15	December 30	January 14	February 14
November 16	December 1	December 16	January 3	January 18	February 14
November 17	December 2	December 17	January 3	January 18	February 15
November 18	December 3	December 20	January 3	January 18	February 16
November 19	December 6	December 20	January 3	January 18	February 17
November 22	December 7	December 22	January 6	January 21	February 22
November 23	December 8	December 23	January 7	January 24	February 22
November 24	December 9	December 27	January 10	January 24	February 22
November 26	December 13	December 27	January 10	January 25	February 24
November 29	December 14	December 29	January 13	January 28	February 28
November 30	December 15	December 30	January 14	January 31	February 28

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11–2–99
Vol. 64 No. 211

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Tuesday
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Contents

Federal Register
Vol. 64, No. 211
Tuesday, November 2, 1999

Agricultural Marketing Service
RULES
Almonds grown in—
  California, 59107–59113
NOTICES
Beef promotion and research:
  Board and State beef council addresses, 59158–59159

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Centers for Disease Control and Prevention
NOTICES
Meetings:
  Advisory Committee to Director, 59182
  Breast and Cervical Cancer Early Detection and Control Advisory Committee, 59182
  National Center for Environmental Health—
    Asthma; public health response, 59182–59183

Children and Families Administration
NOTICES
Meetings:
  Medical Child Support Working Group, 59183–59184

Coast Guard
RULES
Drawbridge operations:
  Minnesota, 59123–59124

Commerce Department
See Economic Analysis Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Senior Executive Service:
  Performance Review Board; membership, 59159

Comptroller of the Currency
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 59232

Copyright Office, Library of Congress
PROPOSED RULES
Copyright office and procedures:
  Non-subscription digital transmissions; notice and recordkeeping, 59140–59141

Defense Department
See Navy Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
  City Drug Co., 59212–59214
  ISP Freetown Fine Chemicals Inc., 59214–59215
  NVE Pharmaceuticals, Inc., 59215–59219

Economic Analysis Bureau
RULES
International sevices surveys:
  BE-80; benchmark survey of financial services transactions between U.S. financial services providers and unaffiliated foreign persons, 59119–59121

Education Department
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 59171–59172

Energy Department
NOTICES
Grants and cooperative agreements; availability, etc.:
  Advanced coal research at U.S. colleges and universities, 59172–59176

Environmental Protection Agency
PROPOSED RULES
Air programs:
  Stratospehric ozone protection—
    Essential-use allowances; allocation, 59141–59147
Water supply:
  National primary drinking water regulations—
    Radon-222; maximum contaminant level goal; public health protection, 59245–59378
NOTICES
Meetings:
  Environmental Policy and Technology National Advisory Council, 59176–59177

Executive Office of the President
See Trade Representative, Office of United States

Farm Service Agency
PROPOSED RULES
Program regulations:
  Loans to Indian Tribes and tribal corporations, 59131–59137

Federal Aviation Administration
RULES
Airworthiness directives:
  Boeing, 59115–59117
  Dornier, 59117–59119
  Saab, 59113–59114
PROPOSED RULES
Airworthiness directives:
  Rolls-Royce plc, 59137–59139
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 59227
Airport noise compatibility program:
  Oakland County International Airport, MI, 59228–59229
Meetings:
  RTCA, Inc., 59229–59230

Federal Communications Commission
RULES
Radio stations; table of assignments:
  Texas, 59124–59125

PROPOSED RULES
- Digital television stations; table of assignments:
  - Louisiana, 59148
  - Texas, 59147–59148
- Radio services, special:
  - Private land mobile services—
    - Medical telemetry equipment operating in 450-460 MHz band, 59148–59149
- Radio stations; table of assignments:
  - Nebraska, 59148

Federal Election Commission

RULES
- Contribution and expenditure limitations and prohibitions:
  - Corporate and labor organizations—
    - Membership association member; definition, 59113

Federal Maritime Commission

NOTICES
- Meetings; Sunshine Act, 59177

Federal Railroad Administration

NOTICES
- Exemption petitions, etc.:
  - National Railroad Passenger Corp. (AMTRAK), 59230–59231

Federal Reserve System

NOTICES
- Publication activities review; comment request, 59177–59179

Federal Trade Commission

NOTICES
- Prohibited trade practices:
  - El Paso Energy Corp., 59179–59182

Fish and Wildlife Service

PROPOSED RULES
- Importation, exportation, and transportation of wildlife:
  - Brush-tailed possum; listing as injurious, 59149–59152

NOTICES
- Meetings:
  - Garrison Diversion Unit Federal Advisory Council, 59197

Foreign-Trade Zones Board

NOTICES
- *Applications, hearings, determinations, etc.:*
  - West Virginia
    - Toyota Motor Manufacturing West Virginia, Inc.; automobile transmissions, 59160

General Services Administration

RULES
- Federal Management Regulation:
  - Transportation—
    - Motor vehicle management, 59592–59602

Health and Human Services Department

See Centers for Disease Control and Prevention
See Children and Families Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration

RULES
- Medicare:
  - Physician fee schedule (2000 CY); payment policies and relative value unit adjustments, 59379–59590

NOTICES
- Agency information collection activities:
  - Submission for OMB review; comment request, 59184–59185
- Medicaid and Medicare:
  - Program issuances and coverage decisions; quarterly listing, 59185–59194

Housing and Urban Development Department

NOTICES
- Agency information collection activities:
  - Submission for OMB review; comment request, 59195–59196
- Meetings:
  - Tribal consultation policy; regional meetings, 59196–59197

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service

PROPOSED RULES
- Income taxes:
  - Qualified zone academy bonds; obligations of States and political subdivisions; cross reference and public hearing
    - Hearing cancellation, 59139–59140

International Trade Administration

NOTICES
- Antidumping:
  - Cold-rolled carbon steel flat products from—
    - Netherlands, 59161–59162
- Antidumping and countervailing duties:
  - Five-year (sunset) reviews—
    - Initiation of reviews, 59160–59161
- North American Free Trade Agreement (NAFTA); binational panel reviews:
  - Corrosion-resistant carbon steel flat products from—
    - Canada, 59162

International Trade Commission

NOTICES
- Import investigations:
  - Compact ductile iron waterworks fittings from—
    - China, 59199
  - Drams of one megabit and above from—
    - Korea, 59202–59204
  - Helical spring lock washers from—
    - China and Taiwan, 59204–59206
  - Professional electric cutting tools from—
    - Japan, 59206–59208
  - Silicon metal from—
    - Various countries, 59209–59211

Justice Department

See Drug Enforcement Administration

RULES
- Practice and procedure:
  - Policy against entering into final settlement agreements or consent decrees subject to confidentiality provisions, etc., 59122–59123

NOTICES
- Pollution control; consent judgments:
  - Chemetco, Inc., 59211–59212

Land Management Bureau

NOTICES

- Meetings:
  - Resource Advisory Councils—
    - Central Montana, 59197
    - New Mexico, 59197–59198
- Realty actions; sales, leases, etc.:
  - New Mexico; correction, 59198

Library of Congress

See Copyright Office, Library of Congress

National Labor Relations Board

NOTICES

- Meetings; Sunshine Act, 59219–59220

National Oceanic and Atmospheric Administration

RULES

- Fishery conservation and management:
  - Caribbean, Gulf, and South Atlantic fisheries—
    - South Atlantic Region; fishery management plans, 59126–59129
  - Caribbean, Gulf, and South tlantic fisheries—
    - Technical amendment, 59125–59126
  - West Coast States and Western Pacific fisheries—
    - Pacific Coast groundfish; correction, 59129–59130

PROPOSED RULES

- Fishery conservation and management:
  - Caribbean, Gulf, and South Atlantic fisheries—
    - Essential fish habitat, 59152–59153
  - Caribbean, Gulf, and South Atlantic fisheries and Gulf of Mexico stone crab—
    - Reef fish, red drum, etc., 59153–59155
  - Northeastern United States fisheries—
    - New England Fishery Management Council; meetings, 59156–59157

NOTICES

- Environmental statements; notice of intent:
  - Atlantic highly migratory species fisheries, 59162–59163
- Meetings:
  - South Atlantic Fishery Management Council, 59163
- Permits:
  - Marine mammals, 59163–59164

National Park Service

NOTICES

- National Register of Historic Places:
  - Pending nominations, 59198–59199
- Native American human remains and associated funerary objects:
  - Bay County Historical Society, MI; inventory, 59199

Navy Department

NOTICES

- Environmental statements; availability, etc.:
  - Base realignment and closure—
    - Naval Air Warfare Center, Aircraft Division, Warminster, PA, 59164–59171

Nuclear Regulatory Commission

NOTICES

- Meetings; Sunshine Act, 59220–59221
- *Applications, hearings, determinations, etc.:*
  - Carolina Power & Light Co., 59220

Office of United States Trade Representative

See Trade Representative, Office of United States

Personnel Management Office

NOTICES

- Privacy Act:
  - Systems of records, 59221–59222

Public Health Service

See Centers for Disease Control and Prevention

See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration

NOTICES

- Hazardous materials transportation:
  - Preemption determinations, 59231–59232

Rural Business-Cooperative Service

PROPOSED RULES

- Program regulations:
  - Loans to Indian Tribes and tribal corporations, 59131–59137

Rural Housing Service

PROPOSED RULES

- Program regulations:
  - Loans to Indian Tribes and tribal corporations, 59131–59137

Rural Utilities Service

PROPOSED RULES

- Program regulations:
  - Loans to Indian Tribes and tribal corporations, 59131–59137

Small Business Administration

NOTICES

- Disaster loan areas:
  - Arizona, 59222
  - FLorida, 59222–59223
  - Florida et al., 59223

State Department

NOTICES

- Art objects; importation for exhibition:
  - Johannes Vermeer's "The Art of Painting", 59223

Substance Abuse and Mental Health Services Administration

NOTICES

- Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 59194–59195

Trade Representative, Office of United States

NOTICES

- Foreign trade barriers; national trade estimate report: comment request, 59223–59224
- World Trade Organization:
  - Dispute settlement panel establishment requests—
    - Australia; U.S.'s safeguard measure on lamb meat imports, 59224–59225
    - New Zealand; U.S.'s safeguard measure on fresh, chilled or frozen lamb meat imports, 59225–59226

Transportation Department

See Coast Guard

See Federal Aviation Administration

See Federal Railroad Administration

See Research and Special Programs Administration

NOTICES

Aviation proceedings:
  Agreements filed; weekly receipts, 59226
  Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 59226–59227

Treasury Department

See Comptroller of the Currency
See Internal Revenue Service

Veterans Affairs Department

NOTICES

Diseases not associated with exposure to herbicide agents; list, 59232–59243

Separate Parts In This Issue

Part II
Environmental Protection Agency, 59245–59378

Part III
Department of Health and Human Services, Health Care Financing Administration, 59379–59590

Part IV
General Services Administration, 59591–59602

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
981 59107
Proposed Rules:
770 59131
1823 59131
1956 59131

11 CFR
100 59113
114 59113

14 CFR
39 (4 documents) 59113, 59115, 59116, 59117
Proposed Rules:
39 59137

15 CFR
801 59119

26 CFR
Proposed Rules:
1 59139

28 CFR
50 59122

33 CFR
117 59123

37 CFR
Proposed Rules:
201 59140

40 CFR
Proposed Rules:
82 59141
141 59245
142 59245

41 CFR
101 59591
102 59591

42 CFR
410 59379
411 59379
414 59379
415 59379
485 59379

47 CFR
73 (3 documents) 59124
Proposed Rules:
73 (3 documents) 59147, 59148
90 59148

50 CFR
622 (2 documents) 59125, 59126
640 59126
660 59129
Proposed Rules:
16 59149
622 (2 documents) 59152, 59153
648 59156
654 59153

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**Almonds
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AGENCY:
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SUMMARY
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the 1999-
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California
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Rules and Regulations

Federal Register
Vol. 64, No. 211
Tuesday, November 2, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–3 FR]

Almonds Grown in California; Salable and Reserve Percentages for the 1999–2000 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes salable and reserve percentages for California almonds received by handlers during the 1999–2000 crop year. The almond marketing order (order) regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The percentages are 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets. The 1999–2000 crop is estimated to be the largest crop on record. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices.

DATES: *Effective Date:* This final rule is effective December 2, 1999 through July 31, 2000. *Applicability Date:* This final rule applies during the period August 1, 1999, through July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable and reserve percentages may be established for almonds handled by handlers during the crop year. This rule establishes salable and reserve percentages for almonds received by handlers during the 1999–2000 crop year which runs from August 1, 1999, through July 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes salable and reserve percentages for California almonds received by handlers during the 1999–2000 crop year. The percentages are 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets. The 1999–2000 crop is estimated to be the largest crop on record. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices. This action was recommended by the Board at a meeting on July 12, 1999, by a vote of seven in favor and three opposed. Volume regulation was last implemented for California almonds during the 1994–95 crop year.

Section 981.47 of the order provides authority for the Secretary, based on recommendations by the Board and analysis of other available information, to establish salable and reserve percentages for almonds received by handlers during a crop year. The crop year runs from August 1 through July 31. To aid the Secretary in fixing the salable and reserve percentages, § 981.49 of the order requires the Board to submit information to the Department on estimates of the marketable production of almonds, combined domestic and export trade demand needs for the year, carryin inventory at the beginning of the year, and the desirable carryout inventory at the end of the crop year. Section 981.66 authorizes the disposition of reserve almonds to certain outlets such as almond oil, almond butter, and animal feed.

The Board met on May 12, 1999, to review the projected crop estimate and marketing conditions for the 1999–2000 season. The day before the Board's meeting, the California Agricultural Statistics Service (CASS) issued its initial forecast for the 1999 almond crop at 760 million kernelweight pounds. Based on that estimate, the Board recommended salable and reserve percentages of 84.79 percent and 15.21 percent, respectively, by a vote of seven in favor to three opposed. The CASS revised its crop estimate upwards to 830 million pounds on July 8, 1999. Based on the updated crop estimate, the Board met on July 12 and revised its recommendation for salable and reserve percentages to 77.64 and 22.36 percent, respectively, again by a seven to three vote. The 830 million pound crop estimate represents a 60 percent increase over 1998–99 production, and is 10 percent larger than the previous record crop of 756 million pounds produced in 1997–98. According to the CASS, although freezing temperatures in early April caused locally variable production losses, average yields are expected to be high due to excellent bloom and good weather during the pollination period. If realized, this will be the largest almond crop on record to date.

A tabulation of the estimates and calculations used by the Board as it considered recommending volume regulation for the 1999–2000 almond crop follows:

MARKETING POLICY ESTIMATES—1999 CROP (KERNELWEIGHT BASIS)

	Million Pounds	Percent
Estimated Production:		
1. 1999 Production	830.0	
2. Loss and Exempt—4.0% (Resulting from the removal of inedible kernels by handlers and losses during manufacturing)	33.2	
3. Marketable Production	796.8	
Estimated Trade Demand:		
4. Domestic	190.0	
5. Export	459.0	
6. Total	649.0	
Inventory Adjustment:		
7. Carryin 8/1/99	100.4	
8. Desirable Carryover 7/31/00 (available for early season shipments during 2000–2001)	70.0	
9. Adjustment (No. 8 minus no. 7)	−30.4	
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9) (quantity of almonds from the marketable production necessary to meet trade demand needs)	618.6	
11. Reserve (No. 3 minus no. 10)	178.2	
12. Salable % (Item 10 divided by item 3 x 100)	....	77.64%
13. Reserve % (100% minus item 12)	....	22.36

As specified in the marketing order, the Board considered the factors set forth in the preceding table in its deliberations. The available data indicate a supply for the 1999–2000 crop year of 827.2 million kernelweight pounds (marketable production adjusted for carryin and desired carryout), which exceeds estimated trade demand by 178.2 million kernelweight pounds. The estimated trade demand of 649 million kernelweight pounds represents 110 percent of the estimated shipments for the current crop year, and exceeds the record high shipments of 1997–98 by 36 million kernelweight pounds, or 6 percent.

In addition to the factors included in the table, the Board considered additional information such as the weather-related variation in production from year to year, significant increases in recent almond plantings, and increased yields. These are the primary factors contributing to the projected oversupply situation. The Board also considered recent price fluctuations in its deliberations. In 1997, grower prices averaged $1.55 per pound; during the 1998–99 season, prices reportedly dropped significantly. This was attributed to larger than anticipated 1998 supplies, speculation within the marketplace, and the anticipated large 1999–2000 crop.

The salable percentage of 77.64 percent will make 618.6 million kernelweight pounds of the marketable production available to handlers for sale to any market. Combining this figure with the carryin inventory from the 1998–99 crop year (100.4 million kernelweight pounds) and deducting the desired carryout inventory at the end of the 1999–2000 crop year (70.0 million kernelweight pounds) will result in a supply of 649 million kernelweight pounds. This supply will allow the industry to meet its trade demand needs of 649 million kernelweight pounds and allow for market growth. The remaining 22.36 percent, or 178.2 million kernelweight pounds, of the marketable production will be withheld by handlers to meet their reserve obligation.

All or part of the reserve almonds may be released to the salable category if it is found that the supply made available by the salable percentage is insufficient to satisfy 1999–2000 trade demand needs or desirable carryover for use during the 2000–2001 crop year. The Board is required to make any recommendations to the Secretary to increase the salable percentage prior to May 15, 2000, pursuant to § 989.48 of the order. Alternatively, all or a portion of the reserve almonds may be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal outlets for almonds.

As previously stated, 3 of the 10 Board members opposed the recommendation for volume regulation at both meetings where the percentages were recommended, with those in opposition commenting that this year's projected "large" crop will ultimately be considered average in size, and that next year's crop may be even larger due to new plantings, or expressing a preference for the industry to concentrate on building demand rather than imposing a reserve. Observers at the Board meetings who were opposed to volume regulation commented that the industry should deal with increasing supplies by building demand through its promotional activities, rather than implementing reserves. Others suggested that it is more appropriate to manage market risks at the individual handler level through marketing tools such as forward contracting, rather than controlling supplies at the industry level.

After much discussion, the majority of Board members supported the establishment of a reserve to help maintain orderly marketing conditions so that the industry can successfully manage the projected large 1999 almond crop. The long-term goal of the almond industry is to increase almond consumption and demand, and the supporting Board members believe this can be best achieved in the presence of stable and orderly marketing conditions. These members believe that use of the reserve provisions of the order as a supply management tool, in conjunction with other marketing tools available in the order, can assist in accomplishing the industry's goals.

The "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) issued by the Department in 1982 specify that 110 percent of recent years' sales be made available to primary markets each season for marketing orders using volume regulation. This rule will provide an estimated 719 million kernelweight pounds of California almonds for unrestricted sales (1999 crop salable production plus carryin from the 1998 crop) to meet increasing domestic and world almond consumption demand. This amount exceeds the estimated delivered sales for 1998–99 California almonds by about 22 percent. Thus, the Guidelines' goals are met.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service (NASS), and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

Pursuant to § 981.47 of the order, this rule establishes salable and reserve percentages applicable to California almonds received by handlers during the 1999–2000 crop year. The volume regulation percentages are 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets such as almond oil, almond butter, and animal feed. Volume regulation is warranted this season because the marketable production estimate of 796.8 million kernelweight pounds combined with the 1998–99 carryin inventory of 100.4 million kernelweight pounds results in an available supply of about 897 million kernelweight pounds. After subtracting the desirable carryout of 70 million kernelweight pounds, the remaining supply of 827 million kernelweight pounds would be 178 million kernelweight pounds higher than the trade demand of 649 million kernelweight pounds. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices, and should ultimately improve grower returns.

Regarding the impact of this rule on affected entities, the salable and reserve percentages will apply uniformly to all handlers in the industry, regardless of size. There were some concerns expressed at the Board's meeting regarding the impact of a reserve on small handlers, specifically, that small handlers who do not have adequate storage facilities may have to rent such facilities to hold their reserve almonds. These are costs they would not otherwise incur. However, the costs of holding almonds in reserve would be borne proportionately throughout the industry. All handlers would be required to store reserve almonds in varying quantities, depending upon the total amount of almonds handled. Those with existing facilities would also incur storage costs, although those costs may be fixed costs spread over a longer period of time. In any event, costs associated with storing reserve product are expected to be more than offset by the benefits of orderly marketing. In addition, the order was amended in 1996 to allow handlers to transfer their reserve obligation to other handlers. Thus, handlers with no storage facilities will now have the option to transfer their reserve withholding obligation to other handlers who can store the reserve almonds.

Furthermore, almond production, like that of many agricultural commodities, can vary significantly from season to season due to a variety of factors. This in turn can contribute to wide fluctuations in prices. For example, California almond production over the past 10 years has varied from a low of 366.7 million kernelweight pounds in 1995 to a high of 756.5 million kernelweight pounds in 1997. Grower prices for the past 10 years, as reported by the NASS, have varied from a low of $.93 per pound in 1990 to $2.48 per pound in 1995.

In addition, returns to growers have reportedly decreased by as much as $1.00 per pound since the beginning of the 1998–99 crop year. It is believed that a larger than anticipated 1998 crop, market speculation, and an estimated record 1999 crop have contributed to the depressed grower prices. Such swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers and consumers. While the benefits of this rulemaking may be difficult to quantify, any stabilizing effects of volume regulation will impact both small and large handlers positively by helping them maintain orderly marketing conditions through supply management.

Regarding alternatives, the Board considered not recommending volume regulation this season. As previously mentioned, three Board members and some observers at the Board's meetings expressed their view that the industry should continue to focus on increasing the demand for almonds rather than implementing a reserve. It was expressed that market risk can be managed by individual handlers through marketing tools such as forward contracting, rather than managing supply at the industry level. However, the majority of Board members supported the establishment of a reserve to help maintain orderly marketing conditions so that the industry can successfully manage the projected large 1999 almond crop. The Board also deliberated the merits of allocating the reserve to noncompetitive outlets or ultimately releasing part or all of the reserve as salable. The Board decided to delay this decision until next spring when additional information, including an estimate of the 2000–2001 crop, is available. However, handlers may sell reserve almonds to authorized reserve outlets at any time pursuant to an agency agreement as authorized in § 981.67 of the order, and receive credit against their withholding obligation.

This rule may impose some additional reporting, recordkeeping and other compliance requirements on both small and large handlers. Handlers who choose to divert their reserve almonds to authorized outlets will have to file certain reports with the Board. This requirement is the same as that applied during the 1991–92 and 1994–95 crop years when almond reserves were last established. Most of the industry's handlers handled almonds during those years and are thus familiar with the required reports. These reports have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Board's meetings were widely publicized throughout the almond industry and all interested persons were invited to attend and participate in Board deliberations. Like all Board meetings, the May 12 and July 12, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Reserve Committee met on April 1, May 11, and July 12, 1999, and presented its recommendations to the Board at meetings on May 12 and July 12, 1999. All of these meetings were open to the public, and both large and small entities were able to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on August 10, 1999 (64 FR 43298). Copies of the rule were also sent to all almond handlers in the industry. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending September 9, 1999, was provided to allow interested persons to respond to the proposal.

Six comments were received during the comment period in response to the proposal. Five comments were opposed to the proposal and one was in favor.

The first commenter, an almond handler, was opposed to the reserve, stating that reserves do nothing to stabilize prices, and that based on historical data, prices are higher when reserves are not utilized. Using the current year as an example, the commenter noted that price levels have fallen since the Almond Board recommended implementing a reserve. The commenter also stated the almond industry ships less almonds in years of oversupply. Finally, the commenter stated that a study conducted by the University of California, Davis concludes that "unallocated" reserves do not work.

A review of historical data pertaining to almond prices and shipments indicates that price levels tend to be higher in years when reserves are not utilized, and lower in years when reserves are implemented. For instance, during the period from crop years 1990 through 1997, the average grower price for years when reserves were not implemented was $1.87 per pound. During the same period, when reserves were implemented, the grower price averaged $1.15 per pound. However, contrary to the commenter's assertions, the data also indicate that in reserve years, shipment levels and total supplies tend to be higher in reserve years than in non-reserve years. For example, during the same time period discussed above, in reserve years, shipments averaged 567 million pounds, while in non-reserve years, shipments averaged 529 million pounds. Lower price levels have occurred when supplies are higher, consistent with the inverse relationship between supplies and prices. In years of high production, if reserves were not implemented, it would be expected that the resulting larger available supplies would put further downward pressure on prices.

In addition, the commenter appears to attribute recent declines in price levels to the Board recommendation for salable and reserve percentages. The crop was initially estimated at 760 million pounds on May 9 of this year, leading to a Board recommendation for a reserve. The crop estimate was revised upwards to 830 million pounds on July 12, confirming the earlier projections, leading to a revised Board recommendation for a higher reserve percentage. Regardless of the Board's recommendations, it would be expected that price levels would decline as updated information confirming the existence of a record large crop becomes available.

Regarding the reference to a University of California, Davis study concerning "unallocated reserves," a 1994 study conducted by economists from that university does indicate reserves are most effective if a portion of the crop is permanently removed from normal consumption channels. This is due to the fact that the demand for almonds is inelastic. Thus, removing a portion of the crop causes a reduction in the supply, resulting in a larger percentage increase in price than the decreased quantity demanded. The marketing order authorizes implementing a requirement to dispose of reserve product to non-competitive outlets. However, the order also provides for carrying forward reserve product into the following crop year in the event of a crop shortfall or increased trade demand needs. The order provides this flexibility to allow the industry to obtain additional information regarding the following year's crop size and trade demand needs prior to making a recommendation concerning the ultimate disposition of the reserve.

Two other comments submitted by growers/handlers of almonds are identical in content. These comments are opposed to implementing a reserve. The commenters indicate that they are currently selling almonds at, or less than, the cost of production and handling. Further, they stated that maintaining reserves adds costs and risks beyond those normally incurred in producing and marketing almonds. The commenters stated that large crops will continue in the future due to increased acreage and yields; thus, carrying forward reserve product into a future large crop year will compound the oversupply problem. The commenters believe handlers should individually deal with crop size, and that growers can adjust by pulling out orchards and planting something else. Finally, the commenters contend that the Board recommendation regarding the reserve was representative of only two handlers, while there are approximately 100 handlers in the industry. In response to these comments, the intent of a reserve is to maintain orderly marketing conditions in an attempt to stabilize supplies and prices. Profitably marketing a crop can best be achieved under stable conditions. Although there may be costs associated with maintaining a reserve, the anticipated benefits of more stable and orderly marketing conditions are expected to outweigh those costs.

Based on a review of historical data concerning almond acreage and yields, future crops are likely to continue to be large. Bearing acreage increased from

411,000 acres in 1990 to 460,000 acres in 1998, and non-bearing acreage increased from 32,400 acres to 113,000 acres during the same period. In addition, average yields have also increased over time due to improved varieties and production practices. During the 5-year period from 1980–1985, almond yields averaged 1,094 pounds per acre, while during the period from 1993–1998, the average yield was 1,405 pounds per acre. While production and yields can vary significantly from year to year due to weather and other factors, both are trending upwards.

With respect to compounding oversupply problems in the future, it was noted earlier that reserve product may either be disposed of in non-competitive markets or carried over to augment supplies during the following year. Decisions regarding ultimate disposition of the reserve will be made as additional market information and information on the following year's crop becomes available.

In response to the comments that growers can respond to oversupply conditions by pulling out orchards, the use of the authorized supply control features under the marketing order, combined with demand building activities, provides an alternative to such drastic measures. Unlike other crops where planting decisions can be made on an annual basis, tree crops require long-term commitment of resources and long-term investment.

Finally, in response to the comment concerning the Almond Board action, the Board is comprised of five grower members and five handler members. The Board is the constituted body under the marketing order charged with administering the provisions of the order and making recommendations to the Department. The Board is nominated by growers and handlers in the industry and represents the industry as a whole. Further, one of the purposes of Federal marketing orders is to benefit producers. Consistent with the provisions of the order, a majority of the members of the Board voted in favor of the recommendation.

Another comment was received from a grower of almonds on behalf of several family members who are also almond growers. This commenter claims that the current marketing situation is the worst in the almond industry since 1910, and projects a $500,000 to $600,000 loss for the family almond farming operations during the coming season. The commenter also stated that the anticipated reserve is not achieving the desired effect of promoting orderly marketing conditions.

The commenter offered several alternatives to correct the current industry situation, including requiring destruction of a certain percentage of each grower's acreage, restricting new plantings, government purchase of reserve almonds, and issuance of nonrecourse loans.

Taking into account the current marketing conditions in the almond industry, it would be premature to judge the effects of a reserve on the market situation at this time, as a reserve is just now being established and the ultimate disposition of the reserve will be determined in accordance with the provisions of the order.

Regarding the alternatives offered by the commenter, except for the option of a sale of reserve almonds to an agency, the proposals offered by the commenter are not authorized under the almond marketing order. The marketing order provides for a comprehensive regulatory scheme which comes in effect when a reserve percentage is fixed for a crop year. Accordingly, the alternatives, with one exception, exist outside of the marketing order program. Regarding a sale of reserve almonds to a government agency, as stated above, the ultimate disposition of the reserve will be determined in accordance with the provisions of the order.

Another comment from a grower of almonds opposed to the establishment of a reserve for the 1999–2000 crop year was received. This comment raised numerous issues. The commenter contends that the proposed rule either violates or does not meet the requirements of the Act and is inconsistent with or violates a number of other Federal statutes, regulations, and policies.

Next, the commenter stated that the same rationale for establishing a reserve was used in the proposed rule that has been used in past seasons. The commenter claims that there has been no analysis of the impact of reserves on the industry, including pricing effects, no analysis of the decreased variability of the alternating production cycles, and no correlation of variability data with acreage statistics and long range weather forecasts.

The commenter also stated that current low price levels are not indicative of disorderly marketing, but rather are a reflection of industry structure and the conduct of handlers with regard to open price contracting. The commenter is of the view that the open price system has allowed handlers to take full advantage of smaller growers. The commenter further stated that current low prices are a function of lack of market price information to the industry. The comment asserted there has been no evaluation of non-bearing almond acreage and improved yields and speculated whether the Department was ignoring this impact or merely giving special treatment to handlers interests in the industry that would give the handlers increased profits while furthering the problems of small growers. In addition, the commenter claims that crop forecasting models indicate there is a 98 percent chance that next year's crop will be larger than the current year's crop, and this has not been considered. Also, there has been no analysis conducted concerning the impact of reserves stimulating production.

The commenter stated that establishment of a reserve would preempt and conflict with Sections 58301 and 58302 of the California Food and Agricultural Code because it will enable handlers to withhold payment to growers on product held in reserve. Further, section 608c(7) of the Act is cited as a statutory requirement that a reserve cannot be established unless it declares that failure to pay a grower for the reserve portion of his or her crop is an unfair trade practice and is prohibited.

The commenter stated that if a reserve is established, it should require that the reserve be held within the State of California. The commenter adds that a reserve would be unfair to growers who incurred a crop loss due to frost. Growers, some of which lost up to 70 percent of their crop, should be exempt from reserve requirements if they suffered 30 percent or more crop loss. Furthermore, a reserve would be unfair to growers who withheld their 1998–99 crop from delivery to handlers until the 1999–2000 crop year in anticipation of improved prices or to guard against reduced production in 1999–2000.

Finally, the commenter stated that the almond marketing order was recently approved by only 27 percent of the State's producers in a continuance referendum, and that there would have been stronger support if the ballot in the continuation referendum would have been split to have the reserve provisions voted on separately.

In response to these comments, the Department disagrees that establishment of salable and reserve percentages do not meet the requirements of the Act and are in conflict with other Federal statutes, regulations, and policies. The establishment of salable and reserve percentages in the action is consistent with applicable law, including the provisions of the Act, order, and regulations governing this program.

The Department has considered and evaluated economic data regarding the potential impact of reserves on the almond industry, as well as information pertaining to acreage statistics and production cycles. In accordance with the provisions of the order, the Board is required to provide to the Department specific information to aid the Department in fixing salable and reserve percentages. Economic studies indicate that the demand for almonds is inelastic. Therefore, a reduction in supply would result in a proportionately larger increase in price levels for the product. This would result in an increase in total revenue to the industry. With respect to acreage statistics, as previously stated, the Department is aware that both bearing and non-bearing almond acreage has increased significantly in recent seasons, and, therefore, future production levels may be expected to continue to increase. This is not an unusual response to a pattern of high price levels as experienced in recent years in the almond industry.

Further, regarding production cycles, a review of historical data indicates that almond production patterns do not display a true pattern of an alternate bearing characteristic. While there appears to be a general pattern of short crops followed by large crops and vice-versa, instances of two consecutive short or large crops have occurred.

The commenter refers to a purported "crop projection model" that indicates there is a 98 percent or greater chance that the 2000–2001 California almond crop will equal or exceed the 1999–2000 crop. Thus, a large carryin of reserve product from the 1999 crop, when combined with a large crop the following year, will put further downward pressure on prices. The Department is unaware of any study that contains such findings regarding the probability of the 2000–2001 crop size. In addition, even if this assertion is assumed to be valid, reserve product from the 1999 crop reserve will not necessarily increase the supply the following year. As previously discussed, under the almond marketing order, reserve may be carried into the following crop year, or removed permanently from normal market channels. If the latter course is taken, that reserve product would not add to the following year's supply. A decision regarding ultimate disposition of reserve product does not need to be made until information concerning the following year's crop is known.

In response to the commenter's claims that low price levels are the result of handler pricing practices and lack of market price information, there may be indeed other factors that can contribute to disorderly marketing. The commenter believes that the combination of poor prices for other crops, the flow of dollars from the Freedom to Farm Act, the lack of information of prices on movement by variety, grade, size, and terms of sale are elements of disorder. The commenter also raises the issue of foreign plantings in connection with an analysis of the production stimulation effects of implementing reserves. However, the Department is not aware of any studies conducted which have attempted to address that issue. While the marketing order and its provisions may not be able to address every possible contingency in the almond industry, it does, however, authorize use of volume control as a means of helping to foster orderly marketing conditions. By establishing a reserve, the industry would be utilizing a tool available to it in an attempt to achieve its goals.

The commenter contends that establishment of a reserve conflicts with California State law. The issue of grower-handler payments, and open price contracts is raised again; however, the almond marketing order does not regulate grower-handler payments or such contracts. If State laws regarding grower-handler payments are in some way violated, then one could look to those statutes for appropriate remedies.

In response to the comment regarding holding reserve product within the State of California, when salable and reserve percentages are in effect, the marketing order requires handlers to withhold from handling a certain percentage of the product received from growers. By definition, shipping product outside the State of California constitutes handling under the almond marketing order.

The marketing order contains no provisions to protect growers from losses due to freeze damage or other natural disasters. Establishment of a reserve is based on collective industry data, and is applied to all handlers equally. While there may be growers who suffered crop losses during the season, other government sponsored programs may be available to recompense growers for such losses, such as crop insurance programs.

If growers withheld product from delivery to handlers during the 1998 season and deliver the product to handlers in the current season, that product will be subject to reserve requirements in accordance with provisions of the order. While growers may have taken such action in anticipation of improved prices or reduced production levels in 1999, they did so based upon their own initiative.

In response to the comment regarding continuation referendum results, 90 percent of the almond growers voting in the February 1999 referendum voted to continue the order. In addition, 88 percent of the volume represented in the referendum voted for continuance. Approximately 27 percent of the State's almond producers voted in the referendum. The Department cannot control this aspect of the voting process and tabulates the results based on the voters who participate in the process, consistent with the requirements of the Act. Finally, continuance referendums have been and are conducted to determine the support of an industry as to the marketing order program established for that commodity. To look at individual provisions is more a function of the marketing order amendatory process.

One comment was received in support of establishing salable and reserve percentages for the 1999–2000 crop year. The commenter presented data regarding world almond supplies and consumption over the most recent 5-year period, and projections for the current year. Also summarized were the high price levels for almonds experienced in the mid-1990's, which was attributed to world demand chasing limited supplies.

The commenter pointed out that reserves have been used in the almond industry in ten of the years during the period from 1980 through 1998, and attributed the use of reserves as a successful tool to manage supplies while increasing demand for almonds. Stable supplies resulted in less market volatility, thus encouraging new product development and expansion of markets for existing products.

The commenter indicated that in reserve years, the industry actually shipped more than the trade demand figure established by the Board.

The commenter also referenced a study conducted by the University of California, Davis indicating that the demand for almonds is inelastic. A practical application of the effect of inelastic demand on prices and supplies of almonds was presented.

Concluding remarks in the comment support the use of supply management as a short-term tool while building long-term consumption and demand for the product.

Members within the industry may have differences of opinion regarding the concept of volume control under the marketing order, as well as its effectiveness and these differences can be and are reflected in Board and

Committee discussions, as well as the comments received in response to the proposed rule. However, a majority of Board members favored the recommendation, and even those opposed indicated they would support the Board's recommendation.

After reviewing the comments received and other available information, the Department has concluded that issuing this rule is appropriate. Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. In Part 981, § 981.240 is added to read as follows:

§ 981.240 Salable and reserve percentages for almonds during the crop year beginning on August 1, 1999.

The salable and reserve percentages during the crop year beginning on August 1, 1999, shall be 77.64 percent and 22.36 percent, respectively.

Dated: October 22, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28301 Filed 10–28–99; 3:22 pm]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

[Notice 1999–21]

11 CFR Parts 100 and 114

Definition of "Member" of a Membership Organization

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On July 30, 1999, the Commission published the text of revised regulations defining who qualifies as a "member" of a membership organization for purposes of the Federal Election Campaign Act. 64 FR 41266. The Commission announces that these rules are effective as of November 2, 1999.

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of revised regulations at 11 CFR 100.8(b)(4), 100.8(b)(4)(iv), and 114.1(e), defining who qualifies as a "member" of a membership organization. The revisions largely address the internal characteristics of an organization that, when coupled with certain financial or organizational attachments, are sufficient to confer membership status.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to implement Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. These revisions were transmitted to Congress on July 27, 1999. Thirty legislative days expired in the Senate on October 12, 1999, and in the House of Representatives on October 18, 1999.

Announcement of Effective Date: Revised 11 CFR 100.8(b)(4), 100.8(b)(4)(iv), and 114.1(e), as published at 64 FR 41266 (July 30, 1999), are effective as of November 2, 1999.

Dated: October 27, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–28475 Filed 11–1–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–199–AD; Amendment 39–11395; AD 99–22–17]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and 340B series airplanes, that requires removal of certain main landing gear downlock and brake hydraulic swivel brackets and replacement with new, redesigned brackets. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the downlock or brake swivels. Brake swivel failure could cause the loss of inboard or outboard brakes. Downlock swivel failure could cause the loss of hydraulic fluid in the main hydraulic system, as well as the loss of nose wheel steering operation, extension and retraction capability of landing gear and flaps, and operation of the propeller brake (if installed).

DATES: Effective December 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and 340B series airplanes was published in the **Federal Register** on August 30, 1999 (64 FR 47146). That action proposed to require removal of certain main landing gear downlock and brake hydraulic swivel brackets and replacement with new, redesigned brackets.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,375 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $299,000, or $1,495 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–22–17 **Saab Aircraft AB:** Amendment 39–11395. Docket 99–NM–199–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers SF340A–004 through –159 inclusive, and Model SAAB 340B series airplanes, serial numbers SF340B–160 through –339 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) downlock or brake hydraulic swivels and consequent loss of certain hyraulicfypowered operations, accomplish the following:

Bracket Replacement

(a) Within 12 months after the effective date of this AD, remove the MLG downlock and brake hydraulic swivel brackets and replace with new, improved parts, in accordance with Saab Service Bulletin 340–29–009, Revision 02, dated July 2, 1999.

Note 2: Accomplishment, prior to the effective date of this AD, of the bracket replacement in accordance with Saab Service Bulletin 340–29–009, dated August 20, 1992, or Revision 1, dated April 15, 1993, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with Saab Service Bulletin 340–29–009, Revision 02, dated July 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–145, dated July 2, 1999.

(e) This amendment becomes effective on December 7, 1999.

Issued in Renton, Washington, on October 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28248 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–03–AD; Amendment 39–11396; AD 98–02–06 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing 777–200 series airplanes, that currently requires repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG); and corrective action, if necessary. That AD was prompted by reports of missing or damaged components on the lock link mechanism. The actions specified by that AD are intended to prevent failure of the lock link mechanism to lock the MLG in the down position, and consequent collapse of the MLG during ground operation. This amendment provides an optional terminating action for the repetitive inspections.

DATES: Effective December 7, 1999.

The incorporation by reference of Boeing Service Bulletin 777–32–0016, dated January 14, 1999, as listed in the regulations is approved by the Director of the Federal Register as of December 7, 1999.

The incorporation by reference of Boeing Alert Service Bulletin 777–32A0015, dated September 4, 1997, as listed in the regulations was approved previously by the Director of the Federal Register as of February 9, 1997 (63 FR 3458, January 23, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 98–02–06, amendment 39–10288 (63 FR 3458, January 23, 1998), which is applicable to certain Boeing 777–200 series airplanes, was published in the **Federal Register** on August 20, 1999 (64 FR 45472). The action proposed to continue to require repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG); and corrective action, if necessary. The action also proposed to provide an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 40 Model 777–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 17 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 98–02–06, and retained in this AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $2,040, or $120 per airplane, per inspection cycle

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 1 work hour per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,094 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $5,154 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10288 (63 FR 3458, January 23, 1998), and by adding a new airworthiness directive (AD), amendment 39–11396 , to read as follows:

98–02–06 **R1 Boeing:** Amendment 39–11396. Docket 98–NM–03–AD. Revises AD 98–02–06, Amendment 39–10288.

Applicability: Model 777–200 series airplanes, line positions 1 through 40 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the lock link mechanism to lock the main landing gear (MLG) in the down position, and consequent collapse of the MLG during ground operation, accomplish the following:

Restatement of the Requirements of AD 98–02–06

Repetitive Inspections and Corrective Actions

(a) Within 30 days after February 9, 1998 (the effective date of AD 98–02–06, amendment 39–10288), perform a visual inspection to determine the presence and condition of the cotter pin and nut of the lock link mechanism on the side struts and drag struts on the left- and right-hand MLG, in accordance with Boeing Alert Service Bulletin 777–32A0015, dated September 4, 1997. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 75 days or 400 flight cycles, whichever occurs first.

New Actions Proposed By This AD

Optional Terminating Action

(b) Replacement of the existing retention bolt, end caps, washer, and nut of the lock link mechanism on the side struts and drag struts on the MLG with a new lock link assembly that incorporates a new bolt, washer, nut, and end-caps, in accordance with Boeing Service Bulletin 777–32–0016, dated January 14, 1999, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–32A0015, dated September 4, 1997, or Boeing Service Bulletin 777–32–0016, dated January 14, 1999, as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 777–32–0016, dated January 14, 1999, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 777–32A0015, dated September 4, 1997, as listed in the regulations was approved previously by the Director of the Federal Register as of February 9, 1997 (63 FR 3458, January 23, 1998).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 7, 1999.

Issued in Renton, Washington, on October 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28247 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–02–AD; Amendment 39–11394; AD 99–22–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires a one-time detailed visual inspection of the upper decompression panel on the flight deck door to verify that a minimum overlap dimension exists, and corrective action, if necessary. This amendment is prompted by reports indicating that, during production, some upper decompression panels were installed incorrectly on the flight deck door. The actions specified by this AD are intended to detect an incorrectly installed upper decompression panel, which could cause the emergency exit panel on the flight deck door to become inoperable, thereby preventing crewmembers from performing essential duties during an emergency evacuation.

DATES: Effective December 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Thompson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1157; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45470). That action proposed to require a one-time detailed visual inspection of the upper decompression panel on the flight deck door to verify that a minimum overlap dimension exists, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,299 airplanes of the affected design in the worldwide fleet. The FAA estimates that 901 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $54,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99-22-16 BOEING: Amendment 39–11394. Docket 99–NM–02–AD.

Applicability: Model 737 series airplanes, as listed in Boeing Service Bulletin 737–52–1128, dated April 22, 1999, or in Boeing Service Bulletin 737–52–1137, dated May 13, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect an incorrectly installed upper decompression panel, which could cause the emergency exit panel on the flight deck door to become inoperable, thereby preventing crewmembers from performing essential duties during an emergency evacuation, accomplish the following:

One-Time Inspection

(a) Within 18 months after the effective date of this AD, perform a one-time detailed visual inspection of the upper decompression panel on the flight deck door to verify that a minimum overlap dimension of 0.05 inch exists, as specified in Boeing Service Bulletin 737–52–1128, dated April 22, 1999 (for Model 737–300/–400/–500 series airplanes); or Boeing Service Bulletin 737–52–1137, dated May 13, 1999 (for Model 737–600/–700/–800 series airplanes); as applicable.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If a minimum overlap dimension of 0.05 inch is not found during the inspection required by paragraph (a) of this AD, prior to further flight, adjust the decompression panel and, as applicable, the adjacent decorative channel, in accordance with Boeing Service Bulletin 737–52–1128, dated April 22, 1999 (for Model 737–300/–400/–500 series airplanes); or Boeing Service Bulletin 737–52–1137, dated May 13, 1999 (for Model 737–600/–700/–800 series airplanes); as applicable.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin 737–52–1128, dated April 22, 1999, or Boeing Service Bulletin 737–52–1137, dated May 13, 1999, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 7, 1999.

Issued in Renton, Washington, on October 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28246 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–01–AD; Amendment 39–11393; AD 99–22–15]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that requires repetitive inspections of the left and right roll spoiler actuators to check for signs of leakage and deformation of the housing, repetitive inspections of the gap between the left roll spoiler actuator housing cap and the actuator housing, repetitive torque checks of the left roll

spoiler actuator housing cap attachment screws, and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent oil leakage from the roll spoiler actuators, which could result in incorrect roll spoiler operation and reduced controllability of the airplane.

DATES: Effective December 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45468). That action proposed to require repetitive inspections of the left and right roll spoiler actuators to check for signs of leakage and deformation of the housing, repetitive inspections of the gap between the left roll spoiler actuator housing cap and the actuator housing, repetitive torque checks of the left roll spoiler actuator housing cap attachment screws, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request to Reference Service Bulletin Revision

One commenter, the manufacturer, requests that the proposed AD be revised to reference Dornier Alert Service Bulletin ASB–328–27–025, Revision 1, dated September 22, 1999. The commenter states that Revision 1 of the service bulletin escalates the inspection interval from the current 330 flight hours to 400 flight hours. This escalation brings the interval parallel to the recent "A–Check" escalation of the Dornier Model 328–100 Maintenance Review Board (MRB) document. The commenter notes that the escalation of the inspection intervals was considered acceptable based on certain other inspections already in place in the MRB document.

The FAA concurs. The procedures contained in Revision 1 of the service bulletin are identical to the original issue, dated October 16, 1998, which was cited in the proposed AD as the appropriate source of service information. The FAA has determined that accomplishment of the actions required by this AD in accordance with the procedures and at the intervals specified in Revision 1 of the service bulletin will adequately address the identified unsafe condition. Paragraphs (a) and (b) of this AD have been revised to cite Revision 1 of the service bulletin as the appropriate source of service information, and the inspection intervals have been revised to 400 flight hours. For operators that may have previously accomplished the initial inspections in accordance with the original issue of the service bulletin, "NOTE 3" of the final rule has been revised to give credit for those actions.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 3 work hours per airplane to accomplish the actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $9,000, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–22–15 Dornier Luftfahrt GMBH: Amendment 39–11393. Docket 99–NM–01–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent oil leakage from the roll spoiler actuators, which could result in incorrect roll spoiler operation and reduced controllability of the airplane, accomplish the following:

(a) Within 14 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD on the left and right roll spoiler actuators, in accordance with Dornier Alert Service Bulletin ASB–328–27–025, Revision 1, dated September 22, 1999. Thereafter, repeat the inspections required by paragraphs (a)(1) and (a)(2) of this AD at intervals not to exceed 400 flight hours.

(1) Perform a detailed inspection to detect leakage of the area around the actuator cap and housing of the roll spoiler actuators. If leakage is found, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

(2) Perform a detailed inspection to detect flatness of the surface of the cap of the roll spoiler actuators. If the cap surface is not flat, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(b) Within 14 days after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD on the left roll spoiler actuator, in accordance with Dornier Alert Service Bulletin ASB–328–27–025, Revision 1, dated September 22, 1999. Thereafter, repeat the inspections required by paragraphs (b)(1) and (b)(2) of this AD at intervals not to exceed 400 flight hours.

(1) Perform a detailed inspection to detect a gap between the cap of the roll spoiler actuator and the actuator housing. If any gap exists, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

(2) Perform a torque check of the housing cap attachment screws. If the torque is within the limits specified by the service bulletin, prior to further flight, torque the screws to 17.7 lb-in, in accordance with the alert service bulletin. If the torque is outside the limits specified by the service bulletin, prior to further flight, replace the left roll spoiler actuator and double shuttle valve with new or serviceable parts, in accordance with the alert service bulletin.

(c) If any left roll spoiler actuator is replaced during any inspection required by paragraph (b)(1) or (b)(2) of this AD, prior to further flight, accomplish the requirements of (b)(1) and (b)(2) for the right roll spoiler actuator.

Note 3: Accomplishment of the inspections required by paragraphs (a) and (b) of this AD prior to the effective date of this AD in accordance with Dornier Alert Service Bulletin ASB–328–27–025, dated October 16, 1998, is acceptable for compliance with the initial inspections required by those paragraphs.

Alternate Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–27–025, Revision 1, dated September 22, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in German airworthiness directive 1998–479, dated December 17, 1998.

(g) This amendment becomes effective on December 7, 1999.

Issued in Renton, Washington, on October 22, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28245 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 9906111599276–02]

RIN 0691–AA35

International Services Surveys: BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules revise regulations for the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

The BE–80 survey is mandatory and is conducted once every 5 years by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, and under the Omnibus Trade and Competitiveness Act of 1988. The benchmark survey will be conducted for 1999. BEA will send the survey to potential respondents in January of the year 2000; responses will be due by March 31, 2000. The last benchmark survey was conducted for 1994. The benchmark survey will obtain universe data on trade in financial services, by type and by country, between U.S. financial services providers and unaffiliated foreign persons. Data from the BE–80 survey (and the follow-on annual survey, the BE–82) are needed to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

The revised rules raise the exemption level for the 1999 survey to $3 million in covered sales or purchases transactions, from $1 million on the previous (1994) survey. Raising the exemption level will reduce respondent burden, particularly for small companies. The revised rules also combine private placement services with underwriting services, combine foreign exchange brokerage services with other brokerage services, and create a separate category for electronic funds transfers. Finally, the revised

rules restate the definition of "financial services provider" using the nomenclature of the new North American Industry Classification System that has replaced the U.S. Standard Industrial Classification System.

The changes in the types of services to be reported separately reflect BEA's experience in collecting data on financial services transactions over the past 5 years. Data collected for both private placement and foreign exchange brokerage services have been very small and do not justify the continuation of separate reporting. Electronic funds transfer services, in contrast appear to account for a large fraction of both total receipts and total payments for "other financial services," in which electronic funds transfers were previously included.

EFFECTIVE DATE: These final rules are effective December 2, 1999.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the July 9, 1999 **Federal Register**, volume 64, No. 131, 64 FR 37049–37051, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

These final rules amend 15 CFR part 801 to set forth revised reporting requirements for the BE–80, Benchmark Survey of Financial Services Transactions Between Financial Services Providers and Unaffiliated Foreign Persons. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter "the Act", and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services, and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The major purposes of the survey are to monitor trade in financial services, analyze its impact on the U.S. and foreign economics, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

BEA will conduct the BE–80 survey once every 5 years. They last survey was conducted for 1994. The survey is intended to cover the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons. Reporting is required from U.S. financial services providers who have sales to or purchases from unaffiliated foreign persons in all covered financial services combined in excess of $3 million during the reporting year. Financial services providers meeting these criteria must apply data on the amount of their sales or purchases for each covered type of service, disaggregate by country. U.S. financial services providers that have covered transactions of less than $3 million during the reporting year are asked to provide voluntary estimates of their total sales or purchases of each type of financial service.

The information from the benchmark survey is updated in nonbenchmark years by an annual follow on survey, the BE–82. Currently, the annual survey covers only those U.S. financial services providers that have covered transaction in excess of $5 million during the reporting year.

Executive Order 12612

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These final rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by OMB (OMB No. 0608–0062) under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The survey is expected to result in the filing of reports, containing mandatory or voluntary data, from about 500 respondents. The average burden for completing the BE–80—both the mandatory and voluntary sections—is estimated to be 7 hours. Thus, the total respondent burden of the survey is estimated at 3,500 hours (500 respondents times 7 hours average burden). The actual burden will vary from reporter to reporter, depending upon the number and variety of their financial services transactions and the ease of assembling the data. Thus, it may range from 4 hours for a reporter that has a small number and variety of transactions and easily accessible data, or that reports only in the voluntary section of the form, to 150 hours for a very large reporter that engages in a large number and variety of financial services transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0062, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. Companies that engage in international financial services transactions tend to be quite large. In addition, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The BE–80 benchmark survey will be required only from U.S. persons with sales to, or purchases from, unaffiliated foreign persons in excess of $3,000,000 during the reporting year, in all covered financial services transactions combined; the exemption level for the previous benchmark survey, covering 1994, was $1,000,000. Thus, the exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: October 8, 1999.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147; E.O. 12318, 3 CFR, 1981 Comp., p. 173; and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.11 is revised to read as follows:

§ 801.11 Rules and regulations for the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

A BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering 1999 and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.9 are applicable to this survey. Additional rules and regulations for the BE–80 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Who must report*—(1) *Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and who had transactions (either sales or purchases) directly with unaffiliated foreign persons in all financial services combined in excess of $3,000,000 during its fiscal year covered by the survey. The $3,000,000 threshold should be applied to financial services transactions with unaffiliated foreign persons by all part of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the $3,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(2) *Voluntary reporting.* If during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries, or parts, combined that are financial services providers or intermediaries, are $3,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. Because the $3,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both.

(b) *BE–80 definition of financial services provider.* Except for Monetary Authorities (i.e. Central Banks), the definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance—of the North American Industry Classification System, United States, 1997. For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, holding companies, savings institutions, check cashing, and debit card issuing); nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending); securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); insurance carriers and related activities (including agents, brokers, and services providers); investment advisors and managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

(c) *Covered types of services.* The BE–80 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage, including foreign exchange brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit care services; credit card services; financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.

(d) *What to file.* (1) The BE–80 survey consists of Forms BE–80 (A) and BE–80(B). Before completing a form BE–80 (B), a consolidated U.S. enterprise (including the top U.S. parent and all of its subsidiaries and parts combined) must complete Form BE–80(A) to determine its reporting status. If the enterprise is subject to the mandatory reporting requirement, or if it is exempt from the mandatory reporting requirement but chooses to report data voluntarily, it should either:

(i) File a separate Form BE–80(B) for each separately organized financial services subsidiary or part of a consolidated U.S. enterprise; or

(ii) File a single BE–80(B) representing the sum of all covered transactions by all financial services subsidiaries or parts of the enterprise combined.

(2) Reporters who receive the BE–80 survey from BEA but are not subject to the mandatory reporting requirements and choose not to report data voluntarily must complete and return to BEA the Exemption Claim.

[FR Doc. 99–28576 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[AG Order No. 2270–99]

Practice and Procedure; Final Settlement Agreements and Consent Decrees

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule codifies the Department of Justice's general policy that, in any civil matter in which the Department of Justice is representing the interests of the United States or its agencies, the Department will not enter into final settlement agreements or consent decrees that are subject to confidentiality provisions, nor will it seek or concur in the sealing of such documents. The rule further establishes internal procedures to be followed in determining whether, in a given case, rare circumstances exist that warrant an exception to the general policy.

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Jeanette Plante, Executive Office for United States Attorneys, (202) 616–6444.

SUPPLEMENTARY INFORMATION: A written statement of the Department's policy with regard to seeking or concurring in the sealing of final settlement agreements or consent decrees will ensure uniformity of practice and be in keeping with the Department's general policy in favor of openness in government. There may be rare instances in which confidentiality is warranted, because privacy or other interests so outweigh the public interest. For this reason, the policy outlines a uniform process for approval of exceptions to the general rule in favor of openness.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 650(b)), the Attorney General has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule states the Department of Justice's internal policy with regard to the conduct of litigation in which it is involved; and (2) this rule imposes no requirements on small businesses or small entities.

Administrative Procedure Act

Because this rule states internal litigation policy and imposes no new restrictions, the Department of Justice finds good cause for exempting the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date.

Paperwork Reduction Act

This rule does not impose any reporting or recordkeeping requirements.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure.

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 516 and 519, part 50 of chapter 1 of title 28 is amended as follows.

1. The authority citation for Part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1921 et seq., 1973c.

2. Section 50.23 is added to read as follows:

§ 50.23 Polocy against entering into final settlement agreements or consent decree that are subject to confidentiality provisions and against seeking or concurring in the sealing of such documents.

(a) It is the policy of the Department of Justice that, in any civil matter in which the Department is representing the interests of the United States or its agencies, it will not enter into final settlement agreements or consent decrees that are subject to confidentiality provisions, nor will it seek or concur in the sealing of such documents. This policy flows from the principle of openness in government and is consistent with the Department's policies regarding openness in judicial proceedings (see 28 CFR 50.9) and the Freedom of Information Act (see Memorandum for Heads of Departments and Agencies from the Attorney General *Re: The Freedom of Information Act (Oct. 4, 1993)*).

(b) There may be rare circumstances that warrant an exception to this general rule. In determining whether an exception is appropriate, any such circumstances must be considered in the context of the public's strong interest in knowing about the conduct of its Government and expenditure of its resources. The existence of such circumstances must be documented as part of the approval process, and any confidentiality provision must be drawn as narrowly as possible. Non-delegable approval authority to determine that an exception justifies use of a confidentiality provision in, or seeking or concurring in the sealing of, a final settlement or consent decree resides with the relevant Assistant Attorney General or United States Attorney, unless authority to approve the settlement itself lies with a more senior Department official, in which case the more senior official will have such approval authority.

(c) Regardless of whether particular information is subject to a confidentiality provision or to seal, statutes and regulations may prohibit its disclosure from Department of Justice files. Thus, before releasing any information, Department attorneys should consult all appropriate statutes and regulations (e.g., 5 U.S.C. 552a (Privacy Act); 50 U.S.C. 403-3(c)(6) (concerning intelligence sources and methods), and Execution Order 12958 (concerning national security information). In particular, in matters involving individuals, the Privacy Act regulates disclosure of settlement agreements that have not been made part of the court record.

(d) The principles set forth in this section are intended to provide guidance to attorneys for the Government and are not intended to create or recognize any legally enforceable right in any person.

Dated: October 26, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–28557 Filed 11–1–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–99–077]

RIN–2115–AE47

Drawbridge Operation Regulations; Duluth Ship Canal (Duluth-Superior Harbor), MN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Commander, Ninth Coast Guard District is temporarily changing the regulations governing the Duluth Aerial Lift Bridge over Duluth Ship Canal in Duluth, MN. The bridge need not open for vessel traffic and will remain in the closed-to-navigation position from December 15, 1999, until March 20, 2000. This temporary rule has been authorized due to major rehabilitation and the need to immobilize the bridge for this project.

DATES: This temporary rule is effective from 12:01 a.m. on December 15, 1999, to 11:59 p.m. on March 20, 2000.

ADDRESSES: Documents concerning this temporary rule are available for inspection and copying at 1240 East Ninth Street, Room 2019, Cleveland, OH, 44199–2060 between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6084.

FOR FURTHER INFORMATION CONTACT: Mr. Scot Striffler, Project Manager, Ninth Coast Guard District Bridge Branch, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Discussion of Temporary Rule

On January 21, 1999, the City of Duluth, MN, requested the Coast Guard approve a time period when the Duluth Aerial lift bridge would not be required to open for vessel traffic in order to complete a major rehabilitation of the operating machinery and deck replacement. A 16-week closure was originally requested by the City.

Commander, Ninth Coast Guard District, solicited the input of commercial vessel operators and Coast Guard engineers and determined that the project could be completed within 13 and one-half weeks without imposing unreasonable restrictions on navigation, while still providing the necessary time to complete the rehabilitation work. (Between January 1 and March 15 each year, the bridge is required to open for vessels if at least 24 hours advance notice is provided.) The Coast Guard authorized the bridge to remain in the closed-to-navigation position from 12:01 a.m. on December 15, 1999 until 11:59 p.m. on March 20, 2000.

The closure dates were based on the traditional times of the least commercial shipping activity in Duluth Harbor. There is no recreational or small entity vessel traffic during this period due to heavy ice in the west end of Lake Superior and Duluth/Superior Harbor. The Coast Guard also considered the fact that an alternate access to the harbor is available through the federal channel in Superior, WI.

This temporary rule is being promulgated without a notice of proposed rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the extensive input by commercial marine interests, limited vessel activity during a majority of the closure period due to severe weather and ice, the need to perform the work necessary to maintain the bridge in a safe and operable condition during regular operating times, and the availability of access to the harbor through Superior Harbor Entry, notice and comment on this temporary final rule are unnecessary.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Access to the harbor will be available through another maintained waterway in close proximity to the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Marine activity in the harbor is virtually non-existent during a majority of the authorized closure period due to extreme weather and ice. Only larger vessels, or specially designed vessels, are capable of transiting the harbor in heavy ice.

Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612, and has determined that this temporary rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary rule and concluded that, under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.lC, this temporary rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard temporarily amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective from 12:01 a.m., December 15, 1999, to 11:59 p.m., March 20, 2000, § 117.661 is suspended and a new § 117.T662 is added to read as follows:

§ 117.T662 Duluth Ship Canal (Duluth-Superior Harbor).

The draw of the Duluth Aerial Lift Bridge, mile 0.1 over the Duluth Ship Canal in Duluth, MN, need not open for the passage of vessels and may be maintained in the closed-to-navigation position.

Dated: October 18, 1999.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 99–28513 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2245; MM Docket No. 99–258; RM–9681]

Radio Broadcasting Services; Iowa Park, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 242A at Iowa Park, Texas, in response to a petition filed by Fred R. Morton, Jr. *See* 64 FR 39964, July 23, 1999. The coordinates for Channel 242A at Iowa Park are 34–01–27 NL and 98–41–14 WL. There is a site restriction 8.3 kilometers (5.2 miles) north of the community. With this action, this proceeding is terminated. A filing window for Channel 242A at Iowa Park will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–258, adopted October 13, 1999, and released October 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Iowa Park, Channel 242A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28409 Filed 11–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2245; MM Docket No. 99–234; RM–9645]

Radio Broadcasting Services; Hunt, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A at Hunt, Texas, in response to a petition filed by Hunt Radio Broadcasting Company. *See* 64 FR 36323, July 6, 1999. The coordinates for Channel 260A at Hunt, Texas, are 30–07–18 NL and 99–25–39 WL. There is a site restriction 10.7 kilometers (6.6 miles) northwest of the community. With this action, this proceeding is terminated. A filing window for Channel 260A at Hunt will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–234, adopted October 13, 1999, and released October 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Hunt, Channel 260A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28408 Filed 11–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2245; MM Docket No. 99–257; RM–9683]

Radio Broadcasting Services; Centerville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 278A at Centerville, Texas, in response to a petition filed by Wolverine Broadcasting. See 64 FR 39965, July 16, 1999. The coordinates for Channel 278A

at Centerville are 31–18–55 NL and 96–02–08 WL. There is a site restriction 8.2 kilometers (5.1 miles) northwest of the community. With this action, this proceeding is terminated. A filing window for Channel 278 at Centerville will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–257, adopted October 13, 1999, and released October 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 278A at Centerville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28407 Filed 11–1–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990924262–9262–01; I.D. 091699A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Technical Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: This final rule, technical amendment, revises outdated terminology, removes outdated provisions, and makes other minor changes for clarity and consistency. The intended effect of this final rule is to conform the regulatory language to current terms and to improve readability and clarity of the regulations.

DATES: This rule is effective November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, phone: 727–570–5325 or fax: 727–570–5583.

SUPPLEMENTARY INFORMATION: In 1996, the title of a NMFS Regional Director was changed to "Regional Administrator." This rule revises 50 CFR part 622 accordingly.

NMFS is replacing the term "sunset" with the term "official sunset" where it appears in 50 CFR part 622 and is adding definitions for the terms "official sunrise" and "official sunset." "Official sunrise" and "official sunset" are defined as the times for sunrise and sunset as determined for the date and location in *The Nautical Almanac*, prepared by the U.S. Naval Observatory. These definitions conform with the historical usage of the terms "sunset" and "sunrise." *The Nautical Almanac* is available from the Government Printing Office and from commercial sources. In addition, times for any specified date and location may be obtained via the Internet at http://www.usno.navy.mil/.

For consistency with the paragraphing style in § 622.4(a)(2), a heading is added for paragraph (a)(2)(x).

The allowable harvest of wild live rock in the Gulf EEZ was discontinued at the end of 1996. This final rule removes language regarding permits, quotas, and trip limits for such harvest and at § 622.45(e) makes the prohibitions on harvest of wild live rock uniform for both the Gulf and South Atlantic EEZ. Allowable harvest of wild live rock was discontinued in the South Atlantic EEZ at the end of 1995.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

Because this rule makes only nonsubstantive and technical changes to existing regulations, no useful purpose would be served by providing advance notice and opportunity for public comment. Accordingly, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), finds for good cause that providing notice and opportunity for public comment is unnecessary. Because the technical changes made by this rule are nonsubstantive, they are not subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

List of Subjects in 15 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, the definition of "Regional Director (RD)" is removed and the definitions of "Official sunrise or official sunset" and "Regional Administrator (RA)" are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Official sunrise or *official sunset* means the time of sunrise or sunset as determined for the date and location in *The Nautical Almanac*, prepared by the U.S. Naval Observatory.

* * * * *

Regional Administrator (RA), for the purposes of this part, means the Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or a designee.

* * * * *

3. In § 622.4, paragraph (a)(3)(vi) is removed; in paragraph (a)(2)(ix), the reference to "§ 622.44(e)(1) or (2)" is removed and "§ 622.44(d)(1) or (2)" is added in its place; in paragraph (p)(1), the reference to "§ 622.44(e)(1)" is removed and "§ 622.44(d)(1)" is added in its place; in paragraph (p)(2), the reference to "§ 622.44(e)(2)" is removed and "§ 622.44(d)(2)" is added in its place; a heading is added to paragraph (a)(2)(x) and the first sentence of paragraph (c) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(x) *South Atlantic golden crab.* * * *

* * * * *

(c) * * * The owner or operator of a vessel with a permit, a person with a coral permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (b) of this section. * * *

* * * * *

§ 622.34 [Amended]

4. In § 622.34, paragraph (k) is removed and reserved and in paragraph (f) and in two places in paragraph (h)(1), "sunset" is removed and "official sunset" is added in its place.

5. In § 622.42, paragraph (b) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(b) *Gulf and South Atlantic allowable octocoral.* The quota for all persons who harvest allowable octocoral in the EEZ of the Gulf and South Atlantic is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

* * * * *

6. In § 622.43, paragraphs (a)(2) and (b)(2) are revised to read as follows:

§ 622.43 Closures.

(a) * * *

(2) *Gulf and South Atlantic allowable octocoral.* Allowable octocoral may not be harvested or possessed in the Gulf EEZ or South Atlantic EEZ and the sale or purchase of allowable octocoral in or from the Gulf EEZ or South Atlantic EEZ is prohibited.

* * * * *

(b) * * *

(2) The prohibition on sale/purchase during a closure for allowable octocoral in paragraph (a)(2) of this section does not apply to allowable octocoral that was harvested and landed ashore prior to the effective date of the closure.

* * * * *

§ 622.44 [Amended]

7. In § 622.44, paragraph (d) is removed and paragraphs (e) and (f) are redesignated as paragraphs (d) and (e), respectively.

8. In § 622.45, paragraph (e) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(e) *Gulf and South Atlantic wild live rock.* Wild live rock in or from the Gulf EEZ or South Atlantic EEZ may not be sold or purchased. The prohibition on sale or purchase does not apply to wild live rock from the South Atlantic EEZ that was harvested and landed prior to January 1, 1996, or to wild live rock from the Gulf EEZ that was harvested and landed prior to January 1, 1997.

* * * * *

§§ 622.4, 622.5, 622.6, 622.15, 622.17, 622.18, 622.34, 622.46, and 622.48 [Amended]

9. In addition to the amendments set forth above, the acronym "RD" or "RD's" is removed and the acronym "RA" or "RA's" is added in its place in the following places:

(a) Section 622.4(b) introductory text (two occurrences), (d), (e)(1), (e)(2) (two occurrences), (h) (three occurrences), (m)(5), (m)(6), (n)(3)(iii), (n)(4), (n)(5), (o)(1), (p)(4), (p)(5)(ii)(C), (p)(6)(i), (p)(6)(ii)(A), (p)(6)(ii)(B) (three occurrences), (p)(6)(ii)(C) (seven occurrences), (q)(2) (two occurrences), (q)((7), and (q)(8);

(b) Section 622.5(d)(2) introductory text and (d)(3);

(c) Section 622.6(a)(1)(ii) introductory text, (b)(1)(i)(B) (two occurrences), (b)(1)(ii)(B), and (b)(1)(iii);

(d) Section 622.15(a)(1), (a)(2) (four occurrences), (b) (four occurrences), (c)(1) (two occurrences), and (c)(2);

(e) Section 622.17(b)(2), (c)(1), and (c)(2);

(f) Section 622.18(d)(1) (two occurrences), (d)(2)(iv) (two occurrences), (d)(3)(i), (d)(3)(ii), (d)(4)(i) (three occurrences), (d)(4)(ii) (two occurrences), (d)(4)(iii), (d)(4)(iv), (d)(4)(v) (four occurrences), (e) introductory text, (e)(1)(i), (e)(1)(iii), (e)(2), (f), (g)(1)(i), (g)(1)(ii), (g)(2) (three occurrences), (g)(3)(i), (g)(3)(ii), (g)(3)(iii) (two occurrences), (g)(4)(i) (two occurrences), (g)(4)(iii), and (g)(5)(i);

(g) Section 622.34(h)(2);

(h) Section 622.41(g)(3)(i) (two occurrences), (h)(3)(i)(A) (two occurrences), (h)(3)(i)(B) (four occurrences), and (h)(3)(ii) (three occurrences);

(i) Section 622.46(b) and (c) (two occurrences); and

(j) Section 622.48 introductory text and (g).

[FR Doc. 99–28480 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 640

[Docket No. 990506122–9284–02; I.D.020899A]

RIN 0648–AL42

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of the South Atlantic Region (FMPs); Addition to Framework Provisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement that portion of the Comprehensive Amendment Addressing Sustainable Fishery Act Definitions and Other Required Provisions in Fishery Management Plans of the South Atlantic Region (Comprehensive Amendment) that modifies the framework procedures in the South Atlantic Fishery Management Council's FMPs to allow the addition of biomass levels and age-structured analyses to these FMPs. The intended effect is to provide a more timely mechanism for incorporating biomass levels and age-structured analyses into the FMPs when such information becomes available.

DATES: This final rule is effective December 2, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Crabtree, 727–570–5305.

SUPPLEMENTARY INFORMATION: The Comprehensive Amendment addresses fisheries under the FMPs. The FMPs were prepared by the South Atlantic Fishery Management Council (Council), except for the coastal migratory pelagics and spiny lobster fishery management plans that were prepared jointly by the South Atlantic and Gulf of Mexico Fishery Management Councils. NMFS approved all of these FMPs and, except the FMP for spiny lobster, implemented them under the authority of the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act) by regulations at 50 CFR part 622. The Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic is implemented by regulations at 50 CFR part 640.

On February 18, 1999, NMFS announced the availability of the Comprehensive Amendment and requested comments on it (64 FR 8052). After considering the comments received, NMFS only partially approved the Comprehensive Amendment on May 18, 1999. NMFS disapproved the rebuilding schedules for all grouper species, red snapper, and red drum. These rebuilding schedules exceed 10 years and NMFS advised the Council that the rebuilding schedules must be estimated and explained in a more explicit manner consistent with the national standard guidelines. NMFS partially approved the stock status determination criteria because they are incomplete and, thus, do not totally fulfill the relevant requirements of the Magnuson-Stevens Act and the national standard guidelines. The Council must provide biomass-based estimates of maximum sustainable yield (MSY) and minimum stock size threshold for each stock in addition to the fishing mortality-based proxies provided in the Comprehensive Amendment.

On May 24, 1999, NMFS published a proposed rule to implement those approved Comprehensive Amendment measures requiring rulemaking and requested comments on the rule (64 FR 27952). The background and rationale for the measures in the Comprehensive Amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

Comments and Responses

NMFS received nine written comments during the public comment period on the Comprehensive Amendment and proposed rule. A summary of the comments and NMFS' responses follow.

Comment 1: One commenter commented that the environmental assessment (EA) included in the amendment is inadequate and that an environmental impact statement (EIS) is required. The commenter stated that the National Environmental Policy Act requires NMFS and the Council to provide an EIS and recommended that NMFS disapprove the Council's EA and require a supplemental EIS.

Response: NMFS disagrees and concurs with the Council's statement that because the action will not have a significant effect on the human environment an EIS is not required. The amendment authorizes no specific regulatory actions that would affect fish stocks or the environment. The need for an EIS will be evaluated as regulatory measures are implemented to achieve the goals of the Comprehensive Amendment.

Comment 2: Two commenters commented that the rebuilding plans for overfished species in the Comprehensive Amendment do not comply with the requirements of the Magnuson-Stevens Act. Both also commented that the Council's actions to end overfishing in the snapper-grouper fishery are inadequate.

Response: NMFS concurs that the rebuilding schedules proposed in the Comprehensive Amendment are incomplete and do not fully comply with the requirements of the Magnuson-Stevens Act. NMFS disapproved the rebuilding schedules for all grouper species, red snapper, and red drum and is committed to working with the Council to provide the additional information necessary to bring all stock rebuilding schedules into compliance with the requirements of the Magnuson-Stevens Act. NMFS believes that the resource conservation measures in Amendment 9 to the FMP for the Snapper-Grouper Fishery off the Southern Atlantic States that it approved and implemented in 1999 (64 FR 3624; January 25, 1999) are precautionary and will sufficiently reduce fishing mortality to initiate the recovery of overfished stocks and to prevent overfishing of others. As new stock assessments are completed for snapper-grouper species, the Council and NMFS will evaluate the need for additional measures to prevent overfishing. For example, the recent red porgy assessment indicated that the measures contained in Amendment 9 were insufficient to prevent overfishing of this stock. Consequently, the Council requested and NMFS agreed to issue an emergency rule to prohibit the harvest of red porgy (September 3, 1999; 64 FR 48324). The Council is currently developing longer term red porgy conservation measures.

Comment 3: Three commenters objected to the provisions of the Comprehensive Amendment regarding the reporting and minimization of bycatch. All commented that additional bycatch reporting is needed to quantify bycatch and that additional measures were required to reduce bycatch.

Response: NMFS believes that the Council has taken actions to reduce bycatch to the maximum extent practicable. Furthermore, the Council is exploring additional approaches, such as marine reserves, to address problems in the snapper-grouper fishery where the release mortality of regulatory discards is high. The Council is also reviewing the rock shrimp fishery to determine if additional measures are required to reduce bycatch. NMFS believes that the improved reporting requirements specified in the Atlantic Coastal Cooperative Statistics Program and NMFS' plans to incorporate a bycatch reporting requirement in all mandatory logbooks currently in use (expected by January 1, 2001) will significantly improve bycatch reporting and will fulfill the requirements of the Magnuson-Stevens Act. NMFS and the Council recognize that as additional bycatch information becomes available through improved bycatch reporting measures, additional action may be needed to further reduce bycatch.

Comment 4: Three commenters commented that the Comprehensive Amendment fails to adequately discuss the fair and equitable allocation of fishery resources among various sectors of the fishery. In particular, these groups objected to the sale of fish caught under the recreational bag limit.

Response: The Comprehensive Amendment addresses bycatch, overfishing definitions, and rebuilding schedules; however, the amendment proposes no regulatory actions that directly affect allocations. Therefore, the issue of fair and equitable allocations and the sale of fish caught under the recreational bag limit are issues outside the scope of this amendment.

Comment 5: Three commenters commented that the Council's actions to reduce bycatch in the recreational sector are inadequate and do not meet the Magnuson-Stevens Act requirement to reduce bycatch.

Response: NMFS disagrees. The Council and NMFS believe that the mortality rate of regulatory discards in shallow-water fisheries such as red drum, and in surface-water pelagic fisheries such as king mackerel, is low and has been minimized to the maximum extent practicable. NMFS and the Council recognize that the mortality rates of deep-water snapper-grouper species may be high and that additional steps may be required to reduce bycatch in that fishery. In the Comprehensive Amendment, the Council states its intent to continue to explore new methods to manage the snapper-grouper fishery and reduce bycatch. For example, the Council has previously established an experimental closed area (i.e., Oculina Bank habitat area of particular concern) to study the benefits of marine reserves and is currently examining the potential for using such marine reserves as a management tool for the snapper-grouper fishery. NMFS stock assessments take into account the number and size of fish released by the recreational sector and the mortality rate of these fish. This source of mortality is considered in the allocation of fishery resources among sectors.

Comment 6: One commenter stated that closures of fisheries are not necessary and that pollution is the major factor reducing populations of marine fishes. Another commenter expressed concerns that the effects of pollution and natural variations on marine stocks were not discussed in the amendment.

Response: NMFS agrees that pollution is a significant problem adversely affecting many species of marine fish. NMFS also recognizes that significant natural fluctuations occur in marine fish stocks even in the absence of a fishery. However, NMFS is required by the Magnuson-Stevens Act to take steps to prevent overfishing and rebuild overfished stocks. To meet this requirement, reductions in catch and closures of some fisheries are justified and necessary. The existence of pollution or natural variations in stocks does not alter the need to control fishing mortality.

Comment 7: Two commenters commented that the Comprehensive Amendment fails to account for the effect of fishing regulations on fishing communities.

Response: The Comprehensive Amendment identifies and describes fishing communities using the best available data and also describes additional data needed to better evaluate the effect of future regulatory actions on fishing communities. As future regulatory actions are proposed by the Council under its FMPs, the Council and NMFS will consider the anticipated effects on fishing communities as required by section 303(a)(9) of the Magnuson-Stevens Act.

Comment 8: One commenter commented that specifying MSY and the maximum fishing mortality threshold (MFMT) at the same level is not precautionary. They recommend that NMFS disapprove the MFMT specifications.

Response: NMFS disagrees. The Technical Guidelines state that the MFMT must not exceed the fishing mortality rate associated with MSY but allows the rate to be set equal to that at MSY.

Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, determined that the approved measures of the Comprehensive Amendment are necessary for the conservation and management of the fisheries off the southern Atlantic states and that, with the exception of the provisions that were disapproved, the Comprehensive Amendment is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 26, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 622 and 640 are amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.48, the introductory text and paragraphs (c), (f), (g), and (h) are revised to read as follows:

§ 622.48 Adjustment of management measures.

In accordance with the framework procedures of the applicable FMPs, the RD may establish or modify the following items:

* * * * *

(c) *Coastal migratory pelagic fish.* For cobia or for a migratory group of king or Spanish mackerel: Biomass levels, age-structured analyses, MSY, overfishing level, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), minimum size limit, vessel trip limits, closed seasons or areas, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, and permit requirements.

* * * * *

(f) *South Atlantic snapper-grouper and wreckfish.* For species or species groups: Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), and seasonal or area closures.

(g) *South Atlantic golden crab.* Biomass levels, age-structured analyses, MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, and authority for the RD to close the fishery when a quota is reached or is projected to be reached.

(h) *South Atlantic shrimp.* Biomass levels, age-structured analyses, BRD certification criteria, BRD specifications, BRD testing protocol, certified BRDs, nets required to use BRDs, and times and locations when the use of BRDs is required.

* * * * *

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

3. The authority citation for part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. A new § 640.25 is added to subpart B to read as follows:

§ 640.25 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the RD may establish or modify the following items: Biomass levels, age-structured analyses, limits on the number of traps fished by each vessel, construction characteristics of traps, specification of gear and vessel identification requirements, specification of allowable or prohibited gear in a directed fishery, specification of bycatch levels in non-directed fisheries, changes to soak or removal periods and requirements for traps, recreational bag and possession limits, changes in fishing seasons, limitations on use, possession, and handling of undersized lobsters, and changes in minimum size.

[FR Doc. 99–28478 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 981231333–8333–01; I.D. 092999C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to trip limits/fishing restrictions.

SUMMARY: This document contains corrections to fishing restrictions which were published in the **Federal Register** on October 8, 1999.

DATES: Effective November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Becky Renko, NMFS, 206–526–6110.

SUPPLEMENTARY INFORMATION: On October 8, 1999, at 64 FR 54786, NMFS announced changes to current management measures for the Pacific Coast Groundfish Fishery Management Plan. Tables 3 and 6 contained errors that need to be corrected. Due to the extent of the changes, we are correcting Tables 3 and 6 and republishing them here.

Corrections

In rule FR Doc. 99–26100 beginning on page 54786, in the issue of Friday, October 8, 1999 (64 FR 54786), tables 3 and 6 are set out in their entirety as set forth here:

TABLE 3: SEBASTES COMPLEX AND ITS COMPONENT SPECIES

Phase	Cumulative trip limit periods	Cumulative Trip Limits (in pounds)							Length of cumulative trip limit period (month)
		Sebastes complex (north and south of Cape Mendocino)		Yellowtail rockfish [1] (north of Cape Mendocino)	*Sebastes* other than yellowtail and canary [1] (north of Cape Mendocino)	Canary rockfish [1] (north and south of Cape Mendocino)		Bocaccio[1] (south of Cape Mendo-cino)	
		North	South			North	South		
I	Jan 1–Mar 31	24,000 (10,886 kg)	13,000 (5,897 kg)	15,000 (6,804 kg)		9,000 (4,082 kg)	9,000 (4,082 kg)	750 per month (340 kg)	
II	Apr 1–May 31	25,000 (11,340 kg)	6,500 (2,948 kg)	13,000 (5,897 kg)		9,000 (4,082 kg)	6,500 (2,948 kg)	750 per month (340 kg)	2
	Jun 1–Jul 31	30,000 (13,608 kg)	3,500 (1,588 kg)	16,000 (7,257 kg)		14,000 (6,350 kg)	3,500 (1,588 kg)	1,000[2] (454 kg)	2
	Aug 1–Sep 30	35,000 (15,876 kg)	3,500 (1,588 kg)	20,000 (9,072 kg)	10,000 (4,536 kg)	14,000 (6,350 kg)	3,500 (1,588 kg)	1,000[2] (454 kg)	
II	Oct 1–31	500 coastwide		300	500	500 coastwide		500	1
I	Nov 1–30	500 coastwide		300	500	500 coastwide		500	1
	Dec 1–31	500 coastwide (227 kg)		300 (136 kg)	500 (227 kg)	500 coastwide (227 kg)		500 (227 kg)	1

[1] Also counts toward the overall *Sebastes* complex limit.

[2] No more than 500 lb (227 kg) of bocaccio may be landed per trip, which counts towards the cumulative trip limits for bocaccio and the *Sebastes* complex south of Cape Mendocino.

* * * * *

TABLE 6: DTS COMPLEX (COASTWIDE)

Phase	Cumulative trip limit periods	Cumulative Trip Limits (in pounds)				Length of cumulative trip limit period (months)
		Dover sole cumulative trip limit	Longspine thornyhead cumulative trip limit	Shortspine thornyhead cumulative trip limit	Trawl-caught sablefish * cumulative trip limit	
I	Jan 1–Mar 31	70,000 (31,752 kg)	12,000 (5,443 kg)	3,000 (1,361 kg)	13,000 (5,897 kg)	3
II	Apr 1–May 31	25,000 (11,340 kg)	8,000	2,000	12,000 (5,443 kg)	2
	June 1–July 31	20,000	8,000	2,000		2
	Aug 1–Sept 30	20,000 (9,072 kg)	8,000 (3,629 kg)	2,000 (907 kg)	10,000 (4,536 kg)	2
III	Oct 1–31	22,000	4,000	1,000	7,000	1
	Nov 1–30	22,000	4,000	1,000	7,000	1
	Dec 1–31	22,000 (9,979 kg)	4,000 (1,814 kg)	1,000 (454 kg)	7,000 (3,175 kg)	1

* At any time of year unless otherwise announced, no more than 500 lb (227 kg) per trip may be trawl-caught sablefish smaller than 22 inches (56 cm) TL. (See paragraph IV.A.(6) regarding length measurement.)

(d) ***

Dated: October 26, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28538 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 211
Tuesday, November 2, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 770

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1823 and 1956

RIN 0560–AF43

Loans to Indian Tribes and Tribal Corporations

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed Rule.

SUMMARY: This rule proposes to consolidate into one part and to revise the Indian Tribal Land Acquisition Program (ITLAP) regulations to allow borrowers to use the loan reserve accounts to purchase additional real estate and to give borrowers additional servicing options. The proposed rule also would allow ITLAP funds to be used for certain refinancing activities; limit the requirement for reserve accounts to loans not secured by a general assignment of Tribal income; expand the uses borrowers may make of land purchased with ITLAP funds; require ITLAP loan applications, in most cases, include a copy of the borrower's option to purchase the land; and provide for subsequent loans to be made to ITLAP borrowers.

DATES: Comments on the proposed rule must be received on or before December 2, 1999 to be assured of consideration. Comments on the information collection requirements of this rule must be received on or before January 3, 2000 to be assured of consideration.

ADDRESSES: Mail comments on the proposed rule to: Veldon Hall, Director, Farm Loan Programs, Loan Servicing and Property Management Division, Farm Service Agency, USDA, 1400 Independence Avenue, S.W., STOP 0523, Washington, D.C. 20250–0523, fax number: (202) 690–0949, or hand deliver them to room 5449-South at that address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Gary West, Senior Loan Officer, Farm Loan Programs, Loan Servicing and Property Management Division, Farm Service Agency, USDA, 1400 Independence Avenue, S.W., STOP 0523, Washington, D.C. 20250–0523, telephone (202) 690–4008, facsimile (202) 690–0949, electronic mail: gwest@wdc.usda.fsa.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agency has determined that this action does not affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA requires agencies to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and Tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

The creation of 7 CFR part 770 set forth in this proposed rule requires review and approval of the information collection requirements by OMB under the provisions of chapter 35 of title 44 of the United States Code.

Title: 7 CFR 770 Indian Tribal Land Acquisition Program.

OMB Control Number: 0560-NEW

Type of Request: Approval of a new information collection.

Abstract: The information collected under OMB Number 0560-NEW, as identified above, is needed for Farm Service Agency (FSA) to effectively administer the regulations relating to the making and servicing of loans under the Indian Tribal Land Acquisition Program. The information is collected by the loan official in order to document the borrower's eligibility for loans and specific loan servicing actions. The reporting requirements imposed on the public by the regulations contained in 7 CFR part 770 are necessary to administer the Indian Tribal Land Acquisition Program (ITLAP) loan program in accordance with statutory requirements (25 U.S.C. 488–494) consistent with commonly performed lending practices.

The proposed rule imposes information collection requirements on Native American Tribes seeking ITLAP loans or borrowers seeking loan servicing actions. In order to apply for an ITLAP loan, the applicant must provide information regarding its financial condition, ability to obtain other credit, plans for use of the land being purchased, plans for how it intends to repay the loan, loan security and purchase agreement for the land. If the borrower seeks loan servicing, the borrower must provide information regarding the financial condition of the tribe.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 18.50 hours per loan application, .25 hours per request for a reamortization, .25 hours per request for an interest rate reduction, and 2 hours per request for a debt write down.

Respondents: Native American Tribes.

Estimated Number of Respondents: 12.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 83 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Craig Nehls, Branch Chief, Farm Loan Programs Loan Servicing Division, FSA, USDA, 1400 Independence Avenue, S.W., STOP 0523, Washington, D.C. 20250–0523. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance.

10.421—Indian Tribes and Tribal Corporation Loans

Discussion of the Advanced Notice of Proposed Rulemaking

On March 3, 1999, the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency published an Advance Notice of Proposed Rulemaking (ANPR) (64 FR 10235) soliciting comments to six issues relating to a possible revision of the debt relief regulations for ITLAP. In response to this request for public comment, 49 comments were received from ten commenters. Six commenters represented Native American Tribes, two commenters were individuals representing themselves, one commenter represented an Intertribal water rights coalition, and one commenter represented another Federal Government agency. The following is a summary of the comments received for each of the six issues:

1. Cancel the ITLAP debts in full. What criteria would be used to determine if a debt should be canceled?

Fourteen comments were received in response to this issue. One comment opposed reducing or canceling any ITLAP debt that is fully secured and collectable. Nine comments supported the cancellation of debt in some unspecified form; four comments supported a broad based cancellation of the debt; and two comments indicated that their Native American Tribes had already repaid more than they had originally borrowed and therefore should not have to pay any additional amounts.

2. Reduce the principal amount of the outstanding ITLAP debt to the present value of expected future annual rental value of the land purchased with ITLAP loan funds and set the annual ITLAP loan payment at the annual rent received or that could be received from this land.

Five comments were received in response to this issue. Two comments stated that the principal balance of such loans should be reduced to present value of future annual rents that could be generated on the land purchased with loan funds; two comments supported the concept that loan payments should be adjusted to equal rental income received from land purchased with loan funds; and one comment supported a reduction in loan payments to equal 85 percent of the rents received on the land purchased by loan funds.

3. Restructure the loan by lowering the interest rate and reamortizing the balance of the loan over the remaining loan term.

Five comments were received in response to this issue which suggested that borrowers should be eligible for reamortizations, deferrals, and servicing options which are available to Farm Loan Program borrowers.

4. Release the assignment of income and substitute real estate mortgages on the land purchased with ITLAP funds. The regulation could provide that payment terms of the loans would be restructured at such time.

Two comments were received in response to this issue which indicated that the Agency should take mortgages as security for these in exchange for the general assignments of income that currently secure many of these loans.

5. Consider the changes in Tribal revenues from all sources and grant a corresponding reduction in the loan principal.

Six comments were received on this issue. Five comments supported the provisions of debt relief based on socio-economic condition of the Tribe; and one comment proposed that debt relief should be based on decreases in Federal funding.

6. Grant deferrals of annual payments if the income loss is temporary.

One comment was received on this issue which recommended that debt relief should be provided when a producer who rents land from the borrower suffers a reduction in commodity prices.

In addition to the above listed comments, the Agency received 16 comments on other issues related to ITLAP. One comment suggested that debt relief should be provided, if the making of the loan payments by the borrower will impede the borrower's ability to resolve fractional land interests on the reservation; one comment stated that debt relief should be provided if the making of loan payments impedes the borrower's ability to repay other loans or meet other Tribal needs; three comments indicated that debt relief should not be conditioned on whether the loan has been accelerated; one comment suggested that independent legislation would be needed to authorize additional debt relief options; seven comments indicated that the Agency should take action without promulgating new regulations since such regulations are not necessary and would violate Executive Order (E.O.) 13084; two comments indicated that the Agency's concerns regarding the budgetary impacts of providing debt relief to borrowers were misplaced because such relief would enable borrowers to purchase more fractional interests and thus reduce the overall Federal Government's costs in tracking these fractional interests; and one comment indicated that funding for the loan program should be provided to the full program authorization level of $50 million.

Based on a review of the comments, the Agency has reached the following conclusions which, in part, formed the basis for the proposed changes to the debt relief provisions of ITLAP contained in this proposed rule:

In response to the comments that suggested the Agency adopt a policy of canceling ITLAP debt, the Agency cannot justify the simple cancellation of ITLAP debt with respect to the program's current borrowers. Such an action would be inconsistent with the intent of the program which is to provide loan financing to Native American Tribes for the purchase of reservation land. Such a change would move the program from a loan program to a grant program. When Congress amended the ITLAP legislation to authorize debt relief, it tied such relief to changes in the value of the land. (Sec. 303 of Pub. L. 101–82) In this amendment, Congress did not suggest or encourage the Agency use its debt settlement authorities to provide broad debt relief. Further, none of the comments provided specific criteria to support when such cancellations of debt should take place and none of the comments addressed the issue that providing such relief to those with recent loans would be unfair to those who have already repaid substantial portions of their debt. Finally, providing such relief could jeopardize the future of this program. At a minimum, as indicated in the ANPR, if such relief is not clearly limited, it could substantially increase the projected costs for future ITLAP loans which would mean that under the Credit Reform Act of 1990 the Agency would have fewer program loan funds available for such loans, even if the appropriation level of the program remains unchanged. Therefore, the Agency has concluded that at this point, the option of broadly canceling ITLAP debts should not be pursued. However, the Agency will accept more comments on this issue in response this proposed rule.

In response to the comments that recommended the Agency allow an ITLAP borrower whose loan is secured by an assignment of income to substitute as security for the loan a mortgage on the land purchased with ITLAP funds, the Agency does not, at this point, propose a change to the ITLAP regulations to allow for such substitution. The Agency has experienced a very low delinquency rate with respect to ITLAP loans secured by an assignment of income. Further, before an ITLAP loan may be secured with an assignment of income, the Agency must first determine that such security would be superior to taking a mortgage on the purchased land. In many of these cases taking security in the form of a mortgage is not practical because the ITLAP funds are being used to purchase fractional interests in land. A mortgage on such fractional interests would not provide the Agency with adequate security for the loan. Therefore, the Agency, at this time, does not believe that such a change would be in the best interests of the program. However, the Agency will take additional comments on this issue in response to this proposed rule.

The Agency received comments with respect to issues 2, 5, and 6 that suggested in a variety of ways that the ITLAP regulations should be changed to allow for debt relief if rental value of the land could not generate enough income to equal the ITLAP loan payments. In addition, the Agency received comments that debt relief should be provided to borrowers that are suffering a loss of revenue, facing severe socio-economic problems and having difficulties in meeting the basic needs of its members. Specifically, these comments taken together indicate that some Native American Tribes, over an extended period of time, are having to take funds needed from other high priority activities to make ITLAP loan payments. The Agency has determined that debt relief to an ITLAP borrower could be extended to those borrowers forced to use scarce Tribal assets needed to fight long term socio-economic problems to make ITLAP loan payments. The proposed rule contains a provision that would allow, under certain circumstances, an ITLAP loan be written down once to a level where ITLAP annual loan payments equal the previous five year average annual rental payment for the land purchased by loan funds, if the Native American Tribe is facing certain socio-economic problems. However, a Native American Tribe could receive the benefit of such a write down regarding its ITLAP loans only once. Such a write down could involve as many ITLAP loans of the Tribe as meet the criteria under this regulation at the time of the write down application. Further, in response to comments received, the availability of this proposed form of debt relief will not be conditioned on the acceleration of the loan.

The Agency received comments that ITLAP borrowers should have the same servicing options (codified at 7 CFR part 1951, subpart S) and debt settlement options (codified at 7 CFR part 1956) as Farm Loan Program (FLP) borrowers with Farm Ownership, Farm Operating, and Emergency loans.

Based on a review of the FLP loan making and servicing procedures, we have determined that loan making and servicing procedures for farmers and ranchers are not consistent with the statutorily established purposes of ITLAP. The purpose of FLP loans is to assist farming and ranching operations in becoming economically successful. Conversely, the statutory purpose of ITLAP loans is to assist Native American Tribes in the purchase of land and interests in land for the purpose of consolidating their ownership of land within their reservations regardless of the economic use such Tribe may make of the land. Thus, FLP loans made to farmers and ranchers versus ITLAP loans made to Native American Tribes are substantially different in the types of borrowers being targeted, the importance of how the borrower's operation is structured, and the importance of the economic viability of the project being funded. In order to accomplish the purpose of these respective loan programs, the servicing options offered to borrowers under each program must be different and tailored to the distinct purposes of these programs.

With respect to debt settlement, the security for most ITLAP loans is a general assignment against Tribal income and not a mortgage on the property purchased with ITLAP funds. Therefore, since the security for these loans in most cases has nothing to do with the purchased land or the operations on the purchased land, the debt settlement regulations at 7 CFR part 1956 which are premised, to the extent possible, on maintaining the economic viability of operations on the land will not work with ITLAP borrowers. Based on this analysis, in the proposed rule we have created loan servicing and debt settlement provisions that are specially tailored and unique to ITLAP.

The Agency received comments that it should proceed with consideration of additional debt relief options for ITLAP borrowers through informal rulemaking, because such actions violate E.O. 13084. These comments indicated that this E.O. obligates the Secretary of Agriculture to take actions to assist Native American Tribes while waiving the normal regulatory requirements to take such actions. The Agency agrees with these comments that the E.O. does place an obligation on the Secretary of Agriculture to take steps wherever possible to assist Native American Tribes. As indicated in the ANPR the Agency is re-examining ITLAP to determine if there are ways in which the Agency can provide more debt relief options to borrowers. The Agency, however, does not agree that the E.O. would allow the Agency to implement such policy changes in violation of the requirements of notice and comment rulemaking requirements in section 553 of title 5, United States Code or the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation (36 FR 13804). Further, while the notice and comment informal rulemaking process may take additional time, this process will give all interested parties, including affected Native American Tribes, the opportunity to participate in the development of this regulation to ensure their interests and concerns are heard prior to the implementation of any policy change. Therefore, the Agency has determined to proceed with the consideration and development of ITLAP debt relief changes through the notice and comment rulemaking process. In response to the concerns expressed that any additional debt relief changes to ITLAP should be made as soon as possible, the comment period for this proposed rule has been reduced from the standard 60-day time frame to 30 days to expedite the implementation of this rule.

The Agency received several comments that disagreed with the Agency's concerns expressed in the ANPR that the consideration of the impact on the Federal budget any ITLAP debt relief proposal is important. These comments indicated that any additional costs to the Federal Government by providing additional debt relief to ITLAP borrowers, which would enable such borrowers to purchase more fractional interests, would be offset by the reduction in costs to the Federal Government to administer programs on Native American reservations. We do not have any information that would support the contention that the costs of providing additional ITLAP debt relief would be offset by other reductions in the cost of administering Federal Government programs on Native American reservations.

Therefore, the Agency is proposing to allow certain ITLAP loans to be written down to a value where the annual loan payment will equal the average annual rental income that could be generated from the land if the borrower can demonstrate based on criteria established in the proposed rule that over an extended period of time, the Native American Tribe is facing other economic burdens which are being exacerbated as a result of the fact that the ITLAP loan payments exceed the long term income producing value of the land.

Discussion of the Proposed Rule

Pub. L. 91–229 (25 U.S.C. 488–494) authorized the Secretary of Agriculture to establish ITLAP. This program was administered by the former Farmers Home Administration (FmHA) to make loans to Native American Tribes and Tribal corporations to acquire land and fractional interests in land on the Tribes' reservations. Under the authority of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, on October 20, 1994, FmHA's ITLAP functions were transferred to the FSA. Regulations for implementing this program are found at 7 CFR part 1823, subpart N for loan making; 7 CFR part 1951, subpart E for loan servicing; and 7 CFR part 1956, subpart C, for debt settlement. The proposed rule would consolidate the ITLAP regulations into one part and clarify that this program is exclusively administered by FSA.

The proposed rule would limit the circumstances when a reserve account would be required to secure an ITLAP loan to those loans not adequately secured by a general assignment of Tribal income. With respect to loans that are not delinquent and that are presently adequately secured by a general assignment of Tribal income, the Agency will release its interest in such funds and allow them to be returned to the Native American Tribe or Tribal corporation. During our review of ITLAP in preparation of this proposed rule, the Agency determined that a general assignment of Tribal income may provide the Agency sufficient security for ITLAP loans. The additional security provided by the reserve account is unnecessary. ITLAP loans secured by an assignment of income have a very low delinquency rate. Only in a handful of cases has the Agency sought to recover an ITLAP loan payment from the reserve account.

The proposed rule also would allow Native American Tribes and Tribal corporations with remaining ITLAP loans secured by a mortgage to use their reserve accounts to purchase additional land consistent with ITLAP, which would be added to the mortgage securing the loan. With this change, the Agency would allow borrowers the use of this reserve account to purchase additional land that could increase its future income. The proposed rule would require the reserve funds be placed in Federally insured interest bearing accounts. We believe that these changes are consistent with the intent of ITLAP to assist Native American Tribes and Tribal corporations to consolidate their ownership in reservation lands and to encourage the rapid build up of the reserve accounts in those cases when they are required.

The proposed rule would also expand the use of ITLAP loan funds to include refinancing of an existing debt incurred by the Native American Tribe or Tribal corporation to purchase land provided: (1) The loan application was received and the Agency approved a land acquisition proposal for the land at issue, prior to the purchase of the land, (2) the Native American Tribe or Tribal corporation was not able to obtain an option on the land, (3) the debt to be refinanced is short term debt with a balloon payment that cannot otherwise be refinanced with the creditor, and (4) the debt secured by the land subject to the refinancing must otherwise meet the requirements of ITLAP.

The proposed rule would allow certain ITLAP loans to be written down to a value where the annual loan payment would equal the 5-year average rental value for the land purchased with such loan funds if the borrower could establish that the Native American Tribe was facing economic hardships based on a combination of certain criteria. Such a write down could involve as many ITLAP loans of the Tribe as meet the criteria under this regulation at the time of the write down application. This proposed amendment is based on comments received in response to the ANPR published on March 3, 1999, previously discussed.

The proposed rule would clarify the process under which the Agency will reduce the interest rate of an ITLAP loan to the interest in effect at the time of application for such a reduction. Such a reduction will take place if the ITLAP loan has been in effect for more than 5 years.

The proposed rule would make several other changes to the ITLAP. The proposed rule would clarify the approved uses of land that are the subject of an ITLAP loan to ensure that the Agency's mortgage on the land is protected by requiring Agency approval prior to such land being either leased, sold, or exchanged. The proposed rule would clarify that a subsequent ITLAP loan may be made to a borrower for the same purposes and under the same conditions as a prior loan. The proposed rule would require that prior to obtaining an ITLAP loan, the Native American Tribe or Tribal corporation obtain an option or other acceptable purchase agreement to purchase the land at issue and that a copy of such agreement accompany the ITLAP loan application. The purpose for this change is to allow the Agency to have all relevant information regarding the land purchase for which ITLAP loan funds are being sought. The proposed rule would, under limited circumstances, allow a reamortization of an ITLAP loan beyond 40 years. Debt settlement of ITLAP loans will be handled in accordance with the general government-wide debt collection standards at 4 CFR parts 101–105 and the USDA regulations at 7 CFR part 3, subpart B.

List of Subjects

7 CFR Part 770

Credit, Indians, Loan programs—agriculture.

7 CFR Part 1823

Credit, Grazing lands, Indians, Loan programs—agriculture, Rural areas, Soil conservation.

7 CFR Part 1956

Accounting, Loan programs—agriculture, Rural areas.

Accordingly, for the reasons stated in the preamble, the Farm Service Agency proposes to add 7 CFR part 770 and amend 7 CFR parts 1823 and 1956 as follows:

1. Part 770 is added to read as follows:

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

Sec.

770.1 Purpose
770.2 Definitions.
770.3 Eligibility for a loan.
770.4 Eligible uses of loan funds.
770.5 Loan limitations.
770.6 Rates and terms.
770.7 Security.
770.8 Use of acquired land.
770.9 Special Requirements.
770.10 Servicing.

Authority: 5 U.S.C. 301, 25 U.S.C. 490.

§ 770.1 Purpose.

This part contains policies and procedures of the Agency for making and servicing loans to assist a Native American Tribe with the acquisition of land interests within the Tribal reservation or Alaskan community.

§ 770.2 Definitions.

Agency means the Farm Service Agency and includes any successor agency.

Appraisal means an appraisal for the purposes of determining the market value of land (less value of any existing buildings that pass with the land) that meets the requirements of the Uniform Standards of Professional Appraisal Practice consistent with part 1922 of this title and by an appraiser approved by the Agency.

Applicant means a Native American Tribe or Tribal corporation seeking a loan under this part.

Loan funds means money loaned under this part.

Native American Tribe means:

(1) An Indian Tribe recognized by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Reservation means lands or interests in land within:

(1) The Native American Tribe's reservation as determined by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Tribal corporation means a corporation established pursuant to the Indian Reorganization Act.

§ 770.3 Eligibility for a loan.

To be eligible for a loan under this part, an applicant shall:

(a) File an application with the Agency on a form approved by the Agency;

(b) Be a Native American Tribe or a Tribal corporation of a Native American Tribe without adequate uncommitted funds, based on Generally Accepted Accounting Principals, to acquire lands or interests therein within the Native American Tribe's reservation for the use of the Native American Tribe or Tribal corporation or the members of either;

(c) Be unable to obtain sufficient credit elsewhere at reasonable rates and terms;

(d) Waive immunity from suit or liability and provide necessary information to private, commercial and government lenders in order to determine if the applicant meets the credit requirements of this part; and

(e) Demonstrate reasonable prospects of success in the proposed operation of the land to be purchased with funds provided under this part by providing:

(1) A feasibility plan for the use of the Native American Tribe's land and other enterprises and funds from any other source from which payment will be made;

(2) A satisfactory management and repayment plan; and

(3) A satisfactory record for paying obligations.

§ 770.4 Eligible uses of loan funds.

(a) *Land.* Loan funds may be used to acquire land and interests therein (including fractional interests, rights-of-way, water rights, easements, and other appurtenances (excluding buildings) that would normally pass with the land or are necessary for the proposed operation of the land) located within the Native American Tribe's reservation which will be used for the benefit of the Tribe or its members.

(b) *Costs of acquiring the land.* Loan funds may be used to pay costs incidental to land acquisition, such as those for title clearance, legal services, land surveys, and loan closing.

(c) *Refinancing existing debt.* Loan funds may be used to refinance non-United States Department of Agriculture preexisting debts the Native American Tribe or Tribal corporation incurred to purchase the land if the following conditions exist:

(1) Prior to the acquisition of such land, the Native American Tribe or Tribal corporation shall file a loan application regarding the purchase of such land and receive the Agency's approval for the land purchase;

(2) The Native American Tribe or Tribal corporation could not have acquired an option on such land;

(3) The debt for such land is a short term debt with a balloon payment that cannot be paid by the Native American Tribe or the Tribal corporation and that cannot be extended or modified to enable the Native American Tribe or Tribal corporation to satisfy the obligation; and

(4) The purchase of such land must be consistent with all other applicable requirements of this part.

(d) *Appraisal costs.* Loan funds may be used to pay for the costs of any appraisals that may be conducted pursuant to this part.

§ 770.5 Loan limitations.

(a) *Land improvement and development costs.* Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property.

payment of operating costs, payment of finder's fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agriculture commodity as further explained in exhibit M of subpart G of part 1940 of this title.

(b) *Loan funds may not exceed value of the land.* The amount of loan funds used to acquire land may not exceed the market value of the land (excluding the value of any improvements) as determined by the Agency.

(c) *Time limit for loan disbursal.* Loan funds for a land purchase must be disbursed over a period not to exceed 24 months from the date of loan approval.

(d) *Sale of non-renewable assets.* The sale of assets that are not renewable within the life of the loan will require a reduction in loan principal equal to the value of the assets sold.

§ 770.6 Rates and terms.

(a) *Term.* Except as provided in § 770.10(c), each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note.

(b) *Interest rate.* The interest rate charged by the Agency will be the lower of the interest rate in effect at the time of the loan approval or loan closing. Except as provided § 770.10(b), the interest rate will be constant for the life of the loan.

§ 770.7 Security.

A mortgage or deed of trust on the land to be purchased by the applicant will be taken as security for a loan under this part unless the Agency determines that an assignment of income from the applicant provides as good or better security. If an assignment of income is to be taken as the sole security for the loan, the prior approval of the Administrator is required.

§ 770.8 Use of acquired land.

(a) *In general.* Land acquired with loan funds, or other property serving as the security for a loan under this part, may be leased, sold, exchanged, or subject to a subordination of the Agency's interests, provided the Agency provides prior written approval of the action, if the Agency determines that the borrower's loan obligations to the Agency are adequately secured and the borrower's ability to repay the loan is not impaired.

(b) *Land exchanges.* In the case where the borrower proposes to exchange any portion of land securing a loan for other land, title clearance and a new mortgage on the land received by the borrower in exchange, which adequately secures the unpaid principal balance of the loan, will be required unless the Agency determines any remaining land or other loan security is adequate security for the loan.

§ 770.9 Special requirements.

(a) *Loan authorizations.* The Native American Tribe or Tribal corporation will take appropriate action to obtain and prove security for the loan.

(b) *Right to mortgage.* If a mortgage is to be obtained on trust or restricted land with respect to a loan under this part and the Native American Tribe's or Tribal corporation's constitution or charter does not specifically authorize mortgage of such land, the mortgage must be authorized by Tribal referendum. All mortgages of trust or restricted land must be approved by the Department of the Interior.

(c) *Waiver of immunity.* Prior to loan closing, the appropriate Tribal officials will execute on behalf of the Native American Tribe or Tribal corporation and in favor of the Agency, a waiver of immunity for the loan being made, which waiver has been approved by the Department of the Interior.

(d) *Reserve accounts.* (1) *Creation of reserve account.* In the case of a loan not adequately secured by a general assignment of Tribal income, funds will be collected from the borrower and deposited into a Federally insured, interest bearing reserve account at the rate of 10 percent of the annual payment per year under each loan authorized under this part until the reserve account has accumulated an amount equal to one year's installment for each loan made to the borrower under this part.

(2) *Use of reserve funds.* (i) *Loan security.* The funds in the reserve account will be available to further secure the loan made to the borrower under this part.

(ii) *Purchase additional land.* The Agency shall allow a borrower to use some or all of the reserve account for additional land purchases under terms and conditions consistent with the requirements of this part provided the loan is not delinquent or likely to become delinquent and any land purchased shall be added to the property that secures the loan.

(iii) *Make an installment payment.* Reserve funds may be used to make an installment payment for a loan made under this part, if the borrower lacks other financial resources to make such a payment.

(e) *Subsequent loan.* A subsequent loan may be made to a borrower for the same purposes and under the same conditions as the initial loan made to the borrower under this part.

(f) *Options.* Except for refinancing activities authorized in § 770.4(c), the applicant shall obtain an option or other acceptable purchase agreement for land to be purchased with loan funds, and such agreement shall be included with the application for loan funds.

(g) *Cost of appraisals.* The applicant or the borrower, as appropriate, will pay the cost of all appraisals required under this part.

§ 770.10 Servicing.

(a) *Reamortization.* (1) *Eligibility for reamortization.* The Agency may approve a reamortization of a loan under this part if:

(i) The account is delinquent and cannot be brought current within 1 year; or

(ii) The account is current, but due to circumstances beyond the control of the borrower, the borrower will be unable to meet the annual loan payments.

(2) *Terms of reamortization.* The term of a loan may not be extended unless:

(i) Reamortization within the remaining term of the loan would increase the annual payment to such an extent that the borrower cannot meet its obligations; and

(ii) No intervening lien exists on the security for the loan.

(3) *Consolidation of Notes.* If one or more notes are to be reamortized, consolidation of the notes is authorized.

(b) *Interest rate reduction.* The Agency shall, at the borrower's request, reduce the interest rate for an existing loan made under this part to the current interest rate for such loans if the loan was made more than 5 year prior to the application for the interest reduction and the Department of the Interior and the borrower certify that the borrower meets at least one of the criteria contained in paragraph (c)(2)(ii) of this section.

(c) *Debt write down.* (1) *Application.* A borrower may apply for a write down under either the land value or rental value option or both options provided in this paragraph. If the borrower applies for a land value write down, the borrower must provide a current appraisal of the land purchased with the loan funds at the time of application. If the borrower applies and is determined eligible for a land value and a rental value write down, the borrower will receive a write down based on the write down option that provides the greatest debt reduction.

(2) *Eligibility.* To be eligible for a write down under this paragraph, the borrower (in the case of a Tribal corporation, the Native American Tribe of the borrower) must:

(i) Be located in a county which is listed as a persistent poverty county by the Economic Research Service pursuant to the most recent data from the Bureau of the Census; and

(ii) Have a socio-economic condition over the immediately preceding 5 year period that meets at least two of the following factors as certified by the Native American Tribe and the Department of the Interior:

(A) The Native American Tribe has experienced a decrease, on a per capita basis, in State and Federal funding of more than 15 percent;

(B) The Tribal gross income, on a per capita basis, has declined by more than 20 percent;

(C) The Native American Tribe has incurred increased costs associated with unfunded or partially funded mandates from Federal or State Governments equal to more than 15 percent of the total amount received from Federal or State sources; and

(D) The Native American Tribe has incurred an increase in costs of meeting the public health and safety needs of Tribal members of more than 20 percent.

(3) *Land value write down.* The Agency may adjust the unpaid principal and interest balance on any loan made under this part to the current market value of the land that was purchased with loan funds, if:

(i) The market value of such land has declined by at least 25 percent since the land was purchased with loan funds as established by an appraisal;

(ii) Land value decrease is not attributed to the depletion of resources contained on or under the land;

(iii) The land on which the principal write down is requested has been held by the borrower for at least 5 years; and

(iv) The loan has not been written down under paragraph (d)(3) of this section within the last 5 years.

(4) *Rental value write down.* The Agency may write down loans made under this part so the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased by each such loan for the immediately preceding 5-year period if:

(i) The land that was purchased with loan funds was purchased more than 5 years prior to the application for such writedown;

(ii) The description of the land purchased with the loan funds and the rental values used to calculate the 5 year average annual rental value of the land have been certified by the Department of the Interior;

(iii) The borrower provides a current appraisal of the land; and

(iv) The borrower (in the case of a Tribal corporation, the Native American Tribe of the borrower) has not previously benefitted from a write down under paragraph (d)(3) of this section.

PART 1823—[REMOVED AND RESERVED]

2. Remove and reserve part 1823.

PART 1956—DEBT SETTLEMENT

3. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart C—Debt Settlement—Community and Business Programs

§ 1956.101 [Amended]

4. Amend § 1956.101 to remove the phrase "and Indian Tribal Land Acquisition loans;"

§ 1956.137 [Removed and Reserved]

5. Remove and reserve § 1956.137.

Signed at Washington, D.C., on October 21, 1999.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 99–28368 Filed 11–01–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–09]

Airworthiness Directives; Rolls-Royce plc Model RB211 Trent 892, 884, 877, 875, and 892B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), 97–06–13, applicable to certain Rolls-Royce plc (R–R) RB.211 Trent 800 series turbofan engines, that currently requires initial and repetitive inspections of the angled drive upper shroud, the intermediate gearbox housing (IGH), and the external gearbox lower bevel box (LBB) housing. In addition, that AD requires initial and repetitive master magnetic chip detector (MCD) inspections. Finally, prior to initiation of Extended-Range Operations with Two-Engine Aircraft (ETOPS), or prior to September 30, 1997, whichever occurs first, AD 97–06–13 requires installation of a redesigned angled drive upper shroud tube and a lower splitter fairing with revised sealing. This action would eliminate the repetitive inspections of the IGH, external gearbox LBB housing, and the angled drive upper shroud, if the engines have incorporated modifications described in certain R–R Service Bulletins (SBs). In addition, this action would increase the inspection interval for repetitive master MCD inspections. This proposal is prompted by service experience since publication of AD 97–06–13. The actions specified by the proposed AD are intended to prevent loss of oil, which could cause an engine fire. This proposed AD is also intended to prevent in-flight engine shutdowns and airplane diversions caused by oil loss and bearing failures.

DATES: Comments must be received by January 3, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–09, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230–3995, fax (317) 230–4743. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–09." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–09, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 14, 1997, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 97–06–13, Amendment 39–9970 (62 FR 23339, April 30, 1997), applicable to Rolls-Royce plc (R–R) Model RB211 Trent 892, 884, 877, 875, and 892B series turbofan engines. That AD requires initial and repetitive visual and fluorescent penetrant inspections (FPI) of the angled drive upper shroud tube for fretting and cracking, initial and repetitive visual inspections and FPI for cracking, a one-time FPI for porosity of the intermediate gearbox housing (IGH), and initial and repetitive visual inspections for cracking of the external gearbox lower bevel box (LBB) housing. In addition, AD 97–06–13 requires initial and repetitive master magnetic chip detector (MCD) inspections. Finally, prior to initiation of Extended-Range Operations with Two-Engine Aircraft (ETOPS), or prior to September 30, 1997, whichever occurs first, AD 97–06–13 requires installation of a redesigned angled drive upper shroud tube and a lower splitter fairing with revised sealing. That action was prompted by reports of loss of oil from the angle drive upper shroud tube, the IGH, the LBB, and by reports of bearing failures. That condition, if not corrected, could result in loss of oil, which could cause an engine fire. That condition, if also not corrected, could result in in-flight engine shutdowns and airplane diversions caused by oil loss and bearing failures.

Service Experience Since Publication of AD 97–06–13

Since the issuance of that AD, the Civil Aviation Authority (CAA) of the United Kingdom and the FAA have received service experience reports from operators that indicate that certain aspects of the current AD may be relaxed.

Relaxatory Actions

This proposal would exempt engines that have incorporated modifications described in certain R–R Service Bulletins (SBs) from the repetitive visual inspections and FPI of the IGH and external gearbox LBB housing. In addition, this proposal would increase the inspection interval for repetitive master MCD inspections.

New Service Bulletins (SBs)

R–R has issued SB RB.211–72–C114, Revision 2, dated March 13, 1998, that introduces a transfer tube and a lower splitter fairing with revised sealing; SB RB.211–72–C220, dated April 18, 1997, that introduces a low vibration angled drive shaft; and SB RB.211–72–C197, March 4, 1997, and SB RB.211–72–C211, dated March 21, 1997, that introduce a strengthened gearbox housing assembly.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 97–06–13 to continue to require the inspections of the current AD. However, engines that have incorporated modifications described by the R–R SBs listed in the New Service Bulletins paragraph of the discussion section would be exempt from the repetitive inspections of the angled drive upper shroud, IGH, and external gearbox LBB housing described in proposed paragraphs (a) and (b). In addition, the repetitive inspection interval for the master MCD inspections described in proposed paragraph (c) would be increased to 250 hours time-in-service (TIS). The actions would be required to be accomplished in accordance with the SBs described previously.

Economic Analysis

The FAA estimates that 24 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per engine to accomplish the optional modifications, and that the average labor rate is $60 per work hour. Required parts would cost approximately $23,000 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $577,920. However, since these modifications are optional, operators may continue to perform the repetitive inspections required by proposed paragraph (b) at no additional cost.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9970 (62 FR 23339, April 30, 1997), and by adding a new airworthiness directive, to read as follows:

Rolls-Royce plc: Docket No. 97–ANE–09. Revises AD 97–06–13, Amendment 39–9970.

Applicability: Rolls-Royce plc (R–R) Model RB211 Trent 892, 884, 877, 875, and 892B series turbofan engines, installed on but not limited to Boeing 777 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of oil, which could cause an engine fire, and in-flight engine shutdowns and airplane diversions caused by oil loss and bearing failures, accomplish the following:

Currently Required Actions

(a) Inspect angle drive upper shroud tubes as follows:

(1) Within 50 cycles-in-service (CIS) after May 15, 1997, the effective date of AD 97–06–13, visually inspect and measure the fretting and fluorescent penetrant inspect (FPI) for cracks the angle drive upper shroud tubes in accordance with R–R Service Bulletin (SB) No. RB.211–72–C089, Revision 1, dated January 24, 1997.

(2) Thereafter, at intervals not to exceed 50 CIS since last inspection, visually inspect and measure the fretting and FPI for cracks in the angled drive upper shroud tubes, in accordance with R–R SB No. RB.211–72–C089, Revision 1, dated January 24, 1997.

(3) Prior to further flight, remove from service angled drive upper shroud tubes that exhibit fretting measured in excess of 0.020 inches, or any cracks, and replace with serviceable parts.

(4) Installation of an improved angled drive upper shroud tube with a lower splitter fairing with revised sealing in accordance with R–R SB No. RB.211–72–C114, Revision 2, dated March 13, 1998, constitutes terminating action to the requirements of this paragraph.

(5) Prior to initiation of Extended-Range Operations with Two-Engine Aircraft (ETOPS), or prior to September 30, 1997, whichever occurs first, install an improved angled drive upper shroud tube with a lower splitter fairing with revised sealing in accordance with R–R SB No. RB.211–72–C114, Revision 2, dated March 13, 1998.

(b) Inspect the intermediate gearbox housing (IGH) and external gearbox lower bevel box (LBB) housing as follows:

(1) Within 5 CIS after May 15, 1997, the effective date of AD 97–06–13, perform an initial visual inspection of the IGH and LBB housing for cracks, in accordance with R–R Mandatory SB No. RB.211–72–C129, Revision 2, dated March 21, 1997.

(2) Within 10 CIS after May 15, 1997, the effective date of AD 97–06–13, perform an initial FPI of the IGH for cracks, in accordance with R–R Mandatory SB No. RB.211–72–C129, Revision 2, dated March 21, 1997.

(3) Thereafter, at intervals not to exceed 5 CIS since last visual inspection, visually inspect the IGH and LBB housing for cracks, and at intervals not to exceed 10 CIS since last FPI, FPI the IGH, in accordance with R–R Mandatory SB No. RB.211–72–C129, Revision 2, dated March 21, 1997.

(4) Within 10 CIS after May 15, 1997, the effective date of AD 97–06–13, perform an FPI of the IGH for porosity in accordance with R–R Mandatory SB No. RB.211–72–C129, Revision 2, dated March 21, 1997.

(5) Within the next 5 CIS after May 15, 1997, the effective date of AD 97–06–13, remove from service IGHs that exhibit porosity levels in excess of the acceptable criteria listed in the SB and replace with serviceable parts.

(6) Prior to further flight, remove from service cracked IGHs and LLB housings and replace with serviceable parts.

Optional Terminating Action to Paragraph (b) Requirements

(7) Incorporation of modifications described in R–R SB RB.211–72–C220, dated April 18, 1997, which introduces a low vibration angled drive shaft; and R–R SB RB.211–72-C197, March 4, 1997, which introduces IGH assembly with increased wall thickness, or SB RB.211–72–C211, dated March 21, 1997, which introduces a strengthened gearbox housing assembly , are incorporated, constitute terminating action to the requirements of this paragraph.

Master Magnetic Chip Detector (MCD) Inspections

(c) Inspect the Master MCD as follows:

(1) Within 100 hours time-in-service (TIS) after May 15, 1997, the effective date of AD 97–06–13, perform an initial inspection of the Master MCD in accordance with Mandatory SB No. RB.211–79–C093, Revision 1, February 28, 1997.

Extended Master MCD Repetitive Inspection Interval

(2) Thereafter, at intervals not to exceed 250 hours TIS since last inspection, perform repetitive inspections of the Master MCD in accordance with Mandatory SB No. RB.211–79–C093, Revision 1, dated February 28, 1997.

Alternative Method of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 25, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–28522 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105327–99]

RIN 1545–AX03

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations providing guidance to holders and issuers of qualified zone academy bonds.

DATES: The public hearing originally scheduled for Tuesday, November 9, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing that appeared in the **Federal Register** on Thursday, July 1, 1999 (64 FR 35579), announced that a public hearing was scheduled for Tuesday, November 9, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1397E of the Internal Revenue Code. The public comment period for these proposed regulations expired on Wednesday, September 29, 1999. The outlines of topics to be addressed at the hearing were due on Tuesday, October 19, 1999.

The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of October 28, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, November 9, 1999, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–28641 Filed 11–1–99; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99–5B]

Notice and Recordkeeping for Non-subscription Digital Transmissions

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Copyright Office proposes extending the date by which a non-interactive, non-subscription service currently making digital transmissions of sound recordings must file an initial notice of digital transmission with the Copyright Office from October 15, 1999, to December 1, 1999.

DATES: Comments must be received by the Copyright Office on or before November 17, 1999.

ADDRESSES: An original and ten copies of the comments shall be hand delivered to: Office of General Counsel, Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559–6000, or mailed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1998, the President signed into law the Digital Millennium Copyright Act of 1998 ("DMCA"). Among other things, the DMCA expanded the section 114 compulsory license to allow a nonexempt, eligible non-subscription transmission service and a preexisting satellite digital audio radio service to perform publicly a sound recording by means of certain digital audio transmissions, subject to compliance with notice and recordkeeping requirements. 17 U.S.C. 114(f).

For purposes of promulgating regulations governing the notice and recordkeeping requirements, the Office published a notice of proposed rulemaking in August, 1999, seeking to amend 37 CFR 201.35(f)—the interim regulation that requires the submission of an initial notice of digital transmission. The proposed change required each non-subscription service to file an initial notice of digital transmission prior to its first transmission, or in the case of those services already making such transmissions, prior to October 15, 1999. 64 FR 42316 (August 4, 1999). On September 2, 1999, the Recording Industry of America, Inc. ("RIAA") filed the only comment to the proposed change supporting, in general, the Office's proposal to amend the date by which a nonexempt, eligible non-subscription service already in operation could file a timely initial notice. Because there was no opposition to the proposed interim rule change, the Office set October 15, 1999, as the date by which non-subscription services currently making digital transmissions had to file its initial notice. 64 FR 50758 (September 20, 1999).

On October 15, 1999, the National Association of Broadcasters ("NAB") filed a petition with the Copyright Office, seeking an extension of the date for filing these initial notices until December 1, 1999. NAB makes this request because it believes that many potentially affected parties were unaware of the need to file an initial notice by the October 15, 1999, date, and consequently, missed the filing deadline, thereby jeopardizing their opportunity to rely upon the statutory license. NAB also suggests that the Office need not have proceeded at such a swift pace to amend the notice requirements when the rates and terms for the section 114 license have yet to be set. However, NAB is not proposing any change to the published schedule for the rate setting proceeding. *See* 64 FR 52107 (September 27, 1999).

In a response to the NAB petition, RIAA raised no objection to NAB's proposal to extend the date for filing initial notices from October 15, 1999, to December 1, 1999, although it stated that it would strongly oppose any extension beyond that date and any change to the November 1, 1999, filing date for the Notices of Intent to Participate in the rate setting proceeding. RIAA states that it needs the information supplied by the initial notices and the Notices of Intent to Participate in order to complete the industry-wide negotiations, the aim of which is to set rates and terms for the section 112 and 114 statutory licenses. *See* 63 FR 65555 (November 27, 1998).

NAB's reasons for requesting the extension are supported by the facts. Since October 15, 1999, the Copyright Office has received several hundred initial notices and expects additional filings to continue. Thus, it appears that many of the potentially affected parties were unaware of the rule change that set a date certain by which services currently operating under the section 114 statutory license had to file an initial notice of digital transmission of sound recordings.

In recognition of the apparent breakdown in the process to disseminate the information regarding the filing requirement to those parties most affected by the interim rule change, the Office is proposing to amend its interim regulation in accordance with NAB's suggestion and to adopt the proposed December 1, 1999, date as the deadline for filing initial notices.

In any event, the Office will accept all initial notices filed with the Licensing Division of the Copyright Office. However, the Office takes no position on the legal sufficiency of any filing made with the Office that does not conform with the filing requirements announced in 37 CFR 201.35(f). A service should be aware that the date-specific filing deadline for non-subscription services is significant only if it has made a digital transmission under the statutory license prior to that filing date. Any preexisting entity, just as any new entity which chooses to make use of the license at a future time, may file its initial notice after these dates, so long as it files its initial notice with the Licensing Division prior to the first transmission of a sound recording.

For these reasons, and because the Office considers it likely that there will be no substantive objections filed and that the Office will promulgate a final rule extending the deadline to December 1, services that have commenced making eligible non-subscription transmissions and that have not yet filed initial notices are encouraged to file their initial notices prior to promulgation of the final rule and in no event later than December 1, 1999.

Regulatory Flexibility Act

Although the Copyright Office, located in the Library of Congress which is part of the legislative branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights considers the effect of a proposed amendment on small businesses. For that reason, the Register is seeking to amend yet again 37 CFR 201.35(f) in order to allow small business entities that are eligible for the statutory license to make a timely filing of its initial notice of digital transmissions. The Register is seeking the amendment at the request of the NAB, an organization that represents the interests of numerous small broadcasters who were heretofore unaware of the filing requirement, and with the expectation that the NAB will make its members aware of the filing requirement and the proposed new deadline.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulation

For the reasons set forth in the preamble, it is proposed that part 201 of title 37 of the Code of Federal Regulations be amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.35(f) is amended by removing the date "October 15" and inserting in its place "December 1".

Dated: October 27, 1999.

David O. Carson,

General Counsel.

[FR Doc. 99–28509 Filed 11–1–99; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6467–7]

RIN 2060–AI73

Protection of Stratospheric Ozone: Allocation of 2000 Essential Use Allowances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this action, EPA is proposing the allocation of essential-use allowances for ozone depleting substances (ODS) for the 2000 control period. The United States nominated specific uses of controlled ozone-depleting substances (ODS) as essential for 2000 under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). The Parties to the Protocol subsequently authorized specific quantities of ODS for 2000 for the uses nominated by the United States. Essential use allowances permit a person to obtain controlled ozone-depleting substances as an exemption to the January 1, 1996 regulatory phaseout of production and import. EPA allocates essential use allowances to a person for exempted production or importation of a specific quantity of a controlled substance solely for the designated essential purpose.

DATES: Written comments on this proposed rule must be received on or before December 2, 1999, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the Stratospheric Ozone Protection Hotline listed below by 5 p.m. Eastern Standard Time on November 12, 1999. If a hearing is held, EPA will publish a document in the **Federal Register** announcing the hearing information.

ADDRESSES: Comments on this rulemaking should be submitted in duplicate (two copies) to: Air Docket No. A–92–13, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC 20460. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

Materials relevant to this rulemaking are contained in Docket No. A–92–13. The Docket is located in room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Protection Hotline at 1–800–296–1996 or Erin Birgfeld, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 401 M Street, SW., Washington, DC, 20460, 202–564–9079.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Allocation of 2000 Essential Use Allowances
III. Summary of Supporting Analysis
  A. Unfunded Mandates Reform Act
  B. Executive Order 12875: Enhancing the Intergovernmental Partnership
  C. Executive Order 12866
  D. Paperwork Reduction Act
  E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
  F. Regulatory Flexibility Act
  G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  H. National Technology Transfer and Advancement Act
  I. Federalism

I. Background

How Are Essential Use Exemptions for Ozone-Depleting Substances Approved at the International Level?

The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol) sets specific deadlines for the phaseout of production and importation of ozone depleting substances (ODS). At their Fourth Meeting in 1992, the signatories to the Protocol (the Parties) amended the Protocol to allow exemptions to the phaseout for uses agreed by the Parties to be essential. At the same Meeting, the Parties also adopted Decision IV/25, which established criteria for determining whether a specific use should be approved as essential, and the process for making such a determination.

The criteria for an essential use as set forth in Decision IV/25 are the following:

"(1) that a use of a controlled substance should qualify as 'essential' only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(2) that production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

The procedure set out by Decision IV/25 first calls for individual Parties to nominate essential uses. The Protocol's Technology and Economic Assessment Panel (TEAP or the Panel) evaluates the nominated essential uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on essential use nominations at their annual meeting.

What Are the Essential Uses That EPA Has Nominated in the Past?

Decision IV/25 was implemented initially in the context of halons which were phased out of production at the end of 1993. At that time, nominations for halons were separated from those for other ozone-depleting substances. EPA issued a **Federal Register** notice requesting nominations for essential uses of halons (February 2, 1993; 58 FR 06786). In response, the Agency received over ten nominations, but was able to work with applicants to resolve their near-term requirements. As a result, the U.S. did not nominate any uses for continued halon production in 1994. About a dozen other nations put forth nominations which were reviewed by the Panel, which determined that in each case alternatives existed or that the existing supply of banked halons was adequate to meet near-term needs. The Panel, therefore, did not recommend approval for any of the nominations. In November of 1993, at the Fifth Meeting, the Parties unanimously adopted the Panel's recommendation not to approve any essential uses for production and consumption of halons in 1994.

EPA issued a second notice requesting applications for essential use applications for halons for the 1995 control period on October 18, 1993 (58 FR 53722). In response to this inquiry, EPA received no applications. The TEAP received only one nomination (from France) for essential use exemptions for halons for production and consumption of halons for an essential use in 1995. The TEAP did not recommend approval of this nomination.

In 1993, EPA issued a **Federal Register** notice requesting essential use applications for CFCs, methyl chloroform, carbon tetrachloride, and hydrobromofluorocarbons required beyond the 1996 phaseout of consumption and production of these class I substances (May 20, 1993, 58 FR 29410). EPA received 20 applications in response to this notice. For several of these applications, EPA determined that the criteria contained in Decision IV/25 had not been satisfied. For example, EPA rejected two applications seeking CFCs for use in servicing air-conditioning equipment on the basis that adequate supplies of banked and recycled CFCs were available. However, in rejecting these nominations, the United States noted that servicing existing air-conditioning and refrigeration equipment remains a major challenge to the successful transition from ODSs and that a future nomination in this area might be necessary if a combination of retrofits, replacements, recycling, recovery at disposal, and banking do not adequately address these needs.

In 1993, the United States forwarded essential use nominations to the Protocol Secretariat for the following uses of CFCs: metered dose inhalers and other selected medical applications; rocket motor assembly for the Space Shuttle; aerosol wasp killers; limited use in a specified bonding agent and polymer application; and a generic application for laboratory uses under specified limitations. (Letter from Pomerance to UNEP, September 27, 1993).

The TEAP reviewed over 200 specific uses which were submitted to the Montreal Protocol Secretariat by the Parties to the Protocol. In March 1994, the Panel issued the "1994 Report of the Technology and Economic Assessment Panel," which included the Panel's recommendations for essential-use production and consumption exemptions. The Panel recommended that essential use exemptions be granted for nominations of: methyl chloroform in solvent bonding for the Space Shuttle; CFCs used in metered dose inhalers; and specific controlled substances needed for laboratory and analytical applications. For each of the other nominations submitted, the TEAP determined that one or more of the criteria for evaluating an essential use had not been satisfied. The Parties approved essential use exemptions for the uses recommended in the 1994 TEAP report. The U.S. has continued to request and receive exemptions for those same uses in subsequent years.

Have There Been Any Recent Changes to the Essential Use Process at the International Level?

At the Eighth Meeting of the Parties in 1996, a new timetable for nomination of essential uses was established in Decision VIII/9. This Decision states that Parties may nominate a controlled substance for an exemption from the production and consumption phaseout by January 31 of each year to the Ozone Secretariat. EPA has since issued **Federal Register** notices calling for essential use applications for class I controlled substances prior to the Protocol deadline for submission to the Ozone Secretariat.

Decision V/18 directed the Technology and Economic Assessment Panel to develop a "handbook on essential use nominations" (Handbook). The July 1994 Handbook contained forms and instructions for how to apply for an essential-use exemption. Subsequent decisions by the Parties to the Protocol created additional criteria for essential use authorizations now reflected in the August 1997 Handbook on Essential Use Nominations. The Handbook may be obtained from the Stratospheric Protection Division, U.S. Environmental Protection Agency or the Ozone Secretariat of the Montreal Protocol in Nairobi. The Handbook can also be downloaded from the TEAP website at: http://www.teap.org/html/teap—reports.html.

What Does EPA Do With the Information in the Essential Use Applications?

The U.S. EPA carefully reviews all the information in each essential use application to ensure that it contains complete information in accordance with the Decisions of the Protocol Parties as reflected in the Handbook. EPA enters the information from each application into a tracking system which permits year by year comparison of quantities of ODS requested, quantities allocated, quantities of ODS received in previous years, and quantities of ODS used for the specific essential activity. The review of data enables EPA to assess whether entities are stockpiling ODS, whether there seems to be inflated requests relative to actual use, and whether there is possible double-counting between companies. For example, in 1998 we identified some double-counting in the requests for CFCs among companies. Our analysis also revealed that there were disparities between the total quantity of CFCs requested for MDIs and the actual quantity used to manufacture MDIs in previous years. To account for this inflation in the request for allocation, EPA reduced the total U.S. nomination for 1998 by 10 percent before forwarding them for consideration by the TEAP and the Parties to the Protocol.

EPA recognizes that since companies must project their need for CFCs almost two years in advance, the actual needs of a company may change in the interim. Therefore, prior to allocation, EPA consults with companies to ensure they still require the total amount of ODS requested. For example, in 1999 several essential use applicants voluntariiy indicated that they would not require the total quantity of ODSs requested in their original application submitted to EPA.

Every year since 1994, EPA has reviewed applications for essential uses according to the above criteria and then forwarded the applications to the Parties. The Parties then review the recommendations by the Technology and Economic Assessment Panel and make final decisions on essential use nominations. Today's action follows decisions taken by the Parties after considering recommendations by the TEAP in 1998 and 1999.

II. Allocation of 2000 Essential Use Allowances

What Is EPA's Proposed Essential Use Allocation for the Year 2000?

In today's action, EPA is proposing allocation of essential use allowances for the 2000 control period to entities listed in Table I for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential use.

TABLE I.—ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL FOR 2000 AND ESSENTIAL USE ALLOWANCES

Company	Chemical	Quantity (metric tonnes)
(i) Metered Dose Inhalers for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
International Pharmaceutical Aerosol Consortium (IPAC)—Medeva Americas, Inc., Boehringer Ingelheim Pharmaceuticals, Glaxo Wellcome, Rhone-Poulenc Rorer, 3M.	CFC–11 CFC–12 CFC–114	588.0 1516.0 301.0
Medisol Laboratories, Inc.	CFC–11 CFC–12 CFC–114	70.0 120.0 10.0
Schering Corporation	CFC–11 CFC–12	330.0 680.0
Sciarra Laboratories, Inc..	CFC–11 CFC–12 CFC–114	25.0 75.0 20.0
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket.	Methyl Chloroform	56.7
United States Air Force/Titan Rocket.	Methyl Chloroform	3.4
(iii) Laboratory and Analytical Applications		
Global Exemption (Restrictions in Appendix G Apply).	Class I Controlled Substances excluding CFCs, carbon tetrachloride, halons, and HBFCs (hydrobromoflouro carbons)	(¹)

¹ No quantity specified.

The International Pharmaceutical Aerosol Consortium (IPAC) consolidated the essential use exemption requests of its member companies for administrative convenience. EPA will separately allocate essential-use allowances to each of IPAC's member companies.

In developing today's action, EPA considered allocating essential-use allowances in accordance with Decision X/6 of the Parties to the Montreal Protocol. Paragraph 2 of Decision X/6 states that the "levels of production and consumption necessary to satisfy essential uses of CFC–11, CFC–12, CFC–113, and CFC–114, for metered-dose inhalers for asthma and chronic obstructive pulmonary diseases...are authorized as specified in annex I to the report of the Tenth Meeting of the Parties." Paragraph 5 of Decision X/6 goes on to say that "the quantities approved under paragraph 2 above and all future approvals are for total CFC volumes with flexibility between CFCs within each group." Thus, EPA is considering allocating essential-use allowances for CFCs for the manufacture of metered-dose inhalers in the aggregate instead of on a compound-by-compound basis and seeks comments on this option. CFC–11, CFC–12 and CFC–114 all have an ozone depleting potential of 1.0, so an aggregate allocation of essential-use allowances for all these CFCs would add some flexibility for protecting patient health by allowing companies to better meet market demand for MDIs without causing additional damage to the stratospheric ozone layer.

How Did EPA Determine the Proposed Essential Use Allocation?

Applications submitted by the entities in Table I requested class I controlled substances for uses deemed essential for the 2000 control period. The applications provided information in accordance with the criteria set forth in Decision IV/25 of the Protocol and the procedures outlined in the "1997 Handbook on Essential Use Nominations." The applications requested exemptions for the production and import of specific quantities of specific class I controlled substances after the phaseout as set forth in 40 CFR 82.4. The U.S. government reviewed the applications and nominated these uses to the Protocol Secretariat for analysis by the Technical and Economic Assessment Panel (TEAP) and its Technical Option Committees (TOCs). The Parties to the Montreal Protocol approved the U.S. nominations for essential-use exemptions during the Tenth Meeting in 1998 (Decision IX/18). Today's action proposes the allocation of essential-use allowances to U.S. entities as authorized by the Parties to the Protocol and consistent with the Clean Air Act.

Does the Clean Air Act Permit Production and Import of Ozone-Depleting Substances for Essential Uses?

The Clean Air Act provides specific exemptions to the phaseout of ozone-depleting substances; unlike the Protocol, it does not provide for an open-ended essential use process. Thus, a use that is permitted under the Protocol may or may not be permitted under the Act. However, the Act's phaseout schedule for class I substances (except for methyl bromide) in Section 604 is less stringent than the Protocol phaseout schedule. For example, in 1999, three years after the phaseout of CFCs under the Protocol, the Act allows production of 15 percent of the baseline. (Note, however, that under EPA's regulations, the CFC phaseout date is the same as that under the Protocol in accordance with section 606 and 614(b) of the Act.) Thus, for the past several years, EPA has been able to authorize production and import of ozone-depleting substances for essential uses allowed under the Protocol, without regard to whether the Act contains exceptions for those uses, as long as the total authorized production does not exceed the amount permitted by the Act. However, January 1, 2000 is the phaseout date under Section 604 of the Act for all class I substances with the exception of methyl chloroform and methyl bromide. The phaseout dates for methyl chloroform and methyl bromide are January 1, 2002 and January 1, 2005, respectively. After the phaseout date for a particular substance has passed, EPA will no longer be able to authorize production of that substance on the basis of the slower phaseout schedule under the Act.

The Act's provision for specific exemptions includes the following. Section 604 (d)(2) of the Act states that notwithstanding the phaseout, EPA shall, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of class I substances for use in medical devices, if FDA, in consultation with EPA, determines that such production is necessary. Section 604(d)(3) states that EPA may, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of halon-1211, halon-1301, and halon-2402 solely for the purpose of aviation safety, if the Federal Aviation Administration, in consultation with EPA, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes. Section 604(d)(1) provides that during the period from January 1, 1992 to January 1, 2005, EPA may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications for which no safe and effective substitute is available. Section 604(d)(4) states that EPA cannot use any of these three exemptions to authorize any person to produce a class I substance in annual quantities greater than 10 percent of that person's baseline year as defined in Section 601(2). Section 604(g)(3) of the Act provides that EPA may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 after December 31, 1999 and before December 31, 2004 for use in fire suppression and explosion prevention in association with domestic production of crude oil and natural gas energy supplies on the North Slope of Alaska, if it is determined that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression or explosion prevention purposes. EPA cannot use this exemption to authorize any person to produce any of these halons in an amount greater than 3 percent of that person's baseline. Finally, section 604(f) states that the President may, to the extent consistent with the Montreal Protocol, provide an exemption for production of CFC -114, halon-1211, halon-1301, and halon-2402 as necessary to protect U.S. national security interests, if the President finds that adequate substitutes are not available and that the production and use of the substance are necessary to protect national security interests.

How Does the Allocation for the Year 2000 Differ From 1999 and Previous Years?

Each year, the Parties to the Protocol have approved an unlimited, global essential use exemption for the production and consumption of high purity ozone depleting substances for use in laboratory and analytical techniques. EPA has implemented this exemption domestically through regulation. However, beginning January 1, 2000 EPA may no longer be able to allow laboratory essential use exemptions for most Class I substances because the Act does not specifically list laboratory and analytical uses as an exception to the phaseout. Thus, as of January 1, 2000, EPA may no longer be able to grant laboratory essential use exemptions for CFCs, halons, carbon tetrachloride, or HBFCs, because the phaseout date under the Act for these substances is January 1, 2000. It should be noted, however, that EPA believes that the ban would apply only to the import and production of these class I ODSs and would not apply to their actual use in the laboratory. Therefore, EPA believes that laboratories could continue to use stockpiles of class I ODSs that were produced or imported prior to January 1, 2000. Trade among companies of class I ODSs that were produced or imported for laboratory uses prior to January 1, 2000 would be permitted. The supply of this subset of class I ODSs (which includes CFCs and carbon tetrachloride) after this date however, would be finite, and once domestic stockpiles are depleted, laboratories would cease to have access to these chemicals. EPA solicits comment on the above interpretation and other possible interpretations of the statutory requirements related to EPA's ability to grant essential use exemptions for laboratory and analytical uses.

For the year 2000, EPA is implementing the exception for medical devices found in section 604(d)(2) of the Clean Air Act. "Medical device" is defined in section 601(8) of the Clean Air Act as follows:

> [A]ny device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—
>
> [A] if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of FDA]; and
>
> [B] if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner [of FDA] in consultation with the Administrator [of EPA].

EPA and FDA are discussing how best to interpret the above definition of "medical device." With respect to part (A) of the definition (section 601(8)(A)), which relates to "safe and effective alternative[s]", the preamble to FDA's September 1, 1999 notice of proposed rulemaking on essential use determinations (64 FR 47735) discusses FDA's approach to determining whether "safe and effective alternative[s]" have been developed. FDA's preamble points out, and EPA agrees, that "A non-CFC product simply having the same active moiety as a CFC product is only one factor to be considered. Other factors, such as whether the non-CFC product has the same route of administration, the same indication, and can be used with approximately the same level of convenience, are important considerations. Additionally, FDA must consider whether patients who medically need the CFC product are adequately served by the non-CFC product...FDA's approval of a non-CFC product is a determination that the product is safe and effective, but it is not a determination that the product is a safe and effective alternative to any other product. That requires a separate and distinct analysis."

With respect to part (B) of the definition of medical device (section 601(8)(B)), and in particular the use of the word "essential" in that part of the definition, EPA proposes to rely on current FDA regulations (21 CFR 2.125) which contain a list of uses of CFCs that FDA in consultation with EPA has found to be essential. This list includes, among others, metered-dose steroids, metered-dose adrenergic bronchodilators, metered-dose cromolyn sodium, metered-dose ipratropium bromide, and metered-dose nedocromil sodium, all drugs for oral inhalation in humans. The companies for which EPA is proposing to grant essential use allowances produce MDIs that are covered by one of the categories on FDA's essential use list. Thus, the products for which EPA is proposing to provide essential use allowances belong to the product categories "determined to be essential" by FDA.

Also with respect to part (B) of the definition of "medical device", EPA and

FDA are discussing at least two interpretations of the language regarding approval by FDA of the "device, product, drug, or drug delivery system." First, one could interpret the word "approved" as referring to FDA's approval of the specific product in question through approval of the New Drug Application (NDA) or Abbreviated New Drug Application (ANDA) for that product. Alternatively, one could interpret it as referring to FDA's approval of the same active moiety under that or any other NDA or ANDA. (FDA regulation at 21 CFR.108(a) defines active moiety as "the molecule or ion excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivatives (such as a complex, chelate or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.")

The implications of adopting the first interpretation described above, would require EPA to have more information regarding product approvals. The 1997 TEAP Handbook on Essential Use Nomination is the guidance document used for application for essential use exemptions. Because this Handbook does not request companies to specifically list the products for which the CFCs will be used, EPA does not have the information necessary to determine whether the products are in fact "approved" by FDA. Therefore, EPA has sent out formal requests for this additional information under section 114 of the Act to the pharmaceutical companies who requested CFCs for the year 2000. If the first interpretation is adopted, EPA will analyze the data received from these letters and will not allocate CFCs in the final rule for those individual products that are not approved by FDA. The allocation in this proposed rule represents the amount allocated by the Parties to the Montreal Protocol at the Tenth Meeting of the Parties, and may be reduced in the final rule.

As stated earlier, section 604(d)(2) of the Act provides that EPA shall authorize production and import of limited quantities of class I substances for use in medical devices if FDA, in consultation with EPA, determines such authorization to be necessary. EPA and FDA are now discussing appropriate approaches to implementing the essential use exemption for medical devices. EPA's final essential use allocation for the year 2000 will be based on what FDA determines is "necessary" under section 604(d)2 of the Act.

The phaseout date for methyl chloroform under the Act is January 1, 2002. Until that date, the Act permits production and import of methyl chloroform equivalent to 20% of baseline. The amount of methyl chloroform allocated for 2000 is well below this limit. Beginning in the year 2002, EPA will implement the exception for essential uses of methyl chloroform found in 604(d)(1) of the Act.

What Reporting Requirements Must Be Followed for the Essential Uses of Ozone Depleting Substances?

Any person obtaining class I controlled substances after the phaseout under the essential use exemptions proposed in today's action would be subject to all the restrictions and requirements in other sections of 40 CFR part 82, subpart A. Holders of essential-use allowances or persons obtaining class I controlled substances under the essential-use exemptions must comply with the record keeping and reporting requirements in 40 CFR 82.13.

III. Summary of Supporting Analysis

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this proposed rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.16).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies or matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities since the rule allocates CFC's to specific entities which have previously submitted requests.

This proposed rule would not have a significant impact on a substantial number of small entities, therefore, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it implements the phaseout schedule established by Congress in Title VI of the Clean Air Act.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs

EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Federalism

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will go into effect on November 2, 1999. In the interim, the current Executive Order 12612, [52 FR 41685 (October 30, 1987),] on federalism still applies. Under this order, this proposed rule will not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government. This proposed rule will affect only the production of controlled ozone-depleting substances by private entities.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Labeling, Ozone layer, Reporting and recordkeeping requirements.

Dated: October 26, 1999.

Carol M. Browner,

Administrator.

40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.4(t)(2) is amended by revising the table to read as follows:

§ 82.4 Prohibitions.

* * * * *

(t) * * *

(2) * * *

TABLE I.—ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL FOR 2000 AND ESSENTIAL USE ALLOWANCES

Company	Chemical	Quantity (metric tonnes)
(i) Metered Dose Inhalers for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
International Pharmaceutical Aerosol Consortium (IPAC)—Medeva Americas, Inc., Boehringer Ingelheim Pharmaceuticals, Glaxo Wellcome, Rhone-Poulenc Rorer, 3M.	CFC–11 CFC–12 CFC–114	588.0. 1,516.0. 301.0.
Medisol Laboratories, Inc.	CFC–11 CFC–12 CFC–114	70.0. 120.0. 10.0.
Schering Corporation.	CFC–11 CFC–12	330.0. 680.0.
Sciarra Laboratories, Inc..	CFC–11 CFC–12 CFC–114	25.0. 75.0. 20.0.
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket.	Methyl Chloroform	56.7.
United States Air Force/Titan Rocket.	Methyl Chloroform	3.4.
(iii) Laboratory and Analytical Applications		
Global Exemption (Restrictions in Appendix G Apply).	Class I Controlled Substances excluding CFCs, carbon tetrachloride, halons, and HBFCs (hydrobromoflourocarbons)	No quantity specified.

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[FR Doc. 99–28506 Filed 11–1–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2276, MM Docket No. 99–315, RM–9731]

Digital Television Broadcast Service; McAllen, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Entravision Holdings, LLC, licensee of station KNVO, NTSC Channel 48, McAllen, Texas, requesting the substitution of DTV channel 49 for its assigned DTV channel 46. DTV channel 49 can be substituted and allotted to McAllen, Texas, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 26–05–20 N. and 98–03–44 W. However, since the community of McAllen is located within 275 kilometer of the U.S.-Mexican border, concurrence by the Mexican government must obtained for this allotment. DTV Channel 49 can be allotted to McAllen with a power of 200 (kW) and a height above average terrain (HAAT) of 288 meters.

DATES: Comments must be filed on or before December 20, 1999, and reply comments on or before January 4, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry A. Friedman and Andrew S. Hyman, Thompson, Hine & Flory LLP, 1920 N Street, NW, Suite 800, Washington, DC 20036 (Counsel for Entravision Holdings, LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–315, adopted October 26, 1999, and released October 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Digital Television Broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–28411 Filed 11–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2292, MM Docket No. 99–317, RM–9743]

Digital Television Broadcast Service; Baton Rouge, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Louisiana Television Broadcasting Corporation, licensee of station WBRZ, NTSC Channel 2, Baton Rouge, Louisiana, requesting the substitution of DTV Channel 13 for station WBRZ's assigned DTV Channel 42. DTV Channel 13 can be substituted and allotted to Baton Rouge, Louisiana, as proposed, in compliance with the principle community requirements of Section 73.625(a) at coordinates 30–17–49 N. and 91–11–40 W. DTV Channel 13 can be allotted to Baton Rouge with a power of 30 (kW) and a height above average terrain (HAAT) of 515 meters.

DATES: Comments must be filed on or before December 20, 1999, and reply comments on or before January 4, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert B. Jacobi, Cohn and Marks, 1920 N Street, NW, Suite 300, Washington, DC 20036–1622 (Counsel for Louisiana Television Broadcasting Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–317, adopted October 27, 1999, and released October 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–28550 Filed 11–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2246; MM Docket No. 99–156; RM–9613]

Radio Broadcasting Services; Pleasant Dale, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, denial of.

SUMMARY: The Commission denies the request of Mountain West Broadcasting to allot Channel 256A to Pleasant Dale, NE, as its first local aural service. *See* 64 FR 28131, May 25, 1999. The Commission found that Pleasant Dale does not qualify as a community for allotment purposes. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–156, adopted October 13, 1999, and released October 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28410 Filed 11–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[DA 99–2244]

Medical Telemetry Equipment Operating in the 450–460 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission released a Public Notice on October 20, 1999, asking parties operating medical telemetry equipment in the 450–460 MHz band to assist the Commission by providing certain information on their operation. It is requested that users of wireless medical telemetry equipment operating in this band provide information on the numbers, types, locations, and frequencies of equipment presently in use. The requested information will aid the Commission in determining whether it is feasible to lift the currently effective freeze on the filing of part 90 applications for high-power operation in the 450–460 MHz band on the 12.5 kHz offset channels without adversely affecting existing medical telemetry operations.

DATES: Comments are due by January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl (202) 418–7506, email: *hvantuyl@fcc.gov.* Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is the text of the Commission's *Public Notice,* DA 99–2244, released October 20, 1999. This document is available for inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW, Washington, DC, and is available on the FCC's Internet site at www.fcc.gov/Bureaus/Engineering__Technology/Public__Notices/1999/. This document may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Public Notice

1. The Office of Engineering and Technology is asking parties operating medical telemetry equipment in the 450–460 MHz band to assist the Commission by providing certain information on their operation. It is requested that users of wireless medical telemetry equipment operating in this band provide information on the numbers, types, locations, and frequencies of equipment presently in use. Parties are asked to submit this information to the Chief, Office of Engineering and Technology by January 31, 2000. The requested information will aid the Commission in determining whether it is feasible to lift the currently effective freeze on the filing of part 90 applications for high-power operation in the 450–460 MHz band on the 12.5 kHz offset channels without adversely affecting existing medical telemetry operations.

2. Medical telemetry equipment is used in hospitals and health care facilities to transmit patient measurement data, such as pulse and respiration rates, to a nearby receiver. Part 90 of the Commission's rules permits medical telemetry equipment to operate on a secondary basis to land mobile users in the 450–470 MHz band. Hospitals and health care facilities holding a valid license to operate a radio station under part 90 may operate medical telemetry equipment without any specific authorization from the Commission (see 47 CFR 90.267). As a consequence, the Commission does not have any records concerning the locations of medical telemetry operations in the 450–470 MHz band.

3. In 1995, the Commission adopted changes to part 90 of the rules to allow more efficient use of the spectrum for land mobile services. The *Report and Order and Further Notice of Proposed Rule Making* in PR Docket 92–235, 60 FR 37152, July 9, 1995 established a new channeling plan for private land mobile radio services (PLMRS). This *Order* adopted a channel spacing plan for PLMRS in the 450–470 MHz band based on 6.25 kHz.

4. Medical telemetry equipment operates in the 450–470 MHz band on channels offset 12.5 kHz from regularly assignable channels under the old channelization plan ("12.5 kHz offset channels"). The maximum operating power for this equipment is substantially less than that authorized for primary users of the band. The channel separation and low-power operation minimize the possibility of interference received from, or caused to, primary users of the band. However, under the new channeling scheme, high-power primary users of the band would be able to operate on the same frequencies used for medical telemetry equipment. This could possibly result in interference to medical telemetry equipment. For this reason, on August 11, 1995, the Commission placed a freeze on the filing of applications for high power operation in the 450–470 MHz band on the 12.5 kHz offset channels. See the *Public Notice, "Freeze on the Filing of High Power Applications for 12.5 kHz Offset Channels in the 450–470 MHz Band,"* DA 95–1171, 60 FR 43720, August 23, 1995. The freeze remains in effect pending the development of a channel utilization plan that will protect low power operation on the 12.5 kHz offset channels.

5. The Commission expects medical telemetry equipment ultimately to migrate out of the PLMRS bands and into new bands allocated for medical telemetry. The Commission recently proposed rules to allocate frequencies where medical telemetry equipment can operate on a primary basis. See the *Notice of Proposed Rule Making* in ET Docket 99–255, FCC 99–182, 64 FR 41891, August 2, 1999. While this would be a long term solution to the problem of PLMRS interference to medical telemetry equipment, the Commission may be able take action in the near term to partially lift the freeze on high power applications on the offset channels.

6. The Commission's records of manufacturers' equipment authorizations show that the majority of medical telemetry equipment authorized for use under part 90 (47 CFR part 90) is authorized only for the 460–470 MHz portion of the 450–470 MHz band. Further, prior to the radio service consolidation in the *Second Report and Order* in PR Docket 92–235, 62 FR 18834, April 17, 1999, the only "Industrial Radio Services" spectrum available to hospitals and health care facilities were frequencies allocated to the old Business Radio Service. There were very few frequencies in the 450–460 MHz band allocated to that service. For these reasons, it may be possible to lift the freeze on applications for high power operation on the 12.5 kHz offset channels in the 450–460 MHz band. Before doing so, however, the Commission wants to ensure that interference will not be caused to medical telemetry equipment in that band. Accordingly, we are requesting that parties operating medical telemetry equipment in the 450–460 MHz band provide certain information on their operation to the Commission's Office of Engineering and Technology. The filing of this information is strictly voluntary, but parties should note that providing it could help prevent serious interference problems in the future. Parties may want to check with the manufacturer of their equipment to determine the operating frequency.

7. We are asking for the following information:

(1) The name and address of the institution operating the equipment, along with the name, telephone number and e-mail address of a contact person there.

(2) The number and types of devices being operated in the 450–460 MHz band, including the make, model number, FCC identification number, age, and type of equipment (e.g., heart rate monitor), and total number of channels of medical telemetry used in the facility.

(3) The operating frequencies and RF output power of these devices.

(4) The geographic coordinates of the institution, if known.

(5) Whether the equipment could be re-tuned to operate in the 460–470 MHz band and, if so, the time period required for such re-tuning and the estimated expense of re-tuning that would be incurred by the institution operating the equipment.

Parties are asked to respond to the following address by January 31, 2000.

Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

For further information about this notice, please contact Hugh L. Van Tuyl at: (202) 418–7506, email: hvantuyl@fcc.gov.Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28485 Filed 11–1–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

[1018–AE34]

Listing of the Brush-tailed Possum as Injurious

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service or we) published a notice on January 24, 1996, soliciting information relative to the threat that *Trichosurus*

spp. poses to agriculture, human health, and fish and wildlife resources. Analysis of the available information warrants the listing of only one species, *T. vulpecula*, as injurious. We received little information about the other two species in the genus, *T. arnhemensis* and *T. caninus*. Consequently, we will not propose their listing at this time. Listing *T. vulpecula* would prohibit its importation into, or transportation between, the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States with limited exceptions.

DATES: Comments must be submitted on or before January 3, 2000.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Fish and Wildlife Management Assistance, 1849 C Street, NW, Mail Stop 840 ARLSQ, Washington, DC 20240, or FAX (703) 358–2044.

FOR FURTHER INFORMATION CONTACT: Susan Mangin, Division of Fish and Wildlife Management Assistance at (703) 358–1718.

SUPPLEMENTARY INFORMATION: We received a letter from the Texas Animal Health Commission requesting that we prohibit the importation of *T. vulpecula* into the United States. Because other members of the genus *Trichosurus* could possibly pose a threat, the Service placed a notice in the **Federal Register** January 24, 1996, (61 FR 1893) requesting information about the injurious nature of the entire genus.

We received 11 responses to our request for information. Review of the information received through the request and additional information indicates the extreme injurious nature of *T. vulpecula*. For this reason, the Service is proposing to list it as injurious. Limited data were available relative to the injurious nature of *T. arnhemensis* and T. caninus. Review of these data did not support listing these two species at this time.

T. vulpecula, introduced to New Zealand from Australia between 1873 and 1930, is now found throughout much of New Zealand with a population of approximately 70 million (Department of Conservation National Possum Control Plan, 1993–2002, February 1994). They can adapt to a wide variety of habitats and elevations (P.E. Cowan, The Ecological Effects of Possums on the New Zealand Environment). They are vectors for the bovine tuberculosis pathogen (*M. bovis*) and have played a major role in keeping it in the environment. This pathogen is found in cattle, deer, pigs, cats, ferrets, rabbits, hedgehogs, and stoats (National Tb Strategy, Animal Health Board, November 1995). The impact of exposure to *M. bovis* in the U.S. would probably be even more devastating due to the presence of a more diverse mammal population (Milton Friend, National Biological Service memorandum, March 12, 1996).

No evidence exists that *T. vulpecula* achieves an ecological balance once introduced into an area. They have altered native plant communities causing forests to degrade to scrub or even to bare ground. They damage erosion control plants like willows and poplars. They eat bark, leaves, buds, flowers, and fruit of trees. They threaten other animals by preying on them, competing for their food, or interfering with nesting sites (P.E. Cowan, The Ecological Effects of Possums on the New Zealand Environment). Management practices used to control them, such as trapping or poisoning, can negatively impact other species.

1. Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(1) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and economic analysis is not required. This rule adds additional restrictions over and above the regulations issued by the Department of Agriculture, which has banned the importation of brush-tailed possums from New Zealand. As a result, discussion is limited to the effect that these additional importation restrictions will have on the American economy.

The brush-tailed possum is abundant in south eastern Australia and Tasmania. Possums have been hunted in Tasmania since the 1920's for the fur trade. However, the fur market has declined in recent years, and the possum industry has been selling skins and meat to Taiwan and China. In 1996, about 3,000 possum skins and meat were exported to Taiwan and 1,000 to China from Australia. The number of permit holders and royalties paid in Australia for brush-tailed possums has been declining steadily. In 1990, there were 493 permit holders receiving $18,800 in royalties for brush-tailed possums. In 1995, there were 40 permit holder's receiving $1,996 in royalties. Since 1995, royalties have been paid for skins and carcasses. No live brush-tailed possums have been imported in the U.S. since 1995. World trade in brush-tailed possums has focused primarily on meat and most of it is going to Asian markets. Consequently, this rule should have little, if any, measurable economic affect on the U.S. economy and will not have an annual effect of $100 million or more for a significant rule making action.

A major, though not quantified, effect of this rule is the reduced risk of substantial environmental damage in the U.S. including the spread of *M. bovis*, that could be caused by having brush-tailed possums escape from captivity. The risk reduction is a benefit of this rule that cannot be quantified with existing data. However, the damage in New Zealand caused by the introduction of the brush-tailed possum in 1840 is well documented. There is no way of knowing where the brush-tailed possums would enter the natural environment in the U.S. and consequently, the economic effect avoided by not having the introduction cannot be estimated.

(2) This rule will not create inconsistencies with other agencies' actions. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture has developed and implemented regulations to prohibit the importation of brush-tailed possums from New Zealand because they carry bovine tuberculosis. This rule will further expand this prohibition to include all countries because of the potential of brush-tailed possums carrying *M. bovis* and the damage that they could inflict on native ecosystems.

(3) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs.

(4) This rule will not raise novel legal or policy issues. There is no indiction that listing wildlife as injurious in the past has caused legal or policy problems. As no live brush-tailed possums have been imported since 1995, this rule should not raise legal, policy, or any other issues.

2. Regulatory Flexibility Act

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the reasons described in section 3 below, no individual small industry within the United States will be significantly affected if brush-tailed possum importation is prohibited.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

The rule is not a major rule under 5 U.S.C. 804(2), the Small business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. Live brush-tailed possums have not been imported into the United States since 1995. U.S. Fish and Wildlife Service records from 1994 and 1995 indicate that 1,030 brush-tailed possums have been imported for a total value of $11,900. Since only four importers were involved and no additional trade has occurred, the Service believes that a market for live brush-tailed possums has not been established in the U.S. Consequently, there is no measurable economic effects on small businesses.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. U.S. Fish and Wildlife Service records indicate that only four importers brought in a total of 1,030 brush-tailed possums in 1994 and 1995. None have been imported since 1995.

c. Does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The low number of brush-tailed possums imported into the U.S. indicates that listing the brush-tailed possum as injurious would not have significant adverse effects.

4. Unfunded Mandates Reform Act

In accordance with the unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

a. The rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Act that this rule making will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The Service has determined and certifies pursuant to the Unfunded Mandates Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Although once listed as injurious, all brush-tailed possum in this country would be exported or destroyed, the takings would not be significant.

6. Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

7. Civil Justice Reform (E.O.12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The proposed rule has been reviewed to eliminate drafting errors and ambiguity, written to minimize litigation, and provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

8. Paperwork Reduction Act

This regulation does not contain any information collection requirements under the Paperwork Reduction Act.

9. National Environmental Policy Act

We have analyzed this policy in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The action is categorically excluded under Department NEPA procedures (516 DM 2, Appendix 1.10), which applies to policies, directives, regulations, and guidelines of an administrative, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

10. Public Comment Solicitation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading: for example § 16.11 Importation of live wild animals. (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, VA 22030. Finally, you may hand-deliver comments to the U.S. Fish and Wildlife Service, Division of Fish and Wildlife Management Assistance, 4401 North Fairfax Drive, Suite 840, Arlington, VA 22203. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondents's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or business, available for public inspection in their entirety.

The Service is issuing this proposed rule under the authority of the Lacey Act (18 U.S.C. 42). Accordingly, the Service proposes to amend 50 CFR part 16 as follows:

List of Subjects in 50 CFR Part 16

Fish, Import, Reporting and recordkeeping, Transportation, Wildlife.

PART 16—INJURIOUS WILDLIFE

1. The authority citation continues to read as follows:

Authority: 18 U.S.C. 42.

2. We amend § 16.11 by adding paragraph (a)(7) to read as follows:

§ 16.11 Importation of live wild mammals.

(a) * * *

(7) Any rush-tailed possum (*Trichosurus vulpecula*).

* * * * *

Dated: November 3, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–28490 Filed 11–1–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990621165-9165-01; I.D. 022599A]

RIN 0648-AL43

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Essential Fish Habitat (EFH) for Species in the South Atlantic; Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplement to the proposed rule; request for comments.

SUMMARY: NMFS issues this supplement to the proposed rule for Amendment 4 to the Coral FMP, which is contained in the Comprehensive Amendment Addressing Essential Fish Habitat in Fishery Management Plans of the South Atlantic Region (EFH Amendment). The supplement is intended to provide information inadvertently omitted from the summary of the initial regulatory flexibility analysis (IRFA) published in the proposed rule to implement Amendment 4 to the Coral FMP. Specifically, this supplement summarizes IRFA information regarding the economic impact the proposed rule would have on the shark, grouper, and tilefish fisheries.

DATES: Written public comments on this supplement to the proposed rule for Amendment 4, the IRFA, and the original proposed rule for Amendment 4 will be accepted until December 2, 1999.

ADDRESSES: Written comments should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St Petersburg, FL 33702. Copies of the IRFA are available from the Southeast Regional Office.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-570-5305.

SUPPLEMENTARY INFORMATION: This supplement to the proposed rule for Amendment 4 to the Coral FMP republishes, for the convenience of the public, the portion of the classification section of the proposed rule for Amendment 4 (64 FR 37082; July 9, 1999) that addressed the Regulatory Flexibility Act and adds information inadvertently omitted from the classification section relevant to the economic impact the proposed rule would have on the shark, grouper, and tilefish fisheries.

Classification

The EFH Amendment contains Amendment 4 to the Coral FMP (Actions 3A and 3B in the EFH Amendment). Except for Actions 3A and 3B, the EFH Amendment does not contain measures that would result in immediate economic effects. These actions would enlarge the existing Oculina Bank HAPC, add two "satellite" HAPC areas, and prohibit bottom longline, bottom trawl, dredge, pot or trap fishing in these areas. The Council originally determined that these regulations would affect trawling for calico scallops, but suggested that there would not be a significant impact on a substantial number of small entities. NMFS reviewed the Council's suggestion and made an independent determination that certain criteria for significance, in particular the NMFS criterion of a 5 percent negative impact on revenues, may be met. NMFS also noted that information relative to the impacts on calico scallopers homeported outside the east coast of Florida was not available. In an effort to supply some of the missing information, NMFS subsequently interviewed 9 vessel owners who represented 11 vessels not homeported on the east coast of Florida. The combined response was that owners of 4 of the vessels, or 36 percent of the sample, reported 5 percent or more of their calico scallop harvests as coming from the areas where trawling would be prohibited. Accordingly, NMFS determined there would be a significant impact on a substantial number of small calico scallop entities and prepared an IRFA.

In addition to the new information gathered by NMFS, 178 fishermen have recently indicated that the expanded Oculina HAPC will have a significant impact on their historical shark and snapper/grouper species landings. These fishermen have provided NMFS with maps showing their fishing areas and have also provided information regarding the potential revenue impacts of the area to be closed to their fishing operations. NMFS subsequently contacted the Florida Department of Environmental Protection's Marine Fisheries Information System (DEP) and reviewed information from the NMFS Accumulative Landings System to obtain catch data for the offshore area encompassing the expanded Oculina HAPC. The data obtained indicate that these fishermen may be impacted by the regulations. There are two statistical areas, specifically 732.9 and 736.9, that include the expanded Oculina HAPC. In the case of sharks taken by bottom longline gear in 1997, the DEP data show a catch of 289,316 pounds (131,234 kg) while similar NMFS data indicate a catch of 295,529 pounds (134,052 kg) for areas 732.9 and 736.9 combined. These landings are from large areas that encompass the expanded Oculina HAPC, so a smaller, but an unknown portion of the landings may have been taken from the expanded Oculina HAPC. Due to a continuing lack of definitive information regarding the significance of the proposed actions on small business entities, including firms that engage in trawling for calico scallops and firms that engage in bottom longline fishing for sharks and snapper-grouper species, NMFS is soliciting additional information during the public comment period on this supplement to the proposed rule. Any new information which becomes available during the public comment period will be carefully reviewed by NMFS and will be used in developing the Final Regulatory Flexibility Analysis for the final rule. A summary of the IRFA follows.

The proposed action responds to the Magnuson-Stevens Act requirements to identify essential fish habitats and to minimize any fishing related damage to these habitats. The overall objective of the proposed rule is to identify and maintain essential fish habitats. The Magnuson-Stevens Act provides the legal basis for the rule. Most of the provisions of the proposed rule would result in regulations that would not have cost or revenue effects on small entities. However, a proposal to enlarge an existing protected area, called the Oculina Bank HAPC, would also prohibit the use of bottom tending gear in the expanded Oculina HAPC. This portion of the proposed rule would apply to about 25 small fishing businesses that have historically participated in the calico scallop fishery. Most of the vessels used by these small businesses were not built specifically for harvesting calico scallops, but are shrimp trawling vessels using modified gear. In 1997, the industry had landings that generated gross revenues of $1.3 million, which indicates that gross revenue per vessel averaged about $52,000. Complete information regarding variability of revenues among vessels does not exist, but it is known with reasonable certainty that the actual landings of calico scallops and the associated revenues would show a considerable amount of variation among the 25 vessels in the industry, and differential impacts are expected.

Other information indicates the possibility that bottom longline fishermen who land sharks and snapper-grouper species may be impacted by the prohibition on the use of bottom tending gear in the expanded Oculina HAPC. According to information contained in the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, dated April 1999, there were 802 shark fishermen who reported landings in 1997 and are permitted under regulations governing the Highly Migratory Species fisheries. The information confirms that these fishermen also target other species, including snapper-grouper. During the winter, the directed shark fishery is concentrated in the southeastern United States, particularly in Florida. However, it is known that the universe of 802 shark fishermen includes firms that specialize in the use of pelagic longline gear and only a portion of the 802 permitted fishermen harvest sharks and other species from the two statistical areas containing the expanded Oculina HAPC. Specifically, available information indicates that the bottom longline fishermen targeting sharks and snapper-grouper species in the general area encompassing the Oculina HAPC utilize fishing craft in the 30 to 49-foot (9 to 15–m) category, take trips that average 7 to 10 days, incur variable expenses of $3,683 per trip, generate gross revenues ranging from $5,954 to $7,145 per trip and realize annual returns to the owner, captain, and crew that range from $34,000 to $51,000. Regarding compliance costs, there are no additional reporting, recordkeeping, or other compliance costs associated with the proposed action, and no existing duplicative, overlapping, or conflicting Federal rules have been identified. Two alternatives were considered and rejected. One of the alternatives considered was no action. While this option obviously would have no impact on small business entities, it was rejected since it would provide no additional protection for essential fish habitats. The other alternative would expand the Oculina Bank HAPC by a greater area than required by the proposed alternative. This option would provide additional protection to essential fish habitats but would result in the closure of a major portion of the known historic fishing grounds for calico scallops and would result in major negative impacts on the calico scallop industry. The resulting negative economic impacts were deemed to be greater than the benefits that would accrue from the additional protection for essential fish habitats, and the alternative was rejected on that basis.

Copies of the IRFA are available (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28476 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 654

[Docket No. 991021283–9283–01; I.D. 072699D]

RIN 0648–AL81

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of the Gulf of Mexico; Addition to FMP Framework Provisions; Stone Crab Gear Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement those provisions of the Generic Sustainable Fisheries Act Amendment to the Fishery Management Plans (FMPs) of the Gulf of Mexico (SFA Amendment) that would modify the framework regulatory adjustment procedures in the FMPs for reef fish, red drum, and coastal migratory pelagics. These FMP framework modifications would allow timely addition of various stock population parameters to the appropriate FMP(s), including biomass-based estimates of minimum stock size thresholds (MSSTs), optimum yield (OY), maximum sustainable yield (MSY), stock biomass that would be achieved by fishing at MSY (B_{MSY}), and maximum fishing mortality thresholds (MFMTs). These regulations also would revise the stone crab trap construction requirements, as proposed by the SFA Amendment. The intended effects are to provide a more timely mechanism for incorporating stock population parameters into the applicable FMPs when such information becomes available and to establish stone crab trap construction regulations that are compatible with those of the State of Florida and that will reduce finfish bycatch.

DATES: Written comments must be received on or before December 17, 1999.

ADDRESSES: Comments on this proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the SFA Amendment, which includes an environmental assessment and a regulatory impact review, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; Fax: 813–225–7015; E-mail: gulf.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Roy Crabtree, 727–570–5305.

SUPPLEMENTARY INFORMATION: The SFA Amendment addresses fisheries under the FMPs for coral and coral reef resources, coastal migratory pelagics, red drum, reef fish, shrimp, spiny lobster, and stone crab. The FMPs were prepared by the Gulf of Mexico Fishery Management Council (Council), except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the South Atlantic and Gulf of Mexico Fishery Management Councils. All of these FMPs, except the spiny lobster and stone crab FMPs, are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. The Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of

Mexico and South Atlantic is implemented by regulations at 50 CFR part 640; the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico is implemented by regulations at 50 CFR part 654.

In 1998, NMFS published revised national standard guidelines to implement the October 1996 amendments to the Magnuson-Stevens Act, which resulted from the Sustainable Fisheries Act of 1996 (SFA). The revised guidelines are intended to assist regional fishery management councils in developing amendments to their fishery management plans to meet SFA requirements including the description of fisheries and fishing communities, setting criteria to determine when a stock is overfished, establishing measures to prevent or end overfishing and rebuild overfished stocks, assessing the amount and type of bycatch, and establishing measures to minimize bycatch (63 FR 24212, May 1, 1998).

Using these revised guidelines, the Council developed its SFA Amendment. Two measures in the SFA amendment, the modification of the framework procedures and the changes to stone crab trap construction requirements, would be implemented by regulation. The SFA Amendment would modify the framework procedures for adjustments in the measures of FMPs for reef fish, red drum, and coastal migratory pelagics to allow timely addition/modification of biomass-based estimates of MSST, OY, MSY, B_{MSY}, estimates of MFMT, and rebuilding schedules for overfished species, with regard to the subject FMPs. The proposed revisions to the FMPs' framework procedures would allow more timely incorporation of these population parameters and rebuilding schedules into the appropriate FMP, and subsequent modification, as new scientific information becomes available. These proposed regulations simply reflect the SFA Amendment's modification of the existing framework procedures in the Council's FMPs to allow incorporation of the aforementioned population parameters and their subsequent modification.

Although the framework procedures of the Council's FMPs generally refer to rulemaking, NMFS does not intend to specify the actual values of these population parameters in codified text. However, NMFS would publish notification of such Council-proposed additions/modifications of these parameters with regard to an FMP in the **Federal Register** and would solicit public comment in accordance with the applicable FMP framework procedure. After considering the public comment and the Council's proposal, NMFS would take final action to approve/disapprove the proposed parameters. Approved population parameters would be considered legitimate measures of the applicable FMP but would not appear in codified text. This process should allow more timely incorporation/modification of such parameters with regard to an FMP, while ensuring the opportunity for adequate public review and comment.

This proposed rule also would implement stone crab trap construction requirements compatible with those set forth in Chapter 46–13.002(2)(a) of Florida law. The stone crab fishery is prosecuted almost exclusively off Florida. Compatible regulations enhance compliance and enforceability. Since the Council's decision to adopt stone crab trap construction requirements compatible with Florida's, Florida has revised its requirements by providing additional options for complying with the degradable panel specifications. Because it was the Council's intent to adopt measures compatible with Florida's and because Florida's revisions, effective June 1, 1999, relieve a restriction by providing additional options for compliance, NMFS proposes to revise § 654.22(a)(6)(ii) consistent with Florida's June 1, 1999, revisions. Comments are invited regarding that additional change.

In addition to the two measures that would be implemented by this rule, the SFA Amendment includes several measures that are not being implemented through regulatory text. It describes Gulf of Mexico fishing communities using existing U.S. census data and information about regional landings and about fishing participants in various fisheries for each of the Gulf of Mexico coastal states. It briefly addresses the Magnuson-Stevens Act requirement to describe fishing sectors and quantify trends in landings by sector. It defines bycatch and concludes that, with the addition of changes in the construction of stone crab pots proposed in this rule, conservation and management measures currently in place under Council FMPs minimize bycatch and bycatch mortality to the extent practicable. It also discusses measures to improve the assessment of the type, amount, and mortality of fish caught and released alive in recreational catch-and-release programs.

The SFA Amendment specifies status determination criteria and overfishing thresholds for each FMP that are intended to meet the appropriate requirements of the Magnuson-Stevens Act and establishes stock rebuilding schedules for overfished red snapper (1999–2033) and Gulf-group king mackerel (1999–2009). Stock rebuilding schedules for Nassau grouper, jewfish, or red drum (also overfished) would be specified and implemented through the framework procedures of FMPs as such schedules are developed.

Availability of Comprehensive Amendment

Additional background and rationale for the measures discussed above are contained in the SFA Amendment, the availability of which was announced in the **Federal Register** (64 FR 44884, August 18, 1999). The public comment period on the SFA Amendment expired on October 18, 1999. All comments received on the SFA Amendment or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

At this time, NMFS has not determined that the SFA Amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on the SFA Amendment, as well as the administrative record.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

> The SFA Amendment would modify the existing framework regulatory adjustment procedures in the FMPs for coastal migratory pelagics, reef fish, and red drum to allow timely incorporation into the FMPs of biomass-based population parameters, such as status determination criteria (e.g., minimum stock size thresholds) and overfishing thresholds (e.g., maximum fishing mortality thresholds), as soon as the necessary scientific information becomes available. The proposed rule simply reflects the SFA Amendment's proposed modifications in the FMPs' framework measures. These modifications would have no immediate economic impacts. Ultimately, these new biological population parameters, as required by the Magnuson-Stevens Fishery Conservation and Management Act, may provide the basis for additional future management actions. The impacts of such future actions would be evaluated at that

time in the appropriate supporting regulatory impact analysis.

This proposed rule would also revise the trap construction requirements for the stone crab fishery to make them compatible with the requirements established by the State of Florida, where the majority of the fishery is prosecuted. These changes in trap construction are intended to minimize the bycatch of finfish in stone crab traps. The economic impact on affected fishermen will be very small, almost negligible, because the changes are minor and because the majority of stone crab traps used in Federal waters already conform to the Florida requirements for trap design.

As a result, a regulatory flexibility analysis was not required.

List of Subjects

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Part 654

Fisheries, Fishing.

Dated: October 26, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 622 and 654 are proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.48, paragraphs (c) and (d) are revised, and paragraph (j) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(c) *Coastal migratory pelagic fish.* For a species or species group: Target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}) (or proxy), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), OY, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), minimum size limit, vessel trip limits, closed seasons or areas and reopenings, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, and permit requirements.

(d) *Gulf reef fish.* (1) For a species or species group: Target date for rebuilding an overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, quotas, MSY (or proxy), OY, and estimates of stock biomass achieved by fishing at MSY (B_{MSY}), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT).

(2) SMZs and the gear restrictions applicable in each.

* * * * *

(j) *Gulf red drum.* Target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}), OY, TAC, minimum stock size threshold (MSST), maximum fishing mortality threshold (MFMT), escapement rates for juvenile fish, bag limits, size limits, gear harvest limits, and other restrictions required to prevent exceeding allocations or quotas.

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

3. The authority citation for part 654 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 654.22, paragraph (a) is revised to read as follows:

§ 654.22 Gear restrictions.

(a) *Trap construction requirements.* No person fishing for stone crab may transport on the water or fish with any trap which does not meet the following requirements:

(1) Each trap must be constructed of wood, plastic, or wire.

(2) A trap may be no larger in dimension than 24 by 24 by 24 inches (61 by 61 by 61 cm) or 8.0 ft^3 (0.23 m^3).

(3) The throats (entrances) to all wood and plastic traps must be located on the top horizontal section of the trap. If the throat is longer in one dimension, the throat size in the longer dimension must not exceed 5½ inches (14.0 cm) and in the shorter dimension must not exceed 3½ inches (9.0 cm). If the throat is round, the throat size must not exceed 5 inches (12.7 cm) in diameter.

(4) In any wire trap used to harvest stone crabs, each throat must be horizontally oriented. The width of the opening where the throat meets the vertical wall of the trap and the opening of the throat at its farthest point from the vertical wall, inside the trap, must be greater than the height of any such opening. No such throat may extend farther than 6 inches (15.2 cm) into the inside of any trap, measured from where the throat opening meets the vertical wall of the trap to the throat opening at its farthest point from the vertical wall, inside the trap.

(5) A wire trap must have at least three unobstructed escape rings installed, each with a minimum inside diameter of 2 3/8 inches (6.0 cm). One such escape ring must be located on a vertical outer surface adjacent to each crab retaining chamber.

(6) A plastic or wire trap must have a degradable panel.

(i) A plastic trap will be considered to have degradable panel if it contains at least one sidewall with a rectangular opening no smaller in either dimension than that of the throat. This opening may be obstructed only with a cypress or untreated pine slat or slats no thicker than 3/4 inch (1.9 cm) such that when the slat degrades, the opening in the sidewall of the trap will no longer be obstructed.

(ii) A wire trap will be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(A) The trap lid tie-down strap is secured to the trap at one end by a single loop of untreated jute twine, a corrodible loop composed of non-coated steel wire measuring 24 gauge or thinner, or an untreated pine dowel no larger than 2 inches (5.1 cm) in length by 3/8 inch (0.95 cm) in diameter. The trap lid must be secured so that when the jute, corrodible loop, or pine dowel degrades, the lid will no longer be securely closed.

(B) The trap contains at least one sidewall with a vertical rectangular opening no smaller in either dimension than 6 inches (15.2 cm) in height by 3 inches (7.6 cm) in width. This opening may be laced, sewn, or otherwise obstructed by—

(*1*) A single length of untreated jute twine knotted only at each end and not tied or looped more than once around a single mesh bar;

(*2*) Untreated pine slat(s) no thicker than 3/8 inch (0.95 cm);

(*3*) Non-coated steel wire measuring 24 gauge or thinner;

(*4*) A panel of ferrous single-dipped galvanized wire mesh made of 24 gauge or thinner wire; or

(*5*) A rectangular panel made of any material, fastened to the trap at each of the four corners of the rectangle by rings made of non-coated 24 gauge or thinner wire or single strands of untreated jute twine. When the jute, untreated pine slat(s), non-coated steel wire, wire mesh panel, or corner fasteners degrade, the opening in the sidewall of the trap must no longer be obstructed.

* * * * *

[FR Doc. 99–28477 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 102599D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day public meeting on November 16, 17, and 18, 1999, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, November 16, 1999, at 9:00 a.m., and Wednesday and Thursday, November 17 and 18, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Tavern on the Harbor, 30 Western Avenue, Gloucester, Massachusetts 01930; telephone (978) 283–4200. Requests for special accommodations or copies of documents related to framework adjustment actions should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906–1036; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Tuesday, November 16, 1999

After introductions, the meeting will begin with several presentations associated with the Stock Assessment and Fishery Evaluation (SAFE) Report for the groundfish resource. Elements of the report include the annual Multispecies Monitoring Committee Report, economic and social baseline data and industry proposals for the yearly adjustment of management measures in the Northeast Multispecies Fishery Management Plan (FMP). The Science and Statistical Committee Chairman and Social Sciences Advisory Committee Chairman will each present committee evaluations of the SAFE Report. Following these presentations, the Council will consider approval of initial action on the yearly adjustment to management measures in the Northeast Multispecies FMP for the 2000 fishing year (May 1, 2000–April 30, 2001). This will entail identification of options for analysis and inclusion in the final framework adjustment document and action on committee recommendations concerning exemptions to groundfish closed area gear restrictions. Gears and fisheries under discussion include recreational and party/charter vessels, raised footrope trawls, scallop dredge vessels, and fishing gear currently listed as "exempted" in the Northeast Multispecies FMP.

Wednesday, November 17, 1999

The Chairman of the Capacity Committee will begin this session of the meeting by reviewing recent committee meeting discussions, including the committee's purpose and objectives. During the Sea Scallop Committee Report to follow, the Social Sciences Advisory Committee will present its evaluation of the social and economic information and analyses contained in the Sea Scallop SAFE Report. The Council will then address issues related to possible approval of Framework Adjustment 12 to the Sea Scallop FMP. The adjustment will focus on two major management actions: (1) The yearly adjustment of days-at-sea available to fish for the 2000 fishing year (March 1, 2000– February 28, 2001); and (2) options for access to one or more of the three Georges Bank groundfish closed areas by scallop dredge vessels. Access to the closed areas may involve, but not be limited to the following elements: separate scallop Total Allowable Catches (TACs) for Closed I, Closed Area II, and the Nantucket Lightship Area; trip allocations for each area; a days-at-sea offset or tradeoff for fishing inside vs. outside the closed areas; trip limits with a trip declaration and notice of landing requirements; area restrictions on scallop fishing within the three closed areas to address bycatch, gear conflicts, habitat, and enforcement issues; external buffer zones or internal no fishing zones within the closed areas; gear restrictions to reduce bycatch; a TAC set-aside to fund observer coverage and research activities; and an adjustment to the 300–pound (136.1–kg) regulated species possession limit to reduce discards. The Council will consider the recommendations of the Groundfish, Habitat, Gear Conflict, and Enforcement Committees before making a decision on Framework Adjustment 12.

Thursday, November 18, 1999

The day will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission. Following reports, the Council will consider whether to submit a request to the Secretary of Commerce asking for authority to manage deep sea red crab (*Geryon quinquedens*). A number of other committee reports will follow this agenda item. The Herring Committee will provide a briefing on their progress to develop a scoping document that would serve to notify the public and collect information about the possible implementation of a controlled access program in the herring fishery. The Whiting Committee will ask the Council to consider approval of final action on Framework Adjustment 32 (whiting management measures) to the Northeast Multispecies FMP. The action calls for changes to the whiting mesh size/ possession limit call-in enrollment system and options for the use of a net strengthener with 2.5–inch (6.35–cm) mesh. The committee also will review issues to be addressed in a new Small Mesh Species FMP, including alternatives for a limited access program for whiting, red hake, offshore hake, and ocean pout. The Social Sciences Advisory Committee will present their recommendations for improving the use of social and economic information in fisheries management. The Habitat Committee will report on ongoing committee activities, including consideration of designating a habitat research area and a structured process for designating habitat areas of particular concern. The Spiny Dogfish Committee will ask the Council to consider approval of annual specifications for spiny dogfish for the 2000 fishing year (May 1, 2000–April 30, 2001). Measures could include a hard Total Allowable Catch (TAC), quotas, trip limits, and/or any other measures specified in the Spiny Dogfish FMP. The Council may also consider approval of an alternative female biomass rebuilding target. The meeting will adjourn after the Council addresses any other outstanding business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 26, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28479 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 211
Tuesday, November 2, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–99–15]

Beef Promotion and Research Board and State Beef Council Addresses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document updates a Notice published in the **Federal Register** in 1997. This updated Notice provides the current addresses of the Cattlemen's Beef Promotion and Research Board (Board) and the current addresses of the 45 Qualified State Beef Councils (QSBCs) which are authorized under the Beef Promotion and Research Order (Order) to receive assessments.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: Pursuant to the Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), the Order was published in the July 18, 1986, **Federal Register** (51 FR 26132). Regulations implementing the Order were published in the October 1, 1986, issue of the **Federal Register** (51 FR 35196).

The Order and the Regulations provide that, beginning October 1, 1986, cattle sold in the United States are subject to an assessment of $1 per head. Persons who collect assessments from producers under the Order and Regulations are required to remit those assessments to the QSBC in the State where they reside or to the Board if there is no QSBC located in their State. Imported cattle, beef, and beef products are also subject to equivalent assessments; these are paid through the U.S. Customs Service.

This Notice provides the current addresses of the Board and 45 QSBCs. A prior notice was published in the **Federal Register** on Thursday, September 25, 1997 (62 FR 50282). This notice updates the addresses, as necessary. QSBCs have different addresses for different purposes. Accordingly, this notice includes two columns for such addresses; one for inquiries and general business and one for remitting assessments and accompanying reports. For inquiries and general business, the address of the Board is: Cattlemen's Beef Promotion and Research Board; 5420 South Quebec Street (80111); P.O. Box 3316; Englewood, Colorado 80155. For remitting assessments and accompanying reports, the address of the Board is Cattlemen's Beef Promotion and Research Board; P.O. Box 803834; Kansas City, Missouri 64180–3834.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS

Inquiries and general business	Remit assessments and accompanying reports to—
Alabama Cattlemen's Association, P.O. Box 2499, Montgomery, AL 36102–2499.	Alabama Cattlemen's Association, P.O. Box 2499, Montgomery, AL 36102–2499.
Arizona Beef Council, 1401 North 24th Street, Phoenix, AZ 85008	Arizona Beef Council, 1401 North 24th Street, Phoenix, AZ 85008.
Arkansas Beef Council, 310 Executive Court, Little Rock, AR 72205	Arkansas Beef Council, AR Dept. of Finance & Revenue, P.O. Box 896, Little Rock, AR 72203.
California Beef Council, 5726 Sonoma Drive, Suite A, Pleasanton, CA 94566.	California Beef Council, P.O. Box 12171, Pleasanton, CA 94588.
Colorado Beef Council, 789 Sherman Street, Suite 105, Denver, CO 80203.	Colorado Beef Council, Department 127, Denver, CO 80291–0127.
Delaware Beef Advisory Board, 2320 South DuPont Highway, Dover, DE 19901.	Delaware Beef Advisory Board, c/o Delaware Dept. of Agriculture, 2320 South DuPont Highway, Dover, DE 19901.
Florida Beef Council, P.O. Box 1929, 1818 North Bermuda (32741), Kissimmee, FL 34742–1929.	Florida Beef Council, P.O. Box 421929, Kissimmee, FL 32742–1929.
Georgia Beef Board, P.O. Box 11347, 100 Cattlemens Drive (31210), Macon, GA 31212.	Georgia Beef Board, P.O. Box 6515, Macon, GA 31208–9939.
Hawaii Beef Industry Council, 91–2002 Fort Weaver Road, Ewa Beach, HI 96706.	Hawaii Beef Industry Council, 91–2002 Fort Weaver Road, Ewa Beach, HI 96706.
Idaho Beef Council, 212 South Cole Road, Boise, ID 83709	Idaho Beef Council, 212 South Cole Road, Boise, ID 83709.
Illinois Beef Association, 2060 West Iles Ave., Suite B, Springfield, IL 62704.	Illinois Beef Association-Checkoff Division, 2060 West Iles Ave., Suite B, Springfield, IL 62704.
Indiana Beef Council, 8770 Guion Road, Suite A, Indianapolis, IN 46268–3013.	Indiana Beef Council, P.O. Box 66577, Indianapolis, IN 46266.
Iowa Beef Industry Council, P.O. Box 451, 2055 Ironwood Court (50014), Ames, IA 50010.	Iowa Beef Industry Council, P.O. Box 451, Ames, IA 50010.
Kansas Beef Council, 6031 Southwest 37th, Topeka, KS 66614	Kansas Beef Council, 6031 Southwest 37th, Topeka, KS 66614.
Kentucky Beef Council, 176 Pasadena Drive, Lexington, KY 40503	Kentucky Beef Council, 176 Pasadena Drive, Lexington, KY 40503.
Louisiana Beef Industry Council, 4921 I–10 Frontage Road, Port Allen, LA 70767.	Louisiana Beef Industry Council, 4921 I–10 Frontage Road, Port Allen, LA 70767.
Maine Beef Industry Council, 149 Clark Lane, Whitefield, ME 04353	Maine Beef Industry Council, c/o Fleet Bank, 192 Water Street, Gardiner, ME 04345.
Maryland Beef Industry Council, University of Maryland, 1129 Animal Science Center, College Park, MD 20742.	Maryland Beef Industry Council, P.O. Box 259, Sykesville, MD 21784.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS—Continued

Inquiries and general business	Remit assessments and accompanying reports to—
Michigan Beef Industry Commission, Suite 300, 2145 University Park Drive, Okemos, MI 48864.	Michigan Beef Industry Commission, Suite 300, 2145 University Park Drive, Okemos, MI 48864.
Minnesota Beef Council, 2850 Metro Drive, Suite 426, Minneapolis, MN 55425.	Minnesota Beef Council, 2850 Metro Drive, Suite 426, Minneapolis, MN 55425.
Mississippi Beef Council, 680 Monroe Street, Suite A, Jackson, MS 39202.	Mississippi Beef Council, 680 Monroe Street, Suite A, Jackson, MS 39202.
Missouri Beef Industry Council, 2306 Bluff Creek Road, Suite 200, Columbia, MO 65201.	Beef Merchandising Fund, c/o Missouri Dept. of Agriculture, P.O. Box 630, Jefferson City, MO 65102–9911.
Montana Beef Council, P.O. Box 5386, 420 North California Street (59601), Helena, MT 59604–5386.	Montana Beef Council, Department of Livestock, P.O. Box 202001, Helena, MT 59620–2001.
Nebraska Beef Council, P.O. Box 2108, 1319 Center Avenue (68847), Kearney, NE 68848–2108.	Nebraska Beef Council, P.O. Box 2108, Kearney, NE 68848–2108.
Nevada Beef Council, P.O. Box 310, Elko, NV 89803–0310	Nevada Division of Agriculture, Bureau of Livestock Identification, ATTN: Checkoff, 350 Capitol Hill Avenue, Reno, NV 89501.
New Jersey Beef Industry Council, c/o Sussex County Cooperative Extension, Plotts Road, Sussex County Administration Bldg., Newton, NJ 07860.	New Jersey Beef Industry Council, Warren Co. Administration Building, c/o Betty Wickwiser, 165 County Road, 519 South, Belvideve, NJ 07823–1949.
New Mexico Beef Council, Suite C, 1209 Mountain Road Place, NE., Albuquerque, NM 87110.	New Mexico Beef Council, Suite C, 1209 Mountain Road Place, NE., Albuquerque, NM 87110.
New York Beef Industry Council, 6351 NYS Route 26 South, Rome, NY 13440 (UPS Only), P.O. Box 250, Westmoreland, NY 13490.	New York Beef Industry Council, c/o NBT Bank, 1148 Erie Boulevard, West Rome, NY 13440.
North Carolina Beef Council, 2228 North Main Street, Fuquay-Varina, NC 27526.	Remit Assessments To: North Carolina Beef Council, North Carolina Dept. of Agric., NCDA, Room 206, P.O. Box 27647, Raleigh, NC 27611. Remit Reports To: NC Cattlemen's Beef Council, 2228 North Main Street, Fuquay-Varina, NC 27526.
North Dakota Beef Commission, 4023 North State Street, Bismarck, ND 58501.	North Dakota Beef Commission, 4023 North State Street, Bismarck, ND 58501.
Ohio Beef Council, 10600 U.S. Route 42, Marysville, OH 43040	Ohio Beef Council, 10600 U.S. Route 42, Marysville, OH 43040.
Oklahoma Beef Industry Council, 7510 North Broadway, Suite 202, Oklahoma City, OK 73116.	Oklahoma Beef Industry Council, P.O. Box 850027, Oklahoma City, OK 73185–0027.
Oregon Beef Council, 1200 Naito Parkway, Suite 290, Portland, OR 97209.	Oregon Beef Council, 1200 Naito Parkway, Suite 290, Portland, OR 97209.
Pennsylvania Beef Council, 1500 Fulling Mill Road, Middletown, PA 17057.	Pennsylvania Beef Council, 1500 Fulling Mill Road, Middletown, PA 17057.
South Carolina Beef Board, P.O. Box 11280, Columbia, SC 29211	South Carolina Beef Board, P.O. Box 11280, Columbia, SC 29211.
South Dakota Beef Industry Council, 106 West Capitol, Pierre, SD 57501.	South Dakota Beef Industry Council, c/o American State Bank, P.O. Box 912, Pierre, SD 57501.
Tennessee Beef Industry Council, 128 Holiday Court, Suite 113, Franklin, TN 37064.	Tennessee Beef Industry Council, c/o First Tennessee Bank, P.O. Box 305172, Department 25, Nashville, TN 37230–9869.
Texas Beef Council, 8708 Rural Route 620, Austin, TX 78726	Texas Beef Council, P.O. Box 140766, Austin, TX 78714–0766.
Utah Beef Council, 150 South 6th East, Suite 10B, Salt Lake City, UT 84102.	Utah Beef Council, 150 South 6th East, Suite 10B, Salt Lake City, UT 84102.
Vermont Beef Industry Council, P.O. Box 2029 (05449), 52 Middle Road, Colchester, VT 05446.	Vermont Beef Industry Council, Vermont National Bank, P.O. Box 180, Woodstock, VT 05091.
Virginia Cattle Industry Council, P.O. Box 9, Daleville, VA 24083–0176	Virginia Cattle Industry Council, P.O. Box 9, Daleville, VA 24083–0176.
Washington State Beef Commission, Suite 224, 14240 Inter Urban Avenue, South, Seattle, WA 98168.	Washington State Beef Commission, P.O. Box 94644, Seattle, WA 98124–6944.
West Virginia Beef Industry Council, P.O. Box 668, 40 Chancery Street, Buckhannon, WV 26201.	West Virginia Beef Industry Council, P.O. Box 668, 40 Chancery Street, Buckhannon, WV 26201.
Wisconsin Beef Council, 630 Grand Canyon Drive, Madison, WI 53719	Wisconsin Beef Council, P.O. Box 86, Columbus, WI 53925–0086.
Wyoming Beef Council, P.O. Box 1243, 113 East 20th Street (82001), Cheyenne, WY 82003.	Wyoming Beef Council, P.O. Box 1243, Cheyenne, WY 82003.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: October 26, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–28375 Filed 11–1–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Performance Review Board; Membership

The following individuals are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary's Senior Executive Service Performance Appraisal System.

Ellen M. Bloom
Douglas K. Day
John S. Gray, III
Parnice Green
Karen F. Hogan
K. David Holmes
Bernadette McGuire-Rivera
John J. Phelan, III
Kathleen J. Taylor

Vicki G. Brooks,

Executive Secretary, Office of the Secretary, Performance Review Board.

[FR Doc. 99–28581 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–99]

Foreign-Trade Subzone 229A—Buffalo, WV; Expansion of Manufacturing Authority, Toyota Motor Manufacturing West Virginia, Inc. (Automobile Transmissions)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the West Virginia Economic Development Authority, grantee of FTZ 229, requesting authority on behalf of Toyota Motor Manufacturing West Virginia, Inc. (TMMWV), operator of Subzone 229A, at the TMMWV plant located in Buffalo, West Virginia, to expand the scope of FTZ authority to include the manufacture of automobile transmissions under FTZ procedures. It was formally filed on October 25, 1999.

Subzone 229A was approved in 1998 with activity granted for the manufacture of internal-combustion engines for automobiles (Board Order 955, 63 FR 9177, 2–14–98). An application for an expansion of the scope of manufacturing authority to include new engine capacity under FTZ procedures is currently pending (Docket 3–99, 64 FR 6877, 2–11–99).

TMMWV is now requesting that its scope of manufacturing authority be extended to include increased capacity for the production of automobile transmissions. The completed transmissions will be shipped to Toyota's automobile assembly plant in Kentucky. The TMMWV plant's capacity will be increased to produce 360,000 automatic transmissions per year, and the activity will involve machining and assembly using domestic and foreign-origin components. The expanded operations will maintain or reduce the current level of foreign-sourced components used in the manufacturing process. Components to be sourced from abroad will at the outset comprise about 60% of the finished transmissions' material value, including: body check balls, spring pins, springs, rollers, spacers, snap rings, wire trim, neutral start switches, shims, and washer springs (duty rates: free—4.4%).

FTZ procedures would exempt TMMWV from Customs duty payments on the foreign components used in production for export. On transmissions shipped to domestic auto assembly plants, company would be able to choose the 2.5 percent automobile duty rate for the foreign inputs noted above when the transmissions (as components of autos) are processed for Customs entry. The transmission rate (2.6%) would apply to the foreign components if the finished transmissions are directly entered for consumption from the TMMWV plant. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 3, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 17, 2000).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Suite 807, 405 Capitol Street, Charleston, WV 25301

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: October 25, 1999.

Dennis Puccinelli,

Acting Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 99–28658 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year ("Sunset") Reviews

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of Institution of Five-Year Reviews covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–5050, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:[1]

DOC Case No.	ITC Case No.	Country	Product
A–570–806	A–472	China	Silicon Metal.
A–351–806	A–471	Brazil	Silicon Metal.
A–357–804	A–470	Argentina	Silicon Metal.
A–823–805	A–673	Ukraine	Silicomaganese.
A–351–824	A–671	Brazil	Silicomaganese.
A–570–828	A–672	China	Silicomaganese.
A–580–812	A–556	Korea	DRAMS of 1 Megabit and Above.
A–588–823	A–571	Japan	Electric Cutting Tools.
A–583–820	A–625	Taiwan	Helical Spring Lock Washers.
A–570–822	A–624	China	Helical Spring Lock Washers.

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[1] Although, as published in the **Federal Register** (64 FR 29374 (May 29, 1998)), the final schedule and groupings of initiation of five-year sunset reviews of transition orders identified seven AD and/or CVD orders on ferrosilicon from various countries for which sunset reviews would be initiated in November 1999, the Department has since rescinded those orders. *See* 64 FR 51097 (September 21, 1999) to notice of recission. As such, we are not initiating reviews on those orders.

DOC Case No.	ITC Case No.	Country	Product
A–570–820	A–621	China	Compact Ductile Iron Waterworks Fittings and Glands.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required from Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[2] Please consult the Department's regulations at 19 CFR Part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: October 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28527 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit.

EFFECTIVE DATE: November 2, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter, Hoogovens Staal BV and Hoogovens Steel USA, Inc., and the period August 1, 1997 through July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak at (202) 482–1395 or Robert James at (202) 482–5222, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department is extending the time limit for completion of the final results until Monday, March 6, 2000. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, September 30, 1999, on file in Room B–099 of the main Commerce building.

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[2] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act, as amended.

Dated: October 22, 1999.

Richard Weible,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–28657 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the final remand determination made by the U.S. International Trade Administration, in the matter of certain corrosion-resistant carbon steel flat products from Canada, Secretariat File No. USA–97–1904–03.

SUMMARY: Pursuant to the Order of the Binational Panel dated September 13, 1999, affirming the final remand determination described above was completed on October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On September 13, 1999, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration ("ITA") concerning Certain Corrosion-Resistant Carbon Steel Flat Products from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective October 25, 1999.

Dated: October 25, 1999.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–28551 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071699B]

RIN 0648–AJ67

Atlantic Highly Migratory Species (HMS) Fisheries; Supplementary Environmental Impact Statement; Notice of Intent

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent (NOI) to prepare a Supplementary Environmental Impact Statement (SEIS) document.

SUMMARY: NMFS announces its intent to prepare an SEIS to assess the impact on the natural and human environment of management strategies designed to reduce bycatch from pelagic longlines. The SEIS will examine time/area management alternatives available to NMFS to reduce the incidence of bycatch of undersized swordfish, Atlantic billfish, and other overfished HMS, as well as protected species (including sea turtles) by pelagic longlines fished along the Atlantic coastal waters of the United States. The purpose of this notice is to inform the interested public of the intent to prepare the SEIS document, and to announce the availability of a draft Technical Memorandum that provides background information on the materials and analytical methods used by NMFS in developing potential time/area closure fishery management alternatives to reduce bycatch from the U.S. Atlantic pelagic longline fishery.

ADDRESSES: Copies of the Highly Migratory Species Fishery Management Plan (HMS FMP), Amendment 1 of the Atlantic Billfish FMP, the final rule, supporting documents, and the HMS Time/Area draft Technical Memorandum can be obtained from Rebecca Lent, Chief, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Buck Sutter, NMFS, (727) 570–5447, or Jill Stevenson, NMFS, (301) 713–2347.

SUPPLEMENTARY INFORMATION:

Background

In a September 1997 Report to Congress, NMFS identified north Atlantic swordfish, Atlantic blue marlin and Atlantic white marlin as overfished; west Atlantic sailfish were included in the 1998 report. The HMS FMP and Amendment 1 of the Atlantic billfish FMP amendment, including final environmental impact statements (revised final SEIS for the Atlantic billfish amendment), were published in April, 1999, to comply with provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for fisheries identified as overfished. The final rule implementing actions included in these FMPs was published on May 28, 1999 (64 FR 29090). Among the fishery conservation and management measures contained within the HMS FMP and Atlantic billfish FMP amendment are actions specifically addressing bycatch concerns associated with HMS fisheries, as required under national standard 9. NMFS is also subject to other national and international requirements to minimize bycatch and bycatch mortality, most notably under the Marine Mammal Protection Act, the Endangered Species, and the Atlantic Tunas Convention Act, which provides authority to implement International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations.

Complicating bycatch management of swordfish and Atlantic billfish is the highly migratory nature of these species, resulting in movement outside the U.S. Exclusive Economic Zone (EEZ) where they are available for capture by other countries. The United States accounts for 29 percent of the north Atlantic swordfish quota (1997–1999) while Atlantic billfish mortality levels from all U.S. sources (commercial dead discards and recreational landings) during the 1990s averaged only 5.2 percent for Atlantic blue marlin, 5.8 percent for white marlin, and 6.6 percent of west Atlantic sailfish, relative to the total mortality as reported to ICCAT. It is important to note, however, that despite the highly migratory nature of these species, changes in fishing patterns or management measures that impact fishing mortality levels in a portion of their range may result in localized increases or decreases in abundance.

Time/area closures have been utilized as a fishery management tool to reduce bycatch for several U.S. marine fisheries, including North Pacific fisheries (herring, crab and groundfish fisheries), the northeast groundfish gillnet fishery (through the Northeast

Multispecies FMP), and the bluefin tuna fishery off the coast of New Jersey during the month of June. In the case of billfish and undersized swordfish, time/area closures for the pelagic longline fishery appear to show promise as interaction with billfish and undersized swordfish bycatch tend to occur in discernable patterns.

The draft HMS FMP and Atlantic billfish FMP amendment included a preferred alternative for time/area closure in the Florida Straits (26° to 28° N. lat., 78° to 81° W. long.) to pelagic longline fishing activity during the months of July, August, and September as part of a management strategy to reduce bycatch of undersized swordfish and Atlantic billfish. NMFS received many written and verbal comments on this proposed closure. The majority of comments received questioned the effectiveness of the Florida Straits closure based on the small size of the selected area relative to the range of the target species within the U.S. EEZ and Atlantic Ocean. In the final HMS FMP, NMFS agreed that this closure would likely be ineffective, and that NMFS would consider, under the framework provisions of the HMS FMP, a larger area or areas. Because of the potential magnitude of the economic and social impacts that would likely result from a more extensive time/area closure, NMFS delayed implementation until completion of further analyses and consultation with the Highly Migratory Species and Atlantic Billfish Advisory Panels (AP's).

On June 10 and 11, 1999, NMFS met with the HMS and Billfish APs to discuss the issue of expanded time/area closures. NMFS has prepared a draft Technical Memorandum that provides a preliminary discussion of the information, methods, and procedures used to identify and analyze alternative time/area closures for U.S. pelagic longlines operating in the Atlantic Ocean. A copy of the HMS Time/Area Technical Memorandum is currently available (see **ADDRESSES**).

Management Measures Under Consideration

NMFS will consider various spatial and temporal closures of waters along the continental U.S. Atlantic coast, including the Gulf of Mexico, to U.S. pelagic longlines. Analyses will likely be limited to areas generally within the U.S. EEZ where most of the incidental catch of species not sought occurs. It is anticipated that the spatial boundaries for time/area closures will follow specific latitudes or longitudes, as appropriate, to facilitate practical application of potential closures to both commercial vessels and enforcement entities. NMFS will also consider the impacts under various assumptions regarding displaced fishing effort, in order to fully evaluate environmental, social, economic and biological impacts of the alternatives.

NMFS has determined that preparation of an SEIS is appropriate because of the potentially significant impact of regulations on the human environment. Based on discussions with the APs, NMFS is preparing a SEIS to fully assess potential impacts on the natural and human environment of various time/area closure alternatives to reduce bycatch of undersized swordfish, Atlantic billfish, other overfished or approaching overfished HMS, and protected species, from U.S. Atlantic pelagic longlines.

Timing of the Analysis and Tentative Decisionmaking Schedule

The public will be provided ample opportunity for written and verbal comments following the publication of the proposed rule. NMFS anticipates that a proposed rule outlining a time/area fishery closure for pelagic longlines will be completed by mid-December, 1999, with a final rule completed by May 1, 2000.

Dated: October 27, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28642 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102599B]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Marine Reserves Advisory Panel will meet in Charleston, SC.

DATES: The Marine Reserves Advisory Panel meeting will be held on November 17, 1999, from 8:30 a.m. to 5:30 p.m. and on November 18, 1999, from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: The advisory panel will review and provide comments and guidance on the following documents: the initial draft of "Why Consider Marine Reserves"; "The Use of Marine Reserves in the South Atlantic Council's Area of Authority"; and the draft Memorandum of Understanding (MOU) between the South Atlantic Council and the Gray's Reef National Marine Sanctuary.

Although non-emergency issues may come before this Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 3, 1999.

Dated: October 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28645 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102699F]

Marine Mammals; File No. 782–1532–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science

Center, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115, has applied in due form for a permit to take Steller sea lions (*Eumetopias jubatus*), northern fur seals (*Callorhinus ursinus*), and harbor seals (*Phoca vitulina richardsi*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before December 2, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6165).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to take Steller sea lions by harassment during aerial surveys, capture, brand, tissue sample, biopsy and blood sample, attach satellite/VHF transmitters and tag with Allflex tags, and scat collections. The applicant will also conduct behavioral observations and set up remote monitoring stations on rookeries and haulouts. Additionally, northern fur seals will be taken by harassment during Steller sea lion surveys on Bogoslof Island and harbor seals during surveys in the Gulf of Alaska and Aleutian Islands. The applicant indicates that mortalities probably will not occur, but requests authority for up to five accidental moralities.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 27, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–28644 Filed 11–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Air Warfare Center, Aircraft Division, Warminster, PA

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, hereby announces its decision to dispose of Naval Air Warfare Center, Aircraft Division, Warminster (NAWC), which is located in Bucks County, Pennsylvania.

Navy analyzed the impacts of the disposal and reuse of NAWC Warminster in an Environmental Impact Statement (EIS), as required by NEPA. The EIS analyzed four reuse alternatives and identified the Proposed Reuse Plan, Naval Air Warfare Center, Bucks County, approved on June 10, 1997, (Reuse Plan) as the Preferred Alternative. The Preferred Alternative proposed to use the base for residential, commercial, municipal, and assisted living activities; to provide low income and homeless assistance services; to develop public parks and recreational areas; and to build access roads. The Federal Lands Reuse Authority of Bucks County (FLRA) is the Local Redevelopment Authority (LRA) for NAWC Warminster. Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR 176.20(a).

Navy intends to dispose of NAWC Warminster in a manner that is consistent with the Reuse Plan. Navy has determined that the proposed mixed land use will meet the goals of achieving local economic redevelopment, creating new jobs, and providing additional housing, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entities and the local zoning authorities.

Background

Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), the 1991 Defense Base Closure and Realignment Commission recommended the realignment of Naval Air Development Center, Warminster. This recommendation was approved by President Bush and accepted by the One Hundred Second Congress in 1991.

As a result of the 1991 realignment, most of the Warminster Development Center's aircraft systems research and development and test and evaluation functions moved to Naval Air Warfare Center, Aircraft Division, Patuxent River, Maryland. On January 1, 1992, the remaining facilities, *i.e.*, the inertial guidance laboratory (Building 108), the navigation equipment laboratory (Building 125), the communications systems laboratory (Building 138), the dynamic flight simulator (Buildings 70 and 72), the family housing units, and the Oreland Open Water Test Facility, a 15-acre non-contiguous site located about eight miles southwest of NAWC Warminster in Montgomery County, Pennsylvania, were renamed Naval Air Warfare Center, Aircraft Division, Warminster.

The 1995 Defense Base Closure and Realignment Commission modified the 1991 Commission's recommendation by directing Navy to close NAWC Warminster, including the Oreland Open Water Test Facility. The 1995 Commission's recommendation was approved by President Clinton and accepted by the One Hundred Fourth Congress in 1995. The base closed on September 30, 1996.

With the exception of the Oreland facility, all of the property comprising NAWC Warminster is located in the southern part of Bucks County, Pennsylvania, about 18 miles north of Center City Philadelphia. This property covers 824 acres and lies within three municipalities. Most of the property, about 609 acres, is located in Warminster Township. About 46 acres in the northwest corner of the base are located in Ivyland Borough. The remaining 169 acres in the eastern part of the base are located in Northampton Township. Navy controls an additional 38 acres in Northampton Township by way of easements for air operations. Disposal and reuse of the Oreland Open Water Test Facility in Montgomery County were treated in a separate environmental analysis and document.

The base is oriented along an east-west axis with irregularly shaped borders. It is bounded on the west by a Southeastern Pennsylvania Transportation Authority railroad line; on the north by Kirk Road, Newtown Road, and Bristol Road; on the east by New Road; and on the southwest by Street Road. In the western part of the base, Jacksonville Road crosses the property in a northeast-southwest alignment and connects Kirk Road to Street Road. In the eastern part of the base, Bristol Road crosses the property in a northwest-southeast orientation, and Hatboro Road links Bristol Road to New Road.

Navy will retain certain NAWC Warminster properties, *i.e.*, six single-family houses, 40 multi-family residential units, and related support buildings that serve 205 military families. In August 1995, Navy transferred these properties, covering 67 acres, to Naval Air Station Joint Reserve base, Willow Grove, Pennsylvania.

This Record Of Decision addresses the disposal and reuse of those parts of NAWC Warminster that are surplus to the needs of the Federal Government. This surplus property, covering 757 acres, contains about 162 buildings and structures that provide about 1.7 million square feet of space. The base contains aviation facilities consisting of an 8,000-foot east-west runway, an aircraft parking apron covering about 11 acres, a hangar, an air traffic control tower, and a fire station. The surplus property also contains research and development facilities, laboratory facilities, industrial facilities, administrative offices, personnel support facilities, medical facilities, and recreational facilities.

Navy expects to convey about 287 acres of surplus property in the western part of the base to the Federal Lands Reuse Authority by way of an economic development conveyance. Of that total, about 261 acres located in Warminster Township, including the western end of the runway and the main complex of buildings (Buildings 1, 2, and 3), will be redeveloped as a business complex. About 26 acres located in Ivyland Borough will be redeveloped as a residential area.

The remaining 470 acres of surplus property have been or will be conveyed by way of various kinds of public benefit conveyances. On September 19, 1997, Navy assigned about 125 acres in the eastern end of the base to the United States Department of the Interior for subsequent conveyance to Northampton Township for use as parks and recreational areas. Subsequently, about 32 of those 125 acres were made available for construction of a school and related recreational facilities for the Council Rock School District. On November 18, 1997, Navy assigned about two acres at the northern tip of the eastern end of the base to the United States Department of Education for subsequent conveyance to Northampton Township for use as a fire fighter training facility.

On January 7, 1998, Navy assigned about 38 acres in the eastern part of the base to the United States Department of Health and Human Services for subsequent conveyance to Northampton Township for use as an assisted living facility for senior citizens. On October 27, 1998, Navy assigned about two acres in the eastern end of the base to the United States Department of Health and Human Services for subsequent conveyance to Northampton Township. The Township will build a well on this property to increase the capacity of its existing municipal water system.

On March 18, 1999, Navy assigned about 31 acres and the inertial guidance laboratory (Building 108), located in the south central part of the base, to the United States Department of Education for subsequent conveyance to Pennsylvania State University for use as an applied research laboratory.

Navy will assign about 255 acres in the western and central parts of the base to the United States Department of the Interior for subsequent conveyance to Warminster Township for use as parks and recreational areas, access roads and open space.

Navy will assign nine acres and the base's wastewater treatment plant in the western end of the base to the United States Department of Health and Human Services for subsequent conveyance to the Warminster Municipal Authority. Navy will assign about two acres in the western part of the base adjacent to the dynamic flight simulator (Buildings 70 and 72) to the United States Department of Health and Human Services for subsequent conveyance to Bucks County, which will build a facility for its county coroner.

Of the remaining six acres of surplus Federal property, Navy will assign two acres to a private homeless assistance provider and four acres to Bucks County. They will provide low income and homeless assistance services in accordance with four legally binding agreements between the FLRA and homeless assistance providers that were approved by the United States Department of Housing and Urban Development.

Navy published a Notice Of Intent in the **Federal Register** on September 19, 1995, announcing that Navy would prepare an EIS for the disposal and reuse of NAWC Warminster. On October 12, 1995, Navy held a public scoping meeting at the Longstreth Elementary School in Warminster, and the scoping period concluded on November 1, 1995.

Navy distributed the Draft EIS (DEIS) to Federal, State, and local agencies, elected officials, interested parties, and the general public on January 3, 1997, and commenced a 45-day public review and comment period. During this period, Federal, State, and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS. On January 28, 1997, Navy held a public hearing at the Warminster Township Building to receive comments on the DEIS.

Navy's responses to the public comments were incorporated in the Final EIS (FEIS), which was distributed to the public on December 24, 1998, for a review period that concluded on January 25, 1999. Navy received two letters commenting on the FEIS.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this surplus Federal property. In the FEIS, Navy analyzed the environmental impacts of four reuse alternatives. Navy also evaluated a "No Action" alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

On February 1, 1995, the Board of Commissioners of Bucks County established the Federal Lands Reuse Authority of Bucks County. Bucks

County Ordnance No. 89. The FLRA would prepare a reuse plan for the NAWC Warminster property to be available as a result of the 1991 round of Defense Base Closures and Realignments. In March 1995, the FLGA adopted a proposed reuse plan entitled Naval Air Warfare Center, Bucks County, Pennsylvania, Reuse Plan. Navy identified this initial reuse plan as the Preferred Alternative in the DEIS dated December 1996. In 1997, the FLRA changed its reuse plan and incorporated those parts of the base that Navy had retained under the 1991 realignment but subsequently declared surplus as a result of the 1995 closure decision. The FLRA adopted the Proposed Reuse Plan, Naval air Warfare Center, Bucks County, Pennsylvania, as its final plan on June 10, 1997. FLRA Resolution No. 25–97.

The Reuse Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses. The Preferred Alternative, proposed a mix of land uses. The Preferred Alternative would use 26 acres for residential purposes; 292 acres for a business complex; 38 acres for an assisted living facility; 13 acres for public health and safety facilities; six acres for low income and homeless assistance services; 18 acres for access roads and open space; and 370 acres for parks and recreational activities. This Alternative would not use the runway for aviation activities. It will be necessary to make extensive utility infrastructure and roadway improvements to support the Reuse Plan's proposed redevelopment of NAWC Warminster.

The Preferred Alternative would use 68 acres west of Jacksonville Road for commercial activities. Within these 68 acres on the western end of the property, this Alternative proposed to use the main complex (Buildings 1, 2, and 3) and the dynamic flight simulator (Buildings 70 and 72) for research and development in ways similar to Navy's historical uses of those buildings. In the southeastern part of this area, the Preferred Alternative proposed to use the dispensary (Building 16) for low income and homeless assistance services.

East of Jacksonville Road and north of Street Road, the Preferred Alternative would build a 187-acre business complex providing about 1.5 million square feet of new construction. The Preferred Alternative would use part of the runway to build new access roads to serve this business complex. In the northern part of the complex, this Alternative would use the base's fire station as a municipal fire station. In the southeastern part of this complex, the aircraft flight equipment laboratory (Building 80) would be used for low income and homeless assistance services.

In Ivyland Borough, north of the proposed business complex, east of Jacksonville Road, and southwest of Kirk Road, the Preferred Alternative proposed to build a 26-acre single-family residential complex adjacent to the officers housing retained by Navy. This residential complex would provide between 150 and 200 new homes.

The central part of the base, east of the business complex and southwest of Bristol Road, would be reserved for parks and recreational activities. This area would cover the eastern part of the runway. The parks and recreational areas would extend northwest to the new residential complex and southwest along the 187-acre business complex to the southern boundary of the property. The Preferred Alternative would use Quarters A and Quarters B here for low income and homeless assistance services.

South of the parks and recreational areas and adjacent to the enlisted housing retained by Navy, the Preferred Alternative proposed to use 37 acres for another business complex that would include use of the inertial guidance laboratory (Building 108) in a manner similar to Navy's historical use of that building.

On 125 acres at the eastern end of the base in Northampton Township, the Preferred Alternative would develop parks and recreational areas. On two acres at the northern tip of the eastern end of the base, this Alternative would build a fire station. At the eastern end of the base, it would build a municipal drinking water well and pump facility. On the remaining surplus property, north of Hatboro Road, it would build as assisted living facility on 38 acres that would support about 500 senior residents.

Navy analyzed a second "action" alternative, described in the FEIS as the University/Institutional Alternative. This Alternative was identified in the DEIS as the Preferred Alternative and reflects the FLRA's March 1995 reuse plan. The University/Institutional Alternative proposed land uses similar to those in the Reuse Plan, but provided more intense development and less parks and recreational areas.

West of Jacksonville Road, the University/Institutional Alternative would use 46 acres to develop a business complex. This Alternative also proposed to use the dynamic flight simulator (Buildings 70 and 72) for research and development in a manner similar to Navy's historical use of those buildings. Additionally, it proposed to build university and institutional facilities on 12 acres west of Jacksonville Road. On these 12 acres, the navigation equipment laboratory (Building 125) and the communications systems laboratory (Building 138) would also be used for university and institutional activities. This Alternative proposed to use Building 16 west of Jacksonville Road for low income and homeless assistance services.

On 159 acres east of Jacksonville Road, the University/Institutional Alternative would build an industrial and business complex providing 1,850,000 square feet of new construction. On the southern end of this complex, it proposed to build a 50,000 square foot hotel and conference center on ten acres facing Street Road. On the northern edge of the complex, this Alternative would use the base's fire station as a municipal fire station. In the southeastern part of the complex, this Alternative proposed to use Building 80 for low-income and homeless assistance services. It would also maintain open space along the boundary between the hotel and Building 80.

In Ivyland Borough, north of the business complex, east of Jacksonville Road, and southwest of Kirk Road, the University/Institutional Alternative proposed to build a 26-acre single-family residential complex adjacent to the officers housing retained by Navy. This residential complex would provide between 150 and 200 new homes.

East of this residential area and south of Kirk Road, the University/Institutional Alternative would provide 25 acres for municipal purposes. This Alternative would also use parts of the runway and aircraft parking apron to build new access roads.

The central part of the base, east of the industrial/business complex and the municipal area and south of Kirk Road, Newtown Road, and Bristol Road, would be reserved for parks and recreational activities. This area would cover the eastern part of the runway. The University/Institutional Alternative would use Quarters A and Quarters B here for low income and homeless assistance services.

The University/Institutional Alternative would use the inertial guidance laboratory (Building 108), located south of the parks and recreational areas and adjacent to the enlisted housing retained by Navy, in a manner similar to Navy's historical use of that building. Northeast of the laboratory, this Alternative would use 84 acres to build an educational complex serving about 2,000 students.

On 125 acres at the eastern end of the base in Northampton Township, the University/Institutional Alternative would develop parks and recreational areas. On the northern and eastern tips of the eastern end of the property, this Alternative would provide five acres for municipal uses. On the remaining surplus property, north of Hatboro Road, it would build an assisted living facility on 38 acres that would support about 500 senior residents.

Navy analyzed a third "action" alternative, described in the FEIS as the Residential Alternative. Under this Alternative, the property east of Jacksonville Road would be developed for residential uses and recreational facilities.

West of Jacksonville Road, the Residential Alternative would use 46 acres to develop a business complex. This Alternative also proposed to use the dynamic flight simulator (Buildings 70 and 72) for research and development in a manner similar to Navy's historical use of those buildings.

Additionally, it proposed to use 12 acres and Buildings 125 and 138 for university and institutional activities. This Alternative also proposed to use Building 16 west of Jacksonville Road for low income and homeless assistance services.

On 65 acres east of Jacksonville Road, the Residential Alternative would build an industrial and business complex providing about 636,000 square feet of new construction. Northeast of the complex, this Alternative would use the base's fire station as a municipal fire station.

In Ivyland Borough, northeast of the business complex, east of Jacksonville Road, and southwest of Kirk Road, the Residential Alternative proposed to build a 26-acre single-family residential complex adjacent to the officers housing retained by Navy. This residential complex would provide about 175 new homes. East of the residential area and the industrial/business complex, the Residential Alternative would develop parks and recreational areas.

In the central part of the base, east of the parks and recreational areas and southwest of Bristol Road, the Residential Alternative would build a 250-acre golf course and residential community consisting of 400 residential units. This area would cover the eastern part of the runway. This Alternative would use Quarters A and Building 80 here for low income and homeless assistance services.

Southwest of the golf course community and east of the industrial and business complex and parks and recreational areas, the Residential Alternative would reserve open space. South of the golf course community, this Alternative would develop additional parks and recreational areas. This Alternative would use Quarters B here for low income and homeless assistance services. South of the golf course community, between the additional parks and recreational areas and the enlisted housing retained by Navy, it would use the inertial guidance laboratory (Building 108) in a manner similar to Navy's historical use of that building.

On 125 acres at the eastern end of the base in Northampton Township, the Residential Alternative would develop additional parks and recreational areas. On the remaining surplus property, north of Hatboro Road, this Alternative would build an assisted living facility on 38 acres that would support about 500 senior residents.

Navy analyzed a fourth "action" alternative, described in the FEIS as the Aviation Alternative. Using 3,800 feet of the 8,000-foot runway, this Alternative would develop a general aviation airport on 168 acres. The airport would support single engine and twin engine propeller aircraft and light cargo turboprop aircraft. By the year 2010, projected air operations for this airport could range from 20,400 to 215,500 general aviation operations annually.

The remainder of the surplus property would be dedicated to uses compatible with a general aviation airport. These uses would include 58 acres for a business complex; 284 acres for industrial and commercial activities; ten acres for a hotel and conference center; 162 acres for parks and recreational activities; and 41 acres for access roads and open space. This Alternative would develop more intense industrial, research and development, and aviation activities than the other reuse alternatives.

West of Jacksonville Road, the Aviation Alternative would build a business complex on 58 acres. This Alternative proposed to use the dynamic flight simulator (Buildings 70 and 71) for research and development in a manner similar to Navy's historical use of those buildings. It also proposed to use Building 16 west of Jacksonville Road for low income and homeless assistance services.

East of Jacksonville Road, north and east of the runway, and southwest of Bristol Road, the Aviation Alternative would use 284 acres to develop a 4,900,000 square foot industrial and business complex. This Alternative would use Quarters A here for low income and homeless assistance services. South of the runway, the Alternative would use 77 acres to support aviation operations with hangars, maintenance facilities, and aircraft tiedown areas. It would also use seven acres here to build a passenger terminal.

On the southern end of the property, south of the aviation support facilities, this Alternative proposed to build a 50,000 square foot hotel and conference center on ten acres facing Street Road. East of the passenger terminal, it would use Building 80 and Quarters B for low income and homeless assistance services. This Alternative would maintain open space along the boundary between the hotel and Building 80.

South of the industrial and business complex, between the aviation support facilities and the enlisted housing retained by Navy, the Aviation Alternative would use the inertial guidance laboratory (Building 108) in a manner similar to Navy's historical use of that building. On 162 acres at the eastern end of the base in Northampton Township, this Alternative would develop parks and recreational activities.

Environmental Impacts

Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this surplus Federal property. The EIS addressed impacts of the Preferred Alternative, the University/Institutional Alternative, the Residential Alternative, the Aviation Alternative, and the "No Action" Alternative for each alternative's effects on land use, socioeconomics, community services, transportation, air quality, noise, infrastructure, cultural resources, natural resources, and petroleum and hazardous substances. This Record of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan, identified in the FEIS as the Preferred Alternative.

The Preferred Alternative would not have an significant impact on land use. Implementation of the Preferred Alternative would result in the continuing use and further development of the property as a technology research and development center. There would be more commercial, industrial, and office activities, additional housing (for single-family) and assisted living), various municipal activities, and extensive parks and recreational areas.

The existing airfield would not be used, and parts of the runway would be converted into roadways and parking areas. Access to the property would be gained from the existing roadway network of Jacksonville Road, Street

Road, Kirk Road, Newton Road, Bristol Road, Hatboro Road, and New Road.

The land uses proposed in the Preferred Alternative would be generally compatible with each other and with adjacent off-base land uses. However, development of the new facilities and activities would result in a substantial increase in use of the property's open space and a significant change from the existing airfield to various proposed uses. Zoning changes will be required for the assisted living facility, the parks and recreational areas, the firehouse, and the municipal well. In Ivyland Borough, it would be necessary to rezone the proposed site of the Reuse Plan's 150 to 200 housing units to accommodate the resultant increase in residential density.

The Reuse Plan would not have any significant impact on the socioeconomics of the surrounding area. The Preferred Alternative would build 150 to 200 new homes in that part of NAWC Warminster located in Ivyland Borough, providing housing for an additional 400 to 600 persons. The proposed 250,000 square foot assisted living facility would provide housing for about 500 senior residents.

By the year 2010, this Alternative would create about 6,850 direct jobs and 7,504 indirect jobs that would generate about $181 million in direct payroll earnings and $151 million in indirect earnings. The Preferred Alternative would also generate an estimated $1.305 million annually in property tax revenue.

The Preferred Alternative would not have any significant impact on community services. By the year 2010, the Preferred Alternative would generate an increase of 1,610 school age children living in the area. Since this increase in student population would not be reached until the year 2010, there is sufficient time for local school districts to prepare for this impact from the reuse of NAWC Warminster as well as other unrelated demographic changes in the region. Additionally, property tax revenues that support local school systems would increase as property previously owned by the Federal Government became taxable.

The redevelopment of NAWC Warminster would increase the demand on local communities for fire and police protection services. Closure of the Navy fire station on the base resulted in dissolution of the mutual aid agreements among local fire departments. Thus Warminster Township is considering hiring full-time fire department employees to supplement the volunteers who currently provide fire protection services. It would also be necessary for Ivyland Borough to expand its fire and police protection services to accommodate the redevelopment of NAWC Warminster. However, implementation of the Preferred Alternative would increase local government revenues by expanding the property tax base, and these revenues would assist in expanding fire and police protection services.

The Preferred Alternative would increase the number of recreational facilities in the region. Under this Alternative, additional passive recreational resources, such as nature and picnic areas and athletic fields, would be available to the public.

The Preferred Alternative would have a significant impact on transportation. By the year 2010, this Alternative would generate about 15,370 average daily trips. The traffic generated by the Reuse Plan would cause considerable delays at eight intersections in the vicinity of NAWC Warminster. Six of these intersections would operate at unacceptable levels of service during peak commuting hours. Implementing mitigation measures, such as signal modifications, additional lanes, staggered work hours, and ride sharing, could reduce the traffic impacts. Even with these improvements, however, there would be significant impacts at certain intersections for which mitigation is not feasible.

The Preferred Alternative would not have any significant impact on air quality. The base is located in a severe nonattainment area for ozone as regulated by the Clean Air Act, 42 U.S.C. 7401–7671a (1994). Ozone, commonly known as smog, is produced when volatile organic compounds and nitrogen oxides react in the atmosphere. The base is in attainment for all other common air pollutants regulated under the Clean Air Act. However, emissions of one common air pollutant, carbon monoxide (CO), would increase under the Reuse Plan.

Carbon monoxide is produced by the burning of fossil fuels. As a result of increased vehicular traffic moving to and from the property, the annual emissions of CO would increase under the Reuse Plan. Nevertheless, there would be no violation of the national standards for carbon monoxide.

The impact on air quality that could arise from sources of stationary emissions, such as heating units, would depend upon the nature and extent of activities conducted on the property. Developers of future facilities would be responsible for obtaining the required air permits and for complying with Federal, State and local laws and regulations governing air pollution. Temporary impacts on air quality resulting from construction activities would not be significant.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506 (1994), requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas such as Bucks County that do not meet one or more of the national standards for ambient air quality, unless the proposed activities conform to an approved implementation plan. The United States Environmental Protection Agency regulations implementing Section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR 93.153(c)(2) (xiv) and (xix). Therefore, the disposal of NAWC Warminster will not require Navy to conduct a conformity determination.

The Preferred Alternative would not have any significant impact on noise. During reuse, a gradual increase in ambient noise levels would arise out of the increased vehicular traffic. At four of the six sites analyzed, noise increases in the early morning hours would be perceptible to the human ear, *i.e.*, greater than three decibels. However, the existing noise levels near the residential areas are typical of a suburban neighborhood and are already high.

The Preferred Alternative would not have any significant impact on infrastructure and utilities. It would be necessary gradually to replace and upgrade the electrical distribution system. The Reuse Plan's projected daily demand for potable water would exceed Navy's historical usage and would require additional sources of water. It would be necessary to extend the Warminster Municipal Authority's water distribution system to the base and incorporate a drinking water well on the base into that system.

The proposed redevelopment of NAWC Warminster would require an increase in wastewater treatment capacity. The acquiring entities could use the base's wastewater treatment plant to provide adequate treatment capacity for the proposed redevelopment of NAWC Warminster. When operating this plant, they would be subject to the requirements of the National Pollutant Discharge Elimination System (NPDES) permit program. Similarly, stormwater must be managed in accordance with Federal, State, and local laws and regulations.

Thus, the acquiring entities would be responsible for constructing adequate drainage facilities.

The Preferred Alternative would generate about three tons of solid waste per day more than Navy did when the base was operational. There is adequate disposal capacity to accommodate this increase in waste, and no significant impact is likely.

The Preferred Alternative would not have any significant impact on cultural resources. Pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (1994), Navy performed a cultural resource survey and determined that seven structures are eligible for listing on the National Register of Historic Places. In a letter dated May 6, 1998, the Pennsylvania State Historic Preservation Officer (SHPO) stated that only three of the seven structures satisfied eligibility requirements. The three structures at NAWC Warminster determined to be eligible for listing on the Register are the inertial guidance laboratory (Building 108), the ejector seat test facility (Structure 361), and the centrifuge (Building 70). The Reuse Plan proposes to use the inertial guidance laboratory and the centrifuge in ways similar to Navy's historical uses. The ejector seat test facility will be used to support communications antennas.

There are no known archaeological sites at NAWC Warminster that are eligible for listing on the National Register. However, the cultural resource survey identified archaeologically sensitive areas within parts of NAWC Warminster proposed for disposal and reuse, *i.e.*, at Quarters A and Quarters B. Depending upon the location and design of particular redevelopment projects, potential archaeological resources in these areas could be affected by construction activities.

Navy has completed consultation pursuant to Section 106 of the National Historic Preservation Act with the Advisory Council on Historic Preservation and the Pennsylvania State Historic Preservation Officer. These consultations identified measures that the acquiring entities must take to avoid or mitigate adverse impacts on the eligible structures and the archaeologically sensitive areas. These measures were set forth in a Programmatic Agreement among Navy, the Advisory Council on Historic Preservation, and the Pennsylvania State Historic Preservation Officer, dated December 9, 1998. This Programmatic Agreement requires the incorporation of restrictive deed covenants for each of the structures in the documents conveying the property. These covenants require subsequent owners of the property to obtain written permission from the SHPO before undertaking any alterations to the three eligible structures and before engaging in any activities that would disturb the ground in the archaeologically sensitive areas.

The Preferred Alternative would not have any significant impact on upland vegetation and wildlife. The existing vegetation in the vicinity of the runway, taxiways, and developed areas consists largely of maintained lawns and ornamental and naturally occurring trees and shrubs. The redevelopment of these areas would reduce the vegetation in these low value habitats. Navy did not actively use the property east of the runway when the base was operational and leased it for farming. The proposed redevelopment of this area would result in a change from agricultural activities to parks and recreational uses.

Navy determined that there were no Federally-listed threatened or endangered species at NAWC Warminster as defined by the Endangered Species Act of 1973, 16 U.S.C. 1531–1544 (1994). Therefore, the disposal and reuse of NAWC Warminster would not have any adverse effect on Federally-listed threatened or endangered species. In letters dated September 14, 1995 and November 21, 1995, the United States Fish and Wildlife Service concurred in Navy's determination.

There are several freshwater wetlands on the base that cover about three acres. The Reuse Plan did not provide detailed site plans for the proposed redevelopment. Thus, the impact on these wetlands cannot be fully assessed. Future redevelopment plans that may affect wetlands will be subject to the wetland regulations that implement Section 404 of the Clean Water Act, 33 U.S.C. 1344 (1994). These regulations are set forth at 33 CFR part 323, and are enforced by the United States Army Corps of Engineers. Implementation of the Preferred Alternative would not have any impact on floodplains, because NAWC Warminster does not lie within 100-year or 500-year floodplains.

The Preferred Alternative would not have any significant impact on the environment as a result of the use of petroleum products or the use or generation of hazardous substances by the acquiring entities. Hazardous materials used and hazardous waste generated by the Reuse Plan will be managed in accordance with Federal and State laws and regulations.

Implementation of the Preferred Alternative would not have any impact on existing environmental contamination at NAWC Warminster. Navy will inform future property owners about the environmental condition of the property and may, when appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995), requires that Navy determine whether any low income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of NAWC Warminster and subsequent reuse of the property under the various proposed alternatives. Minority and low income populations residing within the region would not be disproportionately affected. Indeed, the employment opportunities, housing and public services generated by implementing the Reuse Plan would have beneficial effects.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the residential and recreational areas. The Preferred Alternative would not pose any disproportionate environmental health or safety risks to children.

Mitigation

Implementation of Navy's decision to dispose of NAWC Warminster does not require Navy to implement any mitigation measures. Navy will take certain actions to implement existing agreements and regulations. These actions were treated in the FEIS as agreements or regulatory requirements rather than as mitigation.

The FEIS identified and discussed those actions that will be necessary to mitigate impacts associated with the reuse and redevelopment of NAWC Warminster. The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

Comments Received on the FEIS

Navy received comments on the FEIS from one Federal agency, the United States Environmental Protection Agency (Region III), and one local agency, the Warminster Municipal Authority. All of the substantive comments concerned issues discussed in the FEIS. Those comments that require clarification are addressed below.

The comments of the Environmental Protection Agency's Region III concerned background information in Section 3 of the FEIS regarding Navy's Installation Restoration Program at NAWC Warminster. Navy's responses to these comments are being provided to Region III in the separate regulatory process prescribed for Installation Restoration Programs by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, U.S.C. 9601–9675 (1994).

The Warminster Municipal authority commented that the analysis in Section 4 of the FEIS incorrectly stated that extending the Authority's potable water distribution system to the base would provide an adequate supply of water for redevelopment. The Municipal Authority stated that it would also be necessary to draw upon a drinking water well on the base to provide an adequate supply of potable water for redevelopment. As discussed earlier, Navy acknowledges that a drinking water well on the base must be incorporated into the Authority's water distribution system to provide an adequate supply of potable water for the proposed redevelopment of NAWC Warminster.

The Municipal Authority also commented that the analysis in Section 4 of the FEIS incorrectly concluded that its wastewater treatment plant has sufficient capacity to treat wastewater generated under the Preferred Alternative. As discussed earlier, Navy acknowledges that additional wastewater treatment capacity would be required to support the proposed redevelopment of NAWC Warminster.

Regulations Governing the Disposal Decision

Since the proposed action contemplates a disposal under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C.. 2687 note (1994), Navy's decision was based upon the environmental analysis in the FEIS and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD rule), 32 CFR parts 174 and 175.

Section 101–47.303–1 of the FPMR requires that disposals of Federal property benefit the Federal Government and constitute the "highest and best use" of the property. Section 101–47.4909 of the FPMR defines the "highest and best use" as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The "highest and best use" determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historic considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the "highest and best use" of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under the DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of the DBCRA, may Navy apply disposal procedures other than those in the FPMR.

In Section 2901 of the National Defense Authorization Act for Fiscal year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of the DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Service Act of 1949, 40 U.S.C. 484 (1994), as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The LRA's proposed reuse of NAWC Warminster, reflected in the Reuse Plan, is consistent with the requirements of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for various purposes including residential, commercial, municipal, assisted living, low income and homeless assistance, and parks and recreational activities. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

The Reuse Plan responds to local economic conditions, promotes rapid economic recovery from the impact of the closure of NAWC Warminster, and is consistent with President Clinton's Five-Part Plan for Revitalizing Base Closure Communities, which emphasizes local economic redevelopment and creation of new jobs as the means to revitalize these communities. 32 CFR parts 174 and 175, 59 FR 16,123 (1994).

Although the "No Action" Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the property's location, physical characteristics, and infrastructure or the current uses of adjacent property. Additionally, it would not foster local economic redevelopment of the NAWC Warminster property.

The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result from implementing the Reuse Plan.

Accordingly, Navy will dispose of the surplus Federal property at Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania, in a manner that is consistent with the Federal Lands Reuse Authority of Bucks County's Reuse Plan for the property.

Dated: October 15, 1999.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion And Redevelopment).

Dated: October 27, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99-28646 Filed 11-1-99; 8:45 am]

BILLING CODE 3810-FF-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposed to use for the 2001–2002 year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV, HEA Programs).

DATES: Interested persons are invited to submit comments on or before January 3, 2000.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

In addition, interested persons can access this document on the Internet:

(1) Go to IFAP at *http://ifap.ed.gov.*

(2) Click on the "Bookshelf" or on "Current SFA Publications".

(3) Scroll down and click on "FAFSAs and Renewal FAFSAs".

(4) Click on "By 2001–2002 Award Year".

(5) Click on "FAFSA Form/Instructions".

Please note that the free Adobe Acrobat Reader software, version 3.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's website: *http://www.adobe.com.*

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, "in cooperation with agencies and organizations involved in providing student financial assistance," to "produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under" the Title IV, HEA Programs. This form is the FAFSA. In addition, Section 483 authorizes the Secretary to include non-financial data items that assist States in awarding State student financial assistance.

The Secretary requests comments on the draft 2001–2002 FAFSA that has been posted to the IFAP website (see above). In particular, the Secretary seeks comments on the following changes under consideration to the 2001–2002 FAFSA. References to the current FAFSA are to the 2000–2001 FAFSA.

- Revision of "dependents other than a spouse" question. Applicants who have dependents other than a spouse are considered "independent," and are therefore not required to report parental information on the FAFSA. "Dependents other than a spouse" includes, (1) children supported by the applicant, and (2) non-children dependents who live with and are supported by the applicant. The current FAFSA asks for both of these categories of dependents in a single question. In order to make the application easier to understand, the Secretary is considering splitting this into two separate questions.
- Business and investment farm net worth. As part of the continuing effort to simplify the FAFSA, the Secretary proposes to ask for business net worth and investment farm net worth in a single question.
- Two untaxed income worksheets. The current FAFSA collects untaxed income information through Worksheet A (and a separate earned income credit (EIC) question on the form itself). Some states and schools have indicated that the current Worksheet A is not useful for identifying particularly needy students. Some untaxed income is an indicator of need (*e.g.*, welfare benefits, social security benefits) and some untaxed income is not (*e.g.*, payments to tax-deferred pension and savings plans, tax exempt interest income). For 2001–2002, the Secretary proposes to split the current Worksheet A into a "non-needy" untaxed income worksheet

(Worksheet A) and a "needy" untaxed income worksheet (Worksheet B). The EIC question on the current form would be incorporated into the new Worksheet B. The current Worksheet B, which collects income exclusions, would become Worksheet C.

Note: A school suggested grouping untaxed income items by whether or not they had a tax form reference. The Secretary solicits comments on this suggestion in light of the proposed change to the current Worksheet A, above.

- Grade level. A school suggested that we add an additional code to the grade level question to differentiate first-year graduate/professional students from continuing graduate/professional students. The Secretary seeks comments on this proposed change.

In addition to comments on the draft 2001–2002 FAFSA, the Secretary requests comments on the following issues related to the FAFSA:

- Special circumstances. We received a suggestion to add a "check-off block" to the FAFSA to indicate special circumstances (*e.g.*, reduced income or dependency issues). The Secretary solicits comments on this suggestion.
- Net worth of assets. In the redesign of the 1999–2000 FAFSA, separate value and debt questions about assets were combined into single net worth questions. The Secretary invites comment on any effect that this change has made on the delivery of student financial aid.
- Single identifier. The Secretary is considering switching from the current, six-digit "Federal School Code" to a single, eight-digit identifier in the "school codes" section of the FAFSA (Step Six).

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under the procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 28, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals and families.

Reporting and Recordkeeping Burden:

Responses: 11,134,376

Burden Hours: 7,073,050

Abstract: The FAFSA collects identifying and financial information about a student applying for Title IV, Higher Education Act (HEA) Program funds. This information is used to determine the student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility for State and institutional financial aid programs.

[FR Doc. 99–28640 Filed 11–1–99; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Notice of Restricted Eligibility in Support of Advanced Coal Research at U.S. Colleges and Universities

AGENCY: Federal Energy Technology Center (FETC), Pittsburgh, Department of Energy (DOE).

ACTION: Issuance of Financial Assistance Solicitation.

SUMMARY: FETC announces that, pursuant to 10 CFR 600.8(a)(2), and in support of advanced coal research to U.S. colleges and universities, it intends to conduct a competitive Program Solicitation and award financial assistance grants to qualified recipients. Proposals will be subjected to a comparative merit review by a technical panel of DOE subject-matter experts and external peer reviewers. Awards will be made to a limited number of proposers based on: the scientific merit of the proposals, application of relevant program policy factors, and the availability of funds.

DATES: This solicitation (available in both WordPerfect 6.1 and Portable Document Format (PDF)) will be released on DOE's FETC Internet site (http://fetc-ip.fetc.doe.gov/business/solicit/2000sol.html) on or about October 25, 1999. Applications must be prepared and submitted in accordance with the instructions in the Program Solicitation and must be received at FETC by December 13, 1999. Prior to submitting your application to the solicitation, periodically check the FETC Website for any amendments.

FOR FURTHER INFORMATION, CONTACT: Ms. Debra A. Duncan, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 10940 (MS 921–107), Pittsburgh, PA 15236–0940; Telephone: 412–386–5700; Facsimile: 412–386–6137; e-mail: duncan@fetc.doe.gov.

SUPPLEMENTARY INFORMATION: Through Program Solicitation DE–PS26–00FT40676, the DOE is interested in applications from U.S. colleges and universities, as well as university-affiliated research centers submitting applications through their respective universities. Applications will be selected to complement and enhance research being conducted in related Fossil Energy programs. Applications may be submitted individually (*i.e.*, by only one college/university) or jointly (*i.e.*, by "teams" made up of (1) three or more colleges/universities, or (2) two or more colleges/universities and at least one industrial partner. Collaboration, in the form of joint proposals, is *encouraged* but not required.

Eligibility. Applications submitted in response to this solicitation must address coal research in one of the key focus areas of the Core Program or as outlined in the Innovative Concepts Program.

Background. The current landscape of the U.S. energy industry, not unlike that in other parts of the world, is undergoing a transformation driven by changes such as deregulation of power generation, more stringent environmental standards and regulations, climate change concerns, and other market forces. With these changes come new players and a refocusing of existing players in providing energy services and products. The traditional settings of how energy (both electricity and fuel) is generated, transported, and utilized are likely to be very different in the coming decades. As market, policy, and regulatory forces evolve and shape the energy industry both domestically and globally, the opportunity exists for university, government, and industry partnerships to invest in advanced fossil energy technologies that can return public and economic benefits many times over. These benefits are achievable through the development of advanced coal technologies for the marketplace.

Energy from coal-fired powerplants will continue to play a dominant role as an energy source, and therefore, it is prudent to use this resource wisely and ensure that it remains part of the sustainable energy solution. In that regard, our focus is on a relatively new concept we call Vision 21. Vision 21 is a pathway to clean, affordable energy achieved through a combination of technology evolution and innovation aimed at creating the most advanced fleet of flexible, clean and efficient power and energy plants for the 21st century. Clean, efficient, competitively priced coal-derived products, and low-cost environmental compliance and energy systems remain key to our continuing prosperity and our commitment to tackle environmental challenges, including climate change. It is envisioned that these Vision 21 plants can competitively produce low-cost electricity at efficiencies higher than 60% with coal. This class of facilities will involve "near-zero discharge" energy plants—virtually no emissions will escape into the environment. Sulfur dioxide and nitrogen oxide pollutants would be removed and converted into environmentally benign substances, perhaps fertilizers or other commercial products. Carbon dioxide could be (1) concentrated and either recycled or disposed of in a geologically permanent manner, or (2) converted into industrially useful products, or (3) by creating offsetting natural sinks for CO_2.

Clean coal-fired powerplants remain the major source of electricity for the world while distributed generation, including renewables, will assume a growing share of the energy market. Technological advances finding their way into future markets could result in advanced co-production and co-processing facilities around the world, based upon Vision 21 technologies developed through universities, government, and industry partnerships.

This Vision 21 concept, in many ways is the culmination of decades of power and fuels research and development. Within the Vision 21 plants, the full energy potential of fossil fuel feedstocks and "opportunity" feedstocks such as biomass, petroleum coke, and other materials that might otherwise be considered as wastes, can be tapped by integrating advanced technology "modules." These technology modules include fuel-flexible coal gasifiers and combustors, gas for fuels and chemical synthesis. Each Vision 21 plant can be built in the configuration best suited for its market application by combining technology modules. Designers of Vision 21 plant would tailor the plant to use the desired feedstocks and produce the desired products by selecting and integrating the appropriate "technology modules."

The goal of Vision 21 is to effectively eliminate, at competitive costs, environmental concerns associated with the use of fossil fuel for producing electricity and transportation fuels. Vision 21 is based on three premises: that we will need to rely on fossil fuels for a major share of our electricity and transportation fuel needs well into the 21st century; that it makes sense to rely on a diverse mix of energy resources, including coal, gas, oil, biomass and other renewables, nuclear, and so-called "opportunity" resources, rather than on a reduced subset of these resources; and that R&D directed at resolving our energy and environmental issues can find affordable ways to make energy conversion systems meet ever stricter environmental standards.

To accomplish the program objective, applications will be accepted in two subprogram areas: (1) The Core Program and (2) the Innovative Concepts Program.

University Coal Research (UCR) Core Program

To develop and sustain a national program of university research in fundamental coal studies, the DOE is interested in innovative and fundamental research pertinent to coal conversion and utilization. The DOE anticipates funding at least one proposal in each focus area under the UCR Core Program; however, high-quality proposals in a higher ranked focus area may be given more consideration during the selection process. Research in this area is *limited* to the following eight (8) focus areas and is listed numerically in descending order of programmatic priority.

Core Program Focus Areas

1. Sulfur By-Products Made From Sulfur Dioxide

Hot- and warm-gas cleanup systems are currently under development to optimize the Integrated Gasification Combine Cycles (IGCC) system. In these cleanup systems, two integrated reactors remove hydrogen sulfide from the raw synthesis gas, resulting in an output stream of clean synthesis gas and a waste stream of concentrated sulfur dioxide. Hydrogen sulfide is removed from the raw synthesis gas by being adsorbed onto a sorbent material in a reducing atmosphere. The sulfur-laden sorbent is transferred to the regeneration reactor where oxygen reacts with the sulfur to form sulfur dioxide. Sulfur dioxide leaves the process, and the regenerated sorbent is cycled back to the adsorption reactor.

To improve the economics of synthesis gas contaminant cleaning, sulfur-based by-products will be made from the sulfur dioxide waste stream. Typically, the envisioned by-product is sulfuric acid, produced by conventional processes. More cost-effective means to produce a sulfur-containing by-product is necessary.

Grant applications are being sought for innovative processes for the creation of valuable by-products from sulfur dioxide. The sulfur dioxide feed stream into the process will be:

1. Between 480°C (900°F) and 760°C (1,400°F)
2. 400 psia maximum
3. 2%–14% sulfur dioxide (the rest of the stream is N_2/CO_2/steam)

Preliminary analysis must show process and/or cost improvement over conventional sulfuric acid production, and must show that there is a market for the product (if the product is not sulfuric acid).

2. Application of Industrial Ecology Principles to the Design of Vision 21 Systems

Systems Integration prescribes how to combine high-performance technology modules into safe, reliable, economic Vision 21 plants and, as such, is a critical part of Vision 21. Systems integration can be divided into three key subelements: systems engineering, dynamic response and control, and industrial ecology. For this solicitation, grant applications are sought that addresses the industrial ecology subelement as it relates to future Vision 21 plants.

In a broad sense, industrial ecology is a systems approach that focuses on the interaction of industrial and ecological systems. It seeks a closed-loop system of production and consumption in which material that would otherwise be discarded is reused, recycled, or remanufactured. Industrial ecology balances environmental protection with economic and business viability. In the context of Vision 21, industrial ecology aims to recycle, or utilize in some other manner, all process streams that would otherwise be regarded as wastes. It is desired to apply industrial ecology principles to the design of Vision 21 systems.

Grant applications are sought that addresses industrial ecology issues relevant to Vision 21 plants. Examples of the technologies upon which the modules or subsystems that form the building blocks of Vision 21 plants depend include, but are not limited to, gas separation, gas stream purification, high-temperature heat exchange, fuel-flexible gasification, high-performance combustion, fuel-flexible combustion turbines and engine systems, fuel cells, and fuels and chemicals production. Applications can address one or more of these technologies, other technologies relevant to Vision 21, or hypothetical Vision 21 plant configurations. Proposed activities may include analytical studies and modeling, and small-scale experimental testing.

3. Improved Synthesis Gas Contaminant Cleanup

Optimization of IGCC processes for cogeneration, and coproduction applications have the potential to significantly reduce capital cost and operations cost of IGCC plants. An expected requirement of successful cogeneration and/or coproduction applications is to make the synthesis gas made from coal, petroleum coke and/or petroleum residuals clean enough to meet the stringent gas quality requirements for use with a cogeneration or coproduction process.

Grant applications are being sought to research and begin development of innovative ideas for gas cleaning systems. Though interest remains in separation via adsorption, other novel and innovative techniques are of primary interest. Solids separation or filtration is *not* being sought, unless it is a side-benefit of the chemical cleanup process. These innovative gas cleaning systems must operate above 250°C (480°F). Preliminary analysis must show process and/or cost improvement over conventional cleanups, and over the expected performance of systems currently under development. Gas purity goals shall be:

Sulfur: <100 ppb for fuel cells; <60 ppb for chemical production
Chlorine: <100 ppb for fuel cells; <10 ppb for chemical production
Ammonia: <2000 ppm for fuel cells; <10 ppm for chemical production

4. Solid Oxide Fuel Cells (SOFC)—A Promising Energy Conversion Technology

SOFC are a very promising energy conversion technology for utilization of fossil fuels. It is envisioned that fuel cells may be a key component in an integrated coal-based Vision 21 power plant. The high temperatures of operation (necessary for adequate ionic conductivity and kinetics) conventionally require layered ceramic materials in a solid state configuration. A research opportunity that currently exists in making high-power-density SOFC a commercial reality involves improving the mechanical and sealing characteristics such that the structure is statically and dynamically robust.

Grant applications are sought to improve the static and dynamic structural and sealing characteristics of SOFC. The temperature range of interest is 500°C to 1,100°C, although individual concepts do not have to be applicable to the entire range. The concepts and materials proposed must be compatible with a fully functional SOFC stack with a lifetime of 40,000 hours. Integrated stack concepts or individual component issues can be addressed. The concepts and materials must not be economically detrimental to the fuel cell capital or operating costs. Proposals must address structural issues, sealing issues or both, and the stated lifetime, compatibility, and economic criteria.

5. Fundamental Data To Support the Efficient Design of Advanced Coal-Based Power Systems

The DOE has devoted a significant amount of effort to generating data and elucidating the mechanisms of coal behavior (pyrolysis, char reactivity, mineral matter transformations, NO_X formation, *etc.*) under conventional atmospheric combustion and gasification conditions. This information has made it possible to improve the accuracy of comprehensive computational combustion models to the point where equipment designers have begun to use codes to lead state-of-the-art boiler development efforts. Unfortunately, these same models can not be expected to accurately forecast the performance of power systems that differ significantly from those in use today (*i.e.*, those for which the codes were originally developed).

Future power systems designs will be influenced by many factors, including fuel availability, environmental constraints, the availability of advanced technologies, co-production requirements, etc. While specifics would be difficult to predict with certainty, a significant number of future power systems designs are likely to rely on a variant of one or more of the following combustion/gasification approaches:

- Pulverized coal combustion at atmospheric or elevated pressures in recycled CO_2 atmospheres containing oxygen.
- Fuel flexible, oxygen blown high pressure coal-based gasifiers capable of operating on mixtures of (predominantly) coal and biomass.

Designers of advanced systems will also benefit from the availability of predictive models that enable effective design, or evaluation of the performance of potential designs. Unfortunately, relatively little data available in the literature is directly applicable to the behavior of coals under the aforementioned combustion conditions. The bulk of experiments reported in the literature have been performed under atmospheric pressure utilizing conventional atmospheres, although limited high pressure data is available.

Proposals submitted under this topic should present a program of carefully crafted laboratory-scale experimentation aimed at defining the critical processes controlling combustion behavior under (1) oxygen-blown gasification conditions (*e.g.*, pressures to 1000 psi, high temperatures and oxygen levels approaching 100%), (2) atmospheric combustion conditions relying upon elevated oxygen levels (over 35%) with concomitant high CO_2 atmospheres (greater than 60%), or (3) pressurized combustion conditions relying upon elevated oxygen levels (over 35%) with concomitant high CO_2 atmospheres (greater than 60%). Proposed work may focus on pollutant formation, char reactivity or ash behavior. Experiments should be performed with a range of commercially relevant coals and coal blends. If any portion of the test program is devoted to examining the behavior of coal/biomass blends, must be limited when compared to the proposed coal effort. Further, coal/biomass tests must focus on the behavior of biomass fuels with the potential to achieve commercial significance. The project must carefully integrate data collection and modeling of critical subprocesses. Note that the goal of this effort is to generate data on kinetics and mechanisms that will supplement, clarify or broaden the applicability of existing submodels dealing with NO_X formation, ash behavior or char reactivity.

6. Water Gas Shift With Integrated H_2/CO_2 Separation Process

Options currently under study to obtain deep reduction in CO_2 from power stations are mainly directed to removing CO_2 from a power station's flue gases, i.e., post-combustion decarbonization. Pre-combustion decarbonization is an alternative approach to reducing greenhouse gases from power generation. In this approach, a fossil fuel such as coal is gasified and the product gas is converted to a clean gaseous fuel with a minimal carbon content, *e.g.*, hydrogen or hydrogen-rich gas mixtures.

Augmenting the water-gas shift reaction (WGS) via hydrogen separation technology offers the promise of making hydrogen from coal with zero pollution for fuel cell and other applications. One method to circumvent thermodynamic equilibrium limitations is to move the equilibrium displacement to the product side. From the energy-efficiency viewpoint, this should be achieved by continuous removal of one product component directly at its place of formation.

A promising approach to achieve this objective is to demonstrate the feasibility of driving the WGS reaction toward higher levels of hydrogen production by removal of hydrogen from the product stream. This means that the WGS reaction must be driven far to the right, and that the hydrogen produced must be separated from the remaining gases at elevated temperatures and pressures. To achieve the goals of the concept, it is assumed that a hydrogen separation device is used to obtain a pure hydrogen product stream as well as to drive the shift reaction toward further hydrogen production.

The hydrogen separation device could be a catalytic membrane reactor, in which the WGS reaction is combined with hydrogen separation from the reaction mixture in one reactor, using membranes selectively permeable to hydrogen. Alternatively, capture or removal of CO_2 from the product gas following WGS, sorption/desorption, or other promising technology could be a viable option.

Grant applications are invited that address scientific issues emerging from the above concept as stated below:

A. Experimental and theoretical WGS studies are needed at temperatures above 450 °C to determine reaction kinetics such that the driving force for separation can be maintained sufficiently high, such as required when using membranes, to be economically feasible. The effects of reaction conditions, steam addition, and trace contaminants in the synthesis gas feed on the reactions kinetics need to be obtained and modeled. Grant applications should propose research that would address these issues.

B. Grant applications are sought for novel H_2-separation or CO_2-capture technologies that concentrate hydrogen for use with fuel cells or other applications. Technologies proposed can operate at any temperature above 0 °C but must have an application in mind and must have potential for being less expensive than current technologies for hydrogen production, e.g., Pressure Swing Adsorption.

7. Sulfur Reduction

Restrictions on sulfur content in gasoline and diesel fuels continue to become more stringent. Reduction of the residual sulfur contents in fossil fuels becomes more costly because the remaining sulfur compounds are the most refractory and difficult to remove. Design of processes for elimination of sulfur while keeping costs at a minimum represents a significant challenge to the science of catalysis. Many of the traditional catalysts for desulfurization carry out hydrogenation co-currently with sulfur removal, resulting in excessive consumption of this expensive reagent. Grant applications are sought for novel approaches to the reduction of sulfur in transportation fuels to part-per-million levels while using minimal amounts of hydrogen. Novel approaches are encouraged—for example, combination of selective adsorption with catalytic desulfurization, activation of refractory sulfur compounds, or the application of computational methods to the design and control of desulfurization catalysts and processes.

8. Fischer-Tropsch (FT) Catalysts

The production of ultraclean fuels for the transportation sector is of prime concern to the fossil fuels industry. The conversion of synthesis gas to high-molecular-weight hydrocarbons by the FT reaction provides products that are free from both sulfur and aromatic hydrocarbons. These highly desirable properties combined with the high cetane numbers inherent to straight chain aliphatic compounds makes the FT synthesis an important component of the overall strategy for providing ultraclean fuels, particularly diesel fuels. Although the chemistry of FT catalysts is well studied, possibilities to significantly improve the performance of both the catalyst and the process still remain. For example, slurry-phase reactors may be used to improve the control of temperatures within commercial-sized reactors for this strongly exothermic reaction, but such reactors place extra demands on the catalyst. The preferred catalysts for slurry reactors are in the form of small particles, typically from 1 to 100 microns in diameter. Key characteristics desired in the ideal catalyst are a combination of resistance to attrition, high activity, long lifetime, resistance to poisoning, and ease of separation from the high-molecular-weight hydrocarbons in the reactor. An important goal in this area of research is to achieve an appropriate blend of these catalyst properties so that long-term, efficient operation of commercial-scale reactors can be reliably achieved. In particular, achieving an efficient separation of small catalyst particles from viscous waxy products with less than 0.01 weight % catalyst carryover remains a problem. Grant proposals are sought to solve these problems specifically for iron-based catalysts. Novel approaches are encouraged. That is, incorporation of catalyst properties that may circumvent problems of catalyst/wax separation or heat transfer, thus alleviating the inherent problem of current processes are more desirable than small incremental improvements to the state-of-the-art.

UCR Innovative Concepts Program

The goal of the Innovative Concepts program is to develop unique approaches for addressing fossil energy-related issues. These approaches should represent significant departures from existing approaches, not simply incremental improvements. The Innovative Concepts Program seeks "out-of-the-box" thinking; therefore, well-developed ideas, past the conceptual stage, are not eligible for the Phase I Innovative Concepts Program. Applications under the Innovative Concepts Program are invited from individual college/university researchers. Joint applications (as described under the Core Program) will also be accepted, although no additional funds will be made available for joint versus individual applications. Unlike the Core Program, student participation in the proposed research project is strongly encouraged; however, this is not a requirement in the Phase I Innovative Concepts Program.

Beginning in FY2001, a new initiative, the Phase II Innovative Concepts Program, will be featured in the UCR Solicitation. The goal of the Phase II Innovative Concepts Program is to solicit additional research in areas included in the Phase I Program. Funding for Phase II grants will be limited to a total of $200K over a 3-year period and student participation will be required. Only awardees of a Phase I grant from the previous year will be considered for Phase II.

As the twenty-first century approaches, the challenges facing coal and the electric utility industry continue to grow. Environmental issues such as pollutant control, both criteria and trace pollutants, waste minimization, and the co-firing of coal with biomass, waste, or alternative fuels will remain important. The need for increased efficiency, improved reliability, and lower costs will be felt as an aging utility industry faces deregulation. Advanced power systems, such as a Vision 21 plant, and environmental systems will come into play as older plants are retired and utilities explore new ways to meet the growing demand for electricity.

Innovative research in the coal conversion and utilization areas will be required if coal is to continue to play a dominant role in the generation of electric power. Topics, like the ones that follow, will need to be addressed. Technical topics like the ones that follow, will need to be answered but are not intended to be all-encompassing. It is specifically emphasized that other subjects for coal research will receive the same evaluation and consideration for support as the examples cited.

Innovative Concepts Technical Topics

Development of Membranes for CO_2 Separation

Possible applications of membranes to coal-based systems include the separation of CO_2 from the flue gas effluent of coal-fired power plants. Inorganic membranes are preferred because of their refractory behavior and the possibility of improving their resistance to environmental attack through a suitable choice of ceramic material and associated fabrication process. Since the kinetic diameters of CO_2 and N_2 molecules are relatively close to each other (0.36 nm and 0.40 nm, respectively), an enhanced separation of the two gases can only be accomplished via selective interactions between the molecules and the membrane surface. Molecular modeling would aid the synthesis of membranes for the selective separation of CO_2, while kinetic modeling would establish the potential flux of gases in membrane systems.

Applications are sought to investigate inorganic membranes, including novel synthetic methods that are technically and economically feasible. Large separation factor and high permeability are essential to achieve desired results in a single stage. A target performance that combines a permeability of 3×10^{-7} mol/(m^2 s Pa) and CO_2/N_2 selectivity of 100 is an approximate guideline. The proposed work should be consistent with the Vision 21 concept, novel in nature, and may include, but must not be limited to a review of prior research related to this focus area.

Identification of Promising Vision 21 Configurations

The Vision 21 concept encompasses the idea of interchangeable modules that can be assembled into various configurations that may co-produce power, fuels, or high-value chemicals. Configurations may include a gasifier and a power-generating facility with a specific fuel or chemical production capability. However, many different configurations are possible.

Novel concept grant applications are being sought to examine the feasibility of advanced central station energy plants that produce some combination of power, fuels, and chemicals from fossil fuel feedstocks, perhaps with biomass and/or opportunity feedstocks (e.g., petroleum coke, municipal solid waste, etc.). Process heat and steam may also be produced. Configurations may use internally generated wastes, combustion byproducts, or low-grade heat in ways that improve environmental performance, efficiency, and/or economics. The study should include mass and heat balance calculations along with sensitivity studies of the economics of the proposed processes.

Efficient Power Cycles

The thermal efficiency of a conventional coal-fired steam (Rankine) cycle is 33–35% from coal's heating value to electricity. The other 65–67% of the energy is lost during the conversion process of power generation. By increasing the operating temperatures and pressures over the supercritical condition of steam, the cycle efficiency can be increased to 42–45% (based on coal's higher heating value). However, there are limitations in materials for high-temperature applications. On the other hand, a system with a binary working fluid of ammonia and water has shown an improved cycle efficiency of 45–50% by extracting heat from hot streams at variable boiling temperatures of the ammonia-water mixtures. The cost has been a concern for commercializing this binary system.

Grant applications are being sought for:

A. Binary fluid cycles that demonstrate the potential for a higher cycle efficiency than the conventional system. Also, working fluids other than steam are of interest (*e.g.*, CO_2 is an interesting possibility).

B. Concepts for a bottoming cycle to extract the low-temperature heat from the flue gas of a coal-fired plant in an economical way. By reducing a typical stack gas temperature of 350–380°F to 180–200°F, the plant efficiency can be increased by 3–5%. The cost has been an issue for the low-temperature heat recovery system.

C. New concepts that could be drastically different from the conventional system using a gas or steam turbine (*e.g.*, fuel cells) to generate electricity from coal.

Awards. DOE anticipates awarding a financial assistance grant for each project selected. Approximately $3 million will be available for the Program Solicitation. An estimated $2.5 million is budgeted for the UCR Core Program and should provide funding for approximately one to three (1–3) financial assistance awards in each of the eight (8) focused areas of research. The maximum DOE funding for individual colleges/universities applications in the UCR Core Program varies according to the length of the proposed performance period as follows:

Performance period	Maximum funding
0–12 months	$80,000
13–24 months	140,000
25–60 months	200,000

The maximum DOE funding for UCR Core Program joint applications is $400,000, requiring a performance period of 36 months.

Approximately $0.5 million is budgeted for the UCR Innovative Concepts Program and should provide support for approximately ten (10) financial assistance awards. The maximum DOE funding for UCR Innovative Concepts Program awards is $50,000, with 12-month performance periods.

Issued in Pittsburgh, Pennsylvania on October 25, 1999.

Raymond D. Johnson,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–28599 Filed 11–1–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6468–5]

National Advisory Council for Environmental Policy and Technology, (NACEPT) Standing Committee on Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT standing committee on compliance assistance meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L.

92–463, notice is hereby given that the Standing Committee on compliance assistance will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below. NACEPT Standing Committee on Compliance Assistance; November 18 and 19, 1999. Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the NACEPT Standing Committee on Compliance Assistance on Thursday, November 18, 1999 from 9 a.m. to 5 p.m., and November 19, 1999 from 8:30–5. The meeting will be held at the AED Conference Center, 1825 Connecticut Ave., NW, Washington, DC 20009. The agenda for the first day of the meeting will be focused primarily on organizational issues. The second day will focus specifically on the development of the compliance assistance clearinghouse, national forum and the annual agency plan. A formal Agenda will be available at the meeting.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Pub. L. 92–463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies.

EPA recently issued a new report, "Aiming for Excellence." This report commits EPA to take a number of actions to enhance our reinvention programs, including several to improve our compliance assistance efforts. The report was developed based on extensive external outreach to a broad range of stakeholders through a variety of forums. It is available on EPA's Reinvention home page (www.epa.gov/reinvent/).

In connection with this effort, the Office of Enforcement and Compliance Assurance (OECA) has recently completed work on an action plan, "Innovative Approaches to Enforcement and Compliance Assurance." This action plan includes the compliance assistance activities identified in the Task Force report as well as additional OECA commitments. The action items described in the OECA report (available at www.epa.gov/oeca/innovative/approaches.html) will change fundamental aspects of the Agency's compliance assistance planning and programs.

To ensure that the compliance assistance activities in the action plan are implemented in a way that continues to reflect stakeholder needs, the National Advisory Council on Environmental Policy and Technology (NACEPT) is creating a new Standing Committee on Compliance Assistance. This will provide a continuing Federal Advisory Committee forum from which the Agency can continue to receive valuable stakeholder advice and recommendations on compliance assistance activities.

For further information concerning the NACEPT Standing Committee on Compliance Assistance, including the upcoming meeting, contact Gina Bushong Designated Federal Officer (DFO), on (202)564–2242, or E-mail:bushong.gina@epa.gov.

Inspection of Subcommittee Documents: Documents relating to the above topics will be publicly available at the meeting.

Dated: October 27, 1999.

Gina Bushong,

Designated Federal Officer.

[FR Doc. 99–28636 Filed 11–1–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—November 9, 1999.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

MATTERS TO BE CONSIDERED:

The Open Portion of the Meeting:

1. Docket No. 99–10—Ocean Common Carriers Subject to the Shipping Act of 1984—Consideration of Comments.

The Closed Portion of the Meeting:

1. Docket No. 98–14—Shipping Restrictions, Requirements and Practices of the People's Republic of China.
2. Fact Finding Investigation No. 23—Ocean Common Carriers Practices in the Transpacific Trades—Consideration of the Record.
3. Docket No. 99–05–ANERA and its Members—Opting Out of Service Contracts—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–28733 Filed 10–29–99; 1:05 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–1049]

Publication Activities Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Federal Reserve Board (Board) is conducting a review of its publication activities. As part of this effort, the Board is asking the public to comment on how the Board's publications are individually and collectively meeting their information needs and to offer suggestions for improving or possibly eliminating some publications or adding new ones.

DATES: Comments must be submitted on or before December 17, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1049, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. and to the security control room at all other times. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Ave. and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m., except as provided in § 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Paul Zacharias (202/973–5016). For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD), (202/452–3544).

SUPPLEMENTARY INFORMATION:

Description of the Board's Publications Program

The Board's publications program supports the various missions of the Board by making information about the Federal Reserve System accessible to other parts of the U.S. Government, regulated entities, the legal and business communities, libraries and research institutions, economists and other scholars, consumers, and the public at large. The publications program has the following six objectives:

- To provide to a large and diverse audience, the facts essential to an understanding of the functions and operations of the Federal Reserve System.
- To inform the public of official actions, interpretations, and policies of the Board of Governors.
- To present analyses and discussions of developments relating to public policy in banking, finance, and monetary matters and the general economy.
- To disseminate to the public certain statistics and survey information that the Board collects in the course of its formulation and conduct of monetary and regulatory policies.
- To present the results of developmental research in the areas of finance, economics, and statistics.
- To educate members of the public about, and to inform them of their rights in, financial transactions governed by regulations that the Board administers.

The Board publishes information in both print and electronic forms. Its over eighty published products include books, journals, brochures, press releases, testimony, speeches, legal notices, statistical releases, manuals, reports, staff studies, and research papers. Some products, such as statistical releases, are issued on a weekly, monthly, or quarterly schedule. Others, such as consumer education brochures, are issued when appropriate and are often a joint effort of the Board and other financial regulatory agencies or industry groups. Certain products are available in audio, video, or digital form, and nearly all products are now available on the Board's public Internet web site [http://www.federalreserve.gov/]. The Board currently serves more than 31,000 regular subscribers and annually responds to several thousand phone, walk-in, and mail requests for individual publications. In addition, the Board's Internet web site, which has been operational since March 1996, now contains about 14,000 current and historical documents and averages over 450,000 visits each week.

A Publications Committee (committee), composed of senior officials from several Board divisions and offices, oversees the program. The committee, assisted by the Board's Office of Inspector General, is currently reviewing the Board's publishing processes and products to assess customer service, operational efficiency, and how well the program's objectives are being met.

Issues for Public Comment

User feedback is a key component of the committee's review. The Board is asking the public to comment on the quality of its publications and to offer suggestions for improving or possibly eliminating some publications or adding new ones. The public should feel free to provide comments on any or all of the publications or processes with which they are familiar, regardless of whether access is obtained in printed form or through the Internet. In evaluating these publications, the public is asked to consider the following:

Content: Usefulness, relevance, and reliability of information; quality of information and analysis; appropriateness of level of detail; clarity and effectiveness of writing.

Format/appearance: Logic of organization; ease of locating information; attractiveness and appropriateness of design, including type, color, paper, illustrations, and format; readability of charts, graphs, and text boxes.

Timeliness: Appropriate frequency of issuance; promptness of release of data, public statements, and regulatory material; and speed of delivery relative to the publication date.

Comments of a more general nature are also welcome, including, for example, suggestions on alternative methods for delivering published information, improving subscriber services, or informing the public about the availability of publications.

Presented below is a listing of the Board's publications to facilitate comments on particular documents.

Federal Reserve Board Publications

A. Manuals
  1. Federal Reserve Regulatory Service (FRRS)
    a. Consumer And Community Affairs Handbook
    b. Monetary Policy and Reserve Requirements Handbook
    c. Securities Credit Transactions Handbook
    d. Payment Systems Handbook
  2. Bank Holding Company Examination
  3. Commercial Bank Examination
  4. U.S. Branches and Agencies of Foreign Banking Organizations Examinations
  5. Bank Secrecy Act Examinations
  6. Trading and Capital Markets Activity
  7. Trust Examination
  8. Examination of Edge Corporations
  9. Transfer Agent Examination
  10. Textual Changes to Federal Reserve Act
  11. Merchant and Investment Bank Examinations
  12. Consumer Compliance Examinations
  13. FFIEC Information Systems Examination

B. Regular Periodic Statistical Releases
  1. Aggregate Summaries of Annual Surveys of Securities Credit Extensions C.2
  2. Survey of Terms of Bank Lending E.2
  3. List of OTC Foreign Margin Stocks E.7
  4. Geographical Distribution of Assets and Liabilities of Major Foreign Branches of US Banks E.11
  5. Agricultural Finance Data Book E.15
  6. Country Exposure Lending Survey E.16
  7. Foreign Exchange Rates G.5
  8. Selected Interest Rates G.13
  9. Research Library Recent Acquisitions G.15
  10. Industrial Production and Capital Utilization G.17
  11. Consumer Installment Credit G.19
  12. Finance Companies G.20
  13. Actions of the Board: Applications and Reports H.2
  14. Aggregate Reserves of Depository Institutions and Monetary Base H.3
  15. Factors Affecting Reserve Balances and Condition Statement of FR Banks H.4.1
  16. Money Stock and Debt Measures H.6
  17. Assets and Liabilities of Commercial Banks H.8
  18. Foreign Exchange Rates H.10
  19. Selected Interest and Exchange Rates H.13
  20. Selected Interest Rates H.15
  21. Flow of Funds Accounts Z.1

C. Other Regular Periodic Publications
  1. Federal Reserve Bulletin
  2. Annual Report
  3. Annual Report: Budget Review
  4. Annual Reports to Congress on Specific Topics (e.g., Freedom of Information Act requests, depository institution credit card profitability, and fees and services of depository institutions)
  5. Monetary Policy Report (Humphrey Hawkins)
  6. Annual Percentage Rate Tables vols 1 and 2
  7. Statistical Digest and Concordance (5 Years)
  8. Summary of Official Holidays to be Observed by FR Offices. K.8
  9. Summary of Commentary On Economic Conditions by Federal Reserve District (Beige Book)

10. FOMC Minutes
11. FOMC Transcripts (5-Year Lag)

D. One-time or Occasional Publications
1. Purposes and Functions
2. FR Act and Related Statutes (Red Book)
3. Individual Regulations of the Board of Governors (about 30 documents)
4. Preparedness Program for Emergencies in Banking
5. Guide to Flow of Funds Accounts (1993)
6. U.S. Economy in an Interdependent World: A Multicountry Model (5/84)
7. Industrial Production 1986 Edition (12/86)
8. Financial Futures and Options in the US Economy (12/86)
9. Financial Sectors in Open Economies: Empirical Analysis and Policy Issues (8/90)
10. Risk Measurement and Systemic Risk: Proceedings of a 1996 Joint Central Bank Research Conference
11. Public Policy and Capital Formation
12. Research Staff Studies
13. Finance and Economic Discussion Papers
14. International Finance Discussion Papers
15. Speeches and Testimony
16. Press Releases
17. Board Telephone and Public Information Directory
18. Processing Applications through the Federal Reserve

E. Brochures and Booklets
1. Consumer Handbook on Adjustable Rate Mortgages
2. Consumer Handbook on Credit Protection Laws
3. A Guide to Business Credit for Women, Minorities, and Small Business
4. Series Structure of the Board of Governors of the Federal Reserve System
5. The Federal Open Market Committee
6. Federal Reserve Bank Board of Directors
7. Federal Reserve Banks
8. Keys to Vehicle Leasing
9. A Consumer's Guide to Mortgage Lock-Ins
10. A Consumer's Guide to Mortgage Settlement Costs
11. A Consumer's Guide to Mortgage Refinancing
12. Home Mortgages: Understanding the Process and Your Right to Fair Lending
13. How to File a Consumer Complaint about a Bank
14. Making Sense of Savings
15. Shop: The Card You Pick Can Save You Money
16. Welcome to the Federal Reserve
17. When Your Home Is on the Line: What You Should Know about Home Equity Lines of Credit
18. Looking for the Best Mortgage
19. Government in the Sunshine
20. Guide to Federal Reserve Regulations

By Order of the Board of Governors of the Federal Reserve System, October 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-28588 Filed 11-1-99; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 991 0178]

El Paso Energy Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 23, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Phillip Broyles, FTC/H-374, 600 Pennsylvania Ave., NW, Washington, DC 20580 (202) 326-2574 or 326-2805.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 22, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Draft Complaint and Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from El Paso Energy Corporation ("El Paso") an Agreement Containing Consent Order ("the proposed consent order"). El Paso has also reviewed a draft complaint that the Commission contemplates issuing. The proposed consent order is designed to remedy likely anticompetitive effects arising from El Paso's proposed acquisition of all of the voting securities of Sonat Inc.

II. Description of the Parties and the Proposed Acquisition

El Paso, a Delaware corporation headquartered in Houston, Texas, owns and operates natural gas transmission, gas gathering and processing, energy, marketing, power generation and international energy infrastructure development companies. It operates through the following business units: Tennessee Gas Pipeline Company, East Tennessee Natural Gas Company, El Paso Natural Gas Company, El Paso Field Services Company, El Paso Energy Marketing Company, and El Paso Energy International Company.

In addition to its wholly-owned interests, El Paso also controls offshore pipelines through its interest in Leviathan Gas Pipeline Partners, L.P. ("Leviathan"), a publicly held Delaware limited partnership. El Paso holds a 34.5 percent effective ownership interest in, and is the general partner of, Leviathan. Leviathan owns interests in pipelines across the Gulf of Mexico, including Stingray and Viosca Knoll Gathering

Company ("VKGC"), the two pipelines relevant to this matter. El Paso operates both of these pipelines.

Sonat, a Delaware corporation headquartered in Birmingham, Alabama, is an integrated energy company engaged in exploration and production of oil and natural gas, interstate transmission of natural gas and energy services. Through its natural gas transmission segment, Sonat owns interests in more than 14,000 miles of natural gas pipelines. Sonat's Southern Natural Gas Company is the major pipeline in the southeast, with customers in seven states. Sonat's 50 percent-owned Florida Gas Transmission Company is the principal pipeline serving Florida. Sonat's revenues for the year ending 1998 were $3.7 billion. It has assets of nearly $4.4 billion.

On March 13, 1999, El Paso and Sonat entered into an Agreement and Plan of Merger pursuant to which El Paso intended to acquire 100 percent of the voting securities of Sonat.

III. The Draft Complaint

The draft complaint alleges two relevant lines of commerce: the transportation of natural gas out of producing fields and the transportation of natural gas into gas consuming areas.

A. Transportation of Natural Gas Out of the Producing Fields

The draft complaint alleges two relevant sections of the country in which to analyze the acquisition by El Paso of Sonat's natural gas pipelines out of the producing fields. The first is the area of the Gulf of Mexico off the coast of the State of Louisiana that contains portions of the areas known as the West Cameron Area, West Cameron South Addition Area, East Cameron Area, East Cameron South Addition Area, Vermillion Area and Vermillion Area South Addition, and the Garden Banks Area. Pipeline capacity for transporting natural gas out of this section of the country is approximately 2900 million cubic feet per day.

El Paso and Sonat are direct and substantial horizontal competitors in this relevant market. El Paso, through its interests in Leviathan, controls a 50 percent share of Stingray Pipeline Company, which owns a large natural gas transmission system extending more than 100 miles into the Gulf of Mexico off the coast of Louisiana. It gathers gas from these areas and delivers the gas to shore. Sonat owns and operates Sea Robin Pipeline Company which starts from shore a few miles east of Stingray. Sea Robin also gathers gas from these area and delivers it to shore.

The draft complaint alleges that the post-merger market would be highly concentrated and that the acquisition would substantially increase concentration in the market. The acquisition would increase the Herfindahl-Hirschman Index (commoly referred to as "HHI")[1] in the geographic market by over 1000 points to over 4400.

The draft complaint further alleges that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in the transportation of natural gas out of producing fields in the relevant section of the country by eliminating actual and potential competition between El Paso and Sonat; by eliminating actual and potential competition among competitors generally; and by increasing concentration in the transportation of natural gas out of producing fields in the relevant section of the country, therefore increasing the likelihood of collusion.

The draft complaint alleges that entry would not be timely, likely or sufficient to prevent anticompetitive effects in the relevant markets.

The second relevant offshore geographic market consists of portions the offshore Gulf of Mexico areas known as the Main Pass, including its additions and extensions; South Pass; South Pass East Addition; Viosca Knoll; and Mississippi Canyon. Pipeline capacity for transporting natural gas out of this section of the country is approximately 3050 million cubic feet per day.

El Paso, through its control of VKGC, and Sonat, through its ownership interests in Destin Pipeline Company, L.L.C. ("Destin"), and in other ways, are direct and substantial competitors in the business of transporting natural gas out of producing fields in the relevant sections of the country listed above. VKGC operates a large natural gas gathering system extending more than 100 miles into the Gulf of Mexico off the coast of Louisiana. Destin owns a large natural gas gathering system extending more than 100 miles into the Gulf of Mexico off the coast of Louisiana. Sonat owns a one-third membership interest in Destin and operates the pipeline owned by Destin.

The draft complaint alleges that the post-merger market would be highly concentrated, and that the acquisition would substantially increase concentration in the market. The acquisition would increase the HHI in the geographic market by over 1000 points to over 4300.

The draft complaint alleges that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in the transportation of natural gas out of producing fields in the relevant section of the country by eliminating actual and potential competition between El Paso and Sonat; by eliminating actual and potential competition among competitors generally; and by increasing concentration in the transportation of natural gas out of producing fields in the relevant section of the country, therefore increasing the likelihood of collusion.

The draft complaint further alleges that entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant market.

B. Transportation of Natural Gas Into Gas Consuming Areas

The draft complaint alleges that a relevant line of commerce is the transportation of natural gas into gas consuming areas and a relevant section of the country is eastern Tennessee and northern Georgia and submarkets thereof. This region includes the metropolitan areas of Atlanta, Georgia and Chattanooga and Knoxville, Tennessee. Customers in this area of the country purchase contracts for the transportation and delivery of over 750 million cubic feet of natural gas per day.

El Paso and Sonat are direct and substantial competitors in the business of transporting natural gas into this section of the country. El Paso's Tennessee Gas Pipeline Company owns and operates a large natural gas transmission system extending from producing fields in the Gulf of Mexico, Texas, and Louisiana through several states in the southern United States, including Tennessee, and on into the northern United States. In the State of Tennessee, Tennessee Gas Pipeline interconnects with, and delivers natural gas to, a pipeline owned and operated by East Tennessee Natural Gas Company ("ETNG"), also an El Paso subsidiary. ETNG transports natural gas received from Tennessee Gas Pipeline Company, and from other sources, to many local gas distribution utilities in eastern Tennessee and northern Georgia. Sonat owns Southern Natural Gas Company, which owns and operates a large natural gas transmission system extending from producing fields in the Gulf of Mexico and Louisiana through several states in the southern United States, including Georgia and Tennessee. Sonat, either directly, or via interconnection with East Tennessee Natural Gas, transport natural gas for many local gas distribution utilities in east Tennessee and northern Georgia. El Paso offered reduced transportation rates to local gas distribution utilities located in eastern Tennessee in response to a threat by Sonat to by-pass ETNG by extending its own pipeline.

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[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

The draft complaint alleges that the post-merger market would be highly concerned, and that the acquisition would substantially increase concentration in the market. In the least concentrated submarket of the geographic market, the acquisition would increase the HHI by over 1000 points over 5700. In certain other submarkets, the acquisition would increase the HHI by over 4500 points to 1000.

The draft complaint alleges that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in the transportation of natural gas into the relevant section of the country by eliminating actual and potential competition between El Paso and Sonat; by eliminating actual and potential competition among competitors generally; and by increasing concentration in the transportation of natural gas into the relevant section of the country, therefore increasing the likelihood of collusion.

The draft complaint further alleges that entry would not be timely, likely or sufficient to prevent anticompetitive effects in the relevant markets.

IV. Terms of the Proposed Consent Order

The proposed consent order is designed to remedy the Commission's competitive concerns about the proposed acquisition. To solve the competitive concerns in the onshore market, the proposed consent order requires El Paso to divest ETNG, the owner of the El Paso system that serves cities in east Tennessee and northern Georgia. To solve the competitive concerns offshore, the proposed order requires El Paso to divest Sea Robin (a wholly owned subsidiary of Sonat) and Sonat's 33½ percent interest in Destin.

The proposed consent order requires divestiture of the relevant assets within six months of the date on which the consent agreement was signed at no minimum price to a buyer and in a manner that is approved by the Commission. In the event divestiture has not occurred within six months, the proposed order provides that the Commission may appoint a trustee to divest the assets. The proposed order does not require that EL Paso present the Commission with a buyer of the assets to be divested before acceptance of the proposed consent agreement for public comment (an "up-front buyer") because El Paso has satisfied the Commission that, in this instance, consumers will not be harmed by a post-order divestiture.

In some cases the Commission has required a respondent to divest "crown jewel" assets in the event the respondent fails to divest a narrower package of assets promptly. Such a crown jewel is unnecessary in this case. El Paso has agreed to divest a package of assets that includes ETNG and Sea Robin in their entirety, which should help ensure that the divestiture will convey a saleable and competitively viable set of assets. This will increase the likelihood of finding a buyer acceptable to the Commission in a timely manner. Therefore, the proposed divestiture should readily suffice to remedy consumer harm.

The proposed order contains ancillary provisions in both the onshore and offshore markets. Many customers on the ETNG system have ETNG and Tennessee Gas Pipeline transportation and/or storage contracts with renewal elections to be made in the midst of the proposed ETNG divestiture process. The proposed order extends the renewal deadline for these contracts until 60 days following the divestiture of ETNG, provides customers the option of extending the expiration dates of these contracts, and allows customers to terminate certain other ETNG and Tennessee Gas Pipeline contracts entered into as the proposed divestiture process is underway. The purpose of these provisions is to permit the customer to know the identity of the acquirer of ETNG before having to commit to new contracts for transportation or storage either on ETNG or, more significantly, on the trunklines that transport the gas from the Gulf of Mexico into ETNG. The Commission anticipates that the acquirer of ETNG will open additional interconnections with trunklines that currently intersect with the ETNG system so as to provide customers with alternative routes for gas supply. The tolling provision will give customers the option of using these new sources if they so choose.

The proposed order also contains ancillary provisions regarding VKGC which are in effect in the event Sonat's Destin interest is sold to a natural gas producer. The sale of Sonat's interest to a producer could result in Destin's being less than fully competitive in certain instances in which the producer elected to serve its own producing interests by reserving one part of the Destin system at the expense of independent producers seeking access to certain other parts of the Destin system. To remedy the potential for the divestiture to have this anticompetitive result, the proposed consent order requires El Paso to cause VKGC to adhere to benchmarks established by competition between VKGC and Destin. Specifically, the proposed order requires El Paso to cause VKGC to allow any shipper to obtain access to VKGC, which would be at the shipper's expense if any construction of pipe is required, and to allow any other pipeline to interconnect with VKGC, at the expense of the pipeline requesting the connection. The proposed consent prohibits El Paso from engaging in discrimination in scheduling, rates and terms and conditions of service on VKGC. The connecting pipeline can elect to submit a dispute regarding the terms and conditions of a connection to binding arbitration. El Paso is required to publish the arbitration clause in the order on Leviathan's electronic web site and to incorporate it into further contracts with shippers and connecting pipelines. El Paso is also required to notify the Commission of arbitration proceedings initiated under the proposed order. The requirement to provide open and non-discriminatory access to VKGC may be suspended upon a showing by El Paso that at least one-third of the membership interest in Destin is controlled by a person who does not have an interest in wells or leases in certain areas of the Gulf of Mexico.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–28552 Filed 11–1–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, NCEH, Meeting

The Advisory Committee for the Director of the National Center for Environmental Health of the Centers for Disease Control and Prevention (CDC).

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, NCEH, Meeting.

Times and Dates: 10 a.m.–5 p.m. (EST), November 22, 1999; 8:30 a.m.–3 p.m. (EST), November 23, 1999.

Place: Swissotel, 3391 Peachtree Street, NE, Atlanta, Georgia 30326.

Status: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 60 people.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation, the Director, Centers for Disease Control and Prevention, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to (1) conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in the prevention of infectious diseases and other preventable conditions, and in the promotion of health and well being; and (3) train State and local personnel in health work.

Matters To Be Discussed: Agenda items will include communication issues, the NCEH research agenda, and updates on bioterrorism, genetics and disabilities.

Contact Person for More Information: Marilyn R. DiSirio, Designated Federal Official, CDC, 4770 Buford Highway, NE, MS F–29, Atlanta, Georgia 30341–3724; telephone 770–488–7020, fax 770–488–7024; e-mail: mrd2@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 27, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–28583 Filed 11–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee: Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee.

Times and Dates: 1 p.m.–5 p.m., November 2, 1999; 9 a.m.–4 p.m., November 3, 1999.

Place: The Westin Atlanta North at Perimeter, Seven Concourse Parkway, Atlanta, Georgia 30328–9937, telephone 770/395–3900, fax 770/395–3918.

Status: Open to the public, limited only by the space available.

Purpose: The Breast and Cervical Cancer Early Detection and Control Advisory Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director of CDC, regarding the early detection and control of breast and cervical cancer and to evaluate the Department's current breast and cervical cancer early detection and control activities.

Matters To Be Discussed: The discussion will focus on the research agenda for the National Breast and Cervical Cancer Early Detection Program. Current research efforts will be highlighted and gaps will be identified and prioritized. Persons wishing to make oral presentations at the meeting should contact Ms. Tamikio Bohler 770/488–3199 or Ms. Madeline Cutler 770/488–4751 by 4 p.m. All requests will be limited to five minutes and should contain the name of the presenter and an outline of the meeting should be given to Ms. Cutler prior to the meeting.

Justification for **Federal Register** *Notice Being Posted Less Than the 15–Day Notice:* Due to administrative error, the posting for this meeting was not submitted in time for the required 15-day advance notice to be listed in the Federal Register. All committee members have been informed of this meeting and agenda topics. The meeting will be held as planned.

For Further Information Contact: Tamikio Bohler, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–64, Atlanta, Georgia 30341–3717, telephone 770/488–4751.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: October 28, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99–28695 Filed 11–1–99; 8:45 am]

BILLING CODE 4163–18 P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Response to Asthma

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: A Public Health Response to Asthma.

Times and Dates:

1 p.m.–8 p.m., February 15, 2000.

8 a.m.–5 p.m., February 16, 2000.

8 a.m.–12 p.m., February 17, 2000.

Place: Sheraton Atlanta Hotel, 165 Courtland St; Atlanta, Georgia 30303 Telephone, 404/659–6500.

Status: Open to the public, limited only by space available. The meeting space accommodates approximately 250 people.

Purpose: The purpose of this conference is to provide a forum for increasing knowledge regarding asthma prevention and control and an update of current asthma surveillance and intervention activities in State and local health agencies. It will also provide a forum for interaction with colleagues from across the country.

Matters To Be Discussed: Agenda items include a discussion of asthma surveillance; community interventions; barriers to adequate disease management, and lessons learned from ongoing programs. Concurrent workgroups, round tables, and topic tables will be held to further detailed discussions on asthma related topics.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Leslie Boss, Ph.D., Air Pollution and Respiratory Health Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, Mailstop F–39, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724. Telephone 770/488–7320, e-mail LPB1@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 27, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–28584 Filed 11–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Medical Child Support Working Group

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the sixth and seventh meetings of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The sixth meeting of the MCSWG will be held on Wednesday, November 17, 1999 and on Thursday, November 18, 1999, from 8:30 a.m. to approximately 6:00 p.m., and on Friday, November 19, 1999 from 8:30 a.m. to approximately noon. The seventh meeting of the MCSWG will be held on Monday, December 13, 1999 and on Tuesday, December 14, 1999, from 8:30 a.m. to approximately 6:00 p.m.

ADDRESSES: The meetings will be held at the Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, N.W, Washington, DC, 20037, 202–955–6400. All interested parties are invited to attend these public meetings. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement, at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register.** However, it is expected these will be the last two meetings.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of meetings of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (P.L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulation; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

Agenda

The agenda for these meetings includes a discussion of the issues to be contained in the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting, the MCSWG formed four (4) sub-committees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next two meetings (August, 1999 and October, 1999), the subcommittees presented their draft recommendations to the full MCSWG for further discussion and consideration. At the November, 1999, meeting, the four subcommittees will present additional issues and amended recommendations to the full MCSWG for discussion and consideration. At the December, 1999, meeting, the MCSWG will discuss the recommendations in their report to the Secretaries.

Public Participation

Members of the public wishing to present oral statements to the MSCWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meetings. Such requests should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meetings.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DHHS, these documents will be available at the MCSWG Executive Director's Office, Office of Child Support Enforcement (OCSE), Administration for Children and Families, U.S. Department of Health and Human Services, Aerospace Building, Fourth Floor—East, 370 L'Enfant Promenade, SW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DHHS should be directed to Andrew J. Hagan, OCSE (telephone (202) 401–5375). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Dated: October 27, 1999.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 99–28625 Filed 11–1–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–291]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Multi-State Evaluation of Dual Eligibles Demonstrations; Wisconsin Partnership Program;

Form No.: HCFA–R–291 (OMB# 0938–NEW);

Use: This survey provides information needed to evaluate dual eligible demonstrations on issues of satisfaction and gathers health and functional status to be used in other analyses. Dual eligible demonstrations are designed to create alternative delivery services for acute and long-term care services to elderly and disabled persons which provide increased coordination, improve access to quality services and control or more appropriately allocate future costs. Respondents to the survey include demonstration enrollees both living in the community and in institutions, their families, disenrollees and corresponding comparison groups. Information collected will pertain to description of the person, information regarding enrollment/disenrollment, quality of life, satisfaction, general health, functional status, access to services, and informal care giving. This data will be combined with secondary data on utilization of services to analyze the coordination of care, utilization, outcomes, and cost of providing services;

Frequency: Other: One-time;

Affected Public: Individuals or Households;

Number of Respondents: 5,945;

Total Annual Responses: 5,945;

Total Annual Hours: 3,830.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 5, 1999.

John Parmigiani,

Manager, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–28633 Filed 11–1–99; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–205 & HCFA–R–206]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Information Collection Requirements Referenced in HIPAA for the Individual Market and Supporting Regulations in 45 CFR Section 148;

Form No.: HCFA–R–205 (OMB# 0938–0703);

Use: These information collection requirements help ensure access to the individual insurance market for certain individuals and allows the States to implement their own program to meet the HIPAA requirements for access to the individual market. The information collection requirements outlined in this document are necessary for issuers and

States to ensure individuals receive protection under section 111 of HIPAA.

Frequency: On occasion;

Affected Public: Business or other for-profit, Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

Number of Respondents: 1,040;

Total Annual Responses: 3,230,000;

Total Annual Hours: 921,000.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements Referenced in HIPAA for the Group Market and Supporting Regulations in 45 CFR Section 146;

Form No.: HCFA–R–206 (OMB# 0938–0702);

Use: This regulation and related information collection requirements will ensure that group health plans provide individuals with documentation necessary to demonstrate prior creditable coverage, and the group health plans notify individuals of their special enrollment rights in the group health insurance market.

Frequency: On occasion;

Affected Public: Business or other for-profit, Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

Number of Respondents: 2,030;

Total Annual Responses: 43,000,000;

Total Annual Hours: 2,700,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 6, 1999.

John Parmigiani,

Manager, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–28634 Filed 11–1–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–9003–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Fourth Quarter, 1998

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published during October, November, and December of 1998, relating to the Medicare and Medicaid programs. This notice also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that potentially may be covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT: If you need specific information, please contact the following staff. Copies are not available through the staff. Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Betty Stanton, Center for Medicaid State Operations, Policy Coordination and Planning Group, Health Care Financing Administration, S2–25–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–3247.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Coverage and Analysis Group, Health Care Financing Administration, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–4633.

Questions concerning all other information may be addressed to Trenesha Fultz, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–3822.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of these programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame.

II. How To Use the Addenda

This notice is organized so that you may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-approved investigational device exemptions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR

36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To assist you, we have organized and divided this current listing into five addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique HCFA transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single instruction or many. Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number;
  - Title of the regulation;
  - Ending date of the comment period (if applicable); and
  - Effective date (if applicable).
- Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by this notice. On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. It is our practice to announce all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http://www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents' home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the HCFA Home Page. The Internet address is http://www.hcfa.gov/regs/rulings.htm.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. (Updated titles of the Social Security Laws are available on the Internet at http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

You may review transmittals or Program Memoranda at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, you may contact regional depository libraries that receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans;

however, they are not sales outlets. You may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the materials, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual, (HCFA Pub. 13–3) transmittal entitled "Mammography Screening," use the Superintendent of Documents No. HE 22.8/6 and the HCFA transmittal number 1754.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: September 20, 1999.

Elizabeth Cusick,

Director, Office of Communications and Operations Support.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

June 4, 1998 (63 FR 30499)
August 11, 1998 (63 FR 42857)
September 16, 1998 (63 FR 49598)
December 9, 1998 (63 FR 67899)
May 11, 1999 (64 FR 25351)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992 (57 FR 47468).

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[October 1998 through December 1998]

Transmittal No.	Manual/Subject/Publication No.
	Intermediary Manual **Part 3—Claims Process** **(HCFA Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1753	• Requirement That Bills Be Submitted in Sequence for a Continuous Inpatient Stay or Course of Treatment
	• Need to Reprocess Inpatient or Hospice Claims in Sequence
1754	• Mammography Screening
1755	• Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers
	Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers and Hospital Outpatient Partial Hospitalization Services
1756	• Provider Enrollment
	Description of Process
	Implementation
	Enrollment Instructions for Certified Medicare Providers
	Provider Based Versus Freestanding or Independent Providers
	Outcomes of Processing Applications
	Payment of Claims
	Enrollment Procedures for General Application
	Recommendation for Approval
	Recommendation for Denial
	Request for Additional Information
	Transmission of Recommendations
	Change(s) of Information
	Application Changes
	Change of Ownership
	Applicant/State Agency/Regional Office Liaison and Assistance
	Carrier Liaison
	Application Routing
	Use of Other Than an Official HCFA–855 Enrollment Form
	Processing Time Frames
	Provider/Supplier Education
	Special Processing Situations
	Tracking Requirements
1757	• Ambulance Services
1758	• Claims Processing Timeliness
1759	• Therapeutic Services
1760	• Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
1761	• Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers
1762	• Therapeutic Services
1763	• Revision Number 1763 Will Not Be Published In This or Any Future **Federal Register** Because the Information Contained In It Has Been Combined and Published in Revision Number 1764
1764	• Oral Cancer Drugs
	Oral Anti-Nausea Drugs as Full-Replacement for Intravenous Dosage Forms as Part of a Cancer Chemotherapeutic Regimen
	Mammography Quality Standards Act
	Colorectal Screening
1765	• Colorectal Screening

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October 1998 through December 1998]

Transmittal No.	Manual/Subject/Publication No.
	Carriers Manual Part 2—Program Administration (HCFA Pub. 14–2) (Superintendent of Documents No. HE 22.8/7)
139	• Functional Standards for Claims Processing Claims Operations
	Carriers Manual Part 3—Claims Process (HCFA Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1612	• Identifying a Screening Mammography Claim
1613	• Claims Review for Global Surgeries
1614	• Furnishing Medicare Physician Fee Schedule Database Pricing Files and File Specifications
1615	• Type of Service
1616	• Chiropractic Services
1617	• Self-Administered Drugs and Biologicals
1618	• Medicare Physician Fee Schedule Database 1999 File Layout Maintenance Process for the Medicare Physician Fee Schedule Database
1619	• Billing for Pneumococcal, Hepatitis B, and Influenza Virus Vaccines
1620	• The Carrier Advisory Committee, Membership On the Carrier Advisory Committee, Beneficiaries
1621	• Self-Administered Drugs and Biologicals
1622	• Furnishing Fee Schedule (Excluding Physician Fee Schedule) Prevailing Charge and Conversion Factor Data to United Health Care, Fiscal Intermediaries, State Agencies, Indian Health Services and United Mine Workers
1623	• Maintaining a Directory of Electronic Billing Vendors
	Carriers Manual Part 4—Professional Relations (HCFA Pub. 14–4) (Superintendent of Documents No. HE 22.8/7)
16	• Health Care Provider/Supplier Enrollment Enrollment Instructions Request for Additional Information Denial Approval Enrollment Procedures for General Application HCFA–855R, Individual Reassignment of Benefits Change of Information Form Enrolling Certified Providers/Suppliers Who Enroll With Carriers Appeals Validate Data Elements Collected from Applicant Application Data Collection/Maintenance Requirement Tracking Requirements Provider Enrollment Quarterly Workload Report Data Requirement Changes to the Medicare and Other Federal Health Care Programs Provider/Supplier Enrollment Applications
17	• Registry of Physicians/Health Care Practitioners/Group Practices Ongoing Data Collection on Physicians/Health Care Practitioners/Group Practices Applications Physician/Health Care Practitioners/Group Practices Record-Required Information and Format Maintaining Physician/Health Care and Practitioner/Group Practices Memberships Update Records Batching Procedures Privacy Act Requirements
18	• Purpose of Health Insurance Claim Form HCFA–1500 User Print File Specifications
	Program Memorandum Intermediaries (HCFA Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–98–32	• Postponement of Change Requests 472 and 294
A–98–33	• File Descriptions and Instructions for Retrieving the 1999 Physician, Clinical Lab, Durable Medical Equipment, Prosthetics/Orthotics and Supplies Fee Schedule Payment Amounts Through HCFA's Mainframe Telecommunications Systems, Formerly Known as the Network Data Mover System
A–98–34	• Change in Hospice Payment Rates
A–98–35	• Hospital Outpatient Procedures: Medicare Changes for Radiology and Other Diagnostic Coding Due to the 1999 HCPCS Update; Revised Modifiers

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October 1998 through December 1998]

Transmittal No.	Manual/Subject/Publication No.
A–98–36	• The Supplemental Security Income Medicare Beneficiary Data for Fiscal Year 1997 for Prospective Payment System Hospitals
A–98–37	• Consolidated Billing for Skilled Nursing Facility Patients When Receiving Outpatient/Emergency Care in a Medicare-Participating Hospital or Critical Access Hospital
A–98–38	• Implementation and Corrections to the **Federal Register** Notice Published August 11, 1998 for Home Health Agency Cost Limitation Effective October 1, 1998 and Implementation of §5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, Fiscal Year 1999 Enacted on October 21, 1998
A–98–39	• Surety Bonds from Home Health Agencies
A–98–40	• Intermediary Updating of the International Classification of Diseases, Ninth Revisions, Clinical Modification
A–98–41	• Retrospective Review of Hospital Requests for Higher-Weighted Diagnostic Related Groups
A–98–42	• Renewal of Program Memorandum A–97–8—Instructions to Implement the New Medicare Summary Notice Combined with Program Memorandum AB–98–31
A–98–43	• Requirements for Billing and Processing Claims for Services Subject to Line Item Date of Service Reporting
A–98–44	• FY 1999 Prospective Payment System, Tax Equity and Fiscal Responsibility Act, Hospital and Other Bill Processing Changes
A–98–45	• Clarification to Program Memorandum A–98–16 Issued May 1998, "Coverage and Claims Processing for Prospective Payment for Skilled Nursing Facilities—The Balanced Budget Act of 1977"
A–98–46	• Implementation of Surety Bond Requirement for Home Health Agencies
A–98–47	• Revision to PM A–98–10 Year 2000 Update Pages for the ASC X12 837 Version 3051 Implementations 3A.01 and 1A.C1 Institutional Claim/Coordination of Benefits
A–98–48	• Retrospective Review of Hospital Requests for Higher-Weighted Diagnostic Related Groups
A–98–49	• Medicare Home Health Benefit—The Balanced Budget Act of 1997—Financing Shift of Home Health Services From Part A to Part B
	Program Memorandum **Carriers** **(HCFA Pub. 60B)** **(Superintendent of Documents No. HE 22.8/6–5)**
B–98–36	• 1999 Fee Screens Edit Package for the Medicare Physician Fee Schedule Database
B–98–37	• This Program Memorandum Was Published in the 3rd Quarter Federal Register
B–98–38	• Delaying Y2K Return as Unprocessable Edits for Paper and Electronic Media Claims
B–98–39	• Reviewing Reassignment Agreements of Five or More
B–98–40	• Changes to Correct Coding Edits, Version 5.0
B–98–41	• 1999 Participation Enrollment and Medicare Participating Physician/Supplier Directory Procedures
B–98–42	• Schedule for Completing the 1999 Update and Enrollment Process for the Medicare Physician Fee Schedule Database
B–98–43	• Changes in the Medicare Limiting Charge Monitoring Program for Fiscal Year 1999
B–98–44	• Evaluating the Medical Necessity for Laboratory Panel Common Procedural Terminology Codes
B–98–45	• Enrollment of Independent Diagnostic Testing Facilities
B–98–46	• 1999 Physician Fee Schedule Disclosure Reports
B–98–47	• Discontinuing the Surrogate Unique Physician Identification Number NPP000 for Nurse Practitioners, Clinical Nurse Specialists, and Physician Assistants
B–98–48	• Medicare Physician Fee Schedule Database 1999—Announcement of Revised File
B–98–49	• This Revision Will Not Be Published In This or Any Future **Federal Register**
B–98–50	• Continuing the Use of the Modifiers for Nurse Practitioner Physician Assistant and Clinical Nurse Specialist Claims
B–98–51	• Clarification-Implementation of Additional Commercial Edits Effective for Dates of Service on or After October 1, 1998 Refer to Transmittal Number B–98–27, Change Request Number 502
B–98–52	• Enrollment of Independent Diagnostic Testing Facilities
B–98–53	• Durable Medical Equipment Carrier Billing Procedures
B–98–54	• Changes to Correct Coding Edits, Version 5.1
B–98–55	• Delay of Change to HCFA–1500 Instructions for Processing Physician Claims in Global Payment Systems
B–98–56	• Medicare Physician Fee Schedule Database 1999—Announcement of Revised File
B–98–57	• Provider Notification Concerning Child Support Enforcement Activities
B–98–58	• Delay of Change Request Numbers 521 and 705
B–98–59	• Medicare Enrollment of Physical Therapists in Private Practice and Occupational Therapists in Private Practice—Effective on or After January 1, 1999
B–98–60	• Change in Correct Coding Initiative Edits Update for January 1, 1999 and April 1, 1999
	Program Memorandum **Intermediaries/Carriers** **(HCFA Pub. 60A/B)** **(Superintendent of Documents No. HE 22.8/6–5)**
AB–98–53	• Business Continuity and Contingency Plans for the Millennium Change
AB–98–54	• 1999 HCFA Common Procedure Coding System Update
AB–98–55	• Extension of the Limitation on Payment for Services to Individuals Entitled to Benefits on the Basis of End Stage Renal Disease Who are Covered by Group Health Plans
AB–98–56	• Year 2000 Automated Response Unit Compliance Regarding Periphonics Equipment
AB–98–57	• Contingency Planning for Increased Beneficiary Call Volumes
AB–98–58	• Continue Using the Fiscal Year 1998 Rates and Wage Index Values for Ambulatory Surgical Center Payments

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October 1998 through December 1998]

Transmittal No.	Manual/Subject/Publication No.
AB–98–59	• Map Between Medicare Summary Notice Messages for Beneficiaries and the Corresponding Remittance Advice Messages for Providers
AB–98–60	• Medicare Summary Notice/Explanation of Medicare Benefits and Notice of Utilization Mammography Message for the Month of October
AB–98–61	• Instructions for Implementing and Updating 1999 Payment Amounts for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies
AB–98–62	• Medicare Participating Centers of Excellence Demonstration; Extension of Discard Date for PM's AB–98–11 and AB–98–13
AB–98–63	• Prospective Payment System for Outpatient Rehabilitation Services and Application of Financial Limitation
AB–98–64	• Medicare Coverage Expansion of Certain Oral Anti-Cancer Drugs to Include Food and Drug Administration Approved Oral Anti-cancer Prodrugs
AB–98–65	• Notice of New Interest Rate for Medicare Overpayments and Underpayments
AB–98–66	• Balanced Budget Act Requirements to Furnish Diagnostic Information
AB–98–67	• 1999 Payment Limit for Ambulance Services
AB–98–68	• Identifying Employer in Other-than-Data Match Group Health Plan Medicare Secondary Payer Recovery Situations
AB–98–69	• Medicare Health Plan Choices—Inquiry Guidelines for Medicare Contractors
AB–98–70	• New Waived Tests
AB–98–71	• Implementation of 1999 Clinical Diagnostic Laboratory Fee Schedule and Mapping for 1999 Laboratory Coding Changes
AB–98–72	• Medicare Contractor Coordination of Benefits File Formats
AB–98–73	• Access to Eligibility Data by Eligibility Verification Vendors
AB–98–74	• Fiscal Year 1999 Budget and Performance Requirements—Contractor Customer Service Plan (Beneficiaries)
AB–98–75	• Implementing Instructions—Positron Emission Tomography Scans for Characterizing Solitary Pulmonary Nodules or Staging Lung Cancer Performed on or After January 1, 1998
AB–98–76	• Implementation of the New Payment Limit for Drugs and Biologicals
AB–98–77	• Referral of Cases to the Office of Inspector General
AB–98–78	• Temporary Conversion from Bundled Payments to Regular Medicare Payments for the Participating Centers of Excellence Demonstration Testing Beginning With Discharges after December 31, 1998
	State Operations Manual Provider Certification (HCFA Pub. 7) (Superintendent of Documents No. HE 22.8/12)
4	• Survey Procedures for Intermediate Care Facilities for Persons With Mental Retardation.
	Hospital Manual (HCFA Pub. 10) (Superintendent of Documents No. HE 22.8/2)
731	• Requirement That Bills Be Submitted In Sequence for a Continuous Inpatient Stay or Course of Treatment. Need to Reprocess Inpatient or Hospice Claims In Sequence.
732	• Billing for Mammography Screening.
733	• Billing for Hospital Outpatient Partial Hospitalization Services.
734	• Claims Processing Timeliness.
735	• Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
736	• Ambulance Service Claims.
737	• Billing for Colorectal Screening.
738	• Completion of Form HCFA–1450 for Inpatient and/or Outpatient Billing. Provider Electronic Billing File and Record Formats. Alphabetic Listing of Data Elements.
	Religious Nonmedical Health Care Institutions (Hospital Manual Supplement) (HCFA Pub. 32) (Superintendent of Documents No. HE 22.8/2–2)
39	• Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines.
40	• Inpatient Admission and Billing Religious Nonmedical Health Care Institutions (Form HCFA–1450. Completion of Form HCFA–1450 for Religious Nonmedical Health Care Institutions.
	Home Health Agency Manual (HCFA Pub. 11) (Superintendent of Documents No. HE 22.8/5)
287	• Completion of Form HCFA–1450 for Inpatient and/or Outpatient Billing. Provider Electronic Billing File and Record Formats. Alphabetic Listing of Data Elements.
288	• Billing for Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
289	• Billing for Ambulance Services.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October 1998 through December 1998]

Transmittal No.	Manual/Subject/Publication No.
	Skilled Nursing Facility Manual (HCFA Pub. 12) (Superintendent of Documents No. HE 22.8/3)
355	• Billing for Mammography Screening.
356	• Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
357	• Billing for Ambulance Services.
	Rural Health Clinic and Federally Qualified Health Centers Manual (HCFA Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
30	• Billing for Mammography Screening by Rural Health Clinics and Federally Qualified Health Centers.
31	• Completion of Form HCFA–1450 by Rural Health Clinics and Federally Qualified Health Centers.
32	• Completion of Form HCFA–1450 by Rural Health Clinics and Federally Qualified Health Centers.
	• Billing for Mammography Screening by Rural Health Clinics and Federally Qualified Health Centers.
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA Pub. 29) (Superintendent of Documents No. HE 22.8/13)
83	• Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
52	• Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
53	• Completing the Uniform (Institutional Provider) Bill (Form HCFA–1450) Notice of Election. Completion of the Uniform (Institutional Provider) Bill (Form 53 HCFA–1450) for Hospice Bills.
	Hospice Manual (HCFA Pub. 21) (Superintendent of Documents No. HE 22.8/18)
52	• Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
53	• Completing the Uniform (Institutional Provider) Bill (Form HCFA–1450) Notice of Election. Completion of the Uniform (Institutional Provider) Bill (Form HCFA–1450) for Hospice Bills.
	Outpatient Physical Therapy, Comprehensive Outpatient Rehabilitation Facility and Community Mental Health Center Manual (HCFA Pub. 9) (Superintendent of Documents No. HE 22.8/9)
3	• Billing Instructions for Partial Hospitalization Services Provided in Community Mental Health Centers.
4	• Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines.
5	• Completion of Form HCFA–1450 for Billing Comprehensive Outpatient Rehabilitation Facility, Outpatient Physical Therapy, Occupational Therapy, Speech Therapy, or Community Mental Health Center Manual.
	Provider Reimbursement Manual—Part 1 (HCFA Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
407	• Regional Medicare Swing-Bed Skilled Nursing Facility Rates.
	Provider Reimbursement Manual—Part 2 Provider Cost Reporting Forms and Instructions Chapter 32—Form HCFA 1728–94 (HCFA Pub. 15–2) (Superintendent of Documents No. HE 22.8/4)
6	• Instructions and Cost Reporting Forms as a Result of the Balanced Budget Act of 1997.
	Provider Reimbursement Manual—Part 2 Provider Cost Reporting Forms and Instructions Chapter 36—Form HCFA 2552–96 (HCFA Pub. 15–2) (Superintendent of Documents No. HE 22.8/4)
4	• Instructions and Cost Reporting Forms as a Result of the Balanced Budget Act of 1997.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October 1998 through December 1998]

Transmittal No.	Manual/Subject/Publication No.
	Provider Reimbursement Manual—Part 2 **Provider Cost Reporting Forms and Instructions** **Chapter 18—Form HCFA 2088–92** **(HCFA Pub. 15–2)** **(Superintendent of Documents No. HE 22.8/4)**
2	• Instructions and Cost Reporting Forms as a Result of the Balanced Budget Act of 1997.
	Program Memorandum **Regional Office—General** **(HCFA Pub. 51)** **(Superintendent of Documents No. HE 22.28/5:90–1)**
98–4	• Home Health Agency Surety Bond Requirements.
98–5	• Surety Bond Requirements (HCFA 1152–FC).
	Medicare/Medicaid **Sanction—Reinstatement Report** **(HCFA Pub. 69)**
98–10	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—September 1998.
98–11	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—October 1998.
98–12	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—November 1998.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 63 page	CFR[1] part(s)	File code[2]	Regulation title	End of comment period	Effective date
10/01/98	52610–52614	400, 403, 410, 411, 417, and 422.	HCFA–1030–CN	Medicare Program; Establishment of the Medicare+Choice Program; Correction.	....	07/27/98
10/01/98	52614–52615	405, 412, and 413	HCFA–1003–CN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates; Correction.	....	10/01/98
10/01/98	52663–52665	416 and 488	HCFA–1885–2N	Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Procedures for Ambulatory Surgical Centers Effective October 1, 1998; Reopening of Comment Period and Delay in Adoption of the Proposed Rule as Final.	11/09/98	....
10/05/98	53446–53456	....	HCFA–1039–N	Medicare Program; Hospice Wage Index	....	10/01/98
10/05/98	53301–53308	409, 410, 411, 413, 424, 483, and 489.	HCFA–1913–CN	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction.	....	07/01/98
10/08/98	54142–54148	....	HCFA–2012–N	Medicaid Program; Disproportionate Share Hospital Payments-Institutions for Mental Disease.	....	10/01/98
10/09/98	54526	422	HCFA–1030–CN	Medicare Program; Establishment of the Medicare+Choice Program; Correction.	....	07/27/98
10/13/98	54721	....	HCFA–1099–N	Medicare Program; October 28, 1998, Meeting of the Competitive Pricing Advisory Committee.	....	....
10/14/98	55031–55034	493	HCFA–2024–FC	Medicare, Medicaid, and CLIA Programs; Extension of Certain Effective Dates for Clinical Laboratory Requirements Under CLIA.	12/14/98	10/14/98
10/21/98	56212–56214	....	HCFA–8000–N	Medicare Program; Part A Premium for 1999 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement.	....	01/01/99
10/21/98	56199–56201	....	HCFA–8001–N	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1999.	....	01/01/99
10/21/98	56201–56212	....	HCFA–8003–N	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 1999.	....	01/01/99
10/27/98	57546–57564	45 CFR 144, 146, and 148.	HCFA–2892–IFC	Interim Rules for Group Health Plans and Health Insurance Issuers Under the Newborns' and Mothers' Health Protection Act.	01/25/99	01/01/99
10/28/98	57698–57699	....	HCFA–1035–CN	Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1998; Correction.	....	10/01/98

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 63 page	CFR[1] part(s)	File code[2]	Regulation title	End of comment period	Effective date
11/02/98	58814–59187	405, 410, 413, 414, 415, 424, and 485.	HCFA–1006–FC	Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999.	01/04/99	01/01/99
11/02/98	59188–59190		HCFA–1021–NC	Medicare Program; Sustainable Growth Rate for Fiscal Year 1999.	12/02/98	10/01/98
11/10/98	63068–63069		HCFA–1048–N	Medicare Program; Request for Nominations for the Practicing Physicians Advisory Council.	11/30/98	
11/12/98	63326		HCFA–1039–CN	Medicare Program; Hospice Wage Index; Correction.		10/01/98
11/13/98	63429–63430	409, 410, 411, 412, 413, 419, 489, 498, and 1003.	HCFA–1005–N	Medicare Program; Prospective Payment System for Hospital Outpatient Services; Extension of Comment Period.	01/08/99	
11/13/98	63430–63431	416 and 488	HCFA–1885–3N	Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Procedures for Ambulatory Surgical Centers Effective October 1, 1998; Extension of Comment Period.	01/08/99	
11/19/98	64191–64195	412	HCFA–1049–FC	Medicare Program; Limited Additional Opportunity to Request Certain Hospital Wage Data Revisions for FY 1999.	12/21/98	11/19/98
11/19/98	64195–64199	440 and 441	HCFA–2060–F	Medicaid Program; Inpatient Psychiatric Services Benefit for Individuals Under Age 21.		12/21/98
11/25/98	65213–65214		HCFA–1051–N	Medicare Program; December 14, 1998, Meeting of the Practicing Physicians Advisory Council.		
11/27/98	65561–65562	409, 410, 411, 413, 413, 424, 483, and 489.	HCFA–1913–N2	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Reopening of Comment Period.	12/28/98	
12/02/98	66554–66556		HCFA–2008–FN	Medicare Program; Recognition of the American Association for Accreditation of Ambulatory Surgical Facilities, Inc. for Ambulatory Surgical Centers Program.		12/02/98
12/04/98	67078–67121		HCFA–2025–N	Medicare Program; Recognition of NAIC Model Standards for Regulation of Medicare Supplemental Insurance.		07/01/98
12/09/98	67899–67908		HCFA–9002–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Second Quarter, 1998.		
12/11/98	68464–68465		HCFA–4002–GNC	Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance; Millennium Compliance.	02/09/99	12/11/98
12/14/98	68780		HCFA–3432–N2	Medicare Program; Establishment of the Medicare Coverage Advisory Committee and Request for Nominations for Members.	01/29/99	
12/14/98	68687–68697	400 and 402	HCFA–6135–FC	Medicare and Medicaid Program; Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures.	02/12/99	01/13/99
12/17/98	69638		HCFA–1061–N	Medicare Program; Meeting of the Competitive Pricing Advisory Committee.		
12/24/98	71296–71297		HCFA–2036–NC	Medicare and Medicaid Programs; Recognition of the Commission for Accreditation of Rehabilitation Facilities.	01/25/99	

[1] 42 CFR except where noted.

[2] General Notice; PN—Proposed Notice; NC—Notice with Comment Period; FN—Final Notice; P—Notice of Proposed Rulemaking (NPRM); F—Final Rule; FC—Final Rule with Comment Period; CN—Correction Notice; IFC—Interim Final Rule with Comment Period; GNC—General Notice with Comment Period

Addendum V—Categorization of Food and Drug Administration-Allowed Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G960065	A1 (Correction)
G980224	A1
G980229	A2
G980236	A2
G980240	A1
G980247	A2
G980248	A2
G980253	A2
G980262	A1
G980265	A2
G980306	A1

The following information presents the device number, category (in this case, B), and criterion code.

G980220	B2
G980223	B2
G980225	B4
G980230	B1
G980231	B1
G980235	B4
G980238	B4
G980239	B2
G980241	B3
G980244	B4
G980246	B1
G980252	B1
G980255	B4
G980256	B4
G980259	B2
G980261	B2
G980267	B4

G980268	B1
G980269	B3
G980270	B4
G980272	B4
G980274	B3
G980275	B2
G980276	B1
G980277	B2
G980279	B1
G980280	B2
G980284	B1
G980285	B
G980286	B4
G980289	B3
G980295	B4
G980296	B2
G980298	B1
G980299	B1
G980301	B2
G980302	B4
G980303	B4
G980304	B4
G980305	B4

[FR Doc. 99–28629 Filed 11–1–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)
Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.
Aegis Analytical Laboratories, Inc. 345 Hill Ave., Nashville, TN 37210, 615–255–2400
Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745
Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.)
American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416
Doctors Laboratory, Inc. P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023
Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (Formerly: Methodist Medical Center Toxicology Laboratory)
Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (Formerly: Cedars Medical Center, Department of Pathology)
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)
LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339 (Formerly: MedExpress/National Laboratory Center)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250
NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (Formerly: NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197 (Formerly: UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (Formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (Formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)
Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (Formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800 (Formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, June 9, 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–28565 Filed 11–1–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–51]

Submission for OMB Review: Welfare to Work Voucher Program Evaluation

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The Department of Veterans Administration (VA) and the Department of Housing and Urban Development (HUD) and Independent Agencies Appropriation Act of 1999 established the Section 8 Welfare to Work Vouchers Program to help eligible families make the transfer from welfare to work and set aside 283 million to achieve the effect. The same act permitted HUD to use up to one percent of that amount to conduct detailed evaluations of the effect of providing tenant-based rental assistance to eligible families on their ability to obtain and retain employment. Review of existing literature yields scant scholarly or governmental research on the impact of the availability of assisted housing on employment. The Department determined that the most effective way to gauge the impact of Welfare to Work Vouchers was to establish an experimental situation in which a small number of communities allocated vouchers among eligible participants by random assignment. An experimental group would receive the voucher, and a control group would not. Both groups would be surveyed over time to test whether the presence of the voucher had an independent effect on the ability of families to obtain and retain employment and, thereby, move from dependency upon welfare.

DATES: Comments Due Date: December 2, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including the number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Welfare to Work Voucher Program Evaluation.

OMB Approval Number: 2528–XXXX.

Form Number: None.

Description of the Need for the Information and its Proposed Use: The Purpose is to evaluate the impact of the provision of Section 8 vouchers on the ability of eligible low-income families to obtain or retain jobs.

Respondents: Individuals or Households.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Information Collection	10,000		1		.67		6,667

Total Estimated Burden Hours: 6,667.

Status: New.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 26, 1999.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 99–28570 Filed 11–1–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4490–N–01]

Notice of Regional Meetings on Draft HUD Tribal Consultation Policy

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: Executive Order 13084 directs Federal agencies to "have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." In accordance with the Executive Order, HUD is in the process of developing a tribal consultation policy. This notice announces three regional meetings sponsored by HUD for, the purposes of receiving tribal input on the appropriate scope and content of HUD's consultation policy. All comments received at the meetings will be considered in the development of HUD's final tribal consultation policy. Before finalizing a consultation policy, HUD will publish the draft policy in the **Federal Register** for additional public comment.

DATES AND ADDRESSES: The regional meetings will be held at the following places and times:

Date	Time	Location
November 9, 1999	9 a.m.–12 p.m.	Hilton Northwest 2945 Northwest Expressway Oklahoma City, OK 73112, Tel: (405) 848–4811.
November 16, 1999	9:00 a.m.—2 p.m.	Sheraton Crescent Hotel 2020 W. Dunlap Avenue Phoenix, AZ 85021, Tel: (602) 943–8200.

Date	Time	Location
November 17, 1999	9 a.m.–12 p.m.	Executive Tower Hotel 1405 Curtis Street Denver, CO 80202, Tel: (800) 525–6651.

With the exception of the "800" number, none of the above telephone numbers are toll-free.

FOR FURTHER INFORMATION CONTACT: Jacqueline Johnson, Deputy Assistant Secretary for Native American Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126, Washington, DC 20410; telephone (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On May 14, 1998, President Clinton signed Executive Order 13084 (entitled "Consultation and Coordination with Indian Tribal Governments"). The Executive Order directs Federal agencies to "have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." In accordance with the Executive Order, HUD is in the process of developing a tribal consultation policy.

HUD is sponsoring a series of regional meetings for the purposes of receiving tribal input on the appropriate scope and content of HUD's consultation policy. To facilitate tribal participation at these meetings, HUD has scheduled the meetings to take place in conjunction with previously scheduled regional meetings of Indian tribes.

Three consultation meetings have already been held. The first meeting was held in Pocatello, Idaho in conjunction with the meeting of the Affiliated Tribes of Northwest Indians. The second meetings was held in Anchorage, Alaska in conjunction with the meeting of the Alaska Federation of Natives. The most recent meeting was held on October 27, 1999 in Oneida, New York in conjunction with the meeting of the United South and Eastern Tribes.

This notice announces three future regional consultation meetings. The meetings will be held at the places and times identified in the **DATES AND ADDRESSES** section of this notice.

All comments received at the regional consultation meetings will be considered in the development of HUD's final tribal consultation policy. Before finalizing a consultation policy, HUD will publish the draft policy in the **Federal Register** for additional public comment.

Interested persons who are unable to attend one of the regional consultation meetings are encouraged to submit written comments to the Office of Native American Programs, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: October 26, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–28578 Filed 11–1–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99–0294, May 12, 1986). The meeting is open to the public. Interested persons may make oral statements to the council or may file written statements for consideration.

DATES: The Garrison Diversion Unit Federal Advisory Council will meet from 2 p.m. to 5:30 p.m. on Monday, November 22, and from 8 a.m. to noon on Tuesday, November 23, 1999.

ADDRESSES: The meeting will be held at the U.S. Fish and Wildlife Service's Office, 3425 Miriam Avenue, Bismarck, North Dakota.

FOR FURTHER INFORMATION CONTACT: Dr. Grady Towns, Ecological Services, at (303) 236–7400, extension 264.

SUPPLEMENTARY INFORMATION: The Garrison Diversion Unit Federal Advisory Council will consider and discuss subjects such as mitigation, enhancement, and land acquisition.

Dated: October 27, 1999.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 99–28585 Filed 11–1–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–99–1220–00]

Central Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Lewistown Field Office.

ACTION: Notice of meeting.

SUMMARY: The Central Montana Resource Advisory Council will meet November 16–17, 1999, at the Townhouse Inn, at 601 West 1st Street in Havre, Montana.

The November 16 session will begin with a public comment period from 7 p.m through 8:30 p.m. This meeting will adjourn at 9 p.m.

The November 17 session will begin at 8 a.m. and continue through 3 p.m. During this meeting the council will discuss future options for the public land features in the Missouri Breaks.

DATES: November 16 and 17, 1999.

LOCATION: Townhouse Inn, 601 West 1st Street, Havre, Montana.

FOR FURTHER INFORMATION CONTACT: Field Manager, Malta Field Office, Bureau of Land Management, 501 South 2nd Street East, Malta, Montana 59538.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a public comment period on November 16 as described above.

Dated: October 22, 1999.

David L. Mari,

Field Manager.

[FR Doc. 99–28556 Filed 11–1–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–09–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, the Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on December 7 and 8, 1999 at the Sumner Suites, 2500 Menaul Blvd., NE, Albuquerque, NM 87107. The meeting on Tuesday, December 7 starts at 8:00 a.m. and ends about 4:45 p.m. The meeting on Wednesday, December 8 also starts at 8:00 a.m. and ends about 3:30 p.m. The draft agenda for the RAC meeting includes agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting on October 6, 7 and 8, 1999, in Farmington, NM, a Standards and Guidelines update presentation and discussion, a BLM presentation on urban sprawl in NM, a time for public comment to the RAC, a presentation and discussion on the BLM Resource Management Planning and National Environmental Policy Act process, BLM Field Office Managers State of the Field Office presentations and discussion, several presentations and discussions on urban sprawl from representatives of the U.S. Forest Service, county and mayor offices, NM State Land Office, a conservation group, any RAC recommendations, develop draft agenda items and select a location for the next RAC meeting, and a RAC assessment on the meeting.

The time for the public to address the RAC is on Tuesday, December 7, 1999, from 10:00 a.m. to 12:00 noon. The RAC may reduce or extend the end time of 12:00 noon depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its Agenda items. The meeting on December 8, 1999, will be from 8:00 a.m. to 3:30 p.m. The end time of 3:30 p.m. for the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: October 27, 1999.

Carsten F. Goff,

Acting State Director.

[FR Doc. 99–28586 Filed 11–1–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–7122–829G; NMNM97495]

Notice of Realty Action—Recreation and Public Purpose (R&PP) Act Classification, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

In **Federal Register** Vol. 64, No. 189 beginning on page 52794 in the issue of Thursday, September 30, 1999, make the following change: On page 52794, third column, paragraph Summary, change the acreage in the last line to read "containing 79.95 acres, more or less."

Dated: October 26, 1999.

Joel E. Farrell,

Assistant Field Manager for Resources.

[FR Doc. 99–28651 Filed 11–1–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 23, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by November 17, 1999.

Carol D. Shull

Keeper of the National Register.

ARKANSAS

Drew County

Rough and Ready Cemetery, Approx. 1 mi. SE of Monticello Civic Center on AR 19, Monticello vicinity, 99001376

ILLINOIS

Adams County

Lesem, S.J., Building, 5135–37 N. 3rd St., Quincy, 99001377

Cook County

One LaSalle Street Building, 1 N. LaSalle St., Chicago, 99001378

Jersey County

Smith—Duncan, House and Eastman Barn, IL 100 at Pere Marquette State Park, 2000 ft. W. of Deer Lick Hollow, Grafton vicinity, 99001379

Lake County

Adler, David, Estate, 1700 N. Milwaukee Ave., Libertyville, 99001380

Rock Island County

Peoples National Bank Building—Fries Building, 1729–1731 and 1723–1727 2nd Ave., Rock Island, 99001381

IOWA

Clinton County

Cherry Bank, 1458 Main Ave., Clinton vicinity, 99001382

Linn County

Notbohm Mill Archaeological District (Flour Milling in Iowa MPS) Address Restricted, Alburnett vicinity, 99001383

Scott County

East Hill House and Carriage House, 5004 State St., Riverdale, 99001384

MASSACHUSETTS

Worcester County

Phillipston Center Historic District, Roughly along The Common, Baldwinville, Petersham and Templeton Rds., Phillipston, 99001385

MINNESOTA

Red Lake County

Clearwater Evangelical Lutheran Church, Co. Hwy 10 (Equality Township), Oklee vicinity, 99001386

MISSISSIPPI

Adams County

Natchez National Cemetery (Civil War Era National Cemeteries MPS) 41 Cemetery Rd., Natchez, 99001387

NEBRASKA

Furnas County

Faling, W.H., House, 606 Parker St., Cambridge, 99001388

Gage County

Christ Church Episcopal, 520 N. 5th St., Beatrice, 99001389

Hall County

Grand Island Senior High School, 500 Walnut St., Grand Island, 99001390

NEW MEXICO

Dona Ana County

Bermudez Home Place 2008 Calle de El Paso Mesilla, 99001405

NORTH CAROLINA

Orange County

Faucette, Maude, House, 1830 Hall's Mill Rd., Efland vicinity, 99001391

Wake County

Pope, Dr. M.T., House, 511 S. Wilmington St., Raleigh, 99001392

TENNESSEE

Montgomery County

Madison Street Historic District (Clarksville MPS) Address Restricted, Clarksville, 99001393

Obion County

East Main Street and Exchange Street Historic District (Union City, Tennessee MPS) Roughly along Main, Exchange and Church Sts., Union City, 99001394

TEXAS

Bexar County

San Antonio National Cemetery (Civil War Era National Cemeteries MPS) 517 Paso Hondo St., San Antonio, 99001395

VERMONT

Windsor County

Wilder Village Historic District, Portions of Norwich, Passumpsic, and Horseshoe Aves., Chestnut, Gillette, Fern, Hawthorn, Locust and Division Sts., Hartford, 99001396

WEST VIRGINIA

Jefferson County

Boidstones Place, Shepherd Grade, Shepherdstown vicinity, 99001397

Kanawha County

Charleston Municipal Auditorium, 224–232 Virginia St. E., Charleston, 99001398

Washington, Booker T., High School, Wyatt St. off US 60, London vicinity, 99001399

Mercer County

President's House, Bluefield State College, Rock St., Bluefield, 99001400

Monongalia County

Chancery Hill Historic District, Roughly bounded by S. High St., Oak Grove Cemetery, Waitman, Allison and Simpson Sts., Morgantown, 99001401

Nicholas County

Hamilton, Martin, House, WV 39, Summersville, 99001403

Ohio County

East Wheeling Historic District, Roughly bounded by Chapline, Eoff, 18th, McColloch, 12th and 11th Sts., Wheeling, 99001402

Tyler County

Friendly City Building and Jail, WV 2, Orchard St., Friendly, 99001404

[FR Doc. 99–28601 Filed 11–1–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and an Associated Funerary Object in the Control of the Bay County Historical Society, Bay City, MI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and an associated funerary object in the control of the Bay County Historical Society, Bay City, MI.

A detailed assessment of the human remains was made by Bay County Historical Society professional staff in consultation with representatives of the Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation.

In 1965 or 1966, human remains representing one individual were removed from an area north of the Third Street bridge, Bay City, MI during a dredging project on the west bank of the Saginaw River by a person whose name is withheld by the institution. In 1998, the son of the original collector, whose name is also withheld by the institution, contacted the Bay County Historical Society for the purpose of repatriation. No known individual was identified. The one associated funerary object is a metal artifact, possibly a strike-a-light.

Based on burial location, the associated funerary object, and forensic information, this individual has been identified as Native American from the historic period. Based on the burial location and associated funerary object, these human remains appear to be associated with site 20BY28, the Fletcher site which was excavated during 1967-68 and 1979 by Michigan State University. Based on site location and material culture, site 20BY28 has been identified as an 18th century occupation site. Historical documents indicate Saginaw Chippewa settlements in close proximity to this cemetery area during the late 18th century.

Based on the above mentioned information, officials of the Bay County Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Bay County Historical Society have also determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bay County Historical Society have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary object and the Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation.

This notice has been sent to officials of the Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary object should contact Ms. Gay McInerney, Executive Director, Bay County Historical Society, 321 Washington Avenue, Bay City, MI 38708; telephone: (517) 893-5733, before December 2, 1999. Repatriation of the human remains and associated funerary object to the Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation may begin after that date if no additional claimants come forward.

Dated: October 26, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–28626 Filed 11–1–99; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–621 (Review)]

Compact Ductile Iron Waterworks Fittings From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on compact ductile iron waterworks fittings from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on compact ductile iron waterworks fittings from

China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 21, 1999. Comments on the adequacy of responses may be filed with the Commission by January 13, 2000.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, the Department of Commerce issued an antidumping duty order on imports of compact ductile iron waterworks fittings from China (58 FR 47117). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found in the affirmative for two Domestic Like Products: (1) All iron waterworks fittings and (2) all iron glands. One Commissioner defined the Domestic Like Product differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found in the affirmative for two Domestic Industries: producers of (1) All iron waterworks fittings and (2) all iron glands. One Commissioner defined the Domestic Industry differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is September 7, 1993.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 13, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

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[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–041, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined by the Commission in its original determination, and for each of the products identified by Commerce as Subject Merchandise. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1992.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the

ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–25832 Filed 11–1–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–556 (Review)]

Drams of 1 Megabit and Above From Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on DRAMs of 1 megabit & above from Korea.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on dynamic random access memories (DRAMs) of 1 megabit & above from Korea would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 21, 1999. Comments on the adequacy of responses may be filed with the Commission by January 13, 2000.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1993, the Department of Commerce issued an antidumping duty order on imports of DRAMs of 1 megabit & above from Korea (58 FR 27520). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Korea.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: all DRAMs and video random access memories (VRAMs), irrespective of density, assembled or unassembled, packaged in memory modules or not. The Commission also determined not to establish an upper density limit on the Domestic Like Product based on existing densities of DRAMs then currently available.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry: companies which perform some aspect of DRAM production, excluding companies which only assemble memory modules from purchased DRAMs. Certain Commissioners defined the Domestic Industry differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is May 10, 1993.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

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[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–038, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 13, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1992.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units, by density, and value data in thousands of U.S. dollars, f.o.b. plant, by density). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units, by density, and value data in thousands of U.S. dollars, by density). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject

Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units, by density, and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties, by density). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28528 Filed 11–1–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–624–625 (Review)]

Helical Spring Lock Washers From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on helical spring lock washers from China and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on helical spring lock washers from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 21, 1999. Comments on the adequacy of responses may be filed with the Commission by January 13, 2000.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1993, the Department of Commerce issued an antidumping duty order on imports of helical spring lock washers from Taiwan (58 FR 34567). On October 19, 1993, the Department of Commerce issued an antidumping duty order on imports of helical spring lock washers from China (58 FR 53914). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or an expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the

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[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–040, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: helical spring lockwashers.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found one Domestic Industry: producers of helical spring lockwashers.

(5) The *Order Dates* are the dates that the antidumping duty orders under review became effective. In the review concerning Taiwan, the Order Date is June 28, 1993. In the review concerning China, the Order Date is October 19, 1993.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 13, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section

771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1992.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28530 Filed 11–1–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–571 (Review)]

Professional Electric Cutting Tools From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on professional electric cutting tools from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on professional electric cutting tools from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 21, 1999. Comments on the adequacy of responses may be filed with the Commission by January 13, 2000.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 2, 1999.

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[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–039, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On July 12, 1993, the Department of Commerce issued an antidumping duty order on imports of professional electric cutting tools from Japan (58 FR 37461). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found in the affirmative for one Domestic Like Product. Three Commissioners defined this Domestic Like Product to be professional electric cutting tools. Three Commissioners defined this Domestic Like Product to be electric cutting tools (encompassing consumer and professional electric cutting tools). For purposes of this notice, you should report separately on each of the following Domestic Like Products: (1) professional electric cutting tools and (2) electric cutting tools.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found in the affirmative for one Domestic Industry. Three Commissioners defined this Domestic Industry as all producers of professional electric cutting tools but excluded domestic producer Makita Corp. of America (MCA) from the Domestic Industry under the related parties provision. Three Commissioners defined this Domestic Industry as all producers of electric cutting tools but also excluded MCA. For purposes of this notice, you should report information separately on each of the preceding Domestic Industries.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is July 12, 1993.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 13, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1992.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28529 Filed 11–1–99; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–470–472 and 671–673 (Review)]

Silicon Metal From Argentina, Brazil, and China and Silicomanganese From Brazil, China, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on silicon metal from Argentina, Brazil, and China; the antidumping duty orders on silicomanganese from Brazil and China; and the suspended investigation on silicomanganese from Ukraine.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on silicon metal from Argentina, Brazil, and China; the antidumping duty orders on silicomanganese from Brazil and China; and the suspended investigation on silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 21, 1999. Comments on the adequacy of responses may be filed with the Commission by January 13, 2000.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.Q02

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On the dates listed below, the Department of Commerce issued antidumping duty orders on the subject imports:

Order date	Product/country	Inv. No.	F.R. cite
6/10/91	Silicon metal/China	731–TA–472	56 F.R. 26649
7/31/91	Silicon metal/Brazil	731–TA–471	56 F.R. 36135
9/26/91	Silicon metal/Argentina	731–TA–470	56 F.R. 48779
12/22/94	Silicomanganese/Brazil	731–TA–671	59 F.R. 66003
12/22/94	Silicomanganese/China	731–TA–672	59 F.R. 66003

On October 31, 1994, the Department of Commerce suspended an antidumping duty investigation (Inv. No. 731–TA–673) on imports of silicomanganese from Ukraine (59 F.R. 60951, Nov. 29, 1994). The Commission is conducting reviews to determine whether revocation of the orders and termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or an expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Argentina, Brazil, China, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations concerning silicon metal, the Commission found one Domestic Like Product: silicon metal, regardless of grade, having a silicon content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon. In its original determinations concerning silicomanganese, the Commission found one Domestic Like Product: all silicomanganese. For purposes of this notice, you should report information separately on each of the following Domestic Like Products: (1) silicon metal, regardless of grade, having a silicon content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon and (2) all silicomanganese.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations concerning silicon metal, the Commission found one Domestic Industry: producers of silicon metal, regardless of grade, having a silicon content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon. In its original determinations concerning silicomanganese, the Commission one Domestic Industry: producers of silicomanganese. For purposes of this notice, you should report information separately on each of

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[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–037, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

the following Domestic Industries: (1) producers of silicon metal, regardless of grade, having a silicon content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon and (2) producers of silicomanganese.

(5) The *Order Dates* are the dates that the antidumping duty orders under review became effective and the investigation was suspended. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 13, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined above, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders and termination of the suspended investigation on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since the years the petitions were filed. The Subject Merchandise, the Subject Countries, and the years the petitions were filed are listed below:

Subject merchandise/subject countries	Years
Silicon metal/Argentina, Brazil, and China	1990
Silicomanganese/Brazil, China, and Ukraine	1993

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data for silicon metal in gross tons; quantity data for silicomanganese in short tons; and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data for silicon metal in gross tons; quantity data for silicomanganese in short tons; and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data for silicon metal in gross tons; quantity data for silicomanganese in short tons; and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28531 Filed 11–1–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Chemetco, Inc.*, Civ. No. 93–482–WDS (S.D. Ill.), was lodged with the United States District Court for the Southern District of Illinois on October 18, 1999, pertaining to the Chemetco's secondary cooper smelting facility, located in Hartford, Illinois. The proposed consent decree would resolve the United States' civil claims against Chemetco brought under the Clear Air Act, 42 U.S.C. 7401 to 7671q.

Under the proposed consent decree, Chemetco will pay a civil penalty of $305,267 and undertake a number of injunctive measures at the Facility, including installation of a Continuous Particulate Mass Monitor System.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree.

Comments pertaining to the proposed consent decree should refer to *United States* v. *Chemetco, Inc.*, Civ. No. 93–482–WDS (S.D. Ill.), and DOJ Reference No. 90–5–2–1–1845.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Southern District of Illinois, 9 Executive Drive, Suite 300, Fairview Heights, Illinois 62208, (618) 628–3700; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson

Boulevard, Chicago, Illinois 60604–3590 (contact Jeffery Trevino (312–886–6729)). A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $10.25 for the consent decree only (41 pages at 25 cents per page reproduction costs), or $17.50 for the consent decree and its appendices (70 pages), made payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–28558 Filed 11–1–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–20]

City Drug Co.; Denial of Application

On February 24, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to City Drug Company (Respondent) of Opp, Alabama, notifying it of an opportunity to show cause as to why DEA should not deny its application for registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter received by DEA on March 30, 1998, Respondent requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Mobile, Alabama on October 28, 1998, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument. On June 30, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to Judge Bittner's opinion and on August 10, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent is a pharmacy that is located in Opp, Alabama. Joseph Grimes was Respondent's owner and pharmacist in charge until November 12, 1997. Respondent previously possessed DEA Certificate of Registration AC5430450, which was revoked, following a hearing, by the then-Acting Deputy Administrator in a final order dated October 7, *1997*, and effective November 13, 1997. See 62 FR 53338 (October 14, 1997).

In revoking Respondent's previous DEA registration, the then-Acting Deputy Administrator concluded that a 1992 investigation revealed that between January 1990 and January 1992, Respondent violated 21 U.S.C. 829 and 21 CFR 1306.04 by dispensing over 25,000 dosage units of controlled substances without a physician's authorization. The then-Acting Deputy Administrator based this conclusion on affidavits submitted by 11 physicians who reviewed prescriptions found at Respondent that were attributed to them, compared these prescriptions to their patient charts, and then swore that they had not authorized the prescriptions. The then-Acting Deputy Administrator found unpersuasive Respondent's argument that the physicians had forgotten to note the issuance of the prescriptions in the patient charts, stating that it was "highly unlikely that eleven different physicians forgot to note numerous prescriptions in the patient charts which accounted for the dispensing of over 25,000 dosage units of controlled substances." The then-Acting Deputy Administrator also found that the patients' affidavits submitted by Respondent were less reliable than the physicians' affidavits since the physicians' affidavits were "based upon a review of [their] patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits [were] based upon their recollection more than six years after the event."

The then-Acting Deputy Administrator further concluded that Respondent violated 21 U.S.C. 827, by failing to maintain complete and accurate records of controlled substances, as evidenced by Respondent's inability to account for more than 80,000 dosage units of Schedule III and IV substances, and to explain an overage of 859 dosage units of oxycodone 5 mg., the only Schedule II controlled substance that was audited.

In revoking Respondent's previous DEA Certificate of Registration, the then-Acting Deputy Administrator states that:

> (Joseph) Grimes has failed to acknowledge that he and his pharmacy have done anything improper. An unexplained shortage of 80,000 dosage units and the unauthorized dispensation of over 25,000 dosage units of controlled substances are not merely minor technical violations. The egregious nature of the violations in this matter demonstrate that Respondent has failed miserably in its responsibility as a DEA registrant to protect against the diversion of controlled substances from the legitimate chain of distribution.

Id. at 53343.

On November 12, 1997, the day before the effective date of the revocation of Respondent's previous DEA Certificate of Registration, Joseph Grimes executed a Bill of Sale that transferred, "in consideration of *ten dollars and other good and valuable consideration,*" a life estate in Respondent to Louie Grimes. Louie Grimes is Joseph Grimes' nephew and is also a pharmacist. The "other good and valuable consideration" noted in the Bill of Sale was an oral agreement that Joseph Grimes would continue to work at Respondent two days per week in return for $1,500 per month, and that he would also receive rent of $1,500 per month on the building in which the pharmacy is located. According to the attorney who drafted and notarized the Bill of Sale, Louie Grimes may transfer his life estate in Respondent but that the pharmacy would revert back to Joseph Grimes upon his nephew's death.

Louie Grimes testified that when he took over operation of Respondent he withdrew the funds from the pharmacy's bank account and used those funds to open a new account in a different bank in Respondent's name. The utilities and business license fees are paid from this account, and Joseph Grimes is not authorized to sign any business check for Respondent. However, Louie Grimes was unaware that the utilities for the property where Respondent is located are listed in Joseph Grimes' name.

On November 13, 1997, Louie Grimes executed the application that is the subject of these proceedings on behalf of Repondent. On the application, Louie Grimes answered "No" to a question which asked whether "the applicant ever surrendered or had a Federal controlled substance registration revoked."

At the hearing regarding Respondent's pending application for registration, evidence was presented from the 1992 investigation concerning Louie Grimes' involvement in the operation of Respondent at that time. During the execution of the search warrant at Respondent on March 2, 1992, Joseph Grimes indicated that Louie Grimes worked part-time at Respondent as a pharmacist. According to Louie Grimes, he worked three days a week and Joseph Grimes worked three days a week during the relevant time period. As discussed above prescription records were seized from Respondent and DEA investigations generated a computer report with information from these prescriptions, including the initials of the dispensing pharmacist. This information was later shown to eleven physicians who allegedly authorized a number of the prescriptions. Each of these physicians, after reviewing their patient charts, swore in written declarations that they did not prescribe most of the controlled substances attributed to them. The declarations of two of the physicians indicated that Louie Grimes dispensed 870 dosage units of controlled substances that they had not authorized. In addition, the declarations revealed eight instances, when Louie Grimes refilled controlled substance prescriptions more than five times or more than six months after issuance of the original prescription in violation of 21 U.S.C. 829(b), for a total of 550 dosage units.

Louie Grimes testified at the hearing that he never dispensed a controlled substance without a physician's authorization and that he never refilled a controlled substance prescription more than five times or after six months from its being issued. In an effort to refute the physicians' declarations, Louie Grimes argued that nurses frequently telephone in prescriptions for physicians to pharmacies and in these instinces probably failed to note them in the patient charts. This explanation was rejected by the then-Acting Deputy Administrator in revoking Respondent's previous DEA registration as unlikely given the volume of authorized dispensation.

Louie Grimes also argued that another possible explanation for his initials appearing next to the unauthorized prescriptions is that Respondent uses (and used during the relevant time period) a pharmacy software program to track prescriptions that requires the pharmacist on duty to enter his initials into the computer when he begins work. According to Louie Grimes, these initials remain in the system until the user exits the program or a pharmacist affirmatively changes the initials. Therefore if two pharmacists were on duty at the same time, one could not be absolutely sure which pharmacist filled a particular prescription.

However, the Government entered into evidence a "Daily Transaction Report" created by Respondent for May 22, 1991, which lists orginal prescriptions in the order that they were dispensed at the pharmacy and the initials of the pharmacist that allegedly filled each prescription. This report indicates that Louie Grimes dispensed ten original prescriptions, Joseph Grimes then dispensed three original prescriptions, Louie Grimes then dispensed another four original prescriptions, and finally Joseph Grimes dispensed another ten original prescriptions.

Louie Grimes testified at the hearing that although the Alabama State Board of Pharmacy required pharmacies to maintain a Daily Transaction Report on which the dispensing pharmacist for each prescription is identified by his initials, he could not be completely sure which pharmacist dispensed controlled substances at any given time. However, he also testified that "we could pretty much go by initials," and that he believed that during the relevant time period, Respondent complied with 21 CFR 1304.24 and 1306.22, which required a pharmacy to maintain certain information, including the initials of the pharmacist who dispenses or refills a controlled prescription.

After receiving Respondent's November 12, 1997 application for registration, DEA investigated whether ownership of Respondent had in fact been transferred. Louie Grimes produced documents pertaining to the transfer of ownership and a copy of his State pharmacy permit. As of November 13, 1997, Respondent has not been authorized to dispense controlled substances. Louie Grimes works as the pharmacist at Respondent four days per week and Joseph Grimes is the pharmacist two days per week. However, should Respondent become registered with DEA, Respondent would need a waiver of 21 CFR 1306.04(a) to continue to employ Joseph Grimes with access to controlled substances, in light of the earlier revocation of Respondent's DEA Certificate of Registration.

Louie Grimes testified at the hearing in this matter that he has taken certain measures to ensure that no prescription drugs are dispensed without a prescription authorized by a physician. Specifically, he testified that for oral prescriptions, he notes the person who called in the prescription and the time of the call. Further, Respondent no longer uses doctors' prescription pads to reduce oral prescriptions to writing.

A DEA investigator testified at the hearing that she had not received any complaints regarding Louie Grimes from physicians or the general public. Louie Grimes testified that he has never been charged with a crime and has never had any action taken against him by DEA or the State of Alabama. He further testified that he has never received any complaints from customers or anyone else regarding his conduct as a pharmacist.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that the granting of a registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

Regarding factor one, it is undisputed that Respondent is currently licensed to handle controlled substances in Alabama. But as Judge Bittner noted, "inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration, * * * this factor is not determinative."

Factors two and four, Respondent's experience in the dispensing of controlled substances and its compliance with applicable laws, are clearly relevant in this matter in determining the public interest. Respondent's previous DEA registration was revoked based upon the then-Acting Deputy Administrator's findings that Respondent could not account for over 80,000 dosage units of controlled substances and that the Respondent had dispensed more than 25,000 dosage units of controlled substances without a physician's authorization. The then-Acting Deputy Administrator did not find Respondent's explanation persuasive regarding the unauthorized dispensing of controlled substances. The then-Acting Deputy Administrator's findings regarding the previous revocation are *res judicata* for purposes of this proceeding. *See Stanley Alan Azen, M.D.*, 61 FR 57893 (1996), *Liberty Discount Drugs, Inc.*, 57 FR 2788 (1992).

Louie Grimes is now the owner of Respondent. However, Louis Grimes was also a pharmacist at Respondent, working three days a week, during 1990 to 1992, when the above violations occurred. Louie Grimes insists that he never dispensed a controlled substance in violation of Federal laws and regulations. But, the Government presented evidence that Louie Grimes was responsible for the unlawful dispensation of approximately 1,400 dosage units of controlled substances.

Louie Grimes' contention that the physicians were mistaken and that they had in fact authorized the prescriptions in question was rejected by the then-Acting Deputy Administrator, and his conclusions are binding for purposes of this proceeding.

Louie Grimes' other contention that his initials appeared next to unauthorized dispensations because changes were not made in the computer is also rejected by the Deputy Administrator. The Daily Transaction Report generated by Respondent for May 22, 1991, shows that, at least on that day, the pharmacist's initials were changed throughout the day. Further, Louie Grimes' own testimony at the hearing was contradictory. On the one hand, he maintained that Respondent's computer program made it impossible to be certain who dispensed a controlled substance prescription when two pharmacists were on duty at the same time. But, he also testified that he was "a hundred percent" certain that he was always in compliance with State and Federal laws requiring that the dispensing pharmacist's initials appear next to each dispensation in the pharmacy's records.

As Judge Bittner noted, this explanation was first raised at that hearing. Judge Bittner concluded that "Louie Grimes' testimony regarding Respondent's computer program was a last-ditch attempt at avoiding responsibility for his actions during the relevant time period and that Louie Grimes did in fact on numerous occasions dispense controlled substances without a physician's authorization, or refill a prescription more than five times or after six months from its original issuance."

Regarding factor three, there is no evidence that Respondent or its owner or employees have ever been convicted under State of Federal laws relating to the manufacture, distribution, or dispensing of controlled substances.

As to factor five, the Government contends that the legitimacy of the transfer of Respondent from Joseph Grimes to Louie Grimes and also the role that Joseph Grimes will play in Respondent's future management should be considered. "The [Deputy] Administrator has long held that applications for registration should be denied where there is a likelihood that a transfer of ownership or control of business is actually an attempt to contravene the effects of a revocation." *Hilltop Pharmacy*, 53 FR 35936 (1988) (citing *Darrow Drug, Inc.*, 49 FR 39246 (1984)). Similarly, the Deputy Administrator may look to who exerts influence over the registrant; sometimes the bonds linking the former owner to the new owner are too close to ensure that the former owner will have no influence over the operation of the pharmacy. *See Monk's Pharmacy*, 52 FR 8988 (1987), *Carriage Apothecary*, 52 FR 27599 (1987).

Judge Bittner did not make findings regarding the legitimacy of the transfer of ownership since the Government did not pursue this issue but instead focused on the immediate and potential future effect of the transfer. The then-Acting Deputy Administrator found that during the time that Joseph Grimes was Respondent's owner and managing pharmacist, Respondent "failed miserably in its responsibility as a DEA registrant." Joseph Grimes continues to receive employment, salary and rent from Respondent. In addition, he holds a reversionary interest in Respondent. Therefore the Deputy Administrator concludes that Joseph Grimes continues to derive a benefit from Respondent's operation. The Deputy Administrator agrees with judge Bittner that "Joseph Grimes' continued interest in Respondent, considered in conjunction with the Grimes' familial relationship and the nominal consideration for the life estate, lead * * * to the conclusion that the bonds linking Joseph Grimes with Louie Grimes and Respondent are too close to ensure that Joseph Grimes will have no influence in the operation of Respondent."

The Deputy Administrator agrees with Judge Bittner's conclusion that Respondent's registration would be inconsistent with the public interest. From 1990 to 1992, Respondent could not account for over 80,000 dosage units of controlled substances and dispensed more than 25,000 dosage units of controlled substances without a physician's authorization. During that time, Louie Grimes worked three days a week as a pharmacist at Respondent and some of the unauthorized dispensations are attributable to Louie Grimes. Yet Louie Grimes continues to lay blame elsewhere, with the physicians or the computer program, rather than accept responsibility for his actions. In addition, Respondent did not present any persuasive evidence of meaningful procedural changes since 1992 that would ensure that it will not again fail to account for controlled substances or dispense controlled substances without authorization. Further, the Deputy Administrator is troubled by Joseph Grimes' continued involvement with Respondent and his reversionary interest in Respondent.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration, executed by Respondent, be, and it hereby is , denied. This order is effective November 2, 1999.

Dated: October 25, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–28602 Filed 11–1–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 5, 1999, and published in the **Federal Register** on August 20, 1999 (64 FR 45565), ISP Freetown Acquisition Corp., 238 South Main Street, Freetown, Massachusetts 02702 which has changed its name to ISP Freetown Fine Chemicals Inc. made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basis class of controlled substance listed in Schedule I.

This firm plans to manufacture bulk 2,5-Dimethoxyamphetamine of conversion into a noncontrolled substance.

A registered bulk manufacturer of 2,5-Dimethoxyamphetamine filed written comments requesting that DEA not grant a registration because of the already existing adequate competition and supply in the domestic market, and significant diversion risks. Review of the APA's definitions of license and licensing reveals that the granting or denial of a manufacturer's registration is a licensing action, not a rulemaking. Courts have frequently distinguished between agency licensing actions and rulemaking proceedings. *See, e.g. Gateway Transp. Co.* v. *United States,* 173 F. Supp. 822, 828 (D.C. Wis. 1959); *Underwater Exotics, Ltd.* v. *Secretary of the Interior,* 1994 U.S. Dist. LEXIS 2262 (1994) Courts have interpreted agency action relating to licensing as not falling within the APA's rulemaking provisions.

DEA has considered the factors in Title 21, United States Code, Section 823 (a) and the objector's arguments, and determined that the registration of the ISP Freetown Fine Chemicals Inc. to manufacture 2,5-Dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated the firm to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the applicant's physical security systems, verification of the applicants compliance with state and local laws, and review of the firm's background and history.

Under Title 21, Code of Federal Regulations, Section 1301.33b, DEA is not required to limit the number of manufacturers solely because a smaller number is capable of producing an adequate supply provided effective controls against diversion are maintained. DEA has determined that effective controls against diversion will be maintained by ISP Freetown Fine Chemicals Inc.

Therefore, pursuant to 21 U.S.C. Section 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of 2,5-Dimethoxyamphetamine is granted.

Dated: October 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–28604 Filed 11–1–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–37]

NVE Pharmaceuticals, Inc.; Denial of Applications

On July 14, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to NVE Pharmaceuticals, Inc. (Respondent), notifying it of an opportunity to show cause as to why DEA should not deny its May 7, 1997 applications for registration as an exporter of List I chemicals pursuant to 21 U.S.C. 958(c) and as a manufacturer for distribution of List I chemicals pursuant to 21 U.S.C. 823(h), for reason that such registration would be inconsistent with the public interest.

Respondent timely filed a request for a hearing on the issues raised by the Order to Show Cause. The hearing was held in Newark, New Jersey on December 3, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, the Government called witnesses to testify and introduced documentary evidence. Respondent introduced documentary evidence, however it did not call any witnesses to testify. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On June 17, 1999, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending that Respondent's applications for registration be denied. Neither party filed exceptions to Judge Randall's Recommended Rulings, Findings of Fact, Conclusions of Law and Decision, and on July 21, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, except as specifically noted, the Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent was incorporated in 1986 with Robert Occhifinto as its president. Respondent is a manufacturer and distributor of over-the-counter pharmaceutical products and nutritional vitamins, including diet and exercise supplements. Some of the products that Respondent manufactures and sells contain, in whole or in part, the listed chemicals ephedrine, pseudoephedrine, and phenylpropanolamine (PPA). Respondent employs over 70 individuals, many of whom are extremely handicapped. As early as 1997, Respondent established a position for a "Regulatory Affairs" representative who is responsible for ensuring that Respondent complies with regulatory requirements.

Mr. Occhifinto is involved in numerous community and religious activities. He donates his time and personal resources to a variety of causes, and is also responsible for transforming a toxic waste site into a productive business complex.

The Deputy Administrator finds that ephedrine, pseudoephedrine and PPA are all List I chemicals that have legitimate uses, but they can also be used in the illicit manufacture of controlled substances. Ephedrine and pseudoephedrine can be used to manufacture methamphetamine, a Schedule II controlled substance that is a very potent central nervous system stimulant. Abuse of methamphetamine is a growing problem in the United States. The chemicals needed to manufacture methamphetamine are readily accessible at almost any pharmacy or retail store that sells pharmaceutical products. Ephedrine and pseudoephedrine extracted from over-the-counter products is often used in the illicit manufacture of methamphetamine.

In an effort to curb the use of licit chemicals in the illicit manufacture of controlled substances, Congress amended the Controlled Substances Act in 1988 with the passage of the Chemical Diversion and Trafficking Act (CDTA). Pub. L. 100–690, 102 Stat. 4181 (1988). The CDTA required that records and reports be made of certain transactions involving various chemicals. However, products containing ephedrine and pseudoephedrine were exempt from the recordkeeping and reporting requirements because they were approved for marketing under the Federal Food, Drug, and Cosmetic Act. The CDTA also made it illegal to distribute a listed chemical "knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance * * *." *See* 21 U.S.C. 841(d)(2).

In November 1990, the DEA office in San Francisco discovered four 25 kilogram drums of ephedrine hydrochloride with Respondent's labels on them during the course of an investigation of a large scale methamphetamine manufacturing organization. As a result, the DEA office in Newark began an investigation of Respondent. A review of United Parcel Service (UPS) records, revealed that Respondent had been shipping ephedrine to an individual who lived in West Virginia, and later in California.

During the course of its investigation, DEA discovered that a New York chemical supplier shipped ephedrine hydrochloride to Respondent on July 12, 1990. A review of Respondent's shipping invoices indicated that Respondent claims to have shipped 4,000 bottles of 25 milligram ephedrine tablets to the individual in West Virginia on July 13, 1990. A UPS invoice dated July 13, 1990, indicated that four 70 pound packages were shipped from Respondent to the individual in West Virginia.

A DEA investigator compared the incoming bulk shipment from the New York chemical company to Respondent with the outgoing shipment from Respondent to the individual in West Virginia, and concluded that for the amount of bulk ephedrine purchased by Respondent, an insufficient number of ephedrine tablets was being manufactured. Additionally, the recorded weight of the UPS shipment did not correspond with the same shipment as indicated by Respondent's shipping invoice. Each 25 milligram ephedrine tablet actually weighed 85 milligrams due to the binders and fillers holding the tablet together. Therefore, if 4,000 bottles of 25 milligram tablets were shipped to the individual, as indicated on Respondent's shipping invoice, then the weight of the shipment would have been more than 2.5 times the weight of what was actually shipped according to the UPS record.

Later in 1990, a New Jersey chemical company contacted DEA regarding a suspicious order for ephedrine hydrochloride that it had received from Respondent. DEA controlled and monitored the shipment from the New Jersey chemical company to Respondent, then from Respondent to UPS, and finally to California where it was delivered to the individual's residence. About a week later, in early January 1991, UPS advised DEA of an additional shipment from Respondent to an address in California. Once again, DEA controlled and monitored the shipment from Respondent to the individual's residence in California.

Respondent and Mr. Occhifinto ultimately admitted that from March 22, 1990 through January 2, 1991, 22 shipments totaling 2,700 kilograms of bulk ephedrine hydrochloride powder were shipped from Respondent to the individual. DEA confirmed that the product shipped to the individual was bulk hydrochloride powder, and not ephedrine tablets as indicated by Respondent's invoices. At the time of these shipments, records would have been required for the shipment of bulk ephedrine hydrochloride, however, no records were required for the shipment of ephedrine tablets.

During the course of this investigation, DEA learned that in late 1900 Mr. Occhifinto had been arrested in Florida. In August 1991, Mr. Occhifinto was convicted in the United States District Court for the Middle District of Florida of conspiracy to import hashish, conspiracy to possess hashish, importation of hashish and possession of hashish with intent to distribute. The pre-sentencing report introduced into evidence indicates that the hashish that customs officials confiscated from Mr. Occhifinto was given to him, without his knowledge, by a traveling companion, Roland Bossi. Both Mr. Occhifinto and Mr. Bossi confirmed that "(Mr.) Occhifinto had no knowledge prior to (his arrival at customs) about the contraband that he was carrying." The sentencing judge granted Mr. Occhifinto a downward departure from the sentencing guidelines, "predicated on the (Respondent's) extremely limited involvement in the offense." Mr. Occhifinto was fined $200.00 and received probation.

Following DEA's investigation of Respondent, Mr. Occhifinto cooperated extensively with law enforcement personnel. He provided truthful information regarding Respondent's transactions with the individual in California, and never hid any aspects of his dealings with the individual. He also participated in the criminal prosecution of the individual

On December 17, 1991, Mr. Occhifinto entered into a plea agreement with the United States Attorney's Office, District of New Jersey. He pled guilty to one count of money laundering under 21 U.S.C. 1956, stemming from the transactions between Respondent and the individual, and accepted full responsibility for his actions. In the stipulations attached to the plea agreement, Mr. Occhifinto admitted that he "knew that the funds were the proceeds of unlawful activity involving the manufacture and distribution of controlled substances."

Mr. Occhifinto continued to cooperate with law enforcement personnel and in September 1995, he entered into a voluntary diversionary agreement with DEA, where he agreed, among other things, to limit his sales of pseudoephedrine and to provide DEA with information regarding Respondent's sales of pseudoephedrine.

On June 4, 1996, as a result of his guilty plea, the United States District Court, District of New Jersey, sentenced Mr. Occhifinto to 18 months incarceration, and ordered him to pay a fine of $50,000.00. Mr. Occhifinto was released from prison on December 30, 1997, and he was placed on three years of supervised release.

In 1993, recognizing, among other things that the use of over-the-counter ephedrine products in the illegal manufacture of methamphetamine was increasing, Congress passed the Domestic Chemical Diversion Control Act (DCDCA). Pub. L. 103–200, 107 Stat. 2333 (1993). The DCDCA removed the exemption from recordkeeping and reporting requirements for single entity ephedrine products. In addition, the DCDCA established a registration system for certain handlers of List I chemicals.

On May 7, 1997, Respondent submitted applications for DEA Certificates of Registration to manufacture and to export ephedrine. By Letter to DEA dated September 9, 1997, Respondent requested a modification of both its May 7, 1997 applications, to include the listed chemicals pseudoephedrine and PPA. Since Mr. Occhifinto was incarcerated at the time that the applications were submitted, another individual, by power of attorney, signed the applications and the September 7, 1997 letter, on behalf of Respondent.

The individual who submitted the applications answered "Yes" to the question on the applications which asked:

> Has the applicant ever been convicted of a crime in connection with controlled substances/listed chemicals under State or Federal law, or ever surrendered or had a Federal registration revoked, suspended, restricted or denied, or ever had a State professional license or registration revoked, suspended, denied, restricted or placed on probation?

In addition, he answered "Yes" to the question which asked:

> If the applicant is a corporation * * * has any officer, partner, stockholder, or proprietor been convicted of a crime in connection with controlled substances/listed chemicals under State or Federal law, or ever surrendered or had a Federal controlled substance or listed chemical registration revoked, suspended, restricted or denied, or ever had a State professional license or

controlled substance or chemical registration revoked, suspended, denied, restricted or placed on probation?

These questions are hereinafter referred to as the liability questions. The applications further stated that if a "Yes" answer is provided for either of the liability questions, the applicant should "include a statement using the space provided on the [reverse side of the application.]" In addition, the applications stated that for a "Yes" answer, the applicant is "required to submit a statement explaining such response(s)." However, the applications did not specifically inform the applicant to state the nature of the convictions or to state what type of conviction it was or when it occurred. The following statement was on the reverse of both applications submitted on behalf of Respondent:

> 1990–1991 I sold ephedrine hydrochloride without filing out the appropriate paperwork.
>
> For the past 7 years NVE has manufactured ephedrine-based products without incident and has cooperated extensively with the DEA on numerous occasions.

The DEA investigator who testified at the hearing does not believe that these responses were adequate, since they do not indicate that the president of Respondent was convicted of a crime in connection with controlled substances or listed chemicals.

DEA conducted its pre-registration investigation of Respondent in August or September of 1997. DEA recommended that Respondent install an alarm system in the area in which listed chemicals were going to be stored. According to the DEA investigator, Respondent installed "(a) pretty elaborate alarm system." Later in the fall of 1997, DEA tested the alarm system and concluded that the physical security at Respondent was adequate.

Since Respondent applied for registration prior to a specific date, it was authorized to continue to manufacture and export List I chemicals until its applications for registration were acted upon by DEA. However, it was only authorized to conduct transactions involving listed chemicals with other registered entities or entities that had timely filed applications for registration. Respondent recognized this limitation on its ability to conduct transactions involving ephedrine hydrochloride, pseudoephedrine and PPA. In a letter to its customers dated September 25, 1997, Respondent's Senior Vice President Ron Bossi stated that "it is *mandatory* (that Respondent) have a copy of (the customer's) registration application * * * (and Respondent) must receive a copy of (the customer's) approved application as well."

Respondent regularly sent DEA monthly sales reports for ephedrine, pseudoephedrine and PPA products. A review of these reports revealed that from January 6, 1998 to October 28, 1998, Respondent entered into at least 36 separate transactions involving pseudoephedrine with Select Health, a business located in Oklahoma. Respondent never tried to hide the existence of these sales to Select Health. Since the quantities sold by Respondent to Select Health appeared to be excessive, DEA conducted further investigation. It was determined that Select Health was not registered with DEA to handle listed chemicals, nor did it have an application for registration pending. It was further determined that because almost all of Select Health's business is conducted by mail order, Select Health needed to be registered with DEA.

Although Respondent did disclose its sales to Select Health to DEA, DEA did not inform Respondent that Select Health was not registered. When Respondent independently became aware that Select Health was not registered, Respondent contacted DEA.

After being notified that Select Health had received approximately 3.5 million dosage units of listed chemicals from Respondent, a DEA investigator went to Select Health and met with its owner. The owner informed the investigator that Select Health did not have a DEA registration, nor was she aware that it needed to be registered with DEA. The owner further stated that Respondent never informed her that Select Health needed to be registered with DEA.

In September 1998, DEA seized bottles of 480 tablets of one of Respondent's pseudephedrine products from clandestine laboratories.

Pursuant to 21 U.S.C. 823(h) and 958(c), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest.

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may properly rely on any one or a combination of factors, and may give each factor the weight he deems appropriate in determining whether any application for registration should be denied *See, e.g. Energy Outlet,!* 64 FR 14269 (1999), *see also Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989).

As a preliminary matter, DEA has consistently held that a retail store operates under the control of its owners, stockholders, or other employees. therefore, the conduct of these individuals is relevant in evaluating the fitness of an applicant or registrant for registration. *See, e.g., Energy Outlet*, 64 FR 14 14269 (1999); *Rick's Pharmacy*, 62 FR 42595 (1997); *Big T Pharmacy, Inc.*, 47 FR 51830 (1982). Since, Robert Occhifinto is the president of Respondent, his conduct is relevant in determining whether or not to grant Respondent's applications for registration.

Regarding factor one and Respondent's maintenance of effective controls against the diversion of listed chemicals, it is undisputed that the alarm system and physical security at Respondent is adequate to protect against the diversion of listed chemicals. However as the Government argued, not only did Respondent not maintain effective controls against diversion in its transactions with the individual from West Virginia and then California, it actively engaged in diversion. It shipped ephedrine to the individual on 22 separate occasions knowing that the ephedrine would be used in the illicit manufacture of methamphetamine. Respondent intentionally falsified its invoices to conceal the actual contents of the shipments to avoid DEA's recordkeeping requirements.

In addition, Respondent engaged in at least 36 transactions involving listed chemicals with Select Health, a company not registered with DEA to handle listed chemicals. Pursuant to 21 CFR 1310.07(a), it was Respondent's responsibility to properly identify the other party to a transaction by verifying the identity or registration status of the other party. Here there is no evidence in the record that Respondent attempted to ascertain the registration status of Select Health. As a result, Respondent shipped approximately 3.5 million dosage units of listed chemicals to a company not authorized by DEA to handle the chemical. Respondent's failure to ascertain the registration status of Select Health is further evidence of Respondent's failure to maintain effective controls against the diversion of listed chemicals.

As to factor two, Respondent's compliance with applicable law, the Government contends that Respondent failed to report to DEA transactions involving an "extraordinary quantity" of a listed chemical. Pursuant to 21 CFR 1210.05(a)(1) (1990 & 1991), a regulated person was required to report to DEA "(a)ny regulated transaction involving an extraordinary quantity of a listed chemical." At the time of the 22 shipments to the California individual, Respondent was considered a regulated person and the shipments were considered regulated transactions. See 21 CFR 1310.01(e) and (f)(1) (1990 & 1991). The question then becomes whether these transactions involved an "extraordinary quantity" of a listed chemical requiring that they be reported to DEA.

"Extraordinary quantity" is not defined. In a previous case, the Deputy Administrator evaluated the amount of listed chemical used for various purposes within the manufacturing industry and determined whether the amounts in question were "extraordinary" given the buyer the buyer's stated purpose. *See Alfred Khalily, Inc., d/b/a Alfa Chemical*, 64 FR 31289 (1999). However in this case, no such evaluation can be conducted. The Government did not present any evidence as to why the amount of ephedrine hydrochloride powder shipped to the individual by Respondent should be considered "extraordinary." Therefore, the Deputy Administrator agrees with Judge Randall that the Government "has failed to prove by a preponderance of the evidence that any of the transactions between the Respondent and (the individual) or Select Health involved an 'extraordinary quantity' of ephedrine or any other listed chemical." Thus there is no basis for the Deputy Administrator to conclude that Respondent violated 21 CFR 1310.05(a)(1).

The Government also asserts that pursuant to 21 U.S.C. 841(d)(3) it is unlawful for any person to knowingly or intentionally, "with the intent of causing the evasion of the recordkeeping or reporting requirements of (the CSA) * * * (to) receive() or distribute() a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under (the CSA) is not required." From March 22, 1990 through January 2, 1991, Respondent made 22 shipments of ephedrine powder to the California individual and altered invoices to reflect sales of ephedrine tablets rather than ephedrine powder because no records were required for the shipment of ephedrine tablets in 1990 and 1991. Therefore, the Deputy Administrator concludes that Respondent failed to properly record and report these shipments of ephedrine powder and intentionally misrepresented the shipments on its invoices in violation of 21 U.S.C. 841(d)(3).

The Government further asserts that Respondent violated 21 U.S.C. 841(d)(2) which makes it unlawful for any person to knowingly or intentionally, "possess() or distribute() a listed chemical knowing, or having reasonable cause to believe, that the listed chemical (would) be used to manufacture a controlled substance." In his plea agreement, Mr. Occhifinto stipulated that he knew that he had received funds from the individual originating from unlawful activity involving the manufacture and distribution of controlled substances. Therefore, the Deputy Administrator agrees with Judge Randall that "Respondent, through Mr. Occhifinto, knew or had reason to believe that the ephedrine hydrochloride powder shipped to (California individual) would be used for diversionary purposes in violation of 21 U.S.C. 841(d)(2)."

The evidence also supports a conclusion that Respondent failed to ascertain whether Select Health was registered with DEA as required by 21 CFR 1310.07. Respondent was clearly aware of its responsibilities as evidenced by a letter it placed into evidence signed by its Senior Vice President to its customers indicating that Respondent needed a copy of its customers' registrations. However, there is no indication that Select Health received a copy of this letter. It is undisputed that Respondent shipped listed chemicals to Select Health from January 6 to October 28, 1998, without Select Health being registered with DEA or submitting a timely application for such registration.

The Government also contends that Respondent materially falsified its applications for registration in violation of 21 U.S.C. 843(a)(4)(A), by providing false information in explanation of its affirmative responses to the liability questions. Respondent however argues that it did not materially falsify its applications because it answered "Yes" to the liability questions; an explanation was offered; DEA was aware of Mr. Occhifinto's convictions at the time of the May 1997 applications; and neither Mr. Occhifinto nor Respondent had a motive to attempt to conceal Mr. Occhifinto's prior convictions.

The Deputy Administrator agrees with Judge Randall that the Government has failed to establish that Respondent materially falsified its applications since it did answer "Yes" to the liability questions. However, 21 U.S.C. 843(a)(4)(A) also makes it unlawful for any person to knowingly or intentionally "omit any material information from any application * * *." Here, Respondent clearly failed to disclose on its applications Mr. Occhifinto's hashish convictions or his money laundering conviction. This omission is clearly material since Mr. Occhifinto is Respondent's president and from Respondent's explanation provided on the applications, DEA would not have been on notice of his convictions. The Deputy Administrator agrees with Judge Randall that "(d)espite the Respondent's argument to the contrary, the absence of this information may be considered a material omission regardless of whether the DEA previously was aware of the convictions. * * * The registration application and the applicable law do not provide any exceptions for withholding information that already may be within the DEA's purview." Therefore, the Deputy Administrator concludes that Respondent omitted material information from its applications in violation of 21 U.S.C. 843(a)(4)(A).

The Deputy Administrator notes that there very well may have been a further material omission of information on the applications. Evidence introduced at the hearing by Respondent indicates that Mr. Occhifinto's traveling companion who gave him the bottles containing hashish was named Roland Bossi, and that Mr. Bossi was convicted of controlled substance related offenses. Further evidence introduced by Respondent indicates that the September 1997 letter sent to Respondent's customers regarding the need for a copy of customers' DEA registrations was signed by a Ron Bossi, Senior Vice President. The Deputy Administrator is concerned that this may be the same individual, however the Government presented no evidence to support such a conclusion. Therefore, the Deputy Administrator has not considered these suspicions in rendering his decision in this matter.

Pursuant to factor three, Mr. Occhifinto's convictions can be considered since he is Respondent's president. It is undisputed that in 1991, Mr. Occhifinto was convicted of four counts relating to the smuggling of hashish. Mr. Occhifinto was sentenced to probation based upon his minimal participation. Further, Mr. Occhifinto, was also convicted in 1991 following his guilty plea to one count of money laundering as it related to his shipments of listed chemicals to the California individual. Mr. Occhifinto was ultimately sentenced in 1996 to 18 months incarceration followed by three years of supervised release.

As discussed under factor two, evidence in the record seems to suggest that Respondent's Senior Vice President, who appeared to have a much more significant role in the hashish smuggling endeavor was also convicted of controlled substance-related offenses. However, since no evidence was presented by the Government to indicate that it is the same individual, the Deputy Administrator has not relied on this information in rendering his decision.

Regarding factor four Respondent's experience in manufacturing and distributing listed chemicals, Respondent has manufactured and distributed pharmaceutical products since 1986. However, the record is clear that Respondent distributed listed chemicals from March 22, 1990 through January 2, 1991 knowing that they were to be used in the illicit manufacture of methamphetamine. In addition, as recently as 1998, Respondent was responsible for the distribution of approximately 3.5 million dosage units of a listed chemical to an unregistered customer.

As to factor five, Respondent's product was found at clandestine laboratories in 1990, which initiated the investigation of Respondent, and in 1998. While the evidence in the record does not support a finding that Respondent knew or had reason to believe that these chemicals were being diverted to the illicit manufacture of controlled substances, the Deputy Administrator agrees with Judge Randall that "[d]espite what efforts the Respondent may be making to prevent such an occurrence, these products have been diverted."

The Deputy Administrator agrees with Judge Randall that the Government has presented a prima facie case for denial of Respondent's applications for registration. However, there is evidence in the record regarding Mr. Occhifinto's extensive cooperation with law enforcement, his acceptance of responsibility for his actions, and his active involvement in religious and community-related charitable activities. Further, Mr. Occhifinto did not attempt to hide Respondent's dealings with Select Health and in fact reported to DEA that Select Health was not registered. But as Judge Randall noted, "(w)hile the Respondent may be recognized for its efforts in reporting this violation to the DEA, refraining from any future transactions with Select Health, and in hiring a regulatory affairs representative, the fact remains that had greater preventative actions been taken, the thirty-six unlawful transactions never would have occurred. Remedial efforts are not superior to preventative actions."

In her opinion, Judge Randall indicated that she is troubled by DEA's lack of action in this matter since the shipments to the California individual occurred in 1990 and 1991. Judge Randall stated that "(b)y failing to act against the Respondent from 1991 until the Order to Show Cause in 1998, the Government has weakened its credibility in its argued concern for the public interest in light of the Respondent's past business activities. If the DEA believed then, what it now purports to argue, it should have acted at the time to limit or prohibit the Respondent's, or at least Mr. Occhifinto's, handling of listed chemicals." The Deputy Administrator disagrees with Judge Randall. There was no action that DEA could have taken, short of the criminal action that it did, or possibly civil action. Respondent did not even apply for registration until May 1997 and all applicants who submitted their applications by a specific date were allowed to continue in operation until action was taken regarding the applications

Judge Randall concluded, and the Deputy Administrator agrees, that despite Mr. Occhifinto's cooperation with law enforcement, his willingness to comply with DEA security requests, and his activities within the community, it is inconsistent with the public interest to issue Respondent a DEA registration. Respondent has failed to maintain effective controls against diversion as evidenced by its shipments to the California individual. Mr. Occhifinto has been convicted of two offenses related to the handling of controlled substances and listed chemicals. As recently as 1998, Respondent made a number of shipments of a listed chemical to an unregistered customer. Finally, no assurances have been made by Respondent that procedures are in place to prevent future transgressions. While Respondent has apparently hired a regulatory compliance officer, no evidence was presented concerning that individual's duties, responsibilities, and authority within Respondent. Also, no evidence was presented as to the extent of Mr. Occhifinto's participation in the daily operations of Respondent. As a result, the Deputy Administrator agrees with Judge Randall that one cannot "adequately assess the weight to be given Mr. Occhifinto's prior egregious misconduct in determining the course of business to be followed in the future by the Respondent." Therefore, the Deputy Administrator concludes that Respondent's registration with DEA would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the applications for registration as an exporter of List I chemicals and as a manufacturer for distribution of List I chemicals, submitted by NVE Pharmaceuticals, Inc., be, and they hereby are, denied. This order is effective December 2, 1999.

Dated: October 25, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–28603 Filed 11–1–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 1 p.m., Friday, October 29, 1999.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW, Washington DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); Section 6 (information of a personal nature); (9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action) and (c)(10) (deliberation on adjudicatory matters).

MATTERS TO BE CONSIDERED: Personnel Matters and Case Adjudication.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Suite 11600, Washington, DC 20570, Telephone: (202) 273–1940.

Dated, Washington, DC, October 26, 1999.

By direction of the Board:

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 99–28737 Filed 10–29–99; 2:27 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–324, 50–325, 50–400, 50–261 and 72–3]

Carolina Power & Light Company; Brunswick Steam Electric Plant, Units Nos. 1 and 2; Shearon Harris Nuclear Power Plant, Unit No. 1; H.B. Robinson Steam Electric Plant, Unit No. 2; H.B. Robinson Steam Electric Plant, Unit No. 2 Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 and 72.50 approving the indirect transfer of Facility Operating Licenses DPR–23 for H.B. Robinson Steam Electric Plant Unit 2, DPR–62 for Brunswick Steam Electric Plant Unit 2, DPR–71 for Brunswick Steam Electric Plant Unit 1, and NPF–63 for Shearon Harris Nuclear Power Plant Unit 1, and Materials License SMN–2502 for storage of Robinson spent fuel in the Robinson Independent Spent Fuel Storage Installation (ISFSI), to the extent currently held by Carolina Power and Light Company (CP&L). The indirect transfers would be to a proposed new holding company of CP&L.

According to an application for approval filed by CP&L dated September 15, 1999, which was supplemented on October 8, 1999, CP&L is requesting the consent of the Nuclear Regulatory Commission to the indirect transfers that would result from a proposed corporate restructuring of CP&L. Under the proposed restructuring, a new holding company, CP&L Holdings, Inc. ("Holdings"), will be formed, which will become the parent of CP&L. Current holders of CP&L common stock will receive, on a one-for-one basis, shares of common stock of Holdings such that Holdings will own the common stock of CP&L. CP&L's ownership interests in, and its operation of, its nuclear facilities will not change. No direct transfer of the licenses will occur, as CP&L will continue to hold the licenses. No physical changes to the facilities or ISFSI, or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80 and 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By November 22, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Steven Carr, Associate General Counsel, Legal Department, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602–1551, Voice (919) 546–4161, Fax (919) 546–3805, and E-mail steven.carr@cplc.com; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@nrc.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by December 2, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated September 15, 1999, and supplement dated October 8, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland this 27th day of October 1999.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28597 Filed 11–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 1, 8, 15, and 22, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of November 1

Thursday, November 4

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

9:30 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of November 8—Tentative

Monday, November 8

1:30 p.m. Briefing on Integrated Review of Decommissioning Requirements (Public Meeting) (Contact: Stuart Richards, 301–415–1395)

Tuesday, November 9

9:00 a.m. Meeting on NRC Interactions with Stakeholders on Nuclear Materials and Waste Activities (Public Meeting) Place: NRC Auditorium, Two White Flint North

2:00 p.m. Discussion of Management Issues (Closed—Ex. 2 & 6)

Wednesday, November 10

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

9:30 a.m. Briefing on Draft Maintenance Regulatory Guide (Public Meeting) (Contact: Richard Correia, 301–415–1009)

Week of November 15—Tentative

Friday, November 19

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

Week of November 22—Tentative

Wednesday, November 24

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 29, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–28738 Filed 10–29–99; 2:30 pm]

BILLING CODE 7590–01–M

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* The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to amend a system of records.

SUMMARY: OPM proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency (5 U.S.C. 552(e)(4)).

DATES: The changes will be effective without further notice on December 13, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: This notice covers records that may contain individually identifiable information about FEI program participants supplied by sponsoring agency and the program participant, including application and consent forms, supporting correspondence, class roster and directories. The records contain the name, position title, office address and telephone number, Social Security Number, Federal Executive Institute (FEI) program attended, and, with the approval of the individual, home address and telephone number of program participants. Demographic information is obtained on a completely anonymous basis and is stored as such. This system of records, OPM/Central-10, Federal Executive Institute Program Participants Records, is changed to support the collection and retention of Social Security Numbers and race and national origin (RNO) information.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/CENTRAL 10

SYSTEM NAME:

Federal Executive Institute Program Participant Records.

SYSTEM LOCATION:

Federal Executive Institute, Office of Executive and Management Development, Office of Personnel Management, 1301 Emmet Street, Charlottesville, VA 22903–4899.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Federal, State, and local government employees (both current and former), international executives, former faculty and staff, and Fellowship students who have attended programs at the Federal Executive Institute (FEI).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information supplied by the sponsoring agency and the program participant, including application and consent forms, supporting correspondence, class rosters and directories. The records contain the name, position title, office address and telephone number, Social Security Number, FEI program attended, and, with the approval of the individual, home address and telephone number of program participants. Demographic information is obtained on a completely anonymous basis and is stored as such. It cannot be retrieved as related to any individual. Race and National Origin (RNO) information that is submitted and entered into the system is immediately blocked from individual identification. The RNO information system can generate general reports but the System Administrator(s) is the only individual(s) that can access the original information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions and amendments:

5 U.S.C. 301 and 4117.

PURPOSE(S):

The records are used by FEI staff to administer the program, to promote program participant interaction, and by FEI program participants to maintain contact with other participants. These records may be used to locate individuals for personnel research but no records are released without prior permission. No RNO information will be accessed except as a group with no individual recognition.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1 through 10 of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) apply to the records maintained within this system.

The routine uses listed below are specific to this system of records only:

a. To disclose information to Federal agencies to assist them in planning for executive development programs.

b. To provide information to the FEI Alumni Association for the purpose of mailing association materials to an alumni's home or business address.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy (for 2 years) and automated form.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained. A secondary identifier will be the Social Security Number of an individual (the secondary identifier will not be released in any records). Records may also be retrieved by agency, location and FEI programs.

SAFEGUARDS:

Records kept by FEI officials are maintained in a secured area with access limited to those authorized personnel at FEI whose duties require access. Distribution of information is limited to FEI program participants and specified recipients. In addition:

a. At the request of the individual, his or her home address and telephone number will not be released;

b. Social Security Numbers will not be included in any information released.

c. At the request of the employing agency, information relating to the individual's status (*i.e.*, position title) will not be released.

RETENTION AND DISPOSAL:

Hard copies of applicant files are destroyed after a maximum of 3 years. The automated data base is an ongoing file system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Executive Institute, Office of Executive and Management Development, Office of Personnel Management, 1301 Emmet Street, Charlottesville, VA 22903–4899; Computer Specialist, Federal Executive Institute, Office of Executive and Management Development, Office of Personnel Management, 1301 Emmet Street, Charlottesville, VA 22903–4899.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager(s). Individuals must furnish the following information for their records to be located and identified:

a. Name (possibly Social Security Number).

b. Agency.

c. FEI program attended and dates.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the system manager(s). Individuals must furnish the following information for their records to be located and identified:

a. Name (possibly Social Security Number).

b. Agency.

c. FEI program attended and dates.

Individuals requesting access must also follow OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about them should contact the system manager(s). Individuals must furnish the following information for their records to be located and identified:

a. Name (possibly Social Security Number).

b. Agency.

c. FEI program attended and dates.

Individuals requesting amendment must follow OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

All information in the system comes from:

a. The individuals to whom the records pertain.

b. Employing agency.

[FR Doc. 99–27234 Filed 11–1–99; 8:45 am]

BILLING CODE 6325–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3224]

State of Arizona

As a result of the President's major disaster declaration on October 15, 1999, I find that Maricopa County, Arizona constitutes a disaster area due to damages caused by severe storms, flooding, and high winds that occurred September 14–23, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 14, 1999, and for loans for economic injury until the close of business on July 17, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Arizona may be filed until the specified date at the above location: Gila, La Paz, Pima, Pinal, Yavapai, and Yuma.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 322411 and for economic injury the number is 9F2800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 22, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–28592 Filed 11–1–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3225]

State of Florida

As a result of the President's major disaster declaration on October 20, 1999, I find that the following counties in the State of Florida constitute a disaster area due to damages caused by Hurricane Irene beginning on October 14, 1999 and continuing: Brevard, Broward, Collier, Dade, Glades, Hendry, Highlands, Indian River, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Polk, St. Lucie, Seminole, and Volusia. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 18, 1999 and for economic injury until the close of business on July 20, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Florida may be filed until the specified date at the above location: Charlotte, De Soto, Flagler, Hardee, Hillsborough, Lake, Lee, Manatee, Marion, Pasco, Putnam, and Sumter.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 322508 and for economic injury the number is 9F4700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 22, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–28589 Filed 11–1–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9F26]

State of Florida; Amendment #1

The above-numbered declaration is hereby amended to include Duval and Gulf Counties and the contiguous counties of Baker, Bay, Calhoun, Clay, Franklin, Liberty, Nassau, and St. Johns in the State of Florida as an economic injury disaster loan area as a result of toxic algae blooms, known as Red Tide, beginning on August 19, 1999.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is July 18, 2000.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: October 25, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–28591 Filed 11–1–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9F26]

State of Florida; (And Contiguous Counties in Alabama)

Okaloosa County and the contiguous counties of Santa Rosa and Walton in the State of Florida, and Covington and Escambia Counties in the State of Alabama constitute an economic injury disaster loan area as a result of toxic algae blooms, known as Red Tide, beginning on August 19, 1999. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on July 18, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The economic injury number for the State of Alabama is 9F2700.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: October 18, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–28590 Filed 11–1–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3152]

Culturally Significant Objects Imported for Exhibition Determinations: Johannes Vermeer's "The Art of Painting"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the object to be included in the exhibition Johannes Vermeer's "The Art of Painting," imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit object at the National Gallery of Art, Washington, DC, from on or about December 5, 1999, to on or about February 6, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Jacqueline H. Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: October 25, 1999.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 99–28639 Filed 11–1–99; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request For Public Comment With Respect to the Annual National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector. The TPSC invites written comments that provide views relevant to the issues to be examined in preparing the NTE.

DATES: Public comments are due not later than December 3, 1999.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW, Room 122, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Gloria Blue, Office of Policy

Coordination, Office of the United States Trade Representative, (202) 395–3475.

SUPPLEMENTARY INFORMATION: :Last year's report may be found on USTR's Internet Home Page (www.ustr.gov) under the section on Reports. This year we adding one other country, Romania, to the report, but are not making any change in the list of barrier categories. Finally, in order to ensure compliance with the statutory mandate for reporting foreign trade barriers that are significant, we will focus particularly on those restrictions where there has been active private sector interest.

The information submitted should relate to one or more of the following ten categories of foreign trade barriers:

(1) Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) Standards, testing, labeling, and certification (including unnecessarily restrictive application of phytosanitary standards, refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards, and environmental restrictions);

(3) Government procurement (*e.g.*, "buy national" policies and closed bidding);

(4) Export subsidies (*e.g.*, export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(5) Lack of intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes);

(6) Services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals (*e.g.*, lawyers, doctors, accountants, engineers, nurses, etc.));

(7) Investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);

(8) Anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms that perpetuate the practices);

(9) Trade restrictions affecting electronic commerce (*e.g.*, tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation; and

(10) Other barriers (*i.e.*, barriers that encompass more than one category, *e.g*, bribery and corruption, or that affect a single sector).

As in the case of last year's NTE, we are asking that particular emphasis be placed on any practices that may violate U.S. trade agreements. We are also interested in receiving any new or updated information pertinent to the barriers covered in last year's report as well as new information. Please note that the information not used in the NTE will be maintained for use in future negotiations.

It is most important that your submission contain estimates of the potential increase in exports that would result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: Less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. Such assessments enhance USTR's ability to conduct meaningful comparative analyses of a barrier's effect over a range of industries.

Please note that interested parties discussing barriers in more than one country should provide a separate submission (*i.e.*, one that is self-contained) for each country.

Written Comments: All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW, Room 122, Washington, DC 20508.

All submissions must be in English and should conform to the information requirements of 15 CFR 2003. A party must provide ten copies of its submission which must be received at USTR no later than December 3, 1999.

If the submission contains business confidential information, ten copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "nonconfidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–28649 Filed 11–1–99; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–178]

WTO Dispute Settlement Proceeding Regarding United States—Safeguard Measure on Imports of Lamb Meat From Australia

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of Australia's request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"). Australia challenges the United States' action in imposing temporary quantitative limitations on imports of lamb meat in an effort to prevent serious injury to the domestic industry and to facilitate its adjustment to import competition. In this dispute Australia alleges that the United States' safeguard measure is inconsistent with certain obligations under the WTO Agreement on Safeguards, and the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by January 10, 1999, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Lamb Meat, Office of the United States Trade

Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Marjorie Florestal, Assistant General Counsel at (202) 395–3581 or Teresa Howes, Director for Asian Agricultural Affairs at (202) 395–9559.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on October 14, 1999, Australia submitted a request for the establishment of a WTO dispute settlement panel to examine the U.S. safeguard measure on imports of lamb meat. The WTO Dispute Settlement Body ("DSB") is expected to establish a panel for this purpose in November, 1999.

Major Issues Raised and Legal Basis of the Complaint

Australia challenges the safeguard measure on imports of lamb meat established in Proclamation 7208 of July 7, 1999 (64 FR 37387) (July 9, 1999), and described in the President's Memorandum of July 7, 1999, entitled "Action Under Section 203 of the Trade Act of 1974 Concerning Lamb Meat" (64 FR 37393) (July 12, 1999). In its request for a panel to examine the measure, Australia alleges that the U.S. safeguard action on lamb meat is inconsistent with Articles 2, 3, 4, 5, 6, 11, and 12 of the Agreement on Safeguards, and Articles I, II, and XIX of the GATT 1994.

At Australia's request, on August 26, 1999, the United States and Australia participated in dispute settlement consultations held in Geneva; these consultations did not lead to a satisfactory resolution of the matter.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–178, "Lamb Meat—Australia") may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–28647 Filed 11–1–99; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–177]

WTO Dispute Settlement Proceeding Regarding United States—Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb Meat From New Zealand

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of New Zealand's request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"). New Zealand challenges the United States' action in imposing temporary quantitative limitations on imports of lamb meat in an effort to prevent serious injury to the domestic industry and to facilitate its adjustment to import competition. In this dispute New Zealand alleges that the United States' safeguard measure is inconsistent with certain obligations under the WTO Agreement on Safeguards, and the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by January 10, 1999, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Lamb Meat, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Marjorie Florestal, Assistant General Counsel at (202) 395–3581 or Teresa Howes, Director for Asian Agricultural Affairs at (202) 395–9559.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on October 14, 1999, New Zealand submitted a request for the establishment of a WTO dispute settlement panel to examine the U.S. safeguard measure on imports of lamb meat. The WTO Dispute Settlement Body ("DSB") is expected to establish a panel for this purpose in November, 1999.

Major Issues Raised and Legal Basis of the Complaint

New Zealand challenges the safeguard measure on imports of lamb meat established in Proclamation 7208 of July 7, 1999 (64 FR 37387) (July 9, 1999), and described in the President's Memorandum of July 7, 1999, entitled "Action Under Section 203 of the Trade Act of 1974 Concerning Lamb Meat" (64 FR 37393) (July 12, 1999). In its request for a panel to examine the measure, New Zealand alleges that the U.S. safeguard action on lamb meat is inconsistent with Articles 2, 3, 4, 5, 11, and 12 of the Agreement on Safeguards, and Articles I, II, and XIX of the GATT 1994.

At New Zealand's request, on August 26, 1999, the United States and New Zealand participated in dispute settlement consultations held in Geneva; these consultations did not lead to a satisfactory resolution of the matter.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–177, "Lamb Meat—New Zealand") may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–28648 Filed 11–1–99; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 22, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6380.

Date Filed: October 19, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 AFR–TC3 0084 dated 8 October 1999
Africa-TC3 Expedited Resolutions r1–r20
Intended effective date: 15 November 1999

Docket Number: OST–99–6381.

Date Filed: October 19, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 EUR–SWP 0037 dated 1 October 1999
Europe-South West Pacific Resolutions r1–r22
Minutes—PTC23 EUR–SWP 0038 dated 1 October 1999
Tables—PTC23 EUR–SWP Fares 0016 dated 15 October 1999
Intended effective date: 1 April 2000

Docket Number: OST–99–6387.

Date Filed: October 20, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR–AFR 0092 dated 22 October 1999
Mail Vote 039—Resolution 010j
TC2 Europe-Africa Special Passenger Amending Resolutions To/From Libya
Intended effective date: 8 November 1999

Docket Number: OST–99–6392.

Date Filed: October 21, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 ME–TC3 0079 dated 16 October 1999
Mail Vote 040—TC23 Middle East-South East Asia
Resolution 010k
Special Passenger Amending Resolution from Kuwait
Intended effective date: 15 November 1999

Docket Number: OST–99–6396.

Date Filed: October 22, 1999.

Parties: Members of the International Air Transport Association.

Subject:

CTC COMP 0221 dated 22 October 1999
Resolution 033f—Local Currency Rate Changes—Hungary
Intended effective date: 1 December 1999

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–28613 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 22, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6275.

Date Filed: October 14, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 12, 1999.

Description: Supplement No. 1 to the Application of Delta Air Lines, Inc. "Delta" by adding the following transborder routes to Exhibit A: Atlanta, Georgia—Cozumel, Mexico; Phoenix, Arizona—Mexico City, Mexico.

Docket Number: OST–99–6377.

Date Filed: October 18, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 15, 1999.

Description: Application of Sky Unlimited Ltd. "Sky Unlimited" pursuant to 49 U.S.C. section 41302, part 211 and subpart Q, requests a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail between a point or points in the Bahamas, on the one hand, to a point or points in the United States, on the other hand using small aircraft as defined in 14 C.F.R. section 298.2(u).

Docket Number: OST–99–6385.

Date Filed: October 19, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 16, 1999.

Description: Application of United Air Lines, Inc. ("United") pursuant to 49 U.S.C. section 41102 and subpart Q, applies for a certificate of public convenience and necessity authorizing United to provide scheduled foreign air transportation of persons, property and mail between any point or points in the United States, directly and via any intermediate point or points, and any point or points in the countries listed in Appendix A, and beyond to any point or points in third countries. United also requests authority to integrate the services it provides under the certificate with its other authorized services, consistent with all applicable international agreements.

Docket Number: OST–99–6389.

Date Filed: October 20, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 17, 1999.

Description: Application of United Parcel Service Company "(UPS") pursuant to 49 U.S.C. section 41108 and subpart Q, applies for a certificate of public convenience and necessity to authorize it to engage in the scheduled air transportation of property and mail between any point or points in the United States via intermediate points to a point or points in Argentina, Belize, Panama, Guadeloupe, Haiti, Martinique, Chile, Guyana, Paraguay, Uruguay and Surinam and to points beyond with full traffic rights between all points on these routes. UPS requests route integration authority enabling it to integrate services on the above-described routes with services provided on other routes or under various certificate and exemption authorities held by UPS.

Docket Number: OST–99–6399.

Date Filed: October 22, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 19, 1999.

Description: Application of Air Plus Argentina S.A. ("APA") pursuant to 49 U.S.C. section 41302 and subpart Q, applies for a foreign air carrier permit to enable APA to operate charter foreign air transportation of persons, property, and mail between points in Argentina and points in the United States, including Puerto Rico, and authority to operate charter service between the United States and points in other countries pursuant to part 212.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–28614 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 30, 1999, [FR 64, pages 41482–41483].

DATES: Comments must be submitted on or before December 2, 1999. A comment to OMB is most effective if OMB receives it on or before December 2, 1999.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Flight Engineers and Flight Navigators, FAR 63.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0007.

Forms(s): FAA Form 8400–3, Application for an Airman Certificate and/or Rating.

Affected Public: Estimated 2,969 airmen applying for flight engineer or flight navigator certificate, and training course operators.

Abstract: 49 U.S.C. 44702(a), 44702(a)(2), and 44701(1) authorizes issuance of airman certificates and provides for examination and rating of flying schools, FAR 63 prescribes requirements for flight navigator certification and training course requirements for these airmen. Information collected is used to determine certification eligibility.

Estimated Annual Burden Hours: 1,009 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 27, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–28623 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, [FR 64, pages 29404–29405].

DATES: Comments must be submitted on or before December 2, 1999. A comment to OMB is most effective if OMB receives it on or before December 2, 1999.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Procedures for non-Federal Navigational Facilities, FAR Part 171.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0014.

Forms(s): FAA Forms 6030–1, 6030–17 (formerly 198) 6790–4 (formerly 2396/7) 6790–5.

Affected Public: Estimated 1273 sponsors of non federal navigational facilities.

Abstract: The non-Federal navigation facilities are electrical/electronic aids to air navigation which are purchased, installed, operated and maintained by an entity other than the FAA and are available for use by the flying public. These aids may be located at unattended remote sites or airport terminals.

Estimated Annual Burden Hours: 9,516 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 27, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–29624 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Oakland County International Airport; Pontiac, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Oakland County International Airport, Pontiac, Michigan, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 26, 1999, the FAA determined that the noise exposure maps submitted by Oakland County International Airport under Part 150 were in compliance with applicable requirements. On August 25, 1999, the FAA approved the Oakland County International Airport noise compatibility program. All of the recommendations of the program were approved. A total of 11 measures were included in the Oakland County International Airport recommended program. Of the 11 measures, four are listed as "Noise Abatement Measures," four are listed as "Program Management Measures," and three are listed as "Land Use Measures."

EFFECTIVE DATE: The effective date of the FAA's approval of the Oakland County International Airport noise compatibility program is August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Gary J. Migut, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734–487–7278. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Oakland County International Airport, effective August 25, 1999.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District office in Belleville, Michigan.

Oakland County International Airport submitted to the FAA on February 24, 1999, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 5, 1996, through February 23, 1999. The

Oakland County International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on February 26, 1999. Notice of this determination was published in the **Federal Register** on March 8, 1999.

The Oakland County International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of February 23, 1999 to beyond the year 2002. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 26, 1999, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained 11 proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective Airports effective August 25, 1999.

Outright approval was granted for all of the specific program elements. Issue One, a Land Use Measure, recommends that the Airport purchase of all homes within the 70 DNL noise contour. Issue Two, a Land use Measure, recommends that the Airport will sound attenuate, on a voluntary basis, those single family homes within the 65 or grater DNL noise contour which are economically feasible to attenuate. Issue Three, a Program Management Measure, recommends that the Airport will continue its Noise Concern/Citizen Liaison Program to record all noise concerns received from citizens. Issue four, a Program Management Measure, recommends that the Airport will update and monitor the FAR Part 150 Study at five-year increments or when a significant change in aircraft types or numbers of operations occurs. Issue Five, a Noise Abatement Measure, recommends that the Airport will institute a Fly Quiet Program in an effort to voluntarily reduce the noise levels associated with aircraft operations at the airport. For reasons of aviation safety, this approval does not extend to the use of monitoring equipment for enforcement purposes by in-situ measurement of any preset noise thresholds. Issue Six, a Noise Abatement Measure, recommends that the Airport will construct a run-up enclosure to be used for all jet run-up operations. Issue Seven, a Noise Abatement Measure, recommends that the Airport will construct a noise wall along the north boundary of the airport. Issue Eight, a Noise Abatement Measure, recommends that the Airport will until the noise wall is built, amend its Rules and Regulations to require the use of tugs in the northeast FBO area to pull Stage II jet aircraft to the taxiway. The FAA recognizes that this is a temporary measure whereby the nosier, Stage II aircraft will be towed from the apron to the taxiway in preparation for takeoff. This activity will crease upon completion of the noise wall. Issue Nine, Land Use Measure, recommends that the Airport will amend the Comprehensive Plan for both Waterford and White Lake Townships to reflect compatible future land use development. Issue Ten, a Program Management Measure, recommends that if the Airport determines the Fly Quiet Program is not meeting the voluntary State II phase out goals, then the Airport should initiate the request to fund an FAR Part 161 Study to evaluate the use of Stage II business jets at night, or other measures as appropriate. After the Fly Quiet Program is in place for five years, a determination will be made concerning the initiation of a FAR Part 161 Study. The FAA emphasizes that this measure is recommended for approval for study only, and includes language that does not commit the FAA to any course of action as a result of that study. Issue Eleven, a Program Management Measure, recommends that the Airport will use and maintain the Advisory Committee organized for the Part 150 Study subsequent to the completion of the Part 150 Study and meet on a semi-annual basis to discuss noise abatement issues and to evaluate the progress of the Fly Quiet Program.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on August 25, 1999. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, S.W., Room 617, Washington, DC 20591.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Mr. Karl Randall, Airport Manager, Oakland County International Airport, 6500 Highland Road, Waterford, Michigan 48327–1649.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, September 24, 1999.

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 99–28622 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–186 meeting to be held November 15, starting at 1 p.m., and at 9 a.m. on November 16–18. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: November 15–18, (1) Chairman's Introductory Remarks; (2) Review of Meeting Agenda; (3) Review and Approval of the Relevant Meeting Minutes; (4) Proposed Revision to TORs for SC–186; (5) SC–186 Activity Report and Committee Roadmap: WG–1, WG–3, WG–4; (6) WG–51 Report: SG–1, SG–2; (7) Status/Review Draft CDTI MOPS; (8) Status/Review Draft Ops Concept; (9) Discussion of and Work Plan Formulation for Revised to ADS–B MASSPS, DO–242; (10) Free Flight Select Committee Surveillance Work Group Update; (11) Future Work Programme; (12) Date, Place and Time of Next Meeting; (13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 26, 1999.

Jane P. Caldwell,

Designated Official.

[FR Doc. 99–28621 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6404]

Petition for Grandfathering of Non-Compliant Equipment; National Railroad Passenger Corporation

In accordance with 49 CFR 238.203(f), notice is hereby given that the National Railroad Passenger Corporation (Amtrak) has petitioned the Federal Railroad Administration (FRA) for grandfathering of non-compliant equipment for use on specified rail lines.

Section 238.203 of title 49 of the Code of Federal Regulations addresses static end strength requirements for passenger rail equipment. Paragraph (a)(1) provides that all passenger equipment (subject to limited exceptions) shall resist a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure. Paragraph (d)(2) provides that "[a]ny passenger equipment placed in service on a rail line or lines before November 8, 1999 that does not comply with the requirements of paragraph (a)(1) may continue to be operated on that particular line or (those particular lines) if the operator of the equipment files a petition seeking grandfathering approval under paragraph (d)(3) before November 8, 1999. Such usage may continue while the petition is being processed, but in no event later than May 8, 2000, unless the petition is approved."

Amtrak has petitioned for grandfathering of Talgo articulated trainsets for operation on the rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. The equipment consists of five trainsets of twelve cars each and five spare cars for a total of sixty-five cars. In support of its petition, Amtrak states that, "the Talgo trainsets provide a level of safety to passengers and crew in case of collision that is comparable to that of passenger equipment presently in use in North America."

Interested parties are invited to participate in this proceeding by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding, however, if any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should be identified with Docket Number FRA–1999–6404 and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400 Seventh, SW., Washington, DC 20590–0001. Communications received within 30 days of publication of the notice will be considered by FRA before final action is taken. Comments received after that date will be considered to the extent possible. Amtrak's petition and all written communications concerning this proceeding are available for examination during regular business hours (9 a.m. to 5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

In a related notice published in today's **Federal Register**, FRA has given notice that Amtrak has filed with FRA a petition for exemption under 49 U.S.C. 24305(f) from its statutory domestic preference to permit Amtrak to purchase one of the Talgo trainsets referenced in Amtrak's grandfathering petition. A thirty day comment period is also being provided for this separate proceeding.

Issued in Washington, DC, on October 25, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–28553 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6405]

Petition for Buy American Exemption; National Railroad Passenger Corporation

Notice is hereby given that the National Railroad Passenger Corporation (Amtrak) has petitioned the Federal Railroad Administration (FRA) for an exemption under 49 U.S.C. 24305(f) from its statutory domestic buying preference to permit Amtrak to purchase a Talgo trainset for approximately $11.1 million. The trainset consists of fourteen cars: one business car, one accessible business class car, six coaches, two accessible coaches (one with 2 x 1 seating and one with 2 x 2 seating), one bistro, one diner, one end-service car, and one baggage car. The vendor, Talgo, Inc., is a Washington corporation that is owned by Patentes Talgo SA, a major Spanish manufacturer of railway equipment. Amtrak and Talgo, Inc. estimate that approximately 33% of the total person-hours to construct, test and deliver this trainset have been performed in the United States, and that about 30% of the components have been manufactured in the United States.

Under 49 U.S.C. 24305(f)(2) Amtrak is required to buy only manufactured articles, material and supplies (costing in excess of $1,000,000) manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States. The Secretary of Transportation is authorized to exempt Amtrak from this requirement if the Secretary decides that for particular articles, material, or supplies imposing the Buy American requirements would be inconsistent with the public interest; or that the cost of imposing the requirements would be unreasonable; or if the Secretary determines that the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; or with respect to rolling stock or power train equipment, if the Secretary concludes that the rolling stock or equipment cannot be bought and delivered in the United States within a reasonable time. The Secretary's authority has been delegated to the Federal Railroad Administrator.

On July 22, 1996, the FRA granted a request from Amtrak for a Buy American exemption to purchase one Talgo trainset for use in Amtrak's Northwest Corridor (NW Corridor) service between Seattle and Vancouver, British Columbia.

In support of its current request, Amtrak has indicated that the public interest supports Amtrak's acquisition of this additional trainset, that trainsets that are compatible with those previously purchased by the Washington State Department of Transportation and Amtrak for use in the NW Corridor are not produced or built in this country, so that there are no sufficient and reasonably available commercial quantities of such trainsets manufactured here, and that the trainset that is the subject of this request is currently under lease to Amtrak and, beginning on or about September 2, 1999, will be operated in NW Corridor service. Amtrak states that the acquisition of any other type of new rail passenger equipment for this service would entail a delay of many months or years.

The Administrator has determined that the decision on Amtrak's request would benefit from an opportunity for public comment. All communications concerning this proceeding should be identified with Docket Number FRA–1999–6405 and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400 Seventh, SW, Washington, DC 20590–0001. Communications received within 30 days of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered to the extent possible. All written communications concerning this proceeding, including Amtrak's request, are available for examination during regular business hours (9 a.m. to 5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

In a related notice published in today's **Federal Register**, FRA has given notice that Amtrak has also filed a petition with FRA for grandfathering of Talgo articulated trainsets for operation on the rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego and San Luis Obispo, California. FRA's approval is required because the Talgo equipment does not meet the FRA static end strength requirements for passenger rail equipment found at 49 CFR 238.203. A thirty day comment period is also being provided for this proceeding.

Issued in Washington, DC on October 27, 1999.

Jolene M. Molitoris,

Administrator.

[FR Doc. 99–28554 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3577 (PDA–18(R))]

Application by Association of Waste Hazardous Materials Transporters for a Preemption Determination as to Broward County Florida's Requirements on the Transportation of Certain Hazardous Materials To or From Points in the County

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice reopening comment.

SUMMARY: The Association of Waste Hazardous Materials Transporters (AWHMT) has applied to RSPA for a determination that the Federal hazardous materials transportation law preempts certain Broward County, Florida (the County) requirements pertaining to the transportation of hazardous materials to or from points in the County. AWHMT's application is set forth in RSPA's August 6, 1998 public notice and invitation to comment (63 FR 42098). On September 28, 1999, the Broward County Commissioners approved revisions to the County ordinance that is the subject of AWHMT's application. This Notice reopens the comment period to provide an opportunity to comment on the revised ordinance.

DATES: RSPA will consider comments that are received on or before December 17, 1999, and rebuttal comments that are received on or before January 31, 2000, before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. These additional comments may address only the revised ordinance.

ADDRESSES: You may view AWHMT's application, the revised ordinance, and all comments and other documents submitted in this proceeding in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All documents filed in this proceeding are also available on-line through the home page of DOT's Docket Management System, at "http://dms.dot.gov".

Please submit all additional comments on the revised ordinance to the Dockets Office at the above address. Please submit three copies of each written comment. You may also submit comments electronically by logging on to the Documents Management System at "http://dms.dot.gov". Click on "Help & Information" to obtain instructions for filing the document electronically.

Comments must include the Docket Number RSPA–98–3557. You must also send a copy of each comment to (1) Mr. Michael Carney, Chairman, Association of Waste Hazardous Materials Transporters, 2200 Mill Road, Alexandria, VA 22314, and (2) Mr. Edward A. Dion, County Attorney, 115 S. Andrews Avenue, Suite 423, Fort Lauderdale, FL 33301. You must include a certification that a copy has been sent to these persons with your comments. (The following format is suggested: "I certify that copies of this comment have been sent to Messrs. Carney and Copelan at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Donna L. O'Berry, Office of the Chief Counsel, Research and Special Programs Administration, (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

On April 9, 1998, AWHMT applied for a determination that the Federal hazardous material transportation law preempts certain provisions of the Broward County Code of Ordinances 93–47, Chapter 27, (the Ordinance) pertaining to the transportation of hazardous materials within the County. On August 6, 1998, RSPA published a Public notice and invitation to comment on AWHMT's application (63 FR 42098). The Notice set forth the text of AWHMT's application and asked that comments be filed with RSPA on or before September 21, 1998 and that rebuttal comments be filed on or before November 4, 1998.

On October 26, 1998 the County requested that RSPA stay its review of AWHMT's application for six to eight months. The County requested a stay because it was proposing changes to the Ordinance that would possibly resolve the preemption issues raised in AWHMT's application. On March 15, 1999, RSPA granted the County's request for a stay. The stay was effective until July 1, 1999. On September 28, 1999, the Broward County Commissioners adopted Ordinance No. 1999–53, (the revised Ordinance), which amended Chapter 27. A copy of the revised Ordinance is available through the Docket Management System at the address and Internet site listed above. The document number for the revised Ordinance is RSPA–1998–3577–23.

II. Matters That May Be Addressed in Additional Comments

The revised Ordinance amends, relocates and removes several provisions that AWHMT challenges in its application. The revised Ordinance also creates a new Article XVII, which is entitled "Waste Transporters".

In accordance with 49 CFR 107.219(a), RSPA invites all interested parties to comment on the revised Ordinance.

It appears that the revised Ordinance substantially modifies the previous version of the Ordinance. Therefore, in accordance with 49 CFR 107.219(b), AWHMT is directed to supplement its application, to the extent necessary, to reflect the recent revisions to the Ordinance. For example, AWHMT should ensure that the revisions to the Ordinance have not affected its substantive arguments and it should ensure the accuracy of its citations to particular provisions of the Ordinance.

Issued in Washington, D.C. on October 27, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–28615 Filed 11–1–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comments concerning its extension, without change, for an information collection titled, "(MA)—Securities Exchange Act Disclosure Rules—12 CFR 11."

DATES: You should submit written comments by January 2, 2000.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0106, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0106), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)—Securities Exchange Act Disclosure Rules—12 CFR 11.

OMB Number: 1557–0106.

Form Number: SEC Forms 3, 4, 5, 8–K, 10, 10–K, 10–Q, Schedules 13D, 13G, 14A, 14B, and 14C.

Abstract: This information collection covers the OCC's Securities Exchange Act Disclosure Rules (12 CFR part 11) which require national banks to make public disclosures and file with the OCC certain Securities Exchange Commission forms. Publicly-owned national banks must make disclosures and filings to comply with applicable banking and securities law and regulatory requirements. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed. Investors, depositors, and the public use the information to make informed investment decisions.

Type of Review: Extension, without change, of a currently approved information collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 131.

Estimated Total Annual Responses: 636.

Frequency of Response: Occasional.

Estimated Total Annual Burden Hours: 5,360.

Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 27, 1999.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 99–28571 Filed 11–1–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Diseases Not Associated With Exposure to Certain Herbicide Agents

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Agent Orange Act of 1991, has determined that a presumption of service connection based on exposure to herbicides used in the Republic of Vietnam during the Vietnam era is not warranted for the following conditions: Hepatobiliary cancers, nasal/nasopharyngeal cancer, bone cancer, breast cancer, female reproductive cancers, urinary bladder cancer, renal cancer, testicular cancer, leukemia, abnormal sperm parameters and infertility, motor/coordination dysfunction, chronic peripheral nervous system disorders, metabolic and digestive disorders (other than diabetes mellitus), immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, gastrointestinal tumors, brain tumors, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

FOR FURTHER INFORMATION CONTACT: Donald England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Pub. L. 102–4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease. Section 3 of Pub. L. 102–4 also required that NAS submit reports on its activities every two years (as measured from the date of the first report) for a ten-year period.

Section 2 of Pub. L. 102–4 provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e., the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (i.e., a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Although Pub. L. 102–4 does not define "credible," it does instruct the Secretary to "take into consideration whether the results [of any study] are statistically significant, are capable of replication, and withstand peer review." Simply comparing the number of studies which report a positive relative risk to the number of studies which report a negative relative risk for a particular condition is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between herbicide exposure and the subsequent development of the particular condition. Because of differences in statistical significance, confidence levels, control for confounding factors, bias, and other pertinent characteristics, some studies are clearly more credible than others, and the Secretary has given the more credible studies more weight in evaluating the overall weight of the evidence concerning specific diseases.

NAS issued its initial report, entitled "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam," (VAO) on July 27, 1993. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease, porphyria cutanea tarda, multiple myeloma, and certain respiratory cancers; and that there was no positive association between herbicide exposure and any other condition, other than chloracne, non-Hodgkin's lymphoma, and soft-tissue sarcomas, for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on January 4, 1994 (See 59 FR 341–46).

NAS issued its second report, entitled "Veterans and Agent Orange: Update 1996" (Update 1996), on March 14, 1996. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of prostate cancer and acute and subacute peripheral neuropathy in exposed persons. The Secretary further determined that there was no positive association between herbicide exposure and any other condition, other than those for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on August 8, 1996 (See 61 FR 41442–49).

NAS issued a third report, entitled "Veterans and Agent Orange: Update 1998" (Update 1998), on February 11, 1999. The focus of this updated review was on new scientific studies published since the release of Update 1996 and updates of scientific studies previously reviewed.

Shortly after NAS issued Update 1998, the Secretary formed a VA task force to review the report and pertinent studies and to make recommendations to assist him in determining whether a positive association exists between herbicide exposure and any condition. The task force has completed that review and submitted its recommendations to the Secretary. This notice, pursuant to Pub. L. 102–4, conveys the Secretary's determination that there is no positive association between herbicide exposure and hepatobiliary cancers, nasal/nasopharyngeal cancer, bone cancer, breast cancer, female reproductive cancers, urinary bladder cancer, renal cancer, testicular cancer, leukemia, abnormal sperm parameters and infertility, motor/coordination dysfunction, chronic peripheral nervous system disorders, metabolic and digestive disorders (other than diabetes mellitus), immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, gastrointestinal tumors, brain tumors, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

This notice also conveys the Secretary's determination that a new study concerning the possible association between exposure to herbicides and diabetes mellitus that was published since NAS completed Update 1998, is potentially significant. The Secretary has requested, and the NAS is currently reviewing that new study and will determine whether a positive association exists between herbicide exposure and diabetes mellitus after their review.

NAS, in Update 1998, assigns hepatobiliary cancers, nasal/nasopharyngeal cancer, bone cancer, breast cancer, female reproductive cancers, urinary bladder cancer, renal cancer, testicular cancer, leukemia, abnormal sperm parameters and infertility, motor/coordination dysfunction, chronic peripheral nervous system disorders, metabolic and digestive disorders (including diabetes mellitus), immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), and skin cancer to a category labeled inadequate/insufficient evidence to determine whether an association exists. This is defined as meaning that the available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association with herbicide exposure.

Hepatobiliary Cancers

Hepatobiliary cancers are cancers of the liver and intrahepatic bile ducts. There are a variety of known risk factors, including chronic infections with hepatitis B and C, exposure to aflatoxin, vinyl chloride and polychlorinated biphenyl (PCB) and smoking, that should be considered by a credible study. NAS, in VAO, found the relevant studies to be few, and to have not adequately controlled for these risk factors. One large case-control study showed a positive relationship between herbicide exposure and the subsequent development of hepatobiliary cancer; however, most other credible studies of similar size indicated no relationship. A large occupational study and a study of farmers found no relationship. See 59 FR 343 for study citations.

NAS noted in Update 1996 that an association between dioxin and liver cancer is biologically plausible, in view of evidence that very high exposures to similar compounds which interact with the Ah receptor (an intracellular protein) increase liver cancer risk. However, NAS concluded in that report that the available evidence is inadequate to determine whether an association exists between exposure to herbicides or dioxin and the incurrence of hepatobiliary cancer. The evidence of biologic plausibility may lend credibility to the evidence for an association between herbicide exposure and liver cancer, but does not itself provide significant evidence of such an association. NAS, in Update 1996, again noted that there are few occupational, environmental, or veterans' studies of liver cancer, and most of these are small in size and were not controlled for other risk factors. For example, one small occupational study of workers with potential exposure to TCDD and 4-aminobiphenyl (Collins et al., 1993) showed a slight, but not statistically significant, increased risk for hepatobiliary cancer; however, it did not control for exposure to 4-aminobiphenyl. A large study of herbicide applicators in Finland (Asp et al., 1994) found no increased risk of hepatobiliary cancer. A study of farmers in 23 states (Blair et al., 1993) found no increase in proportionate cancer mortality for liver cancer. In summary, most studies that addressed hepatobiliary cancers suffered from methodological problems or did not reflect an association. See 61 FR 41443 for study citations.

NAS, in Update 1998, again assigned hepatobiliary cancer to the category "inadequate/insufficient evidence to determine whether an association exists." The IARC study (Kogevinas M, Becher H, Benn T, Bertazzi PA, Boffetta P, Bueno-de-Mesquita HB, Coggon D, Colin D, Flesch-Janys D, Fingerhut M, Green L, Kauppinen T, Lettorin M, Lynge E, Mathews JD, Neuberger M, Pearce N, Saracci R. 1997. Cancer mortality in workers exposed to phenoxy herbicides, chlorophenols, and dioxins. An expanded and updated international cohort study. American Journal of Epidemiology 145(12): 1061–1075.) noted no excess of death from hepatobiliary cancer among a group of all workers exposed to phenoxy herbicides or chlorophenol, although those exposed to TCDD or higher chlorinated dioxins had a higher risk (SMR=0.87, CI 0.45–1.52) than those not exposed (SMR=0.41, CI 0.09–1.22). However, this study did not include a detailed analysis by exposure variables (such as duration and time since first exposure), and did not distinguish heavily exposed workers from those with minor exposures. A study of 2,479 male workers in German facilities that produced phenoxy herbicides and chlorophenols (Becher H, Flesch-Janys D, Kauppinen T, Kogevinas M, Steindorf K, Manz A, Wahrendorf J. 1996. Cancer mortality in German male workers exposed to phenoxy herbicides and dioxins. Cancer Causes and Control 7(3): 312–21.) showed only one death due to hepatobiliary cancer (SMR=1.2, CI 0–6.9); this was in one of the groups with presumed lower TCDD exposure. Observed and expected deaths due to liver cancer among a cohort of rice growers in northern Italy between 1957 and 1992 (Gambini GF, Mantovani C, Pira E, Piolatto PG, Negri E. 1997. Cancer mortality among rice growers in Novara Province, Northern Italy. American Journal of Industrial Medicine 31(4); 435–441.) did not differ significantly from national rates (SMR=1.3, CI 0.5–2.6). This small study is limited by its crude exposure assessment and uncertainty in establishing degree of exposure. A 15-year follow-up of the exposed population of Seveso, Italy (Bertazzi PA, Zochetti C, Guercilena S, Consonni D, Tironi A, Landi MT, Pesatori AC. 1997. Dioxin exposure and cancer risk: A 15-year mortality study after the "Seveso Accident." Epidemiology 8(6): 646–652) showed nonsignificant decreases in liver cancer in all exposure groups except for women in group B, where a nonsignificant elevation was seen (3 cases for an SMR=1.3, CI 0.3–3.8). A study of two cohorts of Swedish fishermen, distinguished by the types of fish in their diets and the presumed levels of PCB, PCDD, and PCDF in the fish (Svennson BG, Mikoczy Z, Stromberg U, Hagmar L. 1995. Mortality and cancer incidence among Swedish fishermen with a high dietary intake of persistent organochlorine compounds. Scandinavian Journal of Work, Environment, and Health 21(2): 106–115.), showed nonsignificantly decreased mortality from liver cancer in both groups. The group presumed to have higher exposure had a nonsignificantly increased incidence of the disease compared to national Swedish rates (SIR=1.31, CI 0.48–2.85), while the less exposed group had a nonsignificantly decreased incidence. A particular weakness of this study is the lack of data to support the differences in reported blood levels of dioxin-like compounds for each group. A study of male Australian Vietnam veterans (Crane PJ, Horsley KD, Adena MA. 1997a. Mortality of Vietnam veterans: the veteran cohort study: A report of the 1996 retrospective cohort study of Australian Vietnam veterans, Canberra; Department of Veterans Affairs.) reported a statistically significant excess of all cancer deaths among the 2,067 deaths recorded from 1980 to 1994 but observed no excess of mortality from liver cancer (SMR=0.6, CI 0.3–1.2). However, among the weaknesses of this study are the possible under ascertainment of death, and the uncertain quality of assessing such risk factors as smoking, alcohol, and herbicide and dioxin exposure. Crane's subsequent study of mortality among Australian National Service Vietnam veterans reported similar findings for hepatobiliary cancer (Crane PJ, Horsley KD, Adena MA. 1997b. Mortality of Vietnam veterans: the national servicemen comparison. A report of the 1996 retrospective cohort study of Australian Vietnam veterans. Canberra; Department of Veterans Affairs.).

Most of the few existing studies addressing hepatobiliary cancer contain methodological difficulties such as small study size and inadequate control for life-style-related risk factors, or do not support an association with herbicide exposure. Accordingly, the Secretary has found that the credible evidence against an association between hepatobiliary cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Nasal/Nasopharyngeal Cancer

NAS noted that exposure to nickel, chromates, wood dust and formaldehyde are risk factors for nasal cancers. Smoking, exposure to salt-preserved foods, and Epstein-Barr virus may increase the risk of nasopharyngeal cancer.

In VAO, NAS found studies of nasal and nasopharyngeal cancers very limited. Most studies showed inconclusive results, and often did not control for known confounding variables. Pharmacokinetic studies indicate that dioxin accumulates in the nasopharyngeal areas of animals. Two epidemiological studies and one case-control study showed increased risk associated with herbicide exposure; however, two of those studies were statistically insignificant and the small size of the three studies limits their value in detecting an association. One study (Wiklund K., 1983) found a decreased risk of nasal cancer in Swedish agricultural workers. A study of Vietnam veterans (Centers for Disease Control, 1990) found no association between nasal/nasopharyngeal cancers and Vietnam service. (See 59 FR 345 for study citations.)

NAS noted in Update 1996 that the scientific evidence concerning an association between herbicide exposure and nasopharyngeal cancer continues to be too sparse to make a definitive conclusion regarding the association of nasal/nasopharyngeal cancers with herbicide exposure. An 18-year follow-up of Finnish herbicide applicators (Asp et al., 1994) showed a small, statistically insignificant increased risk and a decreased mortality risk for cancers of the nasopharynx and larynx. Moreover, that study presented little data and combined cancers of the nasopharynx and larynx into a single category, which diminishes its importance regarding the relationship between herbicide exposure and nasopharyngeal cancers. An environmental study based on a follow-up of the Seveso, Italy, population (Bertazzi et al., 1993) found a statistically insignificant increased risk for cancer of the nose and nasal cavity among women in the least-contaminated area and found no cases among men in the same area (although 1.5 were expected) and no cases in the most-contaminated areas. (See 61 FR 41443–44 for study citations.)

In Update 1998, NAS stated that scientific evidence of an association with herbicide exposure continues to be too sparse to make a definitive statement. The IARC study (Kogevinas et al., 1997) has brought together almost all of the phenoxy herbicide production workers in 36 cohorts for a joint analysis. That combined cohort study showed no effect of phenoxy herbicide exposure on oral cavity or pharyngeal cancers (RR=1.1, CI 0.7–1.6). There were three deaths from cancer of the nose and nasal sinuses, but none in the TCDD-exposed group (RR=1.6, CI 0.3–4.7). Crane et al, (1997a) found no deaths from either nasal or nasopharyngeal cancer in Australian Vietnam veterans during 1964–1979, with 0.8 expected. For the period 1980–1994, there were two deaths due to nasal and two due to nasopharyngeal cancers, with 1.7 and 3.9 expected, respectively. Crane's companion study comparing Australian Vietnam veterans with military personnel who did not serve there showed one death due to nasopharyngeal cancer in each group between 1982–1994, and only one death due to nasal cancer, which occurred in the comparison population (Crane et al., 1997b). NAS found that the scientific evidence of the association between herbicide exposure and nasopharyngeal cancer continues to be too sparse to make a definitive statement.

Accordingly, the Secretary has found that the credible evidence against an association between nasal/nasopharyngeal cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Bone Cancers

Bone cancers were considered together with joint cancers in VAO. Because of the rarity of bone cancers, most studies were too small to detect a significant risk. There was not a consistent finding of bone cancer in exposed groups; a number of studies showed no association, and the few studies that demonstrated a positive relationship were small and had large confidence intervals. The small size of the studies and the statistical limitations compromised their credibility. (See 59 FR 343 for study citations.)

NAS noted in Update 1996 only two new studies that considered bone cancers. Both studies (Collins *et al.*, 1993 and Blair *et al.*, 1993) found nonsignificant increases in mortality rates due to bone cancers. Methodologic problems did not permit NAS to reach a conclusion regarding the presence or absence of an association between bone cancers and exposure to herbicides. (See 61 FR 41444 for study citations.)

In Update 1998, NAS reports that there is minimal new information regarding bone cancer and that few data existed before. A study of the IARC combined occupational cohorts (Kogevinas *et al.*, 1997) found five cases of bone cancer for all workers (SMR=1.2, CI 0.4–2.8). The SMR in those exposed to TCDD was lower (1.1) than in those not exposed (1.4). A study of 770 pentachlorophenol workers reported no deaths from bone cancer (Ramlow JM, Spadacene JW, Hoag SR, Stafford BA, Cartmill JB, Lerner PJ. 1996. Mortality in a cohort of pentachlorophenol manufacturing workers, 1940–1989. American Journal of Industrial Medicine 30(2): 180–194.). A study of rice growers in northern Italy (Gambini *et al.*, 1997) identified only one death, and a study of 26,000 Canadian sawmill workers presumptively exposed to dioxin-contaminated chlorophenate reported five bone cancer deaths (SMR=1.3, CI 0.5–2.7) (Hertzmann C, Teschke K, Ostry A, Hershler R, Dimich-Ward H, Kelly S, Spinelli JJ, Gallagher RP, McBride M, Marion SA. 1997. Mortality and cancer incidence among sawmill workers exposed to chlorophenate wood preservatives. American Journal of Public Health 87(1): 71–79.). A follow-up of individuals exposed as a result of the 1976 industrial accident in Seveso, Italy, found 2 deaths in men (SMR=0.5) in the lowest exposure zone and 7 deaths in women in the lowest exposure zone (SMR=2.4) (Bertazzi *et al.*, 1997). Clapp's update of his study of Massachusetts Vietnam veterans reports 4 cases of bone cancer (OR=0.9, CI 0.1–11.3) (Clapp RW. 1997. Update of cancer surveillance of veterans in Massachusetts, USA. International Journal of Epidemiology 26(3): 679–681.). Other Vietnam veteran studies did not report bone cancer results. After reviewing all available evidence, the Secretary has found that the credible evidence against an association between bone cancers and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Breast Cancer and Female Reproductive Cancers

The data related to women and herbicide exposure have been extremely limited because few of the studies have included women. Cohorts reviewed in occupational studies have included few exposed female workers.

Female reproductive cancers reviewed by NAS in VAO included those of the breast, ovaries, and uterus (including the cervix and endometrium). Because of the public health significance of breast cancer, NAS, in Update 1996, considered breast cancer separately from the other reproductive cancers. In Update 1998, NAS again addresses breast cancer separately from the other cancers.

Breast Cancer

Risk factors for breast cancer include age, race, personal or family history of breast cancer and reproductive history. The data relating exposure to herbicides to breast cancer are sparse. In VAO, NAS found that most of the breast cancer studies showed no association. Two studies, both of which failed to control for reproductive histories and had methodological problems, showed a nonsignificant risk for breast cancer. (See 59 FR 343 for study citations.)

In Update 1996, NAS reviewed four recently published studies (Bertazzi *et al.*, 1993; Blair *et al.*, 1993; Kogevinas *et al.*, 1993, and Dalager *et al.*, 1995) that showed no increased risk for breast cancer. NAS noted that it was unclear whether the female members of those cohorts had substantial chemical exposure. (See 61 FR 41444 for study citations.)

NAS found few new published studies on breast cancer since Update 1996. The IARC study (Kogevinas *et al.*, 1997) found a nonsignificant increased risk of breast cancer in males, as well as a significant increased risk in one cohort of women from Germany with substantial exposure to TCDD or higher chlorinated dioxins. Data from Australian Vietnam veterans (Crane *et al.*, 1997a) also indicated an elevation of male breast cancer (SMR=5.5, 95% CI 1.1–16.1). The findings of increased risk for males are notable because breast cancer in males is rare. On the other hand, the 15-year follow-up of the Seveso population (Bertazzi *et al.*, 1997) indicates no excess of breast cancer, and even suggests a possible protective effect of TCDD exposure (RR less than 1.0). TCDD also appears to exert a protective effect on the incidence of mammary tumors in experimental animals. Taken together, the data continue to be inconclusive. Accordingly, the Secretary has found that the credible evidence against an association between herbicide exposure and breast cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Female Reproductive Cancers (Ovaries, Uterus, Cervix, Endometrium)

In VAO, NAS identified only one small case-control study which found an association with ovarian cancer, but the confidence intervals were very large. The larger occupational and farm worker studies generally showed no increased risk for ovarian or uterine cancers. VAO identified three studies showing no increased risk for uterine cancer (including cancers of the cervix and endometrium). One study showed a slightly increased risk for cervical cancer and no increased risk for endometrial cancer. (See 59 FR 343 for study citations.)

In Update 1996, NAS reviewed a follow-up study of the Seveso population which found no significant increased risk of ovarian or uterine cancer. A study of 701 women occupationally exposed to chlorophenoxy herbicides, chlorophenols and dioxins found one death from each of the following types of cancer: cervical (SMR=80), uterine nonspecified (SMR=192), and ovarian (SMR=74). One study found a statistically significant increase in cervical cancer among employees of two Danish phenoxy herbicide manufacturing facilities, based on seven cases (SIR=3.2, CI 1.3–6.6). A study of farmers in 23 states found no increase in the proportionate cancer mortality ratio (PCMR) for cervical cancer in white female farmers, but found a significantly increased PCMR in nonwhite female farmers. This study did not correlate the increased PCMR to herbicide exposure and NAS noted that the increased mortality may reflect risks associated with factors other than herbicide exposure. A study of female Vietnam veterans showed a nonsignificant increased risk of uterine cancer. Although the studies cited in Update 1996 provided some evidence of an association between herbicide exposure and cervical cancer, there continued to be a number of significant studies showing no association between herbicide exposure and either ovarian or uterine cancers (including cervical and endometrial cancers). (See 61 FR 4144–45 for study citations.)

In Update 1998, NAS reviewed two new studies. A 15-year follow-up of more than 20,000 exposed women in the Seveso population (Bertazzi *et al.*, 1997) provides no evidence that TCDD is associated with deaths from either uterine or ovarian cancer. Deaths from uterine cancer were lower than expected in the two zones with the highest exposures, and the deaths from ovarian cancer were 1 and 0, respectively, where 0.4 and 2.7, respectively, were expected. In one zone with a lower exposure (but still greater than those not exposed to the accident), 27 uterine cancer deaths were observed, where 23.7 were expected (RR=1.1, 95% CI 0.8–1.7). The RR for ovarian cancer in this zone was 1.0 (CI 0.6–1.6). However, it may still be too early for tumors related to exposure to have come to clinical attention. In the IARC study (Kogevinas *et al.*, 1997), no deaths from cancer of the uterine cervix or the ovary were observed among women exposed to TCDD or higher chlorinated dioxins. An SMR of 3.41 was observed for cancer of the endometrium and uterus based on three cases with exposure to TCDD or higher chlorinated dioxins. Two of these cases occurred in the cohort that included most of the TCDD-exposed female production workers. NAS concluded that despite some strong associations with ovarian and uterine cancers, the evidence remains inconclusive, largely because most of the published studies have only a small number of cases, poor exposure characterization, or too short a follow-up period. Considering the entire evidence, the Secretary has found that the credible evidence against an association between herbicide exposure and ovarian and uterine cancers outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Urinary Bladder Cancer

Smoking is the most important risk factor for cancer of the urinary bladder. However, exposure to aromatic amines, high fat diet and schistosoma hematobium infection have also been implicated. In VAO and Update 1996, NAS assigned urinary bladder cancer to a category labeled limited/suggestive evidence of no association with herbicide exposure. This category is defined as meaning that several adequate studies, covering the full range of levels of exposure that humans are known to encounter, are mutually consistent in not showing a positive association between herbicide exposure and the particular health outcome at any level of exposure. One study found a small excess of mortality in chemical production workers exposed to TCDD. There were many other credible studies that produced inconclusive results. (For study citations, see pages 515–17 of the 1993 report and pages 225–27 of the 1996 report.)

In Update 1998, NAS, on the basis of all epidemiologic evidence, felt that urinary bladder cancer should now be assigned to the category "inadequate/insufficient evidence to determine whether an association exists." The risk ratios (RR) in some of the largest cohorts tended to be greater than 1, weakening the prior conclusion that there was positive evidence of no relationship. The IARC study found an SMR of 1.0 (CI 0.7–1.5) for all workers, and an SMR of 1.4 (CI 0.9–2.1) among workers exposed to TCDD or higher chlorinated dioxins (Kogevinas *et al.*, 1997). A follow-up of BASF employees (Ott MG, Zober A. 1996. Cause specific mortality and cancer incidence among employees exposed to 2,3,7,8-TCDD after a 1953 reactor accident. Occupational and Environmental Medicine 53(9): 606–612.) found two deaths from a total of five cases (SIR=1.4, CI 0.4–3.2), but they were described as due to "bladder or kidney" cancer. A cohort of Swedish fisherman with presumed elevated-exposure (Svensson *et al.*, 1995) showed an SIR of 0.7 (CI 0.4–1.3), while a comparison cohort showed an SIR of 0.9 (CI 0.7–1.1). SMRs for the two cohorts were 1.3 (CI 0.4–3.1) and 1.0 (CI 0.6–1.6), respectively. Other new occupational and environmental studies showed results around the null (Hertzman *et al.*, 1997; Gambini *et al.*, 1997; and Bertazzi *et al.*, 1997). Among Vietnam veteran studies, a study of the mortality experience of Australian veterans relative to military personnel who did not serve in Vietnam reported a statistically significant RR of 0.6 based on one death among Vietnam veterans and two in the comparison group (Crane *et al.*, 1997b). An update of a study of Massachusetts veterans (Clapp, 1997) found an OR of 0.6 (CI 0.2–1.3) based on 80 cases.

On the basis of its review of new studies, NAS found that there is no evidence that exposure to herbicides alone is related to bladder cancer. Exposure to TCDD in combination with other known bladder carcinogens made it difficult to isolate any additional effect of herbicides. Considering the entire evidence, the Secretary has found that the credible evidence against an association between herbicide exposure and urinary bladder cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Renal Cancer

NAS found in VAO that the leather industry, asbestos, cadmium, petroleum products, analgesics, smoking, and obesity are associated with renal cancers. Studies of renal cancers in relation to herbicide exposure have generally produced inconclusive results because they failed to adequately control for these confounding factors. Only one study of agricultural and forest workers showed a significantly increased risk of death from renal cancers; however, the preponderance of studies, including the two largest, showed either no relationship with renal cancers or increased risk which was not significant. (*See* 59 FR 343 for study citations.)

In Update 1996, NAS reviewed two new studies (Blair *et al.*, 1993; and Visintainer *et al.*, 1995) that showed increased risk for renal cancer that was not significant. A third cohort study (Bertazzi *et al.*, 1993) demonstrated no increased risk of renal cancer in highly exposed individuals. One Danish case-control study (Mellengaard *et al.*, 1994) showed increased risk for renal cancer; however, the results were considered highly uncertain because of the wide confidence limits. (*See* 61 FR 41445 for study citations.)

In Update 1998, NAS found that the most important new study was that of the IARC cohorts (Kogevinas et al., 1997). This study reported 26 cases of kidney cancer (SMR=1.6; CI 1.1–2.4) for workers exposed to TCDD, and an SMR of 1.1 (CI 0.7–1.6) for all workers exposed to any phenoxy herbicide or chlorophenol. However, the study provided no trend analysis by duration of exposure or time since exposure. Clapp's update on Massachusetts Vietnam veterans (Clapp, 1997) reported an OR of 1.0 (CI 0.4–2.3). A study comparing all Australian Vietnam veterans to the male Australian population reported SMR=1.2 (CI 0.8–1.9) (Crane et al., 1997a). Another study of Australian Vietnam veterans compared with military personnel who did not serve in the conflict reported a statistically significant RR of 3.9 based on three deaths among Vietnam veterans and one in the comparison population between 1982 and 1984 (Crane et al., 1997b). However, this study did not have exposure information. Other studies reviewed by NAS produced equivocal results. NAS concluded that of the literature published since Update 1996, only the IARC study points to a possible association between herbicide exposure and renal cancer, but that, due to its marginal significance, lack of trend data, and heterogeneity of the cohorts, it was not strong enough to outweigh the equivocal results of the other studies. Therefore, on the basis of all available evidence, the Secretary has found that the credible evidence against an association between renal cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Testicular Cancer

In VAO, NAS identified the major risk factors for testicular cancer as undescended testis and other factors, such as genetic abnormalities, infections, etc., which produce atrophy and dysfunction. Occupational and environmental studies found either no association between herbicide exposure and testicular cancer, or increased risk which was not significant. (See 59 FR 343 for study citations.) In Update 1996, NAS reviewed three new studies that produced results generally consistent with the 1993 findings, i.e., either no association with testicular cancer, or increased risk which was not significant. (See FR 61 41445 for study citations.)

In Update 1998, NAS found minimal new information on this rare cancer based on a review of 10 new studies (Kogevinas et al., 1997; Ramlow et al., 1996; Hertzman et al., 1997; Bertazzi et al., 1997; Zhong Y, Raffnsson V. 1996. Cancer incidence among Icelandic pesticide users. International Journal of Epidemiology 25(6): 1117–1124; Dalager NA, Kang HK. 1997. Mortality among Army Chemical Corps Vietnam veterans. American Journal of Industrial Medicine 31(6): 719–726; Watanabe KK, Kang HK. 1996. Mortality patterns among Vietnam veterans: a 24-year retrospective analysis. Journal of Occupational and Environmental Medicine 38(3): 272–278; Crane et al., 1997a; Crane et al., 1997b; and Clapp 1997). NAS felt that what new information there is provides little evidence of a connection between testicular cancer and herbicide exposure. Several studies of military working dogs showed abnormal testicular pathology and a moderate excess of seminomas in dogs that had worked in Vietnam. However, NAS did not feel that these studies carried great weight in the absence of exposure data and without observed excesses in human populations. Accordingly, the Secretary has found that the credible evidence against an association between testicular cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Leukemia

In VAO, NAS found evidence for a possible association between herbicide exposure and leukemia from studies of farmers and residents of Seveso, Italy. When farmers were stratified by suspected herbicide exposure, the incidence of leukemia was generally not elevated, and in some cases elevation appeared to be due to factors other than herbicide exposure. Those studies generally did not adequately control for other significant confounding exposures. The suggestive evidence of increased risk concerning Seveso, Italy, was not significant because of the small number of actual cases in which leukemia was found. (See 59 FR 343–44 for study citations.)

In Update 1996, NAS reviewed seven new studies. Six of these studies showed no association between herbicide exposure and leukemia or a nonsignificant elevated risk. One study, a mortality study of farmers, showed a significantly increased PCMR for leukemia but did not correlate the increased PCMR to suspected herbicide exposure and did not control for other confounding factors. (See 61 FR 41445 for study citations.)

In Update 1998, NAS again found that, generally, the evidence of an association of leukemia with herbicide exposure came from studies of agricultural workers and a small subset of the Seveso cohort. A population-based case-control study of farm workers in northeastern Italy (Amadori D, Nanni O, Falcini F, Saragoni A, Tison V, Callea A, Scarpi E, Ricci M, Riva N, Buiatti E. 1995. Chronic lymphocytic leukaemias and non-Hodgkin's lymphomas by histological type in farming-animal breeding workers: a population case-control study based on job titles. Occupational and Environmental Medicine 52(6): 374–379.) found a high risk among farmers who are also involved in animal breeding (OR=1.8, 95% CI 1.2–2.6). However, analysis of the population broken down by the more frequent occupational categories showed no significantly high risk in any occupation. A survey of total and site-specific cancer incidence in male and female adults from 1959 to 1987 (Waterhouse D, Carman WJ, Schottenfeld D, Gridley G, McLean S. 1996. Cancer incidence in the rural community of Tecumseh, Michigan: A pattern of increased lymphopoietic neoplasms. Cancer 77(4): 763–770.), as compared with site-specific cancer incidence rates reported by the Connecticut tumor registry, showed a significantly increased incidence of non-Hodgkin's lymphoma, Hodgkin's disease, and chronic lymphocytic leukemia. A nested case-control study of this group, using risk factor information documented prior to diagnosis, found that the RR of a family history of lymphoma, leukemia, or multiple myeloma was significantly increased among patients with lymphoproliferative neoplasms (OR=3.8, CI 1.5–9.8; p=.005). The follow-up of the Seveso population (Bertazzi et al., 1997) also suggested an increased risk, but the results were based on very limited data from one small subset of the whole cohort. Other studies, including occupational studies (Kogevinas et al., 1997; Ramlow et al., 1996), a study of agricultural workers (Gambini et al., 1997), and studies of Vietnam veterans (Dalager and Kang, 1997; Crane et al., 1997b), showed no increased risk or increases or decreases that were not significant.

An association of leukemia with herbicide exposure is biologically plausible, and the histological similarity of chronic lymphocytic leukemia with non-Hodgkin's lymphoma also suggests an association. Nonetheless, the overall evidence is too slight to warrant assigning leukemia to a higher category. Accordingly, the Secretary has found that the credible evidence against an association between leukemia and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Abnormal Sperm Parameters and Infertility

Infertility incorporates two concepts: the inability to conceive and the inability to produce live children. Most studies do not take into account the desire for children, contraceptive practices, and other factors influencing fertility. VAO found no occupational or environmental studies that examined herbicide exposure and infertility, and veteran studies did not support an association between herbicide exposure and infertility. There are several components of male fertility, including sperm parameters and reproductive hormones. The common parameters used to evaluate toxic effects to sperm are number, motility, structure, and morphology. NAS found in VAO that many chemicals have been implicated in interfering with motility and sperm structure. One occupational study and one study of Vietnam veterans found no association with decreased sperm count. Another study of Vietnam veterans found lower sperm concentrations and reduced sperm motility, but suggested these outcomes may be associated with the Vietnam experience rather than exposure to herbicides. NAS did not cite any studies concerning male reproductive hormone levels in VAO. (See 59 FR 344 for study citations.)

In Update 1996, NAS reviewed one occupational study. Although it suggested an association between TCDD exposure and changes in male reproductive hormones, there were a number of methodologic concerns that did not permit definitive conclusions to be drawn. NAS noted that the hormonal changes were subtle, and it is not known whether they would have any implications for reproductive failure.

In Update 1998, NAS reviewed two new studies that evaluated hormone, semen quality, and fertility endpoints in relation to potential dioxin exposure. The Ranch Hand study (Henriksen GL, Michalek JE, Swaby JA, Rahe AJ. 1996. Serum dioxin, testosterone, and gonadotropins in veterans of Operation Ranch Hand. Epidemiology 7(4): 352–357.) reported a relatively small decrease in testosterone in relation to increased dioxin level. A study of British Columbia sawmill workers (Heacock H, Hogg R, Marion SA, Hershler R, Teschke K, Dimich-Ward H, Demers P, Kelly S, Ostry A, Hertzman C. 1998. Fertility among a cohort of male sawmill workers exposed to chlorophenate fungicides. Epidemiology 9(1): 56–60.) found reduced fertility rates among exposed workers but could not consistently attribute this to chlorophenate exposure. NAS again determined that uncertainty remained due to methodologic limitations of some existing studies.

NAS also reviewed the related fertility endpoint of altered sex ratio as a result of dioxin/herbicide exposure. One study of a small part of the Seveso population (Mocarelli P, Brambilla P, Gerthoux PM, Patterson DG Jr, Needham LL. 1996. Change in sex ratio with exposure to dioxin. Lancet 348(9024): 409.) suggested an altered ratio of male to female children, but other studies did not support that finding (Garry VF, Schreinemachers D, Harkins ME, Griffith J. 1996b. Pesticide appliers, biocides, and birth defects in rural Minnesota. Environmental Health Perspectives 104(4): 394–399; Heacock et al., 1998). NAS concluded that experimental animal evidence and further mechanistic data were needed to evaluate the relationship between sex ratio and exposure to dioxin or herbicides.

Accordingly, on the basis of all available evidence, the Secretary has found that the credible evidence against an association between abnormal sperm parameters and infertility and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Motor/Coordination Dysfunction

NAS indicated in VAO that it had found no significant studies available to analyze whether an association exists between herbicide exposure and motor/coordination dysfunction. In Update 1996, NAS reported finding no new studies directly addressing this topic. In Update 1998, NAS reported that it was not aware of new studies relating directly to this topic. Accordingly, the Secretary has found that there is no credible evidence for an association between motor/coordination dysfunction and herbicide exposure, and he has determined that a positive association does not exist.

Chronic Peripheral Nervous System Disorders

Chronic peripheral nervous system disorders (chronic peripheral neuropathy) can be induced by many common medical and environmental disorders unrelated to herbicide exposure, such as alcoholism, diabetes, and exposure to other toxic chemicals. In VAO, NAS stated that many case reports suggested that acute or subacute (transient) peripheral neuropathy can develop with exposure to dioxin, but that the most rigorously conducted studies argued against a relationship between dioxin or herbicides and chronic peripheral neuropathy. VAO stated that, as a group, the studies on peripheral neuropathy suffered from various methodologic defects, such as not applying consistent methods to define a comparison group, determine exposure, evaluate clinical deficits, use standard definitions of peripheral neuropathy, or eliminate confounding variables. Occupational studies that did not have those methodological problems showed no difference in the incidence of peripheral neuropathy for workers exposed to herbicides and workers not so exposed. (See 59 FR 343 for study citations.)

In Update 1996, NAS assigned acute and subacute peripheral neuropathy to the category labeled limited/suggestive evidence of an association with herbicide exposure, which it defined as meaning there is evidence suggestive of an association between herbicide exposure and a particular health outcome, but that evidence is limited because chance, bias, and confounding could not be ruled out with confidence. However, NAS continued to assign chronic peripheral neuropathy to the category labeled inadequate/insufficient evidence to determine whether an association exists. Two case studies reported development of peripheral neuropathies within days of exposure to 2,4–D followed by gradual recovery over a period of months. Studies of the Seveso, Italy, accident suggested that peripheral nerve problems were more prevalent in the exposed group. One of these studies demonstrated that those individuals with clinical signs of significant exposure (chloracne or elevated liver enzymes) showed a risk ratio of 2.8. Two subsequent follow-up studies showed no increased frequency of peripheral neuropathy several years after the accident among the highly exposed group. Environmental studies and case reports suggest that the development of peripheral neuropathy can follow high levels of exposure to herbicides, and that peripheral neuropathy associated with herbicide exposure will manifest very soon after exposure. The trend to recovery in the individual cases reported and the negative findings of many long-term follow up studies of peripheral neuropathy suggest that, if a neuropathy develops, it resolves with time. Their findings are consistent with others who found no evidence of increased occurrence of chronic persistent peripheral neuropathy after TCDD exposure. (See 61 FR 41446–47 for study citations.)

In Update 1998, NAS stated that no new information had appeared since Update 1996 to alter its previous conclusions on chronic persistent peripheral neuropathy. Where peripheral neuropathy is due to a toxic exposure (such as to herbicides), it is characterized by acute onset and subsequent resolution of the neuropathy after exposure to the toxin is terminated. It would not be expected to appear for the first time many years after exposure. Although the Secretary has previously found a positive association between herbicide exposure and such acute and subacute (transient) peripheral neuropathy, considering all of the evidence, he has found that the credible evidence against an association between chronic nervous system disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Metabolic and Digestive Disorders

Metabolic and digestive disorders covered in this notice include hepatic enzyme abnormality, lipid abnormalities, and ulcers. In VAO, NAS found that two studies related to hepatic enzyme abnormality did not demonstrate an association with liver disease, and that confounding factors (alcohol abuse, cirrhosis, hepatitis, and other toxic chemicals) were not ruled out. Studies showing lipid abnormalities did not control for the confounding variables of obesity and genetic factors, and no medical significance of the modest and variable increases was demonstrated. The risk of gastric ulcers in exposed populations was not sufficiently studied to establish an association with herbicide exposure. Only one study indicated any increase, and in that study it was difficult to rule out the many factors (e.g., alcoholism, non-steroidal anti-inflammatory drugs, and H. pylori infection) known to be associated with ulcers. (See 59 FR 344–45 for study citations.)

In Update 1996, NAS reviewed the same studies when considering the relationship between herbicide exposure and hepatic enzyme abnormalities. The noted increases in abnormal liver function tests or the frequency of chronic liver disease were confounded by the lack of control for alcohol abuse. One study found a nonsignificant increase in liver disease among individuals exposed to dioxin, and another found no correlation between serum dioxin levels and abnormalities in liver function tests. One new study was reviewed in Update 1996 concerning an association between herbicide exposure and lipid abnormalities that showed no substantial differences between the exposed and reference groups. The only new study reviewed in Update 1996 concerning a relationship between ulcers and exposure to herbicides showed no increases in the frequency of ulcers. (See 61 FR 41447 for study citations.)

The two major lipids are cholesterol and triglycerides. They are carried in the blood attached to proteins to form lipoproteins. Lipoproteins are classed according to their density: very low density lipoprotein (VLDL); intermediate-density lipoprotein (IDL); low-density lipoprotein (LDL, the so-called "bad" cholesterol particle); and high-density lipoprotein (HDL, the "good cholesterol" particle). Lipid concentrations play a major role in determining an individual's susceptibility to cardiovascular disease. Disorders of lipoprotein metabolism are usually characterized by abnormally high or low concentrations of lipoproteins. A number of factors may influence these concentrations. For example, when assessing the effects of herbicide exposure, obesity must be controlled for because it is a primary determinant of both triglyceride and TCDD concentrations.

The majority of new studies reviewed by NAS in Update 1998 do not suggest any effects in lipid or lipoprotein concentrations as a result of exposure to herbicide agents. A study of 641 Australian Vietnam veterans (O'Toole BI, Marshall RP, Grayson DA, Schureck RJ, Dobson M, Ffrench M, Pulvertaft B, Meldrum L, Bolton J, Vennard J. 1996b. The Australian Vietnam Veterans Health Study: II. Self-reported health of veterans compared with the Australian population. International Journal of Epidemiology 25(2): 319–330.), did find an increased frequency of elevated cholesterol compared to that expected from national Australian data (RR=3.0, 95% CI 1.3–4.7), but the health problems of these veterans were self-reported, and the data are difficult to assess with any degree of certainty. A follow-up of the Ranch Hand study participants (Air Force Health Study (AFHS). 1996. An epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides. Mortality Update 1996. Brooks AFB, TX: Epidemiologic Research Division. Armstrong Laboratory. AL/AO–TR–1996–0068. 31 pp.) showed essentially no differences in the prevalence of high triglyceride levels, low HDL concentrations, or high ratios of total cholesterol to HDL cholesterol between the Ranch Handers and the comparison group. Other studies (Calvert *et al.*, 1996; Ott and Zober, 1996) similarly indicate a negative or at best a weak association for prevalence of any abnormal lipid or lipoprotein concentrations.

In Update 1998, NAS reviewed a few credible studies reporting some increase in gastrointestinal disease possibly associated with exposure to herbicide agents. A mortality study of a cohort of workers exposed to pentachlorophenol (Ramlow *et al.*, 1996) showed a slight increase in overall digestive system disease. Increases were higher for gastric and duodenal ulcer specifically (SMR 3.6, CI 1.2–8.3; 15-year latency SMR 5.6, CI 1.8–13.0). Higher rates of digestive disease generally were seen in those exposed to higher PCP levels, but a significant decrease in the risk for ulcer was found at higher levels of exposure. Liver cirrhosis increased significantly with level of exposure, but alcoholism played a role in some of these cases and cannot, therefore, be discounted in the rest. In a study of the self-reported health status of Australian veterans (O'Toole *et al.*, 1996b), data indicated that the veterans reported ulcer and other digestive disease more frequently than did the control group. In these instances, however, the authors suggested that psychological stress due to combat may have been a causative factor and implied that high alcohol consumption played a role. Two studies of American Vietnam veterans (AFHS, 1996; Dalager and Kang, 1997) reported an increased incidence of digestive disease, particularly cirrhosis or other liver disease. Lack of data about alcohol consumption, however, makes this information difficult to assess. Other studies provide no evidence of an association of digestive system disease with exposure to herbicide agents. Some studies, in fact, suggest no association (*e.g.*, Bullman TA, Kang HK. 1996. The risk of suicide among wounded Vietnam veterans. American Journal of Public Health 86(5): 662–667.), which observed a significant decrease in deaths due to digestive disease among Vietnam veterans who had been hospitalized for wounds suffered in Vietnam.

After considering all evidence available, the Secretary has found that the credible evidence against an association between metabolic and digestive disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Diabetes Mellitus

In both VAO and Update 1996, NAS placed metabolic and digestive disorders (including diabetes mellitus) in the category labeled "Inadequate/Insufficient Evidence to Determine Whether an Association Exists." According to NAS, this means that the available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association. For example, studies fail to control for confounding, have inadequate exposure assessments, or fail to address latency.

In Update 1998, NAS reviewed several new studies, including the 1997 report from the Ranch Hand study (Henrikson GL, Ketchum NS, Michalek JE, Swaby JA. 1997. Serum dioxin and diabetes mellitus in veterans of operation Ranch Hand. Epidemiology 8:252–258), that addressed the issue of diabetes mellitus. Based on the evidence reported in these and the previously reviewed studies, NAS again concluded that there is inadequate/insufficient evidence to determine whether an association exists between herbicide or dioxin exposure and increased risk of diabetes. However, since NAS released Update 1998 the National Institute of Occupational Safety and Health (NIOSH) published a report that detects an association, though not a strong association between diabetes and dioxin exposure. The study does suggest a dose response relationship because of excess cases of diabetes found in workers having the highest serum-lipid levels of dioxin (Calvert GM, Sweeney MH, Deddens J, Wall DK. 1999. Evaluation of Diabetes Mellitus, Serum Glucose and Thyroid Function Among U.S. Workers Exposed to 2,3,7,8 tetrachlorodibenzo-p-dioxin. Occupational and Environmental Medicine 56:270–276). The Secretary has concluded that the NIOSH study is potentially important enough that it warrants a full review by NAS as soon as possible, and he has directed VA to amend its contract with NAS for the third biennial update to require a special report on herbicide exposure and diabetes, as a separate deliverable, within approximately six months. The Secretary will make a determination as to whether there is an association between herbicide exposure and diabetes mellitus after NAS has reviewed the NIOSH report.

Immune System Disorders

In VAO, NAS found that the available data dealt with two categories of immune system disorders: immune modulation and autoimmunity. Many immune parameters were studied; however, few showed a relationship to herbicide exposure. Most studies addressed such a wide range of immune parameters that it was likely that at least some of the positive results were due to chance alone. Other studies found no relationship between immune system disorders and herbicide exposure. (See 59 FR 345 for study citations.)

NAS noted in Update 1996 that no new studies of heightened susceptibility to infectious disease or new studies that investigated the association of autoimmune disease with exposure to herbicides had been identified. However, some new information had been published regarding the effects of TCDD on immunological parameters in laboratory measurements. The new studies reviewed such a wide range of immune parameters that it is likely that at least some of the abnormal laboratory tests were due to chance. In addition, these studies failed to show a relationship between laboratory abnormalities and development of disease in the populations studied. (See 61 FR 41447 for study citations.)

In Update 1998, NAS reviewed two new studies relating to the incidence of infectious diseases in American Vietnam veterans and two new studies of Australian Vietnam veterans. A proportionate mortality study of Vietnam veterans (Visintainer PF, Barone M, McGee H, Peterson EL. 1995. Proportionate mortality study of Vietnam-era veterans of Michigan. Journal of Occupational and Environmental Medicine 37(4): 423–428) studied a cohort of 377,028 veterans who are on the Michigan Department of Management and Budget's Vietnam-Era Bonus List. Vietnam veterans compared with non-Vietnam veterans had a slightly elevated proportionate mortality ratio from infectious and parasitic diseases (PMR=1.6, CI 1.2–2.1, N=56). The study, however, did not distinguish Vietnam veterans exposed to Agent Orange from those with no known exposure. Watanabe and Kang (1995) (Watanabe KK, Kang HK. 1995. Military service in Vietnam and the risk of death from trauma and selected cancers. Annals of Epidemiology 5(5): 407–12.) found a nonsignificant increased risk for infectious diseases in Vietnam Marines compared with non-Vietnam Marines (RR=2.8; CI 0.8–10.3). The studies of Australian Vietnam veterans did not show any increase in mortality due to infectious or parasitic diseases (Crane et al., 1997a,b). NAS concluded that no evidence is available to associate defects in the immune response with Agent Orange exposure.

NAS also discussed several studies concerning exposure to halogenated aromatic hydrocarbons and shifts in lymphocyte subpopulations. It concluded on the basis of these studies that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and immune suppression or autoimmunity.

Accordingly, the Secretary has found that the credible evidence against an association between immune system disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Circulatory Disorders

NAS noted in VAO that most occupational studies concerning circulatory disorders showed no increased mortality or morbidity after herbicide exposure. The studies of the residents of Seveso, Italy, showed some increased risk of mortality in the first five-year follow-up; however, those studies had a number of technical problems: they were not specific to circulatory disease and did not control for the confounding variables of smoking, diabetes, and hypertension. Certain of the veteran studies suggested that any increase in heart disease may be associated with the Vietnam experience rather than herbicide exposure, and most of those studies did not adjust for confounding variables. (See 59 FR 345 for study citations.)

NAS reviewed one study in Update 1996 that showed no increase in the frequency of heart disease. Another study found possible correlations for elevated systolic blood pressure; however, this relationship was difficult to evaluate because age and body-mass index also had a significant effect. An analysis of the data from an Air Force study provided some potentially significant evidence for an association with dioxin exposure, since the results were derived from the first large-scale study of dose-response relationships. However, this study did not control for the confounding factor of diabetes. There was a significant increased risk of essential hypertension for the participants with a high-level of dioxin exposure. However, the reverse analysis of participants suffering from hypertension did not show an association with dioxin, suggesting lack of dose-response relationships. (See 61 FR 41447–48 for study citations.)

In Update 1998 NAS found sporadic reports of increased circulatory disease potentially related to exposure to herbicides or TCDD. A study of cancer and circulatory system mortality among 1,189 male workers in a chemical plant in Hamburg, Germany (Flesch-Janys D, Berger J, Gurn P, Manz A, Nagel S, Waltsgott H, Dwyer JH. 1995. Exposure to polychlorinated dioxins and furans (PCDD/F) and mortality in a cohort of workers from a herbicide-producing plant in Hamburg, Federal Republic of Germany. American Journal of Epidemiology 142(11): 1165–1175.) found overall circulatory system disease mortality to be elevated among exposed workers. Results were dose-dependent; the RR among those exposed to the highest estimated levels of TCDD was 2.0 (95% CI 1.2–3.3). The increased risk appeared to be restricted to ischemic heart disease (IHD). Information was not available for confounding factors related to IHD, but the authors reasoned that the use of an unexposed referent population combined with the strong dose-response relationship argued against attributing the results to confounding factors. They also noted that the smoking rates and socioeconomic status of both cohorts appeared to be similar. In a simple random sample of Australian Army Vietnam veterans on self-reported health status (O'Toole *et al.*, 1996b), hypertension and other circulatory system disease were reported significantly more frequently by veterans. However, there was no significant association with combat exposure, and veterans were more likely to be current or former smokers and to report high alcohol consumption. The ongoing study of Ranch Hand veterans (AFHS, 1996), observed a significant increase of circulatory disorders among ground troops (SMR 1.5, CI 1.0–2.2), with nearly half of the increase due to atherosclerotic heart disease (SMR 1.4, CI 0.8–2.1). However, data on smoking and alcohol use were not available.

Most studies, however, noted decreases in incidence of circulatory disorders, or at best, nonsignificant increases among exposed individuals. NAS found inconsistent results across the studies reviewed. Interpretation of individual studies was generally limited by a lack of information on cigarette smoking, obesity, serum lipid levels, presence of diabetes, and other risk factors. Accordingly, after reviewing all available evidence, the Secretary has found that the credible evidence against an association between circulatory disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Respiratory Disorders

In VAO, NAS examined studies that covered a wide variety of respiratory disorders other than respiratory cancers (*e.g.*, chronic bronchitis, asthma, pleurisy, pneumonia, and tuberculosis). Studies of individuals exposed in occupational settings revealed no increase in mortality from respiratory disease. Environmental exposure studies similarly showed no significant differences in mortality due to respiratory disease. Mortality studies of Vietnam veterans generally found no increased risk. Morbidity data were generally difficult to evaluate because of methodological problems and because studies focused on symptoms, lung function tests and x-ray interpretation rather than disease. One occupational study showed no excess morbidity; another occupational study found increased symptomatology of respiratory disease, but did not adequately control for the confounding factor of age. (See 59 FR 345 for study citations.)

In Update 1996, NAS reviewed three new studies, all of which found no significant increase in respiratory disease associated with herbicide exposure. (See 61 FR 41448 for study citations.)

In Update 1998, NAS reviewed evidence from several new occupational and veteran studies (Becher *et al.*, 1996; Svensson *et al.*, 1995; Ott and Zober, 1996; Ramlow *et al.* 1996; Kogevinas *et al.*, 1997; Bullman TA, Kang HK. 1996. The risk of suicide among wounded Vietnam veterans. American Journal of Public Health 86(5): 662–667; O'Toole *et al.*, 1996b; Watanabe and Kang, 1996; Dalager and Kang, 1997; Crane *et al.*, 1997a; Crane *et al.*, 1997b; and the ongoing study of Ranch Hand veterans, AFHS, 1996). O'Toole *et al.*, 1996b showed the strongest association between exposure and respiratory disease. Although there was no significant increase in overall respiratory system disease among veterans, hay fever, bronchitis, emphysema, and other respiratory disease were significantly elevated compared to the general population. However, these conditions were not related to an index of combat exposure, and the veterans were more likely to have smoked at some point in their lives than the general population. Although, in general, there were sporadic reports of increased respiratory disease potentially related to exposure to herbicides or dioxin, the results were inconsistent across the studies. In addition, interpretation of individual studies was generally limited by a lack of information on cigarette smoking. Accordingly, the Secretary has found that the credible evidence against an association between respiratory disorders (other than certain respiratory cancers) and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Skin Cancer

In VAO, NAS assigned skin cancer to a category labeled limited/suggestive evidence of no association with herbicide exposure. This is defined as meaning that several adequate studies, covering the full range of levels of exposure that humans are known to encounter, are mutually consistent in not showing a positive association between herbicide exposure and the particular health outcome at any level of exposure. There were many credible studies that showed no association or a negative association with herbicide exposure. (See Chapter 8 of VAO.)

Update 1996 reviewed one new study (Lynge, 1993) that did find an excess risk of skin cancer. However, another new study found no increased risk of skin cancer. Three other new studies were too small to have sufficient statistical power to give definitive results. A mortality study of farmers in 23 states utilizing occupational information from death certificates found an increased PCMR for skin cancer in white male farmers. This study, however, did not correlate the increased PCMR to suspected herbicide exposure and did not control for other confounding factors. NAS felt that these studies, while not providing suggestive evidence of an association with herbicide exposure, undermined the evidence of no association discussed in its first report, and thus warranted changing skin cancer from the "limited/suggestive evidence of no association" category to the "inadequate/insufficient evidence to determine whether an association exists" category. (See 61 FR 41448 for study citations.)

In Update 1998, NAS discussed malignant melanoma separately from squamous and basal cell carcinomas because of the different biologic behaviors and risk factors for these cancers.

Melanoma

Two new studies showed a statistically significant increase in melanoma mortality, but the data are not particularly strong. A study of U.S. Marine and Army veterans (Watanabe and Kang, 1996) found an increased risk of skin cancers only among Marine veterans (PMR=1.3, CI 1.0–1.6). Army veterans showed no increased risk in comparison to any of the control groups. This study made no distinction between melanoma and other skin cancers. A study of Australian Vietnam veterans (Crane *et al.*, 1997a) showed an increased risk when compared to the Australian population, but no increased risk when the comparison group was non-Vietnam veterans (Crane *et al.*, 1997b). None of these studies controlled for exposure to sunlight, the greatest risk-factor for malignant melanoma. A study of Swedish fishermen (Svensson *et al.*, 1995) reported no elevated incidence of melanoma and found a decreased risk of death from the disease compared to the general Swedish population. Other new studies and updates of previous studies found either no increased risk or only a slightly elevated increase that was not considered significant (Bertazzi *et al.*, 1997; Kogevinas *et al.*, 1997; Hertzmann *et al.*, 1997; Dalager and Kang, 1997; Clapp, 1997). NAS did not feel that the evidence warranted altering its prior determination that there was inadequate or insufficient evidence of an association between exposure to herbicide agents and the subsequent development of malignant melanoma.

Basal Cell and Squamous Cell Carcinomas

The most compelling study reviewed by NAS was a Canadian community case-control study (Gallagher RP, Bajdik CD, Fincham S, Hill GB, Keefe AR, Coldman A, McLean DI, 1996. Chemical exposures, medical history, and risk of squamous and basal cell carcinoma of the skin. Cancer Epidemiology, Biomarkers and Prevention 5(6): 419–424.), which found an increased risk for squamous cell carcinoma, but not basal cell carcinoma, in individuals exposed to herbicides (OR=1.5, CI 1.0–2.3). The risk increased with increasing lifetime exposure. However, neither control for confounders nor assessment of exposure were adequate. Moreover, the findings in this study are in conflict with the earlier findings in the Ranch Hand study (Wolfe WH, Michalek JE, Miner JC, Rahe A, Silva J, Thomas WF, Grubbs WD, Lustik MB, Karrison TG, Roegner RH, Williams DE, 1990. Health status of Air Force veterans occupationally exposed to herbicides in Vietnam. I. Physical health. Journal of the American Medical Association 264: 1824–1831.) of an increased incidence of basal cell carcinoma, but not squamous cell carcinoma. The study of Swedish fishermen (Svensson *et al.*, 1995) showed a statistically significant increase in the incidence of such cancers (RR=2.3, CI 1.4–3.5) among the fishermen who ate more of the fish potentially containing higher levels of organochlorine compounds. However, this study provided no measurements of the levels of TCDD or arsenic in either fish or fishermen. Other studies reviewed by NAS generally reported no statistically significant increases of basal cell or squamous cell carcinomas in exposed groups. Again, NAS did not feel that the evidence warranted altering its prior determination that there was inadequate or insufficient evidence of an association between exposure to herbicide agents and the subsequent development of basal cell and squamous cell carcinomas.

Accordingly, based on all available evidence, the Secretary has found that the credible evidence against an association between these skin cancers (malignant melanoma, basal cell carcinoma, and squamous cell carcinoma) and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Cognitive and Neuropsychiatric Effects

NAS found in VAO that the studies of cognitive and neuropsychiatric disorders were beset by a number of methodologic problems, including exposure measures, the wide variety of "standardized" test instruments used, and the inability to detect or correct for other influences on test results such as emotional state, non-neurologic disease, metabolic conditions, fatigue, medications, or style of the examiner. Because of their failure to adequately control for these confounding factors, those studies lacked credibility in assessing the relationship of herbicide exposure to these conditions.

Update 1996 reviewed one study that found multiple neuropsychological changes; however, the significance of these findings is uncertain because of the small number of subjects, possible selection bias, the lack of an external control group, and the low estimated amount of exposure. Another study of a large sample of Vietnam veterans found reports of psychological dysfunction correlated with self-reports of combat exposure and level of herbicide exposure. Without confirmation of the subject reports, the significance of these results is in doubt. Because of methodological problems with the preceding studies and two other reviewed studies, there continued to be no credible evidence for an association between herbicide exposure and cognitive disorders or neuropsychiatric effects. (See 61 FR 41446 for study citations.)

In Update 1998, NAS briefly discussed a report from Australia (O'Toole BI, Marshall RP, Grayson DA, Schureck RJ, Dobson M, Ffrench M, Pulvertaft B, Meldrum L, Bolton J, Vennard J. 1996c. The Australian Vietnam Veterans Health Study: III. Psychological health of Australian Vietnam veterans and its relationship to combat. International Journal of Epidemiology 25(2): 331–340.) that analyzed the self-reported psychiatric states of Vietnam veterans as determined 20–25 years after the war. This study found higher prevalences of alcohol abuse or dependence, PTSD, and social and simple phobias among Vietnam veterans than among the civilian population. However, there was no attempt to relate these behavioral disorders to herbicide exposure. NAS stated it was unaware of other new studies that provide any further evidence of an association between herbicide exposure and cognitive or neuropsychiatric disorders. Therefore, based on available evidence, the Secretary continues to find that the credible evidence against an association between cognitive or neuropsychiatric disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Reproductive Effects in Male Veterans

In Update 1998 NAS, as it had in VAO and Update 1996, reviewed the current literature with respect to possible associations between herbicide exposure and various reproductive effects, *i.e.*, spontaneous abortion, spina bifida and other birth defects, neonatal/infant deaths and stillbirths, low birth weights, and childhood cancer in offspring. NAS continued to find limited/suggestive evidence of an association of spina bifida with exposure to herbicides. For other reproductive outcomes, while the evidence suggests that an association is biologically plausible, various factors complicate reaching more definitive conclusions. (See Chapter 9 of the 1998 NAS report for additional information.)

Except in the case of spina bifida, compensation of a veteran or a veteran's child for these effects is beyond VA's statutory authority (title 38, United States Code) and would require enabling legislation. In 1996, § 421 of Public Law 104–204, as amended by § 404 of Public Law 105–114, gave VA the authority that the Secretary had requested to provide benefits for spina bifida in the natural children of individuals who had served in Vietnam during the period from January 9, 1962, through May 7, 1975. (See 38 U.S.C., Chapter 18.)

Gastrointestinal Tumors and Brain Tumors

In Update 1998 NAS, as it had in VAO and Update 1996, assigned gastrointestinal tumors (stomach cancer, pancreatic cancer, colon cancer, and rectal cancer) and brain tumors to the category labeled limited/suggestive evidence of no association with herbicide exposure. This category is defined as meaning that several adequate studies, covering the full range of levels of exposure that humans are known to encounter, are mutually consistent in not showing a positive association between herbicide exposure and the particular health outcome at any level of exposure. NAS reviewed several new credible studies (see the 1998 NAS report, Chapter 7) concerning all of these conditions that generally showed no association or a negative association with herbicide exposure. One study of workers exposed to TCDD in 1953 at a BASF plant in Germany (Ott and Zober, 1996) did report a statistically significant positive association of both death and incidence of digestive cancer. However, one of the cases of reported digestive cancer was actually primary liver cancer. If this had been classified as hepatobiliary cancer, the reported association probably would have been weaker. Accordingly, on the basis of all evidence available, the Secretary has found that the credible evidence against an association between gastrointestinal tumors (stomach cancer, pancreatic cancer, colon cancer, and rectal cancer) and brain tumors and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS reviewed scientific and medical articles published since the publication of its first report as an integral part of the process that resulted in "Veterans and Agent Orange: Update 1998." In our judgment, the comprehensive review and evaluation of the available literature which NAS conducted in conjunction with its report has permitted VA to identify all conditions for which the current body of knowledge supports a finding of an association with herbicide exposure. Accordingly, the Secretary has determined that there is no positive association between exposure to herbicides and any other condition for which he has not specifically determined that a presumption of service connection is warranted.

Approved: October 26, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 99–28579 Filed 11–1–99; 8:45 am]

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November 2, 1999

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water Regulations; Radon-222; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–6462–8]

RIN 2040–AA94

National Primary Drinking Water Regulations; Radon-222

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is proposing a multimedia approach to reducing radon risks in indoor air (where the problem is greatest), while protecting public health from the highest levels of radon in drinking water. Most radon enters indoor air from soil under homes and other buildings. Only approximately 1–2 percent comes from drinking water. The Agency is proposing a Maximum Contaminant Level Goal (MCLG) and National Primary Drinking Water Regulations (NPDWR) for radon-222 in public water supplies. Under the framework set forth in the 1996 amendments to the SDWA, EPA is also proposing an alternative maximum contaminant level (AMCL) and requirements for multimedia mitigation (MMM) programs to address radon in indoor air. Public water systems (PWS) are defined in the Safe Drinking Water Act (SDWA). This proposed rule applies to community water systems (CWS), a subset of PWSs. Under the proposed rule, CWSs may comply with the AMCL if they are in States that develop an EPA-approved MMM program or, in the absence of a State program, develop a State-approved CWS MMM program. This approach is intended to encourage States, Tribes, and CWSs to reduce the health risk of radon in the most cost-effective way. The Agency is also proposing a maximum contaminant level (MCL) for radon-222, to apply to CWSs in non-MMM States that choose not to implement a CWS MMM program. The proposal also includes monitoring, reporting, public notification, and consumer confidence report requirements for radon-222 in drinking water.

DATES: EPA must receive public comments, in writing, on the proposed regulations by January 3, 2000.

ADDRESSES: You may send written comments to the Radon-222, W–99–08 Comments Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *owdocket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII, WP6.1, or WP8 file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–99–08. Comments and data will also be accepted on disks in WP6.1, WP8, or ASCII format. Electronic comments on this action may be filed online at many Federal Depository libraries.

Please submit a copy of any references cited in your comments. Facsimiles (faxes) cannot be accepted. EPA would appreciate one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

The proposed rule and supporting documents, including public comments, are available for review in the Water Docket at the address listed previously. The Docket also has several of the key supporting documents electronically available as PDF files. For information on how to access Docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For general information on radon in drinking water, contact the Safe Drinking Water Hotline, phone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time. For technical inquiries regarding the proposed regulations, contact Sylvia Malm, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency (mailcode 4607), 401 M Street, SW, Washington DC, 20460. Phone: (202) 260–0417. E-mail: *malm.sylvia@epa.gov*. For inquiries regarding the proposed multimedia mitigation program, contact Anita Schmidt, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, (mailcode 6609J), 401 M Street, S.W, Washington, DC, 20460. Phone: (202) 564–9452. E-mail: *schmidt.anita@epa.gov*. For general information on radon in indoor air, contact the Radon Hotline at 1–800–SOS–RADON (1–800–767–7236).

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

Potentially regulated entities include community water systems using ground water or mixed ground and surface water.

The following table lists potentially regulated entities. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other entities not listed in the table could also be regulated. To determine whether your organization is affected by this action, you should carefully examine the proposed applicability criteria in section 40 CFR parts 141.20(b)(1) and Section IV of the preamble. If you have questions regarding the applicability of this action to a particular entity, consult Sylvia Malm who is listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Category	Examples of potentially regulated entities
Industry	Privately owned/operated community water supply systems using ground water or mixed ground water and surface water.
State, Tribal, and Local Government.	State, Tribal, or local government-owned/operated water supply systems using ground water or mixed ground water and surface water.
Federal Government.	Federally owned/operated community water supply systems using ground water or mixed ground water and surface water.

Abbreviations Used in This Proposal

AMCL: Alternative Maximum Contaminant Level
BAT: Best Available Technology
BEIR: Committee on the Biological Effects of Ionizing Radiation. The Committee on Health Risks of Exposure on Radon that conducted the National Research Council Biological Effects of Ionizing Radiation (BEIR) VI Study (NAS 1999a). The committee is formed by the Radiation Effect Research/Commission on Life Sciences/National Research Council/National Academy of Sciences.
CFR: Code of Federal Regulations
CWS: Community Water System
EF: Equilibrium Factor
EPA: U.S. Environmental Protection Agency
FR: Federal Register
GAC: Granular Activated Carbon

HRRCA: Health Risk Reduction and Cost Analysis
IOC: Inorganic Contaminant
LSC: Liquid Scintillation Counting
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
MMM: Multimedia Mitigation
NAS: National Academy of Sciences
NAS Radon in Drinking Water Committee: The Committee on Risk Assessment of Exposure to Radon of the Drinking Water that conducted the National Research Council Risk Assessment of Radon in Drinking Water Study (NAS 1999b). The committee is formed by the Board of Radiation Effect Research of the Commission on Life Sciences of the National Research Council, National Academy of Sciences.
NELAC: National Environmental Laboratory Accreditation Conference
NIST: National Institute of Standards and Technology
NIRS: National Inorganics and Radionuclides Survey
NPDWR: National Primary Drinking Water Regulation
NPRM: Notice of Proposed Rulemaking
NTNC: Non-Transient, Non-Community
OGWDW: Office of Ground Water and Drinking Water
OMB: Office of Management and Budget
PBMS: Performance-Based Measurement System
PE: Performance Evaluation
PT: Proficiency Testing
POE: Point-of-Entry
POU: Point-of-Use
PRA: Paperwork Reduction Act
PWS: Public Water System
pCi/L: Picocuries per Liter
RFA: Regulatory Flexibility Act
SAB: Science Advisory Board
SBA: Small Business Administration
SBO: Small Business Ombudsman
SBREFA: Small Business Regulatory Enforcement and Fairness Act
SDWA: Safe Drinking Water Act
SDWIS: Safe Drinking Water Information System
SIRG: State Indoor Radon Grant
SSCT: Small Systems Compliance Technology
SSVT: Small Systems Variance Technology
SMF: Standardized Monitoring Framework
UMRA: Unfunded Mandates Reform Act
URTH: Unreasonable Risks to Health
WL: Working Level
WLM: Working Level Month

Table of Contents

I. Summary: What Does Today's Proposed Rulemaking Mean for My Water System?
  A. Why is EPA Proposing to Regulate Radon in Drinking Water?
  B. What is Radon?
  C. What are the Health Concerns from Radon in Air and Water?
  D. Does this Regulation Apply to My Water System?
  E. How Will this Regulation Protect Public Health?
  F. How Will the Multimedia Mitigation (MMM) Program Work?
  G. What are the Proposed Limits for Radon in Drinking Water?
  H. What is the Proposed Best Available Technology (BAT) for Treating Radon in Drinking Water?
  I. What Analytical Methods are Recommended?
  J. Where and How Often Must I Test My Water for Radon?
  K. May I Use Point-of-Use (POU) Devices, Point-of-Entry (POE) Devices, or Bottled Water to Comply with this Regulation?
  L. May I Get More Time or Use a Cheaper Treatment? Variances and Exemptions
  M. What are State Primacy, Record Keeping, and Reporting Requirements?
  N. How are Tribes Treated in this Proposal?

Statutory Requirements and Regulatory History

II. What Does the Safe Drinking Water Act Require the EPA to Do When Regulating Radon in Drinking Water?
  A. Withdraw the 1991 Proposed Regulation for Radon
  B. Arrange for a National Academy of Sciences Risk Assessment.
  C. Set an MCLG, MCL, and BAT for Radon-222
  D. Set an Alternative MCL (AMCL) and Develop Multimedia Mitigation (MMM) Program Plan Criteria
  E. Evaluate Multimedia Mitigation Programs Every Five Years
III. What Actions Has EPA Taken on Radon in Drinking Water Prior to This Proposal?
  A. Regulatory Actions Prior to 1991
  B. The 1991 NPRM
  C. 1994 Report to Congress: Multimedia Risk and Cost Assessment of Radon
  D. 1997 Withdrawal of the 1991 NPRM for Radon-222
  E. 1998 SBREFA Small Business Advocacy Review Panel for Radon
  F. 1999 HRRCA for Radon in Drinking Water

Requirements

IV. To Which Water Systems Does this Regulation Apply?
V. What is the Proposed Maximum Contaminant Level Goal (MCLG) for Radon?
  A. Approach to Setting the MCLG
  B. MCLG for Radon in Drinking Water
VI. What Must a State or Community Water System Have In Its Multimedia Mitigation Program Plan?
  A. What are the Criteria?
  B. Why Will MMM Programs Get Risk Reduction Equal or Greater Than Compliance with the MCL?
  C. Implementation of an MMM Program in Non-Primacy States
  D. Implementation of the MMM Program in Indian Country
  E. CWS Role in State MMM Programs
  F. Local CWS MMM Programs in Non-MMM States and State Role in Approval of CWS MMM Program Plans
  G. CWS Role in Communicating to Customers
  H. How Did EPA Develop These Criteria?
  I. Background on the Existing EPA and State Indoor Radon Programs
VII. What are the Requirements for Addressing Radon in Water and Radon in Air? MCL, AMCL and MMM
  A. Requirements for Small Systems Serving 10,000 People or Less
  B. Requirements for Large Systems Serving More Than 10,000 People
  C. State Role in Approval of CWS MMM Program Plans
  D. Background on Selection of MCL and AMCL
  E. Compliance Dates
VIII. What are the Requirements for Testing for and Treating Radon in Drinking Water?
  A. Best Available Technologies (BATs), Small Systems Compliance Technologies (SSCTs), and Associated Costs
  B. Analytical Methods
  C. Laboratory Approval and Certification
  D. Performance-Based Measurement System (PBMS)
  E. Proposed Monitoring and Compliance Requirements for Radon
IX. State Implementation
  A. Special State Primacy Requirements
  B. State Record Keeping Requirements
  C. State Reporting Requirements
  D. Variances and Exemptions
  E. Withdrawing Approval of a State MMM Program
X. What Do I Need to Tell My Customers? Public Information Requirements
  A. Public Notification
  B. Consumer Confidence Report

Risk Assessment and Occurrence

XI. What is EPA's Estimate of the Levels of Radon in Drinking Water?
  A. General Patterns of Radon Occurrence
  B. Past Studies of Radon Levels in Drinking Water
  C. EPA's Most Recent Studies of Radon Levels in Ground Water
  D. Populations Exposed to Radon in Drinking Water
XII. What Are the Risks of Radon in Drinking Water and Air?
  A. Basis for Health Concern
  B. Previous EPA Risk Assessment of Radon in Drinking Water
  C. NAS Risk Assessment of Radon in Drinking Water
  D. Estimated Individual and Population Risks
  E. Assessment by National Academy of Sciences: Multimedia Approach to Risk Reduction

Economics and Impacts Analysis

XIII. What is the EPA's Estimate of National Economic Impacts and Benefits?
  A. Safe Drinking Water Act (SDWA) Requirements for the HRRCA
  B. Regulatory Impact Analysis and Revised Health Risk Reduction and Cost Analysis (HRRCA) for Radon

  - C. Baseline Analysis
  - D. Benefits Analysis
  - E. Cost Analysis
  - F. Economic Impact Analysis
  - G. Weighing the Benefits and Costs
  - H. Response to Significant Public Comments on the February 1999 HRRCA
- XIV. Administrative Requirements
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Regulatory Flexibility Act (RFA)
  - C. Unfunded Mandates Reform Act (UMRA)
  - D. Paperwork Reduction Act (PRA)
  - E. National Technology Transfer and Advancement Act (NTTAA)
  - F. Executive Order 12898: Environmental Justice
  - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  - H. Executive Order on Federalism
  - I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  - J. Request for Comments on Use of Plain Language

Stakeholder Involvement

- XV. How has the EPA Provided Information to Stakeholders in Development of this NPRM?
  - A. Office of Ground Water and Drinking Water Website
  - B. Public Meetings
  - C. Small Entity Outreach
  - D. Environmental Justice Initiatives
  - E. AWWA Radon Technical Work Group

Background

- XVI. How Does EPA Develop Regulations to Protect Drinking Water?
  - A. Setting Maximum Contaminant Level Goal and Maximum Contaminant Level
  - B. Identifying Best Available Treatment Technology
  - C. Identifying Affordable Treatment Technologies for Small Systems
  - D. Requirements for Monitoring, Quality Control, and Record Keeping
  - E. Requirements for Water Systems to Notify Customers of Test Results if Not in Compliance
  - F. Approval of State Drinking Water Programs to Enforce Federal Regulations
- XVII. Important Technical Terms
- XVIII. References

Appendix I to the Preamble: What are the Major Public Comments on the 1991 NPRM and How has the EPA Addressed Them in this Proposal?

  - A. General Issues
  - B. Statutory Authority and Requirements
  - C. Radon Occurrence
  - D. Radon Exposure and Health Effects
  - E. Maximum Contaminant Level
  - F. Analytical Methods
  - G. Treatment Technologies and Cost
  - H. Compliance Monitoring

I. Summary: What Does Today's Proposed Rulemaking Mean for My Water System?

A. Why Is EPA Proposing To Regulate Radon in Drinking Water?

The proposed National Primary Drinking Water Regulation (NPDWR) for radon in drinking water is based on a multimedia approach designed to achieve greater risk reduction by addressing radon risks in indoor air, with public water systems providing protection from the highest levels of radon in their ground water supplies. The framework for this proposal is set out in the Safe Drinking Water Act as amended in 1996 (SDWA), which provides for a multimedia approach for addressing the public health risks from radon in drinking water and radon in indoor air from soil. This statutory-based framework reflects the characteristics uniquely specific to radon among drinking water contaminants: that the relative cost-effectiveness of reducing risk from exposure to this contaminant is substantially greater for a non-drinking water source of exposure—indoor air—than it is from drinking water. Accordingly, SDWA directs the Environmental Protection Agency (EPA) to promulgate a maximum contaminant level (MCL) for radon in drinking water, but also to make available a higher alternative maximum contaminant level (AMCL) accompanied by a multimedia mitigation (MMM) program to address radon risks in indoor air. Further, in setting the MCL, EPA is to take into account the costs and benefits of programs that control radon in indoor air (SDWA 1412(b)(13)(E)).

B. What Is Radon?

Radon's Physical Properties

Throughout this preamble, "radon" refers to the specific isotope radon-222. Radon is a naturally occurring gas formed from the radioactive decay of uranium-238. Low concentrations of uranium and its other decay products, specifically radium-226, occur widely in the earth's crust, and thus radon is continually being generated, even in soils in which there is no man-made radioactive contamination. Radon is colorless, odorless, tasteless, chemically inert, and radioactive. A portion of the radon released through radioactive decay moves through air or water-filled pores in the soil to the soil surface and enters the air, while some remains below the surface and dissolves in ground water (water that collects and flows under the ground's surface).

Because radon is a gas, when water that contains radon is exposed to the air, the radon will tend to be released into the air. Therefore, radon is usually present in only low amounts in rivers and lakes. If ground water is supplied to a house, radon in the water will tend to be released into the air of the house via various water uses. Thus presence of radon in drinking water supplies leads to exposure via both oral route (ingesting water containing radon) and inhalation route (breathing air containing both radon and radon decay products released from water used in the house such as for cooking and washing).

Radon itself also decays, emitting ionizing radiation in the form of alpha particles, and transforms into decay products, or "progeny" radioisotopes. It has a half-life of about four days and decays into short-lived progeny. Unlike radon, the progeny are not gases, and can easily attach to and be transported by dust and other particles in air. The decay of progeny continues until stable, non-radioactive progeny are formed. At each step in the decay process, radiation is released.

C. What Are the Health Concerns From Radon in Air and Water?

National and international scientific organizations have concluded that radon causes lung cancer in humans. The primary risk is lung cancer from radon entering indoor air from soil under homes. Tap water is a smaller source of radon in air; however, breathing radon released to air from household water uses also increases the risk of lung cancer, and consumption of drinking water containing radon presents a smaller risk of internal organ cancers, primarily stomach cancer.

In most cases, radon in soil under homes is the biggest source of exposure and radon from tap water will be a small source of radon in indoor air.

The U.S. Surgeon General has warned that indoor radon (from soil) is the second leading cause of lung cancer (USEPA 1988b). The National Academy of Sciences (NAS 1999a) estimates that radon from soil causes about 15,000 to 22,000 (using two different approaches) lung cancer deaths each year in the U.S. If you smoke and your home has high indoor radon levels, your risk of lung cancer is especially high. EPA and the U.S. Surgeon General recommend testing all homes below the third floor.

The NAS report mandated by the 1996 SDWA identifies the same unit risk associated with radon in drinking water compared with previous EPA analyses. Based on the NAS risk assessment and an updated EPA occurrence analysis, the Agency estimates that uncontrolled levels of radon in public drinking water supplies cause 168 fatal cancers each year in the U.S. However, radon in domestic drinking water generally contributes a very small part (about 1–2 percent) of total radon exposure from indoor air. The NAS estimated that about 89 percent of the fatal cancers caused by radon in drinking water were due to lung cancer from inhalation of radon released to indoor air, and about 11 percent were due to stomach cancer from consuming water containing radon (NAS 1999b).

D. Does This Regulation Apply to My Water System?

The regulation for radon in drinking water and the multimedia approach proposed in this action would apply to all community public water systems (CWSs) that use ground water or mixed ground and surface water. The proposed regulation would not apply to non-transient non-community (NTNC) public water supplies, nor to transient public water supplies.

E. How Will This Regulation Protect Public Health?

Given the much greater potential for risk reduction in indoor air and years of experience with radon mitigation programs, EPA expects that greater overall risk reduction will result from this proposal than from an approach which solely addresses radon in public drinking water supplies. The proposed regulation for radon in drinking water is intended to promote a more cost-effective multimedia approach to reduce radon risks, particularly for small systems with limited resources, and to reduce the highest levels of radon in drinking water. This determination to have a strong and effective multimedia radon program to address radon in indoor air is consistent with the SDWA framework for multimedia radon programs and the SDWA expectation that EPA would give significant weight to the risk findings of the NAS report, which confirm the health risks of radon in drinking water, and the much greater risks from radon in indoor air arising from soil under homes.

F. How Will the Multimedia Mitigation (MMM) Program Work?

The multimedia mitigation (MMM) program is modeled on the National Indoor Radon Program implemented by EPA, States and others. That program has achieved substantial risk reduction through voluntary public action since the release of the original "A Citizen's Guide to Radon" in 1986 (USEPA 1986, 1992b) and the U.S. Surgeon General's recommendation in 1988 that all homes be tested and elevated levels be reduced. The program has been successful in achieving indoor radon risk reduction through a variety of program strategies, which form the basis for EPA's proposed multimedia mitigation program plan criteria. Based on the estimated number of existing homes fixed and the number of new homes built radon-resistant since the national program began in 1986, EPA estimates that under existing Federal and State indoor radon programs, a total of more than 2,500 lives will be saved through indoor radon risk reduction efforts expected to take place through the year 2000. Every year the rate of lives saved increases as more existing houses with elevated radon levels are fixed and as more new houses are built radon-resistant. For the year 2000, EPA estimates that the rate of radon-related lung cancer deaths that will be avoided from mitigation of existing homes and from homes built radon-resistant (in high radon areas) will be about 350 lives saved per year (USEPA 1999i).

The MMM/AMCL approach is intended to provide a more cost-effective alternative to achieve radon risk reduction, by allowing States (or community water systems) to address radon in indoor air from the soil source, while reducing the highest levels of radon in drinking water. It is EPA's expectation that most States will develop State-wide multimedia mitigation programs as the most cost-effective approach. Most of the States currently have indoor radon programs that are addressing radon risk from soil, and can be used as the foundation for development of MMM program plans. EPA expects that State indoor radon programs will implement MMM programs under agreements with the State drinking water programs. The regulatory expectation of community water systems serving 10,000 persons or less is that they meet the alternative maximum contaminant level (AMCL) and be associated with an approved MMM program plan—either developed by the State and approved by EPA or developed by the CWS and approved by the State. Tribal CWS MMM programs, as well as those in States and Territories that do not have drinking water primacy, will be approved by EPA. The same general criteria for State MMM program plans would apply to CWSs in developing local MMM programs in States that do not have such a program, albeit with a local perspective on such criteria and commensurate with the unique attributes of small CWSs. EPA expects that MMM program strategies for CWSs will be less comprehensive than those of State MMM programs, and will need to reflect the local character of the community served by the CWS. Strong public participation in the development of the CWS MMM program plans will help to ensure this, as well as community support for the MMM program. Figures I.1 and I.2 provide a conceptual model for the MCL, AMCL, and MMM programs for small and large systems.

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FIGURE I.1
Conceptual Model for the MCL, AMCL, and MMM Program
(Small Systems)

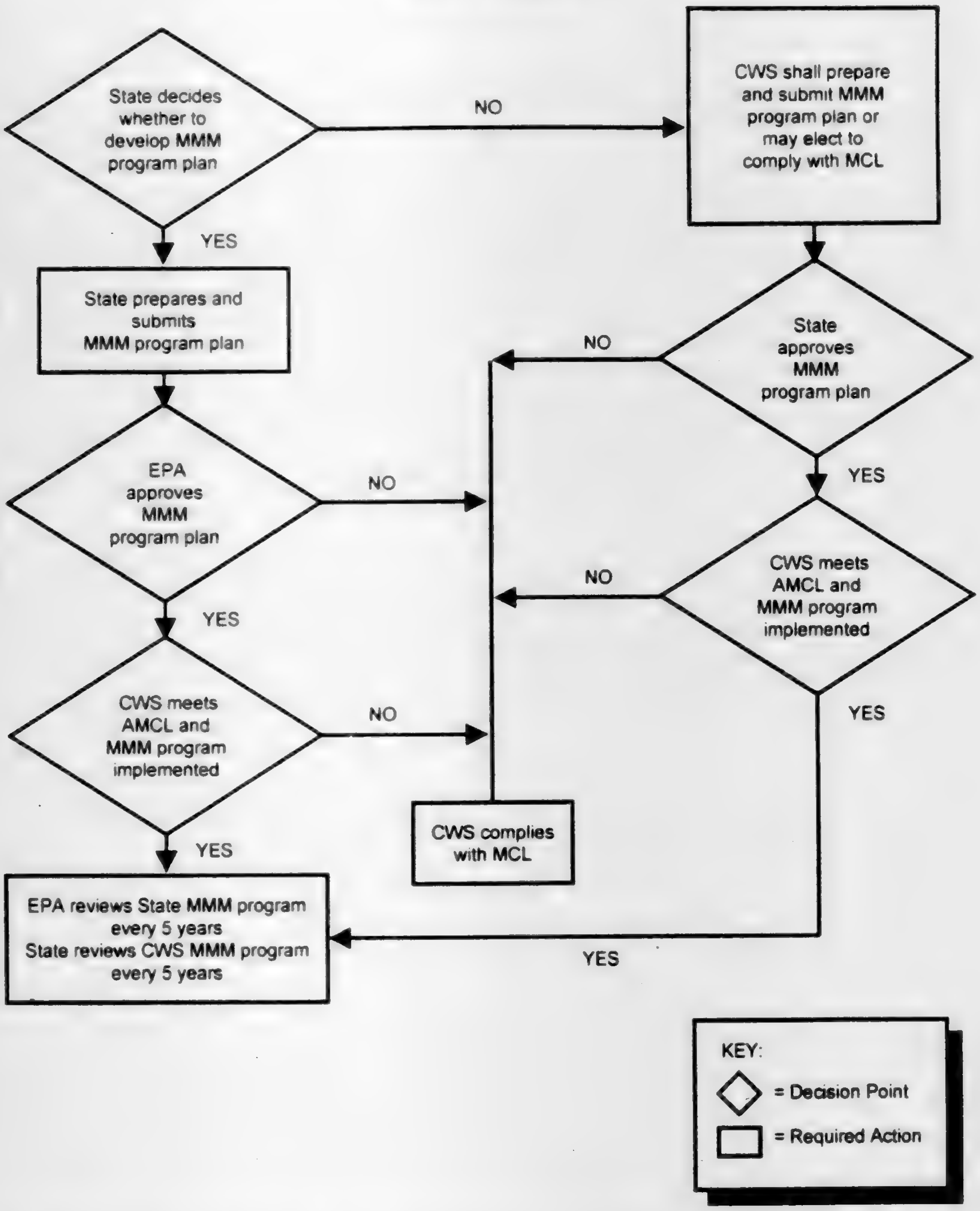
State decides whether to develop MMM program plan
NO
CWS shall prepare and submit MMM program plan or may elect to comply with MCL
YES
State prepares and submits MMM program plan
NO
State approves MMM program plan
EPA approves MMM program plan
NO
YES
YES
NO
CWS meets AMCL and MMM program implemented
CWS meets AMCL and MMM program implemented
NO
YES
CWS complies with MCL
YES
EPA reviews State MMM program every 5 years
State reviews CWS MMM program every 5 years
YES
KEY:
= Decision Point
= Required Action

NOTE: The regulatory expectation for small systems is compliance with the AMCL if there is an approved State MMM program, or implementation of a CWS MMM program (in the absence of a State MMM program. Small systems may elect to comply with the MCL instead of implementing an MMM program.

FIGURE I.2
Conceptual Model for the MCL, AMCL, and MMM Program
(Large Systems)

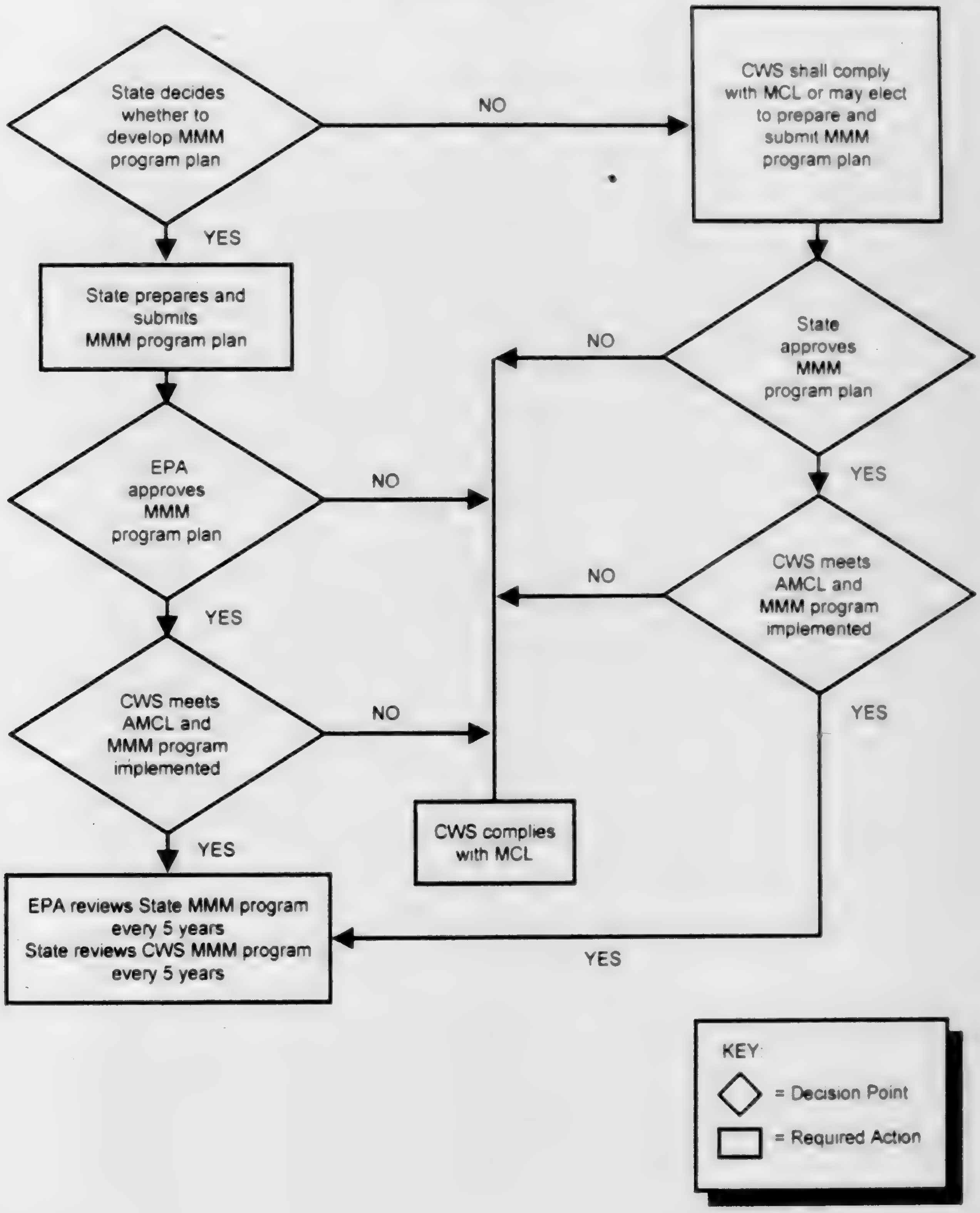
State decides whether to develop MMM program plan
NO
CWS shall comply with MCL or may elect to prepare and submit MMM program plan
YES
State prepares and submits MMM program plan
NO
State approves MMM program plan
EPA approves MMM program plan
NO
YES
YES
NO
CWS meets AMCL and MMM program implemented
CWS meets AMCL and MMM program implemented
NO
YES
YES
CWS complies with MCL
EPA reviews State MMM program every 5 years
State reviews CWS MMM program every 5 years
YES
KEY
= Decision Point
= Required Action

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To meet the requirements of SDWA, the risk reduction benefits expected to be achieved by MMM programs are to be equal to or greater than risk reduction benefits that would be achieved by CWSs complying with the MCL. Under SDWA, this means that if all States implemented MMM programs they would be expected to result in about 62 cancer deaths averted annually, equal to what would be achieved with universal compliance with the MCL at 300 pCi/L. Unlike health risk reduction benefits gained through water treatment, which remain constant from one year to the next, the rate of health benefits from reducing indoor radon is cumulative; that is, it steadily increases every year with every additional existing home that is mitigated and with every new home built radon-resistant. Therefore, MMM programs will use and build on the indoor radon program framework to achieve "equal or greater" risk reduction, rather than focusing efforts on precisely quantifying "equivalency" to the much more limited risk reduction expected to occur if community water systems complied with the MCL.

G. What Are the Proposed Limits for Radon in Drinking Water?

The proposed regulation provides that States may adopt State-wide MMM programs and the alternative maximum contaminant level (AMCL) of 4000 pCi/L. This is the most effective approach for radon risk reduction and the one EPA expects the majority of States to adopt. If a State has an EPA-approved MMM program plan, CWSs in that State may comply with the AMCL. In the absence of an approved State MMM program plan the regulatory expectation for small CWSs (those serving 10,000 or fewer) is that they comply with a level of 4000 pCi/L in drinking water, and develop and implement a State-approved local MMM program plan to reduce indoor radon risks arising from soil and rock under homes and buildings. Small CWSs may also choose to comply with the MCL of 300 pCi/L (and not develop a local MMM program.)

The AMCL/MMM approach is EPA's regulatory expectation for small CWSs because an MMM program and compliance with the AMCL is a much more cost-effective way to reduce radon risk than compliance with the maximum contaminant level (MCL) of 300 pCi/L. (While EPA believes that the MMM approach is preferable for small systems in a non-MMM State, small CWSs may, at their discretion, choose the option of meeting the MCL instead of developing a local MMM program). Large CWSs (serving a population of more than 10,000) must either comply with the proposed MCL or comply with the AMCL and implement a State-approved CWS MMM program plan (in the absence of an approved State MMM program plan).

If a State has an approved MMM program plan, the standard for radon in drinking water that the State would adopt in order to obtain primacy would be 4000 pCi/L.

Under the proposed requirements, an MMM program plan must address four criteria:

1. Public involvement in development of the MMM program plan
2. Quantitative goals for existing homes fixed and new homes built radon-resistant
3. Strategies for achieving goals
4. Plan to track and report results

CWSs must monitor for radon in drinking water according to the requirements described in Section VIII of this preamble, and report their results to the State. If the State determines that the radon level in a CWS is below 300 pCi/L, the system need only continue to meet monitoring requirements and is not covered by the requirements described in Section VI of this preamble, regarding MMM programs.

H. What Is the Proposed Best Available Technology (BAT) for Treating Radon in Drinking Water?

Proposed BAT for Radon Under Section 1412 of the SDWA

High-performance aeration, as described in Section VIII.A of this preamble, is the BAT for all systems. For systems serving 10,000 persons or fewer, the BAT is high-performance aeration and the Small Systems Compliance Technologies, as described in Section VIII.A.

Proposed BAT for Radon Under Section 1415 of the SDWA

BAT for purposes of variances is the same as BAT under Section 1412 of the Act.

I. What Analytical Methods Are Recommended?

EPA is proposing Liquid Scintillation Counting (Standard Method 7500–Rn) and de-emanation ("Lucas Cell") as the approved methods. The Liquid Scintillation Counting method designated "D 5072–92" by the American Society for Testing and Materials (ASTM) is being proposed as an alternate method.

J. Where and How Often Must I Test My Water for Radon?

All CWSs that use ground water must monitor for radon. If your system relies on ground water or uses ground water to supplement surface water during low-flow periods, you must monitor for radon. If you are required to monitor for radon you must collect samples for analysis at each entry point to the distribution system, after treatment and storage. Initially all CWSs using ground water must monitor for radon at each entry point to the distribution system quarterly for one year. (See Section VII.E for discussion of compliance dates). If the results of analyses show that the average of all first year samples at any sample site is above the MCL/AMCL, you must continue monitoring quarterly at that sampling site until the average of four consecutive quarterly samples is below the MCL/AMCL. If the results of analyses show that the average of all first year samples at each sample site is below the MCL/AMCL, you may reduce monitoring to once a year at State discretion at each sample site. If the results indicate that the average of the four quarterly samples are close to the MCL/AMCL (as discussed next), the State may require you to continue monitoring quarterly.

The State may allow you to reduce monitoring for radon to a frequency of once every three-years, if the average from four consecutive quarterly samples is less than ½ the MCL/AMCL and the State determines that your system is reliably and consistently below the MCL/AMCL. However, if a sample collected while monitoring annually or less frequently exceeds the radon MCL/AMCL, the monitoring frequency must be increased to quarterly until the average of 4 consecutive quarterly samples is less than the MCL/AMCL. The State may require the collection of a confirmation sample(s) to verify the result of the initial sample. In the case of reduced monitoring, if the analytical results from any sampling point are found to exceed ½ the MCL/AMCL, the State may require you to collect a confirmation sample at the same sampling point. The results of the initial sample and the confirmation sample(s) will be averaged and the resulting average will be used to determine compliance. States may, at their discretion, disregard samples that have obvious sampling errors.

If, after initial monitoring, the State determines that it is highly unlikely that radon levels in your system will be above the MCL/AMCL, the State may grant a waiver reducing monitoring frequency to once every nine years. In granting the waiver, the State must take into consideration factors such as the geological area of the source water and previous analytical results which demonstrate that radon levels do not occur above the MCL/AMCL. If you are granted a waiver, it remains in effect for a nine year period.

If you monitor for radon after proposal of this rule, you may use the data, at the State's discretion, toward satisfying the initial sampling requirements for radon. Your monitoring program and the methods used to analyze for radon must satisfy the regulations set out in the proposal.

K. May I Use Point-of-Use (POU) Devices, Point-of-Entry (POE) Devices, or Bottled Water To Comply With This Regulation?

POE aeration or granular activated carbon (GAC) would be allowable for use to achieve compliance with MCLs. While these POE technologies are not considered BAT for large systems, they are considered small system compliance technologies (SSCTs), and thus may serve as BAT under Sections 1412 and 1415 of the Act for systems serving 10,000 persons or fewer. Since POU devices are used to treat water at a single tap, radon will be released at unacceptable levels from the other non-treated taps, including the shower head. For this reason, POU devices do not adequately address radon risks and will not be allowed to be used for compliance purposes. Likewise, although bottled water reduces ingestion risk from radon, it does not reduce radon-related inhalation risks from household water. For this reason, compliance determinations based on bottled water consumption cannot be used.

L. May I Get More Time or Use a Cheaper Treatment? Variances and Exemptions

Variances and Exemptions (Section 1415.a of the SDWA)

States and Tribes with primary enforcement responsibility ("primacy") may issue a variance under Section 1415(a)(1)(A) of the Act to a CWS that cannot comply with an MCL because of source water characteristics on condition that the system install the best available technology. Under Section 1416 of the Act, primacy entities may exempt a CWS from an NPDWR due to "compelling factors", subject to the restrictions described in the Act. Primacy entities may require systems to implement additional interim control measures such as installation of additional centralized treatment or POE devices for each customer as measures to reduce the health risk before granting a variance or exemption. The primacy entity must find that the variance or exemption will not pose an "unreasonable risk to health", as determined by the State or other primacy entity. Guidance for estimating "unreasonable risk to health" (URTH) values for contaminants, including radon, is being developed by EPA and will result in an upcoming publication (a draft of the guidance is expected in the Fall of 1999). Preliminary information regarding URTH values may be found elsewhere (Orme-Zavaleta 1992, USEPA 1998f). States must require CWSs to provide POE devices or other means, as appropriate to the risks present (i.e., no POU or bottled water for volatile contaminants, such as radon), to reduce exposure below unreasonable risk to health values before granting a variance or exemption.

"Small Systems Variances" (Section 1415(e) of the SDWA)

For NPDWRs proposed after the 1996 Amendments to the Act, EPA is required to evaluate the affordability and technical feasibility of treatment technologies for use as compliance technologies for small systems. Three categories of small systems will be considered: those serving: (1) 25–500, (2) 501–3,300, and (3) 3,301–10,000 persons. If EPA determines that source water conditions exist for one or more small water system size categories such that typical small systems within a given category will not be able to afford and/or implement a technology capable of achieving compliance, then EPA will designate applicable "small systems variance technologies" (SSVTs) capable of achieving contaminant levels that are "protective of public health". Primacy entities may issue small systems variances to eligible CWSs that install and properly maintain a listed SSVT. For a small system to be eligible for a small systems variance, the primacy entity must determine that the system cannot afford to comply through installing treatment, finding an alternate source of water, or restructuring/consolidating.

EPA has determined that affordable and technically feasible technologies exist for radon removal for all classes of small systems. Under the 1996 SDWA, if EPA lists at least one small systems compliance technology for a given system size category for all source water qualities, then it may not list any small systems variance technologies for that size category, *i.e.*, small systems compliance technologies and variance technologies are mutually exclusive. For this reason, no small system will be eligible for a small systems variance for radon under the SDWA (Section 1415(e)). Small systems may be eligible for general variances (under Section 1415.a of the Act) and/or exemptions on a case by case basis. It is also important to emphasize that the presumptive regulatory expectation for small systems is an MMM program (in the absence of a State MMM program) and compliance with the AMCL of 4000 pCi/L. Thus, for the vast majority of small systems (those with radon levels below 4000 pCi/L), compliance with this proposed rule will not involve any treatment of drinking water.

M. What Are State Primacy, Record Keeping, and Reporting Requirements?

The proposed Radon Rule requires States to adopt several regulatory requirements, including public notification requirements, MCL/AMCL for radon, and the requirements of Subpart R in the proposed rule. In addition, States and eligible Indian tribes will be required to adopt several special primacy requirements for the Radon Rule. The proposed rule includes additional reporting requirements for MMM program plans. The proposed rule also requires States to keep specific records in accordance with existing regulations. These requirements are discussed in more detail in Section IX of this preamble.

N. How Are Tribes Treated in This Proposal?

The proposal provides Tribes the option of seeking "treatment in the same manner as a State" for the purposes of assuming enforcement responsibility for a CWS program, and developing and implementing an MMM program (see Section VI.C). If a Tribe chooses not to implement an EPA-approved MMM program, any tribal CWS may develop an MMM plan for EPA approval, under the same criteria described in Section VI.A.

Statutory Requirements and Regulatory History

II. What Does the Safe Drinking Water Act Require the EPA To Do When Regulating Radon in Drinking Water?

The 1996 Amendments to the Safe Drinking Water Act (PL 104–182) establish a new charter for public water systems, States, Tribes, and EPA to protect the safety of drinking water supplies. (For an overview of the general requirements for all drinking water regulations, see Section XVI of this preamble). Among other mandates, Congress amended Section 1412 of the SDWA to direct EPA to take the following actions regarding radon in drinking water.

A. Withdraw the 1991 Proposed Regulation for Radon

Congress specified that EPA should withdraw the drinking water standards proposed for radon in 1991 (see discussion in Section III.D).

B. Arrange for a National Academy of Sciences Risk Assessment

The amendments in Section 1412(b)(13)(B) require EPA to arrange for the National Academy of Sciences (NAS) to conduct an independent risk assessment for radon in drinking water and an assessment of the health risk reduction benefits from various mitigation measures to reduce radon in indoor air.

C. Set an MCLG, MCL, and BAT for Radon-222

Congress specified in Section 1412 (b)(13) that EPA should propose a new MCLG and NPDWR for radon-222 by August, 1999. EPA is also required to finalize the regulation by August, 2000. As a preliminary step, EPA was required to publish a radon health risk reduction and cost analysis (HRRCA) for possible radon MCLs for public comment by February, 1999. As required by SDWA, this analysis addressed: (1) Health risk reduction benefits that come directly from controlling radon; (2) health risk reduction benefits likely to come from reductions in contaminants that occur with radon; (3) costs; (4) incremental costs and benefits associated with each MCL considered; (5) effects on the general population and on groups within the general population likely to be at greater risk; (6) any increased health risk that may occur as the result of compliance; and (7) other relevant factors, including the quality and extent of the information, the uncertainties in the analysis, and factors with respect to the degree and nature of the risk.

D. Set an Alternative MCL (AMCL) and Develop Multimedia Mitigation (MMM) Program Plan Criteria

The amendments in Section 1412(b)(13)(F) introduced two new elements into the radon in drinking water rule: (1) An Alternative Maximum Contaminant Level (AMCL), and (2) radon multimedia mitigation (MMM) programs. If the MCL established for radon in drinking water is more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air, EPA is required to simultaneously establish an AMCL. The AMCL would be the standard that would result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air. If an AMCL is established, EPA is to publish criteria for State multimedia mitigation (MMM) programs to reduce radon levels in indoor air. Section VI of this preamble describes what a State or public water system must have in their multimedia mitigation program plan.

E. Evaluate Multimedia Mitigation Programs Every Five Years

Once the MMM programs are established, EPA must re-evaluate them no less than every five years (Section 1412(b)(13)(G)). EPA may withdraw approval of programs that are not expected to continue to meet the requirement of achieving equal or greater risk reduction.

III. What Actions Has EPA Taken on Radon in Drinking Water Prior to This Proposal?

A. Regulatory Actions Prior to 1991

Section 1412 of the SDWA, as amended in 1986, required the EPA to publish Maximum Contaminant Level Goals (MCLGs) and to promulgate NPDWRs for contaminants that may cause an adverse effect on human health and that are known or anticipated to occur in public water supplies. On September 30, 1986, EPA published an advance notice of proposed rulemaking (ANPRM) (51 FR 34836) concerning radon-222 and other radionuclides. The ANPRM discussed EPA's understanding of the occurrence, health effects, and risks from these radionuclides, as well as the available analytical methods and treatment technologies, and sought additional data and public comment on EPA's planned regulation.

EPA's Science Advisory Board (SAB) reviewed the ANPRM and the four draft criteria documents that supported it prior to publication of the ANPRM in the **Federal Register**. EPA subsequently revised the criteria documents and resubmitted them to the SAB for review during the summer of 1990. EPA then revised the criteria documents based on this additional round of SAB review and presented a summary of the SAB comments and the Agency's responses in a 1991 Notice of Proposed Rulemaking (NPRM).

B. The 1991 NPRM

On July 18, 1991 (56 FR 33050), EPA proposed a NPDWR for radon and the other radionuclides addressed in the 1986 ANPRM. The 1991 notice, which built on and updated the information assembled for the 1986 ANPRM, proposed an MCLG, an MCL, BAT, and monitoring, reporting, and public notification requirements for radon in public water supplies. The proposed MCLG was zero, the proposed MCL was 300 pCi/L, and the proposed BAT was aeration. Under the proposed rule, all CWSs and NTNCWSs relying on ground water would have been required to monitor radon levels quarterly at each point of entry to the distribution system. Compliance monitoring requirements were based on the arithmetic average of four quarterly samples. The 1991 proposed rule required systems with one or more points of entry out of compliance to treat influent water to reduce radon levels below the MCL or to secure water from another source below the MCL.

The proposed rule was accompanied by an assessment of regulatory costs and economic impacts, as well as an assessment of the risk reduction associated with implementation of the MCL. EPA estimated the following potential impacts from the 1991 proposed MCL:

- An estimated lifetime cancer risk of about two cancers for every 10,000 persons exposed to radon in drinking water.
- Avoidance of about 80 cancer cases per year.
- About 27,000 public water systems affected.
- A total annual cost of about $180 million.

The Agency received substantial comments on the proposal and its supporting analyses from States, water utilities, and other stakeholder groups. EPA has included in Appendix I of this preamble a summary of major public comments on the 1991 NPRM and how EPA subsequently addressed those comments.

C. 1994 Report to Congress: Multimedia Risk and Cost Assessment of Radon

In 1992, Congress directed EPA to report on the multimedia risks from exposure to radon, the costs to control this exposure, and the risks from treating to remove radon. EPA's 1994 Report to Congress (USEPA 1994a) estimates the risk, fatal cancer cases, cancer cases avoided and costs for mitigating radon in water and in indoor air. The Report found that cancer risks from radon in both air and water are high. While radon risk in air typically far exceeds that in water, the cancer risk from radon in water is higher than the cancer risk estimated to result from any other currently regulated drinking water contaminant.

EPA conducted a quantitative uncertainty analysis of the risks associated with exposure to radon in drinking water. This analysis, reviewed by EPA's SAB at the direction of Congress, found that:

- People are exposed to waterborne radon in three ways: (1) From ingesting radon dissolved in water; (2) from inhaling radon gas released from water during household use; and (3) from inhaling radon progeny derived from radon released from water.
- The estimated total U.S. cancer fatalities per year from unregulated waterborne radon via all three routes of exposure were 192, with a range from about 51 to 620.
- The estimated annual cost was $272 million.

The 1994 Report to Congress noted that the regulated industry estimated considerably higher costs than EPA for a 300 pCi/L MCL. For example, in October 1991 the American Water Works Association (AWWA) estimated national costs at $2.5 billion/year (for discussion of this issue, see Section G of the Appendix to this preamble). The final part of the report included the SAB's comments on each analysis presented and an EPA discussion of the issues raised by the SAB.

D. 1997 Withdrawal of the 1991 NPRM for Radon-222

As required by the SDWA as amended, EPA withdrew the MCLG, MCL, and monitoring, reporting, and public notification requirements proposed in 1991 for radon-222 on August 6, 1997 (62 FR 42221). No other provision of the 1991 proposal was affected by this withdrawal.

E. 1998 SBREFA Small Business Advocacy Review Panel for Radon

In 1998, EPA convened a Small Business Advocacy Review Panel to address the radon rule, in accordance with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). The Panel of representatives from EPA, the Office of Management and Budget's Office of Information and Regulatory Affairs, and the Small Business Administration's Office of Advocacy reviewed technical background information related to this rulemaking, and reviewed comments provided by small business and government entities affected by this rule. The Panel made recommendations in a final report to the Administrator which included a discussion of how the Agency could accomplish its environmental goals while minimizing impacts to small entities. For additional details, see Section XIV.B of this proposal.

F. 1999 HRRCA for Radon in Drinking Water

EPA published the Health Risk Reduction and Cost Analysis required by the SDWA on February 26, 1999 (64 FR 9559), and took public comment for 45 days. EPA held a one-day public meeting in Washington, D.C. on March 16, 1999, to present the HRRCA and the latest MMM framework, and discuss stakeholder questions and issues. For details of the contents of the HRRCA and EPA's response to significant public comment, see Section XIII of this preamble.

Requirements

IV. To Which Water Systems Does This Regulation Apply?

The SDWA directs EPA to develop national primary drinking water regulations (NPDWRs) that apply to public water systems (PWSs). The statute defines a PWS as a system that provides water to the public for human consumption if such system has at least 15 service connections or regularly serves at least 25 individuals (Section 1401(4)(A)). EPA's regulations at 40 CFR 141.2 define different types of PWSs. A community water system (CWS) serves at least 15 service connections used by year round residents or regularly serves at least 25 year-round residents. A non-community system does not serve year-round residents; rather, it (1) regularly serves at least 25 of the same persons over 6 months of the year (a "non-transient" system such as a restaurant or church) or (2) does not serve at least 25 of the same persons over 6 months of the year (a "transient" system such as a campground or service station).

The regulation for radon in drinking water and the multimedia approach for reduction of radon in indoor air (MMM program) proposed in this notice applies only to CWSs that use ground water or mixed ground and surface water (see following discussion regarding "mixed" supplies). The proposed regulation does not apply to transient water systems because most people who use such facilities do so only occasionally (*e.g.*, travelers). There is no evidence that such short-term exposure to radon would cause acute illness. The data on which health risks from radon were determined for this rulemaking reflect long-term exposure (see chapter 3 of the RIA (USEPA 1999f) HRRCA section that discusses calculation of risk). And, as discussed next in the context of non-transient non-community systems, even workers at transient facilities who regularly drink the water would be expected to have much less exposure than persons served by community water systems. For these reasons, the proposed rule does not cover transient systems.

The proposed regulation also does not apply to non-transient non-community (NTNC) water systems. EPA has determined that the risks posed to persons served by NTNC systems (such as factories, hospitals, and schools with their own drinking water wells) are substantially less than the risks to persons served by community water systems.

The Agency recently completed a preliminary analysis of radon occurrence (using data provided by six States), exposure and risk at NTNC public water systems. Results from this preliminary analysis indicate that even though radon concentrations are likely to be about 60 percent higher at NTNC locations than at locations served by a community water system, the lifetime average risk to individuals who work or attend school in buildings served by a groundwater-based NTNC system is probably about 17 percent of the average risk to a worker (and 6.7 percent of the average risk to a student) exposed in a home served by a community ground water system. The reason that risks are lower in the NTNC setting than the residential setting is that people who are exposed at NTNC locations spend a smaller fraction of their lifetime there than in the home. Further, in the particular case of students most do not spend their entire school years in the same school. EPA also notes that there is limited data in this area, and more information is needed on how water is used in NTNC facilities and on the contribution NTNC water use makes to radon inhalation risk. In addition, the overall population served by NTNC PWSs is relatively small (5.2 million vs. 89.7 million in homes served by CWSs using ground water (USEPA 1999b)).

EPA acknowledges that the SDWA applies to all public water systems. However, EPA believes that limiting the applicability of the radon rule to community water systems where the risk from radon exposure is the greatest meets a major goal of Congress in enacting the 1996 amendments to the Act-to focus regulations on the most significant problems. In the Conference Report adopting the 1996 amendments, Congress finds that "more effective protection of public health requires—a Federal commitment to set priorities that will allow scarce Federal, State, and local resources to be targeted toward the drinking water problems of greatest public health concerns." H. Rep. 104–182, Sec. 3. Moreover, Congress specifically directed EPA in setting the NPDWRs for radon to take into consideration the costs and benefits of control programs for radon from other sources. EPA has used this authority in this proposal to set the MCL at 300 pCi/L and to encourage small systems to implement the MMM program and comply with the AMCL. In both circumstances, EPA took into account the fact that programs to control radon in indoor air promise greater benefits at considerably less cost. EPA believes this cost-effectiveness factor is also relevant in determining the applicability of the radon rule. EPA's preliminary analysis of the risk associated with exposure to radon from NTNC systems is that it is much less than the risk from exposure from CWSs. For this reason, EPA has determined that it is not cost-effective to regulate these systems.

However, it is important to note that this analysis is based on limited occurrence and exposure data. In particular, relatively little is known about the transfer factor for release of radon from water into indoor air at NTNC locations, or about the equilibrium factor affecting the amount of radon in indoor air at such locations. The calculations done by EPA to date have assumed that certain values for these parameters at NTNC locations are similar to those in homes, although the data are limited.

The EPA is soliciting comment on the proposal to exclude NTNC PWSs from the radon regulation. EPA is soliciting comments on the Agency's preliminary analysis of radon exposure in NTNC PWSs, as well as any additional data on key parameters, including data on the release of radon from drinking water in the types of buildings (*e.g.*, restaurants, factories, churches, etc.) supplied by NTNC PWSs, and occurrence of radon in NTNC PWSs. If information by commenters shows a greater opportunity for risk reduction than identified in its initial analysis, EPA may make the final radon rule applicable to NTNC PWSs without further public comment.

With regard to systems using mixed ground and surface water, current regulations require that all systems that use any amount of surface water as a source be categorized as surface water systems. This classification applies even if the majority of water in a system is from a ground water source. Data currently in SDWIS does not identify how many of these mixed systems exist although this information would help the Agency to better understand regulatory impacts. To the extent that systems correctly classified by SDWIS as surface water systems also use ground water that may exceed the MCL/AMCL for radon, the costs and benefits of the current proposal will be underestimated.

EPA is investigating ways to identify how many mixed systems exist and how many mix their ground and surface water at the same entry point or at separate entry points within the same distribution systems. For example, a system may have several plants/entry points that feed the same distribution system. One of these entry points may mix and treat surface water with ground water prior to its entry into the distribution system. Another entry point might use ground water exclusively for its source while a different entry point would exclusively use surface water. However, all three entry points would supply the same system classified in SDWIS as surface water.

One method EPA could use to address this issue would be to analyze Community Water System Survey (CWSS) data then extrapolate this information to SDWIS to obtain a national estimate of mixed systems. CWSS data, from approximately 1,900 systems, breaks down sources of supply at the level of the entry point to the distribution system and further subdivides flow by source type. The Agency could use the national estimate of mixed systems to regroup surface water systems for certain impact analyses when regulations only impact one type of source. The Agency requests comment on this methodology and its applicability for use in regulatory impact analyses.

V. What Is the Proposed Maximum Contaminant Level Goal for Radon?

A. Approach To Setting the Maximum Contaminant Level Goal (MCLG)

Under Section 1412(b)(4) of the SDWA, the EPA must establish maximum contaminant level goals (MCLG) at the level at which no known or anticipated adverse effects on the health of persons occur, and which allow an adequate safety margin. Section 1412(b)(13) requires the Administrator to set an MCLG for radon in drinking water.

B. MCLG for Radon in Drinking Water

As described in Section XII of this preamble, radon is a documented human carcinogen, classified by EPA as a Group A carcinogen (*i.e.*, there is sufficient evidence of a causal relationship between exposure to radon and lung cancer in humans). Radon is classified as a known human carcinogen based on data from epidemiological studies of underground miners. This finding is supported by a consensus of opinion among national and international health organizations. The carcinogenicity of radon has been well established by the scientific community, including the Biological Effects of Ionizing Radiation (BEIR VI) Committee of the National Academy of Sciences (NAS 1999a), the National Institute of Environmental Health Sciences, U.S. Department of Health and Human Services, the World Health Organization's International Agency for Research on Cancer (IARC 1988), the International Commission on Radiological Protection (ICRP 1987), and the National Council on Radiation Protection and Measurement (NCRP 1984). In addition, the Centers for Disease Control, the American Lung Association, the American Medical Association, the American Public Health Association and others have recognized radon as a significant public health problem.

Based on the well-established human carcinogenicity of radon, and of ionizing radiation in general, the Agency is proposing an MCLG of zero for radon in drinking water. This decision is also supported by the NAS' current recommendation for a linear non-threshold relationship between exposure to radon and cancer in humans. In the BEIR VI report (NAS 1999a), the NAS concluded that there is good evidence that a single alpha particle (high-linear energy transfer radiation) can cause major genomic changes in a cell, including mutation and transformation that potentially could lead to cancer. They noted that even if substantial repair of the genomic damage were to occur, "the passage of a single alpha particle has the potential to cause irreparable damage in cells that are not killed." Given the convincing evidence that most cancers originate from damage to a single cell, the committee went on to conclude that "On the basis of these [molecular and cellular] mechanistic considerations, and in the absence of credible evidence to the contrary, the committee adopted a linear non-threshold model for the relationship between radon exposure and lung-cancer risk. However, the BEIR VI committee recognized that it could not exclude the possibility of a threshold relationship between exposure and lung cancer risk at very low levels of radon exposure." The NAS committee on radon in drinking water (NAS 1999b) reiterated the finding of the BEIR VI committee's comprehensive review of the issue, that a "mechanistic interpretation is consistent with linear non-threshold relationship between radon exposure and cancer risk". The committee noted that the "quantitative estimation of cancer risk requires assumptions about the probability of an exposed cell becoming transformed and the latent period before malignant transformation is complete. When these values are known for singly hit cells, the results might lead to reconsideration of the linear no-threshold assumption used at present." EPA recognizes that research in this area is on-going but is basing its regulatory decisions on the best currently available science and recommendations of the NAS that support use of a linear non-threshold relationship. For additional information on this issue see Section XII.C.3. "Biologic Basis of Risk Estimation" of this preamble.

VI. What Must a State or Community Water System Have in Its Multimedia Mitigation Program Plan?

Today's proposed rule provides States (as defined in Section 1401 of the SDWA) with alternatives for controlling radon exposure. States can develop a MMM program for the reduction of the higher risk of radon in indoor air together with an alternative MCL (AMCL) of 4000 pCi/L to address the highest levels of exposure from radon in drinking water. If a State does not choose this option, the community water systems (CWS) in that State must develop and implement local MMM program plans or comply with an MCL of 300 pCi/L. See Section VII for information on the regulatory expectations for CWSs.

A. What Are the Criteria?

1. Overview

EPA has identified four criteria that State MMM program plans are required to meet to be approved by EPA. MMM program plans developed by Indian tribes will be reviewed by EPA, according to these same criteria. CWSs developing local MMM programs are also subject to these criteria. These four criteria are: public participation, setting quantitative goals, strategies for achieving goals, and a plan to track and report results.

The criteria are based on a number of factors. Foremost, the criteria reflect the elements found in successful voluntary action programs for radon in indoor air that have been underway for more than a decade. It is estimated that at the end of the year 2000, voluntary programs to test homes and mitigate elevated radon levels in indoor air and to encourage the construction of "radon-resistant" new homes will have saved some 2500 lives; and, there is much more that can be done. In the 1999 BEIR VI report (NAS 1999a), NAS concluded that 5,000 to 7,000 cancer cases (using two different methods) could be avoided annually if all homes were below EPA's voluntary radon action level of 4 pCi/L of air. Incorporating these program elements into the criteria required for the MMM programs builds on successful efforts and can be expected to result in an even greater number of lives saved as more States adopt programs and existing programs are strengthened and expanded.

EPA has developed criteria that allow considerable flexibility for those developing and expanding programs. EPA was urged by States and other stakeholders to avoid prescribing the specific elements of the MMM program in a "one size fits all" approach. States and CWSs adopting MMM programs will be required to set quantitative goals for mitigating elevated levels of radon in indoor air of existing homes and building radon-resistant new homes, and to initiate strategies to promote and increase these activities. However, there are requirements that will be new to many of the State indoor radon programs. Those adopting MMM programs will be required to involve the public in a number of important (and on-going) ways, and to track and report results from the implementation of the programs. With these additional elements, both the affected public and EPA will be able to assess the success of the MMM programs. Stakeholder input and EPA's experience with the national voluntary program and the State indoor radon programs led EPA to conclude that these criteria will provide the basis for a program that meets the statutory directive for equal or greater risk reduction benefits.

The Agency also considered equity-related issues concerning the potential impacts of MMM program implementation. There is no factual basis to indicate that minority and low income or other communities are more or less exposed to radon in drinking water than the general public. However, some stakeholders expressed more general concerns about equity in radon risk reduction that could arise from the MMM/AMCL framework outlined in SDWA. One concern is the potential for an uneven distribution of risk reduction benefits across water systems and society. Under the proposed framework for the rule, customers of CWSs complying with the AMCL could be exposed to a higher level of radon in drinking water than if the MCL were implemented, though this level would not be higher than the background concentration of radon in ambient air. However, these CWS customers could also save the cost, through lower water rates, of installing treatment technology to comply with the MCL. Under the proposed regulation, CWSs and their customers have the option of complying with either the AMCL (associated with a State or local MMM program) or the MCL. EPA believes it is important that these issues and choices be considered in an open public process as part of the development of MMM program plans. Therefore, EPA has incorporated requirements into the proposed rule that provide a framework for consideration of equity concerns with the MMM/AMCL. First, the proposed rule includes requirements for public participation in the development of MMM program plans, as well as for notice and opportunity for public comment. EPA believes that the requirement for public participation will result in State and CWS program plans that reflect and meet their different constituents' needs and concerns and that equity issues can be most effectively dealt with at the State and local levels with the participation of the public. In developing their MMM program plans, States and CWSs are required to document and consider all significant issues and concerns raised by the public. EPA expects and strongly recommends that States and CWSs pay particular attention to addressing any equity concerns that may be raised during the public participation process. In addition, EPA believes that providing CWS customers with information about the health risks of radon and on the AMCL and MMM program option will help to promote understanding of the health risks of radon in indoor air, as well as in drinking water, and help the public to make informed choices. To this end, EPA is requiring CWSs to alert consumers to the MMM approach in their State in consumer confidence reports issued between publication of the final radon rule and the compliance dates for implementation of MMM programs. This will include information about radon in indoor air and drinking water and where consumers can get additional information.

EPA is encouraging the States to elect to develop and implement State-wide MMM program plans. Since almost all States currently have State indoor radon programs, EPA considers the States to be best positioned to develop strong MMM program plans that, when implemented, will be expected to achieve equal or greater radon risk reduction when compared to compliance with the MCL. For example, a State-wide plan can take into account the within-State variations in indoor radon potential, the differences in radon levels in drinking water, the experienced coalitions and cooperative partners that have been working to promote public action on indoor radon, the technical expertise of State drinking water and indoor radon programs, and many other factors. EPA expects that the States will be best positioned to develop MMM program plans that are robust and credible in terms of the level of public participation in the development and review process, the goals that are to be achieved from implementation of MMM, and the program strategies to be used.

In the development of State MMM program plans meeting EPA's criteria and in the implementation of the State's MMM program plan, EPA expects and strongly recommends that the State's programs responsible for drinking water and for indoor radon coordinate and collaborate on their efforts. This is particularly important because of the uniqueness of the MMM/AMCL approach which addresses radon risk reduction in drinking water and in indoor air in a multimedia manner that is outside the normal regulatory structure for drinking water. Both programs have important responsibilities and roles in making the AMCL and MMM program approach successful in achieving optimal radon risk reduction. To this end, EPA has included as a special primacy requirement (see Section 142.16 of the proposed rule) that States include in their primacy revision application for the AMCL a description of the extent and nature of coordination between the State's interagency programs (*i.e.*, indoor radon and drinking water programs) on development and implementation of the MMM program plan, including the level of resources that will be made available for implementation and coordination between these agencies.

CWSs developing local MMM program plans are also subject to these criteria. CWS MMM program plans developed in the absence of a State program are deemed to be approved by EPA if they meet the same criteria and are approved by the State. States without a MMM program, as a special condition of primacy (see Section 142.16 of the proposed rule), will be required to review and approve local CWS MMM program plans and to submit their process for approving such plans to EPA. The Agency considered an approach under which it would directly review and approve CWS MMM program plans. However, for several reasons, EPA is proposing that States review local MMM program plans. EPA believes that responsibility for such reviews is an appropriate and natural extension of the States' primacy responsibilities for oversight and enforcement of drinking water regulations. State review and approval of local MMM program plans will ensure that all elements of the radon rulemaking—both the MMM program as well as implementation of the AMCL/MCL—are enforced through the State, rather than separating elements of the rule between the Federal and State governments. Dividing responsibility in such a way may complicate implementation of both elements of the radon rule and be confusing to both CWSs and the public. EPA also believes that the States are best positioned to assist CWSs, especially small systems, in the development of local MMM programs plans to review and approve local plans that meet the four criteria. States have a direct and ongoing regulatory relationship with CWSs as a part of their primacy authorities, as well as a major responsibility for public health related policy and programs in the State. In addition, States are aware of and sensitive to local public health needs and concerns, as well as other issues, that may need to be considered in the development and implementation of local MMM programs. For all these reasons, EPA is proposing an approach today that would require the States to review and approve local MMM program plans in accordance with the same criteria used in EPA's review of State MMM program plans. However, EPA solicits comments on other approaches, such as EPA review and approval of local MMM program plans or other options intermediate between sole State or sole Federal responsibility.

EPA anticipates, and recommends, that States would assist CWSs in developing their local MMM program plans and would approve program plans that meet the criteria and that reflect local radon implementation issues as discussed in Section VI.F. In non-MMM States, EPA is also including as a special primacy requirement that States include in their primacy revision application for the MCL a description of the extent and nature of coordination between interagency programs (*i.e.*, indoor radon and drinking water programs) on development and implementation of the State's review and approval process for CWS MMM program plans, including the level of resources will be made available for implementation and coordination between these agencies.

2. Criteria for MMM Program Plans

The following four criteria are required for approval of State MMM program plans by EPA. Local MMM program plans developed by community water systems are deemed to be approved by EPA if they meet these criteria (as appropriate for the local level) and are approved by the State. The term "State", as referenced next, includes States, Indian tribes and community water systems. EPA is requesting comment on each of the criteria for approval of State, and CWS, MMM program plans. In particular, EPA is requesting comment on whether the criteria need to be more or less stringent, and the supporting rationale for EPA's consideration of other potentially credible approaches.

(a) Description of Process for Involving the Public. (1) States are required to involve community water system customers, and other sectors of the public with an interest in radon, both in drinking water and in indoor air, in developing their MMM program plan. The MMM program plan must include:

A description of processes the State used to provide for public participation in the development of its MMM program plan, including the components identified in the following paragraphs b, c, and d;

A description of the nature and extent of public participation that occurred, including a list of groups and organizations that participated;

A summary describing the recommendations, issues, and concerns arising from the public participation process and how these were considered in developing the State's MMM program plan; and,

A description of how the State made information available to the public to support informed public participation, including information on the State's existing indoor radon program activities and radon risk reductions achieved, and on options considered for the MMM program plan along with any analyses supporting the development of such options.

(2) Once the draft program plan has been developed, the State must provide notice and opportunity for public comment on the draft plan prior to submitting it to EPA.

(b) Quantitative Goals. (1) States are required to establish and include in their plans quantitative goals, to measure the effectiveness of their MMM program, for the following:

(i) Existing houses with elevated indoor radon levels that will be mitigated by the public; and,

(ii) New houses that will be built radon-resistant by home builders.

EPA is proposing to require establishing quantitative goals in these two areas because they represent the most direct link to the risk reduction benefits that are the ultimate objective of the MMM programs. In addition, EPA analyses indicate that it is very cost-effective to test and mitigate existing homes with elevated indoor radon levels. It is also very cost-effective to build new homes radon-resistant, especially in higher radon potential areas. In the existing indoor radon program, EPA has been encouraging the States to promote testing and mitigation in all areas of a State. EPA has also encouraged the States to focus on their activities to promote radon-resistant new construction on the highest radon potential areas (Zone 1) where building homes radon-resistant is most cost-effective. However, it is also cost-effective to build homes in medium potential areas (Zone 2), as well as in "hot" spots found in most lower radon potential areas (Zone 3).

EPA recognizes the States' (and CWSs') need for flexibility in designing MMM programs reflecting their needs and circumstances, in particular the extent to which opportunities are available for risk reduction in mitigation of existing homes with elevated indoor radon levels or in construction of new homes built radon-resistant. Some States, in particular those with a preponderance of lower radon potential areas (and for CWSs in lower radon potential areas), may find it preferable to focus more heavily on testing and mitigation of existing housing than on radon-resistant new construction.

EPA is requesting comment on whether there are alternative goals that achieve radon risk reduction and the rationale for those goals. EPA is also soliciting comments on the goals outlined in paragraph (b), in particular on the appropriateness of the goals and whether the goals need to be more or less stringent.

(2) These goals must be defined quantitatively either as absolute numbers or as rates. If goals are defined as rates, a detailed explanation of the basis for determining the rates must be included.

EPA is proposing to provide this option, in part, because opportunities available for risk reduction in mitigation of existing homes with elevated indoor radon levels or in construction of new homes built radon-resistant may vary between States and within States. In addition, the level of new home construction may vary from year to year in different parts of a State or in a local jurisdiction. In this situation, it may be more appropriate to set goals for radon-resistant new construction as a rate, rather than absolute numbers, to account for this variability. This may be especially true for CWS developing local MMM program plans where no new home construction is currently taking place but may in the future.

(3) States are required to establish goals for promoting public awareness of radon health risks, for testing of existing homes by the public, for testing and mitigation of existing schools, and for construction of new public schools to be radon-resistant, or to include an explanation of why goals were not established in these program areas.

EPA is proposing that States have this option of defining goals as absolute numbers or as rates because, while awareness of radon health risks is a necessary element and a first step in getting the public to take action on indoor radon, public awareness, in and of itself, does not constitute radon exposure reduction. It does, however, help to facilitate informed choice by the public regarding radon testing and mitigation. Since the level of awareness on the health effects of radon is already high in many States, EPA is proposing to give flexibility to the States on this goal. In the case of radon in schools, many States have undertaken a range of activities to address radon in schools and some have done extensive testing, in some cases passing State legislation requiring the State to test public schools. Therefore, EPA is proposing to give States the option of setting these goals for schools. Although this approach provides flexibility in goal setting, EPA strongly encourages those States which do not have high levels of public awareness on radon and where there has been limited testing of public schools across the State to set goals in these areas. EPA is soliciting comment on whether States should be required to set quantitative goals in all or some of these areas in paragraph (b)(3).

(c) Implementation Plans. (1) States are required to include in their MMM program plan implementation plans outlining the strategic approaches and specific activities the State will undertake to achieve the quantitative goals identified in paragraphs (b)(1) and (b)(2). This must include implementation plans in the following two key areas:

(i) Promoting increased testing and mitigation of existing housing by the public through public outreach and education and during residential real estate transactions.

(ii) Promoting increased use of radon-resistant techniques in the construction of new homes.

(2) If a State has included goals for promoting public awareness of radon health risks; promoting testing of existing homes by the public; promoting testing and mitigation of existing schools; and promoting construction of new public schools to be radon resistant, then the State is required to submit a description of the strategic approach that will be used to achieve the goals.

(3) States are required to provide the overall rationale and support for why their proposed quantitative goals identified in paragraphs (b)(1) and (b)(2), in conjunction with their program implementation plans, will satisfy the statutory requirement that an MMM program be expected to achieve equal or greater risk reduction benefits to what would have been expected if all public water systems in the State complied with the MCL.

(d) Plans for Measuring and Reporting Results. (1) States are required to include in the MMM plan submitted to EPA a description of the approach that will be used to assess the results from implementation of the State MMM program, and to assess progress towards the quantitative goals in paragraphs (b)(1) and (b)(2). This specifically includes a description of the methodologies the State will use to determine or track the number of existing homes with elevated levels of radon in indoor air that are mitigated and the number or the rate of new homes built radon-resistant. This must also include a description of the approaches, methods, or processes the State will use to make the results of these assessment available to the public.

(2) If a State includes goals in paragraph (b)(3) for promoting public awareness of radon health risks; testing of existing homes by the public; testing and mitigation of existing schools; and, construction of new public schools to be radon-resistant; the State is required to submit a description of how the State will determine or track progress in achieving each of these goals. This must also include a description of the approaches, methods, or processes the State will use to make these results available to the public.

B. Why Will MMM Programs Get Risk Reduction Equal or Greater Than Compliance With the MCL?

The National Indoor Radon Program implemented by EPA, States and others, has achieved substantial risk reduction through voluntary public action since the release of the original "A Citizen's Guide to Radon" in 1986 (USEPA 1986) (updated: USEPA 1992b) and the U.S. Surgeon General's recommendation in 1988 (US EPA, 1988b) that all homes be tested and elevated radon levels be reduced. The program has been successful in achieving voluntary risk reduction on indoor radon through a variety of program strategies. It is important to keep in perspective the comparatively large potential for risk reduction that can be achieved if all existing homes with indoor radon levels at or above EPA's voluntary action level for indoor radon of 4 pCi/L in the U.S. were mitigated (approximately 6 million homes). In addition there is the potential for significant risk reduction potential if the approximately 1 million new homes built annually in the U.S. were built radon-resistant. Based on the estimated number of existing homes fixed and the number of new homes built radon-resistant since the national program began in 1986, EPA estimates that a total of more than 2,500 lives will be saved through voluntary indoor radon risk reduction efforts expected to take place up through the year 2000. Every year the rate of lives saved increases as more existing houses with elevated radon levels are fixed and as more new houses are built radon-resistant. On average this rate of lives that will be saved from these risk reduction actions increases by about 30 additional lives per year. EPA estimates that for the year 2000, the rate of radon-related lung cancer deaths that will be avoided from mitigation of existing homes and from homes built radon-resistant in high radon areas will be about 350 lives saved per year (USEPA 1999i).

Under the radon provision of SDWA, if all States adopted the AMCL, all State MMM programs together must be expected to result in at minimum about 62 cancer deaths averted annually; equal to what would be achieved with universal compliance with the MCL. Unlike these health risk reduction benefits which remain constant from one year to the next, the rate of health benefits from reducing radon in indoor air, as noted previously, steadily increases every year with every additional existing home that is mitigated and with every new home built radon-resistant. This steady incremental risk reduction offered by mitigation of existing homes with elevated indoor radon and building homes radon-resistant, especially during real estate transactions and through builder and consumer education and State and local adoption of radon-resistant building codes, holds the potential for substantial long-term risk reduction. NAS in their 1999 BEIR VI Report, concluded that up to one third (*i.e.*, 5,000 to 7,000) of their estimated 15,000 to 22,000 annual radon-related lung cancer deaths in the U.S. could be avoided if all homes were below EPA's voluntary radon action level of 4 pCi/L of air (NAS 1999a). This does not include the risk reduction that is achieved from new homes built radon-resistant. The one million new homes on average being built every year represent a significant radon risk reduction opportunity. Therefore, a critical element for MMM is to utilize and build on the indoor radon program framework to achieve "equal or greater" risk reduction rather than focusing efforts on precisely quantifying the much more limited risk reduction that will not occur in community water systems complying with the AMCL (*i.e.*, the difference in the risk reduction between the MCL and the AMCL).

C. Implementation of an MMM Program in Non-Primacy States

A State that does not have primary enforcement responsibility for the Public Water System Program under Section 1413 of the SDWA ("primacy") and where EPA administers the CWS program may still develop a State-wide MMM program plan. EPA would not expect to develop an MMM program plan where the State elects not to develop a State-wide MMM program plan. Accordingly, CWSs in such jurisdictions would be required to comply with the more stringent MCL or develop local MMM program plans for approval by EPA.

The SDWA authorizes all States to develop and submit a MMM program plan to mitigate radon levels in indoor air for approval by the Administrator under Section 1412(b)(13)(G). EPA is proposing that States that do not have primacy may submit a plan to EPA that meets the criteria of 40 CFR 141.302. If the State's plan is approved, the State would be subject to all reporting and compliance requirements of 40 CFR 141.303. Community water systems in States with approved MMM programs would comply with the AMCL of 4000 pCi/L, and would be subject to the requirements for monitoring and analytical methods in 40 CFR 141.20. EPA would continue to administer compliance with the MCL/AMCL, and with monitoring and methods requirements.

D. Implementation of the MMM Program in Indian Country

Under this proposal, States can develop State-wide MMM programs for the reduction of radon in indoor air, and community water systems in such States can then comply with an AMCL of 4000 pCi/L (rather than an MCL of 300 pCi/L). Under Section 1451 of the SDWA, the Administrator of EPA is authorized to treat Indian Tribes in the same manner as States. The proposal provides tribes the option of seeking "treatment in the same manner as a State" for the purposes of assuming enforcement responsibility for a community water system program, and developing and implementing an MMM program. If a tribe does not choose to implement an MMM program, any tribal CWS may develop an MMM program plan for EPA approval, under the same criteria described previously.

EPA is proposing to amend the "treatment as a State" regulations to allow tribes to be treated in the same manner as States for purposes of carrying out the MMM program. Under this proposal, a tribe would not need to demonstrate that it qualified for treatment in the same manner as a State for any other purpose other than the MMM provisions. Tribes may want to seek treatment in the same manner as a State for this limited purpose to the extent that radon is a significant problem on tribal lands because the MMM program provides an opportunity to focus resources on reducing the higher risk exposure—indoor air—and addressing radon in drinking water at the highest levels of exposure. EPA is proposing to amend the treatment in the same manner as State regulations (40 CFR 142.72 and 40 CFR 142.78) to obtain treatment as a State status solely for the purpose of implementing the MMM authorities. Tribes can, of course, always apply to be treated in the same manner as a State for primacy over the Public Water Supply Program under 40 CFR 142.72.

A tribe applying for authority to develop and implement an MMM program plan that has met the criteria under 40 CFR 142. 72 to be treated in the same manner as a State for any purpose will not need to reestablish that it meets the first two criteria (40 CFR 142.72 (a) and (b)) and needs to provide only information in 40 CFR 142.76 that is necessary to demonstrate that the criteria in 40 CFR 142.72 (c) and (d) are met for the MMM program plan. A tribe whose application for authority to carry out the MMM program is approved must develop and implement a MMM program plan in accordance with 40 CFR 141.302 and 141.303.

E. CWS Role in State MMM Programs

EPA anticipates that CWSs, especially small systems, would have a limited role in State-wide MMM programs. For example, States may develop information brochures on radon that could be distributed locally by CWSs. EPA expects that States will want to consult with CWSs, small and large, in making a determination about the nature and scope of the role, if any, of CWSs in implementing a State-wide MMM program. During EPA's stakeholder process, many States and CWSs agreed that States were best positioned to design and implement effective State-wide MMM programs and that it was not apparent what role CWSs might take in such a program. However, CWSs do have important responsibilities for communicating information on radon to their customers (see Section VI.G).

F. Local CWS MMM Programs in Non-MMM States and State Role in Approval of CWS MMM Program Plans

The regulatory expectation of small community public water systems (CWSs) is that they meet the AMCL and be associated with a MMM program-either developed by the State and approved by EPA or developed by the CWS and approved by the State. EPA strongly recommends that States choose to develop and implement State-wide MMM programs as the most cost-effective approach to manage the health risks from radon. In those cases where States do not elect to do a State-wide MMM program, CWSs would need to notify the State of its intention to develop and submit a local MMM program plan to the State (4 years after publication of the final rule in the **Federal Register**). EPA believes that, in all cases, the regulatory burden of complying with AMCL and implementing a MMM program will be considerably less than complying with the more stringent regulatory level for radon in drinking water. EPA believes that the MMM/AMCL is the appropriate standard for CWSs, especially for small systems, because it results in greater radon risk reduction and makes better use of limited resources. EPA believes that the four criteria for plan approval can be applied to CWS local MMM program plans (as appropriate for the local level), commensurate with the unique attributes of these CWSs and their service areas. As previously discussed in more detail, these four criteria are: public participation, setting quantitative goals, strategies for achieving goals, and a plan to track and report results.

In general, EPA expects that CWSs would be able to meet the four criteria by carrying out a wide range of diverse activities, many of which are well within the expertise of CWSs. However, small CWSs would not necessarily be expected to perform some of the activities entirely on their own. In carrying out certain activities, small CWSs would be expected to seek help from others in order to build upon and take advantage of existing CWS and State networks. The existing State indoor radon programs, for example, operate in large measure through a network of State and local partners such as the American Lung Association, the National Association of Counties, the National Environmental Health Association, the National Safety Council, consumer advocacy groups, non-government organizations, and other local and county governmental organizations. CWSs should be able to use the same networks and their capabilities, and State radon in indoor air programs should help facilitate these contacts. The following provides some additional perspective on the four criteria relative to CWS MMM programs.

Public Participation: Thorough public participation is certainly within the capability of CWSs. Systems are often required in the course of CWS activities, such as operation, maintenance, water bill collection, violation notification, and planning for new facilities, to involve, communicate with, inform, and in other ways interact with the public. Thus, these systems already engage, to a significant degree, in public outreach and communication. EPA expects that such expertise can readily be directed toward the particular public participation requirements associated with MMM programs. Public participating during development of local MMM plans will help ensure greater local support for and implementation of the CWS MMM programs.

Quantitative Goals: EPA notes that the quantitative goals that CWSs, especially small CWSs, typically will need to establish may be rather modest compared to those that would be expected for State-wide programs. The level of risk reduction needed to ensure "equal or greater" risk reduction be achieved (as if the MCL were being met) from a local MMM program plan is a function of and takes into account factors such as the size of the population served, level of radon in drinking water, and most importantly, the needs and goals of the community.

Strategies for Achieving Goals: EPA recognizes that promoting public action in the areas of new homes built radon-resistant and mitigation of existing homes with elevated levels of radon in indoor air will be entirely new ventures for CWSs. However, EPA believes CWSs, including small CWSs, will be capable of conducting various activities designed to promote testing and mitigation of existing homes with elevated levels of radon in indoor air and building of new homes to be radon-resistant. Such activities include public education programs, provision of radon test kits, establishing networks with local health and government officials to gain their support and involvement in MMM implementation, meeting with community leaders, customers, local real estate and home building officials and organization, utilizing existing information distribution network employed by CWSs, and other types of activities to promote public action on indoor radon. EPA expects that MMM program strategies for CWSs will be less comprehensive and far reaching than those of State MMM programs, and will need to reflect the local character of the community served by the CWS.

Tracking and Reporting of Results: EPA recognizes that assessing or tracking progress towards meeting these goals also represents a new responsibility for CWSs. However, CWSs may be able to build upon their experience and networks for communicating with customers and identifying their needs or concerns and find ways to collect information about actions taking place in the community. To track homes built or modified to be radon resistant, CWSs may be able to obtain needed information from various local and State programs and offices and other organizations in its network. CWS may also choose to employ contractor support or consultant services to obtain this information or to help track other MMM related activities. EPA also expects the States to provide assistance to CWSs in developing their tracking and assessment approach based on State experience in determining the results of their State indoor radon programs. EPA recognizes that CWSs' options for tracking results may be more limited than those available to the States, and that States should consider such limitations in their five-year review of local programs.

CWSs may find it useful to combine efforts with adjacent CWSs for purpose of developing and implementing joint MMM programs, thereby broadening their combined expertise, local infrastructure and institutional bases, and network of partners. EPA also expects that privately-owned, as well as publicly owned, CWSs can avail themselves of these same kinds of networks, partnership, and consultant services. Private systems will generally also be well connected to the municipal entities in the jurisdictions in which they operate.

The report of the Small Business Advocacy Review Panel included a discussion of the concept of a "model MMM program" for small systems which would not be required but could provide a workable option for small systems. It might address potential concerns of the smallest systems that anticipate they may lack the resources and expertise to develop an MMM program. As discussed subsequently in Section VI. H., EPA has concerns in general about the appropriateness and applicability of a "one-size-fits-all" approach for MMM programs. A model approach, even for small CWSs, would not address the unique, site-specific needs of different CWSs and their associated communities. EPA is requesting public comment on the concept of a model MMM program for CWSs.

As noted previously, EPA is strongly recommending that States choose to develop and implement State-wide MMM programs as the most cost-effective approach to manage the health risks from radon which would preclude the need for water systems to develop such programs on their own. EPA also believes the States which choose not to do an MMM program have an important role, and are the best positioned, to assist CWSs in development of local MMM program plans. EPA will also be providing guidance to assist CWSs, including small CWSs, in the development of local MMM programs. This section has discussed the manner in which the four criteria could be applied to CWSs in non-MMM States. EPA is requesting comment on approaches to applying these criteria to CWSs, especially the smallest CWSs, in view of the capabilities of these systems and their ability to get assistance from others. EPA is also requesting comment on options that may be available to CWSs, particularly, small systems, to develop and implement an MMM program plan.

In summary, EPA recognizes that CWSs do not have the same institutional base and infrastructure, legislative authority, proportionate resource base, or indoor radon program experience as States on which to base development of a local MMM program plan. However, EPA believes that the four criteria for approval are equally applicable to both States and CWSs, and can be applied to CWSs (particularly small CWSs) in a manner that recognizes and accounts for these differences. As discussed previously, the manner in which these criteria are addressed by CWSs in local MMM program plans, and the level and scope of effort, will necessarily differ from that embodied in State plans. States should consider these differences in evaluating CWS MMM program plans and in their five-year review of CWS MMM program implementation. EPA believes that States, in particular, are best positioned to assist CWSs, especially small systems, in the development of local MMM programs that satisfy the four criteria, and expects them to provide such assistance. In evaluating CWS plans, States should exercise flexibility in their review and approval process, especially for small CWSs, recognizing that they will not have the same institutional and resource base or experience and may need to obtain assistance from others.

The Agency expects that most systems in non-MMM States with radon levels between 4,000 pCi/L and 300 pCi/L will develop and submit MMM program plans. However, the Agency recognizes that some CWSs in non-MMM States may elect not to develop a MMM program plan for a variety of reasons. In these cases, certain options are available to small CWSs. They may consider working with one or more other systems for the purposes of developing and implementing an MMM program plan, in order to take advantage of greater institutional capabilities. If a system does not develop an MMM program plan on its own or together with other systems, the system must comply with the MCL of 300 pCi/L through any available means (*e.g.*, blending, use of alternate sources, and treatment).

From a risk communication standpoint, EPA wishes to convey to customers of small CWSs that its regulatory expectation for these systems is that they meet the AMCL and implement an MMM program. However, CWSs can choose to meet the MCL rather than take the MMM approach. If a CWS opts for the MMM/AMCL approach but is unable to develop and successfully implement a State-approved MMM program plan, it may be required as part of an enforcement order, to meet the MCL rather than comply with the MMM/AMCL. The Agency requests comment on this approach for small system MMM programs.

The SDWA provides that EPA will approve local water system MMM program plans and EPA has developed the criteria to be used for approving MMM program plans, as discussed in (A). EPA will review and approve State MMM program plans. CWS MMM program plans that address the criteria and are approved by the State are deemed approved by EPA. The proposed rule requires States that do not have a State-wide MMM program, as a condition of primacy for the radon regulation, to review MMM program plans submitted by CWSs and to approve plans meeting the four criteria for MMM program plans discussed in Section VI.A. of this, including providing notice and opportunity for public comment on CWS MMM program plans. EPA solicits comment on this approach to reviewing and approving local MMM plans. Under SDWA, MMM program plans submitted by CWSs are to be subject to the same criteria and conditions as State MMM program plans. EPA believes that the States are best positioned to assist CWSs, especially small systems, in the development and review of local MMM program plans that meet the four criteria, and to have public health oversight of the progress of the implementation of these local radon risk reduction programs. EPA encourages those States not choosing to develop a State-wide MMM program plan to exercise flexibility in their review and approval of local MMM program plans, especially for small CWSs, recognizing that CWSs will not have the same institutional base, nor the State's program experience on indoor radon, on which to base to local development of a MMM program plan. EPA expects that the State drinking water programs and indoor radon programs will work collaboratively in assisting CWSs that elect to develop and implement local CWS MMM program plans and comply with the AMCL. In non-primacy states, EPA will review and approve local CWS MMM program plans and oversee compliance with the AMCL if the state chooses not to do a state-wide MMM program plan. MMM program plans developed by Indian Tribes or tribal community water systems will be reviewed by EPA. The specific requirements of a CWS in a State with a State-wide MMM program are addressed in Section VI.E. CWSs may choose to meet the MCL.

For those CWSs (both large and small) in non-MMM States that develop local MMM program plans, the State would review the MMM program at least once every 5 years and provide progress reports to the EPA in keeping with the statutory requirements of the SDWA and this Section. (States may also establish interim reporting requirements for the CWS under a MMM program to help ensure adequate progress toward the goals set forth in the local MMM program plan.) Failure of a CWS to develop its MMM program plan by the required regulatory deadline or failure of a CWS to implement its approved MMM program plan (5 years and 5½ years, respectively after the final rule is published) would be a violation of this regulation unless the CWS is complying with the MCL. It is expected that a CWS would be given time to correct any violations relating to its MMM program through an appropriate enforcement action.

G. CWS Role in Communicating to Customers

At a minimum, CWSs have important responsibilities for communicating information on radon to their customers. Under the requirements of the Consumer Confidence Rule (CCR), CWSs will be required to provide key information on the health effects of radon should the level of radon in drinking water exceed the MCL (or AMCL in States with MMM programs). Today's action also updates the standard CCR rule requirements and adds special requirements that reflect the multimedia approach of this rule. The intent of these provisions is to assist in clearer communication of the relative risks of radon in indoor air from soil and from drinking water, and to encourage public participation in the development of the State or CWS MMM program plans. Today's action also proposes to require CWSs to add information to the mandatory yearly report which would inform their customers on how to get involved in developing their State or local CWS MMM program plan. This information would include a brief educational statement on radon risks, explaining that the principal radon risk comes from radon in indoor air, rather than drinking water, and for that reason, radon risk reduction efforts may be focused on indoor air rather than drinking water. This information will also note that many States and systems are in the process of creating programs to reduce exposure to radon, and encourage readers to call for more information. This information would be provided every year until the compliance date for implementation of State MMM programs (or CWS local MMM programs in States without a State-wide MMM program. (See Section X of this preamble for more information on CCR and public notice requirements for radon). EPA is also planning to develop public information materials on radon in drinking water and indoor air as "tools" to assist CWSs, as well as the States, Indian tribes, and others, with the risk communication issues associated with the MCL, AMCL, and MMM.

H. How Did EPA Develop These Criteria?

EPA obtained extensive stakeholder input in developing the regulatory criteria for State MMM program plans. Stakeholders participating in this process represented many diverse groups and organizations with an interest in radon, both from the perspective of radon in drinking water and of radon in indoor air. This included State drinking water and State radon program representatives, municipal and privately owned public water system suppliers, local government officials, environmental groups, and organizations representing State health officials, county governments, public interest groups, and others.

As part of the process of getting stakeholder input on development of MMM guidelines and criteria, EPA presented several conceptual framework options for MMM for discussion and consideration. Three preliminary approaches were discussed: (1) To set specific numerical targets in mitigations of existing houses and houses built radon-resistant (as surrogates for lives saved) for each State to meet; (2) to set a level of effort that States must demonstrate would be achieved under their MMM plan; and (3) to set minimum core indoor radon program elements required for all plans.

Under the first approach, specific targets to achieve "equal" risk reduction could be set using a variety of approaches and tools and based on a number of factors, such as the level of radon in the drinking water, the number of people served by that system, and other factors. It would also require allocating among the States the total number of lives saved nationally by universal compliance with the MCL (estimated to be about 62 lives saved yearly). The allocation of lives saved by States would likely lead to some State targets being fractions of a life saved yearly, depending on the number of systems, radon levels, and people served. Many stakeholders thought that significant attention would need to be paid to the risk communication challenges of communicating this approach to the public. Although some stakeholders thought this approach might be workable, others did not consider it universally applicable or workable and that it might preclude flexibility and innovation.

The second approach, "level of effort", would focus more on a plan for implementation of risk reduction strategies using a point system where different risk reduction strategies (such as public education, radon-resistant new construction code adoption, *etc.*) would be assigned a specific number of points based on potential to achieve health risk reduction. The number of State-specific points that a MMM program plan would have to meet to be approved would require determining the number of systems complying with the AMCL rather than the MCL, the radon levels in their drinking water, and population served. This approach would give States flexibility in choosing the combination of indoor radon risk reduction strategies that best meets the needs of that State by giving them a menu of approaches from different categories of strategies with different assigned points. There are two difficulties in implementing this approach that would need to be addressed. First, it may be difficult to assign in advance a specific quantified value for different strategies in terms of a numerical outcome in risk reduction (*i.e.*, in lives saved or in existing homes mitigated or houses built radon-resistant). EPA requested the National Academy of Sciences (NAS), as part of its assessment of radon in drinking water, to "prepare an assessment of the health risk reduction benefits associated with various mitigation measures [described in SDWA] to reduce radon levels in indoor air." Although the NAS included some review of the States' experience with public education and risk communication, they did not include a quantitative assessment of the "health risk reduction benefits" associated with specific "mitigation measures" referred to by SDWA. Second, risk communication research has shown, and many stakeholders agreed, that a variety of strategies must be employed simultaneously when trying to get voluntary public actions on preventive health and safety measures. It is often difficult to single out or characterize, for example, the number of people who take voluntary health risk reduction actions because of viewing a particular televised public service announcement separate from other messages, activities, communications, and efforts being implemented by society to reduce that particular public health risk.

Setting specific State risk reduction targets or a level of effort point system were considered in part to address language in the SDWA radon provision that State plans approved by EPA are expected to achieve health risk reduction benefits "equal to or greater than the health risk reduction benefits that would be achieved if each public water system in the State complied with the maximum contaminant level [MCL]* * *." As some stakeholders noted, there are complexities associated with determining risk reduction targets (*e.g.*, in pCi/L) for indoor radon needed to substitute or "make-up" for some very small level of risk reduction that would not occur if systems comply with the AMCL. Careful attention would need to be paid to ensuring that this approach did not produce the unintended effect of narrowly focusing or limiting the risk reduction goals of MMM program plans. Some States and other stakeholders were concerned that a complex approach, that may be difficult to communicate to the public, could hamper voluntary public action currently taking place on indoor radon. Some States thought that they may have the data and/or tools that would permit such an approach.

The third conceptual approach was to require MMM program plans to include a set of core program elements, without targets or points, to be determined by EPA. This would require a set of basic program elements that each State MMM program plan would have to incorporate to be approved by EPA. In addition, the States could choose to add additional program elements from a menu of strategies to be provided by EPA. An example of implementation of a core program element might be that each State would have to adopt radon-resistant new construction standards into their State and local building codes, or require testing and mitigation firms to register with the State and report numbers of radon tests and mitigations conducted. Many stakeholders were concerned that this approach might not provide sufficient flexibility needed by the States to reflect their particular needs, including the scope of the radon in drinking water and indoor radon problem, and the varying extent to which the States have been addressing their indoor radon problem through their existing State radon programs.

EPA is soliciting public comment on these three alternative conceptual frameworks for MMM program plans that were examined through the stakeholder process and is also requesting public comment on other potential frameworks and rationale for why and how these would achieve increased radon risk reduction.

While stakeholders had differing views of the three conceptual approaches presented by EPA for discussion purposes, a number of mutual concerns and issues integral to formulation of a conceptual framework for MMM were identified. The following set of broad issues and concerns raised by stakeholders were considered in the development of the required criteria that EPA is proposing.

A uniform approach, that is, a "one size fits all" approach to MMM might not provide States with the flexibility they need to custom tailor their plans to their needs. Every State is different in terms of the extent and magnitude of the indoor radon problem, the nature of the existing State indoor radon program, the levels of radon in public water supplies, and many other factors.

Because the SDWA framework for radon permits States to choose to adopt either the MCL or AMCL/MMM option, some stakeholders believed that States might be less inclined to adopt the MMM/AMCL approach if it were considered too complex and difficult to implement and communicate to the public. The approach needs to be simple and straightforward, provide flexibility to accommodate the variety of needs in different States, and encourage innovation at the State and local level.

MMM will be most effective if it is built on and consistent with the foundation and infrastructure of the existing State indoor radon programs. States are better positioned than public water suppliers to achieve radon risk reduction under MMM programs. Most States currently have a voluntary radon program. Some States noted the need for some consistency between the criteria and objectives for MMM program plans and the goals, priorities, and EPA's existing State Indoor Radon Grant (SIRG) program guidance.

States and other stakeholders raised concerns about the potential relationship between MMM and the current State indoor radon programs. Stakeholders strongly encouraged EPA to carefully identify and consider the potential for negative impacts of MMM requirements on current State efforts on indoor radon. In particular there were concerns that attention and resources might be diverted to the MMM program. States might choose not to do a MMM program if the effectiveness or infrastructure of their current indoor radon program might be reduced, or if it does not help States meet the goals of their voluntary programs. This would be counter-productive if it resulted in reduced efforts and diminished infrastructure of a State's voluntary program already achieving indoor radon risk reduction.

Some States felt it was important to have extensive public debate and examination of any program proposed by the State in order to get public support for the AMCL and MMM approach.

A number of stakeholders noted the need for MMM programs to have definable endpoints or goals, show how these endpoints will be attained, and describe how results will be determined. Some States indicated the importance of demonstrating to the public that the program is achieves radon risk reduction.

Stakeholders noted that the level of risk reduction that can be achieved by focusing resources and effort on radon in indoor air is significantly greater than what can be achieved by universal compliance with the MCL. MCL-based risk reduction targets would also be significantly smaller than the risk reduction already being achieved. Therefore it is important to focus on the greater risk reduction potential for radon in indoor air, and on enhancement of indoor radon programs, rather than focus on the smaller risk reduction potential from radon in water.

In developing and deciding on proposed criteria, EPA took into account these stakeholder views and concerns, as well as EPA's goals for MMM and the current approach used by EPA and the States to get indoor radon risk reduction. This information and experience taken together led to the proposed MMM criteria that are based upon three elements: (1) Involve the public in development of MMM; (2) track the level of indoor radon risk reduction that occurs; and, (3) build on the existing framework of State indoor radon programs.

First, stakeholders suggested that extensive public participation in the development of a State MMM program plan is important. One important approach is to involve various segments of the public, from community water system customers to key public health and other organizations, the business community, local officials, and many others. The public needs to be informed about and participate in the MMM development process to ensure that the goals and other elements of the plan will be publicly supported, responsive to the needs of the various stakeholders, and meet public and State goals for reducing indoor radon. Such a process may also result in increased public awareness and voluntary action to reduce the levels of indoor radon. Stakeholder involvement can help States clearly define goals and design the process and strategies for meeting these goals. EPA recognizes that there are a variety of non-quantitative and quantitative approaches, tools, and types of information that can be used to develop goals, but public input is very important to this process. The public involvement in development and examination of plans will help to get support and buy-in from all stakeholders to a set of goals, program strategies, and results measurement, and thus, helps to ensure program success.

Second, a successful MMM program plan needs to include a provision for determining progress on reducing the public's exposure to indoor radon, and for reporting back to the public. In the case of indoor radon, risk reduction results can be evaluated by tracking or in some way determining the level of existing home mitigation and new homes built radon-resistant. A few States already track this information closely. Many do not. EPA believes that there are a variety of approaches currently being used, such as statistically-based surveys; State requirements for tracking testing and mitigation by radon testing and mitigation companies; voluntary agreement by builders to provide information on construction of radon-resistant homes; and other approaches. EPA also recognizes the importance of providing States the flexibility to craft new and innovative approaches for tracking and assessing progress. Through implementation of a State-wide MMM/AMCL approach, States may be able to provide new incentives and opportunities for gathering the information the State will need to demonstrate to the public, and EPA, that progress is being made in getting public action to reduce radon risks.

Third, building MMM on the framework of existing State indoor radon programs takes advantage of the existing programs already working to get public action on indoor radon. Nearly every State currently has a program with existing policies, public outreach and education programs, partner networks and coalitions, and other infrastructure. States have used the State Indoor Radon Grant (SIRG) funds available under Title III of the Toxics Substances Control Act (TSCA) to develop a variety of radon strategies, including distributing information materials to educate the public, maintaining radon hotlines, conducting training programs, providing technical assistance, operating certification programs for the radon industry, setting up regulatory requirements for industry reporting of testing and mitigation, conducting surveys (testing) of homes and schools, working with local governments in high-risk areas to establish incentive programs for radon-resistant new construction, and many other activities. Many of these activities are consistent with the findings of the National Academy of Sciences. They found three factors were most important for motivating the public to test and fix their home: (1) A radon awareness campaign; (2) promoting the widespread voluntary testing by the public of indoor radon levels; and (3) educating the public about mitigation and ensuring the availability of qualified contractors. The reinforcement and augmentation of these types of efforts through MMM programs is expected to result in increased levels of testing and mitigation of existing homes by the public and of homes being built to be radon-resistant.

The "mitigation measures" set forth in the 1996 SDWA are similar to those being used in the existing national and State radon programs. Section 1412 (b)(13)(G)(ii) provides that State MMM programs may rely on a variety of "mitigation measures" including "public education, testing, training, technical assistance, remediation grants and loans and incentive programs, or other regulatory or non-regulatory measures". These represent many of the same strategies that are integral to the indoor radon program strategy, as well as those outlined in the 1988 Indoor Radon Abatement Act.

The risk reduction achieved to date through the national and State radon programs has been achieved primarily through a non-regulatory approach. The SIRG guidance for implementing a program also outlines and recommends indoor radon program priorities, encourages States to develop narrative descriptions of how they intend to address the priority areas, and encourages the establishment of goals for awareness, testing and mitigation of homes and schools, and radon-resistant new construction. Under SIRG, the States are required to submit a list of their activities and workplans for each project that will be done under the grant. While EPA's SIRG guidance requires a list of program activities, it is not currently a Federal requirement under the Indoor Radon Abatement Act of 1988 or under SIRG that State indoor radon programs to: (a) publicly set goals for awareness, testing, mitigation and new construction; (b) develop and implement a strategic plan for action through real estate transactions, new home construction, testing and fixing schools, and getting the public to test and fix their homes; (c) develop and implement approaches to track and measure the results of their strategic plans and activities and report those results to the public; and (d) directly involve the public in the development of the States' program goals and strategic plans. EPA is proposing that, in order to have an approved MMM program plan, States now be required to take these steps.

EPA believes this augmentation of State programs required under the criteria will result in an increased level of risk reduction. States will develop their plans with direct public participation in setting goals, develop strategic plans in key areas, and develop approaches for tracking and measuring results against goals. EPA also expects that substantial and constructive public participation in the development process of the State's MMM program plan is likely to result in a program that meets the public's needs and concerns on an important public health issue, as well as in greater public awareness of the health effects of radon and in increased voluntary action by the public to address their risks from indoor radon. Given EPA's estimate of the expected increase in the yearly rate of lung cancer deaths avoided from the current voluntary program, EPA expects that State MMM program plans meeting these four criteria will achieve equal, or much more likely, greater health risk reduction benefits.

I. Background on the Existing EPA and State Indoor Radon Programs

Implementation of EPA's current national strategy to reduce public health risks from radon in indoor air has focused on using a decentralized management and risk communication approach in partnership with States, local governments and a network of national organizations; a continuum of risk reduction strategies; and, a strong focus on key priorities. Reduction of indoor radon levels has the potential to yield very large risk reduction benefits through pursuit of a wide range of approaches including the availability of relatively inexpensive testing, mitigation, and new construction techniques to reduce the risk from indoor radon. National, State, and local efforts continue to proactively encourage the public to test and fix their homes, promote action on radon in association with real estate transactions, and promote the construction of new homes with radon-resistant techniques through institutional changes such as local adoption of new construction standards and codes.

Prior to 1985 the federal government and only a few States had initiated activities to address indoor radon problems. The initial foundation and scope of State programs was determined by the different needs of the States. For example, some Western States developed programs to assist citizens living on or near uranium mines or mill tailings sites. When very high levels of radon in homes in the area known as the Reading Prong in the Northeastern U.S. were discovered in late 1984, the Agency began to develop and to implement a coordinated national radon program. Some Eastern States situated over the Reading Prong began to develop strong programs in response to homes being found with radon levels in the hundreds and thousands of pCi/L of air. However, there was no coordinated government program, or testing and mitigation industry, to address the risks posed by radon and only a very small fraction of the public was even aware of the problem.

Since then, there has been significant progress in the nation's program to promote voluntary public action to reduce the health risks from radon in indoor air. EPA's non-regulatory Radon Program has established a partnership between federal, State, local and private organizations, as well as private industry, working together on numerous fronts to promote voluntary radon risk reduction. This partnership initially focused programs on increasing public awareness of the problem and providing the public with the necessary resources, including a range of technical guidance and information, to enable them to reduce their health risks through voluntary actions across the nation. Congress endorsed this strategy and strengthened the indoor radon program through the Superfund Amendments and Reauthorization Act of 1986, and again in 1988 through passage of the Indoor Radon Abatement Act. The Superfund Amendments and Reauthorization Act of 1986 (SARA) authorized EPA to conduct a national assessment of radon in residences, schools, and workplaces. The 1988 Indoor Radon Abatement Act (IRAA), an amendment to the Toxic Substances Control Act, established the overall long-term goal of reducing indoor radon levels to ambient outdoor levels, required the development and promotion of model standards and techniques for radon-resistant construction, and established the State Indoor Radon Grant program (SIRG). IRAA also directed EPA to study radon levels in the U.S., evaluate mitigation methods to reduce indoor radon, establish proficiency programs for radon detection devices and services, develop training centers, provide the public with information about radon, and assist States to develop and implement programs to address indoor radon.

Recognizing the importance of working in partnership with the States and leading national organizations, EPA developed a decentralized system for informing the public about the health risks from radon, consisting primarily of State and local governments and key national organizations, with their state and local affiliates, who serve as sources of radon information and support activities to the public. EPA has worked with the States to help establish and enhance effective State indoor radon programs and develop basic State capabilities needed for assisting the public in reducing their risk from indoor radon. EPA developed and transferred technical guidance on radon measurement and mitigation to the States, the private sector, and the public.

A key initiative in this effort to build State Radon Programs has been the State Indoor Radon Grant (SIRG) Program, which provides funding to help States develop and operate effective and self-sustaining radon programs. As of August 1999, forty-five States are currently participating in the SIRG program. These grants have been instrumental in establishing State radon programs or in helping States expand their radon programs more quickly than they otherwise could have.

EPA, the States and national and local partners are using a mixture of diverse strategies that range from the more flexible, such as providing information to the public to encourage the public to act, to more prescriptive, such as providing incentives that give some advantage for taking action, or to adopting policies and requirements that mandate certain actions. As a result, many initiatives are underway today both to actively encourage and motivate homeowners to test and fix their homes as well as to institutionalize risk reduction through testing and mitigation during real estate transactions and through construction of new homes to be radon-resistant.

EPA and the States, working with key national and local organizations, have developed a wide range of channels for delivering information to their members, affiliates and other target audiences. Many organizations have their own "hotlines," journals, brochures, newsletters, press releases, radio and television programs, national conferences, and offer training and continuing education programs. These partners collaborate to urge public action on radon though a wide variety of strategies including information, motivation, incentives, and state and local mandates. The public receives a consistent message on radon from EPA, the States, and a number of other key, respected, and credible sources. Each target audience, like physicians or school nurses or local government officials, becomes in turn a source of information for new target audiences like their patients and local constituents. This approach is comparable to that used to encourage people to take various other voluntary preventive measures to reduce their risk of various health and safety risks. Some of the national organizations that EPA and the States work with include the American Lung Association, the National Association of City and County Health Officials, the National Parent Teacher Association, the Asian American and Pacific County Health Officials, the Association of State and Territorial Health Officials, the National Environmental Health Association, the National Association of County Officials, the Consumer Research Council of Consumer Federation of America, the National Safety Council, and many others.

Many of the publicly available information materials are specialized and designed to encourage specific actions by certain groups, e.g., physicians, homebuilders, real estate agents, home inspectors, home buyers and sellers, and many others. As a result, for example, many home builders are voluntarily using radon resistant new construction techniques and some real estate associations are voluntarily incorporating the use of radon disclosure forms into their regular business practices. Medical and health care professionals are being educated about the health risks of radon and are encouraging their patients to test their homes for radon as a preventive health care measure. Public service announcements by local radio and TV stations encourage the public to act. Other public information materials provide consumers with information on how to test their homes and what options they have for mitigating their radon problem.

Incentive programs and initiatives, such as free radon test kits, and builder rebates when builders build homes radon-resistant, are being implemented. States and local jurisdictions are also pursuing a variety of regulatory radon initiatives, such as requiring schools to be tested for indoor radon, requiring disclosure of elevated radon levels in residential real estate transactions, and requiring new homes to be built with radon-resistant new construction features through building codes. These strategies and many others are being used to successfully achieve public action to reduce the health risks from indoor radon.

EPA has consulted with scientists, federal, state and local government officials, public health organizations, risk communication experts, and others to design this program and focus on radon program strategies which have the greatest potential for reducing radon risks through long-term institutional change. In developing strategies for reducing radon risks, EPA and the States have learned from the experience of other successful national public health campaigns, such as the campaigns to promote the use of seat belts. These campaigns have shown that significant public action to voluntarily reduce health risks can be achieved from concerted efforts through a variety of diverse strategies and through the combined efforts of State and local governments, public health organizations, and other public interest groups, grass roots organizations, and the private sector.

Program priorities have been identified to help concentrate and focus efforts of EPA, the States, and local organizations, and others on those activities that are most effective in achieving the overall mission of indoor radon risk reduction. Working with a broad group of stakeholders, EPA established several key priority areas for indoor radon. States and cooperative national organizations have been focusing many of their efforts and activities in these areas.

1. Targeting Efforts on the Greatest Risks First

EPA, the States, and many other public health organizations recommend that all homes be tested and all homes at or above 4 pCi/L be fixed. However, resources have been more heavily focused initially in areas where action produces the most substantial risk reduction, such as on homes and schools in the high radon potential areas and on the increased risk of lung cancer from indoor radon to current and former smokers.

2. Promote Radon-Resistant New Construction

EPA and others encourage programs to promote voluntary adoption of radon-resistant building techniques by builders and the adoption of radon construction standards into national, State and local building codes. Methods (model standards) that establish construction techniques for reducing radon entry in new construction have been developed and published by EPA in collaboration with the National Association of Home Builders. There are currently over 30 major building contractors (some are national firms) who design and construct radon resistant new homes. It is very cost-effective to build new homes radon-resistant, especially in higher radon potential areas. In the existing indoor radon program, EPA has been encouraging the States to promote testing and mitigation in all areas of a State. EPA has also encouraged the States to focus on their activities to promote radon-resistant new construction on the highest radon potential areas (Zone 1) where building homes radon-resistant is most cost-effective. However, it is also cost-effective to build homes in medium potential areas (Zone 2), as well as in "hot" spots found in most lower radon potential areas (Zone 3).

3. Promote Testing and Mitigation During Real Estate Transactions

Based on the efforts of EPA, the States, and others, there has been a steady increase in the number of radon tests and mitigations voluntarily done through real estate actions. It is very cost-effective to test and mitigate existing homes with elevated indoor radon levels. Real estate transactions offer a significant opportunity to achieve radon risk reduction. In 1993, EPA published the "Home Buyer's and Seller's Guide to Radon" (USEPA 1993f). Hundreds of thousands of copies of the "Home Buyer's Guide" have been distributed to consumers. The companion to the "Home Buyer's Guide" is the "Consumer's Guide to Radon Reduction" (USEPA 1992d) which provides information on how to go about reducing elevated radon levels in a home.

A significant amount of radon testing and mitigation of existing homes takes place during real estate transactions through the combination of home inspections, real estate transfers, and relocation services. Many different groups are in a position to influence buyers and sellers to test and mitigate elevated radon levels. This includes sales agents and brokers, buyers agents, home inspectors, mortgage lenders, secondary mortgage lenders, appraisers, insurance companies, State real estate licensing commissions, real estate educators, relocation companies, real estate press, and others. There are currently no requirements at the federal, State, or local level that a house be tested for indoor radon as part of a real estate transaction. Many State and local governments, however, have passed laws requiring some form of radon disclosure, although the extent and detail of these mandatory disclosure laws varies.

4. Promote Individual and Institutional Change through Public Information and Outreach Programs

Because the health risk associated with indoor radon is controlled primarily by individual citizens, EPA, the States and others have developed a nationwide public information effort to inform the public about the health risks from indoor radon and encourage them to take action. EPA recommends that the public use EPA-listed or State-listed radon test devices and hire a trained and qualified radon contractor to fix elevated radon levels. Early on, EPA established voluntary programs to evaluate the proficiency of these testing and mitigation service companies to provide a mechanism for providing the public with information by publishing updated lists of firms that pass all relevant criteria. Many States have established their own proficiency programs. To help support these efforts, EPA established four self-sustaining Regional Radon Training Centers across the country to train testing and mitigation contractors, State personnel, and others in radon measurement, mitigation, and prevention techniques. In 1998, the Conference of Radiation Control Program Directors (CRCPD), representing State radiation officials, initiated a pilot program through the National Environmental Health Association to establish a privatized national proficiency program to replace EPA's proficiency program which is terminating.

VII. What Are the Requirements for Addressing Radon in Water and Radon in Air? MCL, AMCL and MMM

A CWS must monitor for radon in drinking water in accordance with the regulations, as described in Section VIII of this preamble, and report their results to the State. If the State determines that the system is in compliance with the MCL of 300 pCi/L, the CWS does not need to implement a MMM program (in the absence of a State program), but must continue to monitor as required.

As discussed in Section VI, EPA anticipates that most States will choose to develop a State-wide MMM program as the most cost-effective approach to radon risk reduction. In this case, all CWSs within the State may comply with the AMCL of 4000 pCi/L. Thus, EPA expects the vast majority of CWSs will be subject only to the AMCL. In those instances where the State does not adopt this approach, the proposed regulation provides the following requirements:

A. Requirements for Small Systems Serving 10,000 People or Less

The EPA is proposing that small CWS serving 10,000 people or less must comply with the AMCL, and implement a MMM program (if there is no state MMM program). This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of "small" for small businesses, governments, and non-profit organizations previously established under the RFA, EPA requested comment on an alternative definition of "small entity" in the preamble to the proposed

Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the SBA Office of Advocacy on the definition as it relates to small business analysis. In the preamble to the final CCR regulation (63 FR 4511, August 19, 1998), EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it for this radon in drinking water rulemaking. Further information supporting this certification is available in the public docket for this rule.

EPA's regulation expectation for small CWSs is the MMM and AMCL because this approach is a much more cost-effective way to reduce radon risk than compliance with the MCL. (While EPA believes that the MMM approach is preferable for small systems in a non-MMM State, they may, at their discretion, choose the option of meeting the MCL of 300 pCi/L instead of developing a local MMM program). The CWSs will be required to submit MMM program plans to their State for approval. (See Sections VI.A and F for further discussion of this approach).

SDWA Section 1412(b)(13)(E) directs EPA to take into account the costs and benefits of programs to reduce radon in indoor air when setting the MCL. In this regard, the Agency expects that implementation of a MMM program and CWS compliance with 4000 pCi/L will provide greater risk reduction for indoor radon at costs more proportionate to the benefits and commensurate with the resources of small CWSs. It is EPA's intent to minimize economic impacts on a significant number of small CWSs, while providing increased public health protection by emphasizing the more cost-effective multimedia approach for radon risk reduction.

B. Requirements for Large Systems Serving More Than 10,000 People

The proposal requires large community water systems, those serving populations greater than 10,000, to comply with the MCL of 300 pCi/L unless the State develops a State-wide MMM program, or the CWSs develops and implements a MMM program meeting the four regulatory requirements, in which case large systems may comply with the AMCL of 4,000 pCi/L. CWSs developing their own MMM plans will be required to submit these plans to their State for approval.

C. State Role in Approval of CWS MMM Program Plans

The SDWA provides that EPA will approve CWS MMM program plans. EPA has developed criteria to be used for approving MMM programs. EPA will review and approve State MMM program plans. CWS MMM program plans that address the criteria and are approved by the State are deemed approved by EPA. The proposed rule requires States that do not have a State-wide MMM program, as a condition of primacy for the radon regulation, to review MMM program plans submitted by CWSs and to approve plans meeting the four criteria for MMM programs discussed in Section VI of this preamble, including providing notice and opportunity for public comment on CWS MMM program plans. Under Section 1412(b)(13)(G)(vi) of SDWA, MMM program plans submitted by CWSs are to be subject to the same criteria and conditions as State MMM program plans. EPA will review CWS MMM program plans in non-primacy States, Tribes and Territories that do not have a state-wide MMM program, and approve them if they meet the four required criteria.

D. Background on Selection of MCL and AMCL

The SDWA directs that if the MCL for radon is set at a level more stringent than the level in drinking water that would correspond to the average concentration of radon in outdoor air, EPA must also set an alternative MCL at the level corresponding to the average concentration in outdoor air. Consistent with this requirement, EPA is proposing to set the AMCL at 4000 pCi/L. This level is based on technical and scientific guidance contained in the NAS Report (NAS 1999b) on the water-to-air transfer factor of 10,000 pCi/L in water to 1 pCi/L in indoor air and the average outdoor radon level of 0.4 pCi/L.

The SDWA generally requires that EPA set the MCL for each contaminant as close as feasible to the MCLG, based on available technology and taking costs to large systems into account. The 1996 amendments to the SDWA added the requirement that the Administrator determine whether or not the benefits of a proposed maximum contaminant level justify the costs based on the HRRCA required under Section 1412(b)(3)(C). They also provide new discretionary authority to the Administrator to set an MCL less stringent than the feasible level if the benefits of an MCL set at the feasible level would not justify the costs (SDWA section 1412(b)(6)(A)).

EPA is proposing to set the MCL at 300 pCi/L, in consideration of several factors. First, the Agency considered the general statutory requirement that the MCL be set as close as feasible to the MCLG of zero (SDWA section 1412(b)(4)), and its responsibility to protect public health. In addition, the radon-specific provisions of the amendments provide that, in promulgating a radon standard, the Agency take into account the costs and benefits of programs to control indoor radon (SDWA 1412(b)(13)(E). Although EPA believes that an MCL of 100 pCi/L would be feasible, EPA believes that consideration of the costs and benefits of indoor radon control programs allows the level of the MCL to be adjusted to a less stringent level than the Agency would set using the SDWA feasibility test. The proposed MCL of 300 pCi/L takes into account and relies on the unique conditions of this provision and the reality it reflects that the great preponderance of radon risk is in air, not water, and the much more cost-effective alternative to water treatment is to address radon in indoor air through the MMM program. The Agency recognizes that controlling radon in air will substantially reduce human health risk in more cost-effective ways than spending resources to control radon in drinking water. If most states adopted the MMM/AMCL option, EPA estimates the combined costs for treatment of water at systems exceeding the AMCL, developing a MMM program, and implementing measures to get risk reduction equivalent to national compliance with the MCL (62 avoided fatal cancer cases and 4 avoided non-fatal cancer cases per year) at $80 million, which is substantially less than the $407.6 million cost of achieving the MCL. EPA expects that most states will adopt the AMCL/MMM program option

While EPA believes it is appropriate to acknowledge the more cost-effective control program to a certain extent in setting the MCL, the Agency does not believe the cost-effectiveness is the sole determining factor. Rather, EPA believes the absolute level of risk to which members of the public may be exposed is also a key consideration in determining a standard that is protective of public health.

The Agency proposed an MCL of 300 pCi/L in 1991 based, in part, on its assessment of the health risk posed by radon in drinking water. It should be noted that the overall magnitude of risk estimated by the Agency at that time is in agreement with the overall risk of radon in drinking water currently estimated by the National Academy of Sciences (NAS 1999b). The Agency has a long-standing policy that drinking water standards should limit risk to within a range of approximately 10^{-4} to 10^{-6} and is thus proposing to use the flexibility provided by the authority in 1412(b)(13)(E) to propose an MCL of 300 pCi/L, which is approximately at the upper bound of the Agency's traditional risk range used for the drinking water program (representing an estimated 2 fatal cancers per 10,000 persons).

As noted earlier, the Administrator must publish a determination as to whether the benefits of the proposed MCL justify the costs, based on the Health Risk Reduction and Cost Analysis prepared in accordance with SDWA § 1412(b)(3)(C). Accordingly, the Administrator has determined that the benefits of the proposed MCL of 300 pCi/L justify the costs. The benefits of the proposed MCL, include about 62 avoided fatal lung cancer cases and 4 avoided non-fatal lung cancer cases annually. EPA has used a valuation of $5.8 million ($1997) to value the avoided fatal cancers and a valuation of $536,000 ($1997) to value the avoided non-fatal cancers. Multiplying these valuations by the estimated cancer cases avoided (62 fatal, 3.6 non-fatal) yields a benefits estimate of $362 million per year. The cost to achieve national compliance with an MCL of 300 pCi/L is estimated at $407.6 million per year. EPA expects the actual cost of the proposed rule to be significantly lower, since the expectation is that most systems will not need to comply with the MCL of 300 pCi/L. Costs would be about $80 million per year if the AMCL/MMM option is widely adopted by States.

There are also some potential non-quantified benefits, including customer peace of mind from knowing drinking water has been treated for radon and reduced treatment costs for arsenic for some water systems that have problems with both contaminants, and non-quantified costs, including increased risks from exposure to disinfection byproducts, permitting and treatment of radon off-gassing, anxiety on the part of residents near treatment plants and customers who may not have previously been aware of radon in their water, and safety measures necessary to protect treatment plant personnel from exposure to radiation. However, in this case it is not likely that accounting for these non-quantifiable benefits and costs quantitatively would significantly alter the overall assessment. Taking both quantified and non-quantified benefits into account, EPA has determined that the costs are justified by the benefits. Accordingly, the new authority to set a less stringent MCL if benefits do not justify costs is not applicable and has not been used in this proposal.

Although the central tendency estimate of monetized costs exceeds the central tendency estimate of monetized benefits, the determination that benefits justify costs is consistent with the legislative history of this provision, which makes clear that this determination whether benefits "justify" costs is more than a simple arithmetic analysis of whether benefits "exceed" or "outweigh" costs. The determination must also "reflect the non-quantifiable nature of some of the benefits and costs that may be considered. The Administrator is not required to demonstrate that the dollar value of the benefits are greater (or lesser) than the dollar value of the costs." [Senate Report 104–169 on S. 1316, p. 33] The determination is based on the analysis conducted under SDWA § 1412(b)(3)(C), in the Health Risk Reduction and Cost Analysis (HRRCA) published for public comment on February 26, 1999 (64 FR 9559), revised in response to public comment, and available as part of the Regulatory Impact Analysis (1999n) in the public docket to support this rulemaking. The costs and benefits of the proposed rule, and the methodologies used to calculate them, are discussed in detail in section XII of this preamble and in the Regulatory Impact Analysis (1999n).

In making this determination, EPA also considered the special nature of the radon standard, which provides an alternate MCL of 4000 pCi/L for states or water systems that adopt a MMM program designed to produce equal or greater risk reduction benefits to compliance with the MCL by promoting voluntary public action to mitigate radon in indoor air. As noted previously, mitigation of radon in indoor air is much more cost-effective than mitigation of radon in drinking water. If most states adopted the MMM/AMCL option, EPA estimates the combined costs for treatment of water at systems exceeding the AMCL, developing a MMM program, and implementing measures to get risk reduction equivalent to national compliance with the MCL (62 avoided fatal cancer cases and 4 avoided non-fatal cancer cases per year) at $80 million, which is substantially less than the $407.6 million cost of achieving the MCL.

In its valuation of costs and benefits for the MMM program, EPA has assumed that adopting the MMM approach will achieve only benefits equivalent to those for meeting the MCL and has calculated the costs and benefits of the proposed rule on this basis. However, EPA expects that adoption of MMM programs will be widespread as a result of this rule and that the actual benefits realized will be far greater than those associated with meeting the MCL. In addition, EPA fully expects most States to follow the MMM approach, therefore CWSs below the AMCL will incur minimal costs and a much smaller subset of CWSs will incur costs to meet the AMCL. Thus, costs for meeting the MCL are a theoretical worst case scenario which the Agency believes will not occur, particularly since the regulatory expectation for water systems serving 10,000 people or fewer would be that they meet the 4000 pCi/L AMCL, along with implementation of a local MMM program. Although in some cases small CWSs may choose to meet the MCL of 300 pCi/L through water treatment, this is voluntary and not a requirement of the proposed regulation.

The Agency also considered the costs, benefits, and risk reduction potential of radon levels at 100 pCi/l, 500 pCi/L, 1000 pCi/L, 2000 pCi/L and 4000 pCi/L. As table VII.1 illustrates, the costs and benefits increase as the radon level increases. The quantified costs somewhat exceed the quantified benefits at each level, but the benefit-cost ratios are similar. However, the difference between costs and benefits becomes somewhat larger as the various MCL options become more stringent, with the largest difference at 100 pCi/L. When the uncertainty of the estimates is factored in, there is overlap in the benefit and cost estimates at all evaluated options. For more information on this analysis, please refer to the Regulatory Impact Analysis (RIA) for this proposal (USEPA, 1999n).

TABLE VII.1.—EVALUATION OF RADON LEVELS

Radon level (pCi/L)	Fatal cancer cases avoided	Individual fatal lifetime cancer risk	Cost per fatal cancer case avoided ($M)	Total national costs[1] $M	Monetized benefits[1] $M	Benefit-cost ratio
4000	2.9	26.8 in 10,000	14.9	43.1	17.0	0.4
2000	7.3	13.4 in 10,000	9.5	69.7	42.7	0.6
1000	17.8	6.7 in 10,000	7.3	130.5	103	0.8
500	37.6	3.35 in 10,000	6.8	257.4	219	0.9
300	62.0	2.0 in 10,000	6.6	407.6	362	0.9
100	120.0	0.67 in 10,000	6.8	816.2	702	0.9

[1] Water Mitigation only; assuming 100% compliance with MCL. Source: revised HRRCA.

Some commenters recommended that EPA give serious consideration to setting an MCL at the AMCL level (4000 pCi/L), or at least at a level substantially above 300 pCi/L, in order to control radon levels in drinking water at a level more comparable to outdoor background levels. This approach was also discussed by the Small Business Advocacy Review Panel convened for this rule under the RFA as amended by SBREFA. (A copy of the Panel's final report is available in the docket for this rule making, (USEPA, 1998c).)

As noted earlier, EPA's interpretation of the standard-setting requirements of the SDWA for radon are that they rely primarily upon the general standard-setting provisions for National Primary Drinking Water Regulations, with some additional radon-specific provisions. The general provisions require that the MCL be set as close as feasible to the MCLG. The radon-specific provisions direct the Administrator to take into account the costs and benefits of control programs for radon from other sources. As discussed, EPA is interpreting these general and radon-specific authorities to propose an MCL above the feasible level, near the upper end of the risk range traditionally used by the Agency in setting drinking water standards. In addition, EPA believes that the extensive statutory detail enacted on multimedia mitigation illustrates a congressional preference for cost-effective compliance through the AMCL/MMM program approach. EPA notes that the equal or greater risk reduction required to be achieved through the AMCL/MMM option would be diminished as the MCL approaches the AMCL of 4,000 pCi/L and that fewer States and CWSs would select this option. Further, the AMCL/MMM approach would be eliminated entirely if the MCL were set at the AMCL.

As noted previously, EPA believes the proposed MCL of 300 pCi/L, in combination with the proposed AMCL and MMM approach, accurately and fully reflects the SDWA provisions. The Agency recognizes , however, that some stakeholders may have strong views about the appropriateness of setting an MCL at a higher level. Accordingly, EPA requests comment on the option of setting the MCL closer to or at the AMCL level of 4000 pCi/L. In this connection, the Agency also requests comments on and the rationale for how such alternative options could be legally supported under the SDWA and in the record for this rulemaking, in light of the considerations EPA has applied for the MCL it proposes.

EPA solicits comment on the proposed MCL and AMCL and the Agency's rationale, and on other appropriate MCLs given these considerations, and the rationale for alternative levels. In the final rule, the Agency may select a higher or lower option from those analyzed in the HRRCA for the final radon rule without further public comment.

E. Compliance Dates

The proposed time line for compliance with the radon rule is described next and illustrated in Figure VII.1.

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FIGURE VII.1

Timeline for Compliance (Radon)

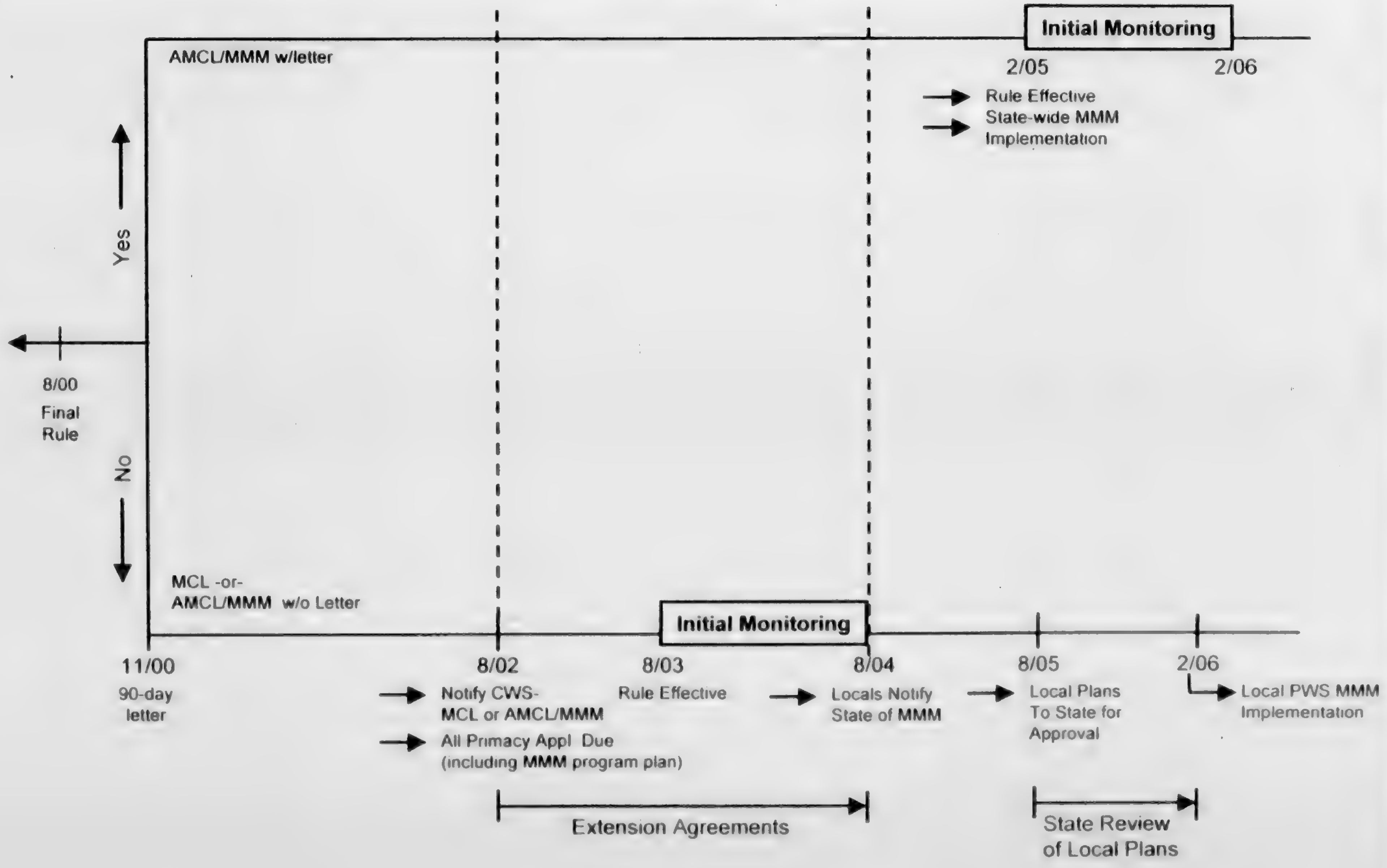

Initial Monitoring
AMCL/MMM w/letter
2/05
2/06
Rule Effective
State-wide MMM Implementation
Yes
8/00
Final Rule
No
MCL -or- AMCL/MMM w/o Letter
Initial Monitoring
11/00
90-day letter
8/02
8/03
8/04
8/05
2/06
Notify CWS- MCL or AMCL/MMM
All Primacy Appl Due (including MMM program plan)
Rule Effective
Locals Notify State of MMM
Local Plans To State for Approval
Local PWS MMM Implementation
Extension Agreements
State Review of Local Plans

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States are required to submit their primacy revision application packages by two years from the date of publication of the final rule in the **Federal Register**. For States adopting the AMCL, EPA approval of a State's primacy revision application is contingent on submission of and EPA approval of the State's MMM program plan. Therefore, EPA is proposing to require submission of State-wide MMM program plans as part of the complete and final primacy revision application. This will enable EPA to review and approve the complete primacy application in a timely and efficient manner in order to provide States with as much time as possible to begin to implement MMM programs. In accordance with Section 1413(b)(1) of SDWA and 40 CFR 142.12(d)(3), EPA is to review primacy applications within 90 days. Therefore, although the SDWA allows 180 days for EPA review and approval of MMM program plans, EPA expects to review and approve State primacy revision applications for the AMCL, including the State-wide MMM program plan, within 90 days of submission to EPA.

EPA is proposing that CWSs begin their initial monitoring requirements (one year of quarterly monitoring) for radon by 3 years after publication of the final rule in the **Federal Register**, except for CWSs in States that submit a letter to the Administrator committing to develop an MMM program plan in accordance with Section 1412 (b)(13)(G)(v). For CWSs in these States, one year of quarterly monitoring is proposed to begin 4.5 years after publication of the final rule. The proposed rule allows systems to use grandfathered data collected after the proposal date to satisfy the initial monitoring requirements provided the monitoring and analytical methods employed satisfy the regulations set forth in the rule and the State approves. Systems opting to conduct early monitoring will not be considered in violation of the MCL/AMCL until after the initial monitoring period applicable to their State (*i.e.*, 4 years after publication of the final rule, 5.5 years after publication of the final rule).

The routine and reduced monitoring requirements were developed to be consistent with the Standardized Monitoring Framework (SMF) and the Phase II/V monitoring schedule. EPA believes this is valuable for States and systems by providing sampling efficiency and organization, therefore, EPA has tried to adapt the compliance dates so that States and systems can make a smooth transition into the SMF following the initial monitoring requirements. The necessity to complete the initial monitoring in a timely manner is driven by the need for systems in non-MMM States to evaluate their compliance options, including development of a local MMM program and compliance with the AMCL), and for systems in MMM States to ensure compliance with the AMCL.

EPA feels it is important to set time constraints on implementation of the MMM plans to ensure the equal or greater risk reduction resulting from multimedia mitigation. Therefore, the rule must allow the systems in non-MMM States enough time to develop their MMM program plan with technical assistance from the State and submit the plan for State approval. In addition, the State must have sufficient time to review and approve the local plans. If the compliance determination for a system in a non-MMM State exceeds the MCL during the initial monitoring period, the proposed rule requires these systems to notify the State of their intention to develop a local MMM program at the completion of initial monitoring, 4 years after publication of the final rule. The local MMM program plans must be submitted to the State for approval by 5 years after of publication of the final rule (*i.e.*, 12 months after the completion of initial monitoring) and the States have 6 months from the submittal date to review and approve or disapprove the plan. The system will begin implementation of their MMM program 5.5 years after publication of the final rule (*i.e.*, 1.5 years after the completion of initial monitoring). If the State fails to review and disapprove the local MMM program in the time allowed, the system will begin implementation of the submitted plan. If the system fails to comply with these compliance dates, a MCL violation will apply from the date of exceedence. If the compliance determination for a system choosing to comply with the MCL exceeds the MCL following the completion of the initial monitoring period, the system will have the option to submit a local MMM plan to the State within 1 year from the date of the exceedence and begin implementation 1.5 years from the date of the exceedence or incur a MCL violation.

Implementation of State-wide MMM programs must begin 3 years after publication of the final rule, unless the State submits a letter to the Administrator committing to develop an MMM program plan in accordance with Section 1412 (b)(13)(G)(v) of the SDWA. States submitting this letter must implement their State-wide MMM program plan by 4.5 years after publication of the final rule. EPA feels it is extremely important that the MMM program plans be completed on a schedule that allows States sufficient time to begin implementation by the compliance date to ensure that equal or greater risk reduction benefits are provided.

EPA recognizes potential issues may arise as a result of the proposed initial monitoring schedule. The potential issues include lab capacity and a temporary deviation from the SMF schedule. EPA is requesting comment on alternatives to avoid or lessen the impact of these issues and other issues not listed here.

EPA considers the proposed monitoring schedule to be acceptable since the proposed rule affects one contaminant and applies to a smaller universe of water systems (NTNCWSs, transient systems, and CWSs relying solely on surface water are not covered by the rule) which decreases the number of systems effected, and therefore lessens the impacts of the potential issues. An alternative initial monitoring scenario which was considered would specify early monitoring requirements for systems serving more than 10,000 people. This scenario would put additional burden on the States and systems to monitor early and it would not substantially ease the workload since the number of systems serving greater than 10,000 that use groundwater or groundwater under the direct influence of surface water is relatively small.

Initial monitoring could be phased in over a period of two or three years, but EPA does not feel it is appropriate to extend the initial monitoring period due to the necessity to evaluate the need to develop and implement local MMM program plans. In MMM States, systems must be in compliance with the AMCL in a timely manner to ensure the maximum risk reduction.

In consideration of all these factors, EPA is proposing to require the initial monitoring over a one-year period as specified earlier. However, systems opting to conduct early monitoring will not be considered in violation of the MCL/AMCL until after the initial monitoring period applicable to their State (*i.e.*, 4 years after publication of the final rule, 5.5 years after publication of the final rule). However, CWSs opting to conduct early monitoring will not be considered in violation of the MCL/AMCL until after the initial monitoring period applicable to their State (*i.e.*, 4 years after publication of the final rule, 5.5 years after publication of the final rule. It is EPA's strong recommendation that all States choose to adopt the AMCL and implement an MMM program. But some States may elect to adopt the MCL or may decide later to adopt the AMCL/MMM approach. In these states, the initial monitoring will be required to begin by 3 years after publication of the final rule, whereas in States submitting the 90-day letter committing to develop an MMM program plan will begin initial monitoring 4.5 years after publication of the final rule.

VIII. What Are the Requirements for Testing for and Treating Radon in Drinking Water?

A. Best Available Technologies (BATs), Small Systems Compliance Technologies (SSCTs), and Associated Costs

1. Background

Section 1412(b)(4)(E) of the Act states that each national primary drinking water regulation which establishes an MCL shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for purposes of meeting the MCL. In addition, the Act states that EPA shall list, if possible, affordable small systems compliance technologies (SSCTs) that are feasible for the purposes of meeting the MCL. In order to fulfill these requirements, EPA has identified best available technologies (BAT) and SSCTs for radon.

(a) Proposed BAT. Technologies are judged to be BAT when they are able to satisfactorily meet the criteria of being capable of high removal efficiency; having general geographic applicability, reasonable cost, and a reasonable service life; being compatible with other water treatment processes; and demonstrating the ability to bring all of the water in a system into compliance. The Agency proposes that, of the technologies capable of removing radon from source water, only aeration fulfills these requirements of the SDWA for BAT determinations for this contaminant. The full range of technical capabilities for this proposed BAT is discussed in the EPA Technologies and Costs document for radon (USEPA 1999h). Table VIII.A.1 summarizes the BAT findings by EPA for the removal of the subject drinking water contaminants, including a summary of removal capabilities.

TABLE VIII.A.1—PROPOSED BAT AND ASSOCIATED CONTAMINANT REMOVAL EFFICIENCIES

High Performance Aeration[1].	Up to 99.9% Removal.

Note: (1) High Performance Aeration is defined as the group of aeration technologies that are capable of being designed for high radon removal efficiencies, *i.e.*, Packed Tower Aeration, Multi-Stage Bubble Aeration and other suitable diffused bubble aeration technologies, Shallow Tray and other suitable Tray Aeration technologies, and any other aeration technologies that are capable of similar high performance.

Granular activated carbon (GAC) can also remove radon from water, and was evaluated as a potential BAT and a potential small systems compliance technology for radon. Since GAC removes radon less efficiently than it does organic contaminants, it generally requires designs that use larger quantities of carbon per volume of water treated to remove radon compared to contaminants for which GAC is BAT. This requirement for larger carbon amounts translates to much higher treatment costs for GAC radon removal. In fact, full-scale application of GAC for radon removal has been limited to installations at the household point-of-entry and for centralized treatment for very small communities (AWWARF 1998a). EPA has determined that the requirements for radon removal render it infeasible for large municipal treatment systems, and it is therefore not considered a BAT for radon. However, GAC and point-of-entry (POE) GAC may be appropriate for very small systems under some circumstances, as described next (USEPA 1999h, AWWARF 1998a, AWWARF 1998b).

(b) Proposed Small Systems Compliance Technologies. The 1996 Amendments to SDWA recognize that BAT determinations may not address many of the problems faced by small systems. In response to this concern, the Act specifically requires EPA to make technology assessments relevant to the three categories of small systems respectively for both existing and future regulations. These requirements are in addition to EPA's obligation, unchanged by the SDWA as amended in 1996, to designate BAT. The three population-served size categories of small systems defined by the 1996 SDWA are: 10,000—3,301 persons, 3,300—501 persons, and 500—25 persons. These evaluations include assessments of affordability and technical feasibility of treatment technologies for each class of small system. Table VIII.A.2, "Proposed Small Systems Compliance Technologies (SSCTs) and Associated Contaminant Removal Efficiencies", lists the proposed small systems compliance technologies for radon and summarizes EPA's findings regarding affordability and technical feasibility for the evaluated technologies. EPA has interpreted the SSCTs as equivalent to BATs under Section 1415 of the Act, for the purposes of small systems (those serving 10,000 persons or fewer) applying to primacy agencies for Section 1415(a) variances.

TABLE VIII.A.2.— PROPOSED SMALL SYSTEMS COMPLIANCE TECHNOLOGIES (SSCTS)[1] AND ASSOCIATED CONTAMINANT REMOVAL EFFICIENCIES

Small systems compliance technology	Affordable listed small systems categories[2]	Removal efficiency	Operator level required[3]	Limitations (see footnotes)
Packed Tower Aeration (PTA)	All Size Categories	90– > 99.9% Removal	Intermediate	(a)
High Performance Package Plant Aeration (*e.g.*, Multi-Stage Bubble Aeration, Shallow Tray Aeration).	All Size Categories	90– > 99.9% Removal	Basic to Intermediate.	(a)
Diffused Bubble Aeration	All Size Categories	70 to > 99% removal	Basic	(a, b)
Tray Aeration	All Size Categories	80 to > 90%	Basic	(a, c)
Spray Aeration	All Size Categories	80 to > 90%	Basic	(a, d)
Mechanical Surface Aeration	All Size Categories	> 90%	Basic	(a, e)
Centralized granular activated carbon	May not be affordable, except for very small flows.	50 to > 99% Removal	Basic	(f)

TABLE VIII.A.2.— PROPOSED SMALL SYSTEMS COMPLIANCE TECHNOLOGIES (SSCTS) [1] AND ASSOCIATED CONTAMINANT REMOVAL EFFICIENCIES—Continued

Small systems compliance technology	Affordable listed small systems categories [2]	Removal efficiency	Operator level required [3]	Limitations (see footnotes)
Point-of-Entry (POE) granular activated carbon.	May be affordable for systems serving fewer than 500 persons..	50 to > 99% Removal	Basic	(f, g)

Notes: [1] The Act (Section 1412(b)(4)(E)(ii)) specifies that SSCTs must be affordable and technically feasible for small systems.

[2] This section specifies three categories of small systems: (i) those serving 25 or more, but fewer than 501, (ii) those serving more than 500, but fewer than 3,301, and (iii) those serving more than 3,300, but fewer than 10,001.

[3] From National Research Council. Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, DC. 1997.

Limitations: (a) Pre-treatment to inhibit fouling may be needed. Post-treatment disinfection and/or corrosion control may be needed.

(b) May not be as efficient as other aeration technologies because it does not provide for convective movement of the water, which reduces the air:water contact. It is generally used in adaptation to existing basins.

(c) Costs may increase if a forced draft is used. Slime and algae growth can be a problem, but may be controlled with chemicals, e.g., copper sulfate or chlorine.

(d) In single pass mode, may be limited to uses where low removals are required. In multiple pass mode (or with multiple compartments), higher removals may be achieved.

(e) May be most applicable for low removals, since long detention times, high energy consumption, and large basins may be required for larger removal efficiencies.

(f) Applicability may be restricted to radon influent levels below around 5000 pCi/L to reduce risk of the build-up of radioactive radon progeny. Carbon bed disposal frequency should be designed to allow for standard disposal practices. If disposal frequency is too long, radon progeny, radium, and/or uranium build-up may make disposal costs prohibitive. Proper shielding may be required to reduce gamma emissions from the GAC unit. GAC may be cost-prohibitive except for very small flows.

(g) When POE devices are used for compliance, programs to ensure proper long-term operation, maintenance, and monitoring must be provided by the water system to ensure adequate performance.

(c) Approaches for Listing Small Systems Compliance Technologies (SSCTs). EPA has considered several options for the listing of SSCTs in the proposed rule for radon. The issue is how to list SSCTs with BAT in the rule, while at the same time allowing for flexible and timely updates to the list of SSCTs in the future.

EPA would like to establish a procedure that allows SSCT lists to be updated by guidance, rather than through the more resource intensive and time-consuming process of rule-making. For example, under today's proposal, EPA is including SSCT lists in the rule. This approach fully satisfies the requirements in Section 1412(b)(4)E(ii) of the Act, which states that EPA shall include SSCTs in lists of BAT for meeting the MCL. Since BATs are explicitly listed in rules, it is consistent to explicitly list SSCTs. Also, Section 1415(a) of the Act requires that BAT be proposed and promulgated with NPDWRs to satisfy the provisions for "general variances" (variances under Section 1415(a)); therefore, SSCTs must be listed in the rule if small systems are to be allowed to use them as BAT in satisfying the provisions for general variances.

Regarding updates to the list of SSCTs, Section 1412(b)(9) of the Act states that EPA shall review and revise, as appropriate, all promulgated NPDWRs every six years. However, since revisions of NPDWRs follow the normal rule-making process of proposing, taking public comment, and finalizing the rule, the process can be very time-consuming. While EPA believes that this six year review cycle is sufficient for updates to lists of BAT, it is unlikely to be sufficient for updates to lists of SSCTs, since recent improvements in package plant technologies, POE/POU devices, and remote monitoring/control technologies have been fairly rapid and future improvements seem imminent. For this reason, EPA seeks comment on this approach or alternate approaches that would allow for more timely updates to the list of SSCTs.

In support of an approach to SSCT list updates that is less formal and more expeditious than rulemaking, EPA notes that new Section 1412(b)(4)(E)(iv) allows the Administrator, after promulgating an NPDWR, to "supplement the list of technologies describing additional or new or innovative treatment technologies that meet the requirements of this paragraph for categories of small public water systems." This provision does not contain any reference to or require rulemaking to update the SSCT list, in contrast with the earlier 1994 House version (in H.R. 3392) of this provision that specifically required revisions of the list to be made "by rule."

Under one alternative, EPA would publish only an initial list of SSCTs with the BAT list in 40 CFR 141.66. EPA would also state in the rule that updates to the list of SSCTs would be done through guidance published in the **Federal Register** or through updates to the SSCT guidance manual. This process would be consistent with the process already used for listing SSCTs for the currently regulated drinking water contaminants (USEPA 1998g). A similar alternative approach would simply "list" SSCTs in Section 141.66 by referencing EPA guidance, which would be published separately and which could be updated periodically as needed outside of the normal rulemaking process. Finally, EPA could publish both the initial list and the updates solely in a **Federal Register** notice or as guidance; however, under this last approach, only the promulgated BAT listed in the rule (which would not include SSCTs) would be available for small systems seeking a general variance under Section 1415(a) of the Act. EPA solicits comments on the suggested approaches for the listing of SSCTs and on the equivalency of SSCTs with BAT for the purposes of small systems applying for variances under Section 1415 of the Act.

(d) Small Systems Affordability Determinations. The affordability determinations that are used for listing SSCTs are discussed in detail in recent EPA publications (USEPA 1998i, USEPA 1998e). It should be noted that aeration is one of the least expensive treatment technologies for drinking water (USEPA 1993d, NRC 1997) and has been determined to be affordable for all three small systems size categories. For the smallest size category (serving 25 to 500 persons), EPA cost estimates indicate that typical annual household

costs for aeration (80% removal efficiency, with disinfection and scaling inhibitor) are $190 per household per year ($/HH/yr). For systems installing aeration only, household costs for the smallest system size category are $114 per household per year. Case studies (n=9, USEPA 1999h) for systems with aeration serving between 25 and 500 persons showed annual household costs ranging from $5 to $97 per household per year, with an average of $45 per household per year. Costs reported in these case studies included all pre- and post-treatments added with aeration. The "national average per household cost" estimated in the Regulatory Impact Analysis is $260 per household per year for 25–500 persons. This average per household cost is higher than the estimated per household costs for systems using aeration since these average costs include not only aeration, but also the more expensive compliance alternatives (GAC, regionalization, and "high side" PTA). Note that the cost for the 25–500 category is a weighted average of the per household costs for the 25–100 and 101–500 categories reported in Table 7–2 of the Regulatory Impact Analysis. Also note that monitoring costs of approximately $4.00 per household per year ($270 per system) are included in the national average per household costs, but not in the aeration treatment per household costs reported.

Granular activated carbon (GAC) may be affordable only for very small flows. EPA's GAC-COST model estimates indicate that GAC may not be affordable for the smallest size category (25–500 persons served) in whole. Annual household costs are estimated to be approximately $800 to > $1000 per household per year. However, case studies of small systems using GAC to remove radon for very small flows (populations served < 100 persons) show annual household costs ranging from $46 to $77 per household per year. The large discrepancy between modeled costs and full-scale case study costs is probably due to the fact that the model design assumptions are more typical of larger systems, whereas the designs used in the case studies are much simpler. The American Water Works Association Research Foundation (AWWARF 1998a) similarly concludes that EPA's cost estimates for radon removal by GAC are over-estimates (ibid., p. 190) and that GAC can be cost competitive with aeration for very small systems (*ibid.*, Chapter 8). Examples of estimates of POE-GAC capital costs are shown in the next section, "Treatment Costs".

2. Treatment Costs: BAT, Small Systems Compliance Technologies, and Other Treatment

(a) Modeled Treatment Unit Costs. Total production costs associated with the various technological options for radon reduction, such as packed tower aeration and diffused bubble aeration installations, have been examined (USEPA 1999h). For systems that are currently disinfecting, ninety-nine percent reduction of radon by PTA is estimated to cost from $2.48/kgal (dollars per 1,000 gallons treated) for the smallest systems, defined as those serving 100 persons or fewer, to $ 0.12/kgal for large systems, defined as those serving up to 1,000,000 persons. Eighty percent reduction of radon by PTA without disinfection is estimated to range from $2.10/kgal to $0.08/kgal for the same system sizes. For those systems adding disinfection because of the addition of aeration treatment, disinfection treatment costs for very small systems are estimated at an additional $1.40/kgal and costs for large systems are estimated at an additional $0.07/kgal. Aeration production costs have been adjusted to include costs that account for the addition of a chemical stabilizer (orthophosphate) by 25 percent of small systems (those serving 10,000 persons or fewer) and by 15 percent of large systems. In other words, the production costs shown are weighted averages that simulate the installation of aeration without chemical stabilizers by a fraction of the systems and with chemical stabilizers by the remaining fraction. Chemical stabilizers are used to minimize fouling from iron and manganese and/or to reduce corrosivity to the distribution system. Chemical addition cost estimates include capital costs for feed systems and operations and maintenance costs for the processes involved. Table VII.A.3 summarizes total production costs for system size categorizes for 80 percent radon removal. Further details on costing assumptions and breakdown of the unit treatment costs can be found in the RIA (USEPA 1999h).

TABLE VIII.A.3.—TOTAL PRODUCTION COST[1] OF CONTAMINANT REMOVAL BY BAT FOR 80 PERCENT RADON REMOVAL (DOLLARS/1,000 GALLONS, LATE 1997 DOLLARS)

	Population Served					
	25–100	100–500	500–1,000	1,000–3,300	3,300–10,000	>10,000
Aeration[2]	2.06	0.71	0.39	0.22	0.15	0.08–0.10
Aeration + disinfection	3.44	1.09	0.69	0.40	0.22	0.09–0.12
Granular Activated Carbon (GAC)	0.34	2.16	2.16	NA	NA	NA
GAC + disinfection	1.71	2.54	2.46	NA	NA	NA
POE GAC + UV disinfection	16.99	14.03	NA	NA	NA	NA

Notes:

[1] Cost ranges are estimated from cost equations found in the radon Technologies and Costs document (EPA 1999h), as used in the radon HRCCA (64 FR 9559).

[2] Aeration costs are weighted to include chemical inhibitor costs (Fe/Mn and corrosion control) for 25 percent of small systems and 15 percent of large systems.

(b) Case Studies of Treatment Unit Costs. Case studies for aeration and GAC are reported in detail in the radon Technologies and Costs document (USEPA 1999h). Total production costs for aeration case studies ranged from an average of $0.82/kgal for systems serving 25—100 persons (n = 4, standard deviation = $0.32/kgal, average population = 58) to $0.19/kgal for systems serving 100—3,300 persons (n = 11, standard deviation = $0.22/kgal, average population = 873). Total production costs for GAC ranged from $1.50/kgal for systems serving fewer than 100 persons (n = 2, standard deviation = $0.48/kgal, average population = 55) to $0.40/kgal for a system serving approximately 23,000 persons. Production costs for two POE GAC installations ranged from $0.21/

kgal to $0.75/kgal. It should be noted that these POE GAC costs do not include the additional monitoring costs that would apply in a compliance situation. Annual monitoring costs are generally negligible compared to annual treatment costs for centralized treatment (<2.5 percent for very small systems to <1 percent for large systems), and may be significant in the case of POE treatment (USEPA 1998g). For this reason, the POE GAC case study production costs may under-estimate true POE GAC costs. In general, the case studies suggest that EPA's modeled unit costs may be conservative for small systems. Since it is true that the radon case studies are not necessarily a random sample of all systems that will be impacted by the future radon rule, it may be argued that the typical reported costs may differ significantly from the typical costs of compliance. However, the costs of aeration from the radon case studies overlap nicely with the costs reported in the VOCs case studies, which should represent typical costs of compliance. Given this fact and the large number of case studies used, EPA has confidence that the case studies represent a best estimate of costs of treatment for compliance purposes. It should be noted that these reported case study costs are total costs and include all pre- and post-treatments added with the radon treatment process.

(c) Treatment Cost Assumptions and Methodology. The general assumptions used to develop the treatment costs include costs for: chemicals and general maintenance, labor, capital amortized over 20 years at a 7 percent interest rate, equipment housing, associated engineering and construction, land for small systems (design flow < 1 mgd per well), and power and fuel (USEPA 1998h, USEPA 1998g, USEPA 1999h). Costs were updated to December 1997 dollars using a standard construction cost index (Engineering News-Record Construction Cost Index). Process capital costs for aeration technologies were calculated using updated cost equations from the Packed Tower Column Air Stripping Cost Model (USEPA 1993e). Process capital costs for granular activated carbon and total capital costs for iron and manganese sequestration/corrosion control, and disinfection were calculated using standard EPA models (as described in USEPA 1998e and USEPA 1999a). Construction, engineering, land, permitting, and labor costs were estimated based upon recommendations from an expert panel comprised of practicing water design and costing engineers from professional consulting companies, utilities, State and Federal agencies, and public utility regulatory commissions (USEPA 1998i). GAC disposal costs are included in the GAC-COST O&M model. All cost estimates include capital costs for equipment housing and land for small systems (design flows < 1.0 MGD). It was assumed that all treatment installations would include disinfection. Capital and operating & maintenance costs for iron and manganese (Fe/Mn) sequestration by the addition of zinc orthophosphate were included for 25 percent of small systems and 15 percent of large systems. Pre- and post-treatment assumptions are explained in more detail later.

(d) "Decision Tree". Compliance costs were estimated assuming that non-compliant water systems would choose from a variety of compliance options, including installing a suitable treatment train, finding an alternate source of water, purchasing water from a near-by water utility, and using best management practices, like blending or ventilated storage. The modeled proportions of systems choosing a compliance pathway (the "decision tree") is based on the assumption that systems will choose the most cost-effective alternative, given the fact that site-specific factors (*e.g.*, a well located in a suburban residential area) may force some systems to choose an option that is more expensive than the least cost alternative. The modeled proportions were assumed to vary by system size and water quality. More details on these assumptions are found in the Health Risk Reduction and Cost Analysis supporting this proposal (64 FR 9559).

(e) Iron and Manganese Assumptions. Treatment costs assume that 25 percent of small systems and 15 percent of large systems installing aeration will need to add an additional chemical inhibitor (*e.g.*, orthophosphate, polyphosphates, silicates, *etc.*) to minimize the formation of iron/manganese (Fe/Mn) precipitates and carbonate scale; to reduce bio-fouling from the growth of Fe/Mn oxidizing bacteria (See, *e.g.*, Faust and Aly 1998); and to reduce water corrosivity. Although zinc orthophosphate was assumed to be universally used, this was done as a simplifying costing assumption, and should not interpreted as suggesting that zinc orthophosphate is the appropriate inhibitor choice for all circumstances. Uncertainty analyses were performed in national cost estimates to simulate a range of choices of chemical inhibitors by systems and to simulate a range in the percentages of systems requiring the addition of an inhibitor. It is reiterated that, for the purposes of iron/manganese control and corrosion control, other chemical inhibitors may be more appropriate than zinc orthophosphate on a case by case basis.

(f) Iron and Manganese Occurrence. Tables VIII.A.4 and VIII.A.5 show the estimated co-occurrence of radon with dissolved iron and manganese in raw ground water for various radon and Fe/Mn levels. It can be seen from these tables (based on the U.S. Geological Survey's National Water Information System database, "NWIS") that the majority of ground water systems will be expected to have Fe/Mn source water levels below the secondary MCLs (SMCLs) for iron (greater than 85 percent of GW samples have less than the SMCL of 0.3 mg/L) and manganese (greater than 75 percent of GW systems have less than the SMCL of 0.05 mg/L). Since Fe/Mn precipitation inhibitors are appropriate for treating combined Fe/Mn levels up to around 1–2 mg/L (Faust and Aly 1998, USEPA 1999h), this data indicates that the vast majority of ground water systems (greater than 95 percent) will be expected to be in situations where inhibitors are sufficient for handling iron and manganese problems. The cost estimates conservatively assume that inhibitors will also be used by systems with source water below the SMCLs for iron and manganese. Systems with Fe/Mn levels above 1–2 mg/L may require oxidation/filtration or a similar removal technology. However, it should be noted that Fe/Mn levels this high may cause very noticeable nuisance problems, including "red water", noticeable turbidity, laundry and sink staining, and interference with the brewing of tea and coffee. It is likely that many systems with source water Fe/Mn levels this high will have already addressed this problem.

TABLE VIII.A.4.— CO-OCCURRENCE OF RADON WITH DISSOLVED IRON IN RAW GROUND WATER[1, 2] (4188 SAMPLES)

Radon (pCi/L)	Dissolved Fe (mg/L) (percent)					
	ND	<0.3	0.3–1.5	1.5–2.5	>2.5	Totals
ND	0.67	0.36	0.21	0.02	0.31	1.57
<100	2.17	1.72	0.53	0.12	0.48	5.02
100–300	7.55	10.20	2.67	1.34	1.74	23.50
300–1,000	18.89	22.61	[3] 3.08	0.57	1.31	46.46
1,000–3,000	6.42	9.05	0.74	0.10	0.62	16.93
>3,000	2.10	3.82	0.31	0.02	0.26	6.51
Totals	37.80	47.76	7.54	2.17	4.72	100.00

Notes:

[1] Based on analyses as described in USEPA 1999c.

[2] The USGS National Water Information System (NWIS) database was used for this analysis.

[3] Shaded area denotes region where radon level is above MCL and dissolved iron is above 0.3 mg/L, the secondary MCL for iron.

TABLE VIII.A.5.—CO-OCCURRENCE OF RADON WITH DISSOLVED MANGANESE IN RAW GROUND WATER[1, 2] (4189 SAMPLES)

Radon (pCi/L)	Dissolved Mn (mg/L) (percent)				
	ND	<0.02	0.02–0.05	>.050	Totals
ND	0.69	0.26	0.05	0.57	1.57
<100	2.67	0.84	0.36	1.15	5.02
100–300	8.00	5.97	2.20	7.33	23.50
300–1,000	21.99	11.84	3.17	[3] 9.48	46.48
1,000–3,000	6.45	5.90	1.24	3.34	16.93
>3,000	1.43	3.39	0.53	1.17	6.52
Totals	41.23	28.20	7.55	23.04	100.00

Notes: [1] and [2]: See Table VIII.A.4.

[3] Shaded area denotes region where radon level is above MCL and dissolved manganese is above 0.05 mg/L, the secondary MCL for manganese.

A similar analysis of the National Inorganic and Radionuclides Survey (NIRS) database, which sampled finished ground water, suggests that greater than 81 percent of GW systems sampled have dissolved Fe/Mn levels less than 0.3 mg/L and greater than 97 percent of systems sampled have levels less than 1.5 mg/L (USEPA 1999h). Table VIII.A.6 compares combined Fe/Mn levels predicted by the NIRS database to occur in finished ground water with levels predicted by NWIS to occur in raw ground water. This table is consistent with expectations that the vast majority of ground water systems will have combined Fe/Mn levels below 1–2 mg/L and that a significant fraction of ground water systems with Fe/Mn levels above the SMCL are already taking measures to reduce Fe/Mn levels.

TABLE VIII.A.6.—CO-OCCURRENCE OF RADON WITH DISSOLVED COMBINED IRON AND MANGANESE IN RAW AND FINISHED GROUND WATER

Ground water type	Percent of samples with dissolved combined Fe and Mn (mg/L) (percent)		Data sources
	<0.3	<1.5	
Finished Ground Water	>81, >93	>97 >99	NIRS,[1] AWWA Water:/Stats[2]
Raw Ground Water	>85, >71	>95 >88	NWIS,[3] AWWA Water:/Stats

Notes:

[1] "National Inorganics and Radionuclides Survey": See USEPA 1999c for references.

[2] American Water Works Association, "Water:/Stats, 1996 Survey: Water Quality".

[3] USGS, National Water Information System.

An analysis of the American Water Works Association (AWWA) "Water:/Stats" database corroborates these conclusions: average Fe/Mn levels in finished water from 442 ground water systems showed that greater than 93 percent of the systems had combined Fe/Mn levels less than 0.3 mg/L and greater than 99 percent of systems had combined Fe/Mn levels less than 1.5 mg/L (AWWA 1997); average Fe/Mn levels in raw ground water from 433 systems showed that greater than 71 percent of systems had combined Fe/Mn levels less than 0.3 mg/L and greater than 88 percent of systems had Fe/Mn levels less than 1.5 mg/L. While this analysis does support the conclusions from NIRS and NWIS, it should be noted that the AWWA "Water:/Stats Survey" is skewed towards large ground water systems: only 3.4 percent of the systems surveyed serve fewer than 10,000 persons, whereas at the national level, greater than 95 percent of ground water systems serve fewer than 10,000 persons. In comparison, NIRS was designed to be nationally representative of contaminant occurrence in CWSs, while NWIS is a "data bank" in which the U.S. Geological Survey stores water contaminant data from its various studies. While the data in NWIS was not collected as part of a designed national survey (and hence can not be claimed to be necessarily nationally representative), it is arguably nationally representative based on its large sample size and its wide distribution of sample collection locations (USEPA 1999c).

(g) Disinfection Assumptions. It was assumed that all systems adding treatment would include disinfection. Since a significant fraction of ground water systems already disinfect, the percentage of systems that would have to add disinfection was estimated from a "disinfection-in-place baseline", as described in the Radon Health Risk Reduction and Cost Analysis published on February 26, 1999 (64 FR 9559). It should be noted that this baseline is nationally representative. Some States will, of course, have higher proportions of ground water systems with disinfection-in-place (*e.g.*, those States that require that ground water systems disinfect) and some will have lower proportions. Since the cost estimates being calculated are at the national level, EPA believes that this assumption is valid since this will over-estimate costs for systems in some States and under-estimate costs for systems in other States, with the respective cost errors tending to cancel at the national level. As a simplifying cost assumption, chlorination was assumed for all systems adding disinfection. The actual choice of disinfection technology should, of course, be made on a case by case basis. The fact that many systems will choose disinfection systems other than chlorination and that some systems will not add disinfection at all is captured in the uncertainty analysis, described later in this section.

(h) Comparison of Modeled Costs with Real Costs from Case Studies. Figure VIII.A.1 compares modeled total capital costs against case studies of actual aeration treatment installations for radon and VOCs found in the literature and gathered by EPA. It should be noted that these case studies include all pre- and post-treatments capital costs and costs for land, housing structures, permits, and all other capital added with the aeration process. If EPA's assumptions regarding pre- and post-treatments were seriously flawed, this comparison would demonstrate the fact. As can be seen, EPA's models fit the data fairly well and, in fact, Figure VIII.A.2 shows that the "typical cost model" rather closely approximates a power fit through the capital cost data for the larger systems and significantly over-estimates capital costs for small systems.

The "PTA Cost Model" represents EPA's best estimate of the costs of constructing and operating a PTA system under the associated design assumptions (steel shell, below-ground concrete clearwell, structure, etc.). This design was intended to be fairly typical of those systems serving more than 500 persons and up to 1,000,000 persons. The "High Side PTA Cost Model" represents EPA's best estimate of the costs of constructing and operating a PTA system under the same basic treatment design, but including significantly higher land, structure, and permitting costs. This model was intended to be fairly typical of systems that are "land-locked" in suburban or urban areas where land costs, building codes, and permitting demands may be much higher than for typical situations. The "Low Side PTA Cost Model" represents EPA's best estimate of the costs of constructing and operating a PTA system using designs more typical of very small systems, including package plant installations. This model is described in the Radon Technologies and Costs Document (USEPA 1999h). As can be seen in Figure VIII.A.1, the PTA Cost and High Side PTA Cost models are representative of the systems with design flows greater than 0.1 MGD. All of these models tend to over-estimate costs for those systems with smaller design flows.

The relative percentages of non-compliant systems modeled by the low-, typical-, and high-side costs are shown in the "decision tree" in Table 7–3 of the Regulatory Impact Assessment supporting this proposal. As part of the uncertainty analysis (described later in this section), these decision tree percentages were varied significantly. The results and assumptions are presented in detail in Section 10.8.3 of the Regulatory Impact Assessment. Based on a sensitivity analysis of the relative impacts of all the cost elements studied, the variance in the decision tree percentage values had much less of an impact on national costs compared to the variance in the treatment unit costs ($/kgal).

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Figure VIII.A.1 Total Capital Costs: Aeration Cost Case Studies. (Late 1997 Dollars)

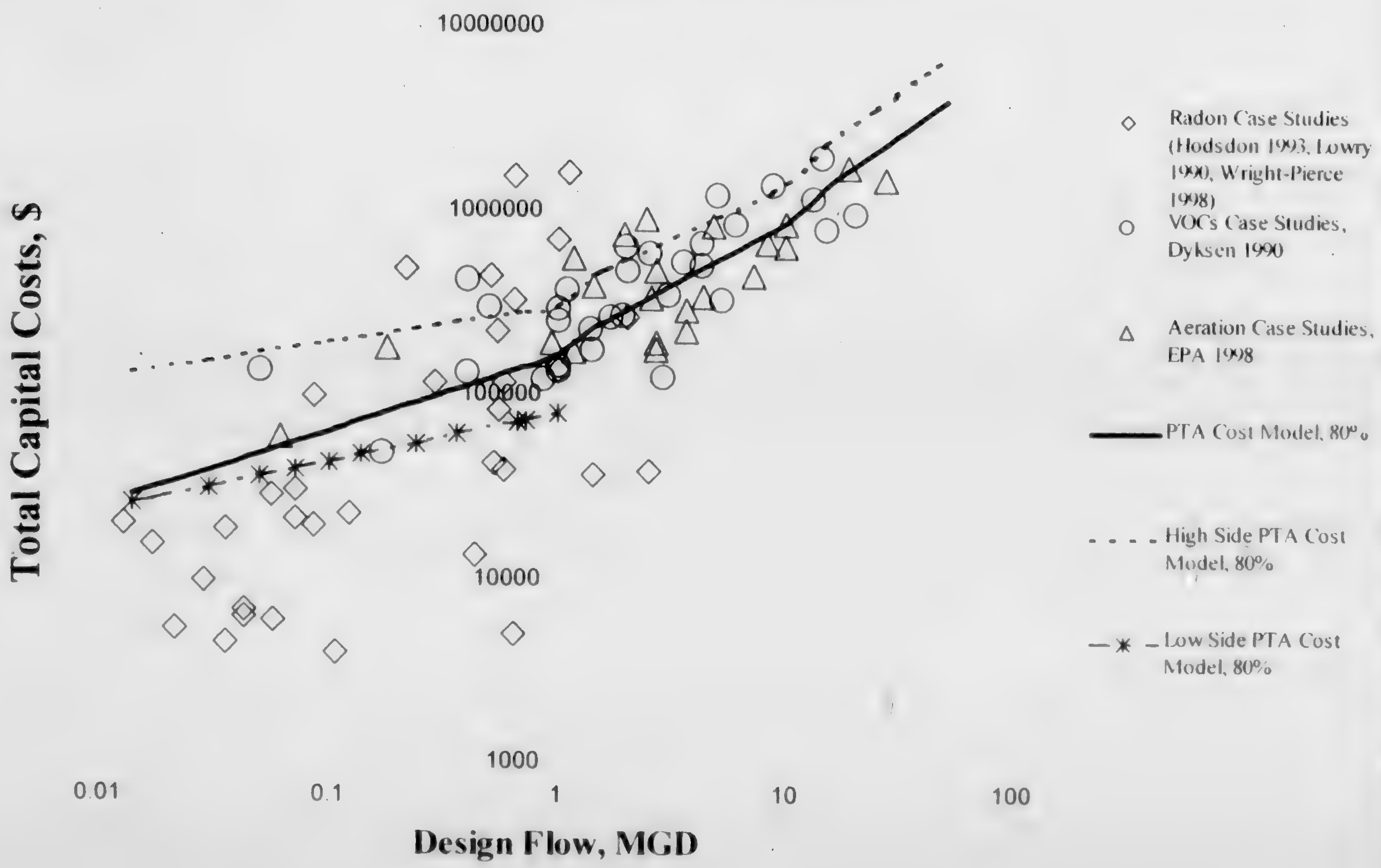

Figure VIII.A.2. Total Capital Costs: Comparison of EPA's Capital Costs Estimates to Literature Estimates. (Late 1997 Dollars)

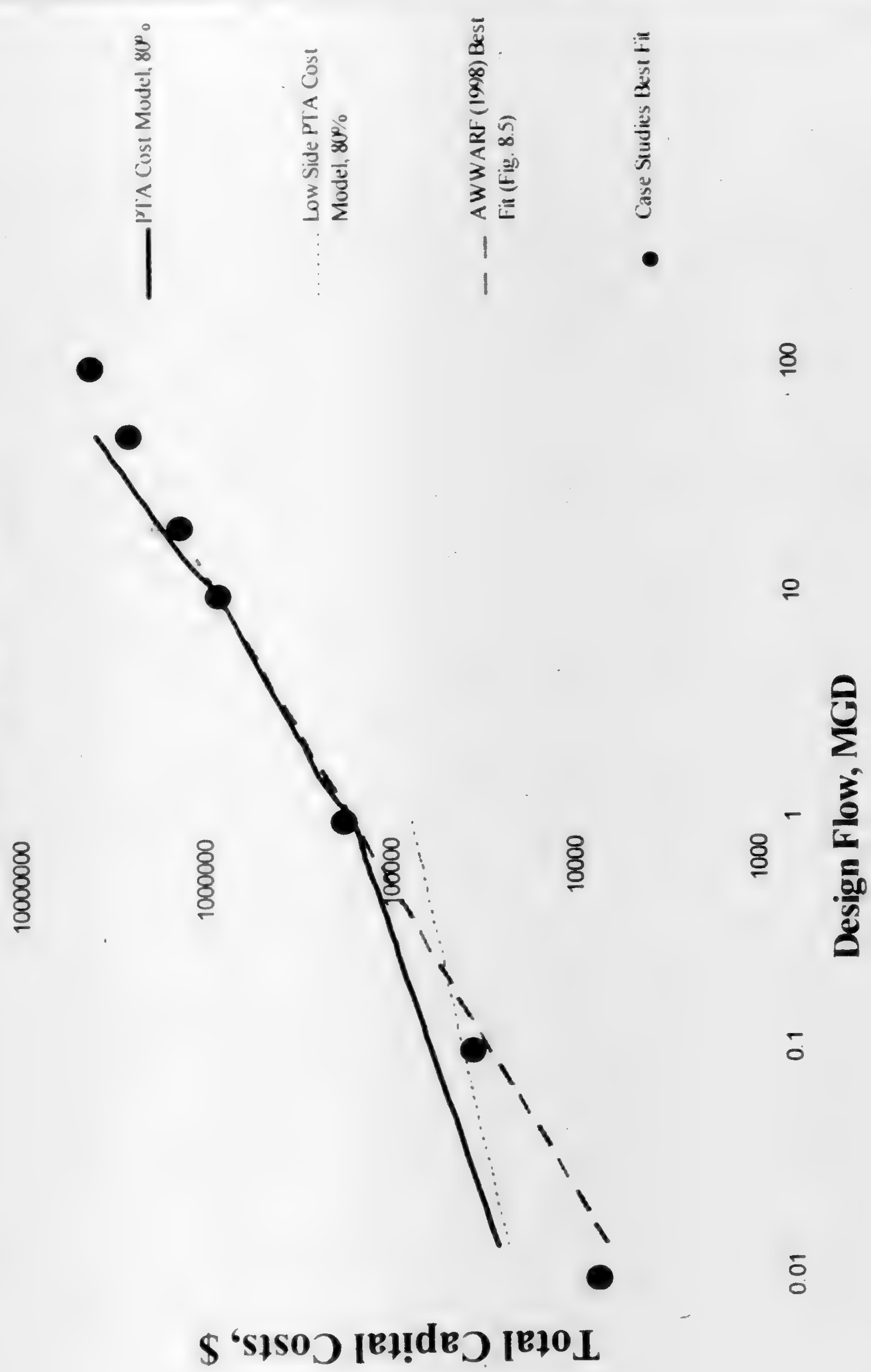

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Figure VIII.A.2 compares the EPA aeration capital cost models against best fits to aeration capital cost case studies from the Radon Technologies and Costs Document (which includes aeration installations for VOCs) and to capital costs for radon case studies as reported by American Water Works Association Research Foundation (AWWARF 1998b). In general, EPA's unit cost estimates are supported by the case studies cited previously and by the findings reported by the AWWARF (AWWARF 1998b).

Figure VIII.A.3 shows that EPA's modeled operations and maintenance (O&M) costs are representative of the case study cost data. It should be noted that EPA is modeling incremental O&M aeration costs (additional O&M costs due to the addition of radon treatment) and that many of the radon case studies and all of the VOCs case studies report total O&M costs, which include O&M costs not related to the removal of radon. For this reason, the case study O&M costs would be expected to be considerably higher than the modeled costs, especially for the larger systems (which tend to have other processes in place that require substantial O&M costs). For example, most of the case studies using disinfection already had disinfection in place before adding aeration for radon. Since it is very difficult to separate the individual components of O&M costs without detailed site-specific information, these disinfection O&M costs are included in the O&M costs shown even though they are not related to treatment added for radon. As described previously, EPA did model O&M costs for disinfection and sequestration for iron and manganese and did include these in its national cost estimates. Figure VIII.A.3 compares modeled O&M costs for aeration with and without disinfection. Modeled O&M costs for iron/manganese stabilization and corrosion control are included through a weighting procedure that simulates 25 percent of small systems and 15 percent of large systems adding a chemical inhibitor. EPA solicits public comment and data on treatment costs and performance for the removal of radon from drinking water.

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Figure VIII.A.3 Annual O&M Costs: Aeration Cost Case Studies. (Late 1997 Dollars per Annum)

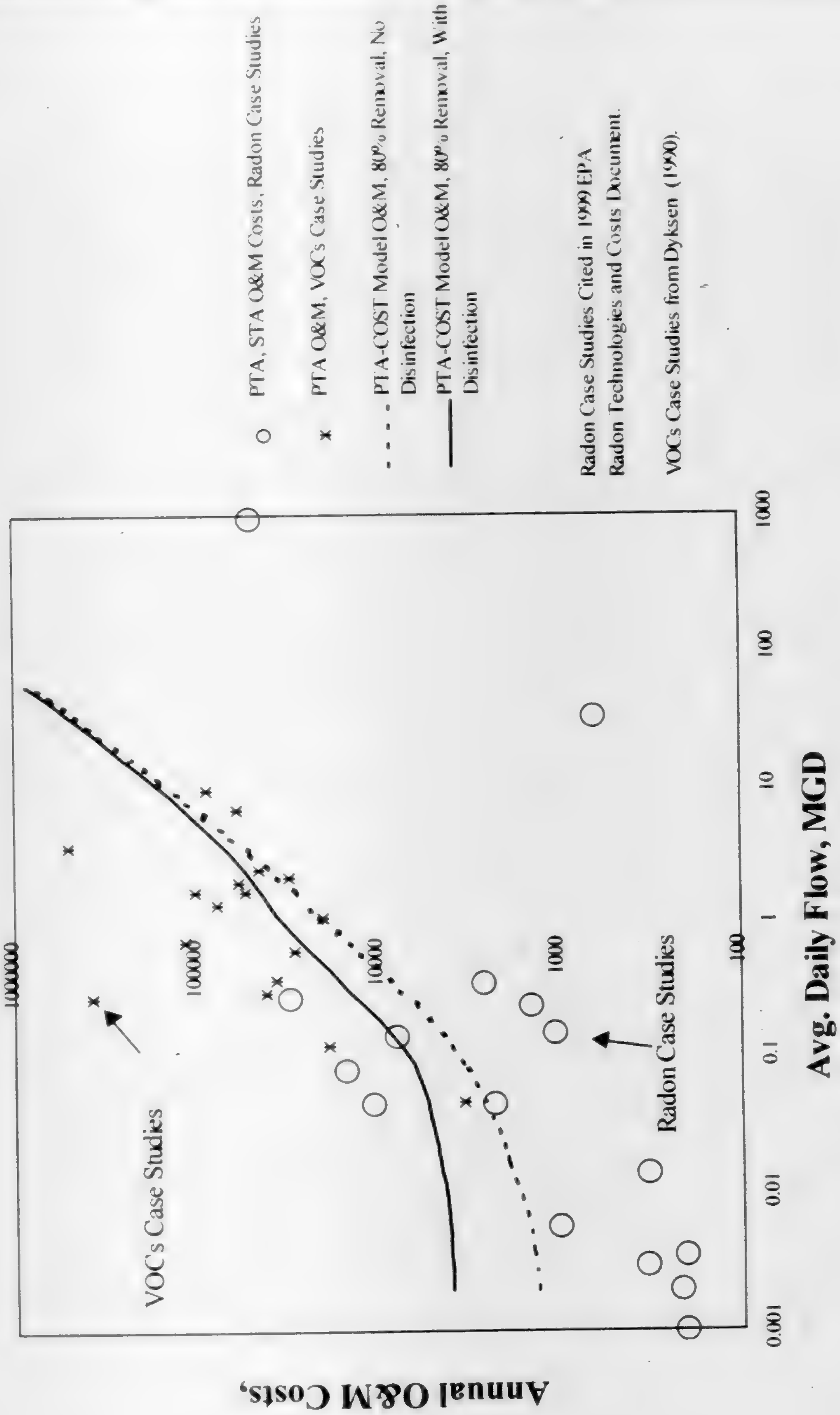

Radon Case Studies Cited in 1999 EPA Radon Technologies and Costs Document.

VOCs Case Studies from Dyksen (1990).

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Figures VIII.A.4 and VIII.A.5 compare the modeled capital costs and O&M costs for GAC against actual costs reported in case studies (USEPA 1999a, AWWARF 1998b). As can be readily seen, EPA's modeled costs are significantly higher than the actual costs, especially so for very small flows. To account for this discrepancy, EPA used the best fit through the case study data to generate a calibrated GAC model for capital and O&M costs. EPA calculated GAC treatment costs based on this model and did an uncertainty analysis on GAC costs assuming that while the modeled costs were typical, they could be as high as the GAC–COST predictions. This procedure is described in more detail in the radon HRRCA.

EPA also estimated point-of-entry GAC (POE–GAC) costs for very small systems. While capital and standard maintenance costs may be affordable ($100–$350 per household per year), monitoring costs can make POE–GAC much more expensive. EPA estimates (USEPA 1998g) that monitoring costs alone can be as much as $140 per household per year. A "high end" estimate for POE–GAC is $1,000 per household per year. If more cost-effective monitoring and maintenance program schemes are devised, these costs may be considerably lower.

In general, treatment costs may vary significantly depending on local circumstances. For example, costs of treatment will be less than shown if contaminant concentration levels encountered in the raw water are lower than those used for the calculations or if an existing clearwell can be retrofitted for aeration. However, costs of treatment will be higher if oxidation/filtration pre-treatment is required for iron and manganese removal or if water must be piped from the well-head to an off-site area for treatment.

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Figure VIII.A.4 Total Capital Costs: GAC Case Studies

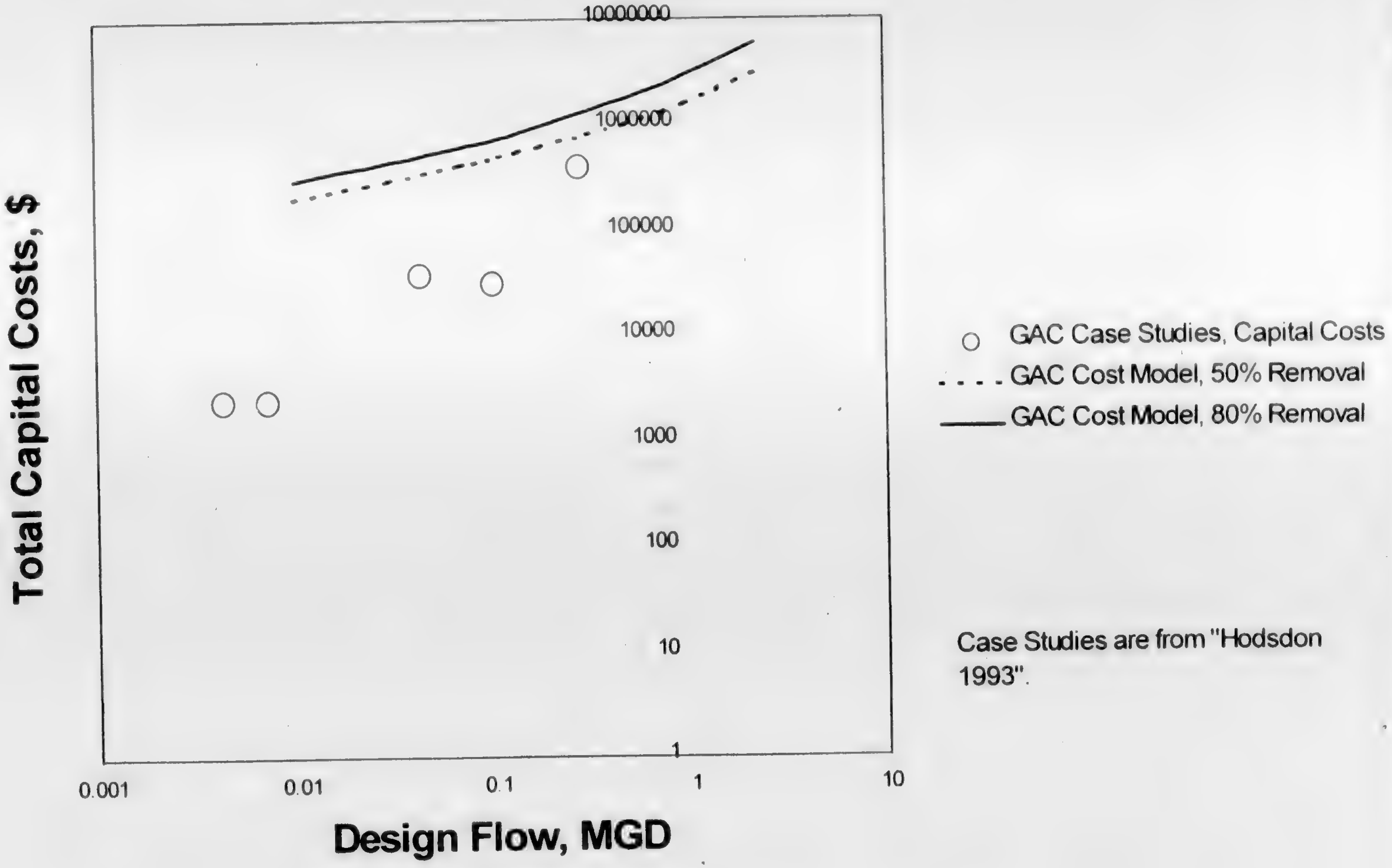

Case Studies are from "Hodsdon 1993".

Figure VIII.A.5 Annual O&M Costs: GAC Case Studies

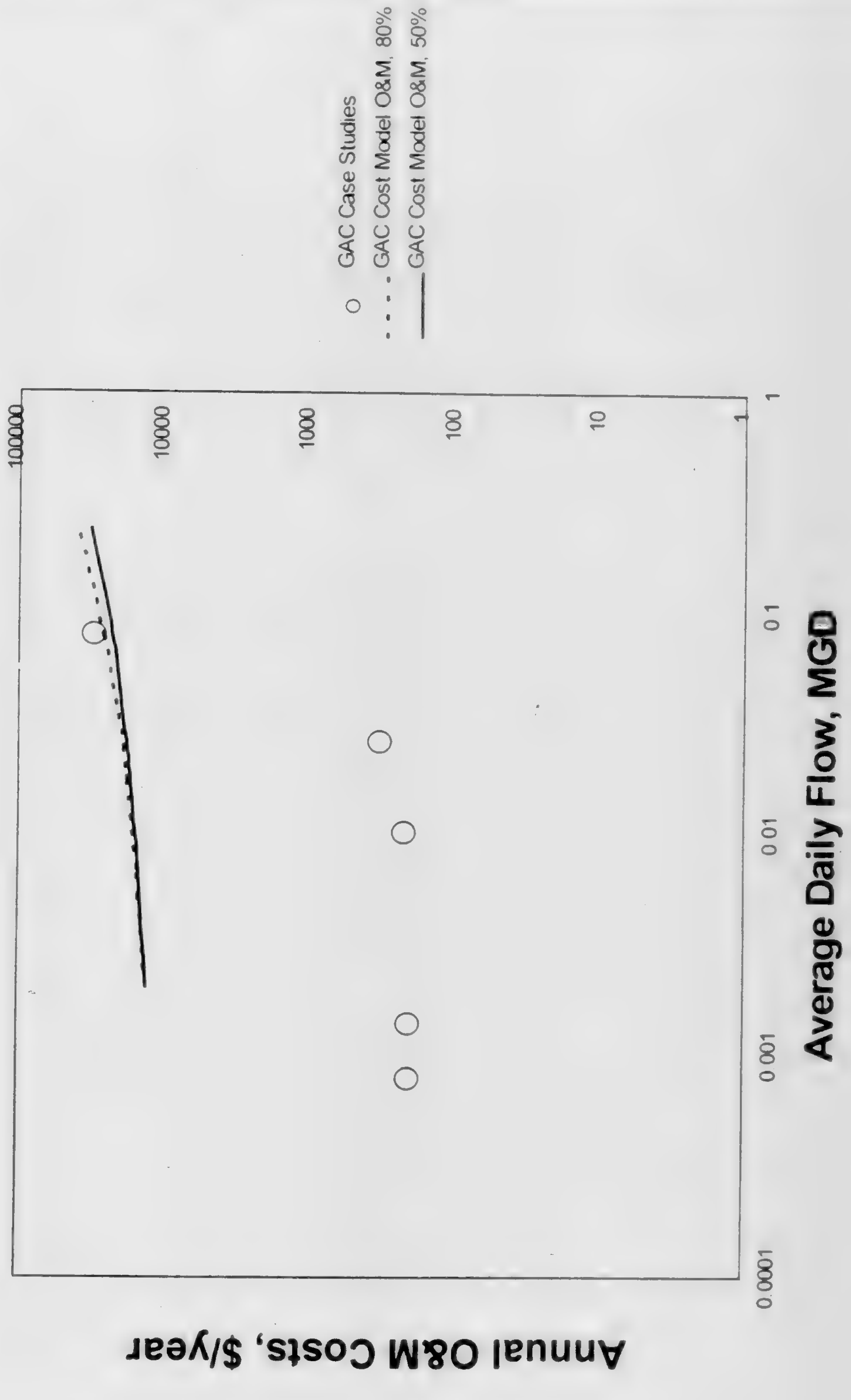

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(i) Uncertainty Analysis for Treatment Costs. To estimate the uncertainty in national treatment costs, EPA estimated credible ranges and distributions of values for the most important factors (inputs) affecting costs. Distributions of selected inputs were then used in a Monte Carlo analysis to explore the uncertainty in national costs. The cost factors that were analyzed include:

- Numbers of systems in the various size categories;
- The distribution of the numbers of sources (wells) per system in each size category;
- Distributions of populations served in each size category;
- Annual household water consumption;
- Proportions of systems and wells exceeding radon limits; and
- Unit costs of radon treatment technologies (aeration and GAC).

Each of these inputs was modeled using probability distributions that reflect the spread in the available data. In some cases, (distributions of populations served, daily household water consumption, unit costs) variability was estimable from SDWIS, the CWSS, or other sources. In the case of the numbers of systems of different sizes, the estimated variability was greatest for the smallest systems, less for the moderate size systems, and the numbers of the largest systems (serving greater than 100,000 customers) was assumed to be known with certainty. The variation in the proportions of systems and sources above radon limits was estimated based on EPA's recent analysis (USEPA 1999l) of inter- and intra-system radon variability in radon levels.

In addition to these inputs, the estimated percentages of systems choosing particular treatment technologies (the "decision tree") were allowed to vary as well. Three decision tree matrices were used, corresponding to a central tendency estimate of the proportions of systems choosing specific mitigation technologies, and to lower- and higher-cost distributions of technology selection. When the simulation was run, the central tendency matrix was selected in 80 percent of the iterations, and the low- and high-cost decision matrices were selected in ten percent of the iterations each.

The variability in the estimated mitigation costs was examined using a conservative test case in which all systems above an MCL of 300 pCi/L were assumed to mitigate to comply with the MCL. The results of the analysis are described in detail in the radon Health Risk Reduction and Cost Analysis. In general, the distribution of cost estimates, even with all the variables included in the Monte Carlo analysis, is much narrower than the corresponding distribution of risk and benefit results. For this hypothetical scenario, the fifth percentile cost estimate is $455 million per year, while the 95th percentile estimate is $599 million per year (only 32 percent higher). The compactness in spread in national costs relative to the spread in national benefits is primarily due to the fact that the variability in the individual cost model inputs is low relative to the variability in some of the inputs (*e.g.*, individual risk) to the benefits model.

(j) Potential Interactions Between the Radon Rule and Upcoming and Existing Rules Affecting Ground Water Systems: Aeration and GAC are BAT for more than 25 and 50 currently regulated contaminants, respectively. Both technologies have been well-demonstrated and the secondary effects of each technology are well understood (See, e.g., Cornwell 1990, Umphres and Van Wagner 1986, AWWA 1990). These technologies are also used to remove other contaminants from drinking water, including taste and odor causing compounds. The Community Water System Survey (USEPA 1997a) indicates that 2 to 5 percent of ground water systems serving fewer than 500 persons currently have aeration treatment in place. Of systems serving more than 500 persons, 10–25 percent of these systems have aeration treatment at one or more entry points.

In the case of aeration, these secondary effects include carbon dioxide release (pH increase), oxygen uptake, and potential bacterial density increases, all of which potentially impact other existing and future drinking water regulations that pertain to ground water. In the case of GAC treatment, potential bacterial density increases are of concern. These potential interactions are described in a following section. (Concerns that are specific to radon removal and secondary effects due to other contaminants, *e.g.*, radium and uranium, are discussed in part 3 of this Section.)

(k) Ground Water Rule: Since the treatment techniques applicable to the removal of radon, *i.e.*, aeration, GAC, and/or ventilated storage, may result in increases in microbial activity (NAS 1999b, Spencer et al. 1999), it is important that water systems determine whether post-treatment disinfection is necessary. The "Ten States Standards" (GLUMRB 1997) suggest that disinfection should follow ground water exposure to the atmosphere (*e.g.*, aeration or atmospheric storage). The Ten State Standards also suggest that systems using GAC treatment implement "provisions for a free chlorine residual and adequate contact time in the water following the [GAC] filters and prior to distribution." While EPA is not requiring that disinfection be used in conjunction with any treatment for radon, it is including costs for disinfection with treatment in accordance with good engineering practice. Cost assumptions for disinfection, including clearwell sizing for 5–10 minutes of contact time, are consistent with 4-log viral inactivation for ground water, which is expected to be consistent with requirements in the upcoming Ground Water Rule.

It should be noted that air is not a significant pathogen vector and thus aeration does not necessarily increase pathogenic risk for ground water users. However, bacterial activity can increase upon aeration and/or treatment with GAC. In the case of aeration treatment, bacteria that oxidize iron and/or sulfide may proliferate because of the oxygen increase; in the case of GAC treatment, bacteria may proliferate since the GAC surface tends to accumulate organic matter and nutrients that support the bacteria. In either case, heterotrophic plate count limits may become high enough to be of concern and for this reason disinfection may be necessary (USEPA 1999h, NAS 1999b).

(l) Disinfectants and Disinfection Byproducts (D/DBP) Rule: Commonly used disinfection practices for ground water systems include chlorination and, especially for small systems with limited distribution systems, ultraviolet (UV) radiation. Disinfection is used by many ground water systems because it decreases microbial risks from microbial contamination of ground water (NAS 1999b). However, there is a trade-off between a reduction in microbial risks and the risks introduced from disinfection by-products. Various disinfectant by-products (DBPs) can be formed depending on the disinfectant used, the disinfectant concentration and contact time, water temperature, the levels of DBP pre-cursors like natural organic materials and bromide, *etc.* For example, chlorination by-products like trihalomethanes can result from the interaction between chlorine chemical species and naturally occurring organic materials (NOM) and bromate can result from the ozonation of waters with sufficiently high levels of naturally occurring bromide ion.

Ground water systems tend to have significantly lower trihalomethane (THM) organic precursors than surface waters, although this is not always the case. Total organic carbon (TOC) is often used as a surrogate for formation of one important class of DBPs, total trihalomethanes (THM), since the THM formation potential of chlorinated waters correlates with TOC. As reported in the proposed Disinfectants and Disinfection Byproducts Rule (July 29, 1994: 59 FR 38668), a survey of surface waters showed TOC levels at the 25th, 50th, and 75th percentiles of 2.6, 4.0, and 6.0 mg/L, respectively; ground waters showed TOC levels at the same percentiles of "non-detect", 0.8, and 1.9 mg/L, respectively. Nationally, typical ground waters have low TOC levels. However, some areas of the U.S., e.g., the Southeastern U.S. (EPA Region 4), have some aquifers with high TOC levels.

One approach for the minimization of DBP formation in drinking water is to employ a disinfectant other than chlorine. Primary disinfection with chloramination, ozonation, or UV radiation are examples. However, other considerations may apply. For example, ozonation of ground water with sufficiently high bromide levels may result in significant levels of the DBP bromate. If a residual is required, it may be necessary to add secondary chlorination to maintain a residual in the distribution system. Other strategies include reducing the precursor concentration prior to chlorination, removal of THMs after their formation, and the installation of a second chlorination point in the distribution system. This last approach allows much lower chlorination levels to be used for primary chlorination, which greatly reduces THM formation.

While these strategies may be employed to minimize the formation of DBPs and, thereby reducing potential DBP risks and avoiding MCL violations for the DBP rule, there are other reasons to expect minimal interactions between the radon rule and the D/DBP rule. Namely, EPA expects that the radon rule will not result in a large percentage of systems adding disinfection because of the need to treat for radon. Since the primary regulatory option for small ground water systems is the MCL/MMM option (MCL = 4000 pCi/L) and less than one percent (1%) of small systems have radon levels that high, EPA does not expect many small systems to add treatment for radon in response to the radon rule, resulting in a very small percentage of small systems adding disinfection. Roughly half of all small systems already half disinfection in place already, further suggesting minimal small system impact from the radon rule. While EPA also expects that many large systems will also adopt the MCL/MMM option, EPA estimates that 95–97 percent of large ground water systems are already disinfecting, and thus would not have to add disinfection if treating for radon. For the expected small minority of systems that do add chlorination disinfection with radon treatment, the trade-off between a reduction in risks from radon exposure to an increase in risk from disinfection by-products will need to be carefully considered by the system installing treatment and strategies to minimize DBP formation should be implemented (NRC 1997, NAS 1999b, Spencer *et al.* 1999).

(m) Lead and Copper Rule: For several reasons, it is expected that few systems already in compliance with the Lead and Copper Rule will experience direct cost impacts because of the Radon Rule. Systems serving fewer than 50,000 persons do not have to modify corrosion control practices if the lead and/or copper contaminant trigger levels are not exceeded. For the reasons explained next, aeration is not expected to result in increased lead and copper levels in the vast majority of cases. While larger systems will have to include radon treatment into their over-all "optimal corrosion control" plans as they are updated, aeration tends to reduce or maintain corrosivity levels and should not result in measures beyond those included in the national costs for the proposed radon rule.

Aeration of ground water for radon treatment tends to raise the pH of water (Kinner *et al.* 1990, as cited by NAS 1999b, Spencer *et al.* 1999), since it tends to remove dissolved carbon dioxide, which forms carbonic acid when dissolved in water. In a study of VOCs removal by aeration, the American Water Works Association (AWWA 1990) reported that the net effect of aeration was "no increase in corrosivity": The reduction in carbon dioxide levels resulted in higher pH and in increased stability of carbonate minerals that serve to protect distribution systems, negating the corrosive effects of increased oxygen levels. The NAS concludes (NAS 1999b and references cited within Spencer *et al.* 1999) that studies suggest that corrosivity tends to decrease with aeration, but that a minority of systems that aerate may have to add a corrosion inhibitor to stabilize the impacts of the increased oxygen levels. As described previously, EPA has assumed in its national costs that, of the systems that install aeration, 25 percent of small systems and 15 percent of large systems will add chemical inhibitors for the dual purposes of corrosion control and the control of iron and manganese.

(n) Arsenic Rule: It is expected that there will be no significant negative relationships between compliance measures for the Arsenic and Radon Rules. In fact, one of the few expected impacts is beneficial: aeration plus disinfection may serve to pre-oxidize As(III) to the more readily removable As(V) form. However, the benefits estimated in this notice do not reflect this potential benefit.

3. Descriptions of Technologies and Issues

(a) Aeration. Aeration techniques for removal of radon from drinking water include active processes such as diffused bubble aeration (DBA), packed tower aeration (PTA), simple spray aeration, slat tray aeration, and free fall aeration, with or without spray aerators. Passive aeration processes such as free-standing, open air storage of water for reduction of radon may be effective for systems requiring lower removal efficiencies. Additional removal of radon via radioactive decay (into the daughter products of radon) may also occur in storage tanks and in pipelines which distribute drinking water, reducing radon by approximately 10 to 30 percent, within 8 to 30 hour detention periods. Although all of these aeration processes may be effective, depending on site specific conditions, only active aeration processes are considered BAT. Site specific considerations that may influence an individual water system's choice of treatment include source water quality (including concentrations of radon and other contaminants removed or otherwise affected by aeration), institutional or labor constraints, wellhead location, seasonal climate (*e.g.*, temperature), site-specific design factors, and local preferences. Identical treatment designs may achieve different radon removal efficiencies at individual water systems, depending upon these factors. A design for a technology may be altered to increase the radon removal efficiency, *e.g.*, an increase in the technology's air:water ratio (the respective flows of air and water being mixed) may increase the radon removal efficiency to account for local conditions that depress the radon removal efficiency. In some cases, the removal efficiency requirement may be high enough that only high performance aeration technologies (*e.g.*, packed tower aeration) will achieve the desired removals.

High performance aeration technologies, *e.g.*, packed tower aeration (PTA) and package plant aerators with high air:water ratios like shallow tray aeration (STA) or multi-stage bubble aeration (MSBA), provide the most efficient transfer of radon from water to air, with the ability to remove greater than 99 percent of radon from water. A supply which requires a smaller reduction of radon, *e.g.*, 50 percent, could opt to install one of these technologies and treat 50 percent of its source water and subsequently blend the treated with raw water, or it may design a shorter packed tower to achieve compliance with the MCL, both of which are significantly cheaper than treating the entire flow to 99 percent radon removal. Other advantages of high performance aeration include: removal of hydrogen sulfide, carbon dioxide, and VOCs, and oxidation of iron and manganese. Full-scale PTA, STA, and MSBA installations have been constructed for the removal of radon for very small up to medium sized-systems (AWWARF 1998b, USEPA 1999a). In addition to these case studies, full-scale aeration facilities for VOCs removal for medium to large-sized systems have been reported in the literature (AWWA 1990). Since radon is more easily air stripped than most volatile organic compounds, and high performance aeration technologies have been shown to be efficient forms of aeration for VOC removal (Kavanaugh and Trussell 1989, Dyksen *et al.* 1995), these technologies are appropriate as BAT for radon.

Treatment issues regarding aeration have been discussed in the literature (*e.g.*, Dihm and Carr 1988, Kinner et al. 1990b, Dell'Orco et al. 1998, AWWARF 1998b) and by EPA (USEPA 1999d). These issues include the potential for bacteria fouling (*e.g.*, iron/manganese/sulfide oxidizing bacteria), iron and manganese chemical precipitation and scaling, and corrosivity changes. Bacteria fouling and Fe/Mn scaling may clog or otherwise impede operations at an aeration facility, requiring preventative maintenance and/or periodic cleaning. Regarding corrosivity, the aeration process tends to reduce carbon dioxide levels (and raise pH, which tends to decrease corrosivity) and introduce oxygen (which tends to increase corrosivity). Whether or not corrosivity increases or decreases depends on site specific factors. In general, the degree to which these treatment issues may occur depends on the source water quality, ambient water and air temperatures, pre- and post-treatments added or in place, the type of aeration used, and other factors. To account for the cost impacts of dealing with Fe/Mn/carbonate scaling, EPA has included the capital and operation and maintenance costs of pre-treatment with a scalant stabilizer (which also may serve as a corrosion inhibitor, depending upon the type of corrosivity). Pre-/Post-treatment with a disinfectant to control biological fouling and to provide four-log viral deactivation (assuming a five minute contact time at 1.0–1.5 mg/L chlorine) has also been assumed in cost estimates. EPA assumed that those groundwater systems without disinfection already in place will add disinfection when aerating.

The PTA process involves the use of packing materials to create pore spaces that greatly increase the air:water contact time for a given flow of air into water. In counter-current PTA, the water is pumped to the top of the tower, then distributed through the tower with spray nozzles or distribution trays. The water flows downward against a current of air, which is blown from the bottom of the tower by forced or induced draft. The air space at the top of the tower is continually refreshed with ventilators. This design results in continuous and thorough contact of the water with ambient air. The factors that determine the radon removal efficiency are the air:water ratio (the ratio of air blown into the bottom of the tower and the water pumped into the top of the tower), the type and number of packing material, the internal tower dimensions, the water loading rate, the radon level in the influent and in the ambient air, and the water and air temperatures. A typical packed tower aeration installation consists of: (1) the tower: a metal (stainless steel or aluminum), fiber-glass reinforced plastic, or concrete tower with internals consisting of packing material with supports and distributors, (2) a blower or blowers, (3) effluent storage, which is generally provided as a concrete clearwell (airwell) below the tower; very small systems may use metal or plastic storage tanks, and (4) effluent pumping. Pumping into the tower is performed either through modification or replacement of the original well pump.

Commercially available high performance package plant aerators (USEPA 1999a, AWWARF 1998b) include multi-stage bubble aerators (MSBA), shallow tray aerators (STA), and other high air:water ratio designs. MSBA units typically consist of shallow (typically less than 1.5 feet deep) high-density polyethylene tanks partitioned into multiple stages with stainless steel or plastic dividers. Each stage is provided with an aerator, each of which is connected to the air supply manifold. STA units typically consist of one to six stacked tray modules (each 18 to 30 inches deep). Water is pumped through each tray as air is blown through diffusers at the bottom of the tray, creating turbulent mixing of the air and water. These package plant aerators have several distinct advantages: they are low-profile and compact (small footprint), are considered straightforward to install, and are relatively easy to maintain.

Other varieties of active aeration include diffused bubble aeration, which involves the bubbling of air into the water basin (of varying depth and design) via a set of air bubble diffusors. Forms vary from designs with shallow depth tanks containing thousands of diffusers to "low technology" designs involving bubbling air into a storage tank via a perforated hose connected to a blower. Some forms of diffused bubble aeration can remove up to 99.9 percent of radon from drinking water; simpler varieties can remove from 80 to > 90 percent of radon. One of the main advantages of diffused bubble aeration is its potential for making use of existing basins for the aeration process, which substantially reduces construction costs. Even if the aeration basin must be newly constructed, this process can be more cost effective than PTA for small systems. The disadvantages of diffused aeration include the requirement for increased contact time, the impracticality of large air-to-water ratios because of air pressure drops, and overall less efficient mass transfer of radon from water. The level of contact between air and water achievable in a packed tower aerator is difficult to obtain in a simple diffused air system (*i.e.*, forms like MSBA can achieve comparable contacts).

The Radon Technology and Cost document (USEPA 1999h) summarizes treatability studies for four diffused bubble aeration installations. One of the case studies involves a full-scale diffused aeration plant in Belstone, England, which provided a long-term radon removal efficiency of 97 percent. This plant (design flow of 2.5 mgd) was designed with an air:water ratio, using 2,800 air diffusers, each designed to supply a maximum of 0.8 cubic feet per minute, and a 24-minute retention time. In a field test of a diffused bubble aeration system, Kinner et al. (1990) report that removals of 90 to 99 percent were achieved at air-to-water ratios of 5 and 15, respectively.

Spray aerators direct water upward, vertically, or at an angle, dispersing the water into small droplets, which provide a large air:water interfacial area for radon volatilization. In single pass mode, depending upon the air:water ratio, removal efficiencies of >50 to >85 percent can be achieved. In multiple pass mode, 99 percent removals can be achieved. Most of the advantages cited previously for diffused aeration also apply to spray aeration. Disadvantages include the need for a large operating area and operating problems during cold weather months when the temperature is below the freezing point. Costs associated with this option (for all sizes of water treatment plants) have not been developed by EPA, but case studies (USEPA 1999a, AWWARF 1998b) indicate that it is cost-competitive with other small systems aeration technologies.

EPA has evaluated other, less technology-intensive ("low-technology"), options which may be suitable for small water systems, and which may cost less than the options described previously to install and operate (Kinner et al. 1990b, USEPA 1999a, AWWARF 1998b). These options include: atmospheric storage, free fall with nozzle-type aerator, bubble aerators, blending, and slat tray aerators. Limited data concerning these low-technology alternatives are reviewed in USEPA 1999a and AWWARF 1998b. Case studies show that atmospheric storage with a detention time of nine hours resulted in removals of 7–13 percent and a detention time of 30 hours in removals of around 35 percent. Dixon and Lee (1987) report that blending 6.34 MG of well water with a radon level of 1079 pCi/L with 18.34 MG of surface water resulted in effluent water with 226 pCi/L. Other storage case studies (detention times ranging from 8 to 23 hours) show that free-fall into a tank, free-fall with simple bubble aeration, simple spray aeration with free-fall, and simple bubble aeration remove 50–70 percent, 85–95 percent, 60–70 percent, and 80–95 percent of radon, respectively. More detail on an example will illustrate the simplicity of the treatment involved: the case study for "free-fall with simple bubble aeration" cited previously involved the introduction of water through two feet of free fall into a tank equipped with garden hose (punctured) bubble aerators, where the air was supplied by a laboratory air pump. Kinner et al. (1990b) concluded that very effective radon reduction can be achieved by simple aeration technologies that may be easily applied in small communities.

(i) *Evaluation of Radon Off-Gas Emissions Risks.* Since this notice contains a proposal to reduce radon concentrations in drinking water by setting an MCL, and the EPA is proposing aeration as BAT for meeting the MCL, the Agency undertook an evaluation of risks associated with potential air emissions of radon from water treatment facilities due to aeration of drinking water. In the first evaluation (USEPA 1988a, 1993a), EPA used radon data from 20 drinking water systems in the U.S. which, according to the Nationwide Radon Survey (1985), contained the highest levels of radon in drinking water and affected the largest populations and/or drinking water communities. EPA estimated the potential annual emissions (in pCi radon/yr) from these facilities, assuming 100 percent radon removal.

These radon emissions estimates were used as inputs to the AIRDOS-EPA model, which is a dispersion model that can be used to estimate the concentration of radon at a point some distance from the point source (*e.g.*, a packed tower vent). This model is the predecessor to the newer CAP–88–PC model, which combined AIRDOS with the DARTAB model, which estimates the total lifetime risk to individuals and the total health impact for populations. The underlying physical models in CAP–88 are essentially the same as those underlying AIRDOS and DARTAB (USEPA 1992c). In fact, the main differences between CAP–88–PC model and its predecessors is that CAP–88–PC is intended for wide-spread use in a personal computer environment (the CAP–88–PC model and its supporting documentation can be downloaded from the EPA homepage, http://www.epa.gov/rpdweb00/assessment/cap88.html). EPA has made comparisons between the AIRDOS-EPA dispersion model results and actual annual-average ground-level concentrations and found very good agreement. EPA has studied the validity of AIRDOS-EPA and concluded that its predictions are within a factor of two within actual average ground-level concentrations, the results of which are as good as any existing comparable model (USEPA 1992c).

Estimates of ground-level radon exposure were made for the following parameters: air dispersion of radioactive emissions, including radon and progeny isotopes of radon decay; concentrations in the air and on the ground; amounts of radionuclides taken into the body via inhalation of air and ingestion of meat, milk, and fresh vegetables, dose rates to organs and estimates of fatal cancers to exposed persons within a 50 kilometer radius of the water treatment facilities. Estimates of individual risk and numbers of annual cancer cases were completed for each of the 20 water systems, as well as a crude estimate of U.S. risks (total national risks) based on a projection of results obtained for the 20 water systems. These estimates were based on exposure analyses on a limited number of model plants, located in urban, suburban and rural settings, which were scaled to evaluate a number of facilities. (A similar approach has been used by the Agency in assessing risks associated with dispersion of coal and oil combustion products.) The risk assessment results for the 20 systems indicate the following: a highest maximum lifetime risk of 2×10^{-5} for individuals within 50 km of one of these systems, with a maximum incidence at the same location of 0.003 cancer cases per year; an estimate of annual cancer cases for all 20 systems of 0.0038 per year; and a crude U.S. estimate of 0.09 fatal cancer cases/year due to air emissions if all drinking water supplies are treated by aeration to meet an MCL of 300 pCi/L. Two other cases were evaluated: (1) Assuming that small drinking water systems are treated by aeration to meet the MCL/MMM option of 4000 pCi/L and large systems are treated to meet the MCL of 300 pCi/L, the best estimate of total national fatal cancer cases per year due to radon off-gas emissions is 0.04 cases/year, and (2) Assuming that all systems treat by aeration to meet the (A)MCL/MMM option of 4000 pCi/L , the best estimate is 0.01 cases/year. These results of the risk assessment for potential radon emissions from drinking water facilities are summarized in Table VIII.A.7. For all MCL options shown, the maximum lifetime individual risks from radon off-gas are much smaller (100 to 70,000 times smaller) than the average lifetime individual risks from the untreated water. Regarding national population risks (fatal cancer cases per year), the estimated population risk from radon off-gas is 850 to 17,000 times smaller than the estimated population risk from the untreated water.

TABLE VIII.A.7.—ESTIMATES OF RISKS AT 20 SITES DUE TO POTENTIAL RADON EMISSIONS FROM AERATION UNITS AND CRUDE PROJECTION OF TOTAL U.S. RISK[1]

Modeling scenario	Concentration in water (pCi/L)	Emissions from facility (Ci Rn/Yr)	Maximum lifetime individual risk[2]	Population risk[2] (fatal cancer cases per year)
20 Facilities Modeled:				
1	1,839	2.79	3×10^{-7}	7×10^{-5}
2	5,003	6.22	6×10^{-7}	2×10^{-4}
3	2,175	2.85	3×10^{-7}	9×10^{-5}
4	1,890	20.89	6×10^{-6}	1×10^{-4}
5	1,310	1.81	5×10^{-7}	9×10^{-7}
6	1,329	91.80	9×10^{-6}	1×10^{-3}
7	4,085	2.26	2×10^{-7}	3×10^{-5}
8	10,640	1.18	1×10^{-7}	1×10^{-5}
9	3,083	0.55	5×10^{-8}	7×10^{-6}
10	3,270	9.04	2×10^{-5}	1×10^{-3}
11	2,565	3.54	7×10^{-6}	6×10^{-4}
12	4,092	13.75	2×10^{-7}	3×10^{-5}
13	16,135	2.23	2×10^{-7}	3×10^{-5}
14	3,882	0.27	8×10^{-8}	5×10^{-6}
15	1,244	1.03	3×10^{-7}	2×10^{-5}
16	2,437	1.35	4×10^{-7}	5×10^{-7}
17	996	8.94	9×10^{-7}	2×10^{-4}
18	7,890	0.87	3×10^{-7}	6×10^{-6}
19	9,195	1.02	3×10^{-7}	1×10^{-5}
20	7,500	1.04	3×10^{-7}	6×10^{-6}
Totals for All 20 Facilities		161		0.004
Totals Assuming All U.S. Community Water Systems Treat to 300 pCi/L[3], i.e., All Systems Meet MCL of 300 pCi/L.		3700		0.09
Totals Assuming All Small U.S. Drinking Water Facilities Treat to 4000 pCi/L[3] and All Large U.S. Drinking Water Treat to 300 pCi/L, i.e., All Small Systems Meet MCL of 4000 pCi/L and All Large Systems: meet MCL of 300 pCi/L.		1600		0.04
Totals Assuming All U.S. Drinking Water Facilities Treat to 4000 pCi/L[3], i.e., All Systems meet MCL of 4000 pCi/L.		240		0.01

Notes:

[1] Estimates of Risk Assessment Using AIRDOS–EPA to estimate radon exposure. The total U.S. risk is based on the very conservative projection that all CWSs will treat to 200 pCi/L, USEPA 1993b.

[2] Risks are based on the National Academy of Science's lifetime fatal cancer unit risk or radon in drinking water of 6.7×10^{-7}.

[3] USEPA 1999j.

A second "worst case" evaluation was performed using four scenarios with high radon influent levels (ranging from 1,323 pCi/L to 110,000 pCi/L) and/or high flows to further determine whether individuals living near water treatment plants would experience significant increases in cancer risks due to radon off-gas emissions. For this analysis, the MINEDOSE model was used in conjunction with radon emissions estimates to estimate lifetime fatal cancer risks for individuals living near the modeled facility. Emissions were estimated using MINDOSE 1.0 (1989), a predecessor to COMPLY–R (1.2), which can be downloaded from the EPA homepage (http://www.epa.gov/rpdweb00/assessment/comply.html). Comply–R (1.2, radon-specific) is intended for demonstrating compliance with the National Emissions Standards for Hazardous Air Pollutants (NESHAPS) in 40 CFR 61, Subpart B, which are the Federal standards for radon emissions from underground uranium mines. While these standards do not apply to drinking water facilities, the model can be used to estimate radon exposures from aeration vents at drinking water facilities. To check for consistency between MINEDOSE and COMPLY–R, several modeling scenarios done in the original analysis with MINEDOSE were repeated using COMPLY–R and the results from MINEDOSE were found to be conservative with respect to the COMPLY-R results, *i.e.*, COMPLY–R predicts lower exposures for the scenarios modeled. The MINEDOSE code was originally used instead of the AIRDOS code because of its relative ease of use. When modeling the same scenarios with MINEDOSE and AIRDOS, the predicted exposures were determined to be similar enough to warrant the use of MINEDOSE for this work. The results from the MINEDOSE modeling work and subsequent work (USEPA 1994a) concluded that even these "worst case maximum individual risks" from radon off-gas were much smaller (300 to 1,000 times smaller) than the average individual risks posed by the untreated water.

(ii) Permitting of Radon Off-Gas from Drinking Water Facilities. Radon emissions to ambient air are only Federally regulated under 40 CFR 61,

National Emission Standards for Hazardous Air Pollutants (NESHAPs). These regulations apply to radon emissions under very specific circumstances, including emissions of radon to ambient air from uranium mine tailings, phosphogypsum stacks (40 CFR 61, Subpart R), Department of Energy storage and disposal facilities for radium-containing materials (40 CFR 61, Subpart Q), and underground uranium mines (40 CFR 61, Subpart B). At present, there are no State or Federal regulations that directly apply to radon air emissions from water treatment facilities.

To assess potential procedures (*e.g.*, permit applications, off-gas risk modeling) and costs that could be associated with radon off-gas from aeration facilities, EPA gathered information from agencies responsible for air permitting (USEPA 1999h), using California as a case study. California air permitting requirements are expected to be more restrictive than most States, and for this reason, it is considered a conservative case study. The information gathered is not expected to be nationally representative, but is illustrative as a "worst case scenario".

EPA contacted representatives from nine air districts in California via telephone to determine the likely response of their district to promulgation of a radon rule with an associated radon MCL requirement (USEPA 1999h). The air boards were chosen to represent large, metropolitan areas, medium-sized cities, and smaller, more rural areas. The representatives responded to the following questions:

- What is the likely response of your permitting board to water systems installing aeration treatment to comply with the radon rule?
- What are the likely permitting procedures and costs for water systems installing aeration for radon? Who would be responsible, the permitting board or the water system, for carrying out each procedure and paying the costs?
- Will large water systems and small water systems follow different procedures, or are procedures uniform regardless of water system size (*e.g.*, off-gas volume)? How do permitting costs change with the applicant's system size?
- Will water systems be required to perform off-gas risk modeling as part of the permitting procedure or will they be required to do other environmental impact analyses?
- Would there be annual renewal procedures (*e.g.*, reapplication, compliance monitoring) and costs? Who would be responsible for carrying our the procedures and bearing the costs?
- Is ongoing monitoring likely to be required?

Where possible, representatives provided estimates of time and cost that could be incurred by water systems and the districts as a result of the potential district response to the radon rule.

Responses to these questions indicated that the likely response to a radon rule is similar across the California air districts contacted. Most districts indicated they are likely to follow the lead of the State. "Following the State's lead" means that, if the State includes radon on its Toxic Air Contaminants List and establishes potency factors (unit risk factors and expected exposure levels for radon), air districts will probably regulate drinking water system aeration facilities through permits. Permitting procedures are similar across air districts and generally do not vary for facilities of different sizes. However, permitting costs and who bears those costs can vary significantly from air district to air district. Some portion of the costs are likely to vary based on facility size or emissions level.

Currently, "radionuclides" (which includes radon) are on the Toxic Air Contaminant Identification List developed by the California Air Resources Board. Listed contaminants are categorized by priority, and depending on what category a substance is in, the substance may or may not have "potency factors" developed by California's Office of Environmental Hazard Health Assessment (OEHHA). At the present time, radon is "Category 4A", which means that OEHHA is *not* currently planning on publishing values for the radon unit risk factor and reference exposure level, indicating that air boards are not likely to require permitting for radon off-gas at the present time. However, radon has been proposed for elevation in priority to "Category 3", which means that it could be a candidate for the development potency numbers in the future. Since California air quality districts generally follow the lead of OEHHA, if OEHHA publishes a unit risk factor and reference exposure level for radon in the future, air districts are then likely to evaluate whether radon should be considered in their air permitting programs. If OEHHA decides not to establish potency factors for radon, California air districts are not likely to require permitting for radon off-gas from drinking water treatment plants.

Respondents indicated that typical permitting procedures were: a system applies for a permit to construct; the board evaluates the application and decides whether or not to issue a permit; a permit may then be issued, after which the system may construct the aerator; the District conducts an inspection and the system may or may not have to perform testing; a public notice is issued if required by risk level and proximity of schools; the District issues a permit to operate; system must annually renew the permit (no monitoring or inspection likely). It is likely that water systems in the more densely populated, Metropolitan areas are more likely to need to do a risk assessment and perform modeling as part of their permit application. Permitting costs ranged from < $500 for simple permitting up to $50,000 for more complicated situations, with typical permitting costs reported in the $1,000 to $5,000 range. These costs do not include any radon dispersion controls or other engineering controls that might be required for the permit.

(b) Centralized Liquid Phase Granular Activated Carbon (GAC) and Point-of-Entry GAC. GAC removes radon from water via sorption. "Downflow" designs are used, in which the raw water is introduced at the top of the carbon bed and flows under pressure downwards through the bed. The treated water may then be disinfected or otherwise post-treated and piped to the distribution system. Advantages to the use of GAC relative to aeration include the lack of a need to break pressure (and hence re-pump), the lack of radon off-gas emissions, and, in very small systems applications with good water quality, GAC typically has no moving parts and requires little maintenance. Details regarding the process of radon removal via GAC are provided elsewhere (USEPA 1999h, AWWARF 1998a,b). This discussion will focus on potential issues that small water systems may face if they choose GAC for radon removal. Of these, raw water quality is of paramount concern since it affects radon removal efficiency, unit lifetime, and the potential for secondary radiation hazards. Radon, iron, uranium, and radium levels are most important.

(i) Radon Influent Levels for POE GAC: Gamma Radiation Hazards. An upper limit of 5,000 pCi/L of radon in influent water being treated by POE GAC is suggested by Rydell et al. (1989) and Kinner et al. (1990b) to protect persons in frequent proximity to the carbon bed (*i.e.*, residents) from gamma ray exposures. This influent level is based on a residential exposure limit of 170 mRem/year, or 0.058 mR/hour based on 8 hours/day of maximum exposure, 365 days per year. The 170 mRem/year limit was established by the National Council on Radiation

Protection Bulletin (cited by Rydell et al. 1989). Note that this residential exposure limit is less conservative than the EPA recommended limit of 100 mRem/year for water treatment plant personnel. However, the assumption of 8 hours/day of maximum proximity is extremely conservative. The 100 mRem/year limit is achieved if a person gets maximum exposure for approximately 5 hours per day or less, 365 days per year, which is still a conservative assumption.

Rydell *et al.* determined this influent limit based on an empirical and theoretical relationship between radon influent level and gamma ray emissions from the carbon bed. As will be discussed next, based on recent work using improved gamma ray detection methodology, Hess *et al.* (1998) report that this limit may be too low by a factor of 2, *i.e.*, the suggested radon influent limit may be closer to 10,000 pCi/L. Note that these limits are based on assumptions about GAC contact basin configurations, type and extent of shielding, length of time and proximity of persons to the unit, *etc.* While the "rules-of-thumb" described previously are useful, appropriate radon influent limits may be higher or lower depending upon site-specific considerations and should be determined on a case-by-case basis.

The University of Maine reported results on the removal of radon from drinking water using GAC (Hess *et al.* 1998). Nine carbon beds (all in Maine), which had been in use for more than 10 years by public water systems and private homes for radon removal, were studied. Radon influent levels ranged from 330 to 107,000 pCi/L, with a mean of 24,500 pCi/L and a standard deviation of 11,800 pCi/L. Gamma ray emissions from the GAC units and accumulated radon progeny, uranium, and radium were analyzed. Gamma ray emissions from the GAC surface ranged from 11.5 uR/h to 301 uR/h, with a mean of 78 uR/h and a standard deviation of 82 uR/h, and were 2 to 4 times lower than predicted by theory. The authors concluded that the limit of 5,000 pCi/L suggested by Rydell *et al.* (1989) may be too low by a factor of 2 or more.

(ii) Radon Influent Levels for Centralized GAC: Gamma Radiation Hazards. Using the very conservative assumption that a water treatment operator will be in close proximity for 40 hours per week, the 100 mRem/year translates to around 0.05 mR/hour, which also corresponds to a maximum of 5,000–10,000 pCi/L of radon for small flows. However, since GAC is likely to be used only by very small water systems and does not involve intensive O&M, much shorter work weeks are likely. Using 10 hours/week, the maximum radon influent level would be higher. Again, these are "rule-of-thumb" suggestions only. The best means to ensure that 100 mRem/year maximum exposure limits are maintained is to implement appropriate monitoring of gamma levels in the treatment facility and to ensure that proper shielding and worker proximity restraints are engineered to minimize exposures.

(iii) Other Water Quality Considerations: Naturally-Occurring Iron and Dissolved Organic Materials. The adsorption of iron precipitates can reduce a unit's radon removal efficiency, so that the raw water may need to be pre-treated to stabilize and/or remove the dissolved iron. The American Water Works Association Research Foundation (AWWARF 1998a,b) reports that waters with low iron and low levels of naturally occurring organic matter ("total organic carbon", TOC) can achieve good radon steady-state removals (*i.e.*, radon sorption equals radon decay), but that the negative effects of iron and TOC on removal efficiencies may necessitate pilot testing to ensure proper contactor design. For raw water with high iron and/or TOC, pre-filtration or pre-oxidation/filtration may be required to achieve good steady-state removals.

(iv) Other Water Quality Considerations: Naturally-Occurring Uranium and Radium: Uranium and radium raw water levels are also of concern since sorption may occur onto the GAC surface, which results in uranium and radium occurrence in the GAC filter backwash residuals and ultimately may create a final GAC bed disposal problem. Water quality (pH, iron levels, natural organic matter levels, alkalinity, *etc.*) determine the extent to which uranium and radium sorb to the GAC surface. AWWARF (1998b) reported results from case studies conducted over a two year period in New Hampshire, New Jersey, and Colorado, including findings regarding loadings of uranium and radium on the GAC surface and respective levels in backwash residuals. Radon influent levels were 15,000–17,000 pCi/L, 2,220 pCi/L, and <7,500 pCi/L at the New Hampshire, New Jersey, and Colorado sites, respectively. In the New Hampshire pilot study, backwash residuals contained ~200 pCi/g uranium and ~50 to 60 pCi/g radium. For water treatment residuals with uranium levels between 75 and 750 pCi/g, EPA suggests that disposal measures be determined on a case-by-case basis (USEPA 1994b). In general, disposal in a controlled landfill environment may be necessary. The GAC bed itself accumulated less than the limit of 75 pCi/g for all but one of the five GAC columns in New Hampshire. For the New Jersey and Colorado pilot plants, uranium, radium, and radon progeny levels were low enough in the backwash residuals and the GAC bed that special disposal considerations were not an issue. It should be noted that State disposal restrictions may be more stringent than EPA's suggestions, which may make GAC a less attractive alternative in these States.

(v) GAC Disposal Issues. Radon progeny (*e.g.*, Pb–210, a beta emitter) accumulation is also related to radon influent level. If radon influent levels are high, the GAC unit lifetime may decrease significantly, where this lifetime is defined as the length of time between start-up and when an unacceptable accumulation of radioactive Pb–210 occurs. While no Federal agency currently has the legislative authority to regulate the disposal of wastes generated by water treatment facilities on the basis of naturally occurring radioactive materials (NORM), EPA (USEPA 1994b) suggests that NORM solid wastes with radioactivity above 2,000 pCi/g be disposed of in appropriate low-level radioactive waste facilities. Furthermore, given the prohibitive expense and burden of disposing of low-level radioactive waste, EPA would suggest that water treatment facilities avoid situations where such high waste levels would expected to potentially occur. In the case of wastes containing Pb–210, EPA suggests that case-by-case determinations be made for determining appropriate disposal. In summary, for higher radon influent levels, shorter bed lifetimes may be appropriate to reduce Pb–210 build-up.

Hess *et al.* (1998), cited previously, also studied several methods of cleaning the GAC bed by removing Pb–210 and radium from the spent GAC with various chemical cleaning solutions (*e.g.*, solutions of hydrochloric acid, nitric acid, sodium hydroxide, *etc.*). Disposal of the cleaned GAC and the much smaller volume of concentrated radon progeny and radium is expected to be cheaper in some cases than disposal of the contaminated GAC bed to a controlled disposal-facility. The authors concluded that several of the cleaning solutions (hydrochloric acid at 1 mole/liter, nitric acid at 0.5 mole/liter, and acetic acid 0.5 mole/liter in quantities of 150 mL solution per 100 grams of carbon) show promise. Precipitates on the GAC surface (including iron oxides, sorbed radium and radon progeny, including Pb–210) were effectively removed. Removal efficiencies for Pb–210 ranged from 30 percent to 70 percent and radium removals from 70 to 90 percent. This work indicates that a viable system of collecting and cleaning spent GAC material may be feasible, potentially making GAC a more attractive small systems alternative. Work supporting programs of this type deserves further consideration.

(vi) The American Water Works Association Research Foundation Report on Radon Removal Using GAC. The American Water Works Association Research Foundation (AWWARF 1998a,b) has recently reported on radon removal by GAC. AWWARF suggests that water systems with design flows below 70 gallons per minute may want to evaluate GAC and POE GAC as potential radon removal technologies (AWWARF 1999a), but warns that they appear to be attractive technologies only for very small systems with radon influent levels below 5,000 pCi/L, iron and manganese levels low enough not to warrant pre-treatment, and uranium and radium levels low enough not to accumulate to levels of concern on the GAC bed (USEPA 1994b). These findings are generally consistent with EPA's findings.

B. Analytical Methods

1. Background

The SDWA directs EPA to set a contaminant's MCL as close to its MCLG as is "feasible", the definition of which includes an evaluation of the feasibility of performing chemical analysis of the contaminant at standard drinking water laboratories. Specifically, SDWA directs EPA to determine that it is economically and technologically feasible to ascertain the level of the contaminant being regulated in water in public water systems (Section 1401(1)(C)(i)). NPDWRs are also to contain "criteria and procedures to assure a supply of drinking water which dependably complies with such [MCLs]; including accepted methods for quality control and testing procedures to insure compliance with such levels. * * *" (Section 1401(1)(D)).

To comply with these requirements, EPA considers method performance under relevant laboratory conditions, their likely prevalence in certified drinking water laboratories, and the associated analytical costs. A critical part of the method performance evaluation involves an analysis of inter-laboratory collaborative study data. This analysis allows EPA to confirm that the method provides reliable and repeatable results when used within a given laboratory and when used "identically" in other standard laboratories. Other technical limitations, e.g., sampling and sample preservation requirements, requirements for non-standard apparatus, and hazards from wastestreams, are also considered.

In particular, the reliability of analytical methods at the maximum contaminant level is critical to the implementation and enforcement of the NPDWR. Therefore, each analytical method considered was evaluated for accuracy, recovery (lack of bias), and precision (good reproducibility over the range of MCLs considered). The primary purpose of this evaluation is to determine:

- Whether currently available analytical methods measure radon in drinking water with adequate accuracy, bias, and precision;
- If any newly developed analytical methods can measure radon in drinking water with acceptable performance;
- Reasonable expectations of technical performance for these methods by analytical laboratories conducting routine analysis at or near the MCL levels (interlaboratory studies); and
- Analytical costs. The selection of analytical methods for compliance with the proposed regulation includes consideration of the following factors:

(a) Reliability (*i.e.*, Precision/accuracy of the analytical results over a range of concentrations, including the MCL);

(b) Specificity in the presence of interferences;

(c) Availability of adequate equipment and trained personnel to implement a national compliance monitoring program (*i.e.*, laboratory availability);

(d) Rapidity of analysis to permit routine use; and

(e) Cost of analysis to water supply systems.

2. Analytical Methods for Radon in Drinking Water

(a) Proposed Analytical Methods for Radon. The analytical methods described here are the testing procedures EPA identified and evaluated to insure compliance with the MCL and AMCL. Two analytical methods for radon in water that fit EPA's criteria for acceptability as compliance monitoring methods were identified: Liquid Scintillation Counting (LSC) and the de-emanation method. The LSC method is here defined as Standard Method 7500-Rn, SM 1995; the de-emanation method is described in the report, "Two Test Procedures for Radon in Drinking Water, Interlaboratory Study" (USEPA 1987). EPA believes these methods are technically sound, economical, and generally available for radon monitoring, and is proposing their use for monitoring to determine compliance with the MCL or AMCL. The reliability of these methods has been demonstrated by a history of many years of use by State, Federal, and private laboratories. Both methods have undergone interlaboratory collaborative studies (multi-laboratory testing), demonstrating acceptable accuracy and precision. Thirty-six laboratories participated in the interlaboratory study for Standard Method 7500-Rn and sixteen labs in the de-emanation study. The American Society for Testing and Materials (ASTM) has also published an LSC method (ASTM 1992). Although its collaborative study (15 participating laboratories) was conducted at radon sample concentrations greater than 1,500 pCi/L, it is substantially equivalent to Standard Method (SM) 7500-Rn. EPA is proposing that ASTM D–5072–92 serve as an alternate method for radon for both the MCL and AMCL, under the restriction that the quality controls from SM 7500-Rn are met; namely, that the relative percent differences between duplicate analyses are less than the 95 percent confidence level counting uncertainty, as defined in SM 7500-Rn. Table VIII.B.1 summarizes the proposed analytical methods for radon in drinking water.

TABLE VIII.B.1.—PROPOSED ANALYTICAL METHODS FOR RADON IN DRINKING WATER

Method	References (method or page number)		
	SM	ASTM	EPA
Liquid Scintillation Counting	7500–Rn[1]	D 5072–92[2]	
De-emanation	....	....	EPA 1987[3]

Notes:

[1] *Standard Methods for the Examination of Water and Wastewater.* 19th Edition Supplement. Clesceri, L., A. Eaton, A. Greenberg, and M. Franson, eds. American Public Health Association, American Water Works Association, and Water Environment Federation. Washington, DC. 1996.

[2] American Society for Testing and Materials (ASTM). Standard Test Method for Radon in Drinking Water. Designation: D 5072–92. *Annual Book of ASTM Standards.* Vol. 11.02. 1996.

[3] Appendix D, Analytical Test Procedure, "The Determination of Radon in Drinking Water". In "Two Test Procedures for Radon in Drinking Water, Interlaboratory Collaborative Study". EPA/600/2–87/082. March 1987. p. 22.

Other analytical methods were evaluated, but they failed at least one of the criteria described previously. These methods included an "activated charcoal passive radon collector", a "de-gassing Lucas Cell" technique (a variant of the de-emanation method), the "electret ionization chamber system", and a "delay-coincidence liquid scintillation counting system". All of these methods are described and evaluated elsewhere (USEPA 1999g). As described next, if EPA implements the "Performance Based Measurement System" (PBMS) program, then any method that performs according to specified criteria may be used for compliance monitoring.

(b) *Summary of Methods.* Analysis of radon in drinking water by the LSC method involves preparation of the water sample (ca. 20 mL), which includes the selective partitioning of radon from the water sample into a water-immiscible mineral-oil scintillation cocktail and allowance for equilibration of radon-222 with its progeny. The prepared sample is then analyzed with an alpha-particle counting system that is optimized for detecting radon alpha particles. Scintillation counting methods are discussed later. One of the advantages of transferring the radon from the water sample into the water-immiscible cocktail is that potential interferents (other alpha emitters) are left behind in the water phase.

The de-emanation method involves bubbling radon-free helium or aged air (low background radon) through the water sample into an evacuated scintillation chamber. After equilibrium is reached (3 to 4 hours), this chamber is placed in a counter and the resulting scintillations are counted. This method generally allows measurement of lower level of radon than does low volume direct liquid scintillation. However, this method is more difficult to use, requiring specialized glassware and skilled technicians. Regions of the country with high radon levels in water (e.g., New Hampshire and Maine) may experience problems with this method, since the high radon levels in the samples can cause high backgrounds in the Lucas cell, forcing retirement of the cell for extended periods.

(c) *Alpha Particle Counting Methods for Radon-222.* One of the distinct characteristics of alpha particles is that they exhibit an intense loss of energy as they pass through matter, due to strong interactions between the alpha particles and the surrounding atoms. This intense loss of energy is used in differentiating alpha radioactivity from other types. Some of the alpha particle's energy loss is due to its ionization of atoms with which it comes in contact. Alpha particle detection is based on this phenomenon: when alpha particles ionize the phosphor coating of a detector, the energized phosphor "scintillates" (or emits light). The resulting light (or scintillations) are then detected and quantified with an appropriate detector that is calibrated to determine the concentration of the alpha emitter of interest. There are variants of detectors that measure these interactions, but this discussion will focus on the type relevant to the LSC and Lucas Cell methods.

In scintillation counting, the alpha particle transfers energy to a scintillator medium, e.g., a phosphor dissolved in a solvent "cocktail", which is enclosed within a "light-tight" container to reduce background light. The scintillation cocktail serves two roles: it contains the phosphor which is involved in quantifying the radon activity (concentration) and it selectively extracts the radon from the water sample, leaving behind other alpha emitters that may interfere with the analysis. The transfer of energy from the radon-derived alpha particles to the phosphor dissolved in the scintillator medium results in the production of light (scintillation) of energies characteristic of the phosphor and with an intensity proportional to the energy transmitted from the alpha particles, which are the "signature" of radon-222. A "counter" records the individual amplified pulses which are proportional to the number of alpha particles striking the scintillation detector, which is ultimately proportional to the radon activity in the original sample. The scintillation cell system used for the liquid scintillation method is as described previously. The system used for the de-emanation method is similar, with the exception that a scintillation flask ("Lucas Cell", a 100–125 ml metal cup coated on the inside with a zinc sulfide phosphor and having a transparent window) replaces the liquid scintillation medium described. A counting system compatible with the scintillation flask is incorporated to quantify the radon concentration in the sample. Since radon has a short decay period (half-life of 3.8 days), correction methods are employed to account for the radon that decayed between the time of sample collection and the end of the analysis.

(d) *Sampling Collection, Handling, and Preservation.* In order to ensure that samples arriving at laboratories for analysis are in good condition, EPA is proposing requirements for sample collection, handling and preservation.

When sampling for dissolved gases like radon, special attention to sample collection is required. Either the sample collection method described in SM 7500-Rn, the VOC sample collection method, or one of the methods described in "Two Test Procedures for Radon in Drinking Water, Interlaboratory Collaborative Study" (USEPA 1987) should be used. In addition, because dissolved radon tends to accumulate at the interface between a water sample and some types of plastic containers, glass bottles with teflon lined caps must be used. Finally, EPA's assessment of laboratory performance is premised on the assumption that sample analysis occurs no later than 4 days after collection. Laboratories unable to comply with this holding time limit may have difficulty performing within the estimated precision and accuracy bounds. EPA solicits public comment on the proposed sample collection procedures for radon in drinking water.

In discussions between EPA and the water utility industry, concerns have been expressed about the difficulties in collecting samples and the requisite skills that may be required. EPA emphasizes that the skills required to sample for radon are the same as those required to sample for other currently regulated drinking water contaminants, namely volatile organic contaminants. In addition, the 1992 EPA collaborative study mentioned earlier evaluated four sample collection techniques and found them all capable of providing equivalent results. Supplementing this study, EPA has reviewed a sampling protocol for radon in water developed by the Department of Health Services Division of Drinking Water and Environmental Management (CA DHS 1998). This protocol employs one of the four techniques evaluated by EPA, the immersion technique.

Using the immersion technique, the well is purged for 15 minutes by running the sampling tap, to ensure that a representative sample is collected. After the purging period, a length of flexible plastic tubing is attached to the spigot, tap, or other connection, and the free end of the tubing is placed at the bottom of a small bucket. The water is allowed to fill the bucket, slowly, until the bucket overflows. The bucket is emptied and refilled at least once.

Once the bucket has refilled, a glass sample container of an appropriate size is opened and slowly immersed into the bucket in an upright position. Once the bottle has been placed on the bottom of the bucket, the tubing is placed into the bottle to ensure that the bottle is flushed with fresh water. After the bottle has been flushed, the tubing is removed while the bottle is resting on the bottom of the bucket. The cap is placed back on the bottle while the bottle is still submerged, and the bottle is tightly sealed. As noted in the California protocol cited earlier, the choice of the sample container is dependent on the laboratory that will perform the analysis, and will be a function of the liquid scintillation counter that is employed. If bottles are supplied by the laboratory, there is no question of what container to employ.

Once the sealed sample bottle is removed from the bucket, it is inverted and checked for bubbles that would indicate headspace. If there are no visible air bubbles, the outside of the sealed bottle is wiped dry and cap is sealed in place with electrical tape, wrapped clockwise. After the sample bottle is sealed, a second (duplicate) sample is collected in the same fashion from the same bucket. The date and time of the sample collection is recorded for each sample.

As can be surmised from the description, the sample collection procedures are not particularly labor intensive. Most of the time is spent allowing the water to overflow the bucket. Likewise, there are no significant manual skills required.

(e) Skill Considerations for Laboratory Personnel. While neither of these techniques is difficult relative to standard drinking water methods, a discussion of the skills required to employ the methods is appropriate. Given the long history of successful use of the liquid scintillation counting technique (it has been used in medical laboratories and environmental research laboratories for well over 30 years), EPA feels confident that State drinking water laboratories will be able to adequately use these methods. The skills required are primarily the ability to transfer and mix aliquots of the sample to a sealed container for further analysis. The counting process is highly automated and the equipment runs unattended for days, if needed.

The de-emanation process requires somewhat more manual skill. As noted in the 1991 proposed rule, EPA expects that this technique would require greater efforts be made to train technicians than for the liquid scintillation technique. The technique requires that the counting cell be evacuated to about 10 mTorr pressure and then a series of stopcocks or valves are manipulated to transfer the radon that is purged from the sample into the counting cell. Potential problems with the analysis, such as a high background level of radon that can develop over the course of the day, or aspirating water into the counting cell, can be minimized by a well-trained analyst. However, as EPA concluded in 1991, the Lucas cell technique is not expected to form the sole basis of a compliance monitoring program for radon in drinking water.

(f) Cost of Performing Analyses. The actual costs of performing analysis may vary with laboratory, analytical technique selected, the total number of samples analyzed by a lab, and by other factors. Based upon information collected in 1991, the average sample cost for radon in water was estimated to be $50 per sample. EPA recently updated this cost estimate to $57 per sample (USEPA 1999b) by conducting a similar survey of drinking water laboratories. The data from the 1991 and 1998 surveys and the descriptive statistics are summarized in Table VIII.B.2. There was no clear correlation between the estimated price and the method cited by the laboratory. The 1998 range of prices brackets those collected by EPA in 1991. It is expected that the "market forces" generated by a radon regulation will tend to lower per sample costs, especially in light of the fact the LSC is very amenable to automation, with feed capacities of more than 50 samples/load possible. However, as will be discussed later, there may be short-term laboratory capacity issues that resist a lowering of per sample prices.

TABLE VIII.B.2. RADON SAMPLE COST ESTIMATE

Arbitrary lab No.	Cost estimate	Year data collected	Descriptive statistics for 1991
1	$30	1991	Mean, $49.80; Median, $47.00; Std. Dev., $18.80; Range, $45; Minimum, $30; Maximum, $75.
2	44	1991	
3	50	1991	
4	75	1998	
			Descriptive Statistics for 1998 Data
5	75	1998	Mean, $56.88; Median, $52.50; Std. Dev., $15.80; Range, $35; Minimum, $40; Maximum, $75.
6	50	1998	
7	40	1998	
8	75	1998	
9	45	1998	
10	55	1998	
11	75	1998	
12	40	1998	

These cost data are preliminary and may be different in practice for the following reasons: (a) As the number of experienced laboratories increases, the costs can be expected to decrease; (b) analytical costs are determined, to some extent, by the quality control efforts and quality assurance programs adhered to by the analytical laboratory; (c) per-sample costs are influenced by the number of samples analyzed per unit time. EPA solicits comments on its cost estimates from laboratories experienced in performing these analyses.

(g) Method Detection Limits and Practical Quantitation Levels. Method detection limits (MDLs) and practical quantitation levels (PQLs) are two performance measures used by EPA to estimate the limits of performance of analytic chemistry methods for measuring contaminants in drinking water. An MDL is the lowest level of a contaminant that can be measured by a specific method under ideal research conditions. EPA usually defines the MDL as the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the true value is greater than zero. The term MDL is used interchangeably with minimum detectable activity (MDA) in radionuclide analysis, which is defined as that amount of activity which in the same counting time, gives a count which is different from the background count by three times the standard deviation of the background count. A PQL is the level at which a contaminant can be ascertained with specified methods on a routine basis (such as compliance monitoring) by accredited laboratories, within specified precision and accuracy limits.

The feasibility of implementing an MCL at a particular level is in part determined by the ability of analytical methods to ascertain contaminant levels with sufficient precision and accuracy at or near the MCL. The proposed methods demonstrate good reproducibility and accuracy at radon concentrations in the range of 150–300 pCi/L (half of the proposed MCL up to the proposed MCL), as demonstrated in the results from inter-laboratory studies. In inter-laboratory studies (or Performance Evaluation studies), prepared samples of known concentration are distributed for analysis to participating labs, which have no information on the concentrations of the samples. The results of the analyses by the participants are compared with the known value and with each other to estimate the precision and accuracy of both the methods used and the lab's proficiency in using the method. Table VIII.B.3 summarizes the statistical results of these inter-laboratory studies for the proposed methods.

In the 1991 proposed rule, EPA proposed using both the MDL and PQL as measures of performance for radon analytical methods. EPA also proposed acceptance limits based on the PQLs that were derived from these performance evaluation studies. The use of acceptance limits was confusing to commenters for various reasons. The important issue is the observation that true analytical method performance is related to within-laboratory conditions (including counting times in the case of radiochemicals) and that acceptance limits are based on multi-laboratory Performance Evaluation studies. For non-radiochemical contaminants this issue is less troublesome because their PQLs tend to be "fixed" since the MDLs to which they are related reflect optimized conditions for standard laboratory equipment, whereas for radiochemical contaminants, counting times can always be increased to increase the sensitivity and hence lower the appropriate acceptance limits. While the fifty minute counting time in Standard Method 7500-Rn reflects a balanced trade-off between time of analysis (and hence the cost of analysis) and sensitivity, it can obviously be adjusted as needed to adjust sensitivity. For this reason, commenters objected to the use of acceptance limits (and, relatedly, PQLs) for radiochemical contaminants.

EPA agrees that these comments have merit and has decided to seek comment on two proposals regarding the use of acceptance limits and PQLs for radon. The first proposal, and the preferred option, is to not use acceptance limits or PQL for radon, and to adopt the detection limit as the measure of sensitivity, as done in the 1976 Radionuclides rule. The existing definition of the detection limit takes into account the influence of the various factors (efficiency, volume, recovery yield, background, counting time) that typically vary from sample to sample. Thus, the detection limit applies to the circumstances specific to the analysis of an individual sample and not to an idealized set of measurement parameters, as with acceptance limits and PQLs. The proposed detection limit is 12 +/− 12 pCi/L, which is based on the detection limit described in SM 7500-Rn (50 minute counting time, 6 cpm background, 2.7 cpm/dpm efficiency, and under the energy window optimization procedure as described in the method). This detection limit should be applicable to all three approved methods.

One of the reasons for setting a sensitivity standard is to ensure that laboratories will perform acceptably well on a routine basis at contaminant levels near the MCL. Internal quality control/quality assurance procedures are of paramount importance. In addition, Proficiency Tests are administered by laboratory certifying authorities to ensure that laboratory performance is acceptable. Currently, the system for administering proficiency tests and certifying laboratories is in a state of transition. Up to the recent past, all primacy entities evaluated laboratory performance based on EPA's Performance Evaluation (PE) studies program, the National Exposure Research Laboratory (NERL–LV) Performance Evaluation (PE) Studies program for radioactivity in drinking water. Currently, the Proficiency Testing (PT) program for radionuclides is being privatized, *i.e.*, operated by an independent third party provider accredited by the National Institute of Standards and Technology (NIST). A lack of uniformity in state PT requirements may limit laboratory availability for a given public water system to laboratories that use PT samples approved by the state. It should be noted that this issue is general and is not specific to the proposed radon regulation. Efforts to encourage uniformity in state PT requirements are described in more detail in the laboratory capacity section.

Under the alternative of using the MDL as the measure of sensitivity, standard statistical procedures would be used to ensure that a laboratory has analyzed PT samples acceptably. Since the national PT program will still be overseen by EPA, the exact procedures for determining acceptable performance will be developed by EPA and NIST as the PT program develops. The respective roles of EPA and NIST in the PT program and discussed further in the Laboratory Approval and Certification section.

The second proposal is to use the concepts of the acceptance limit and PQL for radon. Using the standard relationship that PQLs are equal to 5 to 10 times the MDL yields a PQL for radon in the range of 60 to 240 pCi/L. EPA is proposing a PQL of 100 pCi/L and is seeking comment on this value. The proposed acceptance limit for a single sample is ±5 %. The proposed acceptance limits for triplicate analyses at the 95th and 99th percent confidence intervals are ±6 % and ±9 %, respectively. All of these acceptance limits are based on the inter-laboratory studies used for the precision and accuracy results reported in Table

VIII.B.3. EPA seeks comments on the relative merits between the first option (the preferred option) of using only an MDL as the measure of sensitivity and the second option of using a PQL with prescribed acceptance limits.

TABLE VIII.B.3.—INTER-LABORATORY PERFORMANCE DATA FOR PROPOSED RADON ANALYTICAL METHODS [1]

Method	Sample Conc. pCi/L	Accuracy %	Repeat-ability pCi/L	Reproduc-ibility pCi/Ls	Bias %
SM 7500-Rn	111	101–102	9	12	0.7–2.3
SM 7500-Rn	153	102–103	10	16–18	2.3–3.4
De-Emanation	111	114	16	23	14.5
De-Emanation	153	114	17	28	13.7
ASTM D5072–92	1,622	97	2,217	3,541	−2.6
ASTM D5072–92	16,324	95	14,950	44,400	−4.7
ASTM D5072–92	66,324	94	49,190	210,350	−6.0

Notes: (1) All results are reported in methods citations found in Table VIII.B.1.

(h) Accuracy and Precision of the Proposed Methods. While SM 7500-Rn has the best over-all results in precision and accuracy, the de-emanation method also shows acceptable performance. The ASTM method shows similar accuracy and bias, but much larger errors in repeatability (operator precision) and reproducibility (between-lab precision). Given this inferior demonstration of precision and the higher concentrations used in the intra-laboratory studies, it may be argued that this method should not be proposed as a drinking water method. However, EPA maintains that the method is similar enough in substance to SM 7500-Rn that it may serve as an alternate method if the laboratories use the appropriate quality control measures, *i.e.*, ensure that the relative percent difference between results on duplicate samples is within the counting uncertainty 95% confidence interval, where at least 10% of daily samples are duplicates. This procedure is described in the 4th edition of the Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures Quality Assurance (EPA 1997). EPA requests comment on including ASTM D5072–92 as an alternate test method.

C. Laboratory Approval and Certification

1. Background

The ultimate effectiveness of the proposed regulations depends upon the ability of laboratories to reliably analyze contaminants at relatively low levels. The Drinking Water Laboratory Certification Program is intended to ensure that approved drinking water laboratories analyze regulated drinking water contaminants within acceptable limits of performance. The Certification Program is managed through a cooperative effort between EPA's Office of Ground Water and Drinking Water and its Office of Research and Development. The program stipulates that laboratories analyzing drinking water compliance samples must be certified by U.S. EPA or the State. The program also requires that certified laboratories must analyze PT samples, use approved methods, and States must also require periodic on-site audits.

External checks of performance to evaluate a laboratory's ability to analyze samples for regulated contaminants within specific limits is one of the means of judging lab performance and determining whether to grant certification. Under a PT program, laboratories must successfully analyze PT samples (contaminant concentrations are unknown to the laboratory being reviewed) that are prepared by an organization that is approved by the primacy entity. Successful annual participation in the PT program is prerequisite for a laboratory to achieve certification and to remain certified for analyzing drinking water compliance samples. Achieving acceptable performance in these studies of known test samples provides some indication that the laboratory is following proper practices. Unacceptable performance may be indicative of problems that could affect the reliability of the compliance monitoring data.

EPA's previous PE sample program and the approaches to determine laboratory performance requirements are discussed in 63 FR 47097 (September 3, 1998, "1998 methods update"). In that notice, EPA amended the regulations to adopt the universal requirement for laboratories to successfully analyze a PE sample at least once each year, addressing the fact that the Agency has not specified PE test frequency requirements in its current drinking water regulations. Though not specified in the methods update regulation, PE samples may be provided by EPA, the State, or by a third party with the approval of the State or EPA. Under the developing PT program, NIST has accredited a list of PT sample providers, including a radionuclides PT samples which will apply to radon.

In addition, guidance on minimum quality assurance requirements, conditions of laboratory inspections, and other elements of laboratory certification requirements for laboratories conducting compliance monitoring measurements are detailed in the 4th edition of the Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures Quality Assurance (EPA 1997), which can be downloaded via the internet at "http://www.epa.gov/OGWDW/labindex.html".

2. Laboratory Capacity—Practical Availability of the Methods

In order to determine the practical availability of the methods, EPA considered three major factors. First, the availability of the major instrumentation was reviewed. Secondly, several laboratories performing drinking water analyses were contacted to determine their potential capabilities to perform radon analyses. Lastly, EPA has reviewed the current status of the privatized Performance Evaluation studies program and the on-going measure to implement a uniform program, highlighting the potential impacts on short-term and long-term laboratory capacity for radon.

3. Laboratory Capacity: Instrumentation

Regarding instrumentation availability, the major instrumentation required for LSC is the liquid scintillation counter. Automated counters capable of what that method terms "automatic spectral analysis" are available from at least a dozen suppliers. The de-emanation Lucas cell apparatus is the same apparatus that has been used for radium analyses for many years. In light of the wide availability and the long history of accessibility of the proper instrumentation, EPA believes that instrument availability should not be an issue for radon analytical methods.

4. Laboratory Capacity: Survey of Potential Laboratories

In order to evaluate the availability of laboratory capacity to perform radon analyses, EPA contacted the drinking water certification authorities in the States of California, Maryland, and Pennsylvania. These states were chosen based both on estimated radon occurrence and the overall status of the programs. Ultimately, EPA collected information on the availability and relative costs of radon analyses for drinking water from a total of nine commercial laboratories.

Eight of the nine laboratories that were contacted do perform radon analyses. All the laboratories were certified in one or more states to perform radiochemical analyses. When asked what specific methods were used, the laboratories responded with either the technique (liquid scintillation counting) or a specific method citation. EPA Method 913 (which later was revised to become SM 7500-Rn) was cited by two of the laboratories. EPA Method "EERF Appendix B" was cited by another laboratory. The remaining laboratories indicated that they performed liquid scintillation analyses and could accommodate requests for methods employing that technique.

When asked about capacity, the laboratories indicated that they each perform between 100 and 12,000 analyses per year. The latter figure came from a laboratory that is currently involved in a large ground water monitoring project in the western United States. The next largest estimate was 300 samples per year. However, EPA expects that like any other type of environmental analysis, given a regulatory "driver" to perform the analysis, and given the ability of LSC analysis to be automated, the laboratory capacity will develop in a timely manner.

EPA's 1992 Annual Report on Radiation Research and Methods Validation reports the results of a collaborative study on radon analysis (EPA 1993) and is another useful source of information regarding potential radon laboratory capacity. This study employed 51 laboratories with the capability to perform liquid scintillation analyses. This suggests that at that time there already existed a substantial capacity for these analyses.

Further, the liquid scintillation apparatus is used for other radiochemical analyses, including tritium. Information from EPA regarding the performance evaluation program for tritium analyses suggests that there are approximately 100–200 laboratories with the necessary equipment. Much of the capacity for tritium analyses could also be used for radon (EPA 1997). As of September 1997, 136 of 171 participating laboratories achieved acceptable results for tritium. While the total number of participants and the number achieving acceptable results vary between studies, the data indicate that there is a substantial capability for liquid scintillation analysis nationwide.

5. Laboratory Capacity: Laboratory Certification and Performance Evaluation Studies

The availability of laboratories is also dependent on laboratory certification efforts in the individual states with regulatory authority for their drinking water programs. Until June of 1999, a major component of many of these certification programs was their continued participation in the current EPA Water Supply WS performance evaluation (PE) program, which included radiochemistry PE studies. Due to resource limitations, EPA has recently privatized EPA's PE programs, including the Water Supply studies. EPA has addressed this topic in public stakeholders meetings and in some recent publications, including **Federal Register** notices and its June 1997 "Labcert Bulletin", which can be downloaded from the Internet at "http://www.epa.gov/OGWDW/labcert3.html". The decision to privatize the PE studies programs was announced in the **Federal Register** on June 12, 1997 (62 FR 32112). This notice indicated that in the future the National Institute of Standards and Technology (NIST) would develop standards for private sector PT sample providers and would evaluate and accredit these providers, while the actual development and manufacture of PT samples would fall to the private sector. Further information regarding the respective roles of EPA and NIST in the privatized PT program can be downloaded from NIST's homepage at "http://ts.nist.gov/ts/htdocs/210/210.htm". EPA believes that this program will ensure the continued viability of the existing PT programs, while maintaining government oversight.

This externalized proficiency testing program is in the process of becoming operational. Under the externalized PT program:

- EPA issues standards for the operation of the program,
- NIST administers a program to accredit PT sample providers,
- Non-EPA PT sample providers develop and manufacture PT sample materials and conduct PT studies,
- Environmental laboratories purchase PT samples directly from PT Sample Providers (approved by NIST or the State), and
- Certifying authorities certify environmental laboratories performing sample analyses in support of the various water programs administered by the States and EPA under the Safe Drinking Water Act.

NIST is in the process of approving a provider for PT samples for radionuclides, including radon. States also have the option of approving their own PT sample providers. At this time, it is difficult to speculate to what degree this externalization of the PT program will affect short-term and long-term laboratory capacity for radon. EPA recognizes that initial implementation problems may arise because of the potential for near-term limited availability of radon PT samples. EPA also recognizes that insufficient laboratory capacity may lead to a short-term increase in analytical costs. In the absence of definitive information regarding the future PT program, EPA solicits public comment on this matter.

6. Efforts To Ensure a Uniform Proficiency Testing Program: NELAC

The National Environmental Laboratory Accreditation Conference (NELAC) is also evaluating the issues surrounding privatization of the SDWA PT program through its proficiency testing committee. NELAC serves as a voluntary national standards-setting body for environmental laboratory accreditation, and includes members from both state and Federal regulatory and non-regulatory programs having environmental laboratory oversight, certification, or accreditation functions. One of the goals for the re-designed SDWA PT program is to be consistent with NELAC's recommendations.

The members of NELAC meet bi-annually to develop consensus standards through its committee structure. These consensus standards are adopted by participants for use in their own programs in pursuit of a uniform national laboratory accreditation program in which environmental testing laboratories will be able to receive one annual accreditation that is accepted nationwide. As part of its accreditation program, NELAC is developing standards for a proficiency testing program that addresses all fields of testing, including drinking water. Recent meetings of the Proficiency Testing Committee of NELAC have reviewed several important issues, including State selection of PT sample providers and reciprocity between States.

These issues are described in more detail elsewhere (NELAC 1999a). The NELAC Proficiency Testing Committee is currently drafting requirements for radiochemical proficiency testing under SDWA. The June 15, 1999 draft (NELAC 1999b) of its radiochemical proficiency testing requirements describes radiochemical PT sample designs, acceptance limits, and other information.

The intent of the NELAC standards setting process is to ensure that the needs of EPA and state regulatory programs are satisfied in the context of a uniform national laboratory accreditation program. EPA recognizes that cooperating with NELAC is an important part of the re-design of the Proficiency Testing (PT) program for drinking water, since NELAC provides a means for states, environmental testing laboratories, and PT study providers to have direct input into the process. It is hoped that this mutual effort will minimize the potential disruption in the process of moving from the old EPA PE program towards the new privatized PT program. EPA shares NELAC's goal of encouraging uniformity in standards between primacy States regarding laboratory proficiency testing and accreditation.

7. Laboratory Capacity: Holding Time

The short holding time for radon, 4 days in Method 7500-Rn, presents concerns relative to the practical availability of laboratory capacity as well. The 4-day holding time was also the focus of a number of comments that EPA received in response to the 1991 proposed rule. Many commenters were concerned that if a local laboratory is not available, the only alternative will be to send the samples by overnight delivery to a laboratory elsewhere. However, this situation is not unique to the analysis of radon. As evidenced during the data gathering pursuant to the Disinfection By-Products Information Collection Rule (DBP ICR), several large commercial laboratories already account for a sizable share of the market for SDWA analyses for non-radon parameters, including organics, for which the holding times are often 7 days. Given that a day would be required for shipping the samples, only three days would remain for the laboratory to perform the radon analysis (the day on which the sample is collected being "day zero"). Some commenters argued that for a large commercial laboratory serving the water utilities, this short holding time will make it difficult if not impossible to perform the necessary analyses within the holding time. However, through common sense scheduling efforts between the utility and the laboratory, such as not collecting samples on Thursdays and Fridays, the holding time issue should be able to be accommodated in light of the ability of the LSC method to be highly automated.

D. Performance-Based Measurement System (PBMS)

On October 6, 1997, EPA published a Notice of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all of its programs to the extent feasible (62 FR 52098). EPA is currently determining how to adopt PBMS in its drinking water program, but has not yet made final decisions. When PBMS is adopted in the drinking water program, its intended purpose will be to increase flexibility in laboratories in selecting suitable analytical methods for compliance monitoring, significantly reducing the need for prior EPA approval of drinking water analytical methods. Under PBMS, EPA will modify the regulations that require exclusive use of Agency-approved methods for compliance monitoring of regulated contaminants in drinking water regulatory programs. EPA will probably specify "performance standards" for methods, which the Agency would derive from the existing approved methods and supporting documentation. A laboratory would then be free to use any method or method variant for compliance monitoring that performed acceptably according to these criteria. EPA is currently evaluating which relevant performance characteristics should be specified to ensure adequate data quality for drinking water compliance purposes. After PBMS is implemented, EPA may continue to approve and publish compliance methods for laboratories that choose not to use PBMS. After EPA makes final determinations to implement PBMS in programs under the Safe Drinking Water Act, EPA would then provide specific instruction on the specified performance criteria and how these criteria would be used by laboratories for radon compliance monitoring.

E. Proposed Monitoring and Compliance Requirements for Radon

1. Background

The monitoring regulation for radon proposed in 1991 by EPA required that groundwater systems monitor for radon at each entry point to the distribution system quarterly for one year initially. Monitoring could be reduced to one sample annually per entry point to the distribution system if the average of all first quarterly samples was below the MCL. States could allow systems to reduce monitoring to once every three years if the system demonstrated that results of all previous samples collected were below the MCL. The proposal also allowed States to grant waivers to groundwater systems to reduce the frequency of monitoring, up to once every 9 years, if States determined that radon levels in drinking water were consistently and reliably below the MCL. Comments made in response to the proposed monitoring requirements for radon were mainly concerned that the proposed monitoring requirements including number of samples and the frequency of monitoring did not adequately take into account the effect of seasonal variations in radon levels on determining compliance. Other commenters felt that sampling at the entry point of the distribution system was not representative of exposure to radon, and they suggested that sampling for radon should be done at the point of use.

Since the 1991 proposal EPA has obtained additional information from States, the waterworks industry and academia on the occurrence of radon, including data on the temporal variability of radon. Utilizing this additional data, the Agency performed extensive statistical analyses to predict how temporal, analytical variations and variations between individual wells may affect exposure to radon. The results of these analyses are described in detail in the report "Methods, Occurrence and Monitoring Document for Radon" in the docket for this rule (USEPA 1999g). As a result of the new information available, EPA was able to refine the requirements for monitoring and address the concerns expressed by the commenters on the 1991 proposal.

The proposed monitoring requirements for radon are consistent with the monitoring requirements for regulated drinking water contaminants, as described in the Standardized Monitoring Framework (SMF) promulgated by EPA under the Phase II Rule of the National Primary Drinking Water Regulations (NPDWR) and revised under Phases IIB and V. The goal of the SMF is to streamline the drinking water monitoring requirements by standardizing them within contaminant groups and by synchronizing monitoring schedules across contaminant groups. A summary of monitoring requirements in this proposal, the SMF and the 1991 proposal are provided in Table VIII.E.1.

TABLE VIII.E.1.—COMPARISON OF MONITORING REQUIREMENTS

Monitoring requirements for radon		
1991 Proposal	1999 Proposal—MCL/AMCL	SMF for IOCs in groundwater
Initial Monitoring Requirements		
Four consecutive quarters of monitoring at each entry point for one year. Initial monitoring was proposed to have been completed by January 1, 1999.	Four consecutive quarters of monitoring at each entry point. Initial monitoring must begin by three years from date of publication of the final rule in FEDERAL REGISTER of 4.5 years from date of publication of the final rule in FEDERAL REGISTER (depending on effective date applicable to the State).	Four consecutive quarters of monitoring at each entry point for sampling points initially exceeding MCL.
Routine Monitoring Requirements		
One sample annually if average from four consecutive quarterly samples taken initially is less than MCL.	One sample annually if average from four consecutive quarterly samples is less than MCL/AMCL, and at the discretion of State.	One sample at each sample point during the initial 3 year compliance period for groundwater systems for sampling points below MCL.
1991 Proposal	1999 Proposal—MCL	SMF for IOCs in Groundwater
Reduced Monitoring Requirements		
State may allow groundwater systems to reduce the frequency of monitoring to once every three years provided that they have monitored quarterly in the initial year and completed annual testing in the second and third year of the first compliance period. Groundwater systems must demonstrate that all previous analytical samples were less than the MCL.	State may allow CWS using groundwater to reduce monitoring frequency to:. Once every three years if average from four consecutive quarterly samples is less than ½ the MCL/AMCL, provided no samples exceed the MCL/AMCL. and if the system is determined by State to be "reliably and consistently below MCL/AMCL ".	State may allow groundwater systems to reduce monitoring frequency to: Once every three years if samples subsequently detects less than MCL and determined by State to be "reliably and consistently below MCL."
Monitoring Requirements for Radon		
1991 Proposal	1999 Proposal—MCL/AMCL	SMF for IOCs in Groundwater
Increased Monitoring Requirements		
Systems monitoring annually or once per three year compliance period exceed the radon MCL in a single sample would be required to revert to quarterly monitoring until the average of 4 consecutive samples is less than the MCL. Groundwater systems with unconnected wells would be required to conduct increased monitoring only at those wells exceeding the MCL. The State may require more frequent monitoring than specified. Systems may apply to the State to conduct more frequent monitoring than the minimum monitoring frequencies specified.	Systems monitoring annually would be required to increase monitoring if the MCL/AMCL for radon is exceeded in a single sample, the system would be required to revert to quarterly monitoring until the average of 4 consecutive samples is less than the MCL/AMCL. Systems monitoring once every three years would be required to monitor annually if the radon level is less than MCL/AMCL but above ½ MCL/AMCL in a single sample. Systems may revert to monitoring once per three years if the average of the initial and three consecutive annual samples is lees than ½ MCL/AMCL. CWS using groundwater with un-connected wells would be required to conduct increased monitoring only at those well which are affected.	If the MCL is exceeded in a single sample, the system required to begin sampling quarterly until State determines that it is "reliably and consistently" below MCL.

TABLE VIII.E.1.—COMPARISON OF MONITORING REQUIREMENTS—Continued

Monitoring requirements for radon		
1991 Proposal	1999 Proposal—MCL/AMCL	SMF for IOCs in groundwater
Monitoring Requirements for Radon		
1991 Proposal	1999 Proposal—MCL	SMF for IOCs in Groundwater
Confirmation Samples		
Where the results of sampling indicate an exceedence of the maximum contaminant level, the State may require that one additional sample be collected as soon as possible after the initial sample was taken [but not to exceed two weeks] at the same sampling point. The results of the of the initial sample and the confirmation sample shall be averaged and the resulting average shall be used to determine compliance.	Systems may collect confirmation samples as specified by the State. The average of the initial sample and any confirmation samples will be used to determine compliance.	Where the results sampling indicate an exceedence of the maximum contaminant level, the State may require that one additional sample be collected as soon as possible after the initial sample was taken [but not to exceed two weeks] at the same sampling point. The results of the initial sample and the confirmation sample shall be averaged and the resulting average shall be used to determine compliance.
Grandfathering of Data		
If monitoring data collected after January 1, 1985 are generally consistent with the requirements specified in the regulation, than the State may allow the systems to use those data to satisfy the monitoring requirements for the initial compliance period.	If monitoring data collected after proposal of the rule are consistent with the requirements specified in the regulation, then the State may allow the systems to use those data to satisfy the monitoring requirements for the initial compliance period.	States may allow previous sampling data to satisfy the initial sampling requirements provided the data were collected after January 1, 1990.
Monitoring Requirements for Radon		
1991 Proposal	1999 Proposal—MCL	SMF for IOCs in Groundwater
Waivers		
State may grant waiver to groundwater systems to reduce the frequency of monitoring, up to nine years. If State determines that radon levels in drinking water are "reliably and consistently" below the MCL.	The State may grant a monitoring waiver to systems to reduce the frequency of monitoring to up to one sample every nine years based on previous analytical results, geological characteristics of source water aquifer and if a State determines that radon levels in drinking water are "reliably and consistently" below the MCL/AMCL. Analytical results of all previous samples taken must be below ½ the MCL/AMCL.	The State may grant waiver to groundwater systems after conducting vulnerability assessment to reduce the frequency of monitoring, up to nine years, if State determines that radon levels in drinking water are "reliably and consistently" below the MCL. System must have three previous samples. Analytical results of all previous samples taken must be below MCL.

In developing the proposed compliance monitoring requirements for radon, EPA considered:

(1) The likely source of contamination in drinking water;

(2) The differences between ground water and surface water systems;

(3) The collection of samples which are representative of consumer exposure;

(4) Sample collection and analytical methods;

(5) The use of appropriate historical data to identify vulnerable systems and to specify monitoring requirements for individual systems;

(6) The analytical, temporal and intra-system variance of radon levels;

(7) The use of appropriate historical data and statistical analysis to establish reduced monitoring requirements for individual systems; and

(8) The need to provide flexibility to the States to tailor monitoring requirements to site-specific conditions by allowing them to:

—Grant waivers to systems to reduce monitoring frequency, provided certain conditions are met.

—Require confirmation samples for any sample exceeding the MCL/AMCL.

—Allow the use of previous sampling data to satisfy initial sampling requirements.

—Increase monitoring frequency.

—Decrease monitoring frequency.

2. Monitoring for Surface Water Systems

CWSs relying exclusively on surface water as their water source will not be required to sample for radon. Systems that rely in part on ground water would be considered groundwater systems for purposes of radon monitoring. Systems that use ground water to supplement surface water during low-flow periods will be required to monitor for radon. Ground water under the influence of surface water would be considered ground water for this regulation.

3. Sampling, Monitoring Schedule and Initial Compliance for CWS Using Groundwater

EPA is retaining the quarterly monitoring requirement for radon as proposed initially in the 1991 proposal to account for variations such as sampling, analytical and temporal variability in radon levels. Results of analysis of data obtained since 1991, estimating contributions of individual sources of variability to overall variance in the radon data sets evaluated, indicated that sampling and analytical variance contributes less than 1 percent to the overall variance. Temporal variability within single wells accounts for between 13 and 18 percent of the variance in the data sets evaluated, and a similar proportion (12–17 percent) accounts for variation in radon levels among wells within systems. (USEPA 1999g)

The Agency performed additional analyses to determine whether the requirement of initial quarterly monitoring for radon was adequate to account for seasonal variations in radon levels and to identify non-compliance with the MCL/AMCL. Results of analysis based on radon levels modeled for radon distribution for ground water sources (USEPA 1999g) and systems (USEPA 1998a) in the U.S. show that the average of the first four quarterly samples provides a good indication of the probability that the long-term average radon level in a given source would exceed an MCL or AMCL. Tables VIII.E.2 and VIII.E.3 show the probability of the long-term average radon level exceeding the MCL and AMCL at various averages obtained from the first four quarterly samples from a source.

TABLE VIII.E.2.—THE RELATIONSHIP BETWEEN THE FIRST-YEAR AVERAGE RADON LEVEL AND THE PROBABILITY OF THE LONG-TERM RADON AVERAGE RADON LEVELS EXCEEDING THE MCL

If the average of the first four quarterly samples from a source is	Then the probability that the long-term average radon level in that source exceeds 300 pCi/L is
Less than 50 pCi/L	0 percent.
Between 50 and 100 pCi/L	0.5 percent.
Between 100 and 150 pCi/L.	0.4 percent.
Between 150 and 200 pCi/L.	7.2 percent.
Between 200 and 300 pCi/L.	26.8 percent.

TABLE VIII.E.3.—THE RELATIONSHIP BETWEEN THE FIRST-YEAR AVERAGE RADON LEVEL AND THE PROBABILITY OF THE LONG-TERM RADON AVERAGE RADON LEVELS EXCEEDING THE AMCL

If the average of the first four quarterly samples from a source is	Then the probability that the long-term average radon level in that source exceeds 4000 pCi/L is
Less than 2,000 pCi/L	Less than 0.1 percent.
Between 2,000 and 2,500 pCi/L.	9.9 percent.
Between 2,500 and 3,000 pCi/L.	15.1 percent.
Between 3,000 and 4,000 pCi/L.	32.9 percent.

The Agency proposes that systems relying wholly or in part on ground water will be required to initially sample quarterly for radon for one year at each well or entry point to the distribution system. All samples will be required to be of finished water, as it enters the distribution system after any treatment and storage. If the average of the four quarterly samples at each well is below the MCL/AMCL, monitoring may be reduced to once a year at State discretion. Systems may be required to continue monitoring quarterly in instances where the average of the quarterly samples at each well is below but close to the MCL/AMCL. The reason for this is that in such cases, there is a good chance for the long-term average radon level to exceed the MCL/AMCL.

Systems already on-line must begin initial monitoring for compliance with the MCL/AMCL by the compliance dates specified in the rule (*i.e.*, 3 years after the date of promulgation or 4.5 years after the date of promulgation). Monitoring requirements for new sources will be determined by the State. The compliance dates are discussed in detail in Section VII.E, Compliance Dates.

The Agency is retaining the requirement as proposed in 1991 to sample at the entry point to the distribution system. Sampling at the entry point allows the system to account for radon decay during storage and removal during the treatment process. The reason for not allowing sampling at the point of use is that this approach would not take into account higher exposure levels that may be encountered at locations upstream from the sampling site. In addition, sampling at the entry point will make it easier to identify and isolate possible contaminant sources within the system. The sample collection sites at each entry point to the distribution system and the monitoring schedule requiring sampling for four consecutive quarters proposed herein is consistent with the SMF. This approach streamlines monitoring since the same sampling points can be used for the collection of samples for other source-related contaminants.

EPA specifically requests comments on the following aspects of the proposed monitoring requirements:

- The appropriateness of the proposed initial monitoring period.
- The availability and capabilities of laboratories to analyze radon samples collected during the initial compliance period. The Agency recognizes that short-term implementation problems may arise to meet the initial monitoring deadline because of the potential limited availability of radon performance evaluation (PE) samples used to evaluate and certify laboratories.
- The appropriateness of the proposed number and frequency of samples required to monitor for radon.
- The designation of sampling locations at the entry point to the distribution system which is located after any treatment and storage. Comments are also solicited on the definition of sampling points that are representative of consumer exposure.
- Designating sampling locations and frequencies that permit simultaneous monitoring for all regulated contaminants, whenever possible and advantageous. The proposed sampling locations would be such that the same sampling locations could be used for the collection of samples for other source-related contaminants such as the volatile organic chemicals and inorganic chemicals, which would simplify sample collection efforts.

EPA also solicits comments on whether the monitoring requirements should include additional monitoring for radon as a source of consumer exposure from the distribution system. Results of investigations in Iowa indicate that in some instances, pipe scale deposited in the distribution system can be a source of exposure to radon. Community ground water systems could be required to collect an additional sample from the distribution system during the initial year of monitoring, at the same time the entry point sample is collected, and continue to collect samples from the distribution system annually if it is shown that exceedence of the MCL/AMCL is caused by the release of radon from deposited scale in the interior of the distribution system. Results obtained from distribution samples could provide information on the extent and frequency of occurrence of radon originating from distribution systems.

4. Increased/Decreased Monitoring Requirements

Initial compliance with the MCL/AMCL will be determined based on an average of four quarterly samples taken at individual sampling points in the initial year of monitoring. Systems with averages exceeding the MCL/AMCL at any sampling point will be deemed to be out of compliance. Systems in a non-MMM State exceeding the MCL will have the option to develop and implement a local MMM program in accordance with the timeframe discussed in Section VII.E, Compliance Dates without receiving a MCL violation.

Systems exceeding the MCL/AMCL will be required to monitor quarterly until the average of four consecutive samples is less than the MCL/AMCL. Systems will then be allowed to collect one sample annually if the average from four consecutive quarterly samples is less than the MCL/AMCL and if the State determines that the system is reliably and consistently below the MCL/AMCL.

Systems will be allowed to reduce monitoring frequency to once every three years (one sample per compliance period) per well or sampling point, if the average from four consecutive quarterly samples is less than ½ the MCL/AMCL and the State determines that the system is reliably and consistently below the MCL/AMCL. As shown in Tables VIII.E.2 and VIII.E.3, EPA believes that there is sufficient margin of safety to allow for this since there is a small probability that long term average radon levels will exceed the MCL/AMCL.

Systems monitoring annually that exceed the radon MCL/AMCL in a single sample will be required to revert to quarterly monitoring until the average of four consecutive samples is less than the MCL/AMCL. Community ground water systems with unconnected wells will be required to conduct increased monitoring only at those wells exceeding the MCL/AMCL. Compliance will be based on the average of the initial sample and three consecutive quarterly samples.

Systems monitoring once per compliance period or less frequently which exceed ½ the MCL/AMCL (but do not exceed the MCL/AMCL) in a single sample would be required to revert to annual monitoring. Systems may revert to monitoring once every three years if the average of the initial and three consecutive annual samples is less than ½ the MCL/AMCL. Community ground water systems with unconnected wells will be required to conduct increased monitoring only at those wells exceeding the MCL/AMCL.

States may grant a monitoring waiver reducing monitoring frequency to once every nine years (once per compliance cycle) provided the system demonstrates that it is unlikely that radon levels in drinking water will occur above the MCL/AMCL. In granting the monitoring waiver, the State must take into consideration factors such as the geological area where the water source is located, and previous analytical results which demonstrate that radon levels do not occur above the MCL/AMCL. The monitoring waiver will be granted for up to a nine year period. (Given that all previous samples are less than ½ the MCL/AMCL, then it is highly unlikely that the long-term average radon levels would exceed the MCL/AMCL.)

If the analytical results from any sampling point are found to exceed the MCL/AMCL (in the case of routine monitoring) or ½ the MCL/AMCL (in the case of reduced monitoring), the State may require the system to collect a confirmation sample(s). The results of the initial sample and the confirmation sample(s) shall be averaged and the resulting average shall be used to determine compliance.

EPA specifically requests comments on the following aspects of the proposed monitoring requirements :

- Allowing systems at State discretion, to reduce monitoring frequencies as long as the system demonstrates that its radon levels are maintained below the MCL/AMCL. For example, all community ground water systems would be required to collect one sample from each entry point to the distribution system (located after any treatment and storage) quarterly at first and annually after compliance is established. MCL/AMCL exceedence would trigger reverting to quarterly sampling until compliance with the MCL/AMCL is reestablished. Compliance is reestablished when the average of four consecutive quarterly samples is below the MCL/AMCL.
- Allowing States to reduce monitoring requirements to not less than once every three years if the average radon levels from four consecutive quarterly samples is less than ½ the MCL/AMCL, and the State determines that the radon levels in the drinking water are reliably and consistently below ½ the MCL/AMCL. A single sample exceeding ½ the MCL/AMCL would trigger reverting to sampling annually. Comments are solicited on the criteria allowing the utility to revert to monitoring once every three years if the average of the initial and three consecutive annual samples is less than ½ the MCL/AMCL.
- Factors affecting State discretion to grant waivers. In addition, the Agency solicits comments on the advisability of reducing the monitoring frequency up to nine years between samples. Comments are solicited on the requirement that all previous samples (that might be used to identify systems which are very unlikely to exceed the MCL/AMCL) must be below ½ the MCL/AMCL in order for a system to qualify for a waiver.
- Allowing States to require the collection of confirmation samples to verify initial sample results as specified by the State, and to use the average of the initial sample and the confirmation samples to determine compliance.

5. Grandfathering of Data

At a State's discretion, sampling data collected since the proposal could be used to satisfy the initial sampling requirements for radon, provided that the system has conducted a monitoring program and used analytical methods that meet proposal requirements. The Agency wants to provide water suppliers with the opportunity to synchronize their radon monitoring program with monitoring for other contaminants and to get an early start on their monitoring program if they wish to do so.

The Agency solicits comments on the advisability of allowing the use of monitoring data obtained since the proposal to satisfy the initial monitoring requirements.

IX. State Implementation

This section describes the regulations and other procedures and policies States have to adopt, or have in place, to implement today's proposed rule. States must continue to meet all other conditions of primacy in 40 CFR part 142.

Section 1413 of the SDWA establishes requirements that a State must meet to obtain or maintain primacy enforcement responsibility (primacy) for its public water systems. These include: (1) Adopting drinking water regulations that are no less stringent than Federal NPDWRs in effect under Section 1412(b) of the Act; (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making reports available on activities that EPA requires by regulation; (4) issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by Sections 1415 and 1416; (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations; and (6) adopting authority for administrative penalties.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water supply supervision (PWSS) program, as authorized under SDWA 1413 of the Act. In addition to meeting the basic primacy requirements, States may be required to adopt special. primacy provisions pertaining to a specific regulation. States are required by 40 CFR 142.12 to include these regulation-specific provisions in an application for approval of their program revisions. To maintain primacy for the PWS program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt today's rule, when final, along with the special primacy requirements discussed next. Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

A. Special State Primacy Requirements

In addition to adopting drinking water regulations at least as stringent as the regulations described in the previous sections, EPA requires that States adopt certain additional provisions related to this regulation, in order to have their drinking water program revision application approved by EPA. States have two options when implementing this rule. States may adopt the AMCL and implement a State-wide MMM program plan or States may adopt the MCL. If a State chooses to adopt the MCL, CWSs in that State have the option to develop and implement a State-approved local MMM program plan and comply with the AMCL.

To ensure that the State program includes all the elements necessary for a complete enforcement program, EPA is proposing that 40 CFR part 142 be amended to require the following in order to obtain primacy for this rule:

(1) Adoption of the promulgated Radon Rule, and

(2) One of the following, depending on which regulatory option the State chooses to adopt:

(a) If a State chooses to develop and implement a State-wide MMM program plan and adopt the AMCL, the primacy application must contain a copy of the State-wide MMM program plan meeting the four criteria in 40 CFR Part 141 Subpart R and the following: a description of how the State will make resources available for implementation of the State-wide MMM program plan, and a description of the extent and nature of coordination between interagency programs (*i.e.*, indoor radon and drinking water programs) on development and implementation of the MMM program plan, including the level of resources that will be made available for implementation and coordination between interagency programs (*i.e.*, indoor air and drinking water programs).

(b) If a State chooses to adopt the MCL, the primacy application must contain a description of how the State will implement a program to approve local CWS MMM program plans prepared to meet the criteria outlined in 40 CFR Part 141 Subpart R. In addition, the primacy application must contain a description of how the State will ensure local CWS MMM program plans are implemented and the extent and nature of coordination between interagency programs (*i.e.*, indoor radon and drinking water programs) on development and implementation of the MMM program, including the level of resources that will be made available for implementation and coordination between interagency programs (*i.e.*, indoor air and drinking water programs), as well as, a description of the reporting and record keeping requirements for the CWSs.

States are required to submit their primacy revision application packages by two years from the date of publication of the final rule in the **Federal Register**. For States adopting the AMCL, EPA approval of a State's primacy revision application is contingent on submission of and EPA approval of the State's MMM program plan. Therefore, EPA is proposing to require submission of State-wide MMM program plans as part of the complete and final primacy revision application. This will enable EPA to review and approve the complete primacy application in a timely and efficient manner in order to provide States with as much time as possible to begin to implement MMM programs. In accordance with Section 1413(b)(1) of SDWA and 40 CFR 142.12(d)(3), EPA is to review primacy applications within 90 days. Therefore, although the SDWA allows 180 days for EPA review and approval of MMM program plans, EPA expects to review and approve State primacy revision applications for the AMCL, including the State-wide MMM program plan, within 90 days of submission to EPA.

EPA is proposing that States notify CWSs of their decision to adopt the MCL or AMCL at the time they submit their primacy application package to EPA (24 months after publication of the final rule). If a State adopts the MCL, CWSs choosing to implement a local CWS MMM program and comply with the AMCL will be required to have completed initial monitoring, notify the State of their intention, and begin developing a plan 4 years after the rule is final. EPA is particularly concerned that these CWSs have sufficient time to develop MMM program plans with local input and allow for State approval. Therefore, it is EPA's expectation that States will be submitting complete and final primacy revision applications by 24 months from the date of publication of the final rule in **Federal Register**. In reviewing any State requests for extensions of time in submitting primacy revision applications, EPA will consider whether sufficient time will be provided to CWSs to develop and get State approval of their local MMM program plans prior to implementation.

B. State Record Keeping Requirements

Today's rule does not include changes to the existing recordkeeping provisions required by 40 CFR 142.14. MMM record keeping requirements will be addressed in each State's primacy revision application submission to meet the special primacy requirements for radon (40 CFR 142.16).

C. State Reporting Requirements

Currently States must report to EPA information under 40 CFR 142.15 regarding violations, variances and exemptions, enforcement actions and general operations of State public water supply programs.

In accordance with the Safe Drinking Water Act (SDWA), EPA is to review State MMM programs at least every five years. For the purposes of this review, the States with EPA-approved MMM program plans shall provide written reports to EPA in the second and fourth years between initial implementation of the MMM program and the first 5-year review period, and in the second and fourth years of every subsequent 5-year review period. EPA will review these programs to determine whether they continue to be expected to achieve risk reduction of indoor radon using the information provided in the two biennial reports. EPA requests comment on this approach. These reports are required to include the following information:

- A quantitative assessment of progress towards meeting the required goals described in Section VI. A., including the number or rate of existing homes mitigated and the number or rate of new homes built radon-resistant since implementation of the States' MMM program: and
- A description of accomplishments and activities that implement the program strategies outlined in the implementation plan and in the two required areas of promoting increased testing and mitigation of existing homes and promoting increased use of radon-resistant techniques in construction of new homes.
- If goals were defined as rates, the State must also provide an estimate of the number of mitigations and radon-resistant new homes represented by the reported rate increase for the two-year period.
- If the MMM program plan includes goals for promoting public awareness of the health effects of indoor radon, testing of homes by the public; testing and mitigation of existing schools; and construction of new public schools to be radon-resistant, the report is also required to include information on results and accomplishments in these areas.

EPA will use this information in discussions and consultations with the State during the five-year review to evaluate program progress and to consider what modifications or adjustments in approach may be needed. EPA envisions this review process will be one of consultation and collaboration between EPA and the States to evaluate the success of the program in achieving the radon risk reduction goals outlined in the approved programs. If EPA determines that a MMM program in not achieving progress towards its goals, EPA and the State shall collaborate to develop modifications and adjustments to the program to be implemented over the five year period following the review. EPA will prepare a summary of the outcome of the program evaluation and the proposed modification and adjustments, if any, to be made by the State.

States that submit a letter to the Administrator by 90 days after publication of the final rule committing to develop an MMM program plan, must submit their first 2-year report by 6.5 years from publication of the final rule. For States not submitting the 90-day letter, but choosing subsequently to submit an MMM program plan and adopt the AMCL, the first 2-year report must be submitted to EPA by 5 years from publication of the final rule. States shall make available to the public each of these two-year reports, as well as the EPA summaries of the five-year reviews of a State's MMM program, within 90 days of completion of the reports and the review.

In primacy States without a State-wide MMM program, the States shall provide a report to EPA every five-years on the status and progress of CWS MMM programs towards meeting their goals. The first of such reports would be due 5 years after CWSs begin implementing a local MMM program which is 5.5 years from publication of the final rule.

D. Variances and Exemptions

Section 1415 of the SDWA authorizes the State to issue variances from NPDWRs (the term "State" is used in this preamble to mean the State agency with primary enforcement responsibility, or "primacy," for the public water supply system program or EPA if the State does not have primacy). The State may issue a variance under Section 1415(a) if it determines that a system cannot comply with an MCL due to the characteristics of its source water, and on condition that the system install BAT. Under Section 1415(a), EPA must propose and promulgate its finding identifying the best available technology, treatment techniques, or other means available for each contaminant, for purposes of Section 1415 variances, at the same time that it proposes and promulgates a maximum contaminant level for such contaminant. EPA's finding of BAT, treatment techniques, or other means for purposes of issuing variances may vary, depending upon the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of complying with MCLs, as considered appropriate by the EPA. The State may not issue a variance to a system until it determines among other things that the variance would not pose an unreasonable risk to health (URTH). EPA has developed draft guidance, "Guidance in Developing Health Criteria for Determining Unreasonable Risks to Health" (USEPA 1990) to assist States in determining when an unreasonable risk to health exists. EPA expects to issue final guidance for determining when URTH levels exist later this year. When a State grants a variance, it must at the same time prescribe a schedule for (1) compliance with the NPDWR and (2) implementation of such additional control measures as the State may require.

Under Section 1416(a), the State may exempt a public water system from any MCL and/or treatment technique requirement if it finds that (1) due to compelling factors (which may include economic factors), the system is unable to comply or develop an alternative supply, (2) the system was in operation on the effective date of the MCL or treatment technique requirement, or, for a newer system, that no reasonable alternative source of drinking water is available to that system, (3) the exemption will not result in an unreasonable risk to health, and (4) management or restructuring changes cannot be made that would result in compliance with this rule. Under Section 1416(b), at the same time it grants an exemption the State is to prescribe a compliance schedule and a schedule for implementation of any required interim control measures. The final date for compliance may not exceed three years after the NPDWR effective date except that the exemption can be renewed for small systems for limited time periods.

EPA will not list "small systems variance technologies", as provided in Section 1415(e)(3) of the Act, since EPA has determined that affordable treatment technologies exist for all applicable system sizes and water quality conditions. As stated in this Section of the Act, if the Administrator finds that small systems can afford to comply through treatment, alternate water source, restructuring, or consolidation, according to the affordability criteria established by the Administrator, then systems are not eligible for small systems variances. Small systems will, however, still be able to apply for "regular" variances and exemptions, pursuant to Sections 1415 and 1416 of the Act.

E. Withdrawing Approval of a State MMM Program

If EPA determines that a State MMM program is not achieving progress towards its MMM goals, and the State repeatedly fails to correct, modify and adjust implementation of its MMM program after notice by EPA, EPA may withdraw approval of the State's MMM program plan. The State will be responsible for notifying CWSs of the Administrator's withdrawal of approval of the State-wide MMM program plan. The CWSs in the State would then be required to comply with the MCL within one year from date of notification, or develop a State-approved CWS MMM program plan. EPA will work with the State to develop a State process for review and approval of CWS MMM program plans that meet the required criteria and establish a time frame for submittal of program plans by CWSs that choose to continue complying with the AMCL. The review process will allow for local public participation in development and review of the program plan.

X. What Do I Need To Tell My Customers? Public Information Requirements

A. Public Notification

Sections 1414(c)(1) and (c)(2) of the SDWA, as amended, require that public water systems notify persons served when violations of drinking water standards occur. EPA recently proposed to revise the current public notification regulations to incorporate new statutory provisions enacted under the 1996 SDWA amendments (64 FR 25963, May 13, 1999). The purpose of public notification is to alert customers in a timely manner to potential risks from violations of drinking water standards and the steps they should take to avoid or minimize such risks.

Today's regulatory action would add violation of the radon NPDWR to the list of violations requiring public notice under the May 13, 1999, proposed public notification rule. Today's action would make three changes to the proposed public notification rule.

- First, Appendix A to Subpart Q would be modified to require a Tier 2 public notice for violations of the MCL and AMCL for all community water systems. Under the proposed rule, Tier 2 public notices would be required for violations and situations with potential to have serious adverse effects on human health. Tier 2 public notices must be distributed within 30 days after the violation is known, and must be repeated every three months until the violation is resolved.
- Second, Appendix A would also be modified to require a Tier 3 public notice for all radon monitoring and testing procedure violations and for violations of the Multimedia Mitigation (MMM) Program Plan. Tier 3 public notices must be distributed within a year of the violation and could, at the water system's option, be included in the annual Consumer Confidence Report (CCR).
- Third, Appendix B to Subpart Q would be modified to add standard health effects language, which public water systems are required to use in their notices when violations of the AMCL or MMM occur. EPA proposes that the standard health effects language for these violations, to be included in CCR annual reports and public notices. The language for violation of the (A)MCL would be as follows: "People who use drinking water containing radon in excess of the (A)MCL for many years may have an increased risk of getting lung and stomach cancer." The language for violation of the MMM would be as follows: "Your water system is not complying with requirements to promote the reduction of lung cancer risks from radon in indoor air, which is a problem in some homes. Radon is a naturally occurring radioactive gas which may enter homes from the surrounding soil and may also be present in drinking water. Because your system is not complying with applicable requirements, it may be required to install water treatment technology to meet more stringent standards for radon in drinking water. The best way to reduce radon risk is to test your home's indoor air and, if elevated levels are found, hire a qualified contractor to fix the problem. For more information, call the National Safety Council's Radon Hotline at 1–800–SOS–RADON." The standard health effects language public water systems are to use in their public notice would be identical to that used in the annual CCR.

The final public notification rule is expected to be published around December, 1999, well in advance of the August, 2000, deadline for the final radon regulation. The final public notification requirements for radon, therefore, will be published with the final radon rule. The Agency will republish the tables in Appendices A and B to Subpart Q of Part 141 with all necessary changes in the final rule.

B. Consumer Confidence Report

Section 1414(d) of the SDWA requires that all community water systems provide annual water quality reports (or consumer confidence reports (CCRs)) to their customers. In their reports, systems must provide, among other things, the levels and sources of all detected contaminants, the potential health effects of any contaminant found at levels that violate EPA or State rules, and short educational statements on contaminants of particular interest.

Today's action updates the standard CCR rule requirements in subpart O and adds special requirements that reflect the multimedia approach of this rule. The intent of these provisions is to assist in clearer communication of the relative risks of radon in indoor air from soil and from drinking water, and to encourage public participation in the development of the State or CWS MMM program plans. Systems that detect radon at a level that violates the A/MCL would have to include in their report a clear and understandable explanation of the violation including: the length of the violation, actions taken by the system to address the violation, and the potential health effects (using the language proposed today for Appendix C to subpart O: "People who use drinking water containing radon in excess of the (A)MCL for many years may have an increased risk of getting lung and stomach cancer"). This approach is comparable to that used for other drinking water contaminants.

In addition, recognizing the novelty of the MMM approach and the interest that consumers may have in participating in the design of the MMM program, today's action also proposes that any system that has ground water as a source must include information in its report in the years between publication of the final rule and the date by which States, or systems, will be required to implement an MMM program. This information would include a brief educational statement on radon risks, explaining that the principal radon risk comes from radon in indoor air, rather than drinking water, and for that reason, radon risk reduction efforts may be focused on indoor air rather than drinking water. This information will also note that many States and systems are in the process of creating programs to reduce exposure to radon, and encourage readers to call the Radon Hotline (800–SOS–RADON) or visit EPA's radon web site (www.epa.gov/iaq/radon) for more information. A system would be able to use language provided in the proposed rule by EPA or could chose to tailor the wording to its specific local circumstances in consultation with the primacy agency. EPA recognizes that this creates a slight additional burden on community water system operators, but believes that the value of strong public support for, and participation in, the creation of the MMM program outweighs this burden. EPA also recognizes that this notice may provoke some confusion, since CCRs would alert consumers to the risks presented by a contaminant which most systems have never monitored in their water, although the notice would state that the system would be testing and would provide customers with the results. EPA is requesting comment on this proposed notice.

Finally, the Agency will republish the tables in Appendices A, B, and C to Subpart O of Part 141 with all necessary changes in the final rule.

Risk Assessment and Occurrence

XI. What Is EPA's Estimate of the Levels of Radon in Drinking Water?

A. General Patterns of Radon Occurrence

Radon levels in ground water in the United States are generally highest in New England and the Appalachian uplands of the Middle Atlantic and Southeastern States. There are also isolated areas in the Rocky Mountains, California, Texas, and the upper Midwest where radon levels in ground water tend to be higher than the United States average. The lowest ground water radon levels tend to be found in the Mississippi Valley, lower Midwest, and Plains States. The following map shows the general patterns of radon occurrence in those States for which data are available.

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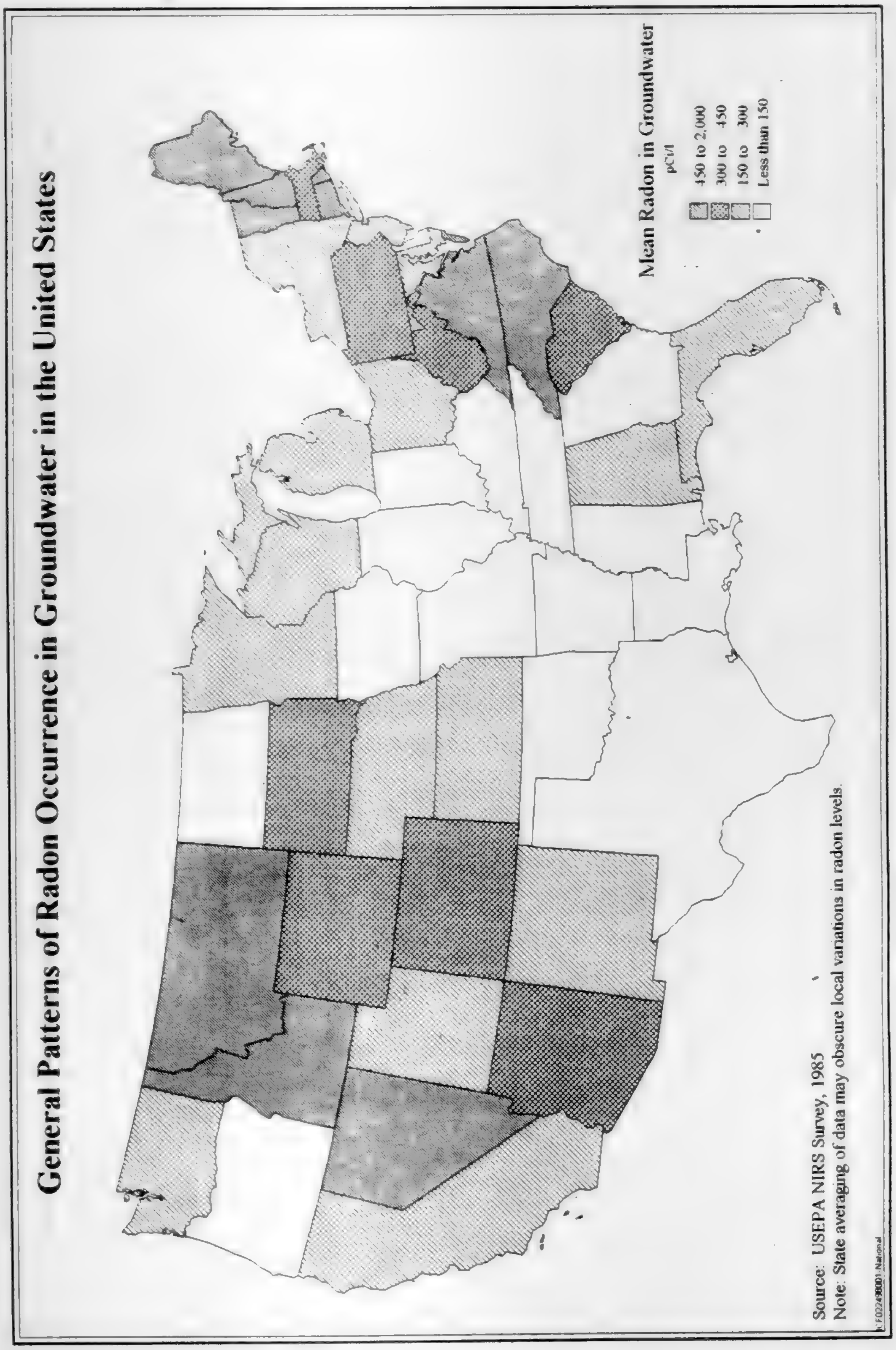

General Patterns of Radon Occurrence in Groundwater in the United States

Mean Radon in Groundwater
pCi/l
450 to 2,000
300 to 450
150 to 300
Less than 150
F02498001 National

Source: USEPA NIRS Survey, 1985
Note: State averaging of data may obscure local variations in radon levels.

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In addition to large-scale regional variation, radon levels in ground water vary significantly over a smaller area. Local differences in geology tend to greatly influence the patterns of radon levels observed at specific locations. (This means, for example, that not all radon levels in New England are high and not all radon levels in the Gulf Coast region are low). Over small distances, there is often no consistent relationship between radon levels in ground water and uranium or other radionuclide levels in the ground water or in the parent bedrock (Davis and Watson 1989). Similarly, no significant geographic correlation has been found between radon levels in groundwater systems and the levels of other inorganic contaminants. Radon may be found in groundwater systems where other contaminants (for example, arsenic) also occur. However, finding a high (or low) level of radon does not indicate that a high (or low) level of other contaminants will also be found. Similarly, there is little evidence that radon occurrence is correlated with the presence of organic pollutants. In estimating the costs of radon removal, EPA has taken into account the fact that other contaminants, such as iron and manganese, may also be present in the water. High levels of iron and manganese may complicate the process of radon removal and increase the costs of mitigation.

Radon is released rapidly from surface water. Therefore, radon levels in supplies that obtain their water from surface sources (lakes or reservoirs) are very low compared to groundwater levels.

Because of its short half life, there are relatively few man-made sources of radon exposure in ground water. The most common man-made sources of radon ground water contamination are phosphate or uranium mining or milling operations and wastes from thorium or radium processing. Releases from these sources can result in high ground water exposures, but generally only to very limited populations; for instance, to persons using a domestic well in a contaminated aquifer as a source of potable water (USEPA 1994a).

B. Past Studies of Radon Levels in Drinking Water

A number of studies of radon levels in drinking water were undertaken in the 1970s and early 1980s. Most of these studies were limited to small geographic areas, or addressed systems that were not representative of community systems throughout the U.S. The first attempt to develop a comprehensive understanding of radon levels in public water supplies was the National Inorganics and Radionuclides Survey (NIRS), which was undertaken by the EPA in 1983–1984. As part of NIRS, radon samples were analyzed from 1,000 community groundwater systems throughout the United States. The size distribution of systems sampled was the same as the size distribution of groundwater systems in U.S., and the geographic distribution was approximately consistent with the regional distribution of systems. Because of the limited number of samples, however, the number of radon measurements in some States was quite small. Table XI.B.1 summarizes the regional patterns of radon in drinking water supplies as seen in the NIRS database.

TABLE XI.B.1.—RADON IN COMMUNITY GROUND WATER SYSTEMS BY REGION (ALL SYSTEM SIZES)

Region	Arithmetic mean (pCi/L)	Geometric mean (pCi/L)	Geometric standard deviation (pCi/L)
Appalachian	1,127	333	4.76
California	629	333	3.09
Gulf Coast	263	125	3.38
Great Lakes	278	151	3.01
New England	2,933	1,214	3.77
Northwest	222	161	2.23
Plains	213	132	2.65
Rocky Mountains	607	361	2.77

Source: USEPA 1999g.

Note: These distributions are described in two ways. First, the arithmetic means (average values) are given. In addition, the geometric mean and geometric standard deviation are given. This approach is taken because the distributions of radon in groundwater systems are not "normal" bell-shaped curves. Instead, like many environmental data sets, it was found that the logarithms of the radon concentrations were normally distributed ("lognormal distribution.") The geometric mean corresponds to the center of a bell-shaped "normal" distribution when radon concentrations are expressed in logarithms. The geometric standard deviation is a measure of the spread of the bell-shaped curve, expressed in logarithmic form.

The NIRS has the disadvantage that the samples were all taken from within the water distribution systems, making estimation of the naturally occurring influent radon levels difficult. In addition, the NIRS data provide no information to allow analysis of the variability of radon levels over time or within individual systems. Thus, while the NIRS data provide statistically valid estimates of radon levels in the systems that were sampled, they do not adequately represent radon levels in some individual States, especially in large systems.

The NIRS data formed the basis for EPA's first estimates of the levels of radon in community groundwater systems in the United States (Wade Miller 1990). They formed the basis for estimating the impacts of EPA's 1991 Proposed Rule. These estimates were updated in 1993, using improved statistical methods to estimate the distributions of radon in different size systems (Wade Miller 1993.)

C. EPA's Most Recent Studies of Radon Levels in Ground Water

EPA's current re-evaluation of radon occurrence in ground water (USEPA 1999g) uses data from a number of additional sources to supplement the NIRS information and to develop estimates of the national distribution of radon in community ground water systems of different sizes. EPA gathered data from 17 States where radon levels were measured at the wellhead, rather than in the distribution systems. The Agency then evaluated the differences between the State (wellhead) data and the NIRS (distribution system) data. These differences were then used to adjust the NIRS data to make them more representative of ground water radon levels in the States where no direct measurements at the wellhead had been made. EPA solicits any additional data on radon levels in community water systems, particularly in the largest size categories.

Table XI.C.1 summarizes EPA's latest estimates of the distributions of radon levels in ground water supplies of different sizes. It also provides information on the populations exposed to radon through community water systems (CWS). In this table, radon levels and populations are presented for systems serving population ranges from 25 to greater than 100,000 customers. The CWSs are broken down into the following system size categories:

- Very very small systems (25–500 people served), further subdivided into 25–100 and 101–500 ranges, in response to comments received on the 1991 proposal;
- Very small systems (501–3,300 people);
- Small systems (3,301–10,000 people);
- Medium systems (10,001–100,000 people); and
- Large systems (greater than 100,000 people).

TABLE XI.C.1.—RADON DISTRIBUTIONS IN COMMUNITY GROUNDWATER SYSTEMS

	System Size (Population Served)					
	25–100	101–500	501–3,300	3,301–10,000	>10,000	All systems
Total Systems	14,651	14,896	10,286	2,538	1,536	43,907
Geometric Mean Radon Level, pCi/L	312	259	122	124	132	232
Geometric Standard Deviation	3.0	3.3	3.2	2.3	2.3	3.0
Arithmetic Mean	578	528	240	175	187	442
Population Served (Millions)	0.87	3.75	14.1	14.3	55.0	88.1
Radon Level, pCi/L	Proportions of Systems Exceeding Radon Levels (percent)					
100	84.7	78.7	56.9	60.4	62.9	74.0
300	51.4	45.1	22.1	14.3	16.2	39.0
500	33.6	29.1	11.4	4.6	5.5	24.2
700	23.4	20.3	6.8	1.8	2.3	16.5
1000	14.7	12.9	3.6	0.6	0.8	10.2
2000	4.7	4.4	0.8	0.0	0.1	4.9
4000	1.1	1.1	0.1	0.0	0.0	0.8

Sources: USEPA 1999g; Safe Drinking Water Information System (1998).

Systems were broken down in this fashion because EPA's previous analyses have shown that the distributions of radon levels are different in different size systems. In the updated occurrence analysis, insufficient data were available to accurately assess radon levels in various subcategories of largest systems. Thus, data from the two largest size categories were pooled to develop exposure estimates.

D. Populations Exposed to Radon in Drinking Water

Based on data from the Safe Drinking Water Information System (SDWIS), the Agency estimates that approximately 88.1 million people were served by community ground water systems in the United States in 1998. Using the data in Table XI.C.1, systems serving more than 500 people account for approximately 95 percent of the population served by community ground water systems, even though they represent only about 33 percent of the total active systems. The largest systems (those serving greater than 10,000 people) serve approximately 62.5 percent of the people served by community ground water systems, even though they account for only 3.5 percent of the total number of systems.

As noted previously, the average radon levels vary across the system size categories. As shown in Table XI.C.1, the average system geometric mean radon levels range from approximately 120 pCi/L for the larger systems to 312 pCi/L for the smallest systems. The average arithmetic mean values for the various system size categories range from 175 pCi/L to 578 pCi/L, and the population-weighted arithmetic mean radon level across all the community ground water supplies is 213 pCi/L (calculations not shown). The bottom panel of Table XI.C.1 shows the proportions of the systems with average radon levels greater than selected values.

Table XI.D.1 presents the total populations in homes served by community ground water systems at different radon levels, broken down by system size category. These data show that approximately 20 percent of the total population served by community ground water systems are served by systems where the average radon levels entering the system exceed 300 pCi/L and 64 percent of this population are served by systems with average radon levels above 100 pCi/L. Less than one-tenth of one percent of the population is served by systems obtaining their water from sources with radon levels above 4,000 pCi/L.

TABLE XI.D.1.—POPULATION EXPOSED ABOVE VARIOUS RADON LEVELS BY COMMUNITY GROUND WATER SYSTEM SIZE (THOUSANDS)

Radon level (pCi/L)	Very very small		Very Small	Small	Medium	Large	Total
	25–100	101–500	501–3,300	3,301–10K	10K–100K	>100K	
4,000	9.4	46	20	0.2	0.9	0.4	77.2
2,000	41	183	119	5.7	21.7	11.0	381
1,000	128	541	513	85.5	289	147	1,695
700	202	848	962	267	859	436	3,558
500	290	1,210	1,620	672	2,070	1,050	6,893
300	445	1,880	3,140	2,080	6,060	3,070	16,641
100	733	3,290	8,080	8,760	23,400	11,900	56,054

XII. What Are the Risks of Radon in Drinking Water and Air?

A. Basis for Health Concern

The potential hazard of radon was first identified in the 1940s when an increased incidence of lung cancer in Bohemian underground miners was shown to be associated with inhalation of high levels of radon-222 in the mines. By the 1950s, the hazard was shown to be due mainly to the short half-life progeny of radon-222. Based on a clear relationship between radon exposure and risk of lung cancer in a number of studies in miners, national and international health organizations have concluded that radon is a human carcinogen. In 1988, the International Agency for Research on Cancer (IARC 1988) convened a panel of world experts who agreed unanimously that sufficient evidence exists to conclude that radon causes cancer in humans and in experimental animals. The Biological Effects of Ionizing Radiation (BEIR) Committee (NAS 1988, NAS 1999a), the International Commission on Radiological Protection (ICRP 1987), and the National Council on Radiation Protection and Measurement (NCRP 1984) also have reviewed the available data and agreed that radon exposure causes cancer in humans. EPA has concurred with these determinations and classified radon in Group A, meaning that it is considered by EPA to be a human carcinogen based on sufficient evidence of cancer in humans. After smoking, radon is the second leading cause of lung cancer deaths in the United States (NAS 1999a).

Most of the radon that people are exposed to in indoor and outdoor air comes from soil. However, radon in ground water used for drinking or other indoor purposes can also be hazardous. When radon in water is ingested, it is distributed throughout the body. Some of it will decay and emit radiation while in the body, increasing the risk of cancer in irradiated organs (although this increased risk is significantly less than the risk from inhaling radon). Radon dissolved in tap water is released into indoor air when it is used for showering, washing or other domestic uses, or when the water is stirred, shaken, or heated before being ingested. This adds to the airborne radon from other sources, increasing the risk of lung cancer (USEPA 1991, 1994a; NAS 1999b).

B. Previous EPA Risk Assessment of Radon in Drinking Water

1. EPA's 1991 Proposed Radon Rule

Because initial information on the cancer risks of radon came from studies of underground miners exposed to very high radon levels, not much consideration was given to non-occupational radon exposure until recently. As new miner groups at lower radon exposure levels were added to the data base, it became evident that radon exposures in indoor air, outdoor air, and drinking water might be important sources of risk for the U.S. population. In 1991, as part of developing a regulation for radionuclides and radon in water as required by the 1986 Safe Drinking Water Act, EPA drafted the Radon in Drinking Water Criteria Document (USEPA 1991) to assess the ingestion and inhalation risk associated with exposure to radon in drinking water. EPA estimated that a person's risk of fatal cancer from lifetime use of drinking water containing one picocurie of radon per liter (1 pCi/L) is close to 7 chances in 10 million (7×10^{-7}). Based on this and other considerations, EPA proposed a rule for regulating radon levels in public water systems (56 FR 33050).

2. SAB Concerns Regarding the 1991 Proposed Radon Rule

The Radiation Advisory Committee of EPA's Science Advisory Board (SAB) reviewed EPA's draft criteria document and proposed rule and identified a number of issues that had not been adequately addressed, including: (a) Uncertainties associated with the models, model parameters, and final risk estimates; (b) high exposure from water at the point of use (*e.g.*, shower); (c) risks from the disposal of treatment byproducts; and (d) occupational exposure due to regulation and removal of radon in drinking water. The SAB recommended that EPA investigate these issues before finalizing the radon rule. The EPA considered SAB's recommendations in developing the current proposal.

3. 1994 Report to Congress

In 1992, Congress passed Public Law 102–389 (the Chafee-Lautenberg Amendment to EPA's Appropriation Bill). This law directs the Administrator of the EPA to report to Congress on EPA's findings regarding the risks of human exposure to radon and their associated uncertainties, the costs for controlling or mitigating that exposure, and the risks posed by treating water to remove radon.

In response to the SAB's comments and the Chafee-Lautenberg Amendment, EPA drafted a report entitled Uncertainty Analysis of Risks Associated with Radon in Drinking Water (USEPA 1993b) and presented it to the SAB in February 1993. This document evaluated the variability and uncertainty in each of the factors needed to calculate human cancer risk from water-borne radon in residences served by community groundwater systems, and used Monte Carlo simulation techniques to derive quantitative confidence bounds for the risk estimates for each of the exposure routes to water-borne radon. In addition, the report summarized the risk estimates from exposure to radon in indoor and outdoor air.

Based on the data available at the time, EPA estimated that the total number of fatal cancers that will occur as a result of exposure to water-borne radon in homes supplied by community groundwater systems was 192 per year. EPA noted that the risk from water-borne radon is small compared to the risk of soil-derived radon in indoor air (13,600 lung cancer cases per year) or in outdoor air (520 lung cancer deaths per year) (USEPA 1992b, 1993b).

The EPA included the findings of this uncertainty analysis with the SAB review comments in the Report to the United States Congress on Radon in Drinking Water: Multimedia Risk and Cost Assessment of Radon (USEPA 1994a). This report also included an assessment of the risk from exposure to radon at drinking water treatment facilities. The SAB reviewed the report prepared by EPA, and commended the EPA's methodologies employed in the uncertainty analysis and the exposure assessment of radon at the point of use (*e.g.* showering). However, the SAB stated that the estimates of risk from ingested radon may have additional uncertainties in dose estimation and in the use of primarily the atomic bomb survivor exposure (gamma emission with low linear energy transfer) in deriving the organ-specific risk per unit dose for from radon and progeny (alpha particle emission with high linear energy transfer). The SAB also questioned EPA's estimates of the number of community water supplies affected, and the extrapolation of the risk of lung cancer associated with the high radon exposures of uranium miners to the low levels of exposure experienced in domestic environments. The SAB recommended that the Agency use a relative risk orientation as an important consideration in making risk reduction decisions on all sources of risks attributable to radon. Based on the comments and recommendations of the SAB, EPA revised several of the distributions used in the Monte Carlo analysis and finalized the Uncertainty Analysis of Risks Associated with Exposure to Radon in Drinking Water (USEPA 1995).

C. NAS Risk Assessment of Radon in Drinking Water

1. NAS Health Risk and Risk-Reduction Benefit Assessment Required by the 1996 Amendments to the Safe Drinking Water Act

The 1996 amendments to the Safe Drinking Water Act required EPA to arrange with the National Academy of Sciences (NAS) to conduct a risk assessment of radon in drinking water and an assessment of the health-risk reduction benefits associated with various measures to reduce radon concentrations in indoor air. The law also directed EPA to promulgate an alternative maximum contaminant level (AMCL) if the proposed MCL is less than the concentration of radon in water "necessary to reduce the contribution of radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air."

2. Charge to the NAS Committee

In accordance with the requirements of the 1996 amendments to the SDWA, in February 1997, EPA funded the NAS National Research Council to establish a multidisciplinary committee of the Board of Radiation Effects Research. This Committee on Risk Assessment of Exposure to Radon in Drinking Water (the NAS Radon in Drinking Water committee) was charged to use the best available data and methods to provide the following:

(a) The best estimate of the central tendency of the transfer factor for radon from water to air, along with an appropriate uncertainty range,

(b) Estimates of unit cancer risk (*i.e.*, the risk from lifetime exposure to water containing 1 pCi/L) for the inhalation and ingestion exposure routes, both for the general population and for subpopulations within the general population (*e.g.*, infants, children, pregnant women, the elderly, individuals with a history of serious illness) that are identified as likely to be at greater risk due to exposure to radon in drinking water than the general population,

(c) Unit cancer risks from inhalation exposure for people in different smoking categories,

(d) Descriptions of any teratogenic and reproductive effects in men and women due to exposure to radon in drinking water,

(e) Central estimates for a population-weighted average national ambient (outdoor) air concentration for radon, with an associated uncertainty range.

The NAS Radon in Drinking Water committee was also asked to estimate health risks that might occur as the result of compliance with a primary drinking water regulation for radon. The committee was to assess the health risk reduction benefits associated with various mitigation measures to reduce radon levels in indoor air.

3. Summary of NAS Findings

The NAS completed its charge and issued a report entitled "Risk Assessment of Radon in Drinking Water" (NAS 1999b). The NAS report provides detailed descriptions of the methods and assumptions employed by the NAS Radon in Drinking Water committee in completing its evaluation. The following text provides a summary of the NAS report.

(a) National Average Ambient Radon Concentration. Because radon levels in outdoor air vary from location to location, the NAS Radon in Drinking Water committee concluded that available data are not sufficiently representative to calculate a population-weighted annual average ambient radon concentration. Based on the data that are available, the NAS Radon in Drinking Water committee concluded that the best estimate of an unweighted arithmetic mean radon concentration in ambient (outdoor) air in the United States is 15 Bq/m^3 (equal to 0.41 pCi/L of air), with a confidence range of 14 to 16 Bq/m^3 (0.38–0.43 pCi/L air).

(b) Transfer Factor. The relationship between the concentration of radon in water and the average indoor air concentration of water-derived radon is described in terms of the transfer factor (pCi/L in air per pCi/L in water). Most researchers who have investigated this variable in residences find that it can be described as a lognormal distribution of values, most conveniently characterized by the arithmetic mean (AM) and the standard deviation (Stdev), or by the geometric mean (GM) and the geometric standard deviation (GSD). The NAS Radon in Drinking Water committee performed an extensive review of both measured and calculated values of the transfer factor in residences, with the results summarized in the following Table XII.1:

TABLE XII.1.—MEASURED AND MODELED TRANSFER FACTORS

Approach	AM	Stdev	GM	GSD
Measured	0.87×10^{-4}	1.2×10^{-4}	0.38×10^{-4}	3.3
Modeled	1.2×10^{-4}	2.4×10^{-4}	0.55×10^{-4}	3.5

[a] Calculated from, GM and GSD.

The committee concluded that there is reasonable agreement between the average value of the transfer factor estimated by the two approaches, and identified 1 in 10,000 (1.0×10^{-4}) as the best central estimate of the transfer factor for residences, with a confidence bound of about 0.8 to 1.2×10^{-4}. This central tendency value is the same as has been used in previous assessments (USEPA 1993b, 1995).

Based on this transfer factor, the NAS committee concluded that the AMCL for radon in drinking water would be 150,000 Bq/m^3 (about 4,000 pCi/L). That is, a concentration of 4,000 pCi/L of radon in water is expected to increase the concentration of radon in indoor air by an amount equal to that in outdoor air.

(c) Biologic Basis of Risk Estimation. Both the BEIR VI Report (NAS 1999a) and their report on radon in drinking water (NAS 1998b) represent the most definitive accumulation of scientific data gathered on radon since the 1988 NAS BEIR IV (NAS 1988). These committees' support for the use of linear non-threshold relationship for radon exposure and lung cancer risk came primarily from their review of the mechanistic information on alpha-particle-induced carcinogenesis, including studies of the effect of single versus multiple hits to cell nuclei.

The NAS BEIR VI Committee (NAS 1999a) conducted an extensive review of information on the cellular and molecular mechanism of radon-induced cancer in order to help support the assessment of cancer risks from low levels of radon exposure. In the BEIR VI report (NAS 1999a), the NAS concluded that there is good evidence that a single alpha particle (high-linear energy transfer radiation) can cause major genomic changes in a cell, including mutation and transformation that potentially could lead to cancer. Alpha particles, such as those that are emitted from the radon decay chain, produce dense trails of ionized molecules when they pass through a cell, causing cellular damage. Alpha particles passing through the nucleus of a cell can damage DNA. In their report, the BEIR VI Committee noted that even if substantial repair of the genomic damage were to occur, "the passage of a single alpha particle has the potential to cause irreparable damage in cells that are not killed". Given the convincing evidence that most cancers originate from damage to a single cell, the Committee went on to conclude that "On the basis of these [molecular and cellular] mechanistic considerations, and in the absence of credible evidence to the contrary, the Committee adopted a linear non-threshold model for the relationship between radon exposure and lung-cancer risk. The Committee also noted that epidemiological data relating to low radon exposures in mines also indicate that a single alpha track through the cell may lead to cancer. Finally, while not definitive by themselves, the results from residential case-control studies provide some direct support for the conclusion that environmental levels of radon pose a risk of lung cancer. However, the BEIR VI Committee recognized that it could not exclude the possibility of a threshold relationship between exposure and lung cancer risk at very low levels of radon exposure.

The NAS Committee on radon in drinking water (NAS 1999b) reiterated the finding of the BEIR VI Committee's comprehensive review of the issue, that a "mechanistic interpretation is consistent with linear non-threshold relationship between radon exposure and cancer risk". The committee noted that the "quantitative estimation of cancer risk requires assumptions about the probability of an exposed cell becoming transformed and the latent period before malignant transformation is complete. When these values are known for singly hit cells, the results might lead to reconsideration of the linear no-threshold assumption used at present.@ EPA recognizes that research in this area is on-going but is basing its regulatory decisions on the best currently available science and recommendations of the NAS that support use of a linear non-threshold relationship. EPA recognizes that research in this area is on-going but is basing its regulatory decisions on the best currently available science and recommendations of the NAS that support use of a linear non-threshold relationship.

(d) Unit Risk from Inhalation Exposure to Radon Progeny. The calculation of the unit risk from inhalation of radon progeny derived from water-borne radon depends on four key variables: (1) The transfer factor that relates the concentration of radon in air to the concentration in water, (2) the equilibrium factor (the level of radon progeny present compared to the theoretical maximum amount), (3) the occupancy factor (the fraction of full time that a person spends at home) and (4) the risk of lung cancer per unit exposure (the risk coefficient). The values utilized by NAS for each of these factors are summarized next.

Transfer Factor

The NAS Radon in Drinking Water committee (NAS 1999b) reviewed available data and concluded that the best estimate of the transfer factor is 1.0×10^{-4} pCi/L air per pCi/L water.

Equilibrium Factor

At radiological equilibrium, 1 pCi/L of radon in air corresponds to a concentration of 0.010 Working Levels (WL) of radon progeny. One WL is defined as any combination of radioactive chemicals that result in an emission of 1.3×10^5 MeV of alpha particle energy. One WL is approximately the total amount of energy released by the short-lived progeny in equilibrium with 100 pCi of radon. Under typical household conditions, processes such as ventilation and plating out of progeny prevent achievement of equilibrium, and the level of radon progeny present is normally less than 0.010 WL. The equilibrium factor (EF) is the ratio of the alpha energy actually present in respirable air compared to the theoretical maximum at equilibrium. Based on a review of measured values in residences, USEPA (1993b, 1995) identified a value of 0.4 as the best estimate of the mean, with a credible range of 0.35 to 0.45. NAS (1999a, 1999b) reviewed the data and also selected a value of 0.4 as the most appropriate point estimate of EF.

Occupancy Factor

The occupancy factor (the fraction of time that a person spends at home) varies with age and occupational status. Studies on the occupancy factor have been reviewed by EPA (USEPA 1992b, 1993b, 1995), who found that a value of 0.75 is the appropriate point estimate of the mean with a credible range of 0.65–0.80. Based on a review of available data, both the BEIR VI committee (NAS 1999a) and the NAS Radon in Drinking Water committee (NAS 1999b) identified an occupancy factor of 0.7 as the best estimate to employ in calculation of the inhalation unit risk from inhalation of radon progeny.

Risk of Lung Cancer Death per Unit Exposure (Risk Coefficient)

There are extensive data on humans (mainly from studies of underground miners) establishing that inhalation exposure to radon progeny causes increased risk of lung cancer (NAS 1999a, 1999b). The basic approach used by NAS to quantify the risk of fatal cancer (specifically death from lung cancer) from inhalation of radon progeny in air was to employ empirical dose-response relationships derived from studies of humans exposed to radon progeny in the environment. The most recent quantitative estimate of the risk of lung cancer associated with inhalation of radon progeny has been conducted by the BEIR VI committee (NAS 1999a), and this analysis was employed by the NAS Radon in Drinking Water committee (NAS 1999b). The BEIR VI committee reviewed all of the most current data from studies of humans exposed to radon, including cohorts of underground miners and residents exposed to radon in their home, as well as studies in animals and in isolated cells. Because of differences in exposure level and duration, studies of residential radon exposure would normally be preferable to studies of miners for quantifying risk to residents from radon progeny in indoor air. However, the BEIR VI committee found that the currently available epidemiological studies of residents exposed in their homes are not sufficient to develop reliable quantitative exposure-risk estimates because (a) the number of subjects is small, (b) the difference between exposure levels is limited, and (c) cumulative radon exposure estimates are generally incomplete or uncertain. Therefore, the BEIR VI committee focused their analysis on studies of radon-exposed underground miners.

The method used by the BEIR VI committee was essentially the same as used previously by the BEIR IV committee (NAS 1988), except that the database on radon risk in underground miners is now much more extensive, including 11 cohorts of underground miners, which, in all, include about 2,700 lung cancers among 68,000 miners, representing nearly 1.2 million person-years of observations. Details of these 11 cohorts are presented in the NAS BEIR VI Report (NAS 1999a). For historical reasons, the measure of exposure used in these studies is the Working Level Month (WLM), which is defined as 170 hours of exposure to one Working Level (WL) of radon progeny.

Based on evidence that risk per unit exposure increased with decreasing exposure rate or with increasing exposure duration (holding cumulative exposure constant), the BEIR VI committee modified the previous risk model to include a term to account for this "inverse dose rate" effect. Because the adjustment could be based on either the concentration of radon progeny or the duration of exposure, there are two alternative forms of the preferred model—the "exposure-age-concentration" model, and the "exposure-age-duration" model. For brevity, these will generally be referred to here as the "concentration" and "duration" models.

Mathematically, both models can be represented as:

$$RR=1+ERR=1+\beta(\omega_{5\text{-}14}+\theta_{15\text{-}24}\omega_{15\text{-}24}+\theta_{25+}\omega_{25+})\phi_{age}\gamma_{z} \qquad (1)$$

Where:

RR=relative risk of lung cancer in a person due to above-average radon exposure compared to the average background risk for a similar person in the general population

ERR=Excess relative risk (the increment in risk due to the above-average exposure to radon)

β=exposure-response parameter (excess relative risk per WLM)

$\omega_{5\text{-}14}$=exposures (WLM) incurred from 5–14 years prior to the current age

$\omega_{15\text{-}24}$=exposures (WLM) incurred from 15–24 years prior to the current age

ω_{25+}=exposures (WLM) incurred 25 or more years prior to the current age

$\theta_{15\text{-}24}$=time-since-exposure factor for risk from exposures incurred 15–24 years or more before the attained age

θ_{25+}=time-since-exposure factor for risk from exposures incurred 25 or more years or more before the attained age

ϕ_{age}=effect-modification factor for attained age

γ_{z}=effect-modification factor for exposure rate or exposure duration

The BEIR VI committee used a two-stage approach for combining information from the 11 miner studies to derive parameters for the concentration and duration risk models. First, estimates of model parameters were derived for each study cohort, and then population-weighted averages of the parameters were calculated across studies to derive an overall estimate that takes variation between and within cohorts into account. The results of the pooled analysis of all of the miner data indicated that, for a given level of exposure to radon, the excess relative risk of lung cancer decreases with increasing time since exposure, decreases as a function of increased attained age, increases with increasing duration of exposure, and decreases with increasing exposure rate (the inverse dose rate effect).

The BEIR VI committee applied the risk models to 1985–89 U.S. mortality data to estimate individual and population risks from radon in air. At the individual level, the committee estimated the lifetime excess relative risk (ERR), which is the percent increase in the lifetime probability of lung cancer death from indoor radon exposure. For population risks, the committee estimated attributable risk (AR), which indicates the proportion of lung-cancer deaths that theoretically may be reduced by reduction of indoor radon concentrations to outdoor levels.

Extrapolation From Mines to Homes

Because of a number of potential differences between mines and homes, exposures to equal levels of radon progeny may not always result in equal doses to lung cells. The ratio of the dose to lung cells in the home compared to that in mines is described by the K factor. Based on the best data available at the time, NAS (1991) had previously concluded that the dose to target cells in the lung was typically about 30 percent lower for a residential exposure compared to an equal WLM exposure in mines (*i.e.*, K = 0.7). The BEIR VI committee re-examined the issue of the relative dosimetry in homes and mines. In light of new information regarding exposure conditions in home and mine environments, the committee concluded that, when all factors are taken into account, the dose per WLM is nearly the same in the two environments (*i.e.*, a best estimate for the K-factor is about 1) (NAS 1999a). The major factor contributing to the change was a downward revision in breathing rates for miners. Thus, for calculation of risks from residential exposures, Equation 1 can be applied directly without adjustment.

Combined Effect of Smoking and Radon

Because of the strong influence of smoking on the risk from radon, the BEIR VI committee (NAS 1999a) evaluated risk to ever-smokers and never-smokers separately. The committee had information on 5 of the miner cohorts, from which they concluded that the combined effects of radon and smoking were more than additive but less than multiplicative. As a best estimate the committee determined that never-smokers should be assigned a relative risk coefficient (β) about twice that for ever-smokers, in each of the two models defined previously. This means that the attributable risk, or the proportion of all lung cancers attributable to radon, is about twice as high for never-smokers as ever-smokers. Nevertheless, because the incidence of lung cancer is much greater for ever-smokers than never-smokers, the probability of a radon induced lung cancer is still much higher for ever-smokers. This higher risk in ever-smokers arises from the synergism between radon and cigarette smoke in causing lung cancer.

Based on the BEIR VI lifetime relative risk results, the NAS Radon in Drinking Water committee (NAS 1999b) calculated the lifetime risk (per Bq/m^3 air) for each of the two models using the following basic equation:

Excess lifetime risk=(Baseline risk)* (LRR–1)

Where LRR=lifetime relative risk

Baseline lung cancer risk values used by the NAS Radon in Drinking Water committee (NAS 1999b) are summarized in Table XII.2.

TABLE XII.2.—BASELINE LUNG CANCER RISK

Gender	Smoking prevalence	Ever-smokers[1]	Never-smokers
Male	0.58	0.116	0.0091
Female	0.42	0.068	0.0059

[1] Ever-smokers were defined as persons who had smoked at least 100 cigarettes in their entire life (CDC 1995).

The NAS Radon in Drinking Water committee (NAS 1999b) adopted the average of the results from each of the two models as the best estimate of lifetime risk from radon progeny.

Results: Inhalation Unit Risk for Water-Borne Radon Progeny

Based on the inputs and approaches summarized in the previous sections, NAS calculated the inhalation unit risk for radon progeny, by smoking category, with the results described in Table XII.3:

TABLE XII.3.—LIFETIME UNIT RISK

Smoking category	per Bq/m³ in air	per pCi/L in water	Lifetime (yrs)	Annual unit risk (per pCi/L in water)	Inhalation risk coefficient (per WLM)
Combined	1.6×10^{-4}	5.93×10^{-7}	74.9	7.92×10^{-9}	5.49×10^{-4}
Ever Smokers	2.6×10^{-4}	9.63×10^{-7}	73.7	1.31×10^{-8}	9.07×10^{-4}
Never Smokers	0.5×10^{-4}	1.85×10^{-7}	76.1	2.43×10^{-9}	1.68×10^{-4}

The NAS Radon in Drinking Water committee (NAS 1999b) estimated that the uncertainty around the inhalation risk coefficient for radon progeny can be characterized by a lognormal - distribution with a GSD of 1.2 (based on the duration model) to 1.3 (based on the concentration model). This corresponds to an uncertainty range for the combined population of about 3.4 × 10–4 to 8.1 × 10–4 lung cancer deaths per person per WLM.

Inhalation Risks to Subpopulations, Including Children

The NAS Radon in Drinking Water committee concluded that, except for the lung-cancer risk to smokers, there is insufficient information to permit quantitative evaluation of radon risks to susceptible sub-populations such as infants, children, pregnant women, elderly and seriously ill persons.

The BEIR VI committee (NAS 1999a) noted that there is only one study (tin miners in China) that provides data on whether risks from radon progeny are different for children, adolescents, and adults. Based on this study, the committee concluded that there was no clear indication of an effect of age at exposure, and the committee made no adjustments in the lung cancer risk model for exposures received at early ages.

(e) Unit Risk for Ingestion Exposure. The calculation of the unit risk from ingestion of radon in water depends on three key variables: (1) The amount of radon-containing water ingested, (2) the fraction of radon lost from the water before ingestion, and (3) the risk to the tissues per unit of radon absorbed into the body (risk coefficient). The values utilized by NAS for each of these factors are summarized next.

Water Ingestion Rate

EPA (USEPA 1993b, 1995) performed a review of available data on the amount of water ingested by residents. In brief, water ingestion can be divided into two categories: direct tap water (that which is ingested as soon as it is taken from the tap) and indirect tap water (water used in cooking, for making coffee, *etc.*). Available data indicate nearly all radon is lost from indirect tap water before ingestion, so only direct tap water is of concern. Based on available data (Pennington 1983; USEPA 1984; Ershow and Cantor 1989, USEPA 1993b, USEPA 1995) scientists estimated that the mean of the direct tap water ingestion rate was 0.65 liters per day (L/day), with a credible range of about 0.57 to 0.74 L/day. Based mainly on this analysis, NAS (1999b) identified 0.6 L/day as the best estimate of direct tap water intake, and utilized this value in the calculation of the unit risk from radon ingestion. This value includes direct tap water ingested at all locations, and so includes both residential and non-residential exposures.

The analysis conducted for radon in drinking water uses radon-specific estimates of water consumption, based on guidance from the NAS Radon in Drinking Water committee. Based on radon's unique characteristics, this approach is different from the Agency's approach to other drinking water contaminants.

In general, in calculating the risk for all other water contaminants, EPA uses 2 liters per day as the average amount of water consumed by an individual. For radon, the Agency used 0.6 liters per day to estimate the risks of radon ingestion. The NAS ingestion risk number is derived from an average risk/radiation coefficient, an average drinking water ingestion rate, and an average life expectancy. NAS chose to use an ingestion rate of 0.6 liter per day, based on an assumption that only 0.6 liters of the "direct" water will retain radon. Since radon is very readily released during normal household water use, we assume that radon in water used for indirect purposes (cooking, making coffee, etc) is released before drinking. Only direct water (drinking from tap directly) is used to estimate ingestion risk.

The Agency solicits comments on this approach to estimating the ingestion risk of radon in drinking water, particularly the assumption of 0.6 liters per day direct consumption.

Fraction of Radon Remaining During Water Transfer From the Tap

Because radon is a gas, it tends to volatilize from water as soon as the water is discharged from the plumbing system into any open container or utensil. As would be expected, the fraction of radon volatilized before consumption depends on time, temperature, surface area-to-volume ratio, and degree of mixing or aeration. A previous analysis by EPA (USEPA 1995) identified a value of 0.8 as a reasonable estimate of the mean fraction remaining before ingestion, with an estimated credibility interval about the mean of 0.7 to 0.9. Because data are so sparse, and in order to be conservative, NAS assumed a point estimate of 1.0 for this factor (NAS 1999b).

Risk per Unit of Radon Absorbed (Risk Coefficient)

The NAS Radon in Drinking Water committee reviewed a number of publications on the risk from ingestion of radon, and noted that there was a wide range in the estimates, due mainly to differences and uncertainties in the way radon is assumed to be absorbed across the gastrointestinal tract. Therefore, the committee developed new mathematical models of the diffusion of radon in the stomach and the behavior of radon dissolved in blood and other tissues to calculate the radiation dose absorbed by tissues following ingestion of radon dissolved in water (NAS 1999b).

NAS determined that the stomach wall has the largest exposure (and hence the largest risk of cancer) following oral exposure to radon in water, but that there is substantial uncertainty on the rate and extent of radon entry into the wall of the stomach from the stomach contents. The "base case" used by NAS assumed that diffusion of radon from the stomach contents occurs through a surface mucus layer and a layer of non-radiosensitive epithelial cells before coming into proximity with the radiosensitive stem cells. Below this layer, diffusion into capillaries was assumed to remove radon and reduce the concentration to zero. Based on this model, the concentration of radon near the stem cells was about 30 percent of that in the stomach contents.

The distribution of absorbed radon to peripheral tissues was estimated by NAS using a physiologically-based pharmacokinetic (PBPK) model based on the blood flow model of Leggett and Williams (1995). The committee's analysis considered that each radioactive decay product formed from radon decay in the body exhibited its own behavior with respect to tissues of deposition, retention, and routes of excretion with the ICRP's age-specific biokinetic models The computational method used by the NAS Radon in Drinking Water committee to calculate the age-and gender-averaged cancer death risk from lifetime ingestion of radon is described in EPA's Federal Guidance Report 13 (USEPA 1998d).

Results: Ingestion Unit Risk

The NAS Radon in Drinking Water committee estimated that an age- and gender-averaged cancer death risk from lifetime ingestion of radon dissolved in drinking water at a concentration of 1 Bq/L probably lies between 3.8×10^{-7} and 4.4×10^{-6}, with 1.9×10^{-6} as the best central value. This is equivalent to a lifetime risk of 7.0×10^{-8} per pCi/L, with a credible range of 1.4×10^{-8} to 1.6×10^{-7} per pCi/L. This uncertainty range is based mainly on uncertainty in the estimated dose to the stomach and in the epidemiologic data used to estimate the risk (NAS 1999b), and does not include the uncertainty in exposure factors such as average daily direct tap water ingestion rates or radon loss before ingestion. The lifetime risk estimate of 7.0×10^{-8} per pCi/L corresponds to an ingestion risk coefficient of 4.29×10^{-12} per pCi ingested.

Ingestion Risk to Children

NAS (1999b) performed an analysis to investigate the relative contribution of radon ingestion at different ages to the total risk. This analysis considered the age dependence of: radon consumption, behavior of radon and its decay products in the body, organ size, and risk. The results indicated that even though water intake rates are lower in children than in adults, dose coefficients are higher in children because of their smaller body size. In addition, the cancer risk coefficient for ingested radon is greater for children than for adults. Based on dose and stomach cancer risk models, NAS (1999b) estimated that about 30% of lifetime ingestion risk was due to exposures occurring during the first 10 years of life. However, the NAS found no direct epidemiological evidence to suggest that any sub-population is at increased risk from ingestion of radon. In addition, ingestion risk as a whole accounts for only 11% of total risk from radon exposure from drinking water for the general population, with inhalation accounting for the remaining 89%. The NAS did not identify children, or any other groups except smokers, as being at significantly higher overall risk from exposure to radon in drinking water.

(f) Summary of NAS Lifetime Unit Risk Estimates. Table XII.4 summarizes the lifetime average unit risk estimates derived by the NAS Radon in Drinking Water committee.

TABLE XII.4.—NAS RADON IN DRINKING WATER COMMITTEE ESTIMATE OF LIFETIME UNIT RISK POSED BY EXPOSURE TO RADON IN DRINKING WATER

Exposure route	Smoking status	Gender-averaged lifetime unit risk	
		Risk per Bq/L in water	Risk per pCi/L in water
Inhalation	Ever	2.6×10^{-5}	9.6×10^{-7}
	Never	0.50×10^{-5}	1.9×10^{-7}
	All	1.6×10^{-5}	5.9×10^{-7}
Ingestion	All	0.19×10^{-5}	7.0×10^{-8}
Total Risk (inhalation + ingestion)	All	1.8×10^{-5}	6.6×10^{-7}

(g) Other Health Effects. The NAS Radon in Drinking Water committee was asked to review teratogenic and reproductive risks from radon. The committee concluded there is no scientific evidence of teratogenic and reproductive risks associated with either inhalation or ingestion of radon.

(h) Relative Magnitude of the Risk from Radon in Water. The NAS Radon in Drinking Water committee concluded that radon in water typically adds only a small increment to the indoor air concentration. The committee estimated the cancer deaths per year due to radon in indoor air (total), radon in outdoor air, radon progeny from waterborne radon, and ingestion of radon in water are 18, 200, 720, 160, and 23, respectively. However, the committee recognized that radon in water is the largest source of cancer risk in drinking water compared to other regulated chemicals in water.

D. Estimated Individual and Population Risks

Based on the findings and recommendations of the NAS Radon in Drinking Water committee, EPA has performed a re-evaluation of the risks posed by radon in water (USEPA 1999b). This assessment relied upon the inhalation and ingestion unit risks derived by NAS (1999b), and calculated risks to individuals and the population by combining the unit risks derived by NAS with the latest available data on the occurrence of radon in public water systems (USEPA 1999g).

In brief, the risk to a person from exposure to radon in water is calculated by multiplying the concentration of radon in the water (pCi/L) by the unit risk factor (risk per pCi/L) for the exposure pathway of concern (ingestion, inhalation). The population risk (the total number of fatal cancer cases per year in the United States due to radon ingestion in water) is estimated by multiplying the average annual individual risk (cases per person per year) by the total number of people exposed. Data which EPA used to calculate individual risks and population risks are summarized next.

Radon Concentration in Community Water Systems

The EPA has recently completed a detailed review and evaluation of the latest available data on the occurrence of radon in community water systems (USEPA 1999g; see Section XI). In brief, the concentration of radon in drinking water from surface water sources is very low, and exposures from surface water systems can generally be ignored. However, radon does occur in most groundwater systems, with the concentration values tending to be highest in areas where groundwater is in contact with granite. In addition, radon concentrations tend to vary as a function of the size of the water system, being somewhat higher in small systems than in large systems (USEPA 1999g). Based on EPA's analysis, the population-weighted average concentration of radon in community ground water systems is estimated to be 213 pCi/L, with a credible range of about 190 to 240 pCi/L (USEPA 1999g).

Total Exposed Population

Based on data available from the Safe Drinking Water Information System (SDWIS), EPA estimates that 88.1 million people (about one-third of the population of the United States) are served in their residence by community water supply systems using ground water (USEPA 1998a).

Based on these data on radon occurrence and size of the exposed population, EPA calculated the risks from water-borne radon to people exposed at residences served by community groundwater systems. EPA also calculated revised quantitative uncertainty analysis of the risk estimates at residential locations, incorporating NAS estimates of the uncertainty inherent in the unit risks for each pathway. In addition, EPA performed screening level estimates of risk to people exposed to water-borne radon in various types of non-residential setting. EPA's findings are summarized next.

1. Risk Estimates for Ingestion of Radon in Drinking Water

Table XII.5 presents EPA's estimate of the mean individual risk (fatal cancer cases per person per year) for the people who ingest water from community ground water systems. This includes exposures that occur both in the residence and in non-residential settings (the workplace, restaurants, etc). The lower and upper bounds around the best estimate were estimated using Monte Carlo simulation techniques (USEPA 1999b).

TABLE XII.5.—ESTIMATED RISK FROM RADON INGESTION AT RESIDENTIAL AND NON-RESIDENTIAL LOCATIONS SERVED BY COMMUNITY WATER SYSTEMS

Parameter	Lower bound	Best estimate	Upper bound
Mean Annual Individual Risk (cancer deaths per person per year)	3.2×10^{-8}	2.0×10^{-7}	4.3×10^{-7}
Population Risk (cancer deaths per year)	3	18	38

2. Risk Estimates for Inhalation of Radon Progeny Derived From Waterborne Radon

(a) Inhalation Exposure to Radon Progeny in the Residential Environment. Table XII.6 presents the EPA's best estimate of the mean individual risk and population risk of lung cancer fatality due to inhalation of radon progeny derived from water-borne radon at residences served by community groundwater systems. Lower and upper bounds on the individual and population risk estimates were derived using Monte Carlo simulation techniques.

TABLE XII.6.—ESTIMATED RISKS FROM INHALATION OF WATER-BORNE RADON PROGENY IN RESIDENCES SERVED BY COMMUNITY GROUND WATER SUPPLY SYSTEMS

Parameter	Lower bound	Best estimate	Upper bound
Mean Annual Individual Risk (lung cancer deaths per person per year)	7.9×10^{-7}	1.7×10^{-6}	3.0×10^{-6}
Population Risk (lung cancer deaths per year)	70	148	263

Of the total number of lung cancer deaths due to water-borne radon, most (about 84 percent) are expected to occur in ever-smokers, with the remainder (about 16 percent) occurring in never-smokers.

Analysis of Peak Exposures and Risks Due to Showering

Both NAS and EPA have paid special attention to the potential hazards associated with high exposures to radon that may occur during showering. High exposure occurs during showering because a large volume of water is used, release of radon from shower water is nearly complete, and the radon enters a fairly small room (the shower/bathroom). However, both NAS (1999b) and USEPA (1993b, 1995) concluded that the risk to humans from radon released during showering was likely to be small. This is because the inhalation risk from radon is due almost entirely to radon progeny and not to radon gas itself, and it takes time (several hours) for the radon progeny to build up from the decay of the radon gas released from the water. For example, in a typical shower scenario (about 10 minutes), the level of progeny builds up to only 2 to 4 percent of its maximum possible value. Thus, showering is one of many indoor water uses that contribute to the occurrence of radon in indoor air, but hazards from inhalation of radon during showering are not of special concern.

(b) Inhalation Exposure to Radon Progeny in the Non-Residential Environment. The results summarized to this point relate to exposures which occur in homes. However, on average, people spend about 30 percent of their time at other locations. Surveys of human activity patterns reveal that time outdoors or in cars accounts for about 13 percent of the time (USEPA 1996), and about 17 percent of the time, on average across the entire population (including both workers and non-workers), is spent in non-residential structures. Such non-residential buildings are presumably all served with water, so exposure to radon and radon progeny is expected to occur, at least in buildings served by groundwater. Because data needed to quantify exposure at non-residential locations are limited, EPA has performed only a screening

level evaluation to date. This evaluation may be revised in the future, depending on the availability of more detailed and appropriate input data.

As with exposures in the home, the largest source of exposure and risk from water-borne radon in non-residential buildings is inhalation of radon progeny. Limited data were found on measured transfer factors in non-residential buildings, so values were estimated for several different types of buildings based on available data on water use rates, building size, and ventilation rate, based on the following basic equation:

$TF = (W \bullet e)/(V \bullet \lambda)$

Where:

W = Water use (L/person/day)

e = Use-weighted fractional release of radon from water to air

V = Building volume (L/person)

λ = Ventilation rate (air changes/day)

The resulting transfer factor values varied as a function of building type, based on limited data, but the average across all building types was about 1×10^{-4} (the same as for residences). Very few data were located for the equilibrium factor in non-residential buildings, so a value of 0.4 (the same as in a residence) was assumed (USEPA 1999b).

Based on an estimated average transfer factor of 1×10^{-4} and assuming an average occupancy factor of 17 percent at non-residential locations, the estimated lifetime and annual risks of death from lung cancer due to exposure per unit concentration of radon (1pCi/L) in water are 1.4×10^{-7} per pCi/L and 1.9×10^{-9} per pCi/L, respectively.

Assuming a mean radon concentration in water of 213 pCi/L, these unit risks correspond to lifetime and annual individual risks of 3.1×10^{-5} and 4.1×10^{-7} lung cancer deaths per person. Assuming the same population size of 88.1 million population exposed to radon through community ground water supplies, EPA's best estimate of the number of fatal cancer cases per year resulting from the inhalation of radon progeny in non-residential environments is 36 lung cancer deaths per year (USEPA 1999b) (from the population of individuals exposed in non-residential settings served by community ground water supplies).

(c) Analysis of Risk Associated with Exposure at NTNC Locations. A subset of the water systems serving non-residential populations are the non-transient non-community (NTNC) systems. Statistics from SDWIS indicate there are about 5.2 million individuals exposed at buildings served by NTNC groundwater systems (USEPA 1999b).

Data on radon exposures at locations served by NTNC systems are limited. However, data are available for water used and population size at each of 40 strata of NTNC systems (USEPA 1998a). Assuming (a) the exposure at NTNC locations is occupational in nature with about 8 hr/day, 250 days/yr, and 25 years per lifetime for workers and 8 hr/day, 180 days/yr, and 12 years per lifetime for students, (b) the same transfer factor (1×10^{-4}) and equilibrium factor (0.4) assumed for other non-residential buildings apply at NTNC locations, and (c) the concentration of radon in water at NTNC locations is about 60 percent higher than in community water systems (mean concentration = 341 pCi/L) (see Section XI of this preamble), then the estimated population-weighted average individual annual and lifetime lung cancer risks are 2.6×10^{-7} and 2.0×10^{-5}, respectively.

3. Risk Estimates for Inhaling Radon Gas

NAS (1999b) did not derive a unit risk factor for inhalation of radon gas, but provided in their report a set of annual effective doses to tissues (liver, kidney, spleen, red bone marrow, bone surfaces, other tissues) from continuous exposure to 1Bq/m^3 of radon in air. These doses to internal organs from the decay of radon gas absorbed across the lung and transported to internal sites were based on calculations by Jacobi and Eisfeld (1980). Based on these dose estimates, EPA estimated a unit risk value using an approach similar to that used by NAS to derive the unit risk for ingestion of radon gas in water. The organ-specific doses reported by Jacobi and Eisfeld were multiplied by the lifetime-average organ-specific and gender-specific risk coefficients (risk of fatal cancer per rad) from Federal Guidance Report No. 13 (USEPA 1998d). Based on an average transfer factor of 1×10^{-4}, and assuming 70 percent occupancy, the estimated annual average unit risk is 8.5×10^{-11} cancer deaths per pCi/L in water. This corresponds to a lifetime average unit risk of 6.3×10^{-9} per pCi/L. This unit risk excludes the risk of lung cancer from inhaled radon gas, since this risk is already included in the unit risk from radon progeny. Based on the population-weighted average radon concentration of 213 pCi/L, the lifetime average individual risk is 1.35×10^{-6} cancer deaths per person, and the average annual individual risk is 1.8×10^{-8} cancer deaths per person per year. Based on an exposed population of 88.1 million people, the annual population risk is about 1.6 cancer deaths/year. The uncertainty range around this estimate, derived using Monte Carlo simulation techniques, is about 1.0 to 2.7 cancer deaths per year (USEPA 1999b).

4. Combined Fatal Cancer Risk

The best estimates of fatal cancer risks to residents from ingesting radon in water, inhalation of waterborne progeny, and inhalation of radon gas are presented in Table XII.7. As seen, EPA estimates that an individual's combined fatal cancer risk from lifetime residential exposure to drinking water containing 1 pCi/L of radon is slightly less than 7 chances in 10 million (7×10^{-7}), and that the population risk is about 168 cancer deaths per year (uncertainty range = 80 to 288 per year). Of this risk, most (88 percent) is due to inhalation of radon progeny, with 11 percent due to ingestion of radon gas, and less than 1 percent due to inhalation of radon gas.

TABLE XII.7.—SUMMARY OF UNIT RISK, INDIVIDUAL RISK AND POPULATION RISK ESTIMATES FOR RESIDENTIAL EXPOSURE TO RADON IN COMMUNITY GROUNDWATER SUPPLIES

Exposure pathway	Lifetime unit risk (fatal cancer cases per person per pCi/L)	Annual individual risk (fatal cancer cases per person per year)	Annual population risk (fatal cancer cases per year)
Radon Gas Ingestion	7.0×10^{-8}	2.0×10^{-7}	18
Radon Progeny Inhalation	5.9×10^{-7}	1.7×10^{-6}	148

TABLE XII.7.—SUMMARY OF UNIT RISK, INDIVIDUAL RISK AND POPULATION RISK ESTIMATES FOR RESIDENTIAL EXPOSURE TO RADON IN COMMUNITY GROUNDWATER SUPPLIES—Continued

Exposure pathway	Lifetime unit risk (fatal cancer cases per person per pCi/L)	Annual individual risk (fatal cancer cases per person per year)	Annual population risk (fatal cancer cases per year)
Radon Gas Inhalation	6.3×10^{-9}	1.8×10^{-8}	1.6
Total (credible bounds)	6.7×10^{-7} (3.6×10^{-7} – 9.7×10^{-7})	1.9×10^{-6} (0.9×10^{-6} – 3.3×10^{-6})	168 (80 – 288)

EPA believes that radon in community groundwater water systems also contributes exposure and risk to people when they are outside the residence (e.g., at school, work, etc.). Although data are limited, a screening level estimate suggests that this type of exposure could be associated with about 36 additional lung cancer deaths per year.

Request for Comment

EPA solicits public comments on its assessment of risk from radon in drinking water. In particular, EPA requests comment and recommendations on the best data sources and best approaches to use for evaluating ingestion and inhalation exposures that occur for members of the public (including both workers and non-workers) at non-residential buildings (e.g. restaurants, churches, schools, offices, factories, etc).

E. Assessment by National Academy of Sciences: Multimedia Approach to Risk Reduction

The NAS report, "Risk Assessment of Radon in Drinking Water," summarized several assessments of possible approaches relating reduction of radon in indoor air from soil gas to reduction of radon in drinking water. The NAS Report provided useful perspectives on multimedia mitigation issues that EPA used in developing the proposed criteria and guidance for multimedia mitigation programs. The NAS Committee focused on how the multimedia approach might be applied at the community level and defined a series of scenarios, assuming that multimedia programs would be implemented by public water systems. The report may provide useful perspectives of interest to public water systems if their State does not develop an EPA-approved MMM program.

For most of the scenarios, the Committee chose primarily to focus on how to compare the risks posed by radon in indoor air from soil gas to the risks from radon in drinking water in a home in a local community. They assessed the feasibility of different activities based on costs, radon concentrations, different assumptions about risk reduction actions that might be taken, and other factors.

Overall, the Committee suggested that reduction of indoor radon can be an alternative and more effective means of reducing the overall risk from radon. They went on to conclude that mitigation of airborne radon to achieve equal or greater radon risk reduction "makes good sense from a public health perspective." They also noted that non-economic issues, such as equity concerns, could factor into a community's decision whether to undertake a multimedia mitigation program.

The Committee also discussed the role of various indoor air mitigation program strategies, or "mitigation measures" as they are described in SDWA. The Committee concluded that an education and outreach program is important to the success of indoor radon risk reduction programs, but would not in and of itself be sufficient to claim that risk reduction took place. Based on an assessment of several State indoor radon programs, they found that States with effective programs had several factors in common in the implementation of their programs. They concluded that the effectiveness of these State programs were the result of: (1) Promoting wide-spread testing of homes, (2) conducting radon awareness campaigns, (3) providing public education on mitigation, and (4) ensuring the availability of qualified contractors to test and mitigate homes.

These views are consistent with the examples of indoor radon activities that Congress set forth in the radon provision in SDWA on which State Multimedia Mitigation programs may rely. These include "public education, testing, training, technical assistance, remediation grants and loans and incentive programs, or other regulatory or non-regulatory measures." These measures also represent many of the same strategies that are integral to the current national and State radon programs, as well as those outlined in the 1988 Indoor Radon Abatement Act, sections 304 to 307 (15 U.S.C. 2664–2667).

EPA recognizes, as does the National Academy of Sciences, that these activities and strategies are important to achieving public awareness and action to reduce radon, but that these actions are not in and of themselves actual risk reduction. Therefore, EPA has determined that State MMM plans will need to set and track actual risk reduction goals. However, the criteria and guidance for States to use in designing MMM program plans provides extensive flexibility in choosing strategies that reflect the needs of individual States.

The Committee discussed the effectiveness of various indoor radon control technologies and recommended that active sub-slab depressurization techniques are most effective for controlling radon in the mitigation of elevated radon levels in existing buildings and in the prevention of elevated levels in new buildings. (Active systems rely on mechanically-driven techniques (powered fans) to create a pressure gradient between the soil and building interior and thus, prevent radon entry.) The Committee expressed concern over the adequacy of the scientific basis for ensuring that such methods can be used reliably as a consistent outcome of normal design and construction methods. The Committee also noted the limited amount of data available to quantify the reduction in indoor radon levels expected when such techniques were used.

The Committee found that much of the comparative data available on the impact of the passive radon-resistant new construction features is confined to the impact of the passive thermal stack on radon levels and not on the other features of the passive radon-resistant new construction system, such as eliminating leakage paths, sealing utility penetrations, and prescribing the extent and quality of aggregate beneath the foundation. The Committee found that the passive stack alone yielded reductions in radon levels as great as 90%, that reductions in radon levels of about 40% are more typical, and that the effect of the passive stack may be considerably less in slab-on-grade houses that in houses with basements. However, the Committee also stated that the other features in the passive radon-resistant new construction system contribute to reducing radon levels. EPA notes that there are substantial difficulties in gathering good comparative data on these other features because of the significant variability of radon potential across building sites, even within a small area. In addition it is impractical to test the same house with and without radon resistant features. However, based on the Committee's discussion of the contributions of these other features to reducing radon levels, it is reasonable to expect that passive systems as a whole achieve greater reductions in radon than the passive stack alone.

EPA agrees with the Committee's perspective that active radon-reduction systems, while slightly more expensive, assure the greatest risk reduction in not only the mitigation of existing homes, but also in the construction of new homes. EPA also agrees with the Committee's perspective that more data on passive new construction systems would allow for more precise estimation of average expected reductions in radon levels in new homes from application of passive radon-resistant new construction techniques. However, EPA believes there is sufficient data and application experience to have a reasonable assurance that the passive techniques when used in new homes reduce indoor radon levels by about 50% on average. Further, these techniques have been adopted by the home construction industry into national model building codes and by many State and local jurisdictions into their building codes. EPA recommends that new homes built with passive radon-resistant new construction features be tested after occupancy and if elevated levels still exist, the passive systems be converted to active ones. For these reasons, EPA believes it is appropriate to consider passive radon-resistant new construction techniques for new homes as one means of achieving risk reduction through new construction in multimedia mitigation programs.

Economics and Impacts Analysis

XIII. What Is the EPA's Estimate of National Economic Impacts and Benefits?

A. Safe Drinking Water Act (SDWA) Requirements for the HRRCA

Section 1412(b)(13)(C) of the SDWA, as amended, requires EPA to prepare a Health Risk Reduction and Cost Analysis (HRRCA) to be used to support the development of the radon NPDWR. EPA was to publish the HRRCA for public comment and respond to significant comments in this preamble. EPA published the HRRCA in the **Federal Register** on February 26, 1999 (64 FR 9559). Responses to significant comments on the HRRCA are provided in Section XIII.H.

The HRRCA addresses the requirements established in Section 1412(b)(3)(C) of the amended SDWA, namely: (1) Quantifiable and non-quantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur as the result of treatment to comply with each level; (2) quantifiable and non-quantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-occurring contaminants that may be attributed solely to compliance with the MCL, excluding benefits resulting from compliance with other proposed or promulgated regulations; (3) quantifiable and non-quantifiable costs for which there is a factual basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of compliance with the MCL, including monitoring, treatment, and other costs, and excluding costs resulting from compliance with other proposed or promulgated regulations; (4) the incremental costs and benefits associated with each alternative MCL considered; (5) the effects of the contaminant on the general population and on groups within the general population, such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population; (6) any increased health risk that may occur as the result of compliance, including risks associated with co-occurring contaminants; and (7) other relevant factors, including the quality and extent of the information, the uncertainties in the analysis, and factors with respect to the degree and nature of the risk.

The HRRCA discusses the costs and benefits associated with a variety of radon levels. Summary tables and figures are presented that characterize aggregate costs and benefits, impacts on affected entities, and tradeoffs between risk reduction and compliance costs. The HRRCA serves as a foundation for the Regulatory Impact Analysis (RIA) for this proposed rule.

B. Regulatory Impact Analysis and Revised Health Risk Reduction and Cost Analysis (HRRCA) for Radon

Under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of the proposed radon rule in a Regulatory Impact Analysis (RIA) and submit the analysis to the Office of Management and Budget (OMB) in conjunction with the proposed rule. To comply with the requirements of E.O. 12866, EPA has prepared an RIA, a copy of which is available in the public docket for this proposed rulemaking. The revised HRRCA is now included as part of the RIA (USEPA 1999f). This section provides a summary of the information from the RIA for the proposed radon rule.

1. Background: Radon Health Risks, Occurrence, and Regulatory History

Radon is a naturally occurring volatile gas formed from the normal radioactive decay of uranium. It is colorless, odorless, tasteless, chemically inert, and radioactive. Uranium is present in small amounts in most rocks and soil, where it decays to other products including radium, then to radon. Some of the radon moves through air or water-filled pores in the soil to the soil surface and enters the air, and can enter buildings through cracks and other holes in the foundation. Some radon remains below the surface and dissolves in ground water (water that collects and flows under the ground's surface). Due to their very long half-life (the time required for half of a given amount of a radionuclide to decay), uranium and radium persist in rock and soil.

Exposure to radon and its progeny is believed to be associated with increased risks of several kinds of cancer. When radon or its progeny are inhaled, lung cancer accounts for most of the total incremental cancer risk. Ingestion of radon in water is suspected of being associated with increased risk of tumors of several internal organs, primarily the stomach. As required by the SDWA, as amended, EPA arranged for the National Academy of Sciences (NAS) to assess the health risks of radon in drinking water. The NAS released the pre-publication draft of the "Report on the Risks of Radon in Drinking Water," (NAS Report) in September 1998 and published the Report in July 1999 (NAS 1999b). The analysis in this RIA uses information from the 1999 NAS Report (see Section XII.C of this preamble). The NAS Report represents a comprehensive assessment of scientific data gathered to date on radon in drinking water. The report, in general, confirms earlier EPA scientific conclusions and analyses of radon in drinking water.

NAS estimated individual lifetime unit fatal cancer risks associated with exposure to radon from domestic water use for ingestion and inhalation pathways (Table XIII.1). The results show that inhalation of radon progeny accounts for most (approximately 88 percent) of the individual risk associated with domestic water use, with almost all of the remainder (11 percent) resulting from directly ingesting radon in drinking water. Inhalation of radon progeny is associated primarily with increased risk of lung cancer, while ingestion exposure is associated primarily with elevated risk of stomach cancer.

TABLE XIII.1.—ESTIMATED RADON UNIT LIFETIME FATAL CANCER RISKS IN COMMUNITY WATER SYSTEMS

Exposure pathway	Cancer unit risk per pCi/L in water	Proportion of total risk (percent)
Inhalation of radon progeny [1]	5.9×10^{-7}	88
Ingestion of radon [1]	7.0×10^{-8}	11
Inhalation of radon gas [2]	6.3×10^{-10}	1
Total	6.7×10^{-7}	100

[1] Source: NAS 1998B.

[2] Source: Calculated by EPA from radiation dosimetry data and risk coefficients provided by NAS (NAS 1998B).

The NAS Report confirmed that indoor air contamination arising from soil gas typically accounts for the bulk of total individual risk due to radon exposure. Usually, most radon gas enters indoor air by diffusion from soils through basement walls or foundation cracks or openings. Radon in domestic water generally contributes a small proportion of the total radon in indoor air.

The NAS Report is one of the most important inputs used by EPA in the RIA. EPA has used the NAS's assessment of the cancer risks from radon in drinking water to estimate both the health risks posed by existing levels of radon in drinking water and also the cancer deaths prevented by reducing radon levels.

In updating key analyses and developing the framework for the cost-benefit analysis presented in the RIA, EPA has consulted with a broad range of stakeholders and technical experts. Participants in a series of stakeholder meetings held in 1997, 1998, and 1999 included representatives of public water systems, State drinking water and indoor air programs, Tribal water utilities and governments, environmental and public health groups, and other Federal agencies.

The RIA builds on several technical components, including estimates of radon occurrence in drinking water, analytical methods for detecting and measuring radon levels, and treatment technologies. Extensive analyses of these issues were undertaken by the Agency in the course of previous rulemaking efforts for radon and other radionuclides. Using data provided by stakeholders, and from published literature, the EPA has updated these technical analyses to take into account the best currently available information and to respond to comments on the 1991 proposed NPDWR for radon.

The analysis presented in the RIA uses updated estimates of the number of active public drinking water systems obtained from EPA's Safe Drinking Water Information System (SDWIS). Treatment costs for the removal of radon from drinking water have also been updated. The RIA follows current EPA policies with regard to the methods and assumptions used in cost and benefit assessment.

As part of the regulatory development process, EPA has updated and refined its analysis of radon occurrence patterns in ground water supplies in the United States (USEPA 1998l). This new analysis incorporates information from the EPA's 1985 National Inorganic and Radionuclides Survey (NIRS) of approximately 1000 community ground water systems throughout the United States, along with supplemental data provided by the States, water utilities, and academic research. The new study also addressed a number of issues raised by public comments in the previous occurrence analysis that accompanied the 1991 proposed NPDWR, including characterization of regional and temporal variability in radon levels, and the impact of sampling point for monitoring compliance.

In general, radon levels in ground water in the United States have been found to be the highest in New England and the Appalachian uplands of the Middle Atlantic and Southeastern States. There are also isolated areas in the Rocky Mountains, California, Texas, and the upper Midwest where radon levels in ground water tend to be higher than the United States average. The lowest ground water radon levels tend to be found in the Mississippi Valley, lower Midwest, and Plains States. When comparing radon levels in ground water to radon levels in indoor air at the States level, the distributions of radon concentrations in indoor air do not always mirror distributions of radon in ground water.

2. Consideration of Regulatory Alternatives

(a) Regulatory Approaches. The RIA evaluates MCL options for radon in ground water supplies of 100, 300, 500, 700, 1000, 2000, and 4000 pCi/L. As Table VII.1 in Section VII of the preamble illustrates, the costs and benefits increase as the radon level decreases and the benefit-cost ratios are very similar at each level. The RIA also presents information on the costs and benefits of implementing multimedia mitigation (MMM) programs. The scenarios evaluated are described in detail in Sections 9 and 10 of the RIA (USEPA 1999f). Based on the analysis shown in the report, the selected regulatory alternative discussed next has a significant multimedia mitigation component. For more information on this analysis, please refer to the RIA.

(b) Selected Regulatory Alternatives. A CWS must monitor for radon in drinking water in accordance with the regulations, as described in Section VIII of this preamble, and report their results to the State. If the State determines that

the system is in compliance with the MCL of 300 pCi/L, the CWS does not need to implement a MMM program (in the absence of a State program), but must continue to monitor as required.

As discussed in Section VI, EPA anticipates that most States will choose to develop a State-wide MMM program as the most cost-effective approach to radon risk reduction. In this case, all CWSs within the State may comply with the AMCL of 4000 pCi/L. Thus, EPA expects the vast majority of CWSs will be subject only to the AMCL. In those instances where the State does not adopt this approach, the proposed regulation provides the following requirements:

(i) Requirements for Small Systems Serving 10,000 People or Less. The EPA is proposing that small CWSs serving 10,000 people or less must comply with the AMCL, and implement a MMM program (if there is no state MMM program). This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of "small" for small businesses, governments, and non-profit organizations previously established under the RFA, EPA requested comment on an alternative definition of "small entity" in the preamble to the proposed Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the SBA Office of Advocacy on the definition as it relates to small business analysis. In the preamble to the final CCR regulation (63 FR 4511, August 19, 1998), EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it for this radon in drinking water rulemaking. Further information supporting this certification is available in the public docket for this rule.

EPA's regulation expectation for small CWSs is the MMM and AMCL because this approach is a much more cost-effective way to reduce radon risk than compliance with the MCL. (While EPA believes that the MMM approach is preferable for small systems in a non-MMM State, they may, at their discretion, choose the option of meeting the MCL of 300 pCi/L instead of developing a local MMM program). The CWSs will be required to submit MMM program plans to their State for approval. (See Sections VI.A and F for further discussion of this approach).

SDWA Section 1412(b)(13)(E) directs EPA to take into account the costs and benefits of programs to reduce radon in indoor air when setting the MCL. In this regard, the Agency expects that implementation of a MMM program and CWS compliance with 4000 pCi/L will provide greater risk reduction for indoor radon at costs more proportionate to the benefits and commensurate with the resources of small CWSs. It is EPA's intent to minimize economic impacts on a significant number of small CWSs, while providing increased public health protection by emphasizing the more cost-effective multimedia approach for radon risk reduction.

(ii) Requirements for Large Systems Serving More Than 10,000 People. The proposal requires large community water systems, those serving populations greater than 10,000, to comply with the MCL of 300 pCi/L unless the State develops a State-wide MMM program, or the CWS develops and implements a MMM program meeting the four regulatory requirements, in which case large systems may comply with the AMCL of 4,000pCi/L. CWSs developing their own MMM plans will be required to submit these plans to their State for approval.

(c) Background on the Selection of the MCL and AMCL. For a description of EPA's process in selecting the MCL and AMCL, see Section VII.D of today's preamble.

C. Baseline Analysis

Data and assumptions used in establishing baselines for the comparison of costs and benefits are presented in the next section. While the rule as proposed does not require 100 percent compliance with an MCL, an analysis of these full compliance scenarios are required by the SDWA, as amended, and were an important feature in the development of the NPDWR for radon.

1. Industry Profile

Radon is found at appreciable levels only in systems that obtain water from ground water sources. Thus, only ground water systems would be affected by the proposed rule. The following discussion addresses various characteristics of community ground water systems that were used in the assessment of regulatory costs and benefits. Table XIII.2 shows the estimated number of community ground water systems in the United States. This data originally came from EPA's Safe Drinking Water Information System (SDWIS) and are summarized in EPA's Drinking Water Baseline Handbook (USEPA, 1999c). EPA estimates that there were 43,908 community ground water systems active in December 1997 when the SDWIS data were evaluated. Approximately 96.5 percent of the systems serve fewer than 10,000 customers, and thus fit EPA's definition of a "small" system (see 63 FR 44512 at 44524–44525, August 19, 1998). Privately-owned systems comprise the bulk of the smaller size categories, whereas most larger systems are publicly owned.

TABLE XIII.2.—NUMBER OF COMMUNITY GROUND WATER SYSTEMS IN THE UNITED STATES [1]

Primary source/ ownership	System size category									
	25–100	101–500	501–1,000	1,001–3,301	3,301–10,000	10,001–50,000	50,001–100,000	100,001–1,000,000	>1,000,000	Total
Total	14,232	15,070	4,739	5,726	2,489	1,282	139	70	2	43,908
Public	1,202	4,104	2,574	3,792	1,916	997	113	52	2	14,764
Private	12,361	9,776	1,705	1,531	459	243	24	14	0	26,252
Purchased-Public	114	427	265	272	84	36	1	4	0	1,203
Purchased-Private	171	347	101	79	13	3	1	0	0	718
Other	384	416	94	52	17	3	0	0	0	971

[1] Source: USEPA 1999c.

In addition to the number of affected systems, the total number of sources (wells) is an important determinant of potential radon mitigation costs. Larger systems tend to have larger numbers of sources than small ones, and it has been conservatively assumed in the mitigation cost analysis that each source out of compliance with the MCL or AMCL would need to install control equipment.

Table XIII.3 summarizes the estimated number of wells per ground water system. Both the number of wells and the variability in the number of wells increases with the number of customers served. These characteristics of community ground water sources are included in the mitigation cost analysis discussed in Section 7 of the RIA (USEPA 1999f).

2. Baseline Assumptions

In addition to the characteristics of the ground water suppliers, other important "baseline" assumptions were made that affect the estimates of potential costs and benefits of radon mitigation. Two of the most important assumptions relate to the distribution of radon in ground water sources and the technologies that are currently in place for ground water systems to control radon and other pollutants.

As noted in Section 3 of the RIA (USEPA 1999f), EPA has recently completed an analysis of the occurrence patterns of radon in groundwater supplies in the United States (USEPA 1999g). This analysis used the NIRS and other data sources to estimate national distributions of groundwater radon levels in community systems of various sizes. The results of that analysis are summarized in Table XIII.4. These distributions are used to calculate baseline individual and population risks, and to predict the proportions of systems of various sizes that will require radon mitigation.

TABLE XIII.3.—ESTIMATED AVERAGE NUMBER OF WELLS PER GROUNDWATER SYSTEM[1]

	System size category							
	25–100	101–500	501–1,000	1001–3,301	3,301–10,000	10,001–50,000	50,001–100,000	100,001–1,000,000
Average Number of Wells (Confidence Interval)	1.5 (0.2)	2.0 (0.2)	2.3 (0.2)	3.1 (0.3)	4.6 (1.1)	9.8 (1.8)	16.1 (2.2)	49.9 (12.7)

[1] Source: USEPA 1999c.

TABLE XIII.4.—DISTRIBUTION OF RADON LEVELS IN U.S. GROUNDWATER SOURCES

Statistic	Population served				
	25–100	101–500	501–3,300	3,301–10,000	>10,000
Geometric Mean, pCi/L	312	259	122	124	132
Geometric Standard Deviation, pCi/L	3.04	3.31	3.22	2.29	2.31
Arithmetic Mean	578	528	240	175	187

The costs of radon mitigation are affected to some extent by the treatment technologies that are currently in place to mitigate radon and other pollutants, and by the existence of pre- and post-treatment technologies that affect the costs of mitigation. EPA has conducted an extensive analysis of water treatment technologies currently in use by groundwater systems. Table XIII.5 shows the proportions of ground water systems with specific technologies already in place, broken down by system size (population served). Many ground water systems currently employ disinfection, aeration, or iron/manganese removal technologies. This distribution of pre-existing technologies serves as the baseline against which water treatment costs are measured. For example, costs of disinfection are attributed to the radon rule only for the estimated proportion of systems that would have to install disinfection as a post-treatment because they do not already disinfect. The cost analysis assumes that any system affected by the rule will continue to employ pre-existing radon treatment technology and pre- and post-treatment technologies in their efforts to comply with the rule. Where pre- or post-treatment technologies are already in place it is assumed that compliance with the radon rule will not require any upgrade or change in the pre- or post-treatment technologies. Therefore, no incremental cost is attributed to pre- or post-treatment technologies. This may underestimate costs if pre- or post-treatment technologies need to be changed (e.g., a need for additional chlorination after the installation of packed tower aeration). The potential magnitude of this cost underestimation is not known, but is likely to be a very small fraction of total treatment costs.

Table XIII.5.—Estimated Proportions of Groundwater Systems With Water Treatment Technologies Already in Place (Percent)[1]

Water treatment technologies in place	System Size (Population Served)							
	25–100	101–500	501–1,000	1,001–3,300	3,301–10,000	10,001–50,000	50,001–100,000	100,001 1,000,000
Fe/Mn removal & aeration & disinfection	0.4	0.2	1.2	0.6	2.9	2.2	3.1	2
Fe/Mn removal & aeration	0	0.1	0.2	0.1	0.4	0.1	0.4	0.1
Fe/Mn removal & disinfection	2.1	5.1	8.3	3	7.8	7.4	9.7	6.8
Fe/Mn removal	1.9	1.5	1.5	1	1.1	0.4	1.1	0.2
Aeration & disinfection only	0.9	3.2	9.8	13.7	20.9	19.7	18.6	19.9
Aeration only	0.8	1	1.8	2.9	2.9	1	2.1	0.6
Disinfection only	49.6	68.2	65	65	56.3	66	58.3	68.3

Table XIII.5.—Estimated Proportions of Groundwater Systems With Water Treatment Technologies Already in Place (Percent) [1]—Continued

Water treatment technologies in place	System Size (Population Served)							
	25–100	101–500	501–1,000	1,001–3,300	3,301–10,000	10,001–50,000	50,001–100,000	100,001 1,000,000
None	44.3	20.7	12.2	13.7	7.7	3.2	6.7	2.1

[1]. Source: EPA analysis of data from the Community Water System Survey (CWSS), 1997, and Safe Drinking Water Information System (SDWIS), 1998.

The treatment baseline assumptions shown in Table XIII.5 were used in the initial analysis for the development of the NPDWR for radon. These assumptions were used to establish the costs of 100 percent compliance with an MCL. Another analysis, which portrays the costs of the rule as recommended in this proposed rulemaking, is provided in the results section of this summary and also in Section 9 of the RIA.

D. Benefits Analysis

11. Quantifiable and Non-Quantifiable Health Benefits

The quantifiable health benefits of reducing radon exposures in drinking water are attributable to the reduced incidence of fatal and non-fatal cancers, primarily of the lung and stomach. Table XIII.6 shows the health risk reductions (number of fatal and non-fatal cancers avoided) and the residual health risk (number of remaining cancer cases) at various radon in water levels.

TABLE XIII.6.—RESIDUAL CANCER RISK AND RISK REDUCTION FROM REDUCING RADON IN DRINKING WATER

Radon Level (pCi/L in water)	Residual fatal cancer risk (cases per year)	Residual non-fatal cancer risk (cases per year)	Risk reduction (fatal cancers avoided per year)[1]	Risk reduction (non-fatal cancers avoided per year)[1]
(Baseline)	168	9.7	0	0
4,000[2]	165	9.5	2.9	0.2
2,000	160	9.4	7.3	0.4
1,000	150	8.8	17.8	1.1
700	141	8.3	26.1	1.5
500	130	7.6	37.6	2.2
300	106	6.1	62.0	3.6
100	46.8	2.8	120	7.0

Notes:

[1] Risk reductions and residual risk estimates are slightly inconsistent due to rounding.

[2] 4000 pCi/L is equivalent to the AMCL estimated by the NAS based on SDWA provisions of Section 1412(b)(13).

Since preparing the prepublication edition of the NAS Report, the NAS has reviewed and slightly revised their unit risk estimates. EPA uses these updated unit risk estimates in calculating the baseline risks, health risk reductions, and residual risks. Under baseline assumptions (no control of radon exposure), approximately 168 fatal cancers and 9.7 non-fatal cancers per year are associated with radon exposures through CWSs. At a radon level of 4,000 pCi/L, approximately 2.9 fatal cancers and 0.2 non-fatal cancers per year are prevented. At 300 pCi/L, approximately 62.0 fatal cancers and 3.6 non-fatal cancers are prevented each year.

The Agency has developed monetized estimates of the health benefits associated with the risk reductions from radon exposures. The SDWA, as amended, requires that a cost-benefit analysis be conducted for each NPDWR, and places a high priority on better analysis to support rulemaking. The Agency is interested in refining its approach to both the cost and benefit analysis, and in particular recognizes that there are different approaches to monetizing health benefits. In the past, the Agency has presented benefits as cost per life saved, as in Table XIII.7.

The costs of reducing radon to various levels, assuming 100 percent compliance with an MCL, are summarized in Table XIII.7, which shows that, as expected, aggregate radon mitigation costs increase with decreasing radon levels. For GWSs, the costs per system do not vary substantially across the different radon levels evaluated. This is because the menu of mitigation technologies for systems with various influent radon levels remains relatively constant and are not sensitive to percent removal.

TABLE XIII.7.—ESTIMATED ANNUALIZED NATIONAL COSTS OF REDUCING RADON EXPOSURES

[$Million, 1997]

Radon level (pCi/L)	Central tendency estimate of annualized costs[2]	Total annualized national costs[3]	Total cost per fatal cancer case avoided
4000[1]	34.5	43.1	14.9
2000	61.1	69.7	9.5

TABLE XIII.7.—ESTIMATED ANNUALIZED NATIONAL COSTS OF REDUCING RADON EXPOSURES—Continued

[$Million, 1997]

Radon level (pCi/L)	Central tendency estimate of annualized costs[2]	Total annualized national costs[3]	Total cost per fatal cancer case avoided
1000	121.9	130.5	7.3
700	176.8	185.4	7.1
500	248.8	257.4	6.8
300	399.1	407.6	6.6
100	807.6	816.2	6.8

[1] 4000 pCi/L is equivalent to the AMCL estimated by the NAS based on SDWA requirements of Section 1412(b)(13).

[2] Costs include treatment, monitoring, and O&M costs only.

[3] Costs include treatment, monitoring, O&M, recordkeeping, reporting, and state costs for administration of water programs.

An alternative approach presented here for consideration as one measure of potential benefits is the monetary value of a statistical life (VSL) applied to each fatal cancer avoided. Since this approach is relatively new to the development of NPDWRs, EPA is interested in comments on these alternative approaches to valuing benefits, and will have to weigh the value of these approaches for future use.

Estimating the VSL involves inferring individuals' implicit tradeoffs between small changes in mortality risk and monetary compensation. In the HRRCA, a central tendency estimate of $5.8 million (1997$) is used in the monetary benefits calculations. This figure is determined from the VSL estimates in 26 studies reviewed in EPA's recent draft guidance on benefits assessment (USEPA 1998e), which is currently under review by the Agency's Science Advisory Board (SAB) and the Office of Management and Budget (OMB).

It is important to recognize the limitations of existing VSL estimates and to consider whether factors such as differences in the demographic characteristics of the populations and differences in the nature of the risks being valued have a significant impact on the value of mortality risk reduction benefits. Also, medical care or lost-time costs are not separately included in the benefits estimate for fatal cancers, since it is assumed that these costs are captured in the VSL for fatal cancers.

For non-fatal cancers, willingness to pay (WTP) data to avoid chronic bronchitis is used as a surrogate to estimate the WTP to avoid non-fatal lung and stomach cancers. The use of such WTP estimates is supported in the SDWA, as amended, at Section 1412(b)(3)(C)(iii): "The Administrator may identify valid approaches for the measurement and valuation of benefits under this subparagraph, including approaches to identify consumer willingness to pay for reductions in health risks from drinking water contaminants."

A WTP central tendency estimate of $536,000 is used to monetize the benefits of avoiding non-fatal cancers (Viscusi et al. 1991). The combined fatal and non-fatal health benefits are summarized in Table XIII.8. The annual health benefits range from $17.0 million for a radon level of 4000 pCi/L to $702 million at 100 pCi/L.

TABLE XIII.8.—ESTIMATED MONETIZED HEALTH BENEFITS FROM REDUCING RADON IN DRINKING WATER

Radon level (pCi/L)	Monetized health benefits, central tendency (annualized, $millions, 1997)[1]
4,000[2]	17.0
2,000	42.7
1,000	103
700	152
500	219
300	362
100	702

Notes:

[1] Includes contributions from fatal and non-fatal cancers, estimated using central tendency estimates of the VSL of $5.8 million (1997$), and a WTP to avoid non-fatal cancers of $536,000 (1997$).

[2] 4000 pCi/L is equivalent to the AMCL estimated by the NAS based on SDWA provisions of Section 1412(b)(13).

Reductions in radon exposures might also be associated with non-quantifiable benefits. EPA has identified several potential non-quantifiable benefits associated with regulating radon in drinking water. These benefits may include any customer peace of mind from knowing drinking water has been treated for radon. In addition, if chlorination is added to the process of treating radon via aeration, arsenic pre-oxidation will be facilitated. Neither chlorination nor aeration will remove arsenic, but chlorination will facilitate conversion of Arsenic (III) to Arsenic (V). Arsenic (V) is a less soluble form that can be better removed by arsenic removal technologies. In terms of reducing radon exposures in indoor air, it has also been suggested that provision of information to households on the risks of radon in indoor air and available options to reduce exposure may be a non-quantifiable benefit that can be attributed to some components of a MMM program. Providing such information might allow households to make more informed choices than they would have in the absence of an MMM program about the need for risk reduction given their specific circumstances and concerns. In the case of the proposed radon rule, it is not likely that accounting for these non-quantifiable benefits would significantly alter the overall assessment.

The benefits calculated for this proposal are assumed to begin to accrue on the effective date of the rule and are based on a calculation referred to as the "value of a statistical life" (VSL), currently estimated at $5.8 million. The VSL is an average estimate derived from a set of 26 studies estimating what people are willing to pay to avoid the risk of premature mortality. Most of these studies examine willingness to pay in the context of voluntary acceptance of higher risks of immediate accidental death in the workplace in exchange for higher wages. This value is sensitive to differences in population characteristics and perception of risks being valued.

For the present rulemaking analysis, which evaluates reduction in premature mortality due to carcinogen exposure, some commenters have argued that the Agency should consider an assumed time lag or latency period in these calculations. Latency refers to the difference between the time of initial exposure to environmental carcinogens and the onset of any resulting cancer. Use of such an approach might reduce significantly the present value estimate.

The BEIR VI model and U.S. vital statistics, on which the estimate of lung cancers avoided is based, imply a probability distribution of latency periods between inhalation exposure to radon and increased probability of cancer death. EPA is interested in receiving comments on the extent to which the presentation of more detailed information on the timing of cancer risk reductions would be useful in evaluating the benefits of the proposed rule.

Latency is one of a number of adjustments or factors that are related to an evaluation of potential benefits associated with this rule, how those benefits are calculated, and when those economic benefits occur. Other factors which may influence the estimate of economic benefits associated with avoided cancer fatalities include (1) A possible "cancer premium" (i.e., the additional value or sum that people may be willing to pay to avoid the experiences of dread, pain and suffering, and diminished quality of life associated with cancer-related illness and ultimate fatality); (2) the willingness of people to pay more over time to avoid mortality risk as their income rises; (3) a possible premium for accepting involuntary risks as opposed to voluntary assumed risks; (4) the greater risk aversion of the general population compared to the workers in the wage-risk valuation studies; (5) "altruism" or the willingness of people to pay more to reduce risk in other sectors of the population; and (6) a consideration of health status and life years remaining at the time of premature mortality. Use of certain of these factors may significantly increase the present value estimate. EPA therefore believes that adjustments should be considered simultaneously. The Agency also believes that there is currently neither a clear consensus among economists about how to simultaneously analyze each of these adjustments nor is there adequate empirical data to support definitive quantitative estimates for all potentially significant adjustment factors. As a result, the primary estimates of economic benefits presented in the analysis of this rule rely on the unadjusted $5.8 million estimate. However, EPA solicits comment on whether and how to conduct these potential adjustments to economic benefits estimates together with any rationale or supporting data commenters wish to offer. Because of the complexity of these issues, EPA will ask the Science Advisory Board (SAB) to conduct a review of these benefits transfer issues associated with economic valuation of adjustments in mortality risks. In its analysis of the final rule, EPA will attempt to develop and present an analysis and estimate of the latency structure and associated benefits transfer issues outlined previously consistent with the recommendations of the SAB and subject to resolution of any technical limitations of the data and models.

E. Cost Analysis

1. Total National Costs of Compliance with MCL Options

Table XIII.9 summarizes the estimates of total national costs of compliance with the range of potential MCLs considered. The table is divided into two major groupings; the first grouping displays the estimated costs to systems and the second grouping displays the estimated costs to States. State costs, presented in Table XIII.9, were developed as part of the analyses to comply with the Unfunded Mandates Reform Act (UMRA) and also the Paperwork Reduction Act (PRA). Additional information on State costs is provided in Section 8 of the RIA and also in Section VIII of this preamble.

TABLE XIII.9.—SUMMARY OF ESTIMATED COSTS UNDER THE PROPOSED RADON RULE ASSUMING 100% COMPLIANCE WITH AN MCL OF 300 PCI/L

[$ Millions][1]

	3 percent cost of capital	7 percent cost of capital	10 percent cost of capital
Costs to Water Systems			
Total Capital Costs (20 years, undiscounted)	2,463	2,463	2,463
Annual Costs			
Annualized Capital	165.6	232.5	289.4
Annual O&M	152.4	152.4	152.4
Total Annual Treatment	318.0	385.0	441.8
Monitoring Costs	14.1	14.1	14.1
Recordkeeping and Reporting Costs[2]	6.1	6.1	6.1
Total Annual Costs to Water Systems[3]	338.2	405.1	461.6
Costs to States			
Administration of Water Programs	2.5	2.5	2.5
Total Annual State Costs	2.5	2.5	2.5
Total Annual Costs of Compliance[4]	340.6	407.6	464.4

1. Assumes no MMM program implementation costs (*e.g.*, all systems comply with 300 pCi/L).
2. Figure represents average annual burden over 20 years.
3. Costs include treatment, monitoring, O&M, recordkeeping, and reporting costs to water systems.
4. Totals have been rounded. Costs include treatment, monitoring, O&M, recordkeeping, reporting, and state costs for administration of water programs.

2. Quantifiable and Non-quantifiable Costs

The capital and operating and maintenance (O&M) costs of mitigating radon in Community Water Systems (CWSs) were estimated for each of the radon levels evaluated. The costs of reducing radon in community ground water to specific target levels were calculated using the cost curves discussed in Section 7.5 and the matrix of treatment options presented in Section 7.6 of the RIA. For each radon level and system size stratum, the number of systems that need to reduce radon levels by up to 50 percent, 80 percent and 99 percent were calculated. Then, the cost curves for the distributions of technologies dictated by the treatment matrix were applied to the appropriate proportions of the systems. Capital and O&M costs were then calculated for each system, based on typical estimated design and average flow rates. These flow rates were calculated on spreadsheets using equations from EPA's Baseline Handbook (USEPA 1999e). The equations and parameter values relating system size to flow rates are presented in Appendix C of the RIA. The technologies addressed in the cost estimation included a number of aeration and granular activated carbon (GAC) technologies described in Section 7.2 of the RIA, as well as storage, regionalization, and disinfection as a post-treatment. To estimate costs, water systems were assumed, with a few exceptions to simulate site-specific problems, to select the technology that could reduce radon to the selected target level at the lowest cost. CWSs were also assumed to treat separately at every source from which water was obtained and delivered into the distribution system.

EPA has attempted to note potential non-quantifiable benefits when the Agency believes they might occur, as in the case of peace-of-mind benefits from radon reduction. The Agency recognizes that there may also be non-quantifiable disbenefits, such as anxiety on the part of those near aeration plants or those who find out that their radon levels are high. It is not possible to determine whether the net results of such psychological effects would be positive or negative. The inclusion of non-quantifiable benefits and costs in this analysis are not likely to alter the overall results of the benefit-cost analysis for the proposed radon rule.

F. Economic Impact Analysis

A summary analysis of the impacts on small entities is shown in Section XIV.B of this preamble (Regulatory Flexibility Act). An analysis of the impacts on State, local, and tribal governments is shown in Section XIV.C (Unfunded Mandates Reform Act). For information on how this proposed rulemaking may impact Indian tribal governments, see Section XIV.I of today's preamble. Information on the types of information that States will be required to collect, as well as EPA's estimate of the burden and reporting requirements for this proposed rulemaking, is shown in Section XIV.D (Paperwork Reduction Act). EPA's assessment of the impacts that this proposed rulemaking may have on low-income and minority populations, as well as any potential concerns regarding children's health, are shown in Section XIV.F (Environmental Justice) and Section XIV.G (Protection of Children from Environmental Health Risks and Safety Risks) of today's preamble.

G. Weighing the Benefits and Costs

1. Incremental Costs and Benefits of Radon Removal

TABLE XIII.10.—ESTIMATES OF THE ANNUAL INCREMENTAL RISK REDUCTION, COSTS, AND BENEFITS OF REDUCING RADON IN DRINKING WATER ASSUMING 100% COMPLIANCE WITH AN MCL

[$ Millions 1997]

	Radon Level, pCi/L						
	4000[1]	2000	1000	700	500	300	100
Incremental Risk Reduction, Fatal Cancers Avoided Per Year	2.9	4.4	10.5	8.4	11.5	24.4	58.4
Incremental Risk Reduction, Non-Fatal Cancers Avoided Per Year	0.2	0.3	0.6	0.4	0.8	1.3	3.5
Annual Incremental Monetized Benefits, $ Million Per Year	17.0	25.7	61.0	48.7	67.1	142	341
Annual Incremental Radon Mitigation Costs, $ Million Per Year[2]	34.5	26.6	60.8	54.9	72.0	150.3	408.5

[1] 4000 pCi/L is equivalent to the AMCL estimated by the NAS based on SDWA requirements of Section 1412(b)(13).

[2] Costs include treatment, monitoring, and O&M costs only.

2. Impacts on Households

The cost impact of reducing radon in drinking water at the household level was also assessed. As expected, costs per household increase as system size decreases as shown in Table XIII.11.

TABLE XIII.11.—ANNUAL COSTS PER HOUSEHOLD FOR COMMUNITY WATER SYSTEMS TO TREAT TO VARIOUS RADON LEVELS[1]

[$, 1997]

Radon level (pCi/L)	VVS (25–100)	VVS (101–500)	VS (501–3300)	S (3301–10K)	M (10,001–100K)	L (> 100K)
Households Served by PUBLIC Systems Above Radon Level by Population Served						
4000[2]	256.5	91.0	22.7	14.3	6.2	4.5
2000	259.0	92.8	23.5	14.9	7.1	5.2
1000	262.5	94.8	24.6	15.4	8.6	6.4
700	264.4	96.0	25.2	15.9	9.6	7.2
500	266.3	97.1	25.9	16.4	10.6	8.1

TABLE XIII.11.—ANNUAL COSTS PER HOUSEHOLD FOR COMMUNITY WATER SYSTEMS TO TREAT TO VARIOUS RADON LEVELS [1]—Continued

[$, 1997]

Radon level (pCi/L)	VVS (25–100)	VVS (101–500)	VS (501–3300)	S (3301–10K)	M (10,001–100K)	L (> 100K)
300	269.5	99.3	26.9	17.4	12.4	9.5
100	278.8	107.1	29.1	20.1	16.2	12.8
Households Served by PRIVATE Systems Above Radon Level by Population Served						
4000 [2]	372.4	141.1	30.3	22.8	6.6	4.4
2000	375.8	143.7	31.2	23.7	7.5	5.1
1000	380.5	146.3	32.6	24.7	9.1	6.3
700	383.1	147.8	33.4	25.4	10.1	7.1
500	385.6	149.4	34.2	26.2	11.2	7.9
300	389.8	152.2	35.5	27.7	13.1	9.4
100	401.5	162.4	37.9	32.1	17.1	12.6

[1] Reflects total household costs for systems to treat down to these levels. Because EPA expects that most systems will comply with the AMCL/MCL, most systems will not incur these household costs.

[2] 4000 pCi/L is equivalent to the AMCL estimated by the NAS based on SDWA requirements of Section 1412(b)(13).

Costs to households are higher for households served by smaller systems than larger systems for two reasons. First, smaller systems serve far fewer households than larger systems and, consequently, each household must bear a greater percentage share of the capital and O&M costs. Second, smaller systems tend to have higher influent radon concentrations that, on a per-capita or per-household basis, require more expensive treatment methods (e.g., one that has an 85 percent removal efficiency rather than 50 percent) to achieve the applicable radon level.

To further evaluate the impacts of these household costs, the costs per household were compared to median household income data for each system-size category. The results of this calculation, presented in Table XIII.12 for public and private systems, indicate a household's likely share of average incremental costs in terms of the median income. Actual costs for individual households will reflect higher or lower income shares depending on whether they are above or below the median household income (approximately $30,000 per year) and whether the water system incurs above average or below average costs for installing treatment. For all system sizes but very very small private systems, average household costs as a percentage of median household income are less than one percent for households served by either public or private systems. Average impacts exceed one percent only for households served by very very small private systems, which are expected to face average impacts of 1.12 percent at the 4,000 pCi/l level and 1.35 percent at the 300 pCi/l level and for households served by very very small public systems at the 300 pCi/l level, whose average costs barely exceed one percent. Similar to the average cost per household results on which they are based, average household impacts exhibit little variability across radon levels.

TABLE XIII.12.—PER HOUSEHOLD IMPACT BY COMMUNITY GROUNDWATER SYSTEMS AS A PERCENTAGE OF MEDIAN HOUSEHOLD INCOME

[Percent]

Radon level, pCi/L	Average Impact to Households Served by Public Systems Exceeding Radon Levels						Average Impact to Households Served by Private Systems Exceeding Radon Levels					
	VVS (25–100)	VVS (101–500)	VS	S	M	L	VVS (25–100)	VVS (101–500)	VS	S	M	L
4000 [1]	0.86	0.30	0.13	0.06	0.03	0.02	1.12	0.35	0.16	0.07	0.04	0.02
2000	0.92	0.36	0.12	0.05	0.02	0.01	1.19	0.42	0.16	0.09	0.02	0.01
1000	0.96	0.38	0.13	0.05	0.02	0.01	1.24	0.44	0.16	0.09	0.03	0.01
700	0.98	0.38	0.13	0.06	0.03	0.02	1.27	0.45	0.17	0.09	0.03	0.01
500	1.00	0.39	0.13	0.06	0.03	0.02	1.30	0.45	0.17	0.09	0.03	0.01
300	1.05	0.40	0.14	0.06	0.03	0.02	1.35	0.47	0.18	0.10	0.04	0.02
100	1.17	0.44	0.15	0.07	0.05	0.03	1.51	0.51	0.19	0.12	0.05	0.02

[1] 4000 pCi/L is equivalent to the AMCL estimated by the NAS based on SDWA requirements of Section 1412(b)(13).

3. Summary of Annual Costs and Benefits

Table XIII.13 reveals that at a radon level of 4000 pCi/L (equivalent to the AMCL estimated in the NAS Report), annual costs of 100 percent compliance with an MCL are approximately twice the annual monetized benefits. For radon levels of 1000 pCi/L to 300 pCi/L, the central tendency estimates of annual costs are above the central tendency estimates of the monetized benefits.

TABLE XIII.13.—ESTIMATED NATIONAL ANNUAL COSTS AND BENEFITS[1] OF REDUCING RADON EXPOSURES ASSUMING 100% COMPLIANCE WITH AN MCL—CENTRAL TENDENCY ESTIMATE

[$ Millions, 1997]

Radon level (pCi/L)	Annualized treatment costs[2]	Total annualized costs[3]	Cost per fatal cancer avoided	Annual monetized benefits
4000[4]	34.5	43.1	14.9	17.0
2000	61.1	69.7	9.5	42.7
1000	121.9	130.5	7.3	103
700	176.8	185.4	7.1	152
500	248.8	257.4	6.8	219
300	399.1	407.6	6.6	362
100	807.6	816.2	6.8	702

Notes:

[1] Benefits are calculated for stomach and lung cancer assuming that risk reduction begins immediately. Estimates assume a $5.8 million value of a statistical life and willingness to pay of $536,000 for non-fatal cancers.

[2] Costs are annualized over twenty years using a discount rate of seven percent. Costs include treatment, monitoring, and O&M costs.

[3] Costs include treatment, monitoring, O&M, recordkeeping, reporting, and state costs for administration of water programs.

[4] 4000 pCi/L is equivalent to the AMCL estimated by the NAS based on SDWA requirements of Section 1412(b)(13).

Because the costs of compliance with an MCL for small systems outweigh the benefits at each radon level (Table XIII.14), the MMM option was recommended for small systems to alleviate some of the financial burden to these systems and the households they serve and to realize equivalent or greater benefits at much lower costs. The results of the benefit-cost analyses for MMM implementation scenarios are shown at the end of this section and also in Section 9 of the RIA.

TABLE XIII.14.— ESTIMATED ANNUAL COSTS AND BENEFITS FOR 100% COMPLIANCE WITH AN MCL BY SYSTEM SIZE

[$Millions, 1997]

Radon level (pCi/l)	Parameter[1]	System size					
		25–100	101–500	501–3300	3301–10,000	10,001–100K	>100K
4000	Benefits	0.16	0.79	2.7	2.8	7.0	3.6
	Costs	7.8	14.3	6.3	2.9	2.7	0.5
2000	Benefits	0.41	2.0	6.8	6.9	17.7	9.0
	Costs	13.2	22.7	11.6	5.7	6.3	1.6
1000	Benefits	1.0	4.8	16.3	16.7	42.6	21.6
	Costs	23.1	36.5	24.7	13.4	18.9	5.3
700	Benefits	1.5	7.1	24.1	24.6	62.9	31.9
	Costs	30.6	46.5	36.3	21.1	32.8	9.5
500	Benefits	2.1	10.2	34.7	35.4	90.6	45.9
	Costs	39.4	57.9	50.8	32.0	53.0	15.6
300	Benefits	3.5	16.9	57.3	58.6	150	75.9
	Costs	55.6	79.3	78.8	56.1	99.3	26.9
100	Benefits	7.2	32.7	111	113	290	147
	Costs	93.4	134	147	122	238	73.5

[1] Costs do not include recordkeeping, reporting, or state costs for administration of water programs. Recordkeeping and reporting costs are estimated at $6.1 million for all system sizes and State administration costs for water programs are estimated at $2.5 million.

Total costs to public and private water systems, by size, were also evaluated in the RIA. Table XIII.15 presents the total annualized costs for public and private systems by system size category for all radon levels evaluated in the RIA. The costs are comparable for public and private systems across system sizes for all options. This pattern may be due in large part to the limited number of treatment options assumed to be available to either public or private systems in mitigating radon.

TABLE XIII.15.—AVERAGE ANNUAL COST PER SYSTEM

[$Thousands, 1997]

Radon Level (pCi/l)	Average costs to public systems exceeding radon levels						Average costs to private systems exceeding radon levels					
	VVS (25–100)	VVS (101–500)	VS	S	M	L	VVS (25–100)	VVS (101–500)	VS	S	M	L
4000	8.2	12.4	18.5	49.3	82.3	484.9	7.6	10.1	15.6	43.7	72.1	468.5
2000	8.3	12.6	19.1	51.3	94.1	560.7	7.7	10.3	16.2	45.5	82.4	541.8
1000	8.4	12.9	26.6	60.1	115.9	693.4	7.8	10.5	16.8	47.3	100.2	670.2
700	8.5	13.0	27.2	61.9	129.0	758.3	7.9	10.6	17.1	48.7	111.7	752.7
500	8.5	13.2	27.8	63.7	143.2	847.8	7.9	10.7	17.5	50.3	123.9	841.6
300	8.6	13.5	28.8	67.4	167.1	1000.4	8.0	10.9	18.1	53.3	144.7	992.9
100	8.9	14.6	31.0	77.2	219.1	1345.3	8.2	11.6	19.1	61.8	189.6	1333.1

TABLE XIII.15.—AVERAGE ANNUAL COST PER SYSTEM—Continued

[$Thousands, 1997]

Radon Level (pCi/l)	Average costs to public systems exceeding radon levels						Average costs to private systems exceeding radon levels					
	VVS (25–100)	VVS (101–500)	VS	S	M	L	VVS (25–100)	VVS (101–500)	VS	S	M	L
Annual Per System Cost for those Systems Below Radon Levels: Monitoring Costs Only												
All	0.3	0.3	0.4	0.6	1.1	2.6	0.3	0.3	0.4	0.6	1.1	2.6

4. Benefits From the Reduction of Co-Occurring Contaminants

The occurrence patterns of industrial pollutants are difficult to clearly define at the national level relative to a naturally occurring contaminant such as radon. Similarly, the Agency's re-evaluation of radon occurrence has revealed that the geographic patterns of radon occurrence are not significantly correlated with other naturally occurring inorganic contaminants that may pose health risks. Thus, it is not likely that a clear relationship exists between the need to install radon treatment technologies and treatments to remove other contaminants. On the other hand, technologies used to reduce radon levels in drinking water have the potential to reduce concentrations of other pollutants as well. Aeration technologies will also remove volatile organic contaminants from contaminated ground water. Similarly, granular activated carbon (GAC) treatment for radon removal effectively reduces the concentrations of organic (both volatile and nonvolatile) chemicals and some inorganic contaminants. Aeration also tends to oxidize dissolved arsenic (a known carcinogen) to a less soluble form that is more easily removed from water. The frequency and extent that radon treatment would also reduce risks from other contaminants has not been quantitatively evaluated.

5. Impacts on Sensitive Subpopulations

The SDWA, as amended, includes specific provisions in Section 1412(b)(3)(C)(i)(V) to assess the effects of the contaminant on the general population and on groups within the general population such as children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population. The NAS Report concluded that there is insufficient scientific information to permit separate cancer risk estimates for potential subpopulations such as pregnant women, the elderly, children, and seriously ill persons. The NAS Report did note, however, that according to the NAS model for the cancer risk from ingested radon, which accounts for 11 percent of the total fatal cancer risk from radon in drinking water, approximately 30 percent of the fatal lifetime cancer risk is attributed to exposure between ages 0 to 10.

The NAS Report identified smokers as the only group that is more susceptible to inhalation exposure to radon progeny (NAS 1999b). Inhalation of cigarette smoke and radon progeny result in a greater increased risk than if the two exposures act independently to induce lung cancer. NAS estimates that "ever smokers" (more than 100 cigarettes over a lifetime) may be more than five times as sensitive to radon progeny as "never smokers" (less than 100 cigarettes over a lifetime). Using current smoking prevalence data, EPA's preliminary estimate for the purposes of the HRRCA is that approximately 85 percent of the cases of radon-induced cancer will occur among current and former smokers. This population of current and former smokers, which consists of 58 percent of the male and 42 percent of the female population, will also experience the bulk of the risk reduction from radon exposure reduction in drinking water supplies.

6. Risk Increases From Other Contaminants Associated With Radon Exposure Reduction

As discussed in Section 7.2 of the RIA, the need to install radon treatment technologies may require some systems that currently do not disinfect to do so. Case studies (US EPA 1998j) of twenty-nine small to medium water systems that installed treatment (24 aeration, 5 GAC) to remove radon from drinking water revealed only two systems that reported adding disinfection (both aeration) with radon treatment (the other systems either had disinfection already in place or did not add it). In practice, the tendency to add other disinfection with radon treatment may be much more significant than these case studies indicate. EPA also realizes that the addition of chlorination for disinfection may result in risk-risk tradeoffs, since, for example, the disinfection technology reduces potential for infectious disease risk, but at the same time can result in increased exposures to disinfection by-products (DBPs). This risk-risk trade-off is addressed by the recently promulgated Disinfectants and Disinfection By-Products NPDWR (63 FR 69390). This rule identified MCLs for the major DBPs, with which all CWSs and NTNCWSs must comply. These MCLs set a risk ceiling from DBPs that water systems adding disinfection in conjunction with treatment for radon removal could face. The formation of DBPs correlates with the concentration of organic precursor contaminants, which tend to be much lower in ground water than in surface water. In support of this statement, the American Water Works Association's WATERSTATS survey (AWWA 1997) reports that more than 50% of the ground water systems surveyed have average total organic carbon (TOC) raw water levels less than 1 mg/L and more than 80% had TOC levels less than 3 mg/L. On the other hand, WATERSTATS reports that less than 6% of surface water systems surveyed had raw water TOC levels less than 1 mg/L and more than 50% had raw water TOC levels greater than 3 mg/L. In fact, this survey reports that more than 85% of surface water systems had finished water TOC levels greater than 1 mg/L.

The NAS Report addressed several important potential risk-risk tradeoffs associated with reducing radon levels in drinking water, including the trade-off between risk reduction from radon treatment that includes post-disinfection with the increased potential for DBP formation (NAS 1999b). The report concluded that, based upon median and average total trihalomethane (THM) levels taken from a 1981 survey, ground water systems would face an incremental individual lifetime cancer risk due to chlorination byproducts of 5×10^{-5}. It should be emphasized that this risk is based on average and median Trihalomethane (THM) occurrence information that does not segregate systems that disinfect from those that do. It should also be noted that this survey pre-dates the promulgation of the Stage I Disinfection Byproducts Rule by almost twenty years. Further, the NAS Report points out that this average DBP risk is smaller than the average individual lifetime fatal cancer risk associated with baseline radon exposures from ground water (untreated for radon), which is estimated at 1.2×10^{-4} using a mean radon concentration of 213 pCi/L.

While this risk comparison is instructive, a more meaningful relationship for the proposed radon rule would be to compare the trade-off between radon risk reduction from radon treatment and introduced DBP risk from disinfection added along with radon treatment. EPA emphasizes that this risk trade-off is only of concern to the small minority (<1%) of small ground water systems with radon levels above the AMCL of 4000 pCi/L and to the small minority of large ground water systems that are not already disinfecting. Presently, approximately half of all small community ground water systems already have disinfection in place, as shown in Table XIII.5. The proportion of systems having disinfection in place increases as the system's size increases; >95% of large ground water systems currently disinfect. In terms of the populations served, 83% of persons served by small community ground water systems (those serving 10,000 persons or fewer) already receive disinfected drinking water and 95% of persons served by large ground water systems already receive disinfected drinking water. As shown in Tables XIII.16 and XIII.17, even for those ground water systems adding both radon treatment and disinfection, this risk-risk trade-off tends to be very favorable, since the risk reduction from radon removal greatly outweighs the added risk from DBP formation.

An estimate of the risk reduction due to treatment of radon in water for various removal percentages and finished water concentrations is provided in Table XIII.16. These risk reductions are much greater than NAS's estimate of the average lifetime risk from DBP exposure for ground water systems, by factors ranging from 3.5 for low radon removal efficiencies (50%) to more than 130 for higher radon removal efficiencies (>95%).

TABLE XIII.16.—RADON RISK REDUCTIONS RESULTING FROM WATER TREATMENT

Radon Influent (Raw Water) level, pCi/L	Required removel efficiency (percent)	Reduced lifetime risk resulting from Water Treatment for Radon in Drinking Water[1]
500	52	1.7×10^{-4}
750	68	3.4×10^{-4}
1000	76	5.1×10^{-4}
2500	90	1.5×10^{-3}
4000	94	2.5×10^{-3}
10000	98	6.5×10^{-3}

[1] Assumes that water is treated to 80% of the radon MCL.

Table XIII.17 demonstrates the risk-risk trade-off between the risk reduction from radon removal and the risks introduced from total trihalomethanes (TTHM) for two scenarios: (1) the resulting TTHM level is 0.008 mg/L (10% of the TTHM MCL) and (2) the resulting TTHM level is 0.080 mg/L (the TTHM MCL). The table demonstrates that the risk-risk trade-off is favorable for treatment with disinfection, even for situations where radon removal efficiencies are low (50%) and TTHM levels are present at the MCL. While accounting quantitatively for the increased risk from DBP exposure for systems adding chlorination in conjunction with treatment for radon may somewhat decrease the monetized benefits estimates, disinfection may also produce additional benefits from the reduced risks of microbial contamination.

TABLE XIII.17.—RADON RISK REDUCTION FROM TREATMENT COMPARED TO DBP RISKS

Radon influent (Raw Water) level pCi/L	Estimated risk ratios: (lifetime risk reduction from radon removal[1] / lifetime average risk from TTHMs in chlorinated groundwater)		
	(NAS)[2]	TTHMs present at 10% of TTHM MCL (0.080 mg/L)[3]	TTHMs present at MCL
500	4	30	3
750	7	60	6
1000	10	90	9
2500	30	300	30
4000	50	500	50
10000	130	1200	120

Notes: [1] From Table XIII.16.

[2] From Appendix D in: National Research Council, *Risk Assessment of Radon in Drinking Water*, National Academy Press, Washington, DC. 1999. DBP concentrations are from a 1981 study and therefore pre-date the Stage 1 DBP NPDWR.

[3] US EPA Regulatory Impact Analysis for the Stage 1 Disinfectants/Disinfection Byproducts Rule. Prepared by The Cadmus Group. November 12, 1998. Analysis is based on the 95% upper confidence interval value from the Integrated Risk Information System (IRIS) lifetime unit risks for each THM. TTHM is assumed to comprised by 70% chloroform, 21% bromodichloromethane, 8% dibromochloromethane, and 1% bromoform.

[4] US EPA. Regulatory Impact Analysis for the Stage 1 Disinfectants/Disinfection Byproducts Rule. Based on the 95% upper confidence interval value from the Integrated Risk Information System (IRIS) for the lifetime unit risk for dibromochloromethane (2.4×10^{-6} risk of cancer case over 70 years of exposure).

7. Other Factors: Uncertainty in Risk, Benefit, and Cost Estimates

Estimates of health benefits from radon reduction are uncertain. EPA is including an uncertainty analysis of radon in drinking water risks in Section XII of the preamble to the proposed radon rule. A brief discussion on the uncertainty analysis is also shown in Section 10 of the RIA (USEPA 1999f) for radon in drinking water. Monetary benefit estimates are also affected by the VSL estimate that is used for fatal cancers. The WTP valuation for non-fatal cancers has less impact on benefit estimates because it contributes less than 1 percent to the total benefits estimates, due to the fact that there are few non-fatal cancers relative to fatal cancers and they receive a much lower monetary valuation.

8. Costs and Benefits of Multimedia Mitigation Program Implementation Scenarios

In addition to evaluating the costs and benefits across a range of radon levels, EPA has evaluated five scenarios that reduce radon exposure through the use of MMM programs. The implementation assumptions for each scenario are described in the next section. These five scenarios are described in detail in Section 9 of the RIA. For the MMM implementation analysis, systems were assumed to mitigate water to the 4,000 pCi/L Alternative Maximum Contaminant Level (AMCL), if necessary, and that equivalent risk reduction between the AMCL and the radon level under evaluation would be achieved through a MMM program. Therefore, the actual number of cancer cases avoided is the same for the MMM implementation scenarios as for the water mitigation only scenario. A complete discussion on why MMM is expected to achieve equal or greater risk reduction is shown in Section VI.B of the preamble for the proposed radon rule.

For the RIA, EPA used a simplified approach to estimating costs of mitigating indoor air radon risks. A point estimate of the average cost per life saved under the current voluntary radon mitigation programs served as the basis for estimating the costs of risk reduction under the MMM options. The Agency has estimated the average screening and mitigation cost per fatal lung cancer avoided to be approximately $700,000, assuming the current distribution of radon in indoor air, that all homes would be tested for radon in indoor air, and that all homes at or above EPA's voluntary action level of 4 pCi/L would be mitigated. This value was originally derived based on data gathered in 1991. The same value has been used in the RIA, without adjustment for inflation, after discussions with personnel from EPA's Office of Radiation and Indoor Air indicated that screening and mitigation costs have not increased since 1991.

9. Implementation Scenarios

EPA evaluated the annual cost of five MMM implementation scenarios that span the range of participation in MMM programs that might occur when a radon NPDWR is implemented. Each scenario assumes a different proportion of States will comply with the AMCL and implement MMM programs. It has been assumed that "50 percent of States" implies 50 percent of systems in the U.S; "60 percent of States" implies 60 percent of systems, and so on.

Scenario A: 50 percent of States implement MMM programs.
Scenario B: 60 percent of States implement MMM programs.
Scenario C: 70 percent of States implement MMM programs.
Scenario D: 80 percent of States implement MMM programs.
Scenario E: 95 percent of States implement MMM programs.

States that do *not* implement MMM programs instead must review and approve any system-level MMM programs prepared by community water systems. In these States, regardless of scenario, 90 percent of systems are assumed to comply with the AMCL *and* to implement a system-level MMM program and 10 percent are assumed to comply with the MCL. EPA requests comment on whether this is an appropriate assumption.

10. Costs and Benefits of MMM Implementation Scenarios

Table XIII.18 shows the total annual system-level and State-level costs for each MMM scenario, assuming an MCL of 300 pCi/L and AMCL of 4,000 pCi/L. Additional MMM scenario cost and benefit tables for MCL levels of 100, 500, 700, 1000, 2000, and 4000 pCi/L are shown in Appendix E of the RIA. System, State, and MMM mitigation costs decrease from $121.1 million to $60.4 million as the percentage of States implementing MMM programs increases from 50 to 95 percent. System-level costs decrease from $104 million to $47 million as the percentage of States implementing MMM programs increases from 50 to 95 percent. Costs for actual mitigation of radon in indoor air rise from $3.9 million to $4.1 million as the percentage of States implementing MMM programs rises from 50 to 95 percent. Note that these mitigation costs are relatively flat because all scenarios assume that 95 percent or more of the risk reduction will be achieved through MMM at either the State or local level.

Table XIII.19 represents the ratios of benefits to costs of MMM programs for each scenario, by system size. Only the ratios in the bottom row of the table include costs to the States. The balance of the numbers presented here represent local benefits and costs only and as such, somewhat overstate the net benefits of the scenarios. Benefit-cost ratios are generally less than one for the smallest system size category (systems serving less than 500 people), but greater than one for larger systems under all five scenarios. For larger systems, benefit-cost ratios range from 2.6 for systems serving 501–3,300 people under Scenario A to approximately 41.4 for systems serving 10,001 to 100,000 people under Scenario E. Overall benefit-cost ratios are over one for all five scenarios. This pattern is seen primarily because a larger proportion of smaller systems have influent radon levels exceeding 4000 pCi/L. A larger proportion of small systems versus large systems therefore, incur water mitigation costs to comply with the AMCL.

Table XIII.20 shows the net benefits (benefits minus costs) of the various MMM implementation scenarios. As would be expected from the benefit-cost ratios shown in Table XIII.19, all systems serving more than 500 people realize net positive benefits under all five scenarios. By far the largest proportion of net benefits is realized by systems serving 10,001 to 100,000 people.

TABLE XIII.18 (A).—ANNUAL SYSTEM—LEVEL AND STATE—LEVEL COSTS ASSOCIATED WITH THE MULTIMEDIA MITIGATION AND AMCL OPTION

[$ Millions/Year] [MCL=300 pCi/L]

System size	Scenario A 45% implement system-level MMM program; 5% mitigate water to 300 piC/L MCL; 95% mitigate water to 4000 piC/L AMCL	Scenario B 36% implement system-level MMM program; 4% mitigate water to 300 piC/L MCL; 96% mitigate water to 4000 piC/L AMCL	Scenario C 27% implement system-level MMM program; 3% mitigate water to 300 piC/L MCL; 97% mitigate water to 4000 piC/L AMCL	Scenario D 18% implement system-level MMM program; 2% mitigate water to 300 piC/L MCL; 98% mitigate water to 4000 piC/L AMCL	Scenario E 5% implement system-level MMM program; 5% mitigate water to 300 piC/L MCL; 99.5% mitigate water to 4000 piC/L AMCL
System Costs for Water Mitigation ($ millions/year)					
25–100	10.2	9.7	9.3	8.8	8.1
101–500	17.6	16.9	16.3	15.6	14.6
501–3300	9.9	9.2	8.5	7.7	6.7
3301–10,000	5.5	5.0	4.5	3.9	3.1
10,001–100,000	7.5	6.6	5.6	4.6	3.2
>100,000	2.0	1.7	1.4	1.1	0.7
Total CWS Water Mitigation Costs	52.7	49.1	45.4	41.8	36.3
Water System Administration Costs ($ millions/year)					
25–100	17.0	14.0	11.0	8.0	3.7
101–500	17.4	14.3	11.3	8.2	3.8
501–3300	12.0	9.9	7.8	5.7	2.6
3301–10,000	3.0	2.5	1.9	1.4	0.6
10,001–100,000	1.7	1.4	1.1	0.8	0.4
>100,000	0.1	0.1	0.1	0.0	0.0
Total CWS Administrative Costs	51.2	42.1	33.1	24.1	11.1
Total CWS Water Mitigation and Administrative Costs	104.0	91.2	78.5	65.9	47.4

TABLE XIII.18 (B).—STATE MMM ADMINISTRATIVE COSTS

[$ millions/year]

	Scenario A 50% of states implement state-wide MMM programs; 45% of CWS implement system-level MMM program	Scenario B 60% of states implement state-wide MMM program; 35% of CWS implement system-level MMM program	Scenario C 70% of states implement state-wide MMM program; 25% of CWS implement system-level MMM program	Scenario D 80% of states implement state-wide MMM program; 15% of CWS implement system-level MMM program	Scenario E 95% of states implement state-wide MMM program; 5% of CWS implement system-level MMM program
State costs associated with State-wide MMM program administration, reviewing system-level MMM programs, and reviewing system-level water mitigation requirements are not distributable across different system sizes.					
State Administration Costs for Water Mitigation	2.5	2.5	2.5	2.5	2.5
State Administration Costs for State-Level MMM Mitigation	2.9	3.5	4.1	4.7	5 6
State Administration Costs for System-Level MMM Mitigation	7.8	6.1	4.4	2.6	0.9
Total State Administration Costs	13.2	12.1	10.9	9.8	8.9

TABLE XIII.18 (C).—MMM TESTING AND MITIGATION COSTS

[$ million/year]

	Scenario A	Scenario B	Scenario C	Scenario D	Scenario E
CWS MMM Costs	1.9	1.5	1.1	0.7	0.2
State MMM Costs	2.1	2.5	2.9	3.3	3.9
Total MMM Costs	3.91	3.95	3.99	4.03	4.12

TABLE XIII.18 (C).—MMM TESTING AND MITIGATION COSTS—Continued

[$ million/year]

	Scenario A	Scenario B	Scenario C	Scenario D	Scenario E
Total Costs (From Tables XIII.18 A, B, and C)	121.1	107.3	93.4	79.7	60.4

TABLE XIII.19.—RATIO OF BENEFITS AND COSTS BY SYSTEM SIZE FOR EACH SCENARIO (MCL=300 PCI/L)

System size	Benefits, $M	Scenario A	Scenario B	Scenario C	Scenario D	Scenario E
25–100	3.5	0.13	0.14	0.17	0.21	0.30
101–500	16.9	0.48	0.53	0.61	0.70	0.92
501–3,300	58.0	2.59	2.98	3.51	4.27	6.23
3,301–10,000	59.2	6.87	7.85	9.16	11.0	15.61
10,001–100,000	147.3	15.82	18.35	21.84	26.96	41.43
>100,000	76.7	37.16	43.70	53.04	67.44	113.68
OVERALL	361.6	2.98	3.37	3.87	4.54	5.99

TABLE XIII.20.—NET BENEFITS BY SYSTEM SIZE FOR EACH SCENARIO [1]

System size	Benefits, $M	Scenario A	Scenario B	Scenario C	Scenario D	Scenario E
25–100	3.5	(24.3)	(20.7)	(17.1)	(13.5)	(8.3)
101–500	16.9	(18.7)	(14.8)	(11.0)	(7.1)	(1.6)
501–3,300	58.0	35.6	38.6	41.5	44.4	48.7
3,301–10,000	59.2	50.6	51.7	52.7	53.8	55.4
10,001–100,000	147.3	138.0	139.3	140.6	141.8	143.7
>100,000	76.7	74.6	74.9	75.3	75.6	76.0
OVERALL	361.6	240.5	254.3	268.2	281.9	301.2

[1] Parentheses indicate negative numbers.

H. Response to Significant Public Comments on the February 1999 HRRCA

To provide the public with opportunities to comment on the Health Risk Reduction and Cost Analysis (HRRCA) for radon in drinking water, the Agency published the HRRCA in the **Federal Register** on February 26, 1999 (64 FR 9559). The HRRCA was published six months in advance of this proposal and illustrated preliminary cost and benefit estimates for various MCL options under consideration for the proposed rule. The comment period on the HRRCA ended on April 12, 1999, and EPA received approximately 26 written comments from a variety of stakeholders, including the American Water Works Association, the National Rural Water Association, the National Association of Water Companies, the Association of Metropolitan Water Agencies, State departments of environmental protection, State health departments, State water utilities and local water utilities.

Significant comments on the HRRCA addressed the topics of radon occurrence, exposure pathways, sensitive sub-populations and the risks to smokers, risks from existing radon exposures, risks associated with co-occurring contaminants, risk increases associated with radon removal, the benefits of reduced radon exposures, the costs of radon treatment measures, the cost and benefit results, and the Multimedia Mitigation (MMM) program. The following discussion outlines the significant comments received on the HRRCA and the Agency's response to these comments.

1. Radon Occurrence

Several commenters had concerns related to EPA's analysis of radon occurrence. Two commenters felt that the radon levels in Table 3.1 of the HRRCA were too low and not representative of radon occurrence in their regions. A California water utility indicated that due to limitations of the NIRS, EPA should conduct a new national radon survey, with special emphasis on determining radon levels in the largest systems, before promulgating the rule. Two commenters from Massachusetts expressed concerns about radon occurrence. One suggested that additional analysis of radon variability in individual wells was required, and another indicated that the effects of storage and residence time on radon levels in supply systems needed to be taken into account. One commenter indicated that EPA should more strongly consider that most risk reductions predicted in the HRRCA come from reductions in radon levels in the small proportions of systems with initial very high radon levels.

EPA Response 1–1

As part of the regulatory development process, EPA updated and refined its analysis of radon occurrence patterns in ground water supplies in the United States. This new analysis incorporated information from the EPA 1995 National Inorganic and Radionuclides Survey (NIRS) of 1000 community ground water systems throughout the United States, along with supplemental data provided by States, water utilities, and academic researchers. EPA's current re-evaluation used data from 17 States to determine the differences between radon levels in ground water and radon levels in distribution systems in the same regions. The results of these comparisons were used to estimate national distributions of radon occurrence in ground water. EPA believes that the existing NIRS data, along with the Agency's updates to this data, currently provide the most comprehensive *national-level* analysis of radon occurrence patterns in ground water supplies. This analysis is not intended for the estimation of radon occurrence at the state-level.

Variability within the NIRS radon occurrence data was analyzed for several important contributing factors: within-well (temporal) variability, sampling and analytical (methods) variability, intra-system variability (variability between wells within a single system), and inter-system variability (variability between wells in different systems). Several important conclusions were drawn from this analysis. First and foremost is the conclusion that the NIRS data do capture the major sources of radon occurrence variability and thus can be used directly, without any additional correction for temporal or sampling and analytical variability, to provide reasonable national estimates of radon levels and variability levels in ground water drinking supplies. In addition, EPA analyzed the additional data sets provided from stakeholders (described previously) in conjunction with the NIRS radon data to estimate the magnitudes of the variability sources. Based on all of these analyses, EPA has concluded that the variability between systems dominates the over-all variability (it comprises approximately 70 percent of the over-all variability). Temporal variability (13–18 percent), sampling and analytical variability (less than 1 percent), and intra-system variability (12–17 percent) are relatively minor by comparison. These results are discussed in detail elsewhere (USEPA 1999b).

Note: These estimates of variability sources apply to national-level radon occurrence estimates: individual regions may have systems that show variability sources that deviate significantly from these values.

This analysis of variability was incorporated into EPA's estimates of nation-wide radon occurrence and was used in its estimates of the effects of uncertainty in occurrence information on total national costs of compliance.

In response to the comment that "most risk reductions predicted in the HRRCA come from reductions in radon levels in the small proportions of systems with initial very high radon levels", EPA agrees that a system with high radon levels would benefit more from water mitigation than a system with much lower initial radon levels, but the vast majority of the national water mitigation benefits come from systems that are above the MCL, but not that high above it (*e.g.*, 80 percent removal required for the system to be at the MCL). This is true since radon is approximately log-normally distributed (i.e., a much higher percentage of water systems can be expected to have relatively low radon levels than relatively high radon levels) and hence *most systems* fall into this category. For this reason, the summation of these smaller per system benefits enjoyed by the large number of systems nearer the MCL greatly outweigh summation of the larger per system benefits enjoyed by the minority of systems with very high radon levels. This is demonstrated in Table 6–2 of the HRRCA ("Estimated Monetized Benefits from Reducing Radon in Drinking Water"), in which the central tendency estimate of monetized benefits associated with an MCL of 500 pCi/L is 212 million dollars and the benefits associated with an MCL of 100 pCi/L is 673 million dollars. This means that, in the latter case, 461 million dollars of the benefits come just from the systems with radon levels between 100 and 500 pCi/L (80 percent removal required), while the remaining benefits (212 million dollars) come from the systems with radon levels from 500 pCi/L up to the highest radon levels.

Five commenters indicated that the estimates of the numbers of entry points per system used in the HRRCA were incorrect, in that large systems had far more entry points than the numbers given in Table 5.4 of the HRRCA. Several of these commenters cited data from the Community Water System Survey (CWSS), showing higher numbers of wells per system in each system size category than were used for cost calculations in the HRRCA.

EPA Response 1–2

The relevant distribution for costing out non-centralized treatment is the number of entry points, not the number of wells. A given entry point (the point at which treatment is applied) may be fed by several wells, and hence there is a discrepancy in numbers between the HRRCA, which reported a distribution of entry points, and Table 1–5 of the Community Water System Survey (CWSS), which reported the average number of wells per system. These numbers are related, but not directly comparable. In general, the average number of entry points for a class of ground water systems would be expected to be smaller than the average number of wells. In the HRRCA, the distribution of entry points per system was estimated from a statistical analysis ("bootstrap analysis") of the well and entry point data from the CWSS. This statistically-calculated distribution was then used to estimate the percentage of systems within a system size category having a given number of entry points. However, as part of its uncertainty analysis, EPA has used the 95% confidence upper bound of the site distribution in the national cost estimates supporting this proposal. The average number of entry points per system is roughly 10% higher using this upper bound analysis. In addition, to test the effects of varying this distribution on the national costs of compliance, the per system costs, and the per household costs, EPA conducted an uncertainty analysis (Monte Carlo analysis including sensitivity) on the distribution by simultaneously varying both the percentages of systems estimated to have a particular number of sites and the estimated number of sites. The results of this analysis are reported both in this notice and in the Regulatory Impact Analysis. It should be noted that the treatment unit costs and total number of systems dominated the cost uncertainty and that the entry point distribution was a relatively minor contributor to the overall cost uncertainty.

2. Exposure Pathways

A number of issues related to radon exposure pathways were raised. Several commenters indicated that the risks associated with the build-up of radon in carbon filters needed to be addressed in HRRCA. Concerns were also expressed about general population exposures to radon in air released from aeration facilities and exposures to workers at water utilities. Another commenter said that EPA should discuss the persistence of radon in the body after ingestion.

EPA Response 2–1

The risks from radon build-up in carbon filters and radon off-gas emissions are discussed in some detail in this notice, including an evaluation of risks, a discussion of references, and responses from a survey of air permitting boards about the permitting of radon off-gas.

EPA Response 2–2

The persistence of radon in the body following ingestion has been investigated and the results have been presented in the Criteria Document for Radon (USEPA 1999b). In brief, radon ingested in water is well-absorbed from the stomach and small intestine into the bloodstream and transported throughout the body. Radon is rapidly (within approximately one hour) excreted from the body via the lungs, so only about 1 percent of ingested radon undergoes radioactive decay while in the body. The risks from the retained radon and its decay products in various organs are calculated by NAS and adopted by EPA in the proposed rule.

3. Nature of Health Impacts

No comments were made concerning the general nature of adverse effects associated with radon exposure. Comments concerning specific aspects of health impact evaluation are summarized in the following sections.

(a) Sensitive subpopulations, risks to smokers, non-smokers. Comments on these sections are addressed together because the majority of the comments had to do with the characterization of smokers as a sensitive population. Several commenters noted that most risk reduction from reducing radon exposure occurs among smokers, and took the position that EPA should not include risk reductions to smokers in its benefits assessment, because smoking can be viewed as a voluntary risk. One commenter suggested that the smokers' willingness to pay for cigarettes also indicated a willingness to face the risk of smoking.

EPA Response 3–1

The term, "groups within the general population" is addressed, but not comprehensively defined, in the 1996 amendments to the Safe Drinking Water Act (SDWA, § 1412(b)(3)(C)). The definition of sensitive subpopulations is an issue for discussion and debate, and EPA is interested in input from stakeholders. The National Academy of Sciences (NAS) Radon in Drinking Water Committee, as part of their assessment of the risks of radon in drinking water, has considered whether groups within the general population, including smokers, may be at increased risk. The NAS Committee has indicated, in their Risk Assessment of Radon in Drinking Water report, that smokers are the only group within the general population that is more susceptible to inhalation exposure to radon progeny, but did not specifically identify smokers as a sensitive subpopulation.

In this proposal, EPA is basing its risk management decision on risks to the general population. The general population includes smokers as well as former smokers. The risk assessments for radon in air and water are based on an average member of the population, which includes smokers, former smokers, and non-smokers. A more complete discussion on the risks of radon in drinking water and air is presented in the NAS's risk assessment report and in Section XII of this preamble.

(b) Risk reduction model, risks from existing radon exposures. Commenters raised only one concern associated with the risk model used to estimate radon reduction benefits. Three commenters suggested that EPA should consider adopting a threshold-based model for radon carcinogenesis, and that EPA's current (non-threshold) approach overestimates radon risks. In support, the commenters cited a recently published paper (Miller et al, 1999) as providing evidence that a single alpha particle "hit" typical in low-level radon may not be sufficient to cause cell transformation leading to cancer.

EPA Response 3–2

There are a number of papers that have recently examined the effects of a single alpha particle on a cell nucleus of mammalian cells in culture. The authors of this study concluded that cells were more likely to be transformed to cancer causing cells if there were multiple alpha particle hits to their nuclei. However, another study, *Hei et al.* (1997), using a similar methodology, found direct evidence that a single "particle traversing a cell nucleus will have a high probability of resulting in a mutation" and concluded that their work highlighted the need for radiation protection at low doses. Moreover, follow-up microbeam experiments described by Miller et al. at the 1999 International Congress of Radiation Research demonstrated that one alpha particle track through the nucleus was indeed sufficient to induce transformation under some experimental conditions. Epidemiological data relating to low radon exposures in mines also indicate that a single alpha track through the cell may lead to cancer. Finally, while not definitive by themselves, the results from residential case-control studies provide some direct support for the conclusion that environmental levels of radon pose a risk of lung cancer. EPA has based its current risk estimates for radon in drinking water on the findings of the National Academy of Sciences. Rather than focus on the results of any one study, the NAS committees based their conclusions on the totality of data on radon—a weight-of-evidence approach.

Both the BEIR VI Report (NAS 1999a) and their report on radon in drinking water (NAS 1998b) represent the most definitive accumulation of scientific data gathered on radon since the 1988 NAS BEIR IV (NAS 1988). These committees' support for the use of linear-non-threshold relationship for radon exposure and lung cancer risk came primarily from their review of the mechanistic information on alpha-particle-induced carcinogenesis, including studies of the effect of single versus multiple hits to cell nuclei.

In the BEIR VI report (NAS 1999a), the NAS concluded that there is good evidence that a single alpha particle (high-linear energy transfer radiation) can cause major genomic changes in a cell, including mutation and transformation that potentially could lead to cancer. They noted that even if substantial repair of the genomic damage were to occur , "the passage of a single alpha particle has the potential to cause irreparable damage in cells that are not killed." Given the convincing evidence that most cancers originate from damage to a single cell, the committee went on to conclude that "on the basis of these [molecular and cellular] mechanistic considerations, and in the absence of credible evidence to the contrary, the committee adopted a linear-nonthreshold model for the relationship between radon exposure and lung-cancer risk. However, the BEIR VI committee recognized that it could not exclude the possibility of a threshold relationship between exposure and lung cancer risk at very low levels of radon exposure." The NAS committee on radon in drinking water (NAS 1999b) reiterated the finding of the BEIR VI committee's comprehensive review of the issue, that a "mechanistic interpretation is consistent with linear, non-threshold relationship between radon exposure and cancer risk". The committee noted that the "quantitative estimation of cancer risk requires assumptions about the probability of an exposed cell becoming transformed and the latent period before malignant transformation is complete. When these values are known for singly hit cells, the results might lead to reconsideration of the linear no-threshold assumption used at present." EPA recognizes that research in this area is on-going but is basing its regulatory decisions on the best currently available science and recommendations of the NAS that support use of a linear non-threshold relationship.

(c)Risk and risk reduction associated with co-occurring contaminants. Several commenters addressed the issue of risks associated with co-occurring contaminants. Other commenters indicated a need to include risks and risk reductions from co-occurring contaminants.

EPA Response 3–3

The contaminants that may co-occur with radon that are of main concern are those that can cause fouling of aeration units (or otherwise impede treatment) and those that are otherwise affected by the aeration process in such a way as to increase risks. Measures and costs to avoid aeration fouling are discussed in this notice and in the references cited. Arsenic co-occurrence may be relevant since some systems may have to treat for both, but the treatment processes are not incompatible. In fact, the only side-effect of the aeration process that may impact the removal of arsenic would be the potential oxidation of some fraction of less easily removed As(IV) form to the more easily removed As(VI) form. There would be no additional costs due to this effect, and in fact, there may be cost savings involved. The potential for increased risks due to potential disinfectant by-product formation after disinfection, is discussed next.

(d) Risk increases associated with radon removal. Five commenters said that EPA should include quantitative estimates of the risk increases associated with increased exposure to disinfection byproducts (DBPs) in the risk and cost-benefit analyses of the HRRCA. One commenter said that risks should be apportioned appropriately between the proposed radon rule and the Groundwater rule. Another commenter maintained that, contrary to the assertion in the HRRCA, there would be no reduction in microbial risks due to the increased disinfection associated with the radon rule because most groundwater sources currently present no microbial risks.

EPA Response 3–4

EPA would like to highlight that the AMCL/MMM option is the preferred option for all drinking water systems, which would result in very few water treatment systems adding disinfection. EPA expects the radon rule to result in a minority of ground water systems choosing the MCL option, and of those, many will be larger systems. Since very few small systems are expected to choose the MCL option , very few systems are above the AMCL of 4000 pCi/L, and most large ground water systems already disinfect their water, few systems are expected to add disinfection in response to the radon rule, i.e., increased risk due to disinfection by-product formation should not be a significant issue. However, EPA does evaluate this risk-risk trade-off in this notice for that minority of systems that will be expected to add disinfection with treatment for radon. For that minority of systems, the trade-off between decreased risks from radon and increased risks from disinfection-by-products is favorable.

4. Benefits of Reduced Radon Exposure

The majority of the comments related to the estimation of benefits focused on the methods used to monetize reductions in cancer risks. There were also a few comments on non-quantifiable benefits, and on several other topics. The previous comments pertaining to risk reductions to smokers and that benefits from these risk reductions should be excluded from the HRRCA apply here as well.

(a) Nature of regulatory benefits. There were few comments on this section, most of which pertained to non-quantifiable benefits. One commenter indicated that the peace-of-mind non-quantifiable benefit from radon reduction would be offset by the anxiety of those living near aeration plants. Another noted that peace-of-mind benefits were not easy to quantify for non-threshold pollutants like radon and, in fact, that the regulation of radon might actually increase anxiety by drawing attention to the risks associated with radon exposures. Commenters also noted that claiming arsenic reduction as a benefit from aeration is questionable because there is no demonstrated correlation between the levels of radon and arsenic in groundwater systems.

EPA Response 4–1

By definition, non-quantifiable benefits cannot be measured and have not been measured in the HRRCA analysis. Thus, comparisons of types of such benefits are not very meaningful. EPA attempts to note these potential benefits when the Agency believes they might occur, as in the case of peace-of-mind benefits from radon reduction. There may also be non-quantifiable costs that may offset any non-quantifiable benefits. These include anxiety on the part of residents near treatment plants and customers who may not have previously been aware of radon in their water. As noted elsewhere in this preamble, EPA believes it unlikely that accounting for these non-quantifiable benefits and costs quantitatively would significantly alter the overall assessment.

(b) Monetization of benefits. Comments related to risk reduction have been discussed in previous responses, so are not discussed further here. Commenters addressed all three approaches to monetizing benefits: the value of statistical life; the costs of illness; and willingness-to-pay. A number of commenters suggested the use of Quality-Adjusted Life Years (QALY) as an alternative approach to the valuation of health benefits. One commenter indicated that the use of QALYs was a good way to avoid having to monetize health outcomes. Two commenters indicated that QALYs had the advantage of being able to take into account the delayed onset of cancer, as well as reduced incidence. One organization suggested QALYs as a superior method for combining the benefits from fatal and non-fatal illness over different time periods; which would be particularly useful in the case of smokers, whose cancers are likely to be delayed, but not necessarily prevented, by reductions in radon exposure.

EPA Response 4–2

The use of QALYs has been extensively discussed within EPA and also before the Environmental Economics Advisory Committee of EPA's Science Advisory Board. At this time, current Agency policy is to use Value of Statistical Life (VSL) estimates for the monetization of risk reduction benefits. EPA believes QALY calculations to be experimental and not well established for the types of analyses performed by the Agency.

(c) Value of statistical life (VSL). Several commenters questioned the use of, or the value selected for, the value of statistical life as a measure of benefits. Other commenters indicated that the large range of uncertainty associated with the estimates of risk reduction called the VSL (and the willingness-to-pay) methods into question, and indicated that EPA needed to better justify the central-tendency VSL value selected for use in the HRRCA. They maintained that the VSL approach would only be appropriate if the VSL estimates were derived from "similar scenarios" to those being evaluated in the HRRCA. Another commenter suggested that using the VSL was inappropriate in that the VSL dollars did not represent (as do compliance costs) actual resource losses to society that could be spent on other programs (e.g. pollution reduction). Thus, the comparison of compliance costs to VSL costs is not valid. They strongly recommend the use of compliance cost per life saved as an appropriate measure for judging radon control options. One commenter indicated that the use of the VSL approach resulted in greatly over-estimated benefits of radon exposure reduction, particularly because the VSL for smokers is the same as for non-smokers and does not account for the age at which mortality is avoided. Another questioned the validity of the mean VSL value used in the HRRCA, and indicated that VSL estimates should only come from the peer-reviewed scientific literature or from Agency documents that had been subject to public comment.

EPA Response 4–3

The VSL value, currently recommended by Agency guidance, is derived from a statistical distribution of the values found in twenty-six VSL studies, which were chosen as the best such studies available from a larger body of studies. This examination of studies was undertaken by EPA's Office of Air and Radiation in the course of its Clean Air Act retrospective analysis. EPA believes the VSL estimate ($5.8 million, 1997 dollars) to be the best estimate at this time, and is recommending that this value be used by the various program offices within the Agency. This estimate may, however, be updated in the future as additional information becomes available to assist the Agency in refining its VSL estimate. The VSL estimate is consistent with current Agency economic analysis guidance, which was recently peer reviewed by EPA's Science Advisory Board.

d. Costs of illness (COI). Two commenters suggested that EPA should further review the literature on the costs of illness and develop better cost measures for the illnesses addressed in the HRRCA.

EPA Response 4–4

EPA believes that the COI data is the most complete analysis of this type currently underway. The cost of illness (COI) data shown in the HRRCA were presented as a comparison to Willingness to Pay (WTP) to avoid chronic bronchitis. The Agency did not use the COI data to estimate risk reduction valuations for non-fatal cancers because these estimates can be seen as underestimating the total WTP to avoid non-fatal cancers. COI may understate total WTP because of its failure to account for many effects of disease such as pain and suffering, defensive expenditures, lost leisure time, and any potential altruistic benefits. It is important to note that the proportion of benefits attributable to non-fatal cancer cases accounts for less than one percent of the total benefits in the HRRCA.

(e) Willingness-to-pay. Several commenters questioned EPA's use of the willingness-to-pay (WTP) approach for monetizing non-fatal cancer risk reductions. Another suggested that a WTP value for victims of non-fatal cancers should have been used, instead of the WTP estimates for chronic bronchitis. It was also suggested that WTP measures would vary within the general population, and that use of a constant value was inappropriate.

EPA Response 4–5

EPA believes that the WTP estimates to avoid chronic bronchitis are the best available surrogate for WTP estimates to avoid non-fatal cancers. WTP estimates were used in the HRRCA as opposed to COI to value non-fatal cancer cases. EPA believes that COI may understate total WTP because of its failure to account for many effects of disease such as pain and suffering, defensive expenditures, lost leisure time, and any potential altruistic benefits. It is important to note that the proportion of benefits attributable to non-fatal cancer cases accounts for less than one percent of the total benefits in the HRRCA.

(f) Treatment of benefits over time. Many commenters objected to EPA's assumption that cancer risk reduction, and hence benefits, would begin to accrue immediately upon the reduction of radon exposures. In addition, they felt that the failure to discount health benefits resulted in an overestimation of the benefits. One commenter suggested that a "gradual phase-in" of risk reduction should be incorporated into the HRRCA benefits calculation. It was also suggested that an alternative to immediate benefits accrual be used, and that the effects of the immediate benefits accrual assumption be discussed in detail with regard to the uncertainties it introduces into the benefits estimates. One commenter identified the assumption of immediate benefits as a major source of benefits overestimation. Another comment asked that EPA provide better justification for assuming immediate benefits accrual, and suggests instead that a linear phase-in of risk reduction over 70 years would be more appropriate. Three commenters also indicate that the failure to take latency of risk reduction into account and to discount benefits appropriately, greatly biases the benefits estimates in the upward direction. One commenter indicated that the failure to discount benefits resulted in a five- to ten-fold over-estimation.

EPA Response 4–6

These comments address the issue of latency, the difference between the time of initial exposure to environmental carcinogens and the onset of any resulting cancer. Qualitative language has been added to the preamble regarding adjustments, including latency, that could be made to benefits calculations. This qualitative discussion notes that latency is one of a number of adjustments related to an evaluation of potential benefits associated with this rule. EPA believes that such adjustments should be considered simultaneously. For further discussion, see section XIII.D of the preamble.

5. Costs of Radon Treatment Measures

(a) Drinking water treatment technologies and costs. All of the commenters had concerns related to EPA's assumptions and analyses of costs of radon treatment measures. In fact, one commenter suggested that the entire section was oversimplified by EPA. Most of the commenters, however, provided more specific comments which are outlined next.

EPA Response 5–1

Most, if not all, commenters assumed that EPA would propose that the risks from radon would be best addressed by drinking water systems attempting to meet the MCL. Under this scenario, many small systems would be in situations where they faced very difficult treatment issues, often with technically difficult and/or expensive solutions. However, EPA is suggesting that the risks from radon are best addressed by the combined use of the AMCL with a multi-media mitigation (MMM) program. Since the proposal also includes a regulatory expectation of adoption of the AMCL by small systems, EPA believes that many of the comments received are less applicable to this proposal than if the MCL were the preferred route of compliance.

(b) Aeration. Several commenters expressed concerns related to aeration costs. One major concern was EPA's failure to address worker safety issues, and the associated cost of occupational safety programs, at treatment plants. A reference to earlier studies of increased risk to neighbors is provided, but details are not included to evaluate these studies. Concern was expressed that costs for permitting and control of radon emissions from treatment plants were not included, and that the public might react strongly to the presence of a local treatment plant even if analysis showed the risk to be minimal. Three commenters noted that the HRRCA failed to consider quantifiable corrosion control costs associated with aeration. Installation of aeration for radon removal may also affect lead/copper levels in the water distribution system, resulting in additional treatment modifications and costs. Many systems will have to develop a different corrosion control strategy to comply with the lead and copper rule due to the radon regulation.

EPA Response 5–2

Worker safety issues for aeration treatment of radon in drinking water are discussed in today's notice (Section

VIII.A.3) and are discussed in more detail in other sources (USEPA 1994b, USEPA 1998h). Radon exposure to workers in drinking water treatment plants has been discussed in the literature (e.g., Fisher et al. 1996, Reichelt 1996). In fact, these discussions usually apply to situations where radon is NOT the contaminant being purposely removed, since there is currently no regulatory driver to do so. When ground water is exposed to air during treatment for any contaminant, radon may be released and may accumulate in the treatment facility. The National Research Council (NAS 1999b) suggests that the air in all groundwater facilities *treating for any contaminant* should be monitored for radon and that ventilation should be investigated as a means of reducing worker exposure. In support of this position, EPA would further strongly suggest that systems that attempt to meet the MCL (i.e., that are in States that do not adopt the AMCL or otherwise choose to meet the MCL) by installing aeration treatment should take the appropriate measures to monitor and ventilate the treatment facilities. For those small systems that choose GAC treatment, other precautions should be taken to monitor and control gamma exposure. GAC treatment issues are discussed later in this notice and are discussed in detail elsewhere (USEPA 1994b, AWWARF 1998 and 1999).

EPA has suggested that occupational exposures be limited to 100 mRem/year, a level well below the upper limit of 5000 mRem/year approved in by the President in 1987 ("Radiation Exposure Guidance to Federal Agencies for Occupational Exposure", as cited in USEPA 1994b). Based on limited data, it appears that 100 mRem/year is a maintainable objective within water treatment plants treating for radon or other contaminants. Exposure level monitoring and mitigation through a combination of air monitoring and ventilation has been demonstrated to be feasible and relatively inexpensive (e.g., Reichelt 1996).

Regarding the effects on water corrosivity and the impacts of costs of corrosion control measures, this notice presents much more detail on EPA's assumptions. Corrosion control measures are included in national cost estimates and are discussed in this notice. Case study information on corrosion control costs associated with aeration are included in the Radon Technologies and Costs document (USEPA 1999h).

(c) GAC. Two commenters noted that the option for use of granular activated carbon (GAC) did not address potential problems with radioactivity buildup in the carbon. In consideration of treatment methods the two commenters saw no mention of the cost of disposal of GAC used for radon removal. If not replaced in time it will become a low level radioactive waste because of Lead 210 and will become difficult to dispose of. Other issues that need to be addressed include: will the unit require special shielding; may the charcoal bed be required to have a radioactive materials license from the State; and how may radioactive carbon be disposed of?

EPA Response 5–3

Special considerations regarding GAC operations, maintenance, and ultimate GAC unit disposal are discussed in some detail in Section VIII.A of this notice, including discussions of the radiation hazards involved and steps that can be taken to ameliorate these hazards. GAC disposal costs are included in the operations and maintenance costs in the model used for cost estimates. Comparisons of modeled GAC capital and operations & maintenance cost estimates to actual costs reported in case studies are included in Section VIII of this notice. EPA would like to strongly emphasize that carbon bed lifetimes (carbon bed replacement rates) should be designed to preclude situations where disposal becomes prohibitively expensive or technically infeasible.

Recently, the American Water Works Association Research Foundation has published a study on the use of GAC for radon removal, which includes discussions of the issues described previously, that concludes that GAC is a tenable treatment strategy for small systems when used properly under the appropriate circumstances (AWWARF 1998a). AWWARF also reviewed the proper use of GAC for radon removal in its recent review of general radon removal strategies (AWWARF 1998b). When the final radon rule is promulgated, a guidance manual will be published describing technical issues and solutions for small systems installing treatment.

One commenter suggested that the costs for GAC seemed to be too high. The figures used in the analysis could be two orders of magnitude above the costs actually seen by the systems.

EPA Response 5–4

EPA agrees that its GAC cost estimates seem to be very high, as compared to case studies (USEPA 1999h, AWWARF 1998b). EPA agrees with others (e.g., AWWARF 1998a and b) that GAC will probably be cost-effective for very small systems or in a point-of-entry mode. This issue is addressed in the preamble (Section VIII.A) and GAC will be included as a small systems compliance technology.

(d) Regionalization. Two commenters questioned a cost of $280,000 as the single cost for regionalization. Assuming $100/foot for an interconnection, these costs would equate to an interconnection of 2800 feet which seems low. Systems are usually separated by more than one-half mile. A range of costs may need to be considered rather than a single number. Smaller systems will have smaller costs, while large systems will have larger costs. Thus, the charge for regionalization should vary by systems size. Also, EPA should clarify whether or not regionalization charges include yearly operation and maintenance costs.

EPA Response 5–5

EPA agrees that the costs of regionalization would be expected to change with water system size, but, as indicated in the assumptions outlined in the February 26, 1999 HRRCA, EPA assumed that only very small systems (those serving fewer than 500) would resort to regionalization in response to the radon rule. Given that the proposed rule involves a multi-media approach that greatly encourages small systems to choose the AMCL of 4000 pCi/L in conjunction with a multi-media mitigation program, EPA expects that very few systems would choose regionalization as an option. EPA believes that the assumption that 1 out of 100 small systems that choose the MCL option would regionalize is conservative and would only be exercised if regionalization were cost-competitive with other options, except under very unusual circumstances. Since the estimate of $250,000 is much more expensive than any other option modeled for those size categories, this assumption supports the situation where small systems may be expected to entertain this option, i.e., where regionalization does not involve piping water over great distances. This figure is based on a simple estimate using the cost of installed cast iron pipe at $44 per linear foot (an average cost for several pipe relevant pipe diameters) from the 1998 Means Plumbing Cost Data and applying 20 percent for fittings, excavation, and other expenses to arrive at an estimate of $53 per linear foot, or $280,000 per linear mile. Purchased water costs ($/kgal) were assumed to equal the pre-regionalization costs of production ($/kgal), merely as a modeling convenience. In some cases, purchased water costs may be higher, in some cases lower. Although EPA does not have many case studies to support this assumption, it does have information on a Wisconsin case study in which a small water system (serving 375 persons) regionalized to connect to a near-by city water supply in 1995, partly in response to a radium violation. The capital costs for this regionalization case study was $225,000. There were no reported operations costs associated with the purchased water. EPA makes no claims that this case study is typical, but rather that this is the best assumption that it could make based on the available information. Since this is a minor part of the over-all national costs and since a more extensive modeling of the costs of regionalization would necessitate a much more detailed modeling of the additional benefits of regionalization (which were not included), this assumption is maintained in the Regulatory Impact Assessment for this proposed rule.

One commenter also questioned the feasibility of regionalization for many systems. There are very few locations where this is possible and just hooking up to a larger supplier is not practical. Many have systems that are not acceptable to a larger supplier and many larger suppliers won't accept the liability involved in taking over the small system.

EPA Response 5–6

Since most small systems are expected to adopt the AMCL/MMM option, EPA's regionalization assumption (1 percent of the minority of small systems that choose the MCL option) is consistent with this commenter's concern. Nevertheless, administrative regionalization is often feasible, in particular when this does not require new physical connections, and may be an important element of the long term compliance strategy for a number of systems.

(e) Pre-treatment to reduce iron/manganese levels. The majority of the commenters disagreed with EPA's assumptions on the removal of Fe/Mn. It was assumed that essentially all systems with high Fe/Mn levels are likely to already be treating to remove or sequester these metals. Therefore, costs of adding Fe/Mn treatment to radon removal were not included in the February, 1999 HRRCA (64 FR 9560). Commenters suggested that this is a poor cost assumption, in that there are many systems above the secondary MCL for Fe/Mn that do not treat. Of those that sequester, commenters suggested that existing treatment is ineffective once Fe/Mn has been oxidized. Therefore, filtration as well as disinfection would be required for that type of system at a significant additional cost that needs to be considered when reviewing the HRRCA.

If Fe/Mn is present in the source water, removal treatment will be necessary to prevent fouling of the radon removal system. Disposal for the Fe/Mn residuals also presents a special problem with its associated costs. One commenter noted that by not including the costs of Fe/Mn removal, EPA is making a poor assumption and may be underestimating costs.

EPA Response 5–7

EPA recognized that not quantifying the costs associated with the control of dissolved iron and manganese (Fe/Mn) was potentially a poor assumption, and indicated that this assumption would be revisited for the Regulatory Impact Analysis supporting this proposed rule. However, EPA also indicated that national costs and average per system costs would probably not be significantly affected in addressing this issue. While EPA's current modeling results support this conclusion, EPA has included the costs of adding chemical stabilizers (which minimize Fe/Mn precipitation and also provide for corrosion control in some cases) by 25 percent of small systems that treat and 15 percent of large systems that treat. A more detailed discussion on the inclusion of Fe/Mn treatment costs is provided in Section VIII of the preamble.

To further support its position on Fe/Mn control, EPA has also (1) analyzed case studies of systems aerating, which include Fe/Mn control measures for a small minority of the systems, (2) performed an analysis of the co-occurrence of radon with Fe/Mn in ground water, and (3) performed an uncertainty analysis on costs, which includes a simulation of more expensive control measures for Fe/Mn. All of these results are also discussed in Section VIII of the preamble.

(f) Post treatment-disinfection. Many commenters stated that EPA's assumption that the majority of groundwater systems already disinfect is false. Some commenters felt this is inconsistent with the Ground Water Rule estimates. Commenters suggested that analyses supporting the proposed groundwater rule estimate that only 50 percent of CWSs and only 25 percent of NTNCWSs disinfect, while Table 5–2 of the HRRCA suggests that the majority of water systems using groundwater already disinfect and that 20 percent of all water systems serving 3,300 or greater have aeration or disinfection in place.

EPA Response 5–8

The cited analyses supporting the Ground Water Rule (GWR) were conducted using occurrence estimates at the level of individual entry points at water systems. The February 1999 Radon HRRCA was conducted using occurrence estimates at the level of water systems. The GWR and radon analyses use the same data source for estimating their respective disinfection-in-place baselines, the 1997 Community Water System Survey (USEPA 1997a), the only source of information of this type that is based on a survey that was designed to be statistically representative of community water systems at the national level. The GWR used a disinfection-in-place baseline for entry points and the radon HRRCA used a disinfection-in-place baseline for water systems.

The most desirable level of analysis is at the entry point, but the only nationally representative data source for radon, the National Inorganics and Radionuclides Survey, was conducted at the water system level (samples were taken at the tap), which provides no information about radon occurrence at individual entry points within water systems. Radon intrasystem (within system) occurrence variability studies were not available for the analyses supporting the February 1999 radon HRRCA. In the interim between publishing the radon HRRCA and today's proposal, EPA has conducted radon intrasystem variability studies (based on studies other than NIRS) and has used the results of this study to estimate radon occurrence at the entry point level. The current Regulatory Impact Analysis supporting the Radon rule was conducted at the entry point level, consistent with the Ground Water Rule.

EPA Response 5–9

The additional costs to which this commenter is referring, namely the costs of storage for contact time, are included in the costs of the clearwell, which are included in the costs of the aeration process. In the scenarios in which disinfection is assumed, EPA does NOT assume that the systems have a clearwell in place and does include the costs of adding a clearwell for collection of water after aeration and for five minutes of disinfection contact time, which EPA believes to be sufficient for 4-log viral de-activation.

(g) Monitoring costs. One commenter expressed concerns regarding EPA's calculation of monitoring costs. The commenter suggested that EPA grossly underestimated the number of wells per

different water system size in Table 5.4 of the HRRCA (64 FR 9585), page 9585 and in Appendix D of the HRRCA. As a result, monitoring costs need to be recalculated by EPA.

EPA Response 5–10

See EPA Response 1–2 for EPA's approach to determining the number of wells per system.

(h) Choice of treatment responses. As noted previously in Section G, one commenter questioned whether chlorination would always be the disinfection technology of choice, as well as EPA's assumption that existing chlorination practices would not have to be augmented if aeration were installed. Other commenters on cost issues questioned the feasibility and practicability of some technologies on cost grounds.

EPA Response 5–11

EPA assumed that chlorination would be the "typical" disinfection technology chosen to model the "average treatment costs" (or "central tendency costs"). There is no way to know beforehand exactly how the universe of water systems will behave in response to a given situation, so EPA believes that the best way to model national compliance costs is to estimate these central tendency costs, then to use statistical tools to capture the fact that "real world costs" will spread around the central tendency costs, rather than being equivalent to them. By estimating the central tendency costs and using statistical uncertainty to capture "real world" variability (including variability in disinfection costs), EPA believes that this modeling technique allows for the fact that real systems will behave in a variety of ways, including things like choosing different disinfection technologies.

(i) Site and system costs. A number of issues were raised concerning site and system cost estimates. Several commenters suggested that the HRRCA severely underestimated the number of sites per system, citing the difference between the CWSS data and HRRCA assumptions. Several commenters noted that the numbers of sources per system in Table 5–4 of the HRRCA for systems serving 10,001—50,000 were too low. One commenter maintained that the number of sources per system could have a significant impact on national treatment costs.

EPA Response 5–12

EPA agrees that the distribution of the number of sites per system was underestimated and *has revised its estimate to be consistent with the CWSS.* However, it should be noted that while the distribution of the sites per system actually does have an impact on national treatment costs, this impact is significantly mitigated by the fact that the flow per well being treated decreases proportionally as the estimated number of wells per system increases.

(j) Aggregated national costs. Several commenters agreed that the national average costs masked significant impacts on small systems. When small systems are considered, the financial impact is large; in some cases, water bills could double or triple. Providing individual system costs is critical so that utilities can explain to their customers the specific costs and benefits for that specific system.

EPA Response 5–13

EPA estimates household impacts for small systems that install treatment (per household costs) by estimating the costs that small systems would face (per system costs), then spreading these costs over the customer base (population served). As demonstrated in the HRRCA, household costs for small systems are expected to be many times higher for very small systems than for larger systems. In listing small systems compliance technologies for radon, EPA estimated the impacts on small systems by estimating the per system costs and the per household costs and comparing them to affordability criteria, as described in this notice and in the references cited. However, it should also be noted that the vast majority of small systems are expected to comply with the AMCL/MMM option, rather than the MCL option. Under these circumstances, less than 1 percent of small systems would have to take measures to reduce radon levels in their drinking water.

(k) Costs to CWSs. Small systems will bear a significant percentage of the costs for implementing a radon MCL, but will only accrue a small proportion of the benefits. At the 300 pCi/L, the two categories of smallest systems combined would receive 5.6 percent of the benefits at this level, but would pay 42 percent of the total costs. Several commenters indicated that the benefit-cost ratio for small systems was thus highly unfavorable.

EPA Response 5–14

EPA recognizes that small systems experience similar benefits per customer as large systems, but, due to economies of scale (higher treatment costs per gallon treated), experience much higher costs per customer compared to large systems. This, of course, leads to higher costs at the same level of benefits. However, EPA has also recognized that radon is a multi-media problem in which most of the risk is presented from sources other than drinking water and has addressed this fact by designating the AMCL/MMM option as the preferred option for small systems. This will greatly lower the per customer costs faced by small systems and may lead to greater total benefits that accrue to small systems.

(l) Costs to consumers/households. One commenter thought that the household consumption presented in the HRRCA (83,000 gal/year) is too low. This is an understatement because treatment would be required for all water produced, not just water consumed by households.

EPA Response 5–15

EPA does not assume that per system costs are based only on residential water use and so does not miscalculate water *prices* in the way described by the commenter. To determine the price of water, EPA calculates per system costs based on both residential and non-residential consumers (which is the main reason EPA calculates costs for privately-owned and publically-owned separately, i.e., because they have different ratios of residential to non-residential consumption). These per system costs determine the costs per gallon *treated* (not per gallon *consumed*) to determine the water price. The water price may then be used in conjunction with the household consumption to estimate the water bills faced by households, since they do pay by the gallon consumed (and not by the gallon treated).

(m) Application of radon related costs to other rules. Several commenters addressed the need to include the cumulative impact of regulations in the RIA. The incremental costs of the regulations for radon, arsenic, and groundwater systems could substantially change the affordability analysis for small systems. Thus, treatment decisions need to be made with an understanding of all the requirements that must be met so that treatment systems can be designed to meet all requirements. One commenter suggested a multi-rule cost and benefit analysis to capture the true costs incurred by these systems.

EPA Response 5–16

The cumulative effects of rules are captured in EPA's "affordability criteria", which are described in the publicly available 1998 EPA document, "National-Level Affordability Criteria Under the 1996 Amendments to the Safe

Drinking Water Act" (USEPA 1998e). These small system affordability criteria take into account how much consumers are currently paying for typical water bills. Since the upcoming regulations will affect these amounts, the cumulative effect of the costs of the rules will be explicitly considered in the affordability determinations for small systems as new rules are issued. EPA recognizes that its method of basing affordability determinations on average costs does not address the situation of systems that have significantly above average costs because they must treat for a number of contaminants simultaneously. EPA believes this approach is consistent with the requirements of SDWA for identifying affordable small system technologies and notes that other SDWA mechanisms may be used to address situations where systems incur considerably higher costs.

6. Cost and Benefit Results

The main concern of many of the comments regarding this section suggested that the costs of controlling radon in drinking water far outweighed possible benefits, especially for small systems. Controlling indoor air radon was identified as a better use of regulatory and economic resources by several commenters. Commenters also had concerns regarding how national total costs, benefits, and economic impacts were calculated, and regarding the uncertainties in costs and benefits estimates.

(a) Overview of analytical approach. Many commenters indicated that the cost-benefit analysis was skewed toward overestimating benefits, and/or omitted important cost elements. One concern shared by many of these commenters was that the cost-benefit calculations were biased because mitigation costs, but not health benefits, were discounted. A commenter also indicated that too many assumptions had been used to derive cost and benefit estimates.

EPA Response 6–1

The radon cost benefit analysis was performed according to EPA guidelines, in an attempt to fairly portray both costs and benefits, and not leave out important categories of either costs or benefits.

Annual mitigation costs are compared to annual benefits for the cost benefit comparisons. Annual mitigation costs consist of annualized capital costs plus yearly operating costs. Annualized costs are computed under the assumption that capital expenditure are made up front, with borrowed funds, and the payments are then annualized over a period of twenty years. Changes in the rate of interest used in the annualization process will change the annual cost, just like a mortgage will change with different rates of interest. Adding yearly operating costs for one year to annualized capital costs for one year gives the total annual cost for the year. The issue of discounting of benefits is discussed in Section XIII.D.

In any modeling process, assumptions must be made. To model costs and benefits, assumptions about those costs and benefits must be made. The number of assumptions needed depends on the complexity of the problem addressed, and the time and information available to address it. We would be interested in information that might inform our modeling, particularly addressing improvements that could be made to specific assumptions.

(b) MCL decision-making criteria. A commenter requested that EPA define explicit decision-making criteria for setting MCL levels, to assure that the net benefit to society is positive.

Another commenter indicated that, because drinking water radon accounts for a small portion of total risks, EPA should consider the relative costs and benefits of mitigation on a case-by-case basis at individual systems before making regulatory decisions. A commenter suggested that if the latency of cancer risk reduction and benefits were discounted properly, the national cost-benefit ratios for radon mitigation would be between 5:1 and 9:1. They stated that EPA should not promulgate a rule with net negative benefits, especially in light of the large economic impacts on small systems.

A commenter indicated that the cost-benefit ratios in Table 6–13 of the HRRCA imply that regulation of radon in ground water is not justified. They point out that systems serving 25–3,300 people incur at least 56 percent of the costs and generate at most 21 percent of the total benefits at all MCLs. They say that justifying radon control in drinking water by adding in the benefits of MMM programs is not justified. Another commenter also maintained that the small, localized benefits of controlling radon exposures do not come near to justifying the costs of mitigation.

One commenter said that the decision to set an MCL must take into account the level of uncertainty in cost and benefit estimates. Another commenter suggested that the Agency undertake a quantitative uncertainty analysis of the cost and benefit estimates. Two commenters said that the closeness of the cost and benefit estimates should be considered in setting a regulatory level; if uncertainty is large, a less stringent MCL would be justified.

EPA Response 6–2

EPA has included a detailed discussion on its decision-making criteria for setting the MCL for radon in drinking water in the preamble for the proposed rulemaking (see Section VII.D).

(c) National costs of radon mitigation. Two commenters indicated that the national cost estimates obscured the high costs that would be borne by individual systems. One commenter indicated that radon variability in individual wells increases the uncertainty in the cost estimates. Another commenter said that cost estimates should include the costs of more frequent lead and copper exceedences brought about by increased aeration. Other comments on specific cost elements were summarized in Section 5. One commenter requested that EPA regionally disaggregate cost and benefit estimates because of structural and operational differences among water systems. Another commenter suggested that EPA should conduct a more comprehensive analysis of costs and benefits, including cost elements not currently addressed, such as waste management.

EPA Response 6–3

The national costs include an uncertainty analysis which captures the regional spread in treatment costs. In addition, EPA has estimated total national costs by assuming that most systems will face "typical costs", but that some will face "high side" and some "low side" treatment costs. These "high side" and "low side" cost differences are largely based on regional considerations, like the costs of land, structure, and permitting.

(d) Incremental costs and benefits. One commenter indicated that the incremental costs and benefits of the various MCL options should be presented in the HRRCA. They question the affordability of radon mitigation for small systems.

EPA Response 6–4

EPA has provided an analysis of the incremental costs and benefits of each MCL option in the HRRCA. See Table 6–7, Estimates of the Annual Incremental Costs and Benefits of Reducing Radon in Drinking Water, in the February 1999 HRRCA.

(e) Costs to community water systems. One commenter said that a more accurate picture of costs and impacts (inclusive of State and local costs) would be needed to make a reasonable

risk management decision. Another commenter suggested that EPA should consider the cumulative costs of all drinking water regulations on drinking water systems.

EPA Response 6–5

See EPA Response 5–14 for EPA's approach to determining the costs to CWSs. Administrative costs to States were not included in the February 1999 HRRCA, but have been added in the RIA for the proposed rule.

(f) Costs and impacts on households. One commenter asked that EPA explain how it determined what was an "acceptable" percentage of household income that would go to radon mitigation. Another commenter indicated that household costs should be compared to benefits at the local, rather than national, level, because benefits and costs are realized locally. A commenter indicated the median household incomes for households served by different system sizes are not shown; they also suggested that household costs as a percentage of income were underestimated in Table 6–11 of the HRRCA. One commenter said that expressing household impacts as a proportion of annual income trivializes it and that costs could more meaningfully be compared to other types of household expenses (i.e., food, rent). Several commenters also noted the significant impact the costs could have on customer water bills for small systems.

EPA Response 6–6

See EPA Response 5–15 for EPA's approach to determining the costs to households.

(g) Summary of costs and benefits. Comments from one organization regarding the cost-benefit comparison for radon mitigation were typical of those received from other sources. They cited the NRC/NAS report as indicating that only two percent of population risk came from drinking water and questioned whether the high costs of the rule could justify the small benefits obtained. They said that the cost-benefit comparison did not justify regulating radon in ground water, especially in small systems, where costs were highest and benefits lowest. Another commenter also pointed out that it would be more cost-effective to regulate radon in indoor air than in drinking water and further maintained that spending resources to mitigate radon in water could actually result in reduced public health protection. They point out that the cost-benefit ratios for the smallest systems range from 20:1 to 50:1, and suggest that these ratios, rather than the greater aggregate costs to large systems, should be persuasive in regulatory decision making. Other commenters suggested the high cost-benefit ratios did not justify the regulation of small systems.

EPA Response 6–7

The 1996 Safe Drinking Water Act Amendments require EPA to propose a regulation for radon in drinking water by August 1999. The options for small systems, proposed for public comment in this rulemaking, represents EPA's efforts to address stakeholder comments concerning small systems.

7. Multimedia Mitigation Programs

(a) Multimedia programs. Two commenters indicated that setting the AMCL at 4,000 pCi/L was justifiable. They suggested that EPA should utilize on MMM approach as the primary tool for reducing radon risks, and not use the SDWA to force the States to develop MMM programs.

Several commenters noted that the MCL EPA selects should be justifiable on cost-benefit grounds, with the MMM program serving as a supplemental program to allow States to achieve greater risk reduction at less cost. Another commenter suggested the multimedia approach allowed under the 1996 amendments to the SDWA should not be used with regard to radon–222 in water.

EPA Response 7–1

The requirement for implementation of an EPA-approved MMM program in conjunction with State adoption of the AMCL is consistent with the statutory framework outlined by Congress in the SDWA provision on radon. As proposed, States may choose either to adopt the MCL or the AMCL and an MMM program. EPA recommends that small systems comply with an AMCL of 4,000 pCi/L and implement a MMM program. See section VII.D for background on the selection of the MCL and AMCL.

Two commenters believe the radon regulation may result in litigation against water utilities, local, and State governments if systems comply with the AMCL rather than the MCL. As a result, some water utilities could choose to comply with the more stringent MCL rather than face potential litigation for meeting a "less stringent standard," regardless of the increased public health protection. According to one commenter, problems will arise when both the AMCL and the MCL are required to appear on the annual Consumer Confidence Report. The public will view the AMCL as an attempt by the water industry to get around the MCL. This will leave the water utility vulnerable to toxic tort lawsuits. Because of these problems, the concept of an MMM program/AMCL is not as attractive as it once appeared.

EPA Response 7–2

EPA is aware of this concern and the risk communication challenges of two regulatory limits for radon in drinking water. However, the SDWA framework requires EPA to set an alternative maximum contaminant limit for radon if the proposed MCL is more stringent than the level of radon in outdoor air. It is important to recognize that in State primacy applications for oversight and enforcement of the drinking water program, States choosing the MMM approach will be adopting 4,000 pCi/L as their MCL. In addition, as part of the proposed rule, EPA will be amending the Consumer Confidence Reporting Rule to reflect the proposed regulation for radon. Under § 141.153 of the proposed radon rule, a system operating under an approved multimedia mitigation program and subject to an Alternative MCL (AMCL) for radon must report the AMCL instead of the MCL whenever reporting on the MCL is required.

Another commenter questioned the need for regulating radon in water below 3,000 pCi/L, and maintained that there is no conceivable reason to regulate it at 100 pCi/L, with or without an MMM program.

EPA Response 7–3

See EPA Response 6–2 for EPA's decision criteria for setting an MCL.

(b) Implementation scenarios evaluated. One commenter feels that a "desk top review" of States likely to adopt an MMM program would give more useful estimates of MMM acceptance than the HRRCA assumptions of zero, 50 percent, and 100 percent adoption of MMM programs. This commenter felt that for an MMM program to be productive, two things are necessary: (1) relatively high radon concentration in water and (2) relatively high radon in indoor air.

EPA Response 7–4

For the purposes of the HRRCA, EPA made these assumptions as a straight forward approach for assessing overall cost implications of MMM. States are not required to make their determinations on whether to adopt the MMM approach until after the rule is final in August 2000. Therefore, EPA did not have this information available when developing the HRRCA, nor does EPA have this information at this time. However, discussions with many State drinking water and radon program staff suggest that many States are seriously considering the MMM approach.

EPA expects that MMM programs will be able to achieve indoor radon risk reduction even in areas of low radon potential. It is important to keep in mind that the only way to know if a house has elevated indoor radon levels is to test it. Many homes in low radon potential areas have been found with levels well above EPA's action level of 4 pCi/L, often next door to houses with very low levels. EPA estimates that about 6 million homes in the U.S. of the 83 million homes that should test are at or above 4 pCi/L. To date only about 11 million homes have been tested. In addition, EPA is not requiring State MMM program plans to precisely quantify equivalency in risk reduction between radon in drinking water and radon in indoor air.

(c) Multimedia mitigation cost and benefit assumptions. Two commenters indicated that, even if it is not known how the MMM programs will be funded, the costs of administering such programs should be included in the HRRCA. Several commenters expressed concerns regarding the estimated cost of $700,000 per fatal cancer averted. One commenter felt that using this value is far too optimistic, indicating that the cost of radon risk reduction under State-mandated MMM programs will significantly exceed present costs under the voluntary system. To get the greatest risk reductions at the lowest costs, MMM program should focus on the houses with the highest radon concentrations. Another commenter recommended that EPA develop an MMM program that is better than the existing voluntary programs and further reduces the cost per fatal cancer avoided. The commenter also requested that EPA supply background information supporting use of this single MMM program cost estimate.

EPA Response 7–5

EPA is required under the UMRA to assess the costs to States of implementing and administering both the MCL and the MMM/AMCL. EPA has addressed these costs in the preamble of the rule.

EPA believes that the criteria for EPA approval of State MMM program plans will augment and build on existing State indoor radon programs and will result in an increased level of risk reduction.

As part of developing the 1992 "A Citizen's Guide to Radon," EPA analyzed the risk reductions and costs of various radon testing and mitigation options (USEPA 1992b). Based on these analyses, a point estimate of the average cost per life saved of the current national voluntary radon program was used as the basis for the cost estimate of risk reduction for the MMM option. EPA had previously estimated that the average cost per fatal lung cancer avoided from testing all existing homes in the U.S. and mitigation of all those homes at or above EPA's voluntary action level of 4 pCi./L is approximately $700,000. This value was originally estimated by EPA in 1991. Since that time there has been an equivalent offset between a decrease in testing and mitigation costs since 1992 and the expected increase due to inflation in the years 1992–1997.

One commenter stated that experiences in Massachusetts showed that the costs of incorporating passive radon resistant construction techniques is about the same as current prices for marginal quality (active) radon mitigation in existing buildings, and disputed the HRRCA statement that passive techniques are much less expensive. The commenter supported the NAS findings that the effectiveness of these techniques in normal construction practice is uncertain.

EPA Response 7–6

Builders have reported costs as low as $100 to install radon resistant new construction features which is significantly less than the $350—$500 that was derived in EPA's cost-effectiveness analysis of the radon model standards. The cost of materials alone for the passive system will always be less than the cost for an active system which includes the cost of a fan. In many areas, the majority of the features for radon-resistant new construction are already required by code or are common building practice, such as an aggregate layer, "poly" sheeting, and sealing and other weatherization techniques. The only additional cost is associated with the vent stack consisting of PVC pipe and fittings. In those areas where gravel is not commonly used, builders can use a drain tile loop or other alternative less costly than gravel to facilitate communication under the slab. EPA estimates that the cost to mitigate an existing home ranges from $800 to $2,500 with an average cost of $1,200.

(d) Annual costs and benefits of MMM program implementation. Several concerns were raised regarding the costs and benefits associated with MMM program implementation. One commenter suggested that the MMM program description in the HRRCA provides essentially no guidance on the point from which additional risk reduction due to MMM will be measured.

EPA Response 7–7

The HRRCA was not intended to include a discussion and description of the criteria for EPA approval of State MMM programs. Rather, proposed criteria are presented in this proposed rule. EPA's proposed criteria do not entail a determination by the State of the level of indoor radon risk reduction that has already occurred ("baseline") as the basis for determining how much more risk reduction needs to take place. Rather States, with public participation, are required to set goals that reflect State and local needs and concerns.

Another commenter states that EPA has underestimated the benefits of an MMM program. The HRRCA registers only the benefits gained in relation to water being treated to the MCL. However, according to EPA's figures, MMM benefits are expected to be much higher than those achieved by mitigating water alone.

EPA Response 7–8

EPA anticipates that MMM programs will result in sufficient risk reduction to achieve "equal or greater" risk reduction. A complete discussion on why MMM is expected to achieve equal or greater risk reduction is shown in Section VI.B of today's preamble. For the purposes of the HRRCA analyses, EPA made the conservative assumption that the level of risk reduction would at least be "equal" to that achieved by universal compliance with the MCL.

8. Other Key Comments

(a) Omission of non-transient non-community water systems (NTNCWSs). Eleven commenters criticized EPA's failure to include NTNCWSs in the HRRCA. Three commenters indicate that failure to include NTNCWSs grossly underestimates costs of radon mitigation. Another commenter also suggests that NTNCWSs should be included in the HRRCA, to provide a better picture of both costs and benefits. Two commenters would also like NTNCWSs included because impacts on these systems are likely to be high. Other commenters maintain that excluding NTNCWSs skews benefit-cost analyses in favor of regulation. Another commenter indicates that NTNCWSs, because of the type of wells and aquifers that they draw from, will be most affected by a radon rule.

EPA Response 8–1

Partly as a result of concerns raised by commenters, and partly as a result of its own preliminary analysis of exposure and risk, EPA is not proposing that NTNCWSs be covered by this rule. A more complete discussion of this issue is included in the preamble for the proposed rule. EPA has conducted a preliminary analysis on exposure and risks to NTNCWSs and is asking for public comment on this preliminary analysis and on the proposed exclusion of NTNCWSs. An analysis of the potential benefits and costs of radon in drinking water for NTNCWSs is included in the docket for this proposed rulemaking. (USEPA 1999m)

XIV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51,735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of E.O. 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in the proposal in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act (RFA)

1. Today's Proposed Rule

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. Today's proposed rule may have significant economic impact on a substantial number of small entities and EPA has prepared an Initial Regulatory Flexibility Analysis (IRFA). In addition, when preparing an IRFA, EPA must convene a Small Business Advocacy Review (SBAR) Panel. A discussion of the Panel's recommendations and EPA's response to their recommendations is shown in Section 6.

2. Use of Alternative Small Entity Definition

The EPA is proposing that small CWS serving 10,000 people or less must comply with the AMCL, and implement a MMM program (if there is no state MMM program). This is the cut-off level specified by Congress in the 1996 amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of "small" for small businesses, governments, and non-profit organizations previously established under the RFA, EPA requested comment on an alternative definition of "small entity" in the Preamble to the proposed Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the SBA Office of Advocacy on the definition as it relates to small business analysis. In the preamble to the final CCR regulation (63 FR 4511, August 19, 1998), EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it for this radon in drinking water rulemaking. Further information supporting this certification is available in the public docket for this rule.

3. Background and Analysis

The RFA requires EPA to address the following when completing an IRFA: (1) describe the reasons why action by the Agency is being considered; (2) state succinctly the objectives of, and legal basis for, the proposed rule; (3) describe, and where feasible, estimate the number of small entities to which the proposed rule will apply; (4) describe the projected reporting, record keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of reports or records; (5) identify, to the extent practicable, all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and (6) describe any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes while minimizing any significant economic impact of the proposed rule on small entities. EPA has considered and addressed all of the previously described requirements. The following is a summary of the IRFA.

The first and second requirements are discussed in Section II of this Preamble. The third, fourth, and sixth requirements are summarized as follows. The fifth requirement is discussed under Section VIII.A.2 of this Preamble in a subsection addressing potential interactions between the radon rule and upcoming and existing rules affecting ground water systems.

4. Number of Small Entities Affected

EPA estimates that 40,863 ground water systems are potentially affected by the proposed radon rule, with 96 percent of these systems serving less than 10,000 persons. Of the 39,420 small systems potentially affected, EPA estimates that 1,761 (4.4 percent) small systems will have to modify treatment (install treatment technology) to comply with the AMCL. The proposed rule recommends that small systems meet the 4,000 pCi/L AMCL and implement a multimedia mitigation (MMM) program if their State does not implement a MMM program. Small systems may also choose to comply with the MCL rather than implement an MMM program. As Table XIV.1 indicates, water mitigation administration costs for small systems remain the same under any State MMM program adoption scenario. However, small systems located in States that do not implement a MMM program must develop and implement their own MMM program for the population they serve (unless they choose to comply with the MCL), thus increasing their costs. Additional MMM implementation scenarios have been analyzed in the RIA (USEPA 1999f) which is included in the docket for this proposed rulemaking.

TABLE XIV.1.—ANNUAL WATER MITIGATION AND MMM PROGRAM COSTS TO SMALL SYSTEMS

[$Millions, 1997]

Cost description	100% of states adopt MMM	50% of states adopt MMM
Water Mitigation Costs [1]		
Total Capital Costs	118.5	194.1
Total Annual Costs [2]	31.3	43.2
Water Mitigation Administration Costs	5.8	5.8
Multimedia Mitigation Program Costs [3]	0	43.3
Total Small System Costs per Year	37.1	92.4

Notes:

[1] Costs to small systems to mitigate water to the AMCL of 4,000 pCi/L.

[2] Includes annual capital costs, monitoring costs, and operation and maintenance costs.

[3] Does not include the costs of testing and mitigating homes.

5. Proposed Rule Reporting Requirements for Small Systems

The proposed radon rule requires small systems to maintain records and to report radon concentration levels at point-of-entry to the water system's distribution system. Small systems are also required to provide radon information in the Consumer Confidence Report, and if the system is implementing its own MMM program, reports on progress to the goals outlined in the system's MMM program plan. Radon monitoring and reporting for water mitigation will be required on a quarterly basis for at least one year, but thereafter the frequency may be reduced to annually or once every three years depending on the level of radon present (see Section VIII.E). Other existing information and reporting requirements, such as Consumer Confidence Reports and (proposed) public notification requirements, will be marginally expanded to encompass radon along with other contaminants (see Section X). As is the case for other contaminants, required information on system radon levels must be provided by affected systems and is not considered to be confidential. The professional skills necessary for preparing the reports are the same skill level required by small systems for current reporting and monitoring requirements.

The classes of small entities that are subject to the proposed radon rule include public groundwater systems serving less than 10,000 people. Small systems are further classified into very very small systems (serving 25–500 persons), very small systems (serving 501–3,300 persons, and small systems (serving 3,301–10,000 persons).

6. Significant Regulatory Alternatives and SBAR Panel Recommendations

In response to the SBAR Panel's recommendations and other small entity concerns, EPA has included several requirements to help reduce the impacts of the proposed radon rule on small entities. These requirements include: (1) Recommendation of small system compliance with the MMM/AMCL option; (2) less routine monitoring; (3) State granting of waivers to ground water systems to reduce monitoring frequency; and (4) encouraging and providing information about the use of low maintenance treatment technologies. A more complete discussion of the SBAR Panel recommendations and EPA's responses follow here. EPA also believes small systems can in some cases reduce their economic burden by a variety of means, including using the State revolving fund loans to offset compliance costs. In the development of this proposed rulemaking, EPA considered several regulatory alternatives to the proposed requirements for small systems. The proposal includes the regulatory expectation that they comply with the AMCL of 4,000 pCi/L and be associated with either a state or local MM program. EPA believes that this option will provide equivalent or greater health protection while reducing economic burdens to small systems. For a more detailed description of the alternatives considered in the development of the proposed rule see the RIA (USEPA 1999f) or the discussion of regulatory alternatives in Section XIV.C (Unfunded Mandates Reform Act).

In addition to being summarized here, the public docket for this proposed rulemaking includes the SBAR Panel's report on the proposed radon regulation, which outlines background information on the proposed radon rule and the types of small entities that may be subject to the proposed rule; a summary of EPA's outreach activities; and the comments and recommendations of the small entity representatives (SERs) and the Panel.

(a) *Consultations*. Consistent with the requirements of the RFA as amended by SBREFA, EPA has conducted outreach directly to representatives of small entities that may be affected by the proposed rule. Anticipating the need to convene a SBAR Panel under Section 609 of the RFA/SBREFA, in consultation with the Small Business Administration (SBA), EPA identified 23 representatives of small entities that were most likely to be subject to the proposal. In April, 1998, EPA prepared an outreach document on the radon rule titled "Information for Small Entity Representatives Regarding the Radon in Drinking Water Rule" (USEPA 1998b). EPA distributed this document to the small entity representatives (SERs), as well as stakeholder meeting discussion documents and the executive summary of the February 1994 document "Report to the United States Congress on Radon in Drinking Water: Multimedia Risk and Cost Assessment of Radon" (EPA 1994a).

On May 11, 1998, EPA held a small entity conference call from Washington DC to provide a forum for small entity input on key issues related to the planned proposal of the radon in drinking water rule. These issues included: (1) Issues related to the rule development, such as radon health risks, occurrence of radon in drinking water, treatment technologies, analytical methods, and monitoring; and (2) issues related to the development and implementation of the multimedia mitigation program guidelines. Thirty people participated in the conference call, including 13 SERs from small water systems from Arizona, California, Nebraska, New Hampshire, Utah, Washington, Alabama, Michigan, Wyoming, and New Jersey.

Efforts to identify and incorporate small entity concerns into this rulemaking culminated with the convening of a SBAR Panel on July 9, 1998, pursuant to Section 609 of RFA/SBREFA. The four person Panel was headed by EPA's Small Business Advocacy Chairperson and included the Director of the Standards and Risk Management Division within EPA's

Office of Ground Water and Drinking Water, the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget, and the Chief Counsel for Advocacy of the SBA. For a 60-day period starting on the convening date, the Panel reviewed technical background information related to this rulemaking, reviewed comments provided by the SERs, and met on several occasions. The Panel also conducted its own outreach to the SERs and held a conference call on August 10, 1998 with the SERs to identify issues and explore alternative approaches for accomplishing environmental protection goals while minimizing impacts to small entities. Details of the Panel process, along with summaries of the conference calls with the SERs and the Panel's findings and recommendations, are presented in the September 1998 document "Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule for National Primary Drinking Regulation: Radon" (USEPA 1998c).

(b) Recommendations and Actions.—Today's notice incorporates all of the recommendations on which the Panel reached consensus. In particular, the Panel made a number of recommendations regarding the MMM program guidelines, including that the guidelines be user-friendly and flexible and provide a viable and realistic alternative to meeting the MCL, for both States and CWSs. The Panel also agreed that provision of information to the public and equity are important considerations in the design of an MMM program.

In response to the Panel's recommendations and concerns heard from other stakeholders, EPA has developed specific criteria that MMM programs must meet to be approved by EPA. EPA believes these criteria are simple and straightforward and provide the flexibility States and public water systems need to develop programs to meet their different needs and concerns. The criteria permit States, with public participation and input, to determine their own prospective indoor radon risk reduction goals and to design the program strategies they determine are needed to achieve these goals. The criteria build on the existing framework of State indoor radon programs that are already working to get indoor radon risk reduction. EPA also believes that equity issues can be most effectively discussed and resolved with the public's participation and involvement in development of goals and strategies for an MMM program. Providing customers of public water systems with information about the health risks of radon and on the AMCL and MMM program option will help to promote understanding of the significant public health risks from radon in indoor air and help the public to make informed choices. Section VI of this Preamble discusses the MMM program in greater detail.

Following is a summary of the other Panel recommendations and EPA's response to these recommendations, by subject area:

Occurrence: The Panel recommended that EPA continue to refine its estimates of the number of affected wells. The occurrence section of the preamble contains an expanded description in regard to how EPA refined the estimates of the number of affected water supply wells (See Section XI.C "EPA's Most Recent Studies of Radon Levels in Ground Water").

Water Treatment: The Panel recommended the following: provide clear guidance for when granular activated carbon (GAC) treatment may be appropriate as a central or point-of-entry unit treatment technology; consider and include in its regulatory cost estimates, to the extent possible, the complete burden and benefits; and carefully consider effects of radon-off-gassing from aeration towers and potential permitting requirements in developing regulations or guidance related to aeration.

In response to these recommendations, the treatment section of the preamble contains an expanded description regarding conditions under which granular activated carbon (GAC) treatment may be appropriate as a central or point-of-entry unit treatment technology (See Section VIII.A.3 "Centralized GAC and Point-of-entry GAC"); the RIA and the treatment sections of the preamble describe the components which contribute to the regulatory economic analysis (See Section VIII.A.2 "Treatment Costs: BAT, Small Systems Compliance Technologies, and Other Treatment"); high-end treatment cost estimates have been revised to include scenarios where air-permitting costs are much higher than typical cases (see Sections VIII.A.2 "Treatment Cost Assumptions and Methodology" and "Comparison of Modeled Costs with Real Costs from Case Studies"); and information and rationale has been added to support EPA's belief that permitting requirements from off-gassing from aeration towers will not preclude installation of aeration treatment (see Section VIII.A.3 "Evaluation of Radon Off-Gas Emissions Risks").

In addition, the Panel recommended that EPA fully consider the relationship of the Radon in Drinking Water Rule with other rules affecting the same small entities. In response, the treatment section of the preamble, the Treatment and Cost Document, and the RIA have been expanded to discuss the relationship of treatment for radon with other drinking water rules including the Ground Water Rule, Lead and Copper Rule, and the Disinfection By-Products Rules (see Section VIII.A.2 "Potential Interactions Between the Radon Rule and Upcoming and Existing Rules Affecting Ground Water Systems").

Analytical Methods and Monitoring: The Panel recommended the following: fully consider the availability and capacity of certified laboratories for radon analysis and consider the costs of monitoring; consider applying the VOCs sampling method to radon to reduce the need for additional training; reduce the frequency of monitoring after initial determination of compliance and consider providing waivers from monitoring requirements when a system is not at risk of exceeding the MCL; and develop monitoring requirements that are simple and easy to interpret to facilitate compliance by small systems.

In response, the analytical methods section of the preamble includes discussion of the availability and capacity of certified laboratories for radon analysis (see Section VIII.C "Laboratory Capacity—Practical Availability of the Methods"); and a clarification that the radon sampling method is the same as for the volatile organic carbons sampling method (see Section VIII.B.2 "Sampling Collection, Handling and Preservation"). The RIA and the preamble include more detailed discussion of regulatory costs estimates including the monitoring costs estimated (see Section VIII.B.2 "Cost of Performing Analysis"). The monitoring section proposed rule provides for a reduced monitoring frequency to once every three years if the average of four quarterly samples is less than 1/2 MCL/AMCL, provided that no sample exceeds the MCL/AMCL (see Section VIII.E.4 "Increased/decreased monitoring requirements" and Section 141.28(b) of the proposed rule). Section VIII.E.5 "Grandfathering of Data" and Section 141.28(b) of the proposed rule describes the allowance of grandfathered data, i.e., data collected after proposal of the rule, that meet specified requirements. Section VIII.E.4 "Increased/decreased monitoring requirements" of this Preamble discusses the allowance for States to grant waivers to ground water systems to reduce the frequency of monitoring, i.e., up to a 9 year frequency. Section VIII.E, Table VIII.E.1 of this Preamble also describes monitoring requirements to facilitate interpretation of the requirements.

General: The Panel recommended that EPA explore options for providing technical assistance to small entities to clearly communicate the risks from radon in drinking water and indoor air, the rationale supporting the regulation, and actions consumers can take to reduce their risks. Therefore, this Preamble has been written to clarify to the public the risks from radon in drinking water and radon in indoor air, and the rationale supporting the proposed regulation (see Sections I through V of this Preamble).

Areas in which Panel did not reach consensus: There were also a number of issues discussed by the Panel on which consensus was not reached. These included the appropriateness of the Agency's affordability criteria for determining if affordable small system compliance technologies are available, the appropriate level at which to set the MCL, whether EPA should provide a "model" MMM program for use by small systems in states that do not adopt state-wide MMM programs, and whether information on the risks of radon and options for reducing it provides "health risk reduction benefits" (as referenced in the SDWA) independent of whether homes are actually mitigated or built radon resistant. A detailed discussion of these issues is included in the Panel report. EPA is requesting comment on some of these issues in other parts of the preamble. To read the full discussion of the issues on which EPA is requesting comment, see Sections VII.A "Requirements for Small Systems Serving 10,000 People or Less", VII.D "Background on Selection of MCL and AMCL", and VI.F "Local CWS MMM Programs in Non-MMM States and State Role in Approval of CWS MMM Program Plans."

C. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA Section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule, for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation on why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notification to potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

1. Summary of UMRA Requirements

EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared, under Section 202 of the UMRA, a written statement addressing the following areas: (1) Authorizing legislation; (2) cost-benefit analysis including an analysis of the extent to which the costs to State, local, and tribal governments will be paid for by the Federal government; (3) estimates of future compliance costs; (4) macro-economic effects; and (5) a summary of EPA's consultation with State, local, and tribal governments, a summary of their concerns, and a summary of EPA's evaluation of their concerns. A summary of this analysis follows and a more detailed description is presented in EPA's Regulatory Impact Analysis (RIA) of the Radon Rule (USEPA 1999f) which is included in the docket for this proposed rulemaking.

(a) Authorizing legislation. Today's proposed rule is proposed pursuant to Section 1412(b)(13) of the 1996 amendments to the SDWA which requires EPA to propose and promulgate a national primary drinking water regulation for radon, establishes a statutory deadline of August 1999 to propose this rule, and establishes a statutory deadline of August 2000 to promulgate this rule.

(b) Cost-benefit analysis. Section XIII.B of this preamble, describing the Regulatory Impact Analysis (RIA) and Revised Health Risk Reduction and Cost Analysis (HRRCA) for radon, contains a detailed cost-benefit analysis in support of the radon rule. Today's proposed rule is expected to have a total annualized cost of approximately $121 million with a range of potential impacts from $60.4 to $407.6 million, depending on how many States and local PWSs adopt MMM programs and comply with the AMCL. This total annualized cost consists of total annual impacts on State, local, and tribal governments, in aggregate, of approximately $53.5 million and total annual impacts on private entities of approximately $67.6 million (Note: these estimates are based on Scenario A which assumes 50 percent of States implement MMM programs with the remaining 50 percent of States implementing system-level MMM programs or complying with the MCL. Under Scenario E, total costs are approximately $60.4 million. Total national costs of full compliance with an MCL are approximately $407.6 million. Detailed descriptions of the national costs and MMM scenarios are shown in Section XIII of this preamble and Sections 9 and 10 of the RIA (USEPA 1999f).

The RIA includes both qualitative and monetized benefits for improvements in health and safety. EPA estimates the proposed radon rule will have annual monetized benefits of approximately $17.0 million if the MCL were to be set at 4,000 pCi/L and $362 million if set at 300 pCi/L. The monetized health benefits of reducing radon exposures in drinking water are attributable to the reduced incidence of fatal and non-fatal cancers, primarily of the lung and stomach. Under baseline assumptions (no control of radon exposure), 168 fatal cancers and 9.7 non-fatal cancers per year are associated with radon exposures through CWSs. At a radon level of 4,000 pCi/L, an estimated 2.9 fatal cancers and 0.2 non-fatal cancers per year are prevented. At a level 300 pCi/L, 62.0 fatal and 3.6 non-fatal cancers per year are prevented. The Agency believes that compliance with an AMCL of 4,000 pCi/L and implementation of a MMM program would result in health benefits equal to or greater than those achieved by complying with the proposed MCL (300 pCi/L).

In addition to quantifiable benefits, EPA has identified several potential non-quantifiable benefits associated with reducing radon exposures in drinking water. These potential benefits are difficult to quantify because of the uncertainty surrounding their estimation. Non-quantifiable benefits may include any peace-of-mind benefits specific to reduction of radon risks that may not be adequately captured in the Value of Statistical Life (VSL) estimate. In addition, if chlorination is added to the process of treating radon via aeration, arsenic pre-oxidization will be facilitated. Neither chlorination nor aeration will remove arsenic, but chlorination will facilitate conversion of Arsenic (III) to Arsenic (V). Arsenic (V) is a less soluble form that can be better removed by arsenic removal technologies. In terms of reducing radon exposures in indoor air, provision of information to households on the risks of radon in indoor air and the availability of options to reduce exposure may be a non-quantifiable benefit that can be attributed to some components of a MMM program. Providing such information might allow households to make more informed choices about the need for risk reduction given their specific circumstances and concerns than they would have in the absence of a MMM program.

(i) State and Local Administrative Costs. States will incur a range of administrative costs with the MCL and MMM/AMCL options in complying with the radon rule. Administrative costs associated with water mitigation can include costs associated with program management, inspections, and enforcement activities. EPA estimates the total annual costs of administrative activities for compliance with the MCL to be approximately $2.5 million.

Additional administrative costs will be incurred by those States who comply with the AMCL and develop an MMM program plan. In this case, States will need to satisfy the four criteria for an acceptable MMM program which include: (1) Involve the public in developing the MMM program plan; (2) set quantitative State-wide goals for reducing radon levels in indoor air; (3) submit and implement plans on existing and new homes; and (4) develop and implement plans for tracking and reporting results. The administrative costs will consist of the various activities necessary to satisfy these four criteria. Because EPA is unable to specify the number of States that will implement an MMM program, administrative costs were estimated under two assumptions: (1) 50 percent of States (all water systems in those States) implement an MMM program; and (2) 100 percent of States implement an MMM program, since we expect that most States will choose this option.

If a State does not develop an MMM program plan, any local water system may chose to meet the AMCL and prepare an MMM program plan for State approval. Administrative costs to the State would consist primarily of reviewing local program plans and overseeing compliance. However, local water systems would bear administrative costs that resemble the State costs to administer an MMM program. To estimate costs for local water systems in these States, EPA assumed that all local systems that exceeded 300 pCi/L but were less than 4,000 pCi/L would choose to administer an MMM program rather than achieve the 300 pCi/L level through water mitigation. It is assumed that, on average, water mitigation costs will exceed MMM program administrative costs for local water systems.

EPA estimates that total annual costs of approximately $13.2 million are expected if half the States elect to administer an MMM program and all local water systems in the remaining States undertake MMM programs. In this case, costs to 50 percent of the States to administer the MMM program ($2.9 million), and costs to 50 percent of the States to approve MMM programs developed by local water systems ($7.8 million) are added to water mitigation costs ($2.5 million). In this latter case there would also be costs to local water systems of $45 million to develop and implement local MMM programs. This is the total cost per year across all system sizes to develop and implement system-level MMM programs and assumes approximately 45 percent of CWSs will do a system-level MMM plan. The total costs across all system sizes under Scenario E for system-level MMM programs is approximately $5 million.

Various Federal financial assistance programs exist to help State, local, and tribal governments comply with this rule. To fund development and implementation of a MMM program, States have the option of using Public Water Systems Supervision (PWSS) Program Assistance Grant funds [SDWA Section 1443(a)(1)] and Program Management Set-Aside funds from the Drinking Water State Revolving Fund (DWSRF) program. Infrastructure funding to provide the equipment needed to ensure compliance is available from the DWSRF program and may be available from other Federal agencies, including the Housing and Urban Development's Community Development Block Grant Program or the Department of Agriculture's Rural Utilities Service.

EPA provides funding to States that have a primary enforcement responsibility for their drinking water programs through the PWSS grants program. States may use PWSS grant funds to establish and administer new requirements under their primacy programs, including MMM programs. PWSS grant funds may be used by a State to set-up and administer a State MMM program.

States may also "contract" to other State agencies to assist in the development or implementation of their primacy program, including an MMM program for radon. However, States may not use grant funds to contract to regulated entities (i.e., water systems) for MMM program implementation.

An additional source of EPA funding to develop and implement a MMM program is through the DWSRF program. The program awards capitalization grants to States, which in turn use funds to provide low cost loans and other types of assistance to eligible public water systems to assist in financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements. The DWSRF program also allows a State to set aside a portion of its capitalization grant to support other activities that result in protection of public health and compliance with the SDWA. The State Program Management set-aside (SDWA Section 1452(g)(2)) allows a State to reserve up to ten percent of its DWSRF allotment to assist in implementation of the drinking water program. States must match expenditures under this set-aside dollar for dollar. DWSRF State Program Management set-aside funds can be used to fund activities to develop and run an MMM program, similar to those eligible for funding from PWSS grant funds.

States may also use State Indoor Radon Grant (SIRG) funds to assist States in funding their MMM programs. The Agency has determined that activities that implement MMM activities and that meet current SIRG eligibility requirements can be carried out with SIRG funds because the goals of the MMM program reinforce and enhance the goals, strategies, and priorities of the existing State indoor radon programs that rely on funding through the SIRG program. However, expenditure of SIRG will not be permitted to fund strictly water-related activities, such as testing or monitoring of water by CWSs.

(c) Estimates of future compliance costs. To meet the requirement in Section 202 of the UMRA, EPA analyzed future compliance costs and possible disproportionate budgetary effects of both the MCL and MMM/AMCL options. The Agency believes that the cost estimates, indicated previously and discussed in more detail in Section XIII.B of today's preamble accurately characterize future compliance costs of the proposed rule.

(d) Macroeconomic effects. As required under UMRA Section 202, EPA is required to estimate the potential macro-economic effects of the regulation. These types of effects include those on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness. Macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP). In 1998, real GDP was $7,552 billion so a rule would have to cost at least $18 billion annually to have a measurable effect. A regulation with a smaller aggregate effect is unlikely to have any measurable impact unless it is highly focused on a particular geographic region or economic sector. The macro-economic effects on the national economy from the radon rule should be negligible based on the fact that, assuming full compliance with an MCL, the total annual costs are approximately $43.1 million at the 4,000 pCi/L level and about $407.6 million at the 300 pCi/L level (at a 7 percent discount rate) and the costs are not expected to be highly focused on a particular geographic region or industry sector.

(e) Summary of EPA's consultation with State, local, and tribal governments and their concerns. Consistent with the intergovernmental consultation provisions of section 204 of the UMRA and Executive Order 12875 "Enhancing Intergovernmental Partnership," EPA has already initiated consultations with the governmental entities affected by this rule. EPA initiated consultations with governmental entities and the private sector affected by this rulemaking through various means. This included four stakeholder meetings, and presentations at meetings of the American Water Works Association, the Association of State Drinking Water Administrators, the Association of State and Territorial Health Officials, and the Conference of Radiation Control Program Directors. Participants in EPA's stakeholder meetings also included representatives from National Rural Water Association, National Association of Water Companies, Association of Metropolitan Water Agencies, State department of environmental protection representatives, State health department representatives, State water utility representatives, the Inter Tribal Council of Arizona, and representatives of other tribes. EPA also made presentations at tribal meetings in Nevada, Alaska, and California. To address the proposed rule's impact on small entities, the Agency convened a Small Business Advocacy Review Panel in accordance with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). EPA also held two series of three conference calls with representatives of State drinking water and State radon programs. In addition to these consultations, EPA made presentations on the proposed Radon Rule to the Association of California Water Agencies, the National Association of Towns and Townships, the National League of Cities, and the National Association of Counties. Several State drinking water representatives also participated in AWWA's Technical Workgroup for Radon.

The Agency also notified governmental entities and the private sector of opportunities to provide input on the Health Risk Reduction and Cost Analysis (HRRCA) for radon in drinking water in the **Federal Register** on February 26, 1999 (64 FR 9559). The HRRCA was published six months in advance of this proposal and illustrated preliminary cost and benefit estimates for various MCL options under consideration for the proposed rule. The comment period on the HRRCA ended on April 12, 1999, and EPA received approximately 26 written comments. Of the 26 comments received concerning the HRRCA, 42 percent were from States and 4 percent were from local governments.

The public docket for this proposed rulemaking contains meeting summaries for EPA's four stakeholder meetings on radon in drinking water, all comments received by the Agency, and provides details about the nature of State, local, and tribal governments' concerns. A summary of State, local, and tribal government concerns on this proposed rulemaking is provided in the following section.

In order to inform and involve tribal governments in the rulemaking process, EPA staff attended the 16th Annual Consumer Conference of the National Indian Health Board on October 6–8, 1998, in Anchorage, Alaska. Over nine hundred persons representing Tribes from across the country were in attendance. During the conference, EPA conducted two workshops for meeting participants. The objectives of the workshops were to present an overview of EPA's drinking water program, solicit comments on key issues of potential interest in upcoming drinking water regulations, and to solicit advice in identifying an effective consultative process with tribes for the future.

EPA, in conjunction with the Inter Tribal Council of Arizona (ITCA), also convened a tribal consultation meeting on February 24–25, 1999, in Las Vegas, Nevada to discuss ways to involve tribal representatives, both tribal council members and tribal water utility operators, in the stakeholder process. Approximately twenty-five representatives from a diverse group of tribes attended the two-day meeting. Meeting participants included representatives from the following tribes: Cherokee Nation, Nezperce Tribe, Jicarilla Apache Tribe, Blackfeet Tribe, Seminole Tribe of Florida, Hopi Tribe, Cheyenne River Sioux Tribe, Menominee Indian Tribe, Tulalip Tribes, Mississippi Band of Choctaw Indians, Narragansett Indian Tribe, and Yakama Nation.

The major meeting objectives were to: (1) Identify key issues of concern to tribal representatives; (2) solicit input on issues concerning current OGWDW regulatory efforts; (3) solicit input and information that should be included in support of future drinking water regulations; and (4) provide an effective format for tribal involvement in EPA's regulatory development process. EPA staff also provided a brief overview on the forthcoming radon rule at the meeting. The presentation included the health concerns associated with radon, EPA's current position on radon in drinking water, the distinction between an MCL and AMCL, the multimedia mitigation (MMM) program, and specific issues for tribes. The following questions were posed to the tribal representatives to begin discussion on radon in drinking water: (1) Will tribal governments be interested in substituting MMM for drinking water control; (2) what types of MMM could tribes reasonably implement; and (3) what resources are available to fund MMM? The summary for the February 24–25, 1999, meeting was sent to all 565 Federally recognized tribes in the United States.

EPA also conducted a series of workshops at the Annual Conference of the National Tribal Environmental Council which was held on May 18–20, 1999, in Eureka, California. Representatives from over 50 tribes attended all, or part, of these sessions.

The objectives of the workshops were to provide an overview of forthcoming EPA regulations affecting water systems; discuss changes to operator certification requirements; discuss funding for tribal water systems; and to discuss innovative approaches to regulatory cost reduction. Tribal representatives were generally supportive of regulations which would ensure a high level of water quality, but raised concerns over funding for regulations. With regard to the forthcoming proposed radon rule, many tribal representatives saw the multimedia mitigation option as highly desirable, but felt that this option may not be adapted unless funds were made available for home mitigation. Meeting summaries for EPA's tribal consultations are available in the public docket for this proposed rulemaking.

(f) Nature of state, local, and tribal government concerns and how EPA addressed these concerns. State and local governments raised several concerns, including the high costs of the rule to small systems; the high degree of uncertainty associated with the benefits; the high costs of including Non-Transient Non-Community Water Systems (NTNCWSs); and the inclusion of risks to both smokers and non-smokers in the proposed regulation. Tribal governments raised several concerns with the MMM program, including where the funding to mitigate homes would come from; the number of homes that would require testing; and the frequency of home testing.

EPA understands the State, local, and tribal government concerns with the issues described previously. The Agency believes that the options for small systems, proposed for public comment in this rulemaking, will address stakeholder concerns pertaining to small systems and will help to reduce the financial burden to these systems.

Non-Transient Non-Community Water Systems (NTNCWSs) are not subject to this proposed rulemaking. A detailed discussion of the exposure to radon in NTNCWSs is shown in Section XII.D of this preamble. EPA has conducted a preliminary analysis on exposure and risks to NTNCWSs and is soliciting public comment on this preliminary analysis. An analysis of the potential benefits and costs of radon in drinking water for NTNCWSs is included in the docket for this proposed rulemaking. (USEPA 1999m)

EPA has included the risks to both ever-smokers and never-smokers in this proposed rulemaking. The Agency is basing this regulation on the risks to the general population and is not excluding any particular segments of the population. For a more complete discussion on the risks of radon in drinking water and air, see Section XII of this preamble.

EPA understands tribal governments' concerns with funding for the MMM program. To assist State, local, and tribal governments with the implementation of an MMM program, EPA is making available Public Water Supply Supervision (PWSS) Program Assistance Grant Funds, Drinking Water State Revolving Fund (DWSRF) funds, and State Indoor Air Grant (SIRG) funds. A more complete discussion of the funding available to State, local, and tribal governments for MMM program implementation is shown in Section XIV.C.1(b) of this preamble.

(g) Regulatory Alternatives Considered. As required under Section 205 of the UMRA, EPA considered several regulatory alternatives in developing an MCL for radon in drinking water. In preparation for this consideration, the Regulatory Impact Analysis and Health Risk Reduction and Cost Analysis (HRRCA) for Radon evaluated radon levels of 100, 300, 500, 700, 1,000, 2,000, and 4,000 pCi/L.

The Regulatory Impact Analysis and HRRCA also evaluated national costs and benefits of MMM implementation, with States choosing to reduce radon exposure in drinking water through an Alternative Maximum Contaminant Level (AMCL) and radon risks in indoor air through MMM programs. Based on the National Academy of Sciences recommendations, the AMCL level that was evaluated is 4,000 pCi/L. For further discussion on the regulatory alternatives considered in this proposed rulemaking, see Section XIII.B of this preamble.

EPA believes that the regulatory approaches proposed in today's notice are the most cost-effective options for radon that achieve the objectives of the rule, including strong public health protection. For a complete discussion of this issue, see EPA's Regulatory Impact Analysis and Revised HRRCA for Radon (USEPA 1999f).

2. Impacts on Small Governments

In preparation for the proposed radon rule, EPA conducted analysis on small government impacts. This rule may significantly impact small governments. EPA included small government officials or their designated representatives in the rule making process. EPA conducted four stakeholder meetings on the development of the radon rule which gave a variety of stakeholders, including small governments, the opportunity for timely and meaningful participation in the regulatory development process.

Groups such as the National Association of Towns and Townships, the National League of Cities, and the National Association of Counties participated in the proposed rulemaking process. Through such participation and exchange, EPA notified potentially affected small governments of requirements under consideration and provided officials of affected small governments with an opportunity to have meaningful and timely input into the development of the regulatory proposal.

EPA also held a conference call on May 11, 1998, to consult directly with representatives of small entities that may be affected by the proposed rule. This conference call provided a forum for Small Entity Representative (SER) input on key issues related to the proposed radon rule. These issues included: (1) Issues related to the rule development, such as radon health risks, occurrence of radon in drinking water, treatment technologies, analytical methods, and monitoring; and (2) issues related to the development and implementation of the MMM program guidelines.

As required by SBREFA, EPA also convened a Small Business Advocacy Review (SBAR) Panel to help further identify and incorporate small entity concerns into this proposed rulemaking. For a sixty-day period starting in July 1998, the Panel reviewed technical background information related to this rulemaking, reviewed comments provided by the SERs, and met on several occasions with EPA and on one occasion with the SERs to identify issues and explore alternative approaches for accomplishing environmental goals while minimizing impacts to small entities. The SBAR final report on the proposed radon rule, which includes a description of the SBAR Panel process and the Panel's findings and recommendations, is available in the public docket for this proposed rulemaking. For a more detailed discussion of the Panel report, see Section XIV.B of this preamble.

In addition, EPA will educate, inform, and advise small systems, including those run by small governments, about the radon rule requirements. One of the most important components of this process is the Small Entity Compliance Guide, required by the Small Business Regulatory Enforcement Fairness Act of 1996 after the rule is promulgated. This plain-English guide will explain what actions a small entity must take to comply with the rule. Also, the Agency is developing fact sheets that concisely describe various aspects and requirements of the radon rule.

D. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR, No. 1923.01) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW, Washington, DC 20460; by email at farmer.sandy@epa.gov; or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

Two types of information will be collected under the proposed radon rule. First, information on individual water systems and their radon levels will enable the States and EPA to evaluate compliance with the applicable MCL or AMCL. This information, most of which consists of monitoring results, corresponds to information routinely collected from water systems for other types of drinking water contaminants. Radon monitoring and reporting will initially be required on a quarterly basis for at least one year, but thereafter the frequency may be reduced to annually or once every three years depending on the level of radon present (see Section VIII.E). Other existing information and reporting requirements, such as Consumer Confidence Reports and (proposed) public notification requirements, will be marginally expanded to encompass radon along with other contaminants. As is the case for other contaminants, required information on system radon levels must be provided by affected systems and is not considered to be confidential.

The second type of information relates to the MMM program, which is EPA's recommended approach for small systems under the proposed radon rule. Information of this type includes MMM plans prepared by States as well as MMM plans prepared by community ground water systems in States that do not develop a MMM plan. The proposed rule allows States to prepare MMM plans regardless of whether they are primacy States with respect to drinking water programs. EPA will review the MMM plans developed by States, and States will review system-level MMM plans. These reviews will help ensure that MMM programs are likely to achieve meaningful reductions in human health risks from radon exposure. Acceptable MMM plans will include a plan for the collection of data to track the progress of the MMM program relative to goals established in the plans (*e.g.*, data on the number or rate of mitigated homes and the number or rate of new homes built radon resistant). EPA will review State-level MMM programs at least every five years, and States will review system-level programs at least every five years. Information related to MMM programs (i.e., the MMM plans and tracking data) is mandatory for States that choose to implement an EPA-approved MMM program and enforce the AMCL for radon rather than the MCL. Similarly, information related to system-level MMM programs is required only from systems that comply with the AMCL rather than the MCL and are in States that do not have a MMM program in place.

EPA believes the information discussed previously, on compliance with the MCL or AMCL and on MMM programs, is essential to achieving the radon-related health risk reductions anticipated by EPA under the proposed rule.

EPA has estimated the burden associated with the specific record keeping and reporting requirements of the proposed rule in an accompanying Information Collection Request (ICR), which is available in the public docket for this proposed rulemaking. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA has estimated a range of administrative costs for the proposed rule. These costs do not include testing and mitigating water or testing and mitigating households in the MMM program. The PRA requires that average annual cost and labor for administrative costs be calculated over a three-year period. These costs are presented next. However, because the full implementation of the proposed rule does not occur until later years, average annual cost and labor for a 20-year period are also presented. These 20-year average annual costs are presented by scenarios defined by the proportions of systems that elect to develop system-level MMM programs and the proportions of states that elect to implement state-wide MMM programs. These scenarios are described in detail in Section XIII.G and Section 9 of the RIA (USEPA 1999f). Based on these analyses, EPA's burden estimates for the proposed rule, in both costs and hours, are as follows:

- Administrative costs to community groundwater systems for mitigation-related activities are estimated to be $14.6 million per year ($357 per system) or 267,625 hours, distributed by system size as shown in Table XIV.2. All 40,863 community groundwater systems will bear these costs under all scenarios evaluated.
- In the first three years of the rule, there are no administrative costs to community groundwater systems for MMM program activities.

TABLE XIV.2.—ADMINISTRATIVE COSTS TO COMMUNITY WATER SYSTEMS ASSOCIATED WITH WATER MITIGATION AND SYSTEM-LEVEL MMM PROGRAMS (EXCLUDING MMM TESTING AND MITIGATION)

System size (customers served)	Administrative costs of water mitigation ($ per year)	Administrative costs of system-level MMM programs ($ per year)
VVS (25–100)	4,485,485	0
VVS (101–500)	4,958,735	0
VS (501–3,300)	3,430,387	0
S (3,301–10,000)	848,487	0
M (10,001–100K)	491,944	0

TABLE XIV.2.—ADMINISTRATIVE COSTS TO COMMUNITY WATER SYSTEMS ASSOCIATED WITH WATER MITIGATION AND SYSTEM-LEVEL MMM PROGRAMS (EXCLUDING MMM TESTING AND MITIGATION)—Continued

System size (customers served)	Administrative costs of water mitigation ($ per year)	Administrative costs of system-level MMM programs ($ per year)
L (>100K)	23,579	0
Total For All Systems	14,598,617	0

- Administrative costs to States for water mitigation-related activities are to be approximately $3 million per year (Table XIV.3) and 119,625 hours, or approximately $65,400 per year per state and 2,600 hours per year per state. Forty-six states bear these costs under all scenarios.

Table XIV.3 presents the costs if 100 percent of all states were to incur the specific administrative costs listed. However, no state will bear 100 percent of state-wide MMM program costs and 100 percent of system-level MMM program costs. These costs will be borne in an inverse relationship; e.g., 95 percent of the states will bear administrative costs associated with state-wide MMM programs and 5 percent of states will bear administrative costs associated with system-level MMM programs.

TABLE XIV.3.—STATE ADMINISTRATIVE COSTS FOR WATER MITIGATION AND MMM PROGRAMS

	($ per year)
Water Mitigation	3,009,713
State-Wide MMM Programs	6,346
System-Level MMM Programs	5,909
Total State Administrative Costs	3,021,968

- State administrative costs associated with state-wide MMM programs are estimated up to $6,300 per year and up to 140 hours per year for the first three years of the rule.
- State administrative costs to review system-level MMM programs and related activities are estimated up to $5,900 per year and up to 123 hours per year for the first three years of the rule.
- The total State administrative costs (water mitigation, state-wide, and system-level MMM programs) are estimated up to approximately $3 million per year and 119,887 hours per year.

Because much of the activity required under the proposed rule occurs in later years, this analysis presents average administrative costs borne by systems and states over a 20 year period. Again, these costs do not include water testing and mitigation or testing and mitigating households in MMM programs. In addition, these costs are presented by scenarios that are defined by the proportions of systems that elect to develop system-level MMM programs and the proportions of states that elect to implement state-wide MMM programs.

- Administrative costs to community groundwater systems for mitigation-related activities are estimated to be $8.6 million per year ($211 per system) or 145,547 hours per year, distributed by system size as shown in Table XIV.4. All 40,863 community groundwater systems will bear these costs under all scenarios evaluated.
- Under Scenario A, administrative costs to community groundwater systems for MMM program activities are approximately $45.1 million per year ($2,452 per system) or 174,000 hours per year for the 18,388 systems (45 percent of all community groundwater systems) that develop and file an MMM plan. The costs are distributed across the system size categories as shown in Table XIV.4. Under Scenario E, administrative costs to systems are $5.0 million per year or 19,333 hours per year. The per-system cost is the same as Scenario A, but only five percent of systems (2,042) bear these costs.

TABLE XIV.4.—ADMINISTRATIVE COSTS TO COMMUNITY WATER SYSTEMS ASSOCIATED WITH WATER MITIGATION AND SYSTEM-LEVEL MMM PROGRAMS

[Excluding MMM Testing and Mitigation]

System size (customers served)	Administrative costs of water mitigation ($ per year)	Administrative costs of system-level MMM programs under scenario A ($ per year	Administrative costs of system-level MMM programs under scenario E ($ per year
VVS (25–100)	2,857,190	14,978,142	1,664,238
VVS (101–500)	2,923,970	15,328,217	1,703,135
VS (501–3,300)	2,022,764	10,603,857	1,178,206
S (3,301–10,000)	500,319	2,622,804	291,423
M (10,001–100K)	290,080	1,520,674	168,964
L (>100K)	13,904	72,886	8,097
Total for All Systems	8,608,226	45,126,581	5,014,065

- Total administrative costs to community water systems (water mitigation plus MMM programs) range from $11 million per year under Scenario E to $51.2 million under Scenario A or 165,000 hours under Scenario E to 320,000 hours under Scenario A. The costs are distributed across the various system sizes as shown in Table XIV.5.

TABLE XIV.5.—TOTAL ADMINISTRATIVE COSTS WATER MITIGATION AND MMM PROGRAMS TO COMMUNITY GROUNDWATER SYSTEMS

System size (customers served)	Total administrative costs under scenario A ($ per year)	Total administrative costs under scenario E ($ per year)
VVS (25–100)	16,990,791	3,676,887
VVS (101–500)	17,387,906	3,762,824
VS (501–3,300)	11,238,829	1,813,178
S (3,001–10,000)	3,412,697	1,081,316
M (10,001–100,000)	1,873,106	521,396
L (100,000)	256,893	192,105
Total for All Systems	51,160,223	11,047,707

- Administrative costs to States for water mitigation-related activities are estimated to be approximately $2.5 million per year (Table XIV.6) or approximately $53,900 per year per state. Total state burden is approximately 100,000 hours per year. Forty-six states bear these costs under all scenarios.

TABLE XIV.6.—STATE ADMINISTRATIVE COSTS FOR WATER MITIGATION AND MMM PROGRAMS

[$ per year]

	Scenario A	Scenario E
Water Mitigation	2,477,299	2,477,299
State-Wide MMM Programs	2,926,691	5,560,713
System-Level MMM Programs	7,830,995	870,111
Total State Administrative Costs	13,234,985	8,908,123

- State administrative costs associated with state-wide MMM programs are estimated to be $2.9 million dollars ($127,200 per state across 23 states) or 123,000 hours per year under Scenario A. Under Scenario E, estimated state administrative costs of state-level MMM programs are estimated to be $5.6 million (again $126,400 per state, but under this scenario, 44 states bear the costs) or 233,000 hours per year for all 44 states.
- State administrative costs to review system-level MMM programs and related activities are estimated to be $7.8 million per year or 316,410 hours per year under Scenario A and approximately $870,000 per year or 35,157 hours per year under Scenario E. In both cases the cost per state is approximately $371,000 per year, with 21 states affected under Scenario A and two states affected under Scenario E.
- The total State administrative costs (water mitigation, state-wide, and system-level MMM programs) are estimated to be $13.2 million per year or 538,845 hours per year under Scenario A and $8.9 million per year or 367,878 hours per year under Scenario E.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information; the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460 and to the Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA". Include the ICR number (1923.01) in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 2, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by December 2, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA's process for selecting the analytical test methods is consistent with Section 12(d) of the NTTAA. EPA performed literature searches to identify analytical methods from industry, academia, voluntary consensus standard bodies, and other parties that could be used to measure radon in drinking water.

This proposed rulemaking involves technical standards. EPA proposes to use Standard Method 7500–Rn, which is specific for radon 222 (radon) in drinking water, for both the MCL and AMCL for radon in drinking water. This method meets the objectives of the rule because it accurately and reliably detects radon in drinking water below 100 pCi/L. Standard Method 7500–Rn was approved by the Standard Methods Committee in 1996 and is described in the "Standard Methods for the Examination of Water and Wastewater (19th Edition Supplement)" which was prepared and published jointly by the American Public Health Association, American Water Works Association, and Water Environment Federation. Additional information on this method is shown in Section VIII.B.2 of today's preamble.

EPA is also proposing the use of the American Society for Testing and Materials (ASTM) Standard Test Method for Radon in Drinking Water (designation: D5072–92) for the AMCL for radon in drinking water. This method is specific for radon in drinking water, but has been shown to accurately and reliably detect radon only at concentrations above 1,500 pCi/L and thus is only useful for the AMCL. ASTM's Standard Test Method for Radon in Drinking Water was adopted by ASTM in 1992 and is described in the Annual Book of ASTM Standards. Additional information on this method is shown in Section VIII.B.2 of this preamble.

As discussed in Section VIII.B (Analytical Methods) of this preamble, EPA is in the process of adopting the Performance-Based Measurement System (PBMS) to allow greater flexibility in compliance monitoring for this proposed rule and for future rules. For further information on PBMS, see Section VIII.D.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 "Federal Actions To Address EnviroPopulations and Low-Income Populations," 59 FR 7629 (February 16, 1994) establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and has consulted with minority and low-income stakeholders by convening a stakeholder meeting via video conference specifically to address environmental justice issues.

As part of EPA's responsibilities to comply with E.O. 12898, the Agency held a stakeholder meeting via video conference on March 12, 1998, to address various components of pending drinking water regulations; and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, tribal, municipal, and individual stakeholders. EPA conducted the meeting by video conference call between eleven cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water programs. The major objectives for the March 12, 1998, meeting were: (1) Solicit ideas from Environmental Justice (EJ) stakeholders on known issues concerning current drinking water regulatory efforts; (2) identify key issues of concern to EJ stakeholders; and (3) receive suggestions from EJ stakeholders concerning ways to increase representation of EJ communities in OGWDW regulatory efforts. In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulation. A meeting summary for the March 12, 1998, stakeholder meeting is available in the public docket for this proposed rulemaking.

Stakeholders have raised concerns that this action may have a disproportionate impact on low-income and minority populations. The rule framework and in particular, the MMM program coupled with a 4,000 pCi/L AMCL, were discussed with EJ stakeholders at the March 12, 1998, meeting. Key issues of concern with the MMM/AMCL approach included: (1) The potential for an uneven distribution of benefits across water systems and society; (2) the cost of air remediation to apartment dwellers; and (3) the concern that the approach could provide water systems and State governments a "loophole" through which they could escape the responsibility of providing appropriate protection from radon exposures.

The Agency considered equity-related issues concerning the potential impacts of MMM program implementation. There is no factual basis to indicate that minority and low income or other communities are more or less exposed to radon in drinking water than the general public. However, some stakeholders expressed more general concerns about equity in radon risk reduction that could arise from the MMM/AMCL framework outlined in SDWA. One concern is the potential for an uneven distribution of risk reduction benefits across water systems and society. Under the proposed framework for the rule, customers of CWSs complying with the AMCL could be exposed to a higher level of radon in drinking water than if the MCL were implemented, though this level would not be higher than the background concentration of radon in ambient air. However, these CWS customers could also save the cost, through lower water rates, of installing treatment technology to comply with the MCL. Under the proposed regulation, CWSs and their customers have the option of complying with either the AMCL (associated with a State or local MMM program) or the MCL.

EPA believes it is important that these issues and choices be considered in an open public process as part of the development of MMM program plans. Therefore, EPA has incorporated requirements into the proposed rule that provide a framework for consideration of equity concerns with the MMM/AMCL. The proposed rule includes requirements for public participation in the development of MMM program plans, as well as for notice and opportunity for public comment. EPA believes that the requirement for public participation will result in State and CWS program plans that reflect and meet their different constituents needs and concerns and that equity issues can be most effectively dealt with at the State and local levels with the participation of the public. In developing their MMM program plans, States and CWSs are required to document and consider all significant issues and concerns raised by the public. EPA expects and strongly recommends that States and CWSs pay particular attention to addressing any equity concerns that may be raised during the public participation process. In addition, EPA believes that providing CWS customers with information about the health risks of radon and on the

AMCL and MMM program option will help to promote understanding of the health risks of radon in indoor air, as well as in drinking water, and help the public to make informed choices. To this end, EPA is requiring CWSs to alert consumers to the MMM approach in their State in consumer confidence reports issued between publication of the final radon rule and the compliance dates for implementation of MMM programs. This will include information about radon in indoor air and drinking water and where consumers can get additional information.

The proposed requirements include the following: (1) A description of processes the State used to provide for public participation in the development of its MMM program plan; (2) a description of the nature and extent of public participation that occurred, including a list of groups and organizations that participated; (3) a summary describing the recommendations, issues, and concerns arising from the public participation process and how these were considered in developing the State's MMM program plan; (4) a description of how the State made information available to the public to support informed public participation, including information on the State's existing indoor radon program activities and radon risk reductions achieved, and on options considered for the MMM program plan along with any analyses supporting the development of such options; and (5) the State must provide notice and opportunity for public comment on the plan prior to submitting it to EPA.

The public is invited to comment on this aspect of the proposed rulemaking and, specifically, to recommend additional methods to address EJ concerns with the MMM/AMCL approach for treating radon in drinking water.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 19885 (April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. Based on the risk assessment for radon in drinking water developed by the NAS, children were not identified as being disproportionately impacted by radon. The Committee on Risk Assessment of Exposure to Radon in Drinking Water that conducted the National Research Council Risk Assessment of Radon in Drinking Water Study (NAS 1999b) concluded, except for the lung cancer risk to smokers, there is insufficient scientific information to permit quantitative evaluation of radon risks to susceptible subpopulations such as infants, children, pregnant women, elderly, and seriously ill persons.

The National Academy of Sciences Committee on the Biological Effects of Ionizing Radiation (BEIR VI) (NAS 1999a) noted that there is only one study (tin miners in China) that provides data on whether risks from radon progeny are different for children, adolescents, and adults. Based on this study, the committee concluded that there was no clear indication of an effect of age at exposure, and the committee made no adjustments in the model for exposures received at early ages (NAS 1999a). Nonetheless, we evaluated the environmental health or safety effects of radon in drinking water on children. The results of this evaluation are contained in Section XII of this preamble. Copies of the documents used to evaluate the environmental health or safety effects of radon in drinking water on children, including the NAS Reports, have been placed in the public docket for this proposed rulemaking.

The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to radon in drinking water.

H. Executive Orders on Federalism

Under Executive Order 12875, "Enhancing the Intergovernmental Partnership," 58 FR 58093 (October 28, 1993) EPA may not issue a regulation that is not required by statute and that creates a mandate upon State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

EPA has concluded that this rule will create a mandate on State, local, and tribal governments and the Federal government will not provide the funds necessary to pay the direct costs incurred by State, local, and tribal governments in complying with the mandate. In developing this rule, EPA consulted with State, local, and tribal governments to enable them to provide meaningful and timely input in the development of this rule.

As described in Section XIV.C.1.e, EPA held extensive meetings with a variety of State and local representatives, who provided meaningful and timely input in the development of the proposed rule. Summaries of the meetings have been included in the public docket for this proposed rulemaking. See Sections XIV.C.1.e and XIV.C.1.f for summaries of the extent of EPA's consultation with State, local, and tribal governments; the nature of the governments' concerns; and EPA's position supporting the need to issue this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)], which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987)], on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 12612. "This proposed rule establishes a National Primary Drinking Water Regulation (NPDWR) for the control of radon. This regulation is required by section 1412(b)(13) of the Safe Drinking Water Act, as amended. EPA conducted extensive discussions with States and local governments in developing this proposal, and significant flexibility is provided in implementing these regulations."

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," 63 FR 27655 (May 19, 1998) EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

EPA has concluded that this rule will significantly or uniquely affect communities of Indian tribal governments. It will impose substantial direct compliance costs on such communities, and the Federal government will not provide the funds necessary to pay the direct costs incurred by the tribal governments in complying with the rule. In developing this rule, EPA consulted with representatives of tribal governments pursuant to both E.O. 12875 and E.O. 13084. Summaries of the meetings have been included in the public docket for this proposed rulemaking. EPA's consultation, the nature of the governments' concerns, and EPA's position supporting the need for this rule are discussed in Section XIV.C.2 of this preamble.

J. Request for Comments on Use of Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

Stakeholder Involvement

XV. How Has the EPA Provided Information to Stakeholders in Development of This NPRM?

A. Office of Ground Water and Drinking Water Website

EPA's Office of Ground Water and Drinking Water maintains a website on radon at the following address: *http://www.epa.gov/safewater/radon.html.* Documents are placed on the website for public access.

B. Public Meetings

EPA has consulted with a broad range of stakeholders and technical experts. Participants in a series of stakeholder meetings held in 1997 and 1998 included representatives of public water systems, State drinking water and indoor air programs, tribal water utilities and governments, environmental and public health groups, and other Federal agencies. EPA convened an expert panel in Denver in November, 1997, to review treatment technology costing approaches. The panel made a number of recommendations for modification to EPA cost estimating protocols that have been incorporated into the radon cost estimates. EPA also consulted with a subgroup of the National Drinking Water Advisory Council (NDWAC) on evaluating the benefits of drinking water regulations. The NDWAC was formed in accordance with the Federal Advisory Committee Act (FACA) to assist and advise EPA. A variety of stakeholders participated in the NDWAC benefits working group, including utility company staff, environmentalists, health professionals, State water program staff, a local elected official, economists, and members of the general public.

EPA conducted one-day public meetings in Washington, D.C. on June 26, 1997; in San Francisco, California on September 2, 1997; and in Boston, Massachusetts on October 30, 1997, to discuss its plans for developing a proposed NPDWR for radon–222. EPA presented information on issues related to developing the proposed NPDWR and solicited stakeholder comments at each meeting. EPA also held a series of conference calls in 1998 and 1999 with State drinking water and indoor air programs, to discuss issues related to developing guidelines for multiedia mitigation programs. EPA also held a public meeting in Washington, DC. on March 16, 1999, to discuss the HRRCA published on February 26, 1999, and the multimedia mitigation framework.

C. Small Entity Outreach

EPA has conducted outreach directly to representatives of small entities that may be affected by the proposed rule, as part of SBREFA. A full discussion of the small entity outreach is in Section XIV.B.6 "Significant Regulatory Alternatives and SBAR Panel Recommendations."

D. Environmental Justice Initiatives

In order to uphold Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," EPA's Office of Ground Water and Drinking Water convened a public meeting in Washington, DC in March 1998 to discuss ways to involve minority, low-income, and other sensitive subgroups in the stakeholder process and to obtain input on the proposed radon rule. The meeting was held in a video-conference format linking EPA Regions I through IX to involve as many stakeholders as possible. EPA has taken the concerns and issues raised by the environmental justice community into account while setting the MCL, MCLG, and AMCL for radon. For more information on the March 1998 environmental justice meeting, and on EPA proposals to address concerns of stakeholders, see Section XIV.F of this Preamble.

E. AWWA Radon Technical Work Group

The American Water Works Association (AWWA) convened a "Radon Technical Work Group," in 1998 that provided technical input on EPA's update of technical analyses (occurrence, analytical methods, and treatment technology), and discussed conceptual issues related to developing guidelines for multimedia mitigation programs. Members of the Radon Technical Work Group included representatives from State drinking water and indoor air programs, public water systems, drinking water testing laboratories, environmental groups and the U.S. Geological Survey.

Background

XVI. How Does EPA Develop Regulations to Protect Drinking Water?

A. Setting Maximum Contaminant Level Goal and Maximum Contaminant Level

EPA sets an MCLG and MCL or treatment technology for each regulated contaminant. The MCLG is based on analysis of health effects of the contaminant. Based on the carcinogenicity of ionizing radiation, and the NAS' current recommendation for a linear, non-threshold relationship between exposure to radon and cancer in humans (NAS 1999a), the Agency is proposing an MCLG of zero for radon in drinking water.

A drinking water MCL applies to finished (treated) drinking water as supplied to customers. The SDWA generally requires that EPA set the MCL for each contaminant as close as feasible to the corresponding MCLG, based on available technology and taking costs into account. For example, if the analytical methods will only allow a relatively confident measure of a contaminant at a certain level, then the MCL cannot practically be set below that level. In addition, the cost of water treatment technologies is considered. If treatment capabilities are limited then the MCL must be set at a level that is found to be feasible. The MCL set by EPA must be protective of public health.

The 1996 amendments to SDWA require the Administrator to do a cost-benefit analysis of the MCLs under consideration and to make a determination as to whether the benefits of an MCL under consideration justify the costs (1412(b)(3)(C)). The Administrator may set an MCL at a level less stringent than the feasible level if he/she finds that the benefits of the feasible MCL do not justify the costs (1412(b)(6)(A)). There are certain exceptions to the use of this authority (1412(b)(6)(B) and (C)).

B. Identifying Best Available Treatment Technology

As discussed also in Section VIII of this preamble, EPA identifies one or more water treatment technologies (i.e., best available treatment (BAT)) found to be effective in removing the contaminant from drinking water and capable of meeting the MCL. There are a number of physical, chemical, and other means used by such treatment technologies for removing the contaminant, or in some cases destroying the contaminant or otherwise changing the contaminant's composition. In assessing potential BATs, EPA examines removal efficiency, cost to purchase and maintain, compatibility with other processes, and other factors. Most of the information cited by EPA in this context is gleaned from technical literature, including research studies covering pilot or full scale treatments. If some of the treatments identified are found to be most efficient, practical and economical, EPA places these on the BAT list and on occasion may provide guidance on other treatments that may have certain limitations.

C. Identifying Affordable Treatment Technologies for Small Systems

The 1996 Amendments to the SDWA directed EPA to identify treatment technologies that are affordable for small water systems. EPA is charged with identifying affordable treatments for three small system population categories: systems serving from 25 to 500, 501 to 3,300, and 3,301 to 10,000 persons. A designated "compliance technology" for these small systems may be a technology that is affordable and that achieves compliance with the MCL or a treatment technique requirement. Possible compliance technologies may include packaged or modular systems, and point-of-entry (POE) or point-of-use (POU) type treatment units. As with BAT designations, the compliance technology(ies) selected by EPA must be based upon available information from technical journals and/or qualified research studies.

EPA must also identify affordable "variance technologies" which are to be installed by a public water system after the system has applied to the responsible primacy agency for a variance, i.e., a "small system variance." This variance applies only to systems serving fewer than 10,000 people. It also applies only in cases where an affordable technology is not available to achieve compliance with an MCL (or treatment technique requirement) yet still will be protective of public health. One of the requirements for systems that have obtained a variance is to install and maintain the variance technology in accordance with the listing by EPA, which may be specific to system size and/or dependent upon source water quality. A small system variance may only be obtained if compliance with the MCL through alternate source, treatment, or restructuring options are deemed not to be affordable for that system.

Small system variances are not available to meet MCL or treatment technique requirements promulgated prior to 1986, nor for regulations addressing microbiological contamination of water.

D. Requirements for Monitoring, Quality Control, and Record Keeping

Water systems are responsible for conducting monitoring of drinking water to ensure that it meets all drinking water standards. To do this, water systems and States use analytical methods set out in EPA regulations.

EPA is responsible for evaluating analytical methods developed for drinking water and approves those methods that it determines meet Agency requirements. Laboratories analyzing drinking water compliance samples must be certified by the EPA or the State.

Whether addressing regulated or unregulated contaminants, EPA establishes requirements as to how often water systems must monitor for the presence of the subject contaminant. Water systems serving larger populations generally must conduct more monitoring (temporally and spatially) because there is a greater potential human health impact of any violation, and because of the physical extent of larger water systems (e.g., miles of pipeline carrying water). Small water systems can receive variances or exemptions from monitoring in limited circumstances. In addition, under certain conditions, a State may have the option to modify monitoring requirements on an interim or a permanent basis for regulated contaminants, with a few exceptions. States may use this flexibility to reduce monitoring requirements for systems with low risk of incurring a violation.

E. Requirements for Water Systems to Notify Customers of Test Results if Not in Compliance

Each owner or operator of a public water system must notify customers if the system has failed to comply with an MCL or treatment technique requirement, or a testing procedure required by EPA regulation. A system must notify its customers if the system is subject to a variance (due to an inability to comply with an MCL).

The form of this notification must be readily understood and delivered via mail or direct delivery, through an annual report, or in the first water billing cycle following such a drinking water violation. The notification must also contain important information about the contaminant so that consumers will be aware of any particular hazards involved; the notification may indicate whether water can/cannot be consumed or used for bathing, whether boiling drinking water will make it safe; or whether storing water before use may be advisable.

F. Approval of State Drinking Water Programs to Enforce Federal Regulations

Section 1413 of the SDWA sets requirements that a State or eligible Indian tribe must meet in order to maintain primary enforcement responsibility (primacy) for its public water systems. These include (1) adopting drinking water regulations that are no less stringent than Federal NPDWRs; (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making reports available on activities that EPA requires by regulation; (4) issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by Sections 1415 and 1416; (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations, and (6) adopting authority for administrative penalties.

In addition to adopting the basic primacy requirements, States may be required to adopt special primacy provisions pertaining to a specific regulation. These regulation-specific provisions may be necessary where implementation of the NPDWR involves activities beyond those in the generic rule. States are required by 40 CFR 142.12 to include these regulation-specific provisions in an application for approval of their program revisions.

XVII. Important Technical Terms

Adsorption: In the case of the water/solid interface, the accumulation of a dissolved chemical species at the interface between a solid material (e.g., granular activated carbon) and water.

Alpha particle: A radioactivity decay product consisting of the charged helium-4 nucleus (two protons and two neutrons with a positive ionic charge of two, +2). Alpha particles are relatively heavy (8000 times as heavy as the beta particle) and are quickly absorbed by surrounding matter. The properties of alpha particles are such that they are only a health hazard if the emitter is in contact with living tissue. When outside the body, they do not penetrate the skin and are stopped by a few centimeters of air. However, when inside the body (breathed in or ingested), the alpha particle may ionize molecules within cells or may form "free radicals" (an atom or chemical group that contains an unpaired electron and which is very chemically reactive), either of which may result in the disruption of normal cellular metabolism and produce changes that affect cell replication which may induce cancerous cellular growth.

Bq (becquerel): An alternative unit of radioactivity is the Bq, which is equal to 1 disintegration per second. One pCi is equal to 0.037 Bq, and one Bq is equal to 27 pCi.

cpm/dpm: Counts per minute divided by radioactive disintegrations per minute; counting efficiency as determined by the counts per minute detected relative to the predicted disintegrations per minute in a well-characterized standard.

Half-life: The time required for one-half of a population of radioactive isotopes to decay; in the case of radioactive contaminants dissolved in water, it is the time for the concentration of the radioactive contaminant to decrease by a factor of two due to radioactive decay.

Heterotrophic Plate Count: A laboratory procedure for estimating the total bacterial count in a water sample (or "bacterial density").

Individual Risk: The risk to a person from exposure to radon in water is calculated by multiplying the concentration of radon in the water (pCi/L) by the unit risk factor (risk per pCi/L) for the exposure pathway of concern (ingestion, inhalation).

Isotopes: Two or more forms of an atomic element having the same number of protons, but differing in the number of neutrons. Some isotopes are stable (not radioactive) and some are radioactive, depending upon the ratio of neutrons and protons.

Monte Carlo Analysis:: Method of approximating a distribution of model solutions by sampling from simulated "random picks" from distributions of model input values.

pCi (picocurie):: a unit of radioactivity equal to 0.037 radioactive disintegrations per second.

Percentile: For any set of observations, the "pth percentile value" is the value such that p% of the observations fall below the pth percentile value and (100-p)% fall above it.

pH: Numerical scale for measuring the relative acidity or basicity of an aqueous solution; values less than 7 are acidic (becoming increasingly so as they decrease) and above 7 are basic (becoming increasing so as they increase).

Radioactivity: The spontaneous disintegration of unstable atomic nuclei (central core of an atom), resulting in the formation of new atomic elements (daughter products), which may or may not themselves be radioactive, and the discharge of alpha particles, beta particles, or photons (other decay particles are known, but their parent isotopes do not occur in drinking water).

Removal efficiency: A measure of the ability of a particular water treatment process to remove a contaminant of interest; defined as the concentration of the contaminant in the treated water (effluent) divided by the concentration of the contaminant in the source water (influent).

WL (working level): Any combination of radioactive chemicals that result in an emission of 1.3×10^5 MeV of alpha particle energy. One WL is approximately the total amount of energy released by the short-lived progeny in equilibrium with 100 pCi of radon.

Working Level Month (WLM): 170 hours of exposure to one Working Level (WL) of radon progeny.

Unit Risk: The risk from lifetime exposure, via the inhalation and ingestion exposure routes, to water containing an unit concentration (1 pCi/L) of radon.

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Appendix 1 to the Preamble: What Were the Major Public Comments on the 1991 NPRM and How Has EPA Addressed Them in This Proposal?

EPA received more than 600 comments on the Notice of Proposed Rulemaking (NPRM) of July 18, 1991 (56 FR 33050). Of the comments received, 289 were from public water suppliers, 89 were from individuals, 76 were from local governments, 52 were from States, 48 were from companies, 43 were from trade/professional organizations, 12 were from Federal agencies, 10 were from health/environmental organizations, 3 were from Members of Congress, and 2 were from universities. EPA received additional comments at public hearings on September 6, 1991, in Washington, DC and on September 12, 1991, in Chicago, Illinois.

Those commenting raised several concerns, including cost of rule implementation, especially for small public water systems, and the larger risk to public health from radon in indoor air from soil under buildings. The next sections summarize major public comments on the 1991 NPRM and provide brief responses in the following areas of most concern: (1) General issues; (2) statutory authority and requirements; (3) radon occurrence; (4) radon exposure and health effects; (5) maximum contaminant level; (6) analytical methods; (7) treatment technologies and costs; and (8) compliance monitoring. In many instances the following sections refer the reader to applicable sections in today's preamble where many of the issues have been fully discussed.

A. General Issues

Additional regulation: Some public comments opposed additional regulation in general, and additional drinking water regulation in particular. Some comments also suggested EPA proceed with a more integrated approach to environmental regulation, i.e., that mitigation programs be designed to provide control over major exposure routes, which in the case of radon must take the soil gas source into account.

EPA Response: At the time of the 1991 proposal, EPA did not have authority under SDWA for a broader radon rule. However, the SDWA as amended in 1996 provides such authority. In addition to requiring EPA to promulgate a regulation for radon in drinking water, the SDWA radon provision also includes a less stringent alternative maximum contaminant level (AMCL) and a multimedia approach to address radon in indoor air. Much of the health threat is associated with radon emanating from soil gas into indoor air. Risk from drinking water particularly through the inhalation pathway is also a significant and preventable risk. Today's proposal addresses all major routes of exposure and is intended to promote multimedia mitigation (MMM) programs and implementation of the AMCL. Thus, the Agency expects to provide more cost-effective reductions in the health risks associated with radon.

Federal funding for compliance and phased implementation: Commenters asked the Agency for increased flexibility in complying with the proposed regulation through phased compliance; cheaper removal technologies; and/or additional Federal funding. Industry and other groups also recommended a phased implementation of radon removal, focusing first on priority water sources with the highest radon levels.

EPA Response: Today's proposal provides different compliance dates for compliance with the MCL and with the AMCL/MMM program, such that there will be sufficient time to implement the MMM program.

The Agency recognizes that the SDWA regulations will continue to place a significant burden on some small communities with limited tax bases and resources with which to attain compliance. The EPA drinking water State Revolving Fund provides support to the States and public and private water suppliers, in particular to small public water suppliers. This fund offers capitalization grants to the States for low-interest loans to help water systems comply with the SDWA (For more information refer to Section XIV.C.1 of today's preamble.)

In addition, EPA surveys of public and private water suppliers have been initiated to understand more clearly their needs in particular in terms of funding to support capital improvements in the context of implementing SDWA-related plans.

B. Statutory Authority and Requirements

Applicability to non-transient, non-community (NTNC) systems: Ten commenters stated that EPA must provide better justification for regulating non-transient, non-community water systems along with community water systems. The indoor occupancy factors and exposure rates are different for persons in the workplace (i.e., school and hospital) than in the home. EPA should state clearly how the final rule will apply to this group.

EPA Response: About one-third of the systems estimated in 1991 as being affected by the final regulation were NTNC water systems. The Agency requested data in 1991 on NTNC system exposure patterns but received none; subsequently, the Agency conducted analysis on limited data on NTNC occurrence and exposure patterns and found the attendant exposures and risks to be relatively small in comparison to those estimated for community water supplies. (For more information refer to Section XI.D of today's preamble.)

In keeping with the flexibility accorded the Agency by SDWA to focus on areas of cognizable public health risk, EPA proposes that NTNC water systems not be required to comply with the proposed radon regulation. At the same time, EPA is soliciting comment and data related to this issue and has left open its options in terms of the final radon regulation.

State authority: Commenters felt that the Federal drinking water regulations should not be uniform across the nation's drinking water supply. Many drinking water issues, including those which involve unique circumstances in the State and the necessary resources to implement programs, remain unresolved and perhaps are not resolvable by the Federal government. As a result, States will need to carry more of the responsibility in regulating drinking water given their familiarity with local circumstances.

EPA Response: The Agency acknowledges the unique circumstances faced by State primacy programs and public water systems. According to the framework set forth in the SDWA Amendments, States will have the option of adopting the MCL or the higher AMCL and the MMM program to address radon in indoor air. State programs in this area are expected to vary, in part due to radon occurrence patterns locally and in part due to State resources as they apply to monitoring public water systems; also States will have flexibility in MMM program implementation, and through consideration of variances and exemptions as allowed under SWDA.

C. Radon Occurrence

Radon in PWS (Nationwide): The American Water Works Association (AWWA) suggested that EPA's 1991 national occurrence estimates for radon were low compared to actual levels, i.e., greater than 20 percent low, resulting in an inaccurate EPA cost impact estimate. The Association suggested EPA consider the following changes to the radon occurrence analysis:

- Disaggregation of the National Inorganics and Radionuclides Survey (NIRS) occurrence data for the smallest public systems, i.e., those serving fewer than 500 persons, into two subsets of systems;
- An accounting in the radon occurrence analysis for geologic conditions in various regions by applying NIRS data in an area-specific manner;
- Updating and increasing the inventory (including NTNCs) based upon FRDS data;
- Inclusion of State radon data in the national occurrence analysis;
- EPA analyses may have underestimated radon in water levels because the location of sampling in NIRS was in the distribution systems (where natural decay of radon-222 may have been significant, thereby lowering occurrence estimates).

EPA Response: EPA analyses of these issues addressed the concerns described previously to the extent feasible (USEPA 1999c). The EPA analyses have incorporated the referenced issues as data allowed; the analyses also addressed newer data collected and/or submitted to EPA.

The Agency used State radon in drinking water data to refine the previous analysis that were based solely on the NIRS data. The Agency identified and obtained data from a number of States that supplement the geographic coverage, representativeness, and utility of the NIRS data in predicting the occurrence of radon in drinking water in the U.S. Additional data sets were obtained that, while not addressing radon distributions in States or regions, provided significant data related to the sampling, analytical, temporal and intra-system variability of radon measurements. The data from the NIRS and from the supplementary data sources were subjected to extensive statistical analysis to characterize their distribution and compare data sets.

These analyses are discussed and referenced in today's preamble Section XI.C. The results indicate that: radon levels seen in the NIRS data sets were generally slightly lower than those seen in the wellhead and point-of-entry data provided by the same States (with radon levels being more comparable in the very small systems due to short residence times); previous results were verified that radon levels in the U.S. are the highest in New England, the Appalachian uplands and other Western and Midwest regions; the levels of radon seen in the supplemental State data sets were similar to those seen in the NIRS data for the same regions; and, due to procedures used to adjust the NIRS data, the proportions of systems exceeding the various levels in the current study are greater than those seen in previous analyses.

However, best estimates of the numbers of systems exceeding regulatory levels in EPA's 1993 estimate for the 1994 EPA Report to Congress (USEPA 1994) and the central tendency estimates in the current analysis are quite similar. This is because the total estimated number of community and non-community non-transient systems that are believed to be active in the U.S. has decreased approximately 17 percent between 1993 and the Agency's current estimates. Part of this difference is due to system consolidation, and part may be due to improved methods for differentiating active from inactive systems, although the relative importance of these two factors is not known.

Occurrence of radon in California: A California drinking water industry association provided a number of resources including the following: a survey of its member agencies; a California Department of Health Services (DHS) Groundwater Study; and the Metropolitan Water District's (MWD) Southern California Radon Survey. The commenter produced estimated radon occurrence figures which far exceeded EPA's California and national occurrence profiles. The commenter's estimate predicted 75 percent to 97 percent of California public water systems out of compliance with a radon standard of 300 pCi/L. The commenter submitted to EPA additional methods and source data necessary for a complete EPA evaluation of this comment.

EPA Response: EPA studied the commenter's methodology for determining radon occurrence in California, proposed water system categorization scheme, and the sources of radon data (surveys mentioned previously), and has concluded the following:

- That sampling in the California surveys biased the results towards higher radon levels since data were apparently collected at the wellhead;
- The methods used in combining data sources (and in substitutions within data sets) resulted in substantial overestimation of radon occurrence in California ground water supplies.
- The commenter assumed 23 percent more public water supplies in California than indicated in then-current EPA FRDS records;
- The use of commenter's GIS-predicted radon levels for California systems was also problematic (USEPA 1999c).

EPA believes that EPA NIRS survey did not under represent the levels of radon in California. A comparison by EPA of the NIRS-California data and other California data reveals a similarity in results. Furthermore, EPA results are more in accord with California State predictions submitted to EPA during the same comment period.

Variability of radon levels in water: The American Water Works Service Company (AWWSC) provided technical information on the issue of radon variability in well water. AWWSC said that the variability of radon levels in well water is a phenomenon that could affect the compliance status of systems. AWWA and the Association of California Water Agencies also echoed concerns about the seasonal and diurnal variability in groundwater.

EPA Response: EPA analyzed this issue to determine if radon variability may or may not have any influence on national occurrence profiles. EPA reviewed the two available sources of information on radon variability (Kinner et al. 1990), and data supplied by the American Water Works Service Co. (AWWSC). The Kinner report was limited to four sites in New Hampshire that exhibited short-term and long-term variability of radon. The AWWSC data were drawn from 400 wells, nationwide, in 1986 and 1987. Kinner's data appear to indicate a radon fluctuation of 20 to 50 percent in well water over long-term intervals, weekly or biweekly. The short-term variability (15 to 180 minute intervals during a three month test at one site) showed a fluctuation of 50 percent as observed in the long-term test. These studies did not try to correlate any of the variability observed with well yield and water table level to account for the inconsistent patterns. The data provided were too limited to independently analyze factors that may have influenced radon level fluctuations. However, EPA notes that the short-term and long-term variabilities of radon observed at a single site were similar. This suggests that the long-term variability may be a reflection of random sampling where short-term influences are influencing radon levels.

The AWWSC analysis of radon in well water included sampling in the fall of 1986 and January 1987. A decrease of 29 percent on average was found over the two-month period. A change in analytical procedure accounted for about 10 percent of that difference. The remaining 19 percent difference was not explained. AWWSC also conducted a test of the effect of pumping time on radon levels over a short period (five days then two days), beginning with an idle period. AWWSC inferred that an observed initial increase in radon level (about 25 percent) was due to radon decay in water that had been sitting near the well casing. According to AWWSC, a subsequent decrease (much smaller) over two days was due to the drawing of less enriched water from beyond a potential geologic radon source yet within the cone of depression.

EPA believes that local geologic and operating conditions may produce temporal variations in radon levels in ground water sources. However, data are too limited to permit drawing of any conclusions. Also, since the Kinner and AWWSC reports cited water that generally contained radon in the high levels, 2,500 to 200,000 pCi/L, and 1,200 to 1,700 pCi/L, respectively, EPA cannot draw any conclusions on the effect(s) of short or long-term variability on radon in water at 300 pCi/L. Because EPA NIRS data represents single, one-time values for systems sampled, it produces no basis for a bias conclusion (*i.e.*, over- or under-estimates). On the contrary, the random nature of the NIRS survey would cancel any differences between the NIRS level and the "true average" radon level in public supplies.

Radon Emanation from Pipe Scale Deposits: Data received after the comment period, and subsequently reviewed by EPA, suggested that due to an existing radon source (radium-226) in some systems, levels of radon-222 may in some instances increase as water passes through water distribution systems.

EPA Response: A paper by Valentine et al. (Valentine 1992) contained data on the phenomenon of radon levels increasing in water distribution pipelines. In three of five distribution systems studied in Iowa, the paper's authors found what they refer to as radon "hot spots." These systems have more radon in delivered water than at the entry to distribution. However, more geographically diverse data generally show that natural radon decay is a more influential factor as water is distributed. In other words, without nationally-relevant data to the contrary, it would be expected that within-distribution system radon decay supercedes radon production, except in very specific circumstances.

A more recent article by Field et al. (1995) reported that a case study of an Iowa water system with an average of 2.2 mg/L dissolved iron and 2.5 pCi/L of radium-226. The finished water entering the distribution system had a mean radon level of 432 ± 54 pCi/L (one standard deviation). Field et al. measured radon levels at the taps of 25 homes and measured radon levels ranging from 81 pCi/L to 2,675 pCi/L, with a mean of 1,108 ± 648 pCi/L. The authors concluded that iron scale deposits were sorbing radium-226, the parent of radon-222. In the case study reported, greater than 80% of the surface pipe-scale was comprised by iron oxides, with traces of scales containing calcium and silicon. Since iron oxides have been shown to selectively scavenge radium, it is plausible that a co-occurrence of high iron and radium levels may result in the production of significant levels of radon within the distribution system. Other factors that would determine the level of radon produced include concentration of radium-226 sorbed to the pipe scale, the quantity, distribution, and surface area of the scale, the composition of the scale, all of which are determined by the average finished water quality, and the length of time the water is in contact with the scale. All case studies were confined to the state of Iowa.

It remains to be shown that the confluence of conditions that result in significant radon production within distribution systems exists commonly at the national level or is confined to specific locales (e.g., areas with high average levels of iron, radium-226, and other site-specific factors).

Regarding this issue, information available at the present time does not support a determination as to the extent to which this phenomenon may occur in the U.S. The Agency is, however, soliciting comments in today's proposal on the advisability of requiring additional monitoring for radon as a source of consumer exposure from the distribution system, and on other radon occurrence issues.

D. Radon Exposure and Health Effects

Approximately 400 public comments were submitted on the assessments of exposure to and health effects of radon in the 1991 NPRM. The major issues raised in these comments, including comments regarding the proposed MCLG, are addressed next.

Linear no-threshold dose response model: Many commenters were concerned that EPA only used a linear no-threshold dose-response model in projecting cancer risk associated with low level exposure to radon in the domestic environment.

EPA Response: The shape of the dose-response curve for radon has been evaluated in detail by the NAS (1999a, 1999b), who concluded that essentially all available data are consistent with a linear non-threshold mechanism. This includes data on the effects of a wide range of ionizing radiation, as well as direct dose-response relationships observed for radon in animals studies and in studies of cohorts of underground miners. The EPA concurs with the NAS evaluation and conclusion.

Age dependence on risk from radon exposure: A few commenters stated that EPA should consider the effect of exposure at young ages. According to these commenters, the additional risks in children were not well addressed.

EPA Response: Data on the relative sensitivity of children to radon are sparse. In general, the NAS Radon in Drinking Water Committee concluded that there is insufficient scientific information to permit quantitative evaluation of the risks of lung cancer death from inhalation exposure to radon progeny in susceptible sub-populations such as infants, children, pregnant women, and elderly and seriously ill persons. However, the BEIR VI committee (NAS 1999a) noted that there is one study (tin miners in China) that provides data on whether risks from radon progeny are different for children, adolescents, and adults. Based on this study, the committee concluded that there was no clear indication of an effect of age at exposure, and the committee made no adjustments in the model for exposures received at early ages. This indicates that children are not an especially susceptible sub-group. With respect to cancer risk from ingestion of radon, NAS (1999b) performed an analysis to investigate the relative contribution of radon ingestion as a child to the total risk. This analysis considered the age dependence of water consumption, of the behavior of radon and its decay products in the body, of organ size, and of risk. The results indicated that dose coefficients are somewhat higher in younger people than adults. NAS (1999b) estimated that about 30 percent of a lifetime risk was due to exposures occurring during the first 10 years of life.

Uncertainty of radon risk estimates: Several commenters said EPA needs to provide a more in-depth discussion of the uncertainty associated with the risk estimates for radon.

EPA Response: EPA has performed a very detailed two-dimensional Monte Carlo evaluation of variability and uncertainty in exposure and risk from water-borne radon (USEPA 1993, 1995). The methods and inputs used by EPA were reviewed by the SAB and by NAS, and the results were judged to be appropriate and sound, subject to some refinements in the uncertainty bounds on some of the inputs. Based on the most recent recommendations from the NAS regarding the uncertainty in the risk coefficient for ingestion and inhalation exposure, EPA (1999d) has recalculated the uncertainty bounds around each risk estimate. In brief, the credible interval around the best estimate of individual and population risks from inhalation and ingestion exposure pathways are about four-fold and fourteen-fold, respectively.

Extrapolation of high dose in mines to lower dose in homes: Many commenters stated that the differences in dose between the mines and homes in the 1991 NAS report *Comparative Dosimetry of Radon in Mines and Homes* needs to be incorporated into the Agency's radon progeny inhalation risk calculation.

EPA Response: EPA and NAS both recognize the importance of potential differences between dose and risk per unit exposure in mines and in homes. The ratio of the dose to lung cells per WLM in the home compared to that in a mine is described by the K factor. Based on the best data available at the time, NAS (1991) had previously concluded that the dose to target cells in the lung was typically about 30 percent lower for a residential exposure compared to an equal WLM exposure in mines (i.e., K=0.7). The BEIR VI committee re-examined the issue of the relative dosimetry in homes and mines. In light of new information regarding exposure conditions in home and mine environments, the committee concluded that, when all factors are taken into account, the dose per WLM is nearly the same in the two environments (i.e., a best estimate for the K-factor is about 1) (NAS 1999a). The major factor contributing to the change was a downward revision in breathing rates for miners. Thus, NAS has concluded that the risk coefficient based on miners is appropriate for use in residences without adjustment.

Possible confounding factors in mine studies: Some commenters raised questions about the possible confounding factors in the miner epidemiological studies EPA used to project lung cancer risks. Commenters stated that, besides radon, exposure to other contaminants not found at home can produce synergistic effects. Such other contaminants could include diesel fumes, excessive dust (which may be a problem in poorly constructed mines without adequate ventilation), and other radionuclides like uranium in the mine air.

EPA Response: The effects on radon risk estimates from potentially toxic exposures to substances such as silica, uranium dust, blasting fumes, and engine exhaust to underground miner cohorts were carefully examined in the NAS reports on radon risks (NAS 1988, 1999a) and other studies. For example, in the Malmberget iron miner study, Radford and St. Clair Renard (1984) investigated and determined that the risk from confounders such as tuberculosis, dust, silica, diesel exhaust, metals and asbestos is negligible. Edling and Axelson (1983) found the Grangeberg mine atmosphere clean of arsenic, asbestos and carcinogenic metals. In the Eldorado miner cohort (NAS 1988), potential confounders were investigated and exposures to silica and diesel exhaust were very low. In the Czechoslovakian uranium miners' study, Sevc et al. (1984, 1988) found that cigarette smoking was the only risk factor other than radon that was a significant exogenic carcinogenic agent. Two of the studies (China and Ontario) have quantitative data on arsenic, and there was no significant variation in excess relative risk per unit radon exposure across different levels of arsenic exposure (NAS 1999a). Despite the variety of exposures to potentially toxic agents other than radon, the dose-response between radon and lung cancer death was approximately consistent across the mining cohorts. NAS (1988) also noted that animal studies show no evidence of a synergistic effect of these agents on lung cancer risk from radon. Taken together, these findings indicate that the effect of confounding factors on observed lung cancer rates in miners is likely to be small.

Radon-smoking interaction: Several commenters stated that EPA's analysis shows that smoking acts synergistically with radon to induce lung cancer. The risk from radon is, on average, ten times higher for smokers than for the rest of the population, and over 20 times higher for heavy smokers. Several commenters asked why they should spend resources to remove a natural contaminant from water while more than ⅔ of the related cancer risk is attributable to the subpopulation who smoke.

EPA Response: Because of the strong influence of smoking on the risk from radon, the BEIR VI committee (NAS 1999a) evaluated risk to ever-smokers and never-smokers separately. The BEIR VI committee had smoking information on five of the miner cohorts, from which they concluded that there was a submultiplicative interaction between radon and smoking in causing lung cancer. Based on current smoking prevalence rates, it is estimated that about 84 percent of all radon-induced lung cancers will occur in ever-smokers, with only 16 percent in never-smokers. Thus, it is true that a reduction in radon exposure will save more cancer cases in the cohort of smokers than nonsmokers, but the relative amount of risk reduction is actually greater for nonsmokers than smokers.

Epidemiological studies of lung cancer in the home environment. Some commenters stated that in estimating risk associated with exposure to radon, EPA should consider health risk data associated with the exposure to low levels of radon in the domestic environment.

EPA Response: The NAS (1999a) has recently performed a careful analysis of epidemiological data on the risk of cancer in residents from radon. The NAS committee concluded that because of numerous design and experimental limitations, these studies do not constitute an adequate data base from which quantitative risk estimates can be derived. However, the data from studies in residents are considered to be generally consistent with the predictions based on the miner data.

Lack of experimental or epidemiological data link exposure via ingestion to increased cancer rates: Several commenters stated that no experimental or epidemiologic data link exposure via ingestion to increased cancer rates. The basis for ingestion risk data was a surrogate gas, xenon-133, that behaves similarly to radon.

EPA Response: Although no human or animal data directly demonstrate cancer risk from ingestion of radon, it is certain that ingested radon is absorbed from the gastrointestinal tract into the body, that this absorbed radon is distributed to internal tissues which are then irradiated with alpha particles as the radon and its progeny undergo decay. That alpha irradiation increases cancer risk is well established (UNSCEAR 1988; NAS 1990).

EPA's ingestion risk estimate is based on the conclusions from the NAS Radon in Drinking Water committee (NAS 1999b). The NAS committee performed a re-evaluation of the risks from ingestion of radon in direct tap water using the basic approach described in Federal Guidance Document 13 (USEPA 1998). This involved developing a new pharmacokinetic model of the behavior of ingested radon, based primarily on observations of the behavior of ingested radon in humans, as well as studies using xenon and other noble gases. NAS also addressed the uncertainties (within an order of magnitude) of the risk estimates for oral exposure associated with dose estimate to the stomach and in the epidemiologic data used to estimate the risk (NAS 1999b). Because the magnitude of the risk posed by ingestion is about 10 percent of the risk from inhalation of radon progeny, these uncertainties are not most critical in evaluating the overall hazards from water-borne radon.

Air-water transfer factor and episodic exposure: As for inhalation exposure, most commenters supported EPA's proposed radon water-to-air transfer ratio of 10,000:1. Two commenters regarded this transfer factor as too conservative.

EPA Response: EPA has performed a detailed evaluation of radon gas transfer from water to air (USEPA 1993, 1995). Values are highly variable between buildings, with an average value of about 1E–04. The NAS has recently performed an independent review of both measured and modeled values, and the NAS committee also concluded that a value of 1E–04 is the best point estimate available (NAS 1999b).

Outdoor versus indoor radon concentrations: Some commenters asserted that the concentration of radon in outdoor air is higher than the indoor air concentration resulting from the proposed MCL of 300 pCi/L.

EPA Response: EPA agrees. The NAS committee reviewed all the ambient radon concentration data that are available, and based on these data concluded that the best estimate of the average ambient (outdoor) radon concentration in the United States is 0.4 pCi/L of air. In contrast, based on a transfer factor of 1×10^{-4}, the contribution to indoor air from an average radon concentration in water (about 213 pCi/L) is only about 0.021 pCi/L. However, some groundwater systems have much higher radon concentrations, and increments in indoor air from water-borne radon may be much higher in those cases. As required by the Congress, EPA is implementing the MMM program to address the issue of relative radon risk from water and air.

Direct tap water ingestion rate: Concerning ingestion intake, few commenters expressed an opinion on the direct tap water ingestion rate of 1 L/day. One commenter suggested that the intake assumption should be 0.7 L/day, and another, 0.25 L/day.

EPA Response: EPA has based its current assessment of this issue on reports by the National Academy of Sciences and others. The reader is referred to a fuller discussion in the preamble to today's proposed radon in drinking water regulation and to references cited therein (see Section XII).

Radon loss via volatilization prior to ingestion: Two commenters felt that the 20 percent radon loss from direct tap water before ingestion is conservative.

EPA Response: Data are limited on the amount of radon lost from direct tap water before ingestion. Several studies (von Doblin and Lindell 1964; Hursh 1965; Suomela and Kahlos 1972; Gesell and Prichard 1980; Horton 1982) suggest a value of about 20 percent as the central estimate of radon lost before direct ingestion. Because of the lack of data, the NAS (1999b) recommended that a value of 0 percent (i.e., no loss) be assumed. It is important to note that this applies only to "direct tap water", and that radon loss is assumed to be nearly complete from other types of water (coffee, juice, that in foods, etc.).

Concerning the potential additional loss from the stomach prior to absorption, EPA believes that radon does not escape from the esophagus. An available study (Correia et al. 1987) conducted by the Massachusetts General Hospital specifically measured exhaled air following ingestion of radioactive xenon in drinking water. Gas did not immediately escape through the mouth. However, the absorption through the stomach and small intestine transferred xenon to the bloodstream and lungs. The pharmacokinetic model used to evaluate risk from ingested radon utilizes this absorption mechanism.

New studies indicating reduced lung cancer risk: Some commenters asserted that the lung cancer risk estimates will be reduced based on new studies.

EPA Response: The risk coefficients for lung cancer derived by NAS (1999a, 1999b) are based on a detailed analysis of all of the currently available studies.

Relative risk of radon from soil versus radon from drinking water: Many commenters stated that the risks posed by radon in water are small compared to the risk of radon from soil, and that regulation of radon in water will have very little effect in reducing the total risk of cancer from radon exposure.

EPA Response: EPA recognizes that the risk to residents contributed by radon in household water is a relatively small fraction of the risk contributed by radon released into indoor air from soil. Based on the most recent quantitative analysis, NAS estimates that this fraction is only about 1 percent. Nevertheless, it is still true that radon in water is one of the most hazardous substances in public water systems, contributing a total of about 160–170 cancer-deaths per year. Thus, regulation of radon in water is appropriate.

Cancer risk posed by radon in drinking water: Radon in drinking water is one of the water contaminants with the highest estimated cancer risk.

EPA Response: EPA agrees, and it is for this reason that EPA believes that regulation of radon in water is necessary and appropriate. By definition, because radon is a known human carcinogen, the MCLG is zero.

E. Maximum Contaminant Level

Opposition to a radon MCL of 300 pCi/L: More than 300 commenters representing trade associations, Federal and State agencies, and regional and community water suppliers disagreed with a standard of 300 pCi/L for radon in drinking water. The strongest opposition came from California, Nebraska, and the northeastern region of the United States. Other commenters suggested the MCL be set at 1,000 pCi/L or at 2,000 pCi/L.

EPA Response: As referenced in Section A of this Appendix, the SDWA as amended in 1996 provides EPA authority to utilize an alternative approach (AMCL with MMM programs), which is expected to significantly allay concerns of stakeholders and commenters on the 1991 proposal.

Use of cost-effectiveness in standard setting: Local water agencies throughout California and elsewhere in the United States insisted that water rates would double, resulting in economic problems. State and local water agencies were in almost unanimous agreement that the proposed standard may not be cost-effective, posing significant financial and administrative burdens on agencies and customers.

EPA Response: In the past, EPA generally limited consideration of economic costs under the SDWA to whether a treatment technology was affordable for large public water systems. Under the SDWA as amended in 1996, the Agency has conducted considerable analysis in the areas of cost and technologies for small systems implementing the radon MCL and on small system compliance technologies. (For more information on related EPA analyses refer to today's proposal.)

The MCL as proposed in 1991 and in today's action was set within the EPA regulatory target range of approximately 10^{-4} to 10^{-6} individual lifetime fatal cancer risk level, to ensure the health and safety of the country's drinking water supply. Although this level will prevent numerous fatal cancer cases per year, the Agency recognizes that this benefit would affect only radon in ground water or 5 percent of the total radon exposure. The Agency expects the proposed AMCL/ multimedia approach will result in greater radon risk reduction at lower cost. (The multimedia mitigation program and the projected costs and benefits are described in greater detail in today's proposal.)

Impact on private wells: Several commenters expressed concern over the potential impact of the proposed standards on private wells.

EPA Response: The Agency cannot comment on the impact of an NPDWR (radon standard) on private wells. EPA currently possesses some data from State surveys that indicate relatively high levels of radon in private wells. However, the data are distinct from Public Water System data collected by EPA and others. The statute regulates public water systems that provide piped water for human consumption to at least 15 service connections or that serve an average of at least 25 people for at least 60 days each year. Public water systems can be community; non-transient, non-community; or transient non-community systems. As a supplement to Federal coverage, some States extend their authority by regulating systems serving 10 people or fewer.

F. Analytical Methods

Availability of qualified laboratories and personnel: Commenters stressed the impact the proposed regulation may have on requirements for analytical laboratory certification and training of laboratory technicians. For example, one State wrote that it has no certification process through which laboratories can receive State certification for radionuclide analyses. Another commenter stressed the need for a strategy to work with individual States to ensure sufficient certified analytical laboratory capacity.

EPA Response: The current situation and expected changes in the processes governing laboratory approval and certification are discussed in some detail in today's preamble (Section VIII.B). One of the changes since 1991 is the formation of the National Environmental Laboratory Accreditation Conference (NELAC) in 1995. NELAC serves as a voluntary national standards-setting body for environmental laboratory accreditation, and includes members from both state and Federal regulatory and non-regulatory programs having environmental laboratory oversight, certification, or accreditation functions. The members of NELAC meet bi-annually to develop consensus standards through its committee structure. These consensus standards are adopted by participants for use in their own programs in order to achieve a uniform national program in which environmental testing laboratories will be able to receive one annual accreditation that is accepted nationwide. The intent of the NELAC standards setting process is to ensure that the needs of EPA and State regulatory programs are satisfied in the context of a uniform national laboratory accreditation program. EPA shares NELAC's goal of encouraging uniformity in standards between primacy States regarding laboratory proficiency testing and accreditation.

Four-day holding period between sampling and analysis: Several commenters contended that for laboratories to cope with the increased number of samples, the holding period should increase to eight days. A State agency suggested a holding period of seven days. Another commenter stated that the proposed four-day holding period was not possible because many ground water systems have sources distributed over large areas that may need sampling. Certified personnel will collect, record, package, and send the samples to analytical laboratories within four days. Also, with a 100-minute counting time requirement, commercial laboratories may be ill-equipped to analyze samples from 28,000 systems. Another State commented that the four-day holding period was not compatible with a standard work week.

Response: Standard Method 7500–Rn reports a 50 minute counting time (not 100 minutes) and a four day sample holding time. This combination of counting time and holding time has been determined to be a good trade-off, given the limitation of the 3.8 day half-life of radon. Doubling the sample holding time (i.e., eight days) would approximately triple the counting time (i.e., to 150 minutes) necessary to achieve the same level of certainty in the analytical results, which would probably result in much higher analytical costs. Since the sample counting procedure is capable of being highly automated, EPA believes that certified laboratories will be able to process the required samples with a four-day holding time. As an example, one laboratory contacted by EPA currently analyzes radon in 12,000 water samples per year as part of a ground water monitoring study, providing evidence that a demand for radon analytical capacity will result in the required laboratory capacity. Based on an evaluation of the potential for laboratory certification, performance testing, and analytical procedures, which included input from stakeholders, the four day holding time has been determined to be feasible, and should result in lower analytical costs than a longer holding time and a longer counting time.

Proposed analytical techniques: A commenter representing a group of utilities approved of direct, low-volume liquid scintillation for measurement of radon as proposed, but recommended the use of Lucas Cell de-emanation for measurement of Ra–226 (not also for radon, as proposed). According to this commenter, the liquid scintillation method for radon measurement is straightforward and efficient compared with the Lucas Cell method that requires a high degree of specialized skill. Also, equipment cost for the Lucas Cell method may be prohibitive. The Conference of Radiation Control Program Directors stated that liquid scintillation, while able to detect radon in water at low levels, may provide laboratory results that are not reliable.

EPA Response: EPA agrees that LSC has the stated advantages relative to de-emanation. EPA also expects that the vast majority of nationwide radon analysis will be done using LSC. However, some laboratories are already equipped to perform the de-emanation method. Since the de-emanation method performs acceptably well, there is no reason to refuse the possibility of the added laboratory capacity afforded by the approval of this method.

Precision variability: A local water agency and an engineering company representative stated that the 30% precision variability is inadequate for determining compliance because of the extensive natural variability in radon levels over time. The combination of counting error, sampling error, and holding time variability demands a precision of ±20%, which would lead to more consistent data.

EPA Response: EPA agrees that the 1991 proposal of an acceptance level of ± 30%, based on a radon "practical quantitation level" (PQL) of 300 pCi/L is not supportable. This conclusion is based on an extensive collaborative study of the liquid scintillation method and the de-emanation method for radon published by EPA in 1993, as described in the methods section (VIII.b) of the preamble to this proposal. Today's proposal contains several options for ensuring that compliance monitoring is performed using radon methods with acceptable accuracy and precision. Based on other comments to the 1991 radionuclides proposal, EPA's preferred option is that the method detection limit (MDL) be used as the measure of sensitivity for radon, and not a PQL, consistent with the use of the MDL as the basis for sensitivity in the current radionuclides rule. EPA is proposing a value of 12 ± 12 pCi/L as the MDL for radon.

Based on the collaborative study data, EPA's best recommendation for acceptance limits for performance evaluations is ± 5% for single measurements, and for triplicate measurements, ± 6% at the 95% confidence level, and ± 9% at the 99% confidence level.

G. Treatment Technologies and Cost

Water Treatment Costs: Industry groups and several utilities provided detailed analyses of unit treatment costs for removal of radon in water. Water treatment cost estimates prepared by a consultant were up to five times the costs estimated by EPA. An analysis produced by a consultant showed that among the different factors influencing annual compliance costs estimated by them, unit treatment costs have the largest impact.

EPA Response: EPA disagrees that its radon aeration treatment estimates supporting the 1991 radionuclides proposal were under-estimates. EPA analyzed the aeration cost model and the cost elements put forward by the industry commenters and summarized the major differences between the EPA and industry models. This summary may be obtained from the docket supporting today's proposal (USEPA 1992). While this summary accounts for the differences in cost estimates between EPA and the industry and utility estimates, it is not necessary to go into detail regarding these differences since overwhelming evidence suggests that EPA's 1992 cost estimates were much closer to actual unit costs, based on costs reported in case studies collected since 1991 (USEPA 1999a, AWWARF 1998a) than the commenter's estimates. A comparison of EPA's current unit capital cost estimates to actual capital costs reported in published case studies can be found in Figure VIII.A.1 of this preamble. The consultant's 1991 estimates are compared against case studies and against EPA's current estimates in an EPA memorandum dated July 28, 1999 (USEPA 1999b). In summary, the consultant's estimates over-estimated the small systems case studies by factors ranging from three for small systems with design flows of around 1 MGD down to around 0.3 MGD. For the smallest systems case studies (systems serving around 0.015 MGD), the consultant's estimates were high by a factor of more than twenty. For large systems, the consultant's estimates were two to three times higher than the best fit for the large system case studies. As can be seen in Figure VIII.A.1 ("Total Capital Costs: Aeration Cost Case Studies"), EPA's current unit capital cost estimates appear to be very conservative compared to small systems case studies (systems with design flows less than 1 MGD) and are typical of case studies for larger flows (design flows greater than 1 MGD). It should be noted the costs reported for these case studies are total capital costs and include all process costs, as well as pre- and post-treatment capital costs, land, buildings, and permits. Figures VIII.A.1 through VIII.A.3 shown in the preamble provide strong evidence that EPA's assumptions affecting its unit cost estimates are realistic for large systems and are conservative for small systems.

Additional Treatment—Disinfection: Commenters asserted that some systems may need to add disinfection treatment to protect aerated water supplies from biological contamination. It was also stated that about 58 percent of small systems and 12 percent of large systems may need to add disinfection technology.

EPA Response: The current cost analysis assumes that all systems adding aeration and GAC will disinfect. For those systems not already disinfecting (proportions estimated from the EPA 1997 Community Water System Survey), it was assumed that systems adding treatment would also add disinfection.

Pretreatment for Iron and Manganese: A commenter also challenged EPA's position on the minimal pretreatment of a ground water supply before air stripping of radon. The commenter presumed that iron and manganese fouling will require additional treatment. While the comment did not address the costs to pre-treat water for iron and manganese removal, it was mentioned this pretreatment would result in high potential costs to water systems.

EPA Response: EPA has re-evaluated its assumptions regarding iron and manganese (Fe/Mn) fouling and has included costs for chemical stabilization (sequestration) of Fe/Mn for 25% of small systems and 15% of large systems. Based on an analysis of the occurrence of Fe/Mn in raw and finished ground water, EPA believes that this is adequate to account for Fe/Mn control. Data sources for this evaluation were: "National Inorganics and Radionuclides Survey" (NIRS); American Water Works Association, "Water:/Stats, 1996 Survey: Water Quality". and U.S. Geological Survey, "National Water Information System"). This analysis is more fully discussed in Section VIII of the preamble. EPA reiterates that if its Fe/Mn cost assumptions were invalid, this fact would be demonstrated in comparisons of its estimates of capital and O&M costs against those reported in the case studies cited in the preamble. As described previously, EPA's unit cost estimates are apparently conservative for small systems and seem to be typical of large systems.

Aeration as BAT and Use of Carbon Treatment: A major commenter and a city in California asserted that aeration treatment for radon could potentially create a problem in air emissions permitting. Also, a major commenter commented that systems with high radon levels in water could produce high levels of radon in off-gas, potentially creating a shift among utilities to activated carbon treatment and waste (radioactive) disposal problems.

EPA Response: EPA discusses this concern in some detail in Section VIII of the preamble, including an evaluation of the estimates of the potential risks. Results from a survey of nine California air permitting agencies regarding permitting requirements and costs for radon treatment is also described in the preamble. The full text of this survey is reported in EPA 1999a.

Centralized Treatment Assumption: Commenters from the regulated community challenged EPA's cost analysis assumption involving centralized water treatment for radon. These associations cited the then-current EPA Community Water Supply Survey of 1986 and the then-current Water Industry Database. They suggested centralized treatment facilities were unrealistic and under predicts the costs to public water systems. The industry asserted that the number of wells and well groupings per system (with numbers increasing with increasing system size) will likely determine the number of treatment sites. An industry group produced estimated distributions of the percent of systems that would require treatment sites.

EPA Response: Centralized treatment was not assumed in the current radon cost analysis. EPA's current estimate of national compliance costs for the proposed radon rule uses the distribution of wells (treatment sites) per ground water system as a function of water system size from the 1997 Community Water System Survey (USEPA 1997). EPA assumed that a given system's total flow would be evenly distributed between the total number of wells at the system. To estimate the radon occurrence at a particular well within a system with multiple wells, EPA used its evaluation of intra-system occurrence variability (the variability of radon occurrence between wells within a given system) to estimate individual well radon levels. If multiple wells were predicted to be impacted at a given system, the cost model assumes that treatment is installed at each well requiring treatment.

Integrated approach to waste management: Three commenters declared that compliance with the radionuclides rule will create radioactive waste that may or may not be disposable. They recommended an integrated environmental management approach in addressing this waste issue.

EPA Response: The Agency used an integrated environmental management approach to determine BAT in removing contaminants from drinking water. While Packed Tower Aeration (PTA), the BAT for radon, does not generate waste requiring disposal, granular activated carbon is of concern. While not BAT, granular activated carbon may be used by very small systems to remove radon. Waste disposal issues regarding GAC treatment for radon are discussed in some detail in Section VIII of this preamble. For more information, see NAS 1999b and AWWARF 1998a and AWWARF 1998b.

H. Compliance Monitoring

Sampling location: Four State environmental/health agencies, one private non-environmental firm, eight public water suppliers, and one water association suggested that radon sampling of the distribution system at the point of entry does not allow systems to account for decay and aeration of radon during distribution. According to these commenters, sampling is more effective closer to the point of use.

EPA Response: EPA's proposal requires sampling at the entry points to the distribution system to assure compliance with the MCL for the water delivered to every customer. All samples will be required to be finished water, as it enters the distribution system after any treatment and storage. This approach allows systems to account for the decay and aeration of radon during treatment and storage before it enters the distribution system and at the same time offers maximum protection to the consumer. It is expected that radon levels would progressively decrease within the distribution system, downstream from the point of entry. Therefore, consumers who are located closest to the point of entry are exposed to higher levels of radon that those further downstream. In order to assure maximum protection to all of the consumers, EPA requires sampling at the entry points to the distribution system.

Compliance period: Clarification concerning the frequency of compliance periods, specifically in regards to the specific timing for the commencement of water systems monitoring is warranted.

EPA Response: The proposed monitoring requirements for radon are consistent with the monitoring requirements for regulated drinking water contaminants, as described in the Standardized Monitoring Framework (SMF) promulgated by EPA under the Phase II Rule of the National Primary Drinking Water Regulations (NPDWR) and revised under Phases IIB and V. The goal of the SMF is to streamline the drinking water monitoring requirements by standardizing them within contaminant groups and by synchronizing monitoring schedules across contaminant groups.

Systems already on-line must begin initial monitoring for compliance with the MCL/AMCL by the compliance dates specified in the rule (i.e., 3 years after the date of promulgation or 4.5 years after the date of promulgation). New sources connected on-line must satisfy initial monitoring requirements.

Initial compliance with the MCL/AMCL will be determined based on an average of 4 quarterly samples taken at individual sampling points in the initial year of monitoring. Systems with averages exceeding the MCL/AMCL at any well or sampling point will be deemed to be out of compliance. Systems exceeding the MCL/AMCL will be required to monitor quarterly until the average of 4 consecutive samples are less than the MCL/AMCL. Systems will then be allowed to collect one sample annually if the average from four consecutive quarterly samples is less than the MCL/AMCL and if the State determines that the system is reliably and consistently below MCL/AMCL.

Systems that primarily use surface water, supplemented with ground water: One water association suggested that public water systems supplementing their surface water supply with ground water are not in violation. Since the actual lifetime risk involved is significantly lower than those systems using 100 percent ground water supply, an equitable method of compliance for this type of combined systems should be administered.

EPA Response: In today's proposal, systems relying exclusively on surface water as their water source are not required to sample for radon. Systems that rely in part on ground water during low-flow periods about one quarter of the year are considered public ground water systems. According to the ground water monitoring requirements, systems are subject to monitor finished water at each entry point to the distribution system for radon during periods of ground water use. For the purpose of determining compliance, systems supplementing their surface water during part of the year will use a value of ½ the detection limit for radon for averaging purposes for the quarters when the water system is not supplemented by ground water. The water system having ground water samples supplementing surface water with a radon detection level above the MCL would not be out of compliance provided that these samples do not cause the average to exceed the MCL when averaged with the value of ½ the detection limit during the quarters the ground water source is not in use.

Averaging quarterly samples: Commenters recommended clarifying the discussion concerning the averaging of initial measurements to determine compliance. They stated that averaging the first year quarterly samples with the annual second and third compliance years will defeat the purpose of quarterly samples detecting signs of seasonal variability.

EPA Response: EPA is retaining the quarterly monitoring requirement for radon as proposed initially in the 1991 proposal to account for variations such as sampling, analytical and temporal variability in radon levels. Results of analysis of data obtained since 1991, estimating contributions of individual sources of variability to overall variance in the radon data sets evaluated, indicated that sampling and analytical variance contributes less than 1 percent to the overall variance. Temporal variability within single wells accounts for between 13 and 18 percent of the variance in the data sets evaluated, and a similar proportion (12–17 percent) accounts for variation in radon levels among wells within systems (USEPA 1999c).

For today's proposal, the Agency performed additional analyses to determine whether the requirement of initial quarterly monitoring for radon was adequate to account for seasonal variations in radon levels and to identify non-compliance with the MCL/AMCL. Results of analysis based on radon levels modeled for radon distribution for ground water sources and systems (USEPA 1999c) in the U.S. show that the average of the first four quarterly samples provides a good indication of the probability that the long-term average radon level in a given source would exceed an MCL or AMCL. Tables A.1 and A.2 show the probability of the long-term average radon level exceeding the MCL and AMCL at various averages obtained from the first four quarterly samples from a source.

TABLE A.1.—THE RELATIONSHIP BETWEEN THE FIRST-YEAR AVERAGE RADON LEVEL AND THE PROBABILITY OF THE LONG-TERM RADON AVERAGE RADON LEVELS EXCEEDING THE MCL

If the average of the first four quarterly samples from a source is:	Then the probability that the long-term average radon level in that source exceeds 300 pCi/L is:
Less than 50 pCi/L	0 percent
Between 50 and 100 pCi/L	0.5 percent
Between 100 and 150 pCi/L	0.4 percent
Between 150 and 200 pCi/L	7.2 percent
Between 200 and 300 pCi/L	26.8 percent

TABLE A.2.—THE RELATIONSHIP BETWEEN THE FIRST-YEAR AVERAGE RADON LEVEL AND THE PROBABILITY OF THE LONG-TERM RADON AVERAGE RADON LEVELS EXCEEDING THE AMCL

If the average of the first four quarterly samples from a source is:	Then the probability that the long-term average radon level in that source exceeds 4000 pCi/L is:
Less than 2,000 pCi/L	Less than 0.1 percent
Between 2,000 and 2,500 pCi/L.	9.9 percent
Between 2,500 and 3,000 pCi/L.	15.1 percent
Between 3,000 and 4,000 pCi/L.	32.9 percent

Water systems with a history of compliance: EPA has provided for the grandfathering of prior monitoring data for granting waivers. Monitoring data collected after January 1, 1985, that are generally consistent with the requirements of the section, and includes at least one sample taken on or after January 1, 1993, may be accepted by the State to satisfy the initial monitoring requirements. Many systems meeting the current monitoring requirements should qualify for this grandfathering provision because each sampling point or source water intake will be monitored within the preceding four-year period. New sampling points, or sampling points with new sources, must take an initial sample within the year the new source or sampling point begins operation.

EPA Response: Today's proposal provides that at a State's discretion, sampling data collected after the proposal could be used to satisfy the initial sampling requirements for radon, provided that the system has conducted a monitoring program not less stringent than that specified in the regulation and used analytical methods specified in the proposed regulation. The Agency wants to provide water suppliers with the opportunity to synchronize their monitoring program with other contaminants and to get an early start on their monitoring program if they wish to do so.

The proposed regulation provides for the States to grant monitoring waiver reducing monitoring frequency to once every nine years (once per compliance cycle) provided the system demonstrates that it is unlikely that radon levels in drinking water will occur above the MCL/AMCL. In granting the waiver, the State must take into consideration factors such as the geological area where the water source is located, and previous analytical results which demonstrate that radon levels do not occur above the MCL/AMCL. The waiver will be granted for up to a nine year period. (Given that all previous samples are less than ½ the MCL/AMCL, then it is highly unlikely that the long-term average radon levels would exceed the MCL/AMCL.)

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List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians—lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: October 19, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 141 and 142 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.2 is amended by adding definitions of "Alternative Maximum Contaminant Level (AMCL)" and "Multimedia Mitigation (MMM) Program Plan" in alphabetical order, to read as follows:

§ 141.2 Definitions.

* * * * *

Alternative Maximum Contaminant Level (AMCL) is the permissible level of radon in drinking water delivered by a community water system in a State with an EPA-approved multimedia mitigation (MMM) program plan, or by a community water system with a State-approved local MMM program plan.

* * * * *

Multimedia Mitigation (MMM) Program Plan is a State or community water system program plan of goals and strategies developed with public participation to promote indoor radon risk reduction. MMM programs for radon in indoor air may use a variety of strategies, including public education, testing, training, technical assistance, remediation grant and loan or incentive programs, or other regulatory or non-regulatory measures.

* * * * *

3. Section 141.6 is amended by adding paragraph (j) to read as follows:

141.6 Effective dates.

* * * * *

(j) The regulations set forth in Subpart R of this part are effective [60 days after date of publication of the final rule in the **Federal Register**].

Subpart C—[Amended]

4. A new § 141.20 is added to Subpart C to read as follows:

§ 141.20 Analytical methods, monitoring, and compliance requirements for radon.

(a) *Analytical methods.* (1) Analysis for radon shall be conducted using one of the methods in the following table:

PROPOSED ANALYTICAL METHODS FOR RADON IN DRINKING WATER

Methodology	References (method or page number)		
	SM	ASTM	EPA
Liquid Scintillation Counting	7500–Rn[1]	D 5072 92[2]	
De-emanation			EPA 1987[3]

[1] *Standard Methods for the Examination of Water and Wastewater*. 19th Edition Supplement. Clesceri, L., A. Eaton, A. Greenberg, and M. Franson, eds. American Public Health Association, American Water Works Association, and Water Environment Federation. Washington, DC. 1996.

[2] American Society for Testing and Materials (ASTM). Standard Test Method for Radon in Drinking Water. Designation: D 5072–92. *Annual Book of ASTM Standards*. Vol. 11.02. 1996.

[3] Appendix D, Analytical Test Procedure, "The Determination of Radon in Drinking Water". In "Two Test Procedures for Radon in Drinking Water, Interlaboratory Collaborative Study". EPA/600/2–87/082. March 1987. p. 22.

(2) Sample collection for radon shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the following table.

SAMPLING METHODS AND SAMPLE HANDLING, PRESERVATION, AND HOLDING TIME

Sampling methods	Preservative	Sample Container	Maximum holding time for sample
(i) As described in SM 7500–Rn[1]	Ship sample in an insulated package to avoid large temperature changes.	Glass with teflon-lined septum.	4 days.

Sampling Methods and Sample Handling, Preservation, and Holding Time

Sampling methods	Preservative	Sample Container	Maximum holding time for sample
(ii) As described in EPA 1987[2].			

[1] *Standard Methods for the Examination of Water and Wastewater.* 19th Edition Supplement. Clesceri, L., A. Eaton, A. Greenberg, and M. Franson, eds. American Public Health Association, American Water Works Association, and Water Environment Federation. Washington, DC 1996.

[2] "Two Test Procedures for Radon in Drinking Water, Interlaboratory Collaborative Study". EPA/600/2–87/082. March 1987.

(b) Monitoring and compliance requirements. Community water systems (CWSs) shall conduct monitoring to determine compliance with the maximum contaminant level (MCL) or alternate maximum contaminant level (AMCL) specified in § 141.66 in accordance with this chapter. The monitoring requirements have been developed to be consistent with the Phase II/V monitoring schedule.

(1) Applicability and sampling location. CWSs using a ground water source or CWSs using ground water and surface water sources (for the purpose of this section hereafter referred to as systems) shall sample at every entry point to the distribution system which is representative of each well after treatment and/or storage (hereafter called a sampling point) under normal operating conditions in accordance with paragraph (b)(2) of this section.

(2) Monitoring—(i) Initial monitoring requirements. (A) Systems must collect four consecutive quarterly samples beginning by the date specified in § 141.301(b).

(B) States may allow previous sampling data collected after [60 days after date of publication of the final rule] to satisfy the initial monitoring requirements, provided the system has conducted monitoring to satisfy the requirements specified in this section. If a system's early monitoring data indicates an MCL/AMCL exceedence, the system will not be considered in violation until the end of the applicable initial monitoring period specified in § 141.301(b).

(ii) Routine monitoring requirements. Systems must continue quarterly monitoring until the running average of four consecutive quarterly samples is less than the MCL/AMCL. If the running average of four consecutive quarterly samples is less than the MCL/AMCL then systems may conduct annual monitoring at the State's discretion.

(iii) Reduced monitoring requirements. States may allow systems to reduce the frequency of monitoring to once every three years (one sample per compliance period) beginning the following compliance period provided the systems:

(A) Demonstrate that the average of four consecutive quarterly samples is below ½ MCL/AMCL;

(B) No individual samples exceed the MCL/AMCL; and

(C) The States determine that the systems are reliably and consistently below the MCL/AMCL.

(iv) Increased monitoring requirements. (A) Systems which exceed the MCL/AMCL shall monitor quarterly beginning the quarter following the exceedence. States may allow systems to reduce their monitoring frequency if the requirements specified in paragraph (b)(2)(iii) or (b)(2)(iv)(B) of this section are met.

(B) Systems monitoring once every three years, or less frequently, which exceed ½ MCL/AMCL shall begin annual monitoring the year following the exceedence. Systems may reduce monitoring to once every three years if the average of the initial and three consecutive annual samples is less than ½ MCL/AMCL and the State determines the system is reliably and consistently below the MCL/AMCL.

(C) If a community water system has a portion of its distribution system separable from other parts of the distribution system with no interconnections, increased monitoring need only be conducted at points of entry to those portions of system.

(v) Failure to conduct monitoring as described in this section is a monitoring violation.

(3) Monitoring waivers. (i) States may grant a monitoring waiver to systems provided that:

(A) The system has completed initial monitoring requirements as specified in paragraph (b)(2)(i) of this section. Systems shall demonstrate that all previous analytical results were less than ½ MCL/AMCL. New systems and systems using a new ground water source must complete four consecutive quarters of monitoring before the system is eligible for a monitoring waiver; and

(B) States determine that the systems are reliably and consistently below the MCL/AMCL, based on a consideration of potential radon contamination of the source water due to the geological characteristics of the source water aquifer.

(ii) Systems with a monitoring waiver must collect a minimum of 1 sample every nine-years (once per compliance cycle).

(iii) A monitoring waiver remains in effect until completion of the nine-year compliance cycle.

(iv) A decision by States to grant a monitoring waiver shall be made in writing and shall set forth the basis for the determination.

(4) Confirmation samples. Systems may take additional samples to verify initial sample results as specified by the State. The results of the initial and confirmation samples will be averaged for use in calculation of compliance.

(5) Compliance. Compliance with § 141.66 shall be determined based on the analytical result(s) obtained at each sampling point. If one sampling point is in violation, the system is in violation.

(i) For systems monitoring more frequently than annually, compliance with the MCL/AMCL is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the MCL/AMCL, then the system is out of compliance with the MCL/AMCL.

(ii) If any one quarterly sampling result will cause the running average to exceed the MCL/AMCL, the system is out of compliance.

(iii) Systems monitoring annually or less frequently whose sample result exceeds the MCL/AMCL will revert to quarterly sampling immediately. The system will not be considered in violation of the MCL/AMCL until they have completed one year of quarterly sampling.

(iv) All samples taken and analyzed under the provisions of this section must be included in determining compliance, even if that number is greater than the minimum required.

(v) If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on available data.

(vi) If a sample result is less than the detection limit, zero will be used to calculate the annual average.

(vii) During the initial monitoring period, if the compliance determination for a system in a non-MMM State exceeds the MCL, the system will incur a MCL violation unless the system notifies the State by [four years after date of publication of the final rule in the **Federal Register**] of their intent to submit a local MMM plan, submits a local MMM plan to the State within [5 years after date of publication of the final rule in the **Federal Register**] and begins implementation by [5.5 years after date of publication of the final rule in the **Federal Register**]. The State shall approve or disapprove a local MMM program plan within 6 months from the date of receipt. If the State does not disapprove the local MMM program plan during such period, then the CWS shall implement the plan submitted to the State for approval. The compliance determination will be conducted as described in this paragraph.

(viii) Following the completion of the initial monitoring period, if the compliance determination for a system in a non-MMM State exceeds the MCL, the system will incur a MCL violation unless the system submits a local MMM plan to the State within 1 year from the date of the exceedence and begins implementation 1.5 years from the date of the exceedence. The State shall approve or disapprove a local MMM program plan within 6 months from the date of receipt. If the State does not disapprove the local MMM program plan during such period, then the CWS shall implement the plan submitted to the State for approval. The compliance determination will be conducted as described in this paragraph.

(6) If a community water system has a distribution system separable from other parts of the distribution system with no interconnections, the State may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

5. Section 141.28 is revised to read as follows:

§ 141.28 Certified laboratories.

(a) For the purpose of determining compliance with § 141.20 through 141.27, 141.41, and 141.42, samples may be considered only if they have been analyzed by a laboratory certified by the State except that measurements for turbidity, free chlorine residual, temperature and pH may be performed by any person acceptable to the State.

(b) Nothing in this part shall be construed to preclude the State or any duly designated representative of the State from taking samples or from using the results from such samples to determine compliance by a supplier of water with the applicable requirements of this part.

Subpart F—[Amended]

6. A new § 141.55 is added to Subpart F to read as follows:

§ 141.55 Maximum contaminant level goals for radionuclides.

MCLGs are as indicated in the following table:

Contaminant	MCLG
Radon–222	Zero.

Subpart G—[Amended]

7. A new § 141.66 is added to Subpart G to read as follows:

§ 141.66 Maximum contaminant level for radionuclides.

(a) The maximum contaminant level for radon-222 is as follows: (1) A community water system (CWS) using a ground water source or using ground water and surface water sources that serves 10,000 or fewer people shall comply with the alternative maximum contaminant level (AMCL) of 4000 pCi/L, and implement a State-approved multimedia mitigation (MMM) program to address radon in indoor air (unless the State in which the system is located has a MMM approved by the Environmental Protection Agency). These systems may elect to comply with the MCL of 300 pCi/L instead of developing a local CWS MMM program plan.

(2) A CWS using a ground water source or using ground water and surface water sources that serves more than 10,000 people shall comply with the MCL of 300 pCi/L, except that the system may comply with an AMCL of 4000 pCi/L where:

(i) The State in which the CWS is located has adopted an MMM program plan approved by EPA; or,

(ii) The CWS has adopted an MMM program plan approved by the State.

(3) A CWS shall monitor for radon in drinking water according to the requirements in § 141.20, and report the results to the State, and continue to monitor as described in § 141.20. If the State determines that the CWS is in compliance with the MCL of 300 pCi/L, the CWS has met the requirements of this section and is not subject to the requirements of subpart R of this part, regarding MMM programs.

(4) The Administrator, pursuant to section 1412 of the Act, hereby identifies, as indicated in the following table, the best technology available for achieving compliance with the maximum contaminant levels for radon identified in paragraphs (a)(1) and (a)(2) of this section:

BAT for Radon–222

High-Performance Aeration [1]

(5) The Administrator, pursuant to section 1412 of the Act, hereby identifies in the following table the best technology available to systems serving 10,000 persons or fewer for achieving compliance with the MCL or AMCL. The table addresses affordability and technical feasibility for such BAT.

PROPOSED SMALL SYSTEMS COMPLIANCE TECHNOLOGIES (SSCTS) [1] AND ASSOCIATED CONTAMINANT REMOVAL EFFICIENCIES

Small systems compliance technology	Affordable for listed small systems categories [2]	Removal efficiency	Operator level required [3]	Limitations (see footnotes)
Packed Tower Aeration (PTA)	All Size Categories	90–>99.9% Removal	Intermediate	(a)
High Performance Package Plant Aeration (e.g., Multi-Stage Bubble Aeration, Shallow Tray Aeration).	All Size Categories	90–> 99.9% Removal	Basic to Intermediate.	(a)
Diffused Bubble Aeration	All Size Categories	70 to >99% removal	Basic	(a, b)

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[1] High Performance Aeration is defined as the group of aeration technologies that are capable of being designed for high radon removal efficiencies, i.e., Packed Tower Aeration, Multi-Stage Bubble Aeration and other suitable diffused bubble aeration technologies, Shallow Tray and other suitable Tray Aeration technologies, and any other aeration technologies that are capable of similar high performance.

PROPOSED SMALL SYSTEMS COMPLIANCE TECHNOLOGIES (SSCTS)[1] AND ASSOCIATED CONTAMINANT REMOVAL EFFICIENCIES—Continued

Small systems compliance technology	Affordable for listed small systems categories[2]	Removal efficiency	Operator level required[3]	Limitations (see footnotes)
Tray Aeration	All Size Categories	80 to >90%	Basic	(a, c)
Spray Aeration	All Size Categories	80 to >90%	Basic	(a, d)
Mechanical Surface Aeration	All Size Categories	>90%	Basic	(a, e)
Centralized granular activated carbon	May not be affordable, except for very small flows.	50 to >99% Removal	Basic	(f)
Point-of-Entry (POE) granular activated carbon	May be affordable for systems serving fewer than 500 persons.	50 to >99% Removal	Basic	(f, g)

[1] Section 1412(b)(4)(E)(ii) of the SDWA specifies that SSCTs must be affordable and technically feasible for small systems.

[2] The Act (ibid.) specifies three categories of small systems: i) those serving 25 or more, but fewer than 501, ii) those serving more than 500, but fewer than 3,301, and iii) those serving more than 3,300, but fewer than 10,001.

[3] From National Research Council. *Safe Water from Every Tap: Improving Water Service to Small Communities*. National Academy Press. Washington, DC. 1997. Limitations: a) Pre-treatment to inhibit fouling may be needed. Post-treatment disinfection and/or corrosion control may be needed. b) May not be as efficient as other aeration technologies because it does not provide for convective movement of the water, which reduces the air:water contact. It is generally used in adaptation to existing basins. c) Costs may increase if a forced draft is used. Slime and algae growth can be a problem, but may be controlled with chemicals, e.g., copper sulfate or chlorine. d) In single pass mode, may be limited to uses where low removals are required. In multiple pass mode (or with multiple compartments), higher removals may be achieved. e) May be most applicable for low removals, since long detention times, high energy consumption, and large basins may be required for larger removal efficiencies. f) Applicability may be restricted to radon influent levels below around 5000 pCi/L to reduce risk of the build-up of radioactive radon progeny. Carbon bed disposal frequency should be designed to allow for standard disposal practices. If disposal frequency is too long, radon progeny, radium, and/or uranium build-up may make disposal costs prohibitive. Proper shielding may be required to reduce gamma emissions from the GAC unit. GAC may be cost-prohibitive except for very small flows. g) When POE devices are used for compliance, programs to ensure proper long-term operation, maintenance, and monitoring must be provided by the water system to ensure adequate performance.

Subpart O—[Amended]

8. Section 141.151 is amended by revising paragraph (d) to read as follows:

141.151 Purpose and applicability of this subpart.

* * * * *

(d) For the purpose of this subpart, *detected* means: at or above the levels prescribed by § 141.23(a)(4) for inorganic contaminants, at or above the levels prescribed by § 141.24(f)(7) for the contaminants listed in § 141.61(a), at or above the level prescribed by § 141.24(h)(18) for the contaminants listed in § 141.61(c), at or above the level prescribed by § 141.66 for radon, and at or above the levels prescribed by § 141.25(c) for radioactive contaminants.

* * * * *

9. Section 141.153 is amended by revising paragraph (d)(1)(i); removing paragraph (e)(2) and redesignating paragraph (e)(3) as (e)(2); redesignating paragraphs (f)(5), (f)(6), and (f)(7) as (f)(6), (f)(7), and (f)(8); and adding paragraph (f)(5) to read as follows:

§ 141.153 Content of the reports.

* * * * *

(d) * * *

(1) * * *

(i) Contaminants subject to a MCL, AMCL, action level, or treatment technique (regulated contaminants);

* * * * *

(f) * * *

(5) Local multimedia radon mitigation programs prescribed by subpart R of this part.

* * * * *

10. Section 141.154 is amended by adding paragraph (f) as follows:

§ 141.154 Required additional health information.

* * * * *

(f) In each complete calendar year between [date of publication of final rule in the **Federal Register**] and [4 years after date of publication of the final rule in the **Federal Register**], each report from a system that has ground water as a source must include the following notice (except that a system developing a local MMM program in a non-MMM State needs to include this statement in each calendar year between [date of publication of the final rule in the **Federal Register**] and [5 years after date of publication of the final rule in the **Federal Register**] :

> Radon is a naturally-occurring radioactive gas found in soil and outdoor air that may also be found in drinking water and indoor air. Some people exposed to elevated radon levels over many years in drinking water may have an increased risk of getting cancer. The main health risk is lung cancer from radon entering indoor air from soil under homes. Your water system plans to test for radon by [insert date], and if radon is detected your water system will provide the results of testing to their customers. The best way to reduce the overall risk from radon is to reduce radon levels in indoor air. Some States, and water systems, may now be working to develop a program to reduce radon exposure in indoor air and drinking water. To get more information and to help develop the program, call the Radon Hotline (800–SOS–RADON) or visit the web site http://www.epa.gov/iaq/radon/.

Subpart Q—[Amended]

11. In § 141.201, Table 1 proposed on May 13, 1999, at 64 FR 25964 is amended by revising paragraphs (1) introductory text and (1)(i) to read as follows:

§ 141.201 General Public Notification Requirements.

* * * * *

Table 1 to § 141.201—Violation Categories and Other Situations Requiring a Public Notice.

(1) NPDWR violations (MCL/AMCL, local MMM, MRDL, treatment technique, monitoring and testing procedure)

(i) Failure to comply with an applicable maximum contaminant level (MCL), alternative maximum contaminant level (AMCL), the local multimedia mitigation requirement for small systems in non-MMM States, or maximum residual disinfectant level (MRDL).

* * * * *

12. In § 141.203, Table 1 proposed on May 13, 1999, at 64 FR 25964 is amended by revising paragraph (1) to read as follows:

§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

* * * * *

Table 1 to § 141.203. Violation Categories and Other Situations Requiring a Tier 2 Public Notice

(1) All violations of the MCL, AMCL, MRDL, and treatment technique requirements not included in the Tier 1 notice category;

* * * * *

13. In § 141.204, Table 1 proposed on May 13, 1999, at 64 FR 25964 is amended by adding paragraph (5) to read as follows:

§ 141.204. Tier 3 Public Notice—Form, manner, and frequency of notice.

* * * * *

Table 1 to § 141.204. Violation Categories and Other Situations Requiring a Tier 3 Public Notice

(5) All violations of the MMM requirements not included in the Tier 1 or 2 notice category;

* * * * *

14. Section 141.205 proposed on May 13, 1999, at 64 FR 25964 is amended by revising paragraph (d)(1), to read as follows:

§ 141.205 Content of the public notice.

* * * * *

(d) * * *

(1) *Standard health effects language for MCL, AMCL, MMM or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption.* Public water systems must include in each public notice the health effects language specified in Appendix B to this subpart corresponding to each MCL, AMCL, MMM, MRDL, and treatment technique violation listed in Appendix A to this subpart, and for each violation of a condition of a variance or exemption.

* * * * *

15. Part 141 is amended by adding a new Subpart R to read as follows:

Subpart R—Reducing Radon Risks in Indoor Air and Drinking Water

Sec.

141.300 Applicability.
141.301 General requirements.
141.302 Multimedia mitigation (MMM) requirements (required elements of MMM program plans).
141.303 Multimedia mitigation (MMM) reporting and compliance requirements.
141.304 Local multimedia mitigation program plan approval and program review.
141.305 States that do not have primacy.

Subpart R—Reducing Radon Risks in Indoor Air and Drinking Water

§ 141.300 Applicability.

(a) The requirements of this subpart constitute national primary drinking water regulations for radon. The provisions of this subpart apply to community water systems (CWS) using a ground water source or using ground water and surface water sources. CWSs must monitor for radon in drinking water according to the requirements described in § 141.20, and report the results to the State, and continue to monitor as described in § 141.20. If the State determines that the CWS is in compliance with the MCL of 300 pCi/L, the CWS has met the requirements of this section and is not subject to the requirements of this subpart.

(b) These regulations in this subpart establish criteria for the development and implementation of program plans to mitigate radon in indoor air and drinking water (multimedia mitigation or MMM program plan). In general, where a State, CWS, or Tribal MMM program plan is approved, CWSs comply with an AMCL of 4000 pCi/L (§ 141.66). In jurisdictions without an approved MMM program plan, large CWSs (serving greater than 10,000 people) must comply with an MCL of 300 pCi/L (§ 141.66), except they comply with the AMCL of 4000 pCi/L if they develop a CWS MMM program plan approved by the State. Small community water systems serving 10,000 or fewer people must comply with 4000 pCi/L and implement a State-approved multimedia mitigation program plan to address radon in indoor air (unless the State in which the system is located has a multimedia mitigation program plan approved by the Environmental Protection Agency); these systems have the option of complying with the MCL instead of implementing a MMM program.

§ 141.301 General requirements.

(a) The requirements for the MMM program plan are set out in this subpart. The requirements for the MCL are set out in § 141.20(a) (analytical methods), § 141.20(b) (monitoring and compliance), § 141.66(a) through (c) (requirements for systems, including MCL and AMCL), and § 141.66(d) (BAT).

(b) *Compliance dates.*—(1) *Initial monitoring.* (i) For States that submit a letter to the Administrator by [90 days after date of publication of the final rule in the **Federal Register**] committing to develop an MMM program plan in accordance with section 1412(b)(13)(G)(v) of the Act, CWSs must begin one year of quarterly monitoring for compliance with the AMCL by [4.5 years after date of publication of the final rule in the **Federal Register**].

(ii) For States not submitting a letter to the Administrator by [90 days after date of publication of final rule in the **Federal Register**] committing to develop an MMM program plan, CWSs must begin one year of quarterly monitoring for compliance with the MCL/AMCL by [3 years after date of publication of final rule in the **Federal Register**].

(2) *State-wide MMM programs.* (i) For States that submit a letter to the Administrator by [90 days after date of publication of the final rule in the **Federal Register**] committing to develop an MMM program plan in accordance with section 1412(b)(13)(G)(v), implementation of the State-wide MMM program must begin by [4.5 years after date of publication of the final rule in the **Federal Register**].

(ii) For States not submitting a letter to the Administrator by [90 days after date of publication of the final rule in the **Federal Register**] committing to develop an MMM program plan, but which subsequently decide to adopt the AMCL, implementation of the State-wide MMM program must begin by [3 years after date of publication of the final rule in the **Federal Register**].

(iii) If EPA-approval of a State MMM program plan is revoked, all systems have one year from notification by the State to comply with the MCL. If a system chooses to continue complying with the AMCL and develop and implement a local MMM program, the State will specify a timeframe for compliance.

(3) *Local MMM programs.* (i) During the initial monitoring period, if the compliance determination for a CWS in a non-MMM State exceeds the MCL, the CWS will incur an MCL violation unless the system notifies the State by [four years after date of publication of the final rule in the **Federal Register**] of their intent to submit a local MMM plan, submits a local MMM plan to the State within [5 years after date of publication of the final rule in the **Federal Register**] and begins implementation by [5.5 years after date of publication of the final rule in the **Federal Register**]. The compliance determination will be conducted as described in § 141.20(b)(2).

(ii) Following the completion of the initial monitoring period, if the compliance determination for a CWS in a non-MMM State exceeds the MCL, the system will incur an MCL violation unless the system submits a local MMM plan to the State within 1 year from the date of the exceedence and begins implementation 1.5 years from the date of the exceedence. The compliance determination will be conducted as described in this paragraph.

(iii) The State shall approve or disapprove a local MMM program plan within 6 months from the date of receipt. If the State does not disapprove the local MMM program plan during such period, the CWS shall implement the plan submitted to the State for approval.

(iv) If the State determines the CWS is not adequately implementing the local MMM plan approved by the State, the system shall incur an MMM violation.

(v) During the MMM program 5-year review periods, the system shall incur an MMM violation if the State determines the CWS is not meeting MMM program plan objectives.

§ 141.302 Multimedia mitigation (MMM) requirements (required elements of MMM program plans).

The following are required for approval of State MMM program plans by EPA. Local MMM program plans developed by community water systems (CWS) are deemed to be approved by EPA if they meet these criteria (as appropriate for the local level) and are approved by the State. The term "State", as referenced next, means any entity submitting an MMM program plan for approval, including States, with and without primacy, Indian Tribes and community water systems.

(a) *Description of process for involving the public.* (1) States are required to involve community water system customers, and other sectors of the public with an interest in radon, both in drinking water and in indoor air, in developing their MMM program plan. The MMM program plan must include:

(i) A description of processes the State used to provide for public participation in the development of its MMM program plan, including the components identified in paragraphs (b), (c), and (d) of this section;

(ii) A description of the nature and extent of public participation that occurred, including a list of groups and organizations that participated;

(iii) A summary describing the recommendations, issues, and concerns arising from the public participation process and how these were considered in developing the State's MMM program plan; and

(iv) A description of how the State made information available to the public to support informed public participation, including information on the State's existing indoor radon program activities and radon risk reductions achieved, and on options considered for the MMM program plan along with any analyses supporting the development of such options.

(2) Once the draft program plan has been developed, the State must provide notice and opportunity for public comment on the draft plan prior to submitting it to EPA.

(b) *Quantitative goals.* (1) States are required to establish and include in their plans quantitative goals, to measure the effectiveness of their MMM program, for the following:

(i) Existing houses with elevated indoor radon levels that will be mitigated by the public; and

(ii) New houses that will be built radon-resistant by home builders.

(2) These goals must be defined quantitatively either as absolute numbers or as rates. If goals are defined as rates, a detailed explanation of the basis for determining the rates must be included.

(3) States are required to establish goals for promoting public awareness of radon health risks, for testing of existing homes by the public, for testing and mitigation of existing schools, and for construction of new public schools to be radon-resistant, or to include an explanation of why goals were not established in these program areas.

(c) *Implementation Plans.* (1) States are required to include in their MMM program plan implementation plans outlining the strategic approaches and specific activities the State will undertake to achieve the quantitative goals identified in paragraph (b) of this section. This must include implementation plans in the following two key areas:

(i) Promoting increased testing and mitigation of existing housing by the public through public outreach and education and during residential real estate transactions.

(ii) Promoting increased use of radon-resistant techniques in the construction of new homes.

(2) If a State has included goals for promoting public awareness of radon health risks; promoting testing of existing homes by the public; promoting testing and mitigation of existing schools; and promoting construction of new public schools to be radon resistant, then the State is required to submit a description of the strategic approach that will be used to achieve the goals.

(3) States are required to provide the overall rationale and support for why their proposed quantitative goals identified in paragraph (b) of this section, in conjunction with their program implementation plans, will satisfy the statutory requirement that an MMM program be expected to achieve equal or greater risk reduction benefits to what would have been expected if all community water systems in the State complied with the MCL.

(d) *Plans for measuring and reporting results.* (1) States are required to include in the MMM plan submitted to EPA a description of the approach that will be used to assess the results from implementation of the State MMM program, and to assess progress towards the quantitative goals in paragraph (b) of this section. This specifically includes a description of the methodologies the State will use to determine or track the number or rate of existing homes with elevated levels of radon in indoor air that are mitigated and the number or the rate of new homes built radon-resistant. This must also include a description of the approaches, methods, or processes the State will use to make the results of these assessments available to the public.

(2) If a State includes goals for promoting public awareness of radon health risks; testing of existing homes by the public; testing and mitigation of existing schools; and construction of new public schools to be radon-resistant; the State is required to submit a description of how the State will determine or track progress in achieving each of these goals. This must also include a description of the approaches, methods, or processes the State will use to make these results of these assessments available to the public.

§ 141.303 Multimedia mitigation (MMM) reporting and compliance requirements.

(a) In accordance with the Safe Drinking Water Act (SDWA), EPA is to review State MMM programs at least every five years. For the purposes of this review, the States with EPA-approved MMM program plans shall provide written reports to EPA in the second and fourth years between initial implementation of the MMM program and the first 5-year review period, and in the second and fourth years of every subsequent 5-year review period. States that submit a letter to the Administrator by [90 days after date of publication of the final rule in the **Federal Register**] committing to develop an MMM program plan, must submit their first 2-year report by 6.5 years from publication of the final rule. For States not submitting the 90-day letter, but choosing subsequently to submit an MMM program plan and adopt the AMCL, the first 2-year report must be submitted to EPA by 5 years from publication of the final rule. EPA will review these programs to determine whether they continue to be expected to achieve risk reduction of indoor radon using the information provided in the two biennial reports.

(b)(1) These reports are required to include the following information:

(i) A quantitative assessment of progress towards meeting the required goals described in § 141.302(b), including the number or rate of existing homes mitigated and the number or rate of new homes built radon-resistant since implementation of the States' MMM program, and,

(ii) A description of accomplishments and activities that implement the required program strategies, described in § 141.302(c), outlined in the implementation plans and in the two required areas of promoting increased testing and mitigation of existing homes and promoting increased use of radon-resistant techniques in construction of new homes.

(2) If goals were defined as rates, the State must also provide an estimate of the number of mitigations and radon-resistant new homes represented by the reported rate increase for the two-year period.

(3) If the MMM program plan includes goals for promoting public awareness of the health effects of indoor radon, testing of homes by the public; testing and mitigation of existing schools; and construction of new public schools to be radon-resistant, the report is also required to include information on results and accomplishments in these areas.

(c) If EPA determines that a MMM program is not achieving progress towards its goals, EPA and the State shall collaborate to develop modifications and adjustments to the program to be implemented over the five year period following the review. EPA will prepare a summary of the outcome of the program evaluation and the proposed modification and adjustments, if any, to be made by the State.

(d) If EPA determines that a State MMM program is not achieving progress towards its MMM goals, and the State repeatedly fails to correct, modify and adjust implementation of their MMM program after notice by EPA, EPA will withdraw approval of the State's MMM program plan. CWSs in the State would then be required to comply with the MCL, or develop a State-approved CWS MMM program plan. The State will be responsible for notifying CWSs of the Administrator's withdrawal of approval of the State-wide MMM program plan. EPA will work with the State to establish a State process for review and approval of CWS MMM program plans that meet the required criteria, including local public participation in development and review of the program plan, and a time frame for submission of program plans by CWSs that choose to continue complying with the AMCL.

(e) States shall make available to the public each of these two-year reports identified in paragraph (a) of this section, as well as the EPA summaries of the five-year reviews of a State's MMM program, within 90 days of completion of the reports and the review.

(f) In primacy States without a State-wide MMM program, the States shall provide a report to EPA every five-years on the status and progress of CWS MMM programs towards meeting their goals. The first of such reports would be due by [10.5 years after date of publication of the final rule in **Federal Register**].

§ 141.304 Local multimedia mitigation program plan approval and program review.

(a) In States without an EPA-approved MMM program plan, any community water system may elect to develop and implement a local MMM program plan that meets the criteria in § 141.302 and comply with the AMCL in lieu of the MCL. Local CWS MMM program plans must be approved by the State.

(b) CWSs with State-approved MMM program plans shall report to the State as required by the State. States shall review such local programs at least every five years to determine if CWSs are implementing their program plans and making progress towards their goals. If the CWS fails to meet those requirements, the State shall require the system to comply with the MCL.

§ 141.305 States that do not have primacy.

(a) If a State, as defined in section 1401 of the Act, that does not have primary enforcement responsibility for the Public Water System Program under section 1413 of the Act chooses to submit an MMM program plan to EPA, that program plan must meet the criteria in § 141.301. EPA will approve such program plans in accordance with the requirements of § 141.302.

(b) States with EPA-approved MMM program plans shall report to EPA in accordance with the requirements of § 141.303.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 142.12 is amended by adding new paragraph (b)(4) to read as follows:

§ 142.12 Revision of State programs.

* * * * *

(b) * * *

(4) To be granted an extension for radon regulatory requirements included under 40 CFR part 141, subpart R, the State must commit to adopt the AMCL and MMM program plan, or MCL.

* * * * *

3. Section 142.15 is amended by adding new paragraph (c)(6) to read as follows:

§ 142.15 Reports by States.

* * * * *

(c) * * *

(6) In accordance with the Safe Drinking Water Act (SDWA), EPA is to review State MMM programs at least every five years. EPA will review these programs to determine whether they continue to be expected to achieve risk reduction of indoor radon using the information provided in the two biennial reports. For the purposes of this review:

(i)(A) States with EPA-approved MMM program plans shall provide written reports to EPA in the second and fourth years between initial implementation of the MMM program and the first 5-year review period, and in the second and fourth years of every subsequent 5-year review period.

(B) States that submit a letter to the Administrator by [90 days after date of publication of the final rule in the **Federal Register**] committing to develop an MMM program plan, must submit their first 2-year report by [6.5 years after date of publication of the final rule in the **Federal Register**]. For States not submitting the 90-day letter, but choosing subsequently to submit an MMM program plan and adopt the AMCL, the first 2-year report must be submitted to EPA by [5 years after date of publication of the final rule in the **Federal Register**].

(ii) These reports are required to include the following information:

(A) A quantitative assessment of progress towards meeting the required goals described in § 141.302(b), including the number or rate of existing homes mitigated and the number or rate of new homes built radon-resistant since implementation of the States' MMM program, and

(B) A description of accomplishments and activities that implement the required program strategies, described in § 141.302(c), outlined in the implementation plans and in the two required areas of promoting increased testing and mitigation of existing homes and promoting increased use of radon-resistant techniques in construction of new homes.

(C) If goals were defined as rates, the State must also provide an estimate of the number of mitigations and radon-resistant new homes represented by the reported rate increase for the two-year period.

(D) If the MMM program plan includes goals for promoting public awareness of the health effects of indoor radon, testing of homes by the public; testing and mitigation of existing schools; and construction of new public schools to be radon-resistant, the report is also required to include information on results and accomplishments in these areas.

(iii) States shall make available to the public each of these two-year reports, as well as the EPA summaries of the five-year reviews of a State's MMM program, within 90 days of completion of the reports and the review.

(iv) In primacy States without a State-wide MMM program, the States shall provide a report to EPA every five-years on the status and progress of CWS MMM programs towards meeting their goals. The first of such reports would be due by [10.5 years after date of publication of the final rule in the **Federal Register**].

* * * * *

4. Section 142.16 is amended by adding new paragraph (i) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(i) Requirements for States to adopt 40 CFR part 141, subpart R. In addition to the general primacy requirements elsewhere in this part, including the requirement that State regulations be at least as stringent as federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart R, must contain a description of how the State will accomplish the program requirements for implementation of the AMCL and MMM program plan or the MCL as follows:

(1) If a State chooses to develop and implement a State-wide MMM program plan and adopt the AMCL, the primacy application must include the following elements:

(i) A copy of the State-wide MMM program plan prepared to meet the criteria outlined in § 141.302 of this chapter.

(ii) A description of how the State will make resources available for implementation of the State-wide MMM program plan.

(iii) A description of the extent and nature of coordination between interagency programs (*i.e.*, indoor radon and drinking water programs) on development and implementation of the MMM program plan, including the level of resources that will be made available for implementation and coordination between interagency programs (*i.e.*, indoor air and drinking water programs).

(2) If a State chooses to adopt the MCL the primacy application must contain the following:

(i) A description of how the State will implement a program to approve local CWS MMM program plans prepared to meet the criteria outlined in § 141.302 of this chapter and a description of the State's authority to implement this program.

(ii) A description of how the State will ensure local CWS MMM program plans are implemented.

(iii) A description of reporting and record keeping requirements for local CWS MMM programs.

(iv) A description of how the State will review local CWS program plans at least every five years to determine if they are implementing the MMM program and making progress towards their goals.

(v) A description of the procedures and schedule the State will use in withdrawing State approval of a CWS MMM program plan and notifying the CWS that they are required to comply with the MCL.

(vi) A description of the extent and nature of coordination between interagency programs (*i.e.*, indoor radon and drinking water programs) on development and implementation of the State process for review and approval of CWS MMM program plans. This description includes the level of resources that will be made available for implementation and coordination between interagency programs (*i.e.*, indoor air and drinking water programs).

(vii) A description of how the State will make required CWS reports available to the public.

5. A new § 142.65 is added to subpart G, to read as follows:

§ 142.65. Variances and exemptions from the maximum contaminant level for radon.

(a) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies in the following table as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for radon:

BAT for Radon–222

1. For all systems: High-Performance Aeration [1]

2. For systems serving 10,000 persons or fewer: High-Performance Aeration [1] or [2], Granular Activated Carbon [2] (GAC), and Point-of-Entry GAC [2].

(b) A State shall require a community water system to install and/or use any treatment method identified in paragraph (a) of this section as a condition for granting a variance, based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system.

(c) Bottled water and/or granular activated carbon point-of-use devices cannot be used as means of being granted a variance or an exemption for radon.

(d) Community water systems that use point-of-entry devices as a condition for obtaining a variance or an exemption from NPDWRs must meet the following requirements:

(1) All point-of-entry units shall be owned, controlled, and maintained by the community water system or by a person or persons under contract with the public water system to ensure proper operation and maintenance of the unit under the terms of the variance or exemption.

(2) All point-of-entry units shall be equipped with mechanical warning devices to ensure that customers are notified of operational problems.

(3) If the American National Standards Institute has issued product standards applicable to a specific type of point-of-entry device for radon,

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[1] High Performance Aeration is defined as the group of aeration technologies that are capable of being designed for high radon removal efficiencies, *i.e.*, Packed Tower Aeration, Multi-Stage Bubble Aeration and other suitable diffused bubble aeration technologies, Shallow Tray and other suitable Tray Aeration technologies, and any other aeration technologies that are capable of similar high performance.

[2] As defined and described in 40 CFR 141.66 (e).

individual units of that type shall not be accepted under the terms of the variance or exemption unless they are independently certified in accordance with such standards.

(4) Before point-of-entry devices are installed, the community water system must obtain the approval of a monitoring plan which ensures that the devices provide health protection equivalent to analogous centralized water treatment.

(5) The community water system must apply effective technology under a State-approved plan. The microbiological safety of the water must be maintained at all times.

(6) The State must require adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering review of the point-of-entry devices.

(7) The design and application of point-of-entry devices must consider the potential for increasing concentrations of heterotrophic bacteria in water treated with activated carbon. It may be necessary to use frequent backwashing, post-GAC contactor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

6. Section 142.72 is amended by removing the introductory text, by redesignating paragraphs (a) through (d) as (b)(1) through (b)(4), and by adding a new paragraph (a) to read as follows:

§ 142.72. Requirements for Tribal eligibility.

(a) If a Tribe meets the criteria in paragraph (b) of this section, the Administrator is authorized to treat an Indian Tribe as eligible to apply for:

(1) Primary enforcement responsibility for the Public Water System Program;

(2) Authority to waive the mailing requirements of 40 CFR 141.155(a); and

(3) Authority to develop and implement a radon multimedia mitigation program in accordance with 40 CFR part 141, subpart R.

* * * * *

7. Section 142.78 is amended by revising paragraph (b) to read as follows:

§ 142.78. Procedure for processing an Indian Tribe's application.

* * * * *

(b) A Tribe that meets the requirements of § 142.72 is eligible to apply for development grants and primary enforcement responsibility for a Public Water System and associated funding under section 1443(a) of the Act, for primary enforcement responsibility for public water systems under section 1413 of the Act, for the authority to waive the mailing requirements of 40 CFR 141.155(a), and for the authority to develop and implement a radon multimedia mitigation program in accordance with 40 CFR part 141, subpart R.

8. Part 142 is amended by adding a new Subpart L to read as follows:

Subpart L—Review of State MMM Programs

§ 142.400 Review of State MMM programs and procedures for withdrawing approval of State MMM programs.

(a)(1)At least every five years, the Administrator shall review State MMM programs. For the purposes of this review, States with EPA-approved MMM programs shall provide written reports to the Administrator in the second and fourth years between initial implementation of the MMM program and the first 5-year review period, and in the second and fourth years of every subsequent 5-year review period. The written reports will discuss the status and progress of their program towards meeting their MMM goals. The Administrator will use the information provided in the two biennial reports in discussions and consultations with the State to review the programs to determine whether they continue to be expected to achieve risk reduction of indoor radon.

(2) If the Administrator determines that a State MMM program is not achieving progress towards its MMM goals, the Administrator and the State shall collaborate to develop modifications and adjustments to the program to be implemented over the five year period following the review. EPA will prepare a summary of the outcome of the program evaluation and the proposed modification and adjustments, if any, to be made by the State.

(3) If the State repeatedly fails to correct, modify or adjust implementation of its MMM program after notice by the Administrator, the Administrator shall initiate proceedings to withdraw approval of the State's MMM program plan. The Administrator shall notify the State in writing that EPA is initiating withdrawing a State-wide MMM program plan and shall summarize in the notice the information available that indicates that the State is no longer achieving progress towards its MMM goals.

(4) The State notified pursuant to paragraph (a)(3) of this section may, within 30 days of receiving the Administrator's notice, submit to the Administrator evidence that the State plans to implement modifications to the State MMM program.

(5) After reviewing the submission of the State, if any, made pursuant to paragraph (a)(4) of this section, the Administrator shall make a final determination either that the State no longer continues to achieve progress towards its MMM goals, or that the State continues to implement modifications to the State MMM program, and shall notify the State of his or her determination. Before a final determination that the State no longer continues to achieve progress towards its MMM goals, the Administrator shall offer a public hearing and will publish a notice in the **Federal Register**.

(b) If approval of a State's MMM program is withdrawn, the State will be responsible for notifying CWSs of the Administrator's withdrawal of approval of the State-wide MMM program plan. The CWSs in the State would then be required to comply with the MCL. EPA will work with the State to establish a State process for review and approval of CWS MMM program plans that meet the required criteria and a time frame for submittal of program plans by CWSs that choose to continue complying with the AMCL. The review process will allow for local public participation in development and review of the program plan.

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November 2, 1999

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410, 411, 414, etc.

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2000; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 411, 414, 415, and 485

[HCFA–1065–FC]

RIN 0938–AJ61

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule makes several changes affecting Medicare Part B payment. The changes include: implementation of resource-based malpractice insurance relative value units (RVUs); refinement of resource-based practice expense RVUs; payment for physician pathology and independent laboratory services; discontinuous anesthesia time; diagnostic tests; prostate screening; use of CPT modifier -25; qualifications for nurse practitioners; an increase in the work RVUs for pediatric services; adjustments to the practice expense RVUs for physician interpretation of Pap smears; and revisions to the work RVUs for new and revised CPT codes for calendar year 1999 and a number of other changes relating to coding and payment. Furthermore, we are finalizing the 1999 interim physician work RVUs and are issuing interim RVUs for new and revised codes for 2000. This final rule solicits public comments on the second 5-year refinement of work RVUs for services furnished beginning January 1, 2002 and requests public comments on potentially misvalued work RVUs for all services in the CY 2000 physician fee schedule. This final rule also conforms the regulations to existing law and policy regarding: removal of the x-ray as a prerequisite for chiropractic manipulation; the exclusion of payment for assisted suicide; and optometrist services. This final rule also announces the calendar year 2000 Medicare physician fee schedule conversion factor under the Medicare Supplementary Medical Insurance (Part B) program as required by section 1848(d) of the Social Security Act. The 2000 Medicare physician fee schedule conversion factor is $36.6137.

DATES: *Effective date:* This rule is effective January 1, 2000. This rule is a major rule as defined in Title 5, United States Code, section 804(2). In accordance with 5 U.S.C. section 801(a)(1)(A), we are submitting a report to the Congress on this final rule on October 29, 1999.

Comment date: Comments on interim RVUs for selected procedure codes identified in Addendum C and on interim practice expense RVUs and malpractice RVUs for all codes as shown in Addendum B will be considered if we receive them at the appropriate address, as provided in the **ADDRESSES** section, no later than 5 p.m. on January 3, 2000.

Comments on all RVUs considered under the 5-year refinement process as discussed in section IV of the preamble will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 1, 2000.

ADDRESSES: Mail written comments related to the 5-year refinement process (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1065–FC (5-Year Refinement), P.O. Box 8013, Baltimore, MD 21244–8013.

Mail written comments related to interim RVUs for new and revised procedure codes, interim practice expense RVUs, and interim malpractice RVUs (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1065–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1065–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7061).

FOR FURTHER INFORMATION CONTACT:

Benjamin Long, (410) 786–0007 (for issues related to accessing the physician fee schedule information on the HCFA homepage).

Bob Ulikowski, (410) 786–5721 (for issues related to the resource-based malpractice relative value units).

Carolyn Mullen, (410) 786–4589 (for issues related to resource-based practice expense relative value units).

Jim Menas, (410) 786–4507 (for issues related to physician pathology services and independent labs and discontinuous anesthesia time).

Ken Marsalek, (410) 786–4502 (for issues related to optometrist services).

Bill Larson, (410) 786–4639 (for issues related to the coverage of prostate screening).

Paul W. Kim, (410) 786–7410 (for issues related to nurse practitioner qualifications).

Dorothy Honemann, (410) 786–5702 (for issues related to the X-ray requirement for chiropractic services).

Bill Morse, (410) 786–4520 (for issues related to diagnostic tests).

Marc Hartstein, (410) 786–4539 (for issues related to the conversion factor and physician fee schedule update and the regulatory impact analysis).

Diane Milstead, (410) 786–3355 (for all other issues).

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Please specify the date of the issue requested, and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa, Discover, or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

To order the disks containing this document, send your request to: Superintendent of Documents, Attention: Electronic Products, P.O. Box 37082, Washington, DC 20013–7082. Please specify, "Medicare Program; Revisions to Payment Policies Under the Physicians Fee Schedule for Calendar Year 2000," and enclose a check or money order payable to the Superintendent of Documents, or enclose your VISA, Discover, or MasterCard number and expiration date. Credit card orders can be placed by calling the order clerk at (202) 512–1530 (or toll free at 1–888–293–6498) or by faxing to (202) 512–1262. The cost of the two disks is $19.

Information on the Physician Fee Schedule can be found on our HCFA homepage. This data can be accessed by using the following directions:

1. Go to the HCFA homepage (http://www.hcfa.gov).
2. Click on "Medicare."
3. Click on "Professional/Technical Information."
4. Select Medicare Payment Systems.
5. Select Physician Fee Schedule.

You will find information on the Physician Fee Schedule Regulation on this page, as well as other documents (for example, Lewin Group Report, Health Economics Research Report) that are referenced in the preamble. Or, you can go directly to the Physician Fee Schedule page by typing the following: http://www.hcfa.gov/medicare/pfsmain.htm.

To assist readers in referencing sections contained in this preamble, we are providing the following table of contents. Some of the issues discussed in this preamble affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations. Information on the regulation's impact appears throughout the preamble and not exclusively in section IX.

Table of Contents

I. Background
  A. Legislative History
  B. Published Changes to the Fee Schedule
  C. Components of the Fee Schedule Payment Amounts
  D. Development of the Relative Value Units
II. Specific Proposals for Calendar Year 2000 and Responses to Public Comments
  A. Resource-Based Malpractice Relative Value Units
  1. Current Malpractice Relative Value Unit System
  2. Methodology for Developing Resource-Based Malpractice Relative Value Units
  B. Resource-Based Practice Expense Relative Value Units
  1. Resource-Based Practice Expense Legislation
  2. Current Methodology for Computing Practice Expense Relative Value Units
  3. Refinement
  C. Adjustment to the Practice Expense Relative Value Units for a Physician's Interpretation of Abnormal Papanicolaou Smears
  D. Physician Pathology Services and Independent Laboratories
  E. Discontinuous Anesthesia Time
  F. Optometrist Services
  G. Assisted Suicide
  H. CPT Modifier −25
  I. Nurse Practitioner Qualifications
  J. Relative Value Units for Pediatric Services
  K. Percutaneous Thrombectomy of an Arteriovenous Fistula
  L. Pulse Oximetry, Temperature Gradient Studies, and Venous Pressure Determinations
  M. Removal of Requirement for X-ray Before Chiropractic Manipulation
  N. Coverage of Prostate Cancer Screening Tests
  O. Diagnostic Tests
  1. Supervision of Diagnostic Test
  2. Independent Diagnostic Testing Facilities
  P. Other Issues
III. Refinement of Relative Value Units for Calendar Year 2000 and Response to Public Comments on Interim Relative Value Units for 1999 (Including the Interim Relative Value Units Contained in the July 22, 1999 Proposed Rule)
  A. Summary of Issues Discussed Related to the Adjustment of Relative Value Units
  B. Process for Establishing Work Relative Value Units for the 2000 Physician Fee Schedule
  C. Other Changes to the 2000 Physician Fee Schedule and Clarification of CPT Definitions
IV. Five Year Refinement of Relative Value Units
  A. Background
  B. Scope of the Five Year Review
  C. Refinement of Work Relative Value Units
  D. Nature and Format of Comments on Work Relative Value Units
  E. New Initiatives
V. Physician Fee Schedule Update and Conversion Factor for Calendar Year 2000
VI. Provisions of the Final Rule
VII. Collection of Information Requirements
VIII. Response to Comments
IX. Regulatory Impact Analysis
  A. Resource-Based Malpractice Relative Value Units
  B. Resource-Based Practice Expense Relative Value Units
  C. Adjustment to the Practice Expense Relative Value Units for a Physician's Interpretation of Abnormal Papanicolaou Smears
  D. Physician Pathology Services and Independent Laboratories
  E. Discontinuous Anesthesia Time
  F. Optometrist Services
  G. Assisted Suicide
  H. CPT Modifier −25
  I. Nurse Practitioner Qualifications
  J. Relative Value Units for Pediatric Services
  K. Percutaneous Thrombectomy of an Arteriovenous Fistula
  L. Pulse Oximetry, Temperature Gradient Studies, and Venous Pressure Determinations
  M. Removal of Requirement for X-ray Before Chiropractic Manipulation
  N. Coverage of Prostate Cancer Screening Tests
  O. Diagnostic Tests
  1. Supervision of Diagnostic Test
  2. Independent Diagnostic Testing Facilities
  P. Budget Neutrality
  Q. Impact on Beneficiaries
Addendum A—Explanation and Use of Addenda B
Addendum B—Relative Value Units and Related Information Used in Determining Medicare Payments for Calendar Year 2000
Addendum C—Codes with Interim RVUs
Addendum D—GPCI File
Addendum E—Reference Set with 2000 Work RVUs

In addition, because of the many organizations and terms to which we refer by acronym in this rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AANA	American Association of Nurse Anesthetists
AMA	American Medical Association
APSA	American Pediatric Surgical Association
ASA	American Society of Anesthesiologists
BBA	Balanced Budget Act of 1997
CF	Conversion factor
CFR	Code of Federal Regulations
CMDs	Carrier Medical Directors
CPEPs	Clinical Practice Expert Panels
CPT	[Physicians'] Current Procedural Terminology [4th Edition, 1999, copyrighted by the AMA]
CRNA	Certified Registered Nurse Anesthetist
DRE	Digital rectal examination
DRG	Diagnostic Related Group
E/M	Evaluation and management
GAF	Geographic adjustment factor
GPCI	Geographic practice cost index
HCFA	Health Care Financing Administration
HCPAC	Health Care Professionals Advisory Committee
HCPCS	HCFA Common Procedure Coding System
HHS	[Department of] Health and Human Services
IDTFs	Independent Diagnostic Testing Facilities
JUAs	Joint Underwriting Associations
MEDPAC	Medicare Payment Advisory Commission
MEI	Medicare Economic Index
MGMA	Medical Group Management Association
OBRA	Omnibus Budget Reconciliation Act
OIG	Office of the Inspector General
PSA	Prostate-specific antigen
PC	Professional component
PCF	Patient Compensation Fund
PEAC	Practice Expense Advisory Committee
PPS	Prospective payment system
ROS	Risk-of-Service
RUC	[AMA's Specialty Society] Relative [Value] Update Committee
RVU	Relative value unit
SMS	Socioeconomic Monitoring Survey
STS	The Society of Thoracic Surgeons
TC	Technical component

I. Background

A. Legislative History

Since January 1, 1992, Medicare has paid for physician services under section 1848 of the Social Security Act (the Act), "Payment for Physicians"

Services." This section contains three major elements: (1) A fee schedule for the payment of physicians' services; (2) a sustainable growth rate for the rates of increase in Medicare expenditures for physicians' services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs because of changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to the conversion factors (CFs) to preserve budget neutrality.

B. Published Changes to the Fee Schedule

In the July 22, 1999, proposed rule (64 FR 39609), we listed all of the final rules published through November 2, 1998, relating to the updates to the RVUs and revisions to payment policies under the physician fee schedule. In the July 22, 1999, proposed rule (64 FR 39608), we discussed several policy issues affecting Medicare payment for physicians' services including implementation of resource-based malpractice insurance relative value units (RVUs); refinement of resource-based practice expense RVUs; payment for physician pathology and independent laboratory services; discontinuous anesthesia time; prostate screening; diagnostic tests; qualifications for nurse practitioners; an increase in the work RVUs for pediatric services; adjustments to the practice expense RVUs for physician interpretation of Pap smears; revisions to the work RVUs for new and revised CPT codes for calendar year 1999; and a number of other issues relating to coding and payment. In the proposed rule, we also indicated that we would conform the regulations to existing law and policy regarding removal of the x-ray as a prerequisite for chiropractic manipulation, the exclusion of payment for assisted suicide, and optometrist services.

This final rule affects the regulations set forth at—

- Part 410, Supplementary medical insurance benefits;
- Part 411, Exclusions from Medicare and limitations on Medicare payment;
- Part 414, Payment for Part B medical and other services;
- Part 415, Services furnished by physicians in providers, supervising physicians in teaching settings, and residents in certain settings; and
- Part 485, Conditions of participation; specialized providers.

The information in this final rule updates information in the July 22, 1999 proposed rule (64 FR 39608).

C. Components of the Fee Schedule Payment Amounts

Under the formula set forth in section 1848(b)(1) of the Act, the payment amount for each service paid for under the physician fee schedule is the product of three factors: (1) A nationally uniform relative value for the service; (2) a geographic adjustment factor (GAF) for each physician fee schedule area; and (3) a nationally uniform conversion factor (CF) for the service. The CF converts the relative values into payment amounts.

For each physician fee schedule service, there are three relative values: (1) An RVU for physician work; (2) an RVU for practice expense; and (3) an RVU for malpractice expense. For each of these components of the fee schedule there is a geographic practice cost index (GPCI) for each fee schedule area. The GPCIs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average for each component.

The general formula for calculating the Medicare fee schedule amount for a given service in a given fee schedule area can be expressed as:

$$\text{Payment} = [(\text{RVU work} \times \text{GPCI work}) + (\text{RVU practice expense} \times \text{GPCI practice expense}) + (\text{RVU malpractice} \times \text{GPCI malpractice}) \times \text{CF}]$$

The CF for calendar year 2000 appears in section V. The RVUs for calendar year 2000 are in Addendum B. The GPCIs for calendar year 2000 can be found in Addendum D.

Section 1848(e) of the Act requires the Secretary to develop GAFs for all physician fee schedule areas. The total GAF for a fee schedule area is equal to a weighted average of the individual GPCIs for each of the three components of the service. Thus, the GPCIs reflect the relative practice expenses, malpractice insurance, and physicians' work in an area compared to the national average. In accordance with the law, however, the GAF for the physician's work reflects one-quarter of the relative cost of physician's work compared to the national average.

D. Development of the Relative Value Units

1. Work Relative Value Units

Approximately 7,500 codes represent services included in the physician fee schedule. The work RVUs established for the implementation of the fee schedule in January 1992 were developed with extensive input from the physician community. The original work RVUs for most codes were developed by a research team at the Harvard School of Public Health in a cooperative agreement with us. In constructing the vignettes for the original RVUs, Harvard worked with panels of expert physicians and obtained input from physicians from numerous specialties.

The RVUs for radiology services are based on the American College of Radiology relative value scale, which we integrated into the overall physician fee schedule. The RVUs for anesthesia services are based on RVUs from a uniform relative value guide. We established a separate CF for anesthesia services while we continue to recognize time as a factor in determining payment for these services. As a result, there is a separate payment system for anesthesia services.

2. Practice Expense and Malpractice Expense Relative Value Units

Section 1848(c)(2)(C) of the Act requires that the practice expense and malpractice expense RVUs equal the product of the base allowed charges and the practice expense and malpractice percentages for the service. Base allowed charges are defined as the national average allowed charges for the service furnished during 1991, as estimated using the most recent data available. For most services, we used 1989 charge data "aged" to reflect the 1991 payment rules, since those were the most recent data available for the 1992 fee schedule.

Section 121 of the Social Security Act Amendments of 1994 (Public Law 103–432), enacted on October 31, 1994, required us to develop a methodology for a resource-based system for determining practice expense RVUs for each physician service. As amended by the BBA, section 1848(c) required the new payment methodology to be phased in over 4 years, effective for services furnished in 1999, with resource-based practice expense RVUs becoming fully effective in 2002. The BBA also requires us to implement resource-based malpractice RVUs for services furnished beginning in 2000.

II. Specific Proposals for Calendar Year 2000 and Responses to Public Comments

In response to the publication of the July 22, 1999 proposed rule, we received approximately 2,050 comments. We received comments from individual physicians, health care workers, and professional associations and societies. The majority of comments addressed the proposals related to resource-based malpractice RVUs, resource-based practice expense RVUs, and supervision of diagnostic tests.

The proposed rule discussed policies that affect the number of RVUs on which payment for certain services would be based. Certain changes implemented through this final rule are subject to the $20 million limitation on annual adjustments contained in section 1848(c)(2)(B)(ii)(II) of the Act.

After reviewing the comments and determining the policies we will implement, we have estimated the costs and savings of these policies and added those costs and savings to the estimated costs associated with any other changes in RVUs for 2000. We discuss in detail the effects of these changes in the Regulatory Impact Analysis (section IX.)

For the convenience of the reader, the headings for the policy issues correspond to the headings used in the July 22, 1999 proposed rule. More detailed background information for each issue can be found in the July 22, 1999 proposed rule.

A. Resource-Based Malpractice Relative Value Units

1. Current Relative Value Unit System

Malpractice RVUs are currently charge-based, using the same statutory formula discussed above for practice expense RVUs but using weighted specialty-specific malpractice expense percentages and 1991 average allowed charges. As with practice expense RVUs, malpractice RVUs for new codes after 1991 were extrapolated from similar existing codes or from work RVUs. Section 4505(f) of the BBA requires us to implement resource-based malpractice RVUs for services furnished beginning in 2000. With the implementation of resource-based malpractice RVUs and full implementation of resource-based practice expense RVUs in 2002, all physician fee schedule RVUs will be resource-based, thus eliminating the last vestiges of payment inequities that resulted from charges that did not accurately reflect the relative resources involved in providing a service.

2. Methodology for Developing Resource-based Malpractice RVUs

The resource-based malpractice RVU methodology is data-driven based on malpractice insurance premium data. Malpractice premium data were used because they represent the actual malpractice expense to the physician and are widely available. Actual malpractice premium data were collected for the top 20 Medicare payment physician specialties. Data were collected from all 50 States, Washington D.C., and Puerto Rico. Data were collected from commercial and physician-owned insurers and from joint underwriting associations (JUAs), typically State government administered risk pooling insurance arrangements in areas where commercial insurers left the market. Adjustments were made to reflect mandatory patient compensation fund or PCF (a fund to pay for any claim beyond the statutory amount thereby limiting an individual physician's liability in cases of a large suit) surcharges in States where PCF participation is mandatory. Premium data reflect at least a 50 percent market share in each State, with the average market share being 77 percent. Adjustments were made to reflect a standard $1 million/$3 million mature claims made policy (a policy covering claims made rather than services provided during the policy term).

Medicare physician specialties were mapped to malpractice insurance rating risk classes. A national average premium was computed for each specialty by weighting area geographic premiums by fee schedule RVUs. Specialty risk factors or indexes were then calculated by dividing the national average premium for each specialty by the national average premium for the specialty with the lowest premium, psychiatry. The risk factors describe the relative malpractice costs among specialties.

Specialty-weighted resource-based malpractice RVUs were calculated for each procedure by summing, for all specialties providing the procedure, the product of each specialty's risk factor times the proportion of total service count for that procedure provided by the specialty. This number was then multiplied by the procedure's work RVUs to account for differences in risk-of-service (ROS) among procedures. If ROS differences were not recognized, all services performed exclusively by a given specialty would have the same resource-based malpractice RVUs, even though they might vary considerably in effort, difficulty, total payment, and their contribution to that specialty's malpractice liability. Since work RVUs reflect differences in time, intensity, and difficulty among procedures and are generally accepted as accurate, we proposed them as the best available proxy for determining ROS. To attain budget neutrality as required by law, the total new fee schedule resource-based malpractice RVUs were compared to the total current charge-based malpractice RVUs, and the appropriate adjustment was made to retain the same total malpractice RVUs.

We proposed to add a new § 414.22(c)(3) (Relative value units (RVUs)) to specify that, for services furnished in the year 2000 and subsequent years, the malpractice RVUs are based on the relative malpractice insurance resources for each service.

A more detailed explanation of our methodology can be found in the July 22, 1999 proposed rule (64 FR 39610).

We received the following comments on our proposed resource-based malpractice RVUs:

Comment: Many commenters agreed that our methodology was generally reasonable and that malpractice risk-of-service (ROS) differences among procedures must be taken into account. While understanding that we used work RVUs to reflect the malpractice ROS differences because we could not find a better proxy, they commented that work RVUs may not be the best proxy to use for ROS and suggested that we work with the medical community to find a better alternative.

Response: As we stated in the July 1999 proposed rule, we realize that work RVUs may not be the perfect proxy to reflect malpractice ROS differences. It is the best proxy available at this time. We will be happy to work with the medical community to find a better alternative and welcome any suggestions.

Comment: The most frequently recurring comment was that, while the law requires that we use the most recent available data, the data used (1993 through 1995 malpractice premiums) is outdated and does not accurately reflect current malpractice premiums. Commenters suggested that we delay implementation of the resource-based malpractice RVUs until more recent data can be collected. If delay is not an option, the commenters requested that the resource-based malpractice RVUs be considered interim subject to change, when more recent data are collected and verified.

Response: We used the 1993 through 1995 data because they were readily available. Moreover, we believe the use of these data are reasonable because it is our understanding that malpractice insurance premiums have been relatively stable in the 1990s. The law requires us to implement the new malpractice RVUs in 2000. However, we do agree that the RVUs should be considered interim until they can be verified by more recent data.

Comment: Some commenters stated that using two risk factors, surgical and nonsurgical, and applying the surgical risk factor to surgical services performed by a specialty, and the lower nonsurgical risk factor to the nonsurgical services performed by the specialty, does not recognize that physicians typically perform a wide range of services and that their malpractice costs are spread across the whole range. Since a physician's malpractice premium is usually determined by the higher risk services performed, the commenters state that the higher risk factor should be applied to the whole range of services. OBGYN specialties felt particularly strongly about this issue, stating that over 80 percent of OBGYNs do both obstetrics and gynecology, and that even if a physician only does a very minimal number of deliveries a year he or she will pay the much higher obstetric premium.

Response: It is true that, for an individual physician in a specialty with different risk factors depending upon whether or not the physician performs surgery, the physician's malpractice premium will probably be based upon the higher risk services, depending upon the policies of the individual insurer. (For obvious surgical specialties, for example, general surgeon and thoracic surgeon, there is only one risk factor and this is applied to all services performed by that specialty.) The purpose of the resource based malpractice RVUs is not to guarantee each physician an absolute return of his or her malpractice costs. It is rather to construct malpractice RVUs based on the relative malpractice costs among services. We believe it is reasonable to use the lower risk factor for the values of the lower risk non-surgical services and to allocate the higher relative values to the higher risk services that cause them. In the case of OBGYN services, the higher obstetric premiums and risk factor were used for services that were clearly obstetrical services which drive these premiums, while the lower gynecology risk factor was used for all other services. This also seems consistent with support from many commenters that we use a risk of service adjuster for each service, as discussed earlier.

Comment: Several commenters generally agreed with our policy of retaining the existing malpractice RVUs for codes with zero work RVUs (generally the technical component (TC) of diagnostic tests) rather than making them zero (as they would have been if we multiplied the premium-based RVUs by the work RVUs as our risk-of-service methodology provides). Some commenters pointed out that retaining the existing values leaves them charge based, however, and suggested that we work with the physician community to find an alternative proxy to work RVUs to use to adjust for risk-of-service. Some commenters suggested that we merely leave the work multiplication step out of the calculation. One commenter suggested that we use the non-physician clinical labor from the practice expense Clinical Practice Expert Panels (CPEPs). It was also pointed out that by retaining the present malpractice values for the TCs and applying our methodology to the professional component (PC) and the global fee, we created anomalies when the value of one of the parts, the TC, was greater than the value of the whole, the global fee.

Response: As stated in the proposed rule, we welcome suggestions concerning a different proxy than work to use to reflect ROS differences among services with no work RVUs. We considered eliminating the work multiplication step, but did not accept this for the reason mentioned in the proposed rule: that without adjusting for ROS all services performed solely or almost solely by a specialty would have the same malpractice RVUs without regard to the different risks they may entail. We will consider all suggestions including using the CPEP data and may propose additional refinements in a future proposed rule. In addition, we have corrected the global PC and TC anomaly. Instead of separately calculating global values using our methodology, we have added the PC and TC to obtain the global value, because that value by definition is the sum of its TC and PC parts.

Comment: Cardiologists commented that the two-tiered surgical breakdown was inadequate to reflect cardiologists' malpractice costs because some of their services (for example, angioplasties and cardiac catherization) do not neatly fall into either category, and that more categories than just surgery or nonsurgery are required. They also stated that we did not clearly define what are surgical and nonsurgical services.

Response: As mentioned in the proposed rule we acknowledge that insurers vary as to categories of physician risk classifications. However, we believe that the major determinants of malpractice premiums are physician specialty and whether or not the physician performs surgery. We believe that our two risk factor methodology is generally adequate. Our proposed methodology was based on the CPT definition of surgery as a way to identify specific codes to be considered surgery or nonsurgery. We applied the surgical risk factors to services in the surgery section of CPT, codes 10000 through 69999, and the nonsurgical risk factors to all other services. After considering this comment, we acknowledge that the cardiological procedures they mentioned are quite invasive and more akin to surgery than most non-surgical services. We are, therefore, applying the higher cardiology surgical risk factor to the following cardiology catheterization and angioplasty codes: 92980 to 92998 and 93501 to 93536. Since all malpractice RVUs are considered to be interim, we welcome additional comments concerning other codes which should be considered as surgery for these purposes.

Comment: Some commenters objected to our basing the resource-based malpractice RVUs on premium data for 20 specialties with other specialties being crosswalked to these 20 specialties. They stated that the RVUs should be based on actual data for all specialties. Some believed that it was particularly inappropriate to crosswalk non-physician specialties to the "all physician" category.

Response: There are about 100 recognized specialties in our payment records. We do not believe it is practical, possible, or necessary to collect actual malpractice premium data on all these specialties. The 20 specialties most prominent in the data represent over 80 percent of physician fee schedule payments. The shares of payments of many of the other specialties for a specific service are extremely small and thus have virtually no effect on the specialty share-weighted calculation. As discussed in the proposed rule, insurers create their own risk classes generally using ISO codes. We mapped all specialties to the risk classes of St. Paul Companies, one of the oldest and largest malpractice insurers. These risk classes include multiple specialties that represent similar malpractice risk. To our knowledge, no insurer has established risk classes for each of the almost 100 Medicare specialties.

Comment: Some commenters objected to our computing the malpractice RVUs for a service by weight-averaging the risk factors for all specialties providing the service. They state that this rewards the specialties with the lowest risk factors and punishes the specialties with the highest risk factors.

Response: The basic principle underlying the physician fee schedule is that the relative value for a service represents the resources required to provide the typical service for all physicians providing the service. Indeed, the law specifically prohibits any specialty payment differential. The RVUs are intended to reflect the relative resources required to provide the service compared to other services. Computing resource-based malpractice RVUs for a service by weight-averaging the relative costs of all specialties providing the service is not intended to reward or punish a particular specialty but to reflect average costs across all specialties providing the service and is entirely in keeping with the basic principles underlying the fee schedule.

Comment: Radiology groups commented that, while both the TC and PC of radiology diagnostic tests contain malpractice RVUs, current and proposed malpractice RVUs are generally much higher for the TC than for the PC. They state that the radiologist supervising or interpreting the test bears the malpractice responsibility and believe that all or the bulk of malpractice RVUs currently in the TC should be moved to the PC.

Response: We disagree with the commenters. The total TC RVUs (practice expense and malpractice) for the TC of radiology diagnostic tests represent the expenses required to perform the test—equipment, supplies, and technicians plus malpractice insurance. The total PC RVUs (work, practice expense and malpractice) represent only the interpretation of the test by the physician. In general, the current TC RVUs for radiology services are significantly higher than the PC RVUs because of the very expensive equipment, supplies and other costs. The malpractice RVUs are generally split in similar proportion between PC and TC as the practice expense RVUs. In cases where the physician or group provides both the TC and PC and bills for both components, the split is not a significant issue since the physician or group would receive the total payment. In many cases, the TC is provided by an entity—hospital or free standing imaging center—other than the physician providing the interpretation. The entity providing the TC, which includes a supervising physician who is most likely a radiologist, assumes the risk, such as excessive irradiation of the patient, of providing the TC. We can think of no reason to transfer any portion of malpractice RVUs from the entity (including a supervising physician) providing the majority of the service, the TC, to a physician who is providing only the interpretation. The malpractice liability associated with interpreting the test is reflected in the PC malpractice RVUs.

Comment: One commenter stated that certain allergy and immunotherapy codes (95145 through 95170, 95010, and 95015) should not have zero malpractice RVUs as these codes contain work RVUs.

Response: We agree that all services with physician work RVUs contain some potential malpractice liability and expense. This error occurred because we rounded to zero in our computation. We have given them a malpractice value of 0.01 RVU.

Comment: Some commenters stated that we should base the resource-based malpractice RVUs on actual closed claims data as recommended by MEDPAC and discussed in the proposed July 1999 proposed rule. MEDPAC again recommended this approach in its comments and stated that some insurers maintain a data base relating malpractice claims to ICD–9 codes and that software is available to crosswalk ICD–9 to CPT codes. MEDPAC also commented that in using only the costs of malpractice premiums that we failed to factor into the malpractice RVUs the "* * * loss of reputation* * *" that a physician incurs from malpractice claims. MEDPAC also indicated that "* * * psychological costs of professional liability are very important to physicians."

Response: As stated in the proposed rule, we do not believe that closed claims data linking malpractice claims to CPT codes are widely available across the country for all or even a significant portion of the 7000 plus CPT codes paid under the physician fee schedule. If any such data are available, we expect they are for a very few codes on a limited geographical basis. Our coding experts tell us it is not possible to crosswalk ICD–9 codes to an individual CPT code with any degree of accuracy. The statute requires that the new malpractice system be based on the malpractice expense resources involved in furnishing the service. We believe that the physician's malpractice premium best reflects the malpractice expense. We do not believe that any loss of a physician's reputation from a malpractice claim would be related to the statutory requirement to base malpractice RVUs on the malpractice resources involved in furnishing the service; we do not believe that this intangible "loss" represents a resource used in furnishing a service. Indeed, we do not see how loss of reputation and psychological costs can be quantified. We encourage MEDPAC to further develop their idea, particularly as it relates to the statutory requirement, and submit their further analysis in comments to future physician fee schedule notices.

Comment: Some neurologists listed five codes (95829, 95920, 95955, 95961, and 95962) assigned the neurology non-surgical risk factor that they believe are surgical services and should be assigned the higher neurology surgical risk factor.

Response: Our medical consultants believe that these are not surgical services and no evidence was presented that these services result in higher malpractice premiums for neurologists. At this time, we will continue to apply the non-surgical risk factor to these services. We will reconsider this decision should evidence be presented that performance of these services results in higher malpractice premiums.

Comment: Some neurosurgeons commented that the real effect of malpractice changes on neurosurgeons is masked by comparing estimated year 2000 allowed charges to 1999 allowed charges, thereby ignoring the effect on the malpractice RVU pool of the rebasing of the MEI from 1998 to 1999. They further commented that, while comparing 2000 to 1999 malpractice RVUs for neurosurgical procedures shows significant increases, comparing 2000 to 1998 malpractice RVUs will substantially reduce or eliminate these increases. They also stated that, while the updated MEI showed that the average malpractice expense represented 3.2 percent of gross income across all physician specialties, neurosurgeons have much higher malpractice expenses of about 7 percent of gross income. Neurosurgeons submitted a detailed methodology that they suggested might be used as an alternative to our proposed methodology.

Response: The MEI was rebased in 1999 to reflect more recent (1997 as compared to 1989) data from the AMA's Socioeconomic Monitoring Survey (SMS) on physician income and expenses. The more recent data indicated that malpractice expenses across all physician specialties as a percentage of gross income had shrunk from 4.8 to 3.2 percent. In order to reflect these more recent data in the physician fee schedule, the pool of malpractice RVUs was reduced from 4.8 to 3.2 percent of total RVUs. We made this change on a budget-neutral basis: the 1.6 percentage points were redistributed among the work and practice expense RVUs. We always show impacts relative to current law, regulations and policies; therefore, comparing 2000 to 1999 changes was not done to mask the effects of previous changes but was consistent with past practices. The effects of proposed 2000 malpractice RVUs were thus compared to existing 1999 levels. We agree that malpractice expenses of neurosurgeons are generally higher than the overall average 3.2 percent of gross income for all physicians. An examination of high volume codes performed primarily by neurosurgeons shows that the new resource-based malpractice RVUs range from about 6 percent of the total 1999 transition RVUs to about 9 percent of fully implemented total 2002 RVUs for a given service. We are examining the alternative methodology suggested by the neurosurgeons and will consider it along with other alternatives during future refinement of malpractice RVUs.

Comment: Several surgical specialties commented that many of the "winners" under our proposal are relatively low-risk specialties (for example, nephrology, general practice, and family practice) with relatively low malpractice premiums, while many of the "losers" are high-risk specialties (for example, cardiac surgery and thoracic surgery) with relatively high malpractice premiums. While acknowledging that the gains or losses are minor, usually less than 1 percent, they state that the results are counter-intuitive and do not match clinical practice experience. Some believe that this is a continuation of a HCFA bias in favor of primary care specialties at the expense of surgical specialties.

Response: We do not agree that the results are counter-intuitive or reflect any intentional bias. The impacts compare a new resource-based system with an existing charge-based system. The systems are on totally different bases. All the results show is what provided the Congress with the impetus to create the resource-based physician fee schedule in the OBRA 1989 and expand it in subsequent legislation: charges for physicians' services did not accurately reflect the relative resources required to provide the services. While over the course of the development of the fee schedule, the changes to a resource-based system did generally increase payments for primary care services relative to surgical services, it was because this was indicated by the resource input data and not as a result of any intentional HCFA bias.

Result of Evaluation of Comments: After careful examination of comments, we are adopting our proposal that new resource-based malpractice RVUs calculated using the methodology described in the July 1999 proposed rule will become effective in 2000. We have modified our proposal to identify certain services as surgery for purposes of applying specialty risk factors to individual services. These RVUs can be found in Addendum B.

B. Resource-Based Practice Expense Relative Value Units

1. Resource-Based Practice Expense Legislation

Section 121 of the Social Security Act Amendments of 1994 (Public Law 103–432), enacted on October 31, 1994, required us to develop a methodology for a resource-based system for determining practice expense RVUs for each physician's service beginning in 1998. The legislation specifically required that, in implementing the new system of practice expense RVUs, we must apply the same budget-neutrality provisions that we apply to other adjustments under the physician fee schedule.

The BBA was enacted on August 5, 1997, before publication of the October 1997 final rule (62 FR 59103). Section 4505(a) of the BBA delayed the effective date of the resource-based practice expense RVUs until January 1, 1999. In addition, the BBA provided for the following revisions in the requirements to change from charge-based practice expense RVUs to resource-based RVUs.

Instead of paying for all services entirely under a resource-based RVU system in 1999, section 4505(b) of the BBA provided for a 4-year transition period. The practice expense RVUs for the year 1999 will be the sum of 75 percent of charge-based RVUs and 25 percent of the resource-based RVUs. For the year 2000, the percentages will be 50 percent charge-based RVUs and 50 percent resource-based RVUs. For the year 2001, the percentages will be 25 percent charge-based RVUs and 75 percent resource-based RVUs. For subsequent years, the RVUs will be totally resource-based.

Section 4505(e) of the BBA provided that, in 1998, the practice expense RVUs would be adjusted for certain services in anticipation of the implementation of resource-based practice expenses beginning in 1999. Thus, practice expense RVUs for office visits were increased. For other services whose practice expense RVUs exceeded 110 percent of the work RVUs and which were furnished less than 75 percent of the time in an office setting, the 1998 practice expense RVUs were reduced to a number equal to 110 percent of the work RVUs. This limitation did not apply to services that had proposed resource-based practice expense RVUs in the June 18, 1997 proposed rule (62 FR 33196) that increased from their 1997 practice expense RVUs. The procedure codes affected and the final RVUs for 1998 were published in the October 31, 1997 final rule (62 FR 59103).

Section 4505(d)(3) also required that a proposed rule be published by May 1, 1998, with a 90-day comment period. A final rule was published on November 2, 1998, (63 FR 58816) and the transition began on January 1, 1999.

The BBA also required that we develop new resource-based practice expense RVUs. In developing these new practice expense RVUs, section 4505(d)(1) required us to—(1) use, to the maximum extent practicable, generally accepted accounting principles that recognize all staff, equipment, supplies, and expenses, not just those that can be tied to specific procedures, and use actual data on equipment use and other key assumptions; (2) consult with organizations representing physicians regarding the methodology and data to be used; and (3) develop a refinement process to be used during each of the four years of the transition period.

2. Current Methodology for Computing Practice Expense Relative Value Units

Effective with services furnished after January 1, 1999, we established a new methodology for computing resource-based practice expense RVU that uses the two significant sources of actual practice expense data we have available—the Clinical Practice Expert Panel (CPEP) data and the American Medical Association's (AMA's) Socioeconomic Monitoring System (SMS) data. This methodology is based on an assumption that current aggregate specialty practice costs are a reasonable basis for establishing initial estimates of relative resource costs of physicians' services across specialties. It then allocates these aggregate specialty practice costs to specific procedures and, thus, can be seen as a "top-down" approach. The following summarizes the general methodology used. (For more specific information refer to the June 5, 1998 proposed rule (63 FR 30826) and the November 1998 final rule with comment (63 FR 58816).)

Practice Expense Cost Pools

We used actual practice expense data by specialty, derived from the 1995 through 1997 SMS survey data, to create six cost pools: administrative labor, clinical labor, medical supplies, medical equipment, office supplies, and all other expenses. There were three steps in the creation of the cost pools. They are as follows:

(Step 1) We used the AMA's SMS survey of actual cost data to determine practice expenses per hour by cost category. The practice expense per hour for each physician respondent's practice was calculated as the practice expenses for the practice divided by the total number of hours spent in patient care activities by the physicians in the practice.

(Step 2) We determined the total number of physician hours, by specialty, spent treating Medicare patients. This was calculated from physician time data for each procedure code and the Medicare claims data.

(Step 3) We then calculated the practice expense pools by specialty and by cost category by multiplying the practice expenses per hour for each category by the total physician hours.

For services with work RVUs equal to zero (including the TC of services with PC and TC), we created a separate practice expense pool using the average clinical staff time from the CPEP data (since these codes by definition do not have physician time), and the "all physicians" practice expense per hour.

Cost Allocation Methodology

For each specialty, we separated the six practice expense pools into two groups, direct costs and indirect costs, and used a different allocation basis for each group.

- For direct costs, which include clinical labor, medical supplies, and medical equipment, we used the CPEP data as the allocation basis.

For the separate practice expense pool for services with work RVUs equal to zero, we are using, as an interim measure, 1998 practice expense RVUs to allocate the direct cost pools (clinical labor, medical supplies and medical equipment).

Also, for all radiology services that are assigned work RVUs, we used the 1998 practice expense RVUs as an interim measure to allocate the direct practice expense cost pool for the specialty of radiology. For all other specialties that perform radiology services that are assigned work RVUs, we used the CPEP data for radiology services in the allocation of that specialty's direct practice expense cost pools.

- For indirect costs, which include administrative labor, office expenses, and all other expenses, we used the total direct costs or the 1998 practice expense RVUs, as described above, in combination with the physician fee schedule work RVUs, to allocate the cost pools. We converted the work RVUs to dollars using the Medicare CF (expressed in 1995 dollars for consistency with the SMS survey years).

- For procedures performed by more than one specialty, the final procedure code allocation was a weighted average of allocations for the specialties that perform the procedure, with the weights being the frequency with which each specialty performs the procedure on Medicare patients.

Other Methodological Issues

- Global Practice Expense Relative Value Units

For services with the PC and TC paid under the physician fee schedule, the global practice expense RVUs are set equal to the sum of the PC and TC.

- Practice Expenses per Hour Adjustments and Specialty Crosswalks

Since many specialties identified in our claims data did not correspond exactly to the specialties included in the practice expenses tables from the SMS survey data, it was necessary to crosswalk these specialties to the most appropriate SMS specialty category. We also made the following adjustments to the practice expense per hour data (the rationale for these adjustments is explained in the November 1998 proposed rule (63 FR 58817):

+ For the specialty of "oncology" we set the medical materials and supplies practice expense per hour equal to the "all physician" medical materials and supplies practice expenses per hour.

+ We based the administrative payroll, office, and other practice expenses per hour for the specialties of "physical therapy" and "occupational therapy" on data used to develop the salary equivalency guidelines for these specialties. We set the practice expense per hour for the direct cost categories equal to the "all physicians" practice expense per hour from the SMS survey data.

+ We derived the resource-based practice expense RVUs for codes performed by audiologists from the practice expenses per hour of the other specialties that perform these codes.

+ For the specialty "emergency medicine" we used the "all physician" practice expense per hour to create practice expense cost pools for the categories "clerical payroll" and "other expenses."

+ For the specialty "podiatry" and the specialty of "maxillofacial prosthetics" we used the "all physician" practice expenses per hour to create the practice expense pool.

+ For the specialty "pathology" we removed the supervision and autopsy hours reimbursed through Part A of the Medicare program from the practice expense per hour calculation.

- Time Associated with the Work Relative Value Units

The time data resulting from the more current RUC refinement of the work RVUs have been, on the average, 25 percent greater than the time data obtained by the original Harvard research team for the same services in 1992. We adjusted the Harvard research team's time data by comparisons within families of CPT codes in order to ensure consistency between these data sources and fairness to those services not yet valued by the RUC.

For services with no assigned physician times, such as dialysis, physical therapy, psychology and many radiology and other diagnostic services, we calculated estimated total physician times based on work RVUs, maximum clinical staff time for each service as shown in the CPEP data, or the judgment of our clinical staff.

We calculated the time for the anesthesia CPT codes 00100 through 01996 using the base and time units from the anesthesia fee schedule and the Medicare allowed claims data.

3. Refinement

Background

Section 4505(d)(1)(C) of the BBA requires us to develop a refinement process to be used during each of the four years of the transition period. In the June 1998 proposed rule (63 FR 30822) and the November 2, 1998 final rule (63 FR 58818) we set out the parameters for a refinement process and indicated that RVUs for all codes would be considered interim for 1999 and for future years during the transition period.

As part of the initial refinement process, in the November 1998 final rule, we outlined the steps we are undertaking to resolve the outstanding general methodological issues. These steps include the establishment of a mechanism to receive additional technical advice for dealing with these broad practice expense RVU methodological issues; evaluation of any additional recommendations from the GAO, MEDPAC, and the Practicing Physicians Advisory Council; and consultation with physicians' and other groups about these issues. In addition, we solicited comments and suggestions about methodology from organizations that have a broad range of interest and expertise in practice expense and survey issues.

We also discussed a proposal submitted by the Relative Update Committee (RUC), which was supported by almost every medical specialty society, for the establishment of a Practice Expense Advisory Committee (PEAC), to review comments and make recommendations on the code-specific

CPEP data (that is, the clinical staff types and times, medical supplies, and medical equipment needed for each procedure) during this refinement period. This committee would make recommendations to the RUC, which would make final recommendations to us.

Current Status of Refinement Activities

Top-Down Methodology

Comment: Several physician specialty societies expressed concern about what they perceive as a lack of progress in the refinement process. One surgical society noted the final report of the contractor we chose to evaluate methodological issues is not due until May 2000. Other commenters requested that we identify our plans for refinement, provide guidance to specialty societies for refining key data sources and inform the medical community of our progress. Several commenters recommended that we lengthen the time period for transition, while another requested that we consider all practice expense RVUs as interim until all refinements are complete, even beyond 2002. Two surgical specialty societies stated their concern that many of the methodological issues on which they previously commented have not yet been resolved, such as averaging of the CPEP inputs for services valued by more than one CPEP panel, the negative effect of high patient care hours on certain specialties, the effects of rounding on the physician time for evaluation and management (E/M) services, and the impact of errors in the Medicare claims data.

Response: We can understand the frustration expressed by many of the commenters about the lack of many immediate revisions to our top-down methodology. However, this methodology is complex and is also dependent on the accuracy and interrelationship among five separate data sources: the SMS survey, the CPEP inputs, Harvard and RUC physician times, the Medicare claims data, and the work RVUs. In addition, because the RVUs must be budget neutral, any change we make that advantages one group could disadvantage another. Therefore, we must ensure that all refinements we make are methodologically sound, are consistent with Medicare policy, and, to the greatest degree possible, are based on objective information.

We believe that we are now in a position to begin addressing many of the methodological issues that are of concern to those commenting on our refinement efforts. As indicated in the July 22, 1999 proposed rule (64 FR 39608), one of our main strategies for resolving the outstanding practice expense methodological issues was to establish a mechanism for obtaining expert advice and technical support. We awarded a one-year contract, beginning May 24, 1999, to The Lewin Group to provide technical assistance in evaluating the following aspects of the practice expense methodology:

- Evaluate the validity and reliability of the SMS data for specialty and subspecialty groups and academic and hospital-based specialties to determine which groups may not be adequately represented in the SMS survey.
- Assist us in our consultations with the AMA and the medical community on considering possible ways to improve the representativeness of the aggregate specialty-specific data so that sampling error is decreased and to eliminate as many sources of non-response and measurement error as possible.
- Evaluate the appropriateness of crosswalking unrepresented specialties to a specialty included in the AMA survey and develop alternative options to crosswalking.
- Determine which specialties' SMS data may be affected by inclusion of mid-level practitioners in specialty survey cost data and develop alternative methodologies to address the issue.
- Determine whether the impact on AMA SMS of non-billable hours is significant and, if so, develop methodologies for adjusting AMA/SMS to account for non-billable hours.
- Determine whether the impact of uncompensated care is significant and, if so, develop methodologies for adjusting the SMS data to account for uncompensated care.
- Identify and evaluate alternative and supplementary data from sources such as specialty and multi-speciality societies and future SMS surveys.
- Determine under what circumstances, if any, we should consider use of survey data other than AMA SMS data and, if this data could be used, develop criteria for accepting other surveys and determine the appropriate form of these surveys.
- Consider ways that specialty data that significantly change in a future survey can be selectively validated by AMA SMS through an independent auditor or other appropriate entity.
- Develop options for validating the Harvard/RUC physician procedure time data.
- Determine whether the effect of rounding time data for high volume/low time services is significant and, if so, develop methodologies to address it.
- Review options supplied by us for allocating indirect costs, including substituting physician time for physician work.
- Provide advice on developing a process for the 5-year review of practice expense RVUs.

Our contractor has accomplished the following to date:

- Met with us and the AMA to discuss our future use of the AMA SMS survey and to discuss the design and structure of the AMA's new practice-level survey. The AMA plans to conduct its survey of practices in alternating years with the SMS survey. Our contractor has completed an evaluation of the 1998 SMS questionnaire and has completed an initial review of the methodology of the practice expense per hour values derived from the SMS data. Our contractor is developing recommendations regarding the practice survey design and methodology and is considering how we can use the practice-level survey and how we can cross-walk the information to the SMS survey. We hope to present the details of the final recommendations and our proposals regarding them in next year's physician fee schedule proposed rule.
- Met with the Society of Thoracic Surgeons (STS) to review the methodology used in their survey to make a specific recommendation concerning the use of this survey to calculate the practice expense per hour for cardiothoracic surgery.
- Hosted a meeting on September 15, 1999 with 37 representatives of physician specialty societies, 11 representatives of nonphysician practitioners and a number of representatives of the AMA.

Our contractor held the meeting at our urging to allow an opportunity for representatives of physicians and other practitioners to raise issues and concerns regarding methodological issues which effect Medicare payment for practice expenses. Among other issues, our contractor discussed:

+ Improving collection reliability of practice expense data from the SMS survey including data on practitioners not represented in the SMS survey.

+ Developing and evaluating criteria for use of supplemental data collection efforts.

+ Defining and validating the number of hours physicians spend in patient care activities.

+ Appropriateness of crosswalk between HCFA and AMA specialty designations.

Our contractor discussed concerns related to these and other issues and facilitated a discussion among the participants of potential ways of improving the top down methodology.

- Submitted their first draft report, Practice Expense Methodology, dated September 24, 1999, containing an analysis and recommendations concerning SMS and other practice expense data. This report has been placed on HCFA's homepage under the title "Lewin Group Report" for anyone interested in reviewing it. (Access to our homepage was discussed under the "Address" section earlier.)

Comment: We have received several comments regarding the effect of the step in our methodology that weight-averages all scaled specialty-specific dollar inputs for each CPT code to arrive at a single value for each service. Commenters claim that this step can cause redistributions in the specialty-specific practice expense pools and, in some cases, can cause anomalies in the payment for certain services. Several commenters indicate that payments for some nerve block injections will rise by several hundred percent in the office. The American Society of Anesthesiologists commented that the values for some of the nerve block injections make no sense in the real world and urged us to allow the refinement process to work before taking action with respect to in-facility practice expense values. Some commenters objected to the proposed increase in payments for outpatient E/M. A number of commenters noted that office-based E/M services will increase substantially under the proposed policy. The Society for Vascular Surgery objected to the proposed 4 to 7 percent increase in total RVUs for outpatient E/M. They indicated that the additional payments for an intermediate office visit (CPT code 99213) alone will increase $312,000,000 which will require further adjustments to the CF. The American College of Cardiology recommended that we should implement a way to reduce or eliminate the "pool leakage" for specialties such as cardiology that have a high practice expense per hour. Such high practice expense specialties can lose a portion of their pool to specialties with lower expenses when the costs are averaged. Other commenters also suggested that we should eliminate "pool leakage." The American Association of Neurological Surgeons (AANS) made a similar comment regarding "pool leakage." AANS asserted that pool leakage is unfair and violates that BBA mandate to develop a system that reflects physicians' actual practice expenses.

The Society of Thoracic Surgeons (STS) commented that, because of the dropping of clinical staff time in the facility setting from the CPEP data, the values for cardiac and thoracic surgical procedures are reduced while values for cardiac and thoracic office visits are increased. The commenter asserted that the effect of this "misallocation and subsequent weighted-averaging of E/M services across specialties is a virtual draining and redistribution of cardiac and thoracic surgery practice expenses to other specialties." The commenter further stated that other anomalies demonstrate the fallibility of this approach. For example, the scaling factors for clinical staff for thoracic and cardiac surgery become 1.75 and 2.2 respectively, which are far from the norm for other specialties. As a result of these high scaling factors, the values in the cardiac and thoracic surgery practice expense pools for E/M services are increased while the values for these same services are decreased in the internal medicine practice expense pool. Cardiac and thoracic surgery have a value for an E/M service which is about six times the values for these services in the internal medicine practice expense pool. Finally, these changes in the direct cost values for E/M services also cause the indirect practice expense for these services to increase in a distorted fashion.

Response: We are required by statute to have a single payment for each service, regardless of the specialty performing that service. It is for this reason that we adopted the weight averaging of services. Under the top-down methodology, we calculate an "SMS" pool using the practice expense per hour from the AMA's SMS as follows:

SMS Pool=Practice expense per hour * time per procedure * allowed services.

This is summed by specialty across all procedures a specialty performs.

We then calculate a "CPEP" pool using the estimates of direct expenses for specific procedures by the CPEP:

CPEP Pool=Practice Expense for a procedure (as estimated by the CPEP) * allowed services.

This is summed across all services a specialty does.

There is a separate pool for each category of direct costs (clinical labor, supplies and equipment). The SMS pool is divided by the CPEP pool for each specialty to produce a scaling factor which is applied to the CPEP direct cost inputs. This process is intended to match costs counted as practice expenses in the SMS survey with items counted as a practice expense in the CPEP process. Ideally, all of the scaling factors would equal 1.0, which would suggest that practice expenses are being identified consistently within each pool. If the scaling factor is more than 1.0, the CPEP inputs for each specialty are increased prior to the weight-averaging step. If the scaling factor is less than 1.0, the CPEP inputs for each specialty are decreased prior to the weight-averaging step. If the scaling factors all equaled 1.0 or alternatively were within a narrow range of each other, the weight averaging step will have little impact on the final value for a procedure relative to the original CPEP estimates. Thus, the ideal is that the scaling factor equals 1.0.

Alternatively, if the scaling factors among different specialties are equal to each other, each specialty specific value that goes into the weight-averaging step would be the same. Since the scaling factors tend to be less than one for the direct inputs, most specialties overestimated practice expenses in the CPEP relative to how the costs were estimated in the SMS survey. In the refinement process, one of our key interests is ensuring that there is consistency between costs counted as practice expenses in the SMS survey and costs which were counted as practice expenses in the CPEP process. To the extent this occurs and we can obtain reliable information on physician time related to performing individual procedures, we believe that scaling factors should approach 1.0 and these refinements would be an improvement in the top-down methodology. In the interim, we believe the policies in this final rule are an improvement in the top-down methodology.

The scaling factors for clinical labor costs for most specialties move closer to 1.0 in this final rule. The scaling factor for all physicians increased from 0.54 to 0.72 in this final rule relative to last year's final rule. For a few specialties, the scaling factor deviates sharply from 1.0 as a result of these new policies. For instance, the scaling factor increased from 0.40 to 2.42 for thoracic surgery, 0.36 to 3.07 for cardiac surgery, and 0.51 to 5.72 for anesthesiology. Since the scaling factors for most specialties and for all physician pools move closer to 1.0, we do not believe that significant changes in policy related to the top-down methodology such as the ones suggested by commenters are necessary. We continue to believe the refinement process should be used to obtain better information on physician practice expenses to further improve the top-down methodology. We do not believe that results for a few specialties that deviate from the general trend indicate a significant problem with the top-down methodology. In fact, it is possible that the increase in the scaling factor that results from changes in this final rule is due to an overstatement of SMS costs on practice expense per hour rather than an understatement of the CPEP pool. For instance, if a physician brings nonphysician practitioners to the hospital, whose services are charged for separately, the expenses associated with these practitioners generate physician revenue and should be considered as a part of the physician work RVU. Indeed, the STS indicated in its comments that thoracic surgeons frequently bring physician assistants to the operating room to perform duties typical of "the first assistant-at-surgery." In this situation, the service of the assistant-at-surgery would be separately billable and would generate additional revenue to the physician. If it is commonplace for thoracic surgeons to bring physician assistants to the hospital for whose services Medicare may make an additional payment, it would be appropriate to examine whether expenses for physician assistants are included as a practice expense in the SMS and thus whether the practice expense per hour is overstated.

Similarly, we believe it is possible that anesthesiologists responding to the SMS survey may have counted certified registered nurse anesthetists as a clinical practice expense even though they may receive an additional payment for the service of a CRNA providing anesthesia services during a surgical procedure. We do not know that this is the case but are instead indicating that this is an avenue for further research to explain the very high scaling factor for anesthesiology.

We acknowledge that payments under our rule will largely decline for services which are predominantly performed in a facility and which had substantial inputs for clinical staff. However, we do not believe that this is illustrative of a problem with the top-down methodology. Indeed, as we explained above, we believe our policies are an improvement in the top-down methodology with a few exceptions.

With respect to some of the code level results that were pointed out by commenters, we are concerned that there are a few instances where the scaling and weight-averaging methodology could cause changes in payment or redistributions that do not reflect the relative costs of performing certain services. These occur for a few services that are performed predominantly by a specialty whose scaling factor deviates sharply from 1.0. For instance, as indicated by some commenters, practice expense RVUs for pain management injection services would have increased substantially for reasons unrelated to the relative resources used in providing the service. This occurs because of the very high scaling factor for anesthesia that is applied to these services. As some commenters have noted, including anesthesiologists themselves, these values "make absolutely no sense in the real world." For this reason, as an interim measure until refinement is completed, we will use the average scaling factor in place of the specialty specific scaling factor if the specialty specific scaling factor exceeds the average scaling factor by more than 3 standard deviations. This change will largely result in a reduction in the enormous increase in some of the pain management services from the proposed rule as a result of a different scaling factor being used for anesthesiology. Although these services still appear to have higher RVUs, the changes do not seem so extreme. We believe this change is warranted as an interim measure in situations where there is an extreme deviation in specialty scaling factor relative to the average scaling factor. As we have indicated, this interim measure is being taken to avoid extremely anomalous payments for certain services until we can further identify the reason for aberrant scaling factors.

SMS Data

As we explained in the July 1999 proposed rule we have received comments from a large number of medical specialty societies concerning the SMS data and the parameters under which we would accept supplementary data or new data. We identified as the top priority of the technical contractor the determination of (1) the circumstances, if any, under which we should consider use of survey data other than the SMS data; (2) the appropriate form of these other surveys; and (3) how these surveys or future SMS surveys can be appropriately validated for our use.

Comment: Many organizations reiterated the concerns expressed in previous comments that their services or their actual costs are not adequately represented in the SMS data or, in the case of non-physician specialties, are not represented at all. Organizations representing emergency medicine, vascular surgery, podiatry, and optometry requested that we use supplementary data already collected for their specialties. Two organizations representing cardiology recommended that we use the most current SMS data in developing practice expense values for the year 2000. One of the comments states that a review of the most recent data indicates that no "gaming" took place in the responses to this new SMS survey, once reported practice expenses have only grown at about the rate of medical inflation.

Two primary care specialty societies support our decision not to use supplementary data at this time and instead to use our outside contractor to develop reliable and standardized criteria for accepting and validating additional specialty-specific data.

Response: We are still in the process of developing the general criteria for the use of supplementary practice expense surveys and more recent SMS survey data that could be used in the calculation of the specialty-specific practice expense per hour. We have made this issue the top priority for our methodological contractor. As stated above, our contractor has already met with AMA staff on several occasions to discuss the future use of the SMS survey, in particular the design, structure and potential use of the new practice-level SMS survey. Our contractor also held a meeting on this issue to which all major national specialty societies were invited in order to obtain input on concerns relating to the AMA SMS survey and other supplementary survey data. As mentioned earlier, we have just received the first draft report with our contractor's findings and recommendations on the criteria for acceptance of future data. We have not yet had the opportunity to review closely this report and its recommendations. Therefore, we are not yet ready to determine which already submitted or potential additional survey data would be acceptable, although we have previously stated our preference for future surveys to be carried out on a multi-specialty level, as is the SMS. We are pleased that, according to the comment mentioned above, the results in general from the latest SMS survey may not have differed significantly from the data that are used for this rule.

Comment: The Society of Thoracic Surgeons (STS) had commented on last year's proposed rule (63 FR 30817) that the sample size in the SMS surveys used by us for cardiac, thoracic and vascular surgery was insufficient for use calculating accurate practice expenses for these specialties. The STS submitted a supplementary survey with these earlier comments that had a larger sample size and that showed a higher practice expense for cardiac and thoracic surgery. The comments stated that STS contracted with the AMA in April 1998, before it was known that the SMS data would be used in the determination of practice expense, to conduct an SMS-clone oversample. This survey showed a practice expense per hour of $75.90, rather than the $63.80 from the 1994 through 1996 data. The STS requests that we use this later SMS data in the calculation of cardiac and thoracic surgery's practice expense per hour.

Response: We believe that the STS survey is unique among all specialty surveys that we have received in that it both appears to be a clone of the SMS surveys already used in our calculations and was undertaken before our top-down methodology was proposed. Therefore, we asked our contractor to evaluate and advise us on the utility of considering the STS survey at this time. Our contractor met with the STS, discussed the issue with SMS technical staff and submitted a detailed questionnaire to STS about the methodology used in the survey.

In the draft report on practice expense methodology mentioned above, our contractor discusses the standards that could be applied to supplementary data provided by specialty groups. The draft report suggests that supplemental data collection efforts: draw the sample from the AMA Physician Masterfile, when possible; survey a large enough number of individuals to assure an adequate number of useable responses; are based on SMS survey instruments and protocols, including administration and follow-up efforts; use the same contractors as SMS and be fielded during the same time-frame; consistently define, through the SMS and all additional surveys, practice expense and hours spent in patient care; give responsibility for data editing and analysis to the AMA's SMS project team.

In a memo to us accompanying the above mentioned draft report, our contractor stated: "We believe that the survey conducted by the Society of Thoracic Surgeons meets the standards we have set forth in the paper. Therefore, it is our recommendation that HCFA incorporate their supplemental survey data into its calculation of practice expense RVUs." We agree with this recommendation and will use the survey submitted by STS in the calculation of thoracic and cardiac surgery's practice expense per hour.

Result of Evaluation of Comments

We will use the survey submitted by STS in the calculation of thoracic and cardiac surgery's practice expense per hour. We recalculated the practice expense per hour for cardiac and thoracic surgery by weight-averaging the new survey information with practice expense SMS survey data from 1995 and 1996. Consistent with other specialty information we deflated values to reflect 1995 costs. We used the number of survey responses adjusted for non-response as the weights. In addition, we did not include the responses from vascular surgeons in the calculations for thoracic and cardiac surgery because we are now crosswalking vascular surgery to all physician practice expense per hour. This produced the following practice expense per hour:

Clinical Labor	Supplies	Equipment	Clerical, Office & Other
$19.50	$1.93	$2.34	$48.20

Adjustment to Direct Patient Care Hours for Pathology

In the November 1998 final rule, we made adjustments to the direct patient care hours for pathologists to account for the fact that time spent performing autopsies and supervising technicians are Part A services. The pathologists had also requested that we eliminate some of the time for "personally performing nonsurgical laboratory procedures including reports" because this time also includes some part A services. We did not make this adjustment at the time because we did not have appropriate data. We now have the necessary information and in the July 1999 rule we proposed to remove three hours from the total patient care hours for pathologists.

Comment: The College of American Pathologists, as well as individual commenters, supported the proposal to eliminate three of the 6.77 hours of pathology SMS time for performing nonsurgical laboratory procedures. The AMA also supports this proposal because the SMS survey shows that 45 percent of the 6.77 weekly hours spent on performing these procedures is non-reimbursable under the physician fee schedule.

One surgical organization expressed concern that this adjustment will be made at the expense of all other specialty pools. Other commenters contended that many other physicians, besides pathologists, spend time in direct patient care activities for patients which is not separately billable including phone calls, waiting time, "hallway" patient consultations and "stand-by" time, or uncompensated care. Two commenters argued that specialties with high patient care hours are not treated fairly in the calculation of practice expense RVUs and ask that we consider removing such time from the SMS data for surgical specialties as well. In a similar comment, an anesthesiology society, though not opposed to the proposed pathology adjustment, urged its extension to other specialties as part of an across-the-board refinement of SMS-generated values.

Response: We believe that the data presented by the College of American Pathologists, in conjunction with the AMA, is persuasive that three hours should be eliminated from the SMS direct patient care weekly hours for pathology. Therefore, we will make the adjustment at this time. However, though we do believe that pathology may differ from most specialties with regard to their split between Part A and Part B payments, we also agree that the other commenters raised a valid point concerning other specialties' non-billable hours that may be inadvertently captured in the SMS direct patient care hours data. It is because of this concern that we included the issue of the SMS patient care hours in the scope of work for our contractor. Over three pages in the draft report from our contractor, which is referenced above and which is available on our home page, are dedicated to this issue. The report points out that, if there is a discrepancy between the activities captured in the code-specific physician time values in the Harvard and RUC database and the activities that physicians considered in responding to the patient care hour question in the SMS survey, the practice expense pools could be biased in either direction. We hope to discuss recommendations on improving the accuracy of the patient care hours data in our next proposed rule.

Result of Evaluation of Comments: We will eliminate 3 hours from pathology's direct patient care hours for "personally performing nonsurgical laboratory procedures including reports" because this time includes some part A services.

CPEP Data

Response to Comments on Egregious CPEP Errors and Anomalies/RUC Recommendations

As we stated in last year's final rule, comments were submitted on the CPEP inputs for about 3000 CPT codes. In response to the July 1999 proposed rule, a few additional comments on CPEP inputs have been received, most of them reiterations of comments previously submitted. In this year's proposed rule we stated that we plan to wait until we receive recommendations from the RUC before making significant changes to most code-specific inputs. The PEAC held its organizing meeting in February 1999 and met again in April to begin the task of refining the code-specific CPEP data. The PEAC and RUC then met at the end of September to further develop the approach to the refinement of the CPEP data and as a result of this meeting the RUC has forwarded recommendations to us on 65 CPT codes. The November 1998 final rule also pointed out that we had received comments on a number of egregious errors and anomalies that we would address in future rulemaking. Our responses to the comments on the errors and anomalies and to the RUC recommendations are discussed further below.

Comment: One organization representing pediatric services supports our decision to wait for RUC recommendations on code-specific direct practice expense inputs, while an ophthalmology subspecialty society strongly recommends adopting the CPEP input changes suggested by ophthalmology groups now, without waiting for RUC recommendations. A primary care group recommended that we publish the CPEP errors and anomalies for review before we correct them in this final rule. A few other organizations suggested further changes to the RUC recommended inputs or changes in inputs for codes not yet reviewed or not agreed to by the PEAC and RUC.

Response: We believe that, particularly at these first steps in refining the CPEP inputs, it is preferable to have a multi-specialty agreement on changing these data, rather than accepting the recommendations of a single group without the level of peer input that a group like the PEAC and RUC can afford. That is the major reason we have chosen to wait for the RUC recommendations before refining most of the CPEP data and why, at this point, we are not addressing the few additional changes suggested by commenters to the July 1999 proposed rule. The commenters pointed out at the same time that there are some obvious errors or anomalies when the corrective action is of a more technical nature. Therefore, we believe that it will be helpful to the refinement process to make these corrections at this time.

Comments on Egregious Errors and Anomalies

Outlined below are comments and our responses concerning those anomalies and errors for which corrections could easily be determined. It is important to note that while we are making some revisions now, all practice expense inputs for these codes are still subject to further comment, our refinement and potential PEAC and RUC review and action. In addition, we have made minor adjustments to the CPEP supply list by deleting a few supplies either because of the difficulty in measuring their use, or because the supplies were not fully used up during a single procedure and do not fit the definition that we use for direct supply costs. Therefore, the costs for tissues, biohazard bags and Lysol spray will be treated as indirect costs. This change should not affect the practice expense RVUs for any service, but it will help simplify the refinement of the supply inputs.

Comment: The American Academy of Orthopaedic Surgeons and the American College of Surgeons both commented that we should delete separately billable casting materials from the CPEP inputs.

Response: Casting materials are bundled into the payment for the initial fracture management procedures and separate billing for the supplies is not allowed under Medicare billing rules. Therefore, for these procedures, the casting supplies should remain as inputs. However, for casting and strapping codes CPT codes 29000 through 29750, casting supplies can be billed for separately, and including the supplies in the CPEP data would lead to double counting. Therefore, we have deleted the fiberglass roll, cast padding and cast shoe from the list of supplies for these procedures.

Comment: The American College of Surgeons commented that we should delete Romazicon (used to reverse conscious sedation) from supplies wherever it appears since it is not typically used.

Response: This comment brought to our attention that many drugs in addition to Romazicon are included in the supply lists of many procedures. Most drugs are separately billable and are not paid under the physician fee schedule. Therefore, in keeping with our general policy to retain in the CPEP data only those inputs that would be paid as practice expense under the physician fee schedule, we have deleted from the supply lists all those drugs that would be billed separately, which would include Romazicon. We have also deleted self-administrable drugs that are not payable under Medicare. The drugs that have been removed are: fentanyl, demerol injection, versed injection, valium injection, ativan syringe, bacitracin ointment, neosporin, benadryl, steroid kenalog, IV fluids, such as saline in various quantities, D5W, droperidol, romazicon, narcan, ancef, nubain, sodium chloride injection, lasix, brevital, decadron, esmolol IV, metopropol IV, sodium amobarbital, tylenol and ibuprofen.

Comment: The American College of Surgeons commented that the supply lists for the insertion of bile duct catheters (CPT code 47510) and stents (CPT code 47511) include an extensive and costly list of supplies used to perform the procedure in the out-of-office setting. However, these supply costs are covered by the facility and therefore should be removed from the list of supplies for these codes.

Response: We agree and note that the supplies listed in the facility setting appear to be connected with the performance of the procedure and will be included in the payment to the facility. Therefore, we have removed these supply costs from the data. However, since this is a 90-day global code and would be expected to have post-procedure visits in the office, we would welcome comments about appropriate supplies for the office visits during the global period. In addition, one CPEP panel listed 210 minutes of angio technician time in the post-procedure period. Because the services of an angio tech would only be needed during the procedure itself and not during the post-procedure office visits, we are deleting this time.

Comment: The American College of Surgeons commented that the supply costs for the procto-sigmoidoscopies and flexible sigmoidoscopies are significantly higher than the supply costs for colonoscopy codes. They attributed this rank order problem partially to the inappropriate inclusion in the supply list of an expensive lumen tube for the sigmoidoscopy codes. They asserted that a lumen tube is not a typical supply for sigmoidoscopy codes and recommended the removal of this supply from these codes.

Response: We are in agreement with the College of Surgeons that the lumen tube is not a typical supply for these procedures and are therefore deleting this supply from the sigmoidoscopy codes (specifically: CPT codes 45300, 45303, 45305, 45307, 45308, 45309, 45315, 45317, 45320, 45330, 45331, 45332, 45333, 45338 and 45339).

Comment: The American Academy of Ophthalmology and the Macula, Retina and Vitreous Societies questioned the prices identified in the CPEP data for the superblade. They indicated the price for the superblade should be $1.00 instead of the $30 listed in the Abt pricing file.

Response: We have verified this lower price and will make the price change to the CPEP database.

Comment: The American Academy of Ophthalmology, the American Optometric Association and the American Society of Cataract and Refractive Surgery stated that the CPEP data included a discrepancy in the supply costs for CPT code 92012 (eye exam, established patient, intermediate). The supply costs reflected were much higher than supply costs for the other eye exam codes. They felt the supplies for the eye exam codes are essentially the same and recommended that the supply values for CPT code 92012 should be changed to be consistent with the value used for the other codes in the series.

Response: We have reviewed the CPEP data and made revisions to the supplies used for CPT code 92012 so that these supplies are consistent with those for other eye exam codes. (We removed as suggested: patient education booklet; fox shield; patch, eye; bleach; gonisol; contact lens solution; tape, VHS).

Comment: The Macula, Retina and Vitreous Societies believed the price allocated for an 18 gauge filter needle, (listed at $46) was in error. They recommended a price of $1 for this supply. They initially also questioned the cost allocated for color film, but in later discussion agreed that the list price of $.85 is reasonable.

Response: We agree that the price allocated for the 18 gauge filter needle is in error and after reviewing supply catalogs believe that the price suggested by the commenter ($1.00) is reasonable. We will revise the CPEP data accordingly.

Comment: The American College of Cardiology pointed out that a cast cutter is listed in the supply list for two cardiovascular rehabilitation procedures (CPT codes 93797 and 93798) and should be removed.

Response: The cast cutter has been deleted from the supply list for these codes.

Comment: The American Academy of Neurology commented that CPT code 62270, spinal fluid tap, diagnostic and CPT code 62272, drainage of spinal fluid, are erroneously listed as having no supplies. A short list of suggested routine supplies was included with the comment.

Response: We believe that the list is appropriate and have included these supplies in the CPEP inputs for these services.

Comment: The Joint Council of Allergy, Asthma and Immunology (JCAAI) pointed out that no supplies were allotted to CPT 95070, bronchial allergy tests, though other codes in the family did have supplies listed.

Response: We agree that the CPEP panel left out the supplies that should have been assigned to CPT 95070, and we found that this is also true for CPT 95071. Therefore, until the inputs for these bronchial allergy test codes can be refined, we are assigning to them the same supplies that are listed for the other codes in the family, such as CPT code 95065, nose allergy test, except that, because CPT codes 95070 and 95071 are inhalation tests, we are omitting the band aid, swab, gauze, tape and syringe included in other codes in the family.

Comment: JCAAI also commented that there were rank order anomalies for the venom immunotherapy codes (CPT codes 95145 through 95149), because the needed antigens were not included in the supplies. The comment lists the antigens (adjusted for a single 1 cc dose) that are necessary for each service: CPT code 95145 requires a single venom; CPT code 95146 requires two venoms; CPT code 95147 requires three venoms; CPT code 95148 requires a three vespid mix plus a single venom; CPT code 95149 requires a three vespid mix, a single venom and a honey bee venom.

Response: We agree that these venom antigens should be added to the supply lists for these codes and have made the necessary adjustments.

Comment: The American College of Obstetrics and Gynecology (ACOG) commented that the CPEP inputs for CPT code 58350, reopen fallopian tube, show time for angiography supplies although this is not an angiography procedure.

Response: Although the comment stated that the angiography supplies are in CPT code 58350, they actually are present in CPT code 58340, catheter for hysterography,(which ACOG states is overvalued in comparison to CPT code 58350). Consistent with the comment, we are deleting the angiographic vessel dilator and the vascular sheath. We also noticed that CPT code 58340 shows 63 minutes of angio technician, which we are deleting as this is not an angiography procedure. In addition, CPT code 58340 has 175 minutes of RN time in the intra-period in the non-facility setting, while CPT code 58350 shows only 63 minutes RN/MA in this period. In line with ACOG's comment that CPT code 58340 is overvalued, we are changing the intra time for CPT code 58340 to 63 minutes of RN/MA clinical time to match the input for CPT code 58350.

Comment: Raytel Cardiac Services were concerned that data on supplies and clinical staff for arrhythmia monitoring services were based on only one monitored event during a 30-day period. The comment requested that we check for the appropriateness of the CPEP supplies and staff time for these services.

Response: The CPEP panel stated that there were no clinical supplies associated with these monitoring services, and the commenter did not supply any information regarding the clinical staff duties required for these codes. Therefore, we have no basis for making any changes to the inputs for these monitoring services at this time, but would welcome further information on this issue from additional comments or from the PEAC and RUC.

Comment: The American Academy of Dermatology commented that the actinotherapy and photochemotherapy CPT codes 96900, 96910, 96912 and 96913 were grossly undervalued because the CPEP equipment data do not include the costs of a photochemotherapy unit. The comment stated that these units also use almost 200 lamps a year.

Response: It is clear that a photochemotherapy unit was omitted from the CPEP data in error, because these procedures could not be performed without this equipment. We will add the photochemotherapy unit and lamps to the CPEP database.

Comment: The American College of Radiology pointed out that many of the cardiovascular nuclear medicine codes had two types of cameras assigned in the CPEP files, but that only one camera is needed.

Response: We found that almost all of the nuclear medicine codes (CPT codes 78000 through 78999) had two or three cameras listed. We have included only one camera for each of these codes as suggested by the commenter.

Comment: The American Urological Association commented that the cost of a lithotriptor is not included in the equipment in the in-office setting for CPT code 50590, extracorporeal shock wave lithotripsy.

Response: The CPEP panel only evaluated inputs for this procedure in the facility setting. However, we assigned practice expense RVUs to both settings; the in-office inputs were crosswalked from the facility setting. As a result, there is no procedure-specific equipment listed in the office setting. We are adding a lithotriptor as requested by the commenter.

Comment: The College of American Pathologists (CAP) commented that the price of $1,481 in the CPEP data for a compound microscope was insufficient to cover the cost of the microscope used for pathology services. CAP submitted a quotation from a pathology equipment supplier which listed the cost of a pathologist's professional microscope at $11,600.

Response: The price submitted by CAP appears more reasonable to us than the original CPEP price, and we will use the new price for the final rule, subject to later review.

Comment: The American Association of Neurological Surgeons recommended that all receptionist time listed in the clinical activities field in the CPEP database be deleted from the labor file, since this should be indirect expense.

Response: We agree and have deleted all administrative staff types from our current CPEP database since all administrative staff costs are included in our indirect expense pool.

Comment: The American Academy of Orthopaedic Surgeons pointed out that the CPEP panel did not assign direct inputs to CPT code 27740, thus creating an anomaly in the family of codes 27730 through 27742.

Response: The CPEP panel only included inputs for CPT code 27740 in the facility setting. We are adding the same clinical staff, supplies and equipment inputs to CPT code 27740, repair of leg epiphyses, in the office setting as are assigned to CPT code 27730, repair of tibia epiphyses. This should help eliminate this anomaly.

Comment: The American Academy of Dermatology (AAD) commented that there are rank order anomalies in the family of excision of malignant lesions, CPT codes 11600 through 11606.

Response: We examined these CPT codes and noted that 11601, 11603 and 11604 were missing routine supplies in the office setting and 11601 had no supply inputs in the facility setting. We are including the same supply inputs as are assigned to 11600, which should bring this code family back in line.

Comment: AAD commented that there is a lack of logical progression in the values for lesions of different sizes in the CPT code series 11400, excision of benign lesions, and 17260, destruction of malignant lesions.

Response: We determined that the 17260 series appeared to have a logical progression in the proposed rule. However, CPT codes 11403, 11404, 11423, 11424, 11444 have supplies missing in the office setting. These services should have at least the same supplies as their "parent" CPT codes, i.e., CPT codes 11403 and 11404 should have the same supplies as CPT codes 11400; CPT codes 11423 and 11424 the same as 11420; and CPT code 11444 the same as 11440. We are including these missing supplies.

Comment: The American College of Chest Physicians and the National Association for Medical Direction of Respiratory Care commented that the practice expense RVUs for complex pulmonary stress testing, CPT code 94621, are lower than those for simple pulmonary stress testing, CPT code 94620. The commenter requested that this anomaly be corrected.

Response: We agree that this anomaly should be corrected. As an interim correction until actual practice expense direct inputs can be developed for these services, which were not evaluated by the CPEP panels, we have crosswalked the supply and equipment inputs for CPT code 94621 from CPT code 94620, but have crosswalked the clinical staff time from the higher of the two CPEP panels' assigned clinical staff time for CPT code 93015, cardiovascular stress test.

Comment: The American College of Nuclear Physicians/Society of Nuclear Medicine commented that CPT code 78494, heart image spect, should be referenced to CPT code 78464, heart image,(3D) single, and CPT code 78588, perfusion lung image, should be referenced to CPT code 78585, Lung V/Q imaging.

Response: We agree that these crosswalks are appropriate, and we have made the changes.

Comment: The American College of Obstetrics and Gynecology recommended the following crosswalk changes: CPT code 57308, fistula repair transperineal, should be crosswalked to either CPT code 57305, repair rectum-vagina fistula, or CPT code 57307, fistula repair and colostomy; CPT 57531, removal of cervix radical, should be crosswalked to CPT code 58210, extensive hysterectomy; CPT code 59866, abortion should be crosswalked to CPT code 59000, amniocentesis or CPT code 59015, chorion biopsy. The values for the CPT vaginectomy codes 57107, 57109, 57111 and 57112 are too low in comparison to other gynecologic oncology procedures. The commenter recommends that we use CPT code 58210, radical abdominal hysterectomy, as a crosswalk for these four codes, since the clinical staff time, supplies and equipment are similar.

Response: We will crosswalk CPT codes 57308 to 57305, 57531 to 58210, and 59866 to 59000 as requested. Due to the clinical similarity of the procedures and the comparable follow up care, we are crosswalking the CPEP inputs from CPT code 57110 to CPT codes 57107 and 57111. For similar reasons we are crosswalking the CPEP inputs from 58200 to CPT codes 57109 and 57112.

RUC Recommendations on CPEP Inputs

The AMA forwarded for our consideration the direct input recommendations for 65 codes originally reviewed by the PEAC and subsequently approved by the RUC. The RUC states that in the majority of cases, the PEAC examined all of the direct inputs for a particular code, but that in several instances, the PEAC examined only a subset of the direct practice expenses. The comment also explains that, in those instances where the RUC approved crosswalking direct impact data to multiple codes, those crosswalked codes are listed. Several organizations representing neurology, ophthalmology, urology, dermatology and other specialties requested that we use these PEAC/RUC recommended refined inputs to calculate the practice expense RVUs for the year 2000 physician fee schedule.

Response: We have reviewed the submitted codes and discuss our specific responses to each of them below. We appreciate the work of the PEAC and RUC in developing the recommendations on these 65 codes. From all of our previous experience in both the CPEP and validation panels, it is a very difficult, time-consuming and complex process to deal with the amount of detail required to arrive at reasonable inputs for a specific procedure. In addition, it takes time for all participants to achieve a level of comfort with our methodology.

We are accepting most of the recommendations with the exceptions noted below, but some of the inputs may still need further review. It does appear that in reviewing the inputs more attention was understandably paid to the changes proposed by the presenting groups than to the original CPEP data that we believe could still need refining. For example, the quantity of supplies associated with many procedures would appear to need further discussion with a view to ensuring appropriate standardization among different services. Another problem lies in the inconsistent assignment in the CPEP data of equipment to either the procedure-specific or overhead equipment categories. This process, we acknowledge, has been hampered by the lack of clear definitions which we hope to correct in the near future.

We would also appreciate more comments and discussion about what constitutes appropriate clinical staff duties and times during the pre-service period. As most of the 65 codes are related to other codes that have not yet been reviewed by the PEAC and RUC, we are recommending that, as the group gains more experience and reviews related codes, this group of codes be reassessed to see if any further adjustments in inputs are warranted. As an alternative, we could propose our own changes to these codes in a future proposed rule.

As discussed above, we have deleted a few minor supplies from the overall CPEP supply list either because of the difficulty in measuring their use or because the supplies were not fully used up during a single procedure. Therefore, tissues, biohazard bags, and Lysol spray have also been deleted from the supplies of these 65 procedures, when applicable. We also have deleted all separately billable and self-administrable drugs and casting supplies as described earlier. In addition, consistent with our policy excluding the CPEP inputs for clinical staff services for a facility patient, all clinical staff time in the out of office intra-service period has been eliminated.

Other adjustments that we have applied to these 65 codes, when relevant, are as follows: We standardized all exam table paper to a quantity of 7 feet per visit, as that appears to be the most common quantity reported. We adjusted the quantity of patient gowns and pillow cases and other supplies to be consistent with the number of visits. We deleted items that could be considered office supplies or office equipment. We did not add any suggested equipment that was costed at less than $500, in order to fit the equipment definition used by Abt. Because we believe that betadine is only used on the day of a procedure, we deleted it from post-procedure visits.

Listed below are the 65 codes on which we received RUC recommendations. We have noted any revisions, other than those specified above, that we have made to these recommendations. The RUC recommendations are available on our home page, as discussed earlier. Access to the homepage is discussed in the introductory section of this regulation under **ADDRESS.**

CPT code 17000, Destruction by any method, including laser with or without surgical curettement, all benign or premalignant lesions other than skin tags or cutaneous vascular proliferate lesions, including local anesthesia; first lesion

The RUC forwarded a recommendation for supplies only. We accepted their recommendation but deleted what appeared to be duplicated gauze supplies.

CPT code 17003, Destruction by any method, including laser with or without surgical curettement, all benign or premalignant lesions other than skin tags or cutaneous vascular proliferate lesions, including local anesthesia; second through 14 lesions

The RUC forwarded a recommendation only on the supplies for this service. This is an add-on code, for which there would be few added supplies since most are contained in the base code. We adjusted the supply list accordingly. In comments, the society representing dermatologists had indicated that this CPT code appeared to be over-valued in comparison with other CPT codes in the family.

CPT code 17004, Destruction by any method, including laser with or without surgical curettement, all benign or premalignant lesions other than skin tags or cutaneous vascular proliferate lesions, including local anesthesia; 15 or more lesions

The RUC forwarded a recommendation only on the supplies for this service. We accepted the recommendation but deleted what appeared to be duplicated gauze supplies and the drape sheet.

CPT code 17304, Chemosurgery (Mohs micrographic technique), including removal of all gross tumor, surgical excision of tissue specimens, mapping, color coding of specimens, microscopic examination of specimens by the surgeon, and complete histopathologic preparation; first stage, fresh tissue technique, up to 5 specimens.

We reviewed and made no changes to the RUC recommendation on clinical staff at this time. We accepted the recommended additions to the supply list; however, we removed the Mohs kit listed in the original CPEP data because it duplicated the pathology supplies that have been added to the list. For equipment, we moved the doppler, suction machine, x-ray view box and smoke evacuator from procedure-specific to overhead equipment because this equipment is used for a wide range of services and thus fits the definition of overhead equipment. We deleted the ECG machine from equipment since it is not needed for this procedure.

CPT code 17305, Chemosurgery (Mohs micrographic technique), including removal of all gross tumor, surgical excision of tissue specimens, mapping, color coding of specimens, microscopic examination of specimens by the surgeon, and complete histopathologic preparation; second stage, fixed or fresh tissue, up to 5 specimens

We made no changes to the RUC recommendation on clinical staff at this time. We deleted the Mohs kit from the supplies (as noted in discussion for CPT code 17304) as well as the sutures, suture kit and patient education pamphlet because we do not believe they are needed for each stage of this procedure. We also deleted the nerve stimulator because it is not typically used for this service. We made the same adjustments for equipment as we did for CPT code 17304.

CPT code 17306, Chemosurgery (Mohs micrographic technique), including removal of all gross tumor, surgical excision of tissue specimens, mapping, color coding of specimens, microscopic examination of specimens by the surgeon, and complete histopathologic preparation; third stage, fixed or fresh tissue, up to 5 specimens

We made no changes to the RUC recommendation on clinical staff at this time. We made the same adjustments in the supply and equipment lists as made for CPT code 17304.

CPT code 17310, Chemosurgery (Mohs micrographic technique), including removal of all gross tumor, surgical excision of tissue specimens, mapping, color coding of specimens, microscopic examination of specimens by the surgeon, and complete histopathologic preparation; more than five specimens, fixed or fresh tissue, any stage

We reviewed and made no changes to the RUC recommendation on clinical staff at this time. We deleted the Mohs kit for the reasons discussed for CPT code 17304 above. We also deleted gel foam, xylocain and the syringe from the supply list and all equipment because this is essentially an add-on code representing an increased number of specimens and these supplies and the equipment are reflected in the base code.

CPT code 32000, Thoracentesis, puncture of pleural cavity for aspiration, initial or subsequent

We reviewed and made no changes to the RUC recommendations for clinical staff time or equipment. We deleted a syringe, xylocain and atropine from the supply list since these items should be included in the thoracentesis kit that is also on the supply list.

CPT code 43239, Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejenum as appropriate; with biopsy single or multiple

The RUC made recommendations only on supplies and we accepted them.

CPT code 45330, Sigmoidoscopy, flexible diagnostic, with or without collection of specimen(s) by brushing or washing (separate procedure)

The RUC made recommendations for supplies only. We accepted the recommendations with the following adjustments. We decreased the staff gowns and surgical masks to two items each to reflect that there would typically only be two staff, a physician and a nurse, involved in this procedure.

CPT code 56340 Laparoscopy, surgical; cholecystectomy (any method).

Only refinements to clinical staff time were proposed by the RUC. We reviewed the proposed changes and the original CPEP inputs. While the RUC proposed changes to the pre-service clinical staff time, we are not accepting these changes at this time because there was an inadequate explanation for these changes. We will continue to use the original CPEP time of 15 minutes for the pre-service clinical staff time. We also noted that the post-service staff time included two RNs. Since it is more typical for one RN to assist with patient care during post-operative visits, we allowed 76 minutes of staff time for one RN and deleted 25 minutes for a second RN from the original CPEP inputs. Total staff time is now 91 minutes. This is an interim value, and the CPT code may be subject to further refinements.

CPT code 58100, Endometrial sampling (biopsy) with or without endocervical sampling (biopsy), without cervical dilation, any method (separate procedure)

We reviewed and made no change to the RUC recommendation on clinical labor or supplies. We deleted the vaginal/surgical procedure tray from the procedure-specific equipment because it was less than $500 and the colposcope from the overhead equipment since it is not typically used for this procedure.

CPT code 65855, Trabeculoplasty by laser surgery, one or more sessions

We made changes based upon review of both the RUC recommendations and the comments of the American Academy of Ophthalmology (AAO) that described the practice expense proposals they made to the RUC. We will continue to use the original CPEP inputs for pre-service clinical staff time of zero minutes. We accepted the RUC's proposed refinements for intra-service time in the office, 62 minutes, and post-service time, 82.5 minutes. We also accepted the RUC's proposal for supplies and equipment. These values were crosswalked to CPT codes 66762, 66770 and 66761 as recommended by the RUC.

CPT code 66170, Fistulization of sclera for glaucoma; trabeculectomy ab externo in absence of previous surgery

We accepted the RUC's recommendation to value the procedure only in the facility setting. Based upon review of both the recommendations of the RUC and the comments of the AAO, we retained the original CPEP value of zero minutes for pre-service clinical staff time and decreased the post-service clinical staff time to 247 minutes. We accepted the recommendations for supplies and deleted the Argon Laser and Hoskins Lens from equipment because this procedure is performed in the facility setting only and therefore this equipment is not used in the office for this procedure. These are interim values and the code may be subject to further refinement. These values were crosswalked to CPT codes 66150 66155, 66160, and 66165 as recommended by the RUC.

CPT code 66172, Fistulization of sclera for glaucoma; trabeculectomy ab externo with scarring from previous ocular surgery or trauma (included injection of antibiotic agents).

This procedure was valued only in the facility setting. Based upon review of both the recommendations of the RUC and comments from the AAO, we retained the original CPEP value of zero minutes for pre-service clinical staff time and decreased the post-service clinical staff time to 330 minutes. We accepted the RUC's proposals for supplies and equipment. These are interim values and the code will be subject to further refinement.

CPT code 66821, Discission of secondary membranous cataract (opacified posterior lens capsule and/or anterior hyaloid); laser surgery (eg YAG laser) (one or more stages)

Based upon review of both the recommendations of the RUC and the comments of the AAO, we retained the original CPEP value of zero minutes for pre-service clinical staff time, we decreased the post-service clinical staff time to 55 minutes, and we accepted the RUC proposed refinement of 37 minutes of intra-service clinical staff time in the office. We accepted the RUC's proposals for supplies and equipment. These are interim values and the code may be subject to further refinement.

CPT code 66984, Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or mechanical technique (eg, irrigation and aspiration or phacoemulsification).

This procedure was valued only in the facility setting. Based upon review of both the recommendations of the RUC and the comments of the AAO, we retained the original CPEP value of zero minutes for pre-service clinical staff time, and we decreased the post-service clinical staff time to 110 minutes. We accepted the RUC's proposals for supplies and equipment. These are interim values and the code will be subject to further refinement. These adjusted values were crosswalked to CPT codes 66830, 66840, 66850, 66852, 66920, 66983, 66985, and 66986 as recommended by the RUC.

CPT code 67036, Vitrectomy, mechanical, pars plana approach

This procedure was valued only in the facility setting. Based upon review of both the recommendations of the RUC and the comments of AAO, we retained the original CPEP value of zero minutes for pre-service clinical staff time, and we decreased the post-service clinical staff time to 124 minutes. We accepted the RUC's proposals for supplies and equipment. These are interim values and the code will be subject to further refinement.

CPT code 67038, Vitrectomy, mechanical, pars plana approach; with epiretinal membrane stripping

This procedure was valued only in the facility setting. Based upon review of both the recommendations of the RUC and the comments the AAO, we retained the original CPEP value of zero minutes for pre-service clinical staff time and we adjusted the post-service clinical staff time to 220 minutes. We accepted the RUC's proposals for supplies and equipment. These are interim values and the code will be subject to further refinement. These adjusted values were crosswalked to CPT codes 67039 and 67040 as recommended by the RUC.

CPT code 67800, Excision of chalazion; single

Based upon review of both the recommendations of the RUC and the comments of the AAO, we retained the original CPEP value of zero minutes of pre-service clinical staff time, and we accepted the RUC's proposed refinements of 35 minutes for intra-service clinical staff time and 20 minutes of post-service clinical staff time. We also accepted their recommendations for supplies and equipment but corrected typographical errors in the quantity of betadine, irrigation fluid and sterile towels. These are interim values and the code will be subject to further refinement. These adjusted values were crosswalked to CPT codes 67700, 67710, 67715, 677801, 67805, 67810, 67840, 68020, 68040, 68100, 68110, 68115, 68130, 68135, 68440, 68705, and 68760 as recommended by the RUC.

CPT code 67820, Correction of trichiasis; epilation, by forceps only

This procedure was valued only in the office setting. We accepted the RUC proposed refinement of 35 minutes for intra-service clinical staff time. We also accepted the RUC's proposed refinements for supplies and equipment, except that we decreased the number of sterile towels and cotton tipped applicators because of typographical errors. These are interim values and the code will be subject to further refinement.

CPT code 71020, Radiologic examination, chest, two views, frontal and lateral

CPT code 72100, Radiologic examination, spine, lumbosacral; anteroposterior and lateral

CPT code 72170, Radiologic examination, pelvis; anteroposterior only

CPT code 73560, Radiologic examination, knee; one or two views

CPT code 74000, Radiologic examination, abdomen; single anteroposterior view

CPT code 74020, Radiologic examination, abdomen; complete, including decubitus and/or erect views

For all these radiologic services we reviewed and made no changes in the RUC recommendation for clinical staff time. Date stickers and insert folders were deleted from the medical supplies because these are considered office supplies. We accepted the RUC recommendation for equipment except for deleting dictation equipment because it is considered office equipment and the lead shield because it does not cost over $500.

CPT code 76519, Ophthalmic biometry by ultrasound echography, A-scan; with intraocular lens power calculation

We reviewed and made no changes in the RUC recommendations for clinical staff time or supplies. We moved the printer from procedure-specific to overhead equipment because it can be used across a range of services.

CPT code 76700, Echography, abdominal, B-scan and/or real time with image documentation complete

The RUC made recommendations only on supplies and, after reviewing, we made no changes to their recommendations.

CPT code 85060, Blood smear, peripheral, interpretation by physician with written report

CPT code 85097, Bone marrow, smear interpretation only, with or without differential cell count

Since these are professional services only, all clinical staff time, supplies, and equipment were deleted. Practice expenses are included for payment with other applicable CPT codes and, if practice expense inputs were included here, would result in a duplicate payment.

CPT code 88104, Cytopathology, fluids, washings or brushings, except cervical or vaginal; smears with interpretation

We made no changes in the clinical staff time, but made a minor revision to the supplies listed. We deleted the marking pen from the supplies because the cost per procedure was negligible and deleted the metal slide storage cabinet from overhead equipment because it is considered furniture.

CPT code 88304, Level III—Surgical pathology, gross and microscopic examination

CPT code 88305, Level IV—Surgical pathology, gross and microscopic examination

We made no changes in the clinical staff time, but made a minor revision to the supply list. We deleted the marking pen from the supplies because the cost per procedure was negligible, and deleted the metal slide storage cabinet and the plastic block storage cabinet from overhead equipment because these items are considered furniture. We also deleted the Stryker saw which is not typically used with these procedures.

CPT code 88312, Special stains; Group I for microorganisms, each

We reviewed and made no changes to the RUC recommendations for clinical labor, equipment and supplies.

CPT code 92004, Ophthalmological services; medical examination and evaluation with initiation of diagnostic and treatment program; comprehensive, new patient, one or more visits

The RUC recommendation was for supplies only; we accepted the recommendation except for deleting the betadine from the supply list because it would not be used during an eye examination.

CPT code 92012, Ophthalmological services; medical examination and evaluation with initiation or continuation of diagnostic and treatment program; intermediate, established patient

CPT code 92014, Ophthalmological services; medical examination and evaluation with initiation or continuation of diagnostic and treatment program; comprehensive, established patient, one or more visits

The RUC recommendation was for supplies only; we accepted this recommendation, except for deleting the betadine from the supply list because it would not be used during an eye examination. We also deleted the patient education pamphlet and contact lens solution to be consistent with comments from the American Academy of Ophthalmology.

CPT code 92083, Visual field examination, unilateral or bilateral, with interpretation and report; extended examination

We reviewed and made no changes to the RUC recommendations for clinical staff time or equipment. We deleted the black pins from the supply list because they are a reusable supply. These adjusted values were crosswalked to CPT code 92081 and 92082 as recommended by the RUC.

CPT code 92235, Fluorescein angiography (includes multiframe imaging) with interpretation and report

We reviewed and made no change to the RUC recommendations on supplies. For equipment, we deleted the electric table because a reclining exam chair is also included and both are not needed for this procedure.

CPT code 92240, Indocyanine-green angiography (includes multiframe imaging) with interpretation and report

We received RUC recommendations on equipment only. We deleted the electric table because a reclining exam chair is also included and both would not be used for a given service.

CPT code 92250, Fundus photography with interpretation and report

We received a RUC recommendation on equipment only. We deleted the electric table because a reclining exam chair is also included and both are not needed for a given service. These adjusted values were crosswalked to CPT code 92230 as recommended by the RUC.

CPT code 92507, Treatment of speech, language , voice, communication, and/ or auditory processing disorder (includes aural rehabilitation); individual

CPT code 92526, Treatment of swallowing dysfunction and/or oral function for feeding

CPT code 92585, Auditory evoked potentials for evoked response audiometry and/or testing of the central nervous system

We reviewed and made no change to the clinical staff time recommended by the RUC. However, we did not increase the wage rate for the audiologist as suggested by the RUC because we will address this issue globally for all staff types during refinement.

CPT code 93307, Echocardiography, transthoracic, real-time with image documentation (2D) with or without M-mode recording; complete

The RUC made recommendations only for supplies that we reviewed and made no changes.

CPT code 93320, Doppler echocardiography, pulsed wave and/or continuous wave with spectral display ; complete

A comment accompanying the RUC recommendation stated that this is an add-on code and questioned whether the RUC recommended equipment should be included. Because the cost of the equipment is reflected in the values for the base code, we have deleted all the equipment listed for this service.

CPT code 94010, Spirometry, including graphic record, total and timed vital capacity, expiratory flow rate measurement(s), with or without maximal voluntary ventilation

We reviewed and made no changes to the RUC recommendations for clinical labor, supplies or equipment.

CPT code 95819, Electroencephalogram (EEG) including recording awake and asleep, with hyperventilation and/or photic stimulation

We reviewed and made no changes to the RUC's clinical labor recommendations. We deleted the following items from the list of supplies: printer toner cartridge, since this is an office expense; the skin marking pen because the cost per procedure is negligible; the nasopharyngeal-electrode because it is not typically used with this procedure; and seconal and chloral hydrate since these are drugs that are not paid under the physician fee schedule. We moved the pulse oximeter from procedure-specific to overhead equipment because it can be used for a wide range of services and deleted the exam table because an electric bed is included with the equipment and both would not be needed for a given service.

CPT code 95860, Needle electromyography, one extremity with or without relaxed paraspinal areas

We reviewed and made no changes to the RUC's clinical labor recommendations. For supplies, we deleted the sharps container and blood medical waste bag since they are not disposed of after only one procedure. We also substituted the ENG electrode needle for the concentric ENG needle electrode because it is more typically used for this procedure. For equipment, we moved the hydrocollator from procedure-specific to overhead equipment because it is used for a wide range of services.

CPT code 95900, Nerve conduction, amplitude and latency/velocity study, each nerve, any /all site(s) along the nerve; motor, without F-wave study

CPT code 95904, Nerve conduction, amplitude and latency/velocity study, each nerve, any /all site(s) along the nerve; sensory

We reviewed and made no changes to the RUC's clinical labor recommendations. For supplies, we deleted the skin marking pen and the stimulator bar electrode and pick-up electrodes because they are not disposable supplies. For equipment, we moved the hydrocollator from procedure-specific to overhead equipment because it is used for a wide range of services.

CPT code 97022, Application of a modality to one or more areas; whirlpool

Based on a review of the RUC recommendation and the original CPEP data, we are using the original CPEP staff time of 31 minutes in the intra-service period because the RUC recommended set-up time of 13 minutes is excessive. For supplies, we deleted the sterile drape, culterette and culture media because they are rarely used for this procedure, and we are deleting the patient education booklet because this procedure would be performed on the same patient more than once and a booklet would not be required at each session. We deleted the hilo table and hoyer lift from the equipment because they are not typically used for the service.

CPT code 97035, Application of a modality to one or more areas; ultrasound, each 15 minutes

We reviewed and made no changes to the RUC's clinical staff time recommendation. However, we deleted the patient education booklet from supplies because it is not provided with every treatment. We also deleted the utility cart from equipment because the cost was under $500.

CPT code 97110, Therapeutic procedure, one or more areas, each 15 minutes; therapeutic exercises to develop strength and endurance, range of motion and flexibility

We made no changes to the RUC's clinical staff time recommendation. However, from the supply list we deleted the patient education booklet, because it would not be provided at each therapeutic session, as well as tape and ace bandage because they are not typically used. For equipment, the RUC recommendation suggested 50 percent utilization for the isokinetic strengthening equipment and the therapeutic exercise equipment set. We have instead assumed 100 percent utilization of the therapeutic exercise equipment as it is much more typically used than the isokinetic equipment. We also deleted the hilo table because there is another table listed in the equipment and only one or the other would be used for a specific procedure.

CPT code 97530, Therapeutic activities, direct (one on one) patient contact by the provider (use of dynamic activities to improve functional performance); each 15 minutes

We reviewed and made no changes to the RUC's clinical staff time recommendation. However, we deleted the patient education booklet, as well as tape and ace bandage, from supplies, because they are not typically used. For equipment, the RUC recommendation suggested 50 percent utilization for the isokinetic strengthening equipment and the therapeutic exercise equipment set.

We have instead used 100 percent utilization of the therapeutic exercise equipment as it is much more typicallv used. We also deleted the hilo table and the low mat table because the patient would typically be standing during this service.

The RUC also forwarded to us recommendations for the CPEP inputs for the following services:

CPT code 11100, Biopsy of skin, subcutaneous tissue and/or mucous membrane (including simple closure), unless otherwise listed (separate procedure); single,

CPT code 52647, Non-contact laser coagulation of prostate, including control of postoperative bleeding, complete (vasectomy, meatotomy, cystourethroscopy, urethral calibration and/or dilation, and internal urethrotomy are included),

CPT code 53850, Transurethral destruction of prostate tissue; by microwave thermotherapy,

CPT code 53852, Transurethral destruction of prostate tissue; by radiofrequency thermotherapy,

CPT code 64721, Neuroplasty and/or transposition; median nerve at carpal tunnel,

CPT code 96408, Chemotherapy administration, intravenous; push technique, and

CPT code 96410, Chemotherapy administration, intravenous; infusion technique, up to one hour.

Since many of the changes proposed for these CPT codes included items not typically used for the procedures, duplicate inputs, inconsistent inputs or extensive additional in-office inputs for services currently only costed in the facility setting, we have concluded that further review is required before the proposed changes can be adopted or rejected. Therefore, the original CPEP inputs will remain unchanged. We solicit comments on these CPT codes to assist us with those refinements.

Physicians' Clinical Staff in the Facility Setting

In the "top-down" methodology set forth in the 1998 regulation, we used the raw CPEP inputs without applying edits to any of the data, and the staff time allotted to the use of clinical staff in the facility setting was therefore included. In our July 1999 rule, we proposed to exclude from the raw CPEP data all clinical staff time in the facility setting. The CPEP data is used in our methodology solely to allocate the specialty-specific practice expense pools to the individual CPT codes. We proposed to exclude this clinical staff time for the following reasons: (1) Medicare should not pay twice for the same service; (2) It is not typical practice for most specialties to use their own staff in the facility setting; (3) Inclusion of these costs is arguably inconsistent with both the law and Medicare regulations. We believe these reasons strongly support not including the costs of physicians' clinical staff used in the facility setting in the calculation of practice expense values. However, in the proposed rule, we invited comments on this issue and particularly solicited information about any possible instances where it would be appropriate to include data on the use of a physician's clinical staff in the facility setting.

Comment: Several commenters, from the American Hospital Association (AHA) and other hospital trade groups, as well as from several physician specialty societies, believe we have correctly determined that it is not a typical practice for physicians to bring their own staff to the hospital. The AHA commented that 1,459 hospitals in the National Hospital Panel Survey were surveyed on physician practices in their institutions. They believe the Panel Survey ensures reliable national estimates by stratifying hospitals according to size and randomly selecting from each stratum in each of the nine census regions in disproportionately larger numbers as bed size increases. There were 573 responses to the survey. They stated that, though 63 percent of the hospitals surveyed answered that at some time in the last 6 months a physician brought his or her own staff to the hospital, only 11 percent of all responding hospitals said this was a regular practice. Two primary care specialty groups agreed that it is not typical for physicians to use their own clinical staff in the facility setting. One specialty group representing urologists acknowledged that a survey of its physician membership showed that less than 15 percent of its members take their clinical staff to facility settings.

We also received many comments that took issue with the argument in the proposed rule that it is not typical practice for most specialties to use their own staff in the facility setting. Several commenters questioned the validity of the AHA survey. Some commenters argued that the category "not a regular practice" in the AHA survey was ambiguous because a negative answer to the question could mean either that no physicians regularly brought staff to the hospital or that only certain specialties, such as cardiothoracic surgeons or anesthesiologists, regularly brought staff to the hospital. Another specialty society commented that the AHA survey provides no basis for concluding that cardiothoracic surgeons do not bring their staff into the hospital because less than 25 percent of the hospitals in the U.S. provide open heart surgery.

Many commenters merely stated, with no data to support their view, that it is common for their particular specialty to bring nurses or physician assistants with them to the facility to prepare the patient for surgery, assist during the procedure, and provide post-operative care. Other commenters referred to the results of one or more surveys that would indicate use of physicians' clinical staff in the facility setting, but did not include a copy of the survey or provide any details of the survey methodology, the sample used, or the questions asked. An organization representing neurosurgery referred to data collected by their society that suggests that between 40 and 60 percent of practices in the mid-West and South Central regions of the country use their employed clinical staff in the hospital. One organization representing a sub-specialty of cardiology cited a survey of its members that indicated that 55 percent of its members follow the practice of bringing staff to the hospital for purposes of patient education when performing such procedures as electrophysiology studies, pacing procedures and ablations. The commenter contended that hospital nurses are not knowledgeable enough about the above procedures to talk comprehensively with patients or families.

Two specialty societies provided more extensive information regarding survey data on the use of clinical staff in the facility setting. The American Society of Anesthesiologists (ASA) stated that the ASA surveyed 220 anesthesia practice managers in August of this year. The survey referenced the fact that our proposed rule proposed to exclude from CPEP data the costs of clinical staff in the facility partly because of our belief that it was not typical and asked respondents if their practice used any of their own staff, excluding those who can bill separately, in the facility setting. The commenter reported that with a 65 percent response rate, 40 percent of the managers reported that they did use clinical staff in the facility setting. ASA further stated that a 1997 Abt survey for the ASA suggested that many anesthesia practices employ clinical staff with a mean of 0.32 employees per practice; this total included a mean of 0.19

registered nurses and 0.04 anesthesia technicians. The commenter also argued that the typical cost criterion does not rest on any statutory footing and that allowances for practice expenses should be based on average cost rather than typical cost. The STS referred to surveys undertaken by the American Association of Physician Assistants and the Association of Physician Assistants in Cardiovascular Surgery that report physician assistants (PAs) are involved in at least 200,000 cardiac cases a year, that almost all these PAs have responsibilities in the operating room, and 85 percent are involved in postoperative care in the hospital.

Response: We want to make it clear that we are not asserting that physicians never bring their own clinical staff into the facility setting or that this practice may not be more common among some specialties than among others. However, as stated in the proposed rule, we have not seen sufficient data to convince us that the use of the physician's clinical staff in the facility setting is a typical practice.

The search for sufficient data did not start with the proposal in this year's proposed rule. Rather, the inclusion by most of the CPEP panels of varying amounts of inputs for clinical staff in the facility setting has been controversial from the start. While many medical specialties insist that the physicians' practice of bringing staff to the hospital is common, other specialties indicate that this is not a typical practice.

In our Notice of Intent to Regulate published on October 31, 1997, we stated that there seemed to be some question of whether the practice of bringing a physician's staff to a facility was, in fact, common and widespread. We explicitly solicited information about this practice. We asked for comments about the extent to which the practice occurs, procedures involved, functions performed, type of staff employed, and staff training and credentialling. We specifically requested the name, location and characteristics of any facility where this practice occurred and the facility's requirements for credentialling the staff, including any limits on duties of the staff by the facility. In addition, we requested that where surveys had been conducted to document this practice, we wanted to receive copies of the surveys and results, including such details as the survey methodology and sampling design.

The response to this request for information was sparse. We received only 16 responses to this issue, most were anecdotal without any specific information. Only two comments from specialty societies included information from surveys or objective sources. The American Academy of Ophthalmology (AAO) surveyed 300 ophthalmologists and reported that 45 percent of the respondents said they utilized staff out of the office. There was no information on the sample size, composition, or response rate. In addition, the information on the frequency of this practice was not clear. It appears from the information provided that a large portion of those who brought their own staff into the facility did so less than 100, and many probably less than 50, times a year. The STS included the PA surveys that are a part of their current comments from which they drew indirect inferences regarding the use of physicians' staff in the facility setting. However, neither the AAO nor the STS surveys answered the specific questions asked in the Notice.

In December 1997, we received a copy of the AHA survey mentioned above that indicated that only 11 percent of the hospitals that responded to the survey said that it was a regular practice for physicians to bring their staff into the facility. We compared the results of the AHA survey with the AMA's 1996 SMS survey of physicians that included responses from 153 surgeons and obstetricians and gynecologists about the use of clinical staff in the facility setting and found that the findings correlated closely. In answer to the question, "When the physician provides services in the hospital how often is he or she assisted by non-physician personnel employed by the physician's practice?," only 11 percent of the physicians answered "always." In contrast, 68 percent answered "never" and another 9 percent "occasionally." Equally important, in answer to the question, "Are these non-physician personnel reimbursed by the hospital, reimbursed by a third party or are they paid directly by the practice for services provided in the hospital?," 38 percent of those who brought their staff to the facility answered "reimbursed by hospital," and only 51 percent said they were paid by the practice. Therefore, it was both the absence of requested data that could actually demonstrate that it was typical for physicians to bring their staff to the hospital, as well as existence of data that strongly indicated that this indeed was not a typical practice, that has led us to the conclusion that it is indeed not typical for physicians to bring their staff to a facility.

The only hard data supplied to us in the comments on the proposed rule were provided by the ASA and STS. The ASA reported the results of two surveys. The Abt study reported a mean of 0.32 full time equivalent (FTE) total clinical staff per practice, of which 0.19 FTE were registered nurses and only 0.04 FTE were anesthesia technicians. These relatively low numbers of clinical staff per practice would actually seem to support a conclusion that it is not typical to bring these staff to the hospital. The ASA also conducted their own study of 220 anesthesia practice managers. With a 65 percent response rate, about 40 percent of the respondents indicated that their practice employed clinical support personnel who were not eligible for direct reimbursement. There is, however, no indication in their comment about what this staff is doing and where they are doing it. In addition, this survey actually shows that 60 percent of practices do not employ clinical staff; therefore, this is not a typical practice. Apparently aware of this, the ASA argues that the typicality standard "merely derives from the original studies undertaken as part of the development of physician work values when the Fee Schedule was initiated." The ASA then contends that we should base our practice expense on the cost of the average patient, not the typical patient. The ASA is correct that all of the RVUs, both work and practice expense, have been based on the services provided to the typical patient. Though we would be willing to discuss in the future the merits of using the typical versus the average patient for certain practice expense categories, we do not believe that the costs of an average patient would be meaningful regarding the use of clinical staff in the facility setting when there is such obvious inconsistency in practice patterns. All the use of the cost of an average patient would accomplish would be to consistently underpay some, while consistently overpaying others.

As stated above, while STS submitted surveys compiled by two PA organizations, no information was included regarding the use of nurses in the facility setting. From the submitted surveys, it would appear that cardiovascular PAs are very active in the hospital setting. For example, the surveys showed that almost all cardiovascular PAs assist in the operating room. The problem with the submitted data is that, because PAs are eligible for direct reimbursement from Medicare, the physicians' costs associated with PAs cannot, in general, be considered practice expense. The same would be true of nurse practitioners.

After reviewing all the available data, we remain convinced that our position in the proposed rule was correct: it is not a typical practice for physicians to bring their own staff into the facility setting.

Comment: We received only a few comments in response to our statement in the proposed rule that Medicare should not pay twice for the same service and that this was a major reason to exclude the clinical staff time for physicians' staff used in the facility setting from the CPEP data. Two groups contended that, to the extent that Part A is paying for the cost of clinical staff brought to the hospital by the physician, we should take measures to see that Part A monies are shifted to Part B. Two other organizations took issue with our statement that, because the hospital is already paid for providing all nursing care to its patients, the inclusion of the costs of physicians' clinical staff in calculating the practice expense RVUs would amount to paying twice for the same service. These commenters claimed that because hospital payments are reweighted annually to reflect changes in costs and charges, these facilities are not being reimbursed for the costs of clinical staff that physicians now bring themselves to the facilities.

The STS argued that, though our observation in the proposed rule that there is separate Part B reimbursement for a PA acting as an assistant-at-surgery is generally true, this is not true in the academic setting where a resident is available, nor in California where state law requires that two physicians be present for every case. The commenters also raised the more general point that PAs are also used in the office setting and point out that 15,000 PAs are employed in family practice, either billing directly or being included as "incident to" physicians' services. The commenters asked why we have not raised this issue more broadly across all specialties and suggested that we could better eliminate duplicate payment for these clinical services by reducing the SMS specialty pools by the amount of income received for staff who can bill directly to Medicare.

In response to our statement that much of the time claimed for clinical staff in the facility for making patient rounds is really a substitute for physician work, the STS states that the Congress and the government have explicitly encouraged the use of such physician extenders. The commenter conceded that it is possible that the work RVUs may need to be adjusted for all specialties, but added that it is not clear what activities are a substitute for physician work and which are added services. Finally, STS argued that excluding hospital-related clinical staff costs from CPEP data because they are not otherwise covered services or because they are separately reimbursable without taking similar action for all other CPEP inputs with similar characteristics is discriminatory.

Response: In the proposed rule we stated our belief that the duties that were being attributed by many specialties to physicians' clinical staff in the facility setting were already paid for by Medicare through a mechanism other than physician expense. For example, an assistant at surgery can be paid separately. In addition, we already pay the facility to provide all nursing care to the facility patient whether that nurse is acting as a scrub nurse or monitoring a patient undergoing conscious sedation. We also pointed out that reviewing charts, making patient rounds or pulling chest tubes are physicians' services that are paid for through the physician work RVUs.

In response to the comment that we should shift Part A monies to Part B so that a double payment would not be made, we believe this implies that we should adjust inpatient hospital PPS rates to remove costs associated with clinical staff brought to the hospital by physicians. We do not believe that such an adjustment is consistent with section 1886(d)(2)(C) of the Act which prescribes the methodology for standardizing PPS base year costs and calculating PPS rates for each fiscal year. We disagree with the comment that annual reweighting of hospital costs and charges means that hospitals are not being reimbursed for staff allegedly replaced by the clinic staff physicians bring to hospitals. The relative weights which determine payment for a diagnostic related group (DRG) are reweighted annually based on hospital charges. However, this only affects the relative payment for each DRG. Payment would continue to be included in the PPS rates unless a specific adjustment were made to remove these costs. As stated above, we do not believe such an adjustment is consistent with section 1886(d)(2)(C) of the Act.

The STS made several interesting points in their comments, and we will respond to each. STS conceded that a PA acting as an assistant-at-surgery can be separately paid, but not when another doctor is there to assist. The STS did not clarify why the use of a PA would be necessary in such a situation or why, if a PA is used, Medicare should recognize any such extra costs. We believe that the STS has raised a valid issue about the general use of physician extenders across all specialties. It is true that in our proposed rule we only addressed the possible substitution of nonphysician practitioners' work for physician work in the facility setting for all specialties. It is not possible in the CPEP data to readily identify in office setting what clinical staff time might be a substitute for physician work or what staff is eligible for separate payment. It was relatively rare for the CPEP panels to identify a PA or nurse practitioner as the clinical staff type in the office setting. However, this is clearly an issue that we intend to address during the refinement process. In addition, as specific in-office codes are refined, either by us or by the PEAC and RUC, the question of possible duplication of physician work should be raised for all services.

The STS also suggests adjustment of the SMS data to account for staff that may bill directly. As we noted above, we have asked our contractor to determine which specialties' SMS data may be affected by inclusion of mid-level practitioners in specialty survey cost data and to develop alternative methodologies to address it. It should also be noted that the practice-level SMS survey that is in development breaks out the costs for clinical staff who are eligible for direct payment.

Regarding the commenter's argument that we are acting in a discriminatory manner unless we exclude from the CPEP data all inputs that are separately billable or not covered, we are attempting to do just that. In last year's final rule, we used the raw CPEP data and made no modifications for any separately billable or non-covered CPEP inputs. However, we have in this final rule identified separately billable supplies, such as drugs and casting materials, and have excluded these from the CPEP data. We have also excluded self-administered drugs from the supply list because they are not covered by Medicare. We invite comments about any other inputs currently in our CPEP database that fall into either category.

After reviewing the comments on this issue, we continue to believe that including in CPEP data the costs of physicians' clinical staff in the facility setting would represent a duplicate payment that Medicare should not make.

Comment: We also stated in the proposed rule that inclusion in CPEP data of the costs of clinical staff brought into the facility is arguably inconsistent with both the law and Medicare regulations. No commenter directly challenged this contention. However, several groups stated the general concern that the elimination of clinical staff costs from the CPEP data contradicts the intent of section 4505(d) of the BBA that specifically states that, in developing such units, the Secretary shall utilize to the maximum extent practicable, generally accepted cost accounting principles which recognize all staff, equipment, supplies, and expenses, not just those which can be tied to specific procedures. The STS submitted an extensive comment on this point which stated that even if it were true that the clinical staff costs would be excluded from coverage under Medicare if physicians sought to bill separately for those services, the point is irrelevant and inconsistent with the statutory language and the history of the practice expense provisions. The comment stated that the Congress defined the term practice expense as "all expenses for furnishing physicians'' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits." The STS concluded that nothing in these definitions requires or even permits the agency to carve out from practice expenses RVU costs that would not be covered services on their own or that are separately reimbursable under Medicare. The commenter added that, to the contrary, the agency's mandate is to identify all practice expenses incurred by physicians in their practice and then to allocate all of those costs to particular procedures.

Response: We believe that a reading of both the law and Medicare regulations leads to the conclusion that no payment should be made under the physician fee schedule that is attributable to the costs of physicians' clinical staff used in the facility setting.

- Section 1862(a)(14) of the Act which discusses exclusions from coverage states that,

"Notwithstanding any other provision of this title, no payment may be made under part A or part B * * * for any expenses incurred for items or services which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph) * * * and which are furnished to an individual who is a patient of a hospital * * * by an entity other than the hospital * * * unless the services are furnished under arrangements. * * *"

(This section also exempts services of physician assistants, nurse practitioners, clinical nurse specialists, certified nurse-midwife services, qualified psychologist services, and services of certified registered nurse anesthetists from the above exclusion.)

- In § 411.15 (Particular Services Excluded from Coverage) subparagraph (m)(1), the text paraphrases the above provision for hospital inpatients and adds that "services subject to exclusion under this paragraph include * * * services incident to physicians' services." Section 411.15(m)(2) implements the exceptions to this exclusion, among them "physician services that meet the criteria of § 415.102(a) of this chapter for payment on a reasonable charge or fee schedule basis."
- Section 415.102(a) contains the definition of physicians' services required by section 1862(a)(14) of the Act and the criteria referred to in § 411.15(m) above: "If the physician furnishes services to beneficiaries in providers, the carrier pays on a fee schedule basis provided the following requirements are met: (1) The services are personally furnished for an individual beneficiary by a physician. (2) The services contribute directly to the diagnosis or treatment of an individual beneficiary. (3) The services ordinarily require performance by a physician."
- On September 8, 1998, we published a proposed rule on a prospective payment system for hospital outpatient services (63 FR 47552). This rule proposed to add § 410.39 which embodies in regulation for the hospital outpatient setting the exclusion in § 411.15 described above. Section 410.39(c) would exempt from the exclusion physicians' services that meet the requirements of § 415.102(a) as described above, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, and qualified psychologist services, as well as services of an anesthetist.

A reading of all of the above suggests that no payment should be made under the physician fee schedule that reflects the costs of physicians' clinical staff used in the hospital setting. Services performed by nonphysician clinical staff do not fulfill the definition of services personally furnished by a physician, and, therefore, the exception to the exclusion for the physicians' services created by section 1862(a)(14) of the Act does not apply. In addition, nursing services, such as those performed by a scrub nurse working for a physician, do not ordinarily require performance by a physician and, thus, are not physicians' services for the purpose of section 1862(a)(14) of the Act. Finally, services "incident to a physician's service" are explicitly excluded from coverage in the hospital setting by § 411.15(m)(1).

As stated above, we received no comments that directly addressed our reading of the statute and regulations. The commenters merely cited the requirement of the BBA that we should utilize generally accepted cost accounting principles which recognize all staff, equipment, supplies, and expenses, not just those which can be tied to specific procedures. We believe that this section of the BBA, with its reference to the recognition of costs that are not tied to specific procedures, is primarily directed at our prior methodology of computing indirect costs; this section of the law does not supersede other provisions of the law or regulations governing Medicare payment. Nor is there any indication that the BBA was intended to prevent us from excluding noncovered or otherwise paid for services as allocators of direct practice expense. We are still convinced that the inclusion of the costs of clinical staff brought into the facility setting is inconsistent with the law and Medicare regulations.

Comment: Several groups commented that there are appropriate services that clinical staff in the physician's office do perform for facility patients that are typical, are not paid for by Medicare under any other mechanism, and that would be permitted by our regulations. For example, clinical staff may help with arranging a psychiatric admission to the hospital, may make follow-up telephone calls to patients to give post-surgical instruction on drugs or pain management, or may give other clinical guidance to the patient or patient's family. The comments recommended that these clinical staff services be included as direct inputs in the facility setting.

Response: We agree that there may be some clinical tasks that clinical staff in the office can appropriately perform for a facility patient. There first needs to be a general discussion about what are the appropriate *clinical* tasks that clinical staff might perform during each of the different global periods. (For example, we would not consider scheduling tests or procedures to be a clinical task but an administrative task and most of the CPEP panels assigned time for a scheduling secretary.) We would also like to obtain a general consensus about what are reasonable parameters for the times it takes to perform these clinical tasks. Once there is a general approach to this issue, we would consider recommendations for specific services. We welcome general comments on this issue; it would also seem to be an appropriate topic for discussion for the PEAC and RUC.

Comment: Several commenters recommended that we delay implementation of this proposal until further data could be collected. Some of the commenters suggested that the PEAC or our contractors help resolve the issue of including within practice expense inputs physicians' clinical staff time in a facility. Another group of commenters advised HCFA to survey physicians to identify the extent to which physicians use their own staff to provide services in facilities and their reasons for doing so. The AMA asked us to defer action on this proposal until the physician fee schedule final rule for 2001 because specialty groups have been given no opportunity for meaningful review of the reasonableness of the approach or its impacts. Other organizations suggested that we proceed with the proposal but allow affected specialty groups to present survey data on this issue to the PEAC to justify whether any of these costs should be included in the CPEP data.

Response: We do not plan to delay implementation of our proposal to exclude the costs of physicians' clinical staff used in the facility setting from the CPEP inputs. We have reviewed and analyzed the submitted comments and continue to believe that the policy in our proposed rule on this issue is correct. Though the PEAC is free to discuss the issue of clinical staff in the facility setting if they so choose, we have the ultimate responsibility for making a decision on this basic policy issue. We will implement this proposal and will use the adjusted CPEP data in the calculation of the practice expense RVUs for the year 2000 physician fee schedule.

Physician Time

Pediatric Surgery Physician Time Data

The physician time assigned to pediatric surgery codes was based on erroneously low time data from the original Harvard study, rather than on later data from the study of pediatric services performed by the same Harvard study team for the American Pediatric Surgical Association (APSA) in 1992. We proposed updating the physician times for these 48 pediatric surgical services upon receipt of the needed data.

Comment: The APSA and the American College of Surgeons have forwarded to us the updated physician times for 48 pediatric surgical services and have requested that we use the times for the calculation of the practice expense pools that contain these services. Included with the comments is a detailed report entitled, "Pediatric Surgery and the Medicare Fee Schedule for Physicians' Services: History, Analysis and Correction of Data on Physician Work and Physician Time." This request is supported by comments from the American Urological Association and the American Academy of Pediatrics.

Response: We have substituted the revised times for these pediatric surgical services into our physician time database and will use them in all of our practice expense calculations.

Physical Therapy and Occupational Therapy Times

We had received comments indicating the times for the physical therapy codes (CPT 97001 through 97770) contained in the November 1998 final rule were too low due to the fact that only intra-service times were used. We agreed that it was appropriate to include some preservice and postservice times for these procedures and proposed adjusting the total code-specific times used to create the practice expense pools as shown in Table 6 "Revised Times for CPT codes 97001 through 97770" in the July 1999 proposed rule.

Comment: Two major organizations commended us for recognizing that it is appropriate to include pre-service and post-service time and for adjusting the RVUs to reflect this time. However, they wanted us to use the times identified by the expert panel established by the American Physical Therapy Association (APTA) for CPT codes 97001 through 97770. They considered such times to more accurately reflect the times associated with each code.

Response: We carefully evaluated the expert panel's submitted time for CPT codes 97001 through 97770 and used it in collaboration with our staff physicians' medical judgment to adjust the practice expense RVUs for these codes. The times as adjusted reflect nonduplicated pre- and post-service times that may occur when multiple services are provided during the same therapy session. The APTA acknowledged the potential for such overlap in commenting on our proposed rule.

Comment: The American Occupational Therapy Association was pleased that we agreed to revise the occupational therapy times to include some pre- and post-service times for the physical medicine and rehabilitation CPT codes and the RUC surveyed intra-service time for the occupational therapy evaluation and occupational therapy re-evaluation CPT codes (97003 and 97004, respectively).

Response: We appreciate the association's comment.

Comment: An association representing physical therapists recommended that we include additional times for two CPT codes that were not reflected in the proposed rule. It was recommended that we use a 20 minute time period for new CPT code 97140. In addition, the association stated that CPT code 97150 should be added with a typical group session of approximately 45 minutes and pre- and post-time.

Response: We are not clear about the commenter's statement that CPT codes 97140 and 97150 were not reflected in the proposed rule. These codes were listed in Addendum B of the proposed rule. We cannot adopt the recommendation to treat code 97140 as a 20 minute code. When the AMA added 97140 to the CPT codes in 1999, it defined it as a 15 minute code. Therefore, we cannot comply with commenter's request to increase the code's time to 20 minutes. After reviewing the comment for CPT code 97150, we have decided to refer it for close examination during the five year refinement process.

RUC Time Database

The primary sources for the physician time data used in creating the specialty-specific practice expense pools are the surveys done for the initial establishment of the work RVUs and the surveys submitted to the AMA's RUC. Some of the times used for the November 1998 final rule differed from the official RUC database. We indicated in the proposed rule that we plan to use the times from the verified database, in conjunction with the Harvard times, as the basis for determining physician times.

Comment: The AMA has submitted a database that contains verified physician times for those codes considered by the RUC. However, according to a letter received September 30, 1999 from the RUC, there are certain complications in trying to calculate total physician time for the global surgical codes. The letter states: "* * * it became apparent that a key assumption would need to be made about the E/M time for each office visit included in a global surgical period. At the most recent RUC meeting, it became apparent that there is not an obvious standard for this data element. * * * It is apparent that this is an issue of real importance and we will, therefore, place this issue back on the RUC's agenda for next year. However, we will be unable, at this time, to provide 'total time calculations' for many of the codes in the RUC database, as we have not yet agreed on the most appropriate E/M time to be utilized in the calculations of the codes with global surgical periods."

Response: We believe that it would not be appropriate to utilize the submitted RUC database until the RUC resolves the question of the E/M time assigned to global surgical visits. The premature use of this data could potentially have unwarranted negative impacts on the specialties that perform these global services. Therefore, we will use the current time database as part of the calculation of the practice expense pools.

Comment: One association commented that our adjustments to the physician time data as described in the 1998 Physician Fee Schedule final rule seem arbitrary and premature and decreased the time for urologic endoscopic procedures by a factor of 0.979. The commenter recommended that we dispense with these adjustments until the contractor has a chance to review the time data. A surgical association recommended that the unadjusted RUC or Harvard times be used in our practice expense calculations because the adjustments were arbitrary; for example the time for E/M codes was increased by 4 to 6 percent which has a serious impact. The commenter included a lengthy technical attachment entitled, "Are Physician Time Data Correct?" A primary care organization also stated it is not convinced that our decision to adjust the Harvard time data to ensure consistency between the RUC and Harvard data is appropriate.

Response: The adjustment to reconcile the Harvard and RUC physician times was proposed in the June 5, 1998 proposed rule (63 FR 30818) and was adopted in the November 2, 1998 final rule (63 FR 58814). In this final rule we stated, "We still believe this adjustment is appropriate and we will continue to use the adjusted values in our calculations for this final rule." There was not a discussion or proposal on this issue in the July 22, 1999 proposed rule. Therefore, we are not changing or dispensing with these adjustments in this final rule. However, we agree that the accuracy and consistency of the physician time data is vitally important to the appropriate calculation of the specialty practice expense pools, and we welcome further discussion on this issue from all parties. As noted above, we have asked our contractor to develop options for validating the Harvard and RUC time data and will share this discussion and any recommended options with the medical community.

Comment: One organization noted that, for services with a small amount of time, a minor error in the time allotted can result in a relatively large difference in the practice expense allocated to such services. The commenter also recommended that we consider using an alternative approach for determining the time used in the calculation of practice expense for those services not performed by physicians.

Response: We would be interested in receiving any suggestions about improved methods of verifying time for any specialty, physician or non-physician, and would be glad to consider any specific approaches that the commenter might want to suggest.

Comment: The American Psychiatric Association commented that the physician times for psychotherapy codes with E/M services are sometimes less than those services without an E/M component. The commenter recommended that the times assigned to the codes with E/M be increased so that they are seven minutes more than the corresponding service without E/M.

Response: We agree that the codes with E/M should be at least equal to those corresponding codes without E/M and are making this adjustment. The current discrepancy in times could be due to the previous changes in the coding of psychiatric services. However, we believe that any further increases in time for these codes might be better addressed during the 5-year review of work or by the RUC process.

Comment: The American Psychiatric Association also commented that the physician times for CPT code 90847 (family psychotherapy with patient present) should be increased from 76 minutes to 101 minutes, so that it is the same as CPT code 90846 (family psychotherapy without patient present) and that the physician time for CPT code 90857 (interactive group psychotherapy) should be increased from 123 to 134 minutes so it is the same as CPT code 90853 (group psychotherapy).

Response: The times for these codes were originally assigned by the RUC and were not affected by the change in CPT coding for psychiatric services. Therefore, we have decided to defer changes in these times to either the RUC process or the 5-year review.

Crosswalk Issues

Physical and Occupational Therapy Indirect Costs

Based upon comments received on the November 2, 1998 rule and after consultation with industry representatives, we proposed increasing the estimated space requirements that were used as part of the calculation of the indirect practice expense per hour for physical and occupational therapists from 250 square feet to 500 square feet per therapist.

Comment: The APTA commended us for recognizing that 250 square feet is not representative of the actual space needed by therapists in private practice and for proposing to increase the space allocation to 500 square feet. However, APTA asserted that 700–850 square feet is a more accurate measure of the square feet required for such therapists.

Response: As stated in our proposed rule of July 1999, we currently crosswalk physical and occupational therapy services to the "all physician" practice expense per hour for direct costs. However, for indirect costs we believed that the crosswalk to "all physicians" would overstate the actual practice expense for therapy services. Instead, we used the data that were used to develop the therapy salary equivalency guidelines to create the practice expense per hour for these costs. These guidelines, which were developed for therapists working under contract for a facility, assumed a required space of 250 square feet per therapist. After further consideration of previous objections received from organizations representing both physical and occupational therapists about the insufficiency of the 250 square feet, we agreed that the 250 square feet space requirements might not be representative of the actual space needed by privately practicing therapists. Based on our analysis of the available data, we increased the space requirements to 500 feet.

We have carefully considered the treatment space necessary for a therapist in private practice and have determined that 500 square feet or a space 25 feet by 20 feet is more than sufficient space for a single therapist to deliver services to a single typical patient. Although some treatment areas are larger, they are designed for multiple therapists to work simultaneously and serve multiple patients. Space requirements for areas such as waiting rooms, record rooms, and restrooms are considered in the overhead for therapists in private practice.

Comment: Several organizations have remained strongly opposed to the use of salary equivalency guidelines to determine the clerical, office, and other practice expense pools for therapists. The associations recommended the SMS data in the "all physician" category as a more accurate measure of the expenses associated with operating a therapist's office. These commenters contended that the salary equivalency guidelines were not intended to serve as the basis for payment for patient treatment delivered in the therapist's office but rather to pay providers directly for these services when furnished by contract therapists who maintained separate administrative offices. They stated that the guidelines established the maximum hourly rates that Medicare will reimburse the provider for therapy services furnished by such therapists. Thus, they argued that the salary equivalency guidelines should not be used to determine the clerical, office, and other practice expense pools for therapists because the overhead costs data used in the guidelines are associated with operating a contract therapist's administrative office but not the setting where the clinical services are furnished.

Response: We continue to believe the salary equivalency guidelines better approximate the actual expenses for this cost pool than the "all physicians" practice expense category. As previously stated, we believe that using the "all physicians" practice expense category would considerably overstate the actual practice expense for occupational and physical therapists. We will continue to use the salary equivalency guidelines to calculate this portion of the practice expense pool for occupational and physical therapists for this final rule. However, during the refinement process, we will consider all data submitted on any service.

Comment: An association objected to the use of salary equivalency data to determine the indirect expense portion of the practice expense portions of the RVUs. The association recommended that we use SMS survey data for a specialty whose indirect cost structure is similar to that of a therapy provider. It was suggested that the SMS survey data on physical medicine and rehabilitation, manipulation therapy or podiatry would be a more accurate measure of the expenses associated with operating a physical therapy office than the salary equivalency guidelines.

Response: There is no SMS data specifically regarding podiatry services. The other recommended specialties are primarily hospital-based. Therefore, we continue to believe that the salary equivalency guidelines are the best estimate of the indirect costs for outpatient rehabilitation services.

Vascular Surgery

Based upon comments received on last year's proposed and final rules, we proposed to change vascular surgery's crosswalk from cardiothoracic surgery to the "all physician" practice expense per hour because this more appropriately reflects the office-based nature of much of vascular surgery's caseload.

Comment: The International Society for Cardiovascular Surgery and The Society for Vascular Surgery stated their appreciation for the interim increase in vascular surgery's practice expense per hour to the "all physician" rate. However, the Societies are concerned that, despite this 5.8 percent increase in the practice expense per hour, and the overall lack of impact on vascular surgery of removing clinical staff from the facility setting, the fully implemented resource-based practice expense RVUs for eleven of their top fifteen services were decreased in the proposed rule. The American College of Surgeons (ACS) agreed that vascular surgeons have patients with more co-morbidities who require more E/M services than certain other specialties. The ACS thus supported the change in the crosswalk of vascular surgery from cardiac and thoracic surgeons to the "all physician" practice expense per hour.

Response: We agree with the commenters that the use of the "all physician" practice expense per hour rate is an appropriate interim crosswalk for vascular surgery, and we are implementing this change. Concerning the decrease in the practice expense RVUs for the 11 listed services, all of these services are facility services that were originally assigned large amounts of clinical staff time in the facility setting. Because vascular surgeons perform a relatively large number of office-based services as well, the impact of the decreases in their facility services was offset by the increases in their office-based services, and therefore the removal of the inputs for clinical staff in the facility had little impact on the specialty as a whole.

Calculation of Practice Expense Pools—Other Issues

Medicare Claims Data

Comment: The American College of Cardiology recommended that we use the most current Medicare claims data available because in the older data many cardiologists identified themselves as internists. This had the effect of decreasing the size of cardiology's practice expense pool.

Response: We will be using the 1998 Medicare claims data, the most current data available, for the purposes of calculating expense RVUs for the year 2000.

"Zero Work" Pool

In the November 2, 1998 final rule, as an interim solution, we created a separate practice expense pool for all services with zero work RVUs because of the possibility that inaccuracies in the data were causing substantial reductions for these services. We used the "all physicians" category for the practice expense per hour for this pool and instead of allocating this pool by the CPEP data, we used the 1998 RVUs as the allocator. This was of benefit to most of the services included in this interim separate expense pool, but some specialties such as sleep medicine, neurology, ophthalmology and pathology were negatively affected by this methodological change. We received comments requesting that certain services negatively impacted by the adjustment in the 1998 final rule be taken out of this special pool and instead be treated in the same way as the vast majority of codes (that is, treated in the same manner as they were treated before the 1998 final rule adjustment). In the proposed rule, we requested comments both on an adjustment in general and on specific services that should either be included or excluded from the adjustment.

Comment: We received many comments supporting the removal of requested services for the "zero" work pool. The comment from the AMA urged us to implement this provision with respect to any codes that specialties have requested be removed from the "zero work" pool. The AMA supported the establishment of this pool but only for true radiology services; all other "zero work" services should be developed in the same way as other services provided by the other specialties. Another comment from an organization representing primary care physicians supported a proposal to treat codes with zero work RVUs more consistently with other codes in the fee schedule. This commenter stated that the reason given for the creation of the pool was concern about possible inaccuracies in the CPEP data for the "zero work" codes, but since concern was expressed regarding the data for other codes as well, "zero work" codes should not be given special treatment. Several organizations representing ophthalmology and optometry opposed the use of the "zero work" pool and favored removing the ophthalmology codes from this pool. These commenters contended that the current approach is not resource-based and that the creation of the "zero work" pool undermined the rationale of the top-down approach. In addition, the commenters stated that ophthalmology has a practice expense per hour that is much higher than the "all physician" rate assigned to the "zero work" pool and that neither optometry nor ophthalmology were among the specialties requesting a change in methodology for their "zero work" services, because the data for eye care services is relatively good. A major surgical specialty society supported plans to move services with zero work RVUs from their own pool and to treat them like other services and opposed retaining any services in the special pool.

Several specialty societies representing imaging services, radiation oncology, cardiology subspecialties, and vascular surgery objected to the removal of any services from the "zero work" practice expense pool or modification of this pool. One of these commenters stated that the "zero work" pool should be retained, because it was created to approximate the costs of independently owned facilities that are not captured in the SMS data. The commenter offered as an alternative recommendation that the current RVUs of those services in the pool be maintained even if other codes are extracted from the pool. Several of the commenters stated that, because the current technical component allowances are virtually identical to those in effect prior to the institution of resource-based practice expense RVUs, a decision, which the commenters support, appeared to be have been made by HCFA that these values should remain unchanged pending further data collection and analysis. For those services that have been disadvantaged by their move to this "zero work" pool, the commenters suggested that we change their charge-based RVUs without removing them from the "zero work" pool. One commenter suggested that all "zero" work codes should be treated uniformly and the fact that some of these services fared better under the original top-down methodology is not a sufficient basis for removing them from the "zero work" pool.

Response: We still believe that, although we regard the "zero work" pool as an interim solution, there is a need to maintain this pool until we have greater confidence in the data for the technical component and "zero work" services. However, we do not believe that we should force specialties to keep their services in this "zero work" pool if there is a stated preference to have these services treated by the same methodology as the vast majority of services. We also do not agree that our decision to create the "zero work" pool implied that the values for the technical component (TC) codes should necessarily be maintained in the change from a charge-based to a resource-based practice expense methodology. In the 1998 proposed rule, before we created the "zero work" pool, many of the TC services would have received large decreases in practice expense RVUs. In response to comments in the final rule of the same year, we stated, "the possibility exists that inaccuracies in the CPEP data * * * are causing the substantial reductions * * *. Therefore * * * as an interim solution until the CPEP data for these services have been validated, we have created a practice expense pool for all services without work RVUs." The purpose of this pool was only to protect the TC services from the substantial decreases referred to in the above quote until further refinement could take place; the purpose, notwithstanding the specific outcomes of the complex practice expense calculations, was not to guarantee that these services alone would be unaffected by any changes in our methodology. We also stated that we were not convinced that there was a bias in the SMS survey data against TC services, although we agreed to examine the issue during refinement.

While the creation of the "no work" pool was of benefit to most of the TC services contained in it, there was an unintended result of the pool's creation: the values of some specialties' TC services were severely reduced. We believe that it is appropriate to remove those services from the "no work" pool if the specialties performing these services make that request. We have no basis for increasing the charge-based RVUs for these codes as a way to offset the negative effects of the "no work" pool.

Comment: The following comments were received that requested services be removed from the "zero work" pool:

- The American Academy of Sleep Medicine reiterated their request that the TC of CPT codes 95805 through 95811 be moved back into the practice expense pools of the specialties performing these services, allocating these pools using the CPEP data. The commenter stated that this recommendation has the support of the major organizations whose members provide sleep medicine services.
- The American Society of Electroneurodiagnostic Technologists supported the removal of neurology codes, CPT codes 95808 through 95956, from the "zero work" pool.
- The National Association of Epilepsy Centers, supported by the American Academy of Neurology, requested the removal of four of the major epilepsy services, CPT codes 95950, 95951, 95954, and 95956 from the "zero work" pool. The commenter stated that the resource-based data for these services collected through the CPEP process is more representative of the costs of these services than the charge-based values.
- The American Academy of Neurology commented that CPT codes 95805 through 95956 should be removed from the "zero work" pool because the CPEP-derived RVUs are more accurate than the historical charge-based values.
- The American College of Chest Physicians supported the proposal to move the sleep medicine CPT codes out of the "zero work" pool, and requested that any of the pulmonary CPT codes 94010 through 94799 that are contained in this pool be treated in the same way.
- The American Academy of Ophthalmology requested that we move any of the CPT codes 76511 through 76529 and 92081 through 92499 that are in the "zero work" pool back into the practice expense pools of the specialties that are providing these services. For all of these codes, ophthalmologists are the predominant specialty. This change is also supported in comments from the American Society of Cataract and Refractive Surgery. The American Optometric Association made the same request and added CPT codes 92060 and 92065 to the list of codes to remove; this same request was made by the Macula, Retina and Vitreous Societies.
- The College of American Pathologists requested that CPEP data be used to calculate all pathology technical component RVUs for the year 2000 rather than historical charge data. This recommendation was also supported by comments from the American Academy of Dermatology and individual commenters.

Response: We will remove all of the above services from the "zero work" pool and return them to the practice expense pools of the specialties performing the services.

Comment: The American College of Cardiology, the American Society of Echocardiography, and the American Society of Nuclear Cardiology commented that CPT codes 93307 and 93350 should not be removed from the "zero work" pool.

Response: We will leave these services in the "zero work" pool as requested by the commenters.

Site-of-Service Differential

Clarification of Site-of-Service Policy

In the 1998 final rule, we defined hospitals, skilled nursing facilities (SNFs) and ambulatory surgical centers (ASCs) as facilities for practice expense purposes. For purposes of physician practice expenses, all other sites of service are considered to be non-facility settings. The distinction between the non-facility and facility setting takes into account the higher expenses of the practitioner in the non-facility setting, where the practitioner typically bears the cost of the resources (for example, clinical staff, supplies and equipment) associated with the service.

The major purpose of the site of service distinction is to ensure that Medicare does not make a duplicate payment for any of the practice expenses incurred in providing a service for a Medicare patient. When the beneficiary is a hospital, SNF or ASC patient, the facility is paid for the clinical staff, supplies and equipment needed to take care of that patient, and the lower facility rate should be paid to the practitioner. Therefore, if the patient is a facility patient or if a facility bills for the service, the practitioner must bill for a facility site-of-service so that the practice expense accurately reflects the setting in which the service was furnished. In the proposed rule, we clarified the circumstances under which either the non-facility or facility RVUs are used to calculate payment for a service. Specifically, we clarified application of the site-of-service differential for procedures performed in an ASC that are not on the Medicare approved list; for therapy services provided in the facility setting; and for services provided to facilities where there is a "mixture" of nursing home and SNF patients. With respect to provision of services in a "mixed" facility, we specifically solicited comments on ways to examine the relative costs of treating patients in different settings, so that we can determine whether an adjustment to certain non-facility practice expense payments is appropriate.

Comment: One organization objected to our stated policy that, in a mixed facility, the physician is responsible for ascertaining that there will be no Part A bill for the service in order to use the non-facility designation. The commenter stated that this would be a time consuming effort.

Response: We do not believe that it would be an onerous task for the physician to determine at the time of service whether the patient is a SNF or a nursing home patient. This information is needed to pay the bill correctly, and the physician is in the best position to obtain this information quickly.

Comment: The Renal Physicians Association, supported by comments from the American College of Physicians/The American Society of Internal Medicine, expressed concern about the application of the site-of-service differential to the monthly capitated payment (MCP) for end-stage renal disease services (CPT codes 90918 through 90921). The commenter stated that the series of E/M services that are represented by the MCP are highly variable and unpredictable and can be provided in a multitude of settings during the month. Therefore, the use of the site-of-service differential is not relevant to the MCP and should not apply.

Response: We agree that the site-of-service designations are not meaningful for a monthly service that may be provided in different settings for the same patient during a given month. Therefore, CPT codes 90918 through 90921 should always be reported as a nonfacility service.

Comment: An association representing speech-language pathologists and audiologists sought confirmation that there are no settings where speech-language pathology and audiology services would be classified as facility based for purposes of the physician fee schedule.

Response: The commenter is correct. As stated in the final rule of November 2, 1998, outpatient rehabilitation services are subject to the non-facility based practice expense.

Comment: One specialty society reiterated their belief that the site-of-service differential is inappropriately applied to some pediatric subspecialty services performed in the facility setting. The commenter maintained that the use of the facility practice expense RVUs could sacrifice access to high quality pediatric care. Two organizations representing gastroenterologists objected to the use of the site-of-service differential for endoscopy services, which require conscious sedation, because the higher rate paid for these services in the office could provide an incentive for physicians to perform these procedures in the inappropriate office setting. One of these commenters argued that we should either use a threshold that would require a procedure be performed a given percent of the time in the office before applying the site-of-service rule, or adopt MEDPAC's recommendation to establish a clinical consensus about the settings in which a service should be provided. An organization representing podiatrists commented that because they bring their own supplies into a skilled nursing facility (SNF) when providing services in that site, the lower facility rate should not be applied. The commenter contended that, even though multiple patients may be seen, each patient requires individual treatment. Another organization suggested we establish a site-of-service differential for services performed in a SNF in order to correct the inadequacies of payment for services performed in this site. An individual physician commented that there should not be a site-of-service penalty for the 67900 series of CPT codes, because these procedures are most safely and appropriately done in the facility setting.

Response: We believe that these commenters do not understand the purpose or the calculation of the site-of-service differential under our new resource-based practice expense methodology. As stated above, the purpose of the differential is both to ensure that Medicare does not make a duplicate payment for any of the practice expenses incurred and to take into account the higher expenses of the practitioner in the non-facility setting. To the extent that the appropriate practice expense inputs—clinical staff, supplies and equipment, and indirect costs—have been assigned to the two settings, there should be no question of penalizing those who perform their services in a facility. The difference in practice expense RVUs in the two settings should only reflect the difference in the relative costs of performing that particular procedure in the facility or office setting. For that reason there should also be no financial incentive to perform a service in one or the other setting. As stated in previous rules, if there is evidence that it is not safe to perform a particular service in the office setting, this information should be submitted to HCFA's Office of Clinical Standards and Quality.

Limitation on Facility RVUs

As we explained in the proposed rule, non-facility RVUs would be expected to be higher than the facility RVUs for a given service, because the practitioner bears the costs of the necessary clinical staff, supplies, and equipment. However, because of anomalies in our calculations, generally due to the different mix of specialties delivering the service in the two settings, for some codes the facility RVUs are higher than the non-facility RVUs. We proposed to limit the facility rate so that it cannot be higher than the non-facility rate for any given code.

Comment: An association representing urologists commented that we should not assume that any higher facility rate is always due to calculation errors and that we should evaluate these codes further before implementing the proposal. The AMA and an association representing gastroenterologists stated their belief that the imposition of such an across-the-board limit on facility RVUs is inappropriate, because the higher practice expense RVUs in the facility may be due to the different mix of specialties that care for the more complex, more costly cases in the facility setting. The AMA recommended that we either use a weighted average of the RVUs from both settings or maintain the higher facility practice expense RVUs until each affected code can be reviewed.

Several primary care organizations commented that they agree with the proposal to limit the facility rate so that it cannot be higher than the non-facility rate for any given code. One commenter agreed that non-facility RVUs would be higher than facility RVUs for a given service, because the practitioner bears the costs of the staff, supplies and equipment needed. Another commenter also supported the proposal because it addresses some of the anomalies in the practice expense RVUs.

Response: We will implement the proposal so that the facility practice expense RVUs can never be higher than the non-facility practice expense RVUs. Because practice costs would always be expected to be at least somewhat higher in the office setting, where the practitioner is responsible for the costs of the staff, supplies and equipment, it would be an anomaly for the facility setting to have higher practice expense RVUs assigned. This adjustment only affects 222 facility services at this time, and the decrease in value for the affected services is minimal. There is no impact on any specialty as a result of this adjustment.

Comment: One commenter stated that we stated under Site-of-Service Differential in the July 1999 proposed rule (64 FR 39622) our policy that when a service is performed in an ASC and the service is not on the Medicare approved list of procedures and we do not make a facility payment to the ASC, we consider the ASC a physician's office and use the non-facility (higher) RVUs. However, the commenter notes that in our proposed revision in § 414.22(b)(5)(I) in the July 1999 proposed rule (62 FR 39641) we do not clearly state this point.

Response: Upon review, we agree that our revision to 42 CFR § 414.22 is not clear enough. We appreciate the commenter bringing this oversight to our attention. We, therefore, are revising § 414.22 (b)(5)(i) to clarify that, when a physician performs a procedure on the ASC approved procedures list in an ASC, the lower facility practice expense RVUs apply, and that when a physician performs a procedure in an ASC that is not on the ASC approved procedures list, the higher non-facility practice expense RVUs apply.

C. Adjustment to the Practice Expense Relative Value Units for a Physician's Interpretation of Abnormal Papanicolaou Smears

As explained in the July 22, 1999 proposed rule, the codes for a physician's interpretation of an abnormal Papanicolaou (Pap) smear were revised in the November 1998 final rule to include three HCPCS level II codes (P3001, G0124, and G0141) in addition to the CPT code 88141. This revision was made to accommodate differences in Pap smear technology, and we evaluated the practice expense RVUs for each of these three codes in a slightly different manner. We now believe that it would be more appropriate to evaluate the work, practice expense, and malpractice RVUs for these codes identically and comparable to the values for CPT code 88141.

We received a comment from one organization in support of our proposal. We are finalizing this proposal and making the practice expense RVUs identical for HCPCS codes P3001, G0124 and G0141.

D. Physician Pathology Services and Independent Laboratories

We proposed to revise our regulations to end payments to independent laboratories under the physician fee schedule for technical component physician pathology services furnished to hospital inpatients. (Some hospitals provide pathology services through hospital laboratories, and this provision does not affect them.) Under this proposal, independent laboratories would still be able to bill and receive payment from their Medicare carrier for the technical component of a physician pathology service furnished to beneficiaries who are not hospital inpatients. For the technical component of physician pathology services provided to a hospital inpatient, the hospital would have to bill and the independent laboratory would have to make arrangements with the hospital to receive payment.

Specifically, we proposed revising § 415.130(c) to state that after December 31, 1999, we would pay only hospitals for technical components of physician pathology services furnished to their inpatients.

We received 55 comments mainly from pathology groups. Most of these commenters requested that the proposed regulation be withdrawn and the current policy continued. Other commenters, mainly specialty organizations, recommended that the implementation of the proposal be delayed two years and that arrangements in effect as of July 22, 1999, the date of the proposed regulation, be grandfathered and the current payment policy continued for them.

Comment: Several commenters pointed out that if the proposal is implemented, hospitals might not compensate the independent laboratories for the technical component of physician pathology services. They referred to past practices where hospitals have not adequately compensated hospital pathologists for management functions related to the clinical laboratory, even though this cost was appropriately reflected in the hospital's prospective payment. The commenters refer to the Office of the Inspector General's (OIG) 1991 "Report of Financial Relationships between Hospitals and Hospital-Based Physicians" as well as the OIG's 1998 "Compliance Program Guidance for Hospitals". One commenter specifically asked if HCFA and OIG would create a safe harbor that sets forth a "bright line", for example 80 percent of the physician fee schedule allowance, for deeming as reasonable the negotiated technical component between hospitals that bill for the TC service and the independent laboratories that provide the service to the hospitals.

Response: The anti-kickback statute, section 1128B(b) of the Act, prohibits any person from soliciting or accepting anything of value to induce the referral of business that is reimbursable by a Federal health care program. If a hospital were to condition, express or implied, the referral of physician pathology services to a clinical laboratory on the lab's agreement to accept less than fair market value for the technical component, it would implicate the anti-kickback statute. Under section 1128D(b)(3) of the Act, the OIG is prohibited from determining what constitutes fair market value in any specific situation.

Comment: Some commenters contend that the factual information in the proposed rule is not correct and question whether double payment is, indeed, being made for the TC services. They believe there is significant question about whether, when the diagnostic related groups (DRGs) were constructed, initially priced and updated through the years, the TC for physician pathology services were adequately captured and incorporated in the DRGs. A few commenters remarked that it was and is the common practice in their State for hospitals to out-source the TC of physician pathology services to independent laboratories.

Response: Before the prospective payment system (PPS) system was implemented in 1983, we advised intermediaries that hospitals could appropriately include in their base period costs the laboratory cost of the physician pathology services furnished directly to hospital inpatients by that hospital laboratory. At the same time, we stated that if an independent laboratory billed the carrier for the physician pathology services, it could continue to do so, and these costs should not be included in the hospital's base period costs. At that time, the TC was incidental to the pathologist's professional service, and was not treated as a service in itself; it was the common practice at that time for the independent laboratory to bill a single charge that reflected both the TC and the PC physician pathology service.

During the early, transitional years of the PPS, the prospective payment was based on a blend of a target amount (reflecting the hospital's specific cost) and a DRG amount. The DRG amount was a blend of regional and national standardized amounts, with separate standardized amounts for rural and urban areas. After the transition, hospital specific amounts were no longer used in payment, except for sole community hospitals. In Federal fiscal year 1995, the separate rural rate was eliminated, and rural hospitals began receiving the same rate as urban hospitals.

Given that urban hospitals were much more likely to have the laboratory costs of physician pathology services included in their PPS base period costs used to calculate the urban standardized amount, it is our view that the DRG payment methodology compensates hospitals for the TC of physician pathology services. Also, the elimination of the separate rural standardized amount in Federal fiscal year 1995 similarly compensates rural hospitals for the TC of physician pathology services. It would be improper to continue to allow hospitals to receive Part A payments that reflect the TC of physician pathology services and simultaneously allow an independent laboratory to bill and be paid under the physician fee schedule for the same service.

Comment: A few commenters question the assumption in the regulatory impact analysis that 60 percent of the allowed charges for independent laboratories represent billings for hospital inpatients. Based on information from its membership, the College of American Pathologists (CAP) estimated that, on average, 20 percent of Medicare payments to independent laboratories are for Medicare inpatient services. The commenters requested that this estimate of savings to Medicare be appropriately reduced.

Response: We are accepting CAP's comment and calculating the estimate based on this information.

Result of Evaluation of Comments

We are adopting our proposal to pay only hospitals for the TC of pathology services furnished to its inpatients, but delaying implementation until January 1, 2001 to allow independent laboratories and hospitals sufficient time to negotiate arrangements.

E. Discontinuous Anesthesia Time

We proposed to revise our regulations to allow anesthesiologists and certified registered nurse anesthetists (CRNAs) to sum blocks of time around a break in continuous anesthesia care as long as there is continuous monitoring of the patient within the blocks of time. Payment for anesthesia services is based on the sum of base units plus time units multiplied by a locality-specific anesthesia CF. Under current regulations at § 414.46(a)(1) (Additional rules for payment of anesthesia services), the base unit is the value for each anesthesia code reflecting all activities other than anesthesia time. Anesthesia time, as defined under § 414.46(a)(2), starts when the anesthesiologist or CRNA prepares the patient for anesthesia care and ends when the anesthesiologist or CRNA is no longer in personal attendance; that is, when the patient is placed under postoperative care. While in most instances the anesthesiologist or CRNA remains continuously with the patient from the establishment of venous access to the conclusion of anesthesia attendance, there may be instances when there are breaks in the continuous presence of the anesthesiologist or CRNA. (See the July 22, 1999 proposed rule (64 FR 39624) for specific examples.) We proposed to revise the regulations in § 414.46 to include this exception to the general requirement and to revise § 414.60 (Payment for the services of CRNAs) to clarify this issue.

Comment: Both of the national specialty groups, the American Society of Anesthesiologists and the American Association of Nurse Anesthetists, support the proposal to allow anesthesiologists and CRNAs to sum blocks of anesthesia time around a break in continuous anesthesia care as long as there is continuous monitoring of the patient within the blocks of time. Both groups requested that we provide guidance to anesthesiologists and CRNAs on how to report discontinuous anesthesia time.

Response: Anesthesiologists and CRNAs should report the total anesthesia time on the HCFA claim form as the sum of the continuous anesthesia block times. The medical record should be documented so that a medical record auditor can see the continuous and discontinuous periods and that the reported total anesthesia time sums to the blocks of continuous time.

Result of Evaluation of Comments: We are adopting the proposed policy and are revising the regulations accordingly.

F. Optometrist Services

The provisions of OBRA 1986 expanded coverage for optometrist services. While this statutory provision had been implemented through manual provisions, we had not revised the regulations to reflect this change. We proposed to revise the regulations at § 410.23 (Limitations on services of an optometrist) to specify that Medicare Part B pays for the services of a doctor of optometry, acting within the scope of his or her license, if the services would be covered as physicians' services if performed by a doctor of medicine or osteopathy. The American Optometric Association supported the proposed revision to the regulations.

Comment: The American Occupational Therapy Association (AOTA) asked that we clarify that optometrists may certify and recertify a beneficiary's need for occupational therapy services. According to AOTA, conforming changes should be made to § 424.11(e) (Limitation on authorization to sign statements) and relevant manual provisions on physician certification procedures for outpatient therapy. AOTA states that the proposed § 410.23 codifies the statutory provision that places optometrists in the same category as other physicians. Therefore, if a service is within the optometrists' lawful scope of practice, they contend it is permissible for a doctor of optometry to certify and recertify a beneficiary's need for occupational therapy services.

Response: Section 1861(r)(4) of the law provides that an optometrist is a physician "only with respect to the provision of items or services described in section 1861(s)." Because certification and recertification are not services described in section 1861(s), we believe that the law does not permit optometrists to be considered physicians for the performance of these functions. We are changing the text of the regulation (§ 410.23) to more directly reflect the language of the law.

Result of Evaluation of Comments: We are revising the regulations at § 410.23

to specify that Medicare Part B pays for services of a doctor of optometry, acting within the scope of his or her license, if he or she furnishes services described in section 1861(s) that would be covered as physicians' services when performed by a doctor of medicine or osteopathy.

G. Assisted Suicide

The Assisted Suicide Funding Restriction Act of 1997 prohibits the use of Federal funds to furnish or pay for any health care service or health benefit coverage for the purpose of causing, or assisting to cause, the death of an individual. The prohibition does not apply to withholding or withdrawing medical treatment, nutrition, or hydration. In addition, the prohibition does not apply to furnishing a service to alleviate pain, even if doing so may increase the risk of death, as long as the purpose is not to cause or assist in causing death.

We are conforming our regulations to the provisions of this Act by adding a new paragraph (q) to § 411.15 (Particular services excluded from coverage) to exclude from coverage any health care service for the specific purpose of causing, or assisting to cause, the death of an individual. Long standing Medicare policy has excluded such services under section 1862(a)(1)(A) of the Act. This section of the Act states that no payment may be made under Part A or Part B for any expenses for items or services that are not necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

One physician group expressed support for this provision, and we are including the provision in the final rule.

H. CPT Modifier -25

Currently, the global surgery payment policies described in section 4820 of the Medicare Carriers Manual apply to procedures that have global periods of 0, 10, and 90 days as shown on the physician fee schedule database. We proposed to apply these policies also to those services and procedures for which the global period indicator is "XXX." Currently, it is only when a significant, separately identifiable E/M service is furnished before furnishing a procedure with a global period of 0, 10, or 90 days that the E/M service may be paid in addition to the procedure. The coding mechanism for indicating that the E/M service is not related to the surgical procedure is to append modifier -25 (significant, separately identifiable evaluation and management service by the same physician on the same day of the procedure or other service) to the E/M service code.

We proposed that, for selected procedures that have a global period indicator of "XXX," when a significant, separately identifiable E/M service is furnished at the same time by the same physician, the physician must append to the E/M service code the modifier -25.

The basis for this policy is that, because every procedure has an inherent E/M component, for an E/M service to be paid separately, a significant, separately identifiable service would need to be documented in the medical record. In other words, we want to prevent the practice of physicians reporting an E/M service code for the inherent evaluative component of the procedure itself.

Comment: Some commenters expressed the view that rather than implement this coding instruction, the carrier should determine if there is a problem with a physician billing for E/M codes with surgical codes and target the physician for review.

Response: We have received this suggestion many times in relation to other proposed coding edits. It is only within the past few years that the CPT Editorial Panel has begun to articulate more clarifying guidelines pertaining to the use of CPT–4 codes. In the meantime, the Congress has mandated that we promote uniformity in paying for services. Establishing coding principles associated with the CPT–4 coding system helps to achieve uniformity. We believe that establishing coding guidelines is an important adjunct to conducting reviews of problem practitioners.

Comment: Many commenters agreed that the proposal is consistent with CPT guidelines but strongly urged clarification of the categories of services to which this policy would apply. For example, these commenters were unclear whether this policy would apply to diagnostic tests, immunizations, laboratory, and pathology services.

Response: We are not making a blanket requirement that modifier -25 be used with every code in a specific category of services. Rather, we will implement this coding policy for specific HCPCS codes when we believe there is abuse or the potential for abuse in the reporting of an E/M service. Before implementing an edit for a specific code combination, we will provide an opportunity for review by physician groups.

Comment: One commenter suggested we clarify that modifier -25 should be used and recognized as denoting a separate E/M service furnished in conjunction with a minor procedure bearing either the "XXX" or the "000" global period policy.

Response: Our current policy for using modifier -25 is applicable to codes with global periods of 0, 10, and 90 days as stated in section 4822.A of the Medicare Carriers Manual. We proposed that, in furnishing a diagnostic or therapeutic service that has a global period of "XXX" as well, the same policy would apply and practitioners should decide whether the E/M component of a service having a global period of "XXX" is routinely furnished as part of the procedure or is a significantly, separately identifiable service. In general, for services with global periods of "XXX," as well as those with 0, 10 and 90 days, when the E/M service is a significant, separately identifiable service, that is, the physician work furnished meets the criteria for the level of E/M service reported, modifier -25 should be appended to the procedure code.

Comment: A few commenters questioned the accuracy of the statement in the proposal, "Since every procedure has an inherent E/M component, in order for an E/M service to be billed, there must be a significant, separately identifiable service documented in the medical record." They asserted that the only procedures that have an "inherent" E/M component are those that are subject to our own global surgery policies that have been developed with input from the specialty societies. However, there are procedures, for example, radiation oncology services such as treatment planning and simulation which are not subject to our global surgery policies nor do they have an E/M component. Therefore, our statement that "every procedure has an inherent E/M component" is in error. In addition, commenters stated that since we worked with the CPT Editorial Panel to create modifier -25 to be used in appropriate specific instances, to propose using modifier -25 for all services is inconsistent with our previous actions. Commenters requested that we not implement the proposal without input from the AMA's Correct Coding Policy Committee (CCPC) and without adequate time for physician education.

Response: One of the factors we will take into consideration as we identify the specific procedures for which the modifier -25 policy for separate payment for an E/M service will apply is whether the procedure, by definition, has an inherent E/M component.

We intend to submit correct coding edits associated with this coding policy to the AMA's CCPC for comment with a potential implementation date of no earlier than October 2000. Assuming CCPC's comments are furnished expeditiously, we believe there will be sufficient time for us to notify carriers of its decisions, for the specialty societies and the AMA to notify their members, and for carriers to publish the edits in their bulletins.

Comment: Several commenters cited particular examples of diagnostic and treatment situations in which the E/M service and the procedure may be reported without the need for appending modifier -25. These examples are services represented by ophthalmology E/M codes 92002 through 92014 that result in the decision to perform a visual field examination or a fluorescein angioscopy and urology services "that do not have a global period and, therefore, an E/M service would always be performed."

Response: We will take these comments into consideration when we develop correct coding edits based on the coding instruction related to the use of modifier -25.

Comment: Many commenters had reservations about the burden on physicians and carriers if this proposal were implemented. They were concerned that this proposal would lead to using modifier -25 routinely, which in turn would lead to more carrier audits.

Another potential result with burdensome consequences to the practitioner and the carrier would be the number of appeals that would be generated because of contested denials when the practitioner is found to have adequate documentation for the services furnished but the denial was based on inadequate information.

Response: While we agree that these scenarios are possible, our experience with the coding instruction associated with the modifier -59 (Distinct Procedural Service) has not validated this kind of concern. While carrier post-payment reviews of two of these scenarios, namely abuse of modifier -59 and lack of appropriate use of modifier -59, have not been extensive, we have no evidence that practitioners are routinely billing modifier -59 with multiple procedures performed on the same day by the same practitioner. The carrier claims processing systems contain edits that identify incorrect coding combinations. When an incorrect code combination is detected, payment for one of the codes is denied. These denials decrease Medicare expenditures. If the use of modifier -59 had become routine, we would expect to see an increase in expenditures because of the increased use of the modifier. This has not been the case. In fact, expenditure data show that billing of the same code pairs is fairly consistent from one quarter to the next, thus suggesting that practitioners are not routinely using modifiers.

Comment: Other commenters suggested we identify the services that are problematic and work with the AMA to clarify CPT descriptions.

Response: We will work with the AMA at the same time that we are implementing the modifier -25 policy.

Comment: One specialty society stated that its members rarely furnish a service designated as one with no global period without performing services represented by an E/M visit code.

Response: We agree that an identifiable E/M service may be furnished with many procedures for which no global period applies. However, we are concerned about those instances in which a minimum amount of evaluation is an inherent component of the service or procedure. For these instances, we do not agree that it is appropriate to report a minimum level E/M code in addition to the service or procedure.

Comment: Pertaining to physical therapy codes, the assertion was made that the physical therapy evaluation codes 97001 and 97002 are not comparable to the "E/M" codes because they do not include the concept of "management" as do the E/M service codes. Since 97001 and 97002 are not comparable to the E/M codes and since modifier -25 can be used only with an E/M service, it would not be appropriate for it to be used with a physical therapy evaluation code when the physical therapy evaluation code is billed with a modality or therapeutic service.

Response: We disagree with the assertion that physical therapy codes are not comparable to the codes usually referred to as E/M codes. The E/M service codes are described in such a way that they may be used to report either evaluation *or* management services; or evaluation and management services. We believe that modifier -25 may accurately be used with evaluation codes associated with occupational therapy, ophthalmology, physical therapy, psychiatry, and radiation consultation.

Comment: Another commenter suggested that since many private payers do not recognize modifiers appropriately, our policy would create inconsistencies in how physicians report Medicare and non-Medicare services.

Response: Under the current circumstances, this comment may be valid in relation to the use of any modifier, not just modifier -25. It is expected, however, that when the relevant portions of the Health Insurance Portability and Accountability Act are implemented, the format for claims for physicians' services will be standardized. In the meantime, the requirement to use modifier -25 in those instances when the E/M service is distinguishable from the pre-procedure work may actually strengthen the claim for payment. This result may persuade other third party payers to recognize this coding guideline thereby ensuring more consistency in payment.

Result of Evaluation of Comments: We have considered the comments we received on the proposal and are proceeding to include procedures with a global period indicator of "XXX" the application of the global surgery payment policy in as it relates to the use of modifier -25.

We will not, however, require the routine use of modifier -25 with all procedures having a global indicator of "XXX." Instead, we will identify specific codes with which the E/M service furnished would need to be one that is documented as being significant and separately identifiable, and, hence, should be reported with modifier -25.

We will seek review of these codes from physician specialty societies as well as those nonphysician practitioners who are authorized to bill Medicare on their own.

Specific procedure codes for which the use of modifier -25 is required when a significant, separately identifiable E/M service is furnished and reported by the same physician or nonphysician practitioner will be included as edits in the Correct Coding Initiative edits. These edits will be implemented no earlier than October 1, 2000 and will continue to be added as appropriate on an ongoing basis.

In the meantime, however, since modifiers are an inherent part of HCPCS, we urge all practitioners to familiarize themselves with them and to make it a practice to use them when applicable.

I. Nurse Practitioner Qualifications

As explained in the July 22, 1999, proposed rule (64 FR 39608), we gave additional consideration to the nurse practitioner (NP) qualifications because we realized that the qualifications would exclude many experienced NPs from continuing to qualify as NPs under the Medicare program. It was not our intention to establish qualifications in the November 1998 final rule (63 FR 58874) that would cause experienced NPs, who have been furnishing services to Medicare patients, to be barred from billing under the Medicare program because they do not posses a master's degree or national certification. Therefore, we proposed NP qualifications that are less restrictive but that still ensure quality services are furnished to Medicare patients. We proposed progressively enhanced qualifications, including providing lead time for NPs to obtain a Medicare billing number under Section 2158 of the Medicare Carriers Manual, national certification, or (ultimately) a master's degree in nursing. Specifically, we proposed to revise § 410.75(b) so that for Medicare Part B coverage of his or her services, a nurse practitioner must:

(1)(i) Be a registered professional nurse who is authorized by the State in which services are furnished to practice as a nurse practitioner in accordance with State law; and

(ii) Be certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners; or

(2) Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law and has been granted a Medicare billing number as a nurse practitioner by December 31, 2000; or

(3) Be a nurse practitioner who, on or after January 1, 2001, applies for a Medicare billing number for the first time and meets the standards for nurse practitioners in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; or

(4) Be a nurse practitioner who, on or after January 1, 2003, applies for a Medicare billing number for the first time and possesses a master's degree in nursing and meets the standards for nurse practitioners in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

Comment: Several individuals and some organizations, including the American College of Nurse Practitioners, American Nurses Association, and the National Association of Pediatric Nurse Associates & Practitioners, submitted comments in support of the proposal. However, a couple of the commenters expressed concern that an NP whose Medicare number expires in the future may encounter new and more stringent qualification requirements depending on the year he or she reapplies for a new Medicare number. One commenter was also concerned that certain NPs, who qualify to receive Medicare billing numbers under current requirements, would be unfairly disadvantaged if they do not need to apply for Medicare numbers before January 1, 2001.

Response: As specified in the rule, the new qualifications beginning January 1, 2001, would apply only to those NPs applying for Medicare numbers for the very first time. Therefore, an NP would be subject only to the qualification requirements under which he or she received the initial Medicare number.

As for those NPs who qualify for the Medicare program under current rules but have not billed Medicare, we do not share their concern. This proposal was specifically intended to (1) avoid barring veteran NPs from continuing to furnish services to Medicare beneficiaries and, (2) provide a lead time for the new NPs to obtain the master's degree. These revised qualification requirements do not detract from our goal to ultimately require all Medicare NPs to have a master's degree.

Comment: Of the physicians and physician organizations that submitted comments, all but the American Academy of Family Physicians (AAFP) opposed the proposal. They stated that it would lessen the qualification requirements of NPs and endanger the safety of Medicare patients. A few individual doctors commented that they were appalled because the proposed rule would allow NPs to perform and bill Medicare directly for physicians' services. They believed that the proposal would not only raise issues regarding quality of care but also jeopardize the Medicare Trust Fund.

Response: It is the Social Security Act (as amended by the BBA), and not this proposed rule, that authorizes NPs to directly bill Medicare for performing physicians' services. Moreover, we do not agree with these conclusions because the proposed qualification requirements are clearly stricter than those that exist currently. We note that the November 1998, final rule regarding NP qualifications was scheduled to become effective January 1, 2000 (see 64 FR 25456). Thus, the new rule merely permits the veteran NPs who have been serving the Medicare beneficiaries to continue to do so.

Comment: The comments from most of the physician groups, such as the American Medical Association, and many of the individual doctors suggested that we emphasize and elaborate upon the provision requiring NPs to collaborate with physicians. Even AAFP requested that we address the definition of "collaboration" in a rule. In addition, some commenters asked that we specify in a rule that NPs should perform only those services specifically authorized by State law.

Response: "Collaboration" was not a subject of the proposed rule, and we have no plans at this time to change the current definition.

Comment: The women's health care NPs requested that we begin requiring the master's degree in 2007 to coincide with their plan to require master's degree of all women's health care NPs.

Response: We believe that the lead time provided under our proposal is sufficient for all new NPs to obtain the master's degree in nursing. We recognize that even some states do not require the master's degree. . Nevertheless, we note that we are not precluded from establishing our own qualification requirements for NPs who furnish services to Medicare patients.

Result of Evaluation of Comments

The rule concerning NP qualifications is adopted as proposed. In addition to revising § 410.75(b), we are also making conforming changes to § 485.705(c)(8).

J. Relative Value Units for Pediatric Services

During the 5-year review, we did not appropriately adjust work RVUs for certain pediatric surgical services. The present values reflect E/M services of the postoperative period as determined in the original study conducted by the Harvard research team and not the subsequent study of pediatric surgical services performed in 1992 by the Harvard research team for the American Pediatric Surgical Association (APSA). We proposed changing the RVUs for E/M services during the global surgical period for pediatric surgical services to reflect the findings of the 1992 Harvard study.

Comment: The American Urological Association and the American Academy of Pediatrics supported this proposal. The American College of Surgeons and the APSA forwarded information from the 1992 Harvard study on work RVUs for pediatric surgical services and requested we use this data.

Response: We have accepted the RVUs from the 1992 Harvard study and have substituted them in our database.

Result of Evaluation of Comments: We are changing the RVUs to reflect the 1992 data.

K. Percutaneous Thrombectomy of an Arteriovenous Fistula

We proposed to implement a HCPCS code, defined as "percutaneous thrombectomy and/or revision, arteriovenous fistula, autogenous or nonautogenous dialysis graft" to be used until the AMA creates a permanent CPT code. We defined it analogously to open surgical procedures, CPT codes 36831 to 36833 and proposed a 90-day global period for this service to be consistent with the open surgical procedure codes and to facilitate comparisons with them.

We proposed individual local carrier pricing for the new HCPCS code.

Comment: The International Society for Cardiovascular Surgery and the Society for Vascular Surgery expressed support for our proposal, and while the American College of Radiology was also in agreement with our proposal, they recommended a "000" global period rather than a 90 day global, as proposed.

Response: We continue to believe that a 90-day global period is appropriate for this procedure because the effectiveness has been compared to open thrombectomies, for which 90-day global periods are used.

Comment: The American Medical Association commented that adding the codes to HCPCS Level II , rather than through CPT, adds to the potential for confusion and incorrect coding.

Response: We have defined a HCPCS Level II code because no appropriate CPT code exists. These procedures are currently being performed, so we believe that it is necessary to have a code for billing even though no CPT code has yet been developed. As we have stated, we also plan to collect data in conjunction with the reporting of the new code so that we, or the CPT Editorial Panel, may refine its definition.

Comment: The Society for Cardiovascular and Interventional Radiology expressed support for our proposal; however, they recommended that the "revision" be dropped from the code description since a graft revision and declotting usually occur at separate sessions and a revision typically involves another physician. They also recommended that the interim HCPCS have a global period of "000" like other percutaneous therapies rather than the 90 day period proposed and that RVUs should be assigned for this interim code rather than allowing the procedure to be carrier priced.

A manufacturer also expressed concern about the 90 day global period and that this code would be carrier priced.

Response: We have specified carrier-pricing for this procedure for the reasons outlined by the commenters. If this is a heterogenous procedure with variations in how the thrombectomy is performed or whether a revision is done simultaneously, the carrier will be able to adjust the payment appropriately. We plan to collect data regarding the procedure variations, and we will consider revisions of the code definition, global period, and alternate codes after we have reviewed the data.

Result of Evaluation of Comments

We will implement this code as proposed with a 90 day global period and will review the collected data to determine if revisions to the code definition, global period and alternate codes should be made.

L. Pulse Oximetry, Temperature Gradient Studies and Venous Pressure Determinations

We proposed to discontinue separate payment for CPT codes 94760, 94761, 94762, 93740, and 93770 (pulse oximetry, temperature gradient studies and venous pressure determinations) and to list them in the physician fee schedule with a status code of "B" for "payment always bundled into payment for other services." We stated that continuing to pay separately for these codes duplicates amounts included in both facility payments and practice expense RVUs.

Comment: Several professional societies commented that we should not consider these services to be bundled with E/M service payments. One commenter noted that the CPT specifies that diagnostic studies may be reported separately. Another commenter stated that if we would not pay separately for pulse oximetry, physicians would not perform pulse oximetry but would refer patients for arterial blood gas determinations. Another commenter observed that the interpretation of pulse oximetry results can be complex. The American College of Chest Physicians and the American Academy of Sleep Medicine commented specifically that CPT code 94762, pulse oximetry by continuous overnight monitoring, is not performed in conjunction with an E/M. All commenters noted that pulse oximetry is a valuable procedure.

Response: We agree that pulse oximetry is a valuable procedure. Because the technology has progressed and been simplified and reduced in cost, pulse oximetry is a routine inclusion in many procedures and visits. Pulse oximetry is no more invasive and arguably less invasive than recording the patient's temperature, another example of a diagnostic service for which we do not make separate payment. If interpretation of pulse oximetry or temperature data is complex, then that interpretation is clearly part of the medical decision making included in the E/M services. We believe that payment for pulse oximetry equipment is included in our facility and practice expense payments just as the costs of electronic thermometers are included.

While we believe that pulse oximetry with continuous overnight monitoring is always performed in conjunction with an E/M service, we agree that the patient's use of the oximeter is separate from the typical use of equipment during the E/M service.

Medicare coverage policy or some type of utilization standards to guide Medicare carrier review.

Response: As required by the BBA, we are developing utilization guidelines for manual manipulation to treat subluxation of the spine when an x-ray is not required.

Result of Evaluation of Comments: We are revising § 410.22(b)(1) to delete the x-ray requirement. Thus, this section will state that Medicare Part B pays only for a chiropractor's manual manipulation of the spine to correct a subluxation if the subluxation has resulted in a neuromusculoskeletal condition for which manipulation is appropriate treatment.

N. Coverage of Prostate Cancer Screening Tests

Effective January 1, 2000, section 4103 of the BBA provides for Medicare coverage of certain prostate cancer screening tests for all male Medicare beneficiaries subject to certain frequency and other limitations. The BBA defines a prostate cancer screening test to mean a test (among other things) that is "provided for the purpose of early detection of prostate cancer to a man over 50 years of age who has not had such a test during the preceding year." We interpreted this language to mean that payment may be made for a male beneficiary over 50 years of age or older (that is, starting at least one day after he has attained age 50) for both an annual screening digital rectal examination (DRE) and an annual screening prostate-specific antigen (PSA) test.

We proposed to add a new § 410.39 to provide coverage for two types of prostate cancer screening. To ensure that the screening DRE is performed as safely and accurately as possible, we proposed to require, in § 410.39(b), that the examination be performed by the patient's attending physician who is either a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act), or by the beneficiary's attending physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife (as defined in section 1861(aa) and section 1861(gg) of the Act) who is authorized under State law to perform the examinations. In § 410.39(c), we proposed that payment may not be made for a screening DRE performed for a man age 50 or younger. For a patient over 50 years of age, payment would be made for a screening DRE only if the beneficiary has not had such an examination paid for by Medicare during the preceding 11 months following the month in which his last Medicare-covered screening DRE was performed. In § 410.39(d), we specified that coverage is available for screening PSA tests only if they are ordered by the beneficiary's attending physician, or by the beneficiary's attending physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife who is authorized to order this test under State law. We included this coverage requirement to assure that beneficiaries receive appropriate information about the potential implications of screening tests. In § 410.39(e), we proposed that payment may not be made for a screening PSA test performed for a man age 50 or younger. For an individual over 50 years of age, payment may be made for a screening PSA test only if he has not had such an examination paid for by Medicare during the preceding 11 months following the month in which his last Medicare-covered screening PSA test was performed.

We also created a new HCPCS code, G0102, prostate cancer screening DRE, to be used for the screening DRE. A DRE is a relatively quick and simple procedure, and we have assigned it the same value as CPT code 99211, the lowest level E/M service. A DRE is usually furnished as part of an E/M service. We believe that it would be extremely rare for a DRE to be the only service provided during a patient encounter. For this reason, we proposed to bundle the DRE into the payment for an E/M service when a covered E/M service is furnished on the same day as a DRE. If the DRE is the only service furnished or is provided as part of an otherwise noncovered service, such as CPT code 99397 (preventive services visit), HCPCS code G0102 would be payable separately if all the aforementioned coverage requirements are met.

We also created a new HCPCS code, G0103, prostate screening; prostate specific antigen (PSA), to be used for the screening PSA test. The screening PSA test is priced at the same payment rate as CPT code 84153 (PSA; total) and would be paid under the clinical diagnostic laboratory fee schedule.

Comment: All the comments we received on this subject supported implementation of the prostate cancer screening provisions created by the BBA. One commenter indicated that the proposed requirements are consistent with current professional medical standards and generally in accord with the views of practicing physicians and various national medical societies.

However, one commenter expressed concern that the BBA was silent with respect to the need for the "attending" requirement and suggested that we needed to furnish additional rationale for adopting the requirements in the final rule. Specifically, it was suggested that physicians other than the beneficiary's attending physician, such as a physician partner, might be qualified to substitute for the attending physician in his or her absence from the office or clinic.

Response: Although the BBA is silent about who should perform DREs or order PSA tests for Medicare patients, section 1862(a)(1)(A) of the Act prohibits payment for services that are not reasonable and necessary for the diagnosis or treatment of illness or injury. Reasonable and appropriate qualification requirements help ensure that quality screening services are delivered to Medicare patients and that they are furnished with sufficient information about the implications and possible results of having a PSA blood test completed. It is true that an appropriately trained physician or other practitioner can perform this service safely and it does not have to be limited to the patient's attending physician. Based on the comments received from various medical societies, we believe that we can best help ensure that these new Medicare screening services are furnished safely and effectively to patients by requiring that they be done by the physician or other recognized practitioner (as stated elsewhere in this section) who is fully knowledgeable about the patient and would be responsible for explaining the results of the screening examination or test. We believe that under this formulation, a physician other than the patient's attending physician in a group practice can easily meet the requirement.

Result of Evaluation of Comments: We are modifying our proposal to delete the word "attending". The revised requirement will be that the screening DREs and the screening PSA tests must be performed and ordered, respectively, by the beneficiary's physician, physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife who is fully knowledgeable about the patient and would be responsible for explaining the results of the screening examination (test). This revision is reflected in the new § 410.39.

Comment: One commenter indicated that §§ 410.39(c)(1) and 410.39(e)(1) relating to the limitation on coverage of screening DREs and screening PSA tests are in conflict, and need to be clarified to make them consistent with the law and our interpretation of the law as explained in the preamble to the proposed rule.

Response: We agree with the commenter. There is an inaccuracy in proposed § 410.39(e)(1) that needs to be corrected. As we discussed in the preamble to the proposed rule, the BBA defines a prostate cancer screening test to mean a test (among other things) that is "provided for the purpose of early detection of prostate cancer to a man over 50 years of age who has not had such a test during the preceding year." We have interpreted this to mean that payment may be made for a male beneficiary over 50 years of age or older (that is, starting at least one day after he has attained age 50) for both an annual screening DRE and an annual screening PSA test. This means, however, that payment may not be made for a male beneficiary on or before the day he attains age 50.

Result of Evaluation of Comments: We are revising § 410.39(e)(1) to provide that payment "may not be made for a screening PSA blood test performed for a man on or before the day he attains age 50." We are leaving § 410.39(c)(1) unchanged.

Comment: Commenters agreed with our proposal to create a new code, G0102, for a DRE and pay for it at the same level as the lowest level E/M code, 99211. Two commenters agreed with our proposal to bundle the payment for a DRE into the payment for a covered E/M service furnished on the same day. Two other commenters stated that since the DRE is a separate covered benefit that it should always be paid separately.

Response: As stated in the July 1999 proposed rule (64 FR 39627), a DRE is a very quick and simple examination taking only a few seconds. We believe it is rarely the sole reason for a physician encounter and is usually part of an E/M encounter. In those instances when it is the only service furnished or it is furnished as part of an otherwise non-covered service, we will pay separately for code G0102. In those instances when it is furnished on the same day as a covered E/M service, we believe it is appropriate to bundle it into the payment for the covered E/M encounter.

Result of Evaluation of Comments: We are adopting our proposal to pay for a DRE (G0102) at the same level as the lowest level E/M service (99211) and to bundle the payment for the DRE into the payment for a covered E/M service when the two services are furnished to the patient on the same day.

O. Diagnostic Tests

1. Supervision of Diagnostic Tests

Sections 4511 and 4512 of the BBA removed the restrictions on the areas and settings in which nurse practitioners (NPs), clinical nurse specialists (CNSs) and physician assistants (PAs) may be paid under the physician fee schedule for services that would be physicians' services if furnished by a physician. We proposed to revise § 410.32(b) concerning diagnostic x-ray and other diagnostic tests and add an exception at § 410.32(b)(2) to specify that no physician supervision of NPs and CNSs is required for diagnostic tests performed by NPs and CNSs when they are authorized by the State to perform these tests. In addition, we proposed to modify § 410.32(b)(3) by means of a parenthetical to state that diagnostic tests that a PA is legally authorized to perform under State law require only a general level of physician supervision of the PA.

We also proposed to add an exception criterion at § 410.32(b)(2) so that physician supervision rules would not apply to pathology and laboratory codes in the 80000 series of the CPT payable under the physician fee schedule. These codes are within the scope of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) regulations (Part 493), and we determined it would be unnecessarily confusing to apply another separate set of supervision rules to the performance of these procedures. The CLIA regulations should determine the level of supervision necessary, if any, for these procedures.

We received many comments opposing the proposal to modify § 410.32 to permit NPs and CNSs to order, interpret, and perform radiological procedures without physician supervision when they are authorized by the State to perform these services. Our proposal addressed only the last activity. The legal authority for NPs and CNSs to order and to interpret tests (and for PAs to perform these activities under physician supervision) is not at issue. Section 410.10(a)(3) already provides that nonphysician practitioners (including PAs, NPs, and CNSs) who are operating within the scope of their authority under State law may order diagnostic tests. With regard to the interpretation of diagnostic tests, Congress has specifically recognized the ability of PAs, NPs, and CNSs to furnish services that would be physician services, if furnished by a physician, subject to the provisions of State law.

Several commenters expressed their approval of the proposal regarding PAs, NPs, and CNSs.

Comment: Several commenters indicated that the proposal to change the regulation to permit NPs and CNSs to perform diagnostic tests without physician supervision did not explain why this change was being proposed.

Response: As indicated in the July 1999 proposed rule (64 FR 39638), the proposal would conform the requirements of the physician supervision policy in § 410.32(b) to the BBA provisions relating to PAs, NPs, and CNSs. Those provisions generally permitted these practitioners to bill directly for services that would be physicians' services if they were furnished by a physician.

Comment: Many commenters expressed concern about the qualifications of NPs and CNSs to perform radiology procedures without physician supervision. The commenters pointed out that—

- Radiologists undergo 4 to 5 years of residency training after medical school;
- NPs and CNSs do not have the training, education, or experience to be qualified to furnish radiology services;
- The lack of training undergone by NPs and CNSs in x-ray physics as well as nuclear medicine, magnetic resonance physics, and ultrasound physics, places the patient in a life-threatening position; and
- The policy on this matter should be a national policy, rather than a policy debated in each State legislature.

Response: As indicated in the July 1999 proposed rule, we made the proposals to remove the requirement for physician supervision of NPs and CNSs for diagnostic tests for services NPs and CNSs are authorized to perform under State law and to establish a level of general supervision by a physician for diagnostic tests that PAs are authorized to perform under State law. Further, since we have not imposed requirements regarding specific training requirements for physician specialties to be able to perform and bill for these diagnostic tests, we believe that it is inappropriate to apply these requirements to practitioners whom the Congress has specifically recognized as having the ability to furnish services that would be physician services if furnished by a physician, subject to the provisions of State law. The Medicare law generally leaves the scope of practice of NPs, CNSs, and PAs to be determined by the individual States. Finally, we have no indication that NPs and CNSs will abuse their benefit by trying to perform diagnostic tests they are not qualified to do.

Comment: A national organization of radiologic technologists questioned the reliance on the statutory language in section 4511 of the BBA for policy on the issue of supervision of NPs or CNSs for diagnostic testing and suggested that we are incorrectly interpreting this section by proposing to allow these practitioners to perform diagnostic testing without a supervising physician. The commenter went on to indicate that the proposed rule creates a practice opportunity for nurses that is not justified by the cited legislation, that it ignores existing law, and that we are in violation of the Administrative Procedure Act by making law that exceeds its congressional authority.

Response: We believe that our proposal is within the law and reflects the intent of the Congress with regard to services of NPs and CNSs.

Comment: One commenter said that it should be made clear in the final rule that the technical component which is the issue at hand, is not subject to the payment reduction applicable to services of nonphysician practitioners.

Response: We agree with the commenter. Since May 1992, Section 16000 of the Medicare Carriers Manual has stated: "For those services that have both a technical component and a professional component (such as a radiology service or a diagnostic test) or if the nonphysician practitioner provides an incident to service that is routinely separately billed, the percentage payment limitations do not apply to the technical component or to the incident to part of the service that is separately billed."

Comment: Some commenters expressed concern about the effect of this proposal, if adopted, on the mammography certification program.

Response: Mammography certification programs are regulated by the FDA (21 CFR Part 900), and entities performing mammography must comply with those regulations in order to be certified. Our regulations would not affect that process.

Comment: Some commenters indicated that the proposed revision would be contrary to Stark I and II that was formulated to reduce self-referral and its potential for abuse. It was pointed out that self-referral has been shown to be an incentive for overutilization of imaging services.

Response: The Stark provisions do not apply to the services of nonphysician practitioners.

Comment: The American Medical Association suggested that the proposal not to require physician supervision for tests NPs and CNSs are authorized to perform under State law be delayed until the controversy surrounding the requirement for NPS and CNSs to be working in collaboration is better resolved.

Response: The collaboration requirement is not an issue upon which comments were sought under this year's proposed rule, and we do not believe that issue should delay implementation of this proposal.

Comment: Several commenters expressed their opinions on issues relating to the levels of physician supervision that should be required for individual diagnostic tests.

Response: No proposals on the levels of physician supervision required for individual diagnostic tests were included in the proposed rule, and we will not discuss them here. We plan to issue a program memorandum setting forth revised levels of supervision.

Comment: One commenter indicated that the proposed rule cites section 4511 of the BBA as one of the reasons for eliminating the physician supervision requirements for NPs and CNSs and pointed out that section 4511 could be interpreted to mean that the provision only applies to "incident to" services. The commenter went on to say that, since "incident to" (as set forth in section 1861(s)(2)(A)) does not apply to diagnostic tests that have technical components, that provision of the BBA does not mandate the elimination of the physician supervision requirement for diagnostic tests performed by NPs and CNSs.

Response: The technical components of diagnostic tests are covered under section 1861(s)(3) of the Act. Section 1848(j) of the Act specifies that services covered under that section are "physicians' services" for purposes of payment under the Medicare physician fee schedule. Section 4511 of the BBA provides that NPs and CNSs may bill directly for services that would be physician services if they were furnished by a physician, so long as the practitioners are authorized under State law to perform the services. This provision is not limited to "incident to" services. (In fact, the very definition of "incident to" services is that they are services which are included in a physician's bill and not separately billed; thus it would be difficult to read section 4511 as applying only to those services.)

Comment: One commenter characterized the language used in our proposal to exclude pathology and laboratory codes in the 80000 series of the CPT from the physician supervision requirements of § 410.32(b) as "inflammatory, patronizing, and gratuitous." The language related to our statement that the decision as to the necessity of physician supervision in connection with these services should be made solely under the CLIA regulations and not under both the CLIA regulations and the physician fee schedule regulations.

Response: Obviously, there was no intent to offend pathologists. We made the proposal to remove confusion with regard to the physician supervision requirements that apply to a class of codes.

Result of Evaluation of Comments

We are adopting our proposal to provide that—

- Diagnostic tests payable under the physician fee schedule and performed by a nurse practitioner or clinical nurse specialist authorized to perform such tests under applicable State laws are excluded from the physician supervision requirement set forth in 42 CFR 410.32(b);
- Pathology and laboratory procedures listed in the 80000 series of the CPT and payable under the physician fee schedule are excluded from the physician supervision requirements of § 410.32(b); and
- Diagnostic tests payable under the physician fee schedule and performed by a physician assistant authorized to perform tests under applicable State laws require only a general level of physician supervision.

2. Independent Diagnostic Testing Facilities

In keeping with the BBA provisions concerning services furnished by NPs, CNSs and PAs as discussed in paragraph 1. above, we proposed to revise § 410.33(a), which establishes criteria for the operation of independent diagnostic testing facilities (IDTFs), to include NPs and CNSs who perform diagnostic tests that the State authorizes them to perform in the list of entities that may be paid directly by the carrier. We also proposed to modify the implementation date for IDTFs from July 1, 1998 to March 15, 1999 to reflect the actual implementation date.

Comment: Several commenters expressed concern that the proposal to add NPs and CNSs to the list of entities that may be paid directly by the carrier for diagnostic tests under the physician fee schedule would enable these practitioners to open their own imaging facilities and independently perform diagnostic imaging tests.

Response: The Congress has specifically recognized the ability of NPs and CNSs to furnish physician services subject to the requirements of State law. The law evidences the intent of the Congress that the determination of the scope of services of NPs and CNSs may be determined by the individual States. We have no reason to believe that NPs and CNSs will abuse their benefit by trying to perform diagnostic tests they are not qualified to do. NPs and CNSs are not precluded from opening an IDTF. However, IDTFs that are owned and/or operated by NPs and CNSs must meet IDTF physician supervision requirements; that is, the IDTFs must employ or contract with a physician (MD or DO) to provide the required levels of supervision of technicians and equipment.

Result of Evaluation of Comments

We are adopting our proposal to amend § 410.33(a) to change the effective date and to add NPs and CNSs to the list of entities that may be paid directly by the carrier for diagnostic tests under the physician fee schedule.

P. Other Issues

Orthopedic Physician Assistants

OPAs are not recognized as PAs under Medicare. We received many comments concerning the recognition of orthopedic physician assistants (OPAs) as PAs for Medicare coverage purposes. We proposed including OPAs as PAs as part of last year's proposed rule, but we chose not to include the proposal in the final rule. For the reasons stated in the 1998 final rule (63 FR 58876 through 58878) we have no current plans to address the issue again.

Image-Guided Biopsy

We received comments concerning the current image-guided biopsy code, CPT code 19101. The commenters stated that currently two different procedures, open incisional biopsy and image-guided breast biopsy with the equipment that integrates imaging and biopsy are assigned this code and it cannot be fairly valued as it does not adequately reflect the skills, work or practice expense for the image guided stereotaxic breast biopsy procedure. The commenters recommended that a new separate code for image-guided vacuum assisted breast biopsy be established. Since this issue is under consideration for a change in coverage criteria, we will consider coding changes needed to implement any change in coverage. No changes will be made at this time.

Portable X-ray Transportation

We received comments concerning the payment rate for portable x-ray transportation codes R0070 and R0075. The commenters suggested that new regional rates, independent of the physician fee schedule, be proposed for portable x-ray transportation codes R0070 and R0075. Until such regional rates are finalized, the commenters believed it would be appropriate to continue carrier pricing based on current year rates plus an annual adjustment for inflation. We continue to believe that the physician fee schedule is the appropriate vehicle for portable x-ray transportation payments because these services are payable only by virtue of section 1861(s)(3) of the Act. Also, we did not propose new RVUs for these services in this year's proposed rule. We will continue to require that these codes be carrier priced at least through the end of 2000. It is within the carrier's discretion to raise or lower payment levels, after appropriate notification, for reasons of inflation or other considerations.

Supervision Requirements for Therapy Assistants

An association representing physical therapists and another association representing occupational therapists, commented that the level of supervision required for therapy assistants in the private practice setting should be direct supervision rather than the personal supervision stipulated in the November 1998 final rule. They indicated that the personal supervision requirement changed the long-standing direct supervision requirement that was applicable to therapy assistants in private practice prior to January 1, 1999 (then known as therapy assistants in independent practice). The commenters further stated that the personal supervision requirement imposed a level of supervision higher than that required for therapy assistants furnishing such services in other Medicare settings and that the requirement is contrary to state law.

While we acknowledge that we have been urged to revisit this issue, we did not include it in our proposed rule and we will not address the issue in this final rule. We believe that supervision issues raise concerns about quality of care, and we would prefer that any changes be the subject of public discussion. Therefore, before we would make changes in supervision requirements, we would include them in a future proposed rule.

III. Refinement of Relative Value Units for Calendar Year 2000 and Response to Public Comments on Interim Relative Value Units for 1999 (Including the Relative Value Units Contained in the July 22, 1999 Proposed Rule)

A. Summary of Issues Discussed Related to the Adjustment of Relative Value Units

Section III. B. of this final rule describes the methodology used to review the comments received on the RVUs for physician work and the RVUs for new and revised CPT codes. Changes to CPT codes on the physician fee schedule reflected in Addendum B are effective for services furnished beginning January 1, 2000.

B. Process of Establishing Work Relative Value Units for 2000 Physician Fee Schedule

Our November 2, 1998 final rule (63 FR 58814) announced the final RVUs for Medicare payment for existing procedure codes under the physician fee schedule and interim RVUs for new and revised procedure codes. The RVUs contained in the rule applied to physician services furnished beginning January 1, 1999. We announced that we considered the RVUs for the interim procedure codes would be subject to public comment under the annual refinement process. We also included an additional 16 new and revised CPT codes in the July 22, 1999 proposed rule and requested comments on these CPT codes. We had received the RUC's recommendations for these CPT codes too late for them to be included in the November 1998 final rule.

In this section, we summarize the refinements to the interim work RVUs that have occurred since publication of the November 1998 final rule and our establishment of the work and practice expense, and malpractice RVUs for new and revised procedure codes for the 2000 physician fee schedule.

Work Relative Value Unit Refinements of Interim and Related Relative Value Units (Includes Table 1—Work RVU Refinement of 1999 Interim and Related Relative Value Units)

Although the work RVUs in the November 1998 final rule were used to calculate 1999 payment amounts, we considered the work RVUs for the new or revised procedure codes to be interim. We accepted comments for a period of 60 days. We also included additional RUC work RVU recommendations in the July 22, 1999 proposed rule. We accepted comments on these work RVU recommendations for a period of 60 days. We received comments from four specialty societies on four CPT codes with interim work RVUs. Only comments received on codes listed in Addendum C of the November 1998 final rule or codes listed in section P. of the July 1999 proposed rule were considered. Due to the limited number of comments received, we did not convene multispecialty refinement panels. Rather, determinations were made by our medical staff. In reaching their conclusions they analyzed written comments of the specialty societies that commented.

Table 1 lists the interim and related codes reviewed during the 1999 refinement process described in this section. This table includes the following information:

- *CPT Code.* This is the CPT code for a service.
- *Description.* This is an abbreviated version of the narrative description of the code.
- *1999 Work RVU.* The work RVUs that appeared in the November 1998 or July 1999 rule are shown for each reviewed code.
- *Requested Work RVU.* This column identifies the work RVUs requested by the commenters.
- *2000 Work RVU.* This column contains the final RVUs for physician work.

The final work RVUs emerged from analysis of the specialty societies written comments on the 1999 interim valued CPT codes.

TABLE 1.—WORK RVU REFINEMENT OF 1999 INTERIM AND RELATED RVUS

CPT Code	MOD	Description	1999 Work RVU	Requested Work RVU	2000 Work RVU
33975		Ventricular access device	21.00	21.00	21.00
33976		Ventricular access device	23.00	23.00	23.00
69990		Microsurgery add-on	3.47	3.47	3.47
78020	26	Thyroid met uptake	0.60	0.67	0.60

* All CPT codes and descriptors copyright 1998 American Medical Association.

Implantation of ventricular assist device (CPT codes 33975 and 33976)

Comment: One speciality society commented that they concur with our proposed work RVUs for the intraoperative work associated with the implantation of a ventricular assist device. It should be noted that the concurrence was contingent upon the global period of "XXX" days that we assigned to CPT codes 33975 and 33976.

Response: We believe that the substitution of an "XXX" global period for the original global period of 90 days, and the resulting reduction in the work RVUs for the implantation of ventricular assist devices, has resulted in equitable work RVUs for the implantation of ventricular assist devices. We appreciate the opportunity to work with specialty societies to accomplish equitable work RVUs.

Microsurgery add-on (CPT code 69990)

Comment: Many surgical groups commented that we should always pay separately for the use of the operating microscope unless its use is explicitly stated in the definition of the procedure. They claim that increasing use of the operating microscope has led to increased work.

Response: We are sympathetic to the idea that increasing use of the operating microscope has led to increased work. However, the current evaluation of CPT code 69990 was not based on an evaluation of the increased work for the myriad of procedures for which an operating microscope may be used. We believe that it is unlikely that one add-on code can correctly reimburse for work done on procedures varying from cranial neurosurgery to foot surgery. Our 5-year review of work RVUs will be active in the coming year. We believe that the 5-year review process is the appropriate mechanism for reviewing appropriate payment for microsurgery.

Comment: Two specialty groups recommended that we increase the physician work RVU of CPT code 78020, Thyroid carcinoma metastases, from 0.60 work RVUs to the AMA RUC recommended value of 0.67 work RVUs.

Response: The specialty society reported that this procedure was previously reported with unlisted CPT code 78099. The specialty survey also estimated that this code will be billed approximately 15 percent of the time that CPT code 78018 is billed. According to Medicare frequency data, CPT code 78099 was only billed 61 times in 1997 while the projected utilization for CPT code 78020 for 1999 is approximately 575 claims annually. In order to keep budget neutrality within this family of codes we will retain its proposed recommendation of 0.60 work RVUs for CPT code 78020.

Establishment of Interim Work Relative Value Units for New and Revised Physicians' Current Procedural Terminology Codes and New HCFA Common Procedure Coding System Codes for 2000 Methodology (Includes Table 2—American Medical Association Specialty Society Relative Value Update Committee and Health Care Professionals Advisory Committee Recommendations and HCFA's Decisions for New and Revised 2000 CPT Codes)

One aspect of establishing work RVUs for 2000 was related to the assignment of interim work RVUs for all new and revised CPT codes. As described in our November 25, 1992 notice on the 1993 fee schedule (57 FR 55938) and in section III.B of our November 22, 1996 final rule (61 FR 59505 through 59506) we established a process, based on recommendations received from the AMA's RUC, for establishing interim work RVUs for new and revised codes.

This year we received work RVU recommendations for approximately 61 new and revised CPT codes from the RUC. Our staff and medical officers reviewed the RUC recommendations by comparing them to our reference set or to other comparable services for which work RVUs that had been established previously, or to both of these criteria. We also considered the relationships among the new and revised codes for which we received RUC recommendations. We agreed with the majority of those relationships reflected in the RUC values. In some cases, when we agreed with the RUC relationships, we revised the work RVUs recommended by the RUC to achieve work neutrality within families of codes. That is, the work RVUs have been adjusted so that the sum of the new or revised work RVUs (weighted by projected frequency of use) for a family of codes will be the same as the sum of the current work RVUs (weighted by their current frequency of use). For approximately 69 percent of the RUC recommendations, proposed work RVUs were accepted, and for approximately 31 percent, the work RVUs were decreased.

There were also 7 CPT codes for which we did not receive a RUC recommendation. After review of these CPT codes by our staff and medical officers, we established interim work RVUs for all 7 CPT codes.

Table 2 lists the new or revised CPT codes, and their associated work RVUs, that will be interim in 2000. This table includes the following information:

- A "#" identifies a new code for 2000.
- *CPT code.* This is the CPT code for a service.
- *Modifier.* A "26" in this column indicates that the work RVUs are for the professional component of the code.
- *Description.* This is an abbreviated version of the narrative description of the code.
- *RUC recommendations.* This column identifies the work RVUs recommended by the RUC.
- *HCPAC recommendations.* This column identifies work RVUs recommended by the HCPAC.
- *HCFA decision.* This column indicates whether we agreed with the RUC recommendation ("agree"); we established work RVUs that are higher than the RUC recommendation ("increase"); or we established work RVUs that were less than the RUC recommendation ("decrease"). Codes for which we did not accept the RUC recommendation are discussed in greater detail following Table 2. An "(a)" indicates that no RUC recommendation was provided. A discussion follows the table.
- *HCFA Work RVUs.* This column contains the RVUs for physician work based on our reviews of the RUC recommendations.
- *2000 Work RVUs.* This column establishes the 2000 RVUs for physician work.

TABLE 2.—AMA RUC AND HCPAC RECOMMENDATIONS AND HCFA DECISIONS FOR NEW AND REVISED 2000 CPT CODES

CPT* code	MOD	Description	RUC recommendation	HCPAC recommendation	HCFA decision	HCFA Work RVU	2000 Work RVU
11980#	....	Hormone pellet implanation	....	....	(a)	1.48	1.48
13102#	....	Repair wound/lesion add-on	1.24	....	Agree	1.24	1.24
13122#	....	Repair wound/lesion add-on	1.44	....	Agree	1.44	1.44

TABLE 2.—AMA RUC AND HCPAC RECOMMENDATIONS AND HCFA DECISIONS FOR NEW AND REVISED 2000 CPT CODES—Continued

CPT* code	MOD	Description	RUC recommendation	HCPAC recommendation	HCFA decision	HCFA Work RVU	2000 Work RVU
13133#		Repair wound/lesion add-on	2.19		Agree	2.19	2.19
13153#		Repair wound/lesion add-on	2.38		Agree	2.38	2.38
20979#		US bone stimulation			(a)	0.17	0.17
22318#		Treat odontoid fx w/o graft	21.50		Agree	21.50	21.50
22319#		Treat odontoid fx w/ graft	24.00		Agree	24.00	24.00
27096#		Inject sacroiliac joint	1.40		Decrease	1.10	1.10
33140#		Heart Revascularize (TMR)	20.00		Agree	20.00	20.00
33244		Remove eltrd, Transven	13.76		Agree	13.76	13.76
33249		Eltrd/insert pace-defib	14.23		Agree	14.23	14.23
33282#		Implant pat-active ht record	4.17		Agree	4.17	4.17
33284#		Remove pat-active ht record	2.50		Agree	2.50	2.50
33405		Replacement of aortic valve	30.61		Agree	30.61	30.61
33410#		Replacement of aortic valve	32.46		Agree	32.46	32.46
33968#		Remove aortic assist device	2.00		Decrease	0.64	0.64
35879#		Revise graft w/ vein	16.00		Agree	16.00	16.00
35881#		Revise graft w/ vein	18.00		Agree	18.00	18.00
36521#		Apheresis w/ adsorp/reinfuse			(a)	1.74	1.74
36550#		Declot vascular device			(a)	0.00	0.00
36819#		AV fusion by basilic vein	14.00		Agree	14.00	14.00
39560#		Resect diaphragm, simple	12.00		Agree	12.00	12.00
39561#		Resect diaphragm, complex	17.50		Agree	17.50	17.50
50541#		Laparo ablate renal cyst	16.00		Agree	16.00	16.00
50544#		Laparoscopy, pyeloplasty	22.40		Agree	22.40	22.40
50546#		Laparoscopic nephrectomy	20.48		Agree	20.48	20.48
50547#		Laparo removal donor kidney	25.50		Agree	25.50	25.50
50548#		Laparo-asst remove k/ureter	24.40		Agree	24.40	24.40
50945#		Laparo ureterolithotomy	17.00		Agree	17.00	17.00
51990#		Laparo urethral suspension	12.50		Agree	12.50	12.50
51992#		Laparo sling operation	14.01		Agree	14.01	14.01
54692#		Laparoscopy, orchiopexy	12.88		Agree	12.88	12.88
61751		Brain biopsy w/ CT/MR guide	17.62		Agree	17.62	17.62
61862#		Implant neurostim, subcort	27.34		Decrease	19.34	19.34
61885		Implant neurostim one array	8.00		Decrease	5.85	5.85
61886#		Implant neurostim arrays	8.00		Agree	8.00	8.00
62263#		Lysis epidural adhesions	7.20		Decrease	6.02	6.02
62310#		Inject spine C/T	2.20		Decrease	1.91	1.91
62311#		Inject spine L/S (CD)	1.78		Decrease	1.54	1.54
62318#		Inject spine w/ cath, C/T	2.35		Decrease	2.04	2.04
62319#		Inject spine w/ cath L/S (CD)	2.15		Decrease	1.87	1.87
64470#		Inj paravertebral C/T	1.85		Agree	1.85	1.85
64472#		Inj paravertebral C/T Add-on	1.29		Agree	1.29	1.29
64479#		Inj foramen epidural C/T	2.20		Agree	2.20	2.20
64480#		Inj foramen epidural add-on	1.54		Agree	1.54	1.54
64483#		Inj foramen epidural L/S	1.90		Agree	1.90	1.90
64484#		Inj foramen epidural add-on	1.33		Agree	1.33	1.33
64573#		Implant neuroelectrodes	7.50		Agree	7.50	7.50
64626#		Destr paravertebri nerve C/T	3.28		Agree	3.28	3.28
64627#		Destr paravertebral N add-on	1.16		Agree	1.16	1.16
72275#	26	Epidurography	0.83		Decrease	0.54	0.54
72285	26	X-ray C/T spine disk	1.16		Agree	1.16	1.16
73542#	26	X-ray exam, sacroiliac joint	0.64		Decrease	0.54	0.54
76005#	26	Fluoroguide for spine inject	0.60		Decrease	0.54	0.54
76873#	26	Echograph trans R, pros study	1.92		Decrease	0.99	0.99
77427#		Radiation TX management, x5	3.31		Agree	3.31	3.31
78267		Breath test attain/anal, C–14	0.00		Agree	0.00	0.00
78268		Breath test analysis, C–14	0.19		Decrease	0.00	0.00
78456#	26	Acute venous thrombus image	1.00		Agree	1.00	1.00
92961#		Cardioversion, electric, int	4.60		Agree	4.60	4.60
93727#	26	Analyze ILR system	0.52		Agree	0.52	0.52
93741#	26	Analyze ht pace device sngl	0.90		Decrease	0.64	0.64
93742#	26	Analyze ht pace device sngl	1.03		Decrease	0.73	0.73
93743#	26	Analyze ht pace device doub	1.17		Decrease	0.83	0.83
93744#	26	Analyze ht pace device doub	1.33		Decrease	0.95	0.95
96570#		Photodynamic tx, 30 min			(a)	1.10	1.10
96571#		Photodynamic tx, addl 15 min			(a)	0.55	0.55
99170#		Anogenital exam, child	1.75		Agree	1.75	1.75
99173#		Visual screening test			(a)	0.00	0.00
99291		Critical care, first hour	4.00		Decrease	3.60	3.60
99292		Critical care, addl 30 min	2.00		Decrease	1.80	1.80

[a] No RUC recommendation provided.

New Codes.

* All numeric HCPCS CPT Copyright 1997 American Medical Association.

Discussion of Codes for Which There Were No RUC Recommendations or for Which the RUC Recommendations Were Not Accepted

The following is a summary of our rationale for not accepting particular RUC work RVU recommendations. It is arranged by type of service in CPT order. Additionally, we also discuss those CPT codes for which we received no RUC recommendations for physician work RVUs. This summary refers only to work RVUs.

Subcutaneous hormone pellet implantation (CPT code 11980)

We did not receive a work RVU recommendation from the RUC for CPT code 11980. Our clinical staff estimate that the work associated with CPT code 11980 is similar to that for insertion of implantable contraceptive capsules, CPT code 11975. For the 2000 fee schedule we will use the work RVUs from CPT code 11975 for CPT code 11980. The work RVU for CPT code 11980 will be considered interim for 2000.

Low intensity ultrasound stimulation to aid bone healing, noninvasive (CPT code 20979)

We did not receive a work RVU recommendation from the RUC for CPT code 20979. Our clinical staff estimate that the work associated with CPT code 20979 is comparable to a level 1 office visit for an established patient, CPT code 99211. The work RVU for CPT code 20979 will be considered interim for 2000.

Injection procedure for sacroiliac joint arthrography and/or anesthetic/steroid (CPT code 27096)

The RUC evaluated the work for this procedure based on a survey of radiologists and a clinical description of the service including the injection of both contrast and therapeutic substances. The RUC assigned a work RVU of 1.4, comparable to other contrast injection procedures. However, the RUC description also notes that this procedure is performed without contrast in which case it is reported as CPT code 20610 for a large joint injection. The work RVU for CPT code 20610 is 0.79. Our medical staff has confirmed that CPT 27096 is also commonly done without contrast. We estimate that CPT code 27096 will be performed half of the time without contrast. To maintain work neutrality, we assigned a work RVU of 1.10 based on the weighted average of procedures with contrast (CPT codes 27093 and 27095) valued at 1.40 work RVUs and a procedure without contrast (CPT code 20610) valued at 0.79 work RVUs.

Removal of a percutaneous intra-aortic balloon assist device or pump (IABP) (CPT code 33968)

The RUC evaluated the removal of a percutaneous IABP as equivalent to 30 minutes of critical care time and assigned a value of 2.00 work RVUs. Our medical staff wishes to emphasize that the time involved with weaning and observation of the patient prior to removal of the IABP should be billed under the appropriate E/M service. Furthermore, since weaning and observation prior to removal of the IABP ensures that the patient is hemodynamically able to tolerate removal of the IABP, we disagree with the RUC's conclusion that the work of removing an IABP is equivalent to the work of providing critical care services.

Our medical staff estimate that the physician work involved is considerably less than 30 minutes. While compression of the removal site may be required for up to 30 minutes, the compression and observation is frequently delegated to hospital staff after a shorter physician observation period immediately following removal. The work has also decreased recently due to the use of smaller, 8 French IABPs and the availability of special compression devices. We have estimated the typical work as comparable to a level 1 subsequent hospital visit, CPT code 99231, and have assigned work RVUs of 0.64 to this procedure.

We advise that this procedure must be performed personally by the billing physician in order to be considered a covered physician service. If the procedure is performed by nursing staff or a hospital catheterization lab technician, then the physician may not claim payment. When a claim is submitted for CPT code 33968, the time involved in removing the IABP may not be counted towards critical care time.

Therapeutic apheresis with extracorporeal column adsorption and plasma reinfusion (CPT code 36521)

We did not receive a recommendation from the RUC for CPT code 36521. Our clinical staff estimate that the work for this procedure is comparable to therapeutic apheresis involving plasma or cell exchange, CPT code 36520.

Declotting by thrombolytic agent of implanted reservoir vascular access device or catheter (CPT code 36550)

This is a new CPT code for which no work recommendation was made by the RUC. Our medical staff reviewed the submission to the AMA CPT panel and the RUC survey and determined that the skill level required for this procedure was that of a registered nurse with some specialized training. Furthermore, the procedure is generally performed by a registered nurse with physician assistance upon request. In the past, this procedure has been billed under CPT code 99211 (level 1 visit for an established patient), which is frequently used for services provided by ancillary staff under physician supervision. Therefore, we have assigned 0.00 physician work RVUs for this procedure. An E/M service may be billed separately if the physician participates in this procedure, or provides another, separately identifiable medically necessary E/M service. Therefore, inclusion of physician work RVUs for CPT code 36550 would lead to duplicate payments.

Subcortical neurostimulator array implantation (CPT code 61862)

The RUC evaluated this code with a building block approach that included the work of stereotactic localization, the device implantation, and 140 minutes of intraoperative testing contributing 8.00 work RVUs. The RUC recommendation for the entire procedure is 27.34 work RVUs. Because the time for intraoperative testing is variable, we are subtracting 8.00 work RVUs and assigning a value for the procedure of 19.34. We are advising using CPT codes 95961 (work RVUs of 2.97) and 95962 (work RVUs of 3.21), functional cortical and subcortical mapping, to report the work of intraoperative testing. We also note that since the work of stereotactic localization is included in 61862, we will deny payment for other stereotactic localization codes billed in conjunction with this code.

Incision and subcutaneous placement of cranial neurostimulator pulse generator or receiver, direct or inductive coupling; with connection to a single electrode array (CPT code 61885) and Incision and subcutaneous placement of cranial neurostimulator pulse generator or receiver, direct or inductive coupling; with connection to two or more electrode arrays (CPT code 61886)

CPT code 61885 was revised to describe the placement of a cranial neurostimulator connected to a single electrode array while CPT code 61886 is a new code that describes the same procedure with connection to two or more electrode arrays.

Currently most cranial neurostimulator placement is reported under CPT code 61885, whether connected to one, two, or more electrode arrays. In the future 100 percent of old CPT code 61885 will be billed as either CPT code 61885 or CPT code 61886. The RUC recommended an increase in work RVUs from 5.85 to 8.00 for CPT code 61885 and recommended a work RVU of 8.00 for CPT code 61886. Our medical staff does not think an increase in work for CPT code 61885 is justified. The work RVU for CPT code 61885 was increased during the last 5-year review of physician work, and the review of the material submitted by the RUC did not include evidence that the physician work for CPT code 61885 has changed in the last two years. Therefore, we will continue to assign 5.85 work RVUs to CPT code 61885. Our medical staff agrees that the physician work for CPT code 61886 is greater than the work for CPT code 61885 and will assign 8.00 work RVUs, as recommended by the RUC, to CPT code 61886. Additionally, we will monitor the utilization pattern for these codes to determine if a work neutrality adjustment is required in the future.

Percutaneous lysis of epidural adhesions using solution injection (for example, hypertonic saline, enzyme) or mechanical means (for example, spring-wound catheter) including radiologic localization (includes contrast when administered) (CPT code 62263)

This is a new CPT code for which the RUC recommended a work value of 7.20 work RVUs using a building block approach. We found flaws in the RUC construction of the building blocks. One building block, CPT code 62279 (Injection of diagnostic or therapeutic anesthetic or antispasmodic substance (including narcotics); epidural, lumbar, or caudal, continuous) was counted twice. This is incorrect since the catheter is only placed once. To correct this, we adopted the RUC's estimate that the injection portion of an injection code (which includes catheter placement) is 1/3 of the total work of the code, and we assumed a total of two injections. This resulted in counting CPT code 62270 1.33 times instead of twice.

Our medical staff also determined that the building block for fluoroscopic guidance was incorrectly crosswalked to new CPT code 76005 (see below) and that the appropriate crosswalk for fluoroscopic guidance was CPT code 76003 (Fluoroscopic localization for needle biopsy or fine needle aspiration) which requires comparable work. These corrections result in a work RVU of 6.02 for CPT code 62263.

Epidural or subarachnoid spine injection procedures (CPT codes 62310, 62311, 62318, and 62319)

New CPT codes 62310 through 62319 were developed to organize different routes (subarachnoid, epidural) at different levels (cervical, thoracic, lumbar, caudal), for different substances (narcotic, anesthetic, steroid, antispasmodic). Nine CPT codes, previously used to report these services, were deleted and crosswalked into these four new CPT codes. Although we agree with the relativity established by the RUC, in order to retain budget neutrality within this family of codes the RUC recommendations had to be uniformly reduced. The work RVUs for these four new CPT codes will be: 62310 (work RVU=1.91), 62311 (work RVU=1.54), 62318 (work RVU=2.04), and 62319 (work RVU=1.87).

Epidurography (CPT code 72275)

The RUC compared this procedure to myelography, CPT code 72265, and assigned identical work RVUs of 0.83. While the RUC survey and discussion state that the work of epidurography is comparable, or even greater, than the work of myelography, the RUC notes also state that this service was previously reported as 72265–52, myelography with reduced service. The RUC discussion also notes that this procedure will be done as an adjunct procedure to epidural injections. Our medical staff has also determined that the work of epidurography is comparable to CPT codes 73525 (Hip Arthrography), 76003 (Fluoroscopic localization for needle biopsy and fine needle aspiration), and 73542 (Sacroiliac joint arthrography, see below). In view of the conflicting information received from the RUC, the comparability of work to the CPT codes above, and because use of epidurography as an adjunct procedure to epidural injections is very similar to the adjunctive use of sacroiliac joint arthrography for sacroiliac joint injections, we are assigning a work RVU of 0.54 to CPT code 72275.

Sacroiliac joint arthrography (CPT code 73542)

The RUC recommended a work RVU of 0.64 based on an evaluation that this procedure requires more work than the similar reference procedure, hip arthrography, CPT code 73525. However, the survey time estimates are virtually identical and the RUC description also notes that this procedure was previously reported as CPT code 73525. Our medical staff does not believe there is enough difference in the physician work components of CPT codes 73542 and 73525 to justify a higher work RVU for 73542. Therefore, we are assigning a work RVU of 0.54 to CPT code 73542.

Fluoroscopic guidance and localization of needle or catheter tip for spine or paraspinous diagnostic or therapeutic injection procedures (epidural, transforaminal epidural, subarachnoid, paravertebral facet joint nerve or sacroiliac joint) including neurolytic agent destruction (CPT code 76005)

The RUC recommended a work RVU of 0.60 for CPT code 76005 based on its estimate that more work was required than the similar referenced procedure, Fluoroscopic localization for needle biopsy or fine needle aspiration, CPT 76003, that is valued at 0.54 work RVUs. However, survey time estimates were almost identical and this procedure was previously reported as CPT code 76003. Based on the RUC survey, our medical staff does not believe there is enough difference in the physician work components of 76005 and 76003 to justify a higher work RVU for 76005. Therefore, we are assigning a work RVU of 0.54 to CPT code 76005.

Prostate Volume Study (CPT code 76873)

This procedure takes place weeks before interstitial radioactive seed placement for prostate cancer. Our medical staff are aware of two approaches to map the prostate for this purpose. The first involves measuring prostate volume by transrectal sonography, making 5 mm cuts of the prostate, and mapping prostate anatomy to a grid that is then used to implant the radioactive seeds accurately several weeks later. This approach does not involve the use of general anesthesia. The second approach takes place after the patient has been placed under general anesthesia for seed implantation and involves positioning the patient, performing the volume study (with 5mm cuts of the prostate), calculating the treatment dose (by the radiation physicist), and immediately implanting the seeds. Even though this new CPT code was developed to describe the first approach, the RUC recommendation of 1.92 work RVUs was based on the use of general anesthesia for performance of the prostate volume study. Our medical staff estimates that the average time to perform the procedure is 30 minutes and that the work is comparable to performance of CPT code 76805, Echography, pregnant uterus, B-scan and/or real time with image documentation; complete. Therefore, we have assigned it a work RVU of 0.99.

CPT code 76873 should not be used on the same day as seed implantation and, therefore, we will not allow payment for this service on the same day as seed implantation or other services that are part of seed implantation.

Urea breath test, C–14; acquisition for analysis (CPT code 78267), and Breath test analysis, C–14 (CPT code 78268)

The RUC recommended a work RVU of 0.00 for CPT code 78267 and 0.19 work RVUs for CPT code 78268. These CPT codes describe procedures currently paid under the lab fee schedule under CPT codes 83013 and 83014 respectively. Our medical staff have reviewed these codes and do not believe any physician work is required for the performance of either service. Moreover, the work required for performance of these services is practically identical to those services still described under CPT codes 83013 and 83014 which are urea breath tests using the C–13 isotope. Therefore, these codes will continue to be paid under the lab fee schedule with CPT code 78267 crosswalked to CPT code 83014 and CPT code 78268 crosswalked to CPT code 83013. Payment rates will be identical to the crosswalk codes.

Electronic Analysis of pacing cardioverter-defibrillator * * * without reprogramming (CPT code 93741)

The RUC recommended a work RVU of 0.90 for CPT code 93741. This recommendation was inconsistent with both the RUC survey data and with the building block approach that the RUC offered as an alternative. The reference procedure used in the RUC survey was CPT code 93737, Electronic analysis of cardioverter-defibrillator only * * * without reprogramming, that has a work RVU of 0.45. Our medical staff believes that the physician work for CPT code 93741 is greater than that of CPT code 93737, and notwithstanding the conflicting information received from the RUC, has assigned 0.64 work RVUs to CPT code 93741. This value is based on a building block approach combining 100 percent of CPT code 93737 and 50 percent of CPT code 93734, Electronic analysis of single chamber pacemaker system * * * without reprogramming which has a work RVU of 0.38.

Electronic analysis of pacing cardioverter-defibrillator * * * single chamber, with reprogramming (CPT code 93742)

The RUC recommended a work RVU of 1.03 based on their estimate that CPT code 93742 required 14 percent more work than CPT code 93741. This recommendation was inconsistent with both the results of the RUC survey and with their building block approach that combined 100 percent of CPT code 93738 (Electronic analysis of cardioverter/defibrillator only * * * with reprogramming, work RVU of 0.92) plus 50 percent of CPT code 93735 (Electronic analysis of single chamber pacemaker system * * * with reprogramming, work RVUs of 0.74). Our medical staff agrees that CPT code 93742 requires more physician work than CPT code 93741 because it includes reprogramming. After analysis of the conflicting information received from the RUC, we agree that CPT code 93742 requires 14 percent more work than CPT code 93741. Therefore, we have assigned 0.73 work RVUs to CPT code 93742.

Electronic analysis of pacing cardioverter-defibrillator * * * dual chamber, without reprogramming (CPT code 93743)

The RUC recommended 1.17 work RVUs for CPT code 93743 because of its estimate that CPT code 93743 required 30 percent more work than CPT code 93741. This recommendation was inconsistent with both the RUC survey data and its building block approach that combined 100 percent of CPT code 93738 with 50 percent of CPT code 93735. Our medical staff agrees that CPT code 93743 requires more work than CPT code 93741. After analysis of the conflicting information received from the RUC, we agree that CPT code 93743 requires 30 percent more work than CPT code 93741. Therefore, we have assigned 0.83 work RVUs to CPT code 93743.

Electronic analysis of pacing cardioverter-defibrillator * * * dual chamber, with reprogramming (CPT code 93744)

The RUC recommended 1.33 work RVUs for CPT code 93744 based on its estimate that CPT code 93744 required 14 percent more work than CPT code 93743. This recommendation was inconsistent with both the RUC survey data and its building block approach. After analysis of the information received from the RUC, our medical staff agrees that CPT code 93744 requires 14 percent more work than CPT code 93743. Therefore, we have assigned 0.95 work RVUs to CPT code 93744.

Photodynamic therapy by endoscopic application of light to ablate abnormal tissue via activation of photosensitive drug(s); first 30 minutes (CPT code 96570), and Photodynamic therapy by endoscopic application of light to ablate abnormal tissue via activation of photosensitive drug(s); each additional 15 minutes (CPT code 96571)

These CPT codes describe a procedure that is performed to ablate abnormal tissue during a bronchoscopy or upper gastrointestinal endoscopy. These procedures have been billed using CPT codes for ablation or destruction of tumors not amenable to other described methods of destruction during endoscopy. Our medical staff reviewed the work RVUs for the base endoscopic procedure codes and the procedure codes used for billing photodynamic therapy (CPT 31641, 43228, and 43258) and valued the work for the new CPT codes as the difference between the work RVU of the CPT code billed and the CPT value of the endo base. We also assumed a procedure time of 60 minutes and are valuing CPT code 96570 at 1.10 work RVUs and CPT 96571 at 0.55 work RVUs. We will not allow payment for other endoscopy procedures on the same date unless it is for a significant, separately identifiable service (for example, ablation of a separate lesion) and the claim contains the appropriate modifier.

Screening test of visual acuity (CPT code 99173)

We consider this procedure to be a screening procedure for which Medicare payment is not authorized. There are no work RVUs associated with CPT code 99173.

Critical Care, 1st hour (CPT code 99291), and Critical Care, each additional thirty minutes (CPT code 99292)

The definition of critical care in CPT 2000 has been revised and the RUC has forwarded a recommendation that the revised definition of critical care was editorial and did not warrant a change in work RVUs, which are 4.0 RVUs for code 99291 and 2.0 RVUs for CPT code 99292. Our medical staff disagrees. Therefore, in accordance with our policy of making work neutrality adjustments at the time a new or revised CPT code is published, we have made a work neutrality adjustment to these codes. We have assigned work values of 3.6 RVUs to CPT code 99291 and 1.8 RVUs to CPT code 99292 for the reasons set forth below.

We compared the work intensity (RVUs per hour) of critical care to other E/M services. The work intensity for each E/M service was calculated from the "typical" performance time in the CPT code descriptor. Initial and subsequent hospital visits have a work intensity of 2.56 RVUs per hour, initial inpatient consultations have a work intensity of 1.98 RVUs per hour, and initial/established office visits have a work intensity of 2.67 RVUs per hour. Similar E/M services have similar work intensities to ensure that the assigned RVU is not anomalous. This facilitates appropriate utilization, coding, and payment. The work intensity of critical care, 4.0 RVUs per hour, is considerably higher than the work intensity of other E/M services. This higher work intensity has been justified on the basis that critical care is significantly different from care described by other E/M services. These differences have been said to include the following:

- Critical care is provided to critically ill patients who, by definition, are more severely ill than other patients.
- The analysis of multiple and complex databases needed to care for critically ill patients is a highly work intensive process, clearly greater than that required to care for non-critically ill patients.
- The frequent application of advanced technology essential to the care of critically ill patients clearly requires more intense work than is needed for the care of other patients.
- CPT 2000 includes significant and substantive changes in the definition of critical care that directly affect the work intensity of critical care. Among these changes are:
- Deletion of the word "unstable" to describe critically ill or injured patients.
- Redefinition of a critical illness to say, "A critical illness or injury acutely impairs one or more vital organ systems such that the patient's survival is jeopardized."
- A change in the frequency for which the work of "extensive interpretation of multiple databases and the application of advanced technology" is required to meet the standards for critical care. CPT 1999 says that such work is "often required" while CPT 2000 says that such work "may be required."

As discussed below, the result of these new work requirements for critical care is to make it somewhat more comparable to the work requirements of E/M services with lower work intensities. In some situations this could allow E/M services with lower work intensities to be coded as critical care.

The new definition of critical illness or injury does not sufficiently distinguish critically ill patients from other patients whose care is appropriately described by other E/M services with less work intensity. For example, many patients with an acute exacerbation of congestive heart failure, regardless of severity, could meet the new definition of critical illness. The problem is compounded by the elimination of the requirement for "extensive interpretation of multiple databases and the application of advanced technology" as a typical component of critical care. This will make it more difficult to distinguish between the work of critical care and the work of care appropriately coded under other E/M services. For example, the physician work required to manage patients with congestive heart failure varies significantly depending on the severity of illness. The care provided to many of these patients would, appropriately, be coded as a non-critical care E/M service because of the lower intensity of physician work required.

In making the work neutrality adjustment we considered the work intensity of other E/M services as described above, and we modeled probable changes in the utilization pattern of critical care services. Our modeling included projections of the number of E/M services currently, and appropriately, coded as non-critical care that will be coded as critical care next year. Based upon this analysis, we estimate that the appropriate work neutrality adjustment for critical care services is 3.6 RVUs for code 99291 and 1.8 RVUs for code 99292.

We will analyze the utilization data for codes 99291 and 99292 and other appropriate E/M services starting in January 2000 to determine whether actual utilization patterns match our projections. Based on this analysis, we will consider making further work neutrality adjustments, either increasing or decreasing the work RVUs, as appropriate.

Note: Codes 99295 through 99298 were revised in CPT 2000. However, due to the different payment methodology for CPT codes 99295 through 99298, we are not proposing a work neutrality adjustment for these codes.

Establishment of Interim Practice Expense Relative Value Units for New and Revised Physicians' Current Procedural Terminology (CPT) Codes and New HCFA Common Procedure Coding System Codes for 2000 Methodology

We have developed a process for establishing interim practice expense RVUs (PERVUs) for new and revised codes that is similar to that used for work RVUs. Under this process, the RUC will recommend the practice expense direct inputs, that is, the staff time, supplies, and equipment associated with each new code. We will then review the recommendations in a manner similar to our evaluation of the recommended work RVUs. Because this is the first year that the RUC has been asked to develop the practice expense inputs for new CPT codes, and developing the practice expense inputs for new procedures is a complicated and time-consuming endeavor, the RUC recommended actual direct inputs for a minority of the new CPT codes. For the other procedures, the RUC either recommended a crosswalk to the inputs of an existing CPT code or made no recommendation at this time. For a few of the codes without a RUC recommendation, the interested specialty society sent us recommendations for possible crosswalks of the direct inputs. We will consider all direct cost input crosswalks to be a temporary proxy for the values for these crosswalked services until procedure-specific actual inputs can be developed.

The table below lists the new CPT codes for which we agree with the RUC recommended crosswalk to the practice expense inputs of an existing CPT code:

New CPT Code	Existing CPT Code
22318 Treat odontoid FX w/o graft	63075 Neck spine disk surgery.
22319 Treat odontoid FX w/ graft	22548 Neck spine Fusion.
27096 Inject sacroiliac joint	27093 Injection for hip X-ray.
35879 Revise graft w/ vein	35301 Rechanneling of artery.
35881 Revise graft w/ vein	35301 Rechanneling of artery.
50547 Lapro removal donor kidney	36830 Artery-vein graft.
62310 Inject spine C/T	56349 Esophagogastric fundoplasty.
62311 Inject spine L/S (CD)	62298 Injection into spinal canal.
62318 Inject spine w/ cath, C/T	62289 Injection into spinal canal.
62319 Inject spine w/ cath, L/S (CD)	62277 Inject spinal anesthetic.
64470 Injection paravertebral C/T	64442 Injection for nerve block.
64479 Injection foramen epidural C/T	64442 Injection for nerve block.
64483 Injection foramen epidural L/S	64442 Injection for nerve block.
64626 Destroy paravertebral nerve C/T	64622 Destroy paravertebral nerve L/S.
72275 Epidurography	72265 Contrast X-ray, lower spine.
73542 X-ray exam, sacroiliac joint	73525 Contrast X-ray of hip.
76005 Fluoroguide for spine injection	76003 Needle localization by X-ray.
77427 Radiation TX management, X5	77430 Weekly radiation therapy.

The following table shows the CPT codes for which the RUC provided no practice expense recommendations. Therefore, we crosswalked these new CPT codes to what we believe to be the most appropriate existing CPT codes.

New CPT Code	Existing CPT Code
11980 Implant hormone pellet(s)	11975 Insert contraceptive cap.
20979 US bone stimulation	20974 Electrical bone stimulation.
33140 Heart revascularize (TMR)	33020 Incision of heart sac.
33282 Implant pat-active HT record	33212 Insertion of pulse generator.
33284 Remove pat-active HT record	33233 Removal of pacemaker system.
33968 Remove aortic assist device	No direct costs.
36521 Apheresis w/ adsorp/reinfuse	36520 Plasma and/or cell exchange.
36550 Declot vascular device	99211 Office/outpatient visit, est.
61862 Implant neurostimu, subcort	61855 Implant neuroreceiver.
61886 Implant neurostim arrays	61855 Implant neuroreceiver.
92961 Cardioversion, electric, int	93610 Intra-atrial pacing.
93727 Analyze IRL system	93272 ECG/review, interpret only.
93741 Analyze HT pace device single	93737 Analyze cardio/defibrillator.
93742 Analyze HT pace device single	93738 Analyze cardio/defibrillator.
93743 Analyze HT pace device dual	93738 Analyze cardio/defibrillator.
93744 Analyze HT pace device dual	93738 Analyze cardio/defibrillator.
99170 Anogenital exam, child	57452 Examination of vagina.

For the following CPT codes we received practice expense recommendations, from either the RUC or a specialty society, that require a short discussion. If we have made any modifications to the recommendations as a result of our review process, the specific changes are discussed.

CPT Code 13102, Repair, complex, trunk; each additional 5 cm or less

CPT Code 13122, Repair, complex, scalp, arms and/or legs; each additional 5 cm or less

CPT Code 13133, Repair, complex, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and or feet; each additional 5 cm or less

CPT Code 13153, Repair, complex, eyelids, nose, ears and/or lips; each additional 5 cm or less

The RUC made no practice expense recommendations for these above four CPT codes. However, the American Society of Plastic and Reconstructive Surgeons recommended to us that we reference these CPT codes to the practice expense inputs for the respective parent codes (CPT codes 13101, 13121, 13132 and 13152, respectively) and that we make the appropriate adjustments to account for the fact that these are add-on codes. We have accepted this recommendation.

CPT Code 33410, Replacement, aortic valve, with cardiopulmonary bypass, with stentless tissue valve

The RUC made no recommendation on this CPT code. However, the Society of Thoracic Surgeons recommended that we crosswalk the direct inputs for this procedure to the direct inputs of CPT code 33406, Repacement, aortic valve, with cardiopulmonary bypass, with homograft valve (freehand). We agree that this is an appropriate crosswalk.

CPT Code 36819, Arteriovenous anastomosis, open; by basilic vein transposition

The RUC approved a list of inputs that had been developed with reference to the inputs for existing CPT code 36830 and recommended their acceptance. We agree with the list of inputs, but have adjusted the supplies and staff times to reflect that there are only two post-visits assigned to CPT code 36819.

CPT 39560, Resection, diaphragm; with simple repair

CPT 39561, Resection, diaphragm; with complex repair

The RUC made no recommendations on these CPT codes. However, the Society of Thoracic Surgeons recommended that we crosswalk the direct inputs for these procedures to the direct inputs of CPT codes 39501, Repair diaphragmatic laceration and 39502, Repair paraesophageal hiatus hernia, transabdominal, with or without fundoplasty, vagotomy, and/or phyloroplasty, except neonatal, respectively. We agree that these are appropriate crosswalks.

CPT Code 50541, Laparoscopy, surgical; ablation of renal cysts

CPT Code 50544, Laparoscopy, surgical; pyeloplasty

CPT Code 50546, Laparoscopy, surgical; nephrectomy

CPT Code 50548, Laparoscopically assisted nephroureretectomy

CPT Code 50945, Laparoscopy, surgical; ureterolithotomy

CPT Code 51990, Laparoscopy, surgical; urethral suspension for stress incontinence

CPT Code 51992, Laparoscopy, surgical; sling operation for stress incontinence

CPT Code 54692, Laparoscopy, surgical; ochiopexy for intra-abdominal testis

The RUC recommended direct practice expense inputs for each of the above CPT codes. We accepted these recommendations with only minor modification. We removed the autoclave from the overhead equipment because it is not needed for the post-procedure visits for these services and adjusted the supplies for CPT code 50544 to reflect that the service is assigned two rather than three office visits. We did not add the female catheter at this time to the list of supplies for CPT codes 51990 and 51992 because we had no information on this supply.

CPT Code 64472, Injection anesthetic agent and/or steroid, paravertebral facet joint or facet joint nerve; cervical or thoracic, each addition level

CPT Code 64480, Injection, anesthetic agent and/or steroid, transforaminal epidural; cervical or thoracic, each additional level

CPT Code 64484, Injection, anesthetic agent and/or steroid, transforaminal epidural; lumbar or sacral, each additional level

CPT Code 64627, Destruction by neurolytic agent, paravertebral facet joint nerve; cervical or thoracic, each additional level

The RUC sent us only suggested clinical staff intra-service times for these four add-on codes. These clinical staff times were derived by comparison to the RUC physician intra-service times. Because the clinical staff times and physician times are not always the same for a given service, we are, in the interim, crosswalking the practice expense inputs for CPT codes 64472, 64480, and 64484 to the direct inputs for a similar add-on code, CPT code 64443, Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, each additional level. We are crosswalking the practice expense inputs for CPT code 64627 to another appropriate add-on code, CPT code 64623, Destruction by neurolytic agent; paravertebral facet joint nerve, lumbar, each additional level.

CPT Code 76873, Echography, transrectal; prostate volume study for brachytherapy treatment planning

The RUC recommended a list of direct cost inputs for this CPT code. However, because these practice expense recommendations differed greatly from the CPEP inputs for other CPT codes in the same family, we, as an interim measure, crosswalked the practice expense inputs for this code to CPT code 76872, Echography, transrectal, which was used by the RUC as the reference CPT code for this service and was also the CPT code used formerly to report this procedure.

CPT Code 78456, Acute venous thrombosis imaging, peptide

We accepted the RUC recommended direct practice expense inputs except that we deleted forms and labels (considered office supplies from the medical supply list) and the dictation machine (considered office equipment). We have not included the bar phantom at this time because the data provided with the recommendation was insufficient to develop a cost for this equipment.

CPT Code 90471, Immunization administration; one vaccine

We accepted the RUC's practice expense recommendations concerning clinical labor, supplies, and equipment inputs with the following adjustments: office supplies, which included the record sheet, school record form and Xerox copy, were deleted from the medical supply list; the APAP elixir was also removed since Medicare does not include coverage of self-administered drugs. We deleted the examination table from the overhead equipment, because it is not needed for the procedure and, in keeping with the CPEP definitions of the equipment categories, moved the refrigerator from the procedure-specific to the overhead medical equipment category.

CPT Code 90472, Immunization administration; each additional vaccine

We accepted the RUC recommendation for clinical staff time and made the same adjustments to the RUC recommendation for supplies as we did for CPT code 90471. In addition, we deleted all equipment because this is an add-on CPT code and all equipment costs are captured in the base CPT code.

For the following CPT codes we did not receive practice expense recommendations from either the RUC or a specialty society and we were unable to do a direct crosswalk to existing CPT codes.

CPT Code 62263, Percutaneous lysis of epipdural adhesions, with or without endoscopic guidance, using solution injection or mechanical means including x-ray localization with or without contrast

We are crosswalking this service to CPT code 62282, Injection of neurolytic substance; epidural, lumbar or caudal, which is a service assigned three post-procedure visits. We are adjusting the inputs of CPT code 62263 to reflect the two post-procedure visits assigned to this procedure.

CPT Code 96570, Photodynamic therapy by endoscopic application of light to ablate abnormal tissue via activation of photsensitive drug(s); first 30 minutes, and CPT code 96571 Photodynamic therapy by endoscopic application of light to ablate abnormal tissue via activation of photsensitive drug(s); each additional 15 minutes.

These codes are add-on codes. That is, they will always be billed along with another procedure. Most of the direct practice expense inputs will be assigned to the base procedure. The inputs for 96570 and 96571 only reflect the additional inputs that are required. We have included an argon laser under equipment and 30 minutes of clinical staff intra-service time for CPT code 96570. For CPT code 95671, we included 15 minutes of clinical staff intra-service time. This is consistent with the discussion for these codes contained in the evaluation of the work RVUs.

C. Other Changes to the 2000 Physician Fee Schedule and Clarification of CPT Definitions

For the 2000 physician fee schedule, we are establishing or revising several alpha-numeric HCPCS codes for the reporting of certain services that are not clearly described by existing CPT codes. We view these codes as temporary since we will be referring them to the CPT Editorial Panel for possible inclusion in future editions of the CPT. Additionally, included in this section are some clarifications of proper usages of some new or revised codes.

External Counterpulsation (G0166)

A new level 2 HCPCS code has been created to describe this technology. External counterpulsation (ECP) consists of sequential compression and decompression of a series of leg and lower trunk air-filled cuffs, coordinated with the cardiac cycle. ECP has been approved for patients with severe stable angina pectoris refractory to medical and/or surgical treatment. An average course of treatment consists of 35, one-hour treatments over seven weeks. We determined that the procedure is performed by non-physician personnel, but requires a physician to be available for emergencies and intermittent physician supervision. Because of the minimal physician involvement we have assigned .07 work RVU to HCPCS code G0166.

We will not allow payment for the following services on the same day as ECP unless they are medically necessary and delivered in a clinical setting not involving ECP treatment:

- CPT code 97016 (vasopneumatic devices).
- CPT codes 93720, 93721, 93722 (total body plethysmography).
- CPT codes 93000, 93005, 93010 (electrocardiogram).
- CPT code 92971 (external cardioassist).
- CPT code 93922 (noninvasive physiologic studies of extremity arteries). If patients undergoing ECP require significant E/M services in the same period, those services should be billed using the appropriate E/M code with modifier –25 to indicate a significant separately identifiable service.

Interim practice expense direct cost inputs were established based on the information available to us concerning the cost of the machine, hours per week of use, registered nurse/technical time per use, disposable supplies, and overhead. Because this is a new procedure, information on practice expense was limited. Therefore, we expect to refine these inputs as more information becomes available.

Hyperbaric oxygen treatment not requiring physician attendance, per treatment session (G0167)

This code was created because the only current code for hyperbaric oxygen treatment is CPT code 99183. Because many providers have stated that physician attendance may not be needed for hyperbaric oxygen treatment, the new HCPCS code G0167 was created to allow coding of these services. The creation of a code does not change current coverage policy.

The physician work of this code is zero. The practice expense inputs were crosswalked to CPT code 99183, though we will consider a lower value in the future if we find that the practice expenses are lower in situations in which there is no physician attendance.

Wound closure utilizing tissue adhesives only (G0168)

This new code should only be used when a wound is closed solely with the use of this new product. Wounds closed with a combination of wound closure adhesives and other traditional methods of wound closure (staples or sutures) should still be coded using the appropriate CPT code (12001–12007). FDA data shows that the time needed to close a wound with wound adhesive is, on average, one quarter of the time needed to close a wound with traditional methods (including use of wound closure tapes). We estimate that the work of HCPCS code G0168 is comparable to the work of a level two E/M service and have assigned a work RVU of .45.

We established interim practice expense inputs for this service by crosswalking inputs from CPT code 12001. We then adjusted the inputs by adding the cost of the wound adhesive and removing the supplies that would not be needed for this type of wound closure. We also reduced the clinical staff time to reflect that the wound size is less complex and treatment method less time consuming.

Removal of devitalized tissue, without use of anesthesia (G0169)

This code was created because the CPT codes 11040 through 11044 for debridement were created to describe complex surgical services requiring the use of general anesthesia. Many practitioners, including physical therapists, occupational therapists, and nurses, do active wound care under physicians' orders. Active care involves the use of high pressure water jets, scissors, or scalpels. Wound care involving use of dressings, gauze, or medications, but not active tissue removal, should not be coded using HCPCS code G0169. The service to be coded with HCPCS code G0169 typically involves regular removal of devitalized tissues in ulcers or non-healing wounds. We have created this code to eliminate the confusion involved in using debridement codes, some of which have 10 day global periods. This code will be recognized as a therapy service for purposes of the outpatient rehabilitation payment system and will replace the CPT codes 11040 and 11044 for use by physical and occupational therapists.

We estimate that the work of HCPCS code G0169 is comparable to the work of CPT code 11040; therefore, we have assigned 0.5 work RVUs to this new code. For the practice expense component, we crosswalked the inputs for this code to the inputs for CPT code 97022, whirlpool therapy.

Application of tissue cultured skin grafts, including bilaminate skin substitutes or neodermis, including site preparation, initial 25 sq cm; and G0171 Application of tissue cultured skin grafts, including bilaminate skin substitutes or neodermis, including site preparation, each additional 25 sq cm (G0170)

CPT 1999 recommended that CPT codes 15100 to 15121, for split-thickness skin grafting, be used for tissue cultured or bilaminate skin substitutes or neodermis. Instead, we have decided that effective January 1, 2000, these services should be reported with the new HCPCS codes G0170 and G0171 on Medicare claims. The CPT codes for split-thickness skin grafts may no longer be used to describe tissue cultured or bilaminate skin substitutes or neodermis. Because the tissue cultured and "bioengineered" products are available for use on small skin ulcers, and because there is no need to harvest a graft and care for the donor site, we estimate that the physician work in using these cultures and "bioengineered" products is considerably less than the work in performing split-thickness skin grafts. The work value for the new codes was calculated with a building block approach using CPT code 15000 (skin graft with work value of 4.00) and either CPT code 15350 (skin homograft with work value of 4.00) or CPT code 15400 (skin heterograft with work value of 4.00).

The work in preparing a graft site and placing a graft equals the work of CPT code 15000 plus 50 percent of the work of either CPT code 15350 or 15400, due to the multiple procedure reduction rule. Since the work values for CPT codes 15000, 15350, and 15400 are based upon graft site preparation and placement of a 100 sq. cm. graft or less, and HCPCS G0170 describes a graft size of 25 cm or less, the work value for HCPCS code G0170 is 25 percent of the work value of CPT code 15000 (4.00) plus 50 percent of CPT code 15350 or 15400 (2.00). This results in a work RVU of 1.5 (25 percent of 6.00). The work RVU for HCPCS code G0171 was calculated similarly using CPT codes 15001 (skin graft add-on with work value of 1.00) and 15351 (skin homograft add-on with a work value of 1.00) resulting in a work RVU of .38 for HCPCS code G0171.

We calculated the practice expense inputs for HCPCS code G0170 by crosswalking the supply and overhead equipment inputs from CPT 15350. We added a power table and soft tissue tray as the procedure-specific equipment inputs and added 80 minutes of RN/MA clinical time in the intra service period. For HCPCS code G0171 we added 20 minutes of RN/MA clinical time in the intra service period.

IV. Five Year Refinement of Relative Value Units

A. Background

Section 1848(c)(2)(B)(i) of the Act requires that we review all RVUs no less often than every five years. As part of the final rule published December 8, 1994 (59 FR 63410), we solicited public comment on all work RVUs for approximately 7,000 CPT and HCPCS codes. The scope of the 5-year review was limited to work values, since at that time, the law required practice expense and malpractice RVUs be calculated based on 1991 allowed charges and practice expense and malpractice expense shares for the specialties performing the services. We applied the specialty practice cost shares from the AMA's Socioeconomic Survey to 1989 actual charges "aged" forward to approximate 1991 charges. In addition, we were aware of the move to replace the charge-based practice expense system by a resource-based methodology. The December 8, 1994 final rules also outlined the proposed process for refinement of the work RVUs and provided a suggested format for submission of comments.

As a result of the December 8, 1994 final rule, we received more than 500 comments on approximately 1,100 codes. Subsequent to review of the comments by our medical staff, comments on approximately 700 codes were forwarded to the RUC for review. An additional 300 codes identified by our staff as potentially misvalued were also forwarded to the RUC. A process similar to that used for the annual physician fee schedule update was used for evaluating the proposed changes to the work RVUs and a notice discussing these proposed changes was published in the **Federal Register** May 3, 1996 (61 FR 19992). As outlined in the notice, for 28 percent of the codes we proposed to increase the work RVUs; for 61 percent of the codes we proposed to maintain the work RVUs and for 11 percent of the codes we proposed to decrease the work RVUs. (Our proposed work RVUs agreed with the RUC recommendations for 93 percent of the codes.)

In response to the May 3, 1996 proposed notice, we received more than 2,900 comments on approximately 133 codes plus all anesthesia services. In order to address these comments, we convened multispecialty panels of physicians. A detailed discussion of this process, as well as the final results of the 5-year review, were included in the final rule with comment period published November 22, 1996 (61 FR 59490).

B. Scope of the Five Year Refinement

We have made several preliminary decisions about the scope of the 5-year refinement and issues for which we are requesting public comment. All work RVUs are subject to comment. Practice expense and malpractice expense RVUs will not be subject to comment and will not be recalculated as part of the 5-year refinement.

Section 4505(f) of the BBA requires us to implement malpractice resource-based RVUs for services furnished beginning in CY 2000. The BBA at section 4505 also provides for a gradual 4-year transition for resource-based practice expenses, with resource-based practice expenses becoming fully effective in CY 2002. Since resource-based malpractice RVUs will have only just been implemented in CY 2000, and resource-based practice expenses will be in the middle of transitioning to a fully resource-based system, it would be premature to include these components in this 5-year review. While these components of the fee schedule will also eventually be subject to review, we will be evaluating how to best approach this task.

C. Refinement of Work Relative Value Units

During the first 5-year review, we relied on public commenters to identify services that were misvalued. For the second 5-year refinement of work RVUs for services furnished beginning January 1, 2002, we are requesting public comments on potentially misvalued work RVUs for all services in the CY 2000 physician fee schedule. These comments will be an important source of information that we will consider in developing further plans for the 5-year review which we will propose in 2001. However, since this process generally elicits comments focusing on undervalued codes, we will supplement the information we receive through these comments with other data and analyses we are initiating, as described in section IV.E.

Comments will be considered if we receive them at the appropriate address as provided below, no later than 5 p.m., March 1, 2000. Mail written comments related to the 5-year refinement process (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1065–FC (5-Year Refinement), P.O. Box 8013, Baltimore, MD 21244–8013. Comments must include the appropriate CPT code (for example CPT code 90918) and the suggested RVUs (for example, 11.00 RVUs). Unless otherwise specified, we will assume that all suggested RVUs are on the 2000 scale. Failure to provide this information may result in our inability to evaluate the comments adequately. We will consider all comments on all work RVUs in the development of a proposed rule that we intend to publish in 2001. In that rule, we will propose the revisions to work RVUs that we believe need to be made. Finalization of that rule will be based on review and analysis of comments received in response to the proposed rule.

In addition to internal review and analysis, we propose to share comments we receive on all CY 2000 RVUs with the RUC, which currently makes recommendations to us on the assignment of RVUs to new and revised CPT codes. This process was used during the first 5-year review and we believe that it was beneficial. The RUC's perspective will be helpful because of its experience in recommending RVUs for the codes that have been added to, or revised by, the CPT panel since we implemented the physician fee schedule in 1992. Furthermore, the RUC, by virtue of its multispecialty membership and consultation with approximately 65 specialty societies, involves the medical community in the refinement process. We emphasize, however, as we reiterated for the first 5-year review, that we retain the responsibility for analyzing the comments in the 2000 physician fee schedule, developing the proposed rule for 2001, evaluating the comments on the proposed rule, and deciding whether to revise RVUs. We are not delegating this responsibility to the RUC or any other organization.

D. Nature and Format of Comments on Work Relative Value Units

While all written public comments are welcomed, based on our past experience we have found it particularly beneficial if the comments include information in a particular format. This includes the CPT code, a clinical description of the service, and a discussion of how the work of that service is analogous to one or more reference services. The use of one or more reference services is of fundamental importance because the relative value of the work in a physicians' service exists only in comparison with the physician work in another service.

The reference services cited should be commonly performed services with established work RVUs and also fairly well understood outside of their specialty. We have included a list of suggested reference services in Addendum E. The RVUs assigned to these services represent benchmarks to serve as a basis for comparison with the work represented by other codes. However, the inclusion of these services in the reference set does not mean that they are exempted from public comment on the RVUs assigned to them. If none of the services in the reference set are suitable for reference, we recommend choosing another service from the physician fee schedule and explaining why it is a better reference procedure.

Physician work has two components; time and intensity. The clinical analogy for many services can be strengthened by dividing the service into the following three time segments and comparing them with the respective segments of the reference services:

- Preservice work—Work performed before the actual procedure such as review of records, solicitation of informed consent, and preparation of equipment. Time spent by the physician dressing, scrubbing, and waiting for the patient should be identified. Preservice work also includes the time spent scrubbing, positioning, or otherwise preparing the patient. For surgical procedures with global periods, commenters should include estimates of the number, time, and type of visits from the day before surgery until the patient enters the operating room. The visit when the physician decides to operate and the visits preceding it should not be included in the estimate of preservice work since these services are not included in the Medicare definition of global period.
- Intraservice work—The actual performance of the procedure. For evaluation and management services, this would be described as "face to face" time in the inpatient setting. For surgical procedures, the customary term would be "skin-to-skin" or its equivalent for those procedures not beginning with incisions.
- Postservice work—Analysis of data collected from the encounter, preparation of a report, and communication of the results. For procedures with global periods, commenters should identify the time spent by the physician with the patient after the procedure on the same day and whether the patient typically goes home to an ordinary hospital bed or to the intensive care unit. Commenters should describe the number, time, and type of physician visits from the day after the procedure until the end of the global period. They should also distinguish inpatient from outpatient visits.

In making these estimations, we encourage detailed clinical information such as data derived from operating logs, operative reports, medical charts concerning the length of service, the amount of work performed before and after the service, and the length of stay in the hospital. The usefulness of these data is greatly increased if the data are presented with comparable data for reference services and evidence that justifies that the data presented are nationally representative of the average work involved in furnishing the service. One common mistake commenters make is to provide data that are not representative of national practices. Another common mistake is to present a lengthy and elaborate description of the work in the service, but to omit, or to provide an incomplete description of, the comparability of the work in the service to the work in the reference procedure or procedures identified.

Intensity of the work in the service is best compared by breaking the intensity into the following elements:

- Mental effort and judgment—Commenters should compare the service in question with a reference service as to the amount of clinical data that needs to be considered, the fund of knowledge required, the range of possible decisions, the number of factors considered in making a decision, and the degree of complexity of the interaction of these factors.
- Technical skill and physical effort—One useful measure of skill is the point in training when a resident is expected to be able to perform the procedure. Physical effort can be compared by dividing services into tasks and making the direct comparisons of tasks. In making the comparison, it is necessary to show that the differences in physician effort are not reflected accurately by differences in the time involved; if they are, considerations of physician effort amount to double counting of physician work in the service.
- Psychological stress—Two kinds of psychological stress are usually associated with physician work. The first is the pressure involved when the outcome is heavily dependent upon skill and judgment and a mistake has serious consequences. The second is related to unpleasant conditions connected with the work that are not affected by skill or judgment. These circumstances would include situations with high rates of mortality or morbidity regardless of the physician's skill or judgment, difficult patients or families, or physician physical discomfort. Of the two forms of stress, only the former is fully accepted as an aspect of work; many consider the latter to be a highly variable function of physician personality.

Intensity often varies significantly in the course of furnishing a service. One common mistake commenters make is to "anchor" the value of the service to a point of maximum intensity during the service as the basis for comparing services. It is unlikely that the maximum intensity is an accurate reflection of the average intensity of a service; a lengthy procedure that is simple except for a few moments of extreme intensity is probably less work than one of equal length during which a fairly high level of intensity is maintained throughout.

E. New Initiatives

While we intend to continue the process used during the first 5-year review, we realize there were limitations to that process, particularly with respect to identifying overvalued codes.

In preparation for the second 5-year review of work RVUs, we awarded a contract to Health Economic Research (HER) to obtain technical assistance to establish a framework for the second 5-year review. We were interested in identifying methods by which we could identify CPT codes in the physician fee schedule that may have been assigned inappropriate work RVUs and also identify services whose work RVUs may have changed since they were originally developed or last revised.

HER identified seven methods that we could potentially use to identify misvalued services. These methods focus upon different components of the work RVU: Total work; time components of total work; that is, total service time, pre- and intra-service time, and post-operative visits; and work per unit of time. They include:

1. *Clinical Panels.* The use of clinical panels to evaluate total physician work. The panels could identify within clinical family rank order anomalies and cross-specialty anomalies in similar services and recalibrate reference set procedures.
2. *Rasch Paired Comparison Method.* This method identifies misvalued CPT codes in terms of either total or intra-

service work based on a small-group panel comparison of codes within clinical families. This method could be used to identify statistical outliers that appear to be either misaligned or compressed in terms of overall physician work effort employing a simpler approach than magnitude estimation.

3. *Clinical Profile.* Use a physician-level-clinical profile database that includes estimates of total available clinical time, as well as estimates of total volume of services provided during that time period at the CPT code level. This method would use objectively collected volume of service estimates and current work RVU time estimates to evaluate the reasonableness of total service time estimates relative to estimates of available service time.

4. *Alternative Data Sources.* Four alternative objective data sources could be used in the direct identification of services whose intra-service times may be misvalued: Anesthesia time estimates from Medicare claims data, operative times obtained from a data vendor, operative times collected from a panel of hospitals, and intra-service times collected through direct observation.

5. *Claims Data: Focused Review.* Use Medicare claims data to identify services whose number of pre- and post-operative hospital visits provided during the global surgical period may be misvalued given current lengths of stay and proportion of same day surgery cases.

6. *Claims Data: Over Time.* Use Medicare claims data to identify services with potentially misvalued work RVUs by analyzing changes over time in site of service, frequency, and specialty mix.

7. *Direct Comparison.* Identify services with potentially misvalued work RVUs through a direct comparison of work per unit of time (WPUT). This method would use statistical analysis to identify those services with a WPUT estimate that differs significantly from the typical value for a group of services expected to have similar levels of WPUT.

In their report, HER also suggested that we: establish a set of standard data collection methods and review procedures and review and correct flaws in the annual review process.

(**Note:** The contents of this report can be accessed through our homepage, as discussed earlier.)

We are incorporating some of the approaches identified by our contractor, and are also considering other means of identifying misvalued services.

We recently awarded a contract to HER to examine in more detail secondary databases that will enable us to validate RUC and Harvard physician time data. Three databases will be examined: D.J. Sullivan intraoperative time data, outpatient and ambulatory care survey data obtained by the National Center for Health Statistics, and MGMA group practice data on total clinical time and services.

We are also attempting to identify other primary and secondary databases that have the potential for identifying misvalued services. We would welcome any comments on the existence and usefulness of such databases, as well as comments on other methodologies that might assist us in determining how to identify misvalued services.

V. Physician Fee Schedule Update and Conversion Factor for Calendar Year 2000

The 2000 physician fee schedule conversion factor is $36.6137. The 2000 anesthesia conversion factor is $17.77.

The specific calculations to determine the conversion factor for physicians' services for calendar year 2000 are explained below.

Detail on Calculation of the Calendar Year 2000 Physician Fee Schedule Update and the 2000 Conversion Factor

Physician Fee Schedule Update and Conversion Factor

The conversion factor is affected by section 1848(c)(2)(B)(ii)(II) of the Act, which requires that changes to the relative value units of the Medicare physician fee schedule not cause expenditures to increase or decrease by more than $20 million from the amount of expenditures that would have been made if such adjustments had not been made. We implement this requirement through a uniform budget-neutrality adjustment to the conversion factor.

Taking this factor into account, as well as the percent change in the MEI and Sustainable Growth Rate (SGR) adjustments described below, the 2000 conversion factor is calculated as follows:

1999 Conversion Factor	34.7315
2000 Update	1.05472
Volume and Intensity Adjustment	0.9988
Other Factors	1.0007
2000 Conversion Factor	36.6137

The 5.5 (1.05472) percent 2000 update is calculated as follows:

MEI	2.4%
SGR adjustment	3.0%
2000 Update	5.5%

Under section 1848(d)(3) of the Act, the update is equal to the product of the MEI and the performance adjustment factor (or SGR adjustment). Thus, the MEI of 2.4 percent (or 1.024) and the SGR adjustment of 3.0 percent (1.03) are multiplied together to produce the 2000 update of 5.5 percent (1.05472).

There is another adjustment of 1.0007 to the conversion factor to reflect that Medicare will no longer provide separate payment for pulse oximetry, temperature gradient studies and venous pressure determinations. Payment for these codes is bundled into payment for other services. Consistent with our proposed rule (64 FR 39638), savings from this provision are recognized in the budget neutrality calculation on the physician fee schedule conversion factor.

The MEI and the SGR adjustments are described below.

The Percentage Change in the Medicare Economic Index

The MEI measures the weighted-average annual price change for various inputs needed to produce physicians' services. The MEI is a fixed-weight input price index, with an adjustment for the change in economy-wide labor productivity. This index, which has 1996 base weights, is comprised of two broad categories: physician's own time and physician's practice expense.

The physician's own time component represents the net income portion of business receipts and primarily reflects the input of the physician's own time into the production of physicians' services in physicians' offices. This category consists of two subcomponents: wages and salaries and fringe benefits. These components are adjusted by the 10-year moving average annual percent change in output per man-hour for the nonfarm business sector to eliminate double counting for productivity growth in physicians' offices and the general economy.

The physician's practice expense category represents the rate of price growth in nonphysician inputs to the production of services in physicians' offices. This category consists of wages and salaries and fringe benefits for nonphysician staff and other nonlabor inputs. Like physician's own time, the nonphysician staff categories are adjusted for productivity using the 10-year moving average annual percent change in output per man-hour for the nonfarm business sector. The physician's practice expense component also includes the following categories of nonlabor inputs: office expense, medical materials and supplies, professional liability insurance, medical equipment, professional car, and other expense. The table below presents a listing of the MEI cost categories with associated weights and percent changes for price proxies for the 2000 update. The calendar year 2000 MEI is 2.4 percent.

INCREASE IN THE MEDICARE ECONOMIC INDEX UPDATE FOR CALENDAR YEAR 2000[1]

Cost Categories and Price Measures	1996 Weights[2]	CY 2000 Percent Changes
Medicare Economic Index Total	100.0	2.4
1. Physician's Own Time[3,4]	54.5	2.3
a. Wages and Salaries: Average hourly earnings private nonfarm, net of productivity	44.2	2.5
b. Fringe Benefits: Employment Cost Index, benefits, private nonfarm, net of productivity	10.3	1.2
2. Physician's Practice Expense[3]	45.5	2.5
a. Nonphysician Employee Compensation	16.8	2.2
1. Wages and Salaries: Employment Cost Index, wages and salaries, weighted by occupation, net of productivity	12.4	2.5
2. Fringe Benefits: Employment Cost Index, fringe benefits, white collar, net of productivity	4.4	1.5
b. Office Expense: Consumer Price Index for Urban Consumers (CPI–U), housing	11.6	2.3
c. Medical Materials and Supplies: Producer Price Index (PPI), ethical drugs/PPI, surgical appliances and supplies/CPI–U, medical equipment and supplies (equally weighted)	4.5	5.5
d. Professional Liability Insurance: HCFA professional liability insurance survey[5]	3.2	3.9
e. Medical Equipment: PPI, medical instruments and equipment	1.9	−0.5
f. Other Professional Expense	7.6	1.7
1. Professional Car: CPI–U, private transportation	1.3	−1.1
2. Other: CPI–U, all items less food and energy	6.3	2.3
Addendum:		
Productivity: 10-year moving average of output per man-hour, nonfarm business sector	n/a	1.2
Physician's Own Time, not productivity adjusted	54.5	3.5
Wages and salaries, not productivity adjusted	44.2	3.8
Fringe benefits, not productivity adjusted	10.3	2.4
Nonphysician Employee Compensation, not productivity adjusted	16.8	3.5
Wages and salaries, not productivity adjusted	12.4	3.7
Fringe benefits, not productivity adjusted	4.4	2.7

[1] The rates of historical change are for the 12-month period ending June 30, 1999, which is the period used for computing the calendar year 2000 update. The price proxy values are based upon the latest available Bureau of Labor Statistics data as of September 21, 1999.

[2] The weights shown for the MEI components are the 1996 base-year weights, which may not sum to subtotals or totals because of rounding. The MEI is a fixed-weight, Laspeyres-type input price index whose category weights indicate the distribution of expenditures among the inputs to physicians' services for calendar year 1996. To determine the MEI level for a given year, the price proxy level for each component is multiplied by its 1996 weight. The sum of these products (weights multiplied by the price index levels) over all cost categories yields the composite MEI level for a given year. The annual percent change in the MEI levels is an estimate of price change over time for a fixed market basket of inputs to physicians' services.

[3] The Physician's Own Time and Nonphysician Employee Compensation category price measures include an adjustment for productivity. The price measure for each category is divided by the 10-year moving average of output per man-hour in the nonfarm business sector. For example, the fringe benefit component of Physician's Own Time is calculated by dividing the rate of growth in the employment cost index for benefits of private nonfarm workers by the 10-year moving average rate of growth of output per man-hour for the nonfarm business sector. Dividing one plus the decimal form of the percent change in the average hourly earnings (1+.024=1.024) by one plus the decimal form of the percent change in the 10-year moving average of labor productivity (1+.012=1.012) equals one plus the change in average hourly earnings net of the change in output per man hour (1.024/1.012=1.012). All Physician's Own Time and Nonphysician Employee Compensation categories are adjusted in this way. Due to a higher level of precision the computer calculated quotient may differ from the quotient calculated from rounded individual percent changes.

[4] The average hourly earnings proxy, the Employment Cost Index proxies, as well as the CPI–U, housing and CPI–U, private transportation are published in the Current Labor Statistics Section of the Bureau of Labor Statistics' Monthly Labor Review. The remaining CPIs and PPIs in the revised index can be obtained from the Bureau of Labor Statistics' CPI Detailed Report or Producer Price Indexes.

[5] Derived from a HCFA survey of several major insurers (the latest available historical percent change data are for the period ending second quarter of 1999).

n/a Productivity is factored into the MEI compensation categories as an adjustment to the price variables; therefore, no explicit weight exists for productivity in the MEI.

Medicare Performance Relative to the SGR

Medicare Sustainable Growth Rate

Section 1848(f) of the Act, as amended by section 4503 of the BBA, replaces the volume performance standard with a sustainable growth rate (SGR) standard. It specifies the formula for establishing yearly SGR targets for physicians' services under Medicare. The use of SGR targets is intended to control the actual growth in Medicare expenditures for physicians' services.

The SGR targets are not limits on expenditures. Payments for services are not withheld if the SGR target is exceeded. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3)(A) of the Act, is adjusted to reflect the success or failure in meeting the SGR target.

As provided in section 4502 of the BBA, the update to the conversion factor is adjusted based on a comparison of actual expenditure to the SGR. The law refers to this update as the update adjustment factor. The amended section 1848(d)(3) of the Act now states that "the 'update adjustment factor' for a year is equal (as estimated by the Secretary) to—

(i) the difference between (I) the sum of the allowed expenditures for physicians' services (as determined under subparagraph (C)) for the period beginning April 1, 1997, and ending on March 31 of the year involved, and (II) the amount of actual expenditures for physicians' services furnished during the period beginning April 1, 1997, and ending on March 31 of the preceding year; divided by

(ii) the actual expenditures for physicians' services for the 12-month period ending on March 31 of the preceding year, increased by the sustainable growth rate under subsection (f) for the fiscal year which begins during such 12-month period.''

The result is a 3.0 percent adjustment for 2000.

VI. Provisions of the Final Rule

The provisions of this final rule restate the provisions of the July 22, 1999, proposed rule except as noted elsewhere in this preamble. Following is a highlight of the changes made:

For our proposal relating to physician pathology services and independent laboratories (§ 415.130(c)), we have decided to adopt our proposal to pay only hospitals for the TC services furnished to its inpatients, but delay implementation until January 1, 2001, to allow independent laboratories and hospitals sufficient time to negotiate arrangements.

For our proposal relating to optometrist services, we are revising the regulations at § 410.23 (Limitations on services of an optometrist) to specify that Medicare Part B pays for services of a doctor of optometry, acting within the scope of his or her license, with respect to the provision of items or services described in section 1861(s) of the Act.

For our proposal relating to CPT modifier −25, we are making the following changes:

- We are proceeding to include procedures with a global period indicator of "XXX" in the application of the global surgery payment policy relating to the use of modifier −25.
- We will not, however, require the routine use of modifier −25 with all procedures having a global indicator of "XXX". Instead, we will identify specific codes if an E/M service is furnished with a specified code. To be billed for, it would need to be documented as being significant and separately identifiable and be reported with modifier −25.
- We will seek review of these codes from physician specialty societies, as well as those nonphysician practitioners who are authorized to bill Medicare on their own.
- Specific procedure codes for which the use of modifier −25 is required when a significant, separately identifiable E/M service is furnished and reported by the same physician or nonphysician practitioner will be included as edits in the Correct Coding Initiative edits.
- These edits will be implemented no earlier than October 1, 2000, and will continue to be added as appropriate on an ongoing basis.
- In the meantime, however, since modifiers are an inherent part of HCPCS, we urge all practitioners to familiarize themselves with them and to make it a practice to use them when applicable.

For our proposal relating to coverage of prostate cancer screening tests (§ 410.39) we are implementing the requirements as stated in the proposed rule. However, we are revising § 410.39(e)(1) to provide that payment "may not be made for a screening PSA blood test performed for a man age 50 or younger".

For our proposal to discontinue separate payment for pulse oximetry, temperature gradient studies, venous pressure determinations, and to list them in the physician fee schedule with a status code of "B" for "payment always bundled into payment for other services," we will bundle payment for these services starting in 2000 with the exception of 94762, which we will continue to pay separately when continuous overnight monitoring is medically necessary as a separate procedure.

VII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Regulatory Impact Analysis

We have examined the impacts of this final rule as required by Executive Order (EO) 12866, the Unfunded Mandates Reform Act (UMRA) (Public Law 104–4), the Regulatory Flexibility Act (RFA) (Public Law 96–354), and the Federalism Executive Order (EO) 13132.

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The changes in the Medicare physician fee schedule are, for the most part, budget neutral. This final rule conforms the regulations to new statutory benefits that exceed $100 million in Medicare spending. (See the estimated costs tables in sections IX. M. and IX. N.) Therefore, this final rule is considered to be a major rule as defined in Title 5, United States Code, Section 804(2).

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below these thresholds as well.

The RFA requires that we analyze regulatory options for small businesses and other small entities. We prepare a Regulatory Flexibility Analysis unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. The analysis must include a justification of why action is being taken, the kinds and number of small entities the rule affects, and an explanation of any meaningful options that achieve the objectives and lessen significant adverse economic impact on the small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

For purposes of the RFA, all physicians are considered to be small entities. There are about 700,000 physicians and other practitioners who receive Medicare payment under the physician fee schedule. We have prepared the following analysis which, together with the rest of this preamble, meets all four assessment requirements. It explains the rationale for and purpose of the rule, details the costs and benefits of the rule, analyzes alternatives, and presents the measures we considered to minimize the burden on small entities.

A. Resource-Based Malpractice Relative Value Units

As explained earlier in this preamble, the resource-based malpractice RVUs must be implemented in a budget-neutral manner. That is, the total fee schedule malpractice RVUs must be the same under the resource-based method as would have existed had the prior charge-based malpractice RVUs been retained. This means that increases in RVUs for some services will necessarily be offset by corresponding decreases in values for other services. Table 3 shows, by specialty, the estimated percentage changes in allowed charges for our proposed resource-based malpractice RVUs.

As Table 3 shows, the effects on payments are very modest and, in most cases, negligible. Of the 35 major payment specialties, 15 are estimated to experience payment increases, 19 are estimated to experience payment decreases, and 1 experiences no change. Only two specialties are estimated to experience increases of more than 1 percent, emergency medicine (2.6 percent) and nephrology (1.1 percent), with an estimated median payment increase of 0.3 percent among the specialties that receive an increase. Only three specialties are estimated to experience payment decreases of 1 percent or more cardiac surgery (−1.2 percent), orthopedic surgery (−1.1 percent), and thoracic surgery (−1.0 percent) with an estimated median payment decrease of −0.5 percent among the specialties which receive a decrease. These impacts are slightly different than those shown in the July 22 proposed rule because they reflect different case mix using 1998 rather than 1997 service frequencies; incorporate RVU changes made as a result of comments received on the NPRM; and reflect the final budget-neutrality adjustment calculated by our actuaries.

The impact of the changes on the total revenue (Medicare and non-Medicare) for a given specialty is less than the impact displayed in Table 3 since physicians furnish services to both Medicare and non-Medicare patients. The magnitude of the impact on Medicare payment for a specialty depends generally on the mix of services a physician in the specialty furnishes.

TABLE 3.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF THE RESOURCE BASED MALPRACTICE EXPENSE RELATIVE VALUE UNITS

[Percent change]

Specialty	Allowed charges (in billions)	Impact by specialty (percent)
ANESTHESIOLOGY	0.2	−0.6
CARDIAC SURGERY	0.3	−1.2
CARDIOLOGY	3.7	−0.1
CLINICS	1.4	0.2
DERMATOLOGY	1.2	0.0
EMERGENCY MEDICINE	0.8	2.6
FAMILY PRACTICE	3.0	0.3
GASTROENTEROLOGY	1.1	−0.4
GENERAL PRACTICE	1.0	0.4
GENERAL SURGERY	1.7	−0.2
HEMATOLOGY ONCOLOGY	0.6	0.2
INTERNAL MEDICINE	6.3	0.3
NEPHROLOGY	0.9	1.1
NEUROLOGY	0.8	0.3
NEUROSURGERY	0.3	0.5
OBSTETRICS/GYNECOLOGY	0.4	−0.6
OPHTHALMOLOGY	3.5	−0.5
ORTHOPEDIC SURGERY	2.0	−1.1
OTOLARYNGOLOGY	0.6	−0.3
PATHOLOGY	0.5	−0.6
PLASTIC SURGERY	0.2	−0.3
PSYCHIATRY	1.1	−0.2
PULMONARY	1.0	0.2
RADIATION ONCOLOGY	0.4	−0.5
RADIOLOGY	2.7	−0.6
RHEUMATOLOGY	0.3	0.3
THORACIC SURGERY	0.5	−1.0
UROLOGY	1.2	−0.1
VASCULAR SURGERY	0.3	−0.5
ALL OTHER PHYSICIAN	1.2	0.1
OTHERS:		
CHIROPRACTOR	0.4	0.6
NONPHYSICIAN PRACTITIONER	0.9	−0.4
OPTOMETRIST	0.4	0.4
PODIATRY	1.0	0.4
SUPPLIERS	0.4	−0.4

B. Resource-Based Practice Expense Relative Value Units

Revisions in resource-based practice expense RVUs for physicians' services are calculated to be budget neutral, that is, the total practice expense RVUs for calendar year 2000 are calculated to be the same as the total practice expense RVUs that we estimate would have occurred without the changes proposed in this regulation. This means that increases in practice expense RVUs for some services will necessarily be offset by corresponding decreases in values for other services.

Table 4, "Impact on Total Allowed Charges by Specialty of the Final Rule Practice Expense Changes" shows, by specialty, the estimated percent changes in allowed charges resulting from the practice expense proposals discussed earlier in this rule. This table shows the impact of changes in the year 2000, as well as 3-year impact from 2000 to 2002 on the fully implemented practice expense RVUs. In the year 2000, the practice expense RVUs are a blend of 50 percent of the charged-based RVU and 50 percent of the resource-based RVU. The year 2000 impact column shows the impact of changes in this rule relative to what payments would have been in 2000 had there been no changes from this rule. The column labeled 2000–2002 impact compares payments using the fully implemented RVUs published in the November 2, 1998 final rule (63 FR 58816) to the fully implemented RVUs reflecting changes included in this rule.

TABLE 4.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF FINAL RULE PRACTICE EXPENSE CHANGES

[Percent change]

Specialty	Allowed charges (in billions)	Year 2000 impact (percent)	2000–2002 impact (percent)
ANESTHESIOLOGY	1.6	−3	−9
CARDIAC SURGERY	0.3	−2	−6
CARDIOLOGY	3.7	−1	−3
CLINICS	1.4	0	−1
DERMATOLOGY	1.2	0	0
EMERGENCY MEDICINE	0.8	−1	−2
FAMILY PRACTICE	3.0	0	1
GASTROENTEROLOGY	1.1	−1	−4
GENERAL PRACTICE	1.0	0	1
GENERAL SURGERY	1.8	0	−1
HEMATOLOGY ONCOLOGY	0.6	0	0
INTERNAL MEDICINE	6.3	0	0
NEPHROLOGY	0.9	0	1
NEUROLOGY	0.8	0	0
NEUROSURGERY	0.3	0	−1
OBSTETRICS/GYNECOLOGY	0.4	1	2
OPHTHALMOLOGY	3.5	1	2
ORTHOPEDIC SURGERY	2.0	0	1
OTHER PHYSICIAN	1.2	−1	−2
OTOLARYNGOLOGY	0.6	1	2
PATHOLOGY	0.5	3	9
PLASTIC SURGERY	0.2	1	2
PSYCHIATRY	1.1	0	−1
PULMONARY	1.0	−1	−2
RADIATION ONCOLOGY	0.6	0	0
RADIOLOGY	2.8	−1	−2
RHEUMATOLOGY	0.3	1	4
THORACIC SURGERY	0.5	−2	−5
UROLOGY	1.2	0	1
VASCULAR SURGERY	0.3	0	−1
OTHERS:		0	0
CHIROPRACTOR	0.4	0	0
NONPHYSICIAN PRACTITIONER	0.9	0	0
OPTOMETRIST	0.4	2	5
PODIATRY	1.0	1	2
SUPPLIERS	0.4	6	18

Table 5 shows the impacts we displayed in the proposed rule published on July 22, 1999 for practice expense only and the corresponding impacts which result from this final rule. This table shows only the fully implemented fee schedule impact, not the year 2000 impact incorporating the transition. There are two factors that explain the difference between the proposed rule and final rule impact statements. In the proposed rule, we indicated that we were considering removing some services from the zero physician work RVU pool. We did not include the effect of that policy change in the proposed rule impact statement. That change is now included in the "Final Rule" column. The zero work RVU change affects specialties which perform the technical portion of diagnostic tests. We are also using a higher practice expense per hour for thoracic and cardiac surgery in order to establish the SMS specialty practice expense pools. This change affects only these two specialties. Both of these changes are discussed in more detail earlier in the preamble to this final rule.

TABLE 5.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF PRACTICE EXPENSE CHANGES ONLY 7/22/1999 PROPOSED RULE AND THIS FINAL RULE

Specialty	Allowed charges (billions)	Proposed rule impact (percent)	Final rule impact (percent)
ANESTHESIOLOGY	1.6	-8	-9
CARDIAC SURGERY	0.3	-8	-6
CARDIOLOGY	3.7	-2	-3
CLINICS	1.4	-1	-1
DERMATOLOGY	1.2	2	0
EMERGENCY MEDICINE	0.8	-1	-2
FAMILY PRACTICE	3.0	2	1
GASTROENTEROLOGY	1.1	-2	-4
GENERAL PRACTICE	1.0	2	1
GENERAL SURGERY	1.8	0	-1
HEMATOLOGY ONCOLOGY	0.6	1	0
INTERNAL MEDICINE	6.3	0	0
NEPHROLOGY	0.9	0	1
NEUROLOGY	0.8	1	0
NEUROSURGERY	0.3	1	-1
OBSTETRICS/GYNECOLOGY	0.4	3	2
OPHTHALMOLOGY	3.5	1	2
ORTHOPEDIC SURGERY	2.0	3	1
OTHER PHYSICIAN	1.2	0	-2
OTOLARYNGOLOGY	0.6	2	2
PATHOLOGY	0.5	2	9
PLASTIC SURGERY	0.2	1	2
PSYCHIATRY	1.1	-1	-1
PULMONARY	1.0	-2	-2
RADIATION ONCOLOGY	0.6	0	0
RADIOLOGY	2.8	0	-2
RHEUMATOLOGY	0.3	5	4
THORACIC SURGERY	0.5	-6	-5
UROLOGY	1.2	2	1
VASCULAR SURGERY	0.3	0	-1
OTHERS:			
CHIROPRACTOR	0.4	0	0
NONPHYSICIAN PRACTITIONER	0.9	2	0
OPTOMETRIST	0.4	2	5
PODIATRY	1.0	2	2
SUPPLIERS	0.4	1	18

Table 6 shows the percentage change in total payment (in 2000 physician fee schedule dollars) for selected high-volume procedures that result from the change in payment related to the changes in practice expense and malpractice RVUs contained in this final rule. These tables reflect the impact of *this final rule only* on the fully implemented fee schedule amount. The payments in these columns are determined using a conversion factor of $36.6137. The RVUs used for calculating payments in the "old" columns are from the **Federal Register** published on November 2, 1998, The RVUs used in calculating payments in the "new" columns are from this final rule. By using the conversion factor of $36.6137 to calculate payments in both the "old" and "new" columns, the impact of changes in practice expense and malpractice expense RVU are illustrated. These tables do not show the actual impact on payment from 1999 to 2000 because they do not incorporate the effect of the transition or physician fee schedule update. In general, payments for services in the facility setting, including evaluation and management services, are declining due to our policy to exclude costs associated with bringing clinical staff to the facility setting. Payment for a tissue exam by a pathologist (CPT 88305) is increasing due to our proposal to remove the service from the zero work pool. The increase in value for the technical portion of the services causes a corresponding increase in the global service.

TABLE 6.—TOTAL PAYMENT FOR SELECTED PROCEDURES

Code	Mod	Description	Old non-facility	New non-facility	Percent change	Old facility	New facility	Percent change
11721	....	Debride nail, 6 or more	$ 39.18	$ 39.18	0%	34.43	$ 28.56	-17
17000	....	Destroy benign/premal lesion	49.43	60.41	22	32.24	32.95	2
27130	....	Total hip replacement	NA	NA	NA	1,435.23	1,395.71	-3
27236	....	Treat thigh fracture	NA	NA	NA	1,118.73	1,065.82	-5
27244	....	Treat thigh fracture	NA	NA	NA	1,133.38	1,085.96	-4
27447	....	Total knee replacement	NA	NA	NA	1,500.43	1,460.52	-3
33533	....	CABG, arterial, single	NA	NA	NA	1,940.01	1,829.59	-6
35301	....	Rechanneling of artery	NA	NA	NA	1,124.23	1,133.93	1
43239	....	Upper GI endoscopy, biopsy	272.41	247.14	-9	147.63	139.13	-6
45385	....	Lesion removal colonoscopy	413.00	462.80	12	292.69	275.70	-6

TABLE 6.—TOTAL PAYMENT FOR SELECTED PROCEDURES—Continued

Code	Mod	Description	Old non-facility	New non-facility	Percent change	Old facility	New facility	Percent change
66821	....	After cataract laser surgery	201.74	196.98	−2	191.58	170.99	−11
66984	....	Remove cataract/insert lens	NA	NA	NA	700.03	654.65	−6
67210	....	Treatment of retinal lesion	593.87	602.66	1	545.08	550.67	1
71010	26	Chest x-ray	8.79	8.79	0	8.79	8.79	0
71020	....	Chest x-ray	35.15	34.42	−2	35.17	34.42	−2
71020	26	Chest x-ray	10.62	10.62	0	10.62	10.62	0
77430	....	Weekly radiation therapy	180.14	187.83	4	180.23	187.83	4
78465	....	Heart image (3d), multiple	542.25	527.24	−3	542.52	527.24	−3
88305	....	Tissue exam by pathologist	61.51	82.01	33	61.54	82.01	33
88305	26	Tissue exam by pathologist	40.28	40.64	1	40.29	40.64	1
90801	....	Psy dx interview	143.53	146.09	2	142.86	138.77	−3
90806	....	Psytx, off, 45–50 min	97.76	97.76	0	95.98	93.73	−2
90807	....	Psytx, off, 45–50 min w/e&m	101.79	103.62	2	102.94	99.22	−4
90862	....	Medication management	49.79	50.89	2	49.09	46.50	−5
90921	....	ESRD related services, month	245.31	263.25	7	245.43	237.26	−3
90935	....	Hemodialysis, one evaluation	NA	NA	NA	69.97	61.51	−12
92004	....	Eye exam, new patient	120.83	124.49	3	86.82	88.61	2
92012	....	Eye exam established pat	75.79	63.71	−16	36.27	36.61	1
92014	....	Eye exam & treatment	87.87	91.53	4	58.98	59.68	1
92980	....	Insert intracoronary stent	NA	NA	NA	949.13	851.63	−10
92982	....	Coronary artery dilation	NA	NA	NA	716.15	630.12	−12
93000	....	Electrocardiogram, complete	26.36	26.36	0	26.37	26.36	0
93010	....	Electrocardiogram report	8.79	8.79	0	8.79	8.79	0
93015	....	Cardiovascular stress test	106.55	104.35	−2	106.60	104.35	−2
93307	....	Echo exam of heart	204.30	198.08	−3	204.40	198.08	−3
93307	26	Echo exam of heart	49.79	48.70	−2	49.82	48.70	−2
93510	26	Left heart catheterization	231.03	247.87	7	231.15	247.87	7
98941	....	Chiropractic manipulation	34.78	35.15	1	30.40	30.76	1
99202	....	Office/outpatient visit, new	68.47	72.50	6	53.48	45.40	−15
99203	....	Office/outpatient visit, new	97.03	102.52	6	78.03	69.57	−11
99204	....	Office/outpatient visit, new	136.94	145.36	6	112.09	102.88	−8
99205	....	Office/outpatient visit, new	169.89	179.41	6	145.43	135.84	−7
99211	....	Office/outpatient visit, est	23.07	25.63	11	14.29	8.79	−38
99212	....	Office/outpatient visit, est	36.61	39.18	7	28.21	23.07	−18
99213	....	Office/outpatient visit, est	48.33	51.63	7	38.46	33.68	−12
99214	....	Office/outpatient visit, est	76.16	80.92	[illegible]	62.27	56.02	−10
99215	....	Office/outpatient visit, est	110.94	116.07	5	96.71	90.44	−6
99221	....	Initial hospital care	NA	NA	NA	72.53	65.17	−10
99222	....	Initial hospital care	NA	NA	NA	115.02	108.38	−6
99223	....	Initial hospital care	NA	NA	NA	157.52	151.21	−4
99231	....	Subsequent hospital care	NA	NA	NA	34.07	32.59	−4
99232	....	Subsequent hospital care	NA	NA	NA	54.95	53.82	−2
99233	....	Subsequent hospital care	NA	NA	NA	78.39	76.16	−3
99236	....	Observ/hosp same date	NA	NA	NA	220.52	215.29	−2
99238	....	Hospital discharge day	NA	NA	NA	68.87	64.44	−6
99239	....	Hospital discharge day	NA	NA	NA	91.58	88.24	−4
99241	....	Office consultation	57.12	61.14	7	40.66	32.95	−19
99242	....	Office consultation	95.93	101.79	6	74.36	67.37	−9
99243	....	Office consultation	121.92	128.51	5	98.54	89.70	−9
99244	....	Office consultation	168.06	176.48	5	142.13	132.54	−7
99245	....	Office consultation	213.09	222.25	4	186.09	176.11	−5
99251	....	Initial inpatient consult	NA	NA	NA	42.13	36.61	−13
99252	....	Initial inpatient consult	NA	NA	NA	77.29	71.76	−7
99253	....	Initial inpatient consult	NA	NA	NA	104.40	97.39	−7
99254	....	Initial inpatient consult	NA	NA	NA	146.16	138.77	−5
99255	....	Initial inpatient consult	NA	NA	NA	198.18	191.12	−4
99261	....	Follow-up inpatient consult	NA	NA	NA	28.21	23.80	−16
99262	....	Follow-up inpatient consult	NA	NA	NA	50.92	45.77	−10
99263	....	Follow-up inpatient consult	NA	NA	NA	72.16	67.37	−7
99282	....	Emergency dept visit	NA	NA	NA	27.84	26.73	−4
99283	....	Emergency dept visit	NA	NA	NA	59.34	60.05	1
99284	....	Emergency dept visit	NA	NA	NA	92.31	94.10	2
99285	....	Emergency dept visit	NA	NA	NA	142.50	146.09	3
99291	....	Critical care, first hour	187.10	187.83	0	185.72	179.41	−3
99292	....	Critical care, addl 30 min	94.46	96.66	2	93.41	89.70	−4
99301	....	Nursing facility care	NA	NA	NA	65.57	60.41	−8
99302	....	Nursing facility care	NA	NA	NA	86.82	80.92	−7
99303	....	Nursing facility care	NA	NA	NA	107.70	100.32	−7
99311	....	Nursing fac care, subseq	NA	NA	NA	33.70	30.02	−11
99312	....	Nursing fac care, subseq	NA	NA	NA	53.12	49.79	−6
99313	....	Nursing fac care, subseq	NA	NA	NA	74.73	71.03	−5
99348	....	Home visit, est patient	70.30	72.50	3	70.70	66.64	−6
99350	....	Home visit, est patient	158.17	164.40	4	154.95	154.88	0

Table 7 shows the combined impact of the proposed changes in the malpractice RVUs and the fully implemented practice expense RVUs.

Comment: One commenter indicated that specialty level impacts displayed in the proposed rule were misleading and caused a great deal of confusion in the physician community. Although the commenter indicated that it is appropriate for us to display specialty level impacts that result from the new rule relative to prior policy, the commenter also requested that we show the total impact of adopting resource-based methodologies.

Response: In general, we show the impact of changes that result from a new rule, not the cumulative impact of changes in policy contained in prior rules as well as the new one. However, we acknowledge that it can be difficult to understand changes that result from adoption of the resource-based practice expense methodology because those changes may result from policy changes contained in the final rule published on November 2, 1998 (63 FR 58814), from changes due to this final rule, and because all of these changes are occurring over the 4-year transition period. Impacts of the final rule published on November 2, 1998 are shown on page 58895 of the physician fee schedule final rule published on November 2, 1998. The percentage increase for a particular specialty can be combined with the impacts shown in table 7 (which shows the impacts in addition to those presented in the November 2, 1998 final rule) to determine the impact of moving to resource based methodologies for practice expense and malpractice expense.

The impact of the changes on the total revenue (Medicare and non-Medicare) for a given specialty is less than the impact displayed in these tables since physicians furnish services to both Medicare and non-Medicare patients. The magnitude of the impact that Medicare payment has on a specialty depends generally on the mix of services a physician in the specialty provides and the sites in which the services are performed. As we indicated in the proposed rule, each year since the fee schedule has been implemented, our actuaries have determined any adjustments needed to meet the requirements of budget neutrality. A key component of the actuarial determination of budget neutrality involves estimating any impact of changes in the volume and intensity of physicians' services furnished to Medicare beneficiaries as a result of the proposed changes.

In estimating the impacts of proposed changes under the physician fee schedule on the volume and intensity of services, the actuaries have historically used a model that assumes that 50 percent of the change in net revenue for a procedure would be recouped. This does not mean that the payments are reduced by 50 percent. In fact, payments have typically been reduced only by a few percent or less. In 1999, the actuary revised the assumption about response to payment changes and will use a model that assumes a 30 percent volume-and-intensity response to price reductions. The actuary is continuing to assume no reduction in volume and intensity response to a price increase. Our actuary's analysis of the volume-and-intensity response is available on our homepage (www.hcfa.gov).

Comment: We again received comments in response to our assumption that physicians respond to payment reductions so as to offset revenue reductions. One commenter indicated that a 30 percent volume-and-intensity response seems extreme.

Response: We provide a response to this and similar comments in the final rule published November 2, 1998 (63 FR 588894). We reiterate that our assumption that physicians respond to payment reductions so as to offset 30 percent of revenue reduction in physician fees. Most physicians, even those in specialties with a negative payment impact shown in table 7, will experience an increase in physician fees in 2000. This is largely due to an update of 5.4 percent. Since there are few specialties that will actually experience a decline in payment in 2000, the adjustment to the conversion factor for behavioral responses to fee reductions will be only 0.12 percent (or approximately $0.04). To the extent that the volume-and-intensity response does not occur, the SGR system enacted as part of the BBA will return the volume-and-intensity adjustment in the form of higher future updates to the Medicare physician fee schedule CF. The volume-and-intensity adjustment should not affect aggregate payments because our actuaries assume an offsetting increase in the volume and intensity of services provided in 2000.

TABLE 7.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF FULLY IMPLEMENTED PRACTICE EXPENSE AND MALPRACTICE EXPENSE RELATIVE VALUE UNITS

Specialty	Allowed Charges (in billions)	Changes Resulting from this Final Rule (percent)
ANESTHESIOLOGY	1.6	-9
CARDIAC SURGERY	0.3	-8
CARDIOLOGY	3.7	-3
CLINICS	1.4	-1
DERMATOLOGY	1.2	0
EMERGENCY MEDICINE	0.8	1
FAMILY PRACTICE	3.0	1
GASTROENTEROLOGY	1.1	-4
GENERAL PRACTICE	1.0	2
GENERAL SURGERY	1.8	-1
HEMATOLOGY ONCOLOGY	0.6	0
INTERNAL MEDICINE	6.3	0
NEPHROLOGY	0.9	2
NEUROLOGY	0.8	0
NEUROSURGERY	0.3	-1
OBSTETRICS/GYNECOLOGY	0.4	1
OPHTHALMOLOGY	3.5	2
ORTHOPEDIC SURGERY	2.0	0
OTHER PHYSICIAN	1.2	-2
OTOLARYNGOLOGY	0.6	1
PATHOLOGY	0.5	8
PLASTIC SURGERY	0.2	1

TABLE 7.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF FULLY IMPLEMENTED PRACTICE EXPENSE AND MALPRACTICE EXPENSE RELATIVE VALUE UNITS—Continued

Specialty	Allowed Charges (in billions)	Changes Resulting from this Final Rule (percent)
PSYCHIATRY	1.1	−1
PULMONARY	1.0	−2
RADIATION ONCOLOGY	0.6	0
RADIOLOGY	2.8	−3
RHEUMATOLOGY	0.3	4
THORACIC SURGERY	0.5	−6
UROLOGY	1.2	1
VASCULAR SURGERY	0.3	−1
OTHERS:		
CHIROPRACTOR	0.4	1
NONPHYSICIAN PRACTITIONER	0.9	0
OPTOMETRIST	0.4	5
PODIATRY	1.0	2
SUPPLIERS	0.4	17

Comment: A few commenters indicated that HCFA has not fulfilled its statutory obligation to provide impacts on the practice expense RVUs in different geographical areas or compare Medicare payments under the new practice expense RVUS with actual practice costs for physicians in each specialty.

Response: Section 4505(d)(3) of the BBA required the Secretary to provide the impacts suggested by this commenter as part of a notice of proposed rule making in the Spring of 1998. We provided impacts of the newly adopted resource-based practice expense by specialty and geographic area in the proposed rule published June 5, 1998 (63 FR 58895). Unlike adoption of the physician fee schedule published on January 1, 1992, the adoption of the practice expense methodology has a negligible impact on payments by geographical area. For this reason we are not continuing to display those impacts. With respect to comparing the new practice expense RVUs to actual practice expenses for physicians in each specialty, we do not believe that the data are available to make reliable comparisons. Although we do have aggregate, specialty level data on practice expense from the SMS, these data are used to establish relative payment amounts for the more than 7,000 physician services paid for by Medicare and are intended to represent the relative resources used by physicians in providing services to Medicare patients. The SMS data do not allow us to directly compare these practice expense relative values to "actual" practice expenses.

Table 7 shows the combined impact of the changes in the malpractice RVUs and the fully implemented practice expense RVUs. The impact of the changes on the total revenue (Medicare and non-Medicare) for a given specialty is less than the impact displayed in these tables since physicians furnish services to both Medicare and non-Medicare patients. The magnitude of the impact that Medicare payment has on a specialty depends generally on the mix of services a physician in the specialty provides and the sites in which the services are performed.

C. Adjustment to the Practice Expense Relative Value Units for a Physician's Interpretation of Abnormal Papanicolaou Smears

Currently, there are several codes for a physician's interpretation of an abnormal pap smear (three HCPCS codes and one CPT code). We evaluated the practice expense RVUs for each of these codes in a slightly different manner, and the practice expense RVUs assigned to HCPCS code G0141 were much lower than those for the other codes. We believe it is more appropriate to have the RVUs for all of these codes identical to those for CPT code 88141. The impact of this provision has been incorporated into the physician fee schedule budget-neutrality calculation.

D. Physician Pathology Services and Independent Laboratories

Independent laboratories usually bill for a combined service that is the sum of the PC and TC services. These services can be furnished to both hospital and nonhospital patients.

The claims processing instructions require the independent laboratory to use the hospital as the place of service (POS) for TC billing of hospital patients. However, our analysis of national claims data indicates that independent laboratories are likely to use the independent laboratory as the POS. Thus, we cannot directly calculate the independent laboratory's billings for the combined service to hospital inpatients.

Based on our knowledge of laboratory practice arrangements, we have assumed that 20 percent of the allowed charges for independent laboratories represent billings for hospital inpatients. We adjusted this amount to remove PC billings because they are billable notwithstanding the provisions of this final rule. We estimated the PC amount by multiplying the total allowed charges for each code by the ratio of the PC RVUs to total RVUs for that code. The remaining amount represents the total allowed charges for TC services for hospital inpatients.

We estimated that payment under the physician fee schedule for TC billings by independent laboratories will decrease by $6 million. However, we are delaying implementation for 1 year so hospitals can make the necessary arrangements

The hospital is paid under the prospective payment system for the TC of a physician pathology service to hospital inpatients. If the independent laboratory furnishes the TC, it must enter into an arrangement with a hospital to be paid appropriately for this service.

E. Discontinuous Anesthesia Time

This final rule clarifies that if an anesthesia practitioner has not been billing for a block of time before an interruption in services, he or she would be able to bill for that block of time and receive payment. It is our understanding that, in most instances, a block of time before an interruption is generally about 15 minutes, or one time unit. However, some anesthesia practitioners may have interpreted our regulations as allowing them to bill for the block of time before an interruption. If an anesthesia practitioner has billed in this manner, then our revision to the regulations will not have any economic effect. We estimate that overall there are no costs or savings to the Medicare program.

F. Optometrist Services

The provisions of the OBRA 1986 expanded coverage of optometrist services. While this statutory provision had been implemented through manual provisions, we had not revised the regulations to reflect this change. We proposed to revise the regulations at § 410.23 to specify that Medicare Part B pays for the services of a doctor of optometry, acting within the scope of his or her license, if the services are those described in section 1861(s) of the Act and 42 CFR 410.10.

We received comments from the American Optometric Association supporting the proposed revision to the regulations. We are revising the regulations at § 410.23 to specify that Medicare Part B pays for services of a doctor of optometry, acting within the scope of his or her license, if the services are those described in section 1861(s) of the Act and 42 CFR 410.10.

G. Assisted Suicide

This final rule conforms the regulations to a provision in the Assisted Suicide Funding Act of 1997. This statute prohibits the use of Federal funds to furnish or pay for any health care service or health benefit coverage for the purpose of causing, or assisting to cause, the death of any individual. We believe that this change will have no program costs or savings given the exclusion from Medicare payment of expenses for these services under section 1862(a)(1)(A) of the Act. This section states that no payment may be made under Part A or Part B for any expenses incurred for items or services that are not reasonable or necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

H. CPT Modifier −25

For selected procedures for which current global surgery rules do not apply (for example, those for which the global indicator is "XXX" in the database), this rule provides that a practitioner may bill for an E/M service only if it is a significant separately identifiable service. This situation will be reported by appending modifier −25 to the E/M service code. This policy will assist carriers in claims adjudication and eliminate unnecessary denials when practitioners append modifier −25 to the E/M service to signify that the E/M service reported is appropriate because it was a significant and separately identifiable service from the procedure performed. We expect the savings to be minimal because the specific procedures to which this policy is to be applied have still to be identified and edits for these procedures will not begin to be implemented until October 2000 at the earliest.

I. Nurse Practitioner Qualifications

The NP qualifications stated in this final rule provide a mechanism that permits those individuals who have a Medicare NP billing number before January 1, 2001, to continue to bill as NPs. Therefore, an individual who may not have been nationally certified as an NP, or who does not have a master's degree in nursing, is permitted to continue to bill under the Medicare program. However, after January 1, 2003, to obtain a Medicare NP billing number, a new applicant is required to possess a master's degree in nursing, State authorization to practice as an NP, and national certification as an NP. By this time, nursing professionals will have had ample notification and time to acquire these credentials. There are no Medicare program costs or savings associated with this provision. Furthermore, these requirements are consistent with our understanding of certification and training requirements being implemented by NP professional groups.

J. Relative Value Units for Pediatric Services

This final rule corrects our use of the wrong data in establishing the work RVUs for certain pediatric surgical services. Since pediatric services are a small portion of services under Medicare, this change has a negligible cost or saving impact on the Medicare program

K. Percutaneous Thrombectomy of an Arteriovenous Fistula

We have established payment for a new HCPCS code that more accurately describes the activities regarding percutaneous thrombectomy of a dialysis graft or fistula. Since this is basically a coding change we do not anticipate any costs or savings to the Medicare program.

L. Pulse Oximetry, Temperature Gradient Studies, and Venous Pressure Determinations

We discontinued separate payment for CPT codes 94760 (noninvasive ear or pulse oximetry for oxygen saturation; single determination); 94761 (non-invasive ear or pulse oximetry for oxygen saturation; multiple determinations); 93740 (temperature gradient studies); and 93770 (determination of venous pressure). Payment for these codes is bundled into payment for other services. Any savings from this provision are incorporated into the physician fee schedule budget-neutrality calculation.

M. Removal of Requirement for X-ray Before Chiropractic Manipulation

This final rule conforms the regulations to section 4513(a) of the BBA. We expect that removal of the requirement will encourage increased billing for chiropractic manipulation. The impact of this BBA provision is shown in the table below.

ESTIMATED COSTS

[$ millions]

FY 2000	20
FY 2001	40
FY 2002	50
FY 2003	70
FY 2004	80
Total	260

N. Coverage of Prostate Cancer Screening Tests

Section 4103 of the BBA authorizes coverage of certain prostate cancer screening tests, effective January 1, 2000, subject to certain frequency and payment limitations. The new tests include: (1) screening DREs and (2) screening prostate-specific antigen tests. Based on the projected utilization of these screening services and related medically necessary follow-up tests and treatment that may be required for the beneficiaries screened, we estimate that this BBA provision will result in an increase in Medicare payments as described in the table below for FYs 2000 through 2002. These payments will be made to many urologists, primary care physicians, and other practitioners (involved in screening DREs), and to clinical laboratories (involved in screening prostate-specific antigen tests) nationally.

ESTIMATED MEDICARE COSTS
[$ million]

	Part A	Part B	Total
FY 2000	170	590	760
FY 2001	300	1,100	1,400
FY 2002	400	1,270	1,670
FY 2003	500	1,470	1,970
FY 2004	620	1,710	2,330
Total	1,990	6,140	8,130

We believe that the effect of the rule will be positive. Prostate cancer is the most commonly diagnosed cancer in men and the second leading cause of cancer death for American men. The American Cancer Society estimates that in 1999 about 179,000 new cases of prostate cancer will be diagnosed in the United States, and about 37,000 people will die directly from the disease. According to the American Urological Association, the use of a screening prostate-specific antigen blood test, in combination with a screening DRE, is the best method for detecting prostate cancer when the disease is localized and potentially curable. Although coverage of prostate cancer screening should improve access to this service for Medicare beneficiaries, the benefits of such screening, based on the available medical literature, are not entirely clear. The literature on the benefits of cancer detection, especially among men over 70, indicates that screening for prostate cancer does not necessarily lead to the prolongation of life or improvement in the quality of life. However, when prostate cancer is found early, there is evidence that it can often be treated successfully. Through early detection of prostate cancer made possible under the new benefit and the use of appropriate treatment measures, our expectation is that the harmful effects of this serious disease among the Medicare population will be reduced in the future.

O. Diagnostic Tests

1. Supervision of Diagnostic Test

The requirements of the physician supervision policy in § 410.32(b) conform to the BBA provisions relating to PAs, NPs, and CNSs. We clarified that the level of physician supervision for diagnostic tests performed by PAs, when they are authorized by the State to perform these tests, is general. This means that we will not require that the supervising physician for the diagnostic test be on the premises when the test is performed. No level of physician supervision is required for diagnostic tests performed by NPs and CNSs when they are authorized by the State to perform these tests. The scope of services for which PAs, NPs, or CNSs can bill will not be affected; therefore, we do not expect any significant costs or savings.

2. Independent Diagnostic Testing Facilities (IDTF)

The IDTF provision at § 410.33 states that NPs and CNSs are included among the entities that may bill carriers directly for diagnostic tests. This final rule is a technical one and will not have a significant effect on costs or savings.

P. Budget-Neutrality

Each year since the fee schedule has been implemented, our actuaries have determined any adjustments needed to meet the budget-neutrality requirement of the statute. A component of the actuarial determination of budget-neutrality involves estimating the impact of changes in the volume-and-intensity of physicians' services provided to Medicare beneficiaries as a result of the proposed changes. Consistent with the provision in the November 2, 1998 final rule, the actuaries used a model that assumes a 30 percent volume-and-intensity response to price reductions.

Q. Impact on Beneficiaries

Although changes in payments to physicians when the physician fee schedule was implemented in 1992 were large, we detected no problems with beneficiary access to care. Furthermore, because there is a 4-year transition to the resource-based practice expense system, we expect minimal impact on beneficiary access to care.

We are currently conducting substantial research to evaluate beneficiary access to physicians. This research includes, but is not limited to, augmenting the beneficiary survey questionnaire to further clarify access problems, conducting a survey of Medicare physicians to identify physician specialties and procedures by geographic areas, and tracking claims data in "vulnerable populations."

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Federalism

We have examined this rule in accordance with Executive Order 13132 and have determined that this final rule will not have any negative impact on the rights, roles, or responsibilities of State, local, or Tribal governments.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare and Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.22, paragraph (b)(1) is revised to read as follows:

§ 410.22. Limitations on services of a chiropractor.

* * * * *

(b) *Limitations on services.* (1) Medicare Part B pays only for a chiropractor's manual manipulation of the spine to correct a subluxation if the subluxation has resulted in a neuromusculoskeletal condition for which manual manipulation is appropriate treatment.

* * * * *

3. Section 410.23 is revised to read as follows:

§ 410.23 Limitations on services of an optometrist.

Medicare Part B pays for the services of a doctor of optometry, which he or she is legally authorized to perform in the State in which he or she performs them, if the services are among those described in section 1861(s) of the Act and § 410.10 of this part.

4. In § 410.32, the introductory text to paragraph (b)(2) is republished for the convenience of the reader, paragraph (b)(2) is amended by adding new paragraphs (b)(2)(v) and (b)(2)(vi), and the introductory text to paragraph (b)(3) is revised to read as follows:

§ 410.32 Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

* * * * *

(b) *Diagnostic x-ray and other diagnostic tests.* * * *

(2) *Exceptions.* The following diagnostic tests payable under the physician fee schedule are excluded from the basic rule set forth in paragraph (b)(1) of this section:

* * * * *

(v) Diagnostic tests performed by a nurse practitioner or clinical nurse specialist authorized to perform the tests under applicable State laws.

(vi) Pathology and laboratory procedures listed in the 80000 series of the Current Procedural Terminology published by the American Medical Association.

(3) *Levels of supervision.* Except where otherwise indicated, all diagnostic x-ray and other diagnostic tests subject to this provision and payable under the physician fee schedule must be furnished under at least a general level of physician supervision as defined in paragraph (b)(3)(i) of this section. In addition, some of these tests also require either direct or personal supervision as defined in paragraphs (b)(3)(ii) or (b)(3)(iii) of this section, respectively. (However, diagnostic tests performed by a physician assistant (PA) that the PA is legally authorized to perform under State law require only a general level of physician supervision.) When direct or personal supervision is required, physician supervision at the specified level is required throughout the performance of the test.

* * * * *

5. In § 410.33, paragraph (a)(1) is revised to read as follows:

§ 410.33 Independent diagnostic testing facility.

(a) *General rule.* (1) Effective for diagnostic procedures performed on or after March 15, 1999, carriers will pay for diagnostic procedures under the physician fee schedule only when performed by a physician, a group practice of physicians, an approved supplier of portable x-ray services, a nurse practitioner, or a clinical nurse specialist when he or she performs a test he or she is authorized by the State to perform, or an independent diagnostic testing facility (IDTF). An IDTF may be a fixed location, a mobile entity, or an individual nonphysician practitioner. It is independent of a physician's office or hospital; however, these rules apply when an IDTF furnishes diagnostic procedures in a physician's office.

* * * * *

6. A new section 410.39 is added to read as follows:

§ 410.39 Prostate cancer screening tests: Conditions for and limitations on coverage.

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Prostate cancer screening tests* means any of the following procedures furnished to an individual for the purpose of early detection of prostate cancer:

(i) A screening digital rectal examination.

(ii) A screening prostate-specific antigen blood test.

(iii) For years beginning after 2002, other procedures HCFA finds appropriate for the purpose of early detection of prostate cancer, taking into account changes in technology and standards of medical practice, availability, effectiveness, costs, and other factors HCFA considers appropriate.

(2) *A screening digital rectal examination* means a clinical examination of an individual's prostate for nodules or other abnormalities of the prostate.

(3) *A screening prostate-specific antigen blood test* means a test that measures the level of prostate-specific antigen in an individual's blood.

(b) *Condition for coverage of screening digital rectal examinations.* Medicare Part B pays for a screening digital rectal examination if it is performed by the beneficiary's physician, or by the beneficiary's physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife who is authorized to perform this service under State law.

(c) *Limitation on coverage of screening digital rectal examinations.* (1) Payment may not be made for a screening digital rectal examination performed for a man age 50 or younger.

(2) For an individual over 50 years of age, payment may be made for a screening digital rectal examination only if the man has not had such an examination paid for by Medicare during the preceding 11 months following the month in which his last Medicare-covered screening digital rectal examination was performed.

(d) *Condition for coverage of screening prostate-specific antigen blood tests.* Medicare Part B pays for a screening prostate-specific antigen blood test if it is ordered by the beneficiary's physician, or by the beneficiary's physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife who is authorized to order this test under State law.

(e) *Limitation on coverage of screening prostate-specific antigen blood test.* (1) Payment may not be made for a screening prostate-specific antigen blood test performed for a man age 50 or younger.

(2) For an individual over 50 years of age, payment may be made for a screening prostate-specific antigen blood test only if the man has not had such an examination paid for by Medicare during the preceding 11 months following the month in which his last Medicare-covered screening prostate-specific antigen blood test was performed.

7. In § 410.75, paragraph (b) is revised to read as follows:

§ 410.75 Nurse practitioner's services.

* * * * *

(b) *Qualifications.* For Medicare Part B coverage of his or her services, a nurse practitioner must—(1)(i) Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law; *and*

(ii) Be certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners; *or*

(2) Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law and have been granted a Medicare billing number as a nurse practitioner by December 31, 2000; or

(3) Be a nurse practitioner who on or after January 1, 2001, applies for a Medicare billing number for the first time and meets the standards for nurse practitioners in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; or

(4) Be a nurse practitioner who on or after January 1, 2003, applies for a Medicare billing number for the first time and possesses a master's degree in nursing and meets the standards for nurse practitioners in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

B. Part 411 is amended as set forth below:

1. The authority citation for Part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 411.15, the introductory text in the section is revised, the introductory text to paragraph (a) is republished, paragraph (a)(1) is revised, the introductory text to paragraph (k) is republished, and new paragraphs (k)(9) and (q) are added to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage:

(a) Routine physical checkups such as:

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptoms, complaint, or injury, except for screening mammography, colorectal cancer screening tests, screening pelvic examinations, or prostate cancer screening tests that meet the criteria specified in paragraphs (k)(6) through (k)(9) of this section.

* * * * *

(k) Any services that are not reasonable and necessary for one of the following purposes:

* * * * *

(9) In the case of prostate cancer screening tests, for the purpose of early detection of prostate cancer, subject to the conditions and limitations specified in § 410.39 of this chapter.

* * * * *

(q) *Assisted suicide.* Any health care service used for the purpose of causing, or assisting to cause, the death of any individual. This does not pertain to the withholding or withdrawing of medical treatment or care, nutrition or hydration or to the provision of a service for the purpose of alleviating pain or discomfort, even if the use may increase the risk of death, so long as the service is not furnished for the specific purpose of causing death.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

C. Part 414 is amended as set forth below:

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395(hh), and 1395rr(b)(1)).

2. In § 414.22, the introductory text is republished, paragraph (b)(5)(i) is revised, and a new paragraph (c)(3) is added to read as follows:

§ 414.22 Relative value units (RVUs).

HCFA establishes RVUs for physicians' work, practice expense, and malpractice insurance.

* * * * *

(b) *Practice expense RVUs.* * * *

(5) * * *

(i) Usually one of two levels of practice expense RVUs can be applied to each code. The lower facility practice expense RVUs apply to services furnished to patients in the hospital, skilled nursing facility, or ambulatory surgical center when the physician performs procedures on the ASC approved procedures list. The higher non-facility practice expense RVUs apply to services performed in a physician's office or in an ASC if the physician is performing a procedure not on the ASC approved procedures list, services furnished to patients in a nursing facility, in a facility or institution other than a hospital, skilled nursing facility, or in the home. The facility practice expense RVUs for a particular code may not be greater than the non-facility RVUs for that code.

* * * * *

(c) *Malpractice insurance RVUs.* * * *

(3) For services furnished in the year 2000 and subsequent years, the malpractice RVUs are based on the relative malpractice insurance resources.

3. In § 414.46, the introductory texts to paragraphs (a) and (b) are republished, paragraphs (a)(1) and (a)(2) are revised, paragraph (a)(3) is added, and paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 414.46 Additional rules for payment of anesthesia services.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Base unit* means the value for each anesthesia code that reflects all activities other than anesthesia time. These activities include usual preoperative and postoperative visits, the administration of fluids and blood incident to anesthesia care, and monitoring services.

(2) *Anesthesia practitioner,* for the purpose of anesthesia time, means a physician who performs the anesthesia service alone, a CRNA who is not medically directed who performs the anesthesia service alone, or a medically directed CRNA.

(3) *Anesthesia time* means the time during which an anesthesia practitioner is present with the patient. It starts when the anesthesia practitioner begins to prepare the patient for anesthesia services and ends when the anesthesia practitioner is no longer furnishing anesthesia services to the beneficiary, that is, when the beneficiary may be placed safely under postoperative care. Anesthesia time is a continuous time period from the start of anesthesia to the end of an anesthesia service. In counting anesthesia time, the anesthesia practitioner can add blocks of anesthesia time around an interruption in anesthesia time as long as the anesthesia practitioner is furnishing continuous anesthesia care within the time periods around the interruption.

(b) *Determinations of payment amount—Basic rule.* For anesthesia services performed, medically directed, or medically supervised by a physician, the carrier pays the lesser of the actual charge or the anesthesia fee schedule amount.

(1) The carrier bases the fee schedule amount for an anesthesia service on the product of the sum of allowable base and time units and an anesthesia-specific CF. The carrier calculates the time units from the anesthesia time reported by the anesthesia practitioner for the anesthesia procedure. The physician who fulfills the conditions for medical direction in § 415.110 (Conditions for payment: Anesthesiology services) reports the same anesthesia time as the medically-directed CRNA.

(2) HCFA furnishes the carrier with the base units for each anesthesia procedure code. The base units are derived from the 1988 American Society of Anesthesiologists' Relative Value Guide except that the number of base units recognized for anesthesia services furnished during cataract or iridectomy surgery is four units.

* * * * *

4. In § 414.60, the introductory text of paragraph (a) is revised to read as follows:

§ 414.60 Payment for the services of CRNAs.

(a) *Basis for payment.* The allowance for the anesthesia service furnished by a CRNA, medically directed or not medically directed, is based on allowable base and time units as defined in § 414.46(a). Beginning with CY 1994—

* * * * *

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

D. Part 415 is amended as set forth below:

1. The authority citation for part 415 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 415.130(c) is revised to read as follows:

§ 415.130 Conditions for payment; Physician pathology services.

* * * * *

(c) *Physician pathology services furnished by an independent laboratory.* The technical component of physician pathology services furnished by an independent laboratory to a hospital inpatient before January 1, 2001, or to an outpatient are paid on a fee schedule basis under this subpart. On or after January 1, 2001, payment is made only to the hospital for the technical component of physician pathology services furnished to a hospital inpatient.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

E. Part 485 is amended as set forth below:

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)

2. In § 485.705, paragraph(c)(8) is revised to read as follows:

§ 485.705 Personnel qualifications.

* * * * *

(8) A nurse practitioner is a person who must:

(i) Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law; *and*

(ii) Be certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners; *or*

(iii) Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law and have been granted a Medicare billing number as a nurse practitioner by December 31, 2000; or

(iv) Be a nurse practitioner who on or after January 1, 2001, applies for a Medicare billing number for the first time and meets the standards for nurse practitioners in paragraphs (c)(8)(i) and (c)(8)(ii) of this section; or

(v) Be a nurse practitioner who on or after January 1, 2003, applies for a Medicare billing number for the first time and possesses a master's degree in nursing and meets the standards for nurse practitioners in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 21, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dated: October 22, 1999.

Donna E. Shalala,

Secretary.

Note: These addenda will not appear in the Code of Federal Regulations.

Addendum A—Explanation and Use of Addendum B

The addenda on the following pages provide various data pertaining to the Medicare fee schedule for physicians' services furnished in 2000. Addendum B contains the RVUs for work, non-facility practice expense, facility practice expense, and malpractice expense, and other information for all services included in the physician fee schedule.

Addendum B—2000 Relative Value Units and Related Information Used in Determining Medicare Payments for 2000

This addendum contains the following information for each CPT code and alphanumeric HCPCS code, except for alphanumeric codes beginning with B (enteral and parenteral therapy), E (durable medical equipment), K (temporary codes for nonphysicians' services or items), or L (orthotics), and codes for anesthesiology.

1. *CPT/HCPCS code.* This is the CPT or alphanumeric HCPCS number for the service. Alphanumeric HCPCS codes are included at the end of this addendum.

2. *Modifier.* A modifier is shown if there is a technical component (modifier TC) and a professional component (PC) (modifier -26) for the service. If there is a PC and a TC for the service, Addendum B contains three entries for the code: One for the global values (both professional and technical); one for modifier -26 (PC); and one for modifier TC. The global service is not designated by a modifier, and physicians must bill using the code without a modifier if the physician furnishes both the PC and the TC of the service.

Modifier -53 is shown for a discontinued procedure. There will be RVUs for the code (CPT code 45378) with this modifier.

3. *Status indicator.* This indicator shows whether the CPT/HCPCS code is in the physician fee schedule and whether it is separately payable if the service is covered.

A = Active code. These codes are separately payable under the fee schedule if covered. There will be RVUs for codes with this status. The presence of an "A" indicator does not mean that Medicare has made a national decision regarding the coverage of the service. Carriers remain responsible for coverage decisions in the absence of a national Medicare policy.

B = Bundled code. Payment for covered services is always bundled into payment for other services not specified. If RVUs are shown, they are not used for Medicare payment. If these services are covered, payment for them is subsumed by the payment for the services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient.)

C = Carrier-priced code. Carriers will establish RVUs and payment amounts for these services, generally on a case-by-case basis following review of documentation, such as an operative report.

D = Deleted code. These codes are deleted effective with the beginning of the calendar year.

E = Excluded from physician fee schedule by regulation. These codes are for items or services that we chose to exclude from the physician fee schedule payment by regulation. No RVUs are shown, and no payment may be made under the physician fee schedule for these codes. Payment for them, if they are covered, continues under reasonable charge or other payment procedures.

G = Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code for reporting of, and payment for, these services.

N = Noncovered service. These codes are noncovered services. Medicare payment may not be made for these codes. If RVUs are shown, they are not used for Medicare payment.

P = Bundled or excluded code. There are no RVUs for these services. No separate payment should be made for them under the physician fee schedule.

—If the item or service is covered as incident to a physician's service and is furnished on the same day as a physician's service, payment for it is bundled into the payment for the physician's service to which it is incident (an example is an elastic bandage furnished by a physician incident to a physician's service).

—If the item or service is covered as other than incident to a physician's service, it is excluded from the physician fee schedule (for example, colostomy supplies) and is paid under the other payment provisions of the Act.

R = Restricted coverage. Special coverage instructions apply. If the service is covered and no RVUs are shown, it is carrier-priced.

T = Injections. There are RVUs for these services, but they are only paid if there are no other services payable under the physician fee schedule billed on the same date by the same provider. If any other services payable under the physician fee schedule are billed on the same date by the same provider, these services are bundled into the service(s) for which payment is made.

X = Exclusion by law. These codes represent an item or service that is not within the definition of "physicians' services" for physician fee schedule payment purposes. No RVUs are shown for these codes, and no payment may be made under the physician fee schedule. (Examples are ambulance services and clinical diagnostic laboratory services.)

4. *Description of code.* This is an abbreviated version of the narrative description of the code.

5. *Physician work RVUs.* These are the RVUs for the physician work for this service in 2000. Codes that are not used for Medicare payment are identified with a "+."

6. *Fully implemented non-facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for non-facility settings.

7. *Year 2000 Transition non-facility practice expense RVUs.* Blended non-facility practice expense RVUs for use in 2000.

8. *Fully implemented facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for facility settings.

9. *Year 2000 transition facility practice expense RVUs.* Blended facility practice expense RVUs for use in 2000.

10. *Malpractice expense RVUs.* These are the RVUs for the malpractice expense for the service for 2000.

11. *Fully implemented non-facility total.* This is the sum of the work, fully implemented non-facility practice expense, and malpractice expense RVUs.

12. *Year 2000 transition non-facility total.* This is the sum of the work, transition non-facility practice expense, and malpractice expense RVUs for use in 2000.

13. *Fully implemented facility total.* This is the sum of the work, fully implemented facility practice expense, and malpractice expense RVUs.

14. *Year 2000 transition facility total.* This is the sum of the work, transition facility practice expense, and malpractice expense RVUs for use in 2000.

15. *Global period.* This indicator shows the number of days in the global period for the code (0, 10, or 90 days). An explanation of the alpha codes follows:

MMM = The code describes a service furnished in uncomplicated maternity cases including antepartum care, delivery, and postpartum care. The usual global surgical concept does not apply. See the 1999 Physicians' Current Procedural Terminology for specific definitions.

XXX = The global concept does not apply.

YYY = The global period is to be set by the carrier (for example, unlisted surgery codes).

ZZZ = The code is part of another service and falls within the global period for the other service.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
10040	....	A	Acne surgery of skin abscess	1.18	1.57	0.96	0.52	0.35	0.05	2.80	2.19	1.75	1.58	010
10060	....	A	Drainage of skin abscess	1.17	1.26	0.87	0.62	0.43	0.08	2.51	2.12	1.87	1.68	010
10061	....	A	Drainage of skin abscess	2.40	1.95	1.32	1.12	0.74	0.15	4.50	3.87	3.67	3.29	010
10080	....	A	Drainage of pilonidal cyst	1.17	1.95	1.25	0.68	0.48	0.09	3.21	2.51	1.94	1.74	010
10081	....	A	Drainage of pilonidal cyst	2.45	2.71	1.96	1.57	1.09	0.20	5.36	4.61	4.22	3.74	010
10120	....	A	Remove foreign body	1.22	1.72	1.11	0.69	0.47	0.10	3.04	2.43	2.01	1.79	010
10121	....	A	Remove foreign body	2.69	2.64	1.87	1.74	1.15	0.24	5.57	4.80	4.67	4.08	010
10140	....	A	Drainage of hematoma/fluid	1.53	1.32	0.92	0.82	0.54	0.11	2.96	2.56	2.46	2.18	010
10160	....	A	Puncture drainage of lesion	1.20	1.46	0.94	0.72	0.47	0.09	2.75	2.23	2.01	1.76	010
10180	....	A	Complex drainage, wound	2.25	1.33	1.24	1.24	1.19	0.23	3.81	3.72	3.72	3.67	010
11000	....	A	Debride infected skin	0.60	0.52	0.48	0.23	0.23	0.04	1.16	1.12	0.87	0.87	000
11001	....	A	Debride infected skin add-on	0.30	0.29	0.29	0.12	0.13	0.02	0.61	0.61	0.44	0.45	ZZZ
11010	....	A	Debride skin, fx	4.20	2.42	3.36	2.08	3.19	0.36	6.98	7.92	6.64	7.75	010
11011	....	A	Debride skin/muscle, fx	4.95	3.66	4.39	2.58	3.85	0.48	9.09	9.82	8.01	9.28	000
11012	....	A	Debride skin/muscle/bone, fx	6.88	4.83	5.98	4.06	5.59	0.71	12.42	13.57	11.65	13.18	000
11040	....	A	Debride skin, partial	0.50	0.45	0.44	0.19	0.21	0.03	0.98	0.97	0.72	0.74	000
11041	....	A	Debride skin, full	0.82	0.61	0.61	0.32	0.32	0.06	1.49	1.49	1.20	1.20	000
11042	....	A	Debride skin/tissue	1.12	0.85	0.78	0.44	0.40	0.09	2.06	1.99	1.65	1.61	000
11043	....	A	Debride tissue/muscle	2.38	2.40	2.18	1.37	1.67	0.22	5.00	4.78	3.97	4.27	010
11044	....	A	Debride tissue/muscle/bone	3.06	3.10	3.08	1.79	2.43	0.30	6.46	6.44	5.15	5.79	010
11055	....	R	Trim skin lesion	0.27	0.34	0.31	0.11	0.13	0.02	0.63	0.60	0.40	0.42	000
11056	....	R	Trim skin lesions, 2 to 4	0.39	0.38	0.38	0.15	0.17	0.03	0.80	0.80	0.57	0.59	000
11057	....	R	Trim skin lesions, over 4	0.50	0.42	0.36	0.20	0.18	0.03	0.95	0.89	0.73	0.71	000
11100	....	A	Biopsy of skin lesion	0.81	1.53	1.04	0.37	0.33	0.04	2.38	1.89	1.22	1.18	000
11101	....	A	Biopsy, skin add-on	0.41	0.68	0.50	0.19	0.18	0.02	1.11	0.93	0.62	0.61	ZZZ
11200	....	A	Removal of skin tags	0.77	1.05	0.76	0.31	0.28	0.04	1.86	1.57	1.12	1.09	010
11201	....	A	Remove skin tags add-on	0.29	0.42	0.30	0.12	0.11	0.02	0.73	0.61	0.43	0.42	ZZZ
11300	....	A	Shave skin lesion	0.51	1.00	0.79	0.22	0.26	0.03	1.54	1.33	0.76	0.80	000
11301	....	A	Shave skin lesion	0.85	1.10	0.92	0.40	0.39	0.04	1.99	1.81	1.29	1.28	000
11302	....	A	Shave skin lesion	1.05	1.20	1.09	0.48	0.49	0.05	2.30	2.19	1.58	1.59	000
11303	....	A	Shave skin lesion	1.24	1.31	1.40	0.56	0.65	0.06	2.61	2.70	1.86	1.95	000
11305	....	A	Shave skin lesion	0.67	0.79	0.68	0.28	0.28	0.04	1.50	1.39	0.99	0.99	000
11306	....	A	Shave skin lesion	0.99	1.05	0.91	0.43	0.41	0.05	2.09	1.95	1.47	1.45	000

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
11307		A	Shave skin lesion	1.14	1.15	1.09	0.51	0.51	0.05	2.34	2.28	1.70	1.70	000
11308		A	Shave skin lesion	1.41	1.22	1.37	0.61	0.69	0.07	2.70	2.85	2.09	2.17	000
11310		A	Shave skin lesion	0.73	1.10	0.93	0.34	0.36	0.04	1.87	1.70	1.11	1.13	000
11311		A	Shave skin lesion	1.05	1.21	1.07	0.51	0.49	0.05	2.31	2.17	1.61	1.59	000
11312		A	Shave skin lesion	1.20	1.28	1.25	0.58	0.60	0.05	2.53	2.50	1.83	1.85	000
11313		A	Shave skin lesion	1.62	1.52	1.57	0.76	0.79	0.08	3.22	3.27	2.46	2.49	000
11400		A	Removal of skin lesion	0.91	2.37	1.48	0.71	0.50	0.07	3.35	2.46	1.69	1.48	010
11401		A	Removal of skin lesion	1.32	2.39	1.56	0.86	0.62	0.10	3.81	2.98	2.28	2.04	010
11402		A	Removal of skin lesion	1.61	2.48	1.73	0.95	0.72	0.11	4.20	3.45	2.67	2.44	010
11403		A	Removal of skin lesion	1.92	2.69	1.98	1.08	0.86	0.15	4.76	4.05	3.15	2.93	010
11404		A	Removal of skin lesion	2.20	2.83	2.17	1.17	0.96	0.18	5.21	4.55	3.55	3.34	010
11406		A	Removal of skin lesion	2.76	3.13	2.59	1.40	1.72	0.25	6.14	5.60	4.41	4.73	010
11420		A	Removal of skin lesion	1.06	1.96	1.26	0.75	0.52	0.08	3.10	2.40	1.89	1.66	010
11421		A	Removal of skin lesion	1.53	2.28	1.53	0.96	0.68	0.11	3.92	3.17	2.60	2.32	010
11422		A	Removal of skin lesion	1.76	2.46	1.74	1.03	0.77	0.12	4.34	3.62	2.91	2.65	010
11423		A	Removal of skin lesion	2.17	2.75	2.09	1.22	0.97	0.17	5.09	4.43	3.56	3.31	010
11424		A	Removal of skin lesion	2.62	2.90	2.21	1.39	1.08	0.20	5.72	5.03	4.21	3.90	010
11426		A	Removal of skin lesion	3.78	3.56	2.78	1.86	1.93	0.32	7.66	6.88	5.96	6.03	010
11440		A	Removal of skin lesion	1.15	2.50	1.63	0.91	0.65	0.08	3.73	2.86	2.14	1.88	010
11441		A	Removal of skin lesion	1.61	2.62	1.77	1.12	0.79	0.11	4.34	3.49	2.84	2.51	010
11442		A	Removal of skin lesion	1.87	2.68	1.95	1.22	0.92	0.13	4.68	3.95	3.22	2.92	010
11443		A	Removal of skin lesion	2.49	3.14	2.36	1.53	1.16	0.18	5.81	5.03	4.20	3.83	010
11444		A	Removal of skin lesion	3.42	3.59	2.60	1.94	1.37	0.25	7.26	6.27	5.61	5.04	010
11446		A	Removal of skin lesion	4.49	4.07	3.00	2.47	1.72	0.32	8.88	7.81	7.28	6.53	010
11450		A	Removal, sweat gland lesion	2.73	3.94	3.43	1.08	2.00	0.24	6.91	6.40	4.05	4.97	090
11451		A	Removal, sweat gland lesion	3.95	4.85	4.00	1.56	2.36	0.37	9.17	8.32	5.88	6.68	090
11462		A	Removal, sweat gland lesion	2.51	3.89	3.26	1.01	1.82	0.23	6.63	6.00	3.75	4.56	090
11463		A	Removal, sweat gland lesion	3.95	5.20	3.69	1.63	1.90	0.39	9.54	8.03	5.97	6.24	090
11470		A	Removal, sweat gland lesion	3.25	4.41	3.72	1.30	2.16	0.31	7.97	7.28	4.86	5.72	090
11471		A	Removal, sweat gland lesion	4.41	5.44	4.06	1.81	2.24	0.42	10.27	8.89	6.64	7.07	090
11600		A	Removal of skin lesion	1.41	2.53	1.88	0.96	0.79	0.09	4.03	3.38	2.46	2.29	010
11601		A	Removal of skin lesion	1.93	2.61	2.06	1.08	0.92	0.11	4.65	4.10	3.12	2.96	010
11602		A	Removal of skin lesion	2.09	2.66	2.32	1.27	1.13	0.12	4.87	4.53	3.48	3.34	010
11603		A	Removal of skin lesion	2.35	2.82	2.63	1.35	1.29	0.15	5.32	5.13	3.85	3.79	010
11604		A	Removal of skin lesion	2.58	2.99	2.90	1.43	1.42	0.18	5.75	5.66	4.19	4.18	010
11606		A	Removal of skin lesion	3.43	3.51	3.45	1.74	2.56	0.28	7.22	7.16	5.45	6.27	010
11620		A	Removal of skin lesion	1.34	2.49	1.97	0.98	0.86	0.09	3.92	3.40	2.41	2.29	010
11621		A	Removal of skin lesion	1.97	2.63	2.27	1.22	1.09	0.11	4.71	4.35	3.30	3.17	010
11622		A	Removal of skin lesion	2.34	2.79	2.59	1.43	1.32	0.14	5.27	5.07	3.91	3.80	010
11623		A	Removal of skin lesion	2.93	2.71	2.76	1.67	1.54	0.20	5.84	5.89	4.80	4.67	010
11624		A	Removal of skin lesion	3.43	3.01	3.25	1.90	1.82	0.25	6.69	6.93	5.58	5.50	010
11626		A	Removal of skin lesion	4.30	3.96	3.83	2.29	3.00	0.34	8.60	8.47	6.93	7.64	010
11640		A	Removal of skin lesion	1.53	2.56	2.18	1.13	1.02	0.10	4.19	3.81	2.76	2.65	010
11641		A	Removal of skin lesion	2.44	2.90	2.59	1.58	1.36	0.14	5.48	5.17	4.16	3.94	010
11642		A	Removal of skin lesion	2.93	2.80	2.80	1.80	1.60	0.18	5.91	5.91	4.91	4.71	010
11643		A	Removal of skin lesion	3.50	3.12	3.20	2.09	1.87	0.24	6.86	6.94	5.83	5.61	010
11644		A	Removal of skin lesion	4.55	3.72	3.77	2.60	2.26	0.32	8.59	8.64	7.47	7.13	010
11646		A	Removal of skin lesion	5.95	4.92	4.81	3.32	4.01	0.46	11.33	11.22	9.73	10.42	010
11719		R	Trim nail(s)	0.11	0.47	0.37	0.04	0.09	0.01	0.59	0.49	0.16	0.21	000
11720		A	Debride nail, 1-5	0.32	0.40	0.38	0.13	0.16	0.02	0.74	0.72	0.47	0.50	000
11721		A	Debride nail, 6 or more	0.54	0.50	0.55	0.21	0.26	0.04	1.08	1.13	0.79	0.84	000
11730		A	Removal of nail plate	1.13	0.71	0.60	0.44	0.35	0.07	1.91	1.80	1.64	1.55	000
11732		A	Remove nail plate, add-on	0.57	0.28	0.28	0.23	0.19	0.04	0.89	0.89	0.84	0.80	ZZZ
11740		A	Drain blood from under nail	0.37	0.64	0.53	0.14	0.18	0.03	1.04	0.93	0.54	0.58	000
11750		A	Removal of nail bed	1.86	1.48	1.88	0.77	0.96	0.12	3.46	3.86	2.75	2.94	010
11752		A	Remove nail bed/finger tip	2.67	1.82	2.44	1.61	1.57	0.20	4.69	5.31	4.48	4.44	010
11755		A	Biopsy, nail unit	1.31	0.96	1.02	0.57	0.82	0.08	2.35	2.41	1.96	2.21	000
11760		A	Repair of nail bed	1.58	1.50	1.26	1.10	0.81	0.13	3.21	2.97	2.81	2.52	010
11762		A	Reconstruction of nail bed	2.89	1.93	2.36	1.70	1.55	0.20	5.02	5.45	4.79	4.64	010
11765		A	Excision of nail fold, toe	0.69	0.93	0.74	0.42	0.35	0.05	1.67	1.48	1.16	1.09	010
11770		A	Removal of pilonidal lesion	2.61	2.89	2.90	1.28	2.09	0.24	5.74	5.75	4.13	4.94	010
11771		A	Removal of pilonidal lesion	5.74	5.06	4.99	4.01	4.46	0.55	11.35	11.28	10.30	10.75	090
11772		A	Removal of pilonidal lesion	6.98	6.01	5.62	4.49	4.86	0.70	13.69	13.30	12.17	12.54	090
11900		A	Injection into skin lesions	0.52	0.70	0.49	0.21	0.18	0.02	1.24	1.03	0.75	0.72	000
11901		A	Added skin lesions injection	0.80	0.83	0.64	0.36	0.29	0.03	1.66	1.47	1.19	1.12	000
11920		R	Correct skin color defects	1.61	1.82	1.55	0.77	1.03	0.17	3.60	3.33	2.55	2.81	000
11921		R	Correct skin color defects	1.93	2.01	1.77	0.98	1.25	0.20	4.14	3.90	3.11	3.38	000
11922		R	Correct skin color defects	0.49	0.34	0.37	0.26	0.33	0.05	0.88	0.91	0.80	0.87	ZZZ
11950		R	Therapy for contour defects	0.84	1.02	1.16	0.36	0.83	0.06	1.92	2.06	1.26	1.73	000
11951		R	Therapy for contour defects	1.19	1.34	1.32	0.53	0.91	0.09	2.62	2.60	1.81	2.19	000
11952		R	Therapy for contour defects	1.69	2.17	1.73	0.79	1.04	0.11	3.97	3.53	2.59	2.84	000
11954		R	Therapy for contour defects	1.85	2.11	1.70	0.71	1.00	0.20	4.16	3.75	2.76	3.05	000
11960		A	Insert tissue expander(s)	9.08	NA	NA	9.32	8.86	0.89	NA	NA	19.29	18.83	090
11970		A	Replace tissue expander	7.06	NA	NA	4.67	6.55	0.75	NA	NA	12.48	14.36	090
11971		A	Remove tissue expander(s)	2.13	5.53	4.02	3.23	2.87	0.22	7.88	6.37	5.58	5.22	090
11975		N	Insert contraceptive cap	+1.48	1.48	1.32	0.57	0.86	0.11	3.07	2.91	2.16	2.45	XXX
11976		R	Removal of contraceptive cap	1.78	1.52	1.46	0.64	1.02	0.13	3.43	3.37	2.55	2.93	XXX
11977		N	Removal/reinsert contra cap	+3.30	2.19	2.38	1.28	1.92	0.25	5.74	5.93	4.83	5.47	XXX
11980		A	Implant hormone pellet(s)	1.48	1.48	1.48	0.57	0.57	0.11	3.07	3.07	2.16	2.16	000
12001		A	Repair superficial wound(s)	1.70	2.27	1.45	0.82	0.72	0.15	4.12	3.30	2.67	2.57	010
12002		A	Repair superficial wound(s)	1.86	2.36	1.61	0.85	0.86	0.16	4.38	3.63	2.87	2.88	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
12004	....	A	Repair superficial wound(s)	2.24	2.54	1.89	0.97	1.11	0.20	4.98	4.33	3.41	3.55	010
12005	....	A	Repair superficial wound(s)	2.86	2.92	2.26	1.21	1.41	0.26	6.04	5.38	4.33	4.53	010
12006	....	A	Repair superficial wound(s)	3.67	4.13	3.03	1.88	1.91	0.34	8.14	7.04	5.89	5.92	010
12007	....	A	Repair superficial wound(s)	4.12	4.45	3.20	2.12	2.04	0.38	8.95	7.70	6.62	6.54	010
12011	....	A	Repair superficial wound(s)	1.76	2.37	1.59	0.82	0.81	0.16	4.29	3.51	2.74	2.73	010
12013	....	A	Repair superficial wound(s)	1.99	2.50	1.81	0.87	1.00	0.18	4.67	3.98	3.04	3.17	010
12014	....	A	Repair superficial wound(s)	2.46	2.79	2.04	1.05	1.17	0.22	5.47	4.72	3.73	3.85	010
12015	....	A	Repair superficial wound(s)	3.19	3.21	2.49	1.24	1.50	0.29	6.69	5.97	4.72	4.98	010
12016	....	A	Repair superficial wound(s)	3.93	3.44	2.95	1.56	2.01	0.36	7.73	7.24	5.85	6.30	010
12017	....	A	Repair superficial wound(s)	4.71	5.20	4.43	2.29	2.97	0.44	10.35	9.58	7.44	8.12	010
12018	....	A	Repair superficial wound(s)	5.53	5.84	5.72	2.63	4.11	0.46	11.83	11.71	8.62	10.10	010
12020	....	A	Closure of split wound	2.62	2.61	1.95	1.52	1.41	0.23	5.46	4.80	4.37	4.26	010
12021	....	A	Closure of split wound	1.84	2.00	1.34	1.10	0.72	0.15	3.99	3.33	3.09	2.71	010
12031	....	A	Layer closure of wound(s)	2.15	2.68	1.73	1.16	0.78	0.14	4.97	4.02	3.45	3.07	010
12032	....	A	Layer closure of wound(s)	2.47	2.78	1.96	1.24	0.91	0.15	5.40	4.58	3.86	3.53	010
12034	....	A	Layer closure of wound(s)	2.92	2.99	2.30	1.41	1.51	0.24	6.15	5.46	4.57	4.67	010
12035	....	A	Layer closure of wound(s)	3.43	2.99	2.54	1.62	1.85	0.32	6.74	6.29	5.37	5.60	010
12036	....	A	Layer closure of wound(s)	4.05	4.88	3.70	2.34	2.43	0.40	9.33	8.15	6.79	6.88	010
12037	....	A	Layer closure of wound(s)	4.67	5.10	4.23	2.78	3.07	0.44	10.21	9.34	7.89	8.18	010
12041	....	A	Layer closure of wound(s)	2.37	2.97	1.94	1.20	0.83	0.17	5.51	4.48	3.74	3.37	010
12042	....	A	Layer closure of wound(s)	2.74	2.97	2.12	1.36	1.00	0.18	5.89	5.04	4.28	3.92	010
12044	....	A	Layer closure of wound(s)	3.14	3.02	2.39	1.54	1.65	0.26	6.42	5.79	4.94	5.05	010
12045	....	A	Layer closure of wound(s)	3.64	3.34	2.83	1.80	2.06	0.32	7.30	6.79	5.76	6.02	010
12046	....	A	Layer closure of wound(s)	4.25	4.91	3.99	2.41	2.74	0.37	9.53	8.61	7.03	7.36	010
12047	....	A	Layer closure of wound(s)	4.65	5.10	4.73	2.84	3.60	0.44	10.19	9.82	7.93	8.69	010
12051	....	A	Layer closure of wound(s)	2.47	2.90	2.00	1.34	0.95	0.17	5.54	4.64	3.98	3.59	010
12052	....	A	Layer closure of wound(s)	2.77	2.91	2.26	1.31	1.06	0.17	5.85	5.20	4.25	4.00	010
12053	....	A	Layer closure of wound(s)	3.12	3.02	2.47	1.47	1.69	0.23	6.37	5.82	4.82	5.04	010
12054	....	A	Layer closure of wound(s)	3.46	3.34	3.08	1.58	2.20	0.29	7.09	6.83	5.33	5.95	010
12055	....	A	Layer closure of wound(s)	4.43	4.10	3.81	2.11	2.82	0.39	8.92	8.63	6.93	7.64	010
12056	....	A	Layer closure of wound(s)	5.24	5.64	5.39	2.94	4.04	0.43	11.31	11.06	8.61	9.71	010
12057	....	A	Layer closure of wound(s)	5.96	5.54	5.79	3.51	4.78	0.49	11.99	12.24	9.96	11.23	010
13100	....	A	Repair of wound or lesion	3.12	3.19	2.22	1.78	1.20	0.22	6.53	5.56	5.12	4.54	010
13101	....	A	Repair of wound or lesion	3.92	3.52	2.89	2.23	1.68	0.23	7.67	7.04	6.38	5.83	010
13102	....	A	Repair wound/lesion add-on	1.24	0.71	0.71	0.57	0.57	0.08	2.03	2.03	1.89	1.89	ZZZ
13120	....	A	Repair of wound or lesion	3.30	3.32	2.40	1.79	1.27	0.25	6.87	5.95	5.34	4.82	010
13121	....	A	Repair of wound or lesion	4.33	3.75	3.32	2.29	1.87	0.27	8.35	7.92	6.89	6.47	010
13122	....	A	Repair wound/lesion add-on	1.44	0.83	0.83	0.66	0.66	0.09	2.36	2.36	2.19	2.19	ZZZ
13131	....	A	Repair of wound or lesion	3.79	3.59	2.87	2.13	1.61	0.26	7.64	6.92	6.18	5.66	010
13132	....	A	Repair of wound or lesion	5.95	4.48	4.72	3.14	2.81	0.34	10.77	11.01	9.43	9.10	010
13133	....	A	Repair wound/lesion add-on	2.19	1.18	1.18	1.01	1.01	0.12	3.49	3.49	3.32	3.32	ZZZ
13150	....	A	Repair of wound or lesion	3.81	4.79	3.35	2.48	2.20	0.29	8.89	7.45	6.58	6.30	010
13151	....	A	Repair of wound or lesion	4.45	4.88	3.77	2.88	2.11	0.30	9.63	8.52	7.63	6.86	010
13152	....	A	Repair of wound or lesion	6.33	5.61	5.59	3.80	3.30	0.40	12.34	12.32	10.53	10.03	010
13153	....	A	Repair wound/lesion add-on	2.38	1.31	1.31	1.09	1.09	0.15	3.84	3.84	3.62	3.62	ZZZ
13160	....	A	Late closure of wound	10.48	NA	NA	6.22	4.92	1.08	NA	NA	17.78	16.48	090
13300	....	D	Repair of wound or lesion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
14000	....	A	Skin tissue rearrangement	5.89	6.86	5.28	4.35	3.10	0.46	13.21	11.63	10.70	9.45	090
14001	....	A	Skin tissue rearrangement	8.47	8.15	6.65	5.62	5.39	0.67	17.29	15.79	14.76	14.53	090
14020	....	A	Skin tissue rearrangement	6.59	7.27	6.30	4.90	5.11	0.51	14.37	13.40	12.00	12.21	090
14021	....	A	Skin tissue rearrangement	10.06	8.86	7.80	6.65	6.70	0.73	19.65	18.59	17.44	17.49	090
14040	....	A	Skin tissue rearrangement	7.87	7.72	7.54	5.62	4.65	0.53	16.12	15.94	14.02	13.05	090
14041	....	A	Skin tissue rearrangement	11.49	9.63	9.09	7.50	5.89	0.69	21.81	21.27	19.68	18.07	090
14060	....	A	Skin tissue rearrangement	8.50	8.21	8.31	6.41	7.41	0.60	17.31	17.41	15.51	16.51	090
14061	....	A	Skin tissue rearrangement	12.29	10.57	10.98	8.40	7.05	0.75	23.61	24.02	21.44	20.09	090
14300	....	A	Skin tissue rearrangement	11.76	9.64	10.96	7.84	10.06	0.92	22.32	23.64	20.52	22.74	090
14350	....	A	Skin tissue rearrangement	9.61	NA	NA	5.76	6.18	0.90	NA	NA	16.27	16.69	090
15000	....	A	Skin graft	4.00	2.37	2.35	1.93	2.13	0.36	6.73	6.71	6.29	6.49	000
15001	....	A	Skin graft add-on	1.00	0.49	0.49	0.48	0.48	0.09	1.58	1.58	1.57	1.57	ZZZ
15050	....	A	Skin pinch graft	4.30	4.68	3.31	3.53	2.74	0.41	9.39	8.02	8.24	7.45	090
15100	....	A	Skin split graft	9.05	5.97	5.45	5.80	5.37	0.94	15.96	15.44	15.79	15.36	090
15101	....	A	Skin split graft add-on	1.72	1.10	1.42	0.76	1.25	0.18	3.00	3.32	2.66	3.15	ZZZ
15120	....	A	Skin split graft	9.83	7.96	7.27	6.56	6.57	0.80	18.59	17.90	17.19	17.20	090
15121	....	A	Skin split graft add-on	2.67	1.63	2.40	1.30	2.23	0.26	4.56	5.33	4.23	5.16	ZZZ
15200	....	A	Skin full graft	8.03	8.64	6.56	5.32	4.90	0.72	17.39	15.31	14.07	13.65	090
15201	....	A	Skin full graft add-on	1.32	1.02	1.42	0.65	1.11	0.13	2.47	2.87	2.10	2.56	ZZZ
15220	....	A	Skin full graft	7.87	8.87	7.06	5.70	5.48	0.68	17.42	15.61	14.25	14.03	090
15221	....	A	Skin full graft add-on	1.19	0.84	1.29	0.58	1.00	0.11	2.14	2.59	1.88	2.30	ZZZ
15240	....	A	Skin full graft	9.04	8.45	7.54	6.44	6.53	0.77	18.26	17.35	16.25	16.34	090
15241	....	A	Skin full graft add-on	1.86	1.36	1.97	0.95	1.59	0.17	3.39	4.00	2.98	3.62	ZZZ
15260	....	A	Skin full graft	10.06	8.69	8.40	7.17	7.64	0.65	19.40	19.11	17.88	18.35	090
15261	....	A	Skin full graft add-on	2.23	1.50	2.30	1.16	1.91	0.17	3.90	4.70	3.56	4.31	ZZZ
15350	....	A	Skin homograft	4.00	6.87	4.60	3.93	3.13	0.40	11.27	9.00	8.33	7.53	090
15351	....	A	Skin homograft add-on	1.00	0.42	0.42	0.42	0.42	0.09	1.51	1.51	1.51	1.51	ZZZ
15400	....	A	Skin heterograft	4.00	4.18	2.67	4.18	2.67	0.34	8.52	7.01	8.52	7.01	090
15401	....	A	Skin heterograft add-on	1.00	0.42	0.42	0.42	0.42	0.09	1.51	1.51	1.51	1.51	ZZZ
15570	....	A	Form skin pedicle flap	9.21	7.93	6.95	5.72	5.85	0.91	18.05	17.07	15.84	15.97	090
15572	....	A	Form skin pedicle flap	9.27	7.34	6.59	5.04	5.44	0.87	17.48	16.73	15.18	15.58	090
15574	....	A	Form skin pedicle flap	9.88	7.87	6.87	6.32	6.09	0.86	18.61	17.61	17.06	16.83	090
15576	....	A	Form skin pedicle flap	8.69	8.17	5.78	6.04	4.72	0.71	17.57	15.18	15.44	14.12	090
15580	....	D	Attach skin pedicle graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
15600		A	Skin graft	1.91	4.86	3.79	2.05	2.17	0.19	6.96	5.89	4.15	4.27	090
15610		A	Skin graft	2.42	2.56	2.81	2.25	2.57	0.25	5.23	5.48	4.92	5.24	090
15620		A	Skin graft	2.94	5.65	4.69	2.97	3.24	0.27	8.86	7.90	6.18	6.45	090
15625		D	Skin graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
15630		A	Skin graft	3.27	5.42	4.67	3.20	3.56	0.29	8.98	8.23	6.76	7.12	090
15650		A	Transfer skin pedicle flap	3.97	6.05	5.40	3.38	4.06	0.33	10.35	9.70	7.68	8.36	090
15732		A	Muscle-skin graft, head/neck	17.84	NA	NA	11.16	13.98	1.47	NA	NA	30.47	33.29	090
15734		A	Muscle-skin graft, trunk	17.79	NA	NA	10.78	15.71	1.88	NA	NA	30.45	35.38	090
15736		A	Muscle-skin graft, arm	16.27	NA	NA	10.10	13.85	1.72	NA	NA	28.09	31.84	090
15738		A	Muscle-skin graft, leg	17.92	NA	NA	10.68	12.34	1.91	NA	NA	30.51	32.17	090
15740		A	Island pedicle flap graft	10.25	8.43	9.86	6.70	8.99	0.64	19.32	20.75	17.59	19.88	090
15750		A	Neurovascular pedicle graft	11.41	NA	NA	7.95	10.47	1.17	NA	NA	20.53	23.05	090
15756		A	Free muscle flap, microvasc	35.23	NA	NA	21.07	26.87	3.62	NA	NA	59.92	65.72	090
15757		A	Free skin flap, microvasc	35.23	NA	NA	21.60	27.13	3.37	NA	NA	60.20	65.73	090
15758		A	Free fascial flap, microvasc	35.10	NA	NA	21.42	27.04	3.40	NA	NA	59.92	65.54	090
15760		A	Composite skin graft	8.74	8.00	7.96	5.98	6.95	0.72	17.46	17.42	15.44	16.41	090
15770		A	Derma-fat-fascia graft	7.52	NA	NA	5.85	6.98	0.81	NA	NA	14.18	15.31	090
15775		R	Hair transplant punch grafts	3.96	2.96	3.05	1.53	2.33	0.42	7.34	7.43	5.91	6.71	000
15776		R	Hair transplant punch grafts	5.54	4.96	4.67	2.14	3.26	0.59	11.09	10.80	8.27	9.39	000
15780		A	Abrasion treatment of skin	7.29	6.64	4.15	6.40	3.62	0.54	14.47	11.98	14.23	11.45	090
15781		A	Abrasion treatment of skin	4.85	4.70	4.40	4.32	3.19	0.29	9.84	9.54	9.46	8.33	090
15782		A	Abrasion treatment of skin	4.32	4.03	2.66	3.71	2.18	0.27	8.62	7.25	8.30	6.77	090
15783		A	Abrasion treatment of skin	4.29	4.35	3.18	3.11	2.06	0.26	8.90	7.73	7.66	6.61	090
15786		A	Abrasion, lesion, single	2.03	1.68	1.18	1.24	0.79	0.11	3.82	3.32	3.38	2.93	010
15787		A	Abrasion, lesions, add-on	0.33	0.27	0.26	0.18	0.16	0.02	0.62	0.61	0.53	0.51	ZZZ
15788		R	Chemical peel, face, epiderm	2.09	2.84	2.23	1.02	1.32	0.10	5.03	4.42	3.21	3.51	090
15789		R	Chemical peel, face, dermal	4.92	5.54	3.58	3.41	2.51	0.30	10.76	8.80	8.63	7.73	090
15792		R	Chemical peel, nonfacial	1.86	2.70	1.62	1.64	1.09	0.11	4.67	3.59	3.61	3.06	090
15793		A	Chemical peel, nonfacial	3.74	NA	NA	3.38	1.96	0.16	NA	NA	7.28	5.86	090
15810		A	Salabrasion	4.74	3.87	4.00	3.87	4.00	0.38	8.99	9.12	8.99	9.12	090
15811		A	Salabrasion	5.39	4.00	4.03	4.00	4.03	0.57	9.96	9.99	9.96	9.99	090
15819		A	Plastic surgery, neck	9.38	NA	NA	6.35	7.52	0.83	NA	NA	16.56	17.73	090
15820		A	Revision of lower eyelid	5.15	8.21	7.18	5.88	6.02	0.30	13.66	12.63	11.33	11.47	090
15821		A	Revision of lower eyelid	5.72	8.71	7.77	6.29	6.56	0.30	14.73	13.79	12.31	12.58	090
15822		A	Revision of upper eyelid	4.45	7.97	6.65	5.57	5.45	0.23	12.65	11.33	10.25	10.13	090
15823		A	Revision of upper eyelid	7.05	9.49	8.93	6.90	7.64	0.33	16.87	16.31	14.28	15.02	090
15824		R	Removal of forehead wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15825		R	Removal of neck wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15826		R	Removal of brow wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15828		R	Removal of face wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15829		R	Removal of skin wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15831		A	Excise excessive skin tissue	12.40	NA	NA	7.01	8.85	1.24	NA	NA	20.65	22.49	090
15832		A	Excise excessive skin tissue	11.59	NA	NA	7.52	8.26	1.20	NA	NA	20.31	21.05	090
15833		A	Excise excessive skin tissue	10.64	NA	NA	7.22	6.99	1.31	NA	NA	19.17	18.94	090
15834		A	Excise excessive skin tissue	10.85	NA	NA	6.10	6.95	1.23	NA	NA	18.18	19.03	090
15835		A	Excise excessive skin tissue	11.67	NA	NA	5.64	6.62	1.36	NA	NA	18.67	19.65	090
15836		A	Excise excessive skin tissue	9.34	NA	NA	5.90	6.10	0.95	NA	NA	16.19	16.39	090
15837		A	Excise excessive skin tissue	8.43	6.63	6.56	6.27	6.38	0.82	15.88	15.81	15.52	15.63	090
15838		A	Excise excessive skin tissue	7.13	NA	NA	5.56	5.97	0.53	NA	NA	13.22	13.63	090
15839		A	Excise excessive skin tissue	9.38	6.20	4.43	5.61	4.13	0.80	16.38	14.61	15.79	14.31	090
15840		A	Graft for face nerve palsy	13.26	NA	NA	9.49	12.66	1.06	NA	NA	23.81	26.98	090
15841		A	Graft for face nerve palsy	23.26	NA	NA	14.65	16.48	2.51	NA	NA	40.42	42.25	090
15842		A	Graft for face nerve palsy	37.96	NA	NA	22.41	26.94	5.53	NA	NA	65.90	70.43	090
15845		A	Skin and muscle repair, face	12.57	NA	NA	8.84	11.93	0.87	NA	NA	22.28	25.37	090
15850		B	Removal of sutures	+0.78	1.38	0.89	0.30	0.35	0.05	2.21	1.72	1.13	1.18	XXX
15851		A	Removal of sutures	0.86	1.53	0.93	0.32	0.25	0.06	2.45	1.85	1.24	1.17	000
15852		A	Dressing change, not for burn	0.86	1.65	1.07	0.33	0.29	0.07	2.58	2.00	1.26	1.22	000
15860		A	Test for blood flow in graft	1.95	1.11	1.29	0.86	1.17	0.19	3.25	3.43	3.00	3.31	000
15876		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15877		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15878		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15879		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15920		A	Removal of tail bone ulcer	7.95	NA	NA	5.34	4.27	0.75	NA	NA	14.04	12.97	090
15922		A	Removal of tail bone ulcer	9.90	NA	NA	6.70	6.60	1.03	NA	NA	17.63	17.53	090
15931		A	Remove sacrum pressure sore	9.24	NA	NA	5.46	4.32	0.95	NA	NA	15.65	14.51	090
15933		A	Remove sacrum pressure sore	10.85	NA	NA	7.62	7.57	1.13	NA	NA	19.60	19.55	090
15934		A	Remove sacrum pressure sore	12.69	NA	NA	7.92	8.01	1.34	NA	NA	21.95	22.04	090
15935		A	Remove sacrum pressure sore	14.57	NA	NA	9.44	10.82	1.53	NA	NA	25.54	26.92	090
15936		A	Remove sacrum pressure sore	12.38	NA	NA	8.39	9.77	1.30	NA	NA	22.07	23.45	090
15937		A	Remove sacrum pressure sore	14.21	NA	NA	9.56	12.09	1.49	NA	NA	25.26	27.79	090
15940		A	Remove hip pressure sore	9.34	NA	NA	5.68	4.77	0.96	NA	NA	15.98	15.07	090
15941		A	Remove hip pressure sore	11.43	NA	NA	8.85	8.25	1.20	NA	NA	21.48	20.88	090
15944		A	Remove hip pressure sore	11.46	NA	NA	8.01	9.03	1.19	NA	NA	20.66	21.68	090
15945		A	Remove hip pressure sore	12.69	NA	NA	8.88	10.49	1.33	NA	NA	22.90	24.51	090
15946		A	Remove hip pressure sore	21.57	NA	NA	13.49	15.76	2.15	NA	NA	37.21	39.48	090
15950		A	Remove thigh pressure sore	7.54	NA	NA	5.07	4.17	0.77	NA	NA	13.38	12.48	090
15951		A	Remove thigh pressure sore	10.72	NA	NA	7.65	7.98	1.11	NA	NA	19.48	19.81	090
15952		A	Remove thigh pressure sore	11.39	NA	NA	6.94	7.34	1.19	NA	NA	19.52	19.92	090
15953		A	Remove thigh pressure sore	12.63	NA	NA	8.32	9.09	1.31	NA	NA	22.26	23.03	090
15956		A	Remove thigh pressure sore	15.52	NA	NA	10.04	14.29	1.61	NA	NA	27.17	31.42	090
15958		A	Remove thigh pressure sore	15.48	NA	NA	10.05	14.27	1.59	NA	NA	27.12	31.34	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
15999		C	Removal of pressure sore	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
16000		A	Initial treatment of burn(s)	0.89	0.94	0.66	0.24	0.22	0.07	1.90	1.62	1.20	1.18	000
16010		A	Treatment of burn(s)	0.87	1.04	0.70	0.34	0.26	0.07	1.98	1.64	1.28	1.20	000
16015		A	Treatment of burn(s)	2.35	1.64	1.93	0.98	1.60	0.21	4.20	4.49	3.54	4.16	000
16020		A	Treatment of burn(s)	0.80	1.01	0.69	0.23	0.21	0.06	1.87	1.55	1.09	1.07	000
16025		A	Treatment of burn(s)	1.85	1.59	1.04	0.66	0.46	0.16	3.60	3.05	2.67	2.47	000
16030		A	Treatment of burn(s)	2.08	2.54	1.55	0.83	0.70	0.19	4.81	3.82	3.10	2.97	000
16035		A	Incision of burn scab	4.82	2.85	2.45	2.09	2.07	0.48	8.15	7.75	7.39	7.37	090
17000		A	Destroy benign/premal lesion	0.60	1.02	0.74	0.27	0.25	0.03	1.65	1.37	0.90	0.88	010
17003		A	Destroy lesions, 2-14	0.15	0.25	0.20	0.07	0.07	0.01	0.41	0.36	0.23	0.23	ZZZ
17004		A	Destroy lesions, 15 or more	2.79	2.36	2.40	1.27	1.25	0.11	5.26	5.30	4.17	4.15	010
17106		A	Destruction of skin lesions	4.59	3.68	2.89	2.67	1.86	0.27	8.54	7.75	7.53	6.72	090
17107		A	Destruction of skin lesions	9.16	6.09	5.06	4.91	3.46	0.51	15.76	14.73	14.58	13.13	090
17108		A	Destruction of skin lesions	13.20	8.09	9.10	7.12	8.62	0.76	22.05	23.06	21.08	22.58	090
17110		A	Destruct lesion, 1-14	0.65	0.96	0.70	0.26	0.24	0.04	1.65	1.39	0.95	0.93	010
17111		A	Destruct lesion, 15 or more	0.92	1.16	0.91	0.37	0.35	0.05	2.13	1.88	1.34	1.32	010
17250		A	Chemical cautery, tissue	0.50	0.64	0.51	0.19	0.19	0.04	1.18	1.05	0.73	0.73	000
17260		A	Destruction of skin lesions	0.91	1.24	1.24	0.41	0.52	0.04	2.19	2.19	1.36	1.47	010
17261		A	Destruction of skin lesions	1.17	1.36	1.44	0.54	0.65	0.05	2.58	2.66	1.76	1.87	010
17262		A	Destruction of skin lesions	1.58	1.56	1.77	0.74	0.87	0.06	3.20	3.41	2.38	2.51	010
17263		A	Destruction of skin lesions	1.79	1.66	2.05	0.83	1.03	0.07	3.52	3.91	2.69	2.89	010
17264		A	Destruction of skin lesions	1.94	1.74	2.28	0.89	1.15	0.08	3.76	4.30	2.91	3.17	010
17266		A	Destruction of skin lesions	2.34	1.93	2.66	0.99	1.34	0.11	4.38	5.11	3.44	3.79	010
17270		A	Destruction of skin lesions	1.32	1.44	1.45	0.60	0.67	0.06	2.82	2.83	1.98	2.05	010
17271		A	Destruction of skin lesions	1.49	1.51	1.71	0.71	0.83	0.06	3.06	3.26	2.26	2.38	010
17272		A	Destruction of skin lesions	1.77	1.65	2.02	0.84	1.02	0.07	3.49	3.86	2.68	2.86	010
17273		A	Destruction of skin lesions	2.05	1.79	2.30	0.97	1.19	0.08	3.92	4.43	3.10	3.32	010
17274		A	Destruction of skin lesions	2.59	2.04	2.76	1.24	1.49	0.11	4.74	5.46	3.94	4.19	010
17276		A	Destruction of skin lesions	3.20	2.35	3.03	1.61	1.73	0.15	5.70	6.38	4.96	5.08	010
17280		A	Destruction of skin lesions	1.17	1.36	1.58	0.54	0.72	0.05	2.58	2.80	1.76	1.94	010
17281		A	Destruction of skin lesions	1.72	1.63	1.95	0.82	0.98	0.07	3.42	3.74	2.61	2.77	010
17282		A	Destruction of skin lesions	2.04	1.79	2.29	0.97	1.19	0.08	3.91	4.41	3.09	3.31	010
17283		A	Destruction of skin lesions	2.64	2.08	2.68	1.25	1.45	0.11	4.83	5.43	4.00	4.20	010
17284		A	Destruction of skin lesions	3.21	2.35	3.08	1.52	1.72	0.13	5.69	6.42	4.86	5.06	010
17286		A	Destruction of skin lesions	4.44	2.96	3.83	2.52	2.44	0.21	7.61	8.48	7.17	7.09	010
17304		A	Chemosurgery of skin lesion	7.60	6.62	5.49	3.63	2.91	0.31	14.53	13.40	11.54	10.82	000
17305		A	2nd stage chemosurgery	2.85	2.87	2.66	1.37	1.30	0.11	5.83	5.62	4.33	4.26	000
17306		A	3rd stage chemosurgery	2.85	2.88	2.20	1.38	1.07	0.11	5.84	5.16	4.34	4.03	000
17307		A	Followup skin lesion therapy	2.85	3.02	2.31	1.39	1.10	0.11	5.98	5.27	4.35	4.06	000
17310		A	Extensive skin chemosurgery	0.95	0.97	0.56	0.47	0.27	0.05	1.97	1.56	1.47	1.27	000
17340		A	Cryotherapy of skin	0.76	1.35	0.83	0.26	0.21	0.05	2.16	1.64	1.07	1.02	010
17360		A	Skin peel therapy	1.43	1.50	0.90	0.78	0.47	0.06	2.99	2.39	2.27	1.96	010
17380		R	Hair removal by electrolysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
17999		C	Skin tissue procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
19000		A	Drainage of breast lesion	0.84	1.14	0.78	0.24	0.23	0.07	2.05	1.69	1.15	1.14	000
19001		A	Drain breast lesion add-on	0.42	0.77	0.52	0.12	0.13	0.03	1.22	0.97	0.57	0.58	ZZZ
19020		A	Incision of breast lesion	3.57	6.27	3.90	3.21	2.37	0.34	10.18	7.81	7.12	6.28	090
19030		A	Injection for breast x-ray	1.53	9.38	4.96	0.42	0.48	0.06	10.97	6.55	2.01	2.07	000
19100		A	Biopsy of breast	1.27	3.03	1.86	0.39	0.37	0.09	4.39	3.22	1.75	1.73	000
19101		A	Biopsy of breast	3.18	8.46	5.50	2.52	2.53	0.23	11.87	8.91	5.93	5.94	010
19110		A	Nipple exploration	4.30	7.34	5.01	4.22	3.45	0.42	12.06	9.73	8.94	8.17	090
19112		A	Excise breast duct fistula	3.67	6.68	4.61	2.89	2.72	0.35	10.70	8.63	6.91	6.74	090
19120		A	Removal of breast lesion	5.56	4.12	3.64	3.47	3.31	0.55	10.23	9.75	9.58	9.42	090
19125		A	Excision, breast lesion	6.06	4.80	3.98	3.66	3.41	0.60	11.46	10.64	10.32	10.07	090
19126		A	Excision, addl breast lesion	2.93	NA	NA	1.11	1.34	0.30	NA	NA	4.34	4.57	ZZZ
19140		A	Removal of breast tissue	5.14	8.59	6.63	3.55	4.11	0.52	14.25	12.29	9.21	9.77	090
19160		A	Removal of breast tissue	5.99	NA	NA	4.40	4.44	0.59	NA	NA	10.98	11.02	090
19162		A	Remove breast tissue, nodes	13.53	NA	NA	8.00	9.09	1.33	NA	NA	22.86	23.95	090
19180		A	Removal of breast	8.80	NA	NA	5.90	6.00	0.87	NA	NA	15.57	15.67	090
19182		A	Removal of breast	7.73	NA	NA	4.94	5.77	0.77	NA	NA	13.44	14.27	090
19200		A	Removal of breast	15.49	NA	NA	9.08	10.09	1.51	NA	NA	26.08	27.09	090
19220		A	Removal of breast	15.72	NA	NA	8.98	10.31	1.49	NA	NA	26.19	27.52	090
19240		A	Removal of breast	16.00	NA	NA	8.93	9.59	1.58	NA	NA	26.51	27.17	090
19260		A	Removal of chest wall lesion	15.44	NA	NA	10.33	7.91	1.68	NA	NA	27.45	25.03	090
19271		A	Revision of chest wall	18.90	NA	NA	13.73	14.44	2.13	NA	NA	34.76	35.47	090
19272		A	Extensive chest wall surgery	21.55	NA	NA	14.28	13.98	2.52	NA	NA	38.35	38.05	090
19290		A	Place needle wire, breast	1.27	4.39	2.44	0.36	0.42	0.05	5.71	3.76	1.68	1.74	000
19291		A	Place needle wire, breast	0.63	1.50	0.89	0.17	0.22	0.03	2.16	1.55	0.83	0.88	ZZZ
19316		A	Suspension of breast	10.69	NA	NA	6.98	9.87	1.13	NA	NA	18.80	21.69	090
19318		A	Reduction of large breast	15.62	NA	NA	9.72	12.56	1.65	NA	NA	26.99	29.83	090
19324		A	Enlarge breast	5.85	NA	NA	3.50	3.54	0.61	NA	NA	9.96	10.00	090
19325		A	Enlarge breast with implant	8.45	NA	NA	4.75	5.56	0.90	NA	NA	14.10	14.91	090
19328		A	Removal of breast implant	5.68	NA	NA	4.13	4.11	0.60	NA	NA	10.41	10.39	090
19330		A	Removal of implant material	7.59	NA	NA	4.88	4.55	0.80	NA	NA	13.27	12.94	090
19340		A	Immediate breast prosthesis	6.33	NA	NA	3.23	5.39	0.67	NA	NA	10.23	12.39	ZZZ
19342		A	Delayed breast prosthesis	11.20	NA	NA	7.27	9.50	1.19	NA	NA	19.66	21.89	090
19350		A	Breast reconstruction	8.92	11.33	9.51	6.22	6.95	0.95	21.20	19.38	16.09	16.82	090
19355		A	Correct inverted nipple(s)	7.57	12.40	8.88	4.47	4.91	0.75	20.72	17.20	12.79	13.23	090
19357		A	Breast reconstruction	18.16	NA	NA	12.50	12.85	1.92	NA	NA	32.58	32.93	090
19361		A	Breast reconstruction	19.26	NA	NA	11.31	16.58	2.04	NA	NA	32.61	37.88	090
19364		A	Breast reconstruction	41.00	NA	NA	23.84	20.97	4.22	NA	NA	69.06	66.19	090

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[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
19366		A	Breast reconstruction	21.28	NA	NA	11.53	14.67	2.15	NA	NA	34.96	38.10	090
19367		A	Breast reconstruction	25.73	NA	NA	14.70	18.28	2.72	NA	NA	43.15	46.73	090
19368		A	Breast reconstruction	32.42	NA	NA	17.49	19.67	3.46	NA	NA	53.37	55.56	090
19369		A	Breast reconstruction	29.82	NA	NA	17.46	19.66	3.17	NA	NA	50.45	52.65	090
19370		A	Surgery of breast capsule	8.05	NA	NA	5.55	6.13	0.86	NA	NA	14.46	15.04	090
19371		A	Removal of breast capsule	9.35	NA	NA	6.53	7.56	0.99	NA	NA	16.87	17.90	090
19380		A	Revise breast reconstruction	9.14	NA	NA	6.42	7.61	0.97	NA	NA	16.53	17.72	090
19396		A	Design custom breast implant	2.17	4.29	3.00	1.14	1.42	0.23	6.69	5.40	3.54	3.82	000
19499		C	Breast surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
20000		A	Incision of abscess	2.12	1.93	1.43	1.11	0.79	0.15	4.20	3.70	3.38	3.06	010
20005		A	Incision of deep abscess	3.42	2.69	2.34	2.10	2.05	0.31	6.42	6.07	5.83	5.78	010
20100		A	Explore wound, neck	10.08	5.63	5.51	4.82	5.11	0.94	16.65	16.53	15.84	16.13	010
20101		A	Explore wound, chest	3.22	3.14	2.42	1.88	1.79	0.30	6.66	5.94	5.40	5.31	010
20102		A	Explore wound, abdomen	3.94	3.51	2.80	1.91	2.00	0.39	7.84	7.13	6.24	6.33	010
20103		A	Explore wound, extremity	5.30	3.95	3.38	2.95	2.88	0.53	9.78	9.21	8.78	8.71	010
20150		A	Excise epiphyseal bar	13.69	NA	NA	8.96	11.21	1.03	NA	NA	23.68	25.93	090
20200		A	Muscle biopsy	1.46	1.59	1.41	0.61	0.92	0.17	3.22	3.04	2.24	2.55	000
20205		A	Deep muscle biopsy	2.35	3.76	2.90	0.97	1.51	0.28	6.39	5.53	3.60	4.14	000
20206		A	Needle biopsy, muscle	0.99	2.74	1.89	0.30	0.67	0.06	3.79	2.94	1.35	1.72	000
20220		A	Bone biopsy, trocar/needle	1.27	3.56	2.49	1.89	1.66	0.06	4.89	3.82	3.22	2.99	000
20225		A	Bone biopsy, trocar/needle	1.87	0.64	1.62	0.64	1.44	0.10	2.61	3.59	2.61	3.41	000
20240		A	Bone biopsy, excisional	3.23	NA	NA	3.66	2.85	0.27	NA	NA	7.16	6.35	010
20245		A	Bone biopsy, excisional	3.95	NA	NA	4.04	3.97	0.36	NA	NA	8.35	8.28	010
20250		A	Open bone biopsy	5.03	NA	NA	3.82	4.66	0.46	NA	NA	9.31	10.15	010
20251		A	Open bone biopsy	5.56	NA	NA	4.41	5.38	0.67	NA	NA	10.64	11.61	010
20500		A	Injection of sinus tract	1.23	4.74	2.57	3.06	1.63	0.09	6.06	3.89	4.38	2.95	010
20501		A	Inject sinus tract for x-ray	0.76	11.77	6.05	0.21	0.27	0.03	12.56	6.84	1.00	1.06	000
20520		A	Removal of foreign body	1.85	4.50	2.64	2.87	1.63	0.15	6.50	4.64	4.87	3.63	010
20525		A	Removal of foreign body	3.50	5.30	3.86	3.68	3.05	0.34	9.14	7.70	7.52	6.89	010
20550		A	Inject tendon/ligament/cyst	0.86	1.73	1.07	0.20	0.21	0.06	2.65	1.99	1.12	1.13	000
20600		A	Drain/inject, joint/bursa	0.66	1.17	0.84	0.26	0.26	0.05	1.88	1.55	0.97	0.97	000
20605		A	Drain/inject, joint/bursa	0.68	1.47	0.98	0.26	0.26	0.05	2.20	1.71	0.99	0.99	000
20610		A	Drain/inject, joint/bursa	0.79	1.80	1.15	0.31	0.28	0.06	2.65	2.00	1.16	1.13	000
20615		A	Treatment of bone cyst	2.28	3.73	2.13	2.28	1.28	0.16	6.17	4.57	4.72	3.72	010
20650		A	Insert and remove bone pin	2.23	3.69	2.43	2.63	1.90	0.17	6.09	4.83	5.03	4.30	010
20660		A	Apply,remove fixation device	2.51	NA	NA	1.31	1.50	0.45	NA	NA	4.27	4.46	000
20661		A	Application of head brace	4.89	NA	NA	6.04	5.10	0.83	NA	NA	11.76	10.82	090
20662		A	Application of pelvis brace	6.07	NA	NA	4.88	5.99	0.64	NA	NA	11.59	12.70	090
20663		A	Application of thigh brace	5.43	NA	NA	4.12	4.58	0.55	NA	NA	10.10	10.56	090
20664		A	Halo brace application	8.06	NA	NA	7.72	5.94	1.38	NA	NA	17.16	15.38	090
20665		A	Removal of fixation device	1.31	2.10	1.32	1.12	0.83	0.17	3.58	2.80	2.60	2.31	010
20670		A	Removal of support implant	1.74	4.77	2.79	3.10	1.75	0.17	6.68	4.70	5.01	3.66	010
20680		A	Removal of support implant	3.35	4.12	3.87	4.12	3.87	0.33	7.80	7.55	7.80	7.55	090
20690		A	Apply bone fixation device	3.52	NA	NA	1.89	2.93	0.33	NA	NA	5.74	6.78	090
20692		A	Apply bone fixation device	6.41	NA	NA	3.37	4.68	0.64	NA	NA	10.42	11.73	090
20693		A	Adjust bone fixation device	5.86	NA	NA	9.96	6.33	0.66	NA	NA	16.48	12.85	090
20694		A	Remove bone fixation device	4.16	7.14	4.98	5.20	4.01	0.43	11.73	9.57	9.79	8.60	090
20802		A	Replantation, arm, complete	41.15	NA	NA	22.61	31.78	3.51	NA	NA	67.27	76.44	090
20805		A	Replant, forearm, complete	50.00	NA	NA	38.99	44.55	3.56	NA	NA	92.55	98.11	090
20808		A	Replantation hand, complete	61.65	NA	NA	45.51	53.90	5.46	NA	NA	112.62	121.01	090
20816		A	Replantation digit, complete	30.94	NA	NA	40.11	35.41	3.20	NA	NA	74.25	69.55	090
20822		A	Replantation digit, complete	25.59	NA	NA	32.28	28.83	2.64	NA	NA	60.51	57.06	090
20824		A	Replantation thumb, complete	30.94	NA	NA	38.46	34.59	3.26	NA	NA	72.66	68.79	090
20827		A	Replantation thumb, complete	26.41	NA	NA	35.68	30.89	2.72	NA	NA	64.81	60.02	090
20838		A	Replantation foot, complete	41.41	NA	NA	24.63	32.79	4.99	NA	NA	71.03	79.19	090
20900		A	Removal of bone for graft	5.58	5.34	4.19	5.34	4.19	0.55	11.47	10.32	11.47	10.32	090
20902		A	Removal of bone for graft	7.55	NA	NA	7.87	6.62	0.78	NA	NA	16.20	14.95	090
20910		A	Remove cartilage for graft	5.34	6.69	3.78	5.81	3.34	0.43	12.46	9.55	11.58	9.11	090
20912		A	Remove cartilage for graft	6.35	NA	NA	6.14	5.58	0.55	NA	NA	13.04	12.48	090
20920		A	Removal of fascia for graft	5.31	NA	NA	4.99	4.63	0.51	NA	NA	10.81	10.45	090
20922		A	Removal of fascia for graft	6.61	9.16	6.96	5.82	5.29	0.84	16.61	14.41	13.27	12.74	090
20924		A	Removal of tendon for graft	6.48	NA	NA	6.26	6.09	0.68	NA	NA	13.42	13.25	090
20926		A	Removal of tissue for graft	5.53	NA	NA	5.52	4.17	0.73	NA	NA	11.78	10.43	090
20930		B	Spinal bone allograft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
20931		A	Spinal bone allograft	1.81	NA	NA	0.96	1.42	0.31	NA	NA	3.08	3.54	ZZZ
20936		B	Spinal bone autograft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
20937		A	Spinal bone autograft	2.79	NA	NA	1.48	2.19	0.34	NA	NA	4.61	5.32	ZZZ
20938		A	Spinal bone autograft	3.02	NA	NA	1.60	2.37	0.44	NA	NA	5.06	5.83	ZZZ
20950		A	Fluid pressure, muscle	1.26	NA	NA	1.63	1.41	0.13	NA	NA	3.02	2.80	000
20955		A	Fibula bone graft, microvasc	39.21	NA	NA	26.38	32.64	3.88	NA	NA	69.47	75.73	090
20956		A	Iliac bone graft, microvasc	39.27	NA	NA	26.86	28.03	4.68	NA	NA	70.81	71.98	090
20957		A	Mt bone graft, microvasc	40.65	NA	NA	18.49	24.37	4.84	NA	NA	63.98	69.86	090
20962		A	Other bone graft, microvasc	39.27	NA	NA	25.63	27.41	4.28	NA	NA	69.18	70.96	090
20969		A	Bone/skin graft, microvasc	43.92	NA	NA	29.27	36.41	4.12	NA	NA	77.31	84.45	090
20970		A	Bone/skin graft, iliac crest	43.06	NA	NA	28.16	35.41	4.49	NA	NA	75.71	82.96	090
20972		A	Bone/skin graft, metatarsal	42.99	NA	NA	18.71	30.85	3.89	NA	NA	65.59	77.73	090
20973		A	Bone/skin graft, great toe	45.76	NA	NA	26.86	36.36	4.73	NA	NA	77.35	86.85	090
20974		A	Electrical bone stimulation	0.62	0.37	2.04	0.31	1.09	0.04	1.03	2.70	0.97	1.75	000
20975		A	Electrical bone stimulation	2.60	NA	NA	1.38	2.24	0.31	NA	NA	4.29	5.15	000
20979		A	Us bone stimulation	0.17	0.25	0.25	0.07	0.07	0.01	0.43	0.43	0.25	0.25	000
20999		C	Musculoskeletal surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
21010	....	A	Incision of jaw joint	10.14	NA	NA	6.45	8.78	0.50	NA	NA	17.09	19.42	090
21015	....	A	Resection of facial tumor	5.29	NA	NA	5.70	6.01	0.52	NA	NA	11.51	11.82	090
21025	....	A	Excision of bone, lower jaw	10.06	6.87	5.68	6.28	4.27	0.77	17.70	16.51	17.11	15.10	090
21026	....	A	Excision of facial bone(s)	4.85	4.88	4.15	4.41	3.06	0.38	10.11	9.38	9.64	8.29	090
21029	....	A	Contour of face bone lesion	7.71	5.94	7.57	5.43	5.02	0.62	14.27	15.90	13.76	13.35	090
21030	....	A	Removal of face bone lesion	6.46	5.06	4.35	4.27	3.05	0.47	11.99	11.28	11.20	9.98	090
21031	....	A	Remove exostosis, mandible	3.24	3.14	3.57	2.00	2.00	0.24	6.62	7.05	5.48	5.48	090
21032	....	A	Remove exostosis, maxilla	3.24	3.11	3.66	2.11	2.11	0.25	6.60	7.15	5.60	5.60	090
21034	....	A	Removal of face bone lesion	16.17	9.28	8.43	9.28	8.43	1.32	26.77	25.92	26.77	25.92	090
21040	....	A	Removal of jaw bone lesion	2.11	2.79	2.90	1.63	1.57	0.16	5.06	5.17	3.90	3.84	090
21041	....	A	Removal of jaw bone lesion	6.71	5.25	5.75	4.12	3.63	0.49	12.45	12.95	11.32	10.83	090
21044	....	A	Removal of jaw bone lesion	11.86	NA	NA	7.61	8.99	0.89	NA	NA	20.36	21.74	090
21045	....	A	Extensive jaw surgery	16.17	NA	NA	9.85	12.43	1.25	NA	NA	27.27	29.85	090
21050	....	A	Removal of jaw joint	10.77	NA	NA	10.76	11.81	0.74	NA	NA	22.27	23.32	090
21060	....	A	Remove jaw joint cartilage	10.23	NA	NA	9.97	11.09	0.77	NA	NA	20.97	22.09	090
21070	....	A	Remove coronoid process	8.20	NA	NA	5.65	6.52	0.71	NA	NA	14.56	15.43	090
21076	....	A	Prepare face/oral prosthesis	13.42	9.45	12.74	7.11	7.56	0.94	23.81	27.10	21.47	21.92	010
21077	....	A	Prepare face/oral prosthesis	33.75	23.77	32.04	17.89	19.02	2.44	59.96	68.23	54.08	55.21	090
21079	....	A	Prepare face/oral prosthesis	22.34	16.79	23.55	12.37	13.77	1.51	40.64	47.40	36.22	37.62	090
21080	....	A	Prepare face/oral prosthesis	25.10	18.87	26.47	13.90	15.47	1.74	45.71	53.31	40.74	42.31	090
21081	....	A	Prepare face/oral prosthesis	22.88	17.19	24.11	12.67	14.10	1.60	41.67	48.59	37.15	38.58	090
21082	....	A	Prepare face/oral prosthesis	20.87	14.70	19.81	11.06	11.76	1.47	37.04	42.15	33.40	34.10	090
21083	....	A	Prepare face/oral prosthesis	19.30	14.51	20.35	10.69	11.90	1.31	35.12	40.96	31.30	32.51	090
21084	....	A	Prepare face/oral prosthesis	22.51	16.92	23.73	12.47	13.87	1.61	41.04	47.85	36.59	37.99	090
21085	....	A	Prepare face/oral prosthesis	9.00	6.34	8.54	4.77	5.07	0.66	16.00	18.20	14.43	14.73	010
21086	....	A	Prepare face/oral prosthesis	24.92	18.73	26.27	13.80	15.36	1.84	45.49	53.03	40.56	42.12	090
21087	....	A	Prepare face/oral prosthesis	24.92	17.55	23.65	13.21	14.05	1.81	44.28	50.38	39.94	40.78	090
21088	....	C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
21089	....	C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
21100	....	A	Maxillofacial fixation	4.22	4.56	2.86	3.82	2.49	0.24	9.02	7.32	8.28	6.95	090
21110	....	A	Interdental fixation	5.21	4.98	5.49	3.79	3.40	0.34	10.53	11.04	9.34	8.95	090
21116	....	A	Injection, jaw joint x-ray	0.81	6.89	3.84	0.26	0.53	0.05	7.75	4.70	1.12	1.39	000
21120	....	A	Reconstruction of chin	4.93	8.74	6.32	4.97	4.44	0.40	14.07	11.65	10.30	9.77	090
21121	....	A	Reconstruction of chin	7.64	6.96	6.55	5.61	5.87	0.60	15.20	14.79	13.85	14.11	090
21122	....	A	Reconstruction of chin	8.52	NA	NA	6.57	6.67	0.72	NA	NA	15.81	15.91	090
21123	....	A	Reconstruction of chin	11.16	NA	NA	8.08	8.46	0.90	NA	NA	20.14	20.52	090
21125	....	A	Augmentation, lower jaw bone	10.62	7.74	6.43	7.28	6.20	0.81	19.17	17.86	18.71	17.63	090
21127	....	A	Augmentation, lower jaw bone	11.12	8.65	8.62	6.58	7.58	0.92	20.69	20.66	18.62	19.62	090
21137	....	A	Reduction of forehead	9.82	NA	NA	7.09	7.41	0.88	NA	NA	17.79	18.11	090
21138	....	A	Reduction of forehead	12.19	NA	NA	7.49	8.56	1.06	NA	NA	20.74	21.81	090
21139	....	A	Reduction of forehead	14.61	NA	NA	9.79	10.67	1.27	NA	NA	25.67	26.55	090
21141	....	A	Reconstruct midface, lefort	18.10	NA	NA	10.76	13.16	1.42	NA	NA	30.28	32.68	090
21142	....	A	Reconstruct midface, lefort	18.81	NA	NA	12.13	14.12	1.77	NA	NA	32.71	34.70	090
21143	....	A	Reconstruct midface, lefort	19.58	NA	NA	10.36	13.54	1.21	NA	NA	31.15	34.33	090
21145	....	A	Reconstruct midface, lefort	19.94	NA	NA	10.42	12.99	1.46	NA	NA	31.82	34.39	090
21146	....	A	Reconstruct midface, lefort	20.71	NA	NA	10.62	13.37	1.61	NA	NA	32.94	35.69	090
21147	....	A	Reconstruct midface, lefort	21.77	NA	NA	11.20	13.96	1.53	NA	NA	34.50	37.26	090
21150	....	A	Reconstruct midface, lefort	25.24	NA	NA	12.77	16.40	1.85	NA	NA	39.86	43.49	090
21151	....	A	Reconstruct midface, lefort	28.30	NA	NA	17.35	19.90	3.25	NA	NA	48.90	51.45	090
21154	....	A	Reconstruct midface, lefort	30.52	NA	NA	16.07	20.06	3.14	NA	NA	49.73	53.72	090
21155	....	A	Reconstruct midface, lefort	34.45	NA	NA	16.74	22.00	3.54	NA	NA	54.73	59.99	090
21159	....	A	Reconstruct midface, lefort	42.38	NA	NA	24.12	28.89	3.77	NA	NA	70.27	75.04	090
21160	....	A	Reconstruct midface, lefort	46.44	NA	NA	22.31	29.59	3.51	NA	NA	72.26	79.54	090
21172	....	A	Reconstruct orbit/forehead	27.80	NA	NA	14.48	18.26	1.92	NA	NA	44.20	47.98	090
21175	....	A	Reconstruct orbit/forehead	33.17	NA	NA	18.07	22.26	3.75	NA	NA	54.99	59.18	090
21179	....	A	Reconstruct entire forehead	22.25	NA	NA	15.84	16.73	2.52	NA	NA	40.61	41.50	090
21180	....	A	Reconstruct entire forehead	25.19	NA	NA	17.68	18.86	2.21	NA	NA	45.08	46.26	090
21181	....	A	Contour cranial bone lesion	9.90	NA	NA	7.35	7.54	1.04	NA	NA	18.29	18.48	090
21182	....	A	Reconstruct cranial bone	32.19	NA	NA	21.26	23.45	2.77	NA	NA	56.22	58.41	090
21183	....	A	Reconstruct cranial bone	35.31	NA	NA	20.94	24.50	3.14	NA	NA	59.39	62.95	090
21184	....	A	Reconstruct cranial bone	38.24	NA	NA	23.21	26.83	6.52	NA	NA	67.97	71.59	090
21188	....	A	Reconstruction of midface	22.46	NA	NA	14.91	16.27	1.87	NA	NA	39.24	40.60	090
21193	....	A	Reconstruct lower jaw bone	17.15	NA	NA	9.99	11.68	1.42	NA	NA	28.56	30.25	090
21194	....	A	Reconstruct lower jaw bone	19.84	NA	NA	11.54	13.51	1.64	NA	NA	33.02	34.99	090
21195	....	A	Reconstruct lower jaw bone	17.24	NA	NA	11.29	12.34	1.34	NA	NA	29.87	30.92	090
21196	....	A	Reconstruct lower jaw bone	18.91	NA	NA	12.30	13.54	1.50	NA	NA	32.71	33.95	090
21198	....	A	Reconstruct lower jaw bone	14.16	NA	NA	11.18	13.63	1.03	NA	NA	26.37	28.82	090
21206	....	A	Reconstruct upper jaw bone	14.10	NA	NA	9.29	10.15	1.02	NA	NA	24.41	25.27	090
21208	....	A	Augmentation of facial bones	10.23	8.77	10.49	7.56	9.89	0.79	19.79	21.51	18.58	20.91	090
21209	....	A	Reduction of facial bones	6.72	6.65	5.82	5.08	5.03	0.55	13.92	13.09	12.35	12.30	090
21210	....	A	Face bone graft	10.23	8.10	10.16	7.38	6.75	0.75	19.08	21.14	18.36	17.73	090
21215	....	A	Lower jaw bone graft	10.77	8.11	10.49	6.40	6.42	0.78	19.66	22.04	17.95	17.97	090
21230	....	A	Rib cartilage graft	10.77	NA	NA	8.72	9.99	0.96	NA	NA	20.45	21.72	090
21235	....	A	Ear cartilage graft	6.72	9.59	8.81	6.80	7.41	0.53	16.84	16.06	14.05	14.66	090
21240	....	A	Reconstruction of jaw joint	14.05	NA	NA	11.16	13.97	1.09	NA	NA	26.30	29.11	090
21242	....	A	Reconstruction of jaw joint	12.95	NA	NA	11.32	13.39	1.09	NA	NA	25.36	27.43	090
21243	....	A	Reconstruction of jaw joint	20.79	NA	NA	13.54	14.59	1.53	NA	NA	35.86	36.91	090
21244	....	A	Reconstruction of lower jaw	11.86	NA	NA	8.48	11.32	0.95	NA	NA	21.29	24.13	090
21245	....	A	Reconstruction of jaw	11.86	9.18	10.82	9.18	10.82	0.91	21.95	23.59	21.95	23.59	090
21246	....	A	Reconstruction of jaw	12.47	9.45	9.52	9.43	9.51	0.96	22.88	22.95	22.86	22.94	090
21247	....	A	Reconstruct lower jaw bone	22.63	NA	NA	15.54	21.28	1.62	NA	NA	39.79	45.53	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
21248		A	Reconstruction of jaw	11.48	8.15	10.93	7.14	7.00	0.85	20.48	23.26	19.47	19.33	090
21249		A	Reconstruction of jaw	17.52	10.73	15.82	9.73	10.10	1.33	29.58	34.67	28.58	28.95	090
21255		A	Reconstruct lower jaw bone	16.72	NA	NA	9.58	14.77	1.66	NA	NA	27.96	33.15	090
21256		A	Reconstruction of orbit	16.19	NA	NA	12.33	15.83	1.38	NA	NA	29.90	33.40	090
21260		A	Revise eye sockets	16.52	NA	NA	8.27	14.00	0.67	NA	NA	25.46	31.19	090
21261		A	Revise eye sockets	31.49	NA	NA	19.66	19.48	2.38	NA	NA	53.53	53.35	090
21263		A	Revise eye sockets	28.42	NA	NA	14.31	24.12	1.12	NA	NA	43.85	53.66	090
21267		A	Revise eye sockets	18.90	NA	NA	14.04	14.95	1.12	NA	NA	34.06	34.97	090
21268		A	Revise eye sockets	24.48	NA	NA	15.03	15.85	3.89	NA	NA	43.40	44.22	090
21270		A	Augmentation, cheek bone	10.23	7.80	9.11	7.80	9.11	0.89	18.92	20.23	18.92	20.23	090
21275		A	Revision, orbitofacial bones	11.24	NA	NA	9.47	9.59	1.05	NA	NA	21.76	21.88	090
21280		A	Revision of eyelid	6.03	NA	NA	6.09	6.65	0.29	NA	NA	12.41	12.97	090
21282		A	Revision of eyelid	3.49	NA	NA	4.82	4.50	0.20	NA	NA	8.51	8.19	090
21295		A	Revision of jaw muscle/bone	1.53	NA	NA	3.69	2.37	0.11	NA	NA	5.33	4.01	090
21296		A	Revision of jaw muscle/bone	4.25	NA	NA	4.30	4.12	0.35	NA	NA	8.90	8.72	090
21299		C	Cranio/maxillofacial surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21300		A	Treatment of skull fracture	0.72	2.45	1.73	0.28	0.57	0.08	3.25	2.53	1.08	1.37	000
21310		A	Treatment of nose fracture	0.58	2.32	1.57	0.16	0.43	0.06	2.96	2.21	0.80	1.07	000
21315		A	Treatment of nose fracture	1.51	2.97	2.47	1.14	1.47	0.12	4.60	4.10	2.77	3.10	010
21320		A	Treatment of nose fracture	1.85	4.14	3.34	1.85	2.03	0.14	6.13	5.33	3.84	4.02	010
21325		A	Treatment of nose fracture	3.77	NA	NA	3.24	3.84	0.31	NA	NA	7.32	7.92	090
21330		A	Treatment of nose fracture	5.38	NA	NA	4.79	5.61	0.47	NA	NA	10.64	11.46	090
21335		A	Treatment of nose fracture	8.61	NA	NA	6.68	8.48	0.65	NA	NA	15.94	17.74	090
21336		A	Treat nasal septal fracture	5.72	NA	NA	4.91	4.68	0.47	NA	NA	11.10	10.87	090
21337		A	Treat nasal septal fracture	2.70	4.69	3.88	2.76	2.91	0.23	7.62	6.81	5.69	5.84	090
21338		A	Treat nasoethmoid fracture	6.46	NA	NA	5.57	5.51	0.53	NA	NA	12.56	12.50	090
21339		A	Treat nasoethmoid fracture	8.09	NA	NA	6.17	6.93	0.65	NA	NA	14.91	15.67	090
21340		A	Treatment of nose fracture	10.77	NA	NA	8.62	9.15	0.69	NA	NA	20.08	20.61	090
21343		A	Treatment of sinus fracture	12.95	NA	NA	9.17	9.56	1.20	NA	NA	23.32	23.71	090
21344		A	Treatment of sinus fracture	19.72	NA	NA	12.94	11.45	1.78	NA	NA	34.44	32.95	090
21345		A	Treat nose/jaw fracture	8.16	7.38	7.98	6.94	7.76	0.64	16.18	16.78	15.74	16.56	090
21346		A	Treat nose/jaw fracture	10.61	NA	NA	8.58	9.39	0.83	NA	NA	20.02	20.83	090
21347		A	Treat nose/jaw fracture	12.69	NA	NA	8.84	10.04	1.08	NA	NA	22.61	23.81	090
21348		A	Treat nose/jaw fracture	16.69	NA	NA	9.89	11.10	1.44	NA	NA	28.02	29.23	090
21355		A	Treat cheek bone fracture	3.77	3.55	2.62	2.02	1.86	0.32	7.64	6.71	6.11	5.95	010
21356		A	Treat cheek bone fracture	4.15	NA	NA	2.96	3.96	0.34	NA	NA	7.45	8.45	010
21360		A	Treat cheek bone fracture	6.46	NA	NA	5.13	6.43	0.52	NA	NA	12.11	13.41	090
21365		A	Treat cheek bone fracture	14.95	NA	NA	10.44	11.92	1.28	NA	NA	26.67	28.15	090
21366		A	Treat cheek bone fracture	17.77	NA	NA	11.32	12.22	1.52	NA	NA	30.61	31.51	090
21385		A	Treat eye socket fracture	9.16	NA	NA	6.77	8.59	0.67	NA	NA	16.60	18.42	090
21386		A	Treat eye socket fracture	9.16	NA	NA	7.25	8.55	0.75	NA	NA	17.16	18.46	090
21387		A	Treat eye socket fracture	9.70	NA	NA	7.64	7.87	0.78	NA	NA	18.12	18.35	090
21390		A	Treat eye socket fracture	10.13	NA	NA	8.00	10.05	0.74	NA	NA	18.87	20.92	090
21395		A	Treat eye socket fracture	12.68	NA	NA	9.01	9.73	1.16	NA	NA	22.85	23.57	090
21400		A	Treat eye socket fracture	1.40	2.89	2.35	0.95	1.31	0.12	4.41	3.87	2.47	2.83	090
21401		A	Treat eye socket fracture	3.26	4.39	3.60	2.75	2.78	0.25	7.90	7.11	6.26	6.29	090
21406		A	Treat eye socket fracture	7.01	NA	NA	5.77	5.71	0.60	NA	NA	13.38	13.32	090
21407		A	Treat eye socket fracture	8.61	NA	NA	7.15	7.42	0.70	NA	NA	16.46	16.73	090
21408		A	Treat eye socket fracture	12.38	NA	NA	9.36	9.29	1.21	NA	NA	22.95	22.88	090
21421		A	Treat mouth roof fracture	5.14	6.30	6.48	5.21	5.67	0.38	11.82	12.00	10.73	11.19	090
21422		A	Treat mouth roof fracture	8.32	NA	NA	6.64	8.29	0.69	NA	NA	15.65	17.30	090
21423		A	Treat mouth roof fracture	10.40	NA	NA	7.35	9.00	0.82	NA	NA	18.57	20.22	090
21431		A	Treat craniofacial fracture	7.05	NA	NA	5.49	6.01	0.54	NA	NA	13.08	13.60	090
21432		A	Treat craniofacial fracture	8.61	NA	NA	7.38	7.36	0.94	NA	NA	16.93	16.91	090
21433		A	Treat craniofacial fracture	25.35	NA	NA	15.62	17.56	2.11	NA	NA	43.08	45.02	090
21435		A	Treat craniofacial fracture	17.25	NA	NA	12.21	13.30	1.36	NA	NA	30.82	31.91	090
21436		A	Treat craniofacial fracture	28.04	NA	NA	17.19	16.55	1.88	NA	NA	47.11	46.47	090
21440		A	Treat dental ridge fracture	2.70	4.84	4.09	3.09	3.16	0.20	7.74	6.99	5.99	6.06	090
21445		A	Treat dental ridge fracture	5.38	6.00	6.32	4.56	5.49	0.42	11.80	12.12	10.36	11.29	090
21450		A	Treat lower jaw fracture	2.97	5.29	4.19	2.40	2.74	0.23	8.49	7.39	5.60	5.94	090
21451		A	Treat lower jaw fracture	4.87	5.83	6.08	4.82	5.32	0.37	11.07	11.32	10.06	10.56	090
21452		A	Treat lower jaw fracture	1.98	7.22	4.37	3.63	2.57	0.15	9.35	6.50	5.76	4.70	090
21453		A	Treat lower jaw fracture	5.54	6.45	6.83	5.38	6.00	0.44	12.43	12.81	11.36	11.98	090
21454		A	Treat lower jaw fracture	6.46	NA	NA	4.91	6.32	0.48	NA	NA	11.85	13.26	090
21461		A	Treat lower jaw fracture	8.09	7.82	8.74	6.98	8.32	0.65	16.56	17.48	15.72	17.06	090
21462		A	Treat lower jaw fracture	9.79	8.73	10.21	7.30	9.50	0.76	19.28	20.76	17.85	20.05	090
21465		A	Treat lower jaw fracture	11.91	NA	NA	7.08	8.12	0.95	NA	NA	19.94	20.98	090
21470		A	Treat lower jaw fracture	15.34	NA	NA	9.08	13.70	1.21	NA	NA	25.63	30.25	090
21480		A	Reset dislocated jaw	0.61	1.54	1.20	0.18	0.46	0.05	2.20	1.86	0.84	1.12	000
21485		A	Reset dislocated jaw	3.99	3.53	2.96	3.01	2.10	0.27	7.79	7.22	7.27	6.36	090
21490		A	Repair dislocated jaw	11.86	NA	NA	7.08	6.97	0.84	NA	NA	19.78	19.67	090
21493		A	Treat hyoid bone fracture	1.27	0.49	1.07	0.49	1.01	0.10	1.86	2.44	1.86	2.38	090
21494		A	Treat hyoid bone fracture	6.28	2.43	5.30	2.43	5.30	0.45	9.16	12.03	9.16	12.03	090
21495		A	Treat hyoid bone fracture	5.69	NA	NA	5.29	5.26	0.41	NA	NA	11.39	11.36	090
21497		A	Interdental wiring	3.86	4.29	4.30	3.43	3.87	0.30	8.45	8.46	7.59	8.03	090
21499		C	Head surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21501		A	Drain neck/chest lesion	3.81	3.96	2.97	3.48	2.73	0.37	8.14	7.15	7.66	6.91	090
21502		A	Drain chest lesion	7.12	NA	NA	7.43	6.01	0.78	NA	NA	15.33	13.91	090
21510		A	Drainage of bone lesion	5.74	NA	NA	7.47	5.81	0.63	NA	NA	13.84	12.18	090
21550		A	Biopsy of neck/chest	2.06	2.21	1.57	1.21	0.84	0.12	4.39	3.75	3.39	3.02	010
21555		A	Remove lesion, neck/chest	4.35	4.12	2.93	2.52	2.13	0.39	8.86	7.67	7.26	6.87	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
21556		A	Remove lesion, neck/chest	5.57	NA	NA	3.29	3.71	0.52	NA	NA	9.38	9.80	090
21557		A	Remove tumor, neck/chest	8.88	NA	NA	7.48	8.35	0.81	NA	NA	17.17	18.04	090
21600		A	Partial removal of rib	6.89	NA	NA	8.41	6.65	0.79	NA	NA	16.09	14.33	090
21610		A	Partial removal of rib	14.61	NA	NA	10.32	7.97	1.99	NA	NA	26.92	24.57	090
21615		A	Removal of rib	9.87	NA	NA	9.28	10.14	1.30	NA	NA	20.45	21.31	090
21616		A	Removal of rib and nerves	12.04	NA	NA	12.51	10.20	1.45	NA	NA	26.00	23.69	090
21620		A	Partial removal of sternum	6.79	NA	NA	8.74	8.09	0.78	NA	NA	16.31	15.66	090
21627		A	Sternal debridement	6.81	NA	NA	15.24	10.35	0.84	NA	NA	22.89	18.00	090
21630		A	Extensive sternum surgery	17.38	NA	NA	13.47	13.73	1.95	NA	NA	32.80	33.06	090
21632		A	Extensive sternum surgery	18.14	NA	NA	15.46	13.99	2.27	NA	NA	35.87	34.40	090
21700		A	Revision of neck muscle	6.19	7.79	6.15	7.44	5.98	0.74	14.72	13.08	14.37	12.91	090
21705		A	Revision of neck muscle/rib	9.60	NA	NA	6.91	6.09	1.27	NA	NA	17.78	16.96	090
21720		A	Revision of neck muscle	5.68	6.61	5.39	6.28	5.23	0.82	13.11	11.89	12.78	11.73	090
21725		A	Revision of neck muscle	6.99	NA	NA	6.15	5.70	0.68	NA	NA	13.82	13.37	090
21740		A	Reconstruction of sternum	16.50	NA	NA	15.80	12.78	1.95	NA	NA	34.25	31.23	090
21750		A	Repair of sternum separation	10.77	NA	NA	13.66	10.81	1.35	NA	NA	25.78	22.93	090
21800		A	Treatment of rib fracture	0.96	1.85	1.35	0.92	0.88	0.09	2.90	2.40	1.97	1.93	090
21805		A	Treatment of rib fracture	2.75	NA	NA	6.38	3.93	0.29	NA	NA	9.42	6.97	090
21810		A	Treatment of rib fracture(s)	6.86	NA	NA	7.52	7.74	0.56	NA	NA	14.94	15.16	090
21820		A	Treat sternum fracture	1.28	2.23	1.86	1.29	1.39	0.12	3.63	3.26	2.69	2.79	090
21825		A	Treat sternum fracture	7.41	NA	NA	12.61	10.05	0.95	NA	NA	20.97	18.41	090
21899		C	Neck/chest surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21920		A	Biopsy soft tissue of back	2.06	2.34	1.60	0.78	0.61	0.10	4.50	3.76	2.94	2.77	010
21925		A	Biopsy soft tissue of back	4.49	10.67	6.40	4.21	3.17	0.43	15.59	11.32	9.13	8.09	090
21930		A	Remove lesion, back or flank	5.00	4.44	3.70	2.67	2.81	0.47	9.91	9.17	8.14	8.28	090
21935		A	Remove tumor, back	17.96	NA	NA	11.50	9.33	1.79	NA	NA	31.25	29.08	090
22100		A	Remove part of neck vertebra	9.73	NA	NA	8.21	8.25	1.34	NA	NA	19.28	19.32	090
22101		A	Remove part, thorax vertebra	9.81	NA	NA	8.40	8.55	1.23	NA	NA	19.44	19.59	090
22102		A	Remove part, lumbar vertebra	9.81	NA	NA	8.27	6.58	1.37	NA	NA	19.45	17.76	090
22103		A	Remove extra spine segment	2.34	NA	NA	1.22	1.82	0.33	NA	NA	3.89	4.49	ZZZ
22110		A	Remove part of neck vertebra	12.74	NA	NA	10.38	10.47	1.88	NA	NA	25.00	25.09	090
22112		A	Remove part, thorax vertebra	12.81	NA	NA	10.04	10.39	1.57	NA	NA	24.42	24.77	090
22114		A	Remove part, lumbar vertebra	12.81	NA	NA	12.03	9.95	1.37	NA	NA	26.21	24.13	090
22116		A	Remove extra spine segment	2.32	NA	NA	1.19	1.80	0.32	NA	NA	3.83	4.44	ZZZ
22210		A	Revision of neck spine	23.82	NA	NA	16.42	15.72	3.46	NA	NA	43.70	43.00	090
22212		A	Revision of thorax spine	19.42	NA	NA	14.26	16.51	1.99	NA	NA	35.67	37.92	090
22214		A	Revision of lumbar spine	19.45	NA	NA	14.84	15.62	2.35	NA	NA	36.64	37.42	090
22216		A	Revise, extra spine segment	6.04	NA	NA	3.18	4.34	0.81	NA	NA	10.03	11.19	ZZZ
22220		A	Revision of neck spine	21.37	NA	NA	14.77	16.42	3.15	NA	NA	39.29	40.94	090
22222		A	Revision of thorax spine	21.52	NA	NA	13.09	13.93	1.01	NA	NA	35.62	36.46	090
22224		A	Revision of lumbar spine	21.52	NA	NA	14.83	15.38	2.43	NA	NA	38.78	39.33	090
22226		A	Revise, extra spine segment	6.04	NA	NA	3.16	4.33	0.73	NA	NA	9.93	11.10	ZZZ
22305		A	Treat spine process fracture	2.05	2.69	2.57	1.72	2.09	0.21	4.95	4.83	3.98	4.35	090
22310		A	Treat spine fracture	2.61	3.88	3.31	2.97	2.85	0.27	6.76	6.19	5.85	5.73	090
22315		A	Treat spine fracture	8.84	NA	NA	8.29	7.14	1.14	NA	NA	18.27	17.12	090
22318		A	Treat odontoid fx w/o graft	21.50	NA	NA	14.50	14.50	3.89	NA	NA	39.89	39.89	090
22319		A	Treat odontoid fx w/graft	24.00	NA	NA	16.72	16.72	4.34	NA	NA	45.06	45.06	090
22325		A	Treat spine fracture	18.30	NA	NA	13.73	11.38	2.29	NA	NA	34.32	31.97	090
22326		A	Treat neck spine fracture	19.59	NA	NA	14.88	16.09	3.18	NA	NA	37.65	38.86	090
22327		A	Treat thorax spine fracture	19.20	NA	NA	14.47	15.89	2.64	NA	NA	36.31	37.73	090
22328		A	Treat each add spine fx	4.61	NA	NA	-2.41	3.60	0.68	NA	NA	7.70	8.89	ZZZ
22505		A	Manipulation of spine	1.87	4.03	2.73	2.69	2.06	0.13	6.03	4.73	4.69	4.06	010
22548		A	Neck spine fusion	25.82	NA	NA	17.59	21.14	4.66	NA	NA	48.07	51.62	090
22554		A	Neck spine fusion	18.62	NA	NA	13.50	17.50	3.14	NA	NA	35.26	39.26	090
22556		A	Thorax spine fusion	23.46	NA	NA	16.52	20.03	3.20	NA	NA	43.18	46.69	090
22558		A	Lumbar spine fusion	22.28	NA	NA	14.96	18.43	2.62	NA	NA	39.86	43.33	090
22585		A	Additional spinal fusion	5.53	NA	NA	2.90	4.38	0.85	NA	NA	9.28	10.76	ZZZ
22590		A	Spine & skull spinal fusion	20.51	NA	NA	14.94	19.18	3.38	NA	NA	38.83	43.07	090
22595		A	Neck spinal fusion	19.39	NA	NA	13.99	18.57	3.23	NA	NA	36.61	41.19	090
22600		A	Neck spine fusion	16.14	NA	NA	12.34	15.80	2.53	NA	NA	31.01	34.47	090
22610		A	Thorax spine fusion	16.02	NA	NA	12.29	15.71	2.22	NA	NA	30.53	33.95	090
22612		A	Lumbar spine fusion	21.00	NA	NA	15.00	18.68	2.62	NA	NA	38.62	42.30	090
22614		A	Spine fusion, extra segment	6.44	NA	NA	3.43	4.78	0.82	NA	NA	10.69	12.04	ZZZ
22630		A	Lumbar spine fusion	20.84	NA	NA	15.55	17.78	3.05	NA	NA	39.44	41.67	090
22632		A	Spine fusion, extra segment	5.23	NA	NA	2.76	4.09	0.72	NA	NA	8.71	10.04	ZZZ
22800		A	Fusion of spine	18.25	NA	NA	13.08	17.44	2.09	NA	NA	33.42	37.78	090
22802		A	Fusion of spine	30.88	NA	NA	20.41	25.57	3.38	NA	NA	54.67	59.83	090
22804		A	Fusion of spine	36.27	NA	NA	23.20	26.97	3.82	NA	NA	63.29	67.06	090
22808		A	Fusion of spine	26.27	NA	NA	17.93	18.96	3.79	NA	NA	47.99	49.02	090
22810		A	Fusion of spine	30.27	NA	NA	19.54	19.76	3.51	NA	NA	53.32	53.54	090
22812		A	Fusion of spine	32.70	NA	NA	20.85	24.50	3.60	NA	NA	57.15	60.80	090
22818		A	Kyphectomy, 1-2 segments	31.83	NA	NA	19.82	25.24	4.31	NA	NA	55.96	61.38	090
22819		A	Kyphectomy, 3 or more	36.44	NA	NA	21.49	26.08	4.93	NA	NA	62.86	67.45	090
22830		A	Exploration of spinal fusion	10.85	NA	NA	9.34	11.15	1.31	NA	NA	21.50	23.31	090
22840		A	Insert spine fixation device	12.54	NA	NA	8.07	7.28	1.61	NA	NA	22.22	21.43	ZZZ
22841		B	Insert spine fixation device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
22842		A	Insert spine fixation device	12.58	NA	NA	6.67	7.06	1.63	NA	NA	20.88	21.27	ZZZ
22843		A	Insert spine fixation device	13.46	NA	NA	7.24	8.26	1.64	NA	NA	22.34	23.36	ZZZ
22844		A	Insert spine fixation device	16.44	NA	NA	10.32	10.83	1.76	NA	NA	28.52	29.03	ZZZ
22845		A	Insert spine fixation device	11.96	NA	NA	7.81	7.00	1.95	NA	NA	21.72	20.91	ZZZ
22846		A	Insert spine fixation device	12.42	NA	NA	8.08	8.33	2.00	NA	NA	22.50	22.75	ZZZ

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CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
22847		A	Insert spine fixation device	13.80	NA	NA	8.56	9.04	1.63	NA	NA	23.99	24.47	ZZZ
22848		A	Insert pelv fixation device	6.00	NA	NA	4.55	5.38	0.64	NA	NA	11.19	12.02	ZZZ
22849		A	Reinsert spinal fixation	18.51	NA	NA	13.27	13.02	2.25	NA	NA	34.03	33.78	090
22850		A	Remove spine fixation device	9.52	NA	NA	8.26	9.11	1.19	NA	NA	18.97	19.82	090
22851		A	Apply spine prosth device	6.71	NA	NA	5.02	5.99	0.93	NA	NA	12.66	13.63	ZZZ
22852		A	Remove spine fixation device	9.01	NA	NA	7.99	9.32	1.09	NA	NA	18.09	19.42	090
22855		A	Remove spine fixation device	15.13	NA	NA	11.16	9.63	2.35	NA	NA	28.64	27.11	090
22899		C	Spine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
22900		A	Remove abdominal wall lesion	5.80	NA	NA	4.25	3.77	0.57	NA	NA	10.62	10.14	090
22999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
23000		A	Removal of calcium deposits	4.36	7.26	5.39	6.86	5.19	0.40	12.02	10.15	11.62	9.95	090
23020		A	Release shoulder joint	8.93	NA	NA	9.07	8.48	0.93	NA	NA	18.93	18.34	090
23030		A	Drain shoulder lesion	3.43	5.09	3.72	3.75	3.05	0.33	8.85	7.48	7.51	6.81	010
23031		A	Drain shoulder bursa	2.74	5.07	2.81	3.46	1.87	0.26	8.07	5.81	6.46	4.87	010
23035		A	Drain shoulder bone lesion	8.61	NA	NA	13.99	10.37	0.88	NA	NA	23.48	19.86	090
23040		A	Exploratory shoulder surgery	9.20	NA	NA	10.47	10.27	0.95	NA	NA	20.62	20.42	090
23044		A	Exploratory shoulder surgery	7.12	NA	NA	8.98	8.24	0.74	NA	NA	16.84	16.10	090
23065		A	Biopsy shoulder tissues	2.27	2.56	1.64	1.32	1.02	0.11	4.94	4.02	3.70	3.40	010
23066		A	Biopsy shoulder tissues	4.16	6.36	3.82	5.36	3.32	0.41	10.93	8.39	9.93	7.89	090
23075		A	Removal of shoulder lesion	2.39	4.44	3.13	2.76	2.29	0.23	7.06	5.75	5.38	4.91	010
23076		A	Removal of shoulder lesion	7.63	NA	NA	7.22	5.53	0.78	NA	NA	15.63	13.94	090
23077		A	Remove tumor of shoulder	16.09	NA	NA	12.44	10.23	1.58	NA	NA	30.11	27.90	090
23100		A	Biopsy of shoulder joint	6.03	NA	NA	7.52	7.36	0.60	NA	NA	14.15	13.99	090
23101		A	Shoulder joint surgery	5.58	NA	NA	7.51	7.09	0.57	NA	NA	13.66	13.24	090
23105		A	Remove shoulder joint lining	8.23	NA	NA	9.01	9.42	0.85	NA	NA	18.09	18.50	090
23106		A	Incision of collarbone joint	5.96	NA	NA	8.05	6.60	0.64	NA	NA	14.65	13.20	090
23107		A	Explore treat shoulder joint	8.62	NA	NA	9.41	9.85	0.88	NA	NA	18.91	19.35	090
23120		A	Partial removal, collar bone	7.11	NA	NA	8.65	6.83	0.73	NA	NA	16.49	14.67	090
23125		A	Removal of collar bone	9.39	NA	NA	9.39	9.30	0.97	NA	NA	19.75	19.66	090
23130		A	Remove shoulder bone, part	7.55	NA	NA	8.53	8.09	0.77	NA	NA	16.85	16.41	090
23140		A	Removal of bone lesion	6.89	NA	NA	7.46	5.99	0.68	NA	NA	15.03	13.56	090
23145		A	Removal of bone lesion	9.09	NA	NA	11.74	10.28	0.84	NA	NA	21.67	20.21	090
23146		A	Removal of bone lesion	7.83	NA	NA	9.01	7.35	0.82	NA	NA	17.66	16.00	090
23150		A	Removal of humerus lesion	8.48	NA	NA	8.44	7.83	0.85	NA	NA	17.77	17.16	090
23155		A	Removal of humerus lesion	10.35	NA	NA	10.54	10.05	1.08	NA	NA	21.97	21.48	090
23156		A	Removal of humerus lesion	8.68	NA	NA	8.67	8.48	0.89	NA	NA	18.24	18.05	090
23170		A	Remove collar bone lesion	6.86	NA	NA	8.94	7.08	0.72	NA	NA	16.52	14.66	090
23172		A	Remove shoulder blade lesion	6.90	NA	NA	8.18	6.89	0.72	NA	NA	15.80	14.51	090
23174		A	Remove humerus lesion	9.51	NA	NA	9.90	9.59	0.94	NA	NA	20.35	20.04	090
23180		A	Remove collar bone lesion	8.53	NA	NA	13.35	9.01	0.88	NA	NA	22.76	18.42	090
23182		A	Remove shoulder blade lesion	8.15	NA	NA	15.09	11.11	0.84	NA	NA	24.08	20.10	090
23184		A	Remove humerus lesion	9.38	NA	NA	13.49	11.54	0.95	NA	NA	23.82	21.87	090
23190		A	Partial removal of scapula	7.24	NA	NA	7.28	6.94	0.74	NA	NA	15.26	14.92	090
23195		A	Removal of head of humerus	9.81	NA	NA	9.64	9.66	1.02	NA	NA	20.47	20.49	090
23200		A	Removal of collar bone	12.08	NA	NA	13.22	11.59	1.22	NA	NA	26.52	24.89	090
23210		A	Removal of shoulder blade	12.49	NA	NA	12.52	11.15	1.25	NA	NA	26.26	24.89	090
23220		A	Partial removal of humerus	14.56	NA	NA	14.26	13.67	1.47	NA	NA	30.29	29.70	090
23221		A	Partial removal of humerus	17.74	NA	NA	13.19	16.44	1.26	NA	NA	32.19	35.44	090
23222		A	Partial removal of humerus	23.92	NA	NA	18.33	17.32	2.43	NA	NA	44.68	43.67	090
23330		A	Remove shoulder foreign body	1.85	4.44	2.52	3.20	1.75	0.18	6.47	4.55	5.23	3.78	010
23331		A	Remove shoulder foreign body	7.38	NA	NA	8.31	5.38	0.76	NA	NA	16.45	13.52	090
23332		A	Remove shoulder foreign body	11.62	NA	NA	10.61	10.58	1.19	NA	NA	23.42	23.39	090
23350		A	Injection for shoulder x-ray	1.00	8.70	4.63	0.28	0.42	0.04	9.74	5.67	1.32	1.46	000
23395		A	Muscle transfer, shoulder/arm	16.85	NA	NA	12.83	12.46	1.74	NA	NA	31.42	31.05	090
23397		A	Muscle transfers	16.13	NA	NA	12.97	14.07	1.68	NA	NA	30.78	31.88	090
23400		A	Fixation of shoulder blade	13.54	NA	NA	13.77	12.23	1.42	NA	NA	28.73	27.19	090
23405		A	Incision of tendon & muscle	8.37	NA	NA	9.72	8.93	0.86	NA	NA	18.95	18.16	090
23406		A	Incise tendon(s) & muscle(s)	10.79	NA	NA	10.34	10.28	1.13	NA	NA	22.26	22.20	090
23410		A	Repair of tendon(s)	12.45	NA	NA	11.54	11.71	1.27	NA	NA	25.26	25.43	090
23412		A	Repair of tendon(s)	13.31	NA	NA	12.03	13.27	1.36	NA	NA	26.70	27.94	090
23415		A	Release of shoulder ligament	9.97	NA	NA	9.05	7.34	1.02	NA	NA	20.04	18.33	090
23420		A	Repair of shoulder	13.30	NA	NA	12.78	14.33	1.36	NA	NA	27.44	28.99	090
23430		A	Repair biceps tendon	9.98	NA	NA	10.23	9.10	1.02	NA	NA	21.23	20.10	090
23440		A	Remove/transplant tendon	10.48	NA	NA	10.30	9.04	1.08	NA	NA	21.86	20.60	090
23450		A	Repair shoulder capsule	13.40	NA	NA	11.63	12.74	1.37	NA	NA	26.40	27.51	090
23455		A	Repair shoulder capsule	14.37	NA	NA	12.34	14.62	1.47	NA	NA	28.18	30.46	090
23460		A	Repair shoulder capsule	15.37	NA	NA	12.88	14.08	1.56	NA	NA	29.81	31.01	090
23462		A	Repair shoulder capsule	15.30	NA	NA	12.83	14.63	1.50	NA	NA	29.63	31.43	090
23465		A	Repair shoulder capsule	15.85	NA	NA	13.21	14.29	1.63	NA	NA	30.69	31.77	090
23466		A	Repair shoulder capsule	14.22	NA	NA	12.21	14.59	1.47	NA	NA	27.90	30.28	090
23470		A	Reconstruct shoulder joint	17.15	NA	NA	13.98	16.09	1.76	NA	NA	32.89	35.00	090
23472		A	Reconstruct shoulder joint	16.92	NA	NA	13.86	17.03	1.74	NA	NA	32.52	35.69	090
23480		A	Revision of collar bone	11.18	NA	NA	10.27	8.71	1.16	NA	NA	22.61	21.05	090
23485		A	Revision of collar bone	13.43	NA	NA	11.78	12.05	1.37	NA	NA	26.58	26.85	090
23490		A	Reinforce clavicle	11.86	NA	NA	10.12	10.48	1.24	NA	NA	23.22	23.58	090
23491		A	Reinforce shoulder bones	14.21	NA	NA	11.72	12.75	1.48	NA	NA	27.41	28.44	090
23500		A	Treat clavicle fracture	2.08	3.16	2.48	2.16	1.98	0.21	5.45	4.77	4.45	4.27	090
23505		A	Treat clavicle fracture	3.69	4.84	3.82	3.43	3.11	0.37	8.90	7.88	7.49	7.17	090
23515		A	Treat clavicle fracture	7.41	NA	NA	7.40	7.46	0.76	NA	NA	15.57	15.63	090
23520		A	Treat clavicle dislocation	2.16	3.26	2.38	2.20	1.85	0.21	5.63	4.75	4.57	4.22	090
23525		A	Treat clavicle dislocation	3.60	4.45	3.30	3.32	2.74	0.37	8.42	7.27	7.29	6.71	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
23530		A	Treat clavicle dislocation	7.31	NA	NA	6.69	6.92	0.74	NA	NA	14.74	14.97	090
23532		A	Treat clavicle dislocation	8.01	NA	NA	6.86	7.36	0.84	NA	NA	15.71	16.21	090
23540		A	Treat clavicle dislocation	2.23	3.60	2.64	2.20	1.94	0.21	6.04	5.08	4.64	4.38	090
23545		A	Treat clavicle dislocation	3.25	4.19	3.17	3.10	2.63	0.32	7.76	6.74	6.67	6.20	090
23550		A	Treat clavicle dislocation	7.24	NA	NA	7.28	7.96	0.73	NA	NA	15.25	15.93	090
23552		A	Treat clavicle dislocation	8.45	NA	NA	7.74	7.83	0.84	NA	NA	17.03	17.12	090
23570		A	Treat shoulder blade fx	2.23	3.17	2.51	2.28	2.06	0.23	5.63	4.97	4.74	4.52	090
23575		A	Treat shoulder blade fx	4.06	5.10	4.04	3.84	3.41	0.41	9.57	8.51	8.31	7.88	090
23585		A	Treat scapula fracture	8.96	NA	NA	8.66	8.51	0.92	NA	NA	18.54	18.39	090
23600		A	Treat humerus fracture	2.93	4.83	3.99	3.21	3.18	0.30	8.06	7.22	6.44	6.41	090
23605		A	Treat humerus fracture	4.87	7.30	6.24	5.81	5.49	0.51	12.68	11.62	11.19	10.87	090
23615		A	Treat humerus fracture	9.35	NA	NA	9.10	10.14	0.96	NA	NA	19.41	20.45	090
23616		A	Treat humerus fracture	21.27	NA	NA	14.98	19.60	2.19	NA	NA	38.44	43.06	090
23620		A	Treat humerus fracture	2.40	4.54	3.84	3.00	2.22	0.25	7.19	6.49	5.65	4.87	090
23625		A	Treat humerus fracture	3.93	6.35	5.25	4.82	4.49	0.41	10.69	9.59	9.16	8.83	090
23630		A	Treat humerus fracture	7.35	NA	NA	7.37	8.08	0.75	NA	NA	15.47	16.18	090
23650		A	Treat shoulder dislocation	3.39	4.54	3.41	3.05	2.67	0.32	8.25	7.12	6.76	6.38	090
23655		A	Treat shoulder dislocation	4.57	NA	NA	3.73	3.46	0.46	NA	NA	8.76	8.49	090
23660		A	Treat shoulder dislocation	7.49	NA	NA	7.08	8.01	0.69	NA	NA	15.26	16.19	090
23665		A	Treat dislocation/fracture	4.47	6.51	5.08	5.10	4.37	0.46	11.44	10.01	10.03	9.30	090
23670		A	Treat dislocation/fracture	7.90	NA	NA	7.63	8.53	0.81	NA	NA	16.34	17.24	090
23675		A	Treat dislocation/fracture	6.05	7.38	5.83	5.93	5.10	0.62	14.05	12.50	12.60	11.77	090
23680		A	Treat dislocation/fracture	10.06	NA	NA	8.74	10.38	1.03	NA	NA	19.[illegible]	21.47	090
23700		A	Fixation of shoulder	2.52	NA	NA	2.93	2.60	0.26	NA	NA	5.71	5.38	010
23800		A	Fusion of shoulder joint	14.16	NA	NA	13.11	15.01	1.41	NA	NA	28.68	30.58	090
23802		A	Fusion of shoulder joint	16.60	NA	NA	10.33	12.80	1.70	NA	NA	28.63	31.10	090
23900		A	Amputation of arm & girdle	19.72	NA	NA	14.14	13.89	1.86	NA	NA	35.72	35.47	090
23920		A	Amputation at shoulder joint	14.61	NA	NA	11.81	13.42	1.52	NA	NA	27.94	29.55	090
23921		A	Amputation follow-up surgery	5.49	5.99	5.31	5.96	5.30	0.50	11.98	11.30	11.95	11.29	090
23929		C	Shoulder surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
23930		A	Drainage of arm lesion	2.94	4.96	3.36	3.46	2.61	0.29	8.19	6.59	6.69	5.84	010
23931		A	Drainage of arm bursa	1.79	4.62	2.72	2.99	1.70	0.17	6.58	4.68	4.95	3.66	010
23935		A	Drain arm/elbow bone lesion	6.09	NA	NA	10.32	7.71	0.62	NA	NA	17.03	14.42	090
24000		A	Exploratory elbow surgery	5.82	NA	NA	5.23	6.09	0.58	NA	NA	11.63	12.49	090
24006		A	Release elbow joint	9.31	NA	NA	7.76	7.76	0.96	NA	NA	18.03	18.03	090
24065		A	Biopsy arm/elbow soft tissue	2.08	4.83	2.85	2.77	1.60	0.11	7.02	5.04	4.96	3.79	010
24066		A	Biopsy arm/elbow soft tissue	5.21	7.18	5.06	5.75	4.35	0.55	12.94	10.82	11.51	10.11	090
24075		A	Remove arm/elbow lesion	3.92	6.71	4.43	5.08	3.62	0.38	11.01	8.73	9.38	7.92	090
24076		A	Remove arm/elbow lesion	6.30	NA	NA	6.16	5.08	0.64	NA	NA	13.10	12.02	090
24077		A	Remove tumor of arm/elbow	11.76	NA	NA	11.59	11.11	1.17	NA	NA	24.52	24.04	090
24100		A	Biopsy elbow joint lining	4.93	NA	NA	5.86	5.23	0.46	NA	NA	11.25	10.62	090
24101		A	Explore/treat elbow joint	6.13	NA	NA	6.05	6.68	0.63	NA	NA	12.81	13.44	090
24102		A	Remove elbow joint lining	8.03	NA	NA	7.02	8.30	0.83	NA	NA	15.88	17.16	090
24105		A	Removal of elbow bursa	3.61	NA	NA	4.30	4.20	0.37	NA	NA	8.28	8.18	090
24110		A	Remove humerus lesion	7.39	NA	NA	8.21	8.28	0.78	NA	NA	16.38	16.45	090
24115		A	Remove/graft bone lesion	9.63	NA	NA	11.53	9.93	0.85	NA	NA	22.01	20.41	090
24116		A	Remove/graft bone lesion	11.81	NA	NA	10.57	10.56	1.20	NA	NA	23.58	23.57	090
24120		A	Remove elbow lesion	6.65	NA	NA	5.85	6.19	0.68	NA	NA	13.18	13.52	090
24125		A	Remove/graft bone lesion	7.89	NA	NA	6.55	6.42	0.76	NA	NA	15.20	15.07	090
24126		A	Remove/graft bone lesion	8.31	NA	NA	6.84	7.44	0.87	NA	NA	16.02	16.62	090
24130		A	Removal of head of radius	6.25	NA	NA	5.97	6.63	0.65	NA	NA	12.87	13.53	090
24134		A	Removal of arm bone lesion	9.73	NA	NA	13.12	11.28	0.94	NA	NA	23.79	21.95	090
24136		A	Remove radius bone lesion	7.99	NA	NA	5.60	7.57	0.80	NA	NA	14.39	16.36	090
24138		A	Remove elbow bone lesion	8.05	NA	NA	6.95	6.94	0.84	NA	NA	15.84	15.83	090
24140		A	Partial removal of arm bone	9.18	NA	NA	13.98	11.75	0.95	NA	NA	24.11	21.88	090
24145		A	Partial removal of radius	7.58	NA	NA	9.58	8.25	0.77	NA	NA	17.93	16.60	090
24147		A	Partial removal of elbow	7.54	NA	NA	9.24	8.21	0.80	NA	NA	17.58	16.55	090
24149		A	Radical resection of elbow	14.20	NA	NA	10.60	12.16	1.46	NA	NA	26.26	27.82	090
24150		A	Extensive humerus surgery	13.27	NA	NA	12.97	14.13	1.34	NA	NA	27.58	28.74	090
24151		A	Extensive humerus surgery	15.58	NA	NA	13.68	14.35	1.50	NA	NA	30.76	31.43	090
24152		A	Extensive radius surgery	10.06	NA	NA	8.25	7.82	0.95	NA	NA	19.26	18.83	090
24153		A	Extensive radius surgery	11.54	NA	NA	6.78	9.06	0.67	NA	NA	18.99	21.27	090
24155		A	Removal of elbow joint	11.73	NA	NA	8.82	10.25	1.18	NA	NA	21.73	23.16	090
24160		A	Remove elbow joint implant	7.83	NA	NA	6.79	6.02	0.78	NA	NA	15.40	14.63	090
24164		A	Remove radius head implant	6.23	NA	NA	5.85	5.93	0.65	NA	NA	12.73	12.81	090
24200		A	Removal of arm foreign body	1.76	4.49	2.55	2.69	1.50	0.14	6.39	4.45	4.59	3.40	010
24201		A	Removal of arm foreign body	4.56	7.05	5.19	5.77	4.55	0.48	12.09	10.23	10.81	9.59	090
24220		A	Injection for elbow x-ray	1.31	10.17	5.36	0.37	0.46	0.07	11.55	6.74	1.75	1.84	000
24301		A	Muscle/tendon transfer	10.20	NA	NA	8.44	8.51	1.04	NA	NA	19.68	19.75	090
24305		A	Arm tendon lengthening	7.45	NA	NA	6.57	4.96	0.75	NA	NA	14.77	13.16	090
24310		A	Revision of arm tendon	5.98	NA	NA	6.79	5.00	0.63	NA	NA	13.40	11.61	090
24320		A	Repair of arm tendon	10.56	NA	NA	9.85	9.92	0.98	NA	NA	21.39	21.46	090
24330		A	Revision of arm muscles	9.60	NA	NA	7.65	8.57	1.03	NA	NA	18.28	19.20	090
24331		A	Revision of arm muscles	10.65	NA	NA	8.18	9.31	1.11	NA	NA	19.94	21.07	090
24340		A	Repair of biceps tendon	7.89	NA	NA	6.70	7.15	0.81	NA	NA	15.40	15.85	090
24341		A	Repair arm tendon/muscle	7.90	NA	NA	6.86	7.23	0.82	NA	NA	15.58	15.95	090
24342		A	Repair of ruptured tendon	10.62	NA	NA	8.46	9.86	1.10	NA	NA	20.18	21.58	090
24350		A	Repair of tennis elbow	5.25	NA	NA	5.24	4.92	0.54	NA	NA	11.03	10.71	090
24351		A	Repair of tennis elbow	5.91	NA	NA	5.71	5.34	0.62	NA	NA	12.24	11.87	090
24352		A	Repair of tennis elbow	6.43	NA	NA	6.23	6.21	0.66	NA	NA	13.32	13.30	090
24354		A	Repair of tennis elbow	6.48	NA	NA	6.15	6.12	0.68	NA	NA	13.31	13.28	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
24356		A	Revision of tennis elbow	6.68	NA	NA	6.14	7.02	0.70	NA	NA	13.52	14.40	090
24360		A	Reconstruct elbow joint	12.34	NA	NA	9.17	11.95	1.27	NA	NA	22.78	25.56	090
24361		A	Reconstruct elbow joint	14.08	NA	NA	9.90	12.08	1.46	NA	NA	25.44	27.62	090
24362		A	Reconstruct elbow joint	14.99	NA	NA	10.74	8.94	1.34	NA	NA	27.07	25.27	090
24363		A	Replace elbow joint	18.49	NA	NA	12.73	17.40	1.91	NA	NA	33.13	37.80	090
24365		A	Reconstruct head of radius	8.39	NA	NA	7.27	7.72	0.87	NA	NA	16.53	16.98	090
24366		A	Reconstruct head of radius	9.13	NA	NA	7.57	9.24	0.95	NA	NA	17.65	19.32	090
24400		A	Revision of humerus	11.06	NA	NA	11.50	10.33	1.13	NA	NA	23.69	22.52	090
24410		A	Revision of humerus	14.82	NA	NA	12.33	13.79	1.37	NA	NA	28.52	29.98	090
24420		A	Revision of humerus	13.44	NA	NA	14.52	13.94	1.36	NA	NA	29.32	28.74	090
24430		A	Repair of humerus	12.81	NA	NA	11.38	13.34	1.32	NA	NA	25.51	27.47	090
24435		A	Repair humerus with graft	13.17	NA	NA	12.48	14.11	1.36	NA	NA	27.01	28.64	090
24470		A	Revision of elbow joint	8.74	NA	NA	7.28	7.94	0.92	NA	NA	16.94	17.60	090
24495		A	Decompression of forearm	8.12	NA	NA	9.44	7.84	0.91	NA	NA	18.47	16.87	090
24498		A	Reinforce humerus	11.92	NA	NA	11.35	11.30	1.23	NA	NA	24.50	24.45	090
24500		A	Treat humerus fracture	3.21	6.75	4.76	2.97	2.87	0.32	10.28	8.29	6.50	6.40	090
24505		A	Treat humerus fracture	5.17	9.99	7.44	6.03	5.46	0.53	15.69	13.14	11.73	11.16	090
24515		A	Treat humerus fracture	11.65	NA	NA	10.18	10.33	1.16	NA	NA	22.99	23.14	090
24516		A	Treat humerus fracture	11.65	NA	NA	10.61	10.54	1.20	NA	NA	23.46	23.39	090
24530		A	Treat humerus fracture	3.50	7.70	5.33	4.28	3.62	0.35	11.55	9.18	8.13	7.47	090
24535		A	Treat humerus fracture	6.87	10.08	7.67	6.07	5.67	0.72	17.67	15.26	13.66	13.26	090
24538		A	Treat humerus fracture	9.43	NA	NA	9.20	8.93	0.96	NA	NA	19.59	19.32	090
24545		A	Treat humerus fracture	10.46	NA	NA	9.08	9.95	1.08	NA	NA	20.62	21.49	090
24546		A	Treat humerus fracture	15.69	NA	NA	12.41	11.62	1.62	NA	NA	29.72	28.93	090
24560		A	Treat humerus fracture	2.80	6.54	4.44	2.77	2.56	0.28	9.62	7.52	5.85	5.64	090
24565		A	Treat humerus fracture	5.56	9.08	6.41	5.22	4.48	0.57	15.21	12.54	11.35	10.61	090
24566		A	Treat humerus fracture	7.79	NA	NA	8.31	7.45	0.78	NA	NA	16.88	16.02	090
24575		A	Treat humerus fracture	10.66	NA	NA	7.66	8.06	1.10	NA	NA	19.42	19.82	090
24576		A	Treat humerus fracture	2.86	6.31	4.33	2.86	2.60	0.29	9.46	7.48	6.01	5.75	090
24577		A	Treat humerus fracture	5.79	9.38	6.86	5.48	4.91	0.60	15.77	13.25	11.87	11.30	090
24579		A	Treat humerus fracture	11.60	NA	NA	9.13	9.11	1.19	NA	NA	21.92	21.90	090
24582		A	Treat humerus fracture	8.55	NA	NA	9.10	8.14	0.88	NA	NA	18.53	17.57	090
24586		A	Treat elbow fracture	15.21	NA	NA	10.20	13.09	1.56	NA	NA	26.97	29.86	090
24587		A	Treat elbow fracture	15.16	NA	NA	9.96	12.43	1.46	NA	NA	26.58	29.05	090
24600		A	Treat elbow dislocation	4.23	8.26	5.19	4.52	3.32	0.42	12.91	9.84	9.17	7.97	090
24605		A	Treat elbow dislocation	5.42	NA	NA	4.36	3.43	0.56	NA	NA	10.34	9.41	090
24615		A	Treat elbow dislocation	9.42	NA	NA	7.13	8.61	0.98	NA	NA	17.53	19.01	090
24620		A	Treat elbow fracture	6.98	NA	NA	5.98	5.04	0.70	NA	NA	13.66	12.72	090
24635		A	Treat elbow fracture	13.19	NA	NA	19.27	15.64	1.37	NA	NA	33.83	30.20	090
24640		A	Treat elbow dislocation	1.20	5.18	3.14	1.61	1.36	0.11	6.49	4.45	2.92	2.67	010
24650		A	Treat radius fracture	2.16	6.23	4.34	2.55	1.89	0.22	8.61	6.72	4.93	4.27	090
24655		A	Treat radius fracture	4.40	8.62	5.95	4.66	3.97	0.45	13.47	10.80	9.51	8.82	090
24665		A	Treat radius fracture	8.14	NA	NA	8.36	8.05	0.84	NA	NA	17.34	17.03	090
24666		A	Treat radius fracture	9.49	NA	NA	9.02	10.09	0.98	NA	NA	19.49	20.56	090
24670		A	Treat ulnar fracture	2.54	6.15	4.14	2.73	2.43	0.26	8.95	6.94	5.53	5.23	090
24675		A	Treat ulnar fracture	4.72	8.77	6.29	4.91	4.36	0.49	13.98	11.50	10.12	9.57	090
24685		A	Treat ulnar fracture	8.80	NA	NA	8.69	8.91	0.91	NA	NA	18.40	18.62	090
24800		A	Fusion of elbow joint	11.20	NA	NA	8.56	10.03	1.13	NA	NA	20.89	22.36	090
24802		A	Fusion/graft of elbow joint	13.69	NA	NA	10.33	11.78	1.37	NA	NA	25.39	26.84	090
24900		A	Amputation of upper arm	9.60	NA	NA	9.49	8.91	1.00	NA	NA	20.09	19.51	090
24920		A	Amputation of upper arm	9.54	NA	NA	10.32	8.84	0.95	NA	NA	20.81	19.33	090
24925		A	Amputation follow-up surgery	7.07	NA	NA	7.69	7.25	0.71	NA	NA	15.47	15.03	090
24930		A	Amputation follow-up surgery	10.25	NA	NA	10.82	9.84	0.99	NA	NA	22.06	21.08	090
24931		A	Amputate upper arm & implant	12.72	NA	NA	8.15	10.14	1.29	NA	NA	22.16	24.15	090
24935		A	Revision of amputation	15.56	NA	NA	11.18	13.03	1.58	NA	NA	28.32	30.17	090
24940		C	Revision of upper arm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
24999		C	Upper arm/elbow surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
25000		A	Incision of tendon sheath	3.38	NA	NA	5.80	4.92	0.35	NA	NA	9.53	8.65	090
25020		A	Decompression of forearm	5.92	NA	NA	9.13	6.93	0.66	NA	NA	15.71	13.51	090
25023		A	Decompression of forearm	12.96	NA	NA	14.45	10.18	1.34	NA	NA	28.75	24.48	090
25028		A	Drainage of forearm lesion	5.25	NA	NA	8.56	5.40	0.53	NA	NA	14.34	11.18	090
25031		A	Drainage of forearm bursa	4.14	NA	NA	8.30	4.51	0.36	NA	NA	12.80	9.01	090
25035		A	Treat forearm bone lesion	7.36	NA	NA	13.04	9.94	0.74	NA	NA	21.14	18.04	090
25040		A	Explore/treat wrist joint	7.18	NA	NA	7.72	6.95	0.74	NA	NA	15.64	14.87	090
25065		A	Biopsy forearm soft tissues	1.99	2.44	1.63	2.44	1.43	0.10	4.53	3.72	4.53	3.52	010
25066		A	Biopsy forearm soft tissues	4.13	NA	NA	6.57	4.12	0.42	NA	NA	11.12	8.67	090
25075		A	Removal of forearm lesion	3.74	NA	NA	6.22	4.30	0.36	NA	NA	10.32	8.40	090
25076		A	Removal of forearm lesion	4.92	NA	NA	10.22	7.16	0.51	NA	NA	15.65	12.59	090
25077		A	Remove tumor, forearm/wrist	9.76	NA	NA	12.85	11.03	0.97	NA	NA	23.58	21.76	090
25085		A	Incision of wrist capsule	5.50	NA	NA	8.41	6.71	0.57	NA	NA	14.48	12.78	090
25100		A	Biopsy of wrist joint	3.90	NA	NA	5.81	5.24	0.41	NA	NA	10.12	9.55	090
25101		A	Explore/treat wrist joint	4.69	NA	NA	6.40	6.00	0.49	NA	NA	11.58	11.18	090
25105		A	Remove wrist joint lining	5.85	NA	NA	8.97	7.98	0.60	NA	NA	15.42	14.43	090
25107		A	Remove wrist joint cartilage	6.43	NA	NA	9.07	7.40	0.67	NA	NA	16.17	14.50	090
25110		A	Remove wrist tendon lesion	3.92	NA	NA	6.81	4.93	0.39	NA	NA	11.12	9.24	090
25111		A	Remove wrist tendon lesion	3.39	NA	NA	5.23	4.36	0.34	NA	NA	8.96	8.09	090
25112		A	Reremove wrist tendon lesion	4.53	NA	NA	6.02	5.03	0.47	NA	NA	11.02	10.03	090
25115		A	Remove wrist/forearm lesion	8.82	NA	NA	13.51	10.63	0.92	NA	NA	23.25	20.37	090
25116		A	Remove wrist/forearm lesion	7.11	NA	NA	12.46	10.48	0.74	NA	NA	20.31	18.33	090
25118		A	Excise wrist tendon sheath	4.37	NA	NA	6.29	5.76	0.46	NA	NA	11.12	10.59	090
25119		A	Partial removal of ulna	6.04	NA	NA	9.12	8.17	0.62	NA	NA	15.78	14.83	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
25120	....	A	Removal of forearm lesion	6.10	NA	NA	11.79	9.44	0.64	NA	NA	18.53	16.18	090
25125	....	A	Remove/graft forearm lesion	7.48	NA	NA	12.59	10.01	0.77	NA	NA	20.84	18.26	090
25126	....	A	Remove/graft forearm lesion	7.55	NA	NA	11.49	9.44	0.77	NA	NA	19.81	17.76	090
25130	....	A	Removal of wrist lesion	5.26	NA	NA	6.62	5.60	0.54	NA	NA	12.42	11.40	090
25135	....	A	Remove & graft wrist lesion	6.89	NA	NA	7.48	6.71	0.73	NA	NA	15.10	14.33	090
25136	....	A	Remove & graft wrist lesion	5.97	NA	NA	6.48	5.81	0.62	NA	NA	13.07	12.40	090
25145	....	A	Remove forearm bone lesion	6.37	NA	NA	11.88	9.17	0.66	NA	NA	18.91	16.20	090
25150	....	A	Partial removal of ulna	7.09	NA	NA	9.85	8.55	0.72	NA	NA	17.66	16.36	090
25151	....	A	Partial removal of radius	7.39	NA	NA	12.50	9.37	0.77	NA	NA	20.66	17.53	090
25170	....	A	Extensive forearm surgery	11.09	NA	NA	14.22	12.42	1.16	NA	NA	26.47	24.67	090
25210	....	A	Removal of wrist bone	5.95	NA	NA	7.05	6.18	0.62	NA	NA	13.62	12.75	090
25215	....	A	Removal of wrist bones	7.89	NA	NA	10.32	9.87	0.81	NA	NA	19.02	18.57	090
25230	....	A	Partial removal of radius	5.23	NA	NA	6.56	6.30	0.53	NA	NA	12.32	12.06	090
25240	....	A	Partial removal of ulna	5.17	NA	NA	8.60	7.18	0.53	NA	NA	14.30	12.88	090
25246	....	A	Injection for wrist x-ray	1.45	8.81	4.68	0.40	0.47	0.06	10.32	6.19	1.91	1.98	000
25248	....	A	Remove forearm foreign body	5.14	NA	NA	8.97	5.67	0.51	NA	NA	14.62	11.32	090
25250	....	A	Removal of wrist prosthesis	6.60	NA	NA	7.34	6.73	0.68	NA	NA	14.62	14.01	090
25251	....	A	Removal of wrist prosthesis	9.57	NA	NA	12.36	10.66	0.98	NA	NA	22.91	21.21	090
25260	....	A	Repair forearm tendon/muscle	7.80	NA	NA	13.24	9.12	0.81	NA	NA	21.85	17.73	090
25263	....	A	Repair forearm tendon/muscle	7.82	NA	NA	14.42	10.34	0.81	NA	NA	23.05	18.97	090
25265	....	A	Repair forearm tendon/muscle	9.88	NA	NA	14.96	11.79	1.02	NA	NA	25.86	22.69	090
25270	....	A	Repair forearm tendon/muscle	6.00	NA	NA	12.30	7.98	0.62	NA	NA	18.92	14.60	090
25272	....	A	Repair forearm tendon/muscle	7.04	NA	NA	12.82	8.28	0.74	NA	NA	20.60	16.06	090
25274	....	A	Repair forearm tendon/muscle	8.75	NA	NA	13.79	10.49	0.91	NA	NA	23.45	20.15	090
25280	....	A	Revise wrist/forearm tendon	7.22	NA	NA	12.43	8.51	0.74	NA	NA	20.39	16.47	090
25290	....	A	Incise wrist/forearm tendon	5.29	NA	NA	13.83	8.26	0.55	NA	NA	19.67	14.10	090
25295	....	A	Release wrist/forearm tendon	6.55	NA	NA	12.25	7.78	0.68	NA	NA	19.48	15.01	090
25300	....	A	Fusion of tendons at wrist	8.80	NA	NA	9.37	8.68	0.87	NA	NA	19.04	18.35	090
25301	....	A	Fusion of tendons at wrist	8.40	NA	NA	8.58	7.97	0.83	NA	NA	17.81	17.20	090
25310	....	A	Transplant forearm tendon	8.14	NA	NA	13.62	10.69	0.84	NA	NA	22.60	19.67	090
25312	....	A	Transplant forearm tendon	9.57	NA	NA	14.64	11.46	0.98	NA	NA	25.19	22.01	090
25315	....	A	Revise palsy hand tendon(s)	10.20	NA	NA	14.29	11.52	1.10	NA	NA	25.59	22.82	090
25316	....	A	Revise palsy hand tendon(s)	12.33	NA	NA	16.10	13.79	1.23	NA	NA	29.66	27.35	090
25320	....	A	Repair/revise wrist joint	10.77	NA	NA	10.24	9.79	1.11	NA	NA	22.12	21.67	090
25332	....	A	Revise wrist joint	11.41	NA	NA	10.48	10.66	1.16	NA	NA	23.05	23.23	090
25335	....	A	Realignment of hand	12.88	NA	NA	12.16	12.27	1.36	NA	NA	26.40	26.51	090
25337	....	A	Reconstruct ulna/radioulnar	10.17	NA	NA	11.18	10.26	1.06	NA	NA	22.41	21.49	090
25350	....	A	Revision of radius	8.78	NA	NA	13.85	11.06	0.91	NA	NA	23.54	20.75	090
25355	....	A	Revision of radius	10.17	NA	NA	13.76	11.83	1.05	NA	NA	24.98	23.05	090
25360	....	A	Revision of ulna	8.43	NA	NA	13.95	10.46	0.90	NA	NA	23.28	19.79	090
25365	....	A	Revise radius & ulna	12.40	NA	NA	16.87	14.03	1.20	NA	NA	30.47	27.63	090
25370	....	A	Revise radius or ulna	13.36	NA	NA	13.09	12.93	1.30	NA	NA	27.75	27.59	090
25375	....	A	Revise radius & ulna	13.04	NA	NA	15.05	14.79	1.27	NA	NA	29.36	29.10	090
25390	....	A	Shorten radius or ulna	10.40	NA	NA	14.88	12.23	1.07	NA	NA	26.35	23.70	090
25391	....	A	Lengthen radius or ulna	13.65	NA	NA	18.97	15.59	1.42	NA	NA	34.04	30.66	090
25392	....	A	Shorten radius & ulna	13.95	NA	NA	14.47	13.99	1.46	NA	NA	29.88	29.40	090
25393	....	A	Lengthen radius & ulna	15.87	NA	NA	16.54	15.98	1.62	NA	NA	34.03	33.47	090
25400	....	A	Repair radius or ulna	10.92	NA	NA	14.74	13.22	1.13	NA	NA	26.79	25.27	090
25405	....	A	Repair/graft radius or ulna	14.38	NA	NA	17.88	15.68	1.48	NA	NA	33.74	31.54	090
25415	....	A	Repair radius & ulna	13.35	NA	NA	19.16	15.78	1.39	NA	NA	33.90	30.52	090
25420	....	A	Repair/graft radius & ulna	16.33	NA	NA	18.64	17.30	1.69	NA	NA	36.66	35.32	090
25425	....	A	Repair/graft radius or ulna	13.21	NA	NA	21.63	17.34	1.33	NA	NA	36.17	31.88	090
25426	....	A	Repair/graft radius & ulna	15.82	NA	NA	16.66	14.69	1.33	NA	NA	33.81	31.84	090
25440	....	A	Repair/graft wrist bone	10.44	NA	NA	9.46	9.64	1.09	NA	NA	20.99	21.17	090
25441	....	A	Reconstruct wrist joint	12.90	NA	NA	11.28	11.81	1.35	NA	NA	25.53	26.06	090
25442	....	A	Reconstruct wrist joint	10.85	NA	NA	10.92	9.29	1.13	NA	NA	22.90	21.27	090
25443	....	A	Reconstruct wrist joint	10.39	NA	NA	10.94	10.56	1.09	NA	NA	22.42	22.04	090
25444	....	A	Reconstruct wrist joint	11.15	NA	NA	11.23	11.12	1.16	NA	NA	23.54	23.43	090
25445	....	A	Reconstruct wrist joint	9.69	NA	NA	10.96	11.10	1.00	NA	NA	21.65	21.79	090
25446	....	A	Wrist replacement	16.55	NA	NA	13.82	16.79	1.70	NA	NA	32.07	35.04	090
25447	....	A	Repair wrist joint(s)	10.37	NA	NA	9.91	10.19	1.07	NA	NA	21.35	21.63	090
25449	....	A	Remove wrist joint implant	14.49	NA	NA	13.47	10.99	1.50	NA	NA	29.46	26.98	090
25450	....	A	Revision of wrist joint	7.87	NA	NA	11.63	9.78	0.65	NA	NA	20.15	18.30	090
25455	....	A	Revision of wrist joint	9.49	NA	NA	10.99	10.22	0.72	NA	NA	21.20	20.43	090
25490	....	A	Reinforce radius	9.54	NA	NA	12.91	11.17	0.99	NA	NA	23.44	21.70	090
25491	....	A	Reinforce ulna	9.96	NA	NA	13.86	11.87	1.04	NA	NA	24.86	22.87	090
25492	....	A	Reinforce radius and ulna	12.33	NA	NA	13.76	12.96	1.29	NA	NA	27.38	26.58	090
25500	....	A	Treat fracture of radius	2.45	5.89	4.21	2.56	1.92	0.23	8.57	6.89	5.24	4.60	090
25505	....	A	Treat fracture of radius	5.21	8.97	6.42	5.02	4.45	0.53	14.71	12.16	10.76	10.19	090
25515	....	A	Treat fracture of radius	9.18	NA	NA	8.92	8.60	0.86	NA	NA	18.96	18.64	090
25520	....	A	Treat fracture of radius	6.26	9.24	7.74	5.65	5.94	0.64	16.14	14.64	12.55	12.84	090
25525	....	A	Treat fracture of radius	12.24	NA	NA	10.74	11.42	1.28	NA	NA	24.26	24.94	090
25526	....	A	Treat fracture of radius	12.98	NA	NA	17.25	15.06	1.34	NA	NA	31.57	29.38	090
25530	....	A	Treat fracture of ulna	2.09	5.92	4.29	2.51	1.88	0.21	8.22	6.59	4.81	4.18	090
25535	....	A	Treat fracture of ulna	5.14	8.80	6.34	5.11	4.49	0.51	14.45	11.99	10.76	10.14	090
25545	....	A	Treat fracture of ulna	8.90	NA	NA	8.64	8.44	0.92	NA	NA	18.46	18.26	090
25560	....	A	Treat fracture radius & ulna	2.44	5.95	4.21	2.59	2.53	0.23	8.62	6.88	5.26	5.20	090
25565	....	A	Treat fracture radius & ulna	5.63	9.36	7.21	5.19	5.13	0.57	15.56	13.41	11.39	11.33	090
25574	....	A	Treat fracture radius & ulna	7.01	NA	NA	7.62	8.00	0.73	NA	NA	15.36	15.74	090
25575	....	A	Treat fracture radius/ulna	10.45	NA	NA	9.59	10.60	1.08	NA	NA	21.12	22.13	090
25600	....	A	Treat fracture radius/ulna	2.63	6.22	4.65	2.74	2.14	0.27	9.12	7.55	5.64	5.04	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
25605		A	Treat fracture radius/ulna	5.81	9.47	6.88	5.48	4.89	0.60	15.88	13.29	11.89	11.30	090
25611		A	Treat fracture radius/ulna	7.77	NA	NA	8.46	7.49	0.80	NA	NA	17.03	16.06	090
25620		A	Treat fracture radius/ulna	8.55	NA	NA	8.34	8.04	0.88	NA	NA	17.77	17.47	090
25622		A	Treat wrist bone fracture	2.61	6.19	4.33	2.72	1.98	0.27	9.07	7.21	5.60	4.86	090
25624		A	Treat wrist bone fracture	4.53	8.75	6.37	4.70	3.35	0.47	13.75	11.37	9.70	8.35	090
25628		A	Treat wrist bone fracture	8.43	NA	NA	8.39	8.07	0.89	NA	NA	17.71	17.39	090
25630		A	Treat wrist bone fracture	2.88	6.33	4.36	2.71	1.95	0.29	9.50	7.53	5.88	5.12	090
25635		A	Treat wrist bone fracture	4.39	8.59	6.12	4.51	3.17	0.45	13.43	10.96	9.35	8.01	090
25645		A	Treat wrist bone fracture	7.25	NA	NA	7.71	7.48	0.75	NA	NA	15.71	15.48	090
25650		A	Treat wrist bone fracture	3.05	6.35	4.62	2.94	2.20	0.31	9.71	7.98	6.30	5.56	090
25660		A	Treat wrist dislocation	4.76	NA	NA	4.74	3.36	0.48	NA	NA	9.98	8.60	090
25670		A	Treat wrist dislocation	7.92	NA	NA	8.07	7.88	0.82	NA	NA	16.81	16.62	090
25675		A	Treat wrist dislocation	4.67	8.28	5.38	4.77	3.62	0.47	13.42	10.52	9.91	8.76	090
25676		A	Treat wrist dislocation	8.04	NA	NA	8.06	8.00	0.81	NA	NA	16.91	16.85	090
25680		A	Treat wrist fracture	5.99	NA	NA	5.71	4.18	0.53	NA	NA	12.23	10.70	090
25685		A	Treat wrist fracture	9.78	NA	NA	9.27	9.41	0.98	NA	NA	20.03	20.17	090
25690		A	Treat wrist dislocation	5.50	NA	NA	6.10	5.71	0.56	NA	NA	12.16	11.77	090
25695		A	Treat wrist dislocation	8.34	NA	NA	8.37	8.01	0.87	NA	NA	17.58	17.22	090
25800		A	Fusion of wrist joint	9.76	NA	NA	9.53	10.60	1.00	NA	NA	20.29	21.36	090
25805		A	Fusion/graft of wrist joint	11.28	NA	NA	10.60	12.04	1.17	NA	NA	23.05	24.49	090
25810		A	Fusion/graft of wrist joint	10.57	NA	NA	9.88	11.25	1.08	NA	NA	21.53	22.90	090
25820		A	Fusion of hand bones	7.45	NA	NA	8.22	8.56	0.74	NA	NA	16.41	16.75	090
25825		A	Fuse hand bones with graft	9.27	NA	NA	9.18	10.13	0.95	NA	NA	19.40	20.35	090
25830		A	Fusion, radioulnar jnt/ulna	10.06	NA	NA	13.53	11.43	1.03	NA	NA	24.62	22.52	090
25900		A	Amputation of forearm	9.01	NA	NA	11.99	9.84	0.95	NA	NA	21.95	19.80	090
25905		A	Amputation of forearm	9.12	NA	NA	13.04	10.38	0.95	NA	NA	23.11	20.45	090
25907		A	Amputation follow-up surgery	7.80	NA	NA	12.86	9.55	0.82	NA	NA	21.48	18.17	090
25909		A	Amputation follow-up surgery	8.96	NA	NA	12.73	9.38	0.96	NA	NA	22.65	19.30	090
25915		A	Amputation of forearm	17.08	NA	NA	14.24	15.71	1.83	NA	NA	33.15	34.62	090
25920		A	Amputate hand at wrist	8.68	NA	NA	8.24	7.92	0.92	NA	NA	17.84	17.52	090
25922		A	Amputate hand at wrist	7.42	NA	NA	8.04	7.03	0.77	NA	NA	16.23	15.22	090
25924		A	Amputation follow-up surgery	8.46	NA	NA	8.61	8.38	0.61	NA	NA	17.68	17.45	090
25927		A	Amputation of hand	8.80	NA	NA	11.44	9.14	0.93	NA	NA	21.17	18.87	090
25929		A	Amputation follow-up surgery	7.59	NA	NA	7.50	6.32	0.76	NA	NA	15.85	14.67	090
25931		A	Amputation follow-up surgery	7.81	NA	NA	13.63	9.28	0.79	NA	NA	22.23	17.88	090
25999		C	Forearm or wrist surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
26010		A	Drainage of finger abscess	1.54	4.36	2.44	3.16	1.71	0.12	6.02	4.10	4.82	3.37	010
26011		A	Drainage of finger abscess	2.19	5.79	3.73	4.88	3.28	0.22	8.20	6.14	7.29	5.69	010
26020		A	Drain hand tendon sheath	4.67	NA	NA	9.73	6.89	0.49	NA	NA	14.89	12.05	090
26025		A	Drainage of palm bursa	4.82	NA	NA	9.83	7.36	0.50	NA	NA	15.15	12.68	090
26030		A	Drainage of palm bursa(s)	5.93	NA	NA	10.46	8.34	0.62	NA	NA	17.01	14.89	090
26034		A	Treat hand bone lesion	6.23	NA	NA	11.65	8.12	0.64	NA	NA	18.52	14.99	090
26035		A	Decompress fingers/hand	9.51	NA	NA	13.52	9.57	0.97	NA	NA	24.00	20.05	090
26037		A	Decompress fingers/hand	7.25	NA	NA	10.26	8.59	0.75	NA	NA	18.26	16.59	090
26040		A	Release palm contracture	3.33	NA	NA	9.42	6.26	0.34	NA	NA	13.09	9.93	090
26045		A	Release palm contracture	5.56	NA	NA	10.72	7.98	0.57	NA	NA	16.85	14.11	090
26055		A	Incise finger tendon sheath	2.69	6.10	4.83	5.85	4.71	0.28	9.07	7.80	8.82	7.68	090
26060		A	Incision of finger tendon	2.81	NA	NA	6.07	3.65	0.30	NA	NA	9.18	6.76	090
26070		A	Explore/treat hand joint	3.69	NA	NA	8.97	5.24	0.32	NA	NA	12.98	9.25	090
26075		A	Explore/treat finger joint	3.79	NA	NA	9.44	6.77	0.35	NA	NA	13.58	10.91	090
26080		A	Explore/treat finger joint	4.24	NA	NA	9.96	6.69	0.43	NA	NA	14.63	11.36	090
26100		A	Biopsy hand joint lining	3.67	NA	NA	6.79	5.02	0.36	NA	NA	10.82	9.05	090
26105		A	Biopsy finger joint lining	3.71	NA	NA	9.88	7.21	0.38	NA	NA	13.97	11.30	090
26110		A	Biopsy finger joint lining	3.53	NA	NA	9.29	6.24	0.36	NA	NA	13.18	10.13	090
26115		A	Removal of hand lesion	3.86	6.17	4.18	6.17	4.18	0.39	10.42	8.43	10.42	8.43	090
26116		A	Removal of hand lesion	5.53	NA	NA	10.62	7.33	0.57	NA	NA	16.72	13.43	090
26117		A	Remove tumor, hand/finger	8.55	NA	NA	12.26	8.88	0.88	NA	NA	21.69	18.31	090
26121		A	Release palm contracture	7.54	NA	NA	12.24	10.62	0.78	NA	NA	20.56	18.94	090
26123		A	Release palm contracture	9.29	NA	NA	13.19	11.54	0.97	NA	NA	23.45	21.80	090
26125		A	Release palm contracture	4.61	NA	NA	2.50	2.67	0.49	NA	NA	7.60	7.77	ZZZ
26130		A	Remove wrist joint lining	5.42	NA	NA	11.89	8.67	0.56	NA	NA	17.87	14.65	090
26135		A	Revise finger joint, each	6.96	NA	NA	13.28	9.28	0.73	NA	NA	20.97	16.97	090
26140		A	Revise finger joint, each	6.17	NA	NA	12.39	8.59	0.64	NA	NA	19.20	15.40	090
26145		A	Tendon excision, palm/finger	6.32	NA	NA	12.67	8.89	0.66	NA	NA	19.65	15.87	090
26160		A	Remove tendon sheath lesion	3.15	6.10	4.31	6.03	4.28	0.32	9.57	7.78	9.50	7.75	090
26170		A	Removal of palm tendon, each	4.77	NA	NA	6.99	5.03	0.53	NA	NA	12.29	10.33	090
26180		A	Removal of finger tendon	5.18	NA	NA	7.27	5.81	0.55	NA	NA	13.00	11.54	090
26185		A	Remove finger bone	5.25	NA	NA	7.06	5.83	0.54	NA	NA	12.85	11.62	090
26200		A	Remove hand bone lesion	5.51	NA	NA	10.76	7.81	0.56	NA	NA	16.83	13.88	090
26205		A	Remove/graft bone lesion	7.70	NA	NA	11.85	9.40	0.81	NA	NA	20.36	17.91	090
26210		A	Removal of finger lesion	5.15	NA	NA	10.94	7.59	0.53	NA	NA	16.62	13.27	090
26215		A	Remove/graft finger lesion	7.10	NA	NA	11.70	8.86	0.66	NA	NA	19.46	16.62	090
26230		A	Partial removal of hand bone	6.33	NA	NA	10.45	7.54	0.66	NA	NA	17.44	14.53	090
26235		A	Partial removal, finger bone	6.19	NA	NA	9.86	7.20	0.65	NA	NA	16.70	14.04	090
26236		A	Partial removal, finger bone	5.32	NA	NA	9.65	6.92	0.55	NA	NA	15.52	12.79	090
26250		A	Extensive hand surgery	7.55	NA	NA	13.89	10.20	0.75	NA	NA	22.19	18.50	090
26255		A	Extensive hand surgery	12.43	NA	NA	16.86	13.28	1.19	NA	NA	30.48	26.90	090
26260		A	Extensive finger surgery	7.03	NA	NA	12.72	9.47	0.72	NA	NA	20.47	17.22	090
26261		A	Extensive finger surgery	9.09	NA	NA	15.25	11.81	0.66	NA	NA	25.00	21.56	090
26262		A	Partial removal of finger	5.67	NA	NA	11.30	8.23	0.59	NA	NA	17.56	14.49	090
26320		A	Removal of implant from hand	3.98	NA	NA	9.96	6.90	0.41	NA	NA	14.35	11.29	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
26350		A	Repair finger/hand tendon	5.99	NA	NA	15.17	10.70	0.62	NA	NA	21.78	17.31	090
26352		A	Repair/graft hand tendon	7.68	NA	NA	16.81	11.99	0.80	NA	NA	25.29	20.47	090
26356		A	Repair finger/hand tendon	8.07	NA	NA	16.30	12.06	0.85	NA	NA	25.22	20.98	090
26357		A	Repair finger/hand tendon	8.58	NA	NA	16.28	11.71	0.89	NA	NA	25.75	21.18	090
26358		A	Repair/graft hand tendon	9.14	NA	NA	16.29	12.16	0.95	NA	NA	26.38	22.25	090
26370		A	Repair finger/hand tendon	7.11	NA	NA	15.70	11.49	0.74	NA	NA	23.55	19.34	090
26372		A	Repair/graft hand tendon	8.76	NA	NA	16.71	11.82	0.90	NA	NA	26.37	21.48	090
26373		A	Repair finger/hand tendon	8.16	NA	NA	15.64	11.54	0.84	NA	NA	24.64	20.54	090
26390		A	Revise hand/finger tendon	9.19	NA	NA	13.18	10.91	0.95	NA	NA	23.32	21.05	090
26392		A	Repair/graft hand tendon	10.26	NA	NA	20.11	14.73	1.07	NA	NA	31.44	26.06	090
26410		A	Repair hand tendon	4.63	NA	NA	12.14	7.86	0.48	NA	NA	17.25	12.97	090
26412		A	Repair/graft hand tendon	6.31	NA	NA	13.47	10.00	0.66	NA	NA	20.44	16.97	090
26415		A	Excision, hand/finger tendon	8.34	NA	NA	12.95	10.14	0.74	NA	NA	22.03	19.22	090
26416		A	Graft hand or finger tendon	9.37	NA	NA	22.26	15.82	0.96	NA	NA	32.59	26.15	090
26418		A	Repair finger tendon	4.25	NA	NA	12.21	8.05	0.44	NA	NA	16.90	12.74	090
26420		A	Repair/graft finger tendon	6.77	NA	NA	15.68	10.92	0.70	NA	NA	23.15	18.39	090
26426		A	Repair finger/hand tendon	6.15	NA	NA	12.86	9.86	0.64	NA	NA	19.65	16.65	090
26428		A	Repair/graft finger tendon	7.21	NA	NA	14.86	10.42	0.74	NA	NA	22.81	18.37	090
26432		A	Repair finger tendon	4.02	NA	NA	10.07	5.89	0.42	NA	NA	14.51	10.33	090
26433		A	Repair finger tendon	4.56	NA	NA	10.76	7.52	0.48	NA	NA	15.80	12.56	090
26434		A	Repair/graft finger tendon	6.09	NA	NA	11.03	8.20	0.61	NA	NA	17.73	14.90	090
26437		A	Realignment of tendons	5.82	NA	NA	10.95	7.68	0.61	NA	NA	17.38	14.11	090
26440		A	Release palm/finger tendon	5.02	NA	NA	14.09	8.98	0.53	NA	NA	19.64	14.53	090
26442		A	Release palm & finger tendon	8.16	NA	NA	15.68	9.67	0.85	NA	NA	24.69	18.68	090
26445		A	Release hand/finger tendon	4.31	NA	NA	13.87	8.70	0.45	NA	NA	18.63	13.46	090
26449		A	Release forearm/hand tendon	7.00	NA	NA	14.65	10.35	0.74	NA	NA	22.39	18.09	090
26450		A	Incision of palm tendon	3.67	NA	NA	6.58	4.53	0.38	NA	NA	10.63	8.58	090
26455		A	Incision of finger tendon	3.64	NA	NA	6.47	4.26	0.38	NA	NA	10.49	8.28	090
26460		A	Incise hand/finger tendon	3.46	NA	NA	6.22	4.05	0.36	NA	NA	10.04	7.87	090
26471		A	Fusion of finger tendons	5.73	NA	NA	10.55	7.53	0.59	NA	NA	16.87	13.85	090
26474		A	Fusion of finger tendons	5.32	NA	NA	10.81	7.91	0.55	NA	NA	16.68	13.78	090
26476		A	Tendon lengthening	5.18	NA	NA	10.62	6.88	0.52	NA	NA	16.32	12.58	090
26477		A	Tendon shortening	5.15	NA	NA	10.65	7.49	0.53	NA	NA	16.33	13.17	090
26478		A	Lengthening of hand tendon	5.80	NA	NA	11.23	7.95	0.60	NA	NA	17.63	14.35	090
26479		A	Shortening of hand tendon	5.74	NA	NA	11.23	8.49	0.60	NA	NA	17.57	14.83	090
26480		A	Transplant hand tendon	6.69	NA	NA	14.87	10.98	0.70	NA	NA	22.26	18.37	090
26483		A	Transplant/graft hand tendon	8.29	NA	NA	17.30	13.26	0.86	NA	NA	26.45	22.41	090
26485		A	Transplant palm tendon	7.70	NA	NA	16.49	11.77	0.79	NA	NA	24.98	20.26	090
26489		A	Transplant/graft palm tendon	9.55	NA	NA	13.45	8.57	0.86	NA	NA	23.86	18.98	090
26490		A	Revise thumb tendon	8.41	NA	NA	12.40	10.44	0.88	NA	NA	21.69	19.73	090
26492		A	Tendon transfer with graft	9.62	NA	NA	13.48	11.49	0.95	NA	NA	24.05	22.06	090
26494		A	Hand tendon/muscle transfer	8.47	NA	NA	16.33	12.12	0.90	NA	NA	25.70	21.49	090
26496		A	Revise thumb tendon	9.59	NA	NA	12.49	10.98	1.00	NA	NA	23.08	21.57	090
26497		A	Finger tendon transfer	9.57	NA	NA	13.21	10.96	0.96	NA	NA	23.74	21.49	090
26498		A	Finger tendon transfer	14.00	NA	NA	16.17	14.48	1.45	NA	NA	31.62	29.93	090
26499		A	Revision of finger	8.98	NA	NA	14.46	11.44	0.81	NA	NA	24.25	21.23	090
26500		A	Hand tendon reconstruction	5.96	NA	NA	11.42	7.61	0.62	NA	NA	18.00	14.19	090
26502		A	Hand tendon reconstruction	7.14	NA	NA	11.07	8.40	0.71	NA	NA	18.92	16.25	090
26504		A	Hand tendon reconstruction	7.47	NA	NA	10.89	9.09	0.74	NA	NA	19.10	17.30	090
26508		A	Release thumb contracture	6.01	NA	NA	11.40	7.95	0.62	NA	NA	18.03	14.58	090
26510		A	Thumb tendon transfer	5.43	NA	NA	10.83	7.67	0.56	NA	NA	16.82	13.66	090
26516		A	Fusion of knuckle joint	7.15	NA	NA	11.57	8.04	0.74	NA	NA	19.46	15.93	090
26517		A	Fusion of knuckle joints	8.83	NA	NA	13.32	10.50	0.90	NA	NA	23.05	20.23	090
26518		A	Fusion of knuckle joints	9.02	NA	NA	12.86	9.97	0.94	NA	NA	22.82	19.93	090
26520		A	Release knuckle contracture	5.30	NA	NA	14.10	9.48	0.55	NA	NA	19.95	15.33	090
26525		A	Release finger contracture	5.33	NA	NA	14.22	9.09	0.55	NA	NA	20.10	14.97	090
26530		A	Revise knuckle joint	6.69	NA	NA	16.09	10.85	0.68	NA	NA	23.46	18.22	090
26531		A	Revise knuckle with implant	7.91	NA	NA	15.97	11.60	0.82	NA	NA	24.70	20.33	090
26535		A	Revise finger joint	5.24	NA	NA	8.30	6.78	0.39	NA	NA	13.93	12.41	090
26536		A	Revise/implant finger joint	6.37	NA	NA	13.37	10.49	0.64	NA	NA	20.38	17.50	090
26540		A	Repair hand joint	6.43	NA	NA	11.58	9.40	0.67	NA	NA	18.68	16.50	090
26541		A	Repair hand joint with graft	8.62	NA	NA	13.40	11.55	0.88	NA	NA	22.90	21.05	090
26542		A	Repair hand joint with graft	6.78	NA	NA	11.42	8.79	0.71	NA	NA	18.91	16.28	090
26545		A	Reconstruct finger joint	6.92	NA	NA	11.82	8.77	0.73	NA	NA	19.47	16.42	090
26546		A	Repair nonunion hand	8.92	NA	NA	13.21	11.01	0.93	NA	NA	23.06	20.86	090
26548		A	Reconstruct finger joint	8.03	NA	NA	12.84	9.56	0.84	NA	NA	21.71	18.43	090
26550		A	Construct thumb replacement	21.24	NA	NA	16.14	18.82	2.24	NA	NA	39.62	42.30	090
26551		A	Great toe-hand transfer	46.58	NA	NA	28.30	37.08	4.99	NA	NA	79.87	88.65	090
26553		A	Single transfer, toe-hand	46.27	NA	NA	27.81	36.68	4.95	NA	NA	79.03	87.90	090
26554		A	Double transfer, toe-hand	54.95	NA	NA	31.16	42.75	5.74	NA	NA	91.85	103.44	090
26555		A	Positional change of finger	16.63	NA	NA	17.80	17.26	1.73	NA	NA	36.16	35.62	090
26556		A	Toe joint transfer	47.26	NA	NA	31.11	38.71	5.06	NA	NA	83.43	91.03	090
26560		A	Repair of web finger	5.38	NA	NA	9.32	7.19	0.53	NA	NA	15.23	13.10	090
26561		A	Repair of web finger	10.92	NA	NA	14.72	12.19	1.13	NA	NA	26.77	24.24	090
26562		A	Repair of web finger	9.68	NA	NA	13.27	12.42	1.02	NA	NA	23.97	23.12	090
26565		A	Correct metacarpal flaw	6.74	NA	NA	12.00	9.16	0.70	NA	NA	19.44	16.60	090
26567		A	Correct finger deformity	6.82	NA	NA	11.38	8.01	0.71	NA	NA	18.91	15.54	090
26568		A	Lengthen metacarpal/finger	9.08	NA	NA	16.44	12.81	0.91	NA	NA	26.43	22.80	090
26580		A	Repair hand deformity	18.18	NA	NA	14.34	16.34	1.51	NA	NA	34.03	36.03	090
26585		A	Repair finger deformity	14.05	NA	NA	11.86	12.96	0.84	NA	NA	26.75	27.85	090
26587		C	Reconstruct extra finger	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
26590		A	Repair finger deformity	17.96	NA	NA	15.57	16.81	1.79	NA	NA	35.32	36.56	090
26591		A	Repair muscles of hand	3.25	NA	NA	9.92	6.21	0.34	NA	NA	13.51	9.80	090
26593		A	Release muscles of hand	5.31	NA	NA	10.46	7.47	0.55	NA	NA	16.32	13.33	090
26596		A	Excision constricting tissue	8.95	NA	NA	8.17	8.56	0.87	NA	NA	17.99	18.38	090
26597		A	Release of scar contracture	9.82	NA	NA	13.61	11.16	1.03	NA	NA	24.46	22.01	090
26600		A	Treat metacarpal fracture	1.96	5.84	3.76	2.48	1.66	0.20	8.00	5.92	4.64	3.82	090
26605		A	Treat metacarpal fracture	2.85	7.44	4.97	3.73	2.49	0.30	10.59	8.12	6.88	5.64	090
26607		A	Treat metacarpal fracture	5.36	NA	NA	6.97	5.41	0.55	NA	NA	12.88	11.32	090
26608		A	Treat metacarpal fracture	5.36	NA	NA	6.90	5.38	0.56	NA	NA	12.82	11.30	090
26615		A	Treat metacarpal fracture	5.33	NA	NA	6.60	5.95	0.55	NA	NA	12.48	11.83	090
26641		A	Treat thumb dislocation	3.94	7.74	4.47	4.35	2.78	0.37	12.05	8.78	8.66	7.09	090
26645		A	Treat thumb fracture	4.41	8.57	5.48	4.60	3.50	0.42	13.40	10.31	9.43	8.33	090
26650		A	Treat thumb fracture	5.72	NA	NA	7.24	5.80	0.59	NA	NA	13.55	12.11	090
26665		A	Treat thumb fracture	7.60	NA	NA	7.78	7.36	0.78	NA	NA	16.16	15.74	090
26670		A	Treat hand dislocation	3.69	7.67	4.36	4.22	2.63	0.35	11.71	8.40	8.26	6.67	090
26675		A	Treat hand dislocation	4.64	7.84	6.28	3.77	4.24	0.47	12.95	11.39	8.88	9.35	090
26676		A	Pin hand dislocation	5.52	NA	NA	7.52	6.40	0.57	NA	NA	13.61	12.49	090
26685		A	Treat hand dislocation	6.98	NA	NA	7.41	6.83	0.72	NA	NA	15.11	14.53	090
26686		A	Treat hand dislocation	7.94	NA	NA	7.91	7.38	0.81	NA	NA	16.66	16.13	090
26700		A	Treat knuckle dislocation	3.69	4.20	2.58	2.56	1.76	0.35	8.24	6.62	6.60	5.80	090
26705		A	Treat knuckle dislocation	4.19	7.30	4.62	3.80	2.87	0.41	11.90	9.22	8.40	7.47	090
26706		A	Pin knuckle dislocation	5.12	NA	NA	4.95	5.02	0.53	NA	NA	10.60	10.67	090
26715		A	Treat knuckle dislocation	5.74	NA	NA	6.73	5.61	0.60	NA	NA	13.07	11.95	090
26720		A	Treat finger fracture, each	1.66	2.50	1.85	1.44	1.02	0.16	4.32	3.67	3.26	2.84	090
26725		A	Treat finger fracture, each	3.33	4.31	2.99	2.80	1.82	0.34	7.98	6.66	6.47	5.49	090
26727		A	Treat finger fracture, each	5.23	NA	NA	7.08	4.87	0.54	NA	NA	12.85	10.64	090
26735		A	Treat finger fracture, each	5.98	NA	NA	6.97	5.51	0.61	NA	NA	13.56	12.10	090
26740		A	Treat finger fracture, each	1.94	3.06	2.16	2.15	1.39	0.19	5.19	4.29	4.28	3.52	090
26742		A	Treat finger fracture, each	3.85	8.25	5.20	4.44	3.30	0.39	12.49	9.44	8.68	7.54	090
26746		A	Treat finger fracture, each	5.81	NA	NA	6.92	6.04	0.61	NA	NA	13.34	12.46	090
26750		A	Treat finger fracture, each	1.70	2.92	1.91	2.01	1.46	0.16	4.78	3.77	3.87	3.32	090
26755		A	Treat finger fracture, each	3.10	4.12	2.65	2.58	1.88	0.31	7.53	6.06	5.99	5.29	090
26756		A	Pin finger fracture, each	4.39	NA	NA	6.67	4.37	0.46	NA	NA	11.52	9.22	090
26765		A	Treat finger fracture, each	4.17	NA	NA	6.00	4.45	0.43	NA	NA	10.60	9.05	090
26770		A	Treat finger dislocation	3.02	4.03	2.43	2.35	1.59	0.29	7.34	5.74	5.66	4.90	090
26775		A	Treat finger dislocation	3.71	7.16	4.20	3.40	2.32	0.37	11.24	8.28	7.48	6.40	090
26776		A	Pin finger dislocation	4.80	NA	NA	6.85	4.56	0.51	NA	NA	12.16	9.87	090
26785		A	Treat finger dislocation	4.21	NA	NA	6.03	4.63	0.44	NA	NA	10.68	9.28	090
26820		A	Thumb fusion with graft	8.26	NA	NA	13.37	10.30	0.86	NA	NA	22.49	19.42	090
26841		A	Fusion of thumb	7.13	NA	NA	11.93	9.32	0.74	NA	NA	19.80	17.19	090
26842		A	Thumb fusion with graft	8.24	NA	NA	13.45	11.38	0.85	NA	NA	22.54	20.47	090
26843		A	Fusion of hand joint	7.61	NA	NA	12.71	9.81	0.76	NA	NA	21.08	18.18	090
26844		A	Fusion/graft of hand joint	8.73	NA	NA	12.58	10.28	0.88	NA	NA	22.19	19.89	090
26850		A	Fusion of knuckle	6.97	NA	NA	11.57	8.30	0.73	NA	NA	19.27	16.00	090
26852		A	Fusion of knuckle with graft	8.46	NA	NA	12.81	9.51	0.88	NA	NA	22.15	18.85	090
26860		A	Fusion of finger joint	4.69	NA	NA	10.23	7.45	0.49	NA	NA	15.41	12.63	090
26861		A	Fusion of finger jnt, add-on	1.74	NA	NA	0.94	1.51	0.18	NA	NA	2.86	3.43	ZZZ
26862		A	Fusion/graft of finger joint	7.37	NA	NA	12.51	9.06	0.76	NA	NA	20.64	17.19	090
26863		A	Fuse/graft added joint	3.90	NA	NA	2.13	2.90	0.40	NA	NA	6.43	7.20	ZZZ
26910		A	Amputate metacarpal bone	7.60	NA	NA	11.56	8.58	0.79	NA	NA	19.95	16.97	090
26951		A	Amputation of finger/thumb	4.59	NA	NA	10.10	6.61	0.48	NA	NA	15.17	11.68	090
26952		A	Amputation of finger/thumb	6.31	NA	NA	11.19	7.77	0.66	NA	NA	18.16	14.74	090
26989		C	Hand/finger surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
26990		A	Drainage of pelvis lesion	7.48	NA	NA	12.99	8.18	0.73	NA	NA	21.20	16.39	090
26991		A	Drainage of pelvis bursa	6.68	10.23	6.10	7.86	4.91	0.65	17.56	13.43	15.19	12.24	090
26992		A	Drainage of bone lesion	13.02	NA	NA	16.40	11.66	1.36	NA	NA	30.78	26.04	090
27000		A	Incision of hip tendon	5.62	NA	NA	6.41	4.21	0.58	NA	NA	12.61	10.41	090
27001		A	Incision of hip tendon	6.94	NA	NA	7.17	4.86	0.71	NA	NA	14.82	12.51	090
27003		A	Incision of hip tendon	7.34	NA	NA	8.16	7.76	0.76	NA	NA	16.26	15.86	090
27005		A	Incision of hip tendon	9.66	NA	NA	9.00	6.33	0.98	NA	NA	19.64	16.97	090
27006		A	Incision of hip tendons	9.68	NA	NA	9.39	7.22	1.01	NA	NA	20.08	17.91	090
27025		A	Incision of hip/thigh fascia	11.16	NA	NA	9.43	8.04	1.17	NA	NA	21.76	20.37	090
27030		A	Drainage of hip joint	13.01	NA	NA	11.09	11.74	1.34	NA	NA	25.44	26.09	090
27033		A	Exploration of hip joint	13.39	NA	NA	11.32	11.91	1.37	NA	NA	26.08	26.67	090
27035		A	Denervation of hip joint	16.69	NA	NA	14.60	13.74	1.69	NA	NA	32.98	32.12	090
27036		A	Excision of hip joint/muscle	12.88	NA	NA	12.60	12.51	1.33	NA	NA	26.81	26.72	090
27040		A	Biopsy of soft tissues	2.87	4.90	2.84	3.25	2.02	0.17	7.94	5.88	6.29	5.06	010
27041		A	Biopsy of soft tissues	9.89	NA	NA	7.41	5.16	0.84	NA	NA	18.14	15.89	090
27047		A	Remove hip/pelvis lesion	7.45	8.16	5.11	6.39	4.22	0.74	16.35	13.30	14.58	12.41	090
27048		A	Remove hip/pelvis lesion	6.25	NA	NA	7.07	5.89	0.63	NA	NA	13.95	12.77	090
27049		A	Remove tumor, hip/pelvis	13.66	NA	NA	11.83	11.42	1.33	NA	NA	26.82	26.41	090
27050		A	Biopsy of sacroiliac joint	4.36	NA	NA	5.63	5.41	0.44	NA	NA	10.43	10.21	090
27052		A	Biopsy of hip joint	6.23	NA	NA	7.19	7.31	0.64	NA	NA	14.06	14.18	090
27054		A	Removal of hip joint lining	8.54	NA	NA	9.32	9.76	0.87	NA	NA	18.73	19.17	090
27060		A	Removal of ischial bursa	5.43	NA	NA	6.07	5.17	0.55	NA	NA	12.05	11.15	090
27062		A	Remove femur lesion/bursa	5.37	NA	NA	6.23	5.41	0.55	NA	NA	12.15	11.33	090
27065		A	Removal of hip bone lesion	5.90	NA	NA	7.45	6.76	0.60	NA	NA	13.95	13.26	090
27066		A	Removal of hip bone lesion	10.33	NA	NA	11.03	9.80	1.04	NA	NA	22.40	21.17	090
27067		A	Remove/graft hip bone lesion	13.83	NA	NA	12.98	12.80	1.42	NA	NA	28.23	28.05	090
27070		A	Partial removal of hip bone	10.72	NA	NA	15.60	11.82	1.10	NA	NA	27.42	23.64	090
27071		A	Partial removal of hip bone	11.46	NA	NA	16.05	12.64	1.17	NA	NA	28.68	25.27	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
27075		A	Extensive hip surgery	17.23	NA	NA	14.84	14.77	1.76	NA	NA	33.83	33.76	090
27076		A	Extensive hip surgery	22.12	NA	NA	18.03	17.90	2.24	NA	NA	42.39	42.26	090
27077		A	Extensive hip surgery	23.13	NA	NA	18.09	19.35	2.42	NA	NA	43.64	44.90	090
27078		A	Extensive hip surgery	13.44	NA	NA	13.26	11.62	1.39	NA	NA	28.09	26.45	090
27079		A	Extensive hip surgery	13.75	NA	NA	13.49	11.44	1.40	NA	NA	28.64	26.59	090
27080		A	Removal of tail bone	6.39	NA	NA	6.51	5.85	0.67	NA	NA	13.57	12.91	090
27086		A	Remove hip foreign body	1.87	4.24	2.44	3.21	1.77	0.15	6.26	4.46	5.23	3.79	010
27087		A	Remove hip foreign body	8.54	NA	NA	7.87	5.90	0.85	NA	NA	17.26	15.29	090
27090		A	Removal of hip prosthesis	11.15	NA	NA	10.12	9.99	1.15	NA	NA	22.42	22.29	090
27091		A	Removal of hip prosthesis	22.14	NA	NA	16.16	18.83	2.17	NA	NA	40.47	43.14	090
27093		A	Injection for hip x-ray	1.30	10.02	5.46	0.44	0.67	0.08	11.40	6.84	1.82	2.05	000
27095		A	Injection for hip x-ray	1.50	10.11	5.56	0.48	0.75	0.09	11.70	7.15	2.07	2.34	000
27096		A	Inject sacroiliac joint	1.10	9.96	9.96	0.36	0.36	0.09	11.15	11.15	1.55	1.55	000
27097		A	Revision of hip tendon	8.80	NA	NA	8.33	8.35	0.92	NA	NA	18.05	18.07	090
27098		A	Transfer tendon to pelvis	8.83	NA	NA	8.42	8.40	0.92	NA	NA	18.17	18.15	090
27100		A	Transfer of abdominal muscle	11.08	NA	NA	12.18	10.26	1.10	NA	NA	24.36	22.44	090
27105		A	Transfer of spinal muscle	11.77	NA	NA	10.63	8.51	1.23	NA	NA	23.63	21.51	090
27110		A	Transfer of iliopsoas muscle	13.26	NA	NA	12.97	12.24	1.18	NA	NA	27.41	26.68	090
27111		A	Transfer of iliopsoas muscle	12.15	NA	NA	10.50	11.56	1.27	NA	NA	23.92	24.98	090
27120		A	Reconstruction of hip socket	18.01	NA	NA	13.53	16.59	1.84	NA	NA	33.38	36.44	090
27122		A	Reconstruction of hip socket	14.98	NA	NA	12.96	15.43	1.54	NA	NA	29.48	31.95	090
27125		A	Partial hip replacement	14.69	NA	NA	12.42	14.98	1.50	NA	NA	28.61	31.17	090
27130		A	Total hip replacement	20.12	NA	NA	15.85	19.94	2.05	NA	NA	38.02	42.11	090
27132		A	Total hip replacement	23.30	NA	NA	17.55	22.69	2.38	NA	NA	43.23	48.37	090
27134		A	Revise hip joint replacement	28.52	NA	NA	20.16	27.10	2.92	NA	NA	51.60	58.54	090
27137		A	Revise hip joint replacement	21.17	NA	NA	16.47	20.88	2.17	NA	NA	39.81	44.22	090
27138		A	Revise hip joint replacement	22.17	NA	NA	16.86	21.58	2.28	NA	NA	41.31	46.03	090
27140		A	Transplant femur ridge	12.24	NA	NA	10.64	11.32	1.26	NA	NA	24.14	24.82	090
27146		A	Incision of hip bone	17.43	NA	NA	14.80	13.31	1.80	NA	NA	34.03	32.54	090
27147		A	Revision of hip bone	20.58	NA	NA	15.53	16.98	2.08	NA	NA	38.19	39.64	090
27151		A	Incision of hip bones	22.51	NA	NA	9.75	14.49	2.36	NA	NA	34.62	39.36	090
27156		A	Revision of hip bones	24.63	NA	NA	17.40	18.64	2.57	NA	NA	44.60	45.84	090
27158		A	Revision of pelvis	19.74	NA	NA	12.92	14.29	2.06	NA	NA	34.72	36.09	090
27161		A	Incision of neck of femur	16.71	NA	NA	13.20	14.37	1.71	NA	NA	31.62	32.79	090
27165		A	Incision/fixation of femur	17.91	NA	NA	13.79	15.99	1.82	NA	NA	33.52	35.72	090
27170		A	Repair/graft femur head/neck	16.07	NA	NA	12.80	15.31	1.65	NA	NA	30.52	33.03	090
27175		A	Treat slipped epiphysis	8.46	NA	NA	6.43	3.86	0.89	NA	NA	15.78	13.21	090
27176		A	Treat slipped epiphysis	12.05	NA	NA	8.79	10.04	1.19	NA	NA	22.03	23.28	090
27177		A	Treat slipped epiphysis	15.08	NA	NA	10.38	11.92	1.57	NA	NA	27.03	28.57	090
27178		A	Treat slipped epiphysis	11.99	NA	NA	8.96	10.16	1.03	NA	NA	21.98	23.18	090
27179		A	Revise head/neck of femur	12.98	NA	NA	9.56	10.83	1.35	NA	NA	23.89	25.16	090
27181		A	Treat slipped epiphysis	14.68	NA	NA	8.48	11.37	1.37	NA	NA	24.53	27.42	090
27185		A	Revision of femur epiphysis	9.18	NA	NA	7.75	5.38	0.80	NA	NA	17.73	15.36	090
27187		A	Reinforce hip bones	13.54	NA	NA	12.20	14.18	1.38	NA	NA	27.12	29.10	090
27193		A	Treat pelvic ring fracture	5.56	6.31	4.47	4.84	3.73	0.57	12.44	10.60	10.97	9.86	090
27194		A	Treat pelvic ring fracture	9.65	8.08	6.16	7.01	5.62	1.01	18.74	16.82	17.67	16.28	090
27200		A	Treat tail bone fracture	1.84	2.52	2.07	1.54	1.58	0.18	4.54	4.09	3.56	3.60	090
27202		A	Treat tail bone fracture	7.04	NA	NA	13.51	10.09	0.89	NA	NA	21.44	18.02	090
27215		A	Treat pelvic fracture(s)	10.05	NA	NA	9.28	10.64	1.00	NA	NA	20.33	21.69	090
27216		A	Treat pelvic ring fracture	15.19	NA	NA	11.12	7.90	1.56	NA	NA	27.87	24.65	090
27217		A	Treat pelvic ring fracture	14.11	NA	NA	11.51	13.65	1.44	NA	NA	27.06	29.20	090
27218		A	Treat pelvic ring fracture	20.15	NA	NA	11.37	13.58	1.96	NA	NA	33.48	35.69	090
27220		A	Treat hip socket fracture	6.18	6.69	5.66	5.18	4.90	0.64	13.51	12.48	12.00	11.72	090
27222		A	Treat hip socket fracture	12.70	NA	NA	9.27	8.09	1.32	NA	NA	23.29	22.11	090
27226		A	Treat hip wall fracture	14.91	NA	NA	12.19	14.66	1.11	NA	NA	28.21	30.68	090
27227		A	Treat hip fracture(s)	23.45	NA	NA	16.06	18.72	2.53	NA	NA	42.04	44.70	090
27228		A	Treat hip fracture(s)	27.16	NA	NA	18.21	19.93	2.79	NA	NA	48.16	49.88	090
27230		A	Treat thigh fracture	5.50	6.61	5.10	5.35	4.47	0.55	12.66	11.15	11.40	10.52	090
27232		A	Treat thigh fracture	10.68	NA	NA	8.28	9.02	1.11	NA	NA	20.07	20.81	090
27235		A	Treat thigh fracture	12.16	NA	NA	9.92	12.22	1.25	NA	NA	23.33	25.63	090
27236		A	Treat thigh fracture	15.60	NA	NA	11.85	15.10	1.59	NA	NA	29.04	32.29	090
27238		A	Treat thigh fracture	5.52	NA	NA	5.40	5.37	0.56	NA	NA	11.48	11.45	090
27240		A	Treat thigh fracture	12.50	NA	NA	9.26	9.90	1.30	NA	NA	23.06	23.70	090
27244		A	Treat thigh fracture	15.94	NA	NA	12.01	14.85	1.63	NA	NA	29.58	32.42	090
27245		A	Treat thigh fracture	20.31	NA	NA	14.39	16.04	2.09	NA	NA	36.79	38.44	090
27246		A	Treat thigh fracture	4.71	6.25	5.23	5.03	4.62	0.49	11.45	10.43	10.23	9.82	090
27248		A	Treat thigh fracture	10.45	NA	NA	9.05	10.77	1.06	NA	NA	20.56	22.28	090
27250		A	Treat hip dislocation	6.95	NA	NA	5.57	4.52	0.68	NA	NA	13.20	12.15	090
27252		A	Treat hip dislocation	10.39	NA	NA	7.47	6.09	1.08	NA	NA	18.94	17.56	090
27253		A	Treat hip dislocation	12.92	NA	NA	10.05	12.16	1.33	NA	NA	24.30	26.41	090
27254		A	Treat hip dislocation	18.26	NA	NA	12.35	13.49	1.83	NA	NA	32.44	33.58	090
27256		A	Treat hip dislocation	4.12	NA	NA	4.36	3.20	0.39	NA	NA	8.87	7.71	010
27257		A	Treat hip dislocation	5.22	NA	NA	4.17	4.59	0.53	NA	NA	9.92	10.34	010
27258		A	Treat hip dislocation	15.43	NA	NA	12.67	13.79	1.58	NA	NA	29.68	30.80	090
27259		A	Treat hip dislocation	21.55	NA	NA	15.89	17.28	2.14	NA	NA	39.58	40.97	090
27265		A	Treat hip dislocation	5.05	NA	NA	5.16	4.46	0.53	NA	NA	10.74	10.04	090
27266		A	Treat hip dislocation	7.49	NA	NA	6.52	5.68	0.78	NA	NA	14.79	13.95	090
27275		A	Manipulation of hip joint	2.27	NA	NA	2.93	2.49	0.24	NA	NA	5.44	5.00	010
27280		A	Fusion of sacroiliac joint	13.39	NA	NA	13.14	12.03	1.38	NA	NA	27.91	26.80	090
27282		A	Fusion of pubic bones	11.34	NA	NA	10.85	10.32	0.84	NA	NA	23.03	22.50	090
27284		A	Fusion of hip joint	16.76	NA	NA	12.67	14.21	1.65	NA	NA	31.08	32.62	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
27286		A	Fusion of hip joint	16.79	NA	NA	14.71	15.61	1.76	NA	NA	33.26	34.16	090
27290		A	Amputation of leg at hip	23.28	NA	NA	15.53	21.55	2.28	NA	NA	41.09	47.11	090
27295		A	Amputation of leg at hip	18.65	NA	NA	13.27	15.61	1.97	NA	NA	33.89	36.23	090
27299		C	Pelvis/hip joint surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
27301		A	Drain thigh/knee lesion	6.49	13.32	8.00	11.90	7.29	0.67	20.48	15.16	19.06	14.45	090
27303		A	Drainage of bone lesion	8.28	NA	NA	12.65	9.51	0.85	NA	NA	21.78	18.64	090
27305		A	Incise thigh tendon & fascia	5.92	NA	NA	8.01	6.07	0.63	NA	NA	14.56	12.62	090
27306		A	Incision of thigh tendon	4.62	NA	NA	6.47	4.32	0.48	NA	NA	11.57	9.42	090
27307		A	Incision of thigh tendons	5.80	NA	NA	6.83	5.05	0.60	NA	NA	13.23	11.45	090
27310		A	Exploration of knee joint	9.27	NA	NA	9.00	9.71	0.95	NA	NA	19.22	19.93	090
27315		A	Partial removal, thigh nerve	6.97	NA	NA	4.69	5.27	0.72	NA	NA	12.38	12.96	090
27320		A	Partial removal, thigh nerve	6.30	NA	NA	4.28	4.95	0.62	NA	NA	11.20	11.87	090
27323		A	Biopsy, thigh soft tissues	2.28	4.86	2.93	3.04	1.77	0.14	7.28	5.35	5.46	4.19	010
27324		A	Biopsy, thigh soft tissues	4.90	NA	NA	5.98	4.42	0.53	NA	NA	11.41	9.85	090
27327		A	Removal of thigh lesion	4.47	7.18	4.84	5.50	4.00	0.45	12.10	9.76	10.42	8.92	090
27328		A	Removal of thigh lesion	5.57	NA	NA	6.17	5.30	0.56	NA	NA	12.30	11.43	090
27329		A	Remove tumor, thigh/knee	14.14	NA	NA	13.00	12.85	1.40	NA	NA	28.54	28.39	090
27330		A	Biopsy, knee joint lining	4.97	NA	NA	5.46	5.70	0.51	NA	NA	10.94	11.18	090
27331		A	Explore/treat knee joint	5.88	NA	NA	6.59	6.81	0.60	NA	NA	13.07	13.29	090
27332		A	Removal of knee cartilage	8.27	NA	NA	7.66	8.77	0.83	NA	NA	16.76	17.87	090
27333		A	Removal of knee cartilage	7.30	NA	NA	7.10	7.91	0.74	NA	NA	15.14	15.95	090
27334		A	Remove knee joint lining	8.70	NA	NA	8.61	9.50	0.90	NA	NA	18.21	19.10	090
27335		A	Remove knee joint lining	10.00	NA	NA	9.62	10.78	1.02	NA	NA	20.64	21.80	090
27340		A	Removal of kneecap bursa	4.18	NA	NA	4.99	4.59	0.43	NA	NA	9.60	9.20	090
27345		A	Removal of knee cyst	5.92	NA	NA	6.52	6.32	0.61	NA	NA	13.05	12.85	090
27347		A	Remove knee cyst	5.78	2.58	2.58	2.58	2.58	0.59	8.95	8.95	8.95	8.95	090
27350		A	Removal of kneecap	8.17	NA	NA	7.96	8.86	0.84	NA	NA	16.97	17.87	090
27355		A	Remove femur lesion	7.65	NA	NA	9.59	8.91	0.78	NA	NA	18.02	17.34	090
27356		A	Remove femur lesion/graft	9.48	NA	NA	10.28	9.59	0.97	NA	NA	20.73	20.04	090
27357		A	Remove femur lesion/graft	10.53	NA	NA	10.41	9.98	1.08	NA	NA	22.02	21.59	090
27358		A	Remove femur lesion/fixation	4.74	NA	NA	2.50	3.72	0.49	NA	NA	7.73	8.95	ZZZ
27360		A	Partial removal, leg bone(s)	10.50	NA	NA	15.68	12.49	1.09	NA	NA	27.27	24.08	090
27365		A	Extensive leg surgery	16.27	NA	NA	13.63	14.38	1.64	NA	NA	31.54	32.29	090
27370		A	Injection for knee x-ray	0.96	10.37	5.51	0.27	0.46	0.04	11.37	6.51	1.27	1.46	000
27372		A	Removal of foreign body	5.07	6.85	5.28	5.80	4.76	0.51	12.43	10.86	11.38	10.34	090
27380		A	Repair of kneecap tendon	7.16	NA	NA	7.38	7.97	0.74	NA	NA	15.28	15.87	090
27381		A	Repair/graft kneecap tendon	10.34	NA	NA	9.17	10.70	1.07	NA	NA	20.58	22.11	090
27385		A	Repair of thigh muscle	7.76	NA	NA	7.87	8.57	0.79	NA	NA	16.42	17.12	090
27386		A	Repair/graft of thigh muscle	10.56	NA	NA	9.97	11.29	1.08	NA	NA	21.61	22.93	090
27390		A	Incision of thigh tendon	5.33	NA	NA	6.50	5.62	0.54	NA	NA	12.37	11.49	090
27391		A	Incision of thigh tendons	7.20	NA	NA	7.62	6.75	0.75	NA	NA	15.57	14.70	090
27392		A	Incision of thigh tendons	9.20	NA	NA	9.32	8.82	0.93	NA	NA	19.45	18.95	090
27393		A	Lengthening of thigh tendon	6.39	NA	NA	7.41	6.78	0.64	NA	NA	14.44	13.81	090
27394		A	Lengthening of thigh tendons	8.50	NA	NA	9.05	7.64	0.87	NA	NA	18.42	17.01	090
27395		A	Lengthening of thigh tendons	11.73	NA	NA	12.41	11.89	1.21	NA	NA	25.35	24.83	090
27396		A	Transplant of thigh tendon	7.86	NA	NA	8.75	8.21	0.80	NA	NA	17.41	16.87	090
27397		A	Transplants of thigh tendons	11.28	NA	NA	10.42	10.03	1.17	NA	NA	22.87	22.48	090
27400		A	Revise thigh muscles/tendons	9.02	NA	NA	9.38	8.97	0.92	NA	NA	19.32	18.91	090
27403		A	Repair of knee cartilage	8.33	NA	NA	8.07	8.81	0.86	NA	NA	17.26	18.00	090
27405		A	Repair of knee ligament	8.65	NA	NA	8.85	9.59	0.89	NA	NA	18.39	19.13	090
27407		A	Repair of knee ligament	10.28	NA	NA	9.51	9.57	1.02	NA	NA	20.81	20.87	090
27409		A	Repair of knee ligaments	12.90	NA	NA	11.22	13.31	1.34	NA	NA	25.46	27.55	090
27418		A	Repair degenerated kneecap	10.85	NA	NA	9.78	11.37	1.12	NA	NA	21.75	23.34	090
27420		A	Revision of unstable kneecap	9.83	NA	NA	8.75	10.24	0.99	NA	NA	19.57	21.06	090
27422		A	Revision of unstable kneecap	9.78	NA	NA	9.01	10.35	1.00	NA	NA	19.79	21.13	090
27424		A	Revision/removal of kneecap	9.81	NA	NA	8.77	10.24	1.02	NA	NA	19.60	21.07	090
27425		A	Lateral retinacular release	5.22	NA	NA	6.23	6.23	0.53	NA	NA	11.98	11.98	090
27427		A	Reconstruction, knee	9.36	NA	NA	8.73	9.96	0.94	NA	NA	19.03	20.26	090
27428		A	Reconstruction, knee	14.00	NA	NA	11.89	13.37	1.40	NA	NA	27.29	28.77	090
27429		A	Reconstruction, knee	15.52	NA	NA	11.48	11.86	1.56	NA	NA	28.56	28.94	090
27430		A	Revision of thigh muscles	9.67	NA	NA	8.74	9.45	0.97	NA	NA	19.38	20.09	090
27435		A	Incision of knee joint	9.49	NA	NA	8.58	8.11	0.98	NA	NA	19.05	18.58	090
27437		A	Revise kneecap	8.46	NA	NA	8.51	9.31	0.85	NA	NA	17.82	18.62	090
27438		A	Revise kneecap with implant	11.23	NA	NA	10.23	11.82	1.15	NA	NA	22.61	24.20	090
27440		A	Revision of knee joint	10.43	NA	NA	9.78	11.12	0.73	NA	NA	20.94	22.28	090
27441		A	Revision of knee joint	10.82	NA	NA	9.65	9.79	0.78	NA	NA	21.25	21.39	090
27442		A	Revision of knee joint	11.89	NA	NA	10.33	12.27	1.22	NA	NA	23.44	25.38	090
27443		A	Revision of knee joint	10.93	NA	NA	9.98	11.51	1.12	NA	NA	22.03	23.56	090
27445		A	Revision of knee joint	17.68	NA	NA	13.43	17.27	1.83	NA	NA	32.94	36.78	090
27446		A	Revision of knee joint	15.84	NA	NA	13.34	16.13	1.60	NA	NA	30.78	33.57	090
27447		A	Total knee replacement	21.48	NA	NA	16.12	20.88	2.19	NA	NA	39.79	44.55	090
27448		A	Incision of thigh	11.06	NA	NA	10.55	11.88	1.14	NA	NA	22.75	24.08	090
27450		A	Incision of thigh	13.98	NA	NA	12.66	14.39	1.43	NA	NA	28.07	29.80	090
27454		A	Realignment of thigh bone	17.56	NA	NA	13.57	15.31	1.76	NA	NA	32.89	34.63	090
27455		A	Realignment of knee	12.82	NA	NA	11.39	12.21	1.27	NA	NA	25.48	26.30	090
27457		A	Realignment of knee	13.45	NA	NA	10.87	12.65	1.37	NA	NA	25.69	27.47	090
27465		A	Shortening of thigh bone	13.87	NA	NA	13.06	13.17	1.43	NA	NA	28.36	28.47	090
27466		A	Lengthening of thigh bone	16.33	NA	NA	14.92	14.75	1.67	NA	NA	32.92	32.75	090
27468		A	Shorten/lengthen thighs	18.97	NA	NA	13.23	15.76	1.94	NA	NA	34.14	36.67	090
27470		A	Repair of thigh	16.07	NA	NA	14.73	16.41	1.64	NA	NA	32.44	34.12	090
27472		A	Repair/graft of thigh	17.72	NA	NA	15.45	18.30	1.83	NA	NA	35.00	37.85	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
27475		A	Surgery to stop leg growth	8.64	NA	NA	8.15	8.28	0.86	NA	NA	17.65	17.78	090
27477		A	Surgery to stop leg growth	9.85	NA	NA	9.26	10.51	0.96	NA	NA	20.07	21.32	090
27479		A	Surgery to stop leg growth	12.80	NA	NA	10.12	11.37	1.35	NA	NA	24.27	25.52	090
27485		A	Surgery to stop leg growth	8.84	NA	NA	8.17	8.38	0.89	NA	NA	17.90	18.11	090
27486		A	Revise/replace knee joint	19.27	NA	NA	14.99	19.00	1.97	NA	NA	36.23	40.24	090
27487		A	Revise/replace knee joint	25.27	NA	NA	18.20	24.17	2.57	NA	NA	46.04	52.01	090
27488		A	Removal of knee prosthesis	15.74	NA	NA	13.12	15.33	1.61	NA	NA	30.47	32.68	090
27495		A	Reinforce thigh	15.55	NA	NA	14.29	16.43	1.59	NA	NA	31.43	33.57	090
27496		A	Decompression of thigh/knee	6.11	NA	NA	7.14	6.03	0.66	NA	NA	13.91	12.80	090
27497		A	Decompression of thigh/knee	7.17	NA	NA	7.77	6.90	0.75	NA	NA	15.69	14.82	090
27498		A	Decompression of thigh/knee	7.99	NA	NA	7.28	7.07	0.87	NA	NA	16.14	15.93	090
27499		A	Decompression of thigh/knee	9.00	NA	NA	7.78	7.84	0.93	NA	NA	17.71	17.77	090
27500		A	Treatment of thigh fracture	5.92	13.49	9.68	6.36	6.12	0.61	20.02	16.21	12.89	12.65	090
27501		A	Treatment of thigh fracture	5.92	14.23	10.05	7.23	6.55	0.62	20.77	16.59	13.77	13.09	090
27502		A	Treatment of thigh fracture	10.58	NA	NA	9.64	8.98	1.10	NA	NA	21.32	20.66	090
27503		A	Treatment of thigh fracture	10.58	NA	NA	9.73	9.03	1.10	NA	NA	21.41	20.71	090
27506		A	Treatment of thigh fracture	17.45	NA	NA	13.28	15.34	1.79	NA	NA	32.52	34.58	090
27507		A	Treatment of thigh fracture	13.99	NA	NA	11.41	14.06	1.43	NA	NA	26.83	29.48	090
27508		A	Treatment of thigh fracture	5.83	8.67	6.63	4.90	4.74	0.60	15.10	13.06	11.33	11.17	090
27509		A	Treatment of thigh fracture	7.71	NA	NA	7.88	6.23	0.80	NA	NA	16.39	14.74	090
27510		A	Treatment of thigh fracture	9.13	NA	NA	6.73	7.07	0.95	NA	NA	16.81	17.15	090
27511		A	Treatment of thigh fracture	13.64	NA	NA	11.87	14.08	1.40	NA	NA	26.91	29.12	090
27513		A	Treatment of thigh fracture	17.92	NA	NA	14.12	15.76	1.83	NA	NA	33.87	35.51	090
27514		A	Treatment of thigh fracture	17.30	NA	NA	13.27	15.19	1.78	NA	NA	32.35	34.27	090
27516		A	Treat thigh fx growth plate	5.37	9.25	7.24	5.23	5.23	0.56	15.18	13.17	11.16	11.16	090
27517		A	Treat thigh fx growth plate	8.78	9.41	8.95	7.02	7.76	0.90	19.09	18.63	16.70	17.44	090
27519		A	Treat thigh fx growth plate	15.02	NA	NA	12.76	13.26	1.51	NA	NA	29.29	29.79	090
27520		A	Treat kneecap fracture	2.86	7.06	5.18	3.39	2.52	0.30	10.22	8.34	6.55	5.68	090
27524		A	Treat kneecap fracture	10.00	NA	NA	8.08	9.65	1.03	NA	NA	19.11	20.68	090
27530		A	Treat knee fracture	3.78	7.55	5.62	3.86	3.78	0.39	11.72	9.79	8.03	7.95	090
27532		A	Treat knee fracture	7.30	6.83	6.50	5.34	5.75	0.76	14.89	14.56	13.40	13.81	090
27535		A	Treat knee fracture	11.50	NA	NA	10.80	11.75	1.18	NA	NA	23.48	24.43	090
27536		A	Treat knee fracture	15.65	NA	NA	11.05	11.87	1.61	NA	NA	28.31	29.13	090
27538		A	Treat knee fracture(s)	4.87	8.86	6.26	4.92	4.29	0.51	14.24	11.64	10.30	9.67	090
27540		A	Treat knee fracture	13.10	NA	NA	9.51	10.70	1.33	NA	NA	23.94	25.13	090
27550		A	Treat knee dislocation	5.76	8.76	5.78	5.20	4.00	0.57	15.09	12.11	11.53	10.33	090
27552		A	Treat knee dislocation	7.90	NA	NA	6.95	5.34	0.82	NA	NA	15.67	14.06	090
27556		A	Treat knee dislocation	14.41	NA	NA	12.97	13.26	1.51	NA	NA	28.89	29.18	090
27557		A	Treat knee dislocation	16.77	NA	NA	14.42	15.13	1.72	NA	NA	32.91	33.62	090
27558		A	Treat knee dislocation	17.72	NA	NA	14.59	15.22	1.80	NA	NA	34.11	34.74	090
27560		A	Treat kneecap dislocation	3.82	7.55	4.55	3.64	2.60	0.36	11.73	8.73	7.82	6.78	090
27562		A	Treat kneecap dislocation	5.79	NA	NA	4.98	5.30	0.59	NA	NA	11.36	11.68	090
27566		A	Treat kneecap dislocation	12.23	NA	NA	9.14	10.31	1.26	NA	NA	22.63	23.80	090
27570		A	Fixation of knee joint	1.74	NA	NA	2.65	2.26	0.18	NA	NA	4.57	4.18	010
27580		A	Fusion of knee	19.37	NA	NA	15.00	16.02	1.98	NA	NA	36.35	37.37	090
27590		A	Amputate leg at thigh	12.03	NA	NA	11.59	10.74	1.30	NA	NA	24.92	24.07	090
27591		A	Amputate leg at thigh	12.68	NA	NA	12.90	12.84	1.34	NA	NA	26.92	26.86	090
27592		A	Amputate leg at thigh	10.02	NA	NA	10.43	9.62	1.07	NA	NA	21.52	20.71	090
27594		A	Amputation follow-up surgery	6.92	NA	NA	7.95	5.96	0.75	NA	NA	15.62	13.63	090
27596		A	Amputation follow-up surgery	10.60	NA	NA	10.81	9.41	1.15	NA	NA	22.56	21.16	090
27598		A	Amputate lower leg at knee	10.53	NA	NA	10.20	10.55	1.10	NA	NA	21.83	22.18	090
27599		C	Leg surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
27600		A	Decompression of lower leg	5.65	NA	NA	7.35	5.52	0.65	NA	NA	13.65	11.82	090
27601		A	Decompression of lower leg	5.64	NA	NA	7.47	5.57	0.64	NA	NA	13.75	11.85	090
27602		A	Decompression of lower leg	7.35	NA	NA	7.41	5.91	0.86	NA	NA	15.62	14.12	090
27603		A	Drain lower leg lesion	4.94	13.17	7.88	8.84	5.71	0.50	18.61	13.32	14.28	11.15	090
27604		A	Drain lower leg bursa	4.47	8.77	4.94	7.10	3.83	0.37	13.61	9.78	11.94	8.67	090
27605		A	Incision of achilles tendon	2.87	7.07	4.18	3.48	2.38	0.28	10.22	7.33	6.63	5.53	010
27606		A	Incision of achilles tendon	4.14	8.16	5.23	4.43	3.37	0.42	12.72	9.79	8.99	7.93	010
27607		A	Treat lower leg bone lesion	7.97	NA	NA	12.52	9.52	0.80	NA	NA	21.29	18.29	090
27610		A	Explore/treat ankle joint	8.34	NA	NA	8.90	8.48	0.84	NA	NA	18.08	17.66	090
27612		A	Exploration of ankle joint	7.33	NA	NA	7.19	7.92	0.68	NA	NA	15.20	15.93	090
27613		A	Biopsy lower leg soft tissue	2.17	5.38	3.06	2.63	1.50	0.13	7.68	5.36	4.93	3.80	010
27614		A	Biopsy lower leg soft tissue	5.66	9.15	5.80	6.20	4.33	0.55	15.36	12.01	12.41	10.54	090
27615		A	Remove tumor, lower leg	12.56	NA	NA	13.71	11.32	1.26	NA	NA	27.53	25.14	090
27618		A	Remove lower leg lesion	5.09	9.98	6.13	5.68	3.98	0.48	15.55	11.70	11.25	9.55	090
27619		A	Remove lower leg lesion	8.40	10.50	7.49	7.85	6.17	0.80	19.70	16.69	17.05	15.37	090
27620		A	Explore/treat ankle joint	5.98	NA	NA	7.02	6.78	0.58	NA	NA	13.58	13.34	090
27625		A	Remove ankle joint lining	8.30	NA	NA	8.55	9.00	0.78	NA	NA	17.63	18.08	090
27626		A	Remove ankle joint lining	8.91	NA	NA	9.00	9.82	0.88	NA	NA	18.79	19.61	090
27630		A	Removal of tendon lesion	4.80	9.81	6.59	5.84	4.60	0.45	15.06	11.84	11.09	9.85	090
27635		A	Remove lower leg bone lesion	7.78	NA	NA	9.63	9.18	0.78	NA	NA	18.19	17.74	090
27637		A	Remove/graft leg bone lesion	9.85	NA	NA	10.94	10.07	1.01	[illegible]	NA	21.80	20.93	090
27638		A	Remove/graft leg bone lesion	10.57	NA	NA	11.27	10.60	1.06	NA	NA	22.90	22.23	090
27640		A	Partial removal of tibia	11.37	NA	NA	15.30	12.98	1.14	NA	NA	27.81	25.49	090
27641		A	Partial removal of fibula	9.24	NA	NA	13.84	10.79	0.92	NA	NA	24.00	20.95	090
27645		A	Extensive lower leg surgery	14.17	NA	NA	15.28	13.96	1.46	NA	NA	30.91	29.59	090
27646		A	Extensive lower leg surgery	12.66	NA	NA	15.63	13.65	1.24	NA	NA	29.53	27.55	090
27647		A	Extensive ankle/heel surgery	12.24	NA	NA	10.11	10.46	1.02	NA	NA	23.37	23.72	090
27648		A	Injection for ankle x-ray	0.96	8.03	4.30	0.29	0.43	0.05	9.04	5.31	1.30	1.44	000
27650		A	Repair achilles tendon	9.69	NA	NA	8.48	9.12	0.95	NA	NA	19.12	19.76	090

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
27652		A	Repair/graft achilles tendon	10.33	NA	NA	8.56	9.93	0.98	NA	NA	19.87	21.24	090
27654		A	Repair of achilles tendon	10.02	NA	NA	8.89	10.38	0.90	NA	NA	19.81	21.30	090
27656		A	Repair leg fascia defect	4.57	11.57	7.51	6.19	4.82	0.44	16.58	12.52	11.20	9.83	090
27658		A	Repair of leg tendon, each	4.98	11.28	7.82	7.64	6.00	0.46	16.72	13.26	13.08	11.44	090
27659		A	Repair of leg tendon, each	6.81	11.75	9.06	8.24	7.31	0.61	19.17	16.48	15.66	14.73	090
27664		A	Repair of leg tendon, each	4.59	9.13	6.42	7.53	5.62	0.45	14.17	11.46	12.57	10.66	090
27665		A	Repair of leg tendon, each	5.40	12.40	8.89	8.13	6.75	0.53	18.33	14.82	14.06	12.68	090
27675		A	Repair lower leg tendons	7.18	NA	NA	7.12	7.04	0.69	NA	NA	14.99	14.91	090
27676		A	Repair lower leg tendons	8.42	NA	NA	8.11	8.16	0.74	NA	NA	17.27	17.32	090
27680		A	Release of lower leg tendon	5.74	NA	NA	6.74	5.61	0.54	NA	NA	13.02	11.89	090
27681		A	Release of lower leg tendons	6.82	NA	NA	7.32	6.90	0.68	NA	NA	14.82	14.40	090
27685		A	Revision of lower leg tendon	6.50	7.41	5.79	7.41	5.79	0.56	14.47	12.85	14.47	12.85	090
27686		A	Revise lower leg tendons	7.46	8.56	7.84	8.31	7.72	0.74	16.76	16.04	16.51	15.92	090
27687		A	Revision of calf tendon	6.24	NA	NA	7.25	6.58	0.56	NA	NA	14.05	13.38	090
27690		A	Revise lower leg tendon	8.71	NA	NA	8.14	7.73	0.76	NA	NA	17.61	17.20	090
27691		A	Revise lower leg tendon	9.96	NA	NA	10.02	9.29	0.95	NA	NA	20.93	20.20	090
27692		A	Revise additional leg tendon	1.87	NA	NA	0.90	1.55	0.19	NA	NA	2.96	3.61	ZZZ
27695		A	Repair of ankle ligament	6.51	NA	NA	7.87	7.82	0.63	NA	NA	15.01	14.96	090
27696		A	Repair of ankle ligaments	8.27	NA	NA	8.71	8.19	0.76	NA	NA	17.74	17.22	090
27698		A	Repair of ankle ligament	9.36	NA	NA	8.48	9.83	0.84	NA	NA	18.68	20.03	090
27700		A	Revision of ankle joint	9.29	NA	NA	6.90	9.00	0.68	NA	NA	16.87	18.97	090
27702		A	Reconstruct ankle joint	13.67	NA	NA	11.60	13.96	1.41	NA	NA	26.68	29.04	090
27703		A	Reconstruction, ankle joint	15.87	NA	NA	11.39	13.20	1.32	NA	NA	28.58	30.39	090
27704		A	Removal of ankle implant	7.62	NA	NA	8.14	7.24	0.67	NA	NA	16.43	15.53	090
27705		A	Incision of tibia	10.38	NA	NA	10.22	10.94	1.06	NA	NA	21.66	22.38	090
27707		A	Incision of fibula	4.37	NA	NA	7.19	6.17	0.45	NA	NA	12.01	10.99	090
27709		A	Incision of tibia & fibula	9.95	NA	NA	9.98	10.93	1.02	NA	NA	20.95	21.90	090
27712		A	Realignment of lower leg	14.25	NA	NA	12.42	12.18	1.46	NA	NA	28.13	27.89	090
27715		A	Revision of lower leg	14.39	NA	NA	13.00	13.35	1.47	NA	NA	28.86	29.21	090
27720		A	Repair of tibia	11.79	NA	NA	12.04	13.06	1.21	NA	NA	25.04	26.06	090
27722		A	Repair/graft of tibia	11.82	NA	NA	11.45	11.43	1.21	NA	NA	24.48	24.46	090
27724		A	Repair/graft of tibia	14.99	NA	NA	13.86	15.34	1.54	NA	NA	30.39	31.87	090
27725		A	Repair of lower leg	15.59	NA	NA	13.98	12.65	1.58	NA	NA	31.15	29.82	090
27727		A	Repair of lower leg	14.01	NA	NA	12.39	11.29	1.41	NA	NA	27.81	26.71	090
27730		A	Repair of tibia epiphysis	7.41	13.83	8.87	8.57	6.24	0.74	21.98	17.02	16.72	14.39	090
27732		A	Repair of fibula epiphysis	5.32	13.02	9.14	6.78	6.02	0.53	18.87	14.99	12.63	11.87	090
27734		A	Repair lower leg epiphyses	8.48	NA	NA	8.16	8.17	0.76	NA	NA	17.40	17.41	090
27740		A	Repair of leg epiphyses	9.30	17.83	13.45	8.59	8.83	0.97	28.10	23.72	18.86	19.10	090
27742		A	Repair of leg epiphyses	10.30	14.94	12.51	8.98	9.53	0.93	26.17	23.74	20.21	20.76	090
27745		A	Reinforce tibia	10.07	NA	NA	10.81	10.27	1.02	NA	NA	21.90	21.36	090
27750		A	Treatment of tibia fracture	3.19	7.22	5.48	3.53	3.64	0.32	10.73	8.99	7.04	7.15	090
27752		A	Treatment of tibia fracture	5.84	9.50	7.51	5.54	5.53	0.61	15.95	13.96	11.99	11.98	090
27756		A	Treatment of tibia fracture	6.78	NA	NA	9.12	8.61	0.70	NA	NA	16.60	16.09	090
27758		A	Treatment of tibia fracture	11.67	NA	NA	11.03	12.48	1.19	NA	NA	23.89	25.34	090
27759		A	Treatment of tibia fracture	13.76	NA	NA	12.13	13.52	1.41	NA	NA	27.30	28.69	090
27760		A	Treatment of ankle fracture	3.01	6.94	4.87	3.46	2.43	0.31	10.26	8.19	6.78	5.75	090
27762		A	Treatment of ankle fracture	5.25	8.95	6.30	5.12	4.39	0.53	14.73	12.08	10.90	10.17	090
27766		A	Treatment of ankle fracture	8.36	NA	NA	7.52	8.03	0.86	NA	NA	16.74	17.25	090
27780		A	Treatment of fibula fracture	2.65	4.70	3.42	3.23	2.15	0.26	7.61	6.33	6.14	5.06	090
27781		A	Treatment of fibula fracture	4.40	8.05	5.81	4.20	3.89	0.45	12.90	10.66	9.05	8.74	090
27784		A	Treatment of fibula fracture	7.11	NA	NA	7.47	6.77	0.73	NA	NA	15.31	14.61	090
27786		A	Treatment of ankle fracture	2.84	6.94	4.84	3.37	2.37	0.29	10.07	7.97	6.50	5.50	090
27788		A	Treatment of ankle fracture	4.45	7.97	5.76	4.16	2.97	0.46	12.88	10.67	9.07	7.88	090
27792		A	Treatment of ankle fracture	7.66	NA	NA	7.21	7.61	0.78	NA	NA	15.65	16.05	090
27808		A	Treatment of ankle fracture	2.83	7.80	5.42	3.94	3.49	0.29	10.92	8.54	7.06	6.61	090
27810		A	Treatment of ankle fracture	5.13	8.97	7.23	5.11	5.30	0.53	14.63	12.89	10.77	10.96	090
27814		A	Treatment of ankle fracture	10.68	NA	NA	9.75	10.30	1.10	NA	NA	21.53	22.08	090
27816		A	Treatment of ankle fracture	2.89	7.40	5.59	3.98	3.72	0.29	10.58	8.77	7.16	6.90	090
27818		A	Treatment of ankle fracture	5.50	9.18	7.88	5.29	5.93	0.56	15.24	13.94	11.35	11.99	090
27822		A	Treatment of ankle fracture	9.20	NA	NA	34.89	22.94	0.95	NA	NA	45.04	33.09	090
27823		A	Treatment of ankle fracture	11.80	NA	NA	35.41	24.65	1.21	NA	NA	48.42	37.66	090
27824		A	Treat lower leg fracture	2.89	7.79	5.78	3.90	3.68	0.29	10.97	8.96	7.08	6.86	090
27825		A	Treat lower leg fracture	6.19	9.70	8.39	5.71	6.39	0.64	16.53	15.22	12.54	13.22	090
27826		A	Treat lower leg fracture	8.54	NA	NA	33.17	21.68	0.88	NA	NA	42.59	31.10	090
27827		A	Treat lower leg fracture	14.06	NA	NA	36.76	24.74	1.44	NA	NA	52.26	40.24	090
27828		A	Treat lower leg fracture	16.23	NA	NA	38.05	25.97	1.67	NA	NA	55.95	43.87	090
27829		A	Treat lower leg joint	5.49	NA	NA	25.16	15.86	0.56	NA	NA	31.21	21.91	090
27830		A	Treat lower leg dislocation	3.79	7.44	5.49	3.48	3.51	0.38	11.61	9.66	7.65	7.68	090
27831		A	Treat lower leg dislocation	4.56	NA	NA	4.50	4.41	0.46	NA	NA	9.52	9.43	090
27832		A	Treat lower leg dislocation	6.49	NA	NA	7.50	6.85	0.68	NA	NA	14.67	14.02	090
27840		A	Treat ankle dislocation	4.58	NA	NA	5.05	3.54	0.45	NA	NA	10.08	8.57	090
27842		A	Treat ankle dislocation	6.21	NA	NA	4.62	3.52	0.64	NA	NA	11.47	10.37	090
27846		A	Treat ankle dislocation	9.79	NA	NA	9.03	9.18	0.96	NA	NA	19.78	19.93	090
27848		A	Treat ankle dislocation	11.20	NA	NA	26.90	17.99	1.15	NA	NA	39.25	30.34	090
27860		A	Fixation of ankle joint	2.34	NA	NA	2.95	2.23	0.23	NA	NA	5.52	4.80	010
27870		A	Fusion of ankle joint	13.91	NA	NA	12.58	13.53	1.40	NA	NA	27.89	28.84	090
27871		A	Fusion of tibiofibular joint	9.17	NA	NA	9.70	9.08	0.92	NA	NA	19.79	19.17	090
27880		A	Amputation of lower leg	11.85	NA	NA	10.82	9.95	1.27	NA	NA	23.94	23.07	090
27881		A	Amputation of lower leg	12.34	NA	NA	11.88	11.81	1.31	NA	NA	25.53	25.46	090
27882		A	Amputation of lower leg	8.94	NA	NA	10.97	9.48	0.98	NA	NA	20.89	19.40	090
27884		A	Amputation follow-up surgery	8.21	NA	NA	9.47	6.57	0.89	NA	NA	18.57	15.67	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

Addendum B.—Relative Value Units (RVUs) and Related Information Used in Determining Medicare Payments for 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
27886		A	Amputation follow-up surgery	9.32	NA	NA	9.50	8.64	1.01	NA	NA	19.83	18.97	090
27888		A	Amputation of foot at ankle	9.67	NA	NA	9.74	10.02	1.01	NA	NA	20.42	20.70	090
27889		A	Amputation of foot at ankle	9.98	NA	NA	8.62	8.89	1.10	NA	NA	19.70	19.97	090
27892		A	Decompression of leg	7.39	NA	NA	7.23	5.46	0.80	NA	NA	15.42	13.65	090
27893		A	Decompression of leg	7.35	NA	NA	6.59	5.13	0.69	NA	NA	14.63	13.17	090
27894		A	Decompression of leg	10.49	NA	NA	8.55	6.48	1.12	NA	NA	20.16	18.09	090
27899		C	Leg/ankle surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
28001		A	Drainage of bursa of foot	2.73	4.29	2.43	2.72	1.50	0.18	7.20	5.34	5.63	4.41	010
28002		A	Treatment of foot infection	4.62	5.47	3.96	3.77	3.11	0.37	10.46	8.95	8.76	8.10	010
28003		A	Treatment of foot infection	8.41	8.65	6.23	8.65	5.28	0.66	17.72	15.30	17.72	14.35	090
28005		A	Treat foot bone lesion	8.68	NA	NA	8.74	6.59	0.74	NA	NA	18.16	16.01	090
28008		A	Incision of foot fascia	4.45	6.03	4.47	5.13	4.02	0.31	10.79	9.23	9.89	8.78	090
28010		A	Incision of toe tendon	2.84	5.56	4.75	3.93	2.95	0.19	8.59	7.78	6.96	5.98	090
28011		A	Incision of toe tendons	4.14	6.81	4.37	5.68	3.32	0.33	11.28	8.84	10.15	7.79	090
28020		A	Exploration of foot joint	5.01	7.49	6.14	5.44	5.11	0.41	12.91	11.56	10.86	10.53	090
28022		A	Exploration of foot joint	4.67	6.14	4.56	4.92	3.21	0.35	11.16	9.58	9.94	8.23	090
28024		A	Exploration of toe joint	4.38	6.24	4.42	4.94	3.12	0.32	10.94	9.12	9.64	7.82	090
28030		A	Removal of foot nerve	6.15	NA	NA	3.19	3.73	0.42	NA	NA	9.76	10.30	090
28035		A	Decompression of tibia nerve	5.09	6.42	6.57	4.67	5.38	0.42	11.[illegible]	12.08	10.18	10.89	090
28043		A	Excision of foot lesion	3.54	5.67	3.78	4.11	3.00	0.27	9.48	7.59	7.92	6.81	090
28045		A	Excision of foot lesion	4.72	6.25	5.29	4.71	4.52	0.36	11.33	10.37	9.79	9.60	090
28046		A	Resection of tumor, foot	10.18	9.19	7.50	8.94	7.38	0.82	20.19	18.50	19.94	18.38	090
28050		A	Biopsy of foot joint lining	4.25	5.48	4.83	4.55	4.36	0.33	10.06	9.41	9.13	8.94	090
28052		A	Biopsy of foot joint lining	3.94	5.60	4.88	4.86	3.47	0.32	9.86	9.14	9.12	7.73	090
28054		A	Biopsy of toe joint lining	3.45	5.61	4.02	5.38	3.91	0.29	9.35	7.76	9.12	7.65	090
28060		A	Partial removal, foot fascia	5.23	6.68	5.63	5.39	4.99	0.38	12.29	11.24	11.00	10.60	090
28062		A	Removal of foot fascia	6.52	8.28	7.97	5.26	6.46	0.45	15.25	14.94	12.23	13.43	090
28070		A	Removal of foot joint lining	5.10	5.82	5.34	5.12	4.99	0.37	11.29	10.81	10.59	10.46	090
28072		A	Removal of foot joint lining	4.58	6.77	5.13	5.79	4.64	0.41	11.76	10.12	10.78	9.63	090
28080		A	Removal of foot lesion	3.58	5.74	5.08	4.36	4.39	0.26	9.58	8.92	8.20	8.23	090
28086		A	Excise foot tendon sheath	4.78	8.36	5.88	6.81	5.10	0.47	13.61	11.13	12.06	10.35	090
28088		A	Excise foot tendon sheath	3.86	6.48	5.21	5.56	4.75	0.35	10.69	9.42	9.77	8.96	090
28090		A	Removal of foot lesion	4.41	6.05	4.67	4.50	3.89	0.32	10.78	9.40	9.23	8.62	090
28092		A	Removal of toe lesions	3.64	6.70	4.45	4.84	3.52	0.28	10.62	8.37	8.76	7.44	090
28100		A	Removal of ankle/heel lesion	5.66	8.69	6.83	6.40	5.69	0.49	14.84	12.98	12.55	11.84	090
28102		A	Remove/graft foot lesion	7.73	NA	NA	7.47	7.45	0.72	NA	NA	15.92	15.90	090
28103		A	Remove/graft foot lesion	6.50	13.37	9.73	5.53	5.81	0.52	20.39	16.75	12.55	12.83	090
28104		A	Removal of foot lesion	5.12	6.59	5.65	5.78	5.24	0.38	12.09	11.15	11.28	10.74	090
28106		A	Remove/graft foot lesion	7.16	NA	NA	6.39	6.68	0.53	NA	NA	14.08	14.37	090
28107		A	Remove/graft foot lesion	5.56	6.30	5.79	5.98	5.63	0.40	12.26	11.75	11.94	11.59	090
28108		A	Removal of toe lesions	4.16	5.54	5.05	4.26	3.27	0.28	9.98	9.49	8.70	7.71	090
28110		A	Part removal of metatarsal	4.08	6.57	5.18	5.63	4.71	0.31	10.96	9.57	10.02	9.10	090
28111		A	Part removal of metatarsal	5.01	8.06	6.77	6.19	5.83	0.42	13.49	12.20	11.62	11.26	090
28112		A	Part removal of metatarsal	4.49	6.79	5.55	5.98	5.14	0.35	11.63	10.39	10.82	9.98	090
28113		A	Part removal of metatarsal	4.79	6.76	5.79	5.69	5.26	0.36	11.91	10.94	10.84	10.41	090
28114		A	Removal of metatarsal heads	9.79	9.29	9.62	9.29	9.62	0.82	19.90	20.23	19.90	20.23	090
28116		A	Revision of foot	7.75	6.87	6.41	5.72	5.84	0.56	15.18	14.72	14.03	14.15	090
28118		A	Removal of heel bone	5.96	6.71	6.46	5.92	6.06	0.48	13.15	12.90	12.36	12.50	090
28119		A	Removal of heel spur	5.39	6.38	6.14	4.99	5.45	0.37	12.14	11.90	10.75	11.21	090
28120		A	Part removal of ankle/heel	5.40	10.25	7.86	7.60	6.54	0.47	16.12	13.73	13.47	12.41	090
28122		A	Partial removal of foot bone	7.29	8.45	6.66	7.79	6.33	0.56	16.30	14.51	15.64	14.18	090
28124		A	Partial removal of toe	4.81	7.08	5.77	6.06	4.15	0.32	12.21	10.90	11.19	9.28	090
28126		A	Partial removal of toe	3.52	6.03	5.18	5.45	3.81	0.24	9.79	8.94	9.21	7.57	090
28130		A	Removal of ankle bone	8.11	NA	NA	7.68	7.66	0.75	NA	NA	16.54	16.52	090
28140		A	Removal of metatarsal	6.91	7.40	6.38	6.50	5.93	0.59	14.90	13.88	14.00	13.43	090
28150		A	Removal of toe	4.09	6.52	5.05	5.65	4.61	0.32	10.93	9.46	10.06	9.02	090
28153		A	Partial removal of toe	3.66	6.07	5.20	4.36	3.27	0.24	9.97	9.10	8.26	7.17	090
28160		A	Partial removal of toe	3.74	6.22	5.35	5.69	3.97	0.27	10.23	9.36	9.70	7.98	090
28171		A	Extensive foot surgery	9.60	NA	NA	6.75	7.71	0.62	NA	NA	16.97	17.93	090
28173		A	Extensive foot surgery	8.80	8.71	7.47	7.49	6.86	0.71	18.22	16.98	17.00	16.37	090
28175		A	Extensive foot surgery	6.05	7.17	6.51	5.67	5.76	0.41	13.63	12.97	12.13	12.22	090
28190		A	Removal of foot foreign body	1.96	5.06	2.81	2.93	1.61	0.13	7.15	4.90	5.02	3.70	010
28192		A	Removal of foot foreign body	4.64	6.55	4.34	4.58	3.35	0.36	11.55	9.34	9.58	8.35	090
28193		A	Removal of foot foreign body	5.73	6.71	4.65	5.35	3.97	0.42	12.86	10.80	11.50	10.12	090
28200		A	Repair of foot tendon	4.60	6.36	5.93	5.25	5.37	0.33	11.29	10.86	10.18	10.30	090
28202		A	Repair/graft of foot tendon	6.84	6.81	6.57	5.74	6.03	0.53	14.18	13.94	13.11	13.40	090
28208		A	Repair of foot tendon	4.37	6.05	4.55	4.77	3.91	0.31	10.73	9.23	9.45	8.59	090
28210		A	Repair/graft of foot tendon	6.35	7.96	7.02	5.72	5.90	0.46	14.77	13.83	12.53	12.71	090
28220		A	Release of foot tendon	4.53	5.92	5.06	4.94	3.52	0.30	10.75	9.89	9.77	8.35	090
28222		A	Release of foot tendons	5.62	6.33	6.64	5.86	4.67	0.36	12.31	12.62	11.84	10.65	090
28225		A	Release of foot tendon	3.66	5.68	4.13	4.54	3.56	0.25	9.59	8.04	8.45	7.47	090
28226		A	Release of foot tendons	4.53	5.90	4.79	5.11	4.39	0.33	10.76	9.65	9.97	9.25	090
28230		A	Incision of foot tendon(s)	4.24	6.00	4.32	5.45	3.39	0.31	10.55	8.87	10.00	7.94	090
28232		A	Incision of toe tendon	3.39	6.13	3.94	5.18	3.03	0.25	9.77	7.58	8.82	6.67	090
28234		A	Incision of foot tendon	3.37	6.28	3.97	4.60	2.72	0.24	9.89	7.58	8.21	6.33	090
28238		A	Revision of foot tendon	7.73	7.16	7.51	6.43	7.14	0.56	15.45	15.80	14.72	15.43	090
28240		A	Release of big toe	4.36	5.87	4.09	5.11	3.71	0.32	10.55	8.77	9.79	8.39	090
28250		A	Revision of foot fascia	5.92	6.77	5.81	6.08	5.46	0.42	13.11	12.15	12.42	11.80	090
28260		A	Release of midfoot joint	7.96	7.25	6.03	6.19	5.50	0.57	15.78	14.56	14.72	14.03	090
28261		A	Revision of foot tendon	11.73	9.10	7.76	8.32	7.37	0.84	21.67	20.33	20.89	19.94	090
28262		A	Revision of foot and ankle	15.83	14.39	13.66	12.98	12.96	1.48	31.70	30.97	30.29	30.27	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
28264		A	Release of midfoot joint	10.35	8.63	9.51	8.63	9.51	0.86	19.84	20.72	19.84	20.72	090
28270		A	Release of foot contracture	4.76	6.49	4.67	5.77	3.60	0.32	11.57	9.75	10.85	8.68	090
28272		A	Release of toe joint, each	3.80	5.63	3.92	4.32	2.72	0.24	9.67	7.96	8.36	6.76	090
28280		A	Fusion of toes	5.19	6.49	4.45	5.75	4.08	0.45	12.13	10.09	11.39	9.72	090
28285		A	Repair of hammertoe	4.59	6.48	5.61	5.33	5.04	0.32	11.39	10.52	10.24	9.95	090
28286		A	Repair of hammertoe	4.56	6.41	5.15	5.09	4.49	0.32	11.29	10.03	9.97	9.37	090
28288		A	Partial removal of foot bone	4.74	6.67	5.37	6.53	5.30	0.38	11.79	10.49	11.65	10.42	090
28289		A	Repair hallux rigidus	7.04	2.82	2.82	2.82	2.82	0.55	10.41	10.41	10.41	10.41	090
28290		A	Correction of bunion	5.66	7.28	6.55	7.18	6.50	0.46	13.40	12.67	13.30	12.62	090
28292		A	Correction of bunion	7.04	7.53	7.59	6.30	6.98	0.50	15.07	15.13	13.84	14.52	090
28293		A	Correction of bunion	9.15	8.54	9.45	6.71	8.54	0.61	18.30	19.21	16.47	18.30	090
28294		A	Correction of bunion	8.56	8.06	9.00	6.55	8.25	0.55	17.17	18.11	15.66	17.36	090
28296		A	Correction of bunion	9.18	8.59	9.08	7.34	8.45	0.66	18.43	18.92	17.18	18.29	090
28297		A	Correction of bunion	9.18	8.47	9.13	8.47	9.13	0.74	18.39	19.05	18.39	19.05	090
28298		A	Correction of bunion	7.94	7.89	8.68	6.92	8.20	0.54	16.37	17.16	15.40	16.68	090
28299		A	Correction of bunion	8.88	8.11	9.36	6.93	8.77	0.61	17.60	18.85	16.42	18.26	090
28300		A	Incision of heel bone	9.54	11.65	9.37	8.35	7.72	0.87	22.06	19.78	18.76	18.13	090
28302		A	Incision of ankle bone	9.55	11.95	10.80	8.50	9.08	0.78	22.28	21.13	18.83	19.41	090
28304		A	Incision of midfoot bones	9.16	8.59	7.79	6.97	6.98	0.68	18.43	17.63	16.61	16.82	090
28305		A	Incise/graft midfoot bones	10.50	13.89	12.29	9.66	10.18	0.61	25.00	23.40	20.77	21.29	090
28306		A	Incision of metatarsal	5.86	6.50	5.73	5.36	5.16	0.45	12.81	12.04	11.67	11.47	090
28307		A	Incision of metatarsal	6.33	7.85	7.11	7.44	6.91	0.51	14.69	13.95	14.28	13.75	090
28308		A	Incision of metatarsal	5.29	5.96	6.08	4.39	5.30	0.35	11.60	11.72	10.03	10.94	090
28309		A	Incision of metatarsals	12.78	NA	NA	9.28	8.37	0.99	NA	NA	23.05	22.14	090
28310		A	Revision of big toe	5.43	6.83	5.68	5.50	5.02	0.37	12.63	11.48	11.30	10.82	090
28312		A	Revision of toe	4.55	6.59	5.77	6.01	5.48	0.33	11.47	10.65	10.89	10.36	090
28313		A	Repair deformity of toe	5.01	7.12	4.96	7.12	4.26	0.45	12.58	10.42	12.58	9.72	090
28315		A	Removal of sesamoid bone	4.86	6.02	5.31	4.58	4.59	0.33	11.21	10.50	9.77	9.78	090
28320		A	Repair of foot bones	9.18	NA	NA	8.45	8.94	0.82	NA	NA	18.45	18.94	090
28322		A	Repair of metatarsals	8.34	7.10	6.09	7.10	6.09	0.74	16.18	15.17	16.18	15.17	090
28340		A	Resect enlarged toe tissue	6.98	7.60	7.24	5.59	6.24	0.52	15.10	14.74	13.09	13.74	090
28341		A	Resect enlarged toe	8.41	8.00	8.16	6.02	7.17	0.55	16.96	17.12	14.98	16.13	090
28344		A	Repair extra toe(s)	4.26	5.49	4.76	4.97	4.50	0.38	10.13	9.40	9.61	9.14	090
28345		A	Repair webbed toe(s)	5.92	6.73	6.27	6.25	6.03	0.48	13.13	12.67	12.65	12.43	090
28360		A	Reconstruct cleft foot	13.34	NA	NA	12.03	12.48	1.39	NA	NA	26.76	27.21	090
28400		A	Treatment of heel fracture	2.16	6.94	4.87	4.09	2.75	0.21	9.31	7.24	6.46	5.12	090
28405		A	Treatment of heel fracture	4.57	7.25	5.74	5.18	4.71	0.44	12.26	10.75	10.19	9.72	090
28406		A	Treatment of heel fracture	6.31	NA	NA	7.48	7.05	0.65	NA	NA	14.44	14.01	090
28415		A	Treat heel fracture	15.97	NA	NA	35.81	22.80	1.58	NA	NA	53.36	40.35	090
28420		A	Treat/graft heel fracture	16.64	NA	NA	35.95	23.89	1.67	NA	NA	54.26	42.20	090
28430		A	Treatment of ankle fracture	2.09	6.58	4.62	3.68	2.51	0.20	8.87	6.91	5.97	4.80	090
28435		A	Treatment of ankle fracture	3.40	6.81	5.23	4.20	3.93	0.31	10.52	8.94	7.91	7.64	090
28436		A	Treatment of ankle fracture	4.71	NA	NA	6.09	5.32	0.50	NA	NA	11.30	10.53	090
28445		A	Treat ankle fracture	9.33	NA	NA	9.73	9.64	0.90	NA	NA	19.96	19.87	090
28450		A	Treat midfoot fracture, each	1.90	6.22	4.13	3.59	2.31	0.18	8.30	6.21	5.67	4.39	090
28455		A	Treat midfoot fracture, each	3.09	5.15	3.96	3.99	2.69	0.25	8.49	7.30	7.33	6.03	090
28456		A	Treat midfoot fracture	2.68	NA	NA	4.89	3.68	0.26	NA	NA	7.83	6.62	090
28465		A	Treat midfoot fracture, each	7.01	NA	NA	20.63	13.32	0.65	NA	NA	28.29	20.98	090
28470		A	Treat metatarsal fracture	1.99	5.81	3.88	3.02	2.00	0.19	7.99	6.06	5.20	4.18	090
28475		A	Treat metatarsal fracture	2.97	5.78	4.16	3.87	2.57	0.26	9.01	7.39	7.10	5.80	090
28476		A	Treat metatarsal fracture	3.38	NA	NA	5.49	4.58	0.32	NA	NA	9.19	8.28	090
28485		A	Treat metatarsal fracture	5.71	NA	NA	20.72	12.90	0.48	NA	NA	26.91	19.09	090
28490		A	Treat big toe fracture	1.09	2.13	1.56	1.78	1.14	0.10	3.32	2.75	2.97	2.33	090
28495		A	Treat big toe fracture	1.58	2.17	1.70	1.89	1.25	0.12	3.87	3.40	3.59	2.95	090
28496		A	Treat big toe fracture	2.33	6.61	4.43	4.31	3.28	0.23	9.17	6.99	6.87	5.84	090
28505		A	Treat big toe fracture	3.81	17.83	10.54	17.83	10.54	0.34	21.98	14.69	21.98	14.69	090
28510		A	Treatment of toe fracture	1.09	1.88	1.43	1.80	1.15	0.09	3.06	2.61	2.98	2.33	090
28515		A	Treatment of toe fracture	1.46	2.06	1.64	1.89	1.25	0.11	3.63	3.21	3.46	2.82	090
28525		A	Treat toe fracture	3.32	16.35	9.30	16.35	9.30	0.30	19.97	12.92	19.97	12.92	090
28530		A	Treat sesamoid bone fracture	1.06	3.90	2.50	2.22	1.39	0.08	5.04	3.64	3.36	2.53	090
28531		A	Treat sesamoid bone fracture	2.35	13.22	7.65	8.81	5.44	0.17	15.74	10.17	11.33	7.96	090
28540		A	Treat foot dislocation	2.04	4.21	2.43	3.38	1.86	0.15	6.40	4.62	5.57	4.05	090
28545		A	Treat foot dislocation	2.45	3.60	2.51	3.60	2.51	0.22	6.27	5.18	6.27	5.18	090
28546		A	Treat foot dislocation	3.20	4.79	3.88	4.79	3.88	0.30	8.29	7.38	8.29	7.38	090
28555		A	Repair foot dislocation	6.30	9.83	7.95	9.83	7.95	0.59	16.72	14.84	16.72	14.84	090
28570		A	Treat foot dislocation	1.66	5.01	3.37	3.36	2.12	0.14	6.81	5.17	5.16	3.92	090
28575		A	Treat foot dislocation	3.31	3.72	3.37	3.72	3.37	0.32	7.35	7.00	7.35	7.00	090
28576		A	Treat foot dislocation	4.17	5.18	4.10	5.18	4.10	0.41	9.76	8.68	9.76	8.68	090
28585		A	Repair foot dislocation	7.99	13.84	9.61	13.84	9.61	0.71	22.54	18.31	22.54	18.31	090
28600		A	Treat foot dislocation	1.89	5.50	3.12	3.63	2.00	0.16	7.55	5.17	5.68	4.05	090
28605		A	Treat foot dislocation	2.71	6.00	4.23	3.85	3.15	0.26	8.97	7.20	6.82	6.12	090
28606		A	Treat foot dislocation	4.90	13.40	8.60	6.01	4.90	0.50	18.80	14.00	11.41	10.30	090
28615		A	Repair foot dislocation	7.77	NA	NA	24.09	14.74	0.77	NA	NA	32.63	23.28	090
28630		A	Treat toe dislocation	1.70	1.78	1.45	1.78	1.17	0.14	3.62	3.29	3.62	3.01	010
28635		A	Treat toe dislocation	1.91	2.88	2.23	2.24	1.52	0.15	4.94	4.29	4.30	3.58	010
28636		A	Treat toe dislocation	2.77	5.61	4.20	2.65	2.72	0.26	8.64	7.23	5.68	5.75	010
28645		A	Repair toe dislocation	4.22	7.74	5.63	7.74	5.63	0.31	12.27	10.16	12.27	10.16	090
28660		A	Treat toe dislocation	1.23	3.83	2.26	2.03	1.36	0.11	5.17	3.60	3.37	2.70	010
28665		A	Treat toe dislocation	1.92	3.17	2.12	2.60	1.57	0.14	5.23	4.18	4.66	3.63	010
28666		A	Treat toe dislocation	2.66	8.39	5.52	2.53	2.59	0.26	11.31	8.44	5.45	5.51	010
28675		A	Repair of toe dislocation	2.92	11.17	7.22	11.17	7.22	0.28	14.37	10.42	14.37	10.42	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
28705		A	Fusion of foot bones	15.21	NA	NA	11.89	14.15	1.40	NA	NA	28.50	30.76	090
28715		A	Fusion of foot bones	13.10	NA	NA	11.44	12.41	1.28	NA	NA	25.82	26.79	090
28725		A	Fusion of foot bones	11.61	NA	NA	10.53	10.39	1.06	NA	NA	23.20	23.06	090
28730		A	Fusion of foot bones	10.76	NA	NA	9.64	9.71	1.00	NA	NA	21.40	21.47	090
28735		A	Fusion of foot bones	10.85	NA	NA	9.48	10.04	0.96	NA	NA	21.29	21.85	090
28737		A	Revision of foot bones	9.64	NA	NA	9.05	9.34	0.86	NA	NA	19.55	19.84	090
28740		A	Fusion of foot bones	8.02	9.65	7.62	7.98	6.78	0.70	18.37	16.34	16.70	15.50	090
28750		A	Fusion of big toe joint	7.30	9.61	7.69	7.82	6.80	0.70	17.61	15.69	15.82	14.80	090
28755		A	Fusion of big toe joint	4.74	6.92	5.46	5.42	4.71	0.38	12.04	10.58	10.54	9.83	090
28760		A	Fusion of big toe joint	7.75	7.17	6.52	6.63	6.25	0.59	15.51	14.86	14.97	14.59	090
28800		A	Amputation of midfoot	8.21	NA	NA	7.96	7.59	0.82	NA	NA	16.99	16.62	090
28805		A	Amputation thru metatarsal	8.39	NA	NA	7.82	7.34	0.89	NA	NA	17.10	16.62	090
28810		A	Amputation toe & metatarsal	6.21	NA	NA	6.70	5.47	0.65	NA	NA	13.56	12.33	090
28820		A	Amputation of toe	4.41	8.44	5.62	5.97	4.39	0.44	13.29	10.47	10.82	9.24	090
28825		A	Partial amputation of toe	3.59	7.81	5.21	5.58	4.09	0.35	11.75	9.15	9.52	8.03	090
28899		C	Foot/toes surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
29000		A	Application of body cast	2.25	9.84	5.93	1.15	1.58	0.34	12.43	8.52	3.74	4.17	000
29010		A	Application of body cast	2.06	9.88	6.21	1.11	1.79	0.26	12.20	8.53	3.43	4.11	000
29015		A	Application of body cast	2.41	8.96	5.75	1.03	1.15	0.14	11.51	8.30	3.58	3.70	000
29020		A	Application of body cast	2.11	8.90	5.44	0.91	0.95	0.12	11.13	7.67	3.14	3.18	000
29025		A	Application of body cast	2.40	11.77	6.29	1.23	0.82	0.27	14.44	8.96	3.90	3.49	000
29035		A	Application of body cast	1.77	11.95	7.04	0.81	0.94	0.19	13.91	9.00	2.77	2.90	000
29040		A	Application of body cast	2.22	8.60	5.40	0.76	1.48	0.18	11.00	7.80	3.16	3.88	000
29044		A	Application of body cast	2.12	14.95	8.61	1.16	1.72	0.23	17.30	10.96	3.51	4.07	000
29046		A	Application of body cast	2.41	14.97	8.70	1.31	1.87	0.25	17.63	11.36	3.97	4.53	000
29049		A	Application of figure eight	0.89	5.90	3.18	0.24	0.24	0.09	6.88	4.16	1.22	1.22	000
29055		A	Application of shoulder cast	1.78	9.53	5.42	0.90	1.10	0.18	11.49	7.38	2.86	3.06	000
29058		A	Application of shoulder cast	1.31	6.44	3.58	0.53	0.62	0.12	7.87	5.01	1.96	2.05	000
29065		A	Application of long arm cast	0.87	4.32	2.60	0.44	0.44	0.09	5.28	3.56	1.40	1.40	000
29075		A	Application of forearm cast	0.77	3.87	2.27	0.37	0.35	0.08	4.72	3.12	1.22	1.20	000
29085		A	Apply hand/wrist cast	0.87	3.80	2.17	0.38	0.33	0.09	4.76	3.13	1.34	1.29	000
29105		A	Apply long arm splint	0.87	2.86	1.70	0.29	0.28	0.09	3.82	2.66	1.25	1.24	000
29125		A	Apply forearm splint	0.59	2.37	1.39	0.17	0.19	0.06	3.02	2.04	0.82	0.84	000
29126		A	Apply forearm splint	0.77	2.86	1.65	0.24	0.23	0.07	3.70	2.49	1.08	1.07	000
29130		A	Application of finger splint	0.50	0.77	0.48	0.14	0.12	0.05	1.32	1.03	0.69	0.67	000
29131		A	Application of finger splint	0.55	1.33	0.88	0.21	0.21	0.05	1.93	1.48	0.81	0.81	000
29200		A	Strapping of chest	0.65	1.33	0.81	0.17	0.16	0.06	2.04	1.52	0.88	0.87	000
29220		A	Strapping of low back	0.64	1.09	0.75	0.26	0.24	0.05	1.78	1.44	0.95	0.93	000
29240		A	Strapping of shoulder	0.71	1.30	0.80	0.19	0.24	0.07	2.08	1.58	0.97	1.02	000
29260		A	Strapping of elbow or wrist	0.55	1.04	0.65	0.15	0.14	0.05	1.64	1.25	0.75	0.74	000
29280		A	Strapping of hand or finger	0.51	1.07	0.65	0.14	0.13	0.05	1.63	1.21	0.70	0.69	000
29305		A	Application of hip cast	2.03	11.84	6.94	1.10	1.57	0.21	14.08	9.18	3.34	3.81	000
29325		A	Application of hip casts	2.32	9.18	5.65	1.19	1.65	0.24	11.74	8.21	3.75	4.21	000
29345		A	Application of long leg cast	1.40	5.41	3.26	0.71	0.64	0.14	6.95	4.80	2.25	2.18	000
29355		A	Application of long leg cast	1.53	5.67	3.43	0.77	0.69	0.15	7.35	5.11	2.45	2.37	000
29358		A	Apply long leg cast brace	1.43	6.31	4.01	0.76	0.81	0.14	7.88	5.56	2.33	2.38	000
29365		A	Application of long leg cast	1.18	4.61	2.77	0.61	0.54	0.12	5.91	4.07	1.91	1.84	000
29405		A	Apply short leg cast	0.86	3.92	2.39	0.41	0.42	0.09	4.87	3.34	1.36	1.37	000
29425		A	Apply short leg cast	1.01	3.69	2.37	0.48	0.51	0.10	4.80	3.48	1.59	1.62	000
29435		A	Apply short leg cast	1.18	6.16	3.72	0.62	0.63	0.11	7.45	5.01	1.91	1.92	000
29440		A	Addition of walker to cast	0.57	2.26	1.26	0.24	0.19	0.06	2.89	1.89	0.87	0.82	000
29445		A	Apply rigid leg cast	1.78	5.90	3.87	0.74	1.29	0.16	7.84	5.81	2.68	3.23	000
29450		A	Application of leg cast	1.02	2.85	1.64	0.44	0.33	0.08	3.95	2.74	1.54	1.43	000
29505		A	Application, long leg splint	0.69	3.18	1.90	0.21	0.42	0.07	3.94	2.66	0.97	1.18	000
29515		A	Application lower leg splint	0.73	2.45	1.48	0.22	0.24	0.06	3.24	2.27	1.01	1.03	000
29520		A	Strapping of hip	0.54	1.17	0.78	0.28	0.24	0.03	1.74	1.35	0.85	0.81	000
29530		A	Strapping of knee	0.57	1.12	0.75	0.16	0.27	0.05	1.74	1.37	0.78	0.89	000
29540		A	Strapping of ankle	0.51	0.50	0.42	0.17	0.17	0.03	1.04	0.96	0.71	0.71	000
29550		A	Strapping of toes	0.47	0.46	0.38	0.18	0.17	0.03	0.96	0.88	0.68	0.67	000
29580		A	Application of paste boot	0.57	0.97	0.92	0.22	0.21	0.05	1.59	1.54	0.84	0.83	000
29590		A	Application of foot splint	0.76	0.68	0.49	0.26	0.21	0.05	1.49	1.30	1.07	1.02	000
29700		A	Removal/revision of cast	0.57	0.72	0.54	0.21	0.20	0.06	1.35	1.17	0.84	0.83	000
29705		A	Removal/revision of cast	0.76	0.88	0.63	0.31	0.25	0.08	1.72	1.47	1.15	1.09	000
29710		A	Removal/revision of cast	1.34	1.47	0.98	0.63	0.44	0.12	2.93	2.44	2.09	1.90	000
29715		A	Removal/revision of cast	0.94	4.58	2.76	0.29	0.38	0.10	5.62	3.80	1.33	1.42	000
29720		A	Repair of body cast	0.68	4.36	2.31	0.35	0.24	0.07	5.11	3.06	1.10	0.99	000
29730		A	Windowing of cast	0.75	0.85	0.57	0.29	0.22	0.08	1.68	1.40	1.12	1.05	000
29740		A	Wedging of cast	1.12	2.99	1.70	0.43	0.32	0.11	4.22	2.93	1.66	1.55	000
29750		A	Wedging of clubfoot cast	1.26	2.25	1.40	0.58	0.43	0.11	3.62	2.77	1.95	1.80	000
29799		C	Casting/strapping procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
29800		A	Jaw arthroscopy/surgery	6.43	NA	NA	7.25	5.80	0.59	NA	NA	14.27	12.82	090
29804		A	Jaw arthroscopy/surgery	8.14	NA	NA	8.32	9.02	0.62	NA	NA	17.08	17.78	090
29815		A	Shoulder arthroscopy	5.89	NA	NA	6.63	5.94	0.58	NA	NA	13.10	12.41	090
29819		A	Shoulder arthroscopy/surgery	7.62	NA	NA	8.46	8.78	0.78	NA	NA	16.86	17.18	090
29820		A	Shoulder arthroscopy/surgery	7.07	NA	NA	8.58	8.51	0.73	NA	NA	16.38	16.31	090
29821		A	Shoulder arthroscopy/surgery	7.72	NA	NA	8.42	8.82	0.78	NA	NA	16.92	17.32	090
29822		A	Shoulder arthroscopy/surgery	7.43	NA	NA	8.79	8.83	0.76	NA	NA	16.98	17.02	090
29823		A	Shoulder arthroscopy/surgery	8.17	NA	NA	9.01	9.39	0.83	NA	NA	18.01	18.39	090
29825		A	Shoulder arthroscopy/surgery	7.62	NA	NA	8.55	8.82	0.78	NA	NA	16.95	17.22	090
29826		A	Shoulder arthroscopy/surgery	8.99	NA	NA	9.52	10.13	0.93	NA	NA	19.44	20.05	090
29830		A	Elbow arthroscopy	5.76	NA	NA	5.26	5.52	0.62	NA	NA	11.64	11.90	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
29834		A	Elbow arthroscopy/surgery	6.28	NA	NA	6.20	6.27	0.64	NA	NA	13.12	13.19	090
29835		A	Elbow arthroscopy/surgery	6.48	NA	NA	6.44	6.49	0.66	NA	NA	13.58	13.63	090
29836		A	Elbow arthroscopy/surgery	7.55	NA	NA	6.63	7.13	0.77	NA	NA	14.95	15.45	090
29837		A	Elbow arthroscopy/surgery	6.87	NA	NA	6.38	6.67	0.71	NA	NA	13.96	14.25	090
29838		A	Elbow arthroscopy/surgery	7.71	NA	NA	6.70	7.18	0.80	NA	NA	15.21	15.69	090
29840		A	Wrist arthroscopy	5.54	NA	NA	6.82	5.20	0.57	NA	NA	12.93	11.31	090
29843		A	Wrist arthroscopy/surgery	6.01	NA	NA	6.96	6.52	0.66	NA	NA	13.63	13.19	090
29844		A	Wrist arthroscopy/surgery	6.37	NA	NA	7.64	6.86	0.67	NA	NA	14.68	13.90	090
29845		A	Wrist arthroscopy/surgery	7.52	NA	NA	7.46	7.53	0.77	NA	NA	15.75	15.82	090
29846		A	Wrist arthroscopy/surgery	6.75	NA	NA	9.53	8.80	0.71	NA	NA	16.99	16.26	090
29847		A	Wrist arthroscopy/surgery	7.08	NA	NA	10.52	8.94	0.74	NA	NA	18.34	16.76	090
29848		A	Wrist endoscopy/surgery	5.44	NA	NA	6.81	5.50	0.58	NA	NA	12.83	11.52	090
29850		A	Knee arthroscopy/surgery	8.19	NA	NA	6.57	5.73	0.71	NA	NA	15.47	14.63	090
29851		A	Knee arthroscopy/surgery	13.10	NA	NA	10.84	11.36	1.37	NA	NA	25.31	25.83	090
29855		A	Tibial arthroscopy/surgery	10.62	NA	NA	9.65	11.17	1.09	NA	NA	21.36	22.88	090
29856		A	Tibial arthroscopy/surgery	14.14	NA	NA	12.03	12.36	1.47	NA	NA	27.64	27.97	090
29860		A	Hip arthroscopy, dx	8.05	NA	NA	7.01	6.13	0.77	NA	NA	15.83	14.95	090
29861		A	Hip arthroscopy/surgery	9.15	NA	NA	8.17	9.18	0.88	NA	NA	18.20	19.21	090
29862		A	Hip arthroscopy/surgery	9.90	NA	NA	8.58	9.76	0.95	NA	NA	19.43	20.61	090
29863		A	Hip arthroscopy/surgery	9.90	NA	NA	8.86	9.16	0.95	NA	NA	19.71	20.01	090
29870		A	Knee arthroscopy, dx	5.07	NA	NA	5.36	4.86	0.52	NA	NA	10.95	10.45	090
29871		A	Knee arthroscopy/drainage	6.55	NA	NA	7.03	7.19	0.59	NA	NA	14.17	14.33	090
29874		A	Knee arthroscopy/surgery	7.05	NA	NA	6.83	7.63	0.68	NA	NA	14.56	15.36	090
29875		A	Knee arthroscopy/surgery	6.31	NA	NA	6.55	7.04	0.66	NA	NA	13.52	14.01	090
29876		A	Knee arthroscopy/surgery	7.92	NA	NA	7.86	8.66	0.80	NA	NA	16.58	17.38	090
29877		A	Knee arthroscopy/surgery	7.35	NA	NA	7.14	7.96	0.76	NA	NA	15.25	16.07	090
29879		A	Knee arthroscopy/surgery	8.04	NA	NA	7.49	8.54	0.84	NA	NA	16.37	17.42	090
29880		A	Knee arthroscopy/surgery	8.50	NA	NA	7.77	8.96	0.89	NA	NA	17.16	18.35	090
29881		A	Knee arthroscopy/surgery	7.76	NA	NA	7.36	8.32	0.80	NA	NA	15.92	16.88	090
29882		A	Knee arthroscopy/surgery	8.65	NA	NA	7.79	9.06	0.90	NA	NA	17.34	18.61	090
29883		A	Knee arthroscopy/surgery	9.46	NA	NA	8.26	9.78	0.98	NA	NA	18.70	20.22	090
29884		A	Knee arthroscopy/surgery	7.33	NA	NA	7.86	8.31	0.75	NA	NA	15.94	16.39	090
29885		A	Knee arthroscopy/surgery	9.09	NA	NA	8.79	8.86	0.95	NA	NA	18.83	18.90	090
29886		A	Knee arthroscopy/surgery	7.54	NA	NA	7.66	7.52	0.78	NA	NA	15.98	15.84	090
29887		A	Knee arthroscopy/surgery	9.04	NA	NA	8.59	9.69	0.94	NA	NA	18.57	19.67	090
29888		A	Knee arthroscopy/surgery	13.90	NA	NA	11.68	14.14	1.41	NA	NA	26.99	29.45	090
29889		A	Knee arthroscopy/surgery	15.13	NA	NA	12.54	11.84	1.56	NA	NA	29.23	28.53	090
29891		A	Ankle arthroscopy/surgery	8.40	NA	NA	8.12	8.87	0.81	NA	NA	17.33	18.08	090
29892		A	Ankle arthroscopy/surgery	9.00	NA	NA	8.60	9.11	0.87	NA	NA	18.47	18.98	090
29893		A	Scope, plantar fasciotomy	5.22	NA	NA	4.62	5.13	0.37	NA	NA	10.21	10.72	090
29894		A	Ankle arthroscopy/surgery	7.21	NA	NA	7.04	7.83	0.65	NA	NA	14.90	15.69	090
29895		A	Ankle arthroscopy/surgery	6.99	NA	NA	7.22	7.79	0.65	NA	NA	14.86	15.43	090
29897		A	Ankle arthroscopy/surgery	7.18	NA	NA	7.56	8.07	0.68	NA	NA	15.42	15.93	090
29898		A	Ankle arthroscopy/surgery	8.32	NA	NA	7.55	8.74	0.74	NA	NA	16.61	17.80	090
29909		C	Arthroscopy of joint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
30000		A	Drainage of nose lesion	1.43	2.10	1.37	1.33	0.83	0.11	3.64	2.91	2.87	2.37	010
30020		A	Drainage of nose lesion	1.43	2.33	1.49	1.37	0.85	0.07	3.83	2.99	2.87	2.35	010
30100		A	Intranasal biopsy	0.94	1.12	0.94	0.54	0.46	0.07	2.13	1.95	1.55	1.47	000
30110		A	Removal of nose polyp(s)	1.63	2.26	1.83	0.90	0.80	0.11	4.00	3.57	2.64	2.54	010
30115		A	Removal of nose polyp(s)	4.35	NA	NA	3.98	3.52	0.31	NA	NA	8.64	8.18	090
30117		A	Removal of intranasal lesion	3.16	3.79	3.44	2.85	2.97	0.23	7.18	6.83	6.24	6.36	090
30118		A	Removal of intranasal lesion	9.69	NA	NA	7.73	8.21	0.71	NA	NA	18.13	18.61	090
30120		A	Revision of nose	5.27	5.10	5.70	5.10	5.70	0.40	10.77	11.37	10.77	11.37	090
30124		A	Removal of nose lesion	3.10	NA	NA	2.96	1.85	0.21	NA	NA	6.27	5.16	090
30125		A	Removal of nose lesion	7.16	NA	NA	5.91	5.97	0.48	NA	NA	13.55	13.61	090
30130		A	Removal of turbinate bones	3.38	NA	NA	3.48	2.65	0.23	NA	NA	7.09	6.26	090
30140		A	Removal of turbinate bones	3.43	NA	NA	3.88	3.59	0.25	NA	NA	7.56	7.27	090
30150		A	Partial removal of nose	9.14	NA	NA	7.47	8.04	0.77	NA	NA	17.38	17.95	090
30160		A	Removal of nose	9.58	NA	NA	7.67	9.56	0.75	NA	NA	18.00	19.89	090
30200		A	Injection treatment of nose	0.78	1.02	0.71	0.45	0.33	0.06	1.86	1.55	1.29	1.17	000
30210		A	Nasal sinus therapy	1.08	1.73	1.01	0.64	0.39	0.08	2.89	2.17	1.80	1.55	010
30220		A	Insert nasal septal button	1.54	2.08	1.86	0.89	0.86	0.11	3.73	3.51	2.54	2.51	010
30300		A	Remove nasal foreign body	1.04	2.15	1.33	0.39	0.32	0.08	3.27	2.45	1.51	1.44	010
30310		A	Remove nasal foreign body	1.96	NA	NA	1.75	1.76	0.14	NA	NA	3.85	3.86	010
30320		A	Remove nasal foreign body	4.52	NA	NA	4.70	4.68	0.33	NA	NA	9.55	9.53	090
30400		R	Reconstruction of nose	9.83	NA	NA	7.91	9.37	0.84	NA	NA	18.58	20.04	090
30410		R	Reconstruction of nose	12.98	NA	NA	9.59	12.55	1.14	NA	NA	23.71	26.67	090
30420		R	Reconstruction of nose	15.88	NA	NA	11.49	15.23	1.25	NA	NA	28.62	32.36	090
30430		R	Revision of nose	7.21	NA	NA	6.17	6.39	0.62	NA	NA	14.00	14.22	090
30435		R	Revision of nose	11.71	NA	NA	9.14	10.09	1.03	NA	NA	21.88	22.83	090
30450		R	Revision of nose	18.65	NA	NA	12.87	12.54	1.65	NA	NA	33.17	32.84	090
30460		A	Revision of nose	9.96	NA	NA	7.96	8.64	0.87	NA	NA	18.79	19.47	090
30462		A	Revision of nose	19.57	NA	NA	12.66	15.64	1.90	NA	NA	34.13	37.11	090
30520		A	Repair of nasal septum	5.70	NA	NA	5.21	6.01	0.41	NA	NA	11.32	12.12	090
30540		A	Repair nasal defect	7.75	NA	NA	5.43	6.32	0.54	NA	NA	13.72	14.61	090
30545		A	Repair nasal defect	11.38	NA	NA	8.33	10.04	0.88	NA	NA	20.59	22.30	090
30560		A	Release of nasal adhesions	1.26	1.93	1.27	1.31	0.81	0.09	3.28	2.62	2.66	2.16	010
30580		A	Repair upper jaw fistula	6.69	4.60	5.69	4.60	4.00	0.49	11.78	12.87	11.78	11.18	090
30600		A	Repair mouth/nose fistula	6.02	4.10	4.10	4.10	4.10	0.47	10.59	10.59	10.59	10.59	090
30620		A	Intranasal reconstruction	5.97	NA	NA	5.65	6.39	0.45	NA	NA	12.07	12.81	090
30630		A	Repair nasal septum defect	7.12	NA	NA	6.31	6.54	0.53	NA	NA	13.96	14.19	090

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
30801		A	Cauterization, inner nose	1.09	2.15	1.33	1.96	1.11	0.08	3.32	2.50	3.13	2.28	010
30802		A	Cauterization, inner nose	2.03	2.64	1.83	2.42	1.72	0.14	4.81	4.00	4.59	3.89	010
30901		A	Control of nosebleed	1.21	1.89	1.25	0.33	0.32	0.10	3.20	2.56	1.64	1.63	000
30903		A	Control of nosebleed	1.54	2.21	1.57	0.52	0.72	0.12	3.87	3.23	2.18	2.38	000
30905		A	Control of nosebleed	1.97	3.97	2.96	0.81	1.38	0.15	6.09	5.08	2.93	3.50	000
30906		A	Repeat control of nosebleed	2.45	4.29	2.73	1.29	1.23	0.18	6.92	5.36	3.92	3.86	000
30915		A	Ligation, nasal sinus artery	7.20	NA	NA	6.26	5.82	0.52	NA	NA	13.98	13.54	090
30920		A	Ligation, upper jaw artery	9.83	NA	NA	7.78	9.07	0.70	NA	NA	18.31	19.60	090
30930		A	Therapy, fracture of nose	1.26	NA	NA	1.75	1.26	0.09	NA	NA	3.10	2.61	010
30999		C	Nasal surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31000		A	Irrigation, maxillary sinus	1.15	1.98	1.23	0.66	0.45	0.08	3.21	2.46	1.89	1.68	010
31002		A	Irrigation, sphenoid sinus	1.91	NA	NA	1.78	1.02	0.13	NA	NA	3.82	3.06	010
31020		A	Exploration, maxillary sinus	2.94	3.57	3.23	3.17	3.03	0.21	6.72	6.38	6.32	6.18	090
31030		A	Exploration, maxillary sinus	5.92	4.36	5.72	4.36	5.72	0.43	10.71	12.07	10.71	12.07	090
31032		A	Explore sinus, remove polyps	6.57	NA	NA	5.50	6.68	0.48	NA	NA	12.55	13.73	090
31040		A	Exploration behind upper jaw	9.42	NA	NA	6.22	7.44	0.69	NA	NA	16.33	17.55	090
31050		A	Exploration, sphenoid sinus	5.28	NA	NA	4.56	5.44	0.39	NA	NA	10.23	11.11	090
31051		A	Sphenoid sinus surgery	7.11	NA	NA	5.93	7.21	0.55	NA	NA	13.59	14.87	090
31070		A	Exploration of frontal sinus	4.28	NA	NA	4.34	4.72	0.31	NA	NA	8.93	9.31	090
31075		A	Exploration of frontal sinus	9.16	NA	NA	7.61	9.28	0.63	NA	NA	17.40	19.07	090
31080		A	Removal of frontal sinus	11.42	NA	NA	8.36	9.18	0.81	NA	NA	20.59	21.41	090
31081		A	Removal of frontal sinus	12.75	NA	NA	9.08	10.14	1.86	NA	NA	23.69	24.75	090
31084		A	Removal of frontal sinus	13.51	NA	NA	9.88	12.97	1.03	NA	NA	24.42	27.51	090
31085		A	Removal of frontal sinus	14.20	NA	NA	10.17	13.56	1.35	NA	NA	25.72	29.11	090
31086		A	Removal of frontal sinus	12.86	NA	NA	9.70	10.75	0.96	NA	NA	23.52	24.57	090
31087		A	Removal of frontal sinus	13.10	NA	NA	9.51	10.40	0.93	NA	NA	23.54	24.43	090
31090		A	Exploration of sinuses	9.53	NA	NA	8.08	9.73	0.68	NA	NA	18.29	19.94	090
31200		A	Removal of ethmoid sinus	4.97	NA	NA	5.52	5.27	0.28	NA	NA	10.77	10.52	090
31201		A	Removal of ethmoid sinus	8.37	NA	NA	7.01	7.31	0.59	NA	NA	15.97	16.27	090
31205		A	Removal of ethmoid sinus	10.24	NA	NA	8.29	8.50	0.61	NA	NA	19.14	19.35	090
31225		A	Removal of upper jaw	19.23	NA	NA	14.11	17.61	1.41	NA	NA	34.75	38.25	090
31230		A	Removal of upper jaw	21.94	NA	NA	15.90	19.75	1.67	NA	NA	39.51	43.36	090
31231		A	Nasal endoscopy, dx	1.10	1.70	1.60	0.61	1.05	0.08	2.88	2.78	1.79	2.23	000
31233		A	Nasal/sinus endoscopy, dx	2.18	2.34	2.69	1.27	1.40	0.15	4.67	5.02	3.60	3.73	000
31235		A	Nasal/sinus endoscopy, dx	2.64	2.61	2.60	1.55	1.43	0.18	5.43	5.42	4.37	4.25	000
31237		A	Nasal/sinus endoscopy, surg	2.98	2.87	3.22	1.70	1.74	0.21	6.06	6.41	4.89	4.93	000
31238		A	Nasal/sinus endoscopy, surg	3.26	3.26	3.58	1.91	1.93	0.23	6.75	7.07	5.40	5.42	000
31239		A	Nasal/sinus endoscopy, surg	8.70	NA	NA	6.54	8.47	0.44	NA	NA	15.68	17.61	010
31240		A	Nasal/sinus endoscopy, surg	2.61	NA	NA	1.48	2.30	0.18	NA	NA	4.27	5.09	000
31254		A	Revision of ethmoid sinus	4.65	NA	NA	2.74	4.15	0.32	NA	NA	7.71	9.12	000
31255		A	Removal of ethmoid sinus	6.96	NA	NA	4.10	6.21	0.50	NA	NA	11.56	13.67	000
31256		A	Exploration maxillary sinus	3.29	NA	NA	1.94	2.94	0.23	NA	NA	5.46	6.46	000
31267		A	Endoscopy, maxillary sinus	5.46	NA	NA	3.22	4.45	0.39	NA	NA	9.07	10.30	000
31276		A	Sinus endoscopy, surgical	8.85	NA	NA	5.12	6.21	0.63	NA	NA	14.60	15.69	000
31287		A	Nasal/sinus endoscopy, surg	3.92	NA	NA	2.31	3.50	0.28	NA	NA	6.51	7.70	000
31288		A	Nasal/sinus endoscopy, surg	4.58	NA	NA	2.70	4.09	0.32	NA	NA	7.60	8.99	000
31290		A	Nasal/sinus endoscopy, surg	17.24	NA	NA	11.53	14.70	1.28	NA	NA	30.05	33.22	010
31291		A	Nasal/sinus endoscopy, surg	18.19	NA	NA	11.87	15.33	1.73	NA	NA	31.79	35.25	010
31292		A	Nasal/sinus endoscopy, surg	14.76	NA	NA	10.02	12.27	1.03	NA	NA	25.81	28.06	010
31293		A	Nasal/sinus endoscopy, surg	16.21	NA	NA	10.66	13.28	1.09	NA	NA	27.96	30.58	010
31294		A	Nasal/sinus endoscopy, surg	19.06	NA	NA	12.43	15.29	1.71	NA	NA	33.20	36.06	010
31299		C	Sinus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31300		A	Removal of larynx lesion	14.29	NA	NA	15.68	14.13	1.02	NA	NA	30.99	29.44	090
31320		A	Diagnostic incision, larynx	5.26	NA	NA	10.85	7.53	0.39	NA	NA	16.50	13.18	090
31360		A	Removal of larynx	17.08	NA	NA	17.05	18.72	1.24	NA	NA	35.37	37.04	090
31365		A	Removal of larynx	24.16	NA	NA	21.02	24.94	1.77	NA	NA	46.95	50.87	090
31367		A	Partial removal of larynx	21.86	NA	NA	21.37	20.03	1.59	NA	NA	44.82	43.48	090
31368		A	Partial removal of larynx	27.09	NA	NA	25.45	27.25	1.98	NA	NA	54.52	56.32	090
31370		A	Partial removal of larynx	21.38	NA	NA	21.33	19.99	1.60	NA	NA	44.31	42.97	090
31375		A	Partial removal of larynx	20.21	NA	NA	18.85	17.48	1.41	NA	NA	40.47	39.10	090
31380		A	Partial removal of larynx	20.21	NA	NA	18.98	18.86	1.44	NA	NA	40.63	40.51	090
31382		A	Partial removal of larynx	20.52	NA	NA	21.34	19.39	1.51	NA	NA	43.37	41.42	090
31390		A	Removal of larynx & pharynx	27.53	NA	NA	25.78	27.59	1.99	NA	NA	55.30	57.11	090
31395		A	Reconstruct larynx & pharynx	31.09	NA	NA	30.43	33.41	2.25	NA	NA	63.77	66.75	090
31400		A	Revision of larynx	10.31	NA	NA	13.45	10.97	0.74	NA	NA	24.50	22.02	090
31420		A	Removal of epiglottis	10.22	NA	NA	13.35	11.06	0.74	NA	NA	24.31	22.02	090
31500		A	Insert emergency airway	2.33	NA	NA	0.56	0.90	0.17	NA	NA	3.06	3.40	000
31502		A	Change of windpipe airway	0.65	1.58	1.11	0.27	0.45	0.04	2.27	1.80	0.96	1.14	000
31505		A	Diagnostic laryngoscopy	0.61	1.48	0.98	0.23	0.24	0.05	2.14	1.64	0.89	0.90	000
31510		A	Laryngoscopy with biopsy	1.92	2.37	1.49	1.01	0.81	0.14	4.43	3.55	3.07	2.87	000
31511		A	Remove foreign body, larynx	2.16	2.55	1.80	0.81	0.93	0.18	4.89	4.14	3.15	3.27	000
31512		A	Removal of larynx lesion	2.07	2.48	2.21	1.13	1.54	0.19	4.74	4.47	3.39	3.80	000
31513		A	Injection into vocal cord	2.10	NA	NA	1.25	1.88	0.15	NA	NA	3.50	4.13	000
31515		A	Laryngoscopy for aspiration	1.80	2.21	1.72	0.77	1.00	0.12	4.13	3.64	2.69	2.92	000
31520		A	Diagnostic laryngoscopy	2.56	NA	NA	1.34	1.56	0.18	NA	NA	4.08	4.30	000
31525		A	Diagnostic laryngoscopy	2.63	2.60	2.50	1.45	1.33	0.18	5.41	5.31	4.26	4.14	000
31526		A	Diagnostic laryngoscopy	2.57	NA	NA	1.51	2.29	0.18	NA	NA	4.26	5.04	000
31527		A	Laryngoscopy for treatment	3.27	NA	NA	1.68	2.46	0.23	NA	NA	5.18	5.96	000
31528		A	Laryngoscopy and dilatation	2.37	NA	NA	1.26	2.05	0.18	NA	NA	3.81	4.60	000
31529		A	Laryngoscopy and dilatation	2.68	NA	NA	1.46	2.07	0.19	NA	NA	4.33	4.94	000
31530		A	Operative laryngoscopy	3.39	NA	NA	1.73	2.84	0.23	NA	NA	5.35	6.46	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
31531	....	A	Operative laryngoscopy	3.59	NA	NA	2.13	3.21	0.26	NA	NA	5.98	7.06	000
31535	....	A	Operative laryngoscopy	3.16	NA	NA	1.82	2.80	0.23	NA	NA	5.21	6.19	000
31536	....	A	Operative laryngoscopy	3.56	NA	NA	2.09	3.17	0.26	NA	NA	5.91	6.99	000
31540	....	A	Operative laryngoscopy	4.13	NA	NA	2.42	3.68	0.30	NA	NA	6.85	8.11	000
31541	....	A	Operative laryngoscopy	4.53	NA	NA	2.65	3.80	0.32	NA	NA	7.50	8.65	000
31560	....	A	Operative laryngoscopy	5.46	NA	NA	3.13	4.28	0.39	NA	NA	8.98	10.13	000
31561	....	A	Operative laryngoscopy	6.00	NA	NA	3.47	5.14	0.43	NA	NA	9.90	11.57	000
31570	....	A	Laryngoscopy with injection	3.87	3.83	4.23	2.21	2.26	0.29	7.99	8.39	6.37	6.42	000
31571	....	A	Laryngoscopy with injection	4.27	NA	NA	2.47	3.68	0.31	NA	NA	7.05	8.26	000
31575	....	A	Diagnostic laryngoscopy	1.10	1.79	1.74	0.59	0.72	0.08	2.97	2.92	1.77	1.90	000
31576	....	A	Laryngoscopy with biopsy	1.97	1.89	2.13	1.09	1.73	0.13	3.99	4.23	3.19	3.83	000
31577	....	A	Remove foreign body, larynx	2.47	2.20	2.58	1.33	2.14	0.18	4.85	5.23	3.98	4.79	000
31578	....	A	Removal of larynx lesion	2.84	2.51	2.95	0.94	2.17	0.20	5.55	5.99	3.98	5.21	000
31579	....	A	Diagnostic laryngoscopy	2.26	2.56	2.55	1.26	1.27	0.16	4.98	4.97	3.68	3.69	000
31580	....	A	Revision of larynx	12.38	NA	NA	13.82	14.30	0.88	NA	NA	27.08	27.56	090
31582	....	A	Revision of larynx	21.62	NA	NA	19.80	19.60	1.54	NA	NA	42.96	42.76	090
31584	....	A	Treat larynx fracture	19.64	NA	NA	17.28	15.54	1.54	NA	NA	38.46	36.72	090
31585	....	A	Treat larynx fracture	4.64	NA	NA	7.52	5.81	0.32	NA	NA	12.48	10.77	090
31586	....	A	Treat larynx fracture	8.03	NA	NA	11.05	9.08	0.57	NA	NA	19.65	17.68	090
31587	....	A	Revision of larynx	11.99	NA	NA	12.50	10.16	0.88	NA	NA	25.37	23.03	090
31588	....	A	Revision of larynx	13.11	NA	NA	15.12	13.37	0.94	NA	NA	29.17	27.42	090
31590	....	A	Reinnervate larynx	6.97	NA	NA	10.28	8.27	0.47	NA	NA	17.72	15.71	090
31595	....	A	Larynx nerve surgery	8.34	NA	NA	9.81	8.62	0.61	NA	NA	18.76	17.57	090
31599	....	C	Larynx surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31600	....	A	Incision of windpipe	3.62	NA	NA	1.66	2.99	0.34	NA	NA	5.62	6.95	000
31601	....	A	Incision of windpipe	4.45	NA	NA	2.28	3.80	0.36	NA	NA	7.09	8.61	000
31603	....	A	Incision of windpipe	4.15	NA	NA	1.93	3.26	0.38	NA	NA	6.46	7.79	000
31605	....	A	Incision of windpipe	3.58	NA	NA	1.33	2.81	0.36	NA	NA	5.27	6.75	000
31610	....	A	Incision of windpipe	8.76	NA	NA	9.92	8.58	0.70	NA	NA	19.38	18.04	090
31611	....	A	Surgery/speech prosthesis	5.64	NA	NA	8.80	7.90	0.41	NA	NA	14.85	13.95	090
31612	....	A	Puncture/clear windpipe	0.91	1.26	1.27	0.36	0.73	0.06	2.23	2.24	1.33	1.70	000
31613	....	A	Repair windpipe opening	4.59	NA	NA	8.15	5.28	0.37	NA	NA	13.11	10.24	090
31614	....	A	Repair windpipe opening	7.12	NA	NA	10.85	9.08	0.53	NA	NA	18.50	16.73	090
31615	....	A	Visualization of windpipe	2.09	3.10	2.61	0.95	1.54	0.14	5.33	4.84	3.18	3.77	000
31622	....	A	Dx bronchoscope/wash	2.78	3.26	3.30	0.92	2.13	0.13	6.17	6.21	3.83	5.04	000
31623	....	A	Dx bronchoscope/brush	2.88	3.30	3.32	0.95	2.15	0.15	6.33	6.35	3.98	5.18	000
31624	....	A	Dx bronchoscope/lavage	2.88	2.89	3.12	0.95	2.15	0.15	5.92	6.15	3.98	5.18	000
31625	....	A	Bronchoscopy with biopsy	3.37	2.88	3.46	1.07	2.55	0.16	6.41	6.99	4.60	6.08	000
31628	....	A	Bronchoscopy with biopsy	3.81	3.35	3.95	1.15	2.85	0.13	7.29	7.89	5.09	6.79	000
31629	....	A	Bronchoscopy with biopsy	3.37	NA	NA	1.03	2.53	0.11	NA	NA	4.51	6.01	000
31630	....	A	Bronchoscopy with repair	3.82	NA	NA	1.62	2.83	0.34	NA	NA	5.78	6.99	000
31631	....	A	Bronchoscopy with dilation	4.37	NA	NA	1.63	2.96	0.31	NA	NA	6.31	7.64	000
31635	....	A	Remove foreign body, airway	3.68	NA	NA	1.33	2.87	0.23	NA	NA	5.24	6.78	000
31640	....	A	Bronchoscopy & remove lesion	4.94	NA	NA	2.07	3.76	0.37	NA	NA	7.38	9.07	000
31641	....	A	Bronchoscopy, treat blockage	5.03	NA	NA	1.77	3.89	0.28	NA	NA	7.08	9.20	000
31643	....	A	Diag bronchoscope/catheter	3.50	1.83	2.59	1.27	2.31	0.20	5.53	6.29	4.97	6.01	000
31645	....	A	Bronchoscopy, clear airways	3.16	NA	NA	0.98	2.38	0.13	NA	NA	4.27	5.67	000
31646	....	A	Bronchoscopy, reclear airway	2.72	NA	NA	0.85	2.05	0.12	NA	NA	3.69	4.89	000
31656	....	A	Bronchoscopy, inj for xray	2.17	NA	NA	0.58	1.59	0.10	NA	NA	2.85	3.86	000
31700	....	A	Insertion of airway catheter	1.34	1.85	1.68	0.38	0.94	0.08	3.27	3.10	1.80	2.36	000
31708	....	A	Instill airway contrast dye	1.41	NA	NA	0.41	0.63	0.06	NA	NA	1.88	2.10	000
31710	....	A	Insertion of airway catheter	1.30	NA	NA	0.39	0.69	0.05	NA	NA	1.74	2.04	000
31715	....	A	Injection for bronchus x-ray	1.11	NA	NA	0.30	0.41	0.04	NA	NA	1.45	1.56	000
31717	....	A	Bronchial brush biopsy	2.12	3.10	1.95	0.66	0.73	0.08	5.30	4.15	2.86	2.93	000
31720	....	A	Clearance of airways	1.06	1.82	1.31	0.33	0.57	0.06	2.94	2.43	1.45	1.69	000
31725	....	A	Clearance of airways	1.96	NA	NA	0.64	1.09	0.08	NA	NA	2.68	3.13	000
31730	....	A	Intro, windpipe wire/tube	2.85	2.39	2.54	0.99	1.84	0.15	5.39	5.54	3.99	4.84	000
31750	....	A	Repair of windpipe	13.02	NA	NA	14.34	11.99	1.00	NA	NA	28.36	26.01	090
31755	....	A	Repair of windpipe	15.93	NA	NA	17.11	15.77	1.20	NA	NA	34.24	32.90	090
31760	....	A	Repair of windpipe	22.35	NA	NA	14.17	13.01	2.09	NA	NA	38.61	37.45	090
31766	....	A	Reconstruction of windpipe	30.43	NA	NA	16.93	18.45	3.73	NA	NA	51.09	52.61	090
31770	....	A	Repair/graft of bronchus	22.51	NA	NA	17.03	16.69	2.06	NA	NA	41.60	41.26	090
31775	....	A	Reconstruct bronchus	23.54	NA	NA	19.25	18.51	2.80	NA	NA	45.59	44.85	090
31780	....	A	Reconstruct windpipe	17.72	NA	NA	14.00	16.41	1.70	NA	NA	33.42	35.83	090
31781	....	A	Reconstruct windpipe	23.53	NA	NA	16.97	17.64	2.83	NA	NA	43.33	44.00	090
31785	....	A	Remove windpipe lesion	17.23	NA	NA	13.17	11.43	1.35	NA	NA	31.75	30.01	090
31786	....	A	Remove windpipe lesion	23.98	NA	NA	18.42	16.43	1.99	NA	NA	44.39	42.40	090
31800	....	A	Repair of windpipe injury	7.43	NA	NA	6.89	6.11	0.74	NA	NA	15.06	14.28	090
31805	....	A	Repair of windpipe injury	13.13	NA	NA	13.03	11.85	1.72	NA	NA	27.88	26.70	090
31820	....	A	Closure of windpipe lesion	4.49	7.27	5.58	7.25	5.57	0.34	12.10	10.41	12.08	10.40	090
31825	....	A	Repair of windpipe defect	6.81	9.86	7.65	9.86	7.65	0.52	17.19	14.98	17.19	14.98	090
31830	....	A	Revise windpipe scar	4.50	7.20	5.59	7.20	5.59	0.36	12.06	10.45	12.06	10.45	090
31899	....	C	Airways surgical procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
32000	....	A	Drainage of chest	1.54	3.17	2.08	0.47	0.73	0.07	4.78	3.69	2.08	2.34	000
32001	....	D	Total lung lavage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
32002	....	A	Treatment of collapsed lung	2.19	NA	NA	0.67	1.06	0.11	NA	NA	2.97	3.36	000
32005	....	A	Treat lung lining chemically	2.19	NA	NA	0.77	0.98	0.18	NA	NA	3.14	3.35	000
32020	....	A	Insertion of chest tube	3.98	NA	NA	1.42	2.14	0.37	NA	NA	5.77	6.49	000
32035	....	A	Exploration of chest	8.67	NA	NA	10.53	8.94	1.05	NA	NA	20.25	18.66	090
32036	....	A	Exploration of chest	9.68	NA	NA	11.78	9.76	1.19	NA	NA	22.65	20.63	090
32095	....	A	Biopsy through chest wall	8.36	NA	NA	10.93	9.94	0.98	NA	NA	20.27	19.28	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
32100		A	Exploration/biopsy of chest	11.84	NA	NA	12.11	12.16	1.45	NA	NA	25.40	25.45	090
32110		A	Explore/repair chest	13.62	NA	NA	12.52	12.51	1.67	NA	NA	27.81	27.80	090
32120		A	Re-exploration of chest	11.54	NA	NA	12.71	11.49	1.45	NA	NA	25.70	24.48	090
32124		A	Explore chest free adhesions	12.72	NA	NA	11.54	11.71	1.57	NA	NA	25.83	26.00	090
32140		A	Removal of lung lesion(s)	13.93	NA	NA	13.74	13.58	1.68	NA	NA	29.35	29.19	090
32141		A	Remove/treat lung lesions	14.00	NA	NA	11.53	13.05	1.74	NA	NA	27.27	28.79	090
32150		A	Removal of lung lesion(s)	14.15	NA	NA	12.78	12.00	1.71	NA	NA	28.64	27.86	090
32151		A	Remove lung foreign body	14.21	NA	NA	14.09	12.01	1.76	NA	NA	30.06	27.98	090
32160		A	Open chest heart massage	9.30	NA	NA	7.61	8.76	1.07	NA	NA	17.98	19.13	090
32200		A	Drain, open, lung lesion	15.29	NA	NA	10.89	9.19	1.25	NA	NA	27.43	25.73	090
32201		A	Drain, percut, lung lesion	4.00	NA	NA	5.64	4.47	0.32	NA	NA	9.96	8.79	000
32215		A	Treat chest lining	11.33	NA	NA	12.89	10.58	1.37	NA	NA	25.59	23.28	090
32220		A	Release of lung	19.27	NA	NA	16.10	16.63	2.28	NA	NA	37.65	38.18	090
32225		A	Partial release of lung	13.96	NA	NA	13.36	13.11	1.74	NA	NA	29.06	28.81	090
32310		A	Removal of chest lining	13.44	NA	NA	12.66	12.65	1.65	NA	NA	27.75	27.74	090
32320		A	Free/remove chest lining	20.54	NA	NA	15.49	17.57	2.50	NA	NA	38.53	40.61	090
32400		A	Needle biopsy chest lining	1.76	1.70	1.66	0.52	1.07	0.07	3.53	3.49	2.35	2.90	000
32402		A	Open biopsy chest lining	7.56	NA	NA	11.02	9.63	0.94	NA	NA	19.52	18.13	090
32405		A	Biopsy, lung or mediastinum	1.93	2.25	2.28	0.53	1.42	0.08	4.26	4.29	2.54	3.43	000
32420		A	Puncture/clear lung	2.18	NA	NA	0.64	1.14	0.10	NA	NA	2.92	3.42	000
32440		A	Removal of lung	21.02	NA	NA	16.12	18.13	2.60	NA	NA	39.74	41.75	090
32442		A	Sleeve pneumonectomy	26.24	NA	NA	16.60	18.04	3.28	NA	NA	46.12	47.56	090
32445		A	Removal of lung	25.09	NA	NA	16.55	19.38	3.09	NA	NA	44.73	47.56	090
32480		A	Partial removal of lung	18.32	NA	NA	13.97	16.29	2.25	NA	NA	34.54	36.86	090
32482		A	Bilobectomy	19.71	NA	NA	15.10	16.86	2.38	NA	NA	37.19	38.95	090
32484		A	Segmentectomy	20.69	NA	NA	15.42	17.02	2.54	NA	NA	38.65	40.25	090
32486		A	Sleeve lobectomy	23.92	NA	NA	17.84	17.90	3.04	NA	NA	44.80	44.86	090
32488		A	Completion pneumonectomy	25.71	NA	NA	18.14	18.70	3.19	NA	NA	47.04	47.60	090
32491		R	Lung volume reduction	21.25	NA	NA	16.12	16.45	2.84	NA	NA	40.21	40.54	090
32500		A	Partial removal of lung	14.30	NA	NA	13.67	14.15	1.79	NA	NA	29.76	30.24	090
32501		A	Repair bronchus add-on	4.69	NA	NA	1.87	3.28	0.53	NA	NA	7.09	8.50	ZZZ
32520		A	Remove lung & revise chest	21.68	NA	NA	16.65	19.54	2.75	NA	NA	41.08	43.97	090
32522		A	Remove lung & revise chest	24.20	NA	NA	17.31	20.54	3.03	NA	NA	44.54	47.77	090
32525		A	Remove lung & revise chest	26.50	NA	NA	17.81	21.66	3.29	NA	NA	47.60	51.45	090
32540		A	Removal of lung lesion	14.64	NA	NA	13.89	13.28	1.81	NA	NA	30.34	29.73	090
32601		A	Thoracoscopy, diagnostic	5.46	NA	NA	4.66	4.22	0.68	NA	NA	10.80	10.36	000
32602		A	Thoracoscopy, diagnostic	5.96	NA	NA	4.86	4.53	0.74	NA	NA	11.56	11.23	000
32603		A	Thoracoscopy, diagnostic	7.81	NA	NA	5.62	4.70	0.78	NA	NA	14.21	13.29	000
32604		A	Thoracoscopy, diagnostic	8.78	NA	NA	6.22	5.21	1.07	NA	NA	16.07	15.06	000
32605		A	Thoracoscopy, diagnostic	6.93	NA	NA	5.67	4.72	0.86	NA	NA	13.46	12.51	000
32606		A	Thoracoscopy, diagnostic	8.40	NA	NA	5.86	5.03	1.04	NA	NA	15.30	14.47	000
32650		A	Thoracoscopy, surgical	10.75	NA	NA	11.21	9.74	1.26	NA	NA	23.22	21.75	090
32651		A	Thoracoscopy, surgical	12.91	NA	NA	11.23	12.04	1.55	NA	NA	25.69	26.50	090
32652		A	Thoracoscopy, surgical	18.66	NA	NA	14.31	15.74	2.30	NA	NA	35.27	36.70	090
32653		A	Thoracoscopy, surgical	12.87	NA	NA	11.96	11.59	1.55	NA	NA	26.38	26.01	090
32654		A	Thoracoscopy, surgical	12.44	NA	NA	9.46	10.98	1.48	NA	NA	23.38	24.90	090
32655		A	Thoracoscopy, surgical	13.10	NA	NA	11.28	12.92	1.54	NA	NA	25.92	27.56	090
32656		A	Thoracoscopy, surgical	12.91	NA	NA	12.02	13.26	1.61	NA	NA	26.54	27.78	090
32657		A	Thoracoscopy, surgical	13.65	NA	NA	12.09	13.36	1.65	NA	NA	27.39	28.66	090
32658		A	Thoracoscopy, surgical	11.63	NA	NA	11.87	12.88	1.45	NA	NA	24.95	25.96	090
32659		A	Thoracoscopy, surgical	11.59	NA	NA	11.94	12.89	1.46	NA	NA	24.99	25.94	090
32660		A	Thoracoscopy, surgical	17.43	NA	NA	16.64	18.72	2.29	NA	NA	36.36	38.44	090
32661		A	Thoracoscopy, surgical	13.25	NA	NA	13.12	11.58	1.65	NA	NA	28.02	26.48	090
32662		A	Thoracoscopy, surgical	16.44	NA	NA	13.61	14.70	2.03	NA	NA	32.08	33.17	090
32663		A	Thoracoscopy, surgical	18.47	NA	NA	14.31	16.46	2.25	NA	NA	35.03	37.18	090
32664		A	Thoracoscopy, surgical	14.20	NA	NA	11.27	11.36	1.64	NA	NA	27.11	27.20	090
32665		A	Thoracoscopy, surgical	15.54	NA	NA	11.56	13.56	1.80	NA	NA	28.90	30.90	090
32800		A	Repair lung hernia	13.69	NA	NA	13.79	11.39	1.41	NA	NA	28.89	26.49	090
32810		A	Close chest after drainage	13.05	NA	NA	12.87	9.96	1.66	NA	NA	27.58	24.67	090
32815		A	Close bronchial fistula	23.15	NA	NA	18.44	17.48	2.94	NA	NA	44.53	43.57	090
32820		A	Reconstruct injured chest	21.48	NA	NA	15.61	18.12	2.40	NA	NA	39.49	42.00	090
32850		X	Donor pneumonectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
32851		A	Lung transplant, single	38.63	NA	NA	25.49	26.61	5.21	NA	NA	69.33	70.45	090
32852		A	Lung transplant with bypass	41.80	NA	NA	26.49	28.28	5.81	NA	NA	74.10	75.89	090
32853		A	Lung transplant, double	47.81	NA	NA	29.00	31.83	6.43	NA	NA	83.24	86.07	090
32854		A	Lung transplant with bypass	50.98	NA	NA	31.09	34.05	6.75	NA	NA	88.82	91.78	090
32900		A	Removal of rib(s)	20.27	NA	NA	15.10	12.15	2.40	NA	NA	37.77	34.82	090
32905		A	Revise & repair chest wall	20.75	NA	NA	15.06	14.45	2.55	NA	NA	38.36	37.75	090
32906		A	Revise & repair chest wall	26.77	NA	NA	18.49	17.61	3.34	NA	NA	48.60	47.72	090
32940		A	Revision of lung	19.43	NA	NA	14.72	13.53	2.37	NA	NA	36.52	35.33	090
32960		A	Therapeutic pneumothorax	1.84	1.91	1.46	0.41	0.71	0.13	3.88	3.43	2.38	2.68	000
32997		A	Total lung lavage	6.00	2.28	2.28	2.28	2.28	0.58	8.86	8.86	8.86	8.86	000
32999		C	Chest surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
33010		A	Drainage of heart sac	2.24	NA	NA	0.84	1.26	0.27	NA	NA	3.35	3.77	000
33011		A	Repeat drainage of heart sac	2.24	NA	NA	0.86	0.73	0.26	NA	NA	3.36	3.23	000
33015		A	Incision of heart sac	6.80	NA	NA	5.25	4.94	0.88	NA	NA	12.93	12.62	090
33020		A	Incision of heart sac	12.61	NA	NA	10.68	12.54	1.63	NA	NA	24.92	26.78	090
33025		A	Incision of heart sac	12.09	NA	NA	11.23	12.83	1.55	NA	NA	24.87	26.47	090
33030		A	Partial removal of heart sac	18.71	NA	NA	16.61	19.47	2.41	NA	NA	37.73	40.59	090
33031		A	Partial removal of heart sac	21.79	NA	NA	18.80	16.59	2.90	NA	NA	43.49	41.28	090
33050		A	Removal of heart sac lesion	14.36	NA	NA	13.33	11.69	1.77	NA	NA	29.46	27.82	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
33120		A	Removal of heart lesion	24.56	NA	NA	22.33	25.83	3.19	NA	NA	50.08	53.58	090
33130		A	Removal of heart lesion	21.39	NA	NA	16.52	15.59	2.42	NA	NA	40.33	39.40	090
33140		A	Heart revascularize (tmr)	20.00	NA	NA	13.15	13.15	2.56	NA	NA	35.71	35.71	090
33200		A	Insertion of heart pacemaker	12.48	NA	NA	11.99	12.66	1.45	NA	NA	25.92	26.59	090
33201		A	Insertion of heart pacemaker	10.18	NA	NA	12.63	12.39	1.34	NA	NA	24.15	23.91	090
33206		A	Insertion of heart pacemaker	6.67	NA	NA	6.17	7.07	0.84	NA	NA	13.68	14.58	090
33207		A	Insertion of heart pacemaker	8.04	NA	NA	6.50	8.05	1.03	NA	NA	15.57	17.12	090
33208		A	Insertion of heart pacemaker	8.13	NA	NA	6.64	8.17	1.07	NA	NA	15.84	17.37	090
33210		A	Insertion of heart electrode	3.30	NA	NA	1.34	2.46	0.42	NA	NA	5.06	6.18	000
33211		A	Insertion of heart electrode	3.40	NA	NA	1.44	2.51	0.44	NA	NA	5.28	6.35	000
33212		A	Insertion of pulse generator	5.52	NA	NA	4.93	5.39	0.71	NA	NA	11.16	11.62	090
33213		A	Insertion of pulse generator	6.37	NA	NA	5.25	5.55	0.82	NA	NA	12.44	12.74	090
33214		A	Upgrade of pacemaker system	7.75	NA	NA	6.29	6.08	0.99	NA	NA	15.03	14.82	090
33216		A	Revise eltrd pacing-defib	5.39	NA	NA	5.43	5.44	0.70	NA	NA	11.52	11.53	090
33217		A	Revise eltrd pacing-defib	5.75	NA	NA	5.54	5.50	0.76	NA	NA	12.05	12.01	090
33218		A	Revise eltrd pacing-defib	5.44	NA	NA	4.93	4.96	0.70	NA	NA	11.07	11.10	090
33220		A	Revise eltrd pacing-defib	5.52	NA	NA	4.98	4.98	0.71	NA	NA	11.21	11.21	090
33222		A	Revise pocket, pacemaker	4.96	NA	NA	4.31	5.12	0.62	NA	NA	9.89	10.70	090
33223		A	Revise pocket, pacing-defib	6.46	NA	NA	5.70	5.95	0.88	NA	NA	13.04	13.29	090
33233		A	Removal of pacemaker system	3.29	NA	NA	4.24	3.56	0.44	NA	NA	7.97	7.29	090
33234		A	Removal of pacemaker system	7.82	NA	NA	6.33	4.71	1.05	NA	NA	15.20	13.58	090
33235		A	Removal pacemaker electrode	9.40	NA	NA	6.96	5.19	1.26	NA	NA	17.62	15.85	090
33236		A	Remove electrode/thoracotomy	12.60	NA	NA	11.48	7.90	1.63	NA	NA	25.71	22.13	090
33237		A	Remove electrode/thoracotomy	13.71	NA	NA	12.46	11.44	1.77	NA	NA	27.94	26.92	090
33238		A	Remove electrode/thoracotomy	15.22	NA	NA	11.68	11.43	1.41	NA	NA	28.31	28.06	090
33240		A	Insert pulse generator	7.60	NA	NA	6.36	6.10	1.03	NA	NA	14.99	14.73	090
33241		A	Remove pulse generator	3.24	NA	NA	3.95	3.15	0.44	NA	NA	7.63	6.83	090
33242		D	Repair pulse generator/leads	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
33243		A	Remove eltrd/thoracotomy	22.64	NA	NA	13.87	11.83	3.03	NA	NA	39.54	37.50	090
33244		A	Remove eltrd, transven	13.76	NA	NA	9.22	9.51	1.83	NA	NA	24.81	25.10	090
33245		A	Insert epic eltrd pace-defib	14.30	NA	NA	14.30	15.69	1.83	NA	NA	30.43	31.82	090
33246		A	Insert epic eltrd/generator	20.71	NA	NA	16.35	19.46	2.74	NA	NA	39.80	42.91	090
33247		D	Insert/replace leads	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
33249		A	Eltrd/insert pace-defib	14.23	NA	NA	9.87	12.87	1.79	NA	NA	25.89	28.89	090
33250		A	Ablate heart dysrhythm focus	21.85	NA	NA	14.51	13.53	2.97	NA	NA	39.33	38.35	090
33251		A	Ablate heart dysrhythm focus	24.88	NA	NA	20.04	18.93	3.26	NA	NA	48.18	47.07	090
33253		A	Reconstruct atria	31.06	NA	NA	22.48	23.08	4.12	NA	NA	57.66	58.26	090
33261		A	Ablate heart dysrhythm focus	24.88	NA	NA	19.80	17.48	2.94	NA	NA	47.62	45.30	090
33282		A	Implant pat-active ht record	4.17	NA	NA	5.99	5.99	0.53	NA	NA	10.69	10.69	090
33284		A	Remove pat-active ht record	2.50	NA	NA	5.46	5.46	0.33	NA	NA	8.29	8.29	090
33300		A	Repair of heart wound	17.92	NA	NA	15.54	15.56	2.33	NA	NA	35.79	35.81	090
33305		A	Repair of heart wound	21.44	NA	NA	18.48	18.68	2.81	NA	NA	42.73	42.93	090
33310		A	Exploratory heart surgery	18.51	NA	NA	17.47	14.86	2.48	NA	NA	38.46	35.85	090
33315		A	Exploratory heart surgery	22.37	NA	NA	18.77	17.24	3.00	NA	NA	44.14	42.61	090
33320		A	Repair major blood vessel(s)	16.79	NA	NA	14.26	14.81	2.14	NA	NA	33.19	33.74	090
33321		A	Repair major vessel	20.20	NA	NA	17.18	20.39	2.36	NA	NA	39.74	42.95	090
33322		A	Repair major blood vessel(s)	20.62	NA	NA	17.70	20.65	2.70	NA	NA	41.02	43.97	090
33330		A	Insert major vessel graft	21.43	NA	NA	16.24	15.00	2.79	NA	NA	40.46	39.22	090
33332		A	Insert major vessel graft	23.96	NA	NA	16.19	16.27	3.29	NA	NA	43.44	43.52	090
33335		A	Insert major vessel graft	30.01	NA	NA	21.84	19.10	3.99	NA	NA	55.84	53.10	090
33400		A	Repair of aortic valve	25.34	NA	NA	23.32	25.88	3.34	NA	NA	52.00	54.56	090
33401		A	Valvuloplasty, open	23.91	NA	NA	18.63	23.54	3.19	NA	NA	45.73	50.64	090
33403		A	Valvuloplasty, w/cp bypass	24.89	NA	NA	22.49	25.47	3.47	NA	NA	50.85	53.83	090
33404		A	Prepare heart-aorta conduit	28.54	NA	NA	24.27	29.09	3.68	NA	NA	56.49	61.31	090
33405		A	Replacement of aortic valve	30.61	NA	NA	22.51	27.80	3.97	NA	NA	57.09	62.38	090
33406		A	Replacement of aortic valve	32.30	NA	NA	23.12	30.84	4.18	NA	NA	59.60	67.32	090
33410		A	Replacement of aortic valve	32.46	NA	NA	23.27	23.27	4.21	NA	NA	59.94	59.94	090
33411		A	Replacement of aortic valve	32.47	NA	NA	23.37	31.07	4.21	NA	NA	60.05	67.75	090
33412		A	Replacement of aortic valve	34.79	NA	NA	26.56	34.05	4.18	NA	NA	65.53	73.02	090
33413		A	Replacement of aortic valve	35.24	NA	NA	27.44	34.75	4.59	NA	NA	67.27	74.58	090
33414		A	Repair of aortic valve	30.35	NA	NA	27.32	31.78	3.88	NA	NA	61.55	66.01	090
33415		A	Revision, subvalvular tissue	27.15	NA	NA	24.07	28.25	2.84	NA	NA	54.06	58.24	090
33416		A	Revise ventricle muscle	30.35	NA	NA	22.76	26.65	4.00	NA	NA	57.11	61.00	090
33417		A	Repair of aortic valve	28.53	NA	NA	26.71	30.39	3.72	NA	NA	58.96	62.64	090
33420		A	Revision of mitral valve	22.70	NA	NA	11.55	16.53	1.58	NA	NA	35.83	40.81	090
33422		A	Revision of mitral valve	25.94	NA	NA	21.00	25.98	3.34	NA	NA	50.28	55.26	090
33425		A	Repair of mitral valve	27.00	NA	NA	20.88	26.56	3.47	NA	NA	51.35	57.03	090
33426		A	Repair of mitral valve	31.03	NA	NA	22.76	28.72	4.03	NA	NA	57.82	63.78	090
33427		A	Repair of mitral valve	33.72	NA	NA	23.61	30.64	4.42	NA	NA	61.75	68.78	090
33430		A	Replacement of mitral valve	31.43	NA	NA	22.84	30.18	4.09	NA	NA	58.36	65.70	090
33460		A	Revision of tricuspid valve	23.60	NA	NA	19.32	23.75	3.00	NA	NA	45.92	50.35	090
33463		A	Valvuloplasty, tricuspid	25.62	NA	NA	20.41	25.50	3.34	NA	NA	49.37	54.46	090
33464		A	Valvuloplasty, tricuspid	27.33	NA	NA	21.36	26.99	3.57	NA	NA	52.26	57.89	090
33465		A	Replace tricuspid valve	28.79	NA	NA	21.88	28.13	3.65	NA	NA	54.32	60.57	090
33468		A	Revision of tricuspid valve	30.12	NA	NA	30.14	33.05	3.93	NA	NA	64.19	67.10	090
33470		A	Revision of pulmonary valve	20.81	NA	NA	11.39	16.45	2.50	NA	NA	34.70	39.76	090
33471		A	Valvotomy, pulmonary valve	22.25	NA	NA	13.10	19.84	1.75	NA	NA	37.10	43.84	090
33472		A	Revision of pulmonary valve	22.25	NA	NA	14.82	20.70	2.53	NA	NA	39.60	45.48	090
33474		A	Revision of pulmonary valve	23.04	NA	NA	19.95	23.73	2.62	NA	NA	45.61	49.39	090
33475		A	Replacement, pulmonary valve	28.41	NA	NA	23.01	28.46	3.73	NA	NA	55.15	60.60	090
33476		A	Revision of heart chamber	25.77	NA	NA	16.31	23.43	2.38	NA	NA	44.46	51.58	090

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
33478	....	A	Revision of heart chamber	26.74	NA	NA	22.86	27.39	3.68	NA	NA	53.28	57.81	090
33496	....	A	Repair, prosth valve clot	27.25	NA	NA	23.63	28.09	3.63	NA	NA	54.51	58.97	090
33500	....	A	Repair heart vessel fistula	25.55	NA	NA	19.92	25.22	3.10	NA	NA	48.57	53.87	090
33501	....	A	Repair heart vessel fistula	17.78	NA	NA	15.19	15.27	2.09	NA	NA	35.06	35.14	090
33502	....	A	Coronary artery correction	21.04	NA	NA	24.95	20.15	2.86	NA	NA	48.85	44.05	090
33503	....	A	Coronary artery graft	21.78	NA	NA	15.16	20.58	2.70	NA	NA	39.64	45.06	090
33504	....	A	Coronary artery graft	24.66	NA	NA	25.77	27.61	2.63	NA	NA	53.06	54.90	090
33505	....	A	Repair artery w/tunnel	26.84	NA	NA	18.09	25.07	3.16	NA	NA	48.09	55.07	090
33506	....	A	Repair artery, translocation	26.71	NA	NA	20.10	25.99	2.94	NA	NA	49.75	55.64	090
33510	....	A	CABG, vein, single	25.12	NA	NA	20.20	25.10	3.27	NA	NA	48.59	53.49	090
33511	....	A	CABG, vein, two	27.40	NA	NA	21.09	26.90	3.56	NA	NA	52.05	57.86	090
33512	....	A	CABG, vein, three	29.67	NA	NA	21.86	28.64	3.79	NA	NA	55.32	62.10	090
33513	....	A	CABG, vein, four	31.95	NA	NA	23.05	30.60	4.11	NA	NA	59.11	66.66	090
33514	....	A	CABG, vein, five	35.00	NA	NA	24.57	33.18	4.49	NA	NA	64.06	72.67	090
33516	....	A	Cabg, vein, six or more	37.40	NA	NA	25.70	35.18	4.78	NA	NA	67.88	77.36	090
33517	....	A	CABG, artery-vein, single	2.57	NA	NA	1.08	2.08	0.33	NA	NA	3.98	4.98	ZZZ
33518	....	A	CABG, artery-vein, two	4.85	NA	NA	2.04	3.92	0.63	NA	NA	7.52	9.40	ZZZ
33519	....	A	CABG, artery-vein, three	7.12	NA	NA	2.99	5.75	0.92	NA	NA	11.03	13.79	ZZZ
33521	....	A	CABG, artery-vein, four	9.40	NA	NA	3.95	7.59	1.21	NA	NA	14.56	18.20	ZZZ
33522	....	A	CABG, artery-vein, five	11.67	NA	NA	4.92	9.43	1.49	NA	NA	18.08	22.59	ZZZ
33523	....	A	Cabg, art-vein, six or more	13.95	NA	NA	5.91	11.29	1.78	NA	NA	21.64	27.02	ZZZ
33530	....	A	Coronary artery, bypass/reop	5.86	NA	NA	2.45	4.73	0.76	NA	NA	9.07	11.35	ZZZ
33533	....	A	CABG, arterial, single	25.83	NA	NA	20.61	25.72	3.33	NA	NA	49.77	54.88	090
33534	....	A	CABG, arterial, two	28.82	NA	NA	21.24	27.82	3.68	NA	NA	53.74	60.32	090
33535	....	A	CABG, arterial, three	31.81	NA	NA	22.27	30.12	3.96	NA	NA	58.04	65.89	090
33536	....	A	Cabg, arterial, four or more	34.79	NA	NA	22.99	32.26	4.39	NA	NA	62.17	71.44	090
33542	....	A	Removal of heart lesion	28.85	NA	NA	23.85	28.60	3.76	NA	NA	56.46	61.21	090
33545	....	A	Repair of heart damage	36.78	NA	NA	26.66	32.28	4.80	NA	NA	68.24	73.86	090
33572	....	A	Open coronary endarterectomy	4.45	NA	NA	1.86	2.69	0.58	NA	NA	6.89	7.72	ZZZ
33600	....	A	Closure of valve	29.51	NA	NA	20.75	27.99	2.58	NA	NA	52.84	60.08	090
33602	....	A	Closure of valve	28.54	NA	NA	20.34	26.71	2.84	NA	NA	51.72	58.09	090
33606	....	A	Anastomosis/artery-aorta	30.74	NA	NA	22.57	29.63	3.97	NA	NA	57.28	64.34	090
33608	....	A	Repair anomaly w/conduit	31.09	NA	NA	25.80	31.46	4.27	NA	NA	61.16	66.82	090
33610	....	A	Repair by enlargement	30.61	NA	NA	25.46	31.00	3.64	NA	NA	59.71	65.25	090
33611	....	A	Repair double ventricle	32.30	NA	NA	23.66	31.11	4.44	NA	NA	60.40	67.85	090
33612	....	A	Repair double ventricle	33.26	NA	NA	28.03	33.87	4.51	NA	NA	65.80	71.64	090
33615	....	A	Repair, simple fontan	32.06	NA	NA	28.54	33.41	3.88	NA	NA	64.48	69.35	090
33617	....	A	Repair, modified fontan	34.03	NA	NA	30.55	35.59	4.75	NA	NA	69.33	74.37	090
33619	....	A	Repair single ventricle	37.57	NA	NA	37.15	41.00	5.03	NA	NA	79.75	83.60	090
33641	....	A	Repair heart septum defect	21.39	NA	NA	16.18	20.86	2.78	NA	NA	40.35	45.03	090
33645	....	A	Revision of heart veins	24.82	NA	NA	20.99	25.31	3.32	NA	NA	49.13	53.45	090
33647	....	A	Repair heart septum defects	28.73	NA	NA	24.78	29.54	3.81	NA	NA	57.32	62.08	090
33660	....	A	Repair of heart defects	25.54	NA	NA	23.25	26.87	3.13	NA	NA	51.92	55.54	090
33665	....	A	Repair of heart defects	28.60	NA	NA	23.59	28.77	4.00	NA	NA	56.19	61.37	090
33670	....	A	Repair of heart chambers	32.73	NA	NA	16.95	28.01	3.35	NA	NA	53.03	64.09	090
33681	....	A	Repair heart septum defect	27.67	NA	NA	25.17	29.11	3.60	NA	NA	56.44	60.38	090
33684	....	A	Repair heart septum defect	29.65	NA	NA	22.59	29.00	3.63	NA	NA	55.87	62.28	090
33688	....	A	Repair heart septum defect	30.62	NA	NA	13.00	24.78	3.74	NA	NA	47.36	59.14	090
33690	....	A	Reinforce pulmonary artery	19.55	NA	NA	18.43	20.89	2.38	NA	NA	40.36	42.82	090
33692	....	A	Repair of heart defects	30.75	NA	NA	21.37	29.04	4.22	NA	NA	56.34	64.01	090
33694	....	A	Repair of heart defects	31.73	NA	NA	21.76	29.82	3.36	NA	NA	56.85	64.91	090
33697	....	A	Repair of heart defects	33.71	NA	NA	22.55	31.40	4.52	NA	NA	60.78	69.63	090
33702	....	A	Repair of heart defects	26.54	NA	NA	23.99	27.84	3.55	NA	NA	54.08	57.93	090
33710	....	A	Repair of heart defects	29.71	NA	NA	20.95	28.21	4.15	NA	NA	54.81	62.07	090
33720	....	A	Repair of heart defect	26.56	NA	NA	22.02	26.87	3.56	NA	NA	52.14	56.99	090
33722	....	A	Repair of heart defect	28.41	NA	NA	25.06	29.07	3.97	NA	NA	57.44	61.45	090
33730	....	A	Repair heart-vein defect(s)	31.67	NA	NA	16.96	27.39	4.24	NA	NA	52.87	63.30	090
33732	....	A	Repair heart-vein defect	28.16	NA	NA	21.40	27.51	3.93	NA	NA	53.49	59.60	090
33735	....	A	Revision of heart chamber	21.39	NA	NA	17.48	22.68	2.21	NA	NA	41.08	46.28	090
33736	....	A	Revision of heart chamber	23.52	NA	NA	23.03	25.46	3.03	NA	NA	49.58	52.01	090
33737	....	A	Revision of heart chamber	21.76	NA	NA	18.63	22.31	0.86	NA	NA	41.25	44.93	090
33750	....	A	Major vessel shunt	21.41	NA	NA	13.10	18.54	2.72	NA	NA	37.23	42.67	090
33755	....	A	Major vessel shunt	21.79	NA	NA	12.92	18.45	1.37	NA	NA	36.08	41.61	090
33762	....	A	Major vessel shunt	21.79	NA	NA	12.92	18.45	2.95	NA	NA	37.66	43.19	090
33764	....	A	Major vessel shunt & graft	21.79	NA	NA	14.44	19.21	2.07	NA	NA	38.30	43.07	090
33766	....	A	Major vessel shunt	22.76	NA	NA	20.65	22.32	3.08	NA	NA	46.49	48.16	090
33767	....	A	Major vessel shunt	24.50	NA	NA	14.91	21.40	3.49	NA	NA	42.90	49.39	090
33770	....	A	Repair great vessels defect	33.29	NA	NA	22.43	31.09	2.76	NA	NA	58.48	67.14	090
33771	....	A	Repair great vessels defect	34.65	NA	NA	16.50	28.94	2.87	NA	NA	54.02	66.46	090
33774	....	A	Repair great vessels defect	30.98	NA	NA	23.62	28.78	1.18	NA	NA	55.78	60.94	090
33775	....	A	Repair great vessels defect	32.20	NA	NA	16.95	25.45	2.67	NA	NA	51.82	60.32	090
33776	....	A	Repair great vessels defect	34.04	NA	NA	17.66	27.78	2.82	NA	NA	54.52	64.64	090
33777	....	A	Repair great vessels defect	33.46	NA	NA	17.44	25.69	2.77	NA	NA	53.67	61.92	090
33778	....	A	Repair great vessels defect	35.82	NA	NA	25.08	33.92	2.97	NA	NA	63.87	72.71	090
33779	....	A	Repair great vessels defect	36.21	NA	NA	16.77	30.00	4.72	NA	NA	57.70	70.93	090
33780	....	A	Repair great vessels defect	36.94	NA	NA	18.78	31.44	5.08	NA	NA	60.80	73.46	090
33781	....	A	Repair great vessels defect	36.45	NA	NA	16.47	30.00	3.02	NA	NA	55.94	69.47	090
33786	....	A	Repair arterial trunk	34.84	NA	NA	17.97	29.78	2.88	NA	NA	55.69	67.50	090
33788	....	A	Revision of pulmonary artery	26.62	NA	NA	14.54	23.16	2.21	NA	NA	43.37	51.99	090
33800	....	A	Aortic suspension	16.24	NA	NA	18.55	16.95	1.95	NA	NA	36.74	35.14	090
33802	....	A	Repair vessel defect	17.66	NA	NA	18.40	19.75	2.40	NA	NA	38.46	39.81	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
33803		A	Repair vessel defect	19.60	NA	NA	12.08	17.74	2.35	NA	NA	34.03	39.69	090
33813		A	Repair septal defect	20.65	NA	NA	16.82	20.40	2.92	NA	NA	40.39	43.97	090
33814		A	Repair septal defect	25.77	NA	NA	22.73	26.75	3.47	NA	NA	51.97	55.99	090
33820		A	Revise major vessel	16.29	NA	NA	17.44	18.45	2.05	NA	NA	35.78	36.79	090
33822		A	Revise major vessel	17.32	NA	NA	11.19	15.93	2.19	NA	NA	30.70	35.44	090
33824		A	Revise major vessel	19.52	NA	NA	18.40	20.85	2.45	NA	NA	40.37	42.82	090
33840		A	Remove aorta constriction	20.63	NA	NA	20.55	22.59	2.89	NA	NA	44.07	46.11	090
33845		A	Remove aorta constriction	22.12	NA	NA	19.92	23.16	3.10	NA	NA	45.14	48.38	090
33851		A	Remove aorta constriction	21.27	NA	NA	23.00	24.20	2.92	NA	NA	47.19	48.39	090
33852		A	Repair septal defect	23.71	NA	NA	23.20	25.75	3.07	NA	NA	49.98	52.53	090
33853		A	Repair septal defect	31.72	NA	NA	29.49	33.68	4.07	NA	NA	65.28	69.47	090
33860		A	Ascending aortic graft	33.96	NA	NA	23.85	30.76	4.46	NA	NA	62.27	69.18	090
33861		A	Ascending aortic graft	34.52	NA	NA	23.62	30.65	4.58	NA	NA	62.72	69.75	090
33863		A	Ascending aortic graft	36.47	NA	NA	24.53	31.10	4.77	NA	NA	65.77	72.34	090
33870		A	Transverse aortic arch graft	40.31	NA	NA	25.91	37.00	5.38	NA	NA	71.60	82.69	090
33875		A	Thoracic aortic graft	33.06	NA	NA	22.17	28.04	4.27	NA	NA	59.50	65.37	090
33877		A	Thoracoabdominal graft	42.60	NA	NA	27.20	37.54	5.48	NA	NA	75.28	85.62	090
33910		A	Remove lung artery emboli	24.59	NA	NA	19.00	17.45	3.12	NA	NA	46.71	45.16	090
33915		A	Remove lung artery emboli	21.02	NA	NA	12.58	12.81	2.26	NA	NA	35.86	36.09	090
33916		A	Surgery of great vessel	25.83	NA	NA	18.00	18.54	3.27	NA	NA	47.10	47.64	090
33917		A	Repair pulmonary artery	24.50	NA	NA	21.74	25.50	3.30	NA	NA	49.54	53.30	090
33918		A	Repair pulmonary atresia	26.45	NA	NA	14.73	23.16	3.77	NA	NA	44.95	53.38	090
33919		A	Repair pulmonary atresia	32.67	NA	NA	17.13	28.07	4.56	NA	NA	54.36	65.30	090
33920		A	Repair pulmonary atresia	31.95	NA	NA	24.52	31.34	4.47	NA	NA	60.94	67.76	090
33922		A	Transect pulmonary artery	23.52	NA	NA	21.31	24.70	2.40	NA	NA	47.23	50.62	090
33924		A	Remove pulmonary shunt	5.50	NA	NA	2.24	3.29	0.77	NA	NA	8.51	9.56	ZZZ
33930		X	Removal of donor heart/lung	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33935		R	Transplantation, heart/lung	60.96	NA	NA	35.30	54.04	8.06	NA	NA	104.32	123.06	090
33940		X	Removal of donor heart	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33945		R	Transplantation of heart	42.10	NA	NA	27.65	38.96	5.60	NA	NA	75.35	86.66	090
33960		A	External circulation assist	19.36	NA	NA	5.96	6.79	1.59	NA	NA	26.91	27.74	XXX
33961		A	External circulation assist	10.93	NA	NA	4.18	5.90	1.35	NA	NA	16.46	18.18	ZZZ
33968		A	Remove aortic assist device	0.64	0.25	0.25	0.25	0.25	0.27	1.16	1.16	1.16	1.16	090
33970		A	Aortic circulation assist	6.75	NA	NA	2.81	5.44	0.91	NA	NA	10.47	13.10	000
33971		A	Aortic circulation assist	9.69	NA	NA	10.07	7.84	1.29	NA	NA	21.05	18.82	090
33973		A	Insert balloon device	9.76	NA	NA	4.01	6.10	1.32	NA	NA	15.09	17.18	000
33974		A	Remove intra-aortic balloon	14.41	NA	NA	13.03	9.53	1.94	NA	NA	29.38	25.88	090
33975		A	Implant ventricular device	39.00	NA	NA	22.02	18.71	2.86	NA	NA	63.88	60.57	XXX
33976		A	Implant ventricular device	43.00	NA	NA	23.99	22.49	3.91	NA	NA	70.90	69.40	XXX
33977		A	Remove ventricular device	19.29	NA	NA	13.77	13.62	2.56	NA	NA	35.62	35.47	090
33978		A	Remove ventricular device	21.73	NA	NA	15.09	15.25	2.89	NA	NA	39.71	39.87	090
33999		C	Cardiac surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
34001		A	Removal of artery clot	12.91	NA	NA	6.63	8.52	1.56	NA	NA	21.10	22.99	090
34051		A	Removal of artery clot	15.21	NA	NA	7.88	8.72	1.85	NA	NA	24.94	25.78	090
34101		A	Removal of artery clot	9.97	NA	NA	5.10	7.08	1.13	NA	NA	16.20	18.18	090
34111		A	Removal of arm artery clot	8.07	NA	NA	4.35	6.30	0.84	NA	NA	13.26	15.21	090
34151		A	Removal of artery clot	16.86	NA	NA	8.09	10.54	1.87	NA	NA	26.82	29.27	090
34201		A	Removal of artery clot	9.13	NA	NA	5.25	7.46	1.06	NA	NA	15.44	17.65	090
34203		A	Removal of leg artery clot	12.21	NA	NA	6.47	7.92	1.43	NA	NA	20.11	21.56	090
34401		A	Removal of vein clot	12.86	NA	NA	6.32	7.54	1.25	NA	NA	20.43	21.65	090
34421		A	Removal of vein clot	9.93	NA	NA	5.53	6.81	0.97	NA	NA	16.43	17.71	090
34451		A	Removal of vein clot	14.44	NA	NA	7.10	9.35	1.60	NA	NA	23.14	25.39	090
34471		A	Removal of vein clot	10.18	NA	NA	4.97	4.39	1.00	NA	NA	16.15	15.57	090
34490		A	Removal of vein clot	7.60	NA	NA	5.38	6.64	0.76	NA	NA	13.74	15.00	090
34501		A	Repair valve, femoral vein	10.93	NA	NA	8.66	8.32	1.43	NA	NA	21.02	20.68	090
34502		A	Reconstruct vena cava	26.95	NA	NA	12.81	16.53	2.97	NA	NA	42.73	46.45	090
34510		A	Transposition of vein valve	13.25	NA	NA	10.92	10.29	1.64	NA	NA	25.81	25.18	090
34520		A	Cross-over vein graft	13.74	NA	NA	8.07	9.10	1.64	NA	NA	23.45	24.48	090
34530		A	Leg vein fusion	17.61	NA	NA	9.56	11.48	2.00	NA	NA	29.17	31.09	090
35001		A	Repair defect of artery	19.64	NA	NA	9.54	13.40	2.51	NA	NA	31.69	35.55	090
35002		A	Repair artery rupture, neck	21.00	NA	NA	9.75	11.74	2.43	NA	NA	33.18	35.17	090
35005		A	Repair defect of artery	18.12	NA	NA	7.42	9.29	1.40	NA	NA	26.94	28.81	090
35011		A	Repair defect of artery	11.65	NA	NA	5.84	9.88	1.36	NA	NA	18.85	22.89	090
35013		A	Repair artery rupture, arm	17.40	NA	NA	7.80	11.88	2.00	NA	NA	27.20	31.28	090
35021		A	Repair defect of artery	19.65	NA	NA	10.50	15.09	2.42	NA	NA	32.57	37.16	090
35022		A	Repair artery rupture, chest	23.18	NA	NA	9.92	12.98	2.15	NA	NA	35.25	38.31	090
35045		A	Repair defect of arm artery	11.26	NA	NA	6.77	10.09	1.26	NA	NA	19.29	22.61	090
35081		A	Repair defect of artery	28.01	NA	NA	12.98	18.13	3.30	NA	NA	44.29	49.44	090
35082		A	Repair artery rupture, aorta	36.35	NA	NA	15.12	19.99	4.14	NA	NA	55.61	60.48	090
35091		A	Repair defect of artery	35.40	NA	NA	15.78	20.19	4.28	NA	NA	55.46	59.87	090
35092		A	Repair artery rupture, aorta	38.39	NA	NA	16.31	22.41	4.48	NA	NA	59.18	65.28	090
35102		A	Repair defect of artery	30.76	NA	NA	13.76	18.90	3.65	NA	NA	48.17	53.31	090
35103		A	Repair artery rupture, groin	33.57	NA	NA	14.39	21.39	3.84	NA	NA	51.80	58.80	090
35111		A	Repair defect of artery	16.43	NA	NA	7.93	13.52	1.82	NA	NA	26.18	31.77	090
35112		A	Repair artery rupture, spleen	18.69	NA	NA	8.41	9.88	2.14	NA	NA	29.24	30.71	090
35121		A	Repair defect of artery	25.99	NA	NA	11.98	16.37	3.10	NA	NA	41.07	45.46	090
35122		A	Repair artery rupture, belly	33.45	NA	NA	14.53	16.99	3.69	NA	NA	51.67	54.13	090
35131		A	Repair defect of artery	18.55	NA	NA	9.20	13.22	2.20	NA	NA	29.95	33.97	090
35132		A	Repair artery rupture, groin	21.95	NA	NA	10.05	15.16	2.47	NA	NA	34.47	39.58	090
35141		A	Repair defect of artery	14.46	NA	NA	7.61	11.78	1.73	NA	NA	23.80	27.97	090
35142		A	Repair artery rupture, thigh	15.86	NA	NA	7.83	12.65	1.92	NA	NA	25.61	30.43	090

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
35151		A	Repair defect of artery	17.00	NA	NA	8.50	12.59	2.01	NA	NA	27.51	31.60	090
35152		A	Repair artery rupture, knee	16.70	NA	NA	8.40	9.23	2.01	NA	NA	27.11	27.94	090
35161		A	Repair defect of artery	18.76	NA	NA	9.76	13.50	2.19	NA	NA	30.71	34.45	090
35162		A	Repair artery rupture	19.78	NA	NA	9.89	15.08	2.26	NA	NA	31.93	37.12	090
35180		A	Repair blood vessel lesion	13.62	NA	NA	7.04	7.52	1.53	NA	NA	22.19	22.67	090
35182		A	Repair blood vessel lesion	17.74	NA	NA	9.71	10.64	2.19	NA	NA	29.64	30.57	090
35184		A	Repair blood vessel lesion	12.25	NA	NA	6.40	8.48	1.45	NA	NA	20.10	22.18	090
35188		A	Repair blood vessel lesion	14.28	NA	NA	6.86	7.83	1.70	NA	NA	22.84	23.81	090
35189		A	Repair blood vessel lesion	18.43	NA	NA	9.24	10.77	2.17	NA	NA	29.84	31.37	090
35190		A	Repair blood vessel lesion	12.75	NA	NA	6.57	8.90	1.48	NA	NA	20.80	23.13	090
35201		A	Repair blood vessel lesion	9.99	NA	NA	5.36	8.15	1.23	NA	NA	16.58	19.37	090
35206		A	Repair blood vessel lesion	9.25	NA	NA	6.29	8.66	1.06	NA	NA	16.60	18.97	090
35207		A	Repair blood vessel lesion	10.15	NA	NA	8.37	10.05	1.06	NA	NA	19.58	21.26	090
35211		A	Repair blood vessel lesion	22.12	NA	NA	18.73	16.63	2.91	NA	NA	43.76	41.66	090
35216		A	Repair blood vessel lesion	18.75	NA	NA	14.34	12.97	2.24	NA	NA	35.33	33.96	090
35221		A	Repair blood vessel lesion	16.42	NA	NA	7.99	10.02	1.81	NA	NA	26.22	28.25	090
35226		A	Repair blood vessel lesion	9.06	NA	NA	6.97	8.90	1.15	NA	NA	17.18	19.11	090
35231		A	Repair blood vessel lesion	12.00	NA	NA	6.76	10.55	1.38	NA	NA	20.14	23.93	090
35236		A	Repair blood vessel lesion	10.54	NA	NA	6.94	9.76	1.23	NA	NA	18.71	21.53	090
35241		A	Repair blood vessel lesion	23.12	NA	NA	21.00	17.82	2.84	NA	NA	46.96	43.78	090
35246		A	Repair blood vessel lesion	19.84	NA	NA	14.39	16.40	2.42	NA	NA	36.65	38.66	090
35251		A	Repair blood vessel lesion	17.49	NA	NA	8.12	9.27	1.87	NA	NA	27.48	28.63	090
35256		A	Repair blood vessel lesion	11.38	NA	NA	7.25	10.36	1.37	NA	NA	20.00	23.11	090
35261		A	Repair blood vessel lesion	11.63	NA	NA	5.93	9.91	1.38	NA	NA	18.94	22.92	090
35266		A	Repair blood vessel lesion	10.30	NA	NA	6.47	9.39	1.24	NA	NA	18.01	20.93	090
35271		A	Repair blood vessel lesion	22.12	NA	NA	18.70	16.15	2.95	NA	NA	43.77	41.22	090
35276		A	Repair blood vessel lesion	18.75	NA	NA	15.75	13.77	2.50	NA	NA	37.00	35.02	090
35281		A	Repair blood vessel lesion	16.48	NA	NA	8.06	13.41	1.84	NA	NA	26.38	31.73	090
35286		A	Repair blood vessel lesion	11.87	NA	NA	7.84	10.28	1.39	NA	NA	21.10	23.54	090
35301		A	Rechanneling of artery	18.70	NA	NA	9.86	12.78	2.29	NA	NA	30.85	33.77	090
35311		A	Rechanneling of artery	23.85	NA	NA	12.98	18.46	3.12	NA	NA	39.95	45.43	090
35321		A	Rechanneling of artery	11.97	NA	NA	6.06	10.06	1.40	NA	NA	19.43	23.43	090
35331		A	Rechanneling of artery	23.52	NA	NA	11.10	12.79	2.88	NA	NA	37.50	39.19	090
35341		A	Rechanneling of artery	25.11	NA	NA	11.52	15.19	3.07	NA	NA	39.70	43.37	090
35351		A	Rechanneling of artery	20.11	NA	NA	9.57	12.90	2.33	NA	NA	32.01	35.34	090
35355		A	Rechanneling of artery	16.09	NA	NA	8.08	12.41	1.86	NA	NA	26.03	30.36	090
35361		A	Rechanneling of artery	23.59	NA	NA	10.84	15.93	2.74	NA	NA	37.17	42.26	090
35363		A	Rechanneling of artery	24.66	NA	NA	11.54	18.13	2.81	NA	NA	39.01	45.60	090
35371		A	Rechanneling of artery	11.64	NA	NA	6.12	9.85	1.37	NA	NA	19.13	22.86	090
35372		A	Rechanneling of artery	13.56	NA	NA	6.85	9.50	1.59	NA	NA	22.00	24.65	090
35381		A	Rechanneling of artery	15.81	NA	NA	7.94	11.39	1.85	NA	NA	25.60	29.05	090
35390		A	Reoperation, carotid add-on	3.19	NA	NA	1.24	1.53	0.40	NA	NA	4.83	5.12	ZZZ
35400		A	Angioscopy	3.00	NA	NA	1.15	1.81	0.27	NA	NA	4.42	5.08	ZZZ
35450		A	Repair arterial blockage	10.07	NA	NA	4.45	8.24	1.17	NA	NA	15.69	19.48	000
35452		A	Repair arterial blockage	6.91	NA	NA	3.34	4.03	0.83	NA	NA	11.08	11.77	000
35454		A	Repair arterial blockage	6.04	NA	NA	2.93	5.07	0.71	NA	NA	9.68	11.82	000
35456		A	Repair arterial blockage	7.35	NA	NA	3.48	6.13	0.87	NA	NA	11.70	14.35	000
35458		A	Repair arterial blockage	9.49	NA	NA	4.30	7.65	1.13	NA	NA	14.92	18.27	000
35459		A	Repair arterial blockage	8.63	NA	NA	3.90	7.10	0.99	NA	NA	13.52	16.72	000
35460		A	Repair venous blockage	6.04	NA	NA	2.74	3.09	0.64	NA	NA	9.42	9.77	000
35470		A	Repair arterial blockage	8.63	NA	NA	3.59	6.95	0.68	NA	NA	12.90	16.26	000
35471		A	Repair arterial blockage	10.07	NA	NA	4.15	8.09	0.82	NA	NA	15.04	18.98	000
35472		A	Repair arterial blockage	6.91	NA	NA	2.97	3.45	0.55	NA	NA	10.43	10.91	000
35473		A	Repair arterial blockage	6.04	NA	NA	2.60	4.91	0.41	NA	NA	9.05	11.36	000
35474		A	Repair arterial blockage	7.36	NA	NA	3.07	5.93	0.53	NA	NA	10.96	13.82	000
35475		R	Repair arterial blockage	9.49	NA	NA	3.48	7.24	0.51	NA	NA	13.48	17.24	000
35476		A	Repair venous blockage	6.04	NA	NA	2.34	2.89	0.26	NA	NA	8.64	9.19	000
35480		A	Atherectomy, open	11.08	NA	NA	4.76	9.00	1.16	NA	NA	17.00	21.24	000
35481		A	Atherectomy, open	7.61	NA	NA	3.85	4.29	0.95	NA	NA	12.41	12.85	000
35482		A	Atherectomy, open	6.65	NA	NA	3.31	5.63	0.83	NA	NA	10.79	13.11	000
35483		A	Atherectomy, open	8.10	NA	NA	3.80	6.74	0.98	NA	NA	12.88	15.82	000
35484		A	Atherectomy, open	10.44	NA	NA	4.69	7.84	1.11	NA	NA	16.24	19.39	000
35485		A	Atherectomy, open	9.49	NA	NA	4.26	4.59	1.15	NA	NA	14.90	15.23	000
35490		A	Atherectomy, percutaneous	11.08	NA	NA	4.42	8.83	1.03	NA	NA	16.53	20.94	000
35491		A	Atherectomy, percutaneous	7.61	NA	NA	3.09	3.91	0.77	NA	NA	11.47	12.29	000
35492		A	Atherectomy, percutaneous	6.65	NA	NA	2.97	5.46	0.71	NA	NA	10.33	12.82	000
35493		A	Atherectomy, percutaneous	8.10	NA	NA	3.98	6.83	0.91	NA	NA	12.99	15.84	000
35494		A	Atherectomy, percutaneous	10.44	NA	NA	3.77	7.38	0.50	NA	NA	14.71	18.32	000
35495		A	Atherectomy, percutaneous	9.49	NA	NA	4.64	4.78	1.09	NA	NA	15.22	15.36	000
35500		C	Harvest vein for bypass	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
35501		A	Artery bypass graft	19.19	NA	NA	7.16	14.08	2.39	NA	NA	28.74	35.66	090
35506		A	Artery bypass graft	19.67	NA	NA	9.61	15.21	2.41	NA	NA	31.69	37.29	090
35507		A	Artery bypass graft	19.67	NA	NA	9.34	14.40	2.43	NA	NA	31.44	36.50	090
35508		A	Artery bypass graft	18.65	NA	NA	9.30	14.48	2.42	NA	NA	30.37	35.55	090
35509		A	Artery bypass graft	18.07	NA	NA	8.42	14.47	2.21	NA	NA	28.70	34.75	090
35511		A	Artery bypass graft	16.83	NA	NA	8.12	9.71	2.00	NA	NA	26.95	28.54	090
35515		A	Artery bypass graft	18.65	NA	NA	8.74	10.48	2.39	NA	NA	29.78	31.52	090
35516		A	Artery bypass graft	16.32	NA	NA	7.73	13.29	2.00	NA	NA	26.05	31.61	090
35518		A	Artery bypass graft	15.42	NA	NA	6.97	12.69	1.74	NA	NA	24.13	29.85	090
35521		A	Artery bypass graft	16.17	NA	NA	8.17	13.60	1.88	NA	NA	26.22	31.65	090
35526		A	Artery bypass graft	20.00	NA	NA	10.39	12.22	2.48	NA	NA	32.87	34.70	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

Addendum B.—Relative Value Units (RVUs) and Related Information Used in Determining Medicare Payments for 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
35531		A	Artery bypass graft	25.61	NA	NA	11.64	16.81	3.04	NA	NA	40.29	45.46	090
35533		A	Artery bypass graft	20.52	NA	NA	9.61	16.22	2.27	NA	NA	32.40	39.01	090
35536		A	Artery bypass graft	23.11	NA	NA	10.58	16.89	2.90	NA	NA	36.59	42.90	090
35541		A	Artery bypass graft	25.80	NA	NA	12.16	16.69	3.08	NA	NA	41.04	45.57	090
35546		A	Artery bypass graft	25.54	NA	NA	11.80	17.51	2.91	NA	NA	40.25	45.96	090
35548		A	Artery bypass graft	21.57	NA	NA	10.54	15.88	2.34	NA	NA	34.45	39.79	090
35549		A	Artery bypass graft	23.35	NA	NA	11.16	17.19	2.69	NA	NA	37.20	43.23	090
35551		A	Artery bypass graft	26.67	NA	NA	12.61	16.75	2.85	NA	NA	42.13	46.27	090
35556		A	Artery bypass graft	21.76	NA	NA	10.32	15.32	2.57	NA	NA	34.65	39.65	090
35558		A	Artery bypass graft	14.04	NA	NA	7.36	12.06	1.61	NA	NA	23.01	27.71	090
35560		A	Artery bypass graft	23.56	NA	NA	11.55	16.75	2.84	NA	NA	37.95	43.15	090
35563		A	Artery bypass graft	15.14	NA	NA	7.95	8.49	1.71	NA	NA	24.80	25.34	090
35565		A	Artery bypass graft	15.14	NA	NA	7.71	12.89	1.78	NA	NA	24.63	29.81	090
35566		A	Artery bypass graft	26.92	NA	NA	15.55	18.97	3.22	NA	NA	45.69	49.11	090
35571		A	Artery bypass graft	18.58	NA	NA	10.67	15.84	2.22	NA	NA	31.47	36.64	090
35582		A	Vein bypass graft	27.13	NA	NA	12.13	18.95	3.14	NA	NA	42.40	49.22	090
35583		A	Vein bypass graft	22.37	NA	NA	11.58	16.88	2.63	NA	NA	36.58	41.88	090
35585		A	Vein bypass graft	28.39	NA	NA	15.14	20.03	3.33	NA	NA	46.86	51.75	090
35587		A	Vein bypass graft	19.05	NA	NA	11.88	17.32	2.23	NA	NA	33.16	38.60	090
35601		A	Artery bypass graft	17.50	NA	NA	8.20	14.32	2.16	NA	NA	27.86	33.98	090
35606		A	Artery bypass graft	18.71	NA	NA	8.94	14.00	2.27	NA	NA	29.92	34.98	090
35612		A	Artery bypass graft	15.76	NA	NA	7.81	13.00	1.90	NA	NA	25.47	30.66	090
35616		A	Artery bypass graft	15.70	NA	NA	7.67	12.95	1.93	NA	NA	25.30	30.58	090
35621		A	Artery bypass graft	14.54	NA	NA	7.57	12.46	1.74	NA	NA	23.85	28.74	090
35623		A	Bypass graft, not vein	16.62	NA	NA	8.22	8.49	2.00	NA	NA	26.84	27.11	090
35626		A	Artery bypass graft	23.63	NA	NA	11.85	17.06	2.98	NA	NA	38.46	43.67	090
35631		A	Artery bypass graft	24.60	NA	NA	11.36	15.38	3.00	NA	NA	38.96	42.98	090
35636		A	Artery bypass graft	22.46	NA	NA	10.28	12.47	2.78	NA	NA	35.44	37.63	090
35641		A	Artery bypass graft	24.57	NA	NA	11.93	17.12	3.00	NA	NA	39.50	44.69	090
35642		A	Artery bypass graft	17.98	NA	NA	7.51	9.36	2.16	NA	NA	27.65	29.50	090
35645		A	Artery bypass graft	17.47	NA	NA	8.52	10.31	1.85	NA	NA	27.84	29.63	090
35646		A	Artery bypass graft	25.81	NA	NA	12.08	18.95	3.08	NA	NA	40.97	47.84	090
35650		A	Artery bypass graft	14.36	NA	NA	6.90	12.03	1.71	NA	NA	22.97	28.10	090
35651		A	Artery bypass graft	25.04	NA	NA	11.56	18.85	2.81	NA	NA	39.41	46.70	090
35654		A	Artery bypass graft	18.61	NA	NA	9.01	15.62	2.20	NA	NA	29.82	36.43	090
35656		A	Artery bypass graft	19.53	NA	NA	9.37	14.31	2.27	NA	NA	31.17	36.11	090
35661		A	Artery bypass graft	13.18	NA	NA	6.85	11.30	1.55	NA	NA	21.58	26.03	090
35663		A	Artery bypass graft	14.17	NA	NA	7.54	12.23	1.72	NA	NA	23.43	28.12	090
35665		A	Artery bypass graft	15.40	NA	NA	7.72	13.05	1.84	NA	NA	24.96	30.29	090
35666		A	Artery bypass graft	19.19	NA	NA	11.92	16.85	2.28	NA	NA	33.39	38.32	090
35671		A	Artery bypass graft	14.80	NA	NA	9.75	13.34	1.75	NA	NA	26.30	29.89	090
35681		A	Composite bypass graft	1.60	NA	NA	2.58	6.10	0.19	NA	NA	4.37	7.89	ZZZ
35682		A	Composite bypass graft	7.20	2.77	6.20	2.71	6.17	0.85	10.82	14.25	10.76	14.22	ZZZ
35683		A	Composite bypass graft	8.50	3.27	6.45	3.20	6.41	1.01	12.78	15.96	12.71	15.92	ZZZ
35691		A	Arterial transposition	18.05	NA	NA	8.33	14.81	2.27	NA	NA	28.65	35.13	090
35693		A	Arterial transposition	15.36	NA	NA	7.01	8.61	1.94	NA	NA	24.31	25.91	090
35694		A	Arterial transposition	19.16	NA	NA	8.39	9.26	2.33	NA	NA	29.88	30.75	090
35695		A	Arterial transposition	19.16	NA	NA	8.64	9.39	2.16	NA	NA	29.96	30.71	090
35700		A	Reoperation, bypass graft	3.08	NA	NA	3.34	2.55	0.38	NA	NA	6.80	6.01	ZZZ
35701		A	Exploration, carotid artery	5.55	NA	NA	3.74	5.03	0.64	NA	NA	9.93	11.22	090
35721		A	Exploration, femoral artery	5.28	NA	NA	4.90	5.47	0.62	NA	NA	10.80	11.37	090
35741		A	Exploration popliteal artery	5.37	NA	NA	4.47	5.35	0.62	NA	NA	10.46	11.34	090
35761		A	Exploration of artery/vein	5.37	NA	NA	4.43	5.37	0.61	NA	NA	10.41	11.35	090
35800		A	Explore neck vessels	7.02	NA	NA	4.34	5.04	0.82	NA	NA	12.18	12.88	090
35820		A	Explore chest vessels	12.88	NA	NA	5.45	7.03	1.70	NA	NA	20.03	21.61	090
35840		A	Explore abdominal vessels	9.77	NA	NA	5.50	6.68	1.08	NA	NA	16.35	17.53	090
35860		A	Explore limb vessels	5.55	NA	NA	3.85	5.08	0.65	NA	NA	10.05	11.28	090
35870		A	Repair vessel graft defect	22.17	NA	NA	10.81	11.18	2.63	NA	NA	35.61	35.98	090
35875		A	Removal of clot in graft	10.13	NA	NA	6.26	7.59	1.08	NA	NA	17.47	18.80	090
35876		A	Removal of clot in graft	17.00	NA	NA	9.24	9.08	1.92	NA	NA	28.16	28.00	090
35879		A	Revise graft w/vein	16.00	NA	NA	8.46	8.46	1.97	NA	NA	26.43	26.43	090
35881		A	Revise graft w/vein	18.00	NA	NA	8.77	8.77	2.21	NA	NA	28.98	28.98	090
35901		A	Excision, graft, neck	8.19	NA	NA	6.10	6.95	0.97	NA	NA	15.26	16.11	090
35903		A	Excision, graft, extremity	9.39	NA	NA	8.44	8.12	1.08	NA	NA	18.91	18.59	090
35905		A	Excision, graft, thorax	18.19	NA	NA	12.59	10.19	2.15	NA	NA	32.93	30.53	090
35907		A	Excision, graft, abdomen	19.24	NA	NA	9.84	8.82	2.29	NA	NA	31.37	30.35	090
36000		A	Place needle in vein	0.18	0.53	0.40	0.05	0.08	0.01	0.72	0.59	0.24	0.27	XXX
36005		A	Injection, venography	0.95	15.15	7.83	0.27	0.39	0.05	16.15	8.83	1.27	1.39	000
36010		A	Place catheter in vein	2.43	NA	NA	0.79	1.54	0.16	NA	NA	3.38	4.13	XXX
36011		A	Place catheter in vein	3.14	NA	NA	1.00	1.53	0.20	NA	NA	4.34	4.87	XXX
36012		A	Place catheter in vein	3.52	NA	NA	1.01	1.96	0.15	NA	NA	4.68	5.63	XXX
36013		A	Place catheter in artery	2.52	NA	NA	0.78	1.54	0.21	NA	NA	3.51	4.27	XXX
36014		A	Place catheter in artery	3.02	NA	NA	0.88	1.68	0.12	NA	NA	4.02	4.82	XXX
36015		A	Place catheter in artery	3.52	NA	NA	1.03	1.97	0.15	NA	NA	4.70	5.64	XXX
36100		A	Establish access to artery	3.02	NA	NA	1.17	1.99	0.32	NA	NA	4.51	5.33	XXX
36120		A	Establish access to artery	2.01	NA	NA	0.64	1.52	0.12	NA	NA	2.77	3.65	XXX
36140		A	Establish access to artery	2.01	NA	NA	0.63	1.08	0.13	NA	NA	2.77	3.22	XXX
36145		A	Artery to vein shunt	2.01	NA	NA	0.59	1.50	0.09	NA	NA	2.69	3.60	XXX
36160		A	Establish access to aorta	2.52	NA	NA	0.89	1.71	0.23	NA	NA	3.64	4.46	XXX
36200		A	Place catheter in aorta	3.02	NA	NA	0.90	1.93	0.16	NA	NA	4.08	5.11	XXX
36215		A	Place catheter in artery	4.68	NA	NA	1.42	2.22	0.28	NA	NA	6.38	7.18	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
36216		A	Place catheter in artery	5.28	NA	NA	1.54	2.56	0.25	NA	NA	7.07	8.09	XXX
36217		A	Place catheter in artery	6.30	NA	NA	1.93	3.09	0.36	NA	NA	8.59	9.75	XXX
36218		A	Place catheter in artery	1.01	NA	NA	0.34	0.51	0.06	NA	NA	1.41	1.58	ZZZ
36245		A	Place catheter in artery	4.68	NA	NA	1.60	2.51	0.35	NA	NA	6.63	7.54	XXX
36246		A	Place catheter in artery	5.28	NA	NA	1.66	2.62	0.33	NA	NA	7.27	8.23	XXX
36247		A	Place catheter in artery	6.30	NA	NA	1.91	3.08	0.35	NA	NA	8.56	9.73	XXX
36248		A	Place catheter in artery	1.01	NA	NA	0.36	0.52	0.07	NA	NA	1.44	1.60	ZZZ
36260		A	Insertion of infusion pump	9.71	NA	NA	5.47	6.39	0.93	NA	NA	16.11	17.03	090
36261		A	Revision of infusion pump	5.45	NA	NA	3.23	2.83	0.53	NA	NA	9.21	8.81	090
36262		A	Removal of infusion pump	4.02	NA	NA	2.52	2.31	0.41	NA	NA	6.95	6.74	090
36299		C	Vessel injection procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
36400		A	Drawing blood	0.18	0.58	0.34	0.05	0.05	0.02	0.78	0.54	0.25	0.25	XXX
36405		A	Drawing blood	0.18	0.47	0.48	0.05	0.15	0.01	0.66	0.67	0.24	0.34	XXX
36406		A	Drawing blood	0.18	0.53	0.35	0.05	0.07	0.01	0.72	0.54	0.24	0.26	XXX
36410		A	Drawing blood	0.18	0.44	0.34	0.05	0.08	0.01	0.63	0.53	0.24	0.27	XXX
36415		I	Drawing blood	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36420		A	Establish access to vein	1.01	NA	NA	0.33	0.44	0.10	NA	NA	1.44	1.55	XXX
36425		A	Establish access to vein	0.76	2.62	1.36	0.18	0.14	0.06	3.44	2.18	1.00	0.96	XXX
36430		A	Blood transfusion service	0.00	1.01	1.03	1.01	0.77	0.05	1.06	1.08	1.06	0.82	XXX
36440		A	Blood transfusion service	1.03	NA	NA	0.27	0.65	0.10	NA	NA	1.40	1.78	XXX
36450		A	Exchange transfusion service	2.23	NA	NA	0.71	0.87	0.14	NA	NA	3.08	3.24	XXX
36455		A	Exchange transfusion service	2.43	NA	NA	0.93	1.70	0.14	NA	NA	3.50	4.27	XXX
36460		A	Transfusion service, fetal	6.59	NA	NA	2.30	3.71	0.60	NA	NA	9.49	10.90	XXX
36468		R	Injection(s), spider veins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36469		R	Injection(s), spider veins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36470		A	Injection therapy of vein	1.09	2.69	1.49	0.40	0.28	0.11	3.89	2.69	1.60	1.48	010
36471		A	Injection therapy of veins	1.57	3.13	1.78	0.58	0.40	0.14	4.84	3.49	2.29	2.11	010
36481		A	Insertion of catheter, vein	6.99	NA	NA	2.12	3.94	0.40	NA	NA	9.51	11.33	000
36488		A	Insertion of catheter, vein	1.35	NA	NA	0.43	0.74	0.11	NA	NA	1.89	2.20	000
36489		A	Insertion of catheter, vein	1.22	3.45	2.34	0.34	0.78	0.09	4.76	3.65	1.65	2.09	000
36490		A	Insertion of catheter, vein	1.67	NA	NA	0.56	1.03	0.13	NA	NA	2.36	2.83	000
36491		A	Insertion of catheter, vein	1.43	NA	NA	0.47	1.09	0.13	NA	NA	2.03	2.65	000
36493		A	Repositioning of cvc	1.21	NA	NA	0.35	0.52	0.06	NA	NA	1.62	1.79	000
36500		A	Insertion of catheter, vein	3.52	NA	NA	1.14	0.62	0.17	NA	NA	4.83	4.31	000
36510		A	Insertion of catheter, vein	1.09	NA	NA	0.39	0.29	0.07	NA	NA	1.55	1.45	000
36520		A	Plasma and/or cell exchange	1.74	NA	NA	0.65	1.36	0.10	NA	NA	2.49	3.20	000
36521		A	Apheresis w/ adsorp/reinfuse	1.74	NA	NA	0.65	0.65	0.09	NA	NA	2.48	2.48	000
36522		A	Photopheresis	1.67	8.21	5.45	0.81	1.41	0.06	9.94	7.18	2.54	3.14	000
36530		[illegible]	Insertion of infusion pump	6.20	NA	NA	3.51	4.37	0.63	NA	NA	10.34	11.20	010
36531		R	Revision of infusion pump	4.87	NA	NA	3.26	4.00	0.49	NA	NA	8.62	9.36	010
36532		R	Removal of infusion pump	3.30	NA	NA	1.59	1.76	0.33	NA	NA	5.22	5.39	010
36533		A	Insertion of access device	5.32	4.03	4.35	3.25	3.96	0.52	9.87	10.19	9.09	9.80	010
36534		A	Revision of access device	2.80	NA	NA	1.32	2.33	0.22	NA	NA	4.34	5.35	010
36535		A	Removal of access device	2.27	2.72	2.34	1.89	1.93	0.23	5.22	4.84	4.39	4.43	010
36550		A	Declot vascular device	0.00	0.51	0.51	0.06	0.06	0.32	0.83	0.83	0.38	0.38	XXX
36600		A	Withdrawal of arterial blood	0.32	0.40	0.35	0.09	0.20	0.02	0.74	0.69	0.43	0.54	XXX
36620		A	Insertion catheter, artery	1.15	NA	NA	0.23	0.48	0.08	NA	NA	1.46	1.71	000
36625		A	Insertion catheter, artery	2.11	NA	NA	0.53	0.73	0.17	NA	NA	2.81	3.01	000
36640		A	Insertion catheter, artery	2.10	NA	NA	0.76	1.64	0.19	NA	NA	3.05	3.93	000
36660		A	Insertion catheter, artery	1.40	NA	NA	0.45	0.49	0.07	NA	NA	1.92	1.96	000
36680		A	Insert needle, bone cavity	1.20	NA	NA	0.40	0.88	0.11	NA	NA	1.71	2.19	000
36800		A	Insertion of cannula	2.43	NA	NA	1.57	1.99	0.21	NA	NA	4.21	4.63	000
36810		A	Insertion of cannula	3.97	NA	NA	2.21	3.48	0.39	NA	NA	6.57	7.84	000
36815		A	Insertion of cannula	2.62	NA	NA	1.83	2.48	0.27	NA	NA	4.72	5.37	000
36819		A	Av fusion by basilic vein	14.00	NA	NA	6.65	6.65	1.55	NA	NA	22.20	22.20	090
36821		A	Av fusion direct any site	8.93	NA	NA	5.08	6.47	0.99	NA	NA	15.00	16.39	090
36822		A	Insertion of cannula(s)	5.42	NA	NA	10.32	8.20	0.70	NA	NA	16.44	14.32	090
36823		C	Insertion of cannula(s)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36825		A	Artery-vein graft	9.84	NA	NA	5.80	8.77	1.10	NA	NA	16.74	19.71	090
36830		A	Artery-vein graft	12.00	NA	NA	6.41	8.61	1.36	NA	NA	19.77	21.97	090
36831		A	Av fistula excision	8.00	2.23	2.23	2.23	2.23	0.85	11.08	11.08	11.08	11.08	090
36832		A	Av fistula revision	10.50	NA	NA	5.77	6.74	1.16	NA	NA	17.43	18.40	090
36833		A	Av fistula revision	11.95	4.45	4.45	4.45	4.45	1.33	17.73	17.73	17.73	17.73	090
36834		A	Repair A-V aneurysm	9.93	NA	NA	3.98	6.23	1.13	NA	NA	15.04	17.29	090
36835		A	Artery to vein shunt	7.15	NA	NA	5.01	4.36	0.80	NA	NA	12.96	12.31	090
36860		A	External cannula declotting	2.01	1.95	2.37	1.43	1.92	0.13	4.09	4.51	3.57	4.06	000
36861		A	Cannula declotting	2.52	NA	NA	1.55	2.28	0.22	NA	NA	4.29	5.02	000
37140		A	Revision of circulation	23.60	NA	NA	8.71	13.20	1.06	NA	NA	33.37	37.86	090
37145		A	Revision of circulation	24.61	NA	NA	9.42	14.01	0.95	NA	NA	34.98	39.57	090
37160		A	Revision of circulation	21.60	NA	NA	9.38	14.32	2.29	NA	NA	33.27	38.21	090
37180		A	Revision of circulation	24.61	NA	NA	10.89	13.15	2.45	NA	NA	37.95	40.21	090
37181		A	Splice spleen/kidney veins	26.68	NA	NA	11.10	14.46	2.56	NA	NA	40.34	43.70	090
37195		A	Thrombolytic therapy, stroke	0.00	8.09	8.21	8.09	8.21	0.39	8.48	8.60	8.48	8.60	XXX
37200		A	Transcatheter biopsy	4.56	NA	NA	1.31	1.52	0.25	NA	NA	6.12	6.33	000
37201		A	Transcatheter therapy infuse	5.00	NA	NA	2.09	4.03	0.25	NA	NA	7.34	9.28	000
37202		A	Transcatheter therapy infuse	5.68	NA	NA	3.03	3.85	0.74	NA	NA	9.45	10.27	000
37203		A	Transcatheter retrieval	5.03	NA	NA	2.12	3.14	0.25	NA	NA	7.40	8.42	000
37204		A	Transcatheter occlusion	18.14	NA	NA	5.23	10.08	0.77	NA	NA	24.14	28.99	000
37205		A	Transcatheter stent	8.28	NA	NA	3.40	4.50	0.61	NA	NA	12.29	13.39	000
37206		A	Transcatheter stent add-on	4.13	NA	NA	1.40	2.10	0.32	NA	NA	5.85	6.55	ZZZ
37207		A	Transcatheter stent	8.28	NA	NA	3.75	4.68	0.97	NA	NA	13.00	13.93	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
37208		A	Transcatheter stent add-on	4.13	NA	NA	1.56	2.18	0.49	NA	NA	6.18	6.80	ZZZ
37209		A	Exchange arterial catheter	2.27	NA	NA	0.68	1.11	0.11	NA	NA	3.06	3.49	000
37250		A	Iv us first vessel add-on	2.10	NA	NA	0.85	1.05	0.24	NA	NA	3.19	3.39	ZZZ
37251		A	Iv us each add vessel add-on	1.60	NA	NA	0.66	0.80	0.19	NA	NA	2.45	2.59	ZZZ
37565		A	Ligation of neck vein	4.44	NA	NA	2.67	3.39	0.44	NA	NA	7.55	8.27	090
37600		A	Ligation of neck artery	4.57	NA	NA	3.44	4.42	0.42	NA	NA	8.43	9.41	090
37605		A	Ligation of neck artery	6.19	NA	NA	3.79	4.91	0.75	NA	NA	10.73	11.85	090
37606		A	Ligation of neck artery	6.28	NA	NA	4.39	5.41	1.11	NA	NA	11.78	12.80	090
37607		A	Ligation of a-v fistula	6.16	NA	NA	3.69	3.51	0.69	NA	NA	10.54	10.36	090
37609		A	Temporal artery procedure	2.30	6.21	4.31	2.17	2.29	0.22	8.73	6.83	4.69	4.81	010
37615		A	Ligation of neck artery	5.73	NA	NA	3.80	4.95	0.58	NA	NA	10.11	11.26	090
37616		A	Ligation of chest artery	16.49	NA	NA	13.37	8.97	1.70	NA	NA	31.56	27.16	090
37617		A	Ligation of abdomen artery	15.95	NA	NA	7.63	8.16	1.61	NA	NA	25.19	25.72	090
37618		A	Ligation of extremity artery	4.84	NA	NA	3.52	4.46	0.54	NA	NA	8.90	9.84	090
37620		A	Revision of major vein	10.56	NA	NA	4.96	7.26	0.78	NA	NA	16.30	18.60	090
37650		A	Revision of major vein	5.13	NA	NA	3.74	4.05	0.60	NA	NA	9.47	9.78	090
37660		A	Revision of major vein	10.61	NA	NA	6.01	6.13	1.19	NA	NA	17.81	17.93	090
37700		A	Revise leg vein	3.73	NA	NA	3.03	3.49	0.41	NA	NA	7.17	7.63	090
37720		A	Removal of leg vein	5.66	NA	NA	3.69	4.62	0.62	NA	NA	9.97	10.90	090
37730		A	Removal of leg veins	7.33	NA	NA	4.57	6.06	0.80	NA	NA	12.70	14.19	090
37735		A	Removal of leg veins/lesion	10.53	NA	NA	6.07	7.56	1.16	NA	NA	17.76	19.25	090
37760		A	Revision of leg veins	10.47	NA	NA	5.74	6.93	1.08	NA	NA	17.29	18.48	090
37780		A	Revision of leg vein	3.84	NA	NA	3.07	2.56	0.43	NA	NA	7.34	6.83	090
37785		A	Revise secondary varicosity	3.88	6.73	3.90	2.86	1.96	0.40	11.01	8.18	7.14	6.24	090
37788		A	Revascularization, penis	22.01	NA	NA	11.87	14.15	1.43	NA	NA	35.31	37.59	090
37790		A	Penile venous occlusion	8.34	NA	NA	7.42	6.81	0.53	NA	NA	16.29	15.68	090
37799		C	Vascular surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38100		A	Removal of spleen, total	13.01	NA	NA	6.35	7.82	1.30	NA	NA	20.66	22.13	090
38101		A	Removal of spleen, partial	13.74	NA	NA	6.77	7.18	1.39	NA	NA	21.90	22.31	090
38102		A	Removal of spleen, total	4.80	NA	NA	1.81	2.27	0.48	NA	NA	7.09	7.55	ZZZ
38115		A	Repair of ruptured spleen	14.19	NA	NA	6.82	7.56	1.43	NA	NA	22.44	23.18	090
38120		C	Laparoscopy, splenectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
38129		C	Laparoscope proc, spleen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38200		A	Injection for spleen x-ray	2.64	NA	NA	0.82	1.34	0.12	NA	NA	3.58	4.10	000
38230		R	Bone marrow collection	4.54	NA	NA	2.36	2.69	0.23	NA	NA	7.13	7.46	010
38231		R	Stem cell collection	1.50	NA	NA	0.60	1.05	0.06	NA	NA	2.16	2.61	000
38240		R	Bone marrow/stem transplant	2.24	NA	NA	0.82	1.54	0.11	NA	NA	3.17	3.89	XXX
38241		R	Bone marrow/stem transplant	2.24	NA	NA	0.87	1.54	0.10	NA	NA	3.21	3.88	XXX
38300		A	Drainage, lymph node lesion	1.53	3.76	2.20	2.22	1.27	0.14	5.43	3.87	3.89	2.94	010
38305		A	Drainage, lymph node lesion	4.61	7.52	4.83	5.83	3.98	0.36	12.49	9.80	10.80	8.95	090
38308		A	Incision of lymph channels	4.95	NA	NA	4.92	4.29	0.43	NA	NA	10.30	9.67	090
38380		A	Thoracic duct procedure	7.46	NA	NA	7.61	6.22	0.60	NA	NA	15.67	14.28	090
38381		A	Thoracic duct procedure	12.88	NA	NA	12.11	10.16	1.66	NA	NA	26.65	24.70	090
38382		A	Thoracic duct procedure	10.08	NA	NA	8.74	7.00	1.06	NA	NA	19.88	18.14	090
38500		A	Biopsy/removal, lymph nodes	2.88	2.56	2.15	2.15	1.94	0.28	5.72	5.31	5.31	5.10	010
38505		A	Needle biopsy, lymph nodes	1.14	2.86	2.04	0.98	0.80	0.09	4.09	3.27	2.21	2.03	000
38510		A	Biopsy/removal, lymph nodes	4.14	NA	NA	4.05	3.41	0.38	NA	NA	8.57	7.93	090
38520		A	Biopsy/removal, lymph nodes	5.12	NA	NA	5.06	4.15	0.53	NA	NA	10.71	9.80	090
38525		A	Biopsy/removal, lymph nodes	4.66	NA	NA	3.71	3.26	0.47	NA	NA	8.84	8.39	090
38530		A	Biopsy/removal, lymph nodes	6.13	NA	NA	6.45	4.95	0.66	NA	NA	13.24	11.74	090
38542		A	Explore deep node(s), neck	5.91	NA	NA	5.61	5.12	0.50	NA	NA	12.02	11.53	090
38550		A	Removal, neck/armpit lesion	6.73	NA	NA	5.24	4.38	0.50	NA	NA	12.47	11.61	090
38555		A	Removal, neck/armpit lesion	14.27	NA	NA	11.47	9.68	1.53	NA	NA	27.27	25.48	090
38562		A	Removal, pelvic lymph nodes	10.49	NA	NA	6.17	6.82	0.84	NA	NA	17.50	18.15	090
38564		A	Removal, abdomen lymph nodes	10.83	NA	NA	6.09	7.06	1.00	NA	NA	17.92	18.89	090
38570		A	Laparoscopy, lymph node biop	9.25	NA	NA	4.55	5.74	0.81	NA	NA	14.61	15.80	010
38571		A	Laparoscopy, lymphadenectomy	12.38	NA	NA	5.36	7.33	0.78	NA	NA	18.52	20.49	010
38572		A	Laparoscopy, lymphadenectomy	14.32	NA	NA	6.12	8.49	1.04	NA	NA	21.48	23.85	010
38589		C	Laparoscope proc, lymphatic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38700		A	Removal of lymph nodes, neck	8.24	NA	NA	11.66	10.75	0.63	NA	NA	20.53	19.62	090
38720		A	Removal of lymph nodes, neck	13.61	NA	NA	14.83	15.54	1.03	NA	NA	29.47	30.18	090
38724		A	Removal of lymph nodes, neck	14.54	NA	NA	15.22	15.40	1.11	NA	NA	30.87	31.05	090
38740		A	Remove armpit lymph nodes	6.77	NA	NA	4.52	4.82	0.67	NA	NA	11.96	12.26	090
38745		A	Remove armpit lymph nodes	8.84	NA	NA	6.60	7.80	0.86	NA	NA	16.30	17.50	090
38746		A	Remove thoracic lymph nodes	4.39	NA	NA	1.79	2.14	0.56	NA	NA	6.74	7.09	ZZZ
38747		A	Remove abdominal lymph nodes	4.89	NA	NA	1.83	2.31	0.45	NA	NA	7.17	7.65	ZZZ
38760		A	Remove groin lymph nodes	8.74	NA	NA	5.42	6.31	0.83	NA	NA	14.99	15.88	090
38765		A	Remove groin lymph nodes	16.06	NA	NA	9.74	11.75	1.34	NA	NA	27.14	29.15	090
38770		A	Remove pelvis lymph nodes	13.23	NA	NA	6.57	11.18	0.85	NA	NA	20.65	25.26	090
38780		A	Remove abdomen lymph nodes	16.59	NA	NA	8.57	13.00	1.26	NA	NA	26.42	30.85	090
38790		A	Inject for lymphatic x-ray	1.29	24.03	12.91	0.46	1.00	0.09	25.41	14.29	1.84	2.38	000
38792		C	Identify sentinel node	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
38794		A	Access thoracic lymph duct	4.45	NA	NA	1.21	2.15	0.17	NA	NA	5.83	6.77	090
38999		C	Blood/lymph system procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
39000		A	Exploration of chest	6.10	NA	NA	9.93	8.25	0.75	NA	NA	16.78	15.10	090
39010		A	Exploration of chest	11.79	NA	NA	13.11	12.78	1.52	NA	NA	26.42	26.09	090
39200		A	Removal chest lesion	13.62	NA	NA	13.66	13.12	1.65	NA	NA	28.93	28.39	090
39220		A	Removal chest lesion	17.42	NA	NA	14.71	15.46	2.16	NA	NA	34.29	35.04	090
39400		A	Visualization of chest	5.61	NA	NA	9.70	7.63	0.72	NA	NA	16.03	13.96	010
39499		C	Chest procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
39501		A	Repair diaphragm laceration	13.19	NA	NA	8.57	10.07	1.35	NA	NA	23.11	24.61	090

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CPT[1]/ HCPCS[2]	MOD	Status	Description[4]	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
39502		A	Repair paraesophageal hernia	16.33	NA	NA	8.74	10.85	1.64	NA	NA	26.71	28.82	090
39503		A	Repair of diaphragm hernia	34.85	NA	NA	14.98	21.16	3.26	NA	NA	53.09	59.27	090
39520		A	Repair of diaphragm hernia	16.10	NA	NA	11.70	12.65	1.82	NA	NA	29.62	30.57	090
39530		A	Repair of diaphragm hernia	15.41	NA	NA	9.44	12.35	1.68	NA	NA	26.53	29.44	090
39531		A	Repair of diaphragm hernia	16.42	NA	NA	9.21	10.03	1.79	NA	NA	27.42	28.24	090
39540		A	Repair of diaphragm hernia	13.32	NA	NA	9.09	11.05	1.39	NA	NA	23.80	25.76	090
39541		A	Repair of diaphragm hernia	14.41	NA	NA	8.62	10.91	1.47	NA	NA	24.50	26.79	090
39545		A	Revision of diaphragm	13.37	NA	NA	11.61	10.09	1.59	NA	NA	26.57	25.05	090
39560		A	Resect diaphragm, simple	12.00	NA	NA	8.79	8.79	1.22	NA	NA	22.01	22.01	090
39561		A	Resect diaphragm, complex	17.50	NA	NA	6.43	6.43	1.79	NA	NA	30.18	30.18	090
39599		C	Diaphragm surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
40490		A	Biopsy of lip	1.22	1.56	1.18	0.62	0.51	0.06	2.84	2.46	1.90	1.79	000
40500		A	Partial excision of lip	4.28	4.91	5.01	4.69	4.90	0.31	9.50	9.60	9.28	9.49	090
40510		A	Partial excision of lip	4.70	5.58	5.60	5.37	5.49	0.37	10.65	10.67	10.44	10.56	090
40520		A	Partial excision of lip	4.67	6.19	5.54	5.47	5.18	0.41	11.27	10.62	10.55	10.26	090
40525		A	Reconstruct lip with flap	7.55	NA	NA	6.95	7.99	0.69	NA	NA	15.19	16.23	090
40527		A	Reconstruct lip with flap	9.13	NA	NA	7.96	9.43	0.79	NA	NA	17.88	19.35	090
40530		A	Partial removal of lip	5.40	5.55	5.54	5.20	5.37	0.45	11.40	11.39	11.05	11.22	090
40650		A	Repair lip	3.64	4.47	4.41	3.92	4.13	0.32	8.43	8.37	7.88	8.09	090
40652		A	Repair lip	4.26	5.55	5.32	5.23	5.16	0.40	10.21	9.98	9.89	9.82	090
40654		A	Repair lip	5.31	6.12	6.23	5.80	6.07	0.48	11.91	12.02	11.59	11.86	090
40700		A	Repair cleft lip/nasal	12.79	NA	NA	9.15	9.17	0.98	NA	NA	22.92	22.94	090
40701		A	Repair cleft lip/nasal	15.85	NA	NA	10.54	15.76	1.38	NA	NA	27.77	32.99	090
40702		A	Repair cleft lip/nasal	13.04	NA	NA	8.68	9.43	0.95	NA	NA	22.67	23.42	090
40720		A	Repair cleft lip/nasal	13.55	NA	NA	10.18	10.30	1.31	NA	NA	25.04	25.16	090
40761		A	Repair cleft lip/nasal	14.72	NA	NA	10.79	11.28	1.31	NA	NA	26.82	27.31	090
40799		C	Lip surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
40800		A	Drainage of mouth lesion	1.17	1.65	1.23	0.48	0.44	0.09	2.91	2.49	1.74	1.70	010
40801		A	Drainage of mouth lesion	2.53	2.19	2.02	1.69	1.31	0.18	4.90	4.73	4.40	4.02	010
40804		A	Removal, foreign body, mouth	1.24	2.22	1.43	2.05	1.19	0.09	3.55	2.76	3.38	2.52	010
40805		A	Removal, foreign body, mouth	2.69	2.64	2.68	2.33	2.52	0.19	5.52	5.56	5.21	5.40	010
40806		A	Incision of lip fold	0.31	0.67	0.53	0.44	0.42	0.03	1.01	0.87	0.78	0.76	000
40808		A	Biopsy of mouth lesion	0.96	1.73	1.28	1.71	1.06	0.07	2.76	2.31	2.74	2.09	010
40810		A	Excision of mouth lesion	1.31	2.30	1.79	1.92	1.28	0.10	3.71	3.20	3.33	2.69	010
40812		A	Excise/repair mouth lesion	2.31	2.59	2.11	2.45	1.64	0.17	5.07	4.59	4.93	4.12	010
40814		A	Excise/repair mouth lesion	3.42	NA	NA	3.85	3.68	0.25	NA	NA	7.52	7.35	090
40816		A	Excision of mouth lesion	3.67	3.93	3.71	3.93	2.84	0.26	7.86	7.64	7.86	6.77	090
40818		A	Excise oral mucosa for graft	2.41	3.77	3.11	3.77	3.11	0.14	6.32	5.66	6.32	5.66	090
40819		A	Excise lip or cheek fold	2.41	3.17	2.25	3.01	1.84	0.17	5.75	4.83	5.59	4.42	090
40820		A	Treatment of mouth lesion	1.28	2.02	1.30	1.85	1.07	0.09	3.39	2.67	3.22	2.44	010
40830		A	Repair mouth laceration	1.76	2.12	1.43	2.12	1.43	0.15	4.03	3.34	4.03	3.34	010
40831		A	Repair mouth laceration	2.46	2.22	2.17	2.22	2.17	0.21	4.89	4.84	4.89	4.84	010
40840		R	Reconstruction of mouth	8.73	5.61	6.22	5.61	6.22	0.66	15.00	15.61	15.00	15.61	090
40842		R	Reconstruction of mouth	8.73	5.38	6.10	5.38	6.10	0.71	14.82	15.54	14.82	15.54	090
40843		R	Reconstruction of mouth	12.10	8.04	8.80	6.27	7.91	0.63	20.77	21.53	19.00	20.64	090
40844		R	Reconstruction of mouth	16.01	8.48	10.55	8.48	10.55	1.44	25.93	28.00	25.93	28.00	090
40845		R	Reconstruction of mouth	18.58	9.95	16.07	9.95	16.07	1.56	30.09	36.21	30.09	36.21	090
40899		C	Mouth surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
41000		A	Drainage of mouth lesion	1.30	1.96	1.39	1.28	0.85	0.10	3.36	2.79	2.68	2.25	010
41005		A	Drainage of mouth lesion	1.26	1.80	1.24	1.28	0.98	0.10	3.16	2.60	2.64	2.34	010
41006		A	Drainage of mouth lesion	3.24	3.54	2.32	2.97	2.04	0.24	7.02	5.80	6.45	5.52	090
41007		A	Drainage of mouth lesion	3.10	3.19	3.17	2.82	2.99	0.16	6.45	6.43	6.08	6.25	090
41008		A	Drainage of mouth lesion	3.37	3.08	2.12	2.95	1.77	0.24	6.69	5.73	6.56	5.38	090
41009		A	Drainage of mouth lesion	3.59	3.21	3.40	2.77	3.18	0.27	7.07	7.26	6.63	7.04	090
41010		A	Incision of tongue fold	1.06	2.70	1.55	2.70	1.55	0.06	3.82	2.67	3.82	2.67	010
41015		A	Drainage of mouth lesion	3.96	3.70	2.32	2.95	1.95	0.29	7.95	6.57	7.20	6.20	090
41016		A	Drainage of mouth lesion	4.07	3.46	3.73	3.00	3.50	0.32	7.85	8.12	7.39	7.89	090
41017		A	Drainage of mouth lesion	4.07	3.68	2.60	3.03	2.28	0.32	8.07	6.99	7.42	6.67	090
41018		A	Drainage of mouth lesion	5.10	4.11	4.19	3.44	3.86	0.34	9.55	9.63	8.88	9.30	090
41100		A	Biopsy of tongue	1.63	2.22	1.55	2.14	1.29	0.11	3.96	3.29	3.88	3.03	010
41105		A	Biopsy of tongue	1.42	2.00	1.56	2.00	1.28	0.11	3.53	3.09	3.53	2.81	010
41108		A	Biopsy of floor of mouth	1.05	1.91	1.42	1.82	1.14	0.08	3.04	2.55	2.95	2.27	010
41110		A	Excision of tongue lesion	1.51	2.57	1.99	2.12	1.42	0.11	4.19	3.61	3.74	3.04	010
41112		A	Excision of tongue lesion	2.73	3.13	2.86	3.13	2.22	0.20	6.06	5.79	6.06	5.15	090
41113		A	Excision of tongue lesion	3.19	3.13	3.42	3.13	2.49	0.23	6.55	6.84	6.55	5.91	090
41114		A	Excision of tongue lesion	8.47	NA	NA	5.87	6.40	0.62	NA	NA	14.96	15.49	090
41115		A	Excision of tongue fold	1.74	2.36	2.15	2.13	2.03	0.12	4.22	4.01	3.99	3.89	010
41116		A	Excision of mouth lesion	2.44	3.03	2.87	2.98	2.84	0.18	5.65	5.49	5.60	5.46	090
41120		A	Partial removal of tongue	9.77	NA	NA	8.03	7.97	0.73	NA	NA	18.53	18.47	090
41130		A	Partial removal of tongue	11.15	NA	NA	8.83	9.33	0.82	NA	NA	20.80	21.30	090
41135		A	Tongue and neck surgery	23.09	NA	NA	15.49	17.68	1.71	NA	NA	40.29	42.48	090
41140		A	Removal of tongue	25.50	NA	NA	15.83	18.17	1.90	NA	NA	43.23	45.57	090
41145		A	Tongue removal, neck surgery	30.06	NA	NA	20.11	22.42	2.20	NA	NA	52.37	54.68	090
41150		A	Tongue, mouth, jaw surgery	23.04	NA	NA	16.17	18.38	1.70	NA	NA	40.91	43.12	090
41153		A	Tongue, mouth, neck surgery	23.77	NA	NA	16.78	21.96	1.79	NA	NA	42.34	47.52	090
41155		A	Tongue, jaw, & neck surgery	27.72	NA	NA	19.27	25.89	2.03	NA	NA	49.02	55.64	090
41250		A	Repair tongue laceration	1.91	2.33	1.75	1.52	1.34	0.16	4.40	3.82	3.59	3.41	010
41251		A	Repair tongue laceration	2.27	2.10	2.18	1.77	2.01	0.17	4.54	4.62	4.21	4.45	010
41252		A	Repair tongue laceration	2.97	2.89	2.72	2.14	2.35	0.24	6.10	5.93	5.35	5.56	010
41500		A	Fixation of tongue	3.71	NA	NA	3.68	3.63	0.25	NA	NA	7.64	7.59	090
41510		A	Tongue to lip surgery	3.42	NA	NA	4.22	3.49	0.21	NA	NA	7.85	7.12	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
41520		A	Reconstruction, tongue fold	2.73	2.58	2.86	2.58	2.86	0.20	5.51	5.79	5.51	5.79	090
41599		C	Tongue and mouth surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
41800		A	Drainage of gum lesion	1.17	1.66	1.21	1.17	0.78	0.10	2.93	2.48	2.44	2.05	010
41805		A	Removal foreign body, gum	1.24	1.66	1.29	1.65	1.28	0.09	2.99	2.62	2.98	2.61	010
41806		A	Removal foreign body, jawbone	2.69	2.30	2.04	2.10	1.50	0.20	5.19	4.93	4.99	4.39	010
41820		R	Excision, gum, each quadrant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41821		R	Excision of gum flap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41822		R	Excision of gum lesion	2.31	2.50	2.90	0.98	2.14	0.18	4.99	5.39	3.47	4.63	010
41823		R	Excision of gum lesion	3.30	3.17	3.56	2.66	3.30	0.23	6.70	7.09	6.19	6.83	090
41825		A	Excision of gum lesion	1.31	2.10	1.86	1.88	1.35	0.10	3.51	3.27	3.29	2.76	010
41826		A	Excision of gum lesion	2.31	2.39	2.32	2.33	1.73	0.17	4.87	4.80	4.81	4.21	010
41827		A	Excision of gum lesion	3.42	3.22	3.65	3.22	2.63	0.25	6.89	7.32	6.89	6.30	090
41828		R	Excision of gum lesion	3.09	2.80	3.61	2.13	3.28	0.21	6.10	6.91	5.43	6.58	010
41830		R	Removal of gum tissue	3.35	2.86	3.43	2.56	3.28	0.24	6.45	7.02	6.15	6.87	010
41850		R	Treatment of gum lesion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41870		R	Gum graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41872		R	Repair gum	2.59	2.68	2.89	2.13	2.61	0.19	5.46	5.67	4.91	5.39	090
41874		R	Repair tooth socket	3.09	2.58	3.14	2.15	2.92	0.24	5.91	6.47	5.48	6.25	090
41899		C	Dental surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42000		A	Drainage mouth roof lesion	1.23	2.06	1.37	1.33	0.84	0.09	3.38	2.69	2.65	2.16	010
42100		A	Biopsy roof of mouth	1.31	2.00	1.43	1.98	1.21	0.10	3.41	2.84	3.39	2.62	010
42104		A	Excision lesion, mouth roof	1.64	2.07	1.92	2.07	1.48	0.11	3.82	3.67	3.82	3.23	010
42106		A	Excision lesion, mouth roof	2.10	2.37	2.39	2.37	1.79	0.15	4.62	4.64	4.62	4.04	010
42107		A	Excision lesion, mouth roof	4.44	3.76	4.53	3.76	3.21	0.32	8.52	9.29	8.52	7.97	090
42120		A	Remove palate/lesion	6.17	NA	NA	5.43	6.40	0.45	NA	NA	12.05	13.02	090
42140		A	Excision of uvula	1.62	2.99	2.23	2.63	2.05	0.11	4.72	3.96	4.36	3.78	090
42145		A	Repair palate, pharynx/uvula	8.05	NA	NA	6.80	8.21	0.57	NA	NA	15.42	16.83	090
42160		A	Treatment mouth roof lesion	1.80	2.49	2.08	2.17	1.50	0.13	4.42	4.01	4.10	3.43	010
42180		A	Repair palate	2.50	2.31	2.37	1.88	2.16	0.18	4.99	5.05	4.56	4.84	010
42182		A	Repair palate	3.83	2.73	3.25	2.73	3.25	0.29	6.85	7.37	6.85	7.37	010
42200		A	Reconstruct cleft palate	12.00	NA	NA	9.14	8.47	1.03	NA	NA	22.17	21.50	090
42205		A	Reconstruct cleft palate	9.59	NA	NA	6.88	9.17	0.85	NA	NA	17.32	19.61	090
42210		A	Reconstruct cleft palate	14.50	NA	NA	8.47	11.03	1.15	NA	NA	24.12	26.68	090
42215		A	Reconstruct cleft palate	8.82	NA	NA	7.34	7.84	0.76	NA	NA	16.92	17.42	090
42220		A	Reconstruct cleft palate	7.02	NA	NA	5.73	5.80	0.49	NA	NA	13.24	13.31	090
42225		A	Reconstruct cleft palate	9.54	NA	NA	8.34	7.92	0.80	NA	NA	18.68	18.26	090
42226		A	Lengthening of palate	10.01	NA	NA	8.40	8.48	0.79	NA	NA	19.20	19.28	090
42227		A	Lengthening of palate	9.52	NA	NA	6.00	7.02	0.78	NA	NA	16.30	17.32	090
42235		A	Repair palate	7.87	NA	NA	5.72	5.87	0.59	NA	NA	14.18	14.33	090
42260		A	Repair nose to lip fistula	9.80	6.56	5.44	6.56	5.44	0.76	17.12	16.00	17.12	16.00	090
42280		A	Preparation, palate mold	1.54	1.30	1.73	0.74	1.45	0.10	2.94	3.37	2.38	3.09	010
42281		A	Insertion, palate prosthesis	1.93	1.54	1.57	1.00	1.30	0.13	3.60	3.63	3.06	3.36	010
42299		C	Palate/uvula surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42300		A	Drainage of salivary gland	1.93	2.29	1.67	1.70	1.11	0.14	4.36	3.74	3.77	3.18	010
42305		A	Drainage of salivary gland	6.07	NA	NA	4.92	3.65	0.46	NA	NA	11.45	10.18	090
42310		A	Drainage of salivary gland	1.56	2.11	1.62	1.41	0.99	0.11	3.78	3.29	3.08	2.66	010
42320		A	Drainage of salivary gland	2.35	2.43	2.21	1.98	1.99	0.17	4.95	4.73	4.50	4.51	010
42325		A	Create salivary cyst drain	2.75	2.90	2.60	1.01	1.66	0.22	5.87	5.57	3.98	4.63	090
42326		A	Create salivary cyst drain	3.78	4.15	4.33	1.59	3.05	0.27	8.20	8.38	5.64	7.10	090
42330		A	Removal of salivary stone	2.21	2.43	1.81	1.19	0.90	0.16	4.80	4.18	3.56	3.27	010
42335		A	Removal of salivary stone	3.31	3.26	2.97	3.26	2.30	0.24	6.81	6.52	6.81	5.85	090
42340		A	Removal of salivary stone	4.60	4.25	4.43	4.25	3.28	0.32	9.17	9.35	9.17	8.20	090
42400		A	Biopsy of salivary gland	0.78	2.05	1.46	0.40	0.42	0.06	2.89	2.30	1.24	1.26	000
42405		A	Biopsy of salivary gland	3.29	2.98	2.33	2.91	1.88	0.24	6.51	5.86	6.44	5.41	010
42408		A	Excision of salivary cyst	4.54	3.83	3.68	3.83	3.68	0.34	8.71	8.56	8.71	8.56	090
42409		A	Drainage of salivary cyst	2.81	3.02	3.04	3.02	3.04	0.20	6.03	6.05	6.03	6.05	090
42410		A	Excise parotid gland/lesion	9.34	NA	NA	7.23	6.84	0.78	NA	NA	17.35	16.96	090
42415		A	Excise parotid gland/lesion	16.89	NA	NA	11.85	12.81	1.30	NA	NA	30.04	31.00	090
42420		A	Excise parotid gland/lesion	19.59	NA	NA	13.47	14.78	1.48	NA	NA	34.54	35.85	090
42425		A	Excise parotid gland/lesion	13.02	NA	NA	9.80	10.93	0.99	NA	NA	23.81	24.94	090
42426		A	Excise parotid gland/lesion	21.26	NA	NA	14.46	19.92	1.60	NA	NA	37.32	42.78	090
42440		A	Excise submaxillary gland	6.97	NA	NA	5.50	6.91	0.53	NA	NA	13.00	14.41	090
42450		A	Excise sublingual gland	4.62	4.31	4.01	4.31	4.01	0.34	9.27	8.97	9.27	8.97	090
42500		A	Repair salivary duct	4.30	4.27	4.64	4.27	4.64	0.32	8.89	9.26	8.89	9.26	090
42505		A	Repair salivary duct	6.18	4.73	6.06	4.73	6.06	0.47	11.38	12.71	11.38	12.71	090
42507		A	Parotid duct diversion	6.11	NA	NA	5.54	5.30	0.46	NA	NA	12.11	11.87	090
42508		A	Parotid duct diversion	9.10	NA	NA	7.05	7.66	0.68	NA	NA	16.83	17.44	090
42509		A	Parotid duct diversion	11.54	NA	NA	8.95	8.44	0.82	NA	NA	21.31	20.80	090
42510		A	Parotid duct diversion	8.15	NA	NA	6.11	7.21	0.81	NA	NA	15.07	16.17	090
42550		A	Injection for salivary x-ray	1.25	11.04	5.76	0.34	0.41	0.05	12.34	7.06	1.64	1.71	000
42600		A	Closure of salivary fistula	4.82	5.64	4.93	4.80	4.51	0.37	10.83	10.12	9.99	9.70	090
42650		A	Dilation of salivary duct	0.77	0.95	0.69	0.41	0.31	0.06	1.78	1.52	1.24	1.14	000
42660		A	Dilation of salivary duct	1.13	1.10	0.82	1.06	0.67	0.07	2.30	2.02	2.26	1.87	000
42665		A	Ligation of salivary duct	2.53	3.17	2.69	3.00	2.61	0.18	5.88	5.40	5.71	5.32	090
42699		C	Salivary surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42700		A	Drainage of tonsil abscess	1.62	2.53	1.73	1.64	1.05	0.11	4.26	3.46	3.37	2.78	010
42720		A	Drainage of throat abscess	5.42	4.50	3.28	4.36	3.21	0.39	10.31	9.09	10.17	9.02	010
42725		A	Drainage of throat abscess	10.72	NA	NA	8.08	6.46	0.84	NA	NA	19.64	18.02	090
42800		A	Biopsy of throat	1.39	2.37	1.59	2.08	1.24	0.10	3.86	3.08	3.57	2.73	010
42802		A	Biopsy of throat	1.54	2.44	1.78	2.15	1.63	0.11	4.09	3.43	3.80	3.28	010
42804		A	Biopsy of upper nose/throat	1.24	2.31	1.75	2.00	1.59	0.09	3.64	3.08	3.33	2.92	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility, PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
42806		A	Biopsy of upper nose/throat	1.58	2.67	2.10	2.21	1.87	0.11	4.36	3.79	3.90	3.56	010
42808		A	Excise pharynx lesion	2.30	3.73	3.23	2.62	2.68	0.16	6.19	5.69	5.08	5.14	010
42809		A	Remove pharynx foreign body	1.81	2.72	1.81	1.57	1.23	0.14	4.67	3.76	3.52	3.18	010
42810		A	Excision of neck cyst	3.33	4.77	4.09	3.83	3.62	0.27	8.37	7.69	7.43	7.22	090
42815		A	Excision of neck cyst	7.23	NA	NA	6.06	7.35	0.55	NA	NA	13.84	15.13	090
42820		A	Remove tonsils and adenoids	3.91	NA	NA	3.52	3.47	0.26	NA	NA	7.69	7.64	090
42321		A	Remove tonsils and adenoids	4.29	NA	NA	3.73	4.00	0.31	NA	NA	8.33	8.60	090
42825		A	Removal of tonsils	3.42	NA	NA	3.30	3.09	0.25	NA	NA	6.97	6.76	090
42826		A	Removal of tonsils	3.38	NA	NA	3.25	3.65	0.24	NA	NA	6.87	7.27	090
42830		A	Removal of adenoids	2.57	NA	NA	2.22	2.12	0.18	NA	NA	4.97	4.87	090
42831		A	Removal of adenoids	2.71	NA	NA	2.32	2.44	0.19	NA	NA	5.22	5.34	090
42835		A	Removal of adenoids	2.30	NA	NA	2.52	2.27	0.16	NA	NA	4.98	4.73	090
42836		A	Removal of adenoids	3.18	NA	NA	3.16	3.10	0.23	NA	NA	6.57	6.51	090
42842		A	Extensive surgery of throat	8.76	NA	NA	7.09	7.18	0.63	NA	NA	16.48	16.57	090
42844		A	Extensive surgery of throat	14.31	NA	NA	10.79	11.29	1.07	NA	NA	26.17	26.67	090
42845		A	Extensive surgery of throat	24.29	NA	NA	16.59	18.40	1.82	NA	NA	42.70	44.51	090
42860		A	Excision of tonsil tags	2.22	NA	NA	2.58	2.32	0.16	NA	NA	4.96	4.70	090
42870		A	Excision of lingual tonsil	5.40	NA	NA	5.33	3.93	0.38	NA	NA	11.11	9.71	090
42890		A	Partial removal of pharynx	12.94	NA	NA	10.05	9.91	0.94	NA	NA	23.93	23.79	090
42892		A	Revision of pharyngeal walls	15.83	NA	NA	11.56	11.71	1.15	NA	NA	28.54	28.69	090
42894		A	Revision of pharyngeal walls	22.88	NA	NA	16.37	16.90	1.69	NA	NA	40.94	41.47	090
42900		A	Repair throat wound	5.25	NA	NA	3.59	4.11	0.39	NA	NA	9.23	9.75	010
42950		A	Reconstruction of throat	8.10	NA	NA	6.74	8.21	0.62	NA	NA	15.46	16.93	090
42953		A	Repair throat, esophagus	8.96	NA	NA	7.90	7.39	0.75	NA	NA	17.61	17.10	090
42955		A	Surgical opening of throat	7.39	NA	NA	5.91	4.76	0.59	NA	NA	13.89	12.74	090
42960		A	Control throat bleeding	2.33	NA	NA	1.91	1.54	0.17	NA	NA	4.41	4.04	010
42961		A	Control throat bleeding	5.59	NA	NA	4.73	3.32	0.40	NA	NA	10.72	9.31	090
42962		A	Control throat bleeding	7.14	NA	NA	5.55	6.02	0.52	NA	NA	13.21	13.68	090
42970		A	Control nose/throat bleeding	5.43	NA	NA	3.44	2.28	0.34	NA	NA	9.21	8.05	090
42971		A	Control nose/throat bleeding	6.21	NA	NA	4.97	4.06	0.45	NA	NA	11.63	10.72	090
42972		A	Control nose/throat bleeding	7.20	NA	NA	5.16	5.05	0.53	NA	NA	12.89	12.78	090
42999		C	Throat surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43020		A	Incision of esophagus	8.09	NA	NA	6.77	6.96	0.76	NA	NA	15.62	15.81	090
43030		A	Throat muscle surgery	7.69	NA	NA	6.56	7.87	0.62	NA	NA	14.87	16.18	090
43045		A	Incision of esophagus	20.12	NA	NA	13.13	13.32	2.34	NA	NA	35.59	35.78	090
43100		A	Excision of esophagus lesion	9.19	NA	NA	6.96	6.84	0.87	NA	NA	17.02	16.90	090
43101		A	Excision of esophagus lesion	16.24	NA	NA	10.21	10.25	1.88	NA	NA	28.33	28.37	090
43107		A	Removal of esophagus	28.79	NA	NA	17.08	20.75	3.29	NA	NA	49.16	52.83	090
43108		A	Removal of esophagus	34.19	NA	NA	17.69	22.56	3.79	NA	NA	55.67	60.54	090
43112		A	Removal of esophagus	31.22	NA	NA	19.13	21.32	3.63	NA	NA	53.98	56.17	090
43113		A	Removal of esophagus	35.27	NA	NA	18.89	23.16	4.18	NA	NA	58.34	62.61	090
43116		A	Partial removal of esophagus	31.22	NA	NA	18.18	22.80	3.01	NA	NA	52.41	57.03	090
43117		A	Partial removal of esophagus	30.02	NA	NA	17.85	22.64	3.45	NA	NA	51.32	56.11	090
43118		A	Partial removal of esophagus	33.20	NA	NA	17.87	22.65	3.39	NA	NA	54.46	59.24	090
43121		A	Partial removal of esophagus	29.19	NA	NA	18.44	20.81	3.40	NA	NA	51.03	53.40	090
43122		A	Parital removal of esophagus	29.11	NA	NA	16.14	19.66	3.21	NA	NA	48.46	51.98	090
43123		A	Partial removal of esophagus	33.20	NA	NA	19.97	23.70	3.58	NA	NA	56.75	60.48	090
43124		A	Removal of esophagus	27.32	NA	NA	16.97	20.70	2.94	NA	NA	47.23	50.96	090
43130		A	Removal of esophagus pouch	11.75	NA	NA	9.33	10.37	1.06	NA	NA	22.14	23.18	090
43135		A	Removal of esophagus pouch	16.10	NA	NA	11.84	12.28	1.90	NA	NA	29.84	30.28	090
43200		A	Esophagus endoscopy	1.59	4.90	3.56	0.79	1.35	0.11	6.60	5.26	2.49	3.05	000
43202		A	Esophagus endoscopy, biopsy	1.89	4.46	3.54	0.75	1.51	0.13	6.48	5.56	2.77	3.53	000
43204		A	Esophagus endoscopy & inject	3.77	NA	NA	1.31	2.91	0.24	NA	NA	5.32	6.92	000
43205		A	Esophagus endoscopy/ligation	3.79	NA	NA	1.30	2.12	0.23	NA	NA	5.32	6.14	000
43215		A	Esophagus endoscopy	2.60	NA	NA	1.04	2.07	0.19	NA	NA	3.83	4.86	000
43216		A	Esophagus endoscopy/lesion	2.40	NA	NA	0.86	1.87	0.17	NA	NA	3.43	4.44	000
43217		A	Esophagus endoscopy	2.90	NA	NA	1.03	2.25	0.19	NA	NA	4.12	5.34	000
43219		A	Esophagus endoscopy	2.80	NA	NA	1.03	2.19	0.20	NA	NA	4.03	5.19	000
43220		A	Esoph endoscopy, dilation	2.10	NA	NA	0.77	1.64	0.13	NA	NA	3.00	3.87	000
43226		A	Esoph endoscopy, dilation	2.34	NA	NA	0.82	1.81	0.15	NA	NA	3.31	4.30	000
43227		A	Esoph endoscopy, repair	3.60	NA	NA	1.25	2.78	0.23	NA	NA	5.08	6.61	000
43228		A	Esoph endoscopy, ablation	3.77	NA	NA	1.35	2.93	0.26	NA	NA	5.38	6.96	000
43234		A	Upper GI endoscopy, exam	2.01	3.41	3.10	0.71	1.56	0.14	5.56	5.25	2.86	3.71	000
43235		A	Upper GI endoscopy, diagnosis	2.39	4.46	3.90	0.83	1.84	0.15	7.00	6.44	3.37	4.38	000
43239		A	Upper GI endoscopy, biopsy	2.69	3.88	3.81	0.93	2.07	0.17	6.74	6.67	3.79	4.93	000
43241		A	Upper GI endoscopy with tube	2.59	NA	NA	0.90	2.00	0.17	NA	NA	3.68	4.76	000
43243		A	Upper GI endoscopy & inject	4.57	NA	NA	1.57	3.52	0.28	NA	NA	6.42	8.37	000
43244		A	Upper GI endoscopy/ligation	4.59	NA	NA	1.58	2.68	0.28	NA	NA	6.45	7.55	000
43245		A	Operative upper GI endoscopy	3.39	NA	NA	1.18	2.62	0.22	NA	NA	4.79	6.23	000
43246		A	Place gastrostomy tube	4.33	NA	NA	1.51	3.34	0.30	NA	NA	6.14	7.97	000
43247		A	Operative upper GI endoscopy	3.39	NA	NA	1.18	2.62	0.22	NA	NA	4.79	6.23	000
43248		A	Upper GI endoscopy/guide wire	3.15	NA	NA	1.09	2.43	0.20	NA	NA	4.44	5.78	000
43249		A	Esoph endoscopy, dilation	2.90	NA	NA	1.00	2.23	0.18	NA	NA	4.08	5.31	000
43250		A	Upper GI endoscopy/tumor	3.20	NA	NA	1.11	2.47	0.21	NA	NA	4.52	5.88	000
43251		A	Operative upper GI endoscopy	3.70	NA	NA	1.28	2.85	0.24	NA	NA	5.22	6.79	000
43255		A	Operative upper GI endoscopy	4.40	NA	NA	1.51	3.38	0.27	NA	NA	6.18	8.05	000
43258		A	Operative upper GI endoscopy	4.55	NA	NA	1.57	3.51	0.29	NA	NA	6.41	8.35	000
43259		A	Endoscopic ultrasound exam	4.89	NA	NA	1.66	3.01	0.30	NA	NA	6.85	8.20	000
43260		A	Endo cholangiopancreatograph	5.96	NA	NA	2.04	4.27	0.36	NA	NA	8.36	10.59	000
43261		A	Endo cholangiopancreatograph	6.27	NA	NA	2.15	4.32	0.38	NA	NA	8.80	10.97	000
43262		A	Endo cholangiopancreatograph	7.39	NA	NA	2.55	5.69	0.46	NA	NA	10.40	13.54	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
43263		A	Endo cholangiopancreatograph	6.19	NA	NA	2.13	4.23	0.38	NA	NA	8.70	10.80	000
43264		A	Endo cholangiopancreatograph	8.90	NA	NA	3.07	6.38	0.54	NA	NA	12.51	15.82	000
43265		A	Endo cholangiopancreatograph	8.90	NA	NA	3.06	5.23	0.54	NA	NA	12.50	14.67	000
43267		A	Endo cholangiopancreatograph	7.39	NA	NA	2.55	5.30	0.46	NA	NA	10.40	13.15	000
43268		A	Endo cholangiopancreatograph	7.39	NA	NA	2.54	5.68	0.46	NA	NA	10.39	13.53	000
43269		A	Endo cholangiopancreatograph	6.04	NA	NA	2.08	4.65	0.37	NA	NA	8.49	11.06	000
43271		A	Endo cholangiopancreatograph	7.39	NA	NA	2.54	5.41	0.44	NA	NA	10.37	13.24	000
43272		A	Endo cholangiopancreatograph	7.39	NA	NA	2.53	4.31	0.44	NA	NA	10.36	12.14	000
43280		A	Laparoscopy, fundoplasty	17.25	NA	NA	8.90	10.90	1.72	NA	NA	27.87	29.87	090
43289		C	Laparoscope proc, esoph	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43300		A	Repair of esophagus	9.14	NA	NA	7.10	9.01	0.88	NA	NA	17.12	19.03	090
43305		A	Repair esophagus and fistula	17.15	NA	NA	12.60	13.74	1.32	NA	NA	31.07	32.21	090
43310		A	Repair of esophagus	25.39	NA	NA	17.64	18.04	3.07	NA	NA	46.10	46.50	090
43312		A	Repair esophagus and fistula	28.42	NA	NA	23.15	19.02	3.46	NA	NA	55.03	50.90	090
43320		A	Fuse esophagus & stomach	16.07	NA	NA	10.83	11.76	1.69	NA	NA	28.59	29.52	090
43324		A	Revise esophagus & stomach	16.58	NA	NA	8.80	10.85	1.66	NA	NA	27.04	29.09	090
43325		A	Revise esophagus & stomach	16.17	NA	NA	9.05	10.83	1.66	NA	NA	26.88	28.66	090
43326		A	Revise esophagus & stomach	15.91	NA	NA	10.78	9.47	1.84	NA	NA	28.53	27.22	090
43330		A	Repair of esophagus	15.94	NA	NA	8.86	10.60	1.54	NA	NA	26.34	28.08	090
43331		A	Repair of esophagus	16.23	NA	NA	11.16	13.36	1.72	NA	NA	29.11	31.31	090
43340		A	Fuse esophagus & intestine	15.81	NA	NA	10.20	11.85	1.70	NA	NA	27.71	29.36	090
43341		A	Fuse esophagus & intestine	16.81	NA	NA	14.40	12.57	1.33	NA	NA	32.54	30.71	090
43350		A	Surgical opening, esophagus	12.72	NA	NA	8.43	8.49	1.19	NA	NA	22.34	22.40	090
43351		A	Surgical opening, esophagus	14.79	NA	NA	11.02	10.27	1.76	NA	NA	27.57	26.82	090
43352		A	Surgical opening, esophagus	12.30	NA	NA	9.94	9.78	1.29	NA	NA	23.53	23.37	090
43360		A	Gastrointestinal repair	28.78	NA	NA	16.83	20.01	2.97	NA	NA	48.58	51.76	090
43361		A	Gastrointestinal repair	32.65	NA	NA	18.83	23.13	3.21	NA	NA	54.69	58.99	090
43400		A	Ligate esophagus veins	17.09	NA	NA	8.63	10.19	1.39	NA	NA	27.11	28.67	090
43401		A	Esophagus surgery for veins	17.81	NA	NA	9.49	9.95	1.76	NA	NA	29.06	29.52	090
43405		A	Ligate/staple esophagus	16.13	NA	NA	9.11	12.33	1.77	NA	NA	27.01	30.23	090
43410		A	Repair esophagus wound	10.86	NA	NA	9.32	9.49	1.16	NA	NA	21.34	21.51	090
43415		A	Repair esophagus wound	17.06	NA	NA	11.08	12.46	1.90	NA	NA	30.04	31.42	090
43420		A	Repair esophagus opening	11.57	NA	NA	7.61	7.00	0.85	NA	NA	20.03	19.42	090
43425		A	Repair esophagus opening	16.95	NA	NA	12.11	11.45	2.00	NA	NA	31.06	30.40	090
43450		A	Dilate esophagus	1.38	1.28	1.01	0.48	0.61	0.09	2.75	2.48	1.95	2.08	000
43453		A	Dilate esophagus	1.51	NA	NA	0.52	1.08	0.10	NA	NA	2.13	2.69	000
43456		A	Dilate esophagus	2.57	NA	NA	0.90	1.79	0.16	NA	NA	3.63	4.52	000
43458		A	Dilate esophagus	3.06	NA	NA	1.08	1.37	0.20	NA	NA	4.34	4.63	000
43460		A	Pressure treatment esophagus	3.80	NA	NA	1.45	1.63	0.28	NA	NA	5.53	5.71	000
43496		C	Free jejunum flap, microvasc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
43499		C	Esophagus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43500		A	Surgical opening of stomach	8.44	NA	NA	4.33	5.49	0.82	NA	NA	13.59	14.75	090
43501		A	Surgical repair of stomach	15.31	NA	NA	7.25	8.28	1.53	NA	NA	24.09	25.12	090
43502		A	Surgical repair of stomach	17.67	NA	NA	8.45	8.88	1.80	NA	NA	27.92	28.35	090
43510		A	Surgical opening of stomach	9.99	NA	NA	6.20	7.60	0.77	NA	NA	16.96	18.36	090
43520		A	Incision of pyloric muscle	7.63	NA	NA	5.34	5.10	0.88	NA	NA	13.85	13.61	090
43600		A	Biopsy of stomach	1.91	NA	NA	0.66	0.60	0.12	NA	NA	2.69	2.63	000
43605		A	Biopsy of stomach	9.15	NA	NA	4.66	5.54	0.90	NA	NA	14.71	15.59	090
43610		A	Excision of stomach lesion	11.15	NA	NA	5.72	7.30	1.11	NA	NA	17.98	19.56	090
43611		A	Excision of stomach lesion	13.63	NA	NA	6.73	7.80	1.33	NA	NA	21.69	22.76	090
43620		A	Removal of stomach	22.54	NA	NA	10.59	13.64	2.25	NA	NA	35.38	38.43	090
43621		A	Removal of stomach	23.06	NA	NA	10.69	13.69	2.29	NA	NA	36.04	39.04	090
43622		A	Removal of stomach	24.41	NA	NA	11.34	14.02	2.44	NA	NA	38.19	40.87	090
43631		A	Removal of stomach, partial	19.66	NA	NA	8.93	11.21	1.96	NA	NA	30.55	32.83	090
43632		A	Removal of stomach, partial	19.66	NA	NA	8.87	11.18	1.95	NA	NA	30.48	32.79	090
43633		A	Removal of stomach, partial	20.10	NA	NA	9.02	11.25	2.00	NA	NA	31.12	33.35	090
43634		A	Removal of stomach, partial	21.86	NA	NA	10.43	16.52	2.21	NA	NA	34.50	40.59	090
43635		A	Removal of stomach, partial	2.06	NA	NA	0.78	0.98	0.20	NA	NA	3.04	3.24	ZZZ
43638		A	Removal of stomach, partial	21.76	NA	NA	9.84	11.84	2.19	NA	NA	33.79	35.79	090
43639		A	Removal of stomach, partial	22.25	NA	NA	10.12	11.98	2.25	NA	NA	34.62	36.48	090
43640		A	Vagotomy & pylorus repair	14.81	NA	NA	7.07	9.15	1.47	NA	NA	23.35	25.43	090
43641		A	Vagotomy & pylorus repair	15.03	NA	NA	7.46	9.34	1.50	NA	NA	23.99	25.87	090
43651		A	Laparoscopy, vagus nerve	10.15	NA	NA	4.71	5.11	1.01	NA	NA	15.87	16.27	090
43652		A	Laparoscopy, vagus nerve	12.15	NA	NA	5.93	6.27	1.03	NA	NA	19.11	19.45	090
43653		A	Laparoscopy, gastrostomy	7.73	NA	NA	4.40	5.56	0.74	NA	NA	12.87	14.03	090
43659		C	Laparoscope proc, stom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43750		A	Place gastrostomy tube	4.49	NA	NA	2.47	3.60	0.34	NA	NA	7.30	8.43	010
43760		A	Change gastrostomy tube	1.10	1.30	1.03	0.36	0.56	0.08	2.48	2.21	1.54	1.74	000
43761		A	Reposition gastrostomy tube	2.01	NA	NA	0.58	0.87	0.10	NA	NA	2.69	2.98	000
43800		A	Reconstruction of pylorus	10.46	NA	NA	5.61	6.52	1.04	NA	NA	17.11	18.02	090
43810		A	Fusion of stomach and bowel	11.19	NA	NA	5.64	6.97	1.07	NA	NA	17.90	19.23	090
43820		A	Fusion of stomach and bowel	11.74	NA	NA	5.91	7.46	1.16	NA	NA	18.81	20.36	090
43825		A	Fusion of stomach and bowel	14.68	NA	NA	6.98	9.50	1.45	NA	NA	23.11	25.63	090
43830		A	Place gastrostomy tube	7.28	NA	NA	4.23	5.48	0.70	NA	NA	12.21	13.46	090
43831		A	Place gastrostomy tube	7.33	NA	NA	4.15	4.90	0.74	NA	NA	12.22	12.97	090
43832		A	Place gastrostomy tube	11.92	NA	NA	6.33	7.48	1.14	NA	NA	19.39	20.54	090
43840		A	Repair of stomach lesion	11.89	NA	NA	5.35	7.23	1.18	NA	NA	19.02	20.30	090
43842		A	Gastroplasty for obesity	14.71	NA	NA	9.97	12.43	1.49	NA	NA	26.17	28.63	090
43843		A	Gastroplasty for obesity	14.85	NA	NA	9.22	12.06	1.47	NA	NA	25.54	28.38	090
43846		A	Gastric bypass for obesity	19.15	NA	NA	11.28	13.67	1.90	NA	NA	32.33	34.72	090
43847		A	Gastric bypass for obesity	21.44	NA	NA	13.21	14.64	2.06	NA	NA	36.71	38.14	090

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
43848		A	Revision gastroplasty	23.41	NA	NA	14.02	15.04	2.34	NA	NA	39.77	40.79	090
43850		A	Revise stomach-bowel fusion	19.69	NA	NA	8.92	10.78	1.91	NA	NA	30.52	32.38	090
43855		A	Revise stomach-bowel fusion	20.83	NA	NA	9.26	10.30	1.92	NA	NA	32.01	33.05	090
43860		A	Revise stomach-bowel fusion	19.91	NA	NA	9.01	10.73	1.98	NA	NA	30.90	32.62	090
43865		A	Revise stomach-bowel fusion	21.12	NA	NA	9.41	11.97	2.12	NA	NA	32.65	35.21	090
43870		A	Repair stomach opening	7.40	NA	NA	4.31	5.29	0.72	NA	NA	12.43	13.41	090
43880		A	Repair stomach-bowel fistula	19.63	NA	NA	9.29	9.12	1.97	NA	NA	30.89	30.72	090
43999		C	Stomach surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44005		A	Freeing of bowel adhesion	13.84	NA	NA	6.62	7.81	1.37	NA	NA	21.83	23.02	090
44010		A	Incision of small bowel	10.68	NA	NA	5.80	6.65	1.06	NA	NA	17.54	18.39	090
44015		A	Insert needle cath bowel	2.62	NA	NA	0.96	2.05	0.25	NA	NA	3.83	4.92	ZZZ
44020		A	Exploration of small bowel	11.93	NA	NA	5.87	7.18	1.15	NA	NA	18.95	20.26	090
44021		A	Decompress small bowel	12.01	NA	NA	6.39	7.00	1.17	NA	NA	19.57	20.18	090
44025		A	Incision of large bowel	12.18	NA	NA	5.98	7.19	1.20	NA	NA	19.36	20.57	090
44050		A	Reduce bowel obstruction	11.40	NA	NA	5.68	7.06	1.13	NA	NA	18.21	19.59	090
44055		A	Correct malrotation of bowel	13.14	NA	NA	6.35	7.33	1.28	NA	NA	20.77	21.75	090
44100		A	Biopsy of bowel	2.01	NA	NA	0.71	1.11	0.14	NA	NA	2.86	3.26	000
44110		A	Excision of bowel lesion(s)	10.07	NA	NA	5.22	6.77	0.97	NA	NA	16.26	17.81	090
44111		A	Excision of bowel lesion(s)	12.19	NA	NA	6.55	8.52	1.17	NA	NA	19.91	21.88	090
44120		A	Removal of small intestine	14.50	NA	NA	6.85	8.56	1.43	NA	NA	22.78	24.49	090
44121		A	Removal of small intestine	4.45	NA	NA	1.68	2.10	0.44	NA	NA	6.57	6.99	ZZZ
44125		A	Removal of small intestine	14.96	NA	NA	7.04	9.36	1.48	NA	NA	23.48	25.80	090
44130		A	Bowel to bowel fusion	12.36	NA	NA	6.04	7.73	1.22	NA	NA	19.62	21.31	090
44139		A	Mobilization of colon	2.23	NA	NA	0.84	1.06	0.22	NA	NA	3.29	3.51	ZZZ
44140		A	Partial removal of colon	18.35	NA	NA	8.72	10.53	1.81	NA	NA	28.88	30.69	090
44141		A	Partial removal of colon	19.51	NA	NA	11.87	12.37	1.94	NA	NA	33.32	33.82	090
44143		A	Partial removal of colon	20.17	NA	NA	12.17	12.74	2.00	NA	NA	34.34	34.91	090
44144		A	Partial removal of colon	18.89	NA	NA	10.90	12.00	1.88	NA	NA	31.67	32.77	090
44145		A	Partial removal of colon	23.18	NA	NA	10.91	12.65	2.30	NA	NA	36.39	38.13	090
44146		A	Partial removal of colon	24.16	NA	NA	14.23	15.25	2.40	NA	NA	40.79	41.81	090
44147		A	Partial removal of colon	18.17	NA	NA	9.37	13.01	1.81	NA	NA	29.35	32.99	090
44150		A	Removal of colon	21.01	NA	NA	13.14	14.63	2.11	NA	NA	36.26	37.75	090
44151		A	Removal of colon/ileostomy	20.04	NA	NA	13.02	12.05	1.98	NA	NA	35.04	34.07	090
44152		A	Removal of colon/ileostomy	24.41	NA	NA	15.54	16.15	2.39	NA	NA	42.34	42.95	090
44153		A	Removal of colon/ileostomy	26.83	NA	NA	15.80	18.40	2.72	NA	NA	45.35	47.95	090
44155		A	Removal of colon/ileostomy	24.44	NA	NA	14.14	16.11	2.44	NA	NA	41.02	42.99	090
44156		A	Removal of colon/ileostomy	23.01	NA	NA	14.63	13.50	2.33	NA	NA	39.97	38.84	090
44160		A	Removal of colon	15.88	NA	NA	7.77	10.64	1.58	NA	NA	25.23	28.10	090
44200		A	Laparoscopy, enterolysis	14.44	NA	NA	6.85	7.92	1.41	NA	NA	22.70	23.77	090
44201		C	Laparoscopy, jejunostomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
44202		A	Laparo, resect intestine	22.04	NA	NA	10.07	12.23	2.17	NA	NA	34.28	36.44	090
44209		C	Laparoscope proc, intestine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44300		A	Open bowel to skin	8.88	NA	NA	5.61	6.08	0.88	NA	NA	15.37	15.84	090
44310		A	Ileostomy/jejunostomy	11.70	NA	NA	8.90	8.73	1.16	NA	NA	21.76	21.59	090
44312		A	Revision of ileostomy	5.88	NA	NA	4.44	3.89	0.53	NA	NA	10.85	10.30	090
44314		A	Revision of ileostomy	11.04	NA	NA	9.11	8.18	1.05	NA	NA	21.20	20.27	090
44316		A	Devise bowel pouch	15.47	NA	NA	11.53	11.00	1.47	NA	NA	28.47	27.94	090
44320		A	Colostomy	12.94	NA	NA	10.21	9.16	1.28	NA	NA	24.43	23.38	090
44322		A	Colostomy with biopsies	11.98	NA	NA	9.98	9.91	1.18	NA	NA	23.14	23.07	090
44340		A	Revision of colostomy	5.66	NA	NA	4.03	2.93	0.55	NA	NA	10.24	9.14	090
44345		A	Revision of colostomy	11.32	NA	NA	6.96	6.11	1.12	NA	NA	19.40	18.55	090
44346		A	Revision of colostomy	12.46	NA	NA	7.34	7.28	1.23	NA	NA	21.03	20.97	090
44360		A	Small bowel endoscopy	2.92	NA	NA	1.01	2.25	0.18	NA	NA	4.11	5.35	000
44361		A	Small bowel endoscopy/biopsy	3.23	NA	NA	1.10	2.48	0.19	NA	NA	4.52	5.90	000
44363		A	Small bowel endoscopy	3.94	NA	NA	1.34	2.29	0.23	NA	NA	5.51	6.46	000
44364		A	Small bowel endoscopy	4.22	NA	NA	1.46	3.25	0.27	NA	NA	5.95	7.74	000
44365		A	Small bowel endoscopy	3.73	NA	NA	1.29	2.87	0.24	NA	NA	5.26	6.84	000
44366		A	Small bowel endoscopy	4.97	NA	NA	1.70	3.82	0.31	NA	NA	6.98	9.10	000
44369		A	Small bowel endoscopy	5.09	NA	NA	1.76	3.92	0.32	NA	NA	7.17	9.33	000
44372		A	Small bowel endoscopy	4.97	NA	NA	1.72	3.83	0.33	NA	NA	7.02	9.13	000
44373		A	Small bowel endoscopy	3.94	NA	NA	1.34	3.02	0.25	NA	NA	5.53	7.21	000
44376		A	Small bowel endoscopy	5.69	NA	NA	1.96	3.18	0.37	NA	NA	8.02	9.24	000
44377		A	Small bowel endoscopy/biopsy	5.98	NA	NA	2.06	3.34	0.37	NA	NA	8.41	9.69	000
44378		A	Small bowel endoscopy	7.71	NA	NA	2.68	4.20	0.50	NA	NA	10.89	12.41	000
44380		A	Small bowel endoscopy	1.51	NA	NA	0.52	1.16	0.10	NA	NA	2.13	2.77	000
44382		A	Small bowel endoscopy	1.82	NA	NA	0.63	1.40	0.11	NA	NA	2.56	3.33	000
44385		A	Endoscopy of bowel pouch	1.82	3.52	3.03	0.63	1.40	0.13	5.47	4.98	2.58	3.35	000
44386		A	Endoscopy, bowel pouch/biop	2.12	4.75	3.21	0.75	1.21	0.17	7.04	5.50	3.04	3.50	000
44388		A	Colon endoscopy	2.82	4.80	4.36	1.01	2.19	0.22	7.84	7.40	4.05	5.23	000
44389		A	Colonoscopy with biopsy	3.13	5.23	4.79	1.10	2.42	0.22	8.58	8.14	4.45	5.77	000
44390		A	Colonoscopy for foreign body	3.83	6.13	4.49	1.34	2.10	0.31	10.27	8.63	5.48	6.24	000
44391		A	Colonoscopy for bleeding	4.32	5.43	5.57	1.50	3.33	0.29	10.04	10.18	6.11	7.94	000
44392		A	Colonoscopy & polypectomy	3.82	5.60	5.60	1.35	2.96	0.28	9.70	9.70	5.45	7.06	000
44393		A	Colonoscopy, lesion removal	4.84	6.07	5.97	1.69	3.73	0.34	11.25	11.15	6.87	8.91	000
44394		A	Colonoscopy w/snare	4.43	6.24	5.92	1.56	3.43	0.32	10.99	10.67	6.31	8.18	000
44500		A	Intro, gastrointestinal tube	0.49	NA	NA	0.13	0.26	0.02	NA	NA	0.64	0.77	000
44602		A	Suture, small intestine	10.61	NA	NA	5.41	6.86	1.05	NA	NA	17.07	18.52	090
44603		A	Suture, small intestine	14.00	NA	NA	6.69	8.28	1.38	NA	NA	22.07	23.66	090
44604		A	Suture, large intestine	14.28	NA	NA	6.78	7.66	1.39	NA	NA	22.45	23.33	090
44605		A	Repair of bowel lesion	15.37	NA	NA	7.54	8.86	1.50	NA	NA	24.41	25.73	090
44615		A	Intestinal stricturoplasty	14.19	NA	NA	6.72	7.02	1.39	NA	NA	22.30	22.60	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
44620		A	Repair bowel opening	10.87	NA	NA	5.43	5.96	1.08	NA	NA	17.38	17.91	090
44625		A	Repair bowel opening	13.41	NA	NA	6.40	8.40	1.33	NA	NA	21.14	23.14	090
44626		A	Repair bowel opening	22.59	NA	NA	9.89	11.12	2.23	NA	NA	34.71	35.94	090
44640		A	Repair bowel-skin fistula	14.83	NA	NA	7.36	7.23	1.48	NA	NA	23.67	23.54	090
44650		A	Repair bowel fistula	15.25	NA	NA	7.45	7.70	1.50	NA	NA	24.20	24.45	090
44660		A	Repair bowel-bladder fistula	14.63	NA	NA	6.94	8.00	1.24	NA	NA	22.81	23.87	090
44661		A	Repair bowel-bladder fistula	16.99	NA	NA	8.01	11.57	1.57	NA	NA	26.57	30.13	090
44680		A	Surgical revision, intestine	13.72	NA	NA	6.97	8.76	1.37	NA	NA	22.06	23.85	090
44700		A	Suspend bowel w/prosthesis	14.35	NA	NA	7.11	9.73	1.25	NA	NA	22.71	25.33	090
44799		C	Intestine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44800		A	Excision of bowel pouch	11.23	NA	NA	5.63	5.66	1.09	NA	NA	17.95	17.98	090
44820		A	Excision of mesentery lesion	10.31	NA	NA	5.38	5.84	1.01	NA	NA	16.70	17.16	090
44850		A	Repair of mesentery	9.57	NA	NA	5.03	5.56	0.95	NA	NA	15.55	16.08	090
44899		C	Bowel surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44900		A	Drain app abscess, open	8.82	NA	NA	5.36	5.00	0.81	NA	NA	14.99	14.63	090
44901		A	Drain app abscess, percut	3.38	NA	NA	3.92	3.35	0.32	NA	NA	7.62	7.05	000
44950		A	Appendectomy	8.70	NA	NA	4.80	5.06	0.86	NA	NA	14.36	14.62	090
44955		A	Appendectomy add-on	1.53	NA	NA	0.58	1.20	0.14	NA	NA	2.25	2.87	ZZZ
44960		A	Appendectomy	10.74	NA	NA	5.88	6.14	1.07	NA	NA	17.69	17.95	090
44970		A	Laparoscopy, appendectomy	8.70	NA	NA	4.27	4.79	0.86	NA	NA	13.83	14.35	090
44979		C	Laparoscope proc, app	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
45000		A	Drainage of pelvic abscess	4.52	NA	NA	3.42	2.58	0.38	NA	NA	8.32	7.48	090
45005		A	Drainage of rectal abscess	1.99	4.22	2.81	1.47	1.44	0.19	6.40	4.99	3.65	3.62	010
45020		A	Drainage of rectal abscess	4.72	NA	NA	3.38	3.11	0.45	NA	NA	8.55	8.28	090
45100		A	Biopsy of rectum	3.68	4.57	3.31	2.01	2.03	0.35	8.60	7.34	6.04	6.06	090
45108		A	Removal of anorectal lesion	4.76	5.66	4.28	3.05	2.97	0.48	10.90	9.52	8.29	8.21	090
45110		A	Removal of rectum	23.80	NA	NA	11.89	14.80	2.33	NA	NA	38.02	40.93	090
45111		A	Partial removal of rectum	16.48	NA	NA	8.73	10.75	1.63	NA	NA	26.84	28.86	090
45112		A	Removal of rectum	25.96	NA	NA	12.09	14.76	2.55	NA	NA	40.60	43.27	090
45113		A	Partial proctectomy	25.99	NA	NA	11.30	14.37	2.48	NA	NA	39.77	42.84	090
45114		A	Partial removal of rectum	23.22	NA	NA	10.99	13.85	2.29	NA	NA	36.50	39.36	090
45116		A	Partial removal of rectum	20.89	NA	NA	9.95	10.82	2.04	NA	NA	32.88	33.75	090
45119		A	Remove rectum w/reservoir	26.21	NA	NA	11.87	14.65	2.58	NA	NA	40.66	43.44	090
45120		A	Removal of rectum	24.60	NA	NA	11.45	14.62	2.31	NA	NA	38.36	41.53	090
45121		A	Removal of rectum and colon	27.04	NA	NA	12.98	12.35	2.65	NA	NA	42.67	42.04	090
45123		A	Partial proctectomy	14.20	NA	NA	7.18	9.98	1.41	NA	NA	22.79	25.59	090
45126		A	Pelvic exenteration	38.39	14.43	14.43	13.83	13.83	2.73	55.55	55.55	54.95	54.95	090
45130		A	Excision of rectal prolapse	13.97	NA	NA	6.88	8.28	1.41	NA	NA	22.26	23.66	090
45135		A	Excision of rectal prolapse	16.39	NA	NA	8.21	12.76	1.62	NA	NA	26.22	30.77	090
45150		A	Excision of rectal stricture	5.67	5.46	4.57	3.09	3.38	0.56	11.69	10.80	9.32	9.61	090
45160		A	Excision of rectal lesion	13.02	NA	NA	6.40	7.25	1.30	NA	NA	20.72	21.57	090
45170		A	Excision of rectal lesion	9.77	NA	NA	5.18	5.10	0.98	NA	NA	15.93	15.85	090
45190		A	Destruction, rectal tumor	8.28	NA	NA	4.57	5.05	0.83	NA	NA	13.68	14.16	090
45300		A	Proctosigmoidoscopy	0.70	1.34	0.97	0.25	0.28	0.06	2.10	1.73	1.01	1.04	000
45303		A	Proctosigmoidoscopy	0.80	1.52	1.11	0.29	0.32	0.07	2.39	1.98	1.16	1.19	000
45305		A	Proctosigmoidoscopy & biopsy	1.01	1.50	1.21	0.37	0.42	0.10	2.61	2.32	1.48	1.53	000
45307		A	Proctosigmoidoscopy	1.71	2.67	2.03	0.61	1.00	0.16	4.54	3.90	2.48	2.87	000
45308		A	Proctosigmoidoscopy	1.51	1.69	1.46	0.56	0.59	0.14	3.34	3.11	2.21	2.24	000
45309		A	Proctosigmoidoscopy	2.01	2.28	1.76	0.74	0.68	0.19	4.48	3.96	2.94	2.88	000
45315		A	Proctosigmoidoscopy	2.54	2.76	2.03	0.92	1.11	0.23	5.53	4.80	3.69	3.88	000
45317		A	Proctosigmoidoscopy	2.73	2.16	1.77	1.00	1.19	0.25	5.14	4.75	3.98	4.17	000
45320		A	Proctosigmoidoscopy	2.88	2.14	2.09	1.05	1.54	0.26	5.28	5.23	4.19	4.68	000
45321		A	Proctosigmoidoscopy	2.12	NA	NA	0.77	1.19	0.18	NA	NA	3.07	3.49	000
45330		A	Diagnostic sigmoidoscopy	0.96	1.35	1.34	0.33	0.46	0.07	2.38	2.37	1.36	1.49	000
45331		A	Sigmoidoscopy and biopsy	1.26	2.01	1.88	0.43	0.97	0.09	3.36	3.23	1.78	2.32	000
45332		A	Sigmoidoscopy	1.96	3.36	2.64	0.68	1.30	0.14	5.46	4.74	2.78	3.40	000
45333		A	Sigmoidoscopy & polypectomy	1.96	2.96	2.70	0.68	1.51	0.14	5.06	4.80	2.78	3.61	000
45334		A	Sigmoidoscopy for bleeding	2.99	NA	NA	1.04	1.99	0.20	NA	NA	4.23	5.18	000
45337		A	Sigmoidoscopy & decompress	2.36	NA	NA	0.83	1.83	0.17	NA	NA	3.36	4.36	000
45338		A	Sigmoidoscopy	2.57	3.54	2.99	0.90	1.67	0.18	6.29	5.74	3.65	4.42	000
45339		A	Sigmoidoscopy	3.14	2.59	3.06	1.09	2.31	0.22	5.95	6.42	4.45	5.67	000
45355		A	Surgical colonoscopy	3.52	NA	NA	1.25	1.26	0.28	NA	NA	5.05	5.06	000
45378		A	Diagnostic colonoscopy	3.70	5.99	5.24	1.29	2.86	0.26	9.95	9.20	5.25	6.82	000
45378	53	A	Diagnostic colonoscopy	0.96	1.25	1.29	0.57	0.86	0.07	2.28	2.32	1.60	1.89	000
45379		A	Colonoscopy	4.72	6.52	6.15	1.64	3.64	0.34	11.58	11.21	6.70	8.70	000
45380		A	Colonoscopy and biopsy	4.01	6.21	5.71	1.39	3.09	0.26	10.48	9.98	5.66	7.36	000
45382		A	Colonoscopy/control bleeding	5.73	7.42	6.90	1.98	4.18	0.36	13.51	12.99	8.07	10.27	000
45383		A	Lesion removal colonoscopy	5.87	7.12	6.77	2.05	4.24	0.40	13.39	13.04	8.32	10.51	000
45384		A	Colonoscopy	4.70	6.77	6.19	1.63	3.62	0.32	11.79	11.21	6.65	8.64	000
45385		A	Lesion removal colonoscopy	5.31	6.96	7.09	1.85	4.10	0.35	12.62	12.75	7.51	9.76	000
45500		A	Repair of rectum	7.29	NA	NA	4.04	5.25	0.73	NA	NA	12.06	13.27	090
45505		A	Repair of rectum	6.02	NA	NA	3.13	4.98	0.60	NA	NA	9.75	11.60	090
45520		A	Treatment of rectal prolapse	0.55	0.67	0.67	0.18	0.26	0.06	1.28	1.28	0.79	0.87	000
45540		A	Correct rectal prolapse	12.92	NA	NA	6.78	8.76	1.26	NA	NA	20.96	22.94	090
45541		A	Correct rectal prolapse	10.64	NA	NA	5.90	8.47	1.07	NA	NA	17.61	20.18	090
45550		A	Repair rectum/remove sigmoid	18.26	NA	NA	8.75	10.61	1.82	NA	NA	28.83	30.69	090
45560		A	Repair of rectocele	8.40	NA	NA	4.73	4.97	0.68	NA	NA	13.81	14.05	090
45562		A	Exploration/repair of rectum	12.21	NA	NA	6.11	7.45	1.14	NA	NA	19.46	20.80	090
45563		A	Exploration/repair of rectum	18.63	NA	NA	9.48	11.67	1.80	NA	NA	29.91	32.10	090
45800		A	Repair rect/bladder fistula	14.11	NA	NA	6.61	8.64	1.11	NA	NA	21.83	23.86	090
45805		A	Repair fistula w/colostomy	16.50	NA	NA	8.53	10.95	1.49	NA	NA	26.52	28.94	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
45820	....	A	Repair rectourethral fistula	14.67	NA	NA	6.81	8.28	1.28	NA	NA	22.76	24.23	090
45825	....	A	Repair fistula w/colostomy	16.87	NA	NA	8.98	9.85	1.49	NA	NA	27.34	28.21	090
45900	....	A	Reduction of rectal prolapse	1.83	NA	NA	0.78	0.71	0.18	NA	NA	2.79	2.72	010
45905	....	A	Dilation of anal sphincter	1.61	2.96	1.87	0.70	0.74	0.15	4.72	3.63	2.46	2.50	010
45910	....	A	Dilation of rectal narrowing	1.96	4.02	2.48	0.83	0.89	0.16	6.14	4.60	2.95	3.01	010
45915	....	A	Remove rectal obstruction	2.20	4.06	2.46	0.81	0.83	0.19	6.45	4.85	3.20	3.22	010
45999	....	C	Rectum surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
46030	....	A	Removal of rectal marker	1.23	2.74	1.59	1.10	0.77	0.12	4.09	2.94	2.45	2.12	010
46040	....	A	Incision of rectal abscess	4.96	5.13	3.48	2.99	2.41	0.50	10.59	8.94	8.45	7.87	090
46045	....	A	Incision of rectal abscess	4.32	NA	NA	2.68	2.35	0.43	NA	NA	7.43	7.10	090
46050	....	A	Incision of anal abscess	1.19	3.29	1.97	1.20	0.77	0.11	4.59	3.27	2.50	2.07	010
46060	....	A	Incision of rectal abscess	5.69	NA	NA	3.56	4.69	0.57	NA	NA	9.82	10.95	090
46070	....	A	Incision of anal septum	2.71	NA	NA	2.59	2.04	0.28	NA	NA	5.58	5.03	090
46080	....	A	Incision of anal sphincter	2.49	3.40	2.86	1.58	1.95	0.25	6.14	5.60	4.32	4.69	010
46083	....	A	Incise external hemorrhoid	1.40	4.39	2.54	1.39	0.87	0.11	5.90	4.05	2.90	2.38	010
46200	....	A	Removal of anal fissure	3.42	3.58	3.58	2.26	2.92	0.34	7.34	7.34	6.02	6.68	090
46210	....	A	Removal of anal crypt	2.67	5.00	2.92	2.06	1.45	0.25	7.92	5.84	4.98	4.37	090
46211	....	A	Removal of anal crypts	4.25	4.67	3.37	2.71	2.39	0.41	9.33	8.03	7.37	7.05	090
46220	....	A	Removal of anal tab	1.56	1.26	0.97	0.58	0.63	0.15	2.97	2.68	2.29	2.34	010
46221	....	A	Ligation of hemorrhoid(s)	1.43	2.91	1.82	0.53	0.45	0.14	4.48	3.39	2.10	2.02	010
46230	....	A	Removal of anal tabs	2.57	4.00	2.45	1.62	1.04	0.25	6.82	5.27	4.44	3.86	010
46250	....	A	Hemorrhoidectomy	4.53	5.18	4.13	2.81	2.95	0.44	10.15	9.10	7.78	7.92	090
46255	....	A	Hemorrhoidectomy	5.36	5.85	5.49	3.09	4.11	0.53	11.74	11.38	8.98	10.00	090
46257	....	A	Remove hemorrhoids & fissure	6.28	NA	NA	3.40	4.54	0.63	NA	NA	10.31	11.45	090
46258	....	A	Remove hemorrhoids & fistula	6.67	NA	NA	3.49	4.93	0.66	NA	NA	10.82	12.26	090
46260	....	A	Hemorrhoidectomy	7.42	NA	NA	4.24	5.42	0.74	NA	NA	12.40	13.58	090
46261	....	A	Remove hemorrhoids & fissure	8.24	NA	NA	4.46	5.82	0.83	NA	NA	13.53	14.89	090
46262	....	A	Remove hemorrhoids & fistula	8.73	NA	NA	4.70	6.00	0.87	NA	NA	14.30	15.60	090
46270	....	A	Removal of anal fistula	3.72	4.77	3.40	2.48	2.26	0.37	8.86	7.49	6.57	6.35	090
46275	....	A	Removal of anal fistula	4.56	4.58	5.02	2.69	4.07	0.46	9.60	10.04	7.71	9.09	090
46280	....	A	Removal of anal fistula	5.98	NA	NA	3.60	5.10	0.61	NA	NA	10.19	11.69	090
46285	....	A	Removal of anal fistula	4.09	3.75	3.11	2.49	2.48	0.41	8.25	7.61	6.99	6.98	090
46288	....	A	Repair anal fistula	7.13	NA	NA	4.14	4.01	0.71	NA	NA	11.98	11.85	090
46320	....	A	Removal of hemorrhoid clot	1.61	3.61	2.19	1.44	0.91	0.15	5.37	3.95	3.20	2.67	010
46500	....	A	Injection into hemorrhoids	1.61	2.51	1.43	0.58	0.38	0.16	4.28	3.20	2.35	2.15	010
46600	....	A	Diagnostic anoscopy	0.50	0.74	0.52	0.15	0.15	0.04	1.28	1.06	0.69	0.69	000
46604	....	A	Anoscopy and dilation	1.31	0.94	0.68	0.48	0.35	0.11	2.36	2.10	1.90	1.77	000
46606	....	A	Anoscopy and biopsy	0.81	0.83	0.61	0.30	0.25	0.08	1.72	1.50	1.19	1.14	000
46608	....	A	Anoscopy/ remove for body	1.51	1.78	1.47	0.49	0.83	0.13	3.42	3.11	2.13	2.47	000
46610	....	A	Anoscopy/remove lesion	1.32	1.38	1.15	0.49	0.71	0.11	2.81	2.58	1.92	2.14	000
46611	....	A	Anoscopy	1.81	1.91	1.42	0.67	0.57	0.16	3.88	3.39	2.64	2.54	000
46612	....	A	Anoscopy/ remove lesions	2.34	2.32	1.92	0.87	1.19	0.20	4.86	4.46	3.41	3.73	000
46614	....	A	Anoscopy/control bleeding	2.01	1.65	1.67	0.72	0.78	0.17	3.83	3.85	2.90	2.96	000
46615	....	A	Anoscopy	2.68	1.68	1.68	1.00	0.92	0.23	4.59	4.59	3.91	3.83	000
46700	....	A	Repair of anal stricture	7.25	NA	NA	3.96	5.31	0.74	NA	NA	11.95	13.30	090
46705	....	A	Repair of anal stricture	7.17	NA	NA	4.21	4.06	0.73	NA	NA	12.11	11.96	090
46715	....	A	Repair of anovaginal fistula	7.46	NA	NA	4.31	4.06	0.86	NA	NA	12.63	12.38	090
46716	....	A	Repair of anovaginal fistula	12.15	NA	NA	6.50	6.54	1.21	NA	NA	19.86	19.90	090
46730	....	A	Construction of absent anus	21.57	NA	NA	11.74	11.70	1.91	NA	NA	35.22	35.18	090
46735	....	A	Construction of absent anus	25.94	NA	NA	12.15	13.15	2.59	NA	NA	40.68	41.68	090
46740	....	A	Construction of absent anus	23.11	NA	NA	10.40	11.47	2.31	NA	NA	35.82	36.89	090
46742	....	A	Repair of imperforated anus	29.67	NA	NA	14.87	18.15	3.00	NA	NA	47.54	50.82	090
46744	....	A	Repair of cloacal anomaly	33.21	NA	NA	14.11	19.09	2.51	NA	NA	49.83	54.81	090
46746	....	A	Repair of cloacal anomaly	36.74	NA	NA	17.61	21.97	3.23	NA	NA	57.58	61.94	090
46748	....	A	Repair of cloacal anomaly	40.52	NA	NA	19.07	24.20	1.94	NA	NA	61.53	66.66	090
46750	....	A	Repair of anal sphincter	8.14	NA	NA	4.62	5.57	0.74	NA	NA	13.50	14.45	090
46751	....	A	Repair of anal sphincter	8.56	NA	NA	5.53	4.98	0.86	NA	NA	14.95	14.40	090
46753	....	A	Reconstruction of anus	6.58	NA	NA	3.41	4.36	0.67	NA	NA	10.66	11.61	090
46754	....	A	Removal of suture from anus	1.54	4.74	3.18	1.09	1.35	0.13	6.41	4.85	2.76	3.02	010
46760	....	A	Repair of anal sphincter	11.46	NA	NA	5.98	6.68	1.08	NA	NA	18.52	19.22	090
46761	....	A	Repair of anal sphincter	10.99	NA	NA	5.43	6.42	1.06	NA	NA	17.48	18.47	090
46762	....	A	Implant artificial sphincter	10.09	NA	NA	4.99	5.60	0.93	NA	NA	16.01	16.62	090
46900	....	A	Destruction, anal lesion(s)	1.91	3.26	1.84	0.76	0.49	0.16	5.33	3.91	2.83	2.56	010
46910	....	A	Destruction, anal lesion(s)	1.86	3.48	2.09	1.38	0.87	0.15	5.49	4.10	3.39	2.88	010
46916	....	A	Cryosurgery, anal lesion(s)	1.86	3.22	1.98	1.52	0.95	0.09	5.17	3.93	3.47	2.90	010
46917	....	A	Laser surgery, anal lesions	1.86	4.22	3.17	1.40	1.23	0.16	6.24	5.19	3.42	3.25	010
46922	....	A	Excision of anal lesion(s)	1.86	3.51	2.45	1.37	1.38	0.18	5.55	4.49	3.41	3.42	010
46924	....	A	Destruction, anal lesion(s)	2.76	4.73	3.76	1.65	2.22	0.22	7.71	6.74	4.63	5.20	010
46934	....	A	Destruction of hemorrhoids	4.08	5.70	3.50	3.43	2.04	0.33	10.11	7.91	7.84	6.45	090
46935	....	A	Destruction of hemorrhoids	2.43	3.90	2.83	0.88	0.88	0.22	6.55	5.48	3.53	3.53	010
46936	....	A	Destruction of hemorrhoids	4.30	5.26	3.88	3.38	2.32	0.37	9.93	8.55	8.05	6.99	090
46937	....	A	Cryotherapy of rectal lesion	2.69	3.98	3.27	1.75	2.15	0.12	6.79	6.08	4.56	4.96	010
46938	....	A	Cryotherapy of rectal lesion	4.66	5.44	4.08	2.97	2.84	0.47	10.57	9.21	8.10	7.97	090
46940	....	A	Treatment of anal fissure	2.32	2.82	1.69	0.86	0.57	0.23	5.37	4.24	3.41	3.12	010
46942	....	A	Treatment of anal fissure	2.04	2.57	1.54	0.72	0.49	0.21	4.82	3.79	2.97	2.74	010
46945	....	A	Ligation of hemorrhoids	2.14	3.67	2.18	2.04	1.19	0.20	6.01	4.52	4.38	3.53	090
46946	....	A	Ligation of hemorrhoids	3.00	4.69	2.86	2.33	1.42	0.27	7.96	6.13	5.60	4.69	090
46999	....	C	Anus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47000	....	A	Needle biopsy of liver	1.90	7.62	4.57	0.56	1.04	0.09	9.61	6.56	2.55	3.03	000
47001	....	A	Needle biopsy, liver add-on	1.90	NA	NA	0.71	1.12	0.18	NA	NA	2.79	3.20	ZZZ
47010	....	A	Open drainage, liver lesion	10.28	NA	NA	6.85	7.09	0.54	NA	NA	17.67	17.91	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
47011		A	Percut drain, liver lesion	3.70	NA	NA	4.92	3.98	0.20	NA	NA	8.82	7.88	000
47015		A	Inject/aspirate liver cyst	9.70	NA	NA	5.87	6.60	0.85	NA	NA	16.42	17.15	090
47100		A	Wedge biopsy of liver	7.49	NA	NA	4.96	4.27	0.74	NA	NA	13.19	12.50	090
47120		A	Partial removal of liver	22.79	NA	NA	12.57	12.80	2.21	NA	NA	37.57	37.80	090
47122		A	Extensive removal of liver	35.39	NA	NA	17.53	18.31	3.39	NA	NA	56.31	57.09	090
47125		A	Partial removal of liver	31.58	NA	NA	16.04	17.48	3.05	NA	NA	50.67	52.11	090
47130		A	Partial removal of liver	34.25	NA	NA	16.84	18.84	3.31	NA	NA	54.40	56.40	090
47133		X	Removal of donor liver	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
47134		R	Partial removal, donor liver	39.15	NA	NA	15.14	18.69	3.78	NA	NA	58.07	61.62	XXX
47135		R	Transplantation of liver	81.52	NA	NA	41.96	50.54	8.02	NA	NA	131.50	140.08	090
47136		R	Transplantation of liver	68.60	NA	NA	39.78	38.07	6.62	NA	NA	115.00	113.29	090
47300		A	Surgery for liver lesion	9.68	NA	NA	5.80	7.06	0.95	NA	NA	16.43	17.69	090
47350		A	Repair liver wound	12.56	NA	NA	7.16	7.63	1.23	NA	NA	20.95	21.42	090
47360		A	Repair liver wound	17.28	NA	NA	9.49	10.68	1.70	NA	NA	28.47	29.66	090
47361		A	Repair liver wound	30.25	NA	NA	14.44	15.17	2.96	NA	NA	47.65	48.38	090
47362		A	Repair liver wound	11.88	NA	NA	6.90	6.29	1.12	NA	NA	19.90	19.29	090
47399		C	Liver surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47400		A	Incision of liver duct	20.86	NA	NA	10.32	9.79	1.96	NA	NA	33.14	32.61	090
47420		A	Incision of bile duct	16.72	NA	NA	8.47	9.38	1.67	NA	NA	26.86	27.77	090
47425		A	Incision of bile duct	16.68	NA	NA	8.60	10.66	1.63	NA	NA	26.91	28.97	090
47460		A	Incise bile duct sphincter	15.17	NA	NA	7.88	12.37	1.26	NA	NA	24.31	28.80	090
47480		A	Incision of gallbladder	9.10	NA	NA	6.09	7.17	0.89	NA	NA	16.08	17.16	090
47490		A	Incision of gallbladder	7.23	NA	NA	6.30	5.09	0.30	NA	NA	13.83	12.62	090
47500		A	Injection for liver x-rays	1.96	NA	NA	0.54	1.09	0.08	NA	NA	2.58	3.13	000
47505		A	Injection for liver x-rays	0.76	13.86	7.46	0.21	0.56	0.03	14.65	8.25	1.00	1.35	000
47510		A	Insert catheter, bile duct	7.83	NA	NA	9.26	6.19	0.32	NA	NA	17.41	14.34	090
47511		A	Insert bile duct drain	10.50	NA	NA	10.29	6.70	0.41	NA	NA	21.20	17.61	090
47525		A	Change bile duct catheter	5.55	NA	NA	2.66	2.20	0.22	NA	NA	8.43	7.97	010
47530		A	Revise/reinsert bile tube	5.85	NA	NA	4.68	2.86	0.28	NA	NA	10.21	8.99	090
47550		A	Bile duct endoscopy add-on	3.02	NA	NA	1.14	1.42	0.30	NA	NA	4.46	4.74	ZZZ
47552		A	Biliary endoscopy thru skin	6.04	NA	NA	2.00	1.74	0.49	NA	NA	8.53	8.27	000
47553		A	Biliary endoscopy thru skin	6.35	NA	NA	1.78	2.95	0.28	NA	NA	8.41	9.58	000
47554		A	Biliary endoscopy thru skin	9.06	NA	NA	3.13	3.70	0.74	NA	NA	12.93	13.50	000
47555		A	Biliary endoscopy thru skin	7.56	NA	NA	2.09	2.47	0.31	NA	NA	9.96	10.34	000
47556		A	Biliary endoscopy thru skin	8.56	NA	NA	2.33	2.59	0.33	NA	NA	11.22	11.48	000
47560		A	Laparoscopy w/cholangio	4.89	NA	NA	1.95	2.48	0.46	NA	NA	7.30	7.83	090
47561		A	Laparo w/cholangio/biopsy	5.18	NA	NA	2.05	3.16	0.47	NA	NA	7.70	8.81	000
47562		A	Laparoscopic cholecystectomy	11.09	NA	NA	5.00	6.84	1.09	NA	NA	17.18	19.02	090
47563		A	Laparo cholecystectomy/graph	11.94	NA	NA	5.54	7.35	1.17	NA	NA	18.65	20.46	090
47564		A	Laparo cholecystectomy/explr	14.23	NA	NA	7.20	8.69	1.37	NA	NA	22.80	24.29	090
47570		A	Laparo cholecystoenterostomy	12.58	NA	NA	6.05	8.00	1.27	NA	NA	19.90	21.85	090
47579		C	Laparoscope proc, biliary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47600		A	Removal of gallbladder	11.42	NA	NA	6.17	7.17	1.14	NA	NA	18.73	19.73	090
47605		A	Removal of gallbladder	12.36	NA	NA	6.50	7.67	1.22	NA	NA	20.08	21.25	090
47610		A	Removal of gallbladder	15.83	NA	NA	7.92	9.05	1.57	NA	NA	25.32	26.45	090
47612		A	Removal of gallbladder	15.80	NA	NA	7.79	11.62	1.58	NA	NA	25.17	29.00	090
47620		A	Removal of gallbladder	17.36	NA	NA	8.50	10.35	1.73	NA	NA	27.59	29.44	090
47630		A	Remove bile duct stone	9.11	NA	NA	2.65	3.36	0.47	NA	NA	12.23	12.94	090
47700		A	Exploration of bile ducts	14.93	NA	NA	8.23	8.26	1.37	NA	NA	24.53	24.56	090
47701		A	Bile duct revision	27.81	NA	NA	13.21	11.06	2.87	NA	NA	43.89	41.74	090
47711		A	Excision of bile duct tumor	19.37	NA	NA	9.98	11.54	1.86	NA	NA	31.21	32.77	090
47712		A	Excision of bile duct tumor	25.44	NA	NA	12.16	12.63	2.67	NA	NA	40.27	40.74	090
47715		A	Excision of bile duct cyst	15.81	NA	NA	8.94	8.93	1.55	NA	NA	26.30	26.29	090
47716		A	Fusion of bile duct cyst	13.83	NA	NA	7.56	7.34	1.30	NA	NA	22.69	22.47	090
47720		A	Fuse gallbladder & bowel	13.38	NA	NA	7.89	8.92	1.33	NA	NA	22.60	23.63	090
47721		A	Fuse upper gi structures	16.08	NA	NA	9.02	10.71	1.58	NA	NA	26.68	28.37	090
47740		A	Fuse gallbladder & bowel	15.54	NA	NA	8.72	9.90	1.57	NA	NA	25.83	27.01	090
47741		A	Fuse gallbladder & bowel	17.95	NA	NA	9.75	12.66	1.78	NA	NA	29.48	32.39	090
47760		A	Fuse bile ducts and bowel	21.74	NA	NA	10.86	11.73	2.17	NA	NA	34.77	35.64	090
47765		A	Fuse liver ducts & bowel	20.93	NA	NA	11.98	13.92	2.07	NA	NA	34.98	36.92	090
47780		A	Fuse bile ducts and bowel	22.29	NA	NA	11.16	12.67	2.21	NA	NA	35.66	37.17	090
47785		A	Fuse bile ducts and bowel	26.23	NA	NA	13.14	13.66	2.63	NA	NA	42.00	42.52	090
47800		A	Reconstruction of bile ducts	19.60	NA	NA	10.15	12.25	1.91	NA	NA	31.66	33.76	090
47801		A	Placement, bile duct support	12.76	NA	NA	8.20	7.08	0.74	NA	NA	21.70	20.58	090
47802		A	Fuse liver duct & intestine	18.13	NA	NA	10.35	10.75	1.85	NA	NA	30.33	30.73	090
47900		A	Suture bile duct injury	16.74	NA	NA	9.28	11.82	1.68	NA	NA	27.70	30.24	090
47999		C	Bile tract surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
48000		A	Drainage of abdomen	14.91	NA	NA	7.74	7.70	1.32	NA	NA	23.97	23.93	090
48001		A	Placement of drain, pancreas	18.83	NA	NA	9.12	8.97	1.85	NA	NA	29.80	29.65	090
48005		A	Resect/debride pancreas	22.40	NA	NA	10.48	10.23	2.21	NA	NA	35.09	34.84	090
48020		A	Removal of pancreatic stone	14.22	NA	NA	6.86	7.11	1.02	NA	NA	22.10	22.35	090
48100		A	Biopsy of pancreas	11.08	NA	NA	6.51	5.54	1.08	NA	NA	18.67	17.70	090
48102		A	Needle biopsy, pancreas	4.68	6.99	4.81	1.94	2.28	0.19	11.86	9.68	6.81	7.15	010
48120		A	Removal of pancreas lesion	14.36	NA	NA	7.11	8.83	1.42	NA	NA	22.89	24.61	090
48140		A	Partial removal of pancreas	20.78	NA	NA	10.17	12.30	2.05	NA	NA	33.00	35.13	090
48145		A	Partial removal of pancreas	21.76	NA	NA	10.59	13.82	2.16	NA	NA	34.51	37.74	090
48146		A	Pancreatectomy	23.91	NA	NA	12.57	15.24	2.44	NA	NA	38.92	41.59	090
48148		A	Removal of pancreatic duct	15.71	NA	NA	8.79	8.86	1.54	NA	NA	26.04	26.11	090
48150		A	Partial removal of pancreas	43.48	NA	NA	20.98	22.72	4.28	NA	NA	68.74	70.48	090
48152		A	Pancreatectomy	39.63	NA	NA	19.41	21.94	4.06	NA	NA	63.10	65.63	090
48153		A	Pancreatectomy	43.38	NA	NA	21.01	22.74	4.31	NA	NA	68.70	70.43	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
48154		A	Pancreatectomy	39.95	NA	NA	19.18	21.82	3.99	NA	NA	63.12	65.76	090
48155		A	Removal of pancreas	22.32	NA	NA	13.12	17.63	2.20	NA	NA	37.64	42.15	090
48160		N	Pancreas removal/transplant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
48180		A	Fuse pancreas and bowel	22.39	NA	NA	10.55	12.11	2.22	NA	NA	35.16	36.72	090
48400		A	Injection, intraop add-on	1.95	NA	NA	0.60	0.86	0.10	NA	NA	2.65	2.91	ZZZ
48500		A	Surgery of pancreas cyst	13.84	NA	NA	6.57	7.92	1.23	NA	NA	21.64	22.99	090
48510		A	Drain pancreatic pseudocyst	12.96	NA	NA	6.70	7.44	0.92	NA	NA	20.58	21.32	090
48511		A	Drain pancreatic pseudocyst	4.00	NA	NA	3.57	3.43	0.29	NA	NA	7.86	7.72	000
48520		A	Fuse pancreas cyst and bowel	14.12	NA	NA	6.86	9.56	1.38	NA	NA	22.36	25.06	090
48540		A	Fuse pancreas cyst and bowel	17.86	NA	NA	8.29	11.02	1.80	NA	NA	27.95	30.68	090
48545		A	Pancreatorrhaphy	16.47	NA	NA	8.38	8.35	1.76	NA	NA	26.61	26.58	090
48547		A	Duodenal exclusion	23.40	NA	NA	10.42	11.22	2.42	NA	NA	36.24	37.04	090
48550		X	Donor pancreatectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
48554		R	Transpl allograft pancreas	34.17	NA	NA	13.22	16.31	3.26	NA	NA	50.65	53.74	090
48556		A	Removal, allograft pancreas	15.71	NA	NA	8.46	8.17	1.50	NA	NA	25.67	25.38	090
48999		C	Pancreas surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49000		A	Exploration of abdomen	11.68	NA	NA	6.18	6.78	1.14	NA	NA	19.00	19.60	090
49002		A	Reopening of abdomen	10.49	NA	NA	6.02	6.30	1.03	NA	NA	17.54	17.82	090
49010		A	Exploration behind abdomen	12.28	NA	NA	7.04	7.29	1.22	NA	NA	20.54	20.79	090
49020		A	Drain abdominal abscess	16.79	NA	NA	8.62	6.93	1.12	NA	NA	26.53	24.84	090
49021		A	Drain abdominal abscess	3.38	NA	NA	4.48	4.26	0.20	NA	NA	8.06	7.84	000
49040		A	Drain, open, abdom abscess	9.94	NA	NA	6.36	6.73	0.67	NA	NA	16.97	17.34	090
49041		A	Drain, percut, abdom abscess	4.00	NA	NA	4.70	4.00	0.27	NA	NA	8.97	8.27	000
49060		A	Drain, open, retrop abscess	11.66	NA	NA	6.95	6.48	0.65	NA	NA	19.26	18.79	090
49061		A	Drain, percut, retroper absc	3.70	NA	NA	4.73	3.89	0.21	NA	NA	8.64	7.80	000
49062		A	Drain to peritoneal cavity	11.36	NA	NA	6.92	7.84	1.07	NA	NA	19.35	20.27	090
49080		A	Puncture, peritoneal cavity	1.35	2.94	1.94	0.42	0.68	0.08	4.37	3.37	1.85	2.11	000
49081		A	Removal of abdominal fluid	1.26	2.79	1.80	0.40	0.61	0.08	4.13	3.14	1.74	1.95	000
49085		A	Remove abdomen foreign body	8.93	NA	NA	5.30	4.53	0.90	NA	NA	15.13	14.36	090
49180		A	Biopsy, abdominal mass	1.73	5.88	3.93	0.48	1.23	0.08	7.69	5.74	2.29	3.04	000
49200		A	Removal of abdominal lesion	10.25	NA	NA	5.97	7.53	0.92	NA	NA	17.14	18.70	090
49201		A	Removal of abdominal lesion	14.84	NA	NA	8.25	10.69	1.28	NA	NA	24.37	26.81	090
49215		A	Excise sacral spine tumor	22.36	NA	NA	10.50	9.86	2.18	NA	NA	35.04	34.40	090
49220		A	Multiple surgery, abdomen	14.88	NA	NA	7.70	10.53	1.45	NA	NA	24.03	26.86	090
49250		A	Excision of umbilicus	8.35	NA	NA	5.08	5.00	0.79	NA	NA	14.22	14.14	090
49255		A	Removal of omentum	11.14	NA	NA	6.30	5.95	1.04	NA	NA	18.48	18.13	090
49320		A	Diag laparo separate proc	5.10	NA	NA	2.91	3.87	0.47	NA	NA	8.48	9.44	010
49321		A	Laparoscopy, biopsy	5.40	NA	NA	3.01	4.17	0.49	NA	NA	8.90	10.06	010
49322		A	Laparoscopy, aspiration	5.70	NA	NA	3.23	4.26	0.49	NA	NA	9.72	10.45	010
49323		A	Laparo drain lymphocele	9.48	NA	NA	4.29	5.80	0.90	NA	NA	14.67	16.18	090
49329		C	Laparo proc, abdm/per/oment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49400		A	Air injection into abdomen	1.88	NA	NA	0.57	0.90	0.11	NA	NA	2.56	2.89	000
49420		A	Insert abdominal drain	2.22	NA	NA	0.91	1.31	0.16	NA	NA	3.29	3.69	000
49421		A	Insert abdominal drain	5.54	NA	NA	3.87	4.18	0.56	NA	NA	9.97	10.28	090
49422		A	Remove perm cannula/catheter	6.25	NA	NA	3.01	3.75	0.63	NA	NA	9.89	10.63	010
49423		A	Exchange drainage catheter	1.46	NA	NA	0.40	0.80	0.15	NA	NA	2.01	2.41	000
49424		A	Assess cyst, contrast inject	0.76	NA	NA	0.21	0.42	0.05	NA	NA	1.02	1.23	000
49425		A	Insert abdomen-venous drain	11.37	NA	NA	7.17	8.19	1.21	NA	NA	19.75	20.77	090
49426		A	Revise abdomen-venous shunt	9.63	NA	NA	5.86	5.86	0.99	NA	NA	16.48	16.48	090
49427		A	Injection, abdominal shunt	0.89	NA	NA	0.26	0.40	0.04	NA	NA	1.19	1.33	000
49428		A	Ligation of shunt	2.38	NA	NA	1.91	1.52	0.29	NA	NA	4.58	4.19	010
49429		A	Removal of shunt	7.40	NA	NA	3.75	3.68	0.79	NA	NA	11.94	11.87	010
49495		A	Repair inguinal hernia, init	5.89	NA	NA	3.67	4.54	0.56	NA	NA	10.12	10.99	090
49496		A	Repair inguinal hernia, init	8.79	NA	NA	6.80	6.14	0.85	NA	NA	16.44	15.78	090
49500		A	Repair inguinal hernia	4.68	NA	NA	3.08	4.24	0.43	NA	NA	8.19	9.35	090
49501		A	Repair inguinal hernia, init	7.58	NA	NA	4.04	4.76	0.75	NA	NA	12.37	13.09	090
49505		A	Repair inguinal hernia	6.49	4.00	4.45	3.68	4.29	0.64	11.13	11.58	10.81	11.42	090
49507		A	Repair inguinal hernia	8.17	NA	NA	5.47	5.47	0.81	NA	NA	14.45	14.45	090
49520		A	Rerepair inguinal hernia	8.22	NA	NA	4.90	5.29	0.82	NA	NA	13.94	14.33	090
49521		A	Repair inguinal hernia, rec	10.22	NA	NA	5.20	5.34	1.02	NA	NA	16.44	16.58	090
49525		A	Repair inguinal hernia	7.32	NA	NA	4.42	5.22	0.73	NA	NA	12.47	13.27	090
49540		A	Repair lumbar hernia	8.87	NA	NA	5.21	5.43	0.89	NA	NA	14.97	15.19	090
49550		A	Repair femoral hernia	7.37	NA	NA	4.07	4.54	0.74	NA	NA	12.18	12.65	090
49553		A	Repair femoral hernia, init	8.06	NA	NA	4.44	4.72	0.80	NA	NA	13.30	13.58	090
49555		A	Repair femoral hernia	7.71	NA	NA	4.67	5.63	0.77	NA	NA	13.15	14.11	090
49557		A	Repair femoral hernia, recur	9.52	NA	NA	4.96	5.78	0.95	NA	NA	15.43	16.25	090
49560		A	Repair abdominal hernia	9.88	NA	NA	5.48	5.81	0.99	NA	NA	16.35	16.68	090
49561		A	Repair incisional hernia	12.17	NA	NA	6.01	6.07	1.21	NA	NA	19.39	19.45	090
49565		A	Rerepair abdominal hernia	9.88	NA	NA	5.59	6.28	0.98	NA	NA	16.45	17.14	090
49566		A	Repair incisional hernia	12.30	NA	NA	6.03	6.50	1.22	NA	NA	19.55	20.02	090
49568		A	Hernia repair w/mesh	4.89	NA	NA	1.86	2.32	0.49	NA	NA	7.24	7.70	ZZZ
49570		A	Repair epigastric hernia	4.86	NA	NA	3.20	3.98	0.49	NA	NA	8.55	9.33	090
49572		A	Repair epigastric hernia	5.75	NA	NA	3.58	4.83	0.57	NA	NA	9.90	11.15	090
49580		A	Repair umbilical hernia	3.51	NA	NA	2.74	3.47	0.34	NA	NA	6.59	7.32	090
49582		A	Repair umbilical hernia	5.68	NA	NA	4.37	4.69	0.57	NA	NA	10.62	10.94	090
49585		A	Repair umbilical hernia	5.32	NA	NA	3.67	4.23	0.53	NA	NA	9.52	10.08	090
49587		A	Repair umbilical hernia	6.46	NA	NA	3.78	4.29	0.64	NA	NA	10.88	11.39	090
49590		A	Repair abdominal hernia	7.29	NA	NA	4.43	5.27	0.73	NA	NA	12.45	13.29	090
49600		A	Repair umbilical lesion	10.35	NA	NA	5.66	5.69	0.95	NA	NA	16.96	16.99	090
49605		A	Repair umbilical lesion	22.66	NA	NA	11.31	10.31	2.20	NA	NA	36.17	35.17	090
49606		A	Repair umbilical lesion	18.60	NA	NA	8.89	8.96	1.91	NA	NA	29.40	29.47	090

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
49610		A	Repair umbilical lesion	10.50	NA	NA	6.56	6.26	1.05	NA	NA	18.11	17.81	090
49611		A	Repair umbilical lesion	8.92	NA	NA	6.05	7.91	0.68	NA	NA	15.65	17.51	090
49650		A	Laparo hernia repair initial	6.27	NA	NA	3.35	4.12	0.62	NA	NA	10.24	11.01	090
49651		A	Laparo hernia repair recur	8.24	NA	NA	4.45	5.06	0.82	NA	NA	13.51	14.12	090
49659		C	Laparo proc, hernia repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49900		A	Repair of abdominal wall	12.28	NA	NA	6.73	5.35	1.20	NA	NA	20.21	18.83	090
49905		A	Omental flap	6.55	NA	NA	2.54	3.13	0.64	NA	NA	9.73	10.32	ZZZ
49906		C	Free omental flap, microvasc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
49999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
50010		A	Exploration of kidney	10.98	NA	NA	6.46	8.41	0.75	NA	NA	18.19	20.14	090
50020		A	Renal abscess, open drain	14.66	NA	NA	11.21	9.30	0.68	NA	NA	26.55	24.64	090
50021		A	Renal abscess, percut drain	3.38	NA	NA	8.30	5.54	0.15	NA	NA	11.83	9.07	000
50040		A	Drainage of kidney	14.94	NA	NA	9.92	8.86	0.79	NA	NA	25.65	24.59	090
50045		A	Exploration of kidney	15.46	NA	NA	7.85	9.25	1.13	NA	NA	24.44	25.84	090
50060		A	Removal of kidney stone	19.30	NA	NA	9.18	11.24	1.14	NA	NA	29.62	31.68	090
50065		A	Incision of kidney	20.79	NA	NA	9.79	12.46	1.17	NA	NA	31.75	34.42	090
50070		A	Incision of kidney	20.32	NA	NA	9.60	11.79	1.44	NA	NA	31.36	33.55	090
50075		A	Removal of kidney stone	25.34	NA	NA	11.58	14.95	1.50	NA	NA	38.42	41.79	090
50080		A	Removal of kidney stone	14.71	NA	NA	9.63	11.44	0.81	NA	NA	25.15	26.96	090
50081		A	Removal of kidney stone	21.80	NA	NA	11.99	14.12	1.23	NA	NA	35.02	37.15	090
50100		A	Revise kidney blood vessels	16.09	NA	NA	9.91	10.57	1.74	NA	NA	27.74	28.40	090
50120		A	Exploration of kidney	15.91	NA	NA	8.06	9.95	0.95	NA	NA	24.92	26.81	090
50125		A	Explore and drain kidney	16.52	NA	NA	8.41	10.15	1.24	NA	NA	26.17	27.91	090
50130		A	Removal of kidney stone	17.29	NA	NA	8.56	11.23	1.05	NA	NA	26.90	29.57	090
50135		A	Exploration of kidney	19.18	NA	NA	9.22	13.86	1.18	NA	NA	29.58	34.22	090
50200		A	Biopsy of kidney	2.63	NA	NA	0.81	1.82	0.14	NA	NA	3.58	4.59	000
50205		A	Biopsy of kidney	11.31	NA	NA	6.18	6.15	0.88	NA	NA	18.37	18.34	090
50220		A	Removal of kidney	17.15	NA	NA	8.69	11.57	1.18	NA	NA	27.02	29.90	090
50225		A	Removal of kidney	20.23	NA	NA	9.71	13.82	1.26	NA	NA	31.20	35.31	090
50230		A	Removal of kidney	22.07	NA	NA	10.21	15.09	1.37	NA	NA	33.65	38.53	090
50234		A	Removal of kidney & ureter	22.40	NA	NA	10.32	14.20	1.38	NA	NA	34.10	37.98	090
50236		A	Removal of kidney & ureter	24.86	NA	NA	13.13	16.19	1.51	NA	NA	39.50	42.56	090
50240		A	Partial removal of kidney	22.00	NA	NA	12.24	14.80	1.37	NA	NA	35.61	38.17	090
50280		A	Removal of kidney lesion	15.67	NA	NA	8.04	9.92	1.00	NA	NA	24.71	26.59	090
50290		A	Removal of kidney lesion	14.73	NA	NA	7.67	8.65	1.16	NA	NA	23.56	24.54	090
50300		X	Removal of donor kidney	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
50320		A	Removal of donor kidney	22.21	NA	NA	10.55	14.23	1.74	NA	NA	34.50	38.18	090
50340		A	Removal of kidney	12.15	NA	NA	9.31	11.43	1.03	NA	NA	22.49	24.61	090
50360		A	Transplantation of kidney	31.53	NA	NA	17.07	21.80	2.91	NA	NA	51.51	56.24	090
50365		A	Transplantation of kidney	36.81	NA	NA	20.06	26.70	3.32	NA	NA	60.19	66.83	090
50370		A	Remove transplanted kidney	13.72	NA	NA	9.31	10.67	1.24	NA	NA	24.27	25.63	090
50380		A	Reimplantation of kidney	20.76	NA	NA	12.41	11.70	1.79	NA	NA	34.96	34.25	090
50390		A	Drainage of kidney lesion	1.96	NA	NA	0.54	1.19	0.08	NA	NA	2.58	3.23	000
50392		A	Insert kidney drain	3.38	NA	NA	0.93	1.75	0.13	NA	NA	4.44	5.26	000
50393		A	Insert ureteral tube	4.16	NA	NA	1.15	2.21	0.16	NA	NA	5.47	6.53	000
50394		A	Injection for kidney x-ray	0.76	12.99	6.80	0.21	0.41	0.03	13.78	7.59	1.00	1.20	000
50395		A	Create passage to kidney	3.38	NA	NA	0.94	2.28	0.13	NA	NA	4.45	5.79	000
50396		A	Measure kidney pressure	2.09	NA	NA	0.59	0.57	0.09	NA	NA	2.77	2.75	000
50398		A	Change kidney tube	1.46	0.90	0.74	0.40	0.49	0.06	2.42	2.26	1.92	2.01	000
50400		A	Revision of kidney/ureter	19.50	NA	NA	9.32	12.07	1.17	NA	NA	29.99	32.74	090
50405		A	Revision of kidney/ureter	23.93	NA	NA	12.33	15.55	1.48	NA	NA	37.74	40.96	090
50500		A	Repair of kidney wound	19.57	NA	NA	11.13	12.33	1.54	NA	NA	32.24	33.44	090
50520		A	Close kidney-skin fistula	17.23	NA	NA	10.38	10.80	1.08	NA	NA	28.69	29.11	090
50525		A	Repair renal-abdomen fistula	22.27	NA	NA	12.50	13.10	2.00	NA	NA	36.77	37.37	090
50526		A	Repair renal-abdomen fistula	24.02	NA	NA	13.62	10.82	2.40	NA	NA	40.04	37.24	090
50540		A	Revision of horseshoe kidney	19.93	NA	NA	9.57	12.06	1.37	NA	NA	30.87	33.36	090
50541		A	Laparo ablate renal cyst	16.00	NA	NA	6.53	6.53	1.03	NA	NA	23.56	23.56	090
50544		A	Laparoscopy, pyeloplasty	22.40	NA	NA	8.70	8.70	1.36	NA	NA	32.46	32.46	090
50546		A	Laparoscopic nephrectomy	20.48	NA	NA	8.23	8.23	1.41	NA	NA	30.12	30.12	090
50547		A	Laparo removal donor kidney	25.50	NA	NA	11.21	11.21	1.98	NA	NA	38.69	38.69	090
50548		A	Laparo-asst remove k/ureter	24.40	NA	NA	9.42	9.42	1.52	NA	NA	35.34	35.34	090
50549		C	Laparoscope proc, renal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
50551		A	Kidney endoscopy	5.60	4.43	3.41	1.88	2.13	0.32	10.35	9.33	7.80	8.05	000
50553		A	Kidney endoscopy	5.99	16.45	9.13	2.04	1.92	0.33	22.77	15.45	8.36	8.24	000
50555		A	Kidney endoscopy & biopsy	6.53	12.61	8.86	2.18	3.64	0.34	19.48	15.73	9.05	10.51	000
50557		A	Kidney endoscopy & treatment	6.62	18.15	11.63	2.23	3.67	0.37	25.14	18.62	9.22	10.66	000
50559		A	Renal endoscopy/radiotracer	6.78	NA	NA	2.40	1.93	0.30	NA	NA	9.48	9.01	000
50561		A	Kidney endoscopy & treatment	7.59	16.40	10.98	2.52	4.04	0.42	24.41	18.99	10.53	12.05	000
50570		A	Kidney endoscopy	9.54	NA	NA	3.21	2.39	0.54	NA	NA	13.29	12.47	000
50572		A	Kidney endoscopy	10.35	NA	NA	3.39	5.63	0.56	NA	NA	14.30	16.54	000
50574		A	Kidney endoscopy & biopsy	11.02	NA	NA	3.66	5.67	0.62	NA	NA	15.30	17.31	000
50575		A	Kidney endoscopy	13.98	NA	NA	4.72	7.75	0.79	NA	NA	19.49	22.52	000
50576		A	Kidney endoscopy & treatment	10.99	NA	NA	3.72	6.58	0.64	NA	NA	15.35	18.21	000
50578		A	Renal endoscopy/radiotracer	11.35	NA	NA	4.39	4.25	0.57	NA	NA	16.31	16.17	000
50580		A	Kidney endoscopy & treatment	11.86	NA	NA	4.00	3.95	0.68	NA	NA	16.54	16.49	000
50590		A	Fragmenting of kidney stone	9.09	9.38	10.12	4.72	7.79	0.52	18.99	19.73	14.33	17.40	090
50600		A	Exploration of ureter	15.84	NA	NA	8.10	9.31	0.99	NA	NA	24.93	26.14	090
50605		A	Insert ureteral support	15.46	NA	NA	8.15	7.39	1.10	NA	NA	24.71	23.95	090
50610		A	Removal of ureter stone	15.92	NA	NA	8.34	10.56	0.99	NA	NA	25.25	27.47	090
50620		A	Removal of ureter stone	15.16	NA	NA	7.79	10.13	0.90	NA	NA	23.85	26.19	090
50630		A	Removal of ureter stone	14.94	NA	NA	7.64	10.72	0.92	NA	NA	23.50	26.58	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
50650	....	A	Removal of ureter	17.41	NA	NA	8.92	11.01	1.06	NA	NA	27.39	29.48	090
50660	....	A	Removal of ureter	19.55	NA	NA	9.78	11.67	1.20	NA	NA	30.53	32.42	090
50684	....	A	Injection for ureter x-ray	0.76	13.39	6.96	0.24	0.39	0.04	14.19	7.76	1.04	1.19	000
50686	....	A	Measure ureter pressure	1.51	4.47	2.44	0.58	0.49	0.09	6.07	4.04	2.18	2.09	000
50688	....	A	Change of ureter tube	1.17	NA	NA	1.42	0.92	0.05	NA	NA	2.64	2.14	010
50690	....	A	Injection for ureter x-ray	1.16	13.92	7.14	0.34	0.35	0.06	15.14	8.36	1.56	1.57	000
50700	....	A	Revision of ureter	15.21	NA	NA	8.25	10.95	0.94	NA	NA	24.40	27.10	090
50715	....	A	Release of ureter	18.90	NA	NA	10.75	11.48	1.38	NA	NA	31.03	31.76	090
50722	....	A	Release of ureter	16.35	NA	NA	8.79	10.00	1.17	NA	NA	26.31	27.52	090
50725	....	A	Release/revise ureter	18.49	NA	NA	9.58	11.33	1.34	NA	NA	29.41	31.16	090
50727	....	A	Revise ureter	8.18	NA	NA	5.86	5.85	0.52	NA	NA	14.56	14.55	090
50728	....	A	Revise ureter	12.02	NA	NA	7.58	8.08	0.91	NA	NA	20.51	21.01	090
50740	....	A	Fusion of ureter & kidney	18.42	NA	NA	9.06	11.60	1.49	NA	NA	28.97	31.51	090
50750	....	A	Fusion of ureter & kidney	19.51	NA	NA	9.69	12.47	1.13	NA	NA	30.33	33.11	090
50760	....	A	Fusion of ureters	18.42	NA	NA	9.28	11.95	1.19	NA	NA	28.89	31.56	090
50770	....	A	Splicing of ureters	19.51	NA	NA	9.55	13.04	1.19	NA	NA	30.25	33.74	090
50780	....	A	Reimplant ureter in bladder	18.36	NA	NA	9.19	12.07	1.18	NA	NA	28.73	31.61	090
50782	....	A	Reimplant ureter in bladder	19.54	NA	NA	9.96	12.46	1.29	NA	NA	30.79	33.29	090
50783	....	A	Reimplant ureter in bladder	20.55	NA	NA	10.16	12.56	1.32	NA	NA	32.03	34.43	090
50785	....	A	Reimplant ureter in bladder	20.52	NA	NA	9.99	13.36	1.30	NA	NA	31.81	35.18	090
50800	....	A	Implant ureter in bowel	14.52	NA	NA	8.94	12.43	0.92	NA	NA	24.38	27.87	090
50810	....	A	Fusion of ureter & bowel	20.05	NA	NA	12.44	13.04	1.62	NA	NA	34.11	34.71	090
50815	....	A	Unne shunt to bowel	19.93	NA	NA	10.82	16.13	1.28	NA	NA	32.03	37.34	090
50820	....	A	Construct bowel bladder	21.89	NA	NA	11.31	15.95	1.46	NA	NA	34.66	39.30	090
50825	....	A	Construct bowel bladder	28.18	NA	NA	13.93	23.54	1.71	NA	NA	43.82	53.43	090
50830	....	A	Revise unne flow	31.28	NA	NA	14.59	18.65	2.15	NA	NA	48.02	52.08	090
50840	....	A	Replace ureter by bowel	20.00	NA	NA	10.89	12.68	1.25	NA	NA	32.14	33.93	090
50845	....	A	Appendico-vesicostomy	20.89	NA	NA	9.40	12.23	1.26	NA	NA	31.55	34.38	090
50860	....	A	Transplant ureter to skin	15.36	NA	NA	8.27	10.06	1.01	NA	NA	24.64	26.43	090
50900	....	A	Repair of ureter	13.62	NA	NA	7.40	9.12	0.97	NA	NA	21.99	23.71	090
50920	....	A	Closure ureter/skin fistula	14.33	NA	NA	7.83	9.08	1.[illegible]	NA	NA	23.19	24.44	090
50930	....	A	Closure ureter/bowel fistula	18.72	NA	NA	9.04	11.31	1.34	NA	NA	29.10	31.37	090
50940	....	A	Release of ureter	14.51	NA	NA	8.67	9.71	0.95	NA	NA	24.13	25.17	090
50945	....	A	Laparoscopy ureterolithotomy	17.00	NA	NA	6.84	6.84	1.07	NA	NA	24.91	24.91	090
50951	....	A	Endoscopy of ureter	5.84	4.65	3.23	1.97	1.89	0.34	10.83	9.41	8.15	8.07	000
50953	....	A	Endoscopy of ureter	6.24	16.62	9.21	2.10	1.95	0.36	23.22	15.81	8.70	8.55	000
50955	....	A	Ureter endoscopy & biopsy	6.75	12.46	7.62	2.17	2.47	0.37	19.58	14.74	9.29	9.59	000
50957	....	A	Ureter endoscopy & treatment	6.79	12.51	7.61	2.28	2.50	0.38	19.68	14.78	9.45	9.67	000
50959	....	A	Ureter endoscopy & tracer	4.40	NA	NA	1.39	2.53	0.25	NA	NA	6.04	7.18	000
50961	....	A	Ureter endoscopy & treatment	6.05	22.16	12.50	1.98	2.41	0.33	28.54	18.88	8.36	8.79	000
50970	....	A	Ureter endoscopy	7.14	NA	NA	2.44	4.03	0.41	NA	NA	9.99	11.58	000
50972	....	A	Ureter endoscopy & catheter	6.89	NA	NA	2.31	1.99	0.40	NA	NA	9.60	9.28	000
50974	....	A	Ureter endoscopy & biopsy	9.17	NA	NA	3.11	5.36	0.50	NA	NA	12.78	15.03	000
50976	....	A	Ureter endoscopy & treatment	9.04	NA	NA	3.08	5.02	0.51	NA	NA	12.63	14.57	000
50978	....	A	Ureter endoscopy & tracer	5.10	NA	NA	1.97	3.19	0.33	NA	NA	7.40	8.62	000
50980	....	A	Ureter endoscopy & treatment	6.85	NA	NA	2.26	2.83	0.38	NA	NA	9.49	10.06	000
51000	....	A	Drainage of bladder	0.78	1.68	1.10	0.24	0.38	0.05	2.51	1.93	1.07	1.21	000
51005	....	A	Drainage of bladder	1.02	2.84	1.67	0.35	0.43	0.08	3.94	2.77	1.45	1.53	000
51010	....	A	Drainage of bladder	3.53	6.52	3.79	1.73	1.39	0.22	10.27	7.54	5.48	5.14	010
51020	....	A	Incise & treat bladder	6.71	NA	NA	4.97	6.20	0.42	NA	NA	12.10	13.33	090
51030	....	A	Incise & treat bladder	6.77	NA	NA	5.20	5.06	0.40	NA	NA	12.37	12.23	090
51040	....	A	Incise & drain bladder	4.40	NA	NA	3.81	4.53	0.27	NA	NA	8.48	9.20	090
51045	....	A	Incise bladder/drain ureter	6.77	NA	NA	5.14	5.26	0.43	NA	NA	12.34	12.46	090
51050	....	A	Removal of bladder stone	6.92	NA	NA	4.68	6.21	0.41	NA	NA	12.01	13.54	090
51060	....	A	Removal of ureter stone	8.85	NA	NA	5.58	8.08	0.53	NA	NA	14.96	17.46	090
51065	....	A	Removal of ureter stone	8.85	NA	NA	5.57	6.63	0.52	NA	NA	14.94	16.00	090
51080	....	A	Drainage of bladder abscess	5.96	NA	NA	4.89	5.26	0.36	NA	NA	11.21	11.58	090
51500	....	A	Removal of bladder cyst	10.14	NA	NA	5.85	6.65	0.82	NA	NA	16.81	17.61	090
51520	....	A	Removal of bladder lesion	9.29	NA	NA	5.76	7.51	0.57	NA	NA	15.62	17.37	090
51525	....	A	Removal of bladder lesion	13.97	NA	NA	7.37	9.48	0.85	NA	NA	22.19	24.30	090
51530	....	A	Removal of bladder lesion	12.38	NA	NA	7.00	8.52	0.85	NA	NA	20.23	21.75	090
51535	....	A	Repair of ureter lesion	12.57	NA	NA	7.23	7.78	0.84	NA	NA	20.64	21.19	090
51550	....	A	Partial removal of bladder	15.66	NA	NA	8.07	9.85	1.10	NA	NA	24.83	26.61	090
51555	....	A	Partial removal of bladder	21.23	NA	NA	10.27	11.79	1.38	NA	NA	32.88	34.40	090
51565	....	A	Revise bladder & ureter(s)	21.62	NA	NA	10.66	13.93	1.37	NA	NA	33.65	36.92	090
51570	....	A	Removal of bladder	24.24	NA	NA	11.61	14.31	1.50	NA	NA	37.35	40.05	090
51575	....	A	Removal of bladder & nodes	30.45	NA	NA	14.32	19.57	1.90	NA	NA	46.67	51.92	090
51580	....	A	Remove bladder/revise tract	31.08	NA	NA	14.70	18.18	1.93	NA	NA	47.71	51.19	090
51585	....	A	Removal of bladder & nodes	35.23	NA	NA	16.09	21.68	2.21	NA	NA	53.53	59.12	090
51590	....	A	Remove bladder/revise tract	32.66	NA	NA	14.95	20.78	2.03	NA	NA	49.64	55.47	090
51595	....	A	Remove bladder/revise tract	37.14	NA	NA	16.46	26.57	2.21	NA	NA	55.81	65.92	090
51596	....	A	Remove bladder/create pouch	39.52	NA	NA	17.57	27.72	2.37	NA	NA	59.46	69.61	090
51597	....	A	Removal of pelvic structures	38.35	NA	NA	17.45	25.35	2.53	NA	NA	58.33	66.23	090
51600	....	A	Injection for bladder x-ray	0.88	13.53	6.92	0.26	0.28	0.04	14.45	7.84	1.18	1.20	000
51605	....	A	Preparation for bladder xray	0.64	14.01	7.17	0.20	0.27	0.03	14.68	7.84	0.87	0.94	000
51610	....	A	Injection for bladder x-ray	1.05	14.39	7.34	0.32	0.31	0.05	15.49	8.44	1.42	1.41	000
51700	....	A	Irrigation of bladder	0.88	3.56	1.90	0.29	0.21	0.05	4.49	2.83	1.22	1.14	000
51705	....	A	Change of bladder tube	1.02	2.31	1.36	1.15	0.68	0.06	3.39	2.44	2.23	1.76	010
51710	....	A	Change of bladder tube	1.49	4.44	2.53	1.28	0.80	0.09	6.02	4.11	2.86	2.38	010
51715	....	A	Endoscopic injection/implant	3.74	3.82	3.35	1.27	2.08	0.22	7.78	7.31	5.23	6.04	000
51720	....	A	Treatment of bladder lesion	1.96	3.72	2.11	0.66	0.46	0.11	5.79	4.18	2.73	2.53	000

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

Addendum B.—Relative Value Units (RVUs) and Related Information Used in Determining Medicare Payments for 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
51725		A	Simple cystometrogram	1.51	0.92	1.01	0.92	1.01	0.12	2.55	2.64	2.55	2.64	000
51725	26	A	Simple cystometrogram	1.51	0.52	0.60	0.52	0.60	0.09	2.12	2.20	2.12	2.20	000
51725	TC	A	Simple cystometrogram	0.00	0.40	0.41	0.40	0.41	0.03	0.43	0.44	0.43	0.44	000
51726		A	Complex cystometrogram	1.71	1.09	1.25	1.09	1.25	0.14	2.94	3.10	2.94	3.10	000
51726	26	A	Complex cystometrogram	1.71	0.58	0.73	0.58	0.73	0.10	2.39	2.54	2.39	2.54	000
51726	TC	A	Complex cystometrogram	0.00	0.51	0.52	0.51	0.52	0.04	0.55	0.56	0.55	0.56	000
51736		A	Urine flow measurement	0.61	0.37	0.41	0.37	0.41	0.05	1.03	1.07	1.03	1.07	000
51736	26	A	Urine flow measurement	0.61	0.21	0.25	0.21	0.25	0.04	0.86	0.90	0.86	0.90	000
51736	TC	A	Urine flow measurement	0.00	0.16	0.16	0.16	0.16	0.01	0.17	0.17	0.17	0.17	000
51741		A	Electro-uroflowmetry, first	1.14	0.61	0.62	0.61	0.62	0.09	1.84	1.85	1.84	1.85	000
51741	26	A	Electro-uroflowmetry, first	1.14	0.39	0.39	0.39	0.39	0.07	1.60	1.60	1.60	1.60	000
51741	TC	A	Electro-uroflowmetry, first	0.00	0.22	0.23	0.22	0.23	0.02	0.24	0.25	0.24	0.25	000
51772		A	Urethra pressure profile	1.61	1.02	1.03	1.02	1.03	0.14	2.77	2.78	2.77	2.78	000
51772	26	A	Urethra pressure profile	1.61	0.57	0.57	0.57	0.57	0.10	2.28	2.28	2.28	2.28	000
51772	TC	A	Urethra pressure profile	0.00	0.45	0.46	0.45	0.46	0.04	0.49	0.50	0.49	0.50	000
51784		A	Anal/urinary muscle study	1.53	0.94	1.04	0.94	1.04	0.13	2.60	2.70	2.60	2.70	000
51784	26	A	Anal/urinary muscle study	1.53	0.53	0.62	0.53	0.62	0.10	2.16	2.25	2.16	2.25	000
51784	TC	A	Anal/urinary muscle study	0.00	0.41	0.42	0.41	0.42	0.03	0.44	0.45	0.44	0.45	000
51785		A	Anal/urinary muscle study	1.53	0.94	1.04	0.94	1.04	0.12	2.59	2.69	2.59	2.69	000
51785	26	A	Anal/urinary muscle study	1.53	0.53	0.62	0.53	0.62	0.09	2.15	2.24	2.15	2.24	000
51785	TC	A	Anal/urinary muscle study	0.00	0.41	0.42	0.41	0.42	0.03	0.44	0.45	0.44	0.45	000
51792		A	Urinary reflex study	1.10	1.84	1.97	1.84	1.97	0.17	3.11	3.24	3.11	3.24	000
51792	26	A	Urinary reflex study	1.10	0.43	0.54	0.43	0.54	0.06	1.59	1.70	1.59	1.70	000
51792	TC	A	Urinary reflex study	0.00	1.41	1.43	1.41	1.43	0.11	1.52	1.54	1.52	1.54	000
51795		A	Urine voiding pressure study	1.53	1.44	1.51	1.44	1.51	0.17	3.14	3.21	3.14	3.21	000
51795	26	A	Urine voiding pressure study	1.53	0.53	0.58	0.53	0.58	0.09	2.15	2.20	2.15	2.20	000
51795	TC	A	Urine voiding pressure study	0.00	0.91	0.93	0.91	0.93	0.08	0.99	1.01	0.99	1.01	000
51797		A	Intraabdominal pressure test	1.60	1.03	1.04	1.03	1.04	0.14	2.77	2.78	2.77	2.78	000
51797	26	A	Intraabdominal pressure test	1.60	0.55	0.55	0.55	0.55	0.10	2.25	2.25	2.25	2.25	000
51797	TC	A	Intraabdominal pressure test	0.00	0.48	0.49	0.48	0.49	0.04	0.52	0.53	0.52	0.53	000
51800		A	Revision of bladder/urethra	17.42	NA	NA	8.73	10.89	1.09	NA	NA	27.24	29.40	090
51820		A	Revision of urinary tract	17.89	NA	NA	9.66	8.84	1.37	NA	NA	28.92	28.10	090
51840		A	Attach bladder/urethra	10.71	NA	NA	6.08	8.05	0.74	NA	NA	17.53	19.50	090
51841		A	Attach bladder/urethra	13.03	NA	NA	7.47	9.71	0.90	NA	NA	21.40	23.64	090
51845		A	Repair bladder neck	9.73	NA	NA	6.04	8.83	0.59	NA	NA	16.36	19.15	090
51860		A	Repair of bladder wound	12.02	NA	NA	7.27	7.77	0.93	NA	NA	20.22	20.72	090
51865		A	Repair of bladder wound	15.04	NA	NA	8.18	10.04	1.05	NA	NA	24.27	26.13	090
51880		A	Repair of bladder opening	7.66	NA	NA	5.06	5.22	0.53	NA	NA	13.25	13.41	090
51900		A	Repair bladder/vagina lesion	12.97	NA	NA	7.36	10.00	0.89	NA	NA	21.22	23.86	090
51920		A	Close bladder-uterus fistula	11.81	NA	NA	6.58	7.37	0.85	NA	NA	19.24	20.03	090
51925		A	Hysterectomy/bladder repair	15.58	NA	NA	8.63	9.78	1.17	NA	NA	25.38	26.53	090
51940		A	Correction of bladder defect	26.81	NA	NA	13.38	16.98	1.90	NA	NA	42.09	45.69	090
51960		A	Revision of bladder & bowel	23.01	NA	NA	11.96	17.59	1.39	NA	NA	36.36	41.99	090
51980		A	Construct bladder opening	11.36	NA	NA	6.73	7.42	0.73	NA	NA	18.82	19.51	090
51990		A	Laparo urethral suspension	12.50	NA	NA	5.94	5.94	0.87	NA	NA	19.31	19.31	090
51992		A	Laparo sling operation	14.01	NA	NA	6.15	6.15	0.86	NA	NA	21.02	21.02	090
52000		A	Cystoscopy	2.01	2.95	2.20	0.68	0.70	0.11	5.07	4.32	2.80	2.82	000
52005		A	Cystoscopy & ureter catheter	2.37	4.66	3.53	0.80	1.60	0.13	7.16	6.03	3.30	4.10	000
52007		A	Cystoscopy and biopsy	3.02	NA	NA	1.02	2.04	0.17	NA	NA	4.21	5.23	000
52010		A	Cystoscopy & duct catheter	3.02	4.90	3.48	1.02	1.03	0.17	8.09	6.67	4.21	4.22	000
52204		A	Cystoscopy	2.37	5.40	3.99	0.80	1.69	0.13	7.90	6.49	3.30	4.19	000
52214		A	Cystoscopy and treatment	3.71	5.77	4.41	1.25	2.15	0.21	9.69	8.33	5.17	6.07	000
52224		A	Cystoscopy and treatment	3.14	5.62	4.39	1.06	2.11	0.18	8.94	7.71	4.38	5.43	000
52234		A	Cystoscopy and treatment	4.63	6.50	5.81	1.56	3.34	0.26	11.39	10.70	6.45	8.23	000
52235		A	Cystoscopy and treatment	5.45	6.78	6.65	1.84	4.18	0.31	12.54	12.41	7.60	9.94	000
52240		A	Cystoscopy and treatment	9.72	8.23	9.90	3.28	7.42	0.55	18.50	20.17	13.55	17.69	000
52250		A	Cystoscopy and radiotracer	4.50	NA	NA	1.52	2.31	0.26	NA	NA	6.28	7.07	000
52260		A	Cystoscopy and treatment	3.92	NA	NA	1.32	1.81	0.22	NA	NA	5.46	5.95	000
52265		A	Cystoscopy and treatment	2.94	3.34	2.41	0.99	0.87	0.17	6.45	5.52	4.10	3.98	000
52270		A	Cystoscopy & revise urethra	3.37	6.08	4.93	1.14	2.46	0.19	9.64	8.49	4.70	6.02	000
52275		A	Cystoscopy & revise urethra	4.70	6.61	5.16	1.58	2.65	0.27	11.58	10.13	6.55	7.62	000
52276		A	Cystoscopy and treatment	5.00	6.71	5.84	1.69	3.33	0.29	12.00	11.13	6.98	8.62	000
52277		A	Cystoscopy and treatment	6.17	NA	NA	2.09	3.66	0.36	NA	NA	8.62	10.19	000
52281		A	Cystoscopy and treatment	2.80	3.34	2.93	0.94	1.10	0.16	6.30	5.89	3.90	4.06	000
52282		A	Cystoscopy, implant stent	6.40	6.95	5.96	2.16	3.57	0.36	13.71	12.72	8.92	10.33	000
52283		A	Cystoscopy and treatment	3.74	6.01	3.83	1.26	1.45	0.21	9.96	7.78	5.21	5.40	000
52285		A	Cystoscopy and treatment	3.61	6.21	4.70	1.22	1.41	0.21	10.03	8.52	5.04	5.23	000
52290		A	Cystoscopy and treatment	4.59	NA	NA	1.55	2.05	0.26	NA	NA	6.40	6.90	000
52300		A	Cystoscopy and treatment	5.31	NA	NA	1.79	2.78	0.31	NA	NA	7.41	8.40	000
52301		A	Cystoscopy and treatment	5.51	NA	NA	1.77	2.77	0.40	NA	NA	7.68	8.68	000
52305		A	Cystoscopy and treatment	5.31	NA	NA	1.79	2.80	0.31	NA	NA	7.41	8.42	000
52310		A	Cystoscopy and treatment	2.81	13.81	8.53	0.95	2.10	0.16	16.78	11.50	3.92	5.07	000
52315		A	Cystoscopy and treatment	5.21	14.77	9.60	1.76	3.09	0.30	20.28	15.11	7.27	8.60	000
52317		A	Remove bladder stone	6.72	22.48	14.60	2.27	4.50	0.38	29.58	21.70	9.37	11.60	000
52318		A	Remove bladder stone	9.19	NA	NA	3.10	5.83	0.52	NA	NA	12.81	15.54	000
52320		A	Cystoscopy and treatment	4.70	NA	NA	1.57	3.42	0.27	NA	NA	6.54	8.39	000
52325		A	Cystoscopy, stone removal	6.16	NA	NA	2.07	4.72	0.35	NA	NA	8.58	11.23	000
52327		A	Cystoscopy, inject material	5.19	NA	NA	1.77	2.89	0.30	NA	NA	7.26	8.38	000
52330		A	Cystoscopy and treatment	5.04	18.67	11.22	1.70	2.74	0.29	24.00	16.55	7.03	8.07	000
52332		A	Cystoscopy and treatment	2.83	28.09	15.79	0.95	2.17	0.16	31.08	18.78	3.94	5.16	000
52334		A	Create passage to kidney	4.83	NA	NA	1.60	2.61	0.28	NA	NA	6.71	7.72	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
52335		A	Endoscopy of urinary tract	5.86	NA	NA	1.97	3.53	0.33	NA	NA	8.16	9.72	000
52336		A	Cystoscopy, stone removal	6.88	NA	NA	2.31	5.27	0.39	NA	NA	9.58	12.54	000
52337		A	Cystoscopy, stone removal	7.97	NA	NA	2.66	6.09	0.45	NA	NA	11.08	14.51	000
52338		A	Cystoscopy and treatment	7.34	NA	NA	2.48	4.45	0.42	NA	NA	10.24	12.21	000
52339		A	Cystoscopy and treatment	8.82	NA	NA	2.98	4.70	0.51	NA	NA	12.31	14.03	000
52340		A	Cystoscopy and treatment	9.68	NA	NA	5.06	5.33	0.55	NA	NA	15.29	15.56	090
52450		A	Incision of prostate	7.64	NA	NA	5.81	5.62	0.43	NA	NA	13.88	13.69	090
52500		A	Revision of bladder neck	8.47	NA	NA	6.06	7.07	0.48	NA	NA	15.01	16.02	090
52510		A	Dilation prostatic urethra	6.72	NA	NA	5.22	6.62	0.38	NA	NA	12.32	13.72	090
52601		A	Prostatectomy (TURP)	12.37	NA	NA	7.39	10.14	0.70	NA	NA	20.46	23.21	090
52606		A	Control postop bleeding	8.13	NA	NA	5.62	4.61	0.47	NA	NA	14.22	13.21	090
52612		A	Prostatectomy, first stage	7.98	NA	NA	5.92	7.73	0.46	NA	NA	14.36	16.17	090
52614		A	Prostatectomy, second stage	6.84	NA	NA	5.51	6.60	0.39	NA	NA	12.74	13.83	090
52620		A	Remove residual prostate	6.61	NA	NA	5.46	5.62	0.37	NA	NA	12.44	12.60	090
52630		A	Remove prostate regrowth	7.26	NA	NA	5.69	7.18	0.41	NA	NA	13.36	14.85	090
52640		A	Relieve bladder contracture	6.62	NA	NA	5.10	6.04	0.37	NA	NA	12.09	13.03	090
52647		A	Laser surgery of prostate	10.36	NA	NA	4.75	8.56	0.58	NA	NA	15.69	19.50	090
52648		A	Laser surgery of prostate	11.21	NA	NA	6.94	9.91	0.64	NA	NA	18.79	21.76	090
52700		A	Drainage of prostate abscess	6.80	NA	NA	5.50	4.54	0.40	NA	NA	12.70	11.74	090
53000		A	Incision of urethra	2.28	6.47	4.19	2.21	2.06	0.14	8.89	6.61	4.63	4.48	010
53010		A	Incision of urethra	3.64	NA	NA	3.56	3.69	0.30	NA	NA	7.50	7.63	090
53020		A	Incision of urethra	1.77	3.86	2.38	0.60	0.75	0.11	5.74	4.26	2.48	2.63	000
53025		A	Incision of urethra	1.13	4.16	2.52	0.38	0.63	0.07	5.36	3.72	1.58	1.83	000
53040		A	Drainage of urethra abscess	6.40	9.05	5.53	9.05	5.53	0.38	15.83	12.31	15.83	12.31	090
53060		A	Drainage of urethra abscess	2.63	5.77	3.16	2.28	1.42	0.18	8.58	5.97	5.09	4.23	010
53080		A	Drainage of urinary leakage	6.29	NA	NA	8.14	6.23	0.36	NA	NA	14.79	12.88	090
53085		A	Drainage of urinary leakage	10.27	NA	NA	8.88	8.11	0.61	NA	NA	19.76	18.99	090
53200		A	Biopsy of urethra	2.59	4.94	3.07	0.88	1.04	0.15	7.68	5.81	3.62	3.78	000
53210		A	Removal of urethra	12.57	NA	NA	7.13	7.17	0.80	NA	NA	20.50	20.54	090
53215		A	Removal of urethra	15.58	NA	NA	8.01	9.43	0.94	NA	NA	24.53	25.95	090
53220		A	Treatment of urethra lesion	7.00	NA	NA	4.83	5.01	0.41	NA	NA	12.24	12.42	090
53230		A	Removal of urethra lesion	9.58	NA	NA	5.64	7.13	0.56	NA	NA	15.78	17.27	090
53235		A	Removal of urethra lesion	10.14	NA	NA	5.86	5.66	0.59	NA	NA	16.59	16.39	090
53240		A	Surgery for urethra pouch	6.45	NA	NA	4.58	4.64	0.42	NA	NA	11.45	11.51	090
53250		A	Removal of urethra gland	5.89	NA	NA	4.13	4.27	0.38	NA	NA	10.40	10.54	090
53260		A	Treatment of urethra lesion	2.98	5.36	3.29	2.06	1.64	0.19	8.53	6.46	5.23	4.81	010
53265		A	Treatment of urethra lesion	3.12	5.75	3.90	2.05	2.05	0.19	9.06	7.21	5.36	5.36	010
53270		A	Removal of urethra gland	3.09	5.42	3.17	2.18	1.32	0.21	8.72	6.47	5.48	4.62	010
53275		A	Repair of urethra defect	4.53	NA	NA	2.94	2.76	0.26	NA	NA	7.73	7.55	010
53400		A	Revise urethra, stage 1	12.77	NA	NA	7.10	7.61	0.74	NA	NA	20.61	21.12	090
53405		A	Revise urethra, stage 2	14.48	NA	NA	7.59	9.43	0.82	NA	NA	22.89	24.73	090
53410		A	Reconstruction of urethra	16.44	NA	NA	8.25	8.77	0.95	NA	NA	25.64	26.16	090
53415		A	Reconstruction of urethra	19.41	NA	NA	8.70	10.79	1.19	NA	NA	29.30	31.39	090
53420		A	Reconstruct urethra, stage 1	14.08	NA	NA	7.78	9.80	0.84	NA	NA	22.70	24.72	090
53425		A	Reconstruct urethra, stage 2	15.98	NA	NA	8.47	9.26	0.90	NA	NA	25.35	26.14	090
53430		A	Reconstruction of urethra	16.34	NA	NA	8.34	8.06	0.97	NA	NA	25.65	25.37	090
53440		A	Correct bladder function	12.34	NA	NA	7.67	10.97	0.72	NA	NA	20.73	24.03	090
53442		A	Remove perineal prosthesis	8.27	NA	NA	5.22	5.78	0.47	NA	NA	13.96	14.52	090
53443		A	Reconstruction of urethra	19.89	NA	NA	9.23	10.06	1.25	NA	NA	30.37	31.20	090
53445		A	Correct urine flow control	14.06	NA	NA	7.85	12.32	0.82	NA	NA	22.73	27.20	090
53447		A	Remove artificial sphincter	13.17	NA	NA	7.28	8.61	0.75	NA	NA	21.20	22.53	090
53449		A	Correct artificial sphincter	9.70	NA	NA	5.99	7.56	0.55	NA	NA	16.24	17.81	090
53450		A	Revision of urethra	6.14	NA	NA	4.36	3.67	0.34	NA	NA	10.84	10.15	090
53460		A	Revision of urethra	7.12	NA	NA	4.71	3.68	0.42	NA	NA	12.25	11.22	090
53502		A	Repair of urethra injury	7.63	NA	NA	5.18	5.29	0.48	NA	NA	13.29	13.40	090
53505		A	Repair of urethra injury	7.63	NA	NA	4.86	5.24	0.45	NA	NA	12.94	13.32	090
53510		A	Repair of urethra injury	10.11	NA	NA	6.18	6.88	0.68	NA	NA	16.97	17.67	090
53515		A	Repair of urethra injury	13.31	NA	NA	6.90	8.35	0.78	NA	NA	20.99	22.44	090
53520		A	Repair of urethra defect	8.68	NA	NA	5.27	5.83	0.52	NA	NA	14.47	15.03	090
53600		A	Dilate urethra stricture	1.21	3.73	2.05	0.41	0.30	0.07	5.01	3.33	1.69	1.58	000
53601		A	Dilate urethra stricture	0.98	3.66	1.99	0.33	0.25	0.06	4.70	3.03	1.37	1.29	000
53605		A	Dilate urethra stricture	1.28	NA	NA	0.43	0.47	0.08	NA	NA	1.79	1.83	000
53620		A	Dilate urethra stricture	1.62	5.55	3.03	0.55	0.41	0.10	7.27	4.75	2.27	2.13	000
53621		A	Dilate urethra stricture	1.35	5.54	2.98	0.46	0.34	0.08	6.97	4.41	1.89	1.77	000
53660		A	Dilation of urethra	0.71	3.51	1.91	0.24	0.20	0.04	4.26	2.66	0.99	0.95	000
53661		A	Dilation of urethra	0.72	3.56	1.92	0.24	0.19	0.04	4.32	2.68	1.00	0.95	000
53665		A	Dilation of urethra	0.76	NA	NA	0.26	0.33	0.05	NA	NA	1.07	1.14	000
53670		A	Insert urinary catheter	0.50	3.32	1.78	0.15	0.14	0.03	3.85	2.31	0.68	0.67	000
53675		A	Insert urinary catheter	1.47	4.41	2.46	0.48	0.50	0.09	5.97	4.02	2.04	2.06	000
53850		A	Prostatic microwave thermotx	9.45	NA	NA	6.42	6.85	0.53	NA	NA	16.40	16.83	090
53852		A	Prostatic rf thermotx	9.88	NA	NA	4.60	6.11	0.56	NA	NA	15.04	16.55	090
53899		C	Urology surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
54000		A	Slitting of prepuce	1.54	5.11	2.90	1.27	0.98	0.09	6.74	4.53	2.90	2.61	010
54001		A	Slitting of prepuce	2.19	5.50	3.21	1.80	1.36	0.13	7.82	5.53	4.12	3.68	010
54015		A	Drain penis lesion	5.32	7.27	4.09	2.91	1.91	0.32	12.91	9.73	8.55	7.55	010
54050		A	Destruction, penis lesion(s)	1.24	2.21	1.31	0.49	0.35	0.07	3.52	2.62	1.80	1.66	010
54055		A	Destruction, penis lesion(s)	1.22	5.94	3.30	1.25	0.79	0.07	7.23	4.59	2.54	2.08	010
54056		A	Cryosurgery, penis lesion(s)	1.24	2.73	1.66	0.53	0.41	0.05	4.02	2.95	1.82	1.70	010
54057		A	Laser surg, penis lesion(s)	1.24	2.51	2.08	1.16	1.32	0.07	3.82	3.39	2.47	2.63	010
54060		A	Excision of penis lesion(s)	1.93	4.92	3.10	1.40	1.34	0.11	6.96	5.14	3.44	3.38	010
54065		A	Destruction, penis lesion(s)	2.42	4.98	3.83	1.88	1.61	0.13	7.53	6.38	4.43	4.16	010

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
54100		A	Biopsy of penis	1.90	3.39	2.05	0.65	0.68	0.10	5.39	4.05	2.65	2.68	000
54105		A	Biopsy of penis	3.50	5.76	3.43	1.92	1.51	0.20	9.46	7.13	5.62	5.21	010
54110		A	Treatment of penis lesion	10.13	NA	NA	7.24	6.89	0.60	NA	NA	17.97	17.62	090
54111		A	Treat penis lesion, graft	13.57	NA	NA	8.38	9.17	0.78	NA	NA	22.73	23.52	090
54112		A	Treat penis lesion, graft	15.86	NA	NA	9.57	10.67	0.96	NA	NA	26.39	27.49	090
54115		A	Treatment of penis lesion	6.15	9.96	7.25	5.91	5.23	0.36	16.47	13.76	12.42	11.74	090
54120		A	Partial removal of penis	9.97	NA	NA	7.24	7.13	0.57	NA	NA	17.78	17.67	090
54125		A	Removal of penis	13.53	NA	NA	8.42	10.49	0.79	NA	NA	22.74	24.81	090
54130		A	Remove penis & nodes	20.14	NA	NA	11.02	13.47	1.20	NA	NA	32.36	34.81	090
54135		A	Remove penis & nodes	26.36	NA	NA	13.36	16.31	1.54	NA	NA	41.26	44.21	090
54150		A	Circumcision	1.81	5.33	2.96	1.61	1.10	0.12	7.26	4.89	3.54	3.03	010
54152		A	Circumcision	2.31	NA	NA	1.56	1.77	0.15	NA	NA	4.02	4.23	010
54160		A	Circumcision	2.48	5.46	3.63	1.62	1.71	0.17	8.11	6.28	4.27	4.36	010
54161		A	Circumcision	3.27	NA	NA	1.85	2.11	0.19	NA	NA	5.31	5.57	010
54200		A	Treatment of penis lesion	1.06	2.24	1.30	0.37	0.28	0.06	3.36	2.42	1.49	1.40	010
54205		A	Treatment of penis lesion	7.93	NA	NA	6.44	6.00	0.46	NA	NA	14.83	14.39	090
54220		A	Treatment of penis lesion	2.42	1.76	1.74	0.81	1.26	0.14	4.32	4.30	3.37	3.82	000
54230		A	Prepare penis study	1.34	NA	NA	0.44	0.59	0.08	NA	NA	1.86	2.01	000
54231		A	Dynamic cavernosometry	2.04	1.90	1.73	0.68	1.12	0.14	4.08	3.91	2.86	3.30	000
54235		A	Penile injection	1.19	1.00	0.74	0.40	0.32	0.07	2.26	2.00	1.66	1.58	000
54240		A	Penis study	1.31	0.95	1.02	0.95	1.02	0.14	2.40	2.47	2.40	2.47	000
54240	26	A	Penis study	1.31	0.44	0.50	0.44	0.50	0.09	1.84	1.90	1.84	1.90	000
54240	TC	A	Penis study	0.00	0.51	0.52	0.51	0.52	0.05	0.56	0.57	0.56	0.57	000
54250		A	Penis study	2.22	1.07	0.98	1.07	0.98	0.15	3.44	3.35	3.44	3.35	000
54250	26	A	Penis study	2.22	0.75	0.65	0.75	0.65	0.13	3.10	3.00	3.10	3.00	000
54250	TC	A	Penis study	0.00	0.32	0.33	0.32	0.33	0.02	0.34	0.35	0.34	0.35	000
54300		A	Revision of penis	10.41	NA	NA	8.20	7.84	0.61	NA	NA	19.22	18.86	090
54304		A	Revision of penis	12.49	NA	NA	8.98	9.19	0.78	NA	NA	22.25	22.46	090
54308		A	Reconstruction of urethra	11.83	NA	NA	8.50	7.42	0.77	NA	NA	21.10	20.02	090
54312		A	Reconstruction of urethra	13.57	NA	NA	9.78	9.98	0.69	NA	NA	24.04	24.24	090
54316		A	Reconstruction of urethra	16.82	NA	NA	11.95	12.13	0.95	NA	NA	29.72	29.90	090
54318		A	Reconstruction of urethra	11.25	NA	NA	8.94	8.56	0.64	NA	NA	20.83	20.45	090
54322		A	Reconstruction of urethra	13.01	NA	NA	8.52	8.39	0.74	NA	NA	22.27	22.14	090
54324		A	Reconstruction of urethra	16.31	NA	NA	10.38	11.15	1.18	NA	NA	27.87	28.64	090
54326		A	Reconstruction of urethra	15.72	NA	NA	10.01	10.71	1.11	NA	NA	26.84	27.54	090
54328		A	Revise penis/urethra	15.65	NA	NA	9.88	10.76	0.88	NA	NA	26.41	27.29	090
54332		A	Revise penis/urethra	17.08	NA	NA	10.49	12.04	1.03	NA	NA	28.60	30.15	090
54336		A	Revise penis/urethra	20.04	NA	NA	12.57	16.48	1.47	NA	NA	34.08	37.99	090
54340		A	Secondary urethral surgery	8.91	NA	NA	7.38	6.99	0.63	NA	NA	16.92	16.53	090
54344		A	Secondary urethral surgery	15.94	NA	NA	9.83	13.93	1.03	NA	NA	26.80	30.90	090
54348		A	Secondary urethral surgery	17.15	NA	NA	10.68	11.65	1.15	NA	NA	28.98	29.95	090
54352		A	Reconstruct urethra/penis	24.74	NA	NA	13.47	15.52	1.11	NA	NA	39.32	41.37	090
54360		A	Penis plastic surgery	11.93	NA	NA	7.96	7.79	0.70	NA	NA	20.59	20.42	090
54380		A	Repair penis	13.18	NA	NA	9.62	9.92	0.86	NA	NA	23.66	23.96	090
54385		A	Repair penis	15.39	NA	NA	11.18	11.27	0.99	NA	NA	27.56	27.65	090
54390		A	Repair penis and bladder	21.61	NA	NA	13.58	14.16	1.39	NA	NA	36.58	37.16	090
54400		A	Insert semi-rigid prosthesis	8.99	NA	NA	5.84	8.29	0.53	NA	NA	15.36	17.81	090
54401		A	Insert self-contd prosthesis	10.28	NA	NA	6.50	9.39	0.61	NA	NA	17.39	20.28	090
54402		A	Remove penis prosthesis	9.21	NA	NA	5.87	6.19	0.54	NA	NA	15.62	15.94	090
54405		A	Insert multi-comp prosthesis	13.43	NA	NA	7.60	11.82	0.78	NA	NA	21.81	26.03	090
54407		A	Remove multi-comp prosthesis	13.34	NA	NA	7.28	9.73	0.77	NA	NA	21.39	23.84	090
54409		A	Revise penis prosthesis	12.20	NA	NA	6.83	8.28	0.71	NA	NA	19.74	21.19	090
54420		A	Revision of penis	11.42	NA	NA	8.29	8.35	0.67	NA	NA	20.38	20.44	090
54430		A	Revision of penis	10.15	NA	NA	7.24	7.42	0.60	NA	NA	17.99	18.17	090
54435		A	Revision of penis	6.12	NA	NA	5.46	4.98	0.34	NA	NA	11.92	11.44	090
54440		C	Repair of penis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
54450		A	Preputial stretching	1.12	0.89	0.82	0.38	0.56	0.07	2.08	2.01	1.57	1.75	000
54500		A	Biopsy of testis	1.31	5.39	2.94	0.44	0.46	0.08	6.78	4.33	1.83	1.85	000
54505		A	Biopsy of testis	3.46	NA	NA	2.42	2.22	0.21	NA	NA	6.09	5.89	010
54510		A	Removal of testis lesion	5.45	NA	NA	3.28	3.29	0.34	NA	NA	9.07	9.08	090
54520		A	Removal of testis	5.23	NA	NA	3.35	4.56	0.32	NA	NA	8.90	10.11	090
54530		A	Removal of testis	8.58	NA	NA	4.90	6.42	0.53	NA	NA	14.01	15.53	090
54535		A	Extensive testis surgery	12.16	NA	NA	6.72	8.00	0.79	NA	NA	19.67	20.95	090
54550		A	Exploration for testis	7.78	NA	NA	4.52	5.11	0.47	NA	NA	12.77	13.36	090
54560		A	Exploration for testis	11.13	NA	NA	6.64	7.25	0.75	NA	NA	18.52	19.13	090
54600		A	Reduce testis torsion	7.01	NA	NA	3.99	4.50	0.41	NA	NA	11.41	11.92	090
54620		A	Suspension of testis	4.90	NA	NA	2.97	3.29	0.29	NA	NA	8.16	8.48	010
54640		A	Suspension of testis	6.90	NA	NA	4.01	6.13	0.47	NA	NA	11.38	13.50	090
54650		A	Orchiopexy (Fowler-Stephens)	11.45	NA	NA	6.49	7.49	0.63	NA	NA	18.57	19.57	090
54660		A	Revision of testis	5.11	NA	NA	3.74	3.72	0.29	NA	NA	9.14	9.12	090
54670		A	Repair testis injury	6.41	NA	NA	3.73	4.20	0.42	NA	NA	10.56	11.03	090
54680		A	Relocation of testis(es)	12.65	NA	NA	7.17	8.03	0.86	NA	NA	20.68	21.54	090
54690		A	Laparoscopy, orchiectomy	10.96	NA	NA	6.36	7.11	0.69	NA	NA	18.01	18.76	090
54692		A	Laparoscopy, orchiopexy	12.88	NA	NA	5.56	5.56	0.87	NA	NA	19.31	19.31	090
54699		C	Laparoscope proc, testis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
54700		A	Drainage of scrotum	3.43	7.82	4.40	3.13	2.06	0.22	11.47	8.05	6.78	5.71	010
54800		A	Biopsy of epididymis	2.33	5.45	3.80	0.83	1.49	0.14	7.92	6.27	3.30	3.96	000
54820		A	Exploration of epididymis	5.14	NA	NA	3.37	3.11	0.36	NA	NA	8.87	8.61	090
54830		A	Remove epididymis lesion	5.38	NA	NA	3.42	3.62	0.33	NA	NA	9.13	9.33	090
54840		A	Remove epididymis lesion	5.20	NA	NA	3.35	4.30	0.31	NA	NA	8.86	9.81	090
54860		A	Removal of epididymis	6.32	NA	NA	3.90	4.76	0.36	NA	NA	10.58	11.44	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
54861		A	Removal of epididymis	8.90	NA	NA	4.89	6.41	0.51	NA	NA	14.30	15.82	090
54900		A	Fusion of spermatic ducts	13.20	NA	NA	6.45	8.08	0.74	NA	NA	20.39	22.02	090
54901		A	Fusion of spermatic ducts	17.94	NA	NA	9.34	11.34	1.18	NA	NA	28.46	30.46	090
55000		A	Drainage of hydrocele	1.43	1.76	1.10	0.50	0.36	0.10	3.29	2.63	2.03	1.89	000
55040		A	Removal of hydrocele	5.36	NA	NA	3.23	4.27	0.35	NA	NA	8.94	9.98	090
55041		A	Removal of hydroceles	7.74	NA	NA	4.22	6.17	0.50	NA	NA	12.46	14.41	090
55060		A	Repair of hydrocele	5.52	NA	NA	3.30	3.89	0.37	NA	NA	9.19	9.78	090
55100		A	Drainage of scrotum abscess	2.13	8.87	4.78	3.33	2.01	0.13	11.13	7.04	5.59	4.27	010
55110		A	Explore scrotum	5.70	NA	NA	3.36	3.57	0.35	NA	NA	9.41	9.62	090
55120		A	Removal of scrotum lesion	5.09	NA	NA	3.19	2.57	0.30	NA	NA	8.58	7.96	090
55150		A	Removal of scrotum	7.22	NA	NA	4.26	5.09	0.46	NA	NA	11.94	12.77	090
55175		A	Revision of scrotum	5.24	NA	NA	3.38	4.13	0.31	NA	NA	8.93	9.68	090
55180		A	Revision of scrotum	10.72	NA	NA	5.90	6.66	0.72	NA	NA	17.34	18.10	090
55200		A	Incision of sperm duct	4.24	NA	NA	2.92	2.53	0.27	NA	NA	7.43	7.04	090
55250		A	Removal of sperm duct(s)	3.29	8.33	5.59	2.77	2.10	0.20	11.82	9.08	6.26	5.59	090
55300		A	Prepare, sperm duct x-ray	3.51	NA	NA	1.28	2.11	0.19	NA	NA	4.98	5.81	000
55400		A	Repair of sperm duct	8.49	NA	NA	4.84	5.98	0.52	NA	NA	13.85	14.99	090
55450		A	Ligation of sperm duct	4.12	7.15	4.99	2.26	2.55	0.31	11.58	9.42	6.69	6.98	010
55500		A	Removal of hydrocele	5.59	NA	NA	3.50	4.10	0.43	NA	NA	9.52	10.12	090
55520		A	Removal of sperm cord lesion	6.03	NA	NA	3.66	3.53	0.57	NA	NA	10.26	10.13	090
55530		A	Revise spermatic cord veins	5.66	NA	NA	3.53	4.59	0.36	NA	NA	9.55	10.61	090
55535		A	Revise spermatic cord veins	6.56	NA	NA	3.84	4.31	0.41	NA	NA	10.81	11.28	090
55540		A	Revise hernia & sperm veins	7.67	NA	NA	4.27	4.60	0.73	NA	NA	12.67	13.00	090
55550		A	Laparo ligate spermatic vein	6.57	NA	NA	3.34	4.06	0.41	NA	NA	10.32	11.04	090
55559		C	Laparo proc, spermatic cord	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
55600		A	Incise sperm duct pouch	6.38	NA	NA	3.91	4.30	0.36	NA	NA	10.65	11.04	090
55605		A	Incise sperm duct pouch	7.96	NA	NA	4.64	5.36	0.52	NA	NA	13.12	13.84	090
55650		A	Remove sperm duct pouch	11.80	NA	NA	5.91	6.88	0.70	NA	NA	18.41	19.38	090
55680		A	Remove sperm pouch lesion	5.19	NA	NA	3.57	4.19	0.30	NA	NA	9.06	9.68	090
55700		A	Biopsy of prostate	1.57	3.39	2.51	0.52	0.67	0.09	5.05	4.17	2.18	2.33	000
55705		A	Biopsy of prostate	4.57	NA	NA	3.41	3.54	0.25	NA	NA	8.23	8.36	010
55720		A	Drainage of prostate abscess	7.64	NA	NA	5.26	4.54	0.44	NA	NA	13.34	12.62	090
55725		A	Drainage of prostate abscess	8.68	NA	NA	5.93	6.02	0.52	NA	NA	15.13	15.22	090
55801		A	Removal of prostate	17.80	NA	NA	8.84	11.35	1.09	NA	NA	27.73	30.24	090
55810		A	Extensive prostate surgery	22.58	NA	NA	10.58	14.99	1.32	NA	NA	34.48	38.89	090
55812		A	Extensive prostate surgery	27.51	NA	NA	12.91	16.05	1.65	NA	NA	42.07	45.21	090
55815		A	Extensive prostate surgery	30.46	NA	NA	13.80	20.58	1.88	NA	NA	46.14	52.92	090
55821		A	Removal of prostate	14.25	NA	NA	7.47	11.11	0.85	NA	NA	22.57	26.21	090
55831		A	Removal of prostate	15.62	NA	NA	8.00	11.90	0.94	NA	NA	24.56	28.46	090
55840		A	Extensive prostate surgery	22.69	NA	NA	11.35	14.69	1.37	NA	NA	35.41	38.75	090
55842		A	Extensive prostate surgery	24.38	NA	NA	11.95	16.37	1.50	NA	NA	37.83	42.25	090
55845		A	Extensive prostate surgery	28.55	NA	NA	13.29	20.27	1.69	NA	NA	43.53	50.51	090
55859		A	Percut/needle insert, pros	12.52	NA	NA	6.97	6.68	0.69	NA	NA	20.18	19.89	090
55860		A	Surgical exposure, prostate	14.45	NA	NA	7.81	7.78	0.78	NA	NA	23.04	23.01	090
55862		A	Extensive prostate surgery	18.39	NA	NA	9.57	11.13	1.19	NA	NA	29.15	30.71	090
55865		A	Extensive prostate surgery	22.87	NA	NA	10.77	18.69	1.40	NA	NA	35.04	42.96	090
55870		A	Electroejaculation	2.58	1.63	1.81	0.86	1.43	0.14	4.35	4.53	3.58	4.15	000
55899		C	Genital surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
55970		N	Sex transformation, M to F	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
55980		N	Sex transformation, F to M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56300		D	Laparoscopy; diagnostic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56301		D	Laparoscopy; tubal cautery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56302		D	Laparoscopy; tubal block	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56303		D	Laparoscopy; excise lesions	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56304		D	Laparoscopy; lysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56305		D	Laparoscopy; biopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56306		D	Laparoscopy; aspiration	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56307		D	Laparoscopy; remove adnexa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56308		D	Laparoscopy; hysterectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56309		D	Laparoscopy; remove myoma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56310		D	Laparoscopic enterolysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56311		D	Laparoscopic lymph node biop	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56312		D	Laparoscopic lymphadenectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56313		D	Laparoscopic lymphadenectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	010
56314		D	Lapar; drain lymphocele	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56315		D	Laparoscopic appendectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56316		D	Laparoscopic hernia repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56317		D	Laparoscopic hernia repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56318		D	Laparoscopic orchiectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56320		D	Laparoscopy, spermatic veins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	9.00	0.00	0.00	090
56321		D	Laparoscopy; adrenalectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
56322		D	Laparoscopy, vagus nerves	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56323		D	Laparoscopy, vagus nerves	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56324		D	Laparoscopy, cholecystoenter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56340		D	Laparoscopic cholecystectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56341		D	Laparoscopic cholecystectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56342		D	Laparoscopic cholecystectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56343		D	Laparoscopic salpingostomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56344		D	Laparoscopic fimbrioplasty	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56345		D	Laparoscopic splenectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56346		D	Laparoscopic gastrostomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
56347		D	Laparoscopic jejunostomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56348		D	Laparo; resect intestine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56349		D	Laparoscopy; fundoplasty	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
56350		D	Hysteroscopy; diagnostic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
56351		D	Hysteroscopy; biopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
56352		D	Hysteroscopy; lysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
56353		D	Hysteroscopy; resect septum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
56354		D	Hysteroscopy; remove myoma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
56355		D	Hysteroscopy; remove impact	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
56356		D	Hysteroscopy; ablation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
56362		D	Laparoscopy w/cholangio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
56363		D	Laparoscopy w/biopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
56399		D	Laparoscopy procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
56405		A	I & D of vulva/perineum	1.44	2.17	1.50	1.23	0.82	0.11	3.72	3.05	2.78	2.37	010
56420		A	Drainage of gland abscess	1.39	2.17	1.52	1.13	0.79	0.11	3.67	3.02	2.63	2.29	010
56440		A	Surgery for vulva lesion	2.84	3.34	3.10	2.12	2.49	0.22	6.40	6.16	5.18	5.55	010
56441		A	Lysis of labial lesion(s)	1.97	2.35	2.07	1.90	1.85	0.13	4.45	4.17	4.00	3.95	010
56501		A	Destruction, vulva lesion(s)	1.53	2.15	1.37	1.26	0.78	0.11	3.79	3.01	2.90	2.42	010
56515		A	Destruction, vulva lesion(s)	1.88	2.51	2.54	1.82	2.04	0.13	4.52	4.55	3.83	4.05	010
56605		A	Biopsy of vulva/perineum	1.10	1.66	1.20	0.42	0.40	0.09	2.85	2.39	1.61	1.59	000
56606		A	Biopsy of vulva/perineum	0.55	1.43	0.91	0.21	0.20	0.04	2.02	1.50	0.80	0.79	ZZZ
56620		A	Partial removal of vulva	7.47	NA	NA	4.52	5.77	0.56	NA	NA	12.55	13.80	090
56625		A	Complete removal of vulva	8.40	NA	NA	5.30	7.67	0.63	NA	NA	14.33	16.70	090
56630		A	Extensive vulva surgery	12.36	NA	NA	7.02	10.82	0.94	NA	NA	20.32	24.12	090
56631		A	Extensive vulva surgery	16.20	NA	NA	9.45	14.40	1.21	NA	NA	26.86	31.81	090
56632		A	Extensive vulva surgery	20.29	NA	NA	7.62	15.38	1.52	NA	NA	29.43	37.19	090
56633		A	Extensive vulva surgery	16.47	NA	NA	8.60	12.97	1.24	NA	NA	26.31	30.68	090
56634		A	Extensive vulva surgery	17.88	NA	NA	10.06	15.71	1.34	NA	NA	29.28	34.93	090
56637		A	Extensive vulva surgery	21.97	NA	NA	11.60	17.43	1.64	NA	NA	35.21	41.04	090
56640		A	Extensive vulva surgery	22.17	NA	NA	11.50	16.58	1.64	NA	NA	35.31	40.39	090
56700		A	Partial removal of hymen	2.52	2.92	2.45	1.90	1.94	0.18	5.62	5.15	4.60	4.64	010
56720		A	Incision of hymen	0.68	1.53	1.03	0.58	0.55	0.05	2.26	1.76	1.31	1.28	000
56740		A	Remove vagina gland lesion	3.76	3.32	3.22	2.45	2.78	0.31	7.39	7.29	6.52	6.85	010
56800		A	Repair of vagina	3.89	NA	NA	2.57	2.87	0.29	NA	NA	6.75	7.05	010
56805		A	Repair clitoris	18.86	NA	NA	8.69	10.72	1.08	NA	NA	28.63	30.66	090
56810		A	Repair of perineum	4.13	NA	NA	2.61	2.73	0.32	NA	NA	7.06	7.18	010
57000		A	Exploration of vagina	2.97	NA	NA	2.20	2.20	0.22	NA	NA	5.39	5.39	010
57010		A	Drainage of pelvic abscess	6.03	NA	NA	3.62	3.25	0.48	NA	NA	10.13	9.76	090
57020		A	Drainage of pelvic fluid	1.50	1.44	1.08	0.54	0.63	0.11	3.05	2.69	2.15	2.24	000
57061		A	Destruction vagina lesion(s)	1.25	2.08	1.49	1.18	0.82	0.10	3.43	2.84	2.53	2.17	010
57065		A	Destruction vagina lesion(s)	2.61	2.69	2.90	2.11	2.61	0.20	5.50	5.71	4.92	5.42	010
57100		A	Biopsy of vagina	0.97	1.31	0.99	0.36	0.35	0.08	2.36	2.04	1.41	1.40	000
57105		A	Biopsy of vagina	1.69	0.65	1.18	0.65	1.18	0.12	2.46	2.99	2.46	2.99	010
57106		A	Remove vagina wall, partial	6.36	2.43	2.43	2.40	2.40	0.51	9.30	9.30	9.27	9.27	090
57107		A	Remove vagina tissue, part	23.00	NA	NA	8.58	8.58	1.75	NA	NA	33.33	33.33	090
57109		A	Vaginectomy partial w/nodes	27.00	NA	NA	11.80	11.80	1.81	NA	NA	40.61	40.61	090
57110		A	Remove vagina wall, complete	14.29	NA	NA	6.84	7.70	1.07	NA	NA	22.20	23.06	090
57111		A	Remove vagina tissue, compl	27.00	NA	NA	11.71	11.71	2.03	NA	NA	40.74	40.74	090
57112		A	Vaginectomy w/nodes, compl	29.00	NA	NA	12.45	12.45	1.89	NA	NA	43.34	43.34	090
57120		A	Closure of vagina	7.41	NA	NA	4.31	5.95	0.56	NA	NA	12.28	13.92	090
57130		A	Remove vagina lesion	2.43	NA	NA	1.94	2.39	0.19	NA	NA	4.56	5.01	010
57135		A	Remove vagina lesion	2.67	2.68	2.39	2.08	2.09	0.20	5.55	5.26	4.95	4.96	010
57150		A	Treat vagina infection	0.55	0.88	0.55	0.21	0.16	0.04	1.47	1.14	0.80	0.75	000
57160		A	Insert pessary/other device	0.89	1.24	0.76	0.33	0.24	0.07	2.20	1.72	1.29	1.20	000
57170		A	Fitting of diaphragm/cap	0.91	1.25	0.80	0.33	0.26	0.07	2.23	1.78	1.31	1.24	000
57180		A	Treat vaginal bleeding	1.58	2.06	1.33	1.36	0.83	0.12	3.76	3.03	3.06	2.53	010
57200		A	Repair of vagina	3.94	NA	NA	2.79	2.87	0.31	NA	NA	7.04	7.12	090
57210		A	Repair vagina/perineum	5.17	NA	NA	3.26	3.41	0.40	NA	NA	8.83	8.98	090
57220		A	Revision of urethra	4.31	NA	NA	3.12	3.97	0.32	NA	NA	7.75	8.60	090
57230		A	Repair of urethral lesion	5.64	NA	NA	3.84	4.01	0.40	NA	NA	9.88	10.05	090
57240		A	Repair bladder & vagina	6.07	NA	NA	4.08	5.67	0.44	NA	NA	10.59	12.18	090
57250		A	Repair rectum & vagina	5.53	NA	NA	3.56	5.08	0.42	NA	NA	9.51	11.03	090
57260		A	Repair of vagina	8.27	NA	NA	4.62	7.01	0.63	NA	NA	13.52	15.91	090
57265		A	Extensive repair of vagina	11.34	NA	NA	6.36	8.29	0.86	NA	NA	18.56	20.49	090
57268		A	Repair of bowel bulge	6.76	NA	NA	4.04	5.83	0.52	NA	NA	11.32	13.11	090
57270		A	Repair of bowel pouch	12.11	NA	NA	5.94	6.68	0.92	NA	NA	18.97	19.71	090
57280		A	Suspension of vagina	15.04	NA	NA	7.07	8.17	1.13	NA	NA	23.24	24.34	090
57282		A	Repair of vaginal prolapse	8.86	NA	NA	4.85	7.16	0.67	NA	NA	14.38	16.69	090
57284		A	Repair paravaginal defect	12.70	NA	NA	6.61	7.97	0.93	NA	NA	20.24	21.60	090
57288		A	Repair bladder defect	13.02	NA	NA	6.60	9.12	0.80	NA	NA	20.42	22.94	090
57289		A	Repair bladder & vagina	11.58	NA	NA	6.32	7.61	0.78	NA	NA	18.68	19.97	090
57291		A	Construction of vagina	7.95	NA	NA	5.33	5.57	0.62	NA	NA	13.90	14.14	090
57292		A	Construct vagina with graft	13.09	NA	NA	6.58	6.85	1.08	NA	NA	20.75	21.02	090
57300		A	Repair rectum-vagina fistula	7.61	NA	NA	4.47	6.53	0.69	NA	NA	12.77	14.83	090
57305		A	Repair rectum-vagina fistula	13.77	NA	NA	6.81	7.50	1.34	NA	NA	21.92	22.61	090
57307		A	Fistula repair & colostomy	15.93	NA	NA	7.63	7.13	1.57	NA	NA	25.13	24.63	090
57308		A	Fistula repair, transperine	9.94	NA	NA	5.50	6.68	0.86	NA	NA	16.30	17.48	090
57310		A	Repair urethrovaginal lesion	6.78	NA	NA	4.41	4.55	0.43	NA	NA	11.62	11.76	090
57311		A	Repair urethrovaginal lesion	7.98	NA	NA	5.00	5.53	0.41	NA	NA	13.39	13.92	090
57320		A	Repair bladder-vagina lesion	8.01	NA	NA	4.89	7.23	0.51	NA	NA	13.41	15.75	090
57330		A	Repair bladder-vagina lesion	12.35	NA	NA	6.37	7.69	0.78	NA	NA	19.50	20.82	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

Addendum B.—Relative Value Units (RVUs) and Related Information Used in Determining Medicare Payments for 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
57335		A	Repair vagina	18.73	NA	NA	8.71	8.11	1.37	NA	NA	28.81	28.21	090
57400		A	Dilation of vagina	2.27	NA	NA	1.19	0.78	0.16	NA	NA	3.62	3.21	000
57410		A	Pelvic examination	1.75	2.51	1.45	0.98	0.69	0.11	4.37	3.31	2.84	2.55	000
57415		A	Remove vaginal foreign body	2.17	3.20	1.80	1.93	1.16	0.16	5.53	4.13	4.26	3.49	010
57452		A	Examination of vagina	0.99	1.52	1.12	0.36	0.36	0.08	2.59	2.19	1.43	1.43	000
57454		A	Vagina examination & biopsy	1.27	1.60	1.46	0.48	0.57	0.10	2.97	2.83	1.85	1.94	000
57460		A	Cervix excision	2.83	1.87	2.03	1.09	1.10	0.21	4.91	5.07	4.13	4.14	000
57500		A	Biopsy of cervix	0.97	1.32	0.97	0.37	0.34	0.08	2.37	2.02	1.42	1.39	000
57505		A	Endocervical curettage	1.14	1.75	1.22	1.19	0.77	0.09	2.98	2.45	2.42	2.00	010
57510		A	Cauterization of cervix	1.90	2.90	1.73	1.47	0.88	0.14	4.94	3.77	3.51	2.92	010
57511		A	Cryocautery of cervix	1.90	2.21	1.57	0.71	0.59	0.14	4.25	3.61	2.75	2.63	010
57513		A	Laser surgery of cervix	1.90	2.33	2.30	1.46	1.87	0.14	4.37	4.34	3.50	3.91	010
57520		A	Conization of cervix	4.04	3.86	3.80	2.62	3.18	0.31	8.21	8.15	6.97	7.53	090
57522		A	Conization of cervix	3.36	3.52	3.63	2.35	3.05	0.26	7.14	7.25	5.97	6.67	090
57530		A	Removal of cervix	4.79	NA	NA	3.31	3.62	0.37	NA	NA	8.47	8.78	090
57531		A	Removal of cervix, radical	28.00	NA	NA	12.93	16.11	2.16	NA	NA	43.09	46.27	090
57540		A	Removal of residual cervix	12.22	NA	NA	5.99	6.65	1.00	NA	NA	19.21	19.87	090
57545		A	Remove cervix/repair pelvis	13.03	NA	NA	6.25	5.61	1.02	NA	NA	20.30	19.66	090
57550		A	Removal of residual cervix	5.53	NA	NA	3.55	5.08	0.43	NA	NA	9.51	11.04	090
57555		A	Remove cervix/repair vagina	8.95	NA	NA	5.19	7.94	0.70	NA	NA	14.84	17.59	090
57556		A	Remove cervix, repair bowel	8.37	NA	NA	4.61	7.31	0.64	NA	NA	13.62	16.32	090
57700		A	Revision of cervix	3.55	NA	NA	2.44	2.52	0.26	NA	NA	6.25	6.33	090
57720		A	Revision of cervix	4.13	NA	NA	3.03	3.02	0.31	NA	NA	7.47	7.46	090
57800		A	Dilation of cervical canal	0.77	1.04	0.78	0.29	0.28	0.06	1.87	1.61	1.12	1.11	000
57820		A	D & c of residual cervix	1.67	2.41	2.34	2.07	2.17	0.13	4.21	4.14	3.87	3.97	010
58100		A	Biopsy of uterus lining	0.71	1.12	0.92	0.27	0.32	0.06	1.89	1.69	1.04	1.09	000
58120		A	Dilation and curettage	3.27	3.55	3.24	2.27	2.60	0.25	7.07	6.76	5.79	6.12	010
58140		A	Removal of uterus lesion	14.60	NA	NA	6.85	7.95	1.24	NA	NA	22.69	23.79	090
58145		A	Removal of uterus lesion	8.04	NA	NA	4.54	6.74	0.60	NA	NA	13.18	15.38	090
58150		A	Total hysterectomy	15.24	NA	NA	7.19	8.79	1.19	NA	NA	23.62	25.22	090
58152		A	Total hysterectomy	15.09	NA	NA	7.14	10.08	1.16	NA	NA	23.39	26.33	090
58180		A	Partial hysterectomy	15.29	NA	NA	7.19	8.89	1.23	NA	NA	23.71	25.41	090
58200		A	Extensive hysterectomy	21.59	NA	NA	10.42	12.26	1.65	NA	NA	33.66	35.50	090
58210		A	Extensive hysterectomy	28.85	NA	NA	13.21	16.25	2.18	NA	NA	44.24	47.28	090
58240		A	Removal of pelvis contents	38.39	NA	NA	17.81	24.50	2.98	NA	NA	59.18	65.87	090
58260		A	Vaginal hysterectomy	12.20	NA	NA	5.63	7.91	0.94	NA	NA	18.77	21.05	090
58262		A	Vaginal hysterectomy	13.99	NA	NA	6.34	8.27	1.06	NA	NA	21.39	23.32	090
58263		A	Vaginal hysterectomy	15.28	NA	NA	6.82	9.01	1.16	NA	NA	23.26	25.45	090
58267		A	Hysterectomy & vagina repair	15.00	NA	NA	6.69	9.60	1.15	NA	NA	22.84	25.75	090
58270		A	Hysterectomy & vagina repair	13.48	NA	NA	6.12	8.66	1.03	NA	NA	20.63	23.17	090
58275		A	Hysterectomy/revise vagina	14.98	NA	NA	6.69	9.33	1.17	NA	NA	22.84	25.48	090
58280		A	Hysterectomy/revise vagina	15.41	NA	NA	6.87	9.14	1.18	NA	NA	23.46	25.73	090
58285		A	Extensive hysterectomy	18.57	NA	NA	9.23	10.91	1.42	NA	NA	29.22	30.90	090
58300		N	Insert intrauterine device	+1.01	1.33	1.09	0.39	0.62	0.08	2.42	2.18	1.48	1.71	XXX
58301		A	Remove intrauterine device	1.27	1.40	0.95	0.47	0.36	0.10	2.77	2.32	1.84	1.73	000
58321		A	Artificial insemination	0.92	0.90	0.84	0.36	0.57	0.07	1.89	1.83	1.35	1.56	000
58322		A	Artificial insemination	1.10	0.95	0.86	0.42	0.60	0.08	2.13	2.04	1.60	1.78	000
58323		A	Sperm washing	0.23	0.44	0.31	0.09	0.13	0.02	0.69	0.56	0.34	0.38	000
58340		A	Catheter for hysterography	0.88	9.51	5.07	0.28	0.45	0.06	10.45	6.01	1.22	1.39	000
58345		A	Reopen fallopian tube	4.66	NA	NA	1.59	2.69	0.26	NA	NA	6.51	7.61	010
58350		A	Reopen fallopian tube	1.01	1.76	1.26	1.05	0.90	0.08	2.85	2.35	2.14	1.99	010
58400		A	Suspension of uterus	6.36	NA	NA	3.78	4.95	0.49	NA	NA	10.63	11.80	090
58410		A	Suspension of uterus	12.73	NA	NA	6.38	6.19	0.94	NA	NA	20.05	19.86	090
58520		A	Repair of ruptured uterus	11.92	NA	NA	5.94	5.27	1.03	NA	NA	18.89	18.22	090
58540		A	Revision of uterus	14.64	NA	NA	6.03	6.34	1.11	NA	NA	21.78	22.09	090
58550		A	Laparo-asst vag hysterectomy	14.19	NA	NA	6.38	8.29	1.11	NA	NA	21.68	23.59	010
58551		A	Laparoscopy, remove myoma	14.21	NA	NA	6.34	5.76	1.15	NA	NA	21.70	21.12	010
58555		A	Hysteroscopy, dx, sep proc	3.33	2.52	2.34	1.28	1.72	0.26	6.11	5.93	4.87	5.31	000
58558		A	Hysteroscopy, biopsy	4.75	3.07	2.62	1.83	2.00	0.36	8.18	7.73	6.94	7.11	000
58559		A	Hysteroscopy, lysis	6.17	2.40	3.25	2.38	3.24	0.48	9.05	9.90	9.03	9.89	000
58560		A	Hysteroscopy, resect septum	7.00	2.72	3.41	2.70	3.40	0.54	10.26	10.95	10.24	10.94	000
58561		A	Hysteroscopy, remove myoma	10.00	3.88	4.62	3.86	4.61	0.77	14.65	15.39	14.63	15.38	000
58562		A	Hysteroscopy, remove fb	5.21	NA	NA	2.01	2.09	0.40	NA	NA	7.62	7.70	000
58563		A	Hysteroscopy, ablation	6.17	2.38	3.57	2.38	3.57	0.48	9.03	10.22	9.03	10.22	000
58578		C	Laparo proc, uterus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
58579		C	Hysteroscope procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
58600		A	Division of fallopian tube	3.84	NA	NA	2.45	3.52	0.30	NA	NA	6.59	7.66	090
58605		A	Division of fallopian tube	3.34	NA	NA	2.37	3.18	0.26	NA	NA	5.97	6.78	090
58611		A	Ligate oviduct(s) add-on	0.63	NA	NA	0.24	0.38	0.05	NA	NA	0.92	1.06	ZZZ
58615		A	Occlude fallopian tube(s)	3.90	NA	NA	2.95	3.06	0.30	NA	NA	7.15	7.26	010
58660		A	Laparoscopy, lysis	11.29	NA	NA	5.30	5.69	1.04	NA	NA	17.63	18.02	090
58661		A	Laparoscopy, remove adnexa	11.05	NA	NA	4.94	6.36	0.87	NA	NA	16.86	18.28	010
58662		A	Laparoscopy, excise lesions	11.79	NA	NA	5.20	5.60	0.94	NA	NA	17.93	18.33	090
58670		A	Laparoscopy, tubal cautery	5.60	NA	NA	3.26	4.19	0.43	NA	NA	9.29	10.22	090
58671		A	Laparoscopy, tubal block	5.60	NA	NA	3.27	4.49	0.43	NA	NA	9.30	10.52	090
58672		A	Laparoscopy, fimbrioplasty	12.88	NA	NA	6.10	5.83	1.10	NA	NA	20.08	19.81	090
58673		A	Laparoscopy, salpingostomy	13.74	NA	NA	6.71	6.22	1.12	NA	NA	21.57	21.08	090
58679		C	Laparo proc, oviduct-ovary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
58700		A	Removal of fallopian tube	6.49	NA	NA	3.70	5.29	0.58	NA	NA	10.77	12.36	090
58720		A	Removal of ovary/tube(s)	11.36	NA	NA	5.61	6.88	0.95	NA	NA	17.92	19.19	090
58740		A	Revise fallopian tube(s)	5.83	NA	NA	3.54	5.25	0.46	NA	NA	9.83	11.54	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
58750		A	Repair oviduct	14.84	NA	NA	6.96	6.91	1.20	NA	NA	23.00	22.95	090
58752		A	Revise ovarian tube(s)	14.84	NA	NA	6.81	7.06	1.09	NA	NA	22.74	22.99	090
58760		A	Remove tubal obstruction	13.13	NA	NA	6.34	5.95	0.99	NA	NA	20.46	20.07	090
58770		A	Create new tubal opening	13.97	NA	NA	6.82	6.28	1.14	NA	NA	21.93	21.39	090
58800		A	Drainage of ovarian cyst(s)	4.14	3.82	3.37	3.74	3.33	0.28	8.24	7.79	8.16	7.75	090
58805		A	Drainage of ovarian cyst(s)	5.88	NA	NA	3.42	5.17	0.52	NA	NA	9.82	11.57	090
58820		A	Drain ovary abscess, open	4.22	NA	NA	2.90	2.95	0.25	NA	NA	7.37	7.42	090
58822		A	Drain ovary abscess, percut	10.13	NA	NA	5.07	4.46	0.85	NA	NA	16.05	15.44	090
58823		A	Drain pelvic abscess, percut	3.38	NA	NA	2.65	2.72	0.23	NA	NA	6.26	6.33	000
58825		A	Transposition, ovary(s)	6.13	NA	NA	3.71	4.04	0.48	NA	NA	10.32	10.65	090
58900		A	Biopsy of ovary(s)	5.99	NA	NA	3.59	4.61	0.51	NA	NA	10.09	11.11	090
58920		A	Partial removal of ovary(s)	6.78	NA	NA	3.83	5.60	0.60	NA	NA	11.21	12.98	090
58925		A	Removal of ovarian cyst(s)	11.36	NA	NA	5.56	6.34	1.00	NA	NA	17.92	18.70	090
58940		A	Removal of ovary(s)	7.29	NA	NA	3.95	5.50	0.66	NA	NA	11.90	13.45	090
58943		A	Removal of ovary(s)	18.43	NA	NA	9.09	11.12	1.53	NA	NA	29.05	31.08	090
58950		A	Resect ovarian malignancy	15.27	NA	NA	7.97	10.09	1.24	NA	NA	24.48	26.60	090
58951		A	Resect ovarian malignancy	21.81	NA	NA	10.50	15.20	1.70	NA	NA	34.01	38.71	090
58952		A	Resect ovarian malignancy	25.01	NA	NA	11.73	15.69	1.94	NA	NA	38.68	42.64	090
58960		A	Exploration of abdomen	14.65	NA	NA	7.67	10.88	1.16	NA	NA	23.48	26.69	090
58970		A	Retrieval of oocyte	3.53	7.44	5.09	1.37	2.05	0.25	11.22	8.87	5.15	5.83	000
58974		C	Transfer of embryo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
58976		A	Transfer of embryo	3.83	2.19	2.58	1.48	2.22	0.29	6.31	6.70	5.60	6.34	000
58999		C	Genital surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
59000		A	Amniocentesis	1.30	1.54	1.30	0.49	0.77	0.10	2.94	2.70	1.89	2.17	000
59012		A	Fetal cord puncture, prenatal	3.45	NA	NA	1.38	2.11	0.26	NA	NA	5.09	5.82	000
59015		A	Chorion biopsy	2.20	1.27	1.29	0.85	1.08	0.16	3.63	3.65	3.21	3.44	000
59020		A	Fetal contract stress test	0.66	0.78	1.06	0.78	1.06	0.13	1.57	1.85	1.57	1.85	000
59020	26	A	Fetal contract stress test	0.66	0.26	0.53	0.26	0.53	0.05	0.97	1.24	0.97	1.24	000
59020	TC	A	Fetal contract stress test	0.00	0.52	0.53	0.52	0.53	0.08	0.60	0.61	0.60	0.61	000
59025		A	Fetal non-stress test	0.53	0.43	0.55	0.43	0.55	0.07	1.03	1.15	1.03	1.15	000
59025	26	A	Fetal non-stress test	0.53	0.20	0.31	0.20	0.31	0.04	0.77	0.88	0.77	0.88	000
59025	TC	A	Fetal non-stress test	0.00	0.23	0.24	0.23	0.24	0.03	0.26	0.27	0.26	0.27	000
59030		A	Fetal scalp blood sample	1.99	NA	NA	0.77	1.24	0.14	NA	NA	2.90	3.37	000
59050		A	Fetal monitor w/report	0.89	NA	NA	0.34	0.61	0.07	NA	NA	1.30	1.57	XXX
59051		A	Fetal monitor/interpret only	0.74	NA	NA	0.28	0.58	0.06	NA	NA	1.08	1.38	XXX
59100		A	Remove uterus lesion	12.35	NA	NA	6.05	5.27	0.90	NA	NA	19.30	18.52	090
59120		A	Treat ectopic pregnancy	11.49	NA	NA	5.73	7.13	0.86	NA	NA	18.08	19.48	090
59121		A	Treat ectopic pregnancy	11.67	NA	NA	5.84	5.84	0.88	NA	NA	18.39	18.39	090
59130		A	Treat ectopic pregnancy	14.22	NA	NA	6.89	6.68	1.49	NA	NA	22.60	22.39	090
59135		A	Treat ectopic pregnancy	13.88	NA	NA	6.76	8.73	1.45	NA	NA	22.09	24.06	090
59136		A	Treat ectopic pregnancy	13.18	NA	NA	6.49	6.62	1.37	NA	NA	21.04	21.17	090
59140		A	Treat ectopic pregnancy	5.46	NA	NA	3.40	4.23	0.57	NA	NA	9.43	10.26	090
59150		A	Treat ectopic pregnancy	6.89	NA	NA	3.95	4.44	0.52	NA	NA	11.36	11.85	090
59151		A	Treat ectopic pregnancy	7.86	NA	NA	4.01	6.68	0.59	NA	NA	12.46	15.13	090
59160		A	D & c after delivery	2.71	3.30	3.24	2.07	2.63	0.20	6.21	6.15	4.98	5.54	010
59200		A	Insert cervical dilator	0.79	1.19	0.89	0.29	0.30	0.06	2.04	1.74	1.14	1.15	000
59300		A	Episiotomy or vaginal repair	2.41	1.56	1.32	0.92	0.73	0.18	4.15	3.91	3.51	3.32	000
59320		A	Revision of cervix	2.48	NA	NA	1.30	1.62	0.19	NA	NA	3.97	4.29	000
59325		A	Revision of cervix	4.07	NA	NA	1.92	2.53	0.31	NA	NA	6.30	6.91	000
59350		A	Repair of uterus	4.95	NA	NA	1.84	2.84	0.38	NA	NA	7.17	8.17	000
59400		A	Obstetrical care	23.06	NA	NA	13.44	14.86	1.74	NA	NA	38.24	39.66	MMM
59409		A	Obstetrical care	13.50	NA	NA	5.08	7.69	1.01	NA	NA	19.59	22.20	MMM
59410		A	Obstetrical care	14.78	NA	NA	6.01	8.60	1.11	NA	NA	21.90	24.49	MMM
59412		A	Antepartum manipulation	1.71	1.16	1.24	0.65	0.99	0.13	3.00	3.08	2.49	2.83	MMM
59414		A	Deliver placenta	1.61	NA	NA	1.13	1.19	0.12	NA	NA	2.86	2.92	MMM
59425		A	Antepartum care only	4.81	4.62	3.88	4.62	3.10	0.36	9.79	9.05	9.79	8.27	MMM
59426		A	Antepartum care only	8.28	7.85	6.61	7.81	5.25	0.62	16.75	15.51	16.71	14.15	MMM
59430		A	Care after delivery	2.13	1.14	0.78	1.14	0.68	0.16	3.43	3.07	3.43	2.97	MMM
59510		A	Cesarean delivery	26.22	NA	NA	15.40	16.87	1.99	NA	NA	43.61	45.08	MMM
59514		A	Cesarean delivery only	15.97	NA	NA	6.01	8.97	1.21	NA	NA	23.19	26.15	MMM
59515		A	Cesarean delivery	17.37	NA	NA	7.56	10.20	1.31	NA	NA	26.24	28.88	MMM
59525		A	Remove uterus after cesarean	8.54	NA	NA	3.19	3.66	0.67	NA	NA	12.40	12.87	ZZZ
59610		A	Vbac delivery	24.62	NA	NA	9.36	12.82	1.84	NA	NA	35.82	39.28	MMM
59612		A	Vbac delivery only	15.06	NA	NA	5.77	8.03	1.08	NA	NA	21.91	24.17	MMM
59614		A	Vbac care after delivery	16.34	NA	NA	6.29	8.74	1.19	NA	NA	23.82	26.27	MMM
59618		A	Attempted vbac delivery	27.78	NA	NA	10.51	14.43	2.10	NA	NA	40.39	44.31	MMM
59620		A	Attempted vbac delivery only	17.53	NA	NA	6.67	9.30	1.33	NA	NA	25.53	28.16	MMM
59622		A	Attempted vbac after care	18.93	NA	NA	7.27	10.05	1.43	NA	NA	27.63	30.41	MMM
59812		A	Treatment of miscarriage	3.25	4.21	4.07	2.23	3.06	0.25	7.71	7.57	5.73	6.56	090
59820		A	Care of miscarriage	4.01	4.40	4.24	2.52	3.30	0.31	8.72	8.56	6.84	7.62	090
59821		A	Treatment of miscarriage	4.47	4.87	3.91	2.71	2.83	0.33	9.67	8.71	7.51	7.63	090
59830		A	Treat uterus infection	6.11	NA	NA	3.64	4.28	0.46	NA	NA	10.21	10.85	090
59840		R	Abortion	3.01	4.64	4.07	2.14	2.82	0.23	7.88	7.31	5.38	6.06	010
59841		R	Abortion	5.24	6.01	5.04	3.35	3.71	0.40	11.65	10.68	8.99	9.35	010
59850		R	Abortion	5.91	NA	NA	2.52	3.43	0.45	NA	NA	8.88	9.79	090
59851		R	Abortion	5.93	NA	NA	2.87	3.76	0.45	NA	NA	9.25	10.14	090
59852		R	Abortion	8.24	NA	NA	4.34	5.16	0.62	NA	NA	13.20	14.02	090
59855		R	Abortion	6.12	NA	NA	3.17	3.83	0.46	NA	NA	9.75	10.41	090
59856		R	Abortion	7.48	NA	NA	3.55	4.55	0.56	NA	NA	11.59	12.59	090
59857		R	Abortion	9.29	NA	NA	4.28	5.52	0.71	NA	NA	14.28	15.52	090
59866		R	Abortion (mpr)	4.00	NA	NA	1.55	2.33	0.31	NA	NA	5.86	6.64	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
59870	....	A	Evacuate mole of uterus	4.28	NA	NA	2.85	3.01	0.32	NA	NA	7.45	7.61	090
59871	....	A	Remove cerclage suture	2.13	1.89	1.91	0.81	1.37	0.13	4.15	4.17	3.07	3.63	000
59898	....	C	Laparo proc, ob care/deliver	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
59899	....	C	Maternity care procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
60000	....	A	Drain thyroid/tongue cyst	1.76	2.11	1.38	1.80	1.07	0.11	3.98	3.25	3.67	2.94	010
60001	....	A	Aspirate/inject thyriod cyst	0.97	1.53	1.34	0.33	0.74	0.07	2.57	2.38	1.37	1.78	000
60100	....	A	Biopsy of thyroid	0.97	2.06	1.60	0.29	0.43	0.06	3.09	2.63	1.32	1.46	000
60200	....	A	Remove thyroid lesion	9.55	NA	NA	6.44	6.49	0.87	NA	NA	16.86	16.91	090
60210	....	A	Partial thyroid excision	10.88	NA	NA	6.41	7.92	1.01	NA	NA	18.30	19.81	090
60212	....	A	Parital thyroid excision	16.03	NA	NA	8.25	9.03	1.54	NA	NA	25.82	26.60	090
60220	....	A	Partial removal of thyroid	10.53	NA	NA	6.41	7.84	0.97	NA	NA	17.91	19.34	090
60225	....	A	Partial removal of thyroid	14.19	NA	NA	7.96	9.67	1.30	NA	NA	23.45	25.16	090
60240	....	A	Removal of thyroid	16.06	NA	NA	9.21	10.35	1.49	NA	NA	26.76	27.90	090
60252	....	A	Removal of thyroid	18.20	NA	NA	10.37	12.59	1.64	NA	NA	30.21	32.43	090
60254	....	A	Extensive thyroid surgery	23.88	NA	NA	14.26	17.56	1.99	NA	NA	40.13	43.43	090
60260	....	A	Repeat thyroid surgery	15.46	NA	NA	9.26	6.34	1.42	NA	NA	26.14	23.22	090
60270	....	A	Removal of thyroid	17.94	NA	NA	11.98	13.57	1.86	NA	NA	31.78	33.37	090
60271	....	A	Removal of thyroid	14.89	NA	NA	9.27	11.23	1.39	NA	NA	25.55	27.51	090
60280	....	A	Remove thyroid duct lesion	6.08	NA	NA	4.86	6.06	0.48	NA	NA	11.42	12.62	090
60281	....	A	Remove thyroid duct lesion	8.53	NA	NA	6.44	5.96	0.74	NA	NA	15.71	15.23	090
60500	....	A	Explore parathyroid glands	16.23	NA	NA	8.06	10.20	1.58	NA	NA	25.87	28.01	090
60502	....	A	Re-explore parathyroids	20.35	NA	NA	10.05	11.21	1.97	NA	NA	32.37	33.53	090
60505	....	A	Explore parathyroid glands	21.49	NA	NA	12.50	13.38	2.20	NA	NA	36.19	37.07	090
60512	....	A	Autotransplant parathyroid	4.45	NA	NA	1.80	2.16	0.44	NA	NA	6.69	7.05	ZZZ
60520	....	A	Removal of thymus gland	16.81	NA	NA	11.75	13.22	1.90	NA	NA	30.46	31.93	090
60521	....	A	Removal of thymus gland	18.87	NA	NA	15.01	14.85	2.43	NA	NA	36.31	36.15	090
60522	....	A	Removal of thymus gland	23.09	NA	NA	16.11	15.40	2.88	NA	NA	42.08	41.37	090
60540	....	A	Explore adrenal gland	17.03	NA	NA	7.89	10.49	1.40	NA	NA	26.32	28.92	090
60545	....	A	Explore adrenal gland	19.88	NA	NA	9.79	12.64	1.68	NA	NA	31.35	34.20	090
60600	....	A	Remove carotid body lesion	17.93	NA	NA	14.92	13.68	1.95	NA	NA	34.80	33.56	090
60605	....	A	Remove carotid body lesion	20.24	NA	NA	17.95	14.79	1.89	NA	NA	40.08	36.92	090
60650	....	C	Laparoscopy adrenalectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
60659	....	C	Laparo proc, endocrine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
60699	....	C	Endocrine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
61000	....	A	Remove cranial cavity fluid	1.58	1.55	1.36	1.32	1.24	0.13	3.26	3.07	3.03	2.95	000
61001	....	A	Remove cranial cavity fluid	1.49	1.56	1.26	1.28	0.88	0.13	3.18	2.88	2.90	2.50	000
61020	....	A	Remove brain cavity fluid	1.51	1.88	1.63	1.31	1.34	0.28	3.67	3.42	3.10	3.13	000
61026	....	A	Injection into brain canal	1.69	1.88	1.95	1.36	1.69	0.24	3.81	3.88	3.29	3.62	000
61050	....	A	Remove brain canal fluid	1.51	NA	NA	1.10	1.22	0.16	NA	NA	2.77	2.89	000
61055	....	A	Injection into brain canal	2.10	NA	NA	1.18	1.61	0.12	NA	NA	3.40	3.83	000
61070	....	A	Brain canal shunt procedure	0.89	6.44	3.49	0.94	0.61	0.09	7.42	4.47	1.92	1.59	000
61105	....	A	Twist drill hole	5.14	NA	NA	3.57	4.85	1.03	NA	NA	9.74	11.02	090
61107	....	A	Drill skull for implantation	5.00	NA	NA	2.97	4.47	1.00	NA	NA	8.97	10.47	000
61108	....	A	Drill skull for drainage	10.19	NA	NA	6.95	9.56	2.04	NA	NA	19.18	21.79	090
61120	....	A	Burr hole for puncture	8.76	NA	NA	5.78	6.12	1.78	NA	NA	16.32	16.66	090
61140	....	A	Pierce skull for biopsy	15.90	NA	NA	9.86	12.60	3.06	NA	NA	28.82	31.56	090
61150	....	A	Pierce skull for drainage	17.57	NA	NA	10.45	13.18	3.40	NA	NA	31.42	34.15	090
61151	....	A	Pierce skull for drainage	12.42	NA	NA	8.24	5.28	2.51	NA	NA	23.17	20.21	090
61154	....	A	Pierce skull & remove clot	14.99	NA	NA	9.55	13.73	2.94	NA	NA	27.48	31.66	090
61156	....	A	Pierce skull for drainage	16.32	NA	NA	10.25	13.91	3.25	NA	NA	29.82	33.48	090
61210	....	A	Pierce skull, implant device	5.84	NA	NA	3.42	4.99	1.15	NA	NA	10.41	11.98	000
61215	....	A	Insert brain-fluid device	4.89	NA	NA	4.14	4.99	0.95	NA	NA	9.98	10.83	090
61250	....	A	Pierce skull & explore	10.42	NA	NA	6.67	7.69	2.07	NA	NA	19.16	20.18	090
61253	....	A	Pierce skull & explore	12.36	NA	NA	7.39	8.92	2.40	NA	NA	22.15	23.68	090
61304	....	A	Open skull for exploration	21.96	NA	NA	12.57	19.40	4.20	NA	NA	38.73	45.56	090
61305	....	A	Open skull for exploration	26.61	NA	NA	15.14	23.37	5.00	NA	NA	46.75	54.98	090
61312	....	A	Open skull for drainage	24.57	NA	NA	14.52	20.36	4.77	NA	NA	43.86	49.70	090
61313	....	A	Open skull for drainage	24.93	NA	NA	14.74	20.42	4.81	NA	NA	44.48	50.16	090
61314	....	A	Open skull for drainage	24.23	NA	NA	14.28	21.04	4.73	NA	NA	43.24	50.00	090
61315	....	A	Open skull for drainage	27.68	NA	NA	16.16	21.33	5.37	NA	NA	49.21	54.38	090
61320	....	A	Open skull for drainage	25.62	NA	NA	14.93	17.61	4.90	NA	NA	45.45	48.13	090
61321	....	A	Open skull for drainage	28.50	NA	NA	15.94	18.73	5.28	NA	NA	49.72	52.51	090
61330	....	A	Decompress eye socket	23.32	NA	NA	16.91	15.50	2.77	NA	NA	43.00	41.59	090
61332	....	A	Explore/biopsy eye socket	27.28	NA	NA	19.21	20.85	4.31	NA	NA	50.80	52.44	090
61333	....	A	Explore orbit/remove lesion	27.95	NA	NA	17.14	19.67	3.08	NA	NA	48.17	50.70	090
61334	....	A	Explore orbit/remove object	18.27	NA	NA	11.92	13.91	2.49	NA	NA	32.68	34.67	090
61340	....	A	Relieve cranial pressure	18.66	NA	NA	11.66	13.86	3.47	NA	NA	33.79	35.99	090
61343	....	A	Incise skull (press relief)	29.77	NA	NA	17.73	25.17	5.80	NA	NA	53.30	60.74	090
61345	....	A	Relieve cranial pressure	27.20	NA	NA	16.85	18.84	5.29	NA	NA	49.34	51.33	090
61440	....	A	Incise skull for surgery	26.63	NA	NA	14.23	18.38	2.95	NA	NA	43.81	47.96	090
61450	....	A	Incise skull for surgery	25.95	NA	NA	14.41	18.29	5.14	NA	NA	45.50	49.38	090
61458	....	A	Incise skull for brain wound	27.29	NA	NA	15.84	22.73	5.28	NA	NA	48.41	55.30	090
61460	....	A	Incise skull for surgery	28.39	NA	NA	16.85	22.02	4.73	NA	NA	49.97	55.14	090
61470	....	A	Incise skull for surgery	26.06	NA	NA	14.32	14.68	4.30	NA	NA	44.68	45.04	090
61480	....	A	Incise skull for surgery	26.49	NA	NA	15.08	15.72	4.97	NA	NA	46.54	47.18	090
61490	....	A	Incise skull for surgery	25.66	NA	NA	14.74	13.73	4.81	NA	NA	45.21	44.20	090
61500	....	A	Removal of skull lesion	17.92	NA	NA	10.89	16.14	3.14	NA	NA	31.95	37.20	090
61501	....	A	Remove infected skull bone	14.84	NA	NA	9.06	13.39	2.53	NA	NA	26.43	30.76	090
61510	....	A	Removal of brain lesion	28.45	NA	NA	16.59	22.97	5.53	NA	NA	50.57	56.95	090
61512	....	A	Remove brain lining lesion	35.09	NA	NA	20.17	25.83	6.83	NA	NA	62.09	67.75	090
61514	....	A	Removal of brain abscess	25.26	NA	NA	14.94	21.32	4.82	NA	NA	45.02	51.40	090

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[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
61516		A	Removal of brain lesion	24.61	NA	NA	14.88	21.81	4.78	NA	NA	44.27	51.20	090
61518		A	Removal of brain lesion	37.32	NA	NA	22.15	27.37	7.20	NA	NA	66.67	71.89	090
61519		A	Remove brain lining lesion	41.39	NA	NA	24.12	29.00	8.02	NA	NA	73.53	78.41	090
61520		A	Removal of brain lesion	54.84	NA	NA	31.99	34.37	9.62	NA	NA	96.45	98.83	090
61521		A	Removal of brain lesion	44.48	NA	NA	25.59	30.69	8.18	NA	NA	78.25	83.35	090
61522		A	Removal of brain abscess	29.45	NA	NA	17.62	19.64	5.79	NA	NA	52.86	54.88	090
61524		A	Removal of brain lesion	27.86	NA	NA	16.77	23.28	5.32	NA	NA	49.95	56.46	090
61526		A	Removal of brain lesion	52.17	NA	NA	31.07	33.99	6.38	NA	NA	89.62	92.54	090
61530		A	Removal of brain lesion	43.86	NA	NA	27.17	32.04	6.16	NA	NA	77.19	82.06	090
61531		A	Implant brain electrodes	14.63	NA	NA	9.79	13.03	2.88	NA	NA	27.30	30.54	090
61533		A	Implant brain electrodes	19.71	NA	NA	12.17	15.32	3.88	NA	NA	35.76	38.91	090
61534		A	Removal of brain lesion	20.97	NA	NA	13.21	10.07	3.84	NA	NA	38.02	34.88	090
61535		A	Remove brain electrodes	11.63	NA	NA	7.72	8.02	2.13	NA	NA	21.48	21.78	090
61536		A	Removal of brain lesion	35.52	NA	NA	20.96	22.40	7.13	NA	NA	63.61	65.05	090
61538		A	Removal of brain tissue	26.81	NA	NA	16.38	23.97	5.27	NA	NA	48.46	56.05	090
61539		A	Removal of brain tissue	32.08	NA	NA	19.09	22.01	6.37	NA	NA	57.54	60.46	090
61541		A	Incision of brain tissue	28.85	NA	NA	17.40	19.45	5.40	NA	NA	51.65	53.70	090
61542		A	Removal of brain tissue	31.02	NA	NA	18.95	20.28	6.27	NA	NA	56.24	57.57	090
61543		A	Removal of brain tissue	29.22	NA	NA	17.29	18.00	5.25	NA	NA	51.76	52.47	090
61544		A	Remove & treat brain lesion	25.50	NA	NA	14.08	22.26	3.85	NA	NA	43.43	51.61	090
61545		A	Excision of brain tumor	43.80	NA	NA	25.80	26.83	8.32	NA	NA	77.92	78.95	090
61546		A	Removal of pituitary gland	31.30	NA	NA	18.88	24.10	5.86	NA	NA	56.04	61.26	090
61548		A	Removal of pituitary gland	21.53	NA	NA	13.54	19.62	3.48	NA	NA	38.55	44.63	090
61550		A	Release of skull seams	14.65	NA	NA	8.60	10.71	0.57	NA	NA	23.82	25.93	090
61552		A	Release of skull seams	19.56	NA	NA	9.38	12.20	1.48	NA	NA	30.42	33.24	090
61556		A	Incise skull/sutures	22.26	NA	NA	11.73	14.29	3.45	NA	NA	37.44	40.00	090
61557		A	Incise skull/sutures	22.38	NA	NA	12.19	14.57	4.12	NA	NA	38.69	41.07	090
61558		A	Excision of skull/sutures	25.58	NA	NA	14.02	16.64	5.17	NA	NA	44.77	47.39	090
61559		A	Excision of skull/sutures	32.79	NA	NA	18.90	21.94	6.63	NA	NA	58.32	61.36	090
61563		A	Excision of skull tumor	26.83	NA	NA	15.80	18.11	4.50	NA	NA	47.13	49.44	090
61564		A	Excision of skull tumor	33.83	NA	NA	14.65	20.20	5.00	NA	NA	53.48	59.03	090
61570		A	Remove foreign body, brain	24.60	NA	NA	13.76	15.83	4.45	NA	NA	42.81	44.88	090
61571		A	Incise skull for brain wound	26.39	NA	NA	15.03	17.46	4.79	NA	NA	46.21	48.64	090
61575		A	Skull base/brainstem surgery	34.36	NA	NA	21.21	28.51	5.12	NA	NA	60.69	67.99	090
61576		A	Skull base/brainstem surgery	52.43	NA	NA	32.53	31.59	6.55	NA	NA	91.51	90.57	090
61580		A	Craniofacial approach, skull	30.35	NA	NA	18.86	20.83	2.98	NA	NA	52.19	54.16	090
61581		A	Craniofacial approach, skull	34.60	NA	NA	21.54	23.71	2.46	NA	NA	58.60	60.77	090
61582		A	Craniofacial approach, skull	31.66	NA	NA	18.51	21.01	5.44	NA	NA	55.61	58.11	090
61583		A	Craniofacial approach, skull	36.21	NA	NA	22.04	24.43	6.91	NA	NA	65.16	67.55	090
61584		A	Orbitocranial approach/skull	34.65	NA	NA	20.47	23.21	6.45	NA	NA	61.57	64.31	090
61585		A	Orbitocranial approach/skull	38.61	NA	NA	22.52	25.78	7.01	NA	NA	68.14	71.40	090
61586		A	Resect nasopharynx, skull	25.10	NA	NA	15.70	19.45	3.10	NA	NA	43.90	47.65	090
61590		A	Infratemporal approach/skull	41.78	NA	NA	25.31	28.45	4.74	NA	NA	71.83	74.97	090
61591		A	Infratemporal approach/skull	43.68	NA	NA	27.13	30.13	5.52	NA	NA	76.33	79.33	090
61592		A	Orbitocranial approach/skull	39.64	NA	NA	23.57	26.81	7.30	NA	NA	70.51	73.75	090
61595		A	Transtemporal approach/skull	29.57	NA	NA	19.45	20.82	3.03	NA	NA	52.05	53.42	090
61596		A	Transcochlear approach/skull	35.63	NA	NA	22.20	24.58	4.03	NA	NA	61.86	64.24	090
61597		A	Transcondylar approach/skull	37.96	NA	NA	22.72	25.61	5.65	NA	NA	66.33	69.22	090
61598		A	Transpetrosal approach/skull	33.41	NA	NA	20.29	22.70	5.09	NA	NA	58.79	61.20	090
61600		A	Resect/excise cranial lesion	25.85	NA	NA	16.14	17.70	2.80	NA	NA	44.79	46.35	090
61601		A	Resect/excise cranial lesion	27.89	NA	NA	16.87	18.76	5.14	NA	NA	49.90	51.79	090
61605		A	Resect/excise cranial lesion	29.33	NA	NA	18.70	20.25	2.67	NA	NA	50.70	52.25	090
61606		A	Resect/excise cranial lesion	38.83	NA	NA	23.48	26.34	7.06	NA	NA	69.37	72.23	090
61607		A	Resect/excise cranial lesion	36.27	NA	NA	21.59	24.43	6.59	NA	NA	64.45	67.29	090
61608		A	Resect/excise cranial lesion	42.10	NA	NA	25.00	28.37	8.11	NA	NA	75.21	78.58	090
61609		A	Transect artery, sinus	9.89	NA	NA	4.69	6.25	2.00	NA	NA	16.58	18.14	ZZZ
61610		A	Transect artery, sinus	29.67	NA	NA	14.96	19.19	4.63	NA	NA	49.26	53.49	ZZZ
61611		A	Transect artery, sinus	7.42	NA	NA	2.87	4.36	1.50	NA	NA	11.79	13.28	ZZZ
61612		A	Transect artery, sinus	27.88	NA	NA	14.67	18.34	4.21	NA	NA	46.76	50.43	ZZZ
61613		A	Remove aneurysm, sinus	40.86	NA	NA	24.04	27.58	8.27	NA	NA	73.17	76.71	090
61615		A	Resect/excise lesion, skull	32.07	NA	NA	20.17	22.06	4.42	NA	NA	56.66	58.55	090
61616		A	Resect/excise lesion, skull	43.33	NA	NA	26.89	29.74	7.27	NA	NA	77.49	80.34	090
61618		A	Repair dura	16.99	NA	NA	11.17	11.75	2.83	NA	NA	30.99	31.57	090
61619		A	Repair dura	20.71	NA	NA	12.84	14.12	3.40	NA	NA	36.95	38.23	090
61624		A	Occlusion/embolization cath	20.15	NA	NA	6.05	11.32	1.04	NA	NA	27.24	32.51	000
61626		A	Occlusion/embolization cath	16.62	NA	NA	4.77	9.22	0.74	NA	NA	22.13	26.58	000
61680		A	Intracranial vessel surgery	30.71	NA	NA	18.45	26.08	5.90	NA	NA	55.06	62.69	090
61682		A	Intracranial vessel surgery	61.57	NA	NA	34.23	36.28	11.84	NA	NA	107.64	109.69	090
61684		A	Intracranial vessel surgery	39.81	NA	NA	23.85	28.08	8.05	NA	NA	71.71	75.94	090
61686		A	Intracranial vessel surgery	64.49	NA	NA	36.21	37.63	12.87	NA	NA	113.57	114.99	090
61690		A	Intracranial vessel surgery	29.31	NA	NA	16.84	23.32	5.46	NA	NA	51.61	58.09	090
61692		A	Intracranial vessel surgery	51.87	NA	NA	29.05	30.15	9.05	NA	NA	89.97	91.07	090
61700		A	Inner skull vessel surgery	50.52	NA	NA	28.33	31.36	9.86	NA	NA	88.71	91.74	090
61702		A	Inner skull vessel surgery	48.41	NA	NA	27.30	33.36	9.56	NA	NA	85.27	91.33	090
61703		A	Clamp neck artery	17.47	NA	NA	10.87	12.06	3.28	NA	NA	31.62	32.81	090
61705		A	Revise circulation to head	36.20	NA	NA	19.57	26.29	6.67	NA	NA	62.44	69.16	090
61708		A	Revise circulation to head	35.30	NA	NA	12.94	20.15	2.42	NA	NA	50.66	57.87	090
61710		A	Revise circulation to head	29.67	NA	NA	12.12	15.09	3.62	NA	NA	45.41	48.38	090
61711		A	Fusion of skull arteries	36.33	NA	NA	20.58	28.22	7.04	NA	NA	63.95	71.59	090
61720		A	Incise skull/brain surgery	16.77	NA	NA	10.68	15.35	3.29	NA	NA	30.74	35.41	090
61735		A	Incise skull/brain surgery	20.43	NA	NA	12.74	13.40	3.98	NA	NA	37.15	37.81	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
61750		A	Incise skull/brain biopsy	18.20	NA	NA	10.98	12.84	3.52	NA	NA	32.70	34.56	090
61751		A	Brain biopsy w/ ct/mr guide	17.62	NA	NA	10.76	15.90	3.47	NA	NA	31.85	36.99	090
61760		A	Implant brain electrodes	22.27	NA	NA	6.73	11.50	4.18	NA	NA	33.18	37.95	090
61770		A	Incise skull for treatment	21.44	NA	NA	13.26	17.15	3.85	NA	NA	38.55	42.44	090
61790		A	Treat trigeminal nerve	10.86	NA	NA	5.07	9.02	1.75	NA	NA	17.68	21.63	090
61791		A	Treat trigeminal tract	14.61	NA	NA	9.16	9.88	2.90	NA	NA	26.67	27.39	090
61793		A	Focus radiation beam	17.24	NA	NA	10.78	15.68	3.31	NA	NA	31.33	36.23	090
61795		A	Brain surgery using computer	4.04	NA	NA	2.14	3.48	0.80	NA	NA	6.98	8.32	ZZZ
61850		A	Implant neuroelectrodes	12.39	NA	NA	7.93	10.28	2.10	NA	NA	22.42	24.77	090
61855		D	Implant neuroelectrodes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
61860		A	Implant neuroelectrodes	20.87	NA	NA	13.11	10.97	4.22	NA	NA	38.20	36.06	090
61862		A	Implant neurostimul, subcort	19.34	NA	NA	12.02	12.02	3.89	NA	NA	35.25	35.25	090
61865		D	Implant neuroelectrodes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
61870		A	Implant neuroelectrodes	14.94	NA	NA	8.70	6.63	3.03	NA	NA	26.67	24.60	090
61875		A	Implant neuroelectrodes	15.06	NA	NA	8.76	8.01	3.05	NA	NA	26.87	26.12	090
61880		A	Revise/remove neuroelectrode	6.29	NA	NA	5.14	5.17	1.25	NA	NA	12.68	12.71	090
61885		A	Implant neurostim one array	8.00	NA	NA	4.04	3.09	1.18	NA	NA	13.22	12.27	090
61886		A	Implant neurostim arrays	8.00	NA	NA	5.98	5.98	1.43	NA	NA	15.41	15.41	090
61888		A	Revise/remove neuroreceiver	5.07	NA	NA	3.85	3.15	1.02	NA	NA	9.94	9.24	010
62000		A	Treat skull fracture	12.53	NA	NA	5.45	5.84	0.90	NA	NA	18.88	19.27	090
62005		A	Treat skull fracture	16.17	NA	NA	8.70	10.36	2.61	NA	NA	27.48	29.14	090
62010		A	Treatment of head injury	19.81	NA	NA	11.83	16.34	3.72	NA	NA	35.36	39.87	090
62100		A	Repair brain fluid leakage	22.03	NA	NA	14.02	18.74	3.82	NA	NA	39.87	44.59	090
62115		A	Reduction of skull defect	21.66	NA	NA	10.57	13.70	2.96	NA	NA	35.19	38.32	090
62116		A	Reduction of skull defect	23.59	NA	NA	13.08	15.76	4.47	NA	NA	41.14	43.82	090
62117		A	Reduction of skull defect	26.60	NA	NA	15.69	18.27	5.38	NA	NA	47.67	50.25	090
62120		A	Repair skull cavity lesion	23.35	NA	NA	14.32	16.33	3.46	NA	NA	41.13	43.14	090
62121		A	Incise skull repair	21.58	NA	NA	13.62	16.31	3.52	NA	NA	38.72	41.41	090
62140		A	Repair of skull defect	13.51	NA	NA	8.75	11.67	2.56	NA	NA	24.82	27.74	090
62141		A	Repair of skull defect	14.91	NA	NA	9.77	13.79	2.80	NA	NA	27.48	31.50	090
62142		A	Remove skull plate/flap	10.79	NA	NA	7.36	10.12	2.06	NA	NA	20.21	22.97	090
62143		A	Replace skull plate/flap	13.05	NA	NA	8.81	9.38	2.47	NA	NA	24.33	24.90	090
62145		A	Repair of skull & brain	18.82	NA	NA	11.72	13.00	3.76	NA	NA	34.30	35.58	090
62146		A	Repair of skull with graft	16.12	NA	NA	10.27	11.10	2.93	NA	NA	29.32	30.15	090
62147		A	Repair of skull with graft	19.34	NA	NA	11.77	13.03	3.22	NA	NA	34.33	35.59	090
62180		A	Establish brain cavity shunt	21.06	NA	NA	13.24	14.33	4.00	NA	NA	38.30	39.39	090
62190		A	Establish brain cavity shunt	11.07	NA	NA	7.23	10.23	2.21	NA	NA	20.51	23.51	090
62192		A	Establish brain cavity shunt	12.25	NA	NA	8.38	11.51	2.28	NA	NA	22.91	26.04	090
62194		A	Replace/irrigate catheter	5.03	NA	NA	1.98	2.01	0.47	NA	NA	7.48	7.51	010
62200		A	Establish brain cavity shunt	18.32	NA	NA	11.50	14.95	3.67	NA	NA	33.49	36.94	090
62201		A	Establish brain cavity shunt	14.86	NA	NA	9.88	9.71	2.71	NA	NA	27.45	27.28	090
62220		A	Establish brain cavity shunt	13.00	NA	NA	8.65	12.09	2.52	NA	NA	24.17	27.61	090
62223		A	Establish brain cavity shunt	12.87	NA	NA	8.50	11.94	2.43	NA	NA	23.80	27.24	090
62225		A	Replace/irrigate catheter	5.41	NA	NA	4.02	4.62	1.07	NA	NA	10.50	11.10	090
62230		A	Replace/revise brain shunt	10.54	NA	NA	6.71	8.69	2.02	NA	NA	19.27	21.25	090
62256		A	Remove brain cavity shunt	6.60	NA	NA	5.30	6.11	1.30	NA	NA	13.20	14.01	090
62258		A	Replace brain cavity shunt	14.54	NA	NA	8.72	12.38	2.80	NA	NA	26.06	29.72	090
62263		A	Lysis epidural adhesions	6.02	4.61	4.61	2.18	2.18	0.88	11.51	11.51	9.08	9.08	000
62268		A	Drain spinal cord cyst	4.74	NA	NA	2.06	2.65	0.42	NA	NA	7.22	7.81	000
62269		A	Needle biopsy, spinal cord	5.02	NA	NA	2.16	2.03	0.28	NA	NA	7.46	7.33	000
62270		A	Spinal fluid tap, diagnostic	1.13	3.46	2.12	0.36	0.57	0.14	4.73	3.39	1.63	1.84	000
62272		A	Drain spinal fluid	1.35	3.25	2.18	0.53	0.82	0.19	4.79	3.72	2.07	2.36	000
62273		A	Treat epidural spine lesion	2.15	1.21	1.22	0.96	1.09	0.14	3.50	3.51	3.25	3.38	000
62274		D	Inject spinal anesthetic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
62275		D	Inject spinal anesthetic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
62276		D	Inject spinal anesthetic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
62277		D	Inject spinal anesthetic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
62278		D	Inject spinal anesthetic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
62279		D	Inject spinal anesthetic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
62280		A	Treat spinal cord lesion	2.63	4.41	2.59	0.66	0.72	0.17	7.21	5.39	3.46	3.52	010
62281		A	Treat spinal cord lesion	2.66	3.46	2.20	0.52	0.73	0.18	6.30	5.04	3.36	3.57	010
62282		A	Treat spinal canal lesion	2.33	5.29	3.57	0.54	1.19	0.15	7.77	6.05	3.02	3.67	010
62284		A	Injection for myelogram	1.54	3.47	2.81	0.43	1.13	0.11	5.12	4.46	2.08	2.78	000
62287		A	Percutaneous diskectomy	8.08	NA	NA	4.46	6.01	0.83	NA	NA	13.37	14.92	090
62288		D	Injection into spinal canal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
62289		D	Injection into spinal canal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
62290		A	Inject for spine disk x-ray	3.00	4.26	3.14	1.02	1.52	0.21	7.47	6.35	4.23	4.73	000
62291		A	Inject for spine disk x-ray	2.91	4.39	3.16	0.90	1.42	0.21	7.51	6.28	4.02	4.54	000
62292		A	Injection into disk lesion	7.86	NA	NA	3.85	6.62	0.71	NA	NA	12.42	15.19	090
62294		A	Injection into spinal artery	11.83	NA	NA	5.93	6.14	0.68	NA	NA	18.44	18.65	090
62298		D	Injection into spinal canal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
62310		A	Inject spine c/t	1.91	3.24	3.24	0.38	0.38	0.26	5.41	5.41	2.55	2.55	000
62311		A	Inject spine l/s (cd)	1.54	3.66	3.66	0.33	0.33	0.25	5.45	5.45	2.12	2.12	000
62318		A	Inject spine w/cath, c/t	2.04	3.29	3.29	0.40	0.40	0.32	5.65	5.65	2.76	2.76	000
62319		A	Inject spine w/cath l/s (cd)	1.87	3.35	3.35	0.35	0.35	0.28	5.50	5.50	2.50	2.50	000
62350		A	Implant spinal canal cath	6.87	NA	NA	3.33	3.56	0.67	NA	NA	10.87	11.10	090
62351		A	Implant spinal canal cath	10.00	NA	NA	6.74	6.17	1.61	NA	NA	18.35	17.78	090
62355		A	Remove spinal canal catheter	5.45	NA	NA	2.57	3.18	0.51	NA	NA	8.53	9.14	090
62360		A	Insert spine infusion device	2.62	NA	NA	1.96	1.[illegible]	0.23	NA	NA	4.81	4.44	090
62361		A	Implant spine infusion pump	5.42	NA	NA	2.91	2.91	0.54	NA	NA	8.87	8.87	090
62362		A	Implant spine infusion pump	7.04	NA	NA	3.87	3.84	0.86	NA	NA	11.77	11.74	090

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[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
62365		A	Remove spine infusion device	5.42	NA	NA	2.93	3.35	0.72	NA	NA	9.07	9.49	090
62367		C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
62367	26	A	Analyze spine infusion pump	0.48	0.13	0.26	0.13	0.26	0.05	0.66	0.79	0.66	0.79	XXX
62367	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
62368		C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
62368	26	A	Analyze spine infusion pump	0.75	0.19	0.40	0.19	0.40	0.06	1.00	1.21	1.00	1.21	XXX
62368	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
63001		A	Removal of spinal lamina	15.82	NA	NA	11.50	15.19	2.62	NA	NA	29.94	33.63	090
63003		A	Removal of spinal lamina	15.95	NA	NA	11.65	15.35	2.70	NA	NA	30.30	34.00	090
63005		A	Removal of spinal lamina	14.92	NA	NA	10.97	14.39	2.29	NA	NA	28.18	31.60	090
63011		A	Removal of spinal lamina	14.52	NA	NA	8.96	9.90	1.74	NA	NA	25.22	26.16	090
63012		A	Removal of spinal lamina	15.40	NA	NA	10.12	14.25	2.25	NA	NA	27.77	31.90	090
63015		A	Removal of spinal lamina	19.35	NA	NA	13.30	18.17	3.59	NA	NA	36.24	41.11	090
63016		A	Removal of spinal lamina	19.20	NA	NA	13.36	18.14	3.29	NA	NA	35.85	40.63	090
63017		A	Removal of spinal lamina	15.94	NA	NA	11.66	15.34	2.55	NA	NA	30.15	33.83	090
63020		A	Neck spine disk surgery	14.81	NA	NA	11.01	14.21	2.69	NA	NA	28.51	31.71	090
63030		A	Low back disk surgery	12.00	NA	NA	9.64	11.99	1.95	NA	NA	23.59	25.94	090
63035		A	Spinal disk surgery add-on	3.15	NA	NA	1.65	2.71	0.51	NA	NA	5.31	6.37	ZZZ
63040		A	Neck spine disk surgery	18.81	NA	NA	13.04	17.75	3.09	NA	NA	34.94	39.65	090
63042		A	Low back disk surgery	17.47	NA	NA	12.44	16.65	2.69	NA	NA	32.60	36.81	090
63045		A	Removal of spinal lamina	16.50	NA	NA	11.86	15.78	2.91	NA	NA	31.27	35.19	090
63046		A	Removal of spinal lamina	15.80	NA	NA	11.60	15.23	2.63	NA	NA	30.03	33.66	090
63047		A	Removal of spinal lamina	14.61	NA	NA	10.94	14.19	2.22	NA	NA	27.77	31.02	090
63048		A	Remove spinal lamina add-on	3.26	NA	NA	1.72	2.81	0.51	NA	NA	5.49	6.58	ZZZ
63055		A	Decompress spinal cord	21.99	NA	NA	14.62	20.19	3.94	NA	NA	40.55	46.12	090
63056		A	Decompress spinal cord	20.36	NA	NA	13.59	18.65	3.01	NA	NA	36.96	42.02	090
63057		A	Decompress spine cord add-on	5.26	NA	NA	2.71	3.44	0.86	NA	NA	8.83	9.56	ZZZ
63064		A	Decompress spinal cord	24.61	NA	NA	16.41	21.14	4.26	NA	NA	45.28	50.01	090
63066		A	Decompress spine cord add-on	3.26	NA	NA	1.67	2.18	0.53	NA	NA	5.46	5.97	ZZZ
63075		A	Neck spine disk surgery	19.41	NA	NA	13.51	16.29	3.38	NA	NA	36.30	39.08	090
63076		A	Neck spine disk surgery	4.05	NA	NA	2.14	3.49	0.70	NA	NA	6.89	8.24	ZZZ
63077		A	Spine disk surgery, thorax	21.44	NA	NA	14.78	17.39	2.72	NA	NA	38.94	41.55	090
63078		A	Spine disk surgery, thorax	3.28	NA	NA	1.69	2.26	0.40	NA	NA	5.37	5.94	ZZZ
63081		A	Removal of vertebral body	23.73	NA	NA	16.19	22.26	4.08	NA	NA	44.00	50.07	090
63082		A	Remove vertebral body add-on	4.37	NA	NA	2.31	3.77	0.74	NA	NA	7.42	8.88	ZZZ
63085		A	Removal of vertebral body	26.92	NA	NA	18.02	23.88	4.10	NA	NA	49.04	54.90	090
63086		A	Remove vertebral body add-on	3.19	NA	NA	1.66	2.74	0.49	NA	NA	5.34	6.42	ZZZ
63087		A	Removal of vertebral body	35.57	NA	NA	22.06	26.36	4.66	NA	NA	62.29	66.59	090
63088		A	Remove vertebral body add-on	4.33	NA	NA	2.27	3.72	0.61	NA	NA	7.21	8.66	ZZZ
63090		A	Removal of vertebral body	28.16	NA	NA	17.83	24.77	3.66	NA	NA	49.65	56.59	090
63091		A	Remove vertebral body add-on	3.03	NA	NA	1.55	2.26	0.37	NA	NA	4.95	5.66	ZZZ
63170		A	Incise spinal cord tract(s)	19.83	NA	NA	13.44	16.97	3.84	NA	NA	37.11	40.64	090
63172		A	Drainage of spinal cyst	17.66	NA	NA	12.87	16.98	3.36	NA	NA	33.89	38.00	090
63173		A	Drainage of spinal cyst	21.99	NA	NA	14.86	15.83	4.25	NA	NA	41.10	42.07	090
63180		A	Revise spinal cord ligaments	18.27	NA	NA	12.89	12.75	2.76	NA	NA	33.92	33.78	090
63182		A	Revise spinal cord ligaments	20.50	NA	NA	12.49	15.17	3.22	NA	NA	36.21	38.89	090
63185		A	Incise spinal column/nerves	15.04	NA	NA	9.42	13.15	2.43	NA	NA	26.89	30.62	090
63190		A	Incise spinal column/nerves	17.45	NA	NA	11.77	16.31	2.84	NA	NA	32.06	36.60	090
63191		A	Incise spinal column/nerves	17.54	NA	NA	10.83	12.49	2.78	NA	NA	31.15	32.81	090
63194		A	Incise spinal column & cord	19.19	NA	NA	12.10	13.12	3.89	NA	NA	35.18	36.20	090
63195		A	Incise spinal column & cord	18.84	NA	NA	12.71	13.88	3.71	NA	NA	35.26	36.43	090
63196		A	Incise spinal column & cord	22.30	NA	NA	11.71	14.32	4.52	NA	NA	38.53	41.14	090
63197		A	Incise spinal column & cord	21.11	NA	NA	12.06	13.82	4.27	NA	NA	37.44	39.20	090
63198		A	Incise spinal column & cord	25.38	NA	NA	10.16	13.94	5.14	NA	NA	40.68	44.46	090
63199		A	Incise spinal column & cord	26.89	NA	NA	16.58	19.90	4.52	NA	NA	47.99	51.31	090
63200		A	Release of spinal cord	19.18	NA	NA	12.97	13.26	3.23	NA	NA	35.38	35.67	090
63250		A	Revise spinal cord vessels	40.76	NA	NA	22.13	26.26	5.30	NA	NA	68.19	72.32	090
63251		A	Revise spinal cord vessels	41.20	NA	NA	23.01	23.85	7.84	NA	NA	72.05	72.89	090
63252		A	Revise spinal cord vessels	41.19	NA	NA	22.90	26.78	7.47	NA	NA	71.56	75.44	090
63265		A	Excise intraspinal lesion	21.56	NA	NA	13.16	18.53	4.01	NA	NA	38.73	44.10	090
63266		A	Excise intraspinal lesion	22.30	NA	NA	13.78	20.20	4.17	NA	NA	40.25	46.67	090
63267		A	Excise intraspinal lesion	17.95	NA	NA	11.42	16.43	3.14	NA	NA	32.51	37.52	090
63268		A	Excise intraspinal lesion	18.52	NA	NA	9.49	11.56	3.31	NA	NA	31.32	33.39	090
63270		A	Excise intraspinal lesion	26.80	NA	NA	15.92	17.81	5.33	NA	NA	48.05	49.94	090
63271		A	Excise intraspinal lesion	26.92	NA	NA	16.05	22.46	5.19	NA	NA	48.16	54.57	090
63272		A	Excise intraspinal lesion	25.32	NA	NA	15.07	20.10	4.72	NA	NA	45.11	50.14	090
63273		A	Excise intraspinal lesion	24.29	NA	NA	14.76	16.91	4.53	NA	NA	43.58	45.73	090
63275		A	Biopsy/excise spinal tumor	23.68	NA	NA	14.20	21.24	4.31	NA	NA	42.19	49.23	090
63276		A	Biopsy/excise spinal tumor	23.45	NA	NA	14.11	20.79	4.29	NA	NA	41.85	48.53	090
63277		A	Biopsy/excise spinal tumor	20.83	NA	NA	12.77	18.82	3.64	NA	NA	37.24	43.29	090
63278		A	Biopsy/excise spinal tumor	20.56	NA	NA	12.62	18.59	3.52	NA	NA	36.70	42.67	090
63280		A	Biopsy/excise spinal tumor	28.35	NA	NA	16.76	23.62	5.51	NA	NA	50.62	57.48	090
63281		A	Biopsy/excise spinal tumor	28.05	NA	NA	16.49	23.26	5.42	NA	NA	49.96	56.73	090
63282		A	Biopsy/excise spinal tumor	26.39	NA	NA	15.91	21.04	4.95	NA	NA	47.25	52.38	090
63283		A	Biopsy/excise spinal tumor	25.00	NA	NA	13.35	16.86	4.52	NA	NA	42.87	46.38	090
63285		A	Biopsy/excise spinal tumor	36.00	NA	NA	20.75	23.67	7.01	NA	NA	63.76	66.68	090
63286		A	Biopsy/excise spinal tumor	35.63	NA	NA	20.35	25.78	6.85	NA	NA	62.83	68.26	090
63287		A	Biopsy/excise spinal tumor	36.70	NA	NA	21.35	24.63	7.13	NA	NA	65.18	68.46	090
63290		A	Biopsy/excise spinal tumor	37.38	NA	NA	21.46	25.47	6.99	NA	NA	65.83	69.84	090
63300		A	Removal of vertebral body	24.43	NA	NA	14.86	16.80	4.35	NA	NA	43.64	45.58	090
63301		A	Removal of vertebral body	27.60	NA	NA	15.92	17.97	4.63	NA	NA	48.15	50.20	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
63302		A	Removal of vertebral body	27.81	NA	NA	16.18	19.68	4.56	NA	NA	48.55	52.05	090
63303		A	Removal of vertebral body	30.50	NA	NA	17.10	18.59	4.47	NA	NA	52.07	53.56	090
63304		A	Removal of vertebral body	30.33	NA	NA	18.14	20.64	6.14	NA	NA	54.61	57.11	090
63305		A	Removal of vertebral body	32.03	NA	NA	18.06	21.24	5.24	NA	NA	55.33	58.51	090
63306		A	Removal of vertebral body	32.22	NA	NA	17.99	21.35	5.44	NA	NA	55.65	59.01	090
63307		A	Removal of vertebral body	31.63	NA	NA	16.51	21.51	4.17	NA	NA	52.31	57.31	090
63308		A	Remove vertebral body add-on	5.25	NA	NA	2.69	3.55	0.86	NA	NA	8.80	9.66	ZZZ
63600		A	Remove spinal cord lesion	14.02	NA	NA	5.61	8.61	1.51	NA	NA	21.14	24.14	090
63610		A	Stimulation of spinal cord	8.73	NA	NA	2.89	5.10	0.54	NA	NA	12.16	14.37	000
63615		A	Remove lesion of spinal cord	16.28	NA	NA	9.91	11.22	3.14	NA	NA	29.33	30.64	090
63650		A	Implant neuroelectrodes	6.74	NA	NA	2.66	5.35	0.55	NA	NA	9.95	12.64	090
63655		A	Implant neuroelectrodes	10.29	NA	NA	7.05	9.67	1.75	NA	NA	19.09	21.71	090
63660		A	Revise/remove neuroelectrode	6.16	NA	NA	3.61	5.49	0.71	NA	NA	10.48	12.36	090
63685		A	Implant neuroreceiver	7.04	NA	NA	4.04	6.04	0.89	NA	NA	11.97	13.97	090
63688		A	Revise/remove neuroreceiver	5.39	NA	NA	3.26	4.85	0.73	NA	NA	9.38	10.97	090
63700		A	Repair of spinal herniation	16.53	NA	NA	10.55	11.44	2.48	NA	NA	29.56	30.45	090
63702		A	Repair of spinal herniation	18.48	NA	NA	11.83	12.85	3.04	NA	NA	33.35	34.37	090
63704		A	Repair of spinal herniation	21.18	NA	NA	12.13	13.77	3.87	NA	NA	37.18	38.82	090
63706		A	Repair of spinal herniation	24.11	NA	NA	13.95	15.84	2.61	NA	NA	40.67	42.56	090
63707		A	Repair spinal fluid leakage	11.26	NA	NA	7.77	10.61	1.78	NA	NA	20.81	23.65	090
63709		A	Repair spinal fluid leakage	14.32	NA	NA	9.47	13.28	2.18	NA	NA	25.97	29.78	090
63710		A	Graft repair of spine defect	14.07	NA	NA	9.25	9.92	2.49	NA	NA	25.81	26.48	090
63740		A	Install spinal shunt	11.36	NA	NA	7.66	10.62	2.15	NA	NA	21.17	24.13	090
63741		A	Install spinal shunt	8.25	NA	NA	4.75	7.30	1.28	NA	NA	14.28	16.83	090
63744		A	Revision of spinal shunt	8.10	NA	NA	5.69	7.27	1.41	NA	NA	15.20	16.78	090
63746		A	Removal of spinal shunt	6.43	NA	NA	3.72	4.86	0.73	NA	NA	10.88	12.02	090
64400		A	Injection for nerve block	1.11	2.10	1.31	0.24	0.25	0.09	3.30	2.51	1.44	1.45	000
64402		A	Injection for nerve block	1.25	3.90	2.29	0.46	0.57	0.08	5.23	3.62	1.79	1.90	000
64405		A	Injection for nerve block	1.32	2.23	1.46	0.28	0.32	0.12	3.67	2.90	1.72	1.76	000
64408		A	Injection for nerve block	1.41	2.34	1.74	0.60	0.59	0.13	3.88	3.28	2.14	2.13	000
64410		A	Injection for nerve block	1.43	2.36	1.57	0.27	0.52	0.09	3.88	3.09	1.79	2.04	000
64412		A	Injection for nerve block	1.18	2.63	1.65	0.22	0.28	0.10	3.91	2.93	1.50	1.56	000
64413		A	Injection for nerve block	1.40	2.47	1.64	0.34	0.37	0.11	3.98	3.15	1.85	1.88	000
64415		A	Injection for nerve block	1.48	2.62	1.45	0.28	0.28	0.11	4.21	3.04	1.87	1.87	000
64417		A	Injection for nerve block	1.44	2.25	1.47	0.29	0.49	0.11	3.80	3.02	1.84	2.04	000
64418		A	Injection for nerve block	1.32	2.13	1.53	0.26	0.36	0.10	3.55	2.95	1.68	1.78	000
64420		A	Injection for nerve block	1.18	2.20	1.45	0.24	0.47	0.08	3.46	2.71	1.50	1.73	000
64421		A	Injection for nerve block	1.68	2.56	1.73	0.34	0.62	0.11	4.35	3.52	2.13	2.41	000
64425		A	Injection for nerve block	1.75	2.17	1.40	0.37	0.50	0.12	4.04	3.27	2.24	2.37	000
64430		A	Injection for nerve block	1.46	2.52	1.64	0.40	0.58	0.10	4.08	3.20	1.96	2.14	000
64435		A	Injection for nerve block	1.45	2.69	1.60	0.51	0.39	0.11	4.25	3.16	2.07	1.95	000
64440		D	Injection for nerve block	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
64441		D	Injection for nerve block	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
64442		D	Injection for nerve block	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
64443		D	Inject, nerve block add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
64445		A	Injection for nerve block	1.48	2.97	1.75	0.31	0.29	0.10	4.55	3.33	1.89	1.87	000
64450		A	Injection for nerve block	1.27	1.54	1.06	0.31	0.30	0.09	2.90	2.42	1.67	1.66	000
64470		A	Inj paravertebral c/t	1.85	3.60	3.60	0.46	0.46	0.12	5.57	5.57	2.43	2.43	000
64472		A	Inj paravertebral c/t add-on	1.29	3.29	3.29	0.35	0.35	0.09	4.67	4.67	1.73	1.73	ZZZ
64475		A	Inj paravertebral l/s	1.41	3.44	3.44	0.35	0.35	0.10	4.95	4.95	1.86	1.86	000
64476		A	Inj paravertebral l/s add-on	0.98	3.63	3.63	0.24	0.24	0.07	4.68	4.68	1.29	1.29	ZZZ
64479		A	Inj foramen epidural c/t	2.20	3.70	3.70	0.55	0.55	0.15	6.05	6.05	2.90	2.90	000
64480		A	Inj foramen epidural add-on	1.54	3.80	3.80	0.36	0.36	0.11	5.45	5.45	2.01	2.01	ZZZ
64483		A	Inj foramen epidural l/s	1.90	3.58	3.58	0.47	0.47	0.10	5.58	5.58	2.47	2.47	000
64484		A	Inj foramen epidural add-on	1.33	3.72	3.72	0.31	0.31	0.10	5.15	5.15	1.74	1.74	ZZZ
64505		A	Injection for nerve block	1.36	2.09	1.38	0.33	0.34	0.09	3.54	2.83	1.78	1.79	000
64508		A	Injection for nerve block	1.12	1.77	1.45	0.39	0.48	0.13	3.02	2.70	1.64	1.73	000
64510		A	Injection for nerve block	1.22	2.22	1.50	0.23	0.50	0.08	3.52	2.80	1.53	1.80	000
64520		A	Injection for nerve block	1.35	3.39	2.09	0.26	0.52	0.10	4.84	3.54	1.71	1.97	000
64530		A	Injection for nerve block	1.58	2.71	1.99	0.33	0.80	0.11	4.40	3.68	2.02	2.49	000
64550		A	Apply neurostimulator	0.18	0.46	0.47	0.05	0.15	0.01	0.65	0.66	0.24	0.34	000
64553		A	Implant neuroelectrodes	2.31	1.63	1.37	1.28	0.92	0.06	4.00	3.74	3.65	3.29	010
64555		A	Implant neuroelectrodes	2.27	2.18	1.32	0.48	0.36	0.16	4.61	3.75	2.91	2.79	010
64560		A	Implant neuroelectrodes	2.36	2.30	1.94	0.85	0.82	0.17	4.83	4.47	3.38	3.35	010
64565		A	Implant neuroelectrodes	1.76	2.19	1.51	0.56	0.49	0.13	4.08	3.40	2.45	2.38	010
64573		A	Implant neuroelectrodes	7.50	NA	NA	5.34	4.39	0.84	NA	NA	13.68	12.73	090
64575		A	Implant neuroelectrodes	4.35	NA	NA	3.26	3.30	0.68	NA	NA	8.29	8.33	090
64577		A	Implant neuroelectrodes	4.62	NA	NA	3.59	3.30	0.74	NA	NA	8.95	8.66	090
64580		A	Implant neuroelectrodes	4.12	NA	NA	3.44	3.30	0.38	NA	NA	7.94	7.80	090
64585		A	Revise/remove neuroelectrode	2.06	3.94	2.50	1.85	1.45	0.26	6.26	4.82	4.17	3.77	010
64590		A	Implant neuroreceiver	2.40	NA	NA	2.31	2.16	0.37	NA	NA	5.08	4.93	010
64595		A	Revise/remove neuroreceiver	1.73	NA	NA	1.97	1.60	0.14	NA	NA	3.84	3.47	010
64600		A	Injection treatment of nerve	3.45	2.97	2.40	1.87	1.85	0.34	6.76	6.19	5.66	5.64	010
64605		A	Injection treatment of nerve	5.61	3.50	2.60	2.41	2.05	0.43	9.54	8.64	8.45	8.09	010
64610		A	Injection treatment of nerve	7.16	NA	NA	4.09	5.99	1.28	NA	NA	12.53	14.43	010
64612		A	Destroy nerve, face muscle	1.96	2.78	2.18	1.59	1.19	0.14	4.88	4.28	3.69	3.29	010
64613		A	Destroy nerve, spine muscle	1.96	1.40	1.49	1.16	0.98	0.36	3.72	3.81	3.48	3.30	010
64620		A	Injection treatment of nerve	2.84	2.84	1.97	0.57	0.83	0.20	5.88	5.01	3.61	3.87	010
64622		A	Destr paravertebrl nerve l/s	3.00	4.04	3.01	0.67	1.33	0.21	7.25	6.22	3.88	4.54	010
64623		A	Destr paravertebral n add-on	0.99	3.05	1.99	0.22	0.57	0.07	4.11	3.05	1.28	1.63	ZZZ
64626		A	Destr paravertebrl nerve c/t	3.28	3.59	3.59	0.90	0.90	0.22	7.09	7.09	4.40	4.40	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
64627		A	Destr paravertebral n add-on	1.16	2.99	2.99	0.32	0.32	0.08	4.23	4.23	1.56	1.56	ZZZ
64630		A	Injection treatment of nerve	3.00	2.59	2.24	0.66	1.28	0.25	5.84	5.49	3.91	4.53	010
64640		A	Injection treatment of nerve	2.76	4.36	2.68	0.88	0.94	0.20	7.32	5.64	3.84	3.90	010
64680		A	Injection treatment of nerve	2.62	2.50	2.09	0.63	1.16	0.16	5.28	4.87	3.41	3.94	010
64702		A	Revise finger/toe nerve	4.23	NA	NA	3.49	4.04	0.44	NA	NA	8.16	8.71	090
64704		A	Revise hand/foot nerve	4.57	NA	NA	2.94	4.20	0.36	NA	NA	7.87	9.13	090
64708		A	Revise arm/leg nerve	6.12	NA	NA	4.70	6.00	0.66	NA	NA	11.48	12.78	090
64712		A	Revision of sciatic nerve	7.75	NA	NA	4.57	6.92	0.74	NA	NA	13.06	15.41	090
64713		A	Revision of arm nerve(s)	11.00	NA	NA	4.94	7.57	1.14	NA	NA	17.08	19.71	090
64714		A	Revise low back nerve(s)	10.33	NA	NA	3.64	5.15	0.78	NA	NA	14.75	16.26	090
64716		A	Revision of cranial nerve	6.31	NA	NA	4.71	4.98	0.59	NA	NA	11.61	11.88	090
64718		A	Revise ulnar nerve at elbow	5.99	NA	NA	4.75	5.95	0.74	NA	NA	11.48	12.68	090
64719		A	Revise ulnar nerve at wrist	4.85	NA	NA	4.13	4.75	0.53	NA	NA	9.51	10.13	090
64721		A	Carpal tunnel surgery	4.29	5.28	5.20	5.05	5.09	0.49	10.06	9.98	9.83	9.87	090
64722		A	Relieve pressure on nerve(s)	4.70	NA	NA	2.89	4.25	0.40	NA	NA	7.99	9.35	090
64726		A	Release foot/toe nerve	4.18	NA	NA	2.80	1.79	0.31	NA	NA	7.29	6.28	090
64727		A	Internal nerve revision	3.10	NA	NA	1.48	2.50	0.33	NA	NA	4.91	5.93	ZZZ
64732		A	Incision of brow nerve	4.41	NA	NA	3.40	4.04	0.75	NA	NA	8.56	9.20	090
64734		A	Incision of cheek nerve	4.92	NA	NA	3.35	4.18	0.72	NA	NA	8.99	9.82	090
64736		A	Incision of chin nerve	4.60	NA	NA	2.79	3.82	0.39	NA	NA	7.78	8.81	090
64738		A	Incision of jaw nerve	5.73	NA	NA	3.45	4.48	0.58	NA	NA	9.76	10.79	090
64740		A	Incision of tongue nerve	5.59	NA	NA	3.39	4.51	0.38	NA	NA	9.36	10.48	090
64742		A	Incision of facial nerve	6.22	NA	NA	4.57	5.00	0.53	NA	NA	11.32	11.75	090
64744		A	Incise nerve, back of head	5.24	NA	NA	3.59	4.92	0.92	NA	NA	9.75	11.08	090
64746		A	Incise diaphragm nerve	5.93	NA	NA	5.12	4.61	0.68	NA	NA	11.73	11.22	090
64752		A	Incision of vagus nerve	7.06	NA	NA	5.72	5.00	0.67	NA	NA	13.45	12.73	090
64755		A	Incision of stomach nerves	13.52	NA	NA	6.53	8.95	1.22	NA	NA	21.27	23.69	090
64760		A	Incision of vagus nerve	6.96	NA	NA	3.83	5.53	0.64	NA	NA	11.43	13.13	090
64761		A	Incision of pelvis nerve	6.41	NA	NA	3.74	4.40	0.44	NA	NA	10.59	11.25	090
64763		A	Incise hip/thigh nerve	6.93	NA	NA	4.98	5.10	0.71	NA	NA	12.62	12.74	090
64766		A	Incise hip/thigh nerve	8.67	NA	NA	5.14	6.19	1.34	NA	NA	15.15	16.20	090
64771		A	Sever cranial nerve	7.35	NA	NA	5.34	6.16	0.86	NA	NA	13.55	14.37	090
64772		A	Incision of spinal nerve	7.21	NA	NA	4.86	6.11	1.14	NA	NA	13.21	14.46	090
64774		A	Remove skin nerve lesion	5.17	NA	NA	3.48	3.23	0.52	NA	NA	9.17	8.92	090
64776		A	Remove digit nerve lesion	5.12	NA	NA	3.59	3.31	0.44	NA	NA	9.15	8.87	090
64778		A	Digit nerve surgery add-on	3.11	NA	NA	1.44	2.20	0.34	NA	NA	4.89	5.65	ZZZ
64782		A	Remove limb nerve lesion	6.23	NA	NA	3.44	4.27	0.45	NA	NA	10.12	10.95	090
64783		A	Limb nerve surgery add-on	3.72	NA	NA	1.83	2.69	0.37	NA	NA	5.92	6.78	ZZZ
64784		A	Remove nerve lesion	9.82	NA	NA	6.26	6.19	1.06	NA	NA	17.14	17.07	090
64786		A	Remove sciatic nerve lesion	15.46	NA	NA	9.69	11.72	1.93	NA	NA	27.08	29.11	090
64787		A	Implant nerve end	4.30	NA	NA	2.19	2.98	0.43	NA	NA	6.92	7.71	ZZZ
64788		A	Remove skin nerve lesion	4.61	NA	NA	3.16	3.55	0.49	NA	NA	8.26	8.65	090
64790		A	Removal of nerve lesion	11.31	NA	NA	6.87	7.30	1.47	NA	NA	19.65	20.08	090
64792		A	Removal of nerve lesion	14.92	NA	NA	8.62	9.19	1.97	NA	NA	25.51	26.08	090
64795		A	Biopsy of nerve	3.01	NA	NA	1.76	2.17	0.43	NA	NA	5.20	5.61	000
64802		A	Remove sympathetic nerves	9.15	NA	NA	6.12	5.99	1.03	NA	NA	16.30	16.17	090
64804		A	Remove sympathetic nerves	14.64	NA	NA	7.82	10.84	1.83	NA	NA	24.29	27.31	090
64809		A	Remove sympathetic nerves	13.67	NA	NA	6.95	9.20	1.68	NA	NA	22.30	24.55	090
64818		A	Remove sympathetic nerves	10.30	NA	NA	6.20	7.75	1.16	NA	NA	17.66	19.21	090
64820		A	Remove sympathetic nerves	10.37	NA	NA	7.29	7.59	1.08	NA	NA	18.74	19.04	090
64831		A	Repair of digit nerve	9.44	NA	NA	6.55	5.11	0.99	NA	NA	16.98	15.54	090
64832		A	Repair nerve add-on	5.66	NA	NA	3.00	2.26	0.59	NA	NA	9.25	8.51	ZZZ
64834		A	Repair of hand or foot nerve	10.19	NA	NA	6.64	5.22	1.06	NA	NA	17.89	16.47	090
64835		A	Repair of hand or foot nerve	10.94	NA	NA	7.29	6.88	1.14	NA	NA	19.37	18.96	090
64836		A	Repair of hand or foot nerve	10.94	NA	NA	7.42	7.35	1.17	NA	NA	19.53	19.46	090
64837		A	Repair nerve add-on	6.26	NA	NA	3.14	3.99	0.65	NA	NA	10.05	10.90	ZZZ
64840		A	Repair of leg nerve	13.02	NA	NA	8.74	9.99	1.03	NA	NA	22.79	24.04	090
64856		A	Repair/transpose nerve	13.80	NA	NA	8.76	8.84	1.52	NA	NA	24.08	24.16	090
64857		A	Repair arm/leg nerve	14.49	NA	NA	9.26	9.80	1.54	NA	NA	25.29	25.83	090
64858		A	Repair sciatic nerve	16.49	NA	NA	10.02	10.97	2.38	NA	NA	28.89	29.84	090
64859		A	Nerve surgery	4.26	NA	NA	2.26	3.03	0.45	NA	NA	6.97	7.74	ZZZ
64861		A	Repair of arm nerves	19.24	NA	NA	12.88	13.72	1.68	NA	NA	33.80	34.64	090
64862		A	Repair of low back nerves	19.44	NA	NA	11.60	17.50	3.93	NA	NA	34.97	40.87	090
64864		A	Repair of facial nerve	12.55	NA	NA	8.20	8.37	1.12	NA	NA	21.87	22.04	090
64865		A	Repair of facial nerve	15.24	NA	NA	10.23	11.81	1.37	NA	NA	26.84	28.42	090
64866		A	Fusion of facial/other nerve	15.74	NA	NA	9.80	10.97	1.42	NA	NA	26.96	28.13	090
64868		A	Fusion of facial/other nerve	14.04	NA	NA	9.38	10.76	1.62	NA	NA	25.04	26.42	090
64870		A	Fusion of facial/other nerve	15.99	NA	NA	9.19	12.15	1.71	NA	NA	26.89	29.85	090
64872		A	Subsequent repair of nerve	1.99	NA	NA	1.08	1.32	0.22	NA	NA	3.29	3.53	ZZZ
64874		A	Repair & revise nerve add-on	2.98	NA	NA	1.50	1.93	0.32	NA	NA	4.80	5.23	ZZZ
64876		A	Repair nerve/shorten bone	3.38	NA	NA	1.31	1.99	0.37	NA	NA	5.06	5.74	ZZZ
64885		A	Nerve graft, head or neck	17.53	NA	NA	11.02	12.40	1.47	NA	NA	30.02	31.40	090
64886		A	Nerve graft, head or neck	20.75	NA	NA	12.97	14.70	1.74	NA	NA	35.46	37.19	090
64890		A	Nerve graft, hand or foot	15.15	NA	NA	9.74	11.53	1.57	NA	NA	26.46	28.25	090
64891		A	Nerve graft, hand or foot	16.14	NA	NA	9.85	10.58	1.54	NA	NA	27.53	28.26	090
64892		A	Nerve graft, arm or leg	14.65	NA	NA	8.71	10.35	1.74	NA	NA	25.10	26.74	090
64893		A	Nerve graft, arm or leg	15.60	NA	NA	8.91	12.02	2.41	NA	NA	26.92	30.03	090
64895		A	Nerve graft, hand or foot	19.25	NA	NA	11.75	13.02	1.81	NA	NA	32.81	34.08	090
64896		A	Nerve graft, hand or foot	20.49	NA	NA	12.42	15.72	2.18	NA	NA	35.09	38.39	090
64897		A	Nerve graft, arm or leg	18.24	NA	NA	10.50	12.11	1.91	NA	NA	30.65	32.26	090
64898		A	Nerve graft, arm or leg	19.50	NA	NA	11.83	13.73	1.97	NA	NA	33.30	35.20	090

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
64901		A	Nerve graft add-on	10.22	NA	NA	5.78	8.41	1.02	NA	NA	17.02	19.65	ZZZ
64902		A	Nerve graft add-on	11.83	NA	NA	5.89	9.42	1.07	NA	NA	18.79	22.32	ZZZ
64905		A	Nerve pedicle transfer	14.02	NA	NA	7.83	9.02	1.02	NA	NA	22.87	24.06	090
64907		A	Nerve pedicle transfer	18.83	NA	NA	11.16	12.65	1.97	NA	NA	31.96	33.45	090
64999		C	Nervous system surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
65091		A	Revise eye	6.46	NA	NA	9.65	8.69	0.27	NA	NA	16.38	15.42	090
65093		A	Revise eye with implant	6.87	NA	NA	9.85	9.03	0.28	NA	NA	17.00	16.18	090
65101		A	Removal of eye	7.03	NA	NA	9.94	9.17	0.30	NA	NA	17.27	16.50	090
65103		A	Remove eye/insert implant	7.57	NA	NA	10.17	9.61	0.30	NA	NA	18.04	17.48	090
65105		A	Remove eye/attach implant	8.49	NA	NA	10.66	10.40	0.33	NA	NA	19.48	19.22	090
65110		A	Removal of eye	13.95	NA	NA	13.40	15.03	0.68	NA	NA	28.03	29.66	090
65112		A	Remove eye/revise socket	16.38	NA	NA	14.65	13.93	1.19	NA	NA	32.22	31.50	090
65114		A	Remove eye/revise socket	17.53	NA	NA	15.28	14.73	0.82	NA	NA	33.63	33.08	090
65125		A	Revise ocular implant	3.12	4.91	3.80	1.59	2.14	0.16	8.19	7.08	4.87	5.42	090
65130		A	Insert ocular implant	7.15	NA	NA	9.71	9.13	0.30	NA	NA	17.16	16.58	090
65135		A	Insert ocular implant	7.33	NA	NA	9.66	7.77	0.31	NA	NA	17.30	15.41	090
65140		A	Attach ocular implant	8.02	NA	NA	10.10	8.43	0.32	NA	NA	18.44	16.77	090
65150		A	Revise ocular implant	6.26	NA	NA	9.14	8.31	0.25	NA	NA	15.65	14.82	090
65155		A	Reinsert ocular implant	8.66	NA	NA	10.74	10.54	0.40	NA	NA	19.80	19.60	090
65175		A	Removal of ocular implant	6.28	NA	NA	9.18	8.34	0.25	NA	NA	15.71	14.87	090
65205		A	Remove foreign body from eye	0.71	5.55	2.98	0.20	0.20	0.04	6.30	3.73	0.95	0.95	000
65210		A	Remove foreign body from eye	0.84	5.76	3.13	0.30	0.28	0.04	6.64	4.01	1.18	1.16	000
65220		A	Remove foreign body from eye	0.71	7.36	3.96	0.19	0.24	0.06	8.13	4.73	0.96	1.01	000
65222		A	Remove foreign body from eye	0.93	5.69	3.16	0.28	0.30	0.04	6.66	4.13	1.25	1.27	000
65235		A	Remove foreign body from eye	7.57	NA	NA	6.62	6.36	0.32	NA	NA	14.51	14.25	090
65260		A	Remove foreign body from eye	10.96	NA	NA	11.33	10.35	0.42	NA	NA	22.71	21.73	090
65265		A	Remove foreign body from eye	12.59	NA	NA	13.07	11.99	0.50	NA	NA	26.16	25.08	090
65270		A	Repair of eye wound	1.90	3.39	2.33	2.06	1.67	0.08	5.37	4.31	4.04	3.65	010
65272		A	Repair of eye wound	3.82	5.06	3.42	4.20	2.99	0.15	9.03	7.39	8.17	6.96	090
65273		A	Repair of eye wound	4.36	NA	NA	4.53	4.01	0.17	NA	NA	9.06	8.54	090
65275		A	Repair of eye wound	5.34	4.92	2.82	4.44	2.58	0.27	10.53	8.43	10.05	8.19	090
65280		A	Repair of eye wound	7.66	NA	NA	7.25	8.20	0.30	NA	NA	15.21	16.16	090
65285		A	Repair of eye wound	12.90	NA	NA	13.36	13.34	0.51	NA	NA	26.77	26.75	090
65286		A	Repair of eye wound	5.51	7.84	6.52	6.78	4.69	0.22	13.57	12.25	12.51	10.42	090
65290		A	Repair of eye socket wound	5.41	NA	NA	5.85	6.16	0.22	NA	NA	11.48	11.79	090
65400		A	Removal of eye lesion	6.06	7.79	7.40	6.46	6.74	0.24	14.09	13.70	12.76	13.04	090
65410		A	Biopsy of cornea	1.47	1.64	1.69	0.72	1.23	0.06	3.17	3.22	2.25	2.76	000
65420		A	Removal of eye lesion	4.17	7.06	5.85	6.07	5.36	0.16	11.39	10.18	10.40	9.69	090
65426		A	Removal of eye lesion	5.25	7.08	6.68	6.07	6.17	0.21	12.54	12.14	11.53	11.63	090
65430		A	Corneal smear	1.47	6.32	3.46	0.73	0.52	0.06	7.85	4.99	2.26	2.05	000
65435		A	Curette/treat cornea	0.92	1.27	1.06	0.43	0.43	0.04	2.23	2.02	1.39	1.39	000
65436		A	Curette/treat cornea	4.19	5.21	3.44	4.37	2.60	0.16	9.56	7.79	8.72	6.95	090
65450		A	Treatment of corneal lesion	3.27	6.74	5.15	5.63	4.60	0.12	10.13	8.54	9.02	7.99	090
65600		A	Revision of cornea	3.40	4.83	3.84	1.60	1.51	0.14	8.37	7.38	5.14	5.05	090
65710		A	Corneal transplant	12.35	NA	NA	11.92	12.71	0.49	NA	NA	24.76	25.55	090
65730		A	Corneal transplant	14.25	NA	NA	13.70	15.07	0.55	NA	NA	28.50	29.87	090
65750		A	Corneal transplant	15.00	NA	NA	14.12	15.80	0.58	NA	NA	29.70	31.38	090
65755		A	Corneal transplant	14.89	NA	NA	14.01	15.74	0.58	NA	NA	29.48	31.21	090
65760		N	Revision of cornea	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65765		N	Revision of cornea	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65767		N	Corneal tissue transplant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65770		A	Revise cornea with implant	17.56	NA	NA	14.93	14.96	0.69	NA	NA	33.18	33.21	090
65771		N	Radial keratotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65772		A	Correction of astigmatism	4.29	6.36	5.74	5.46	4.01	0.17	10.82	10.20	9.92	8.47	090
65775		A	Correction of astigmatism	5.79	NA	NA	8.09	7.50	0.23	NA	NA	14.11	13.52	090
65800		A	Drainage of eye	1.91	2.16	2.02	1.39	1.63	0.08	4.15	4.01	3.38	3.62	000
65805		A	Drainage of eye	1.91	2.16	2.06	1.40	1.19	0.08	4.15	4.05	3.39	3.18	000
65810		A	Drainage of eye	4.87	NA	NA	7.49	6.66	0.19	NA	NA	12.55	11.72	090
65815		A	Drainage of eye	5.05	8.01	6.44	6.96	5.92	0.20	13.26	11.69	12.21	11.17	090
65820		A	Relieve inner eye pressure	8.13	NA	NA	9.68	10.02	0.32	NA	NA	18.13	18.47	090
65850		A	Incision of eye	10.52	NA	NA	9.57	11.07	0.41	NA	NA	20.50	22.00	090
65855		A	Laser surgery of eye	4.30	4.58	5.55	3.26	3.26	0.17	9.05	10.02	7.73	7.73	090
65860		A	Incise inner eye adhesions	3.55	3.77	4.01	2.96	2.54	0.14	7.46	7.70	6.65	6.23	090
65865		A	Incise inner eye adhesions	5.60	NA	NA	6.23	6.46	0.22	NA	NA	12.05	12.28	090
65870		A	Incise inner eye adhesions	6.27	NA	NA	6.58	6.47	0.25	NA	NA	13.10	12.99	090
65875		A	Incise inner eye adhesions	6.54	NA	NA	6.71	6.77	0.26	NA	NA	13.51	13.57	090
65880		A	Incise inner eye adhesions	7.09	NA	NA	6.95	7.19	0.28	NA	NA	14.32	14.56	090
65900		A	Remove eye lesion	10.93	NA	NA	11.55	10.07	0.48	NA	NA	22.96	21.48	090
65920		A	Remove implant from eye	8.40	NA	NA	7.63	8.35	0.33	NA	NA	16.36	17.08	090
65930		A	Remove blood clot from eye	7.44	NA	NA	8.03	8.18	0.29	NA	NA	15.76	15.91	090
66020		A	Injection treatment of eye	1.59	2.21	2.06	1.46	1.68	0.07	3.87	3.72	3.12	3.34	010
66030		A	Injection treatment of eye	1.25	2.03	1.31	1.28	0.79	0.05	3.33	2.61	2.58	2.09	010
66130		A	Remove eye lesion	7.69	6.93	6.33	6.13	5.93	0.31	14.93	14.33	14.13	13.93	090
66150		A	Glaucoma surgery	8.30	NA	NA	9.10	9.51	0.32	NA	NA	17.72	18.13	090
66155		A	Glaucoma surgery	8.29	NA	NA	9.02	9.46	0.32	NA	NA	17.63	18.07	090
66160		A	Glaucoma surgery	10.17	NA	NA	9.94	10.82	0.41	NA	NA	20.52	21.40	090
66165		A	Glaucoma surgery	8.01	NA	NA	8.72	9.14	0.32	NA	NA	17.05	17.47	090
66170		A	Glaucoma surgery	12.16	NA	NA	11.04	12.12	0.48	NA	NA	23.68	24.76	090
66172		A	Incision of eye	15.04	NA	NA	13.00	13.10	0.59	NA	NA	28.63	28.73	090
66180		A	Implant eye shunt	14.55	NA	NA	12.06	14.72	0.57	NA	NA	27.18	29.84	090
66185		A	Revise eye shunt	8.14	NA	NA	8.33	9.02	0.32	NA	NA	16.79	17.48	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
66220		A	Repair eye lesion	7.77	NA	NA	9.65	8.06	0.32	NA	NA	17.74	16.15	090
66225		A	Repair/graft eye lesion	11.05	NA	NA	9.55	11.38	0.43	NA	NA	21.03	22.86	090
66250		A	Follow-up surgery of eye	5.98	7.78	7.46	6.42	6.78	0.24	14.00	13.68	12.64	13.00	090
66500		A	Incision of iris	3.71	NA	NA	4.16	4.30	0.14	NA	NA	8.01	8.15	090
66505		A	Incision of iris	4.08	NA	NA	4.27	3.91	0.16	NA	NA	8.51	8.15	090
66600		A	Remove iris and lesion	8.68	NA	NA	9.30	9.73	0.34	NA	NA	18.32	18.75	090
66605		A	Removal of iris	12.79	NA	NA	12.11	12.50	0.53	NA	NA	25.43	25.82	090
66625		A	Removal of iris	5.13	7.87	7.00	7.00	6.56	0.20	13.20	12.33	12.33	11.89	090
66630		A	Removal of iris	6.16	NA	NA	8.13	7.75	0.24	NA	NA	14.53	14.15	090
66635		A	Removal of iris	6.25	NA	NA	6.58	7.03	0.25	NA	NA	13.08	13.53	090
66680		A	Repair iris & ciliary body	5.44	NA	NA	6.13	6.31	0.21	NA	NA	11.78	11.96	090
66682		A	Repair iris & ciliary body	6.21	NA	NA	8.17	7.79	0.24	NA	NA	14.62	14.24	090
66700		A	Destruction, ciliary body	4.78	7.35	6.53	6.40	6.06	0.20	12.33	11.51	11.38	11.04	090
66710		A	Destruction, ciliary body	4.78	7.65	6.68	6.40	6.06	0.19	12.62	11.65	11.37	11.03	090
66720		A	Destruction, ciliary body	4.78	7.32	6.52	6.37	6.04	0.20	12.30	11.50	11.35	11.02	090
66740		A	Destruction, ciliary body	4.78	NA	NA	5.82	5.77	0.19	NA	NA	10.79	10.74	090
66761		A	Revision of iris	4.07	4.49	4.68	3.41	2.92	0.16	8.72	8.91	7.64	7.15	090
66762		A	Revision of iris	4.58	4.70	5.09	3.64	3.19	0.18	9.46	9.85	8.40	7.95	090
66770		A	Removal of inner eye lesion	5.18	4.99	5.59	3.94	3.52	0.20	10.37	10.97	9.32	8.90	090
66820		A	Incision, secondary cataract	3.89	NA	NA	6.97	5.81	0.15	NA	NA	11.01	9.85	090
66821		A	After cataract laser surgery	2.35	2.93	2.87	2.22	2.52	0.10	5.38	5.32	4.67	4.97	090
66825		A	Reposition intraocular lens	8.23	NA	NA	9.17	8.56	0.32	NA	NA	17.72	17.11	090
66830		A	Removal of lens lesion	8.20	4.24	6.28	4.24	6.28	0.32	12.76	14.80	12.76	14.80	090
66840		A	Removal of lens material	7.91	NA	NA	6.22	7.83	0.32	NA	NA	14.45	16.06	090
66850		A	Removal of lens material	9.11	NA	NA	6.78	8.83	0.36	NA	NA	16.25	18.30	090
66852		A	Removal of lens material	9.97	NA	NA	7.28	9.60	0.39	NA	NA	17.64	19.96	090
66920		A	Extraction of lens	8.86	NA	NA	6.68	8.63	0.35	NA	NA	15.89	17.84	090
66930		A	Extraction of lens	10.18	NA	NA	8.65	10.02	0.40	NA	NA	19.23	20.60	090
66940		A	Extraction of lens	8.93	NA	NA	8.00	9.33	0.35	NA	NA	17.28	18.61	090
66983		A	Remove cataract/insert lens	8.99	NA	NA	5.00	7.87	0.49	NA	NA	14.48	17.35	090
66984		A	Remove cataract/insert lens	10.28	NA	NA	7.15	9.71	0.43	NA	NA	17.86	20.42	090
66985		A	Insert lens prosthesis	8.39	NA	NA	6.33	8.18	0.34	NA	NA	15.06	16.91	090
66986		A	Exchange lens prosthesis	12.28	NA	NA	8.42	10.83	0.49	NA	NA	21.19	23.60	090
66999		C	Eye surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67005		A	Partial removal of eye fluid	5.70	NA	NA	2.88	4.84	0.22	NA	NA	8.80	10.76	090
67010		A	Partial removal of eye fluid	6.87	NA	NA	3.49	5.85	0.27	NA	NA	10.63	12.99	090
67015		A	Release of eye fluid	6.92	NA	NA	7.58	7.29	0.27	NA	NA	14.77	14.48	090
67025		A	Replace eye fluid	6.84	15.20	11.27	7.08	7.21	0.27	22.31	18.38	14.19	14.32	090
67027		A	Implant eye drug system	10.85	17.16	13.49	9.09	9.45	0.42	28.43	24.76	20.36	20.72	090
67028		A	Injection eye drug	2.52	8.58	6.04	1.27	2.14	0.10	11.20	8.66	3.89	4.76	000
67030		A	Incise inner eye strands	4.84	NA	NA	6.21	5.99	0.19	NA	NA	11.24	11.02	090
67031		A	Laser surgery, eye strands	3.67	3.86	4.12	3.03	2.61	0.14	7.67	7.93	6.84	6.42	090
67036		A	Removal of inner eye fluid	11.89	NA	NA	8.57	11.39	0.47	NA	NA	20.93	23.75	090
67038		A	Strip retinal membrane	21.24	NA	NA	15.04	20.20	0.83	NA	NA	37.11	42.27	090
67039		A	Laser treatment of retina	14.52	NA	NA	11.65	14.49	0.56	NA	NA	26.73	29.57	090
67040		A	Laser treatment of retina	17.23	NA	NA	13.02	16.80	0.68	NA	NA	30.93	34.71	090
67101		A	Repair detached retina	7.53	10.22	9.61	8.38	6.44	0.30	18.05	17.44	16.21	14.27	090
67105		A	Repair detached retina	7.41	7.43	8.68	5.52	5.24	0.29	15.13	16.38	13.22	12.94	090
67107		A	Repair detached retina	14.84	NA	NA	12.82	15.27	0.58	NA	NA	28.24	30.69	090
67108		A	Repair detached retina	20.82	NA	NA	17.24	21.05	0.81	NA	NA	38.87	42.68	090
67110		A	Repair detached retina	8.81	18.45	14.49	9.72	10.12	0.34	27.60	23.64	18.87	19.27	090
67112		A	Rerepair detached retina	16.86	NA	NA	15.20	16.56	0.66	NA	NA	32.72	34.08	090
67115		A	Release encircling material	4.99	NA	NA	6.24	6.10	0.19	NA	NA	11.42	11.28	090
67120		A	Remove eye implant material	5.98	14.53	10.84	6.64	6.89	0.24	20.75	17.06	12.86	13.11	090
67121		A	Remove eye implant material	10.67	NA	NA	11.33	10.78	0.42	NA	NA	22.42	21.87	090
67141		A	Treatment of retina	5.20	7.37	6.79	6.43	4.77	0.20	12.77	12.19	11.83	10.17	090
67145		A	Treatment of retina	5.37	5.15	6.10	4.12	3.83	0.21	10.73	11.68	9.70	9.41	090
67208		A	Treatment of retinal lesion	6.70	7.83	7.92	6.75	5.38	0.26	14.79	14.88	13.71	12.34	090
67210		A	Treatment of retinal lesion	8.82	7.28	8.54	5.86	5.38	0.34	16.44	17.70	15.02	14.54	090
67218		A	Treatment of retinal lesion	13.52	NA	NA	12.79	13.62	0.53	NA	NA	26.84	27.67	090
67220		A	Treatment of choroid lesion	13.13	6.66	6.66	6.60	6.60	0.52	20.31	20.31	20.25	20.25	090
67227		A	Treatment of retinal lesion	6.58	8.08	7.97	6.75	7.31	0.27	14.93	14.82	13.60	14.16	090
67228		A	Treatment of retinal lesion	12.74	9.92	10.06	7.51	6.31	0.50	23.16	23.30	20.75	19.55	090
67250		A	Reinforce eye wall	8.66	NA	NA	10.37	8.98	0.39	NA	NA	19.42	18.03	090
67255		A	Reinforce/graft eye wall	8.90	NA	NA	10.49	10.56	0.35	NA	NA	19.74	19.81	090
67299		C	Eye surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67311		A	Revise eye muscle	6.65	NA	NA	6.21	7.08	0.27	NA	NA	13.13	14.00	090
67312		A	Revise two eye muscles	8.54	NA	NA	7.19	8.69	0.33	NA	NA	16.06	17.56	090
67314		A	Revise eye muscle	7.52	NA	NA	6.64	7.81	0.30	NA	NA	14.46	15.63	090
67316		A	Revise two eye muscles	9.66	NA	NA	7.73	9.44	0.38	NA	NA	17.77	19.48	090
67318		A	Revise eye muscle(s)	7.85	NA	NA	7.06	6.90	0.31	NA	NA	15.22	15.06	090
67320		A	Revise eye muscle(s) add-on	4.33	NA	NA	6.44	8.39	0.17	NA	NA	10.94	12.89	ZZZ
67331		A	Eye surgery follow-up add-on	4.06	NA	NA	4.93	7.31	0.16	NA	NA	9.15	11.53	ZZZ
67332		A	Rerevise eye muscles add-on	4.49	NA	NA	5.60	8.17	0.18	NA	NA	10.27	12.84	ZZZ
67334		A	Revise eye muscle w/suture	3.98	NA	NA	5.23	6.04	0.15	NA	NA	9.36	10.17	ZZZ
67335		A	Eye suture during surgery	2.49	NA	NA	1.25	2.11	0.10	NA	NA	3.84	4.70	ZZZ
67340		A	Revise eye muscle add-on	4.93	NA	NA	6.59	7.57	0.20	NA	NA	11.72	12.70	ZZZ
67343		A	Release eye tissue	7.35	NA	NA	6.93	6.63	0.29	NA	NA	14.57	14.27	090
67345		A	Destroy nerve of eye muscle	2.96	3.61	3.01	1.47	1.34	0.27	6.84	6.24	4.70	4.57	010
67350		A	Biopsy eye muscle	2.87	NA	NA	2.34	2.47	0.12	NA	NA	5.33	5.46	000
67399		C	Eye muscle surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
67400	....	A	Explore/biopsy eye socket	9.76	NA	NA	11.60	11.63	0.43	NA	NA	21.79	21.82	090
67405	....	A	Explore/drain eye socket	7.93	NA	NA	10.21	9.84	0.39	NA	NA	18.53	18.16	090
67412	....	A	Explore/treat eye socket	9.50	NA	NA	13.20	12.27	0.41	NA	NA	23.11	22.18	090
67413	....	A	Explore/treat eye socket	10.00	NA	NA	11.54	10.16	0.49	NA	NA	22.03	20.65	090
67414	....	A	Explr/decompress eye socket	11.13	NA	NA	14.06	11.59	0.52	NA	NA	25.71	23.24	090
67415	....	A	Aspiration, orbital contents	1.76	NA	NA	0.83	1.47	0.09	NA	NA	2.68	3.32	000
67420	....	A	Explore/treat eye socket	20.06	NA	NA	18.13	18.17	1.07	NA	NA	39.26	39.30	090
67430	....	A	Explore/treat eye socket	13.39	NA	NA	15.17	13.37	0.59	NA	NA	29.15	27.35	090
67440	....	A	Explore/drain eye socket	13.09	NA	NA	14.22	14.93	0.54	NA	NA	27.85	28.56	090
67445	....	A	Explr/decompress eye socket	14.42	NA	NA	15.52	13.80	0.61	NA	NA	30.55	28.83	090
67450	....	A	Explore/biopsy eye socket	13.51	NA	NA	14.62	15.38	0.66	NA	NA	28.79	29.55	090
67500	....	A	Inject/treat eye socket	0.79	7.59	4.19	0.23	0.51	0.05	8.43	5.03	1.07	1.35	000
67505	....	A	Inject/treat eye socket	0.82	5.97	3.55	0.20	0.35	0.04	6.83	4.41	1.06	1.21	000
67515	....	A	Inject/treat eye socket	0.61	5.80	3.21	0.31	0.31	0.03	6.44	3.85	0.95	0.95	000
67550	....	A	Insert eye socket implant	10.19	NA	NA	11.22	10.83	0.49	NA	NA	21.90	21.51	090
67560	....	A	Revise eye socket implant	10.60	NA	NA	11.37	10.19	0.48	NA	NA	22.45	21.27	090
67570	....	A	Decompress optic nerve	13.58	NA	NA	15.17	11.69	0.81	NA	NA	29.56	26.08	090
67599	....	C	Orbit surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67700	....	A	Drainage of eyelid abscess	1.35	5.71	3.12	0.62	0.45	0.06	7.12	4.53	2.03	1.86	010
67710	....	A	Incision of eyelid	1.02	5.88	3.49	0.52	0.54	0.04	6.94	4.55	1.58	1.60	010
67715	....	A	Incision of eyelid fold	1.22	NA	NA	0.62	1.04	0.05	NA	NA	1.89	2.31	010
67800	....	A	Remove eyelid lesion	1.38	5.91	3.47	0.69	0.60	0.06	7.35	4.91	2.13	2.04	010
67801	....	A	Remove eyelid lesions	1.88	6.21	3.86	0.95	0.86	0.08	8.17	5.82	2.91	2.82	010
67805	....	A	Remove eyelid lesions	2.22	6.40	3.95	1.12	0.94	0.09	8.71	6.26	3.43	3.25	010
67808	....	A	Remove eyelid lesion(s)	3.80	NA	NA	3.78	3.05	0.16	NA	NA	7.74	7.01	090
67810	....	A	Biopsy of eyelid	1.48	4.66	2.77	0.74	0.59	0.06	6.20	4.31	2.28	2.13	000
67820	....	A	Revise eyelashes	0.89	1.54	0.98	0.39	0.30	0.04	2.47	1.91	1.32	1.23	000
67825	....	A	Revise eyelashes	1.38	7.44	4.21	1.68	1.09	0.06	8.88	5.65	3.12	2.53	010
67830	....	A	Revise eyelashes	1.70	8.53	5.42	1.86	1.95	0.07	10.30	7.19	3.63	3.72	010
67835	....	A	Revise eyelashes	5.56	NA	NA	4.50	5.57	0.23	NA	NA	10.29	11.36	090
67840	....	A	Remove eyelid lesion	2.04	6.22	3.77	1.03	0.85	0.09	8.35	5.90	3.16	2.98	010
67850	....	A	Treat eyelid lesion	1.69	7.04	3.97	1.81	1.13	0.07	8.80	5.73	3.57	2.89	010
67875	....	A	Closure of eyelid by suture	1.35	8.56	5.22	1.74	1.68	0.06	9.97	6.63	3.15	3.09	000
67880	....	A	Revision of eyelid	3.80	9.79	7.04	2.96	3.62	0.15	13.74	10.99	6.91	7.57	090
67882	....	A	Revision of eyelid	5.07	12.66	9.36	4.36	5.21	0.21	17.94	14.64	9.64	10.49	090
67900	....	A	Repair brow defect	6.14	9.00	6.55	6.01	5.06	0.30	15.44	12.99	12.45	11.50	090
67901	....	A	Repair eyelid defect	6.97	NA	NA	6.41	7.37	0.34	NA	NA	13.72	14.68	090
67902	....	A	Repair eyelid defect	7.03	NA	NA	6.46	7.43	0.32	NA	NA	13.81	14.78	090
67903	....	A	Repair eyelid defect	6.37	8.73	8.17	6.36	6.99	0.40	15.50	14.94	13.13	13.76	090
67904	....	A	Repair eyelid defect	6.26	12.20	9.84	7.42	7.45	0.27	18.73	16.37	13.95	13.98	090
67906	....	A	Repair eyelid defect	6.79	8.73	7.33	6.19	6.06	0.27	15.79	14.39	13.25	13.12	090
67908	....	A	Repair eyelid defect	5.13	8.22	7.17	5.89	6.01	0.20	13.55	12.50	11.22	11.34	090
67909	....	A	Revise eyelid defect	5.40	8.49	7.47	6.08	6.27	0.24	14.13	13.11	11.72	11.91	090
67911	....	A	Revise eyelid defect	5.27	NA	NA	6.21	6.25	0.24	NA	NA	11.72	11.76	090
67914	....	A	Repair eyelid defect	3.68	10.08	7.24	3.26	3.83	0.15	13.91	11.07	7.09	7.66	090
67915	....	A	Repair eyelid defect	3.18	8.93	5.15	1.59	1.14	0.12	12.23	8.45	4.89	4.44	090
67916	....	A	Repair eyelid defect	5.31	13.23	9.79	4.87	5.61	0.23	18.77	15.33	10.41	11.15	090
67917	....	A	Repair eyelid defect	6.02	8.96	8.07	6.35	6.77	0.26	15.24	14.35	12.63	13.05	090
67921	....	A	Repair eyelid defect	3.40	9.94	7.00	3.11	3.59	0.13	13.47	10.53	6.64	7.12	090
67922	....	A	Repair eyelid defect	3.06	8.85	5.07	2.86	1.76	0.12	12.03	8.25	6.04	4.94	090
67923	....	A	Repair eyelid defect	5.88	13.36	10.19	5.15	6.09	0.24	19.48	16.31	11.27	12.21	090
67924	....	A	Repair eyelid defect	5.79	8.50	7.71	5.80	6.36	0.24	14.53	13.74	11.83	12.39	090
67930	....	A	Repair eyelid wound	3.61	10.23	5.81	2.83	1.76	0.16	14.00	9.58	6.60	5.53	010
67935	....	A	Repair eyelid wound	6.22	13.61	8.86	4.98	4.55	0.30	20.13	15.38	11.50	11.07	090
67938	....	A	Remove eyelid foreign body	1.33	6.95	3.76	0.53	0.41	0.07	8.35	5.16	1.93	1.81	010
67950	....	A	Revision of eyelid	5.82	7.39	7.17	6.59	6.77	0.28	13.49	13.27	12.69	12.87	090
67961	....	A	Revision of eyelid	5.69	7.25	7.02	5.82	6.31	0.26	13.20	12.97	11.77	12.26	090
67966	....	A	Revision of eyelid	6.57	7.69	7.77	5.69	6.77	0.31	14.57	14.65	12.57	13.65	090
67971	....	A	Reconstruction of eyelid	9.79	NA	NA	7.76	9.68	0.41	NA	NA	17.96	19.88	090
67973	....	A	Reconstruction of eyelid	12.87	NA	NA	9.60	12.15	0.58	NA	NA	23.05	25.60	090
67974	....	A	Reconstruction of eyelid	12.84	NA	NA	9.67	12.47	0.59	NA	NA	23.10	25.90	090
67975	....	A	Reconstruction of eyelid	9.13	NA	NA	7.44	5.97	0.37	NA	NA	16.94	15.47	090
67999	....	C	Revision of eyelid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
68020	....	A	Incise/drain eyelid lining	1.37	5.80	3.18	0.68	0.48	0.06	7.23	4.61	2.11	1.91	010
68040	....	A	Treatment of eyelid lesions	0.85	5.62	3.06	0.39	0.32	0.04	6.51	3.95	1.28	1.21	000
68100	....	A	Biopsy of eyelid lining	1.35	5.99	3.53	0.67	0.61	0.06	7.40	4.94	2.08	2.02	000
68110	....	A	Remove eyelid lining lesion	1.77	6.73	4.04	1.34	1.01	0.07	8.57	5.88	3.18	2.85	010
68115	....	A	Remove eyelid lining lesion	2.36	6.48	4.29	1.19	1.64	0.10	8.94	6.75	3.65	4.10	010
68130	....	A	Remove eyelid lining lesion	4.93	NA	NA	2.50	3.47	0.19	NA	NA	7.62	8.59	090
68135	....	A	Remove eyelid lining lesion	1.84	6.17	3.49	0.93	0.67	0.08	8.09	5.41	2.85	2.59	010
68200	....	A	Treat eyelid by injection	0.49	5.72	3.14	0.25	0.27	0.02	6.23	3.65	0.76	0.78	000
68320	....	A	Revise/graft eyelid lining	5.37	5.25	5.83	5.25	5.83	0.22	10.84	11.42	10.84	11.42	090
68325	....	A	Revise/graft eyelid lining	7.36	NA	NA	6.35	7.57	0.34	NA	NA	14.05	15.27	090
68326	....	A	Revise/graft eyelid lining	7.15	NA	NA	6.27	7.41	0.31	NA	NA	13.73	14.87	090
68328	....	A	Revise/graft eyelid lining	8.18	NA	NA	6.76	8.27	0.40	NA	NA	15.34	16.85	090
68330	....	A	Revise eyelid lining	4.83	6.38	6.07	5.06	5.41	0.19	11.40	11.09	10.08	10.43	090
68335	....	A	Revise/graft eyelid lining	7.19	NA	NA	5.33	6.96	0.30	NA	NA	12.82	14.45	090
68340	....	A	Separate eyelid adhesions	4.17	12.24	7.83	3.83	3.62	0.17	16.58	12.17	8.17	7.96	090
68360	....	A	Revise eyelid lining	4.37	6.11	5.67	4.83	5.03	0.17	10.65	10.21	9.37	9.57	090
68362	....	A	Revise eyelid lining	7.34	NA	NA	7.47	8.08	0.29	NA	NA	15.10	15.71	090
68399	....	C	Eyelid lining surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
68400		A	Incise/drain tear gland	1.69	8.60	4.85	1.89	1.22	0.07	10.36	6.61	3.65	2.98	010
68420		A	Incise/drain tear sac	2.30	9.02	5.07	2.17	1.37	0.10	11.42	7.47	4.57	3.77	010
68440		A	Incise tear duct opening	0.94	5.77	3.30	0.48	0.45	0.04	6.75	4.28	1.46	1.43	010
68500		A	Removal of tear gland	11.02	NA	NA	8.74	8.50	0.52	NA	NA	20.28	20.04	090
68505		A	Partial removal, tear gland	10.94	NA	NA	9.25	9.34	0.65	NA	NA	20.84	20.93	090
68510		A	Biopsy of tear gland	4.61	10.56	7.28	2.37	3.19	0.18	15.35	12.07	7.16	7.98	000
68520		A	Removal of tear sac	7.51	NA	NA	6.60	7.78	0.32	NA	NA	14.43	15.61	090
68525		A	Biopsy of tear sac	4.43	NA	NA	2.22	3.11	0.18	NA	NA	6.83	7.72	000
68530		A	Clearance of tear duct	3.66	11.41	7.25	2.76	2.16	0.15	15.22	11.06	6.57	5.97	010
68540		A	Remove tear gland lesion	10.60	NA	NA	8.48	8.75	0.53	NA	NA	19.61	19.88	090
68550		A	Remove tear gland lesion	13.26	NA	NA	9.57	10.94	0.95	NA	NA	23.78	25.15	090
68700		A	Repair tear ducts	6.60	NA	NA	6.14	4.53	0.27	NA	NA	13.01	11.40	090
68705		A	Revise tear duct opening	2.06	6.43	3.77	1.05	0.81	0.09	8.58	5.92	3.20	2.96	010
68720		A	Create tear sac drain	8.96	NA	NA	7.32	9.00	0.38	NA	NA	16.66	18.34	090
68745		A	Create tear duct drain	8.63	NA	NA	6.92	7.02	0.35	NA	NA	15.90	16.00	090
68750		A	Create tear duct drain	8.66	NA	NA	7.59	8.97	0.36	NA	NA	16.61	17.99	090
68760		A	Close tear duct opening	1.73	6.05	3.53	0.87	0.69	0.07	7.85	5.33	2.67	2.49	010
68761		A	Close tear duct opening	1.36	5.73	3.37	0.63	0.57	0.07	7.16	4.80	2.06	2.00	010
68770		A	Close tear system fistula	7.02	13.43	9.02	5.51	3.91	0.31	20.76	16.35	12.84	11.24	090
68801		A	Dilate tear duct opening	0.94	6.76	3.61	0.46	0.35	0.04	7.74	4.59	1.44	1.33	010
68810		A	Probe nasolacrimal duct	1.90	8.60	4.60	1.94	1.12	0.08	10.58	6.58	3.92	3.10	010
68811		A	Probe nasolacrimal duct	2.35	NA	NA	2.18	1.90	0.10	NA	NA	4.63	4.35	010
68815		A	Probe nasolacrimal duct	3.20	9.35	5.72	2.62	1.84	0.14	12.69	9.06	5.96	5.18	010
68840		A	Explore/irrigate tear ducts	1.25	7.50	4.02	0.55	0.41	0.05	8.80	5.32	1.85	1.71	010
68850		A	Injection for tear sac x-ray	0.80	12.83	6.69	0.27	0.41	0.03	13.66	7.52	1.10	1.24	000
68899		C	Tear duct system surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69000		A	Drain external ear lesion	1.45	1.77	1.08	0.53	0.36	0.10	3.32	2.63	2.08	1.91	010
69005		A	Drain external ear lesion	2.11	2.18	1.72	1.81	1.22	0.15	4.44	3.98	4.07	3.48	010
69020		A	Drain outer ear canal lesion	1.48	1.86	1.18	0.76	0.51	0.11	3.45	2.77	2.35	2.10	010
69090		N	Pierce earlobes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
69100		A	Biopsy of external ear	0.81	1.49	1.11	0.41	0.39	0.04	2.34	1.96	1.26	1.24	000
69105		A	Biopsy of external ear canal	0.85	1.25	1.06	0.84	0.64	0.06	2.16	1.97	1.75	1.55	000
69110		A	Remove external ear, partial	3.44	3.15	3.00	2.47	2.66	0.25	6.84	6.69	6.16	6.35	090
69120		A	Removal of external ear	4.05	NA	NA	3.76	2.31	0.32	NA	NA	8.13	6.68	090
69140		A	Remove ear canal lesion(s)	7.97	NA	NA	7.10	7.89	0.56	NA	NA	15.63	16.42	090
69145		A	Remove ear canal lesion(s)	2.62	2.91	2.82	2.20	2.46	0.19	5.72	5.63	5.01	5.27	090
69150		A	Extensive ear canal surgery	13.43	NA	NA	10.26	10.81	1.01	NA	NA	24.70	25.25	090
69155		A	Extensive ear/neck surgery	20.80	NA	NA	14.17	15.73	1.65	NA	NA	36.62	38.18	090
69200		A	Clear outer ear canal	0.77	1.20	0.83	0.66	0.45	0.06	2.03	1.66	1.49	1.28	000
69205		A	Clear outer ear canal	1.20	NA	NA	1.26	1.21	0.09	NA	NA	2.55	2.50	010
69210		A	Remove impacted ear wax	0.61	1.12	0.69	0.24	0.19	0.04	1.77	1.34	0.89	0.84	000
69220		A	Clean out mastoid cavity	0.83	1.24	0.89	0.45	0.36	0.06	2.13	1.78	1.34	1.25	000
69222		A	Clean out mastoid cavity	1.40	1.82	1.31	1.41	0.91	0.10	3.32	2.81	2.91	2.41	010
69300		R	Revise external ear	6.36	NA	NA	4.22	4.99	0.51	NA	NA	11.09	11.86	YYY
69310		A	Rebuild outer ear canal	10.79	NA	NA	8.79	9.74	0.77	NA	NA	20.35	21.30	090
69320		A	Rebuild outer ear canal	16.96	NA	NA	12.94	14.42	1.21	NA	NA	31.11	32.59	090
69399		C	Outer ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69400		A	Inflate middle ear canal	0.83	1.24	0.87	0.45	0.35	0.06	2.13	1.76	1.34	1.24	000
69401		A	Inflate middle ear canal	0.63	1.12	0.70	0.37	0.26	0.05	1.80	1.38	1.05	0.94	000
69405		A	Catheterize middle ear canal	2.63	2.63	1.58	1.50	0.88	0.18	5.44	4.39	4.31	3.69	010
69410		A	Inset middle ear (baffle)	0.33	1.05	0.85	0.15	0.24	0.02	1.40	1.20	0.50	0.59	000
69420		A	Incision of eardrum	1.33	1.85	1.30	0.74	0.56	0.10	3.28	2.73	2.17	1.99	010
69421		A	Incision of eardrum	1.73	2.12	1.68	1.61	1.43	0.12	3.97	3.53	3.46	3.28	010
69424		A	Remove ventilating tube	0.85	1.32	0.99	0.71	0.52	0.06	2.23	1.90	1.62	1.43	000
69433		A	Create eardrum opening	1.52	1.90	1.67	0.88	0.80	0.11	3.53	3.30	2.51	2.43	010
69436		A	Create eardrum opening	1.96	NA	NA	1.75	2.03	0.14	NA	NA	3.85	4.13	010
69440		A	Exploration of middle ear	7.57	NA	NA	6.53	7.79	0.53	NA	NA	14.63	15.89	090
69450		A	Eardrum revision	5.57	NA	NA	5.28	5.97	0.40	NA	NA	11.25	11.94	090
69501		A	Mastoidectomy	9.07	NA	NA	7.41	9.12	0.66	NA	NA	17.14	18.85	090
69502		A	Mastoidectomy	12.38	NA	NA	9.80	12.15	0.89	NA	NA	23.07	25.42	090
69505		A	Remove mastoid structures	12.99	NA	NA	10.08	12.80	0.94	NA	NA	24.01	26.73	090
69511		A	Extensive mastoid surgery	13.52	NA	NA	10.38	13.26	0.96	NA	NA	24.86	27.74	090
69530		A	Extensive mastoid surgery	19.19	NA	NA	14.08	16.11	1.43	NA	NA	34.70	36.73	090
69535		A	Remove part of temporal bone	36.14	NA	NA	23.45	25.44	2.61	NA	NA	62.20	64.19	090
69540		A	Remove ear lesion	1.20	1.77	1.58	1.29	0.99	0.09	3.06	2.87	2.58	2.28	010
69550		A	Remove ear lesion	10.99	NA	NA	8.72	10.92	0.77	NA	NA	20.48	22.68	090
69552		A	Remove ear lesion	19.46	NA	NA	13.84	16.00	1.38	NA	NA	34.68	36.84	090
69554		A	Remove ear lesion	33.16	NA	NA	21.15	22.99	2.94	NA	NA	57.25	59.09	090
69601		A	Mastoid surgery revision	13.24	NA	NA	10.70	12.96	0.95	NA	NA	24.89	27.15	090
69602		A	Mastoid surgery revision	13.58	NA	NA	10.40	13.31	0.96	NA	NA	24.94	27.85	090
69603		A	Mastoid surgery revision	14.02	NA	NA	10.69	13.71	1.00	NA	NA	25.71	28.73	090
69604		A	Mastoid surgery revision	14.02	NA	NA	10.63	13.68	1.00	NA	NA	25.65	28.70	090
69605		A	Mastoid surgery revision	18.49	NA	NA	13.68	14.95	1.24	NA	NA	33.41	34.68	090
69610		A	Repair of eardrum	4.43	3.73	2.37	3.17	1.84	0.31	8.47	7.11	7.91	6.58	010
69620		A	Repair of eardrum	5.89	5.79	6.41	3.50	5.27	0.42	12.10	12.72	9.81	11.58	090
69631		A	Repair eardrum structures	9.86	NA	NA	8.32	10.05	0.70	NA	NA	18.88	20.61	090
69632		A	Rebuild eardrum structures	12.75	NA	NA	10.43	12.83	0.91	NA	NA	24.09	26.49	090
69633		A	Rebuild eardrum structures	12.10	NA	NA	10.09	12.27	0.86	NA	NA	23.05	25.23	090
69635		A	Repair eardrum structures	13.33	NA	NA	10.39	13.15	0.95	NA	NA	24.67	27.43	090
69636		A	Rebuild eardrum structures	15.22	NA	NA	11.97	15.07	1.09	NA	NA	28.28	31.38	090
69637		A	Rebuild eardrum structures	15.11	NA	NA	11.85	14.95	1.08	NA	NA	28.04	31.14	090

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
69641		A	Revise middle ear & mastoid	12.71	NA	NA	10.02	12.60	0.91	NA	NA	23.64	26.22	090
69642		A	Revise middle ear & mastoid	16.84	NA	NA	12.90	16.50	1.19	NA	NA	30.93	34.53	090
69643		A	Revise middle ear & mastoid	15.32	NA	NA	12.00	15.15	1.10	NA	NA	28.42	31.57	090
69644		A	Revise middle ear & mastoid	16.97	NA	NA	12.92	16.59	1.20	NA	NA	31.09	34.76	090
69645		A	Revise middle ear & mastoid	16.38	NA	NA	12.59	16.08	1.16	NA	NA	30.13	33.62	090
69646		A	Revise middle ear & mastoid	17.99	NA	NA	13.59	17.54	1.29	NA	NA	32.87	36.82	090
69650		A	Release middle ear bone	9.66	NA	NA	7.70	9.62	0.69	NA	NA	18.05	19.97	090
69660		A	Revise middle ear bone	11.90	NA	NA	9.01	11.61	0.85	NA	NA	21.76	24.36	090
69661		A	Revise middle ear bone	15.74	NA	NA	11.63	15.21	1.14	NA	NA	28.51	32.09	090
69662		A	Revise middle ear bone	15.44	NA	NA	11.47	14.95	1.10	NA	NA	28.01	31.49	090
69666		A	Repair middle ear structures	9.75	NA	NA	7.79	9.72	0.69	NA	NA	18.23	20.16	090
69667		A	Repair middle ear structures	9.76	NA	NA	7.77	9.72	0.69	NA	NA	18.22	20.17	090
69670		A	Remove mastoid air cells	11.51	NA	NA	9.25	10.15	0.79	NA	NA	21.55	22.45	090
69676		A	Remove middle ear nerve	9.52	NA	NA	8.02	8.64	0.66	NA	NA	18.20	18.82	090
69700		A	Close mastoid fistula	8.23	NA	NA	5.66	7.10	0.62	NA	NA	14.51	15.95	090
69710		N	Implant/replace hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
69711		A	Remove/repair hearing aid	10.44	NA	NA	8.41	8.79	0.73	NA	NA	19.58	19.96	090
69720		A	Release facial nerve	14.38	NA	NA	11.41	14.29	1.03	NA	NA	26.82	29.70	090
69725		A	Release facial nerve	25.38	NA	NA	17.48	16.69	1.62	NA	NA	44.48	43.69	090
69740		A	Repair facial nerve	15.96	NA	NA	10.91	11.88	1.11	NA	NA	27.98	28.95	090
69745		A	Repair facial nerve	16.69	NA	NA	11.46	14.39	1.80	NA	NA	29.95	32.88	090
69799		C	Middle ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69801		A	Incise inner ear	8.56	NA	NA	7.13	8.68	0.61	NA	NA	16.30	17.85	090
69802		A	Incise inner ear	13.10	NA	NA	10.17	11.19	1.04	NA	NA	24.31	25.33	090
69805		A	Explore inner ear	13.82	NA	NA	10.12	12.19	0.97	NA	NA	24.91	26.98	090
69806		A	Explore inner ear	12.35	NA	NA	9.82	12.29	0.88	NA	NA	23.05	25.52	090
69820		A	Establish inner ear window	10.34	NA	NA	8.42	9.01	0.55	NA	NA	19.31	19.90	090
69840		A	Revise inner ear window	10.26	NA	NA	8.98	9.10	0.40	NA	NA	19.64	19.76	090
69905		A	Remove inner ear	11.10	NA	NA	9.05	11.15	0.77	NA	NA	20.92	23.02	090
69910		A	Remove inner ear & mastoid	13.63	NA	NA	10.34	13.31	0.97	NA	NA	24.94	27.91	090
69915		A	Incise inner ear nerve	21.23	NA	NA	15.03	17.13	1.50	NA	NA	37.76	39.86	090
69930		A	Implant cochlear device	16.81	NA	NA	11.99	16.03	1.21	NA	NA	30.01	34.05	090
69949		C	Inner ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69950		A	Incise inner ear nerve	25.64	NA	NA	16.22	17.87	2.34	NA	NA	44.20	45.85	090
69955		A	Release facial nerve	27.04	NA	NA	18.59	20.30	2.31	NA	NA	47.94	49.65	090
69960		A	Release inner ear canal	27.04	NA	NA	17.67	18.52	2.52	NA	NA	47.23	48.08	090
69970		A	Remove inner ear lesion	30.04	NA	NA	19.13	20.25	2.13	NA	NA	51.30	52.42	090
69979		C	Temporal bone surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69990		R	Microsurgery add-on	3.47	1.84	1.84	1.84	1.84	0.64	5.95	5.95	5.95	5.95	ZZZ
70010		A	Contrast x-ray of brain	1.19	4.67	4.86	4.67	4.86	0.24	6.10	6.29	6.10	6.29	XXX
70010	26	A	Contrast x-ray of brain	1.19	0.32	0.44	0.32	0.44	0.05	1.56	1.68	1.56	1.68	XXX
70010	TC	A	Contrast x-ray of brain	0.00	4.35	4.42	4.35	4.42	0.19	4.54	4.61	4.54	4.61	XXX
70015		A	Contrast x-ray of brain	1.19	1.70	1.83	1.70	1.83	0.12	3.01	3.14	3.01	3.14	XXX
70015	26	A	Contrast x-ray of brain	1.19	0.34	0.45	0.34	0.45	0.05	1.58	1.69	1.58	1.69	XXX
70015	TC	A	Contrast x-ray of brain	0.00	1.36	1.38	1.36	1.38	0.07	1.43	1.45	1.43	1.45	XXX
70030		A	X-ray eye for foreign body	0.17	0.47	0.50	0.47	0.50	0.03	0.67	0.70	0.67	0.70	XXX
70030	26	A	X-ray eye for foreign body	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70030	TC	A	X-ray eye for foreign body	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
70100		A	X-ray exam of jaw	0.18	0.57	0.61	0.57	0.61	0.03	0.78	0.82	0.78	0.82	XXX
70100	26	A	X-ray exam of jaw	0.18	0.05	0.08	0.05	0.08	0.01	0.24	0.27	0.24	0.27	XXX
70100	TC	A	X-ray exam of jaw	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
70110		A	X-ray exam of jaw	0.25	0.69	0.73	0.69	0.73	0.04	0.98	1.02	0.98	1.02	XXX
70110	26	A	X-ray exam of jaw	0.25	0.07	0.10	0.07	0.10	0.01	0.33	0.36	0.33	0.36	XXX
70110	TC	A	X-ray exam of jaw	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
70120		A	X-ray exam of mastoids	0.18	0.67	0.71	0.67	0.71	0.04	0.89	0.93	0.89	0.93	XXX
70120	26	A	X-ray exam of mastoids	0.18	0.05	0.08	0.05	0.08	0.01	0.24	0.27	0.24	0.27	XXX
70120	TC	A	X-ray exam of mastoids	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
70130		A	X-ray exam of mastoids	0.34	0.88	0.93	0.88	0.93	0.05	1.27	1.32	1.27	1.32	XXX
70130	26	A	X-ray exam of mastoids	0.34	0.09	0.13	0.09	0.13	0.01	0.44	0.48	0.44	0.48	XXX
70130	TC	A	X-ray exam of mastoids	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
70134		A	X-ray exam of middle ear	0.34	0.83	0.88	0.83	0.88	0.05	1.22	1.27	1.22	1.27	XXX
70134	26	A	X-ray exam of middle ear	0.34	0.09	0.13	0.09	0.13	0.01	0.44	0.48	0.44	0.48	XXX
70134	TC	A	X-ray exam of middle ear	0.00	0.74	0.75	0.74	0.75	0.04	0.78	0.79	0.78	0.79	XXX
70140		A	X-ray exam of facial bones	0.19	0.67	0.71	0.67	0.71	0.04	0.90	0.94	0.90	0.94	XXX
70140	26	A	X-ray exam of facial bones	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
70140	TC	A	X-ray exam of facial bones	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
70150		A	X-ray exam of facial bones	0.26	0.86	0.90	0.86	0.90	0.05	1.17	1.21	1.17	1.21	XXX
70150	26	A	X-ray exam of facial bones	0.26	0.07	0.10	0.07	0.10	0.01	0.34	0.37	0.34	0.37	XXX
70150	TC	A	X-ray exam of facial bones	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
70160		A	X-ray exam of nasal bones	0.17	0.57	0.60	0.57	0.60	0.03	0.77	0.80	0.77	0.80	XXX
70160	26	A	X-ray exam of nasal bones	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70160	TC	A	X-ray exam of nasal bones	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
70170		A	X-ray exam of tear duct	0.30	1.03	1.09	1.03	1.09	0.06	1.39	1.45	1.39	1.45	XXX
70170	26	A	X-ray exam of tear duct	0.30	0.08	0.12	0.08	0.12	0.01	0.39	0.43	0.39	0.43	XXX
70170	TC	A	X-ray exam of tear duct	0.00	0.95	0.97	0.95	0.97	0.05	1.00	1.02	1.00	1.02	XXX
70190		A	X-ray exam of eye sockets	0.21	0.68	0.72	0.68	0.72	0.04	0.93	0.97	0.93	0.97	XXX
70190	26	A	X-ray exam of eye sockets	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	XXX
70190	TC	A	X-ray exam of eye sockets	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
70200		A	X-ray exam of eye sockets	0.28	0.87	0.91	0.87	0.91	0.05	1.20	1.24	1.20	1.24	XXX
70200	26	A	X-ray exam of eye sockets	0.28	0.08	0.11	0.08	0.11	0.01	0.37	0.40	0.37	0.40	XXX
70200	TC	A	X-ray exam of eye sockets	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
70210		A	X-ray exam of sinuses	0.17	0.67	0.70	0.67	0.70	0.04	0.88	0.91	0.88	0.91	XXX
70210	26	A	X-ray exam of sinuses	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70210	TC	A	X-ray exam of sinuses	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
70220		A	X-ray exam of sinuses	0.25	0.86	0.90	0.86	0.90	0.05	1.16	1.20	1.16	1.20	XXX
70220	26	A	X-ray exam of sinuses	0.25	0.07	0.10	0.07	0.10	0.01	0.33	0.36	0.33	0.36	XXX
70220	TC	A	X-ray exam of sinuses	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
70240		A	X-ray exam, pituitary saddle	0.19	0.47	0.51	0.47	0.51	0.03	0.69	0.73	0.69	0.73	XXX
70240	26	A	X-ray exam, pituitary saddle	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
70240	TC	A	X-ray exam, pituitary saddle	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
70250		A	X-ray exam of skull	0.24	0.69	0.73	0.69	0.73	0.04	0.97	1.01	0.97	1.01	XXX
70250	26	A	X-ray exam of skull	0.24	0.07	0.10	0.07	0.10	0.01	0.32	0.35	0.32	0.35	XXX
70250	TC	A	X-ray exam of skull	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
70260		A	X-ray exam of skull	0.34	0.98	1.04	0.98	1.04	0.06	1.38	1.44	1.38	1.44	XXX
70260	26	A	X-ray exam of skull	0.34	0.09	0.13	0.09	0.13	0.01	0.44	0.48	0.44	0.48	XXX
70260	TC	A	X-ray exam of skull	0.00	0.89	0.91	0.89	0.91	0.05	0.94	0.96	0.94	0.96	XXX
70300		A	X-ray exam of teeth	0.10	0.30	0.32	0.30	0.32	0.03	0.43	0.45	0.43	0.45	XXX
70300	26	A	X-ray exam of teeth	0.10	0.04	0.05	0.04	0.05	0.01	0.15	0.16	0.15	0.16	XXX
70300	TC	A	X-ray exam of teeth	0.00	0.26	0.27	0.26	0.27	0.02	0.28	0.29	0.28	0.29	XXX
70310		A	X-ray exam of teeth	0.16	0.48	0.50	0.48	0.50	0.03	0.67	0.69	0.67	0.69	XXX
70310	26	A	X-ray exam of teeth	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
70310	TC	A	X-ray exam of teeth	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
70320		A	Full mouth x-ray of teeth	0.22	0.85	0.89	0.85	0.89	0.05	1.12	1.16	1.12	1.16	XXX
70320	26	A	Full mouth x-ray of teeth	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
70320	TC	A	Full mouth x-ray of teeth	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
70328		A	X-ray exam of jaw joint	0.18	0.55	0.59	0.55	0.59	0.03	0.76	0.80	0.76	0.80	XXX
70328	26	A	X-ray exam of jaw joint	0.18	0.05	0.08	0.05	0.08	0.01	0.24	0.27	0.24	0.27	XXX
70328	TC	A	X-ray exam of jaw joint	0.00	0.50	0.51	0.50	0.51	0.02	0.52	0.53	0.52	0.53	XXX
70330		A	X-ray exam of jaw joints	0.24	0.92	0.96	0.92	0.96	0.05	1.21	1.25	1.21	1.25	XXX
70330	26	A	X-ray exam of jaw joints	0.24	0.07	0.10	0.07	0.10	0.01	0.32	0.35	0.32	0.35	XXX
70330	TC	A	X-ray exam of jaw joints	0.00	0.85	0.86	0.85	0.86	0.04	0.89	0.90	0.89	0.90	XXX
70332		A	X-ray exam of jaw joint	0.54	2.27	2.36	2.27	2.36	0.12	2.93	3.02	2.93	3.02	XXX
70332	26	A	X-ray exam of jaw joint	0.54	0.16	0.22	0.16	0.22	0.02	0.72	0.78	0.72	0.78	XXX
70332	TC	A	X-ray exam of jaw joint	0.00	2.11	2.14	2.11	2.14	0.10	2.21	2.24	2.21	2.24	XXX
70336		A	Magnetic image, jaw joint	1.48	11.67	11.87	11.67	11.87	0.56	13.71	13.91	13.71	13.91	XXX
70336	26	A	Magnetic image, jaw joint	1.48	0.41	0.44	0.41	0.44	0.06	1.95	1.98	1.95	1.98	XXX
70336	TC	A	Magnetic image, jaw joint	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
70350		A	X-ray head for orthodontia	0.17	0.43	0.46	0.43	0.46	0.03	0.63	0.66	0.63	0.66	XXX
70350	26	A	X-ray head for orthodontia	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70350	TC	A	X-ray head for orthodontia	0.00	0.38	0.39	0.38	0.39	0.02	0.40	0.41	0.40	0.41	XXX
70355		A	Panoramic x-ray of jaws	0.20	0.63	0.66	0.63	0.66	0.04	0.87	0.90	0.87	0.90	XXX
70355	26	A	Panoramic x-ray of jaws	0.20	0.06	0.08	0.06	0.08	0.01	0.27	0.29	0.27	0.29	XXX
70355	TC	A	Panoramic x-ray of jaws	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
70360		A	X-ray exam of neck	0.17	0.47	0.50	0.47	0.50	0.03	0.67	0.70	0.67	0.70	XXX
70360	26	A	X-ray exam of neck	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70360	TC	A	X-ray exam of neck	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
70370		A	Throat x-ray & fluoroscopy	0.32	1.40	1.46	1.40	1.46	0.07	1.79	1.85	1.79	1.85	XXX
70370	26	A	Throat x-ray & fluoroscopy	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
70370	TC	A	Throat x-ray & fluoroscopy	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
70371		A	Speech evaluation, complex	0.84	2.34	2.46	2.34	2.46	0.13	3.31	3.43	3.31	3.43	XXX
70371	26	A	Speech evaluation, complex	0.84	0.23	0.32	0.23	0.32	0.03	1.10	1.19	1.10	1.19	XXX
70371	TC	A	Speech evaluation, complex	0.00	2.11	2.14	2.11	2.14	0.10	2.21	2.24	2.21	2.24	XXX
70373		A	Contrast x-ray of larynx	0.44	1.91	1.99	1.91	1.99	0.11	2.46	2.54	2.46	2.54	XXX
70373	26	A	Contrast x-ray of larynx	0.44	0.12	0.17	0.12	0.17	0.02	0.58	0.63	0.58	0.63	XXX
70373	TC	A	Contrast x-ray of larynx	0.00	1.79	1.82	1.79	1.82	0.09	1.88	1.91	1.88	1.91	XXX
70380		A	X-ray exam of salivary gland	0.17	0.72	0.75	0.72	0.75	0.04	0.93	0.96	0.93	0.96	XXX
70380	26	A	X-ray exam of salivary gland	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70380	TC	A	X-ray exam of salivary gland	0.00	0.67	0.68	0.67	0.68	0.03	0.70	0.71	0.70	0.71	XXX
70390		A	X-ray exam of salivary duct	0.38	1.89	1.96	1.89	1.96	0.11	2.38	2.45	2.38	2.45	XXX
70390	26	A	X-ray exam of salivary duct	0.38	0.10	0.14	0.10	0.14	0.02	0.50	0.54	0.50	0.54	XXX
70390	TC	A	X-ray exam of salivary duct	0.00	1.79	1.82	1.79	1.82	0.09	1.88	1.91	1.88	1.91	XXX
70450		A	CAT scan of head or brain	0.85	4.97	5.13	4.97	5.13	0.25	6.07	6.23	6.07	6.23	XXX
70450	26	A	CAT scan of head or brain	0.85	0.23	0.32	0.23	0.32	0.03	1.11	1.20	1.11	1.20	XXX
70450	TC	A	CAT scan of head or brain	0.00	4.74	4.81	4.74	4.81	0.22	4.96	5.03	4.96	5.03	XXX
70460		A	Contrast CAT scan of head	1.13	6.00	6.20	6.00	6.20	0.31	7.44	7.64	7.44	7.64	XXX
70460	26	A	Contrast CAT scan of head	1.13	0.32	0.43	0.32	0.43	0.05	1.50	1.61	1.50	1.61	XXX
70460	TC	A	Contrast CAT scan of head	0.00	5.68	5.77	5.68	5.77	0.26	5.94	6.03	5.94	6.03	XXX
70470		A	Contrast CAT scans of head	1.27	7.45	7.69	7.45	7.69	0.37	9.09	9.33	9.09	9.33	XXX
70470	26	A	Contrast CAT scans of head	1.27	0.35	0.48	0.35	0.48	0.05	1.67	1.80	1.67	1.80	XXX
70470	TC	A	Contrast CAT scans of head	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX
70480		A	CAT scan of skull	1.28	5.09	5.30	5.09	5.30	0.27	6.64	6.85	6.64	6.85	XXX
70480	26	A	CAT scan of skull	1.28	0.35	0.49	0.35	0.49	0.05	1.68	1.82	1.68	1.82	XXX
70480	TC	A	CAT scan of skull	0.00	4.74	4.81	4.74	4.81	0.22	4.96	5.03	4.96	5.03	XXX
70481		A	Contrast CAT scan of skull	1.38	6.06	6.29	6.06	6.29	0.31	7.75	7.98	7.75	7.98	XXX
70481	26	A	Contrast CAT scan of skull	1.38	0.38	0.52	0.38	0.52	0.05	1.81	1.95	1.81	1.95	XXX
70481	TC	A	Contrast CAT scan of skull	0.00	5.68	5.77	5.68	5.77	0.26	5.94	6.03	5.94	6.03	XXX
70482		A	Contrast CAT scans of skull	1.45	7.50	7.76	7.50	7.76	0.38	9.33	9.59	9.33	9.59	XXX
70482	26	A	Contrast CAT scans of skull	1.45	0.40	0.55	0.40	0.55	0.06	1.91	2.06	1.91	2.06	XXX
70482	TC	A	Contrast CAT scans of skull	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX
70486		A	CAT scan of face/jaw	1.14	5.05	5.24	5.05	5.24	0.27	6.46	6.65	6.46	6.65	XXX
70486	26	A	CAT scan of face/jaw	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
70486	TC	A	CAT scan of face/jaw	0.00	4.74	4.81	4.74	4.81	0.22	4.96	5.03	4.96	5.03	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
70487		A	Contrast CAT scan, face/jaw	1.30	6.04	6.26	6.04	6.26	0.31	7.65	7.87	7.65	7.87	XXX
70487	26	A	Contrast CAT scan, face/jaw	1.30	0.36	0.49	0.36	0.49	0.05	1.71	1.84	1.71	1.84	XXX
70487	TC	A	Contrast CAT scan, face/jaw	0.00	5.68	5.77	5.68	5.77	0.26	5.94	6.03	5.94	6.03	XXX
70488		A	Contrast CAT scans, face/jaw	1.42	7.49	7.75	7.49	7.75	0.38	9.29	9.55	9.29	9.55	XXX
70488	26	A	Contrast CAT scans, face/jaw	1.42	0.39	0.54	0.39	0.54	0.06	1.87	2.02	1.87	2.02	XXX
70488	TC	A	Contrast CAT scans, face/jaw	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX
70490		A	CAT scan of neck tissue	1.28	5.09	5.30	5.09	5.30	0.27	6.64	6.85	6.64	6.85	XXX
70490	26	A	CAT scan of neck tissue	1.28	0.35	0.49	0.35	0.49	0.05	1.68	1.82	1.68	1.82	XXX
70490	TC	A	CAT scan of neck tissue	0.00	4.74	4.81	4.74	4.81	0.22	4.96	5.03	4.96	5.03	XXX
70491		A	Contrast CAT of neck tissue	1.38	6.06	6.29	6.06	6.29	0.31	7.75	7.98	7.75	7.98	XXX
70491	26	A	Contrast CAT of neck tissue	1.38	0.38	0.52	0.38	0.52	0.05	1.81	1.95	1.81	1.95	XXX
70491	TC	A	Contrast CAT of neck tissue	0.00	5.68	5.77	5.68	5.77	0.26	5.94	6.03	5.94	6.03	XXX
70492		A	Contrast CAT of neck tissue	1.45	7.49	7.75	7.49	7.75	0.38	9.32	9.58	9.32	9.58	XXX
70492	26	A	Contrast CAT of neck tissue	1.45	0.39	0.54	0.39	0.54	0.06	1.90	2.05	1.90	2.05	XXX
70492	TC	A	Contrast CAT of neck tissue	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX
70540		A	Magnetic image, face/neck	1.48	11.67	12.00	11.67	12.00	0.56	13.71	14.04	13.71	14.04	XXX
70540	26	A	Magnetic image, face/neck	1.48	0.41	0.57	0.41	0.57	0.06	1.95	2.11	1.95	2.11	XXX
70540	TC	A	Magnetic image, face/neck	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
70541		R	Magnetic image, head (MRA)	1.81	11.76	12.04	11.76	12.04	0.57	14.14	14.42	14.14	14.42	XXX
70541	26	R	Magnetic image, head (MRA)	1.81	0.50	0.61	0.50	0.61	0.07	2.38	2.49	2.38	2.49	XXX
70541	TC	R	Magnetic image, head (MRA)	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
70551		A	Magnetic image, brain (MRI)	1.48	11.67	12.00	11.67	12.00	0.56	13.71	14.04	13.71	14.04	XXX
70551	26	A	Magnetic image, brain (MRI)	1.48	0.41	0.57	0.41	0.57	0.06	1.95	2.11	1.95	2.11	XXX
70551	TC	A	Magnetic image, brain (MRI)	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
70552		A	Magnetic image, brain (MRI)	1.78	14.01	14.39	14.01	14.39	0.67	16.46	16.84	16.46	16.84	XXX
70552	26	A	Magnetic image, brain (MRI)	1.78	0.51	0.69	0.51	0.69	0.07	2.36	2.54	2.36	2.54	XXX
70552	TC	A	Magnetic image, brain (MRI)	0.00	13.50	13.70	13.50	13.70	0.60	14.10	14.30	14.10	14.30	XXX
70553		A	Magnetic image, brain (mri)	2.36	25.66	26.29	25.66	26.29	1.21	29.23	29.86	29.23	29.86	XXX
70553	26	A	Magnetic image, brain (mri)	2.36	0.65	0.91	0.65	0.91	0.09	3.10	3.36	3.10	3.36	XXX
70553	TC	A	Magnetic image, brain (mri)	0.00	25.01	25.38	25.01	25.38	1.12	26.13	26.50	26.13	26.50	XXX
71010		A	Chest x-ray	0.18	0.53	0.56	0.53	0.56	0.03	0.74	0.77	0.74	0.77	XXX
71010	26	A	Chest x-ray	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
71010	TC	A	Chest x-ray	0.00	0.48	0.49	0.48	0.49	0.02	0.50	0.51	0.50	0.51	XXX
71015		A	Chest x-ray	0.21	0.58	0.62	0.58	0.62	0.03	0.82	0.86	0.82	0.86	XXX
71015	26	A	Chest x-ray	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	XXX
71015	TC	A	Chest x-ray	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
71020		A	Chest x-ray	0.22	0.68	0.72	0.68	0.72	0.04	0.94	0.98	0.94	0.98	XXX
71020	26	A	Chest x-ray	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
71020	TC	A	Chest x-ray	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
71021		A	Chest x-ray	0.27	0.81	0.85	0.81	0.85	0.05	1.13	1.17	1.13	1.17	XXX
71021	26	A	Chest x-ray	0.27	0.07	0.10	0.07	0.10	0.01	0.35	0.38	0.35	0.38	XXX
71021	TC	A	Chest x-ray	0.00	0.74	0.75	0.74	0.75	0.04	0.78	0.79	0.78	0.79	XXX
71022		A	Chest x-ray	0.31	0.83	0.87	0.83	0.87	0.05	1.19	1.23	1.19	1.23	XXX
71022	26	A	Chest x-ray	0.31	0.09	0.12	0.09	0.12	0.01	0.41	0.44	0.41	0.44	XXX
71022	TC	A	Chest x-ray	0.00	0.74	0.75	0.74	0.75	0.04	0.78	0.79	0.78	0.79	XXX
71023		A	Chest x-ray and fluoroscopy	0.38	0.91	0.95	0.91	0.95	0.05	1.34	1.38	1.34	1.38	XXX
71023	26	A	Chest x-ray and fluoroscopy	0.38	0.12	0.15	0.12	0.15	0.01	0.51	0.54	0.51	0.54	XXX
71023	TC	A	Chest x-ray and fluoroscopy	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
71030		A	Chest x-ray	0.31	0.88	0.92	0.88	0.92	0.05	1.24	1.28	1.24	1.28	XXX
71030	26	A	Chest x-ray	0.31	0.09	0.12	0.09	0.12	0.01	0.41	0.44	0.41	0.44	XXX
71030	TC	A	Chest x-ray	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
71034		A	Chest x-ray and fluoroscopy	0.46	1.60	1.66	1.60	1.66	0.09	2.15	2.21	2.15	2.21	XXX
71034	26	A	Chest x-ray and fluoroscopy	0.46	0.15	0.19	0.15	0.19	0.02	0.63	0.67	0.63	0.67	XXX
71034	TC	A	Chest x-ray and fluoroscopy	0.00	1.45	1.47	1.45	1.47	0.07	1.52	1.54	1.52	1.54	XXX
71035		A	Chest x-ray	0.18	0.57	0.60	0.57	0.60	0.03	0.78	0.81	0.78	0.81	XXX
71035	26	A	Chest x-ray	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
71035	TC	A	Chest x-ray	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
71036		A	X-ray guidance for biopsy	0.54	1.73	1.82	1.73	1.82	0.10	2.37	2.46	2.37	2.46	XXX
71036	26	A	X-ray guidance for biopsy	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
71036	TC	A	X-ray guidance for biopsy	0.00	1.58	1.61	1.58	1.61	0.08	1.66	1.69	1.66	1.69	XXX
71040		A	Contrast x-ray of bronchi	0.58	1.63	1.72	1.63	1.72	0.09	2.30	2.39	2.30	2.39	XXX
71040	26	A	Contrast x-ray of bronchi	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
71040	TC	A	Contrast x-ray of bronchi	0.00	1.47	1.49	1.47	1.49	0.07	1.54	1.56	1.54	1.56	XXX
71060		A	Contrast x-ray of bronchi	0.74	2.42	2.54	2.42	2.54	0.14	3.30	3.42	3.30	3.42	XXX
71060	26	A	Contrast x-ray of bronchi	0.74	0.20	0.29	0.20	0.29	0.03	0.97	1.06	0.97	1.06	XXX
71060	TC	A	Contrast x-ray of bronchi	0.00	2.22	2.25	2.22	2.25	0.11	2.33	2.36	2.33	2.36	XXX
71090		A	X-ray & pacemaker insertion	0.54	1.91	1.97	1.91	1.97	0.11	2.56	2.62	2.56	2.62	XXX
71090	26	A	X-ray & pacemaker insertion	0.54	0.22	0.25	0.22	0.25	0.02	0.78	0.81	0.78	0.81	XXX
71090	TC	A	X-ray & pacemaker insertion	0.00	1.69	1.72	1.69	1.72	0.09	1.78	1.81	1.78	1.81	XXX
71100		A	X-ray exam of ribs	0.22	0.63	0.67	0.63	0.67	0.04	0.89	0.93	0.89	0.93	XXX
71100	26	A	X-ray exam of ribs	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
71100	TC	A	X-ray exam of ribs	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
71101		A	X-ray exam of ribs/chest	0.27	0.74	0.79	0.74	0.79	0.04	1.05	1.10	1.05	1.10	XXX
71101	26	A	X-ray exam of ribs/chest	0.27	0.07	0.11	0.07	0.11	0.01	0.35	0.39	0.35	0.39	XXX
71101	TC	A	X-ray exam of ribs/chest	0.00	0.67	0.68	0.67	0.68	0.03	0.70	0.71	0.70	0.71	XXX
71110		A	X-ray exam of ribs	0.27	0.86	0.91	0.86	0.91	0.05	1.18	1.23	1.18	1.23	XXX
71110	26	A	X-ray exam of ribs	0.27	0.07	0.11	0.07	0.11	0.01	0.35	0.39	0.35	0.39	XXX
71110	TC	A	X-ray exam of ribs	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
71111		A	X-ray exam of ribs/ chest	0.32	0.98	1.04	0.98	1.04	0.06	1.36	1.42	1.36	1.42	XXX
71111	26	A	X-ray exam of ribs/ chest	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
71111	TC	A	X-ray exam of ribs/ chest	0.00	0.89	0.91	0.89	0.91	0.05	0.94	0.96	0.94	0.96	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
71120		A	X-ray exam of breastbone	0.20	0.70	0.74	0.70	0.74	0.04	0.94	0.98	0.94	0.98	XXX
71120	26	A	X-ray exam of breastbone	0.20	0.05	0.08	0.05	0.08	0.01	0.26	0.29	0.26	0.29	XXX
71120	TC	A	X-ray exam of breastbone	0.00	0.65	0.66	0.65	0.66	0.03	0.68	0.69	0.68	0.69	XXX
71130		A	X-ray exam of breastbone	0.22	0.77	0.81	0.77	0.81	0.04	1.03	1.07	1.03	1.07	XXX
71130	26	A	X-ray exam of breastbone	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
71130	TC	A	X-ray exam of breastbone	0.00	0.71	0.72	0.71	0.72	0.03	0.74	0.75	0.74	0.75	XXX
71250		A	CAT scan of chest	1.16	6.26	6.47	6.26	6.47	0.32	7.74	7.95	7.74	7.95	XXX
71250	26	A	CAT scan of chest	1.16	0.32	0.44	0.32	0.44	0.05	1.53	1.65	1.53	1.65	XXX
71250	TC	A	CAT scan of chest	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
71260		A	Contrast CAT scan of chest	1.24	7.44	7.68	7.44	7.68	0.37	9.05	9.29	9.05	9.29	XXX
71260	26	A	Contrast CAT scan of chest	1.24	0.34	0.47	0.34	0.47	0.05	1.63	1.76	1.63	1.76	XXX
71260	TC	A	Contrast CAT scan of chest	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX
71270		A	Contrast CAT scans of chest	1.38	9.27	9.54	9.27	9.54	0.44	11.09	11.36	11.09	11.36	XXX
71270	26	A	Contrast CAT scans of chest	1.38	0.38	0.52	0.38	0.52	0.05	1.81	1.95	1.81	1.95	XXX
71270	TC	A	Contrast CAT scans of chest	0.00	8.89	9.02	8.89	9.02	0.39	9.28	9.41	9.28	9.41	XXX
71550		A	Magnetic image, chest (mri)	1.60	11.70	12.04	11.70	12.04	0.56	13.86	14.20	13.86	14.20	XXX
71550	26	A	Magnetic image, chest (mri)	1.60	0.44	0.61	0.44	0.61	0.06	2.10	2.27	2.10	2.27	XXX
71550	TC	A	Magnetic image, chest (mri)	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
71555		R	Magnetic image, chest (mra)	1.81	11.77	12.08	11.77	12.08	0.57	14.15	14.46	14.15	14.46	XXX
71555	26	R	Magnetic image, chest (mra)	1.81	0.51	0.65	0.51	0.65	0.07	2.39	2.53	2.39	2.53	XXX
71555	TC	R	Magnetic image, chest (mra)	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
72010		A	X-ray exam of spine	0.45	1.16	1.23	1.16	1.23	0.07	1.68	1.75	1.68	1.75	XXX
72010	26	A	X-ray exam of spine	0.45	0.13	0.18	0.13	0.18	0.02	0.60	0.65	0.60	0.65	XXX
72010	TC	A	X-ray exam of spine	0.00	1.03	1.05	1.03	1.05	0.05	1.08	1.10	1.08	1.10	XXX
72020		A	X-ray exam of spine	0.15	0.46	0.49	0.46	0.49	0.03	0.64	0.67	0.64	0.67	XXX
72020	26	A	X-ray exam of spine	0.15	0.04	0.06	0.04	0.06	0.01	0.20	0.22	0.20	0.22	XXX
72020	TC	A	X-ray exam of spine	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
72040		A	X-ray exam of neck spine	0.22	0.66	0.70	0.66	0.70	0.04	0.92	0.96	0.92	0.96	XXX
72040	26	A	X-ray exam of neck spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72040	TC	A	X-ray exam of neck spine	0.00	0.60	0.61	0.60	0.61	0.03	0.63	0.64	0.63	0.64	XXX
72050		A	X-ray exam of neck spine	0.31	0.98	1.03	0.98	1.03	0.06	1.35	1.40	1.35	1.40	XXX
72050	26	A	X-ray exam of neck spine	0.31	0.09	0.12	0.09	0.12	0.01	0.41	0.44	0.41	0.44	XXX
72050	TC	A	X-ray exam of neck spine	0.00	0.89	0.91	0.89	0.91	0.05	0.94	0.96	0.94	0.96	XXX
72052		A	X-ray exam of neck spine	0.36	1.24	1.30	1.24	1.30	0.06	1.66	1.72	1.66	1.72	XXX
72052	26	A	X-ray exam of neck spine	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
72052	TC	A	X-ray exam of neck spine	0.00	1.14	1.16	1.14	1.16	0.05	1.19	1.21	1.19	1.21	XXX
72069		A	X-ray exam of trunk spine	0.22	0.56	0.60	0.56	0.60	0.03	0.81	0.85	0.81	0.85	XXX
72069	26	A	X-ray exam of trunk spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72069	TC	A	X-ray exam of trunk spine	0.00	0.50	0.51	0.50	0.51	0.02	0.52	0.53	0.52	0.53	XXX
72070		A	X-ray exam of thoracic spine	0.22	0.71	0.75	0.71	0.75	0.04	0.97	1.01	0.97	1.01	XXX
72070	26	A	X-ray exam of thoracic spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72070	TC	A	X-ray exam of thoracic spine	0.00	0.65	0.66	0.65	0.66	0.03	0.68	0.69	0.68	0.69	XXX
72072		A	X-ray exam of thoracic spine	0.22	0.80	0.84	0.80	0.84	0.05	1.07	1.11	1.07	1.11	XXX
72072	26	A	X-ray exam of thoracic spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72072	TC	A	X-ray exam of thoracic spine	0.00	0.74	0.75	0.74	0.75	0.04	0.78	0.79	0.78	0.79	XXX
72074		A	X-ray exam of thoracic spine	0.22	0.97	1.02	0.97	1.02	0.06	1.25	1.30	1.25	1.30	XXX
72074	26	A	X-ray exam of thoracic spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72074	TC	A	X-ray exam of thoracic spine	0.00	0.91	0.93	0.91	0.93	0.05	0.96	0.98	0.96	0.98	XXX
72080		A	X-ray exam of trunk spine	0.22	0.73	0.77	0.73	0.77	0.04	0.99	1.03	0.99	1.03	XXX
72080	26	A	X-ray exam of trunk spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72080	TC	A	X-ray exam of trunk spine	0.00	0.67	0.68	0.67	0.68	0.03	0.70	0.71	0.70	0.71	XXX
72090		A	X-ray exam of trunk spine	0.28	0.75	0.79	0.75	0.79	0.04	1.07	1.11	1.07	1.11	XXX
72090	26	A	X-ray exam of trunk spine	0.28	0.08	0.11	0.08	0.11	0.01	0.37	0.40	0.37	0.40	XXX
72090	TC	A	X-ray exam of trunk spine	0.00	0.67	0.68	0.67	0.68	0.03	0.70	0.71	0.70	0.71	XXX
72100		A	X-ray exam of lower spine	0.22	0.73	0.77	0.73	0.77	0.04	0.99	1.03	0.99	1.03	XXX
72100	26	A	X-ray exam of lower spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72100	TC	A	X-ray exam of lower spine	0.00	0.67	0.68	0.67	0.68	0.03	0.70	0.71	0.70	0.71	XXX
72110		A	X-ray exam of lower spine	0.31	1.00	1.05	1.00	1.05	0.06	1.37	1.42	1.37	1.42	XXX
72110	26	A	X-ray exam of lower spine	0.31	0.09	0.12	0.09	0.12	0.01	0.41	0.44	0.41	0.44	XXX
72110	TC	A	X-ray exam of lower spine	0.00	0.91	0.93	0.91	0.93	0.05	0.96	0.98	0.96	0.98	XXX
72114		A	X-ray exam of lower spine	0.36	1.30	1.36	1.30	1.36	0.07	1.73	1.79	1.73	1.79	XXX
72114	26	A	X-ray exam of lower spine	0.36	0.10	0.14	0.10	0.14	0.02	0.48	0.52	0.48	0.52	XXX
72114	TC	A	X-ray exam of lower spine	0.00	1.20	1.22	1.20	1.22	0.05	1.25	1.27	1.25	1.27	XXX
72120		A	X-ray exam of lower spine	0.22	0.95	1.00	0.95	1.00	0.06	1.23	1.28	1.23	1.28	XXX
72120	26	A	X-ray exam of lower spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72120	TC	A	X-ray exam of lower spine	0.00	0.89	0.91	0.89	0.91	0.05	0.94	0.96	0.94	0.96	XXX
72125		A	CAT scan of neck spine	1.16	6.26	6.47	6.26	6.47	0.32	7.74	7.95	7.74	7.95	XXX
72125	26	A	CAT scan of neck spine	1.16	0.32	0.44	0.32	0.44	0.05	1.53	1.65	1.53	1.65	XXX
72125	TC	A	CAT scan of neck spine	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
72126		A	Contrast CAT scan of neck	1.22	7.43	7.67	7.43	7.67	0.37	9.02	9.26	9.02	9.26	XXX
72126	26	A	Contrast CAT scan of neck	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
72126	TC	A	Contrast CAT scan of neck	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX
72127		A	Contrast CAT scans of neck	1.27	9.24	9.50	9.24	9.50	0.44	10.95	11.21	10.95	11.21	XXX
72127	26	A	Contrast CAT scans of neck	1.27	0.35	0.48	0.35	0.48	0.05	1.67	1.80	1.67	1.80	XXX
72127	TC	A	Contrast CAT scans of neck	0.00	8.89	9.02	8.89	9.02	0.39	9.28	9.41	9.28	9.41	XXX
72128		A	CAT scan of thorax spine	1.16	6.26	6.47	6.26	6.47	0.32	7.74	7.95	7.74	7.95	XXX
72128	26	A	CAT scan of thorax spine	1.16	0.32	0.44	0.32	0.44	0.05	1.53	1.65	1.53	1.65	XXX
72128	TC	A	CAT scan of thorax spine	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
72129		A	Contrast CAT scan of thorax	1.22	7.43	7.67	7.43	7.67	0.37	9.02	9.26	9.02	9.26	XXX
72129	26	A	Contrast CAT scan of thorax	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
72129	TC	A	Contrast CAT scan of thorax	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
72130		A	Contrast CAT scans of thorax	1.27	9.24	9.50	9.24	9.50	0.44	10.95	11.21	10.95	11.21	XXX
72130	26	A	Contrast CAT scans of thorax	1.27	0.35	0.48	0.35	0.48	0.05	1.67	1.80	1.67	1.80	XXX
72130	TC	A	Contrast CAT scans of thorax	0.00	8.89	9.02	8.89	9.02	0.39	9.28	9.41	9.28	9.41	XXX
72131		A	CAT scan of lower spine	1.16	6.26	6.47	6.26	6.47	0.32	7.74	7.95	7.74	7.95	XXX
72131	26	A	CAT scan of lower spine	1.16	0.32	0.44	0.32	0.44	0.05	1.53	1.65	1.53	1.65	XXX
72131	TC	A	CAT scan of lower spine	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
72132		A	Contrast CAT of lower spine	1.22	7.43	7.67	7.43	7.67	0.37	9.02	9.26	9.02	9.26	XXX
72132	26	A	Contrast CAT of lower spine	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
72132	TC	A	Contrast CAT of lower spine	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX
72133		A	Contrst CAT scans, low spine	1.27	9.25	9.51	9.25	9.51	0.44	10.96	11.22	10.96	11.22	XXX
72133	26	A	Contrst CAT scans, low spine	1.27	0.36	0.49	0.36	0.49	0.05	1.68	1.81	1.68	1.81	XXX
72133	TC	A	Contrst CAT scans, low spine	0.00	8.89	9.02	8.89	9.02	0.39	9.28	9.41	9.28	9.41	XXX
72141		A	Magnetic image, neck spine	1.60	11.70	12.04	11.70	12.04	0.56	13.86	14.20	13.86	14.20	XXX
72141	26	A	Magnetic image, neck spine	1.60	0.44	0.61	0.44	0.61	0.06	2.10	2.27	2.10	2.27	XXX
72141	TC	A	Magnetic image, neck spine	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
72142		A	Magnetic image, neck spine	1.92	14.05	14.44	14.05	14.44	0.68	16.65	17.04	16.65	17.04	XXX
72142	26	A	Magnetic image, neck spine	1.92	0.55	0.74	0.55	0.74	0.08	2.55	2.74	2.55	2.74	XXX
72142	TC	A	Magnetic image, neck spine	0.00	13.50	13.70	13.50	13.70	0.60	14.10	14.30	14.10	14.30	XXX
72146		A	Magnetic image, chest spine	1.60	12.94	13.30	12.94	13.30	0.61	15.15	15.51	15.15	15.51	XXX
72146	26	A	Magnetic image, chest spine	1.60	0.44	0.61	0.44	0.61	0.06	2.10	2.27	2.10	2.27	XXX
72146	TC	A	Magnetic image, chest spine	0.00	12.50	12.69	12.50	12.69	0.55	13.05	13.24	13.05	13.24	XXX
72147		A	Magnetic image, chest spine	1.92	14.04	14.44	14.04	14.44	0.68	16.64	17.04	16.64	17.04	XXX
72147	26	A	Magnetic image, chest spine	1.92	0.54	0.74	0.54	0.74	0.08	2.54	2.74	2.54	2.74	XXX
72147	TC	A	Magnetic image, chest spine	0.00	13.50	13.70	13.50	13.70	0.60	14.10	14.30	14.10	14.30	XXX
72148		A	Magnetic image, lumbar spine	1.48	12.91	13.26	12.91	13.26	0.61	15.00	15.35	15.00	15.35	XXX
72148	26	A	Magnetic image, lumbar spine	1.48	0.41	0.57	0.41	0.57	0.06	1.95	2.11	1.95	2.11	XXX
72148	TC	A	Magnetic image, lumbar spine	0.00	12.50	12.69	12.50	12.69	0.55	13.05	13.24	13.05	13.24	XXX
72149		A	Magnetic image, lumbar spine	1.78	14.01	14.39	14.01	14.39	0.67	16.46	16.84	16.46	16.84	XXX
72149	26	A	Magnetic image, lumbar spine	1.78	0.51	0.69	0.51	0.69	0.07	2.36	2.54	2.36	2.54	XXX
72149	TC	A	Magnetic image, lumbar spine	0.00	13.50	13.70	13.50	13.70	0.60	14.10	14.30	14.10	14.30	XXX
72156		A	Magnetic image, neck spine	2.57	25.72	26.36	25.72	26.36	1.22	29.51	30.15	29.51	30.15	XXX
72156	26	A	Magnetic image, neck spine	2.57	0.71	0.98	0.71	0.98	0.10	3.38	3.65	3.38	3.65	XXX
72156	TC	A	Magnetic image, neck spine	0.00	25.01	25.38	25.01	25.38	1.12	26.13	26.50	26.13	26.50	XXX
72157		A	Magnetic image, chest spine	2.57	25.72	26.36	25.72	26.36	1.22	29.51	30.15	29.51	30.15	XXX
72157	26	A	Magnetic image, chest spine	2.57	0.71	0.98	0.71	0.98	0.10	3.38	3.65	3.38	3.65	XXX
72157	TC	A	Magnetic image, chest spine	0.00	25.01	25.38	25.01	25.38	1.12	26.13	26.50	26.13	26.50	XXX
72158		A	Magnetic image, lumbar spine	2.36	25.66	26.29	25.66	26.29	1.21	29.23	29.86	29.23	29.86	XXX
72158	26	A	Magnetic image, lumbar spine	2.36	0.65	0.91	0.65	0.91	0.09	3.10	3.36	3.10	3.36	XXX
72158	TC	A	Magnetic image, lumbar spine	0.00	25.01	25.38	25.01	25.38	1.12	26.13	26.50	26.13	26.50	XXX
72159		N	Magnetic image, spine (mra)	+1.80	13.20	13.40	13.20	13.40	0.62	15.62	15.82	15.62	15.82	XXX
72159	26	N	Magnetic image, spine (mra)	+1.80	0.70	0.71	0.70	0.71	0.07	2.57	2.58	2.57	2.58	XXX
72159	TC	N	Magnetic image, spine (mra)	+0.00	12.50	12.69	12.50	12.69	0.55	13.05	13.24	13.05	13.24	XXX
72170		A	X-ray exam of pelvis	0.17	0.57	0.60	0.57	0.60	0.03	0.77	0.80	0.77	0.80	XXX
72170	26	A	X-ray exam of pelvis	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
72170	TC	A	X-ray exam of pelvis	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
72190		A	X-ray exam of pelvis	0.21	0.73	0.77	0.73	0.77	0.04	0.98	1.02	0.98	1.02	XXX
72190	26	A	X-ray exam of pelvis	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	XXX
72190	TC	A	X-ray exam of pelvis	0.00	0.67	0.68	0.67	0.68	0.03	0.70	0.71	0.70	0.71	XXX
72192		A	CAT scan of pelvis	1.09	6.24	6.44	6.24	6.44	0.31	7.64	7.84	7.64	7.84	XXX
72192	26	A	CAT scan of pelvis	1.09	0.30	0.41	0.30	0.41	0.04	1.43	1.54	1.43	1.54	XXX
72192	TC	A	CAT scan of pelvis	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
72193		A	Contrast CAT scan of pelvis	1.16	7.20	7.42	7.20	7.42	0.36	8.72	8.94	8.72	8.94	XXX
72193	26	A	Contrast CAT scan of pelvis	1.16	0.32	0.44	0.32	0.44	0.05	1.53	1.65	1.53	1.65	XXX
72193	TC	A	Contrast CAT scan of pelvis	0.00	6.88	6.98	6.88	6.98	0.31	7.19	7.29	7.19	7.29	XXX
72194		A	Contrast CAT scans of pelvis	1.22	8.86	9.12	8.86	9.12	0.42	10.50	10.76	10.50	10.76	XXX
72194	26	A	Contrast CAT scans of pelvis	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
72194	TC	A	Contrast CAT scans of pelvis	0.00	8.53	8.66	8.53	8.66	0.37	8.90	9.03	8.90	9.03	XXX
72196		A	Magnetic image, pelvis	1.60	11.70	12.04	11.70	12.04	0.56	13.86	14.20	13.86	14.20	XXX
72196	26	A	Magnetic image, pelvis	1.60	0.44	0.61	0.44	0.61	0.06	2.10	2.27	2.10	2.27	XXX
72196	TC	A	Magnetic image, pelvis	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
72198		N	Magnetic image, pelvis (mra)	+1.80	11.96	12.17	11.96	12.17	0.57	14.33	14.54	14.33	14.54	XXX
72198	26	N	Magnetic image, pelvis (mra)	+1.80	0.70	0.74	0.70	0.74	0.07	2.57	2.61	2.57	2.61	XXX
72198	TC	N	Magnetic image, pelvis (mra)	+0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
72200		A	X-ray exam sacroiliac joints	0.17	0.57	0.60	0.57	0.60	0.03	0.77	0.80	0.77	0.80	XXX
72200	26	A	X-ray exam sacroiliac joints	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
72200	TC	A	X-ray exam sacroiliac joints	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
72202		A	X-ray exam sacroiliac joints	0.19	0.67	0.71	0.67	0.71	0.04	0.90	0.94	0.90	0.94	XXX
72202	26	A	X-ray exam sacroiliac joints	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
72202	TC	A	X-ray exam sacroiliac joints	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
72220		A	X-ray exam of tailbone	0.17	0.62	0.65	0.62	0.65	0.04	0.83	0.86	0.83	0.86	XXX
72220	26	A	X-ray exam of tailbone	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
72220	TC	A	X-ray exam of tailbone	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
72240		A	Contrast x-ray of neck spine	0.91	5.01	5.18	5.01	5.18	0.26	6.18	6.35	6.18	6.35	XXX
72240	26	A	Contrast x-ray of neck spine	0.91	0.24	0.34	0.24	0.34	0.04	1.19	1.29	1.19	1.29	XXX
72240	TC	A	Contrast x-ray of neck spine	0.00	4.77	4.84	4.77	4.84	0.22	4.99	5.06	4.99	5.06	XXX
72255		A	Contrast x-ray, thorax spine	0.91	4.58	4.76	4.58	4.76	0.23	5.72	5.90	5.72	5.90	XXX
72255	26	A	Contrast x-ray, thorax spine	0.91	0.23	0.34	0.23	0.34	0.04	1.18	1.29	1.18	1.29	XXX
72255	TC	A	Contrast x-ray, thorax spine	0.00	4.35	4.42	4.35	4.42	0.19	4.54	4.61	4.54	4.61	XXX
72265		A	Contrast x-ray, lower spine	0.83	4.30	4.46	4.30	4.46	0.23	5.36	5.52	5.36	5.52	XXX
72265	26	A	Contrast x-ray, lower spine	0.83	0.21	0.31	0.21	0.31	0.04	1.08	1.18	1.08	1.18	XXX
72265	TC	A	Contrast x-ray, lower spine	0.00	4.09	4.15	4.09	4.15	0.19	4.28	4.34	4.28	4.34	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
72270		A	Contrast x-ray of spine	1.33	6.48	6.72	6.48	6.72	0.34	8.15	8.39	8.15	8.39	XXX
72270	26	A	Contrast x-ray of spine	1.33	0.35	0.50	0.35	0.50	0.06	1.74	1.89	1.74	1.89	XXX
72270	TC	A	Contrast x-ray of spine	0.00	6.13	6.22	6.13	6.22	0.28	6.41	6.50	6.41	6.50	XXX
72275		A	Epidurography	0.54	2.25	2.25	2.25	2.25	0.24	3.03	3.03	3.03	3.03	XXX
72275	26	A	Epidurography	0.54	0.14	0.14	0.14	0.14	0.05	0.73	0.73	0.73	0.73	XXX
72275	TC	A	Epidurography	0.00	2.11	2.11	2.11	2.11	0.19	2.30	2.30	2.30	2.30	XXX
72285		A	X-ray c/t spine disk	1.16	8.76	8.93	8.76	8.93	0.41	10.33	10.50	10.33	10.50	XXX
72285	26	A	X-ray c/t spine disk	1.16	0.34	0.38	0.34	0.38	0.04	1.54	1.58	1.54	1.58	XXX
72285	TC	A	X-ray c/t spine disk	0.00	8.42	8.55	8.42	8.55	0.37	8.79	8.92	8.79	8.92	XXX
72295		A	X-ray of lower spine disk	0.83	8.14	8.35	8.14	8.35	0.38	9.35	9.56	9.35	9.56	XXX
72295	26	A	X-ray of lower spine disk	0.83	0.24	0.33	0.24	0.33	0.04	1.11	1.20	1.11	1.20	XXX
72295	TC	A	X-ray of lower spine disk	0.00	7.90	8.02	7.90	8.02	0.34	8.24	8.36	8.24	8.36	XXX
73000		A	X-ray exam of collar bone	0.16	0.56	0.59	0.56	0.59	0.03	0.75	0.78	0.75	0.78	XXX
73000	26	A	X-ray exam of collar bone	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
73000	TC	A	X-ray exam of collar bone	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
73010		A	X-ray exam of shoulder blade	0.17	0.57	0.60	0.57	0.60	0.03	0.77	0.80	0.77	0.80	XXX
73010	26	A	X-ray exam of shoulder blade	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73010	TC	A	X-ray exam of shoulder blade	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
73020		A	X-ray exam of shoulder	0.15	0.52	0.55	0.52	0.55	0.03	0.70	0.73	0.70	0.73	XXX
73020	26	A	X-ray exam of shoulder	0.15	0.04	0.06	0.04	0.06	0.01	0.20	0.22	0.20	0.22	XXX
73020	TC	A	X-ray exam of shoulder	0.00	0.48	0.49	0.48	0.49	0.02	0.50	0.51	0.50	0.51	XXX
73030		A	X-ray exam of shoulder	0.18	0.62	0.65	0.62	0.65	0.04	0.84	0.87	0.84	0.87	XXX
73030	26	A	X-ray exam of shoulder	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
73030	TC	A	X-ray exam of shoulder	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
73040		A	Contrast x-ray of shoulder	0.54	2.26	2.35	2.26	2.35	0.12	2.92	3.01	2.92	3.01	XXX
73040	26	A	Contrast x-ray of shoulder	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
73040	TC	A	Contrast x-ray of shoulder	0.00	2.11	2.14	2.11	2.14	0.10	2.21	2.24	2.21	2.24	XXX
73050		A	X-ray exam of shoulders	0.20	0.73	0.76	0.73	0.76	0.04	0.97	1.00	0.97	1.00	XXX
73050	26	A	X-ray exam of shoulders	0.20	0.06	0.08	0.06	0.08	0.01	0.27	0.29	0.27	0.29	XXX
73050	TC	A	X-ray exam of shoulders	0.00	0.67	0.68	0.67	0.68	0.03	0.70	0.71	0.70	0.71	XXX
73060		A	X-ray exam of humerus	0.17	0.62	0.65	0.62	0.65	0.04	0.83	0.86	0.83	0.86	XXX
73060	26	A	X-ray exam of humerus	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73060	TC	A	X-ray exam of humerus	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
73070		A	X-ray exam of elbow	0.15	0.56	0.59	0.56	0.59	0.03	0.74	0.77	0.74	0.77	XXX
73070	26	A	X-ray exam of elbow	0.15	0.04	0.06	0.04	0.06	0.01	0.20	0.22	0.20	0.22	XXX
73070	TC	A	X-ray exam of elbow	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
73080		A	X-ray exam of elbow	0.17	0.62	0.65	0.62	0.65	0.04	0.83	0.86	0.83	0.86	XXX
73080	26	A	X-ray exam of elbow	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73080	TC	A	X-ray exam of elbow	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
73085		A	Contrast x-ray of elbow	0.54	2.28	2.36	2.28	2.36	0.12	2.94	3.02	2.94	3.02	XXX
73085	26	A	Contrast x-ray of elbow	0.54	0.17	0.22	0.17	0.22	0.02	0.73	0.78	0.73	0.78	XXX
73085	TC	A	Contrast x-ray of elbow	0.00	2.11	2.14	2.11	2.14	0.10	2.21	2.24	2.21	2.24	XXX
73090		A	X-ray exam of forearm	0.16	0.56	0.59	0.56	0.59	0.03	0.75	0.78	0.75	0.78	XXX
73090	26	A	X-ray exam of forearm	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
73090	TC	A	X-ray exam of forearm	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
73092		A	X-ray exam of arm, infant	0.16	0.54	0.57	0.54	0.57	0.03	0.73	0.76	0.73	0.76	XXX
73092	26	A	X-ray exam of arm, infant	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
73092	TC	A	X-ray exam of arm, infant	0.00	0.50	0.51	0.50	0.51	0.02	0.52	0.53	0.52	0.53	XXX
73100		A	X-ray exam of wrist	0.16	0.55	0.58	0.55	0.58	0.03	0.74	0.77	0.74	0.77	XXX
73100	26	A	X-ray exam of wrist	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73100	TC	A	X-ray exam of wrist	0.00	0.50	0.51	0.50	0.51	0.02	0.52	0.53	0.52	0.53	XXX
73110		A	X-ray exam of wrist	0.17	0.58	0.61	0.58	0.61	0.03	0.78	0.81	0.78	0.81	XXX
73110	26	A	X-ray exam of wrist	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73110	TC	A	X-ray exam of wrist	0.00	0.53	0.54	0.53	0.54	0.02	0.55	0.56	0.55	0.56	XXX
73115		A	Contrast x-ray of wrist	0.54	1.74	1.83	1.74	1.83	0.10	2.38	2.47	2.38	2.47	XXX
73115	26	A	Contrast x-ray of wrist	0.54	0.16	0.22	0.16	0.22	0.02	0.72	0.78	0.72	0.78	XXX
73115	TC	A	Contrast x-ray of wrist	0.00	1.58	1.61	1.58	1.61	0.08	1.66	1.69	1.66	1.69	XXX
73120		A	X-ray exam of hand	0.16	0.55	0.58	0.55	0.58	0.03	0.74	0.77	0.74	0.77	XXX
73120	26	A	X-ray exam of hand	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73120	TC	A	X-ray exam of hand	0.00	0.50	0.51	0.50	0.51	0.02	0.52	0.53	0.52	0.53	XXX
73130		A	X-ray exam of hand	0.17	0.58	0.61	0.58	0.61	0.03	0.78	0.81	0.78	0.81	XXX
73130	26	A	X-ray exam of hand	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73130	TC	A	X-ray exam of hand	0.00	0.53	0.54	0.53	0.54	0.02	0.55	0.56	0.55	0.56	XXX
73140		A	X-ray exam of finger(s)	0.13	0.46	0.49	0.46	0.49	0.03	0.62	0.65	0.62	0.65	XXX
73140	26	A	X-ray exam of finger(s)	0.13	0.04	0.06	0.04	0.06	0.01	0.18	0.20	0.18	0.20	XXX
73140	TC	A	X-ray exam of finger(s)	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
73200		A	CAT scan of arm	1.09	5.28	5.47	5.28	5.47	0.26	6.63	6.82	6.63	6.82	XXX
73200	26	A	CAT scan of arm	1.09	0.30	0.41	0.30	0.41	0.04	1.43	1.54	1.43	1.54	XXX
73200	TC	A	CAT scan of arm	0.00	4.98	5.06	4.98	5.06	0.22	5.20	5.28	5.20	5.28	XXX
73201		A	Contrast CAT scan of arm	1.16	6.26	6.47	6.26	6.47	0.32	7.74	7.95	7.74	7.95	XXX
73201	26	A	Contrast CAT scan of arm	1.16	0.32	0.44	0.32	0.44	0.05	1.53	1.65	1.53	1.65	XXX
73201	TC	A	Contrast CAT scan of arm	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
73202		A	Contrast CAT scans of arm	1.22	7.79	8.03	7.79	8.03	0.38	9.39	9.63	9.39	9.63	XXX
73202	26	A	Contrast CAT scans of arm	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
73202	TC	A	Contrast CAT scans of arm	0.00	7.46	7.57	7.46	7.57	0.33	7.79	7.90	7.79	7.90	XXX
73220		A	Magnetic image, arm/hand	1.48	11.67	12.00	11.67	12.00	0.56	13.71	14.04	13.71	14.04	XXX
73220	26	A	Magnetic image, arm/hand	1.48	0.41	0.57	0.41	0.57	0.06	1.95	2.11	1.95	2.11	XXX
73220	TC	A	Magnetic image, arm/hand	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
73221		A	Magnetic image, joint of arm	1.48	11.67	11.87	11.67	11.87	0.56	13.71	13.91	13.71	13.91	XXX
73221	26	A	Magnetic image, joint of arm	1.48	0.41	0.44	0.41	0.44	0.06	1.95	1.98	1.95	1.98	XXX
73221	TC	A	Magnetic image, joint of arm	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
73225		N	Magnetic image, upper (mra)	+1.73	11.93	12.13	11.93	12.13	0.57	14.23	14.43	14.23	14.43	XXX
73225	26	N	Magnetic image, upper (mra)	+1.73	0.67	0.70	0.67	0.70	0.07	2.47	2.50	2.47	2.50	XXX
73225	TC	N	Magnetic image, upper (mra)	+0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
73500		A	X-ray exam of hip	0.17	0.53	0.56	0.53	0.56	0.03	0.73	0.76	0.73	0.76	XXX
73500	26	A	X-ray exam of hip	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73500	TC	A	X-ray exam of hip	0.00	0.48	0.49	0.48	0.49	0.02	0.50	0.51	0.50	0.51	XXX
73510		A	X-ray exam of hip	0.21	0.63	0.67	0.63	0.67	0.04	0.88	0.92	0.88	0.92	XXX
73510	26	A	X-ray exam of hip	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	XXX
73510	TC	A	X-ray exam of hip	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
73520		A	X-ray exam of hips	0.26	0.74	0.78	0.74	0.78	0.04	1.04	1.08	1.04	1.08	XXX
73520	26	A	X-ray exam of hips	0.26	0.07	0.10	0.07	0.10	0.01	0.34	0.37	0.34	0.37	XXX
73520	TC	A	X-ray exam of hips	0.00	0.67	0.68	0.67	0.68	0.03	0.70	0.71	0.70	0.71	XXX
73525		A	Contrast x-ray of hip	0.54	2.26	2.35	2.26	2.35	0.12	2.92	3.01	2.92	3.01	XXX
73525	26	A	Contrast x-ray of hip	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
73525	TC	A	Contrast x-ray of hip	0.00	2.11	2.14	2.11	2.14	0.10	2.21	2.24	2.21	2.24	XXX
73530		A	X-ray exam of hip	0.29	0.60	0.64	0.60	0.64	0.03	0.92	0.96	0.92	0.96	XXX
73530	26	A	X-ray exam of hip	0.29	0.08	0.11	0.08	0.11	0.01	0.38	0.41	0.38	0.41	XXX
73530	TC	A	X-ray exam of hip	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
73540		A	X-ray exam of pelvis & hips	0.20	0.63	0.67	0.63	0.67	0.04	0.87	0.91	0.87	0.91	XXX
73540	26	A	X-ray exam of pelvis & hips	0.20	0.06	0.09	0.06	0.09	0.01	0.27	0.30	0.27	0.30	XXX
73540	TC	A	X-ray exam of pelvis & hips	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
73542		A	X-ray exam, sacroiliac joint	0.54	2.26	2.26	2.26	2.26	0.14	2.94	2.94	2.94	2.94	XXX
73542	26	A	X-ray exam, sacroiliac joint	0.54	0.15	0.15	0.15	0.15	0.04	0.73	0.73	0.73	0.73	XXX
73542	TC	A	X-ray exam, sacroiliac joint	0.00	2.11	2.11	2.11	2.11	0.10	2.21	2.21	2.21	2.21	XXX
73550		A	X-ray exam of thigh	0.17	0.62	0.65	0.62	0.65	0.04	0.83	0.86	0.83	0.86	XXX
73550	26	A	X-ray exam of thigh	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73550	TC	A	X-ray exam of thigh	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
73560		A	X-ray exam of knee, 1 or 2	0.17	0.57	0.60	0.57	0.60	0.03	0.77	0.80	0.77	0.80	XXX
73560	26	A	X-ray exam of knee, 1 or 2	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73560	TC	A	X-ray exam of knee, 1 or 2	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
73562		A	X-ray exam of knee, 3	0.18	0.62	0.66	0.62	0.66	0.04	0.84	0.88	0.84	0.88	XXX
73562	26	A	X-ray exam of knee, 3	0.18	0.05	0.08	0.05	0.08	0.01	0.24	0.27	0.24	0.27	XXX
73562	TC	A	X-ray exam of knee, 3	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
73564		A	X-ray exam, knee, 4 or more	0.22	0.68	0.72	0.68	0.72	0.04	0.94	0.98	0.94	0.98	XXX
73564	26	A	X-ray exam, knee, 4 or more	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
73564	TC	A	X-ray exam, knee, 4 or more	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
73565		A	X-ray exam of knees	0.17	0.55	0.58	0.55	0.58	0.03	0.75	0.78	0.75	0.78	XXX
73565	26	A	X-ray exam of knees	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73565	TC	A	X-ray exam of knees	0.00	0.50	0.51	0.50	0.51	0.02	0.52	0.53	0.52	0.53	XXX
73580		A	Contrast x-ray of knee joint	0.54	2.78	2.88	2.78	2.88	0.14	3.46	3.56	3.46	3.56	XXX
73580	26	A	Contrast x-ray of knee joint	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
73580	TC	A	Contrast x-ray of knee joint	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
73590		A	X-ray exam of lower leg	0.17	0.57	0.60	0.57	0.60	0.03	0.77	0.80	0.77	0.80	XXX
73590	26	A	X-ray exam of lower leg	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73590	TC	A	X-ray exam of lower leg	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
73592		A	X-ray exam of leg, infant	0.16	0.55	0.58	0.55	0.58	0.03	0.74	0.77	0.74	0.77	XXX
73592	26	A	X-ray exam of leg, infant	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73592	TC	A	X-ray exam of leg, infant	0.00	0.50	0.51	0.50	0.51	0.02	0.52	0.53	0.52	0.53	XXX
73600		A	X-ray exam of ankle	0.16	0.55	0.58	0.55	0.58	0.03	0.74	0.77	0.74	0.77	XXX
73600	26	A	X-ray exam of ankle	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73600	TC	A	X-ray exam of ankle	0.00	0.50	0.51	0.50	0.51	0.02	0.52	0.53	0.52	0.53	XXX
73610		A	X-ray exam of ankle	0.17	0.58	0.61	0.58	0.61	0.03	0.78	0.81	0.78	0.81	XXX
73610	26	A	X-ray exam of ankle	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73610	TC	A	X-ray exam of ankle	0.00	0.53	0.54	0.53	0.54	0.02	0.55	0.56	0.55	0.56	XXX
73615		A	Contrast x-ray of ankle	0.54	2.27	2.36	2.27	2.36	0.12	2.93	3.02	2.93	3.02	XXX
73615	26	A	Contrast x-ray of ankle	0.54	0.16	0.22	0.16	0.22	0.02	0.72	0.78	0.72	0.78	XXX
73615	TC	A	Contrast x-ray of ankle	0.00	2.11	2.14	2.11	2.14	0.10	2.21	2.24	2.21	2.24	XXX
73620		A	X-ray exam of foot	0.16	0.55	0.58	0.55	0.58	0.03	0.74	0.77	0.74	0.77	XXX
73620	26	A	X-ray exam of foot	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73620	TC	A	X-ray exam of foot	0.00	0.50	0.51	0.50	0.51	0.02	0.52	0.53	0.52	0.53	XXX
73630		A	X-ray exam of foot	0.17	0.58	0.61	0.58	0.61	0.03	0.78	0.81	0.78	0.81	XXX
73630	26	A	X-ray exam of foot	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73630	TC	A	X-ray exam of foot	0.00	0.53	0.54	0.53	0.54	0.02	0.55	0.56	0.55	0.56	XXX
73650		A	X-ray exam of heel	0.16	0.53	0.56	0.53	0.56	0.03	0.72	0.75	0.72	0.75	XXX
73650	26	A	X-ray exam of heel	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73650	TC	A	X-ray exam of heel	0.00	0.48	0.49	0.48	0.49	0.02	0.50	0.51	0.50	0.51	XXX
73660		A	X-ray exam of toe(s)	0.13	0.46	0.49	0.46	0.49	0.03	0.62	0.65	0.62	0.65	XXX
73660	26	A	X-ray exam of toe(s)	0.13	0.04	0.06	0.04	0.06	0.01	0.18	0.20	0.18	0.20	XXX
73660	TC	A	X-ray exam of toe(s)	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
73700		A	CAT scan of leg	1,09	5.28	5.47	5.28	5.47	0.26	6.63	6.82	6.63	6.82	XXX
73700	26	A	CAT scan of leg	1.09	0.30	0.41	0.30	0.41	0.04	1.43	1.54	1.43	1.54	XXX
73700	TC	A	CAT scan of leg	0.00	4.98	5.06	4.98	5.06	0.22	5.20	5.28	5.20	5.28	XXX
73701		A	Contrast CAT scan of leg	1.16	6.26	6.47	6.26	6.47	0.32	7.74	7.95	7.74	7.95	XXX
73701	26	A	Contrast CAT scan of leg	1.16	0.32	0.44	0.32	0.44	0.05	1.53	1.65	1.53	1.65	XXX
73701	TC	A	Contrast CAT scan of leg	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
73702		A	Contrast CAT scans of leg	1.22	7.79	8.03	7.79	8.03	0.38	9.39	9.63	9.39	9.63	XXX
73702	26	A	Contrast CAT scans of leg	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
73702	TC	A	Contrast CAT scans of leg	0.00	7.46	7.57	7.46	7.57	0.33	7.79	7.90	7.79	7.90	XXX
73720		A	Magnetic image, leg/foot	1.48	11.67	12.00	11.67	12.00	0.56	13.71	14.04	13.71	14.04	XXX
73720	26	A	Magnetic image, leg/foot	1.48	0.41	0.57	0.41	0.57	0.06	1.95	2.11	1.95	2.11	XXX
73720	TC	A	Magnetic image, leg/foot	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
73721		A	Magnetic image, joint of leg	1.48	11.67	11.87	11.67	11.87	0.56	13.71	13.91	13.71	13.91	XXX
73721	26	A	Magnetic image, joint of leg	1.48	0.41	0.44	0.41	0.44	0.06	1.95	1.98	1.95	1.98	XXX
73721	TC	A	Magnetic image, joint of leg	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
73725		R	Magnetic image/lower (mra)	1.82	11.76	12.04	11.76	12.04	0.57	14.15	14.43	14.15	14.43	XXX
73725	26	R	Magnetic image/lower (mra)	1.82	0.50	0.61	0.50	0.61	0.07	2.39	2.50	2.39	2.50	XXX
73725	TC	R	Magnetic image/lower (mra)	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
74000		A	X-ray exam of abdomen	0.18	0.57	0.60	0.57	0.60	0.03	0.78	0.81	0.78	0.81	XXX
74000	26	A	X-ray exam of abdomen	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
74000	TC	A	X-ray exam of abdomen	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
74010		A	X-ray exam of abdomen	0.23	0.63	0.67	0.63	0.67	0.04	0.90	0.94	0.90	0.94	XXX
74010	26	A	X-ray exam of abdomen	0.23	0.06	0.09	0.06	0.09	0.01	0.30	0.33	0.30	0.33	XXX
74010	TC	A	X-ray exam of abdomen	0.00	0.57	0.58	0.57	0.58	0.03	0.60	0.61	0.60	0.61	XXX
74020		A	X-ray exam of abdomen	0.27	0.69	0.74	0.69	0.74	0.04	1.00	1.05	1.00	1.05	XXX
74020	26	A	X-ray exam of abdomen	0.27	0.07	0.11	0.07	0.11	0.01	0.35	0.39	0.35	0.39	XXX
74020	TC	A	X-ray exam of abdomen	0.00	0.62	0.63	0.62	0.63	0.03	0.65	0.66	0.65	0.66	XXX
74022		A	X-ray exam series, abdomen	0.32	0.83	0.88	0.83	0.88	0.05	1.20	1.25	1.20	1.25	XXX
74022	26	A	X-ray exam series, abdomen	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
74022	TC	A	X-ray exam series, abdomen	0.00	0.74	0.75	0.74	0.75	0.04	0.78	0.79	0.78	0.79	XXX
74150		A	CAT scan of abdomen	1.19	6.01	6.22	6.01	6.22	0.31	7.51	7.72	7.51	7.72	XXX
74150	26	A	CAT scan of abdomen	1.19	0.33	0.45	0.33	0.45	0.05	1.57	1.69	1.57	1.69	XXX
74150	TC	A	CAT scan of abdomen	0.00	5.68	5.77	5.68	5.77	0.26	5.94	6.03	5.94	6.03	XXX
74160		A	Contrast CAT scan of abdomen	1.27	7.23	7.46	7.23	7.46	0.36	8.86	9.09	8.86	9.09	XXX
74160	26	A	Contrast CAT scan of abdomen	1.27	0.35	0.48	0.35	0.48	0.05	1.67	1.80	1.67	1.80	XXX
74160	TC	A	Contrast CAT scan of abdomen	0.00	6.88	6.98	6.88	6.98	0.31	7.19	7.29	7.19	7.29	XXX
74170		A	Contrast CAT scans, abdomen	1.40	8.91	9.19	8.91	9.19	0.43	10.74	11.02	10.74	11.02	XXX
74170	26	A	Contrast CAT scans, abdomen	1.40	0.38	0.53	0.38	0.53	0.06	1.84	1.99	1.84	1.99	XXX
74170	TC	A	Contrast CAT scans, abdomen	0.00	8.53	8.66	8.53	8.66	0.37	8.90	9.03	8.90	9.03	XXX
74181		A	Magnetic image/abdomen (mri)	1.60	11.70	12.04	11.70	12.04	0.56	13.86	14.20	13.86	14.20	XXX
74181	26	A	Magnetic image/abdomen (mri)	1.60	0.44	0.61	0.44	0.61	0.06	2.10	2.27	2.10	2.27	XXX
74181	TC	A	Magnetic image/abdomen (mri)	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
74185		R	Magnetic image/abdomen (MRA)	1.80	11.75	12.07	11.75	12.07	0.57	14.12	14.44	14.12	14.44	XXX
74185	26	R	Magnetic image/abdomen (MRA)	1.80	0.49	0.64	0.49	0.64	0.07	2.36	2.51	2.36	2.51	XXX
74185	TC	R	Magnetic image/abdomen (MRA)	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
74190		A	X-ray exam of peritoneum	0.48	1.44	1.47	1.44	1.47	0.08	2.00	2.03	2.00	2.03	XXX
74190	26	A	X-ray exam of peritoneum	0.48	0.13	0.14	0.13	0.14	0.02	0.63	0.64	0.63	0.64	XXX
74190	TC	A	X-ray exam of peritoneum	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
74210		A	Contrst x-ray exam of throat	0.36	1.30	1.36	1.30	1.36	0.06	1.72	1.78	1.72	1.78	XXX
74210	26	A	Contrst x-ray exam of throat	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
74210	TC	A	Contrst x-ray exam of throat	0.00	1.20	1.22	1.20	1.22	0.05	1.25	1.27	1.25	1.27	XXX
74220		A	Contrast x-ray, esophagus	0.46	1.33	1.40	1.33	1.40	0.07	1.86	1.93	1.86	1.93	XXX
74220	26	A	Contrast x-ray, esophagus	0.46	0.13	0.18	0.13	0.18	0.02	0.61	0.66	0.61	0.66	XXX
74220	TC	A	Contrast x-ray, esophagus	0.00	1.20	1.22	1.20	1.22	0.05	1.25	1.27	1.25	1.27	XXX
74230		A	Cinema x-ray, throat/esoph	0.53	1.46	1.54	1.46	1.54	0.08	2.07	2.15	2.07	2.15	XXX
74230	26	A	Cinema x-ray, throat/esoph	0.53	0.15	0.21	0.15	0.21	0.02	0.70	0.76	0.70	0.76	XXX
74230	TC	A	Cinema x-ray, throat/esoph	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
74235		A	Remove esophagus obstruction	1.19	2.96	3.12	2.96	3.12	0.17	4.32	4.48	4.32	4.48	XXX
74235	26	A	Remove esophagus obstruction	1.19	0.33	0.45	0.33	0.45	0.05	1.57	1.69	1.57	1.69	XXX
74235	TC	A	Remove esophagus obstruction	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
74240		A	X-ray exam, upper gi tract	0.69	1.66	1.76	1.66	1.76	0.10	2.45	2.55	2.45	2.55	XXX
74240	26	A	X-ray exam, upper gi tract	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74240	TC	A	X-ray exam, upper gi tract	0.00	1.47	1.49	1.47	1.49	0.07	1.54	1.56	1.54	1.56	XXX
74241		A	X-ray exam, upper gi tract	0.69	1.69	1.79	1.69	1.79	0.10	2.48	2.58	2.48	2.58	XXX
74241	26	A	X-ray exam, upper gi tract	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74241	TC	A	X-ray exam, upper gi tract	0.00	1.50	1.52	1.50	1.52	0.07	1.57	1.59	1.57	1.59	XXX
74245		A	X-ray exam, upper gi tract	0.91	2.64	2.78	2.64	2.78	0.15	3.70	3.84	3.70	3.84	XXX
74245	26	A	X-ray exam, upper gi tract	0.91	0.25	0.35	0.25	0.35	0.04	1.20	1.30	1.20	1.30	XXX
74245	TC	A	X-ray exam, upper gi tract	0.00	2.39	2.43	2.39	2.43	0.11	2.50	2.54	2.50	2.54	XXX
74246		A	Contrst x-ray uppr gi tract	0.69	1.84	1.95	1.84	1.95	0.11	2.64	2.75	2.64	2.75	XXX
74246	26	A	Contrst x-ray uppr gi tract	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74246	TC	A	Contrst x-ray uppr gi tract	0.00	1.65	1.68	1.65	1.68	0.08	1.73	1.76	1.73	1.76	XXX
74247		A	Contrst x-ray uppr gi tract	0.69	1.88	1.99	1.88	1.99	0.12	2.69	2.80	2.69	2.80	XXX
74247	26	A	Contrst x-ray uppr gi tract	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74247	TC	A	Contrst x-ray uppr gi tract	0.00	1.69	1.72	1.69	1.72	0.09	1.78	1.81	1.78	1.81	XXX
74249		A	Contrst x-ray uppr gi tract	0.91	2.83	2.97	2.83	2.97	0.16	3.90	4.04	3.90	4.04	XXX
74249	26	A	Contrst x-ray uppr gi tract	0.91	0.25	0.35	0.25	0.35	0.04	1.20	1.30	1.20	1.30	XXX
74249	TC	A	Contrst x-ray uppr gi tract	0.00	2.58	2.62	2.58	2.62	0.12	2.70	2.74	2.70	2.74	XXX
74250		A	X-ray exam of small bowel	0.47	1.44	1.51	1.44	1.51	0.08	1.99	2.06	1.99	2.06	XXX
74250	26	A	X-ray exam of small bowel	0.47	0.13	0.18	0.13	0.18	0.02	0.62	0.67	0.62	0.67	XXX
74250	TC	A	X-ray exam of small bowel	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
74251		A	X-ray exam of small bowel	0.69	1.50	1.54	1.50	1.54	0.09	2.28	2.32	2.28	2.32	XXX
74251	26	A	X-ray exam of small bowel	0.69	0.19	0.21	0.19	0.21	0.03	0.91	0.93	0.91	0.93	XXX
74251	TC	A	X-ray exam of small bowel	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
74260		A	X-ray exam of small bowel	0.50	1.64	1.72	1.64	1.72	0.09	2.23	2.31	2.23	2.31	XXX
74260	26	A	X-ray exam of small bowel	0.50	0.14	0.20	0.14	0.20	0.02	0.66	0.72	0.66	0.72	XXX
74260	TC	A	X-ray exam of small bowel	0.00	1.50	1.52	1.50	1.52	0.07	1.57	1.59	1.57	1.59	XXX
74270		A	Contrast x-ray exam of colon	0.69	1.90	2.01	1.90	2.01	0.12	2.71	2.82	2.71	2.82	XXX
74270	26	A	Contrast x-ray exam of colon	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74270	TC	A	Contrast x-ray exam of colon	0.00	1.71	1.74	1.71	1.74	0.09	1.80	1.83	1.80	1.83	XXX
74280		A	Contrast x-ray exam of colon	0.99	2.51	2.66	2.51	2.66	0.15	3.65	3.80	3.65	3.80	XXX
74280	26	A	Contrast x-ray exam of colon	0.99	0.27	0.38	0.27	0.38	0.04	1.30	1.41	1.30	1.41	XXX
74280	TC	A	Contrast x-ray exam of colon	0.00	2.24	2.28	2.24	2.28	0.11	2.35	2.39	2.35	2.39	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
74283		A	Contrast x-ray exam of colon	2.02	3.12	3.38	3.12	3.38	0.20	5.34	5.60	5.34	5.60	XXX
74283	26	A	Contrast x-ray exam of colon	2.02	0.55	0.77	0.55	0.77	0.08	2.65	2.87	2.65	2.87	XXX
74283	TC	A	Contrast x-ray exam of colon	0.00	2.57	2.61	2.57	2.61	0.12	2.69	2.73	2.69	2.73	XXX
74290		A	Contrast x-ray, gallbladder	0.32	0.83	0.88	0.83	0.88	0.05	1.20	1.25	1.20	1.25	XXX
74290	26	A	Contrast x-ray, gallbladder	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
74290	TC	A	Contrast x-ray, gallbladder	0.00	0.74	0.75	0.74	0.75	0.04	0.78	0.79	0.78	0.79	XXX
74291		A	Contrast x-rays, gallbladder	0.20	0.47	0.51	0.47	0.51	0.03	0.70	0.74	0.70	0.74	XXX
74291	26	A	Contrast x-rays, gallbladder	0.20	0.05	0.08	0.05	0.08	0.01	0.26	0.29	0.26	0.29	XXX
74291	TC	A	Contrast x-rays, gallbladder	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
74300		C	X-ray bile ducts/pancreas	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
74300	26	A	X-ray bile ducts/pancreas	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
74300	TC	C	X-ray bile ducts/pancreas	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
74301		C	X-rays at surgery add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
74301	26	A	X-rays at surgery add-on	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	ZZZ
74301	TC	C	X-rays at surgery add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
74305		A	X-ray bile ducts/pancreas	0.42	0.90	0.96	0.90	0.96	0.06	1.38	1.44	1.38	1.44	XXX
74305	26	A	X-ray bile ducts/pancreas	0.42	0.11	0.16	0.11	0.16	0.02	0.55	0.60	0.55	0.60	XXX
74305	TC	A	X-ray bile ducts/pancreas	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
74320		A	Contrast x-ray of bile ducts	0.54	3.32	3.43	3.32	3.43	0.16	4.02	4.13	4.02	4.13	XXX
74320	26	A	Contrast x-ray of bile ducts	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74320	TC	A	Contrast x-ray of bile ducts	0.00	3.17	3.22	3.17	3.22	0.14	3.31	3.36	3.31	3.36	XXX
74327		A	X-ray bile stone removal	0.70	1.96	2.07	1.96	2.07	0.12	2.78	2.89	2.78	2.89	XXX
74327	26	A	X-ray bile stone removal	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
74327	TC	A	X-ray bile stone removal	0.00	1.77	1.80	1.77	1.80	0.09	1.86	1.89	1.86	1.89	XXX
74328		A	Xray bile duct endoscopy	0.70	3.36	3.49	3.36	3.49	0.17	4.23	4.36	4.23	4.36	XXX
74328	26	A	Xray bile duct endoscopy	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
74328	TC	A	Xray bile duct endoscopy	0.00	3.17	3.22	3.17	3.22	0.14	3.31	3.36	3.31	3.36	XXX
74329		A	X-ray for pancreas endoscopy	0.70	3.36	3.49	3.36	3.49	0.17	4.23	4.36	4.23	4.36	XXX
74329	26	A	X-ray for pancreas endoscopy	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
74329	TC	A	X-ray for pancreas endoscopy	0.00	3.17	3.22	3.17	3.22	0.14	3.31	3.36	3.31	3.36	XXX
74330		A	X-ray bile/panc endoscopy	0.90	3.42	3.52	3.42	3.52	0.18	4.50	4.60	4.50	4.60	XXX
74330	26	A	X-ray bile/panc endoscopy	0.90	0.25	0.30	0.25	0.30	0.04	1.19	1.24	1.19	1.24	XXX
74330	TC	A	X-ray bile/panc endoscopy	0.00	3.17	3.22	3.17	3.22	0.14	3.31	3.36	3.31	3.36	XXX
74340		A	X-ray guide for GI tube	0.54	2.78	2.88	2.78	2.88	0.14	3.46	3.56	3.46	3.56	XXX
74340	26	A	X-ray guide for GI tube	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74340	TC	A	X-ray guide for GI tube	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
74350		A	X-ray guide, stomach tube	0.76	3.38	3.52	3.38	3.52	0.17	4.31	4.45	4.31	4.45	XXX
74350	26	A	X-ray guide, stomach tube	0.76	0.21	0.30	0.21	0.30	0.03	1.00	1.09	1.00	1.09	XXX
74350	TC	A	X-ray guide, stomach tube	0.00	3.17	3.22	3.17	3.22	0.14	3.31	3.36	3.31	3.36	XXX
74355		A	X-ray guide, intestinal tube	0.76	2.84	2.97	2.84	2.97	0.15	3.75	3.88	3.75	3.88	XXX
74355	26	A	X-ray guide, intestinal tube	0.76	0.21	0.30	0.21	0.30	0.03	1.00	1.09	1.00	1.09	XXX
74355	TC	A	X-ray guide, intestinal tube	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
74360		A	X-ray guide, GI dilation	0.54	3.35	3.45	3.35	3.45	0.16	4.05	4.15	4.05	4.15	XXX
74360	26	A	X-ray guide, GI dilation	0.54	0.18	0.23	0.18	0.23	0.02	0.74	0.79	0.74	0.79	XXX
74360	TC	A	X-ray guide, GI dilation	0.00	3.17	3.22	3.17	3.22	0.14	3.31	3.36	3.31	3.36	XXX
74363		A	X-ray, bile duct dilation	0.88	6.37	6.56	6.37	6.56	0.32	7.57	7.76	7.57	7.76	XXX
74363	26	A	X-ray, bile duct dilation	0.88	0.24	0.34	0.24	0.34	0.04	1.16	1.26	1.16	1.26	XXX
74363	TC	A	X-ray, bile duct dilation	0.00	6.13	6.22	6.13	6.22	0.28	6.41	6.50	6.41	6.50	XXX
74400		A	Contrst x-ray, urinary tract	0.49	1.82	1.91	1.82	1.91	0.11	2.42	2.51	2.42	2.51	XXX
74400	26	A	Contrst x-ray, urinary tract	0.49	0.13	0.19	0.13	0.19	0.02	0.64	0.70	0.64	0.70	XXX
74400	TC	A	Contrst x-ray, urinary tract	0.00	1.69	1.72	1.69	1.72	0.09	1.78	1.81	1.78	1.81	XXX
74410		A	Contrst x-ray, urinary tract	0.49	2.09	2.18	2.09	2.18	0.11	2.69	2.78	2.69	2.78	XXX
74410	26	A	Contrst x-ray, urinary tract	0.49	0.13	0.19	0.13	0.19	0.02	0.64	0.70	0.64	0.70	XXX
74410	TC	A	Contrst x-ray, urinary tract	0.00	1.96	1.99	1.96	1.99	0.09	2.05	2.08	2.05	2.08	XXX
74415		A	Contrst x-ray, urinary tract	0.49	2.26	2.35	2.26	2.35	0.12	2.87	2.96	2.87	2.96	XXX
74415	26	A	Contrst x-ray, urinary tract	0.49	0.13	0.19	0.13	0.19	0.02	0.64	0.70	0.64	0.70	XXX
74415	TC	A	Contrst x-ray, urinary tract	0.00	2.13	2.16	2.13	2.16	0.10	2.23	2.26	2.23	2.26	XXX
74420		A	Contrst x-ray, urinary tract	0.36	2.73	2.81	2.73	2.81	0.14	3.23	3.31	3.23	3.31	XXX
74420	26	A	Contrst x-ray, urinary tract	0.36	0.10	0.14	0.10	0.14	0.02	0.48	0.52	0.48	0.52	XXX
74420	TC	A	Contrst x-ray, urinary tract	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
74425		A	Contrst x-ray, urinary tract	0.36	1.41	1.47	1.41	1.47	0.07	1.84	1.90	1.84	1.90	XXX
74425	26	A	Contrst x-ray, urinary tract	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
74425	TC	A	Contrst x-ray, urinary tract	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
74430		A	Contrast x-ray, bladder	0.32	1.15	1.21	1.15	1.21	0.06	1.53	1.59	1.53	1.59	XXX
74430	26	A	Contrast x-ray, bladder	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
74430	TC	A	Contrast x-ray, bladder	0.00	1.06	1.08	1.06	1.08	0.05	1.11	1.13	1.11	1.13	XXX
74440		A	X-ray, male genital tract	0.38	1.25	1.31	1.25	1.31	0.07	1.70	1.76	1.70	1.76	XXX
74440	26	A	X-ray, male genital tract	0.38	0.11	0.15	0.11	0.15	0.02	0.51	0.55	0.51	0.55	XXX
74440	TC	A	X-ray, male genital tract	0.00	1.14	1.16	1.14	1.16	0.05	1.19	1.21	1.19	1.21	XXX
74445		A	X-ray exam of penis	1.14	1.48	1.60	1.48	1.60	0.11	2.73	2.85	2.73	2.85	XXX
74445	26	A	X-ray exam of penis	1.14	0.34	0.44	0.34	0.44	0.06	1.54	1.64	1.54	1.64	XXX
74445	TC	A	X-ray exam of penis	0.00	1.14	1.16	1.14	1.16	0.05	1.19	1.21	1.19	1.21	XXX
74450		A	X-ray, urethra/bladder	0.33	1.56	1.62	1.56	1.62	0.08	1.97	2.03	1.97	2.03	XXX
74450	26	A	X-ray, urethra/bladder	0.33	0.09	0.13	0.09	0.13	0.01	0.43	0.47	0.43	0.47	XXX
74450	TC	A	X-ray, urethra/bladder	0.00	1.47	1.49	1.47	1.49	0.07	1.54	1.56	1.54	1.56	XXX
74455		A	X-ray, urethra/bladder	0.33	1.67	1.74	1.67	1.74	0.09	2.09	2.16	2.09	2.16	XXX
74455	26	A	X-ray, urethra/bladder	0.33	0.09	0.13	0.09	0.13	0.01	0.43	0.47	0.43	0.47	XXX
74455	TC	A	X-ray, urethra/bladder	0.00	1.58	1.61	1.58	1.61	0.08	1.66	1.69	1.66	1.69	XXX
74470		A	X-ray exam of kidney lesion	0.54	1.40	1.48	1.40	1.48	0.08	2.02	2.10	2.02	2.10	XXX
74470	26	A	X-ray exam of kidney lesion	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74470	TC	A	X-ray exam of kidney lesion	0.00	1.25	1.27	1.25	1.27	0.06	1.31	1.33	1.31	1.33	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
74475		A	X-ray control, cath insert	0.54	4.24	4.36	4.24	4.36	0.21	4.99	5.11	4.99	5.11	XXX
74475	26	A	X-ray control, cath insert	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74475	TC	A	X-ray control, cath insert	0.00	4.09	4.15	4.09	4.15	0.19	4.28	4.34	4.28	4.34	XXX
74480		A	X-ray control, cath insert	0.54	4.24	4.36	4.24	4.36	0.21	4.99	5.11	4.99	5.11	XXX
74480	26	A	X-ray control, cath insert	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74480	TC	A	X-ray control, cath insert	0.00	4.09	4.15	4.09	4.15	0.19	4.28	4.34	4.28	4.34	XXX
74485		A	X-ray guide, GU dilation	0.54	3.32	3.43	3.32	3.43	0.16	4.02	4.13	4.02	4.13	XXX
74485	26	A	X-ray guide, GU dilation	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74485	TC	A	X-ray guide, GU dilation	0.00	3.17	3.22	3.17	3.22	0.14	3.31	3.36	3.31	3.36	XXX
74710		A	X-ray measurement of pelvis	0.34	1.15	1.21	1.15	1.21	0.06	1.55	1.61	1.55	1.61	XXX
74710	26	A	X-ray measurement of pelvis	0.34	0.09	0.13	0.09	0.13	0.01	0.44	0.48	0.44	0.48	XXX
74710	TC	A	X-ray measurement of pelvis	0.00	1.06	1.08	1.06	1.08	0.05	1.11	1.13	1.11	1.13	XXX
74740		A	X-ray, female genital tract	0.38	1.42	1.48	1.42	1.48	0.08	1.88	1.94	1.88	1.94	XXX
74740	26	A	X-ray, female genital tract	0.38	0.11	0.15	0.11	0.15	0.02	0.51	0.55	0.51	0.55	XXX
74740	TC	A	X-ray, female genital tract	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
74742		A	X-ray, fallopian tube	0.61	3.34	3.44	3.34	3.44	0.16	4.11	4.21	4.11	4.21	XXX
74742	26	A	X-ray, fallopian tube	0.61	0.17	0.22	0.17	0.22	0.02	0.80	0.85	0.80	0.85	XXX
74742	TC	A	X-ray, fallopian tube	0.00	3.17	3.22	3.17	3.22	0.14	3.31	3.36	3.31	3.36	XXX
74775		A	X-ray exam of perineum	0.62	1.65	1.74	1.65	1.74	0.10	2.37	2.46	2.37	2.46	XXX
74775	26	A	X-ray exam of perineum	0.62	0.18	0.25	0.18	0.25	0.03	0.83	0.90	0.83	0.90	XXX
74775	TC	A	X-ray exam of perineum	0.00	1.47	1.49	1.47	1.49	0.07	1.54	1.56	1.54	1.56	XXX
75552		A	Magnetic image, myocardium	1.60	11.71	12.05	11.71	12.05	0.56	13.87	14.21	13.87	14.21	XXX
75552	26	A	Magnetic image, myocardium	1.60	0.45	0.62	0.45	0.62	0.06	2.11	2.28	2.11	2.28	XXX
75552	TC	A	Magnetic image, myocardium	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
75553		A	Magnetic image, myocardium	2.00	11.80	12.09	11.80	12.09	0.58	14.38	14.67	14.38	14.67	XXX
75553	26	A	Magnetic image, myocardium	2.00	0.54	0.66	0.54	0.66	0.08	2.62	2.74	2.62	2.74	XXX
75553	TC	A	Magnetic image, myocardium	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
75554		A	Cardiac MRI/function	1.83	11.84	12.11	11.84	12.11	0.57	14.24	14.51	14.24	14.51	XXX
75554	26	A	Cardiac MRI/function	1.83	0.58	0.68	0.58	0.68	0.07	2.48	2.58	2.48	2.58	XXX
75554	TC	A	Cardiac MRI/function	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
75555		A	Cardiac MRI/limited study	1.74	11.89	12.14	11.89	12.14	0.56	14.19	14.44	14.19	14.44	XXX
75555	26	A	Cardiac MRI/limited study	1.74	0.63	0.71	0.63	0.71	0.06	2.43	2.51	2.43	2.51	XXX
75555	TC	A	Cardiac MRI/limited study	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
75556		N	Cardiac MRI/flow mapping	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
75600		A	Contrast x-ray exam of aorta	0.49	12.86	13.07	12.86	13.07	0.58	13.93	14.14	13.93	14.14	XXX
75600	26	A	Contrast x-ray exam of aorta	0.49	0.20	0.22	0.20	0.22	0.02	0.71	0.73	0.71	0.73	XXX
75600	TC	A	Contrast x-ray exam of aorta	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75605		A	Contrast x-ray exam of aorta	1.14	13.03	13.31	13.03	13.31	0.60	14.77	15.05	14.77	15.05	XXX
75605	26	A	Contrast x-ray exam of aorta	1.14	0.37	0.46	0.37	0.46	0.04	1.55	1.64	1.55	1.64	XXX
75605	TC	A	Contrast x-ray exam of aorta	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75625		A	Contrast x-ray exam of aorta	1.14	12.99	13.29	12.99	13.29	0.61	14.74	15.04	14.74	15.04	XXX
75625	26	A	Contrast x-ray exam of aorta	1.14	0.33	0.44	0.33	0.44	0.05	1.52	1.63	1.52	1.63	XXX
75625	TC	A	Contrast x-ray exam of aorta	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75630		A	X-ray aorta, leg arteries	1.79	13.74	13.98	13.74	13.98	0.66	16.19	16.43	16.19	16.43	XXX
75630	26	A	X-ray aorta, leg arteries	1.79	0.55	0.59	0.55	0.59	0.07	2.41	2.45	2.41	2.45	XXX
75630	TC	A	X-ray aorta, leg arteries	0.00	13.19	13.39	13.19	13.39	0.59	13.78	13.98	13.78	13.98	XXX
75650		A	Artery x-rays, head & neck	1.49	13.08	13.42	13.08	13.42	0.62	15.19	15.53	15.19	15.53	XXX
75650	26	A	Artery x-rays, head & neck	1.49	0.42	0.57	0.42	0.57	0.06	1.97	2.12	1.97	2.12	XXX
75650	TC	A	Artery x-rays, head & neck	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75658		A	Artery x-rays, arm	1.31	13.13	13.40	13.13	13.40	0.61	15.05	15.32	15.05	15.32	XXX
75658	26	A	Artery x-rays, arm	1.31	0.47	0.55	0.47	0.55	0.05	1.83	1.91	1.83	1.91	XXX
75658	TC	A	Artery x-rays, arm	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75660		A	Artery x-rays, head & neck	1.31	13.05	13.36	13.05	13.36	0.61	14.97	15.28	14.97	15.28	XXX
75660	26	A	Artery x-rays, head & neck	1.31	0.39	0.51	0.39	0.51	0.05	1.75	1.87	1.75	1.87	XXX
75660	TC	A	Artery x-rays, head & neck	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75662		A	Artery x-rays, head & neck	1.66	13.22	13.53	13.22	13.53	0.62	15.50	15.81	15.50	15.81	XXX
75662	26	A	Artery x-rays, head & neck	1.66	0.56	0.68	0.56	0.68	0.06	2.28	2.40	2.28	2.40	XXX
75662	TC	A	Artery x-rays, head & neck	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75665		A	Artery x-rays, head & neck	1.31	13.04	13.36	13.04	13.36	0.62	14.97	15.29	14.97	15.29	XXX
75665	26	A	Artery x-rays, head & neck	1.31	0.38	0.51	0.38	0.51	0.06	1.75	1.88	1.75	1.88	XXX
75665	TC	A	Artery x-rays, head & neck	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75671		A	Artery x-rays, head & neck	1.66	13.13	13.49	13.13	13.49	0.63	15.42	15.78	15.42	15.78	XXX
75671	26	A	Artery x-rays, head & neck	1.66	0.47	0.64	0.47	0.64	0.07	2.20	2.37	2.20	2.37	XXX
75671	TC	A	Artery x-rays, head & neck	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75676		A	Artery x-rays, neck	1.31	13.05	13.36	13.05	13.36	0.62	14.98	15.29	14.98	15.29	XXX
75676	26	A	Artery x-rays, neck	1.31	0.39	0.51	0.39	0.51	0.06	1.76	1.88	1.76	1.88	XXX
75676	TC	A	Artery x-rays, neck	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75680		A	Artery x-rays, neck	1.66	13.13	13.49	13.13	13.49	0.63	15.42	15.78	15.42	15.78	XXX
75680	26	A	Artery x-rays, neck	1.66	0.47	0.64	0.47	0.64	0.07	2.20	2.37	2.20	2.37	XXX
75680	TC	A	Artery x-rays, neck	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75685		A	Artery x-rays, spine	1.31	13.03	13.35	13.03	13.35	0.61	14.95	15.27	14.95	15.27	XXX
75685	26	A	Artery x-rays, spine	1.31	0.37	0.50	0.37	0.50	0.05	1.73	1.86	1.73	1.86	XXX
75685	TC	A	Artery x-rays, spine	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75705		A	Artery x-rays, spine	2.18	13.28	13.69	13.28	13.69	0.65	16.11	16.52	16.11	16.52	XXX
75705	26	A	Artery x-rays, spine	2.18	0.62	0.84	0.62	0.84	0.09	2.89	3.11	2.89	3.11	XXX
75705	TC	A	Artery x-rays, spine	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75710		A	Artery x-rays, arm/leg	1.14	13.01	13.30	13.01	13.30	0.61	14.76	15.05	14.76	15.05	XXX
75710	26	A	Artery x-rays, arm/leg	1.14	0.35	0.45	0.35	0.45	0.05	1.54	1.64	1.54	1.64	XXX
75710	TC	A	Artery x-rays, arm/leg	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75716		A	Artery x-rays, arms/legs	1.31	13.03	13.35	13.03	13.35	0.61	14.95	15.27	14.95	15.27	XXX
75716	26	A	Artery x-rays, arms/legs	1.31	0.37	0.50	0.37	0.50	0.05	1.73	1.86	1.73	1.86	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
75716	TC	A	Artery x-rays, arms/legs	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75722		A	Artery x-rays, kidney	1.14	13.03	13.31	13.03	13.31	0.60	14.77	15.05	14.77	15.05	XXX
75722	26	A	Artery x-rays, kidney	1.14	0.37	0.46	0.37	0.46	0.04	1.55	1.64	1.55	1.64	XXX
75722	TC	A	Artery x-rays, kidney	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75724		A	Artery x-rays, kidneys	1.49	13.22	13.49	13.22	13.49	0.61	15.32	15.59	15.32	15.59	XXX
75724	26	A	Artery x-rays, kidneys	1.49	0.56	0.64	0.56	0.64	0.05	2.10	2.18	2.10	2.18	XXX
75724	TC	A	Artery x-rays, kidneys	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75726		A	Artery x-rays, abdomen	1.14	12.98	13.28	12.98	13.28	0.61	14.73	15.03	14.73	15.03	XXX
75726	26	A	Artery x-rays, abdomen	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75726	TC	A	Artery x-rays, abdomen	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75731		A	Artery x-rays, adrenal gland	1.14	12.98	13.28	12.98	13.28	0.61	14.73	15.03	14.73	15.03	XXX
75731	26	A	Artery x-rays, adrenal gland	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75731	TC	A	Artery x-rays, adrenal gland	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75733		A	Artery x-rays, adrenals	1.31	13.04	13.36	13.04	13.36	0.61	14.96	15.28	14.96	15.28	XXX
75733	26	A	Artery x-rays, adrenals	1.31	0.38	0.51	0.38	0.51	0.05	1.74	1.87	1.74	1.87	XXX
75733	TC	A	Artery x-rays, adrenals	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75736		A	Artery x-rays, pelvis	1.14	12.98	13.28	12.98	13.28	0.61	14.73	15.03	14.73	15.03	XXX
75736	26	A	Artery x-rays, pelvis	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75736	TC	A	Artery x-rays, pelvis	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75741		A	Artery x-rays, lung	1.31	13.02	13.35	13.02	13.35	0.61	14.94	15.27	14.94	15.27	XXX
75741	26	A	Artery x-rays, lung	1.31	0.36	0.50	0.36	0.50	0.05	1.72	1.86	1.72	1.86	XXX
75741	TC	A	Artery x-rays, lung	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75743		A	Artery x-rays, lungs	1.66	13.12	13.48	13.12	13.48	0.63	15.41	15.77	15.41	15.77	XXX
75743	26	A	Artery x-rays, lungs	1.66	0.46	0.63	0.46	0.63	0.07	2.19	2.36	2.19	2.36	XXX
75743	TC	A	Artery x-rays, lungs	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75746		A	Artery x-rays, lung	1.14	12.98	13.28	12.98	13.28	0.60	14.72	15.02	14.72	15.02	XXX
75746	26	A	Artery x-rays, lung	1.14	0.32	0.43	0.32	0.43	0.04	1.50	1.61	1.50	1.61	XXX
75746	TC	A	Artery x-rays, lung	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75756		A	Artery x-rays, chest	1.14	13.14	13.36	13.14	13.36	0.60	14.88	15.10	14.88	15.10	XXX
75756	26	A	Artery x-rays, chest	1.14	0.48	0.51	0.48	0.51	0.04	1.66	1.69	1.66	1.69	XXX
75756	TC	A	Artery x-rays, chest	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75774		A	Artery x-ray, each vessel	0.36	12.77	12.99	12.77	12.99	0.57	13.70	13.92	13.70	13.92	ZZZ
75774	26	A	Artery x-ray, each vessel	0.36	0.11	0.14	0.11	0.14	0.01	0.48	0.51	0.48	0.51	ZZZ
75774	TC	A	Artery x-ray, each vessel	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	ZZZ
75790		A	Visualize A-V shunt	1.84	1.87	2.09	1.87	2.09	0.15	3.86	4.08	3.86	4.08	XXX
75790	26	A	Visualize A-V shunt	1.84	0.51	0.71	0.51	0.71	0.08	2.43	2.63	2.43	2.63	XXX
75790	TC	A	Visualize A-V shunt	0.00	1.36	1.38	1.36	1.38	0.07	1.43	1.45	1.43	1.45	XXX
75801		A	Lymph vessel x-ray, arm/leg	0.81	5.67	5.84	5.67	5.84	0.29	6.77	6.94	6.77	6.94	XXX
75801	26	A	Lymph vessel x-ray, arm/leg	0.81	0.23	0.32	0.23	0.32	0.04	1.08	1.17	1.08	1.17	XXX
75801	TC	A	Lymph vessel x-ray, arm/leg	0.00	5.44	5.52	5.44	5.52	0.25	5.69	5.77	5.69	5.77	XXX
75803		A	Lymph vessel x-ray,arms/legs	1.17	5.76	5.96	5.76	5.96	0.30	7.23	7.43	7.23	7.43	XXX
75803	26	A	Lymph vessel x-ray,arms/legs	1.17	0.32	0.44	0.32	0.44	0.05	1.54	1.66	1.54	1.66	XXX
75803	TC	A	Lymph vessel x-ray,arms/legs	0.00	5.44	5.52	5.44	5.52	0.25	5.69	5.77	5.69	5.77	XXX
75805		A	Lymph vessel x-ray, trunk	0.81	6.36	6.54	6.36	6.54	0.31	7.48	7.66	7.48	7.66	XXX
75805	26	A	Lymph vessel x-ray, trunk	0.81	0.23	0.32	0.23	0.32	0.03	1.07	1.16	1.07	1.16	XXX
75805	TC	A	Lymph vessel x-ray, trunk	0.00	6.13	6.22	6.13	6.22	0.28	6.41	6.50	6.41	6.50	XXX
75807		A	Lymph vessel x-ray, trunk	1.17	6.45	6.66	6.45	6.66	0.33	7.95	8.16	7.95	8.16	XXX
75807	26	A	Lymph vessel x-ray, trunk	1.17	0.32	0.44	0.32	0.44	0.05	1.54	1.66	1.54	1.66	XXX
75807	TC	A	Lymph vessel x-ray, trunk	0.00	6.13	6.22	6.13	6.22	0.28	6.41	6.50	6.41	6.50	XXX
75809		A	Nonvascular shunt, x-ray	0.47	0.92	0.97	0.92	0.97	0.06	1.45	1.50	1.45	1.50	XXX
75809	26	A	Nonvascular shunt, x-ray	0.47	0.13	0.17	0.13	0.17	0.02	0.62	0.66	0.62	0.66	XXX
75809	TC	A	Nonvascular shunt, x-ray	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
75810		A	Vein x-ray, spleen/liver	1.14	12.97	13.28	12.97	13.28	0.61	14.72	15.03	14.72	15.03	XXX
75810	26	A	Vein x-ray, spleen/liver	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75810	TC	A	Vein x-ray, spleen/liver	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75820		A	Vein x-ray, arm/leg	0.70	1.14	1.24	1.14	1.24	0.08	1.92	2.02	1.92	2.02	XXX
75820	26	A	Vein x-ray, arm/leg	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
75820	TC	A	Vein x-ray, arm/leg	0.00	0.95	0.97	0.95	0.97	0.05	1.00	1.02	1.00	1.02	XXX
75822		A	Vein x-ray, arms/legs	1.06	1.78	1.91	1.78	1.91	0.11	2.95	3.08	2.95	3.08	XXX
75822	26	A	Vein x-ray, arms/legs	1.06	0.29	0.40	0.29	0.40	0.04	1.39	1.50	1.39	1.50	XXX
75822	TC	A	Vein x-ray, arms/legs	0.00	1.49	1.51	1.49	1.51	0.07	1.56	1.58	1.56	1.58	XXX
75825		A	Vein x-ray, trunk	1.14	12.98	13.28	12.98	13.28	0.61	14.73	15.03	14.73	15.03	XXX
75825	26	A	Vein x-ray, trunk	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75825	TC	A	Vein x-ray, trunk	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75827		A	Vein x-ray, chest	1.14	12.97	13.28	12.97	13.28	0.61	14.72	15.03	14.72	15.03	XXX
75827	26	A	Vein x-ray, chest	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75827	TC	A	Vein x-ray, chest	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75831		A	Vein x-ray, kidney	1.14	12.98	13.28	12.98	13.28	0.61	14.73	15.03	14.73	15.03	XXX
75831	26	A	Vein x-ray, kidney	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75831	TC	A	Vein x-ray, kidney	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75833		A	Vein x-ray, kidneys	1.49	13.08	13.42	13.08	13.42	0.62	15.19	15.53	15.19	15.53	XXX
75833	26	A	Vein x-ray, kidneys	1.49	0.42	0.57	0.42	0.57	0.06	1.97	2.12	1.97	2.12	XXX
75833	TC	A	Vein x-ray, kidneys	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75840		A	Vein x-ray, adrenal gland	1.14	12.98	13.28	12.98	13.28	0.61	14.73	15.03	14.73	15.03	XXX
75840	26	A	Vein x-ray, adrenal gland	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75840	TC	A	Vein x-ray, adrenal gland	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75842		A	Vein x-ray, adrenal glands	1.49	13.07	13.42	13.07	13.42	0.62	15.18	15.53	15.18	15.53	XXX
75842	26	A	Vein x-ray, adrenal glands	1.49	0.41	0.57	0.41	0.57	0.06	1.96	2.12	1.96	2.12	XXX
75842	TC	A	Vein x-ray, adrenal glands	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75860		A	Vein x-ray, neck	1.14	12.99	13.29	12.99	13.29	0.61	14.74	15.04	14.74	15.04	XXX
75860	26	A	Vein x-ray, neck	1.14	0.33	0.44	0.33	0.44	0.05	1.52	1.63	1.52	1.63	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
75860	TC	A	Vein x-ray, neck	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75870		A	Vein x-ray, skull	1.14	12.98	13.28	12.98	13.28	0.61	14.73	15.03	14.73	15.03	XXX
75870	26	A	Vein x-ray, skull	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75870	TC	A	Vein x-ray, skull	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75872		A	Vein x-ray, skull	1.14	12.97	13.28	12.97	13.28	0.61	14.72	15.03	14.72	15.03	XXX
75872	26	A	Vein x-ray, skull	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75872	TC	A	Vein x-ray, skull	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75880		A	Vein x-ray, eye socket	0.70	1.14	1.24	1.14	1.24	0.08	1.92	2.02	1.92	2.02	XXX
75880	26	A	Vein x-ray, eye socket	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
75880	TC	A	Vein x-ray, eye socket	0.00	0.95	0.97	0.95	0.97	0.05	1.00	1.02	1.00	1.02	XXX
75885		A	Vein x-ray, liver	1.44	13.05	13.39	13.05	13.39	0.62	15.11	15.45	15.11	15.45	XXX
75885	26	A	Vein x-ray, liver	1.44	0.39	0.54	0.39	0.54	0.06	1.89	2.04	1.89	2.04	XXX
75885	TC	A	Vein x-ray, liver	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75887		A	Vein x-ray, liver	1.44	13.05	13.39	13.05	13.39	0.62	15.11	15.45	15.11	15.45	XXX
75887	26	A	Vein x-ray, liver	1.44	0.39	0.54	0.39	0.54	0.06	1.89	2.04	1.89	2.04	XXX
75887	TC	A	Vein x-ray, liver	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75889		A	Vein x-ray, liver	1.14	12.97	13.28	12.97	13.28	0.61	14.72	15.03	14.72	15.03	XXX
75889	26	A	Vein x-ray, liver	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75889	TC	A	Vein x-ray, liver	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75891		A	Vein x-ray, liver	1.14	12.97	13.28	12.97	13.28	0.61	14.72	15.03	14.72	15.03	XXX
75891	26	A	Vein x-ray, liver	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75891	TC	A	Vein x-ray, liver	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75893		A	Venous sampling by catheter	0.54	12.81	13.06	12.81	13.06	0.58	13.93	14.18	13.93	14.18	XXX
75893	26	A	Venous sampling by catheter	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
75893	TC	A	Venous sampling by catheter	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75894		A	X-rays, transcath therapy	1.31	24.62	25.11	24.62	25.11	1.13	27.06	27.55	27.06	27.55	XXX
75894	26	A	X-rays, transcath therapy	1.31	0.37	0.50	0.37	0.50	0.05	1.73	1.86	1.73	1.86	XXX
75894	TC	A	X-rays, transcath therapy	0.00	24.25	24.61	24.25	24.61	1.08	25.33	25.69	25.33	25.69	XXX
75896		A	X-rays, transcath therapy	1.31	21.49	21.92	21.49	21.92	0.99	23.79	24.22	23.79	24.22	XXX
75896	26	A	X-rays, transcath therapy	1.31	0.40	0.52	0.40	0.52	0.05	1.76	1.88	1.76	1.88	XXX
75896	TC	A	X-rays, transcath therapy	0.00	21.09	21.40	21.09	21.40	0.94	22.03	22.34	22.03	22.34	XXX
75898		A	Follow-up angiogram	1.65	1.54	1.72	1.54	1.72	0.12	3.31	3.49	3.31	3.49	XXX
75898	26	A	Follow-up angiogram	1.65	0.48	0.64	0.48	0.64	0.07	2.20	2.36	2.20	2.36	XXX
75898	TC	A	Follow-up angiogram	0.00	1.06	1.08	1.06	1.08	0.05	1.11	1.13	1.11	1.13	XXX
75900		A	Arterial catheter exchange	0.49	21.21	21.58	21.21	21.58	0.97	22.67	23.04	22.67	23.04	XXX
75900	26	A	Arterial catheter exchange	0.49	0.14	0.20	0.14	0.20	0.02	0.65	0.71	0.65	0.71	XXX
75900	TC	A	Arterial catheter exchange	0.00	21.07	21.38	21.07	21.38	0.95	22.02	22.33	22.02	22.33	XXX
75940		A	X-ray placement, vein filter	0.54	12.81	13.06	12.81	13.06	0.58	13.93	14.18	13.93	14.18	XXX
75940	26	A	X-ray placement, vein filter	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
75940	TC	A	X-ray placement, vein filter	0.00	12.66	12.85	12.66	12.85	0.56	13.22	13.41	13.22	13.41	XXX
75945		A	Intravascular us	0.40	4.74	4.86	4.74	4.86	0.24	5.38	5.50	5.38	5.50	XXX
75945	26	A	Intravascular us	0.40	0.15	0.20	0.15	0.20	0.03	0.58	0.63	0.58	0.63	XXX
75945	TC	A	Intravascular us	0.00	4.59	4.66	4.59	4.66	0.21	4.80	4.87	4.80	4.87	XXX
75946		A	Intravascular us add-on	0.40	2.45	2.54	2.45	2.54	0.13	2.98	3.07	2.98	3.07	ZZZ
75946	26	A	Intravascular us add-on	0.40	0.15	0.20	0.15	0.20	0.02	0.57	0.62	0.57	0.62	ZZZ
75946	TC	A	Intravascular us add-on	0.00	2.30	2.34	2.30	2.34	0.11	2.41	2.45	2.41	2.45	ZZZ
75960		A	Transcatheter intro, stent	0.82	15.23	15.52	15.23	15.52	0.70	16.75	17.04	16.75	17.04	XXX
75960	26	A	Transcatheter intro, stent	0.82	0.26	0.33	0.26	0.33	0.04	1.12	1.19	1.12	1.19	XXX
75960	TC	A	Transcatheter intro, stent	0.00	14.97	15.19	14.97	15.19	0.66	15.63	15.85	15.63	15.85	XXX
75961		A	Retrieval, broken catheter	4.25	11.74	12.34	11.74	12.34	0.63	16.62	17.22	16.62	17.22	XXX
75961	26	A	Retrieval, broken catheter	4.25	1.19	1.63	1.19	1.63	0.16	5.60	6.04	5.60	6.04	XXX
75961	TC	A	Retrieval, broken catheter	0.00	10.55	10.71	10.55	10.71	0.47	11.02	11.18	11.02	11.18	XXX
75962		A	Repair arterial blockage	0.54	15.99	16.27	15.99	16.27	0.73	17.26	17.54	17.26	17.54	XXX
75962	26	A	Repair arterial blockage	0.54	0.17	0.22	0.17	0.22	0.02	0.73	0.78	0.73	0.78	XXX
75962	TC	A	Repair arterial blockage	0.00	15.82	16.05	15.82	16.05	0.71	16.53	16.76	16.53	16.76	XXX
75964		A	Repair artery blockage, each	0.36	8.54	8.70	8.54	8.70	0.39	9.29	9.45	9.29	9.45	ZZZ
75964	26	A	Repair artery blockage, each	0.36	0.11	0.14	0.11	0.14	0.02	0.49	0.52	0.49	0.52	ZZZ
75964	TC	A	Repair artery blockage, each	0.00	8.43	8.56	8.43	8.56	0.37	8.80	8.93	8.80	8.93	ZZZ
75966		A	Repair arterial blockage	1.31	16.26	16.59	16.26	16.59	0.76	18.33	18.66	18.33	18.66	XXX
75966	26	A	Repair arterial blockage	1.31	0.44	0.54	0.44	0.54	0.05	1.80	1.90	1.80	1.90	XXX
75966	TC	A	Repair arterial blockage	0.00	15.82	16.05	15.82	16.05	0.71	16.53	16.76	16.53	16.76	XXX
75968		A	Repair artery blockage, each	0.36	8.55	8.71	8.55	8.71	0.38	9.29	9.45	9.29	9.45	ZZZ
75968	26	A	Repair artery blockage, each	0.36	0.12	0.15	0.12	0.15	0.01	0.49	0.52	0.49	0.52	ZZZ
75968	TC	A	Repair artery blockage, each	0.00	8.43	8.56	8.43	8.56	0.37	8.80	8.93	8.80	8.93	ZZZ
75970		A	Vascular biopsy	0.83	11.86	12.11	11.86	12.11	0.55	13.24	13.49	13.24	13.49	XXX
75970	26	A	Vascular biopsy	0.83	0.26	0.34	0.26	0.34	0.03	1.12	1.20	1.12	1.20	XXX
75970	TC	A	Vascular biopsy	0.00	11.60	11.77	11.60	11.77	0.52	12.12	12.29	12.12	12.29	XXX
75978		A	Repair venous blockage	0.54	15.97	16.39	15.97	16.39	0.73	17.24	17.66	17.24	17.66	XXX
75978	26	A	Repair venous blockage	0.54	0.15	0.34	0.15	0.34	0.02	0.71	0.90	0.71	0.90	XXX
75978	TC	A	Repair venous blockage	0.00	15.82	16.05	15.82	16.05	0.71	16.53	16.76	16.53	16.76	XXX
75980		A	Contrast xray exam bile duct	1.44	5.83	6.06	5.83	6.06	0.31	7.58	7.81	7.58	7.81	XXX
75980	26	A	Contrast xray exam bile duct	1.44	0.39	0.54	0.39	0.54	0.06	1.89	2.04	1.89	2.04	XXX
75980	TC	A	Contrast xray exam bile duct	0.00	5.44	5.52	5.44	5.52	0.25	5.69	5.77	5.69	5.77	XXX
75982		A	Contrast xray exam bile duct	1.44	6.52	6.76	6.52	6.76	0.34	8.30	8.54	8.30	8.54	XXX
75982	26	A	Contrast xray exam bile duct	1.44	0.39	0.54	0.39	0.54	0.06	1.89	2.04	1.89	2.04	XXX
75982	TC	A	Contrast xray exam bile duct	0.00	6.13	6.22	6.13	6.22	0.28	6.41	6.50	6.41	6.50	XXX
75984		A	Xray control catheter change	0.72	2.16	2.27	2.16	2.27	0.12	3.00	3.11	3.00	3.11	XXX
75984	26	A	Xray control catheter change	0.72	0.20	0.28	0.20	0.28	0.03	0.95	1.03	0.95	1.03	XXX
75984	TC	A	Xray control catheter change	0.00	1.96	1.99	1.96	1.99	0.09	2.05	2.08	2.05	2.08	XXX
75989		A	Abscess drainage under x-ray	1.19	3.50	3.67	3.50	3.67	0.19	4.88	5.05	4.88	5.05	XXX
75989	26	A	Abscess drainage under x-ray	1.19	0.33	0.45	0.33	0.45	0.05	1.57	1.69	1.57	1.69	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
75989	TC	A	Abscess drainage under x-ray	0.00	3.17	3.22	3.17	3.22	0.14	3.31	3.36	3.31	3.36	XXX
75992		A	Atherectomy, x-ray exam	0.54	16.00	16.28	16.00	16.28	0.73	17.27	17.55	17.27	17.55	XXX
75992	26	A	Atherectomy, x-ray exam	0.54	0.18	0.23	0.18	0.23	0.02	0.74	0.79	0.74	0.79	XXX
75992	TC	A	Atherectomy, x-ray exam	0.00	15.82	16.05	15.82	16.05	0.71	16.53	16.76	16.53	16.76	XXX
75993		A	Atherectomy, x-ray exam	0.36	8.58	8.72	8.58	8.72	0.38	9.32	9.46	9.32	9.46	ZZZ
75993	26	A	Atherectomy, x-ray exam	0.36	0.15	0.16	0.15	0.16	0.01	0.52	0.53	0.52	0.53	ZZZ
75993	TC	A	Atherectomy, x-ray exam	0.00	8.43	8.56	8.43	8.56	0.37	8.80	8.93	8.80	8.93	ZZZ
75994		A	Atherectomy, x-ray exam	1.31	16.27	16.59	16.27	16.59	0.77	18.35	18.67	18.35	18.67	XXX
75994	26	A	Atherectomy, x-ray exam	1.31	0.45	0.54	0.45	0.54	0.06	1.82	1.91	1.82	1.91	XXX
75994	TC	A	Atherectomy, x-ray exam	0.00	15.82	16.05	15.82	16.05	0.71	16.53	16.76	16.53	16.76	XXX
75995		A	Atherectomy, x-ray exam	1.31	16.22	16.57	16.22	16.57	0.75	18.28	18.63	18.28	18.63	XXX
75995	26	A	Atherectomy, x-ray exam	1.31	0.40	0.52	0.40	0.52	0.04	1.75	1.87	1.75	1.87	XXX
75995	TC	A	Atherectomy, x-ray exam	0.00	15.82	16.05	15.82	16.05	0.71	16.53	16.76	16.53	16.76	XXX
75996		A	Atherectomy, x-ray exam	0.36	8.55	8.71	8.55	8.71	0.38	9.29	9.45	9.29	9.45	ZZZ
75996	26	A	Atherectomy, x-ray exam	0.36	0.12	0.15	0.12	0.15	0.01	0.49	0.52	0.49	0.52	ZZZ
75996	TC	A	Atherectomy, x-ray exam	0.00	8.43	8.56	8.43	8.56	0.37	8.80	8.93	8.80	8.93	ZZZ
76000		A	Fluoroscope examination	0.17	1.36	1.40	1.36	1.40	0.07	1.60	1.64	1.60	1.64	XXX
76000	26	A	Fluoroscope examination	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
76000	TC	A	Fluoroscope examination	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
76001		A	Fluoroscope exam, extensive	0.67	2.82	2.94	2.82	2.94	0.15	3.64	3.76	3.64	3.76	XXX
76001	26	A	Fluoroscope exam, extensive	0.67	0.19	0.27	0.19	0.27	0.03	0.89	0.97	0.89	0.97	XXX
76001	TC	A	Fluoroscope exam, extensive	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
76003		A	Needle localization by x-ray	0.54	1.46	1.54	1.46	1.54	0.08	2.08	2.16	2.08	2.16	XXX
76003	26	A	Needle localization by x-ray	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
76003	TC	A	Needle localization by x-ray	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
76005		A	Fluoroguide for spine inject	0.60	1.48	1.48	1.48	1.48	0.09	2.17	2.17	2.17	2.17	XXX
76005	26	A	Fluoroguide for spine inject	0.60	0.17	0.17	0.17	0.17	0.03	0.80	0.80	0.80	0.80	XXX
76005	TC	A	Fluoroguide for spine inject	0.00	1.31	1.31	1.31	1.31	0.06	1.37	1.37	1.37	1.37	XXX
76006		A	X-ray stress view	0.41	0.11	0.11	0.11	0.11	0.02	0.54	0.54	0.54	0.54	XXX
76010		A	X-ray, nose to rectum	0.18	0.57	0.60	0.57	0.60	0.03	0.78	0.81	0.78	0.81	XXX
76010	26	A	X-ray, nose to rectum	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
76010	TC	A	X-ray, nose to rectum	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
76020		A	X-rays for bone age	0.19	0.57	0.61	0.57	0.61	0.03	0.79	0.83	0.79	0.83	XXX
76020	26	A	X-rays for bone age	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
76020	TC	A	X-rays for bone age	0.00	0.52	0.53	0.52	0.53	0.02	0.54	0.55	0.54	0.55	XXX
76040		A	X-rays, bone evaluation	0.27	0.87	0.91	0.87	0.91	0.05	1.19	1.23	1.19	1.23	XXX
76040	26	A	X-rays, bone evaluation	0.27	0.08	0.11	0.08	0.11	0.01	0.36	0.39	0.36	0.39	XXX
76040	TC	A	X-rays, bone evaluation	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	XXX
76061		A	X-rays, bone survey	0.45	1.12	1.19	1.12	1.19	0.07	1.64	1.71	1.64	1.71	XXX
76061	26	A	X-rays, bone survey	0.45	0.12	0.17	0.12	0.17	0.02	0.59	0.64	0.59	0.64	XXX
76061	TC	A	X-rays, bone survey	0.00	1.00	1.02	1.00	1.02	0.05	1.05	1.07	1.05	1.07	XXX
76062		A	X-rays, bone survey	0.54	1.60	1.68	1.60	1.68	0.09	2.23	2.31	2.23	2.31	XXX
76062	26	A	X-rays, bone survey	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
76062	TC	A	X-rays, bone survey	0.00	1.45	1.47	1.45	1.47	0.07	1.52	1.54	1.52	1.54	XXX
76065		A	X-rays, bone evaluation	0.28	0.82	0.86	0.82	0.86	0.05	1.15	1.19	1.15	1.19	XXX
76065	26	A	X-rays, bone evaluation	0.28	0.08	0.11	0.08	0.11	0.01	0.37	0.40	0.37	0.40	XXX
76065	TC	A	X-rays, bone evaluation	0.00	0.74	0.75	0.74	0.75	0.04	0.78	0.79	0.78	0.79	XXX
76066		A	Joint(s) survey, single film	0.31	1.22	1.27	1.22	1.27	0.06	1.59	1.64	1.59	1.64	XXX
76066	26	A	Joint(s) survey, single film	0.31	0.10	0.13	0.10	0.13	0.01	0.42	0.45	0.42	0.45	XXX
76066	TC	A	Joint(s) survey, single film	0.00	1.12	1.14	1.12	1.14	0.05	1.17	1.19	1.17	1.19	XXX
76070		I	CT scan, bone density study	+0.25	3.06	3.13	3.06	3.13	0.14	3.45	3.52	3.45	3.52	XXX
76070	26	I	CT scan, bone density study	+0.25	0.10	0.12	0.10	0.12	0.01	0.36	0.38	0.36	0.38	XXX
76070	TC	I	CT scan, bone density study	+0.00	2.96	3.01	2.96	3.01	0.13	3.09	3.14	3.09	3.14	XXX
76075		A	Dual energy x-ray study	0.30	3.20	3.27	3.20	3.27	0.15	3.65	3.72	3.65	3.72	XXX
76075	26	A	Dual energy x-ray study	0.30	0.09	0.11	0.09	0.11	0.01	0.40	0.42	0.40	0.42	XXX
76075	TC	A	Dual energy x-ray study	0.00	3.11	3.16	3.11	3.16	0.14	3.25	3.30	3.25	3.30	XXX
76076		A	Dual energy x-ray study	0.22	0.83	0.86	0.83	0.86	0.05	1.10	1.13	1.10	1.13	XXX
76076	26	A	Dual energy x-ray study	0.22	0.07	0.09	0.07	0.09	0.01	0.30	0.32	0.30	0.32	XXX
76076	TC	A	Dual energy x-ray study	0.00	0.76	0.77	0.76	0.77	0.04	0.80	0.81	0.80	0.81	XXX
76078		A	Photodensitometry	0.20	0.82	0.86	0.82	0.86	0.05	1.07	1.11	1.07	1.11	XXX
76078	26	A	Photodensitometry	0.20	0.06	0.09	0.06	0.09	0.01	0.27	0.30	0.27	0.30	XXX
76078	TC	A	Photodensitometry	0.00	0.76	0.77	0.76	0.77	0.04	0.80	0.81	0.80	0.81	XXX
76080		A	X-ray exam of fistula	0.54	1.21	1.29	1.21	1.29	0.07	1.82	1.90	1.82	1.90	XXX
76080	26	A	X-ray exam of fistula	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
76080	TC	A	X-ray exam of fistula	0.00	1.06	1.08	1.06	1.08	0.05	1.11	1.13	1.11	1.13	XXX
76086		A	X-ray of mammary duct	0.36	2.73	2.81	2.73	2.81	0.13	3.22	3.30	3.22	3.30	XXX
76086	26	A	X-ray of mammary duct	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
76086	TC	A	X-ray of mammary duct	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
76088		A	X-ray of mammary ducts	0.45	3.80	3.91	3.80	3.91	0.18	4.43	4.54	4.43	4.54	XXX
76088	26	A	X-ray of mammary ducts	0.45	0.12	0.17	0.12	0.17	0.02	0.59	0.64	0.59	0.64	XXX
76088	TC	A	X-ray of mammary ducts	0.00	3.68	3.74	3.68	3.74	0.16	3.84	3.90	3.84	3.90	XXX
76090		A	Mammogram, one breast	0.58	1.22	1.23	1.22	1.23	0.07	1.87	1.88	1.87	1.88	XXX
76090	26	A	Mammogram, one breast	0.58	0.16	0.15	0.16	0.15	0.02	0.76	0.75	0.76	0.75	XXX
76090	TC	A	Mammogram, one breast	0.00	1.06	1.08	1.06	1.08	0.05	1.11	1.13	1.11	1.13	XXX
76091		A	Mammogram, both breasts	0.69	1.50	1.53	1.50	1.53	0.09	2.28	2.31	2.28	2.31	XXX
76091	26	A	Mammogram, both breasts	0.69	0.19	0.20	0.19	0.20	0.03	0.91	0.92	0.91	0.92	XXX
76091	TC	A	Mammogram, both breasts	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
76092		X	Mamm0gram, screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76093		A	Magnetic image, breast	1.63	18.16	18.59	18.16	18.59	0.84	20.63	21.06	20.63	21.06	XXX
76093	26	A	Magnetic image, breast	1.63	0.45	0.62	0.45	0.62	0.06	2.14	2.31	2.14	2.31	XXX
76093	TC	A	Magnetic image, breast	0.00	17.71	17.97	17.71	17.97	0.78	18.49	18.75	18.49	18.75	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
76094		A	Magnetic image, both breasts	1.63	24.48	25.00	24.48	25.00	1.12	27.23	27.75	27.23	27.75	XXX
76094	26	A	Magnetic image, both breasts	1.63	0.45	0.62	0.45	0.62	0.06	2.14	2.31	2.14	2.31	XXX
76094	TC	A	Magnetic image, both breasts	0.00	24.03	24.38	24.03	24.38	1.06	25.09	25.44	25.09	25.44	XXX
76095		A	Stereotactic breast biopsy	1.59	7.66	7.93	7.66	7.93	0.40	9.65	9.92	9.65	9.92	XXX
76095	26	A	Stereotactic breast biopsy	1.59	0.46	0.62	0.46	0.62	0.08	2.13	2.29	2.13	2.29	XXX
76095	TC	A	Stereotactic breast biopsy	0.00	7.20	7.31	7.20	7.31	0.32	7.52	7.63	7.52	7.63	XXX
76096		A	X-ray of needle wire, breast	0.56	1.46	1.55	1.46	1.55	0.08	2.10	2.19	2.10	2.19	XXX
76096	26	A	X-ray of needle wire, breast	0.56	0.15	0.22	0.15	0.22	0.02	0.73	0.80	0.73	0.80	XXX
76096	TC	A	X-ray of needle wire, breast	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
76098		A	X-ray exam, breast specimen	0.16	0.47	0.50	0.47	0.50	0.03	0.66	0.69	0.66	0.69	XXX
76098	26	A	X-ray exam, breast specimen	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
76098	TC	A	X-ray exam, breast specimen	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
76100		A	X-ray exam of body section	0.58	1.41	1.50	1.41	1.50	0.08	2.07	2.16	2.07	2.16	XXX
76100	26	A	X-ray exam of body section	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
76100	TC	A	X-ray exam of body section	0.00	1.25	1.27	1.25	1.27	0.06	1.31	1.33	1.31	1.33	XXX
76101		A	Complex body section x-ray	0.58	1.59	1.68	1.59	1.68	0.09	2.26	2.35	2.26	2.35	XXX
76101	26	A	Complex body section x-ray	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
76101	TC	A	Complex body section x-ray	0.00	1.43	1.45	1.43	1.45	0.07	1.50	1.52	1.50	1.52	XXX
76102		A	Complex body section x-rays	0.58	1.90	2.00	1.90	2.00	0.11	2.59	2.69	2.59	2.69	XXX
76102	26	A	Complex body section x-rays	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
76102	TC	A	Complex body section x-rays	0.00	1.74	1.77	1.74	1.77	0.09	1.83	1.86	1.83	1.86	XXX
76120		A	Cinematic x-rays	0.38	1.19	1.24	1.19	1.24	0.07	1.64	1.69	1.64	1.69	XXX
76120	26	A	Cinematic x-rays	0.38	0.13	0.16	0.13	0.16	0.02	0.53	0.56	0.53	0.56	XXX
76120	TC	A	Cinematic x-rays	0.00	1.06	1.08	1.06	1.08	0.05	1.11	1.13	1.11	1.13	XXX
76125		A	Cinematic x-rays add-on	0.27	0.87	0.91	0.87	0.91	0.05	1.19	1.23	1.19	1.23	ZZZ
76125	26	A	Cinematic x-rays add-on	0.27	0.08	0.11	0.08	0.11	0.01	0.36	0.39	0.36	0.39	ZZZ
76125	TC	A	Cinematic x-rays add-on	0.00	0.79	0.80	0.79	0.80	0.04	0.83	0.84	0.83	0.84	ZZZ
76140		I	X-ray consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76150		A	X-ray exam, dry process	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
76350		C	Special x-ray contrast study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76355		A	CAT scan for localization	1.21	8.64	8.88	8.64	8.88	0.41	10.26	10.50	10.26	10.50	XXX
76355	26	A	CAT scan for localization	1.21	0.34	0.46	0.34	0.46	0.05	1.60	1.72	1.60	1.72	XXX
76355	TC	A	CAT scan for localization	0.00	8.30	8.42	8.30	8.42	0.36	8.66	8.78	8.66	8.78	XXX
76360		A	CAT scan for needle biopsy	1.16	8.62	8.85	8.62	8.85	0.41	10.19	10.42	10.19	10.42	XXX
76360	26	A	CAT scan for needle biopsy	1.16	0.32	0.43	0.32	0.43	0.05	1.53	1.64	1.53	1.64	XXX
76360	TC	A	CAT scan for needle biopsy	0.00	8.30	8.42	8.30	8.42	0.36	8.66	8.78	8.66	8.78	XXX
76365		A	CAT scan for cyst aspiration	1.16	8.62	8.85	8.62	8.85	0.41	10.19	10.42	10.19	10.42	XXX
76365	26	A	CAT scan for cyst aspiration	1.16	0.32	0.43	0.32	0.43	0.05	1.53	1.64	1.53	1.64	XXX
76365	TC	A	CAT scan for cyst aspiration	0.00	8.30	8.42	8.30	8.42	0.36	8.66	8.78	8.66	8.78	XXX
76370		A	CAT scan for therapy guide	0.85	3.21	3.34	3.21	3.34	0.16	4.22	4.35	4.22	4.35	XXX
76370	26	A	CAT scan for therapy guide	0.85	0.25	0.33	0.25	0.33	0.03	1.13	1.21	1.13	1.21	XXX
76370	TC	A	CAT scan for therapy guide	0.00	2.96	3.01	2.96	3.01	0.13	3.09	3.14	3.09	3.14	XXX
76375		A	3d/holograph reconstr add-on	0.16	3.60	3.67	3.60	3.67	0.16	3.92	3.99	3.92	3.99	XXX
76375	26	A	3d/holograph reconstr add-on	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
76375	TC	A	3d/holograph reconstr add-on	0.00	3.56	3.61	3.56	3.61	0.15	3.71	3.76	3.71	3.76	XXX
76380		A	CAT scan follow-up study	0.98	3.79	3.95	3.79	3.95	0.19	4.96	5.12	4.96	5.12	XXX
76380	26	A	CAT scan follow-up study	0.98	0.27	0.38	0.27	0.38	0.04	1.29	1.40	1.29	1.40	XXX
76380	TC	A	CAT scan follow-up study	0.00	3.52	3.57	3.52	3.57	0.15	3.67	3.72	3.67	3.72	XXX
76390		A	Mr spectroscopy	1.40	11.64	11.98	11.64	11.98	0.56	13.60	13.94	13.60	13.94	XXX
76390	26	A	Mr spectroscopy	1.40	0.38	0.55	0.38	0.55	0.06	1.84	2.01	1.84	2.01	XXX
76390	TC	A	Mr spectroscopy	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
76400		A	Magnetic image, bone marrow	1.60	11.69	12.04	11.69	12.04	0.56	13.85	14.20	13.85	14.20	XXX
76400	26	A	Magnetic image, bone marrow	1.60	0.43	0.61	0.43	0.61	0.06	2.09	2.27	2.09	2.27	XXX
76400	TC	A	Magnetic image, bone marrow	0.00	11.26	11.43	11.26	11.43	0.50	11.76	11.93	11.76	11.93	XXX
76499		C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76499	26	C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76499	TC	C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76506		A	Echo exam of head	0.63	1.64	1.71	1.64	1.71	0.10	2.37	2.44	2.37	2.44	XXX
76506	26	A	Echo exam of head	0.63	0.21	0.26	0.21	0.26	0.03	0.87	0.92	0.87	0.92	XXX
76506	TC	A	Echo exam of head	0.00	1.43	1.45	1.43	1.45	0.07	1.50	1.52	1.50	1.52	XXX
76511		A	Echo exam of eye	0.94	1.68	1.62	1.68	1.62	0.09	2.71	2.65	2.71	2.65	XXX
76511	26	A	Echo exam of eye	0.94	0.43	0.35	0.43	0.35	0.03	1.40	1.32	1.40	1.32	XXX
76511	TC	A	Echo exam of eye	0.00	1.25	1.27	1.25	1.27	0.06	1.31	1.33	1.31	1.33	XXX
76512		A	Echo exam of eye	0.66	1.85	1.88	1.85	1.88	0.10	2.61	2.64	2.61	2.64	XXX
76512	26	A	Echo exam of eye	0.66	0.32	0.33	0.32	0.33	0.02	1.00	1.01	1.00	1.01	XXX
76512	TC	A	Echo exam of eye	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76513		A	Echo exam of eye, water bath	0.66	1.84	1.87	1.84	1.87	0.10	2.60	2.63	2.60	2.63	XXX
76513	26	A	Echo exam of eye, water bath	0.66	0.31	0.32	0.31	0.32	0.02	0.99	1.00	0.99	1.00	XXX
76513	TC	A	Echo exam of eye, water bath	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76516		A	Echo exam of eye	0.54	1.52	1.54	1.52	1.54	0.08	2.14	2.16	2.14	2.16	XXX
76516	26	A	Echo exam of eye	0.54	0.27	0.27	0.27	0.27	0.02	0.83	0.83	0.83	0.83	XXX
76516	TC	A	Echo exam of eye	0.00	1.25	1.27	1.25	1.27	0.06	1.31	1.33	1.31	1.33	XXX
76519		A	Echo exam of eye	0.54	1.52	1.54	1.52	1.54	0.08	2.14	2.16	2.14	2.16	XXX
76519	26	A	Echo exam of eye	0.54	0.27	0.27	0.27	0.27	0.02	0.83	0.83	0.83	0.83	XXX
76519	TC	A	Echo exam of eye	0.00	1.25	1.27	1.25	1.27	0.06	1.31	1.33	1.31	1.33	XXX
76529		A	Echo exam of eye	0.57	1.66	1.68	1.66	1.68	0.09	2.32	2.34	2.32	2.34	XXX
76529	26	A	Echo exam of eye	0.57	0.29	0.29	0.29	0.29	0.02	0.88	0.88	0.88	0.88	XXX
76529	TC	A	Echo exam of eye	0.00	1.37	1.39	1.37	1.39	0.07	1.44	1.46	1.44	1.46	XXX
76536		A	Echo exam of head and neck	0.56	1.58	1.67	1.58	1.67	0.09	2.23	2.32	2.23	2.32	XXX
76536	26	A	Echo exam of head and neck	0.56	0.15	0.22	0.15	0.22	0.02	0.73	0.80	0.73	0.80	XXX
76536	TC	A	Echo exam of head and neck	0.00	1.43	1.45	1.43	1.45	0.07	1.50	1.52	1.50	1.52	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
76604		A	Echo exam of chest	0.55	1.46	1.55	1.46	1.55	0.08	2.09	2.18	2.09	2.18	XXX
76604	26	A	Echo exam of chest	0.55	0.15	0.22	0.15	0.22	0.02	0.72	0.79	0.72	0.79	XXX
76604	TC	A	Echo exam of chest	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
76645		A	Echo exam of breast(s)	0.54	1.21	1.29	1.21	1.29	0.07	1.82	1.90	1.82	1.90	XXX
76645	26	A	Echo exam of breast(s)	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
76645	TC	A	Echo exam of breast(s)	0.00	1.06	1.08	1.06	1.08	0.05	1.11	1.13	1.11	1.13	XXX
76700		A	Echo exam of abdomen	0.81	2.20	2.32	2.20	2.32	0.12	3.13	3.25	3.13	3.25	XXX
76700	26	A	Echo exam of abdomen	0.81	0.22	0.31	0.22	0.31	0.03	1.06	1.15	1.06	1.15	XXX
76700	TC	A	Echo exam of abdomen	0.00	1.98	2.01	1.98	2.01	0.09	2.07	2.10	2.07	2.10	XXX
76705		A	Echo exam of abdomen	0.59	1.59	1.68	1.59	1.68	0.09	2.27	2.36	2.27	2.36	XXX
76705	26	A	Echo exam of abdomen	0.59	0.16	0.23	0.16	0.23	0.02	0.77	0.84	0.77	0.84	XXX
76705	TC	A	Echo exam of abdomen	0.00	1.43	1.45	1.43	1.45	0.07	1.50	1.52	1.50	1.52	XXX
76770		A	Echo exam abdomen back wall	0.74	2.18	2.30	2.18	2.30	0.12	3.04	3.16	3.04	3.16	XXX
76770	26	A	Echo exam abdomen back wall	0.74	0.20	0.29	0.20	0.29	0.03	0.97	1.06	0.97	1.06	XXX
76770	TC	A	Echo exam abdomen back wall	0.00	1.98	2.01	1.98	2.01	0.09	2.07	2.10	2.07	2.10	XXX
76775		A	Echo exam abdomen back wall	0.58	1.59	1.68	1.59	1.68	0.09	2.26	2.35	2.26	2.35	XXX
76775	26	A	Echo exam abdomen back wall	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
76775	TC	A	Echo exam abdomen back wall	0.00	1.43	1.45	1.43	1.45	0.07	1.50	1.52	1.50	1.52	XXX
76778		A	Echo exam kidney transplant	0.74	2.19	2.30	2.19	2.30	0.12	3.05	3.16	3.05	3.16	XXX
76778	26	A	Echo exam kidney transplant	0.74	0.21	0.29	0.21	0.29	0.03	0.98	1.06	0.98	1.06	XXX
76778	TC	A	Echo exam kidney transplant	0.00	1.98	2.01	1.98	2.01	0.09	2.07	2.10	2.07	2.10	XXX
76800		A	Echo exam spinal canal	1.13	1.77	1.89	1.77	1.89	0.12	3.02	3.14	3.02	3.14	XXX
76800	26	A	Echo exam spinal canal	1.13	0.34	0.44	0.34	0.44	0.05	1.52	1.62	1.52	1.62	XXX
76800	TC	A	Echo exam spinal canal	0.00	1.43	1.45	1.43	1.45	0.07	1.50	1.52	1.50	1.52	XXX
76805		A	Echo exam of pregnant uterus	0.99	2.41	2.54	2.41	2.54	0.14	3.54	3.67	3.54	3.67	XXX
76805	26	A	Echo exam of pregnant uterus	0.99	0.30	0.40	0.30	0.40	0.04	1.33	1.43	1.33	1.43	XXX
76805	TC	A	Echo exam of pregnant uterus	0.00	2.11	2.14	2.11	2.14	0.10	2.21	2.24	2.21	2.24	XXX
76810		A	Echo exam of pregnant uterus	1.97	4.82	5.06	4.82	5.06	0.26	7.05	7.29	7.05	7.29	XXX
76810	26	A	Echo exam of pregnant uterus	1.97	0.60	0.78	0.60	0.78	0.07	2.64	2.82	2.64	2.82	XXX
76810	TC	A	Echo exam of pregnant uterus	0.00	4.22	4.28	4.22	4.28	0.19	4.41	4.47	4.41	4.47	XXX
76815		A	Echo exam of pregnant uterus	0.65	1.63	1.72	1.63	1.72	0.09	2.37	2.46	2.37	2.46	XXX
76815	26	A	Echo exam of pregnant uterus	0.65	0.20	0.27	0.20	0.27	0.02	0.87	0.94	0.87	0.94	XXX
76815	TC	A	Echo exam of pregnant uterus	0.00	1.43	1.45	1.43	1.45	0.07	1.50	1.52	1.50	1.52	XXX
76816		A	Echo exam follow-up/repeat	0.57	1.31	1.38	1.31	1.38	0.07	1.95	2.02	1.95	2.02	XXX
76816	26	A	Echo exam follow-up/repeat	0.57	0.19	0.24	0.19	0.24	0.02	0.78	0.83	0.78	0.83	XXX
76816	TC	A	Echo exam follow-up/repeat	0.00	1.12	1.14	1.12	1.14	0.05	1.17	1.19	1.17	1.19	XXX
76818		A	Fetal biophysical profile	0.77	1.88	1.97	1.88	1.97	0.11	2.76	2.85	2.76	2.85	XXX
76818	26	A	Fetal biophysical profile	0.77	0.26	0.32	0.26	0.32	0.03	1.06	1.12	1.06	1.12	XXX
76818	TC	A	Fetal biophysical profile	0.00	1.62	1.65	1.62	1.65	0.08	1.70	1.73	1.70	1.73	XXX
76825		A	Echo exam of fetal heart	1.67	2.59	2.51	2.59	2.51	0.15	4.41	4.33	4.41	4.33	XXX
76825	26	A	Echo exam of fetal heart	1.67	0.61	0.50	0.61	0.50	0.06	2.34	2.23	2.34	2.23	XXX
76825	TC	A	Echo exam of fetal heart	0.00	1.98	2.01	1.98	2.01	0.09	2.07	2.10	2.07	2.10	XXX
76826		A	Echo exam of fetal heart	0.83	1.01	1.24	1.01	1.24	0.07	1.91	2.14	1.91	2.14	XXX
76826	26	A	Echo exam of fetal heart	0.83	0.30	0.52	0.30	0.52	0.03	1.16	1.38	1.16	1.38	XXX
76826	TC	A	Echo exam of fetal heart	0.00	0.71	0.72	0.71	0.72	0.04	0.75	0.76	0.75	0.76	XXX
76827		A	Echo exam of fetal heart	0.58	1.94	2.21	1.94	2.21	0.12	2.64	2.91	2.64	2.91	XXX
76827	26	A	Echo exam of fetal heart	0.58	0.21	0.45	0.21	0.45	0.02	0.81	1.05	0.81	1.05	XXX
76827	TC	A	Echo exam of fetal heart	0.00	1.73	1.76	1.73	1.76	0.10	1.83	1.86	1.83	1.86	XXX
76828		A	Echo exam of fetal heart	0.56	1.33	1.40	1.33	1.40	0.09	1.98	2.05	1.98	2.05	XXX
76828	26	A	Echo exam of fetal heart	0.56	0.21	0.26	0.21	0.26	0.02	0.79	0.84	0.79	0.84	XXX
76828	TC	A	Echo exam of fetal heart	0.00	1.12	1.14	1.12	1.14	0.07	1.19	1.21	1.19	1.21	XXX
76830		A	Echo exam, transvaginal	0.69	1.72	1.82	1.72	1.82	0.11	2.52	2.62	2.52	2.62	XXX
76830	26	A	Echo exam, transvaginal	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
76830	TC	A	Echo exam, transvaginal	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76831		A	Echo exam, uterus	0.72	1.75	1.84	1.75	1.84	0.11	2.58	2.67	2.58	2.67	XXX
76831	26	A	Echo exam, uterus	0.72	0.22	0.29	0.22	0.29	0.03	0.97	1.04	0.97	1.04	XXX
76831	TC	A	Echo exam, uterus	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76856		A	Echo exam of pelvis	0.69	1.72	1.82	1.72	1.82	0.11	2.52	2.62	2.52	2.62	XXX
76856	26	A	Echo exam of pelvis	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
76856	TC	A	Echo exam of pelvis	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76857		A	Echo exam of pelvis	0.38	1.17	1.23	1.17	1.23	0.07	1.62	1.68	1.62	1.68	XXX
76857	26	A	Echo exam of pelvis	0.38	0.11	0.15	0.11	0.15	0.02	0.51	0.55	0.51	0.55	XXX
76857	TC	A	Echo exam of pelvis	0.00	1.06	1.08	1.06	1.08	0.05	1.11	1.13	1.11	1.13	XXX
76870		A	Echo exam of scrotum	0.64	1.71	1.80	1.71	1.80	0.11	2.46	2.55	2.46	2.55	XXX
76870	26	A	Echo exam of scrotum	0.64	0.18	0.25	0.18	0.25	0.03	0.85	0.92	0.85	0.92	XXX
76870	TC	A	Echo exam of scrotum	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76872		A	Echo exam, transrectal	0.69	1.74	1.83	1.74	1.83	0.11	2.54	2.63	2.54	2.63	XXX
76872	26	A	Echo exam, transrectal	0.69	0.21	0.28	0.21	0.28	0.03	0.93	1.00	0.93	1.00	XXX
76872	TC	A	Echo exam, transrectal	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76873		A	Echograp trans r, pros study	1.38	2.54	2.54	2.54	2.54	0.20	4.12	4.12	4.12	4.12	XXX
76873	26	A	Echograp trans r, pros study	1.38	0.43	0.43	0.43	0.43	0.07	1.88	1.88	1.88	1.88	XXX
76873	TC	A	Echograp trans r, pros study	0.00	2.11	2.11	2.11	2.11	0.13	2.24	2.24	2.24	2.24	XXX
76880		A	Echo exam of extremity	0.59	1.59	1.68	1.59	1.68	0.09	2.27	2.36	2.27	2.36	XXX
76880	26	A	Echo exam of extremity	0.59	0.16	0.23	0.16	0.23	0.02	0.77	0.84	0.77	0.84	XXX
76880	TC	A	Echo exam of extremity	0.00	1.43	1.45	1.43	1.45	0.07	1.50	1.52	1.50	1.52	XXX
76885		A	Echo exam, infant hips	0.74	1.74	1.83	1.74	1.83	0.11	2.59	2.68	2.59	2.68	XXX
76885	26	A	Echo exam, infant hips	0.74	0.21	0.28	0.21	0.28	0.03	0.98	1.05	0.98	1.05	XXX
76885	TC	A	Echo exam, infant hips	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76886		A	Echo exam, infant hips	0.62	1.60	1.68	1.60	1.68	0.09	2.31	2.39	2.31	2.39	XXX
76886	26	A	Echo exam, infant hips	0.62	0.17	0.23	0.17	0.23	0.02	0.81	0.87	0.81	0.87	XXX
76886	TC	A	Echo exam, infant hips	0.00	1.43	1.45	1.43	1.45	0.07	1.50	1.52	1.50	1.52	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
76930		A	Echo guide for heart sac tap	0.67	1.79	1.85	1.79	1.85	0.10	2.56	2.62	2.56	2.62	XXX
76930	26	A	Echo guide for heart sac tap	0.67	0.26	0.30	0.26	0.30	0.02	0.95	0.99	0.95	0.99	XXX
76930	TC	A	Echo guide for heart sac tap	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76932		A	Echo guide for heart biopsy	0.67	1.80	1.86	1.80	1.86	0.10	2.57	2.63	2.57	2.63	XXX
76932	26	A	Echo guide for heart biopsy	0.67	0.27	0.31	0.27	0.31	0.02	0.96	1.00	0.96	1.00	XXX
76932	TC	A	Echo guide for heart biopsy	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76934		A	Echo guide for chest tap	0.67	1.71	1.81	1.71	1.81	0.11	2.49	2.59	2.49	2.59	XXX
76934	26	A	Echo guide for chest tap	0.67	0.18	0.26	0.18	0.26	0.03	0.88	0.96	0.88	0.96	XXX
76934	TC	A	Echo guide for chest tap	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76936		A	Echo guide for artery repair	1.99	6.93	7.40	6.93	7.40	0.40	9.32	9.79	9.32	9.79	XXX
76936	26	A	Echo guide for artery repair	1.99	0.61	0.98	0.61	0.98	0.11	2.71	3.08	2.71	3.08	XXX
76936	TC	A	Echo guide for artery repair	0.00	6.32	6.42	6.32	6.42	0.29	6.61	6.71	6.61	6.71	XXX
76938		A	Echo exam for drainage	0.67	1.71	1.81	1.71	1.81	0.11	2.49	2.59	2.49	2.59	XXX
76938	26	A	Echo exam for drainage	0.67	0.18	0.26	0.18	0.26	0.03	0.88	0.96	0.88	0.96	XXX
76938	TC	A	Echo exam for drainage	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76941		A	Echo guide for transfusion	1.34	2.06	2.15	2.06	2.15	0.12	3.52	3.61	3.52	3.61	XXX
76941	26	A	Echo guide for transfusion	1.34	0.52	0.59	0.52	0.59	0.05	1.91	1.98	1.91	1.98	XXX
76941	TC	A	Echo guide for transfusion	0.00	1.54	1.56	1.54	1.56	0.07	1.61	1.63	1.61	1.63	XXX
76942		A	Echo guide for biopsy	0.67	1.72	1.82	1.72	1.82	0.11	2.50	2.60	2.50	2.60	XXX
76942	26	A	Echo guide for biopsy	0.67	0.19	0.27	0.19	0.27	0.03	0.89	0.97	0.89	0.97	XXX
76942	TC	A	Echo guide for biopsy	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76945		A	Echo guide, villus sampling	0.67	1.74	1.99	1.74	1.99	0.10	2.51	2.76	2.51	2.76	XXX
76945	26	A	Echo guide, villus sampling	0.67	0.20	0.43	0.20	0.43	0.03	0.90	1.13	0.90	1.13	XXX
76945	TC	A	Echo guide, villus sampling	0.00	1.54	1.56	1.54	1.56	0.07	1.61	1.63	1.61	1.63	XXX
76946		A	Echo guide for amniocentesis	0.38	1.66	1.71	1.66	1.71	0.09	2.13	2.18	2.13	2.18	XXX
76946	26	A	Echo guide for amniocentesis	0.38	0.13	0.16	0.13	0.16	0.01	0.52	0.55	0.52	0.55	XXX
76946	TC	A	Echo guide for amniocentesis	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76948		A	Echo guide, ova aspiration	0.38	1.64	1.70	1.64	1.70	0.10	2.12	2.18	2.12	2.18	XXX
76948	26	A	Echo guide, ova aspiration	0.38	0.11	0.15	0.11	0.15	0.02	0.51	0.55	0.51	0.55	XXX
76948	TC	A	Echo guide, ova aspiration	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76950		A	Echo guidance radiotherapy	0.58	1.50	1.57	1.50	1.57	0.09	2.17	2.24	2.17	2.24	XXX
76950	26	A	Echo guidance radiotherapy	0.58	0.19	0.24	0.19	0.24	0.03	0.80	0.85	0.80	0.85	XXX
76950	TC	A	Echo guidance radiotherapy	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
76960		A	Echo guidance radiotherapy	0.58	1.49	1.57	1.49	1.57	0.09	2.16	2.24	2.16	2.24	XXX
76960	26	A	Echo guidance radiotherapy	0.58	0.18	0.24	0.18	0.24	0.03	0.79	0.85	0.79	0.85	XXX
76960	TC	A	Echo guidance radiotherapy	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
76965		A	Echo guidance radiotherapy	1.34	6.04	6.70	6.04	6.70	0.32	7.70	8.36	7.70	8.36	XXX
76965	26	A	Echo guidance radiotherapy	1.34	0.44	1.02	0.44	1.02	0.07	1.85	2.43	1.85	2.43	XXX
76965	TC	A	Echo guidance radiotherapy	0.00	5.60	5.68	5.60	5.68	0.25	5.85	5.93	5.85	5.93	XXX
76970		A	Ultrasound exam follow-up	0.40	1.17	1.24	1.17	1.24	0.07	1.64	1.71	1.64	1.71	XXX
76970	26	A	Ultrasound exam follow-up	0.40	0.11	0.16	0.11	0.16	0.02	0.53	0.58	0.53	0.58	XXX
76970	TC	A	Ultrasound exam follow-up	0.00	1.06	1.08	1.06	1.08	0.05	1.11	1.13	1.11	1.13	XXX
76975		A	GI endoscopic ultrasound	0.81	1.80	1.87	1.80	1.87	0.11	2.72	2.79	2.72	2.79	XXX
76975	26	A	GI endoscopic ultrasound	0.81	0.27	0.32	0.27	0.32	0.03	1.11	1.16	1.11	1.16	XXX
76975	TC	A	GI endoscopic ultrasound	0.00	1.53	1.55	1.53	1.55	0.08	1.61	1.63	1.61	1.63	XXX
76977		A	Us bone density measure	0.05	0.85	0.85	0.85	0.85	0.05	0.95	0.95	0.95	0.95	XXX
76977	26	A	Us bone density measure	0.05	0.02	0.02	0.02	0.02	0.01	0.08	0.08	0.08	0.08	XXX
76977	TC	A	Us bone density measure	0.00	0.83	0.83	0.83	0.83	0.04	0.87	0.87	0.87	0.87	XXX
76986		A	Echo exam at surgery	1.20	3.00	3.15	3.00	3.15	0.18	4.38	4.53	4.38	4.53	XXX
76986	26	A	Echo exam at surgery	1.20	0.37	0.48	0.37	0.48	0.06	1.63	1.74	1.63	1.74	XXX
76986	TC	A	Echo exam at surgery	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
76999		C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76999	26	C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76999	TC	C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77261		A	Radiation therapy planning	1.39	0.51	0.59	0.51	0.59	0.05	1.95	2.03	1.95	2.03	XXX
77262		A	Radiation therapy planning	2.11	0.76	0.89	0.76	0.89	0.08	2.95	3.08	2.95	3.08	XXX
77263		A	Radiation therapy planning	3.14	1.13	1.33	1.13	1.33	0.12	4.39	4.59	4.39	4.59	XXX
77280		A	Set radiation therapy field	0.70	3.72	3.83	3.72	3.83	0.18	4.60	4.71	4.60	4.71	XXX
77280	26	A	Set radiation therapy field	0.70	0.23	0.29	0.23	0.29	0.03	0.96	1.02	0.96	1.02	XXX
77280	TC	A	Set radiation therapy field	0.00	3.49	3.54	3.49	3.54	0.15	3.64	3.69	3.64	3.69	XXX
77285		A	Set radiation therapy field	1.05	5.94	6.10	5.94	6.10	0.30	7.29	7.45	7.29	7.45	XXX
77285	26	A	Set radiation therapy field	1.05	0.34	0.42	0.34	0.42	0.04	1.43	1.51	1.43	1.51	XXX
77285	TC	A	Set radiation therapy field	0.00	5.60	5.68	5.60	5.68	0.26	5.86	5.94	5.86	5.94	XXX
77290		A	Set radiation therapy field	1.56	7.05	7.28	7.05	7.28	0.36	8.97	9.20	8.97	9.20	XXX
77290	26	A	Set radiation therapy field	1.56	0.51	0.64	0.51	0.64	0.06	2.13	2.26	2.13	2.26	XXX
77290	TC	A	Set radiation therapy field	0.00	6.54	6.64	6.54	6.64	0.30	6.84	6.94	6.84	6.94	XXX
77295		A	Set radiation therapy field	4.57	29.56	30.35	29.56	30.35	1.44	35.57	36.36	35.57	36.36	XXX
77295	26	A	Set radiation therapy field	4.57	1.49	1.87	1.49	1.87	0.17	6.23	6.61	6.23	6.61	XXX
77295	TC	A	Set radiation therapy field	0.00	28.07	28.48	28.07	28.48	1.27	29.34	29.75	29.34	29.75	XXX
77299		C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77299	26	C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77299	TC	C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77300		A	Radiation therapy dose plan	0.62	1.55	1.62	1.55	1.62	0.08	2.25	2.32	2.25	2.32	XXX
77300	26	A	Radiation therapy dose plan	0.62	0.20	0.25	0.20	0.25	0.02	0.84	0.89	0.84	0.89	XXX
77300	TC	A	Radiation therapy dose plan	0.00	1.35	1.37	1.35	1.37	0.06	1.41	1.43	1.41	1.43	XXX
77305		A	Radiation therapy dose plan	0.70	2.10	2.19	2.10	2.19	0.12	2.92	3.01	2.92	3.01	XXX
77305	26	A	Radiation therapy dose plan	0.70	0.23	0.29	0.23	0.29	0.03	0.96	1.02	0.96	1.02	XXX
77305	TC	A	Radiation therapy dose plan	0.00	1.87	1.90	1.87	1.90	0.09	1.96	1.99	1.96	1.99	XXX
77310		A	Radiation therapy dose plan	1.05	2.68	2.80	2.68	2.80	0.15	3.88	4.00	3.88	4.00	XXX
77310	26	A	Radiation therapy dose plan	1.05	0.34	0.42	0.34	0.42	0.04	1.43	1.51	1.43	1.51	XXX
77310	TC	A	Radiation therapy dose plan	0.00	2.34	2.38	2.34	2.38	0.11	2.45	2.49	2.45	2.49	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
77315		A	Radiation therapy dose plan	1.56	3.18	3.35	3.18	3.35	0.18	4.92	5.09	4.92	5.09	XXX
77315	26	A	Radiation therapy dose plan	1.56	0.51	0.64	0.51	0.64	0.06	2.13	2.26	2.13	2.26	XXX
77315	TC	A	Radiation therapy dose plan	0.00	2.67	2.71	2.67	2.71	0.12	2.79	2.83	2.79	2.83	XXX
77321		A	Radiation therapy port plan	0.95	4.37	4.51	4.37	4.51	0.22	5.54	5.68	5.54	5.68	XXX
77321	26	A	Radiation therapy port plan	0.95	0.31	0.39	0.31	0.39	0.04	1.30	1.38	1.30	1.38	XXX
77321	TC	A	Radiation therapy port plan	0.00	4.06	4.12	4.06	4.12	0.18	4.24	4.30	4.24	4.30	XXX
77326		A	Radiation therapy dose plan	0.93	2.67	2.79	2.67	2.79	0.15	3.75	3.87	3.75	3.87	XXX
77326	26	A	Radiation therapy dose plan	0.93	0.30	0.38	0.30	0.38	0.04	1.27	1.35	1.27	1.35	XXX
77326	TC	A	Radiation therapy dose plan	0.00	2.37	2.41	2.37	2.41	0.11	2.48	2.52	2.48	2.52	XXX
77327		A	Radiation therapy dose plan	1.39	3.94	4.10	3.94	4.10	0.21	5.54	5.70	5.54	5.70	XXX
77327	26	A	Radiation therapy dose plan	1.39	0.45	0.56	0.45	0.56	0.06	1.90	2.01	1.90	2.01	XXX
77327	TC	A	Radiation therapy dose plan	0.00	3.49	3.54	3.49	3.54	0.15	3.64	3.69	3.64	3.69	XXX
77328		A	Radiation therapy dose plan	2.09	5.65	5.90	5.65	5.90	0.30	8.04	8.29	8.04	8.29	XXX
77328	26	A	Radiation therapy dose plan	2.09	0.67	0.84	0.67	0.84	0.08	2.84	3.01	2.84	3.01	XXX
77328	TC	A	Radiation therapy dose plan	0.00	4.98	5.06	4.98	5.06	0.22	5.20	5.28	5.20	5.28	XXX
77331		A	Special radiation dosimetry	0.87	0.79	0.87	0.79	0.87	0.05	1.71	1.79	1.71	1.79	XXX
77331	26	A	Special radiation dosimetry	0.87	0.28	0.35	0.28	0.35	0.03	1.18	1.25	1.18	1.25	XXX
77331	TC	A	Special radiation dosimetry	0.00	0.51	0.52	0.51	0.52	0.02	0.53	0.54	0.53	0.54	XXX
77332		A	Radiation treatment aid(s)	0.54	1.52	1.59	1.52	1.59	0.08	2.14	2.21	2.14	2.21	XXX
77332	26	A	Radiation treatment aid(s)	0.54	0.17	0.22	0.17	0.22	0.02	0.73	0.78	0.73	0.78	XXX
77332	TC	A	Radiation treatment aid(s)	0.00	1.35	1.37	1.35	1.37	0.06	1.41	1.43	1.41	1.43	XXX
77333		A	Radiation treatment aid(s)	0.84	2.17	2.27	2.17	2.27	0.12	3.13	3.23	3.13	3.23	XXX
77333	26	A	Radiation treatment aid(s)	0.84	0.27	0.34	0.27	0.34	0.03	1.14	1.21	1.14	1.21	XXX
77333	TC	A	Radiation treatment aid(s)	0.00	1.90	1.93	1.90	1.93	0.09	1.99	2.02	1.99	2.02	XXX
77334		A	Radiation treatment aid(s)	1.24	3.66	3.81	3.66	3.81	0.19	5.09	5.24	5.09	5.24	XXX
77334	26	A	Radiation treatment aid(s)	1.24	0.40	0.50	0.40	0.50	0.05	1.69	1.79	1.69	1.79	XXX
77334	TC	A	Radiation treatment aid(s)	0.00	3.26	3.31	3.26	3.31	0.14	3.40	3.45	3.40	3.45	XXX
77336		A	Radiation physics consult	0.00	2.99	3.04	2.99	3.04	0.13	3.12	3.17	3.12	3.17	XXX
77370		A	Radiation physics consult	0.00	3.51	3.56	3.51	3.56	0.15	3.66	3.71	3.66	3.71	XXX
77380		D	Proton beam delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77380	26	D	Proton beam delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77380	TC	D	Proton beam delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77381		D	Proton beam treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77381	26	D	Proton beam treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77381	TC	D	Proton beam treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77399		C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77399	26	C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77399	TC	C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77401		A	Radiation treatment delivery	0.00	1.78	1.81	1.78	1.81	0.09	1.87	1.90	1.87	1.90	XXX
77402		A	Radiation treatment delivery	0.00	1.78	1.81	1.78	1.81	0.09	1.87	1.90	1.87	1.90	XXX
77403		A	Radiation treatment delivery	0.00	1.78	1.81	1.78	1.81	0.09	1.87	1.90	1.87	1.90	XXX
77404		A	Radiation treatment delivery	0.00	1.78	1.81	1.78	1.81	0.09	1.87	1.90	1.87	1.90	XXX
77406		A	Radiation treatment delivery	0.00	1.78	1.81	1.78	1.81	0.09	1.87	1.90	1.87	1.90	XXX
77407		A	Radiation treatment delivery	0.00	2.10	2.13	2.10	2.13	0.10	2.20	2.23	2.20	2.23	XXX
77408		A	Radiation treatment delivery	0.00	2.10	2.13	2.10	2.13	0.10	2.20	2.23	2.20	2.23	XXX
77409		A	Radiation treatment delivery	0.00	2.10	2.13	2.10	2.13	0.10	2.20	2.23	2.20	2.23	XXX
77411		A	Radiation treatment delivery	0.00	2.10	2.13	2.10	2.13	0.10	2.20	2.23	2.20	2.23	XXX
77412		A	Radiation treatment delivery	0.00	2.34	2.38	2.34	2.38	0.11	2.45	2.49	2.45	2.49	XXX
77413		A	Radiation treatment delivery	0.00	2.34	2.38	2.34	2.38	0.11	2.45	2.49	2.45	2.49	XXX
77414		A	Radiation treatment delivery	0.00	2.34	2.38	2.34	2.38	0.11	2.45	2.49	2.45	2.49	XXX
77416		A	Radiation treatment delivery	0.00	2.34	2.38	2.34	2.38	0.11	2.45	2.49	2.45	2.49	XXX
77417		A	Radiology port film(s)	0.00	0.59	0.60	0.59	0.60	0.03	0.62	0.63	0.62	0.63	XXX
77419		D	Weekly radiation therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77420		D	Weekly radiation therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77425		D	Weekly radiation therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77427		A	Radiation tx management, x5	3.31	1.08	1.08	1.08	1.08	0.11	4.50	4.50	4.50	4.50	XXX
77430		D	Weekly radiation therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77431		A	Radiation therapy management	1.81	0.69	0.79	0.69	0.79	0.07	2.57	2.67	2.57	2.67	XXX
77432		A	Stereotactic radiation trmt	7.93	2.93	4.15	2.93	4.15	0.31	11.17	12.39	11.17	12.39	XXX
77470		A	Special radiation treatment	2.09	11.88	12.22	11.88	12.22	0.58	14.55	14.89	14.55	14.89	XXX
77470	26	A	Special radiation treatment	2.09	0.68	0.85	0.68	0.85	0.08	2.85	3.02	2.85	3.02	XXX
77470	TC	A	Special radiation treatment	0.00	11.20	11.37	11.20	11.37	0.50	11.70	11.87	11.70	11.87	XXX
77499		C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77499	26	C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77499	TC	C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77520		C	Proton beam delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77523		C	Proton beam delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77600		R	Hyperthermia treatment	1.56	3.54	3.73	3.54	3.73	0.19	5.29	5.48	5.29	5.48	XXX
77600	26	R	Hyperthermia treatment	1.56	0.48	0.62	0.48	0.62	0.06	2.10	2.24	2.10	2.24	XXX
77600	TC	R	Hyperthermia treatment	0.00	3.06	3.11	3.06	3.11	0.13	3.19	3.24	3.19	3.24	XXX
77605		R	Hyperthermia treatment	2.09	4.81	5.01	4.81	5.01	0.28	7.18	7.38	7.18	7.38	XXX
77605	26	R	Hyperthermia treatment	2.09	0.73	0.87	0.73	0.87	0.09	2.91	3.05	2.91	3.05	XXX
77605	TC	R	Hyperthermia treatment	0.00	4.08	4.14	4.08	4.14	0.19	4.27	4.33	4.27	4.33	XXX
77610		R	Hyperthermia treatment	1.56	3.54	3.73	3.54	3.73	0.19	5.29	5.48	5.29	5.48	XXX
77610	26	R	Hyperthermia treatment	1.56	0.48	0.62	0.48	0.62	0.06	2.10	2.24	2.10	2.24	XXX
77610	TC	R	Hyperthermia treatment	0.00	3.06	3.11	3.06	3.11	0.13	3.19	3.24	3.19	3.24	XXX
77615		R	Hyperthermia treatment	2.09	4.75	4.98	4.75	4.98	0.27	7.11	7.34	7.11	7.34	XXX
77615	26	R	Hyperthermia treatment	2.09	0.67	0.84	0.67	0.84	0.08	2.84	3.01	2.84	3.01	XXX
77615	TC	R	Hyperthermia treatment	0.00	4.08	4.14	4.08	4.14	0.19	4.27	4.33	4.27	4.33	XXX
77620		R	Hyperthermia treatment	1.56	3.66	3.79	3.66	3.79	0.19	5.41	5.54	5.41	5.54	XXX
77620	26	R	Hyperthermia treatment	1.56	0.60	0.68	0.60	0.68	0.06	2.22	2.30	2.22	2.30	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
77620	TC	R	Hyperthermia treatment	0.00	3.06	3.11	3.06	3.11	0.13	3.19	3.24	3.19	3.24	XXX
77750		A	Infuse radioactive materials	4.91	2.92	3.26	2.92	3.26	0.24	8.07	8.41	8.07	8.41	090
77750	26	A	Infuse radioactive materials	4.91	1.58	1.90	1.58	1.90	0.18	6.67	6.99	6.67	6.99	090
77750	TC	A	Infuse radioactive materials	0.00	1.34	1.36	1.34	1.36	0.06	1.40	1.42	1.40	1.42	090
77761		A	Radioelement application	3.81	3.60	3.97	3.60	3.97	0.28	7.69	8.06	7.69	8.06	090
77761	26	A	Radioelement application	3.81	1.08	1.41	1.08	1.41	0.16	5.05	5.38	5.05	5.38	090
77761	TC	A	Radioelement application	0.00	2.52	2.56	2.52	2.56	0.12	2.64	2.68	2.64	2.68	090
77762		A	Radioelement application	5.72	5.52	5.93	5.52	5.93	0.40	11.64	12.05	11.64	12.05	090
77762	26	A	Radioelement application	5.72	1.90	2.25	1.90	2.25	0.24	7.86	8.21	7.86	8.21	090
77762	TC	A	Radioelement application	0.00	3.62	3.68	3.62	3.68	0.16	3.78	3.84	3.78	3.84	090
77763		A	Radioelement application	8.57	7.31	7.93	7.31	7.93	0.55	16.43	17.05	16.43	17.05	090
77763	26	A	Radioelement application	8.57	2.80	3.35	2.80	3.35	0.35	11.72	12.27	11.72	12.27	090
77763	TC	A	Radioelement application	0.00	4.51	4.58	4.51	4.58	0.20	4.71	4.78	4.71	4.78	090
77776		A	Radioelement application	4.66	3.32	3.92	3.32	3.92	0.31	8.29	8.89	8.29	8.89	XXX
77776	26	A	Radioelement application	4.66	1.13	1.70	1.13	1.70	0.20	5.99	6.56	5.99	6.56	XXX
77776	TC	A	Radioelement application	0.00	2.19	2.22	2.19	2.22	0.11	2.30	2.33	2.30	2.33	XXX
77777		A	Radioelement application	7.48	6.77	7.28	6.77	7.28	0.50	14.75	15.26	14.75	15.26	090
77777	26	A	Radioelement application	7.48	2.51	2.96	2.51	2.96	0.31	10.30	10.75	10.30	10.75	090
77777	TC	A	Radioelement application	0.00	4.26	4.32	4.26	4.32	0.19	4.45	4.51	4.45	4.51	090
77778		A	Radioelement application	11.19	8.77	9.59	8.77	9.59	0.67	20.63	21.45	20.63	21.45	090
77778	26	A	Radioelement application	11.19	3.61	4.35	3.61	4.35	0.44	15.24	15.98	15.24	15.98	090
77778	TC	A	Radioelement application	0.00	5.16	5.24	5.16	5.24	0.23	5.39	5.47	5.39	5.47	090
77781		A	High intensity brachytherapy	1.66	20.95	21.35	20.95	21.35	0.98	23.59	23.99	23.59	23.99	090
77781	26	A	High intensity brachytherapy	1.66	0.55	0.65	0.55	0.65	0.07	2.28	2.38	2.28	2.38	090
77781	TC	A	High intensity brachytherapy	0.00	20.40	20.70	20.40	20.70	0.91	21.31	21.61	21.31	21.61	090
77782		A	High intensity brachytherapy	2.49	21.21	21.68	21.21	21.68	1.01	24.71	25.18	24.71	25.18	090
77782	26	A	High intensity brachytherapy	2.49	0.81	0.98	0.81	0.98	0.10	3.40	3.57	3.40	3.57	090
77782	TC	A	High intensity brachytherapy	0.00	20.40	20.70	20.40	20.70	0.91	21.31	21.61	21.31	21.61	090
77783		A	High intensity brachytherapy	3.73	21.62	22.15	21.62	22.15	1.05	26.40	26.93	26.40	26.93	090
77783	26	A	High intensity brachytherapy	3.73	1.22	1.45	1.22	1.45	0.14	5.09	5.32	5.09	5.32	090
77783	TC	A	High intensity brachytherapy	0.00	20.40	20.70	20.40	20.70	0.91	21.31	21.61	21.31	21.61	090
77784		A	High intensity brachytherapy	5.61	22.22	22.88	22.22	22.88	1.12	28.95	29.61	28.95	29.61	090
77784	26	A	High intensity brachytherapy	5.61	1.82	2.18	1.82	2.18	0.21	7.64	8.00	7.64	8.00	090
77784	TC	A	High intensity brachytherapy	0.00	20.40	20.70	20.40	20.70	0.91	21.31	21.61	21.31	21.61	090
77789		A	Radioelement application	1.12	0.83	0.91	0.83	0.91	0.06	2.01	2.09	2.01	2.09	090
77789	26	A	Radioelement application	1.12	0.37	0.44	0.37	0.44	0.04	1.53	1.60	1.53	1.60	090
77789	TC	A	Radioelement application	0.00	0.46	0.47	0.46	0.47	0.02	0.48	0.49	0.48	0.49	090
77790		A	Radioelement handling	1.05	0.85	0.94	0.85	0.94	0.06	1.96	2.05	1.96	2.05	XXX
77790	26	A	Radioelement handling	1.05	0.34	0.42	0.34	0.42	0.04	1.43	1.51	1.43	1.51	XXX
77790	TC	A	Radioelement handling	0.00	0.51	0.52	0.51	0.52	0.02	0.53	0.54	0.53	0.54	XXX
77799		C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77799	26	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77799	TC	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78000		A	Thyroid, single uptake	0.19	1.02	1.07	1.02	1.07	0.06	1.27	1.32	1.27	1.32	XXX
78000	26	A	Thyroid, single uptake	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
78000	TC	A	Thyroid, single uptake	0.00	0.97	0.99	0.97	0.99	0.05	1.02	1.04	1.02	1.04	XXX
78001		A	Thyroid, multiple uptakes	0.26	1.38	1.43	1.38	1.43	0.07	1.71	1.76	1.71	1.76	XXX
78001	26	A	Thyroid, multiple uptakes	0.26	0.07	0.10	0.07	0.10	0.01	0.34	0.37	0.34	0.37	XXX
78001	TC	A	Thyroid, multiple uptakes	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
78003		A	Thyroid suppress/stimul	0.33	1.06	1.12	1.06	1.12	0.06	1.45	1.51	1.45	1.51	XXX
78003	26	A	Thyroid suppress/stimul	0.33	0.09	0.13	0.09	0.13	0.01	0.43	0.47	0.43	0.47	XXX
78003	TC	A	Thyroid suppress/stimul	0.00	0.97	0.99	0.97	0.99	0.05	1.02	1.04	1.02	1.04	XXX
78006		A	Thyroid imaging with uptake	0.49	2.53	2.62	2.53	2.62	0.13	3.15	3.24	3.15	3.24	XXX
78006	26	A	Thyroid imaging with uptake	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78006	TC	A	Thyroid imaging with uptake	0.00	2.39	2.43	2.39	2.43	0.11	2.50	2.54	2.50	2.54	XXX
78007		A	Thyroid image, mult uptakes	0.50	2.72	2.82	2.72	2.82	0.14	3.36	3.46	3.36	3.46	XXX
78007	26	A	Thyroid image, mult uptakes	0.50	0.14	0.20	0.14	0.20	0.02	0.66	0.72	0.66	0.72	XXX
78007	TC	A	Thyroid image, mult uptakes	0.00	2.58	2.62	2.58	2.62	0.12	2.70	2.74	2.70	2.74	XXX
78010		A	Thyroid imaging	0.39	1.94	2.01	1.94	2.01	0.11	2.44	2.51	2.44	2.51	XXX
78010	26	A	Thyroid imaging	0.39	0.11	0.15	0.11	0.15	0.02	0.52	0.56	0.52	0.56	XXX
78010	TC	A	Thyroid imaging	0.00	1.83	1.86	1.83	1.86	0.09	1.92	1.95	1.92	1.95	XXX
78011		A	Thyroid imaging with flow	0.45	2.55	2.64	2.55	2.64	0.13	3.13	3.22	3.13	3.22	XXX
78011	26	A	Thyroid imaging with flow	0.45	0.13	0.18	0.13	0.18	0.02	0.60	0.65	0.60	0.65	XXX
78011	TC	A	Thyroid imaging with flow	0.00	2.42	2.46	2.42	2.46	0.11	2.53	2.57	2.53	2.57	XXX
78015		A	Thyroid met imaging	0.67	2.77	2.89	2.77	2.89	0.15	3.59	3.71	3.59	3.71	XXX
78015	26	A	Thyroid met imaging	0.67	0.19	0.27	0.19	0.27	0.03	0.89	0.97	0.89	0.97	XXX
78015	TC	A	Thyroid met imaging	0.00	2.58	2.62	2.58	2.62	0.12	2.70	2.74	2.70	2.74	XXX
78016		A	Thyroid met imaging/studies	0.82	3.74	3.88	3.74	3.88	0.18	4.74	4.88	4.74	4.88	XXX
78016	26	A	Thyroid met imaging/studies	0.82	0.24	0.33	0.24	0.33	0.03	1.09	1.18	1.09	1.18	XXX
78016	TC	A	Thyroid met imaging/studies	0.00	3.50	3.55	3.50	3.55	0.15	3.65	3.70	3.65	3.70	XXX
78018		A	Thyroid met imaging, body	0.86	5.70	5.89	5.70	5.89	0.28	6.84	7.03	6.84	7.03	XXX
78018	26	A	Thyroid met imaging, body	0.86	0.25	0.36	0.25	0.36	0.03	1.14	1.25	1.14	1.25	XXX
78018	TC	A	Thyroid met imaging, body	0.00	5.45	5.53	5.45	5.53	0.25	5.70	5.78	5.70	5.78	XXX
78020		A	Thyroid met uptake	0.60	0.38	0.38	0.38	0.38	0.00	0.98	0.98	0.98	0.98	ZZZ
78020	26	A	Thyroid met uptake	0.60	0.23	0.23	0.23	0.23	0.00	0.83	0.83	0.83	0.83	ZZZ
78020	TC	A	Thyroid met uptake	0.00	0.15	0.15	0.15	0.15	0.00	0.15	0.15	0.15	0.15	ZZZ
78070		A	Parathyroid nuclear imaging	0.82	2.06	2.10	2.06	2.10	0.12	3.00	3.04	3.00	3.04	XXX
78070	26	A	Parathyroid nuclear imaging	0.82	0.23	0.24	0.23	0.24	0.03	1.08	1.09	1.08	1.09	XXX
78070	TC	A	Parathyroid nuclear imaging	0.00	1.83	1.86	1.83	1.86	0.09	1.92	1.95	1.92	1.95	XXX
78075		A	Adrenal nuclear imaging	0.74	5.68	5.83	5.68	5.83	0.28	6.70	6.85	6.70	6.85	XXX
78075	26	A	Adrenal nuclear imaging	0.74	0.23	0.30	0.23	0.30	0.03	1.00	1.07	1.00	1.07	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
78075	TC	A	Adrenal nuclear imaging	0.00	5.45	5.53	5.45	5.53	0.25	5.70	5.78	5.70	5.78	XXX
78099		C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78099	26	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78099	TC	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78102		A	Bone marrow imaging, ltd	0.55	2.22	2.30	2.22	2.30	0.12	2.89	2.97	2.89	2.97	XXX
78102	26	A	Bone marrow imaging, ltd	0.55	0.17	0.22	0.17	0.22	0.02	0.74	0.79	0.74	0.79	XXX
78102	TC	A	Bone marrow imaging, ltd	0.00	2.05	2.08	2.05	2.08	0.10	2.15	2.18	2.15	2.18	XXX
78103		A	Bone marrow imaging, mult	0.75	3.41	3.54	3.41	3.54	0.17	4.33	4.46	4.33	4.46	XXX
78103	26	A	Bone marrow imaging, mult	0.75	0.22	0.30	0.22	0.30	0.03	1.00	1.08	1.00	1.08	XXX
78103	TC	A	Bone marrow imaging, mult	0.00	3.19	3.24	3.19	3.24	0.14	3.33	3.38	3.33	3.38	XXX
78104		A	Bone marrow imaging, body	0.80	4.32	4.47	4.32	4.47	0.22	5.34	5.49	5.34	5.49	XXX
78104	26	A	Bone marrow imaging, body	0.80	0.23	0.32	0.23	0.32	0.03	1.06	1.15	1.06	1.15	XXX
78104	TC	A	Bone marrow imaging, body	0.00	4.09	4.15	4.09	4.15	0.19	4.28	4.34	4.28	4.34	XXX
78110		A	Plasma volume, single	0.19	1.01	1.05	1.01	1.05	0.06	1.26	1.30	1.26	1.30	XXX
78110	26	A	Plasma volume, single	0.19	0.06	0.08	0.06	0.08	0.01	0.26	0.28	0.26	0.28	XXX
78110	TC	A	Plasma volume, single	0.00	0.95	0.97	0.95	0.97	0.05	1.00	1.02	1.00	1.02	XXX
78111		A	Plasma volume, multiple	0.22	2.64	2.71	2.64	2.71	0.13	2.99	3.06	2.99	3.06	XXX
78111	26	A	Plasma volume, multiple	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
78111	TC	A	Plasma volume, multiple	0.00	2.58	2.62	2.58	2.62	0.12	2.70	2.74	2.70	2.74	XXX
78120		A	Red cell mass, single	0.23	1.81	1.87	1.81	1.87	0.10	2.14	2.20	2.14	2.20	XXX
78120	26	A	Red cell mass, single	0.23	0.07	0.10	0.07	0.10	0.01	0.31	0.34	0.31	0.34	XXX
78120	TC	A	Red cell mass, single	0.00	1.74	1.77	1.74	1.77	0.09	1.83	1.86	1.83	1.86	XXX
78121		A	Red cell mass, multiple	0.32	3.01	3.10	3.01	3.10	0.13	3.46	3.55	3.46	3.55	XXX
78121	26	A	Red cell mass, multiple	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
78121	TC	A	Red cell mass, multiple	0.00	2.92	2.97	2.92	2.97	0.12	3.04	3.09	3.04	3.09	XXX
78122		A	Blood volume	0.45	4.75	4.87	4.75	4.87	0.23	5.43	5.55	5.43	5.55	XXX
78122	26	A	Blood volume	0.45	0.13	0.18	0.13	0.18	0.02	0.60	0.65	0.60	0.65	XXX
78122	TC	A	Blood volume	0.00	4.62	4.69	4.62	4.69	0.21	4.83	4.90	4.83	4.90	XXX
78130		A	Red cell survival study	0.61	3.05	3.15	3.05	3.15	0.14	3.80	3.90	3.80	3.90	XXX
78130	26	A	Red cell survival study	0.61	0.18	0.24	0.18	0.24	0.02	0.81	0.87	0.81	0.87	XXX
78130	TC	A	Red cell survival study	0.00	2.87	2.91	2.87	2.91	0.12	2.99	3.03	2.99	3.03	XXX
78135		A	Red cell survival kinetics	0.64	5.08	5.22	5.08	5.22	0.24	5.96	6.10	5.96	6.10	XXX
78135	26	A	Red cell survival kinetics	0.64	0.18	0.25	0.18	0.25	0.02	0.84	0.91	0.84	0.91	XXX
78135	TC	A	Red cell survival kinetics	0.00	4.90	4.97	4.90	4.97	0.22	5.12	5.19	5.12	5.19	XXX
78140		A	Red cell sequestration	0.61	4.13	4.25	4.13	4.25	0.20	4.94	5.06	4.94	5.06	XXX
78140	26	A	Red cell sequestration	0.61	0.18	0.24	0.18	0.24	0.02	0.81	0.87	0.81	0.87	XXX
78140	TC	A	Red cell sequestration	0.00	3.95	4.01	3.95	4.01	0.18	4.13	4.19	4.13	4.19	XXX
78160		A	Plasma iron turnover	0.33	3.78	3.87	3.78	3.87	0.17	4.28	4.37	4.28	4.37	XXX
78160	26	A	Plasma iron turnover	0.33	0.10	0.13	0.10	0.13	0.01	0.44	0.47	0.44	0.47	XXX
78160	TC	A	Plasma iron turnover	0.00	3.68	3.74	3.68	3.74	0.16	3.84	3.90	3.84	3.90	XXX
78162		A	Iron absorption exam	0.45	3.39	3.47	3.39	3.47	0.15	3.99	4.07	3.99	4.07	XXX
78162	26	A	Iron absorption exam	0.45	0.17	0.20	0.17	0.20	0.01	0.63	0.66	0.63	0.66	XXX
78162	TC	A	Iron absorption exam	0.00	3.22	3.27	3.22	3.27	0.14	3.36	3.41	3.36	3.41	XXX
78170		A	Red cell iron utilization	0.41	5.45	5.57	5.45	5.57	0.26	6.12	6.24	6.12	6.24	XXX
78170	26	A	Red cell iron utilization	0.41	0.12	0.16	0.12	0.16	0.02	0.55	0.59	0.55	0.59	XXX
78170	TC	A	Red cell iron utilization	0.00	5.33	5.41	5.33	5.41	0.24	5.57	5.65	5.57	5.65	XXX
78172		C	Total body iron estimation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78172	26	A	Total body iron estimation	0.53	0.16	0.22	0.16	0.22	0.02	0.71	0.77	0.71	0.77	XXX
78172	TC	C	Total body iron estimation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78185		A	Spleen imaging	0.40	2.48	2.57	2.48	2.57	0.13	3.01	3.10	3.01	3.10	XXX
78185	26	A	Spleen imaging	0.40	0.11	0.16	0.11	0.16	0.02	0.53	0.58	0.53	0.58	XXX
78185	TC	A	Spleen imaging	0.00	2.37	2.41	2.37	2.41	0.11	2.48	2.52	2.48	2.52	XXX
78190		A	Platelet survival, kinetics	1.09	6.14	6.29	6.14	6.29	0.30	7.53	7.68	7.53	7.68	XXX
78190	26	A	Platelet survival, kinetics	1.09	0.40	0.46	0.40	0.46	0.04	1.53	1.59	1.53	1.59	XXX
78190	TC	A	Platelet survival, kinetics	0.00	5.74	5.83	5.74	5.83	0.26	6.00	6.09	6.00	6.09	XXX
78191		A	Platelet survival	0.61	7.55	7.72	7.55	7.72	0.34	8.50	8.67	8.50	8.67	XXX
78191	26	A	Platelet survival	0.61	0.18	0.24	0.18	0.24	0.02	0.81	0.87	0.81	0.87	XXX
78191	TC	A	Platelet survival	0.00	7.37	7.48	7.37	7.48	0.32	7.69	7.80	7.69	7.80	XXX
78195		A	Lymph system imaging	1.20	4.44	4.50	4.44	4.50	0.24	5.88	5.94	5.88	5.94	XXX
78195	26	A	Lymph system imaging	1.20	0.35	0.35	0.35	0.35	0.05	1.60	1.60	1.60	1.60	XXX
78195	TC	A	Lymph system imaging	0.00	4.09	4.15	4.09	4.15	0.19	4.28	4.34	4.28	4.34	XXX
78199		C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78199	26	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78199	TC	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78201		A	Liver imaging	0.44	2.50	2.58	2.50	2.58	0.13	3.07	3.15	3.07	3.15	XXX
78201	26	A	Liver imaging	0.44	0.13	0.17	0.13	0.17	0.02	0.59	0.63	0.59	0.63	XXX
78201	TC	A	Liver imaging	0.00	2.37	2.41	2.37	2.41	0.11	2.48	2.52	2.48	2.52	XXX
78202		A	Liver imaging with flow	0.51	3.05	3.14	3.05	3.14	0.14	3.70	3.79	3.70	3.79	XXX
78202	26	A	Liver imaging with flow	0.51	0.15	0.20	0.15	0.20	0.02	0.68	0.73	0.68	0.73	XXX
78202	TC	A	Liver imaging with flow	0.00	2.90	2.94	2.90	2.94	0.12	3.02	3.06	3.02	3.06	XXX
78205		A	Liver imaging (3D)	0.71	6.14	6.31	6.14	6.31	0.30	7.15	7.32	7.15	7.32	XXX
78205	26	A	Liver imaging (3D)	0.71	0.20	0.28	0.20	0.28	0.03	0.94	1.02	0.94	1.02	XXX
78205	TC	A	Liver imaging (3D)	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
78206		A	Liver image (3d) w/flow	0.96	6.21	6.21	6.21	6.21	0.13	7.30	7.30	7.30	7.30	XXX
78206	26	A	Liver image (3d) w/flow	0.96	0.28	0.28	0.28	0.28	0.04	1.28	1.28	1.28	1.28	XXX
78206	TC	A	Liver image (3d) w/flow	0.00	5.93	5.93	5.93	5.93	0.09	6.02	6.02	6.02	6.02	XXX
78215		A	Liver and spleen imaging	0.49	3.09	3.19	3.09	3.19	0.14	3.72	3.82	3.72	3.82	XXX
78215	26	A	Liver and spleen imaging	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78215	TC	A	Liver and spleen imaging	0.00	2.95	3.00	2.95	3.00	0.12	3.07	3.12	3.07	3.12	XXX
78216		A	Liver & spleen image/flow	0.57	3.66	3.77	3.66	3.77	0.17	4.40	4.51	4.40	4.51	XXX
78216	26	A	Liver & spleen image/flow	0.57	0.16	0.22	0.16	0.22	0.02	0.75	0.81	0.75	0.81	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
78216	TC	A	Liver & spleen image/flow	0.00	3.50	3.55	3.50	3.55	0.15	3.65	3.70	3.65	3.70	XXX
78220		A	Liver function study	0.49	3.88	3.99	3.88	3.99	0.18	4.55	4.66	4.55	4.66	XXX
78220	26	A	Liver function study	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78220	TC	A	Liver function study	0.00	3.74	3.80	3.74	3.80	0.16	3.90	3.96	3.90	3.96	XXX
78223		A	Hepatobiliary imaging	0.84	3.91	4.06	3.91	4.06	0.19	4.94	5.09	4.94	5.09	XXX
78223	26	A	Hepatobiliary imaging	0.84	0.23	0.32	0.23	0.32	0.03	1.10	1.19	1.10	1.19	XXX
78223	TC	A	Hepatobiliary imaging	0.00	3.68	3.74	3.68	3.74	0.16	3.84	3.90	3.84	3.90	XXX
78230		A	Salivary gland imaging	0.45	2.33	2.41	2.33	2.41	0.13	2.91	2.99	2.91	2.99	XXX
78230	26	A	Salivary gland imaging	0.45	0.14	0.19	0.14	0.19	0.02	0.61	0.66	0.61	0.66	XXX
78230	TC	A	Salivary gland imaging	0.00	2.19	2.22	2.19	2.22	0.11	2.30	2.33	2.30	2.33	XXX
78231		A	Serial salivary imaging	0.52	3.34	3.45	3.34	3.45	0.16	4.02	4.13	4.02	4.13	XXX
78231	26	A	Serial salivary imaging	0.52	0.15	0.21	0.15	0.21	0.02	0.69	0.75	0.69	0.75	XXX
78231	TC	A	Serial salivary imaging	0.00	3.19	3.24	3.19	3.24	0.14	3.33	3.38	3.33	3.38	XXX
78232		A	Salivary gland function exam	0.47	3.70	3.80	3.70	3.80	0.17	4.34	4.44	4.34	4.44	XXX
78232	26	A	Salivary gland function exam	0.47	0.14	0.19	0.14	0.19	0.02	0.63	0.68	0.63	0.68	XXX
78232	TC	A	Salivary gland function exam	0.00	3.56	3.61	3.56	3.61	0.15	3.71	3.76	3.71	3.76	XXX
78258		A	Esophageal motility study	0.74	3.11	3.23	3.11	3.23	0.15	4.00	4.12	4.00	4.12	XXX
78258	26	A	Esophageal motility study	0.74	0.21	0.29	0.21	0.29	0.03	0.98	1.06	0.98	1.06	XXX
78258	TC	A	Esophageal motility study	0.00	2.90	2.94	2.90	2.94	0.12	3.02	3.06	3.02	3.06	XXX
78261		A	Gastric mucosa imaging	0.69	4.33	4.46	4.33	4.46	0.22	5.24	5.37	5.24	5.37	XXX
78261	26	A	Gastric mucosa imaging	0.69	0.21	0.28	0.21	0.28	0.03	0.93	1.00	0.93	1.00	XXX
78261	TC	A	Gastric mucosa imaging	0.00	4.12	4.18	4.12	4.18	0.19	4.31	4.37	4.31	4.37	XXX
78262		A	Gastroesophageal reflux exam	0.68	4.47	4.61	4.47	4.61	0.21	5.36	5.50	5.36	5.50	XXX
78262	26	A	Gastroesophageal reflux exam	0.68	0.20	0.27	0.20	0.27	0.02	0.90	0.97	0.90	0.97	XXX
78262	TC	A	Gastroesophageal reflux exam	0.00	4.27	4.34	4.27	4.34	0.19	4.46	4.53	4.46	4.53	XXX
78264		A	Gastric emptying study	0.78	4.37	4.52	4.37	4.52	0.22	5.37	5.52	5.37	5.52	XXX
78264	26	A	Gastric emptying study	0.78	0.22	0.31	0.22	0.31	0.03	1.03	1.12	1.03	1.12	XXX
78264	TC	A	Gastric emptying study	0.00	4.15	4.21	4.15	4.21	0.19	4.34	4.40	4.34	4.40	XXX
78267		X	Breath tst attain/anal c-14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78268		X	Breath test analysis, c-14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78270		A	Vit B-12 absorption exam	0.20	1.61	1.67	1.61	1.67	0.09	1.90	1.96	1.90	1.96	XXX
78270	26	A	Vit B-12 absorption exam	0.20	0.06	0.09	0.06	0.09	0.01	0.27	0.30	0.27	0.30	XXX
78270	TC	A	Vit B-12 absorption exam	0.00	1.55	1.58	1.55	1.58	0.08	1.63	1.66	1.63	1.66	XXX
78271		A	Vit B-12 absorp exam, IF	0.20	1.71	1.77	1.71	1.77	0.09	2.00	2.06	2.00	2.06	XXX
78271	26	A	Vit B-12 absorp exam, IF	0.20	0.06	0.09	0.06	0.09	0.01	0.27	0.30	0.27	0.30	XXX
78271	TC	A	Vit B-12 absorp exam, IF	0.00	1.65	1.68	1.65	1.68	0.08	1.73	1.76	1.73	1.76	XXX
78272		A	Vit B-12 absorp, combined	0.27	2.41	2.48	2.41	2.48	0.12	2.80	2.87	2.80	2.87	XXX
78272	26	A	Vit B-12 absorp, combined	0.27	0.08	0.11	0.08	0.11	0.01	0.36	0.39	0.36	0.39	XXX
78272	TC	A	Vit B-12 absorp, combined	0.00	2.33	2.37	2.33	2.37	0.11	2.44	2.48	2.44	2.48	XXX
78278		A	Acute GI blood loss imaging	0.99	5.18	5.36	5.18	5.36	0.26	6.43	6.61	6.43	6.61	XXX
78278	26	A	Acute GI blood loss imaging	0.99	0.28	0.39	0.28	0.39	0.04	1.31	1.42	1.31	1.42	XXX
78278	TC	A	Acute GI blood loss imaging	0.00	4.90	4.97	4.90	4.97	0.22	5.12	5.19	5.12	5.19	XXX
78282		C	GI protein loss exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78282	26	A	GI protein loss exam	0.38	0.11	0.15	0.11	0.15	0.01	0.50	0.54	0.50	0.54	XXX
78282	TC	C	GI protein loss exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78290		A	Meckel's divert exam	0.68	3.25	3.38	3.25	3.38	0.16	4.09	4.22	4.09	4.22	XXX
78290	26	A	Meckel's divert exam	0.68	0.19	0.27	0.19	0.27	0.03	0.90	0.98	0.90	0.98	XXX
78290	TC	A	Meckel's divert exam	0.00	3.06	3.11	3.06	3.11	0.13	3.19	3.24	3.19	3.24	XXX
78291		A	Leveen/shunt patency exam	0.88	3.33	3.47	3.33	3.47	0.16	4.37	4.51	4.37	4.51	XXX
78291	26	A	Leveen/shunt patency exam	0.88	0.25	0.34	0.25	0.34	0.03	1.16	1.25	1.16	1.25	XXX
78291	TC	A	Leveen/shunt patency exam	0.00	3.08	3.13	3.08	3.13	0.13	3.21	3.26	3.21	3.26	XXX
78299		C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78299	26	C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78299	TC	C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78300		A	Bone imaging, limited area	0.62	2.67	2.78	2.67	2.78	0.14	3.43	3.54	3.43	3.54	XXX
78300	26	A	Bone imaging, limited area	0.62	0.17	0.24	0.17	0.24	0.02	0.81	0.88	0.81	0.88	XXX
78300	TC	A	Bone imaging, limited area	0.00	2.50	2.54	2.50	2.54	0.12	2.62	2.66	2.62	2.66	XXX
78305		A	Bone imaging, multiple areas	0.83	3.91	4.06	3.91	4.06	0.19	4.93	5.08	4.93	5.08	XXX
78305	26	A	Bone imaging, multiple areas	0.83	0.23	0.32	0.23	0.32	0.03	1.09	1.18	1.09	1.18	XXX
78305	TC	A	Bone imaging, multiple areas	0.00	3.68	3.74	3.68	3.74	0.16	3.84	3.90	3.84	3.90	XXX
78306		A	Bone imaging, whole body	0.86	4.53	4.69	4.53	4.69	0.22	5.61	5.77	5.61	5.77	XXX
78306	26	A	Bone imaging, whole body	0.86	0.24	0.33	0.24	0.33	0.03	1.13	1.22	1.13	1.22	XXX
78306	TC	A	Bone imaging, whole body	0.00	4.29	4.36	4.29	4.36	0.19	4.48	4.55	4.48	4.55	XXX
78315		A	Bone imaging, 3 phase	1.02	5.09	5.26	5.09	5.26	0.26	6.37	6.54	6.37	6.54	XXX
78315	26	A	Bone imaging, 3 phase	1.02	0.29	0.39	0.29	0.39	0.04	1.35	1.45	1.35	1.45	XXX
78315	TC	A	Bone imaging, 3 phase	0.00	4.80	4.87	4.80	4.87	0.22	5.02	5.09	5.02	5.09	XXX
78320		A	Bone imaging (3D)	1.04	6.24	6.43	6.24	6.43	0.31	7.59	7.78	7.59	7.78	XXX
78320	26	A	Bone imaging (3D)	1.04	0.30	0.40	0.30	0.40	0.04	1.38	1.48	1.38	1.48	XXX
78320	TC	A	Bone imaging (3D)	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
78350		A	Bone mineral, single photon	0.22	0.82	0.86	0.82	0.86	0.05	1.09	1.13	1.09	1.13	XXX
78350	26	A	Bone mineral, single photon	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
78350	TC	A	Bone mineral, single photon	0.00	0.76	0.77	0.76	0.77	0.04	0.80	0.81	0.80	0.81	XXX
78351		N	Bone mineral, dual photon	+0.30	1.46	0.84	0.12	0.17	0.01	1.77	1.15	0.43	0.48	XXX
78399		C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78399	26	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78399	TC	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78414		C	Non-imaging heart function	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78414	26	A	Non-imaging heart function	0.45	0.15	0.19	0.15	0.19	0.02	0.62	0.66	0.62	0.66	XXX
78414	TC	C	Non-imaging heart function	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78428		A	Cardiac shunt imaging	0.78	2.56	2.65	2.56	2.65	0.14	3.48	3.57	3.48	3.57	XXX
78428	26	A	Cardiac shunt imaging	0.78	0.30	0.35	0.30	0.35	0.03	1.11	1.16	1.11	1.16	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
78428	TC	A	Cardiac shunt imaging	0.00	2.26	2.30	2.26	2.30	0.11	2.37	2.41	2.37	2.41	XXX
78445		A	Vascular flow imaging	0.49	2.01	2.10	2.01	2.10	0.11	2.61	2.70	2.61	2.70	XXX
78445	26	A	Vascular flow imaging	0.49	0.14	0.20	0.14	0.20	0.02	0.65	0.71	0.65	0.71	XXX
78445	TC	A	Vascular flow imaging	0.00	1.87	1.90	1.87	1.90	0.09	1.96	1.99	1.96	1.99	XXX
78455		A	Venous thrombosis study	0.73	4.21	4.35	4.21	4.35	0.21	5.15	5.29	5.15	5.29	XXX
78455	26	A	Venous thrombosis study	0.73	0.21	0.29	0.21	0.29	0.03	0.97	1.05	0.97	1.05	XXX
78455	TC	A	Venous thrombosis study	0.00	4.00	4.06	4.00	4.06	0.18	4.18	4.24	4.18	4.24	XXX
78456		A	Acute venous thrombus image	1.00	4.30	4.30	4.30	4.30	0.30	5.60	5.60	5.60	5.60	XXX
78456	26	A	Acute venous thrombus image	1.00	0.30	0.30	0.30	0.30	0.05	1.35	1.35	1.35	1.35	XXX
78456	TC	A	Acute venous thrombus image	0.00	4.00	4.00	4.00	4.00	0.25	4.25	4.25	4.25	4.25	XXX
78457		A	Venous thrombosis imaging	0.77	2.89	3.01	2.89	3.01	0.15	3.81	3.93	3.81	3.93	XXX
78457	26	A	Venous thrombosis imaging	0.77	0.22	0.30	0.22	0.30	0.03	1.02	1.10	1.02	1.10	XXX
78457	TC	A	Venous thrombosis imaging	0.00	2.67	2.71	2.67	2.71	0.12	2.79	2.83	2.79	2.83	XXX
78458		A	Ven thrombosis images, bilat	0.90	4.31	4.45	4.31	4.45	0.21	5.42	5.56	5.42	5.56	XXX
78458	26	A	Ven thrombosis images, bilat	0.90	0.27	0.35	0.27	0.35	0.03	1.20	1.28	1.20	1.28	XXX
78458	TC	A	Ven thrombosis images, bilat	0.00	4.04	4.10	4.04	4.10	0.18	4.22	4.28	4.22	4.28	XXX
78459		I	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78459	26	I	Heart muscle imaging (PET)	+1.88	0.73	1.09	0.73	1.09	0.07	2.68	3.04	2.68	3.04	XXX
78459	TC	I	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78460		A	Heart muscle blood, single	0.86	2.63	2.75	2.63	2.75	0.14	3.63	3.75	3.63	3.75	XXX
78460	26	A	Heart muscle blood, single	0.86	0.26	0.34	0.26	0.34	0.03	1.15	1.23	1.15	1.23	XXX
78460	TC	A	Heart muscle blood, single	0.00	2.37	2.41	2.37	2.41	0.11	2.48	2.52	2.48	2.52	XXX
78461		A	Heart muscle blood, multiple	1.23	5.15	5.31	5.15	5.31	0.26	6.64	6.80	6.64	6.80	XXX
78461	26	A	Heart muscle blood, multiple	1.23	0.41	0.50	0.41	0.50	0.04	1.68	1.77	1.68	1.77	XXX
78461	TC	A	Heart muscle blood, multiple	0.00	4.74	4.81	4.74	4.81	0.22	4.96	5.03	4.96	5.03	XXX
78464		A	Heart image (3d), single	1.09	7.44	7.64	7.44	7.64	0.36	8.89	9.09	8.89	9.09	XXX
78464	26	A	Heart image (3d), single	1.09	0.34	0.43	0.34	0.43	0.04	1.47	1.56	1.47	1.56	XXX
78464	TC	A	Heart image (3d), single	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX
78465		A	Heart image (3d), multiple	1.46	12.34	12.63	12.34	12.63	0.58	14.38	14.67	14.38	14.67	XXX
78465	26	A	Heart image (3d), multiple	1.46	0.49	0.60	0.49	0.60	0.05	2.00	2.11	2.00	2.11	XXX
78465	TC	A	Heart image (3d), multiple	0.00	11.85	12.03	11.85	12.03	0.53	12.38	12.56	12.38	12.56	XXX
78466		A	Heart infarct image	0.69	2.84	2.95	2.84	2.95	0.15	3.68	3.79	3.68	3.79	XXX
78466	26	A	Heart infarct image	0.69	0.21	0.28	0.21	0.28	0.03	0.93	1.00	0.93	1.00	XXX
78466	TC	A	Heart infarct image	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
78468		A	Heart infarct image (ef)	0.80	3.91	4.05	3.91	4.05	0.19	4.90	5.04	4.90	5.04	XXX
78468	26	A	Heart infarct image (ef)	0.80	0.23	0.31	0.23	0.31	0.03	1.06	1.14	1.06	1.14	XXX
78468	TC	A	Heart infarct image (ef)	0.00	3.68	3.74	3.68	3.74	0.16	3.84	3.90	3.84	3.90	XXX
78469		A	Heart infarct image (3D)	0.92	5.55	5.70	5.55	5.70	0.27	6.74	6.89	6.74	6.89	XXX
78469	26	A	Heart infarct image (3D)	0.92	0.30	0.37	0.30	0.37	0.03	1.25	1.32	1.25	1.32	XXX
78469	TC	A	Heart infarct image (3D)	0.00	5.25	5.33	5.25	5.33	0.24	5.49	5.57	5.49	5.57	XXX
78472		A	Gated heart, planar, single	0.98	5.85	6.02	5.85	6.02	0.30	7.13	7.30	7.13	7.30	XXX
78472	26	A	Gated heart, planar, single	0.98	0.31	0.40	0.31	0.40	0.04	1.33	1.42	1.33	1.42	XXX
78472	TC	A	Gated heart, planar, single	0.00	5.54	5.62	5.54	5.62	0.26	5.80	5.88	5.80	5.88	XXX
78473		A	Gated heart, multiple	1.47	8.76	9.01	8.76	9.01	0.41	10.64	10.89	10.64	10.89	XXX
78473	26	A	Gated heart, multiple	1.47	0.46	0.59	0.46	0.59	0.05	1.98	2.11	1.98	2.11	XXX
78473	TC	A	Gated heart, multiple	0.00	8.30	8.42	8.30	8.42	0.36	8.66	8.78	8.66	8.78	XXX
78478		A	Heart wall motion add-on	0.62	1.77	1.85	1.77	1.85	0.10	2.49	2.57	2.49	2.57	ZZZ
78478	26	A	Heart wall motion add-on	0.62	0.21	0.26	0.21	0.26	0.02	0.85	0.90	0.85	0.90	ZZZ
78478	TC	A	Heart wall motion add-on	0.00	1.56	1.59	1.56	1.59	0.08	1.64	1.67	1.64	1.67	ZZZ
78480		A	Heart function add-on	0.62	1.77	1.85	1.77	1.85	0.10	2.49	2.57	2.49	2.57	ZZZ
78480	26	A	Heart function add-on	0.62	0.21	0.26	0.21	0.26	0.02	0.85	0.90	0.85	0.90	ZZZ
78480	TC	A	Heart function add-on	0.00	1.56	1.59	1.56	1.59	0.08	1.64	1.67	1.64	1.67	ZZZ
78481		A	Heart first pass, single	0.98	5.59	5.74	5.59	5.74	0.27	6.84	6.99	6.84	6.99	XXX
78481	26	A	Heart first pass, single	0.98	0.34	0.41	0.34	0.41	0.03	1.35	1.42	1.35	1.42	XXX
78481	TC	A	Heart first pass, single	0.00	5.25	5.33	5.25	5.33	0.24	5.49	5.57	5.49	5.57	XXX
78483		A	Heart first pass, multiple	1.47	8.45	8.66	8.45	8.66	0.40	10.32	10.53	10.32	10.53	XXX
78483	26	A	Heart first pass, multiple	1.47	0.54	0.63	0.54	0.63	0.05	2.06	2.15	2.06	2.15	XXX
78483	TC	A	Heart first pass, multiple	0.00	7.91	8.03	7.91	8.03	0.35	8.26	8.38	8.26	8.38	XXX
78491		I	Heart image (pet), single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78491	26	I	Heart image (pet), single	+1.50	0.58	1.02	0.58	1.02	0.05	2.13	2.57	2.13	2.57	XXX
78491	TC	I	Heart image (pet), single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78492		I	Heart image (pet), multiple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78492	26	I	Heart image (pet), multiple	+1.87	0.72	1.09	0.72	1.09	0.07	2.66	3.03	2.66	3.03	XXX
78492	TC	I	Heart image (pet), multiple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78494		A	Heart image, spect	1.19	7.47	7.47	7.47	7.47	0.30	8.96	8.96	8.96	8.96	XXX
78494	26	A	Heart image, spect	1.19	0.37	0.37	0.37	0.37	0.04	1.60	1.60	1.60	1.60	XXX
78494	TC	A	Heart image, spect	0.00	7.10	7.10	7.10	7.10	0.26	7.36	7.36	7.36	7.36	XXX
78496		A	Heart first pass add-on	0.50	1.75	1.75	1.75	1.75	0.28	2.53	2.53	2.53	2.53	ZZZ
78496	26	A	Heart first pass add-on	0.50	0.19	0.19	0.19	0.19	0.02	0.71	0.71	0.71	0.71	ZZZ
78496	TC	A	Heart first pass add-on	0.00	1.56	1.56	1.56	1.56	0.26	1.82	1.82	1.82	1.82	ZZZ
78499		C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78499	26	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78499	TC	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78580		A	Lung perfusion imaging	0.74	3.66	3.79	3.66	3.79	0.18	4.58	4.71	4.58	4.71	XXX
78580	26	A	Lung perfusion imaging	0.74	0.21	0.29	0.21	0.29	0.03	0.98	1.06	0.98	1.06	XXX
78580	TC	A	Lung perfusion imaging	0.00	3.45	3.50	3.45	3.50	0.15	3.60	3.65	3.60	3.65	XXX
78584		A	Lung V/Q image single breath	0.99	3.49	3.65	3.49	3.65	0.18	4.66	4.82	4.66	4.82	XXX
78584	26	A	Lung V/Q image single breath	0.99	0.27	0.38	0.27	0.38	0.04	1.30	1.41	1.30	1.41	XXX
78584	TC	A	Lung V/Q image single breath	0.00	3.22	3.27	3.22	3.27	0.14	3.36	3.41	3.36	3.41	XXX
78585		A	Lung V/Q imaging	1.09	5.96	6.16	5.96	6.16	0.30	7.35	7.55	7.35	7.55	XXX
78585	26	A	Lung V/Q imaging	1.09	0.30	0.41	0.30	0.41	0.04	1.43	1.54	1.43	1.54	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
78585	TC	A	Lung V/Q imaging	0.00	5.66	5.75	5.66	5.75	0.26	5.92	6.01	5.92	6.01	XXX
78586		A	Aerosol lung image, single	0.40	2.71	2.80	2.71	2.80	0.14	3.25	3.34	3.25	3.34	XXX
78586	26	A	Aerosol lung image, single	0.40	0.11	0.16	0.11	0.16	0.02	0.53	0.58	0.53	0.58	XXX
78586	TC	A	Aerosol lung image, single	0.00	2.60	2.64	2.60	2.64	0.12	2.72	2.76	2.72	2.76	XXX
78587		A	Aerosol lung image, multiple	0.49	2.96	3.05	2.96	3.05	0.14	3.59	3.68	3.59	3.68	XXX
78587	26	A	Aerosol lung image, multiple	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78587	TC	A	Aerosol lung image, multiple	0.00	2.82	2.86	2.82	2.86	0.12	2.94	2.98	2.94	2.98	XXX
78588		A	Perfusion lung image	1.09	5.97	5.97	5.97	5.97	0.19	7.25	7.25	7.25	7.25	XXX
78588	26	A	Perfusion lung image	1.09	0.31	0.31	0.31	0.31	0.04	1.44	1.44	1.44	1.44	XXX
78588	TC	A	Perfusion lung image	0.00	5.66	5.66	5.66	5.66	0.15	5.81	5.81	5.81	5.81	XXX
78591		A	Vent image, 1 breath, 1 proj	0.40	2.98	3.07	2.98	3.07	0.14	3.52	3.61	3.52	3.61	XXX
78591	26	A	Vent image, 1 breath, 1 proj	0.40	0.11	0.16	0.11	0.16	0.02	0.53	0.58	0.53	0.58	XXX
78591	TC	A	Vent image, 1 breath, 1 proj	0.00	2.87	2.91	2.87	2.91	0.12	2.99	3.03	2.99	3.03	XXX
78593		A	Vent image, 1 proj, gas	0.49	3.61	3.71	3.61	3.71	0.17	4.27	4.37	4.27	4.37	XXX
78593	26	A	Vent image, 1 proj, gas	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78593	TC	A	Vent image, 1 proj, gas	0.00	3.47	3.52	3.47	3.52	0.15	3.62	3.67	3.62	3.67	XXX
78594		A	Vent image, mult proj, gas	0.53	5.15	5.29	5.15	5.29	0.24	5.92	6.06	5.92	6.06	XXX
78594	26	A	Vent image, mult proj, gas	0.53	0.15	0.21	0.15	0.21	0.02	0.70	0.76	0.70	0.76	XXX
78594	TC	A	Vent image, mult proj, gas	0.00	5.00	5.08	5.00	5.08	0.22	5.22	5.30	5.22	5.30	XXX
78596		A	Lung differential function	1.27	7.46	7.70	7.46	7.70	0.37	9.10	9.34	9.10	9.34	XXX
78596	26	A	Lung differential function	1.27	0.36	0.49	0.36	0.49	0.05	1.68	1.81	1.68	1.81	XXX
78596	TC	A	Lung differential function	0.00	7.10	7.21	7.10	7.21	0.32	7.42	7.53	7.42	7.53	XXX
78599		C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78599	26	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78599	TC	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78600		A	Brain imaging, ltd static	0.44	3.03	3.12	3.03	3.12	0.14	3.61	3.70	3.61	3.70	XXX
78600	26	A	Brain imaging, ltd static	0.44	0.13	0.18	0.13	0.18	0.02	0.59	0.64	0.59	0.64	XXX
78600	TC	A	Brain imaging, ltd static	0.00	2.90	2.94	2.90	2.94	0.12	3.02	3.06	3.02	3.06	XXX
78601		A	Brain imaging, ltd w/ flow	0.51	3.56	3.67	3.56	3.67	0.17	4.24	4.35	4.24	4.35	XXX
78601	26	A	Brain imaging, ltd w/ flow	0.51	0.14	0.20	0.14	0.20	0.02	0.67	0.73	0.67	0.73	XXX
78601	TC	A	Brain imaging, ltd w/ flow	0.00	3.42	3.47	3.42	3.47	0.15	3.57	3.62	3.57	3.62	XXX
78605		A	Brain imaging, complete	0.53	3.59	3.69	3.59	3.69	0.17	4.29	4.39	4.29	4.39	XXX
78605	26	A	Brain imaging, complete	0.53	0.17	0.22	0.17	0.22	0.02	0.72	0.77	0.72	0.77	XXX
78605	TC	A	Brain imaging, complete	0.00	3.42	3.47	3.42	3.47	0.15	3.57	3.62	3.57	3.62	XXX
78606		A	Brain imaging, compl w/flow	0.64	4.07	4.20	4.07	4.20	0.19	4.90	5.03	4.90	5.03	XXX
78606	26	A	Brain imaging, compl w/flow	0.64	0.18	0.25	0.18	0.25	0.02	0.84	0.91	0.84	0.91	XXX
78606	TC	A	Brain imaging, compl w/flow	0.00	3.89	3.95	3.89	3.95	0.17	4.06	4.12	4.06	4.12	XXX
78607		A	Brain imaging (3D)	1.23	6.95	7.17	6.95	7.17	0.35	8.53	8.75	8.53	8.75	XXX
78607	26	A	Brain imaging (3D)	1.23	0.36	0.48	0.36	0.48	0.05	1.64	1.76	1.64	1.76	XXX
78607	TC	A	Brain imaging (3D)	0.00	6.59	6.69	6.59	6.69	0.30	6.89	6.99	6.89	6.99	XXX
78608		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78609		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78610		A	Brain flow imaging only	0.30	1.67	1.73	1.67	1.73	0.09	2.06	2.12	2.06	2.12	XXX
78610	26	A	Brain flow imaging only	0.30	0.09	0.12	0.09	0.12	0.01	0.40	0.43	0.40	0.43	XXX
78610	TC	A	Brain flow imaging only	0.00	1.58	1.61	1.58	1.61	0.08	1.66	1.69	1.66	1.69	XXX
78615		A	Cerebral blood flow imaging	0.42	4.01	4.11	4.01	4.11	0.19	4.62	4.72	4.62	4.72	XXX
78615	26	A	Cerebral blood flow imaging	0.42	0.14	0.18	0.14	0.18	0.02	0.58	0.62	0.58	0.62	XXX
78615	TC	A	Cerebral blood flow imaging	0.00	3.87	3.93	3.87	3.93	0.17	4.04	4.10	4.04	4.10	XXX
78630		A	Cerebrospinal fluid scan	0.68	5.25	5.41	5.25	5.41	0.26	6.19	6.35	6.19	6.35	XXX
78630	26	A	Cerebrospinal fluid scan	0.68	0.19	0.27	0.19	0.27	0.03	0.90	0.98	0.90	0.98	XXX
78630	TC	A	Cerebrospinal fluid scan	0.00	5.06	5.14	5.06	5.14	0.23	5.29	5.37	5.29	5.37	XXX
78635		A	CSF ventriculography	0.61	2.81	2.88	2.81	2.88	0.14	3.56	3.63	3.56	3.63	XXX
78635	26	A	CSF ventriculography	0.61	0.25	0.28	0.25	0.28	0.02	0.88	0.91	0.88	0.91	XXX
78635	TC	A	CSF ventriculography	0.00	2.56	2.60	2.56	2.60	0.12	2.68	2.72	2.68	2.72	XXX
78645		A	CSF shunt evaluation	0.57	3.61	3.72	3.61	3.72	0.17	4.35	4.46	4.35	4.46	XXX
78645	26	A	CSF shunt evaluation	0.57	0.16	0.22	0.16	0.22	0.02	0.75	0.81	0.75	0.81	XXX
78645	TC	A	CSF shunt evaluation	0.00	3.45	3.50	3.45	3.50	0.15	3.60	3.65	3.60	3.65	XXX
78647		A	Cerebrospinal fluid scan	0.90	6.19	6.38	6.19	6.38	0.30	7.39	7.58	7.39	7.58	XXX
78647	26	A	Cerebrospinal fluid scan	0.90	0.25	0.35	0.25	0.35	0.03	1.18	1.28	1.18	1.28	XXX
78647	TC	A	Cerebrospinal fluid scan	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
78650		A	CSF leakage imaging	0.61	4.84	4.97	4.84	4.97	0.23	5.68	5.81	5.68	5.81	XXX
78650	26	A	CSF leakage imaging	0.61	0.18	0.24	0.18	0.24	0.02	0.81	0.87	0.81	0.87	XXX
78650	TC	A	CSF leakage imaging	0.00	4.66	4.73	4.66	4.73	0.21	4.87	4.94	4.87	4.94	XXX
78660		A	Nuclear exam of tear flow	0.53	2.28	2.37	2.28	2.37	0.12	2.93	3.02	2.93	3.02	XXX
78660	26	A	Nuclear exam of tear flow	0.53	0.15	0.21	0.15	0.21	0.02	0.70	0.76	0.70	0.76	XXX
78660	TC	A	Nuclear exam of tear flow	0.00	2.13	2.16	2.13	2.16	0.10	2.23	2.26	2.23	2.26	XXX
78699		C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78699	26	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78699	TC	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78700		A	Kidney imaging, static	0.45	3.18	3.28	3.18	3.28	0.15	3.78	3.88	3.78	3.88	XXX
78700	26	A	Kidney imaging, static	0.45	0.12	0.17	0.12	0.17	0.02	0.59	0.64	0.59	0.64	XXX
78700	TC	A	Kidney imaging, static	0.00	3.06	3.11	3.06	3.11	0.13	3.19	3.24	3.19	3.24	XXX
78701		A	Kidney imaging with flow	0.49	3.72	3.82	3.72	3.82	0.17	4.38	4.48	4.38	4.48	XXX
78701	26	A	Kidney imaging with flow	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78701	TC	A	Kidney imaging with flow	0.00	3.58	3.63	3.58	3.63	0.15	3.73	3.78	3.73	3.78	XXX
78704		A	Imaging renogram	0.74	4.18	4.32	4.18	4.32	0.21	5.13	5.27	5.13	5.27	XXX
78704	26	A	Imaging renogram	0.74	0.21	0.29	0.21	0.29	0.03	0.98	1.06	0.98	1.06	XXX
78704	TC	A	Imaging renogram	0.00	3.97	4.03	3.97	4.03	0.18	4.15	4.21	4.15	4.21	XXX
78707		A	Kidney flow/function image	0.96	4.76	4.93	4.76	4.93	0.24	5.96	6.13	5.96	6.13	XXX
78707	26	A	Kidney flow/function image	0.96	0.27	0.37	0.27	0.37	0.04	1.27	1.37	1.27	1.37	XXX
78707	TC	A	Kidney flow/function image	0.00	4.49	4.56	4.49	4.56	0.20	4.69	4.76	4.69	4.76	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
78708		A	Kidney flow/function image	1.21	4.83	4.96	4.83	4.96	0.25	6.29	6.42	6.29	6.42	XXX
78708	26	A	Kidney flow/function image	1.21	0.34	0.40	0.34	0.40	0.05	1.60	1.66	1.60	1.66	XXX
78708	TC	A	Kidney flow/function image	0.00	4.49	4.56	4.49	4.56	0.20	4.69	4.76	4.69	4.76	XXX
78709		A	Kidney flow/function image	1.41	4.88	4.99	4.88	4.99	0.25	6.54	6.65	6.54	6.65	XXX
78709	26	A	Kidney flow/function image	1.41	0.39	0.43	0.39	0.43	0.05	1.85	1.89	1.85	1.89	XXX
78709	TC	A	Kidney flow/function image	0.00	4.49	4.56	4.49	4.56	0.20	4.69	4.76	4.69	4.76	XXX
78710		A	Kidney imaging (3D)	0.66	6.13	6.29	6.13	6.29	0.30	7.09	7.25	7.09	7.25	XXX
78710	26	A	Kidney imaging (3D)	0.66	0.19	0.26	0.19	0.26	0.03	0.88	0.95	0.88	0.95	XXX
78710	TC	A	Kidney imaging (3D)	0.00	5.94	6.03	5.94	6.03	0.27	6.21	6.30	6.21	6.30	XXX
78715		A	Renal vascular flow exam	0.30	1.68	1.74	1.68	1.74	0.09	2.07	2.13	2.07	2.13	XXX
78715	26	A	Renal vascular flow exam	0.30	0.10	0.13	0.10	0.13	0.01	0.41	0.44	0.41	0.44	XXX
78715	TC	A	Renal vascular flow exam	0.00	1.58	1.61	1.58	1.61	0.08	1.66	1.69	1.66	1.69	XXX
78725		A	Kidney function study	0.38	1.90	1.97	1.90	1.97	0.10	2.38	2.45	2.38	2.45	XXX
78725	26	A	Kidney function study	0.38	0.11	0.15	0.11	0.15	0.01	0.50	0.54	0.50	0.54	XXX
78725	TC	A	Kidney function study	0.00	1.79	1.82	1.79	1.82	0.09	1.88	1.91	1.88	1.91	XXX
78730		A	Urinary bladder retention	0.36	1.59	1.64	1.59	1.64	0.09	2.04	2.09	2.04	2.09	XXX
78730	26	A	Urinary bladder retention	0.36	0.12	0.15	0.12	0.15	0.02	0.50	0.53	0.50	0.53	XXX
78730	TC	A	Urinary bladder retention	0.00	1.47	1.49	1.47	1.49	0.07	1.54	1.56	1.54	1.56	XXX
78740		A	Ureteral reflux study	0.57	2.29	2.38	2.29	2.38	0.12	2.98	3.07	2.98	3.07	XXX
78740	26	A	Ureteral reflux study	0.57	0.16	0.22	0.16	0.22	0.02	0.75	0.81	0.75	0.81	XXX
78740	TC	A	Ureteral reflux study	0.00	2.13	2.16	2.13	2.16	0.10	2.23	2.26	2.23	2.26	XXX
78760		A	Testicular imaging	0.66	2.87	2.99	2.87	2.99	0.15	3.68	3.80	3.68	3.80	XXX
78760	26	A	Testicular imaging	0.66	0.18	0.26	0.18	0.26	0.03	0.87	0.95	0.87	0.95	XXX
78760	TC	A	Testicular imaging	0.00	2.69	2.73	2.69	2.73	0.12	2.81	2.85	2.81	2.85	XXX
78761		A	Testicular imaging/flow	0.71	3.42	3.55	3.42	3.55	0.17	4.30	4.43	4.30	4.43	XXX
78761	26	A	Testicular imaging/flow	0.71	0.20	0.28	0.20	0.28	0.03	0.94	1.02	0.94	1.02	XXX
78761	TC	A	Testicular imaging/flow	0.00	3.22	3.27	3.22	3.27	0.14	3.36	3.41	3.36	3.41	XXX
78799		C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78799	26	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78799	TC	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78800		A	Tumor imaging, limited area	0.66	3.61	3.73	3.61	3.73	0.18	4.45	4.57	4.45	4.57	XXX
78800	26	A	Tumor imaging, limited area	0.66	0.19	0.26	0.19	0.26	0.03	0.88	0.95	0.88	0.95	XXX
78800	TC	A	Tumor imaging, limited area	0.00	3.42	3.47	3.42	3.47	0.15	3.57	3.62	3.57	3.62	XXX
78801		A	Tumor imaging, mult areas	0.79	4.48	4.62	4.48	4.62	0.22	5.49	5.63	5.49	5.63	XXX
78801	26	A	Tumor imaging, mult areas	0.79	0.23	0.31	0.23	0.31	0.03	1.05	1.13	1.05	1.13	XXX
78801	TC	A	Tumor imaging, mult areas	0.00	4.25	4.31	4.25	4.31	0.19	4.44	4.50	4.44	4.50	XXX
78802		A	Tumor imaging, whole body	0.86	5.81	5.98	5.81	5.98	0.29	6.96	7.13	6.96	7.13	XXX
78802	26	A	Tumor imaging, whole body	0.86	0.25	0.34	0.25	0.34	0.03	1.14	1.23	1.14	1.23	XXX
78802	TC	A	Tumor imaging, whole body	0.00	5.56	5.64	5.56	5.64	0.26	5.82	5.90	5.82	5.90	XXX
78803		A	Tumor imaging (3D)	1.09	6.92	7.12	6.92	7.12	0.34	8.35	8.55	8.35	8.55	XXX
78803	26	A	Tumor imaging (3D)	1.09	0.33	0.43	0.33	0.43	0.04	1.46	1.56	1.46	1.56	XXX
78803	TC	A	Tumor imaging (3D)	0.00	6.59	6.69	6.59	6.69	0.30	6.89	6.99	6.89	6.99	XXX
78805		A	Abscess imaging, ltd area	0.73	3.63	3.76	3.63	3.76	0.18	4.54	4.67	4.54	4.67	XXX
78805	26	A	Abscess imaging, ltd area	0.73	0.21	0.29	0.21	0.29	0.03	0.97	1.05	0.97	1.05	XXX
78805	TC	A	Abscess imaging, ltd area	0.00	3.42	3.47	3.42	3.47	0.15	3.57	3.62	3.57	3.62	XXX
78806		A	Abscess imaging, whole body	0.86	6.71	6.89	6.71	6.89	0.33	7.90	8.08	7.90	8.08	XXX
78806	26	A	Abscess imaging, whole body	0.86	0.25	0.33	0.25	0.33	0.03	1.14	1.22	1.14	1.22	XXX
78806	TC	A	Abscess imaging, whole body	0.00	6.46	6.56	6.46	6.56	0.30	6.76	6.86	6.76	6.86	XXX
78807		A	Nuclear localization/abscess	1.09	6.91	7.11	6.91	7.11	0.34	8.34	8.54	8.34	8.54	XXX
78807	26	A	Nuclear localization/abscess	1.09	0.32	0.42	0.32	0.42	0.04	1.45	1.55	1.45	1.55	XXX
78807	TC	A	Nuclear localization/abscess	0.00	6.59	6.69	6.59	6.69	0.30	6.89	6.99	6.89	6.99	XXX
78810		N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78810	26	N	Tumor imaging (PET)	+1.93	0.75	1.12	0.75	1.12	0.07	2.75	3.12	2.75	3.12	XXX
78810	TC	N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78890		B	Nuclear medicine data proc	+0.05	1.33	1.35	1.33	1.35	0.06	1.44	1.46	1.44	1.46	XXX
78890	26	B	Nuclear medicine data proc	+0.05	0.02	0.02	0.02	0.02	0.01	0.08	0.08	0.08	0.08	XXX
78890	TC	B	Nuclear medicine data proc	+0.00	1.31	1.33	1.31	1.33	0.05	1.36	1.38	1.36	1.38	XXX
78891		B	Nuclear med data proc	+0.10	2.67	2.72	2.67	2.72	0.12	2.89	2.94	2.89	2.94	XXX
78891	26	B	Nuclear med data proc	+0.10	0.04	0.05	0.04	0.05	0.01	0.15	0.16	0.15	0.16	XXX
78891	TC	B	Nuclear med data proc	+0.00	2.63	2.67	2.63	2.67	0.11	2.74	2.78	2.74	2.78	XXX
78990		I	Provide diag radionuclide(s)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999		C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999	26	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999	TC	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79000		A	Init hyperthyroid therapy	1.80	3.15	3.37	3.15	3.37	0.19	5.14	5.36	5.14	5.36	XXX
79000	26	A	Init hyperthyroid therapy	1.80	0.52	0.70	0.52	0.70	0.07	2.39	2.57	2.39	2.57	XXX
79000	TC	A	Init hyperthyroid therapy	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
79001		A	Repeat hyperthyroid therapy	1.05	1.62	1.74	1.62	1.74	0.10	2.77	2.89	2.77	2.89	XXX
79001	26	A	Repeat hyperthyroid therapy	1.05	0.31	0.41	0.31	0.41	0.04	1.40	1.50	1.40	1.50	XXX
79001	TC	A	Repeat hyperthyroid therapy	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
79020		A	Thyroid ablation	1.81	3.14	3.37	3.14	3.37	0.19	5.14	5.37	5.14	5.37	XXX
79020	26	A	Thyroid ablation	1.81	0.51	0.70	0.51	0.70	0.07	2.39	2.58	2.39	2.58	XXX
79020	TC	A	Thyroid ablation	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
79030		A	Thyroid ablation, carcinoma	2.10	3.25	3.49	3.25	3.49	0.20	5.55	5.79	5.55	5.79	XXX
79030	26	A	Thyroid ablation, carcinoma	2.10	0.62	0.82	0.62	0.82	0.08	2.80	3.00	2.80	3.00	XXX
79030	TC	A	Thyroid ablation, carcinoma	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
79035		A	Thyroid metastatic therapy	2.52	3.39	3.67	3.39	3.67	0.21	6.12	6.40	6.12	6.40	XXX
79035	26	A	Thyroid metastatic therapy	2.52	0.76	1.00	0.76	1.00	0.09	3.37	3.61	3.37	3.61	XXX
79035	TC	A	Thyroid metastatic therapy	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
79100		A	Hematopoetic nuclear therapy	1.32	3.03	3.19	3.03	3.19	0.17	4.52	4.68	4.52	4.68	XXX
79100	26	A	Hematopoetic nuclear therapy	1.32	0.40	0.52	0.40	0.52	0.05	1.77	1.89	1.77	1.89	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
79100	TC	A	Hematopoetic nuclear therapy	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
79200		A	Intracavitary nuclear trmt	1.99	3.23	3.46	3.23	3.46	0.19	5.41	5.64	5.41	5.64	XXX
79200	26	A	Intracavitary nuclear trmt	1.99	0.60	0.79	0.60	0.79	0.07	2.66	2.85	2.66	2.85	XXX
79200	TC	A	Intracavitary nuclear trmt	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
79300		C	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79300	26	A	Interstitial nuclear therapy	1.60	0.49	0.63	0.49	0.63	0.06	2.15	2.29	2.15	2.29	XXX
79300	TC	C	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79400		A	Nonhemato nuclear therapy	1.96	3.21	3.43	3.21	3.43	0.19	5.36	5.58	5.36	5.58	XXX
79400	26	A	Nonhemato nuclear therapy	1.96	0.58	0.76	0.58	0.76	0.07	2.61	2.79	2.61	2.79	XXX
79400	TC	A	Nonhemato nuclear therapy	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
79420		C	Intravascular nuclear ther	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79420	26	A	Intravascular nuclear ther	1.51	0.47	0.60	0.47	0.60	0.06	2.04	2.17	2.04	2.17	XXX
79420	TC	C	Intravascular nuclear ther	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79440		A	Nuclear joint therapy	1.99	3.24	3.46	3.24	3.46	0.20	5.43	5.65	5.43	5.65	XXX
79440	26	A	Nuclear joint therapy	1.99	0.61	0.79	0.61	0.79	0.08	2.68	2.86	2.68	2.86	XXX
79440	TC	A	Nuclear joint therapy	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
79900		C	Provide ther radiopharm(s)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999		C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999	26	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999	TC	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80048		X	Basic metabolic panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80049		D	Metabolic panel, basic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80050		N	General health panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80051		X	Electrolyte panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80053		X	Comprehen metabolic panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80054		D	Comprehen metabolic panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80055		I	Obstetric panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80058		D	Hepatic function panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80059		D	Hepatitis panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80061		X	Lipid panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80069		X	Renal function panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80072		X	Arthritis panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80074		X	Acute hepatitis panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80076		X	Hepatic function panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80090		X	Torch antibody panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80091		D	Thyroid panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80092		D	Thyroid panel w/TSH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80100		X	Drug screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80101		X	Drug screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80102		X	Drug confirmation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80103		X	Drug analysis, tissue prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80150		X	Assay of amikacin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80152		X	Assay of amitriptyline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80154		X	Assay of benzodiazepines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80156		X	Assay of carbamazepine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80158		X	Assay of cyclosporine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80160		X	Assay of desipramine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80162		X	Assay of digoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80164		X	Assay, dipropylacetic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80166		X	Assay of doxepin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80168		X	Assay of ethosuximide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80170		X	Assay of gentamicin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80172		X	Assay of gold	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80174		X	Assay of imipramine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80176		X	Assay of lidocaine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80178		X	Assay of lithium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80182		X	Assay of nortriptyline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80184		X	Assay of phenobarbital	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80185		X	Assay of phenytoin, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80186		X	Assay of phenytoin, free	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80188		X	Assay of primidone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80190		X	Assay of procainamide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80192		X	Assay of procainamide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80194		X	Assay of quinidine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80196		X	Assay of salicylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80197		X	Assay of tacrolimus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80198		X	Assay of theophylline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80200		X	Assay of tobramycin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80201		X	Assay of topiramate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80202		X	Assay of vancomycin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80299		X	Quantitative assay, drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80400		X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80402		X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80406		X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80408		X	Aldosterone suppression eval	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80410		X	Calcitonin stimul panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80412		X	CRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80414		X	Testosterone response	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80415		X	Estradiol response panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80416		X	Renin stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80417		X	Renin stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
80418		X	Pituitary evaluation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80420		X	Dexamethasone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80422		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80424		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80426		X	Gonadotropin hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80428		X	Growth hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80430		X	Growth hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80432		X	Insulin suppression panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80434		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80435		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80436		X	Metyrapone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80438		X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80439		X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80440		X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80500		A	Lab pathology consultation	0.37	0.19	0.21	0.17	0.20	0.01	0.57	0.59	0.55	0.58	XXX
80502		A	Lab pathology consultation	1.33	0.64	0.50	0.60	0.48	0.04	2.01	1.87	1.97	1.85	XXX
81000		X	Urinalysis, nonauto w/scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81001		X	Urinalysis, auto w/scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81002		X	Urinalysis nonauto w/o scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81003		X	Urinalysis, auto, w/o scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81005		X	Urinalysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81007		X	Urine screen for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81015		X	Microscopic exam of urine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81020		X	Urinalysis, glass test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81025		X	Urine pregnancy test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81050		X	Urinalysis, volume measure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81099		X	Urinalysis test procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82000		X	Assay of blood acetaldehyde	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82003		X	Assay of acetaminophen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82009		X	Test for acetone/ketones	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82010		X	Acetone assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82013		X	Acetylcholinesterase assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82016		X	Acylcarnitines, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82017		X	Acylcarnitines, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82024		X	Assay of acth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82030		X	Assay of adp & amp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82040		X	Assay of serum albumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82042		X	Assay of urine albumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82043		X	Microalbumin, quantitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82044		X	Microalbumin, semiquant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82055		X	Assay of ethanol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82075		X	Assay of breath ethanol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82085		X	Assay of aldolase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82088		X	Assay of aldosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82101		X	Assay of urine alkaloids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82103		X	Alpha-1-antitrypsin, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82104		X	Alpha-1-antitrypsin, pheno	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82105		X	Alpha-fetoprotein, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82106		X	Alpha-fetoprotein, amniotic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82108		X	Assay of aluminum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82120		X	Amines, vaginal fluid qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82127		X	Amino acid, single qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82128		X	Amino acids, mult qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82131		X	Amino acids, single quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82135		X	Assay, aminolevulinic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82136		X	Amino acids, quant, 2-5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82139		X	Amino acids, quan, 6 or more	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82140		X	Assay of ammonia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82143		X	Amniotic fluid scan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82145		X	Assay of amphetamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82150		X	Assay of amylase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82154		X	Androstanediol glucuronide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82157		X	Assay of androstenedione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82160		X	Assay of androsterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82163		X	Assay of angiotensin II	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82164		X	Angiotensin I enzyme test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82172		X	Assay of apolipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82175		X	Assay of arsenic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82180		X	Assay of ascorbic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82190		X	Atomic absorption	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82205		X	Assay of barbiturates	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82232		X	Assay of beta-2 protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82239		X	Bile acids, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82240		X	Bile acids, cholylglycine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82247		X	Bilirubin, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82248		X	Bilirubin, direct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82251		I	Assay of bilirubin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82252		X	Fecal bilirubin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82261		X	Assay of biotinidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82270		X	Test for blood, feces	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82273		X	Test for blood, other source	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
82286		X	Assay of bradykinin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82300		X	Assay of cadmium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82306		X	Assay of vitamin D	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82307		X	Assay of vitamin D	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82308		X	Assay of calcitonin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82310		X	Assay of calcium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82330		X	Assay of calcium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82331		X	Calcium infusion test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82340		X	Assay of calcium in urine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82355		X	Calculus (stone) analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82360		X	Calculus (stone) assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82365		X	Calculus (stone) assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82370		X	X-ray assay, calculus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82374		X	Assay, blood carbon dioxide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82375		X	Assay, blood carbon monoxide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82376		X	Test for carbon monoxide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82378		X	Carcinoembryonic antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82379		X	Assay of carnitine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82380		X	Assay of carotene	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82382		X	Assay, urine catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82383		X	Assay, blood catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82384		X	Assay, three catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82387		X	Assay of cathepsin-d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82390		X	Assay of ceruloplasmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82397		X	Chemiluminescent assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82415		X	Assay of chloramphenicol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82435		X	Assay of blood chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82436		X	Assay of urine chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82438		X	Assay, other fluid chlorides	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82441		X	Test for chlorohydrocarbons	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82465		X	Assay of serum cholesterol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82480		X	Assay, serum cholinesterase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82482		X	Assay, rbc cholinesterase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82485		X	Assay, chondroitin sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82486		X	Gas/liquid chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82487		X	Paper chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82488		X	Paper chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82489		X	Thin layer chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82491		X	Chromotography, quant, sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82492		X	Chromotography, quant, mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82495		X	Assay of chromium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82507		X	Assay of citrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82520		X	Assay of cocaine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82523		X	Collagen crosslinks	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82525		X	Assay of copper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82528		X	Assay of corticosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82530		X	Cortisol, free	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82533		X	Total cortisol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82540		X	Assay of creatine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82541		X	Column chromotography, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82542		X	Column chromotography, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82543		X	Column chromotograph/isotope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82544		X	Column chromotograph/isotope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82550		X	Assay of ck (cpk)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82552		X	Assay of cpk in blood	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82553		X	Creatine, MB fraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82554		X	Creatine, isoforms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82565		X	Assay of creatinine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82570		X	Assay of urine creatinine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82575		X	Creatinine clearance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82585		X	Assay of cryofibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82595		X	Assay of cryoglobulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82600		X	Assay of cyanide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82607		X	Vitamin B-12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82608		X	B-12 binding capacity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82615		X	Test for urine cystines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82626		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82627		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82633		X	Desoxycorticosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82634		X	Deoxycortisol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82638		X	Assay of dibucaine number	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82646		X	Assay of dihydrocodeinone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82649		X	Assay of dihydromorphinone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82651		X	Assay of dihydrotestosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82652		X	Assay of dihydroxyvitamin d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82654		X	Assay of dimethadione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82657		X	Enzyme cell activity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82658		X	Enzyme cell activity, ra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82664		X	Electrophoretic test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82666		X	Assay of epiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82668		X	Assay of erythropoietin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
82670		X	Assay of estradiol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82671		X	Assay of estrogens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82672		X	Assay of estrogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82677		X	Assay of estriol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82679		X	Assay of estrone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82690		X	Assay of ethchlorvynol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82693		X	Assay of ethylene glycol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82696		X	Assay of etiocholanolone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82705		X	Fats/lipids, feces, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82710		X	Fats/lipids, feces, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82715		X	Assay of fecal fat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82725		X	Assay of blood fatty acids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82726		X	Long chain fatty acids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82728		X	Assay of ferritin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82731		X	Assay of fetal fibronectin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82735		X	Assay of fluoride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82742		X	Assay of flurazepam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82746		X	Blood folic acid serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82747		X	Assay of folic acid, rbc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82757		X	Assay of semen fructose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82759		X	Assay of rbc galactokinase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82760		X	Assay of galactose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82775		X	Assay galactose transferase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82776		X	Galactose transferase test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82784		X	Assay of gammaglobulin igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82785		X	Assay of gammaglobulin ige	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82787		X	Igg 1, 2, 3 and 4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82800		X	Blood pH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82803		X	Blood gases: pH, pO2 & pCO2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82805		X	Blood gases W/02 saturation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82810		X	Blood gases, O2 sat only	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82820		X	Hemoglobin-oxygen affinity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82926		X	Assay of gastric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82928		X	Assay of gastric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82938		X	Gastrin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82941		X	Assay of gastrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82943		X	Assay of glucagon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82946		X	Glucagon tolerance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82947		X	Assay of glucose, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82948		X	Reagent strip/blood glucose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82950		X	Glucose test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82951		X	Glucose tolerance test (GTT)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82952		X	GTT-added samples	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82953		X	Glucose-tolbutamide test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82955		X	Assay of g6pd enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82960		X	Test for G6PD enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82962		X	Glucose blood test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82963		X	Assay of glucosidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82965		X	Assay of gdh enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82975		X	Assay of glutamine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82977		X	Assay of GGT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82978		X	Assay of glutathione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82979		X	Assay, rbc glutathione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82980		X	Assay of glutethimide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82985		X	Glycated protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83001		X	Gonadotropin (FSH)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83002		X	Gonadotropin (LH)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83003		X	Assay, growth hormone (hgh)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83008		X	Assay of guanosine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83010		X	Assay of haptoglobin, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83012		X	Assay of haptoglobins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83013		X	H pylori breath tst analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83014		X	H pylori drug admin/collect	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83015		X	Heavy metal screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83018		X	Quantitative screen, metals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83020		X	Hemoglobin electrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83020	26	A	Hemoglobin electrophoresis	0.37	0.17	0.20	0.17	0.20	0.01	0.55	0.58	0.55	0.58	XXX
83021		X	Hemoglobin chromotography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83026		X	Hemoglobin, copper sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83030		X	Fetal hemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83033		X	Fetal fecal hemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83036		X	Glycated hemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83045		X	Blood methemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83050		X	Blood methemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83051		X	Assay of plasma hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83055		X	Blood sulfhemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83060		X	Blood sulfhemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83065		X	Assay of hemoglobin heat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83068		X	Hemoglobin stability screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83069		X	Assay of urine hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83070		X	Assay of hemosiderin, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
83071		X	Assay of hemosiderin, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83080		X	Assay of b hexosaminidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83088		X	Assay of histamine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83150		X	Assay of for hva	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83491		X	Assay of corticosteroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83497		X	Assay of 5-hiaa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83498		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83499		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83500		X	Assay, free hydroxyproline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83505		X	Assay, total hydroxyproline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83516		X	Immunoassay, nonantibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83518		X	Immunoassay, dipstick	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83519		X	Immunoassay, nonantibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83520		X	Immunoassay, RIA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83525		X	Assay of insulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83527		X	Assay of insulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83528		X	Assay of intrinsic factor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83540		X	Assay of iron	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83550		X	Iron binding test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83570		X	Assay of ldh enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83582		X	Assay of ketogenic steroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83586		X	Assay 17- ketosteroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83593		X	Fractionation, ketosteroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83605		X	Assay of lactic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83615		X	Lactate (LD) (LDH) enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83625		X	Assay of ldh enzymes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83632		X	Placental lactogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83633		X	Test urine for lactose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83634		X	Assay of urine for lactose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83655		X	Assay of lead	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83661		X	Assay of l/s ratio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83662		X	L/S ratio, foam stability	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83670		X	Assay of lap enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83690		X	Assay of lipase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83715		X	Assay of blood lipoproteins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83716		X	Assay of blood lipoproteins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83718		X	Assay of lipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83719		X	Assay of blood lipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83721		X	Assay of blood lipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83727		X	Assay of lrh hormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83735		X	Assay of magnesium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83775		X	Assay of md enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83785		X	Assay of manganese	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83788		X	Mass spectrometry qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83789		X	Mass spectrometry quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83805		X	Assay of meprobamate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83825		X	Assay of mercury	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83835		X	Assay of metanephrines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83840		X	Assay of methadone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83857		X	Assay of methemalbumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83858		X	Assay of methsuximide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83864		X	Mucopolysaccharides	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83866		X	Mucopolysaccharides screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83872		X	Assay synovial fluid mucin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83873		X	Assay of csf protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83874		X	Assay of myoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83883		X	Assay, nephelometry not spec	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83885		X	Assay of nickel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83887		X	Assay of nicotine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83890		X	Molecule isolate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83891		X	Molecule isolate nucleic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83892		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83893		X	Molecule dot/slot/blot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83894		X	Molecule gel electrophor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83896		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83897		X	Molecule nucleic transfer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83898		X	Molecule nucleic ampli	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83901		X	Molecule nucleic ampli	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83902		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83903		X	Molecule mutation scan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83904		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83905		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83906		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83912		X	Genetic examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83912	26	A	Genetic examination	0.37	0.18	0.20	0.16	0.19	0.01	0.56	0.58	0.54	0.57	XXX
83915		X	Assay of nucleotidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83916		X	Oligoclonal bands	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83918		X	Assay, organic acids quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83919		X	Assay, organic acids qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83925		X	Assay of opiates	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83930		X	Assay of blood osmolality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
83935		X	Assay of urine osmolality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83937		X	Assay of osteocalcin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83945		X	Assay of oxalate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83970		X	Assay of parathormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83986		X	Assay of body fluid acidity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83992		X	Assay for phencyclidine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84022		X	Assay of phenothiazine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84030		X	Assay of blood pku	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84035		X	Assay of phenylketones	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84060		X	Assay acid phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84061		X	Phosphatase, forensic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84066		X	Assay prostate phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84075		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84078		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84080		X	Assay alkaline phosphatases	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84081		X	Amniotic fluid enzyme test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84085		X	Assay of rbc pg6d enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84087		X	Assay phosphohexose enzymes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84100		X	Assay of phosphorus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84105		X	Assay of urine phosphorus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84106		X	Test for porphobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84110		X	Assay of porphobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84119		X	Test urine for porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84120		X	Assay of urine porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84126		X	Assay of feces porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84127		X	Assay of feces porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84132		X	Assay of serum potassium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84133		X	Assay of urine potassium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84134		X	Assay of prealbumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84135		X	Assay of pregnanediol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84138		X	Assay of pregnanetriol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84140		X	Assay of pregnenolone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84143		X	Assay of 17-hydroxypregneno	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84144		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84146		X	Assay of prolactin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84150		X	Assay of prostaglandin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84153		X	Assay of psa, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84154		X	Assay of psa, free	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84155		X	Assay of protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84160		X	Assay of serum protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84165		X	Assay of serum proteins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84165	26	A	Assay of serum proteins	0.37	0.17	0.20	0.17	0.20	0.01	0.55	0.58	0.55	0.58	XXX
84181		X	Western blot test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84181	26	A	Western blot test	0.37	0.14	0.18	0.14	0.18	0.01	0.52	0.56	0.52	0.56	XXX
84182		X	Protein, western blot test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84182	26	A	Protein, western blot test	0.37	0.14	0.18	0.14	0.18	0.01	0.52	0.56	0.52	0.56	XXX
84202		X	Assay RBC protoporphyrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84203		X	Test RBC protoporphyrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84206		X	Assay of proinsulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84207		X	Assay of vitamin b-6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84210		X	Assay of pyruvate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84220		X	Assay of pyruvate kinase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84228		X	Assay of quinine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84233		X	Assay of estrogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84234		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84235		X	Assay of endocrine hormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84238		X	Assay, nonendocrine receptor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84244		X	Assay of renin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84252		X	Assay of vitamin b-2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84255		X	Assay of selenium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84260		X	Assay of serotonin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84270		X	Assay of sex hormone globul	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84275		X	Assay of sialic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84285		X	Assay of silica	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84295		X	Assay of serum sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84300		X	Assay of urine sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84305		X	Assay of somatomedin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84307		X	Assay of somatostatin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84311		X	Spectrophotometry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84315		X	Body fluid specific gravity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84375		X	Chromatogram assay, sugars	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84376		X	Sugars, single, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84377		X	Sugars, multiple, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84378		X	Sugars single quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84379		X	Sugars multiple quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84392		X	Assay of urine sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84402		X	Assay of testosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84403		X	Assay of total testosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84425		X	Assay of vitamin b-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84430		X	Assay of thiocyanate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84432		X	Assay of thyroglobulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
84436		X	Assay of total thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84437		X	Assay of neonatal thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84439		X	Assay of free thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84442		X	Assay of thyroid activity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84443		X	Assay thyroid stim hormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84445		X	Assay of tsi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84446		X	Assay of vitamin e	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84449		X	Assay of transcortin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84450		X	Transferase (AST) (SGOT)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84460		X	Alanine amino (ALT) (SGPT)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84466		X	Assay of transferrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84478		X	Assay of triglycerides	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84479		X	Assay of thyroid (t3 or t4)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84480		X	Assay, triiodothyronine (t3)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84481		X	Free assay (FT-3)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84482		X	T3 reverse	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84484		X	Assay of troponin, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84485		X	Assay duodenal fluid trypsin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84488		X	Test feces for trypsin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84490		X	Assay of feces for trypsin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84510		X	Assay of tyrosine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84512		X	Assay of troponin, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84520		X	Assay of urea nitrogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84525		X	Urea nitrogen semi-quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84540		X	Assay of urine/urea-n	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84545		X	Urea-N clearance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84550		X	Assay of blood/uric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84560		X	Assay of urine/uric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84577		X	Assay of feces/urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84578		X	Test urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84580		X	Assay of urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84583		X	Assay of urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84585		X	Assay of urine vma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84586		X	Assay of vip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84588		X	Assay of vasopressin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84590		X	Assay of vitamin a	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84597		X	Assay of vitamin k	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84600		X	Assay of volatiles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84620		X	Xylose tolerance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84630		X	Assay of zinc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84681		X	Assay of c-peptide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84702		X	Chorionic gonadotropin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84703		X	Chorionic gonadotropin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84830		X	Ovulation tests	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84999		X	Clinical chemistry test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85002		X	Bleeding time test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85007		X	Differential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85008		X	Nondifferential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85009		X	Differential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85013		X	Hematocrit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85014		X	Hematocrit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85018		X	Hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85021		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85022		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85023		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85024		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85025		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85027		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85031		X	Manual hemogram, cbc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85041		X	Red blood cell (RBC) count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85044		X	Reticulocyte count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85045		X	Reticulocyte count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85046		X	Reticyte/hgb concentrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85048		X	White blood cell (WBC) count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85060		A	Blood smear interpretation	0.45	0.20	0.22	0.20	0.22	0.01	0.66	0.68	0.66	0.68	XXX
85095		A	Bone marrow aspiration	1.08	4.29	2.51	0.44	0.59	0.03	5.40	3.62	1.55	1.70	XXX
85097		A	Bone marrow interpretation	0.94	0.41	0.47	0.41	0.47	0.03	1.38	1.44	1.38	1.44	XXX
85102		A	Bone marrow biopsy	1.37	4.41	2.64	0.55	0.71	0.04	5.82	4.05	1.96	2.12	XXX
85130		X	Chromogenic substrate assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85170		X	Blood clot retraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85175		X	Blood clot lysis time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85210		X	Blood clot factor II test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85220		X	Blood clot factor V test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85230		X	Blood clot factor VII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85240		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85244		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85245		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85246		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85247		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85250		X	Blood clot factor IX test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85260		X	Blood clot factor X test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
85270		X	Blood clot factor XI test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85280		X	Blood clot factor XII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85290		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85291		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85292		X	Blood clot factor assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85293		X	Blood clot factor assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85300		X	Antithrombin III test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85301		X	Antithrombin III test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85302		X	Blood clot inhibitor antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85303		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85305		X	Blood clot inhibitor assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85306		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85335		X	Factor inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85337		X	Thrombomodulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85345		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85347		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85348		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85360		X	Euglobulin lysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85362		X	Fibrin degradation products	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85366		X	Fibrinogen test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85370		X	Fibrinogen test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85378		X	Fibrin degradation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85379		X	Fibrin degradation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85384		X	Fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85385		X	Fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85390		X	Fibrinolysins screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85390	26	A	Fibrinolysins screen	0.37	0.12	0.17	0.12	0.17	0.01	0.50	0.55	0.50	0.55	XXX
85400		X	Fibrinolytic plasmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85410		X	Fibrinolytic antiplasmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85415		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85420		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85421		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85441		X	Heinz bodies, direct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85445		X	Heinz bodies, induced	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85460		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85461		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85475		X	Hemolysin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85520		X	Heparin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85525		X	Heparin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85530		X	Heparin-protamine tolerance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85535		X	Iron stain, blood cells	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85540		X	Wbc alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85547		X	RBC mechanical fragility	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85549		X	Muramidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85555		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85557		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85576		X	Blood platelet aggregation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85576	26	A	Blood platelet aggregation	0.37	0.17	0.20	0.16	0.19	0.01	0.55	0.58	0.54	0.57	XXX
85585		X	Blood platelet estimation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85590		X	Platelet count, manual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85595		X	Platelet count, automated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85597		X	Platelet neutralization	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85610		X	Prothrombin time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85611		X	Prothrombin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85612		X	Viper venom prothrombin time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85613		X	Russell viper venom, diluted	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85635		X	Reptilase test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85651		X	Rbc sed rate, nonautomated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85652		X	Rbc sed rate, automated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85660		X	RBC sickle cell test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85670		X	Thrombin time, plasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85675		X	Thrombin time, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85705		X	Thromboplastin inhibition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85730		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85732		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85810		X	Blood viscosity examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85999		X	Hematology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86000		X	Agglutinins, febrile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86003		X	Allergen specific IgE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86005		X	Allergen specific IgE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86021		X	WBC antibody identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86022		X	Platelet antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86023		X	Immunoglobulin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86038		X	Antinuclear antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86039		X	Antinuclear antibodies (ANA)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86060		X	Antistreptolysin o, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86063		X	Antistreptolysin o, screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86077		A	Physician blood bank service	0.94	0.51	0.42	0.42	0.38	0.03	1.48	1.39	1.39	1.35	XXX
86078		A	Physician blood bank service	0.94	0.54	0.46	0.42	0.40	0.02	1.50	1.42	1.38	1.36	XXX
86079		A	Physician blood bank service	0.94	0.53	0.45	0.43	0.40	0.02	1.49	1.41	1.39	1.36	XXX
86140		X	C-reactive protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
86147		X	Cardiolipin antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86148		X	Phospholipid antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86155		X	Chemotaxis assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86156		X	Cold agglutinin, screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86157		X	Cold agglutinin, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86160		X	Complement, antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86161		X	Complement/function activity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86162		X	Complement, total (CH50)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86171		X	Complement fixation, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86185		X	Counterimmunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86215		X	Deoxyribonuclease, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86225		X	DNA antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86226		X	DNA antibody, single strand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86235		X	Nuclear antigen antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86243		X	Fc receptor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86255		X	Fluorescent antibody, screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86255	26	A	Fluorescent antibody, screen	0.37	0.18	0.20	0.17	0.20	0.01	0.56	0.58	0.55	0.58	XXX
86256		X	Fluorescent antibody, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86256	26	A	Fluorescent antibody, titer	0.37	0.16	0.19	0.16	0.19	0.01	0.54	0.57	0.54	0.57	XXX
86277		X	Growth hormone antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86280		X	Hemagglutination inhibition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86308		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86309		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86310		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86316		X	Immunoassay, tumor antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86317		X	Immunoassay,infectious agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86318		X	Immunoassay,infectious agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86320		X	Serum immunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86320	26	A	Serum immunoelectrophoresis	0.37	0.17	0.20	0.16	0.19	0.01	0.55	0.58	0.54	0.57	XXX
86325		X	Other immunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86325	26	A	Other immunoelectrophoresis	0.37	0.18	0.20	0.16	0.19	0.01	0.56	0.58	0.54	0.57	XXX
86327		X	Immunoelectrophoresis assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86327	26	A	Immunoelectrophoresis assay	0.42	0.16	0.19	0.16	0.19	0.01	0.59	0.62	0.59	0.62	XXX
86329		X	Immunodiffusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86331		X	Immunodiffusion ouchterlony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86332		X	Immune complex assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86334		X	Immunofixation procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86334	26	A	Immunofixation procedure	0.37	0.16	0.19	0.16	0.19	0.01	0.54	0.57	0.54	0.57	XXX
86337		X	Insulin antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86340		X	Intrinsic factor antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86341		X	Islet cell antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86343		X	Leukocyte histamine release	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86344		X	Leukocyte phagocytosis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86353		X	Lymphocyte transformation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86359		X	T cells, total count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86360		X	T cell, absolute count/ratio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86361		X	T cell, absolute count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86376		X	Microsomal antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86378		X	Migration inhibitory factor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86382		X	Neutralization test, viral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86384		X	Nitroblue tetrazolium dye	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86403		X	Particle agglutination test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86406		X	Particle agglutination test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86430		X	Rheumatoid factor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86431		X	Rheumatoid factor, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86485		C	Skin test, candida	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86490		A	Coccidioidomycosis skin test	0.00	0.29	0.30	0.29	0.30	0.02	0.31	0.32	0.31	0.32	XXX
86510		A	Histoplasmosis skin test	0.00	0.32	0.33	0.32	0.33	0.02	0.34	0.35	0.34	0.35	XXX
86580		A	TB intradermal test	0.00	0.25	0.26	0.25	0.26	0.02	0.27	0.28	0.27	0.28	XXX
86585		A	TB tine test	0.00	0.20	0.21	0.20	0.21	0.01	0.21	0.22	0.21	0.22	XXX
86586		C	Skin test, unlisted	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86588		D	Streptocollus, direct screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86590		X	Streptokinase, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86592		X	Blood serology, qualitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86593		X	Blood serology, quantitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86602		X	Antinomyces antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86603		X	Adenovirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86606		X	Aspergillus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86609		X	Bacterium antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86612		X	Blastomyces antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86615		X	Bordetella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86617		X	Lyme disease antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86618		X	Lyme disease antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86619		X	Borrelia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86622		X	Brucella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86625		X	Campylobacter antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86628		X	Candida antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86631		X	Chlamydia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86632		X	Chlamydia igm antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86635		X	Coccidioides antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86638		X	Q fever antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs [4]	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
86641		X	Cryptococcus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86644		X	CMV antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86645		X	CMV antibody, IgM	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86648		X	Diphtheria antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86651		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86652		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86653		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86654		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86658		X	Enterovirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86663		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86664		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86665		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86668		X	Francisella tularensis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86671		X	Fungus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86674		X	Giardia lamblia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86677		X	Helicobacter pylori	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86682		X	Helminth antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86684		X	Hemophilus influenza	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86687		X	Htlv-i antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86688		X	Htlv-ii antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86689		X	HTLV/HIV confirmatory test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86692		X	Hepatitis, delta agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86694		X	Herpes simplex test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86695		X	Herpes simplex test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86698		X	Histoplasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86701		X	HIV-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86702		X	HIV-2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86703		X	HIV-1/HIV-2, single assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86704		X	Hep b core antibody, igg/igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86705		X	Hep b core antibody, igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86706		X	Hep b surface antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86707		X	Hep be antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86708		X	Hep a antibody, igg/igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86709		X	Hep a antibody, igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86710		X	Influenza virus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86713		X	Legionella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86717		X	Leishmania antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86720		X	Leptospira antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86723		X	Listeria monocytogenes ab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86727		X	Lymph choriomeningitis ab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86729		X	Lympho venereum antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86732		X	Mucormycosis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86735		X	Mumps antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86738		X	Mycoplasma antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86741		X	Neisseria meningitidis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86744		X	Nocardia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86747		X	Parvovirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86750		X	Malaria antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86753		X	Protozoa antibody nos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86756		X	Respiratory virus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86759		X	Rotavirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86762		X	Rubella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86765		X	Rubeola antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86768		X	Salmonella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86771		X	Shigella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86774		X	Tetanus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86777		X	Toxoplasma antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86778		X	Toxoplasma antibody, igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86781		X	Treponema pallidum, confirm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86784		X	Trichinella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86787		X	Varicella-zoster antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86790		X	Virus antibody nos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86793		X	Yersinia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86800		X	Thyroglobulin antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86803		X	Hepatitis c ab test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86804		X	Hep c ab test, confirm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86805		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86806		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86807		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86808		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86812		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86813		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86816		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86817		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86821		X	Lymphocyte culture, mixed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86822		X	Lymphocyte culture, primed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86849		X	Immunology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86850		X	RBC antibody screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86860		X	RBC antibody elution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86870		X	RBC antibody identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86880		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[1] CPT codes and descriptions only are copyright 1999 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.

[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
86885		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86886		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86890		X	Autologous blood process	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86891		X	Autologous blood, op salvage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86900		X	Blood typing, ABO	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86901		X	Blood typing, Rh (D)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86903		X	Blood typing, antigen screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86904		X	Blood typing, patient serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86905		X	Blood typing, RBC antigens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86906		X	Blood typing, Rh phenotype	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86910		N	Blood typing, paternity test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86911		N	Blood typing, antigen system	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86915		X	Bone marrow/stem cell prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86920		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86921		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86922		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86927		X	Plasma, fresh frozen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86930		X	Frozen blood prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86931		X	Frozen blood thaw	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86932		X	Frozen blood freeze/thaw	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86940		X	Hemolysins/agglutinins, auto	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86941		X	Hemolysins/agglutinins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86945		X	Blood product/irradiation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86950		X	Leukacyte transfusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86965		X	Pooling blood platelets	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86970		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86971		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86972		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86975		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86976		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86977		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86978		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86985		X	Split blood or products	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86999		X	Transfusion procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87001		X	Small animal inoculation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87003		X	Small animal inoculation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87015		X	Specimen concentration	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87040		X	Blood culture for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87045		X	Stool culture for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87060		X	Nose/throat culture, bact	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87070		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87072		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87075		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87076		X	Bacteria identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87081		X	Bacteria culture screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87082		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87083		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87084		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87085		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87086		X	Urine culture/colony count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87087		X	Urine bacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87088		X	Urine bacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87101		X	Skin fungus culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87102		X	Fungus isolation culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87103		X	Blood fungus culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87106		X	Fungus identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87109		X	Mycoplasma culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87110		X	Culture, chlamydia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87116		X	Mycobacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87117		X	Mycobacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87118		X	Mycobacteria identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87140		X	Culture typing, fluorescent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87143		X	Culture typing, GLC method	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87145		X	Culture typing, phage method	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87147		X	Culture typing, serologic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87151		X	Culture typing, serologic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87155		X	Culture typing, precipitin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87158		X	Culture typing, added method	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87163		X	Special microbiology culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87164		X	Dark field examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87164	26	A	Dark field examination	0.37	0.14	0.18	0.14	0.18	0.01	0.52	0.56	0.52	0.56	XXX
87166		X	Dark field examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87174		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87175		X	Assay, endotoxin, bacterial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87176		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87177		X	Ova and parasites smears	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87181		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87184		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87186		X	Antibiotic sensitivity, MIC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87187		X	Antibiotic sensitivity, MBC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87188		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
87190		X	TB antibiotic sensitivity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87192		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87197		X	Bactericidal level, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87205		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87206		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87207		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87207	26	A	Smear, stain & interpret	0.37	0.18	0.20	0.16	0.19	0.01	0.56	0.58	0.54	0.57	XXX
87208		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87210		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87211		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87220		X	Tissue exam for fungi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87230		X	Assay, toxin or antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87250		X	Virus inoculation for test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87252		X	Virus inoculation for test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87253		X	Virus inoculation for test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87260		X	Adenovirus ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87265		X	Pertussis ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87270		X	Chylmd trach ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87272		X	Cryptosporidum ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87274		X	Herpes simplex ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87276		X	Influenza ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87278		X	Legion pneumo ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87280		X	Resp syncytial ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87285		X	Trepon pallidum ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87290		X	Varicella ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87299		X	Ag detection nos, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87301		X	Adenovirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87320		X	Chylmd trach ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87324		X	Clostridium ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87328		X	Cryptospor ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87332		X	Cytomegalovirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87335		X	E coli 0157 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87338		X	Hpylori, stool, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87340		X	Hepatitis b surface ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87350		X	Hepatitis be ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87380		X	Hepatitis delta ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87385		X	Histoplasma capsul ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87390		X	Hiv-1 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87391		X	Hiv-2 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87420		X	Resp syncytial ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87425		X	Rotavirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87430		X	Strep a ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87449		X	Ag detect nos, eia, mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87450		X	Ag detect nos, eia, single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87470		X	Bartonella, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87471		X	Bartonella, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87472		X	Bartonella, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87475		X	Lyme dis, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87476		X	Lyme dis, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87477		X	Lyme dis, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87480		X	Candida, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87481		X	Candida, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87482		X	Candida, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87485		X	Chylmd pneum, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87486		X	Chylmd pneum, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87487		X	Chylmd pneum, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87490		X	Chylmd trach, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87491		X	Chylmd trach, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87492		X	Chylmd trach, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87495		X	Cytomeg, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87496		X	Cytomeg, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87497		X	Cytomeg, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87510		X	Gardner vag, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87511		X	Gardner vag, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87512		X	Gardner vag, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87515		X	Hepatitis b, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87516		X	Hepatitis b , dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87517		X	Hepatitis b , dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87520		X	Hepatitis c , rna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87521		X	Hepatitis c , rna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87522		X	Hepatitis c, rna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87525		X	Hepatitis g , dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87526		X	Hepatitis g, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87527		X	Hepatitis g, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87528		X	Hsv, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87529		X	Hsv, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87530		X	Hsv, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87531		X	Hhv-6, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87532		X	Hhv-6, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87533		X	Hhv-6, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87534		X	Hiv-1, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
87535		X	Hiv-1, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87536		X	Hiv-1, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87537		X	Hiv-2, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87538		X	Hiv-2, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87539		X	Hiv-2, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87540		X	Legion pneumo, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87541		X	Legion pneumo, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87542		X	Legion pneumo, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87550		X	Mycobactena, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87551		X	Mycobactena, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87552		X	Mycobactena, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87555		X	M.tuberculo, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87556		X	M.tuberculo, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87557		X	M.tuberculo, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87560		X	M.avium-intra, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87561		X	M.avium-intra, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87562		X	M.avium-intra, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87580		X	M.pneumon, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87581		X	M.pneumon, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87582		X	M.pneumon, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87590		X	N.gonorrhoeae, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87591		X	N.gonorrhoeae, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87592		X	N.gonorrhoeae, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87620		X	Hpv, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87621		X	Hpv, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87622		X	Hpv, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87650		X	Strep a, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87651		X	Strep a, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87652		X	Strep a, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87797		X	Detect agent nos, dna, dir	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87798		X	Detect agent nos, dna, amp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87799		X	Detect agent nos, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87810		X	Chylmd trach assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87850		X	N. gonorrhoeae assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87880		X	Strep a assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87899		X	Agent nos assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87999		X	Microbiology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88000		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88005		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88007		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88012		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88014		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88016		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88020		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88025		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88027		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88028		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88029		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88036		N	Limited autopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88037		N	Limited autopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88040		N	Forensic autopsy (necropsy)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88045		N	Coroner's autopsy (necropsy)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88099		N	Necropsy (autopsy) procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88104		A	Cytopathology, fluids	0.56	0.87	0.68	0.87	0.68	0.03	1.46	1.27	1.46	1.27	XXX
88104	26	A	Cytopathology, fluids	0.56	0.25	0.25	0.25	0.25	0.01	0.82	0.82	0.82	0.82	XXX
88104	TC	A	Cytopathology, fluids	0.00	0.62	0.43	0.62	0.43	0.02	0.64	0.45	0.64	0.45	XXX
88106		A	Cytopathology, fluids	0.56	0.68	0.55	0.68	0.55	0.03	1.27	1.14	1.27	1.14	XXX
88106	26	A	Cytopathology, fluids	0.56	0.25	0.24	0.25	0.24	0.01	0.82	0.81	0.82	0.81	XXX
88106	TC	A	Cytopathology, fluids	0.00	0.43	0.31	0.43	0.31	0.02	0.45	0.33	0.45	0.33	XXX
88107		A	Cytopathology, fluids	0.76	1.13	0.82	1.13	0.82	0.04	1.93	1.62	1.93	1.62	XXX
88107	26	A	Cytopathology, fluids	0.76	0.34	0.30	0.34	0.30	0.02	1.12	1.08	1.12	1.08	XXX
88107	TC	A	Cytopathology, fluids	0.00	0.79	0.52	0.79	0.52	0.02	0.81	0.54	0.81	0.54	XXX
88108		A	Cytopath, concentrate tech	0.56	1.02	0.77	1.02	0.77	0.03	1.61	1.36	1.61	1.36	XXX
88108	26	A	Cytopath, concentrate tech	0.56	0.25	0.26	0.25	0.26	0.01	0.82	0.83	0.82	0.83	XXX
88108	TC	A	Cytopath, concentrate tech	0.00	0.77	0.51	0.77	0.51	0.02	0.79	0.53	0.79	0.53	XXX
88125		A	Forensic cytopathology	0.26	0.26	0.19	0.26	0.19	0.02	0.54	0.47	0.54	0.47	XXX
88125	26	A	Forensic cytopathology	0.26	0.12	0.10	0.12	0.10	0.01	0.39	0.37	0.39	0.37	XXX
88125	TC	A	Forensic cytopathology	0.00	0.14	0.09	0.14	0.09	0.01	0.15	0.10	0.15	0.10	XXX
88130		X	Sex chromatin identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88140		X	Sex chromatin identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88141		A	Cytopath, c/v, interpret	0.42	0.20	0.28	0.20	0.28	0.01	0.63	0.71	0.63	0.71	XXX
88142		X	Cytopath, c/v, thin layer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88143		X	Cytopath c/v thin layer redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88144		X	Cytopath, c/v thin lyr redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88145		X	Cytopath, c/v thin lyr sel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88147		X	Cytopath, c/v, automated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88148		X	Cytopath, c/v, auto rescreen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88150		X	Cytopath, c/v, manual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88152		X	Cytopath, c/v, auto redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88153		X	Cytopath, c/v, redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88154		X	Cytopath, c/v, select	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
88155	....	X	Cytopath, c/v, index add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88160	....	A	Cytopath smear, other source	0.50	1.31	0.84	1.31	0.84	0.03	1.84	1.37	1.84	1.37	XXX
88160	26	A	Cytopath smear, other source	0.50	0.23	0.21	0.23	0.21	0.01	0.74	0.72	0.74	0.72	XXX
88160	TC	A	Cytopath smear, other source	0.00	1.08	0.63	1.08	0.63	0.02	1.10	0.65	1.10	0.65	XXX
88161	....	A	Cytopath smear, other source	0.50	0.59	0.51	0.59	0.51	0.03	1.12	1.04	1.12	1.04	XXX
88161	26	A	Cytopath smear, other source	0.50	0.22	0.22	0.22	0.22	0.01	0.73	0.73	0.73	0.73	XXX
88161	TC	A	Cytopath smear, other source	0.00	0.37	0.29	0.37	0.29	0.02	0.39	0.31	0.39	0.31	XXX
88162	....	A	Cytopath smear, other source	0.76	1.04	0.95	1.04	0.95	0.04	1.84	1.75	1.84	1.75	XXX
88162	26	A	Cytopath smear, other source	0.76	0.34	0.39	0.34	0.39	0.02	1.12	1.17	1.12	1.17	XXX
88162	TC	A	Cytopath smear, other source	0.00	0.70	0.56	0.70	0.56	0.02	0.72	0.58	0.72	0.58	XXX
88164	....	X	Cytopath tbs, c/v, manual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88165	....	X	Cytopath tbs, c/v, redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88166	....	X	Cytopath tbs, c/v, auto redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88167	....	X	Cytopath tbs, c/v, select	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88170	....	A	Fine needle aspiration	1.27	0.94	1.01	0.94	1.01	0.08	2.29	2.36	2.29	2.36	XXX
88170	26	A	Fine needle aspiration	1.27	0.55	0.56	0.55	0.56	0.05	1.87	1.88	1.87	1.88	XXX
88170	TC	A	Fine needle aspiration	0.00	0.39	0.45	0.39	0.45	0.03	0.42	0.48	0.42	0.48	XXX
88171	....	A	Fine needle aspiration	1.27	0.79	1.13	0.79	1.13	0.07	2.13	2.47	2.13	2.47	XXX
88171	26	A	Fine needle aspiration	1.27	0.45	0.61	0.45	0.61	0.04	1.76	1.92	1.76	1.92	XXX
88171	TC	A	Fine needle aspiration	0.00	0.34	0.52	0.34	0.52	0.03	0.37	0.55	0.37	0.55	XXX
88172	....	A	Evaluation of smear	0.60	1.31	1.04	1.31	1.04	0.04	1.95	1.68	1.95	1.68	XXX
88172	26	A	Evaluation of smear	0.60	0.27	0.33	0.27	0.33	0.02	0.89	0.95	0.89	0.95	XXX
88172	TC	A	Evaluation of smear	0.00	1.04	0.71	1.04	0.71	0.02	1.06	0.73	1.06	0.73	XXX
88173	....	A	Interpretation of smear	1.39	1.60	1.28	1.60	1.28	0.06	3.05	2.73	3.05	2.73	XXX
88173	26	A	Interpretation of smear	1.39	0.63	0.56	0.63	0.56	0.04	2.06	1.99	2.06	1.99	XXX
88173	TC	A	Interpretation of smear	0.00	0.97	0.72	0.97	0.72	0.02	0.99	0.74	0.99	0.74	XXX
88180	....	A	Cell marker study	0.36	0.87	0.61	0.87	0.61	0.03	1.26	1.00	1.26	1.00	XXX
88180	26	A	Cell marker study	0.36	0.16	0.17	0.16	0.17	0.01	0.53	0.54	0.53	0.54	XXX
88180	TC	A	Cell marker study	0.00	0.71	0.44	0.71	0.44	0.02	0.73	0.46	0.73	0.46	XXX
88182	....	A	Cell marker study	0.77	1.37	1.17	1.37	1.17	0.05	2.19	1.99	2.19	1.99	XXX
88182	26	A	Cell marker study	0.77	0.35	0.42	0.35	0.42	0.02	1.14	1.21	1.14	1.21	XXX
88182	TC	A	Cell marker study	0.00	1.02	0.75	1.02	0.75	0.03	1.05	0.78	1.05	0.78	XXX
88199	....	C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88199	26	C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88199	TC	C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88230	....	X	Tissue culture, lymphocyte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88233	....	X	Tissue culture, skin/biopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88235	....	X	Tissue culture, placenta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88237	....	X	Tissue culture, bone marrow	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88239	....	X	Tissue culture, tumor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88240	....	X	Cell cryopreserve/storage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88241	....	X	Frozen cell preparation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88245	....	X	Chromosome analysis, 20-25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88248	....	X	Chromosome analysis, 50-100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88249	....	X	Chromosome analysis, 100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88261	....	X	Chromosome analysis, 5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88262	....	X	Chromosome analysis, 15-20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88263	....	X	Chromosome analysis, 45	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88264	....	X	Chromosome analysis, 20-25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88267	....	X	Chromosome analys, placenta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88269	....	X	Chromosome analys, amniotic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88271	....	X	Cytogenetics, dna probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88272	....	X	Cytogenetics, 3-5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88273	....	X	Cytogenetics, 10-30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88274	....	X	Cytogenetics, 25-99	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88275	....	X	Cytogenetics, 100-300	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88280	....	X	Chromosome karyotype study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88283	....	X	Chromosome banding study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88285	....	X	Chromosome count, additional	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88289	....	X	Chromosome study, additional	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88291	....	A	Cyto/molecular report	0.52	0.23	0.23	0.23	0.23	0.01	0.76	0.76	0.76	0.76	XXX
88299	....	C	Cytogenetic study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88300	....	A	Surgical path, gross	0.08	0.46	0.35	0.46	0.35	0.02	0.56	0.45	0.56	0.45	XXX
88300	26	A	Surgical path, gross	0.08	0.04	0.08	0.04	0.08	0.01	0.13	0.17	0.13	0.17	XXX
88300	TC	A	Surgical path, gross	0.00	0.42	0.27	0.42	0.27	0.01	0.43	0.28	0.43	0.28	XXX
88302	....	A	Tissue exam by pathologist	0.13	1.44	0.94	1.44	0.94	0.03	1.60	1.10	1.60	1.10	XXX
88302	26	A	Tissue exam by pathologist	0.13	0.06	0.12	0.06	0.12	0.01	0.20	0.26	0.20	0.26	XXX
88302	TC	A	Tissue exam by pathologist	0.00	1.38	0.82	1.38	0.82	0.02	1.40	0.84	1.40	0.84	XXX
88304	....	A	Tissue exam by pathologist	0.22	0.77	0.70	0.77	0.70	0.03	1.02	0.95	1.02	0.95	XXX
88304	26	A	Tissue exam by pathologist	0.22	0.10	0.18	0.10	0.18	0.01	0.33	0.41	0.33	0.41	XXX
88304	TC	A	Tissue exam by pathologist	0.00	0.67	0.52	0.67	0.52	0.02	0.69	0.54	0.69	0.54	XXX
88305	....	A	Tissue exam by pathologist	0.75	1.43	1.28	1.43	1.28	0.05	2.23	2.08	2.23	2.08	XXX
88305	26	A	Tissue exam by pathologist	0.75	0.34	0.46	0.34	0.46	0.02	1.11	1.23	1.11	1.23	XXX
88305	TC	A	Tissue exam by pathologist	0.00	1.09	0.82	1.09	0.82	0.03	1.12	0.85	1.12	0.85	XXX
88307	....	A	Tissue exam by pathologist	1.59	3.39	2.53	3.39	2.53	0.09	5.07	4.21	5.07	4.21	XXX
88307	26	A	Tissue exam by pathologist	1.59	0.72	0.79	0.72	0.79	0.04	2.35	2.42	2.35	2.42	XXX
88307	TC	A	Tissue exam by pathologist	0.00	2.67	1.74	2.67	1.74	0.05	2.72	1.79	2.72	1.79	XXX
88309	....	A	Tissue exam by pathologist	2.28	5.00	3.54	5.00	3.54	0.11	7.39	5.93	7.39	5.93	XXX
88309	26	A	Tissue exam by pathologist	2.28	1.03	1.05	1.03	1.05	0.06	3.37	3.39	3.37	3.39	XXX
88309	TC	A	Tissue exam by pathologist	0.00	3.97	2.49	3.97	2.49	0.05	4.02	2.54	4.02	2.54	XXX
88311	....	A	Decalcify tissue	0.24	0.21	0.23	0.21	0.23	0.02	0.47	0.49	0.47	0.49	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
88311	26	A	Decalcify tissue	0.24	0.11	0.12	0.11	0.12	0.01	0.36	0.37	0.36	0.37	XXX
88311	TC	A	Decalcify tissue	0.00	0.10	0.11	0.10	0.11	0.01	0.11	0.12	0.11	0.12	XXX
88312		A	Special stains	0.54	1.33	0.81	1.33	0.81	0.02	1.89	1.37	1.89	1.37	XXX
88312	26	A	Special stains	0.54	0.24	0.20	0.24	0.20	0.01	0.79	0.75	0.79	0.75	XXX
88312	TC	A	Special stains	0.00	1.09	0.61	1.09	0.61	0.01	1.10	0.62	1.10	0.62	XXX
88313		A	Special stains	0.24	2.05	1.15	2.05	1.15	0.02	2.31	1.41	2.31	1.41	XXX
88313	26	A	Special stains	0.24	0.11	0.12	0.11	0.12	0.01	0.36	0.37	0.36	0.37	XXX
88313	TC	A	Special stains	0.00	1.94	1.03	1.94	1.03	0.01	1.95	1.04	1.95	1.04	XXX
88314		A	Histochemical stain	0.45	3.93	2.30	3.93	2.30	0.03	4.41	2.78	4.41	2.78	XXX
88314	26	A	Histochemical stain	0.45	0.20	0.29	0.20	0.29	0.01	0.66	0.75	0.66	0.75	XXX
88314	TC	A	Histochemical stain	0.00	3.73	2.01	3.73	2.01	0.02	3.75	2.03	3.75	2.03	XXX
88318		A	Chemical histochemistry	0.42	1.11	0.69	1.11	0.69	0.02	1.55	1.13	1.55	1.13	XXX
88318	26	A	Chemical histochemistry	0.42	0.19	0.16	0.19	0.16	0.01	0.62	0.59	0.62	0.59	XXX
88318	TC	A	Chemical histochemistry	0.00	0.92	0.53	0.92	0.53	0.01	0.93	0.54	0.93	0.54	XXX
88319		A	Enzyme histochemistry	0.53	3.79	2.16	3.79	2.16	0.03	4.35	2.72	4.35	2.72	XXX
88319	26	A	Enzyme histochemistry	0.53	0.24	0.26	0.24	0.26	0.01	0.78	0.80	0.78	0.80	XXX
88319	TC	A	Enzyme histochemistry	0.00	3.55	1.90	3.55	1.90	0.02	3.57	1.92	3.57	1.92	XXX
88321		A	Microslide consultation	1.30	0.63	0.54	0.58	0.51	0.04	1.97	1.88	1.92	1.85	XXX
88323		A	Microslide consultation	1.35	2.29	1.54	2.29	1.54	0.06	3.70	2.95	3.70	2.95	XXX
88323	26	A	Microslide consultation	1.35	0.62	0.52	0.62	0.52	0.04	2.01	1.91	2.01	1.91	XXX
88323	TC	A	Microslide consultation	0.00	1.67	1.02	1.67	1.02	0.02	1.69	1.04	1.69	1.04	XXX
88325		A	Comprehensive review of data	2.22	0.99	0.75	0.99	0.75	0.06	3.27	3.03	3.27	3.03	XXX
88329		A	Pathology consult in surgery	0.67	0.55	0.48	0.30	0.35	0.02	1.24	1.17	0.99	1.04	XXX
88331		A	Pathology consult in surgery	1.19	1.03	1.12	1.03	1.12	0.06	2.28	2.37	2.28	2.37	XXX
88331	26	A	Pathology consult in surgery	1.19	0.54	0.58	0.54	0.58	0.03	1.76	1.80	1.76	1.80	XXX
88331	TC	A	Pathology consult in surgery	0.00	0.49	0.54	0.49	0.54	0.03	0.52	0.57	0.52	0.57	XXX
88332		A	Pathology consult in surgery	0.59	0.52	0.56	0.52	0.56	0.04	1.15	1.19	1.15	1.19	XXX
88332	26	A	Pathology consult in surgery	0.59	0.27	0.29	0.27	0.29	0.02	0.88	0.90	0.88	0.90	XXX
88332	TC	A	Pathology consult in surgery	0.00	0.25	0.27	0.25	0.27	0.02	0.27	0.29	0.27	0.29	XXX
88342		A	Immunocytochemistry	0.85	2.04	1.37	2.04	1.37	0.04	2.93	2.26	2.93	2.26	XXX
88342	26	A	Immunocytochemistry	0.85	0.38	0.37	0.38	0.37	0.02	1.25	1.24	1.25	1.24	XXX
88342	TC	A	Immunocytochemistry	0.00	1.66	1.00	1.66	1.00	0.02	1.68	1.02	1.68	1.02	XXX
88346		A	Immunofluorescent study	0.86	2.05	1.34	2.05	1.34	0.04	2.95	2.24	2.95	2.24	XXX
88346	26	A	Immunofluorescent study	0.86	0.38	0.36	0.38	0.36	0.02	1.26	1.24	1.26	1.24	XXX
88346	TC	A	Immunofluorescent study	0.00	1.67	0.98	1.67	0.98	0.02	1.69	1.00	1.69	1.00	XXX
88347		A	Immunofluorescent study	0.86	1.17	0.81	1.17	0.81	0.04	2.07	1.71	2.07	1.71	XXX
88347	26	A	Immunofluorescent study	0.86	0.34	0.25	0.34	0.25	0.02	1.22	1.13	1.22	1.13	XXX
88347	TC	A	Immunofluorescent study	0.00	0.83	0.56	0.83	0.56	0.02	0.85	0.58	0.85	0.58	XXX
88348		A	Electron microscopy	1.51	11.84	7.16	11.84	7.16	0.10	13.45	8.77	13.45	8.77	XXX
88348	26	A	Electron microscopy	1.51	0.67	0.98	0.67	0.98	0.04	2.22	2.53	2.22	2.53	XXX
88348	TC	A	Electron microscopy	0.00	11.17	6.18	11.17	6.18	0.06	11.23	6.24	11.23	6.24	XXX
88349		A	Scanning electron microscopy	0.76	6.24	3.96	6.24	3.96	0.07	7.07	4.79	7.07	4.79	XXX
88349	26	A	Scanning electron microscopy	0.76	0.34	0.60	0.34	0.60	0.02	1.12	1.38	1.12	1.38	XXX
88349	TC	A	Scanning electron microscopy	0.00	5.90	3.36	5.90	3.36	0.05	5.95	3.41	5.95	3.41	XXX
88355		A	Analysis, skeletal muscle	1.85	2.60	2.25	2.60	2.25	0.10	4.55	4.20	4.55	4.20	XXX
88355	26	A	Analysis, skeletal muscle	1.85	0.83	0.92	0.83	0.92	0.05	2.73	2.82	2.73	2.82	XXX
88355	TC	A	Analysis, skeletal muscle	0.00	1.77	1.33	1.77	1.33	0.05	1.82	1.38	1.82	1.38	XXX
88356		A	Analysis, nerve	3.02	3.62	3.26	3.62	3.26	0.15	6.79	6.43	6.79	6.43	XXX
88356	26	A	Analysis, nerve	3.02	1.26	1.39	1.26	1.39	0.09	4.37	4.50	4.37	4.50	XXX
88356	TC	A	Analysis, nerve	0.00	2.36	1.87	2.36	1.87	0.06	2.42	1.93	2.42	1.93	XXX
88358		A	Analysis, tumor	2.82	2.71	2.62	2.71	2.62	0.13	5.66	5.57	5.66	5.57	XXX
88358	26	A	Analysis, tumor	2.82	1.28	1.27	1.28	1.27	0.07	4.17	4.16	4.17	4.16	XXX
88358	TC	A	Analysis, tumor	0.00	1.43	1.35	1.43	1.35	0.06	1.49	1.41	1.49	1.41	XXX
88362		A	Nerve teasing preparations	2.17	3.83	2.99	3.83	2.99	0.12	6.12	5.28	6.12	5.28	XXX
88362	26	A	Nerve teasing preparations	2.17	0.94	1.02	0.94	1.02	0.07	3.18	3.26	3.18	3.26	XXX
88362	TC	A	Nerve teasing preparations	0.00	2.89	1.97	2.89	1.97	0.05	2.94	2.02	2.94	2.02	XXX
88365		A	Tissue hybridization	0.93	2.80	1.81	2.80	1.81	0.04	3.77	2.78	3.77	2.78	XXX
88365	26	A	Tissue hybridization	0.93	0.41	0.41	0.41	0.41	0.02	1.36	1.36	1.36	1.36	XXX
88365	TC	A	Tissue hybridization	0.00	2.39	1.40	2.39	1.40	0.02	2.41	1.42	2.41	1.42	XXX
88371		X	Protein, western blot tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88371	26	A	Protein, western blot tissue	0.37	0.14	0.18	0.14	0.18	0.01	0.52	0.56	0.52	0.56	XXX
88372		X	Protein analysis w/probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88372	26	A	Protein analysis w/probe	0.37	0.17	0.20	0.17	0.20	0.01	0.55	0.58	0.55	0.58	XXX
88399		C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88399	26	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88399	TC	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89050		X	Body fluid cell count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89051		X	Body fluid cell count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89060		X	Exam,synovial fluid crystals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89060	26	A	Exam,synovial fluid crystals	0.37	0.18	0.20	0.17	0.20	0.01	0.56	0.58	0.55	0.58	XXX
89100		A	Sample intestinal contents	0.60	1.56	1.01	0.21	0.34	0.02	2.18	1.63	0.83	0.96	XXX
89105		A	Sample intestinal contents	0.50	3.17	1.80	0.16	0.29	0.02	3.69	2.32	0.68	0.81	XXX
89125		X	Specimen fat stain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89130		A	Sample stomach contents	0.45	1.72	1.08	0.14	0.29	0.02	2.19	1.55	0.61	0.76	XXX
89132		A	Sample stomach contents	0.19	1.73	0.97	0.07	0.14	0.01	1.93	1.17	0.27	0.34	XXX
89135		A	Sample stomach contents	0.79	1.91	1.27	0.24	0.44	0.03	2.73	2.09	1.06	1.26	XXX
89136		A	Sample stomach contents	0.21	1.80	1.02	0.08	0.16	0.01	2.02	1.24	0.30	0.38	XXX
89140		A	Sample stomach contents	0.94	1.87	1.38	0.33	0.61	0.04	2.85	2.36	1.31	1.59	XXX
89141		A	Sample stomach contents	0.85	3.71	2.25	0.33	0.56	0.03	4.59	3.13	1.21	1.44	XXX
89160		X	Exam feces for meat fibers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89190		X	Nasal smear for eosinophils	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
89250		X	Fertilization of oocyte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89251		X	Culture oocyte w/embryos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89252		X	Assist oocyte fertilization	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89253		X	Embryo hatching	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89254		X	Oocyte identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89255		X	Prepare embryo for transfer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89256		X	Prepare cryopreserved embryo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89257		X	Sperm identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89258		X	Cryopreservation, embryo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89259		X	Cryopreservation, sperm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89260		X	Sperm isolation, simple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89261		X	Sperm isolation, complex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89264		X	Identify sperm tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89300		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89310		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89320		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89325		X	Sperm antibody test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89329		X	Sperm evaluation test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89330		X	Evaluation, cervical mucus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89350		A	Sputum specimen collection	0.00	0.41	0.42	0.41	0.42	0.02	0.43	0.44	0.43	0.44	XXX
89355		X	Exam feces for starch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89360		A	Collect sweat for test	0.00	0.46	0.47	0.46	0.47	0.02	0.48	0.49	0.48	0.49	XXX
89365		X	Water load test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399		C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399	26	C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399	TC	C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90281		I	Human ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90283		I	Human ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90287		I	Botulinum antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90288		I	Botulism ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90291		I	Cmv ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90296		E	Diphtheria antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90371		E	Hep b ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90375		E	Rabies ig, im/sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90376		E	Rabies ig, heat treated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90378		X	Rsv ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90379		E	Rsv ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90384		I	Rh ig, full-dose, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90385		E	Rh ig, minidose, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90386		I	Rh ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90389		E	Tetanus ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90393		E	Vaccina ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90396		E	Varicella-zoster ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90399		I	Immune globulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90471		X	Immunization admin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90472		X	Immunization admin, each add	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90476		E	Adenovirus vaccine, type 4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90477		E	Adenovirus vaccine, type 7	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90581		E	Anthrax vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90585		E	Bcg vaccine, percut	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90586		E	Bcg vaccine, intravesical	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90592		D	Cholera vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90632		E	Hep a vaccine, adult im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90633		E	Hep a vacc, ped/adol, 2 dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90634		E	Hep a vacc, ped/adol, 3 dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90636		E	Hep a/hep b vacc, adult im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90645		E	Hib vaccine, hboc, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90646		E	Hib vaccine, prp-d, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90647		E	Hib vaccine, prp-omp, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90648		E	Hib vaccine, prp-t, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90657		X	Flu vaccine, 6-35 mo, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90658		X	Flu vaccine, 3 yrs, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90659		X	Flu vaccine, whole, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90660		X	Flu vaccine, nasal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90665		E	Lyme disease vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90669		N	Pneumococcal vaccine, ped	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90675		E	Rabies vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90676		E	Rabies vaccine, id	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90680		E	Rotovirus vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90690		E	Typhoid vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90691		E	Typhoid vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90692		E	Typhoid vaccine, h-p, sc/id	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90693		E	Typhoid vaccine, akd, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90700		E	Dtap vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90701		E	Dtp vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90702		E	Dt vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90703		E	Tetanus vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90704		E	Mumps vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90705		E	Measles vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90706		E	Rubella vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90707		E	Mmr vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
90708		E	Measles-rubella vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90709		E	Rubella & mumps vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90710		E	Mmrv vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90712		E	Oral poliovirus vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90713		E	Poliovirus, ipv, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90716		E	Chicken pox vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90717		E	Yellow fever vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90718		E	Td vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90719		E	Diphtheria vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90720		E	Dtp/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90721		E	Dtap/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90725		E	Cholera vaccine, injectable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90727		E	Plague vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90732		X	Pneumococcal vaccine, adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90733		E	Meningococcal vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90735		E	Encephalitis vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90744		X	Hep b vaccine, ped/adol, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90745		D	Hepb vaccine, adol/risk, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90746		X	Hep b vaccine, adult, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90747		X	Hep b vaccine, ill pat, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90748		E	Hep b/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90749		E	Vaccine toxoid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90780		A	IV infusion therapy, 1 hour	0.00	1.12	1.14	1.12	1.14	0.06	1.18	1.20	1.18	1.20	XXX
90781		A	IV infusion, additional hour	0.00	0.56	0.57	0.56	0.57	0.03	0.59	0.60	0.59	0.60	ZZZ
90782		T	Injection, sc/im	0.00	0.11	0.11	0.11	0.11	0.01	0.12	0.12	0.12	0.12	XXX
90783		T	Injection, ia	0.00	0.41	0.42	0.41	0.42	0.02	0.43	0.44	0.43	0.44	XXX
90784		T	Injection, iv	0.00	0.48	0.49	0.48	0.49	0.03	0.51	0.52	0.51	0.52	XXX
90788		T	Injection of antibiotic	0.00	0.12	0.12	0.12	0.12	0.01	0.13	0.13	0.13	0.13	XXX
90799		C	Ther/prophylactic/dx inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90801		A	Psy dx interview	2.80	1.12	0.93	0.92	0.83	0.07	3.99	3.80	3.79	3.70	XXX
90802		A	Intac psy dx interview	3.01	1.14	0.78	0.96	0.69	0.08	4.23	3.87	4.05	3.78	XXX
90804		A	Psytx, office, 20-30 min	1.21	0.51	0.45	0.40	0.39	0.03	1.75	1.69	1.64	1.63	XXX
90805		A	Psytx, off, 20-30 min w/e&m	1.37	0.57	0.48	0.43	0.41	0.04	1.98	1.89	1.84	1.82	XXX
90806		A	Psytx, off, 45-50 min	1.86	0.76	0.68	0.65	0.62	0.05	2.67	2.59	2.56	2.53	XXX
90807		A	Psytx, off, 45-50 min w/e&m	2.02	0.76	0.68	0.64	0.62	0.05	2.83	2.75	2.71	2.69	XXX
90808		A	Psytx, office, 75-80 min	2.79	1.10	1.12	0.98	1.06	0.07	3.96	3.98	3.84	3.92	XXX
90809		A	Psytx, off, 75-80, w/e&m	2.95	1.08	1.11	0.93	1.04	0.08	4.11	4.14	3.96	4.07	XXX
90810		A	Intac psytx, off, 20-30 min	1.32	0.55	0.60	0.43	0.54	0.03	1.90	1.95	1.78	1.89	XXX
90811		A	Intac psytx, 20-30, w/e&m	1.48	0.59	0.62	0.46	0.55	0.04	2.11	2.14	1.98	2.07	XXX
90812		A	Intac psytx, off, 45-50 min	1.97	0.83	0.74	0.68	0.66	0.05	2.85	2.76	2.70	2.68	XXX
90813		A	Intac psytx, 45-50 min w/e&m	2.13	0.82	0.73	0.67	0.66	0.05	3.00	2.91	2.85	2.84	XXX
90814		A	Intac psytx, off, 75-80 min	2.90	1.18	0.91	1.01	0.83	0.07	4.15	3.88	3.98	3.80	XXX
90815		A	Intac psytx, 75-80 w/e&m	3.06	1.18	0.91	0.94	0.79	0.08	4.32	4.05	4.08	3.93	XXX
90816		A	Psytx, hosp, 20-30 min	1.25	0.58	0.48	0.43	0.41	0.03	1.86	1.76	1.71	1.69	XXX
90817		A	Psytx, hosp, 20-30 min w/e&m	1.41	0.60	0.49	0.44	0.41	0.04	2.05	1.94	1.89	1.86	XXX
90818		A	Psytx, hosp, 45-50 min	1.89	0.80	0.70	0.66	0.63	0.05	2.74	2.64	2.60	2.57	XXX
90819		A	Psytx, hosp, 45-50 min w/e&m	2.05	0.80	0.70	0.63	0.61	0.05	2.90	2.80	2.73	2.71	XXX
90821		A	Psytx, hosp, 75-80 min	2.83	1.15	1.15	0.97	1.06	0.07	4.05	4.05	3.87	3.96	XXX
90822		A	Psytx, hosp, 75-80 min w/e&m	2.99	1.10	1.12	0.93	1.04	0.08	4.17	4.19	4.00	4.11	XXX
90823		A	Intac psytx, hosp, 20-30 min	1.36	0.68	0.66	0.44	0.54	0.03	2.07	2.05	1.83	1.93	XXX
90824		A	Intac psytx, hsp 20-30 w/e&m	1.52	0.66	0.65	0.47	0.56	0.04	2.22	2.21	2.03	2.12	XXX
90826		A	Intac psytx, hosp, 45-50 min	2.01	0.92	0.78	0.70	0.67	0.05	2.98	2.84	2.76	2.73	XXX
90827		A	Intac psytx, hsp 45-50 w/e&m	2.16	0.88	0.76	0.67	0.66	0.06	3.10	2.98	2.89	2.88	XXX
90828		A	Intac psytx, hosp, 75-80 min	2.94	1.27	0.96	1.05	0.85	0.08	4.29	3.98	4.07	3.87	XXX
90829		A	Intac psytx, hsp 75-80 w/e&m	3.10	1.17	0.91	0.96	0.80	0.08	4.35	4.09	4.14	3.98	XXX
90845		A	Psychoanalysis	1.79	0.68	0.56	0.56	0.50	0.05	2.52	2.40	2.40	2.34	XXX
90846		R	Family psytx w/o patient	1.83	0.74	0.71	0.62	0.65	0.05	2.62	2.59	2.50	2.53	XXX
90847		R	Family psytx w/patient	2.21	0.85	0.74	0.74	0.69	0.06	3.12	3.01	3.01	2.96	XXX
90849		R	Multiple family group psytx	0.59	0.32	0.30	0.21	0.25	0.02	0.93	0.91	0.82	0.86	XXX
90853		A	Group psychotherapy	0.59	0.34	0.31	0.20	0.24	0.02	0.95	0.92	0.81	0.85	XXX
90857		A	Intac group psytx	0.63	0.34	0.25	0.22	0.19	0.02	0.99	0.90	0.87	0.84	XXX
90862		A	Medication management	0.95	0.42	0.41	0.30	0.35	0.02	1.39	1.38	1.27	1.32	XXX
90865		A	Narcosynthesis	2.84	1.34	0.94	0.88	0.71	0.10	4.28	3.88	3.82	3.65	XXX
90870		A	Electroconvulsive therapy	1.88	0.70	0.65	0.58	0.59	0.05	2.63	2.58	2.51	2.52	000
90871		A	Electroconvulsive therapy	2.72	NA	NA	0.85	0.88	0.07	NA	NA	3.64	3.67	000
90875		N	Psychophysiological therapy	+1.20	0.81	0.81	0.46	0.46	0.03	2.04	2.04	1.69	1.69	XXX
90876		N	Psychophysiological therapy	+1.90	1.08	1.08	0.73	0.73	0.05	3.03	3.03	2.68	2.68	XXX
90880		A	Hypnotherapy	2.19	0.88	0.79	0.70	0.70	0.06	3.13	3.04	2.95	2.95	XXX
90882		N	Environmental manipulation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90885		B	Psy evaluation of records	+0.97	0.38	0.36	0.38	0.36	0.02	1.37	1.35	1.37	1.35	XXX
90887		B	Consultation with family	+1.48	0.77	0.57	0.57	0.47	0.04	2.29	2.09	2.09	1.99	XXX
90889		B	Preparation of report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90899		C	Psychiatric service/therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90901		A	Biofeedback train, any meth	0.41	0.66	0.86	0.18	0.62	0.02	1.09	1.29	0.61	1.05	000
90911		A	Biofeedback peri/uro/rectal	0.89	0.74	0.99	0.37	0.80	0.05	1.68	1.93	1.31	1.74	000
90918		A	ESRD related services, month	11.18	5.17	3.78	5.17	3.78	0.48	16.83	15.44	16.83	15.44	XXX
90919		A	ESRD related services, month	8.54	4.26	3.32	4.26	3.32	0.39	13.19	12.25	13.19	12.25	XXX
90920		A	ESRD related services, month	7.27	3.60	2.99	3.60	2.99	0.38	11.25	10.64	11.25	10.64	XXX
90921		A	ESRD related services, month	4.47	2.52	2.45	2.52	2.45	0.26	7.25	7.18	7.25	7.18	XXX
90922		A	ESRD related services, day	0.37	0.15	0.12	0.15	0.12	0.02	0.54	0.51	0.54	0.51	XXX
90923		A	Esrd related services, day	0.28	0.14	0.11	0.14	0.11	0.01	0.43	0.40	0.43	0.40	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
90924		A	Esrd related services, day	0.24	0.12	0.10	0.12	0.10	0.01	0.37	0.35	0.37	0.35	XXX
90925		A	Esrd related services, day	0.15	0.08	0.08	0.08	0.08	0.01	0.24	0.24	0.24	0.24	XXX
90935		A	Hemodialysis, one evaluation	1.22	NA	NA	0.40	0.93	0.07	NA	NA	1.69	2.22	000
90937		A	Hemodialysis, repeated eval	2.11	NA	NA	0.69	1.61	0.11	NA	NA	2.91	3.83	000
90945		A	Dialysis, one evaluation	1.28	NA	NA	0.42	0.90	0.08	NA	NA	1.78	2.26	000
90947		A	Dialysis, repeated eval	2.16	NA	NA	0.71	1.49	0.12	NA	NA	2.99	3.77	000
90989		X	Dialysis training, complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90993		X	Dialysis training, incompl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90997		A	Hemoperfusion	1.84	NA	NA	0.62	1.41	0.10	NA	NA	2.56	3.35	000
90999		C	Dialysis procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91000		A	Esophageal intubation	0.73	0.33	0.53	0.33	0.53	0.03	1.09	1.29	1.09	1.29	000
91000	26	A	Esophageal intubation	0.73	0.25	0.45	0.25	0.45	0.02	1.00	1.20	1.00	1.20	000
91000	TC	A	Esophageal intubation	0.00	0.08	0.08	0.08	0.08	0.01	0.09	0.09	0.09	0.09	000
91010		A	Esophagus motility study	1.25	1.26	1.81	1.26	1.81	0.09	2.60	3.15	2.60	3.15	000
91010	26	A	Esophagus motility study	1.25	0.43	0.97	0.43	0.97	0.04	1.72	2.26	1.72	2.26	000
91010	TC	A	Esophagus motility study	0.00	0.83	0.84	0.83	0.84	0.05	0.88	0.89	0.88	0.89	000
91011		A	Esophagus motility study	1.50	1.55	2.21	1.55	2.21	0.10	3.15	3.81	3.15	3.81	000
91011	26	A	Esophagus motility study	1.50	0.52	1.16	0.52	1.16	0.05	2.07	2.71	2.07	2.71	000
91011	TC	A	Esophagus motility study	0.00	1.03	1.05	1.03	1.05	0.05	1.08	1.10	1.08	1.10	000
91012		A	Esophagus motility study	1.46	1.67	2.31	1.67	2.31	0.12	3.25	3.89	3.25	3.89	000
91012	26	A	Esophagus motility study	1.46	0.51	1.13	0.51	1.13	0.06	2.03	2.65	2.03	2.65	000
91012	TC	A	Esophagus motility study	0.00	1.16	1.18	1.16	1.18	0.06	1.22	1.24	1.22	1.24	000
91020		A	Gastric motility	1.44	1.26	1.88	1.26	1.88	0.11	2.81	3.43	2.81	3.43	000
91020	26	A	Gastric motility	1.44	0.49	1.10	0.49	1.10	0.06	1.99	2.60	1.99	2.60	000
91020	TC	A	Gastric motility	0.00	0.77	0.78	0.77	0.78	0.05	0.82	0.83	0.82	0.83	000
91030		A	Acid perfusion of esophagus	0.91	0.54	0.58	0.54	0.58	0.05	1.50	1.54	1.50	1.54	000
91030	26	A	Acid perfusion of esophagus	0.91	0.32	0.35	0.32	0.35	0.03	1.26	1.29	1.26	1.29	000
91030	TC	A	Acid perfusion of esophagus	0.00	0.22	0.23	0.22	0.23	0.02	0.24	0.25	0.24	0.25	000
91032		A	Esophagus, acid reflux test	1.21	1.17	1.65	1.17	1.65	0.09	2.47	2.95	2.47	2.95	000
91032	26	A	Esophagus, acid reflux test	1.21	0.42	0.89	0.42	0.89	0.04	1.67	2.14	1.67	2.14	000
91032	TC	A	Esophagus, acid reflux test	0.00	0.75	0.76	0.75	0.76	0.05	0.80	0.81	0.80	0.81	000
91033		A	Prolonged acid reflux test	1.30	1.80	2.37	1.80	2.37	0.14	3.24	3.81	3.24	3.81	000
91033	26	A	Prolonged acid reflux test	1.30	0.45	1.00	0.45	1.00	0.05	1.80	2.35	1.80	2.35	000
91033	TC	A	Prolonged acid reflux test	0.00	1.35	1.37	1.35	1.37	0.09	1.44	1.46	1.44	1.46	000
91052		A	Gastric analysis test	0.79	0.62	0.76	0.62	0.76	0.05	1.46	1.60	1.46	1.60	000
91052	26	A	Gastric analysis test	0.79	0.28	0.41	0.28	0.41	0.03	1.10	1.23	1.10	1.23	000
91052	TC	A	Gastric analysis test	0.00	0.34	0.35	0.34	0.35	0.02	0.36	0.37	0.36	0.37	000
91055		A	Gastric intubation for smear	0.94	0.57	0.72	0.57	0.72	0.07	1.58	1.73	1.58	1.73	000
91055	26	A	Gastric intubation for smear	0.94	0.27	0.41	0.27	0.41	0.05	1.26	1.40	1.26	1.40	000
91055	TC	A	Gastric intubation for smear	0.00	0.30	0.31	0.30	0.31	0.02	0.32	0.33	0.32	0.33	000
91060		A	Gastric saline load test	0.45	0.37	0.58	0.37	0.58	0.04	0.86	1.07	0.86	1.07	000
91060	26	A	Gastric saline load test	0.45	0.15	0.35	0.15	0.35	0.02	0.62	0.82	0.62	0.82	000
91060	TC	A	Gastric saline load test	0.00	0.22	0.23	0.22	0.23	0.02	0.24	0.25	0.24	0.25	000
91065		A	Breath hydrogen test	0.20	0.43	0.53	0.43	0.53	0.03	0.66	0.76	0.66	0.76	000
91065	26	A	Breath hydrogen test	0.20	0.07	0.16	0.07	0.16	0.01	0.28	0.37	0.28	0.37	000
91065	TC	A	Breath hydrogen test	0.00	0.36	0.37	0.36	0.37	0.02	0.38	0.39	0.38	0.39	000
91100		A	Pass intestine bleeding tube	1.08	NA	NA	0.28	0.45	0.07	NA	NA	1.43	1.60	000
91105		A	Gastric intubation treatment	0.37	NA	NA	0.09	0.27	0.02	NA	NA	0.48	0.66	000
91122		A	Anal pressure record	1.77	1.34	1.61	1.34	1.61	0.18	3.29	3.56	3.29	3.56	000
91122	26	A	Anal pressure record	1.77	0.63	0.89	0.63	0.89	0.11	2.51	2.77	2.51	2.77	000
91122	TC	A	Anal pressure record	0.00	0.71	0.72	0.71	0.72	0.07	0.78	0.79	0.78	0.79	000
91299		C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91299	26	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91299	TC	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92002		A	Eye exam, new patient	0.88	1.08	0.81	0.34	0.31	0.03	1.99	1.72	1.25	1.22	XXX
92004		A	Eye exam, new patient	1.67	1.67	1.15	0.69	0.50	0.06	3.40	2.88	2.42	2.23	XXX
92012		A	Eye exam established pat	0.67	1.05	0.77	0.31	0.28	0.02	1.74	1.46	1.00	0.97	XXX
92014		A	Eye exam & treatment	1.10	1.35	0.97	0.49	0.40	0.04	2.49	2.11	1.63	1.54	XXX
92015		N	Refraction	+0.38	1.47	0.91	0.15	0.25	0.01	1.86	1.30	0.54	0.64	XXX
92018		A	New eye exam & treatment	1.51	NA	NA	0.72	0.62	0.05	NA	NA	2.28	2.18	XXX
92019		A	Eye exam & treatment	1.31	NA	NA	0.60	0.43	0.05	NA	NA	1.96	1.79	XXX
92020		A	Special eye evaluation	0.37	0.73	0.52	0.17	0.17	0.01	1.11	0.90	0.55	0.55	XXX
92060		A	Special eye evaluation	0.69	1.24	0.84	1.24	0.84	0.03	1.96	1.56	1.96	1.56	XXX
92060	26	A	Special eye evaluation	0.69	0.29	0.26	0.29	0.26	0.02	1.00	0.97	1.00	0.97	XXX
92060	TC	A	Special eye evaluation	0.00	0.95	0.58	0.95	0.58	0.01	0.96	0.59	0.96	0.59	XXX
92065		A	Orthoptic/pleoptic training	0.37	0.75	0.58	0.75	0.58	0.02	1.14	0.97	1.14	0.97	XXX
92065	26	A	Orthoptic/pleoptic training	0.37	0.15	0.19	0.15	0.19	0.01	0.53	0.57	0.53	0.57	XXX
92065	TC	A	Orthoptic/pleoptic training	0.00	0.60	0.39	0.60	0.39	0.01	0.61	0.40	0.61	0.40	XXX
92070		A	Fitting of contact lens	0.70	1.01	1.16	0.35	0.50	0.02	1.73	1.88	1.07	1.22	XXX
92081		A	Visual field examination(s)	0.36	1.50	0.92	1.50	0.92	0.02	1.88	1.30	1.88	1.30	XXX
92081	26	A	Visual field examination(s)	0.36	0.16	0.17	0.16	0.17	0.01	0.53	0.54	0.53	0.54	XXX
92081	TC	A	Visual field examination(s)	0.00	1.34	0.75	1.34	0.75	0.01	1.35	0.76	1.35	0.76	XXX
92082		A	Visual field examination(s)	0.44	1.49	1.02	1.49	1.02	0.02	1.95	1.48	1.95	1.48	XXX
92082	26	A	Visual field examination(s)	0.44	0.21	0.27	0.21	0.27	0.01	0.66	0.72	0.66	0.72	XXX
92082	TC	A	Visual field examination(s)	0.00	1.28	0.75	1.28	0.75	0.01	1.29	0.76	1.29	0.76	XXX
92083		A	Visual field examination(s)	0.50	1.23	1.07	1.23	1.07	0.03	1.76	1.60	1.76	1.60	XXX
92083	26	A	Visual field examination(s)	0.50	0.24	0.42	0.24	0.42	0.02	0.76	0.94	0.76	0.94	XXX
92083	TC	A	Visual field examination(s)	0.00	0.99	0.65	0.99	0.65	0.01	1.00	0.66	1.00	0.66	XXX
92100		A	Serial tonometry exam(s)	0.92	0.76	0.52	0.37	0.26	0.03	1.71	1.47	1.32	1.21	XXX
92120		A	Tonography & eye evaluation	0.81	0.74	0.54	0.31	0.24	0.03	1.58	1.38	1.15	1.08	XXX
92130		A	Water provocation tonography	0.81	0.84	0.69	0.31	0.29	0.03	1.68	1.53	1.15	1.13	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
92135		A	Opthalmic dx imaging	0.35	1.56	1.56	1.56	1.56	0.02	1.93	1.93	1.93	1.93	XXX
92135	26	A	Opthalmic dx imaging	0.35	0.17	0.17	0.17	0.17	0.01	0.53	0.53	0.53	0.53	XXX
92135	TC	A	Opthalmic dx imaging	0.00	1.39	1.39	1.39	1.39	0.01	1.40	1.40	1.40	1.40	XXX
92140		A	Glaucoma provocative tests	0.50	0.87	0.60	0.23	0.20	0.02	1.39	1.12	0.75	0.72	XXX
92225		A	Special eye exam, initial	0.38	1.80	1.15	0.16	0.21	0.01	2.19	1.54	0.55	0.60	XXX
92226		A	Special eye exam, subsequent	0.33	1.92	1.18	0.16	0.19	0.01	2.26	1.52	0.50	0.53	XXX
92230		A	Eye exam with photos	0.60	1.40	1.08	0.21	0.30	0.02	2.02	1.70	0.83	0.92	XXX
92235		A	Eye exam with photos	0.81	2.15	1.94	2.15	1.94	0.08	3.04	2.83	3.04	2.83	XXX
92235	26	A	Eye exam with photos	0.81	0.41	0.53	0.41	0.53	0.03	1.25	1.37	1.25	1.37	XXX
92235	TC	A	Eye exam with photos	0.00	1.74	1.41	1.74	1.41	0.05	1.79	1.46	1.79	1.46	XXX
92240		A	Icg angiography	1.10	3.08	2.40	3.08	2.40	0.08	4.26	3.58	4.26	3.58	XXX
92240	26	A	Icg angiography	1.10	0.55	0.60	0.55	0.60	0.03	1.68	1.73	1.68	1.73	XXX
92240	TC	A	Icg angiography	0.00	2.53	1.80	2.53	1.80	0.05	2.58	1.85	2.58	1.85	XXX
92250		A	Eye exam with photos	0.44	1.94	1.20	1.94	1.20	0.02	2.40	1.66	2.40	1.66	XXX
92250	26	A	Eye exam with photos	0.44	0.21	0.24	0.21	0.24	0.01	0.66	0.69	0.66	0.69	XXX
92250	TC	A	Eye exam with photos	0.00	1.73	0.96	1.73	0.96	0.01	1.74	0.97	1.74	0.97	XXX
92260		A	Ophthalmoscopy/dynamometry	0.20	0.21	0.40	0.09	0.20	0.01	0.42	0.61	0.30	0.41	XXX
92265		A	Eye muscle evaluation	0.81	1.59	0.96	1.59	0.96	0.05	2.45	1.82	2.45	1.82	XXX
92265	26	A	Eye muscle evaluation	0.81	0.30	0.19	0.30	0.19	0.03	1.14	1.03	1.14	1.03	XXX
92265	TC	A	Eye muscle evaluation	0.00	1.29	0.77	1.29	0.77	0.02	1.31	0.79	1.31	0.79	XXX
92270		A	Electro-oculography	0.81	1.09	0.91	1.09	0.91	0.05	1.95	1.77	1.95	1.77	XXX
92270	26	A	Electro-oculography	0.81	0.34	0.37	0.34	0.37	0.03	1.18	1.21	1.18	1.21	XXX
92270	TC	A	Electro-oculography	0.00	0.75	0.54	0.75	0.54	0.02	0.77	0.56	0.77	0.56	XXX
92275		A	Electroretinography	1.01	0.73	0.85	0.73	0.85	0.06	1.80	1.92	1.80	1.92	XXX
92275	26	A	Electroretinography	1.01	0.45	0.50	0.45	0.50	0.04	1.50	1.55	1.50	1.55	XXX
92275	TC	A	Electroretinography	0.00	0.28	0.35	0.28	0.35	0.02	0.30	0.37	0.30	0.37	XXX
92283		A	Color vision examination	0.17	0.77	0.54	0.77	0.54	0.02	0.96	0.73	0.96	0.73	XXX
92283	26	A	Color vision examination	0.17	0.08	0.13	0.08	0.13	0.01	0.26	0.31	0.26	0.31	XXX
92283	TC	A	Color vision examination	0.00	0.69	0.41	0.69	0.41	0.01	0.70	0.42	0.70	0.42	XXX
92284		A	Dark adaptation eye exam	0.24	0.89	0.69	0.89	0.69	0.02	1.15	0.95	1.15	0.95	XXX
92284	26	A	Dark adaptation eye exam	0.24	0.09	0.20	0.09	0.20	0.01	0.34	0.45	0.34	0.45	XXX
92284	TC	A	Dark adaptation eye exam	0.00	0.80	0.49	0.80	0.49	0.01	0.81	0.50	0.81	0.50	XXX
92285		A	Eye photography	0.20	2.00	1.16	2.00	1.16	0.02	2.22	1.38	2.22	1.38	XXX
92285	26	A	Eye photography	0.20	0.10	0.15	0.10	0.15	0.01	0.31	0.36	0.31	0.36	XXX
92285	TC	A	Eye photography	0.00	1.90	1.01	1.90	1.01	0.01	1.91	1.02	1.91	1.02	XXX
92286		A	Internal eye photography	0.66	2.23	1.78	2.23	1.78	0.04	2.93	2.48	2.93	2.48	XXX
92286	26	A	Internal eye photography	0.66	0.32	0.61	0.32	0.61	0.02	1.00	1.29	1.00	1.29	XXX
92286	TC	A	Internal eye photography	0.00	1.91	1.17	1.91	1.17	0.02	1.93	1.19	1.93	1.19	XXX
92287		A	Internal eye photography	0.81	2.08	1.87	0.37	0.60	0.03	2.92	2.71	1.21	1.44	XXX
92310		N	Contact lens fitting	+1.17	0.97	1.19	0.45	0.93	0.00	2.14	2.36	1.62	2.10	XXX
92311		A	Contact lens fitting	1.08	1.04	1.01	0.39	0.44	0.04	2.16	2.13	1.51	1.56	XXX
92312		A	Contact lens fitting	1.26	0.99	1.13	0.66	0.65	0.04	2.29	2.43	1.96	1.95	XXX
92313		A	Contact lens fitting	0.92	0.94	0.95	0.27	0.38	0.03	1.89	1.90	1.22	1.33	XXX
92314		N	Prescription of contact lens	+0.69	0.78	0.80	0.27	0.55	0.00	1.47	1.49	0.96	1.24	XXX
92315		A	Prescription of contact lens	0.45	0.73	0.73	0.17	0.27	0.02	1.20	1.20	0.64	0.74	XXX
92316		A	Prescription of contact lens	0.68	0.80	0.92	0.26	0.39	0.02	1.50	1.62	0.96	1.09	XXX
92317		A	Prescription of contact lens	0.45	0.93	0.68	0.17	0.19	0.01	1.39	1.14	0.63	0.65	XXX
92325		A	Modification of contact lens	0.00	0.36	0.39	0.14	0.28	0.01	0.37	0.40	0.15	0.29	XXX
92326		A	Replacement of contact lens	0.00	0.37	1.03	0.15	0.92	0.05	0.42	1.08	0.20	0.97	XXX
92330		A	Fitting of artificial eye	1.08	0.80	1.02	0.26	0.44	0.04	1.92	2.14	1.38	1.56	XXX
92335		A	Fitting of artificial eye	0.45	0.86	1.50	0.17	0.62	0.02	1.33	1.97	0.64	1.09	XXX
92340		N	Fitting of spectacles	+0.37	0.58	0.52	0.14	0.29	0.00	0.95	0.89	0.51	0.66	XXX
92341		N	Fitting of spectacles	+0.47	0.62	0.60	0.18	0.37	0.00	1.09	1.07	0.65	0.84	XXX
92342		N	Fitting of spectacles	+0.53	0.65	0.65	0.20	0.42	0.00	1.18	1.18	0.73	0.95	XXX
92352		B	Special spectacles fitting	+0.37	0.58	0.46	0.14	0.24	0.01	0.96	0.84	0.52	0.62	XXX
92353		B	Special spectacles fitting	+0.50	0.63	0.53	0.19	0.31	0.02	1.15	1.05	0.71	0.83	XXX
92354		B	Special spectacles fitting	+0.00	0.52	4.84	0.18	4.67	0.08	0.60	4.92	0.26	4.75	XXX
92355		B	Special spectacles fitting	+0.00	0.52	2.50	0.18	2.33	0.01	0.53	2.51	0.19	2.34	XXX
92358		B	Eye prosthesis service	+0.00	0.33	0.67	0.12	0.56	0.04	0.37	0.71	0.16	0.60	XXX
92370		N	Repair & adjust spectacles	+0.32	0.45	0.42	0.12	0.25	0.00	0.77	0.74	0.44	0.57	XXX
92371		B	Repair & adjust spectacles	+0.00	0.33	0.49	0.12	0.38	0.02	0.35	0.51	0.14	0.40	XXX
92390		N	Supply of spectacles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92391		N	Supply of contact lenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92392		I	Supply of low vision aids	+0.00	0.33	2.26	0.12	2.15	0.02	0.35	2.28	0.14	2.17	XXX
92393		I	Supply of artificial eye	+0.00	0.33	6.66	0.12	6.55	0.48	0.81	7.14	0.60	7.03	XXX
92395		I	Supply of spectacles	+0.00	0.33	0.88	0.12	0.77	0.08	0.41	0.96	0.20	0.85	XXX
92396		I	Supply of contact lenses	+0.00	0.33	1.36	0.12	1.25	0.06	0.39	1.42	0.18	1.31	XXX
92499		C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92499	26	C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92499	TC	C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92502		A	Ear and throat examination	1.51	NA	NA	1.18	1.20	0.05	NA	NA	2.74	2.76	000
92504		A	Ear microscopy examination	0.18	0.76	0.52	0.09	0.12	0.01	0.95	0.71	0.28	0.31	XXX
92506		A	Speech/hearing evaluation	0.86	1.14	0.85	0.41	0.35	0.03	2.03	1.74	1.30	1.24	XXX
92507		A	Speech/hearing therapy	0.52	1.06	0.71	0.26	0.22	0.02	1.60	1.25	0.80	0.76	XXX
92508		A	Speech/hearing therapy	0.26	0.91	0.56	0.15	0.13	0.01	1.18	0.83	0.42	0.40	XXX
92510		A	Rehab for ear implant	1.50	1.58	1.53	0.68	0.71	0.05	3.13	3.08	2.23	2.26	XXX
92511		A	Nasopharyngoscopy	0.84	0.98	0.95	0.44	0.45	0.03	1.85	1.82	1.31	1.32	000
92512		A	Nasal function studies	0.55	0.86	0.69	0.25	0.26	0.02	1.43	1.26	0.82	0.83	XXX
92516		A	Facial nerve function test	0.43	0.70	0.56	0.23	0.22	0.01	1.14	1.00	0.67	0.66	XXX
92520		A	Laryngeal function studies	0.76	0.46	0.52	0.45	0.37	0.03	1.25	1.31	1.24	1.16	XXX
92525		A	Oral function evaluation	1.50	1.47	1.29	0.76	0.66	0.05	3.02	2.84	2.31	2.21	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
92526		A	Oral function therapy	0.55	1.17	0.84	0.21	0.24	0.02	1.74	1.41	0.78	0.81	XXX
92531		B	Spontaneous nystagmus study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92532		B	Positional nystagmus study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92533		B	Caloric vestibular test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92534		B	Optokinetic nystagmus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92541		A	Spontaneous nystagmus test	0.40	0.43	0.59	0.43	0.59	0.03	0.86	1.02	0.86	1.02	XXX
92541	26	A	Spontaneous nystagmus test	0.40	0.20	0.35	0.20	0.35	0.01	0.61	0.76	0.61	0.76	XXX
92541	TC	A	Spontaneous nystagmus test	0.00	0.23	0.24	0.23	0.24	0.02	0.25	0.26	0.25	0.26	XXX
92542		A	Positional nystagmus test	0.33	0.42	0.55	0.42	0.55	0.03	0.78	0.91	0.78	0.91	XXX
92542	26	A	Positional nystagmus test	0.33	0.16	0.28	0.16	0.28	0.01	0.50	0.62	0.50	0.62	XXX
92542	TC	A	Positional nystagmus test	0.00	0.26	0.27	0.26	0.27	0.02	0.28	0.29	0.28	0.29	XXX
92543		A	Caloric vestibular test	0.10	0.16	0.20	0.16	0.20	0.02	0.28	0.32	0.28	0.32	XXX
92543	26	A	Caloric vestibular test	0.10	0.05	0.09	0.05	0.09	0.01	0.16	0.20	0.16	0.20	XXX
92543	TC	A	Caloric vestibular test	0.00	0.11	0.11	0.11	0.11	0.01	0.12	0.12	0.12	0.12	XXX
92544		A	Optokinetic nystagmus test	0.26	0.34	0.43	0.34	0.43	0.03	0.63	0.72	0.63	0.72	XXX
92544	26	A	Optokinetic nystagmus test	0.26	0.13	0.21	0.13	0.21	0.01	0.40	0.48	0.40	0.48	XXX
92544	TC	A	Optokinetic nystagmus test	0.00	0.21	0.22	0.21	0.22	0.02	0.23	0.24	0.23	0.24	XXX
92545		A	Oscillating tracking test	0.23	0.32	0.39	0.32	0.39	0.03	0.58	0.65	0.58	0.65	XXX
92545	26	A	Oscillating tracking test	0.23	0.11	0.17	0.11	0.17	0.01	0.35	0.41	0.35	0.41	XXX
92545	TC	A	Oscillating tracking test	0.00	0.21	0.22	0.21	0.22	0.02	0.23	0.24	0.23	0.24	XXX
92546		A	Sinusoidal rotational test	0.29	0.37	0.48	0.37	0.48	0.03	0.69	0.80	0.69	0.80	XXX
92546	26	A	Sinusoidal rotational test	0.29	0.13	0.23	0.13	0.23	0.01	0.43	0.53	0.43	0.53	XXX
92546	TC	A	Sinusoidal rotational test	0.00	0.24	0.25	0.24	0.25	0.02	0.26	0.27	0.26	0.27	XXX
92547		A	Supplemental electrical test	0.00	0.56	0.57	0.56	0.57	0.05	0.61	0.62	0.61	0.62	ZZZ
92548		A	Posturography	0.50	1.75	1.88	1.75	1.88	0.13	2.38	2.51	2.38	2.51	XXX
92548	26	A	Posturography	0.50	0.27	0.38	0.27	0.38	0.02	0.79	0.90	0.79	0.90	XXX
92548	TC	A	Posturography	0.00	1.48	1.50	1.48	1.50	0.11	1.59	1.61	1.59	1.61	XXX
92551		N	Pure tone hearing test, air	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92552		A	Pure tone audiometry, air	0.00	0.45	0.46	0.45	0.46	0.03	0.48	0.49	0.48	0.49	XXX
92553		A	Audiometry, air & bone	0.00	0.66	0.67	0.66	0.67	0.05	0.71	0.72	0.71	0.72	XXX
92555		A	Speech threshold audiometry	0.00	0.38	0.39	0.38	0.39	0.03	0.41	0.42	0.41	0.42	XXX
92556		A	Speech audiometry, complete	0.00	0.57	0.58	0.57	0.58	0.05	0.62	0.63	0.62	0.63	XXX
92557		A	Comprehensive hearing test	0.00	1.20	1.22	1.20	1.22	0.10	1.30	1.32	1.30	1.32	XXX
92559		N	Group audiometric testing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92560		N	Bekesy audiometry, screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92561		A	Bekesy audiometry, diagnosis	0.00	0.72	0.73	0.72	0.73	0.05	0.77	0.78	0.77	0.78	XXX
92562		A	Loudness balance test	0.00	0.41	0.42	0.41	0.42	0.03	0.44	0.45	0.44	0.45	XXX
92563		A	Tone decay hearing test	0.00	0.38	0.39	0.38	0.39	0.03	0.41	0.42	0.41	0.42	XXX
92564		A	Sisi hearing test	0.00	0.48	0.49	0.48	0.49	0.04	0.52	0.53	0.52	0.53	XXX
92565		A	Stenger test, pure tone	0.00	0.40	0.41	0.40	0.31	0.03	0.43	0.44	0.43	0.34	XXX
92567		A	Tympanometry	0.00	0.52	0.53	0.52	0.53	0.05	0.57	0.58	0.57	0.58	XXX
92568		A	Acoustic reflex testing	0.00	0.38	0.39	0.38	0.39	0.03	0.41	0.42	0.41	0.42	XXX
92569		A	Acoustic reflex decay test	0.00	0.41	0.42	0.41	0.42	0.03	0.44	0.45	0.44	0.45	XXX
92571		A	Filtered speech hearing test	0.00	0.39	0.40	0.39	0.30	0.03	0.42	0.43	0.42	0.33	XXX
92572		A	Staggered spondaic word test	0.00	0.09	0.09	0.09	0.09	0.01	0.10	0.10	0.10	0.10	XXX
92573		A	Lombard test	0.00	0.35	0.36	0.35	0.36	0.03	0.38	0.39	0.38	0.39	XXX
92575		A	Sensorineural acuity test	0.00	0.30	0.31	0.30	0.23	0.02	0.32	0.33	0.32	0.25	XXX
92576		A	Synthetic sentence test	0.00	0.45	0.46	0.45	0.34	0.04	0.49	0.50	0.49	0.38	XXX
92577		A	Stenger test, speech	0.00	0.72	0.73	0.72	0.55	0.06	0.78	0.79	0.78	0.61	XXX
92579		A	Visual audiometry (vra)	0.00	0.73	0.74	0.73	0.74	0.05	0.78	0.79	0.78	0.79	XXX
92582		A	Conditioning play audiometry	0.00	0.73	0.74	0.73	0.56	0.05	0.78	0.79	0.78	0.61	XXX
92583		A	Select picture audiometry	0.00	0.89	0.91	0.89	0.91	0.07	0.96	0.98	0.96	0.98	XXX
92584		A	Electrocochleography	0.00	2.49	2.53	2.49	2.53	0.18	2.67	2.71	2.67	2.71	XXX
92585		A	Auditory evoked potential	0.50	2.07	2.81	2.07	2.81	0.14	2.71	3.45	2.71	3.45	XXX
92585	26	A	Auditory evoked potential	0.50	0.21	0.92	0.21	0.92	0.02	0.73	1.44	0.73	1.44	XXX
92585	TC	A	Auditory evoked potential	0.00	1.86	1.89	1.86	1.89	0.12	1.98	2.01	1.98	2.01	XXX
92587		A	Evoked auditory test	0.13	1.37	1.42	1.37	1.42	0.10	1.60	1.65	1.60	1.65	XXX
92587	26	A	Evoked auditory test	0.13	0.06	0.09	0.06	0.09	0.01	0.20	0.23	0.20	0.23	XXX
92587	TC	A	Evoked auditory test	0.00	1.31	1.33	1.31	1.33	0.09	1.40	1.42	1.40	1.42	XXX
92588		A	Evoked auditory test	0.36	1.63	1.74	1.63	1.74	0.12	2.11	2.22	2.11	2.22	XXX
92588	26	A	Evoked auditory test	0.36	0.15	0.24	0.15	0.24	0.01	0.52	0.61	0.52	0.61	XXX
92588	TC	A	Evoked auditory test	0.00	1.48	1.50	1.48	1.50	0.11	1.59	1.61	1.59	1.61	XXX
92589		A	Auditory function test(s)	0.00	0.53	0.54	0.53	0.54	0.05	0.58	0.59	0.58	0.59	XXX
92590		N	Hearing aid exam, one ear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92591		N	Hearing aid exam, both ears	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92592		N	Hearing aid check, one ear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92593		N	Hearing aid check, both ears	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92594		N	Electro hearng aid test, one	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92595		N	Electrc hearng aid tst, both	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92596		A	Ear protector evaluation	0.00	0.59	0.60	0.59	0.60	0.05	0.64	0.65	0.64	0.65	XXX
92597		A	Oral speech device eval	1.35	1.54	1.32	0.77	0.94	0.04	2.93	2.71	2.16	2.33	XXX
92598		A	Modify oral speech device	0.99	0.99	0.86	0.53	0.63	0.03	2.01	1.88	1.55	1.65	XXX
92599		C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92599	26	C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92599	TC	C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92950		A	Heart/lung resuscitation cpr	3.80	1.58	2.02	0.99	1.73	0.21	5.59	6.03	5.00	5.74	000
92953		A	Temporary external pacing	0.23	NA	NA	0.07	0.17	0.01	NA	NA	0.31	0.41	000
92960		A	Cardioversion electric, ext	2.25	2.05	2.05	0.89	1.47	0.08	4.38	4.38	3.22	3.80	000
92961		A	Cardioversion, electric, int	4.60	1.54	1.54	1.54	1.54	0.31	6.45	6.45	6.45	6.45	000
92970		A	Cardioassist, internal	3.52	NA	NA	1.04	2.41	0.17	NA	NA	4.73	6.10	000
92971		A	Cardioassist, external	1.77	NA	NA	0.73	0.97	0.06	NA	NA	2.56	2.80	000

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
92975		A	Dissolve clot, heart vessel	7.25	NA	NA	3.07	4.64	0.22	NA	NA	10.54	12.11	000
92977		A	Dissolve clot, heart vessel	0.00	NA	NA	8.09	8.21	0.39	NA	NA	8.48	8.60	XXX
92978		A	Intravasc us, heart add-on	1.80	5.35	5.62	5.35	5.62	0.27	7.42	7.69	7.42	7.69	ZZZ
92978	26	A	Intravasc us, heart add-on	1.80	0.76	0.96	0.76	0.96	0.06	2.62	2.82	2.62	2.82	ZZZ
92978	TC	A	Intravasc us, heart add-on	0.00	4.59	4.66	4.59	4.66	0.21	4.80	4.87	4.80	4.87	ZZZ
92979		A	Intravasc us, heart add-on	1.44	2.91	3.11	2.91	3.11	0.15	4.50	4.70	4.50	4.70	ZZZ
92979	26	A	Intravasc us, heart add-on	1.44	0.61	0.77	0.61	0.77	0.04	2.09	2.25	2.09	2.25	ZZZ
92979	TC	A	Intravasc us, heart add-on	0.00	2.30	2.34	2.30	2.34	0.11	2.41	2.45	2.41	2.45	ZZZ
92980		A	Insert intracoronary stent	14.84	NA	NA	6.32	12.02	2.00	NA	NA	23.16	28.86	000
92981		A	Insert intracoronary stent	4.17	NA	NA	1.77	3.38	0.56	NA	NA	6.50	8.11	ZZZ
92982		A	Coronary artery dilation	10.98	NA	NA	4.68	8.90	1.48	NA	NA	17.14	21.36	000
92984		A	Coronary artery dilation	2.97	NA	NA	1.26	2.41	0.40	NA	NA	4.63	5.78	ZZZ
92986		A	Revision of aortic valve	21.80	NA	NA	10.88	11.98	2.82	NA	NA	35.50	36.60	090
92987		A	Revision of mitral valve	22.70	NA	NA	11.22	12.23	2.99	NA	NA	36.91	37.92	090
92990		A	Revision of pulmonary valve	17.34	NA	NA	8.54	9.48	1.90	NA	NA	27.78	28.72	090
92992		C	Revision of heart chamber	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
92993		C	Revision of heart chamber	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
92995		A	Coronary atherectomy	12.09	NA	NA	5.15	9.79	1.63	NA	NA	18.87	23.51	000
92996		A	Coronary atherectomy add-on	3.26	NA	NA	1.42	2.66	0.44	NA	NA	5.12	6.36	ZZZ
92997		A	Pul art balloon repr, percut	12.00	NA	NA	5.10	9.72	1.45	NA	NA	18.55	23.17	000
92998		A	Pul art balloon repr, percut	6.00	NA	NA	2.46	3.29	0.73	NA	NA	9.19	10.02	ZZZ
93000		A	Electrocardiogram, complete	0.17	0.52	0.59	0.52	0.59	0.03	0.72	0.79	0.72	0.79	XXX
93005		A	Electrocardiogram, tracing	0.00	0.46	0.47	0.46	0.47	0.02	0.48	0.49	0.48	0.49	XXX
93010		A	Electrocardiogram report	0.17	0.06	0.12	0.06	0.12	0.01	0.24	0.30	0.24	0.30	XXX
93012		A	Transmission of ecg	0.00	2.37	2.41	2.37	2.41	0.15	2.52	2.56	2.52	2.56	XXX
93014		A	Report on transmitted ecg	0.52	0.20	0.32	0.20	0.32	0.02	0.74	0.86	0.74	0.86	XXX
93015		A	Cardiovascular stress test	0.75	1.99	2.26	1.99	2.26	0.11	2.85	3.12	2.85	3.12	XXX
93016		A	Cardiovascular stress test	0.45	0.18	0.30	0.18	0.30	0.01	0.64	0.76	0.64	0.76	XXX
93017		A	Cardiovascular stress test	0.00	1.69	1.72	1.69	1.72	0.09	1.78	1.81	1.78	1.81	XXX
93018		A	Cardiovascular stress test	0.30	0.12	0.24	0.12	0.24	0.01	0.43	0.55	0.43	0.55	XXX
93024		A	Cardiac drug stress test	1.17	1.60	2.09	1.60	2.09	0.11	2.88	3.37	2.88	3.37	XXX
93024	26	A	Cardiac drug stress test	1.17	0.47	0.94	0.47	0.94	0.04	1.68	2.15	1.68	2.15	XXX
93024	TC	A	Cardiac drug stress test	0.00	1.13	1.15	1.13	1.15	0.07	1.20	1.22	1.20	1.22	XXX
93040		A	Rhythm ECG with report	0.16	0.20	0.24	0.20	0.24	0.02	0.38	0.42	0.38	0.42	XXX
93041		A	Rhythm ECG, tracing	0.00	0.15	0.15	0.15	0.15	0.01	0.16	0.16	0.16	0.16	XXX
93042		A	Rhythm ECG, report	0.16	0.05	0.09	0.05	0.09	0.01	0.22	0.26	0.22	0.26	XXX
93224		A	ECG monitor/report, 24 hrs	0.52	3.64	3.90	3.64	3.90	0.21	4.37	4.63	4.37	4.63	XXX
93225		A	ECG monitor/record, 24 hrs	0.00	1.24	1.26	1.24	1.26	0.07	1.31	1.33	1.31	1.33	XXX
93226		A	ECG monitor/report, 24 hrs	0.00	2.20	2.23	2.20	2.23	0.12	2.32	2.35	2.32	2.35	XXX
93227		A	ECG monitor/review, 24 hrs	0.52	0.20	0.41	0.20	0.41	0.02	0.74	0.95	0.74	0.95	XXX
93230		A	ECG monitor/report, 24 hrs	0.52	3.92	4.18	3.92	4.18	0.22	4.66	4.92	4.66	4.92	XXX
93231		A	Ecg monitor/record, 24 hrs	0.00	1.53	1.55	1.53	1.55	0.09	1.62	1.64	1.62	1.64	XXX
93232		A	ECG monitor/report, 24 hrs	0.00	2.19	2.22	2.19	2.22	0.11	2.30	2.33	2.30	2.33	XXX
93233		A	ECG monitor/review, 24 hrs	0.52	0.20	0.41	0.20	0.41	0.02	0.74	0.95	0.74	0.95	XXX
93235		A	ECG monitor/report, 24 hrs	0.45	2.81	3.03	2.81	3.03	0.13	3.39	3.61	3.39	3.61	XXX
93236		A	ECG monitor/report, 24 hrs	0.00	2.63	2.67	2.63	2.67	0.12	2.75	2.79	2.75	2.79	XXX
93237		A	ECG monitor/review, 24 hrs	0.45	0.18	0.36	0.18	0.36	0.01	0.64	0.82	0.64	0.82	XXX
93268		A	ECG record/review	0.52	3.80	3.98	3.80	3.98	0.24	4.56	4.74	4.56	4.74	XXX
93270		A	ECG recording	0.00	1.24	1.26	1.24	1.26	0.07	1.31	1.33	1.31	1.33	XXX
93271		A	Ecg/monitoring and analysis	0.00	2.37	2.41	2.37	2.41	0.15	2.52	2.56	2.52	2.56	XXX
93272		A	Ecg/review,interpret only	0.52	0.19	0.31	0.19	0.31	0.02	0.73	0.85	0.73	0.85	XXX
93278		A	ECG/signal-averaged	0.25	1.26	1.38	1.26	1.38	0.10	1.61	1.73	1.61	1.73	XXX
93278	26	A	ECG/signal-averaged	0.25	0.10	0.20	0.10	0.20	0.01	0.36	0.46	0.36	0.46	XXX
93278	TC	A	ECG/signal-averaged	0.00	1.16	1.18	1.16	1.18	0.09	1.25	1.27	1.25	1.27	XXX
93303		A	Echo transthoracic	1.30	4.35	4.72	4.35	4.72	0.24	5.89	6.26	5.89	6.26	XXX
93303	26	A	Echo transthoracic	1.30	0.47	0.78	0.47	0.78	0.04	1.81	2.12	1.81	2.12	XXX
93303	TC	A	Echo transthoracic	0.00	3.88	3.94	3.88	3.94	0.20	4.08	4.14	4.08	4.14	XXX
93304		A	Echo transthoracic	0.75	2.24	2.50	2.24	2.50	0.13	3.12	3.38	3.12	3.38	XXX
93304	26	A	Echo transthoracic	0.75	0.29	0.52	0.29	0.52	0.02	1.06	1.29	1.06	1.29	XXX
93304	TC	A	Echo transthoracic	0.00	1.95	1.98	1.95	1.98	0.11	2.06	2.09	2.06	2.09	XXX
93307		A	Echo exam of heart	0.92	4.26	4.68	4.26	4.68	0.23	5.41	5.83	5.41	5.83	XXX
93307	26	A	Echo exam of heart	0.92	0.38	0.74	0.38	0.74	0.03	1.33	1.69	1.33	1.69	XXX
93307	TC	A	Echo exam of heart	0.00	3.88	3.94	3.88	3.94	0.20	4.08	4.14	4.08	4.14	XXX
93308		A	Echo exam of heart	0.53	2.16	2.40	2.16	2.40	0.13	2.82	3.06	2.82	3.06	XXX
93308	26	A	Echo exam of heart	0.53	0.21	0.42	0.21	0.42	0.02	0.76	0.97	0.76	0.97	XXX
93308	TC	A	Echo exam of heart	0.00	1.95	1.98	1.95	1.98	0.11	2.06	2.09	2.06	2.09	XXX
93312		A	Echo transesophageal	2.20	4.66	5.03	4.66	5.03	0.34	7.20	7.57	7.20	7.57	XXX
93312	26	A	Echo transesophageal	2.20	0.86	1.17	0.86	1.17	0.09	3.15	3.46	3.15	3.46	XXX
93312	TC	A	Echo transesophageal	0.00	3.80	3.86	3.80	3.86	0.25	4.05	4.11	4.05	4.11	XXX
93313		A	Echo transesophageal	0.95	4.83	2.78	0.21	0.47	0.05	5.83	3.78	1.21	1.47	XXX
93314		A	Echo transesophageal	1.25	4.29	4.47	4.29	4.47	0.29	5.83	6.01	5.83	6.01	XXX
93314	26	A	Echo transesophageal	1.25	0.49	0.61	0.49	0.61	0.04	1.78	1.90	1.78	1.90	XXX
93314	TC	A	Echo transesophageal	0.00	3.80	3.86	3.80	3.86	0.25	4.05	4.11	4.05	4.11	XXX
93315		A	Echo transesophageal	2.78	4.87	5.13	4.87	5.13	0.36	8.01	8.27	8.01	8.27	XXX
93315	26	A	Echo transesophageal	2.78	1.07	1.27	1.07	1.27	0.11	3.96	4.16	3.96	4.16	XXX
93315	TC	A	Echo transesophageal	0.00	3.80	3.86	3.80	3.86	0.25	4.05	4.11	4.05	4.11	XXX
93316		A	Echo transesophageal	0.95	1.69	1.21	0.27	0.50	0.05	2.69	2.21	1.27	1.50	XXX
93317		A	Echo transesophageal	1.83	4.52	4.59	4.52	4.59	0.32	6.67	6.74	6.67	6.74	XXX
93317	26	A	Echo transesophageal	1.83	0.72	0.73	0.72	0.73	0.07	2.62	2.63	2.62	2.63	XXX
93317	TC	A	Echo transesophageal	0.00	3.80	3.86	3.80	3.86	0.25	4.05	4.11	4.05	4.11	XXX
93320		A	Doppler echo exam, heart	0.38	1.88	2.06	1.88	2.06	0.11	2.37	2.55	2.37	2.55	ZZZ

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
93320	26	A	Doppler echo exam, heart	0.38	0.16	0.31	0.16	0.31	0.01	0.55	0.70	0.55	0.70	ZZZ
93320	TC	A	Doppler echo exam, heart	0.00	1.72	1.75	1.72	1.75	0.10	1.82	1.85	1.82	1.85	ZZZ
93321		A	Doppler echo exam, heart	0.15	1.18	1.26	1.18	1.26	0.08	1.41	1.49	1.41	1.49	ZZZ
93321	26	A	Doppler echo exam, heart	0.15	0.06	0.12	0.06	0.12	0.01	0.22	0.28	0.22	0.28	ZZZ
93321	TC	A	Doppler echo exam, heart	0.00	1.12	1.14	1.12	1.14	0.07	1.19	1.21	1.19	1.21	ZZZ
93325		A	Doppler color flow add-on	0.07	2.94	3.00	2.94	3.00	0.19	3.20	3.26	3.20	3.26	ZZZ
93325	26	A	Doppler color flow add-on	0.07	0.03	0.04	0.03	0.04	0.01	0.11	0.12	0.11	0.12	ZZZ
93325	TC	A	Doppler color flow add-on	0.00	2.91	2.96	2.91	2.96	0.18	3.09	3.14	3.09	3.14	ZZZ
93350		A	Echo transthoracic	0.78	2.09	2.43	2.09	2.43	0.13	3.00	3.34	3.00	3.34	XXX
93350	26	A	Echo transthoracic	0.78	0.32	0.63	0.32	0.63	0.02	1.12	1.43	1.12	1.43	XXX
93350	TC	A	Echo transthoracic	0.00	1.77	1.80	1.77	1.80	0.11	1.88	1.91	1.88	1.91	XXX
93501		A	Right heart catheterization	3.02	17.92	19.51	17.92	19.51	1.27	22.21	23.80	22.21	23.80	000
93501	26	A	Right heart catheterization	3.02	1.23	2.42	1.23	2.42	0.37	4.62	5.81	4.62	5.81	000
93501	TC	A	Right heart catheterization	0.00	16.69	17.09	16.69	17.09	0.90	17.59	17.99	17.59	17.99	000
93503		A	Insert/place heart catheter	2.91	1.02	1.80	0.71	1.64	0.22	4.15	4.93	3.84	4.77	000
93505		A	Biopsy of heart lining	4.38	3.78	4.56	3.78	4.56	0.70	8.86	9.64	8.86	9.64	000
93505	26	A	Biopsy of heart lining	4.38	1.83	2.56	1.83	2.56	0.57	6.78	7.51	6.78	7.51	000
93505	TC	A	Biopsy of heart lining	0.00	1.95	2.00	1.95	2.00	0.13	2.08	2.13	2.08	2.13	000
93508		A	Cath placement, angiography	4.10	14.16	15.11	14.16	15.11	1.11	19.37	20.32	19.37	20.32	000
93508	26	A	Cath placement, angiography	4.10	1.72	2.37	1.72	2.37	0.55	6.37	7.02	6.37	7.02	000
93508	TC	A	Cath placement, angiography	0.00	12.44	12.74	12.44	12.74	0.56	13.00	13.30	13.00	13.30	000
93510		A	Left heart catheterization	4.33	38.29	39.92	38.29	39.92	2.55	45.17	46.80	45.17	46.80	000
93510	26	A	Left heart catheterization	4.33	1.83	2.58	1.83	2.58	0.58	6.74	7.49	6.74	7.49	000
93510	TC	A	Left heart catheterization	0.00	36.46	37.34	36.46	37.34	1.97	38.43	39.31	38.43	39.31	000
93511		A	Left heart catheterization	5.03	37.61	38.83	37.61	38.83	2.59	45.23	46.45	45.23	46.45	000
93511	26	A	Left heart catheterization	5.03	2.12	2.48	2.12	2.48	0.68	7.83	8.19	7.83	8.19	000
93511	TC	A	Left heart catheterization	0.00	35.49	36.35	35.49	36.35	1.91	37.40	38.26	37.40	38.26	000
93514		A	Left heart catheterization	7.05	38.38	40.27	38.38	40.27	2.87	48.30	50.19	48.30	50.19	000
93514	26	A	Left heart catheterization	7.05	2.89	3.92	2.89	3.92	0.96	10.90	11.93	10.90	11.93	000
93514	TC	A	Left heart catheterization	0.00	35.49	36.35	35.49	36.35	1.91	37.40	38.26	37.40	38.26	000
93524		A	Left heart catheterization	6.95	49.27	51.48	49.27	51.48	3.45	59.67	61.88	59.67	61.88	000
93524	26	A	Left heart catheterization	6.95	2.90	3.98	2.90	3.98	0.95	10.80	11.88	10.80	11.88	000
93524	TC	A	Left heart catheterization	0.00	46.37	47.50	46.37	47.50	2.50	48.87	50.00	48.87	50.00	000
93526		A	Rt & Lt heart catheters	5.99	50.17	53.02	50.17	53.02	3.37	59.53	62.38	59.53	62.38	000
93526	26	A	Rt & Lt heart catheters	5.99	2.52	4.22	2.52	4.22	0.80	9.31	11.01	9.31	11.01	000
93526	TC	A	Rt & Lt heart catheters	0.00	47.65	48.80	47.65	48.80	2.57	50.22	51.37	50.22	51.37	000
93527		A	Rt & Lt heart catheters	7.28	49.44	52.91	49.44	52.91	3.47	60.19	63.66	60.19	63.66	000
93527	26	A	Rt & Lt heart catheters	7.28	3.07	5.41	3.07	5.41	0.97	11.32	13.66	11.32	13.66	000
93527	TC	A	Rt & Lt heart catheters	0.00	46.37	47.50	46.37	47.50	2.50	48.87	50.00	48.87	50.00	000
93528		A	Rt & Lt heart catheters	9.00	50.21	51.83	50.21	51.83	3.73	62.94	64.56	62.94	64.56	000
93528	26	A	Rt & Lt heart catheters	9.00	3.84	4.33	3.84	4.33	1.23	14.07	14.56	14.07	14.56	000
93528	TC	A	Rt & Lt heart catheters	0.00	46.37	47.50	46.37	47.50	2.50	48.87	50.00	48.87	50.00	000
93529		A	Rt, Lt heart catheterization	4.80	48.28	50.05	48.28	50.05	3.08	56.16	57.93	56.16	57.93	000
93529	26	A	Rt, Lt heart catheterization	4.80	1.91	2.56	1.91	2.55	0.58	7.29	7.93	7.29	7.93	000
93529	TC	A	Rt, Lt heart catheterization	0.00	46.37	47.50	46.37	47.50	2.50	48.87	50.00	48.87	50.00	000
93530		A	Rt heart cath, congenital	4.23	18.34	19.88	18.34	19.88	1.45	24.02	25.56	24.02	25.56	000
93530	26	A	Rt heart cath, congenital	4.23	1.65	2.79	1.65	2.79	0.55	6.43	7.57	6.43	7.57	000
93530	TC	A	Rt heart cath, congenital	0.00	16.69	17.09	16.69	17.09	0.90	17.59	17.99	17.59	17.99	000
93531		A	R & l heart cath, congenital	8.35	51.10	53.48	51.10	53.48	3.70	63.15	65.53	63.15	65.53	000
93531	26	A	R & l heart cath, congenital	8.35	3.45	4.68	3.45	4.68	1.13	12.93	14.16	12.93	14.16	000
93531	TC	A	R & l heart cath, congenital	0.00	47.65	48.80	47.65	48.80	2.57	50.22	51.37	50.22	51.37	000
93532		A	R & l heart cath, congenital	10.00	50.25	53.32	50.25	53.32	3.92	64.17	67.24	64.17	67.24	000
93532	26	A	R & l heart cath, congenital	10.00	3.88	5.82	3.88	5.82	1.42	15.30	17.24	15.30	17.24	000
93532	TC	A	R & l heart cath, congenital	0.00	46.37	47.50	46.37	47.50	2.50	48.87	50.00	48.87	50.00	000
93533		A	R & l heart cath, congenital	6.70	48.74	50.28	48.74	50.28	3.40	58.84	60.38	58.84	60.38	000
93533	26	A	R & l heart cath, congenital	6.70	2.37	2.78	2.37	2.78	0.90	9.97	10.38	9.97	10.38	000
93533	TC	A	R & l heart cath, congenital	0.00	46.37	47.50	46.37	47.50	2.50	48.87	50.00	48.87	50.00	000
93536		A	Insert circulation assi	4.85	NA	NA	2.08	3.94	0.65	NA	NA	7.58	9.44	000
93539		A	Injection, cardiac cath	0.40	0.75	0.86	0.17	0.33	0.01	1.16	1.27	0.58	0.74	000
93540		A	Injection, cardiac cath	0.43	0.78	0.87	0.18	0.35	0.01	1.22	1.31	0.62	0.79	000
93541		A	Injection for lung angiogram	0.29	NA	NA	0.12	0.24	0.01	NA	NA	0.42	0.54	000
93542		A	Injection for heart x-rays	0.29	NA	NA	0.12	0.24	0.01	NA	NA	0.42	0.54	000
93543		A	Injection for heart x-rays	0.29	0.50	0.56	0.12	0.24	0.01	0.80	0.86	0.42	0.54	000
93544		A	Injection for aortography	0.25	0.48	0.55	0.11	0.21	0.01	0.74	0.81	0.37	0.47	000
93545		A	Inject for coronary x-rays	0.40	0.77	0.63	0.17	0.33	0.01	1.18	1.04	0.58	0.74	000
93555		A	Imaging, cardiac cath	0.81	6.53	6.66	6.53	6.66	0.32	7.66	7.79	7.66	7.79	XXX
93555	26	A	Imaging, cardiac cath	0.81	0.34	0.32	0.34	0.32	0.03	1.18	1.16	1.18	1.16	XXX
93555	TC	A	Imaging, cardiac cath	0.00	6.19	6.34	6.19	6.34	0.29	6.48	6.63	6.48	6.63	XXX
93556		A	Imaging, cardiac cath	0.83	10.11	10.42	10.11	10.42	0.46	11.40	11.71	11.40	11.71	XXX
98556	26	A	Imaging, cardiac cath	0.83	0.35	0.42	0.35	0.42	0.03	1.21	1.28	1.21	1.28	XXX
93556	TC	A	Imaging, cardiac cath	0.00	9.76	10.00	9.76	10.00	0.43	10.19	10.43	10.19	10.43	XXX
93561		A	Cardiac output measurement	0.50	0.70	0.93	0.70	0.93	0.07	1.27	1.50	1.27	1.50	000
93561	26	A	Cardiac output measurement	0.50	0.17	0.39	0.17	0.39	0.02	0.69	0.91	0.69	0.91	000
93561	TC	A	Cardiac output measurement	0.00	0.53	0.54	0.53	0.54	0.05	0.58	0.59	0.58	0.59	000
93562		A	Cardiac output measurement	0.16	0.36	0.45	0.36	0.45	0.04	0.56	0.65	0.56	0.65	000
93562	26	A	Cardiac output measurement	0.16	0.05	0.13	0.05	0.13	0.01	0.22	0.30	0.22	0.30	000
93562	TC	A	Cardiac output measurement	0.00	0.31	0.32	0.31	0.32	0.03	0.34	0.35	0.34	0.35	000
93571		A	Heart flow reserve measure	1.80	5.29	5.29	5.29	5.29	0.27	7.36	7.36	7.36	7.36	ZZZ
93571	26	A	Heart flow reserve measure	1.80	0.70	0.70	0.70	0.70	0.06	2.56	2.56	2.56	2.56	ZZZ
93571	TC	A	Heart flow reserve measure	0.00	4.59	4.59	4.59	4.59	0.21	4.80	4.80	4.80	4.80	ZZZ
93572		A	Heart flow reserve measure	1.44	5.15	5.15	5.15	5.15	0.15	6.74	6.74	6.74	6.74	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
93572	26	A	Heart flow reserve measure	1.44	0.56	0.56	0.56	0.56	0.04	2.04	2.04	2.04	2.04	ZZZ
93572	TC	A	Heart flow reserve measure	0.00	4.59	4.59	4.59	4.59	0.11	4.70	4.70	4.70	4.70	ZZZ
93600		A	Bundle of His recording	2.12	2.86	3.71	2.86	3.71	0.18	5.16	6.01	5.16	6.01	000
93600	26	A	Bundle of His recording	2.12	0.90	1.72	0.90	1.72	0.07	3.09	3.91	3.09	3.91	000
93600	TC	A	Bundle of His recording	0.00	1.96	1.99	1.96	1.99	0.11	2.07	2.10	2.07	2.10	000
93602		A	Intra-atrial recording	2.12	2.02	2.55	2.02	2.55	0.15	4.29	4.82	4.29	4.82	000
93602	26	A	Intra-atrial recording	2.12	0.90	1.41	0.90	1.41	0.09	3.11	3.62	3.11	3.62	000
93602	TC	A	Intra-atrial recording	0.00	1.12	1.14	1.12	1.14	0.06	1.18	1.20	1.18	1.20	000
93603		A	Right ventricular recording	2.12	2.59	3.36	2.59	3.36	0.18	4.89	5.66	4.89	5.66	000
93603	26	A	Right ventricular recording	2.12	0.90	1.64	0.90	1.64	0.09	3.11	3.85	3.11	3.85	000
93603	TC	A	Right ventricular recording	0.00	1.69	1.72	1.69	1.72	0.09	1.78	1.81	1.78	1.81	000
93607		A	Left ventricular recording	3.26	2.90	3.42	2.90	3.42	0.19	6.35	6.87	6.35	6.87	000
93607	26	A	Left ventricular recording	3.26	1.40	1.90	1.40	1.90	0.10	4.76	5.26	4.76	5.26	000
93607	TC	A	Left ventricular recording	0.00	1.50	1.52	1.50	1.52	0.09	1.59	1.61	1.59	1.61	000
93609		A	Mapping of tachycardia	10.07	6.96	6.97	6.96	6.97	0.46	17.49	17.50	17.49	17.50	000
93609	26	A	Mapping of tachycardia	10.07	4.23	4.20	4.23	4.20	0.32	14.62	14.59	14.62	14.59	000
93609	TC	A	Mapping of tachycardia	0.00	2.73	2.77	2.73	2.77	0.14	2.87	2.91	2.87	2.91	000
93610		A	Intra-atrial pacing	3.02	2.63	3.27	2.63	3.27	0.19	5.84	6.48	5.84	6.48	000
93610	26	A	Intra-atrial pacing	3.02	1.27	1.89	1.27	1.89	0.11	4.40	5.02	4.40	5.02	000
93610	TC	A	Intra-atrial pacing	0.00	1.36	1.38	1.36	1.38	0.08	1.44	1.46	1.44	1.46	000
93612		A	Intraventricular pacing	3.02	2.89	3.56	2.89	3.56	0.21	6.12	6.79	6.12	6.79	000
93612	26	A	Intraventricular pacing	3.02	1.27	1.91	1.27	1.91	0.12	4.41	5.05	4.41	5.05	000
93612	TC	A	Intraventricular pacing	0.00	1.62	1.65	1.62	1.65	0.09	1.71	1.74	1.71	1.74	000
93615		A	Esophageal recording	0.99	0.64	0.68	0.64	0.68	0.08	1.71	1.75	1.71	1.75	000
93615	26	A	Esophageal recording	0.99	0.32	0.35	0.32	0.35	0.06	1.37	1.40	1.37	1.40	000
93615	TC	A	Esophageal recording	0.00	0.32	0.33	0.32	0.33	0.02	0.34	0.35	0.34	0.35	000
93616		A	Esophageal recording	1.49	0.68	1.25	0.68	1.25	0.10	2.27	2.84	2.27	2.84	000
93616	26	A	Esophageal recording	1.49	0.36	0.92	0.36	0.92	0.08	1.93	2.49	1.93	2.49	000
93616	TC	A	Esophageal recording	0.00	0.32	0.33	0.32	0.33	0.02	0.34	0.35	0.34	0.35	000
93618		A	Heart rhythm pacing	4.26	5.79	7.49	5.79	7.49	0.33	10.38	12.08	10.38	12.08	000
93618	26	A	Heart rhythm pacing	4.26	1.81	3.45	1.81	3.45	0.12	6.19	7.83	6.19	7.83	000
93618	TC	A	Heart rhythm pacing	0.00	3.98	4.04	3.98	4.04	0.21	4.19	4.25	4.19	4.25	000
93619		A	Electrophysiology evaluation	7.32	10.84	13.78	10.84	13.78	0.62	18.78	21.72	18.78	21.72	000
93619	26	A	Electrophysiology evaluation	7.32	3.10	5.92	3.10	5.92	0.22	10.64	13.46	10.64	13.46	000
93619	TC	A	Electrophysiology evaluation	0.00	7.74	7.86	7.74	7.86	0.40	8.14	8.26	8.14	8.26	000
93620		A	Electrophysiology evaluation	11.59	13.83	18.47	13.83	18.47	0.79	26.21	30.85	26.21	30.85	000
93620	26	A	Electrophysiology evaluation	11.59	4.82	9.33	4.82	9.33	0.34	16.75	21.26	16.75	21.26	000
93620	TC	A	Electrophysiology evaluation	0.00	9.01	9.14	9.01	9.14	0.45	9.46	9.59	9.46	9.59	000
93621		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93621	26	A	Electrophysiology evaluation	12.66	5.36	10.24	5.36	10.24	0.41	18.43	23.31	18.43	23.31	000
93621	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93622		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93622	26	A	Electrophysiology evaluation	12.74	5.23	10.22	5.23	10.22	0.39	18.36	23.35	18.36	23.35	000
93622	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93623		C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93623	26	A	Stimulation, pacing heart	2.85	1.20	2.11	1.20	2.11	0.10	4.15	5.06	4.15	5.06	ZZZ
93623	TC	C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93624		A	Electrophysiologic study	4.81	4.03	4.66	4.03	4.66	0.26	9.10	9.73	9.10	9.73	000
93624	26	A	Electrophysiologic study	4.81	2.04	2.64	2.04	2.64	0.15	7.00	7.60	7.00	7.60	000
93624	TC	A	Electrophysiologic study	0.00	1.99	2.02	1.99	2.02	0.11	2.10	2.13	2.10	2.13	000
93631		A	Heart pacing, mapping	7.60	9.32	10.97	9.32	10.97	0.95	17.87	19.52	17.87	19.52	000
93631	TC	A	Heart pacing, mapping	0.00	6.18	6.27	6.18	6.27	0.53	6.71	6.80	6.71	6.80	000
93631	26	A	Heart pacing, mapping	7.60	3.14	4.70	3.14	4.70	0.42	11.16	12.72	11.16	12.72	000
93640		A	Evaluation heart device	3.52	8.69	10.16	8.69	10.16	0.47	12.68	14.15	12.68	14.15	000
93640	26	A	Evaluation heart device	3.52	1.48	2.84	1.48	2.84	0.11	5.11	6.47	5.11	6.47	000
93640	TC	A	Evaluation heart device	0.00	7.21	7.32	7.21	7.32	0.36	7.57	7.68	7.57	7.68	000
93641		A	Electrophysiology evaluation	5.93	9.70	12.11	9.70	12.11	0.54	16.17	18.58	16.17	18.58	000
93641	26	A	Electrophysiology evaluation	5.93	2.49	4.79	2.49	4.79	0.18	8.60	10.90	8.60	10.90	000
93641	TC	A	Electrophysiology evaluation	0.00	7.21	7.32	7.21	7.32	0.36	7.57	7.68	7.57	7.68	000
93642		A	Electrophysiology evaluation	4.89	9.21	11.24	9.21	11.24	0.50	14.60	16.63	14.60	16.63	000
93642	26	A	Electrophysiology evaluation	4.89	2.00	3.92	2.00	3.92	0.14	7.03	8.95	7.03	8.95	000
93642	TC	A	Electrophysiology evaluation	0.00	7.21	7.32	7.21	7.32	0.36	7.57	7.68	7.57	7.68	000
93650		A	Ablate heart dysrhythm focus	10.51	NA	NA	4.49	8.52	0.32	NA	NA	15.32	19.35	000
93651		A	Ablate heart dysrhythm focus	16.25	NA	NA	6.83	13.09	0.50	NA	NA	23.58	29.84	000
93652		A	Ablate heart dysrhythm focus	17.68	NA	NA	7.47	13.41	0.54	NA	NA	25.69	31.63	000
93660		C	Tilt table evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93660	26	A	Tilt table evaluation	1.89	0.79	1.18	0.79	1.18	0.06	2.74	3.13	2.74	3.13	000
93660	TC	C	Tilt table evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93720		A	Total body plethysmography	0.17	0.76	0.87	0.76	0.67	0.06	0.99	1.10	0.99	0.90	XXX
93721		A	Plethysmography tracing	0.00	0.71	0.72	0.71	0.54	0.05	0.76	0.77	0.76	0.59	XXX
93722		A	Plethysmography report	0.17	0.05	0.15	0.05	0.13	0.01	0.23	0.33	0.23	0.31	XXX
93724		A	Analyze pacemaker system	4.89	6.06	6.65	6.06	6.65	0.35	11.30	11.89	11.30	11.89	000
93724	26	A	Analyze pacemaker system	4.89	2.08	2.61	2.08	2.61	0.14	7.11	7.64	7.11	7.64	000
93724	TC	A	Analyze pacemaker system	0.00	3.98	4.04	3.98	4.04	0.21	4.19	4.25	4.19	4.25	000
93727		A	Analyze ilr system	0.52	0.21	0.21	0.21	0.21	0.02	0.75	0.75	0.75	0.75	XXX
93731		A	Analyze pacemaker system	0.45	0.69	0.78	0.69	0.78	0.05	1.19	1.28	1.19	1.28	XXX
93731	26	A	Analyze pacemaker system	0.45	0.19	0.27	0.19	0.27	0.02	0.66	0.74	0.66	0.74	XXX
93731	TC	A	Analyze pacemaker system	0.00	0.50	0.51	0.50	0.51	0.03	0.53	0.54	0.53	0.54	XXX
93732		A	Analyze pacemaker system	0.92	0.89	0.94	0.89	0.94	0.06	1.87	1.92	1.87	1.92	XXX
93732	26	A	Analyze pacemaker system	0.92	0.38	0.42	0.38	0.42	0.03	1.33	1.37	1.33	1.37	XXX
93732	TC	A	Analyze pacemaker system	0.00	0.51	0.52	0.51	0.52	0.03	0.54	0.55	0.54	0.55	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
93733	....	A	Telephone analy, pacemaker	0.17	0.80	0.88	0.80	0.88	0.06	1.03	1.11	1.03	1.11	XXX
93733	26	A	Telephone analy, pacemaker	0.17	0.07	0.14	0.07	0.14	0.01	0.25	0.32	0.25	0.32	XXX
93733	TC	A	Telephone analy, pacemaker	0.00	0.73	0.74	0.73	0.74	0.05	0.78	0.79	0.78	0.79	XXX
93734	....	A	Analyze pacemaker system	0.38	0.51	0.61	0.51	0.61	0.03	0.92	1.02	0.92	1.02	XXX
93734	26	A	Analyze pacemaker system	0.38	0.16	0.25	0.16	0.25	0.01	0.55	0.64	0.55	0.64	XXX
93734	TC	A	Analyze pacemaker system	0.00	0.35	0.36	0.35	0.36	0.02	0.37	0.38	0.37	0.38	XXX
93735	....	A	Analyze pacemaker system	0.74	0.76	0.85	0.76	0.85	0.06	1.56	1.65	1.56	1.65	XXX
93735	26	A	Analyze pacemaker system	0.74	0.31	0.39	0.31	0.39	0.03	1.08	1.16	1.08	1.16	XXX
93735	TC	A	Analyze pacemaker system	0.00	0.45	0.46	0.45	0.46	0.03	0.48	0.49	0.48	0.49	XXX
93736	....	A	Telephone analy, pacemaker	0.15	0.70	0.77	0.70	0.77	0.06	0.91	0.98	0.91	0.98	XXX
93736	26	A	Telephone analy, pacemaker	0.15	0.07	0.13	0.07	0.13	0.01	0.23	0.29	0.23	0.29	XXX
93736	TC	A	Telephone analy, pacemaker	0.00	0.63	0.64	0.63	0.64	0.05	0.68	0.69	0.68	0.69	XXX
93737	....	A	Analyze cardio/defibrillator	0.45	0.69	0.75	0.69	0.75	0.04	1.18	1.24	1.18	1.24	XXX
93737	26	A	Analyze cardio/defibrillator	0.45	0.19	0.24	0.19	0.24	0.01	0.65	0.70	0.65	0.70	XXX
93737	TC	A	Analyze cardio/defibrillator	0.00	0.50	0.51	0.50	0.51	0.03	0.53	0.54	0.53	0.54	XXX
93738	....	A	Analyze cardio/defibrillator	0.92	0.90	0.93	0.90	0.93	0.06	1.88	1.91	1.88	1.91	XXX
93738	26	A	Analyze cardio/defibrillator	0.92	0.39	0.41	0.39	0.41	0.03	1.34	1.36	1.34	1.36	XXX
93738	TC	A	Analyze cardio/defibrillator	0.00	0.51	0.52	0.51	0.52	0.03	0.54	0.55	0.54	0.55	XXX
93740	....	B	Temperature gradient studies	+0.16	0.20	0.35	0.20	0.35	0.02	0.38	0.53	0.38	0.53	XXX
93740	26	E	Temperature gradient studies	+0.16	0.04	0.19	0.04	0.19	0.01	0.21	0.36	0.21	0.36	XXX
93740	TC	B	Temperature gradient studies	+0.00	0.16	0.16	0.16	0.16	0.01	0.17	0.17	0.17	0.17	XXX
93741	....	A	Analyze ht pace device sngl	0.64	1.18	1.18	1.18	1.18	0.05	1.87	1.87	1.87	1.87	XXX
93741	26	A	Analyze ht pace device sngl	0.64	0.25	0.25	0.25	0.25	0.02	0.91	0.91	0.91	0.91	XXX
93741	TC	A	Analyze ht pace device sngl	0.00	0.93	0.93	0.93	0.93	0.03	0.96	0.96	0.96	0.96	XXX
93742	....	A	Analyze ht pace device sngl	0.73	1.56	1.56	1.56	1.56	0.05	2.34	2.34	2.34	2.34	XXX
93742	26	A	Analyze ht pace device sngl	0.73	0.28	0.28	0.28	0.28	0.02	1.03	1.03	1.03	1.03	XXX
93742	TC	A	Analyze ht pace device sngl	0.00	1.28	1.28	1.28	1.28	0.03	1.31	1.31	1.31	1.31	XXX
93743	....	A	Analyze ht pace device dual	0.83	1.25	1.25	1.25	1.25	0.05	2.13	2.13	2.13	2.13	XXX
93743	26	A	Analyze ht pace device dual	0.83	0.32	0.32	0.32	0.32	0.02	1.17	1.17	1.17	1.17	XXX
93743	TC	A	Analyze ht pace device dual	0.00	0.93	0.93	0.93	0.93	0.03	0.96	0.96	0.96	0.96	XXX
93744	....	A	Analyze ht pace device dual	0.95	1.65	1.65	1.65	1.65	0.05	2.65	2.65	2.65	2.65	XXX
93744	26	A	Analyze ht pace device dual	0.95	0.37	0.37	0.37	0.37	0.02	1.34	1.34	1.34	1.34	XXX
93744	TC	A	Analyze ht pace device dual	0.00	1.28	1.28	1.28	1.28	0.03	1.31	1.31	1.31	1.31	XXX
93760	....	N	Cephalic thermogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93762	....	N	Peripheral thermogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93770	....	B	Measure venous pressure	+0.16	0.08	0.15	0.08	0.15	0.02	0.26	0.33	0.26	0.33	XXX
93770	26	B	Measure venous pressure	+0.16	0.05	0.12	0.05	0.12	0.01	0.22	0.29	0.22	0.29	XXX
93770	TC	B	Measure venous pressure	+0.00	0.03	0.03	0.03	0.03	0.01	0.04	0.04	0.04	0.04	XXX
93784	....	N	Ambulatory BP monitoring	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93786	....	N	Ambulatory BP recording	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93788	....	N	Ambulatory BP analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93790	....	N	Review/report BP recording	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93797	....	A	Cardiac rehab	0.18	0.36	0.29	0.07	0.09	0.01	0.55	0.48	0.26	0.28	000
93798	....	A	Cardiac rehab/monitor	0.28	0.44	0.48	0.11	0.19	0.01	0.73	0.77	0.40	0.48	000
93799	....	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93799	26	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93799	TC	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93875	....	A	Extracranial study	0.22	1.19	1.30	1.19	1.30	0.10	1.51	1.62	1.51	1.62	XXX
93875	26	A	Extracranial study	0.22	0.08	0.17	0.08	0.17	0.01	0.31	0.40	0.31	0.40	XXX
93875	TC	A	Extracranial study	0.00	1.11	1.13	1.11	1.13	0.09	1.20	1.22	1.20	1.22	XXX
93880	....	A	Extracranial study	0.60	3.93	4.11	3.93	4.11	0.34	4.87	5.05	4.87	5.05	XXX
93880	26	A	Extracranial study	0.60	0.19	0.31	0.19	0.31	0.04	0.83	0.95	0.83	0.95	XXX
93880	TC	A	Extracranial study	0.00	3.74	3.80	3.74	3.80	0.30	4.04	4.10	4.04	4.10	XXX
93882	....	A	Extracranial study	0.40	2.63	2.74	2.63	2.74	0.22	3.25	3.36	3.25	3.36	XXX
93882	26	A	Extracranial study	0.40	0.14	0.21	0.14	0.21	0.03	0.57	0.64	0.57	0.64	XXX
93882	TC	A	Extracranial study	0.00	2.49	2.53	2.49	2.53	0.19	2.68	2.72	2.68	2.72	XXX
93886	....	A	Intracranial study	0.94	4.60	4.71	4.60	4.71	0.38	5.92	6.03	5.92	6.03	XXX
93886	26	A	Intracranial study	0.94	0.36	0.41	0.36	0.41	0.05	1.35	1.40	1.35	1.40	XXX
93886	TC	A	Intracranial study	0.00	4.24	4.30	4.24	4.30	0.33	4.57	4.63	4.57	4.63	XXX
93888	....	A	Intracranial study	0.62	3.06	3.14	3.06	3.14	0.27	3.95	4.03	3.95	4.03	XXX
93888	26	A	Intracranial study	0.62	0.23	0.27	0.23	0.27	0.04	0.89	0.93	0.89	0.93	XXX
93888	TC	A	Intracranial study	0.00	2.83	2.87	2.83	2.87	0.23	3.06	3.10	3.06	3.10	XXX
93922	....	A	Extremity study	0.25	1.25	1.38	1.25	1.38	0.13	1.63	1.76	1.63	1.76	XXX
93922	26	A	Extremity study	0.25	0.09	0.20	0.09	0.20	0.02	0.36	0.47	0.36	0.47	XXX
93922	TC	A	Extremity study	0.00	1.16	1.18	1.16	1.18	0.11	1.27	1.29	1.27	1.29	XXX
93923	....	A	Extremity study	0.45	2.36	2.58	2.36	2.58	0.23	3.04	3.26	3.04	3.26	XXX
93923	26	A	Extremity study	0.45	0.16	0.35	0.16	0.35	0.04	0.65	0.84	0.65	0.84	XXX
93923	TC	A	Extremity study	0.00	2.20	2.23	2.20	2.23	0.19	2.39	2.42	2.39	2.42	XXX
93924	....	A	Extremity study	0.50	2.56	2.81	2.56	2.81	0.27	3.33	3.58	3.33	3.58	XXX
93924	26	A	Extremity study	0.50	0.18	0.39	0.18	0.39	0.05	0.73	0.94	0.73	0.94	XXX
93924	TC	A	Extremity study	0.00	2.38	2.42	2.38	2.42	0.22	2.60	2.64	2.60	2.64	XXX
93925	....	A	Lower extremity study	0.58	3.95	4.13	3.95	4.13	0.34	4.87	5.05	4.87	5.05	XXX
93925	26	A	Lower extremity study	0.58	0.19	0.31	0.19	0.31	0.04	0.81	0.93	0.81	0.93	XXX
93925	TC	A	Lower extremity study	0.00	3.76	3.82	3.76	3.82	0.30	4.06	4.12	4.06	4.12	XXX
93926	26	A	Lower extremity study	0.39	0.13	0.21	0.13	0.21	0.03	0.55	0.63	0.55	0.63	XXX
93926	....	A	Lower extremity study	0.39	2.64	2.76	2.64	2.76	0.23	3.26	3.38	3.26	3.38	XXX
93926	TC	A	Lower extremity study	0.00	2.51	2.55	2.51	2.55	0.20	2.71	2.75	2.71	2.75	XXX
93930	....	A	Upper extremity study	0.46	4.14	4.34	4.14	4.34	0.35	4.95	5.15	4.95	5.15	XXX
93930	26	A	Upper extremity study	0.46	0.15	0.29	0.15	0.29	0.03	0.64	0.78	0.64	0.78	XXX
93930	TC	A	Upper extremity study	0.00	3.99	4.05	3.99	4.05	0.32	4.31	4.37	4.31	4.37	XXX
93931	....	A	Upper extremity study	0.31	2.75	2.88	2.75	2.88	0.23	3.29	3.42	3.29	3.42	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
93931	26	A	Upper extremity study	0.31	0.10	0.19	0.10	0.19	0.02	0.43	0.52	0.43	0.52	XXX
93931	TC	A	Upper extremity study	0.00	2.65	2.69	2.65	2.69	0.21	2.86	2.90	2.86	2.90	XXX
93965		A	Extremity study	0.35	1.22	1.39	1.22	1.39	0.12	1.69	1.86	1.69	1.86	XXX
93965	26	A	Extremity study	0.35	0.12	0.27	0.12	0.27	0.02	0.49	0.64	0.49	0.64	XXX
93965	TC	A	Extremity study	0.00	1.10	1.12	1.10	1.12	0.10	1.20	1.22	1.20	1.22	XXX
93970		A	Extremity study	0.68	4.37	4.54	4.37	4.54	0.39	5.44	5.61	5.44	5.61	XXX
93970	26	A	Extremity study	0.68	0.22	0.33	0.22	0.33	0.05	0.95	1.06	0.95	1.06	XXX
93970	TC	A	Extremity study	0.00	4.15	4.21	4.15	4.21	0.34	4.49	4.55	4.49	4.55	XXX
93971		A	Extremity study	0.45	2.90	3.02	2.90	3.02	0.26	3.61	3.73	3.61	3.73	XXX
93971	26	A	Extremity study	0.45	0.14	0.22	0.14	0.22	0.03	0.62	0.70	0.62	0.70	XXX
93971	TC	A	Extremity study	0.00	2.76	2.80	2.76	2.80	0.23	2.99	3.03	2.99	3.03	XXX
93975		A	Vascular study	1.80	5.27	5.30	5.27	5.30	0.47	7.54	7.57	7.54	7.57	XXX
93975	26	A	Vascular study	1.80	0.55	0.51	0.55	0.51	0.10	2.45	2.41	2.45	2.41	XXX
93975	TC	A	Vascular study	0.00	4.72	4.79	4.72	4.79	0.37	5.09	5.16	5.09	5.16	XXX
93976		A	Vascular study	1.21	3.50	3.53	3.50	3.53	0.32	5.03	5.06	5.03	5.06	XXX
93976	26	A	Vascular study	1.21	0.35	0.33	0.35	0.33	0.06	1.62	1.60	1.62	1.60	XXX
93976	TC	A	Vascular study	0.00	3.15	3.20	3.15	3.20	0.26	3.41	3.46	3.41	3.46	XXX
93978		A	Vascular study	0.65	4.09	4.25	4.09	4.25	0.37	5.11	5.27	5.11	5.27	XXX
93978	26	A	Vascular study	0.65	0.22	0.32	0.22	0.32	0.05	0.92	1.02	0.92	1.02	XXX
93978	TC	A	Vascular study	0.00	3.87	3.93	3.87	3.93	0.32	4.19	4.25	4.19	4.25	XXX
93979		A	Vascular study	0.44	2.73	2.83	2.73	2.83	0.24	3.41	3.51	3.41	3.51	XXX
93979	26	A	Vascular study	0.44	0.16	0.22	0.16	0.22	0.03	0.63	0.69	0.63	0.69	XXX
93979	TC	A	Vascular study	0.00	2.57	2.61	2.57	2.61	0.21	2.78	2.82	2.78	2.82	XXX
93980		A	Penile vascular study	1.25	3.92	4.21	3.92	4.21	0.37	5.54	5.83	5.54	5.83	XXX
93980	26	A	Penile vascular study	1.25	0.41	0.65	0.41	0.65	0.08	1.74	1.98	1.74	1.98	XXX
93980	TC	A	Penile vascular study	0.00	3.51	3.56	3.51	3.56	0.29	3.80	3.85	3.80	3.85	XXX
93981		A	Penile vascular study	0.44	3.38	3.58	3.38	3.58	0.30	4.12	4.32	4.12	4.32	XXX
93981	26	A	Penile vascular study	0.44	0.14	0.29	0.14	0.29	0.03	0.61	0.76	0.61	0.76	XXX
93981	TC	A	Penile vascular study	0.00	3.24	3.29	3.24	3.29	0.27	3.51	3.56	3.51	3.56	XXX
93990		A	Doppler flow testing	0.25	2.61	2.71	2.61	2.71	0.21	3.07	3.17	3.07	3.17	XXX
93990	26	A	Doppler flow testing	0.25	0.10	0.16	0.10	0.16	0.01	0.36	0.42	0.36	0.42	XXX
93990	TC	A	Doppler flow testing	0.00	2.51	2.55	2.51	2.55	0.20	2.71	2.75	2.71	2.75	XXX
94010		A	Breathing capacity test	0.17	0.47	0.61	0.47	0.61	0.03	0.67	0.81	0.67	0.81	XXX
94010	26	A	Breathing capacity test	0.17	0.05	0.18	0.05	0.18	0.01	0.23	0.36	0.23	0.36	XXX
94010	TC	A	Breathing capacity test	0.00	0.42	0.43	0.42	0.43	0.02	0.44	0.45	0.44	0.45	XXX
94014		A	Patient recorded spirometry	0.52	0.62	0.62	0.62	0.62	0.03	1.17	1.17	1.17	1.17	XXX
94015		A	Patient recorded spirometry	0.00	0.42	0.42	0.42	0.42	0.01	0.43	0.43	0.43	0.43	XXX
94016		A	Review patient spirometry	0.52	0.20	0.20	0.20	0.20	0.02	0.74	0.74	0.74	0.74	XXX
94060		A	Evaluation of wheezing	0.31	1.03	1.19	1.03	1.19	0.06	1.40	1.56	1.40	1.56	XXX
94060	26	A	Evaluation of wheezing	0.31	0.09	0.23	0.09	0.23	0.01	0.41	0.55	0.41	0.55	XXX
94060	TC	A	Evaluation of wheezing	0.00	0.94	0.96	0.94	0.96	0.05	0.99	1.01	0.99	1.01	XXX
94070		A	Evaluation of wheezing	0.60	1.65	1.79	1.65	1.79	0.10	2.35	2.49	2.35	2.49	XXX
94070	26	A	Evaluation of wheezing	0.60	0.18	0.30	0.18	0.30	0.02	0.80	0.92	0.80	0.92	XXX
94070	TC	A	Evaluation of wheezing	0.00	1.47	1.49	1.47	1.49	0.08	1.55	1.57	1.55	1.57	XXX
94150		B	Vital capacity test	+0.07	0.12	0.15	0.12	0.15	0.02	0.21	0.24	0.21	0.24	XXX
94150	26	B	Vital capacity test	+0.07	0.03	0.06	0.03	0.06	0.01	0.11	0.14	0.11	0.14	XXX
94150	TC	B	Vital capacity test	+0.00	0.09	0.09	0.09	0.09	0.01	0.10	0.10	0.10	0.10	XXX
94200		A	Lung function test (MBC/MVV)	0.11	0.28	0.34	0.28	0.34	0.03	0.42	0.48	0.42	0.48	XXX
94200	26	A	Lung function test (MBC/MVV)	0.11	0.03	0.08	0.03	0.08	0.01	0.15	0.20	0.15	0.20	XXX
94200	TC	A	Lung function test (MBC/MVV)	0.00	0.25	0.26	0.25	0.26	0.02	0.27	0.28	0.27	0.28	XXX
94240		A	Residual lung capacity	0.26	0.77	0.87	0.77	0.87	0.05	1.08	1.18	1.08	1.18	XXX
94240	26	A	Residual lung capacity	0.26	0.08	0.17	0.08	0.17	0.01	0.35	0.44	0.35	0.44	XXX
94240	TC	A	Residual lung capacity	0.00	0.69	0.70	0.69	0.70	0.04	0.73	0.74	0.73	0.74	XXX
94250		A	Expired gas collection	0.11	0.17	0.22	0.17	0.22	0.02	0.30	0.35	0.30	0.35	XXX
94250	26	A	Expired gas collection	0.11	0.03	0.08	0.03	0.08	0.01	0.15	0.20	0.15	0.20	XXX
94250	TC	A	Expired gas collection	0.00	0.14	0.14	0.14	0.14	0.01	0.15	0.15	0.15	0.15	XXX
94260		A	Thoracic gas volume	0.13	0.58	0.65	0.58	0.65	0.04	0.75	0.82	0.75	0.82	XXX
94260	26	A	Thoracic gas volume	0.13	0.04	0.10	0.04	0.10	0.01	0.18	0.24	0.18	0.24	XXX
94260	TC	A	Thoracic gas volume	0.00	0.54	0.55	0.54	0.55	0.03	0.57	0.58	0.57	0.58	XXX
94350		A	Lung nitrogen washout curve	0.26	0.62	0.71	0.62	0.71	0.04	0.92	1.01	0.92	1.01	XXX
94350	26	A	Lung nitrogen washout curve	0.26	0.08	0.16	0.08	0.16	0.01	0.35	0.43	0.35	0.43	XXX
94350	TC	A	Lung nitrogen washout curve	0.00	0.54	0.55	0.54	0.55	0.03	0.57	0.58	0.57	0.58	XXX
94360		A	Measure airflow resistance	0.26	1.05	1.14	1.05	1.14	0.06	1.37	1.46	1.37	1.46	XXX
94360	26	A	Measure airflow resistance	0.26	0.08	0.15	0.08	0.15	0.01	0.35	0.42	0.35	0.42	XXX
94360	TC	A	Measure airflow resistance	0.00	0.97	0.99	0.97	0.99	0.05	1.02	1.04	1.02	1.04	XXX
94370		A	Breath airway closing volume	0.26	0.35	0.40	0.35	0.40	0.03	0.64	0.69	0.64	0.69	XXX
94370	26	A	Breath airway closing volume	0.26	0.08	0.12	0.08	0.12	0.01	0.35	0.39	0.35	0.39	XXX
94370	TC	A	Breath airway closing volume	0.00	0.27	0.28	0.27	0.28	0.02	0.29	0.30	0.29	0.30	XXX
94375		A	Respiratory flow volume loop	0.31	0.58	0.66	0.58	0.66	0.03	0.92	1.00	0.92	1.00	XXX
94375	26	A	Respiratory flow volume loop	0.31	0.09	0.16	0.09	0.16	0.01	0.41	0.48	0.41	0.48	XXX
94375	TC	A	Respiratory flow volume loop	0.00	0.49	0.50	0.49	0.50	0.02	0.51	0.52	0.51	0.52	XXX
94400		A	CO2 breathing response curve	0.40	0.44	0.65	0.44	0.65	0.07	0.91	1.12	0.91	1.12	XXX
94400	26	A	CO2 breathing response curve	0.40	0.12	0.32	0.12	0.32	0.02	0.54	0.74	0.54	0.74	XXX
94400	TC	A	CO2 breathing response curve	0.00	0.32	0.33	0.32	0.33	0.05	0.37	0.38	0.37	0.38	XXX
94450		A	Hypoxia response curve	0.40	0.52	0.60	0.52	0.60	0.03	0.95	1.03	0.95	1.03	XXX
94450	26	A	Hypoxia response curve	0.40	0.13	0.20	0.13	0.20	0.01	0.54	0.61	0.54	0.61	XXX
94450	TC	A	Hypoxia response curve	0.00	0.39	0.40	0.39	0.40	0.02	0.41	0.42	0.41	0.42	XXX
94620		A	Pulmonary stress test/simple	0.64	1.63	1.93	1.63	1.93	0.11	2.38	2.68	2.38	2.68	XXX
94620	26	A	Pulmonary stress test/simple	0.64	0.20	0.48	0.20	0.48	0.03	0.87	1.15	0.87	1.15	XXX
94620	TC	A	Pulmonary stress test/simple	0.00	1.43	1.45	1.43	1.45	0.08	1.51	1.53	1.51	1.53	XXX
94621		A	Pulm stress test/complex	1.42	1.87	2.05	1.87	2.05	0.11	3.40	3.58	3.40	3.58	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
94621	26	A	Pulm stress test/complex	1.42	0.44	0.60	0.44	0.60	0.03	1.89	2.05	1.89	2.05	XXX
94621	TC	A	Pulm stress test/complex	0.00	1.43	1.45	1.43	1.45	0.08	1.51	1.53	1.51	1.53	XXX
94640		A	Airway inhalation treatment	0.00	0.62	0.52	0.20	0.31	0.02	0.64	0.54	0.22	0.33	XXX
94642		C	Aerosol inhalation treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94650		A	Pressure breathing (IPPB)	0.00	0.59	0.50	0.19	0.30	0.02	0.61	0.52	0.21	0.32	XXX
94651		A	Pressure breathing (IPPB)	0.00	0.53	0.46	0.18	0.29	0.02	0.55	0.48	0.20	0.31	XXX
94652		A	Pressure breathing (IPPB)	0.00	0.53	0.49	0.18	0.31	0.06	0.59	0.55	0.24	0.37	XXX
94656		A	Initial ventilator mgmt	1.22	NA	NA	0.32	0.78	0.06	NA	NA	1.60	2.06	XXX
94657		A	Continued ventilator mgmt	0.83	NA	NA	0.25	0.46	0.03	NA	NA	1.11	1.32	XXX
94660		A	Pos airway pressure, CPAP	0.76	0.60	0.69	0.23	0.50	0.03	1.39	1.48	1.02	1.29	XXX
94662		A	Neg press ventilation, cnp	0.76	NA	NA	0.24	0.29	0.02	NA	NA	1.02	1.07	XXX
94664		A	Aerosol or vapor inhalations	0.00	0.46	0.50	0.15	0.35	0.03	0.49	0.53	0.18	0.38	XXX
94665		A	Aerosol or vapor inhalations	0.00	0.49	0.50	0.15	0.33	0.04	0.53	0.54	0.19	0.37	XXX
94667		A	Chest wall manipulation	0.00	0.64	0.62	0.21	0.41	0.04	0.68	0.66	0.25	0.45	XXX
94668		A	Chest wall manipulation	0.00	0.64	0.51	0.20	0.29	0.02	0.66	0.53	0.22	0.31	XXX
94680		A	Exhaled air analysis, o2	0.26	0.59	0.72	0.59	0.72	0.06	0.91	1.04	0.91	1.04	XXX
94680	26	A	Exhaled air analysis, o2	0.26	0.08	0.20	0.08	0.20	0.01	0.35	0.47	0.35	0.47	XXX
94680	TC	A	Exhaled air analysis, o2	0.00	0.51	0.52	0.51	0.52	0.05	0.56	0.57	0.56	0.57	XXX
94681		A	Exhaled air analysis, o2/co2	0.20	1.45	1.56	1.45	1.56	0.11	1.76	1.87	1.76	1.87	XXX
94681	26	A	Exhaled air analysis, o2/co2	0.20	0.06	0.15	0.06	0.15	0.01	0.27	0.36	0.27	0.36	XXX
94681	TC	A	Exhaled air analysis, o2/co2	0.00	1.39	1.41	1.39	1.41	0.10	1.49	1.51	1.49	1.51	XXX
94690		A	Exhaled air analysis	0.07	0.55	0.58	0.55	0.58	0.04	0.66	0.69	0.66	0.69	XXX
94690	26	A	Exhaled air analysis	0.07	0.02	0.04	0.02	0.04	0.01	0.10	0.12	0.10	0.12	XXX
94690	TC	A	Exhaled air analysis	0.00	0.53	0.54	0.53	0.54	0.03	0.56	0.57	0.56	0.57	XXX
94720		A	Monoxide diffusing capacity	0.26	0.93	1.03	0.93	1.03	0.06	1.25	1.35	1.25	1.35	XXX
94720	26	A	Monoxide diffusing capacity	0.26	0.08	0.17	0.08	0.17	0.01	0.35	0.44	0.35	0.44	XXX
94720	TC	A	Monoxide diffusing capacity	0.00	0.85	0.86	0.85	0.86	0.05	0.90	0.91	0.90	0.91	XXX
94725		A	Membrane diffusion capacity	0.26	1.83	1.92	1.83	1.92	0.11	2.20	2.29	2.20	2.29	XXX
94725	26	A	Membrane diffusion capacity	0.26	0.08	0.14	0.08	0.14	0.01	0.35	0.41	0.35	0.41	XXX
94725	TC	A	Membrane diffusion capacity	0.00	1.75	1.78	1.75	1.78	0.10	1.85	1.88	1.85	1.88	XXX
94750		A	Pulmonary compliance study	0.23	0.65	0.76	0.65	0.76	0.04	0.92	1.03	0.92	1.03	XXX
94750	26	A	Pulmonary compliance study	0.23	0.07	0.17	0.07	0.17	0.01	0.31	0.41	0.31	0.41	XXX
94750	TC	A	Pulmonary compliance study	0.00	0.58	0.59	0.58	0.59	0.03	0.61	0.62	0.61	0.62	XXX
94760		B	Measure blood oxygen level	+0.00	0.08	0.18	0.08	0.18	0.02	0.10	0.20	0.10	0.20	XXX
94761		B	Measure blood oxygen level	+0.00	0.15	0.42	0.15	0.42	0.05	0.20	0.47	0.20	0.47	XXX
94762		A	Measure blood oxygen level	0.00	0.12	0.65	0.12	0.65	0.08	0.20	0.73	0.20	0.73	XXX
94770		A	Exhaled carbon dioxide test	0.15	0.34	0.39	0.34	0.39	0.07	0.56	0.61	0.56	0.61	XXX
94770	26	A	Exhaled carbon dioxide test	0.15	0.04	0.08	0.04	0.08	0.01	0.20	0.24	0.20	0.24	XXX
94770	TC	A	Exhaled carbon dioxide test	0.00	0.30	0.31	0.30	0.31	0.06	0.36	0.37	0.36	0.37	XXX
94772		C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94772	26	C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94772	TC	C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799		C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799	26	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799	TC	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95004		A	Allergy skin tests	0.00	0.10	0.10	0.10	0.10	0.01	0.11	0.11	0.11	0.11	XXX
95010		A	Sensitivity skin tests	0.15	0.40	0.26	0.06	0.06	0.01	0.56	0.42	0.22	0.22	XXX
95015		A	Sensitivity skin tests	0.15	0.43	0.28	0.07	0.07	0.01	0.59	0.44	0.23	0.23	XXX
95024		A	Allergy skin tests	0.00	0.15	0.15	0.15	0.15	0.01	0.16	0.16	0.16	0.16	XXX
95027		A	Skin end point titration	0.00	0.15	0.15	0.15	0.15	0.01	0.16	0.16	0.16	0.16	XXX
95028		A	Allergy skin tests	0.00	0.23	0.24	0.23	0.24	0.01	0.24	0.25	0.24	0.25	XXX
95044		A	Allergy patch tests	0.00	0.20	0.21	0.20	0.21	0.01	0.21	0.22	0.21	0.22	XXX
95052		A	Photo patch test	0.00	0.25	0.26	0.25	0.26	0.01	0.26	0.27	0.26	0.27	XXX
95056		A	Photosensitivity tests	0.00	0.17	0.18	0.17	0.13	0.01	0.18	0.19	0.18	0.14	XXX
95060		A	Eye allergy tests	0.00	0.35	0.36	0.35	0.36	0.02	0.37	0.38	0.37	0.38	XXX
95065		A	Nose allergy test	0.00	0.20	0.21	0.20	0.16	0.01	0.21	0.22	0.21	0.17	XXX
95070		A	Bronchial allergy tests	0.00	2.29	2.33	2.29	2.33	0.02	2.31	2.35	2.31	2.35	XXX
95071		A	Bronchial allergy tests	0.00	2.93	2.98	2.93	2.98	0.02	2.95	3.00	2.95	3.00	XXX
95075		A	Ingestion challenge test	0.95	0.83	1.49	0.39	0.73	0.03	1.81	2.47	1.37	1.71	XXX
95078		A	Provocative testing	0.00	0.25	0.26	0.25	0.26	0.02	0.27	0.28	0.27	0.28	XXX
95115		A	Immunotherapy, one injection	0.00	0.39	0.40	0.39	0.40	0.02	0.41	0.42	0.41	0.42	000
95117		A	Immunotherapy injections	0.00	0.51	0.52	0.51	0.52	0.02	0.53	0.54	0.53	0.54	000
95120		I	Immunotherapy, one injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95125		I	Immunotherapy, many antigens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95130		I	Immunotherapy, insect venom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95131		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95132		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95133		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95134		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95144		A	Antigen therapy services	0.06	0.23	0.19	0.03	0.05	0.01	0.30	0.26	0.10	0.12	000
95145		A	Antigen therapy services	0.06	0.47	0.42	0.03	0.11	0.01	0.54	0.49	0.10	0.18	000
95146		A	Antigen therapy services	0.06	0.62	0.64	0.03	0.18	0.01	0.69	0.71	0.10	0.25	000
95147		A	Antigen therapy services	0.06	0.77	0.88	0.02	0.26	0.01	0.84	0.95	0.09	0.33	000
95148		A	Antigen therapy services	0.06	0.78	0.89	0.02	0.26	0.01	0.85	0.96	0.09	0.33	000
95149		A	Antigen therapy services	0.06	0.60	0.92	0.02	0.32	0.01	0.67	0.99	0.09	0.39	000
95165		A	Antigen therapy services	0.06	0.24	0.18	0.02	0.04	0.01	0.31	0.25	0.09	0.11	000
95170		A	Antigen therapy services	0.06	0.24	0.31	0.02	0.11	0.01	0.31	0.38	0.09	0.18	000
95180		A	Rapid desensitization	2.01	1.54	0.85	0.87	0.48	0.06	3.61	2.92	2.94	2.55	000
95199		C	Allergy immunology services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
95805		A	Multiple sleep latency test	1.88	8.99	7.49	8.99	7.49	0.35	11.22	9.72	11.22	9.72	XXX
95805	26	A	Multiple sleep latency test	1.88	0.65	0.63	0.65	0.63	0.06	2.59	2.57	2.59	2.57	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
95805	TC	A	Multiple sleep latency test	0.00	8.34	6.86	8.34	6.86	0.29	8.63	7.15	8.63	7.15	XXX
95806		A	Sleep study, unattended	1.66	2.30	5.05	2.30	4.71	0.32	4.28	7.03	4.28	6.69	XXX
95806	26	A	Sleep study, unattended	1.66	0.53	1.60	0.53	1.26	0.05	2.24	3.31	2.24	2.97	XXX
95806	TC	A	Sleep study, unattended	0.00	1.77	3.45	1.77	3.45	0.27	2.04	3.72	2.04	3.72	XXX
95807		A	Sleep study, attended	1.66	6.82	7.83	6.82	7.83	0.41	8.89	9.90	8.89	9.90	XXX
95807	26	A	Sleep study, attended	1.66	0.52	1.26	0.52	1.26	0.05	2.23	2.97	2.23	2.97	XXX
95807	TC	A	Sleep study, attended	0.00	6.30	6.57	6.30	6.57	0.36	6.66	6.93	6.66	6.93	XXX
95808		A	Polysomnography, 1-3	2.65	8.96	9.23	8.96	9.23	0.45	12.06	12.33	12.06	12.33	XXX
95808	26	A	Polysomnography, 1-3	2.65	0.90	1.78	0.90	1.78	0.09	3.64	4.52	3.64	4.52	XXX
95808	TC	A	Polysomnography, 1-3	0.00	8.06	7.45	8.06	7.45	0.36	8.42	7.81	8.42	7.81	XXX
95810		A	Polysomnography, 4 or more	3.53	15.92	12.71	15.92	12.71	0.47	19.92	16.71	19.92	16.71	XXX
95810	26	A	Polysomnography, 4 or more	3.53	1.16	1.91	1.16	1.91	0.11	4.80	5.55	4.80	5.55	XXX
95810	TC	A	Polysomnography, 4 or more	0.00	14.76	10.80	14.76	10.80	0.36	15.12	11.16	15.12	11.16	XXX
95811		A	Polysomnography w/cpap	3.80	16.20	13.09	16.20	13.09	0.49	20.49	17.38	20.49	17.38	XXX
95811	26	A	Polysomnography w/cpap	3.80	1.26	2.03	1.26	2.03	0.12	5.18	5.95	5.18	5.95	XXX
95811	TC	A	Polysomnography w/cpap	0.00	14.94	11.06	14.94	11.06	0.37	15.31	11.43	15.31	11.43	XXX
95812		A	Electroencephalogram (EEG)	1.08	3.02	2.52	3.02	2.52	0.13	4.23	3.73	4.23	3.73	XXX
95812	26	A	Electroencephalogram (EEG)	1.08	0.43	0.49	0.43	0.49	0.04	1.55	1.61	1.55	1.61	XXX
95812	TC	A	Electroencephalogram (EEG)	0.00	2.59	2.03	2.59	2.03	0.09	2.68	2.12	2.68	2.12	XXX
95813		A	Electroencephalogram (EEG)	1.73	4.54	3.28	4.54	3.28	0.16	6.43	5.17	6.43	5.17	XXX
95813	26	A	Electroencephalogram (EEG)	1.73	0.68	0.61	0.68	0.61	0.07	2.48	2.41	2.48	2.41	XXX
95813	TC	A	Electroencephalogram (EEG)	0.00	3.86	2.67	3.86	2.67	0.09	3.95	2.76	3.95	2.76	XXX
95816		A	Electroencephalogram (EEG)	1.08	3.16	2.42	3.16	2.42	0.12	4.36	3.62	4.36	3.62	XXX
95816	26	A	Electroencephalogram (EEG)	1.08	0.44	0.37	0.44	0.37	0.04	1.56	1.49	1.56	1.49	XXX
95816	TC	A	Electroencephalogram (EEG)	0.00	2.72	2.05	2.72	2.05	0.08	2.80	2.13	2.80	2.13	XXX
95819		A	Electroencephalogram (EEG)	1.08	1.87	1.91	1.87	1.91	0.12	3.07	3.11	3.07	3.11	XXX
95819	26	A	Electroencephalogram (EEG)	1.08	0.44	0.49	0.44	0.49	0.04	1.56	1.61	1.56	1.61	XXX
95819	TC	A	Electroencephalogram (EEG)	0.00	1.43	1.42	1.43	1.42	0.08	1.51	1.50	1.51	1.50	XXX
95822		A	Sleep electroencephalogram	1.08	2.06	2.27	2.06	2.27	0.15	3.29	3.50	3.29	3.50	XXX
95822	26	A	Sleep electroencephalogram	1.08	0.43	0.52	0.43	0.52	0.04	1.55	1.64	1.55	1.64	XXX
95822	TC	A	Sleep electroencephalogram	0.00	1.63	1.75	1.63	1.75	0.11	1.74	1.86	1.74	1.86	XXX
95824		A	Electroencephalography	0.74	0.37	0.72	0.37	0.72	0.05	1.16	1.51	1.16	1.51	XXX
95824	26	A	Electroencephalography	0.74	0.30	0.47	0.30	0.47	0.03	1.07	1.24	1.07	1.24	XXX
95824	TC	A	Electroencephalography	0.00	0.07	0.25	0.07	0.25	0.02	0.09	0.27	0.09	0.27	XXX
95827		A	Night electroencephalogram	1.08	2.67	3.01	2.67	3.01	0.16	3.91	4.25	3.91	4.25	XXX
95827	26	A	Night electroencephalogram	1.08	0.37	0.67	0.37	0.67	0.04	1.49	1.79	1.49	1.79	XXX
95827	TC	A	Night electroencephalogram	0.00	2.30	2.34	2.30	2.34	0.12	2.42	2.46	2.42	2.46	XXX
95829		A	Surgery electrocorticogram	6.21	6.61	3.63	6.61	3.63	0.26	13.08	10.10	13.08	10.10	XXX
95829	26	A	Surgery electrocorticogram	6.21	2.36	1.43	2.36	1.43	0.24	8.81	7.88	8.81	7.88	XXX
95829	TC	A	Surgery electrocorticogram	0.00	4.25	2.20	4.25	2.20	0.02	4.27	2.22	4.27	2.22	XXX
95830		A	Insert electrodes for EEG	1.70	2.84	1.85	0.70	0.78	0.07	4.61	3.62	2.47	2.55	XXX
95831		A	Limb muscle testing, manual	0.28	0.40	0.36	0.13	0.15	0.01	0.69	0.65	0.42	0.44	XXX
95832		A	Hand muscle testing, manual	0.29	0.34	0.31	0.13	0.14	0.01	0.64	0.61	0.43	0.44	XXX
95833		A	Body muscle testing, manual	0.47	0.51	0.46	0.22	0.22	0.02	1.00	0.95	0.71	0.71	XXX
95834		A	Body muscle testing, manual	0.60	0.55	0.61	0.28	0.31	0.02	1.17	1.23	0.90	0.93	XXX
95851		A	Range of motion measurements	0.16	0.43	0.35	0.08	0.11	0.01	0.60	0.52	0.25	0.28	XXX
95852		A	Range of motion measurements	0.11	0.35	0.26	0.05	0.07	0.01	0.47	0.38	0.17	0.19	XXX
95857		A	Tensilon test	0.53	0.60	0.57	0.22	0.25	0.02	1.15	1.12	0.77	0.80	XXX
95858		A	Tensilon test & myogram	1.56	1.05	1.08	1.05	1.08	0.09	2.70	2.73	2.70	2.73	XXX
95858	26	A	Tensilon test & myogram	1.56	0.65	0.67	0.65	0.67	0.06	2.27	2.29	2.27	2.29	XXX
95858	TC	A	Tensilon test & myogram	0.00	0.40	0.41	0.40	0.41	0.03	0.43	0.44	0.43	0.44	XXX
95860		A	Muscle test, one limb	0.96	0.79	0.99	0.79	0.99	0.06	1.81	2.01	1.81	2.01	XXX
95860	26	A	Muscle test, one limb	0.96	0.41	0.60	0.41	0.60	0.04	1.41	1.60	1.41	1.60	XXX
95860	TC	A	Muscle test, one limb	0.00	0.38	0.39	0.38	0.39	0.02	0.40	0.41	0.40	0.41	XXX
95861		A	Muscle test, two limbs	1.54	1.40	1.77	1.40	1.77	0.11	3.05	3.42	3.05	3.42	XXX
95861	26	A	Muscle test, two limbs	1.54	0.66	1.02	0.66	1.02	0.06	2.26	2.62	2.26	2.62	XXX
95861	TC	A	Muscle test, two limbs	0.00	0.74	0.75	0.74	0.75	0.05	0.79	0.80	0.79	0.80	XXX
95863		A	Muscle test, 3 limbs	1.87	1.72	2.12	1.72	2.12	0.12	3.71	4.11	3.71	4.11	XXX
95863	26	A	Muscle test, 3 limbs	1.87	0.78	1.16	0.78	1.16	0.07	2.72	3.10	2.72	3.10	XXX
95863	TC	A	Muscle test, 3 limbs	0.00	0.94	0.96	0.94	0.96	0.05	0.99	1.01	0.99	1.01	XXX
95864		A	Muscle test, 4 limbs	1.99	2.64	3.20	2.64	3.20	0.18	4.81	5.37	4.81	5.37	XXX
95864	26	A	Muscle test, 4 limbs	1.99	0.85	1.38	0.85	1.38	0.08	2.92	3.45	2.92	3.45	XXX
95864	TC	A	Muscle test, 4 limbs	0.00	1.79	1.82	1.79	1.82	0.10	1.89	1.92	1.89	1.92	XXX
95867		A	Muscle test, head or neck	0.79	0.92	1.08	0.92	1.08	0.06	1.77	1.93	1.77	1.93	XXX
95867	26	A	Muscle test, head or neck	0.79	0.34	0.49	0.34	0.49	0.03	1.16	1.31	1.16	1.31	XXX
95867	TC	A	Muscle test, head or neck	0.00	0.58	0.59	0.58	0.59	0.03	0.61	0.62	0.61	0.62	XXX
95868		A	Muscle test, head or neck	1.18	1.19	1.64	1.19	1.64	0.09	2.46	2.91	2.46	2.91	XXX
95868	26	A	Muscle test, head or neck	1.18	0.49	0.93	0.49	0.93	0.05	1.72	2.16	1.72	2.16	XXX
95868	TC	A	Muscle test, head or neck	0.00	0.70	0.71	0.70	0.71	0.04	0.74	0.75	0.74	0.75	XXX
95869		A	Muscle test, thor paraspinal	0.37	0.37	0.48	0.37	0.48	0.03	0.77	0.88	0.77	0.88	XXX
95869	26	A	Muscle test, thor paraspinal	0.37	0.16	0.26	0.16	0.26	0.01	0.54	0.64	0.54	0.64	XXX
95869	TC	A	Muscle test, thor paraspinal	0.00	0.21	0.22	0.21	0.22	0.02	0.23	0.24	0.23	0.24	XXX
95870		A	Muscle test, nonparaspinal	0.37	0.37	0.48	0.37	0.48	0.03	0.77	0.88	0.77	0.88	XXX
95870	26	A	Muscle test, nonparaspinal	0.37	0.16	0.26	0.16	0.26	0.01	0.54	0.64	0.54	0.64	XXX
95870	TC	A	Muscle test, nonparaspinal	0.00	0.21	0.22	0.21	0.22	0.02	0.23	0.24	0.23	0.24	XXX
95872		A	Muscle test, one fiber	1.50	1.21	1.29	1.21	1.29	0.10	2.81	2.89	2.81	2.89	XXX
95872	26	A	Muscle test, one fiber	1.50	0.61	0.68	0.61	0.68	0.06	2.17	2.24	2.17	2.24	XXX
95872	TC	A	Muscle test, one fiber	0.00	0.60	0.61	0.60	0.61	0.04	0.64	0.65	0.64	0.65	XXX
95875		A	Limb exercise test	1.34	0.97	0.82	0.97	0.82	0.10	2.41	2.26	2.41	2.26	XXX
95875	26	A	Limb exercise test	1.34	0.53	0.39	0.53	0.39	0.05	1.92	1.78	1.92	1.78	XXX
95875	TC	A	Limb exercise test	0.00	0.44	0.43	0.44	0.43	0.05	0.49	0.48	0.49	0.48	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
95900		A	Motor nerve conduction test	0.42	0.46	0.57	0.46	0.57	0.04	0.92	1.03	0.92	1.03	XXX
95900	26	A	Motor nerve conduction test	0.42	0.18	0.28	0.18	0.28	0.02	0.62	0.72	0.62	0.72	XXX
95900	TC	A	Motor nerve conduction test	0.00	0.28	0.29	0.28	0.29	0.02	0.30	0.31	0.30	0.31	XXX
95903		A	Motor nerve conduction test	0.60	0.50	0.58	0.50	0.58	0.04	1.14	1.22	1.14	1.22	XXX
95903	26	A	Motor nerve conduction test	0.60	0.25	0.32	0.25	0.32	0.02	0.87	0.94	0.87	0.94	XXX
95903	TC	A	Motor nerve conduction test	0.00	0.25	0.26	0.25	0.26	0.02	0.27	0.28	0.27	0.28	XXX
95904		A	Sense/mixed n conduction tst	0.34	0.36	0.49	0.36	0.49	0.03	0.73	0.86	0.73	0.86	XXX
95904	26	A	Sense/mixed n conduction tst	0.34	0.14	0.26	0.14	0.26	0.01	0.49	0.61	0.49	0.61	XXX
95904	TC	A	Sense/mixed n conduction tst	0.00	0.22	0.23	0.22	0.23	0.02	0.24	0.25	0.24	0.25	XXX
95920		A	Intraop nerve test add-on	2.11	2.23	2.57	2.23	2.57	0.15	4.49	4.83	4.49	4.83	ZZZ
95920	26	A	Intraop nerve test add-on	2.11	0.92	1.24	0.92	1.24	0.09	3.12	3.44	3.12	3.44	ZZZ
95920	TC	A	Intraop nerve test add-on	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	ZZZ
95921		A	Autonomic nerv function test	0.90	0.70	0.73	0.70	0.73	0.05	1.65	1.68	1.65	1.68	XXX
95921	26	A	Autonomic nerv function test	0.90	0.32	0.34	0.32	0.34	0.03	1.25	1.27	1.25	1.27	XXX
95921	TC	A	Autonomic nerv function test	0.00	0.38	0.39	0.38	0.39	0.02	0.40	0.41	0.40	0.41	XXX
95922		A	Autonomic nerv function test	0.96	0.76	0.77	0.76	0.77	0.06	1.78	1.79	1.78	1.79	XXX
95922	26	A	Autonomic nerv function test	0.96	0.38	0.38	0.38	0.38	0.04	1.38	1.38	1.38	1.38	XXX
95922	TC	A	Autonomic nerv function test	0.00	0.38	0.39	0.38	0.39	0.02	0.40	0.41	0.40	0.41	XXX
95923		A	Autonomic nerv function test	0.90	3.01	1.88	3.01	1.88	0.06	3.97	2.84	3.97	2.84	XXX
95923	26	A	Autonomic nerv function test	0.90	0.36	0.36	0.36	0.36	0.04	1.30	1.30	1.30	1.30	XXX
95923	TC	A	Autonomic nerv function test	0.00	2.65	1.52	2.65	1.52	0.02	2.67	1.54	2.67	1.54	XXX
95925		A	Somatosensory testing	0.54	1.13	1.39	1.13	1.39	0.07	1.74	2.00	1.74	2.00	XXX
95925	26	A	Somatosensory testing	0.54	0.22	0.46	0.22	0.46	0.02	0.78	1.02	0.78	1.02	XXX
95925	TC	A	Somatosensory testing	0.00	0.91	0.93	0.91	0.93	0.05	0.96	0.98	0.96	0.98	XXX
95926		A	Somatosensory testing	0.54	1.14	1.39	1.14	1.39	0.07	1.75	2.00	1.75	2.00	XXX
95926	26	A	Somatosensory testing	0.54	0.23	0.46	0.23	0.46	0.02	0.79	1.02	0.79	1.02	XXX
95926	TC	A	Somatosensory testing	0.00	0.91	0.93	0.91	0.93	0.05	0.96	0.98	0.96	0.98	XXX
95927		A	Somatosensory testing	0.54	1.17	1.41	1.17	1.41	0.07	1.78	2.02	1.78	2.02	XXX
95927	26	A	Somatosensory testing	0.54	0.26	0.48	0.26	0.48	0.02	0.82	1.04	0.82	1.04	XXX
95927	TC	A	Somatosensory testing	0.00	0.91	0.93	0.91	0.93	0.05	0.96	0.98	0.96	0.98	XXX
95930		A	Visual evoked potential test	0.35	0.79	0.85	0.79	0.85	0.02	1.16	1.22	1.16	1.22	XXX
95930	26	A	Visual evoked potential test	0.35	0.14	0.39	0.14	0.39	0.01	0.50	0.75	0.50	0.75	XXX
95930	TC	A	Visual evoked potential test	0.00	0.65	0.46	0.65	0.46	0.01	0.66	0.47	0.66	0.47	XXX
95933		A	Blink reflex test	0.59	1.01	1.18	1.01	1.18	0.07	1.67	1.84	1.67	1.84	XXX
95933	26	A	Blink reflex test	0.59	0.22	0.38	0.22	0.38	0.02	0.83	0.99	0.83	0.99	XXX
95933	TC	A	Blink reflex test	0.00	0.79	0.80	0.79	0.80	0.05	0.84	0.85	0.84	0.85	XXX
95934		A	H-reflex test	0.51	0.43	0.52	0.43	0.52	0.04	0.98	1.07	0.98	1.07	XXX
95934	26	A	H-reflex test	0.51	0.22	0.30	0.22	0.30	0.02	0.75	0.83	0.75	0.83	XXX
95934	TC	A	H-reflex test	0.00	0.21	0.22	0.21	0.22	0.02	0.23	0.24	0.23	0.24	XXX
95936		A	H-reflex test	0.55	0.44	0.52	0.44	0.52	0.04	1.03	1.11	1.03	1.11	XXX
95936	26	A	H-reflex test	0.55	0.23	0.30	0.23	0.30	0.02	0.80	0.87	0.80	0.87	XXX
95936	TC	A	H-reflex test	0.00	0.21	0.22	0.21	0.22	0.02	0.23	0.24	0.23	0.24	XXX
95937		A	Neuromuscular junction test	0.65	0.59	0.72	0.59	0.72	0.05	1.29	1.42	1.29	1.42	XXX
95937	26	A	Neuromuscular junction test	0.65	0.25	0.37	0.25	0.37	0.03	0.93	1.05	0.93	1.05	XXX
95937	TC	A	Neuromuscular junction test	0.00	0.34	0.35	0.34	0.35	0.02	0.36	0.37	0.36	0.37	XXX
95950		A	Ambulatory eeg monitoring	1.51	3.68	5.77	3.68	5.77	0.44	5.63	7.72	5.63	7.72	XXX
95950	26	A	Ambulatory eeg monitoring	1.51	0.61	0.96	0.61	0.96	0.07	2.19	2.54	2.19	2.54	XXX
95950	TC	A	Ambulatory eeg monitoring	0.00	3.07	4.81	3.07	4.81	0.37	3.44	5.18	3.44	5.18	XXX
95951		A	EEG monitoring/videorecord	6.00	22.41	16.00	22.41	16.00	0.63	29.04	22.63	29.04	22.63	XXX
95951	26	A	EEG monitoring/videorecord	6.00	2.43	2.03	2.43	2.03	0.24	8.67	8.27	8.67	8.27	XXX
95951	TC	A	EEG monitoring/videorecord	0.00	19.98	13.97	19.98	13.97	0.39	20.37	14.36	20.37	14.36	XXX
95953		A	EEG monitoring/computer	3.08	7.61	7.74	7.61	7.74	0.49	11.18	11.31	11.18	11.31	XXX
95953	26	A	EEG monitoring/computer	3.08	1.25	1.28	1.25	1.28	0.12	4.45	4.48	4.45	4.48	XXX
95953	TC	A	EEG monitoring/computer	0.00	6.36	6.46	6.36	6.46	0.37	6.73	6.83	6.73	6.83	XXX
95954		A	EEG monitoring/giving drugs	2.45	3.56	3.04	3.56	3.04	0.15	6.16	5.64	6.16	5.64	XXX
95954	TC	A	EEG monitoring/giving drugs	0.00	2.55	1.52	2.55	1.52	0.05	2.60	1.57	2.60	1.57	XXX
95954	26	A	EEG monitoring/giving drugs	2.45	1.01	1.52	1.01	1.52	0.10	3.56	4.07	3.56	4.07	XXX
95955		A	EEG during surgery	1.01	2.32	2.74	2.32	2.74	0.19	3.52	3.94	3.52	3.94	XXX
95955	26	A	EEG during surgery	1.01	0.35	0.74	0.35	0.74	0.05	1.41	1.80	1.41	1.80	XXX
95955	TC	A	EEG during surgery	0.00	1.97	2.00	1.97	2.00	0.14	2.11	2.14	2.11	2.14	XXX
95956		A	Eeg monitoring, cable/radio	3.08	24.27	16.23	24.27	16.23	0.49	27.84	19.80	27.84	19.80	XXX
95956	26	A	Eeg monitoring, cable/radio	3.08	1.25	1.44	1.25	1.44	0.12	4.45	4.64	4.45	4.64	XXX
95956	TC	A	Eeg monitoring, cable/radio	0.00	23.02	14.79	23.02	14.79	0.37	23.39	15.16	23.39	15.16	XXX
95957		A	EEG digital analysis	1.98	2.52	2.49	2.52	2.49	0.18	4.68	4.65	4.68	4.65	XXX
95957	26	A	EEG digital analysis	1.98	0.81	0.75	0.81	0.75	0.08	2.87	2.81	2.87	2.81	XXX
95957	TC	A	EEG digital analysis	0.00	1.71	1.74	1.71	1.74	0.10	1.81	1.84	1.81	1.84	XXX
95958		A	EEG monitoring/function test	4.25	3.38	4.35	3.38	4.35	0.27	7.90	8.87	7.90	8.87	XXX
95958	26	A	EEG monitoring/function test	4.25	1.63	2.57	1.63	2.57	0.16	6.04	6.98	6.04	6.98	XXX
95958	TC	A	EEG monitoring/function test	0.00	1.75	1.78	1.75	1.78	0.11	1.86	1.89	1.86	1.89	XXX
95961		A	Electrode stimulation, brain	2.97	2.60	2.75	2.60	2.75	0.17	5.74	5.89	5.74	5.89	XXX
95961	26	A	Electrode stimulation, brain	2.97	1.29	1.42	1.29	1.42	0.11	4.37	4.50	4.37	4.50	XXX
95961	TC	A	Electrode stimulation, brain	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	XXX
95962		A	Electrode stim, brain add-on	3.21	2.66	2.78	2.66	2.78	0.19	6.06	6.18	6.06	6.18	ZZZ
95962	26	A	Electrode stim, brain add-on	3.21	1.35	1.45	1.35	1.45	0.13	4.69	4.79	4.69	4.79	ZZZ
95962	TC	A	Electrode stim, brain add-on	0.00	1.31	1.33	1.31	1.33	0.06	1.37	1.39	1.37	1.39	ZZZ
95970		A	Analyze neurostim, no prog	0.45	0.15	0.15	0.13	0.13	0.03	0.63	0.63	0.61	0.61	XXX
95971		A	Analyze neurostim, simple	0.78	0.27	0.27	0.22	0.22	0.05	1.10	1.10	1.05	1.05	XXX
95972		A	Analyze neurostim, complex	1.50	0.52	0.52	0.43	0.43	0.09	2.11	2.11	2.02	2.02	XXX
95973		A	Analyze neurostim, complex	0.92	0.32	0.32	0.26	0.26	0.06	1.30	1.30	1.24	1.24	ZZZ
95974		A	Cranial neurostim, complex	3.00	1.03	1.03	0.90	0.90	0.16	4.19	4.19	4.06	4.06	XXX
95975		A	Cranial neurostim, complex	1.70	0.60	0.60	0.55	0.55	0.09	2.39	2.39	2.34	2.34	ZZZ

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
95999		C	Neurological procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96100		A	Psychological testing	0.00	1.77	1.80	1.77	1.80	0.15	1.92	1.95	1.92	1.95	XXX
96105		A	Assessment of aphasia	0.00	1.77	1.80	1.77	1.80	0.15	1.92	1.95	1.92	1.95	XXX
96110		C	Developmental test, lim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96111		A	Developmental test, extend	0.00	1.77	1.80	1.77	1.80	0.15	1.92	1.95	1.92	1.95	XXX
96115		A	Neurobehavior status exam	0.00	1.77	1.80	1.77	1.80	0.15	1.92	1.95	1.92	1.95	XXX
96117		A	Neuropsych test battery	0.00	1.77	1.80	1.77	1.80	0.15	1.92	1.95	1.92	1.95	XXX
96400		A	Chemotherapy, sc/im	0.00	0.14	0.14	0.14	0.14	0.01	0.15	0.15	0.15	0.15	XXX
96405		A	Intralesional chemo admin	0.52	1.71	1.06	0.24	0.23	0.02	2.25	1.60	0.78	0.77	000
96406		A	Intralesional chemo admin	0.80	2.15	1.38	0.25	0.28	0.02	2.97	2.20	1.07	1.10	000
96408		A	Chemotherapy, push technique	0.00	0.97	0.99	0.97	0.99	0.05	1.02	1.04	1.02	1.04	XXX
96410		A	Chemotherapy, infusion method	0.00	1.55	1.58	1.55	1.58	0.07	1.62	1.65	1.62	1.65	XXX
96412		A	Chemo, infuse method add-on	0.00	1.16	1.18	1.16	1.18	0.06	1.22	1.24	1.22	1.24	ZZZ
96414		A	Chemo, infuse method add-on	0.00	1.34	1.36	1.34	1.36	0.07	1.41	1.43	1.41	1.43	XXX
96420		A	Chemotherapy, push technique	0.00	1.25	1.27	1.25	1.27	0.07	1.32	1.34	1.32	1.34	XXX
96422		A	Chemotherapy, infusion method	0.00	1.23	1.25	1.23	1.25	0.07	1.30	1.32	1.30	1.32	XXX
96423		A	Chemo, infuse method add-on	0.00	0.49	0.50	0.49	0.50	0.02	0.51	0.52	0.51	0.52	ZZZ
96425		A	Chemotherapy, infusion method	0.00	1.44	1.46	1.44	1.46	0.07	1.51	1.53	1.51	1.53	XXX
96440		A	Chemotherapy, intracavitary	2.37	7.08	3.98	0.82	0.85	0.09	9.54	6.44	3.28	3.31	000
96445		A	Chemotherapy, intracavitary	2.20	7.22	4.14	0.84	0.69	0.07	9.49	6.41	3.11	2.96	000
96450		A	Chemotherapy, into CNS	1.89	5.54	3.24	0.72	0.60	0.06	7.49	5.19	2.67	2.55	000
96520		A	Pump refilling, maintenance	0.00	0.89	0.91	0.89	0.91	0.05	0.94	0.96	0.94	0.96	XXX
96530		A	Pump refilling, maintenance	0.00	1.07	1.09	1.07	1.09	0.05	1.12	1.14	1.12	1.14	XXX
96542		A	Chemotherapy injection	1.42	3.46	2.32	0.54	0.57	0.04	4.92	3.78	2.00	2.03	XXX
96545		B	Provide chemotherapy agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96549		C	Chemotherapy, unspecified	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96570		A	Photodynamic tx, 30 min	1.10	0.71	0.71	0.43	0.43	0.28	2.09	2.09	1.81	1.81	000
96571		A	Photodynamic tx, addl 15 min	0.55	0.31	0.31	0.21	0.21	0.28	1.14	1.14	1.04	1.04	000
96900		A	Ultraviolet light therapy -	0.00	0.40	0.41	0.40	0.41	0.02	0.42	0.43	0.42	0.43	XXX
96902		B	Trichogram	+0.41	0.23	0.27	0.16	0.24	0.01	0.65	0.69	0.58	0.66	XXX
96910		A	Photochemotherapy with UV-B	0.00	0.58	0.59	0.58	0.59	0.03	0.61	0.62	0.61	0.62	XXX
96912		A	Photochemotherapy with UV-A	0.00	0.66	0.67	0.66	0.67	0.04	0.70	0.71	0.70	0.71	XXX
96913		A	Photochemotherapy, UV-A or B	0.00	1.36	1.38	1.36	1.38	0.08	1.44	1.46	1.44	1.46	XXX
96999		C	Dermatological procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97001		A	Pt evaluation	1.20	0.50	0.44	0.49	0.44	0.05	1.75	1.69	1.74	1.69	XXX
97002		A	Pt re-evaluation	0.60	0.32	0.18	0.24	0.14	0.02	0.94	0.80	0.86	0.76	XXX
97003		A	Ot evaluation	1.20	0.50	0.44	0.39	0.39	0.05	1.75	1.69	1.64	1.64	XXX
97004		A	Ot re-evaluation	0.60	0.29	0.17	0.19	0.12	0.02	0.91	0.79	0.81	0.74	XXX
97010		B	Hot or cold packs therapy	+0.06	0.21	0.22	0.01	0.12	0.01	0.28	0.29	0.08	0.19	XXX
97012		A	Mechanical traction therapy	0.25	0.23	0.22	0.04	0.13	0.01	0.49	0.48	0.30	0.39	XXX
97014		A	Electric stimulation therapy	0.18	0.22	0.22	0.03	0.13	0.01	0.41	0.41	0.22	0.32	XXX
97016		A	Vasopneumatic device therapy	0.18	0.22	0.25	0.03	0.15	0.01	0.41	0.44	0.22	0.34	XXX
97018		A	Paraffin bath therapy	0.06	0.20	0.23	0.01	0.14	0.01	0.27	0.30	0.08	0.21	XXX
97020		A	Microwave therapy	0.06	0.21	0.22	0.01	0.12	0.01	0.28	0.29	0.08	0.19	XXX
97022		A	Whirlpool therapy	0.17	0.25	0.23	0.02	0.12	0.01	0.43	0.41	0.20	0.30	XXX
97024		A	Diathermy treatment	0.06	0.21	0.22	0.01	0.12	0.01	0.28	0.29	0.08	0.19	XXX
97026		A	Infrared therapy	0.06	0.20	0.21	0.01	0.11	0.01	0.27	0.28	0.08	0.18	XXX
97028		A	Ultraviolet therapy	0.08	0.20	0.21	0.01	0.11	0.01	0.29	0.30	0.10	0.20	XXX
97032		A	Electrical stimulation	0.25	0.25	0.20	0.04	0.10	0.01	0.51	0.46	0.30	0.36	XXX
97033		A	Electric current therapy	0.26	0.27	0.21	0.04	0.10	0.01	0.54	0.48	0.31	0.37	XXX
97034		A	Contrast bath therapy	0.21	0.24	0.18	0.03	0.07	0.01	0.46	0.40	0.25	0.29	XXX
97035		A	Ultrasound therapy	0.21	0.12	0.12	0.03	0.08	0.01	0.34	0.34	0.25	0.30	XXX
97036		A	Hydrotherapy	0.28	0.30	0.27	0.04	0.14	0.01	0.59	0.56	0.33	0.43	XXX
97039		A	Physical therapy treatment	0.20	0.24	0.25	0.03	0.15	0.01	0.45	0.46	0.24	0.36	XXX
97110		A	Therapeutic exercises	0.45	0.19	0.17	0.06	0.10	0.02	0.66	0.64	0.53	0.57	XXX
97112		A	Neuromuscular reeducation	0.45	0.26	0.20	0.06	0.10	0.02	0.73	0.67	0.53	0.57	XXX
97113		A	Aquatic therapy/exercises	0.44	0.28	0.25	0.06	0.14	0.02	0.74	0.71	0.52	0.60	XXX
97116		A	Gait training therapy	0.40	0.26	0.19	0.06	0.09	0.01	0.67	0.60	0.47	0.50	XXX
97124		A	Massage therapy	0.35	0.25	0.19	0.05	0.09	0.01	0.61	0.55	0.41	0.45	XXX
97139		A	Physical medicine procedure	0.21	0.23	0.20	0.03	0.10	0.01	0.45	0.42	0.25	0.32	XXX
97140		A	Manual therapy	0.43	0.28	0.28	0.06	0.06	0.02	0.73	0.73	0.51	0.51	XXX
97150		A	Group therapeutic procedures	0.27	0.23	0.23	0.04	0.13	0.02	0.52	0.52	0.33	0.42	XXX
97504		A	Orthotic training	0.45	0.24	0.20	0.06	0.11	0.03	0.72	0.68	0.54	0.59	XXX
97520		A	Prosthetic training	0.45	0.26	0.21	0.06	0.11	0.02	0.73	0.68	0.53	0.58	XXX
97530		A	Therapeutic activities	0.44	0.16	0.17	0.06	0.12	0.02	0.62	0.63	0.52	0.58	XXX
97535		A	Self care mngment training	0.45	0.26	0.22	0.06	0.12	0.02	0.73	0.69	0.53	0.59	XXX
97537		A	Community/work reintegration	0.45	0.26	0.22	0.06	0.12	0.01	0.72	0.68	0.52	0.58	XXX
97542		A	Wheelchair mngment training	0.25	0.23	0.21	0.04	0.11	0.01	0.49	0.47	0.30	0.37	XXX
97545		R	Work hardening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97546		R	Work hardening add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
97703		A	Prosthetic checkout	0.25	0.12	0.16	0.04	0.12	0.01	0.38	0.42	0.30	0.38	XXX
97750		A	Physical performance test	0.45	0.22	0.24	0.06	0.16	0.02	0.69	0.71	0.53	0.63	XXX
97770		A	Cognitive skills development	0.44	0.23	0.27	0.06	0.18	0.01	0.68	0.72	0.51	0.63	XXX
97780		N	Acupuncture w/o stimul	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97781		N	Acupuncture w/stimul	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97799		C	Physical medicine procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
98925		A	Osteopathic manipulation	0.45	0.35	0.31	0.15	0.21	0.02	0.82	0.78	0.62	0.68	000
98926		A	Osteopathic manipulation	0.65	0.41	0.42	0.25	0.34	0.02	1.08	1.09	0.92	1.01	000
98927		A	Osteopathic manipulation	0.87	0.50	0.46	0.30	0.36	0.03	1.40	1.36	1.20	1.26	000
98928		A	Osteopathic manipulation	1.03	0.56	0.51	0.34	0.40	0.03	1.62	1.57	1.40	1.46	000
98929		A	Osteopathic manipulation	1.19	0.63	0.53	0.37	0.40	0.04	1.86	1.76	1.60	1.63	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
98940		A	Chiropractic manipulation	0.45	0.24	0.28	0.12	0.14	0.01	0.70	0.74	0.58	0.60	000
98941		A	Chiropractic manipulation	0.65	0.29	0.30	0.17	0.17	0.02	0.96	0.97	0.84	0.84	000
98942		A	Chiropractic manipulation	0.87	0.35	0.33	0.23	0.20	0.03	1.25	1.23	1.13	1.10	000
98943		N	Chiropractic manipulation	+0.40	0.35	0.33	0.15	0.23	0.01	0.76	0.74	0.56	0.64	XXX
99000		B	Specimen handling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99001		B	Specimen handling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99002		B	Device handling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99024		B	Postop follow-up visit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99025		B	Initial surgical evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99050		B	Medical services after hrs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99052		B	Medical services at night	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99054		B	Medical servcs, unusual hrs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99056		B	Non-office medical services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99058		B	Office emergency care	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99070		B	Special supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99071		B	Patient education materials	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99075		N	Medical testimony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99078		B	Group health education	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99080		B	Special reports or forms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99082		C	Unusual physician travel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99090		B	Computer data analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99100		B	Special anesthesia service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99116		B	Anesthesia with hypothermia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99135		B	Special anesthesia procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99140		B	Emergency anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99141		B	Sedation, iv/im or inhalant	+0.80	1.77	1.34	0.31	0.61	0.05	2.62	2.19	1.16	1.46	XXX
99142		B	Sedation, oral/rectal/nasal	+0.60	1.69	1.18	0.23	0.45	0.04	2.33	1.82	0.87	1.09	XXX
99170		A	Anogenital exam, child	1.75	1.82	1.82	0.68	0.68	0.11	3.68	3.68	2.54	2.54	000
99173		N	Visual screening test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99175		A	Induction of vomiting	0.00	1.40	1.42	1.40	1.42	0.08	1.48	1.50	1.48	1.50	XXX
99183		A	Hyperbaric oxygen therapy	2.34	0.73	1.27	0.73	1.27	0.12	3.19	3.73	3.19	3.73	XXX
99185		A	Regional hypothermia	0.00	NA	NA	0.64	0.65	0.03	NA	NA	0.67	0.68	XXX
99186		A	Total body hypothermia	0.00	NA	NA	1.79	1.82	0.38	NA	NA	2.17	2.20	XXX
99190		X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99191		X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99192		X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99195		A	Phlebotomy	0.00	0.45	0.46	0.45	0.46	0.02	0.47	0.48	0.47	0.48	XXX
99199		C	Special service/proc/report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99201		A	Office/outpatient visit, new	0.45	0.81	0.64	0.16	0.18	0.02	1.28	1.11	0.63	0.65	XXX
99202		A	Office/outpatient visit, new	0.88	1.06	0.81	0.32	0.29	0.04	1.98	1.73	1.24	1.21	XXX
99203		A	Office/outpatient visit, new	1.34	1.39	1.02	0.49	0.39	0.07	2.80	2.43	1.90	1.80	XXX
99204		A	Office/outpatient visit, new	2.00	1.88	1.42	0.72	0.58	0.09	3.97	3.51	2.81	2.67	XXX
99205		A	Office/outpatient visit, new	2.67	2.12	1.58	0.93	0.70	0.11	4.90	4.36	3.71	3.48	XXX
99211		A	Office/outpatient visit, est	0.17	0.51	0.37	0.06	0.09	0.01	0.69	0.55	0.24	0.27	XXX
99212		A	Office/outpatient visit, est	0.45	0.59	0.47	0.16	0.16	0.02	1.06	0.94	0.63	0.63	XXX
99213		A	Office/outpatient visit, est	0.67	0.72	0.60	0.23	0.22	0.02	1.41	1.29	0.92	0.91	XXX
99214		A	Office/outpatient visit, est	1.10	1.07	0.85	0.39	0.33	0.04	2.21	1.99	1.53	1.47	XXX
99215		A	Office/outpatient visit, est	1.77	1.32	1.13	0.63	0.52	0.07	3.16	2.97	2.47	2.36	XXX
99217		A	Observation care discharge	1.28	NA	NA	0.44	0.50	0.05	NA	NA	1.77	1.83	XXX
99218		A	Observation care	1.28	NA	NA	0.44	0.59	0.05	NA	NA	1.77	1.92	XXX
99219		A	Observation care	2.14	NA	NA	0.72	0.93	0.08	NA	NA	2.94	3.15	XXX
99220		A	Observation care	2.99	NA	NA	1.02	1.13	0.11	NA	NA	4.12	4.23	XXX
99221		A	Initial hospital care	1.28	NA	NA	0.45	0.59	0.05	NA	NA	1.78	1.92	XXX
99222		A	Initial hospital care	2.14	NA	NA	0.74	0.94	0.08	NA	NA	2.96	3.16	XXX
99223		A	Initial hospital care	2.99	NA	NA	1.03	1.13	0.11	NA	NA	4.13	4.23	XXX
99231		A	Subsequent hospital care	0.64	NA	NA	0.23	0.32	0.02	NA	NA	0.89	0.98	XXX
99232		A	Subsequent hospital care	1.06	NA	NA	0.37	0.43	0.04	NA	NA	1.47	1.53	XXX
99233		A	Subsequent hospital care	1.51	NA	NA	0.52	0.59	0.05	NA	NA	2.08	2.15	XXX
99234		A	Observ/hosp same date	2.56	NA	NA	0.88	0.81	0.10	NA	NA	3.54	3.47	XXX
99235		A	Observ/hosp same date	3.42	NA	NA	1.16	1.15	0.12	NA	NA	4.70	4.69	XXX
99236		A	Observ/hosp same date	4.27	NA	NA	1.46	1.35	0.14	NA	NA	5.87	5.76	XXX
99238		A	Hospital discharge day	1.28	NA	NA	0.44	0.50	0.04	NA	NA	1.76	1.82	XXX
99239		A	Hospital discharge day	1.75	NA	NA	0.60	0.58	0.06	NA	NA	2.41	2.39	XXX
99241		A	Office consultation	0.64	0.99	0.84	0.22	0.29	0.04	1.67	1.52	0.90	0.97	XXX
99242		A	Office consultation	1.29	1.41	1.13	0.47	0.45	0.08	2.78	2.50	1.84	1.82	XXX
99243		A	Office consultation	1.72	1.70	1.38	0.64	0.59	0.09	3.51	3.19	2.45	2.40	XXX
99244		A	Office consultation	2.58	2.13	1.73	0.92	0.80	0.11	4.82	4.42	3.61	3.49	XXX
99245		A	Office consultation	3.43	2.50	2.17	1.23	1.08	0.14	6.07	5.74	4.80	4.65	XXX
99251		A	Initial inpatient consult	0.66	NA	NA	0.29	0.51	0.04	NA	NA	0.99	1.21	XXX
99252		A	Initial inpatient consult	1.32	NA	NA	0.56	0.69	0.08	NA	NA	1.96	2.09	XXX
99253		A	Initial inpatient consult	1.82	NA	NA	0.75	0.89	0.09	NA	NA	2.66	2.80	XXX
99254		A	Initial inpatient consult	2.64	NA	NA	1.04	1.17	0.11	NA	NA	3.79	3.92	XXX
99255		A	Initial inpatient consult	3.65	NA	NA	1.40	1.55	0.15	NA	NA	5.20	5.35	XXX
99261		A	Follow-up inpatient consult	0.42	NA	NA	0.20	0.28	0.02	NA	NA	0.64	0.72	XXX
99262		A	Follow-up inpatient consult	0.85	NA	NA	0.36	0.43	0.03	NA	NA	1.24	1.31	XXX
99263		A	Follow-up inpatient consult	1.27	NA	NA	0.51	0.62	0.05	NA	NA	1.83	1.94	XXX
99271		A	Confirmatory consultation	0.45	0.59	0.61	0.19	0.26	0.02	1.06	1.08	0.66	0.73	XXX
99272		A	Confirmatory consultation	0.84	0.78	0.78	0.36	0.38	0.05	1.67	1.67	1.25	1.27	XXX
99273		A	Confirmatory consultation	1.19	1.02	1.07	0.50	0.53	0.07	2.28	2.33	1.76	1.79	XXX
99274		A	Confirmatory consultation	1.73	1.33	1.33	0.71	0.69	0.09	3.15	3.15	2.53	2.51	XXX
99275		A	Confirmatory consultation	2.31	1.54	1.72	0.88	1.39	0.10	3.95	4.13	3.29	3.80	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
99281		A	Emergency dept visit	0.33	NA	NA	0.09	0.20	0.02	NA	NA	0.44	0.55	XXX
99282		A	Emergency dept visit	0.55	NA	NA	0.15	0.28	0.03	NA	NA	0.73	0.86	XXX
99283		A	Emergency dept visit	1.24	NA	NA	0.32	0.43	0.08	NA	NA	1.64	1.75	XXX
99284		A	Emergency dept visit	1.95	NA	NA	0.48	0.62	0.12	NA	NA	2.55	2.69	XXX
99285		A	Emergency dept visit	3.06	NA	NA	0.73	0.98	0.19	NA	NA	3.98	4.23	XXX
99288		B	Direct advanced life support	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99291		A	Critical care, first hour	3.60	1.38	1.47	1.15	1.35	0.14	5.12	5.21	4.89	5.09	XXX
99292		A	Critical care, addl 30 min	1.80	0.76	0.72	0.57	0.63	0.08	2.64	2.60	2.45	2.51	ZZZ
99295		A	Neonatal critical care	16.00	NA	NA	4.85	5.18	0.62	NA	NA	21.47	21.80	XXX
99296		A	Neonatal critical care	8.00	NA	NA	2.60	2.64	0.24	NA	NA	10.84	10.88	XXX
99297		A	Neonatal critical care	4.00	NA	NA	1.34	1.34	0.11	NA	NA	5.45	5.45	XXX
99298		A	Neonatal critical care	2.75	0.94	0.94	0.92	0.92	0.09	3.78	3.78	3.76	3.76	XXX
99301		A	Nursing facility care	1.20	NA	NA	0.41	0.45	0.04	NA	NA	1.65	1.69	XXX
99302		A	Nursing facility care	1.61	NA	NA	0.54	0.54	0.06	NA	NA	2.21	2.21	XXX
99303		A	Nursing facility care	2.01	NA	NA	0.66	0.85	0.07	NA	NA	2.74	2.93	XXX
99311		A	Nursing fac care, subseq	0.60	NA	NA	0.20	0.29	0.02	NA	NA	0.82	0.91	XXX
99312		A	Nursing fac care, subseq	1.00	NA	NA	0.33	0.39	0.03	NA	NA	1.36	1.42	XXX
99313		A	Nursing fac care, subseq	1.42	NA	NA	0.47	0.49	0.05	NA	NA	1.94	1.96	XXX
99315		A	Nursing fac discharge day	1.13	NA	NA	0.37	0.46	0.04	NA	NA	1.54	1.63	XXX
99316		A	Nursing fac discharge day	1.50	NA	NA	0.51	0.53	0.05	NA	NA	2.06	2.08	XXX
99321		A	Rest home visit, new patient	0.71	0.41	0.41	0.32	0.36	0.03	1.15	1.15	1.06	1.10	XXX
99322		A	Rest home visit, new patient	1.01	0.64	0.60	0.44	0.50	0.04	1.69	1.65	1.49	1.55	XXX
99323		A	Rest home visit, new patient	1.28	0.87	0.83	0.54	0.67	0.05	2.20	2.16	1.87	2.00	XXX
99331		A	Rest home visit, est pat	0.60	0.44	0.37	0.31	0.31	0.02	1.06	0.99	0.93	0.93	XXX
99332		A	Rest home visit, est pat	0.80	0.55	0.47	0.37	0.38	0.03	1.38	1.30	1.20	1.21	XXX
99333		A	Rest home visit, est pat	1.00	0.67	0.58	0.45	0.47	0.03	1.70	1.61	1.48	1.50	XXX
99341		A	Home visit, new patient	1.01	0.51	0.55	0.48	0.53	0.04	1.56	1.60	1.53	1.58	XXX
99342		A	Home visit, new patient	1.52	0.79	0.72	0.59	0.62	0.06	2.37	2.30	2.17	2.20	XXX
99343		A	Home visit, new patient	2.27	1.21	1.03	1.14	0.99	0.08	3.56	3.38	3.49	3.34	XXX
99344		A	Home visit, new patient	3.03	1.48	1.20	1.11	1.02	0.10	4.61	4.33	4.24	4.15	XXX
99345		A	Home visit, new patient	3.79	1.74	1.33	1.34	1.13	0.12	5.65	5.24	5.25	5.04	XXX
99347		A	Home visit, est patient	0.76	0.45	0.47	0.36	0.43	0.03	1.24	1.26	1.15	1.22	XXX
99348		A	Home visit, est patient	1.26	0.68	0.63	0.52	0.55	0.04	1.98	1.93	1.82	1.85	XXX
99349		A	Home visit, est patient	2.02	1.00	0.83	0.79	0.73	0.07	3.09	2.92	2.88	2.82	XXX
99350		A	Home visit, est patient	3.03	1.36	1.09	1.10	0.96	0.10	4.49	4.22	4.23	4.09	XXX
99354		A	Prolonged service, office	1.77	1.27	1.05	0.60	0.51	0.06	3.10	2.88	2.43	2.34	ZZZ
99355		A	Prolonged service, office	1.77	1.14	0.98	0.58	0.50	0.06	2.97	2.81	2.41	2.33	ZZZ
99356		A	Prolonged service, inpatient	1.71	NA	NA	0.58	0.75	0.06	NA	NA	2.35	2.52	ZZZ
99357		A	Prolonged service, inpatient	1.71	NA	NA	0.60	0.76	0.07	NA	NA	2.38	2.54	ZZZ
99358		B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99359		B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99360		X	Physician standby services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99361		B	Physician/team conference	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99362		B	Physician/team conference	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99371		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99372		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99373		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99374		B	Home health care supervision	+1.10	1.29	0.92	0.43	0.49	0.04	2.43	2.06	1.57	1.63	XXX
99375		A	Home health care supervision	1.73	1.30	0.93	0.60	0.58	0.06	3.09	2.72	2.39	2.37	XXX
99377		B	Hospice care supervision	+1.10	1.29	0.92	0.43	0.49	0.04	2.43	2.06	1.57	1.63	XXX
99378		A	Hospice care supervision	1.73	1.50	1.03	0.58	0.57	0.06	3.29	2.82	2.37	2.36	XXX
99379		B	Nursing fac care supervision	+1.10	1.29	0.92	0.43	0.49	0.04	2.43	2.06	1.57	1.63	XXX
99380		B	Nursing fac care supervision	+1.73	1.53	1.04	0.67	0.61	0.06	3.32	2.83	2.46	2.40	XXX
99381		N	Prev visit, new, infant	+1.19	1.33	1.33	0.46	0.90	0.18	2.70	2.70	1.83	2.27	XXX
99382		N	Prev visit, new, age 1-4	+1.36	1.37	1.45	0.53	1.03	0.04	2.77	2.85	1.93	2.43	XXX
99383		N	Prev visit, new, age 5-11	+1.36	1.33	1.43	0.53	1.03	0.04	2.73	2.83	1.93	2.43	XXX
99384		N	Prev visit, new, age 12-17	+1.53	1.40	1.57	0.59	1.16	0.05	2.98	3.15	2.17	2.74	XXX
99385		N	Prev visit, new, age 18-39	+1.53	1.41	1.47	0.59	1.06	0.05	2.99	3.05	2.17	2.64	XXX
99386		N	Prev visit, new, age 40-64	+1.88	1.59	1.73	0.73	1.30	0.06	3.53	3.67	2.67	3.24	XXX
99387		N	Prev visit, new, 65 & over	+2.06	1.71	1.88	0.80	1.42	0.06	3.83	4.00	2.92	3.54	XXX
99391		N	Prev visit, est, infant	+1.02	0.91	1.03	0.39	0.77	0.15	2.08	2.20	1.56	1.94	XXX
99392		N	Prev visit, est, age 1-4	+1.19	0.98	1.16	0.46	0.90	0.04	2.21	2.39	1.69	2.13	XXX
99393		N	Prev visit, est, age 5-11	+1.19	0.96	1.15	0.46	0.90	0.04	2.19	2.38	1.69	2.13	XXX
99394		N	Prev visit, est, age 12-17	+1.36	1.04	1.29	0.53	1.03	0.04	2.44	2.69	1.93	2.43	XXX
99395		N	Prev visit, est, age 18-39	+1.36	1.07	1.22	0.53	0.95	0.04	2.47	2.62	1.93	2.35	XXX
99396		N	Prev visit, est, age 40-64	+1.53	1.16	1.34	0.59	1.06	0.05	2.74	2.92	2.17	2.64	XXX
99397		N	Prev visit, est, 65 & over	+1.71	1.25	1.47	0.66	1.18	0.05	3.01	3.23	2.42	2.94	XXX
99401		N	Preventive counseling, indiv	+0.48	0.55	0.52	0.19	0.34	0.01	1.04	1.01	0.68	0.83	XXX
99402		N	Preventive counseling, indiv	+0.98	0.78	0.88	0.38	0.68	0.03	1.79	1.89	1.39	1.69	XXX
99403		N	Preventive counseling, indiv	+1.46	1.01	1.23	0.56	1.01	0.04	2.51	2.73	2.06	2.51	XXX
99404		N	Preventive counseling, indiv	+1.95	1.24	1.59	0.75	1.34	0.05	3.24	3.59	2.75	3.34	XXX
99411		N	Preventive counseling, group	+0.15	0.16	0.16	0.06	0.11	0.01	0.32	0.32	0.22	0.27	XXX
99412		N	Preventive counseling, group	+0.25	0.22	0.24	0.10	0.18	0.01	0.48	0.50	0.36	0.44	XXX
99420		N	Health risk assessment test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99429		N	Unlisted preventive service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99431		A	Initial care, normal newborn	1.17	NA	NA	0.39	0.85	0.04	NA	NA	1.60	2.06	XXX
99432		A	Newborn care, not in hosp	1.26	0.72	1.07	0.40	0.91	0.04	2.02	2.37	1.70	2.21	XXX
99433		A	Normal newborn care/hospital	0.62	NA	NA	0.22	0.46	0.02	NA	NA	0.86	1.10	XXX
99435		A	Newborn discharge day hosp	1.50	NA	NA	0.50	1.09	0.05	NA	NA	2.05	2.64	XXX
99436		A	Attendance, birth	1.50	0.46	1.07	0.46	1.07	0.05	2.01	2.62	2.01	2.62	XXX
99440		A	Newborn resuscitation	2.93	NA	NA	0.98	2.14	0.09	NA	NA	4.00	5.16	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
99450		N	Life/disability evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99455		R	Disability examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99456		R	Disability examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99499		C	Unlisted e&m service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0021		I	Outside state ambulance serv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0030		X	Air ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0040		X	Helicopter ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0050		X	Water amb service emergency	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0080		I	Noninterest escort in non er	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0090		I	Interest escort in non er	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0100		I	Nonemergency transport taxi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0110		I	Nonemergency transport bus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0120		I	Noner transport mini-bus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0130		I	Noner transport wheelch van	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0140		I	Nonemergency transport air	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0160		I	Noner transport case worker	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0170		I	Noner transport parking fees	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0180		I	Noner transport lodgng recip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0190		I	Noner transport meals recip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0200		I	Noner transport lodgng escrt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0210		I	Noner transport meals escort	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0225		X	Neonatal emergency transport	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0300		X	Ambulance basic non-emer all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0302		X	Ambulance basic emergeny all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0304		X	Amb adv non-er no serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0306		X	Amb adv non-er spec serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0308		X	Amb adv er no spec serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0310		X	Amb adv er spec serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0320		X	Amb basic non-er + supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0322		X	Amb basic emerg + supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0324		X	Adv non-er serv sep mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0326		X	Adv non-er no serv sep mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0328		X	Adv er no serv sep mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0330		X	Adv er spec serv sep mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0340		X	Amb basic non-er + mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0342		X	Ambul basic emer + mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0344		X	Amb adv non-er no serv +mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0346		X	Amb adv non-er serv + mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0348		X	Adv emer no spec serv + mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0350		X	Adv emer spec serv + mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0360		X	Basic non-er sep mile & supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0362		X	Basic emer sep mile & supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0364		X	Adv non-er no serv sep mi&su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0366		X	Adv non-er serv sep mil&supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0368		X	Adv er no serv sep mile&supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0370		X	Adv er spec serv sep mi&supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0380		X	Basic life support mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0382		X	Basic support routine suppls	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0384		X	Bls defibrillation supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0390		X	Advanced life support mileag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0392		X	Als defibrillation supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0394		X	Als IV drug therapy supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0396		X	Als esophageal intub suppls	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0398		X	Als routine disposble suppls	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0420		X	Ambulance waiting 1/2 hr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0422		X	Ambulance 02 life sustaining	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0424		X	Extra ambulance attendant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0888		N	Noncovered ambulance mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0999		X	Unlisted ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4206		I	1 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4207		I	2 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4208		I	3 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4209		I	5+ CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4210		N	Nonneedle injection device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4211		P	Supp for self-adm injections	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4212		P	Non coring needle or stylet	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4213		I	20+ CC syringe only	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4214		P	30 CC sterile water/saline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4215		I	Sterile needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4220		P	Infusion pump refill kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4221		X	Maint drug infus cath per wk	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4222		X	Drug infusion pump supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4230		X	Infus insulin pump non needl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4231		X	Infusion insulin pump needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4232		X	Syringe w/needle insulin 3cc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4244		I	Alcohol or peroxide per pint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4245		I	Alcohol wipes per box	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4246		I	Betadine/phisohex solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4247		I	Betadine/iodine swabs/wipes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4250		N	Urine reagent strips/tablets	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4253		P	Blood glucose/reagent strips	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[1] CPT codes and descriptions only are copyright 1999 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.

[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
A4254		X	Battery for glucose monitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4255		X	Glucose monitor platforms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4256		P	Calibrator solution/chips	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4258		P	Lancet device each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4259		P	Lancets per box	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4260		N	Levonorgestrel implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4261		N	Cervical cap contraceptive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4262		B	Temporary tear duct plug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4263		A	Permanent tear duct plug	0.00	0.00	0.52	0.00	0.52	0.00	0.00	0.52	0.00	0.52	XXX
A4265		P	Paraffin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4270		B	Disposable endoscope sheath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4280		X	Brst prsths adhsv attchmnt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4300		A	Cath impl vasc access portal	0.00	0.00	0.52	0.00	0.52	0.00	0.00	0.52	0.00	0.52	XXX
A4301		P	Implantable access syst perc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4305		P	Drug delivery system ≤=50 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4306		P	Drug delivery system <=5 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4310		P	Insert tray w/o bag/cath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4311		P	Catheter w/o bag 2-way latex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4312		P	Cath w/o bag 2-way silicone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4313		P	Catheter w/bag 3-way	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4314		P	Cath w/drainage 2-way latex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4315		P	Cath w/drainage 2-way silcne	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4316		P	Cath w/drainage 3-way	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4320		P	Irrigation tray	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4321		X	Cath therapeutic irrig agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4322		P	Irrigation syringe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4323		P	Saline irrigation solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4326		P	Male external catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4327		P	Fem urinary collect dev cup	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4328		P	Fem urinary collect pouch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4329		P	External catheter start set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4330		P	Stool collection pouch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4335		P	Incontinence supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4338		P	Indwelling catheter latex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4340		P	Indwelling catheter special	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4344		P	Cath indw foley 2 way silicn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4346		P	Cath indw foley 3 way	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4347		P	Male external catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4351		P	Straight tip urine catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4352		P	Coude tip urinary catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4353		X	Intermittent urinary cath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4354		P	Cath insertion tray w/bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4355		P	Bladder irrigation tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4356		P	Ext ureth clmp or compr dvc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4357		P	Bedside drainage bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4358		P	Urinary leg bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4359		P	Urinary suspensory w/o leg b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4361		P	Ostomy face plate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4362		P	Solid skin barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4363		D	Liquid skin barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4364		P	Ostomy/cath adhesive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4365		X	Ostomy adhesive remover wipe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4367		P	Ostomy belt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4368		X	Ostomy filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4369		X	Skin barrier liquid per oz	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4370		X	Skin barrier paste per oz	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4371		X	Skin barrier powder per oz	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4372		X	Skin barrier solid 4x4 equiv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4373		X	Skin barrier with flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4374		X	Skin barrier extended wear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4375		X	Drainable plastic pch w fcpl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4376		X	Drainable rubber pch w fcplt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4377		X	Drainable plstic pch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4378		X	Drainable rubber pch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4379		X	Urinary plastic pouch w fcpl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4380		X	Urinary rubber pouch w fcplt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4381		X	Urinary plastic pouch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4382		X	Urinary hvy plstc pch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4383		X	Urinary rubber pouch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4384		X	Ostomy faceplt/silicone ring	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4385		X	Ost skn barrier sld ext wear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4386		X	Ost skn barrier w flng ex wr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4387		X	Ost clsd pouch w att st barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4388		X	Drainable pch w ex wear barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4389		X	Drainable pch w st wear barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4390		X	Drainable pch ex wear convex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4391		X	Urinary pouch w ex wear barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4392		X	Urinary pouch w st wear barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4393		X	Urine pch w ex wear bar conv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4394		X	Ostomy pouch liq deodorant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4395		X	Ostomy pouch solid deodorant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
A4397		P	Irrigation supply sleeve	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4398		P	Ostomy irrigation bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4399		P	Ostomy irrig cone/cath w brs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4400		P	Ostomy irrigation set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4402		P	Lubricant per ounce	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4404		P	Ostomy ring each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4421		P	Ostomy supply misc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4454		P	Tape all types all sizes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4455		P	Adhesive remover per ounce	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4460		P	Elastic compression bandage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4462		X	Abdmnl drssng holder/binder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4465		P	Non-elastic extremity binder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4470		P	Gravlee jet washer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4480		P	Vabra aspirator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4481		X	Tracheostoma filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4483		X	Moisture exchanger	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4490		N	Above knee surgical stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4495		N	Thigh length surg stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4500		N	Below knee surgical stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4510		N	Full length surg stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4550		A	Surgical trays	0.00	0.00	0.52	0.00	0.52	0.00	0.00	0.52	0.00	0.52	XXX
A4554		N	Disposable underpads	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4556		P	Electrodes, pair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4557		P	Lead wires, pair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4558		P	Conductive paste or gel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4560		X	Pessary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4565		X	Slings	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4570		X	Splint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4572		X	Rib belt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4575		N	Hyperbaric o2 chamber disps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4580		X	Cast supplies (plaster)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4590		X	Special casting material	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4595		X	TENS suppl 2 lead per month	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4611		X	Heavy duty battery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4612		X	Battery cables	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4613		X	Battery charger	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4614		X	Hand-held PEFR meter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4615		X	Cannula nasal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4616		X	Tubing (oxygen) per foot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4617		X	Mouth piece	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4618		X	Breathing circuits	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4619		X	Face tent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4620		X	Variable concentration mask	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4621		X	Tracheotomy mask or collar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4622		X	Tracheostomy or larngectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4623		X	Tracheostomy inner cannula	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4624		X	Tracheal suction tube	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4625		X	Trach care kit for new trach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4626		X	Tracheostomy cleaning brush	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4627		N	Spacer bag/reservoir	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4628		X	Oropharyngeal suction cath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4629		X	Tracheostomy care kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4630		X	Repl bat t.e.n.s. own by pt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4631		X	Wheelchair battery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4635		X	Underarm crutch pad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4636		X	Handgrip for cane etc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4637		X	Repl tip cane/crutch/walker	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4640		X	Alternating pressure pad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4641		E	Diagnostic imaging agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4642		E	Satumomab pendetide per dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4643		E	High dose contrast MRI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4644		E	Contrast 100-199 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4645		E	Contrast 200-299 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4646		E	Contrast 300-399 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4647		B	Supp- paramagnetic contr mat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4649		P	Surgical supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4650		X	Supp esrd centrifuge	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4655		X	Esrd syringe/needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4660		X	Esrd blood pressure device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4663		X	Esrd blood pressure cuff	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4670		N	Auto blood pressure monitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4680		X	Activated carbon filters	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4690		X	Dialyzers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4700		X	Standard dialysate solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4705		X	Bicarb dialysate solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4712		X	Sterile water	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4714		X	Treated water for dialysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4730		X	Fistula cannulation set dial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4735		X	Local/topical anesthetics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4740		X	Esrd shunt accessory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4750		X	Arterial or venous tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
A4755		X	Arterial and venous tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4760		X	Standard testing solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4765		X	Dialysate concentrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4770		X	Blood testing supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4771		X	Blood clotting time tube	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4772		X	Dextrostick/glucose strips	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4773		X	Hemostix	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4774		X	Ammonia test paper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4780		X	Esrd sterilizing agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4790		X	Esrd cleansing agents	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4800		X	Heparin/antidote dialysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4820		X	Supplies hemodialysis kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4850		X	Rubber tipped hemostats	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4860		X	Disposable catheter caps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4870		X	Plumbing/electrical work	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4880		X	Water storage tanks	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4890		R	Contracts/repair/maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4900		X	Capd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4901		X	Ccpd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4905		X	Ipd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4910		X	Esrd nonmedical supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4912		X	Gomco drain bottle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4913		X	Esrd supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4914		X	Preparation kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4918		X	Venous pressure clamp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4919		X	Supp dialysis dialyzer holde	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4920		X	Harvard pressure clamp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4921		X	Measuring cylinder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4927		X	Gloves	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5051		P	Pouch clsd w barr attached	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5052		P	Clsd ostomy pouch w/o barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5053		P	Clsd ostomy pouch faceplate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5054		P	Clsd ostomy pouch w/flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5055		P	Stoma cap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5061		P	Pouch drainable w barrier at	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5062		P	Drnble ostomy pouch w/o barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5063		P	Drain ostomy pouch w/flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5064		I	Drain ostomy pouch w/fcepltе	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5065		I	Drain ostomy pouch on fcplte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5071		P	Urinary pouch w/barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5072		P	Urinary pouch w/o barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5073		P	Urinary pouch on barr w/flng	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5074		I	Urinary pouch w/faceplate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5075		I	Urinary pouch on faceplate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5081		P	Continent stoma plug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5082		P	Continent stoma catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5093		P	Ostomy accessory convex inse	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5102		P	Bedside drain btl w/wo tube	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5105		P	Urinary suspensory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5112		P	Urinary leg bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5113		P	Latex leg strap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5114		P	Foam/fabric leg strap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5119		P	Skin barrier wipes box pr 50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5121		P	Solid skin barrier 6x6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5122		P	Solid skin barrier 8x8	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5123		P	Skin barrier with flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5126		P	Disk/foam pad +or- adhesive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5131		P	Appliance cleaner	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5149		P	Incontinence/ostomy supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5200		X	Percutaneous catheter anchor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5500		X	Diab shoe for density insert	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5501		X	Diabetic custom molded shoe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5502		X	Diabetic shoe density insert	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5503		X	Diabetic shoe w/roller/rockr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5504		X	Diabetic shoe with wedge	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5505		X	Diab shoe w/metatarsal bar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5506		X	Diabetic shoe w/off set heel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5507		X	Modification diabetic shoe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5508		X	Diabetic deluxe shoe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6020		P	Collagen wound dressing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6025		I	Silicone gel sheet, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6154		P	Wound pouch each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6196		P	Alginate dressing <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6197		P	Alginate drsg ≤16 <=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6198		P	alginate dressing ≤ 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6199		P	Alginate drsg wound filler	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6200		X	Compos drsg <=16 no border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6201		X	Compos drsg ≤16<=48 no bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6202		X	Compos drsg ≤48 no border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6203		P	Composite drsg <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6204		P	Composite drsg ≤16<=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
A6205		P	Composite drsg ≤ 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6206		P	Contact layer <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6207		P	Contact layer ≤16<= 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6208		P	Contact layer ≤ 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6209		P	Foam drsg <=16 sq in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6210		P	Foam drg ≤16<=48 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6211		P	Foam drg ≤ 48 sq in w/o brdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6212		P	Foam drg <=16 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6213		P	Foam drg ≤16<=48 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6214		P	Foam drg ≤ 48 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6215		P	Foam dressing wound filler	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6216		P	Non-sterile gauze<=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6217		P	Non-sterile gauze≤16<=48 sq	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6218		P	Non-sterile gauze ≤ 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6219		P	Gauze <= 16 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6220		P	Gauze ≤16 <=48 sq in w/bordr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6221		P	Gauze ≤ 48 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6222		P	Gauze <=16 in no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6223		P	Gauze ≤16<=48 no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6224		P	Gauze ≤ 48 in no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6228		P	Gauze <= 16 sq in water/sal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6229		P	Gauze ≤16<=48 sq in watr/sal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6230		P	Gauze ≤ 48 sq in water/saine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6234		P	Hydrocolld drg <=16 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6235		P	Hydrocolld drg ≤16<=48 w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6236		P	Hydrocolld drg ≤ 48 in w/o [illegible]	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6237		P	Hydrocolld drg <=16 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6238		P	Hydrocolld drg ≤16<=48 w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6239		P	Hydrocolld drg ≤ 48 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6240		P	Hydrocolld drg filler paste	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6241		P	Hydrocolloid drg filler dry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6242		P	Hydrogel drg <=16 in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6243		P	Hydrogel drg ≤16<=48 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6244		P	Hydrogel drg ≤48 in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6245		P	Hydrogel drg <= 16 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6246		P	Hydrogel drg ≤16<=48 in w/b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6247		P	Hydrogel drg ≤ 48 sq in w/b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6248		P	Hydrogel drsg gel filler	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6250		P	Skin seal protect moisturizr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6251		P	Absorpt drg <=16 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6252		P	Absorpt drg ≤16 <=48 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6253		P	Absorpt drg ≤ 48 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6254		P	Absorpt drg <=16 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6255		P	Absorpt drg ≤16<=48 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6256		P	Absorpt drg ≤ 48 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6257		P	Transparent film <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6258		P	Transparent film ≤16<=48 in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6259		P	Transparent film ≤ 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6260		P	Wound cleanser any type/size	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6261		P	Wound filler gel/paste /oz	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6262		P	Wound filler dry form / gram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6263		P	Non-sterile elastic gauze/yd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6264		P	Non-sterile no elastic gauze	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6265		P	Tape per 18 sq inches	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6266		P	Impreg gauze no h20/sal/yard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6402		P	Sterile gauze <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6403		P	Sterile gauze≤16 <= 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6404		P	Sterile gauze ≤ 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6405		P	Sterile elastic gauze /yd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6406		P	Sterile non-elastic gauze/yd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7000		X	Disposable canister for pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7001		X	Nondisposable pump canister	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7002		X	Tubing used w suction pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7003		X	Nebulizer administration set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7004		X	Disposable nebulizer sml vol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7005		X	Nondisposable nebulizer set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7006		X	Filtered nebulizer admin set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7007		X	Lg vol nebulizer disposable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7008		X	Disposable nebulizer prefill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7009		X	Nebulizer reservoir bottle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7010		X	Disposable corrugated tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7011		X	Nondispos corrugated tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7012		X	Nebulizer water collec devic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7013		X	Disposable compressor filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7014		X	Compressor nondispos filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7015		X	Aerosol mask used w nebulize	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7016		X	Nebulizer dome & mouthpiece	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7017		X	Nebulizer not used w oxygen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9150		E	Misc/exper non-prescript dru	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9160		N	Podiatrist non-covered servi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9170		N	Chiropractor non-covered ser	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
A9190		N	Misc/expe personal comfort i	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9270		N	Non-covered item or service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9300		N	Exercise equipment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9500		E	Technetium TC 99m sestamibi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9502		X	Technetium TC99M tetrofosmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9503		E	Technetium TC 99m medronate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9504		X	Technetium tc 99m apcitide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9505		E	Thallous chloride TL 201/mci	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9507		X	Indium/111 capromab pendetid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9600		X	Strontium-89 chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9605		X	Samarium sm153 lexidronamm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9900		X	Supply/accessory/service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9901		X	Delivery/set up/dispensing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0120		N	Periodic oral evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0140		N	Limit oral eval problm focus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0150		R	Comprehensve oral evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0160		N	Extensv oral eval prob focus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0170		N	Re-eval,est pt,problem focus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0210		I	Intraor complete film series	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0220		I	Intraoral periapical first f	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0230		I	Intraoral periapical ea add	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0240		R	Intraoral occlusal film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0250		R	Extraoral first film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0260		R	Extraoral ea additional film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0270		R	Dental bitewing single film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0272		R	Dental bitewings two films	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0274		R	Dental bitewings four films	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0277		R	Vert bitewings-sev to eight	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0290		I	Dental film skull/facial bon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0310		I	Dental saliography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0320		I	Dental tmj arthrogram incl i	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0321		I	Dental other tmj films	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0322		I	Dental tomographic survey	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0330		I	Dental panoramic film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0340		I	Dental cephalometric film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0350		I	Oral/facial images	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0415		N	Bacteriologic study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0425		N	Caries susceptibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0460		R	Pulp vitality test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0470		N	Diagnostic casts	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0471		D	Diagnostic photographs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0472		R	Gross exam, prep & report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0473		R	Micro exam, prep & report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0474		R	Micro w exam of surg margins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0480		R	Cytopath smear prep & report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0501		R	Histopathologic examinations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0502		R	Other oral pathology procedu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0999		R	Unspecified diagnostic proce	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1110		N	Dental prophylaxis adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1120		N	Dental prophylaxis child	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1201		N	Topical fluor w prophy child	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1203		N	Topical fluor w/o prophy chi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1204		N	Topical fluor w/o prophy adu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1205		N	Topical fluoride w/ prophy a	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1310		N	Nutri counsel-control caries	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1320		N	Tobacco counseling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1330		N	Oral hygiene instruction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1351		N	Dental sealant per tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1510		R	Space maintainer fxd unilat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1515		R	Fixed bilat space maintainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1520		R	Remove unilat space maintain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1525		R	Remove bilat space maintain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1550		R	Recement space maintainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D2110		N	Amalgam one surface primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2120		N	Amalgam two surfaces primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2130		N	Amalgam three surfaces prima	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2131		N	Amalgam four/more surf prima	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2140		N	Amalgam one surface permanen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2150		N	Amalgam two surfaces permane	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2160		N	Amalgam three surfaces perma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2161		N	Amalgam 4 or ≤ surfaces perm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2210		D	Silcate cement per restorat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2330		N	Resin one surface-anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2331		N	Resin two surfaces-anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2332		N	Resin three surfaces-anterio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2335		N	Resin 4/≤ surf or w incis an	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2336		N	Composite resin crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2337		N	Compo resin crown ant-perm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2380		N	Resin one surf poster primar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2381		N	Resin two surf poster primar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2382		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
D2385		N	Resin one surf poster perman	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2386		N	Resin two surf poster perman	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2387		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2388		N	Resin four/more, post perm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2410		N	Dental gold foil one surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2420		N	Dental gold foil two surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2430		N	Dental gold foil three surfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2510		N	Dental inlay metalic 1 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2520		N	Dental inlay metallic 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2530		N	Dental inlay metl 3/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2542		N	Dental onlay metallic 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2543		N	Dental onlay metallic 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2544		N	Dental onlay metl 4/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2610		N	Inlay porcelain/ceramic 1 su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2620		N	Inlay porcelain/ceramic 2 su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2630		N	Dental onlay porc 3/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2642		N	Dental onlay porcelin 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2643		N	Dental onlay porcelin 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2644		N	Dental onlay porc 4/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2650		N	Inlay composite/resin one su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2651		N	Inlay composite/resin two su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2652		N	Dental inlay resin 3/mre sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2662		N	Dental onlay resin 2 surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2663		N	Dental onlay resin 3 surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2664		N	Dental onlay resin 4/mre sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2710		N	Crown resin laboratory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2720		N	Crown resin w/ high noble me	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2721		N	Crown resin w/ base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2722		N	Crown resin w/ noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2740		N	Crown porcelain/ceramic subs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2750		N	Crown porcelain w/ h noble m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2751		N	Crown porcelain fused base m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2752		N	Crown porcelain w/ noble met	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2780		N	Crown 3/4 cast hi noble met	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2781		N	Crown 3/4 cast base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2782		N	Crown 3/4 cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2783		N	Crown 3/4 porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2790		N	Crown full cast high noble m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2791		N	Crown full cast base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2792		N	Crown full cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2799		N	Provisional crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2810		D	Crown 3/4 cast metallic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2910		N	Dental recement inlay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2920		N	Dental recement crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2930		N	Prefab stnlss steel crwn pri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2931		N	Prefab stnlss steel crown pe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2932		N	Prefabricated resin crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2933		N	Prefab stainless steel crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2940		N	Dental sedative filling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2950		N	Core build-up incl any pins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2951		N	Tooth pin retention	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2952		N	Post and core cast + crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2953		N	Each addtnl cast post	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2954		N	Prefab post/core + crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2955		N	Post removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2957		N	Each addtnl prefab post	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2960		N	Laminate labial veneer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2961		N	Lab labial veneer resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2962		N	Lab labial veneer porcelain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2970		R	Temporary- fractured tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D2980		N	Crown repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2999		R	Dental unspec restorative pr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D3110		N	Pulp cap direct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3120		N	Pulp cap indirect	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3220		N	Therapeutic pulpotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3221		N	Gross pulpal debridement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3230		N	Pulpal therapy anterior prim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3240		N	Pulpal therapy posterior pri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3310		N	Anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3320		N	Root canal therapy 2 canals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3330		N	Root canal therapy 3 canals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3331		N	Non-surg tx root canal obs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3332		N	Incomplete endodontic tx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3333		N	Internal root repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3346		N	Retreat root canal anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3347		N	Retreat root canal bicuspid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3348		N	Retreat root canal molar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3351		N	Apexification/recalc initial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3352		N	Apexification/recalc interim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3353		N	Apexification/recalc final	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3410		N	Apicoect/perirad surg anter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
D3421		N	Root surgery bicuspid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3425		N	Root surgery molar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3426		N	Root surgery ea add root	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3430		N	Retrograde filling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3450		N	Root amputation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3460		R	Endodontic endosseous implan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D3470		N	Intentional replantation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3910		N	Isolation- tooth w rubb dam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3920		N	Tooth splitting	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3950		N	Canal prep/fitting of dowel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3960		D	Bleaching of discolored toot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3999		R	Endodontic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4210		I	Gingivectomy/plasty per quad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4211		I	Gingivectomy/plasty per toot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4220		N	Gingival curettage per quadr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4240		N	Gingival flap proc w/ planin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4245		N	Apically positioned flap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4249		N	Crown lengthen hard tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4250		D	Mucogingival surg per quadra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4260		R	Osseous surgery per quadrant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4263		R	Bone replce graft first site	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4264		R	Bone replce graft each add	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4266		N	Guided tiss regen resorble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4267		N	Guided tiss regen nonresorb	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4268		R	Surgical revision procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4270		R	Pedicle soft tissue graft pr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4271		R	Free soft tissue graft proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4273		R	Subepithelial tissue graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4274		N	Distal/proximal wedge proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4320		N	Provision splint intracoronal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4321		N	Provisional splint extracoro	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4341		N	Periodontal scaling & root	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4355		R	Full mouth debridement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4381		R	Localized chemo delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4910		N	Periodontal maint procedures	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4920		N	Unscheduled dressing change	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4999		N	Unspecified periodontal proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5110		N	Dentures complete maxillary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5120		N	Dentures complete mandible	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5130		N	Dentures immediat maxillary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5140		N	Dentures immediat mandible	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5211		N	Dentures maxill part resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5212		N	Dentures mand part resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5213		N	Dentures maxill part metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5214		N	Dentures mandibl part metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5281		N	Removable partial denture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5410		N	Dentures adjust cmplt maxil	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5411		N	Dentures adjust cmplt mand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5421		N	Dentures adjust part maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5422		N	Dentures adjust part mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5510		N	Dentur repr broken compl bas	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5520		N	Replace denture teeth complt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5610		N	Dentures repair resin base	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5620		N	Rep part denture cast frame	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5630		N	Rep partial denture clasp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5640		N	Replace part denture teeth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5650		N	Add tooth to partial denture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5660		N	Add clasp to partial denture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5710		N	Dentures rebase cmplt maxil	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5711		N	Dentures rebase cmplt mand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5720		N	Dentures rebase part maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5721		N	Dentures rebase part mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5730		N	Denture reln cmplt maxil ch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5731		N	Denture reln cmplt mand chr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5740		N	Denture reln part maxil chr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5741		N	Denture reln part mand chr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5750		N	Denture reln cmplt max lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5751		N	Denture reln cmplt mand lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5760		N	Denture reln part maxil lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5761		N	Denture reln part mand lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5810		N	Denture interm cmplt maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5811		N	Denture interm cmplt mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5820		N	Denture interm part maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5821		N	Denture interm part mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5850		N	Denture tiss conditn maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5851		N	Denture tiss conditn mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5860		N	Overdenture complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5861		N	Overdenture partial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5862		N	Precision attachment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5867		N	Replacement of precision att	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5875		N	Prosthesis modification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
D5899		N	Removable prosthodontic proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5911		R	Facial moulage sectional	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5912		R	Facial moulage complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5913		I	Nasal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5914		I	Auricular prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5915		I	Orbital prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5916		I	Ocular prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5919		I	Facial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5922		I	Nasal septal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5923		I	Ocular prosthesis interim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5924		I	Cranial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5925		I	Facial augmentation implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5926		I	Replacement nasal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5927		I	Auricular replacement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5928		I	Orbital replacement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5929		I	Facial replacement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5931		I	Surgical obturator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5932		I	Postsurgical obturator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5933		I	Refitting of obturator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5934		I	Mandibular flange prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5935		I	Mandibular denture prosth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5936		I	Temp obturator prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5937		I	Trismus appliance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5951		R	Feeding aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5952		I	Pediatric speech aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5953		I	Adult speech aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5954		I	Superimposed prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5955		I	Palatal lift prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5958		I	Intraoral con def inter plt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5959		I	Intraoral con def mod palat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5960		I	Modify speech aid prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5982		I	Surgical stent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5983		R	Radiation applicator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5984		R	Radiation shield	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5985		R	Radiation cone locator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5986		N	Fluoride applicator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5987		R	Commissure splint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5988		I	Surgical splint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5999		I	Maxillofacial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6010		I	Odontics endosteal implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6020		I	Odontics abutment placement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6040		I	Odontics eposteal implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6050		I	Odontics transosteal implnt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6055		I	Implant connecting bar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6056		N	Prefabricated abutment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6057		N	Custom abutment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6058		N	Abutment supported crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6059		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6060		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6061		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6062		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6063		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6064		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6065		N	Implant supported crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6066		N	Implant supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6067		N	Implant supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6068		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6069		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6070		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6071		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6072		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6073		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6074		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6075		N	Implant supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6076		N	Implant supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6077		N	Implant supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6078		N	Implnt/abut suprtd fixd dent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6079		N	Implnt/abut suprtd fixd dent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6080		I	Implant maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6090		I	Repair implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6095		I	Odontics repr abutment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6100		I	Removal of implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6199		I	Implant procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6210		N	Prosthodont high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6211		N	Bridge base metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6212		N	Bridge noble metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6240		N	Bridge porcelain high noble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6241		N	Bridge porcelain base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6242		N	Bridge porcelain nobel metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6245		N	Bridge porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6250		N	Bridge resin w/high noble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
D6251		N	Bridge resin base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6252		N	Bridge resin w/noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6519		N	Inlay/onlay porce/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6520		N	Dental retainer two surfaces	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6530		N	Retainer metallic 3+ surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6543		N	Dental retainr onlay 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6544		N	Dental retainr onlay 4/more	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6545		N	Dental retainr cast metl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6548		N	Porcelain/ceramic retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6720		N	Retain crown resin w hi nble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6721		N	Crown resin w/base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6722		N	Crown resin w/noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6740		N	Crown porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6750		N	Crown porcelain high noble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6751		N	Crown porcelain base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6752		N	Crown porcelain noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6780		N	Crown 3/4 high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6781		N	Crown 3/4 cast based metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6782		N	Crown 3/4 cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6783		N	Crown 3/4 porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6790		N	Crown full high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6791		N	Crown full base metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6792		N	Crown full noble metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6920		R	Dental connector bar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D6930		N	Dental recement bridge	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6940		N	Stress breaker	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6950		N	Precision attachment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6970		N	Post & core plus retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6971		N	Cast post bridge retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6972		N	Prefab post & core plus reta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6973		N	Core build up for retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6975		N	Coping metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6976		N	Each addtnl cast post	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6977		N	Each addtl prefab post	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6980		N	Bridge repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6999		N	Fixed prosthodontic proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7110		R	Oral surgery single tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7120		R	Each add tooth extraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7130		R	Tooth root removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7210		R	Rem imp tooth w mucoper flp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7220		R	Impact tooth remov soft tiss	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7230		R	Impact tooth remov part bony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7240		R	Impact tooth remov comp bony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7241		R	Impact tooth rem bony w/comp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7250		R	Tooth root removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7260		R	Oral antral fistula closure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7270		N	Tooth reimplantation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7272		N	Tooth transplantation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7280		N	Exposure impact tooth orthod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7281		N	Exposure tooth aid eruption	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7285		I	Biopsy of oral tissue hard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7286		I	Biopsy of oral tissue soft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7290		N	Repositioning of teeth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7291		R	Transseptal fiberotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7310		I	Alveoplasty w/ extraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7320		I	Alveoplasty w/o extraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7340		I	Vestibuloplasty ridge extens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7350		I	Vestibuloplasty exten graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7410		I	Rad exc lesion up to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7420		I	Lesion ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7430		I	Exc benign tumor to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7431		I	Benign tumor exc ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7440		I	Malig tumor exc to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7441		I	Malig tumor ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7450		I	Rem odontogen cyst to 1.25cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7451		I	Rem odontogen cyst ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7460		I	Rem nonodonto cyst to 1.25cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7461		I	Rem nonodonto cyst ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7465		I	Lesion destruction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7470		D	Rem exostosis maxilla/mandib	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7471		I	Rem exostosis any site	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7480		I	Partial ostectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7490		I	Mandible resection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7510		I	I&d absc intraoral soft tiss	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7520		I	I&d abscess extraoral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7530		I	Removal fb skin/areolar tiss	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7540		I	Removal of fb reaction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7550		I	Removal of sloughed off bone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7560		I	Maxillary sinusotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7610		I	Maxilla open reduct simple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7620		I	Clsd reduct simpl maxilla fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
D7630		I	Open red simpl mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7640		I	Clsd red simpl mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7650		I	Open red simp malar/zygom fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7660		I	Clsd red simp malar/zygom fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7670		I	Closd rductn splint alveolus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7680		I	Reduct simple facial bone fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7710		I	Maxilla open reduct compound	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7720		I	Clsd reduct compd maxilla fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7730		I	Open reduct compd mandble fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7740		I	Clsd reduct compd mandble fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7750		I	Open red comp malar/zygma fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7760		I	Clsd red comp malar/zygma fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7770		I	Open reduc compd alveolus fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7780		I	Reduct compnd facial bone fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7810		I	Tmj open reduct-dislocation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7820		I	Closed tmp manipulation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7830		I	Tmj manipulation under anest	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7840		I	Removal of tmj condyle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7850		I	Tmj meniscectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7852		I	Tmj repair of joint disc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7854		I	Tmj excisn of joint membrane	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7856		I	Tmj cutting of a muscle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7858		I	Tmj reconstruction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7860		I	Tmj cutting into joint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7865		I	Tmj reshaping components	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7870		I	Tmj aspiration joint fluid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7871		N	Lysis + lavage w catheters	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7872		I	Tmj diagnostic arthroscopy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7873		I	Tmj arthroscopy lysis adhesn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7874		I	Tmj arthroscopy disc reposit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7875		I	Tmj arthroscopy synovectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7876		I	Tmj arthroscopy discectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7877		I	Tmj arthroscopy debridement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7880		I	Occlusal orthotic appliance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7899		I	Tmj unspecified therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7910		I	Dent sutur recent wnd to 5cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7911		I	Dental suture wound to 5 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7912		I	Suture complicate wnd ≤ 5 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7920		I	Dental skin graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7940		R	Reshaping bone orthognathic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7941		I	Bone cutting ramus closed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7942		D	Bone cutting ramus open	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7943		I	Cutting ramus open w/graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7944		I	Bone cutting segmented	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7945		I	Bone cutting body mandible	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7946		I	Reconstruction maxilla total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7947		I	Reconstruct maxilla segment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7948		I	Reconstruct midface no graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7949		I	Reconstruct midface w/graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7950		I	Mandible graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7955		I	Repair maxillofacial defects	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7960		I	Frenulectomy/frenulotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7970		I	Excision hyperplastic tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7971		I	Excision pericoronal gingiva	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7980		I	Sialolithotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7981		I	Excision of salivary gland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7982		I	Sialodochoplasty	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7983		I	Closure of salivary fistula	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7990		I	Emergency tracheotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7991		I	Dental coronoidectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7995		I	Synthetic graft facial bones	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7996		I	Implant mandible for augment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7997		N	Appliance removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7999		I	Oral surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8010		N	Limited dental tx primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8020		N	Limited dental tx transition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8030		N	Limited dental tx adolescent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8040		N	Limited dental tx adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8050		N	Intercep dental tx primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8060		N	Intercep dental tx transitn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8070		N	Compre dental tx transition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8080		N	Compre dental tx adolescent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8090		N	Compre dental tx adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8210		N	Orthodontic rem appliance tx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8220		N	Fixed appliance therapy habt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8660		N	Preorthodontic tx visit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8670		N	Periodic orthodontc tx visit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8680		N	Orthodontic retention	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8690		N	Orthodontic treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8691		N	Repair ortho appliance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8692		N	Replacement retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
D8999		N	Orthodontic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9110		R	Tx dental pain minor proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9210		I	Dent anesthesia w/o surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9211		I	Regional block anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9212		I	Trigeminal block anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9215		I	Local anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9220		I	General anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9221		I	General anesthesia ea ad 15m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9230		R	Analgesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9240		D	Intravenous sedation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9241		I	Intravenous sedation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9242		I	IV sedation ea ad 30 m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9248		R	Sedation (non-iv)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9310		I	Dental consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9410		I	Dental house call	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9420		I	Hospital call	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9430		I	Office visit during hours	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9440		I	Office visit after hours	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9610		I	Dent therapeutic drug inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9630		R	Other drugs/medicaments	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9910		N	Dent appl desensitizing med	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9911		N	Appl desensitizing resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9920		N	Behavior management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9930		R	Treatment of complications	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9940		R	Dental occlusal guard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9941		N	Fabrication athletic guard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9950		R	Occlusion analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9951		R	Limited occlusal adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9952		R	Complete occlusal adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9970		N	Enamel microabrasion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9971		N	Odontoplasty 1-2 teeth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9972		N	Extrnl bleaching per arch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9973		N	Extrnl bleaching per tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9974		N	Intrnl bleaching per tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9999		I	Adjunctive procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0001		X	Drawing blood for specimen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0002		A	Temporary urinary catheter	0.50	3.06	1.91	0.17	0.47	0.03	3.59	2.44	0.70	1.00	000
G0004		A	ECG transm phys review & int	0.52	7.48	7.71	7.48	7.71	0.46	8.46	8.69	8.46	8.69	XXX
G0005		A	ECG 24 hour recording	0.00	1.24	1.26	1.24	1.26	0.07	1.31	1.33	1.31	1.33	XXX
G0006		A	ECG transmission & analysis	0.00	6.04	6.13	6.04	6.13	0.37	6.41	6.50	6.41	6.50	XXX
G0007		A	ECG phy review & interpret	0.52	0.20	0.32	0.20	0.32	0.02	0.74	0.86	0.74	0.86	XXX
G0008		X	Admin influenza virus vac	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0009		X	Admin pneumococcal vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0010		X	Admin hepatitis b vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0015		A	Post symptom ECG tracing	0.00	6.04	6.13	6.04	6.13	0.37	6.41	6.50	6.41	6.50	XXX
G0016		A	Post symptom ECG md review	0.52	0.26	0.35	0.26	0.35	0.02	0.80	0.89	0.80	0.89	XXX
G0025		A	Collagen skin test kit	0.00	0.00	0.52	0.00	0.52	0.00	0.00	0.52	0.00	0.52	XXX
G0026		X	Fecal leukocyte examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0027		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0030		C	PET imaging prev PET single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0030	26	A	PET imaging prev PET single	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0030	TC	C	PET imaging prev PET single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0031		C	PET imaging prev PET multple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0031	26	A	PET imaging prev PET multple	1.87	0.70	0.71	0.70	0.71	0.07	2.64	2.65	2.64	2.65	XXX
G0031	TC	C	PET imaging prev PET multple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0032		C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0032	26	A	PET follow SPECT 78464 singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0032	TC	C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0033		C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0033	26	A	PET follow SPECT 78464 mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0033	TC	C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0034		C	PET follow SPECT 76865 singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0034	TC	C	PET follow SPECT 76865 singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0034	26	A	PET follow SPECT 76865 singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0035		C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0035	26	A	PET follow SPECT 78465 mult	1.87	0.70	0.71	0.70	0.71	0.07	2.64	2.65	2.64	2.65	XXX
G0035	TC	C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0036		C	PET follow cornry angio sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0036	26	A	PET follow cornry angio sing	1.50	0.52	0.52	0.52	0.52	0.06	2.08	2.08	2.08	2.08	XXX
G0036	TC	C	PET follow cornry angio sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0037		C	PET follow cornry angio mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0037	26	A	PET follow cornry angio mult	1.87	0.70	0.71	0.70	0.71	0.07	2.64	2.65	2.64	2.65	XXX
G0037	TC	C	PET follow cornry angio mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0038		C	PET follow myocard perf sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0038	26	A	PET follow myocard perf sing	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0038	TC	C	PET follow myocard perf sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0039		C	PET follow myocard perf mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0039	26	A	PET follow myocard perf mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0039	TC	C	PET follow myocard perf mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0040		C	PET follow stress echo singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0040	26	A	PET follow stress echo singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
G0040	TC	C	PET follow stress echo singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0041		C	PET follow stress echo mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0041	26	A	PET follow stress echo mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0041	TC	C	PET follow stress echo mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0042		C	PET follow ventriculogm sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0042	26	A	PET follow ventriculogm sing	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0042	TC	C	PET follow ventriculogm sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0043		C	PET follow ventriculogm mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0043	26	A	PET follow ventriculogm mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0043	TC	C	PET follow ventriculogm mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0044		C	PET following rest ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0044	26	A	PET following rest ECG singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0044	TC	C	PET following rest ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0045		C	PET following rest ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0045	26	A	PET following rest ECG mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0045	TC	C	PET following rest ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0046		C	PET follow stress ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0046	26	A	PET follow stress ECG singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0046	TC	C	PET follow stress ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0047		C	PET follow stress ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0047	26	A	PET follow stress ECG mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0047	TC	C	PET follow stress ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0050		A	Residual urine by ultrasound	0.00	0.85	0.87	0.85	0.87	0.04	0.89	0.91	0.89	0.91	XXX
G0101		A	CA screen;pelvic/breast exam	0.45	0.57	0.44	0.17	0.24	0.02	1.04	0.91	0.64	0.71	XXX
G0102		A	Prostate ca screening; dre	0.17	0.07	0.07	0.07	0.07	0.02	0.26	0.26	0.26	0.26	XXX
G0103		X	Psa, total screening	0.00	0.00	0.00	0.09	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0104		A	CA screen;flexi sigmoidscope	0.96	1.88	1.61	0.32	0.45	0.04	2.88	2.61	1.32	1.45	000
G0105		A	Colorectal scrn; hi risk ind	3.70	5.98	5.23	1.29	2.86	0.13	9.81	9.06	5.12	6.69	000
G0106		A	Colon CA screen;barium enema	0.99	2.53	2.67	2.53	2.67	0.15	3.67	3.81	3.67	3.81	XXX
G0106	26	A	Colon CA screen;barium enema	0.99	0.29	0.39	0.29	0.39	0.04	1.32	1.42	1.32	1.42	XXX
G0106	TC	A	Colon CA screen;barium enema	0.00	2.24	2.28	2.24	2.28	0.11	2.35	2.39	2.35	2.39	XXX
G0107		X	CA screen; fecal blood test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0108		A	Diab manage trn per indiv	0.00	1.64	1.64	1.64	1.64	0.01	1.65	1.65	1.65	1.65	XXX
G0109		A	Diab manage trn ind/group	0.00	0.96	0.97	0.96	0.97	0.01	0.97	0.98	0.97	0.98	XXX
G0110		R	Nett pulm-rehab educ; ind	0.90	0.70	0.49	0.35	0.32	0.03	1.63	1.42	1.28	1.25	XXX
G0111		R	Nett pulm-rehab educ; group	0.27	0.28	0.25	0.13	0.18	0.01	0.56	0.53	0.41	0.46	XXX
G0112		R	Nett;nutrition guid, initial	1.72	1.48	1.27	0.67	0.86	0.07	3.27	3.06	2.46	2.65	XXX
G0113		R	Nett;nutrition guid,subseqnt	1.29	1.02	0.93	0.40	0.62	0.05	2.36	2.27	1.74	1.96	XXX
G0114		R	Nett; psychosocial consult	1.20	0.49	0.44	0.37	0.38	0.03	1.72	1.67	1.60	1.61	XXX
G0115		R	Nett; psychological testing	1.20	0.56	0.47	0.46	0.42	0.03	1.79	1.70	1.69	1.65	XXX
G0116		R	Nett; psychosocial counsel	1.11	0.65	0.52	0.33	0.36	0.03	1.79	1.66	1.47	1.50	XXX
G0120		A	Colon ca scrn; barium enema	0.99	2.53	2.67	2.53	2.67	0.15	3.67	3.81	3.67	3.81	XXX
G0120	26	A	Colon ca scrn; barium enema	0.99	0.29	0.39	0.29	0.39	0.04	1.32	1.42	1.32	1.42	XXX
G0120	TC	A	Colon ca scrn; barium enema	0.00	2.24	2.28	2.24	2.28	0.11	2.35	2.39	2.35	2.39	XXX
G0121		N	Colon ca scrn not hi rsk ind	+3.70	6.18	5.33	1.43	2.93	0.13	10.01	9.16	5.26	6.76	XXX
G0122		N	Colon ca scrn; barium enema	+0.99	2.62	2.72	2.62	2.72	0.15	3.76	3.86	3.76	3.86	XXX
G0122	26	N	Colon ca scrn; barium enema	+0.99	0.38	0.44	0.38	0.44	0.04	1.41	1.47	1.41	1.47	XXX
G0122	TC	N	Colon ca scrn; barium enema	+0.00	2.24	2.28	2.24	2.28	0.11	2.35	2.39	2.35	2.39	XXX
G0123		X	Screen cerv/vag thin layer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0124		A	Screen c/v thin layer by MD	0.42	0.20	0.28	0.20	0.28	0.01	0.63	0.71	0.63	0.71	XXX
G0125		A	Lung image (PET)	1.50	56.15	56.15	56.15	56.15	2.06	59.71	59.71	59.71	59.71	XXX
G0125	26	A	Lung image (PET)	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0125	TC	A	Lung image (PET)	0.00	55.63	55.63	55.63	55.63	2.01	57.64	57.64	57.64	57.64	XXX
G0126		A	Lung image (PET) staging	1.87	56.33	56.34	56.33	56.34	2.07	60.27	60.28	60.27	60.28	XXX
G0126	26	A	Lung image (PET) staging	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0126	TC	A	Lung image (PET) staging	0.00	55.63	55.63	55.63	55.63	2.01	57.64	57.64	57.64	57.64	XXX
G0127		R	Trim nail(s)	0.11	0.47	0.37	0.04	0.09	0.01	0.59	0.49	0.16	0.21	000
G0128		R	CORF skilled nursing service	0.08	0.03	0.03	0.03	0.03	0.01	0.12	0.12	0.12	0.12	XXX
G0130		A	Single energy x-ray study	0.22	0.90	0.90	0.90	0.90	0.05	1.17	1.17	1.17	1.17	XXX
G0130	26	A	Single energy x-ray study	0.22	0.11	0.11	0.11	0.11	0.01	0.34	0.34	0.34	0.34	XXX
G0130	TC	A	Single energy x-ray study	0.00	0.79	0.79	0.79	0.79	0.04	0.83	0.83	0.83	0.83	XXX
G0131		A	CT scan, bone density study	0.25	3.18	3.18	3.18	3.18	0.14	3.57	3.57	3.57	3.57	XXX
G0131	26	A	CT scan, bone density study	0.25	0.13	0.13	0.13	0.13	0.01	0.39	0.39	0.39	0.39	XXX
G0131	TC	A	CT scan, bone density study	0.00	3.05	3.05	3.05	3.05	0.13	3.18	3.18	3.18	3.18	XXX
G0132		A	CT scan, bone density study	0.22	0.90	0.90	0.90	0.90	0.05	1.17	1.17	1.17	1.17	XXX
G0132	26	A	CT scan, bone density study	0.22	0.11	0.11	0.11	0.11	0.01	0.34	0.34	0.34	0.34	XXX
G0132	TC	A	CT scan, bone density study	0.00	0.79	0.79	0.79	0.79	0.04	0.83	0.83	0.83	0.83	XXX
G0141		A	Scr c/v cyto, autosys and md	0.42	0.20	0.28	0.20	0.28	0.01	0.63	0.71	0.63	0.71	XXX
G0143		X	Scr c/v cyto, thinlayer, rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0144		X	Scr c/v cyto, thinlayer, rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0145		X	Scr c/v cyto, thinlayer, rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0147		X	Scr c/v cyto, automated sys	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0148		X	Scr c/v cyto, autosys, rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0159		C	Perc declot dialysis graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0160		C	Cryo. ablation, prostate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
G0161		C	Echo guide for cryo probes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0161	26	C	Echo guide for cryo probes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0161	TC	C	Echo guide for cryo probes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0163		A	Pet for rec of colorectal ca	1.50	52.64	52.64	52.64	52.64	0.00	54.14	54.14	54.14	54.14	XXX
G0163	26	A	Pet for rec of colorectal ca	1.50	0.58	0.58	0.58	0.58	0.00	2.08	2.08	2.08	2.08	XXX
G0163	TC	A	Pet for rec of colorectal ca	0.00	52.06	52.06	52.06	52.06	0.00	52.06	52.06	52.06	52.06	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
G0164		A	Pet for lymphoma staging	1.87	52.78	52.78	52.78	52.78	0.00	54.65	54.65	54.65	54.65	XXX
G0164	26	A	Pet for lymphoma staging	1.87	0.72	0.72	0.72	0.72	0.00	2.59	2.59	2.59	2.59	XXX
G0164	TC	A	Pet for lymphoma staging	0.00	52.06	52.06	52.06	52.06	0.00	52.06	52.06	52.06	52.06	XXX
G0165		A	Pet,rec of melanoma/met ca	1.50	52.64	52.64	52.64	52.64	0.00	54.14	54.14	54.14	54.14	XXX
G0165	TC	A	Pet,rec of melanoma/met ca	0.00	52.06	52.06	52.06	52.06	0.00	52.06	52.06	52.06	52.06	XXX
G0165	26	A	Pet,rec of melanoma/met ca	1.50	0.58	0.58	0.58	0.58	0.00	2.08	2.08	2.08	2.08	XXX
G0166		A	Extrnl counterpulse, per tx	0.07	3.40	3.40	0.03	0.03	0.01	3.48	3.48	0.11	0.11	XXX
G0167		A	Hyperbaric oz tx;no md reqrd	0.00	0.73	0.73	0.73	0.73	0.02	0.75	0.75	0.75	0.75	XXX
G0168		A	Wound closure by adhesive	0.45	1.12	1.12	0.25	0.25	0.02	1.59	1.59	0.72	0.72	010
G0169		A	Removal tissue; no anesthsia	0.50	0.36	0.36	0.36	0.36	0.04	0.90	0.90	0.90	0.90	XXX
G0170		A	Skin biograft	1.50	1.50	1.50	0.38	0.38	0.39	3.39	3.39	2.27	2.27	010
G0171		A	Skin biograft add-on	0.38	2.87	2.87	1.03	1.03	0.39	3.64	3.64	1.80	1.80	ZZZ
J0120		E	Tetracyclin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0130		E	Abciximab injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0150		E	Injection adenosine 6 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0151		E	Adenosine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0170		E	Adrenalin epinephrin inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0190		E	Inj biperiden lactate/5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0200		E	Alatrofloxacin mesylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0205		E	Alglucerase injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0207		E	Amifostine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0210		E	Methyldopate hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0256		E	Alpha 1 proteinase inhibitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0270		E	Alprostadil for injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0275		E	Alprostadil urethral suppos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0280		E	Aminophyllin 250 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0285		E	Amphotericin B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0286		E	Amphotericin B lipid complex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0290		E	Ampicillin 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0295		E	Ampicillin sodium per 1.5 gm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0300		E	Amobarbital 125 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0330		E	Succinycholine chloride inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0340		E	Nandrolon phenpropionate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0350		E	Injection anistreplase 30 u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0360		E	Hydralazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0380		E	Inj metaraminol bitartrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0390		E	Chloroquine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0395		E	Arbutamine HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0400		E	Inj trimethaphan camsylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0456		E	Azithromycin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0460		E	Atropine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0470		E	Dimecaprol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0475		E	Baclofen 10 MG injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0476		E	Baclofen intrathecal trial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0500		E	Dicyclomine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0510		E	Benzquinamide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0515		E	Inj benztropine mesylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0520		E	Bethanechol chloride inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0530		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0540		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0550		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0560		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0570		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0580		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0585		E	Botulinum toxin a per unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0590		E	Ethylnorepinephrine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0600		E	Edetate calcium disodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0610		E	Calcium gluconate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0620		E	Calcium glycer & lact/10 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0630		E	Calcitonin salmon injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0635		E	Calcitriol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0640		E	Leucovorin calcium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0670		E	Inj mepivacaine HCL/10 ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0690		E	Cefazolin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0694		E	Cefoxitin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0695		E	Cefonocid sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0696		E	Ceftriaxone sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0697		E	Sterile cefuroxime injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0698		E	Cefotaxime sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0702		E	Betamethasone acet&sod phosp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0704		E	Betamethasone sod phosp/4 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0710		E	Cephapirin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0713		E	Inj ceftazidime per 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0715		E	Ceftizoxime sodium / 500 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0720		E	Chloramphenicol sodium injec	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0725		E	Chorionic gonadotropin/1000u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0730		E	Chlorpheniramin maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0735		E	Clonidine hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0740		E	Cidofovir injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0743		E	Cilastatin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0745		E	Inj codeine phosphate /30 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
J0760		E	Colchicine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0770		E	Colistimethate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0780		E	Prochlorperazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0800		E	Corticotropin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0810		E	Cortisone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0835		E	Inj cosyntropin per 0.25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0850		E	Cytomegalovirus imm IV /vial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0895		E	Deferoxamine mesylate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0900		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0945		E	Brompheniramine maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0970		E	Estradiol valerate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1000		E	Depo-estradiol cypionate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1020		E	Methylprednisolone 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1030		E	Methylprednisolone 40 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1040		E	Methylprednisolone 80 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1050		E	Medroxyprogesterone inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1055		N	Medrxyprogester acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1060		E	Testosterone cypionate 1 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1070		E	Testosterone cypionat 100 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1080		E	Testosterone cypionat 200 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1090		E	Testosterone cypionate 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1095		E	Inj dexamethasone acetate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1100		E	Dexamethasone sodium phos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1110		E	Inj dihydroergotamine mesylt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1120		E	Acetazolamid sodium injectio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1160		E	Digoxin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1165		E	Phenytoin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1170		E	Hydromorphone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1180		E	Dyphylline injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1190		E	Dexrazoxane HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1200		E	Diphenhydramine hcl injectio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1205		E	Chlorothiazide sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1212		E	Dimethyl sulfoxide 50% 50 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1230		E	Methadone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1240		E	Dimenhydrinate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1245		E	Dipyridamole injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1250		E	Inj dobutamine HCL/250 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1260		E	Dolasetron mesylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1320		E	Amitriptyline injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1325		E	Epoprostenol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1327		E	Eptifibatide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1330		E	Ergonovine maleate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1362		E	Erythromycin glucep / 250 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1364		E	Erythro lactobionate /500 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1380		E	Estradiol valerate 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1390		E	Estradiol valerate 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1410		E	Inj estrogen conjugate 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1435		E	Injection estrone per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1436		E	Etidronate disodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1438		E	Etanercept injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1440		E	Filgrastim 300 mcg injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1441		E	Filgrastim 480 mcg injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1450		E	Fluconazole	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1455		E	Foscarnet sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1460		E	Gamma globulin 1 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1470		E	Gamma globulin 2 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1480		E	Gamma globulin 3 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1490		E	Gamma globulin 4 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1500		E	Gamma globulin 5 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1510		E	Gamma globulin 6 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1520		E	Gamma globulin 7 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1530		E	Gamma globulin 8 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1540		E	Gamma globulin 9 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1550		E	Gamma globulin 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1560		E	Gamma globulin ≤ 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1561		E	Immune globulin 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1562		E	Immune globulin 5 gms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1565		E	RSV-ivig	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1570		E	Ganciclovir sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1580		E	Garamycin gentamicin inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1600		E	Gold sodium thiomaleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1610		E	Glucagon hydrochloride/1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1620		E	Gonadorelin hydroch/ 100 mcg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1626		E	Granisetron HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1630		E	Haloperidol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1631		E	Haloperidol decanoate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1642		E	Inj heparin sodium per 10 u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1644		E	Inj heparin sodium per 1000u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1645		E	Dalteparin sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1650		E	Inj enoxaparin sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1670		E	Tetanus immune globulin inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
J1690		E	Prednisolone tebutate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1700		E	Hydrocortisone acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1710		E	Hydrocortisone sodium ph inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1720		E	Hydrocortisone sodium succ i	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1730		E	Diazoxide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1739		E	Hydroxyprogesterone cap 125	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1741		E	Hydroxyprogesterone cap 250	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1742		E	Ibutilide fumarate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1745		E	Infliximab injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1750		E	Iron dextran	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1760		D	Iron dextran 2 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1770		D	Iron dextran 5 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1780		D	Iron dextran 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1785		E	Injection imiglucerase /unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1790		E	Droperidol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1800		E	Propranolol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1810		E	Droperidol/fentanyl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1820		E	Insulin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1825		E	Interferon beta-1a	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1830		E	Interferon beta-1b / .25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1840		E	Kanamycin sulfate 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1850		E	Kanamycin sulfate 75 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1885		E	Ketorolac tromethamine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1890		E	Cephalothin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1910		E	Kutapressin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1930		E	Propiomazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1940		E	Furosemide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1950		E	Leuprolide acetate /3.75 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1955		E	Inj levocarnitine per 1 gm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1956		E	Levofloxacin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1960		E	Levorphanol tartrate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1970		E	Methotrimeprazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1980		E	Hyoscyamine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1990		E	Chlordiazepoxide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2000		E	Lidocaine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2010		E	Lincomycin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2060		E	Lorazepam injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2150		E	Mannitol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2175		E	Meperidine hydrochl /100 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2180		E	Meperidine/promethazine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2210		E	Methylergonovin maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2240		E	Metocurine iodide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2250		E	Inj midazolam hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2260		E	Inj milrinone lactate / 5 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2270		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2271		E	Morphine so4 injection 100mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2275		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2300		E	Inj nalbuphine hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2310		E	Inj naloxone hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2320		E	Nandrolone decanoate 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2321		E	Nandrolone decanoate 100 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2322		E	Nandrolone decanoate 200 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2330		E	Thiothixene injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2350		E	Niacinamide/niacin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2352		E	Octreotide acetate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2355		E	Oprelvekin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2360		E	Orphenadrine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2370		E	Phenylephrine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2400		E	Chloroprocaine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2405		E	Ondansetron hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2410		E	Oxymorphone hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2430		E	Pamidronate disodium /30 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2440		E	Papaverin hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2460		E	Oxytetracycline injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2480		E	Hydrochlorides of opium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2500		E	Paricalcitol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2510		E	Penicillin g procaine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2512		E	Inj pentagastrin per 2 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2515		E	Pentobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2540		E	Penicillin g potassium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2543		E	Piperacillin/tazobactam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2545		E	Pentamidine isethionte/300mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2550		E	Promethazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2560		E	Phenobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2590		E	Oxytocin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2597		E	Inj desmopressin acetate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2640		E	Prednisolone sodium ph inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2650		E	Prednisolone acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2670		E	Totazoline hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2675		E	Inj progesterone per 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2680		E	Fluphenazine decanoate 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
J2690		E	Procainamide hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2700		E	Oxacillin sodium injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2710		E	Neostigmine methylslfte inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2720		E	Inj protamine sulfate/10 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2725		E	Inj protirelin per 250 mcg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2730		E	Pralidoxime chloride inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2760		E	Phentolaine mesylate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2765		E	Metoclopramide hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2780		E	Ranitidine hydrochloride inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2790		E	Rho d immune globulin inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2792		E	Rho(D) immune globulin h, sd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2800		E	Methocarbamol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2810		E	Inj theophylline per 40 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2820		E	Sargramostim injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2860		E	Secobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2910		E	Aurothioglucose injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2912		E	Sodium chloride injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2920		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2930		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2950		E	Promazine hcl injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2970		E	Methicillin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2994		E	Reteplase double bolus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2995		E	Inj streptokinase /250000 IU	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2996		E	Alteplase recombinant inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3000		E	Streptomycin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3010		E	Fentanyl citrate injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3030		E	Sumatriptan succinate / 6 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3070		E	Pentazocine hcl injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3080		E	Chlorprothixene injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3105		E	Terbutaline sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3120		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3130		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3140		E	Testosterone suspension inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3150		E	Testosteron propionate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3230		E	Chlorpromazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3240		E	Thyrotropin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3245		E	Tirofiban hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3250		E	Trimethobenzamide hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3260		E	Tobramycin sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3265		E	Injection torsemide 10 mg/ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3270		E	Imipramine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3280		E	Thiethylperazine maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3301		E	Triamcinolone acetonide inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3302		E	Triamcinolone diacetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3303		E	Triamcinolone hexacetonl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3305		E	Inj trimetrexate glucoronate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3310		E	Perphenazine injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3320		E	Spectinomycn di-hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3350		E	Urea injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3360		E	Diazepam injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3364		E	Urokinase 5000 IU injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3365		E	Urokinase 250,000 IU inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3370		R	Vancomycin hcl injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3390		E	Methoxamine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3400		E	Triflupromazine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3410		E	Hydroxyzine hcl injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3420		E	Vitamin b12 injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3430		E	Vitamin k phytonadione inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3450		E	Mephentermine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3470		E	Hyaluronidase injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3475		E	Inj magnesium sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3480		E	Inj potassium chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3490		E	Drugs unclassified injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3520		N	Edetate disodium per 150 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3530		E	Nasal vaccine inhalation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3535		N	Metered dose inhaler drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3570		N	Laetrile amygdalin vit B17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7030		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7040		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7042		E	5% dextrose/normal saline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7050		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7051		E	Sterile saline/water	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7060		E	5% dextrose/water	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7070		E	D5w infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7100		E	Dextran 40 infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7110		E	Dextran 75 infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7120		E	Ringers lactate infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7130		E	Hypertonic saline solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7190		X	Factor viii	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7191		X	Factor VIII (porcine)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7192		X	Factor viii recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
J7194		X	Factor ix complex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7196		D	Othr hemophilia clot factors	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7197		X	Antithrombin iii injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7198		E	Anti-inhibitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7199		E	Hemophilia clot factor noc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7300		N	Intraut copper contraceptive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7310		E	Ganciclovir long act implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7315		E	Sodium hyaluronate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7320		E	Hylan G-F 20 injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7500		X	Azathioprine oral 50mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7501		X	Azathioprine parenteral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7502		E	Cyclosporine oral 100 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7503		D	Cyclosporine parenteral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7504		X	Lymphocyte immune globulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7505		X	Monoclonal antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7506		X	Prednisone oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7507		E	Tacrolimus oral per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7508		E	Tacrolimus oral per 5 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7509		X	Methylprednisolone oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7510		X	Prednisolone oral per 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7513		E	Daclizumab, parenteral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7515		E	Cyclosporine oral 25 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7516		E	Cyclosporin parenteral 250mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7517		E	Mycophenolate mofetil oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7599		X	Immunosuppressive drug noc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7608		E	Acetylcysteine inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7610		E	Acetylcysteine 10% injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7615		E	Acetylcysteine 20% injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7618		E	Albuterol inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7619		E	Albuterol inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7620		E	Albuterol sulfate .083%/ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7625		E	Albuterol sulfate .5% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7627		E	Bitolterolmesylate inhal sol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7628		E	Bitolterol mes inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7629		E	Bitolterol mes inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7630		E	Cromolyn sodium injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7631		E	Cromolyn sodium inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7635		E	Atropine inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7636		E	Atropine inhal sol unit dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7637		E	Dexamethasone inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7638		E	Dexamethasone inhal sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7639		E	Dornase alpha inhal sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7640		E	Epinephrine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7642		E	Glycopyrrolate inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7643		E	Glycopyrrolate inhal sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7644		E	Ipratropium brom inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7645		E	Ipratropium bromide .02%/ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7648		E	Isoetharine hcl inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7649		E	Isoetharine hcl inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7650		E	Isoetharine hcl .1% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7651		E	Isoetharine hcl .125% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7652		E	Isoetharine hcl .167% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7653		E	Isoetharine hcl .2%/ inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7654		E	Isoetharine hcl .25% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7655		E	Isoetharine hcl 1% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7658		E	Isoproterenolhcl inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7659		E	Isoproterenol hcl inh sol ud	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7660		E	Isoproterenol hcl .5% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7665		E	Isoproterenol hcl 1% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7668		E	Metaproterenol inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7669		E	Metaproterenol inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7670		E	Metaproterenol sulfate .4%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7672		E	Metaproterenol sulfate .6%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7675		E	Metaproterenol sulfate 5%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7680		E	Terbutaline so4 inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7681		E	Terbutaline so4 inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7682		E	Tobramycin inhalation sol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7683		E	Triamcinolone inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7684		E	Triamcinolone inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7699		E	Inhalation solution for DME	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7799		E	Non-inhalation drug for DME	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8499		N	Oral prescrip drug non chemo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8510		E	Oral busulfan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8520		E	Capecitabine, oral, 150 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8521		E	Capecitabine, oral, 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8530		E	Cyclophosphamide oral 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8560		E	Etoposide oral 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8600		E	Melphalan oral 2 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8610		E	Methotrexate oral 2.5 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8999		E	Oral prescription drug chemo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9000		E	Doxorubic hcl 10 MG vl chemo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
J9001		E	Doxorubicin hcl liposome inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9015		E	Aldesleukin/single use vial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9020		E	Asparaginase injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9031		E	Bcg live intravesical vac	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9040		E	Bleomycin sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9045		E	Carboplatin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9050		E	Carmus bischl nitro inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9060		E	Cisplatin 10 MG injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9062		E	Cisplatin 50 MG injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9065		E	Inj cladribine per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9070		E	Cyclophosphamide 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9080		E	Cyclophosphamide 200 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9090		E	Cyclophosphamide 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9091		E	Cyclophosphamide 1.0 grm inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9092		E	Cyclophosphamide 2.0 grm inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9093		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9094		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9095		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9096		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9097		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9100		E	Cytarabine hcl 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9110		E	Cytarabine hcl 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9120		E	Dactinomycin actinomycin d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9130		E	Dacarbazine 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9140		E	Dacarbazine 200 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9150		E	Daunorubicin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9151		E	Daunorubicin citrate liposom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9165		E	Diethylstilbestrol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9170		E	Docetaxel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9181		E	Etoposide 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9182		E	Etoposide 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9185		E	Fludarabine phosphate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9190		E	Fluorouracil injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9200		E	Floxuridine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9201		E	Gemcitabine HCl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9202		E	Goserelin acetate implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9206		E	Irinotecan injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9208		E	Ifosfomide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9209		E	Mesna injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9211		E	Idarubicin hcl injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9212		E	Interferon alfacon-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9213		E	Interferon alfa-2a inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9214		E	Interferon alfa-2b inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9215		E	Interferon alfa-n3 inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9216		E	Interferon gamma 1-b inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9217		E	Leuprolide acetate suspnsion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9218		E	Leuprolide acetate injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9230		E	Mechlorethamine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9245		E	Inj melphalan hydrochl 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9250		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9260		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9265		E	Paclitaxel injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9266		E	Pegaspargase/singl dose vial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9268		E	Pentostatin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9270		E	Plicamycin (mithramycin) inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9280		E	Mitomycin 5 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9290		E	Mitomycin 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9291		E	Mitomycin 40 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9293		E	Mitoxantrone hydrochl / 5 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9310		E	Rituximab cancer treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9320		E	Streptozocin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9340		E	Thiotepa injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9350		E	Topotecan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9355		E	Trastuzumab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9357		E	Valrubicin, 200 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9360		E	Vinblastine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9370		E	Vincristine sulfate 1 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9375		E	Vincristine sulfate 2 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9380		E	Vincristine sulfate 5 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9390		E	Vinorelbine tartrate/10 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9600		E	Porfimer sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9999		E	Chemotherapy drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0064		A	Visit for drug monitoring	0.37	0.26	0.24	0.12	0.17	0.01	0.64	0.62	0.50	0.55	XXX
M0075		N	Cellular therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0076		N	Prolotherapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0100		N	Intragastric hypothermia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0300		N	IV chelationtherapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0301		N	Fabric wrapping of aneurysm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0302		C	Assessment of cardiac output	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0302	26	C	Assessment of cardiac output	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0302	TC	C	Assessment of cardiac output	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.

[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
P2028		X	Cephalin floculation test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2029		X	Congo red blood test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2031		N	Hair analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2033		X	Blood thymol turbidity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2038		X	Blood mucoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P3000		X	Screen pap by tech w md supv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P3001		A	Screening pap smear by phys	0.42	0.20	0.28	0.20	0.28	0.01	0.63	0.71	0.63	0.71	XXX
P7001		I	Culture bacterial urine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9010		E	Whole blood for transfusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9011		E	Blood split unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9012		E	Cryoprecipitate each unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9013		E	Unit/s blood fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9016		E	Leukocyte poor blood, unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9017		E	One donor fresh frozn plasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9018		E	Plasma protein fract, unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9019		E	Platelet concentrate unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9020		E	Plaelet rich plasma unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9021		E	Red blood cells unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9022		E	Washed red blood cells unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9023		X	Frozen plasma, pooled, sd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9603		X	One-way allow prorated miles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9604		X	One-way allow prorated trip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9612		X	Catheterize for urine spec	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9615		X	Urine specimen collect mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0034		X	Admin of influenza vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0035		A	Cardiokymography	0.17	0.46	0.50	0.46	0.50	0.03	0.66	0.70	0.66	0.70	XXX
Q0035	TC	A	Cardiokymography	0.00	0.39	0.40	0.39	0.40	0.02	0.41	0.42	0.41	0.42	XXX
Q0035	26	A	Cardiokymography	0.17	0.07	0.10	0.07	0.10	0.01	0.25	0.28	0.25	0.28	XXX
Q0068		D	Extracorpeal plasmapheresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
Q0091		A	Obtaining screen pap smear	0.37	0.66	0.48	0.14	0.22	0.01	1.04	0.86	0.52	0.60	XXX
Q0092		A	Set up port xray equipment	0.00	0.32	0.33	0.32	0.33	0.01	0.33	0.34	0.33	0.34	XXX
Q0111		X	Wet mounts/ w preparations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0112		X	Potassium hydroxide preps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0113		X	Pinworm examinations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0114		X	Fern test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0115		X	Post-coital mucous exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0132		D	Dispensing fee DME neb drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0136		X	Non esrd epoetin alpha inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0144		N	Azithromycin dihydrate, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0156		X	Human albumin 5%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0157		X	Human albumin 25%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0160		X	Factor IX non-recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0161		X	Factor IX recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0163		X	Diphenhydramine HCl 50mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0164		X	Prochlorperazine maleate 5mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0165		X	Prochlorperazine maleate10mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0166		X	Granisetron HCl 1 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0167		X	Dronabinol 2.5mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0168		X	Dronabinol 5mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0169		X	Promethazine HCl 12.5mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0170		X	Promethazine HCl 25 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0171		X	Chlorpromazine HCl 10mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0172		X	Chlorpromazine HCl 25mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0173		X	Trimethobenzamide HCl 250mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0174		X	Thiethylperazine maleate10mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0175		X	Perphenazine 4mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0176		X	Perphenazine 8mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0177		X	Hydroxyzine pamoate 25mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0178		X	Hydroxyzine pamoate 50mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0179		X	Ondansetron HCl 8mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0180		X	Dolasetron mesylate oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0181		X	Unspecified oral anti-emetic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0183		E	Nonmetabolic active tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0184		E	Metabolically active tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0185		E	Metabolic active D/E tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0186		E	Paramedic intercept, rural	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0187		E	Factor viia recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1001		E	Ntiol category 1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1002		E	Ntiol category 2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1003		E	Ntiol category 3	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1004		E	Ntiol category 4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1005		E	Ntiol category 5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9920		E	Epoetin with hct <= 20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9921		E	Epoetin with hct = 21	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9922		E	Epoetin with hct = 22	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9923		E	Epoetin with hct = 23	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9924		E	Epoetin with hct = 24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9925		E	Epoetin with hct = 25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9926		E	Epoetin with hct = 26	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9927		E	Epoetin with hct = 27	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9928		E	Epoetin with hct = 28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
Q9929		E	Epoetin with hct = 29	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9930		E	Epoetin with hct = 30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9931		E	Epoetin with hct = 31	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9932		E	Epoetin with hct = 32	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9933		E	Epoetin with hct = 33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9934		E	Epoetin with hct = 34	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9935		E	Epoetin with hct = 35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9936		E	Epoetin with hct = 36	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9937		E	Epoetin with hct = 37	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9938		E	Epoetin with hct = 38	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9939		E	Epoetin with hct = 39	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9940		E	Epoetin with hct ≤= 40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0070		C	Transport portable x-ray	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0075		C	Transport port x-ray multipl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0076		B	Transport portable EKG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0009		I	Injection, butorphanol tartr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0010		I	Injection, somatrem, 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0011		I	Injection, somatropin, 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0012		I	Butorphanol tartrate, nasal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0014		I	Tacrine hydrochloride, 10 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0016		I	Injection, amikacin sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0017		I	Injection, aminocaproic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0020		I	Injection, bupivicaine hydro	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0021		I	Injection, ceftoperazone sod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0023		I	Injection, cimetidine hydroc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0024		I	Injection, ciprofloxacin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0028		I	Injection, famotidine, 20 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0029		I	Injection, fluconazole	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0030		I	Injection, metronidazole	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0032		I	Injection, nafcillin sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0034		I	Injection, ofloxacin, 400 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0039		I	Injection, sulfamethoxazole	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0040		I	Injection, ticarcillin disod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0071		I	Injection, acyclovir sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0072		I	Injection, amikacin sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0073		I	Injection, aztreonam, 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0074		I	Injection, cefotetan disodiu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0077		I	Injection, clindamycin phosp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0078		I	Injection, fosphenytoin sodi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0080		I	Injection, pentamidine iseth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0081		I	Injection, piperacillin sodi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0090		I	Sildenafil citrate, 25 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0096		I	Injection, itraconazole, 200	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0097		I	Injection, ibutilide fumarat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0098		I	Injection, sodium ferric glu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0601		I	Screening proctoscopy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0605		I	Digital rectal examination,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0610		I	Annual gynecological examina	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0612		I	Annual gynecological examina	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0620		I	Routine ophthalmological exa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0621		I	Routine ophthalmological exa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0800		I	Laser in situ keratomileusis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0810		I	Photorefractive keratectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2050		I	Donor enterectomy, with prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2052		I	Transplantation of small int	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2053		I	Transplantation of small int	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2054		I	Transplantation of multivisc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2055		I	Harvesting of donor multivis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2109		I	Autologous chondrocyte trans	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2190		I	Subcutaneous implantation of	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2204		I	Transmyocardial laser revasc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2205		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2206		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2207		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2208		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2209		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2210		I	Cryosurgical ablation (in si	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2300		I	Arthroscopy, shoulder, surgi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2350		I	Diskectomy, anterior, with d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2351		I	Diskectomy, anterior, with d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S3645		I	HIV-1 antibody testing of or	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S3650		I	Saliva test, hormone level;	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S3652		I	Saliva test, hormone level;	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8035		I	Magnetic source imaging	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8040		I	Topographic brain mapping	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8048		I	Isolated limb perfusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8049		I	Intraoperative radiation the	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8060		I	Supply of contrast material	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8092		I	Electron beam computed tomog	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8095		I	Wig (for medically-induced h	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8096		I	Portable peak flow meter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
S8110		I	Peak expiratory flow rate (p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8200		I	Chest compression vest	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8205		I	Chest compression system gen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8260		I	Oral orthotic for treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8300		I	Sacral nerve stimulation tes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8950		I	Complex lymphedema therapy,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9001		I	Home uterine monitor with or	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9022		I	Digital subtraction angiogra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9023		I	Xenon regional cerebral bloo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9024		I	Paranasal sinus ultrasound	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9033		I	Gait analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9055		I	Procuren or other growth fac	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9056		I	Coma stimulation per diem	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9075		I	Smoking cessation treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9085		I	Meniscal allograft transplan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9090		I	Vertebral axial decompressio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9122		I	Home health aide or certifie	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9123		I	Nursing care, in the home; b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9124		I	Nursing care, in the home; b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9125		I	Respite care, in the home, p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9126		I	Hospice care, in the home, p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9127		I	Social work visit, in the ho	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9128		I	Speech therapy, in the home,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9129		I	Occupational therapy, in the	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9140		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9141		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9455		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9460		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9465		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9470		I	Nutritional counseling, diet	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9472		I	Cardiac rehabilitation progr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9473		I	Pulmonary rehabilitation pro	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9474		I	Enterostomal therapy by a re	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9475		I	Ambulatory setting substance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9480		I	Intensive outpatient psychia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9485		I	Crisis intervention mental h	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9524		I	Nursing services related to	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9527		I	Insertion of a peripherally	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9528		I	Insertion of midline central	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9543		I	Administration of medication	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9990		I	Services provided as part of	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9991		I	Services provided as part of	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9992		I	Transportation costs to and	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9994		I	Lodging costs (e.g. hotel ch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9996		I	Meals for clinical trial par	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9999		I	Sales tax	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2020		X	Vision svcs frames purchases	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2025		N	Eyeglasses delux frames	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2100		X	Lens spher single plano 4.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2101		X	Single visn sphere 4.12-7.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2102		X	Singl visn sphere 7.12-20.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2103		X	Spherocylindr 4.00d/12-2.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2104		X	Spherocylindr 4.00d/2.12-4d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2105		X	Spherocylinder 4.00d/4.25-6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2106		X	Spherocylinder 4.00d/≤6.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2107		X	Spherocylinder 4.25d/12-2d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2108		X	Spherocylinder 4.25d/2.12-4d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2109		X	Spherocylinder 4.25d/4.25-6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2110		X	Spherocylinder 4.25d/over 6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2111		X	Spherocylindr 7.25d/.25-2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2112		X	Spherocylindr 7.25d/2.25-4d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2113		X	Spherocylindr 7.25d/4.25-6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2114		X	Spherocylinder over 12.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2115		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2116		X	Nonaspheric lens bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2117		X	Aspheric lens bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2118		X	Lens aniseikonic single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2199		X	Lens single vision not oth c	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2200		X	Lens spher bifoc plano 4.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2201		X	Lens sphere bifocal 4.12-7.0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2202		X	Lens sphere bifocal 7.12-20.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2203		X	Lens sphcyl bifocal 4.00d/.1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2204		X	Lens sphcy bifocal 4.00d/2.1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2205		X	Lens sphcy bifocal 4.00d/4.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2206		X	Lens sphcy bifocal 4.00d/ove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2207		X	Lens sphcy bifocal 4.25-7d/.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2208		X	Lens sphcy bifocal 4.25-7/2.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2209		X	Lens sphcy bifocal 4.25-7/4.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2210		X	Lens sphcy bifocal 4.25-7/ov	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2211		X	Lens sphcy bifo 7.25-12/.25-	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2212		X	Lens sphcyl bifo 7.25-12/2.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
V2213		X	Lens sphcyl bifo 7.25-12/4.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2214		X	Lens sphcyl bifocal over 12.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2215		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2216		X	Lens lenticular nonasphenc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2217		X	Lens lenticular asphenc bif	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2218		X	Lens aniseikonic bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2219		X	Lens bifocal seg width over	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2220		X	Lens bifocal add over 3.25d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2299		X	Lens bifocal speciality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2300		X	Lens sphere trifocal 4.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2301		X	Lens sphere trifocal 4.12-7.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2302		X	Lens sphere trifocal 7.12-20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2303		X	Lens sphcy trifocal 4.0/.12-	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2304		X	Lens sphcy trifocal 4.0/2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2305		X	Lens sphcy trifocal 4.0/4.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2306		X	Lens sphcyl trifocal 4.00/≤6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2307		X	Lens sphcy trifocal 4.25-7/.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2308		X	Lens sphc trifocal 4.25-7/2.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2309		X	Lens sphc trifocal 4.25-7/4.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2310		X	Lens sphc trifocal 4.25-7/≤6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2311		X	Lens sphc trifo 7.25-12/.25-	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2312		X	Lens sphc trifo 7.25-12/2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2313		X	Lens sphc trifo 7.25-12/4.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2314		X	Lens sphcyl trifocal over 12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2315		X	Lens lenticular trifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2316		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2317		X	Lens lenticular asphenc tri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2318		X	Lens aniseikonic trifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2319		X	Lens trifocal seg width ≤ 28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2320		X	Lens trifocal add over 3.25d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2399		X	Lens trifocal speciality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2410		X	Lens vanab asphericity sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2430		X	Lens variable asphericity bi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2499		X	Variable asphericity lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2500		X	Contact lens pmma spherical	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2501		X	Cntct lens pmma-toric/prism	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2502		X	Contact lens pmma bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2503		X	Cntct lens pmma color vision	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2510		X	Cntct gas permeable sphericl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2511		X	Cntct toric prism ballast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2512		X	Cntct lens gas permbl bifocl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2513		X	Contact lens extended wear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2520		P	Contact lens hydrophilic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2521		X	Cntct lens hydrophilic toric	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2522		X	Cntct lens hydrophil bifocl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2523		X	Cntct lens hydrophil extend	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2530		X	Contact lens gas impermeable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2531		X	Contact lens gas permeable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2599		X	Contact lens/es other type	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2600		X	Hand held low vision aids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2610		X	Single lens spectacle mount	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2615		X	Telescop/othr compound lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2623		X	Plastic eye prosth custom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2624		X	Polishing artifical eye	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2625		X	Enlargemnt of eye prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2626		X	Reduction of eye prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2627		X	Scleral cover shell	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2628		X	Fabrication & fitting	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2629		X	Prosthetic eye other type	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2630		X	Anter chamber intraocul lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2631		X	Iris support intraoclr lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2632		X	Post chmbr intraocular lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2700		X	Balance lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2710		X	Glass/plastic slab off prism	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2715		X	Prism lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2718		X	Fresnell prism press-on lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2730		X	Special base curve	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2740		X	Rose tint plastic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2741		X	Non-rose tint plastic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2742		X	Rose tint glass	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2743		X	Non-rose tint glass	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2744		X	Tint photochromatic lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2750		X	Anti-reflective coating	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2755		X	UV lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2760		X	Scratch resistant coating	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2770		X	Occluder lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2780		X	Oversize lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2781		X	Progressive lens per lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2785		X	Corneal tissue processing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2799		X	Miscellaneous vision service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5008		N	Hearing screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

[4] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION USED IN DETERMINING MEDICARE PAYMENTS FOR 2000—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully Implemented Non-Facility PE RVUs	Year 2000 Transitional Non-Facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-Practice RVUs	Fully Implemented Non-Facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
V5010		N	Assessment for hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5011		N	Hearing aid fitting/checking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5014		N	Hearing aid repair/modifying	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5020		N	Conformity evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5030		N	Body-worn hearing aid air	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5040		N	Body-worn hearing aid bone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5050		N	Body-worn hearing aid in ear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5060		N	Behind ear hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5070		N	Glasses air conduction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5080		N	Glasses bone conduction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5090		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5100		N	Body-worn bilat hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5110		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5120		N	Body-worn binaur hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5130		N	In ear binaural hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5140		N	Behind ear binaur hearing ai	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5150		N	Glasses binaural hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5160		N	Dispensing fee binaural	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5170		N	Within ear cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5180		N	Behind ear cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5190		N	Glasses cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5200		N	Cros hearing aid dispens fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5210		N	In ear bicros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5220		N	Behind ear bicros hearing ai	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5230		N	Glasses bicros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5240		N	Dispensing fee bicros	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5299		R	Hearing service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5336		N	Repair communication device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5362		R	Speech screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5363		R	Language screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5364		R	Dysphagia screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

ADDENDUM C.—CODES WITH INTERIM RVUS

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs[3]	Fully Implemented Non-facility PE RVUs	Year 2000 Transitional Non-facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-practice RVUs	Fully Implemented Non-facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
11980		A	Implant hormone pellet(s)	1.48	1.48	1.48	0.57	0.57	0.11	3.07	3.07	2.16	2.16	000
13102		A	Repair wound/lesion add-on	1.24	0.71	0.71	0.57	0.57	0.08	2.03	2.03	1.89	1.89	ZZZ
13122		A	Repair wound/lesion add-on	1.44	0.83	0.83	0.66	0.66	0.09	2.36	2.36	2.19	2.19	ZZZ
13133		A	Repair wound/lesion add-on	2.19	1.18	1.18	1.01	1.01	0.12	3.49	3.49	3.32	3.32	ZZZ
13153		A	Repair wound/lesion add-on	2.38	1.31	1.31	1.09	1.09	0.15	3.84	3.84	3.62	3.62	ZZZ
20979		A	Us bone stimulation	0.17	0.25	0.25	0.07	0.07	0.01	0.43	0.43	0.25	0.25	000
22318		A	Treat odontoid fx w/o graft	21.50	NA	NA	14.50	14.50	3.89	NA	NA	39.89	39.89	090
22319		A	Treat odontoid fx w/graft	24.00	NA	NA	16.72	16.72	4.34	NA	NA	45.06	45.06	090
27096		A	Inject sacroiliac joint	1.10	9.96	9.96	0.36	0.36	0.09	11.15	11.15	1.55	1.55	000
33140		A	Heart revascularize (tmr)	20.00	NA	NA	13.15	13.15	2.56	NA	NA	35.71	35.71	090
33244		A	Remove eltrd, transven	13.76	NA	NA	9.22	9.51	1.83	NA	NA	24.81	25.10	090
33249		A	Eltrd/insert pace-defib	14.23	NA	NA	9.87	12.87	1.79	NA	NA	25.89	28.89	090
33282		A	Implant pat-active ht record	4.17	NA	NA	5.99	5.99	0.53	NA	NA	10.69	10.69	090
33284		A	Remove pat-active ht record	2.50	NA	NA	5.46	5.46	0.33	NA	NA	8.29	8.29	090
33405		A	Replacement of aortic valve	30.61	NA	NA	22.51	27.80	3.97	NA	NA	57.09	62.38	090
33410		A	Replacement of aortic valve	32.46	NA	NA	23.27	23.27	4.21	NA	NA	59.94	59.94	090
33968		A	Remove aortic assist device	0.64	0.25	0.25	0.25	0.25	0.27	1.16	1.16	1.16	1.16	090
35879		A	Revise graft w/vein	16.00	NA	NA	8.46	8.46	1.97	NA	NA	26.43	26.43	090
35881		A	Revise graft w/vein	18.00	NA	NA	8.77	8.77	2.21	NA	NA	28.98	28.98	090
36521		A	Apheresis w/ adsorp/reinfuse	1.74	NA	NA	0.65	0.65	0.09	NA	NA	2.48	2.48	000
36550		A	Declot vascular device	0.00	0.51	0.51	0.06	0.06	0.32	0.83	0.83	0.38	0.38	XXX
36819		A	Av fusion by basilic vein	14.00	NA	NA	6.65	6.65	1.55	NA	NA	22.20	22.20	090
39560		A	Resect diaphragm, simple	12.00	NA	NA	8.79	8.79	1.22	NA	NA	22.01	22.01	090
39561		A	Resect diaphragm, complex	17.50	NA	NA	10.89	10.89	1.79	NA	NA	30.18	30.18	090
50541		A	Laparo ablate renal cyst	16.00	NA	NA	6.53	6.53	1.03	NA	NA	23.56	23.56	090
50544		A	Laparoscopy, pyeloplasty	22.40	NA	NA	8.70	8.70	1.36	NA	NA	32.46	32.46	090
50546		A	Laparoscopic nephrectomy	20.48	NA	NA	8.23	8.23	1.41	NA	NA	30.12	30.12	090
50547		A	Laparo removal donor kidney	25.50	NA	NA	11.21	11.21	1.98	NA	NA	38.69	38.69	090
50548		A	Laparo-asst remove k/ureter	24.40	NA	NA	9.42	9.42	1.52	NA	NA	35.34	35.34	090
50945		A	Laparoscopy ureterolithotomy	17.00	NA	NA	6.84	6.84	1.07	NA	NA	24.91	24.91	090
51990		A	Laparo urethral suspension	12.50	NA	NA	5.94	5.94	0.87	NA	NA	19.31	19.31	090
51992		A	Laparo sling operation	14.01	NA	NA	6.15	6.15	0.86	NA	NA	21.02	21.02	090
54692		A	Laparoscopy, orchiopexy	12.88	NA	NA	5.56	5.56	0.87	NA	NA	19.31	19.31	090
61751		A	Brain biopsy w/ ct/mr guide	17.62	NA	NA	10.76	15.90	3.47	NA	NA	31.85	36.99	090
61862		A	Implant neurostimul, subcort	19.34	NA	NA	12.02	12.02	3.89	NA	NA	35.25	35.25	090
61885		A	Implant neurostim one array	8.00	NA	NA	4.04	3.09	1.18	NA	NA	13.22	12.27	090
61886		A	Implant neurostim arrays	8.00	NA	NA	5.98	5.98	1.43	NA	NA	15.41	15.41	090
62263		A	Lysis epidural adhesions	6.02	4.61	4.61	2.18	2.18	0.88	11.51	11.51	9.08	9.08	000

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ADDENDUM C.—CODES WITH INTERIM RVUs—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs[3]	Fully Implemented Non-facility PE RVUs	Year 2000 Transitional Non-facility PE RVUs	Fully Implemented Facility PE RVUs	Year 2000 Transitional Facility PE RVUs	Mal-practice RVUs	Fully Implemented Non-facility Total	Year 2000 Transitional Non-Facility Total	Fully Implemented Facility Total	Year 2000 Transitional Facility Total	Global
62310		A	Inject spine c/t	1.91	3.24	3.24	0.38	0.38	0.26	5.41	5.41	2.55	2.55	000
62311		A	Inject spine l/s (cd)	1.54	3.66	3.66	0.33	0.33	0.25	5.45	5.45	2.12	2.12	000
62318		A	Inject spine w/cath, c/t	2.04	3.29	3.29	0.40	0.40	0.32	5.65	5.65	2.76	2.76	000
62319		A	Inject spine w/cath l/s (cd)	1.87	3.35	3.35	0.35	0.35	0.28	5.50	5.50	2.50	2.50	000
64470		A	Inj paravertebral c/t	1.85	3.60	3.60	0.46	0.46	0.12	5.57	5.57	2.43	2.43	000
64472		A	Inj paravertebral c/t add-on	1.29	3.29	3.29	0.35	0.35	0.09	4.67	4.67	1.73	1.73	ZZZ
64479		A	Inj foramen epidural c/t	2.20	3.70	3.70	0.55	0.55	0.15	6.05	6.05	2.90	2.90	000
64480		A	Inj foramen epidural add-on	1.54	3.80	3.80	0.36	0.36	0.11	5.45	5.45	2.01	2.01	ZZZ
64483		A	Inj foramen epidural l/s	1.90	3.58	3.58	0.47	0.47	0.10	5.58	5.58	2.47	2.47	000
64484		A	Inj foramen epidural add-on	1.33	3.72	3.72	0.31	0.31	0.10	5.15	5.15	1.74	1.74	ZZZ
64573		A	Implant neuroelectrodes	7.50	NA	NA	5.34	4.39	0.84	NA	NA	13.68	12.73	090
64626		A	Destr paravertebrl nerve c/t	3.28	3.59	3.59	0.90	0.90	0.22	7.09	7.09	4.40	4.40	010
64627		A	Destr paravertebral n add-on	1.16	2.99	2.99	0.32	0.32	0.08	4.23	4.23	1.56	1.56	ZZZ
72275	26	A	Epidurography	0.54	0.14	0.14	0.14	0.14	0.05	0.73	0.73	0.73	0.73	XXX
72285	26	A	X-ray c/t spine disk	1.16	0.34	0.38	0.34	0.38	0.04	1.54	1.58	1.54	1.58	XXX
73542	26	A	X-ray exam, sacroiliac joint	0.54	0.15	0.15	0.15	0.15	0.04	0.73	0.73	0.73	0.73	XXX
76005	26	A	Fluoroguide for spine inject	0.60	0.17	0.17	0.17	0.17	0.03	0.80	0.80	0.80	0.80	XXX
76873	26	A	Echograp trans r, pros study	1.38	0.43	0.43	0.43	0.43	0.07	1.88	1.88	1.88	1.88	XXX
77427		A	Radiation tx management, x5	3.31	1.08	1.08	1.08	1.08	0.11	4.50	4.50	4.50	4.50	XXX
78267		X	Breath tst attain/anal c-14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78268		X	Breath test analysis, c-14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78456	26	A	Acute venous thrombus image	1.00	0.30	0.30	0.30	0.30	0.05	1.35	1.35	1.35	1.35	XXX
92961		A	Cardioversion, electric, int	4.60	1.54	1.54	1.54	1.54	0.31	6.45	6.45	6.45	6.45	000
93727		A	Analyze ilr system	0.52	0.21	0.21	0.21	0.21	0.02	0.75	0.75	0.75	0.75	XXX
93741	26	A	Analyze ht pace device sngl	0.64	0.25	0.25	0.25	0.25	0.02	0.91	0.91	0.91	0.91	XXX
93742	26	A	Analyze ht pace device sngl	0.73	0.28	0.28	0.28	0.28	0.02	1.03	1.03	1.03	1.03	XXX
93743	26	A	Analyze ht pace device dual	0.83	0.32	0.32	0.32	0.32	0.02	1.17	1.17	1.17	1.17	XXX
93744	26	A	Analyze ht pace device dual	0.95	0.37	0.37	0.37	0.37	0.02	1.34	1.34	1.34	1.34	XXX
96570		A	Photodynamic tx, 30 min	1.10	0.71	0.71	0.43	0.43	0.28	2.09	2.09	1.81	1.81	000
96571		A	Photodynamic tx, addl 15 min	0.55	0.31	0.31	0.21	0.21	0.28	1.14	1.14	1.04	1.04	000
99170		A	Anogenital exam, child	1.75	1.82	1.82	0.68	0.68	0.11	3.68	3.68	2.54	2.54	000
99173		N	Visual screening test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99291		A	Critical care, first hour	3.60	1.38	1.47	1.15	1.35	0.14	5.12	5.21	4.89	5.09	XXX
99292		A	Critical care, addl 30 min	1.80	0.76	0.72	0.57	0.63	0.08	2.64	2.60	2.45	2.51	ZZZ
G0102		A	Prostate ca screening; dre	0.17	0.07	0.07	0.07	0.07	0.02	0.26	0.26	0.26	0.26	XXX
G0159		C	Perc declot dialysis graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0166		A	Extrnl counterpulse, per tx	0.07	3.40	3.40	0.03	0.03	0.01	3.48	3.48	0.11	0.11	XXX
G0167		A	Hyperbaric oz tx;no md reqrd	0.00	0.73	0.73	0.73	0.73	0.02	0.75	0.75	0.75	0.75	XXX
G0168		A	Wound closure by adhesive	0.45	1.12	1.12	0.25	0.25	0.02	1.59	1.59	0.72	0.72	010
G0169		A	Removal tissue; no anesthsia	0.50	0.36	0.36	0.36	0.36	0.04	0.90	0.90	0.90	0.90	XXX
G0170		A	Skin biograft	1.50	1.50	1.50	0.38	0.38	0.39	3.39	3.39	2.27	2.27	010
G0171		A	Skin biograft add-on	0.38	2.87	2.87	1.03	1.03	0.39	3.64	3.64	1.80	1.80	ZZZ

ADDENDUM D.—1999/2000 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY

Carrier No.	Locality No.	Locality name	Work	Practice expense	Mal-practice
00510	00	ALABAMA	0.978	0.872	0.876
00831	01	ALASKA	1.063	1.173	1.533
00832	00	ARIZONA	0.995	0.971	1.189
00520	13	ARKANSAS	0.953	0.855	0.403
02050	26	ANAHEIM/SANTA ANA, CA	1.036	1.191	0.846
02050	18	LOS ANGELES, CA	1.055	1.199	0.846
31140	03	MARIN/NAPA/SOLANO, CA	1.014	1.161	0.667
31140	07	OAKLAND/BERKLEY, CA	1.040	1.196	0.667
31140	05	SAN FRANCISCO, CA	1.067	1.299	0.667
31140	06	SAN MATEO, CA	1.047	1.274	0.667
31140	09	SANTA CLARA, CA	1.062	1.262	0.667
02050	17	VENTURA, CA	1.027	1.131	0.717
02050	99	REST OF STATE*	1.008	1.043	0.698
31140	99	REST OF STATE*	1.008	1.043	0.698
00824	01	COLORADO	0.987	0.970	0.795
10230	00	CONNECTICUT	1.049	1.172	1.052
00570	01	DELAWARE	1.019	1.028	0.860
00580	01	DC + MD/VA SUBURBS	1.050	1.161	1.032
00590	03	FORT LAUDERDALE, FL	0.996	1.026	1.783
00590	04	MIAMI, FL	1.015	1.077	2.350
00590	99	REST OF STATE	0.975	0.948	1.327
00511	01	ATLANTA, GA	1.006	1.034	0.951
00511	99	REST OF STATE	0.970	0.900	0.951
00833	01	HAWAII/GUAM	0.998	1.183	0.954
05130	00	IDAHO	0.960	0.892	0.566

ADDENDUM D.—1999/2000 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Mal-practice
00621	16	CHICAGO, IL	1.027	1.088	1.693
00621	12	EAST ST. LOUIS, IL	0.988	0.931	1.487
00621	15	SUBURBAN CHICAGO, IL	1.006	1.067	1.365
00621	99	REST OF STATE	0.963	0.886	0.990
00630	00	INDIANA	0.981	0.917	0.408
00640	00	IOWA	0.958	0.882	0.648
00650	00	KANSAS*	0.963	0.898	0.890
00740	04	KANSAS*	0.963	0.898	0.890
00660	00	KENTUCKY	0.970	0.874	0.807
00528	01	NEW ORLEANS, LA	0.998	0.950	1.153
00528	99	REST OF STATE	0.969	0.881	1.031
31142	03	SOUTHERN MAINE	0.979	1.030	0.708
31142	99	REST OF STATE	0.961	0.924	0.708
00901	01	BALTIMORE/SURR. CNTYS, MD	1.019	1.039	1.098
00901	99	REST OF STATE	0.985	0.986	0.866
31143	01	METROPOLITAN BOSTON	1.039	1.196	0.713
31143	99	REST OF STATE	1.010	1.093	0.713
00623	01	DETROIT, MI	1.042	1.022	3.069
00623	99	REST OF STATE	0.996	0.939	1.828
10240	00	MINNESOTA	0.989	0.967	0.507
10250	00	MISSISSIPPI	0.957	0.846	0.721
00740	02	METROPOLITAN KANSAS CITY, MO	0.988	0.949	1.196
11260	01	METROPOLITAN ST. LOUIS, MO	0.994	0.943	1.198
00740	99	REST OF STATE*	0.945	0.828	1.165
11260	99	REST OF STATE*	0.945	0.828	1.165
00751	01	MONTANA	0.951	0.877	0.732
00655	00	NEBRASKA	0.949	0.873	0.443
00834	00	NEVADA	1.005	1.032	0.997
31144	40	NEW HAMPSHIRE	0.988	1.033	1.013
00860	01	NORTHERN NJ	1.057	1.191	0.795
00860	99	REST OF STATE	1.028	1.094	0.795
00521	05	NEW MEXICO	0.973	0.910	0.716
00803	01	MANHATTAN, NY	1.093	1.353	1.654
00803	02	NYC SUBURBS/LONG I., NY	1.067	1.233	1.932
00803	03	POUGHKPSIE/N NYC SUBURBS, NY	1.010	1.084	1.326
14330	04	QUEENS, NY	1.057	1.234	1.839
00801	99	REST OF STATE	0.999	0.959	0.793
05535	00	NORTH CAROLINA	0.970	0.924	0.497
00820	01	NORTH DAKOTA	0.950	0.877	0.656
16360	00	OHIO	0.990	0.939	1.074
00522	00	OKLAHOMA	0.969	0.882	0.451
00835	01	PORTLAND, OR	0.996	1.021	0.587
00835	99	REST OF STATE	0.961	0.938	0.587
00865	01	METROPOLITAN PHILADELPHIA, PA	1.024	1.089	1.207
00865	99	REST OF STATE	0.989	0.931	0.637
00973	20	PUERTO RICO	0.882	0.729	0.359
00870	01	RHODE ISLAND	1.018	1.069	1.189
00880	01	SOUTH CAROLINA	0.975	0.905	0.280
00820	02	SOUTH DAKOTA	0.935	0.873	0.435
05440	35	TENNESSEE	0.975	0.899	0.552
00900	31	AUSTIN, TX	0.986	1.000	0.849
00900	20	BEAUMONT, TX	0.992	0.899	1.386
00900	09	BRAZORIA, TX	0.992	0.977	1.386
00900	11	DALLAS, TX	1.010	1.016	0.930
00900	28	FORT WORTH, TX	0.987	0.971	0.930
00900	15	GALVESTON, TX	0.988	0.970	1.386
00900	18	HOUSTON, TX	1.020	1.007	1.418
00900	99	REST OF STATE	0.966	0.888	0.871
00910	09	UTAH	0.977	0.909	0.594
31145	50	VERMONT	0.973	0.984	0.548
00973	50	VIRGIN ISLANDS	0.965	1.034	1.032
10490	00	VIRGINIA	0.985	0.941	0.557
00836	02	SEATTLE (KING CNTY), WA	1.005	1.080	0.742
00836	99	REST OF STATE	0.982	0.976	0.742
16510	16	WEST VIRGINIA	0.963	0.853	1.106
00951	00	WISCONSIN	0.981	0.933	0.841
00825	21	WYOMING	0.967	0.895	0.705

* Payment locality is serviced by two carriers.

Note: Work GPCI is the 1/4 work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act. GPCIs rescaled by the following factors to assure budget neutrality: Work = 1.00027; Practice expense = 1.00057; Malpractice = 1.03174.

ADDENDUM E.—REFERENCE SET WITH 2000 WORK RVUS

CPT Code	Short descriptor	Glob days	Work RVU
10060	DRAINAGE OF SKIN ABSCESS	010	1.17
10120	REMOVE FOREIGN BODY	010	1.22
11040	DEBRIDE SKIN, PARTIAL	000	0.5
11043	DEBRIDE TISSUE/MUSCLE	010	2.38
11100	BIOPSY OF SKIN LESION	000	0.81
11400	REMOVAL OF SKIN LESION	010	0.91
11406	REMOVAL OF SKIN LESION	010	2.76
11441	REMOVAL OF SKIN LESION	010	1.61
11603	REMOVAL OF SKIN LESION	010	2.35
11642	REMOVAL OF SKIN LESION	010	2.93
11762	RECONSTRUCTION OF NAIL BED	010	2.89
12002	REPAIR SUPERFICIAL WOUND(S)	010	1.86
14060	SKIN TISSUE REARRANGEMENT	090	8.5
15100	SKIN SPLIT GRAFT	090	9.05
15240	SKIN FULL GRAFT	090	9.04
15260	SKIN FULL GRAFT	090	10.06
15734	MUSCLE-SKIN GRAFT, TRUNK	090	17.79
15823	REVISION OF UPPER EYELID	090	7.05
15937	REMOVE SACRUM PRESSURE SORE	090	14.21
15946	REMOVE HIP PRESSURE SORE	090	21.57
17000	DESTROY BENIGN/PREMAL LESION	010	0.6
19240	REMOVAL OF BREAST	090	16
19318	REDUCTION OF LARGE BREAST	090	15.62
19364	BREAST RECONSTRUCTION	090	41
19367	BREAST RECONSTRUCTION	090	25.73
20610	DRAIN/INJECT, JOINT/BURSA	000	0.79
21267	REVISE EYE SOCKETS	090	18.9
21395	TREAT EYE SOCKET FRACTURE	090	12.68
21433	TREAT CRANIOFACIAL FRACTURE	090	25.35
22554	NECK SPINE FUSION	090	18.62
22595	NECK SPINAL FUSION	090	19.39
23412	REPAIR OF TENDON(S)	090	13.31
25611	TREAT FRACTURE RADIUS/ULNA	090	7.77
26040	RELEASE PALM CONTRACTURE	090	3.33
26045	RELEASE PALM CONTRACTURE	090	5.56
26055	INCISE FINGER TENDON SHEATH	090	2.69
26123	RELEASE PALM CONTRACTURE	090	9.29
26356	REPAIR FINGER/HAND TENDON	090	8.07
26531	REVISE KNUCKLE WITH IMPLANT	090	7.91
26615	TREAT METACARPAL FRACTURE	090	5.33
27006	INCISION OF HIP TENDONS	090	9.68
27165	INCISION/FIXATION OF FEMUR	090	17.91
27170	REPAIR/GRAFT FEMUR HEAD/NECK	090	16.07
27418	REPAIR DEGENERATED KNEECAP	090	10.85
27635	REMOVE LOWER LEG BONE LESION	090	7.78
27792	TREATMENT OF ANKLE FRACTURE	090	7.66
28285	REPAIR OF HAMMERTOE	090	4.59
28485	TREAT METATARSAL FRACTURE	090	5.71
29881	KNEE ARTHROSCOPY/SURGERY	090	7.76
30520	REPAIR OF NASAL SEPTUM	090	5.7
31575	DIAGNOSTIC LARYNGOSCOPY	000	1.1
31584	TREAT LARYNX FRACTURE	090	19.64
31600	INCISION OF WINDPIPE	000	3.62
31622	DX BRONCHOSCOPE/WASH	000	2.67
32000	DRAINAGE OF CHEST	000	1.54
32020	INSERTION OF CHEST TUBE	000	3.98
32100	EXPLORATION/BIOPSY OF CHEST	090	11.84
32440	REMOVAL OF LUNG	090	21.02
32480	PARTIAL REMOVAL OF LUNG	090	18.32
32500	PARTIAL REMOVAL OF LUNG	090	14.3
32602	THORACOSCOPY, DIAGNOSTIC	000	5.96
33208	INSERTION OF HEART PACEMAKER	090	8.13
33405	REPLACEMENT OF AORTIC VALVE	090	30.61
33426	REPAIR OF MITRAL VALVE	090	31.03
33430	REPLACEMENT OF MITRAL VALVE	090	31.43

ADDENDUM E.—REFERENCE SET WITH 2000 WORK RVUs—Continued

CPT Code	Short descriptor	Glob days	Work RVU
33500	REPAIR HEART VESSEL FISTULA	090	25.55
33512	CABG, VEIN, THREE	090	29.67
33513	CABG, VEIN, FOUR	090	31.95
33533	CABG, ARTERIAL, SINGLE	090	25.83
33870	TRANSVERSE AORTIC ARCH GRAFT	090	40.31
34201	REMOVAL OF ARTERY CLOT	090	9.13
35081	REPAIR DEFECT OF ARTERY	090	28.01
35082	REPAIR ARTERY RUPTURE, AORTA	090	36.35
35091	REPAIR DEFECT OF ARTERY	090	35.4
35207	REPAIR BLOOD VESSEL LESION	090	10.15
35221	REPAIR BLOOD VESSEL LESION	090	16.42
35301	RECHANNELING OF ARTERY	090	18.7
35454	REPAIR ARTERIAL BLOCKAGE	000	6.04
35473	REPAIR ARTERIAL BLOCKAGE	000	6.04
35474	REPAIR ARTERIAL BLOCKAGE	000	7.36
35556	ARTERY BYPASS GRAFT	090	21.76
35646	ARTERY BYPASS GRAFT	090	25.81
35654	ARTERY BYPASS GRAFT	090	18.61
35656	ARTERY BYPASS GRAFT	090	19.53
36140	ESTABLISH ACCESS TO ARTERY	XXX	2.01
36200	PLACE CATHETER IN AORTA	XXX	3.02
36215	PLACE CATHETER IN ARTERY	XXX	4.68
36216	PLACE CATHETER IN ARTERY	XXX	5.28
36245	PLACE CATHETER IN ARTERY	XXX	4.68
36471	INJECTION THERAPY OF VEINS	010	1.57
36489	INSERTION OF CATHETER, VEIN	000	1.22
36533	INSERTION OF ACCESS DEVICE	010	5.32
36620	INSERTION CATHETER, ARTERY	000	1.15
37140	REVISION OF CIRCULATION	090	23.6
38720	REMOVAL OF LYMPH NODES, NECK	090	13.61
39400	VISUALIZATION OF CHEST	010	5.61
40701	REPAIR CLEFT LIP/NASAL	090	15.85
42200	RECONSTRUCT CLEFT PALATE	090	12
42415	EXCISE PAROTID GLAND/LESION	090	16.89
42440	EXCISE SUBMAXILLARY GLAND	090	6.97
42809	REMOVE PHARYNX FOREIGN BODY	010	1.81
42820	REMOVE TONSILS AND ADENOIDS	090	3.91
43235	UPPR GI ENDOSCOPY, DIAGNOSIS	000	2.39
43239	UPPER GI ENDOSCOPY, BIOPSY	000	2.69
43260	ENDO CHOLANGIOPANCREATOGRAPH	000	5.96
43268	ENDO CHOLANGIOPANCREATOGRAPH	000	7.39
43312	REPAIR ESOPHAGUS AND FISTULA	090	28.42
43331	REPAIR OF ESOPHAGUS	090	16.23
43420	REPAIR ESOPHAGUS OPENING	090	11.57
43610	EXCISION OF STOMACH LESION	090	11.15
43750	PLACE GASTROSTOMY TUBE	010	4.49
44120	REMOVAL OF SMALL INTESTINE	090	14.5
44140	PARTIAL REMOVAL OF COLON	090	18.35
44152	REMOVAL OF COLON/ILEOSTOMY	090	24.41
44160	REMOVAL OF COLON	090	15.88
44950	APPENDECTOMY	090	8.7
45110	REMOVAL OF RECTUM	090	23.8
45300	PROCTOSIGMOIDOSCOPY	000	0.7
45330	DIAGNOSTIC SIGMOIDOSCOPY	000	0.96
45331	SIGMOIDOSCOPY AND BIOPSY	000	1.26
45378	DIAGNOSTIC COLONOSCOPY	000	3.7
45380	COLONOSCOPY AND BIOPSY	000	4.01
45385	LESION REMOVAL COLONOSCOPY	000	5.31
46050	INCISION OF ANAL ABSCESS	010	1.19
46221	LIGATION OF HEMORRHOID(S)	010	1.43
46255	HEMORRHOIDECTOMY	090	5.36
46260	HEMORRHOIDECTOMY	090	7.42
46500	INJECTION INTO HEMORRHOIDS	010	1.61
46600	DIAGNOSTIC ANOSCOPY	000	0.5
47000	NEEDLE BIOPSY OF LIVER	000	1.9
47130	PARTIAL REMOVAL OF LIVER	090	34.25
47556	BILIARY ENDOSCOPY THRU SKIN	000	8.56
47605	REMOVAL OF GALLBLADDER	090	12.36

ADDENDUM E.—REFERENCE SET WITH 2000 WORK RVUS—Continued

CPT Code	Short descriptor	Glob days	Work RVU
48150	PARTIAL REMOVAL OF PANCREAS	090	43.48
49000	EXPLORATION OF ABDOMEN	090	11.68
49505	REPAIR INGUINAL HERNIA	090	6.49
50080	REMOVAL OF KIDNEY STONE	090	14.71
50230	REMOVAL OF KIDNEY	090	22.07
50392	INSERT KIDNEY DRAIN	000	3.38
50393	INSERT URETERAL TUBE	000	4.16
50780	REIMPLANT URETER IN BLADDER	090	18.36
51050	REMOVAL OF BLADDER STONE	090	6.92
51596	REMOVE BLADDER/CREATE POUCH	090	39.52
51845	REPAIR BLADDER NECK	090	9.73
51860	REPAIR OF BLADDER WOUND	090	12.02
52000	CYSTOSCOPY	000	2.01
52325	CYSTOSCOPY, STONE REMOVAL	000	6.16
52601	PROSTATECTOMY (TURP)	090	12.37
54150	CIRCUMCISION	010	1.81
54520	REMOVAL OF TESTIS	090	5.23
54640	SUSPENSION OF TESTIS	090	6.9
55250	REMOVAL OF SPERM DUCT(S)	090	3.29
55530	REVISE SPERMATIC CORD VEINS	090	5.66
55700	BIOPSY OF PROSTATE	000	1.57
55845	EXTENSIVE PROSTATE SURGERY	090	28.55
56340	LAPROSCOPIC CHOLECYSTECTOMY	090	11.09
57100	BIOPSY OF VAGINA	000	0.97
57300	REPAIR RECTUM-VAGINA FISTULA	090	7.61
57520	CONIZATION OF CERVIX	090	4.04
58100	BIOPSY OF UTERUS LINING	000	0.71
58150	TOTAL HYSTERECTOMY	090	15.24
58260	VAGINAL HYSTERECTOMY	090	12.2
58950	RESECT OVARIAN MALIGNANCY	090	15.27
59160	D & C AFTER DELIVERY	010	2.71
59400	OBSTETRICAL CARE	MMM	23.06
59515	CESAREAN DELIVERY	MMM	17.37
60240	REMOVAL OF THYROID	090	16.06
61154	PIERCE SKULL & REMOVE CLOT	090	14.99
61312	OPEN SKULL FOR DRAINAGE	090	24.57
61510	REMOVAL OF BRAIN LESION	090	28.45
61518	REMOVAL OF BRAIN LESION	090	37.32
61520	REMOVAL OF BRAIN LESION	090	54.84
61526	REMOVAL OF BRAIN LESION	090	52.17
61530	REMOVAL OF BRAIN LESION	090	43.86
61700	INNER SKULL VESSEL SURGERY	090	50.52
62223	ESTABLISH BRAIN CAVITY SHUNT	090	12.87
62270	SPINAL FLUID TAP, DIAGNOSTIC	000	1.13
62279	INJECT SPINAL ANESTHETIC	000	1.58
62284	INJECTION FOR MYELOGRAM	000	1.54
62289	INJECTION INTO SPINAL CANAL	000	1.64
63012	REMOVAL OF SPINAL LAMINA	090	15.4
63017	REMOVAL OF SPINAL LAMINA	090	15.94
63030	LOW BACK DISK SURGERY	090	12
63047	REMOVAL OF SPINAL LAMINA	090	14.61
63075	NECK SPINE DISK SURGERY	090	19.41
63650	IMPLANT NEUROELECTRODES	090	6.74
63660	REVISE/REMOVE NEUROELECTRODE	090	6.16
63685	IMPLANT NEURORECEIVER	090	7.04
63688	REVISE/REMOVE NEURORECEIVER	090	5.39
64442	INJECTION FOR NERVE BLOCK	000	1.41
64590	IMPLANT NEURORECEIVER	010	2.4
64595	REVISE/REMOVE NEURORECEIVER	010	1.73
64721	CARPAL TUNNEL SURGERY	090	4.29
66984	REMOVE CATARACT/INSERT LENS	090	10.28
67010	PARTIAL REMOVAL OF EYE FLUID	090	6.87
67107	REPAIR DETACHED RETINA	090	14.84
67145	TREATMENT OF RETINA	090	5.37
67228	TREATMENT OF RETINAL LESION	090	12.74
67904	REPAIR EYELID DEFECT	090	6.26
69631	REPAIR EARDRUM STRUCTURES	090	9.86
70220	X-RAY EXAM OF SINUSES	XXX	0.25

ADDENDUM E.—REFERENCE SET WITH 2000 WORK RVUS—Continued

CPT Code	Short descriptor	Glob days	Work RVU
70450	CAT SCAN OF HEAD OR BRAIN	XXX	0.85
70470	CONTRAST CAT SCANS OF HEAD	XXX	1.27
70541	MAGNETIC IMAGE, HEAD (MRA)	XXX	1.81
70553	MAGNETIC IMAGE, BRAIN (MRI)	XXX	2.36
71020	CHEST X-RAY	XXX	0.22
72050	X-RAY EXAM OF NECK SPINE	XXX	0.31
72100	X-RAY EXAM OF LOWER SPINE	XXX	0.22
72131	CAT SCAN OF LOWER SPINE	XXX	1.16
72148	MAGNETIC IMAGE, LUMBAR SPINE	XXX	1.48
72170	X-RAY EXAM OF PELVIS	XXX	0.17
73560	X-RAY EXAM OF KNEE, 1 OR 2	XXX	0.17
74000	X-RAY EXAM OF ABDOMEN	XXX	0.18
74020	X-RAY EXAM OF ABDOMEN	XXX	0.27
74160	CONTRAST CAT SCAN OF ABDOMEN	XXX	1.27
74280	CONTRAST X-RAY EXAM OF COLON	XXX	0.99
74400	CONTRST X-RAY, URINARY TRACT	XXX	0.49
74455	X-RAY, URETHRA/BLADDER	XXX	0.33
75650	ARTERY X-RAYS, HEAD & NECK	XXX	1.49
75962	REPAIR ARTERIAL BLOCKAGE	XXX	0.54
76091	MAMMOGRAM, BOTH BREASTS	XXX	0.69
76519	ECHO EXAM OF EYE	XXX	0.54
76645	ECHO EXAM OF BREAST(S)	XXX	0.54
76700	ECHO EXAM OF ABDOMEN	XXX	0.81
76805	ECHO EXAM OF PREGNANT UTERUS	XXX	0.99
76872	ECHO EXAM, TRANSRECTAL	XXX	0.69
77263	RADIATION THERAPY PLANNING	XXX	3.14
77290	SET RADIATION THERAPY FIELD	XXX	1.56
77430	WEEKLY RADIATION THERAPY	XXX	3.6
77762	RADIOELEMENT APPLICATION	090	5.72
77777	RADIOELEMENT APPLICATION	090	7.48
78006	THYROID IMAGING WITH UPTAKE	XXX	0.49
78223	HEPATOBILIARY IMAGING	XXX	0.84
78306	BONE IMAGING, WHOLE BODY	XXX	0.86
78461	HEART MUSCLE BLOOD, MULTIPLE	XXX	1.23
78465	HEART IMAGE (3D), MULTIPLE	XXX	1.46
78472	GATED HEART, PLANAR, SINGLE	XXX	0.98
78585	LUNG V/Q IMAGING	XXX	1.09
79000	INIT HYPERTHYROID THERAPY	XXX	1.8
80500	LAB PATHOLOGY CONSULTATION	XXX	0.37
85060	BLOOD SMEAR INTERPRETATION	XXX	0.45
85095	BONE MARROW ASPIRATION	XXX	1.08
85102	BONE MARROW BIOPSY	XXX	1.37
86078	PHYSICIAN BLOOD BANK SERVICE	XXX	0.94
88104	CYTOPATHOLOGY, FLUIDS	XXX	0.56
88302	TISSUE EXAM BY PATHOLOGIST	XXX	0.13
88304	TISSUE EXAM BY PATHOLOGIST	XXX	0.22
88305	TISSUE EXAM BY PATHOLOGIST	XXX	0.75
88307	TISSUE EXAM BY PATHOLOGIST	XXX	1.59
88309	TISSUE EXAM BY PATHOLOGIST	XXX	2.28
88325	COMPREHENSIVE REVIEW OF DATA	XXX	2.22
88331	PATHOLOGY CONSULT IN SURGERY	XXX	1.19
90801	PSY DX INTERVIEW	XXX	2.8
90853	GROUP PSYCHOTHERAPY	XXX	0.59
90862	MEDICATION MANAGEMENT	XXX	0.95
90870	ELECTROCONVULSIVE THERAPY	000	1.88
90935	HEMODIALYSIS, ONE EVALUATION	000	1.22
90937	HEMODIALYSIS, REPEATED EVAL	000	2.11
90945	DIALYSIS, ONE EVALUATION	000	1.28
92004	EYE EXAM, NEW PATIENT	XXX	1.67
92012	EYE EXAM ESTABLISHED PAT	XXX	0.67
92014	EYE EXAM & TREATMENT	XXX	1.1
92083	VISUAL FIELD EXAMINATION(S)	XXX	0.5
92250	EYE EXAM WITH PHOTOS	XXX	0.44
92950	HEART/LUNG RESUSCITATION CPR	000	3.8
92960	CARDIOVERSION ELECTRIC, EXT	000	2.25
92982	CORONARY ARTERY DILATION	000	10.98
93010	ELECTROCARDIOGRAM REPORT	XXX	0.17
93015	CARDIOVASCULAR STRESS TEST	XXX	0.75

ADDENDUM E.—REFERENCE SET WITH 2000 WORK RVUS—Continued

CPT Code	Short descriptor	Glob days	Work RVU
93224	ECG MONITOR/REPORT, 24 HRS	XXX	0.52
93307	ECHO EXAM OF HEART	XXX	0.92
93320	DOPPLER ECHO EXAM, HEART	ZZZ	0.38
93510	LEFT HEART CATHETERIZATION	000	4.33
93526	RT & LT HEART CATHETERS	000	5.99
93620	ELECTROPHYSIOLOGY EVALUATION	000	11.59
93651	ABLATE HEART DYSRHYTHM FOCUS	000	16.25
93732	ANALYZE PACEMAKER SYSTEM	XXX	0.92
93736	TELEPHONE ANALY, PACEMAKER	XXX	0.15
93880	EXTRACRANIAL STUDY	XXX	0.6
94010	BREATHING CAPACITY TEST	XXX	0.17
94060	EVALUATION OF WHEEZING	XXX	0.31
94656	INITIAL VENTILATOR MGMT	XXX	1.22
94657	CONTINUED VENTILATOR MGMT	XXX	0.83
95819	ELECTROENCEPHALOGRAM (EEG)	XXX	1.08
95860	MUSCLE TEST, ONE LIMB	XXX	0.96
95861	MUSCLE TEST, TWO LIMBS	XXX	1.54
95900	MOTOR NERVE CONDUCTION TEST	XXX	0.42
95904	SENSE/MIXED N CONDUCTION TST	XXX	0.34
97110	THERAPEUTIC EXERCISES	XXX	0.45
99201	OFFICE/OUTPATIENT VISIT, NEW	XXX	0.45
99202	OFFICE/OUTPATIENT VISIT, NEW	XXX	0.88
99203	OFFICE/OUTPATIENT VISIT, NEW	XXX	1.34
99204	OFFICE/OUTPATIENT VISIT, NEW	XXX	2
99205	OFFICE/OUTPATIENT VISIT, NEW	XXX	2.67
99211	OFFICE/OUTPATIENT VISIT, EST	XXX	0.17
99212	OFFICE/OUTPATIENT VISIT, EST	XXX	0.45
99213	OFFICE/OUTPATIENT VISIT, EST	XXX	0.67
99214	OFFICE/OUTPATIENT VISIT, EST	XXX	1.1
99215	OFFICE/OUTPATIENT VISIT, EST	XXX	1.77
99222	INITIAL HOSPITAL CARE	XXX	2.14
99223	INITIAL HOSPITAL CARE	XXX	2.99
99231	SUBSEQUENT HOSPITAL CARE	XXX	0.64
99232	SUBSEQUENT HOSPITAL CARE	XXX	1.06
99233	SUBSEQUENT HOSPITAL CARE	XXX	1.51
99238	HOSPITAL DISCHARGE DAY	XXX	1.28
99241	OFFICE CONSULTATION	XXX	0.64
99242	OFFICE CONSULTATION	XXX	1.29
99243	OFFICE CONSULTATION	XXX	1.72
99244	OFFICE CONSULTATION	XXX	2.58
99245	OFFICE CONSULTATION	XXX	3.43
99252	INITIAL INPATIENT CONSULT	XXX	1.32
99253	INITIAL INPATIENT CONSULT	XXX	1.82
99254	INITIAL INPATIENT CONSULT	XXX	2.64
99255	INITIAL INPATIENT CONSULT	XXX	3.65
99263	FOLLOW-UP INPATIENT CONSULT	XXX	1.27
99282	EMERGENCY DEPT VISIT	XXX	0.55
99283	EMERGENCY DEPT VISIT	XXX	1.24
99284	EMERGENCY DEPT VISIT	XXX	1.95
99285	EMERGENCY DEPT VISIT	XXX	3.06
99291	CRITICAL CARE, FIRST HOUR	XXX	3.6
99292	CRITICAL CARE, ADDL 30 MIN	ZZZ	1.8
99295	NEONATAL CRITICAL CARE	XXX	16
99296	NEONATAL CRITICAL CARE	XXX	[illegible]
99297	NEONATAL CRITICAL CARE	XXX	4
99302	NURSING FACILITY CARE	XXX	1.61
99311	NURSING FAC CARE, SUBSEQ	XXX	0.6
99381	PREV VISIT, NEW, INFANT	XXX	1.19
99382	PREV VISIT, NEW, AGE 1–4	XXX	1.36
99383	PREV VISIT, NEW, AGE 5–11	XXX	1.36
99384	PREV VISIT, NEW, AGE 12–17	XXX	1.53
99385	PREV VISIT, NEW, AGE 18–39	XXX	1.53
99386	PREV VISIT, NEW, AGE 40–64	XXX	1.88
99387	PREV VISIT, NEW, 65 & OVER	XXX	2.06
99391	PREV VISIT, EST, INFANT	XXX	1.02
99392	PREV VISIT, EST, AGE 1–4	XXX	1.19
99393	PREV VISIT, EST, AGE 5–11	XXX	1.19
99394	PREV VISIT, EST, AGE 12–17	XXX	1.36

ADDENDUM E.—REFERENCE SET WITH 2000 WORK RVUS—Continued

CPT Code	Short descriptor	Glob days	Work RVU
99431	INITIAL CARE, NORMAL NEWBORN	XXX	1.17
99433	NORMAL NEWBORN CARE/HOSPITAL	XXX	0.62
99440	NEWBORN RESUSCITATION	XXX	2.93

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November 2, 1999

Part IV

General Services Administration

41 CFR Parts 101–38 and 102–34
Motor Vehicle Management; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–38 and 102–34

RIN 3090–AG12

[FPMR Amendment G–114]

Motor Vehicle Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration is revising Federal Property Management Regulations (FPMR) coverage on motor vehicle management, and moving it into the Federal Management Regulation (FMR). A cross-reference will be added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language and will provide agencies with updated regulatory material that is easy to read and understand.

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Michael W. Moses, Office of Governmentwide Policy, Federal Vehicle Policy Division (202) 501–2507 or E-mail at *mike.moses@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

In the Fall of 1996, several Federal agencies requested a change to 41 CFR 101–38.103 concerning the size of motor vehicles that may be acquired and the associated GSA certification process. The change requested included increasing the maximum size of sedans that agencies normally may acquire from compact to midsize. The reason for the requested change was a need for more emphasis on agency mission requirements in lieu of motor vehicle classifications and to remove unnecessary reporting requirements associated with the certification to GSA. Additionally, agencies stated that, since this provision (§ 101–38.103) was added to the regulation in the early 1970's, motor vehicle manufacturer design changes have resulted in motor vehicles with increased fuel economy in all motor vehicle classes. It will also allow for a greater flexibility in the purchasing and leasing of alternative fuel vehicles.

On June 11, 1997, GSA's Office of Governmentwide Policy surveyed the major Federal agencies that control about 99 percent of the Federal motor vehicle fleet. Based upon that survey, the vast majority of Federal agencies operating sedans agreed that such a change to the regulation would be appropriate. Concerns were raised by several agencies, including the GSA Fleet, that this regulation, if amended to incorporate the requested change, may be used as a blanket justification to increase the size of sedans in the Federal fleet. However, there is no reason to believe that the Federal sedan fleet will automatically be upgraded to midsize motor vehicles in the near future due to the ongoing requirements in § 101–38.103 to acquire the smallest motor vehicle necessary to meet agency mission requirements and mandated fuel economy standards. Additionally, because of funding limitations, the additional cost associated with larger motor vehicles would preclude most agencies from upgrading their sedan fleets, except to the extent the agency deems necessary. For these reasons, this amendment increases the maximum size of sedan an agency may acquire from compact to midsize. Proponents of the change also noted that agencies can already acquire midsize sedans at any time, provided their missions justify such motor vehicles, and that the certification process has always been a "self certification" in that approval from GSA is not required. This same agency majority also favored elimination of the certification process to GSA whenever a larger motor vehicle is acquired. This amendment removes this certification process.

The Secretary of Transportation establishes yearly fleet average fuel economy standards for passenger automobiles and light trucks. Prior to this amendment, 41 CFR part 101–38 provided fuel economy standards through fiscal year 1998 for passenger automobiles and through fiscal year 1997 for light trucks. The Secretary of Transportation has established fuel economy standards for passenger automobiles through fiscal year 2000, and for light trucks through fiscal year 1999. Accordingly, this amendment includes an update to reflect these additional standards. The listing of fuel economy standards for fiscal years 1977 through 1994 are removed because they are no longer relevant.

The regulation previously stated that executive agencies would obtain their official U.S. Government license plates from the District of Columbia, Department of Corrections (Lorton Prison). Under the previous regulation and 48 CFR 6.302–5(a)(2), agencies could purchase license plates from Lorton Prison without competition because section 3 of Public Law 88–622, 78 Stat. 1000, authorizes the purchase from a specified source. Additionally, section 24–458.5 of the District of Columbia Code authorizes Lorton Prison to make such sales to departments or agencies of the Federal Government. Although the Federal statute provides authority for agencies to procure license plates from Lorton Prison, it does not require that they do so. This amendment removes the regulatory requirement that all Government license plates be procured from the District of Columbia, Department of Corrections. Agencies are reminded, however, that applicable competition requirements, which typically are based on the dollar value of the acquisition, must be followed unless the authority under which the license plates are procured provides otherwise.

On April 16, 1997, the President signed Executive Order 13043, Increasing Seat Belt Use in the United States. This Executive Order requires that each Federal employee occupying any seating position of a motor vehicle on official business, whose seat is equipped with a seat belt, must have the seat belt properly fastened at all times when the motor vehicle is in motion. Accordingly, the regulation is changed to add a requirement for seat belt use for motor vehicles owned or leased by the Government.

GSA's Federal Supply Service has contracted for fleet charge cards that are used to purchase fuel and maintenance services. Under these contracts, the Government no longer deals directly with fuel providers and Federal agencies deal directly with the fleet charge card service providers. As a result, the regulation is revised to remove references to the obsolete Standard Forms 149 and 149A and allow for the revised fleet charge card contracting actions.

On May 18, 1998, GSA's Office of Governmentwide Policy, Federal Vehicle Policy Division, sent letters to all Federal agencies asking for verification of active license plate codes in 41 CFR 101–38.202–4. The responses received indicated that of the 60 Federal agencies currently authorized license plate codes, ten no longer require them. Accordingly, the license plate codes for ACTION, the Department of Education, the Export-Import Bank of the United States, the Federal Home Loan Bank Board, the Federal Reserve System, the Federal Trade Commission, the General Accounting Office, the Department of Housing and Urban Development, the National Capital Housing Authority, and the Securities and Exchange Commission are removed.

GSA's Office of Governmentwide Policy, Federal Vehicle Policy Division, has undertaken an effort to automate the Federal Motor Vehicle Fleet Report and the associated input form, Standard Form 82, Agency Report of Motor

Vehicle Data. The regulation is revised to reflect changes in the way motor vehicle data is reported and to add the requirement for reporting data on alternative fuel motor vehicles, as required by the Energy Policy Act of 1992 (Pub. L. 102–486).

GSA's Office of Governmentwide Policy, Federal Vehicle Policy Division (MTV), provided a draft copy of this amendment to Federal agencies during a Federal Fleet Policy Council (FEDFLEET) meeting on April 24, 1997. FEDFLEET is comprised of about 150 Federal agency fleet managers. The amendment was also discussed at the next two FEDFLEET meetings on July 10, 1997, and October 29, 1997. On October 15, 1997, GSA provided a final draft of the amendment to members of the FEDFLEET Motor Vehicle Advisory Council (VAC) for a final review. The VAC consists of fleet managers from the Departments of the Air Force, the Navy, Agriculture, Defense, the Interior, Justice, and Transportation; the GSA Federal Vehicle Policy Division and the GSA Fleet Management Division. VAC meetings are held periodically to discuss issues of immediate importance in the management of the Federal motor vehicle fleet. VAC members were asked to provide any formal comments on the final draft of the amendment to MTV by November 1, 1997. By December 15, 1997, no comments were received. In an effort to ensure that the amendment accurately reflected current policies and the needs of Federal agencies, MTV telephoned each VAC member between December 15–19, 1997. No comments were received as a result of these telephone calls.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

The final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates and clarifies the existing guidance pertaining to motor vehicle management. As such, it affects only the relationship among executive branch agencies, not among any private entities or members of the public.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–38 and 102–34

Energy conservation, Government property management, Motor vehicles, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 41 CFR chapters 101 and 102 are amended as follows:

CHAPTER 101—[AMENDED]

PART 101-38—MOTOR VEHICLE MANAGEMENT

1. The authority citation for part 101–38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. Part 101–38 is revised to read as follows:

§ 101-38.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For motor vehicle management policy, see FMR part 34 (41 CFR part 102–34).

CHAPTER 102—[AMENDED]

3. Part 102–34 is added to subchapter D to read as follows:

PART 102-34—MOTOR VEHICLE MANAGEMENT

Sec.
102–34.5 Preamble.
102–34.10 What definitions apply to motor vehicle management?
102–34.15 What motor vehicles are not covered by this part?
102–34.20 What types of motor vehicle fleets are there?
102–34.25 What sources of supply are available for obtaining motor vehicles?

Subpart A—Obtaining Fuel Efficient Motor Vehicles

102–34.30 Who must comply with motor vehicle fuel efficiency requirements?
102–34.35 What are the procedures for purchasing and leasing motor vehicles?
102–34.40 How are passenger automobiles classified?
102–34.45 What size motor vehicles may we purchase and lease?
102–34.50 What are fleet average fuel economy standards?
102–34.55 What are the minimum fleet average fuel economy standards?
102–34.60 How do we calculate the average fuel economy for our fleet?
102–34.65 How may we request an exemption from the fuel economy standards?
102–34.70 How does GSA monitor the fuel economy of purchased and leased motor vehicles?
102–34.75 How must we report fuel economy data for passenger automobiles and light trucks we purchase or commercially lease?
102–34.80 Do we report fuel economy data for passenger automobiles and light trucks purchased for our agency by the GSA Automotive Division?
102.–34.85 Do we have to submit a negative report if we don't purchase or lease any motor vehicles in a fiscal year?
102–34.90 Are any motor vehicles exempted from these reporting requirements?
102–34.95 Does fleet average fuel economy reporting affect our acquisition plan?
102–34.100 Where may we obtain help with our motor vehicle acquisition plan?

Subpart B—Identifying and Registering Motor Vehicles

Motor Vehicle Identification

102–34.105 What motor vehicles require motor vehicle identification?
102–34.110 What motor vehicle identification must we put on motor vehicles we purchase or lease?
102–34.115 What motor vehicle identification must the Department of Defense (DOD) put on motor vehicles it purchases or leases?
102–34.120 Where is motor vehicle identification placed on purchased and leased motor vehicles?
102–34.125 Before we sell a motor vehicle, what motor vehicle identification or markings must we remove?

License Plates

102–34.130 Must our motor vehicles use Government license plates?
102–34.135 Do we need to register motor vehicles owned or leased by the Government?
102–34.140 Where may we obtain U.S. Government license plates?
102–34.145 How do we display license plates on motor vehicles?
102–34.150 What do we do about a lost or stolen license plate?
102–34.155 What records do we need to keep on U.S. Government license plates?
102–34.160 How are U.S. Government license plates coded and numbered?
102–34.165 How can we get a new license plate code designation?
102–34.170 Are there special licensing procedures for motor vehicles operating in the District of Columbia (DC)?

Identification Exemptions

102–34.175 What types of exemptions are there?

102–34.180 May we have a limited exemption from displaying U.S. Government license plates and other motor vehicle identification?
102–34.185 What information must the certification contain?
102–34.190 For how long is a limited exemption valid?
102–34.195 What agencies have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?
102–34.200 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification?
102–34.205 What license plates and motor vehicle identification do we use on motor vehicles that are exempt from motor vehicle identification and U.S. Government license plates?
102–34.210 What special requirements apply to exempted motor vehicles operating in the District of Columbia?
102–34.215 Can GSA ask for a listing of exempted motor vehicles?

Subpart C—Official Use of Government Motor Vehicles

102–34.220 What is official use of a motor vehicle owned or leased by the Government?
102–34.225 May I use a motor vehicle owned or leased by the Government for transportation between my residence and place of employment?
102–34.230 May Government contractors use motor vehicles owned or leased by the Government?
102–34.235 What does GSA do if it learns of unofficial use of a motor vehicle owned or leased by the Government?
102–34.240 How are Federal employees disciplined for misuse of motor vehicles owned or leased by the Government?
102–34.245 How am I responsible for protecting motor vehicles?
102–34.250 Am I bound by State and local traffic laws?
102–34.255 Who pays for parking fees and fines?
102–34.260 Do Federal employees in motor vehicles owned or leased by the Government have to use safety belts?

Subpart D—Replacement of Motor Vehicles

102–34.265 What are motor vehicle replacement standards?
102–34.270 May we replace a Government-owned motor vehicle sooner?
102–34.275 May we keep a Government-owned motor vehicle even though the standard permits replacement?
102–34.280 How long must we keep a Government-owned motor vehicle?

Subpart E—Scheduled Maintenance of Motor Vehicles

102–34.285 What kind of maintenance programs must we have?
102–34.290 Must our motor vehicles pass State inspections?
102–34.295 Where can we obtain help in setting up a maintenance program?

Subpart F—Motor Vehicle Accident Reporting

102–34.300 What forms do I use to report an accident involving a motor vehicle owned or leased by the Government?
102–34.305 To whom do we send accident reports?

Subpart G—Disposal of Motor Vehicles

102–34.310 How do we dispose of a motor vehicle in any State, Commonwealth, territory or possession of the United States, or the District of Columbia?
102–34.315 What forms do we use to transfer ownership when selling a motor vehicle?
102–34.320 How do we distribute the completed Standard Form 97?

Subpart H—Motor Vehicle Fueling

102–34.325 How do we obtain fuel for motor vehicles?
102–34.330 What Government-issued charge cards may I use to purchase fuel and motor vehicle related services?
102–34.335 What type of fuel do I use in motor vehicles?
102–34.340 Do I have to use self-service fuel pumps?

Subpart I—Federal Motor Vehicle Fleet Report

102–34.345 What is the Federal Motor Vehicle Fleet Report?
102–34.350 What records do we need to keep?
102–34.355 When and how do we report motor vehicle data?

Subpart J—Forms

102–34.360 How do we obtain the forms prescribed in this part?

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 102–34.5 Preamble.

(a) This part governs the economical and efficient management and control of motor vehicles that the Government owns or leases. Agencies will incorporate appropriate provisions of this part into contracts offering Government-furnished equipment in order to ensure adequate control over the use of motor vehicles.

(b) The questions and associated answers in this part are regulatory in effect. Thus compliance with the written text of this part is required by all executive agencies.

(c) The terms "we," "I," "our," "you," and "your," when used in this part, mean you as an executive agency, as your agency's fleet manager, or as a motor vehicle user or operator, as appropriate.

§ 102–34.10 What definitions apply to motor vehicle management?

The following definitions apply to motor vehicle management:

Commercial design motor vehicle means a motor vehicle procurable from regular production lines and designed for use by the general public.

Domestic fleet (see § 102–34.20(a)).

Foreign fleet (see § 102–34.20(b)).

GSA Fleet lease (see § 102–34.25(d)).

Large fleet (see § 102–34.20(d)).

Law enforcement motor vehicle means a passenger automobile or light truck that is specifically approved in an agency's appropriation act for use in apprehension, surveillance, police or other law enforcement work or specifically designed for use in law enforcement. If not identified in an agency's appropriation language, a motor vehicle qualifies as a law enforcement motor vehicle only in the following cases:

(1) A passenger automobile having heavy duty components for electrical, cooling and suspension systems and at least the next higher cubic inch displacement or more powerful engine than is standard for the automobile concerned.

(2) A light truck having emergency warning lights and identified with markings such as "police."

(3) An unmarked motor vehicle certified by the agency head as essential for the safe and efficient performance of intelligence, counterintelligence, protective, or other law enforcement duties.

(4) A motor vehicle seized by a Federal agency that is subsequently used for the purpose of performing law enforcement activities.

Light duty motor vehicle means any motor vehicle with a gross motor vehicle weight rating (GVWR) of 8,500 pounds or less.

Light truck means a motor vehicle on a truck chassis with a gross motor vehicle weight rating (GVWR) of 8,500 pounds or less.

Military design motor vehicle means a motor vehicle (excluding general-purpose motor vehicles) designed according to military specifications to support directly combat or tactical operations or training for such operations.

Motor vehicle means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers, but does not include a military design motor vehicle or vehicles not covered by this part (see § 102–34.15).

Motor vehicle identification (also referred to as "motor vehicle markings") means the legends "For Official Use Only" and "U.S. Government" placed on a motor vehicle plus other legends showing the full name of the department, agency, establishment, corporation, or service by which the motor vehicle is used. This identification is usually a decal placed in the rear window or on the side of the motor vehicle.

Motor vehicle lease (see § 102–34.25(b)).

Motor vehicle markings (see "Motor vehicle identification" in this section).

Motor vehicle purchase (see § 102–34.25(a)).

Motor vehicle rental (see § 102–34.25(c)).

Motor vehicles transferred from excess (see § 102–34.25(e)).

Owning agency means the executive agency that holds the vehicle title, manufacturer's Certificate of Origin, or is the lessee of a motor vehicle lease. This term does not apply to agencies that lease motor vehicles from the GSA Fleet.

Passenger automobile means a sedan or station wagon designed primarily to transport people.

Reportable motor vehicles are vehicles which are reported to GSA as outlined in Subpart I of this part:

(1) Included are sedans, station wagons, buses, ambulances, vans, utility motor vehicles, trucks and truck tractors, regardless of fuel type.

(2) Excluded are fire trucks, motorcycles, military-design motor vehicles, semi-trailers, trailers and other trailing equipment such as pole trailers, dollies, cable reels, trailer coaches and bogies, and trucks with permanently mounted equipment such as generators and air compressors.

Small fleet (see § 102–34.20(c)).

Using agency means a Federal agency that obtains motor vehicles from the GSA Fleet, commercial firms or another Federal agency and does not hold the vehicle title or manufacturer's Certificate of Origin. However, this does not include a Federal agency that obtains a motor vehicle by motor vehicle rental.

§ 102–34.15 What motor vehicles are not covered by this part?

Motor vehicles not covered are:

(a) Designed or used for military field training, combat, or tactical purposes;

(b) Used principally within the confines of a regularly established military post, camp, or depot; or

(c) Used by an agency in the performance of investigative, law enforcement, or intelligence duties if the head of such agency determines that exclusive control of such vehicle is essential to the effective performance of such duties, although such vehicles are subject to subpart C and subpart I of this part.

§ 102–34.20 What types of motor vehicle fleets are there?

The types of motor vehicle fleets are:

(a) *Domestic fleet* means all reportable agency-owned motor vehicles operated in any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

(b) *Foreign fleet* means all reportable agency-owned motor vehicles operated in areas outside any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

(c) *Small fleet* means a fleet of fewer than 2,000 reportable agency-owned motor vehicles, worldwide.

(d) *Large fleet* means a fleet of 2,000 or more reportable agency-owned motor vehicles, worldwide.

§ 102–34.25 What sources of supply are available for obtaining motor vehicles?

The following sources of supply are available:

(a) *Motor vehicle purchase* means buying a motor vehicle from a commercial source, usually a motor vehicle manufacturer or a motor vehicle manufacturer's dealership.

(b) *Motor vehicle lease* means obtaining a motor vehicle by contract or other arrangement from a commercial source for 60 continuous days or more.

(c) *Motor vehicle rental* means obtaining a motor vehicle by contract or other arrangement from a commercial source for less than 60 continuous days.

(d) *GSA Fleet lease* means obtaining a motor vehicle from the General Services Administration (GSA Fleet). Where "lease" is used alone within this part, it refers to "motor vehicle lease" in paragraph (b) of this section and not GSA Fleet lease.

(e) *Motor vehicles transferred from excess* means obtaining a motor vehicle reported as excess and transferred with or without cost.

Subpart A—Obtaining Fuel Efficient Motor Vehicles

§ 102–34.30 Who must comply with motor vehicle fuel efficiency requirements?

Executive agencies located in any State, Commonwealth, territory or possession of the United States, and the District of Columbia which operate motor vehicles owned or leased by the Government in the conduct of official business. This subpart does not apply to motor vehicles exempted by law or other regulations, such as law enforcement and motor vehicles in foreign areas. Other Federal agencies are encouraged to comply so that maximum energy conservation benefits may be realized in obtaining, operating, and managing motor vehicles owned or leased by the Government.

§ 102–34.35 What are the procedures for purchasing and leasing motor vehicles?

Procedures for purchasing and leasing motor vehicles can be found in subpart 101–26.5 of this title.

§ 102–34.40 How are passenger automobiles classified?

Passenger automobiles are classified in the following table:

Sedan class	Station wagon class	Descriptive name
I	I	Subcompact.
II	II	Compact.
III	III	Midsize.
IV	IV	Large.
V		Limousine.

§ 102–34.45 What size motor vehicles may we purchase and lease?

(a) You must select motor vehicles to achieve maximum fuel efficiency.

(b) Limit motor vehicle body size, engine size and optional equipment to what is essential to meet your agency's mission.

(c) With the exception of motor vehicles used by the President and Vice President and motor vehicles for security and highly essential needs, you must purchase and lease midsize (class III) or smaller sedans.

(d) Purchase and lease large (class IV) sedans only when such motor vehicles are essential to your agency's mission.

§ 102–34.50 What are fleet average fuel economy standards?

(a) The minimum miles per gallon that a fleet of motor vehicles purchased or leased by an executive agency must obtain. The need to meet these standards is set forth in 49 U.S.C. 32917, Standards for Executive Agency Automobiles, and Executive Order 12375, Motor Vehicles. These standards have two categories:

(1) Average fuel economy standard for all passenger automobiles.

(2) Average fuel economy standard for light trucks.

(b) These standards do not apply to passenger automobiles and light trucks designed to perform combat-related missions for the U.S. Armed Forces or motor vehicles designed for use in law enforcement or emergency rescue work.

§ 102–34.55 What are the minimum fleet average fuel economy standards?

The minimum fleet average fuel economy standards appear in the following table:

FLEET AVERAGE FUEL ECONOMY STANDARDS[a]

Fiscal year	Passsenger automobile[1]	Light truck[2]
1995	27.5	20.6[3]
1996	27.5	20.7[3]
1997	27.5	20.7[3]
1998	27.5	20.7[3]
1999	27.5	20.7[3]
2000 & beyond	27.5	([4])

[a] These figures represent miles/gallon.

[1] Established by section 49 U.S.C. 32902 and the Secretary of Transportation.

[2] Fleet average fuel economy standard set by the Secretary of Transportation and mandated by Executive Order 12375 beginning in fiscal year 1982.

[3] Fleet average fuel economy for light trucks is the combined fleet average fuel economy for all 4 x 2 and 4 x 4 light trucks.

[4] Requirements not yet set by the Secretary of Transportation.

§ 102–34.60 How do we calculate the average fuel economy for our fleet?

(a) Due to the variety of motor vehicle configurations, you must take an average of all motor vehicles, by category (passenger automobiles or light truck) purchased and leased by your agency during the fiscal year. This calculation is the sum of passenger automobiles or light trucks that your executive agency purchases or leases from commercial sources divided by the sum of the fractions representing the number of motor vehicles of each category by model divided by the unadjusted city/highway mile-per-gallon ratings for that model, developed by the Environmental Protection Agency (EPA) for each fiscal year. The EPA mile-per-gallon rating for each motor vehicle make, model, and model year may be obtained from the: General Services Administration, Attn: FFA, Washington, DC 20406.

(b) An example follows:

Light trucks: i. 600 light trucks acquired in a specific year. These are broken down into:

A. 200 Six cylinder automatic transmission pick-up trucks, EPA rating: 24.3 mpg, plus

B. 150 Six cylinder automatic transmission mini-vans, EPA rating 24.8 mpg, plus

C. 150 Eight cylinder automatic transmission pick-up trucks, EPA rating: 20.4 mpg, plus

D. 100 Eight cylinder automatic transmission cargo vans, EPA rating: 22.2 mpg.

$$= \frac{600}{\frac{200}{24.3} + \frac{150}{24.8} + \frac{150}{20.4} + \frac{100}{22.2}}$$

$$= \frac{600}{8.2305 + 6.0484 + 7.3530 + 4.5045}$$

$$= \frac{600}{26.1364} = 22.9565 \text{ (Rounded to nearest 0.1 mpg.)}$$

ii. Fleet average fuel economy for light trucks in this case is 23.0 mpg.

§ 102–34.65 How may we request an exemption from the fuel economy standards?

(a) You must submit your reasons for the exemption in a written request to the: Administrator of General Services, ATTN: MTV, Washington, DC 20405.

(b) GSA will review the request and advise you of the determination within 30 days of receipt. Passenger automobiles and light trucks exempted under the provisions of this section must not be included in calculating your fleet average fuel economy.

§ 102–34.70 How does GSA monitor the fuel economy of purchased and leased motor vehicles?

(a) Executive agencies report to GSA their leases and purchases of passenger automobiles and light trucks. GSA keeps a master record of the miles per gallon for passenger automobiles and light trucks acquired by each agency during the fiscal year. GSA verifies that each agency's passenger automobile and light truck leases and purchases achieve the fleet average fuel economy for the applicable fiscal year, as required by Executive Order 12375.

(b) The GSA Federal Vehicle Policy Division (MTV) issues information about the EPA miles-per-gallon ratings to executive agencies at the beginning of each fiscal year to help agencies with their acquisition plans.

§ 102–34.75 How must we report fuel economy data for passenger automobiles and light trucks we purchase or commercially lease?

(a) You must send copies or synopses of motor vehicle leases and purchases to GSA. Use the unadjusted combined city/highway mile-per-gallon ratings for passenger automobiles and light trucks developed each fiscal year by the Environmental Protection Agency (EPA). All submissions for a fiscal year must reach GSA by December 1 of the next fiscal year. Submit the information as soon as possible after the purchase or effective date of each lease to the: General Services Administration, ATTN: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*.

(b) Include in your submission to GSA motor vehicles purchased or leased by your agency for use in any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

(c) Your submission to GSA must include:

(1) Number of passenger automobiles and light trucks, by category.

(2) Year.

(3) Make.

(4) Model.

(5) Transmission type (if manual, number of forward speeds).

(6) Cubic inch displacement of engine.

(7) Fuel type (i.e., gasoline, diesel, or type of alternative fuel).

(8) Monthly lease cost, if applicable.

Note to § 102–34.75: Do not include passenger automobile and light truck lease renewal options as new acquisition motor vehicle leases. Do not report passenger automobiles and light trucks exempted from fleet average fuel economy standards (see § 102–34.50(b) and § 102–34.65).

§ 102–34.80 Do we report fuel economy data for passenger automobiles and light trucks purchased for our agency by the GSA Automotive Division?

No. The GSA Automotive Division provides information for passenger automobiles and light trucks it purchases for agencies.

§ 102–34.85 Do we have to submit a negative report if we don't purchase or lease any motor vehicles in a fiscal year?

Yes, you must submit a negative report if you don't purchase or lease any motor vehicles in a fiscal year.

§ 102–34.90 Are any motor vehicles exempted from these reporting requirements?

Yes. You do not need to report passenger automobiles and light trucks that are:

(a) Purchased or leased for use outside any State, Commonwealth, territory or possession of the United States, or the District of Columbia.

(b) Designed to perform combat-related missions for the U.S. Armed Forces.

(c) Designed for use in law enforcement or emergency rescue work.

§ 102–34.95 Does fleet average fuel economy reporting affect our acquisition plan?

It may. If previous motor vehicle purchases and leases have caused your fleet to fail to meet the required fuel economy by the end of the fiscal year, GSA may encourage you to adjust future requests to meet fuel economy requirements.

§ 102–34.100 Where may we obtain help with our motor vehicle acquisition plans?

For help with your motor vehicle acquisition plan, contact the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: vehicle.policy@gsa.gov

Subpart B—Identifying and Registering Motor Vehicles—Motor Vehicle Identification

§ 102–34.105 What motor vehicles require motor vehicle identification?

All motor vehicles owned or leased by the Government must display motor vehicle identification unless exempted under § 102–34.180, § 102–34.195, or § 102–34.200.

§ 102–34.110 What motor vehicle identification must we put on motor vehicles we purchase or lease?

(a) For motor vehicles with rear windows, display:

(1) "For Official Use Only," in letters ½ to ¾ inch high.

(2) "U.S. Government" in letters ¾ to 1 inch high; and

(3) The full name of the department, agency, establishment, corporation, or service owning or leasing the motor vehicle (in letters 1 to 1½ inch high), or in the alternative, a title that describes the activity in which it is operated (if the title readily identifies the department, agency, establishment, corporation, or service concerned).

(b) For other than motor vehicle rear windows, display the motor vehicle identification in paragraphs (a)(1) through (3) of this section, but:

(1) Use letters 1 to 1½ inches high in colors contrasting to the motor vehicle.

(2) If you use subsidiary words or titles of subordinate units, use letters ½ inch to ¾ inch high.

(c) The preferred material is a decal of elastomeric pigmented film type for ease of application and removal.

Note to § 102–34.110: Each agency or activity is responsible for acquiring its own decals. Replace this motor vehicle identification when necessary due to damage or wear.

§ 102–34.115 What motor vehicle identification must the Department of Defense (DOD) put on motor vehicles it purchases or leases?

The following must appear on DOD purchased or leased motor vehicles:

(a) "For Official Use Only;"

(b) An appropriate title for the DOD component; and

(c) The DOD code and registration number assigned by the DOD component accountable for the motor vehicle.

§ 102–34.120 Where is motor vehicle identification placed on purchased and leased motor vehicles?

(a) *On most motor vehicles.* On the left side of the rear window, 1½ inches or less from the bottom of the window.

(b) *On motor vehicles without rear windows or where identification on the rear window would not be easily seen.* Centered on both front doors or in any appropriate position on each side of the motor vehicle.

(c) *On trailers.* Centered on both sides of the front quarter of the trailer in a conspicuous location.

§ 102–34.125 Before we sell a motor vehicle, what motor vehicle identification or markings must we remove?

You must remove all motor vehicle identification before you transfer the title or deliver the motor vehicle.

License Plates

§ 102–34.130 Must our motor vehicles use Government license plates?

Yes you must use Government license plates, with the exception of motor vehicles exempted under § 102–34.180, § 102–34.195, and § 102–34.200.

§ 102–34.135 Do we need to register motor vehicles owned or leased by the Government?

For a motor vehicle owned or leased by the Government that is regularly based or operated outside the District of Columbia and displaying U.S. Government license plates and motor vehicle identification, you need not register it in a State, Commonwealth, territory or possession of the United States. Motor vehicles exempted under § 102–34.180, § 102–34.195, or § 102–34.200 must be registered and inspected in accordance with the laws of the State, Commonwealth, territory or possession of the United States where the motor vehicle is regularly operated.

§ 102–34.140 Where may we obtain U.S. Government license plates?

For detailed instructions and an ordering form to obtain U.S. Government license plates, contact the: Superintendent of Industries, District of Columbia, Department of Corrections, Lorton, VA 22079.

Note to § 102–34.140: You may, but are not required to obtain license plates from the District of Columbia, Department of Corrections.

§ 102–34.145 How do we display license plates on motor vehicles?

(a) Display official U.S. Government license plates on the front and rear of all motor vehicles owned or leased by the Government. The exception is two-wheeled motor vehicles, which require rear license plates only.

(b) You must display U.S. Government license plates on the motor vehicle to which the license plates were assigned.

(c) Display the U.S. Government license plates until the motor vehicle is removed from Government service or is transferred, or until the plates are damaged and require replacement.

(d) For motor vehicles owned or leased by DOD, follow DOD regulations.

§ 102–34.150 What do we do about a lost or stolen license plate?

You should report the loss or theft of license plates as follows:

(a) *U.S. Government license plates.* Tell your local security office (or equivalent) and local police.

(b) *District of Columbia or State license plates.* Tell your local security office (or equivalent) and either the District of Columbia, Department of Transportation, or the State agency, as appropriate.

§ 102–34.155 What records do we need to keep on U.S. Government license plates?

You must keep a central record of all U.S. Government license plates for your agency's motor vehicle purchases and motor vehicle leases. The GSA Fleet must keep such a record for GSA Fleet vehicles. The record must identify:

(a) The motor vehicle to which each set of plates is assigned.

(b) The complete history of any reassigned plates.

(c) A list of destroyed or voided license plate numbers.

§ 102–34.160 How are U.S. Government license plates coded and numbered?

U.S. Government license plates, except those issued by the District of Columbia, Department of Transportation, under § 102–34.170, will be numbered serially for each executive agency, beginning with 101, and preceded by a letter code that designates the owning agency for the motor vehicle as follows:

Agriculture, Department of—A
Air Force, Department of the—AF
Army, Department of the—W
Commerce, Department of—C
Consumer Product Safety Commission—CPSC
Corps of Engineers, Civil Works—CE
Defense, Department of—D
Defense Commissary Agency—DECA
Defense Contract Audit Agency—DA
Defense Logistics Agency—DLA
District of Columbia Redevelopment Land Agency—LA
Energy, Department of—E
Enrichment Corporation, U.S—EC
Environmental Protection Agency—EPA
Executive Office of the President—EO
  Council of Economic Advisers, National Security Council, Office of Management and Budget—EO
Federal Communications Commission—FC
Federal Deposit Insurance Corporation—FD
Federal Emergency Management Agency—FE
Federal Mediation and Conciliation Service—FM
General Services Administration—GS
Government Printing Office—GP
GSA Fleet—G
Health and Human Services, Department of—HHS
Interior, Department of the—I
Judicial Branch of the Government—JB
Justice, Department of—J
Labor, Department of—L
Legislative Branch—LB
Marine Corps—MC
National Aeronautics and Space Administration—NA
National Capital Planning Commission—NP
National Guard Bureau—NG
National Labor Relations Board—NL
National Science Foundation—NS
Navy, Department of the—N
Nuclear Regulatory Commission—NRC
Office of Personnel Management—OPM
Panama Canal Commission—PC
Railroad Retirement Board—RR
Selective Service System—SS
Small Business Administration—SB
Smithsonian Institution, National Gallery of Art—SI
Soldiers' and Airmen's Home, U.S—SH
State, Department of—S
Tennessee Valley Authority—TV
Transportation, Department of—DOT
Treasury, Department of the—T
United States Information Agency—IA
United States Postal Service—P
Veterans Affairs, Department of—VA

§ 102–34.165 How can we get a new license plate code designation?

To get a new license plate code designation, write to the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

§ 102–34.170 Are there special licensing procedures for motor vehicles operating in the District of Columbia (DC)?

Yes. DC Code, section 40–102(d)(2), requires the issuance of license plates, without charge, for all motor vehicles owned or leased by the Government at the time the motor vehicle is registered or reregistered.

(a) You must register motor vehicles that are regularly based or operated in DC with the DC Department of Transportation. Your application to register must include a manufacturer's Certificate of Origin, bill of sale, or other document attesting Government ownership. Forms for registering motor vehicles are available from the District of Columbia, Department of Transportation.

(b) Motor vehicles owned or leased by the Government and licensed in the District of Columbia may have the letter code designation prescribed in § 102–34.160 stenciled in the blank space beside the embossed numbers. If you add a letter code designation, stencil it on the license plate so that the letters resemble the embossed numbers in size and color. License plates issued by the District of Columbia without an agency letter code designation will usually have the letter code designation "US".

(c) Transfer of U.S. Government license plates issued by the District of Columbia between your agency's own motor vehicles requires prior approval from the District of Columbia, Department of Transportation.

(d) You must have each registered motor vehicle inspected annually according to section 40–204 of the District of Columbia Code and applicable regulations. The District of Columbia issues an inspection verification sticker for each motor vehicle that passes inspection.

(e) Return damaged or mutilated license plates to the District of Columbia, Department of Transportation, for cancellation. Also return license plates when you transfer a motor vehicle regularly based or operated in the District of Columbia to operation in a field area, another agency, or remove the motor vehicle from Government service.

Identification Exemptions

§ 102–34.175 What types of exemptions are there?

(a) Limited exemption.
(b) Unlimited exemption.
(c) Special exemption.

§ 102–34.180 May we have a limited exemption from displaying U.S. Government license plates and other motor vehicle identification?

Yes. The head of your agency or designee may authorize a limited exemption to the display of U.S. Government license plates and motor vehicle identification upon written certification. (See § 102–34.185.) For motor vehicles leased from the GSA Fleet, send an information copy of this certification to the: General Services Administration, Attn: FFF, Washington, DC 20406.

Note to § 102–34.180: Not eligible for exemption are motor vehicles regularly used for common administrative purposes and not directly connected to investigative, law enforcement or intelligence duties involving security activities.

§ 102–34.185 What information must the certification contain?

The certification must state either:

(a) That the motor vehicle is used primarily for investigative, law enforcement or intelligence duties involving security activities and that identifying the motor vehicle would interfere with those duties; or

(b) That identifying the motor vehicle would endanger the security of the vehicle occupants.

§ 102–34.190 For how long is a limited exemption valid?

An exemption granted in accordance with § 102–34.180 and § 102–34.185 may last from one day up to one year. If the requirement for exemption still exists at the end of the year, your agency must re-certify the continued exemption. For a motor vehicle leased from the GSA Fleet, send a copy of the re-certification to the: General Services Administration, ATTN: FFF, Washington, DC 20406.

§ 102–34.195 What agencies have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?

The following Federal agencies, or activities within agencies, are granted an unlimited exemption based on ongoing mission requirements and do not need to certify:

(a) *Administrative Office of the United States Courts.* All motor vehicles used by United States probation offices and pretrial services agencies of the judicial branch of the U.S. Government.

(b) *Department of Agriculture.* Motor vehicles used for investigative or law enforcement activities by the Agricultural Marketing Service, Animal and Plant Health Inspection Service, Food Safety and Inspection Service, Forest Service, Grain Inspection, Packers and Stockyard Administration, Packers and Stockyard Program, Food and Consumers Service, and Office of the Inspector General.

(c) *Department of Commerce.* Motor vehicles used for surveillance and other law enforcement activities by the Office of Export Enforcement, International Trade Administration, the National Marine Fisheries Service, and the National Oceanic and Atmospheric Administration.

(d) *Department of Defense.* Motor vehicles used for intelligence, investigative, or security activities by the U.S. Army Intelligence Agency and the Criminal Investigation Command of the Department of the Army; Office of Naval Intelligence of the Department of the Navy; Office of Special Investigations of the Department of the Air Force; the Defense Criminal Investigation Service, Office of the Inspector General; and the Defense Logistics Agency.

(e) *District of Columbia.* Motor vehicles used by St. Elizabeth's Hospital in outpatient work where identifying the motor vehicles would be prejudicial to patients.

(f) *Department of Education.* Motor vehicles used for investigative and law enforcement activities by the Office of the Inspector General.

(g) *Department of Energy.* Motor vehicles used for investigative or security activities.

(h) *Environmental Protection Agency.* Motor vehicles used for investigative and law enforcement activities by the Office of Inspector General and the Office of Enforcement and Compliance Assurance.

(i) *Federal Communications Commission.* Motor vehicles used for investigative activities by the Field Operations Bureau.

(j) *General Services Administration.* Motor vehicles used for investigative, surveillance, and security activities by special agents of the Federal Protective Service, and Office of the Inspector General.

(k) *Department of Health and Human Services.* Motor vehicles used for undercover law enforcement and similar investigative work by the Food and Drug Administration; motor vehicles used to transport mentally disturbed children by the National Institutes of Health; and motor vehicles used for law enforcement and investigative purposes by the Office of Investigations and the Office of the Inspector General.

(l) *Department of Housing and Urban Development.* Motor vehicles used for law enforcement or investigative purposes by the Office of the Inspector General.

(m) *Department of the Interior.* Motor vehicles used to enforce game laws by the U.S. Fish and Wildlife Service; motor vehicles assigned to special agents of the Bureau of Land Management who investigate crimes against public lands; motor vehicles assigned to special officers of the Bureau of Indian Affairs; motor vehicles used for investigating crimes against public lands by the National Park Service and assigned to the U.S. Park Police; and motor vehicles assigned to the special agents of the Office of the Inspector General who investigate possible crimes of fraud and abuse by departmental employees, contractors, and grantees.

(n) *Department of Justice.* All motor vehicles used for undercover law enforcement activities or investigative work by the Department.

(o) *Department of Labor.* All motor vehicles used for investigative, law enforcement, and compliance activities by the Employment and Training Administration, Occupational Safety and Health Administration, Employment Standards Administration, and the Mine Safety and Health Administration.

(p) *National Aeronautics and Space Administration.* Motor vehicles used for investigative or law enforcement activities.

(q) *National Labor Relations Board.* Motor vehicles used for investigative activities by field offices.

(r) *National Security Council.* Motor vehicles used by the Central Intelligence Agency.

(s) *Nuclear Regulatory Commission.* Motor vehicles used for the conduct of security operations or in the enforcement of security regulations.

(t) *Office of Personnel Management.* Motor vehicles used for the investigative program of the Office of Personnel Investigations and regional investigation activities.

(u) *United States Postal Service.* Motor vehicles that the Postal Inspection Service uses for investigative and law enforcement activities.

(v) *Department of State.* Motor vehicles used for protecting domestic and foreign dignitaries and investigating passport and visa fraud.

(w) *Department of Transportation.* Motor vehicles used for intelligence, investigative, or security activities by the Office of the Inspector General, the OST Office of Security, the Investigations and Security Division and field counterparts in the U.S. Coast Guard, the Office of Civil Aviation Security and field counterparts in the Federal Aviation Administration, and the Idaho Division Office of Motor Carriers in the Federal Highway Administration.

(x) *Department of Treasury.* Motor vehicles used by the U.S. Secret Service; the Criminal Investigation Division and the Internal Security Division of the Internal Revenue Service; motor vehicles used for investigative activities by the Collection Division of the Internal Revenue Service; motor vehicles used by the Office of Enforcement and the Office of Inspection at the Bureau of Alcohol, Tobacco, and Firearms; and motor vehicles used by the Office of Enforcement, Office of Compliance Operations, and the Office of Internal Affairs at the U.S. Customs Service.

(y) *Department of Veterans Affairs.* Motor vehicles used for investigative activities by the Office of the Inspector General and regional Field Examiners and Property Management Inspectors.

§ 102–34.200 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification?

Motor vehicles assigned for the use of the President and the heads of executive departments specified in 5 U.S.C. 101 are exempt from the requirement to display motor vehicle identification. All motor vehicles, other than those assigned for the personal use of the President, will display official U.S. Government license plates.

§ 102–34.205 What license plates and motor vehicle identification do we use on motor vehicles that are exempt from motor vehicle identification and U.S. Government license plates?

Display the regular license plates of the State, Commonwealth, territory or possession of the United States, or the District of Columbia, where the motor vehicle is principally operated.

§ 102–34.210 What special requirements apply to exempted motor vehicles operating in the District of Columbia?

If your agency wants to use regular District of Columbia license plates for motor vehicles exempt from displaying U.S. government license plates and motor vehicle identification, your agency head must designate an official to authorize them. Provide the name and facsimile signature of that official to the District of Columbia, Department of Transportation, annually.

§ 102–34.215 Can GSA ask for a listing of exempted motor vehicles?

Yes. If asked, the head of each executive agency must submit a report concerning motor vehicles exempted under this subpart. This report, which has been assigned interagency report control number 1537–GSA–AR, should be submitted to the: General Services Administration, ATTN: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

Subpart C—Official Use of Government Motor Vehicles

§ 102–34.220 What is official use of a motor vehicle owned or leased by the Government?

Official use of a motor vehicle is using a motor vehicle to perform your agency's mission(s), as authorized by your agency.

§ 102–34.225 May I use a motor vehicle owned or leased by the Government for transportation between my residence and place of employment?

No, you may not use a Government motor vehicle for transportation between your residence and place of employment unless your agency authorizes such use after making the necessary determination under 31 U.S.C. 1344 and subpart 101–6.4 of this title. Your agency must keep a copy of the written authorization within the agency and monitor the use of these motor vehicles.

§ 102–34.230 May Government contractors use motor vehicles owned or leased by the Government?

Yes, Government contractors may use Government motor vehicles when authorized under applicable procedures and the following conditions:

(a) Motor vehicles are used for official purposes only and solely in the performance of the contract.

(b) Motor vehicles cannot be used for transportation between residence and place of employment, unless authorized in accordance with 31 U.S.C. 1344 and subpart 101–6.4 of this title.

(c) Contractors must:

(1) Establish and enforce suitable penalties against employees who use, or authorize the use of, such motor vehicles for unofficial purposes or for other than in the performance of the contract; and

(2) Pay any expenses or cost, without Government reimbursement, for using such motor vehicles other than in the performance of the contract.

§ 102–34.235 What does GSA do if it learns of unofficial use of a motor vehicle owned or leased by the Government?

GSA reports the matter to the head of the agency employing the motor vehicle operator. The employing agency investigates and may, if appropriate, take disciplinary action under 31 U.S.C. 1349 or may report the violation to the Attorney General for prosecution under 18 U.S.C. 641.

§ 102–34.240 How are Federal employees disciplined for misuse of motor vehicles owned or leased by the Government?

If an employee willfully uses, or authorizes the use of, a motor vehicle for other than official purposes, the employee is subject to suspension of at least one month or, up to and including, removal by the head of the agency (31 U.S.C. 1349).

§ 102–34.245 How am I responsible for protecting motor vehicles?

When a Government-owned or -leased motor vehicle is under your control, you must:

(a) Park or store the vehicle in a manner that reasonably protects it from theft or damage.

(b) Lock the unattended motor vehicle. (The only exception to this requirement is when fire regulations or other directives prohibit locking motor vehicles in closed buildings or enclosures.)

§ 102–34.250 Am I bound by State and local traffic laws?

Yes. You must obey all motor vehicle traffic laws of the State and local jurisdiction, except when the duties of your position require otherwise. You are personally responsible if you violate State or local traffic laws. If you are fined or otherwise penalized for an offense you commit while performing your official duties, but which was not required as part of your official duties, payment is your personal responsibility.

§ 102–34.255 Who pays for parking fees and fines?

You must pay parking fees while operating a motor vehicle owned or leased by the Government. However, you can expect to be reimbursed for parking fees incurred while performing official duties. Conversely, if you are fined for a parking violation while operating a motor vehicle owned or leased by the Government, payment is your personal responsibility and you will not be reimbursed.

§ 102–34.260 Do Federal employees in motor vehicles owned or leased by the government have to use safety belts?

Yes Federal employees must use safety belts, when there is a safety belt.

Subpart D—Replacement of Motor Vehicles

§ 102–34.265 What are motor vehicle replacement standards?

Motor vehicle replacement standards specify the minimum number of years in use or miles traveled at which an executive agency may replace a Government-owned motor vehicle (see § 102–34.280).

§ 102–34.270 May we replace a Government-owned motor vehicle sooner?

Yes. You may replace a Government-owned motor vehicle if it needs body or mechanical repairs that exceed the fair market value of the motor vehicle. Determine the fair market value by adding the current market value of the motor vehicle plus any capitalized motor vehicle additions (such as a utility body or liftgate) or repairs. Your agency head or designee must review the replacement in advance.

§ 102–34.275 May we keep a Government-owned motor vehicle even though the standard permits replacement?

Yes. The replacement standard is a minimum only, and therefore, you may keep a Government-owned motor vehicle longer than shown in § 102–34.280 if the motor vehicle can be operated without excessive maintenance costs or substantial reduction in resale value.

§ 102–34.280 How long must we keep a Government-owned motor vehicle?

You must keep a motor vehicle owned or leased by the Government for at least the years or miles shown in the following table:

TABLE OF MINIMUM REPLACEMENT STANDARDS

Motor vehicle type	Years [a]	or Miles [a]
Sedans/Station Wagons	3	60,000
Ambulances	7	60,000
Buses:		
Intercity	n/a	280,000
City	n/a	150,000
School	n/a	80,000
Trucks:		
Less than 12,500 pounds GVWR	6	50,000
12,500–23,999 pounds GVWR	7	60,000
24,000 pounds GVWR and over	9	80,000
4- or 6-wheel drive motor vehicles	6	40,000

[a] Minimum standards are stated in both years and miles; use whichever occurs first.

Subpart E—Scheduled Maintenance of Motor Vehicles

§ 102–34.285 What kind of maintenance programs must we have?

You must have a scheduled maintenance program for each motor vehicle you own or lease. This requirement applies to motor vehicles operated in any State, Commonwealth, territory or possession of the United States, and the District of Columbia. The GSA Fleet will develop maintenance programs for GSA Fleet vehicles. The scheduled maintenance program must:

(a) Meet Federal, State, and local emission standards;

(b) Meet manufacturer warranty requirements;

(c) Ensure the safe and economical operating condition of the motor vehicle throughout its life; and

(d) Ensure that inspections and servicing occur as recommended by the manufacturer or more often if local operating conditions require.

§ 102–34.290 Must our motor vehicles pass State inspections?

Yes your motor vehicles must pass State inspections, where mandated.

(a) Each motor vehicle owned or leased by the Government must pass Federally-mandated emission inspections in the jurisdictions in which they operate when required by State motor vehicle administrations or State environmental departments. You must reimburse State activities for the cost of these inspections if the fee is not waived. GSA will pay the cost of these inspections for motor vehicles leased from the GSA Fleet.

(b) Motor vehicles owned or leased by the Government that are exempted from the display of U.S. Government license plates and motor vehicle identification must comply with emission and mechanical inspection programs of the State, Commonwealth, territory or possession of the United States or the District of Columbia in which they are regularly operated. Your agency must pay for these inspections, unless the fee is waived. Payment for these inspections for motor vehicles leased from the GSA Fleet are the responsibility of the using agency.

§ 102–34.295 Where can we obtain help in setting up a maintenance program?

For help in setting up a maintenance programs, contact the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

Subpart F—Motor Vehicle Accident Reporting

§ 102–34.300 What forms do I use to report an accident involving a motor vehicle owned or leased by the Government?

GSA recommends the following forms for use to report an accident in any State, Commonwealth, territory or possession of the United States and the District of Columbia. The forms should be carried in any motor vehicle owned or leased by the Government.

(a) *Standard Form 91, Motor Vehicle Accident Report*. The motor vehicle operator should complete this form at the time and scene of the accident if possible, even if damage to the motor vehicle is not noticeable.

(b) *Standard Form 94, Statement of Witness*. This form should be completed by any witness to the accident.

§ 102–34.305 To whom do we send accident reports?

Send accident reports as follows:

(a) If the motor vehicle is owned or leased by your agency, follow your internal agency directives.

(b) If the motor vehicle is managed by the GSA Fleet, report the accident to GSA in accordance with subpart 101–39.4 of this title.

Subpart G—Disposal of Motor Vehicles

§ 102–34.310 How do we dispose of a motor vehicle in any State, Commonwealth, territory or possession of the United States, or the District of Columbia?

After meeting the replacement standards under subpart D of this part, you may dispose of a Government-owned motor vehicle by transferring the motor vehicle title, or manufacturer's Certificate of Origin, to the new owner. Detailed instructions on the disposal process are in parts 101–45 and 101–46 of this title.

§ 102–34.315 What forms do we use to transfer ownership when selling a motor vehicle?

Use the following forms to transfer ownership:

(a) Standard Form 97, The United States Government Certificate to Obtain Title to a Motor Vehicle, if both of the following apply:

(1) The motor vehicle will be retitled by a State, Commonwealth, territory or possession of the United States or the District of Columbia; and

(2) The purchaser intends to operate the motor vehicle on highways.

Note to § 102–34.315(a)(2): Do not use Standard Form 97 if the Government-owned motor vehicle is either not designed or not legal for operation on highways. Examples are construction equipment, farm machinery, and certain military-design motor vehicles. Instead, use an appropriate bill of sale or award document. Examples are Optional Form 16, Sales Slip-Sale of Government Personal Property, and Standard Form 114, Sale of Government Property—Bid and Award.

(b) Standard Form 97 is optional in foreign countries because foreign governments may require the use of other forms.

Note to § 102–34.315: The original Standard Form 97 is printed on secure paper to identify readily any attempt to alter the form. The form is also pre-numbered to prevent duplicates. State motor vehicle agencies may reject certificates showing erasures or strikeovers.

§ 102–34.320 How do we distribute the completed Standard Form 97?

Standard Form 97 is a 4-part set printed on continuous-feed paper. Distribute the form as follows:

(a) Original SF 97 to the purchaser or donee.

(b) One copy to the owning agency.

(c) One copy to the contracting officer making the sale or transfer of the motor vehicle.

(d) One copy under owning-agency directives.

Subpart H—Motor Vehicle Fueling

§ 102–34.325 How do we obtain fuel for motor vehicles?

You may obtain fuel for any motor vehicle owned or leased by the Government by using:

(a) A Government-issued charge card;

(b) A Government agency fueling facility; or

(c) Personal funds and obtaining reimbursement from your agency.

§ 102–34.330 What Government-issued charge cards may I use to purchase fuel and motor vehicle related services?

(a) You may use a fleet charge card specifically issued for this purpose. These cards are designed to collect motor vehicle data at the time of purchase. Where appropriate, State sales and motor fuel taxes are deducted from fuel purchases by the fleet charge card services contractor before your agency is billed. The GSA contractor issued fleet charge card is the only Government-issued charge card that may be used for GSA Fleet motor vehicles. For further information on acquiring these fleet charge cards and their use, contact the: General Services Administration, Attn: FCX, Washington, DC 20406.

(b) You may use a Government purchase card if you do not have a fleet charge card or if the use of such a government purchase card is required by your agency mission. However, the Government purchase card does not collect motor vehicle data nor does it deduct State sales and motor fuel taxes.

§ 102–34.335 What type of fuel do I use in motor vehicles?

(a) Use the grade (octane rating) of fuel recommended by the motor vehicle manufacturer when fueling motor vehicles owned or leased by the Government.

(b) Do not use premium grade gasoline in any motor vehicle owned or leased by the Government unless the motor vehicle specifically requires premium grade gasoline.

(c) Use unleaded gasoline in all Government owned or leased motor vehicles designed to operate on gasoline and used overseas unless:

(1) Such use would be in conflict with country-to-country or multi-national logistics agreements; or

(2) Such gasoline is not available locally.

§ 102–34.340 Do I have to use self-service fuel pumps?

Yes. You must use self-service fuel pumps to the fullest extent possible.

Subpart I—Federal Motor Vehicle Fleet Report

§ 102–34.345 What is the Federal Motor Vehicle Fleet Report?

The Federal Motor Vehicle Fleet Report is compiled by GSA annually from information submitted by Federal agencies on motor vehicle inventory, cost, and use data. GSA supplies copies of the report to the Congress, Federal agencies, and other organizations upon request.

Recipients of this report use it to evaluate and analyze operations and management of the Federal motor vehicle fleet.

§ 102–34.350 What records do we need to keep?

For owned motor vehicles, you are responsible for developing adequate accounting and reporting procedures to ensure accurate reporting of inventory, cost, and operational data needed to manage and control motor vehicles.

§ 102–34.355 When and how do we report motor vehicle data?

(a) Within 75 calendar days after the end of the fiscal year, use Standard Form 82, Agency Report of Motor Vehicle Data, to report motor vehicle inventory, cost, and operating information. Send the Standard Form 82 to the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

(b) Use separate forms to report data for domestic and foreign fleets.

(1) For motor vehicles lent to another agency during the reporting period, the owning agency reports all data.

(2) For motor vehicles transferred from one owning agency to another, each agency reports data for the time it retained accountability.

(c) Detailed instructions are included as part of the form. You can also complete the Standard Form 82 electronically using a computerized input medium. For further information, contact the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

Subpart J—Forms

§ 102–34.360 How do we obtain the forms prescribed in this part?

See § 102–2.135 of this chapter for how to obtain forms prescribed in this part.

Dated: October 19, 1999.

David J. Barram,

Administrator of General Services.

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Vol. 64, No. 211

Tuesday, November 2, 1999

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

58755–59106	1
59107–59602	2

CFR PARTS AFFECTED DURING NOVEMBER

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3CFR

Proclamations:	
7245	59103
Executive Orders:	
13067 (See Notice of October 29, 1999)	59105
Administrative Orders:	
Notices:	
Notice of October 29, 1999	59105
Presidential Determinations:	
No. 00–2 of October 21, 1999	58755
No. 00–3 of October 25, 1999	58757

5 CFR

Proposed Rules:	
1201	58798

7 CFR

905	58759
944	58759
981	58763, 59107
1439	58766
1477	58766
Proposed Rules:	
770	59131
1823	59131
1956	59131

9 CFR

77	58769

11 CFR

100	59113
114	59113

12 CFR

211	58780
1805	59076
Proposed Rules:	
1102	58800

14 CFR

39 (4 documents)	59113, 59115, 59116, 59117
Proposed Rules:	
39	59137

15 CFR

801	59119

26 CFR

1	58782, 59139
301	58782
Proposed Rules:	
1	59139

28 CFR

0	58782
27	58782
50	59122

31 CFR

538	58789
550	58789
560	58789

33 CFR

117	59123

34 CFR

668 (3 documents)	58974, 59016, 59060
682 (2 documents)	58938, 59016
685(2 documents)	58938, 59016

37 CFR

Proposed Rules:	
201	59140

40 CFR

51	58792
Proposed Rules:	
82	59141
141	59245
142	59245
180	58792

41 CFR

101	59591
102	59591

42 CFR

410	59379
411	59379
414	59379
415	59379
485	59379

43 CFR

414	58986

47 CFR

73 (3 documents)	59124
90	59148
Proposed Rules:	
73 (3 documents)	59147, 59148
90	59148

48 CFR

201	58908
213	58908

49 CFR

Proposed Rules:	
Ch. II	59046
209	59046

50 CFR

17	58910

622 (2 documents)	59126
635	58793
640	59126
660	59129
Proposed Rules:	
16	59149
622 (2 documents)	59152, 59153
648	59156
654	59153
679	58796
Proposed Rules:	
17	58934

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 2, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Almonds grown in—
  - California; published 11-1-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Balanced Budget Act of 1997; implementation—
    - Time-limit exemptions and employment and training programs; published 9-3-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - Caribbean, Gulf, and South tlantic fisheries—
    - Technical amendment; published 11-2-99
  - West Coast States and Western Pacific fisheries—
    - Pacific Coast groundfish; correction; published 11-2-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - Massachusetts; published 9-3-99

FEDERAL ELECTION COMMISSION

- Contribution and expenditure limitations and prohibitions:
  - Corporate and labor organizations—
    - Membership association member; definition; published 11-2-99

GENERAL SERVICES ADMINISTRATION

- Federal Management Regulation:
  - Transportation—
    - Motor vehicle management; published 11-2-99

JUSTICE DEPARTMENT

- Practice and procedure:
  - Policy against entering into final settlement agreements or consent decrees subject to confidentiality provisions, etc.; published 11-2-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Eurocopter Canada Ltd.; published 10-18-99
  - Fokker; published 9-28-99
  - General Electric Co.; published 9-3-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Electronic benefit transfer system; adjustments; comments due by 11-8-99; published 9-9-99

AGRICULTURE DEPARTMENT

Forest Service

- National Forest System land and resource management planning; comments due by 11-9-99; published 10-5-99

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

- Americans with Disabilities Act; implementation:
  - Accessibility guidelines—
    - Recreation facilities; comments due by 11-8-99; published 7-9-99

COMMERCE DEPARTMENT

Economic Analysis Bureau

- International services surveys:
  - U.S. direct investments abroad—
    - BE-10; benchmark survey-1999; reporting requirements; comments due by 11-8-99; published 9-7-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Endangered and threatened species:
  - Sea turtle conservation; shrimp trawling requirements—
    - Cape Lookout, NC, offshore waters affected by Hurricanes Dennis and Floyd; limited tow times use as alternative to turtle excluder devices; comments due by 11-12-99; published 10-15-99

DEFENSE DEPARTMENT

- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

ENERGY DEPARTMENT

- Acquisition regulations:
  - Management and operating contracts; purchasing from contractor affiliated sources; comments due by 11-12-99; published 10-13-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-8-99; published 9-23-99
  - Colorado; comments due by 11-8-99; published 10-7-99
  - Delaware; comments due by 11-12-99; published 10-12-99
  - New York; comments due by 11-8-99; published 10-8-99
  - Source-specific plans—
    - Navajo Nation, AZ and NM; comments due by 11-8-99; published 10-8-99
- Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Texas; comments due by 11-12-99; published 10-13-99
- Hazardous waste program authorizations:
  - Washington; comments due by 11-12-99; published 10-12-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Avermectin B1 and its delta-8,9-isomer; comments due by 11-8-99; published 9-7-99
  - Processing fees; comments due by 11-8-99; published 9-24-99

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Wireless telecommunications services—
    - Extension to Tribal lands; comments due by 11-9-99; published 9-10-99
- Digital television stations; table of assignments:
  - Illinois; comments due by 11-9-99; published 9-29-99
- Radio stations; table of assignments:
  - New York; comments due by 11-8-99; published 10-12-99
  - Texas; comments due by 11-8-99; published 9-29-99
  - Wisconsin; comments due by 11-8-99; published 9-29-99

FEDERAL DEPOSIT INSURANCE CORPORATION

- Resolution and receivership rules:
  - Financial assests transferred by insured depository institution in connection with securitization or participation; comments due by 11-8-99; published 9-9-99

FEDERAL ELECTION COMMISSION

- Rulemaking petitions:
  - Project on Government Oversight; comments due by 11-12-99; published 10-13-99

FEDERAL RESERVE SYSTEM

- Equal credit opportunity (Regulation B):
  - Revision; comments due by 11-10-99; published 8-16-99

GENERAL SERVICES ADMINISTRATION

- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Medical devices:
  - Cardiovascular, orthopedic, and physical medicine diagnostic devices—
    - Cardiopulmonary bypass accessory equipment, goniometer device, and electrode cable devices; comments due by 11-8-99; published 8-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Tuberculosis-related services to TB-infected individuals; optional coverage; comments due by 11-9-99; published 9-10-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Risk-based capital:

Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 11-10-99; published 6-14-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:

Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 11-12-99; published 10-15-99

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:

Rights-of-way—

Principles and procedures under Mineral Leasing Act; comments due by 11-12-99; published 10-13-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

National Wildlife Refuge System:

Land usage; compatibility policy; comments due by 11-8-99; published 9-9-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Virginia; comments due by 11-8-99; published 10-8-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Foreign proposals to NASA research announcements; implementation on no-exchange-of-funds basis; comments due by 11-8-99; published 9-7-99

Federal Acquisition Regulation (FAR):

Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:

Angel, Jeffery C.; comments due by 11-8-99; published 8-23-99

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list additions; comments due by 11-8-99; published 8-23-99

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

Patapsco River, MD; New Year's Celebration Fireworks; comments due by 11-8-99; published 10-8-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Advisory circulars; availability, etc.:

Aircraft products and parts—

Brakes and braking systems certification tests and analysis; comments due by 11-8-99; published 8-10-99

Airworthiness directives:

Airbus; comments due by 11-8-99; published 10-8-99

AlliedSignal Inc.; comments due by 11-8-99; published 9-8-99

British Aerospace; comments due by 11-8-99; published 10-8-99

General Electric Co.; comments due by 11-8-99; published 9-8-99

Airworthiness standards:

Transport category airplanes—

Braking systems; harmonization with European standards; comments due by 11-8-99; published 8-10-99

Braking systems; harmonization with European standards; correction; comments due by 11-8-99; published 8-20-99

Technical standard orders:

Transport airplane wheels and wheel and brake assemblies; comments due by 11-8-99; published 8-10-99

TREASURY DEPARTMENT

Customs Service

Merchandise entry:

Anticounterfeiting Consumer Protection Act; Customs entry documentation; comments due by 11-12-99; published 9-13-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes, etc.:

Partnerships and branches; guidance under Subpart F; withdrawal and new guidance involving hybrid branches; comments due by 11-10-99; published 7-13-99

Income taxes:

Capital gains, partnership, Subchapter S, and trust provisions; comments due by 11-8-99; published 8-9-99

Correction; comments due by 11-8-99; published 9-10-99

Income tax return preparer; identifying number; cross reference; comments due by 11-10-99; published 8-12-99

LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1663/P.L. 106–83

National Medal of Honor Memorial Act (Oct. 28, 1999; 113 Stat. 1293)

H.R. 2841/P.L. 106–84

To amend the Revised Organic Act of the Virgin Islands to provide for greater fiscal autonomy consistent with other United States jurisdictions, and for other purposes. (Oct. 28, 1999; 113 Stat. 1295)

H.J. Res. 73/P.L. 106–85

Making further continuing appropriations for the fiscal year 2000, and for other purposes. (Oct. 29, 1999; 113 Stat. 1297)

Last List October 28, 1999

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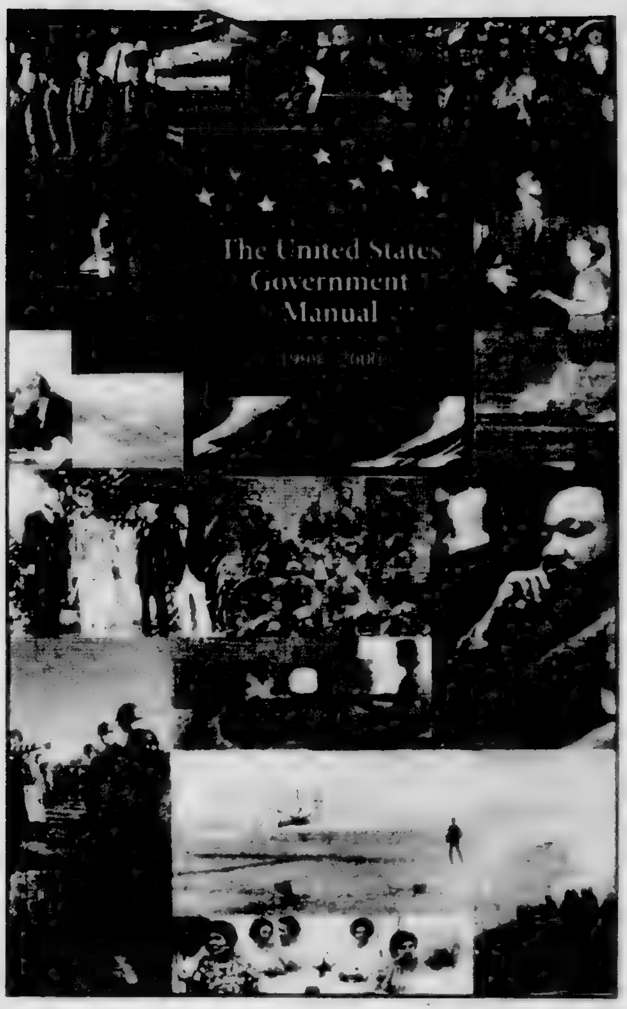

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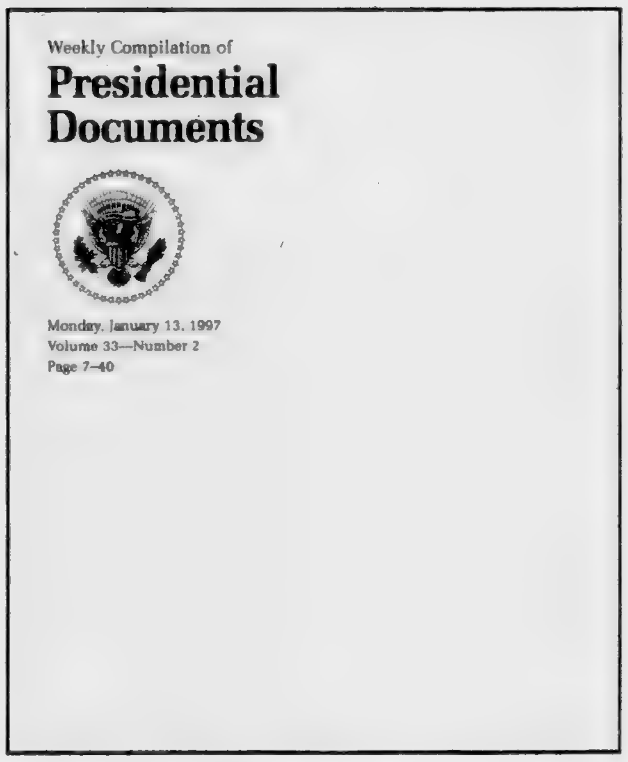

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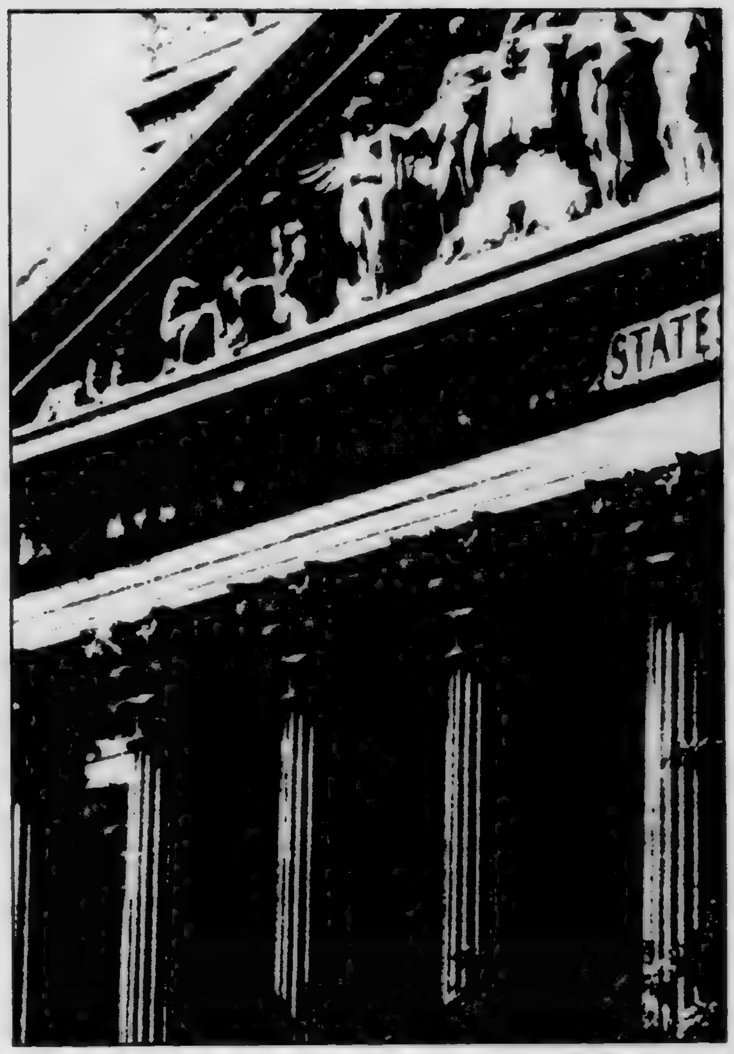

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Vol. 64
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11–3–99
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Contents

Federal Register

Vol. 64, No. 212

Wednesday, November 3, 1999

Agricultural Marketing Service

RULES

Papayas grown in—
  Hawaii, 59604–59606

PROPOSED RULES

Olive oil promotion, research, and information order
  Referendum procedures, 59669

Agricultural Research Service

NOTICES

Inventions, Government-owned; availability for licensing, 59735–59736

Agriculture Department

See Agricultural Marketing Service
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See Rural Telephone Bank

NOTICES

Agency information collection activities:
  Submission for OMB review; comment request, 59732–59734
Committees; establishment, renewal, termination, etc.:
  Small Farms Advisory Committee, 59734–59735

Animal and Plant Health Inspection Service

RULES

Plant-related quarantine, foreign:
  Fumigated imported logs, lumber, and other unmanufactured wood articles; aeration, 59603–59604

Antitrust Division

NOTICES

Meetings:
  International Competition Policy Advisory Committee, 59791–59792

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention

NOTICES

Organization, functions, and authority delegations:
  Scientific Resources Program, National Center for Infectious Diseases, 59774

Children and Families Administration

NOTICES

Agency information collection activities:
  Submission for OMB review; comment request, 59774–59775

Coast Guard

RULES

Drawbridge operations:
  New Jersey, 59624–59625
Regattas and marine parades:
  Head of the South Rowing Regatta, 59623–59624

Commerce Department

See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Futures Trading Commission

PROPOSED RULES

Commodity Exchange Act:
  Electronic signatures by customers, participants, and clients of registrants, 59694–59695

NOTICES

Meetings; Sunshine Act, 59742

Defense Department

See Navy Department

NOTICES

Agency information collection activities:
  Submission for OMB review; comment request, 59742–59743
Federal Acquisition Regulation (FAR):
  Agency information collection activities—
    Proposed collection; comment request, 59743
Meetings:
  Defense Intelligence Agency Science and Technology Advisory Board, 59743
  Science Board task forces, 59743–59744
  Threat Reduction Advisory Committee, 59744
Travel per diem rates, civilian personnel; changes, 59744–59749

Education Department

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 59750–59751

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Meetings:
  Environmental Management Site-Specific Advisory Board—
    Los Alamos National Laboratory, NM, 59751–59752
    Paducah Gaseous Diffusion Plant, KY, 59751
    Pantex Plant, TX, 59752
  Nuclear Science Advisory Committee, 59752–59753

Environmental Protection Agency

RULES

Air programs:
  Accidental release prevention—
    Risk management programs, 59650–59652
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
  Maryland, 59648–59650
Air quality implementation plans; approval and promulgation; various States:
  Alabama, 59633–59635
  Indiana, 59642–59644
  Kentucky, 59644
  New Jersey, 59638–59642
  Ohio, 59644–59648

Oklahoma, 59629–59633
Tennessee, 59625–59629
Virginia, 59635–59638
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Buprofezin, 59652–59655
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Maryland, 59718–59719
Air programs; State authority delegations:
Ohio, 59719
Air quality implementation plans; approval and promulgation; various States:
Alabama, 59704
Indiana, 59705
Nevada, 59706
New Jersey, 59704–59705
New York, 59706–59718
Ohio, 59705–59706
Oklahoma, 59703
Tennessee, 59703
Virginia, 59704
NOTICES
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
Wisconsin, 59760
Confidential business information and data transfer, 59760–59761
Municipal solid waste landfill permit program; adequacy determinations:
Guam, 59761–59762
Pesticide data submitters list; availability, 59762–59763
Pesticide, food, and feed additive petitions:
E.I. du Pont de Nemours & Co., 59767–59771
Pesticide registration, cancellation, etc.:
Hill Mfg. Co., Inc., et al., 59763–59766
Tomen Agro Inc., 59766–59767

Federal Aviation Administration

RULES
Air carrier certification and operations:
Year 2000 airport safety inspections, 60067–60077
Airworthiness directives:
Eurocopter France, 59614–59615
Robinson Helicopter Co., 59613–59614
Class E airspace, 59615–59616
PROPOSED RULES
Airworthiness directives:
Dassault, 59685–59687
Class E airspace, 59687–59691
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 59820–59821

Federal Communications Commission

RULES
Radio broadcasting:
Broadcast, broadcast cable and cable/Multipoint Distribution Service cross-ownership attribution rules; regulatory review
Effective date, 59655
Radio services, special:
Fixed microwave services—
37.0-38.6 and 38.6-40.0 bands; licensing by Economic Areas; correction, 59663–59664
Personal services—
218-219 MHz services; licensing issues, 59656–59663
Radio stations; table of assignments:
Idaho, 59655–59656
PROPOSED RULES
Common carrier services:
Local telephone service competition status and advanced telecommunications capability (broadband) deployment, 59719–59727
Radio stations; table of assignments:
Illinois and Kentucky, 59728–59729
Pennsylvania, 59728

Federal Election Commission

RULES
Presidential primary and general election candidates; public financing:
Credit and debit card contributions over Internet
Effective date, 59607
Party committee coordinated expenditures and media travel costs, 59606

Federal Energy Regulatory Commission

NOTICES
Agency information collection activities:
Proposed collection; comment request, 59753–59754
Electric rate and corporate regulation filings:
California Power Exchange Corp. et al., 59755–59756
Oswego Harbor Power LLC et al., 59756–59759
Environmental statements; availability, etc.:
Chugach Electric Association, Inc., 59759
Hydroelectric applications, 59759–59760
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 59754
Entergy Services, Inc., 59754
Kern River Gas Transmission Co., 59754
Questar Pipeline Co., 59754–59755
Wyoming Interstate Co., Ltd., 59755

Federal Highway Administration

NOTICES
Environmental statements; notice of intent:
Bronx and New York Counties, NY, 59821–59822

Federal Maritime Commission

NOTICES
Complaints filed:
South Carolina Maritime Services, Inc., 59771–59772
Freight forwarder licenses:
Unistar Lines et al., 59772

Federal Mediation and Conciliation Service

PROPOSED RULES
Freedom of Information Act; implementation, 59697–59700

Federal Reserve System

RULES
Availability of funds and collection of checks (Regulation CC):
Sending notices in lieu of returning original checks, 59607–59613
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 59772
Permissible nonbanking activities, 59772–59773
Meetings; Sunshine Act, 59773

Federal Trade Commission

RULES

- Children's Online Privacy Protection Act; implementation, 59887–59915

Fish and Wildlife Service

PROPOSED RULES

- Endangered and threatened species:
  - Columbian white-tailed deer; Douglas County population delisting, 59729–59730

Food and Drug Administration

RULES

- Medical devices:
  - Hearing aids; technical data amendments, 59618–59620
- Organization, functions, and authority delegations:
  - Center for Drug Evaluation and Research, Director, et al., 59617–59618

PROPOSED RULES

- Medical devices:
  - Hearing aids; technical data amendments, 59695–59697

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 59775–59779
- Drug Evaluation and Research Center; regulatory project managers; training programs; information availability to pharmaceutical companies, 59779–59780
- Medical devices:
  - Gastroenterology-urology devices—
    - Fiber optic light sources; reclassification petition denied, 59780–59782
- Meetings:
  - Pulmonary-Allergy Drugs Advisory Committee, 59782
- Reports and guidance documents; availability, etc.:
  - Medical devices—
    - Single use devices; reuse strategy, 59782–59783
  - Replication competent retrovirus in retroviral vector based gene therapy products, etc.; testing; industry guidance, 59783–59784

Food and Nutrition Service

PROPOSED RULES

- Food stamp program:
  - Retailer application processing, 59665–59669

Forest Service

NOTICES

- Environmental statements; notice of intent:
  - Superior National Forest, MN, 59736–59737
- Meetings:
  - Resource Advisory Councils—
    - John Day/Snake, 59737

General Services Administration

NOTICES

- Environmental statements; notice of intent:
  - San Jose, CA; Federal courthouse, 59773–59774
- Federal Acquisition Regulation (FAR):
  - Agency information collection activities—
    - Proposed collection; comment request, 59743

Health and Human Services Department

See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration

PROPOSED RULES

- Health plans, health care clearinghouses, and health care providers:
  - Administrative data standards and related requirements—
    - Individually identifiable health information; privacy standards, 59917–60066

Health Resources and Services Administration

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request, 59784–59785

Housing and Urban Development Department

RULES

- Low income housing:
  - Housing assistance payments (section 8)—
    - Tenant-based certificate and voucher programs merger into Housing Choice Voucher Program; amendment, 59620–59622

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request, 59785–59786
- Grants and cooperative agreements; availability, etc.:
  - Public and Indian housing—
    - Public Housing Drug Elimination Program; Gun Buyback Violence Reduction Initiative, 60079–60082

Immigration and Naturalization Service

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request, 59792

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau

International Trade Administration

NOTICES

- Antidumping:
  - Cold-rolled and corrosion-resistant carbon steel flat products from—
    - Korea, 59738–59739
  - Freshwater crawfish tail meat from—
    - China, 59739
  - Large newspaper printing presses and components, assembled or unassembled, from—
    - Japan, 59739–59741
  - Natural bristle paint brushes and brush heads from—
    - China, 59741
- Antidumping and countervailing duties:
  - Five-year (sunset) reviews—
    - Final results and revocations, 59737–59738
- Committees; establishment, renewal, termination, etc.:
  - Africa Commerce Advisory Committee, 59741–59742

International Trade Commission

NOTICES

- Meetings; Sunshine Act, 59791

Justice Department

See Antitrust Division
See Immigration and Naturalization Service
See Parole Commission

Land Management Bureau
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 59786–59787
Environmental statements; notice of intent:
  Wilderness study areas, UT, 59787–59789
Oil and gas leases:
  Utah, 59789
Realty actions; sales, leases, etc.:
  Nevada, 59789–59790
  Wyoming, 59790

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
  Agency information collection activities—
    Proposed collection; comment request, 59743

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
  Combined Arts Advisory Panel, 59792–59794

National Institute of Standards and Technology
RULES
Organization, functions, and authority delegations:
  Laboratory Accreditation Program, Chief, 59616–59617
PROPOSED RULES
Accreditation and assessment programs:
  Federal conformity assessment activities; policy guidance, 59691–59694

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
  Alaska; fisheries of Exclusive Economic Zone—
    Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 59730–59731

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 59750

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
  Antitrust review authority; clarification, 59671–59677
Rulemaking petitions:
  Nevada, 59684–59685
  Stein, Michael, 59669–59670
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
  Flexibility; clarification and addition, 59677–59684
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 59794
Meetings:
  Fatigue effects on metal components, 59795
  Nuclear Waste Advisory Committee, 59795–59796
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 59796–59812
Petitions; Director's decisions:
  Niagara Mohawk Power Corp., 59812–59813
Reports and guidance documents; availability, etc.:
  Antitrust reviews; standard review plan, 59813

Panama Canal Commission
NOTICES
Accumulated unpaid balances relating to Canal Zone postal-savings deposits and certificates and postal money orders; agency's release from liability, 59813–59814

Parole Commission
RULES
Federal prisoners; paroling and releasing, etc.:
  Rescission guidelines, 59622–59623

Patent and Trademark Office
PROPOSED RULES
Patent cases:
  Payment of fees by credit card; changes, 59701–59702

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
  San Joaquin County, CA; Lower Mokelumne River Restoration Program, 59790–59791

Rural Telephone Bank
NOTICES
Meetings; Sunshine Act, 59737

Securities and Exchange Commission
RULES
Investment companies:
  Investment company boards of directors; independent directors role; interpretive issues, 59877–59886
PROPOSED RULES
Investment companies:
  Investment company boards of directors; independent directors role, 59825–59874
NOTICES
Self-regulatory organizations; proposed rule changes:
  National Association of Securities Dealers, Inc., 59815–59819
Applications, hearings, determinations, etc.:
  Advantage Marketing Systems, Inc., 59814
  IKON Office Solutions, Inc., 59814–59815

Small Business Administration
NOTICES
Privacy Act:
  Systems of records, 59819–59820

State Department
NOTICES
International Religious Freedom Act:
  Countries of particular concern; list, 59820

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
  Washington County Railroad Co., 59822–59823

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board

Treasury Department

NOTICES

Meetings:

International Financial Institution Advisory Commission, 59823

Separate Parts In This Issue

Part II

Securities and Exchange Commission, 59825–59886

Part III

Federal Trade Commission, 59887–59915

Part IV

Department of Health and Human Services, 59917–60066

Part V

Department of Transportation, Federal Aviation Administration, 60067–60077

Part VI

Department of Housing and Urban Development, 60079–60082

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR	
319	59603
928	59604
Proposed Rules:	
278	59665
1217	59669
10 CFR	
Proposed Rules:	
2 (2 documents)	59669, 59671
50	59671
72	59677
73	59684
11 CFR	
110	59606
9004	59606
9034	59606
9036	59607
12 CFR	
229	59607
14 CFR	
39 (2 documents)	59613, 59614
71	59615
139	60068
Proposed Rules:	
39	59685
71 (4 documents)	59687, 59688, 59689, 59690
15 CFR	
285	59616
Proposed Rules:	
287	59691
16 CFR	
312	59888
17 CFR	
271	59877
Proposed Rules:	
1	59694
239	59826
240	59826
270	59826
274	59826
21 CFR	
5	59617
801	59618
Proposed Rules:	
801	59695
24 CFR	
982	59620
28 CFR	
2	59622
29 CFR	
Proposed Rules:	
1401	59697
33 CFR	
100	59623
117	59624
37 CFR	
Proposed Rules:	
1	59701
40 CFR	
52 (8 documents)	59625, 59629, 59633, 59635, 59638, 59642, 59644
62	59648
63	59650
68	59650
180	59652
Proposed Rules:	
52 (9 documents)	59703, 59704, 59705, 59706
62	59718
63	59719
68	59719
45 CFR	
Proposed Rules:	
160	59918
161	59918
162	59918
163	59918
164	59918
47 CFR	
1	59656
20	59656
73 (2 documents)	59655
95	59656
101	59663
Proposed Rules:	
1	59719
20	59719
43	59719
73 (2 documents)	59728
50 CFR	
Proposed Rules:	
17	59729
679	59730

Rules and Regulations

Federal Register
Vol. 64, No. 212
Wednesday, November 3, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 99–057–1]

Aeration of Imported Logs, Lumber, and Other Unmanufactured Wood Articles That Have Been Fumigated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations for importing unmanufactured wood articles that have been fumigated with methyl bromide or other fumigants by adding a reminder that such articles must be aerated after fumigation in accordance with U.S. Environmental Protection Agency label requirements, the Plant Protection and Quarantine Treatment Manual, and Occupational Safety and Health Administration regulations. Aeration protects port personnel, consignees, and others against possible exposure to dangerous levels of fumigant residue. We are taking this action to increase awareness of the aeration requirement among persons shipping fumigated wood to the United States.

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Reeves, Acting Assistant Director, Port Operations, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) regulates the importation of logs, lumber, and other unmanufactured wood articles to prevent the introduction into the United States of dangerous plant pests, including forest pests. These regulations are contained in 7 CFR 319.40–1 through 319.40–11, "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (referred to below as the regulations).

One option for importing certain wood articles involves fumigating the articles with methyl bromide or other fumigants. Section 319.40–7(f) of the regulations contains methyl bromide fumigation standards for logs, lumber, and other regulated wood articles. Other fumigants may be utilized for solid wood packing material from the Peoples Republic of China, including Hong Kong. The Plant Protection and Quarantine (PPQ) Treatment Manual (which is incorporated into the regulations by reference at 7 CFR 300.1) contains fumigation standards for methyl bromide and other fumigants.

When articles are fumigated, the articles must be aerated afterward to ensure that the articles are safe for handling, storage, and transportation. Aeration is required by the Environmental Protection Agency (EPA) in EPA-approved label instructions for all fumigants utilized pursuant to the regulations. Additionally, aeration requirements are set forth in the PPQ Treatment Manual. Furthermore, Occupational Safety and Health Administration (OSHA) regulations contained in title 29 of the Code of Federal Regulations require employers of cargo handlers to determine that the concentration of fumigants is below the level specified as hazardous before the cargo is loaded or discharged.

Recently, APHIS has detected high levels of methyl bromide residue in shipping containers from the Peoples Republic of China, including Hong Kong, that contain fumigated solid wood packing material. These residue levels could pose a health and safety risk to APHIS inspectors at ports of entry and to consignees and other persons who open the shipping containers. APHIS inspectors cannot safely inspect containers with such residues.

Because the recent cases of high levels of residue were all connected with shipments from the Peoples Republic of China, including Hong Kong, APHIS has notified officials in the Peoples Republic of China, including Hong Kong, to remind them of the aeration requirements cited above. However, we believe the requirements would be more apparent to exporters in these and other countries if we stated them explicitly in the regulations.

Therefore, we are adding the following sentence to the introductory paragraph in § 319.40–7(f), which deals with methyl bromide fumigation: "Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with the Treatment Manual and label instructions approved by the U.S. Environmental Protection Agency."

We are making a parallel change to § 319.40–5(g), which requires that solid wood packing material from China "must be heat treated, fumigated, or treated with preservatives, using a treatment schedule contained in § 319.40–7 or in the Plant protection and Quarantine Treatment Manual." This paragraph authorizes fumigation not only with methyl bromide, but with other fumigants authorized by the PPQ Treatment Manual. In each place where the word "fumigated" appears, we are changing the word "fumigated" to "fumigated and aerated," as a reminder that the PPQ Treatment Manual and EPA-approved label instructions require aeration of all fumigants utilized pursuant to the regulations.

Effective Date

The requirement to aerate fumigated shipments to reduce levels of fumigant to a safe level is already in effect, in the form of EPA-approved label requirements. This requirement is also set forth in the PPQ Treatment Manual. This rule only adds a reference to those requirements to the regulations to increase their visibility to regulated parties. It does not appear that public participation in this rulemaking procedure would make additional relevant information available to the Department.

Accordingly, because the changes contained in this rule are nonsubstantive in nature, we have found that notice and public procedure on this rule are unnecessary. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this is not a substantive change in the regulations, it is exempt from the provisions of Executive Order 12866 and Executive

Order 12988. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of the Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.40–5 [Amended]

2. In § 319.40–5, paragraphs (g)(1), (g)(2)(i), (g)(6), and (i) are amended by removing the word "fumigated," each time it appears and adding the phrase "fumigated and aerated," in its place.

§ 319.40–7 [Amended]

3. In § 319.40–7, paragraph (f), the introductory text is amended by adding a third sentence to read as follows: "Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with the Treatment Manual and label instructions approved by the U.S. Environmental Protection Agency."

Done in Washington, DC, this 27th day of October 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–28606 Filed 11–2–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV99–928–1 FR]

Papayas Grown in Hawaii; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate from $0.0063 to $0.008 per pound of assessable papayas established for the Papaya Administrative Committee (Committee) under Marketing Order No. 928 for the 1999–2000 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of papayas grown in Hawaii. Authorization to assess papaya handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began on July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 155 and Order No. 928, both as amended (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, papaya handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable papayas beginning July 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal years from $0.0063 per pound to $0.008 per pound of assessable papayas.

The papaya marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of papayas. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–1999 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 22, 1999, to discuss the crop estimate, budget, and assessment rate for the 1999–2000 fiscal year. On July 15, 1999, the Committee completed a mail ballot on the crop estimate and assessment rate, and on an eight-to-one vote, adopted a crop estimate of 40 million pounds of assessable papayas and an assessment rate of $0.008 per pound for the 1999–2000 and subsequent fiscal years. The person who voted no objected to the higher assessment rate. The Committee unanimously recommended a 1999–2000 fiscal year budget of $522,500.

The assessment rate of $0.008 is $0.0017 higher than the rate currently in effect. The budgeted expenses are $39,000 less than the $561,500 budgeted for last year. The Committee determined that a higher assessment rate was necessary to meet the recommended expenses and maintain a reserve fund for the 1999–2000 fiscal year. For several fiscal years, money from the reserve fund has been used to meet a portion of budgeted expenses in an effort to keep the assessment rate as low as possible. The Committee believes a further reduction of the reserve fund would not be prudent.

The Committee is authorized to maintain reserve funds in an amount not to exceed approximately one fiscal year's operational expenses. Last year, the reserve fund was $25,200. This year it is expected to be $25,000, which is approximately one percent lower than the previous year and considered adequate by the Committee. After consideration of the estimated crop size and anticipated expenses for the 1999–2000 fiscal year, it was determined that increasing the assessment rate by approximately 27 percent will provide sufficient funds to meet anticipated expenses and maintain an adequate reserve fund.

The major expenditures recommended by the Committee for the 1999–2000 year include $230,000 for marketing and promotion, $90,500 for research and development, and $98,000 for salaries. Budgeted expenses for these items in 1998–99 were $183,000 for marketing and promotion, $171,500 for research and development, and $98,000 for salaries, respectively.

The assessment rate recommended by the Committee was derived by dividing assessment income needed by expected shipments of papayas. Papaya shipments for the year are estimated at 40 million pounds which should provide $320,000 in assessment income. Income derived from handler assessments, when combined with income from the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and the Japanese Inspection program, along with interest income of $16,000, will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be $25,000 at the end of the 1999–2000 fiscal year) will be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 400 producers of papayas in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a reported average f.o.b. price of $1.30 per pound of papayas, a handler would have to ship in excess of 3.85 million pounds of papayas to have annual receipts of $5,000,000. Last year, a majority of the handlers shipped less than 3.85 million pounds of papayas, and, therefore, could be considered small businesses under SBA's definition.

Based on a reported average grower price of $0.45 per pound and industry shipments of 36 million pounds, total grower revenues would be $16.2 million. Average grower revenue would thus be $40,500. Based on the foregoing, the majority of producers of papayas may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal years from $0.0063 per pound to $0.008 per pound of assessable papayas. The Committee recommended 1999–2000 expenditures for $522,500 and the $0.008 per pound assessment rate. The assessment rate of $0.008 is $0.0017 higher than the 1998–99 rate. The quantity of assessable papayas for the 1999–2000 fiscal year is estimated at 40 million pounds. Thus, the $0.008 rate should provide $320,000 in assessment income. Income derived from handler assessments, the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and the Japanese Inspection program, along with interest income of $16,000, will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be about $25,000 at the end of the 1999–2000 fiscal year) will be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The Committee recommended 1999–2000 expenditures of $522,500. The major expenditures recommended for the 1999–2000 year include $230,000 for marketing and promotion, $90,500 for research and development, and $98,000 for salaries. Budgeted expenses for these items in 1998–99 were $183,000 for marketing and promotion, $171,500 for research and development, and $98,000 for salaries, respectively.

The Committee discussed the alternative of decreasing expenditure levels for marketing and promotion and further reducing research and development expenditures. It determined that the programs should be funded at the recommended levels. The assessment rate of $0.008 per pound of assessable papayas was determined by dividing the assessment income needed by the quantity of assessable papayas, estimated at 40 million pounds for the 1999–2000 fiscal year. This estimate would generate $320,000 in assessment income. When combined with $208,800 in anticipated income from the previously mentioned sources, and $16,000 in interest income, the Committee will have adequate funds to meet its 1999–2000 expenses.

A review of historical information and preliminary information pertaining to the 1999–2000 fiscal year indicates that the grower price for the season could range between $.30 and $.45 per pound of papayas. Therefore, the estimated assessment revenue for the 1999–2000 fiscal year as a percentage of total grower revenue could range between 1.8 and 2.7 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Hawaii papaya industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 22, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Hawaii papaya handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on September 2, 1999 (64 FR 48115). Copies of the proposed rule were also mailed or sent via facsimile to all papaya handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. The period of comments ended October 4, 1999. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 1999–2000 crop papayas from growers; (2) the 1999–2000 fiscal year began on July 1 and the order requires that the assessment rate apply to all papayas received during that fiscal year; (3) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (4) handlers are aware of this action which was recommended at a public meeting, and is similar to other assessment rate actions issued in past years; (5) a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 928.226 is revised to read as follows:

§ 928.226 Assessment rate.

On and after July 1, 1999, an assessment rate of $0.008 per pound is established for Hawaii papayas.

Dated: October 28, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28751 Filed 11–2–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

[Notice 1999–23]

11 CFR Parts 110, 9004, and 9034

Party Committee Coordinated Expenditures; Costs of Media Travel With Publicly Financed Presidential Campaigns

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On August 5, 1999, the Commission published the text of revised regulations governing publicly financed Presidential campaigns. These rules address the costs of transportation and ground services that federally funded Presidential primary and general election campaigns may pass on to the news media covering their campaigns, as well as party committee coordinated expenditures that are made before the date their candidates receive the nomination. 64 FR 42579. The Commission announces that these rules are effective as of November 3, 1999.

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of revised regulations at 11 CFR 110.7(d), 9004.6(a) and (b), and 9034.6(a) and (b). New section 11 CFR 110.7(d) addresses party committee coordinated expenditures that are made before the date the party's candidate receives the Presidential nomination. The remaining cited sections address the costs of transportation and ground services that federally funded Presidential primary and general election campaigns may pass on to the news media covering their campaigns.

Section 438(d) of Title 2, United States Code, and sections 9009(c) and 9039(c) of Title 26, United States Code, require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 or 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. These rules were transmitted to Congress on July 30, 1999. Thirty legislative days expired in the Senate and the House of Representatives on October 19, 1999.

Announcement of Effective Date: New 11 CFR 110.7(d) and revised 11 CFR 9004.6(a) and (b) and 9034.6(a) and (b), as published at 64 FR 42579 (August 5, 1999), are effective as of November 3, 1999.

Dated: October 29, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–28703 Filed 11–2–99; 8:45 am]

BILLING CODE 6715–01–U

FEDERAL ELECTION COMMISSION

[Notice 1999–22]

11 CFR Part 9036

Matching Credit Card and Debit Card Contributions in Presidential Campaigns: Documentation

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On August 5, 1999, the Commission published the text of revised regulations addressing the documentation required to allow contributions made by credit or debit card, including contributions made over the Internet, to be matched under the Presidential Primary Matching Payment Account Act. 64 FR 42584. The Commission announces that these rules are effective retroactive to January 1, 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of new regulations at 11 CFR 9036.1(b) and 9036.2(b) that set out the documentation requirements that must be met before contributions made by credit or debit card, including contributions made over the Internet, may be matched under the Presidential Primary Matching Payment Account Act ("Matching Payment Act"), 26 U.S.C. 9031 *et seq.* "Matchable contributions" are those which, when received by candidates who qualify for payments under the Matching Payment Act, are matched by the Federal Government. The new rules require candidates to provide sufficient documentation to the Commission to insure that each contribution submitted for matching was made by a lawful contributor who manifested an intention to make the contribution to the campaign committee that submits it for maching fund payments. They further note that additional information on the documentation required to accompany such contributions will be found in the Commission's Guideline for Presentation in Good Order ("PIGO").

Section 9039(c) of Title 26, United States Code, requires that any rules or regulations prescribed by the Commission to implement Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR 9036.1 and 9036.2 were transmitted to Congress on August 2, 1999. Thirty legislative days expired in the Senate and the House of Representatives on October 19, 1999.

In the Explanation and Justification that accompanied the final rules, the Commission explained that, since many presidential campaigns will have engaged in substantial fundraising by the time these rules take effect, it would retroactively match credit and debit card contributions made on January 1, 1999 and thereafter, if these requirements are met. 64 FR at 42584. Accordingly, these new rules are effective retroactive to January 1, 1999.

Announcement of Effective Date: Amended 11 CFR 9036.1 and 9036.2, as published at 64 FR 42584, are effective retroactive to January 1, 1999.

Dated: October 29, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–28702 Filed 11–2–99; 8:45 am]

BILLING CODE 6715–01–U

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1034]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting amendments to Subpart C of Regulation CC, which contains rules governing the collection and return of checks. The amendments to the regulation and Commentary are intended to provide further clarification as to the extent to which depository institutions and others may vary the terms of the regulation by agreement for the purpose of instituting electronic return systems.

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Louise Roseman, Director, Division of Reserve Bank Operations and Payment Systems (202/452–2789); Oliver I. Ireland, Associate General Counsel (202/452–3625), Stephanie Martin, Managing Senior Counsel (202/452–3198), Legal Division. For the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

In February 1999, the Board requested comment on options for amending provisions in Regulation CC governing when paying or returning banks may send notices instead of returning the original checks.[1] The purpose of the proposal was to explore whether more flexibility is needed to enable check system participants to experiment with methods to return checks electronically.

The collection and return of checks is governed by both Regulation CC and state law (Articles 3 and 4 of the Uniform Commercial Code (U.C.C.)). When a paying bank decides to return a check, the U.C.C. and Regulation CC require it to send the check or a notice within certain deadlines.[2] The U.C.C. and Regulation CC differ on when a bank can return a notice rather than the check itself. If a check is "unavailable for return," U.C.C. 4–301(a) allows a paying bank to charge back the check by revoking its provisional settlement with the presenting bank based on a notice of dishonor or nonpayment. The Official Comment to U.C.C. 4–301 states that a check may be considered unavailable for return if, under a collecting bank check retention plan, presentment is made by a presentment notice and the check is retained by the collecting bank. Presumably, therefore, the U.C.C. would allow a paying bank to return a notice when a check has been truncated. (It is not clear whether a check would be deemed unavailable for return under the U.C.C. if the paying bank, rather than the collecting bank, retains it.)

Regulation CC (§§ 229.30(f) and 229.31(f)) establishes a "notice in lieu of return," which substitutes for the original check and carries value. The notice-in-lieu provisions of Regulation CC provide that the paying (or returning) bank must return the original check unless the check is unavailable, in which case the bank may return a notice that meets certain information requirements. The Regulation CC Commentary states that notice is permitted in lieu of return only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. The Commentary explains that a check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system.

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[1] 64 FR 9105, Feb. 24, 1999.

[2] The paying bank must initiate the return by midnight of the banking day following the day the check was presented (U.C.C. 4–301). The paying bank must return the check so that it reaches the depositary bank expeditiously, in accordance with § 229.30(a) of Regulation CC.

The primary reason for the difference between the U.C.C.''s and Regulation CC's treatment of notices is that there is likely to be less risk for a depositary bank in accepting a notice (instead of the original check) from a bank it knows than from a bank it doesn't know. Under the U.C.C., the paying bank returns a check to the presenting bank, which in turn charges back the check against the prior collecting bank, and so on back up the forward collection chain until the check reaches the depositary bank. Therefore, under the U.C.C., the depositary bank receives returns from the bank to which it had sent the check for collection and with which it has a previously established relationship. One of the purposes of Regulation CC was to speed up the check return system that existed under the U.C.C. Regulation CC eliminated the requirement that returned checks follow the forward collection chain. Under Regulation CC, the paying bank may send the returned check directly to the depositary bank or to any returning bank, even if that bank did not handle the check for forward collection. Therefore, under Regulation CC, depositary banks may receive returned checks from banks with which they have no previous relationship.

Some check system participants asked the Board to clarify the interrelationship between the U.C.C. and Regulation CC in order to provide additional legal certainty for institutions that wish to experiment with electronic return systems, under which they would return images or other notices rather than the checks. These participants were concerned about their ability to bind all relevant parties to an electronic return arrangement under the variation-by-agreement provisions of Regulation CC. Regulation CC (§ 229.37) permits the parties to a check to vary the notice-in-lieu provisions; however, an agreement under Regulation CC cannot affect banks, customers, or others that are not party to the agreement or otherwise bound by it. The Regulation CC variation-by-agreement provision differs from the corresponding language in U.C.C. 4–103 in that the U.C.C. allows clearinghouse rules (as well as Federal Reserve regulations and operating circulars) to be effective as agreements whether or not specifically assented to by all interested parties.[3] Regulation CC does not incorporate the U.C.C.''s special treatment for clearinghouse rules (or for Federal Reserve rules and circulars) but does not affect the status of such under the U.C.C.

This difference in variation-by-agreement provisions exists because Regulation CC does not govern the relationship between banks, their customers, and remote parties to the extent that the U.C.C. does. While Board rules can bind depository institutions, the Board does not appear to have the authority under the Expedited Funds Availability Act to bind depositors or payees to an electronic check return system. Section 611(f) of the Act, which authorizes the Board to establish rules allocating loss and liability in the payments system, applies to loss and liability among depository institutions only. The Act does not authorize such allocations to customers of depository institutions.

Although banks would be able to obtain agreement to the terms of an electronic return arrangement from their customers through account agreements, under Regulation CC they would not be able to bind remote parties to the check, such as non-depositor payees. Some check system participants sought an amendment to Regulation CC that would eliminate the risk that these remote third parties would bring a claim under Regulation CC in the event they suffered losses due to the fact that a check was returned electronically rather than in physical form. A claim could potentially arise under the following circumstances:

Drawer A writes and delivers a check payable to Payee B. Payee B negotiates the check to Depositor C, who deposits the check in his bank. Depositor C's bank presents the check to Drawer A's bank. Both banks are participating in an electronic return system, and Drawer A's bank returns an image of the check to Depositor C's bank, which, in turn, charges Depositor C's account. Depositor C would have to attempt to collect the funds from Payee B or Drawer A without the physical check. Assuming that Depositor C has agreed to the electronic return system through an account agreement, Depositor C would bear the risk that Payee B or Drawer A would not pay without the original check. (Payee B or Drawer A may be concerned about the risk of double payment if the original check is not returned.) If Payee B pays Depositor C in return for the check image or similar notice, Payee B may still be unable to collect from Drawer A without the check and could suffer losses (although Payee B may still have recourse against Drawer A under the U.C.C. even without the original check). Presumably, an electronic return arrangement would allow banks or customers to request the original check within a certain amount of time. If Drawer A becomes insolvent before the original check is retrieved, Payee B would suffer losses. If Payee B would have been able to collect from Drawer A had Payee B originally received the check rather than the notice, then Payee B's losses would likely be attributable to the electronic return system.

Regulation CC imposes a duty on banks to exercise ordinary care and act in good faith in handling checks under Regulation CC. This duty runs to the depositary bank, the depositary bank's customer, the owner of a check, or another party to the check. If a bank violates these duties, resulting in harm to one of these parties, the party may have a claim against the bank for damages. Therefore, if a bank returned a notice-in-lieu when the physical check was deemed "available" under Regulation CC, and the return of the notice rather than the physical check caused a party to the check to incur a loss, the bank potentially could be liable for damages. The bank sending the notice could be liable even if it had agreed with the receiving bank to use notices in lieu of return. The injured party would have to show lack of good faith or failure to exercise ordinary care.

The risk of a bank becoming liable to a remote third party under the circumstances described above appears to be low. Nevertheless, some check system participants stated that they were reluctant to begin experimenting with electronic check return systems without additional protection. To flesh out the pros and cons of making regulatory changes in this area, in February 1999 the Board sought commenters' input on two options.[4]

The first option was to amend the Commentary to Regulation CC to state that banks could send a notice of dishonor or nonpayment in accordance with the provisions of U.C.C. 4–301 when they return the notice through the forward collection chain, as contemplated in the U.C.C. The U.C.C. notices would be subject to the Regulation CC expeditious return rules. This proposal would clarify that banks could avail themselves of the U.C.C. rules regarding return of notices to the same extent that they could before Regulation CC was adopted. The Board noted, however, that this proposal may not provide relief for check truncation or image systems if returns do not follow the forward collection chain and that it could have consequences for the depositors or payees of the checks, who may have difficulty recovering from the drawers without the original checks.

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[3] The Official Comment to U.C.C. 4–103 (note 3) indicates, however, that there are limitations on the scope of clearinghouse rules. The Comment notes that clearinghouses are not authorized to rewrite the basic law generally and that clearinghouse rules should be understood in the light of functions the clearinghouses have exercised in the past.

[4] 64 FR 9105, Feb. 24, 1999.

The second option was to delete the Regulation CC Commentary language that explains when a check is unavailable for return. Instead of this language, the Commentary would indicate that notices in lieu of return are permissible whenever they would be permissible under the U.C.C. The Board noted that this option would liberalize the circumstances under which banks could use notices in lieu of return and potentially make it easier for banks to establish electronic check return mechanisms that feature check truncation, but would force depositary banks to accept notices from banks with whom they may have no established relationships. This option could also have consequences for the depositors or payees of the checks as discussed above under option one.

The Board also proposed to delete § 229.36(c) of Regulation CC and its associated Commentary, which states that a bank may present a check electronically under an agreement with the paying bank and that the agreement may not extend return times or otherwise vary the provisions of Regulation CC with respect to persons not party to the agreement. This provision of the regulation is subsumed by the variation-by-agreement provisions in § 229.37, and it may be unnecessary and potentially confusing to retain special provisions regarding a particular type of variation by agreement. The Board proposed to add an example to the Commentary to § 229.37, listing an electronic check presentment agreement as a permissible variation by agreement under Regulation CC. The Board noted that eliminating § 229.36(c) and its Commentary would result in no substantive change to the regulation regarding the validity of electronic presentment agreements.

Summary of Comments

The Board received 72 comments on its proposed options, classified as follows:

Banks/Bank holding cos: 32
Thrifts/Thrift holding cos: 2
Credit unions/Corporate credit unions: 9
Trade associations representing—
  Banks: 5
  Credit unions: 5
  Clearing houses: 2
  Non-banks: 2
Clearing houses/organizations: 9
Federal Reserve Banks: 2
Non-bank service providers: 4

Problems Raised by Notices in Lieu of Returns

Overall, the commenters were supportive of changes that would improve efficiency and reduce risk in the check collection and return system, but were reluctant to support changes that would impose costs on depositary banks, their customers, and other parties to the check without their consent. Thirty-five commenters specifically discussed the problems that would arise if depositors received notices of returned checks instead of the physical checks. Many of these commenters echoed the problems stated by the Board in its proposal, i.e. that customers generally expect checks to be returned to them when their accounts are charged back and that customers have ownership rights in the physical checks. Commenters were concerned about whether their customers would be able to collect from drawers without the original checks and some noted that the drawer's risk of double payment needs to be addressed. Some of these commenters stated that the U.C.C. limits a holder's rights to enforce a check without possession of the physical item. Several commenters raised concerns about whether a notice of a returned check would be sufficient evidence of the return in court, and others noted that law enforcement authorities often require the original check in order to lift fingerprints from the check or examine the handwriting. Four commenters, however, stated that even though the customer, as the legal owner, may have a right to the original check, there may be no practical consequence if an image or other electronic return has legal equivalence under the U.C.C. or the Uniform Electronic Transactions Act.[5]

Twenty-one commenters raised concerns about whether the information provided on a notice-in-lieu-of-return would be sufficient to allow the depositary bank to charge back its customer's account. The commenters listed such necessary information as the indorsement (especially on third-party checks), the check date, the payee, the amount, the reason for return, the teller stamp, trace numbers, and the account number. Some commenters noted that missing information is already a problem for notices-in-lieu under the current regulation. Some of these comments were related to concerns about the quality of the photocopy or image that depositary banks would receive, and others were related to the sufficiency of information in an electronic notice that did not include an image of the check. One commenter suggested that if notices-in-lieu become more permissible, then all of the information requirements of § 229.33(b) should be mandatory and no questions marks allowed.

Costs and Benefits of Electronic Returns

Thirty-one commenters specifically mentioned the benefits of an electronic return system. These commenters generally believe that electronic returns will enable checks to be returned faster and will allow depositary banks and their customers to protect themselves better against check fraud. They stated that an electronic return system would lead to operational savings and make forward check truncation feasible.

On the other hand, eight commenters believed that the costs of an electronic return system could likely outweigh the benefits. The commenters noted that costs could take the form of incomplete information to the depositary bank, potentially resulting in delays in charging back the customer's account, as well as the expense of hardware and software to operate an electronic return system.

Six commenters discussed the potential competitive effects of establishing an electronic return system. These commenters were generally concerned that community banks and other small depository institutions may not be technologically prepared for electronic returns and should not be placed at a disadvantage by any regulatory change.

Option One

Only one commenter expressed a preference for option one. Thirty-two commenters pointed out specific problems that would arise if the Board were to adopt option one. Many stated that application of option one would be too limited in scope to provide sufficient incentive for experimentation in electronic returns. Several commenters believed that certain checks may be impossible to return through the forward collection chain within the expeditious return deadlines. Others commented that the U.C.C. standards are not clear as to what information must be included in a U.C.C. notice of nonpayment and were concerned that the depositary bank would not receive information sufficient to charge the check back to its customer's account.

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[5] The Uniform Electronic Transactions Act is a model law drafted and approved by the National Conference of Commissioners on Uniform State Laws and recently adopted in California. It does not provide that a check image or other electronic returned check is legally equivalent to the original check, except for limited record-keeping purposes.

Some commenters believed that adoption of option one would lead to confusion as to when the U.C.C. applied to a returned check rather than Regulation CC, and one commenter noted that state-to-state variation in the meaning of "unavailable for return" could lead to confusion with respect to interstate transactions. Commenters raised other questions as to the implementation of option one, such as (1) whether the presenting bank that receives a U.C.C. notice of nonpayment, but holds the truncated physical check, has the option to either send a notice or the check to depositary bank and (2) whether the physical check must be made available to the depositary bank or its customer upon request.

Option Two

Eighteen commenters supported proposed option two, although nearly all of those commenters raised additional issues that they believed should be addressed. The Electronic Check Clearing House Organization (ECCHO) and seventeen other commenters supported option two so long as the regulation made clear that the depositary bank would have to agree to receive electronic notices in lieu of return. These commenters stated that experimentation with electronic notices should be conducted on a voluntary basis, governed by bilateral or multilateral agreements. The commenters stated that the depositary bank would need to know from whom it would be receiving electronic returns and would have to work out such issues as who would own the returns/images, acceptable quality standards, who to contact in case of problems, and what procedures to follow. One supporter of option two, however, did not expect that the receipt of unexpected electronic returns from unfamiliar banks would be widespread. This commenter stated that the issue of the quality of electronic returns from unfamiliar banks would be an operational matter that would likely be self-regulated between paying banks and depositary banks and should be left for the banks to police.

Eleven commenters discussed specific problems regarding option two. Some of these commenters raised issues related to dealing with an unknown returning bank. They stated that accepting notices from banks with which the depositary bank has no relationship could pose significant financial or customer service risk exposure. They also said that handling returned items could become more complex and time-consuming if images are received from multiple sources, and the amount of manual sorting could outweigh the advantages of new technology. Another concern raised by the commenters was that option two could increase the use of notices in lieu of returns, placing the burden on the depositary bank in providing the depositor with the information on the return item when a charge-back occurs without the physical check. The commenters also raised other matters that would need to be addressed under option two, such as (1) Whether the presenting bank that receives a notice but holds the physical check has the option to send either the notice or the check to the depositary bank and (2) whether the physical check must be made available to the depositary bank or its customer on request.

Other Comments on Options.

Seventeen commenters opposed both options. Most of these commenters stated that the proposals would make the return process more complicated, particularly in connection with reconcilement, without a comprehensive all-electronic approach. They stated that the Board should address other issues related to electronic returns before adopting either option. One commenter favored either option, stating that either would accomplish the goal of reconciling Regulation CC with the U.C.C. as to when a check is available for return.

Most of the commenters suggested additions or enhancements to the two options proposed by the Board:

Variation by Agreement.

Nine commenters stated that the Board should permit clearing house rules to vary Regulation CC in same way as they vary the U.C.C. The commenters stated that this would avoid the need to change Regulation CC to accommodate innovations and would put private-sector banks on a more equal footing with non-banks and Federal Reserve Banks.

The Federal Reserve Bank of Atlanta (FRB Atlanta) believed that the concern as to whether § 229.37 of Regulation CC limits the ability of an agreement to bind remote parties is ameliorated by at least two factors: (1) FRB Atlanta stated that the only remote party right under Regulation CC is the right to receive a notice of return, which can be met by an image of sufficient quality to permit the depositary bank to identify its customer; other remote party rights arise under the U.C.C. and can be addressed in the context of agreements under the U.C.C.; and (2) At least one court decision[6] held that the depositary bank, as the collection agent for its customer, can enter into agreements on behalf of the customer without prior consent as long as agreement is reasonable. FRB Atlanta stated that accepting an image return (with the paper check to follow) seems to be reasonable. FRB Atlanta suggested, as an alternative to the proposed options, that the Board revise the Commentary to § 229.37 to provide that depositary bank may agree with paying or returning banks to accept images or other notices of dishonored checks as notices in lieu of return and that those banks may be responsible under other applicable law to parties interested in the check for any losses caused by the handling of check returns under such agreements (except to the extent addressed in effective agreements with those other parties).

U.C.C. Availability Requirement.

Three commenters stated that the proposal's reference to U.C.C. 4–301 is not sufficient because it is not clear what types of check programs are encompassed by the U.C.C.'s Official Comment to 4–301 regarding "availability" of checks for return. The commenters suggested that the Regulation CC Commentary should specifically permit notice in lieu of return when a check is difficult to retrieve from a filing system or from storage pursuant to a truncation, image or other check electronification program, provided the receiving bank has agreed to accept notices in lieu of return in such circumstances.

Two commenters raised other questions concerning what sorts of truncation arrangements are contemplated by U.C.C. 4–301(a). These comments reflected the uncertainty as to whether it matters which bank in the collection or return chain is the truncating bank in determining if a check is unavailable for return under the U.C.C.

Three commenters suggested that the Board allow a bank to provide a notice-in-lieu at will, rather than only when the original check is unavailable for return. These commenters noted that such returns may not be permissible under the U.C.C., but they anticipated that the U.C.C. or its state variations may become less restrictive in the future as technology changes.

Address Legal Status of Images.

Five commenters requested that the Board address the legal status of images to provide comfort that an image or electronic notice legally replaces the original check. Some of these commenters suggested that the

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[6] *Graubert* v. *Bank Leumi*, 399 N.E. 2d 930 (Ct. App. N.Y. 1979).

Commentary should explicitly state that images are acceptable in the U.S. check collection and return system to bolster banks' ability to convince customers to accept images in lieu of the original check.

Establish Standards.

Fifteen commenters asked the Board to establish standards for an electronic return system. The commenters expressed a need for standards in areas such as image quality, standardized return reason codes, data communication, procedures to verify system integrity and compatibility, and indorsements. Some of these commenters stated that the Board should set time limits for the returning bank to provide the depositary bank with the paper check and procedures for request and retrieval. One commenter stated that the Board should provide for migration to more image-friendly check stock. Another commenter stated that a new regulatory infrastructure is necessary to address detailed issues, even more specifically than the Board's same-day settlement provisions in Regulation CC.

Address Return Deadlines.

Seven commenters stated that the Board should clarify how an electronic return system would affect return deadlines. For example, one commenter suggested that the Board should clarify when the return clock starts if checks are presented electronically and the physical item is necessary to create a return. Other commenters suggested that the Board amend Regulation CC to provide that, if a bank sends image returns under a truncation arrangement where the check was presented electronically, it would not be required to meet the U.C.C. return deadline. The commenters stated that this rule would nurture the development of electronic check presentment and would enable the paying bank to examine the physical check and create an image return without violating the U.C.C. midnight deadline.

Representment.

Eleven commenters stated that the Board should address how a depositary bank could represent a check that had been returned electronically. They said that representment of checks returned electronically would pose technical and operational challenges, including the form of the represented check and what would replace the indorsement audit trail. One commenter suggested that the Board establish redeposit rules allowing for prompt representment of electronic returns to protect consumers from the potential loss from dishonored checks.

Depositary Bank Protections.

Thirteen commenters requested that the Board take steps to protect depositary banks under electronic return systems. Several commenters suggested that the depositary bank should be able to send back an electronic return and require return of the physical check instead. Other commenters suggested providing warranty protection for the depositary bank by requiring the bank that sends an electronic return to indemnify a depositary bank that charges back its customer based on the electronic return. One commenter also stated that the depositary bank and its customers should receive guarantees that the original check will not be returned.

Allow Images Only.

Ten commenters suggested that the Board limit electronic return to images only. One of these commenters stated that the regulation should reflect a preference in favor of check imaging rather than the transmission of a detailed accounting of the check. Another commenter stated that the regulation should discourage the proliferation of written notices, which are often incomplete and expose the depositary bank to undue risk.

Address Coordination Issues.

Two commenters suggested that the Board should address various issues related to the interaction of an electronic return system with other electronic payment initiatives. One commenter asked for clarification as to how a paying bank could return an image if it is receiving check presentment electronically. This commenter also asked how a depositary bank could create ACH returned-check entries (RCKs) without the physical checks. Another commenter suggested that the Board should provide a statement authorizing use of a notice in lieu of return when the check has been processed electronically and returned to its owner at the point of sale. The commenter stated that this would encourage increased experimentation with electronic check truncation at the point of sale.

Comprehensive Approach.

Seven commenters believed that the Board should take the lead in working with the industry on a comprehensive approach to structuring an all-electronic return process. One commenter stated that electronic returns need to be part of a new regulatory approach for overall check electronification. Another commenter stated that the Board should express its willingness to consider and act on appropriate regulatory changes on an ongoing basis during the transition to electronics in check processing. Another commenter suggested that the Board fund a nationwide education and marketing campaign to ensure consumer and corporate acceptance of images in lieu of checks. Finally, one commenter stated that the current return rules hold the check system hostage to the needs of a few payees, and the Board should endorse the notice-in-lieu process more enthusiastically rather than merely condoning it.

Implementation Date.

Seven commenters made statements regarding the implementation date of any rule change. Most of these commenters favored implementation as quickly as possible, but one commenter asked for at least one year lead time to allow for updating of internal systems.

Amendments to §§ 229.36 and 229.37.

Seven commenters explicitly supported the proposed amendments to §§ 229.36 and 229.37 regarding electronic presentment agreements. One commenter suggested that the restriction on the expansion of check return deadlines should be retained explicitly.

Board staff invited all of the public commenters to participate in a meeting on July 26 to discuss issues related to the proposed amendments. Twenty-eight commenters attended the meeting.

Discussion

As indicated in the comment summary, overall, most commenters were open to the idea of an electronic return system but were very concerned about the effects of such a system on depositary banks and their customers. Many commenters were reluctant to support regulatory changes without knowing the details of how an electronic return system would work and how they and their customers would be protected. This concern prompted many commenters to suggest that the Board, in cooperation with banks, establish more detailed rules and standards that would govern such a system. The Board continues to believe that practices and standards would be developed most efficiently through commercial practice and market experimentation rather than by regulation. The Board believes that its appropriate role is to facilitate experimentation by determining whether its rules create barriers to experimentation and if so, whether those rules can be changed without creating undue adverse affects.

As noted above, under Regulation CC, the inability to bind remote parties to an interbank agreement could lead to liability on the part of banks for relying on electronic returns. Some participants in the July 26 meeting reiterated that it is this potential liability they would like to avoid. ECCHO and various others suggested in their comment letters that the Board adopt option two but permit an electronic return only if the depositary bank agrees to accept it. ECCHO restated its proposal at the July 26 meeting, laying out a 3-part plan for revising option two: (1) All of the banks involved, including the depositary bank, would have to agree to participate in any electronic check return program, (2) a notice in lieu of return, whether specifically permitted under Regulation CC or permitted as part of an interbank agreement on electronic check returns, would satisfy the requirements of Regulation CC to the same extent as the return of the original paper check for all bank and non-bank parties to the check, and (3) banks that are parties to an electronic return agreement may be liable under other law to non-bank parties unless that liability is covered by other agreements.

Most of the discussion at the July 26 meeting focused on the cut-off of rights under ECCHO's point (2), which would shield participating banks against claims by remote parties under Regulation CC but would not operate as a shield against claims under other law. (Presumably, ECCHO and others would rely on their ability to bind remote parties by clearinghouse rules under the U.C.C. to address these potential claims.) The Board's proposed option two would have cut off Regulation CC rights, but those rights would have been cut off for both banks and non-banks. The ECCHO proposal would allow banks to opt out of the electronic return arrangement but would not allow their customers or other parties to the check to do so. Supporters of the ECCHO proposal reasoned that this distinction was justified because depositary banks would have to make operational changes to be able to accept electronic returns, but depositors and others would not necessarily need to make such changes.

Meeting participants were unable to quantify the risk presented by the possibility that non-assenting parties may assert Regulation CC rights if an electronic return program caused them to incur losses. In general, participants agreed that, because banks can generally obtain assent from their customers through deposit agreements, the most serious risks would be from potential claims by remote third parties, such as non-depositor payees, unless those rights are cut off. ECCHO and some of the bank representatives stated that the uncertainty as to the size of this risk was preventing banks from investing in pilot electronic return programs. Without quantifying this risk, some banks stated that they are unable to judge whether the benefits of an electronic return system outweigh the risks, although some bank representatives said that they had not made a focused attempt to determine the magnitude of the risk. At the close of the meeting representatives from ECCHO and certain banks stated that they would take a closer look at the risks of claims from non-assenting parties under Regulation CC to determine whether those risks are actually outweighed by the perceived benefits to banks of electronic returns.

In a subsequent letter to the Board, ECCHO reiterated its support for a Regulation CC amendment that would incorporate its proposal as outlined at the meeting.[7] In its letter, ECCHO argued that its proposal would result in increased efficiency in the check return system that would benefit banks as well as depositors in terms of protection against check fraud. ECCHO believes that customer service incentives will lead banks to make the original paper checks available to customers within a reasonable window of time and that banks that are not comfortable with the arrangement can opt out.

ECCHO's proposal would eliminate the risks of potential Regulation CC claims against banks that participate in electronic check return systems. The risk would, in effect, be shifted from depositary banks to their customers and remote third parties. Those who favor this proposal have not demonstrated the magnitude of this risk. They state that the risk is significant enough to prevent banks from experimenting with electronic returns. On the other hand, they state that shifting the risk to non-bank parties is justified by the efficiencies and cost-savings that an electronic return system would bring. The Board's proposed option 2 would also, in effect, shift this risk to non-bank parties to the check, as well as to depositary banks. The Board believes that the risk of Regulation CC claims by remote third parties is quite low and finds it difficult to justify shifting that risk to the remote third parties to benefit banks that have agreed among themselves to return checks electronically. The barrier that the current regulation presents to electronic check return does not appear to be significant enough to warrant shifting risks to non-assenting parties. Further, the commenters indicated that proposed option one would not be useful in many situations where checks are not returned back through the forward collection chain.

Instead, the Board has taken a different approach, similar to that suggested by FRB Atlanta. The Board has revised the Commentary to § 229.37 to clarify that depositary banks may agree with paying or returning banks to accept images or other notices in lieu of returned checks even when the checks are available for return under Regulation CC. Except to the extent that other parties interested in the checks assent to or are bound by the banks' agreements, banks entering into such agreements may be liable under Regulation CC or other applicable law to other interested parties for any losses caused by the handling of returned checks under such agreements. This revision leaves the rights of depositary banks, depositors, and remote parties intact under both Regulation CC and the U.C.C., avoiding the potential consumer issues of the proposed options and the ECCHO proposal.

Given the Board's action, the final analysis of any electronic return system will be driven by a cost decision on the part of the banks involved. If the cost savings of an electronic return system will be as great as some check system participants expect, then the risk of Regulation CC claims by non-assenting remote third parties may be outweighed by those savings and could be absorbed by participating banks. The Board notes that banks have taken on these risks in other contexts. For example, the banks that are participating in the Federal Reserve electronic return pilot in Montana have agreed to assume the risk of claims by non-assenting parties.[8]

The Board believes that the best long-term solution to this particular electronic return issue, as well as other issues related to the electronic collection and return of checks, would best be addressed in a coordinated effort to bring subpart C of Regulation CC and the U.C.C. into conformance. The Board is pursuing this solution with the National Conference of Commissioners on Uniform State Laws.

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[7] The Board received five other follow-up letters from organizations that attended the July 26 meeting. The letters supported the ECCHO proposal in general, but some stated that the Board should seek additional comment before adopting the ECCHO proposal.

[8] In other electronic payment experimental programs, banks have been willing to assume risks that appear to be more significant than the risk presented in this instance. For example, under recently adopted National Automated Clearing House Association rules that allow check payees to collect the funds from the checks through the automated clearing house (ACH) under certain circumstances, the bank that originates the ACH transaction warrants that all signatures on the check are genuine and that the underlying paper check will not be presented, even though the bank itself may not have possession of or control over the check.

In addition, as proposed, the Board has removed the electronic presentment agreement provisions from § 229.36(c) and its related Commentary and added a corresponding example to the Commentary to § 229.37. These amendments will not have any substantive effect.

Regulatory Flexibility Act Certification

In accordance with section 605 of the Regulatory Flexibility Act, (12 U.S.C. 605), the Board certifies that the amendments to Regulation CC and its Commentary will not have a significant economic impact on a substantial number of small entities. The amendments will clarify the extent to which banks may agree to vary the terms of Regulation CC by agreement to experiment with electronic return systems, but will not affect any entities who have not agreed.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 12 CFR Part 229 is amended as set forth below:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

§ 229.36 [Amended]

2. In § 229.36, paragraph (c) is removed and reserved.

3. In Appendix E, under section XXII, paragraph C. is removed and reserved.

4. In Appendix E, under section XXIII, new paragraphs C.9. and C.10. are added to read as follows:

Appendix E to Part 229—Commentary

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XXIII. Section 229.37 Variations by Agreement

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C. * * *

9. A presenting bank and a paying bank may agree that presentment takes place when the paying bank receives an electronic transmission of information describing the check rather than upon delivery of the physical check. (See § 229.36(b).)

10. A depositary bank may agree with a paying or returning bank to accept an image or other notice in lieu of a returned check even when the check is available for return under this part. Except to the extent that other parties interested in the check assent to or are bound by the variation of the notice-in-lieu provisions of this part, banks entering into such an agreement may be responsible under this part or other applicable law to other interested parties for any losses caused by the handling of a returned check under the agreement. (See §§ 229.30(f), 229.31(f), 229.38(a).)

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28580 Filed 11–2–99; 8:15 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–12–AD; Amendment 39–11397; AD 99–23–01]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company (Robinson) Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Model R44 helicopters, that currently requires removing and replacing the pilot's cyclic control grip assembly (grip assembly) with an airworthy grip assembly. This amendment requires the same actions as the current AD but would change a part number (P/N) referenced in the current AD. This amendment is prompted by the discovery of an error in the P/N of the current AD. The actions specified by this AD are intended to prevent use of a grip assembly that may crack, resulting in failure of the grip assembly and subsequent loss of control of the helicopter.

EFFECTIVE DATE: December 8, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Boulevard, Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–21–36, Amendment 39–10845, Docket No. 97–SW–01–AD, (63 FR 55783, October 19, 1998), which is applicable to Robinson Model R44 helicopters, was published in the **Federal Register** on August 4, 1999 (64 FR 42296). That action proposed to require removing the grip assembly, P/N A756–6, Revision N or prior revision, and replacing it with an airworthy grip assembly other than P/N A765–6, Revision A through N.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 5 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $576 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,080.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10845 (63 FR 55783), and by adding a new airworthiness directive (AD), Amendment 39–11397, to read as follows:

AD 99–23–01 Robinson Helicopter Company: Amendment 39–11397. Docket No. 99–SW–12–AD. Supersedes AD 98–21–36, Amendment 39–10845, Docket No. 97–SW–01–AD.

Applicability: Model R44 helicopters, serial numbers (S/N) 0001 through 0159, except S/N's 0143, 0150, and 0156, with pilot's cyclic control grip assembly (grip assembly), part number (P/N) A756–6, Revision N or prior revision, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within 25 hours time-in-service or 30 calendar days, whichever occurs first, unless accomplished previously.

To prevent use of a grip assembly that may crack, resulting in failure of the grip assembly and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the grip assembly, P/N A756–6, Revision A through N, and replace it with an airworthy grip assembly other than P/N A756–6, Revision A through N.

Note 2: Robinson KI–112 R44 Pilot's Grip Assembly Upgrade Kit instructions, dated December 20, 1996, pertain to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 8, 1999.

Issued in Fort Worth, Texas, on October 26, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–28655 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–60–AD; Amendment 39–11398; AD 99–23–02]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, and AS–365N2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model SA–365N, SA–365N1, and AS–365N2 helicopters, that requires replacing certain defective electrical modules with airworthy electrical modules. This amendment is prompted by the discovery of several defective electrical modules. The actions specified by this AD are intended to prevent loss of electrical continuity, which could cause loss of critical rotorcraft electrical systems and subsequent loss of control of the helicopter.

EFFECTIVE DATE: December 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Eurocopter France Model SA–365N, SA–365N1, and AS–365N2 helicopters was published in the **Federal Register** on August 4, 1999 (64 FR 42295). That action proposed to require replacing certain defective electrical modules with airworthy electrical modules.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for two nonsubstantive changes that have been made to paragraph (b) and Note 3 of the AD. In paragraph (b), the NPRM incorrectly states that alternative methods of compliance (AMOC) or adjustments of the compliance time may be approved by the "Manager, Rotorcraft Standards Staff, Rotorcraft Directorate." This is incorrect and has been changed to state that the Manager, Regulations Group, Rotorcraft Directorate, is responsible for approving any AMOC or adjustment of the compliance time. Note 3 of the NPRM states that information concerning the existence of approved AMOC may be obtained from the "Rotorcraft Standards Staff"; this is also incorrect and has been changed to state that information may be obtained from the "Regulations Group." The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 41 helicopters of U.S. registry will be affected by this AD, that it will take approximately 300 work hours per helicopter to replace all affected modules, and that the average labor rate is $60 per work hour. Required parts would cost approximately $29,520, but the helicopter manufacturer has stated that the parts will be provided at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $738,000 to replace all affected modules.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–23–02 Eurocopter France: Amendment 39–11398. Docket No. 98–SW–60–AD.

Applicability: Model SA–365N, SA–365N1, and AS–365N2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 200 hours time-in-service (TIS) or within the next 3 calendar months, whichever occurs first, unless accomplished previously.

To prevent loss of electrical continuity, which could cause loss of critical rotorcraft electrical systems and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove and replace each "CONNECTRAL" green electrical module that does not have a white dot on the face and that has a manufacturing code of 95/16 through 96/21 with an airworthy electrical module.

Note 2: Eurocopter France Service Bulletin No. 01.00.47R1, dated December 18, 1998, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 8, 1999.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 1998–253–044(A)R1, dated February 10, 1999.

Issued in Fort Worth, Texas, on October 26, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–28654 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–46]

Amendment to Class E Airspace; Mountain View, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Mountain View Airport, Mountain View, MO. A review of the Class E airspace area for Mountain View Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, February 24, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 5, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–46, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Mountain View, MO. A review of the Class E airspace for Mountain View Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Mountain View Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received with the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–46." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Mountain View, MO [Revised]

Mountain View Airport, MO
(Lat 36°59′34″ N., long. 91°42′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mountain View Airport and within 2.6 miles each side of the 108° bearing from the Mountain View Airport, extending from the 6.5-mile radius to 7 miles east of the airport.

Issued in Kansas City, MO, on October 13, 1999.

Herman J. Lyons, Jr.,
Manager, Air Traffic Division, Central Region.

[FR Doc. 99–27927 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 285

[Docket No. 990927264.9264.01]

National Voluntary Laboratory Accreditation Program; Amendment of Regulations

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Final rule.

SUMMARY: On February 20, 1996, the Director of NIST delegated certain designated authorities under the National Voluntary Laboratory Accreditation Program (NVLAP) regulations to the Chief of the Laboratory Accreditation Program at NIST. This document amends the NVLAP regulations to reflect the delegation of authority. The amendments will only affect Agency organization, procedure and practice.

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD, 20899–2140; or, by e-mail at *nvlap@nist.gov*.

SUPPLEMENTARY INFORMATION:

Background

Title 15 Part 285 of the Code of Federal Regulations sets out procedures and general requirements under which the National Voluntary Laboratory

Accreditation Program (NVLAP) operates as an unbiased third party to accredit both calibration laboratories and testing laboratories. NVLAP accredits laboratories in response to (a) mandates by the Federal Government; (b) requests from a government agency; and (c) requests from a private sector organization.

The NVLAP procedures were first published in the **Federal Register** on February 25, 1976, and have been revised several times since then. Certain authorities under the NVLAP regulations were given to the Director of NIST. In accordance with 15 CFR subpart A, section 285.5, the Director of NIST delegated these authorities to the Chief of the National Voluntary Laboratory Accreditation Program on February 20, 1996, in a memorandum to the Director of the Office of Standards Services. The delegation of authority was not extended to the conclusion of any agreements with the governments of other countries referenced in Section 285.11(f) of Title 15 of the Code of Federal Regulations.

Purpose

The purpose of this rule is to amend Part 285 of Title 15 of the CFR so that it conforms to the current delegation of authority.

Rulemaking Requirements

Under Title 5 United States Code Section 553, this rule is not subject to the notice and comment requirements of the Administrative Procedure Act. This rule only relates to Agency organization, management or personnel (5 USC 553 (a)(2)).

PRA Clearance. This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12866: This rule is exempt under Section 3(d)(3) of E.O. 12866.

Regulatory Flexibility Act. This action is exempt from the analytical requirements of the Regulatory Flexibility Act because notice and comment are not required for this action by Section 553 of the Administrative Procedure Act or any other law.

List of Subjects in 15 CFR Part 285

Business and industry, Commerce, Laboratories, Measurement standards.

Dated: October 26, 1999.

Karen H. Brown,

Deputy Director.

For the reasons set forth in the preamble, Title 15 of the Code of Federal Regulations (CFR), part 285 is amended as follows:

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

1. The authority citation for 15 CFR part 285 continues to read as follows:

Authority: 15 U.S.C. 272 et seq.

§ 285.3 [Amended]

2. In § 285.3(c) remove the phrase, "Director of the National Institute of Standards and Technology (NIST)" and add, in its place, the phrase "Chief of NVLAP."

§ 285.11 [Amended]

3. In § 285.11 (a) and (d) introductory text, remove the phrase, "Director of NIST" and add, in its place, the phrase "Chief of NVLAP."

4. In § 285.11(e) introductory text, remove the phrase, "Director" and add, in its place, the phrase "Chief of NVLAP."

§ 285.12 [Amended]

5. In § 285.12(a) introductory text, (b) introductory text (twice), (c), (d), and (e), remove the phrase, "Director of NIST" and add, in its place, the phrase "Chief of NVLAP."

§ 285.13 [Amended]

6. In 285.13 (a) and (d), remove the phrase, "Director of NIST" and add, in its place, the phrase "Chief of NVLAP."

§ 285.14 [Amended]

7. In § 285.14(a) introductory text and (d), remove the phrase, "Director of NIST" and add, in its place, the phrase "Chief of NVLAP."

§ 285.19 [Amended]

8. In § 285.19(a) (twice) and (c) (twice), remove the phrase, "Director of NIST" and add, in its place, the phrase "Chief of NLAP."

[FR Doc. 99–28665 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Office of the Commissioner and the Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the delegations of authority statement that covers general redelegations of authority from the Commissioner of Food and Drugs to other officers of FDA. The amendment delegates authority to perform all functions relating to waivers or reductions of prescription drug user fees under the Prescription Drug User Fee Act of 1992 (PDUFA), as originally enacted and as reauthorized by the FDA Modernization Act of 1997 (the Modernization Act), to the Director, Center for Drug Evaluation and Research (CDER) and to the Associate Director for Policy, CDER, except for the functions that pertain to situations where "the fees will exceed the anticipated present and future costs." The authority to waive or reduce user fees, previously redelegated to the Chief Mediator and Ombudsman/User Fee Waiver Officer, the Deputy Chief Mediator and Ombudsman, and the Deputy User Fee Waiver Officer is hereby revoked, except the authority to act upon requests for reconsideration of any user fee decision made by such officers prior to July 1, 1999. Also, as a result of the June 20, 1999, FDA reorganization, the Office of Operations component and the Deputy Commissioner for Operations position were abolished; therefore, the Deputy Commissioner will assume the role of the User Fee Appeals Officer and perform the associated functions.

EFFECTIVE DATE: July 1, 1999.

ADDRESSES: As of July 1, 1999, submit all requests for waivers, refunds, and reductions in user fees under PDUFA, originally enacted and reauthorized by the Modernization Act, to the Associate Director for Policy, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, Attn: User Fee Waiver Office. Submit requests sent via a courier that requires a street address to the Associate Director for Policy, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, Attn: User Fee Waiver Office. Submit requests for reconsideration of user fee waiver determinations made prior to the effective date of this document to the Office of the Chief Mediator and Ombudsman, (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Beverly J. Friedman, User Fee Staff (HFD–5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041, or

Donna G. Page, Division of Management Programs (HFA–340),

Food and Drug Administration,
5600 Fishers Lane, Rockville, MD
20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.20 *General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration* (21 CFR 5.20) by revising § 5.20(h) to revoke the authority of the Chief Mediator and Ombudsman/User Fee Waiver Officer, the Deputy Chief Mediator and Ombudsman, and the Deputy User Fee Waiver Officer to waive or reduce user fees under the waiver provisions of PDUFA as originally enacted and as amended by the Modernization Act (section 736(d) and (a)(1)(G) of the Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379h(d) and (a)(1)(G)), except the authority to act upon requests for reconsideration of any user fee decision made by such officers prior to July 1, 1999. FDA is also revising the section to reflect that the Deputy Commissioner is designated as the User Fee Appeals Officer and in the case of a vacancy in the position, to reflect the designation of the Senior Associate Commissioner, Office of the Commissioner as the User Fee Appeals Officer.

FDA is adding § 5.101 *Authority relating to waivers or reductions of prescription drug user fees* to reflect redelegation of certain user fee-related authorities under section 736(d) and (a)(1)(G) of the act, as amended, to the Director, CDER and to the Associate Director for Policy, CDER. CDER will exercise the authority now being delegated to resolve requests for waivers, reductions, or refunds of assessable fees relating to human drug products reviewed and regulated by CDER, the Center for Biologics Evaluation and Research, and any other FDA center.

Authority delegated to a position by title may be exercised by a person officially designated to serve in such a position in an acting capacity or on a temporary basis, unless prohibited by a restriction in the document designating him/her as "acting" or unless not legally permissible. These authorities may not be further redelegated.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. Section 5.20 is amended by revising paragraph (h) to read as follows:

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

* * * * *

(h)(1) The Chief Mediator and Ombudsman and the Deputy Chief Mediator and Ombudsman are authorized to act upon requests for reconsideration of any user fee decisions (under 21 U.S.C. 379h(d)) made by such officers and the former Deputy User Fee Waiver Officer prior to July 1, 1999. This authority may not be further redelegated. (See § 5.101 for the user fee-related redelegation to officials within the Center for Drug Evaluation and Research.)

(2) The Deputy Commissioner for Management and Systems and the Director, Office of Financial Management are authorized to perform the functions of the Commissioner under 21 U.S.C. 379h(d)(1)(C), as amended, to waive or reduce prescription drug user fees in situations where he/she finds that "the fees will exceed the anticipated present and future costs." This authority may not be further redelegated.

(3) The Deputy Commissioner or, in the event of a vacancy in that position, the Senior Associate Commissioner, Office of the Commissioner, is designated as the User Fee Appeals Officer. The User Fee Appeals Officer is authorized to hear and decide user fee waiver appeals. The decision of the User Fee Appeals Officer will constitute final agency action on such matters. This authority may not be further redelegated.

3. Section 5.101 is added to subpart C to read as follows:

§ 5.101 Authority relating to waivers or reductions of prescription drug user fees.

The Director, Center for Drug Evaluation and Research (CDER), and the Associate Director for Policy, CDER, are authorized to perform all functions of the Commissioner of Food and Drugs relating to waivers or reductions of prescription drug user fees under the Prescription Drug User Fee Act of 1992, as originally enacted and as reauthorized by the FDA Modernization Act of 1997, except for the functions under 21 U.S.C. 379h(d)(1)(C) that pertain to situations where "the fees will exceed the anticipated present and future costs," on behalf of CDER, the Center for Biologics Evaluation and Research, and any other FDA center. This authority pertains to waivers requested under the public health waiver provision (21 U.S.C. 379h(d)(1)(A)); the barrier to innovation waiver provision (21 U.S.C. 379h(d)(1)(B)); the applications submitted under section 505(b)(1) and (b)(2) of the Federal Food, Drug, and Cosmetic Act waiver provision (21 U.S.C. 379h(d)(1)(D)); the small business waiver provision (21 U.S.C. 379h(d)(1)(E)); and to requests for refunds of fees if an application or supplement is withdrawn after filing (21 U.S.C. 379h(a)(1)(G)); as well as waivers, reductions, or refunds requested on any other basis except fees exceeding the cost. These authorities may not be further redelegated. (See § 5.20(h)(1) for the authority to reconsider any user fee decisions made by the Chief Mediator and Ombudsman, the Deputy Chief Mediator and Ombudsman, and/or the former Deputy User Fee Waiver Officer prior to July 1, 1999.)

* * * * *

Dated: October 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28562 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 99N–2550]

Medical Devices; Hearing Aids; Technical Data Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing hearing aid labeling to reference the most recent version of the consensus standard used to determine the technical data to be included in labeling for hearing aids. This amendment is being made in order that manufacturers may use state-of-the-art methods to address technical data in hearing aid labeling. FDA is amending

the regulations in accordance with its direct final rule procedures. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and withdraws this direct final rule.

DATES: This regulation is effective March 17, 2000. Submit written comments on or before January 17, 2000. If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 801.420(c)(4) (21 CFR 801.420(c)(4)), effective March 17, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ–460), Food And Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 15, 1977 (42 FR 9286), FDA published final regulations establishing requirements for professional and patient labeling of hearing aids (§ 801.420) and governing conditions for sale of hearing aids (§ 801.421 (21 CFR 801.421)). The regulations became effective on August 15, 1977. Section 801.421(b)(1) of the regulations provides that, before the sale of a hearing aid to a prospective user, a hearing aid dispenser is to provide the prospective user with a copy of the User Instructional Brochure. Section 801.420(c)(4) requires that technical data useful in selecting, fitting, and checking the performance of a hearing aid be provided in the brochure or in separate labeling that accompanies the device. The regulation further required that the technical data values provided in the brochure or other labeling be determined according to the test procedures established by the Acoustical Society of America (ASA) in the "American National Standard Specification of Hearing Aid Characteristics," ANSI S3.22–1976 (ASA 70–1976), which was incorporated by reference in the regulation.

ANSI S3.22 (ASA 70–1976) established measurement methods and specifications for several definitive hearing aid characteristics, and provided a method of ascertaining whether a hearing aid, after being manufactured and shipped, met the specifications and design parameters stated by the manufacturer for a particular model, within the tolerance stated by the standard.

In 1982, ASA revised the standard (ANSI S3.22–1982) (ASA 70–1982). In a final rule published in the **Federal Register** of July 24, 1985 (50 FR 30153), FDA incorporated the revised standard into § 801.420(c)(4). ASA revised the standard again in 1987 (ANSI S3.22–1987) (ASA 70–1987). In a final rule published in the **Federal Register** of December 21, 1989 (54 FR 52395), FDA incorporated the newly revised standard into § 801.420(c)(4).

In 1996, ASA revised the standard again (ANSI S3.22–1996) (ASA 70–1996). The standard describes air-conduction hearing aid measurement methods that are particularly suitable for specification and tolerance purposes. Among the test methods described are output sound pressure level (SPL with a 90-dB input SPL, full-on gain, frequency response, harmonic distortion, equivalent input noise, current drain, induction-coil sensitivity, and static and dynamic characteristics of automatic gain control hearing aids. The standard gives specific configurations for measuring the input SPL to a hearing aid. The standard also describes allowable tolerances in relation to values specified by the manufacturer for certain parameters. Appendices are provided to describe an equivalent substitution method, characteristics of battery simulators, and additional tests to characterize the electroacoustic performance of hearing aids more completely.

FDA is now incorporating the 1996 standard into § 801.420(c)(4). This will allow hearing aid manufacturers to use the up-to-date methods to determine the technical data values for hearing aids. In addition, FDA is removing from § 801.420(c)(4) the address for "American National Standard Institute" and is adding in its place the address for "Acoustical Society of America."

II. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described when and how FDA will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because FDA views this rule as a noncontroversial amendment and anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register** a companion proposed rule to amend part 801 (21 CFR part 801). The companion proposed rule and the direct final rule are substantively identical. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of a significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments to the companion proposed rule will be considered as comments regarding the direct final rule.

FDA is providing a comment period on the direct final rule until January 17, 2000. If the agency receives a significant adverse comment, FDA intends to withdraw this final rule by publication in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment requesting a change in provisions of the hearing aid rule unrelated to the subject matter addressed in the ANSI standard will not be considered a significant adverse comment, because it is outside the scope of the rule. On the other hand, a comment recommending an additional change to the rule may be considered a significant adverse comment if the comment demonstrates why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

If FDA withdraws the direct final rule, all comments received will be considered under the proposed rule in developing a final rule in accordance with usual Administrative Procedure Act notice-and-comment procedures.

If FDA receives no significant adverse comment during the specified comment period, FDA intends to publish a confirmation document within 30 days after the comment period ends confirming the effective date.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impact of this direct final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this direct final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The direct final rule amends the existing hearing aid regulation to refer to the updated consensus standard that is used to determine the technical data in hearing aid labeling. Communications from manufacturers to FDA show that they are prepared to be in compliance with this standard immediately. The agency, therefore, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This direct final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any one year.

V. Paperwork Reduction Act of 1995

This direct final rule contains no collection of information. Therefore clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is no required.

VI. Request for Comments

Interested persons may, on or before January 17, 2000, submit to the Docket Management Branch (address above) written comments regarding this direct final rule. The comment period runs concurrently with the comment period for the companion proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding the companion proposed rule and this direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the companion proposed rule and this direct final rule will be considered comments on the proposed rule.

List of Subjects in 21 CFR Part 801

Hearing aids, Incorporation by reference, Medical devices, Professional and patient labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

PART 801—LABELING

1. The authority section for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

2. Section 801.420 is amended by revising the second and third sentences in paragraph (c)(4) to read as follows:

§ 801.420 Hearing aid devices; professional and patient labeling.

* * * * *

(c) * * *

(4) * * * The determination of technical data values for the hearing aid labeling shall be conducted in accordance with the test procedures of the American National Standard “Specification of Hearing Aid Characteristics,” ANSI S3.22–1996 (ASA 70–1996) (Revision of ANSI S3.22–1987), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Standards Secretariat of the Acoustical Society of America, 120 Wall St., New York, NY 10005–3993, or are available for inspection at the Regulations Staff, CDRH (HFZ–215), FDA, 1350 Piccard Dr., rm. 240, Rockville, MD 20850, and at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. * * *

* * * * *

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28209 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4428–F–05]

RIN 2577–AB91

Housing Choice Voucher Program; Amendment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: On October 21, 1999, HUD published a final rule implementing the statutory merger of the Section 8 tenant-based certificate and voucher programs. This rule makes an amendment to the October 21, 1998 final rule concerning the 40 percent of adjusted monthly income initial rent burden limit. HUD is making this change based upon its reconsideration of the statutory language and legislative history regarding this requirement.

DATES: Effective Date: December 3, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1999 (64 FR 56894), HUD published a final rule implementing the statutory merger of the Section 8 tenant-based certificate and voucher programs. The October 21, 1999 final rule implemented section 545 of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub. L. 105–276, approved October 21, 1998) (referred to as the "Public Housing Reform Act"). The new tenant-based program (known as the Housing Choice Voucher program) has features of the previously authorized certificate and voucher programs, plus new features. Interested persons should consult the preamble to the October 21, 1999 final rule for additional details. This final rule makes an amendment to new Housing Choice Voucher Program regulations at 24 CFR part 982.

The Public Housing Reform Act provides that at the time a family initially receives tenant based assistance under the Housing Choice Voucher Program with respect to any dwelling unit:

> [T]he total amount that a family may be required to pay for rent may not exceed 40 percent of the monthly adjusted income of the family. (42 U.S.C. 1437f(o)(3), as amended by section 545 of the Public Housing Reform Act)

This statutory provision is currently implemented by § 982.508.

This final rule provides that the initial rent burden restriction at § 982.508 applies only to a family who leases a unit at a gross rent which exceeds the applicable payment standard for the family. This final rule provides that at the time the Public Housing Agency (PHA) approves a tenancy for initial occupancy of a dwelling unit by a family with assistance under the voucher program, *and where the gross rent of the unit exceeds the applicable payment standard for the family,* the family share of gross rent must not exceed 40 percent of the family's monthly adjusted income. Under this final rule, the initial rent burden restriction will not apply to a family that rents a unit for a gross rent (rent to owner plus tenant-paid utilities) at or below the payment standard for the family.

In the Housing Choice Voucher Program, the monthly assistance payment for a family that rents for a gross rent below the payment standard for the family is the gross rent minus the total tenant payment (TTP), as computed by a statutory formula. The TTP is *the highest of:*

1. 30 percent of monthly adjusted income;
2. 10 percent of monthly income;
3. In "as-paid" States (where the welfare housing grant is adjusted in accordance with actual housing cost), the portion of welfare assistance designated for housing; or
4. The PHA's minimum rent (from $0 to $50, as determined by the PHA).

Under the last three branches of this formula, the TTP (which is not covered by the voucher subsidy payment) for a family may exceed 40 percent of adjusted monthly income. HUD previously advised that such families may not rent a unit for a gross rent that exceeds the 40 percent initial rent burden limit.

On reconsideration of the statute and legislative history, HUD believes that the statute is only intended to place a restriction on the rent burden of a family who chooses to lease a unit for a rent that exceeds the payment standard applicable to the family.

The exact language later enacted as the initial rent burden restriction in the Public Housing Reform Act originated in the predecessor of the Public Housing Reform Act, as reported by the Senate Banking Committee in May, 1997 (Sen. Report 105–21, May 23, 1997). The Committee report specifies that the 40 percent rent burden limitation applies "if the initial rent on a unit exceeds the payment standard" (Sen. Report 105–21, page 34; see also, page 35). The Committee report also states that "if the tenant wishes to lease a unit where the initial rent on a unit exceeds the payment standard" tenants may pay the difference up to 40 percent of adjusted income (Sen. Report 105–21, page 56). The Committee report clearly indicates that the 40 percent rent burden limitation is not intended to apply for a family that rents below the payment standard, and whose statutory total tenant payment exceeds 40 percent of adjusted income.

Although this final rule will not take effect until December 3, 1999, PHAs are advised that the amendment made by this final rule better reflects the intent of the Congress in enacting the "40 percent rent burden limit." PHAs should, therefore, immediately begin to conform their practices and procedures to the language of § 982.508, as amended by this final rule. In the meantime, pending the effective date of this rule, HUD does not anticipate imposing sanctions against PHAs that rely on the course set out here as a "safe harbor."

II. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure would be contrary to the public interest. This final rule amends the Housing Choice Voucher Program regulations at 24 CFR part 982 to more accurately reflect the Congressional intent regarding the "40 percent initial rent burden." Upon reconsideration of the relevant statutory language and legislative history, HUD has determined that its initial interpretation (codified at § 982.505) may contradict the intent of the Congress in enacting this provision. It is necessary for this rule not to be delayed to solicit public comments in order to correct any potential confusion on the part of PHAs and assisted families regarding the scope and applicability of this statutory requirement. Accordingly, HUD is publishing this rule for effect without prior public participation.

III. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made on HUD's May 14, 1999 interim rule implementing the statutory merger of the tenant-based Section 8 certificate and voucher programs, in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The final rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under Section 8 of the United States Housing Act of 1937. Specifically, the final rule would establish requirements governing tenant-based assistance for an eligible family. The final regulatory amendment would not change the amount of funding available under the Section 8 voucher program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the programs affected by this final rule are 14.855 and 14.85.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies.

For the reasons described in the preamble, HUD is amending 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Revise § 982.305(a)(5) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

(a) * * *

(5) At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share does not exceed 40 percent of the family's monthly adjusted income.

* * * * *

3. Revise § 982.508 to read as follows:

§ 982.508 Maximum family share at initial occupancy.

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the PHA issues a voucher to the family.

Dated: October 28, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99-28790 Filed 11-1-99; 8:51 am]

BILLING CODE 4210-33-U

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Rescission Guidelines

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule; amendments.

SUMMARY: The Commission is amending its regulation regarding sanctioning of disciplinary infractions and new criminal behavior by prisoners who have applied for parole or who have received grants of parole. The amendment clarifies the Commission's longstanding policy that this regulation applies to all misconduct committed by a prisoner while confined, whether before or after the sentence is imposed. It also clarifies the applicability of the rule to parolees when they are confined for new crimes committed while on parole.

DATES: *Effective Date:* December 3, 1999. Comments must be received by December 31, 1999.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The Commission's regulation at 28 CFR § 2.36 provides in pertinent part that the rescission guidelines contained therein "shall apply to the sanctioning of disciplinary infractions or new criminal behavior committed by a prisoner subsequent to the commencement of his sentence and prior to his release on parole." 28 CFR 2.36(a). The Commission's regulation regarding guidelines for parole decisionmaking provides in pertinent part that "for criminal behavior committed while in confinement see § 2.36." 28 CFR 2.20(i). The Commission's longstanding interpretation of its rescission guidelines is therefore that they apply to all misconduct and new criminal behavior committed by an offender "in confinement". In order to clarify the language of § 2.36(a), (which, standing alone, appears to limit rescission guidelines to conduct after a prisoner has begun service of an imposed sentence) the Commission is amending § 2.36(a). The amended rule will make clear that the rescission guidelines apply to new criminal conduct committed by any offender who is in confinement, whether as a pretrial detainee, as a prisoner serving an imposed sentence, or as a prisoner who has been transferred to another institution pending trial or sentencing on another matter. The amended rule also makes clear that the rescission guidelines apply to disciplinary infractions or further crimes committed by a parolee after he has been confined on a new criminal charge, whether before or after the Commission revokes his parole. This inclusive policy reflects the Commission's view that disciplinary infractions are always relevant to the parole decisionmaking process, and that new crimes committed while in official confinement of any type share are a significant indicant of the offender's lack of suitability for parole or reparole.

The rescission guidelines therefore apply to conduct committed while in confinement regardless of the venue of confinement; new criminal conduct in a halfway house or jail, as well as in a prison, falls within the ambit of § 2.36(a).

Implementation

The amended rule is made effective as an interim rule pending the public comment process because of the public and law enforcement interest in not placing in doubt the many parole decisions made in accordance with 28 CFR 2.36 and 2.20(i).

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this amended interim rule is not a significant rule within the meaning of Executive Order 12866. The amended interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not "substantially affect the rights or obligations of non-agency parties" pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendments

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.36 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 2.36 Rescission guidelines.

(a) The following guidelines shall apply to the sanctioning of disciplinary infractions or new criminal conduct committed by a prisoner during any period of confinement that is credited to his current sentence (whether before or after sentence is imposed), but prior to his release on parole; and by a parole violator during any period of confinement prior to or following the revocation of his parole (except when such period of confinement has resulted from initial parole to a detainer). * * *

* * * * *

Dated: October 25, 1999.

Michael J. Gaines,

Chairman, Parole Commission.

[FR Doc. 99–28587 Filed 11–2–99; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–99–068]

RIN 211–AE46

Special Local Regulations: City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being adopted for the Augusta Port Authority's Head of the South Rowing Regatta. The event will be held from 7 a.m. to 6 p.m. Eastern Standard Time (EST) on November 13 and 14, 1999, on the Savannah River in Augusta, GA. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 6:30 a.m. November 13, 1999, and terminate at 6:30 p.m. on November 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. William Tole (706) 722–4114.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters during the Head of the South Rowing Regatta to be held in Augusta, GA. The regulations are intended to promote safe navigation on the Savannah River immediately before, during, and after the race by controlling the traffic entering, exiting, and travelling within the regulated area. The anticipated number of participant and spectator vessels poses a safety concern which is addressed in these special local regulations. There will be approximately 3000 participants racing single, double, four and eight person rowing shells on a fixed course. The event will take place in an area of limited commercial traffic on the Savannah River at Augusta GA, between mile marker 187.5 and 203.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Information concerning the exact date and times of the event were only recently received by the U.S. Coast Guard, leaving insufficient time for a full comment period and delayed effective date.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. The Office of Management and Budget has excepted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT 44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area encompasses less than 3 nautical miles on the Savannah River with little commercial usage, entry into which is prohibited for only twelve hours on each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small business, not-for-profit organizations that are independently owned and operated and are not dominant under their fields, and governmental jurisdictions with populations of less then 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for two days in a limited area of the Savannah River that is seldom used for commerce.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.49 CFR 1.46, and 33 CFR 100.35.

2. Add temporary § 100.35T–07–068 to read as follows:

§ 100.35T–07–068 Head of the South Rowing Regatta; Savannah River, Augusta, GA

(a) *Regulated Area:* A regulated area is established on that portion of the Savannah River at Augusta GA, between mile markers 187 and 200.2. The regulated area encompasses the width of the Savannah River between these two points.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Group Charleston, SC.

(c) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. After termination of the Head of the South Rowing Regatta, all vessels may resume normal operations.

(d) *Dates:* These regulations become effective at 6:30 a.m. and terminate at 6:30 p.m. on November 13 and 14, 1999.

Dated: October 27, 1999.

G.W. Sutton,

Captain U.S.Coast Guard, Commander, Seventh Coast Guard District Acting.

[FR Doc. 99–28748 Filed 11–2–99; 8:15 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–111]

RIN 2115–AE47

Drawbridge Operation Regulations; Debbies Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Monmouth County highway bridge, at mile 0.4, across Debbies Creek, at Manasquan, New Jersey. This rule will continue to provide the current opening schedule, except that from January 1 through April 1, from 4:30 p.m. to 8 a.m., a four-hour advance notice will be required. This change is intended to relieve the bridge owner of the burden of having a bridge tender staff the bridge during periods when there are few or no requests for openings, while still providing for the reasonable needs of navigation.

DATES: This final rule is effective December 3, 1999.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–98–111 and are available for inspection or copying at the office of Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 22, 1999, we published a Notice of Proposed Rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Debbies Creek, New Jersey" in the **Federal Register** (64 FR 3464). We received 10 letters commenting on the proposed rulemaking. One of the comments included a request for a public hearing, but after reading and considering the comments, we determined that a public hearing would provide no additional information and would not aid the rulemaking process.

On July 6, 1999, we published a Supplemental Notice of Proposed Rulemaking (SNPRM) entitled "Drawbridge Operation Regulations; Debbies Creek, New Jersey" in the **Federal Register** (64 FR 36318). We received no comments on the supplemental notice of proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Monmouth County highway bridge is owned and operated by the Board of Chosen Freeholders of the County of Monmouth (BCFCM) in New Jersey. Title 33 Code of Federal Regulations (CFR) part 117.715 requires the bridge to open on signal, except that, from Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need be opened only on the hour and the half hour if any vessels are waiting to pass.

The BCFMC had initially requested a change in the regulation by requiring a 24-hour advance notice for bridge openings from January 1 through March 31. Bridge logs from 1989 through 1997 revealed a total of 496 bridge openings in the months of January, February and March. During this period, bridge tenders received an average of approximately 18 bridge-opening requests per month. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believed that the initial proposal would more fairly balance the competing needs of vehicular and vessel traffic. However, the Coast Guard received 10 comments objecting to the proposed rule. After consideration of the comments and further discussions with BCFCM, the Coast Guard determined that since vessel use from January 1 through March 31 was primarily during the daylight hours, an alternative proposal, as set forth in the SNPRM was appropriate. The Coast Guard also believes that enumeration and rewording will clarify the current regulation.

Discussion of Comments and Changes

The Coast Guard received 10 comments on the NPRM in opposition to a 24-hour advance notice for vessel openings from January 1 to March 31. Nine comments opposed the proposed change as unreasonable and unfair. The remaining comment suggested manning the bridge between the hours of 8 a.m. and 4:30 p.m. during January and February, and between 8 a.m. and 6 p.m. or 7 p.m. in the month of March with a 24-hour advance notice at all other times. All commenters generally indicated that a 24-hour advance notice would be inconvenient and was excessive due to the unpredictable weather conditions. Further review of the bridge logs from 1995 through 1997 revealed a total of 61 bridge openings for vessels from January 1 to March 31, from 4:30 p.m. to 8 a.m. During the same timeframes, bridge logs from 1989 to 1997 showed a total of 104 vessel openings. The Coast Guard responded to the comments by reducing the 24-hour advance notice requirement in our original proposal to only four hours.

The Coast Guard received no comments opposing our new proposal and is amending 33 CFR 117.715 by inserting a new provision requiring a four-hour advance notice for bridge openings from January 1 through April

1, between the hours of 4:30 p.m. to 8 a.m. Additionally, to ensure clarity and consistency of the operating regulation, the text of the current 33 CFR 117.715 will be enumerated and reworded.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard reached this conclusion based on the fact that the final rule will not prevent mariners from transiting the bridge, but merely require mariners to plan their transits and to provide the four-hour advance notice to the bridge tender.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that this rule will continue to provide openings to mariners on a schedule they are accustomed to, and merely require advance notice for openings during nighttime transits.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1966 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effect on them and participate in the rulemaking process. This was accomplished by publication of a NPRM in the **Federal Register**, consideration of comments received in response to the NPRM, and subsequent issuance of a SNPRM based on those comments.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule only deals with the operating schedule of an existing drawbridge, and will have no effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.715 is revised to read as follows:

§ 117.715 Debbies Creek.

(a) The draw of the Monmouth County highway bridge, mile 0.4 at Manasquan, shall open on signal, except as follows:

(1) From 4:30 p.m. January 1 through 8 a.m. April 1, from 4:30 p.m. to 8 a.m., the draw need open only if at least four-hours advance notice is given.

(2) From Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need open only on the hour and half hour if any vessels are waiting to pass.

(b) The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gauges shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

Dated: October 20, 1999.

John E. Shkor,

Vice Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 99–28612 Filed 11–2–99; 8:15 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–158–2–9942(a); TN–211–1–9943(a); TN–215–1–9944(a); TN–221–1–9945(a); FRL–6452–8]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Knox County Portion of the Tennessee SIP Regarding Use of LAER for Major Modifications and Revisions to the Tennessee SIP Regarding the Coating of Miscellaneous Metal Parts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is acting on revisions to Section 46.2 and 46.3.A. of the Knox County portion of the Tennessee State Implementation Plan (SIP) which were submitted by the Tennessee Department of Air Pollution Control (TDAPC), on May 23, 1995, and November 13, 1998, for purposes of revising the definition for Volatile Organic Compounds (VOC) and requiring the use of Lowest Achievable Emission Rate (LAER) for major modifications to existing sources of VOC. The EPA is also approving revisions to the Tennessee SIP which were submitted by TDAPC on February 12, 1999, and May 17, 1999, for purposes of revising Rule 1200–3–18–.20 (Coating of Miscellaneous Metal Parts) to include a standard for the touch-up of heavy-duty trucks and revise the definition of "high performance architectural coating."

DATES: This direct final rule is effective January 3, 2000 without further notice, unless EPA receives adverse comment by December 3, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville,

Tennessee 37243–1531.615/532–0554

Knox County Department of Air Quality Management, City-County Building, Room 339, 400 West Main Street, Knoxville, Tennessee, 37902–2405. 423/215–2488

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION:

I. Background

A. Knox County SIP Revisions

The EPA is approving the most recently received revisions to Section 46.2 (Definitions) and Section 46.3 (Regulation of Volatile Organic Compounds/Standards for New Sources) of the Knox County Portion of the Tennessee SIP, which were submitted by TDAPC on November 13, 1998. Section 46.2.A.34 is being revised to incorporate by reference the definition for VOC contained in 40 CFR Part 51 Subpart F. The existing paragraph A of Section 46.3 requires all new major VOC sources and all modifications to existing major VOC sources to use LAER. On May 23, 1995, TDAPC submitted a revision to this paragraph that allowed director's discretion in determining whether or not to apply LAER to modifications to existing major VOC sources. On November 13, 1998, following EPA notification that this revision was unapprovable, TDAPC submitted replacement language for Section 46.3.A that requires use of LAER for all new VOC sources and all major modifications to existing VOC sources. EPA is taking action on both submittals by approving the most recently submitted revision.

B. Tennessee SIP Revisions

The EPA is also approving revisions to Rule 1200–3–18–.20 (Coating of Miscellaneous Metal Parts) of the Tennessee SIP which were submitted on February 12, 1999, and May 17, 1999. The February 12, 1999, submittal amends Rule 1200–3–18–.20(2) and (3)(b) to include a definition and an emission limit for "heavy-duty truck touch-up." The May 17, 1999, submittal revises the definition for "High Performance Architectural Coating" contained in Rule 1200–3–18–.20(2). The revisions also include appropriate renumbering of the definitions section of the rule.

II. Analysis of State's Submittal

A. Knox County SIP Revisions

Section 46.2.A.34 is amended to revise the definition for VOC by exempting 16 compounds (per 62 FR 44900) and methyl acetate (per 63 FR 17331) from regulation as VOC due to EPA's determination that they do not contribute significantly to ozone formation. Section 46.3.A is being revised to ensure that the Knox County Portion of the Tennessee SIP contains requirements for applying LAER to VOC sources that: (i) Are at least as stringent as the existing local SIP requirements, (ii) will help to ensure Knox County's maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone, and (iii) are consistent with Clean Air Act (CAA) requirements. The language being approved by this notice is as stringent as existing local SIP requirements, since it will require use of LAER for all major modifications, instead of allowing director's discretion to determine the appropriate controls. The language is also consistent with Section 173(a)(2) of the CAA and Chapter 1200–3–9–.01(5)(b)2.(iii) of the Tennessee SIP, both of which specify that new or modified major stationary sources located in a nonattainment area must comply with LAER in order to be issued construction or operating permits. Knox County is currently a maintenance area for the one-hour ozone NAAQS. However, Section 46 was contained in the SIP while the county was designated nonattainment for ozone. Implementation of Section 46 requirements was therefore critical to Knox County's attainment of the ozone NAAQS in 1991, as explained in EPA's September 27, 1993 redesignation notice (58FR50271).

B. Tennessee SIP Revisions

Several changes and additions to Rule 1200–3–18–.20 are being approved by this notice. The first revision, submitted February 12, 1999, establishes an emission limit of 4.8 pounds per gallon for "heavy-duty truck touch-up" that satisfies Reasonably Available Control Technology (RACT) requirements. As noted in August 15, 1996, correspondence from EPA to Tennessee, this limit is consistent with EPA's guidance on final repair, as specified in the Control Technology Guideline (CTG) document: Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles and Light-Duty Trucks (May 1977). This submittal also addresses EPA's disapproval (60FR10504) of a previous revision of this chapter that included a less stringent emission limit for "heavy-duty truck touch-up." This disapproval was part of an action in which EPA approved the majority of SIP revisions submitted by Tennessee on May 18, 1993, to satisfy RACT "Catch Up" requirements contained in the amended CAA.

The second revision, submitted May 17, 1999, revises the definition for "High Performance Architectural Coating" by deleting language that limits the applicability of this standard to a specific county. Upon EPA approval of this revision, the emission limit of 6.2 pounds per gallon for this coating type, as provided in 1200–3–18–.20(3), will become applicable to all Tennessee counties. This limit is consistent with the National Volatile Organic Compound Emission Standards for Architectural Coatings—Final Rule (63 FR 48848), which specifies a maximum allowable VOC content of 6.7 pounds per gallon for extreme high durability coatings.

III. Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with Clean Air Act and EPA requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 3, 2000 without further notice unless the Agency receives adverse comments by December 3, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 3, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987)] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 23, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2239(c), is amended by adding paragraph (c)(168) to read as follows:

§ 52.2239 Original identification of plan section.

* * * * *

(c) * * *

(168) Revisions to the Knox County portion of the Tennessee state implementation plan submitted to EPA by the State of Tennessee on November 13, 1998, concerning VOC and use of LAER for major modifications to existing sources were approved.

(i) Incorporation by reference.

(A) Section 46.2.A.34 of the Knox County Air Pollution Control Regulation "Volatile Organic Compounds/ Definitions" effective November 10, 1998.

(B) Section 46.3.A of the Knox County Air Pollution Control Regulation "Volatile Organic Compounds/ Standards for New Sources" effective November 10, 1998.

(ii) Other material. None.

3. Section 52.2220(c) is amended by revising the entry for Section 1200–3–18–.20 to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED TENNESSEE REGULATIONS FOR TENNESSEE

State citation	Title/subject	Adoption date	EPA approval date	Federal Register notice
* *	*	*	*	* *
Chapter 1200–3–18	Volatile Organic Compounds.			
* *	*	*	*	* *
Section 1200–3–18–.20	Coating of Miscellaneous Metal Parts.	01/26/99	November 3, 1999	[Insert citation of this FEDERAL REGISTER Notice when published]
* *	*	*	*	* *

[FR Doc. 99–27195 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK–8–1–5772a; FRL–6457–7]

Approval and Promulgation of Implementation Plans; Oklahoma; Recodification of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving into the Oklahoma State Implementation Plan (SIP), subchapters of the Oklahoma Department of Environmental Quality (ODEQ) Air Pollution Control Rules adopted by the State Legislature on March 30, 1994. These Rules, submitted by the Governor to EPA on May 16, 1994, replace most of the existing ODEQ regulations in the Oklahoma SIP. The EPA is taking no action on subchapters of the submittal that are either not equivalent to, or are not in, the current Oklahoma SIP-approved regulations. Approval of this action will make the numbering format and administrative terms of the subchapters being approved consistent with that of the current ODEQ air quality control regulations. The changes are administrative in nature and do not substantively revise the current SIP.

DATES: This rule is effective on January 3, 2000 without further notice, unless EPA receives adverse comment by December 3, 1999. If EPA receive such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we" is used, we mean EPA.

I. What Is the Purpose of This Action?

This action approves a recodification of the ODEQ regulations in the Oklahoma SIP adopted by the Oklahoma Legislature on March 30, 1994, and submitted by the Governor of Oklahoma on May 16, 1994, as a revision to the Oklahoma SIP. The EPA is approving subchapters of the submittal that are equivalent to the current SIP-approved regulations replaced. The EPA is taking no action on subchapters that have not previously been approved into the Oklahoma SIP or are not equivalent to the existing SIP-approved regulations.

II. Why Is EPA Taking This Action?

The ODEQ has used four different numbering systems for its air quality control regulations since the original Oklahoma SIP was approved by EPA on May 31, 1972 (37 FR 10887). Regulations in the current Oklahoma SIP have been approved under three of these numbering systems.

The ODEQ air quality control regulations approved with the original Oklahoma SIP were numbered with a one or two digit number such as Regulation Number 4 and Regulation Number 15. Regulations approved by EPA under this numbering system were approved in 40 CFR part 52, §§ 52.1920(b) to 52.1920(c)(21). Some ODEQ regulations approved under this system are still in the Oklahoma SIP.

Between 1981 and 1991, the ODEQ used a numbering system such as Regulation 1.1, Regulation 1.4.4, and Regulation 4.1 for its air quality control regulations. Regulations were approved by EPA under this numbering system at 40 CFR 52.1920(c)(24) to 52.1920(c)(41) and 52.1920(c)(47).

In 1990 the Oklahoma State Legislature passed the Oklahoma Administrative Procedures Act which mandated a common format for all Oklahoma rules and regulations. To meet the requirements of the Administrative Procedures Act, the Air Quality Service of the Oklahoma State Department of Health recodified the Oklahoma air pollution control regulations into the Oklahoma Administrative Code, Title 310, Chapter 200 (OAC:310:200), Oklahoma Air Pollution Control Rules. As required by the Oklahoma Administrative Procedures Act, the Oklahoma Air Pollution Control Rules contained no substantive changes, but was a change in format only. The Governor of Oklahoma submitted the recodified regulations to EPA on July 1, 1992, as a revision to the Oklahoma SIP.

The EPA has approved two revisions to the ODEQ regulations in the Oklahoma SIP in this numbering system submitted after the July 1, 1992, submittal. The revisions were submitted to EPA on December 10, 1992, and May 16, 1994. Subchapter 31 (OAC:310:200–31), Control of Emissions of Sulfur Compounds, adopted by the State March 24, 1993, and submitted by the Governor on December 10, 1992, was approved by EPA on July 15, 1993 (58 FR 38060), at 40 CFR 52.1920(c)(43). Subchapter 23 (OAC:310:200–23), Control of Emissions from Cotton Gins, adopted by the State on March 24, 1993, and submitted by the Governor on May 16, 1994, was approved by EPA on May 14, 1997 (62 FR 26393), at 40 CFR 52.1920(c)(44).

(**Note:** The May 16, 1994, submittal of Subchapter 23 (OAC:310:200–23) was a completely separate submittal from the May 16, 1994, submittal being acted upon in this action.)

Before EPA could take action on the recodified regulations submitted July 1, 1992, the Air Quality Service, in 1993, became the Air Quality Division of the newly created ODEQ. This necessitated the transfer of the Air Pollution Control Rules from OAC:310:200 to new OAC:252:100. The recodification of the regulations to OAC:252:100 was adopted by the Oklahoma Legislature on March 30, 1994, published in the *Oklahoma Register* on May 16, 1994, effective May 26, 1994, and submitted by the Governor of Oklahoma to EPA as a revision to the Oklahoma SIP on May 16, 1994. There were no substantive changes in the regulations. No regulations or revisions to regulations in the Oklahoma SIP have been approved under this numbering system.

The intent of this **Federal Register** action is to approve the regulations in the May 16, 1994, submittal that are equivalent to the current SIP-approved regulations. The EPA is taking no action on subchapters of the submittal that are not equivalent to the current SIP-approved regulations being replaced, or on subchapters that have not previously been approved into the SIP.

III. What Regulations in the May 16, 1994, Submittal Are Not Being Acted Upon in This Action?

Subchapter 8 (Operating Permits), subchapter 11 (Alternative Emissions Reduction Permits), subchapter 21 (Particulate Matter Emissions from Wood-Waste Burning Equipment), and appendix D (Particulate Matter Emission Limits for Wood Waste Burning Equipment) are not being acted upon in this action because equivalent regulations are not in the current Oklahoma SIP.

Subchapter 7 (Permits) is not being approved in this recodification because it is a substantial revision to the current SIP-approved regulation. As a result, the following ODEQ regulation remains in the Oklahoma SIP: Regulation 1.4 (Air Resources Management Permits Required) as approved by EPA on August 25, 1983 (48 FR 38636), at § 52.1920(c)(26); January 31, 1991 (56 FR 03781), at § 52.1920(c)(38); and July 23, 1991 (56 FR 33717), at § 52.1920(c)(41). This subchapter will be addressed in a future rulemaking.

Subchapter 41 (Control of Emission of Hazardous and Toxic Air Contaminants) is not being acted on in this rulemaking because it is not equivalent to the current SIP-approved regulations. As a result, the following ODEQ regulation remains in the Oklahoma SIP: Regulation 3.8, (Control of Emission of Hazardous Air Contaminants), as approved by EPA on August 15, 1983 (48 FR 36819), at § 52.1920(c)(27).

IV. What Oklahoma SIP Regulations Are Being Replaced by This Action?

The table below cross-references subchapters in the May 16, 1994, submittal of OAC:252:100 that EPA is approving in this action with previous citations of the regulations. The third (1992) codification is not shown because it is identical to the current codification except that "252:100" in the current codification was "310:200" in the third codification. The titles shown are the proposed new SIP titles. In some cases these titles are different from the current SIP-approved titles. The current SIP-approved regulations are shown with an "*" following the regulation numbers. In some cases, such as new subchapter 1, parts of two former codifications are in the current SIP. An "*" in the first column means the current SIP regulations were approved under the 1992 "310–200" codification.

Proposed New SIP Citation, (Subchapter of 252:100)	Proposed New SIP Title	1982 to 1991 State Citation (Regulation)	Before 1982 State Citation (Regulation No.)
1.	General Provisions	1.1*	3*
3.	Air Quality Standards and Increments	1.2*	3
5.	Registration of Air Contaminant Sources	1.3	4*
9.	Excess Emission and Malfunction Reporting Requirements	1.5*	11
13.	Prohibition of Open Burning	2.1	1
15.	Motor Vehicle Pollution Control Devices	2.2	2*
17.	Incinerators	2.3	5*
19.	Particulate Matter Emissions from Fuel-Burning Equipment	2.4	6*
23.*	Control of Emissions from Cotton Gins	Did not exist	Did not exist
25.	Smoke, Visible Emissions and Particulates	3.1*	7
27.	Particulate matter Emissions from Industrial and Other Processes and Operations.	3.2	8*
29.	Control of Fugitive Dust	3.3	9*
31.*	Control of Emissions of Sulfur Compounds	3.4	16
33.	Control of Emissions of Nitrogen Oxides	3.5	18*
35.	Control of Emission of Carbon Monoxide	3.6	17*
37.	Control of Emission of Organic Materials	3.7*	15*
39.	Control of Emission of Organic Materials in Nonattainment Areas	3.7*	15*
43.	Sampling and Testing Methods	4.1*	12*
45.	Monitoring of Emissions	5.1	13*
Appendix A. (Cited in Subchapter 17).	Allowable Emissions for Incinerators with Capacities in Excess of 100 lbs/hr	2.3 Figure 1	5 Figure 1*
Appendix B. (Cited in Subchapter 17).	Allowable Emissions for Incinerators with Capacities Less Than 100 lbs/hr	2.3 Figure 1	5 Figure 1*
Appendix C. (Cited in Subchapter 19).	Particulate Matter Emission Limits for Fuel-Burning Equipment	2.4 Figure 1	6 Figure 1*
Appendix E. (Cited in Subchapter 3).	Primary Ambient Air Quality Standards	1.2(1) Table 1*	3, Table 1a
Appendix F. (Cited in Subchapter 3).	Secondary Ambient Air Quality Standards	1.2(1) Table 2*	3, Table 1b
Appendix G. (Cited in Subchapter 27).	Allowable Rate of Emissions	3.2 Table 1	8 Table 1*

V. What Changes Have Been Made to the Regulations?

This section summarizes changes to the regulations initially made in OAC:300:200 and carried over into OAC:252:100.

A. Format Changes

The new numbering system is considerably different from the first two numbering systems. A subchapter number has been assigned to the group of rules previously identified by regulation numbers. Some subchapters are further divided into parts. The numbers initially assigned to subchapters and parts are all odd numbers to allow for future expansions of the rules.

Subchapters and parts are divided into groups of related sections. A section may be further subdivided into subsections, paragraphs, subparagraphs, units, and subunits.

B. Administrative Wording Changes

The regulations also underwent administrative wording changes necessitated by the transfer of the administration of the regulations to the newly created ODEQ and the resultant transfer of the Oklahoma Air Pollution Control Regulations to OAC:252:100 as well as style changes to be consistent with that preferred by the State. For example, the term "Executive Director" replaced the word "Commissioner" and the terms "Chapter" and "Subchapter" replaced the word "Regulation." Two tables in the support document for this action show the administrative wording changes versus the terms replaced.

C. Changes to Definition Sections

Subchapter 1, General Provisions, contains definitions for Chapter 100. Almost all definitions previously approved by EPA in other ODEQ SIP-approved regulations are included in subchapter 1, section 1–3, Definitions, as well as in the subchapter, part, or section they apply to. Some individual terms and terms with more than one definition in section 1–3 are restricted to specific subchapters, parts, or sections.

All definitions in Chapter 100 have a standard introductory paragraph which gives the part or section the definitions pertain to. All defined terms are in double quotes followed by the word "means" followed by the definition of the term. Terms within each definitions section have been placed in alphabetical order. Definitions not previously approved by EPA in the State General Definitions section were approved into the SIP in the Regulations they apply to.

D. Other Changes

A Purpose section is the first section of each subchapter. Some regulations in the earlier codifications did not have a Purpose section.

Most sections and subsections and some paragraphs and subparagraphs formerly without titles have been given titles.

Most of the tables in the old regulations are in appendices at the end of Chapter 100. New sections in the subchapters reference the tables in the appendices.

VI. Final Action

The EPA is approving ODEQ Air Pollution Control Rules (OAC:252:100) adopted by the State on March 30, 1994, and submitted by the Governor on May 16, 1994, except for subchapters 7, 8, 11, 21, 41, and appendix D. The regulations being approved replace the current ODEQ regulations in the Oklahoma SIP except for Regulation 1.4 (Air Resources Management Permits Required) and Regulation 3.8 (Control of Emission of Hazardous Air Contaminants). The changes are administrative in nature and do not substantively revise the current SIP.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on January 3, 2000 without further notice unless we receive adverse comment by December 3, 1999. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Federal Clear Air Act (the Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective January 3, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 23, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart LL—Oklahoma

2. Section 52.1920 is amended by adding paragraph (c)(48) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(48) Revisions to Oklahoma Department of Environmental Quality (ODEQ) regulations in the Oklahoma SIP adopted by the Oklahoma Legislature on March 30, 1994, effective May 26, 1994, and submitted by the Governor on May 16, 1994.

(i) Incorporation by reference.

(A) *Oklahoma Register*, May 16, 1994, pages 2031 and 2032, approving the transfer of the Oklahoma Air Quality Control Rules into Title 252, Chapter 100, of the Oklahoma Administrative Code.

(B) Oklahoma Administrative Code, Title 252, Chapter 100 (OAC:252:100), Oklahoma Air Quality Control Rules, adopted by the Oklahoma Legislature on March 30, 1994, effective May 26, 1994.

(1) Subchapter 1, General Provisions.

(2) Subchapter 3, Air Quality Standards and Increments.

(3) Subchapter 5, Registration of Air Contaminant Sources.

(4) Subchapter 9, Excess Emissions and Reporting Requirements.

(5) Subchapter 13, Prohibition of Open Burning.

(6) Subchapter 15, Motor Vehicle Pollution Control Devices.

(7) Subchapter 17, Incinerators.

(8) Subchapter 19, Particulate Matter Emissions from Fuel-Burning Equipment.

(9) Subchapter 23, Control of Emissions from Cotton Gins.

(10) Subchapter 25, Smoke, Visible Emissions and Particulates.

(11) Subchapter 27, Particulate Matter Emissions from Industrial and Other Processes and Operations.

(12) Subchapter 29, Control of Fugitive Dust.

(13) Subchapter 31, Control of Emission of Sulfur Compounds.

(14) Subchapter 33, Control of Emission of Nitrogen Oxides.

(15) Subchapter 35, Control of Emission of Carbon Monoxide.

(16) Subchapter 37, Control of Emissions of Organic Materials.

(17) Subchapter 39, Control of Emission of Organic Materials in Nonattainment Areas

(18) Subchapter 43, Sampling and Testing Methods.

(19) Subchapter 45, Monitoring of Emissions.

(20) Appendix A, Allowable Emissions for Incinerators with Capacities in Excess of 100 lbs/hr.

(21) Appendix B, Allowable Emissions for Incinerators with Capacities Less Than 100 lbs/hr.

(22) Appendix C, Particulate Matter Emission Limits for Fuel-Burning Equipment.

(23) Appendix E, Primary Ambient Air Quality Standards.

(24) Appendix F, Secondary Ambient Air Quality Standards.

(25) Appendix G, Allowable Rate of Emissions.

(ii) The following previously approved ODEQ regulations remain in the Oklahoma SIP:

(A) Regulation 1.4, "Air Resources Management Permits Required," as approved by EPA on: August 25, 1983 (48 FR 38636), at 52.1920(c)(26); April 2, 1984 (49 FR 13039), at 52.1920(c)(29); July 27, 1984 (49 FR 30185), at 52.1920(c)(31); August 20, 1990 (55 FR 33907), at 52.1920(c)(34); February 12, 1991 (56 FR 5655), at 52.1920(c)(38); and July 23, 1991 (56 FR 33717), at 52.1920(c)(41).

(B) Regulation 3.8, "Control of Emission of Hazardous Air Contaminants," approved by EPA on August 15, 1983 (48 FR 36819), at 52.1920(c)(27).

(iii) Additional materials—None.

[FR Doc. 99–27541 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–050–9953(a); FRL–6461–8]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on April 22, 1999, by the State of Alabama. These revisions were made to comply with the regulations set forth in the Clean Air Act (CAA). Included in this document are revisions to Chapter 335-3-1—General Provisions which establishes Credible Evidence regulations and Chapter 335-3-14—Air Permits which allows exemptions for projects which are found to be beneficial to the environment.

DATES: This direct final rule is effective January 3, 2000 without further notice, unless EPA receives adverse comment by December 3, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Kimberly Bingham at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

Listed below is a summary of the revisions to the Alabama State implementation plan (SIP) on which EPA is taking action in this document.

Chapter 335-3-1—General Provisions

Rule 335–3–1–.13—Credible Evidence

On February 24, 1997, EPA promulgated regulations under sections 113(a) and 113(e)(1) of the CAA that gave EPA the authority to use all available data to prove CAA violations (See 62 FR 8314–8328). EPA required states to incorporate provisions into their SIPs to ensure that the states have the ability to use any available data or "credible evidence" to determine violations. To comply, the ADEM submitted rule 335–3–1–.13 to EPA Region 4 for approval. This new rule allows the use of any credible evidence that is both reference test data and comparable non-reference test data. The data will be used to prove or disprove violations of the State of Alabama's regulations in enforcement actions.

Chapter 335-3-14—Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]

Rule 335–3–14.04(2)(ff)

ADEM is revising its PSD rules to allow an exemption for modifications or projects that are proven to be beneficial to the environment. These regulations would require that an ambient air quality analysis be completed before the project can be approved. Class 1 areas must also not be affected by the new project. Moreover, the public notification requirements of the PSD regulations would also have to be met.

Rule 335–3–14.04(2)(gg)

The rule was revised to include a definition for Pollution Prevention Projects that can also be exempted if proven to be environmentally beneficial. ADEM defines Pollution Prevention Projects as any activity that through process changes, product reformulation or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. It does not mean recycling (other than certain "in process recycling" practices), energy recovery, treatment, or disposal.

Rule 335–3–14–.04(8)(m)

This rule lists the PSD exemptions for projects that are environmentally beneficial.

II. Final Action

EPA is approving the aforementioned changes to the State of Alabama's SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 3, 2000 without further notice unless the Agency receives adverse comments by December 3, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 3, 2000 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987)) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 5, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

EPA APPROVED ALABAMA REGULATIONS

State citation	Title subject	Adoption date	EPA approval date	Federal Register notice
Chapter No. 335–3–1—General Provision				
* * *	*	*	*	* *
Section 335–3–1–.13	Credible Evidence	04/13/99	11/03/99	[Insert citation of publication]
Chapter No. 335–3–14—Air Permits				
Section 335–3–14–.04(ff–gg)	Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration (PSD)].	04/13/99	11/03/99	[Insert citation of publication]
Section335–3–14–.04(8)(m)	Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration (PSD)].	04/13/99	11/03/99	[Insert citation of publication]
* * *	*	*	*	* *

Subpart B—Alabama

2. Section 52.50 is amended by revising the table heading and adding three new entries in the table in paragraph (c) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) EPA approved regulations.

* * * * *

[FR Doc. 99–27539 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 097–5041; FRL–6459–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Control of VOC Emissions From Solvent Metal Cleaning Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. The revisions pertain to and clarify the Commonwealth's regulation to control of volatile organic compound (VOC) emissions from solvent metal cleaning operations using non-halogenated solvents, and update another of its regulations to incorporate certain federal regulations by reference. The intended effect of this action is to approve the Commonwealth's request to approve these SIP revisions pertaining to solvent metal cleaning operations.

DATES: This final rule is effective on December 20, 1999 without further notice, unless EPA receives adverse comments by December 3, 1999. If EPA receives adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Virginia Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at EPA Region III address above or via e-mail at lewis.janice@epa.gov. While information may be requested by e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On April 22, 1996 the Virginia Department of Environmental Quality (VADEQ) submitted a revised version of Rule 4–24 (9 VAC 5–40–3260 et seq) Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents as adopted on December 19, 1995, published in the Virginia Register of Regulations (Volume 12, Issue 11) on February 19, 1996, and effective on April 1, 1996. The VADEQ originally adopted this regulation in 1979 to satisfy the Clean Air Act's (the Act's) requirement that states impose reasonably available control technology (RACT) requirements on sources of volatile organic compound (VOC) emissions located in ozone nonattainment areas. In accordance with the Act's requirements, this RACT regulation applies in the Virginia portion of the Metropolitan Washington DC ozone nonattainment area and also applies in the previously designated ozone nonattainment areas of Richmond and Hampton Roads which have been redesignated to attainment for the one-hour ozone ambient air quality standard. The redesignations do not alter the Act's requirements that RACT be imposed on sources of VOC located in the of the Richmond and Hampton Roads areas. On December 19, 1995, Virginia adopted amendments to the regulation to update it to conform to recently issued EPA guidance, and on April 22, 1996 submitted it to EPA for approval as SIP revision.

On October 9, 1998, VADEQ submitted an amendment to the 9 VAC 5–40–3260 Applicability and designation of affected facility portion of Rule 4–24 (9 VAC 5–40–3260 et seq) Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents. Although the title of the December 19, 1995 version of Rule 4–24 specifically referred to sources using non-halogenated solvents, the portion of the regulation entitled Applicability and designation of affected facility did not. Therefore, to clarify any potential for confusion, Virginia adopted a technical amendment to add language to the 9 VAC 5–40–3260 Applicability and designation of affected facility portion of Rule 4–24 to specify that it applies to facilities using non-halogenated solvents. This amendment was adopted on January 8, 1997, published in the Virginia Register of Regulations (Volume 13, Issue 14) on March 31, 1997 and effective on April 1, 1997.

EPA has determined that Rule 4–24 (9 VAC 5–40–3260 et seq) Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents as originally submitted on April 22, 1996, and as revised by the October 9, 1998 submittal, meets all federal guidance for approval.

As a separate matter, the Commonwealth's October 9, 1998 submittal also included requests that EPA approve revisions made to Rule 6–2 (9 VAC 5–60–90 et seq) pertaining to the use of halogenated solvents as a source category subject to maximum available control technology (MACT) to control air toxics. For the Commonwealth to maintain its delegation of authority for the MACT standard, and to make this federal rule part of the SIP to establish RACT for halogenated solvent sources, Virginia adopted the relevant federal regulations found at 40 CFR Part 63.460 through 40 CFR Part 63.469 by incorporating them by reference into Rule 6–2 at 9 VAC 5–60–100, Subpart T. The Commonwealth also amended Rule 6–2 at 9 VAC 5–60–90 to update its dated citation of the Code of Federal Regulations from which regulations have been incorporated by reference from the 1994 version to the 1996 version. EPA is approving both of these revisions.

II. Final Action

EPA is approving the SIP revisions pertaining to solvent metal cleaning submitted by the VADEQ on April 22, 1996 and October 9, 1998.

EPA is approving these SIP revisions without a prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separated document that will serve as the proposal to approve the SIP revisions should adverse or critical comments be filed. This SIP revision will be effective December 20, 1999 without further notice unless the Agency receives adverse comments by December 3, 1999. If EPA receives such comments, then EPA will publish a document withdrawing the final action and informing the public that the action will not take effect. All public comments received will then be addressed in a subsequent final action based on the proposed rule. EPA will not institute a second comment period on the rule. Parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this SIP revision will be effective on December 20, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule. On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final regulation that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve revisions to the Virginia SIP pertaining to solvent metal cleaning operations in the Commonwealth must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve revisions to the Virginia SIP pertaining to solvent metal cleaning operations may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Dated: September 30, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(130) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(130) Revisions to the State Implementation Plan submitted on April 22, 1996 and October 9, 1998 by the Virginia Department of Environmental Quality regarding regulations for reasonably available control technology requirements to control volatile organic compound emissions from solvent metal cleaning operations using non-halogenated solvents.

(i) Incorporation by reference.

(A) The letters dated April 22, 1996 and October 9, 1998 from the Virginia Department of Environmental Quality transmitting revisions to the Virginia State Implementation Plan pertaining to Rule 4–24 (9 VAC 5–40–3260 et seq.) of 9 VAC 5 Chapter 40.

(B) The amended version of Rule 4–24 (9 VAC 5–40–3260 et seq.) Emission Standards for Solvent Metal Cleaning Operations Using Nonhalogenated Solvents as adopted on December 19, 1995, published in the Virginia Register of Regulations (Volume 12, Issue 11) on February 19, 1996, and effective on April 1, 1997.

(C) Amendments to 9 VAC 5–40–3260 *Applicability and designation of affected facility* of Rule 4–24 (9 VAC 5–40–3260 et seq.) Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents adopted on January 8, 1997, published in the Virginia Register of Regulations (Volume 13, Issue 14) on March 31, 1997 and effective on April 1, 1997.

(ii) Additional Materials—The remainders of the April 22, 1996 and October 1998 submittals which pertain to Rule 4-24 (9 VAC 5–40–3260 et seq.) Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents.

3. Section 52.2423 is amended by adding paragraph (q) to read as follows:

§ 52.2423 Approval status.

* * * * *

(q) EPA approves as part of the Virginia State Implementation Plan the following revisions to the Virginia Regulations for the Control and Abatement of Pollution submitted by the Virginia Department of Environmental Quality on October 9, 1998:

(1) Subpart T of 9 VAC 5–60–100 *Designated emission standards* of Rule 6–2 (9 VAC 5–60–90 et seq.) of 9 VAC 5 Chapter 60 amended to adopt 40 CFR 63.460 through 63.469 by reference. This amendment was adopted on January 8, 1997, published in the Virginia Register of Regulations on March 31, 1997 and effective on May 1, 1997.

(2) Revised date reference to 40 CFR part 63 (July 1, 1996) contained in 9 VAC 5–60–90 (General), as it pertains to the documents listed in 9 VAC 5–60–100, Subpart T.

[FR Doc. 99–27675 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ35–2–195a FRL–6461–7]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of New Jersey on February 22, 1999. That revision committed that the State will accept compliance with the National Low Emission Vehicle (National LEV) program requirements as a compliance option for new motor vehicles sold in the State. New Jersey has previously adopted the California Low Emission Vehicle (CAL LEV) program, but the State has made clear that National LEV is the preferred motor vehicle control program. Auto manufacturers have agreed to sell cleaner vehicles meeting the National LEV standards throughout New Jersey for the duration of the manufacturers' commitments to the National LEV program. This SIP revision is required as part of the agreement between states and automobile manufacturers to ensure the continuation of the National LEV program to supply clean cars throughout most of the country, beginning with 1999 model year vehicles in Northeastern states and extending to other states beginning with 2001 model year vehicles.

DATES: This rule is effective on January 3, 2000 without further notice, unless EPA receives adverse comment by December 3, 1999. If we receive such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be mailed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866.

Copies of the State submittal are available for public inspection during normal business hours, by appointment, at the following addresses:

Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3710.

SUPPLEMENTARY INFORMATION:

Table of Contents

1. What action is EPA taking today?
2. What is the National Low Emission Vehicle program?
3. What is New Jersey's role in the National LEV program?
4. Final Action
5. Administrative Requirements

1. What Action Is EPA Taking Today?

The EPA is approving New Jersey's State Implementation Plan (SIP) revision, submitted on February 22, 1999, which fulfills the State's obligation to incorporate its commitment to the National Low Emission Vehicle (National LEV) program in the SIP. The submittal contains amendments, adopted on February 3, 1999, to the State's "Ozone Transport Commission—Low Emission

Vehicle" (OTC-LEV) program rules at N.J.A.C. 7:27–26. These changes complete New Jersey's process of agreeing to participate in, or "opting into" the National LEV program.

The State's commitment to opt into the National LEV program was stated by Governor Christine Todd Whitman in her January 28, 1998 letter to the EPA Administrator. New Jersey's regulations now provide that the National LEV program is an acceptable compliance option, in addition to the California low emission vehicle (CAL LEV) program, for new motor vehicles sold in the State.

New Jersey had previously adopted the CAL LEV program, but had also specified that National LEV would be the State's preferred motor vehicle control program if it became effective. Based on the opt-ins and commitments of the auto manufacturers and the Northeastern states, on March 2, 1998, EPA determined that National LEV is in effect. New Jersey's SIP revision is required as part of the agreement between states and automobile manufacturers to ensure the continuation of this program to bring clean cars throughout the country, beginning with 1999 model year vehicles in the Northeast.

The final National LEV rule stated that if states submitted SIP revisions containing language substantively identical to the language in the National LEV regulations without additional conditions, and if the submissions met the Clean Air Act requirements for approvable SIP submissions, we would not need to go through notice-and-comment rulemaking to approve the SIP revisions. In the National LEV rulemaking, we provided full opportunity for public comment on the language for the SIP revisions. Thus, as discussed in more detail in the final rule, the requirements for EPA approval are easily verified objective criteria. See 63 FR 936 (January 7, 1998). While we believe that we could have appropriately approved the New Jersey submittal without providing for additional notice and comment, we nonetheless decided to take this action as a direct final rulemaking, which allows an opportunity for further public comment. Here, we are not under a timing constraint that would support a shorter rulemaking process, and thus we decided there was no need to deviate from EPA's usual procedures for SIP approvals.

2. What Is the National Low Emission Vehicle Program?

The National Low Emission Vehicle (National LEV) program is a voluntary nationwide clean car program, designed to reduce smog and other pollution from new motor vehicles. On January 7, 1998, (63 FR 926) EPA published a final rule outlining the National LEV program. The National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light light-duty trucks that are more stringent than EPA can mandate. The regulations provided that the program would come into effect only if Northeastern states and the auto manufacturers voluntarily signed up for it. On March 9, 1998 (63 FR 11374), EPA published a notice finding that nine Northeastern states (New Jersey, New Hampshire, Rhode Island, Connecticut, Pennsylvania, Maryland, Virginia, Delaware and the District of Columbia) and 23 manufacturers had opted into the National LEV program and that the program is in effect. Now that it is in effect, National LEV is enforceable in the same manner as any other federal new motor vehicle program.

National LEV will achieve significant air pollution reductions nationwide. In addition, the program provides substantial harmonization of federal and California new motor vehicle standards and test procedures, which enables manufacturers to design and test vehicles to one set of standards nationwide. The National LEV program demonstrates how cooperative, partnership efforts can produce a smarter, cheaper program that reduces regulatory burden while increasing protection of the environment and public health.

The National LEV program will result in substantial reductions in non-methane organic gases (NMOG) and nitrous oxides (NO_X), which contribute to unhealthy levels of smog in many areas across the country. National LEV vehicles are 70% cleaner than today's model requirements under the Clean Air Act. This voluntary program provides auto manufacturers flexibility in meeting the associated standards as well as the opportunity to harmonize their production lines and make vehicles more efficiently.

National LEV vehicles were estimated to cost an additional $76 above the price of vehicles otherwise required today, but it is expected that due to factors such as economies of scale and historical trends related to emission control costs, the per vehicle cost will be even lower. This incremental cost is less than 0.5% of the price of an average new car. In addition, the National LEV program will help ozone nonattainment areas across the country improve their air quality as well as reduce pressure to make further, more costly emission reductions from stationary industrial sources.

Because it is a voluntary program, National LEV was set up to come into effect, and will remain in effect, only if the Northeastern state and auto manufacturer participants commit to the program and abide by their commitments. The states and manufacturers initially committed to the program through opt-in notifications to EPA, which were sufficient for EPA to find that National LEV had come into effect. The National LEV regulations provide that the second stage of the state commitments is to be made through SIP revisions that incorporate the state commitments to National LEV in state regulations, which EPA will approve into the federally-enforceable SIPs. The National LEV regulations laid out the elements to be incorporated in the SIP revisions, the timing for such revisions, and the language (or substantively similar language) that needs to be included in a SIP revision to allow EPA to approve the revision as adequately committing the state to the National LEV program. In today's action, EPA is approving the National LEV SIP revision for New Jersey as adequately committing the State to the program. EPA expects to take similar action for the other states that have elected to join the National LEV program in the future.

3. What Is New Jersey's Role in the National LEV Program?

Along with eight other Northeast states, New Jersey has chosen to participate in and accept National LEV as an alternative motor vehicle control program. New Jersey has adopted state clean vehicle rules which include provisions for a program identical to the California low emission vehicle (CAL LEV) program, pursuant to section 177 of the Clean Air Act. The motor vehicle program rules, originally adopted on November 22, 1995, are titled "Ozone Transport Commission—Low Emission Vehicle program" (OTC–LEV) and are codified at N.J.A.C. 7:27–26. These rules explicitly provide that motor vehicle manufacturers could comply with a national program as an alternative to the CAL LEV program in New Jersey.

The State adopted amendments, on February 3, 1999, to its OTC–LEV program rules. Those amendments, transmitted in the SIP submittal we are acting on today, modify the OTC–LEV rule to accept compliance with National LEV, specifically, as the auto manufacturers' alternative to compliance with the section 177 CAL LEV requirements. The State's regulations now provide that for the duration of New Jersey's participation in

National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with the CAL LEV program adopted pursuant to section 177. The regulations accept National LEV as a compliance alternative for requirements applicable to passenger cars, light light-duty trucks, and light-duty trucks designed to operate on gasoline. The regulations further provide that New Jersey's participation in National LEV conditionally extends until model year 2006. The condition is that by the end of calendar year 2000, EPA must adopt mandatory standards at least as stringent as the National LEV standards. Such standards would apply to new motor vehicles beginning in model year 2004, 2005 or 2006. If EPA does not adopt such standards by that date, the State's participation in National LEV would extend only until model year 2004. Through this regulation and its amendments, the State has adequately committed to the National LEV program, as provided in the final National LEV rule.

4. Final Action

EPA has evaluated the SIP revision submitted by New Jersey and have determined it is consistent with the EPA National LEV regulations and meets the Clean Air Act section 110 requirements for SIP approvals. Therefore, EPA is approving the New Jersey "OTC–LEV" program rules as amended on February 3, 1999, and submitted on February 22, 1999, into the New Jersey SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the "Proposed Rules" section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 3, 2000 without further notice unless the Agency receives adverse comment by December 3, 1999.

If EPA receives adverse comment, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments received in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

5. Administrative Requirements

A. Executive Order 12866

Regulatory Impact Analysis

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987)) on federalism still applies. This rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one state, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not "economically significant" as defined under E. O. 12866, and does not involve an action that addresses environmental or safety risks.

D. Executive Order 13084

Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Impact on Small Entities

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final approval action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 27, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(67) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(67) Revision to the New Jersey State Implementation Plan (SIP) for ozone, submitting amended New Jersey Ozone Transport Commission—Low Emission Vehicle (OTC–LEV) program, Opting into the National Low Emission Vehicle (National LEV) Program, dated February 22, 1999, submitted by the New Jersey Department of Environmental Protection (NJDEP).

(i) Incorporation by reference: Title 7, Chapter 27, Subchapter 26, "Ozone Transport Commission—Low Emission Vehicles Program," effective March 1, 1999.

(ii) Additional information: Letter from the New Jersey Department of Environmental Protection Commissioner Shinn, dated February 22, 1999, submitting a revision to the New Jersey State Implementation Plan for the National Low Emission Vehicle program.

3. Section 52.1605 is amended by revising the entry for "Subchapter 26" under the heading "Title 7, Chapter 27" in numerical order to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Explanation
*	*	*	* * * *
Title 7, Chapter 27			

State regulation	State effective date	EPA approved date	Explanation
* *	*	*	* * *
Subchapter 26, "Ozone Transport Commission—Low Emission Vehicles Program".	March 1, 1999	Nov. 3, 1999	Provides that for the duration of New Jersey's participation in National Low Emission Vehicle (LEV), manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with the California LEV program adopted pursuant to section 177. The regulations accept National LEV as a compliance alternative for requirements applicable to passenger cars, light light-duty trucks, and light-duty trucks designed to operate on gasoline.
* *	*	*	* * *

[FR Doc. 99–27793 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN106–1a; FRL–6446–5]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an Indiana request to amend the Stage II Vapor Recovery rule as a revision to the State Implementation Plan (SIP). Indiana submitted the SIP revision request on April 6, 1999. The revision affects gasoline dispensing facilities in Clark, Floyd, Lake, and Porter Counties. Stage II Vapor Recovery systems lower Volatile Organic Compound (VOC) emissions from vehicle refueling operations. VOC emissions are a precursor of ground-level ozone, commonly known as smog.

DATES: This rule is effective on January 3, 2000, unless EPA receives adverse written comments by December 3, 1999. If adverse written comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the revision request for this rulemaking action are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Francisco J. Acevedo at (312) 886–6061 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, at (312) 886–6061.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us,", or "our" are used we mean EPA.

Table of Contents

I. What action is EPA proposing in this rulemaking?
II. Why is the Stage II Vapor Recovery rule approvable?
III. Where are the SIP revision rules codified?
IV. What public hearing opportunities were provided for this SIP revision?
V. Final Rulemaking Action.
VI. Administrative Requirements.
  A. Executive Order 12866
  B. Executive Order 12875
  C. Executive Order 13045
  D. Executive Order 13084
  E. Regulatory Flexibility Act
  F. Unfunded Mandates
  G. Submission to Congress and the Comptroller
  H. National Technology Transfer and Advancement Act
  I. Petitions for Judicial Review

I. What Action Is EPA Proposing in This Rulemaking?

We are approving Indiana's April 6, 1999, SIP revision request to amend the Stage II Vapor Recovery rules promulgated by Indiana in 1993 and approved by us on April 28, 1994. The amendments we are approving clarify the applicability of definitions pertaining to gasoline dispensing facilities.

II. Why Are the Amendments to the Stage II Vapor Recovery Rule Approvable?

This SIP revision does not impact the stringency of the SIP. The definitions specific to the Stage II Vapor Recovery rules promulgated by Indiana in 1993 and approved by us on April 28, 1994 were incorrectly incorporated into the general provisions for all of the volatile organic compound rules contained in Indiana rule 326 IAC Article 8. To rectify this error and avoid future confusion, Indiana amended the Stage II rules and relocated the definitions specific to gasoline dispensing facilities from 326 IAC 8–1–0.5 to 326 IAC 8–4–6. Indiana did not make any other substantive changes to the Stage II rule; and this revision does not change the requirements of the Stage II program originally approved. For these reasons, the amendments to the Stage II Vapor Recovery rule are approvable.

III. Where Are the Rules for This SIP Revision Codified?

The Stage II Vapor Recovery rule amendments are codified under 326 IAC 8–1–0.5: Definitions, and 326 IAC 8–4–6: Gasoline dispensing facilities.

The rules were published in the Indiana Register on November 1, 1995 (19 In. Reg. 202). The effective date of the rules is October 18, 1995.

IV. What Public Hearing Opportunities Were Provided for This SIP Revision?

Indiana held public hearings on March 1, 1995, and on May 3, 1995, in Indianapolis, Indiana.

V. Final Rulemaking Action

In this rulemaking action, we are approving the April 6, 1999, SIP revision request, which includes technical amendments to the Stage II Vapor recovery rule affecting gasoline dispensing facilities.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse written comments be received. This action will be effective without further notice unless EPA receives relevant adverse written comment by December 3, 1999. Should the Agency receive such comments, it will publish a timely withdrawal informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 3, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act

(NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 17, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(125) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(125) On April 6, 1999, Indiana submitted amended rules for the control of volatile organic compound emissions from vehicle refueling in Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan.

(i) *Incorporation by reference.*

326 Indiana Administrative Code 8–1: General Provisions, Section 0.5: Definitions and 326 Indiana Administrative Code 8–4: Petroleum Sources, Section 6: Gasoline Dispensing Facilities. Adopted by the Indiana Air Pollution Control Board May 3, 1995. Filed with the Secretary of State September 18, 1995. Published at Indiana Register, Volume 19, Number 2, November 1, 1995. Effective October 18, 1995.

[FR Doc. 99–28039 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–75–1–9910a; KY–97–1–9911a; FRL–6465–6]

Approval and Promulgation of Implementation Plans, Kentucky: Approval of Revisions to the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; Withdrawal.

SUMMARY: On September 13, 1999, EPA published a direct final rule (64 FR 49404) approving, and an accompanying proposed rule (64 FR 4925) proposing to approve the Louisville 15 Percent Rate-of-Progress Plan (15 percent plan) which was submitted on November 12, 1993, and amended on June 30, 1997. As stated in the **Federal Register** document, if adverse or critical comments were received by October 13, 1999, the effective date would be delayed and timely notice would be published in the **Federal Register**. Therefore, due to receiving adverse comments within the comment period, EPA is withdrawing the direct final rule and will address all public comments received in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this document.

DATE: The direct final rule published on September 13, 1999 (64 FR 49404) is withdrawn as of November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. The telephone number is (404) 562–9036.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the September 13, 1999, **Federal Register** (64 FR 49404).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–28390 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[OH 129–1a; FRL–6464–5]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving an August 19, 1999, request from Ohio for a State Implementation Plan (SIP) revision of the Columbiana County ozone maintenance plan. The maintenance plan revision establishes a new transportation conformity mobile source emissions budget for the year 2005. USEPA is approving the allocation of a portion of the safety margin for oxides of nitrogen (NO_X) to the area's 2005 mobile source emissions budget for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations. The transportation conformity budget for volatile organic compounds will remain the same as previously approved in the maintenance plan.

DATES: This rule is effective on January 3, 2000, unless USEPA receives adverse written comments by December 3, 1999. If adverse comment is received, USEPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West

Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location:

Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean USEPA.

This Supplementary Information section is organized as follows:

What action is USEPA taking today?
Who is affected by this action?
How did the State support its request?
What is transportation conformity?
What is an emissions budget?
What is a safety margin?
How does this action change the Columbiana County ozone maintenance plan?
Why is the request approvable?
USEPA Action.
Administrative Requirements.

What Action is USEPA Taking Today?

In this action, we are approving a revision to the ozone maintenance plan for Columbiana County, Ohio. The revision will change the mobile source emissions budget for NO_X that is used for transportation conformity purposes. The revision will keep the total emissions for the area at or below the attainment level required by law. This action will allow State or local agencies to maintain air quality while providing for transportation growth.

Who Is Affected by This Action?

Primarily, the transportation sector represented by Ohio Department of Transportation and persons needing to travel through Columbiana County will be affected by this revision. A proposed project to build a new 4 lane highway through a portion of Columbiana County would produce higher emissions than currently allowed in the maintenance plan. The conformity rule, however, provides that if a "safety margin" exists in the maintenance plan, then the safety margin can be allocated to the transportation sector via the mobile source budget.

How Did the State Support This Request?

On August 19, 1999, Ohio submitted to USEPA a SIP revision request for the Columbiana County ozone maintenance area. A public hearing on this proposal was held on September 22, 1999. No one from the public commented on the proposed revisions. At the public hearing Ohio officially changed the request from 1 ton per day of NO_X to 0.5 ton per day of NO_X to be allocated to the mobile source budget.

In the submittal, Ohio requested to establish a new 2005 mobile source emissions budget for NO_X for the Columbiana County, Ohio, ozone maintenance area. The State originally requested that 1 ton per day of NO_X be allocated from the maintenance plan's safety margin. After comment from USEPA, however, the request was changed to 0.5 ton per day of NO_X. The 0.5 ton per day change will accommodate the proposed highway and leave a safety margin for future use. The mobile source budgets are used for transportation conformity purposes.

What Is Transportation Conformity?

Transportation conformity means that the level of emissions from the transportation sector (cars, trucks and buses) must be consistent with the requirements in the SIP to attain and maintain the air quality standards. The Clean Air Act, in section 176(c), requires conformity of transportation plans, programs and projects to an implementation plan's purpose of attaining and maintaining the National Ambient Air Quality Standards. On November 24, 1993, USEPA published a final rule establishing criteria and procedures for determining if transportation plans, programs and projects funded or approved under Title 23 U.S.C. or the Federal Transit Act conform to the SIP.

The transportation conformity rules require an ozone maintenance area, such as Columbiana County, to compare the actual projected emissions from cars, trucks and buses on the highway network, to the mobile source emissions budget established by a maintenance plan. The Columbiana County area has an approved ozone maintenance plan. Our approval of the maintenance plan established the mobile source emissions budgets for transportation conformity purposes.

What Is an Emissions Budget?

An emissions budget is the projected level of controlled emissions from the transportation sector (mobile sources) that is estimated in the SIP. The SIP controls emissions through regulations, for example, on fuels and exhaust levels for cars. The emissions budget concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the mobile source emissions budget in the SIP and how to revise the emissions budget. The transportation conformity rule allows the mobile source emissions budget to be changed as long as the total level of emissions from all sources remains below the attainment level.

What Is a Safety Margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. For example: Columbiana County was monitoring attainment of the one hour ozone standard during the 1988–1990 time period. The State uses 1990 as the attainment level of emissions for Columbiana County. The emissions from County point, area and mobile sources in 1990 equaled 23.98 tons per day of VOC and 11.66 tons per day of NO_X. The Ohio Environmental Protection Agency projected emissions out to the year 2005 and projected a total of 18.70 tons per day of VOC and 10.02 tons per day of NO_X from all sources in Columbiana County. The safety margin for the County is calculated to be the difference between these amounts or 5.28 tons per day of VOC and 1.64 tons per day of NO_X. Table 1 gives detailed information on the estimated emissions from each source category and the safety margin calculation.

The 2005 emission projections reflect the point, area and mobile source reductions and are illustrated in Table 1.

TABLE 1.—NO_X and VOC Emissions Budget; and Safety Margin Determinations, Columbiana County

[Tons/day]

Source Category	1990	2005
	VOC Emission	
Point	1.89	2.25
Mobile	11.69	5.65
Area	10.40	10.80
Totals	23.98	18.70

TABLE 1.—NO_X and VOC Emissions Budget; and Safety Margin Determinations, Columbiana County—Continued

[Tons/day]

Source Category	1990	2005
Safety Margin = 1990 total emissions—2005 total emissions = 5.28 tons/day VOC		
	NO_X Emissions	
Point	0.06	0.07
Mobile	7.00	5.05
Area	4.60	4.90
Totals	11.66	10.02
Safety Margin = 1990 total emissions—2005 total emissions = 1.64 tons/day NO_X		

The emissions are projected to maintain the area's air quality consistent with the air quality health standard. The safety margin credit can be allocated to the transportation sector. The total emission level, even with this allocation will be below the attainment level or safety level and thus is acceptable. The safety margin is the extra safety [points] that can be allocated as long as the total level is maintained.

How Does This Action Change the Columbiana County Zone Maintenance Plan?

It raises the NO_X emissions budget for mobile sources. The maintenance plan is designed to provide for future growth while still maintaining the ozone air quality standard. Growth in industries, population, and traffic is offset with reductions from cleaner cars and other emission reduction programs. Through the maintenance plan the State and local agencies can manage and maintain air quality while providing for growth.

In the submittal, Ohio requested to allocate part of the area's safety margin to the mobile source emissions budget. The Columbiana County area's safety margin is the difference between the 1990 attainment inventory year and the 2005 projected emissions inventory (5.28 tons /day VOC safety margin, and 1.64 tons/day NO_X safety margin) as shown in Table 1. The SIP revision requests the allocation of 0.5 ton/day NO_X, into the area's mobile source NO_X emissions budget from the safety margin. The 2005 mobile source NO_X emissions budget showing the safety margin allocations are outlined in Table 2. The mobile source NO_X emissions budget in Table 2 will be used for transportation conformity purposes.

Table 2 below illustrates that the requested portion of the safety margin can be allocated to the 2005 mobile source budget and that total emissions will still remain at or below the 1990 attainment level of total emissions for the Columbiana County maintenance area. Since the area would still be at or below the 1990 attainment level for the total emissions, this allocation is allowed by the conformity rule. The VOC budget and safety margin will remain the same.

TABLE 2.—ALLOCATION OF SAFETY MARGIN TO THE 2005 MOBILE SOURCE EMISSIONS BUDGET, COLUMBIANA COUNTY

[Tons/day]

Source category	1990	2005
	NO_X Emissions	
Point	0.06	0.07
Mobile	7.00	5.55
Area	4.60	4.90
Total	11.66	10.52

Remaining Safety Margin = 1990 total emissions −2005 total emissions = 1.14 tons/day NO_X

Why is the Request Approvable?

After review of the SIP revision request, USEPA finds that the requested allocation of the safety margin for the Columbiana County area is approvable because the new mobile source emissions budget for NO_X maintains the total emissions for the area at or below the attainment year inventory level as required by the transportation conformity regulations. This allocation is allowed by the conformity rule since the area would still be at or below the 1990 attainment level for the total emissions.

USEPA Action

USEPA is approving the requested allocation of the safety margin to the mobile source NO_X emission budget for the Columbiana County ozone maintenance area.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by December 3, 1999. Should the Agency receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 3, 2000.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, USEPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, USEPA must provide to the Office of Management and Budget a description of the extent of USEPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires USEPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that USEPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, USEPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, USEPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of USEPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires USEPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, USEPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

USEPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Transportation conformity.

Dated: October 20, 1999.

Francis X. Lyons,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

2. Section 52.1885 is amended by adding paragraph (a)(13) to read as follows:

§ 52.1885 Control Strategy: Ozone.

(a) * * *

(13) Approval—On August 19, 1999, Ohio submitted a revision to the ozone maintenance plan for the Columbiana County area. The revision consists of allocating a portion of the Columbiana County area's NO_X safety margin to the transportation conformity mobile source emissions budget. The mobile source emissions budgets for transportation conformity purposes for the Columbiana County area are now: 5.65 tons per day of volatile organic compound emissions for the year 2005 and 5.55 tons per day of oxides of nitrogen emissions for the year 2005. This approval only changes the NO_X transportation conformity emission budget for Columbiana County.

[FR Doc. 99–28386 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD054–3044a; FRL–6456–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Maryland; Revision to Section 111(d) Plan Controlling Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the section 111(d) plan revision submitted by the State of Maryland regarding revised monitoring procedures test methods used to determine compliance of total reduced sulfur (TRS) emissions from existing kraft pulp mills. The plan revision was submitted in accordance with the requirements of the Clean Air Act (the Act). EPA is approving this plan revision because Maryland's revised procedures meet current EPA requirements for monitoring and testing TRS emissions.

DATES: This final rule is effective January 3, 2000 unless by December 3, 1999 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public the rule will not take effect.

ADDRESSES: Comments may be mailed to Harold A. Frankford, Office of Air Programs, Mail Code 3AP20, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108, or by e-mail at frankford.harold@epamail.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "us", or "our" is used, we mean EPA.

What Action is EPA Taking?

We are approving a revision to Maryland's section 111(d) plan for the control of total reduced sulfur (TRS) emissions from kraft pulp mills.

What Does the Revision Consist Of?

Maryland has revised COMAR 26.11.14.05 (monitoring and reporting requirements for control of kraft pulp mills TRS emissions) to incorporate Method 16B of Technical Memorandum 91–01 as the method for continuous monitoring of TRS emissions from recovery boilers (COMAR 26.11.14.05A.), and once-a-month grab sampling from smelt dissolving tanks (COMAR 26.11.14.05B). According to documents supplied by Maryland accompanying this revision, Method 16B of Technical Memorandum 91–01 consists of cross-references to the Method 16B provisions found in 40 CFR part 60, Appendix A.

What Actions Did the State Take to Satisfy the Federal Public Hearing Requirements?

Maryland certified that public hearings on the revisions to COMAR 26.11.14.05 were held in Baltimore on November 25, 1991 in accordance with the requirements of 40 CFR 60.23(d).

What is EPA Evaluation?

The April 2, 1992 revisions to COMAR 26.11.14.05 replace provisions found in TM–116, Method 12 [Revised 1980] submitted with the State's original Section 111(d) plan controlling TRS from kraft pulp mills. We had approved these test methods on May 11, 1982 (47 FR 20127). Since then, we have revised the monitoring and testing provisions of 40 CFR part 60 as they apply to measuring TRS emissions from kraft pulp mills—May 20, 1986 (51 FR 18545) for emissions monitoring, February 14, 1990 (55 FR 5212) for test methods and procedures. We have determined that Maryland's revised provisions found in COMAR 26.11.14.05 reflect our current requirements for monitoring and testing TRS emissions from recovery boilers and smelt dissolving tanks.

Final Action

We are approving the revisions to COMAR 26.11.14.05 regarding monitoring procedures and test methods for measuring TRS emissions from affected facilities. We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the revision to Maryland's Section 111(d) plan for controlling TRS emissions from kraft pulp mills if adverse comments are filed. This rule will be effective on January 3, 2000 without further notice unless we receive adverse comment by December 3, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 (64 FR 43255 (August 10, 1999), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because approvals under section 111(d) of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning section 111(d) plans on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve revised test methods for Maryland's section 111(d) plan controlling TRS emissions from existing kraft pulp mills may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Total reduced sulfur.

Dated: September 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, EPA Region III.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

Subpart V—Maryland

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Under the following undesignated centerhead, § 62.5100 is amended by adding paragraph (d) to read as follows:

Plan for Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

* * * * *

§ 62.5100 Identification of plan.

* * * * *

(d) *Submittal of plan revisions*—On April 2, 1992, Maryland submitted revisions to COMAR 26.11.14.05A. and .05B. governing the testing, monitoring, and reporting of total reduced sulfur (TRS) emissions from kraft pulp mills.

[FR Doc. 99–26851 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 68

[FRL–6465–7]

Approval of Delegation of the Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7): State of Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves delegation of the Clean Air Act (CAA) section 112(r)(7) accidental release prevention requirements to the State of Ohio, Environmental Protection Agency (OEPA), Division of Air Pollution Control (DAPC), for all applicable Ohio sources. DAPC requested the section 112(r)(7) delegation on July 23, 1999. Section 112(r)(7) requires owners and operators of stationary sources subject to the requirements to submit a risk management plan (RMP) to detect and prevent or minimize accidental releases of regulated substances.

In the proposed rule section of this **Federal Register**, EPA is proposing approval of, and soliciting comments on, the proposed delegation. If adverse comments are received on this action, EPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This direct final rule will be effective January 3, 2000, unless EPA receives adverse or critical comments by December 3, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written Comments on this action should be sent concurrently to: Bob Mayhugh, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., (SC–6J), Chicago, IL 60604–3590, *mayhugh.robert@epa.gov*, and Sherri Swihart, Ohio Environmental Protection Agency, 1800 WaterMark Dr., Columbus, Ohio 43215–1099, *sherri.swihart@epa.state.ohio.us.*

Copies of Ohio's section 112(r) delegation request letter and accompanying documents are available for public review during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the addresses listed above. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before visiting day.

FOR FURTHER INFORMATION CONTACT: Bob Mayhugh, U.S. Environmental Protection Agency, Region 5, Superfund Division, Office of Chemical Emergency Preparedness and Prevention, 60604–3590, (telephone 312/886–5929), *mayhugh.robert@epa.gov*, or Sherri Swihart, Ohio Environmental Protection Agency, 1800 WaterMark Dr., Columbus, Ohio 43215–1099 (telephone 614/644–3594), *sherri.swihart@epa.state.oh.us.*

SUPPLEMENTARY INFORMATION: The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental chemical releases. Section 112(r) (3)–(5) mandates that EPA promulgate a list of "regulated substances," with threshold quantities. Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). Pursuant to section 112(r)(7), EPA published the risk management program regulations on June 20, 1996 (61 FR 31668), and subsequently amended the regulations on January 6, 1999 (64 FR 963). The risk management program regulations are set forth at 40 CFR part 68. The regulations require, among other things, that owners and operators of stationary sources with more than a threshold quantity of a regulated substance in a process submit a risk management plan (RMP) by June 21, 1999, to a central location specified by EPA. A RMP must include, in general, an offsite consequence analysis, a prevention program, and an emergency response program. The RMPs will be available to state and local governments and to the public. These regulations encourage sources to reduce the probability of accidentally releasing substances that have the potential to cause harm to public health and the environment. Further, the regulations stimulate dialog between industry and the public on ways to improve accident prevention and emergency response practices.

Section 112(l) of the CAA and 40 CFR 63.91 and 63.95, authorize EPA, in part, to delegate the authority to implement 112(r)(7) to any state or local agency which submits an approvable program to implement and enforce the section 112(r)(7) requirements, including the risk management program regulations set forth at 40 CFR part 68. An appropriate plan must contain, among other criteria, the following elements: a demonstration of the state's authority and resources to implement and enforce regulations that are at least as stringent as section 112(r) regulations; procedures for receiving, reviewing, and making publicly available RMPs; procedures to provide technical assistance to subject sources, including small businesses.

On September 28, 1998, the Ohio Accidental Release Prevention and Risk Management Planning Act (Chapter 3753–104 Ohio Revised Code) became effective. This law adopts the federal requirements found in CAA section 112(r) and the corresponding regulations for section 112(r)(7) set forth at 40 CFR part 68 for use with the Ohio section 112(r) program. Ohio's section 112(r) program has the authority and resources to educate the general public and subject sources through outreach programs; provide technical assistance;

review and make publicly available risk management plans; and adequately enforce its 112(r) program. Upon delegation, the State's program will be administered by the DAPC of OEPA. DAPC will work closely with OEPA's Division of Emergency Remedial Response (DERR) which is also responsible for implementation of the Federal Emergency Planning and Community Right-To-Know Act (EPCRA) program in the State. The DERR serves as Chair and staff to the State Emergency Response Commission (SERC) and has an established relationship with Ohio's eighty-seven Local Emergency Planning Committees (LEPCs).

Based on Ohio's delegation request and its pertinent laws and regulations, EPA has determined that such a delegation is appropriate in that Ohio has satisfied the criteria of 40 CFR 63.91 and 63.95. The Ohio program has adequate and effective authorities, resources, and procedures in place for implementation and enforcement of non-major and major sources subject to the section 112(r)(7) requirements. The State has the primary authority and responsibility to carry out all elements of the section 112(r)(7) program for all sources covered in the State, including on-site inspections, record keeping reviews, audits and enforcement. Although the State has primary authority and responsibility to implement and enforce the section 112(r)(7) requirements, nothing shall preclude, limit, or interfere with the authority of EPA to exercise its enforcement, investigatory, and information gathering authorities concerning this part of the Act.

Administrative Requirements

A. Executive Order 12866

Under E.O. 12866 (58 FR 51735; October 4, 1993), EPA must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order EPA has determined that the promulgation of risk management program regulations is a "significant regulatory action" under the terms of E.O. 12866 (61 FR 31668, June 20, 1996; 64 FR 963, January 6, 1999). However, the delegation of section 112(r)(7) unchanged from the Federal requirements does not create any new regulatory requirements. Therefore, this regulatory action is exempt from Executive Order 12866 review.

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The State of Ohio has voluntarily requested delegation of this program. The state will be implementing its own pre-existing Accidental Releases Prevention/Risk Management Planning program as described in the Supplemental Information Section of this notice. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have significant impact on a substantial number of small entities. (5 U.S.C. 603 and 604.) Alternatively, EPA may certify that the regulatory action will not have a significant impact on a substantial number of small entities. Because the delegation of section 112(r)(7) unchanged from the Federal requirements does not create any new regulatory requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

EPA has determined that the approval action promulgated today does not constitute a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. The State voluntarily requested this delegation under section 112(l) for the purpose of implementing and enforcing the risk management program requirements of section 112(r)(7). The delegation imposes no new Federal requirements. Because the State was not required by law to seek delegation, this Federal action does not impose a mandate on the State.

G. Submission to Congress and the Comptroller General

The Congressional Review Act 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (VCS) are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's action does not require the public to perform activities conducive to the use of VCS. Therefore, EPA believes that voluntary consensus standards are inapplicable to this action.

I. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "'economically significant'" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

List of Subjects

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

40 CFR Part 68

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Chemicals, Reporting and recordkeeping requirements.

Dated: October 21, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–28311 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300937; FRL–6387–4]

RIN 2070–AB70

Buprofezin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the insecticide buprofezin and its metabolites in or on cucurbits at 0.5 part per million (ppm) for an additional 1-year period. This tolerance will expire and is revoked on December 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cucurbits. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective November 3, 1999. Objections and requests for hearings, identified by docket control number OPP–300937, must be received by EPA on or before January 3, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300937 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9356; and e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300937. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 8, 1998 (63 FR 41720) (FRL–6018–5), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of buprofezin and its metabolites in or on curcubits at 0.5 ppm, with an expiration date of December 31, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of buprofezin on curcubits for this year's growing season due to the situation remaining an emergency. The silverleaf whitefly has been a major pest in Arizona since the late 1980s and has caused significant economic loss in a host of crops throughout the region. This new strain or species of whitefly has proven to be resistant to available alternative controls, and can cause extensive damage through reduced yields from feeding activities, excretion of a honeydew which leads to fungal diseases, and also has been found to transmit several viral diseases of curcubits. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of buprofezin on curcubits for control of the silverleaf whitefly in Arizona.

EPA assessed the potential risks presented by residues of buprofezin in or on curcubits. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 5, 1998 (63 FR 41720). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on curcubits after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300937 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 3, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300937, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.511 [Amended]

2. In § 180.511, by amending paragraph (b) by changing the date for curcubits from "12/31/99" to read "12/31/00".

[FR Doc. 99–28637 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–150, 92–51, 87–154; FCC 99–207]

Attribution Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This rule announces the effective date of two of the rules published on September 17, 1999. Those rules amended the Commission's rules local public inspection file and filing requirements for broadcast licensees. The Commission amended the filing requirements for broadcasters to require filing of attributable TV LMAs. The Commission also amended the public inspection file rules to require that television time brokerage agreements and radio and television joint sales agreements be kept in commercial broadcast stations' public files.

DATES: Sections 73.3526(e)(14) and (16) and 73.3613(d) and (e) published at 64 FR 50621 (September 17, 1999) are effective on November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mania K. Baghdadi, Mass Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: On October 27, 1999 the Office of Management and Budget ("OMB") approved the amendments to the public file rules pursuant to OMB Control No. 3060–0214, and on October 27, 1999, OMB approved the amendments to the filing requirements rules pursuant to OMB Control No. 3060–0185. Accordingly, the rules in Sections 73.3526(3)(14) and (16) and 73.3613(d) will be effective on November 16, 1999.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28791 Filed 11–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1444; MM Docket No. 96–249, RM–8926 and RM–9068; MM Docket No. 96–259, RM–8970, RM–9069, and RM–9070]

FM Broadcasting Services; St. Maries, Moscow, Post Falls, and Troy, Idaho

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In MM Docket No. 96–249, the Chief, Allocations Branch, granted the petition for rulemaking filed by Pentacle Investments, Inc. (RM–8926), set forth in *Notice of Proposed Rulemaking*, 61 FR 66,249, published December 17, 1996, to allot Channel 221A at St. Maries, Idaho. In MM Docket No. 96–259, the Chief denied the petition for rulemaking filed by Darin L. Siebert (RM–8970), set forth in the *Notice of Proposed Rulemaking*, 62 FR 372, published January 3, 1997, to allot Channel 277A at Moscow, Idaho. However, the Chief granted two counterproposals filed in response to this *Notice*: by Rook Broadcasting, Inc. (RM–9069), licensee of Station KCDA(FM), Coeur d'Alene, Idaho, to upgrade its station by substituting Channel 276C1 for Channel 276C2 and to change that station's community of license by modifying it for operation at Post Falls, Idaho, and by Radio Palouse, Inc. (RM–9070) to allot Channel 262A at Troy, Idaho. With this action, the proceeding is terminated.

DATES: Effective November 26, 1999. A filing window for Channel 221A at St. Maries, Idaho and for Channel 262A at Troy, Idaho, will not be opened at this time. Instead, the Commission will address the issue of opening a filing window for this channel in a subsequent order.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order*, MM Dockets 96–249 and 96–259, adopted September 29, 1999, and released October 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, DC 20036, (202) 857–3800.

Channel 221A can be allotted at St. Maries, Idaho in compliance with the Commission's minimum distance separation requirements without a site restriction at reference coordinates North Latitude 47–18–54 and West Longitude 116–34–30. Channel 276C1 can be allotted at Post Falls, Idaho in compliance with the Commission's minimum distance separation requirements at a site restricted to 6.0 kilometers (3.7 miles) north of the community at coordinates North Latitude 47–39–35 and West Longitude 116–57–12. Channel 262A can be allotted at Troy, Idaho in compliance with the Commission's minimum distance separation requirements at a site restricted to 7.7 kilometers (4.8 miles) east of the community at coordinates North Latitude 46–44–49 and West Longitude 116–39–59. Because St. Maries, Troy, and Post Falls are located within 320 kilometers (199 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained.

The Chief referred back to the Audio Services Division for final disposition, the application filed by Spokane Public Radio, Inc. (BPED–961210MC), which had been treated as a counterproposal (RM–9068) in MM Docket No. 96–249. That application seeks to upgrade Station KSFC(FM) at Spokane by substituting Channel 220C2 for Channel 220A. The Chief also rejected an alternative proposal offered by Spokane Public Radio to allot Channel 278A to St. Maries in lieu of Channel 221A. Since this decision removes the conflict with the application filed by Wilson Creek Communications, L.L.C. (BPH–970227ID), to upgrade Station KVYF(FM) at Wilson Creek by substituting Channel 278C1 for Channel 277C3, processing of this application may be resumed upon finality in this proceeding.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 reads continues to read as follows:

Authority: Sections 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, under Idaho, is amended by adding St. Maries, Channel 221A and Troy, Channel 262A and by removing Channel 276C2 at Coeur d'Alene and adding Post Falls, Channel 276C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28481 Filed 11–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 95

[FCC 99–239; WT Docket No. 98–169]

218–219 MHz Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the regulations governing the licensing of the 218–219 MHz Service to maximize the efficient and effective use of the 218–219 MHz band. The Commission amends the rules to redesignate the 218–219 MHz Service from a strictly private radio service to a service that can be used in common carrier and private operations, extend the license term to ten years, adopt a "substantial service" analysis to replace the three- and five-year construction benchmarks, and permit partitioning and disaggregation of spectrum. Additionally, the Commission addresses the constitutional issues raised by Graceba Total Communications, Inc. that are before the Commission on remand from the D.C. Circuit Court of Appeals, together with similar issues raised by other commenters in the proceeding.

DATES: Effective January 3, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room 4–C207, Washington, D.C. 20554. A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, S.W., Room 1–C804, Washington, D.C. 20554 or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Shellie Blakeney or Nick Kolovos of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680. For further information concerning the information collection contained in the *Report and Order and Memorandum Opinion and Order*, contact Judy Boley at (202) 418–0215 or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order and Memorandum Opinion and Order* in WT Docket No. 98–169, FCC 99–239, adopted September 7, 1999, and released September 10, 1999. The full text of the *Report and Order and Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The full text of the *Report and Order and Memorandum Opinion and Order* may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036, telephone (202) 857–3800, facsimile (202) 857–3805. The full text of the *Report and Order and Memorandum Opinion and Order* may also be downloaded at: <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99239.wp≥. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

Synopsis of the Report and Order and Memorandum Opinion and Order

The *Report and Order* gives maximum flexibility to 218–219 MHz Service providers, letting them choose their regulatory status. Mobile service providers may elect their regulatory status as either commercial (under the Commercial Mobile Radio Service [CMRS] rules) or private (under the Private Mobile Radio Service rules). Fixed service providers may elect their regulatory status as either common carrier or private, under the conditions set forth in Title III of the Communications Act of 1934, as amended. Regardless of regulatory status, the *Report and Order* further clarifies that both one-and two-way communications are permissible, as well as Response Transmitter Unit-to-Response Transmitter Unit (RTU-to-RTU) communications (in addition to RTU interconnection with the public switched network or any CMRS service). License terms are extended to ten years, regardless of whether the license was obtained by lottery or auction.

Regarding payment options, existing licensees that (a) were current in installment payments (*i.e.*, less than 90 days delinquent) as of March 16, 1998, or (b) had properly filed grace period requests under the former installment payment rules, are eligible for a new payment structure. These eligible licensees may choose between (a) reamortization of principal and interest installment payments over the new ten-year period; (b) amnesty wherein licensees surrender any licenses they choose to the Commission for subsequent auction and, in return, have all of the outstanding debt on those licenses forgiven (together with a refund of any installment payments already made, either in full or applied toward retained licenses, as applicable); or (c) prepayment whereupon licensees may retain or return as many licenses as they desire. Licensees electing the prepayment option, however, must prepay the outstanding principal of any license they wish to retain.

The *Report and Order* also resolves constitutional concerns raised by Graceba Total Communications, Inc. regarding a bidding preference for minorities and women that was used in the 1994 auction for what is now the 218–219 MHz Service. Now, every winning bidder that met the small business qualifications for that auction receives a 25 percent bidding credit, in order to achieve parity with the bidding credit formerly given to minorities and women. Minority-and women-owned winning bidders are not disadvantaged by this action because all such bidders also met the small business qualifications.

Regarding service and construction requirements, the three-and five-year construction benchmarks are replaced by a "substantial service" construction requirement, defined as a "service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal." In addition, the following "safe harbor" examples achieve compliance: (a) a demonstration of coverage to twenty percent of the population or land area of the licensed service area; (b) a demonstration of specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers; or (c) a demonstration of service to niche markets or a focus on serving populations outside of areas currently serviced by other licensees. These criteria are to be demonstrated at the time of license renewal.

License transfer restrictions on lotteried licenses are relaxed, though they remain subject to case-by-case, public interest analysis. Spectrum aggregation restrictions are also relaxed, so that cross-ownership is allowed of both frequency segment A (218.0–218.5 MHz) and frequency segment B (218.5–219.0 MHz) in the same service area. Partitioning and disaggregation are now allowed, and any partitionee/disaggregatee is authorized to hold its license for the remainder of the original licensee's term.

The *Report and Order* revises several technical standards as well, responsive to changes in the original scope of use contemplated for the 218–219 MHz Service. The duty cycle limitation, of a maximum of five seconds per hour for each RTU, is eliminated. The 100 milliwatt power limitation on mobile RTUs is reduced to an average of 4 watts, while maintaining protection for TV Channel 13 reception. Automatic power control restrictions are eliminated. The cell transmitter station (CTS) antenna height/transmitter power ratios are removed, but CTS antennas may still not be taller than is necessary to assure adequate service. The 20 watt maximum effective radiated power for transmitters is retained. Section 95.861(e) of the Commission's Rules continues to provide the framework for resolving interference complaints, with the further requirement that licensees produce an interference control plan that includes, as part of the planning process, an analysis of the proposed system and the methods used to eliminate co- and adjacent channel interference, together with updates to reflect changes in system design or construction.

Finally, the Part 1, Subpart Q standardized auction rules are incorporated by reference, providing a uniform set of competitive bidding rules on issues concerning designated entities, application and payment, competitive bidding design, procedure and timing, and anti-collusion. Small businesses and very small businesses will receive bidding credits consistent with the Part 1 rules, but installment payments will no longer be available as a means of financing winning bids. Small businesses are defined as having average annual gross revenues not to exceed $15 million for the preceding three years, and very small businesses are defined as having average annual gross revenues not to exceed $3 million for the preceding three years.

The *Memorandum Opinion and Order* dismisses a Petition for Reconsideration filed by Interactive America Corporation (IAC). IAC challenged the Commission's failure, prior to the then-planned auction of IAC's defaulted licenses, to disclose IAC's pending appeal (Auction No. 13), but that argument is moot because the Commission subsequently postponed Auction No. 13, and the D.C. Circuit denied IAC's petition for review. IAC also argued that any 218–219 MHz Service auction should be delayed until final rules are adopted. However, this *Report and Order* adopts such rules, rendering that argument moot as well.

Regulatory Flexibility Act Final Analysis

As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service and Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Services, Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking.*[2] The Commission sought written public comment on the proposals in the *218–219 MHz Flex NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

I. Need for, and Objectives of, the Report and Order

This rulemaking proceeding was initiated to secure public comment on proposals to maximize the efficient and effective use of spectrum in the 218–219 MHz band, allocated in 1992 to the Interactive Video and Data Service (IVDS) in the Personal Radio Services, now redesignated as the 218–219 MHz Service. In attempting to maximize the use of the 218–219 MHz band, we continue our efforts to improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, facilitate technological innovation, and provide opportunities for development of competitive new service offerings. The rules adopted in this *Report and Order* are also designed to implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with Section 309(j) of the Communications Act of 1934, as amended (the Communications Act).[4]

II. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

No petitions were filed in direct response to the IRFA. In general, commenters and reply commenters supported our proposals to provide additional flexibility in the 218–219 MHz Service. Moreover, many of the commenters and reply commenters were existing 218–219 MHz Service licensees many of whom, as discussed *infra*, qualify as small businesses. These commenters overwhelmingly supported proposals that would permit (1) acquisitions by partitioning or disaggregation; (2) 218–219 MHz Service licensees and applicants to choose regulatory status; and (3) non-defaulting 218–219 MHz Service licensees currently participating in the installment payment plan to elect one of three restructuring plans concerning their outstanding payments, despite the increased reporting requirements that these proposals may entail.

III. Description and Estimate of the Number of Small Entities to Which the Rules Apply

The Regulatory Flexibility Act directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.[5] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[7] Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

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[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law Number 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service and Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Services (proceeding terminated), Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 63 FR 52215 (Sept. 30, 1998), 13 FCC Rcd 19064, 19101 (1998) (*218–219 MHz Flex NPRM*).

[3] *See* 5 U.S.C. 604.

[4] 47 U.S.C. 257, 309(j).

[5] U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

The rules adopted in this *Report and Order* affect a number of small entities who are either licensees, or who may choose to become applicants for licenses, in the 218–219 MHz Service. Such entities fall into two categories: (1) those using the 218–219 MHz Service for providing interactivity capabilities in conjunction with broadcast services; and (2) those using the 218–219 MHz Service to operate other types of wireless communications services with a wide variety of uses, such as commercial data applications and two-way telemetry services. Theoretically, an entity could fall into both categories. The spectrum uses in the two categories differ markedly.

With respect to the first category, the provision of interactivity capabilities in conjunction with broadcast services could be described as a wireless provider of subscription television service. The SBA's rules applicable to subscription television services define small entities as those with annual gross revenues of $11 million or less.[8] In the *Competitive Bidding Tenth Report and Order*, we extended special competitive bidding provisions to small businesses with annual gross revenues that are not more than $15 million, and additional benefits to very small businesses with annual gross revenues that are not more than $3 million.[9] On January 6, 1998, the SBA approved of the small business size standards established in the *Competitive Bidding Tenth Report and Order*.[10]

The Commission's estimate of the number of small business entities operating in the 218–219 MHz band for interactivity capabilities with television viewers begins with the 1992 Bureau of Census report on businesses listed under SIC Code 4841, subscription television services, which is the most recent information available. The total number of entities under this category is 1,788.[11] There are 1,463 companies in the 1992 Census Bureau report which are categorized as small businesses providing cable and pay TV services.[12] We know that many of these businesses are cable and television service businesses, rather than businesses operating in the 218–219 MHz band. We also know that, to date, we have issued 612 licenses in the 218–219 MHz Service. Therefore, the number of small entities currently providing interactivity capability to television viewers in the 218–219 MHz Service which will be subject to the rules will be less than 612.

With respect to the second category, neither the Commission nor the SBA has developed a specific definition of small entities applicable to 218–219 MHz band licensees that would provide wireless communications services other than that described above. Generally, the applicable definition of a small entity in this instance appears to be the definition under the SBA rules applicable to establishments primarily engaged in furnishing telegraph and other message communications, SIC Code 4822. This definition provides that a small entity is an entity with annual receipts of $5 million or less.[13] The 1992 Census data, which is the most recent information available, indicates that of the 286 firms under this category, 247 had annual receipts of $4.999 million or less.[14]

The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity, together with its affiliates, that has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[15] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this FRFA that in future auctions, all of the licenses may be awarded to small businesses, which would be affected by the rule changes we propose.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The final rules adopted in this *Report and Order* alter the reporting and recordkeeping requirements for a number of small business entities. Specifically, (1) 218–219 MHz Service licensees will not be required to file a license renewal application after five years from the date of grant of the license, but will be required to file a license renewal application after ten years after the date of grant of the license; (2) 218–219 MHz Service licensees will not be required to file construction reports at specified intervals after initial licensure, but will be obligated to demonstrate that they are providing "substantial service" as a condition for renewal of their license; and (3) acquisitions by partitioning or disaggregation will be treated as assignments of a license and parties will be required to comply with the 218–219 MHz Service licensing requirements. In addition small business may make elections under the final rules that will alter their reporting and recordkeeping requirements. Specifically, (1) 218–219 MHz Service licensees and applicants may choose to elect regulatory status (common carrier, private, commercial mobile radio service, private mobile radio service) and file appropriate documentation coincident with the regulatory status elected; (2) non-defaulting 218–219 MHz Service licensees currently participating in the installment payment plan may elect one of three restructuring plans concerning their outstanding payments; and (3) 218–219 MHz Service licensees electing to continue making installment payments may be required to execute loan documents as a condition of the reamortization of its installment payment plan under the revised ten-year term.

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[6] Small Business Act, 15 U.S.C. 632 (1996).

[7] 5 U.S.C. 601(4).

[8] 13 CFR 121.201, SIC Code 4841.

[9] Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket No. 93–253, *Tenth Report and Order*, 61 FR 60198 (Nov. 27, 1996), 11 FCC Rcd 19974, 19981–85 (1996) (*Competitive Bidding Tenth Report and Order*), *recon. pending*.

[10] *See* Letter to Daniel B. Phythyon, Chief, WTB, from Aida Alverez, Administrator, SBA, Dated Jan. 6, 1998.

[11] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 4841 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[12] The Census table divides those companies by the amount of annual receipts. There is a dividing point at companies with annual receipts of $10 million. The next increment is annual receipts of $17 million, a category that greatly exceeds the SBA definition of small businesses that provide subscription television services. However, there are 17 firms in this category, with revenues between $10–$17 million. Approximately 1,480 SIC Code 4841 category firms have annual gross receipts of $15 million or less. Only a small fraction of those 1,480 firms provide IVDS.

[13] 13 CFR 121.201, SIC Code 4822.

[14] 1992 Economic Census Industry and Enterprise Receipts Size Report, U.S. Bureau of the Census, U.S. Department of Commerce, Table 2D, SIC Code 4822 (industry data prepared by the Census Bureau under contract to the U.S. SBA Office of Advocacy).

[15] Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket No. 93–253, *Fourth Report and Order*, 59 FR 24947 (May 13, 1994), 9 FCC Rcd 2330, 2336 (1994).

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

In response to general comments filed in this proceeding we have adopted final rules designed to maximize opportunities for participation by, and growth of, small businesses in providing wireless services. Specifically, we expect that the extension of license terms from five to ten years and allowing partitioning and disaggregation of licenses, will specifically assist small businesses. We adopted a plan that provided for a reamortization of installment payment debt in conjunction with the extension of license term that differed from our original proposal in specific response to concerns raised in comments and reply comments. Commenters noted that our original proposal would have required licensees to pay two years worth of principal payments, as well as the accrued interest, in a lump sum, within ninety days of the *Report and Order* to retain their licenses, and claimed that such a plan would not allow licensees in particular, small businesses sufficient time to make new capital arrangements. Commenters proposed a variety of means of providing relief beyond that which we proposed in the *218–219 MHz Flex NPRM*. We note that some of these proposals such as a ten-year payout schedule that would be entirely interest-free[16] may have resulted in greater relief than that provided by the reamortization procedures adopted in the *Report and Order*.

We also believe that our proposals regarding permissible uses of 218–219 MHz Service, liberalization of construction requirements and technical restrictions, and elimination of the cross-ownership restriction, will make expansion of 218–219 MHz Service operations easier, and this flexibility assists all licensees, including small business licensees. We considered proposals by small business interests to eliminate (instead of liberalize) technical restrictions for the service,[17] but concluded that limited technical restrictions are still necessary in order to protect other licensees offering services (such as TV Channel 13 broadcasting) operating in or in close proximity of the 218–219 MHz band. We further believe that by retroactively applying a bidding credit for small businesses to the IVDS auction and by adopting our general auction rules that provide for small business bidding credits, we will maximize opportunities for participation by, and growth of, small businesses in the 218–219 MHz Service. For these reasons, we did not consider any significant alternatives to our proposals to minimize significant economic impact on small entities, nor were any significant alternatives of this nature proposed by commenters and reply commenters.

Report to Congress

The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

List of Subjects in 47 CFR Parts 1, 20 and 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 20 and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

2. Section 1.2105 is amended by revising paragraph (a)(2)(xi) is to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

(a) * * *

(2) * * *

(xi) For C block and 218–219 MHz Service applicants, an attached statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency.

* * * * *

PART 20—COMMERCIAL MOBILE RADIO SERVICES

3. The authority citation for Part 20 continues read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

4. Section 20.9 is amended by redesignating paragraph (a)(13) as (a)(14), redesignating paragraph (a)(12) as (a)(13) and by adding a new paragraph (a)(12) to read as follows:

§ 20.9 Commercial mobile radio services.

(a) * * *

(12) Mobile operations in the 218–219 MHz Service (part 95, subpart F of this chapter) that provide for-profit interconnected service to the public:

* * * * *

PART 95—PERSONAL RADIO SERVICES

5. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

6. Section 95.1 is amended be revising paragraph (b) to read as follows:

§ 95.1 The General Mobile Radio Service (GMRS).

* * * * *

(b) The 218–219 MHz Service is a two-way radio service authorized for system licensees to provide communication service to subscribers in a specific service area. The rules for this service are contained in subpart F of this part.

Subpart F Heading—[Revised]

7. The heading for subpart F is revised to read, "218–219 MHz Service."

8. Section 95.801 is revised to read as follows:

§ 95.801 Scope.

This subpart sets out the regulations governing the licensing and operation of a 218–219 MHz system. This subpart supplements Part 1, Subpart F of this chapter, which establishes the requirements and conditions under which commercial and private radio stations may be licensed and used in the Wireless Telecommunications Services. The provisions of this subpart contain additional pertinent information for current and prospective licensees specific to the services governed by this part 95.

9. Sections 95.803 (a) and (b) and the section heading are revised to read as follows:

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[16] *See* CRSPI Reply Comments at 2.

[17] *See, e.g.,* Petty Comments at 1.

§ 95.803 218–219 MHz Service description.

(a) The 218–219 MHz Service is a two-way radio service authorized for system licensees to provide communication service to subscribers in a specific service area.

(b) The components of each 218–219 MHz Service system are its administrative apparatus, its response transmitter units (RTUs), and one or more cell transmitter stations (CTSs). RTUs may be used in any location within the service area.

* * * * *

10. Section 95.805 is revised to read as follows:

§ 95.805 Permissible communications.

A 218–219 MHz Service system may provide any fixed or mobile communications service to subscribers within its service area on its assigned spectrum, consistent with the Commission's rules and the regulatory status of the system to provide services on a common carrier or private basis.

11. Section 95.807 is added to read as follows:

§ 95.807 Requesting regulatory status.

(a) Authorizations for systems in the 218–219 MHz Service will be granted to provide services on a common carrier basis or a private basis, or on both a common carrier and private basis in a single authorization.

(1) *Initial applications.* An applicant will specify on FCC Form 601 if it is requesting authorization to provide services on a common carrier basis, a private basis, or on both a common carrier and private basis.

(2) *Amendment of pending applications.* Any pending application may be amended to:

(i) Change the carrier status requested; or

(ii) Add to the pending request in order to obtain both common carrier and private status in a single license.

(3) *Modification of license.* A licensee may modify a license to:

(i) change the carrier status authorized; or

(ii) add to the status authorized in order to obtain both common carrier and private status in a single license. Applications to change, or add to, carrier status in a license must be submitted on FCC Form 601 in accordance with § 1.1102 of this chapter.

(4) *Pre-existing licenses.* Licenses issued before [effective date of rules] are authorized to provide services on a private basis. Licensees may modify this initial status pursuant to paragraph (a)(3) of this section.

(b) An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status required to provide a specific communications service.

12. Section 95.811 is amended by revise paragraphs (b), (c), and (d) to read as follows:

§ 95.811 License requirements.

* * * * *

(b) A CTS must be individually licensed to the 218–219 MHz Service licensee for the service area in which the CTS is located in accordance with part 1, subpart F of this chapter if it:

(1) Is in the vicinity of certain receiving locations (see § 1.924 of this chapter);

(2) May have significant environmental effect (see part 1, subpart I of this chapter);

(3) Is part of an antenna structure that requires notification to the Federal Aviation Administration (see part 17, subpart B of this chapter); or

(4) Has an antenna the tip of which exceeds:

(i) 6.1 meters (20 feet) above ground level; or

(ii) 6.1 meters (20 feet) above the top of an existing man-made structure (other than an antenna structure) on which it is mounted.

(c) All CTSs not meeting the licensing criteria under paragraph (b) of this section are authorized under the 218–219 MHz Service system license.

(d) Each component RTU in a 218–219 MHz Service system is authorized under the system license or if associated with an individually licensed CTS, under that CTS license.

13. Section 95.812 is added to read as follows:

§ 95.812 License term.

(a) The term of each 218–219 MHz Service system license is ten years from the date of original issuance or renewal.

(b) Licenses for individually licensed CTSs will be issued for a period running concurrently with the license of the associated 218–219 MHz Service system with which it is licensed.

14. Section 95.813 is amended by removing paragraph (c) and by revising paragraph (b) to read as follows:

§ 95.813 License eligibility.

* * * * *

(b) An entity that loses its 218–219 MHz Service authorization due to failure to meet the construction requirements specified in § 95.833 of this part may not apply for a 218–219 MHz Service system license for three years from the date the Commission takes final action affirming that the 218–219 MHz Service license has been canceled.

15. Section 95.815 is amended by revising paragraphs (a) and (b) to read as follows:

§ 95.815 License application.

(a) In addition to the requirements of part 1, subpart F of this chapter, each application for a 218–219 MHz Service system license must include a plan analyzing the co- and adjacent channel interference potential of the proposed system, identifying methods being used to minimize this interference, and showing how the proposed system will meet the service requirements set forth in § 95.831 of this part. This plan must be updated to reflect changes to the 218–219 MHz Service system design or construction.

(b) In addition to the requirements of part 1, subpart F of this chapter, each request by a 218–219 MHz Service system licensee to add, delete, or modify technical information of an individually licensed CTS (*see* § 95.811(b) of this part) must include a description of the system after the proposed addition, deletion, or modifications, including the population in the service area, the number of component CTSs, and an explanation of how the system will satisfy the service requirements specified in § 95.831 of this part.

* * * * *

16. Section 95.816 is revised to read as follows:

§ 95.816 Competitive bidding proceedings.

(a) Mutually exclusive initial applications for 218–219 MHz Service system licenses are subject to competitive bidding procedures. The procedures set forth in part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

(b) *Installment payments.* Eligible Licensees that elect resumption pursuant to Amendment of part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order,* FCC 99–239 (released September 10, 1999) may continue to participate in the installment payment program. Eligible Licensees are those that were current in installment payments (*i.e.* less than ninety days delinquent) as of March 16, 1998, or those that had properly filed grace period requests under the former installment payment rules. All unpaid interest from grant date through election date will be capitalized into the principal as of Election Day creating a new principal amount. Installment payments must be made on a quarterly basis. Installment payments will be calculated based on new principal amount as of Election Day and will fully amortize over the remaining term of the license. The interest rate will equal the rate for five-year U.S. Treasury obligations at the time of licensing.

(c) *Eligibility for small business provisions.*

(1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed $15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed $3 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraph (b)(1) or (b)(2) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

(4) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(5) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section (or each of which individually satisfies the definition in paragraph (b)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(d) *Controlling interest.*

(1) For purposes of this section, controlling interests includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) the entity plays an integral role in management decisions.

(2) *Calculation of certain interests.*

(i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person, or its affiliate pursuant to § 1.2110(b)(4) of this chapter, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(e) *Bidding credits.* A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this subsection may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this subsection may use the bidding credit specified in accordance to § 1.2110(e)(2)(i) of this chapter.

(f) Winning bidders in Auction No. 1, which took place on July 28–29, 1994, that, at the time of that auction, met the qualifications under the Commission's rules then in effect, for small business status will receive a twenty-five percent bidding credit pursuant to Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order,* FCC 99–239 (released September 10, 1999).

17. Section 95.819 is revised to read as follows:

§ 95.819 License transferability.

(a) A 218–219 MHz Service system license acquired through competitive bidding procedures (including licenses obtained in cases of no mutual exclusivity), together with all of its component CTS licenses, may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in 47 CFR 1.2111.

(b) A 218–219 MHz Service system license obtained through random selection procedures, together with all of its component CTS licenses, may be transferred, assigned, sold, or given away, to any other entity in accordance with the provisions and procedures set forth in § 1.948 of this chapter.

(c) If the transfer, assignment, sale, or gift of a license is approved, the new licensee is held to the construction requirements set forth in § 95.833 of this part.

18. Section 95.823 is added to read as follows:

§ 95.823 Geographic partitioning and spectrum disaggregation.

(a) *Eligibility.* Parties seeking Commission approval of geographic partitioning or spectrum disaggregation of 218–219 MHz Service system licenses shall request an authorization for partial assignment of license pursuant to § 1.948 of this chapter.

(b) *Technical standards.*

(1) *Partitioning.* In the case of partitioning, requests for authorization of partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC-recognized service area (*i.e.* Economic Areas) is utilized or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds, to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In the case where an FCC-recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum maybe disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignments of licenses that propose combinations of partitioning and disaggregation.

(c) *Provisions applicable to designated entities.*

(1) *Unjust enrichment.* See § 1.2111(e) of this chapter.

(2) *Parties not qualified for installment payment plans.*

(i) When a winning bidder (partitionor or disaggregator) that elected to pay for its license through an installment payment plan partitions its license or disaggregates spectrum to another party (partitionee or disaggregatee) that would not qualify for an installment payment plan, or elects not to pay for its share of the license through installment payments, the outstanding principal balance owed by the partitionor or disaggregator shall be apportioned according to § 1.2111(e)(3) of this chapter. The partitionor or disaggregator is responsible for accrued and unpaid interest through and including the consummation date.

(ii) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire *pro rata* amount of the outstanding principal balance on or before the consummation date. Failure to meet this condition will result in cancellation of the grant of the partial assignment application.

(iii) The partitionor or disaggregator shall be permitted to continue to pay its *pro rata* share of the outstanding balance and, if applicable, shall receive loan documents evidencing the partitioning and disaggregation. The original interest rate, established pursuant to § 1.2110(f)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the partitionor's or disaggregator's portion of the remaining government obligation.

(iv) A default on the partitionor's or disaggregator's payment obligation will affect only the partitionor's or disaggregator's portion of the market.

(3) Parties qualified for installment payment plans.

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation.

(ii) Each party may be required, as a condition to approval of the partial assignment application, to execute loan documents agreeing to pay its *pro rata* portion of the outstanding principal balance due, as apportioned according to § 1.2111(e)(3) of this chapter, based upon the installment payment terms for which it qualifies under the rules. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(f)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for its portion of the partitioned market.

(iii) A default on an obligation will affect only that portion of the market area held by the defaulting party.

(d) *Construction requirements.*

(1) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently satisfy the applicable construction requirements set forth in § 95.833 of this part for their respective partitioned areas. If either licensee failed to meet its requirement in § 95.833 of this part, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the requirement in § 95.833 of this part for the entire market. If the partitionor fails to meet the requirement in § 95.833 of this part, however, only its renewal application would be subject to forfeiture at renewal.

(2) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 95.833 of this part for the geographic service area. If parties choose this option and either party fails to do so, both licenses would be subject to forfeiture at renewal. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the requirement in § 95.833 of this part for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to forfeiture at renewal.

(3) All applications requesting partial assignments of license for partitioning or disaggregation must include the above-referenced certification as to which of the construction options is selected.

(4) Responsible parties must submit supporting documents showing compliance with the respective construction requirements within the appropriate construction benchmarks set forth in § 95.833 of this part.

19. Section 95.831 is revised to read as follows:

§ 95.831 Service requirements.

Subject to the initial construction requirements of § 95.833 of this subpart, each 218–219 MHz Service system license must demonstrate that it provides substantial service within the service area. Substantial service is defined as a service that is sound, favorable, and substantially above a level of service which might minimally warrant renewal.

20. Section 95.833 is revised to read as follows:

§ 95.833 Construction requirements.

(a) Each 218–219 MHz Service licensee must make a showing of "substantial service" within ten years of the license grant. A "substantial service" assessment will be made at renewal pursuant to the provisions and procedures contained in § 1.949 of this chapter.

(b) Each 218–219 MHz Service licensee must file a report to be submitted to inform the Commission of the service status of its system. The report must be labeled as an exhibit to the renewal application. At minimum, the report must include:

(1) A description of its current service in terms of geographic coverage and population served;

(2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;

(3) A description of its investments in its 218–219 MHz Service systems;

(4) A list, including addresses, of all component CTSs constructed; and

(5) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(c) Failure to demonstrate that substantial service is being provided in the service area will result in forfeiture of the license, and will result in the licensee's ineligibility to apply for 218–219 MHz Service licenses for three years from the date the Commission takes final action affirming that the 218–219 MHz Service license has been canceled pursuant to § 95.813 of this part.

21. Section 95.853 is revised to read as follows:

§ 95.853 Frequency segments.

There are two frequency segments available for assignment to the 218–219 MHz Service in each service area. Frequency segment A is 218.000–218.500 MHz. Frequency segment B is 218.501–219.000 MHz.

22. Section 95.855 is revised to read as follows:

§ 95.855 Transmitter effective radiated power limitation.

The effective radiated power (ERP) of each CTS and RTU shall be limited to the minimum necessary for successful communications. No CTS or fixed RTU may transmit with an ERP exceeding 20 watts. No mobile RTU may transmit with an ERP exceeding 4 watts.

23. Section 95.859 is amended by revising paragraph (a) and by removing and reserving paragraph (b) to read as follows:

§ 95.859 Antennas.

(a) The overall height from ground to topmost tip of the CTS antenna shall not exceed the height necessary to assure adequate service. Certain CTS antennas must be individually licensed to the 218–219 MHz System licensee (see § 95.811(b) of this part) and the antenna structures of which they are a part must be registered with the Commission (*see* part 17 of this chapter).

24. Section 95.861 is revised to read as follows:

§ 95.861 Interference.

(a) When a 218–219 MHz Service system suffers harmful interference within its service area or causes harmful interference to another 218–219 MHz Service system, the licensees of both systems must cooperate and resolve the problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including, but not limited to, specifying the transmitter power, antenna height or area, duty cycle, or hours of operation for the stations concerned.

(b) The use of any frequency segment (or portion thereof) at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest; the use of a frequency segment (or portion thereof) specified for the 218–219 MHz Service system may be restricted as to specified geographical areas, maximum power, or other operating conditions.

(c) A 218–219 MHz Service licensee must provide a copy of the plan required by § 95.815(b) of this part to every TV Channel 13 station whose Grade B predicted contour overlaps the licensed service area for the 218–219 MHz Service system. The 218–219 MHz Service licensee must send the plan to the TV Channel 13 licensee(s) within 10 days from the date the 218–219 MHz Service licensee submits the plan to the Commission, and the 218–219 MHz Service licensee must send updates to this plan to the TV Channel 13 licensee(s) within 10 days from the date that such updates are filed with the Commission pursuant to § 95.815(b) of this part.

(d) Each 218–219 MHz Service system licensee must provide upon request, and install free of charge, an interference reduction device to any household within a TV Channel 13 station Grade B predicted contour that experiences interference due to a component CTS or RTU.

(e) Each 218–219 MHz Service system licensee must investigate and eliminate harmful interference to television broadcasting and reception, from its component CTSs and RTSs, within 30 days of the time it is notified in writing, by either an affected television station, an affected viewer, or the Commission, of an interference complaint. Should the licensee fail to eliminate the interference within the 30-day period, the CTS(s) or RTU(s) causing the problem(s) must discontinue operation.

(f) The boundary of the 218–219 MHz Service system, as defined in its authorization, is the limit of interference protection for that 218–219 MHz Service system.

§ 95.863 [Removed]

25. Section 95.863 is removed.

[FR Doc. 99–27874 Filed 11–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[FCC 99–179–ET Docket No. 95–183]

37.0–38.6 GHz and 38.6–40.0 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published rules in the **Federal Register** concerning the service rules for the 37.0–38.6 GHz and 38.6–40.0 GHz bands. This document makes corrections to those rules.

DATES: Effective October 22, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Burton, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, (202) 418–0680. *TTY:* (202) 418–7233.

SUPPLEMENTARY INFORMATION:

Background

The Commission inadvertently included typographical errors in certain final rules published in the **Federal Register** dated August 23, 1999, (64 FR 45891). This correction amends those typographical errors. This correction also amends § 101.56(i) to comport with the Commission's decision in the *Memorandum Opinion and Order* to allow 39 GHz licensees that obtain a bidding credit at auction to subsequently partition or disaggregate subject to the Commission's unjust enrichment rules, the substance of which was not reflected in the final regulations.

List of Subjects in 47 CFR Part 101

Radio, Communications equipment.

Federal Communications Commission.

Magalie Roman Sales,

Secretary.

Rule Changes

For the reasons set forth in the preamble, amend part 101 of title 47 of the Code of Federal Regulations as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for Part 101 continues to read as follows:

Authority: Sec. 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, unless otherwise noted.

2. In § 101.56, paragraphs (d)(1) and (d)(2) are redesignated as paragraphs (d) and (e) and paragraph (i) is revised to read as follows:

§ 101.56 Partitioned Services Areas (PSAs) and Disaggregate Spectrum.

* * * * *

(i) Licensees, including those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum. Licensees who utilize bidding credits must comply with the requirements set forth in § 1.2111 (d) and (e).

* * * * *

§ 101.147 Frequency assignments.

3. In § 101.147, paragraph (u)(2) is redesignated as (v)(2).

[FR Doc. 99–28482 Filed 11–2–99; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 64, No. 212
Wednesday, November 3, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 278

[Amendment No. 380]

RIN 0584–AC05

Food Stamp Program: Retailer Application Processing

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to revise the initial application processing timeframe for retail food stores and wholesale food concerns that apply for authorization to accept and redeem food stamp benefits and clarify verification requirements. In addition to lengthening the time allowed for processing applications, this rule would clarify Food and Nutrition Service (FNS) regulatory authority to require specific documentation from an applicant to verify a firm's eligibility. This rule will also incorporate two provisions of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, related to the collection of tax information from applicant firms or from firms being reauthorized in the program, and the provision of written permission for FNS to verify such information with appropriate agencies. These changes are being proposed as a means to ensure that only legitimate food stores are allowed to participate in the Food Stamp Program.

DATES: Comments must be received on or before January 3, 2000 to be assured of consideration.

ADDRESSES: Comments should be submitted to Karen J. Walker, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments may also be data faxed to the attention of Ms. Walker at (703) 605–0232. All written comments will be open for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 706.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Ms. Walker at the above address or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purpose of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–602). The Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities. The rule would have almost no impact on the majority of applicant firms, most of which are legitimate food stores.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice announces our intent to collect additional information associated with the application completed by retail food stores and meal services to request approval to participate in the Food Stamp Program (FSP) and to obtain approval for 3 years on the revised burden estimates.

Comments on this notice must be submitted by January 3, 2000.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Lori Shack, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20502 (a copy may also be sent to Karen J. Walker, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. For further information, or for copies of the information collection, please contact Ms. Walker at the above address.)

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

Title: Food Stamp Program Store Applications.

OMB Number: 0584–0008.

Expiration Date: October 31, 2002.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) of the Department of Agriculture is the Federal agency responsible for the FSP. The Food Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2011–2036), requires that the Agency determine the eligibility of firms and certain food service organizations to accept and redeem food stamp benefits and to monitor them for compliance and continued eligibility.

Part of FNS' responsibility is to accept applications from retail food establishments and meal service programs that wish to participate in the FSP, review the applications in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

There are currently 3 application forms approved under OMB No. 0584–0008. Together these forms are used by retailers, wholesalers, meal service providers, certain types of group homes, shelters, and State-contracted restaurants, to apply to FNS for authorization to participate in the FSP. Form FNS–252, Food Stamp Application For Stores is generally used by stores, excluding facilities which provide meal services such as communal dining, shelters and other meal service programs, which are newly applying for authorization; Form FNS–252R, Food Stamp Program Application For Stores—Reauthorization is used by the majority of currently authorized stores to apply for reauthorization, excluding facilities which provide meal services such as communal dining, shelters and other meal service programs; and Form FNS–252–2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Others generally used by communal dining and restaurant facilities and other food service programs which are newly applying or applying for reauthorization. In a few cases, at the discretion of the FNS field offices, some stores would be required to complete Form FNS–252 to apply for reauthorization. Section 9(c) of the Act provides the necessary authorization(s) to collect the information contained in these forms.

We do not collect information on the number of FSP applications received annually. Current burden estimates associated with these 3 application forms are determined from information maintained in STARS (Store Tracking and Redemption System) based on the total number of currently authorized stores or the number of newly authorized stores. The number of expected applications is divided between initial applications from new applicants and applications for reauthorization from currently authorized stores.

For burden estimates associated with new applicants (initial authorizations), we used the number of stores (all types) newly authorized/approved currently estimated at 20,696 (rounded to 20,700) based on FY 1997 year-end data from STARS and inflated this number by 10% (2,070) to account for denied applications received for a total of 22,770 applications expected to be received and processed from stores annually. It is estimated that 98% (22,315) of the 22,770 applications expected to be received would be on Form FNS–252 and 2% (423) would be on Form FNS–252–2. In addition, an estimated 32 private restaurants applying for FSP participation in the State-administered special restaurant program annually will use Form FNS–252 versus Form FNS–252–2 to apply for participation reducing the number of expected applications for Form FNS–252–2 by 32 and increasing the number of expected applications using Form FNS–252 by the same amount.

For burden estimates associated with firms applying for reauthorization, we used the total number of stores (all types) authorized (184,300) as of December 1997. Generally, authorized stores are subject to reauthorization at least once every 4 years. Thus, it is estimated that 25% (46,000) of all authorized stores would be subject to reauthorization in any given year. Using the number of authorized stores as of December 1997, it is estimated that 46,000 reauthorization applications would be expected to be received annually. Of the 46,000 reauthorization applications expected, it is estimated that 96% (44,160) will be on Form FNS–252R, 3% (1,380) will be on Form FNS–252–2, and 1% (460) will be on Form FNS–252.

The number of respondents completing at least 1 of the 3 applications in question annually, as currently approved by OMB, is as follows:

FNS–252		
New authorizations	22,347	(22,770 × .98 + 32)
Reauthorizations	460	(184,000 × .25 × .01)
	22,807	
FNS–252–2		
New authorizations	423	(22,770 × .02 − 32)
Reauthorizations	1,380	(184,000 × .25 × .03)
	1,803	
FNS–252R		
Reauthorizations	44,160	(184,000 × .25 × .01 − 1,380 − 460)
Total responses	68,770	

It should be noted that the number of applicant and authorized stores has been declining over the past few years due to several program changes, such as changes in eligibility requirements, stronger sanctions against violators, and implementation of Electronic Benefit Transfer systems. These declines have resulted in a reduction in the overall number of applications expected to be received annually.

Hourly burden time per response varies by type of application and includes the time to review instructions, search existing data resources, gather and copy the data needed, complete and review the application, and submit the form and documentation to FNS.

As currently approved by OMB, the hourly burden rate per response for: (1) Form FNS–252 is 20 to 68 minutes, with the average being 27.5 minutes; (2) 10 to 20 minutes for Form FNS 252–2, with the average being 12 minutes; and, (3) 7 to 8 minutes, with the average being 7.5 minutes for Form FNS–252R.

Information Collection—Proposed Rule

This proposed rule at § 278.1(b) requires that applicant firms submit copies of income and sales tax filing documents to the FNS if requested during the application or reauthorization process. The proposed rule further provides that FNS can deny a firm's application if they do not supply requested documentation. Lastly, the proposed rule would require firms to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies, and to obtain corroborating documentation from other sources as deemed necessary. These new requirements will not result in changes to current burden estimates or methodologies used to arrive at current burden estimates as approved by OMB, because: (1) Currently approved burden estimates already include time associated with collecting, copying and submitting this type of documentation, or other sufficient documentation, to FNS. The new proposal simply allows FNS to mandate the submission of a particular type of document, such as sales and tax filing documents and to deny applications which do not provide the specific documentation; and (2) FNS would design a standard release form for the purpose of the new requirement to sign a release form. This would be a one-time burden for new applicants, including applicants for reauthorization. It is estimated that burden associated with a one-time requirement to affix a single signature to a standard form would be minimal and is not being assessed separately.

The burden estimates, as approved by OMB through October 31, 2002, are shown below:

Affected Public: Food retail and wholesale firms, meal service programs, certain types of group homes, shelters, and State-contracted restaurants.

Estimated Number of Respondents: 68,770.

Estimated Number of Responses per respondent: 1.

Estimated Time per Response: 0.229413.

Estimated Total Annual Burden: 15,777.

SUMMARY OF BURDEN ESTIMATES FOR FORMS FNS–252, 252–2 AND 252R

Title	Number of respondents	Responses per respondent	Total annual responses	Burden hours per response	Total annual burden hours
Form FNS–252	22,807	1	22,807	.4500	10,263
Form FNS–252–2	1,803	1	1,803	.2000	361
Form FNS–252R	44,160	1	44,160	.1167	5,153
Totals	68,770	1	68,770		15,777

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) For State Agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out as 7 CFR 276.7 (for rules related to non-quality control liabilities) or part 284 (for rules related to quality control liabilities: (3) For Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) Public Law 104–04, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) which impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the URMA.

Background

The authorization of retail food stores and wholesale food concerns to accept and redeem food stamp benefits is the responsibility of the Department's FNS Field Offices. This rule makes four changes, two discretionary and two reflecting additional authorities provided by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The discretionary changes alter the timeframe within which FNS must approve or reject a firm's application, and specify types of documents firms might be asked to provide. The PRWORA changes authorize the Department to require that applicant firms sign a release form allowing FNS to verify the accuracy of information submitted by firms, and that FNS may request the submission of tax records.

Application Processing Timeframes

Current rules at 7 CFR 278.1(a) provide that an FNS officer in charge shall deny or approve authorization, or request more information, within 30 days of receipt of the firm's application. If FNS returns an incomplete application and/or requests more documentation from the applicant, the 30-day time clock then stops until a fully completed application and/or the additional information is received from the applicant, at which point FNS has a full 30 days to approve or deny authorization.

Current rules do not define a completed application. This proposed rule would clarify what is meant by a completed application. It is proposed that a completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a determination on the firm's application has been received. This information includes, but is not limited to a completed application form, all required information and documentation from the applicant, as well as all needed third-party verification and documentation. In most instances, the current rule is adequate to ensure the eligibility of a firm. Current rules become problematic, however, when the field office is not familiar with the store, or needs more information about the firm's qualifications to determine whether it is a legitimate retail food store. Experience has shown that, in such cases, a visit is necessary to verify the nature and scope of a firm's business in questionable circumstances. FNS is proposing in this rule that Field Offices have a 45-day time period in order to process completed applications and to make any needed store visits.

On site-visits may be conducted during the 45-day period by employees of FNS or by a designee of the Secretary of Agriculture (such as a firm under contract to USDA) or by an official of a State or local government. In the interest of efficiency and the responsible use of resources, on-site visits must be carefully planned and clustered in geographic areas. Thus, the 45-day period following the receipt of a completed application is necessary to allow additional time to effectively plan and carry out these on-site visits, and to allow the field office to make a determination as to whether the firm qualifies for authorization.

In order to address this need, FNS is proposing in this rule that the field office shall have 45 days from the receipt of a completed application to approve or deny the application. FNS is confident this will allow sufficient time to conduct an on-site visit if necessary and to make a final determination as to whether a store qualifies for authorization to participate in the FSP.

Information for Verifying Eligibility for Authorization

Current rules do not specify the types of documentation which firms may be required to provide when applying for authorization. In the interest of program integrity, however, it is necessary that FNS stipulate its specific authority to require firms to provide verification and documentation to determine a store's eligibility. This proposed rule (7 CFR 278.1(b)) identifies the type of documentation that may be required by FNS by stipulating that such information may include, but not be limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records and invoice records.

Tax Records

Section 833 of the PRWORA amends section 9 of the Food Stamp Act and provides the Secretary with the authority to require applicant firms to submit copies of relevant income and sales tax filing documents when applying for participation or continued authorization in the program. Firms that are applying for initial authorization or reauthorization in the FSP may now be required to submit copies of relevant business related income and sales tax filing documents to FNS as a condition of eligibility for program participation. Failure of a firm to provide such documentation if requested by FNS would serve as a basis for the denial of such a firm's application for authorization or of a firm's reauthorization in the program. This program change is reflected in 278.1(b). Since this is a statutory provision over which the Secretary has no authority to amend, implementation of this provision cannot be affected by public comment.

Authorization To Verify Tax Filings and Other Documentation

Section 833 of PRWORA also permits the Secretary to implement, through regulations, a requirement that firms provide, upon request, written authorization to allow FNS to verify all relevant tax filings and to obtain corroborating documentation from other sources so that the accuracy of information provided on the application by stores and concerns may be verified. Section 278.1(b) of the regulation proposes to require that all firms provide written authorization for FNS to verify all relevant business tax filings with appropriate agencies and for FNS to obtain corroborating documentation from other sources so as to ensure that the accuracy of information provided by stores and concerns may be verified. Examples of the types of agencies that could be contacted for the purpose of verifying applicant information include, but are not limited to wholesale suppliers, State or local licensing agencies, State or local liquor and lottery control boards, financial institutions, Federal and State income and sales tax agencies, and Federal, State or local law enforcement agencies. Retailers will be requested to complete a general release form that would provide permission for FNS to access information maintained by any agency or entity that has information directly related to the information requested by FNS on FSP application materials.

This authority will greatly enhance the ability of FNS to ensure that only legitimate stores are authorized to participate in the program and that no false information is filed on the FSP application. This is applicable to all firms, whether new or currently participating firms seeking reauthorization in the program.

List of Subjects in 7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesalers, Penalties.

Accordingly, 7 CFR part 278 is proposed to be amended as follows:

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

1. The authority citation for part 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In § 278.1:

a. Paragraph (a) is amended by removing the last sentence and adding three new sentences in its place; and

b. The introductory text of paragraph (b) is revised.

The revisions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* * * * FNS shall approve or deny the application within 45 days of receipt of a completed application. A completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a determination on the firm's application has been received. This information includes, but is not limited to, a completed application form, all information and documentation from the applicant, as well as any needed third-party verification and documentation.

(b) *Determination of authorization.* An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information provided on the application form. Such documentation may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies, and to obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy and eligibility of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program. In determining whether a firm qualifies for authorization, FNS shall consider all of the following:

* * * * *

Dated: October 25, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 99–28547 Filed 11–2–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Docket No. FV–99–703–PR1]

Proposed Olive Oil Promotion, Research, and Information Order; Reopening of Comment Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of the comment period.

SUMMARY: Notice is hereby given that the comment period on the proposed Olive Oil Promotion, Research, and Information Order is reopened until December 3, 1999.

DATES: Comments must be received by December 3, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** (64 FR 46754; August 26, 1999). The proposed rule contains the proposal submitted by the North American Olive Oil Association (NAOOA). Prior to submitting its proposal, the NAOOA had coordinated a task force consisting of the NAOOA, the California Olive Oil Council, the Texas Olive Oil Council, and other companies involved in the olive oil business.

Under the proposed Order, first handlers and importers would pay an assessment to the proposed Olive Oil Council (Council). Assessments collected under the program, at the rate of $0.01 per pound, are expected to generate between $3 million and $4 million annually. The Council would use the assessments collected to conduct a promotion, research, and information program to maintain, develop, and expand markets for olive oil. The comment period ended October 25, 1999.

On October 22, the Task Force Coordinator requested that additional time be provided for interested persons to comment on the proposed rule. The task force coordinator stated that discussions are still taking place among industry participants and that allowing additional discussion will help to ensure that the process allows all parties to participate.

After reviewing the situation, and in accordance with the task force request, the Department is reopening the comment period for 30 additional days. This will provide interested persons a total of 90 days to review the proposed rule, perform a more complete analysis, and submit any written comments.

This delay should not substantially add to the time required to complete this rulemaking action. Accordingly, the period in which to file written comments is reopened until December 3, 1999. This notice is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; Public Law 104–127, enacted April 4, 1996.

Dated: October 27, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetgable Programs.

[FR Doc. 99–28832 Filed 11–1–99; 8:51 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM–2–12]

Michael Stein; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated July 26, 1999, filed by Michael Stein (petitioner). The petition has been docketed by the Commission and has been assigned Docket No. PRM–2–12. The petitioner believes that the NRC regulations pertaining to deliberate misconduct and employee protection do not contain certain needed safeguards. The petitioner is requesting that the NRC regulations pertaining to employee protection and deliberate misconduct be amended to ensure that all individuals are afforded the right to respond to an NRC determination that the individual has violated these regulations.

DATES: Submit comments by January 18, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

You may also provide comments via the NRC's interactive rulemaking website (http://www.ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1999, the Nuclear Regulatory Commission (NRC) received a petition for rulemaking submitted by Michael Stein (petitioner). Although Mr. Stein is an employee of the NRC, he submitted the petition as an individual member of the public. The NRC recently initiated an enforcement action involving a notice of violation against an individual without conducting a prior pre-decisional enforcement conference. As a result, the petitioner states that the NRC regulations pertaining to deliberate misconduct and employee protection do not contain certain important safeguards. The petitioner requests that the NRC regulations governing deliberate misconduct and employee protection be amended to ensure that all individuals are afforded the right to respond to an NRC determination that the individual has violated these regulations before the NRC issues the action.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–2–12. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner requests that the title of the NRC regulations codified at 10 CFR Part 2, Subpart B be amended to be the "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Issuance of a Notice of Violation to an Individual, or for Imposing Civil Penalties." The petitioner also suggests amending 10 CFR 2.201 entitled, "Notice of Violation," by adding a new paragraph (b). In a meeting between the petitioner and the NRC staff on October 14, 1999, the language of suggested paragraph was modified by changing the word "order" to "Notice of Violation" each time it appears in the second sentence of paragraph (b)(2) and to include Part 76 in the list of 10 CFR parts presented in the introductory text of paragraph. The NRC notes that a paragraph (b) currently appears in the codified text of § 2.201. Therefore, the NRC is presenting the paragraph suggested by the petitioner as a new paragraph (c). The new paragraph suggested by the petitioner would read as follows:

> § 2.201 Notice of violation.
>
> * * * * *
>
> (c) In response to an alleged violation of the employee protection or deliberate misconduct regulations contained in 10 CFR Parts 19, 30, 40, 50, 60, 61, 70, 72, and 76 the Commission may serve on the individual a Notice of Violation as described in 10 CFR 2.201(a). This Notice of Violation to the individual shall state that:
>
> (1) The answer to the Notice of Violation shall state any facts, explanations, and arguments denying the charges of violation;
>
> (2) If the individual charged with the violation files an answer denying the violation, the Executive Director for Operations, or the Executive Director's designee, upon consideration of the answer, will issue an Order imposing, mitigating, or withdrawing the Notice of Violation to the individual. The individual charged with a violation of the employee protection or deliberate misconduct regulations may, within twenty (20) days of the date of the Notice of Violation or other time specified in the Notice of Violation, request a hearing;
>
> (3) If the individual charged with an employee protection or deliberate misconduct violation requests a hearing, the Commission will issue an order designating the time and place of the hearing;
>
> (4) If a hearing is held, an order will be issued after the hearing by the presiding officer or the Commission dismissing the proceeding, or imposing, mitigating or withdrawing the Notice of Violation. This shall be considered the final NRC action with regard to the Notice of Violation at issue in the proceeding.

The petitioner suggests that the current NRC regulations pertaining to employee protection be amended. Although the petitioner did not specifically identify the employee protection regulations to be amended, the NRC believes that these regulations are 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, 72.10, and 76.7. The Commission specifically requests comments on whether this is a complete list of employee protection regulations that should be amended under the petition. The petitioner's suggested language reads as follows:

> An individual charged with a violation of the employee protection regulations in Part X, has the right to a hearing pursuant to 10 CFR 2.201(b). In addition, prior to the issuance of a Notice of Violation pursuant to 10 CFR Part 2.201 or an Order pursuant to 10 CFR 2.202, the individual charged with such a violation shall have the right to inform the agency either by written correspondence or by a predecisional enforcement conference, regarding their involvement in the alleged violation of this section.

The petitioner also proposes that the current NRC regulations pertaining to deliberate misconduct be amended. Although the petitioner did not specifically identify the deliberate misconduct regulations to be amended, the NRC believes that these regulations are 10 CFR 30.10, 40.10, 50.5, 52.9, 60.11, 61.9b, 70.10, 71.11, 72.12, 76.10, and 110.7b. The Commission specifically requests comments on whether this is a complete list of deliberate misconduct regulations that should be amended under the petition. The petitioner's suggested language reads as follows:

> An individual charged with a violation of the deliberate misconduct regulations in Part X, has the right to a hearing pursuant to 10 CFR 2.201(b). In addition, prior to the issuance of a Notice of Violation pursuant to 10 CFR 2.201 or an Order pursuant to 10 CFR 2.202, the individual charged with such a violation shall have the right to inform the agency either by written correspondence or by a predecisional enforcement conference, regarding their involvement in the alleged violation of this section.

The petitioner contends that his proposed amendment would ensure that all individuals have the opportunity to address an NRC determination that the individual has violated either the deliberate misconduct or employee protection regulations before the NRC issues the action.

The Petitioner's Conclusions

The petitioner concludes that the NRC regulations governing deliberate misconduct and employee protection are missing certain safeguards he believes are important. The petitioner requests that the NRC regulations pertaining to deliberate misconduct and employee protection be amended as discussed above to ensure that each individual has an opportunity to address an NRC determination that he or she has violated these regulations.

Dated at Rockville, Maryland, this 28th day of October, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–28757 Filed 11–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

RIN 3150–AG38

Antitrust Review Authority: Clarification

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to clarify its regulations to reflect more clearly its limited antitrust review authority by explicitly limiting the types of applications that must include antitrust information. Specifically, because the Commission is not authorized to conduct antitrust reviews of post-operating license transfer applications, or at least is not required to conduct this type of review and has decided that it no longer will conduct them, no antitrust information is required as part of a post-operating license transfer application. Because the current regulations do not clearly specify which types of applications are not subject to antitrust review, these proposed clarifying amendments would bring the regulations into conformance with the Commission's limited statutory authority to conduct antitrust reviews.

DATES: The comment period expires January 3, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Comments may be submitted either electronically or in written form.

ADDRESSES: Written comments should be sent to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

You may also provide comments via the NRC's interactive rulemaking web site (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

Comments received on this rulemaking may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jack R. Goldberg, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1681; e-mail JRG1@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Purpose

In a license transfer application filed on October 27, 1998, by Kansas Gas and Electric Company (KGE) and Kansas City Power and Light Company (KCP&L) (Applicants), Commission approval pursuant to 10 CFR 50.80 was sought of a transfer of the Applicants' possession-only interests in the operating license for the Wolf Creek Generating Station, Unit 1, to a new company, Westar Energy, Inc. Wolf Creek is jointly owned by the Applicants, each of which owns an undivided 47 percent interest. The remaining 6 percent interest is owned by Kansas Electric Power Cooperative, Inc. (KEPCo). The Applicants requested that the Commission amend the operating license for Wolf Creek pursuant to 10 CFR 50.90 by deleting KGE and KCPL as licensees and adding Westar Energy in their place. KEPCo opposed the transfer on antitrust grounds, claiming that the transfer would have anticompetitive affects and would result in "significant changes" in the competitive market. KEPCo petitioned the Commission to intervene in the transfer proceeding and requested a hearing, arguing that the Commission should conduct an antitrust review of the proposed transfer under Section 105c of the Atomic Energy Act, 42, U.S.C. 2135(c). Applicants opposed the petition and request for a hearing.

By Memorandum and Order dated March 2, 1999, CLI–99–05, 49 NRC 199 (1999), the Commission indicated that although its staff historically has performed a "significant changes" review in connection with certain kinds of license transfers, it intended to consider in the Wolf Creek case whether to depart from that practice and "direct the NRC staff no longer to conduct significant changes reviews in license transfer cases, including the current case." In deciding this matter, the Commission stated that it expected to consider a number of factors, including its statutory mandate, its expertise, and its resources. Accordingly, the Commission directed the Applicants and KEPCo to file briefs on the single question: "whether as a matter of law or policy the Commission may and should eliminate all antitrust reviews in connection with license transfers and therefore terminate this adjudicatory proceeding forthwith." *Id.* at 200.

Because the issue of the Commission's authority to conduct antitrust reviews of license transfers is of interest to, and affects, more than only the parties directly involved in, or affected by, the proposed Wolf Creek transfer, the Commission in that case invited *amicus curiae* briefs from "any interested person or entity." CLI–99–05, 49 NRC at 200, n.1. (Briefs on the issue subsequently were received from a number of nonparties.) In addition, widespread notice of the Commission's intent to decide this matter in the Wolf Creek proceeding was provided by publishing that order on the NRC's web site and in the **Federal Register**, and also by sending copies to organizations known to be active in or interested in the Commission's antitrust activities. *Id.*

After considering the arguments presented in the briefs, and based on a thorough de novo review of the scope of the Commission's antitrust authority, the Commission concluded that the structure, language, and history of the Atomic Energy Act do not support its prior practice of conducting antitrust reviews of post-operating license transfers. The Commission stated:

> It now seems clear to us that Congress never contemplated such reviews. On the contrary, Congress carefully set out exactly when and how the Commission should exercise its antitrust authority, and limited the Commission's review responsibilities to the anticipatory, prelicensing stage, prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective antitrust relief was at its maximum. The Act's antitrust provisions nowhere even mention post-operating license transfers.
>
> The statutory scheme is best understood, in our view, as an implied prohibition against additional Commission antitrust reviews beyond those Congress specified. At the least, the statute cannot be viewed as a requirement of such reviews. In these circumstances, and given what we view as strong policy reasons against a continued expansive view of our antitrust authority, we have decided to abandon our prior practice of conducting antitrust reviews of post-operating license transfers * * *.

Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441, 446 (1999).

II. Discussion

The Commission's decision in Wolf Creek was based on a thorough consideration of the documented purpose of Congress's grant of limited antitrust authority to the NRC's predecessor, the Atomic Energy Commission, the statutory framework of that authority, the carefully-crafted statutory language, and the legislative history of the antitrust amendments to the Atomic Energy Act. The Commission's Wolf Creek decision explained that, in eliminating the theretofore government monopoly over atomic energy, Congress wished to provide incentives for its further development for peaceful purposes but was concerned that the high costs of nuclear power plants could enable the large electric utilities to monopolize nuclear generating facilities to the anticompetitive harm of smaller utilities. Therefore, Congress amended the Atomic Energy Act to provide for an antitrust review in the prelicensing stages of the regulatory licensing process. Congress focused its grant of antitrust review authority on the two steps of the Commission's licensing process: the application for the facility's construction permit and the application for the facility's initial operating license. It is at these early stages of the facility's licensing that the Commission historically was believed by Congress to be in a unique position to remedy a situation inconsistent with the antitrust laws by providing ownership access and related bulk power services to smaller electric systems competitively disadvantaged by the planned operation of the nuclear facility. Congress emphasized that the Commission's review responsibilities were to be exercised at the anticipatory, prelicensing stages prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective relief was at its maximum. See Wolf Creek at 446–448.

The Commission next focused on the structure and language of its antitrust review authority found exclusively in Section 105 of the Atomic Energy Act, 42 U.S.C. 2135. Section 105c provides for a mandatory and complete antitrust review at the construction permit phase of the licensing process when all entities who might wish ownership access to the nuclear facility and who are in a position to raise antitrust concerns are able to seek an appropriate licensing remedy from the Commission prior to actual operation of the facility. The construction permit antitrust review contrasts markedly from the only other review authorized by the statute. Specifically, Section 105c explicitly provides that the antitrust review provisions "shall not apply" to an application for an operating license unless "significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review * * * in connection with the construction permit for the facility." Section 105c.(2). Following this more limited and conditional review prior to initial operation of the facility, Section 105 makes clear that traditional antitrust forums are available to consider asserted anticompetitive conduct of Commission licensees, which are not relieved of operation of the antitrust laws. Section 105a, b. Further, if any Commission licensee is found to have violated any antitrust law, the Commission has the authority to take any licensing action it deems necessary. Section 105a. See *id.* at 447–452.

After describing this statutory framework and structure, the Commission then closely examined the language of its statutory antitrust review authority. The Commission found that it focused on only two types of applications, namely those for a construction permit and those for an initial operating license, but not for other types of applications explicitly mentioned in Section 103 of the Atomic Energy Act, such as applications to "acquire" or "transfer" a license. Even if an application to transfer an operating license were considered an application for an operating license for the transferee, the Commission found that the specific "significant changes" review process mandated by Section 105 does not lend itself to an antitrust review of post-operating license transfer applications. The Commission noted that its past practice of conducting "significant changes" reviews of post-operating license transfer applications did not use the construction permit review as the benchmark for comparison as mandated by Section 105, but instead examined whether there were significant changes compared with the previous *operating license review.* Like the statutory framework, the statutory language was found to be inconsistent with authorization to conduct post-operating license antitrust reviews and certainly could not be found to support a required review at that time. *See id.* at 452–456.

Finally, the Commission reviewed the legislative history of the antitrust amendments. It found that the Joint Committee on Atomic Energy, in its authoritative report on the Commission's prelicensing antitrust authority, explicitly clarified the scope of the terms "license application" and "application for a license" in the language which was enacted as Section 105. The Commission stated:

> In its Report, the Joint Committee[11] made clear that the term "license application" referred only to applications for construction permits or operating licenses filed as part of the "initial" licensing process for a new facility not yet constructed, or for modifications which would result in a substantially different facility:
>
> > The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review [sic-renew] a license, and also that the form of an application for construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases "any license application", "an application for a license", and "any application" as used in the clarified and revised subsection 105c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

See *id.* at 458, quoting Report By The Joint Committee On Atomic Energy: Amending The Atomic Energy Act of 1954, As Amended, To Eliminate The Requirement For A Finding Of Practical Value, To Provide For Prelicensing Antitrust Review Of Production And Utilization Facilities, And To Effectuate Certain Other Purposes Pertaining To Nuclear Facilities, H.R. Rep. No. 91–1470 (also Rep. No. 91–1247), 91st Cong., 2nd Sess., at 29 (1970), 3 U.S. Code and Adm. News 4981 (1970) ("Joint Committee Report") (*quoting* from legislative history of 1954 Act).

In summary, the Commission concluded that neither the language of the Commission's statutory authority to conduct antitrust reviews nor its legislative history support any authority to perform antitrust reviews of post-operating license transfer applications and certainly cannot be interpreted to require such reviews.

The Commission's Wolf Creek decision is published in its entirety at 64 FR 33916; June 24, 1999. Interested persons are encouraged to read the Wolf Creek decision in its entirety for a complete understanding of the Commission's interpretation of its statutory antitrust authority.

Because of the Commission's past practice of conducting antitrust reviews of license transfer applications, including those at the post-operating license stage of the regulatory process, the Commission in the Wolf Creek case also closely examined its rules of practice to determine whether they required or warranted revision to

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scheme." *See Power Reactor Development Co.* v. *International Union*, 367 U.S. 396, 409 (1961).

[11] The Joint Committee Report is the best source of legislative history of the 1970 amendments. *See Alabama Power Co.* v. *NRC*, 692 F.2d, 1362, 1368 (11th Cir. 1982). The Report was considered by both houses in their respective floor deliberations on the antitrust legislation and is entitled to special weight because of the Joint Committee's "peculiar responsibility and place * * * in the statutory

conform to its decision in the Wolf Creek decision. The Commission concluded that, notwithstanding its past interpretation of its rules as being consistent with an antitrust review of all transfer applications, including those involving post-operating license transfers, the rules themselves do not explicitly mandate such reviews. *Id.* at 462, 467.

The Commission's practice has been to perform a "significant changes" review of applications to directly transfer Section 103 construction permit and operating licenses to a new entity, including those applications for post-operating license transfers. While the historical basis for such reviews in the case of post-operating license transfer applications remains cloudy—it does not appear that the Commission ever explicitly focused on the issue of whether such reviews were authorized or required by law, but instead apparently assumed that they were [14]—the reasons, even if known, would have to yield to a determination that such reviews are not authorized by the Act. *See American Telephone & Telegraph Co.* v. *FCC*, 978 F.2d 727, 733 (D.C. Cir. 1992). We now in fact have concluded, upon a close analysis of the Act, that Commission antitrust reviews of post-operating license transfer applications cannot be squared with the terms or intent of the Act and that we therefore lack authority to conduct them. But even if we are wrong about that, and we possess some general residual authority to continue to undertake such antitrust reviews, it is certainly true that the Act nowhere requires them, and we think it sensible from a legal and policy perspective to no longer conduct them.

It is well established in administrative law that, when a statute is susceptible to more than one permissible interpretation, an agency is free to choose among those interpretations. *Chevron*, 467 U.S. at 842–43. This is so even when a new interpretation at issue represents a sharp departure from prior agency views. Id. at 862. As the Supreme Court explained in *Chevron*, agency interpretations and policies are not "carved in stone" but rather must be subject to re-evaluations of their wisdom on a continuing basis. *Id.* at 863–64. Agencies "must be given ample latitude to "adapt its rules and policies to the demands of changing circumstances.' " *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 42 (1983), *quoting Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968). An agency may change its interpretation of a statute so long as it justifies its new approach with a "reasoned analysis" supporting a permissible construction. *Rust* v. *Sullivan, 500 U.S. 173, 186–87 (1991); Public Lands Council* v. *Babbit*, 154 F.3d 1160, 1175 (10th Cir. 1998); *First City Bank* v. *National Credit Union Admin Bd.*, 111 F.3d 433, 442 (6th Cir. 1997); *see also Atchison, T. & S. F. Ry. Co.* v. *Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973); *Hatch* v. *FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981); *Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1971).

We therefore give due consideration to the Commission's established practice of conducting antitrust reviews of post-operating license transfer applications but appropriately accord little weight to it in evaluating anew the issue of Section 105's scope and whether, even if such reviews are authorized by an interpretation of Section 105, they should continue as a matter of policy. Moreover, as we noted above, the Commission's actual practice of reviewing license transfer applications for significant changes is on its face inconsistent with the statutory requirement regarding how significant changes must be determined. The fact that the statutory method does not lend itself to post-operating license transfer applications, while the different one actually used does logically apply, also must be considered and suggests that such a review is not required by the plain language of the statute and was never intended by Congress.

In support of the arguments advanced in KEPCo's briefs and some of the amicus briefs that the Commission must conduct antitrust reviews of transfer applications, various NRC regulations and guidance are cited. Just as the Commission's past practices cannot justify continuation of reviews unauthorized by statute, neither can regulations or guidance to the contrary. Before accepting the argument that our regulations require antitrust reviews of post-operating license transfer applications, however, they warrant close consideration.

Section 50.80 of the Commission's regulations, 10 CFR 50.80, "Transfer of licenses," provides, in relevant part:

> (b) An application for transfer of a license shall include [certain technical and financial information described in sections 50.33 and 50.34 about the proposed transferee] as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, the information required by § 50.33a.

Section 50.33a, "Information requested by the Attorney General for antitrust review," which by its terms applies only to applicants for construction permits, requires the submittal of antitrust information in accordance with 10 CFR Part 50, Appendix L. Appendix L, in turn, identifies the information "requested by the Attorney General in connection with his review, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, of certain license applications for nuclear power plants." "Applicant" is defined in Appendix L as "the entity applying for authority to construct or operate subject unit and each corporate parent, subsidiary and affiliate." "Subject unit" is defined as "the nuclear generating unit or units for which application for construction or operation is being made." Appendix L does not explicitly apply to applications to transfer an operating license.

KEPCo argues that the section 50.80(b) requirement, in conjunction with the procedural requirements governing the filing of applications discussed below, requires the submittal of antitrust information in support of post-operating license transfer applications and that the Wolf Creek case cannot lawfully be dismissed without a "significant changes" determination. *See* KEPCo Brief at 11. While we agree that section 50.80 may imply that antitrust information is required for purposes of a "significant changes" review, linguistically it need not be read that way. The Applicants plausibly suggest that the phrase "the license *to be* issued" could be interpreted to apply only to entities that have not yet been issued an initial license. *See* App. Brief at 11.[15] Moreover, neither this regulation nor any other states the purpose of the submittal of antitrust information. For applications to construct or operate a proposed facility, it is clear that section 50.80(b), in conjunction with section 50.33a and Appendix L, requires the information specified in Appendix L for purposes of the Section 105c antitrust review, for construction permits, and for the "significant changes" review for operating licenses. But for applications to transfer an existing operating license, there are other Section 105 purposes which could be served by the information. Such information could be useful, for example, in determining the fate of any existing antitrust license conditions relative to the transferred license, as well as for purposes of the Commission's Section 105b responsibility to report to the Attorney General any information which appears to or tends to indicate a violation of the antitrust laws.

While we acknowledge that information submitted under section 50.80(b) has not been used for these purposes in the past, and has instead been used to develop "significant changes" findings, the important point is that section 50.80(b) is simply an information submission rule. It does not, in and of itself, mandate a "significant changes" review of license transfer applications. No Commission rule imposes such a legal requirement.

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[14] Until recently, the Commission's staff applied the "significant changes" review process to both "direct" and "indirect" transfers. Indirect transfers involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license. The vast majority of indirect transfers involve the purchase or acquisition of securities of the licensee (*e.g.*, the acquisition of a licensee by a new parent holding company). In this type of transfer, existing antitrust license conditions continue to apply to the same licensee. The Commission recently did focus on antitrust reviews of indirect license transfer applications and approved the staff's proposal to no longer conduct "significant changes" reviews for such applications because there is no effective application for an operating license in such cases. See Staff Requirements Memorandum (November 18, 1997) on SECY–97–227, Status Of Staff Actions On Standard Review Plans For Antitrust Reviews And Financial Qualifications And Decommissioning-Funding Assurance Reviews.

[15] This reading is consistent with the history of section 50.80(b). Its primary purpose appears to have been to address transfers which were to occur before issuance of the initial (original) operating license, transfers which unquestionably fall within the scope of Section 105c. *See Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, 587–88 (1978). When section 50.80(b) was revised in 1973 to require submission of the antitrust information specified in section 50.33a, the stated purpose was to obtain the "*prelicensing* antitrust advice by the Attorney General." 38 FR 3955, 3956 (February 9, 1973) (emphasis added).

Nonetheless, in conjunction with this decision, we are directing the NRC staff to initiate a rulemaking to clarify the terms and purpose of section 50.80 (b).[16]

KEPCo also argues that the Commission's procedural requirements governing the filing of license applications supports its position that antitrust review is required in this case. *See* KEPCo Brief at 11–13. The Applicants disagree, arguing that nothing in those regulations states that transfer applications will be subject to antitrust reviews. *See* App. Reply Brief at 3. For the same reasons we believe that the specific language in Section 105c does not support antitrust review of post-operating license transfer applications, we do not read our procedural requirements to indicate that there will be an antitrust review of transfer applications. Indeed, the language in 10 CFR 2.101(e)(1) regarding operating license applications under Section 103 tracks closely the process described in Section 105c. As stated in 10 CFR 2.101(e)(1), the purpose of the antitrust information is to enable the staff to determine "whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the *previous antitrust review in connection with the construction permit.*" (Emphasis added.) As explained above, this description of the process for determining "significant changes" is consistent with an antitrust review of the initial operating license application for a facility but wholly inconsistent with an antitrust review of post-operating license transfer applications.

Id. at 459–463 (footnotes in original).

Indeed, after considering the various interpretations of the rules advanced by the parties and *amici curiae* in the Wolf Creek proceeding, the Commission concluded: "Not one comma of the Commission's current regulations need be changed in the wake of a cessation of such reviews, although because of the NRC's past practice of conducting such reviews, we have decided that clarification of our rules is warranted." *Id.* at 467. Therefore, the Commission directed that the rules be clarified "by explicitly limiting which types of applications must include antitrust information," *Id.* at 463, and that Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection with Its Antitrust Review of Operating License Applications for Nuclear Power Plants," and NUREG–1574, "Standard Review Plan on Antitrust Reviews," also be clarified.

The proposed clarifications make clear that, consistent with the decision in the Wolf Creek case, no antitrust information is required to be submitted as part of any application for Commission approval of a post-operating license transfer. Because the current regulations do not clearly specify which types of applications are not subject to antitrust review, these proposed clarifying amendments will bring the regulations into conformance with the Commission's limited statutory authority to conduct antitrust reviews and its decision that such reviews of post-operating license transfer applications are not authorized or, if authorized, are not required and not warranted.[1]

Direct transfers of facility licenses which are proposed *prior* to the issuance of the initial operating license for the facility, however, are and continue to be subject to the Commission's antitrust review.[2] In order to make clear that the Commission's regulations do not require antitrust information as part of applications for post-operating license transfers, the Commission is proposing to amend its regulations by specifying that antitrust information must be submitted only with applications for construction permits and "initial" operating licenses for the facility and applications for transfers of licenses prior to the issuance of the "initial" operating license. Thus, the word "initial" would be inserted to modify "operating license" in appropriate locations and the word "application" would be modified where necessary to make clear that the application must be for a construction permit or initial operating license. Appendix L to 10 CFR Part 50, "Information Requested by the Attorney General for Antitrust Review [of] Facility License Applications," would be similarly amended and clarified and a new definition would be added there to define "initial operation" to mean operation pursuant to the first operating license issued by the Commission for the facility.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in the proposed revisions to improve the organization and readability of the existing language of paragraphs being revised. These types of changes are not discussed further in this notice. The NRC requests comment on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC proposes to eliminate the submission of antitrust information in connection with post-operating license applications for transfers of facility operating licenses. This rule would not constitute the establishment of a standard that establishes generally-applicable requirements.

V. Finding of No Significant Environmental Impact and Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, falls within the categorical exclusions appearing at 10 CFR 51.22 (c)(1), (2), and (3)(i) and (iii) for which neither an Environmental Assessment nor an Environmental Impact Statement is required.

VI. Paperwork Reduction Act Statement

The proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

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[16] In one important respect the language of section 50.80(b), quoted above, in fact supports the Commission's analysis of Section 105 and its legislative history. The phrase "if the application were for an *initial license*" certainly demonstrates that, consistent with the clearly intended focus of Section 105c on antitrust reviews of applications for initial licenses, the Commission has long distinguished initial operating license applications from license transfer applications. Be that as it may, clarification of section 50.80(b) will be appropriate in the wake of our decision that our antitrust authority does not extend to antitrust reviews of post-operating license transfer applications.

[1] The same principle holds in the context of Part 52 of the Commission's regulations. Under that Part, the operating license is issued simultaneously with the construction permit in a combined license. The application for the combined license is subject to the agency's antitrust review, but antitrust reviews of post-combined license transfer applications are not authorized or, if authorized, are not required and not warranted.

[2] The paragraph speaks only to the historically typical case in which a construction permit (CP) is issued first, and then years later an operating license (OL). Under Part 52, the CP and OL are issued simultaneously, and the antitrust review is done before issuance. Thus, there could be no direct transfer of the facility CP before issuance of the initial OL.

VII. Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The proposed revisions to the regulations clarify that antitrust information is required to be submitted only in connection with applications for construction permits and initial operating licenses and not in connection with applications for post-operating license transfers. Therefore, to the extent that, in the past, antitrust information was submitted with applications for post-operating license transfers, these proposed revisions will reduce the burden on such applicants by eliminating the submission of antitrust information and the costs associated with preparing and submitting that information. In short, the proposed revisions will result in no additional burdens or costs on any applicants or licensees and will reduce burdens and costs on others. Clearly, because the proposed revisions only affect when antitrust information need be submitted to the Commission, there will be no effect on the public health and safety or the common defense and security, and they will continue to be adequately protected. The cost savings to applicants resulting from these revisions justify taking this action.

To determine whether the amendments contained in this proposed rule were appropriate, the Commission considered the following options:

1. *The No-Action Alternative*

This alternative was considered because the current rules are not explicitly inconsistent with the Commission's decision that antitrust reviews of post-operating license transfers are not authorized, or at least are not required and should be discontinued. Because the current rules have been interpreted to be consistent with the Commission's practice of conducting such reviews, however, in that they have been interpreted to require the submission of antitrust information with post-operating license transfer applications, the Commission concluded that clarification of the rules are appropriate. Therefore, the Commission determined that this alternative is not acceptable.

2. *Clarification of 10 CFR Parts 2 and 50*

For the reasons explained above and in the Commission's Wolf Creek decision, the Commission decided that its rules could and should be made clearer that no antitrust information should be submitted with applications for post-operating license transfers because antitrust reviews of such applications are not authorized or, if authorized, should be discontinued as a matter of policy. Therefore, to make clear that there is no need to submit antitrust information in connection with post-operating license transfers, and because the proposed revisions would result in cost savings to certain applicants, with no additional costs or burdens on anyone, this option was chosen.

IX. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. This proposed rule affects only the licensing and operation of nuclear power plants. The entities that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). Furthermore, this proposed rule does not subject any entities to any additional requirements, nor does it require any additional information from any entity. Instead, the proposed rule, if adopted, will clarify that certain information is not required to be submitted in connection with applications for post-operating license transfers.

X. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109. The rule does not constitute a backfit because it does not propose a change to or additions to requirements for existing structures, systems, components, procedures, organizations or designs associated with the construction or operation of a facility. Rather, this proposed rule eliminates the need for certain applicants to submit antitrust information with their applications.

XI. Proposed Amendments

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified Information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 2 and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority section for part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42

U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.101 paragraphs (e)(1) and (e)(2) are revised to read as follows:

§ 2.101 Filing of application.

* * * * *

(e)(1) Upon receipt of the antitrust information responsive to Regulatory Guide 9.3 submitted in connection with an application for a facility's initial operating license under section 103 of the Act, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, shall publish in the **Federal Register** and in appropriate trade journals a "Notice of Receipt of Initial Operating License Antitrust Information." The notice shall invite persons to submit, within thirty (30) days after publication of the notice, comments or information concerning the antitrust aspects of the application to assist the Director in determining, pursuant to section 105c of the Act, whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the previous antitrust review in connection with the construction permit. The notice shall also state that persons who wish to have their views on the antitrust aspects of the application considered by the NRC and presented to the Attorney General for consideration should submit such views within thirty (30) days after publication of the notice to: U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Chief, Policy Development and Technical Support Branch.

(2) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, after reviewing any comments or information received in response to the published notice and any comments or information regarding the applicant received from the Attorney General, concludes that there have been no significant changes since the completion of the previous antitrust review in connection with the construction permit, a finding of no significant changes shall be published in the **Federal Register**, together with a notice stating that any request for reevaluation of such finding should be submitted within thirty (30) days of publication of the notice. If no requests for reevaluation are received within that time, the finding shall become the NRC's final determination. Requests for a reevaluation of the no significant changes determination may be accepted after the date when the Director's finding becomes final but before the issuance of the initial operating license only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority section for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391. Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

4. In § 50.42 paragraph (b) is revised to read as follows:

§ 50.42 Additional standards for class 103 licenses

* * * * *

(b) Due account will be taken of the advice provided by the Attorney General, under subsection 105c of the Act, and to any evidence that may be provided during any proceedings in connection with the antitrust aspects of the application for a construction permit or the facility's initial operating license.

(1) For this purpose, the Commission will promptly transmit to the Attorney General a copy of the construction permit application or initial operating license application. The Commission will request any advice as the Attorney General considers appropriate in regard to the finding to be made by the Commission as to whether the proposed license would create or maintain a situation inconsistent with the antitrust laws, as specified in subsection 105a of the Act. This requirement will not apply—

(i) With respect to the types of class 103 licenses which the Commission, with the approval of the Attorney general, may determine would not significantly affect the applicant's activities under the antitrust laws; and

(ii) To an application for an initial license to operate a production or utilization facility for which a class 103 construction permit was issued unless the Commission, after consultation with the Attorney General, determines such review is advisable on the ground that significant changes have occurred subsequent to the previous review by the Attorney General and the Commission.

(2) The Commission will publish any advice it receives from the Attorney General in the **Federal Register**. After considering the antitrust aspects of the application for a construction permit or initial operating license, the Commission, if it finds that the construction permit or initial operating license to be issued or continued, would create or maintain a situation inconsistent with the antitrust laws specified in subsection 105a of the Act, will consider, in determining whether a construction permit or initial operating license should be issued or continued, other factors the Commission considers necessary to protect the public interest, including the need for power in the affected area.[1]

5. In § 50.80 paragraph (b) is revised to read as follows:

§ 50.80 Transfer of licenses.

* * * * *

(b) An application for transfer of a license shall include as much of the information described in §§ 50.33 and

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[1] As permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to Dec. 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Atomic Energy Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the **Federal Register** of notice of filing of the application for an operating license or Dec. 19, 1970, whichever is later, the Commission may issue a construction permit or operating license in advance of consideration of, and findings with respect to the antitrust aspects of the application, provided that the permit or license so issued contains the condition specified in § 50.55b.

50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 construction permit or initial operating license, the information required by § 50.33a. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards. The application shall include also a statement of the purposes for which the transfer of the license is requested, the nature of the transaction necessitating or making desirable the transfer of the license, and an agreement to limit access to Restricted Data pursuant to § 50.37. The Commission may require any person who submits an application for license pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility involved.

* * * * *

6. In Appendix L to Part 50, the heading of Appendix L and Definition 1 are revised, Definitions 3 through 6 are redesignated as Definitions 4 through 7, and a new Definition 3 is added, to read:

Appendix L to Part 50—Information Requested by the Attorney General for Antitrust Review of Facility Construction Permits and Initial Operating Licenses

* * * * *

I. Definitions

1. *Applicant* means the entity applying for authority to construct or initially operate subject unit and each corporate parent, subsidiary and affiliate. Where application is made by two or more electric utilities not under common ownership or control, each utility, subject to the applicable exclusions contained in § 50.33a, should set forth separate responses to each item herein.

* * * * *

3. *Initially operate* a unit means to operate the unit pursuant to the first operating license issued by the Commission for the unit.

* * * * *

Dated at Rockville, Maryland, this 27th day of October 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–28593 Filed 11–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG15

Clarification and Addition of Flexibility

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations on spent fuel storage to specify those sections of 10 CFR Part 72 that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate. The proposed amendment is consistent with past NRC staff licensing practice and would eliminate any ambiguity for these persons by clarifying which portions of Part 72 apply to their activities. This proposed rule would eliminate the necessity for repetitious Part 72 specific license hearing reviews of cask design issues that the Commission previously considered and resolved during approval of the cask design. This proposed rule would also allow an applicant for a Certificate of Compliance (CoC) to begin cask fabrication under an NRC-approved quality assurance (QA) program before the CoC is issued.

DATES: Submit comments by January 18, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, the regulatory analysis, and a Table of Applicability, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Anthony DiPalo, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6191, or e-mail at AJD@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Commission's regulations at 10 CFR Part 72 were originally designed to provide specific licenses for the storage of spent nuclear fuel in an independent spent fuel storage installation (ISFSI) (45 FR 74693; November 12, 1980). In 1990, the Commission amended Part 72 to include a process for approving the design of spent fuel storage casks and issuing a CoC (Subpart L) and for granting a general license to reactor licensees (Subpart K) to use NRC-approved casks for the storage of spent nuclear fuel (55 FR 29181; August 17, 1990). Although the Commission intended that the requirements imposed in Subpart K for general licensees be used in addition to, rather than in lieu of, appropriate existing requirements, ambiguity exists as to which Part 72 requirements, other than those in Subpart K, are applicable to general licensees.

In addition, the Commission has identified two aspects of Part 72 where it would be desirable to reduce the regulatory burden and provide additional flexibility to applicants for a specific license or for a CoC.

First, the staff anticipates that the Commission may receive several applications for specific licenses for ISFSI's that will propose using storage cask designs previously approved by NRC under the provisions of Subpart L of Part 72 (i.e., cask designs that have been issued a CoC and are listed in § 72.214). Section 72.18, "Elimination of repetition," permits an applicant to incorporate by reference information contained in previous applications, statements, or reports filed with the NRC, including cask designs approved under Subpart L. Section 72.46 requires that in an application for a license under Part 72, the Commission shall issue or cause to be issued a notice of proposed action and opportunity for a license hearing in accordance with 10 CFR Part 2. Under current Part 72 regulations, the adequacy of the design of these previously approved casks could be at issue during a § 72.46 license hearing for a specific license application (i.e., issues on the cask design which have been previously addressed by the Commission, including resolution of public comments, that could be the subject of license hearings).

Second, § 72.234(c), which was part of the 1990 amendments to Part 72, prohibits an applicant for a CoC from beginning fabrication of a spent fuel cask before the NRC issues a CoC for the cask design. However, an applicant for a specific license is currently allowed to begin fabrication of spent fuel storage casks before the license is issued. At the time the 1990 rule was proposed, a commenter suggested that a fabricator (i.e. applicant for a CoC) be allowed to take the risk of beginning fabrication before the receipt of the CoC. However, the Commission took the position, "[i]f a vendor has not received the certificate, then the vendor does not have the necessary approved specifications and may design and fabricate casks to meet incorrect criteria," (55 FR 29185; August 17, 1990).

Since 1990, the Commission has reviewed and approved several cask designs. These reviews and follow-up requests for additional information have established the NRC's expectation as to how its criteria for cask design and fabrication should be met. In January 1997, the NRC published NUREG–1536, "Standard Review Plan for Dry Cask Storage Systems," informing CoC applicants of its expectations in reviewing cask designs. Since then, the Commission has granted six exemptions from § 72.234(c) allowing applicants to begin fabrication prior to issuance of the CoC. One exemption request is currently under review by NRC. Additional exemption requests from § 72.234(c) requirements are anticipated.

Discussion

Clarification

This proposed rulemaking would eliminate the regulatory uncertainty that now exists in Part 72 by adding a new section § 72.13 which specifies which Part 72 regulations apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC.

Flexibility

First, this proposed rule would eliminate the necessity for repetitious § 72.46 specific license hearing board reviews of cask design issues that the Commission has previously considered during approval of the cask design. The Commission anticipates receipt of several applications, for specific ISFSI licenses, that will propose using storage cask designs previously approved by the NRC. Applicants for a specific license presently have the authority under § 72.18 to incorporate by reference into their application, information contained in previous applications, statements, or reports filed with the Commission, including information from the Safety Analysis Report on a cask design previously approved by the NRC under the provisions of Subpart L. The Commission believes previously reviewed cask design issues should be excluded from the scope of a license hearing. This is because the public had the right during the Subpart L approval process to comment on the adequacy of the cask design. The right of the public to comment on cask designs would not be affected by this rulemaking. For new cask design issues, this rulemaking would not limit the scope of staff's review of the application or of license hearings. For example, a cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a licensing hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.*, meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design may be raised as issues at a potential hearing. Furthermore, the rights of the public to petition the Commission under § 2.206 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking.

Second, the proposed rule would permit an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (*i.e*, the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this proposed rule would eliminate NRC's disparate treatment between general and specific licensees. In addition to allowing an applicant for a CoC to begin fabrication of a cask, comments would be requested on the need for a general licensee to also begin fabrication of a cask before issuance of the CoC. The Commission and the staff have previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense, or security and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication would also be received. This rulemaking would eliminate the need for such exemption requests.

This proposed rule would revise the quality assurance regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meet the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this proposed rule is a conditional relaxation to permit fabrication before the CoC is issued. Since NRC staff would approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program prior to fabrication is a question of timing (*e.g.*, when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or scheduler risks associated with fabrication of casks prior to issuance of the CoC would be borne by the applicant. The Commission believes that the proposed rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants prior to issuance of the license or CoC. This rule would require that a cask for which fabrication was initiated before issuance of the CoC must conform to the issued CoC before it may be used.

This proposed rule would also require an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this proposed rule would impose a separate requirement, rather it would require different timing on when the QA program is approved.

This proposed rule would also revise § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC.

As a result of this proposed rule, both licensees and certificate holders will be required to accomplish any fabrication activities under an NRC-approved QA program. The Commission believes this proposed rule's increase in flexibility and change in timing of approval of a QA program is not a backfit.

In addition to an applicant's fabrication of a cask design prior to issuance of the CoC, the Commission is requesting comments on the need for a general licensee to also begin fabrication of a cask design, before the cask design is approved and the CoC is issued.

Section-by-Section Discussion of Proposed Amendments

This proposed rule would make several amendment changes to Part 72 which are characterized as follows. This proposed rule would eliminate the regulatory uncertainty that now exists in Part 72 and explicitly specifies which regulations apply to general licensees, specific licensees, and certificate holders. The proposed rule would eliminate the necessity for repetitious reviews in a specific license hearing of cask design issues that the Commission previously considered during approval of the cask design. The proposed rule would permit an applicant for approval of a spent fuel storage cask design to begin cask fabrication, at its own risk, before the NRC has issued the CoC. The proposed rule would require that NRC approval of the quality assurance program be obtained before cask fabrication can commence.

Section 72.13 Applicability

This new section identifies those sections of Part 72 that apply to specific licenses, general licenses, and Certificates of Compliance. No changes to the underlying regulations would result from this amendment, it is intended for clarification only.

Section 72.46 Public Hearings

A new paragraph (e) would be added to this section to indicate that the scope of any license hearing, for an application for an ISFSI license, shall not include any issues that were previously resolved by the Commission during the approval process of the design of a spent fuel storage cask, when the application incorporates by reference, information on the design of an NRC-approved spent fuel storage cask. The Commission considers rereview of cask design issues, which have been previously resolved as an unnecessary regulatory burden on applicants causing unnecessary expenditure of staff and hearing board resources. For example, the cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.*, meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design may be raised as issues at a potential hearing.

This proposed rulemaking would not limit the scope of staff's review of the application or of license hearings, for new cask design issues that were not considered by the Commission during previous approval of the cask design. In addition, the rights of the public to petition the Commission under § 2.206 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking.

Section 72.86 Criminal Penalties

Paragraph (b) of this section lists those Part 72 regulations for which criminal sanctions may not be issued, because the Commission considers these sections to be non-substantive regulations issued under the provisions of § 161(b), (i), or (o) of the Atomic Energy Act of 1954 (AEA).

Substantive regulations are those regulations that create duties, obligations, conditions, restrictions, limitations, and prohibitions (see final rule on "Clarification of Statutory Authority for Purposes of Criminal Enforcement" (57 FR 55062; November 24, 1992)). The Commission considers that the new § 72.13 would not be a substantive regulation, issued under the provisions of § 161(b), (i), or (o) of the AEA. Therefore, paragraph (b) of this section would be revised to add § 72.13 to indicate that willful violations of this new section would not be subject to criminal penalties.

Section 72.140 Quality Assurance Requirements

Paragraph (c)(1) would be revised to add applicants for a specific license and applicants for a CoC. Paragraph (c)(2) would be revised to add the requirement that an applicant for a specific license shall obtain NRC-approval of its QA program before beginning fabrication or testing of a spent fuel storage cask. Paragraph (c)(3) would be revised to indicate that an applicant for a CoC shall obtain NRC-approval of its QA program requirement before beginning fabrication or testing of a spent fuel storage cask. These revisions would result in consistent treatment of general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC. These revisions would also ensure that the NRC has reviewed and approved a QA program before commencement of any fabrication or testing activities.

Paragraph (d) would be revised to clarify the use of previously approved QA programs by a licensee, applicant for a license, certificate holder, and applicant for a CoC. The Commission expects these persons to notify the NRC of their intent to use a QA program previously approved by the NRC under the provisions of Parts 50, 71, or 72.

Section 72.234 Conditions of approval

Paragraph (c) of this section would be revised to permit an applicant for a CoC to begin fabrication of spent fuel storage casks (under an NRC-approved QA program), at the applicant's own risk, before the NRC issues the CoC. The Commission expects that any risks associated with fabrication (*e.g.*, rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. The NRC would also require that a cask fabricated before the CoC was issued conform to the issued CoC before spent fuel is loaded. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

Section 72.236 Specific Requirements For Spent Fuel Storage Cask Approval

The introductory text in this section before paragraph (a) would be revised as a conforming change to § 72.234(c) to indicate that all of the requirements in this section apply to both certificate holders and applicants for a CoC.

Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the proposed rule to amend 10 CFR 72.140, 72.234, and 72.236 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this proposed rule is classified as Category NRC. Compatibility is not required for Category NRC regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995, (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC is proposing to amend its regulations on spent fuel storage in those sections of 10 CFR Part 72 that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate. This proposed rule would eliminate the necessity for repetitious Part 72 specific license hearing reviews of cask design issues that the Commission previously considered and resolved during approval of the cask design. This proposed rule would also allow an applicant for a Certificate of Compliance (CoC) to begin cask fabrication before the CoC is issued. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in the categorical exclusion in 10 CFR 51.22(c)(2) and (3). This action represents amendments to the regulations which are corrective or of a minor or nonpolicy nature and do not substantially modify the existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule would decrease the burden on licensees by eliminating the requirement to request an exemption to begin cask design before a license is issued, and by allowing all licensees and CoC holders to reference previously approved QA programs. The public burden reduction for this information collection would average 200 hours per exemption request. However, because no burden has previously been approved for exemption requests and no licensees are expected to reference previously approved QA programs in the foreseeable future, no burden reduction can be taken for this rulemaking. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

Statement of the Problem and Objective

The Commission's regulations at 10 CFR Part 72 were originally designed to provide specific licenses for the storage of spent nuclear fuel in independent spent fuel storage installations (ISFSIs) (45 FR 74693; November 12, 1980). In 1990, the Commission amended Part 72 to include a process for approving the design of spent fuel storage casks and issuance of a CoC (Subpart L); and for granting a general license to reactor licensees (Subpart K) to use NRC-approved casks for storage of spent nuclear fuel (55 FR 29181; August 17, 1990). Although the Commission intended that the requirements imposed in Subpart K for general licensees be used in addition to, rather than in lieu of, appropriate existing requirements, ambiguity exists as to which of the Part 72 requirements, other than those in Subpart K, are applicable to general licensees. This rulemaking would resolve that ambiguity.

In addition, the Commission has identified two aspects of Part 72 where it would be desirable to reduce the regulatory burden for applicants, NRC staff, and hearing boards and to afford additional flexibility to applicants for a CoC:

First, this proposed rule would eliminate the necessity for repetitious reviews, during a Part 72 specific license hearing (§ 72.46), of cask design issues that the Commission has previously considered during approval of the cask design. The Commission anticipates receipt of several applications, for specific ISFSI licenses, that will propose using storage cask designs previously approved by the NRC. Applicants for a specific license presently have the authority under § 72.18 to incorporate by reference into their application, information contained in previous applications, statements, or reports filed with the Commission, including information from the Safety Analysis Report for a cask design previously approved by the NRC under the provisions of Subpart L. The Commission believes previously reviewed cask design issues should be excluded from the scope of a license hearing. This is because the public had the right to question the adequacy of the cask design, during the approval process under Subpart L. The right of the public to comment on cask designs would not be affected by this rulemaking. For new cask design issues, this rulemaking would not limit the scope of staff's review of the application or of license hearings. For example, a cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (e.g., meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design may be raised as issues at a potential hearing. In addition, the rights of the public to petition the Commission under § 2.206 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking.

Second, the proposed rule would permit an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (i.e, the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this proposed rule would eliminate NRC's disparate treatment between general and specific licensees. In addition to allowing an applicant for a CoC to begin fabrication of a cask prior to issuance of the CoC, comments would be requested on the need for a general licensee to also begin fabrication of a cask before the CoC is issued. The Commission and the staff have previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense, or security and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication would also be received. Therefore, this rulemaking would eliminate the need for such exemption requests.

This proposed rule would revise the quality assurance regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meets the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this proposed rule is a conditional relaxation to permit fabrication before the CoC is issued. Since NRC staff would approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program prior to fabrication is a question of timing (e.g., when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or scheduler risks associated with fabrication of casks prior to issuance of the CoC would be borne by the applicant. The Commission believes that the proposed rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants prior to issuance of the license or CoC. This rule would require that a cask for which fabrication was initiated before issuance of the CoC must conform to the issued CoC before it may be used.

This proposed rule would also require an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this proposed rule would impose a separate requirement, rather it would require different timing on when the QA program is approved.

This proposed rule would also revise § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC.

As a result of this proposed rule both licensees and certificate holders will be required to accomplish any fabrication activities under an NRC-approved QA program. The Commission believes this proposed rule's increase in flexibility and change in timing of approval of a QA program is not a backfit.

The Commission expects that any risks associated with fabrication (e.g., rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. In particular, the staff would require that a cask, which was fabricated before the CoC was issued, must conform with the issued CoC. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

Identification and Preliminary Analysis of Alternative Approaches to the Problem

- Option 1—Conduct a rulemaking that would address the regulatory problems as described above.

First, this proposed rulemaking would specify the sections in Part 72 that apply to general licensees, specific licensees, and certificate holders. This would eliminate the need to resolve on a case-by-case basis questions on which Part 72 sections are applicable to those activities. The proposed rule is administrative in nature and other than the cost of rulemaking, would have no impact.

Second, this rulemaking would reduce the regulatory burden on applicants, staff, and hearing board resources relating to any § 72.46 license hearings involving cask design issues associated with an application for a specific license, where the cask design has been previously approved by the NRC. Elimination of the need for repetitious reviews of cask design issues and licensing hearings on these same cask design issues together would save 1.0 FTE of applicant effort and 1.0 FTE of staff effort for each license application received. NRC expects to receive three applications in 1999 and six applications each year in 2000 and 2001. While applicants for a license are currently allowed to incorporate by reference information on cask design information, this rulemaking would reduce applicant burden associated with providing additional information on the cask design and responding to hearing board contentions on issues which have been previously reviewed.

Third, this rulemaking would also provide increased flexibility to applicants for a CoC by allowing them to begin cask fabrication, before the CoC is issued. This rulemaking would reduce the burden on applicants for a CoC associated with submission of requests for exemption from § 72.234(c). Certificate holders have requested these exemptions to take advantage of favorable business conditions (*i.e.*, they want to begin fabrication of casks a soon as possible to meet their contract obligations). Elimination of the need for submission and review of exemption requests from the cask fabrication requirement of § 72.234(c) would save 0.1 FTE of applicant effort and 0.1 FTE of staff effort, for each exemption request not received. Without this action, NRC expects that two requests for exemption from § 72.234(c) would be received each year in 1999 and beyond. This rulemaking would also eliminate the disparate treatment of general and specific licensees under Part 72, with respect to fabrication of spent fuel storage casks. This rulemaking would also reduce staff burden associated with review of such exemption requests. Because a certificate holder is currently required by § 72.140(c)(3) to obtain NRC approval of its QA program before commencing fabrication, and the staff is currently required to review and approve such programs, no increase in applicant burden or staff resources would occur with respect to the proposed change to § 72.140(c)(3). However, the timing of the staff review and approval of the QA program would change.

The impact of this option consists primarily of a reduction in regulatory burden on an applicant for a specific license, a reduction in regulatory burden and increase in regulatory flexibility for an applicant for a cask design, and a reduction in the expenditure of NRC resources involved in reviewing applications for a specific license, supporting license hearings, and reviewing requests for exemption from § 72.234(c). This option would result in the expenditure of NRC resources to conduct this rulemaking.

- Option 2—No action.

The benefit of the no action alternative is that NRC resources will be conserved because no rulemaking would be conducted. The impact of this alternative would be that the regulatory problems described above would not be addressed. Instead, applicant and staff resources will continue to be expended on repetitious reviews of previously approved cask designs, conducting licensing hearings on previously approved cask design issues, and processing requests for exemption from § 72.234(c), to allow fabrication of casks.

Estimation and Evaluation of Values and Impacts

The clarification of which Part 72 sections apply to specific licensees, applicants for a specific license, general licensees, certificate holders, and applicants for a CoC alone would have no impacts other than the cost of rulemaking, because this action is administrative in nature.

The elimination of the need for repetitious reviews of cask design issues, that were previously reviewed by the NRC, and elimination of licensing hearings on these same cask design issues together would save 1.0 FTE of applicant effort and 1.0 FTE of staff effort for each license application received. NRC expects to receive three applications in 1999 and six applications each year in 2000 and 2001.

The elimination of the need for submission and review of exemption requests from the cask fabrication requirement of § 72.234(c) would save 0.1 FTE of applicant effort and 0.1 FTE of staff effort, for each exemption request not received. Without this action, NRC expects that two requests for exemption from § 72.234(c) would be received each year in 1999 and beyond.

Presentation of Results

The recommended action is to adopt the first option because it will set forth a clear regulatory base for Part 72 general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC.

The recommended action would eliminate the need for repetitious license hearing adjudication of cask design issues that the Commission has previously reviewed in approving the cask design, when an applicant for a specific license has incorporated by reference a cask design that has been approved by the Commission under the provisions of Subpart L. This is because the public had the right to question the adequacy of the cask design during the approval process under Subpart L. The right of the public to comment on cask designs would not be affected by this rulemaking. This rulemaking would not limit the scope of staff's review of the application or license hearings for issues which were not considered by the Commission during previous approval of the cask design. In addition, the rights of the public to petition the Commission under § 2.206 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking. The Commission considers rereview of cask design issues which have been previously evaluated and dispositioned as an unnecessary regulatory burden on applicants and an unnecessary expenditure of staff and hearing board resources. For example, the cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.*, meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design may be raised as issues at a potential hearing. Therefore, this action has no safety impact.

The recommended action would permit an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (*i.e*, the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this proposed rule would eliminate NRC's disparate treatment between general and specific licensees. In addition to allowing an applicant for a CoC to begin fabrication of a cask prior to issuance of the CoC, comments would be requested on the need for a general licensee to also begin fabrication of a cask before the CoC is issued. The Commission and the staff have previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense, or security and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication would also be received. Therefore, this rulemaking would eliminate the need for such exemption requests.

This proposed rule would revise the quality assurance regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meet the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this proposed rule is a conditional relaxation to permit fabrication before the CoC is issued. Since NRC staff would approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program prior to fabrication is a question of timing (*e.g.*, when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or scheduler risks associated with fabrication of casks prior to issuance of the CoC would be borne by the applicant. The Commission believes that the proposed rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants prior to issuance of the license or CoC. This rule would require that a cask for which fabrication was initiated before issuance of the CoC must conform to the issued CoC before it may be used.

This proposed rule would also require an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this proposed rule would impose a separate requirement, rather it would require different timing on when the QA program is approved.

This proposed rule would also revise § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC.

As a result of this proposed rule, both licensees and certificate holders will be required to conduct any fabrication activities under an NRC-approved QA program. The Commission believes this proposed rule's increase in flexibility and change in timing of approval of a QA program is not a backfit. Therefore, these actions have no safety impact.

The Commission expects that any risks associated with fabrication (*e.g.*, rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. In particular, the staff would require that a cask, which was fabricated before the CoC was issued, must conform with the issued CoC. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

The total cost of this rulemaking to the NRC is estimated at 1.9 FTE. The total savings to the NRC for this rulemaking is estimated at 16.5 FTE over a 3-year period (1999 through 2001). The total savings to applicants is estimated at 15.0 FTE over the same 3-year period. Therefore, this action would be considered cost beneficial to both NRC and applicants, would reduce the burden on applicants, and would improve the efficiency and effectiveness of the NRC. Consequently, the Commission believes public confidence in the safe storage of spent fuel at independent spent fuel storage installations would not be adversely affected by this rulemaking.

Decision Rationale

The rationale is to proceed with this proposed rulemaking implementing the Commission approved rulemaking plan. This rulemaking would save both staff and applicant resources as discussed above.

The clarification of the provisions of Part 72 and their application to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC is administrative in nature and would have no safety impacts.

The elimination of the need for repetitious license hearings on cask design issues, that the NRC has previously reviewed and approved, in an application for a specific license would have no safety impacts. The public's right to comment on cask design issues, through the Subpart L cask approval process, will remain unchanged.

The flexibility to begin fabrication cask fabrication before the NRC issues the CoC, when combined with the requirement that cask fabrication must be performed under an NRC-approved QA program, would have no safety impacts.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would clearly specify which sections of Part 72 apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate and allow these persons to determine which Part 72 regulations apply to their activity. This clarification will eliminate the ambiguity that now exists. This proposed rule would also eliminate the need for repetitious license-hearing reviews of cask design issues, that were previously reviewed and approved by the NRC, when the applicant for a specific license incorporates by reference information on a cask design that was previously approved by the NRC. Finally, this proposed rule would allow applicants for a CoC to begin fabrication of a cask design before the NRC has issued a CoC. Applicants desiring to begin fabrication shall use an NRC-approval QA program. The requirement to obtain NRC-approval of the applicant's QA program is not considered an additional burden. An applicant who has been issued a CoC, and is then considered a certificate holder, is currently required by § 72.140(c)(2) to obtain NRC-approval before fabrication or testing is commenced; consequently, no actual increase in burden occurs. Similarly, an applicant for a license is currently required to obtain NRC-approval prior to receipt of spent fuel or high-level waste; consequently, no actual increase in burden occurs. This proposed rule does not impose any additional obligations on entities that may fall within the definition of "small entities" as set forth in Section 601(6) of the Regulatory Flexibility Act; or within the definition of "small business" as found in Section 3 of the Small Business Act, 15 U.S.C. 632; or within the size standards adopted by the NRC on April 11, 1985 (60 FR 18344).

Backfit Analysis

The NRC has determined that the backfit rule, § 72.62, does not apply to this proposed rule. Because these amendments would not involve any provisions that would impose backfits as defined in § 72.62(a), a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.13 is added to Subpart A to read as follows:

§ 72.13 Applicability.

(a) This section identifies those sections, under this part, that apply to the activities associated with a specific license, a general license, or a certificate of compliance.

(b) The following sections apply to activities associated with a specific license: §§ 72.1; 72.2(a) through (e); 72.3 through 72.13(b); 72.16 through 72.34; 72.40 through 72.62; 72.70 through 72.86; 72.90 through 72.108; 72.120 through 72.130; 72.140 through 72.176; 72.180 through 72.186; 72.190 through 72.194; and 72.200 through 72.206.

(c) The following sections apply to activities associated with a general license: §§ 72.1; 72.2(a)(1), (b), (c), and (e); 72.3 through 72.6(c)(1); 72.7 through 72.13(a) and (c); 72.30(c) and (d); 72.32(c) and 72.32(d); 72.44(b), (d), (e), and (f); 72.48; 72.50(a); 72.52; 72.54(d) through (m); 72.60; 72.62; 72.72 through 72.80(f); 72.82 through 72.86; 72.104; 72.106; 72.122; 72.124; 72.126; 72.140 through 72.176; 72.190 through 72.194; 72.210; 72.212; and 72.216 through 72.220.

(d) The following sections apply to activities associated with a certificate of compliance: §§ 72.1; 72.2(e) and (f); 72.3; 72.4; 72.5; 72.7; 72.9 through 72.13(a) and (d); 72.48; 72.84(a); 72.86; 72.124; 72.140 through 72.176; 72.214; and 72.230 through 72.248.

3. In § 72.46, paragraph (e) is added to read as follows:

§ 72.46 Public hearings.

* * * * *

(e) If an application for (or an amendment to) a specific license issued under this part incorporates by reference information on the design of an NRC-approved spent fuel storage cask, the scope of any public hearing held to consider the application will not include any cask design issues previously addressed by the Commission when it issued a Certificate of Compliance under subpart L of this part.

4. In § 72.86, paragraph (b) is revised to read as follows:

§ 72.86 Criminal penalties.

* * * * *

(b) The regulations in part 72 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 72.1, 72.2, 72.3, 72.4, 72.5, 72.7, 72.8, 72.9, 72.13; 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.32, 72.34, 72.40, 72.46, 72.56, 72.58, 72.60, 72.62, 72.84, 72.86, 72.90, 72.96, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.182, 72.194, 72.200, 72.202, 72.204, 72.206, 72.210, 72.214, 72.220, 72.230, 72.238, and 72.240.

5. In § 72.140, paragraphs (c) and (d) are revised to read as follows:

§ 72.140 Quality assurance requirements.

* * * * *

(c) *Approval of program:*

(1) Each licensee, applicant for a license, certificate holder, or applicant for a CoC shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, in accordance with § 72.4.

(2) Each licensee shall obtain Commission approval of its quality assurance program prior to receipt of spent fuel at the ISFSI or spent fuel and high-level radioactive waste at the MRS. Each licensee or applicant for a specific license shall obtain Commission approval of its quality assurance program prior to commencing fabrication or testing of a spent fuel storage cask.

(3) Each certificate holder or applicant for a CoC shall obtain Commission approval of its quality assurance program prior to commencing fabrication or testing of a spent fuel storage cask.

(d) *Previously approved programs.* A quality assurance program previously approved by the Commission as satisfying the requirements of appendix B to part 50 of this chapter, subpart H to part 71 of this chapter, or subpart G to this part will be accepted as satisfying the requirements of paragraph (b) of this section, except that a licensee, applicant for a license, certificate holder, and applicant for a CoC who is using an appendix B or subpart H quality assurance program shall also meet the recordkeeping requirements of § 72.174. In filing the description of the quality assurance program required by paragraph (c) of this section, each licensee, applicant for a license, certificate holder, and applicant for a CoC shall notify the NRC, in accordance with § 72.4, of its intent to apply its previously approved quality assurance program to ISFSI activities or spent fuel storage cask activities. The notification shall identify the previously approved quality assurance program by date of submittal to the Commission, docket number, and date of Commission approval.

6. In § 72.234, paragraph (c) is revised to read as follows:

§ 72.234 Conditions of approval.

* * * * *

(c) An applicant for a CoC may begin fabrication of spent fuel storage casks before the Commission issues a CoC for the cask; however, applicants who begin fabrication of casks without a CoC do so at their own risk. A cask fabricated before the CoC is issued shall be made to conform to the issued CoC prior to being placed in service or prior to spent fuel being loaded.

* * * * *

7. Section 72.236 is amended by revising the introductory text to read as follows:

§ 72.236 Specific requirements for spent fuel storage cask approval and fabrication.

The certificate holder and applicant for a CoC shall ensure that the requirements of this section are met.

* * * * *

Dated at Rockville, Maryland, this 26th day of October, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–28594 Filed 11–2–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–10]

Petition From the State of Nevada; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Extension of comment period.

SUMMARY: On September 13, 1999, the Nuclear Regulatory Commission (NRC) published for public comment a petition for rulemaking filed by the State of Nevada. The petitioner requested that the Commission amend its regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism. The petitioner requested that the NRC conduct a comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage, including attacks against transportation infrastructure used during nuclear waste shipments, attacks involving capture of nuclear waste shipments and use of high energy explosives against a cask or casks, and direct attacks upon a nuclear waste shipping cask or casks using antitank missiles or other military weapons. The comment period was to have expired on November 29, 1999. John Allen, Chairman of the Hazardous Materials Transportation Committee of the Transportation Research Board, submitted a comment on October 11, 1999, and requested that the comment period be extended due to the tight filing date for the petition. In view of this request, the NRC believes it is appropriate to extend the comment period; therefore, the comment period is extended to January 28, 2000.

DATES: The comment period has been extended and now closes on January 28, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleform.llnl.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, 301–415–5905 (e-mail: cag@nrc.gov).

FOR FURTHER INFORMATION CONTACT: James Smith, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6459, or toll-free: 800–368–5642.

Dated at Rockville, Maryland, this 27th day of October, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–28596 Filed 11–2–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–262–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that currently requires a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions. This proposed AD would add a new requirement for operators to adjust the thrust reverser handle stop, install new wiring, and modify the Digital Electronic Engine Control (DEEC) software, which would terminate the AFM revision. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent flightcrew use of erroneous N1 thrust setting information displayed on the Engine Indication Electronic Display (EIED), which could result in in-flight shutdown of engine(s).

DATES: Comments must be received by December 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–262–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 5, 1997, the FAA issued AD 97–21–16, amendment 39–10202 (62 FR 60773, November 13, 1997), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, to require a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions. That action was prompted by a report indicating that erroneous minimum anti-icing N1 thrust setting indications were displayed on the Engine Indication Electronic Display (EIED). The erroneous minimum N1 indications do not correspond with minimums specified in the Normal Procedures Section of the AFM for operations in icing conditions. The requirements of that AD are intended to prevent flightcrew use of erroneous N1 thrust setting information displayed on the EIED and consequent in-flight shutdown of engine(s).

Actions Since Issuance of Previous Rule

In the preamble to AD 97–21–16, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

Dassault Aviation has issued Service Bulletin F50–276, dated June 24, 1998, which describes procedures for adjustment of the thrust reverser handle stop, installation of new wiring, and modification of the Digital Electronic Engine Control (DEEC) software whereby push-lights are installed and wired to the DEEC. The software changes affect the N1 synch, Mach hold logic, thrust reverser logic, and wing anti-ice and takeoff schedules. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued French airworthiness directive 98–228–021(B), dated June 17, 1998, in order to assure the continued airworthiness of these airplanes in France.

Dassault Service Bulletin F50–276 refers to Allied Signal Service Bulletin TFE731–76–5107, dated December 24, 1997, as an additional source of service information for accomplishment of the modification.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of §§ 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 97–21–16 to retain the requirement to revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions, and add a new requirement for adjustment of the thrust reverser handle stop, installation of new wiring, and modification of the Digital Electronic Engine Control (DEEC) software, which would terminate the need for the AFM revision.

Cost Impact

There are approximately 7 airplanes of U.S. registry that would be affected by this proposed AD.

The action that is currently required by AD 97–21–16, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $60 per airplane.

The new actions that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,026 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $8,022, or $1,146 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10202 (62 FR 60773, November 13, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Dassault Aviation: Docket 98–NM–262–AD. Supersedes AD 97–21–16, Amendment 39–10202.

Applicability: Model Mystere-Falcon 50 series airplanes, serial numbers 251, 253, and subsequent; equipped with Allied-Signal TFE731–40 engines; certificated in any category; except those that have been modified in accordance with Dassault Service Bulletin F50–276, dated June 24, 1998.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight shutdown of the engine(s) due to the flight crew using erroneous N1 speed values displayed on the engine Indication Electronic Display (EIED), accomplish the following:

Restatement of the Requirements of AD 97–21–16, Amendment 39–10202

AFM Revision

(a) Within 1 day after November 18, 1997 (the effective date of AD 97–21–16, amendment 39–10202), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to add the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Operation in Icing Conditions:

The N1 speed of the operating engines must not be less than the minimum values specified in Normal Section 4, Sub-section 140, Page 2, of the AFM."

New Requirements for This AD

Modification

(b) Within 6 months after the effective date of this AD, adjust the thrust reverser handle stop, install new "push-light" wiring on the instrument panel, and modify the Digital Electronic Engine Control (DEEC) software; in accordance with Dassault Service Bulletin F50–276, dated June 24, 1998. Accomplishment of such actions constitutes terminating action for the AFM revision required by paragraph (a) of this AD. Following accomplishment of the terminating action, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

Note 2: Dassault Service Bulletin F50–276 refers to Allied Signal Service Bulletin TFE731–76–5107, dated December 24, 1997, as an additional source of service information for accomplishment of the modification.

Spares

(c) As of the effective date of this AD, no person shall install DEEC software, part number 2118882–4002, on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–228–021(B), dated June 17, 1998.

Issued in Renton, Washington, on October 27, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28656 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–53]

Proposed Modification of Class E Airspace; Bemidji, MN.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Bemidji, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31 has been developed for Bemidji-Beltrami County Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before December 17, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, rules Docket No. 99–AGL–53, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–53." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Bemidiji, MN, to accommodate aircraft executing the proposed GPS Rwy 31 SIAP at Bemidji-Beltrami County Airport by modifying the existing controlled airspace. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MN E2 Bemidiji, MN [Revised]

Bemidiji-Beltrami County Airport, MN
(Lat. 47°30′34″ N., long. 094°56′01″ W.)

Within a 4.6-mile radius of the Bemidiji-Beltrami County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Director.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Bemidiji, MN [Revised]

Bemidiji-Beltrami County Airport, MN
(Lat. 47°30′34″ N., long. 094°56′01″ W.)

That airspace extending upward from 700 feet above the surface with a 6.6-mile radius of Bemidiji-Beltrami County Airport.

* * * * *

Issued in Des Plaines, Illinois on October 15, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–28620 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–52]

Proposed Modification of Class E Airspace; Steubenville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Steubenville, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 293° helicopter point in space approach, has been developed for Trinity West Hospital. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify the existing controlled airspace for Steubenville, OH, to the northeast in order to include the point in space approach serving Trinity West Hospital.

DATES: Comments must be received on or before December 17, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–52, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments, to Airspace Docket No. 99–AGL–52." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

the FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Steubenville, OH, to accommodate aircraft executing the proposed GPS SIAP 293° helicopter point in space approach for Trinity West Hospital by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designated listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRPSACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Steubenville, OH [Revised]

Steubenville, Jefferson County Airport, OH
(Lat. 40°21′34″ N., long. 080°42′00″ W.)
Trinity West Hospital, OH
Point In Space Coordinates
(Lat. 40°22′00″ N., long. 080°39′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Jefferson County Airport, and within a 6.0-mile radius of the point in space serving Trinity West Hospital, excluding the airspace within the Wheeling, WV, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on October 15, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–28619 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AGL–54]

Proposed Modification of Class E Airspace; Cooperstown, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Cooperstown, ND. A review of the controlled airspace within the State of North Dakota has indicated a small portion of Class G uncontrolled airspace in the vicinity of Cooperstown, ND. Controlled airspace extending upward from 1200 feet above ground level (AGL) is needed to allow the FAA to provide safe and efficient air traffic control services for aircraft executing enroute and terminal instrument procedures into and out of Grand Forks International Airport. This small portion of uncontrolled airspace, in the southwest quadrant of Grand Forks Approach Control airspace, causes confusion for both pilots and controllers and does not allow for consistent application of instrument flight rules in a critical area servicing the Grand Forks International Airport. This action proposes to eliminate the Class G airspace approximately 15 nautical miles to the southeast of Cooperstown Airport.

DATES: Comments must be received on or before December 17, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–54, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–54." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484.

Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify class E airspace at Cooperstown, ND, to accommodate aircraft executing instrument flight procedures into and out of Grand Forks International Airport by modifying the existing controlled airspace. A small portion of uncontrolled airspace to the southeast of Cooperstown Airport would be eliminated. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact as a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g),40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1964 Comp., P. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Cooperstown, ND [Revised]

Cooperstown Municipal Airport, ND
(Lat. 47°25′22″ N., long. 098°06′21″ W.)
Devils Lake VOR/DME
(Lat. 48°06′55″ N., long. 098°54′45″ W.)
Fargo, Hector International Airport, ND
(Lat. 46°55′10″ N., long. 096°48′54″ W.)
Grand Forks AFB, ND
(Lat. 47°57′40″ N., long. 097°24′04″ W.)
Jamestown VOR/DME
(Lat. 46°55′58″ N., long. 098°40′44″ W.)
Valley City, Barnes County Municipal Airport, ND
(Lat. 46°56′28″ N., long. 098°01′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Cooperstown Municipal Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by V430; on the northeast by the 34.0-mile radius of Grand Forks AFB; on the southeast by the 40.0-mile radius of Fargo, Hector International Airport; on the south by V2–510 east of Valley City, ND, the 7.9-mile radius of Valley City, Barnes Municipal Airport, and V2–510 west of Valley City, ND; on the southwest by the 16.5-mile radius of the Jamestown VOR/DME; on the west by V170; and on the northwest by the 22.0-mile radius of the Devils Lake VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on October 15, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–28618 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–51]

Proposed Establishment of Class E Airspace; Garrison, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Garrison, ND. A Global Positioning System (GPS) Standard Instruction Approach Procedure (SIAP) to Runway (Rwy) 13, and a GPS SIAP to Rwy 31, have been developed for Garrison Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action would create controlled airspace for Garrison Municipal Airport.

DATES: Comments must be received on or before December 17, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–51, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–51." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of the Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Garrison, ND, to accommodate aircraft executing the proposed GPS Rwy 13 SIAP and GPS Rwy 31 SIAP at Garrison Municipal Airport by creating controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Garrison, ND [New]

Garrison Municipal Airport, ND
(Lat. 47°39′22″ N, long. 101°26′17″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Garrison Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on October 15, 1999.

Christopher R. Blum,
Manager, Air Traffic Division.

[FR Doc. 99–28617 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 287

[Docket No. 981222315–8315–01]

RIN 0693–AB49

Proposed Guidance on Federal Conformity Assessment Activities

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Proposed policy guidance; request for comments.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, requests comments on the proposed addition of guidance on Federal conformity assessment activities. In February 1996, The National Technology Transfer and Advancement Act of 1995 was enacted by Congress. Section 12 of the Act changed the policies contained in the existing Office of Management and Budget (OMB) Circular A–119 into law, created additional reporting requirements, and directed NIST to coordinate conformity assessment activities of Federal, state and local entities thus eliminating any unnecessary duplication of conformity assessment activities. OMB Circular A–119, revised February 19, 1998, recognized the conformity assessment requirements and obligations defined in the Act and the role of the Department of Commerce in this area. The Circular directed the Secretary of Commerce to issue guidance to the agencies to ensure effective coordination of Federal conformity assessment activities. This document contains that guidance.

The Director of NIST has decided to include this guidance for conformity assessment activities in the Code of Federal Regulations (CFR). Inclusion in the CFR will make it easier for federal, state and local entities to find the guidance necessary for effective coordination of conformity assessment activities. The provisions are solely intended to be used as guidance for agencies in their conformity assessment activities.

DATES: Comments must be received no later than January 18, 2000.

ADDRESSES: All comments concerning this proposed guidance should be addressed to: Dr. Belinda Collins, Director, Office of Standards Services, National Institute of Standards and Technology, Building 820, Room 282, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Belinda L. Collins, Office of Standards Services, NIST, 301–975–4000, facsimile: 301–963–2871 or Maureen A. Breitenberg, Global Standards Program, NIST, 301–975–4031, facsimile: 301–963–2871.

SUPPLEMENTARY INFORMATION:

Background

Section 12 of the National Technology Transfer and Advancement Act of 1995, (Public Law 104–113 or "the Act") enacted by Congress in February 1996 established the policies of the existing Office of Management and Budget (OMB) Circular A–119 into law. The Act also directed the National Institute of Standards and Technology NIST) to coordinate conformity assessment activities of Federal, state and local entities thus eliminating unnecessary duplication of conformity assessment activities. OMB Circular A–119, which was revised and reissued on February 19, 1998, recognized the conformity assessment requirements and obligations defined in the Act and the role of the Department of Commerce in this area.

Conformity assessment is defined in the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Guide 2 (1996), as: "any activity concerned with determining directly or indirectly that relevant requirements are fulfilled." Conformity assessment includes: sampling and testing; inspection; certification; and quality and environmental management system assessment and registration. It also includes accreditation and recognition.

The Act states and OMB Circular A–119 reiterates that NIST is to "coordinate Federal, State and local * * * conformity assessment activities, with private sector * * * conformity assessment activities. * * *" This guidance is designed to improve the internal management of the Executive Branch with regard to its conformity assessment activities.

Purpose of This Guidance

This guidance outlines Federal agencies' responsibility for evaluating the efficacy and efficiency of their conformity assessment activities. Each agency is responsible for coordinating its conformity assessment activities with those of other appropriate government agencies and with those of the private sector to make more productive use of the increasingly limited Federal resources available for the conduct of conformity assessment activities and to reduce unnecessary duplication.

Applicability of This Guidance

This guidance applies to all agencies, which set policy for, manage, operate, or use conformity assessment activities and results, both domestic and international, except for activities carried out pursuant to treaties. "Agency" means any Executive Branch Department, independent commission, board, bureau, office, agency, government-owned or controlled corporation, or other establishment of the federal government. It also includes any regulatory commission or board, except for independent regulatory commissions subject to separate statutory requirements regarding policy setting, management, operation, and use of conformity assessment activities. It does not include the legislative or judicial branches of the Federal government.

Rulemaking Requirements

Under 5 U.S.C. 553(b)(A), this guidance is not subject to the notice and comment requirements of the Administrative Procedure Act. Furthermore, pursuant to 5 U.S.C. 553(d)(2), this guidance is not subject to the delayed effective date requirement of the Act. The Director has chosen to publish this document for comment only to obtain input from persons who may be affected by the guidance.

PRA Clearance

This policy statement does not contain a collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12866

It has been determined that this action is significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

This action is exempt from the analytical requirements of the Regulatory Flexibility Act because notice and comment are not required for this action by section 553 of the Administrative Procedure Act or any other law.

List of Subjects in 15 CFR Part 287

Conformity assessment, Procurement, Reporting and recordkeeping requirements.

Dated: October 22, 1999.

Karen H. Brown,

Deputy Director.

For the reasons set forth in the preamble, it is proposed that Part 287 be added to subchapter J of chapter II in Title 15 of the Code of Federal Regulations (CFR) to read as follows:

PART 287—GUIDANCE ON FEDERAL CONFORMITY ASSESSMENT

Sec.
287.1 Purpose and scope of this guidance.
287.2 Definitions.
287.3 Responsibilities of the National Institute of Standards and Technology.
287.4 Responsibilities of Federal agencies.
287.5 Responsibilities of an Agency Standards Executive.

Authority: 15 U.S.C. *et seq.* Pub. L. 104–113, section 12.

§ 287.1 Purpose and scope of this guidance.

(a) This part provides guidance for each Federal agency to use in evaluating the efficacy and efficiency of its conformity assessment activities. Each agency should coordinate its conformity assessment activities with those of other appropriate government agencies and with those of the private sector to reduce unnecessary duplication. This guidance is intended to help Federal agencies improve the management and coordination of their own conformity assessment activities with respect to other government entities and the private sector. This will help ensure more productive use of the increasingly limited Federal resources available to conduct conformity assessment activities. This will also support the role of the U.S. Government in pursuing international trade and other related negotiations and agreements with foreign countries and U.S. industry in pursing agreements with foreign national and international private sector organizations.

(b) This guidance applies to all agencies, which set policy for, manage, operate, or use conformity assessment activities and results, both domestic and international, except for activities carried out pursuant to treaties.

(c) This guidance does not preempt the agencies' authority and responsibility to make regulatory or procurement decisions authorized by statute or required to meet programmatic objectives and requirements. These decision-making activities include: determining the level of acceptable regulatory or procurement risk; setting the level of protection; balancing risk, cost and availability of technology (where statutes permit) in establishing regulatory and procurement objectives; and determining or implementing procurement or regulatory requirements necessary to meet programmatic or regulatory objectives. Each agency retains broad discretion in its selection and use of regulatory and procurement conformity assessment practices and may elect not to use or recognize alternative conformity assessment practices if the agency deems them to be inappropriate, inadequate, or inconsistent with statutory criteria or programmatic objectives and requirements. Each agency remains responsible for representation of the agency's views on conformity assessment in matters under its jurisdiction. Each agency also remains the primary point of contact for information on the agency's regulatory and procurement conformity assessment actions.

§ 287.2 Definitions[1].

Accreditation means a procedure used to provide formal notice that a body or person is competent to carry out specific tasks. These tasks include: sampling and testing; inspection; certification; and registration.

Agency means any Executive Branch Department, independent commission, board, bureau, office, agency, government-owned or controlled corporation, or other establishment of the Federal government. It also includes any regulatory commission or board, except for independent regulatory commissions subject to separate statutory requirements regarding policy setting, management, operation, and use of conformity assessment activities. It does not include the legislative or judicial branches of the Federal government.

Agency Standards Executive means an official designated by an agency as its representative on the Interagency Committee for Standards Policy (ICSP) and delegated the responsibility for agency implementation of OMB Circular A–119 and the guidance in this part.

Certification means a procedure used to provide written assurance that a product, process, service, or person's qualifications conforms to specified requirements.

Conformity assessment means any activity concerned with determining directly or indirectly that requirements are fulfilled. Requirements for products, services, and systems are those defined by law or regulation or by an agency in a procurement action. Conformity assessment includes: sampling and testing; inspection; certification; and quality and environmental management system assessment and registration. It also includes accreditation and recognition. Conformity assessment does not include mandatory administrative procedures (such as registration notification) for granting permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions.

Inspection is defined as the evaluation by observation and judgment accompanied as appropriate by measurement, testing or gauging of the conformity of a product, process or service to specified requirements.

NIST means the National Institute of Standards and Technology, an agency within the United States Department of Commerce.

Recognition means a procedure used to provide formal notice that an accreditation body is competent to carry out specific tasks. These tasks include: the accreditation of testing laboratories and inspection, certification, and registration bodies. A governmental recognition system is a set of one or more procedures used by a Federal agency to provide recognition.

Registration means a procedure used to give written assurance that a system conforms to specified requirements. Such systems include those established for the management of product, process or service quality and environmental performance.

Sampling means the selection of one or more specimens of a product, process, or service for the purpose of evaluating the conformity of the product, process or service to specified requirements.

Testing means the action of carrying out one or more technical operations (tests) that determine one or more characteristics or performance of a given product, material, equipment, organism, person's qualifications, physical phenomenon, process, or service according to a specified technical procedure (test method).

§ 287.3 Responsibilities of the National Institute of Standards and Technology.

(a) Work with agencies through the Interagency Committee on Standards Policy (ICSP) to coordinate Federal, state and local conformity assessment activities with private sector conformity assessment activities. NIST chairs the ICSP; assists the ICSP in developing and publishing policies and guidance on conformity assessment related issues; collects and disseminates information on Federal, state and private sector conformity assessment activities; and increases public awareness of the importance of conformity assessment and nature and extent of national and international conformity assessment activities.

(b) Encourage participation in the ICSP by all affected agencies and ensure that all agency views on conformity assessment are considered.

(c) Review within three years from [EFFECTIVE DATE OF THE FINAL GUIDANCE] the effectiveness of the final guidance and recommend modifications to the Secretary as needed.

§ 287.4 Responsibilities of Federal agencies.

Each agency should:

(a) Implement the policies contained in the guidance in this part.

(b) Use the results of other governmental agency and private sector organization conformity assessment activities to enhance the safety and efficacy of proposed new conformity assessment requirements and measures. An example of this would be to collect and review information on similar activities conducted by other Federal, state and international organizations and agencies and private sector organizations to determine if the results of these activities can be used to improve the effectiveness of a proposed Federal agency conformity assessment activity.

(c) Use relevant guides or standards for conformity assessment practices published by domestic and international standardizing bodies as appropriate in meeting regulatory and procurement objectives. Guides and standards for sampling, testing, inspection, certification, quality and environmental management systems, management system registration and accreditation are issued by organizations which include, but are not limited to, the American National Standards Institute, the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunications Union (ITU) and the Organization for Economic Cooperation and Development (OECD), the World Health Organization (WHO), and the Codex Alimentarius Commission. Each agency retains responsibility for determining which, if any, of these documents are relevant to its needs.

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[1] Definitions of accreditation, certification, conformity assessment, inspection, registration and testing are based on the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), Guide 2 (1996). In certain industrial sectors, it is recognized that organizations other than ISO or IEC may issue definitions relevant to conformity assessment, such as the Codex Alimentarius Commission with respect to the food industry sector.

(d) Identify appropriate private sector conformity assessment practices and programs and consider using the results of such practices and/or programs as appropriate in existing regulatory and procurement actions. Responsibility for the determination of appropriateness rests with each agency. Example: An agency could use the results of private sector or other governmental conformity assessment activities to schedule procurement type audits more effectively. This could allow agencies to reduce the number and extent of audits conducted at companies which are performing in accordance with contract specifications and which are under review by a third party or another agency and to concentrate agency audit efforts on companies which have shown problems in conforming to contract specifications.

(e) Consider mutual recognition of the results of other agencies' conformity assessment procedures. Example: An agency could use the results of another agency's inspection/audit of a supplier to eliminate or reduce the scope of its own inspection/audit of that supplier.

(f) Participate in efforts designed to improve coordination among governmental and private sector conformity assessment activities. These efforts include, but are not limited to, the National Cooperation for Laboratory Accreditation (NACLA) organization, the National Environmental Laboratory Accreditation Conference (NELAC), and ICSP working groups dealing with conformity assessment issues.

(g) Work with other agencies to avoid unnecessary duplication and complexity in federal conformity assessment activities. Examples: An agency can participate in another agency's conformity assessment activities by conducting joint procurement audits/inspections of suppliers that sell to both agencies. An agency can share conformity assessment information with other agencies. An agency can use conformity assessment information provided by other agencies to the extent appropriate to improve the effectiveness and efficiency in its own conformity assessment activities. Conformity assessment information may include: conformity assessment procedures and results, technical data on the operation of conformity assessment programs, processing methods and requirements for applications, fees, facility site data, complaint review procedures, and confidentiality procedures.

(h) Encourage domestic and international recognition of U.S. conformity assessment results by supporting the work of the U.S. Government in international trade and related negotiations with foreign countries and U.S. industry in pursuing agreements with foreign national and international private sector organizations and any resulting activities/requirements resulting from those negotiations/agreements.

(i) Participate in the development of private sector conformity assessment standards to ensure that Federal viewpoints are represented.

(j) Work with other agencies to harmonize Federal requirements for quality and environmental management systems for use in procurement and regulation, including provisions which will allow the use of one quality or environmental management system per supplier facility in the Federal procurement process and the sharing and usage of audit results and related information as appropriate.

(k) Work with other ICSP members, NIST, and the private sector to develop national infrastructures for coordinating and harmonizing U.S. conformity assessment needs, practices and requirements in support of the efforts of the U.S. Government and U.S. industry to increase international market access for U.S. products.

(l) Work with other ICSP members, NIST, and the private sector as necessary and appropriate to establish criteria for the development and implementation of governmental recognition systems to meet government recognition requirements imposed by other nations and regional groups to support the efforts of the U.S. Government to facilitate international market access for U.S. products.

(m) Assign an Agency Standard Executive responsibility for coordinating the agency-wide implementation of the guidance in this part.

§ 287.5 Responsibilities of an Agency Standards Executive.

In addition to carrying out the duties described in OMB Circular A–119 related to standards activities, an Agency Standards Executive should:

(a) Promote the following goals:

(1) Effective use of agency conformity assessment related resources and participation in conformity assessment related activities of agency interest.

(2) Development and dissemination of agency technical and policy positions.

(3) Development of agency positions on conformity assessment related issues that are in the public interest.

(b) Ensure that agency participation in conformity assessment related activities is consistent with agency missions, authorities, priorities, and budget.

(c) Cooperate with NIST in carrying out agency responsibilities under the guidance in this part.

(d) Consult with NIST, as necessary, in the development and issuance of internal agency procedures and guidance implementing the policies in this part.

(e) Establish an ongoing process for reviewing his/her agency's existing conformity assessment activities and identifying areas where efficiencies can be achieved through coordination with other agency and private sector conformity assessment activities.

(f) Work with other parts of his/her agency to develop and implement improvements in agency conformity assessment related activities.

(g) Report to NIST, on a voluntary basis, on agency conformity assessment activities for inclusion in the annual report to the Office of Management and Budget (OMB) on the agency's implementation of OMB Circular A–119.

[FR Doc. 99–28496 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Use of Electronic Signatures by Customers, Participants and Clients of Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening of comment period.

SUMMARY: On August 30, 1999, the Commodity Futures Trading commission (the "Commission" or "CFTC") published in the **Federal Register** a request for public comment on proposed regulations to allow the use of electronic signatures in lieu of handwritten signatures for certain purposes under the commission's regulations. The original comment period expires October 29, 1999. 64 FR 47151 (August 30, 1999). By letter dated October 27, 1999, the Futures Industry Association Inc. requested an extension of the comment period. In order to insure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to reopen the comment period for an additional two weeks for all interested parties.

DATES: Written comments must be received on or before November 12, 1999.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to secretary@cftc.gov. Reference should be made to "Internet Account Opening Process."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone Number: (202) 418–5450. Facsimile Number: (202) 418–5547. Electronic Mail: tm@cftc.gov.

Issued In Washington, DC on October 27, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–28605 Filed 11–2–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 99N–2550]

Medical Devices; Hearing Aids; Technical Data Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing hearing aid labeling to reference the most recent version of the consensus standard used to determine the technical data to be included in labeling for hearing aids. FDA is proposing to amend the regulation in order that manufacturers may use state-of-the-art methods to address technical data in hearing aid labeling. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written comments on or before January 18, 2000. If FDA receives any significant adverse comment regarding this rule, FDA will publish a document withdrawing the direct final rule within 30 days after the comment period ends. FDA then and will proceed to respond to the comments under this proposed rule using the usual notice and comment procedures. Any parties interested in commenting on this document should do so at this time.

If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on the direct final rule ends. The direct final rule will be effective March 17, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850 301–594–2080.

SUPPLEMENTARY INFORMATION:

I. Regulatory Framework

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule is substantively identical to the direct final rule. This proposed rule will provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and the direct final rule is withdrawn. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comments. A detailed discussion of this rule is set forth in the preamble of the direct final rule. If no significant comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on March 17, 2000. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If FDA receives a significant adverse comment regarding this rule, the agency will publish a document withdrawing the direct final rule within 30 days after the comment period ends and will proceed to respond to the comments under this rule using usual notice-and-comment procedures. The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment requesting a change in provisions of the hearing aid rule unrelated to the subject matter addressed in the American National Standards Institute's (ANSI) standard will not be considered a significant adverse comment, because it is outside the scope of the rule. On the other hand, a comment recommending an additional change to the rule may be considered a significant adverse comment if the comment demonstrates why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

II. Background

In the **Federal Register** of February 15, 1977 (42 FR 9286), FDA published final regulations establishing requirements for professional and patient labeling of hearing aids (§ 801.420 (21 CFR 801.420)) and governing conditions for sale of hearing aids (§ 801.421 (21 CFR 801.421)). The regulations became effective on August 15, 1977. Section 801.421(b)(1) of the regulations provides that, before the sale of a hearing aid to a prospective user, a hearing aid dispenser is to provide the prospective user with a copy of the User Instructional Brochure. Section 801.420(c)(4) requires that technical data useful in selecting, fitting, and checking the performance of a hearing aid be provided in the brochure or in separate labeling that accompanies the device. The regulation further required that the technical data values provided in the brochure or other labeling be determined according to the test procedures established by the Acoustical Society of America (ASA) in the "American National Standard

Specification of Hearing Aid Characteristics," ANSI S3.22–1976 (ASA 70–1976), which was incorporated by reference in the regulation.

ANSI S3.22 (ASA 70–1976) established measurement methods and specifications for several definitive hearing aid characteristics, and provided a method of ascertaining whether a hearing aid, after being manufactured and shipped, met the specifications and design parameters stated by the manufacturer for a particular model, within the tolerance stated by the standard.

In 1982, ASA revised the standard (ANSI S3.22–1982) (ASA 70–1982). In a final rule published in the **Federal Register** of July 24, 1985 (50 FR 30153), FDA incorporated the revised standard into § 801.420(c)(4). ASA revised the standard again in 1987 (ANSI S3.22–1987) (ASA 70–1987). In a final rule published in the **Federal Register** of December 21, 1989 (54 FR 52395). FDA incorporated the newly revised standard into § 801.420(c)(4).

In 1996, ASA revised the standard again (ANSI S3.22–1996) (ASA 70–1996). The standard describes air-conduction hearing aid measurement methods that are particularly suitable for specification and tolerance purposes. Among the test methods described are output sound pressure level (SPL with a 90-dB input SPL, full-on gain, frequency response, harmonic distortion, equivalent input noise, current drain, induction-coil sensitivity, and static and dynamic characteristics of automatic gain control hearing aids) the standard gives specific configurations for measuring the input SPL to a hearing aid. The standard also describes allowable tolerances in relation to values specified by the manufacturer for certain parameters. Appendices are provided to describe an equivalent substitution method, characteristics of battery simulators, and additional tests to characterize the electroacoustic performance of hearing aids more completely.

FDA is now incorporating the 1996 standard into § 801.420(c)(4). This will allow hearing aid manufacturers to use the up-to-date methods to determine the technical data values for hearing aids. In addition, FDA is removing from § 801.420(c)(4) the address for "American National Standards Institute" and is adding in its place the address for "Acoustical Society of America."

III. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The proposed rule amends the existing hearing aid regulation to refer to the updated consensus standard that is used to determine the technical data in hearing aid labeling. Communications from manufacturers to FDA show that they are prepared to be in compliance with this standard immediately. The agency, therefore, certifies that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities. This proposed rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any one year.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Request for Comments

Interested persons may, on or before January 18, 2000, submit to the Dockets Management Branch (address above) written comments regarding this companion proposed rule. The comment period runs concurrently with the comment period for the direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Comments will be considered to determine whether to amend or revoke this proposed rule. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding the direct final rule and this proposed rule. In the event the direct final rule is withdrawn, all comments received regarding the direct final rule and this companion proposed rule will be considered comments on this proposed rule.

List of Subjects in 21 CFR Part 801

Hearing aids, Incorporation by reference, Medical devices, Professional and patient labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 801 be amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

2. Section 801.420 is amended by revising the second and third sentences in paragraph (c)(4) to read as follows:

§ 801.420 Hearing aid devices; professional and patient labeling.

* * * * *

(c) * * *

(4) * * * The determination of technical data values for the hearing aid labeling shall be conducted in accordance with the test procedures of the American National Standard "Specification of Hearing Aid Characteristics," ANSI S3.22–1996 (ASA 70–1996) (Revision of ANSI S3.22–1987), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Standards Secretariat of the Acoustical Society of America, 120 Wall St., New York, NY 10005–3993, or are available for inspection at the Regulations Staff, CDRH (HFZ–215), FDA, 1350 Piccard Dr., rm. 240,

Rockville, MD 20580, and the Office of the Federal Register, 800 North Capitol St. NW. suite 700, Washington DC.

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Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28210 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1401

RIN 3076–AA06

Freedom of Information Act Regulations

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) proposes to amend its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. The proposed revisions include the new response time for FOIA requests, procedures for requesting expedited processing, the availability of certain public information on FMCS's web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, FMCS's proposed amendments would update its fee schedule. FMCS is also updating the names and addresses of the various offices within the agency responsible for FOIA related activities. This rulemaking only deals with such matters at FMCS; it is not an executive branchwide regulation.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 3, 2000.

ADDRESSES: Send comments to Jane Lorber, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Jane Lorber, (202) 606–5444.

SUPPLEMENTARY INFORMATION: In this rulemaking, FMCS proposes to amend its regulations at 29 CFR part 1401, Subpart B under FOIA, 5 U.S.C. 552. The primary focus of these proposed amendments is to effectuate for this Agency various provisions under the 1996 Electronic FOIA Amendments, Public Law 104–231. New provisions implementing the amendments are found at § 1401.21(c) (electronic reading room), §§ 1401.34(b), (c), (e), (f) (timing of responses), § 1401.22 (deletion marking), § 1401.34(d) (volume estimation), § 1401.36(a)(3) (format of disclosure) and § 1401.36(a)(2) (electronic searches).

Proposed revisions to the Service's fee schedule can be found at §§ 1401.36(b)(1), (3)(v). The duplication charge will remain the same at twenty cents per page, while document search and review charges will increase to $4.00 and $10.00 for clerical and professional time, respectively. The amount at or below which the Service will not charge a fee will decrease from $50.00 to $14.00.

Sections 1401.22(d), 1401.31(a),(b) and 1401.32(b) are being revised to reflect organizational name changes within FMCS. Sections 1401.24 and 1401.37 are being removed because they are neither required by law nor necessary to interpret the law.

Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by FMCS are nominal. Further, the "small entities" that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number .

Executive Order 12866

This regulation has been reviewed in accordance with Executive Order 12866. It is not classified as significant because it does not meet the criteria for significant regulatory action established by the Executive Order.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small Governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with Foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 1401

Administrative practice and procedure, Freedom of Information.

For the reasons set forth in the preamble, FMCS proposes to amend 29 CFR part 1401 as follows:

PART 1401—PUBLIC INFORMATION

1. The authority citation for part 1401 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Subpart B of part 1401 is revised to read as follows:

Subpart B—Production or Disclosure of Information

Sec.
1401.20 Purpose and scope.
1401.21 Information policy.
1401.22 Partial disclosure of records.
1401.23 Preparation of new records.
1401.30 Applicability of procedures.
1401.31 Filing a request for records.
1401.32 Logging of written requests.
1401.33 Description of information requested.
1401.34 Time for processing requests.
1401.35 Appeals from denials of request.
1401.36 Freedom of Information Act fee schedules.

Subpart B—Production or Disclosure of Information

§ 1401.20 Purpose and scope.

This subpart contains the regulations of the Federal Mediation and Conciliation Service providing for public access to information from records of the Service. These regulations implement the Freedom of Information Act, 5 U.S.C. 552, and the policy of the FMCS to disseminate information on matters of interest to the public and to disclose on request information contained in agency records insofar as is compatible with the discharge of its responsibilities and the principle of confidentiality and neutrality of dispute resolution by third party neutrals.

§ 1401.21 Information policy.

(a) Except for matters specifically excluded by subsection 552(b) of title 5, United States Code, matters covered by the Privacy Act, or other applicable statutes, all documents and records maintained by this agency or in its custody shall be available to the public upon request filed in accordance with these regulations. To the extent permitted by other laws, the Service also will make available records which it is authorized to withhold under 5 U.S.C. 552(b) whenever it determines that such disclosure is in the public interest.

(b) Any document released for inspection under the provisions of this part may be manually copied by the requesting party. The Service shall provide facilities for copying such documents at reasonable times during normal working hours so long as it does not interfere with the efficient operation of the agency.

(c) The Service maintains a public reading room that contains the records that the FOIA requires to be made regularly available for public inspection and copying. FMCS shall maintain and make available for public inspection and copying a current subject-matter index of its reading room records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. FMCS shall also make reading room records created by the Service on or after November 1, 1996, available electronically through FMCS's World Wide Web Site (which can be found at http://www.fmcs.gov)

(d) Records or documents prepared by the Service for routine public distribution, e.g., pamphlets and brochures, will be furnished upon request to Office of the Director, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427, as long as the supply lasts. The provisions of § 1401.36 (fees) is not applicable to such requests expect when the supply of such material is exhausted and it is necessary to reproduce individual copies upon specific request.

(e) All existing FMCS records are subject to routine destruction according to standard record retention schedules.

§ 1401.22 Partial disclosure of records.

(a) If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not feasible to separate them or release of the disclosable information would compromise or impinge upon the nondisclosable portion of the record.

(b) Records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

§ 1401.23 Preparation of new records.

(a) The Freedom of Information Act and the provisions of this part apply only to existing records that are reasonably described in a request filed with the Federal Mediation and Conciliation Service pursuant to the procedures established in §§ 1401.31–1401.36.

(b) The Director may, in his or her discretion, prepare new records in order to respond to a request for information when he or she concludes that it is in the public interest and promotes the objectives of the Labor-Management Relations Act, 1947, as amended.

§ 1401.30 Applicability of procedures.

Requests for inspection or copying of information from records in the custody of the FMCS which are reasonably identifiable and available under the provisions of this part shall be made and acted upon as provided in the following sections of this subpart. The prescribed procedure shall be followed in all cases where access is sought to official records pursuant to the provisions of the Freedom of Information Act, except with respect to records for which a less formal disclosure procedure is provided specifically in this part.

§ 1401.31 Filing a request for records.

(a) Any person who desires to inspect or copy any record covered by this part shall submit a written request to that effect to the Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427.

(b) The Office of the General Counsel will determine what office or division within FMCS is custodian of the records. The Office will then send the request to the appropriate FMCS office or division as provided in § 1401.32(b) of this part.

§ 1401.32 Logging of written request.

(a) All requests for records should by clearly and prominently identified as a request for information under the Freedom of Information Act, and if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly and prominently identified as such on the envelope or other cover.

(b) Upon receipt of a request for records from the Office of the General Counsel, the FMCS office or division responding to the request shall enter it in a public log. The log shall state the date and time received, the name and address of person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 1401.34(b) and (d), the date(s) any records are subsequently furnished, the number of staff hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

§ 1401.33 Description of information requested.

(a) Each request should reasonably describe the records being sought, in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought.

(b) If the description is insufficient, the officer processing the request will so notify the person making the request and indicate the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the records sought.

§ 1401.34 Time for processing requests.

(a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the officer or employee processing the request pursuant to § 1401.32(b). An oral request for records shall not begin any time requirement. A written request for records sent to an office or division of FMCS other than the one having authority to grant or deny access to the records shall be redirected to the appropriate office for processing, and the time shall begin upon its being logged in there in accordance with § 1401.32(b).

(b) The officer or employee passing upon the request for records shall, within twenty (20) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the Agency shall comply with the request.

(1) If all of the records requested have been located and a final determination has been made with respect to disclosure of all the records requested, the response shall so state.

(2) If all of the records have not been located or a final determination has not been made with respect to disclosure of all records requested, the response shall state the extent to which the records involved will be disclosed pursuant to the rules established in this part.

(3) If the request is expected to involve an assessed fee in excess of $50.00, the response shall specify or

estimate the fee involved and shall require prepayment before the records are made available.

(4) Whenever possible, the response relating to a request for records that involves a fee of less than $50.00, shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Agency.

(c) Where the time limits for processing a request cannot be met because of unusual circumstances and FMCS determines to extend the time limit on that basis, FMCS will, as soon as practicable, notify the requester in writing of the unusual circumstances and of the date by which the processing can be expected to be completed. Where the extension is for more than 10 working days, FMCS will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the request or a modified request. If FMCS reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated.

(d) If any request for records is denied in whole or in part, the response required by paragraph (b) of this section shall notify the requester of the denial. Such denial shall specify the reason therefor and also advise that the denial may be appealed to the Office of Deputy Director of the Agency as specified in § 1401.35. In addition, such denial shall include an estimate of the volume of records or information withheld, in numbers of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable estimation.

(e) FMCS offices may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and or time needed to process the request. A person making a request that does not qualify for the fastest multitrack processing should be given an opportunity to limit the scope of the request in order to qualify for faster processing.

(f) Requests and appeals will be taken out of order and given expedited processing in cases where the requester demonstrates a compelling need.

(1) The term "compelling need" means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(2) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

(3) Within 10 calendar days of its receipt of a request for expedited processing, FMCS will notify the requester of its decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1401.35 Appeals from denials of request.

(a) Whenever any request for records is denied, a written appeal may be filed with the Deputy Director, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427, within 30 days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. The appeal shall state the grounds for appeal, including any supporting statements or arguments.

(b) Final action on the appeal shall be taken within 20 working days from the time of receipt of the appeal. Where novel and complicated questions have been raised or unusual difficulties have been encountered, the Deputy Director may extend the time for final action up to an additional 10 days, depending upon whether there had been an extension pursuant to § 1401.34(c) at the initial stage. In such cases, the applicant shall be notified in writing of the reasons for the extension of time and the approximate date on which a final response will be forthcoming.

(c) If on appeal the denial of the request for records is upheld in whole or in part, the Deputy Director shall notify the applicant of the reasons therefor, and shall advise the requester of the provisions for judicial review under 5 U.S.C. 552(a)(4) and (6).

§ 1401.36 Freedom of Information Act fee schedules.

(a) *Definitions.* For purpose of § 1401.36, the following definitions apply:

(1) *Direct costs* means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requesters, reviewing to respond to a FOIA request.

(2) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Copies may be in various forms including machine readable documentation (e.g. magnetic tape or disk) among others. A requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Review* refers to the process of examining documents located in response to a request that is for commercial use, to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure to the requester, e.g., doing all that is necessary to excise them or otherwise prepare them for release.

(5) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial trade or profit interest of the requester or the person on whose behalf the request is made.

(6) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate or professional education or an institution vocational education, which operates a program of programs of scholarly research.

(7) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a reasonable

expectation of publication through the organization, even though not actually employed by it.

(8) *Non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as defined under "commercial use request" in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(b) *Fee schedules and waivers.* Requests submitted shall be subject to direct costs, including search, duplication and review, in accordance with the following schedules, procedures and conditions.

(1) *Schedule of charges.*—(i) *Clerical time.* For each one-quarter hour or portion thereof of clerical time, $4.00.

(ii) *Professional time.* For each one-quarter hour or portion thereof of professional time, $10.00.

(iii) *Duplication.* For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records, $.20.

(iv) *Computer time.* For computer time, $3.00 per minute of time expended for production programming, searching and production of any record. Computer time expressed in fractions of minutes will be rounded to the next whole minute.

(v) *Certification or authorization of records.* The fee per certification or authentication is $2.00.

(vi) *Forwarding material to destination.* No charge will be assessed for ordinary packaging and mailing costs. The FMCS may assess a charge if compliance with the request requires special handing procedures such as express mail or other unusual procedures. Such charges will be made on the basis of actual costs.

(vii) *Other costs.* All other direct costs of preparing a response to a request shall be charged to requester in the same amount as incurred by FMCS. Charges may also be assessed for searches even if the records requested are not found, or the records are determined to be exempted from disclosure.

(2) *Rules of construction.* (i) In providing the foregoing the schedules pursuant to the provisions of 5 U.S.C. 552(a)(4)(A), it is the intent of FMCS to apply 29 CFR part 70 and the user charge statute, 31 U.S.C. 9701, to cover those situations in which the Agency is performing for a requester services which are not required under the Freedom of Information Act.

(ii) For those matters coming within the scope of this regulation, the FMCS will look to the provisions of the guidance published by the Office of Management and Budget (52 FR 10012, March 27, 1987) and the Department of Justice (Attorney General's, memorandum on the 1986 Amendments to the Freedom of Information Act, December 1987) for making such interpretations as may be necessary.

(3) *Fee categories.* Fees shall be determined in accordance with the following categories of requesters.

(i) Commercial use requesters will be assessed charges to recover the full direct cost of searching for, reviewing for release, and duplicating the records sought. This includes the full direct costs of computer production programming, searching and production of records. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents, as described below.

(ii) Educational and non-commercial scientific institution requesters will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution pursuant to the criteria in paragraphs (a)(6) and (a)(8) of this section, and that the records are not sought for commercial use, but are sought in furtherance of scholarly or scientific research.

(iii) Requesters who are representatives of the news media will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(7) of this section, and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(iv) All other requesters will be assessed charges to recover the full reasonable direct costs of searching for and reproducing records that are responsive to the request, including costs of computer production programming, searching and production, except that the first 100 pages of reproduction, and the first 2 hours of search time shall be furnished without charge.

(v) In no event shall fees be charged when the total charges are less than $14.00, which is the Agency cost of collecting and processing the fee itself.

(4) *Waiver or reduction of charge.* Documents are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest; that is, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(c) *Fee payments.* (1) Payments shall be made by check or money order payable to "Federal Mediation and Conciliation Service" and shall be sent to: Director, Financial Management Staff, Federal Mediation and Conciliation Service, 2100 K Street NW, Washington, DC 20427.

(2) If a requester fails to pay chargeable fees that were incurred as a result of this Agency's processing of the information request, the Agency beginning on the 31st day following the date on which the notification of charges was sent, may assess interest charges against the requester in the manner prescribed in 31 U.S.C. 3717.

(3) The Agency may use the provisions of the Debt Collection Act of 1982, (Pub. L. 97–365, 29 CFR part 1450) including disclosure to consumer reporting agencies, for the purpose of obtaining payment.

(d) *Advance payments.* FMCS may require a requester to make an advance payment of anticipated fees under the following circumstances:

(1) If the anticipated charges are likely to exceed $250.00, FMCS may notify the requestor of the likely cost and obtain satisfactory assurance of full payment when the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payments.

(2) If a requester has previously failed to pay fees that have been charged in processing a request, within 30 days of the date when the notification of fees was sent, the requester may be required to:

(i) Pay the entire amount of fees that are owed, plus any applicable interest as provided for in paragraph (c)(2) of this section, and

(ii) To make an advance payment of the full amount of the estimated fee before the Agency will process the new pending request.

Dated: October 28, 1999.

Vella M. Traynham,

Deputy Director.

[FR Doc. 99–28678 Filed 11–2–99; 8:45 am]

BILLING CODE 6372–01–U

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 991008272-9272-01]

RIN 0651-AB07

Changes To Permit Payment of Patent and Trademark Office Fees by Credit Card

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is proposing to amend the rules of practice to provide for the payment of any patent or trademark fee by credit card. The Office previously limited payment by credit card to the fees required for information products or for an electronic submission with or in a trademark application. The Office is proposing to accept payment of any patent fee, trademark fee, or information product fee by credit card.

DATES: *Comment Deadline Date*: To be assured of consideration, written comments must be received on or before December 3, 1999. While comments may be submitted after this date, the Office cannot ensure that consideration will be given to such comments. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: ccard.comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 308–6916, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted $3^1/_2$ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Special Program Law Office, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, located at Room 3–C23 of Crystal Plaza 4, 2201 South Clark Place, Arlington, Virginia, 22202, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: ftp.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Concerning this proposed rule change: Robert W. Bahr, by telephone at (703) 305–9285, or by facsimile to (703) 308–6916 marked to the attention of Robert W. Bahr.

Concerning the payment of fees (by credit card or otherwise) in general: Matthew Lee, by telephone at (703) 305–8051, by e-mail at matthew.lee@uspto.gov, or by facsimile at (703) 305–8007 marked to the attention of Matthew Lee.

SUPPLEMENTARY INFORMATION: Patent and Trademark Office (Office) practice has been to accept payment of fees for information products by credit card, but not to accept patent fees or trademark fees by credit card. The Office recently revised 37 CFR 1.23 to expressly permit payment of money for fees "in an electronically filed trademark application or electronic submission in a trademark application." *See Trademark Law Treaty Implementation Act Changes,* Final Rule Notice, 64 FR 48989, 48917 (September 8, 1999), 1226 *Off. Gaz. Pat. Office* 103, 120 (September 23, 1999). As explained in that final rule notice:

> Section 1.23 is also amended to add a paragraph (b), providing that payments of money for fees in electronically filed trademark applications, or electronic submissions in trademark applications, may also be made by credit card. The Office previously limited fee payment by credit card to the fees required for information products, and will continue to accept payment of information product fees by credit card.
>
> Section 1.23(b) will also provide that payment of a fee by credit card must specify the amount to be charged and such other information as is necessary to process the charge, and is subject to collection of the fee.
>
> Section 1.23(b) will further provide that the Office will not accept a general authorization to charge fees to a credit card. The Office cannot accept an authorization to charge "all required fees" or "the filing fee" to a credit card, because the Office cannot determine with certainty the amount of an unspecified fee (the amount of the "required fee" or the applicable "filing fee") within the time frame for reporting a charge to the credit card company. Also, the Office cannot accept charges to credit cards that require the use of a personal identification number (PIN) (*e.g.*, certain debit cards or check cards).
>
> Section 1.23(b) also contains a warning that if credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number is made public. The Office currently provides an electronic form for use when paying a fee in an electronically filed trademark application or electronic submission in a trademark application. This form will not be included in the records open to public inspection in the file of a trademark matter. However, the inclusion of credit card information on forms or documents other than the electronic form provided by the Office may result in the release of credit card information.

See Trademark Law Treaty Implementation Act Changes, 64 FR at 48906–07, 1226 *Off. Gaz. Pat. Office* at 110. The Office is now proposing to revise the rules of practice to expressly accept payment of any patent fee, trademark fee, or information product fee by credit card, subject to actual collection of the fee.

The Office will provide a Credit Card Payment Form (PTO–2038) for use when paying a patent or trademark fee (or the fee for an information product) by credit card. The Office will not require customers to use this form when paying a patent or trademark fee by credit card. If, however, a customer provides a credit card charge authorization in another form or document (*e.g.*, a communication relating to the patent or trademark), the credit card information may become part of the record of an Office file that is open to public inspection. Information concerning fees in general is posted on the Office's Web site at http://www.uspto.gov, and information on completing the Credit Card Payment Form will be posted on the Office's Web site.

The Office will not include the Credit Card Payment Form (PTO–2038) among the records open to public inspection in the file of a patent, trademark registration, or other proceeding. The Credit Card Payment Form (PTO–2038) is the only form the Office uses to collect credit card information and is the only form the Office will not make available to the public as part of the file of a patent, trademark, or other proceeding. As discussed above, failure to use the Credit Card Payment Form (PTO–2038) when submitting a credit card payment may result in your credit card information becoming part of the record of a Patent and Trademark Office file that is open to public inspection. If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the Patent and Trademark Office will not be liable in the event that the credit card number becomes public knowledge.

Discussion of Specific Rules: Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.21: Section 1.21(m) is proposed to be amended to make the $50.00 fee for processing a check returned "unpaid" by a bank applicable to any payment refused or charged back by a financial institution. The burden of processing any payment refused or credit card transaction charged back by a financial institution is the same as the burden of processing a check returned "unpaid" by a bank. The phrase "payment refused * * * by a financial institution" includes a check returned "unpaid" by a bank but also applies to the refusal by a financial institution of a payment by other means.

Section 1.23: Section 1.23(b) is proposed to be amended by revising the first sentence to eliminate the restriction that the payment of money required for Patent and Trademark Office fees by credit card be limited to fees "in an electronically filed trademark application or electronic submission in a trademark application."

Review under the Paperwork Reduction Act of 1995 and Other Considerations. This notice is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612 (October 26, 1987), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It has been determined that this rulemaking is not significant for the purposes of Executive Order 12866 (September 30, 1993).

This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Patent and Trademark Office has submitted an information collection package to OMB for its review and approval. The title, description, and respondent description for this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Patent and Trademark Office Fees.

Form Number: PTO–2038.

Type of Review: A new collection.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

Estimated Number of Respondents: 100,000 responses per year.

Estimated Time Per Response: 12 minutes.

Estimated Total Annual Respondent Burden Hours: 20,000 hours per year.

Needs and Uses: Persons submitting fees to the Patent and Trademark Office need to provide information concerning the purpose for the fee so that the Patent and Trademark Office is able to: (1) Apply the fee to the particular application, patent, trademark registration, or other proceeding, service or product; and (2) determine whether the person has submitted the fee(s) required by law or regulation. The Credit Card Form provides the public with a convenient manner of paying a patent application or service fee, trademark application or service fee, or information product fee by credit card.

Comments are invited on: (a) Whether the collection of information is necessary for proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding the burden estimate or any other aspects of the information requirements, including suggestions for reducing the burden, to Robert J. Spar, Director, Special Program Law Office, Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice if adopted would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The Office does not currently permit patent or trademark fees (except in an electronically filed trademark application or electronic submission in a trademark application) to be paid by credit card. The changes proposed in this notice if adopted would permit small entities as well as non-small entities the option of paying any patent or trademark fee by credit card. Small entities as well as non-small entities will continue to have the option of paying any patent or trademark fee by check, treasury note, money order, or charge to a deposit account. Based upon the number of small entities who pay fees to the Patent and Trademark Office each year and the percentage of fee payments that are by credit card (where currently permitted), the Office expects 16,000 small entities to pay a patent or trademark fee by credit card each year. Thus, the changes proposed in this notice if adopted would not have a significant economic impact on any business.

This notice of proposed rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612 (October 26, 1987).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 is revised to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.21 is amended by revising paragraph (m) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(m) For processing each payment refused (including a check returned "unpaid") or charged back by a financial institution— $50.00

* * * * *

3. Section 1.23 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 1.23 Method of payment.

* * * * *

(b) Payments of money required for Patent and Trademark Office fees may also be made by credit card. * * *

* * * * *

Dated: October 29, 1999.

Robert M. Anderson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–28731 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–158–2–9942(b); TN–211–1–9943(b); TN–215–1–9944(b); TN–221–1–9945(b); FRL–6452–7]

Approval and Promulgation of Implementation Plans, Tennessee: Approval of Revisions to the Knox County Portion of the Tennessee SIP Regarding Use of LAER for Major Modifications and Revisions to the Tennessee SIP Regarding the Coating of Miscellaneous Metal Parts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to take action on revisions to Sections 46.2 and 46.3.A. of the Knox County portion of the Tennessee State Implementation Plan (SIP) which were submitted by the Tennessee Department of Air Pollution Control (TDAPC), on May 23, 1995, and November 13, 1998, for purposes of revising the definition for Volatile Organic Compounds (VOC) and requiring the use of Lowest Achievable Emission Rate (LAER) for major modifications to existing sources of VOC. The EPA also proposes to approve revisions to the Tennessee SIP which were submitted by TDAPC on February 12, 1999, and May 17, 1999, for purposes of revising Rule 1200–3–18–.20 (Coating of Miscellaneous Metal Parts) to include a standard for the touch-up of heavy-duty trucks and revise the definition of "high performance architectural coating." In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 3, 1999.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554

Knox County Department of Air Quality Management, City/County Building, Room 339, 400 Main Street, Knoxville, Tennessee, 37902–2405. 423/215–2488

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: September 23, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–27196 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK–8–1–5772b; FRL–6457–8]

Approval and Promulgation of Implementation Plans; Oklahoma; Recodification of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action approving a recodification of the Oklahoma Department of Environmental Quality (ODEQ) regulations in the Oklahoma State Implementation Plan (SIP).

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by December 3, 1999.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION: This document concerns a recodification of the ODEQ SIP-approved regulations. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 23, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–27542 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–050–9953(b); FRL–6461–9]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted on April 22, 1999, by the State of Alabama. These revisions were made to comply with the regulations set forth in the Clean Air Act (CAA). Included in this document are revisions to Chapter 335–3–1—General Provisions which establishes Credible Evidence regulations and Chapter 335–3–14—Air Permits which allows exemptions for projects which are found to be beneficial to the environment. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 3, 1999.

ADDRESSES: Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: October 5, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–27540 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 097–5041; FRL–6459–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Control of VOC Emissions From Solvent Metal Cleaning Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. The revisions pertain to and clarify the Commonwealth's regulation to control of volatile organic compound (VOC) emissions from solvent metal cleaning operations using non-halogenated solvents, and update another of its regulations to incorporate certain federal regulations by reference. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision requests as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by December 3, 1999.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III address above, or via e-mail at lewis.janice@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 30, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–27676 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NJ35–2–195b FRL–6461–6]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Jersey on February 22, 1999. That revision committed that the State will accept compliance with the National Low Emission Vehicle (National LEV) program requirements as a compliance option for new motor vehicles sold in the State. New Jersey has previously adopted the California Low Emission Vehicle (CAL LEV) program, but the State has made clear that National LEV is the preferred motor vehicle control

program. Auto manufacturers have agreed to sell cleaner vehicles meeting the National LEV standards throughout New Jersey for the duration of the manufacturers' commitments to the National LEV program. This SIP revision is required as part of the agreement between states and automobile manufacturers to ensure the continuation of the National LEV program to supply clean cars throughout most of the country, beginning with 1999 model year vehicles in Northeastern states and extending to other states beginning with 2001 model year vehicles.

In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 3, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 27, 1999.

William J. Musynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–27794 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN106–1b; FRL–6446–6]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve an Indiana request to amend the Stage II Vapor Recovery rule as a revision to the State Implementation Plan (SIP). Indiana submitted the SIP revision request on April 6, 1999. The revision affects gasoline dispensing facilities in Clark, Floyd, Lake, and Porter Counties. Stage II Vapor Recovery systems lower Volatile Organic Compound (VOC) emissions from vehicle refueling operations. VOC emissions are a precursor of ground-level ozone, commonly known as smog.

In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: EPA must receive written comments by December 3, 1999.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA.

Table of Contents

I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

We are proposing to approve Indiana's April 6, 1999, State Implementation Plan revision request to amend the Stage II Vapor Recovery rules promulgated by Indiana in 1993 and approved by us on April 28, 1994. The amendments we are approving clarify the applicability of definitions pertaining to gasoline dispensing facilities.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: September 17, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–28040 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH 129–1b; FRL–6464–6]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve an August 19, 1999, request from Ohio for a State Implementation

Plan (SIP) revision of the Columbiana County, Ohio ozone maintenance plan. The maintenance plan revision allocates a portion of the safety margin to the transportation conformity mobile source emissions budget for the year 2005. USEPA is approving the allocation of 0.5 tons per day of oxides of nitrogen (NO_X) to the area's 2005 mobile source emissions budget for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations. In the Final Rules section of this **Federal Register**, USEPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule we plan to take no further activity in relation to this proposed rule. If USEPA receives significant adverse comments, in writing, which have not been addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this document.

DATES: Written comments must be received on or before December 3, 1999.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean USEPA.

This Supplementary Information section is organized as follows:

What action Is USEPA taking today?

Where can I find more information about this proposal and the corresponding direct final rule?

What Action is USEPA Taking Today?

In this action, we are proposing to approve a revision to the ozone maintenance plan for Columbiana County, Ohio. The revision will change the mobile source oxides of nitrogen emission budget that is used for transportation conformity purposes. The revision will keep the total emissions for the area at or below the attainment level required by law. This action will allow State or local agencies to maintain air quality while providing for transportation growth.

Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: October 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–28387 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6469–1]

Assessment of Visibility Impairment at the Grand Canyon National Park: Advance Notice of Proposed Rulemaking; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking; extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for an advance notice of proposed rulemaking, published June 17, 1999 (64 FR 32458), regarding visibility impairment at the Grand Canyon National Park (GCNP) and the possibility that the Mohave Generating Station (MGS) in Laughlin, Nevada may contribute to that impairment. In the June 17 notice, EPA requests information that it should consider in determining whether visibility problems at the GCNP can be reasonably attributed to MGS, and if so, what, if any, pollution control requirements should be applied.

The public comment period for the advance notice of proposed rulemaking was originally due to expire on August 16, 1999. On August 6, 1999 (64 FR 42891), September 14, 1999 (64 FR 49756), and October 1, 1999 (64 FR 53303), EPA published notices extending the public comment period on the advance notice of proposed rulemaking. Today, EPA is extending the public comment period for an additional 25 days.

DATES: The comment period on the advance notice of proposed rulemaking is extended until November 15, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: EPA Region IX, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn: Regina Spindler.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251, Planning Office (AIR2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: October 25, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 99–28722 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY37–202, FRL–6469–7]

Approval and Promulgation of Implementation Plans; New York 15 and 9 Percent Rate of Progress Plans, Phase I Ozone Implementation Plan and 1996 and 1999 Transportation Conformity Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a State Implementation Plan revision submitted by New York which is intended to meet several Clean Air Act requirements. EPA is proposing approval of the 1990 base year ozone emission inventory (for all ozone nonattainment areas in New York); the 1996 and 1999 ozone projection emission inventories; demonstration that emissions from growth in vehicle miles traveled will not increase motor vehicle emissions and, therefore, offsetting measures are not necessary; modeling efforts completed to date; transportation conformity budgets; photochemical assessment monitoring stations network; and enforceable commitments. EPA is also proposing

approval of New York's 15 Percent Rate of Progress Plan and the 9 Percent Reasonable Further Progress Plan. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the one-hour national ambient air quality standard for ozone.

DATES: Comments must be received on or before December 3, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the New York submittals and EPA's Technical Support Document are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is required by the Clean Air Act and how does it apply to New York?
II. What was included in New York's submittal?
  A. What emission inventories were included in New York's submittal and do they meet EPA's guidance?
    1. 1990 base year inventory
    2. 1996 and 1999 projection year inventories for the New York Metropolitan Area
  B. What are the Act requirements for an approvable 15 Percent Rate of Progress Plan and what does New York's 15 Percent Plan consist of?
  C. What are the Act requirements for an approvable 9 Percent Reasonable Further Progress Plan and what does New York's 9 Percent Plan consist of?
IV. What other Phase I required elements has New York satisfied in their submittal?
  A. What modeling work was submitted by New York?
  B. Did New York satisfy the Ozone Transport Commission NOx MOU requirement?
  C. What commitments to future actions were included in New York's submittal?
  D. Has New York satisfied the Phase I Clean Fuel Fleet requirement?
  E. Does New York need to offset growth in emissions from growth in VMT?
  F. Has New York submitted an approvable photochemical assessment monitoring station network?
V. Are New York's transportation conformity budgets approvable?
VI. What are EPA's Phase I Findings?
VII. What are EPA's Conclusions?
VIII. Administrative Requirements
  A. Executive Order 12866
  B. Executive Orders on Federalism
  C. Executive Order 13045
  D. Executive Order 13084
  E. Regulatory Flexibility Act
  F. Unfunded Mandates

I. What Is Required by the Clean Air Act and How Does It Apply to New York?

Section 182 of the Clean Air Act (Act) specifies the required State Implementation Plan (SIP) submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to EPA by the states. EPA has issued the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) describing in detail EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale.

New York was originally divided into six ozone nonattainment areas. These areas were the Albany-Schenectady-Troy Area, Buffalo-Niagara Falls Area, Essex County Area, Jefferson County Area, Poughkeepsie Area and the New York-Northern New Jersey-Long Island Area. The New York-Northern New Jersey-Long Island Area is classified as a severe ozone nonattainment area. The New York portion of the New York-Northern New Jersey-Long Island Area is composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland, referred to as the New York City Metropolitan Area (NYCMA), and certain towns in Orange County-Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury, referred to as the Lower Orange County Metropolitan Area (LOCMA). The primary focus of this **Federal Register** action is the New York portion of the New York-Northern New Jersey-Long Island Area (referred to as the New York Metropolitan Area). EPA is also acting on the 1990 base year emission inventories for the five upstate areas identified above.

II. What Was Included in New York's Submittal?

On February 2, 1999, Deputy Commissioner Johnson of the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a revision to the SIP to meet requirements related to attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, referred to as Phase I. New York's submittal revised the previously submitted 15 Percent Rate of Progress (ROP) Plan dated November 15, 1993 and September 4, 1997. In addition, these revisions are intended to fulfill EPA's Phase I requirement ("Ozone Attainment Demonstrations," March 2, 1995 memo from Mary Nichols) and includes the following: revisions of the 1990 base year ozone emission inventory (for areas designated nonattainment for ozone since 1991 in New York); the 1996 and 1999 ozone projection emission inventories; 9 Percent Reasonable Further Progress (RFP) Plan; contingency measures; demonstration that emissions from growth in vehicle miles traveled will not increase motor vehicle emissions and, therefore, offsetting measures are not necessary; modeling efforts completed to date; enforceable commitments for Phase II; photochemical assessment monitoring stations network; and transportation conformity budgets. EPA will be acting on the contingency measures in a separate **Federal Register** notice.

A. What Emission Inventories Were Included in New York's Submittal and Do They Meet EPA's Guidance?

New York's submittal included revisions of the 1990 base year ozone emission inventory (for areas designated nonattainment for ozone since 1991 in New York) and the 1996 and 1999 ozone projection emission inventories.

1. 1990 Base Year Inventory

Based on EPA's review, New York has satisfied all of EPA's requirements of providing a comprehensive, accurate, and current inventory of actual emissions in the six ozone nonattainment areas. A more detailed discussion of how the emission inventory was reviewed and the results are presented in the technical support document (TSD). A summary of EPA's review is given below:

—New York submitted a final Inventory Preparation Plan for the "Development of Ozone/CO SIP Inventory of Base Year 1990 Emissions," September 24, 1992. This Plan contained a Quality Assurance

Plan which was implemented and documented.

—The inventory is well documented. New York provided documentation detailing the methods used to develop emissions estimates for each category. In addition, New York identified the sources of data used in developing the inventory.

—The point and area source inventories are complete and were prepared/calculated in accordance with EPA guidance.

—New York biogenic emissions were prepared/calculated using the July 1991 version of PC–BEIS according to current EPA guidance.

—The method used to develop vehicle miles traveled (VMT) estimates was in accordance with EPA guidance and was adequately described and documented in the inventory report.

—The most current version of the Mobile model was used correctly for each of the eight vehicle classes.

—Emission estimates for the non-road mobile source categories were correctly prepared according to EPA guidance.

The revisions have been made in accordance with EPA guidance. Therefore, EPA is proposing to approve the revisions to the 1990 base year volatile organic compounds (VOC), nitrogen oxides (NOx) and carbon monoxide (CO) emission inventories.[1]

A summary of the emission inventories broken down by point, area, biogenic, on-road, and non-road mobile sources are presented in the Tables 1A–1F.

TABLE 1A.—NEW YORK METROPOLITAN AREA 1990 BASE YEAR OZONE SEASON EMISSIONS IN TONS/DAY

Pollutant	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	381	103	484	167	103	1,238
NO_x	59	286	400	178	N/A	923
CO	40	45	3,890	1,333	N/A	5,308

TABLE 1B.—ALBANY-SCHENECTADY-TROY AREA 1990 BASE YEAR OZONE SEASON EMISSIONS IN TONS/DAY

Pollutant	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	48.27	78.66	54.40	23.5	222.11	426.79
NO_x	4.84	73.34	73.10	23.35	N/A	174.63
CO	3.16	15.04	474.6	174.32	N/A	667.12

TABLE 1C.—BUFFALO-NIAGARA FALLS AREA 1990 BASE YEAR OZONE SEASON EMISSIONS IN TONS/DAY

Pollutant	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	67.11	156.45	50.5	32.70	61.06	367.85
NO_x	9.54	116.53	75.3	29.55	N/A	230.92
CO	5.13	69.06	437.7	24.12	N/A	536.00

TABLE 1D.—POUGHKEEPSIE AREA 1990 BASE YEAR OZONE SEASON EMISSIONS IN TONS/DAY

Pollutant	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	31.70	15.73	39.27	13.45	56.51	156.66
NO_x	4.0	66.47	50.69	15.42	N/A	136.58
CO	1.9	5.73	338.00	23.35	N/A	368.98

TABLE 1E.—ESSEX COUNTY AREA 1990 BASE YEAR OZONE SEASON EMISSIONS IN TONS/DAY

Pollutant	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	1.98	.29	2.97	.97	182.22	188.43
NO_x	.18	2.50	4.89	.83	N/A	8.4
CO	.36	1.45	25.06	7.61	N/A	34.48

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[1] EPA's March 1991 guidance document, "Emission Inventory Requirements for Ozone State Implementation Plans" (EPA–450/4–91–010), requires the base year inventory summary contain emission estimates of VOC, NOx and CO.

TABLE 1F.—JEFFERSON COUNTY AREA 1990 BASE YEAR OZONE SEASON EMISSIONS IN TONS/DAY

Pollutant	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	5.53	1.5	7.00	2.88	83.08	99.99
NO_X	.56	3.43	12.6	2.69	N/A	19.28
CO	.33	.23	61.90	21.72	N/A	84.18

2. 1996 and 1999 Projection Year Inventories for the New York Metropolitan Area

A projection of 1990 VOC anthropogenic emissions to 1996 for the New York Metropolitan Area is required to determine the reductions needed for the 15 Percent ROP Plan. In addition, projection of the 1990 VOC and NOx anthropogenic emissions to 1999 are required to determine the reductions needed for the 9 Percent RFP Plan with NOx substitution. The 1996 and 1999 projection year emission inventories are calculated by multiplying the 1990 base year inventory by factors which estimate growth from 1990 to 1996 and 1990 to 1999. A specific growth factor for each source type in the inventory is required since sources typically grow at different rates.

The difference between the most current 1990 base year inventory and the 1996 and 1999 projection inventories are the emissions growth estimates. Based on the difference between the 1990 base year inventory and the 1996 and 1999 projection year inventories, the total 1990–1996 and 1990–1999 VOC growth for the four source categories is estimated at 40 tons per day (tpd) and 81 tpd, respectively, in the New York Metropolitan Area. The total 1990–1996 and 1990–1999 NOx growth for the four source categories is estimated at 79 tpd and 125 tpd, respectively, in the New York Metropolitan Area.

Projection Methodology. Point Sources. For the point source category, New York projected 1990 base year emissions to 1996 and 1999 for each facility using Bureau of Economic Analysis (BEA) growth indicators available from New York State at the two-digit Standard Industrial Classification (SIC) Code level.

Since BEA growth indicators are one of the preferred growth indicators to use, as outlined in “Procedures for Preparing Emissions Projections,” July 1991, EPA finds New York's 1996 and 1999 point source projection methodologies to be acceptable.

Area Sources. For the area source category, New York projected emissions from 1990 to 1996 and 1999 using population and BEA growth rates where applicable. This is in accordance with EPA's recommended growth indicators for projecting emissions for area source categories outlined in “Procedures for Preparing Emissions Projections,” July 1991.

Non-Road Mobile Sources. For the non-road mobile source category, New York projected emissions utilizing EPA's guidance documents. New York included reductions anticipated from reformulated gasoline and new engine standards. Population growth rates were utilized to project the subcategory emissions except for light commercial, industrial and construction equipment which used the BEA growth rates. EPA finds New York's methodology for projecting nonroad mobile sources to be acceptable.

On-Road Mobile Sources. For the highway mobile source category, the primary indicator and tool for developing on-road mobile growth and expected emissions are VMT and EPA's mobile emissions model Mobile 5b. 1996 and 1999 VOC and NO_X emission factors were generated by Mobile 5b and applied to the New York State Department of Transportation (NYSDOT) VMT projections.

NYSDOT projected VMT by county and functional roadway classification based upon linear regression of historical Highway Performance Monitoring System (HPMS) VMT data. NYSDOT's method is in accordance with EPA's recommended growth indicators for projecting emissions for on-road mobile source categories outlined in “Procedures for Preparing Emissions Projections,” July 1991.

The 1996 and 1999 projection year emission inventories were calculated in accordance with EPA guidance. Therefore, EPA is proposing to approve the 1996 and 1999 projection year inventories. A more detailed discussion of how the emission inventories were reviewed and the results are presented in the TSD.

Tables 2A and 2B show 1996 and 1999 VOC and NO_X projection emission inventories using the aforementioned growth indicators/methodologies.

TABLE 2A.—NEW YORK METROPOLITAN AREA 1996 PROJECTION YEAR EMISSIONS INVENTORY IN TONS/DAY

Pollutant	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Total emissions
VOC	388	109	506	172	1,175
NO_X	61	311	443	187	1,002

TABLE 2B.—NEW YORK METROPOLITAN AREA 1999 PROJECTION YEAR EMISSIONS INVENTORY IN TONS/DAY

Pollutant	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Total emissions
VOC	393	113	534	176	1,216
NO_X	62	327	467	192	1,048

B. What Are the Act Requirements for an Approvable 15 Percent Rate of Progress Plan and What Does New York's 15 Percent Plan Consist of?

Section 182(b)(1) of the Act as amended in 1990 requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide VOC emissions by 15 percent from a 1990 adjusted baseline. The plans were to be submitted by November 15, 1993 and the reductions were required to be achieved within six years of enactment or by November 15, 1996. The Act also sets limitations on the creditability of certain types of reductions. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990 and Reid Vapor Pressure (RVP) programs promulgated prior to 1990. Furthermore, the Act does not allow credit for corrections to vehicle Inspection and Maintenance Programs (I/M) or corrections to reasonably available control technology (RACT) rules (RACT fix-ups) that were required to have been made to meet requirements in effect prior to 1990.

The target emission reductions were calculated in accordance with EPA guidance. The reader is referred to "Guidance On The Adjusted Base Year Emissions Inventory and The 1996 Target For The 15 Percent Rate of Progress Plans," (EPA–452/R–92–005). New York's 15 Percent ROP Plan is summarized in Table 3A.

The reader should note that the differences in VOC emissions between 1990 and 1996, in the New York Metropolitan Area as depicted in Tables 1A and 2A, are not the same as the emission reductions for the same time period depicted in Table 3A, Summary of 15 Percent ROP Plan. This is because the emissions changes between 1990 and 1996 have been adjusted for purposes of the 15 Percent ROP Plan to eliminate emission changes not creditable according to the Act. These adjustments are explained in detail in the previously referenced guidance.

TABLE 3A.—SUMMARY OF 15 PERCENT ROP PLAN

	New York metropolitan area VOC (tons/day)
Required VOC reductions to meet 15 Percent Plan	197.2
Creditable Reductions—Mobile Source control measures:	
Non-Road:	
Reformulated Gasoline	4.0
New Engine Standard	12.0
On-Road:	
Reformulated Gasoline	56.6
Tier I—New Vehicle Program	4.1
Low Emission Vehicle	3.3
Enhanced Inspection & Maintenance, July 1999 Emission Reduction Using Phase-in Cutpoints	22.2
Pressure/Purge Programs July 1999 Emission Reduction	19.8
Full Inspection Cycle Completed in November 1999	30.6
Stationary Source control measures: Parts 212, 228, 229, 234—VOC RACT	24.34
Area Source control measures:	
Auto Body Refinishing	5.7
Commercial Bakeries (Part 212)	2.1
Consumer Products	12.1
Graphic Art Facilities	0.7
Stage II for 1.2 to 2.5K Gal/Yr Stations	1.6
Stage II for LOCMA	0.4
Transit/Loading Losses	0.5
Total VOC reductions	200.04
Surplus	2.84
Reductions not credited in today's action—Stationary Source control measures: Capped/shut down Emissions	2.27

Measures Achieving the Projected Reductions. New York has provided a plan to achieve the reductions required for the New York Metropolitan Area. The following is a concise description of each control measure New York used to achieve emission reduction credit within its 15 Percent ROP Plan. All of the New York measures have been adopted and submitted as SIP revisions. EPA has previously approved most of the control measures, including interim approval of the enhanced vehicle I/M program.

Mobile source control measures. Reformulated Gasoline. Section 211(k) of the Act requires that after January 1, 1995 in severe and above ozone nonattainment areas, only reformulated gasoline (RFG) be sold or dispensed. RFG is reformulated to burn cleaner and produce fewer evaporative emissions. Specifically, RFG Phase I (1995—1999) must achieve reductions in VOCs of 15 to 17 percent and no increase in NOx from 1990 baseline gasoline emission levels. RFG Phase II (2000+) must achieve reductions in VOCs of 25 to 29 percent and reductions in NOx of five to seven percent from 1990 baseline emissions. EPA agrees with the reductions toward New York's ROP that were calculated due to the sale of RFG for both on-road and off-road use.

New Engine Standards. In November 1994, EPA provided guidance entitled, "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standard" for calculating future years' emission benefits from new engines proposed standards. The small gasoline engine standards, except recreational marine vessels, are being implemented in two phases starting with 1997 engine model year for both VOC and NOx and additional phase II exhaust and evaporative emission standards effective by 2001 engine model year. On

September 7, 1994, EPA issued a memo entitled, "Advance Emission Reduction Credits for Small Nonroad Gasoline Engines", which stated that advance reductions are available starting in 1994 based upon manufacturers introducing lower-emitting small gasoline engines into the market earlier than required by EPA's phase I rule. New York calculated the expected emission reductions from the proposed new engine standards for VOC and NOx based upon EPA's guidance. Further, on July 3, 1995 (60 FR 34581), EPA promulgated the first phase and on March 30, 1999 (64 FR 15208), EPA promulgated the second phase of the regulations to control emissions from new nonroad spark-ignition engines. These regulations are contained in the Code of Federal Regulations (CFR), Title 40, "Part 90—Control of Emissions From Nonroad Spark-Ignition Engines."

EPA has determined that the first phase of the new nonroad standards will cause a reduction of VOC emissions by 13.1 percent in 1997, 19.5 percent in 1998 and 23.9 percent in 1999 nationally. New York's estimated emission reductions, based upon EPA's earlier guidance, is conservative with respect to the reductions estimated by EPA in the 1995 Phase I regulations for new nonroad spark-ignition engines. EPA agrees with New York's calculated emission reductions associated with the Phase I new engine standards.

Tier I—New Vehicle Standards & Low Emission Vehicle Program. EPA promulgated standards for 1994 and later model year light-duty vehicles and light-duty trucks (56 FR 25724). Since the standards were adopted after the Clean Air Act Amendments of 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal. On April 28, 1992, New York adopted revisions to Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines" to incorporate the California low emission vehicle (LEV) standards as a part of New York's new motor vehicle emission control program. The New York State effective date as a result of the revisions to Part 218 was November 22, 1992. On January 6, 1995 (60 FR 2025), EPA published a final notice approving the revisions to Part 218 as a revision to the SIP. EPA agrees that the State's adopted LEV program will provide additional reductions which can be attributed to New York's 1996 ROP plan. EPA agrees with the emission reductions calculated by New York due to vehicle turnover combined with the FMVCP and the LEV program.

Enhanced I/M. On March 27, 1996 New York submitted revisions to its existing Inspection and Maintenance (I/M) program to satisfy applicable requirements of the Act and the 1995 National Highway Systems Designation Act (NHSDA). On November 27, 1996 (61 FR 60242) EPA proposed conditional interim approval of this submittal. The reader is referred to that proposal for the details on the enhanced I/M program and EPA's findings. Conditional approval was proposed because the March 27, 1996 New York submittal did not include (1) an indication of when the Consumer Price Index adjustments to the $450 repair cost waiver would take effect; (2) the modeling demonstrating that the proposed I/M program would achieve the required emission reductions; and (3) written test procedures, pass/fail standards, and equipment specifications. That notice called for New York to commit within 30 days to correct these major deficiencies in the submittal as identified above, by specific dates. On December 20, 1996, New York committed to correct the deficiencies by the timelines stipulated in EPA's November 27, 1996 proposed conditional interim approval. New York has since submitted the necessary material as committed to in the December 20, 1996 letter. On October 24, 1997 (62 FR 55343) EPA granted a final interim approval of New York's enhanced I/M program under section 110 which strengthens the SIP, as well as an interim approval under section 348 of the NHSDA. Interim approval was granted for 18 months, or until May 24, 1999, for New York to correct six minor, or de minimus, deficiencies related to the Act requirements for enhanced I/M and provide EPA with an enhanced I/M program effectiveness demonstration. The reader is referred to EPA's October 24, 1997 interim approval for the details on the enhanced I/M program supplemental submittals and EPA's findings.

On May 20, 1999, New York submitted to EPA a final revision to the New York enhanced I/M program which addressed the six minor, or de minimus, deficiencies relating to the Act requirements for enhanced I/M. In addition, on May 24, 1999 New York submitted to EPA an enhanced I/M program evaluation report/program effectiveness demonstration. EPA is in the process of reviewing these submittals for technical adequacy and approvability and will be acting on these submittals in a separate **Federal Register** notice.

By today's action, EPA proposes to approve emission credits for the 15 Percent ROP and 9 Percent RFP Plans, pending EPA's verification of New York's enhanced I/M program's effectiveness, under section 348 of the NHSDA. If EPA determines New York's enhanced I/M program effectiveness demonstration indicates a shortfall in emission reductions compared to the emission reductions credited in the 15 Percent ROP and/or 9 Percent RFP Plans, EPA will propose to disapprove the 15 Percent ROP and/or 9 Percent RFP Plans. EPA final action will be based on EPA's evaluation of New York's demonstration of the enhanced I/M program's effectiveness. If New York's demonstration indicates a shortfall in emission reductions compared to the emission reductions credited in the 15 Percent ROP and 9 Percent RFP Plans, New York would need to find additional emission reduction credits. Failure of New York to make up for an emission shortfall may subject them to sanctions and imposition of a Federal Implementation Plan. The credits provided by the enhanced I/M program for those plans may be adjusted based on EPA's evaluation of the enhanced I/M Program's performance.

Enhanced I/M "as soon as practicable". Section 182(b)(1) of the Act requires that states containing ozone nonattainment areas classified as moderate or above prepare SIPs that provide for a 15 percent VOC emissions reduction by November 15, 1996. Most of the 15 Percent ROP Plans originally submitted to EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, many states became concerned over the cost and convenience issues related to enhanced I/M programs as they were originally envisioned.

In a response to these concerns in September 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs. Subsequently, Congress enacted the NHSDA, which provided states significantly more flexibility in determining the design of their respective enhanced I/M programs. The substantial lead time required for states to redesign and set up the necessary infrastructure of enhanced I/M programs in accordance with the NHSDA precluded them from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many states upon enhanced I/M programs to help achieve the 15 percent VOC emissions reduction required under section 182(b)(1), and the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA recognized that it was no longer possible for many states to achieve the portion of the 15 percent reductions that is attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15 Percent ROP Plans would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow states that pursue redesign of enhanced I/M programs to receive emission reduction credit from these programs within their 15 Percent ROP Plans, even though the emissions reductions from the enhanced I/M program will occur after November 15, 1996.

Specifically, EPA can propose approval of 15 Percent ROP Plans if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15 Percent ROP Plan measures, will achieve the 15 percent level as soon as practicable after November 15, 1996. To make this "as soon as practicable" determination, EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15 percent level is achieved. EPA does not believe that measures meaningfully accelerate the 15 percent date if they provide only an insignificant amount of reductions.

In the case of New York, they have submitted a 15 Percent ROP Plan that would achieve the amount of reductions needed from enhanced I/M by November 15, 1999. New York has submitted a 15 Percent ROP Plan that achieves all other reductions by 1996. In addition, EPA is pursuing federal rulemaking on a national scope which will result in additional emission reductions. EPA proposes to determine that this SIP does contain all measures, including enhanced I/M, that achieves the required reductions as soon as practicable.

EPA has examined other potentially available SIP measures to determine if they are practicable for New York and if they would meaningfully accelerate the date by which the area reaches the 15 percent level of reductions. In most cases New York has already adopted and implemented stationary control measures that other states are considering or which other states have included in their 15 Percent ROP Plans. Moreover, there are no measures that would achieve the 15 Percent reduction faster than the measures in New York's SIP. EPA proposes to determine that the SIP does contain the appropriate measures.

Pressure/Purge Programs. The 1992 I/M regulation requires that the enhanced I/M program include measures to curtail evaporative emissions from vehicle fueling systems. One such measure includes a functional check of the fuel tank integrity through pressurization. For a fraction of the emission reduction credit, EPA later allowed use of a test that checks only the integrity of the vehicle gas cap. New York has opted to perform this version of the test and submitted calculated emission reductions based on its use.

Full Inspection Cycle. In November 1998, New York began mandatory testing under the new inspection program. Although initial operating problems were identified, most of the vehicles covered under the program have thus far been tested. A legal challenge to the State's authority by non-implementing stations briefly allowed the use of the old test procedure during the early part of 1999. However, only a small portion of the covered vehicles was affected and New York estimates that the vast majority of the vehicles will have been tested by November 1999. Pending the verification of New York's enhanced I/M program's effectiveness, this will allow New York to meet the emission credit portion calculated in its 15 percent plan submittal.

Stationary source control measures. Parts 212, 228, 229, 234—VOC RACT. New York has submitted adopted revisions to Part 212, "General Process Emission Sources" which expanded the coverage of the regulation to require RACT on all major VOC process sources not covered in EPA issued control techniques guidelines (CTG) documents (referred to as "non-CTG major sources") and NO_X process sources throughout New York State and those not previously regulated in the New York Metropolitan Area. The New York State effective date as a result of the amendments to Part 212 was September 22, 1994. Although Part 212 is pending EPA rulemaking action, EPA agrees with the reductions projected in the New York 15 Percent ROP Plan due to the implementation of this rule.

New York submitted adopted revisions to Part 228, "Surface Coating Processes," Part 229, "Petroleum and Volatile Organic Liquid Storage," and Part 234, "Graphic Arts" which became New York State effective on April 4, 1993. These revisions extended the applicability of New York's RACT rules for sources covered by pre-enactment CTGs statewide and also added control requirements for some non-CTG RACT sources. On December 23, 1997 (62 FR 67004), EPA published a final notice approving these rules as a revision to the SIP. EPA agrees with the reductions projected in the New York 15 Percent ROP Plan due to the implementation of these rules.

Area source control measures: Auto Body Refinishing. On September 11, 1998 (63 FR 48806), EPA promulgated a national rule to control VOC emissions from solvent evaporation through reformulation of coatings used in auto body refinishing processes. These coatings are typically used by small businesses, or by vehicle owners. VOC emissions emanate from the evaporation of solvents used in the coating process. Use of emissions reductions from EPA's national rule is creditable toward ROP and RFP plans. EPA agrees with the reductions projected in the New York 15 Percent ROP Plan due to the implementation of this rule.

Commercial Bakeries (Part 212). As stated above, New York submitted adopted revisions to Part 212 "General Process Emission Sources." Commercial bakeries had previously been exempt from the control requirements of Part 212, however, the revisions to Part 212 subject commercial bakeries to control requirements and includes a provision which sets forth a deadline in which bakeries must apply for a certificate to operate. Although Part 212 is pending EPA rulemaking action, EPA agrees with the reductions projected in the New York 15 Percent ROP Plan due to the implementation of this rule.

Consumer Products. On September 11, 1998 (63 FR 48819) EPA promulgated a national rule to control VOC emissions from household consumer products, such as cleaning products, personal care products, and a variety of insecticides. EPA's regulation is based on best available controls, as defined under the Act, and sets specific VOC content limits on 24 consumer product categories (some product categories are divided into subcategories). VOC limits would be met by the pollution prevention method of product reformulation. Use of emissions reductions from EPA's national rule is creditable toward ROP and RFP plans. EPA agrees with the reductions projected in the New York 15 Percent ROP Plan due to the implementation of this rule.

Graphic Arts Facilities (Part 234). As stated above, New York submitted adopted revisions to Part 234, "Graphic Arts", which became New York State effective on April 4, 1993. These amendments extended the applicability of regulations currently in force in the NYCMA to the major VOC facilities in LOCMA. Control requirements for screen printing operations and lithographic printing processes (both which are non-CTG categories) have been mandated. Part 234 also has opacity limitations and provisions for the handling, storage, and disposal of VOC. EPA agrees with the reductions projected in the New York 15 Percent ROP Plan due to the implementation of this rule.

Stage II for 1.2 to 2.5K Gal/Yr Stations (Part 230). New York submitted adopted revisions to Part 230 "Gasoline Dispensing Sites and Transport Vehicles" which became New York State effective on September 22, 1994. The revisions to Part 230 lowered the applicability of the Stage II gasoline vapor recovery systems, which capture gasoline vapors during the refueling of motor vehicles, within the NYCMA. On April 30, 1998 (63 FR 23665), EPA published a final notice approving the revisions to Part 230 into the SIP. EPA agrees with the reductions projected in the New York 15 Percent ROP Plan due to the implementation of this rule.

Stage II for LOCMA (Part 230). New York submitted adopted revisions to Part 230 "Gasoline Dispensing Sites and Transport Vehicles" which became New York State effective on September 22, 1994. The revisions to Part 230 expanded the applicability of all the gasoline vapor control measures which are required in the NYCMA, into the LOCMA and expanded the applicability to cover additional gas stations. On April 30, 1998 (63 FR 23665), EPA published a final notice approving the revisions to Part 230 into the SIP. EPA agrees with the reductions projected in the New York 15 Percent ROP Plan due to the implementation of this rule.

Transit/Loading Losses. New York submitted adopted revisions to Part 230 "Gasoline Dispensing Sites and Transport Vehicles" which became New York State effective on September 22, 1994. The revisions to Part 230 expanded the requirements of Stage I gasoline vapor recovery systems to gasoline dispensing facilities located in the LOCMA. All gasoline transport vehicles which convey gasoline either to or from gasoline loading terminals or gasoline bulk plants are to be equipped with a vapor control system or equivalent method. On April 30, 1998 (63 FR 23665), EPA published a final notice approving the revisions to Part 230 into the SIP. EPA agrees with the reductions projected in the New York 15 Percent ROP Plan due to the implementation of this rule.

Measures Not Creditable in Today's Action. Capped/shutdown emissions. Certain facilities chose permit limits on their hours of operation to "cap" their facilities potential emissions below an annual level which reflected their actual hours of operation and emissions. These "capping out" provisions are included in a number of New York VOC and NO_X RACT regulations. The "capping out" provision exempts the facility from RACT requirements and/or Title V permitting requirements. In the projection inventory, New York adjusted emissions to account for those facilities that have "capped out". In addition, New York adjusted emissions to account for those facilities that have ceased or shutdown operations since the 1990 base year emissions inventory was compiled.

While EPA acknowledges that capped/shutdown facilities may have resulted in emission reductions, the documentation New York provided is not sufficient to determine whether these reductions are real, permanent and enforceable. Further, without this documentation, EPA is unable to verify whether the emission reduction credits associated with capped/shutdown facilities are not "double counted" or, more simply, used more than once (i.e., reductions cannot be used for offsets and to meet the 15 percent ROP requirement). Because of the uncertainties associated with both capped and shutdown emissions, EPA is considering these emissions reductions to be noncreditable at this time with respect to New York's Phase I Ozone SIP.

15 Percent ROP Plan Evaluation. New York has identified the control measures necessary for achieving the required emission reductions and all the measures have been adopted and implemented. EPA is proposing to find that the 15 Percent ROP Plan contains the necessary measures as identified in Table 3A to achieve the required emission reductions. The Plan also satisfies the requirement of achieving these reductions "as soon as practicable" and there are no remaining measures which could be implemented any sooner to offset the delay in the enhanced I/M program. Therefore, EPA proposes to approve emission credits for the 15 Percent ROP, pending EPA's verification of New York's enhanced I/M program's effectiveness. If EPA determines New York's enhanced I/M program effectiveness demonstration indicates a shortfall in emission reductions compared to the emission reductions credited in the 15 Percent ROP Plan, EPA will propose to disapprove the 15 Percent ROP Plan. EPA final action will be based on EPA's evaluation of New York's demonstration of the enhanced I/M program's effectiveness.

C. What Are the Act Requirements for an Approvable 9 Percent Reasonable Further Progress Plan and What Does New York's 9 Percent Plan Consist Of?

Section 182(c)(2)(B) of the Act requires ozone nonattainment areas with classifications of serious and above to develop plans to reduce area-wide VOC emissions by 3 percent per year averaged over the next three-year period (1997–1999) from a 1990 baseline. This is referred to as the 9 Percent RFP Plan. The plan was to be submitted by November 15, 1994 and the reductions are required to be achieved by November 15, 1999. The Act also sets limitations on the creditability of certain types of reductions.

The target emission reductions were calculated in accordance with EPA guidance. The reader is referred to "Guidance On The Post 1996 Rate of Progress Plan and the Attainment Demonstration," (EPA–452/R–93–015).

Section 182(c)(2)(C) of the Act allows NO_X reductions to be substituted for VOC reductions for RFP demonstrations provided states demonstrate through modeling that NO_X reductions are needed in the nonattainment area. New York has shown that NO_X reductions will contribute toward attaining the ozone standard (See section IV. A., Modeling discussion below). New York has demonstrated that every ton of NO_X is equivalent to approximately 1.2 tons of VOC in the New York Metropolitan Area on percent of total inventory basis. Table 3B includes columns showing the VOC and NO_X reductions that will result from the implementation of the control measures.

TABLE 3B.—SUMMARY OF NEW YORK'S 9 PERCENT RFP PLAN

	New York metropolitan area (tons/day)	
	VOC [2]	NO_X [2]
Required VOC reductions needed to meet 9 Percent Plan	130.76	

TABLE 3B.—SUMMARY OF NEW YORK'S 9 PERCENT RFP PLAN—Continued

	New York metropolitan area (tons/day)	
	VOC[2]	$\mathrm{NO_X}$[2]
Creditable Reductions—1996 Surplus	5.11	....
Mobile source control measures:		
Non-Road:		
Reformulated gasoline and New Engine Standards	9	5
On-Road:		
Reformulated gasoline	4	3.9
Tier I—New Vehicle Program	20.3	43.4
Low Emission Vehicle	3.2	7.4
Enhanced Inspection & Maintenance July 1999 Emission Reduction Using Phase-in Cutpoints	....	22.2
Full Inspection Cycle Completed in November 1999	....	15.3
Stationary source control measures:		
Parts 212, 228, 229—VOC RACT	0.32	....
MACT (Federal Measures)	3.19	....
OTC Phase II Baseline (Part 227–3)	....	135.65
Part 227–2	....	6.89
Area source control measures:		
Consumer Products	0.1	....
Hospital Sterilizers	0.1	....
Municipal Solid Waste Landfills	4.9	....
Surface Cleaning	18.3	....
Total reductions	68.52	[3] 239.74
VOC Shortfall	62.24	....
VOC and $\mathrm{NO_X}$ Equivalent Surplus	75.44	[4] 62.87
Reductions not credited in today's action—Capped/Shutdown Emissions	0.15	2.95

[2] VOC emission reductions claimed occur from 1997 through 1999. $\mathrm{NO_X}$ emission reductions claimed occur from 1990 through 1999.

[3] Of the available 239.74 tpd $\mathrm{NO_X}$ emissions reductions credits, 125 tpd are used to meet the growth in $\mathrm{NO_X}$ emissions and 51.87 tpd to cover the VOC shortfall (51.87 tpd of $\mathrm{NO_X}$ is equivalent to 62.24 tpd VOC), 62.87 tpd $\mathrm{NO_X}$ are surplus.

[4] 62.87 tons/day of $\mathrm{NO_X}$ surplus converts to 75.44 tons/day of VOC equivalent in the New York Metropolitan Area.

Measures Achieving the Projected Reductions. New York has provided a plan to achieve the reductions required for the New York Metropolitan Area. The following is a concise description of each control measure New York used to achieve the emission reduction credit within its 9 Percent RFP Plan. All of the State's measures used in the 9 Percent RFP Plan have been adopted and submitted as SIP revisions. EPA has previously approved most of the control measures, including interim approval of the enhanced vehicle I/M program.

Mobile Source Measures: New Engine Standard. This is the same measure as contained in New York's 15 Percent ROP Plan except New York's 9 Percent RFP Plan is only taking the additional VOC credit that would be generated for the years 1997–1999 and utilizing the substitution of the $\mathrm{NO_X}$ emission reduction credits generated for the years 1990–1999. EPA agrees with the calculated emission reductions associated with the New Engine Standard.

Reformulated Gasoline. This is the same measure as contained in New York's 15 Percent ROP Plan except New York's 9 Percent RFP Plan is only utilizing the substitution of the $\mathrm{NO_X}$ emission reduction credits generated for the years 1990–1999. EPA agrees with the calculated emission reductions associated with reformulated gasoline.

Enhanced Inspection and Maintenance. This is the same measure as contained in New York's 15 Percent ROP Plan except New York's 9 Percent RFP Plan is utilizing the substitution of the $\mathrm{NO_X}$ emission reduction credits generated for the years 1990–1999. See above discussion for EPA's action on New York's enhanced I/M emission credits for the 9 Percent RFP Plan.

Low Emissions Vehicle Program. This is the same measure as contained in New York's 15 Percent ROP Plan except New York's 9 Percent RFP Plan is utilizing the substitution of the $\mathrm{NO_X}$ emission reduction credits generated for the years 1990–1999. EPA agrees with the calculated emission reductions associated with New York's low emission vehicle program.

Stationary Source Control Measures. Parts 212, 228, 229—VOC RACT. This is the same measure as contained in New York's 15 Percent ROP Plan except New York's 9 Percent RFP Plan is only taking the additional VOC credit that would be generated for the years 1997–1999. EPA agrees with the calculated emission reductions associated with these VOC RACT measures.

OTC Phase II Baseline (Part 227–3)—$\mathrm{NO_X}$ MOU/$\mathrm{NO_X}$ RACT. On January 12, 1999, New York adopted revisions to Part 227–3 "Pre 2003 Nitrogen Oxides Emissions Budget and Allocation Program," which incorporate the $\mathrm{NO_X}$ MOU requirements. The OTC $\mathrm{NO_X}$ MOU calls for states to reduce $\mathrm{NO_X}$ emissions from boilers and indirect heat exchangers with heat inputs greater than 250 million BTU per hour. These emission reductions will be realized in two phases, first in 1999 and again in 2003. Part 227–3 became effective on March 5, 1999 and sources are required to be in compliance with the first phase by May 1, 1999. On April 29, 1999, NYSDEC submitted to EPA a SIP revision which included the revisions to Part 227–3. EPA will be acting on the April submittal in the near future. EPA agrees with the calculated emission reductions associated with this $\mathrm{NO_X}$ RACT measure, however, only the first phase of reductions will be creditable towards New York's 9 Percent RFP Plan.

Part 227–2—$\mathrm{NO_X}$ RACT. On January 19, 1994 and January 27, 1999, New York adopted revisions to Part 227–2, "Stationary Combustion Installations" to comply with the Act provisions to implement $\mathrm{NO_X}$ RACT. On April 29, 1999, NYSDEC submitted to EPA a SIP revision which included the revisions to Part 227–2. Subpart 227–2 requires the following major source of NO_X to achieve RACT by May 31, 1995: (1) very large boilers (>250 mmBTU/hr); (2) large boilers (>100–250 mmBTU/hr); (3) Mid-size boilers (>50–100 mmBTU/hr); (4) small boilers (<50 mmBTU/hr); (5) combustion turbines; (6) stationary internal combustion engines; (7) other combustion sources (not specifically covered under separate New York regulations). EPA will be acting on the April submittal in the near future. EPA agrees with the calculated emission reductions associated with this NO_X RACT measure.

MACT (Federal Measures). For the 1999 projected emissions reductions, VOC emissions reductions from specific source categories were adjusted according to RACT (promulgated New York regulations discussed previously) and Maximum Achievable Control Technology (MACT—promulgated federal regulations regarding National Emission Standards for Hazardous Air Pollutants). In most cases there was a New York rule in place and RACT was applied. Where MACT was in effect and it was more stringent than RACT, it took the place of RACT. In order for RACT or MACT to have been creditable, it had to have a compliance date prior to November 15 of the projection year (*i.e.*, 1999 for creditable reductions towards the 9 Percent RFP plan). New York took credit for the following MACT standards in the 9 Percent RFP plan:

(1) 40 CFR 63.190 subpart I—Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (59 FR 19402).

(2) 40 CFR 63.1310 subpart JJJ—Standards for Group IV Polymer and Resins (61 FR 48208).

(3) 40 CFR 63.100 subpart F—Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry (59 FR 19402).

(4) 40 CFR 63.460 subpart T—Halogenated Solvent Cleaning (59 FR 61801).

(5) 40 CFR 63.640 subpart CC—Petroleum Refineries (60 FR 43244).

(6) 40 CFR 63.820 subpart KK—Standards for the Printing and Publishing Industry (61 FR 27131).

(7) 40 CFR 63.420 subpart R: Gasoline Distribution (59 FR 64303).

EPA agrees with the calculated emission reductions associated with the federal MACT standards.

Area Source Control Measures: Consumer Products. This is the same measure as contained in New York's 15 Percent ROP Plan except New York's 9 Percent RFP Plan is only taking the additional VOC credit that would be generated for the years 1997–1999. EPA agrees with the calculated emission reductions associated with consumer products.

Hospital Sterilizers. For 1999 the New York Metropolitan Area will be affected by the federal MACT for ethylene oxide sterilizers. The MACT requires all ethylene oxide sterilizers to be permitted. This permit requirement subsequently subjects them to the control requirements of Part 212, "General Process Emission Sources". EPA agrees with the calculated emission reductions associated with hospital sterilizers.

Municipal Solid Waste Landfills. For 1999, federally adopted New Source Performance Standards and a New York State adopted regulation for Municipal Solid Waste Landfills will be in effect for certain new and existing landfills respectively in the New York Metropolitan Area. On March 12, 1996 (61 FR 9919), the EPA promulgated in the **Federal Register** standards of performance for new sources for municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills. These regulations and guidelines were promulgated as subparts WWW and Cc of 40 CFR part 60. On September 22, 1998, New York adopted revisions to Part 360.2 "Landfills", which became effective on November 21, 1998. These revisions make enforceable the requirements as outlined in EPA's emission guidelines. On July 19, 1999 (64 FR 38582), EPA published a final notice approving the revisions to Part 360.2. EPA agrees with the calculated emission reductions associated with the Municipal Solid Waste Landfills.

Surface Cleaning. For 1999, facilities located in the New York Metropolitan Area will be subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for halogenated solvent cleaning (NESHAP—40 CFR 63.460, subpart T). Subpart T applies to facilities that use any of the following halogenated hazardous air pollutant solvents, which have also been identified as VOC's: (1) trichloethylene (TCE); (2) carbon tetrachloride (CT); and (3) chloroform (C). EPA agrees with the calculated emission reductions associated with surface cleaning.

Measures Not Creditable in Today's Action. Capped/shutdown emissions. As discussed under the 15 Percent ROP Plan section, because of the uncertainties associated with both capped and shutdown emissions, EPA is considering these emissions reductions to be noncreditable at this time with respect to New York's Phase I Ozone SIP.

9 Percent RFP Plan Evaluation. New York has identified the control measures necessary for achieving the required emission reductions and all the measures have been adopted and implemented. EPA is proposing to find that the 9 Percent RFP Plan contains the necessary measures as identified in Table 3B to achieve the required emission reductions. EPA proposes to approve emission credits for the 9 Percent RFP Plan, pending EPA's verification of New York's enhanced I/M program's effectiveness. However, as discussed under the 15 Percent ROP Plan section, if EPA determines New York's enhanced I/M program effectiveness demonstration indicates a shortfall in emission reductions compared to the emission reductions credited in the 9 Percent RFP Plan, EPA will propose to disapprove the 9 Percent RFP Plan. EPA final action will be based on EPA's evaluation of New York's demonstration of the enhanced I/M program's effectiveness.

IV. What Other Phase I Required Elements Has New York Satisfied in Their Submittal?

New York's submittal is intended to fulfill EPA's Phase I requirements ("Ozone Attainment Demonstrations," March 2, 1995 memo from Mary Nichols) and in addition to the previously mentioned SIP elements, includes the following Phase I required elements: modeling efforts completed to date; Ozone Transport Commission NO_X MOU; enforceable commitments for Phase II; clean fuel fleet program; analysis of growth in emissions due to increases in VMT; and photochemical assessment monitoring stations network.

A. What Modeling Work Was Submitted by New York?

As part of New York's initial submittal of the 15 and 9 percent plans, New York submitted a preliminary modeling analysis using assumptions about transported ozone and precursors, as required by the March 2, 1995 memo.

Photochemical grid modeling is used to support New York's submittal in two ways: first, meet the requirements set out in EPA's March 2, 1995 memo for a preliminary modeling analysis and to support the State's ability to use reductions in VOC and NO_X emissions as part of its ROP and RFP Plans.

The modeling predicts that ozone will be reduced if emissions of VOC or of NO_X are reduced. This is based on modeling the impact of proportionally reducing emissions of VOC and NO_X together and separately and showing that the peak ozone concentration is reduced. Thus, emissions of either VOC and NO_X can be reduced to improve ozone air quality in New York and either can be used in the 15 Percent ROP and 9 Percent RFP Plans to the extent allowed in the Act.

New York has since submitted additional modeling analyses as part of their Phase II Ozone Attainment Plan. EPA will act on the Phase II Ozone Attainment Plan in a separate **Federal Register** notice.

EPA is proposing to accept New York's modeling efforts as fulfilling EPA's Phase I requirements.

B. Did New York Satisfy the Ozone Transport Commission NO_X MOU Requirement?

EPA is proposing that New York has satisfied EPA's Phase I requirement for NO_X Memorandum of Understanding (MOU). In September 1994, the Ozone Transport Commission agreed to develop a regional program to achieve significant reduction in NO_X emissions from large combustion sources. On September 27, 1994, New York signed the MOU which formalized this program. EPA's March 2, 1995 policy requires states to provide an enforceable commitment to implement the NO_XMOU, which New York did in a June 15, 1995 letter to EPA. On January 12, 1999, New York adopted revisions to Part 227–3 "Pre 2003 Nitrogen Oxides Emissions Budget and Allocation Program," which incorporate the NO_X MOU requirements. Part 227–3 became effective on March 5, 1999. On April 29, 1999, NYSDEC submitted to EPA a SIP revision which included the revisions to Part 227–3. EPA will be acting on the April submittal in the near future.

C. What Commitments to Future Actions Were Included in New York's Submittal?

As part of New York's submittal of the Phase I SIP revision, New York made commitments to the following EPA March 2, 1995 policy requirements: (1) participate in the consultative process to address regional transport; (2) adopt additional control measures as necessary to attain the ozone standard, meet rate of progress requirements, and eliminate significant contribution to nonattainment downwind; and (3) identify any reductions that are needed from upwind areas for the area to meet the ozone standard.

New York has since submitted a Phase II Ozone Attainment Plan which address the commitments made in their Phase I plan. EPA is proposing to accept the commitments made by New York as satisfying EPA's Phase I requirements and will act on these elements in conjunction with Phase II in the near future.

D. Has New York Satisfied the Phase I Clean Fuel Fleet Requirement?

With regards to fulfilling EPA's Clean Fuel Fleet Program (CFFP) Phase I requirement ("Ozone Attainment Demonstrations," March 2, 1995 memo from Mary Nichols), New York has done so by adopting and submitting to EPA a LEV program to be used as a substitute measure for CFFP.

Section 182(c)(4) of the Act requires that serious or above ozone and carbon monoxide nonattainment areas implement a CFFP. The Federal CFFP requires that light and heavy duty fleets of ten or more vehicles in the covered areas assure that a percentage of their annual new vehicle purchases be clean fueled vehicles. The Act also allows states to opt out of the CFFP with a substitute program or programs which achieve equivalent long term emission reductions. On January 6, 1995 (60 FR 2022) EPA approved New York's opt out of the light duty CFFP with its LEV program. The LEV program will cover all the vehicles in the New York Metropolitan Area (as well as the rest of New York State), of which the light duty vehicles covered by the CFFP would be only a subset. Since that time New York has proposed to also opt out of the heavy duty portion of the CFFP with the LEV program. New York is confident that the LEV program will generate enough long term emission reduction credits to be used as a substitute measure for the heavy duty CFFP as well and still have surplus credit left over from the far reaching LEV program. EPA will be acting on the heavy duty CFFP opt-out in a separate **Federal Register** notice. New York is taking credit for the LEV program in the 1996 and 1999 ROP plans and no credit is being assigned to the CFFP program in these plans (*i.e.*, there is no "double counting" of credits). EPA agrees with this treatment of the LEV program. With respect to New York's use of LEV as a substitute for the CFFP, equivalency is measured in the long term, *i.e.* by the year 2010, therefore its use in that capacity will have no bearing on the State's 1996 and 1999 ROP plans.

E. Does New York Need To Offset Growth in Emissions From Growth in VMT?

New York has indicated in its Phase I SIP submittal, that it will not need to offset growth in emissions from growth in VMT until at least the year 2007, the year New York is required to demonstrate attainment. New York has also chosen to comply with the Act's RFP milestone and attainment requirements using measures other than Transportation Control Measures (TCMs).

Section 182(d)(1)(A) of the Act requires states containing ozone nonattainment areas classified as "severe" under section 181(a) of the Act to adopt TCMs in order to offset growth in emissions from growth in VMT, and to attain reductions in motor vehicle emissions as necessary to comply with the Act's RFP milestone and attainment requirements.

Because current modeling does not indicate a need for TCMs to offset a growth in emissions before 2007, EPA is proposing to approve the part of the ozone SIP that determines that New York is not required to adopt specific, enforceable TCMs to meet the TCM offset requirement. EPA is also proposing to approve the states decision to comply with the RFP milestone and attainment requirements using measures other than TCMs.

F. Has New York Submitted an Approvable Photochemical Assessment Monitoring Station Network?

NYSDEC submitted its photochemical assessment monitoring station network (PAMS) Network Plan which was reviewed and found approvable on September 21, 1998 by EPA and was judged to satisfy the requirements of 40 CFR 58.40(a).

Section 182(c)(1) of the Act and the General Preamble (57 FR 13515) require that EPA promulgate rules for enhanced monitoring of ozone, NO_X and VOCs (see 58 FR 8452, February 12, 1993) and that states classified serious and above develop and operate a PAMS. NYSDEC has been establishing its PAMS network according to its approved Work Plan and implementation schedule. The two PAMS sites approved by EPA, one in the Bronx and the other in Queens, have been operating since 1994 and 1997, respectively. EPA is proposing to approve New York's PAMS network.

V. Are New York's Transportation Conformity Budgets Approvable?

By virtue of proposing approval of the 15 Percent ROP Plan and 9 Percent RFP Plan, EPA is also proposing approval of the motor vehicle conformity emissions budgets for VOC and NO_X. For the 1999 analysis year and later, conformity determinations addressing VOC and NO_X must demonstrate consistency with the 9 Percent RFP Plan revision's VOC and NO_X motor vehicle emissions budget. Table 4 summarizes New York's Emission Budgets.

TABLE 4.—EMISSION BUDGETS FOR CONFORMITY

County	1996		1999	
	VOC tons/day	tons/ dayNO_x	VOC tons/day	NO_x tons/day
Bronx	22.2	23.6	18.0	20.6
Kings	36.5	31.8	29.7	27.6
Nassau	71.0	69.2	60.0	61.4
New York	35.1	21.0	27.9	18.5
Orange (LOCMA)	5.1	9.2	4.9	8.7
Queens	47.9	44.4	39.0	38.8
Richmond	13.0	13.1	11.1	11.9
Rockland	16.9	20.5	14.3	18.4
Suffolk	62.3	75.7	53.6	68.0
Westchester	43.1	54.5	36.1	48.7
Total	353.2	362.8	294.7	322.6

EPA is proposing to approve New York's emission budgets.

VI. What Are EPA's Phase I Findings?

On July 3, 1996, EPA notified the Governor of New York that EPA was making a finding of failure to submit all the Act elements required to fulfill the March 2, 1995 "Ozone Attainment Demonstration" policy as committed to by New York. With New York's submittals of September 4, 1997 and February 2, 1999 (Phase I SIP revision), and December 19, 1997 (Clean Fuel Fleets Program SIP revision), New York has now submitted all the Phase I requirements.

VII. What Are EPA's Conclusions?

EPA has evaluated these submittals for consistency with the Act, applicable EPA regulations, and EPA policy. EPA is proposing approval of New York's: revisions to the 1990 base year ozone emission inventory (for all ozone nonattainment areas in New York); the 1996 and 1999 ozone projection emission inventories; photochemical assessment monitoring station network; demonstration that emissions from growth in vehicle miles traveled will not increase motor vehicle emissions; modeling efforts completed to date; transportation conformity budget; and enforceable commitments for Phase II. EPA is also proposing to approve emission credits for the 15 Percent ROP and 9 Percent RFP Plans, pending EPA's verification of New York's enhanced I/M program's effectiveness. If EPA determines New York's enhanced I/M program effectiveness demonstration indicates a shortfall in emission reductions compared to the emission reductions credited 15 Percent ROP and/or 9 Percent RFP Plans, EPA will propose to disapprove the 15 Percent ROP and/or 9 Percent RFP Plans. EPA final action will be based on EPA's evaluation of New York's demonstration of the enhanced I/M program's effectiveness.

VIII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one state, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed SIP approval is not subject to E.O. 13045 because it proposes approval of a state program implementing a Federal standard, and it is not economically significant under E.O. 12866.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, versus *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

DatedD: October 21, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–28725 Filed 11–2–99; 8:15 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD054–3044b; FRL–6456–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Maryland; Proposed Revision to Section 111(d) Plan Controlling Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to Maryland's Section 111(d) plan for the purpose of controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills. In the final rules section of the **Federal Register**, EPA is approving this plan revision. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by December 3, 1999.

ADDRESSES: Comments may be mailed to Harold A. Frankford, Office of Air Programs, Mail Code 3AP20, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford (215) 814–2108, or by e-mail at frankford.harold@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the Rules and Regulations section of the **Federal Register**.

Dated: September 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, EPA Region III.

[FR Doc. 99–26852 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 68

[FRL–6466–5]

Approval and Promulgation of State Program Delegation; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the State of Ohio's request for delegation of the Accidental Release Prevention Program under section 112(r)(7) of the Clean Air Act.

In the final rules section of this **Federal Register**, EPA is approving the State's request for delegation as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless EPA receives relevant adverse written comment. Should EPA receive such comment, we will publish a timely withdrawal informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document, and no further action will be taken.

EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 3, 1999.

ADDRESSES: Written comments may be mailed to Mark J. Horwitz, Chief, Office of Chemical Emergency Preparedness and Prevention, Superfund Division (SC–6J), Region 5, at the address listed below.

Copies of the materials submitted by the Ohio Environmental Protection Agency may be examined during normal business hours at the following location: Office of Chemical Emergency Preparedness and Prevention, Superfund Division (SC–6J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Bob Mayhugh, Environmental Protection Specialist, Office of Chemical Emergency Preparedness and Prevention, Superfund Division(SC–6J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, 312–886–5929.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: October 21, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–28312 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 43

[CC Docket No. 99–301, FCC 99–283]

Local Competition and Broadband Reporting

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission proposes to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. The Commission seeks comment on all aspects of the proposal, including how it can best structure such a program to satisfy its needs without overburdening those entities that would be required to file.

DATES: Comments are due on or before December 3, 1999. Reply comments are due on or before December 20, 1999. Written comments by the public on the proposed information collections are due on or before December 3, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 3, 2000.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, with a copy to Ms. Terry Conway of the Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW, 6A–100, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20037. Parties may file electronically through the Internet at <http://www.fcc.gov/e-file/ecfs.html>. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to VHuth@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Burton, Industry Analysis Division, Common Carrier Bureau, at (202) 418–0958, or Thomas Beers, Deputy Chief of the Industry Analysis Division, Common Carrier Bureau, at (202) 418–0952. For additional information concerning the information collections contained in the Notice of Proposed Rulemaking (NPRM) contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) released October 22, 1999 (FCC 99–283). The full text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 1231 20th Street, NW, Washington, DC 20037. Additionally, the complete item is available on the Commission's website at <http://www.fcc.gov/Bureaus/Common_Carrier/Notices/1999/>.

Paperwork Reduction Act

The NPRM summarized here contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on the NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0816.

Title: "Local Competition and Broadband Reporting, CC Docket No. 99–301."

Form Number: FCC Form 477.

Type of Review: Revision of Existing Collection.

Respondents: Business or Not-for-profit institutions, including small businesses.

Burden Estimate:

	Number of respondents	Estimated time per response	Total annual burden
(1) Local Competition and Broadband Reporting:			
(a) Entities completing entire data collection except section VI	Up to 75	120–576	Up to 19,144.
(b) Entities completing only section VI	Up to 70	32–236	Up to 4,792.

Total Annual Burden: Up to 23,936 person-hours.

Estimated Costs per Respondent: $0.00.

Needs and Uses: The information collection for which approval is sought would be used by the Commission to gather information on the state of the development of local competition and broadband deployment. Without such information, the Commission faces significant difficulty in assessing the development of these markets and, therefore, is less able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Summary of the Notice of Proposed Rulemaking

1. In the NPRM summarized here, we propose to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. We tentatively concludes that we need timely and reliable information about the pace and extent of developing local competition in different geographic areas in order to evaluate the effectiveness of actions that this Commission and the states are taking to promote local competition. We also tentatively conclude that we need timely and reliable information to assess the deployment of broadband services, as required by section 706 of the Telecommunications Act of 1996.

2. Moreover, we tentatively conclude that this information would allow us to avoid "one size fits all" regulation, and, specifically, to reduce regulation wherever we can pursuant to new sections 10 and 11 of the Act. 47 U.S.C. 160, 161. The Commission proposes a simple filing that should enable it to make better informed decisions, while placing as low a burden as possible on reporting entities. A proposed data collection form is attached to the NPRM as Attachment A. Currently, the Commission does not gather data of the type requested under this proposed program.

3. Throughout the NPRM, we seek comment on all of the tentative conclusions we reach. We also encourage commenters to propose alternative means of collecting the needed information. The following text represents a brief summary of issues set out for discussion and comment in the NPRM.

4. *Types of Entities that Must Report:* In the NPRM, we discuss the types of entities that should be required to report data describing the extent and intensity of local competition and the extent of broadband services deployment. Based on our determination that we need comprehensive data about developing local services competition, we tentatively conclude that large and medium incumbent local exchange carriers (LECs)—as well as their wireline and fixed wireless telephony competitors, and also their mobile wireless telephony potential competitors—should complete sections I–III of the survey if the reporting entity is a wireline or fixed wireless LEC and section VI if the entity is a mobile wireless telephony carrier. Consistent with our need for comprehensive local competition information, we tentatively conclude that the obligation to complete the survey should not depend on the type of technology that an incumbent LEC or competitive LEC uses to provide local service. We tentatively conclude that we should require carriers with 50,000 or more local access lines or channels (of any capacity) nationwide, or 50,000 or more subscribers nationwide to file information pursuant to this program. Further, we propose to collect information about certain mobile wireless services because of their potential to become substitutes for wireline service. Thus, we propose to require any carrier who provides mobile telephony (defined here as, real time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoffs of subscriber calls) to report if such an entity has more than 50,000 subscribers nationwide. We note that providers of mobile telephony services may include facilities-based providers of cellular, broadband personal communications service (PCS), specialized mobile radio services (SMR), as well as providers using satellite technology. We ask commenters to address whether the 50,000 nationwide access line/subscribers threshold that we propose is sufficient to provide the information that the Commission needs, while not burdening smaller entities.

5. We next turn to a consideration of those entities that should report data on deployment of broadband services. The Notice tentatively concludes that given our broad statutory mandate under section 706 of the Telecommunications Act of 1996, to evaluate the deployment of broadband services, regardless of the transmission media or technology employed, the survey should include questions about the deployment of what we term "full broadband" services. For purposes of the proposed data collection, "full broadband" service is defined, consistent with the *Advanced Telecommunications Report,* as having an information carrying capacity of over 200 Kilobits per second (Kbps) in each direction, simultaneously. *An Inquiry Concerning the Deployment of Advanced Telecommunications Capabilities to All Americans in a Reasonable and Timely Fashion,* 14 FCC 2d 2398, paragraphs 20–25 (*Advanced Telecommunications Report*). The Notice recognizes, however, that entities may provide services with bandwidth that exceeds voice grade (*i.e.* 48 Kbps) but is less than 200 Kbps, and seeks

comment on the extent to which the Commission should consider services deployed in this range of bandwidth in assessing the progress of broadband deployment. Actual or potential providers of broadband services may include: LECs (incumbent and competitive, both resale and facilities-based, regardless of the technology used), cable television companies, utilities, MMDS/MDS/"wireless cable" carriers, mobile wireless carriers (both terrestrial and satellite-based), fixed wireless providers, and others. We believe that only by casting our net wide enough to include all such entities can we discern progress, or the lack of it, in meeting the goals stated in the *Advanced Telecommunications Report.* We also tentatively conclude, that any entity that provides at least 1,000 full broadband service lines (or wireless channels), or has at least 1,000 full broadband subscribers, should be required to complete all relevant parts of the survey, regardless of whether that entity meets the criterion for reporting local competition data (*i.e.,* at least 50,000 nationwide local access lines or telephony subscribers). Therefore, it is possible, for example, that a LEC with fewer than 50,000 local access lines in service could have 1,000 or more full broadband lines in service, in which case that LEC would complete both the sections of the survey related to broadband services and the sections concerning local competition.

6. *Frequency of Reports:* We also ask commenters to address the frequency with which the Commission should gather the information sought by this proposed program. The majority of commenters to our *Local Competition Public Notice* proceeding concluded that for the program to be effective, the information should be collected quarterly. *Public Notice,* 63 FR 29409, CC Docket No. 91–141, DA 98–839, 13 FCC Rcd 9279 (May 28, 1998). We ask for comment on whether quarterly, semi-annual or annual reporting would best serve the goals of this information collection program.

7. *Exempting Smaller Entities:* We want to explore whether we can totally exempt some carriers from reporting without materially affecting our ability to effectively assess the development of local competition. Thus, we again ask commenters to address the desirability of the proposed threshold levels for local competition and broadband reporting. With regard to cable companies providing local exchange telephony, we seek comment on how best to measure the threshold for complying with our proposed reporting requirement.

8. With respect to broadband, we tentatively conclude that we should establish a more comprehensive reporting requirement for providers of broadband services. We promised in the *Advanced Telecommunications Report* to keep a close watch on deployment of broadband services to rural and other insular groups. Thus, to ensure that we do not miss broadband deployment by smaller entities, we seek comment on whether our threshold of 1,000 customers will allow us to accurately gauge its deployment, particularly to rural America.

9. Finally, we seek comment on whether, to reduce reporting burdens even further, we should allow an incumbent LEC *of any size* to file a brief letter in lieu of reporting local competition and broadband deployment data for states where that incumbent faces no local service competition and if it provides a *de minimis* number of broadband lines. We tentatively conclude that such an approach would reduce reporting burdens imposed on carriers without compromising our ability to get necessary information.

10. *Definition of Reporting Area:* To minimize the burden the reporting requirement places on reporting entities, we tentatively conclude that information should be reported by state. The Commission recognizes that collecting information about competitive activity and broadband services deployment in smaller geographic areas *might* yield sharper pictures of the extent and intensity of these developments. At the same time, we recognize that companies may regard such information as confidential, and we seek comment on whether a requirement that they disclose such information is appropriate to the extent such confidentiality concerns exist. Therefore, we seek comment on whether a level more narrowly defined than state level would be appropriate.

11. *Confidentiality of Data:* We think it extremely important that *all* local competition and broadband information collected pursuant to the proposed survey be made available to the public. Public availability will assist Commission staff in interpreting and utilizing such data, and it will facilitate Commission publication of data and analysis in Commission reports. Notwithstanding our belief that submitted information will not ordinarily raise legitimate protection issues, we cannot prevent parties submitting data from asserting confidentiality or other claims and seeking protection from public release. We, of course, expect such parties to follow Commission rules and guidelines when seeking protection pursuant, primarily, to relevant sections of the Freedom of Information Act. We seek comment on our tentative conclusions regarding the confidentiality of the type of information to be gathered.

12. *Electronic Filing:* Because we seek to ensure that the filing requirement does not impose undue burdens on those entities that must complete the form and to allow the staff of the Commission to more efficiently analyze the data, we tentatively conclude that data should be submitted in spreadsheet form, utilizing Excel format. Additionally, we propose that filers make their submissions to an e-mail address over the Internet. We ask commenters about the desirability of such an e-mail/spreadsheet-based electronic filing system, as well as other electronic filing systems.

13. *Survey Modification and Termination:* We expect the local services and broadband services markets will become increasingly dynamic as competition develops. Therefore, it may be necessary to make changes to the form, content, or reporting obligations of this information collection to ensure its continuing value, while minimizing filing burdens on respondents. Finally, to ensure that the program does not outlive its usefulness, we ask commenters whether it would be best to "sunset" this program, or perhaps to require a regular review process.

14. *Data to be Reported:* We describe and seek comment on, in the NPRM, the specific items set out in the proposed data collection form. A brief description of the proposed data collection form follows, with greater detail found in the complete NPRM.

15. Section I of the survey collects information about: (1) The number of voice grade and equivalent wireline or fixed wireless lines/channels in service that connect residential and, separately, non-residential end users to the public switched telephone network (for convenience, "voice grade lines"); and (2) the extent to which LECs use their own facilities, and the facilities or services of other LECs, in providing these lines.

16. Section II of the survey collects information about numbers of voice grade lines served from LEC switching centers, as defined in Attachment A of the NPRM, in which local service competitors have operational collocation arrangements.

17. Section III of the survey collects information from LECs about the number of high capacity lines or channels in service connecting end users to the public switched network (for convenience, "high-capacity lines").

High capacity lines are defined as lines with information carrying capacity capability to the customer's premises in excess of 200 Kbps in at least one direction, and at least 48 Kbps (*i.e.*, voice grade) in the other direction.

18. Providers of mobile telephony services (including mobile telephony affiliates of LECs) would not report data in sections I, II or III, but would instead report data on number of subscribers to voice grade mobile telephony service in section VI.

19. Sections IV and V of the survey collect information about the number of broadband lines in service to consumers. This includes information about both "full broadband" lines, with information carrying capacity in excess of 200 Kbps in both directions, simultaneously, and asymmetric "one way broadband" lines, with information carrying capacity in excess of 200 Kbps in one direction but not both. Section IV collects information about broadband lines in service to all customers, and section V collects information about broadband lines in service to residential customers. From the total and residential information, we will be able to derive information about broadband deployment to all other customers, such as business, government, and institutional customers.

20. The Notice seeks comment on whether answers to the survey questions are necessary and sufficient to describe and understand the state of local competition and deployment of broadband services in diverse areas of the nation.

Procedural Matters

A. Initial Paperwork Reduction Act of 1995 Analysis

21. The NPRM summarized here contains a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on the NPRM; OMB comments are due 60 days from the date of the publication of this summary of the NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

B. Initial Regulatory Flexibility Act

22. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the NPRM. A copy of the IRFA is attached to this summary. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM and they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

23. This proceeding will be treated as a "permit-but-disclose" proceedings subject to the "permit-but-disclose" requirements under § 1.1206 of the Commission's rules, as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206.

C. Notice and Comment Provisions

24. *General.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 3, 1999, and reply comments on or before Decemeber 20, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

25. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>". A sample form and directions will be sent in reply.

26. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St. SW, Washington, DC 20554, with a copy to: Ms. Terry Conway, Common Carrier Bureau, Industry Analysis Division, 445 12th St. SW, Room 6A–100, Washington, DC 20554. Written comments by the public on the proposed information collection are due on or before December 3, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before January 3, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to VHuth@omb.eop.gov.

27. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Ms. Terry Conway, Common Carrier Bureau, Industry Analysis Division, 445 12th St. SW, Room 6A–100, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (CC Docket No. 99–301), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service,

Inc., 1231 20th Street, NW, Washington, DC 20037.

Initial Regulatory Flexibility Act Analysis

28. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of any possible significant economic impact on small entities by the policies and rules proposed in the Notice. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice, which are set out in paragraph 91 of the Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

I. Need for, and Objectives of, the Proposed Action

29. The Commission has initiated this proceeding to determine whether it should require certain providers of communications services to report a limited amount of information about the development of local telephone competition and the deployment of broadband services as mandated by the Telecommunications Act of 1996. The 1996 Act—in particular, sections 251 and 271—tasked this Commission and the states with important roles in opening up local telephone markets to competition. The Commission needs timely and reliable information about the pace and extent of developing competition in different geographic markets in order to evaluate the effectiveness of the actions this Commission and the states are taking to promote local telephone competition. Moreover, the Commission tentatively concluded that gathering broadband deployment information is critical given that section 706 of the 1996 Act requires the Commission to issue periodic reports on the state of broadband deployment.

II. Legal Basis

30. The legal basis for the action as proposed for this rulemaking is contained in sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332 and 403, and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Action May Apply

31. The Commission tentatively concludes that local exchange carriers and providers of mobile telephony services that serve 50,000 or more subscribers, and any entity that provides at least 1,000 full broadband lines, should comply with the proposed reporting requirement. Based on data available to it at present, the Commission estimates that fewer than 50 of the nation's largest local exchange carriers and between 40 and 70 mobile telephony providers would be required to comply with the proposed requirement. Nevertheless, and out of an abundance of caution, we set out below a detailed description of the types of entities that could possibly be required to comply with the proposed reporting requirement and we detail our understanding of the number of small entities within each of these categories.

32. To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

33. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,604 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

34. We have included small incumbent LECs in the present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in the RFA analysis, although we emphasize that the RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

35. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules proposed in the Notice.

36. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321

such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules proposed in the Notice.

37. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,410 LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers that may be affected by the decisions and rules proposed in the Notice.

38. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules proposed in the Notice.

39. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. We will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies, however, to the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described in paragraphs 40–52, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and rules proposed in the Notice.

40. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

41. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA, and approval for the 900 MHz SMR definition has been sought. The proposed rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be

held by small entities, some of which may be affected by the decisions and rules proposed in the Notice. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules proposed in the Notice includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules proposed in the Notice.

42. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHZ Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition, some of which may be affected by the decisions and rules proposed in the Notice.

43. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.

44. *Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA approved this definition for paging services on December 12, 1999. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Carrier Locator* data, 137 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data. We do not have data specifying the number of these carriers that meet this two-tiered definition, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the decisions and rules proposed in the Notice.

45. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

46. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

47. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

48. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically

applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of, if any, small businesses that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States. We note, however, that because the vast majority of these licensees are end-users, not providers of telephony or broadband services, they would not be directly affected by the rules proposed in this Notice.

49. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

50. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

51. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules proposed in the Notice includes these eight entities.

52. *Satellite Services.* The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data.

53. In addition to the estimates provided in paragraphs 40–52, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe in paragraphs 54–61 other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

54. *Cable Services or Systems:* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

55. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

56. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 66,000,000 subscribers, and we have based our fee revenue estimates on that figure.

57. *Multipoint Distribution Systems (MDS):* The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

58. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint

distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules proposed in the Notice.

59. *Electric Services (SIC 4911):* The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.

60. *Electric and Other Services Combined (SIC 4931):* The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.

61. *Combination Utilities, Not Elsewhere Classified (SIC 4939):* The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

IV. Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements

62. The very focus of this proceeding is whether the Commission should require certain providers of communications services to report a limited amount of information about the development of local telephone competition and the deployment of broadband services. The Notice tentatively concludes that the Commission should undertake such a data collection and that local exchange carriers and providers of mobile telephony services that serve 50,000 or more subscribers, and any entity that provides at least 1,000 full broadband lines, should report specifically targeted information. The Notice sets out in detail, and seeks comment on, the Commission's tentative conclusions about the types of carriers that should report, exempting smaller carriers, frequency of reports, data to be reported, and methods (such as electronic filing) of reporting. In particular, the Commission has tentatively concluded that given the comprehensive data to be obtained from large and medium-size carriers, it can exempt most small carriers from completing the survey without materially affecting its ability to assess the development of local competition and the deployment of broadband services.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. The Commission makes specific provision to exempt most smaller carriers from the proposed requirement to report local telephone competition data. The Commission tentatively concludes that carriers with fewer than 50,000 nationwide local access lines (or mobile telephony subscribers, in the case of mobile telephony providers) should be exempted from the proposed reporting requirement. Based on this exemption, the Commission estimates that fewer than 50 of the nation's largest service providers would remain subject to the proposed requirement. The Commission provides a detailed explanation for this proposed exemption and seeks comment on the 50,000 local access line threshold in the Notice.

64. With respect to broadband service, and irrespective of the criteria for reporting local competition data, the Commission tentatively concludes that entities that provide full broadband services to at least 1,000 customers should report. The Commission tentatively concludes that this more comprehensive reporting requirement is necessary to monitor broadband developments by smaller entities, for example, in rural areas. The Commission seeks comment on this proposed threshold and invites commenters to suggest alternative thresholds.

65. Among significant alternatives, the Commission considers whether it might rely on publicly available data or voluntary surveys, in lieu of a mandatory data collection program. The Commission tentatively concludes other publicly available information sources present less than complete pictures of actual conditions and trends in developing local service markets and in the deployment of broadband. Further, the Commission considers the need for, and size of, its proposed exemptions for small entities. The Commission tentatively concludes that the proposed thresholds will allow it exempt most small entities from completing the survey without materially affecting its ability to assess the development of local competition and the deployment of broadband services.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

66. None.

Ordering Clause

67. Accordingly, *it is ordered* that, pursuant to sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, and 403, and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this notice of proposed rulemaking is hereby adopted.

68. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects

47 CFR Parts 1 and 43

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28792 Filed 11–1–99; 11:13 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99-2272; MM Docket No. 99-312; RM-9735]

Radio Broadcasting Services; Jersey Shore, Mill Hall, and Pleasant Gap, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Forever Broadcasting, LLC, proposing the reallotment of Channel 249A from Jersey Shore to Mill Hall, Pennsylvania, and the modification of Station WVRT(FM)'s license accordingly. Petitioner also requests the reallotment of Channel 254A from Mill Hall to Pleasant, Gap, Pennsylvania, and the modification of Station WZRZ(FM)'s license accordingly. Channel 249A can be reallotted to Mill Hall in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 249A at Mill Hall are 41-08-03 North Latitude and 77-28-09 West Longitude. *See* **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Comments must be filed on or before December 13, 1999, reply comments on or before December 28, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: Allan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, LLP, 901 15th Street, NW., Suite 1100, Washington, DC 20005 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-312, adopted October 13, 1999, and released October 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Additionally, Channel 245A can be reallotted to Pleasant Gap, Pennsylvania, without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 252 A at Pleasant Gap are 40-55-58 North Latitude and 77-45-40 West Longitude. Since Mill Hall and Pleasant Gap are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In accordance with section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 249A at Mill Hall, Pennsylvania, or Channel 252A at Pleasant Gap, Pennsylvania.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99-28628 Filed 11-2-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99-2272; MM Docket No. 99-314; RM-9754]

Radio Broadcasting Services; Metropolis, IL, and Paducah, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sun Media, Inc., proposing the reallotment of Channel 252C1 from Metropolis, Illinois to Paducah, Kentucky, and the modification of Station WRIK-FM's construction permit accordingly. Channel 252C1 can be reallotted to Paducah in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's authorized construction permit site. The coordinates for Channel 252C1 at Paducah are 36-45-09 North Latitude and 88-29-58 West Longitude. In accordance with section 1.420(i), of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 244A at Paducah, Kentucky.

DATES: Comments must be filed on or before December 13, 1999, reply comments on or before December 28, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: Dawn M. Sciarrino, Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Ave., NW., Suite 400, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-314, adopted October 13, 1999, and released October 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28627 Filed 11–2–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF43

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Delisting of the Douglas County Population of the Columbian White-Tailed Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provide notice of the reopening of the comment period for the proposed delisting of the Douglas County, Oregon population of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*). The comment period has been reopened in order to conduct a peer review of the proposed rule.

DATES: Comments from all interested parties must be received by November 18, 1999.

ADDRESSES: Written comments, materials, data, and reports concerning this proposal should be sent to the Supervisor, U.S. Fish and Wildlife Service, Southwest Oregon Field Office, 2900 NW Stewart Parkway, Roseburg, Oregon 97470. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: David Peterson, at the address listed above (telephone 541/957–3474; facsimile 541/957–3475).

SUPPLEMENTARY INFORMATION:

Background

The Columbian white-tailed deer (*Odocoileus virginianus leucurus*) resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lbs) for females and 52 to 68 kg (115 to 150 lbs) for males. Generally a red-brown color in summer, and gray in winter, the species has white rings around the eyes and a white ring just behind the nose. Its tail is long and triangular in shape, and is brown on the dorsal (upper) surface, fringed in white, and the ventral (under) portion is white (Oregon Department of Fish and Wildlife (ODFW) 1995). The species was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936). It is the westernmost representative of the 38 subspecies of white-tailed deer. Early accounts suggested this deer was locally common, particularly in riparian areas along the major rivers (Gavin 1978). The decline in deer numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys. Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors apparently caused the extirpation of this deer over most of its range by the early 1900s (Gavin 1984). Only a small herd of 200 to 400 animals in the lower Columbia River area of Clatsop and Columbia counties, Oregon, and Cowlitz and Wahkiakum counties, Washington, and a disjunct population of unknown size in Douglas County, Oregon, survived. These two remnant populations are geographically separated by about 320 kilometers (km) (200 miles (mi)) of unsuitable or discontinuous habitat.

Population declines led to classification of this subspecies as endangered in 1967 under the Endangered Species Protection Act of 1966 (32 FR 4001). The subspecies was automatically included in the lists of threatened and endangered species when the Endangered Species Act was authorized in 1973 (16 U.S. C. 1531 *et seq.*). Prior to 1977, only the Columbia River population was listed as endangered since the Douglas County population was considered a black-tailed deer (*Odocoileus hemionus columbiana*) or a hybrid between the black-tailed deer and the Columbian white-tailed deer by the State of Oregon. In 1978, the State of Oregon recognized the white-tailed deer population in Douglas County as the Columbian white-tailed deer and prohibited hunting of white-tailed deer in that county (ODFW 1995). The Columbian White-tailed Deer Recovery Plan (Recovery Plan) was approved by us in 1976, and a revised version was approved in 1983 (Service 1983). Because of the distance between the Douglas County and Columbia River populations, and differences in habitats and threats, the Recovery Plan addresses the recovery of these two populations separately.

Crews (1939) estimated the population in the 1930s in Douglas County at 200 to 300 individuals within a range of about 78 square kilometers (sq km) (30 square miles (sq mi)). In 1970, ODFW estimated that 450 to 500 deer were present. By 1983, the number had increased to about 2,500 (Smith 1985). The population has continued to grow, and are presently are estimated to be between 5,900 to 7,900 deer (ODFW 1999).

Along with this increase in numbers, the range also has expanded. The deer have expanded to the north and west in the last 10 years, and now occupy an area of approximately 800 sq km (308 sq mi) (ODFW 1995).

Most habitat for the Douglas County population is on private lands. Approximately 3,880 hectares (ha) (9,586 acres (ac)) of suitable habitat are presently considered secure on Federal, County and private lands. For the purpose of delisting, habitat is considered secure if it is protected by legally binding measures or law from adverse human activities for the foreseeable future.

The current total population size is estimated as approximately six times the population size required for downlisting, which greatly reduces the risk to the population. It is also anticipated that as habitat management and restoration activities are implemented by the Bureau of Land Management, which contains the majority of secure lands, the carrying capacity and numbers of deer on these lands will increase accordingly. The Douglas County population has met the objectives in the Recovery Plan, and greatly exceeded the habitat objectives.

We published a proposed rule to delist the Douglas County population of the Columbian white-tailed deer on May 11, 1999 (64 FR 25263). The original comment period closed on June 25, 1999. We will conduct a peer review of this proposal and solicit the opinions of three appropriate and independent specialists regarding the data, assumptions, and supportive information presented for the Columbian white-tailed deer, per our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270).

References Cited

Bailey, V. 1936. The mammals and life zones of Oregon. North American Fauna. U.S. Department of Agriculture, Washington DC 55: 89–91.

Crews, A.K. 1939. A study of the Oregon white-tailed deer, *Odocoileus virginianus leucurus* (Douglas). M.S. thesis. Oregon State College. Corvallis. 46 pp.

Gavin, T.A. 1984. Pacific Northwest. *in*: White-tailed deer, ecology and management. L.K. Halls, editor. A Wildlife Management Institute publication. Pages 491–492.

Gavin, T.A. 1978. Status of the Columbian white-tailed deer: some quantitative uses of biogeographic data. Pages 185–202 *in*: Threatened Deer. IUCN. Morges, Switzerland. 434 pp.

Oregon Department of Fish Wildlife. 1999. Deer census and population trend data. Unpublished ODFW report, Southwest Regional Office. 4 pages.

Oregon Department of Fish and Wildlife. 1995. Columbian white-tailed deer biological status assessment. Report to Oregon Fish and Wildlife Commission. 83 pp.

Smith, W.P. 1985. Current geographic distribution and abundance on the Columbian white-tailed deer, *Odocoileus virginianus leucurus* (Douglas). Northwest Science 59:243–251.

U.S. Fish and Wildlife Service. 1983. Revised Columbian white-tailed deer recovery plan. Portland, Oregon. 75 pp.

Author: The primary author of this notice is Barbara Behan of the Regional Office, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6131).

Authority

The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 26, 1999.

Thomas Dwyer,

Regional Director, Fish and Wildlife Service.

[FR Doc. 99–28696 Filed 11–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 102699G]

Groundfish Fisheries of the Gulf of Alaska and the Bering Sea/Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of draft alternatives; extension of scoping and comment period.

SUMMARY: NMFS is publishing draft alternatives to be analyzed in a programmatic supplemental environmental impact statement (SEIS) on Federal groundfish fishery management in the Exclusive Economic Zone (EEZ) off Alaska. This document also provides an extension of the scoping period from November 15 until December 15, 1999.

DATES: Written comments must be received on or before December 15, 1999.

ADDRESSES: Written comments should be sent to Lori Gravel, Sustainable Fisheries Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Comments may also be hand delivered to Room 457–1 Federal Office Building, 907 West 9 Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Steven Davis, NMFS, (907) 271-3523 or steven.k.davis@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS published in the **Federal Register**, a notice of intent to prepare an SEIS on Federal groundfish fishery management in the EEZ off Alaska and announced scoping meetings (64 FR 53305, October 1, 1999). The reason for undertaking the analysis, and the issues to be analyzed, are detailed in the notice of intent and are not repeated here. In the notice, NMFS indicated that, prior to the scoping meetings, NMFS will publish in the **Federal Register** draft alternatives to be developed further during the scoping process.

NMFS manages the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish fisheries to achieve the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plans (FMPs) for the Groundfish Fisheries in the BSAI Area, and the Groundfish of the GOA. The goals and objectives reflect the complicated array of often competing concerns that affect the Alaska groundfish fisheries. In some instances, contradictory objectives are articulated within a single goal. For example, paraphrasing from the Magnuson-Stevens Act and the FMPs, we find they generally contain the following goals and objectives: Assure continuing availability of food supply and recreational opportunities; minimize irreversible adverse effects on fishery resources and the marine environment, including essential fish habitat; maximize economic benefits to the Nation and to the states; provide for sustained participation of fishing communities; minimize waste, reduce bycatch and the mortality of bycatch, encourage development of underused fisheries; control effort; promote equitable allocations; keep management options open for the future; prevent overfishing and rebuild overfished stocks; manage stocks as a unit; promote protection of the safety of human life at sea; promote regulatory and fishing efficiency; use the best available data; account for all fishery related removals. In deciding on particular new management measures, NMFS and the North Pacific Fishery Management Council review reasonable alternatives for achieving one or more of those goals and objectives, then base decisions according to the views of competing interests and concerns.

With this programmatic environmental impact analysis, NMFS will evaluate how successfully the current management regime achieves those goals and objectives. The SEIS will support these determinations by presenting an analysis of the environmental impacts of the current regime and compare them to configurations of alternatives management measures that would also achieve those goals and objectives.

Alternatives

NMFS has chosen to analyze broad thematic alternatives that will provide, in a programmatic sense, a conceptual framework for understanding how effectively alternative harvest management regimes achieve the articulated goals and objectives and what their environmental impacts would be. The SEIS will look at the themes: (1) Who harvests groundfish; (2) what groundfish is harvested; (3) when and where is groundfish harvested; and (4) how groundfish is harvested. Sub-alternatives will be developed for each theme. The alternatives and sub-alternatives NMFS is currently considering include the following:

Allocative Schemes (Who harvests groundfish?)

Sub-alternative 1 - Status quo: Allocation of groundfish harvest is currently based on the species or species group and is made to individuals, cooperatives, and Olympic-style fisheries (i.e., non-Community Development Quota (CDQ), non-Individual Fishing Quota (IFQ) fisheries) by sector.

Sub-alternative 2 - IFQ: Expand or reduce allocations to individuals by species or species group.

Sub-alternative 3 - Cooperatives: Expand or reduce allocations to cooperatives by species or species group.

Sub-alternative 4 - Open access: Reduce or remove limited access systems.

Sub-alternative 5 - Allocation: Expand or reduce the use of sector allocations or alter the amounts of allocations.

Sub-alternative 6 - License Limitation: Expand or reduce the use of license limitation.

Harvest Level (What is harvested?)

Sub-alternative 1 - Status quo: Total Allowable Catch levels (TACs) are set by species or species group and the sum of the TACs must stay within the OY of the groundfish complex.

Sub-alternative 2 - Increase the TACs: Set fishing mortality equal to the maximum acceptable biological catch (going above OY of the groundfish complex).

Sub-alternative 3 - Decrease the TACs: Set fishing mortality equal to 50 percent of the maximum acceptable biological catch.

Sub-alternative 4 - Stabilize the TACs: Set fishing mortality equal to the 1994–1998 average fishing mortality.

Sub-alternative 5 - Authorize zero harvest: Set the TACs at zero.

Time/Area Closures (When and Where does harvest occur?)

Sub-alternative 1 - Status quo: Numerous time/area closure schemes are currently in use serving to achieve various conservation objectives. Among the purposes served are closures to minimize fishery interactions with species listed under the Endangered Species Act, prohibited species, and crab habitat.

Sub-alternative 2 - Steller sea lion focus: Add additional closures based on their potential to minimize indirect interactions with Steller sea lion foraging habitat.

Sub-alternative 3 - Prohibited species focus: Add additional closures based on their potential to minimize take of prohibited species.

Sub-alternative 4 - Habitat focus: Add additional closures based on their potential to minimize disturbance of marine substrates.

Sub-alternative 5 - Market focus: Modify seasonal and area restrictions to increase value of harvest and/or improve the efficiency of fishing operations.

Gear Limitations (How is groundfish harvested?)

Sub-alternative 1 - Status quo. Fishing gear as described in regulations with sector allocations made in annual total allowable catch specifications.

Sub-alternative 2 - Further restrict fishing gear contact with the sea floor by banning non-pelagic trawl gear in flatfish fisheries.

Sub-alternative 3 - Restrict use of trawl, longline, and/or pot gear to habitat areas with substrates composed of unconsolidated sediments.

Sub-alternative 4 - Restrict authorized fishing gear to those capable of minimizing bycatch significantly below levels presently considered clean for each directed fishery.

Sub-alternative 5 - Allow all gear types and allow fishermen to select the most effective type.

Public Involvement

Scoping for the programmatic SEIS began with publication of a Notice of Intent in the **Federal Register** on October 1, 1999. This notice extends the scoping period from November 15, to December 15, 1999, to provide the public and NMFS with additional time to refine these alternatives.

Dated: October 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28643 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 212
Wednesday, November 3, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 28, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR Part 3550, Direct Single Family Housing Loan and Grant Programs, HB–1–3550, and HB–2–3550.

OMB Control Number: 0575–0172.

Summary of Collection: The Rural Housing Service (RHS) is a credit agency for rural housing and community development within the Rural Development mission area of the Department of Agriculture. Section 501 of Title V of the Housing Act of 1049, as amended, authorizes the Secretary of Agriculture to administer such programs and to prescribe regulations to ensure that these loans and grants provided with Federal Funds are made to eligible applicants for authorized purposes, and that subsequent servicing and benefits provided to borrowers are consistent with the authorizing statute. RHS offers a supervised credit program to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals living in rural areas. To assist individuals in obtaining affordable housing, a borrower's house payment may be subsidized to an interest rate as low as 1%. The information requested by RHS is vital to be able to process applications for RHS assistance and make prudent credit and program decisions. RHS will collect information using several forms.

Need and Use of the Information: RHS will collect information to verify program eligibility requirements; verify continued eligibility requirements for borrower assistance; service loans; to determine eligibility for special servicing assistance such as: payment subsidies, moratorium (stop) on payments, delinquency workout agreements; liquidation of loans; and, debt settlement. The information is used to ensure that the direct Single Family Housing programs are administered in a manner consistent with legislative and administrative requirements. Without this information RHS would be unable to determine if a borrower would qualify for services or if assistance has been granted to which the customer would not be eligible under current regulations and statutes.

Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 500,000.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 923,053.

Agricultural Research Service

Title: Continuing Survey of food Intakes by Individuals (CSFII) 1999–2002.

OMB Control Number: 0518–0023.

Summary of Collection: During the past decade the U.S. diet has been undergoing changes unprecedented in scope and rapidity. Changes reflect increased interest by consumers in foods (variety and taste), nutrition and health, convenience, and availability of new or modified foods or meals from which they may choose. In the next decade, new information will be received on relationships among foods, nutrients, and health which will influence food consumption patterns and nutritional interventions. The objective of the Continuing Survey of Food Intakes by Individuals (CSFII) is to measure current levels and shifts in the food and nutrients consumed by individuals and the nutritional adequacy of diets, signal changes taking place, and provide information for use in evaluating dietary status. The CSFII is a major component of the National Nutrition Monitoring and Related Research Program (NNMRRP). The NNMRRP, which was developed in the early eighties at the request of Congress, was formally established following the passage of the National Nutrition Monitoring and Related Act of 1990 (Pub. L. 101–445). The Agricultural Research Service (ARS) will collect information using telephone surveys and questionnaires.

Need and Use of the Information: ARS will collect information to meet requirements for information on food consumption and dietary status as well as information on foods eaten at home and away. If the information is not collected many regulatory, research, and other programs would be severely limited by the lack of current data on food intakes by individuals.

Description of Responses: Individuals or households.

Number of Respondents: 5,066.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 17,800.

Farm Service Agency

Title: Farmer Program Account Servicing Policies—7 CFR Part 1951–S.

OMB Control Number: 0560–0161.

Summary of Collection: The Farm Service Agency's (FSA) Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. The regulations covering this information collection package describe the policies and procedures the agency will use to service most FLP loans when they become delinquent. These loans include Operating, Farm Ownership, Soil and Water, Softwood Timber Production, Emergency, Economic Emergency, Economic Opportunity, Recreation, and Rural Housing loans for farm service buildings. Servicing of accounts is administered in accordance with the provisions of the Consolidated Farm and Rural Development Act (CONACT) as amended by the Food Security Act of 1985, the Agriculture Credit Act of 1987, the Food Agriculture Conservation and Trade Act of 1990, the Agricultural Credit Improvement Act of 1992, and the Federal Agriculture Improvement and Reform Act of 1996. The Agricultural Credit Act of 1987 was intended to ensure that private individuals who have obtained a loan from the U.S. Treasury through the Department of Agriculture are all treated equally when they default on that loan. FSA will collect information using form FSA–1951–39 and other attachments and exhibits.

Need and Use of the Information: FSA will collect information to determine whether a financially distressed or delinquent borrower's request for loan servicing is warranted. If information is not collected, borrowers may not receive the correct servicing options which could result in the failure of their business and the loss of security property through either voluntary or forced liquidation.

Description of Respondents: Farms; individuals or households; business or other for-profit.

Number of Respondents: 12,013.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,116.

Animal and Plant Health Inspection Service

Title: Animal Welfare—Guinea Pigs, Hamsters, and Rabbits.

OMB Control Number: 0579—0092.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) enacted in 1966 and amended in 1970 and 1990 requires the U.S. Department of Agriculture to regulate the humane care and handling of most warm-blooded animals used for research or exhibition purposes, sold as pets, or transported in commerce. The Animal and Plant Health Inspection Service (APHIS) has the responsibility for enforcing the Animal Welfare Act and its provisions. APHIS collects information and requires certain recordkeeping in order to review and evaluate program compliance by regulated facilities and ensure a workable enforcement system to carry out the requirements of the AWA. Specific information collection requirements relate to certifications of shipping containers used to transport guinea pigs, hamsters, and rabbits as well as the conditions (*e.g.*, temperature) necessary during transport, and acclimation certificates.

Need and Use of the Information: APHIS collects information from regulated facilities including dealers, exhibitors, and research facilities, intermediate handlers and carriers, and from accredited veterinarians to ensure proper handling and care for guinea pigs, hamsters, and rabbits. Without this information, APHIS would be unable to detect violations and take appropriate actions consistent with the AWA.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,470.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 260.

Food and Nutrition Service

Title: Report of School Program Operations.

OMB Control Number: 0584–0002.

Summary of Collection: The Food and Nutrition Service (FNS) administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the National School Lunch Act, as amended, and the Child Nutrition Act of 1996, as amended. Information on school program operations is collected from State agencies on a monthly basis to monitor and make adjustments to State agency funding requirements. FNS uses form FNS–10 to collect data, although 95 percent of the information is collected through electronic means.

Need and Use of the Information: FNS collects quantity information from State agencies on the number of meals served under the various food programs. Information is categorized in a number of areas and States are asked to provide their estimates along with actual data. FNS uses the information collected on school operations to assess the progress of the various programs and to make monthly adjustments to State agency funding requirements. If the information was not collected, FNS would be unable to monitor the proper use of program funds.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 62.

Frequency of Responses: Reporting: Monthly; annually.

Total Burden Hours: 95,232.

Animal and Plant Health Inspection Service

Title: 9 CFR 160–162, Veterinary Accreditation Program.

OMB Control Number: 0579–0032.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g, of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis and tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth and rinderpest. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service's (APHIS) ability to compete in exporting animals and animal products. Because APHIS does not have sufficient numbers of Federal personnel to perform all of the disease prevention work that must be done, APHIS relies heavily on assistance from veterinarians in the private sector. Regulations governing the Veterinary Accreditation Program are found in Title 9 of the Code of Federal Regulations, parts 160, 161, and 162. Operating this important program requires APHIS to engage in a number of information collection activities in the form of applications for veterinary accreditation, veterinary accreditation orientation and training, paperwork associated with tasks performed by our accredited veterinarians (such as completing certificates, applying and removing official seals, and completing test reports); reviewing applications for veterinary accreditation and re-accreditation, recordkeeping, and updating information on accredited veterinarians. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information to determine that a veterinarian has met the requirements for being accredited, or for obtaining re-accreditation. APHIS will also collect information to ensure that accredited veterinarians are knowledgeable of current Federal and State animal health regulations, objectives and programs and they are competent in their application. If information is not collected it would significantly destroy APHIS' ability to operate the Veterinary Accreditation Program.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 56,024.

Frequency of Responses: Recordkeeping; Reporting: On occasion; annually.

Total Burden Hours: 52,190.

Rural Utilities Service

Title: 7 CFR Part 1789, Use of Consultants Funded.

OMB Control Number: 0572–0115.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste water facilities in rural areas. The RUS loan portfolio totals nearly $42 billion. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by Office of Management and Budget Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivable. RUS will collect information through the use of consultants.

Need and Use of the Information: RUS will collect information to determine whether it is appropriate to use a consultant voluntarily funded by the borrower to expedite a particular borrower application.

Description of Respondents: Business or other for-profit.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 12.

Food and Nutrition Service

Title: Report of the Child and Adult Care Food Program.

OMB Control Number: 0584–0078.

Summary of Collection: The Child and Adult Care Food Program is mandated by Section 17 of the National School Lunch Act, as amended. Program implementation is contained in 7 CFR Part 226. The Food and Nutrition Service (FNS) collection information using Form FNS–44 to use in managing the Child and Adult Care Food Program. This report is vital since it is the only means by which FNS can obtain current information necessary to make payments to State agencies and to plan for future levels of program funding.

Need and Use of the Information: FNS will collect information in order to analyze progress in the program and to make monthly adjustments to State agency funding requirements. If data is not collected FNS would be unable to monitor the proper use of program funds.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Reporting: Quarterly; semi-annually; Monthly.

Total Burden Hours: 5,724.

Animal and Plant Health Inspection Service

Title: Importation of Gypsy Moth Host Materials from Canada.

OMB Control Number: 0579–0142.

Summary of Collection: Section 5 of the Plant Quarantine Act (7 U.S.C. 159) authorizes the Secretary of Agriculture to determine whether the unrestricted importation of any plants, fruits, vegetables, roots, bulbs, seeds, or other plant products not included by the term "nursery stock" will result in the introduction of plant diseases or insect pests into the United States, and to then specify which of these products will be subject to the provisions of Section 1 of the Plant Quarantine Act. Section 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee) authorizes the Secretary to require inspection and treatment of any product when the Secretary deems it necessary to prevent a plant pest from being introduced into the United States. Until now the Animal and Plant Health Inspection Service (APHIS) did not specifically regulate the importation of gypsy moth host materials from foreign countries into the United States. APHIS has determined that the gypsy moth population is growing in certain parts of Canada, and that steps must be taken to prevent the introduction of gypsy moth from Canada into non-infested areas of the United States. APHIS will collect information using phytosanitary certificates, certificates of origin, and signed statements from individuals both within and outside the United States.

Need and Use of the Information: APHIS will collect information to ensure that importing foreign logs, trees, shrubs, and other articles do not harbor plant or insect pests such as the gypsy moth. If the information is not collected it would cripple APHIS' ability to ensure that trees, shrubs, logs, and a variety of other items imported from Canada do not harbor gypsy moths.

Description of Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; farms; State, Local or Tribal Government.

Number of Respondents: 2,120.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 183.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–28750 Filed 11–2–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Chief Economist; Intent To Establish an Advisory Committee on Small Farms

AGENCY: Office of the Chief Economist, USDA.

ACTION: Notice of intent to establish an Advisory Committee on Small Farms.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to establish an Advisory Committee on Small Farms (Committee). The purposes of the Committee is to gather and analyze information regarding small U.S. farms and ranches within the United States and its Territories and recommend to the Secretary of Agriculture actions to enhance their viability and economic livelihood. The Committee is in the public interest and within the duties and responsibilities of the Department of Agriculture. Establishment of the Committee also ensures the continued consideration and implementation of the recommendations made by the National Commission on Small Farms in its report, "A Time to Act".

FOR FURTHER INFORMATION CONTACT: Alfonzo Drain, 202/720–3238. E-mail address: adrain@nass.usda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Secretary of Agriculture intends to establish the Advisory Committee on Small Farms, hereinafter referred to as the Committee.

The Committee will monitor government and private sector actions, policy and program proposals that relate to small farms, ranches, and woodlots, including limited-resource farms, ranches, and woodlots; and evaluate the impact such actions and proposals may have upon the viability and growth of small farms, ranches and woodlots; review USDA programs and strategies to implement small farm policy; advise the Secretary on actions to strengthen USDA programs; and evaluate other approaches that the Committee would deem advisable or which the Secretary of Agriculture or the Director of Sustainable Development and Small Farms may request the Committee to consider. The Secretary of Agriculture shall make all appointments to the Committee and members will serve at the Secretary's discretion. Members will serve two-year terms.

The Committee will have 19 members, one of whom will serve as Chair and be appointed by the Secretary of Agriculture, and one of whom will serve as Vice-Chair as appointed by the Committee. Members will represent small farms, ranches, and woodlot owners and will represent the diverse groups USDA programs serve, including but not limited to, finance, commerce, conservation, cooperatives, nonprofit organizations, rural communities, academia, State and local governments, women and minorities, farmworkers, and other interests as the Secretary determines. USDA will follow equal opportunity practices in making appointments to the Committee. To ensure that recommendations of the Committee take into account the needs of the diverse groups USDA serves, membership will include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: October 26, 1999.

Keith Collins,

Chief Economist, Office of the Chief Economist.

[FR Doc. 99–28752 Filed 11–2–99; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Government Owned Inventions Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for Licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to June Blalock, Technology Licensing Coordinator, USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131; telephone: 301–504–5989 or fax: 301–504–5060. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

S.N. 08/848,146, "Device and Method for Application of Collars to Animals"

S.N. 08/906,091, "An Attractant for Social Pest Insects"

S.N. 08/958,475, "Control of Fire Blight on Pome Fruit Trees with Erwinia Herbicola"

S.N. 09/006,562, "Noxious Weed Control by Soil Solarization"

S.N. 09/019,155, "Suppression of Alpha-Amylase Expression Using a Serine/Threonine Protein Kinase"

S.N. 09/033,349, "Control of Fruit Ripening Through Genetic Control of ACC Synthase Synthesis"

S.N. 09/052,333, "Transgenic Spacer Target Sequence for Detecting and Distinguishing Chlamydial Stains"

S.N. 09/074,394, "Method for the Simultaneous and Independent Determination of Moisture Content and Density of Particulate Materials for Radio-Frequency Permittivity Measurements"

S.N. 09/083,852 "Modification of Cereal Grain Hardness Via Expression of Puroindoline Proteins"

S.N. 09/108,051, "Species-Specific Genetic Identification of Mycobacterium Paratuberculosis"

S.N. 09/110,132, "Biological Control of Aflatoxin and Cyclopiazonic Acid Contamination of Crops Using Non-Toxigenic Strain of Asperigillus"

S.N. 09/120,347, "A Novel Fungal Species for the Biocontrol of the Sugarbeet Root Maggot"

S.N. 09/120,521, "Attractants for Bactrocera Latiforns (Hendel)"

S.N. 09/122,342, "Control of Replant Disease of Tree Fruits with Pseudomonas putida"

S.N. 09/126,229, "Taxane Production from Taxus Species Cell Lines"

S.N. 09/130,788, "Soluble Hydrocolloid Food Additives and Method of Making"

S.N. 09/131,363, "Variable-Rate, Digitally-Controlled Fluid Metering Device"

S.N. 09/135,999, "Starch Microcapsules for Delivery of Active Agents"

S.N. 09/156,348, "Chemical Attractants for Moths"

S.N. 09/156,625, "Chemical Attractants for Frugivorous Pest Insects"

S.N. 09/166,655, "Feeding Attractant and Stimulant for Adult Control of Noctuid and/or Other Lepidopteran Species"

S.N. 09/191,906, "Mimetic Insect Allatostatin Analogs for Insect Control"

S.N. 09/201,449, "Stabilization of Pet Operon Plasmids and Ethanol Production in Bacterial Strains Lacking Lactate Dehydrogenase and Pyruvate-Formate Lyase Activities"

S.N. 09/204,864, "Determination of Concentration of a Compound in a Multiple Component Fluid"

S.N. 09/208,449, "Apparatus and Process for the Rapid Tenderization of Meat"

S.N. 09/211,017, "Method for the Development of Delta-Lactones and Hydroxy Acids from Unsaturated Fatty Acids and Their Glycerides"

S.N. 09/233,761, "Paper Coated with Polymerized Vegetable Oils for Use as Biodegradable Mulch"

S.N. 09/252,945, "Release Rate Modulator and Method for Producing and Using Same"

S.N. 09/257,730, "Biological Control of Sprouting in Stored Potatoes"

S.N. 09/258,304, "Sex Pheromone Synergist"

S.N. 09/266,950, "Ferritin Formation as a Predictor of Iron Availability in Foods"

S.N. 09/281,276, "Edible Food Coatings Containing Polyvinyl Acetate"

S.N. 09/302,962, "Extraction of Pectin by Microwave Heating Under Pressure"

S.N. 09/330,365, "Fruit and Vegetable Based Edible Film Wraps and Methods to Improve the Quality and Extend Shelf Life of Foods"

S.N. 09/336,220, "Real Time Trash Measurement System for Seed Cotton or Lint for Use in Cotton Gins"

S.N. 09/345,236, "A Baculovirus for the Biocontrol Control of Larval Mosquitoes"

S.N. 09/347,907, "Aggregation Pheromone for the Asian Longhorned Beetle"

S.N. 09/353,087, "Composition and Method for the Control of Diabroticite Insects"

S.N. 09/353,348, "Monoclonal Antibodies and Antibody Cocktail for Detection of Prion Protein as an Indication of Transmissible Spongiform Encephalopathies"

S.N. 09/353,643, "Ant Bait Attractive to Multiple Species of Ants"

S.N.09/353,713, "An Autonomous Animal Control System Without Ground Based Fencing"

S.N. 09/354,446, "Use of Indigenous Bacterial Enzymatic and Regulatory Processes to Control Enteropathogens Associated with Food Producing Animals"

- S.N. 09/360,083, "Novel System for the Sequential, Directional Cloning of Multiple DNA Sequences"
- S.N. 09/364,447, "Recombinant Bacteria Which Produce Lipase and Poly (B-Hydroxyalkanoates)"
- S.N. 09/366,603, "Vaccines for the Protection of Cattle from Psoroptic Scabies"
- S.N. 09/376,755, "Process for the Enzymatic Conversion of Podophyllotoxin Beta-Glucopyranosides and other Podophyllum Blycosides to Their Corresponding Aglycons"
- S.N. 09/377,513, "Novel Cytoplasm for Maize"
- S.N. 09/378,441, "Biodegradable Films from Agricultural Polymers"
- S.N. 09/395,565, "Insulin Potentiating Compounds in Cinnamon"
- S.N. 09/400,799, "Process for the Production of Fatty Acid Esters"

June Blalock,

Technology Licensing Coordinator.

[FR Doc. 99–28753 Filed 11–2–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gunflint Corridor Fuels Reduction Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: On August 24, 1999, the Council on Environmental Quality granted alternative arrangements for the immediate actions needed to address public safety concerns within the Gunflint Trail Corridor as a result of the 4th of July Blowdown Event. These alternative arrangements are effective until close of business on Friday, December 24, 1999. Subsequent actions which the Agency (Forest Service) proposed to take over the "longer term" were to be addressed through the normal NEPA process. Therefore, the Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to reduce the fire hazard and restore damaged components of the ecosystem within the Gunflint Corridor. The objectives of the project are to: (1) Reduce fuel and fire hazard, (2) Provide and improve land-based infrastructure needs for fire suppression or public evacuation, (3) Increase the acreage and component of longer lived species, particularly pine, (4) Improve long term visual quality, and (5) Reforest blown-down areas. The Record of Decision will disclose how the Forest Service has decided to treat more than 11,000 acres of blowdown fuels. The proposed action is to treat an estimated 8400 acres with mechanical means such as commercial timber sales or service contract for piling and burning; treat 3000 acres with prescribed fire; and treat 100 acres with service contracts for hand treatment. A range of alternatives responsive to significant issues will be developed, including a no-action alternative. The proposed project is located on the Gunflint Ranger District, Grand Marais, MN, Superior National Forest. The Gunflint Ranger District is requesting the project be considered an emergency under CFR 215.10(d)(1).

DATES: Comments concerning the scope of this project should be received by December 6, 1999.

ADDRESSES: Please send written comments to: Gunflint Ranger District, Superior National Forest, Attn.: Gunflint Corridor Fuels Reduction EIS, P.O. Box 790, Grand Marais, MN 55604.

FOR FURTHER INFORMATION CONTACT: Jo Barnier, District Ranger, or Becky Bartol, Team Leader, Gunflint Ranger District, Superior National Forest, P.O. Box 790, Grand Marais, MN 55604, telephone (218) 387–1750.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies, individuals, and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) Identification of potential issues, (2) identification of issues to be analyzed in depth, and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Written scoping comments will be solicited through a scoping package that will be sent to the project mailing list and to the local newspaper. For the Forest Service to best use the scoping input, comments should be received by December 6, 1999. Issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: Fuel hazard reduction, riparian areas and Shipstead Newton Nolan areas, reforestation, temporary roads, inventoried candidate special management complexes, roadless areas, and others.

Based on the results of scoping and the resource capabilities within the Project Area, alternatives, including a no-action alternative, will be developed for the Draft EIS. The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in February 2000. The Final EIS is anticipated in May 2000.

The comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EISs must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553, (1978)). Environmental objections that could have been raised at the Draft EIS stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this Proposed Action, participate by the close of the 45-day comment period, so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns of the Proposed Action, comments during scoping and on the Draft EIS should be as specific as possible and refer to specific pages or chapters. Comments may address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed. In addressing these points reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1503.3. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission, from the public record, by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. If the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

Permits/Authorizations

The proposed action includes prescribed burning in the Boundary Waters Canoe Area Wilderness. An amendment to the Superior National Forest Land and Resource Management Plan would be needed for such burns. James W. Sanders, Forest Supervisor, Superior National Forest, would be the responsible official for the plan amendment.

Responsible Official

Jo Barnier, Gunflint District Ranger, Superior National Forest, is the responsible official. In making the decision, the responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies. The responsible official will state the rationale for the chosen alternative in the Record of Decision.

Dated: October 27, 1999.

Jo Barnier,

District Ranger.

[FR Doc. 99–28699 Filed 11–2–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on November 22 and 23, 1999 at the Baker Ranger District of the Wallowa-Whitman National Forest, 3165 10th Street, Baker City, Oregon. The meeting will begin at 9:00 a.m. and continue until 5:00 p.m. the first day and will begin at 9:00 a.m. and continue until 4:00 p.m. on the second day. Agenda items to be covered include: (1) Review draft CMP alternatives and, (2) Open public forum. All meetings are open to the public. Public comments will be received at 1:00 p.m. on November 22.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: October 28, 1999.

Kurt R. Wiedenmann,

Acting Deputy Forest Supervisor.

[FR Doc. 99–28701 Filed 11–2–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting; Notice

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the Board of Directors.

TIME AND DATE: 2:00 p.m., Monday, November 8, 1999.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Fiscal year 2000 agency budget.
3. Status of PBO planning and general discussion on privatization of the Bank.
4. Options relating to the conversion of B stock to C stock.
5. Current method for allocating patronage refunds to class B stockholders.
6. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9:00 a.m., Tuesday, November 9, 1999.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the August 6, 1999, board meeting.
3. Report on loans approved in FY 1999.
4. Summary of financial activity for FY 1999.
5. Privatization committee report.
6. Consideration of resolution of appreciation for former Governor Wally Beyer.
7. Establish dates and locations for Year 2000 board meetings.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: October 27, 1999.

Christopher A. McLean,

Acting Governor, Rural Telephone Bank.

[FR Doc. 99–28841 Filed 11–1–99; 9:50 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

August 1999 Sunset Reviews: Termination of Review, Final Results of Reviews and Revocation and Termination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of five-year ("Sunset") review of the antidumping duty order on kiwifruit from New Zealand (A–614–801); Final Results of Sunset Reviews: Revocation of Antidumping Duty Order on Tungsten Ore Concentrates from the People's Republic of China (A–570–811) and termination of the suspended antidumping duty investigation on uranium from Krygyzstan (A–835–802).

SUMMARY: On August 2, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on kiwifruit from New Zealand and tungsten ore concentrates from the People's Republic of China ("PRC"), and of the suspended antidumping duty investigation of uranium from Krygyzstan. The Department is terminating the sunset review of the order on kiwifruit from New Zealand on the basis that, on September 17, 1999, the Department issued the final results of a changed circumstances review and revoked this order. Further, because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking the order on tungsten ore concentrates from the PRC and terminating the suspended investigation on uranium from Krygyzstan.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued antidumping duty orders on kiwifruit from New

Zealand (57 FR 23203 (June 2, 1992)) and tungsten ore concentrates from the People's Republic of China (56 FR 58681 (November 21, 1991)). Further, the Department suspended the antidumping duty investigation on uranium from Krygyzstan (57 FR 49220 (October 30, 1992)). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated sunset reviews of these orders and suspended investigation by publishing notice of the initiation in the **Federal Register** (64 FR 41915 (August 2, 1999)). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of the sunset reviews on these orders and suspended investigation.

No domestic interested party in the sunset reviews on these orders responded to the notice of initiation by the August 17, 1999 deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

In the sunset review of the suspended antidumping investigation on uranium from Kyrgyzstan, we received notices of intent to participate from domestic interested parties: USEC Inc. and its subsidiary, United States Enrichment Corporation (collectively "USEC"), the Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL-CIO ("PACE"), and the Ad Hoc Committee of Domestic Uranium Producers (the "Ad Hoc Committee"). However, the Ad Hoc Committee, PACE, and USEC withdrew their notices of intent to participate on August 17, August 18, and August 23, 1999, respectively. Further, the Department did not receive a complete substantive response from any domestic interested party (in this case no response) by the September 1, 1999, deadline. (*See* § 351.218(d)(1)(i)). Therefore, the Department has determined that no domestic interested party intends to participate in the sunset review of this suspended investigation.

Determination

Pursuant to section 751(c)(3)(A) of the Act and § 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the order or terminating the suspended investigation. Because no domestic interested party in the sunset review of tungsten ore concentrates from the PRC responded to the notice of initiation by the applicable deadline, August 17, 1999, we are revoking this antidumping duty order. Additionally, because USEC, PACE and Ad Hoc Committee of Domestic Uranium withdrew their notices of intent to participate and no other domestic interested party filed a substantive response (*see* §§ 351.218(d)(1)(i) and 351.218(d)(3) of the *Sunset Regulations*), we are terminating the suspended antidumping duty investigation on uranium from Kyrgyzstan.

Further, the Department revoked the antidumping duty order on kiwifruit from New Zealand on September 17, 1999, effective June 1, 1997. Pursuant to the Department's *Final Results of Changed Circumstances Review; Revocation of the Order on Kiwifruit from New Zealand*, the Department has instructed the United States Customs Service to terminate the liquidation of merchandise subject to the antidumping duty order on kiwifruit from New Zealand effective June 1, 1997 (*see Fresh Kiwifruit From New Zealand: Final Results of Changed Circumstances Review; Revocation of Order*, 64 FR 50486). Because the antidumping duty order on kiwifruit from New Zealand was revoked as a result of a changed circumstances review, we are terminating the sunset review of this order.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to the antidumping duty order on tungsten ore concentrates from the PRC entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The suspension agreement on uranium from Kyrgzystan will remain in effect until January 1, 2000. The Department will complete any pending administrative reviews of the order and this suspension agreement and will conduct administrative reviews of all entries prior to the effective date of revocation or termination in response to appropriately filed requests for review.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28763 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results for the fifth reviews of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover the period August 1, 1997 through July 31, 1998. The extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Becky Hagen at (202) 482–3362 or Robert Bolling at (202) 482–3434; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Postponement of Final Results

On September 8, 1999, the Department published the preliminary results for this review. *See* 64 FR 48767. Section 751(a)(3)(A) of the Act requires the Department to complete an administrative review within 120 days of publication of the preliminary results. However, if it is not practicable to complete the review within the 120-day time limit, section 751(a)(3)(A) of the Act allows the Department to extend the time limit to180 days from the date of publication of the preliminary results. The Department has determined that it is not practicable to issue its final results within the original 120-day time limit (*See* Decision Memorandum from Joseph A. Spetrini to Robert LaRussa dated October 21, 1999). We are therefore extending the deadline for the final results in this review to 180 days from the date on which the notice of preliminary results was published. The fully extended deadline for the final results is March 6, 2000.

Dated: October 28, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 99–28766 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Extension of Time Limit for Preliminary Results of New-Shipper Antidumping Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4106 and (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Background

On March 30, 1999, the Department of Commerce received a request from Yancheng Haiteng Aquatic Products & Foods Co., Ltd., to conduct a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On April 30, 1999, the Department initiated this new shipper antidumping review covering the period September 1, 1998, through February 28, 1999 (64 FR 24328, published May 6, 1999).

Extension of Time Limits for Preliminary Results

The Department has determined that the issues are extraordinarily complicated and it is not practicable to complete this review within the time limits mandated by section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214 (i)(2) of the Department's regulations. Therefore, in accordance with these sections, the Department is extending the time limits for the preliminary results to February 24, 2000. The final results continue to be due 90 days after the issuance of the preliminary results. This extension of time limits is in accordance with section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(i)(2) of the Department's regulations.

Dated: October 25, 1999.

Joseph A Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–28765 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–837]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review and Intent To Revoke Antidumping Order, In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances and intent to revoke antidumping duty order, in part.

SUMMARY: At the request of Goss Graphic Systems, Inc., the petitioner and a U.S. producer of the subject merchandise, the Department of Commerce is conducting a changed circumstances administrative review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan to determine whether to revoke in part the order with respect to large newspaper printing presses and components thereof, whether assembled or unassembled. Goss states that it has no interest in maintaining the antidumping duty order on subject merchandise from Japan with respect to the specific category of large newspaper printing presses and components thereof, whether assembled or unassembled, identified in its request. We preliminarily determine to revoke the order, in part, with respect to these specific systems, as described below under "Scope of Review." We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Dinah McDougall, Office 2, AD/CVD Enforcement Group I, Import Administration, Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4136 or (202) 482–3773, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department's") regulations are to the regulations at 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1996, the Department published in the **Federal Register** (61 FR 46621) the antidumping duty order on large newspaper printing presses ("LNPP") and components thereof, whether assembled or unassembled, from Japan. On May 28, 1999, Goss Graphic Systems, Inc. ("Goss") requested that the Department conduct a changed circumstances administrative review to determine, pursuant to 19 CFR 351.216(b), whether to revoke in part the antidumping duty order on LNPPs from Japan with regard to imports of the elements and components of LNPP systems, and additions thereto, imported to fulfill a contract for one or more complete LNPP systems, as described in detail below under "Scope of Review." Goss states that it is no longer interested in maintaining the order as applied to the category of merchandise described in the request.

KBA North America ("KBA"), a U.S. producer and an affiliate of the German respondent Koenig & Bauer-Albert AG in the German less-than-fair-value ("LTFV") investigation of LNPP from Germany, Tokyo Kikai Seisakusho, Ltd.

("TKS"), a respondent in the current administrative review of the order on LNPPs from Japan, and MAN Roland, Inc. ("MAN Roland"), a U.S. producer and an affiliate of the other respondent in the German LTFV investigation, MAN Roland Druckmaschinen AG, submitted comments in opposition to Goss' request, which they note, among other things, is limited to a very specific product covered by the antidumping duty order. KBA has also questioned Goss' claim that it represents "substantially all" of the U.S. industry. Mitsubishi Heavy Industries, Ltd. ("MHI"), the other respondent in the current administrative review of the order on LNPPs from Japan, supports Goss' request.

Scope of Review

The products covered by this changed circumstances review are elements and components of LNPP systems, and additions thereto, imported to fulfill a contract for one or more complete LNPP systems which feature a 22 inch cut-off, 50 inch web width and a rated speed no greater than 75,000 copies per hour. In addition to the specifications set out in this paragraph, all of which must be met in order for the product to fall within this changed circumstances review, the product must also possess all of the specifications detailed in the five (5) numbered sections following this paragraph and in any figures referenced below. If one or more of these criteria is not fulfilled, the product is not within the scope of this changed circumstances review:

1. *Printing Unit:* A printing unit which is a color keyless blanket-to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:

- Each tower consisting of four levels, one or more of which must be populated.
- Plate cylinders which contain slot lock-ups and blanket cylinders which contain reel rod lock-ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in-line with bearers of other cylinders.
- Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non-anilox and non-porous metering roller.
- The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.
- The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.

2. *Folder:* A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under) delivery, with a cut-off length of 22 inches. The upper section consists of three-high double formers (total of 6) with six sets of nipping rollers.

3. *RTP:* A component which is of the two-arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back-to-back configuration (left and right hand load pairs).

4. *Conveyance and Access Apparatus:* Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.

5. *Computerized Control System:* A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

The order with regard to imports of other LNPPs is not affected by this request.

Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act. Section 782(h)(2) of the Act and § 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. The Department interprets "substantially all" production to mean at least 85 percent of production of the domestic like product (*i.e.*, the merchandise produced in the United States that corresponds to the scope of the proceeding) (*see, e.g., Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review : Oil Country Tubular Goods From Mexico*, 64 FR 14213–14214, March 24, 1999).

In order to determine whether "substantially all" of the domestic producers supported revocation in part of the order, the Department requested domestic production information from Goss and KBA (MAN Roland did not identify any domestic production). Based on their responses, we have preliminarily determined that Goss represents at least 85 percent of the domestic production of the domestic like product and thus accounts for "substantially all" of the production of the domestic like product. This lack of interest by the domestic industry constitutes sufficient changed circumstances to warrant partial revocation of the order (*see, e.g., Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part: Certain Cut-To-Length Carbon Steel Plate from Finland, Germany and the United Kingdom*, 64 FR 46343, August 25, 1999). The objections raised by other interested parties do not provide a basis for rejecting Goss' request. Therefore, the Department is notifying the public of its intent to revoke in part the antidumping duty order on LNPP from Japan with respect to the import of the elements and components of LNPP systems and additions thereto as described above.

If final revocation in part occurs, we intend to instruct the U.S. Customs Service (Customs) to liquidate without regard to antidumping duties, and to refund any estimated antidumping duties collected for all entries, of the merchandise described above, made on or after September 4, 1996, as requested by the petitioner. Further, we intend to issue instructions to Customs requiring that a party importing the merchandise described above submit a certification to Customs certifying that the imported merchandise meets the specifications of the merchandise covered by the revocation in part. The current requirement for a cash deposit of estimated antidumping duties on LNPP from Japan with regard to the specified merchandise will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any interested party may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 15 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than 20 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: October 28, 1999.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28762 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Administrative Review: Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping administrative review.

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Nulman or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4052 and (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Background

On February 23, 1999, the Department of Commerce (the Department) received a request from Hebei Animal By-Products Import and Export Corporation (HACO) to conduct an administrative review of the antidumping duty order on natural bristle paint brushes and brush heads from the People's Republic of China (PRC). On February 26, 1999, the Department received a request from petitioner, the Paint Applicator Division of the American Brush Manufacturers Association, to conduct an administrative review of Hunan Provincial Native Produce and Animal By-Products Import and Export Corporation. On March 19, 1999, the Department initiated an antidumping administrative review of these firms covering the period February 1, 1998 through January 31, 1999 (64 FR 14860, published March 29, 1999).

Extension of Time Limit for Preliminary Results

Under Section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. Due to the complexity of certain issues in this case, the Department has determined that it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review of Natural Bristle Paint Brushes and Brush Heads from the PRC,* dated October 27, 1999, on file in Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for the preliminary results of this review to February 28, 2000. This extension of the time limit is in accordance with Section 751(a)(3)(A) of the Act.

Dated: October 27, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–28764 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Commerce Advisory Committee on Africa: Membership

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of committee establishment and membership opportunity.

SUMMARY: A committee comprised of U.S. businesses active in Sub-Saharan Africa is to be established to advise the Secretary on issues of U.S. commercial policy in Africa. This action is taken to ensure regular consultation with the U.S. business community and to reflect its views in the Clinton Administration's Africa Initiative. The Advisory Committee will meet quarterly, or more often as determined by the Secretary.

DATES: In order to receive full consideration, requests must be received no later than November 31, 1999.

ADDRESSES: Please send your requests for consideration to Mrs. S.K. Miller, Director, Office of Africa by fax on 202/482–5198 or by mail at Room 2037, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. S.K. Miller, Director, Office of Africa, Room 2037, U.S. Department of Commerce, Washington, DC 20230; telephone: 202/482–4227.

Notice of Committee Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101–6, and, after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Advisory Committee on Africa is in the public interest in connection with the performance of duties imposed on the Department by law.

In furtherance of the President's Africa Initiative, the Committee will advise the Secretary, through the Under Secretary for International Trade, on U.S. commercial policy on trade with Sub-Saharan Africa.

The ACA will be composed of not more than 21 individuals representing companies, and will be chaired by Secretary of Commerce William M. Daley. To assure a balanced representation of interests, members will be selected based on the criteria set forth below, to obtain a balance in industry sectors, company size, location, gender and ethnic representation.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, fifteen days from the publication of this notice.

The inaugural meeting of the ACA is expected to take place during the first quarter of the year 2000. Meetings will be scheduled quarterly throughout the year at the Department's headquarters. Additional meetings may be called as determined by the Secretary.

Notice of Opportunity To Apply for Membership

Membership Obligations

Members will be expected to serve a term of two years. However, to set up a staggered membership renewal, one-third of the private sector members from this initial appointment will serve for a two year term; a second third will serve for a three year term and a final third for a four year term. Each year, a third of the ACA membership will be replaced.

Nominations are now being sought for private sector members to serve for a two, three, or four year period from January 1, 2000 until December 31, 2001–2004, respectively. Members will serve at the discretion of the Secretary and shall serve as representatives of the business community and, specifically, the industry in which their business is engaged. They are expected to participate fully in implementing the Committee's work program. It is expected that private sector individuals chosen for ACA membership will attend not less than 75% of the ACA meetings each year.

Private sector members are fully responsible for travel, per diem, and personal expenses associated with their participation on the ACA.

The ACA will work on issues of common interest to encourage trade and investment, including the following:

—Resolving obstacles to trade and investment between the United States and Africa;

—Expanding commercial activity between the United States and Africa and identifying commercial opportunities;

—Developing sectoral or project-oriented approaches to expand business opportunities;

—Identifying further steps to facilitate and encourage the development of commercial expansion between the United States and Africa; and

—Taking any other appropriate steps for fostering commercial relations between the U.S. and Africa.

Criteria

In order to be eligible for membership in the U.S. section, potential candidates must be:

(1) U.S. citizens or permanent residents;

(2) CEOs or other senior management level employees of a U.S. company or organization with demonstrated involvement in trade with and/or investment in Sub-Saharan Africa who will participate in not less than 75% of the meetings, which will be held in the United States. Representative nominated should be the individual who will actively participate in the ACA;

(3) Not a Registered Foreign Agent; and

(4) Actively doing business in Sub-Saharan Africa or actively developing entry plans for doing business in Sub-Saharan Africa.

To the extent possible, the Department of Commerce will strive to achieve membership composition that reflects U.S. entrepreneurial diversity. Therefore, in reviewing eligible candidates, the Department of Commerce will consider such selection factors as:

(1) Depth of experience in the Sub-Saharan African market;

(2) Export/investment experience;

(3) Representation of industry or service sectors of importance to our commercial relationship with Sub-Saharan Africa;

(4) Company size or, if an organization, size and number of member companies;

(5) Location of company or organization; and

(6) Contribution to the Committee's ethnic and gender diversity.

To apply for membership, please provide a company information sheet and a personal resume and any other pertinent information which demonstrate how the applicant satisfies the selection criteria identified.

Authority: 15 U.S.C. 1501 *et seq.*; Reorganization Plan No. 3 of 1979, 19 U.S.C. 2171 Note, 5 U.S.C. App.2.

Edward Casselle,

Deputy Assistant Secretary for Africa.

[FR Doc. 99–28694 Filed 11–2–99; 8:45 am]

BILLING CODE 3510–DA–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Wednesday, November 17, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–28963 Filed 11–1–99; 3:55 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Validation of Public or Community Service Employment Performed by Retired Personnel Retired Under the Temporary Early Retirement Authority for Increased Retirement Compensation; DD form 2676; OMB Number 0704–0357.

Type of Request: Revision.

Number of Respondents: 1,775.

Responses per Respondent: 1.

Annual Responses: 1,775.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 296.

Needs and Uses: Public Law 102–484, section 4464, required the Department of Defense to develop policy and procedures to validate and credit increased compensation for qualifying public and community service employment performed by retired personnel of the Armed Forces under the "Temporary Early Retirement Authority Program." Public Law 103–337, section 542, extended this program to the Coast Guard. This information, which uses DD Form 2676, will allow DoD and Coast Guard to collect necessary information to recompute retired pay when the participating member qualifies under this program. Respondents to this program will be registered public or community service employers. The data are submitted by the Defense Manpower Data Center to either the Defense Finance and Accounting Service (DFAS) or the Coast Guard Finance Center for update of final pay information files. When a member reaches age 62, the Finance Centers will recompute retirement pay, adding whatever public or community service employment was validated during the enhanced retirement qualification period.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion; Annually.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–28667 Filed 11–2–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0130]

Proposed Collection; Comment Request Entitled Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0130).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate. The clearance currently expires on February 28, 2000.

DATES: Comments may be submitted on or before January 3, 2000.

ADDRESSES: Comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA, (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the North American Free Trade Agreement (NAFTA) Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and NAFTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and NAFTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .167 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: *Respondents,* 1,140; *responses per respondent,* 5; *total annual responses,* 5,700; *preparation hours per response,* .167; and *total response burden hours,* 952.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0130, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all correspondence.

Dated: October 29, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–28718 Filed 11–2–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board; Closed Panel Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 9–10 November, (800 am to 1600 pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: October 28, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–28668 Filed 11–2–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on DoD Frequency Spectrum Issues

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on DoD Frequency Spectrum Issues will meet in closed session on November 9–10, December 10, 1999, January 20–21, February 24–25, March 29–30, April 20–21, May 24–25, 2000 at SAIC, 4001 N. Fairfax Drive, Arlington, Virginia (except for the 10 December meeting which will be held at the Joint Spectrum Center, Annapolis, MD.) In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, the

meeting to be held on November 9–10, 1999, is scheduled on short notice. The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition, Technology and Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the competing interest in, and access to, the RF frequency spectrum and its impact on military readiness and national security in the 21st century. This study will review and evaluate DoD user frequency spectrum requirements and related advances in technology to improve utilization of this finite resource.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: October 27, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–28670 Filed 11–2–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition and Technology) Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on Tuesday December 7, 1999, at the Pentagon.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition and Technology) on technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II, (1994), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly the meeting will be closed to the public.

DATES: Tuesday, December 7, 1999, (8:00 a.m. to 5:30 p.m.)

ADDRESSES: Room 3E869, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Giglio, Defense Threat Reduction Agency/AS, 45045 Aviation Drive, Dulles, VA 20166–7517. Phone: (703) 326–8789.

Dated: October 27, 1999.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–28669 Filed 11–2–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 211. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 211 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 1999.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 210. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: October 27, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

BILLING CODE 5001–10–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGE IN CIVILIAN BULLETIN 211 UPDATES RATES FOR PUERTO RICO.				
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
BARROW	115	73	188	03/01/1999
BETHEL	105	60	165	03/01/1999
CLEAR AB	80	57	137	03/01/1999
COLD BAY	110	68	178	03/01/1999
COLDFOOT	135	71	206	10/01/1999
CORDOVA	85	62	147	03/01/1998
CRAIG				
05/01 - 08/31	95	66	161	10/01/1998
09/01 - 04/30	79	64	143	10/01/1998
DEADHORSE	80	67	147	03/01/1999
DENALI NATIONAL PARK				
06/01 - 08/31	115	52	167	03/01/1998
09/01 - 05/31	90	50	140	03/01/1998
DILLINGHAM	95	59	154	10/01/1998
DUTCH HARBOR-UNALASKA	110	71	181	03/01/1999
EARECKSON AIR STATION	80	57	137	03/01/1999
EIELSON AFB				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
ELMENDORF AFB				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
FAIRBANKS				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
FT. RICHARDSON				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
FT. WAINWRIGHT				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
GLENNALLEN	90	52	142	10/01/1998
HEALY				
06/01 - 08/31	115	52	167	03/01/1998
09/01 - 05/31	90	50	140	03/01/1998

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
HOMER				
05/15 - 09/15	115	58	173	03/01/1999
09/16 - 05/14	98	57	155	03/01/1999
JUNEAU	105	68	173	03/01/1999
KAKTOVIK	175	74	249	03/01/1999
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
05/01 - 09/30	114	63	177	03/01/1999
10/01 - 04/30	76	59	135	03/01/1999
KENNICOTT	149	68	217	10/01/1998
KETCHIKAN				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999
KING SALMON	101	70	171	03/01/1999
KLAWOCK				
05/01 - 08/31	95	66	161	10/01/1998
09/01 - 04/30	79	64	143	10/01/1998
KODIAK	99	67	166	03/01/1999
KOTZEBUE				
05/01 - 08/31	137	75	212	03/01/1999
09/01 - 04/30	73	61	134	03/01/1999
KULIS AGS				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
MCCARTHY	149	68	217	10/01/1998
METLAKATLA				
05/30 - 10/01	85	52	137	03/01/1999
10/02 - 05/29	78	51	129	03/01/1999
MURPHY DOME				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
NOME				
03/01 - 03/31	117	58	175	03/01/1999
04/01 - 02/29	92	56	148	03/01/1999
NUIQSUT	120	69	189	03/01/1999
PETERSBURG	87	57	144	03/01/1999
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/01 - 09/30	122	65	187	03/01/1999
10/01 - 04/30	86	61	147	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
SITKA-MT. EDGECOMBE				
09/05 - 03/31	83	59	142	10/01/1998
04/01 - 09/04	101	60	161	03/01/1998
SKAGWAY				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999
SPRUCE CAPE	99	67	166	03/01/1999
TANANA				
03/01 - 03/31	117	58	175	03/01/1999
04/01 - 02/29	92	56	148	03/01/1999
UMIAT	107	33	140	03/01/1999
VALDEZ				
05/15 - 10/01	110	63	173	03/01/1999
10/02 - 05/14	84	60	144	03/01/1999
WAINWRIGHT	127	82	209	03/01/1999
WRANGELL				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	57	137	03/01/1999
AMERICAN SAMOA				
AMERICAN SAMOA	73	53	126	03/01/1997
GUAM				
GUAM (INCL ALL MIL INSTAL)	150	79	229	10/01/1998
HAWAII				
CAMP H M SMITH	110	61	171	10/01/1998
EASTPAC NAVAL COMP TELE AREA	110	61	171	10/01/1998
FT. DERUSSEY	110	61	171	10/01/1998
FT. SHAFTER	110	61	171	10/01/1998
HICKAM AFB	110	61	171	10/01/1998
HONOLULU (INCL NAV & MC RES CTR)	110	61	171	10/01/1998
ISLE OF HAWAII: HILO	80	52	132	06/01/1998
ISLE OF HAWAII: OTHER	100	54	154	10/01/1998
ISLE OF KAUAI				
12/01 - 04/30	145	64	209	06/01/1999
05/01 - 11/30	115	62	177	06/01/1998
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	112	64	176	10/01/1998
ISLE OF OAHU	110	61	171	10/01/1998
KANEOHE BAY MC BASE	110	61	171	10/01/1998
KEKAHA PACIFIC MISSILE RANGE FAC				
12/01 - 04/30	145	64	209	06/01/1999
05/01 - 11/30	115	62	177	06/01/1998

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KILAUEA MILITARY CAMP	80	52	132	06/01/1998
LUALUALEI NAVAL MAGAZINE	110	61	171	10/01/1998
NAS BARBERS POINT	110	61	171	10/01/1998
PEARL HARBOR [INCL ALL MILITARY]	110	61	171	10/01/1998
SCHOFIELD BARRACKS	110	61	171	10/01/1998
WHEELER ARMY AIRFIELD	110	61	171	10/01/1998
[OTHER]	79	62	141	06/01/1993
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	9	22	10/01/1998
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	65	41	106	05/01/1999
NORTHERN MARIANA ISLANDS				
ROTA	88	69	157	06/01/1999
SAIPAN	154	88	242	06/01/1999
[OTHER]	61	62	123	06/01/1999
PUERTO RICO				
BAYAMON				
04/11 - 12/23	169	73	242	11/01/1999
12/24 - 04/10	216	77	293	11/01/1999
CAROLINA				
04/11 - 12/23	169	73	242	11/01/1999
12/24 - 04/10	216	77	293	11/01/1999
FAJARDO [INCL CEIBA & LUQUILLO]	90	55	145	11/01/1999
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	169	73	242	11/01/1999
12/24 - 04/10	216	77	293	11/01/1999
HUMACAO	90	55	145	11/01/1999
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	169	73	242	11/01/1999
12/24 - 04/10	216	77	293	11/01/1999
MAYAGUEZ	94	60	154	06/01/1998
PONCE	107	70	177	11/01/1999
ROOSEVELT RDS & NAV STA	90	55	145	11/01/1999
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	169	73	242	11/01/1999
12/24 - 04/10	216	77	293	11/01/1999
SAN JUAN & NAV RES STA				
04/11 - 12/23	169	73	242	11/01/1999
12/24 - 04/10	216	77	293	11/01/1999
[OTHER]	66	57	123	09/01/1998

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	100	73	173	08/01/1999
12/15 - 04/14	140	77	217	08/01/1999
ST. JOHN				
04/15 - 12/14	236	85	321	08/01/1999
12/15 - 04/14	413	103	516	08/01/1999
ST. THOMAS				
04/15 - 12/14	176	74	250	08/01/1999
12/15 - 04/14	311	88	399	08/01/1999
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 99–28671 Filed 11–2–99; 8:45 am]

BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 5,259,061 entitled "Fabrication and Phase Tuning of an Optical Waveguide Device," Navy Case No. 75,085.

U.S. Patent No. 5,195,163 entitled "Fabrication and Phase Tuning of an Optical Waveguide Device," Navy Case No. 73,281.

ADDRESSES: Requests for copies of the patents cited should be directed to the Naval Research Laboratory, Code 3008.2, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: October 26, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–28783 Filed 11–2–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 3, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 27, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Reinstatement.

Title: Directory of Designated Low-Income Schools for Teacher Loan Cancellation Benefits.

Frequency: Annually.

Affected Public: Federal Government; State; local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 57. Burden Hours: 570.

Abstract: Under the Federal Perkins and National Direct Student Loan Programs, a borrower may have a portion of his/her loan cancelled, if they teach at a school that appears in the Directory.

Requests for copies of the proposed information collection (1845–New) request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–28577 Filed 11–2–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 3, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 29, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: School Survey on Crime and Safety.

Frequency: Intended to be biennial; clearance is being sought for year 2000 only.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs (schools).

Reporting and Recordkeeping Hour Burden:

Responses: 3,000.

Burden Hours: 3,000.

Abstract: This survey of 3,000 public elementary and secondary schools is intended to be the first of a biennial series. It collects data on the frequency of crime and disciplinary problems, the characteristics of school policies and programs to prevent or reduce crime, and school disciplinary actions.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651,or should be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov.*

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–28709 Filed 11–2–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 18, 1999: 6 p.m.–9:30 p.m.

ADDRESSES: Metropolis Junior High School Auditorium, 1004 Catherine Street (Eleventh Street Entrance), Metropolis, Illinois.

OTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

6:00 p.m.	Call to order/Discussion
6:05 p.m.	Approve Meeting Minutes
6:15 p.m.	Public Comments/Questions
6:30 p.m.	Presentations
8:30 p.m.	Sub Committee Reports
9:00 p.m.	Administrative Issues
9:30 p.m.	Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on October 29, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–28710 Filed 11–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 17, 1999, 6 p.m.–9 p.m.

ADDRESSES: San Juan Pueblo, Bureau of Indian Affairs Conference Room, Route 68, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Public Comment, 6:30 p.m.–7 p.m.
2. Committee Reports:
   - Environmental Restoration
   - Monitoring and Surveillance
   - Waste Management
   - Community Outreach
   - Budget
3. Election of Officers for FY 2000
4. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on October 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–28711 Filed 11–2–99; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

Date and Time: Tuesday, November 16, 1999: 10 a.m.–2:30 p.m.

Address: Amarillo Senior Citizens' Center, 1217 Tyler Street, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120, (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

10:00 Welcome—Agenda Review—Approval of Minutes
10:15 Co-Chair Comments
10:30 Task Force/Subcommittee Reports
11:00 Breakdown of Technical Terms on Groundwater Issues
11:15 Updates—Occurrence Reports—DOE
11:30 Lunch
12:30 Texas Risk Reduction Program Rule Update
1:00 E-Officios Reports
1:30 Public Comments
2:00 Closing Comments
2:15 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX, phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX, phone (806) 537–3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on October 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–28713 Filed 11–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, November 22, 1999; 9 a.m. to 6 p.m. and Tuesday, November 23, 1999; 9 a.m. to 5 p.m.

ADDRESSES: National Science Foundation, 4201 Wilson Boulevard, National Science Board Room 1235, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Cathy A. Hanlin, U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–3613.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda

Monday, November 22, 1999, and Tuesday, November 23, 1999

- Presentation of Rare Isotope Accelerator (RIA) Task Force Report;
- Briefing on DOE Office of Science; Office of High Energy and Nuclear Physics; and Division of Nuclear Physics Activities and Budget Outlook;
- Briefing on NSF Mathematical and Physical Sciences Directorate; Physics Division; and Nuclear Physics Program Activities and Budget Outlook;
- Discussion of RIA Task Force Report, and Draft and Formulation of NSAC Response;
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the

Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Cathy A. Hanlin at 301–903–3613. You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 29, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–28712 Filed 11–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–597–000]

Proposed Information Collection and Request for Comments

October 27, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before January 3, 2000.

ADDRESSES: Written comments on the proposed collection of information may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425 and by E-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: *Abstract:* The FERC–597, "Customer Satisfaction Survey" (OMB No. 1902–0163) is used by the Commission to evaluate the services performed in the Public Reference Room for the public. The Public Reference Room is the Commission's repository and reference center for most of the documents filed with the Commission. Official file copies of all public records of the Commission are accessible through the Public Reference Room. Duplicate copies of those documents and reports in greatest demand are available on open shelves or in labeled file cabinets in the public area of the reference room. Other documents, historical records, indexes and publications are available but mut be retrieved by Commission staff. The Public Reference room staff respond to both oral, written and electronic inquiries regarding the Commission's official records and documents. The customer survey is conducted on an annual basis and responses to the survey are voluntary. The Commission uses the survey to assess the performance of its staff and to determine how best to serve the public.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents (1)	Annual responses per response (2)	Average burden Hours per response (3)	Total annual burden hours (1)×(2)×(3)
100	1	.15 Hours	15 Hours

Estimated cost burden to respondents: Because of the minimal amount of time to conduct this survey (15 minutes), and the voluntary nature of response to this survey, the commission estimates that the cost to respondents will be minimal.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including (*as applicable*): (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28569 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–30–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 27, 1999.

Take notice that on October 21, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets as listed in Appendix A to the filing, to be effective December 1, 1999.

ANR states that this filing, made on a limited basis in accordance with the provisions of Section 4 of the Natural Gas Act and Section 154 of the Commission's regulations, is to implement new Rate Schedules FTS–3 and ITS–3, which will enable firm and interruptible transportation shippers, respectively, to obtain service at variable hourly flow rates. Accordingly, this filing includes revised tariff sheets for these two new rate schedules, as well as certain conforming revisions to the General Terms and Conditions of ANR's tariff.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28568 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–41–000]

Entergy Services, Inc.; Notice of Filing

October 28, 1999.

Take notice that on October 5, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing a Letter Amendment to the Interconnection and Operating Agreement between Entergy Gulf States and PPG Industries, Inc.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.11 and 385.214). All such motions and protests should be filed on or before November 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28714 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–274–003]

Kern River Gas Transmission Company; Notice of Compliance Filing

October 28, 1999.

Take notice that on October 20, 1999, Kern River Gas Transmission Company (Kern River) tendered for filing information and documentation (including work papers) supporting the proposed settlement and rates contained in its filing of March 31, 1999 during which Kern River's rates as established in Docket No. RP99–274 are applicable.

Kern River states that the purpose of this filing is to comply with the Commission's September 20, 1999 Order in Docket No. RP99–274–001. Kern River states that its compliance filing is consistent with the Commission's orders and directives that have been issued with respect to Docket No. RP99–274–001.

Kern River states that a copy of this filing has been served upon each person designated on the official service lists compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.)

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28682 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–12–000]

Questar Pipeline Company; Notice of Application

October 28, 1999.

Take notice that on October 25, 1999, Questar Pipeline Company (Questar), P.O. Box 45360, Salt Lake City, Utah 84145–0360, filed in Docket No. CP00–12–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation service provided to Northwest Pipeline Corporation (Northwest) under individually certificated agreements, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Questar proposes to abandon natural gas transportation service provided to Northwest Pipeline Corporation under Questar's Rate Schedules X–29, X–30, X–36, X–37, X–38, and X–39 contained in its respective FERC Gas Tariff, Original Volume No. 3. Questar states that these service agreements have been inactive for several years and will never be re-activated. Questar declares that a letter notifying Northwest of Questar's intent to terminate these agreements was received and signed by Northwest, evidencing its agreement with the proposed terminations. Questar requests that authority to abandon the rate schedules be made effective September 1, 1999. Questar states that it does not propose to abandon or modify any existing facilities pursuant to the instant application.

Any person desiring to be heard or to make any protest with reference to said Application should on or before November 18, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 383.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28679 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–28–004 and CP99–102–001]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

October 27, 1999.

Take notice that on October 20, 1999, Wyoming Interstate Company, Ltd. (WIC), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, the tariff sheets listed in Appendix A to be effective November 20, 1999.

WIC states it was granted authority to construct the Medicine Bowl Lateral in an Order Issuing Certificate that issued July 28, 1999 in Docket No. CP99–102.

WIC further states it is making this filing in compliance with Ordering Paragraph H of the Preliminary Determination on Non-Environmental Issues in Docket No. CP99–102 ("PD") which issued April 28, 1999. The tariff sheets filed herein are consistent with both the pro forma tariff sheets contained in the application and revisions as required in the PD.

WIC states it is also filing tariff sheets as required in Article 33 of its General Terms and Conditions for the negotiated rate agreements supporting the Medicine Bow project.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28567 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC96–19–032, et al.]

California Power Exchange Corporation, et al.; Electric Rate and Corporate Regulation Filings

October 25, 1999.

Take notice that the following filings have been made with the Commission:

1. California Power Exchange Corporation

[Docket Nos. EC96–19–032 and ER96–1663–033]

Take notice that on October 18, 1999, the California Power Exchange Corporation (CalPX) submitted a compliance filing in the above-referenced dockets. The compliance filing states how CalPX intends to implement the resolution of settlement and billing issues once they are resolved through the California stakeholder process.

Comment date: November 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. TECO EnergySource, Inc.; Poco Petroleum, Inc.; Poco Marketing Ltd.; Kamps Propane, Inc.; Conoco Power Marketing Inc.

[Docket Nos. ER96–1563–015; ER97–2197–008; ER97–2198–009; ER98–1148–005; and ER95–1441–019]

Take notice that on October 18, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

3. Florida Power Corporation and Progress Power Marketing

[Docket Nos. ER97–2846–001 and ER96–1618–014]

Take notice that on October 19, 1999, Florida Power Corporation (FPC) and Progress Power Marketing, Inc. (PPM) tendered for filing a Notification of Change in Status. The Notification of Change in Status is intended to inform the Commission that Florida Progress Corporation (parent of FPC and PPM), and Carolina Power & Light Company (CP&L) announced a share exchange whereby FPC would become an affiliate of CP&L upon consummation of the proposed exchange. In addition, the filing makes certain commitments, consistent with Commission precedent, regarding sales of power and the pricing of non-power goods and services.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. NYSEG Solutions, Inc.; The Furst Group, Inc.; The Mack Services Group; Unicom Power Marketing, Inc.; Bangor Energy Resale, Inc.; Monterey Consulting Associates, Incorporated; Thicksten Grimm Burgum, Incorporated; Cargill-Alliant, LLC

[Docket Nos. ER99–220–003; ER98–2423–004; ER99–1750–003; ER97–3954–009; ER98–459–007; ER96–2143–012; ER96–2241–013; and ER97–4273–009]

Take notice that on October 20, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

5. e prime, inc.; Energy Atlantic, LLC; Southwood 2000, Inc.; Burlington Resources Trading Inc.

[Docket Nos. ER99–1610–004; ER98–4381–004; ER98–2603–002; and ER96–3112–012]

Take notice that on October 19, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. Williams Energy Marketing & Trading Company

[Docket No. ER99–1722–003]

Take notice that on October 13, 1999, Williams Energy Marketing & Trading Company filed its second revised first quarter 1999 Power Marketer Report for information only.

7. Maine Public Service Company; Kansas City Power & Light Company

[Docket Nos. ER00–158–000 and ER00–156–000]

Take notice that on October 19, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Wisvest-Connecticut, LLC; Commonwealth Edison Company; PacifiCorp; Westchester RESCO Company, L.P.; Bangor Hydro-Electric Company; Florida Power Corporation; Carthage Energy, LLC; South Glens Falls Energy, LLC

[Docket Nos. ER00–159–000; ER00–160–000; ER00–161–000; ER00–162–000; ER00–163–000; ER00–164–000; ER00–165–000; and ER00–166–000]

Take notice that on October 20, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ES00–2–000]

Take notice that on October 15, 1999, PJM Interconnection, L.L.C. (PJM), submitted for filing an application under Section 204 of the Federal Power Act. PJM is seeking authorization for the issuance of an unsecured promissory note for a revolving line of credit of up to $15 million.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. The Detroit Edison Company

[Docket No. OA96–78–005]

Take notice that on October 15, 1999, The Detroit Edison Company made a compliance filing in the above-referenced docket.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company; Massachusetts Electric Company; The Narragansett Electric Company; New England Electric Transmission Corporation; New England Hydro-Transmission Corporation; New England Hydro-Transmission Electric Company, Inc.; AllEnergy Marketing Company, L.L.C.; Montaup Electric Company; Blackstone Valley Electric Company; Eastern Edison Company; Newport Electric Corporation and Research Drive LLC; New England Power Company; Montaup Electric Company

[Docket No. OA00–1–000]

Take notice that on October 14, 1999, New England Power Company, et al. and Montaup Electric Company, et al. submitted for filing revised standards of conduct in compliance with the Federal Energy Regulatory Commission's September 29, 1999, order (88 FERC ¶ 61,292 (1999) in the above captioned proceeding.

Copies of the filing have been served on all parties to the proceedings, as well as the relevant state commissions.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28566 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–11–000, et al.]

Oswego Harbor Power LLC, et al.; Electric Rate and Corporate Regulation Filings

October 27, 1999.

Take notice that the following filings have been made with the Commission:

1. Oswego Harbor Power LLC

[Docket No. EG00–11–000]

Take notice that on October 22, 1999, Oswego Harbor Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Oswego generating station in Oswego, New York (Facility) and selling electric energy at wholesale. The Facility consists of two oil-fired 850 MW units, four retired units, and associated interconnection components. The applicant intends to purchase the Facility from Niagara Mohawk Power Corporation and Rochester Gas and Electric Company.

Comment date: November 17, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Stand Energy Corporation, Griffin Energy Marketing, L.L.C., Shell Energy Services Company, L.L.C., PacifiCorp Power Marketing and IGI Resources, Inc.

[Docket Nos. ER95–362–019, ER97–4168–008, ER99–2109–002, ER95–1096–020, ER95–1034–017]

Take notice that on October 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

3. Lowell Cogeneration Company, L.P.

[Docket No. ER97–2414–002]

Take notice that on October 21, 1999 Lowell Cogeneration Company, L.P. (LCCLP) tendered for filing a Notification of Change in Status. LCCLP seeks to notify the Commission that it has become affiliated with the Duke Power Company and Nantahala Power and Light Company divisions of Duke Energy Corporation. Due to its new affiliation with these regulated utilities, LCCLP is filing with the Commission an amended Rate Schedule No. 1 as well as a Code of Conduct (Supplement No. 1 to Rate Schedule No. 1).

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. PPM One LLC, PPM Two LLC, PPM Three LLC, PPM Four LLC, PPM Five LLC, and PPM Six LLC.

[Docket Nos. ER97–3926–003, ER97–3927–003, ER97–3928–003, ER97–3929–003, ER97–3930–003, and ER97–3931–003]

Take notice that on October 19, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

5. TransCanada Power Marketing Ltd., MEG Marketing, LLC, NGTS Energy Services, Sparc, L.L.C., El Paso Power Services Company, Superior Electric Power Corporation, and Strategic Energy L.L.C.

[Docket No. ER98–564–005, ER98–2284–006, ER96–2892–011, ER98–2671–003, ER95–428–022, ER95–1747–017 and ER96–3107–012]

Take notice that on October 21, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. Commonwealth Edison Company and Unicom Power Marketing, Inc.

[Docket Nos. ER98–1734–001 and ER97–3954–010]

Take notice that on October 21, 1999, Commonwealth Edison Company (ComEd) and its affiliate Unicom Power Marketing, Inc. (UPMI) filed their report of change in status to reflect a departure from the facts relied upon by the Federal Energy Regulatory Commission (Commission) in its grant of market-based rate authority to ComEd and UPMI in the above-referenced proceedings.

7. PowerSource Corp.

[Docket No. ER98–3052–005]

Take notice that on October 25, 1999, PowerSource Corp. filed its quarterly report for the quarter ending September 30, 1999 for information only.

8. The United Illuminating Company

[Docket No. ER00–143–000]

Take notice that on October 18, 1999, The United Illuminating Company (UI) tendered for filing a Service Agreement dated September 12, 1999, between UI and Entergy Power Marketing Corp. (Entergy) for non-firm point-to-point transmission service under UI'S Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended. The Service Agreement adds Entergy as a transmission customer under the Tariff.

UI requests an effective date of September 12, 1999 and has therefore requested that the Commission waive its 60-day prior notice requirement.

Copies of the filing were served upon the Contract Administrator, Entergy Power Marketing, Corp. and Robert J. Murphy, Executive Secretary, Connecticut Department of Public Utility Control.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Strategic Energy Management Corp.

[Docket No. ER00–167–000]

Take notice that on October 20, 1999, Strategic Energy Management Corp., petitioned the Commission for acceptance of Strategic Energy Management Corp., Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Strategic Energy Management Corp., intends to engage in wholesale electric power and energy purchases and sales as a marketer. Strategic Energy Management Corp., is not in the business of generating or transmitting electric power. Strategic Energy Management Corp., has no affiliates and is independently owned.

Comment date: November 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Reliant Energy HL&P

[Docket No. ER00–168–000]

Take notice that on October 20, 1999, Reliant Energy HL&P (Reliant), tendered for filing a notice of cancellation of a transmission service agreement with NP Energy, Inc., under Reliant's tariff for transmission service "to, from and over" certain HVDC Interconnections.

Reliant states that a copy of the filing has been served on the affected customer.

Comment date: November 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER00–169–000]

Take notice that on October 20, 1999, Southern California Edison Company (SCE), tendered for filing a Notice of Cancellation of the Harborgen Substation Service Agreement with Harbor Cogeneration Company.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Avista Corporation

[Docket No. ER00–170–000]

Take notice that on October 20, 1999, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Settlement Procedures Agreement allowing for arrangements of amounts which become due and owing to one

Party to be set off against amounts which are due and owing to the other Party with Citizens Power Sales.

Avista Corporation requests waiver of the prior notice requirement and requests an effective date of October 1, 1999.

Comment date: November 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER00–171–000]

Take Notice that on October 20, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated September 27, 1999 with TransCanada Power Marketing Ltd. (TCPM) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds TCPM as an eligible customer under the Tariff.

PP&L requests an effective date of October 20, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to TCPM and to the Pennsylvania Public Utility Commission.

Comment date: November 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. American Electric Power Service Corporation

[Docket No. ER00–172–000]

Take notice that on October 21, 1999, the American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company (CSP), tendered for filing with the Commission a Facilities, Operations, Maintenance And Repair Agreement dated September 27, 1999, between CSP and The City of Columbus, Ohio.

AEPSC requests an effective date of November 1, 1999, for the tendered agreement.

A copy of the filing was served upon The City of Columbus, Ohio and the Public Utilities Commission of Ohio.

Comment date: November 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER00–173–000]

Take notice that on October 21, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 11, 1999, Utility.com under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Utility.com as a customer under the Tariff.

DLC requests an effective date of October 11, 1999, for the Service Agreement.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER00–174–000]

Take notice that on October 21, 1999, Niagara Mohawk (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Virginia Electric & Power Co. This Transmission Service Agreement specifies that Virginia Electric & Power Co., has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff filed with FERC on July 9, 1996, will allow Niagara Mohawk and Virginia Electric & Power Co., to enter into separately scheduled transactions under which Niagara Mohawk will provide firm transmission service for Virginia Electric & Power Co., as the parties may mutually agree.

Niagara Mohawk requests an effective date of September 24, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Virginia Electric & Power Co.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER00–175–000]

Take notice that on October 21, 1999, UtiliCorp United Inc. filed the following three rate schedules (Rate Schedules): (1) Missouri Public Service Purchases of Electricity from Non-QF Small Independent Power Producers; (2) WestPlains Energy-Kansas Purchases of Electricity from Non-QF Small Independent Power Producers; and (3) WestPlains Energy-Colorado Purchases of Electricity from Non-QF Small Independent Power Producers. Under the three respective Rate Schedules, UtiliCorp's Missouri Public Service, WestPlains Energy-Kansas, and WestPlains Energy-Colorado operating divisions may purchase electricity from certain non-QF small-scale independent power producers.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. PP&L, Inc., Wisconsin Electric Power Company, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket Nos. ER00–178–000, ER00–179–000, ER00–200–000]

Take notice that on October 21, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

19. Avista Corporation

[Docket No. ER00–177–000]

Take notice that on October 21, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 of the Commission Rules and Regulations, an executed Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 9., replacing a previously filed unsigned Service Agreement with MIECO, Inc., under Docket No. ER98–3482–000, Service Agreement No. 157, effective July 1, 1998.

Notice of the filing has been served upon MIECO, Inc.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Company

[Docket No. ER00–181–000]

Take notice that on October 21, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with City of Homestead Utilities (Homestead) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on September 27, 1999.

Copies of the filing have been served on Homestead and the Florida Public Service Commission.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company and Commonwealth Edison Company of Indiana

[Docket No. ER00–182–000]

Take notice that on October 21, 1999, Commonwealth Edison Company tendered for filing an amended service agreement between Commonwealth Edison Company and PECO Energy Company to put into effect a market index rate cap for sales from Commonwealth Edison Company to

PECO Energy Company in light of their announced intention to merge.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Entergy Services, Inc.

[Docket No. ER00–183–000]

Take notice that on October 21, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc. (EAI), tendered for filing a Settlement Agreement between Entergy Services, Inc. as agent for EAI, and Associated Electric Cooperative, Inc.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. American Electric Power Service Corporation

[Docket No. ER00–184–000]

Take notice that on October 21, 1999, the American Electric Power Service Corporation (AEPSC), on behalf of Ohio Power Company (OPCo), tendered for filing with the Commission a Facilities, Operation and Maintenance Agreement dated September 21, 1999, between OPCo and American Municipal Power—Ohio (AMP-Ohio) as agent for The Ohio Municipal Joint Venture 5 (OMEGA–JV5).

AEPSC requests an effective date of October 1, 1999, for the tendered agreement citing cause for waiver of the usual notice requirements.

A copy of the filing was served upon AMP-Ohio and the Public Utilities Commission of Ohio.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Hardee Power Partners Limited

[Docket No. ER00–185–000]

Take notice that on October 21, 1999, Hardee Power Partners Limited (HPP), tendered for filing an unexecuted service agreement with Reedy Creek Energy Services, Inc. (RCES) under HPP's market-based sales tariff.

HPP proposes that the service agreement be made effective on September 23, 1999.

Copies of the filing have been served on RCES and the Florida Public Service Commission.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Central Illinois Light Company, Rochester Gas and Electric Corporation, Monmouth Energy, Inc., Carolina Power & Light Company, Oklahoma Gas and Electric Co., Great Bay Power Corporation and Little Bay Power Corporation

[Docket Nos. ER00–189–000, ER00–190–000, ER00–191–000, ER00–196–000, ER00–197–000, ER00–201–000 and ER00–202–000

Take notice that on October 22, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28715 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2170–010, Alaska]

Chugach Electric Association, Inc.; Notice of Availability of Final Environmental Assessment

October 28, 1999.

A final environmental assessment (FEA) is available for public review. the FEA is for an application to amend the license for the Cooper Lake Project (FERC No. 2170) for a 4.3 megawatt increase in the rated generating capacity. The increase would be achieved by rewinding the stator coils of the generators and by replacing the runners of the turbines. The hydraulic capacity of each of the two generating units would increase from 165.5 cubic feet per second (cfs) to 190 cfs, a total project increase from 331 cfs to 380 cfs. Cooper Lake, the project reservoir would be drawn down to facilitate the upgrades of the generating units. The Cooper Lake Project is located on Cooper Lake, Cooper Creek and Kenai Lake Near Cooper Landing on the Kenai Peninsula, Alaska. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA are available for review in the Commission's Public Reference Branch, Room 2A, 888 First Street, N.E., Washington, D.C. 20426 or by calling (202) 208–1371. The FEA may be viewed on the web at *httP://www.ferc.fed.us./online/rims.htm.* Please call (202) 208–2222 for assistance. For further information, please contact John K. Novak at (202) 219–2828.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28681 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

October 28, 1999.

a. *Type of filing*: Notice of Intent to File Application for New License.

b. *Project No.*: 2105.

c. *Date filed*: October 19, 1999.

d. *Submitted By*: Pacific Gas and Electric Company.

e. *Name of Project*: Upper North Fork Feather River Hydroelectric Project.

f. *Location*: On the North Fork Feather River and Butt Creek in Plumas County, California.

g. *Filed Pursuant to*: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license*: November 1, 1954.

i. *Expiration date of original license*: October 31, 2004.

j. The project consists of the Butt Valley powerhouse with an installed capacity of 41 megawatts (MW), the Caribou No. 1 powerhouse with an installed capacity of 75 MW, the

Caribou No. 2 powerhouse with an installed capacity of 120 MW, the Oak Flat powerhouse with an installed capacity of 1.3 MW, and the Belden powerhouse with an installed capacity of 125 MW.

k. Pursuant to 18 CFR 16.7, information on the project is available contacting John Gourley at Pacific Gas and Electric Company, 245 Market Street, Room 1137, San Francisco, CA 94105, (415) 972–5772.

l. *FERC contact*: Sergiu Serban (202) 501–6935.

m. Pursuant to 18 CFR 16.9(b)(l) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28680 Filed 11–2–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6469–2]

Adequacy Status of Milwaukee, Wisconsin Submitted 9% Rate of Progress Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that EPA has found that the Milwaukee, Wisconsin 9% Rate of Progress (ROP) plan does contain adequate mobile source emission budgets. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. Since the December 11, 1997, submittal does contain adequate budgets, this attainment demonstration can be used for future conformity determinations.

FOR FURTHER INFORMATION CONTACT:

The finding and the response to comments will be available at EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Michael G. Leslie, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard., Chicago, Illinois, 60604, (312) 353–6680, leslie.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

Throughout this document, whenever "we", "us" or "our" is used, we mean EPA. This notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Wisconsin Department of Natural Resources on October 7, 1999, stating that the Milwaukee, Wisconsin submitted 9% ROP does contain adequate mobile source emission budgets. This finding will also be announced on EPA's conformity website: http://www.epa.gov/oms/traq, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 22, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–28724 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100150; FRL–6386–2]

Oracle Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Oracle Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Oracle Corporation has been awarded a contract to perform work for OPP, and access to this information will enable Oracle Corporation to fulfill the obligations of the contract.

DATES: Oracle Corporation will be given access to this information on or before November 8, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under this contract number, the contractor will perform the following:

Under Contract No. 68-W2-0033, this project will deal with the analysis, design, development, installation, and maintenance of OPP applications developed in Oracle as the RDBMS with Graphical User Interface. The requirements may consist of detailed system requirements/specifications, screen layouts, navigation and interface among screens, data validation rules, and detailed storage and processing requirements. The contractor will complete the work to meet the requirements of the assignment, complete initial alpha testing, and document the completed work.

This contract involves no subcontractors.

The OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Oracle Corporation, prohibits use of the information for any purpose not specified in this contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Oracle Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Oracle Corporation until the requirements in this document have been fully satisfied. Records of information provided to Oracle Corporation will be maintained by EPA Project Officers for this contract. All information supplied to Oracle Corporation by EPA for use in connection with this contract will be returned to EPA when Oracle Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: September 30, 1999.

Richard D. Schmitt

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–28727 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6468–9]

Guam: Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice; extension of comment period for tentative determination to fully approve the adequacy of the Guam Municipal Solid Waste Permitting Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. Approved State permit programs provide for interaction between the State and the Owner/Operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site specific flexibilities provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that, regardless of the approval status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

Guam is defined as a "State" in 40 CFR 258.2. Guam has applied for a determination of adequacy under section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA Region IX has reviewed Guam's MSWLF permit program application and has made a tentative determination that all portions of Guam's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Guam's application for program adequacy determination is available for public review and comment at the place(s) listed in the **ADDRESSES** section below during regular office hours.

RCRA does not require EPA to hold a public hearing on a determination to approve any State's MSWLF permit. However, if a sufficient number of persons express interest in participating in a hearing by writing to the Region IX Solid Waste Program or calling the contact given below by November 22, 1999 the Region will hold a hearing in Tiyan, Guam. The Region will notify all persons who submit comments on this notice if it appears that there is sufficient public interest to warrant a hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

DATES: The Public Comment Period for Guam's application for a determination of adequacy has been extended to November 22, 1999. All comments on Guam's application for a determination of adequacy must be received by the close of business on November 22, 1999. If there is sufficient interest, a public hearing will be held in Tiyan, Guam at least 45 days from the date of notice that such a hearing will be held. Guam's Environmental Protection Agency will participate in the public hearing, if held by EPA on this subject.

ADDRESSES: Written comments should be sent to Ms. Heidi Hall, Chief, Solid Waste Program, mail code WST–7, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. The public hearing, if held, will be held at the Guam Environmental Protection Agency's Main Conference Room, Building 15–6101 Mariner Avenue, Tiyan, Guam. Copies of Guam's application for adequacy determination are available at the following address for inspection and copying: Guam Environmental Protection Agency, Calibration Laboratory Building, 15–6101 Mariner Ave. Tiyan, Barrigada, Guam between the hours of 8:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105 attention Ms. Beth Godfrey, mail code WST–7, telephone 415 744–2095.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this document from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any mew burdens on small entities. This document, therefore, does not require a regulatory flexibility analysis.

Authority: This document is issued under the authority of section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6946.

Dated: October 20, 1999.

Laura Yoshi,

Acting Regional Administrator, Region 9.

[FR Doc. 99–28721 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00622; FRL–6387–3]

Pesticide Data Submitters List; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions. The Pesticide Data Submitters List is a compilation of names and addresses of registrants who wish to be notified and offered compensation for use of their data. It was developed to assist pesticide applicants in fulfilling their obligation as required by sections 3(c)(1)(f) and 3(c)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 152, subpart E regarding ownership of data used to support registration.

DATES: Comments regarding additions, deletions, and changes to the Data Submitters List must be received on or before March 15, 2000 to be included in the next edition of the Data Submitters List which is scheduled for publication on March 31, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA it is imperative that you identify docket control number OPP-00622 in the subject line on the front page of your response.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Resources and Services Division, mail code (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–6426.; fax number: (703) 305–7670; e-mail address: jamula.john @epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who plan to apply for registration of pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**- -Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may access an electronic copy of the Data Submitters List from the EPA Internet Home Page at http://www.epa.gov. To access the Data Submitters List by searching for the keyword 'DataSubmittersList'. You can also access the Data Submitters List directly at http://www.epa.gov/opppmsd1/DataSubmittersList/index.html. Note that this address is case sensitive.

2. *In person.* The Data Submitters List is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *On Microfiche.* The Data Submitters List is available on microfiche from the National Technical Information Service (NTIS) ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161. Telephone: 1–800–553–6847. When requesting a document from NTIS, please provide its name and publication number (PB). The NTIS publication number for this version of the Data Submitters List is PB–99–171670.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically.

1. *By mail.* Submit your comments regarding additions, changes and deletions to: Information Services Branch (7504C) (DSL), Information Resources and Services Division Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Document Processing Desk, Information Services Branch (ISB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 226, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Processing Desk is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

II. What Action Is the Agency Taking?

The Office of Pesticide Programs announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions. The Pesticide Data Submitters List is a compilation of names and addresses of registrants who wish to be notified and offered compensation for use of their data. It was developed to assist pesticide applicants in fulfilling their obligation as required by sections 3(c)(1)(f) and 3(c)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 152 subpart E regarding ownership of data used to support registration.

List of Subjects

Environmental protection, Data Submitters List

Dated: October 4, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–28730 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENT PROTECTION AGENCY

[OPP–66271; FRL–6383–9]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATE: Unless a request is withdrawn the Agency will approve these use deletions and the deletions will become effective on May 1, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room, 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, e-mail: hollins.james@epa.gov.(703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**- Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* The Agency has established an official record for this action under docket control number [insert appropriate docket #]. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. What Action Is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel some 45 pesticide products registered under Section 3 or 24 of FIFRA. These registrations are listed in sequence by registration number (or company number and 24 number) in the following Table 1:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000402–00132	Aerochem General Purpose Spray	*o*-Isopropoxyphenyl methylcarbamate
N/A	N/A	*N*-Octyl bicycloheptene dicarboximide
N/A	N/A	(Butylcarbityl)(6-propylpiperonyl)ether 80% and related compounds 20%
N/A	N/A	Pyrethrins
000707–00204	Kelthane EC Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
001459–00027	Ack-Ack Residual Insect Spray	*o*-Isopropoxyphenyl methylcarbamate
002517–00065	Sergeant's Flea & Tick Killer and Coat Conditioning Spray	*o*-Isopropoxyphenyl methylcarbamate
002781–00003	Happy Jack Kennel Dip	Lindane (Gamma isomer of benzene hexachloride)(99% pure gamma isomer
002781–00047	Sardex	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate
002935 WA–88–0003.	Dupont Karmex Df Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
002935 WA–97–0018.	Methyl Parathion 5 Spray	*O,O*-Dimethyl *O*-*p*-nitrophenyl phosphorothioate
004758–00078	Holiday Double Strength Fly Relief Insect Repellant	Butoxypolypropylene glycol
N/A	N/A	*N,N*-Diethyl-meta-toluamide and other isomers

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
004758–00081	Holiday Outdoorsman Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
006959–00089	Cessco Accudose Residual Spray II	*o*-Isopropoxyphenyl methylcarbamate
N/A	N/A	(Butylcarbityl)(6-propylpiperonyl)ether 80% and related compounds 20%
N/A	N/A	Pyrethrins
N/A	N/A	Rotenone
007401–00315	Ferti-Lome Lindane Borer, Leaf Miner & Bark Beetle Spray	Lindane (Gamma isomer of benzene hexachloride)99% pure gamma isomer
007401–00321	Hi-Yield Lindane Spray	Lindane (Gamma isomer of benzene hexachloride)99% pure gamma isomer
010370–00182	Bendiocarb 20% Wettable Powder	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
010370–00183	Bendiocarb 76% Wettable Powder	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
010370–00185	Bendiocarb Technical 95.0%	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
011715–00012	Speer Fast Knockdown Wasp & Hornet Spray	*o*-Isopropoxyphenyl methylcarbamate
N/A	N/A	*N*-Octyl bicycloheptene dicarboximide
N/A	N/A	(Butylcarbityl)(6-propylpiperonyl)ether 80% and related compounds 20%
N/A	N/A	Pyrethrins
011715–00022	Speer Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
011715–00086	Speer Insect Repellent for Fisherman, Hunters, and Camp	Dipropyl isocinchomeronate
N/A	N/A	*N*-Octyl bicycloheptene dicarboximide
N/A	N/A	*N,N*-Diethyl-meta-toluamide and other isomers
011715–00129	Magic Guard Residual Insecticide	*o*-Isopropoxyphenyl methylcarbamate
N/A	N/A	*N*-Octyl bicycloheptene dicarboximide
N/A	N/A	(Butylcarbityl)(6-propylpiperonyl)ether 80% and related compounds 20%
N/A	N/A	Pyrethrins
011715–00185	Speer Repellent 100	*N,N*-Diethyl-meta-toluamide and other isomers
011715–00242	SPI Personal Insect Repellent Towelette	Dipropyl isocinchomeronate
N/A	N/A	*N*-Octyl bicycloheptene dicarboximide
N/A	N/A	*N,N*-Diethyl-meta-toluamide and other isomers
011715–00301	Speer Cyfluthrin Ant and Roach Killer II	*o*-Isopropoxyphenyl methylcarbamate
N/A	N/A	(Butylcarbityl)(6-propylpiperonyl)ether 80% and related compounds 20%
N/A	N/A	Pyrethrins
N/A	N/A	CYANO(4-FLUORO-3-PHENOXYPHENYL)METHYL 3-(2,2-DICHLOROETHENYL)-2,2-
019713–00220	Dylox 5% Granular Insecticide	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
019713–00314	Drexel Shoo Insect Repellent Lotion	*N,N*-Diethyl-meta-toluamide and other isomers
032802–00051	Sevin Brand 5% Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
032802–00058	Carbaryl 390 Insecticide/Fertilizer	1-Naphthyl-*N*-methylcarbamate
032802–00059	Carbaryl 143 Insecticide/fertilizer	1-Naphthyl-*N*-methylcarbamate
033355–00012	Selcide 901	5-Chloro-2-methyl-3(2H)-isothiazolone
N/A	N/A	2-Methyl-3(2H)-isothiazolone
045639–00001	Ficam W	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00002	Bendiocarb WP	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00003	Ficam D	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00006	Bendiocarb Technical	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00009	Bendiocarb 1% Dust	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00010	Bendiocarb 1% Homeowner Dust	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00059	Turcam	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00066	Ficam Plus	(Butylcarbityl)(6-propylpiperonyl)ether 80% and related compounds 20%
N/A	N/A	Pyrethrins
N/A	N/A	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00100	Turcam 2 1/2 G	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00148	Turcam Fertilizer	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00150	Ficam 2 1/2 G	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
067517–00050	Tick and Mange Dip for Dogs	Lindane (Gamma isomer of benzene hexachloride)99% pure gamma isomer

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
067760–00021	Chlorpyrifos 4E-AG	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate
068688–00020	Elite Insect Repellent 100	*N,N*-Diethyl-meta-toluamide and other isomers
068688–00042	Elite Insect Repellent Spray-R70	Dipropyl isocinchomeronate
N/A	N/A	*N*-Octyl bicycloheptene dicarboximide
N/A	N/A	*N,N*-Diethyl-meta-toluamide and other isomers
070051–00038	Anagrapha Falcifera MNPV PIB's	Anagrapha falcifera multi-nuclear polyhedrosis virus polyhedral inclusion

Unless a request is withdrawn by the registrant within 180 days (30 days when requested by registrant) of publication of this notice, orders will be issued canceling all of these registrations. (A 30-day comment period applies to EPA Registrations 002781-00003. 002781-00047 and 067517-00050).

Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant during this comment period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number:

Table 2—Registrants Requesting Voluntary Cancellation

EPA Company no.	Company Name and Address
000402	Hill Mfg. Co., Inc., 1500 Jonesboro Rd Se, Atlanta, GA 30315.
000707	Rohm & Haas Co, Attn: Robert H. Larkin, 100 Independence Mall W., Philadelphia, PA 19106.
001459	Bullen Companies, Box 37, Folcroft, PA 19032.
002517	Sergeant's Pet Products, Box 18993, Memphis, TN 38181.
002781	Happy Jack Inc., Box 475, Snow Hill, NC 28580.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704.
004758	Pet Chemicals, 4242 BF Goodrich Blvd, Box 18993, Memphis, TN 38181.
006959	Cessco Inc., 3609A River Rd, Johns Island, SC 29455.
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc≤, c/o Voluntary Purchasing Groups, Inc. Box 460, Bonham, TX 75418.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd, Montvale, NJ 07645.
011715	Speer Products Inc., 4242 B.F. Goodrich Blvd., Memphis, TN 38181.
019713	Drexel Chemical Co, 1700 Channel Ave., Box 13327, Memphis, TN 38113.
032802	Howard Johnson's Enterprises Inc., 700 W. Virginia St., Ste 222, Milwaukee, WI 53204.
033355	Southeastern Laboratories, Inc., Box 10189, Goldsboro, NC 27532.
045639	Agrevo USA Co, Little Falls Centre One, 2711 Centerville Rd, Wilmington, DE 19808.
067517	PM Resources Inc., 13001 St. Charles Rock Rd, Bridgeton, MO 63044.
067760	Cheminova Inc., Oak Hill Park 1700 Route 23 - Ste 210, Wayne, NJ 07470.
068688	Speer Products Inc., 4242 B.F. Goodrich Blvd., , Memphis, TN 38181.
070051	Thermo Trilogy Corp., 9145 Guilford Rd., Suite 175, Columbia, MD 21046.

III. Loss of Active Ingredients

Unless the request for cancellation is withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant(s) to explore the possibility of withdrawing their request for cancellation. The active ingredient is listed in the following Table 3, with the CAS Number and EPA Company Number.

TABLE 3.—ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANT'S REQUEST TO CANCEL

CAS No.	Chemical Name	EPA Co. Number
None Assigned.	Anagrapha falcifera MNPV PIB's in aqueous suspension	070051

IV. What Is the Agency's Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before May 1, 2000. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

VI. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received by the Agency. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** dated June 26, 1991 (56 FR 29362) (FRL–3846–4). Exception to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA- approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: September 29, 1999.

Richard D. Schmitt,

Acting Director, Information Resources & Services Division, Office of Pesticide Programs.

[FR Doc. 99–28729 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30468A; FRL–6387–1]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Tomen Agro Inc., to conditionally register the pesticide products Fenhexamid Technical and Elevate 50 WDG Fungicide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–308–9354; and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

ategories

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the home page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select "factsheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30468A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA ((703) 305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Conditionally Approve the Application(s)?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *N*-(2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *N*-(2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of February 23, 1999 (64 FR 8815)(FRL–6062–1), which announced that Tomen Agro Inc., 100 First St., Suite 1610, San Francisco, CA 94105, had submitted applications to register the products Fenhexamid Technical and Elevate 50 WDG Fungicide (EPA File Symbols 66330–GA and 66330–GL) containing the active ingredient *N*-(2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide at 97.8% and 50% respectively. These products were not previously registered.

The applications were approved on May 21, 1999, for one technical and one end-use product:

1.Fenhexamid Technical for manufacturing use only; for disease control in grapes, strawberries, and ornamentals (EPA Registration Number 66330–36.

2. Elevate 50 WDG Fungicide for agricultural and horticultural use only; for use to control *Botrytis* diseases of grapes, strawberries, and ornamentals (EPA Registration Number 66330–35).

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–28638 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–897; FRL–6389–1]

Notice of Filing a Pesticide Petition To Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–897, must be received on or before December 3, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–897 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5697; and e-mail address: tompkins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–897. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway,

Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–897 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–897. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 26, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summary of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

E.I. DuPont de Nemours & Company

PP 7F4849 and 9F6039

EPA has received pesticide petitions (9F6039 and an amended petition 7F4849) from E.I. DuPont de Nemours and Company, Barley Mill Plaza, P.O. Box 80083, Wilmington, DE 19880-0038 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of azafenidin, 2-[2,4-dichloro-5-(2-propynyloxy)phenyl]-5,6,7,8-tetrahydro-1,2,4-triazolo[4,3-a]pyridin-3(2H)-one] in or on the raw agricultural commodities (RAC) crop groupings of pome fruits at 0.02 ppm, the crop grouping stone fruits at 0.02 ppm, the crop grouping of tree nuts including pistachios at 0.02 ppm, and almond hulls at 0.5 ppm 9F6039. On December 3, 1997 (62 FR 63942) (FRL–5756–1), EPA issued a notice proposing to amend 40 CFR part 180 by establishing tolerances for residues of azafendin in or on the raw agricultural commodities (RAC) crop grouping citrus, grapes, sugarcane, and sugarcane molasses (7F4849). DuPont has amended PP 7F4849 by proposing the amend 40 CFR part 180 by establishing tolerances for residues of the herbicide azafenidn, 2-[2,4-dichloro-5-(2-propynyloxy)phenyl]-5,6,7,8-tetrahydro-1,2,4-triazolo[4.3-a]pyridin-3(2H)-one in or on the crop grouping citrus at 0.1 ppm, and the RAC citrus oil at 0.50 ppm, grapes at 0.02 ppm, sugarcane at 0.05 ppm, and sugarcane molasses at 0.5 ppm . EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of azafenidin in pome fruit, stone fruit, and tree nuts is

adequately understood for the purposes of registration. Similar metabolic pathways were previously demonstrated in the three dissimilar crops of grapefruit, grapes, and sugarcane. The primary metabolic pathway begins with rapid O-dealkylation and production of hydroxyl derivatives, with subsequent formation of glucoside conjugates.

2. *Analytical method*. There is an independently validated practical analytical method available using gas chromatography (GC) and mass selective detection (MS) to measure levels of azafenidin in or on pome fruits, stone fruits, and tree nuts, with limits of quantitation (LOQ) that will allow for monitoring of crop residues at or above tolerance levels.

3. *Magnitude of residues*. Crop field trial residue data from pome fruit, stone fruit and tree nut studies show that the proposed tolerances on these commodities will not be exceeded when Milestone® is used as directed. Excessive application rates made to pome fruit and stone fruit in field trial residue studies demonstrated that azafenidin does not concentrate in the processed commodities of these crops.

B. Toxicological Profile

1. *Acute toxicity*. Technical azafenidin has been placed in acute toxicology category III based on overall results from several studies. Results from the following studies indicate toxicology category III: acute dermal toxicity (LD_{50} > 2,000 milligrams/kilograms (mg/kg); rabbits) and eye irritation (effects reversible within 72 hours; rabbits). Acute oral toxicity (LD_{50} > 5,000 mg/kg; rats), acute inhalation toxicity (LC_{50} > 5.4 milligrams per liter (mg/L), rats) and skin irritation (slight effects resolved within 48 hours; rabbits) results were assigned toxicology category IV. Technical azafenidin is not a dermal sensitizer.

An acute neurotoxicity study was conducted in rats administered azafenidin via gavage at 0, 100, 300, or 900 mg/kg. Azafenidin was not neurotoxic at any dose. The systemic no observed adverse effect level (NOAEL) was 100 mg/kg for males and females based on reduced food consumption and body weights at 300 mg/kg and above.

2. *Genotoxicity*. Technical azafenidin was negative for genotoxicity in a battery of *in vitro* and *in vivo* tests. These tests included the following: mutagenicity in bacterial (Ames test) and mammalian Chinese hampster ovary/hypoxanthine guanine phophoribosyl transferase (CHO/HGPRT assay) cells; *in vitro* cytogenetics (chromosomal aberration in human lymphocytes); *in vivo* cytogenetics (bone marrow micronucleus assay in mice); and unscheduled DNA synthesis (UDS) in rat primary hepatocytes.

3. *Reproductive and developmental toxicity*—i. A 2-generation reproduction study was conducted in rats with dietary technical azafenidin concentrations of 0, 5, 30, 180, or 1,080 ppm. The NOAEL was 30 ppm (1.7 to 2.8 mg/kg/day for P_1 and F_1 males and females and their offspring). This was based on the following effects at 180 ppm (10.1 to 17.8 mg/kg/day for P_1 and F_1 males and females and/or their offspring): slight reductions in mean body weights for F_1 males and females; reductions in mean gestation body weight gain and implantation efficiency; slightly increased gestation lengths; decreased offspring survival, body weights and other indices of offspring health; and increased incidence of diarrhea among F_1 parental males.

ii. A developmental study was conducted in rats administered technical azafenidin by gavage at 0, 3, 8, 16, or 24 mg/kg/day. Azafenidin was not teratogenic. The NOAEL was 16 mg/kg/day based on the following observations at 24 mg/kg/day: reduced maternal body weight, increased resorptions, reductions in litter size and fetal weights and increased sternebral variations. The maternal effects consisted of transient body weight reductions; however, the nature of these effects suggested that fetal resorptions contributed to weight reductions.

iii. A developmental study was conducted in rabbits administered technical azafenidin by gavage at 0, 12, 36, 100, or 300 mg/kg/day. Azafenidin was not teratogenic. The NOAELs for maternal and offspring toxicity were 12 and 100 mg/kg/day, respectively. The maternal NOAEL was based on reduced body weight at 36 and 100 mg/kg/day and mortality at higher doses. Excessive maternal toxicity at 300 mg/kg/day precluded assessment of developmental effects at this level. However, the developmental NOAEL was considered to be 100 mg/kg/day since there were no indications of fetal toxicity up to and including this dose level.

iv. A dermal pre-natal developmental toxicity study was conducted in rats administered technical azafenidin. The dose levels were 0, 5, 25, 50, and 100 mg/kg/day. The NOAEL was 5 mg/kg/day based on postimplantation losses with a corresponding decrease in viable litter size and fetal weight, visceral variations and increased skeletal malformations at all other dose levels. The maternal effects consisted of body weight gain reduction.

4. *Subchronic toxicity*—i. A 90-day study in mice was conducted at dietary concentrations of 0, 50, 300, 900, or 1,500 ppm. The NOAEL was 300 ppm (47.2 and 65.8 mg/kg/day for male and female mice, respectively). This was based on reduced body weight gain in males and microcytic and hypochromic anemia in males and females at 900 ppm (or 144 and 192 mg/kg/day for males and females, respectively).

ii. Technical azafenidin was administered in the diets of rats at 0, 50, 300, 900, or 1,500 ppm for 90 days. The NOAEL was 300 ppm (24.2 and 28.2 mg/kg/day for male and female rats, respectively). This was based on methemoglobinemia and microcytic and hypochromic anemia in males and females at 900 ppm (or 71.9 and 83.8 mg/kg/day for male and female rats, respectively).

iii. Dogs were administered technical azafenidin in their diets at 0, 10, 60, 120, or 240 ppm for 90 days. The NOAEL was 10 ppm (0.34 and 0.33 mg/kg/day for males and females, respectively). This was based on enlarged hepatocytes and increased serum alkaline phosphatase and alanine aminotransferase activities at 60 ppm (2.02 and 2.13 mg/kg/day for male and female dogs, respectively).

iv. A 90–day subchronic neurotoxicity study was conducted in rats at 0, 50, 750, or 1,500 ppm. There were no neurological effects observed in this study. The NOAEL for systemic toxicity was 50 ppm (3.0 mg/kg/day) and 750 ppm (54.5 mg/kg/day) for male and female rats, respectively. These were based on reduced food consumption and body weights and increased incidences of clinical signs of toxicity at the higher doses.

v. A 28–day dermal study was conducted in rats at 0, 80, 400, or 1,000 mg/kg/day. There was no dermal irritation or systemic toxicity among males or females at the highest dose tested (HDT). The NOAEL was > 1,000 mg/kg/day.

5. *Chronic toxicity*—i. An 18–month mouse study was conducted with dietary concentrations of 0, 10, 30, 300, or 900 ppm technical azafenidin. This product was not oncogenic in mice. The systemic NOAEL was 300 ppm (39.8 and 54.1 mg/kg/day for males and females, respectively). This was based on hepatotoxicity among males and reduced body weights and food efficiency among females at 900 ppm (or 122 and 163 mg/kg/day for males and females, respectively).

ii. A 2–year chronic toxicity/oncogenicity study was conducted in rats fed diets that contained 0, 5, 15, 30, 300, or 900 ppm technical azafenidin.

This product was not oncogenic in rats. The systemic NOAEL was 300 ppm (12.1 and 16.4 mg/kg/day males and females, respectively). The NOAEL was defined by microcytic, hypochromic and hemolytic anemia and mortality at 900 (or 35.2 and 50.2 mg/kg/day for male and female rats, respectively).

iii. Technical azafenidin was administered for 1–year to dogs at dietary concentrations of 0, 5, 10, 120, and 360 ppm. The NOAEL was 10 ppm (0.30 mg/kg/day for males and females). This was based on observations of altered hepatocyte morphology, hydropic degeneration and elevated alanine aminotransferase and alkaline phosphatase at 30 ppm (0.86 and 0.87 mg/kg/day for male and female dogs, respectively) and above.

6. *Animal metabolism*. The metabolism of azafenidin in animals (rat and goat) is adequately understood and is similar among the species evaluated. Azafenidin was readily absorbed following oral administration, extensively metabolized and rapidly eliminated in the urine and feces. The terminal elimination half-life in plasma was 40 hours in rats. Less than 1% of the administered dose was present in rat tissues at 120 hours. There were no volatile metabolites of azafenidin. The major metabolic pathways in the rat and goat consisted of rapid O-dealkylation and production of hydroxyl derivatives, subsequent formation of glucuronide and sulfate conjugates and elimination of these conjugates in feces and urine. There was no evidence of accumulation of azafenidin or its metabolites in the tissues of either species or in the goat's milk.

7. *Metabolite toxicology*. There is no evidence that the metabolites of azafenidin identified in animal or plant metabolism studies are of any toxicological significance. The existing metabolism studies indicate that the metabolites formed are unlikely to accumulate in humans or in animals that may be exposed to these residues in the diet. The fact that no quantifiable residues were found in edible portions of treated crops further indicates that exposures to and accumulation of metabolites are unlikely.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of azafenidin have been conducted. However, the standard battery of toxicology studies required to support product registration has been completed. Studies in this battery included an evaluation of the potential effects on reproduction in the rat over 2-generations and effects on offspring development in two species. Evaluations of the pathology of the endocrine organs in subchronic and chronic studies at doses that far exceed likely human exposures have also been conducted in several species. Based on the results of these studies, the potential for azafenidin to impact the endocrine system has been adequately defined. There is no evidence to suggest that azafenidin has estrogenic properties or mimics the actions of other hormones in the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. It is proposed that azafenidin be defined as the residue for enforcement purposes. Monitoring for azafenidin residues in field samples will provide an adequate estimate of this compound in edible portions of treated crops.

i. *Food—Acute dietary exposure*. An acute dietary exposure assessment was made using the dietary exposure evaluation model (DEEM) computer software (version 6.73, Acute Module, Novigen Sciences, Inc, 1999). Acute dietary exposure was based upon the following crop uses: citrus, grapes, pome fruit, stone fruit, sugarcane, and tree nuts. Anticipated residues were estimated based on field trial data and assuming that 30% of every crop was treated. The predicted acute exposure for the U.S. population subgroup was 0.000158 mg/kg body weight day (bw/d). The population subgroup with the highest predicted level of acute exposure was the children age 1-6–year subgroup with an exposure of 0.000273 mg/kg bw/d (99.9th percentile). Based on an acute NOAEL of 16 mg/kg bw/d from an oral developmental toxicity study with rats, and a 100-fold safety factor, the acute reference dose (aRfD) would be 0.16 mg/kg bw/d. For the U.S. population the predicted exposure is equivalent to 0.10% of the aRfD. For the population subgroup children age 1-6–year, the exposure would be equivalent to 0.17% of the aRfD. Because the predicted exposures, expressed as percentages of the aRfD, are well below 100%, there is reasonable certainty that no acute effects would result from dietary exposure to azafenidin.

ii. *Chronic dietary exposure*. A chronic dietary exposure assessment was made using the DEEM computer software (version 6.74, Chronic Module, Novigen Sciences, Inc, 1999). Acute dietary exposure was based upon the following crop uses: citrus, grapes, pome fruit, stone fruit, sugarcane, and tree nuts. Anticipated residues were estimated based on field trial data and assuming that 30% of every crop was treated. The predicted chronic exposure for the U.S. population subgroup was 0.000007 mg/kg bw/d. The population subgroup with the highest predicted level of chronic exposure was the children age 1–6–year subgroup with an exposure of 0.000021 mg/kg bw/d. Based on a chronic NOAEL of 0.3 mg/kg bw/d from a 1-year chronic feeding study in dogs, and a 100-fold safety factor, the chronic reference dose (cRfD) would be 0.003 mg/kg bw/d. For the U.S. population the predicted exposure is equivalent to 0.2% of the cRfD. For the population subgroup children age 1-6–year, the exposure would be equivalent to 0.7% of the cRfD. Because the predicted exposures, expressed as percentages of the cRfD, are well below 100%, there is reasonable certainty that no chronic effects would result from dietary exposure to azafenidin.

iii. *Drinking water*. Surface water exposure was estimated using the PRZM/EXAMS models. Several USEPA standard scenarios were used (Florida citrus, Louisiana sugar cane, and New York grapes) along with standard methods for selecting input data. Ground water exposure was estimated using SCI-GROW. These are screening level models used for determining upper bound concentrations of pesticides in surface and ground water. PRZM/EXAMS and SCI-GROW use the soil/water partition coefficient , hydrolysis half life, and maximum label rate to estimate surface water concentration. The models and accompanying scenarios contain a number of very conservative underlying assumptions. Therefore, the concentrations derived from PRZM/EXAMS and SCI- GROW for drinking water are likely to be great overestimates. The predicted concentration for azafenidin in ground water under worst-case conditions was 2 parts per billion (ppb). The predicted peak concentration for azafenidin in surface water in a small non-flowing pond directly adjacent a treated citrus grove at the maximum rate was 24 ppb. The annual average concentration predicted for the same pond scenario was 4.72 ppb. EPA uses drinking water levels of comparison (DWLOCs) as a surrogate measure to capture risk associated with exposure to pesticides in drinking water. A DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and with drinking water consumption patterns and body weights for specific subpopulations. The acute DWLOC for azafenidin was calculated for the subpopulation of concern, children (ages 1-6 years) to be 1.6 parts per million (ppm). The estimated maximum concentration of azafenidin in surface water (24 ppb) derived from PRZM/EXAMS is much lower than the acute DWLOC. Therefore, one can conclude with reasonable certainty that residues of azafenidin in drinking water do not contribute significantly to the aggregate acute human health risk. The chronic DWLOCs are 0.1 ppm for the U.S. population and 0.03 ppm for the most sensitive subgroup, children (1-6 years). The DWLOCs are substantially higher than the PRZM/EXAMS estimated annual environmental concentration of 4.7 ppb for azafenidin in surface water. Therefore, one can conclude with reasonable certainty that residues of azafenidin in drinking water do not contribute significantly to the aggregate chronic human health risk.

2. *Non-dietary exposure.* Azafenidin is pending registration for use in weed control in selective non-food crop situations including certain temperate woody crops, and in non-crop situations including industrial sites and unimproved turf areas. Azafenidin is not to be used in on residential temperate woody plantings, or on lawns, walkways, driveways, tennis courts, golf courses, athletic fields, commercial sod operations, or other high maintenance fine turf grass areas, or similar areas. Any non-occupational exposure to azafenidin is likely to be negligible.

D. Cumulative Effects

The herbicidal activity of azafenidin is due to its inhibition of an enzyme involved with synthesis of the porphyrin precursors of chlorophyll, protoporphyrinogen oxidase. Mammals utilize this enzyme in the synthesis of heme. Although there are other herbicides that also inhibit this enzyme, there is no reliable information that would indicate or suggest that azafenidin has any toxic effects on mammals that would be cumulative with those of any other chemicals. In addition there is no valid methodology for combining the risks of adverse effects of overexposures to these compounds.

E. Safety Determination

1. *U.S. population.* Based on the completeness and reliability of the azafenidin toxicology database and using the conservative aggregate exposure assumptions presented earlier, it is concluded that azafenidin products may be used with a reasonable certainty of no harm relative to exposures from food and drinking water. The TMRC determined for the combined pending and proposed uses of azafenidin in citrus, grapes, pome fruit, stone fruit, sugar cane and tree nuts utilized only 0.2% of the cRfD (an exposure of 0.000007 mg/kg bw/d). The chronic calculated drinking water level of comparison DWLOCs of 0.1 ppm for the U.S. population is substantially higher than the PRZM/EXAMS estimated annual environmental concentration of 4.7 ppb for azafenidin. Therefore, one can conclude with reasonable certainty that chronic aggregate exposure will not exceed 100% of the cRfD. In a similar analysis of acute risk for the U.S. population, a predicted exposure of 0.000158 mg/kg bw/d, equivalent to 0.10% of the aRfD is determined. The aRfD For the U.S. population is based on an acute NOAEL of 16 mg/kg bw/d from an oral developmental toxicity study with rats, and a 100-fold safety factor. An acute DWLOC for azafenidin, calculated for the subpopulation of children (ages 1-6 yrs), was 1.6 parts per million (ppm). The estimated maximum concentration of azafenidin in water (24 ppb) derived from PRZM/EXAMS is again, much lower than this acute DWLOC. Therefore, one can conclude with reasonable certainty that residues of azafenidin in drinking water would not contribute significantly to the aggregate acute human health risk. In conclusion, there is a reasonable certainty of no harm to the general population resulting from either acute or chronic aggregate exposure to azafenidin.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of azafenidin, data from the previously discussed developmental and multigeneration reproductive toxicity studies were considered. Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposures to the pesticide. The rat reproduction and developmental studies indicated developmental effects in this species at exposures that produced minimal maternal effects. A clear dose-response and developmental NOAEL has been defined for these effects. FFDCA section 408 provides that EPA may apply an additional uncertainty factor for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the database. The additional uncertainty factor may increase the margin of exposure (MOE) from the usual 100- up to 1,000-fold. Based on current toxicological data requirements, the database for azafenidin relative to pre-natal and post-natal effects for children is complete. In addition, the NOAEL of 0.3 mg/kg/day in the 1–year dog study and upon which the RfD is based is much lower than the NOAELs defined in the reproduction and developmental toxicology studies. Conservative assumptions utilized to estimate acute and chronic dietary exposures of infants and children to azafenidin demonstrated that only 0.17% of the aRfD and 0.7% of the cRfD were utilized. Chronic and acute drinking water levels of concern (DWLOC's) of 0.03 ppm and 1.6 ppm calculated for children age 1–6–years, were significantly greater than predicted chronic and acute water concentrations of 4.7 ppb and 24 ppb respectively. Based on these exposure estimates it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposures to azafenidin.

F. International Tolerances

There are no established Canadian, Mexican or Codex MRLs for azafenidin. Compatibility is not a problem.

[FR Doc. 99–28728 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

[Docket No. 99–21]

South Carolina Maritime Services, Inc. v. South Carolina State Ports Authority; Notice of Filing of Complaint and Assignment

Notice is given that a complaint was filed by South Carolina Maritime Services, Inc. ("Complainant"), against South Carolina State Ports Authority ("Respondent"). The complaint was served on October 27, 1999. Complainant alleges that Respondent violated sections 10(b)(10) and (d)(4) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(b)(10) and (d)(4), by refusing to deal with gaming vessels and refusing to provide berthing space to Complainant for its "cruises to nowhere" and cruises to the Bahamas, yet providing berthing space to other vessels providing "cruises to nowhere" and cruises to the Bahamas.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 27, 2000, and the final decision of the Commission shall be issued by February 26, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–28734 Filed 11–2–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Uni International, America Corp. d/b/a Unistar Lines, 190 Walker Street S.W., Suite 204, Atlanta, GA 30313, Officers: Joseph Schulte, President, (Qualifying Individual), Eduardo Macaluso, Vice President

General Logistics International Inc., 139 York Drive, Princeton, NJ 08540, Officer: Glenn R. Nudell, President, (Qualifying Individual)

Shipping International, 1161 Mission Street, San Francisco, CA 94103, Hossein Bolourchi, Sole Proprietor

Newmark Shipping Ltd. d/b/a R S Freight, Inc., 4455 Torrance Boulevard, Suite 848, Torrance, CA 90503, Officer: Alfred Yau, President, (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

SeaGate Logistics, Inc., 182–11 150th Road, Suite #205, Jamaica, NY 11413, Officers: Vi Hung Vuong, President, (Qualifying Individual), Renbo Lee, Secretary, Secretary

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

All World International Shipping, Inc., 2630 NW 97th Avenue, Miami, FL 33172, Officers: Elizabeth R. Monserrate, (Qualifying Individual), Alexandra Gayraud, President

Arrowpak, Inc., 2240 74th Street, North Bergen, NJ 09047, Officers: Walter J. Kenney, Vice President, (Qualifying Individual), Paul S. Doherty, Jr., President

Dated: October 29, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–28735 Filed 11–2–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Rockhold-Brown Bancshares, Inc., Bainbridge, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Rock-Hold Brown & Company Bank, Bainbridge, Ohio.

2. United Bancshares, Inc., Columbus Grove, Ohio; to acquire 100 percent of the voting shares of The Bank of Leipsic Company, Leipsic, Ohio.

Board of Governors of the Federal Reserve System, October 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28660 Filed 11–2–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer

Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Banque Nationale de Paris, and Paribas, both of Paris, France; to acquire Paribas Corporation, New York, New York, and thereby indirectly acquire Paribas Asset Management, Inc., New York, New York, and Paribas Futures, Inc., New York, New York, and thereby engage in underwriting and dealing to a limited extent in all types of equity securities and debt securities that a member bank may not underwrite or deal in, *see First Security Corporation*, 85 Fed Res. Bull. 207 (1999); in acting as investment or financial advisor to any person, pursuant to § 224.28(b)(6) of Regulation Y; in providing securities brokerage services and incidental activities, as agent for the account of customers, pursuant to § 225.28(b)(7)(i) of Regulation Y; in buying and selling in the secondary market all types of securities on the order of customers as a riskless principal, pursuant to § 225.28(b)(7)(ii) of Regulation Y; in acting as agent in the private placement of all types of securities, including providing related advisory services, pursuant to § 225.28(b)(7)(iii) of Regulation Y; in providing to customers as agent transactional services, pursuant to § 225.28(b)(7)(v) of Regulation Y; in engaging as principal in underwriting and dealing in governmental obligations and money market instruments, pursuant to § 225.28(b)(8)(i) of Regulation Y; in investing and trading in: foreign exchange, and forward contracts, options, futures, options on futures, swaps and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset, nonfinancial asset or group of assets, pursuant to § 225.28(b)(8)(ii) of Regulation Y; in making, acquiring, brokering or servicing loans or other extensions of credit for its own account or for the account of others, pursuant to § 225.28(b)(1) of Regulation Y; in engaging in asset management, servicing and collection of assets of a type that an insured depository institution may originate and own, pursuant to § 225.25(b)(2)(vi) of Regulation Y; in acquiring debt that is in default at the time of acquisition, pursuant to § 225.28(b)(2)(vii) of Regulation Y; in acting as a futures commission merchant in the execution, clearance, or execution and clearance of futures contracts and options on futures contracts, pursuant to § 225.28(b)(7)(iv) of Regulation Y; in engaging as principal in certain forward contracts, options, futures, options on futures, swaps and similar contracts, pursuant to § 225.28(b)(8)(ii)(B) or (C) of Regulation Y; and in serving as the investment advisor to and the general partner of, and holding and placing equity interests in, certain investment funds which invest only in securities and other instruments which Notificant would be permitted to hold directly under the Bank Holding Company Act, including acting as a commodity pool operator for private investment funds organized as commodity pools, *see Dresdner Bank AG*, 84 Fed. Res. Bull. 361 (1998).

Board of Governors of the Federal Reserve System, October 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-28659 Filed 11-2-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 8, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-28789 Filed 10-29-99; 4:44 pm]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement

The United States General Services Administration intends to prepare an Environment Impact Statement (EIS) on the following project:

Federal Building—U.S. Courthouse, San Jose, California

Proposed Action: The United States General Services Administration is planning the construction of a new U.S. Courthouse in the Central Business District of San Jose, California. This construction is intended to accommodate the need of the Courts for expanded courtroom and office space. The building will house the U.S. Courts and other Court related agencies currently located in the Robert F. Peckham Federal Building Courthouse and in leased locations.

Alternatives to the Proposed Action Include

A. Construction of new facility on the site located within the Central Business District of San Jose and comprised of a full city block bounded by East St. James Street, North First Street, North Market Street and Divine Street. This action may entail demolition of existing structures.

B. Construction of a new facility on the site located within the Central Business District of San Jose and comprised of the northeastern half of the block bounded by East Santa Clara Street, North Fourth Street, East St. John Street, and North Third Street. This action may entail demolition of an existing structure.

C. Construction of a new facility on the site located within the Central Business District of San Jose and comprised by a full city block bounded by East San Carlos Street, East San Salvador Street, South First Street, and South Second Street. This site is immediately adjacent to the south of the Robert F. Peckham Federal Building and Courthouse. This action may entail demolition of an existing structure.

D. Construction of a new facility on the site located within the Central Business District of San Jose and comprised of a full city block bounded by West Santa Clara Street, North Market Street, West St. John Street, and North First Street. This action may entail demolition of an existing structure.

E. No action: Space for the U.S. Courts' functions will continue to be provided in the current facilities. The impact to the community of maintaining the status quo will be analyzed.

The public is cordially invited to participate in the scoping process, review of the draft Environmental Impact Statement, and the public meeting.

The scoping meeting will be held at the Victory Theater on Thursday, November 18, 1999 from 5 p.m. to 8 p.m.

At the scoping meeting, the public will be asked to identify any significant issues that they believe should be analyzed in the Environmental Impact Statement. The Victory Theater is located at 14 South Second Street, between East San Fernando and East Santa Clara Streets in San Jose, California.

Release of the draft EIS for public comment and the public meeting will be announced in the local newspaper, as these dates are established.

FOR FURTHER INFORMATION CONTACT: George F. Doñes, General Services Administration, Portfolio Management Division (9PT), 450 Golden Gate Avenue, San Francisco, California 94102, (415) 522–3497, Fax: (415) 522–3215, Email: *george.dones@gsa.gov*

Approved: October 28, 1999.

Kenn N. Kojima,

Regional Administrator.

[FR Doc. 99–28700 Filed 11–2–99; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 64 FR 25897, dated May 13, 1999) is amended to reflect the reoganization of the Scientific Resources Program, National Center for Infectious Diseases.

Section C–B, Organization and Functions, is hereby amended as follows:

After the title for the *Scientific Resources Program (CRL)*, delete the functional statement and insert the following:

(1) Provides animals, animal and human blood products, glassware, mammalian tissue cultures, microbiological media, special reagents, and other laboratory materials in support of research and service activities to NCID laboratories and other CDC organizations; (2) installs, fabricates, modifies, services, and maintains laboratory equipment used in the research and service activities of CDC; (3) develops and implements applied research programs to expand and enhance the use of animal models necessary to support research and diagnostic programs and to improve breeding and husbandry procedures; (4) conducts both basic and applied research in cell biology and in the expansion of tissue culture technology as a research and diagnostic tool for infectious disease activities; (5) provides services for NCID investigators in protein and DNA synthesis and sequencing; (6) maintains a bank of serum and other biological specimens of epidemiological and special significance to CDC's research and diagnostic activities; (7) obtains and distributes experimental and orphaned vaccines, drugs, antisera, antitoxins, and immune globulins; (8) manages and distributes the inventory, maintains the computerized system database, and provides general technical service support for dispensing, lyophilizing, capping, and labeling CDC Reference Reagents; (9) provides support for liquid nitrogen freezers; (10) administratively and technically supports the CDC Animal Policy Board and the Atlanta Area Animal Care and Use Committee; (11) provides computer support services for the Program's activities; (12) receives, categorizes, processes and distributes specimens to CDC laboratories for reference diagnostic testing, research studies, and epidemics and reports diagnostic test results to submitting organizations; (13) manages all CDC exports and ensures compliance with regulations and serves as CDC liaison with Department of Commerce for export related issues; (14) maintains the CDC Atlanta laboratory water treatment systems; (15) provides collaborative development and production services to produce high priority reference reagents and specialized diagnostics for internal NCID investigators.

Dated: October 25, 1999.

Jeffrey P. Koplan,

Director.

[FR Doc. 99–28739 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Form OCSE–396A, Child Support Enforcement Program Financial Report and Form OCSE–34A. Child Support Enforcement Program Quarterly Report of Collections.

OMB No.: 0970–0181.

Description: These forms are used by States to report the administrative costs of operating the Child Support Enforcement Program and to report the collections of child support payments made under Title IV–D of the Social Security Act during each fiscal quarter. These forms also reports the portion of the collected payments distributed to the custodial parent or to the Federal or State governments. The information is used to calculate quarterly grant awards, annual incentive payments to the State, and is published in an Annual Report to Congress.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–396A	54	4	8	1,728
OCSE–34A	54	4	8	1,728

Estimated Total Annual Burden Hours: 3,456.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of

Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW.; Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Attn: ACF Desk Officer.

Dated: October 27, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–28677 Filed 11–2–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0260]

Agency Information Collection Activities; Submission for OMB review; Comment Request; Medical Devices; Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the information collection by December 3, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20501, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Recall Authority—21 CFR Part 810

Section 518(e) (21 U.S.C. 360h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*) provides that if FDA finds that there is a reasonable probability that a device intended for human use would cause serious adverse health consequences or death, FDA shall issue an order requiring the appropriate person to immediately cease distribution of such device, immediately notify health professionals and device user facilities of the order, and instruct such professionals and facilities to cease use of the device. Under this statutory authority, FDA issued regulations under part 810 (21 CFR part 810).

The regulation in § 810.10(d) provides that FDA may require the person named in the cease distribution and notification order to submit certain information to the agency. Section 810.11(a) requires that a request for a regulatory hearing regarding the cease distribution and notification order must be submitted in writing to FDA. In lieu of a written request for a regulatory hearing, the person named in the cease distribution and notification order may submit a written request asking that the order be modified or vacated as provided in § 810.12(a). Under § 810.12(b), a written request for review of a cease distribution and notification order must identify each ground upon which the requestor relies in asking that the order be modified or vacated and address an appropriate cease distribution and notification strategy. A written request must also address whether the order should be amended to require a recall of the device that was the subject of the order.

Section 810.14 states that the person named in the cease distribution and notification order or a mandatory recall order must develop a strategy for complying with the order that is appropriate for the individual circumstances and submit the strategy to the agency for review. Section 810.15(a) requires that the person named in the cease distribution and notification order or a mandatory recall order must promptly notify each health professional, user facility, consignee, or individual of the order, and § 810.15(b) through (c) prescribes the contents and implementation of such notification. Section 810.15(d) requires the person named in the order to ensure that followup communications are sent to all who fail to respond to the initial communications. Under § 810.15(e), recipients of such letters must follow instructions in the letter and notify consignees of the order. Section 810.16 requires that the person named in a cease distribution and notification order or a mandatory recall order submit periodic status reports to FDA to enable the agency to assess the person's progress in complying with the order. The frequency of such reports and the agency official to whom such reports must be submitted will be specified in the order. Lastly, § 810.17 provides that the person named in a cease distribution and notification order or a mandatory recall order may request termination of the order by submitting a written request to FDA. The person submitting a request must certify that he or she has complied in full with all the requirements of the order and must include a copy of the most current status report submitted to the agency.

The information collected under the recall authority will be used by FDA to ensure that all devices entering the market are safe and effective, to learn quickly about serious problems with medical devices, and to remove dangerous and defective devices from the market.

In the preamble to the final rule (61 FR 59004 at 59018, November 20, 1996), hereinafter referred to as the November 1996 final rule, the agency requested comments on the information collection provisions of the new regulation. The 60-day comment period closed January 21, 1997. The agency received two comments. The comments stated that: (1) The information collection requirements in this regulation are redundant and time and resource consuming, and (2) FDA should provide for the use of electronic media for complying with this rule.

FDA disagrees with the comment that the information collection requirements for the medical device recall authority are redundant and time and resource consuming. Almost all recalls are carried out under the voluntary recall procedures in part 7 (21 CFR part 7). As discussed in the November 1996 final rule, for cease distribution and notification orders and recall orders, FDA interprets the standard in §§ 810.10(a) and 810.13 to match closely to the elements of a class I voluntary recall under part 7, subpart C, for which the agency has a long record of experiences. FDA will initiate a mandatory recall under section 518(e) of the act when FDA finds that there is a reasonable probability that a device would cause serious, adverse health consequences or death. A firm may initiate a voluntary recall of a violative device without FDA intervention;

however, if FDA determines that such a voluntary recall is not effective in remedying a violation and there remains a reasonable probability that the violative device would cause serious adverse health consequences or death, FDA will invoke the medical device recall authority in addition to the voluntary efforts that the manufacturer has already undertaken. FDA will not order a mandatory recall if a voluntary recall has been effective in addressing the problems.

FDA believes that the November 1996 final rule provides sufficient flexibility so as to minimize the burden on those required to take action consistent with the determination that the device presents a risk of serious adverse health consequences or death. FDA expects that at most one or two recalls per year would be ordered that would not have occurred without this regulation.

In response to the comment regarding the use of electronic media for complying with these provisions, the regulation for electronic records and electronic signatures became effective March 20, 1997. Part 11 (21 CFR part 11) sets forth the criteria under which FDA will accept documents and signatures in electronic form in lieu of paper.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
810.10(d)	2	1	2	8	16
810.11(a)	1	1	1	8	8
810.12(a) and (b)	1	1	1	8	8
810.14	2	1	2	16	32
810.15(a) through (d)	2	1	2	16	32
810.15(e)	10	1	1	1	10
810.16	2	12	24	40	960
810.17	2	1	2	8	16
Total					1,082

[1] There are no operating and maintenance or capital costs associated with this collection of information.

FDA developed these estimates based on its experience with the number of voluntary recalls received in the last 3 years and other similar procedures.

Dated: October 27, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–28664 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4614]

Agency Emergency Processing Request Under OMB Review; Guidance for Industry; Changes to an Approved NDA or ANDA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The collection of information is contained in a guidance for industry entitled "Changes to an Approved NDA or ANDA." The guidance is intended to assist applicants in determining how they should report changes to an approved new drug application (NDA) or abbreviated new drug application (ANDA) under section 116 of the Food and Drug Administration Modernization Act (the Modernization Act), which provides requirements for making and reporting manufacturing changes to an approved application and for distributing a drug product made with such changes.

DATES: Submit written comments on the collection of information by November 10, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: On November 21, 1997, the President signed the Modernization Act (Public Law 105–115) into law. Section 116 of the Modernization Act amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506A (21 U.S.C. 356a), which describes requirements and procedures for making and reporting manufacturing changes to approved NDA's and ANDA's, to new and abbreviated animal drug applications, and to license applications for biological products.

The guidance for industry entitled "Changes to an Approved NDA or ANDA" provides recommendations to holders of NDA's and ANDA's who intend to make postapproval changes in accordance with section 506A of the act. The guidance covers recommended reporting categories for postapproval changes for drugs, other than specified biotechnology and specified synthetic biological products. Recommendations are provided for postapproval changes in: (1) Components and composition, (2) sites, (3) manufacturing process, (4) specification(s), (5) package, (6) labeling, and (7) miscellaneous changes.

With respect to the collection of information described below, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Changes to an Approved NDA or ANDA

Section 116 of the Modernization Act amended the act by adding section 506A, which includes the following provisions:

1. A drug made with a manufacturing change, whether a major manufacturing change or otherwise, may be distributed only after the applicant validates the effects of the change on the identity, strength, quality, purity, and potency of the drug as these factors may relate to the safety or effectiveness of the drug (sections 506A(a)(1) and (b) of the act). This section recognizes that additional testing, beyond testing to ensure that an approved specification is met, is required to ensure unchanged identity, strength, quality, purity, or potency as these factors may relate to the safety or effectiveness of the drug.

A drug made with a major manufacturing change may be distributed only after the applicant submits a supplemental application to FDA and the supplemental application is approved by the agency. The application is required to contain information determined to be appropriate by FDA and include the information developed by the applicant when "validating the effects of the change" (section 506A(c)(1) of the act).

3. A major manufacturing change is a manufacturing change determined by FDA to have substantial potential to adversely affect the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Such changes include: (1) A change made in the qualitative or quantitative formulation of the drug involved or in the specifications in the approved application or license unless exempted by FDA by regulation or guidance; (2) a change determined by FDA by regulation or guidance to require completion of an appropriate clinical study demonstrating equivalence of the drug to the drug manufactured without the change; and (3) other changes determined by FDA by regulation or guidance to have a substantial potential to adversely affect the safety or effectiveness of the drug (section 506A(c)(2) of the act).

4. FDA may require submission of a supplemental application for drugs made with manufacturing changes that are not major (section 506A(d)(1)(B) of the act) and establish categories of manufacturing changes for which a supplemental application is required (section 506A(d)(1)(C) of the act). In such a case the applicant may begin distribution of the drug 30 days after FDA receives a supplemental application unless the agency notifies the applicant within the 30-day period that prior approval of the application is required (section 506A(d)(3)(B)(i) of the act). FDA may also designate a category of manufacturing changes that permit the applicant to begin distributing a drug made with such changes upon receipt by the agency of a supplemental application for the change (section 506A(d)(3)(B)(ii) of the act). If FDA disapproves a supplemental application, the agency may order the manufacturer to cease the distribution of drugs that have been made with the disapproved change (section 506A(d)(3)(B)(iii) of the act).

5. FDA may authorize applicants to distribute drugs without submitting a supplemental application (section 506A(d)(1)(A) of the act) and may establish categories of manufacturing changes that may be made without submitting a supplemental application (section 506A(d)(1)(C) of the act). The applicant is required to submit a report to FDA on such a change, and the report is required to contain information the agency deems to be appropriate and information developed by the applicant when validating the effects of the change. FDA may also specify the date on which the report is to be submitted (section 506A(d)(2)(A) of the act). If during a single year an applicant makes more than one manufacturing change subject to an annual reporting requirement, FDA may authorize the applicant to submit a single report containing the required information for all the changes made during the year (annual report) (section 506A(d)(2)(B) of the act).

Section 506A of the act provides FDA with considerable flexibility to determine the information and filing mechanism required for the agency to assess the effect of manufacturing changes in the safety and effectiveness of the product. There is a corresponding need to retain such flexibility in the guidance on section 506A of the act to ensure that the least burdensome means for reporting changes are available. FDA believes that such flexibility will allow it to be responsive to increasing knowledge of and experience with certain types of changes and help ensure the efficacy and safety of the products involved. For example, a change that may currently be considered to have a substantial potential to have an adverse effect on the safety or effectiveness of the product may, at a later date, based on new information or advances in technology, be determined to have a lesser potential to have such an adverse effect. Conversely, a change originally considered to have a minimal or moderate potential to have an adverse effect on the safety or effectiveness of the product may later, as a result of new information, be found to have an increased, substantial potential to adversely affect the product. The guidance enables the agency to respond more readily to knowledge gained from manufacturing experience, further research and data collection, and advances in technology. The guidance describes the agency's current interpretation of specific changes falling into the four filing categories. Section 506A of the act explicitly provides FDA the authority to use guidance documents to determine the type of changes that do or do not have a substantial potential to adversely affect the safety or effectiveness of the drug product. The use of guidance documents allows FDA to more easily and quickly modify and update important information.

Description of Respondents: Businesses or other for-profit organizations.

As explained below, FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Federal Food, Drug, and Cosmetic Act Sections	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
506A(c)(1) 506A(c)(2) Prior approval supplement (supp.)	594	3	1,744	120	209,280
506A(d)(1)(B) 506A(d)(1)(C)					

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Federal Food, Drug, and Cosmetic Act Sections	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
506A(d)(3)(B)(i) Changes being effected (CBE) in 30-day supp.	594	5	2,754	80	220,320
506A(d)(1)(B) 506A(d)(1)(C) 506A(d)(3)(B)(ii) CBE supp.	486	1	486	80	38,880
506A(d)(1)(A) 506A(d)(1)(C) 506A(d)(2)(A) 506A(d)(2)(B) Annual Report	704	10	6,929	25	173,225
Total					641,705

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Sections 506A(a)(1) and 506A(b) of the act require the holder of an approved application to validate the effects of a manufacturing change on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug before distributing a drug made with the change. Under section 506A(d)(3)(A), information developed by the applicant to validate the effects of the change regarding identity, strength, quality, purity, and potency is required to be submitted to FDA as part of the supplement or annual report. Thus, no separate estimates are provided for these sections in the Table 1; estimates for validation requirements are included in the estimates for supplements and annual reports. The guidance does not provide recommendations on the specific information that should be developed by the applicant to validate the effect of the change on the identity, strength (e.g., assay, content uniformity), quality (e.g., physical, chemical, and biological properties), purity (e.g., impurities and degradation products), or potency (e.g., biological activity, bioavailability, bioequivalence) of a product as they may relate to the safety or effectiveness of the product.

Sections 506A(c)(1) and 506A(c)(2) of the act set forth requirements for changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes). Under these sections, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. The applicant must obtain approval of a supplement from FDA prior to distribution of a product made using the change.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1,744 supplements will be submitted annually under sections 506A(c)(1) and 506A(c)(2) of the act. FDA estimates that approximately 594 applicants will submit such supplements, and that it will take approximately 120 hours to prepare and submit to FDA each supplement.

Under section 506A(d)(1)(B), 506A(d)(1)(C), and 506A(d)(3)(B)(i) of the act set forth requirements for changes requiring supplement submission at least 30 days prior to distribution of the product made using the change (moderate changes). Under these sections, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. Distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 2,754 supplements will be submitted annually under sections 506A(d)(1)(B), 506A(d)(1)(C), and 506A(d)(3)(B)(i) of the act. FDA estimates that approximately 594 applicants will submit such supplements, and that it will take approximately 80 hours to prepare and submit to FDA each supplement.

Under section 506A(d)(3)(B)(ii) of the act, FDA may designate a category of changes for the purpose of providing that, in the case of a change in such category, the holder of an approved application may commence distribution of the drug upon receipt by the agency of a supplement for the change. Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 486 supplements will be submitted annually under section 506A(d)(3)(B)(ii) of the act. FDA estimates that approximately 486 applicants will submit such supplements, and that it will take approximately 80 hours to prepare and submit to FDA each supplement.

Sections 506A(d)(1)(A), 506A(d)(1)(C), 506A(d)(2)(A), and 506A(d)(2)(B) of the act set forth requirements for changes to be described in an annual report (minor changes). Under these sections, changes in the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product must be documented by the applicant in the next annual report.

Based on data concerning the number of supplements and annual reports received by the agency, FDA estimates that approximately 6,929 annual reports will include documentation of certain manufacturing changes as required under sections 506A(d)(1)(A), 506A(d)(1)(C), 506A(d)(2)(A), and 506A(d)(2)(B) of the act. FDA estimates that approximately 704 applicants will submit such information, and that it will take approximately 25 hours to prepare and submit to FDA the information for each annual report.

In the **Federal Register** of June 28, 1999 (64 FR 34608), FDA published a proposed rule to implement section 116 of the Modernization Act by revising current regulations at 21 CFR 314.70 on supplements and other changes to an approved application. In that same issue of the **Federal Register** (64 FR 34660), FDA published a notice of availability of a draft guidance for industry entitled "Changes to an Approved NDA or ANDA." On August 19, 1999, FDA held a public meeting to discuss and receive comments on the proposed regulations and the draft guidance. (On August 5, 1999, a notice of the meeting was published in the **Federal Register** (64 FR 42625).)

The period for public comment on the proposed regulations closed on September 13, 1999, and FDA is currently reviewing the comments and preparing a final rule. The comment period for the draft guidance closed on August 27, 1999, and FDA has considered these comments when preparing the guidance that is the subject of this request for emergency processing.

FDA is requesting emergency processing of this proposed collection of information under section 3507(j) of the PRA and 5 CFR 1320.13. The information is needed immediately to implement section 506A of the act, which provides requirements for making and reporting manufacturing changes to an approved application and for distributing a drug product made with such changes. The use of normal information clearance procedures would likely result in the prevention or disruption of this collection of information because section 506A takes effect on November 21, 1999. After November 20, 1999, and until final regulations are issued revising 21 CFR 314.70, section 506A of the act will be the sole basis for FDA's regulation of postapproval manufacturing changes for products approved under NDA's or ANDA's. The guidance provides recommendations to holders of approved NDA's and ANDA's who intend to make postapproval changes in accordance with section 506A of the act. Section 506A of the act explicitly provides FDA the authority to use guidance documents to determine the type of changes that do or do not have a substantial potential to adversely affect the safety or effectiveness of the drug product.

Dated: October 29, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28793 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Training Programs for Regulatory Project Managers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is initiating of two new training programs: The Regulatory Project Manager Site Tours and the Regulatory Project Manager Shadowing Program. These programs are intended to give the Center for Drug Evaluation and Research's (CDER's) regulatory project managers an opportunity to tour pharmaceutical facilities and shadow their industry counterparts. Both the tour and shadowing programs are intended to enhance review efficiency and quality by providing CDER staff with a better understanding of the pharmaceutical industry and its operations. The purpose of this notice is to invite pharmaceutical companies interested in participating in these programs to contact CDER for more information.

DATES: Pharmaceutical companies may request training program information at any time.

FOR FURTHER INFORMATION CONTACT: Deborah L. Kallgren, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5481, FAX 301–827–3132.

SUPPLEMENTARY INFORMATION:

I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this primary goal, CDER has initiated various training and development programs to promote high performance in its regulatory project management staff. CDER seeks to significantly enhance review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is initiating two new training programs to give regulatory project managers the opportunity to tour pharmaceutical facilities and shadow their industry regulatory/project management counterparts. The goals are: (1) To provide first hand exposure to industry's drug development processes, and (2) to provide a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

II. The Project Manager Site Tours and Regulatory Project Manager Shadowing Program

A. Regulatory Project Management Site Tours

In this program, over a 2-day period, small groups (six or less) of project managers accompanied by a senior level regulatory project manager may observe operations of pharmaceutical manufacturing, packaging facilities and pathology/toxicology laboratories, and regulatory affairs operations. The purpose of this tour, or any part of the program, is meant to improve mutual understanding and to provide an avenue for open dialogue.

B. Regulatory Project Manager Shadowing Program

In this program, over a 2- to 3-day visit, regulatory project managers will accompany their industry counterparts in their day-to-day activities. The primary objective of the shadowing program is to learn about the team approach to drug development, including drug discovery, preclinical evaluation, project tracking mechanisms, and regulatory submission operations. The overall benefit to regulatory project managers will be exposure to project management and team techniques and processes employed by the pharmaceutical industry, professional and personal growth, and enhanced job satisfaction and performance through increased understanding of the industry processes and procedures that directly relate to their jobs.

C. Site Selection

All travel expenses associated with the site tours and/or shadowing programs will be the responsibility of CDER, therefore, selection of potential facilities will be based on available resources for this program.

If your firm is interested in learning more about these training opportunities, please contact Deborah L. Kallgren (address above).

Dated: October 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy

[FR Doc. 99–28564 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99P–0895]

Gastroenterology-Urology Devices; Denial of Request for Change in Classification of Fiber Optic Light Sources

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; denial of petition.

SUMMARY: The Food and Drug Administration (FDA) is denying the petition submitted by QED, Inc. (QED) to reclassify fiber optic light sources used as accessories to endoscopes from class II to class I. The agency is denying the petition because QED failed to provide any new information to establish that general controls would provide reasonable assurance of the safety and effectiveness of the device. This notice also summarizes the basis for the agency's decision. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the FDA Modernization Act of 1997 (the FDAMA).

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. St. Pierre, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Classification and Reclassification of Devices Under the 1976 Amendments

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory control needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices under the 1976 amendments were class I (general controls), class II (performance standards), and class III (premarket approval). Except as provided in section 520(c) of the act (21 U.S.C. 360j(c)), FDA may not use confidential information concerning a device's safety and effectiveness as a basis for reclassification of the device from class III into class II or class I.

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendment devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act (21 U.S.C. 360c(f)) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

Reclassification of classified preamendments devices is governed by section 513(e) of the act (21 U.S.C. 360c(e)). This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based on "new information." The reclassification can be initiated by FDA or by the petition of an interested person. The term "new information," as used in section 513(e) of the act and 515(b)(2)(A)(iv) of the act (21 U.S.C. 360e(b)(2)(A)(iv)), includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at the time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F.Supp. 382,389–91 (D.D.C. 1991)), or in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the "new information" upon which reclassification under section 513(e) of the act is based must consist of "valid scientific evidence," as defined in section 513(a)(3) of the act (21 U.S.C. 360c(a)(3)) and 21 CFR 860.7(c)(2). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application. (See section 520(c) of the act (21 U.S.C. 360j(c)).

II. Reclassification Under the SMDA

The SMDA (Public Law 101–629) further amended the act to change the definition of a class II device. Under the SMDA, class II devices are those devices which cannot be classified into class I because general controls by themselves are not sufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act (21 U.S.C. 360c(a)(1)(B)). Thus, the definition of the controls for a class II device was changed from "performance standards" to "special controls." In order for a device to be reclassified from class II into class I, the agency must determine that special controls are not necessary to provide reasonable assurance of its safety and effectiveness.

III. Background

In the **Federal Register** of November 23, 1983 (48 FR 53012 at 53015), FDA issued a final rule classifying the endoscope and accessories, including fiber optic light sources, into class II (21 CFR 876.1500). The preamble to the proposal (46 FR 7571, January 23, 1981) to classify the device included the recommendations of the Gastroenterology-Urology Device and the General and Plastic Surgery Device Classification Panels (the Panels). Both Panels' recommendations, among other things, identified certain risks to health (misdiagnosis and inappropriate therapy; infection; trauma, hemorrhage, or perforation; adverse tissue reaction; electrical injury because of improper design or construction; burns and rupture of body cavity, embolism and hypotensive shock) presented by the device. The agency agreed with both Panels' recommendations and proposed classification accordingly.

The agency received one comment on the proposed classification of the endoscope and accessories. The comment suggested that the endoscope and its accessories be classified into class I rather than class II as proposed. The comment stated that the skill of the user is more essential to the safe use of the device than its design and construction. The agency partially agreed with the comment. The agency believed that the principal hazard associated with the use of the device may be due to unskilled users. However, the agency believed then and continues to believe that fiber optic light sources should be classified into class II because the electrical, optical, mechanical, biocompatibility, and lighting characteristics of the device must be controlled by special controls to prevent injury to the patient resulting from devices of improper design and construction.

In the **Federal Register** of January 16, 1996 (61 FR 1117 at 1122), FDA issued a final rule reclassifying 111 generic types of class II devices into class I based on new information respecting such devices. FDA also exempted the 111 generic types of devices from the requirement of premarket notification, with limitations. Fourteen of the 111 generic types of devices were endoscopes and accessories, but did not include fiber optic light sources.

On December 11, 1998, the agency received a petition from QED, a consulting firm, requesting that the fiber optic light sources be reclassified from class II into class I.

IV. Device Description

A fiber optic light source is an accessory device to an endoscope that provides illumination to allow observation of body cavities, hollow organs, and canals.

V. Agency Decision

FDA recognizes that section 513(e) of the act provides that, for a preamendments device for which reclassification is sought, FDA may secure a recommendation concerning the reclassification of the device from the Panel which had made a recommendation on the initial classification of the device. FDA did not, however, refer this petition to the Panel because the petitioner did not present new information to warrant reconsideration of this device by a Panel.

The petition is requesting reclassification based, in part, on the European Union Medical Devices Directive 93/42 EEC (EU MDD), Annex IV, Classification III, Non-invasive Devices 1.1, Rule 1 and the FDA General Device Classification Questionnaire. According to the petition, the EU MDD would support down classifying these devices because it states that all noninvasive devices are class I unless particular exceptions apply and those exceptions are not relevant to the fiber optic light sources used as accessories for endoscopes. The petition also notes that the FDA questionnaire states that, "if the device is not life supporting; is not a device for a use which is of substantial importance in preventing impairment of human health; does not present a potential unreasonable risk of illness or injury; and there is sufficient information to determine that general controls are sufficient to provide reasonable assurance of safety and effectiveness, then the device is class I." The petition implies that classification of the device into class I and the use of general controls are sufficient to provide reasonable assurance of safety and effectiveness.

Based on its review of the information contained in the petition, the agency finds that the petition raises the same issues that were evaluated by the device classification Panels and by FDA when issuing the 1983 final rule classifying the endoscope and accessories, including fiber optic light sources, into class II. The petitioner provided no new information to supports its claim that the risks posed by this device are of the type for which general controls alone would provide reasonable assurance of the safety and effectiveness of the device. Nor did the petitioner provide new information justifying a change in the classification of fiber optic light sources.

Furthermore, since the classification of this device, there have been technological advances in fiber optic light sources, i.e., many light sources are now software controlled. The petitioner provided no information as to how to control the risks associated with the software design. Additionally, at the time of the classification, electromagnetic compatibility (EMC) was not recognized as a risk to health. FDA now believes EMC should be considered a risk. Moreover, the agency searched its medical device reporting (MDR) data base in order to determine the extent of reported problems or adverse incidents associated with devices within this generic type. The search revealed several adverse events of the types considered by the Panels and FDA during and since the classification (Ref. 1). FDA believes that fiber optic light sources require special controls to eliminate or reduce the risks associated with them.

Accordingly, FDA believes, on the basis of the information considered in the petition, and for the same reasons stated when the classification regulation issued, as well as on the basis of technological advances and the MDR reports, that the risks to public health posed by these devices continue and that class II is necessary to provide a reasonable assurance of the safety and effectiveness of this type of device. Assuming the petitioner has correctly interpreted the EU MDD, the classification of a device under the EU regulatory system does not describe or establish a similar level of control under the act.

The petitioner's claim that "light sources do not require special controls and are approved under the UL Safety Standards for Medical Devices, UL 2601" does not support a reliance on general controls only; UL 2601 is the type of voluntary standard that would qualify as a special control. Similarly, the petitioner's claim that "there is no potential hazard to the patient or the medical personnel" because light sources conform to UL 2601 supports the agency's belief that electrical safety controls are needed for light sources.

As stated previously, FDA's search of the MDR data base revealed adverse events relating to electrical safety, such as arcing resulting in a burn; unintentional shutdown of the light source, resulting in a procedural delay; and patient and drape burns related to light cable guides. These are the type of adverse events which special controls are intended to obviate.

In further recognition of EMC and electrical safety risks, under the good guidance practices, FDA has developed a guidance document entitled "510(k) Checklist for Endoscopic Light Sources Used in Gastroenterology and Urology," dated June 22, 1995. This checklist identifies the type of information a premarket notification should include to support a determination of substantial equivalence. The checklist also includes recommendations for EMC testing and electrical safety testing, including UL 2601 cited by the petitioner.

Under section 513(a)(1)(A) of the act, a device is to be classified in class I if it is a device for which the general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. Therefore, the relevant question is whether a device should be classified as class I and be subject only to general controls, or whether class II controls are necessary to provide reasonable assurance of the safety and effectiveness of the device. On the basis of information described previously concerning the risks associated with the fiber optic light sources, FDA believes that this device is appropriately in class II.

The petitioner presented no new information, in the form of valid scientific evidence, on which FDA could rely to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device for its intended use. FDA, therefore, is denying the petition.

VI. Reference

The following information has been placed on display in the Dockets Managements Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Food and Drug Administration, Center for Devices and Radiological Health, Medical Device Reporting Search Information, 5 pp.

Dated: September 9, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–28563 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on November 22, 1999, 8 a.m. to 5 p.m. and November 23, 1999, 7:45 a.m. to 4 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8210 Wisconsin Ave., Bethesda, MD.

Contact Person: Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 22, 1999, FDA will discuss its regulations related to ozone-depleting substances. In this discussion, FDA will review the Montreal Protocol on substances that deplete the ozone layer and the advanced notice of proposed rulemaking published on March 6, 1997 (62 FR 10242), as discussed at the April 11, 1997, committee meeting. FDA will provide an overview and detailed discussion of the proposed rule published on September 1, 1999 (64 FR 47719), related to the phase-out of chlorofluorocarbons (CFC's) in metered-dose inhalers. The proposed rule outlines the mechanism by which FDA will determine when the use of ozone-depleting substances, including CFC's in metered-dose, inhalers, in any product regulated by FDA is no longer essential under the Clear Air Act. The proposed rule can be downloaded at http://www.fda.gov/ohrma/dockets/98fr/090199b.pdf. FDA has also created a website at http://www.fda.gov/cder/mdi to provide information to the public regarding this proposal and the issues related to CFC use in medical products. The committee will discuss and comment on the proposed rule and on the presentations made during the public hearing.

On November 23, 1999, the committee will discuss the safety and efficacy of new drug application (NDA) 21–077 for three products: (1) Advair™ Diskus® 100 micrograms (µg) (salmeterol xinafoate 50 µg/fluticasone propionate 100 µg inhalation powder), (2) Advair™ Diskus® 250 µg (salmeterol xinafoate 50 µg/fluticasone inhalation powder), and (3) Advair™ Diskus® 500 µg (salmeterol xinafoate 50 µg/fluticasone propionate 500 µg inhalation powder), Glaxo Wellcome, for the maintenance treatment of asthma as prophylatic therapy in patients 12 years of age and older.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 12, 1999. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 12:30 p.m. on November 22, 1999, and between approximately 8 a.m. and 8:30 a.m. on November 23, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 12, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 22, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–28559 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4491]

FDA's Proposed Strategy on Reuse of Single Use Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "FDA's Proposed Strategy on Reuse of Single-Use Devices." The document presents the agency's current thinking about the best way to address the concerns regarding the practice of reprocessing and reusing devices that are labeled, or otherwise intended, for one use only (referred to as "single use devices" (SUD's)). The strategy outlined in the document is based, in part, on information and suggestions the agency received during the May 5 and 6, 1999, conference on Reuse of Single-Use Devices, which the agency cosponsored with the Association for the Advancement of Medical Instrumentation (AAMI). The document reflects FDA's belief that the optimum approach to this issue will involve action by the agency and all of the affected stakeholders. The agency is soliciting comments, proposals for alternative approaches, and information on this issue. In a future issue of the **Federal Register**, the agency will announce an open meeting, to be held

in Rockville, Maryland on December 14, 1999, to gather comments on the agency's proposed strategy.

DATES: Submit written comments at anytime.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the document. Submit written requests for single copies (on a 3.5" diskette) of "FDA's Proposed Strategy on Reuse of Single-Use Devices" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning "FDA's Proposed Strategy on Reuse of Single-Use Devices" to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Larry D. Spears, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4646.

SUPPLEMENTARY INFORMATION:

I. Background

Reuse of SUD's is the practice of cleaning, disinfecting, sterilizing, and reusing medical devices that are intended for only one use. Reuse has raised concerns regarding patient safety, informed consent, and equitable regulation of reuse under the Federal Food, Drug, and Cosmetic Act. On May 5 and 6, 1999, FDA and AAMI cosponsored a conference on Reuse of Single-Use Devices to help examine policy alternatives regarding the practice of reuse. At that time, the agency committed to publishing a response to the positions expressed at the conference in the **Federal Register** by no later than October 1999. "FDA's Proposed Strategy on Reuse of Single-Use Devices" is that response.

II. Significance of the Proposed Strategy Document

"FDA's Proposed Strategy on Reuse of Single-Use Devices" represents options that the agency is considering on the reuse of single-use devices.

III. Electronic Access

In order to receive "FDA's Proposed Strategy on Reuse of Single-Use Devices" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number 2525 followed by the pound sign (). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of "FDA's Proposed Strategy on Reuse of Single-Use Devices" may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes "FDA's Proposed Strategy on Reuse of Single-Use Devices," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

IV. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding this document. Submit two copies of any comments, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The agency will consider such comments when determining their final strategy. "FDA's Proposed Strategy on Reuse of Single-Use Devices" and any received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28807 Filed 11–1–99; 12:19 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4114]

Draft "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors." The draft guidance document applies to the manufacture of gene therapy retroviral vector products intended for in vivo or ex vivo use and to followup monitoring of patients who have received retroviral vector products. When finalized, the draft guidance document is intended to supplement the guidance document entitled "Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy," dated March 1998, and a letter to Sponsors of an IND Using Retroviral Vectors, dated September 20, 1993.

DATES: Written comments may be submitted at any time, however, comments should be submitted by February 1, 2000, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–

835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors." The draft guidance document applies to the manufacture of gene therapy retroviral vector products intended for in vivo or ex vivo use and to followup monitoring of patients who have received retroviral vector products. The draft document provides guidance for replication competent retrovirus (RCR) testing during manufacture, including timing, amount of material to be tested, and general testing methods. The draft document also provides guidance on monitoring patients for evidence of retroviral infection. When finalized, the draft guidance document is intended to supplement the guidance and recommendations pertaining to RCR testing given in the following documents: (1) "Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy" dated March 1998 (issued on the Internet); and (2) letter to Sponsors of an IND Using Retroviral Vectors, dated September 20, 1993.

The new recommendations are based on data and analyses generated by CBER and members of the gene therapy community. Public discussion and development of these recommendations have taken place during the retroviral breakout sessions at the "1996 Gene Therapy Conference: Development and Evaluation of Phase I Products and Workshop on Vector Development" (61 FR 18749, April 29, 1996), and the "Forum 1997 Gene Therapy Conference."

The draft guidance document represents the agency's current thinking regarding testing for RCR in retroviral vector based gene therapy products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

The draft guidance document is being distributed for comment purposes only, and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by February 1, 2000, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28560 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Querying the National Practitioner Data Bank—New.

Under the Health Resources and Services Administration (HRSA), Bureau of Health Professions (BHPr), the Division of Quality Assurance (DQA) is planning to conduct a survey to obtain information on the degree of user satisfaction with the National Practitioner Data Bank's (NPDB) reporting and querying processes, how users believe these processes can be improved, and how users perceive the usefulness of information they obtained from the NPDB for licensing and credentialing of health care entities, *e.g.* managed care organizations, State licensing boards for physicians and dentists, and professional societies. The study will also identify and survey non-user entities. The information obtained in this study will be interpreted in relation to similar information from previous studies conducted by DQA and the Office of the Inspector General.

The estimated response burden is as follows:

Questionnaire version	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Reporting:					
Hospital	1,031	1	1,031	.2	206.2
Group Practice	210	1	210	.2	42.0
HMOs	161	1	161	.2	32.2
State boards	81	1	81	.2	16.2
Malpractice Payers	188	1	188	.2	37.6
Professional Societies	67	1	67	.2	13.4
Other	209	1	209	.2	41.8
Querying:					
Hospital	770	1	770	.4	308
Group Practice	173	1	173	.4	69.2
HMOs	153	1	153	.4	61.2
State boards	74	1	74	.4	29.6
Malpractice Payers	(*)				
Professional Societies	66	1	66	.4	26.4
Other	184	1	184	.4	73.6
Match Response:					
Hospital	770	3	2,310	1	2,310
Group Practice	173	3	519	1	519
HMOs	153	3	459	1	459
State boards	74	3	222	1	2,222
Malpractice Payers	(*)				
Professional Societies	66	3	198	1	198
Other	184	3	552	1	552
Total					5,217.4

*Cannot query the NPDB; thus these entities do not receive query or match response questionnaires.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: October 28, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–28705 Filed 11–2–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–26]

Notice of Proposed Information Collection: Comment Request; Computation of Surplus Cash Distributions and Residual Receipts and Fund Authorizations

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 3, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Office of Business Products, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Computation of Surplus Cash Distributions and Residual Receipts and Funds Authorizations.

OMB Control Number, if applicable: 2502–0314.

Description of the need for the information and proposed use: Handbook 4350.1, Rev. 1, Chapter 25, Multifamily Asset Management and Project Servicing, applies to all non-profit and limited dividend multifamily projects with HUD-insured and HUD-held mortgages, including the Section 202 Program projects. Generally, all projects owned by non-profit mortgagors and all Section 236 and 221(d)(3) projects owned by limited distribution (LD) mortgagors as well, as Section 8 New Construction/Substantial Rehabilitation projects subject to the 1979/80 revised Section 8 regulations, are required to establish a Residual Receipts Account. The requirement for a Residual Receipts Account is established by a Regulatory Agreement or a project-based subsidy contract such as Section 8 Housing Assistance Payments.

HUD–93486 is used to calculate allowable distributions and any amounts that may be due for deposit to the Residual Receipts Account. HUD–9250 is a form used by HUD Field Offices and the Mortgagor/Managing Agent authorizing the release of funds for Reserve for Replacements or Residual Receipts.

Agency form numbers, if applicable: HUD–93486, HUD–9250.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are 23,473, frequency of responses is 1 per respondent, and the hours of response is estimated to be 1 hour for HUD–93486 and 1 hour for HUD–9250, totaling 46,946 annual burden hours.

Status of the proposed information collection: Reinstatement without change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 28, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commission.

[FR Doc. 99–28690 Filed 11–2–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–25]

Notice of Proposed Information Collection: Comment Request, Advance of Escrow Funds

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 3, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Advance of Escrow Funds.

OMB Control Number, if applicable: 2502–0018.

Description of the need for the information and proposed use: 24 CFR, Section 200.50—Requirements Incident to Insured Advances—Building Loan Agreement—states that the mortgagor and mortgagee must execute a building loan agreement approved by the Commissioner, that sets forth the terms and conditions under which progress payments may be advanced during construction, before initial endorsement of the mortgage for insurance.

Agency form numbers, if applicable: HUD–92464.

Form HUD–92464, is the form utilized to control the disposition to escrow funds for offside facilities, construction changes, and unpaid construction costs and repairs pending completion or not paid at final endorsement. The face of the form contains two parts. The top part is used by the depository to request approval of advance of such funds. The bottom part is used by HUD to authorized approval.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 525, the frequency of responses is 1, the estimated time to complete form HUD–92464 is 2 hours, and the estimated annual burden hours requested is 1,050.

Status of the proposed information collection: Reinstatement with change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, is amended.

Dated: October 25, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–28691 Filed 11–2–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–00]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). On July 27, 1999 (64 FR 40618), the Bureau of Land Management (BLM) published a notice in the **Federal Register** requesting comments on extending the currently approved information collection. BLM received no public comments as a result of that notice.

You can obtain copies of the proposed collection of information and explanatory material by contacting BLM's Clearance Officer at the telephone number listed below. OMB is required to respond to the request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirements should be made within 30 days directly to the Bureau Clearance Officer and the Office of Management and Budget, Office of Information and Regulatory Affairs (1004–0114), 725 17th St., NW, Washington, DC 20503, telephone: (202) 395–7340.

Title: Recordation of Location Notices and Annual filings for Mining Claims, Mill Sites, and Tunnel Sites; Payment of Location and Maintenance Fees and Service Charges.

OMB Approval Number: 1004–0114.

Abstract: The information collected is used to determine whether or not mining claimants have met the statutory requirements of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744); the Mining Claim Rights Restoration Act of 1995 (30 U.S.C. 621 *et seq.*); the Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands Act of 1948, referred to after this as the "O and C Lands Act," (62 Stat. 162); the General Mining Law of 1872 (30 U.S.C. 22–54); and the Act of October 21, 1998 (112 Stat. 2681–235). Mining claimants must record location notices or certificates of mining claims, mill sites, and tunnel sites with BLM within 90 days of their location. Claimants who do not pay the maintenance fee must make an annual filing by December 30. Failure to record the mining claim or site or to submit an annual filing when required causes the claimant to forfeit the mining claim or site by operation of law.

The Act of October 21, 1998, requires payment of a $100-per-claim or site maintenance fee for fiscal years 1999 through 2001. The payment is due at the time of recording and by each September 1st after that. The Act also requires a $25 location fee for all new claims or sites located, payable at the time of recording with BLM. Certain "small miners" owning 10 or fewer claims and sites may file by each September 1st a waiver from payment of the maintenance fee and record an annual filing as in the past. Failure to pay the fee or file for a waiver by September 1st makes the mining claim or site forfeited by operation of law. The Act of October 21, 1998, expires on September 30, 2001, unless Congress renews it.

The Act of April 16, 1993 (43 U.S.C. 299[b]), established new procedures for locating mining claims on the reserved mineral estate of the United States where the mineral estate was reserved under the authority of the Stockraising Homestead Act of 1916, as amended. The locator must now file a "Notice of Intent to Locate Mining Claims (NOITL)" with BLM and serve a copy of the NOITL on the surface owner of record, as given in local tax records. The locator must wait 30 days after serving the surface owner before entering the lands or locating mining claims on them. The notice segregates the lands from mining claim location or mineral sale on behalf of the locator for 90 days from BLM's acceptance of the notice. BLM must respond to the NOITL on its official land records. The surface owner does not have to file an NOITL and may locate mining claims at any time the mineral estate is not encumbered.

Bureau Form Numbers: 3830–2 and 3830–3.

Frequency: Once for notices and certificates of location, NOITL's, and payment of location fees. Once each year for annual filings, payment of maintenance fees or filing of waivers. As needed for recording of amendments to a previously recorded notice or certificate of location or transfer of interest.

Description of Respondents: Respondents range from individuals to multi-national corporations engaged in exploring for and developing mineral resources on federal lands.

Estimated Completion Time: 8 minutes for each document or payment.

Annual Responses: 364,000.

Estimated Burden Hours: 48,652 annually.

Bureau Clearance Officer: Carole Smith, (202) 452–0367.

Dated: September 27, 1999.

Carole J. Smith,

BLM Clearance Officer.

[FR Doc. 99–28683 Filed 11–2–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–00–934–1610–00]

Notice of Intent To Modify Scope of Statewide Environmental Impact Statement (EIS) and Multiple Plan Amendments Considering Establishment of New Wilderness Study Areas (WSAs) on Selected Public Lands in Utah, and Call for Additional Information

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The BLM has modified the scope of its planning effort considering establishment of new WSAs on public lands in Utah. Instead of preparing a single EIS/Plan Amendment for all inventory areas under study throughout the state, the BLM will now use a staged approach that will break the plan amendment process into four components. Selected inventory areas will be grouped in four regional studies to address whether or not new WSAs should be established. The first such regional grouping will include 35 inventory areas within the southeast region, encompassing approximately 815,000 acres of BLM lands administered by the Moab and Monticello Field Offices. This change is due, in part, to the large number of scoping comments that provided detailed information on specific areas and regions. Focusing planning on a regional basis will allow for a more thorough consideration of public input that has already been received, and is anticipated, as the National Environmental Policy Act (NEPA) process proceeds. Some adjustment is also necessary because new legislation prohibits the BLM from proceeding with WSA planning in certain areas in the West Desert region of the state until the Department of Defense completes a study to evaluate the impact upon military training, testing, and operational readiness of any proposed changes in land designations or management of the "Utah national defense lands."

The scope of this first planning effort has also been modified to include all of the BLM lands that were inventoried and shown in the 1999 Utah Wilderness Inventory Report within the areas under study. This includes approximately 162,000 acres of public land currently under study that were initially found lacking wilderness characteristics by the BLM. These include the Arch and Mule Canyon inventory area and portions of 30 other inventory areas within the southeast region. This modification is in response to extensive scoping comments on these areas, and to provide the public additional opportunities to comment on all public lands that were reviewed during the BLM's field inventory.

FOR FURTHER INFORMATION CONTACT: Don Banks, Project Manager (Phone: 801–539-4063 or E-mail: *dbanks@ut.blm.gov*), or by mail to: Utah State Office, Attention: Wilderness Project, P.O. Box 45155, Salt Lake City, Utah 84145.

Copies of the 1999 Utah Wilderness Inventory Report are available for public review at all BLM field offices within Utah and at depository libraries throughout the state. This report is also available on the BLM's Internet web page (*http://www.ut.blm.gov/wilderness*) established for the WSA planning project. This 300-page document provides maps, narratives, and summary reports of the inventory areas. The 35 areas included in the first grouping are contained in this report. In addition, inventory unit permanent documentation files containing aerial photographs, topographic maps, slides, voluminous field log notes and other useful information are available for public review. A complete set of all files can be found at the Utah State Office in Salt Lake City. The documentation files for the relevant inventory areas in the southeast region are also located in BLM's Moab and Monticello Field Offices, respectively.

DATES: All scoping comments regarding this planning effort conducted under the authority of Section 202 of the Federal Land Policy Management Act (FLMPA), must be received in writing by the BLM Utah State Office no later than December 31, 1999. It is not anticipated that any new scoping meetings would be required for this modified action. All information gathered to date through the scoping process will continue to be considered for this effort.

SUPPLEMENTARY INFORMATION: On March 18, 1999, BLM published in the **Federal Register** a Notice of Intent to Prepare a Statewide EIS and multiple plan amendments for consideration of new WSAs on public land identified as having wilderness characteristics in the 1999 Utah Wilderness Inventory. Since that time, BLM has engaged in an extensive public involvement process to gather scoping information. To date, BLM has received nearly 13,000 comment letters, many of which contain very specific and detailed comments and new information.

On October 5, 1999 the National Defense Authorization Act for Fiscal Year 2000 was signed into law. Section 2815 of this legislation precludes the BLM from completing any land use plan amendment or statewide amendment package for the "Utah national defense lands" until the Secretary of Defense submits to Congress a report evaluating the impact upon military training, testing, and operational readiness of any proposed changes in land designations or management of the "Utah national defense lands". "Utah national defense lands" are defined in Section 2815 as "public lands under the jurisdiction of the Bureau of Land Management in the state of Utah that are adjacent to or near the Utah Test and Training Range and Dugway Proving Ground or beneath the Military Operating Areas, Restricted Areas, and airspace that make up the Utah Test and Training Range." This provision affects approximately 13 inventory areas encompassing approximately 186,000 acres of BLM lands under consideration for possible establishment as WSAs.

The BLM will now proceed through a series of four regional studies to address the question as to whether or not new WSAs will be established. The first area for which an EIS and plan amendments will be completed, and for which public comments are currently being solicited, is in the southeast region. This region includes inventoried public lands within 35 areas, encompassing approximately 815,000 acres. Establishment of new WSAs would amend the Grand and San Juan Resource Management Plans (RMPs). These land use plans are administered by the Moab and Monticello Field Offices, respectively. The following land use plans and associated wilderness inventory areas depict the areas currently under study: Grand RMP: Beaver Creek, Behind the Rocks, Fisher Towers, Goldbar, Granite Creek, Hatch Wash, Hunter Canyon, east portion of Labyrinth Canyon, Lost Spring Canyon, Mary Jane Canyon, Mill Creek Canyon, Negro Bill Canyon, Shafer Canyon, and Westwater Canyon Inventory Areas. San Juan RMP: Arch and Mule Canyons, Bridger Jack Mesa, Butler Wash, Cheesebox Canyon, Comb Ridge, Cross Canyon, Dark Canyon, Fish and Owl Creeks, Fort Knocker Canyon, Gooseneck, Grand Gulch, Gravel and Long Canyons, Harmony Flat, Harts Point, Indian Creek, Mancos Mesa, Nokai Dome, Road Canyon, San Juan River, Sheep Canyon, Squaw and Papoose Canyon. The Gooseneck and Harts Point inventory areas involve both of the RMPs.

Three additional regional groupings of areas will be subject to WSA planning and studies in the future: Uintah and Book Cliffs/San Rafael Swell/Henry Mountains (eastern areas); the Grand Staircase Escalante National Monument/Kane County/Washington Counties (south-central/southwest areas); and inventory areas found in the West Desert of Utah. All WSA planning is expected to be completed statewide by 2004.

Scoping comments should focus on all lands within the southeastern Utah region that encompass the 35 areas previously identified in the 1999 Utah Wilderness Inventory Report. Comments would be particularly helpful if they address one or more of the following elements:

(a) Any additional information concerning wilderness characteristics within the 35 inventoried areas of the southeastern region, including those lands found by the BLM in the 1999 Utah Wilderness Inventory to be lacking wilderness characteristics.

(b) Information regarding manageability opportunities or conflicts including information on valid existing rights which could be exercised (developed) during the next ten to fifteen years and thereby preclude effective management under the IMP.

(c) Specific information on other resource uses within the inventoried areas, including such uses as grazing practices, rights of way, corridor development, recreation development or mechanical uses, off highway vehicle use, development for mineral extraction, or oil and gas exploration and production.

(d) The proposed planning criteria described further below.

Those members of the public who have previously submitted comments regarding all or portions of the inventoried areas in the southeast region do not need to resubmit scoping comments on these areas, as BLM will take all of the existing comments into consideration. Additional comments focused on the lands initially found by BLM not to have wilderness characteristics are appropriate at this time and would be helpful in identifying and addressing specific issues in these areas. Proposed planning criteria were originally made available in the **Federal Register** Notice of March 18, 1999.

1. BLM will amend the RMPs based on the information contained in the Utah Wilderness Inventory of 1999, as supplemented by information gathered and analyses contributed in this planning/NEPA process.

2. This planning/NEPA process will conform to all applicable laws, such as the Clean Water Act, Archeological Resource Protection Act, and the Endangered Species Act.

3. To the extent possible under Federal law, and within the framework of proper long-term management of the public lands, BLM will strive to ensure that its management prescriptions and planning actions take into consideration related programs, plans, or policies of other resource agencies. This will include the formal consistency review by the State of Utah Governor's office. BLM will work closely with the Governor's Office to help facilitate the consistency review process.

4. BLM will provide local, state and Federal agencies a copy of the Draft EIS with a written request to comment. Agencies may identify in writing any inconsistencies with formally approved land use plans or their related jurisdictions.

5. Existing WSAs will continue to be managed under the provisions of the Interim Management Policy for Lands Under Wilderness Review (IMP). The current plan amendment process will not address suitability recommendations for existing WSAs.

6. Planning decisions made through this BLM process will apply only to Federal public lands.

7. All valid existing rights will continue to be recognized.

8. Any WSAs designated pursuant to this process will contain the following recommended setbacks:

- –300 feet from the centerline of high standard paved roads,
- –100 feet from the centerline of high

standard graveled roads,

– 30 feet from the centerline of low standard dirt roads, Unless resource conditions warrant granting exceptions.

9. The plan amendment process will address off highway vehicle designations in the inventory areas, consistent with the provisions of the IMP as necessary to protect wilderness characteristics.

Alternatives that are currently proposed for consideration include: (1) No Action—Under this alternative, none of the inventory areas would be designated as WSAs and the lands would continue to be managed according to the existing land use plans; (2) All areas would be designated as WSAs, and IMP would be applied to all lands; (3) Selected WSAs—Some of the 35 inventoried areas, or portions thereof, would be designated as WSAs and IMP would be applied, while other inventoried areas, or portions thereof, would not be designated as WSAs. The EIS would provide information and analysis to identify impacts associated with each alternative.

Planning for the southeastern region is expected to be completed in the Fall of 2000. A draft EIS is expected to be published by Spring of 2000.

The public will have opportunities to provide further input, review information, and to comment on the draft EIS. Anyone wanting to be added to the mail list for this planning project should contact the BLM at the address given above. Comments received, including names and addresses of respondents will be available for public review at the Utah State Office and will be subject to disclosure under the Freedom of Information Act. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written scoping letter. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, will be made available for public inspection in their entirety.

Dated: October 28, 1999.

Linda S. Coleville,

Acting Utah State Director.

[FR Doc. 99–28698 Filed 11–2–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–76561, UTU–77365]

Utah; Proposed Reinstatement of Terminated Oil and Gas Leases

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Public Law 97–451), a petition for reinstatement of oil and gas leases UTU–76561 and UTU–77365 for lands in Duchesne and Emery Counties, Utah, was timely filed and required rentals accruing from September 1, 1999, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for each lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the leases as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate leases UTU–76561 and UTU–77365, effective September 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Branch of Minerals Adjudication.

[FR Doc. 99–28697 Filed 11–2–99; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–65825]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Segregation terminated, recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated on July 23, 1997 for exchange purposes under serial number N–61855. The exchange segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the lands for a fire station and training facility.

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E.,
Sec. 2, Lot 15.

Containing 40.00 acres, more or less, located at Hollywood Ave. and Sahara Ave.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations of the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for telephone purposes which have been granted to Sprint Central Telephone by right-of-way CC–017422A under the Act of March 4, 1911 (43 USC 961).

3. Those rights for gas line purposes which have been granted to Southwest Gas Corporation by right-of-way Nev-061333 under the Act of February 25, 1920 (30 USC 185 sec. 28).

4. Those rights for water line purposes which have been granted to the Bureau of Reclamation by right-of-way N–1521 under the Act of December 5, 1924 (43 Stat. 0672).

5. Those rights for roadway purposes which have been granted to Clark County by right-of-way N–56936 under the Act of October 21, 1976 (43 USC 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a fire station and training facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a fire station and training facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will be offered for lease/conveyance until after the classification becomes effective.

Dated: October 20, 1999.

Sharon DiPinto,

Acting Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 99–28555 Filed 11–2–99; 8:45 am]

BILLING CODE 1430–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–1430–ES; WYW–146136/WYW–146153]

Realty Action; Lease for Recreation and Public Purposes; Washakie and Hot Springs Counties, Worland Field Office, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Washakie and Hot Springs Counties, Wyoming have been examined and found suitable for classification for lease to the Washakie County Fair Board and the Hot Springs County Recreation Board under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Counties propose to use the lands for radio controlled airplane flying areas.

Sixth Principal Meridian

WYW–146136—Washakie County Fair Board

T. 47 N. R. 92 W.

Section 33, within lot 1, E1/2SW1/4NW1/4; comprising 34 acres more or less; and

WYW–146153—Hot Springs County Recreation Board

T. 43 N. R. 95 W.

Section 20, NE1/4SW1/4; comprising 40 acres more or less.

The lands are not needed for federal purposes. Lease is consistent with current BLM land use planning and would be in the public interest.

The lease, when issued, will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of lease issuance.
3. Site specific mitigation measures to protect the public lands and users on the leases.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Worland Field Office, 101 South 23rd Street, Worland, Wyoming.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Worland Field Office, PO Box 119, Worland WY 82401.

Classification Comments

Interested parties may submit comments involving the suitability of the land for radio controlled airplane flying areas. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for radio controlled airplane flying areas.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Comments, including names and street addresses of respondents will be available for public review at the Worland District Office, 101 South 23rd Street, Worland, Wyoming during regular business hours (7:30 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: October 21, 1999.

Darrell Barnes,

Worland Field Manager.

[FR Doc. 99–28782 Filed 11–2–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Woodbridge Irrigation District and City of Lodi's Lower Mokelumne River Restoration Program, San Joaquin County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS) INT–DES–99–50.

SUMMARY: Pursuant to the National Environmental Policy Act and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation), Woodbridge Irrigation District (WID), and the City of Lodi have

prepared a joint DEIR/DEIS for the Lower Mokelumne River Restoration Program (LMRRP). The LMRRP encompasses an area located in northern San Joaquin County along the lower Mokelumne River between Camanche Dam and the Mokelumne and Cosumnes Rivers. The Proposed Project comprises four elements: (1) Improving fish passage at Woodbridge Dam, (2) upgrading the fish screen at the WID diversion, (3) placing screens on unscreened or underscreened riparian diversions on the Mokelumne River between Camanche Dam and the Cosumnes Rivers on a voluntary basis, and (4) restoring riparian vegetation along the Mokelumne River. The DEIR/DEIS describes and presents the environmental effects of the four elements of the program.

DATES: Submit written comments on the DEIR/DEIS on or before January 4, 2000. Comments may be submitted to Reclamation or WID at the addresses provided below. The public hearing on the DEIR/DEIS will be held on November 16, 1999, at 7:00 p.m.

ADDRESSES: The public hearing will be held in the Carnegie Forum, located at 305 West Pine Street, next to City Hall, in Lodi, California.

Written comments on the DEIR/DEIS should be addressed to Mr. Anders Christensen, WID, 18777 N. Lower Sacramento Road, Woodbridge, California 95258, or to Mr. Buford Holt, Reclamation, 16349 Shasta Dam Boulevard, Shasta Lake, California 96019.

Copies of the DEIR/DEIS may be requested from Mr. Christensen at the above address or by calling (209) 369–6808.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the DEIR/DEIS are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Anders Christensen, WID, at (209) 369–6808; or Mr. Buford Holt, Reclamation, at (530) 275–1554.

SUPPLEMENTARY INFORMATION: The LMRRP was developed to implement important elements from resource management plans prepared by the CALFED Bay-Delta Program (CALFED), the United States Fish and Wildlife Service, and the Department of Fish and Game. The goal of the LMRRP is to substantially increase fall-run chinook salmon and steelhead populations, enhance critical and limiting aquatic habitats, and restore riparian ecosystem integrity and diversity. In addition to a No-Project Alternative, which involves the continued operation of the existing Woodbridge Dam and fish passage facilities, four action alternatives are examined, including: (1) Construct new fish passage facilities on the existing Woodbridge Dam; (2) construct a new Woodbridge Dam with operable weir gates and new fish passage facilities; (3) construct a new Woodbridge Dam with operable weir gates and new fish passage facilities, and diversion pumps; and (4) replace the existing Woodbridge Dam and pump water from the river.

WID applied to CALFED for funding for the entire LMRRP. CALFED has provided funding through Reclamation for the environmental documentation and permitting of the first two elements, and final design for the first element. The remainder of the LMRRP will be funded by CALFED or by the State of California as funds are available.

Copies of the DEIR/DEIS are available for public inspection and review at the following locations:

- Woodbridge Irrigation District Office, 18777 N. Lower Sacramento Road, Woodbridge, California 95258; telephone: (209) 369–6808.
- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street NW, Washington DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, Colorado 80225; telephone: (303) 445–2072.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento, California 95825–1898; telephone: (916) 978–5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240–0001.
- Lodi Public Library, 201 W. Locust Street, Lodi, California 95240–2099.

Hearing Process Information

WID staff will make a brief presentation to describe the proposed project, its purpose and need, and alternatives considered. The public may comment on environmental issues addressed in the DEIR/DEIS. If necessary due to large attendance, comments will be limited to 5 minutes per speaker. Written comments will also be accepted.

Dated: October 22, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–28740 Filed 11–2–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–99–046]

Sunshine Act Meeting; Notice.

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 9, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–812 (Final)(Live Cattle from Canada)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on November 17, 1999.)
5. Inv. No. 731–TA–224 (Review)(Live Swine from Canada)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on November 22, 1999.)
6. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 29, 1999.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28788 Filed 10–29–99; 4:38 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

International Competition Policy Advisory Committee (ICPAC); Notice of Meeting

The International Competition Policy Advisory Committee (the "Advisory Committee") will hold its next meeting on November 19, 1999. The Advisory Committee was established by the Department of Justice to provide advice regarding issues relating to international competition policy; specifically, how best to cooperate with foreign authorities to eliminate international anticompetitive cartel agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multijurisdictional mergers, and how best to address issues that interface international trade and competition policy concerns. The meeting will be held at The Carnegie

Endowment for International Peace, Root Conference Room, 1779 Massachusetts Avenue, NW, Washington, DC 20036 and will begin at 10 a.m. EST and end at approximately 7 p.m. The agenda for the meeting will be as follows:

1. Trade and Competition Policy Interface Issues
2. Multijurisdictional Merger Review
3. Enforcement Cooperation
4. Next Steps

Attendance is open to the interested public, limited by the availability of space. Persons needing special assistance, such as sign language interpretation or other special accommodations, should notify the contract person listed below as soon as possible. Members of the public may submit written statements by mail, electronic mail, or facsimile at any time before or after the meeting to the contact person listed below for consideration by the Advisory Committee. All written submissions will be included in the public record of the Advisory Committee. Oral statements from the public will not be solicited or accepted at this meeting. For further information contact: Merit Janow, c/o Marianne Pak, U.S. Department of Justice, Antitrust Division, 601 D Street, NW, Room 10011, Washington, DC 20530, Telephone: (202) 353–9074, Facsimile: (202) 353–9985, Electronic mail: icpac.atr@usdoj.gov.

Merit E. Janow,

Executive Director, International Competition Policy Advisory Committee.

[FR Doc. 99–28736 Filed 11–2–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Application for Asylum and Withholding of Removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until January 3, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Application for Asylum and Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–589. Office of international Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection will be used to determine whether an alien applying for asylum and/or withholding of deportation in the United States is classifiable as a refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: October 28, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–28747 Filed 11–2–99; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Presenting section (Heritage & Preservation, Education, and Access categories), to the National Council on the Arts will be held from 9:00 a.m. to 4:30 p.m. on December 6, 1999 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: October 28, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 99–28685 Filed 11–2–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Arts Education section (Education category), to the National Council on the Arts will be held from December 13–17, 1999 in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. The Panel will meet from 9:00 a.m. to 5:30 p.m. on December 13th–16th and from 9:00 a.m. to 4:00 p.m. on December 17th. A portion of this meeting, from 1:00 p.m. to 2:30 p.m. on December 17th, will be open to the public for policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on December 13th–16th, and from 9:00 a.m. to 1:00 p.m. and 2:30 p.m. to 4:00 p.m. on December 17th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 28, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–28686 Filed 11–2–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Multidisciplinary section (Heritage & Preservation, Education, and Access categories), to the National Council on the Arts will be held from December 7–10, 1999 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. A portion of this meeting, from 1:30 p.m. to 3:00 p.m. on December 10th, will be open to the public for policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on December 7th–December 9th and from 9:00 a.m. to 1:30 p.m. and 3:00 p.m. to 4:00 p.m. on December 10th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 28, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–28687 Filed 11–2–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater/Musical Theater section (Heritage & Preservation, Education, and Access categories), to the National Council on the Arts will be held from November 15–19, 1999 in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. A portion of this meeting, from 3:00 p.m. to 5:00 p.m. on November 17th, will be open to the public for policy discussion.

The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on November 15th, 16th and 18th, from 9:30 a.m. to 3:00 p.m. to 5:00 to 6:30 p.m. on November 17th, and from 9:30 a.m. to 4:30 p.m. on November 19th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD

202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Art, Washington, DC, 20506, or call 202/682–5691.

Dated: October 28, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–28688 Filed 11–2–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)92) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Advisory Panel, Music section (Heritage & Preservation, Education and Access categories), to the National Council on the Arts will be held from November 29—December 1 and December 1–3, 1999 in Rooms 714 and 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of each meeting, from 3:00 p.m. to 5:00 p.m. on December 1st and December 3rd, will be open to the public for policy discussion.

The remaining portions of these meetings, (for Panel A) from 9:30 a.m. to 6:30 p.m. on November 29th, from 8:30 a.m. to 6:00 p.m. on November 30th, and from 9:00 a.m. to 3:00 p.m. on December 1st, (for Panel B) from 8:30 a.m. to 6:00 p.m. on December 1st, from 8:30 a.m. to 6:30 p.m. on December 2nd, and from 8:30 a.m. to 3:00 p.m. on December 3rd, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observer meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 28, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–28689 Filed 11–2–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 110—Rules and Regulations for the Export and Import of Nuclear Equipment and Material.
2. *Current OMB approval number:* 3150–0036.
3. *How often the collection is required:* On occasion.
4. *Who is required or asked to report:* Any person in the U.S. who wishes to export or import nuclear material and equipment subject to the requirements of 10 CFR part 110 or to export incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.
5. *The number of annual respondents:* 125.
6. *The number of hours needed annually to complete the requirement or request:* Reporting, 130 hours (1.3 hours per response); recordkeeping, 150 hours (1.2 hours per respondent). The total burden is 280 hours.
7. *Abstract:* 10 CFR part 110 provides application, reporting, and recordkeeping requirements for exports and imports of nuclear material and equipment subject to the requirements of a specific license or a general license and exports of incidental radioactive material. The information collected and maintained pursuant to 10 CFR part 110 enables the NRC to authorize only imports and exports which are not inimical to U.S. common defense and security and which meet applicable statutory, regulatory, and policy requirements.

Submit, by January 3, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 28th day of October 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–28761 Filed 11–2–99; 8:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on Fatigue Effects on Metal Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: A public meeting on the issue of fatigue effects will be held at Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814 to discuss issues related to fatigue of metal components in nuclear power plants. The discussion topics will include: a plan to integrate results from NRC and industry efforts addressing fatigue; NRC and industry efforts addressing various aspects of the overall fatigue problems; and general views concerning fatigue and the fatigue-related issues being addressed today. This meeting is also expected to facilitate the progress on the resolution of Generic Safety Issue (GSI–190), "Fatigue Evaluation of Metal components for 60-year Plant life."

DATES: November 17, 1999, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Khalid Shaukat, Mail Stop T10–E10, U.S. Nuclear Regulator Commission, Washington, DC 20555–0001. Telephone: (301) 415–6592; FAX: (301) 415–5153; Internet: SKS1@NRC.GOV . Or: Mike Mayfield, Mail Stop T10–E10, U.S. Nuclear Regulator Commission, Washington, DC 20555–0001. Telephone: (301) 415–6690; FAX: (301) 415–5074; Internet: *MEM2@NRC.GOV*.

Dated at Rockville, Maryland, this 28th day of October, 1999.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Chief, Materials Engineering Branch, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 99–28758 Filed 11–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 114th meeting on November 17–19, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, November 17, 1999

8:30 A.M.–8:40 A.M.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:40 A.M.–12:00 Noon: ACNW Planning and Procedures (Open)—The Committee will hear a briefing from its staff on issues to be covered during this meeting. The Committee will also consider topics proposed for future consideration by the full Committee and Working Groups. This will include strategic planning and self assessment as well as topics for the next Commission briefing. The Committee will discuss ACNW-related activities of individual members. The Committee may also discuss potential ACNW members. (Note: The new members portion may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6)).

1:00 P.M.–3:00 P.M.: Department of Energy's Yucca Mountain Draft Environmental Impact Statement (DEIS) (Open)—The Committee will discuss with the NRC staff the staff's review of the DEIS. The Committee plans to submit a letter report on this topic.

3:15 P.M.–5:00 P.M.: NRC's Yucca Mountain Specific High-Level Waste Regulation (Open)—The Committee will review the latest version of 10 CFR Part 63, "Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada. The tenor of public comments will also be explored.

Thursday, November 18, 1999

8:30 A.M.–8:40 A.M.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:40 A.M.–10:00 A.M.: Rubblization (Open)—The Committee will review this decommissioning option and prepare comments on the concept.

10:15 A.M.–11:30 A.M.: Annotated Outline for Yucca Mountain Review Plan (Open)—The Committee will hear a briefing from the NRC staff which will describe the transition from Issue Resolution Status Reports to a Yucca Mountain review plan.

12:30 P.M.–2:00 P.M.: Research Plan for Environmental Transport (Open)—The ACNW will review generic codes used to predict radionuclide transport in the geosphere. The Committee intends to submit comments on this review.

2:15 P.M.–5:00 P.M.: Preparation of ACNW Reports (Open)—The Committee will discuss planned reports on the following topics: a White Paper on Near-Field Chemistry issues, a joint ACRS/ACNW letter report on an NMSS approach to risk-informed, performance-based regulation in NMSS, the Yucca Mountain DEIS, NRC's Yucca Mountain specific high-level waste disposal regulation, rubblization decommissioning option, waste related research, NRC staff comments on the U.S. Environmental Protection Agency's Proposed Rule on Environmental Radiation Protection Standards For Yucca Mountain, NV (40 CFR part 197), and other topics discussed during this and previous meetings as the need arises.

Friday, November 19, 1999

8:30 A.M.–8:40 A.M.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:40 A.M.–9:35 A.M.: Meeting with the Office of Nuclear Material Safety and Safeguards (NMSS) Management (Open)—The Committee will meet with NMSS managers to discuss items of mutual interest.

9:35 A.M.–3:00 P.M.: Preparation of ACNW Reports (Open)—The Committee will discuss planned reports on the following topics: a White Paper on Near-Field Chemistry issues, a joint ACRS/ACNW letter report on an NMSS approach to risk-informed, performance-based regulation in NMSS, the Yucca Mountain DEIS, NRC's Yucca Mountain specific high-level waste disposal regulation, rubblization decommissioning option, waste related research, NRC staff comments on the U.S. Environmental Protection Agency's Proposed Rule on Environmental Radiation Protection Standards For Yucca Mountain, NV (40 CFR part 197), and other topics discussed during this and previous meetings as the need arises.

3:00 P.M.–3:30 P.M.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, ACNW (Telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT. ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

The ACNW meeting dates for Calendar Year 2000 are provided below:

ACNW meeting No.	Meeting date
January 2000—No meeting.	
116th (Rockville, MD)	February 15–17, 2000.
117th (Rockville, MD)	March 14–16, 2000.
April 2000—No meeting.	
118th (Rockville, MD)	May 16–18, 2000.
119th (Rockville, MD)	June 20–22, 2000.
120th (San Antonio, Texas)	July 18–20, 2000.
August 2000—No meeting.	
121st (Amargosa Valley, Nevada)	September 19–21, 2000.
122nd (Rockville, MD)	October 17–19, 2000.
123rd (Rockville, MD)	November 15–17, 2000.
December 2000—No meeting.	

Dated: October 29, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–28786 Filed 11–2–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 8, 1999, through October 22, 1999. The last biweekly notice was published on October 20, 1999 (64 FR 56526).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 10, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the Nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: September 28, 1999.

Description of amendment request: The licensee has proposed to revise Technical Specification (TS) 2.1.1, "Reactor Core Safety Limits," and TS 5.6.5, "Core Operating Limits Report." These revisions would remove cycle-specific safety limit restrictions which are no longer necessary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The procedures for determining the MCPR [Minimum Critical Power Ratio] Safety Limit are described in General Electric Standard Application for Reactor Fuel (i.e., topical report NEDE–24011–P–A, otherwise referred to as GESTAR II). The basis for the MCPR Safety Limit calculation is to ensure that greater than 99.9 percent of all fuel rods in the core avoid transition boiling in the event of a postulated accident. The existing MCPR Safety Limit preserves this margin to transition boiling and fuel damage. The MCPR Safety Limits for the BSEP [Brunswick Steam Electric Plant], Unit 1 TSs, and their use in determining cycle-specific operating limits documented in the Core Operating Limits Report, are determined using NRC-approved methods (i.e., GESTAR II). The use of these methods ensures that the MCPR Safety Limit values are within the existing design and licensing bases, and cannot increase the probability or consequences of an accident previously evaluated.

2. The proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit is a TS numerical value that has been established to ensure that fuel damage from transition boiling does not occur in at least 99.9 percent of the fuel rods in the core as a result of a limiting postulated accident. The MCPR Safety Limit is not an accident initiator; therefore, it cannot create the possibility of any new type of accident. The MCPR Safety Limits are calculated using NRC-approved methods. The function, location, operation, and handling of the fuel will remain unchanged. In addition, the initiating sequence of events for previously evaluated accidents has not been changed. Therefore, no new or different kind of accident has been created.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The MCPR Safety Limit preserves the existing margin to transition boiling and fuel damage in the event of a postulated accident. The margin of safety, as defined in the TS Bases, will remain the same. The MCPR Safety Limit remains unchanged, and will ensure that greater than 99.9 percent of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. The MCPR Safety Limits will continue to be calculated using NRC-approved generic and cycle-specific methodologies that are described in GESTAR II. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Section Chief: Ron Hernan, Acting.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: September 28, 1999.

Description of amendment request: The amendment revises Technical Specifications (TS) surveillance requirement (SR) 3.7.6.2 "Component Cooling Water (CCW) System," to change the CCW pump automatic start actuation signal basis from Engineered Safety Feature Actuation Signal (ESFAS) to Loss-of-Power Diesel Generator (LOP DG). This change is required to reflect the original plant design which was not properly incorporated during conversion of the TS to Improved TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The CP&L conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Surveillance Requirement (SR) 3.7.6.2 does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The safety function of the Loss of Power (LOP) Diesel Generator (DG) start signal for the Component Cooling Water (CCW) pumps is to start the CCW pumps in order to provide the minimum heat removal capability assumed in the safety analysis for the systems to which it supplies cooling water. The CCW System provides a heat sink for the removal of process and operating heat from safety related components during a Design Basis Accident (DBA) or transient. During normal operation, the CCW System also provides this function for various nonessential components, as well as the spent fuel storage pool. The CCW System serves as a barrier to the release of radioactive byproducts between potentially radioactive systems and the Service Water System, and thus to the environment. The CCW pumps start upon receipt of a LOP DG start signal from undervoltage on the emergency bus. The LOP DG start signal to the CCW pumps is not an Engineered Safety Features Actuation System (ESFAS) signal. Since this proposed change only corrects the description of the start signal, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change does not introduce a new mode of operation or changes in the method of normal plant operation. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change corrects the word description of the start signal for the CCW pumps and does not alter any plant design margin or analysis assumption as described in the Updated Safety Analysis Report. The proposed change does not affect any limiting safety system setpoint, calibration method, or setpoint calculation. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602 .

NRC Section Chief: Sheri R. Peterson.

CBS Corporation (licensee), Westinghouse Test Reactor, Waltz Mill Site, Westmoreland, Pennsylvania, Docket No. 50–22, License No. TR–2

Date of amendment request: September 15, 1999, as supplemented on October 4, 1999.

Description of amendment request: CBS Corporation is the licensee for the Westinghouse Test Reactor (WTR) at Waltz Mill, Pennsylvania. The licensee is authorized to only possess the reactor and a decommissioning plan has been approved.

The licensee is planning to revise four Technical Specifications (TS) in their approved Decommissioning Plan. The first TS change deals with what doors need to be closed when restricted activities are taking place within containment. Access to containment is through three locations, i.e., the truck lock door and the east and west airlock doors. Each entry point has two doors, an outer door and an inner door. In the existing TS either door could be closed except during personnel ingress or egress or while equipment is being passed through the doorways. In the proposed TS the licensee has specified the following. For the truck lock door the inner door to containment needs to be closed. The reason given for the change is that the containment boundary is more accurately defined as the interior access door between the truck lock area and containment. The truck lock area was transferred to the SNM–770 license in April 1970 and the outer doors are controlled by this license.

For the east and west airlock doors, fire doors with an interior crash bar have been installed at the outer door as a safety feature to minimize the risk of personnel being trapped in containment during an emergency. The airlock doors (inner doors) do not allow quick and efficient egress during a postulated fire in containment; therefore, the original air lock doors have been removed and confinement is maintained by the newly installed fire doors.

Therefore the proposed TS require that the inner truck lock door be closed and the outer east and west lock doors be closed except during personnel ingress or egress or while equipment is being passed through the doorways, and this meets the original goal of the existing TS.

The second TS change deals with the condition of the containment when the containment is open for removal of materials and equipment. In the existing TS Restricted Activities in containment are suspended. In the proposed TS, containment extension is permitted if an enclosure is provided around the opening to effectively isolate the containment from the outside environment. If these extensions are not in place, all Restricted Activities in containment are suspended. Negative pressure (airflow into containment) is maintained in containment in the existing as well as the proposed TS. Containment isolation is effectively maintained under the proposed TS as it was in the existing TS.

The third TS change deals with the control of access into containment. In the existing TS the outer doors in the air lock and the truck lock outer doors shall be locked or blocked closed to prevent unauthorized entry except when authorized personnel are inside the containment building or outside with the door in view. In the proposed TS access into containment is through a Health Physics (HP) control point, which is on the first floor of the G-Building. To prevent unauthorized entry the accesses into and out of containment shall be locked or blocked closed except when this access control point is supervised and the provisions of the first TS change are implemented.

Normal access to the containment is through a door in the G-Building basement (east and west airlock doors). The G-Building basement is a "Radiation Area". Routine activities during the day may require workers to exit containment (rest, lunch, equipment change out, etc). Locking or blocking the doors after workers temporarily exit during the working day does not minimize radiation dose and reduces worker efficiency. Access control will be established on the first floor of the G-Building outside the radiation area. Therefore, the access control point would provide positive control into and out of containment and meets the original intent of the TS.

The fourth TS is being changed to include the HP control point in the monthly visual surveillance, which assures that accesses into containment are locked or blocked when no on is inside containment and the HP control point is not occupied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards considerations. The proposed amendment to a license of a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety.

The staff agrees with the licensee's no significant hazards consideration determination submitted on September 15, 1999, for the following reason:

The changes are consistent with the original intent of the TS, i.e., to maintain confinement during Restricted Activities and to prevent uncontrolled spread of contamination. Access control is still being maintained.

Based on a review of the licensee's analysis, and on the staff's analysis detailed above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William David Wall, Assistant General Counsel, CBS Corporation, 11 Stanwix Street, Pittsburgh, Pennsylvania 15222.

NRC Branch Chief: Ledyard B. Marsh.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: June 2, 1999, as supplemented August 25, 1999

Description of amendment request: The proposed amendment would relocate the quality assurance (QA) related requirements to the licensee's Quality Assurance Program Description (QAPD) in accordance with NRC Administrative Letter (AL) 95–06, "Relocation of Technical Specifications Administrative Controls Related to Quality Assurance," dated December 12 1995. Specifically, Technical Specification (TS) Section 6.5, "Review and Audit," TS Section 6.8, "Procedures and Programs," and TS Section 6.10, "Record Retention" would be relocated from the current TS to the QAPD in accordance with 10 CFR 50.36 (60 FR 30957).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: This amendment application does not involve a significant increase in the probability or consequences of an accident previously analyzed. The relocation of the administrative controls from the Technical Specification to the Quality Assurance Program Description (QAPD) does not alter the performance or frequency of these activities. Any future changes to the QA Program Description, which might constitute a reduction in commitments, are governed by 10 CFR 50.54(a). Therefore, sufficient controls for these requirements exist and these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: This amendment application does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes involve the relocation of requirements from the Technical Specifications to the QAPD.

Relocation of these requirements does not affect plant equipment or the way the plant operates. The functions continue to be performed in the identical manner as they are currently being performed. Therefore, the proposed revisions can not create a new or different kind of accident.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

Response: This amendment application does not involve a significant reduction in a margin of safety. The requested Technical Specification revisions relocate the administrative control requirements from the Technical Specifications to the QAPD. These requirements are not being altered by this relocation. The functions continue to be performed in the identical manned as they are currently being performed. Any future changes to the QA Program Description, which might constitute a reduction in commitments, are governed by 10 CFR 50.54(a). Therefore, sufficient controls for these requirements exist and these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Section Chief: Sheri Peterson.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: July 30, 1999 (NRC–99–0048).

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to include provisions related to enabling the oscillation power range monitor (OPRM) upscale trip function in the average power range monitor. This change is associated with the power range neutron monitoring (PRNM) system installed during the last refueling outage. The associated Bases would also be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is to enable the OPRM Upscale Function that is contained in the previously installed PRNM equipment. Enabling the OPRM hardware provides the long-term stability solution required by Generic Letter 94–02. This hardware incorporates the Option III detect and suppress solution reviewed and approved by the NRC in the Reference 6, 7, and 8 [of the licensee's application dated July 30, 1999] Licensing Topical Reports and their Supplements. The OPRM is designed to meet all requirements of GDC [General Design Criteria] 10 and 12 by automatically detecting and suppressing design basis thermal-hydraulic power oscillations prior to violating the fuel MCPR [minimum critical power ratio] Safety Limit. The OPRM system provides this protection in the region where Interim Corrective Actions (ICAs) restricted operation because of stability concerns. Thus, the ICA restrictions on plant operation are deleted from the TS, including region avoidance and the requirement for the operator to manually scram the reactor with no recirculation loops operating. Operation at high core powers with low core flows may cause a slight, but not significant, increase in the probability that an instability may occur. This slight increase is acceptable because subsequent to the automatic detection of an instability, the OPRM Upscale function provides an automatic scram signal to the RPS that is faster than the operator-initiated manual scram required by the current ICAs. Because of this rapid automatic action, the consequences of an instability event are not increased as a result of the installation of the OPRM system because it eliminates dependence on operator actions.

Based on the above discussion, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change permits Fermi 2 to enable the OPRM power oscillation detect and suppress function provided in previously installed PRNM hardware, and it simultaneously deletes certain restrictions which preclude operation in regions of the power-flow map where oscillations potentially may occur. Enabling the OPRM Upscale function does not create any new system hardware interfaces nor create any new system interactions. Potential failures of the OPRM Upscale function result either in failure to perform a mitigation action or in spurious initiation of a reactor scram. These failures would not create the possibility of a new or different kind of accident.

Based on the above discussion, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The OPRM Upscale function implements BWROG [Boiling Water Reactor Owners Group] Stability Option III, which was developed to meet the requirements of GDC 10 and GDC 12 by providing a hardware system that detects the presence of thermal-hydraulic instabilities and automatically initiates the necessary actions to suppress the oscillations prior to violating the MCPR Safety Limit. The NRC has reviewed and accepted the Option III methodology described in the Reference 6, 7, and 8 [of the licensee's application dated July 30, 1999] Licensing Topical Reports and their supplements, and concluded that this solution will provide the intended protection. Therefore, it is concluded that there will be no reduction in the margin of safety as defined in the TS as a result of enabling the OPRM Upscale function and simultaneously removing the operating restrictions previously imposed by the ICAs.

Based on the above discussion, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: Claudia M. Craig.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 10, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Surveillance Requirements (SRs) 3.8.4.1, 3.8.4.6, and 3.8.6.2 to accommodate changes in battery parameters associated with the replacement of the Division I battery. The licensee also plans to revise the Bases section for SR 3.8.6.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a change in the manner in which the plant is operated. TS Sections [SRs] 3.8.4.1, 3.8.4.6, 3.8.6.2 and Bases Surveillance Requirement Section 3.8.6.2 are being revised to reflect the new Division I battery cell/system characteristics and associated requirements. The new battery will have an increased capacity over the present battery, while maintaining the existing battery system voltage requirements. This is possible because the present and new battery specific gravity (1.215) and type (lead calcium) are the same. Also, the end of battery system discharge voltage remains the same as 210 VDC. The Division I batteries will continue to furnish power to redundant essential loads as required and as designed. The new surveillance requirement voltages are based on the same volts/cell criteria used for the existing batteries. Furthermore, failure or malfunction of the station batteries does not initiate any of the analyzed accidents previously evaluated in the UFSAR [updated final safety analysis report]. The changes described will therefore not involve an increase in the probability or consequences of an accident previously evaluated.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The new battery is Class 1E qualified equipment and is being maintained within the same overall design parameters as the existing battery. That is, the battery terminal voltage on float voltage conditions (2.167 volt[s]/cell), overvoltage conditions (2.5 volts/cell) and charger capability (2.15 volts/cell) are the same as the original design. Furthermore, the end of system discharge voltage of the battery system is maintained the same; therefore, there is no negative impact to plant loads supplied by the batteries. Failures of the batteries and chargers have been considered in both the existing and modified configurations. The proposed changes will not change performance or reliability nor introduce any new or different failure modes or common mode failure and will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The changes do not involve a significant reduction in the margin of safety.

The changes act to increase overall battery capacity from 560 ampere-hours to 1200 ampere-hours with the minimum battery discharge voltage remaining at 210 VDC (or 105 VDC per battery). The battery terminal voltage on float voltage conditions (2.167 volt[s]/cell), overvoltage conditions (2.5 volts/cell) and charger capability (2.15 volts/cell) are the same as the original design. The new surveillance requirement voltages are based on the same volts/cell criteria used for the existing batteries. The batteries' ability to satisfy the design requirements (battery duty cycle) of the dc system will not be reduced from original plant design and will therefore not have any negative impact to plant loads [that] the battery supplies. The proposed changes therefore do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: Claudia M. Craig.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: April 5, 1999; supplemented October 7, 1999.

Description of amendment request: The proposed amendments would revise the Improved Technical Specifications (TS), Updated Final Safety Analysis Report (UFSAR), and Core Operating Limits Report to incorporate Topical Report (TR) DPC-NE–3005–P, "Thermal-Hydraulic Transient Analysis Methodology." The proposed changes are: (1) Modification of a note for TS Surveillance Requirement (SR) 3.4.1.2, "RCS [Reactor Coolant System] Pressure, Temperature, and Flow DNB [Departure from Nucleate Boiling] Limits," to add that the SR would apply for the condition where there is a 0°F delta-Tcold setpoint; (2) modification of TS 3.4.10, "Pressurizer Safety Valves," to increase the setpoint range of the lift settings for the pressurizer safety valves; (3) modification of SR 3.4.10.1 to specify that the pressurizer safety valve lift settings shall be within plus or minus 1 percent; (4) addition of TS 3.7.4, "Atmospheric Dump Valve (ADV) Flow Paths," to address the applicability and required actions related to the ADS valves; (5) addition of TS 3.9.7, "Unborated Water Source Isolation Valves," to require valves that are used to isolate unborated water sources to be secured in the closed position while in Mode 6, provide required actions if one or more of the valves is not secured in the closed position, and related SRs; (6) TS 5.6.5b would be changed to update the Core Operating Limits Report references; and (7) modification of the appropriate Bases to reflect the above changes and consistentcy with the revision to the TR analysis. In addition, proposed changes to the UFSAR revisions were provided.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes to the Technical Specifications, Bases, Updated Final Safety Analysis Report (UFSAR), and Core Operating Limits Report (COLR) incorporate the accident analyses established in Topical Report DPC–NE–3005–P, "UFSAR Chapter 15 Transient Analysis Methodology, Revision 1." On February 1, 1999, Duke submitted Topical Report DPC–NE–3005–P to the NRC for approval. The NRC found DPC–NE–3005–P acceptable as noted in SER [Safety Evaluation Report] dated May 25, 1999.

The analyzed events are initiated by the failure of specific plant structures, systems or components. These proposed changes do not impact the condition or performance of those structures, systems or components.

The revised accident analyses in DPC–NE–3005–P demonstrate that the applicable acceptance criteria are met. In addition, the calculations show that the applicable radiological and environmental acceptance criteria will continue to be met.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes do not involve a physical alteration of the plant. No new or different equipment is being installed, and no installed equipment is being operated in a new or different manner. Where setpoints and operating limits have been revised, the revised accident analyses demonstrate that the applicable acceptance criteria are met. As a result, no new failure modes are being introduced.

Based on the above, the proposed changes do not create the possibility of any new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. The margin of safety is established through the design of the plant structures, systems and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed changes do not involve a physical alteration of the plant. No new or different equipment is being installed, and no installed equipment is being operated in a new or different manner. Where setpoints and operating limits have been revised, the revised accident analyses in DPC–NE–3005–P demonstrate that the applicable acceptance criteria are met.

Based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: September 9, 1999.

Description of amendment request: The proposed amendment would increase the authorized rated thermal power level of 3579 megawatts thermal by 5 percent to 3758 megawatts thermal. The proposal follows the NRC-approved generic format and content for Boiling Water Reactor power uprate licensing topical reports documented in NEDC–31897P–A, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," and NEDC–31984P, "Generic Evaluations of General Electric Boiling Water Reactor Power Uprate."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The increase in power level discussed herein will not significantly increase the probability or consequences of an accident previously evaluated.

The probability (frequency of occurrence) of Design Basis Accidents occurring is not affected by the increased power level, as the regulatory criteria established for plant equipment (ASME code, IEEE standards, NEMA standards, Regulatory Guide criteria, etc.) are still complied with at the uprated power level. An evaluation of the boiling water reactor (BWR) probabilistic risk assessments concludes that the calculated core damage frequencies do not significantly change due to power uprate. Scram setpoints (equipment settings that initiate automatic plant shutdowns) are established such that there is no significant increase in scram frequency due to uprate. No new challenge to safety-related equipment results from power uprate.

The changes in consequences of hypothetical accidents which would occur from 102% of the uprated power, compared to those previously evaluated from greater than or equal to 102% of the original power, are in all cases insignificant, because the accident evaluations from power uprate compared with 105% of original power do not result in exceeding the NRC-approved acceptance limits. The spectrum of hypothetical accidents and transients has been investigated, and shown to meet the plant's currently licensed regulatory criteria. In the area of core design, for example, the fuel operating limits such as Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Safety Limit Minimum Critical Power Ratio (SLMCPR) are still met at the uprated power level, and fuel reload analyses will show plant transients meet the criteria accepted by the NRC as specified in NEDO–24011, "GESTAR II." Challenges to fuel (ECCS performance) are evaluated, and shown to still meet the criteria of 10 CFR 50.46 and Appendix K (Section 4.3 above, and Regulatory Guide 1.70 Safety Analysis Report Section 6.3).

Challenges to the containment have been evaluated, and the containment and its associated cooling systems will continue to meet 10 CFR Appendix A Criterion 38, Long Term Cooling, and Criterion 50, Containment.

Radiological release events (accidents) have been evaluated, and shown to meet the guidelines of 10 CFR 100 (Regulatory Guide 1.70 Safety Analysis Report Chapter 15).

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

As summarized below, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Equipment that could be affected by power uprate has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario or equipment failure mode was identified. The full spectrum of accident considerations defined in Regulatory Guide 1.70 has been evaluated and no new or different kind of accident has been identified. Power uprate uses existing technology, and applies it within the capabilities of already existing plant equipment in accordance with existing regulatory criteria and includes NRC approved codes, standards, and methods. General Electric has designed BWRs of higher power and no new power dependent accidents have been identified.

The technical specifications needed to implement power uprate require some small adjustments, with no change to the plant's physical configuration. All technical specification changes have been evaluated and are acceptable.

(3) Will the change involve a significant reduction in a margin of safety?

As summarized below, this change will not involve a significant reduction in a margin of safety.

The calculated loads on all affected structures, systems and components remain within their design allowables for all design basis event categories. No NRC acceptance criteria are exceeded. Some design and operational margins are affected by power uprate, however, the margins of safety originally designed into the plant are not affected by power uprate. Because the plant configuration and reactions to transients and hypothetical accidents do not exceed the presently approved NRC acceptance limits, power uprate does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: September 9, 1999.

Description of amendment request: The proposed amendment would revise Perry Operating License Appendix B, the Perry Environmental Protection Plan. The proposed change will eliminate the requirement in the Environmental Protection Plan to sample Lake Erie sediment in the Perry and Eastlake Plant area for *Corbicula*, since *Corbicula* and zebra mussels have already been identified, and control and treatment plans have been implemented which are effective on both species.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Perry Plant water source (Lake Erie) is now known to have mussels and clams present. Therefore, it is no longer necessary to use lake sampling techniques designed to provide advance notice of their arrival. Treatment programs and monitoring for system fouling are in place. The treatment programs and system monitoring for fouling makes it highly likely that equipment degradation due to *Corbicula* would be avoided or readily identified, allowing time for corrective actions. Therefore, the programs will ensure that plant systems remain capable of performing their intended functions. Since the lake sampling was designed to allow time to implement a control program, and the control program is now in place, elimination of the lake sampling program will not involve a significant increase in the probability or radiological consequences of an accident previously evaluated.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will eliminate the lake sampling program designed to detect the arrival of *Corbicula*, a particular species of clam, at the Perry Plant. Since the clam is now known to exist in the vicinity, and control methods are developed and implemented, advanced detection is no longer required. Since the proposed change involves only a monitoring program and does not change or modify the design, maintenance or operation of any plant equipment, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The current requirements for aquatic monitoring are designed to detect *Corbicula* prior to plant cooling water systems and heat exchangers becoming infested with clams and flow becoming degraded, and thus reducing the cooling available to safety systems.

Since an effective control method has already been implemented, the deletion of a lake sampling method to provide advance warning of clams in the area provides no significant benefit. The proposed change will continue to provide the same level of protection against system or component fouling that currently exists, thus the proposed change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308

NRC Section Chief: Anthony J. Mendiola.

First Energy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: September 9, 1999.

Description of amendment request: The proposed amendment includes nine separate changes to the Perry technical specifications. The proposed changes include increasing the minimum water volume of the condensate storage tank, clarification of minimum ECCS pump differential pressures, clarifications to Required Action and Condition statements, as well as minor nomenclature and editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

A summary of the proposed changes is:

1. (Condensate Storage Tank (CST) Level-Low.) The Allowable Values for the CST low water level limits (Technical Specification (TS) Table 3.3.5.1–1 Function 3.d and Table 3.3.5.2–1 Function 3) are being revised from greater than or equal to 59,700 gallons to greater than or equal to 90,300 gallons based on recent revisions to calculations taking into account potential vortex issues. This change also results in raising the TS Surveillance Requirement (SR) 3.5.2.2.b value for the normal CST level limit to greater than or equal to 249,700 gallons.

2. (Emergency Core Cooling System Pump Differential Pressure) TS SRs 3.5.1.4 and SR 3.5.2.5 are being revised to better describe what the differential pressures listed in the SRs represent at Perry Nuclear Power Plant, in lieu of the phrase "pump differential pressure".

3. (RCIC/RHR Steam Line Flow-High) The proposed change revises the nomenclature on a table to match the plant-specific instrument nomenclature.

4. (Containment Average Temperature-To-Relative-Humidity) This revision is a clarification to prevent misinterpretation of the Required Actions.

5. (Containment Vacuum Breakers) T 3.6.1.11 Required Action A.2 is being revised to clarify the proper actions to take if the required number of vacuum breakers is not operable. Required Action A.2 is being revised to add the word "required".

6. (Reporting Requirements) TS Administrative Controls Reporting Requirement 5.6.1 is being revised to clarify the definition of the time period of the report. "Calendar" is being removed from the term "calendar year" to clarify the time period that the Occupational Radiation Exposure Report is required to cover, to be consistent with the revised wording in 10 CFR 20.1003.

7. (High Radiation Area) TS Administrative Control 5.7 is being revised to update the titles of individuals responsible for radiation protection. The term "health physics" is being revised to "radiation protection" to be consistent with plant terminology.

8. (ECCS Instrumentation) Required Action E.1 Note 1 is being revised for consistency with other specifications. The word "in" is being added.

9. (Electrical Power Systems) In TS 3.8.3, the word "continued" is being added to the bottom of the page for consistency with other specifications.

The CST level change is adjusted in a conservative direction, as recommended by NRC inspectors during a Safety System Functional Inspection (SSFI) that was conducted in the spring of 1997. The current setpoints were reviewed and determined to be adequate, however it was suggested that some additional margin should be added. The "low level" limits are being raised to move the setpoint further away from the level at which vortexing would begin, and the normal water level limit is also being raised to ensure that at least 150,000 gallons of water would be available for HPCS and RCIC. Since the existing limits are already considered adequate, and the proposed changes are in the conservative direction, the proposed change does not involve a significant increase in the probability or radiological consequences of an accident previously evaluated.

The other eight proposed changes are administrative only, and can have no effect on any previously evaluated accident scenario. These eight changes have no effect on plant hardware, plant design, safety limit settings, or system operation and therefore do not modify or add any initiating parameters that would significantly increase the probability of an accident previously evaluated, or the radiological consequences of an event.

(2) The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will raise the Condensate Storage Tank level, which is conservative, and also includes some administrative changes to improve clarity, update titles or terminology. None of these changes can create the possibility of a new of different kind of accident from any accident previously evaluated.

(3) The proposed changes will not involve a significant reduction in the margin of safety.

The Condensate Storage Tank level change increases the margin of safety by providing more margin between the setpoint that causes the HPCS and RCIC suctions to shift from the CST to the Suppression Pool and the beginning of the formation of a vortex at their pump suctions. The other administrative changes have no effect on the margin of safety. Therefore the proposed change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: September 14, 1999.

Description of amendment request: The proposed amendment would delete one Operating License Condition, and revise another. License Condition 2.C.10 regarding controls over the containment air locks during plant outages would be deleted due to the effective implementation of Shutdown Safety administrative controls at Perry. License Condition 2.F would be revised to clarify the intent of reporting requirements for violations of the technical specifications and the Environmental Protection Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes delete or revise two Operating License Conditions, one that addresses administrative controls on air locks during refueling outages, and one regarding reporting of violations of the technical specifications and the Environmental Protection Plan.

These proposed changes to the Operating License are administrative only, and have no effect on any previously evaluated accident scenario. The proposed changes have no effect on plant hardware, plant design, safety limit setting, or plant system operation and therefore do not modify or add any initiating parameters that would significantly increase the probability of an accident previously evaluated.

The changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients, nor will they alter the operation of equipment important to safety previously evaluated in the accident analyses.

The proposed activity does not affect accident mitigation capabilities or the radiation release amounts for postulated accidents. Since there are no changes to previous accident analyses, the radiological consequences associated with these analyses remain unchanged.

Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature, and do not involve any physical alteration of the plant (no new or different type of equipment will be installed). They do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes have no impact on component and system interactions.

The safety functions of plant structures, systems, and components are also not changed in any manner, nor is the reliability of any structure, system, or component reduced.

The proposed changes are not providing for operation in a mode that is not already evaluated. These changes do not affect the operation of any systems or components, nor do they involve any potential initiating events that would create any new or different kind of event.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature (they delete or revise two license conditions). Administrative controls will continue to be applied to the opening of the air locks during plant shutdown periods, and to the reporting of violations of the technical specifications and the Environmental Protection Plan.

There is no impact on safety limits or limiting safety system settings. The changes do not affect any plant safety parameters or setpoints. No physical or operational changes to the facility will result from the proposed changes.

The proposed changes have no impact on any safety analysis assumptions. Consequently, no margin of safety as described in the Final Safety Analysis Report or defined in the basis of any technical specification is reduced as a result of these changes. These proposed changes do not detrimentally affect the ability of structures, systems, and components important to safety to fulfill their intended safety functions.

Therefore, the proposed changes do not cause a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: October 12, 1999.

Description of amendment requests: The proposed amendments would revise Technical Specification (T/S) Surveillance Requirement (SR) 4.6.2.2.d for the spray additive system to relocate the details associated with the acceptance criteria and test parameters to the associated T/S Bases. Additionally, certain administrative text format changes are being proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes relocate the details associated with the acceptance criteria and test parameters from the T/S SR to the associated Bases and do not affect system operability or performance. The format changes in the text on each page are administrative in nature and do not result in any change in plant operation. Relocation of this information to the Bases is administrative in nature and does not affect the probability or consequences of any accident previously evaluated. No actual change to the requirement is made. Actual plant operation is not affected by the administrative changes. No methods of operation of plant systems, structures or components are changed. Operation of accident mitigation features is not changed. Consequently, there is no affect upon the probability of any previously analyzed accident, transient, accident initiators, or precursor events. Additionally, because there is no actual change in plant design or operation, there is no affect upon radioactive material inventories, plant shielding, or effluent release points. Therefore, these changes do not significantly increase the probability of occurrence or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes relocate the details associated with the acceptance criteria and test parameters from the T/S SR to the associated Bases and do not affect system operability or performance. The format changes in the text on each page are administrative in nature and do not result in any change in plant operation. Facility operation and procedures are not changed. Relocation of this information to the Bases is administrative in nature and does not affect [sic] create any new accident scenarios, accident initiators, or precursor events. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes relocate the details associated with acceptance criteria and test parameters from the T/S SR to the associated Bases and do not modify T/S safety settings, setpoints, or other values. The format changes in the text on each page are administrative in nature and do not result in any change in plant operation. There is no effect upon operating margins and accident margins because the administrative changes do not change the manner of operation of plant systems, structures, or components. Plant emergency and abnormal operating procedures are not affected. There is no change of actual testing methodology, test parameters, or acceptance criteria. The response of the plant to an event is the same. Potential offsite doses are unaffected because operation of the facility is unchanged. Relocation of the testing details to the Bases is acceptable because controls are in place for T/S Bases changes which require evaluation of changes under the provisions of 10 CFR 50.59. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jeremy J. Euto, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: September 30, 1999.

Description of amendment request: The proposed amendment would change the Technical Specification surveillance periodicity requirements for the control room emergency filtration system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

During an accident, the Control Room Emergency Filtration [EFT] System provides filtered air to pressurize the Control Room to minimize the activity, and therefore the radiological dose, inside the Control Room. Technical Specification surveillance requirements are established in order to ensure that the EFT System will perform its safety function during an accident. The proposed amendment eliminates unnecessary testing which is not required to show that the filters are operable and which causes unnecessary wear and tear on the system. The remaining surveillances adequately show that the system is operable and capable of performing its safety function. Dose to the public and the Control Room operators are not affected by the proposed change.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not significantly increase the probability or the consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes. The proposed surveillance requirements are consistent with industry and regulatory guidance and show that the system is capable of performing its safety function. System reliability is enhanced by the proposed change by eliminating unnecessary wear on the system.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment is within current industry and regulatory standards for testing filters. The proposed amendment maintains margins of safety. Off-site and Control Room dose assessments are not affected by the proposed amendment, since the ability of the EFT System to perform its safety function is shown by the proposed surveillance requirements. The proposed change to the surveillance provides assurance that the system will perform at the filter efficiency used in the evaluation of the radiological consequences of the postulated events. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 30, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications associated with the Safety Limit Minimum Critical Power Ratios (SLMCPRs) in order to support the operation of Hope Creek in the upcoming Cycle 10 with a mixed core of General Electric (GE) and Asea Brown Bovieri/Combustion Engineering (ABB/CE) fuel. In addition, administrative changes would be made to the Technical Specifications to reflect the change in fuel vendor from GE to ABB/CE.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised SLMCPRs for Hope Creek for incorporation into the Technical Specifications, and its use to determine cycle-specific thermal limits, have been performed using NRC [U.S. Nuclear Regulatory Commission] approved methods. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

There are no significant increases in the consequences of an accident previously evaluated. The basis of the MCPR Safety Limit is to ensure that no mechanistic fuel damage due to clad overheating is calculated to occur if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased.

Removal of the cycle specific footnote for the Safety Limit applicability will not involve a significant increase in the probability or consequences of an accident previously evaluated since the change is administrative and does not affect the plant or fuel design or operation.

Likewise, the proposed changes to the Average Planar Heat Generation Rate (APLHGR), Minimum Critical Power Ratio (MCPR), Recirculation Loop Limiting Condition for Operation (LCO) Action Statements, and references to fuel vendor analyses and reports do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes to the APLHGR, MCPR and Recirculation Loop LCOs are considered to be administrative in nature since the Core Operating Limits Report (COLR) will continue to be used to appropriately control and limit the bounds of plant operation with slow control rods or during single recirculation loop operation, and the COLR will still be developed in accordance with NRC approved methods. Similarly, the revised references to the fuel vendor throughout the Technical Specifications are also considered to be administrative in nature since they reflect the current status of NRC approval of methodologies utilized by PSE&G [Public Service Electric and Gas Company] and the fuel vendor to develop operating and safety limits for the fuel and core designs. These proposed changes do not alter the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

There are no significant increases in the consequences of an accident previously evaluated. The basis of the COLR and the PSE&G and fuel vendor methodologies is to ensure that no mechanistic fuel damage is calculated to occur if the limits on plant operation are not violated. The COLR will continue to preserve the existing margin to fuel damage and the probability of fuel damage is not increased.

Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes contained in this submittal result from an analysis of the reload core using the same fuel types as previous cycles and an ABB/CE fuel design with extensive operating experience. These changes do not involve any new method for operating the facility and do not involve any facility modifications for the reload core operation. No new initiating events or transients result from these changes. Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

Removal of the cycle specific footnote for the Safety Limit applicability does not create the possibility of a new or different kind of accident from any accident previously evaluated since the change is administrative and does not affect the plant or fuel design or operation.

The changes to the APLHGR, MCPR and Recirculation Loop LCOs are considered to be administrative in nature since the Core Operating Limits Report (COLR) will continue to be used to appropriately control and limit the bounds of plant operation with slow control rods or during single recirculation loop operation, and the COLR will still be developed in accordance with NRC approved methods. These changes do not involve any new method for operating the facility and do not involve any facility modifications in addition to the new fuel design. No new initiating events or transients result from these changes. Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident.

The revised references to the fuel vendor throughout the Technical Specifications are also considered to be administrative in nature since they reflect the current status of NRC approval of methodologies utilized by PSE&G and the fuel vendor to develop operating and safety limits for the fuel and core designs. These changes do not involve any new method for operating the facility and do not involve any facility modifications in addition to the new fuel design. No new initiating events or transients result from these changes. Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the Technical Specification bases will remain the same. The new SLMCPRs are calculated using NRC approved methods, which are in accordance with the current fuel designs, and licensing criteria. The MCPR Safety Limit remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

Removal of the cycle specific footnote for the Safety Limit applicability does not create the possibility of a new or different kind of accident from any accident previously evaluated since the SLMCPR will continue to be evaluated on a cycle-specific basis.

The margin of safety as defined in the Technical Specification bases will likewise remain unaffected by the proposed changes to APLHGR, MCPR and Recirculation Loop LCOs, and the revised references to the fuel vendor throughout the Technical Specifications. These changes establish controls for plant operation and establish bases for fuel analyses that reflect NRC approved methods, and are in accordance with the current fuel design and licensing criteria. These changes will continue to ensure that the plant is operated within specified acceptable fuel design limits. Therefore, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 8, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.8.1, "A.C. Sources, Operating," and associated Bases, by eliminating the requirement for accelerated testing of the standby diesel generators and the associated reporting requirements. The TS Index would also be revised to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve hardware changes nor do they affect the operational limits or design of the standby diesel generators or power systems. These changes do not alter assumptions made in the safety analysis. In conjunction with the maintenance rule program, these changes continue to assure the operability and reliability of the standby diesel generators while minimizing the number of required engine starts and associated wear. These changes are also consistent with the guidance provided in Generic Letter 94–01, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators."

Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes minimize the number of required standby diesel generator starts; they do not affect the operational limits or design. The performance capability of the standby diesel generators is not affected. These changes do not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing normal plant operation. These changes do not alter assumptions made in the safety analysis. These changes are also consistent with the guidance provided in Generic Letter 94–01.

Therefore, the changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not involve a change in the operational limits or design of the emergency power system. The design and capabilities of the standby diesel generators are not affected by these changes. These changes are also consistent with the guidance provided in Generic Letter 94–01.

The proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 8, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification 3/4.8.1, "A.C. Sources, Operating," and associated Bases, by relocating the 18-month surveillance to subject the standby diesel generator to inspections in accordance with procedures prepared in conjunction with its manufacturer's recommendations, to the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change moves the requirement to perform manufacturer's recommended inspections of the Standby Diesel Generators from the Technical Specifications to the Updated Final Safety Analysis Report (UFSAR). The change does not result in any hardware or operating procedure changes. The requirement being removed from the Technical Specifications is not the initiator of any analyzed event. The UFSAR is maintained using the provisions of 10 CFR 50.59. Since any changes will be evaluated per 10 CFR 50.59, no significant increase in the probability or consequences of an accident previously evaluated will be allowed without prior NRC approval. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change moves the requirement to perform manufacturer's recommended inspections of the Standby Diesel Generators from the Technical Specifications to the Updated Final Safety Analysis Report (UFSAR). The change does not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing normal plant operation. The change does not impose different requirements. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change moves the requirement to perform manufacturer's recommended inspections of the Standby Diesel Generators from the Technical Specifications to the Updated Final Safety Analysis Report (UFSAR). The change does not reduce the margin of safety since the location of details has no impact on any safety analysis assumptions. In addition, the requirement being transposed from the Technical Specification to the UFSAR [is the] same as the existing Technical Specification. Also, the UFSAR is maintained using the provisions of 10 CFR 50.59. Since any changes will be evaluated per 10 CFR 50.59, no significant reduction in a margin of safety will be allowed without prior NRC approval.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority (TVA), Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment request: September 28, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications to increase the maximum allowable leakage rates for main steam isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA proposes to utilize the main steam drain lines to preferentially direct MSIV leakage to the main condenser. This drain path takes advantage of the large volume of the steam lines and condenser to provide holdup and plate-out of fission products that may leak through the closed MSIVs. In this approach, the main steam lines, steam drain piping, and the main condenser are used to mitigate the consequences of an accident to limit potential off-site exposures below those specified in 10 CFR 100 and 10 CFR 50 Appendix A, GDC 19 for control room dose limits.

Seismic verification walkdowns and evaluations of representative piping/supports were performed to demonstrate the main steam line piping and components that comprise the ALT path were rugged, and able to perform the safety function of MSIV leakage control following an Design Basis Earthquake (DBE). Thus, it has been concluded the primary components in the MSIV alternate treatment flow path can be relied upon to maintain structural integrity.

Therefore, the proposed amendment does not involve changes to structures, components, or systems which would affect the probability of an accident previously evaluated in the Browns Ferry Final Safety Analysis Report (FSAR).

A plant-specific radiological analysis has been performed to assess the effects of the proposed increase in MSIV leakage criteria in terms of off-site doses and main control room dose. This analysis uses the holdup and plate-out factors described in NEDC–31858P, Revision 2. The analysis shows the dose contribution from the proposed increase in leakage criteria is acceptable compared to doses limits prescribed in 10 CFR 100 and 10 CFR 50, Appendix A, GDC 19. Therefore, the proposed changes do not significantly increase the consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes require the use of the main steam piping and the condenser to process MSIV leakage. This additional function does not compromise the reliability of these systems. They will continue to function as intended and not be subject to a failure of a different kind than previously considered. In addition, MSIV functionality will not be adversely impacted by the increased leakage limit. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change to TS Surveillance Requirement 3.6.1.3.10 to increase the allowable MSIV leakage does not involve a significant reduction in the margin of safety. The allowable leak rate specified for the MSIVs is used to quantify a maximum amount of leakage assumed to bypass containment. The results of the re-analysis supporting these changes were evaluated against the dose limits contained in 10 CFR 100 for off-site doses and 10 CFR 50, Appendix A, GDC 19 for control room doses. Sufficient margin relative to the regulatory limits is maintained even when conservative assumptions and methods are utilized. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: September 30, 1999.

Description of amendment request: The proposed amendments consist of administrative revisions to the Operating Licenses for BFN Units 1, 2 and 3 that delete license conditions that have become outdated, are no longer applicable, or are redundant, and consolidate license conditions which currently exist in two locations in each units' Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes requested by this submittal are administrative in nature and do not change the way BFN operates. The proposed changes are intended to: delete redundant paragraphs, delete requirements and authorizations for modifications that have been completed, delete an authorization to temporarily store radioactive material on site, delete an exemption from a General Design Criterion which has expired, and consolidate license conditions which currently exist in two locations in each units Technical Specifications.

The change does not affect any design bases accident or the ability of any safe shutdown equipment to perform its design function. There are no physical modifications that are required to implement this license condition update. There is no impact on plant equipment or changes to operating procedures. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes described above are administrative in nature and do not change the way BFN operates. There are no physical modifications authorized by the proposed changes and there are no procedure or process changes that are requested. Changes requested are intended to ensure the license conditions reflect the current status of the plant. There is no impact on any accident analysis created by this change. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The changes described above are administrative in nature and do not change the way BFN operates. There are no procedural or physical changes required by this amendment. The license conditions are being updated partially as a result of NRC Information Notice 97–43 which highlighted the importance of periodically verifying compliance with the Operating License. These changes are intended to delete license conditions which are no longer needed or are redundant in order to ensure the license conditions accurately reflect the current status of the licensed facility. The change does not affect any design bases accident or the ability of any safe shutdown equipment to perform its design function, therefore no margins of safety have been affected by any of these changes. Accordingly, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Acting Section Chief: Ronald W. Hernan.

Previously Published Notices of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content of the same as above. They were published as individual notices either because the time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards considerations.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: June 8, 1999.

Brief description of amendments request: The proposed amendments would revise Technical Specification (TS) 3.7.15, "Fuel Storage Pool Boron Concentration," TS 3.7.17, "Spent Fuel Assembly Storage," and TS 4.3.1, "Criticality," to increase spent fuel pool storage capacity by crediting soluble boron and decay time in the safety analysis for the spent fuel pool storage racks. The proposed amendments would also increase the maximum radially averaged fuel enrichment from 4.3 weight percent to 4.8 weight percent.

Date of publication of individual notice in **Federal Register**: September 20, 1999 (64 FR 50835)

Expiration date of individual notice: October 20, 1999.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: October 8, 1999.

Brief description of amendments request: The proposed amendment would revise Technical Specification (TS) Section 3.8.4, "DC Sources—Operating," to waive, on a one-time basis, the requirement to perform Surveillance Requirement (SR) 3.8.4.8 for Unit 1 channels A, B, and C.

Date of publication of individual notice in **Federal Register**: October 19, 1999 (64 FR 56369).

Expiration date of individual notice: For comments on proposed no significant hazards consideration determination: November 2, 1999; for opportunity for hearing: November 18, 1999.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: October 20, 1998 (PCN 485), as supplemented August 13, 1999.

Brief description of amendment request: The proposed amendments would revise the San Onofre Nuclear Generating Station Units 2 and 3 technical specifications Surveillance Requirement 3.3.9 to include a response time testing requirement for the control room isolation signal.

Date of publication of individual notice in **Federal Register**: October 12, 1999 (64 FR 55311.

Expiration date of individual notice: November 12, 1999.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: October 27, 1998.

Brief description of amendment: The amendments update the Operating Licenses for the Brunswick Steam Electric Plant, Units 1 and 2.

Date of issuance: October 5, 1999.

Effective date: October 5, 1999.

Amendment No.: 206 and 236.

Facility Operating License Nos. DPR–71 and DPR–62: Amendment revises the Operating Licenses.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71964).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1999.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: June 2, 1999, as supplemented on September 1, 1999.

Brief description of amendment: This amendment relocates Technical Specification (TS) Section 6.5, "REVIEW AND AUDIT," TS 6.8.2, TS 6.8.3, and TS Section 6.10, "RECORD RETENTION," intact from the Harris Nuclear Plant (HNP) TS to the Quality Assurance Program Description (QAPD) currently located in HNP Final Safety Analysis Report Section 17.3. Future changes to the associated relocated TS will be processed in accordance with 10 CFR 50.54(a). The change is consistent with NUREG–1431, Revision 1, "Standard Technical Specifications, Westinghouse Plants," dated April 1995, and with the guidance provided in NRC Administrative Letter 95–06, "Relocation of Technical Specification Administrative Controls related To Quality Assurance," dated December 12, 1995.

Date of issuance: October 19, 1999.

Effective date: October 19, 1999.

Amendment No.: 92.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: June 30, 1999 (64 FR 35201).

The September 1, 1999, submittal contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1999.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 30, 1999.

Brief description of amendments: The amendments revised the requirements related to the cross-tie of DC power buses between units, remove references to the AT&T batteries which have been replaced at Braidwood Station, and remove references to the 10-day allowed outage time (AOT) required for replacement of the AT&T batteries at Braidwood, Unit 2, which was granted in Amendment Nos. 99 and 99 issued to Braidwood Station, Unit Nos. 1 and 2, on March 26, 1999.

Date of issuance: October 13, 1999.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 111 and 104.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 11, 1999 (64 FR 43767).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 13, 1999.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: November 9, 1998, and July 7, 1999.

Brief description of amendments: The amendments revised Technical Specification Table 3.3.3–2, "Emergency Core Cooling System Actuation Instrumentation Setpoints," to modify the degraded voltage second level undervoltage relay setpoint and allowable value.

Date of issuance: October 15, 1999.

Effective date: Immediately, to be implemented prior to startup from L1R08 for Unit 1 and prior to startup from L2R08 for Unit 2.

Amendment Nos.: 135 and 120.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 13, 1999 (64 FR 2245) and August 11, 1999 (64 FR 43769).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 15, 1999.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: August 13, 1999, as supplemented on August 27, 1999.

Brief description of amendments: The amendments revise Technical Specification (TS) Section 1.0, "Definitions," Item 1.7, "Core Alteration," to specify that instrumentation and control rod movements are not considered core alterations if there are no fuel assemblies in the associated cell. The amendments also revise TS Sections 3/4.1, 3/4.3, and 3/4.9 to reflect the change in definition. In addition, a license condition is added as follows: "The licensee is prohibited from moving any fuel assemblies within the reactor pressure vessel unless all control rods except one are fully inserted during refueling in Mode 5".

Date of issuance: October 18, 1999.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 136 and 121.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Operating Licenses and Technical Specifications.

Date of initial notice in **Federal Register**: September 8, 1999 (64 FR 48860).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 18, 1999.

No significant hazards consideration comments received: No.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application of amendment: June 3, 1999, and as supplemented by letter dated August 24, 1999 .

Brief description of amendment: The amendment revises the Operating License to clarify that the license is not terminated until the Commission notifies the licensee in writing, and relocates certain Technical Specification (TS) requirements to licensee-controlled documents. The administrative controls section of the TSs have been revised to more closely conform to the standardized TSs. Administrative controls have been added for the control of radioactive effluents. A TS Bases Control Program has been added. The weight limit for loads carried over the spent fuel pool (SFP) has been increased. The amendment deletes certain TSs that are either (1) no longer applicable to the permanently shutdown and defueled state of the reactor, or (2) which duplicate regulatory requirements, or (3) which duplicate information located in the Updated Final Safety Analysis Report. A number of editorial changes were made to clarify the language used, to correct typographical errors, to renumber the listings, to remove section numbers that no longer contain requirements, and to renumber the pages in the TSs.

Date of issuance: October 19, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 195.

Facility Operating License No. DPR–61: The amendment revised the Operating License and the Technical Specifications.

Date of original notice in **Federal Register:** July 14, 1999 (64 FR 38024).

The August 24, 1999, supplement contained clarifications of the June 3, 1999 amendment request. The supplemental information did not change the staff's initial proposed no significant hazards consideration determination nor expand the scope of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1999.

No significant hazards consideration received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 24, 1999.

Description of amendment request: The amendment revises current Technical Specification (TS) 3.6.1.8 by adding footnote "**" to Action b. The footnote allows continued operation of Fermi 2 with the leakage of penetration X–26 exceeding the limit in TS 4.6.1.8.2, provided certain compensatory measures are taken. Operation is allowed to continue until the next plant shutdown.

Because the NRC staff issued the Fermi 2 improved standard TSs (ITS) on September 30, 1999, with implementation within 90 days, this amendment also provides pages that are compatible with the ITS. The amendment adds a new special operations TS, ITS 3.10.8, to address the compensatory actions and other requirements associated with penetration X–26.

Date of issuance: October 19, 1999.

Effective date: October 19, 1999, and shall be implemented within 5 days.

Amendment No.: 135.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (64 FR 53421, dated October 1, 1999). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by November 1, 1999, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final NSHC determination are contained in a Safety Evaluation dated October 19, 1999.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: Claudia M. Craig.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 23, 1999, as supplemented by letters dated August 6, September 8, and October 4, 1999.

Brief description of amendment: The amendment revises Technical Specification requirements for handling irradiated fuel in the Containment Building and in the Auxiliary Building, and selected specifications associated with performing core alterations.

Date of issuance: October 20, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No: 139.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications and Operating License.

Date of initial notice in **Federal Register**: August 25, 1999 (64 FR 46435).

The August 6, September 8, and October 4, 1999, submittals provided additional clarifying information and did not change the initial proposed no significant hazards consideration determination and did not expand the scope of the original application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 1999.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: March 8, 1999.

Brief description of amendments: The amendments revised the Technical Specifications (TS), Section 6.0, Administrative Controls, by removing requirements that are adequately controlled by existing regulations other than 10 CFR 50.36 and the TS. The amendments also relocate selected requirements from TS 6.0 to licensee-controlled documents or programs (e.g., the final safety analysis report or the quality assurance plan). Guidance on the changes was developed by the NRC and provided in the Standard Technical Specifications for Pressurized Water Reactor Plants, NUREG–1431, and Administrative Letter 95–06, "Relocation of Technical Specification

Administrative Controls Related to Quality Assurance," issued on December 12, 1995.

Date of issuance: October 6, 1999.

Effective date: As of date of issue, to be implemented within 90 days of issuance.

Amendment Nos.: 201 and 195.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TS.

Date of initial notice in **Federal Register**: April 7, 1999 (64 FR 17025).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 1999.

No significant hazards consideration comments received: No.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: May 10, 1999, as supplemented July 16 and October 4, 1999.

Brief description of amendment: The amendment revised Duane Arnold Energy Center (DAEC) Technical Specification (TS) 2.1.1.2 to revise the Safety Limit Minimum Critical Power Ratio (SLMCPR) to support operation with GE–12 fuel with a 10x10 pin array.

Date of issuance: October 20, 1999.

Effective date: Immediately, to be implemented within 30 days

Amendment No.: 229.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 14, 1999 (64 FR 38029).

The July 16 and October 4, 1999, letters provided additional clarifying information within the scope of the original **Federal Register** notice and did not affect the NRC staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 1999.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 14, 1998.

Brief description of amendments: The amendments revise Technical Specification page 3/4 5–6, "Limiting Conditions for Operation and Surveillance Requirements—Emergency Core Cooling Systems (ECCS)," and its associated Bases to change pump runout limits for a safety injection pump to 675 gallons per minute (gpm) unless the pump is specifically tested to a higher flow rate not to exceed 700 gpm for Units 1 and 2.

Date of issuance: October 21, 1999.

Effective date: October 21, 1999, with full implementation within 45 days.

Amendment Nos.: 229 and 212.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 1999 (64 FR 47533).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1999.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: May 21, 1999.

Brief description of amendments: The amendments change the Technical Specifications (TS) to allow reactor coolant system temperature changes in certain Mode 5 and 6 action statements if the shutdown margin is sufficient to accommodate the expected temperature change. In addition, footnotes regarding additions of water from the refueling water storage tank to the reactor coolant system are clarified and relocated to action statements. Additional actions are added in Table 3.3–1, "Reactor Trip System Instrumentation," when the required source range neutron flux channel is inoperable. Corresponding changes are proposed for the Bases for TS 3/4.1.1, "Boration Control," and TS 3/4.1.2, "Boration Systems." Administrative changes are proposed to improve clarity. Finally, additions are made to shutdown margin TS surveillance requirements to address use of a boron penalty (requirement for additional boron) during residual heat removal system operation in Modes 4 and 5.

Date of issuance: October 21, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 230 and 213.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1999 (64 FR 37574).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1999.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 31, 1998, as supplemented May 17, 1999.

Brief description of amendment: The amendment revises the technical specification reactor pressure vessel (RPV) pressure-temperature limit curves, deletes completed RPV sample surveillance requirements, deletes the requirement to withdraw a specimen at the next refueling outage, removes the standby liquid control system relief valve setpoint, and makes associated administrative changes.

Date of issuance: October 12, 1999.

Effective date: October 12, 1999, with full implementation within 45 days.

Amendment No.: 106.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 10, 1999 (64 FR 6706). The May 17, 1999, submittal added clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1999.

No significant hazards consideration comments received: No.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 9, 1999.

Brief description of amendment: The amendment changes the Technical Specifications by increasing the allowable outage time for any one safety injection pump.

Date of issuance: October 12, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 196.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: June 2, 1999 (64 FR 297147).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1999.

No significant hazards consideration comments received: No.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 29, 1999, as supplemented August 2, 1999.

Brief description of amendment: The amendment changes the Technical Specifications by increasing the allowable control rod misalignment when operating at or below 85% power.

Date of issuance: October 14, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 197.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19564).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1999.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: August 19, 1999, as supplemented by letter dated October 8, 1999.

Brief description of amendment: The amendment revises the TS to incorporate the new Pressure/Temperature Limits Curves consistent with the analysis results of reactor specimen W.

Date of issuance: October 21, 1999.

Effective date: October 21, 1999.

Amendment No.: 143.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 8, 1999 (64 FR 48865). The October 8, 1999, submittal contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1999.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 2, 1999 (TS 98–05).

Brief description of amendments: The amendments delete the Sequoyah Nuclear Plant. License Conditions that require an Independent Safety Engineering Group.

Date of issuance: October 12, 1999.

Effective date: As of the date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 248 and 239.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the License.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24201).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1999.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 18, 1999.

Brief description of amendment: The amendment revises the definition of "Surveillance Frequency" to incorporate provisions that apply upon the discovery of a missed Technical Specification surveillance. This change allows a delay in performing the actions of the associated limiting conditions for operation for up to 24 hours or up to the limit of the specified frequency, whichever is less, when it is discovered that a surveillance was not performed within its specified frequency.

Date of Issuance: October 13, 1999.

Effective date: October 13, 1999, and shall be implemented within 30 days.

Amendment No.: 179.

Facility Operating License No. DPR–28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1999 (64 FR 48867).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 13, 1999.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 8, 1999, as supplemented by letter dated September 2, 1999.

Brief description of amendment: The amendment increased the allowable values for engineered safety features actuation system (ESFAS) loss-of-power 4 kV undervoltage trips in the current Technical Specifications (TSs) Table 3.3–4 (functional units 8.a and 8.b) and in surveillance requirement (SR) 3.3.5.3 of the improved TSs. The word "nominal" is also added to describe the trip setpoint in SR 3.3.5.3 and in the Bases of the improved TSs. The improved TSs were issued in Amendment 123 dated March 31, 1999, but have not yet been implemented.

Date of issuance: October 12, 1999.

Effective date: October 12, 1999, to be implemented within 60 days from the date of issuance.

Amendment No.: 128.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 11, 1999 (64 FR 43782).

The September 2, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1999.

No significant hazards consideration comments received: No.

Yankee Atomic Electric Co., Docket No. 50–29, Yankee Nuclear Power Station (YNPS) Franklin County, Massachusetts

Date of application for amendment: March 17, 1999

Brief description of amendment: Revises the Possession Only License by deleting technical specifications related to hours of work and putting these requirements in appropriate Administrative Procedures.

Date of issuance: October 8, 1999.

Effective date: October 8, 1999, Implementation of this amendment includes incorporation of hours of work restrictions into the Administrative Procedures as described in the licensee's application dated March 17, 1999, and evaluated in the staff's safety evaluation attached to the amendment, and written notification to NRC that the amendment has been fully implemented.

Amendment No.: 153.

Facility Operating License No. DPR–3. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 7, 1999 (64 FR 17032).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 1999.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 27th day of October 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28598 Filed 11–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410]

Niagara Mohawk Power Corporation Nine Mile Point Nuclear Station, unit Nos. 1 and 2 Issuance of Final Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a letter dated April 5, 1999, (Petition) filed by Robert Norway (Petitioner) pursuant to § 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petitioner requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to Niagara Mohawk Power Corporation (NMPC) and its senior nuclear and corporate management. The Petitioner requested that the Commission (1) take enforcement action against NMPC and its senior nuclear and corporate management and, as a minimum, against three named individuals, for submitting an altered 1994 employee record to the NRC at a predecisional enforcement conference on May 10, 1996; (2) take enforcement action against these same parties for presenting at this predecisional enforcement conference a false written record of what the Administrative Law Judge determined in the Department of Labor's proceeding in 95–ERA–005; (3) take enforcement action against these same parties for placing confidential employee information into the public record in violation of 10 CFR 2.790; and (4) take enforcement action against these same parties for an additional act of discrimination, pursuant to 10 CFR 50.7, for destroying the Petitioner's credibility and reputation in the nuclear industry. The Petitioner also requested that the NRC forward these issues to the Department of Justice for consideration of criminal prosecution.

In addition to these requests for enforcement actions, the Petitioner also requested that the following other actions be implemented: (1) That the agency perform an independent review of all of NMPC's docketed files associated with the individuals who committed the alleged fraud; (2) that the NRC forward the complaint to the NRC's Office of the Inspector General for an investigation of possible deliberate misconduct on the part of the NRC staff; (3) that an independent oversight group be established to oversee the NMPC Human Resources Department and Employee Concerns Program; (4) that a public meeting be held to obtain public comments pertaining to a number of issues, including discrimination and the placement of fraudulent documentation into public records; and (5) that the NRC publicly post NMPC's Safety Evaluation 96–09, which addresses the Residual Heat Removal Alternate Shutdown Cooling for Unit 2, to make it available for public comment, or require NMPC to re-perform this safety evaluation.

The Director of the Office of Nuclear Reactor Regulation has complied with the Petitioner's request to have his complaint forwarded to the NRC's Office of the Inspector General. The Petitioner's technical concern has been addressed independent of the Director's Decision by the NRC staff's letter to the Petitioner dated October 6, 1999. The Petitioner's additional requests are not supported for the reasons that are explained in the "Final Director's Decision Pursuant to 10 CFR 2.206" (DD–99–13). The complete text of the Final Director's Decision follows this notice and is available for public inspection at the Commission's Public Document Rooms located in the Gelman Building, 2120 L Street, NW., Washington, DC, and in the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 28th day of October 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28759 Filed 11–2–99; 8:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft Revision To NUREG–1574; Standard Review Plan for Antitrust Reviews

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability: Draft Revision 1 to Nureg 1574, "Standard Review Plan (SRP) for Antitrust Reviews".

SUMMARY: The NRC is seeking public comment on a Draft Revision to NUREG–1574, "Standard Review Plan on Antitrust Reviews." The Standard Review Plan (SRP) is being revised in accordance with Commission guidance to remove any implication that the NRC would conduct antitrust reviews of license transfers after issuance of an operating license. The draft revised SRP is being published to obtain public comments which will be considered in evaluating whether the NRC review process in this area should be changed. The revised draft SRP will be available on NRC electronic bulletin boards and in the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555–001. A free single copy of Draft Revision 1 to NUREG–1574, to the extent of supply, may be requested by writing to U.S. Nuclear Regulatory Commission, Records Management Branch, Washington, DC 20555–0001.

DATES: The public is invited to submit comments on the revised draft SRP by January 3, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date. On the basis of the submitted comments, the Commission will determine whether to modify the revised draft SRP before issuing it in final form.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

SUPPLEMENTARY INFORMATION: The Draft Revision to NUREG–1574, "Standard Review Plan on Antitrust Reviews," describes the procedures used by the NRC staff to implement the antitrust review and enforcement prescribed in Sections 105 and 186 of the Atomic Energy Act of 1954, as amended, and will replace the final NUREG–1574 published in December 1997. These procedures are principally covered by the Commission's Rules and Regulations in 10 CFR 2.101, 2.102, 2.2, 50.33a, 52.77, 50.80, and 50.90. These procedures set forth the steps and criteria the staff applies in the antitrust review of construction permit/initial operating license applications. In addition, the procedures describe how the staff enforces compliance by licensees with antitrust license conditions.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Davis, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Davis can be contacted at (301) 415–1016, via E-mail at *mjd1@nrc.gov*, or by writing to: Michael J. Davis, U.S. Nuclear Regulatory Commission, MS O–11F1, Washington, DC 20555.

Dated at Rockville, Maryland, this 18th day of October 1999.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28760 Filed 11–2–99; 8:15 am]

BILLING CODE 7590–01–P

PANAMA CANAL COMMISSION

Canal Zone Postal Money Orders and Savings Certificates

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: The Panama Canal Commission (Commission) hereby provides notice the Commission and the U.S. Government will no longer be responsible for the distribution of any accumulated unpaid balances relating to Canal Zone postal-savings deposits, postal-savings certificates, and postal money orders.

DATES: This action shall become effective December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Eva Chen, Manager, Accounting Division, Department of Financial Management, Telephone 011–507–272–4727, Facsimile 011–507–272–3849.

SUPPLEMENTARY INFORMATION: When the Panama Canal Commission was created in 1979 by Public Law 96–70, approved September 27, 1979, Section 1331 of that law transferred the responsibility for the management of the Postal Savings deposits, certificates and money orders to the Commission. Public Law 140–201, approved September 23, 1996, released the Commission from liability for unpaid balances due on postal-savings deposits and certificates and postal money orders effective December 1, 1999.

(Authority: 22 U.S.C. 3741)

Therefore, under the authority of 22 U.S.C. 3741, the Panama Canal Commission hereby gives notice after December 1, 1999, it will no longer be liable for any unpaid balances due on postal-savings deposits and certificates and postal money orders presented for payment.

Dated: October 13, 1999.

John L. Haines, Jr.,

General Counsel, Panama Canal Commission.

[FR Doc. 99–28785 Filed 11–2–99; 8:45 am]

BILLING CODE 3640–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Advantage Marketing Systems, Inc., Common Stock, $.0001 Par Value per Share) File No. 1–13343

October 28, 1999.

Advantage Marketing Systems, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Incorporated ("BSE" or "Exchange").

The Security of the Company has been listed for trading on the BSE and, pursuant to a Registration Statement on Form 8–A filed with the Commission which became effective on June 9, 1999, on the American Stock Exchange LLC ("Amex"). Trading in the Company's Security on the Amex commenced at the opening of business on June 15, 1999.

In making its decision to withdraw its Security from listing and registration on the BSE, the Company considered the direct and indirect costs arising from maintaining the listing of such Security on the BSE and Amex simultaneously. Moreover, the Company does not see any particular advantage in having its Security trade in two markets and seeks to avoid fragmenting the market for its Security.

The Company has complied with the rules of the BSE by filing with the Exchange a certified copy of the preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the BSE and by setting forth in detail to the Exchange the reasons for the proposed withdrawal and the facts to support thereof.

The BSE has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The Company's application relates solely to the withdrawal of the Securities from listing and registration on the BSE and shall have no effect upon their continued listing and registration on the Amex. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file with the Commission and the Amex any reports required under Section 13 of the Act.

Any interested person may, on or before November 18, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–28756 Filed 11–2–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (IKON Office Solutions, Inc., Common Stock, No Par Valance, and Associated Preferred Share Purchase Rights) File No. 1–5964

October 28, 1999

IKON Office Solutions, Inc. ("Company") has filed and application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Chicago Stock Exchange, Incorporated ("CHX") and the Philadelphia Stock Exchange, Inc. ("Phlx") (the CHX and the Phlx shall be referred to herein collectively as the "Exchanges").

The reasons cited in the application for withdrawing the Securities from listing and registration on the Exchanges include the following:

The Securities of the Company have been listed for trading on the CHX, the Phlx and the New York Stock Exchange, Inc. ("NYSE"). The Board of Directors of the Company has authorized the withdrawal of the Securities from the CHX and the Phlx in order to eliminate the costs associated with such listings. Moreover, the Company does not see any particular advantage in having its Securities trade on multiple exchanges.

The Company has complied with the Exchanges' rules by filing with each certified copies of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the Exchanges and by setting forth in detail to the each Exchange the reasons for the proposed withdrawal and the facts in support thereof.

The CHX and the Phlx have each informed the Company that they have not objections to the Company's withdrawal of its Securities from listing on the respective Exchanges.

The Company's application relates solely to the withdrawal of its Securities from listing on the CHX and the Phlx and shall have no effect upon the continued listing of the Securities on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission and with the NYSE under Section 13 of the Act.

Any interested person may, on or before November 18, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, it any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–28755 Filed 11–2–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42061; File No. SR–NASD–99–08]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Arbitration Process for Claims of Employment Discrimination

October 27, 1999.

On February 1, 1999, the National Association of Securities Dealers, Inc. ("NASD") or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] Under its proposal, NASD Regulation has created rules for the resolution of statutory employment discrimination claims. The proposed rule change and Amendment No. 1[3] to the proposed were published for comment in the **Federal Register** on June 4, 1999.[4] The Commission received four comment letters on the proposal.[5] This order approves the proposed rule change, as amended.

I. Description of the Proposed

NASD Regulation proposes to amend NASD Rules 10201 and 10202, and to add new Rule 3080 and new Rule 10210 Series. The proposed rule change is intended to enhance the dispute resolution process for the handling of employment discrimination claims, and to expand disclosure to employees concerning the arbitration of all disputes.

A. Background

In August 1997, the Board of NASD Regulation and the Board of the NASD ("NASD Boards") submitted a proposal that removed from the NASD Code of Arbitration Procedure provisions requiring registered persons to arbitrate claims of statutory employment discrimination. That rule change was approved by the Commission, and became effective January 1, 1999.[6] In conjunction with this rule change, the NASD Boards recommended certain enhancements to the voluntary arbitration process for employment discrimination claims. To carry out the Boards' mandate, NASD Regulation staff assembled a working group, including attorneys representing employees, general counsels of member firms, and arbitrators with expertise in employment matters to advise on issues relating to the arbitration of employment discrimination claims.

In addition to several issues that were presented to them by NASD Regulation staff, the working group considered recommendations contained in a document known as "A Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising Out of the Employment Relationship" ("the Protocol"). The Protocol has been adopted by several dispute resolution forums, and the NASD Boards recommended that due process procedures similar to those in the Protocol be considered by the working group for use in the dispute resolution process at the NASD for claims of employment discrimination.

B. Description of Proposed Amendments.

The Proposed Rule 10210 Series contains special rules applicable to statutory employment discrimination claims. These rules supplement and, in some instances, supersede the provisions of the NASD Code that currently apply to the arbitration of employment disputes.

(1) Qualifications for Arbitrators Who Hear Employment Discrimination Cases

In accordance with the Protocol provisions, NASD Regulation proposes the use of a specialized roster of available arbitrators for intra-industry cases in which statutory discrimination is alleged. Proposed Rule 10211(a) provides that public (non-industry) arbitrators will be selected to consider disputes involving a claim of employment discrimination, including a sexual harassment claim, in violation of a statute. Proposed Rule 10211(a) incorporates by reference the definition of "public arbitrator" in the list selection rule, Rule 10308. The definition of "public arbitrator" in Rule 10308 excludes not only securities industry employees and their immediate family members, but also attorneys, accountants, and other professionals who have devoted 20% or more of their professional work in the preceding two years to clients who are engaged in the securities business. NASD Regulation believes that the use of the same definition of public arbitrators throughout the NASD Code provides for more efficient administration of the list selection system.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 10, 1999 ("Amendment No. 1"). Amendment No. 1 made substantive changes to the proposed rule language, including the provisions for arbitrator qualifications and coordination of claims filed in court and arbitration.

[4] Securities Exchange Act Release No. 41461 (May 27, 1999), 64 FR 30081 (File No. SR–NASD–99–08.

[5] *See* Letters to Jonathan G. Katz, Secretary, Commission, from: Jeffery A. Norris, President, Equal Employment Advisory Council ("EEAC Letter"), date June 24, 1999; Stephen G. Sneeringer, Chairman of the Arbitration Committee, Securities Industry Association ("SIA Letter"), dated June 30, 1999; and Cliff Palefsky, National Employment Lawyers Association ("NELA Letter"), dated July 7, 1999, and letter from George A. Schieren, Senior Vice President and General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch Letter"), to Margaret H. McFarland, Deputy Secretary, Commission, dated June 30, 1999.

[6] *See* Securities Exchange Act Release No. 40109 (June 22, 1998), 63 FR 35299 (June 29, 1998).

For chairpersons and single arbitrators, NASD Regulation proposes additional qualifications in Rule 10211(b)(1) that should assist NASD Regulation to identify specially qualified and impartial arbitrators to resolve these disputes. In addition, under Rule 10211(b)(2), a chairperson or single arbitrator may not have represented primarily the views of employees or employers within the past five years. For this purpose, NASD Regulation has defined "primarily" to mean 50% or more of the arbitrator's business or professional activities within the preceding five years. NASD Regulation states that it is important to the credibility to the forum for the single arbitrator or chairperson not only to be neutral, but to avoid even the appearance of bias toward either employees or employers.

Rule 10211(c) provides that parties may agree, after a dispute arises, to waive any of the special qualifications contained in either paragraphs (a) or (b) of proposed Rule 10211. Such a waiver is not valid if it is contained in a predispute arbitration agreement.

(2) Composition of Panels

NASD Regulation proposes that for each involving claims of employment discrimination, regardless of whether other issues are also involved, all arbitrators must be qualified as public arbitrators under Rule 10211.[7] In addition, proposed Rule 10212(b) provides a higher dollar threshold for single arbitrator cases than is found elsewhere in the Code: a single arbitrator will hear claims of $100,000 or less. NASD Regulation states that this higher threshold reduces the hearing costs for the parties and results in more efficient allocation of qualified employment arbitrators. Proposed Rule 10212(c) provides that claims for more than $100,000 will be assigned to a three-person panel, unless the parties agree to have their case determined by a single arbitrator.

(3) Discovery

NASD Regulation proposes that the provision on depositions in the Protocol should be the standard under its own rules. NASD Regulation proposes that, in considering the need for depositions, arbitrator(s) should consider the relevancy of the information sought from the persons to be deposed, and the issues of time and expenses. These considerations are already provided for in Rule 10321, paragraphs (d) and (e), which set forth procedures for deciding unresolved issues either at the pre-hearing conference or by appointment of a selected arbitrator. The proposed discovery provision relating to depositions is in proposed Rule 10213.

(4) Attorneys' Fees

Proposed Rule 10215 provides that the arbitrator(s) shall have the authority to award reasonable attorneys' fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law. NASD Regulation notes that this accords with Title VII of the Civil Rights Act of 1964, which authorizes a court, in its discretion, to allow the prevailing party "a reasonable attorney's fee" as part of the costs.[8] NASD Regulation states that the intent of proposed Rule 1021 is to allow the award of attorneys' fees if applicable law permits such an award.

(5) Awards

Proposed Rule 10214 provides that arbitrator(s) will be empowered to award any relief that would be available in court under applicable law, and sets forth the information that must be contained in the arbitrators' award. This information includes a summary of the issues, the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claims.

NASD Regulation has not used the Protocol's phrase "opinion and award" in Proposed Rule 10214, but instead has used the term "award," which is also used elsewhere in the NASD Code. This avoids confusion that might result from use of the term "opinion," which could mislead parties into expecting a judicial type of decision, including a detailed explanation, rather than the customary type of arbitration award that contains the specific elements listed in the proposed rule. Consistent with current NASD Regulations practice, however, parties may request that the arbitrator(s) provide reasons for their decision, and the arbitrator(s) have discretion to grant or deny the request.

(6) Coordination of Claims Filed in Court and in Arbitration

Several commenters on the rule change to allow statutory discrimination claims to be filed in court predicted that the change could lead to splitting or bifurcation of cases: the discrimination claims would proceed in court, while other arbitrable employment claims would proceed in arbitration.[9] Some commenters believed bifurcation of statutory and common law claims could impose a financial burden on employees and members, delay the resolution of claims, and cause scheduling and discovery disputes.[10]

NASD Regulation proposes a new rule to address coordination of claims. Proposed Rule 10216 provides that, if the parties agree to resolve all related matters in court, then the matter need not be submitted to arbitration. Moreover, if a discrimination claim is filed in court and related claims subject to mandatory arbitration are filed in arbitration, a respondent in the arbitration would have the option to move to combine all claims in court. As described more fully below, the rule provides several other opportunities for a party to move to compel that a claim be consolidated with other claims in court. Any claims not accepted by the court under any of these methods, however, would continue to be arbitrable.

If the respondent does not agree to consolidate all claims in court, and an arbitration claims is then filed, proposed Rule 10216 provides several methods for coordinating claims filed in court and in arbitration. Paragraph (a)(1)(A) of proposed Rule 10216 addresses the situation in which an associated person files a statutory discrimination claim in court and files related claims in arbitration against some or all of the same parties. In that situation, any respondent who is named in both proceedings may move to compel the associated person to bring the related arbitration claims in the same court proceeding, to the full extent to which the court will accept jurisdiction over those claims. As noted above, any claims not accepted by the court would remain in arbitration.

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[7] Arbitrators must qualify under the relevant portion of Rule 10211: paragraph (a) for the second and third arbitrators on a three-arbitrator panel, and paragraph (b) for the chairperson or single arbitrator. *See* Letter from Jean I. Feeney, Assistant General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division, Commission, dated August 20, 1999 ("NASD Regulation Letter").

[8] 42 U.S.C. 2000e–5(k) (1998).

[9] *See* Securities Exchange Act Rel. No. 40109 (June 22, 1998), 63 FR 35299 (June 29, 1998).

[10] *Id.*

Paragraph (a)(1)(B) of proposed Rule 10216 requires a respondent that wishes to exercise this option to notify the claimant in writing that it is exercising this option. This notice is intended to motivate parties to discuss their options and consider consolidating all claims in one forum before either party incurs further expenses.

Paragraph (a)(2)(A) of proposed Rule 10216 provides that if a party has a pending claim in arbitration against an associated person who thereafter assets a related statutory employment discrimination claim in court against the party, that party has the option to assert all arbitration claims and counterclaims in court. This is intended to cover the situation in which arbitration claims is filed before the statutory discrimination claim is filed in court. Paragraph (a)(2)(C) of proposed Rule 10216 provides that a party may not exercise this option after the first hearing has begun on the arbitration claim. This is intended to avoid disruption of the arbitration proceeding when it is farther along in the process.

Paragraph (b) of proposed Rule 10216 provides that the time for consolidating claims in court is extended if the claimant files an amended statement of claim adding new claims not asserted in the original statement of claim. In that situation, a respondent has an opportunity to move to compel the claimant to assert all related claims in the same court proceeding, even if those related claims were asserted in the original statement of claim.

Paragraph (c) of proposed Rule 10216 provides that if a party elects to require a current or former associated person to assert all related claims in court, the party also must assert in the same court proceeding all related claims the party has against the associated person, to the full extent to which the court will accept jurisdiction over the related claims.

Paragraph (d) of proposed Rule 10216 provides that a respondent named in both court and arbitration proceedings may choose to remain in arbitration, even if another respondent has exercised its option to consolidate the proceedings against it in court. Any remaining party may seek a stay of the arbitration proceeding, and the proceeding will be stayed unless the arbitration panel determines that the stay will result in substantial prejudice to one or more of the parties. The presumption in favor of a stay of the arbitration proceeding is designed to avoid the situation in which parties must proceed in two forums at the same time. Nevertheless, a party may object to the stay and have the matter considered by an arbitrator.

If no panel has been appointed yet, a single arbitrator will be appointed to consider the application for a stay, using the Neutral List Selection System to select the arbitrator. That arbitrator is not required to have the special employment arbitrator qualifications described in Rule 10211, since there would be no statutory employment discrimination claims in arbitration at this point. Instead, the single arbitrator would be appointed under the provisions of Rule 10202. Under that rule, the single arbitrator is either an industry arbitrator or a public arbitrator, depending on the claims involved.A single public arbitrator may later appear on a list of arbitrators to be chosen for any hearing on the merits in the same arbitration.

Paragraph (f) of proposed Rule 10216 clarifies that, if an associated person files a claim in court that includes matters that are subject to arbitration, either by the rules of the NASD or by private agreement, the defending party may move to compel arbitration of the claims that are subject to mandatory arbitration. This is a statement of current practice and is intended to apply where the defending party has not exercised an option under other provisions of proposed Rule 10216 to combine all claims in court.

(7) Disclosure Issues

NASD Regulation also proposes a model disclosure statement that would be given to persons who signing the Form U–4 to apply for registration. This disclosure statement would explain the nature and effect of the arbitration clause contained in the Form U–4. It would not address any private arbitration agreement that an applicant might enter into with a member firm. Rather, firms would be responsible for either making proper disclosure to their employees about their private arbitration agreement, or risk an adverse decision in later litigation concerning any inadequacy in the disclosure.

Proposed Rule 3080, entitled "Disclosure to Associated Persons When Signing a Form U–4," was modeled on the disclosure given to customers when signing predispute arbitration agreements with member firms, as required by Rule 3110(f) and proposed amendments to that rule contained in File No. SR–NASD–98–74. The introductory language of the proposed rule requires members to provide each associated person, whenever the associated person is asked to sign a new or amended Form U–4, with specified disclosure language. The specified disclosure language explains that the Form U–4 contains a predispute arbitration clause, and indicates in which Item of the Form U–4 the clause is located.[11]

Subparagraph (1) of proposed Rule 3080 paraphrases the arbitration clause in the Form U–4 and discloses that an associated person is giving up the right to sue in court, except as provided by the rules of the arbitration forum in which a claim be filed. Subparagraph (2) incorporates the language of Rule 10201 regarding an exception to the arbitration requirement for claims of statutory employment discrimination, and indicates that the rules of other arbitration forums may be different. Subparagraph (3) through (7) track the language of the proposed amendments to Rule 3110(f)(1), which sets forth similar disclosures to customers. Those subparagraphs inform associated persons that arbitration awards are generally final and binding, that discovery is generally more limited in arbitration than in court, that arbitrator(s) do not have to explain the reasons for their awards, that the panel of arbitrators may include either public or industry (non-public) arbitrators,[12] and that rules of some arbitration forums may impose time limits for bringing a claim in arbitration.

II. Summary of Comments

The Commission received four comment letters on the proposed rule change.[13] Three commenters generally supported the proposed rule change, believing that it will help ensure the efficient resolution of statutory discrimination claims in a manner fair to all parties.[14] The remaining commenter believed the proposal was an unnecessary departure from an arbitration system that has worked well in the past.[15]

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[11] The member will be responsible for updating the item number of new disclosure statements if it changes in later versions of the Form U–4.

[12] The language of subparagraph (6) differs slightly from that of proposed Rule 3110(f)(1)(E) because, following adoption of the present proposed rule change, the panel composition for statutory employment discrimination claims will differ from the panel composition for customer claims.

[13] *See supra* note 3.

[14] *See* Letters from EEAC, Merrill Lynch, and NELA. However, NELA stated that the Protocol

A. The Commission's Solicitation of Comments

The Commission specifically solicited comment on the following aspects of proposed Rule 10216: (1) Whether the proposed rule strikes a fair balance in permitting respondents to choose when to bifurcate claims; (2) whether the provision permitting respondents to choose when to bifurcate is necessary to give employers an incentive to allow employees to bring statutory claims in court; (3) whether the bifurcation provisions unreasonably burden individual claimants; and (4) whether the presumptive stay unduly infringes upon the parties' bargain to arbitrate.[16]

Two commenters responded to the Commission's questions.[17] Both commenters stated that the proposal strikes a fair balance in permitting respondents to chose when to bifurcate claims. One of these commenters noted that the provision preserves the effectiveness of the NASD's general arbitration rule for employers and employees, while the other comment focused on the costs of litigation and on its view that claimants already have procedural advantages in bringing their case. Both commenters also stated that without the choice of when to bifurcate, employers would be more likely to require their employees to sign pre-dispute arguments mandating arbitration of all claims.[18] In response to the third question, the commenters stated their views that allowing respondents to coordinate related claims in court does not place an unreasonable burden on claimants because the proposed rule furthers the goals of providing fair and efficient arbitration of statutory employment disputes.[19] Finally, both commenters argued that the presumptive stay does not unduly infringe on the parties bargain to arbitrate, and that parties should not be burdened with simultaneously litigating claims in two different forums.[20]

B. Qualifications of Arbitrators and Composition of Arbitration Panels

One commenter contends that the proposed requirements for qualification of single arbitrators and panel chairs will severely limit the pool of available arbitrators.[21] That commenter recommends that section 10211(b)(2) be deleted. Another commenter argues that the use of "public arbitrators," only as defined in Rule 10308, discriminates against attorneys who primarily represent employers in employment discrimination cases.[22] With respect to the composition of the panel, one commenter suggests that only single arbitrators who have no affiliation with securities industry employers be used in order to improve the fairness, reduce the cost, and increase the efficiency of the arbitration process.[23]

C. Discovery

The Commission received three comments on the discovery provisions contained in proposed Rule 10213.[24] Two commenters believe that the proposed rule would be adequate,[25] although one of those commenters suggested that: (1) The rule contains a presumption of one deposition per side, with arbitrator(s) retaining the authority to order additional depositions of an indispensable witness who is unavailable to attend a hearing; and (2) the rule contain a specific procedure requiring panel approval of the particular deposition the parties intend to take.[26]

The remaining commenter argues that the proposed rule should set more specific limitations and guidance as to how and when depositions should be used.[27] This commenter recommends the adoption of language concerning depositions in SR–NASD–99–07,[28] which discourages the use of depositions and generally advises arbitrator(s) to permit depositions under limited circumstances.[29]

D. Attorneys' Fees

One commenter believes that the proposal correctly limits awards of attorneys' fees to cases in which there is a statutory basis for such an award.[30] One commenter, however, thinks that language of proposed Rule 10215 wrongly suggests that an award of attorneys' fees is required in employment discrimination cases.[31] That commenter recommended modifying the proposal by deleting proposed Rule 10215, and adding the phrase "including reasonable attorneys' fees where appropriate" to proposed Rule 10214 to clarify the arbitrator's authority.[32]

E. Miscellaneous Provisions

Finally, one commenter suggests the adoption of the Protocol's requirement that arbitrator(s) are bound by applicable statutes, and that arbitrator(s) should issue a written opinion.[33]

III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)[34] of the Act, in general, and furthers the objectives of section 15A(b)(6)[35] in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.[36] The Commission believes that the proposed rule change will protect the public interest by improving the arbitration process for those individuals who arbitrate claims of statutory employment discrimination. The public interest will be further protected by the expanded disclosure contained in the Form U–4 concerning the arbitration of all disputes.

In June of 1998, the Commission approved the NASD's proposal to remove the requirement to arbitrate statutory claims of employment discrimination.[37] The Commission stated in its order approving the NASD's rule change that "[i]t is reasonable for the NASD to determine that in this unique area, it will not, as a self-regulatory organization, require arbitration."[38] That rule change does not affect the obligations of NASD member firms and associated persons under NASD rules to arbitrate other employment-related claims, as well as any business-related claims involving investors or other persons.

Moreover, statutory employment discrimination claims will continue to be resolved in the NASD's forum under private employment agreements between the parties or through post-dispute submissions. The current rule

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should be adopted without modification. *See* NELA Letter.

[15] *See* SIA Letter.

[16] *See* notice of the proposed rule change.

[17] *See* Letters from EEAC and Merrill Lynch.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *See* EEAC Letter.

[22] *See* SIA Letter.

[23] *See* NELA Letter.

[24] *See* letters from EEAC, Merrill Lynch, and the SIA.

[25] *See* Letters from EEAC and Merrill Lynch.

[26] *See* Merrill Lynch Letter.

[27] *See* SIA Letter.

[28] Securities Exchange Act Release No. 41833 (September 2, 1999), 64 FR 49256 (September 10, 1999) (order approving proposed rule change relating to the creation of a Discovery Guide for use in NASD arbitrations).

[29] *Id.*

[30] *See* EEAC Letter.

[31] *See* SIA Letter.

[32] *Id.*

[33] *See* NELA Letter.

[34] 15 U.S.C. 78o–3(b).

[35] 15 U.S.C. 78o–3(b)(6).

[36] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[37] *See supra* note 6.

[38] *Id.*

proposal strengthens the NASD's procedures for administering statutory employment discrimination claims by amending appropriate provisions, including those governing the composition of arbitration panels, discovery, and awards. The proposal also introduces predictable methods for determining how disputes involving both statutory employment discrimination claims filed in court and arbitrable claims will be resolved. In addition, it also provides for clear disclosure to employees about arbitration.

The rules were drafted by the NASD over a two-year period with the contributions of organizations who represent interests of both employers and employees within the securities industry, as well as arbitrators who practice in this area. The proposal includes many of the provisions of the Protocol, and equitably accommodates competing concerns.

The comments on the qualifications for arbitrators in the proposal point out the sharp differences of opinion the NASD worked to bridge in its proposal. One commenter objected to the exclusion of industry arbitrators from the panels, another objected to the additional requirements for those who serve as single arbitrators or panel chairpersons because of the resulting exclusion of certain employment experts from serving in those roles,[39] while yet another commenter objected that the proposal permits the use of arbitrators with too much affiliation with the industry.

Further, a commenter stated that the additional qualifications required for single arbitrators and panel chairs will severely limit the pool of available arbitrators. In response, NASD Regulation stated that it will have enough qualified arbitrators on its roster.[40] The Commission believes that the NASD's proposal resolves these differing views in a fair manner, and should enable the NASD to identify qualified and impartial arbitrators to resolve these disputes.

Another commenter contends that only single arbitrators, rather than a panel, should be used for discrimination cases to reduce the cost and increase the efficiency of the process. The Commission notes, however, that proposed Rule 10212(b) already provides a higher dollar threshold for single arbitrator cases than is found elsewhere the NASD Code. The Commission believes that this threshold should help reduce the hearing costs for the parties in smaller cases.

With respect to discovery provisions of the proposed rule, two commenters urged a more restrictive use of depositions.[41] However, the Commission supports NASD Regulation's adoption of the Protocol's view that "necessary pre-hearing depositions consistent with the expedited nature of arbitration should be available" in employment discrimination cases. The Commission notes that arbitrators are as capable of resolving disputes concerning depositions as they are for difficult factual and legal issues. Under the proposal, arbitrators must consider the relevance of the information sought, the expeditious nature of arbitration, and the expense of discovery, prior to permitting the use of depositions.

One commenter argues that arbitrators should issue a written opinion detailing their reasoning for the award. However, the Commission has previously stated that arbitrators are not required to write opinions, although they may voluntarily prepare them.[42]

Another commenter contends that the provisions for attorneys' fees in the proposed rule suggests that an award of attorneys' fees is mandatory. NASD Regulation has stated, however, that the intent of proposed Rule 10215 is to allow the award of attorney's fees only if applicable law permits such an award. There is no difference between the NASD's proposed Rule 10215 and the commenter's suggestion, noted above, that Rule 10214 be amended to include the attorneys' fees reference. As the NASD noted, attorneys' fees may be awarded under current practice under the Code of Arbitration Procedure that is used for all of its cases. The NASD has proposed, and the Commission is today approving, the specific provision governing attorneys fees in cognizance of the special attention to them under the civil rights laws, and in the discussions of the arbitration of these claims that the NASD has sponsored. We also note that awards of attorney's fees by arbitrators remain available to all parties in other cases administered under the Code of Arbitration Procedure, if applicable law permits such an award.

The Commissions did not receive any negative comments with respect to the bifurcation provisions contained in proposed Rule 10216. These provisions appear to strike a fair balance in administering statutory discrimination and other employment disputes.

Finally, the Commission observes that the NASD's proposal includes opportunities for the parties to talk with one another, when determining where to file a claim (including fee savings and reimbursements for employees) and in putting together a mutually acceptable arbitration panel. Providing opportunities for the parties to talk with one another early in the process allows parties to resolve their disputes earlier, and with less cost.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–99–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28754 Filed 11–2–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; System of Records Notices

AGENCY: Small Business Administration.

ACTION: Notice of new system of record.

SUMMARY: The Small Business Administration is adding a new system of records to the Agency's Privacy Act System of Records. The new system collects information for the Women's Business Center, Small Business

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[39] The Commission notes that the additional requirements for chairpersons and single arbitrators do not prevent individuals from serving as one of the other two arbitrators on a three person panel, provided that they qualify as public arbitrators. The Commission further notes that the commenter's concerns about the exclusion of industry arbitrators is addressed, in part, by the NASD's determination to exclude plaintiffs' attorneys from serving as panel chairpersons or single arbitrators (Rule 10211(b)(2)), and the Commission will not interfere with that balancing determination. Moreover, the proposal also allows the parties, after their dispute has arisen, to waive any of the qualifications under the rule and to agree on the use of other arbitrators.

[40] In 1998, 107 claims of employment discrimination were filed with NASD Regulation and, as of August 10, 1999, 40 claims of discrimination have been filed. Approximately 58% of the more than 6,700 arbitrators on the NASD Regulation roster are classified as public arbitrators, and at least 40 arbitrators have already been identified as meeting the additional standards of proposed Rule 10211(b). Due to the fact that many cases are settled or withdrawn before a hearing commences, the NASD believes that there will be enough qualified employment arbitrators. *See* NASD Regulation Letter, *supra* note 7.

[41] As previously noted, one commenter urged the adoption of the language found in the new Discovery Guide for use in NASD arbitrations. The Commission notes, however, that the Discovery Guide only contains suggested guidance on the use of depositions. The policies and procedures set forth in Discovery Guide are discretionary and may be changed by the arbitrators so long as they are consistent with the rules of the forum. *See supra* note 28.

[42] *See* Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989).

[43] 17 CFR 200.30–3(a)(12).

Development Center, Business Information Center, One Stop Capital Shop, Veteran's Assistance, Tribal Business Information Center, and Welfare to Work Programs.

DATES: Submit comments on or before December 3, 1999.

ADDRESSES: Address comments to Monika Edwards Harrison, Associate Administrator for Business Initiatives, Small Business Administration, 409 3rd Street, SW., Suite 6100, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Monika Edwards Harrison, Associate Administrator for Business Initiatives, (202) 205–6665.

SBA 170

SYSTEM NAME:

Entrepreneurial Development—Management Information System (EDMIS), U.S. Small Business Administration (SBA).

SYSTEM LOCATION:

SBA Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using SBA's business counseling and assistance services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual and business information on SBA clients.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 85–536; 15 U.S.C. 631 (Small Business Act), sec. 7(j)(1), (Business Counseling); 15 U.S.C. 648 sec. 21 (Small Business Development Centers); 15 U.S.C. 656 sec. 29 (Women's Business Centers); Pub. L. 106–50 (Veterans' Entrepreneurship and Small Business Development Act of 1999); 44 U.S.C. 3101 (Records Management by Federal Agencies); and Pub. L. 103–62 (Results Act).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used, disclosed, or referred:

(a) To the Agency service provider (resource partner) who initially collected the individual's information.

(b) To a Congressional office from an individual's record when the office is inquiring on the individual's behalf. The Member's access rights are no greater than the individual's.

(c) To the Federal, state, local or foreign agency or organization which investigates, prosecutes, or enforces violations, statutes, rules, regulations, or orders issued when an agency identifies a violation or potential violation of law, arising by general or program statute, or by regulation, rule, or order.

(d) To Agency volunteers, interns, and contractors for use in their official duties.

(e) To the Department of Justice (DOJ) when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in his or her official capacity; or

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(f) To disclose them in a proceeding before a court or adjudicative body before which the Agency is authorized to appear, when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in his or her official capacity; or

(3) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Electronic form in secured database on a dedicated server.

RETRIEVABILITY:

By SBA Customer Number and cross-referenced by individual or business name.

SAFEGUARDS:

Access and use over the Internet with a restricted numerical password. Access and use is limited to Federal officials with a need-to-know and to designated resource partners. SBA resource partners will have access only to those individual records that were collected by that particular resource partner. Generally, designated program managers in Headquarters and the district director in the field will have access to individual records only as needed for program management.

RETENTION AND DISPOSAL:

In accordance with SBA SOP 00 41 2, Item #65:06, these records are retained a minimum of 3 years and generally destroyed 3 years after last update.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Deputy Administrator of Entrepreneurial Development and designee in Headquarters.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or Privacy Act Officer for Headquarters records. Individuals inquiring about this system must follow the SBA Privacy Act Regulations at 13 CFR part 102 subpart B.

RECORDS ACCESS PROCEDURES:

Systems Manager or Privacy Act Officer will determine procedures. Individuals inquiring about this system must follow the SBA Privacy Act Regulations at 13 CFR part 102 subpart B.

CONTESTING RECORD PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought, as indicated in 13 CFR part 102 subpart B.

RECORD SOURCE CATEGORIES:

Individuals and businesses to whom the record belongs.

Dated: October 29, 1999.

Mona Koppel Mitnick,

Senior Privacy Act Official.

[FR Doc. 99–28706 Filed 11–2–99; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 3153]

Office of International Religious Freedom Bureau of Democracy, Human Rights and Labor; Designation of Countries of Particular Concern Under The International Religious Freedom Act

Pursuant to section 408(a) of the International Religious Freedom Act of 1998, notice is hereby given that the Secretary of State, under authority delegated by the President, has designated the following countries as "countries of particular concern" under section 402(b) of the Act for having engaged in or tolerated particularly severe violations of religious freedom: Burma, China, Iran, Iraq, Sudan.

Dated: October 27, 1999.

Robert A. Seiple,

Ambassador at Large for International Religious Freedom, U.S. Department of State.

[FR Doc. 99–28749 Filed 11–2–99; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, [FR 64, pages 29404–29405].

DATES: Comments must be submitted on or before December 3, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: ACSEP Evaluation Customer Feedback Report.

Type of Request: Extension of a currently approved collection.

OMB Control number: 2120–0605.

Form(s): FAA Form 8100–7.

Affected Public: 450 holders of FAA production approvals and selected suppliers.

Abstract: The information collection will be used by the Aircraft Certification Service's Manufacturing Inspection Officers, Aircraft Certification Offices, and the Production & Airworthiness Certification Division to improve the administration and conduct of the Aircraft Certification Systems Evaluation Program at the local and national levels.

Estimated Annual Burden Hours: 225 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 28, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–28707 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: In compliance with the paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (CR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, (FR 64, pages 29404–29405).

DATES: Comments must be submitted on or before December 3, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Kansas City Center Customer Satisfaction Questionnaire.

Type of Request: Estensions of a currently approved collection.

OMB Control Number: 2120–0576.

Form(s): ZKC Form 7010–1.

Affected Public: 100 general aviation pilots, air taxi operators, airlines, military pilots, and adjacent facilities.

Abstract: The information collected on this form represents customer feedback concerning the quality of service provided to the users of Kansas City ARTCC airspace. This information may be used to solve problems, improve safety, and increase system efficiency.

Estimated Annual Burden Hours: 25 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 28, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–28708 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–03–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bronx County and New York County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed bridge improvement project in Bronx County and New York County, New York.

FOR FURTHER INFORMATION CONTACT: (1) Harold J. Brown, Division Administrator, Federal Highway Administration (FHWA), Leo O'Brien Federal Building, 9th Floor, Albany, New York 12207; Telephone: (518) 431–4127 or (2) Richard Maitino, Regional Director, New York State Department of Transportation—Region 11 Office, Hunter's Point Plaza, 47–40 21st Street 8th Floor, Long Island City, New York 11101; Telephone: (718) 482–4526.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation and the New York City Departmental of Transportation (NYCDOT), will prepare an EIS on the proposal to rehabilitate, reconstruct, or replace the Willis Avenue Bridge over the Harlem River in Bronx County and New York County, New York .

The Willis Avenue Bridge is one of six bridges which span the lower Harlem River, providing a continuous street grid system between upper Manhattan and the southwest Bronx. Opened to traffic in 1901, the four-lane Willis Avenue Bridge, a swing bridge, is now open for one-way Bronx-bound vehicular travel with complementary Manhattan-bound service provided on the Third Avenue Bridge, several blocks to the north. The bridge is used by approximately 70,000 vehicles daily outbound from Manhattan, with 4,800 vehicles in the PM peak hour, when traffic is heaviest. The proposed project raises a number of environmental issues including effects on historic resources, water quality, natural resources, hazardous materials contamination, and parkland.

Improvements to the bridge are considered necessary to provide for the existing and projected traffic demand by improving land width and geometry of the bridge and its approach ramps, reducing the rate of accidents, increasing the bridge's load carrying capacity, improving the bridge's bicycle and pedestrian facilities, and addressing all structural and seismic deficiencies of the present structure. Alternatives under consideration include (1) Taking no action; (2) an on-line rehabilitation of the existing bridge; (3) an on-line replacement, and (4) an off-line replacement. Incorporated into and studied with the various build alternatives will be design variations of bridge type (moveable or fixed) and materials (concrete or steel). All proposed alternatives retain four Bronx-bound lanes.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting, for the purpose of soliciting comments from the public on the proposed scope of work for the EIS, will be held in November 1999. To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified in the upcoming EIS, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

After completion of the Draft EIS, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on October 21, 1999.

Douglas P. Conlan,

District Engineer, FHWA, Albany, New York.

[FR Doc. 99–28781 Filed 11–2–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33807]

Washington County Railroad Company—Modified Rail Certificate

On October 6, 1999, Washington County Railroad Company (WCRC), a noncarrier, filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate a 14-mile rail line owned by the State of Vermont (the line).[1]

The line was approved for abandonment by Montpelier and Barre Railroad Company in *Montpelier and Barre Railroad Company—Entire Line Abandonment—From Graniteville to Montpelier Junction in Washington County, VT*, Docket No. AB–202 F (ICC served Mar. 12, 1980), and acquired by the State of Vermont on November 21, 1980. The Washington County Railroad Corporation (WACR) filed a notice for a modified certificate of public convenience and necessity on November 17, 1980, and a modified rail certificate was issued to WACR authorizing it to operate the line as of November 17, 1980.[2] On February 2, 1999, WACR agreed to assign its lease of the line to New England Central Railroad, Inc. (NECR).[3] NECR accepted the assignment on February 9, 1999, and operated the line through the close of business on September 8, 1999, when it terminated operations over the line. Vermont Railway, Inc. (VTR) filed a notice for a modified certificate of public convenience and necessity on September 14, 1999, and a modified rail certificate was issued to VTR for the immediate interim operation of the line while VTR and the State of Vermont negotiated and entered into a lease and operating agreement that would govern future operations of the line by VTR or a subsidiary of VTR.[4] On September 30, 1999, WCRC and the State of Vermont entered into an agreement whereby WCRC would operate the line, unless modified, through June 30, 2004. WCRC states that, effective immediately, it will replace VTR as the operator of the line.[5]

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[1] WCRC was incorporated on September 23, 1999, for the purpose of providing rail service over the line for the State of Vermont.

[2] *See Washington County Railroad Corporation—Operations—From Montpelier Junction to Graniteville, VT*, Finance Docket No. 29536F (ICC served Jan. 2, 1981).

[3] *See New England Central Railroad, Inc.—Modified Rail Certificate*, STB Finance Docket No. 33715 (STB served Feb. 26, 1999).

[4] *See Vermont Railway, Inc.''Modified Rail Certificate*, STB Finance Docket No. 33800 (STB served Sept. 24, 1999).

[5] WCRC states that it is owned by the same persons who control VTR. WCRC further states that it has the same officers and directors as VTR and two other Class III carriers, Clarendon & Pittsford Railroad Company, and Green Mountain Railroad Corporation. WCRC states that an exemption will be sought under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 for the control of WCRC by individuals who control other rail carriers. Common control authority or an exemption is needed before WCRC may begin rail carrier operations.

The line extends between Montpelier Junction, VT, and Graniteville, VT, a distance of approximately 14 miles. WCRC expects to conduct operations between Montpelier Junction and Websterville, a distance of approximately 12 miles. At Montpelier Junction, the line connects with NECR.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

A subsidy is involved. Under the agreement, the State of Vermont's Agency of Transportation (VAOT) agrees to pay WCRC a subsidy equivalent to $5,000 per week, through June 30, 2000. The agreement further provides that VAOT, beginning July 1, 2000 and for each subsequent year of the agreement, agrees to pay a subsidy of $260,000 per year, reduced by a subsidy credit equivalent to 50% of all gross revenues between $150,000 and $670,000.[6] WCRC represents that it has obtained general liability insurance coverage and that there are no preconditions for shippers to meet in order to receive rail service.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, N.W., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street, N.W., Suite 520, Washington, DC 20005.

Decided: October 28, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–28743 Filed 11–2–99; 8:15 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Financial Institution Advisory Commission

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 603 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the "Commission") shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-America Development Bank, and Inter-American Investment Corporation), the World Trade Organization, and the Bank for International Settlements.

DATES: The fifth meeting of the Advisory Commission will be held on November 16, 1999, beginning at 9:00 a.m. and tentatively ending at 3:00 p.m. in Room HC8 in the U.S. Capitol, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue NW. Washington, DC, 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Commission members will continue their discussion on the role of the multilateral development banks and tentatively begin discussion on the role of the World Trade Organization.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the fifth meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than November 9, 1999.

Dated: October 27, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–28684 Filed 11–2–99; 8:45 am]

BILLING CODE 4810–25–M

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[6] VAOT states that it is authorized under 5 V.S.A. 3401–3409 to administer State-owned railroad properties and to take necessary action to ensure continuity of service over such properties.

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federal register

Wednesday
November 3, 1999

Part II

Securities and Exchange Commission

17 CFR Parts 239, 240, 270, 271 and 274
Role of Independent Directors of Investment Companies; Proposed Rule
Interpretive Matters Concerning Independent Directors of Investment Companies; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 270 and 274

[Release Nos. 33–7754; 34–42007; IC–24082; File No. S7–23–99]

RIN 3235–AH75

Role of Independent Directors of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment proposed amendments to certain exemptive rules under the Investment Company Act of 1940 to require that, for investment companies that rely on those rules: independent directors constitute at least a majority of their board of directors; independent directors select and nominate other independent directors; and any legal counsel for the independent directors be an independent legal counsel. We also are proposing amendments to our rules and forms to improve the disclosure that investment companies provide about their directors. These proposed amendments are designed to enhance the independence and effectiveness of boards of directors of investment companies and to better enable investors to assess the independence of directors.

DATES: Comments must be received on or before January 28, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–23–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: For information regarding the proposed substantive rule amendments, contact Jennifer B. McHugh, Attorney, Office of Regulatory Policy, (202) 942–0690, or regarding the disclosure amendments, contact Annette M. Capretta, Senior Counsel, or Heather A. Seidel, Senior Counsel, Office of Disclosure Regulation, (202) 942–0721, at the Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today is proposing for public comment new rules 2a19–3 [17 CFR 270.2a19–3], 10e–1 [17 CFR 270.10e–1], and 32a–4 [17 CFR 270.32a–4] and amendments to rules 0–1 [17 CFR 270.0–1], 2a19–1 [17 CFR 270.2a19–1], 10f–3 [17 CFR 270.10f–3], 12b–1 [17 CFR 270.12b–1], 15a–4 [17 CFR 270.15a–4], 17a–7 [17 CFR 270.17a–7], 17a–8 [17 CFR 270.17a–8], 17d–1 [17 CFR 270.17d–1], 17e–1 [17 CFR 270.17e–1], 17g–1 [17 CFR 270.17g–1], 18f–3 [17 CFR 270.18f–3], 23c–3 [17 CFR 270.23c–3], 30d–1 [17 CFR 270.30d–1], 30d–2 [17 CFR 270.30d–2], and 31a–2 [17 CFR 270.31a–2] under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act" or "Act"); amendments to Forms N–1A [17 CFR 274.11A], N–2 [17 CFR 274.11a–1], and N–3 [17 CFR 274.11b] under the Investment Company Act and the Securities Act of 1933 [15 U.S.C. 77a–aa] ("Securities Act"); and amendments to Schedule 14A [17 CFR 240.14a–101] under the Securities Exchange Act of 1934 [15 U.S.C. 78a–mm] ("Exchange Act").

Table of Contents

Executive Summary

I. Background

II. Discussion

A. Enhancing the Independence of Fund Boards of Directors
  1. Independent Directors as a Majority of the Board
  (a) Proposed Board Composition Requirements
  (b) Suspension of Board Composition Requirements
  2. Selection and Nomination of Independent Directors
  3. Independent Legal Counsel
B. Limits on Coverage of Directors Under Joint Insurance Policies
C. Exemption from Ratification of Independent Public Accountant Requirement for Funds with Independent Audit Committees
D. Qualification as an Independent Director
  1. Affiliation with a Broker-Dealer
  2. Ownership of Index Fund Securities
E. Disclosure of Information about Fund Directors
  1. Basic Information about Directors
  (a) Location of Information
  (b) Required Information
  2. Ownership of Equity Securities in Fund Complex
  3. Conflicts of Interest
  (a) Statutory Scheme Governing Conflicts of Interest
  (b) Need for Disclosure Changes
  (c) General Approach to Disclosure
  (d) Specific Disclosure in the Proxy Rules and SAI
  4. Board's Role in Fund Governance
  5. Separate Disclosure
  6. Technical and Conforming Amendments
  7. Compliance Date
F. Recordkeeping Regarding Director Independence
G. General Request for Comments

III. Cost-Benefit Analysis

IV. Paperwork Reduction Act

V. Summary of Initial Regulatory Flexibility Analysis

VI. Statutory Authority

Text of Proposed Rules and Forms

Executive Summary

The board of directors of an investment company ("fund") has significant responsibilities to protect investors under state law, the Investment Company Act, and many of our exemptive rules. Independent directors, in particular, serve as "independent watchdogs," guarding investor interests. These interests are paramount, for it is investors who own the funds and for whose benefit they must be operated.

We recently hosted a Roundtable on the Role of Independent Investment Company Directors, which highlighted the significance of those directors in protecting the interests of fund shareholders. After reviewing corporate governance issues and the recommendations of participants at our Roundtable, we are proposing a number of rule and form changes to enhance the independence and effectiveness of fund boards of directors and provide investors with greater information about fund directors.

First, we are proposing to require that, for funds relying on certain exemptive rules:

- Independent directors constitute either a majority or a super-majority (two-thirds) of the fund's board of directors;
- Independent directors select and nominate other independent directors; and
- Any legal counsel for the fund's independent directors be an independent legal counsel.

Second, we are proposing rules and rule amendments that would:

- Prevent qualified individuals from being unnecessarily disqualified from serving as independent directors;
- Protect independent directors from the costs of legal disputes with fund management;
- Permit us to monitor the independence of directors by requiring

funds to keep records of their assessments of director independence;

- Temporarily suspend the independent director minimum percentage requirements if a fund falls below a required percentage due to an independent director's death or resignation; and
- Exempt funds from the requirement that shareholders ratify or reject the directors' selection of an independent public accountant, if the fund establishes an audit committee composed entirely of independent directors.

Finally, we are proposing to require funds to provide better information about directors, including:

- Basic information about the identity and business experience of directors;
- Fund shares owned by directors;
- Information about directors' potential conflicts of interest; and
- The board's role in governing the fund's operations.

In addition, today we are publishing a companion release that sets forth the views of the Commission and the Commission's staff on a number of interpretive matters.[1] This release provides guidance on certain discrete issues related to independent directors.

Together, these initiatives are designed to reaffirm the important role that independent directors play in protecting fund investors, strengthen their hand in dealing with fund management, reinforce their independence, and provide investors with greater information to assess the directors' independence.

I. Background

Today, millions of Americans rely on mutual funds to save and invest for their families' futures.[2] More than 77 million individual investors own shares of mutual funds, which hold over $5.5 trillion in assets—an increase of over 580 percent from ten years ago.[3] Investments in mutual funds are a significant part of retirement plans and college savings plans, as well as many traditional brokerage accounts.[4] Money market funds, which alone have over $1 trillion in assets,[5] often serve as a substitute for checking accounts and provide an important vehicle for cash management for individual investors as well as many institutions and businesses.[6] International and global funds give investors easy access to foreign markets.[7]

Mutual funds are formed as corporations or business trusts under state law and, like other corporations and trusts, must be operated for the benefit of their shareholders.[8] Mutual funds are unique, however, in that they are "organized and operated by people whose primary loyalty and pecuniary interest lie outside the enterprise."[9] As described below, this "external management" of virtually all mutual funds presents inherent conflicts of interest and potential for abuses.

An investment adviser typically organizes a mutual fund and is responsible for its day-to-day operations. The adviser generally provides the seed money, officers, employees, and office space, and usually selects the initial board of directors. In many cases, the investment adviser sponsors several funds that share administrative and distribution systems as part of a "family of funds." As a result of this extensive involvement, and the general absence of shareholder activism, investment advisers typically dominate the funds they advise.[10]

Investment advisers to mutual funds are generally organized as corporations, which have their own shareholders. These shareholders may have an interest in the mutual fund that is quite different from the interests of the fund's shareholders. For example, while fund shareholders ordinarily prefer lower fees (to achieve greater returns), shareholders of the fund's investment adviser might want to maximize profits through higher fees. And while fund shareholders might prefer that advisers use brokers that charge the lowest possible commissions, advisers might prefer to use brokers that are affiliates of the adviser. These types of conflicts (and others) resulted in the pervasive abuses that led Congress in 1940 to enact legislation regulating the activities of mutual funds.[11]

The Investment Company Act establishes a comprehensive regulatory scheme designed to protect fund investors by addressing the conflicts of interest between funds and their investment advisers or other affiliated persons. The Act strictly regulates some of the most serious conflicts. For example, the Act prohibits certain transactions between a fund and its affiliates, including the investment adviser, unless approved by the

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[1] Interpretive Matters Concerning Independent Directors of Investment Companies, Investment Company Act Release No. 24083 (Oct. 14, 1999) ["Interpretive Release"].

[2] For simplicity, this release focuses on mutual funds (*i.e.*, open-end funds). Our proposed rule amendments, however, would apply to all management investment companies, except where noted.

[3] *See* Investment Company Institute, Mutual Fund Fact Book 3 (1999) ["1999 Mutual Fund Fact Book"]. Total assets of mutual funds were $5.525 trillion at the end of 1998, compared to $809.4 billion in 1988. In 1998, an estimated 44 percent of U.S. households owned mutual funds, up from 5.7 percent in 1980 and 24.4 percent in 1988. *Id.* at 45. As of December 31, 1998, an estimated 77.3 million individuals owned shares of mutual funds. *Id.* at 41. At the end of 1998, assets of all funds (open-end funds, closed-end funds, and unit investment trusts) totaled $5.778 trillion. *See id.* at 3 (stating that assets of open-end funds totaled $5.525 trillion at the end of 1998); Lipper Inc., Lipper Closed-End Fund Performance Analysis 1–2 (Jan 1999) (stating that assets of closed-end funds totaled $158 billion at the end of 1998); Investment Company Institute, Release No. 99–36 (stating that assets of unit investment trusts totaled $94.54 billion at the end of 1998).

[4] At the end of 1998, assets totaling approximately $1.9 trillion, or 35 percent of all mutual fund assets, were held in retirement accounts, up from $348 billion at the end of 1991. 1999 Mutual Fund Fact Book, *Supra* note 3, at 47–48; *see also* Jennifer Karchmer, *Planning for Retirement Has Given Mutual Fund Assets a Steady Boost*, Bond Buyer, May 24, 1999, at 6.

[5] At the end of 1998, money market fund assets totaled approximately $1.352 trillion. *See* 1999 Mutual Fund Fact Book, *supra* note 3, at 4.

[6] *See generally* Investment Company Institute, Money Market Mutual Funds (1990).

[7] Assets in funds investing primarily in foreign securities totaled over $448.5 billion at the end of 1998. *See* Investment Company Institute, Release No.99–07 (stating that assets of open-end funds investing primarily in foreign securities totaled $416.5 billion at the end of 1998); Lipper Inc., Lipper Closed-End Fund Performance Analysis—Fourth Quarter 1998 Report (stating that assets of closed-end funds investing primarily in foreign securities totaled $32 billion at the end of 1998).

[8] *See generally* James M. Storey & Thomas M. Clyde, Mutual Fund Law Handbook § 7.2 (1998); Allan S Mostoff & Oliver P. Adler, *Organizing an Investment Company—Structural Considerations* § 2.4 *in* The Investment Company Regulation Deskbook (Amy L. Goodman ed., 1997).

[9] Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 251 ["1992 Protecting Investors Report"]; *see also* 1 Tamar Frankel, Regulation of Money Managers 10 (1978).

[10] *See* SEC. Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d. Sess. 12 127, 148 (1966) ["Public Policy Report"] (stating that funds generally are formed by their advisers and remain under their control, and that advisers' influence permeates fund activities); Wharton School of Finance and Commerce, a Study of Mutual Funds, H.R. Rep. No. 2274, 87th Cong., 2d Sess. 463 (1962) ["Wharton Report"] (discussing the dominant position of advisers in the control of funds and the infrequency with which funds have a separate existence from their advisers); *see also* Clarke Randall, *Fiduciary Duties of Investment Company Directors and Management Companies Under the Investment Company Act of 1940*, 31 Okla. L. Rev. 635, 636 (1978) ("The adviser's control and influence over the fund is very nearly total."); In the Matter of Steadman Security Corporation, Investment Company Act Release No. 9830 [1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 81,243, at n.81 (Jun. 29, 1977) ("[T]he investment adviser almost always controls the fund.").

[11] *See* section 1(b)(2) of the Act [15 U.S.C. 80a–1(b)(2)]; SEC. Report on Investment Trusts and Investment Companies, Part III (1939); *see also Storey & Clyde, supra* note 8, at § 2.2 Joseph F., Krupsky, *The Role of Investment Company Directors*, 32 Bus. Law. 1733, 1737–40 (1977); William J. Nutt, *A Study of Mutual Fund Independent Directors*, 120 U. PA. L. Rev. 179, 181 (1971).

Commission.[12] The Act also relies on fund boards of directors to police conflicts of interest.

Under state law, directors are generally responsible for the oversight of all of the operations of a mutual fund.[13] In addition, the Investment Company Act assigns many specific responsibilities to fund boards. For example, fund boards must evaluate and approve a fund's advisory contract and any assignment of the contract, and may unilaterally terminate the contract.[14] Directors also approve the fund's principal underwriting contract,[15] select the fund's independent accountant,[16] and value certain securities held by the fund.[17] In addition, under the Act and our rules, directors have responsibility for evaluating the reasonableness of advisory and distribution-related fees charged the fund [18] and managing certain operational conflicts. Just recently, for example, we clarified that boards must assume oversight responsibility for personal securities transactions by employees of the fund and its adviser.[19]

The Act requires that independent directors constitute at least 40 percent of a fund's board,[20] and sets the standards for when a person will be disqualified from being an independent director (*i.e.*, will be considered an "interested person" under the Act).[21] These independent directors play an important role in representing and guarding the interests of investors. As has been stated many times, Congress intended these directors to be the "independent watchdogs" [22] for investors and to "supply an independent check on management." [23]

Many requirements of the Act and our rules that protect investors from conflicts of interest specifically rely on action by these independent directors. The Act, for example, requires independent directors to separately evaluate and approve the fund's contract with an investment adviser or principal underwriter.[24] Our rules have permitted innovative types of funds, more efficient fund operations, and new distribution arrangements by exempting funds from prohibitions related to conflicts of interest. While these rules have provided important flexibility to allow mutual funds to meet the changing needs of investors, they also rely on approval, oversight, and monitoring by independent directors to protect investors.[25]

Earlier this year we held a two-day public Roundtable discussion on the role of independent directors of mutual funds.[26] Participants in the Roundtable included independent directors, investor advocates, executives of fund advisers, academics, corporate governance experts, and experienced legal counsel. They examined the activities and responsibilities of independent directors and reviewed the nature of their independence. Participants also discussed various ways that the Commission might promote greater effectiveness of independent directors.

We endorse the sentiments of the Roundtable participants who favor enhancing the effectiveness and independence of fund boards of directors. While those sentiments can be fully achieved only through amendments to the Investment Company Act, we are impressed by the consensus of the participants concerning the importance of the role of independent directors and the conditions they believe are necessary to enhance the effectiveness of those directors. We therefore are proposing rule amendments designed to reaffirm the important role that independent directors play in protecting fund investors, strengthen their hand in dealing with fund management, reinforce their independence, and provide investors with better information to assess the independence of directors.

II. Discussion

A. Enhancing the Independence of Fund Boards of Directors

Panelists at our recent Roundtable discussed a number of possible ways to enhance the independence and effectiveness of fund boards. Most participants agreed that independent directors can best fulfill their responsibilities when they constitute a substantial majority of the board.

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[12] Section 17(a) of the Act [15 U.S.C. 80a–17(a)].

[13] *See* Jean Gleason Stromberg, *Governance of Investment Companies, in* The Investment Company Regulation Deskbook §§ 4.1–.2 (Amy L. Goodman, ed. 1997).

[14] *See* section 15(a) of the Act [15 U.S.C. 80a–15a)] (requiring annual approval of the advisory contract by the funds's board of directors or shreholders and requiring that the contract empower the board to terminate the contract); section 15(c) of the Act [15 U.S.C. 80a–15(c)] (requiring that a fund's independent directors separately evaluate and approve any advisory contract with the fund).

[15] *See* Section 15(b) of the Act [15 U.S.C. 80a–15(b)] (requiring approval of the principal underwriting contract by the fund's board or shareholders); section 15(c) of the Act (requiring that a fund's independent directors separately evaluate and approve the fund's contract with its principal underwriter).

[16] *See* section 32(a)(1) of the Act [15 U.S.C. 80a–31(a)(1)] (requiring that a fund's independent directors select the fund's independent public accountant).

[17] *See* section 2(a)(41) of the Act [15 U.S.C. 80a–2(a)(41)] (requiring, in effect, that any security for which no market quotation is readily available be valued at fair value as determined in good faith by the board of directors).

[18] *See* sections 15 (a)–(c) of the Act (board review of fees paid to a fund's adviser and principal underwriter); rule 12b–1 under the Act [17 CFR 270.12b–1] (board review of asset-based distribution fees paid pursuant to a "rule 12b–1 plan").

[19] *See* Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) [64 FR 46821 (Aug. 27, 1999)] (adopting amendments to rule 17j–1 under the Act [17 CFR 270.17j–1]).

[20] Section 10(a) of the Act [15 U.S.C. 80a-10(a)] (prohibiting more than 60 percent of a fund's directors from being interested persons of the fund). We refer to directors who are not "interested persons" of the fund as "independent directors." *See also* section 10(b)(2) of the Act [15 U.S.C. 80a-10(b)(2)] (requiring, in effect, that independent directors comprise a majority of a fund's board if the fund's principal underwriter is an affiliate of the fund's investment adviser); section 15(f)(1) of the Act [15 U.S.C. 80a-15(f)(1)] (providing a safe harbor for the sale of an advisory business if directors who are not interested persons of the investment adviser constitute at least 75 percent of a fund's board for at least three years following the assignment of the advisory contract).

[21] Section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)] (defining "interested person"); *see infra* note 170 (discussing the elements of the definition of "interested person").

[22] *See* Burks v. Lasker, 441 U.S. 471, 484 (1979) (quoting Tannenbaum v. Zeller, 552 F.2d 402, 406 (2d Cir. 1977)).

[23] S. Rep. No. 184, 91st Cong., 2d Sess. 31 (1969).

[24] *See* section 15(c) of the Act.

[25] *See, e.g.*, rule 10f-3 [17 CFR 270.10f-3] (permitting funds to purchase securities in a primary offering when an affiliated broker-dealer is a member of the underwriting syndicate if the fund's board, including a majority of its independent directors, (i) approves procedures regulating purchases of these securities and (ii) determines at least quarterly that the purchases complied with the board-approved procedures). In addition, we have eliminated certain rule provisions that arguably required directors to "micro-manage" fund operations. *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997) [62 FR 26923 (May 16, 1997)] (amending rule 17f-5 to permit fund directors to delegate certain responsibilities related to foreign custody arrangements and eliminating the requirement that directors annually review those arrangements); Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Investment Company Act Release No. 19719 (Sept. 17, 1993) [58 FR 49919 (Sept. 24, 1993)] (eliminating certain annual board review requirements of rules 10f-3, 17a-7, 17e-1, 17f-4, and 22c-1). *See also* Investment Company Institute, SEC No-Action Letter (Jun. 15, 1999) (revising the staff's previous position to permit a fund's adviser, rather than the fund's board, to evaluate the creditworthiness of repurchase agreement counterparties and otherwise assume primary responsibility for monitoring and evaluating the fund's use of repurchase agreements).

[26] *See* SEC, Notice of Sunshine Act Meetings (Feb. 18, 1999) [64 FR 8632 (Feb. 22, 1999)]; *see also* Transcripts from the Roundtable on the Role of Independent Investment Company Directors, February 23–24, 1999 ["Roundtable Transcripts"]. The Roundtable Transcripts are available to the public in the Commission's public reference room and the Commission's Louis Loss Library. They also are available on the Commission's Internet web site <http://www.sec.gov/offices/invmgmt/roundtab.htm>.

Participants also recommended that the selection of new independent directors be entrusted to existing independent directors and that independent directors have independent legal counsel.[27] An industry advisory group organized by the Investment Company Institute recently made similar recommendations in a "best practices" report ("ICI Advisory Group Report").[28]

The recommendations of the Roundtable participants have led us to review our exemptive rules that provide funds and advisers relief from various statutory prohibitions designed to prevent the most egregious conflicts of interest. Roundtable participants repeatedly noted that one of the most important functions of independent directors is to oversee conflicts of interest.[29] Although the rules that we have adopted over the years have expanded the responsibilities of boards, the rules generally do not contain conditions designed to enhance the independence and effectiveness of fund boards, with two notable exceptions.[30]

Upon reflection, and in light of the recommendations of the Roundtable participants, we believe that our exemptive rules that rely on fund boards to approve and oversee arrangements or transactions that involve conflicts of interest and are otherwise prohibited by the Act also should contain provisions designed to enhance director independence and effectiveness. We therefore are proposing amendments to certain exemptive rules under the Investment Company Act to enhance the independence of fund directors who are charged with overseeing the fund's activities and transactions covered by those rules. These amendments would require, for funds that rely (or whose affiliated persons rely) on the rules, that: (i) independent directors constitute either a majority or a super-majority (two-thirds) of their boards; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the independent directors be an independent legal counsel.

Our proposals to enhance board independence would amend ten rules under the Investment Company Act. We have selected those rules that (i) exempt funds or their affiliated persons from provisions of the Act, and (ii) have as a condition the approval or oversight of independent directors. For convenience, we will refer to these rules as the "Exemptive Rules."[31] The Exemptive Rules typically relieve funds from statutory prohibitions that preclude certain types of transactions or arrangements that would involve serious conflicts of interest.[32] In one case, a rule permits the board to approve an interim advisory agreement without a shareholder vote that otherwise would be required.[33] Based on these criteria, we propose to amend the following rules:

- Rule 10f–3 (permitting funds to purchase securities in a primary offering when an affiliated broker-dealer is a member of the underwriting syndicate);
- Rule 12b–1 (permitting use of fund assets to pay distribution expenses);
- Rule 15a–4 (permitting fund boards to approve interim advisory contracts without shareholder approval);
- Rule 17a–7 (permitting securities transactions between a fund and another client of the fund's adviser);
- Rule 17a–8 (permitting mergers between certain affiliated funds);
- Rule 17d–1(d)(7) (permitting funds and their affiliates to purchase joint liability insurance policies);
- Rule 17e–1 (specifying conditions under which funds may pay commissions to affiliated brokers in connection with the sale of securities on an exchange);
- Rule 17g–1(j) (permitting funds to maintain joint insured bonds);
- Rule 18f–3 (permitting funds to issue multiple classes of voting stock); and
- Rule 23c–3 (permitting the operation of interval funds by enabling closed-end funds to repurchase their shares from investors).

The Commission requests comment on the criteria that we have used to select these rules. Are there additional rules that we should similarly amend? Conversely, should any of the Exemptive Rules not be amended?

Although the Commission urges all funds to adopt these measures to strengthen the independence of their boards, we are *not* proposing to require all funds to adopt these measures. Funds that do not rely on any of the Exemptive Rules will not be subject to these requirements. They may continue, for example, to have only 40 percent of their boards consist of independent directors.

As discussed above, an advisory group organized by the Investment Company Institute ("ICI Advisory Group") has issued a report containing a set of "best practices" for "enhancing a culture of independence and effectiveness" of fund directors.[34] These best practices generally include some of the practices that our proposed rule amendments would require boards to adopt in order to rely on the Exemptive Rules. We applaud the initiative, but, as the report acknowledges, many of the "best practices" may be impracticable or unnecessary for all funds to adopt. Moreover, it may not be appropriate for us to address many of the recommendations through rulemaking.[35] Thus, we are not at this time proposing to require that funds relying on the Exemptive Rules follow all of these practices. Nonetheless, we believe that fund boards should give serious consideration to the recommendations of the ICI Advisory Group. We request comment whether we should amend the Exemptive Rules, or other rules, to require funds relying on them to follow any of these "best practices." Commenters who favor any of these practices also should address the benefits and burdens of amending the Exemptive Rules in this manner.

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[27] *See infra* notes 41, 63, and 76 (citing testimony of Roundtable participants). We discuss the merits of each of these recommendations below.

[28] Investment Company Institute, Report of the Advisory Group on Best Practices for Fund Directors: Enhancing A Culture of Independence and Effectiveness (June 24, 1999). On July 7, 1999, the Board of Governors of the Investment Company Institute unanimously endorsed the recommended "best practices." *See* "ICI Board Adopts Resolution Urging Fund Industry to Strengthen Governance," at <http://www.ici.org/issues/dtrs__best__prac.htm>.

[29] *See, e.g.*, Roundtable Transcript of Feb. 24, 1999 at 174 (statement of John C. Coffee, Jr.) (stating that the need for activism by independent directors is most evident in the context of conflicts of interest); *id.* at 197 (statement of Richard M. Phillips) ("[T]he focal point of independent directors is conflicts of interest.").

[30] Rule 12b–1, one of the exceptions, permits the use of fund assets to pay for distribution of fund shares, but only if the fund's independent directors select and nominate other independent directors. *See* rule 12b–1(c) under the Act [17 CFR 270.12b–1(c)]. In adopting this requirement, we stated our view that "as a general proposition disinterested directors should not be entrusted with a decision on the use of fund assets for distribution without receiving the benefit of measures designed to enhance their ability to act independently." Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 11414 (Oct. 28, 1980) [45 FR 73898 (Nov. 7, 1980)] ["Rule 12b–1 Adopting Release"], at text following n.50. Rule 23c–3, the other exception, permits the creation of so-called "interval funds" (i.e., closed-end funds that periodically offer to repurchase their securities from investors), but only if independent directors constitute a majority of the board, and select and nominate other independent directors. Rule 23c-3(b)(8) under the Act [17 CFR 270.23c–3(b)(8)]. These requirements were included in the rule to "ensure that the board of directors provides independent decisions or scrutiny for actions or decisions that may involve a conflict of interest between the adviser and [the fund's] shareholders." Repurchase Offers by Closed-End Management Investment Companies, Investment Company Act Release No. 19399 (Apr. 7, 1993) [58 FR 19330 (Apr. 14, 1993)] ["Rule 23c–3 Adopting Release"], at Section II.D.

[31] A number of the Exemptive Rules exempt fund affiliates, rather than the fund, from certain statutory prohibitions. For ease of reference, this Release generally refers to *funds* that rely on the Exemptive Rules, rather than reiterating that funds or their affiliated persons may be relying on the rules.

[32] These rules also require boards of funds relying on the rules to exercise vigilance in protecting funds and their investors. *See, e.g.*, Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)], at n.52 and accompanying text (the fund's board should be "vigilant" not only in reviewing the fund's compliance with the procedures required by rule 10f–3, but also "in conducting any additional reviews that it determines are needed to protect the interests of investors").

[33] *See* rule 15a–4 [17 CFR 270.15a–4]. Under section 15(a) of the Act, shareholders generally must approve a fund's contract with its adviser.

[34] ICI Advisory Group Report, *supra* note 28.

1. Independent Directors as a Majority of the Board

(a) Proposed Board Composition Requirements. We believe that a fund board that has at least a majority of independent directors is better equipped to perform its responsibilities of monitoring potential conflicts of interests and protecting the fund and its shareholders.[36] By virtue of its independence, and its ability to act without the approval of the investment adviser (whose employees often serve as interested, or "inside," directors on fund boards), such a board is better able to exert a strong and independent influence over fund management.[37] This is particularly important in circumstances where the fund's interests conflict with those of the adviser.[38]

Today most, but not all, mutual funds have boards with at least a simple majority of independent directors.[39] When our Division of Investment Management studied mutual fund governance in 1992 it recommended that, as a requirement for all funds, independent directors constitute at least a majority of a fund's board.[40] Many of the Roundtable participants stated that, based on their experience, a fund board generally is more effective if independent directors represent a substantial majority of the board.[41] Similarly, the ICI Advisory Group Report recently endorsed boards having a "super-majority" of independent directors. The Report concluded that a *two-thirds* majority of independent directors on a board "will be more effective than a simple majority in enhancing the authority of independent directors."[42]

We take the conclusions of the ICI Report as a serious recommendation reflecting the collective experience and wisdom of the Advisory Group, which consisted of prominent members of the mutual fund industry.[43] Although the Report did not address whether Congress or the Commission should adopt a two-thirds majority as a regulatory requirement, it recommended the standard as a "best practice" for all funds to consider.[44] It is unclear, however, why a super-majority standard as a "best practice" would be appropriate for some fund boards and not others.

A simple majority requirement would permit, under state law, the independent directors to control the "corporate machinery," *i.e.*, to elect officers of the fund, call meetings, solicit proxies, and take other actions without the consent of the adviser. Such a provision would require few funds to change the current composition of their boards, but would bring those that must change into conformity with the better practice. A two-thirds requirement, on the other hand, could change the dynamics of board decision-making in favor of the interests of investors, but may require many funds to change the composition of their boards.

In light of the potential benefits to funds, their boards, and shareholders, we are proposing to amend the Exemptive Rules to require funds relying on them to have boards with *at*

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[35] In addition, because our rules apply to all funds (or, in the case of the Exemptive Rules, all funds that rely on those rules), we have designed our amendments by considering, among other things, the costs, benefits, and paperwork burdens for funds and investors (including small entities) that may result from the changes. *See, e.g., infra* Section III (cost-benefit analysis); Section IV (Paperwork Reduction Act analysis); Section V (Regulatory Flexibility Act analysis). In each area of consideration, we have requested comment on the costs, benefits, and burdens of the proposed rule amendments.

[36] *See* 1992 Protecting Investors Report, *supra* note 9, at 267 ("[A]n increased measure of independence is necessary to allow independent directors to perform these responsibilities appropriately."). In the context of business development companies, Congress has recognized that having a majority of independent directors is particularly important "where board approval is made expressly a substitute for Commission review or for a per se restriction." H.R. Rep. No. 1341, 96th Cong., 2d Sess. 25 (1980). *See also* S. Rep. No. 75, 94th Cong., 1st Sess. 71 (1975) (stating that the requirement in section 15(f) that 75 percent of a fund's board consist of directors who are not interested persons of the adviser for three years following the sale of an advisory contract is a "safeguard [ ] to protect the investment company and its shareholders").

[37] The original Senate bill that culminated in the Investment Company Act would have required a majority of a fund's directors to be independent from management. *See* S. 3580, 76th Cong., 3d Sess. § 10(a) (1940). That requirement was changed to 40 percent out of concern that a board with an independent majority would repudiate the recommendations of the investment adviser, depriving fund shareholders of those recommendations. *See Investment Trusts and Investment Companies: Hearings on H.R. 10065 Before the House Subcomm. on Interstate and Foreign Commerce,* 76th Cong., 3d Sess. 109–10 (1940) (statement of David Schenker). Experience has shown that this concern was unfounded. *See* 1992 Protecting Investors Report, *supra* note 9, at 267. Rather, we believe that an independent majority enhances board oversight without unnecessarily impeding fund operations or significantly increasing costs.

[38] We expressly recognized this when we adopted rule 23c–3. We included the requirements that independent directors constitute a majority of the board and select and nominate their successors to "ensure that the board of directors provides independent decisions or scrutiny for actions or decisions that may involve a conflict of interest between the adviser and [fund] shareholders." Rule 23c–3 Adopting Release, *supra* note 30; *cf.* Peter Tufano & Matthew Sevick, *Board Structure and Fee-setting in the U.S. Mutual Fund Industry,* J. FIN. ECON. 321, 350 (1997) ("[T]he salutary benefits of * * * a higher fraction of independent directors [on a fund's board] should be *most visible* when management's and shareholders' interests are most at odds.").

[39] *See* ICI Advisory Group Report, *supra* note 28, at 5 ("The vast majority of fund boards today consist of a majority of independent directors."); Investment Company Institute, Understanding the Role of Mutual Fund Directors 5 (1998) (noting that most fund boards have a majority of independent directors). In some cases, fund boards have an independent majority in order to comply with certain requirements of the Act and our rules. *See, e.g.,* section 10(b)(2) (requiring, in effect, that independent directors comprise a majority of a fund's board if the fund's principal underwriter is an affiliate of the fund's investment adviser); section 15(f)(1) (providing a safe harbor for the sale of an advisory business if directors independent of the adviser constitute at least 75 percent of a fund's board for at least three years following the assignment of the advisory contract); rule 6e–3(T)(b)(15) [17 CFR 270.6e–3(T)(b)(15)] (exempting certain funds underlying insurance products from various Investment Company Act provisions provided that independent directors constitute a majority of the boards of those funds); rule 23c–3(b)(8) (permitting the operation of interval funds if, among other conditions, independent directors comprise a majority of the board).

[40] *See* 1992 Protecting Investors Report, *supra* note 9, at 267 (Division recommended that Investment Company Act be amended to require that independent directors constitute more than 50 percent of a fund's board); *see also* Wharton Report, *supra* note 10, at 35 (increasing the proportion of unaffiliated directors may enhance the value of those directors as a check on management).

[41] *See* Roundtable Transcript of Feb. 24, 1999 at 241 (statement of Aulana L. Peters) ("My experience * * * dictates that for a board to have a chance of operating truly independently * * * there should be at least two independent [ ] [directors] to one [inside director]."); *id.* at 265 (statement of Gerald C. McDonough) (recommending that fund boards be required to have "a certain majority, 60, 66 percent, * * * certainly a clear majority of truly independent [directors]"); Roundtable Transcript of Feb. 23, 1999 at 136 (statement of Faith Colish) (endorsing a "substantial majority" of independent directors as a positive corporate governance feature for fund boards). *See also* Tufano & Sevick, *supra* note 38 (using empirical analysis to suggest that funds with boards that have a larger fraction of independent directors tend to have lower fees).

[42] *See* ICI Advisory Group Report, *supra* note 28, at 11.

[43] As noted above, the Board of Governors of the ICI also unanimously endorsed the recommendations of the ICI Advisory Group Report. *See supra* note 28.

[44] The Report also noted that, while many funds already have a two-thirds majority of independent directors, the practice is "far from universal." ICI Advisory Group Report, *supra* note 28, at 11.

least a majority of independent directors. Comment is requested on whether we should adopt a simple majority requirement, as the staff recommended in 1992, or the two-thirds super-majority requirement recommended by the ICI Advisory Group Report. We also request comment whether we should adopt an even higher percentage requirement (*e.g.*, 75 percent or 100 percent).[45]

We note that the charters[46] of some funds may contain provisions that require the approval of greater than a majority of a fund's board for some matters, and, in light of our proposed amendments, other funds may amend their charters to provide that a board may act only upon the vote of greater than a simple (or two-thirds) majority of its members. Would the existence of these super-majority voting provisions in fund charters undercut the effectiveness of a board with a majority of independent directors by requiring the consent of the "inside" directors and thus, in many cases, give the adviser a veto over board votes? We request comment regarding the prevalence and potential effect of these voting provisions in fund charters.

If we adopt the proposed amendments, we expect to delay the compliance date for one year to allow funds to bring their boards into compliance with the majority independence condition to the Exemptive Rules.[47] As of the compliance date, any fund relying on an Exemptive Rule would be required to have a board with the requisite percentage of independent directors. We request comment on this transition period.

(b) Suspension of Board Composition Requirements. If the death, disqualification, or bona fide resignation of an independent director causes the representation of independent directors on the board to fall below that required under the Investment Company Act, section 10(e) of the Act suspends the percentage requirement for a short time to allow the vacancy to be filled.[48] Under section 10(e), the relevant percentage requirement is suspended for 30 days if the board may fill the vacancy,[49] or for 60 days if the vacancy must be filled by a shareholder vote.[50] Section 10(e) also authorizes the Commission to set a longer period for filling a board vacancy in these circumstances.[51]

In our experience, the time provided by section 10(e) is insufficient for most funds to select and nominate qualified independent director candidates, and, if necessary, hold a shareholder election. Many funds address this problem by avoiding the need to rely on the section—they have a greater percentage of independent directors than is required by the Act. This approach may become more difficult if, as we propose, funds relying on the Exemptive Rules must have a majority or a super-majority of independent directors.[52] Moreover, the consequence of a fund falling below the minimum required percentage of independent directors would be more severe and more immediate because the fund would lose the availability of the Exemptive Rules.[53]

The Commission is proposing new rule 10e–1 to address these concerns. Proposed rule 10e–1 would suspend the board composition requirements of the Act, and of the rules under the Act, for 60 days if the board of directors may fill the vacancy or 150 days if a shareholder vote is required.[54] We believe these longer time periods are appropriate in light of the need to select, nominate, and elect qualified candidates for service as independent directors.[55]

We request comment whether the proposed 60-day and 150-day periods are adequate to provide funds and their independent directors with the time needed to approve new independent directors. Commenters who believe that a longer or shorter period is appropriate should explain why, and specify the number of days they believe would be adequate.

2. Selection and Nomination of Independent Directors

Independent directors who are truly independent are more effective in their roles as "watchdogs" for fund shareholders. While the Investment Company Act precludes independent directors from having certain affiliations or relationships with the fund's adviser or principal underwriter,[56] no law can

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[45] *See, e.g.*, section 15(f)(1) of the Act (providing a safe harbor for the sale of an advisory business if directors who are independent of the adviser constitute at least 75 percent of a fund's board for at least three years following the assignment of the advisory contract). The ICI Advisory Group Report discussed, but did not recommend at a best practice, having fund boards comprised exclusively of independent directors. *See* ICI Advisory Group Report, *supra* note 28, at 11–12. As a result of the Glass-Steagall Act, most bank-sponsored funds have boards comprised entirely of independent directors. *See* section 32 of the Glass Steagall Act [12 U.S.C. 78] (prohibiting directors of any entity issuing securities, such as a fund, from simultaneously serving as an officer, director, or employee of a national bank); *see also* Roundtable Transcript of Feb. 24, 1999 at 111 (statement of Richard J. Herring, independent director of a family of bank-related mutual funds and business school professor of international banking) (noting that a bank-related fund board comprised entirely on independent directors "works quite well").

[46] We use the term "charters" generally to include the organizational documents of a fund—typically articles of incorporation or declarations of trust, and corporate by-laws.

[47] There are several methods by which funds could affect the transition to majority independent representation on their boards. For instance, funds could (i) increase the size of their boards and elect new independent board members; (ii) decrease the size of their boards and allow some inside directors to resign; or (ii) allow some inside directors to resign and replace them with independent board members. A fund's ability to alter the composition of its board without holding a shareholder vote will be determined by state law and by section 16(a) of the Act [15 U.S.C. 89a–16(a)], which states that a fund's board may fill a board vacancy without a shareholder vote if, after the new director takes officer, at least two-thirds of the board has been elected by shareholders. Section 16(a) further requires a shareholder meeting to elect directors if the number of shareholder-elected board members decreases to less than half of the board. Newly organized funds could begin operations during the one-year transition period without a majority of independent directors and still rely on the Exemptive Rules, but they, like other funds, would be required to have boards with a majority of independent directors if they rely on any of the Exemptive Rules after the compliance date for the amendments.

[48] Various provisions of the Investment Company Act require a particular percentage or minimum number of independent directors. *See* sections 10(a), 10(b)(2), 10(d) [15 U.S.C. 80a–10(d)], and 15(f)(1); *see also supra* notes 20, 39, and 45 (discussing sections 10(a), 10(b)(2), and 15(f)(1) and their percentage requirements). Section 10(e) [15 U.S.C. 80a–10(e)] similarly suspends the board composition requirements of sections 10(d)(1), 10(b)(3), and 10(c) [15 U.S.C. 80a–10(b)(1), –10(b)(3), and –10(c)]. For convenience, we refer to all of the above requirements as "percentage requirements."

[49] *See* section 16(a) of the Act (permitting directors to fill a board vacancy if, after the new director takes officer, at least two-thirds of the board has been elected by shareholders, but requiring a shareholder meeting to elect directors if the number of shareholder-elected board members decreases to less then half of the board).

[50] Section 10(e)(1) and (2) [15 U.S.C. 80a–10(e)(1) and (2)].

[51] Section 10(e)(3) [15 U.S.C. 80a–10(e)(3)].

[52] *See supra* Section II.A.1.a.

[53] Currently, the loss of an independent director that causes a fund to fall below a statutorily required percentage of independent directors does not result in immediate consequences for a fund. Issues arise only when the fund's next board vote is required. Under the proposed amendments to the Exemptive Rules, however, the fund would be unable, for example, to offer multiple classes of shares, pay distribution fees under rule 12b–1, engage in securities transactions with fund affiliates, or participate in a joint liability insurance policy from the date of the loss of the independent director until the fund replaces the independent director.

[54] *See* proposed rule 10e–1.

[55] *See infra* Section II.A.2 (discussing the selection and nomination of independent directors by other independent directors); *cf.* Temporary Exemption for Certain Investment Advisers, Investment Company Act Release No. 23325 (July 22, 1998) [63 FR 40231 (July 28, 1998)] (proposing amendments to rule 15a–4 in part to extend, from 120 days to 150 days, the period of time funds are permitted to operate with an interim advisory contract that has not been approved by shareholders to allow funds more time to seek shareholder approval of an advisory contract).

[56] *See* section 2(a)(19)(B) [15 U.S.C. 80a–2(a)(19)(B)] (outlining the types of affiliations and

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guarantee that an independent director will be vigilant in protecting fund shareholders. Fund shareholders therefore must depend on the character, ability, and diligence of persons who serve as fund directors to protect their interests.[57]

One recognized method of enhancing the independence of directors is to commit the selection and nomination of new independent directors to the incumbent independent directors.[58] Independent directors who are selected and nominated by other independent directors, rather than by the fund's adviser, are more likely to have their primary loyalty to shareholders rather than the adviser.[59] In addition, when independent directors are self-selecting and self-nominating, they are less likely to feel beholden to the adviser. Thus, they may be more willing to challenge the adviser's recommendations when the adviser's interests conflict with those of the shareholders.[60]

Two comprehensive studies that addressed mutual fund governance recognized that the selection and nomination of independent directors by other independent directors could enhance their independence.[61] In its guidebook for fund directors, the American Bar Association's Section of Business Law has endorsed this practice,[62] as did several participants at our Roundtable.[63] The recent ICI Advisory Group report also recommended the self-selection and self-nomination of independent directors.[64] As noted above, two of our rules currently require funds to have self-selecting and self-nominating independent directors,[65] and many fund groups have adopted this practice.[66]

We are proposing to amend each of the Exemptive Rules to require that funds relying on those rules have boards whose independent directors select and nominate any other independent directors.[67] Funds that have adopted distribution plans under rule 12b–1, which already contains this requirement, would be unaffected by the proposal.[68] Funds whose independent directors were not nominated in this manner would not immediately lose their ability to rely on the Exemptive Rules. Rather, if we adopt the proposed amendments, these funds would be required to adopt the practice before the compliance date for the amendments, and the fund's incumbent independent directors subsequently would select and nominate all independent directors of the fund.[69]

We understand that committing the selection and nomination of independent directors to a board committee composed entirely of independent directors might, in some cases, conflict with applicable state law.[70] We believe that a fund could comply with our proposed amendments in those circumstances if the fund's independent directors choose the candidates and then present their recommendations to the full board. We

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relationships that render a director an "interested person" of a fund's adviser or principal underwriter).

[57] *See* Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 10862 (Sept. 7, 1979) [44 FR 54014 (Sept. 17, 1979)] (proposing rule 12b–1) ("[P]roper fulfillment of directors' duties depends primarily on the character, ability, and diligence of directors."); William G. Bowen, Inside the Boardroom: Governance by Directors and Trustees 47 (1994) ("Effective governance by any board surely depends, most of all, on having an outstanding group of members."); Roundtable Transcript of Feb. 23, 1999 at 14–15 (statement of Arthur Levitt, Chairman, SEC) ("[B]oard independence does not come from a specific legal structure * * * I believe passionately in boards made up of men and women of good, sound independent judgment. Board independence comes from directors who do their jobs aggressively.").

[58] Selection and nomination refers to the process by which board candidates are researched, recruited, considered, and formally named. Some funds establish a nominating committee of the board that is comprised entirely of independent directors to select and nominate directors.

[59] *See* ICI Advisory Group Report, *supra* note 28, at 14 ("[I]ndependent directors are uniquely qualified to evaluate whether a present or prospective director is likely to contribute to the continuing independence and effectiveness of the independent directors as a group.").

[60] *See* ICI Advisory Group Report, *supra* note 28, at 14 ("[C]ontrol of the nominating process by the independent directors helps dispel any notion that the directors are 'hand picked' by the adviser and therefore not in a position to function in a true spirit of independence.")

[61] *See* 1992 Protecting Investors Report, *supra* note 9, at 266–67 (recommending that the Act be amended to require that independent directors be self-nominating); Wharton Report, *supra* note 10, at 465–66 (noting that the selection of unaffiliated directors by management limits those directors' independence).

[62] *See* A.B.A., Section of Business Law, Fund Director's Guidebook 27 (1996) ["Fund Director's Guidebook"] ("The independence of a fund's independent directors is enhanced by providing that persons nominated by the board for election as independent directors be nominated by a committee of the fund's incumbent independent directors.").

[63] *See* Roundtable Transcript of Feb. 24, 1999 at 182 (statement of John C. Coffee, Jr.) ("[W]e should have" independent nominating committees.); Roundtable Transcript of Feb. 23, 1999 at 136 (statement of Faith Colish) ("a very good idea"); Roundtable Transcript of Feb. 24, 1999 at 63 (statement of Dawn-Marie Driscoll) ("I'm a great believer in independent directors choosing other independent directors who the adviser does not know. * * * The more ways you can ensure independence, the better the process will be."); *id.* at 148 (statement of Ronald J. Gilson) ("A nominating committee made up of independent directors makes an enormous amount of sense."); *id.* at 215 (statement of John R. Haire) ("[Self-selection and self-nomination are] very helpful in the process of seeing that * * * independent directors * * * bring to the board a diversity of skills that are useful * * * in the role of overseeing management."); *id.* at 243 (statement of Aulana L. Peters) ("[I]t is not a good idea to have the adviser or the CEO of the adviser * * * be the sole decisionmaker on who should serve as a disinterested member of the board."). *But see id.* at 245 (statement of Aulana L. Peters) (stating that the involvement of a fund's adviser in the selection and nomination of independent directors may facilitate increasing diversity on a fund's board).

[64] *See* ICI Advisory Group Report, *supra* note 28, at 14–16.

[65] Rule 12b–1 permits the use of fund assets to pay for distribution of fund shares, but only if the fund's independent directors select and nominate other independent directors. *See supra* note 30 (discussing rule 12b–1). In discussing our decision to include this condition in the rule, we noted that "the likelihood that a decision will be in the best interests of a fund and its shareholders will be increased if the disinterested directors are genuinely independent of management," and that "formal independence will breed an atmosphere in which actual independence will develop." Rule 12b–1 Adopting Release, *supra* note 30, at discussion of "Independence of Directors." See also *supra note* 30 (discussing rule 23c–3, which permits the operation of interval funds if independent directors are self-selecting, self-nominating, and comprise a majority of the board). The Act also requires independent directors to select and nominate individuals to fill independent director vacancies for a period of three years following the sale of an investment advisory contract. Section 16(b) [15 U.S.C. 80a–16(b)].

[66] *See* ICI Advisory Group Report, *supra* note 28, at 15 (noting that funds with rule 12b–1 plans, which are required to have self-selecting and self-nominating independent directors, represent a majority of all mutual funds and that many funds without rule 12b–1 plans also assign to independent directors the selection and nomination of other independent directors); Joel H. Goldberg & Gregory N. Bressler, *Revisiting Rule 12b–1 Under the Investment Company Act*, 31 Rev. Sec. & Commodities Reg. 147, 147 (1998) (since the adoption of rule 12b–1 in 1980, over 7,000 mutual funds have adopted rule 12b–1 plans).

[67] *See* proposed rules 10f–3(b)(11)(i); 15a–4(c)(1); 17a–7(f)(1); 17a–8(c)(1); 17d–1(d)(7)(v)(A); 17e–1(c)(1); 17g–1(j)(3)(i); 18f–3(e)(1). In addition, we are proposing to amend rules 12b–1 and 23c–3 to conform their current language regarding the self-selection and self-nomination of independent directors to the language of the proposed amendments. Proposed rules 12b–1(c)(1) and 23c–3(b)(8)(i).

[68] Our proposals to amend rules 12b–1 and 23c–3 to conform their language regarding self-selection and self-nomination to the language of our proposed amendments are not intended to have any substantive effect on the operation of those rules. *See* proposed rules 12b–1(c)(1), 23c–3(b)(8)(i).

[69] Our proposed amendments would have no impact on the initial selection of an organizing fund's directors because, at the time of organization, the fund would not yet be registered under the Investment Company Act and therefore would not be relying on our Exemptive Rules. Any organizing fund that intends to rely on the Exemptive Rules, however, should adopt a self-selection and self-nomination practice, and once the fund begins operations, independent directors should select and nominate other independent directors as board vacancies occur.

[70] *See, e.g.*, ICI Advisory Group Report, *supra* note 28, at n.28 (discussing Md. Code Ann., Corps. & Ass'ns § 2–411(a)(2), which prohibits the bylaws of a Maryland corporation from authorizing the board to delegate to a committee the power to recommend to stockholders any action that requires stockholder approval). Section 2–411(a)(2) may have a greater effect on closed-end funds, which, unlike mutual funds, generally must hold annual meetings of shareholders at which shareholders elect directors.

request comment whether this approach adequately addresses any potential conflicts between state law and our proposed amendments regarding self-selection and self-nomination of independent directors.

Moreover, our proposals regarding the self-selection and self-nomination of independent directors are not intended to limit the abilities of public shareholders to nominate independent directors. To the extent permitted under state law, shareholders may participate in the nomination process.[71]

We request comment whether we should further amend the Exemptive Rules to require that independent directors, rather than the entire board, elect other independent directors in those instances when a shareholder vote is not required.[72] Commenters should discuss the effect state law would have on a fund board's ability to delegate its authority to elect directors to a subset of the board.

3. Independent Legal Counsel

Another recognized method of enhancing the independence and effectiveness of independent directors is to provide them with independent counsel.[73] Because mutual funds are highly regulated and their boards frequently are called upon to protect fund shareholders from conflicts of interest, independent counsel can be particularly helpful to independent directors of funds.[74] Experienced counsel can help to identify potential conflicts of interest and other compliance issues. They can assist directors in "marshal[ling] arguments to balance those presented by management in matters involving conflicts of interest," and evaluating legal issues with an independent and critical eye.[75] Often, independent counsel can draw on their experience and knowledge to identify best practices of other funds that might be appropriate for directors to adopt for their fund.

We believe counsel who does not also represent the fund's adviser can best provide zealous representation of independent directors. Several of our Roundtable participants made this point,[76] as have many legal commentators over the years.[77] The recent ICI Advisory Group Report recommended that independent directors have qualified counsel who is independent from the fund's adviser and other service providers.[78] Courts too have recognized that independent legal counsel improves the deliberative process of fund independent directors.[79] As a result, independent directors of many funds retain legal counsel who does not also represent the adviser and, in some cases, does not represent the fund.

We are aware, however, that in some cases counsel has regularly represented the fund, the fund's adviser, and the independent directors. We have no doubt that such representation has been in conformity with applicable codes of legal ethics, which permit a lawyer to represent clients with conflicting interests after full disclosure and client consent.[80] We nevertheless are troubled by such conflicts and how they affect the ability of independent directors to carry out their responsibilities under the Act and the Exemptive Rules. We are particularly concerned when lawyers represent both the independent directors and management organizations in the negotiation of the advisory contract, distribution arrangements (*e.g.*, 12b–1 plans), and other matters of fundamental importance to a fund and its shareholders. Lawyers representing fund management may not suggest courses of action to independent directors that are opposed by their management clients. Thus, we are proposing to amend the Exemptive Rules to require that counsel for a fund's independent directors not also act as counsel to the fund's adviser, principal underwriter, or administrator (or their control persons).[81]

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[71] *See* Item 7(e)(2) of Schedule 14A (requiring that any proxy sent to shareholders for the purpose of electing directors state whether a registrant's nominating committee will consider nominees recommended by shareholders and describe the procedures to be followed by shareholders submitting nominee recommendations); *see also infra* note 224 and accompanying text.

[72] The ICI Advisory Group Report recommends that, to the extent permitted by state law, fund boards delegate to a fund's incumbent independent directors the authority to elect independent directors in the absence of a shareholder vote. *See* Advisory Group Report, *supra* note 28, at 15–16; *see also supra* note 47 (discussing section 16(a) of the Act and the circumstances under which fund directors may elect a board member without holding a shareholders vote).

[73] *See generally* Grover C. Brown, Michael J. Maimone, and Joseph C. Schoell, *Director and Advisor Disinterestedness and Independence Under Delaware Law*, 23 Del. J. Corp. L. 1157 (1998).

[74] *See* ICI Advisory Group Report, *supra* note 28, at 18 ("[Independent] counsel can help to ensure that the directors understand their responsibilities, ask the pertinent questions, and receive the information necessary to carry out those responsibilities."); *What's the Job of Your Fund Counsel?*, Fund Directions, Nov. 1995, at 4, 5 (Independent directors "look to their lawyer for assistance in resolving and acting upon any matters where the adviser potentially has a conflict of interest with the shareholders.' ") (quoting Edward T. O'Dell, partner, Goodwin, Procter & Hoar LLP).

[75] Joel H. Goldberg, *Disinterested Directors, Independent Directors and the Investment Company Act of 1940*, 9 Loy. U. Chi. L.J. 565, 585 (1978).

[76] *See* Roundtable Transcript of Feb. 24, 1999 at 178 (statement of John C. Coffee, Jr.) ("[T]he central lesson from corporate governance generally is that independent directors can function well as a committee if an probably only if they have the effective assistance of a truly independent legal counsel who does not generally represent the investment adviser and who does not have any other conflict."); *id.* at 190–97 (statement of Leslie L. Ogg) (discussing the important role of service providers, including separate counsel, to fund independent directors); *id.* at 52 (statement of David M. Butowsky) (stating that independent directors should be counseled by someone "who is completely independent of any affiliation with management when reviewing found reorganizations following the acquisition of an adviser); *id.* at 67 (statement of Joseph Hankin) (noting that retaining counsel separate from fund management is "absolutely a prudent step" when reviewing fund mergers and advisory contracts); *see also id.* at 222–23 (statement of David A. Sturms) (reviewing various structures of legal representation of a fund, its independent directors, and its adviser).

[77] *See, e.g.*, Martin Lipton, *Directors of Mutual Funds: Special Problems*, 31 BUS. LAW. 1259, 1262 (1976) ("[M]utual funds should have separate counsel. Either the independent directors of a fund should have separate counsel or the fund itself should have separate counsel. That is, separate counsel from counsel for the management company. Independent counsel plays a very important role."); Goldberg, *supra* note 75, at 585 ("[T]he value of [independent] counsel in helping to ensure independent consideration of issues by disinterested directors is beyond dispute * * *."); Jean W. Gleason, Mutual Fund Governance: Independent Directors—Their Role and Incentives and Tools for Fulfilling It, VI–A–9, VI–A–16 (1994) (material prepared for the 1994 Mutual Funds and Investment Management Conference) ("Access to, and use of, outside experts [such as independent legal counsel] can provide increased independence and allow for informed judgments [by independent directors] * * *."). *See also* Public Policy Report, *supra* note 10, at 130–31 (listing the absence of separate legal counsel as one of the factors contributing to the relative ineffectiveness of unaffiliated directors).

[78] *See* ICI Advisory Group Report, *supra* note 28, at 18–20. The Advisory Group concluded that "[c]ounsel to the independent directors must be independent from the adviser and other fund service providers in order to render objective advice on areas of potential conflict between the fund and its service providers." *Id.* at 18. *See also* Fund Director's Guidebook, *supra* note 62, at 23 ("[G]enerally it is important that the independent directors have ready access to counsel who views the board and the fund, not the adviser, as the client.").

[79] *See* Tannenbaum v. Zeller, 552 F.2d 402, 428 (2d Cir. 1977) (stating that it would have been preferable if the fund's independent directors received advise from an independent counsel, rather than counsel who also represented the fund, the fund's adviser, and the fund's distributor); Fogel v. Chestnutt, 533 F.2d 731, 750 (2d Cir. 1975) ("It would have been * * * better to have the investigation of recapture methods and their legal consequences performed by disinterested counsel furnished to the independent directors."); Schuyt v. Rowe Price Prime Reserve Fund, Inc., 663 F. Supp. 962, 965, 982, 986 (S.D.N.Y.) (noting that "[d]uring all relevant times, the independent directors * * * had their own counsel" who was an "important resource" and who advice "the record indicates the directors made every effort to keep in mind as they deliberated"), *aff'd*, 835 F.2d 45 (2d Cir. 1987); Cartenberg v. Merill Lynch Asset Management, Inc., 528 F. Supp. 1038, 1064 (S.D.N.Y. 1981) (noting that the "non-interested Trustees were represented by their own independent counsel * * * who acted to give them conscientious and competent advice"), *aff'd, 694 F.2d 923 (2d Cir. 1982). See also* Palilsky v. Berndt, [1976–1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,627, 15 90,133 (S.D.N.Y. June 24, 1976) (noting that a law firm, in advising both a fund and the fund's adviser, "was counseling people with contrary interests. * * * The effect of the inadequate advice was to discourage any independent inquiry by * * * [the] Board.").

[80] *See* American Bar Association, Center for Professional Responsibility, Model Rules of Professional Conduct ["ABA Model Rules"], Rule 1.7 (1998); *see also* Del. Prof. Cond. R. 1.7 (1998); MASS. SUP. JUD. CT.R. 3:07, R.P.C. 1.7 (1999); Md. Rule 1.7 (1998).

We are not, however, proposing at this time to *require* independent directors to retain legal counsel. Although we believe that independent directors are in the best position to fulfill the roles assigned to them by the Exemptive Rules if they have the assistance of independent counsel, the services of counsel do not come without cost.[82] We are hesitant to propose a rule that might result in the engagement of legal counsel simply to fulfill a legal requirement. Moreover, we believe that a likely result of our proposed amendments would be that fund directors will seek independent counsel. Comment is requested whether we should amend the Exemptive Rules to require independent directors of funds relying on those rules to retain independent legal counsel. Would this requirement impose substantial costs on small fund groups? If we adopt this condition to the Exemptive Rules, should we provide for an exception for smaller fund groups? If so, what factors should determine which fund groups are small?

Under the proposed amendments, reliance on each of the Exemptive Rules would be conditioned on any legal counsel for a fund's independent directors being an "independent legal counsel."[83] A person would be an "independent legal counsel" if the fund reasonably believes the person and his law firm, partners, and associates[84] have not acted as legal counsel for the fund's investment adviser, principal underwriter, administrator[85] (collectively, "management organizations"), or any of their control persons[86] at any time since the beginning of the fund's last two completed fiscal years.[87] The independent directors could make an exception and permit a person to serve as independent legal counsel even if the person has a remote or minor conflict of interest because the person has provided legal advice to management organizations or their control persons.[88]

(a) Independent of Fund Management Organizations. The proposed amendments would treat as fund management organizations, fund advisers (including sub-advisers), principal underwriters, and fund administrators.[89] We are proposing to include fund administrators because, in some fund complexes, an administrator performs many of the management functions traditionally performed by a fund's adviser, and thus may have the same types of conflicts as an investment adviser sponsoring a fund.[90] The limitations on dual representation also would extend to *control persons* of fund management organizations: persons who directly or indirectly control, are controlled by, or are under common control with the adviser, principal underwriter, or fund administrator.[91] Counsel to both a parent company of the fund's adviser and a fund's independent directors, for example, may face the same conflicts as those faced by counsel to the fund's adviser and the fund's independent directors.[92] We request comment whether the amendments should extend to other types of service providers in addition to management organizations,[93] and to persons other than control persons (*e.g.*, affiliated persons of a management organization).

Under the proposed amendments, a person could be an independent legal counsel to a fund's independent directors regardless of the nature and amount of legal services he or she provides to the fund itself. A person acting as both fund counsel and independent director counsel ordinarily should not have the types of conflicts of interest that would diminish the counsel's ability to provide zealous representation of independent directors.[94] Similarly, our proposal would not preclude counsel from representing the independent directors of multiple funds affiliated with the same management organization. We request comment on this provision.

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[81] Our proposals are not intended to regulate the practice of law, but rather to delimit the ability of independent fund directors to waive certain conflicts of interest. In other contexts, fiduciaries have been similarly restricted in their ability to waive conflicts. *See, e.g.*, section 327 of the U.S. Bankruptcy Code [11 U.S.C. 327] (bankruptcy trustee generally cannot employ a counsel who represents an interest adverse to the estate in bankruptcy, and any counsel employed by the trustee must be a disinterested person); Md. Regs. Code tit. 13 § 105 (attorney to a receiver or assignee in bankruptcy must meet prescribed independence standards, including that the attorney does not represent an interest adverse to the estate). *See also* rule 116.5 of the Bureau of Indian Affairs [25 CFR 116.5] (no person with a personal, financial, or business connection to a trustee of restricted Indian property may act as an appraiser of that property in connection with loans made from the trust).

[82] In the 1992 Protecting Investors Report, the staff of the Division of Investment Management considered, but did not recommend, requiring funds to provide independent directors with their own counsel. While the staff recognized the benefits of separate counsel for independent directors, it was concerned about the costs associated with requiring separate counsel in all cases. *See* 1992 Protecting Investors Report, *supra* note 9, at 268.

[83] *See* proposed rules 10f–3(b)(11)(ii); 12b–1(c)(2); 15a–4(c)(2); 17a–7(f)(2); 17a–8(c)(2); 17d–1(d)(7)(v)(B); 17e–1(c)(2); 17g–1(j)(3)(ii); 18f–3(e)(2); 23c–3(b)(8)(ii).

[84] The proposed definition of an independent legal counsel would apply to a "person." *See* proposed rule 0–1(a)(6)(i). The term "person" would have the same meaning as in section 2(a)(28) of the Act [15 U.S.C. 80a–2(a)(28)] and, in addition, would include a partner, co-member, or employee of any person. *See* proposed rule 0–1(a)(6)(ii)(A). The term "co-member" is intended to address law firms organized as limited liability companies. The interest-holders of limited liability companies generally are called "members."

[85] *See infra* note 89.

[86] *See infra* note 91 and accompanying text.

[87] *See* proposed rule 0–1(a)(6)(i)(A). We intend that the phrase "act as legal counsel" as used in the proposed definition of "independent legal counsel" will have the same meaning that it has for purposes of section 2(a)(19)(B)(iv) [15 U.S.C. 80a–2(a)(19)(B)(iv)]. The staff has interpreted the phrase "acts as legal counsel" broadly. *See* 399 Fund, SEC No-Action Letter (Sept. 2, 1973) (fund directors would be an "interested person" because his firm had entered an appearance on behalf of certain officers and directors of the fund's adviser in litigation unrelated to the fund); Alpha Investors Fund, Inc., SEC No-Action Letter (Jan. 9, 1972) (fund director would be an "interested person" because his firm had performed two small legal projects for a company that owned a 50 percent share of an adviser to a fund).

In some cases, ethics rules permit counsel to accept payment for legal services from a non-client third party. *See* ABA Model Rules, *supra* note 79, rule 1.8(f) (1998) (counsel may accept compensation from a third party if (i) the client consents after consultation, (ii) there is no interference with counsel's independence of professional judgment or with the attorney-client relationship, and (iii) counsel maintains client confidentiality); *see also id.* Rule 1.7 cmt. 10 ("Interest of Person Paying for a Lawyer's Service"). Under our proposed amendments, we would not view a lawyer as "acting as legal counsel" to a fund's investment adviser merely because the lawyer accepts payment of fees from the adviser for legal services performed on behalf of the fund or its independent directors as permitted by relevant professional ethics rules.

[88] *See infra* Section 11.A.3(d) "Exception"; proposed rule 0–1(a)(6)(i)(B).

[89] We are proposing to define "administrator" as any person who provides significant administrative or business affairs management services to a fund. Proposed rule 0–1(a)(5). This definition is substantially similar to, and has the same meaning as, the definition of administrator contained in Item 22(a)(1)(i) of Schedule 14A and Item 15(h)(1) of Form N–1A.

[90] Funds are increasingly turning to third-party fund administrators to provide an array of services, including shareholder servicing, recordkeeping, accounting, and fund distribution. *See* Jackie Cohen, *Priming the Pump for Better Mutual Fund Sales*, Bank Tech. News, June 1998, at 43; Katharine Fraser, *Fund Administrators Vie for Megabank Pacts*, Am. Banker, May 27, 1998, at 10. As of December 31, 1998, third-party fund administrators had approximately $527 billion in assets under administration. *See generally* Lipper Inc., Lipper Directors' Analytical Data: Executive Summary (1st ed. 1999) (providing estimates of fund assets administered by entities other than funds, from which estimates of fund assets administered by entities unaffiliated with the fund may be derived).

[91] The definition of "control person" would exclude funds. This exclusion enables the same counsel to represent a fund and its independent directors. *See* proposed rule 0–1(a)(6)(ii)(B); *see also infra* note 94 and accompanying text.

[92] This could be the case even if the legal work performed for the control person is unrelated to the fund or its operations.

[93] *See* ICI Advisory Group Report, *supra* note 28, at 19 (recommending counsel for the independent directors who is independent from all of the fund's service providers).

(b) Two-Year Period. Section 2(a)(19) of the Act prevents any person who has acted as legal counsel to a fund's adviser or principal underwriter during the last two years from serving as an independent director of the fund.[95] This section reflects Congress's belief that acting as counsel to fund management organizations creates conflicts that may affect a person's ability to represent shareholder interests. Based upon similar considerations, the proposed amendments would (subject to the exception discussed below) preclude a person from acting as counsel for independent directors for two years after having acted as legal counsel to a fund management organization or its control person. As in section 2(a)(19), the disqualification would apply to any partner or employee of a person who acted as legal counsel to the management organization or its control person.[96]

(c) Reasonable Belief. The proposed amendments would require the fund to have a "reasonable belief" that counsel to the independent directors meets the requirements of the independent legal counsel definition. If, despite the fund's reasonable belief, counsel does not actually meet the requirements, the fund would not lose the ability to rely on any of the Exemptive Rules. A fund could form a reasonable belief based on a representation from counsel. If the fund relies on counsel's representation, the fund also should obtain an undertaking that the counsel will inform the fund and the independent directors if it begins to act as legal counsel to the fund management organizations or any of their control persons.

(d) Exception. As discussed above, these proposed amendments are intended to assure that independent directors have the benefit of counsel who is free from the types of conflicts that may affect the advice provided to independent directors. The scope of the proposed limitation, described above, is broad and covers direct and indirect conflicts. As a result, the proposed amendments might preclude a person from serving as counsel to a fund's independent directors because of a remote or minor conflict involving, for example, a law-firm partner who represented an affiliate of the fund's adviser in a minor real estate transaction. Therefore, the proposed definition of "independent legal counsel" includes an exception that would permit the independent directors to retain the counsel if they determine that the counsel's representation was "so limited that it would not adversely affect the counsel's ability to provide impartial, objective, and unbiased legal counsel to the [independent] directors."[97]

The exception would not permit waivers in all instances, but only in circumstances where the nature or extent of the conflict is minor. We would expect that the independent directors, in making a determination under the exception, would consider all relevant factors. These factors could include whether the representation presented a direct and ongoing conflict with the fund, the amount of legal fees generated by the representation, and the nature and the extent of the affiliation between a control person and a fund management organization. The basis for any determination under this provision also must be recorded in board meeting minutes.[98]

We request comment on the approach we have taken. Should independent directors who engage legal counsel under the exception to the general rule be required to make findings different from those proposed? For example, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees recommended that a director who does not meet proposed independence standards be allowed to serve as a member of a company's audit committee if the board, under exceptional and limited circumstances, determines that membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual proxy statement, the reasons why the director does not meet the independence standards and the reasons for the board's determination.[99] Should we also require public disclosure of the independent directors' determination regarding their counsel's conflict and the nature of that conflict? If so, in what document should the disclosure be made?

(e) Transition Period. If we adopt the proposals after the comment period, counsel for the independent directors of funds relying on any of the Exemptive Rules would not be required to be "independent legal counsel" until the compliance date established in the adopting release. We believe that independent directors of most fund groups would not be required to seek new counsel. In some cases, however, they may. Comment is requested on the transition time that independent directors would need to hire new counsel.

B. Limits on Coverage of Directors Under Joint Insurance Policies

The oversight responsibilities that the Act assigns to independent directors[100] may create tensions between those directors and the fund's adviser[101] that can lead to disputes.[102] A dispute among these parties that escalates to the level of a lawsuit can result in significant legal expenses for the independent directors.[103]

Funds typically purchase "errors and omissions" insurance policies ("D&O/E&O policies")[104] to cover expenses

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[94] *See id.* at 18–19 ("The Adisory Group believes that counsel for the independent directors also may serve as fund counsel because, in virtually every situation except possibly litigation, the interests of the fund and its directors are aligned."). *But see* Roundtable Transcript of Feb. 24, 1999 at 179 (statement of John C. Coffee, Jr.) (noting that counsel to a fund invariably works closely with, and generally receives work requests from, personnel of the adviser who manages the fund, and that the close association with the adviser that results from representing the fund could influence the counsel's representation of the independent directors).

[95] Section 2(a)(19)(B)(vi). Section 2(a)(19)(A)(iv) of the Act [15 U.S.C. 80a–2(a)(19)(A)(iv)] also precludes a person who has acted as *fund* counsel from serving as an independent director of that fund for at least two years. As discussed above, our proposal would not preclude counsel to a fund from serving as counsel to a fund's independent directors. *See supra* note 94 and accompanying text.

[96] *See* proposed rule 0–1(a)(6)(ii)(A); *see also supra* note 84.

[97] *See* proposed rule 0–1(a)(6)(i)(B).

[98] *See id.*

[99] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees 11 (1999) ["Blue Ribbon Committee Report"].

[100] *See supra* notes 12–24 and accompanying text; *see also* section 36(a) of the Act [15 U.S.C. 80a–35(a)] (enabling federal lawsuits to be brought against fund directors for breaches of fiduciary duty involving personal misconduct).

[101] *See* Roundtable Transcript of Feb. 24, 1999 at 234 (statement of Gerald C. McDonough) ("The adversarial role * * * of independent [directors] and fund advisers is a healthy and desirable one.").

[102] *See* David A. Sturms, The Debate: The System is Broken—Fix It or Scrap It vs. The System Works—Don't Fix What Isn't Broken 4–7 (materials prepared for SEC Roundtable on the Role of Independent Investment Company Directors, Feb 23–24, 1999) (discussing recent disputes between independent directors of funds and the funds' advisers).

[103] *See* ICI Advisory Group Report, *supra* note 28, at 26 ("[L]itigation [involving independent directors] can be extremely expensive and may even carry with it a potential for personal financial ruin.").

[104] D&O/E&O policies generally insure directors and officers of an insured entity (*e.g.*, a fund) for claims made against them for their designated acts, errors, or omissions. *See generally* Spiro K. Bantis, "What Mutual Fund D&O/E&O Policies Don't Cover"; Ellen Metzger, Mutual Fund D&O/E&O Insurance: Considerations in Selecting and

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incurred by directors and officers in the event of litigation.[105] Often these policies are joint policies that cover numerous funds within a fund family as well as the adviser and principal underwriter of those funds. Although the Investment Company Act and our rules generally prohibit joint transactions and other joint arrangements involving a fund and its affiliates,[106] rule 17d–1(d)(7) permits the purchase of joint D&O/E&O policies.[107]

Joint D&O/E&O policies historically have excluded claims in which the parties under the policy sue each other.[108] A policy that insures both a fund's investment adviser and its independent directors therefore may not cover the independent directors' expenses of litigation with the fund's adviser. Without this coverage, independent directors face substantial personal legal expenses in the event of a lawsuit.[109]

The exclusion of coverage under joint policies creates a potential threat to directors' personal assets, which can hamper directors' willingness to question management and weaken their resolve to protect fund shareholders in the event of a conflict with the adviser. Because we are concerned about the effect that these exclusions may have on the ability of independent directors to carry out their statutory responsibilities, we propose to amend rule 17d–1(d)(7) to make the rule available only for joint liability insurance policies that do not exclude coverage for litigation between the independent directors and the fund's adviser.[110] These proposals are intended to allow independent directors to engage in the good faith performance of their statutory responsibilities without concern for their personal financial security.[111]

We request comment on the proposed amendments to rule 17d-1(d)(7) concerning the purchase of joint D&O/E&O policies. The ICI Advisory Group Report recommended more broadly that fund boards should consider obtaining D&O/E&O insurance policies and/or indemnification from the fund "that is adequate to ensure the independence and effectiveness of independent directors." [112] The proposed amendments do not require that funds obtain insurance coverage or indemnification for independent directors, so that funds will have the latitude to determine which arrangements are appropriate for their circumstances. We request comment whether we should further amend rule 17d-1(d)(7) to require that joint insurance polices purchased under the rule be in an amount adequate to ensure that independent directors can perform their duties in an independent and effective manner, and what that amount might be.

C. Exemption From Ratification of Independent Public Accountant Requirement for Funds With Independent Audit Committees

The Investment Company Act requires that a fund's independent directors select the fund's independent public accountant.[113] The Act further requires that the selection of the fund's independent public accountant be submitted to shareholders for ratification or rejection at their next annual meeting.[114]

We have observed that shareholders rarely contest votes over the ratification of the selection of a fund's independent accountant. Many believe shareholder ratification has become perfunctory. This may have occurred because of the growth of funds,[115] their organization into large complexes, the increased complexity of accounting issues, or the consolidation of accounting firms, which have made it impracticable for shareholders to evaluate the qualifications and independence of fund auditors. We are proposing, therefore, to exempt funds from the shareholder ratification requirement if the auditor is subject to the oversight and direction of an audit committee consisting entirely of independent directors.

Today, in many corporations and fund complexes, audit committees play an important and growing role in assuring the integrity of financial statements.[116] The current listing

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Maintaining a Policy; Natalie Shirley, Claims—What to Do When the Unthinkable Happens; Daniel T. Steiner, Selected Issues Regarding Basic Policy Forms (collected materials from 1995 Mutual Funds and Investment Management Conference, Mutual Fund D&O/E&O Insurance 101).

[105] Under the Act, a fund's organizational documents cannot contain any provision protecting a director or officer of the fund from any liability to the fund or its shareholders to which he is subject by reason of willful misfeasance, bad faith, gross negligence, or reckless disregard of the duties involved in the conduct of his office. *See* section 17(h) of the Act [15 U.S.C. 80a–17(h)]; *see also* Interpretive Release, *supra* note 1, Section II.C (discussing section 17(h) and providing guidance regarding when a fund may pay an advance of legal fees to its directors).

[106] *See* section 17(d) [15 U.S.C. 80a–17(d)] (prohibiting an affiliated person of a fund from effecting a joint transaction with the fund in contravention of Commission rules); rule 17d–1 [17 CFR 270.17d–1] (prohibiting a fund affiliate from participating in any joint enterprise, joint arrangement, or profit-sharing plan with a fund without first obtaining a Commission order, except in certain designated circumstances); *see also* Interpretive Release, *supra* note 1, Section II.B (discussing section 17(d) and rule 17d–1 and explaining the view of the staff that actions taken by fund directors within the scope of their duties for the fund generally would not be joint transactions under section 17(d) and rule 17d–1).

[107] 17 CFR 270.17d–1(d)(7). Reliance on rule 17d–1(d)(7) currently is conditioned on a fund's board, and a majority of its independent directors, annually determining that the joint policy is in the best interests of the fund and that the proportion of the policy's premium allocated to the fund is fair and reasonable.

[108] *See* ICA Advisory Group Report, *supra* 28, at 26. The general purpose of these standard "insured versus insured" exclusions is to prevent collusion among insureds.

[109] *See* Paul H. Dykstra and Paulita Pike-Bokhari, *The Yacktman Battle: Manager Bites the Watchdogs*, Investment Law., Nov./Dec. 1998, at 1, 9–10 (discussing the effect of an "insured versus insured" exclusion of insurance coverage on independent directors of the Yacktman Fund).

[110] Proposed rule 17d–1(d)(7)(iii). The proposed amendments would prohibit exclusions for bonafide (*i.e.*, non-collusive) claims made against any independent director by another person insured under the joint insurance policy. The proposed amendments also would prohibit exclusion of coverage for the fund if it is a co-defendant with an independent director in a claim brought by a co-insured. We believe that the ability of fund directors to perform their duties may be further impaired if an adviser's lawsuit poses a threat to fund assets as well as to director's personal assets.

[111] Earlier this year, Chairman Levitt expressed concern about standard "insured versus insured" exclusions. *See* Arthur Levitt, Keeping Faith with the Shareholder Interest: Strengthening the role of Independent Directors of Mutual Funds (remarks at the Mutual Funds and Investment Management Conference, Palm Springs, CA, Mar. 22, 1999), available at <http://www.sec.gov/news/speeches/spch259.htm>. In response, the ICI Mutual Insurance Company ("ICI Mutual"), which insures funds representing approximately 70 percent of all mutual fund assets, recently announced that it has revised its D&O/E&O policies to clarify that these types of claims are covered under its standard insurance policy. *See* Aaron Lucchetti, *Direct and Protect*, Wall St. J., April 2, 1999, at C23. ICI Mutual now makes available a standard policy endorsement that permits independent directors to recover defense costs, settlements, and judgments in "insured versus insured" claims otherwise covered under the policy. This change by ICI Mutual is a significant step toward ensuring the ability of independent directors to vigorously fulfill their duties under the Act without concerns of personal liability. We believe, however, that all independent directors who serve on funds that obtain joint liability insurance policies should have the benefit of protections similar to those provided by ICI Mutual.

ICI Advisory Group Report, *supra* note 28, at 26. the Report also noted that independent directors may need to be covered by insurance after their service on the board has ended for claims involving their service as directors. *Id.* at 26–27.

[113] Section 32(a)(1).

[114] Section 32(a)(2) [15 U.S.C. 80a–31(a)(2)].

[115] *See supra* note 3 and accompanying test.

[116] *See generally* A.B.A., Section of Business Law, Corporate Director's Guidebook 27–32 (2d ed. 1994) ["1994 Corporate Director's Guidebook"]; *See also* Investment Company Institute, Understanding the Role of Mutual Fund Directors 7 (1998) (noting that although not required by law, it is common practice for mutual funds to have an audit committee oversee the financial reporting and internal controls of the fund and stating that the results of a 1998 survey conducted by Management Practice Inc. indicated that 100 percent of fund boards surveyed had an audit committee); Fund Director's Guidebook, *supra* note 62, at 26 (stating that the audit committees of many funds are comprised of all of the fund's independent directors).

requirements of the primary U.S. securities exchanges require publicly traded companies to have audit committees,[117] and many commentators have recognized the value of independent audit committees and the significance of their function in a corporate governance structure.[118] Recently, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees emphasized the important role of audit committees and recommended enhanced responsibilities, membership standards, and methods of operation designed to strengthen their oversight function.[119] The ICI Advisory Group Report, furthermore, recommended that fund boards establish audit committees comprised entirely of independent directors.[120]

We believe that the ongoing oversight provided by an independent audit committee can provide greater protection to shareholders than the current requirement for shareholder ratification of a fund's independent auditors. We therefore are proposing a rule that would exempt a fund from the Act's requirement that shareholders ratify or reject the selection of the fund's independent public accountant if the fund has an audit committee comprised wholly of independent directors.[121] In order for a fund to rely on the proposed exemption, (i) the audit committee must be responsible for overseeing the fund's accounting and auditing processes,[122] (ii) the fund's board of directors must adopt an audit committee charter setting forth the committee's structure, duties, powers, and methods of operation,[123] and (iii) the fund must maintain a copy of the charter.[124]

We request comment regarding the conditions of the proposed rule. Should the exemption require that the charter set forth certain specific responsibilities and methods of operation? Should funds relying on the exemption be required to provide a copy of their audit committee charter as an exhibit to their registration statement, and should the board be required to review the charter on an annual basis? Should the exemption require fund audit committees to obtain an annual representation from the fund's independent public accountant certifying its independence, as the ICI Advisory Group suggested?[125] Should the exemption include other conditions that are similar to the recommendations of the ICI Advisory Group and Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees?

The proposed rule assumes that the appropriate form for the instrument governing an audit committee is a charter. Should the rule explicitly recognize that the audit committee provisions could be included in a document other than the charter, such as the fund's by-laws, articles of incorporation, or declaration of trust?

D. Qualification as an Independent Director

In addition to the amendments to enhance the independence of fund boards, we are proposing amendments to prevent qualified individuals from being unnecessarily disqualified from serving as independent directors. The Investment Company Act sets standards for who may be considered an independent director.[126] While these standards are meant to exclude individuals with affiliations or business interests that can impair their independence, there are circumstances in which the standards may cause certain individuals to be unnecessarily disqualified from serving as an independent director. For this reason, Congress directed the Commission to apply the standards "in a flexible manner" and adopt appropriate exemptions.[127] Today we are proposing (i) to amend the rule that permits directors to be considered independent directors even if they are affiliated with a broker-dealer, and (ii) a new rule that would prevent directors from being disqualified as independent directors solely because they own shares of index funds that hold limited interests in their fund's adviser or principal underwriter.

1. Affiliation With a Broker-Dealer

Section 2(a)(19) of the Act provides that no person can be an independent director if he is, or is affiliated with, a registered broker-dealer.[128] This provision is designed to prevent independent directors from being influenced by a business relationship with broker-dealers.[129] Rule 2a19–1 under the Act provides relief from this provision under certain conditions, but only if no more than a minority of a fund's independent directors are broker-dealers or affiliated with broker-dealers.[130] When we proposed this condition in 1984, we explained that allowing all of the fund's independent directors to be affiliated with broker-dealers would be inconsistent with Congress's intent to separate independent directors from the brokerage industry.[131]

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[117] *See e.g.*, New York Stock Exchange Listed Company Manual ¶ 303.00.

[118] *See, e.g.*, Roundtable Transcript of Feb. 23, 1999 at 236 (statement of Manuel H. Johnson) (noting that an audit committee comprised entirely of independent directors serves as a check and balance); 1994 Corporate Director's Guidebook, *supra* note 116, 27 ("The Audit Committee should be composed solely of independent directors."); Fund Director's Guidebook, *supra* note 62, at 25–26 (noting that the boards of many public companies, including funds, have established audit committees at the urging of many governmental and non-governmental institutions that have determined that audit committees can play a meaningful role in ensuring corporate accountability), *The Role and Composition of the Board of Directors of the Large Publicly Owned Corporation: Statement of the Business Roundtable*, 33 Bus. Law. 2083, 2108, 2109 (1978) ("[W]e believe it highly desirable * * * that the board be served by an Audit Committee." THe audit committee should be "composed entirely of non management directors.") Report of the National Commission on Fraudulent Financial Reporting 12 (Oct. 1987) ["Treadway Report"] ("The audit committee on the board of directors plays a role critical to the integrity of the company's financial reporting. [We] recommend[] that all public companies be required to have audit committees composed entirely of independent directors."); Advisory Panel on Auditor Independence, Strengthening the Professionalism of the Independent Auditor 14 (Sep. 13, 1994) (Special Report to the Oversight Board of the SEC Practice Section, AICPA ["Kirk Panel Report"] (noting that it is important that companies have audit committees of independent directors).

[119] Blue Ribbon Committee Report, *supra* note 99. With respect to independence of audit committee members, the Blue Ribbon Committee Report states:

> [I]t is widely recognized that each member of the audit committee should be an independent director. Several recent studies have produced a correlation between audit committee independence and two desirable outcomes: a higher degree of active oversight and a lower incident of financial statement fraud. In addition, common sense dictates that a director without any financial, family, or other material personal ties to management is more likely to be able to evaluate objectively the propriety of management's accounting internal control and reporting practices.

Id. at 22.

[120] ICI Advisory Group Report, *supra* note 28, at 22–23.

[121] *See* proposed rule 32a–4(b). A closed-end fund listed on a stock exchange also is subject to the exchange's listing requirements regarding audit committees. *See, e.g., Supra* note 117 and accompanying text.

[122] Proposed rule 32a–4(a).

[123] Proposed rule 32a–4(c).

[124] Proposed rule 32a–4(d). Under the current requirements of rule 31a–1(b)(4) [17 CFR 270.31a–1(b)(4)], funds also would be required to maintain minute books of the audit committee's meetings.

[125] *See* ICI Advisory Group Report, *supra* note 28, at 22–23. *Cf.* Independence Standards Board Standard No. 1: Independence Discussions with Audit Committees (Jan. 1999) (requiring, for all funds with fiscal years ending after July 19, 1999, that a fund's auditor provide an annual representation of the auditor's independence).

[126] For example, the Act provides that no person can be an independent director to a fund if he is affiliated with the fund itself, or with the fund's investment adviser or principal underwriter. Section 2(a)(19)(A)(i), (A)(iii), (B)(i) [15 U.S.C. 80a–2(a)(19)(A)(i), (A)(iii), (B)(i)]. *See generally infra* note 170.

[127] *See* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 15 (1970).

[128] Section 2(a)(19)(A)(v), (B)(v) [15 U.S.C. 80a–2(a)(19)(A)(v), (b) (v)].

[129] *See* The First Australia Fund, Inc., SEC No-Action Letter, at n.8 and accompanying text (Oct. 8, 1987) ("The broad scope of section 2(a)(19) with respect to brokers and dealers appears to have been prompted by the many subtle relationships that exist between persons who are active in the securities markets.") (citing Public Policy Report, *supra* note 10, at 162–68). Congress also may have adopted this broad prohibition reaction to the nature of fund brokerage arrangements when fixed commission rates were prevalent. *See* Certain Persons Not Deemed Interested Persons; Definition of Regular Broker or Dealer, Investment Company Act Release No. 13920 (May 2, 1984) [49 FR 19519 (May 8, 1984)] at n.1 ["Rule 2a19–1 Proposing Release"].

In recent years, some directors have been unable to qualify as independent directors due to the condition that no more than a minority of a fund's independent directors may be affiliated with a broker-dealer. This condition has been especially troublesome for funds with small boards of directors. For example, if a three-member board has only two independent directors, neither director can rely on rule 2a19–1 because it would result in more than a minority of the independent directors relying on the rule. In these types of circumstances, the Commission has granted exemptions from this condition of the rule.[132]

We are proposing to amend rule 2a19–1 to provide that no more than *one-half* of a fund's independent directors may be broker-dealers or their affiliates.[133] This condition should make the rule more flexible for funds with small boards of directors, while continuing to ensure that not all of a fund's independent directors are broker-dealers or their affiliates.[134] We seek comment on whether rule 2a19–1 should be expanded further.

2. Ownership of Index Fund Securities

Section 2(a)(19) disqualifies an individual from being considered an independent director if he knowingly has any direct or indirect beneficial interest in a security issued by the fund's investment adviser or principal underwriter, or by a controlling person of the adviser or underwriter.[135] A fund director, for example, who owns securities issued by the fund's adviser (or its parent company) could not be an independent director. This provision was designed to ensure that an independent director does not have a financial interest in the organizations that are closely associated with the fund or that would benefit from payments that the independent director is charged with scrutinizing.[136]

If a director owns securities of an index fund[137] that seeks to replicate a securities market index that includes securities of the fund's adviser (or principal underwriter or a controlling person of the adviser or principal underwriter), an issue could arise whether the director knowingly has an indirect beneficial interest in the securities of the adviser (or principal underwriter or controlling person).[138] We believe that this attenuated interest in the adviser's or underwriter's securities is not the type of interest Congress intended to prohibit independent directors from owning when it adopted section 2(a)(19). An index fund's investment decision-making process is dictated by the goal of mirroring the performance of a market index, and thus is largely mechanical.[139] Because index fund portfolios typically are spread among a large number of issuers, ownership of their shares is unlikely to have a material effect on the independent judgment of a fund director.

In order to resolve concerns that may have arisen about the status of independent directors who own index funds, we are proposing a new rule that would conditionally exempt an individual from being disqualified as an independent director merely because he owns shares of an index fund that invests in the adviser or underwriter of the fund, or their controlling persons.[140] The exemption would be available if the value of securities issued by the adviser or underwriter (or controlling person) does not exceed five percent of the value of any index tracked by the index fund.[141] The purpose of this condition is to assure that an independent director's indirect interest in the adviser's securities will not be substantial enough to impair his independence and create a conflict of interest.

The proposed rule would define an "index fund" as a fund with an investment objective to replicate the performance of a securities index or indices.[142] We request comment on the proposed definition of index fund. Does it encompass the types of funds for which relief is appropriate? Should other types of investment vehicles be included in the proposed rule? We also request comment on the proposed limit on the percentage of the value of securities of the adviser or principal underwriter (or their controlling persons) represented in any index tracked by the fund. Should the rule allow an independent director to own index fund shares when the value of the securities issued by the adviser or underwriter (or their controlling persons) in the index constitutes more than five percent of the value of any index tracked by the fund? Should the limit be less than five percent?

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[130] Rule 2a19–1(a)(3) [17 CFR 270.2a19–1(a)(3]. Rule 2a19–1 also requires that the broker-dealer not execute any portfolio transactions for, engage in any principal transactions with, or distribute shares for, the fund's "complex," and that the board determine that the fund and its shareholders will not be adversely affected if the broker-dealer does not perform those functions for the fund. Rule 2a19–1(a)(1), (2) [17 CFR 270.2a19–1(a)(1), (2)]. The rule defines "complex" to the fund on whose board the director serves, its investment adviser and principal underwriter, and other funds having the same adviser or principal underwriter. Rule 2a19–1(b) [17 CFR 270.2a19–1(b).

[131] *See* Rule 2a19–1 Proposing, *supra* note 129, at n.36 and accompanying text.

[132] *See* Bergstrom, Capital Corporation, Investment Company Act Release Nos. 23629 (Dec. 31, 1998) [64 FR 1035 (Jan. 7, 1999)] (notice) and 23666 (Jan. 26, 1999) [68 SEC Docket 3501 (Feb. 23 1999)] (order); Counsellors Tandem Securities Fund, Inc. and Warburg, Pincus Counsellors, Inc., Investment Company Act Release Nos. 15636 (Mar. 24, 1987) [52 FR 10278 (Mar. 31, 1987)] (notice) and 15697 and 15697 (Apr. 22, 1987) [38 SEC Docket 318 (May 5, 1987)] (order).

[133] Proposed amendment to rule 2a19–1(a)(3).

[134] We also are proposing to amend the title of rule 2a19–1 to refer specifically to broker-dealers, the subject of the rule.

[135] Section 2(a)(19)(B)(iii) [15 U.S.C. 80a–2(a)(19)(B)(iii)].

[136] *See* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 13–14 (1970) (expressing policy concerns about the use of "affiliated person" in the Act because, among other things, it permitted a director to be classified as "unaffiliated" even though he had substantial business relationships with the fund, its adviser, or its underwriter); Public Policy Report, *supra* note 10, at 332–34 (same); *see also* section 15(c) of the Act (requiring independent directors to scrutinize and approve the fund's contracts with investment advisers and principal underwriters).

[137] An index fund is a type of fund that selects the securities in its portfolio in an effort to replicate the investment performance of the securities in a market index. Nearly 20 percent of the index funds registered with the Commission track the performance of the Standard & Poor's 500 Composite Stock Price Index.® For a discussion of other types of indexes, *see* John Waggoner, *Index Funds Race Into New Venues; Investors Can Track Europe or Racing Firms*, USA Today, Nov. 27, 1998, at 3B.

[138] *Cf.* The Massachusetts Company, SEC No-Action Letter (Jan. 29, 1972) (fund director who serves as a trustee of an irrevocable trust that holds shares of a controlling person of the fund's adviser and underwriter would be an interested person of the fund under section 2(a)(19)(B)(iii)).

[139] *Cf., e.g.,* The Victory Stock Index Fund, SEC No-Action Letter (Feb. 7, 1995) (staff would not recommend enforcement action under section 12(d)(3) or rule 12d3–1 when an index fund purchased securities of an affiliated person of the fund's adviser or principal underwriter, because, among other things, the "non-volitional nature of the index fund's purchases" made it unlikely that the fund's portfolio securities would be selected in the interest of the fund's adviser or principal underwriter, rather than the fund's shareholders).

[140] The proposed rule would not address an independent director's ownership of securities of an *actively* managed fund. The holdings of this type of fund can vary from day to day without the knowledge of the fund's shareholders, and periodic disclosure of fund holdings may be out of date by the time an investor receives them. We therefore believe it is clear that an independent director who owns shares of an actively managed fund ordinarily would not "knowingly" have an indirect beneficial interest in the issuers of securities the fund holds.

[141] Proposed rule 2a19–3.

[142] *Id.*

E. Disclosure of Information About Fund Directors

Participants at the Roundtable agreed that independent directors can vigilantly represent the interests of mutual fund shareholders only when they are truly independent of those who operate and manage the fund.[143] We agree with the Roundtable participants and believe that the effectiveness of fund boards of directors is enhanced by a high degree of independence of each independent director.

We believe that shareholders have a significant interest in knowing who the independent directors are, whether the independent directors' interests are aligned with shareholders' interests, whether the independent directors have any conflicts of interest, and how the directors govern the fund. This information helps a mutual fund shareholder to evaluate whether the independent directors can, in fact, act as an independent, vigorous, and effective force in overseeing fund operations.

The Commission has long recognized the importance of providing mutual fund shareholders with relevant information about fund directors and has required funds to provide shareholders with certain information about fund directors. Currently, information about directors is available in fund registration statements and proxy statements for the election of directors. Generally, funds are required to provide basic information about directors in the statement of additional information ("SAI") and proxy statements, including name and age; positions with the fund; principal occupations during the past five years; and compensation from the fund and fund complex.[144] Moreover, funds are required to disclose in proxy statements for the election of directors a director's positions with, interests in, and transactions with, the fund and certain persons related to the fund.[145]

For some time, however, we have been concerned that mutual fund investors do not in all cases have access to significant information about fund directors when they need it. When we adopted our recent comprehensive revisions to the mutual fund prospectus, we noted that mandating more information about fund directors than is available under our existing rules may be appropriate in light of independent directors' role as "watchdogs" for fund shareholders.[146] Critics have charged that shareholders do not know the very people who are entrusted with safeguarding their interests.[147] Some have complained that fund shareholders do not know whether the interests of independent directors are aligned with shareholders or with fund management.[148]

We have reevaluated our disclosure requirements in light of these criticisms and have concluded that, while our fundamental approach is sound, there are several gaps in the information that shareholders currently receive about directors. Historically, the primary vehicle for providing information about mutual fund directors was the proxy statement prepared in connection with shareholder meetings. In recent years, the proxy statement has become an ineffective vehicle for communicating information to fund shareholders on a regular basis because funds generally are no longer required to hold annual meetings.[149]

In addition, although mutual funds are required to disclose certain information that bears on a director's potential conflicts, the SAI requirements and proxy rules do not require disclosure of other circumstances that could raise similar conflict of interest concerns, such as those involving a director's immediate family members. The current rules also do not require disclosure of information that may show that a director's interests are aligned with shareholder interests, including a director's securities holdings in funds in the fund complex.

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[143] *See, e.g.*, statement of Bruce K. MacLaury, Roundtable Transcript of Feb. 23, 1999, at 42 ("It should be apparent that boards work best when the possibilities for conflict of interest are minimized so that truly independent directors can exercise their best judgment on behalf of the interest of the shareholders."); statement of Dawn-Marie Driscoll, Roundtable Transcript of Feb. 24, 1999, at 63 ("[I]ndependence is one of the most important characteristics of an independent director. The more ways that you can ensure independence the better the process will be."); statement of Thomas R. Smith, Jr., Roundtable Transcript of Feb. 24, 1999, at 253 ("There is something beyond what is in the statute that you consider when you pick new directors. You've got to look at material business relationships, and, quite frequently, in the selection process you will rule somebody out, although technically they are independent, because of relationships.").

[144] Items 13(b) and (d) of Form N–1A; Items 18.1 and 18.4 of Form N–2; Items 20(a) and (c) of Form N–3; Items 401(a) and (e) of Regulation S–K, through Item 22(b)(4) of Schedule 14A.

Funds also are required to disclose for each director the positions held with affiliated persons or principal underwriters of the fund. Item 13(c) of Form N–1A; Item 18.2 of Form N–2; Item 20(b) of Form N–3. Funds also must provide the percentage of the fund's equity securities owned as a group by all officers, directors, and advisory board members. Item 14(c) of Form N–1A and Item 19.3 of Form N–2. *See also* Items 23(f) and 25 of Form N–1A; Items 24.2.i and 29 of Form N–2; Items 21(a)(ii) and (f)(ii), 28(b)(10), and 32 of Form N–3.

[145] *See* Item 22(b)(1) of Schedule 14A (requiring disclosure of director's positions with the investment adviser and a director's securities holdings or material interest in the investment adviser and any person controlling, controlled by, or under common control with the investment adviser); Item 401 of Regulation S–K, through Item 22(b)(4) of Schedule 14A (requiring disclosure of director's positions with the fund); Item 22(b)(2) of Schedule 14A (requiring disclosure of any material interests of a director in the fund's principal underwriter or administrator); Item 22(b)(3) of Schedule 14A (requiring disclosure of any material interests of a director in any material transactions with the fund, the investment adviser, the principal underwriter, or the administrator, and any person controlling, controlled by, or under common control with the investment adviser, principal underwriter, or administrator); Item 404(a) of Regulation S–K, through Item 22(b)(4) of Schedule 14A (requiring disclosure of a director's material interests in transactions with the fund involving amounts over $60,000). Funds also must disclose in proxy statements a director's holdings in the fund. Item 403(b) of Regulation S–K, through Item 6(d) of Schedule 14A. *See also* Items 5, 7(e), (f), and (g), and 22(b)(5) and (b)(6) of Schedule 14A (requiring other information about directors).

[146] Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916, 13931 (Mar. 23, 1998)] ("1998 Form N–1A Release").

[147] John Markese, president of the American Association of Individual Investors, discussed his view that there is a "disconnect" between shareholders and the independent directors at our recent Roundtable. Roundtable Transcript of Feb. 23, 1999, at 48–49. *See also* Paul J. Lim, *Despite Plan to Fortify Independent Directors, Shareholders Must be Their Own Watchdogs*, L.A. Times, Mar . 28, 1999, at C3; Russ Wiles, "Fund Directors Losing Clout," The Arizona Republic D1 (Mar. 28, 1999).

[148] *See, e.g.*, Edward Wyatt, *Empty Suits In the Board Room; Under Fire, Mutual Fund Directors Seem Increasingly Hamstrung*, N.Y. Times, June 7, 1998, at C1; Steven D. Kaye, *Whose board is it?*, U.S. News & World Rep., Feb. 2, 1998, at 64; Jason Zweig, *How Funds Can Do Better*, MONEY, Feb. 1998, at 42.

[149] *See* John Nuveen & Co., Inc. SEC No-Action Letter (Nov. 18, 1986) ("Nuveen Letter") (annual meetings to elect directors not required by Investment Company Act). The Nuveen Letter took the position that annual meeting requirements generally are a question of state law.

For historical and other reasons, most funds are organized under the laws of Massachusetts or Maryland. The organizational and operational requirements of Massachusetts business trusts are not specified by statute, and a fund's essential structure is contained in the trust agreement, which generally includes a provision eliminating the need for annual shareholder meetings to elect directors. *See generally* Jones, Moret and Storey, *The Massachusetts Business Trust and Registered Investment Companies*, 13 DEL. J. CORP. L. 421 (1988). Under Maryland corporate law, fund charters or by-laws are not required to provide that annual meetings be held in any year in which election of directors is not required by the Investment Company Act. MD. CODE ANN., CORPS. & ASS'NS Code § 2–501(b) (1999). In addition, Delaware, Minnesota, and California also have business trust or special corporate law structures that have the effect of not requiring shareholder meetings other than those required by the Investment Company Act. DEL. CODE ANN. tit 12, § 3806 (1999); Minn. Stat. § 302A.431 (1999); CAL. CORP. CODE § 600(b) (West 1999).

Closed-end funds registered on national securities exchanges, however, are required to hold an annual meeting to elect directors under the rules of the exchanges. *See, e.g.*, American Stock Exchange Listing Standards, Policies, and Requirements § 704; New York Stock Exchange Listed Company Manual § 302.00. Closed-end fund shareholders therefore generally would receive annual proxy statements.

Therefore, we are proposing amendments to our disclosure rules to close these gaps. Our proposals would require mutual funds to:

- Provide basic information about directors to shareholders annually so that shareholders will know the identity and experience of their representatives;
- Disclose to shareholders fund shares owned by directors to help shareholders evaluate whether directors' interests are aligned with their own;
- Disclose to shareholders information about directors that may raise conflict of interest concerns; and
- Provide information to shareholders on the board's role in governing the fund.

These proposals would supplement the information that currently is available in the mutual fund SAI and in proxy statements. For ease of reference, we have attached as Appendix A a table cross-referencing the proposed disclosure requirements in the proxy rules and the SAI of Form N–1A with existing requirements.[150]

1. Basic Information About Directors

(a) Location of Information. The Commission is proposing to require mutual funds to disclose basic information about directors in an easy-to-read tabular format.[151] We are proposing to combine in one table certain information currently required for directors in the SAI and proxy statements.[152] This new table would be required in three places: the fund's annual report to shareholders, SAI, and proxy statement for the election of directors. This would ensure that the information is available to prospective investors upon request. It also would ensure that mutual fund shareholders receive basic information about the identity and experience of their directors both annually and whenever they are asked to vote to elect directors.

We are not proposing to require that basic information about directors be included in the prospectus. We considered, and rejected, this idea during our recent top-to-bottom overhaul of the mutual fund prospectus.[153] At the time of our prospectus overhaul, however, we directed the Division of Investment Management to consider whether information about directors should be included in fund annual reports, and we have now concluded that it should.[154]

Our proposals would, for the first time, require that basic information about mutual fund directors be included in the annual report to shareholders.[155] Because the proxy statement is no longer received by most fund shareholders annually, we are proposing to include basic information about directors in the annual report to ensure that shareholders will receive it regularly. We also are proposing to require funds to include in the annual report a statement that the SAI includes additional information about fund directors and is available without charge upon request.[156] The statement must include a toll-free (or collect) telephone number for shareholders to call for additional information.

We request comment on the appropriate location for basic information about mutual fund directors. Please address whether basic information should be included in the prospectus, SAI, annual report, and/or proxy statement. Should we, for example, reconsider our decision not to include any of the basic information about directors in the prospectus?

(b) Required Information. The proposed table would require for each director: (1) Name, address, and age; (2) current positions held with the fund; (3) term of office and length of time served; (4) principal occupations during the past five years; (5) number of portfolios overseen within the fund complex; and (6) other directorships held outside of the fund complex.[157] The table also would require for each "interested" director, as defined in section 2(a)(19) of the Act, a description of the relationship, events, or transactions by reason of which the director is an interested person.[158]

Currently, mutual funds must disclose the number of other registered investment companies in the fund complex that a director oversees.[159] The Commission now is proposing to require disclosure of the total number of portfolios, rather than registered investment companies, that a director oversees.[160] In today's environment, where a complex may choose between organizing a single series company with multiple portfolios or multiple investment companies each with a single portfolio, we believe that requiring disclosure of the number of portfolios that a director oversees would provide a more accurate picture of the director's responsibilities.

The Commission seeks comment on whether the proposed basic information would provide shareholders with sufficient information about the directors who are charged with protecting shareholder interests. If the disclosure would not achieve this purpose, is there other basic information about directors that should be required? If proposed disclosure of any item is not necessary or useful to investors, please explain the reason why. Should the same basic information be included in the SAI, annual report, and proxy statement?

2. Ownership of Equity Securities in Fund Complex

As discussed above, some have complained that shareholders do not know whether directors' interests are aligned with those of shareholders.[161] Although a director need not necessarily hold securities of funds in a fund complex to be an effective advocate for shareholders, the interests of a director who holds shares in the complex will tend to be aligned with the interests of other shareholders.[162] We are therefore proposing to require disclosure of the aggregate dollar amount of equity securities of funds in the fund complex owned beneficially and of record by each director.[163]

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[150] Form N–1A is the registration form used by open-end management investment companies to register under the Investment Company Act and to offer their shares under the Securities Act. We also are proposing parallel changes to Forms N–2 (closed-end funds) and N–3 (managed separate accounts offering variable annuity contracts).

[151] Proposed Item 22(b)(1) of Schedule 14A; proposed Items 13(a)(1) and 22(b)(5) of Form N–1A; proposed Item 18.1 and Instruction 4.e. to Item 23 of Form N–2; proposed Item 20(a) and Instruction 4(v) to Item 27 of Form N–3. For convenience in discussing the proposed requirements, we are not specifically referring to nominees for election as directors. The proposed requirements, however, would be applicable to nominees in proxy solicitations for the election of directors. The disclosure requirements in Item 22 of Schedule 14A also are applicable to information statements prepared in accordance with Regulation 14C and Schedule 14C [17 CFR 240.14c–101].

[152] *See* Item 13(b) of Form N–1A; Item 18.1 to Form N–2; Item 20(a) of Form N–3; Items 401(a) and (e) of Regulation S–K, through Item 22(b)(4) of Schedule 14A. As currently required, funds would continue to include in the table information about officers and advisory board members of the fund, as well as directors. *See* Items 13(b) of Form N–1A; Item 18.1 of Form N–2; Item 20(a) of Form N–3; Items 401(b) and (e) of Regulation S–K, through Item 22(b)(4) of Schedule 14A.

[153] *See* 1998 Form N–1A Release, *supra* note 146, at 13930–13931.

[154] *See Id.*

[155] Proposed Item 22(b)(5) of Form N–1A; proposed Instruction 4.e. to Item 23 of Form N–2; proposed Instruction 4(v) to Item 27 of Form N–3.

[156] Proposed Item 22(b)(6) of Form N–1A; proposed Instruction 4.e. to Item 23 of Form N–2; proposed Instruction 4(vi) to Item 27 of Form N–3.

[157] As is currently required, the fund also would be required to explain any family relationship between the persons listed in the table. *See* current Item 401(d) of Regulation S–K, through Item 22(b)(4) of Schedule 14A; Item 13(b) of Form N–1A; Item 18.1 of Form N–2; Item 20(a) of Form N–3; proposed Item 22(b)(1) of Schedule 14A; proposed Item 13(a)(1) of Form N–1A; proposed Item 18.1 of Form N–2; proposed Item 20(a) of Form N–3.

[158] Proposed Instruction 4 to Item 22(b)(1) of Schedule 14A; proposed Instruction 2 to Item 13(a)(1) of Form N–1A; proposed Instruction 2 to Item 18.1 N–2; proposed Instruction 2 to Item 20(a) of Form N–3.

[159] *See* Item 401(e)(2) and Instruction to Item 401(e)(2) of Regulation S–K, through Item 22(b)(4) of Schedule 14A; Item 13(c) and Instruction to Item 13(c) of Form N–1A; Item 18.2 and Instruction to Item 18.2 of Form N–2; Item 20(b) and Instruction to Item 20(b) of Form N–3.

[160] Proposed Item 22(b)(1) of Schedule 14A; proposed Item 13(a)(1) of Form N–1A; proposed Item 18.1 of Form N–2; proposed Item 20(a) of Form N–3.

We are not proposing to require separate disclosure of a director's holdings of equity securities in the fund itself. We are concerned that this information might have limited meaning because of the many reasons that a director could have for not holding shares of any specific fund, *e.g.*, that its investment objective did not fill a need in the director's portfolio.

Funds would provide information on director holdings in an easy-to-read tabular format including: (1) Name of director; (2) identity of fund complex; and (3) aggregate dollar amount of equity securities owned of funds in the complex. The information, as of the most recent practicable date, would be provided in the fund's SAI and in any proxy statement relating to the election of directors. This would ensure that the information is available to prospective investors upon request and is provided to shareholders whenever they are asked to vote to elect directors.[164]

"Fund complex" is currently defined in the proxy rules as two or more funds that (1) hold themselves out to investors as related companies for purposes of investment and investor services; or (2) have a common investment adviser or an investment adviser that is an affiliated person of the investment adviser of any of the other funds.[165] The Commission is proposing to use this definition to determine a director's holdings in a fund complex.[166]

We request comment on whether information on director holdings of shares in a fund complex would be useful to shareholders. If so, should the Commission use the definition of "fund complex" that is currently contained in the proxy rules? Or should the Commission use another definition, such as "family of investment companies" used in Form N–SAR?[167] Should disclosure of director holdings be limited to holdings in the fund itself, the group of funds overseen by a director, or some other group of funds? The Commission also requests comment on whether there is other information that bears on the alignment of interests of shareholders and directors and should be disclosed.

3. Conflicts of Interest

(a) Statutory Scheme Governing Conflicts of Interest. As described above, Congress provided that at least 40 percent of the board of directors of an investment company must be independent and assigned a special role to the independent directors—to supply a check on management and act as independent watchdogs for investors.[168] Under the Investment Company Act, an independent director is an individual who is not an "interested person" of the fund.[169]

In section 2(a)(19) of the Act, Congress enumerated individuals who are "interested persons" of a fund and who, therefore, are not considered independent directors. These individuals include: (1) Any affiliated person of the fund, (2) any member of the immediate family of any natural person who is an affiliated person of the fund, (3) any interested person of any investment adviser of or principal underwriter for the fund, (4) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of the fund has acted as legal counsel for the fund, and (5) any broker or dealer registered under the Exchange Act or any affiliated person of a broker or dealer.[170]

Congress also gave the Commission authority to determine by order that a director is an interested person even though he is not covered by the categories enumerated in the statute.[171] The Commission may determine that a natural person is an interested person of a fund by reason of having had, at any time since the beginning of the last two completed fiscal years of the fund, a material business or professional relationship with the fund, the principal executive officer of the fund, any other investment company having the same investment adviser or principal underwriter, or the principal executive officer of the other investment company.[172] We also may determine that a natural person is an interested person of an investment adviser or principal underwriter of a fund (and therefore of the fund itself) by reason of having had, at any time since the beginning of the last two completed fiscal years of the fund, a material business or professional relationship with the investment adviser or principal underwriter or with the principal executive officer or any controlling person of the investment adviser or principal underwriter.[173] For example, in appropriate circumstances, the Commission may find that a director who was an employee of a fund's investment adviser within the past two years is an "interested person" under section 2(a)(19)(B)(vi) of the Act by reason of having a material business or professional relationship with the investment adviser.[174]

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[161] *See supra* note 148 and accompanying text.

[162] *See* Peter McKenna, *Mutual Funds Are Built to Last With Embedded Checks, Balances*, Investor's Business Daily, May 1, 1998, at B4 (quoting fund industry consultant Geoffrey H. Bobroff) ("It's useful to see how many shares are owned by members of the board. * * * Most investors like board members to share the fund's risk and possible reward.").

[163] Proposed Item 22(b)(4) of Schedule 14A; proposed Item 13(b)(4) of Form N–1A; proposed Item 18.7 of Form N–2; proposed Item 20(f) of Form N–3.

[164] As noted earlier, *supra* note 149, closed-end funds are not required to update their registration statements annually; however, shareholders would receive the information annually in proxy statements for the election of directors.

[165] *See* Item 22(a)(1)(v) of Schedule 14A.

[166] *See* proposed Instruction 1(a) to Item 13 of Form N–1A; proposed Instruction 1.b. to Item 18 of Form N–2; proposed Instruction 1.a. to Item 20 of Form N–3. The proposed definition of "fund complex" also would apply to the proposed disclosure requirement for basic information about directors. *See supra* note 157 and accompanying text (proposing to require disclosure for each director of the number of portfolios overseen within the fund complex and other directorships held outside of the fund complex).

[167] *See* Item H of Form N–SAR [17 CFR 274.101] (defining "family of investment companies" to mean any two or more investment companies that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services); *see also* Rule 11a–3 under the Act [17 CFR 270.11a–3] (defining "group of investment companies" to mean any two or more open-end investment companies that hold themselves out to investors as related companies for purposes of investment and investor services and that either (1) have a common investment adviser or principal underwriter or (2) the investment adviser or principal underwriter of one of the companies is an affiliated person of the investment adviser or principal underwriter of each of the other companies).

[168] *See supra* notes 20, 22, and 23 and accompanying text.

[169] *See* section 10(a) of the Act.

[170] Sections 2(a)(19)(A)(i)–(v) of the Act [15 U.S.C. 80a–2(a)(19)(A)(i)–(v)]. Section 2(a)(3) of the Act [15 U.S.C. 80a–2(a)(3)] defines affiliated person of another person to mean: (1) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

Section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)] defines immediately family member to mean any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships.

Sections 2(a)(19)(B)(i)–(v) of the Act [15 U.S.C. 80a–2(a)(19)(B)(i)–v] define an interested person of an investment adviser or principal underwriter of a fund to include: (1) Any affiliated person of the investment adviser or principal underwriter; (2) any member of the immediate family of any natural person who is an affiliated person of the investment adviser or principal underwriter; (3) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by the investment adviser or principal underwriter or by a controlling person of the investment adviser or principal underwriter; (4) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of the fund has acted as legal counsel for the investment adviser or principal underwriter; and (5) any broker or dealer registered under the Exchange Act or any affiliated person of a broker or dealer.

[171] *See* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 14–15 (1970).

(b) Need for Disclosure Changes. The proxy rules currently require significant information about conflicts of interest of directors.[175] The proxy rules require disclosure of positions held with the investment adviser and any securities holdings or material interests in the investment adviser and any person controlling, controlled by, or under common control with the investment adviser.[176] A mutual fund also must disclose any material interests of a director in the fund's principal underwriter or administrator.[177] In addition, a fund must disclose any material interests of a director in any material transactions with the fund, the investment adviser, the principal underwriter, the administrator, or any person controlling, controlled by, or under common control with the investment adviser, principal underwriter, or administrator.[178]

We are proposing to enhance the disclosure required in the proxy rules because we believe that there are other situations that could involve conflicts of interest. We also are proposing to include the proposed conflicts disclosure about directors in the SAI because mutual funds no longer prepare proxy statements on a regular basis.[179]

We believe disclosure of directors' potential conflicts of interest would serve three purposes. First, this disclosure would bring to the attention of shareholders circumstances that may affect the directors' allegiance to shareholders. With this information, shareholders may decide for themselves whether an independent director has any potential conflicts of interest that could affect the director's ability to protect the interests of shareholders.

Second, disclosure would provide the public, including the press and other third-party information providers, access to information about directors' potential conflicts of interest. The resulting public dissemination may discourage the selection of independent directors who have relationships or engage in activities that raise questions about their independence.

Third, the information would assist the Commission in evaluating whether it should exercise its authority to determine that a director is "interested" under section 2(a)(19)(A)(vi) or (B)(vi) of the Act even though he is not within one of the categories of "interested persons" specifically enumerated by Congress in other provisions of section 2(a)(19).[180] The legislative history of section 2(a)(19) states that the Commission could issue an order determining that a director is an interested person if the Commission found that a director's "business or professional relationship [with certain related persons] was material in the sense that it might tend to impair the independence of such director."[181] In providing the Commission with this authority, Congress contemplated that the Commission would look at each situation on a case-by-case basis.[182] The proposed disclosure would assist the Commission in determining whether it would be appropriate to make a further inquiry into a director's independence.

We believe that the proposed disclosure would give shareholders the tools to help determine how effectively the directors serve their interests and encourage the selection of directors that are independent in the spirit intended by Congress. We first discuss our general approach to the disclosure requirements and then discuss the specific requirements.

(c) General Approach to Disclosure—(1) Circumstances Raising Potential Conflicts of Interest. The Commission is proposing to require disclosure of three types of circumstances that could affect the allegiance of mutual fund directors to their shareholders: positions, interests, and transactions and relationships of directors. In specifying the circumstances where disclosure is required, we have drawn on the current proxy rules, which require disclosure of positions, interests, and transactions of directors.[183]

The Commission is proposing to require disclosure of positions held by a director with the fund and persons related to the fund.[184] A director who holds such a position may be influenced to act in the interest of persons related to the fund rather than the interest of fund shareholders. We also are proposing to require disclosure of directors' interests, including securities holdings, in entities related to the fund.[185] A director who holds an interest in an entity related to the fund may be tempted to place his financial interest in the entity ahead of shareholders' interests in the fund. Finally, we are proposing to require disclosure of directors' transactions and relationships with the fund and persons related to the fund.[186] A director who is involved in a transaction or relationship with the fund or related persons may have financial or other interests that compete with those of fund shareholders.

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[172] Section 2(a)(19)(A)(vi) of the Act [15 U.S.C. 80a–2(a)(19)(A)(vi)]. The statute also provides that no person shall be deemed an interested person of a fund solely by reason of being a member of its board of directors or advisory board or an owner of its securities, or his membership in the immediate family of any person who is a member of the fund's board of directors or advisory board or an owner of its securities. *Id.*

[173] Section 2(a)(19)(B)(vi) of the Act [15 U.S.C. 80a–2(a)(19)(B)(vi)].

Section 2(a)(9) of the Act [15 U.S.C. 80a–2(a)(9)] defines control to mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company. Any person who does not own more than 25 percent of the voting securities of any company shall be presumed not to control such company.

[174] *See* Interpretive Release, *supra* note 1.

[175] *See supra* note 145 and accompanying text.

[176] *See* Item 22(b)(1) of Schedule 14A.

[177] *See* Item 22(b)(2) of Schedule 14A.

[178] *See* Item 22(b)(3) of Schedule 14A, and Item 404(a) of Regulation S–K, through Item 22(b)(4) of Schedule 14A.

[179] *See supra* note 149 and accompanying text.

[180] *See supra* note 170 and accompanying text.

[181] *See* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 14–15 (1970). Ordinarily, a business or professional relationship would not be deemed to impair independence where the benefits flow from the director of an investment company to the other party to the relationship. *Id.*

[182] *Id.* Over the years, Division of Investment Management staff analyzed issues arising under sections 2(a)(19)(A)(vi) or (B)(vi) of the Act on the particular facts of each case to determine whether a director's relationships might tend to impair the independence of the director. *See, e.g., Travelers Equities Fund Inc.*, SEC No-Action Letter (Jan. 11, 1982); *Securities Groups*, SEC No-Action Letter (Apr. 20, 1981); *Equitable of Iowa Variable Annuity Account A*, SEC No-Action Letter (Jan. 6, 1980); *American Medical Association*, SEC No-Action Letter (Dec. 5, 1979); *American Medical Association Tax-Exempt Income Fund, Inc.*, SEC No-Action Letter (Jun. 18, 1978); *Cal-Western Separate Account A*, SEC No-Action Letter (Mar. 8, 1976); *Southwestern Investors, Inc.*, SEC No-Action Letter (Jun. 13, 1971).

Beginning in 1984, the staff stated that it did not believe that it was appropriate for the staff to consider no-action requests under section 2(a)(19)(A)(vi) or (B)(vi) as a matter of policy. *Capital Supervisors Helios Fund, Inc.*, SEC No-Action Letter (Jun. 13, 1984); *see also Daniel Calabria*, SEC No-Action Letter (Sept. 12, 1984). *See also* Interpretive Release, *supra* note 1.

[183] *See* Items 22(b)(1) (positions with the interests in the investment adviser), 22(b)(2) (interests in the principal underwriter or administrator), 22(b)(3) (interests in transactions with the investment adviser, principal underwriter, or administrator), and 22(b)(4) (interests in transactions with the fund) of Schedule 14A.

[184] Proposed Item 22(b)(3) of Schedule 14A; proposed Item 13(b)(3) of Form N–1A; proposed Item 18.6 of Form N–2; proposed Item 20(e) of Form N–3.

[185] Proposed Items 22(b)(5) and (6) of Schedule 14A; proposed Items 13(b)(5) and (6) of Form N–

The Commission requests comment on whether disclosure of directors' positions, interests, and transactions and relationships is appropriate. Are there other types of circumstances that also raise conflict of interest concerns and should be disclosed?

(2) Persons Covered by Disclosure Requirements; Directors and Immediate Family Members. The Commission is proposing to follow the approach taken in the current proxy rules and require conflicts of interest disclosure about all directors, both interested and independent.[187] The Commission requests comment on whether this approach is appropriate, or whether there are any proposed requirements that should apply only to independent directors. If so, which requirements should apply only to independent directors?

The Commission also proposes to extend the disclosure requirements to the immediate family members of directors because the involvement of family members with the fund or persons related to the fund could raise the same conflicts of interest for a director as if the director was involved directly in the situation. The Commission proposes to define "immediate family member" to mean any spouse, parent, child, sibling, mother- or father-in-law, son- or daughter-in-law, or sister- or brother-in-law, including step and adoptive relationships.[188] This definition is similar to the definition of immediate family member in the current proxy rules.[189] We are proposing to add step and adoptive relationships, based on the definition of "immediate family member" in section 2(a)(19) of the Act. Our proposed definition would be slightly broader than the definition in section 2(a)(19) of the Act, which does not include mother- or father-in-law or sister- or brother-in-law relationships. We request comment on whether the proposed definition is appropriate, or whether it should be expanded or narrowed.

Related Persons. The Commission is proposing to require disclosure about circumstances involving directors, on the one hand, and the fund and persons related to the fund, on the other. We looked to the Act for guidance in determining which related persons should be covered by our disclosure requirements. The Commission's statutory authority to determine that a director is an "interested person" is based on finding a relationship with the fund; its investment adviser, principal underwriter, or a person controlling the investment adviser or principal underwriter; another investment company with the same investment adviser or principal underwriter; or the principal executive officer of the fund, its investment adviser or principal underwriter, or another investment company with the same investment adviser or principal underwriter.[190]

We are proposing to require disclosure with respect to circumstances involving these persons and other persons that we have concluded may pose similar conflicts of interest. The additional persons include: (1) a fund's administrator or a person directly or indirectly controlling the administrator; (2) a person directly or indirectly controlled by or under common control with the fund's investment adviser, principal underwriter, or administrator; (3) any other investment company with the same administrator as the fund; (4) any other investment company with an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the fund; and (5) any officer of (i) the fund; (ii) the investment adviser, principal underwriter, or administrator of the fund; (iii) a person directly or indirectly controlling, controlled by, or under common control with the fund's investment adviser, principal underwriter, or administrator; (iv) an investment company with the same investment adviser, principal underwriter, or administrator as the fund; or (v) an investment company with an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the fund.[191]

We are following the approach of the current proxy rules in proposing to require disclosure regarding directors' relationships with mutual fund administrators. As administrators take on an increasing role in the operations of funds, the relationships of independent directors with these entities may affect the directors' ability to safeguard the interests of fund shareholders.[192]

As in the current proxy rules, we are proposing to require mutual funds to disclose circumstances involving the director and persons controlling, controlled by, or under common control with some parties related to the fund.[193] We believe that situations involving a director and persons controlled by or under common control with persons related to the fund could pose conflicts of interest that are similar to situations involving controlling persons, which are referenced in section 2(a)(19) of the Act. We are concerned that the burden on mutual funds of expanding disclosure beyond these persons, however, may outweigh the value of the information to investors. The Commission requests comment on whether it should extend the proposed disclosure requirements beyond persons controlling, controlled by, or under common control with parties related to the fund, or limit the proposed disclosure requirements to

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1A; proposed Items 18.8 and 18.9 of Form N–2; proposed Items 20(g) and (h) of Form N–3.

[186] Proposed Items 22(b)(7) and (8) of Schedule 14A; proposed Items 13(b)(7) and (8) of Form N–1A; proposed Items 18.10 and 18.11 of Form N–2; proposed Items 20(i) and (j) of Form N–3.

[187] *See* Items 22(b)(1) (positions and interests); 22(b)(2) (interests); 22(b)(3) (transactions); and 22(b)(4) (transactions) of Schedule 14A.

[188] Proposed Item 22(a)(1)(vi) of Schedule 14A; proposed Instruction 1(b) to Item 13 of Form N–1A; proposed Instruction 1.b. to Item 18 of Form N–2; proposed Instruction 1.b. to Item 20 of Form N–3.

[189] *See* Instruction 2 to Item 404(a) of Regulation S–K, through Item 22(b)(4) of Schedule 14A.

[190] *See* sections 2(a)(19)(A)(vi) and (B)(vi) of the Act [15 U.S.C. 80a–2(a)(19)(A)(vi) and (B)(vi)].

[191] Separate accounts offering variable insurance products that are registered as management companies also would be required to disclose circumstances involving the insurance company that sponsors the separate account. We are proposing to define "sponsoring insurance company" in the proxy rules to mean the insurance company that establishes and maintains the separate account and that owns the assets of the separate account. Proposed Item 22(a)(1)(x) of Schedule 14A.

[192] *See supra* notes 89–90 and accompanying text.

[193] *See* Items 22(b)(1) of Schedule 14A (requiring funds to disclose directors' ownership of any securities and any other material direct or indirect interest in the investment adviser or any person controlling, controlled by, or under common control with the investment adviser unless the director is a general partner or director of the investment adviser) and 22(b)(3) of Schedule 14A (requiring funds to disclose any material interest, direct or indirect, of any director or nominee for election as director in any material transactions or any proposed material transactions to which the investment adviser, principal underwriter, the administrator, or a person controlling, controlled by, or under common control with those entities (other than a fund) was or is to be a party)

controlling persons as specified in section 2(a)(19) of the Act.

As noted above, we also are proposing to require disclosure of circumstances involving any officer of (1) the fund; (2) the investment adviser, principal underwriter, or administrator of the fund; (3) a person directly or indirectly controlling, controlled by, or under common control with the fund's investment adviser, principal underwriter, or administrator; (4) an investment company with the same investment adviser, principal underwriter, or administrator as the fund; or (5) an investment company with an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the fund. We are proposing to require disclosure for all officers who perform policy-making functions, not only the principal executive officer as referred to in sections 2(a)(19)(A)(vi) and (B)(vi) of the Act, because we believe that situations involving a director and other officers may raise conflict of interest concerns that are similar to those involving a director and the principal executive officer. Form N–1A defines "officer" to mean president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.[194] We are proposing to add this definition to the proxy rules.[195]

The Commission requests comment on the scope of its general approach to disclosure outlined above, including whether there are any other circumstances that could raise potential conflicts of interest that should be disclosed, and whether the scope of persons covered by the disclosure requirements is appropriate. Having discussed the general concepts of our proposal, we now turn to the specific proposed requirements for disclosure in the SAI and proxy statements for the election of directors.

(d) Specific Disclosure in the Proxy Rules and SAI—(1) Positions. The Commission is proposing to require disclosure of any positions, including as an officer, employee, director, or general partner, held during the past five years by directors and their immediate family members with: (1) the fund; (2) an investment company having the same investment adviser, principal underwriter, or administrator as the fund or an investment adviser, principal underwriter, or administrator that controls, is controlled by, or is under common control with the fund's investment adviser, principal underwriter, or administrator;[196] (3) an investment adviser, principal underwriter, administrator, or affiliated person of the fund; or (4) any person controlling, controlled by, or under common control with the fund's investment adviser, principal underwriter, or administrator.[197]

We request comment on the proposed disclosure of director positions. Should we limit the disclosure required to certain positions, such as managerial or policy-making positions? Have we appropriately specified the entities with respect to which positions should be disclosed? Should any entities be added to or eliminated from the required disclosure? Should disclosure be required for five years as proposed consistent with the current proxy rules, or for a longer or shorter period?[198]

(2) Interests. The Commission is proposing to require disclosure of securities currently owned, and material direct or indirect interests held during the past five years, by each director and his immediate family members in (i) an investment adviser, principal underwriter, or administrator of the fund; or (ii) a person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator.[199] Information about securities owned would be provided in a table, including the value of the securities and percent of each class owned.[200] The value of the securities and percent of each class owned would be provided in the aggregate for each director and his immediate family members.[201] This information would be provided as of the most recent practicable date.[202]

We request comment on the proposed disclosure of director interests. Have we appropriately defined the scope of the interests required to be disclosed? Should disclosure be required of current securities ownership, and of material interests for the past five years, as in the current proxy rules, or should longer or shorter periods be used? Should securities ownership be aggregated or presented separately for a director and his immediate family members? Should the Commission establish any *de minimis* threshold for the disclosure of material interests? If so, what should it be, *e.g.*, interests exceeding $5,000, $10,000, $50,000, or some other amount?

(3) Transactions and Relationships

Transactions and Relationships Generally. The Commission is proposing to require disclosure of transactions and relationships of directors with the fund and parties related to the fund. The parties related to the fund that would be covered by this requirement are: (i) an officer of the fund; (ii) an investment company having the same investment adviser, principal underwriter, or administrator as the fund or having an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the fund;[203] (iii) an officer of an investment company described in (ii); (iv) an investment adviser, principal underwriter, or administrator of the fund; (v) an officer of an investment adviser, principal underwriter, or administrator of the fund; (vi) a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the fund; or (vii) an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the fund (together "Related Parties").[204]

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[194] Instruction 1 to Item 13(b) of Form N–1A; *see also* Instruction 1 to Item 18.1 of Form N–2 and Instruction 1 to Item 20(a) of Form N–3.

[195] Proposed Item 22(a)(1)(vii) of Schedule 14A; proposed Instruction 1(c) to Item 13 of Form N–1A; proposed Instruction 1.c. to Item 18 of Form N–2; proposed Instruction 1.c. to Item 20 of Form N–3.

[196] This category would include a foreign fund (*i.e.*, an investment company that is organized under the laws of a jurisdiction other than the United States). The proposed rule also would require disclosure of positions with a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act. *See* proposed Item 22(b)(3)(ii) of Schedule 14A; proposed Item 13(b)(3)(ii) of Form N–1A; proposed Item 18.6(b) of Form N–2; proposed Item 20(e)(ii) of Form N–3.

[197] Proposed Item 22(b)(3) of Schedule 14A; proposed Item 13(b)(3) of Form N–1A; proposed Item 18.6 of Form N–2; proposed Item 20(e) of Form N–3. *Cf.* Item 13(b) of Form N–1A, Item 18.1 of Form N–2, and Item 20(a) of Form N–3 (requiring disclosure of directors' positions with the fund); Item 13(c) of Form N–1A, Item 18.2 of Form N–2; and Item 20(b) of Form N–3 (requiring disclosure of directors' positions with affiliated persons of the fund and the principal underwriter); Item 22(b)(1) of Schedule 14A (requiring the fund to identify each director or nominee who is, or was during the past five years, an officer, employee, director, general partner, or shareholder of the investment adviser); and Item 401(a) and (b) of Regulation S–K, through Item 22(b)(4) of Schedule 14A (requiring disclosure of directors' and executive officers' positions and offices with the fund). We have proposed to include disclosure of positions with affiliated persons of the fund consistent with current SAI requirements.

Separate accounts offering variable insurance products that are registered as management companies also would be required to disclose directors' positions with the insurance company that sponsors the separate account. *See supra* note 191.

[198] *See* Item 22(b)(1) of Schedule 14A.

[199] Separate accounts offering variable insurance products that are registered as management companies also would be required to disclose directors' interests in the insurance company that sponsors the separate account. *See supra* note 191.

[200] Proposed Items 22(b)(5) and (6) of Schedule 14A; proposed Items 13(b)(5) and (6) of Form N–1A; proposed Items 18.8 and 18.9 of Form N–2; proposed Items 20(g) and (h) of Form N–3. *Cf.* Item 22(b)(1) of Schedule 14A (generally requiring disclosure of directors' current ownership of securities, and material interests during the past five years, in the investment adviser or any person controlling, controlled by, or under common control with the investment adviser); Item 22(b)(2) of Schedule 14A (requiring disclosure of director's material interests during the past five years in a fund's principal underwriter and administrator).

[201] Proposed Instruction 4 to Item 22(b)(5) of Schedule 14A; proposed Instruction 4 to Item 13(b)(5) of Form N–1A; proposed Instruction 4 to Item 18.8 of Form N–2; proposed Instruction 4 to Item 20(g) of Form N–3.

[202] Proposed Instruction 1 to Item 22(b)(5) of Schedule 14A; proposed Instruction 1 to Item 13(b)(5) of Form N–1A; proposed Instruction 1 to Item 18.8 of Form N–2; proposed Instruction 1 to Item 20(g) of Form N–3.

We are proposing to require disclosure of any material interest, direct or indirect, of any director or his immediate family member in any material transaction, or material series of similar transactions, since the beginning of the last two completed fiscal years (or currently proposed), to which the fund or a Related Party was or is to be a party.[205] Transactions would include loans, lines of credit, and other indebtedness.

For material interests in material transactions, a mutual fund would be required to state the name of the director or family member whose interest is described, the nature of the circumstances by reason of which the interest is required to be described, the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.[206] For indebtedness, a mutual fund would be required to indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the latest practicable date, and the rate of interest paid or charged.[207]

We also are proposing to require disclosure of any material relationship, direct or indirect, of any director or his immediate family member that exists, or has existed at any time since the beginning of the last two completed fiscal years, or is currently proposed, with the fund or a Related Party. Relationships would include payments for property or services, provision of legal or investment banking services, and any consulting or other relationship that is substantially similar in nature and scope to any of the foregoing relationships.[208]

For material relationships, a fund would be required to state the name of the director or family member whose relationship is described, the nature of the circumstances by reason of which the relationship is required to be described, the nature of the relationship, and the amount of business done between the director or family member and the fund or Related Party since the beginning of the last two completed fiscal years or proposed to be done during the current fiscal year.[209]

A fund would not be required to disclose routine, retail transactions and relationships between directors or immediate family members and the fund or Related Parties. For example, a mutual fund need not disclose that a director holds a credit card or bank or brokerage account with a fund or Related Party, unless the director is accorded special treatment, such as preferred access to initial public offerings.[210]

Indirect, as well as direct, material interests in material transactions and material relationships would be required to be disclosed. A director or family member who has a position or a relationship with, or interest in, a company that engages in a transaction or has a relationship with a fund or Related Party may have an indirect interest in the transaction or an indirect relationship by reason of the position, relationship, or interest.[211] The interest in the transaction or the relationship of the director or family member, however, would not be deemed material if the interest or the relationship arises solely from the holding of an equity interest (excluding a general partnership interest) or a creditor interest in a company that engages in a transaction or has a relationship with the fund or Related Party if the transaction or the relationship is not material to the company.

We request comment on the proposed disclosure of director transactions and relationships. Have we appropriately defined the scope of transactions and relationships to be disclosed? Should disclosure be required for the period since the beginning of the last two completed fiscal years, as proposed based on the time period specified in section 2(a)(19) of the Act,[212] or only since the beginning of the most recently completed fiscal year as required in the current proxy rules, or for some other time period?

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[203] This category would include a foreign fund (*i.e.*, an investment company that is organized under the laws of a jurisdiction other than the United States). The proposed rule also would require disclosure of transactions with a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act. *See* proposed Item 22(b)(7)(iii) of Schedule 14A; proposed Item 13(b)(7)(iii) of Form N–1A; proposed item 18.10(c) of Form N–2; proposed Item 20(i)(iii) of Form N–3.

[204] Proposed Items 22(b)(7) and (8) of Schedule 14A; proposed Items 13(b)(7) and (8) of Form N–1A; proposed Items 18.10 and 18.11 of Form N–2; proposed Items 20(i) and (j) of Form N–3. *Cf.* Item 22(b)(3) of Schedule 14A (generally requiring disclosure of directors' material interests in material transactions since the beginning of the most recently completed fiscal year, or proposed material transactions, to which the investment adviser, principal underwriter, administrator, or a person controlling, controlled by, or under common control with those entities was or is to be a party). *See also* Item 404(a) of Regulation S–K [17 CFR 229.404(a)], through Item 22(b)(4) of Schedule 14A (requiring disclosure of transactions since the beginning of the last fiscal year, or proposed transactions, to which the fund was or is to be a party, in which any director or immediate family member had, or will have, a material interest and which the amount involved exceeds $60,000).

Separate accounts offering variable insurance products that are registered as management companies also would be required to disclose directors' transactions with the insurance company that sponsors the separate account. *See supra* note 191.

[205] Proposed Item 22(b)(7) of Schedule 14A; proposed Item 13(b)(7) of Form N–1A; proposed Item 18.10 of Form N–2; proposed Item 20(i) of Form N–3.

[206] Proposed Instructions 1 and 2 to Item 22(b)(7) of Schedule 14A; proposed Instructions 1 and 2 to Item 13(b)(7) of Form N–1A; proposed Instructions 1 and 2 to Item 18.10 of Form N–2; proposed Instructions 1 and 2 to Item 20(i) of Form N–3.

[207] Proposed Instruction 9 to Item 22(b)(7) of Schedule 14A; proposed Instruction 9 to Item 13(b)(7) of Form N–1A; proposed Instruction 8 to Item 18.10 of Form N–2; proposed Instruction 8 to Item 20(i) of Form N–3.

[208] Proposed Item 22(b)(8) of Schedule 14A; proposed Item 13(b)(8) of Form N–1A; proposed Item 18.11 of Form N–2; proposed Item 20(j) of Form N–3.

[209] Proposed Instructions 1 and 2 to item 22(b)(8) of Schedule 14A; proposed Instructions 1 and 2 to Item 13(b)(8) of Form N–1A; proposed Instructions 1 and 2 to Item 18.11 of Form N–2; proposed Instructions 1 and 2 to item 20(j) of Form N–3.

[210] Proposed Instruction 10 to Item 22(b)(7) and Instruction 8 to Item 22(b)(8) of Schedule 14A; proposed Instruction 10 to Item 13(b)(7) and Instruction 8 to Item 13(b)(8) of Form N–1A; proposed Instruction 9 to Item 18.10 of and instruction 7 to Item 18.11 of Form N–2; proposed Instruction 9 to Item 20(i) and Instruction 7 to Item 20(j) of Form N–3. *See* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 14–15 (1970) ("[A] director ordinarily would not be considered to have a material business relationship with the investment adviser simply because he is a brokerage customer who is not accorded special treatment."); Interpretive Release, *supra* note 1.

[211] Proposed Instruction 7 to Item 22(b)(7) and Instruction 5 to Item 22(b)(8) of Schedule 14A; proposed Instruction 7 to Item 13(b)(7) and Instruction 5 to Item 13(b)(8) of Form N–1A; proposed Instruction 6 to Item 18.10 and Instruction 4 to Item 18.11 of Form N–2; proposed Instruction 6 to Item 20(i) and Instruction 4 to Item 20(j) of Form N–3.

[212] *See* sections 2(a)(19)(A)(vi) and 2(a)(19)(B)(vi) of the Act.

We also request comment on whether we should specify a minimum dollar amount involved in a transaction or relationship that would trigger the disclosure requirements rather than simply requiring disclosure of "material" transactions or relationships. If so, what should the threshold be, *e.g.*, transactions exceeding $60,000, or some other amount?[213] Similarly, should we require disclosure of transactions or relationships only when the interest of a director or his immediate family member is greater than a specified dollar amount? If so, what should the dollar amount be, *e.g.*, interests exceeding $5,000, $10,000, $50,000, or some other amount?

We also request comment on whether we should limit disclosure of transactions or relationships where the interest of a director or his immediate family member arises indirectly through ownership of an interest in a company that is involved in a transaction or relationship with a fund or Related Party. For example, should disclosure of a transaction or relationship not be required when a director and his immediate family members, in the aggregate, have less than a specified threshold interest in a company that is a party to the transaction or relationship with the fund or Related Party?[214] If so, what should the threshold percentage be, *e.g.* 5%, 10%, or some other amount? Or should the Commission set a threshold dollar amount ownership interest in the company? If so, what should the dollar amount be, *e.g.*, $5,000, $10,000, $50,000, or some other amount? In determining whether the threshold is exceeded, should a director's interests be aggregated with those of his immediate family members, other directors or nominees, executive officers, security holders who own more than 5% of any class of the registrant's voting securities, or any other persons?[215]

Cross-Directorships. Finally, the Commission is proposing to require a mutual fund to disclose situations where an officer of an investment adviser, principal underwriter, or administrator of a fund, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the fund serves, or has served since the beginning of the last two completed fiscal years of the fund, as a director of a company of which a fund director or his immediate family member is, or was, an officer.[216] The fund would be required to identify (i) the company involved; (ii) the individual who serves or has served as a director of the company and the period of service as director; (iii) the investment adviser, principal underwriter, or administrator, or person controlling, controlled by, or under common control with the investment adviser, principal underwriter, or administrator where the individual named in (ii) holds or held office and the office held; and (iv) the director of the fund or immediate family member who is or was an officer of the company, the office held, and the period of holding office.

We believe that cross-directorships could potentially create a conflict of interest for a director because the position that he or his immediate family member holds in another company could be affected by an officer of the investment adviser, principal underwriter, or administrator, or an officer of a party controlling, controlled by, or under common control with the investment adviser, principal underwriter, or administrator.[217] We request comment on the proposed disclosure of cross-directorships. Have we appropriately defined the scope of the circumstances to be disclosed? Should disclosure be required for a shorter or longer period than since the beginning of the last two completed fiscal years of the fund?

4. Board's Role in Fund Governance

The Commission is proposing to modify disclosure of matters related to the board's role in governing a fund currently required in the proxy rules and the SAI. We believe that this information would help shareholders more readily determine whether the directors are effectively representing shareholders' interests, independent of fund management.

The proxy rules require a mutual fund to discuss in reasonable detail the material factors and conclusions that formed the basis for the board of directors' recommendation that the shareholders approve an investment advisory contract, including a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the fund such as soft dollar arrangements by which brokers provide research to the fund or its investment adviser in return for allocating fund brokerage.[218] We are proposing to require similar disclosure in the SAI so that investors will be able to evaluate the board's basis for approving the renewal of an existing investment advisory contract.[219]

Director responsibility for evaluating and approving a mutual fund's advisory contract is one of the most important fund governance obligations assigned to directors under the Investment Company Act.[220] In approving an investment advisory contract, independent directors must review the level of fees charged to a fund by an investment adviser. Participants at the Roundtable discussed the important role of independent directors in negotiating these fees and expenses.[221] We believe that a discussion of the factors considered by the board in retaining an investment adviser will help investors understand and evaluate the board's basis for that action.

We also are proposing to modify disclosure in the proxy rules and the SAI relating to a fund's committees of the board of directors. The proxy rules currently require mutual funds to disclose information about standing audit, nominating, and compensation committees.[222] In the SAI, mutual funds are required to identify members of any executive or investment committee, and provide a concise statement of the duties and functions of each committee.[223]

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[213] *Cf.* Item 404(a) of Regulation S–K, through Item 22 (b)(4) of Schedule 14A (requiring disclosure of a director's or immediate family member's material interest in a transaction with the fund only when the amount involved in the transaction is greater than $60,000).

[214] Currently, Instruction 8(A) of Item 404(a) of Regulation S–K states that a director's interest in a material transaction is not material when he and all other directors, nominees, executive officers, security holders who own more than 5% of any class of the registrant's voting securities, and immediate family members, in the aggregate, own less than a 10% equity interest in another person that is a party to the transaction.

[215] *See supra* note 214 (Instruction 8(A) of Item 404(a) of Regulation S–K.

[216] Proposed Item 22(b)(9) of Schedule 14A; proposed Item 13(b)(9) of Form N–1A; proposed Item 18.12 of Form N–2; proposed Item 20(k) of Form N–3.

Separate accounts offering variable insurance products that are registered as management companies also would be required to disclose cross-directorships involving the insurance company that sponsors the separate account. *See supra* note 191.

[217] *Cf. Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committee* at 11 (1999) (director not independent when he is employed as an executive of another company where any of the corporation's executives serves on that company's compensation committee).

[218] Item 22(c)(11) of Schedule 14A.

[219] Proposed Item 13(b)(10) of Form N–1A; proposed Item 18.13 of Form N–2; proposed Item 20(l) and Form N–3.

[220] *See* sections 15 (a) and (c) of the Investment Company Act [15 U.S.C. 80a–15 (a) and (c)].

[221] *See* Negotiating Fees and Expenses Panel, Roundtable Transcript of Feb. 23, 1999 at 26–91.

[222] The fund must state whether it has a standing audit, nominating, compensation, or similar committee, identify each committee member, state the number of committee meetings held by each committee during the last fiscal year, and describe briefly the functions performed by the committees. Item 7(e)(1) of Schedule 14A. If the fund has a nominating or similar committee, the fund must state whether the committee will consider nominees recommended by security holders and, if

We are proposing to modify this disclosure to require mutual funds to identify each standing committee of the board in the SAI and proxy statements for the election of directors. As in the current proxy rules, funds would be required to provide a concise statement of the functions of each committee; identify the members of the committee; indicate the number of committee meetings held during the last fiscal year; and state whether its nominating committee will consider nominees recommended by fund shareholders and, if so, describe the procedures for submitting recommendations.[224]

5. Separate Disclosure

Currently, mutual funds must indicate with an asterisk the directors who are interested persons of the fund within the meaning of section 2(a)(19) of the Act for certain disclosure items in the proxy statements and the SAI.[225] To provide more prominent disclosure about independent directors, we are proposing to require funds to present all disclosure for independent directors separately from disclosure for interested directors in the SAI, proxy statements for the election of directors, and annual reports to shareholders.[226] For example, when information is furnished in a table, funds should provide separate tables (or separate sections of a single table) for independent directors and for interested directors. When presenting information in narrative form, funds should clearly indicate, by heading or other means, which directors are interested and which are independent.

6. Technical and Conforming Amendments

The Commission is proposing to clarify that Item 22 of Schedule 14A applies to business development companies.[227] This proposed change reflects current requirements.

The Commission is proposing changes to cross-references in Items 8 and 10 of Schedule 14A to reflect the proposed amendments to Item 22 of Schedule 14A. We also are proposing to amend current Item 22(b)(4) of Schedule 14A. This item requires funds to provide the information required by Items 401, 404(a) and (c), and 405 of Regulation S–K. Because proposed Item 22(b)(7) of Schedule 14A requires much of the information now required by Item 401 of Regulation S–K, we are proposing to modify Item 22(b)(4) of Schedule 14A to require funds to provide the information required by Items 401(f) and (g), 404(a) and (c), and 405 of Regulation S–K.[228]

Because we have defined the term "officer" to mean the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions, we are proposing to change the reference in the compensation table from "executive officer" to "officer."[229] In addition, we are proposing to amend the definition of "administrator" in the proxy rules to conform to the proposed definition of "administrator" in rule 0–1(a)(5).[230]

We also are proposing conforming changes to the SAI. Because we are proposing enhanced disclosure about directors' positions, we are proposing to require disclosure of officers' positions, which remains unchanged, as a separate item.[231] We are proposing amendments to the SAI to conform to the proxy rules by requiring a brief description of any arrangement or understanding between a director or officer and any other person pursuant to which he was selected as a director or officer.[232]

We also are proposing changes to rule 30d–1 under the Investment Company Act.[233] Rule 30d–1(d) allows a fund to send to shareholders a copy of its currently effective prospectus or SAI, or both, instead of a shareholder report required by the rule, provided that the prospectus or SAI, or both, include certain financial information and information about directors' compensation. We are proposing to amend the rule to require a prospectus or SAI, or both, serving as a shareholder report to include all the information that would otherwise be required in the shareholder report.[234]

7. Compliance Date

If we adopt the proposed disclosure requirements, we expect to require all new registration statements and post-effective amendments that are annual updates to effective registration statements, proxy statements for the election of directors, and reports to shareholders filed on or after the effective date of the amendments to comply with the proposed amendments. The Commission requests comment on this proposed compliance date.

F. Recordkeeping Regarding Director Independence

To assure that independent directors are able to fully carry out the important

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so, describe the procedures to be followed by security holders in submitting such recommendations. Item 7(e)(2) of Schedule 14A.

[223] Instruction 3 to Item 13(b) of Form N–1A; Instruction 3 to Item 18.1 of Form N–2; Instruction 3 to Item 20(a) of Form N–3.

[224] Proposed Item 22(b)(13) of Schedule 14A; proposed Item 13(b)(2) of Form N–1A; proposed Item 18.5 of Form N–2; proposed Item 20(d) of Form N–3. *Cf.* Item 7(e)(1) of Schedule 14A.

Because this proposed disclosure requirement covers information that is similar to that already required for proxy statements in Item 7(e) of Schedule 14A, the Commission is proposing to amend Item 7 to state that investment companies must furnish the information on committees proposed in Item 22(b)(13) in lieu of the information currently required in Item 7(e). *See* proposed Items 7 (d) and (e) of Schedule 14A. We also recently proposed to require additional information about a closed-end fund's audit committee. *See* Audit Committee Disclosure, Securities Exchange Act Release No. 41987 (Oct. 7, 1999) [64 FR 55648 (Oct. 14, 1999)] (proposed Item 7(e)(3) of Schedule 14A).

[225] *See* Instruction 1 to Item 22(b)(4) of Schedule 14A (table containing information about director's background and experience and table containing information about directors' transactions with the fund); Instruction 4 to Item 13(b) of Form N–1A (management information table).

[226] Proposed Instruction 3 to Item 22(b) of Schedule 14A; proposed Instruction 2 to Item 13 of Form N–1A; proposed Instruction 2 to Item 18 of Form N–2; proposed Instruction 2 to Item 20 of Form N–3.

[227] Proposed Item 22(a)(1)(viii) of Schedule 14A. Business development companies are subject to special provisions under the Act designed to accommodate their venture capital investments. *See* sections 54–65 of the Investment Company Act [15 U.S.C. 80a–53 to 80a–64]. Business development companies are required to have a majority of directors who are not "interested persons." *See* section 56 of the Investment Company Act [15 U.S.C. 80a–55].

[228] We also are proposing to redesignate Item 22(b)(4) as Item 22(b)(10). Funds would not be required to provide information for directors, nominees, and their immediate family members as required by Items 404(a) and (c) of Regulation S–K, through Item 22(b)(10) of Schedule 14A, because we are proposing to require the information under Item 22(b)(7) of Schedule 14A. Proposed Instruction to Item 22(b)(10) of Schedule 14A.

[229] Proposed Item 22(b)(12) of Schedule 14A; proposed Item 13(c) of Form N–1A, proposed item 18.14 of Form N–2; proposed Item 20(m) of Form N–3.

[230] *See* Proposed Item 22(a)(1) of Schedule 14A.

[231] *See* Item 13(c) of Form N–1A; Item 18.2 of Form N–2; Item 20(b) of Form N–3; proposed Item 13(a)(2) of Form N–1A; proposed Item 18.2 of Form N–2; proposed Item 20(b) of Form N–3 (requiring disclosure of officers' positions with affiliated persons of the fund and the principal underwriter).

[232] Proposed Item 22(b)(2) of Schedule 14A; proposed Item 13(a)(3) of Form N–1A; proposed Item 18.3 of Form N–2; proposed Item 20(c) of Form N–3. *See* Items 401(a) and 401(b) of Regulation S–K and Instruction 1 to Items 401(a) and 401(b) of Regulation S–K, through Item 22(b)(4) of Schedule 14A.

[233] 17 CFR 270.30d–1.

[234] Proposed rule 30c–1(d) under the Investment Company Act. We also are proposing to amend rule 30d–1(a) to require funds to include in their shareholder reports any information (not just financial statements) required to be included in those reports by the company's registration statement form under the Investment Company Act. Proposed rule 30e–1(a) under the Investment Company Act. We are redesignating rules 30d–1 and 30d–2 as rules 30e–1 and 30e–2 respectively to reflect the National Securities Markets Improvement Act of 1996 amendments to section 30 of the Act. [Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in various sections of the United States Code)].

duties assigned to them, the Act and our rules establish standards concerning their financial and other interests.[235] A fund must determine whether the individuals who serve as independent directors in fact satisfy these standards when it prepares certain disclosure documents for investors.[236] The process that a fund uses to make these determinations should reflect diligent efforts to evaluate each director's relevant business and personal relationships that might affect his independent judgment.

We are proposing to amend our rule requiring funds to preserve certain records to enable the Commission to monitor funds' assessments of the independence of their directors. The proposed amendment would require funds to preserve any record of the initial determination that a director qualifies as an independent director, and each subsequent determination of whether the director continues to qualify as an independent director.[237] We propose that funds preserve these documents for a period of six years, the first two years in an easily accessible place.[238]

Because funds already should be collecting relevant information when they make and review their determinations of director independence,[239] we believe that our proposed recordkeeping requirement would not impose substantial costs or other burdens on funds. Comment is requested on the necessity of this information, and on the costs of maintaining these records. We also request comment on the effects that this proposed recordkeeping requirement would have on funds' internal compliance policies and procedures. Are there feasible alternatives to the proposal that would enable the Commission to monitor funds' assessments of the independence of their directors, while minimizing the burdens imposed on funds?[240]

G. General Request for Comments

The Commission requests comment on the new rules, rule amendments, and form amendments proposed in this Release, suggestions for additional provisions or changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this Release. We also request comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. We will consider those comments in satisfying our responsibilities under section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act.[241] For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[242] we also request information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

As discussed above, the ICI Advisory Group Report recommended several measures that are similar to our proposed amendments as well as several additional practices and policies. We request comment whether we should adopt any of these "best practices" recommendations as further measures to enhance the effectiveness of independent directors.[243]

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules.

A. Proposed Amendments to the Exemptive Rules

The Commission is proposing to amend the Exemptive Rules[244] to require that, for funds relying on those rules: (i) independent directors constitute either a majority or a super-majority (two-thirds) of their boards; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the fund's independent directors be an independent legal counsel. These proposals are designed to enhance the independence and effectiveness of fund directors who are charged with overseeing the fund's activities and transactions that are covered by the Exemptive Rules. Boards that meet these conditions should be more effective at exerting an independent influence over fund management. Their independent directors should be more likely to have their primary loyalty to the fund's shareholders rather than the adviser, and should be better able to evaluate the complex legal issues that are often faced by fund boards with an independent and critical eye. These proposed amendments, therefore, would provide substantial benefits to shareholders by helping to ensure that independent directors are better able to fulfill their role of representing shareholder interests and supplying an independent check on management.

The proposed amendments to the Exemptive Rules may impose some costs on funds that choose to rely on those rules. Funds that do not rely on an Exemptive Rule, however, will not be subject to the proposed conditions, or any costs associated with those conditions. These costs are discussed below.

Independent directors as a majority of the board. First, the Commission is making two alternative proposals regarding the representation of independent directors on fund boards. Under one proposal, funds relying on the Exemptive Rules would be required to have independent directors constitute a simple majority of their boards. Because, as noted above, most mutual funds today have boards with independent majorities,[245] it appears that this proposal would not impose substantial costs on funds as a group. Under the alternative proposal, funds relying on the Exemptive Rules would be required to have independent directors constitute two-thirds of their boards. Because fewer funds currently have boards of which two-thirds of the directors are independent, this alternative proposal could have higher costs for funds as a group.[246]

Under either of these alternative proposals, funds that currently do not have the required percentage of independent directors on their boards (whether a simple majority or two-thirds) and that would like to rely on the Exemptive Rules may incur some costs. The Commission, however, has no reasonable basis for estimating those costs. Those funds could come into compliance with either alternative proposal in a number of ways. For example, funds could: (i) decrease the size of their boards and allow some inside directors to resign; (ii) maintain the current size of their boards and replace some inside directors with independent directors; or (iii) increase the size of their boards and elect new independent directors.

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[235] *See supra* notes 21, 170 and accompanying text.

[236] A fund must indicate which individuals are independent directors in its registration statement, as well as in proxy statements for the election of directors. *See supra* note 225 and accompanying text.

[237] Proposed rule 31a–2(a)(4). The proposed rule states that these records must include any questionnaire and any other document used to determine that a director qualifies as independent.

[238] *Id.*

[239] *See, e.g.*, ICI Advisory Group Report, *supra* note 28, at 21 (recommending that funds require independent directors to complete a questionnaire each year on business, financial, and family relationships that could affect their independence).

[240] *See* section 31(a)(2) of the Act [15 U.S.C. 80a–30(a)(2)] (requiring Commission to consider and request public comment on minimizing recordkeeping compliance burdens).

[241] Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)], section 2(b) of the Securities Act [15 U.S.C. 77b(b)], and section 3(f) of the Exchange Act [15 U.S.C. 78c(f)] require the Commission, when it engages in rulemaking and is required to consider whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[242] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[243] *See supra* notes 34–35 and accompanying and following text.

[244] *See supra* text following note 33.

[245] *See supra* note 39 and accompanying text.

[246] *See supra* note 44. As noted above, however, the ICI Advisory Group Report has recommended that independent directors constitute two-thirds of a fund's board. *See supra* note 42 and accompanying text. It is therefore likely that in the future the number of funds following this practice will increase, even absent the Commission's proposal.

Where new independent directors are elected, whether to replace inside directors or to fill new positions that expand the size of the board, the fund would incur the costs of preparing a proxy statement and holding a shareholder meeting to elect those independent directors, as well as the costs of compensating those directors.[247] The Commission, however, has no reasonable basis for determining how many funds that currently do not have independent directors as a simple majority of their boards would choose to comply with either proposal through electing new independent directors. Similarly, we have no reasonable basis for determining how many funds that currently have independent directors as a simple majority, but not as a two-thirds majority, would choose to comply with the alternative proposal through electing new independent directors. We also have no reasonable basis for estimating the average compensation that would be paid to those newly elected independent directors, or the costs to those funds of preparing proxy statements and holding shareholder meetings to elect those directors.

We request comment on the potential costs of each of these alternative proposals. Comment is specifically requested on the differences in costs to funds of the two alternatives.

Independent director self-selection and self-nomination. Second, the proposed amendments to the Exemptive Rules would require that independent directors select and nominate any other independent directors. It appears that this proposal would not impose significant new costs on funds, because many funds already have adopted this practice.[248] Although some funds do not currently follow this practice and would need to adopt it in order to rely on the Exemptive Rules, we are not aware of any costs that would result from requiring a fund's incumbent independent directors to select and nominate other independent directors. Comment is requested on the costs associated with independent director self-selection and self-nomination. Are those costs greater than the costs that would otherwise be incurred by a fund in selecting qualified independent directors?

Independent legal counsel. Finally, the proposed amendments to the Exemptive Rules would require that any legal counsel to a fund's independent directors be an independent legal counsel.[249] The proposal would not require independent directors to *retain* legal counsel, but only that any person that does act as counsel to the independent directors qualify as an independent legal counsel. Independent directors who are represented by counsel who does not meet the proposed definition of "independent legal counsel" thus would be required to retain different counsel if their fund chooses to rely on any of the Exemptive Rules. The Commission, however, has no reasonable basis for determining whether this substitution of counsel is likely to cause the independent directors' costs of legal counsel to increase. We request comment on the costs associated with this proposal. Do law firms frequently offer fee arrangements that include, for example, discounts for providing services to both a fund's independent directors and the fund's adviser, which could disqualify the firm from serving as an independent legal counsel?

B. Definition of Independent Legal Counsel

Rule 0–1 defines certain terms for purposes of the rules and regulations under the Investment Company Act. The Commission is proposing to amend this rule to add a definition of the term "independent legal counsel." Under the proposed definition, a person is an independent legal counsel if (i) a fund reasonably believes that the person has not acted as legal counsel to the fund's adviser, principal underwriter, administrator,[250] or any of their control persons[251] during the last two years, or (ii) a majority of the fund's independent directors determines that the person's representation of the fund's adviser, principal underwriter, administrator, or a control person is or was so limited that it would not adversely affect the person's ability to provide impartial, objective and unbiased legal counsel to the independent directors. The basis of the independent directors' determination must be recorded in the minutes of the directors' meeting.

The proposed definition of "independent legal counsel" should help to ensure that independent directors' counsel is able to provide impartial legal advice concerning the complex legal issues faced by those directors. This proposal thus should benefit both shareholders and independent directors by helping those directors to better fulfill their role as shareholder representatives. Shareholders also would benefit from the requirement that the independent directors' determinations be recorded in the minute books of the fund, because this requirement would make it possible for the Commission staff to review independent directors' determinations that their counsel qualifies as independent legal counsel.

The proposed definition would impose costs on some funds that rely on the Exemptive Rules and thus would be required to use this definition.[252] We assume that approximately 3,200 funds rely on at least one of the Exemptive Rules annually.[253] We further assume that the independent directors of approximately one-third of those funds (1,065) would be required to make the specified determination in order for their counsel to meet the definition of

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[247] Under some circumstances a vacancy on the board may be filled by the board of directors. *See* section 16(a) of the Act. In those cases, the fund would only incur the costs of compensating the new independent directors.

[248] *See supra* note 66 and accompanying text.

[249] As discussed above, we are proposing to amend rule 0–1 to include a definition of "independent legal counsel." *See supra* note 87 and accompanying text; *see also infra* notes 250–256 and accompanying text (discussing the costs and benefits of this proposed definition).

[250] In connection with this proposal, we also are proposing to amend rule 0–1 to define an "administrator" as any person who provides significant administrative or business affairs management services to a fund. This definition is substantially similar to the definition of administrator that is currently contained in Item 22(a)(1)(i) of Schedule 14A and Item 15(h)(1) of Form N–1A. Adding this definition to rule 0–1 should benefit funds by helping to clarify the scope of the proposed definition of independent legal counsel. We are not aware of any costs that would be associated with this definition of administrator.

[251] We are proposing to amend rule 0–1 to define "control person" as any person (other than a registered investment company) directly or indirectly controlling, controlled by or under common control with a fund's investment adviser, principal underwriter, or administrator. This definition should benefit funds by helping to clarify the scope of the proposed definition of independent legal counsel. We are not aware of any costs that would be associated with this definition.

[252] Among other things, the proposed amendments to the Exemptive Rules would require that, for funds relying on those rules, any legal counsel for the independent directors of the fund be an "independent legal counsel."

[253] Based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998, we estimate that there are approximately 3,560 funds that could rely on one or more of the Exemptive Rules. Of those funds, we assume that approximately 90 percent (3,200) actually rely on at least on Exemptive Rule annually.

"independent legal counsel."[254] We estimate that each of these 1,065 funds would be required to spend, on average, 0.75 hours annually to comply with the proposed requirement that this determination be recorded in the fund's minute books,[255] for a total annual burden of approximately 799 hours. Based on this estimate, the total annual cost to funds of this proposed definition would be approximately $70,505.[256] The Commission is not aware of any other costs that would be associated with this proposal. Comment is requested on these estimated costs.

C. Suspension of Board Composition Requirements

Proposed rule 10e–1 would increase the periods for which the independent director minimum percentage requirements of the Act, and of the rules under the Act, are temporarily suspended if the death, disqualification, or bona fide resignation of an independent director causes the representation of independent directors on the board to fall below that required by the Act or our rules. This proposal would benefit funds by helping to ensure that a fund that dips below the independent director minimum percentage requirements in these circumstances does not immediately face the severe consequences of losing the availability of the Exemptive Rules.

We are not aware of any costs to funds that would result from this proposal. Because we believe that the periods for which the rule would suspend the independent director minimum percentage requirements are consistent with concerns for investor protection, it also appears that this proposal would not have any costs for investors.

D. Limits on Coverage of Directors Under Joint Insurance Policies

Rule 17d–1(d)(7) under the Act permits funds to purchase joint liability insurance policies without first obtaining a Commission order permitting this joint arrangement, provided that certain conditions are met. The Commission is proposing amendments to this rule that would make the rule available only for joint liability insurance policies that do not exclude coverage for independent directors' litigation expenses in the event that they are sued by the fund's adviser. This proposal should benefit shareholders by making it possible for independent directors to engage in the good faith performance of their responsibilities under the Act and our rules without concern for their personal financial security. For the same reasons, the proposal also should benefit independent directors.

Because obtaining this type of coverage may cause the premiums charged by some insurance providers for joint liability insurance policies to increase, this proposed amendment may have some costs for funds.[257] The Commission, however, has no reasonable basis for estimating the possible increase in premiums that may result from this proposal. Comment is requested on these costs.

E. Exemption From Ratification of Independent Public Accountant Requirement for Funds With Independent Audit Committees

Section 32(a)(2) of the Act requires that the selection of a fund's independent public accountant be submitted to shareholders for ratification or rejection. Proposed rule 32a–4 would exempt a fund from this requirement if the fund has an audit committee consisting entirely of independent directors to oversee the fund's auditor. This proposed exemption could provide significant benefits to shareholders. Many believe shareholder ratification of a fund's independent auditor has become a perfunctory process, with votes that are rarely contested. As a consequence, we believe that the ongoing oversight provided by an independent audit committee can provide greater protection to shareholders than shareholder ratification of the choice of auditor.

Proposed rule 32a–4 may impose certain costs on those funds that choose to rely on the exemption. It appears that these costs likely would be minimal and would be justified by the relief provided by the exemption. To rely on the exemption, among other things, a fund's board of directors must adopt an audit committee charter that sets forth the committee's structure, duties, powers, and methods of operation. The fund also must preserve that charter, and any modifications to the charter, permanently in an easily accessible place.[258] We estimate that there are approximately 3,490 investment companies that may rely on the proposed rule.[259] We assume that approximately 15 percent (524) of those funds are likely to rely on the exemption. For each of those funds, we estimate that the adoption of the audit committee charter would require, on average, 2 hours of director time and 2 hours of professional time,[260] for a total one-time burden of approximately 2,096 hours, and a total one-time cost of approximately $655,000.[261] We also estimate that each of the funds relying on the rule would be required to spend approximately 0.2 hours annually to comply with the proposed requirement that they preserve permanently their audit committee charters,[262] for an additional total annual hour burden of 105 hours, and an additional total annual cost of approximately $5,425.[263] We request comment on these estimated costs.

In addition, some funds pay their directors an extra fee for each committee on which they serve.[264] Those funds may incur the additional costs of audit committee fees if they establish an audit committee in order to rely on the proposed exemption. Of those funds likely to rely on the exemption, however, we have no basis for determining the number that would pay their independent directors a separate fee for service on the audit committee, or the likely amount of those fees.[265] Comment is requested on these additional costs that may be associated with this proposed exemption.

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[254] We assume that the independent directors of the remaining two-thirds of those funds (2,135) either would not have legal counsel, or would have legal counsel who meets the requirements of the first part of the proposed definition, so that no determination by the independent directors would be necessary.

[255] This estimate is based on a staff assessment of the burden associated with this proposed recordkeeping requirement in light of the estimated hour burdens currently associated with other rules under the Act that impose similar collection of information requirements.

[256] To calculate this total annual cost, the Commission staff assumed that two-thirds of the total annual industry hour burden (532 hours) would be incurred by professionals with an average hourly wage rate of $125 per hour, and one-third of that annual hour burden (267 hours) would be incurred by clerical staff with an average hourly wage rate of $15 per hour ((532 × $125/hour) + (267 × $15/hour) = $70,505).

[257] As discussed above, the ICI Mutual Insurance Company ("ICI Mutual"), which insures funds representing approximately 70 percent of all open-end fund assets, recently announced that it is making available to funds a standard policy endorsement that permits independent directors to recover defense costs, settlements, and judgments in "insured vs. insured" claims otherwise covered under the policy. *See supra* note 111. According to an ICI Mutual representative, that company is not charging funds any additional premiums for this coverage. It is possible, however, that other insurance providers will charge funds additional premiums for providing this type of coverage.

[258] These conditions are designed to enable the Commission staff to monitor the duties and responsibilities of an independent audit committee formed by a fund relying on the exemption.

[259] This estimate is based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998.

[260] This estimate is based on a review of the estimated hour burdens currently associated with other rules under the Act that impose similar collection of information requirements.

[261] To calculate this one-time cost, the Commission staff used $500 per hour as the average cost of directors' time and $125 per hour as an average hourly wage for professionals ((2 hours × 524 funds × $500/hour) + (2 hours × 524 funds × $125/hour) = $655,000).

[262] This estimate is based on a review of the estimated hour burdens associated with other rules under the Act that impose similar collection of information requirements.

[263] To calculate the total annual cost of the proposed rule, the Commission staff assumed that one-third of the total annual hour burden (35 hours) would be incurred by professionals with an hourly wage rate of $125 per hour, and two-thirds of that annual hour burden (70 hours) would be incurred by clerical staff with an hourly wage rate of $15 per hour ((35 × $125/hour) + (70 × $15/hour) = $5,425).

F. Qualifications as an Independent Director

The proposed amendment to rule 2a19–1 and proposed new rule 2a19–3 should benefit shareholders, funds, and independent directors by working to prevent qualified individuals from being unnecessarily disqualified from serving as independent directors. The proposed amendment to rule 2a19–1 would make the rule more flexible for all funds, particularly funds with small boards of directors. Proposed rule 2a19–3 would benefit both funds and their independent directors by clarifying the status of independent directors who own shares of index funds.

The Commission is not aware of any costs to funds that would result from these proposals. There also should be no costs to investors because, consistent with concerns for investor protection, these proposals would not permit individuals who have affiliations or business interests that could impair their independence to serve as independent directors.

G. Disclosure of Information About Fund Directors

As discussed above, the purpose of the proposed amendments to the proxy rules and Forms N–1A, N–2, and N–3 is to provide fund investors with improved information about directors. Because independent directors are the shareholders' representatives and advocates, shareholders have a significant interest in knowing who the independent directors are, whether the independent directors' interests are aligned with shareholders' interests, whether the independent directors have any conflicts of interest, and how the directors govern the fund. This information would help a fund shareholder to evaluate whether his designated representatives can, in fact, act as independent, vigorous, and effective representatives.

We believe that the proposed amendments would benefit investors in several ways. The proposed requirement that mutual funds disclose basic information about directors in an easy-to-read tabular format in the fund's annual report to shareholders, SAI, and proxy statements for the election of directors would benefit shareholders by ensuring that shareholders receive information about the identity and experience of their directors both annually and whenever they are asked to elect directors. Moreover, this information would benefit prospective investors who may obtain the information upon request.

Our proposal to require disclosure in the SAI of the aggregate dollar amount of equity securities of funds in the fund complex owned beneficially and of record by each director will allow shareholders and prospective investors to better calculate whether the interests of directors are aligned with their interests. In addition, shareholders also would benefit by receiving this information in the proxy statements whenever they are asked to elect directors.

Our proposal to improve the disclosure of possible conflict of interest circumstances for directors will enable investors to decide for themselves whether an independent director would be an effective advocate. Disclosure of this type of information also would result in its public dissemination, bring these circumstances to the attention of fund shareholders, and encourage the selection of independent directors who are independent in the spirit of the Act. Finally, this information would assist the Commission in determining whether to exercise its authority under section 2(a)(19) of the Act to find that a person is an interested person of a fund by reason of having had, at any time since the beginning of the last two completed fiscal years of the fund, a material business or professional relationship with the fund and certain persons related to the fund.

The proposed modifications to the disclosure requirements of matters related to the board's role in governing a mutual fund would benefit shareholders by allowing them to determine more readily whether the directors are effectively representing shareholders' interests, independent of fund management.

The proposed amendments would impose certain costs on the fund industry. The costs associated with the proposed amendments would include the resources expended by funds in determining what information needs to be disclosed about fund directors (in the case of proxy statements, also nominees) and preparing the disclosure documents.

Proxy Statements. The current hour burden for preparing proxy statements is 96.2 hours per proxy statement, and we estimate that approximately ⅓ of those hours—or 32 hours—are expended collecting and disclosing information about directors and nominees.[266] We estimate the additional burden hours that would be imposed by the proposed disclosure requirements to be 10 hours per proxy statement.[267]

We estimate the annual industry cost of the proposed amendments to the proxy statements to be 10,000 hours, or $1.25 million, based on an estimated 1,000 proxy statements that are filed annually.[268]

Registration Statements. Because the information proposed to be disclosed in the registration statement would be the same as in the proxy statements, we believe the hour burden for the proposed amendments per registration statement would be approximately the current hour burden for collecting and disclosing director information under the current proxy rules plus the hour burden for the proposed amendments to the proxy rules. As stated above, we estimate the current hour burden for collecting and disclosing information about directors and nominees in proxy statements to be 32 hours per proxy statement and the burden hours for collecting and disclosing the enhanced information about directors and nominees to be 10 hours per proxy statement, for a total of 42 hours.

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[264] In some cases, funds pay these additional committee fees only if the committee meeting is held on a day when a board meeting is not scheduled.

[265] We also have no basis for determining how many funds would choose to avoid those fees by scheduling audit committee meetings for the same day as a board meeting.

[266] This estimate is based on Commission staff assessment of the different types of information currently required to be disclosed in proxy statements.

[267] This estimate is based upon a Commission staff assessment of the proposed amendments in light of the current hour burden and current reporting requirements. As stated above, the additional hours are based on the additional time funds would devote to determining what information needs to be disclosed and preparing the disclosure documents.

[268] The estimated number of proxy statements is based on the approximate number of proxy statements filed with the Commission in calendar year 1998. The total industry cost of the proposed amendments to the proxy statement is calculated by multiplying the annual number of proxy statements (1,000) by the additional hour burden imposed by the proposed amendments (10 hours) by the hourly wage rate ($125). The hourly wage rate is based upon consultations with a sample of filers and represents the Commission's estimate for an appropriate wage rate for the legal, financial, and accounting skills commonly used in preparation of registration statements, shareholder reports, and proxy statements.

Form N–1A. The hour burden for Form N–1A is on a per portfolio basis and not per registration statement filed with the Commission. Based on the Commission staff's experience with Form N–1A, we estimate that there are approximately 1.75 portfolios per registration statement filed on Form N–1A. The average hour burden per portfolio for disclosing the information about directors would be the hour burden per registration statement (42) divided by the average number of portfolios per registrant (1.75), or 24 hours per portfolio.[269] Because mutual funds would only have to update information in post-effective amendments, we expect that the hour burden would be ⅙ of the hours expended for the initial registration statement, or 4 hours per portfolio for post-effective amendments.[270]

We estimate that 280 portfolios file initial registration statements and 7,875 portfolios file post-effective amendments annually on Form N–1A.[271] Thus, we estimate the annual industry cost of the proposed amendments to Form N–1A to be 38,220 hours, or $4.78 million.[272]

Form N–2. The hour burden for Form N–2 is on a per registration statement basis because funds registering on Form N–2 register one portfolio per registration statement. Because the proposed disclosure would be the same for Form N–2 as for Form N–1A, except that it would be for one portfolio per registration statement, we estimate the additional hour burden for the proposed amendments to be 42 hours for each initial registration statement. Because funds would only have to update information in post-effective amendments, we expect that the hour burden would be approximately ⅙ of the hours expended for the initial registration statement, or 7 hours per post-effective amendment.[273]

We estimate that 110 funds file initial registration statements and 20 file post-effective amendments annually on Form N–2.[274] Thus, we estimate annual industry cost of the proposed amendments to Form N–2 to be 4,760 hours, or $595,000.[275]

Form N–3. The hour burden for Form N–3 is on a per portfolio basis and not per registration statement filed with the Commission. Based on the Commission staff's experience with Form N–3, we estimate that there are approximately 4 portfolios per investment company registering on Form N–3. The average hour burden per portfolio for disclosing the information about directors would be the hour burden per registration statement (42) divided by the approximate number of portfolios per registrant (4), or 10.5 hours per portfolio. Because funds would only have to update information in post-effective amendments, we expect that the hour burden would be ⅙ of the hours expended for the initial registration statement, or 1.75 hours per portfolio for post-effective amendments.[276]

We estimate that 20 portfolios file initial registration statements and 40 portfolios file post-effective amendments annually on Form N–3.[277] Thus, we estimate the annual industry cost of the proposed amendments to Form N–3 to be 280 hours, or $35,000.[278]

Shareholder Reports. Because the disclosure of basic tabular information, which is proposed to be required in annual shareholder reports, is a subset of the information that would be required in the initial registration statement of a fund and any post-effective amendments, we expect that the annual burden for complying with the proposed amendments to the shareholder report requirements would be minimal. Based upon the amount of information proposed to be disclosed, we estimate that the hour burden would be one-half hour per investment company for each annual shareholder report. We estimate that there are 3,490 management investment companies that are subject to the annual report requirements.[279] Thus, we estimate the annual industry cost of the proposed amendments for annual shareholder reports to be 1,745 hours, or $218,125.[280]

H. Recordkeeping Regarding Director Independence

The Commission also is proposing to amend rule 31a–2 under the Act, which requires funds to preserve certain records for specified periods of time. The proposed amendments to rule 31a–2 would require funds to preserve for a period of at least six years any record of: (i) the initial determination that a director qualifies as an independent director, and (ii) each subsequent determination of whether the director continues to qualify as an independent director. This proposal would benefit both shareholders and the Commission by enabling the Commission's staff to monitor a fund's assessments of the independence of its directors. This would make it possible for the Commission to ascertain whether a fund's assessments reflect diligent efforts to evaluate each director's relevant business and personal relationships that might affect the director's independent judgment. The proposed amendment would impose certain minimal costs on funds. The Commission staff estimates that each investment company currently spends about 27.8 hours per year complying with the record preservation requirements of rule 31a–2.[281] Approximately 3,490 investment companies would be affected by the proposal to amend the rule to require funds to preserve records regarding the independence of their directors.[282] The Commission staff estimates that each of those investment companies would be required to spend an additional 0.2 hours annually to comply with the proposed amendment,[283] for a total additional burden for all funds of approximately 698 hours. Based on this estimate, the total annual cost for all funds of the proposed amendment to rule 31a–2 would be $36,100.[284] The Commission is not aware of any other costs that would result from the proposed amendments to rule 31a–2. Comment is requested on the costs associated with this proposal.

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[269] Our estimated hour burden may significantly overstate the burden for those portfolios that are part of a fund complex in which multiple registered investment companies have the same board of directors because the burden of collecting and disclosing information about the common board would be spread over a larger number of portfolios.

[270] Although funds would only have to update the information about current directors and add information about new directors, we anticipate that funds would incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure.

The hour burden for the post-effective amendment to a registration statement filed by an existing fund after the rules take effect generally would be higher than for subsequent post-effective amendments because the fund would need to compile and disclose the required information for the first time.

[271] These estimates are based on filings received in calendar year 1998.

[272] The total annual industry cost is calculated by multiplying he total annual industry hour burden ((280 portfolios × 24 hours) + (7,875 portfolios × 4 hours)) by the hourly wage rate of $125.

[273] Although funds would only have to update the information about current directors and add information about new directors, we anticipate that funds would incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure.

The hour burden for the first post-effective amendment to a registration statement filed by an existing fund after the rules take effect generally would be higher than for subsequent post-effective amendments because the fund would need to compile and disclose the required information for the first time.

[274] These estimates are based on filings received in calendar year 1998.

[275] The total annual industry cost is calculated by multiplying the total annual industry hour burden ((110 funds × 42 hours) + (20 funds × 7 hours)) by the hourly wage rate of $125.

[276] Although funds would only have to update the information about current directors and add information about new directors, we anticipate that funds would incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure.

The hour burden for the first post-effective amendment to a registration statement filed by an existing fund after the rules take effect generally would be higher than for subsequent post-effective amendments because the fund would need to compile and disclose the required information for the first time.

[277] These estimates are based on filings received in calendar year 1998.

[278] The total annual industry cost is calculated by multiplying the total annual industry hour burden ((20 portfolios × 10.5 hours) + (40 portfolios × 1.75 hours)) by the hourly wage rate of $125.

[279] This estimate is based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998.

[280] The industry cost of the proposed annual shareholder reporting requirements is calculated by multiplying the total annual hour burden for the industry (0.5 hours × 3,490 registered management investment companies) by the hourly wage rate of $125.

To assist in the evaluation of the costs and benefits that may result from the proposed rules and rule amendments, the Commission requests that commenters provide views and data relating to any costs and benefits associated with these proposals.

IV. Paperwork Reduction Act

Certain provisions of Forms N–1A, N–2, and N–3, and rules 0–1, 20a–1, 30e–1, 31a–2, and 32a–4 under the Investment Company Act, and Schedule 14A under the Exchange Act contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].[285] The Commission has submitted those rules and forms to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) "Rule 0–1 under the Investment Company Act of 1940, Definition of terms used in this part;" (2) "Rule 20a–1 under the Investment Company Act of 1940, Solicitation of Proxies, Consents and Authorizations;" (3) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies;" (4) "Form N–2—Registration Statement of Closed-End Management Investment Companies;" (5) "Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies;" (6) "Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies;" (7) "Rule 31a–2 under the Investment Company Act of 1940, Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies;" and (8) "Rule 32a–4 under the Investment Company Act of 1940, Exemption from ratification or rejection requirement of section 32(a)(2) for registered investment companies with independent audit committees." An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Forms N–1A (OMB Control No. 3235–0307), N–2 (OMB Control No. 3235–0026), and N–3 (OMB Control No. 3235–0316) were adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and section 5 of the Securities Act [15 U.S.C. 77e]. Rule 0–1 was adopted pursuant to section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)]. Rule 20a–1 (OMB Control No. 3235–0158) and rule 30e–1 (OMB Control No. 3235–0025) were promulgated under sections 20(a) and 30(e) [15 U.S.C. 80a–20 and 80a–29], respectively, of the Investment Company Act. Rule 31a–2 (OMB Control No. 3235–0179) was adopted under sections 31 [15 U.S.C. 80a–30] and 38(a) of the Investment Company Act. Rule 32a–4 is proposed pursuant to sections 6(c) [15 U.S.C. 80a–6(c)] and 38(a) of the Investment Company Act.

Rule 0–1

The proposed amendments to rule 0–1 include collection of information requirements. Rule 0–1 defines certain terms for purposes of the rules and regulations under the Investment Company Act. The proposed amendments would add a definition of the term "independent legal counsel" to this rule. Under the proposed definition, a person is an independent legal counsel if (i) a fund reasonably believes that the person has not acted as legal counsel to the fund's adviser, principal underwriter, administrator, or any of their control persons[286] during the last two years, or (ii) a majority of the fund's independent directors determines that the person's representation of the fund's adviser, principal underwriter, administrator, or a control person is or was so limited that it would not adversely affect the person's ability to provide impartial, objective, and unbiased legal counsel to the independent directors. The basis of the independent directors' determination must be recorded in the minutes of the fund. The purpose of this recordkeeping requirement is to make it possible for the Commission staff to review these determinations.

Any fund that relies on an Exemptive Rule would be required to use this proposed definition of independent legal counsel.[287] We assume that approximately 3,200 funds rely on at least one of the Exemptive Rules annually.[288] We further assume that the independent directors of approximately one-third (1,065) of those funds would need to make the required determination in order for their counsel to meet the definition of "independent legal counsel."[289] We estimate that each of these 1,065 funds would be required to spend, on average, 0.75 hours annually to comply with the proposed recordkeeping requirement concerning this determination,[290] for a total annual burden of approximately 799 hours.

Compliance with the proposed rule 0–1 definition of independent legal counsel would be necessary to obtain the benefit of relying on the Exemptive Rules. Responses will not be kept confidential.

Rule 20a–1

Rule 20a–1 requires persons soliciting proxies regarding investment companies to comply with the proxy solicitation requirements of Regulation 14A under the Exchange Act, including Schedule 14A, which, with the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are investment companies and other persons filing proxy statements for investment companies. We estimate that 1,000 proxy statements are filed annually for investment companies and that the current hour burden for proxy statements is 96.2 hours per statement.[291]

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[281] Commission staff surveyed representatives of several funds to determine the current burden hour estimate for rule 31a–2.

[282] This estimate is based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998.

[283] This estimate is based on a Commission staff assessment of the hour burden that would be imposed by the proposed amendment in light of the estimated hour burden currently imposed by the requirements of the rule.

[284] In calculating the total annual industry cost of the proposed amendment, the Commission staff assumed that one-third of the total annual industry hour burden (233 hours) would be incurred by professionals with an average hourly wage rate of $125 per hour, and two-thirds of that annual hour burden (465 hours) would be incurred by clerical staff with an average hourly wage rate of $15 per hour ((233×$125/hour)+(465×$15/hour)=$36,100).

[285] Because we are proposing to redesignate rule 30d–1 as rule 30e–1, were refer to the newly designated rule 30e–1 in this section.

[286] The term "control person" is defined as any person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with a fund's investment adviser, principal underwriter, or administrator.

[287] Among other things, the proposed amendments to the Exemptive Rules would require that, for funds relying on those rules, any legal counsel for the independent directors of the fund be an independent legal counsel.

[288] *See supra* note 253.

[289] *See supra* note 254.

[290] *See supra* note 255 for the basis of this estimate.

We estimate that the proposed amendments would increase the hour burden per filing of a proxy statement by 10 hours.[292] Thus, we estimate the hour burden per proxy statement would be 106.2 hours, for a total industry annual hour burden of 106,200 hours.

Compliance with the disclosure requirements of rule 20a–1 and Schedule 14A is mandatory. Responses to the disclosure requirements will not be kept confidential.

Form N–1A

Form N–1A, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A. We estimate that 160 initial registration statements are filed annually on Form N–1A, registering 280 portfolios, and that the current hour burden per portfolio per filing is 800 hours, for an annual hour burden of 224,000 hours.[293] We estimate that 4,500 post-effective amendments to registration statements are filed annually on Form N–1A, for 7,875 portfolios, and that the current hour burden per portfolio per post-effective amendment filing is 100 hours, for an annual hour burden of 787,500 hours.[294] Thus, we estimate a current total annual hour burden of 1,011,500 hours for the preparation and filing of Form N–1A.

We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement by 24 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 4 hours.[295] Thus, if the proposed amendments to Form N–1A are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–1A would be 1,049,720 hours.[296]

Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements will not be kept confidential.

Form N–2

Form N–2, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission on Form N–2. We estimate that 110 initial registration statements are filed annually on Form N–2, at a current hour burden per filing of 500 hours, for an annual hour burden of 55,000 hours.[297] We estimate that 20 post-effective amendments to registration statements are filed annually on Form N–2, at a current hour burden of 100 hours, for an annual hour burden of 2,000.[298] Thus, we estimate a current total annual hour burden of 57,000 hours for the preparation and filing of Form N–2.

We estimate that the proposed amendments would increase the hour burden per filing of an initial registration statement by 42 hours and would increase the hour burden per filing of a post-effective amendment to a registration statement by 7 hours.[299] Thus, if the proposed amendments to Form N–2 are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–2 would be 61,760 hours.[300]

Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements will not be kept confidential.

Form N–3

Form N–3, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts organized as management investment companies registering with the Commission on Form N–3. We estimate that 5 initial registration statements are filed annually on Form N–3, including approximately 20 portfolios, and that the current hour burden per portfolio in a filing is 900 hours, for an annual hour burden of 18,000 hours.[301] We estimate that 10 post-effective amendments to registration statements are filed annually on Form N–3, including approximately 40 portfolios, at a current hour burden of 150 hours per portfolio in a filing, for an annual hour burden of 6,000.[302] Thus, we estimate a current total annual hour burden of 24,000 hours for the preparation and filing of Form N–3.

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[291] The estimated number of proxy statements filed is based on the approximate number of proxy statements filed with the commission in calendar year 1998. The current approved Paperwork Reduction Act (''PRA'') hour burden for rule 20a–1 is 96.2 hours.

[292] This estimate is based upon a Commission staff assessment of the proposed amendments in light of the current hour burden and current reporting requirements.

As stated above, the additional hours are based on the additional time funds would devote to determining what information needs to be disclosed and preparing the disclosure documents.

[293] These estimates are based on filings received in calendar year 1998. The current approved PRA hour burden per portfolio for an initial Form N–1A is 800 hours.

[294] These estimates are based on filings received in calendar year 1998. The current approved PRA hour burden per portfolio for post-effectmens amendmends to Form N–1A is 100 hours.

[295] *See supra* 269 and 270 and accompanying text. As stated above, the additional hours are based on the additional time funds would devote to determining what information needs to be dislosed and preparing the disclosure documents.

For post-effective amendments, although funds would only have to update the information about current directors and add information about new directors, we anticipate that funds would incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure.

The hour burden for the first post-effective amendment to a registration statement filed by an existing fund after the rules take effect generally would be higher than for subsequent post-effective amendments because the fund would need to compile and disclose the required information for the first time.

[296] This total annual hour burden is calculated by adding the hour burden for initial registration statements and the hour burden for post-effective amendments, based on the proposed amendments. The annual hour burden per portfolio for an initial filing would be 824 hours (800 plus 24), for 280 portfolios, for a total of 230,720 hours. The annual hour burden per portfolio for a post-effective amendment would be 104 hours (100 plus 4), for 7,875 portfolios, for a total of 819,000 hours. The total annual hour burden for all funds for preparing and filing of initial registration statements and post-effective amendments on Form N–1A would be 1,049,720 hours (230,720 plus 819,000).

[297] These estimates are based on filings received in calendar year 1998. The current approved PRA hour burden per initial Form N–2 is 500 hours.

[298] These estimates are based on filings received in calendar year 1998. The current approved PRA hour burden per initial Form N–2 is 100 hours.

[299] *See supra* Section III.F. As states above, the additional hours are based on the additional time funds would devote to determining what information needs to be disclosed and preparing the disclosure documents.

For post-effective amendments, although funds would only have to update the information about current directors and add information about new directors, we anticipate that funds would incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure.

The hour burden for the first post-effective amendment to a registration statement filed by an existing fund after the rules take effect generally would be higher than for subsequent post-effective amendments because the fund would need to compile and disclose the required information for the first time.

[300] This total annual hour burden is calculated by adding the hour burden for initial registration statements and the hour burden for post-effective amendments, based on the proposed amendments. The annual hour burden per initial registration statement would be 542 hours (500 plus 42), for 110 filings, for a total of 59,620 hours. The annual hour burden per post-effective amendment would be 107 hours (100 plus 7), for 20 post-effective amendments, for a total of 2,140 hours. The total annual hour burden for all funds for preparing and filing of initial registration statements and post-effective amendments on Form N–2 would be 61,760 hours (59,620 plus 2,140).

[301] These estimates are based on filings received in calendar year 1998. The previous Paperwork Reduction Act submission for Form N–3 did not differentiate the hour burden between initial filings

We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement by 10.5 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 1.75 hours.[303] Thus, if the proposed amendments to Form N–3 are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–3 would be 24,280 hours.[304]

Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements will not be kept confidential.

Rule 30e–1 Shareholder Reports[305]

Rule 30e–1, including the proposed amendments to Forms N–1A, N–2, and N–3, contains collection of information requirements.[306] There are approximately 3,490 management investment companies subject to rule 30e–1.[307] We estimate that the current hour burden for preparing and filing semi-annual and annual shareholder reports in compliance with rule 30e–1 is 202 hours.[308] With the proposed amendments, we estimate the hour burden to be 202.5 hours, for a total annual hour burden to the industry of 706,725 hours.[309]

Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

Rule 31a–2

Rule 31a–2, including the proposed amendments, contains collection of information requirements. The rule requires funds and certain principal underwriters, broker-dealers, investment advisers and depositors of funds to preserve certain records for at least six years and other records permanently. Its purpose is to ensure that the Commission and the public have access to material business information about funds. The proposed amendments to rule 31a–2 would require funds to preserve for a period of at least six years any record of (i) The initial determination that a director qualifies as an independent director, and (ii) each subsequent determination of whether the director continues to qualify as an independent director. The purpose of this proposal is to enable the Commission to monitor funds' assessments of the independence of their directors.

We estimate that approximately 3,490 management investment companies are likely respondents to rule 31a–2,[310] and that each investment company currently spends about 27.8 hours per year complying with the rule, for a total industry burden of approximately 97,022 hours.[311]

Each of those 3,490 investment companies would be affected by the proposal to amend rule 31a–2 to require funds to preserve records regarding the independence of their directors. We estimate that each of these investment companies would be required to spend an additional 0.2 hours annually to comply with the proposed amendment,[312] for a total additional annual burden for all funds of approximately 698 hours. Thus, we estimate that the total annual burden for all funds of complying with rule 31a–2, as proposed to be amended, would be approximately 97,720 hours.

Compliance with rule 31a–2 is mandatory for every registered fund. The Commission may not keep confidential any records preserved in reliance on the rule.

Rule 32a–4

Proposed rule 32a–4 contains collection of information requirements. The rule provides an exemption from the requirement in section 32(a)(2) of the Act that the selection of a fund's independent public accountant be submitted to shareholders for ratification or rejection, if the fund establishes an audit committee consisting entirely of independent directors to oversee the fund's auditor. To rely on this exemption, among other things, the fund's board of directors must adopt an audit committee charter that sets forth the committee's structure, duties, powers and methods of operation. The fund also must preserve that charter, and any modifications to the charter, permanently in an easily accessible place. The purpose of these conditions is to ensure that the Commission staff will be able to monitor the duties and responsibilities of an independent audit committee formed by a fund relying on this exemption.

We estimate that there are approximately 3,490 investment companies that could rely on the proposed rule. We assume that approximately 15 percent (524) of those funds are likely to rely on the

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and post-effective amendments. the approved hour burden at that time was 518.8 hours per filing based on 53 filings. Based upon experience with Form N–3, we have reevaluated the hour burden for Form N–3 and estimated that exclusive of the proposed amendments, the hour burden for initial filings is 900 hours.

[302] These estimates are based on filings received in calendar year 1998. The previous Paperwork Reduction Act submission for Form N–3 did not differentiate the hour burden between initial filings and post-effective amendments. The approved hour burden at that time was 518.8 hours per filing based on 53 filings. Based upon experience with Form N–3, we have reevaluated the hour burden for Form N–3 and estimated that exclusive of the proposed amendments, the hour burden for post-effective amendments is 150 hours.

[303] *See supra* Section III.F. As stated above, the additional hours are based on the additional time funds would devote the determining what information needs to be disclosed and preparing the disclosure documents.

For post-effective amendments, although funds would only have to update the information about current directors and add information about new directors, we anticipate that funds would incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure.

The hour burden for the first post-effective amendment to a registration statement filed by an existing fund after the rules take effect generally would be higher than for subsequent post-effective amendments because the fund would need to compile and disclose the required information for the first time.

[304] This total annual hour burden is calculated by adding the hour burden for initial registration statements and the hour burden for post-effective amendments, based on the proposed amendments. the annual hour burden per portfolio for an initial filing would be 910.5 hours (900 plus 10.5), for 20 portfolios, for a total of 18,210 hours. The annual hour burden per portfolio for a post-effective amendment would be 151.75 hours (150 plus 1.75), for 40 portfolios, for a total of 6,070 hours. The total annual hour burden for all funds for preparing and filing of initial registration statements and post-effective amendments on Form N–3 would be 24,280 hours (18,210 plus 6,070).

[305] Because we are proposing to redesignate rule 30d–1 as rule 30e–1, we refer to the newly designated rule 30e–1 in this section.

[306] The proposed amendments are to Forms N–1A, N–2, and N–3. Rule 30e–1 requires funds to include in the shareholder reports the information that is required by the fund's registration statement form.

[307] This estimate is based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998.

[308] The current approved PRA hour burden for rule 30e–1 is 202 hours per investment company.

[309] *See Supra* section III.F.

[310] The burdens associated with the rule's requirements that investment advisers. underwriters, brokers, dealers, and depositors preserve certain records have been addressed separately in connection with rules adopted under section 204 of the Investment Advisers Act [15 U.S.C. 80b–4] and section 17 of the exchange Act [15 U.S.C. 78q].

[311] The Commission staff surveyed representatives of several funds to determine the current burden hour estimate for rule 31a–2.

[312] *See suprs* note 283 for the basis of this estimate.

exemption. For each of those funds, we estimate that the adoption of the audit committee charter would require, on average, 2 hours of director time and 2 hours of professional time,[313] for a total one-time burden of 2,096 hours. We also estimate that each of the funds relying on the rule would be required to spend approximately 0.2 hours annually to comply with the proposed requirement that they preserve permanently their audit committee charters,[314] for an additional annual hour burden of 105 hours.

Compliance with rule 32a–4 is voluntary. The Commission may not keep confidential the records preserved pursuant to the rule.

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–23–99. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA" or "analysis") in accordance with 5 U.S.C. 603. The IRFA relates to proposed rules 2a19–3, 10e–1, and 32a–4, and the proposed amendments to rules 0–1, 2a19–1, 10f–3, 12b–1, 15a–4, 17a–7, 17a–8, 17d–1, 17e–1, 17g–1, 18f–3, 23c–3, and 31a–2 (the "substantive rule proposals"). The IRFA also relates to the proposed amendments to Schedule 14A, Forms N–1A, N–2, and N–3, and rules 30e–1 and 30e–2 (the "disclosure proposals").[315] The following summarizes the IRFA.

The analysis explains that the substantive rule proposals contained in this Release include proposed amendments to the Exemptive Rules that are designed to enhance the independence and effectiveness of fund independent directors.[316] The proposals also include new rules and rule amendments that would prevent qualified individuals from being unnecessarily disqualified from serving as independent directors, protect independent directors from the costs of legal disputes with fund management, permit the Commission to monitor the independence of directors by requiring funds to preserve records of their assessments of director independence, and temporarily suspend the independent director minimum percentage requirements if a fund falls below the required percentage due to an independent director's death or resignation. In addition, the Commission is proposing to exempt funds from the requirement that shareholders ratify or reject the directors' selection of an independent public accountant, if the fund establishes an audit committee composed entirely of independent directors.

The analysis also explains that the proposals contained in this Release would require enhanced disclosure about directors that should allow a fund shareholder to evaluate whether his designated representatives can, in fact, act as independent, vigorous, and effective representatives. The analysis explains that the proposed amendments would impose enhanced disclosure requirements on all funds by requiring disclosure of basic information about directors to shareholders in the SAI, proxy solicitations for the election of directors, and annual reports to shareholders. The proposed amendments also would require improved disclosure in the SAI and proxy solicitations for the election of directors about fund shares owned by directors, information about directors that may raise conflict of interest concerns, and information on the board's role in governing the fund.

The analysis discusses the impact of the proposed amendments on small entities. For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[317]

The analysis notes that as of December 1998, there were approximately 3,560 investment companies that may be affected by one or more of the substantive and disclosure rule proposals, including 320 investment companies that are small entities. The proposed amendments to the Exemptive Rules would affect any of these funds, including those that are small entities, that rely on an Exemptive Rule and do not already meet the proposed new conditions to those rules. The analysis explains that although it appears that funds may incur certain costs in complying with those proposed conditions, the Commission does not have a reasonable basis for estimating those costs. The analysis also explains that the Commission believes that the other substantive rule proposals are not expected to have a significant economic impact on funds, including those that are small entities. The analysis states that the Commission believes that the disclosure changes may have a significant impact on small entities.

The analysis also discusses the reporting, recordkeeping and other compliance requirements associated with the proposals contained in this Release. It notes that the proposed amendments to the Exemptive Rules would require that, for funds relying on those rules: (i) independent directors constitute either a majority or a super-majority (two-thirds) of the fund's board of directors; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the independent directors be an independent legal counsel.

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[313] *See supra* note 260 for the basis of this estimate.

[314] *See supra* note 262 for the basis of this estimate.

[315] Because we are proposing to redesignate rule 30d–1 as rule 30e–1, and rule 30d–2 as 30e–2, we refer to the newly designated rules 30e–1 and 30e–2 in this section.

[316] These proposals would require that, for funds relying on those exemptive rules, (i) independent directors constitute either a majority or a super-majority (two-thirds) of the fund's board of directors; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the independent directors be an independent legal counsel. In connection with these proposals, we also are proposing to amend rule 0–1 under the Act to add definitions of the terms "independent legal counsel" and "administrator."

[317] 17 CFR 270.0–10.

The analysis explains that the proposed amendments to rule 0–1 would add a definition of "independent legal counsel." Under this proposed definition, a person is an independent legal counsel if (i) a fund reasonably believes that the person has not acted as legal counsel to the fund's adviser, principal underwriter, administrator, or any of their control persons during the last two years, or (ii) a majority of the fund's independent directors determines that the person's representation of the fund's adviser, principal underwriter, administrator, or a control person is or was so limited that it would not adversely affect the person's ability to provide impartial, objective, and unbiased legal counsel to the independent directors. The basis of the independent directors' determination must be recorded in the minutes of the fund. The analysis explains that each fund whose independent directors make a determination under the proposed definition would be required to spend approximately 0.75 hours annually to comply with the requirement that the determination be recorded in the minutes of the fund.[318]

Proposed rule 32a–4 would require any fund relying on the exemption provided by the rule to (i) establish an audit committee comprised solely of independent directors, (ii) adopt an audit committee charter, and (iii) preserve that charter, and any modifications to that charter, permanently in an easily accessible place. The analysis explains that the staff estimates that each fund relying on the proposed rule would be required to spend approximately 4 hours to comply with the requirement that it adopt an audit committee charter, and approximately 0.2 hours annually to comply with the requirement that it preserve that charter in an easily accessible place.[319]

In addition, the analysis notes that the proposed amendments to rule 31a–2 would require funds to preserve for a period of at least six years any record of (i) the initial determination that a director qualifies as an independent director, and (ii) each subsequent determination of whether the director continues to qualify as an independent director. The analysis explains the Commission staff estimates that each investment company that must comply with the rule would be required to spend 0.2 hours annually to comply with this new recordkeeping requirement.[320]

The disclosure proposals would require all funds subject to the amendments to provide enhanced disclosure about directors. As explained in the analysis, based upon staff assessment of the proposed amendments in light of the current hour burden and current reporting requirements, the Commission estimates it will take approximately 10 additional hours per proxy statement to include the proposed disclosure about directors; 24 additional hours per portfolio to prepare an initial registration statement on Form N–1A and 4 additional hours per portfolio to prepare post-effective amendments to the registration statement on Form N–1A that include the proposed disclosure about directors; 42 additional hours per registrant to prepare an initial registration statement on Form N–2 and 7 additional hours per registrant to prepare post-effective amendments to the registration statement on Form N–2 that include the proposed disclosure about directors; 10.5 additional hours per portfolio to prepare an initial registration statement on Form N–3 and 1.75 additional hours per portfolio to prepare post-effective amendments to the registration statement on Form N–3 that include the proposed disclosure about directors; and 0.5 additional hours per investment company to include the proposed basic information about directors in the annual report to shareholders.[321]

As stated in the analysis, the Commission considered several alternatives to both the substantive rule proposals and the disclosure proposals, including establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed amendments. The Commission believes that establishing different substantive or disclosure requirements applicable specifically to small entities is inconsistent with the protection of investors. The Commission also believes that adjusting the proposals to establish different compliance requirements for small entities could undercut the purpose of the proposals: to enhance the effectiveness of independent directors, and thus better enable those directors to fulfill their role of protecting shareholder interests.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposals and the impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be placed in the same public comment file as comments on the proposals. A copy of the IRFA may be obtained by contacting Jennifer B. McHugh or Heather A. Seidel, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

VI. Statutory Authority

The Commission is proposing rules 2a19–3, 10e–1, and 32a–4, and amendments to rules 0–1, 2a19–1, 10f–3, 12b–1, 15a–4, 17a–7, 17a–8, 17d–1, 17e–1, 17g–1, 18f–3, 23c–3, 30d–1, 30d–2, and 31a–2 pursuant to authority set forth in sections 6(c), 10(e), 30(e), 31, and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–10(e), 80a–29(e), 80a–30, 80a–37(a)]. The Commission is proposing amendments to Schedule 14A pursuant to authority set forth in sections 14 and 23(a)(1) of the Exchange Act [15 U.S.C. 78n, 78w(a)(1)] and sections 20(a) and 38 of the Investment Company Act [15 U.S.C. 80a–20(a), 80a–37]. The Commission is proposing amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act of 1933 [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a)] and sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, 80a–37].

List of Subjects

17 CFR Parts 239 and 240

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Forms

1. For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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[318] *See supra* note 255 for the basis of this estimate.

[319] *See supra* notes 260 and 262 for the basis of these estimates.

[320] *See supra* note 283 for the basis of this estimate.

[321] The hour burden for the first post-effective amendment to a registration statement filed by an existing fund after the rules take effect generally would be higher than for subsequent post-effective amendments because the fund would need to compile and disclose the required information for the first time.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.14a–101 is amended by revising paragraphs (d) and (e) of Item 7 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. Directors and executive officers.

* * * * *

(d)(1) State whether or not the registrant has standing audit, nominating and compensation committees of the Board of Directors, or committees performing similar functions. If the registrant has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees.

(2) If the registrant has a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting such recommendations.

(e) In lieu of paragraphs (a) through (d) of this Item, investment companies registered under the Investment Company Act of 1940 must furnish the information required by Item 22(b) of this Schedule 14A.

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3. In § 240.14a–101 amend Item 8(d), before the Instruction, by revising "Item 22(b)(6)" to read "Item 22(b)(12)".

4. In § 240.14a–101 amend the Instruction following Item 10(a)(2)(ii)(A) by revising "Item 22(b)(6)" to read "Item 22(b)(12)".

5. In § 240.14a–101 amend the Instruction following Item 10(b)(1)(ii) by revising "Item 22(b)(6)(ii)" to read "Item 22(b)(12)(ii)".

6. Item 22 of § 240.14a–101 is amended by:

A. Revising paragraph (a)(1)(i);

B. Redesignating paragraphs (a)(1)(vi), (vii), and (viii) as paragraphs (a)(1)(viii), (ix), and (xi);

C. Adding new paragraphs (a)(1)(vi), (vii), and (x); and

D. Revising newly designated paragraph (a)(1) (ix).

The revisions and additions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 22. Information required in investment company proxy statement.

(a) * * *

(1) * * *

(i) *Administrator.* The term "Administrator" shall mean any person who provides significant administrative or business affairs management services to a Fund.

* * * * *

(vi) *Immediate family member.* The term "Immediate Family Member" shall mean a person's spouse, parent, child, sibling, mother- or father-in-law, son- or daughter-in-law, or brother- or sister-in-law, and includes step and adoptive relationships.

(vii) *Officer.* The term "Officer" shall mean the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

* * * * *

(ix) *Registrant.* The term "Registrant" shall mean an investment company registered under the Investment Company Act of 1940 or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940.

(x) *Sponsoring Insurance Company.* The term "Sponsoring Insurance Company" of a Fund that is a separate account shall mean the insurance company that establishes and maintains the separate account and that owns the assets of the separate account.

* * * * *

7. Section 240.14a–101 is amended by revising paragraph (b) of Item 22 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(b) *Election of directors.* If action is to be taken with respect to the election of directors of a Fund, furnish the following information in the proxy statement in addition to the information (and in the format) required by paragraphs (f) and (g) of Item 7 of Schedule 14A.

Instructions to introductory text of paragraph (b). 1. Furnish information with respect to a prospective investment adviser to the extent applicable.

2. If the solicitation is made by or on behalf of a person other than the Fund or an investment adviser of the Fund, provide information only as to nominees of the person making the solicitation.

3. When providing information about directors and nominees for election as directors in response to this Item 22(b), furnish information for directors or nominees who are or would be "interested persons" within the meaning of section 2(a)(19) of the Investment Company Act of 1940 separately from the information for directors or nominees who are not or would not be "interested persons." For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors and nominees who are or would be interested persons and for directors or nominees who are not or would not be interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors or nominees who are or would be interested persons and the ones who are not or would not be interested persons.

4. No information need be given about any director whose term of office as a director will not continue after the meeting to which the proxy statement relates.

(1) Provide the information required by the following table for each director, nominee for election as director, Officer of the Fund, person chosen to become an Officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age	Position(s) Held with Fund	Term of Office and Length of Time Served	Principal Occupation(s) During Past 5 Years	Number of Portfolios in Fund Complex Overseen by Director or Nominee for Director	Other Directorships Held by Director or Nominee for Director

Instructions to paragraph (b)(1). 1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. No nominee or person chosen to become a director or Officer who has not consented to act as such may be named in response to this Item. In this regard, see Rule 14a–4(d) under the Exchange Act (§ 240.14a–4(d) of this chapter).

3. If fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

4. For each director or nominee for election as director who is or would be an "interested person" within the meaning of section 2(a)(19) of the Investment Company Act of 1940, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director or nominee is or would be an interested person.

5. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

6. Include in column (5) the total number of separate portfolios that a nominee for election as director would oversee if he were elected.

7. Indicate in column (6) directorships not included in column (5) that are held by a director or nominee for election as director in any company with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of the Exchange Act or any company registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. 80a, as amended, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same Fund Complex, identify the Fund Complex and provide the number of portfolios overseen as a director in the Fund Complex rather than listing each portfolio separately.

(2) Describe briefly any arrangement or understanding between any director, nominee for election as director, Officer, or person chosen to become an Officer, and any other person(s) (naming the person(s)) pursuant to which he was or is to be selected as a director, nominee, or Officer.

Instruction to paragraph (b)(2). Do not include arrangements or understandings with directors or Officers acting solely in their capacities as such.

(3) Unless disclosed in the table required by paragraph (b)(1) of this Item, describe any positions, including as an officer, employee, director, or general partner, held by a director, nominee for election as director, or Immediate Family Member of the director or nominee, during the past five years, with:

(i) The Fund;

(ii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund;

(iii) An investment adviser, principal underwriter, Administrator, Sponsoring Insurance Company, or affiliated person of the Fund; or

(iv) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund.

Instruction to paragraph (b)(3). When an individual holds the same position(s) with two or more portfolios that are part of the same Fund Complex, identify the Fund Complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(4) For each director or nominee for election as director, state the aggregate dollar amount of equity securities of Funds in the same Fund Complex as the Fund owned beneficially or of record by the director or nominee as required by the following table:

(1)	(2)	(3)
Name of Director or Nominee	Identity of Fund Complex	Aggregate Dollar Amount of Equity Securities in Fund Complex

Instructions to paragraph (b)(4). 1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 13d–3 under the Exchange (§ 240.13d–3 of this chapter).

(5) For each director or nominee for election as director and his Immediate Family Members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund; or

(ii) a person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director or Nominee	Name of Owners and Relationships to Director or Nominee	Company	Title of Class	Value of Securities	Percent of Class

Instructions to paragraph (b)(5).

1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 13d-3 under the Exchange Act (§ 240.13d-3 of this chapter).

3. Identify the company in which the director, nominee, or Immediate Family Member of the director or nominee owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company, describe the company's relationship with the investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director (or nominee) and his Immediate Family Members.

(6) Unless disclosed in response to paragraph (b)(5) of this Item, describe any material interest, direct or indirect, of each director, nominee for election as director, or Immediate Family Member of a director or nominee, during the past five years, in:

(i) An investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund.

Instruction to paragraph (b)(6). A director, nominee, or Immediate Family Member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

(7) Describe briefly any material interest, direct or indirect, of any director, nominee for election as director, or Immediate Family Member of a director or nominee in any material transaction, or material series of similar transactions, since the beginning of the last two completed fiscal years of the Fund, or in any currently proposed material transaction, or material series of similar transactions, to which any of the following persons was or is to be a party:

(i) The Fund;

(ii) An Officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund;

(iv) An Officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund;

(v) An investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund;

(vi) An Officer of an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund; or

(viii) An Officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund.

Instructions to paragraph (b)(7).

1. Include the name of each director, nominee, or Immediate Family Member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director, nominee, or Immediate Family Member of the director or nominee without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

7. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed "material" within the meaning of paragraph (b)(7) of this Item where the interest of the director, nominee, or Immediate Family Member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item, and the transaction is not material to the company.

8. No information need be given as to any transaction where the interest of the director, nominee, or Immediate Family Member arises solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item and the director, nominee, or Immediate Family Member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the latest practicable date, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director holds a credit card or bank or brokerage account with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item unless the director is accorded special treatment.

(8) Describe briefly any material relationship, direct or indirect, of any director, nominee for election as director, or Immediate Family Member of a director or nominee that exists, or has existed at any time since the beginning of the last two completed fiscal years of the Fund, or is currently proposed, with any of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item;

(ii) Provision of legal services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(8)(i) through (b)(8)(iii) of this Item.

Instructions to paragraph (b)(8). 1. Include the name of each director, nominee, or Immediate Family Member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director, nominee, or Immediate Family Member and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item as a result of the relationship since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

5. Disclose indirect, as well as direct, material relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item may have an indirect relationship by reason of the position, relationship, or interest. The relationship, however, will not be deemed "material" within the meaning of paragraph (b)(8) of this Item where the relationship of the director, nominee, or Immediate Family Member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that has a relationship with one of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item, and the relationship is not material to the company.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item has a relationship; the name of the director,

nominee, or Immediate Family Member affiliated with the company and the nature of the affiliation; and the amount of business done between the company and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

7. In calculating payments for property and services for purposes of paragraph (b)(8)(i) of this Item, the following may be excluded:

A. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

B. Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director holds a credit card or bank or brokerage account with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item unless the director is accorded special treatment.

(9) If an Officer of an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund, or an Officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company of the Fund, serves, or has served since the beginning of the last two completed fiscal years of the Fund, on the board of directors of a company where a director of the Fund, nominee for election as director, or Immediate Family Member of a director or nominee is, or was since the beginning of the last two completed fiscal years of the Fund, an Officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company or person controlling, controlled by, or under common control with the investment adviser, principal underwriter, Administrator, or Sponsoring Insurance Company where the individual named in paragraph (b)(9)(ii) of this Item holds or held office and the office held; and

(iv) The director of the Fund, nominee for election as director, or Immediate Family Member who is or was an Officer of the company; the office held; and the period of holding the office.

Instruction to paragraph (b)(9). If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

(10) Provide in tabular form, to the extent practicable, the information required by Items 401(f) and (g), 404(a) and (c), and 405 of Regulation S-K (§§ 229.401(f) and (g), 229.404(a) and (c), and 229.405 of this chapter).

Instruction to paragraph (b)(10). Information provided under paragraph (b)(7) of this Item 22 is deemed to satisfy the requirements of Items 404(a) and (c) of Regulation S-K for information about directors, nominees for election as directors, and Immediate Family Members of directors and nominees, and need not be provided under this paragraph (b)(10).

(11) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the Fund's business, to which any director or nominee for director or affiliated person of such director or nominee is a party adverse to the Fund or any of its affiliated persons or has a material interest adverse to the Fund or any of its affiliated persons. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

(12) For all directors, and for each of the three highest-paid Officers that have aggregate compensation from the Fund for the most recently completed fiscal year in excess of $60,000 ("Compensated Persons"):

(i) Furnish the information required by the following table for the last fiscal year:

COMPENSATION TABLE

(1)	(2)	(3)	(4)	(5)
Name of Person, Position	Aggregate Compensation From Fund	Pension or Retirement Benefits Accrued as Part of Fund Expenses	Estimated Annual Benefits Upon Retirement	Total Compensation From Fund and Fund Complex Paid to Directors

Instructions to paragraph (b)(12)(i). 1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)) or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund or any of its Subsidiaries, or by other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(ii) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (b)(12)(i) of this Item pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under any plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Fund.

(iii) With respect to each Compensated Person, business development companies must include the information required by Items 402(b)(2)(iv) and 402(c) of Regulation S–K (§§ 229.402(b)(2)(iv) and 229.402(c) of this chapter).

(13) Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

8. The authority citation for part 270 is amended by adding the following citation to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

Section 270.10e–1 is also issued under 15 U.S.C. 80a–10(e).

* * * * *

9. Section 270.0–1 is amended by adding paragraphs (a)(5) and (a)(6) to read as follows:

§ 270.0–1 Definition of terms used in this part.

* * * * *

(a) * * *

(5) The term *administrator* means any person who provides significant administrative or business affairs management services to an investment company.

(6)(i) A person is an *independent legal counsel* with respect to the directors who are not interested persons of an investment company ("disinterested directors") if:

(A) The investment company reasonably believes that the person has not acted as legal counsel for the company's investment adviser, principal underwriter, administrator (collectively, "management organizations"), or any of their control persons at any time since the beginning of the company's last two completed fiscal years; or

(B) A majority of the disinterested directors determine (and record the basis for that determination in the minutes of their meeting) that the person's representation of any of the company's management organizations or any of their control persons is or was so limited that it would not adversely affect the person's ability to provide impartial, objective, and unbiased legal counsel to the disinterested directors.

(ii) For purposes of paragraph (a)(6)(i) of this section:

(A) The term *person* has the same meaning as in section 2(a)(28) of the Act (15 U.S.C. 80a–2(a)(28)) and, in addition, includes a partner, co-member, or employee of any person; and

(B) The term *control person* means any person (other than an investment company) directly or indirectly controlling, controlled by, or under common control with any of the investment company's management organizations.

* * * * *

10. The section heading for § 270.2a19–1 is revised to read as follows:

§ 270.2a19–1 Certain investment company directors not considered interested persons because of broker-dealer affiliation.

* * * * *

11. Section 270.2a19–1 is amended by removing the phrase "a minority of the directors f" in paragraph (a)(3) and adding in its place the phrase "one-half of the directors of".

12. Section 270.2a19–3 is added to read as follows:

§ 270.2a19–3 Certain investment company directors not considered interested persons because of ownership of index fund securities.

If a director of a registered investment company ("Fund") owns shares of a registered investment company (including the Fund) with an investment objective to replicate the performance of one or more securities indices ("Index Fund"), ownership of the Index Fund shares will not cause the director to be considered an "interested person" of the Fund or of the Fund's investment adviser or principal underwriter (as defined by section 2(a)(19)(A)(iii) and (B)(iii) of the Act (15 U.S.C. 80a–2(a)(19)(A)(iii) and (B)(iii))), if the value of the securities of the Fund's investment adviser or principal underwriter (or a controlling person of the investment adviser or principal underwriter) in any of the securities indices constitutes no more than five percent of the value of that index.

13. Section 270.10e–1 is added to read as follows:

§ 270.10e–1 Death, disqualification, or bona fide resignation of directors.

If a registered investment company, by reason of the death, disqualification, or bona fide resignation of any director, does not meet any requirement of the Act or any rule or regulation regarding the composition of the company's board of directors, the operation of the relevant subsection of the Act, rule, or regulation will be suspended as to the company:

(a) For 60 days if the vacancy may be filled by action of the board of directors; or

(b) For 150 days if a vote of stockholders is required to fill the vacancy.

14. Section 270.10f–3 is amended by redesignating paragraph (b)(11) as paragraph (b)(12) and adding new paragraph (b)(11) to read as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

* * * * *

(b) * * *

(11) *Board Composition, Selection, and Representation.* (i) [A majority/At least two-thirds] of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(ii) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

Section 270.12b–1 is amended by revising paragraph (c) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if:

(1) [A majority/At least two-thirds] of the directors of the company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel;

* * * * *

16. Section 270.15a–4 is amended by removing the word "and" at the end of paragraph (a), removing the period at the end of paragraph (b) and adding in its place "; and" and adding paragraph (c) to read as follows:

§ 270.15a–4 Temporary exemption for certain investment advisers.

* * * * *

(c)(1) [A majority/At least two-thirds] of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

17. Section 270.17a–7 is amended by:

A. Removing the "and" at the end of paragraph (e)(3), IPB. Redesignating paragraph (f) as paragraph (g), and

C. Adding new paragraph (f) to read as follows:

§ 270.17a–7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

* * * * *

(f)(1) [A majority/At least two-thirds] of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel; and

* * * * *

18. Section 270.17a–8 is amended by:

A. Removing the ", and" at the end of paragraph (a)(2) and in its place adding a semi-colon,

B. Removing the period at the end of paragraph (b) and adding in its place "; and", and

C. Adding paragraph (c) to read as follows:

§ 270.17a–8 Mergers of certain affiliated investment companies.

* * * * *

(c)(1) [A majority/At least two-thirds] of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

19. Section 270.17d–1 is amended by:

A. Removing the word "and" at the end of paragraph (d)(7)(ii),

B. Redesignating paragraph (d)(7)(iii) as paragraph (d)(7)(iv),

C. Removing the period at the end of newly designated paragraph (d)(7)(iv) and adding in is place "; and", and

D. Adding new paragraphs (d)(7)(iii) and (d)(7)(v) to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(d) * * *

(7) * * *

(iii) The joint liability insurance policy does not exclude coverage for bona fide claims made against any director who is not an interested person of the investment company, or against the investment company if it is a co-defendant in the claim with the disinterested director, by another person insured under the joint liability insurance policy;

* * * * *

(v)(A) [A majority/At least two-thirds] of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(B) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

20. Section 270.17e–1 is amended by: Removing the word "and" at the end of paragraph (b)(3), redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) to read as follows:

§ 270.17e–1 Brokerage transactions on a securities exchange.

* * * * *

(c)(1) [A majority / At least two-thirds] of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel; and

* * * * *

21. Section 270.17g–1 is amended by revising paragraph (j) to read as follows:

§ 270.17g–1 Bonding of officers and employees of registered management investment companies.

* * * * *

(j) Any joint insured bond provided and maintained by a registered management investment company and one or more other parties shall be a transaction exempt from the provisions of section 17(d) of the Act (15 U.S.C. 80a–17(d)) and the rules thereunder, if:

(1) The terms and provisions of the bond comply with the provisions of this section;

(2) The terms and provisions of any agreement required by paragraph (f) of this section comply with the provisions of that paragraph; and

(3)(i) [A majority / At least two-thirds] of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(ii) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

22. Section 270.18f–3 is amended by redesigning paragraph (e) as paragraph (f), and adding new paragraph (e) to read as follows:

§ 270.18f–3 Multiple class companies.

* * * * *

(e)(1) [A majority / At least two-thirds] of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

23. Section 270.23c–3 is amended by revising paragraph (b)(8) to read as follows:.

§ 270.23c–3 Repurchase offers by closed-end companies.

* * * * *

(b) * * *

(8)(i) [A majority / At least two-thirds] of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(ii) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

24. Redesignate § 270.30d–1 as § 270.30e–1; in newly designated § 270.30e–1, in paragraph (a), revise "financial statements" to read "information"; and revise paragraph (d) to read as follows:

§ 270.30e–1 Reports to stockholders of management companies.

* * * * *

(d) An open-end company may transmit a copy of its current effective prospectus or Statement of Additional Information, or both, under the Securities Act, inplace of any report required to be transmitted to shareholders by this section, provided that the prospectus or Statement of Additional Information, or both, include all the information that would otherwise be required to be contained in the report by this section. Such prospectus or Statement of Additional Information, or both, shall be transmitted within 60 days after the close of the period for which the report is being made.

* * * * *

§ 270.30d–2 [Redesignated as § 270.30e–2]

25. Redesignate § 270.30d–2 as § 270.30e–2 and in newly designated § 270.30e–2 revise "Rule N–30D–1" to read "§ 270.30e–1 of this chapter" in the first and second sentence.

26. Section 270.31a–2 is amended by removing the period at end of paragraph (a)(3) and in its place adding a semi-

colon, and adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(4) Preserve for a period not less than six years, the first two years in an easily accessible place, any record of the initial determination that a director is not an interested person of the investment company, and each subsequent determination that the director is not an interested person of the investment company. These records must include any questionnaire and any other document used to determine that a director is not an interested person of the company; and

(5) Preserve for a period not less than six years, the first two years in an easily accessible place, any document used by an investment company to establish a reasonable belief that any person who acts as legal counsel to the directors who are not interested persons of the company is an independent legal counsel and any document used by the disinterested directors to determine that any current or prior representation is or was so limited that it will not adversely affect the counsel's ability to provide impartial, objective, and unbiased legal advice.

* * * * *

27. Section 270.32a–4 is added to read as follows:

§ 270.32a–4 Exemption from ratification or rejection requirement of section 32(a)(2) for certain registered investment companies with independent audit committees.

A registered management investment company or a registered face-amount certificate company is exempt from the requirement of section 32(a)(2) of the Act (15 U.S.C. 80a–31(a)(2)) that the selection of the company's independent public accountant be submitted for ratification or rejection at the next succeeding annual meeting of shareholders, if:

(a) The company's board of directors has established a committee that has responsibility for overseeing the fund's accounting and auditing processes ("audit committee");

(b) The audit committee is composed solely of directors who are not interested persons of the fund;

(c) The company's board of directors has adopted a charter for the audit committee setting forth the committee's structure, duties, powers, and methods of operation; and

(d) The company maintains and preserves permanently in an easily accessible place a copy of the audit committee's charter and any modification to the charter.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

28. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

29. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: The text of Form N–1A does not and these amendments will not appear in the Code of Federal Regulations.

30. Item 13 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding Instructions 1 and 2 before paragraph (a); removing paragraphs (a), (b), and (c) and adding paragraphs (a) and (b) in their place; redesignating paragraphs (d) and (e) as paragraphs (c) and (d); and removing "executive" from the first sentence of newly redesignated paragraph (c) to read as follows:

Form N–1A

* * * * *

Item 13. Management of the Fund

Instructions

1. For purposes of this Item 13, the terms below have the following meanings:

(a) The term "fund complex" means two or more registered investment companies that:

(1) Hold themselves out to investors as related companies for purposes of investment and investor services; or (2) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

(b) The term "immediate family member" means a person's spouse, parent, child, sibling, mother- or father-in-law, son- or daughter-in-law, or brother- or sister-in-law, and includes step and adoptive relationships.

(c) The term "officer" means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons separately from the information for directors who are not interested persons. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the ones who are not interested persons.

(a) *Management Information.* (1) Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age	Position(s) Held with Fund	Term of Office and Length of Time Served	Principal Occupation(s) During Past 5 Years	Number of Portfolios in Fund Complex Overseen by Director	Other Directorships Held by Director

Instructions

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless

the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Securities Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(2) For each individual listed in column (1) of the table required by paragraph (a)(1) of this Item 13 who is not a director, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

Instruction. When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(3) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction. Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(b) *Board of Directors.*

(1) Briefly describe the responsibilities of the board of directors with respect to the Fund's management.

Instruction. A Fund may respond to this paragraph by providing a general statement as to the responsibilities of the board of directors with respect to the Fund's management under the applicable laws of the state or other jurisdiction in which the Fund is organized.

(2) Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(3) Unless disclosed in the table required by paragraph (a)(1) of this Item 13, describe any positions, including as an officer, employee, director, or general partner, held by a director or immediate family member of the director during the past five years with:

(i) The Fund;

(ii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or administrator as the Fund or having an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the Fund;

(iii) An investment adviser, principal underwriter, administrator, or affiliated person of the Fund; or

(iv) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Fund.

Instruction. When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(4) For each director, state the aggregate dollar amount of equity securities of registered investment companies in the same fund complex as the Fund owned beneficially or of record by the director as required by the following table:

(1)	(2)	(3)
Name of Director	Identity of Fund Complex	Aggregate Dollar Amount of Equity Securities in Fund Complex

Instructions

1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 13d–3 under the Exchange Act (§ 240.13d–3 of this chapter).

(5) For each director and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser, principal underwriter, or administrator of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director	Company	Title of Class	Value of Securities	Percent of Class

Instructions

1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 13d–3 under the Exchange Act (§ 240.13d–3 of this chapter).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator, describe the company's relationship with the investment adviser, principal underwriter, or administrator.

4. Provide the information required by columns (5) and (6) on an aggregate

basis for each director and his immediate family members.

(6) Unless disclosed in response to paragraph (b)(5) of this Item 13, describe any material interest, direct or indirect, of each director or immediate family member of a director, during the past five years, in:

(i) An investment adviser, principal underwriter, or administrator of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Fund.

Instruction. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

(7) Describe briefly any material interest, direct or indirect, of any director or immediate family member of a director in any material transaction, or material series of similar transactions, since the beginning of the last two completed fiscal years of the Fund, or in any currently proposed material transaction, or material series of similar transactions, to which any of the following persons was or is to be a party:

(i) The Fund;

(ii) An officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or administrator as the Fund or having an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the Fund;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a–3(c)(1) and (7)), having the same investment adviser, principal underwriter, or administrator as the Fund or having an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the Fund;

(v) An investment adviser, principal underwriter, or administrator of the Fund;

(vi) An officer of an investment adviser, principal underwriter, or administrator of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Fund; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Fund.

Instructions

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. If the Registrant is a Series company whose Series have different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Registrant, use the earliest date of any Series.

7. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed "material" within the meaning of paragraph (b)(7) of this Item 13 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13, and the transaction is not material to the company.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the latest practicable date, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director holds a credit card or bank or brokerage account with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 unless the director is accorded special treatment.

(8) Describe briefly any material relationship, direct or indirect, of any director or immediate family member of a director that exists, or has existed at any time since the beginning of the last two completed fiscal years of the Fund, or is currently proposed, with any of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13;

(ii) Provision of legal services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(8)(i) through (b)(8)(iii) of this Item 13.

Instructions

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 as a result of the relationship since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. If the Registrant is a Series company whose Series have different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Registrant, use the earliest date of any Series.

5. Disclose indirect, as well as direct, material relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 may have an indirect relationship by reason of the position, relationship, or interest. The relationship, however, will not be deemed "material" within the meaning of paragraph (b)(8) of this Item 13 where the relationship of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that has a relationship with one of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13, and the relationship is not material to the company.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business done between the company and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

7. In calculating payments for property and services for purposes of paragraph (b)(8)(i) of this Item 13, the following may be excluded:

A. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

B. Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director holds a credit card or bank or brokerage account with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 unless the director is accorded special treatment.

(9) If an officer of an investment adviser, principal underwriter, or administrator of the Fund, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Fund, serves, or has served since the beginning of the last two completed fiscal years of the Fund, on the board of directors of a company where a director of the Fund or immediate family member of a director is, or was since the beginning of the last two completed fiscal years of the Fund, an officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The investment adviser, principal underwriter, or administrator or person controlling, controlled by, or under common control with the investment adviser, principal underwriter, or administrator where the individual named in paragraph (b)(9)(ii) of this Item 13 holds or held office and the office held; and

(iv) The director of the Fund or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

Instruction. If the Registrant is a Series company whose Series have different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Registrant, use the earliest date of any Series.

(10) Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of directors approving the existing investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating fund brokerage.

Instruction. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Fund and the investment advisory contract.

* * * * *

31. Item 22 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding paragraphs (b)(5) and (b)(6) to read as follows:

Form N–1A

* * * * *

Item 22. Financial Statements

* * * * *

(b) * * *

(5) The management information required by Item 13(a)(1).

(6) A statement that the SAI includes additional information about Fund directors and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

* * * * *

Note: The text of Form N–2 does not and these amendments will not appear in the Code of Federal Regulations

32. Item 18 of Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by adding Instructions 1 and 2 before paragraph 1; revising paragraphs 1 and 2; redesignating paragraphs 3 and 4 as paragraphs 4 and 14; adding new paragraphs 3 and 5 through 13; and removing "executive" from the first sentence of newly designated paragraph 14 to read as follows:

Form N–2

* * * * *

Item 18. Management

Instructions

1. For purposes of this Item 18, the terms below have the following meanings:

a. The term "fund complex" means two or more registered investment companies that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(ii) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

b. The term "immediate family member" means a person's spouse, parent, child, sibling, mother- or father-in-law, son- or daughter-in-law, or brother- or sister-in-law, and includes step and adoptive relationships.

c. The term "officer" means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder separately from the information for directors who are not interested persons. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the ones who are not interested persons.

1. Provide the information required by the following table for each director and officer of the Registrant, and, if the Registrant has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age	Position(s) Held with Registrant	Term of Office and Length of Time Served	Principal Occupation(s) During Past 5 Years	Number of Portfolios in Fund Complex Overseen by Director	Other Directorships Held by Director

Instructions

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

2. For each individual listed in column (1) of the table required by paragraph 1 who is not a director, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Registrant.

Instruction: When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

3. Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction: Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

4. For each non-resident director or officer of the Registrant listed in column (1) of the table required by paragraph 1, disclose whether he has authorized an agent in the United States to receive notice and, if so, disclose the name and address of the agent.

5. Identify the standing committees of the Registrant's board of directors, and provide the following information about each committee:

(a) A concise statement of the functions of the committee;

(b) The members of the committee;

(c) The number of committee meetings held during the last fiscal year; and

(d) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

6. Unless disclosed in the table required by paragraph 1 of this Item 18, describe any positions, including as an officer, employee, director, or general partner, held by a director or immediate family member of the director during the past five years with:

(a) The Registrant;

(b) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or administrator as the Registrant or having an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the Registrant;

(c) An investment adviser, principal underwriter, administrator, or affiliated person of the Registrant; or

(d) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Registrant.

Instruction: When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

7. For each director, state the aggregate dollar amount of equity securities of registered investment companies in the same fund complex as the Registrant owned beneficially or of record by the director as required by the following table:

(1)	(2)	(3)
Name of Director	Identity of Fund Complex	Aggregate Dollar Amount of Equity Securities in Fund Complex

Instructions

1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 13d–3 under the Exchange Act (§ 240.13d–3 of this chapter).

8. For each director and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(a) An investment adviser, principal underwriter, or administrator of the Registrant; or

(b) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Registrant:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director	Company	Title of Class	Value of Securities	Percent of Class

Instructions

1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 13d–3 under the Exchange Act (§ 240.13d–3 of this chapter).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator, describe the company's relationship with the investment adviser, principal underwriter, or administrator.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

9. Unless disclosed in response to paragraph 8 of this Item 18, describe any material interest, direct or indirect, of each director or immediate family member of a director, during the past five years, in:

(a) An investment adviser, principal underwriter, or administrator of the Registrant; or

(b) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Registrant.

Instruction: A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

10. Describe briefly any material interest, direct or indirect, of any director or immediate family member of a director in any material transaction, or material series of similar transactions, since the beginning of the last two completed fiscal years of the Registrant, or in any currently proposed material transaction, or material series of similar transactions, to which any of the following persons was or is to be a party:

(a) The Registrant;

(b) An officer of the Registrant;

(c) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or administrator as the Registrant or having an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the Registrant;

(d) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or administrator as the Registrant or having an investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or administrator of the Registrant;

(e) An investment adviser, principal underwriter, or administrator of the Registrant;

(f) An officer of an investment adviser, principal underwriter, or administrator of the Registrant;

(g) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Registrant; or

(h) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Registrant.

Instructions

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs 10(a) through (h) of this Item 18 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed "material" within the meaning of paragraph 10 of this Item 18 where the interest of the director or immediate

family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs 10(a) through (h) of this Item 18, and the transaction is not material to the company.

7. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs 10(a) through (h) of this Item 18 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

8. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the latest practicable date, and the rate of interest paid or charged.

9. No information need be given as to any routine, retail transaction. For example, the Registrant need not disclose that a director holds a credit card or bank or brokerage account with a person specified in paragraphs 10(a) through (h) of this Item 18 unless the director is accorded special treatment.

11. Describe briefly any material relationship, direct or indirect, of any director or immediate family member of a director that exists, or has existed at any time since the beginning of the last two completed fiscal years of the Registrant, or is currently proposed, with any of the persons specified in paragraphs 10(a) through (h) of this Item 18. Relationships include:

(a) Payments for property or services to or from any person specified in paragraphs 10(a) through (h) of this Item 18;

(b) Provision of legal services to any person specified in paragraphs 10(a) through (h) of this Item 18;

(c) Provision of investment banking services to any person specified in paragraphs 10(a) through (h) of this Item 18, other than as a participating underwriter in a syndicate; and

(d) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs 11(a) through (c) of this Item 18.

Instructions

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs 10(a) through (h) of this Item 18 as a result of the relationship since the beginning of the last two completed fiscal years of the Registrant or proposed to be done during the Registrant's current fiscal year.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, material relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs 10(a) through (h) of this Item 18 may have an indirect relationship by reason of the position, relationship, or interest. The relationship, however, will not be deemed "material" within the meaning of paragraph 11 of this Item 18 where the relationship of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that has a relationship with one of the persons specified in paragraphs 10(a) through (h) of this Item 18, and the relationship is not material to the company.

5. In the case of an indirect interest, identify the company with which a person specified in paragraphs 10(a) through (h) of this Item 18 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business done between the company and the person specified in paragraphs 10(a) through (h) of this Item 18 since the beginning of the last two completed fiscal years of the Registrant or proposed to be done during the Registrant's current fiscal year.

6. In calculating payments for property and services for purposes of paragraph 11(a) of this Item 18, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs 10(a) through (h) of this Item 18 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

7. No information need be given as to any routine, retail relationship. For example, the Registrant need not disclose that a director holds a credit card or bank or brokerage account with a person specified in paragraphs 10(a) through (h) of this Item 18 unless the director is accorded special treatment.

* * * * *

12. If an officer of an investment adviser, principal underwriter, or administrator of the Registrant, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or administrator of the Registrant, serves, or has served since the beginning of the last two completed fiscal years of the Registrant, on the board of directors of a company where a director of the Registrant or immediate family member of a director is, or was since the beginning of the last two completed fiscal years of the Registrant, an officer, identify:

(a) The company;

(b) The individual who serves or has served as a director of the company and the period of service as director;

(c) The investment adviser, principal underwriter, or administrator or person controlling, controlled by, or under common control with the investment adviser, principal underwriter, or administrator where the individual named in paragraph 12(b) of this Item 18 holds or held office and the office held; and

(d) The director of the Registrant or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

13. Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of directors approving the existing investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating fund brokerage.

Instruction: Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract.

* * * * *

33. Instruction 4 to Item 23 of Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by removing "and" from the end of paragraph c., removing the period at the end of paragraph d. and in its place adding a semi-colon, and adding paragraphs e. and f. to read as follows:

Form N–2

* * * * *

Item 23. Financial Statements

* * * * *

Instructions

* * * * *

4. * * *

e. the management information required by paragraph 1 of Item 18; and

f. a statement that the SAI includes additional information about directors of the Registrant and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

* * * * *

Note: The text of Form N–3 does not and these amendments will not appear in the *Code of Federal Regulations.*

34. Item 20 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding instructions 1 and 2 before paragraph (a); revising paragraphs (a) and (b); redesignating paragraph (c) as paragraph (m); adding paragraphs (c) through (l); and removing "executive" from the first sentence of newly designated paragraph (m) to read as follows:

Form N–3

* * * * *

Item 20. Management

Instructions

1. For purposes of this Item 20, the terms below have the following meanings:

a. The term "fund complex" means two or more registered investment companies that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(ii) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

b. The term "immediate family member" means a person's spouse, parent, child, sibling, mother- or father-in-law, son- or daughter-in-law, or brother or sister-in-law, and includes step and adoptive relationships.

c. The term "officer" means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder separately from the information for directors who are not interested persons. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the ones who are not interested persons.

(a) Provide the information required by the following table for each member of the board of managers ("director") and officer of the Registrant, and, if the Registrant has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age	Position(s) Held with Registrant	Term of Office and Length of Time Served	Principal Occupation(s) During Past 5 Years	Number of Portfolios in Fund Complex Overseen by Director	Other Directorships Held by Director

Instructions

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(b) For each individual listed in column (1) of the table required by paragraph (a) of this Item 20 who is not a director, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Registrant.

Instruction: When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(c) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction: Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(d) Identify the standing committees of the Registrant's board of managers, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(e) Unless disclosed in the table required by paragraph (a) of this Item 20, describe any positions, including as an officer, employee, director, or general partner, held by a director or immediate family member of the director during the past five years with:

(i) The Registrant;

(ii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, principal underwriter, or administrator as the Registrant or having an Insurance Company, investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant;

(iii) The Insurance Company or an investment adviser, principal underwriter, administrator, or affiliated person of the Registrant; or

(iv) Any person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant.

Instruction:

When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(f) For each director, state the aggregate dollar amount of equity securities of registered investment companies in the same fund complex as the Registrant owned beneficially or of record by the director as required by the following table:

(1)	(2)	(3)
Name of Director	Identity of fund Complex	Aggregate Dollar Amount of Equity Securities in Fund Complex

Instructions:

1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 13d–3 under the Exchange Act (§ 240.13d–3 of this chapter).

(g) For each director and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) The Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director	Company	Title of Class	Value of Securities	Percent of Class

Instructions

1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 13d–3 under the Exchange Act (§ 240.13d–3 of this chapter).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator, describe the company's relationship with the Insurance Company, investment adviser, principal underwriter, or administrator.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

(h) Unless disclosed in response to paragraph (g) of this Item 20, describe any material interest, direct or indirect, of each director or immediate family member of a director, during the past five years, in:

(i) The Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant.

Instruction

A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

(i) Describe briefly any material interest, direct or indirect, of any director or immediate family member of a director in any material transaction, or material series of similar transactions, since the beginning of the last two completed fiscal years of the Registrant, or in any currently proposed material transaction, or material series of similar transactions, to which any of the following persons was or is to be a party:

(i) The Registrant;

(ii) An officer of the Registrant;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, principal underwriter, or administrator as the Registrant or having an Insurance Company, investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, principal underwriter, or administrator as the Registrant or having an Insurance Company, investment adviser, principal underwriter, or administrator that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant;

(v) The Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant;

(vi) An officer of the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant;

(vii) A person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant.

Instructions

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (i) through (viii) of paragraph (i) of this Item 20 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed "material" within the meaning of paragraph (i) of this Item 20 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20, and the transaction is not material to the company.

7. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

8. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the latest practicable date, and the rate of interest paid or charged.

9. No information need be given as to any routine, retail transaction. For example, the Registrant need not disclose that a director holds a credit card or bank or brokerage account with a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 unless the director is accorded special treatment.

(j) Describe briefly any material relationship, direct or indirect, of any director or immediate family member of a director that exists, or has existed at any time since the beginning of the last two completed fiscal years of the Registrant, or is currently proposed, with any of the persons specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20;

(ii) Provision of legal services to any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20;

(iii) Provision of investment banking services to any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (j)(i) through (j)(iii) of this Item 20.

Instructions

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 as a result of the relationship since the beginning of the last two completed fiscal years of the Registrant or proposed to be done during the Registrant's current fiscal year.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, material relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (i) through (viii) of paragraph (i) of this Item 20 may have an indirect relationship by reason of the position, relationship, or interest. The relationship, however, will not be deemed "material" within the meaning of paragraph (j) of this Item 20 where the relationship of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that has a relationship with one of the persons specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20, and the relationship is not material to the company.

5. In the case of an indirect interest, identify the company with which a person specified in paragraphs (i)

through (viii) of paragraph (i) of this Item 20 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business done between the company and the person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 since the beginning of the last two completed fiscal years of the Registrant or proposed to be done during the Registrant's current fiscal year.

6. In calculating payments for property and services for purposes of paragraph (j)(i) of this Item 20, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

7. No information need be given as to any routine, retail relationship. For example, the Registrant need not disclose that a director holds a credit card or bank or brokerage account with a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 unless the director is accorded special treatment.

(k) If an officer of the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant, or an officer of a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser, principal underwriter, or administrator of the Registrant, serves, or has served since the beginning of the last two completed fiscal years of the Registrant, on the board of directors of a company where a director of the Registrant or immediate family member of a director is, or was since the beginning of the last two completed fiscal years of the Registrant, an officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The Insurance Company, investment adviser, principal underwriter, or administrator or person controlling, controlled by, or under common control with the Insurance Company, investment adviser, principal underwriter, or administrator where the individual named in paragraph (k)(ii) of this Item 20 holds or held office and the office held; and

(iv) The director of the Registrant or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

(l) Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of managers approving the existing investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating fund brokerage.

Instruction: Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract.

* * * * *

35. Instruction 4 to Item 27 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by removing "and" from the end of paragraph (iii), removing the period at the end of paragraph (iv) and in its place adding a semi-colon, and adding paragraphs (v) and (vi) to read as follows:

Item 27. Financial Statements

* * * * *

Instructions

* * * * *

4. * * *

(v) The management information required by paragraph (a) of Item 20; and

(vi) A statement that the SAI includes additional information about members of the board of managers of the Registrant and is available, without charge, upon request, and a toll-free (or collect) telephone number for contract owners to call to request the SAI.

* * * * *

Dated: October 14, 1999.

By the Commission.

Jonathan G. Katz,
Secretary.

Note: Appendix A to the preamble will not appear in the Code of Federal Regulations.

APPENDIX A.—ANALYSIS OF PROPOSED AMENDMENTS TO SCHEDULE 14A UNDER THE EXCHANGE ACT AND FORM N–1A UNDER THE INVESTMENT COMPANY ACT

Proposed item 22 of Schedule 14A	Proposed items 13 and 22 of Form N–1A	Source of proposed items in current rules and forms
Item 22. Information Required in Investment Company Proxy Statement	Item 13. Management Information.	
	Instr. 1.a. to Item 13 (Defn. of fund complex)	Item 22(a)(v) of Schedule 14A.
22(a)(1)(i) (Defn. of Administrator)		Item 15(h)(1) of Form N–1A.
22(a)(1)(vi) (Defn. of Immediate Family Member)	Instr. 1.b. to Item 13	Instruction 2 to 404(a) of Reg. S–K.
22(a)(1)(vii) (Defn. of Officer)	Instr. 1.c. to Item 13	Instruction 1 to Item 13(b) of Form N–1A.
22(a)(1)(ix) (Defn. of Registrant)		Item 22(a)(1)(vii) of Schedule 14A.
22(a)(1)(x) (Defn. of Sponsoring Insurance Company.		Instruction D. of General Instructions to Form N–3.
22(b) (Applies when there is an election of directors):		
Instr. 1		Instruction 1 to Item 22(b) of Schedule 14A.
Instr. 2		Instruction 2 to Item 22(b) of Schedule 14A.
Instr. 3	Instr. 2 to Item 13	New.
Instr. 4		Instruction 3 to Item 401(a) of Reg. S–K.

APPENDIX A.—ANALYSIS OF PROPOSED AMENDMENTS TO SCHEDULE 14A UNDER THE EXCHANGE ACT AND FORM N–1A UNDER THE INVESTMENT COMPANY ACT—Continued

Proposed item 22 of Schedule 14A	Proposed items 13 and 22 of Form N–1A	Source of proposed items in current rules and forms
22(b)(1) (Table of core information about each director, nominee, officer, and advisory board member)	Item 13(a)(1)	Items 401(a), (b), (d), and (e) of Reg. S–K and Item 13 of Form N–1A.
Instr. 1	Instr. 1 to Item 13(a)(1)	Instruction to 401(d) of Reg. S–K and Instruction 1 to Item 13(b) of Form N–1A.
Instr. 2		Instruction 2 to Item 401(a) and Instruction 2 to Item 401(b) to Reg. S–K.
Instr. 3		Instruction 4 to Item 401(a) of Reg. S–K.
Instr. 4	Instr. 2 to Item 13(a)(1)	Instruction 1 to Item 22(b)(4) of Schedule 14A.
Instr. 5	Instr. 3 to Item 13(a)(1)	Instruction 2 to Item 13(b) of Form N–1A.
Instr. 6		New.
Instr. 7	Instr. 4 to Item 13(a)(1)	Item 401(e)(2) and Instruction to Item 401(e)(2) of Reg. S–K.
	Item 13(a)(2) (Positions held by officers):	Item 13(c) of Form N–1A.
	Instr. to Item 13(a)(2)	Instruction to Item 13(c) of Form N–1A.
22(b)(2) (Any agreement regarding selection as director, nominee, or officer).	Item 13(a)(3)	Items 401(a) and 401(b) of Reg. S–K.
Instr.	Instr. to Item 13(a)(3)	Instruction 1 to Item 401(a) and Instruction 1 to Item 401(b) of Reg. S–K.
	Item 13(b)(1) (Description of board responsibilities).	Item 13(a) of Form N–1A.
	Instr. to Item 13(b)(1)	Instruction to Item 13(a) of Form N–1A.

APPENDIX A—ANALYSIS OF PROPOSED AMENDMENTS TO SCHEDULE 14A UNDER THE EXCHANGE ACT AND FORM N–1A UNDER THE INVESTMENT COMPANY ACT

Proposed item 22 of Schedule 14A	Proposed items 13 and 22 of Form N–1A	Source of proposed items in current rules and forms
22(b)(3) (Positions held by director, nominee, or immediate family members at fund and related persons (*i.e.*, other funds in fund complex, investment adviser, principal underwriter, administrator, or control-affiliates of adviser, underwriter, or administrator).	Item 13(b)(3)	Item 22(b)(1) of Schedule 14A and Item 13(c) of Form N–1A.
Instr	Instr. to Item 13(b)(3)	Instruction to Item 13(c) of Form N–1A.
22(b)(4) (Ownership of funds in fund complex)	Item 13(b)(4)	New.
Instr. 1	Instr. 1 to Item 13(b)(4)	Item 403(b) of Reg. S–K.
Instr. 2	Instr. 2 to Item 13(b)(4)	Instruction 2 to Item 403 of Reg. S–K.
22(b)(5) (Ownership of securities of investment adviser, principal underwriter, administrator, and control-affiliates of adviser, underwriter, and administrator).	Item 13(b)(5)	Item 22(b)(1) of Schedule 14A.
Instr. 1	Instr. 1 to Item 13(b)(5)	Item 403(b) of Reg. S–K.
Instr. 2	Instr. 2 to Item 13(b)(5)	Instruction 2 to Item 403 of Reg. S–K.
Instr. 3	Instr. 3 to Item 13(b)(5)	New.
Instr. 4	Instr. 4 to Item 13(b)(5)	New.
22(b)(6) (Material interests in fund and related persons).	Item 13(b)(6)	Items 22(b)(1) and (2) of Schedule 14A.
Instr	Instr. to Item 13(b)(6)	Item 5(b)(1)(viii) of Schedule 14A.

APPENDIX A—ANALYSIS OF PROPOSED AMENDMENTS TO SCHEDULE 14A UNDER THE EXCHANGE ACT AND FORM N–1A UNDER THE INVESTMENT COMPANY ACT

Proposed item 22 of Schedule 14A	Proposed items 13 and 22 of Form N–1A	Source of proposed items in current rules and forms
22(b)(7) (Material interests in material transactions involving fund and related persons).	Item 13(b)(7)	Item 22(b)(3) of Schedule 14A and Item 404(a) of Reg. S–K.
Instr. 1	Instr. 1 to Item 13(b)(7)	Instruction 1 to Item 22(b)(3) of Schedule 14A.
Instr. 2	Instr. 2 to Item 13(b)(7)	Item 404(a) of Reg. S–K.
Instr. 3	Instr. 3 to Item 13(b)(7)	Instruction 3 of Item 404(a) of Reg. S–K.

APPENDIX A—ANALYSIS OF PROPOSED AMENDMENTS TO SCHEDULE 14A UNDER THE EXCHANGE ACT AND FORM N–1A UNDER THE INVESTMENT COMPANY ACT—Continued

Proposed item 22 of Schedule 14A	Proposed items 13 and 22 of Form N–1A	Source of proposed items in current rules and forms
Instr. 4	Instr. 4 to Item 13(b)(7)	Instruction 4 to Item 404(a) of Reg. S–K.
Instr. 5	Instr. 5 to Item 13(b)(7)	Instruction 2 to Item 22(b)(3) of Schedule 14A and Instruction 5 to Item 404(a) of Reg. S–K.
Instr. 6	Instr. 6 to Item 13(b)(7)	New.
Instr. 7	Instr. 7 to Item 13(b)(7)	Instruction 8 to Item 404(a) of Reg. S–K.
Instr. 8	Instr. 8 to Item 13(b)(7)	Instruction 7.C to Item 404(a) of Reg. S–K.
Instr. 9	Instr. 9 to Item 13(b)(7)	New.
22(b)(8) (Material relationships with fund and related persons).	Item 13(b)(8)	New. Derived from Item 404(b) of Reg. S–K.
Instr. 1	Instr. 1 to Item 13(b)(8)	New. Derived from Instruction 1 to Item 22(b)(3) of Schedule 14A.
Instr. 2	Instr. 2 to Item 13(b)(8)	New. Derived from Item 404(b) of Reg. S–K.
Instr. 3	Instr. 3 to Item 13(b)(8)	New. Derived from Instruction 3 of Item 404(a) of Reg. S–K.
Instr. 4	Instr. 4 to Item 13(b)(8)	New.
Instr. 5	Instr. 5 to Item 13(b)(8)	New. Derived from Instruction 8 of Item 404(a) of Reg. S–K.
Instr. 6	Instr. 6 to Item 13(b)(8)	New. Derived from Item 404(b) of Reg. S–K.
Instr. 7	Instr. 7 to Item 13(b)(8)	New. Derived from Instructions 2.A and B to 404(b) of Reg. S–K.
22(b)(9) (Cross-directorships)	Item 13(b)(9)	New.
Instr.	Instr. to Item 13(b)(9)	New.
22(b)(10) (Incorporates parts of Reg. S–K into Item 22).		Item 22(b)(4) of Schedule 14A.
Instr.		New.
22(b)(11) (Material pending legal proceedings)		Item 22(b)(5) of Schedule 14A.
22(b)(12) (Compensation table)	Item 13(c)	Item 22(b)(6) of Schedule 14A and Item 13(d) of Form N–1A.
22(b)(13) (Board committees)	Item 13(b)(2)	Item 7(e) (1) and (2) of Schedule 14A and Instruction 3 of Item 13(b) of Form N–1A.
	Item 13(b)(10) (Basis for approving advisory contract).	Item 22(c)(11) of Schedule 14A.
	Item 22. Financial Statements.	
	Item 22(b)(5) (Management information required by Item 13(a)(1).	New.
	Item 22(b)(6) (Reference to SAI)	New.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 271

[Release No. IC-24083]

Interpretive Matters Concerning Independent Directors of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Statement of Staff Position.

SUMMARY: The Securities and Exchange Commission is publishing the views of the Commission and its staff concerning certain issues under the Investment Company Act of 1940 that are related to the independent directors of registered investment companies.

EFFECTIVE DATE: October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Assistant Chief Counsel, or Alison M. Fuller, Assistant Chief Counsel, at 202-942-0659, in the Office of Chief Counsel, Division of Investment Management, or by writing to the Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, 450 5th St., NW., Washington, DC 20549-0506.

SUPPLEMENTARY INFORMATION:

Executive Summary

Management investment companies are governed by a board of directors, at least 40% of whom must not be "interested persons" of the company under section 2(a)(19) of the Investment Company Act of 1940 (the "Act") (*i.e.*, "independent directors").[1] Independent directors of registered investment companies ("investment companies" or "funds") play a critical role in overseeing the funds operations and protecting the interests of their shareholders. Today, in a companion release,[2] the Commission is proposing to amend a number of rules and forms as part of a broad initiative to enhance the effectiveness of independent directors. Simultaneously, the Commission is publishing this release, which contains the views of its staff concerning a number of interpretive issues under the Act that relate to independent directors, and briefly describes the role of the Commission in connection with certain disputes between independent fund directors and fund management.

Following some general background on the role and duties of fund directors, this release addresses the following interpretive topics:

- Section 2(a)(19) of the Act authorizes the Commission to issue an order finding that a person is an "interested person" due to a material business or professional relationship with a fund or certain persons or entities. This release provides guidance from the staff about the types of business and professional relationships that may be material for purposes of section 2(a)(19).
- Some have argued that, if fund directors take an action on behalf of the fund that benefits themselves, the action may constitute a "joint transaction" under section 17(d) of the Act and rule 17d-1 thereunder, thereby requiring prior Commission approval. This release explains the view of the staff that actions taken by fund directors within the scope of their duties generally would not be "joint transactions."
- Some have questioned when a fund may pay an advance of legal fees to its directors consistent with section 17(h) of the Act, which limits a fund's ability to indemnify its directors. This release provides guidance from the staff regarding when funds may pay such advances.
- Section 22(g) of the Act prohibits open-end funds from compensating their directors with shares of the fund. This release provides guidance from the staff concerning the circumstances under which open-end funds may compensate fund directors with fund shares consistent with section 22(g).

The Commission believes that publishing the staff's views on these issues will enhance the effectiveness of independent directors by: encouraging funds to nominate directors who will effectively protect the interests of shareholders; relieving independent directors of concerns regarding their ability to act in shareholders' best interests without undue fear of personal liability; helping funds attract the most qualified persons to serve on their boards; and facilitating the implementation of fund policies that encourage or require that fund directors be compensated with fund shares, thereby aligning more closely the interests of independent directors and fund shareholders.

We also discuss the Commission's views regarding its role and response in disputes between independent directors and investment advisers when there are allegations of violations of the federal securities laws. The Commission and the staff hope thereby to dispel any confusion that may exist regarding the Commission's role in connection with disputes between independent fund directors and fund management.

I. Background

A. The Role and Independence of Independent Directors

The critical role of independent directors of investment companies is necessitated, in part, by the unique structure of investment companies. Unlike a typical corporation, a fund generally has no employees of its own. Its officers are usually employed and compensated by the fund's investment adviser, which is a separately owned and operated entity. The fund relies on its investment adviser and other affiliates—who are usually the very companies that sponsored the fund's organization—for basic services, including investment advice, administration, and distribution.

Due to this unique structure, conflicts of interest can arise between a fund and the fund's investment adviser because the interests of the fund do not always parallel the interests of the adviser. An investment adviser's interest in maximizing its own profits for the benefit of its owners may conflict with its paramount duty to act solely in the best interests of the fund and its shareholders.

In an effort to control conflicts of interest between funds and their investment advisers, Congress required that at least 40% of a fund's board be composed of independent directors.[3] Congress intended to place independent directors in the role of "independent watchdogs," who would furnish an independent check upon the management of funds and provide a means for the representation of shareholder interests in fund affairs.[4]

Independent directors play a critical role in policing the potential conflicts of interest between a fund and its investment adviser. The Act requires that a majority of a fund's independent directors: approve the fund's contracts with its investment adviser and principal underwriter;[5] select the independent public accountant of the fund;[6] and select and nominate individuals to fill independent director vacancies resulting from the assignment of an advisory contract.[7] In addition, rules promulgated under the Act require independent directors to: approve distribution fees paid under rule 12b–1 under the Act;[8] approve and oversee affiliated securities transactions;[9] set the amount of the fund's fidelity bond;[10] and determine if participation in joint insurance contracts is in the best interest of the fund.[11] Each of these duties and responsibilities is vital to the proper functioning of fund operations and, ultimately, the protection of fund shareholders.[12]

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[1] 15 U.S.C. § 80a-10(a).

[2] Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (Oct. 14, 1999) ("Companion Release").

[3] Section 2(a)(19) [15 U.S.C. § 80a-2(a)(19)] (defining the term "interested person") and Section 19(a) [15 U.S.C. § 80a-10(a)]. In addition, Congress required that at least a majority of the directors not be: (1) "interested persons" of the fund's principal underwriter, Section 10(v) [15 U.S.C. § 80a-10(b)]; (2) investment bankers, or affiliated persons of investment bankers, Section 10(b)(3) [15 U.S.C. § 80a-10(b)(3)]; or (3) officers, directors or employees of any one bank. Section 10(c) [15 U.S.C. § 80a-10(c)].

[4] *See Burks* v. *Lasker*, 44 U.S. 471, 484 (1979) (quoting *Tannenbaum* v. *Zeller*, 552 F. 2d 402, 406 (2d Cir. 1979) and *Investment Trusts and Investment Companies: Hearings on H.R. 10065 Before the House Subcomm. on Interstate and Foreign Commerce*, 76th Cong., 3d Sess. 109 (1940) (statement of David Schenker, Chief Counsel, Investment Trust Study, SEC) ("House Hearings")).

In addition to the requirements of federal law, directors must abide by standards of care prescribed by state statutory and common law. Specifically, directors are subject to state law duties of care and loyalty.[13] The duty of care generally requires that directors act in good faith and with that degree of diligence, care and skill that a person of ordinary prudence would exercise under similar circumstances in a like position.[14] The duty of loyalty generally requires that directors exercise their powers in the interests of the fund and not in the directors' own interests or in the interests of another person or organization.[15]

B. Improving Fund Governance

The role of independent fund directors, and proposals to enhance their independence and effectiveness, have been the subject of a number of initiatives since the Act was enacted in 1940. For example, the Wharton School, at the request of the Commission, began a detailed study of the fund industry in the late 1950s. At that time, any person who was not an officer, employee or investment adviser of a fund, or an affiliated person of the investment adviser, could serve as an independent director of the fund. Under this standard, the Wharton study questioned the "extent to which reliance can be placed on the independent directors to safeguard adequately the rights of shareholders in negotiations between the [fund] and the investment adviser." [16] The Commission followed the Wharton study with its own study, which agreed that the then-current standard for director independence was inadequate.[17] Subsequently, Congress enacted an amendment to the Act in 1970 which required that independent directors not be "interested persons" of a fund under new section 2(a)(19) of the Act.[18] The amendment substantially limited the categories of persons who could serve as independent directors for funds.[19]

The Commission staff revisited the issue of the effectiveness of fund directors in the early 1990s, which culminated in a published report in 1992.[20] The staff concluded that the governance model embodied in the Act was sound, but suggested a number of changes designed to improve the effectiveness of fund directors. One of these recommendations was to increase the minimum percentage of independent directors on fund boards from 40% to greater than 50%. In addition, the staff suggested that a fund's independent directors be allowed to choose the persons who would fill independent director vacancies and that the independent directors be given the express authority to terminate advisory contracts.

Fund governance has recently returned to the forefront. The press has questioned the effectiveness of independent directors [21] and, in a number of instances, independent directors have come under fire by fund management and been replaced with directors who were nominated by management.[22] Private litigants have challenged independent directors' independence,[23] and the Commission has instituted enforcement actions against independent directors for failing to fulfill their legal obligations.[24] The prominence of these developments has been magnified by the extraordinary growth of the fund industry.[25]

In recognition of the increasingly important role that funds play in Americans' finances, and that independent directors play in protecting fund investors, the Commission launched an initiative to explore the state of fund governance and to determine what improvements could be made. Last February, the Commission hosted a Roundtable on the Role of Independent Investment Company Directors to discuss the role of independent directors and the steps that could be taken to improve their effectiveness. There was broad agreement among Roundtable participants that fund governance could be improved to enable independent directors to better serve fund shareholders.[26]

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[5] Sections 15(a) and (b) [15 U.S.C. §§ 80a–15(a), (b)].

[6] Section 32(a) [15 U.S.C. § 80a–31(a)].

[7] Sections 16(b) and 15(f)(1)(A) [15 U.S.C. §§ 80a–16(b), 15(f)(1)(A)].

[8] Rule 12b–1 [17 CFR 270.12b–1]

[9] Rules 10f–3, 17a–7, 17a–8, and 17e–1 [17 CFR 270.10f–3, 270.17a–7, 270.17a–8, and 270.17e–1]

[10] Rule 17g–1 [17 CFR 270.17g–1]

[11] Rule 17d–1(d)(7) [17 CFR 270.17d–1(d)(7)].

[12] The full board of directors also has certain other responsibilities, including, but not limited to: (1) Approving the fund's valuation procedures, custody agreements, and brokerage allocation policies; (2) monitoring the fund's investments and investment performance and any allocation of expenses between the company and its affiliates; (3) authorizing the mergers of two or more affiliated funds and the issuance and sale of shares of the fund; and (3) declaring dividends in accordance with the fund's investment policies and objectives.

[13] The business judgment rule generally protects fund directors from liability for their decisions so long as the directors acted in good faith, were reasonably informed, and rationally believed that the action taken was in the best interests of the fund. *See Solomon* v. *Armstrong*, 1999 Del. Ch. LEXIS 62, 23 (Del. Ch. Mar. 25, 1999). *See generally* James Solheim, J.D. and Kenneth Elkins, J.D., 3A Flechter Cyc Corp § 1036 (perm. ed.).

[14] *See Hanson Trust PLC* v. *ML SCM Acquisition Inc.*, 781 F.2d 264, 273 (2d Cir. 1986) and *Norlin Corp.* v. *Rooney, Pace Inc.*, 744 F.2d 255, 264 (2d Cir. 1984). *See generally* Solheim and Elkins, *supra* note 13 at § 1029.

[15] *See Norlin Corp.* 744 F.2d at 264 (*citing Pepper* v. *Litton*, 308 U.S. 295, 306–07 (1939)). *See generally* Beth A. Buday and Gail A. O'Gradney, 3 Fletcher Cyc Corp § 913 (Perm Ed).

[16] Wharton School of Finance and Commerce, A Study of Mutual Funds, H.R. Rep. No. 2274, 87th Cong., 2d Sess. 8 (1962).

[17] SEC, Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 333 (1966).

[18] *See* S. Rep. No. 184, 91st Cong., 1st Sess. 32–33 (1969).

[19] The Commission, however, has provided some flexibility by promulgating rules that broaden the categories of persons who can serve as independent directors of a fund. For example, registered broker-dealers and their affiliated persons are considered "interested persons" of a fund, and its investment adviser or principal underwriter. *See* Sections 2(a)(19)(A) and (B)(v) [15 U.S.C. §§ 80a–2(a)(19)(A)(v), (B)(v)]. Under rule 2a19–1, however, a fund director who is an affiliated person of a registered broker or dealer will not be deemed to be an "interested person" of the fund, or its investment adviser or principal underwriter, provided that, among other things, the broker or dealer does not sell fund shares or effect portfolio transactions for the fund. Rule 2a19–1 [17 CFR 270.2a19–1].

[20] Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation, Ch. 7 (1992).

[21] *See, e.g.*, Russ Wiles, *Third Quarter Review: Your Money, Investments and Personal Finance; Study Raises Questions About the Vigilance of the Family Watchdog*, L.A. Times, Oct. 6, 1996, at D5; Charles Jaffe, *Don't Count on Directors to Guard Your Interests*, Kansas City Star, Mar. 9, 1999, at D19; and Edward Wyatt, *Empty Suits in the Board Room; Under Fire, Mutual Fund Directors Seem Increasingly Hamstrung*, N.Y. Times, June 7, 1998, at C1.

[22] *See, e.g., Defeating Dissidents*, Institutional Investor, Feb. z1999, at 112; and Edward Wyatt, *Investing: Funds Watch; SEC Explores Directors' Roles*, N.Y. Times, Jan. 31, 1999, at C9.

[23] *See, e.g., Strougo* v. *Scudder, Stevens & Clark, Inc.*, 964 F.Supp. 783 (S.D.N.Y. 1997); *Strougo* v. *Bassini, et al.*, 97 Civ. 3579 (S.D.N.Y. 1998); *Strougo* v. *BEA Associates.*, 98 Civ. 3725 (S.D.N.Y. 1999); and *Verkouteren* v. *Blackrock Financial Management, Inc.*, 98 Civ. 4673 (S.D.N.Y. 1999).

[24] *See, e.g., In the Matter of Parnassus Investments, et al.*, Initial Decision Release No. 131 (Sept. 3, 1998); *In the Matter of the Rockies Fund, Inc., et al.*, Investment Company Act Release No. 23229 (June 1, 1998) (pending); and *In the Matter of Monetta Financial Services, Inc., et al.*, Investment Company Act Release No. 23048 (May 8, 1998) (pending).

[25] *See* Investment Company Institute, Mutual Fund Fact Book 3 (1999). Total assets of open-end funds were $5.525 trillion at the end of 1998, compared with $809.4 billion in 1988. In 1998, an estimated 44 percent of U.S. households owned open-end funds, up from 5.7 percent in 1980 and 24.4 percent in 1988. *Id.* at 45.

Following the Roundtable, the Commission undertook a rulemaking initiative to implement some of the suggestions made at the Roundtable on how to improve fund governance.[27] In the Companion Release, the Commission is proposing amendments to a number of exemptive rules under the Act, and is proposing to amend a number of forms to provide fund shareholders with improved information with which to judge the independence of their funds' directors. This release provides staff interpretive guidance regarding certain issues relating to the independence and role of independent fund directors, and briefly describes the role of the Commission in connection with disputes between independent fund directors and fund management.

II. Interpretive Guidance

A. Commission Orders Under Section 2(a)(19) of the Act

Sections 2(a)(19)(A)(vi) and (B)(vi) of the Act authorize the Commission to issue an order finding that a person is "interested" by reason of a material business or professional relationship with certain persons and entities.[28] The Commission and the staff have not publicly provided guidance concerning these sections for a significant period of time.[29] The staff believes that it would be useful to provide additional guidance about the types of professional and business relationships that may be considered to be material for purposes of sections 2(a)(19)(A)(vi) and (B)(vi).[30] This guidance should be particularly useful because the staff understands that many fund groups will not nominate an individual as an independent director if they identify a material business or professional relationship that the individual has with a Specified Entity (as defined below) due to concerns that the Commission may commence proceedings under section 2(a)(19).[31]

The Commission has the authority to issue an order under section 2(a)(19) of the Act when it finds that a person has or had a "material business or professional relationship" with certain specified persons and entities, including some fund affiliates ("Specified Entities").[32] Section 2(a)(19) does not define a "material business or professional relationship." The legislative history, however, indicates that a business or professional relationship would be material if it "might tend to impair the independence of [a] director."[33] The legislative history also states that "[o]rdinarily, a business or professional relationship would not be deemed to impair independence where the benefits flow from the director of an investment company to the other party to the relationship. In such instances the relationship is not likely to make the director beholden to that party."[34]

The staff believes that issues arising under sections 2(a)(19)(A)(vi) and (B)(vi) must be analyzed based on the particular facts of each case to determine whether a director's interests and relationships might tend to impair his or her independence.[35] The staff also believes, however, that it would be useful to provide guidance about the types of professional and business relationships between a director and a Specified Entity that may be considered to be material. In particular, this section of the release describes how the staff will analyze whether a person should be treated as "interested" by virtue of (1) holding or having held certain positions with a Specified Entity, and (2) engaging or having engaged in certain material transactions with a Specified Entity.[36]

Positions as Material Business or Professional Relationships

The staff believes that a fund director may be treated as "interested" if he or she currently holds or held, at any time since the beginning of the last two completed fiscal years of the fund (the "two-year period"), certain positions with a Specified Entity. The staff would consider a position that a director holds with a Specified Entity as a "material business or professional relationship" if it would tend to impair a director's independence by providing incentives for the director to place his or her own interests over the interests of fund shareholders. The key factors in evaluating whether a director's position with a Specified Entity would tend to impair his or her independence include the level of the director's responsibility in the position and the level of compensation or other benefits that the director receives or received from the position.

For instance, the staff would consider an individual who served as the fund's portfolio manager during the two-year period to have had a material business or professional relationship with the fund and its investment adviser. The staff previously has informally advised certain funds of this position on several occasions. The staff believes that a fund's former portfolio manager must be viewed as having had a material business or professional relationship with the fund and its adviser because he or she would have had significant responsibilities with the fund and the adviser, and likely would have received substantial compensation and other benefits from the adviser and/or the fund.[37] Indeed, the staff would view the former portfolio manager's position as material due to the manager's responsibility in the position even if the manager had not received substantial compensation from adviser or the fund. Similarly, the staff believes that former directors, officers, and employees of the fund's investment adviser or principal underwriter could be viewed as having had a material business or professional relationship with a Specified Entity, depending on the facts and circumstances.[38]

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[26] *See* SEC, Roundtable on the Role of Independent Investment Company Directors, Feb. 23–24, 1999 ("Roundtable Transcript"). The Roundtable Transcripts are available to the public in the Commission's public reference room, the Commission's Louis Loss Library, and on the Commission's Web site at www.sec.gov/offices/invmgmt/roundtab.htm. *See also* Companion Release, *supra* note 2, nn. 41, 63 and 76 (citing statements of Roundtable participants).

[27] At the Roundtable, Commission Chairman Arthur Levitt also asked the fund industry to assume an active role in establishing and promoting best fund governance practices. In June 1999, the Investment Company Institute issued a Report of the Advisory Group on Best Practices for Fund Directors ("ICI Advisory Group Report").

[28] Section 2(a)(19)(A)(vi) of the Act defines "interested person," when used with respect to an investment company, in part, as: "any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company." 15 U.S.C. § 80a–2(a)(19)(A)(vi).

Section 2(a)(19)(B)(vi) of the Act defines "interested person," when used with respect to an investment adviser of or principal underwriter for, any investment company, in part, as: "any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter."

15 U.S.C. § 80a–2(a)(19)(B)(vi).

[29] For a number of years, the staff provided some informal guidance by issuing no-action letters, but has not done so since 1984 as a matter of policy. *See* Daniel Calabria, SEC No-Action Letter (Sept. 12, 1984); Capital Supervisors Helios Fund, Inc., SEC No-Action Letter (June 13, 1984).

[30] In the Companion Release, the Commission has proposed rules that would require additional disclosure about fund directors to, among other things, assist the Commission and its staff in evaluating directors' independence. Companion Release, *supra* note 2.

[31] *See* ICI Advisory Group Report, *supra* note 27, at 6; Roundtable Transcript of Feb. 24, 1999, at 253 (statement by Thomas R. Smith, Jr.). The staff believes that the guidance provided in this portion of the release may assist funds in the independent director nominating process.

[32] Those entities include the fund, its principal executive officer, the investment adviser and principal underwriter of the fund, the principal executive officer of the investment adviser or principal underwriter, or any controlling person of the investment adviser or principal underwriter, any other fund with the same investment adviser or principal underwriter, and the principal executive officer of such other fund. *See* Sections 2(a)(19)(A)(iv) and (B)(vi) [15 U.S.C. §§ 80a–2(a)(19)(A)(vi), (B)(vi)].

[32] H.R. Rep. No. 1382, 91st Cong., 2d Sess. 14 (1970); S. Rep. No. 184, 91st Cong., 1st Sess. 33 (1969).

[34] *Id.*

[35] The legislative history indicates that Congress intended for the Commission to determine whether a material business and professional relationship exists on a case-by-case basis. H.R. Rep. No. 1382, 91st Cong. 2d Sess. 15 (1970); S. Rep. No. 184, 91st Cong., 1st Sess. 33 (1969).

[36] The examples discussed in this release are not exhaustive and are provided for illustrative purposes only. There may be other relationships that would be viewed by the staff as material under section 2(a)(19).

In addition, a fund director who at any time during the two-year period also was a director, officer or employee of a current or former holding company of the fund's investment adviser may be treated as interested by reason of a material business or professional relationship with the controlling person of the fund's adviser (a Specified Entity).[39] As described above, the staff's analysis of the materiality of the relationship would focus on, among other things, the level of the director's responsibility with the holding company and the level of compensation or other benefits that the director received from the position.

The staff believes that not every position that a director holds or held with a Specified Entity would be deemed to impair his or her independence. For example, a director of a fund who also is a director of another fund managed by the same adviser generally would not be viewed as an interested person of the fund under section 2(a)(19) solely as a result of this relationship.[40]

Material Transactions as Material Business or Professional Relationships

The staff believes that a fund director may be treated as "interested" if he or she has, at any time during the two-year period, directly or indirectly engaged (or proposed to engage) in any material transactions (or proposed material transactions) with a Specified Entity. Such a relationship could result from a single transaction or from multiple transactions. These transactions may be structured as service arrangements, including legal, investment banking, and consulting services, or other business transactions, such as business and personal loans, and real estate purchases.[41] In addition, a material business or professional relationship with a Specified Entity may result from a fund director's position with, or ownership interest in, an entity that engages in material transactions with a Specified Entity.

For example, the staff believes that a fund director may be treated as "interested" if the fund's investment adviser manages or managed for the director, at any time during the two-year period, an advisory or brokerage account, and the adviser favors, or creates the expectation that it will favor, the account over the other accounts that it manages.[42] In the staff's view, a director would receive favored treatment, for instance, if the adviser charged the director no fees or fees that were lower than the fees that it charged for similar types of accounts, or accorded the director's account special treatment regarding portfolio management decisions or securities allocations. By favoring the director's account over other accounts that it manages, the adviser may create an incentive for the director to act in a manner that will preserve or increase the favorable treatment.[43] In this instance, significant economic benefits from the relationship between the director and the adviser would flow to the director, or the director may have the expectation that significant economic benefits would flow in the future to the director.[44]

The staff believes that a fund director who serves as a chief executive officer of any company for which the chief executive officer of the fund's adviser serves as a director also may be treated as "interested." The relationship between the fund director and the adviser's chief executive officer may tend to impair the director's independence because the adviser's chief executive officer has the power to vote on matters that affect the director's compensation and status as chief executive officer of the company. In this instance, the fund director may act with respect to fund matters in a manner to preserve his or her relationship with the company and with the adviser's chief executive officer, rather than in the interest of the fund's shareholders.[45]

A fund director may be deemed to have indirectly engaged in a material transaction with a Specified Entity through his or her interest in a company that conducted business with the Specified Entity.[46] In determining whether the director would have a material business or professional relationship with a Specified Entity due to his or her interest in the company and the company's transaction with the Specified Entity, the staff would look to the nature and significance of the director's interest in the company and the company's interest in the transaction. In particular, the staff would focus on the significance of any economic or other benefit that would flow to the director. For example, a fund director who had a controlling interest in a company that conducted material business with a fund would likely receive significant economic benefits, either directly or indirectly, as a result.[47] Such a director may be treated as interested because the director may have a material business or professional relationship with the fund as a result of having indirectly engaged in a material transaction with the fund.

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[37] Similarly, the ICI Advisory Group recommends that former employees of a fund's investment adviser who had significant responsibilities in their positions with the adviser not serve as independent directors of the fund. *See* ICI Advisory Group Report, *supra* note 27, at 13.

[38] In addition, the staff notes that many former officers and employees of a fund's investment adviser or principal underwriter may own securities issued by the adviser or underwriter. Such persons are interested persons of the fund by virtue of sections 2(a)(19)(A)(iii) and (B)(iii) [15 U.S.C. §§ 80a–2(a)(19)(A)(iii), (B)(iii)].

[39] *See also* Western Separate Account A, SEC No-Action Letter (Mar. 8, 1976) (directors who are employees or executives of a fund adviser, principal underwriter or controlling person may not be disinterested); NEA Mutual Fund, SEC No-Action Letter (June 3, 1971) (directors who are employees or executives of an entity that controls the fund's adviser or principal underwriter may not be disinterested).

[40] *See* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 15 (1970); S. Rep. No. 184, 91st Cong., 1st Sess. 34 (1969) (stating that "a director of one investment company would not ordinarily be deemed an interested person of that company by reason of being a director of another investment company with the same adviser").

[41] *See, e.g.*, Alpha Investors Fund, SEC No-Action Letter (Jan. 9, 1972) (director who is a partner at a law firm that provides legal services to an entity that controls the fund's adviser may be interested under section 2(a)(19)(B)(vi) because the director has a material business or professional relationship with that entity).

[42] *Cf.* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 15 (1970); S. Rep. No. 184, 91st Cong., 1st Sess. 34 (1969) (stating that "a director ordinarily would not be considered to have a material business relationship with the investment adviser simply because he is a brokerage customer who is not accorded special treatment").

[43] Such favoritism would raise additional issues under the federal securities laws. See, *e.g.*, In the Matter of Monetta Financial Services, Inc., *supra* note 24.

[44] For an example of a relationship in which the staff believed that significant economic benefits did not flow to the director, *see* Securities Groups, SEC No-Action Letter (Apr. 20, 1981) (staff stated that a nominated director's participation in a symposium sponsored by the parent of the fund's adviser did not constitute a material relationship because "the $2,000 paid to him for taking part in that seminar is not so significant as to tend to impair his independence were he to serve as a disinterested director of the fund").

[45] *See* Southwestern Investors, Inc., SEC No-Action Letter (June 13, 1971) (fund director who is an officer and director of company A may not be disinterested if the president of a company that indirectly controls the fund's investment adviser and principal underwriter also serves as a director of company A). *Cf.* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 15 (1970); S. Rep. No. 184, 91st Cong., 1st Sess. 34 (1969) (fund director that serves with the chief executive officer of the fund's adviser on the board of another company generally would not be deemed to have a material business or professional relationship with the chief executive officer). Unlike the facts in Southwestern Investors, Inc., the fund director described in the House and Senate Reports was not an officer or employee of the other company, such that the chief executive officer of the fund's adviser did not appear to have the power to vote on matters affecting the fund director's status with the other company.

[46] *See also* The MONY Fund, Inc., SEC No-Action Letter (Jan. 29, 1972) (director who is a senior

A material relationship resulting from a *proposed* material transaction with a Specified Entity might include the negotiation of a service contract between a company controlled by the director and the Specified Entity. During the negotiation of such a contract (and even if such contract is never finalized), the director may be concerned about interests other than those of the fund and its shareholders. As a result, the process of negotiating a material transaction may tend to impair the director's independence, and thus may itself create a material business or professional relationship with a Specified Entity for purposes of section 2(a)(19).

Other Related Matters

In the Companion Release, the Commission is proposing amendments to various disclosure requirements. The purpose of the proposed disclosure amendments is, in part, to assist the Commission and the staff in determining whether it would be appropriate to make further inquiry into a particular director's independence. If the proposed rules are adopted, the staff will review and monitor the new disclosure. Based on its review of the disclosure, the staff will consider whether to issue additional guidance regarding other types of relationships that may be considered to be material under section 2(a)(19).

B. Independent Directors and Section 17(d) and Rule 17d–1

In the course of their duties, fund directors often take actions on behalf of a fund that may also benefit themselves in some way. Some have questioned whether these actions may run afoul of certain provisions of the Act that prohibit affiliated transactions. As discussed in greater detail below, the staff generally believes that they do not, and believes that it would be beneficial to fund directors for the staff to clarify its views on these matters.

As discussed previously, a fund's board of directors is charged with the responsibility of protecting the interests of fund shareholders by overseeing the operations of the fund and policing conflicts of interests. Fund directors must fulfill this responsibility, regardless of whether they may personally benefit from their actions, or whether their actions are contrary to the wishes of fund management. Some have argued that actions taken by directors on behalf of a fund that also provide some benefit to the directors could constitute a joint transaction for purposes of section 17(d)[48] of the Act and rule 17d–1[49] thereunder.[50]

Section 17(d) and rule 17d–1 generally prohibit an affiliated person of an investment company (which includes a fund director) or an affiliated person of such person ("affiliate"), acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which the investment company is also a participant, unless an application regarding the joint arrangement has been filed with and an order authorizing the transaction has been granted by the Commission. A joint enterprise or other joint arrangement or profit-sharing plan ("joint arrangement") is broadly defined in rule 17d–1(c) to include any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby the investment company and the affiliate have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking.

Fund directors commonly authorize the use of fund assets to make payments from which the directors may personally benefit, such as director salaries, board meeting expenses, proxy expenses, and legal fees of counsel to the independent directors. As a practical matter, the staff believes that interpreting rule 17d–1 as encompassing such actions could impede, or in some cases prevent, fund directors from taking actions that would be in the best interests of shareholders. Such a broad reading also could be used to prevent fund directors from fulfilling their responsibilities, such as opposing a proxy solicitation that they believe is not in the best interests of fund shareholders, or otherwise acting to protect shareholder interests.[51] Furthermore, the staff believes that requiring a fund to obtain a Commission order for every action that results in some benefit to directors would be unduly burdensome and could impede the efficient operation of funds.

The staff believes that it would be helpful to fund directors to clarify the meaning of "joint arrangement" in the context of actions taken in their capacities as directors. As a general matter, the staff believes that the actions of fund directors taken in their capacities as directors would not constitute joint arrangements for purposes of rule 17d–1. Joint arrangements require "some element of combination" between the fund and its affiliate.[52] The staff believes that, when a fund's directors are acting on behalf of the fund in their capacities as fund directors, the requisite element of "combination" is not present. Indeed, in order for the requisite element of "combination" to be present, the staff generally believes that the joint arrangement must involve activities that

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officer of a company that contracted with company A, which wholly owns the fund's investment adviser, to find a vice president for company A, may have a material relationship with a controlling person of the fund's adviser).

[47] *Cf.* Travelers Equities Fund, Inc., SEC No-Action Letter (Jan. 11, 1982) (director who is a limited partner of a partnership that obtained a loan from the principal underwriter of the fund is not an interested person of the underwriter).

[48] Section 17(d) [15 U.S.C. § 80a–17(d)].

[49] Rule 17d–1 [17 CFR 270.17d–1].

[50] *See* Verified Complaint, *In the Matter of Yacktman* v. *Carlson*, No. 98278117 (Cir. Ct. Md. 1998).

[51] This prospect was raised in connection with recent litigation arising out of a dispute between the independent directors of a fund and its investment adviser. In the course of the dispute, the president of the fund, who also was the president of the investment adviser, called a special shareholders meeting and initiated a proxy contest to replace the independent directors. In addition, the investment adviser filed a lawsuit seeking to enjoin the fund's independent directors from using the fund's assets to pay for the fund's proxy expenses on the theory that such payment would be a joint arrangement among the fund and the independent directors in violation of section 17(d) and rule 17d–1. In response, the staff issued a letter to the parties indicating that it seriously questioned whether payment of the proxy expenses out of fund assets required a prior order under section 17(d) and rule 17d–1. *See* Letter from Jacob H. Stillman and Douglas Scheidt to Richard Teigen, Esq., *et. al*, October 16, 1998. This letter is included in the public comment file for the Companion Release. *See supra* note 2, at S7–23–99.

[52] *SEC* v. *Tally Industries, Inc.*, 399 F.2d 396, 403 (2d Cir. 1968), *cert. denied*, 393 U.S. 1015 (1969); and Deferred Compensation Plans for Investment Company Directors, SEC No-Action Letter (May 14, 1998).

are beyond the scope of the directors' duties to the fund.[53]

In the staff's view, the fact that fund expenditures may benefit the directors in some way is not sufficient to render them "joint arrangements" among the fund and the directors for purposes of rule 17d–1. Whether there is "some element of combination" does not depend on whether the directors' actions were motivated by self-interest. If, in fact, the directors were motivated solely by self-interest, they may have breached their duties of care or loyalty under state law or breached their fiduciary duties under section 36(a) of the Act.[54] But whether rule 17d–1 applies turns on the nature of the transaction, not on its propriety or the affiliate's motives, provided that the directors are acting within the scope of their duties. The staff believes that fund directors must be able to fulfill their duties without fear that their actions, even those from which they may personally benefit, may result in a joint transaction for purposes of rule 17d–1.

C. Advances of Legal Expenses to Independent Directors

As a consequence of their "watchdog" role in policing potential conflicts of interests, fund directors have heightened exposure to personal liability for actions that they take which they believe to be in the best interests of the fund and its shareholders.[55] The risk of personal liability could, however, deter some independent directors from making controversial decisions that may benefit the fund and discourage qualified individuals from serving as independent directors. The staff has sought to address these concerns by interpreting the Act to permit funds to advance legal fees to their directors under certain circumstances. Nonetheless, participants at the Commission's Roundtable on the Role of Independent Investment Company Directors (and others) have advised the staff that additional guidance may be necessary to clarify some uncertainties that may exist about certain aspects of the staff's positions. These uncertainties could make it unnecessarily difficult for some independent directors to receive advances of legal fees, particularly during disputes with the fund's investment adviser. The staff therefore is providing the following guidance regarding when funds may advance legal fees to their independent directors.

The defense of a lawsuit against a fund director can severely deplete the director's personal assets. If a director is found liable, even for mere negligence, the potential financial burdens may far exceed the director's ability to pay, and be greatly disproportionate to the financial and other benefits of serving as a director. Even if the lawsuit is without legal merit, the costs of defending it can be high. Without some protection against the risks of incurring these costs, directors may avoid making controversial decisions, even if those decisions would have been in the best interests of the fund and its shareholders. Indeed, the potential liability attendant upon service as a director of a fund can have the effect of discouraging qualified individuals from serving in that capacity.

One commonly used approach to address this problem is for funds to agree to indemnify directors for personal financial liability arising out of actions taken in their capacities as directors.[56] Any indemnification provisions, however, are subject to section 17(h) of the Act. Section 17(h) generally prohibits a fund from including in its organizational documents any provision that protects a director or officer of a fund against any liability to the fund or its shareholders by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of his or her duties as director or officer (collectively, "disabling conduct").[57] Section 17(h) is intended to balance the need to ensure that funds have the ability to indemnify directors for liability arising out of actions that they took in good faith with the need for funds and their shareholders to be able to hold fund directors personally accountable for their actions as directors.[58]

The staff has taken the position that the prohibitions of section 17(h) apply to advances for legal fees, as well as to payments for settlements and judgments.[59] The staff believes that section 17(h) is intended to ensure that directors can be held personally accountable for any costs that may result from their disabling conduct, including those costs, such as legal fees, that are indirect results of litigation or the threat thereof.

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[53] For example, the staff believes that a joint transaction would not exist if fund directors authorized the use of fund assets to pay for proxy expenses incurred in connection with the directors' uncontested re-election, notwithstanding that they could benefit personally from such expenditures. Similarly, the staff believes that, if a third party such as the fund's investment adviser initiated a proxy contest to unseat the fund's independent directors, the directors' use of fund assets to solicit proxies in favor of their re-election would not constitute a joint transaction. *Accord* Order Granting Defendants' Emergency Motion to Modify Temporary Restraining Order, *Yacktman* v. *Carlson*, Case No. AMD 98–3496 (D. Md. 1998) (vacating temporary restraining order enjoining directors from using fund assets to pay proxy expenses).

[54] Section 36(a) [15 U.S.C. 80a–35(a)]. Section 36(a) authorizes the Commission to institute a lawsuit alleging, among other things, that an officer or director of a fund, including an independent director, has engaged in an "act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any [fund] for which such person so serves or acts." The Commission has used its authority under section 36(a) in a number of cases, including cases in which the Commission called into question the conduct of a fund's independent directors. *See, e.g., SEC* v. *Treasury First, Inc.*, Litigation Release No. 13094 (Nov. 19, 1991); *SEC* v. *Forty Four Management, Ltd.*, Litigation Release No. 11717 (Apr. 28, 1988); and *SEC* v. *American Birthright Trust Management Company, Inc.*, Litigation Release No. 9266 (Dec. 30, 1980).

In addition, section 37 of the Act prohibits persons from unlawfully and willfully converting to their own use or the use of another person any funds or assets of a registered investment company. *See, e.g., SEC* v. *Donna Tumminia*, Litigation Release No. 14217 (Sept. 1, 1994); and SEC v. Lazzell, Litigation Release No. 12585 (Aug. 17, 1990).

[55] The Act places substantial responsibilities on the independent directors of investment companies to protect the interests of fund shareholders by policing potential conflicts of interest. These responsibilities are in addition to the general duties of loyalty and care imposed on directors under state law. The Act and state law also provide fund shareholders with private rights of action against directors who fail to exercise reasonable care in the fulfillment of their duties. *See, e.g., Strougo* v. *Scudder, Stevens & Clark, Inc., supra* note 23, at 796–798 (holding that fund shareholder has a private right of action under section 36(a) against, among others, the independent directors of the fund). *See also* Pui-Wing Tam, "Jury Gives Boost to Independent Directors," Wall St. J. at C19 (July 26, 1999) (trial of action by certain shareholders of a fund and the fund's investment adviser against former independent fund directors for breach of fiduciary duty resulted in jury verdict for defendants); Richard A. Oppel Jr., *A Potentially Costly Lawsuit*, N.Y. Times at sec. 3, at 7 (Aug. 1, 1999) (former independent fund directors sued by investment adviser and fund shareholders, *see supra*, may seek recovery of millions of dollars in legal fees from fund that has assets of only $37.5 million).

[56] American Bar Association, Section of Business Law, Fund Director's Guidebook 70 (1996). Funds also commonly obtain "errors and omissions" insurance policies to cover expenses incurred by directors and officers in the event of litigation. These policies often are joint policies that cover numerous funds within a fund family as well as the funds' investment adviser and principal underwriter, and have generally excluded claims in which one party covered by the policy sues another. Although section 17(d) of the Act and rule 17d–1 thereunder generally prohibit such jointly arrangements, *see supra* text accompanying notes 48–51, rule 17d–1(d)(7) permits the purchase of joint errors and omission policies. The Commission is proposing to amend rule 17d–1(d)(7) [17 CFR 270.17d–1(d)(7)] to make the rule available only for joint insurance policies that do not exclude coverage for litigation between a fund's independent directors and investment adviser. *See* Companion Release, *supra* note 2, at Section II.B.

[57] *See* Section 17(h) [15 U.S.C. § 80a–17(h)]. State laws similarly limit the ability of investment companies to indemnify their directors and officers. At least one commenter has suggested that such state law provisions that are more restrictive than section 17(h) probably are not susceptible to challenge on the grounds of federal preemption. *See* Newman, O'Dell and Kenyon, *Indemnification and Insurance*, ALI–ABA Course of Study: Investment Company Regulation and Compliance 217,220 (June 11, 1998).

[58] *See Chabot* v. *Empire Trust Co.*, 301 F.2d 458,460 (2d Cir. 1962) ("The purpose of [section] 17(h) is to ensure that liability for violation of the duties and standards provided by the Act will not be defeated by the inclusion of protective contractual clauses").

[59] "Indemnification by Investment Companies," Investment Company Act Release No. 11330 (Sept.

The staff also has taken the position that, before advancing legal fees to a director, a fund's board must either (1) obtain assurances, such as by obtaining insurance or receiving collateral provided by the director, that the advance will be repaid if the director is found to have engaged in disabling conduct, or (2) have a reasonable belief that the director has not engaged in disabling conduct and ultimately will be entitled to indemnification.[60] The staff has stated that a reasonable belief may be formed either by a majority of a quorum of the independent, non-party directors of the investment company, or based on a written opinion[61] provided by independent legal counsel that in turn is based on counsel's review of the readily available facts (as opposed to a full trial-type inquiry).[62] These positions are intended to permit a fund to protect its directors against the legal costs attendant upon defending and resolving lawsuits, while preventing or minimizing the risk that a fund's assets will be used to indemnify directors for legal fees that are incurred as a result of the directors' disabling conduct.

The staff has been advised that these positions may make it unnecessarily difficult for funds to advance legal fees to their directors. This could inhibit the willingness of independent directors to take appropriate but controversial actions and discourage qualified individuals from serving as independent directors. This problem may be particularly acute when there is a dispute between the fund's investment adviser and the fund's independent directors, as the investment adviser in some circumstances would be able to influence any determination about the whether the directors had engaged in disabling conduct. For example, persons who had been ousted as independent directors in a proxy battle with management might question the ability or willingness of the fund's new independent directors to objectively determine whether there was reason to believe that the ousted directors had engaged in disabling conduct because the directors may have been nominated by the fund's investment adviser.

The staff has recently addressed the issue of whether independent directors should be afforded a presumption that they have not engaged in disabling conduct within the meaning of section 17(h). Independent directors are presumed by the nature of their qualifications to be free of many of the kinds of conflicts that may color their judgment and affect their actions as directors.[63] On this basis, the staff reasoned that it would be consistent with section 17(h) and prior staff positions if legal counsel—in providing an opinion as to whether a fund should advance legal fees either to its independent directors or to any directors who are interested persons solely by reason of serving as officers of the fund—afforded the directors a rebuttable presumption that they had not engaged in disabling conduct.[64] The staff stated that this position was limited to actions taken by directors while acting in their capacities as directors. The staff believes that the rebuttable presumption also should apply in situations when the independent, non-party directors of the investment company, rather than independent legal counsel, make the reasonable belief determination.

Another related issue is the degree of due diligence that would be necessary for independent, non-party directors or independent legal counsel to make a reasonable belief determination. As noted above, the staff has stated that the directors or counsel could rely on a review of the readily available facts, and that a full trial-type inquiry was unnecessary. Thus, we would not expect the directors or counsel to engage in fact-finding to the same degree as one might undertake to prepare for a trial, which might include taking depositions, issuing interrogatories, or interviewing every witness involved in the dispute. Furthermore, while the level of review that would be required to be undertaken by the directors or counsel would depend on the particular facts and circumstances of each situation, the review need only be sufficient to form the basis of a reasonable, but not necessarily conclusive, belief.

The staff believes, however, that the directors and counsel should give certain information significant weight when making a reasonable belief determination. For example, the staff believes that the directors and counsel would be precluded, in most cases, from making a reasonable belief determination once a court or other body before which the relevant proceeding was brought found that a director had engaged in disabling conduct, notwithstanding the possibility that the director might prevail on appeal.[65] When directors and counsel cannot make a reasonable belief determination, the staff believes that section 17(h) would prohibit the fund from advancing legal fees to the director unless the fund obtained assurances that the advance will be repaid if the director ultimately is found to have engaged in disabling conduct. Conversely, the dismissal of a court action or an administrative proceeding against a director for insufficiency of evidence of any disabling conduct would likely provide the basis for a reasonable belief that the director had not engaged in such conduct.[66]

4, 1980) ("Release 11330") [20 SEC Docket 1342]. As noted in Release 11330, improper advances or payments for settlements or judgments could form the basis of an action under sections 36(a) and 37 of the Act. *See supra* note 54.

[60] Before Release 11330 was issued, the staff has taken the position that a fund could not advance legal fees unless it had obtained insurance or received sufficient collateral. It response to complaints that this requirement was unduly burdensome and expensive, the staff revised its position to permit a fund also to advance legal fees on the basis of a reasonable belief that the director had not engaged in disabling conduct and ultimately would be entitled to indemnification. *See id.*

[61] The opinion must set forth the facts and legal analysis that formed the basis for counsel's conclusion. *See* Steadman Security Corp., SEC No-Action Letter (Apr. 18, 1983) (concluding, among other things, that neither the board's resolutions, nor the legal opinion submitted to the board, contained any facts or legal analysis supporting indemnification). Similarly, any finding made by the disinterested, non-party directors should be memorialized in a written document that also contains the information upon which the directors relied to reach their decision. *Id.*

[62] The staff also believes that non-party independent directors or independent legal counsel must make a reasonable belief determination prior to each advance of legal fees to fund directors. *See infra* note 65. Such a determination should include the consideration of any new information that is readily available.

[63] For example, affiliated persons of the fund's investment adviser cannot serve as a independent directors. *See* Section 2(a)(19) [15 U.S.C. 080a–2(a)(19)].

[64] The Yacktman Funds, Inc., SEC No-Action Letter (Dec. 18, 1998).

[65] The staff also has previously stated that directors should consider whether advances of legal expenses may involve a breach of fiduciary duty involving personal misconduct under section 36(a) of the Act or misuse of fund assets in violation of section 37 of the Act. Sections 36(a) and 37 [15 U.S.C. §§ 80a–35(a), 80a–36]. *Id.* and *supra* note 54. When authorizing the fund to make an advance of legal expenses, fund directors should consider whether the amount of the advance is reasonable at that point in the litigation. For example, it generally may be inappropriate for the fund directors to authorize the fund to advance—at the earliest stages of litigation when little information regarding the dispute may be readily available—an amount that would cover the expenses of an entire trial. If a director-defendant requests additional advances from the fund, and a reasonable belief determination no longer can be made, the fund's board should decline to authorize the advance, unless the fund obtained assurances that the advance will be repaid if the director ultimately is found to have engaged in disabling conduct.

[66] *See* Release 11330, *supra* note 59.

D. Compensating Fund Directors With Fund Shares

The Commission staff believes that effective fund governance can be enhanced when funds align the interests of their directors with the interests of their shareholders. Fund directors who own shares in the funds that they oversee have a clear economic incentive to protect the interests of fund shareholders. In addition, as fund shareholders, these directors are in a better position to evaluate the services that the funds provide to their shareholders.

Certain funds have instituted policies that encourage or require their independent directors to invest the compensation that they receive from the funds in shares of the funds.[67] The Commission staff believes that the implementation of such policies gives the independent directors a direct and tangible stake in the financial performance of the funds that they oversee, and can help more closely align the interests of independent directors and fund shareholders. Recently, an advisory group organized by the Investment Company Institute recommended this practice.[68]

The staff believes that some fund groups have not instituted these policies because of concerns that they may be prohibited by section 22(g) of the Investment Company Act.[69] The staff believes that such concerns may be misplaced, and would like to clarify the circumstances in which open-end funds may (1) encourage or require fund directors to purchase fund shares with the compensation that they receive from a fund and (2) compensate directors directly with fund shares, consistent with section 22(g).

Prior to the enactment of section 22(g) in 1940, some open-end funds issued their shares to fund insiders for providing management, promotion, distribution and other services to the funds.[70] In some instances, this practice apparently resulted in the dilution of shareholder interests. For example, some funds agreed to pay insiders a definite number of shares of the fund at a future date for their services (rather than assign a fixed dollar value to the services). If the value of the fund's shares appreciated by the time that the shares were payable by the fund, the compensation paid to the insiders exceeded the value of the services provided. As a result, the fund treated the insiders on a basis more favorable than other shareholders by allowing them to acquire fund shares at less than the net asset value of the shares. The insiders received a "windfall" that diluted the value of the shares of other shareholders.

Consequently, Congress enacted section 22(g) to prohibit open-end funds from issuing shares to any person or entity that performs services for the fund. Section 22(g) generally provides that no open-end fund shall issue any of its securities (1) for services or (2) for property other than cash or securities.[71] Both the Commission and the representatives of investment companies agreed in 1940 that "[n]o security issued by an investment company shall be sold to insiders or to anyone other than an underwriter or dealer, except on the same terms as are offered to other investors."[72]

As previously mentioned, some open-end funds have instituted policies that encourage or require their independent directors to invest their compensation in the shares of the funds that they oversee. Under these policies, a fixed dollar value is assigned to the services provided by the directors prior to the time that the directors perform any services or purchase the funds' shares. The directors' fees, therefore, cannot be inflated by allowing directors to receive fund shares with an aggregate net asset value that exceeds the dollar value that was previously assigned to the directors' services. The staff believes that, under these circumstances, funds may institute policies that encourage or require their directors to purchase fund shares with the compensation that the directors receive from the funds, consistent with section 22(g).[73]

In addition, the staff would not recommend enforcement action to the Commission under section 22(g) if funds directly compensate their directors with fund shares, rather than compensating the directors in cash and requiring them subsequently to purchase fund shares, provided that a fixed dollar value is assigned to the directors' services prior to the time that the compensation is payable.[74] The staff similarly believes that this method of compensation, which is functionally equivalent to paying the directors in cash, does not present the dangers of dilution and the overvaluation of services that section 22(g) was designed to prevent.

In implementing these policies, funds should ensure that their directors purchase their shares from the funds on the same basis as other shareholders, and not on preferential terms.[75] Funds also should disclose the directors' compensation structure and the dollar amount or value of their compensation to current and prospective fund shareholders in registration statements, shareholder reports and proxy statements, as required by the federal securities laws.

III. The Role of the Commission in Disputes Between Independent Fund Directors and Fund Management

Over the past few years, the Commission has been criticized for not taking certain actions in connection with disputes between independent fund directors and fund management.[76] Specifically, some persons have suggested that the Commission should have taken action against certain investment advisers based on allegations made by funds' independent directors that the advisers had violated the federal securities laws. We believe that these suggestions may reflect confusion regarding the significance that should be attached to the Commission's public silence, or determination not to institute an enforcement action, in the face of allegations of violations of the federal securities laws. Indeed, as discussed below, no one should presume that the Commission has not carefully considered such allegations or that the Commission has failed to take appropriate action merely because the Commission has not instituted an enforcement action or taken other public actions.

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[67] Some funds have implemented deferred compensation plans for directors allowing directors to defer receipt of director fees to obtain tax and other benefits. Under these plans, directors can be credited with amounts tied to the performance of the funds. *See* Deferred Compensation Plans for Investment Company Directors, *supra* note 52.

[68] *See* ICI Advisory Group Report, *supra* note 27, at 17.

[69] *Id.* at n.31.

[70] *See House Hearings, supra* note 4, at 124.

[71] Section 22(g) [15 U.S.C. §§ 80a–22(g)].

[72] *See House Hearings, supra* note 4, at 99 (memorandum of agreement in principle between the Commission and representatives of open-end and closed-end investment companies dated May 13, 1940).

[73] Closed-end funds also may wish to institute policies that encourage or require their directors to use the compensation that they receive from the funds to purchase fund shares in the secondary market on the same basis as other fund shareholders. The staff believes that these policies would be consistent with section 23(a) of the Investment Company Act. Section 23(a) [15 U.S.C. § 80a–23(a)]. Like section 22(g), section 23(a) prohibits a closed-end fund from issuing any of its securities (1) for services or (2) for property other than cash or securities.

[74] Similarly, the staff would not recommend enforcement action to the Commission under section 23(a) if closed-end funds directly compensate their directors with fund shares, provided that the directors' services are assigned a fixed dollar value prior to the time that the compensation is payable. Closed-end funds, however, are generally prohibited by section 23(b) of the Investment Company Act from selling their shares at a price below their current net asset value. Section 23(b) [15 U.S.C. § 80a–23(b)]. As a result, any closed-end fund that compensates its directors by issuing fund shares would generally be required to issue those shares at net asset value, even if the shares are trading at a discount to their net asset value.

[75] A fund may sell its shares to its directors at prices that reflect scheduled variations in, or the elimination of, any sales load pursuant to rule 22d–1 under the Act [17 CFR 270.22d–1].

[76] *See, e.g.*, Charles Jaffe, An oversight on oversight: SEC wants directors to stand by shareholders, but won't help them, Boston Globe, Feb. 28, 1999, at D6; and Edward Wyatt, SEC Explores Directors' Roles, N.Y. Times, Jan. 31, 1999, at S3.

Two principles are important to understanding the Commission's response to disputes between independent fund directors and fund management. First, the Commission's staff may conduct an examination or investigation, but the public generally will be unaware of such action. As a matter of policy, the Commission and its staff generally will not comment on the existence or non-existence of a particular examination or investigation, or disclose publicly any actions taken in connection with an examination or investigation, unless the Commission institutes an enforcement action.[77] This policy is necessary to protect both the integrity of an examination or investigation against premature disclosure, and the personal privacy of individuals against whom others may make unfounded charges. Second, the Commission and its staff may decide that enforcement action is not warranted based on all available information, including information to which commentators and others are not privy, even though publicly available information may suggest that a federal securities law violation has occurred. Thus, a decision by the Commission not to institute an enforcement action may be based on nonpublic, exculpatory information, and the Commission's policies preclude it from disclosing this information or explaining its decision to the public. It therefore is wrong to presume, merely because the Commission has not made any public statement or taken any public action in connection with an internal fund dispute, that the Commission has not investigated any allegations made by the parties or failed to take appropriate action in view of all available facts.[78]

We also believe that it would be helpful to clarify the Commission's role and procedures in connection with disputes between independent fund directors and fund management. The Commission's role, as a general matter, is to interpret, administer and enforce the federal securities laws for the protection of investors. Accordingly, the Commission's role in connection with internal fund disputes generally is to provide guidance regarding the requirements of the federal securities laws, investigate possible violations of these laws, and institute enforcement actions in appropriate circumstances when the Commission believes that these laws have been violated. While there may be instances in which the Commission, in fulfilling this role, may indirectly assist one party in a dispute, the Commission generally will not mediate private disputes, side with one party over another, or seek to effect a particular outcome. Rather, the Commission will assist the parties to understand the requirements of the federal securities laws, evaluate all allegations of violations of those laws, and take appropriate action for the protection of investors.

As a general matter, the procedures followed by the Commission and the staff in connection with internal fund disputes are similar to the procedures that it follows in connection with any private dispute that involves the application of, and compliance with, the federal securities laws. As a matter of practice, the Commission affords substantial consideration to all such allegations of violations and promptly assigns staff to carefully evaluate them. During this initial, informal evaluation, the staff typically will review public documents, such as registration statements and other Commission filings, and may invoke the Commission's examination authority to review fund records, including board minutes, or the records of the fund's investment adviser.[79] The staff also may ask interested parties, including independent and interested directors, fund officers, and investment advisory personnel, to cooperate voluntarily by agreeing to provide additional information and documents to the staff. If more information is needed, the staff may conduct an investigation and, if necessary, the Commission may issue a formal order of investigation. Under a formal order, the Commission authorizes the staff to conduct an investigation, pursuant to which the staff may subpoena witnesses and compel the production of documents.[80] This information gathering is critical to the Commission's determination of the appropriate course of action, for it often uncovers exculpatory or inculpatory nonpublic information that bears upon the validity of the allegations.

The Commission may take more serious steps if the public interest so requires. For example, if the Commission finds evidence of serious violations of the federal securities laws, it may institute administrative proceedings or initiate an action in federal district court.[81] In some circumstances, the staff may refer the matter to the Department of Justice to consider whether criminal charges are warranted.

The Commission's role in disputes between independent fund directors and fund management will not necessarily involve an examination or investigation. If, for example, the parties disagree as to the correct interpretation of some provision of the federal securities laws and regulations, or the parties need further clarification of particular legal issues, the staff may provide its interpretation of the provision or its views regarding the issue in question, either in writing or orally. The Commission also may file a friend-of-the-court brief in ongoing litigation, or otherwise seek to intervene in private litigation when it believes that its views on certain matters may be helpful to the court or necessary for the protection of investors.[82]

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[77] The Commission's rules require that both informal and formal investigations be non-public. 17 CFR 202.5 and 203.5. Section 210(b) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b–10(b)] generally prohibits the Commission and its staff from disclosing the existence of, and information obtained as a result of, an examination of an investment adviser under the Act. Further, records or information that are obtained in the course of an investigation or examination generally are exempt from disclosure under the Freedom of Information Act. Exemptions 7 and 8 of the Freedom of Information Act [5 U.S.C. §§ 552(b)(7), (8)].

[78] *See* Roundtable Transcript of Feb. 23, 1999, at 25 (statement of Arthur Levitt, Chairman, SEC) (the Commission "will aggressively and vigorously pursue reports by directors of violations of federal law and not sit idly by"); Roundtable Transcript of Feb. 24, 1999, at 207–208 (statement of Paul Roye, Director, Division of Investment Management, SEC) (allegations of violations of federal securities laws will be resolutely pursued).

[79] *See* Section 31(b) of the Act [15 U.S.C. § 80a–30(b); Section of the Advisers Act [15 U.S.C. § 80b04].

[80] *See* Section 42(b) of the Act [15 U.S.C. § 80a–41(b)]; Section 209(b) of the Advisers Act [15 U.S.C. § 80b–9(b)].

[81] Section 36(a) of the Act [15 U.S.C. (80a–35(a)] authorizes the Commission to institute an action in federal district court against certain individuals for breaches of fiduciary duties involving personal misconduct regarding a registered investment company. Section 36(b) [15 U.S.C. (80a–35(b)] authorizes the Commission to institute an action in federal district court against an investment adviser for breach of fiduciary duty in connection with its receipt of compensation from a registered investment company. The Commission also may institute other actions in federal district court pursuant to Section 42(d) of the Act [15 U.S.C. (80a–41(d)] and Section 209(d) of the Advisers Act [15 U.S.C. (80b–9(d)]. Administrative proceedings may be instituted under Section 9 of the Act [15 U.S.C. (80a–9] and Section 203 of the Advisers Act [15 U.S.C. (80b–3].

As described above, the Commission and the staff are committed to carefully reviewing all allegations of violations of the federal securities laws, and taking appropriate action when a violation has occurred. The Commission's and the staff's actions, and any decisions not to act, will be based on all facts that are available to us, and will not necessarily be explained to the public. These positions are necessary to ensure the fairness and integrity of the examination and investigative process. The Commission and the staff also are dedicated to enhancing the fairness and integrity of the fund governance process, and will consider instituting enforcement proceedings or taking other public positions if they will further this goal.

List of Subjects in 17 CFR Part 271

Investment companies.

Amendment of the Code of Federal Regulations

For the reasons set out in the preamble, title 17 chapter II of the Code of Federal Regulations is amended as set forth below:

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

1. Part 271 is amended by adding Release No. IC–24083 and the release date of October 14, 1999, to the list of interpretive releases.

Dated: October 14, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27443 Filed 11–2–99; 8:45 am]

BILLING CODE 8010–01–P

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[82] *See, e.g.*, discussion of Letter from Jacob H. Stillman and Douglas Scheidt to Richard Teigen, Esq., *et. al*, October 16, 1998, supra note 51 and accompanying text; and discussion of The Yacktman Funds, Inc., SEC No-Action Letter (Dec. 18, 1998), *supra* note 64 and accompanying text. *See also* Section 44 of the Act [15 U.S.C. § 80a–43] (authorizing the Commission to intervene in private litigation brought under Section 36(b) of the Act) [15 U.S.C. § 80a–35(b)]). *See also* statements of Commission Chairman Arthur Levitt: regarding the need for the fund industry to assume an active role in establishing and promoting best fund governance practices, *supra* note 27, and expressing concerns about standard "insured versus insured" exclusions in joint insurance policies. *See* Companion Release, *supra* note 2, n.111; and *supra* note 56.

federal register

Wednesday
November 3, 1999

Part III

Federal Trade Commission

16 CFR Part 312
Children's Online Privacy Protection Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AA84

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission issues its final Rule pursuant to the Children's Online Privacy Protection Act of 1998 ("COPPA" or "the Act"). Section 6502 of the Act requires the Commission to enact rules governing the online collection of personal information from children under 13 within one year of the date of the enactment of the COPPA, October 21, 1998.

DATES: The rule will become effective on April 21, 2000.

ADDRESSES: Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Copies of these documents are also available at the Commission's website, <*www.ftc.gov*>.

FOR FURTHER INFORMATION CONTACT: Division of Advertising Practices: Toby Milgrom Levin (202) 326–3156, Loren G. Thompson (202) 326–2049, or Abbe Goldstein (202) 326–3423, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Rule implements the requirements of the COPPA by requiring operators of websites or online services directed to children and operators of websites or online services who have actual knowledge that the person from whom they seek information is a child (1) to post prominent links on their websites to a notice of how they collect, use, and/or disclose personal information from children; (2) with certain exceptions, to notify parents that they wish to collect information from their children and obtain parental consent prior to collecting, using, and/or disclosing such information; (3) not to condition a child's participation in online activities on the provision of more personal information than is reasonably necessary to participate in the activity; (4) to allow parents the opportunity to review and/or have their children's information deleted from the operator's database and to prohibit further collection from the child; and (5) to establish procedures to protect the confidentiality, security, and integrity of personal information they collect from children. As directed by the COPPA, the Rule also provides a safe harbor for operators following Commission-approved self-regulatory guidelines.

Statement of Basis and Purpose

I. Introduction

Congress enacted the COPPA to prohibit unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personally identifiable information from and about children on the Internet.[1]

Section 6502(b)(1) of the Act sets forth a series of general privacy protections to prevent unfair or deceptive online information collection from or about children, and directs the Commission to adopt regulations to implement those protections. The Act requires operators of websites directed to children and operators who knowingly collect personal information from children to: (1) Provide parents notice of their information practices; (2) obtain prior verifiable parental consent for the collection, use, and/or disclosure of personal information from children (with certain limited exceptions for the collection of "online contact information," *e.g.*, an e-mail address); (3) provide a parent, upon request, with the means to review the personal information collected from his/her child; (4) provide a parent with the opportunity to prevent the further use of personal information that has already been collected, or the future collection of personal information from that child; (5) limit collection of personal information for a child's online participation in a game, prize offer, or other activity to information that is reasonably necessary for the activity; and (6) establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of the personal information collected.[2]

The COPPA authorizes the Commission to bring enforcement actions for violations of the Rule in the same manner as for other rules defining unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act.[3] In addition, section 6504 of the COPPA authorizes state attorneys general to enforce compliance with the final Rule by filing actions in federal court after serving prior written notice upon the Commission when feasible.[4]

The Commission published a Notice of Proposed Rulemaking and Request for Public Comment ("NPR") in the **Federal Register** on April 27, 1999,[5] and the 45-day comment period closed on June 11, 1999. The Commission received 132 comments from a wide array of interested parties, all of which were extremely informative and which the Commission has considered in crafting the final Rule. The commenters included private individuals; companies operating Internet sites or businesses; public interest organizations; marketing and advertising trade groups; library, school, and other educational organizations; Federal government entities; State Attorneys General; publishers and publishing trade groups; Internet service providers; and organizations sponsoring Internet privacy seal programs.

Because of particular interest among commenters in the issue of how to obtain verifiable parental consent under the Rule, Commission staff conducted a public workshop on that issue on July 20, 1999, to obtain additional information and learn more about the views expressed.[6] The 32 panelists at the workshop included representatives from industry (including website operators and technology companies), as well as privacy advocates, consumer groups, and representatives of other government agencies. Approximately 100 other parties also attended the workshop. Panelists discussed methods of obtaining verifiable parental consent that are currently in use; whether and how e-mail could be used to obtain verifiable parental consent; and technologies or methods that are under development that could be used in the future to obtain verifiable parental consent. Workshop attendees were invited to comment during question and answer sessions. The proceeding was transcribed, and the transcript was placed on the public record.[7] In addition, the Commission accepted further public comment on issues raised at the workshop. The workshop comment period, which ended on July 30, 1999, yielded 14 comments.[8]

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[1] 15 U.S.C. 6501–6505.

[2] 15 U.S.C. 6502(b)(1).

[3] Section 6502(c) of the Act provides that the Rule shall be treated as a rule issued under § 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a (a)(1)(B)).

[4] 15 U.S.C. 6504.

[5] 64 FR 22750 (Apr. 27, 1999) (to be codified at 16 CFR pt. 312).

[6] 64 FR 34595 (June 28, 1999) (announcement of the public workshop).

[7] The transcript and all of the comments received in the course of this proceeding appear on the FTC's website at <*www.ftc.gov*>. References to the workshop transcript are cited as "Speaker/affiliation (Workshop Tr. at ___)" followed by the appropriate page designation. Initial references to the comments are cited as "Name of commenter (Comment or Workshop comment number) at (page number)."

In drafting this final Rule, the Commission has taken very seriously the concerns expressed about maintaining children's access to the Internet, preserving the interactivity of the medium, and minimizing the potential burdens of compliance on companies, parents, and children. The Commission believes that the final Rule strikes the appropriate balance between these concerns and the Act's goals of protecting children's information in the online environment. It looks forward to continuing to work with industry, consumer groups, and parents to ensure widespread compliance in as efficient a manner as possible, to educate the public about online privacy protections, and to assess the Rule's effectiveness on a periodic basis.[9]

II. The Rule

As noted above, the Commission published the proposed Rule and accompanying analysis in the **Federal Register** in April 1999. Unless specifically modified herein, all of the analysis accompanying the proposed Rule in the NPR is adopted and incorporated into this Statement of Basis and Purpose for the final Rule.

A. Section 312.2: Definitions

Section 312.2 of the proposed Rule included definitions of a number of key terms.[10] The Commission sought comment as to whether these definitions were clear, comprehensive, flexible, and appropriate.[11] In the Rule, the Commission has modified the definitions of four of these terms: "collects or collection," "disclosure," "personal information," and "third party." All other definitions have been adopted without change.

1. Definition of "Child"

In the proposed Rule, the Commission adopted the statutory definition of "child" as "an individual under the age of 13." [12] The Commission received only one comment on this issue, which supported the definition.[13] Thus, the final Rule retains the statutory definition.

2. Definition of "Collects or Collection"

The proposed Rule defined "collects or collection" to include "the direct or passive gathering of any personal information from a child by any means, including but not limited to: (a) [a]ny online request for personal information by the operator regardless of how that personal information is transmitted to the operator; (b) [c]ollection using a chat room, message board, or other public posting of such information on a website or online service; or (c) [p]assive tracking or use of any identifying code linked to an individual, such as a cookie." [14] The term was meant to encompass the many ways that website operators could gather information from children.

Responsive comments contended that subparagraph (a) swept within the proposed Rule information requested online but submitted offline that was clearly meant to be excluded under the COPPA.[15] These comments also noted that it would be burdensome to require a business that solicits the same information from children in a number of ways, including through the Internet, to determine the source of the request in order to provide the required parental notice and seek consent for information submitted online.

The Commission is persuaded that the Congress intended the COPPA to apply only to information collected online by an operator. Therefore, based on the written comments, subparagraph (a) of the definition of collects or collection has been modified to cover any request by the operator that children submit information online.[16]

Other commenters were concerned that including public postings in the definition of "collects or collection" would confer liability on operators of general audience (*i.e.*, non-child-directed) chat sites for unsolicited postings by children.[17] The Commission believes that these concerns are legitimate, and therefore the Rule now provides that such sites would only be liable if they (1) have actual knowledge that postings are being made by a child under 13, and (2) when they have such knowledge, fail to delete any personal information before it is made public, and also to delete it from their records.

For general audience sites, the Act explicitly covers operators who have *actual knowledge* that they are collecting personal information from children.[18] Therefore, the operator of a general audience chat site who has actual knowledge that a child is posting personal information on the site must provide notice and obtain verifiable parental consent if the child is to continue to post such information in that site's chat room.[19] In most cases, if the operator does not monitor the chat room, the operator likely will not have the requisite knowledge under the Act. However, where the operator does monitor the chat room, the Commission has amended the Rule so that, if the operator strips any posting of individually identifiable information before it is made public (and deletes it from the operator's records), that operator will not be deemed to have collected the child's personal information.[20]

One group of commenters stated that requiring operators to get parental consent in order for a child to participate in a chat room would violate the child's First Amendment right to free speech.[21] These commenters also

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[8] On July 27, 1999, the Commission also issued an Initial Regulatory Flexibility Analysis ("IRFA") under the Regulatory Flexibility Act, 64 FR 40525. The IRFA focused on the impact of the proposed Rule on small businesses and sought additional public comment on that issue. This final comment period closed on August 6, 1999. Five comments were received. These comments are cited as "Name of commenter (IRFA comment number) at (page number)."

[9] Shortly after issuing this final Rule, the Commission plans to develop and distribute educational materials to assist businesses in complying with the Rule and to inform parents of the protections provided by the COPPA.

[10] 64 FR at 22751–53, 22763–64.

[11] 64 FR at 22761.

[12] COPPA, 15 U.S.C. 6501(1). *See* 64 FR at 22751, 22763.

[13] American Psychological Association ("APA") (Comment 106) at 1.

[14] 64 FR at 22751, 22763.

[15] *See generally*, Direct Marketing Ass'n ("DMA") (Comment 89) at 31–32; Kraft Foods, Inc. ("Kraft") (Comment 67) at 2–3; Council of Better Business Bureaus, Inc. ("CBBB") (Comment 91) at 4; Viacom, Inc. ("Viacom") (Comment 79) at 4–5; Time Warner, Inc. ("Time Warner") (Comment 78) at 6–7; Magazine Publishers of America ("MPA") (Comment 113) at 2. These comments pointed out that the COPPA covers the collection of personal information, which is defined in the statute as "individually identifiable information about an individual collected online. * * *" 15 U.S.C. 6501(8). Commenters also noted that the Floor Statement accompanying the Act states "[t]his is an online children's privacy bill, and its reach is limited to information collected online from a child." 144 Cong. Rec. S11657 (daily ed. Oct. 7, 1998) (Statement of Sen. Bryan).

[16] If, however, an operator combines in one database information collected offline with information collected online such that the operator cannot determine the source of the information, the operator will be required to disclose all of that data in response to a parent's request under section 312.6 of the Rule. *See* Section II.E, *infra*.

[17] ZapMe! Corp. ("ZapMe!") (Comment 76) at 7; Talk City, Inc. ("Talk City") (Comment 110) at 2. *See also* Promotion Marketing Ass'n. ("PMA") (Comment 107) at 3.

[18] 15 U.S.C. 6502(a)(1). *See also* Rule section 312.3.

[19] Operators of sites directed to children that provide chat rooms and bulletin boards and who do not delete personally identifiable information from postings before they are made public must always provide notice and obtain parental consent as provided by the Rule.

[20] This amendment applies both to operators of websites directed to children and to websites with actual knowledge that information is being collected from a child. Because an operator who deletes such information will not be deemed to have "collected" it, that operator also will not have "disclosed" that information under the Rule.

[21] Center for Democracy and Technology, American Civil Liberties Union, American Library

Continued

asserted that the Commission's proposal went beyond what Congress intended with this legislation.[22] Congress, however, specifically included such postings in the COPPA on the grounds that children could be placed at risk in such fora, noting that one of the Act's goals was "to enhance parental involvement to help protect the safety of children in online fora such as chatrooms, home pages, and pen-pal services in which children may make public postings of identifying information."[23] As noted in the Commission's June 1998 report to Congress, children's use of chat rooms and bulletin boards that are accessible to all online users present the most serious safety risks, because it enables them to communicate freely with strangers.[24] Indeed, an investigation conducted by the FBI and the Justice Department revealed that these services are quickly becoming the most common resources used by predators for identifying and contacting children.[25] Commenters also generally acknowledged that these are among the most sensitive online activities.[26]

Several commenters expressed concerns that the proposed Rule would similarly require operators to give notice and obtain parental consent in order to give a child an e-mail account.[27] The Commission notes that, to the extent that operators who provide e-mail accounts keep records of the e-mail addresses they have assigned, along with any associated information, those operators can be considered to have "collected" those e-mail addresses under the Act. Operators of sites directed to children are therefore required to comply with the Act when giving children e-mail accounts. For operators of general audience sites, the Rule requires *actual knowledge* that information is being collected from a child. Such operators would only be required to provide notice and obtain parental consent if registration or other information reveals that the person seeking the e-mail account is a child.

A number of commenters noted that operators might be responsible for complying with all of the requirements of the Rule after receiving an unsolicited e-mail from a child.[28] If an operator of a site directed to children receives such an e-mail, that contact is covered under the Act's (and the Rule's) one-time e-mail exception.[29] Under that exception, an operator may collect a child's name and online contact information for the purpose of responding one time in response to a direct request from a child. This exception would allow an operator to receive an e-mail from a child and provide a response without providing parental notice and obtaining consent, as long as the name and online contact information collected from the child are deleted and not used for any other purpose.[30] And again, in the case of a general audience site, these requirements apply only if the site receiving the e-mail has actual knowledge that it was sent by a child.

One commenter noted that a site could collect non-personally identifiable information about a child without parental notice or consent as long as that information was only tied to a screen name.[31] An operator who has solicited such information could obtain the child's name through a subsequent solicitation, and would thus have evaded the Act's requirement of prior parental consent.[32] This is a valid concern, but the Commission believes that the Rule does in fact address the issue. Indeed, under the Rule, once such information is linked to an identifier (the name), it becomes "personal information" and the Rule requires the operator to provide notice and obtain consent for the collection, use, and/or disclosure of all of the information.[33]

3. Definition of "Disclosure"

The definition of "disclosure" in the proposed Rule covered: (1) The release of personal information collected from a child in identifiable form by an operator for any purpose, except where the operator provides the information to a person who provides support for the internal operations of the website and who does not use that information for any other purpose;[34] and (2) making personal information collected from a child publicly available in identifiable form, including through public postings, posting of personal home pages, messages boards, and chat rooms, or any other means that would enable a child to reveal personal information to others online.[35]

In the NPR, the Commission sought to clarify that entities that provide fulfillment services or technical support would be considered "support for the internal operations of the website or online service," and thus disclosures to such entities need not be disclosed in the site's notices.[36] The Commission also noted that such services as merely providing the server for the website, or providing chat or e-mail service would also be considered "support for the internal operations of the website."[37] The Commission cautioned, however, that because operators are also required by the Act to establish reasonable procedures to maintain the confidentiality, security, and integrity of personal information collected from children,[38] they should take appropriate measures to safeguard such information in the possession of those who provide support for the internal operations of their websites.[39]

Association ("CDT, et al.") (Workshop comment 11) at 2–4.

[22] *Id.*

[23] 144 Cong. Rec. S11657 (Statement of Sen. Bryan).

[24] *Privacy Online: A Report to Congress* at 5 (June 1998).

[25] *Id.* The concern may be heightened where such services are directed to children because potential predators know that the majority of the participants are likely to be underage.

[26] Center for Media Education, Consumer Federation of America, Am. Academy of Child and Adolescent Psychiatry, Am. Academy of Pediatrics, Junkbusters Corp., Nat'l Alliance for Non-Violent Programming, Nat'l Ass'n of Elementary School Principals, Nat'l Consumers League, Nat'l Education Ass'n, Privacy Times and Public Advocacy for Kids ("CME/CFA et al.") (Comment 80) at 30; Viacom (Comment 79) at 13–14; DMA (Workshop comment 02) at 1–2; Bagwell/MTV Networks Online (Workshop Tr. 32–33); Kraft (Comment 67) at 4–5; Children's Advertising Review Unit of the Council of Better Business Bureaus ("CARU") (Workshop comment 08) at 2; Cartoon Network, et al. (Comment 77) at 18; Nikolai.com, Inc. (Comment 129) at 2; and Consumers Union (Comment 116) at 3.

[27] *See, e.g.*, Commercial Internet eXchange Ass'n and PSINet Inc. ("CIX et al.") (Comment 83) at 8; Zeeks.com (Comment 98) at 1; CDT et al. (Workshop comment 11) at 3 (noting same First Amendment concerns as for chat rooms). Similar concerns were expressed in connection with the proposed Rule's definition of "disclosure," which included "any other means that would enable a child to reveal personal information to others online." *See* Section II.A.3, *infra*.

[28] *See, e.g.*, ZapMe! (Comment 76) at 7–8. *See also* Highlights for Children, Inc. ("Highlights") (Comment 124) at 2.

[29] 15 U.S.C. 6502(b)(2)(A); section 312.5(c)(2) of the Rule. *See* Section II.D.3, *infra*.

[30] Moreover, this exception would accommodate sites that automate their responses to incoming e-mails, as long as the child's name and online contact information are deleted and not used for any other purpose. MLG Internet (Comment 119) at 2 (asking about automated e-mail responses).

[31] CDT (Comment 81) at 18.

[32] *Id.*

[33] *See* Section II.A.8, *infra*. Moreover, under section 312.6 of the Rule, the operator must disclose that information to the parent upon request and the parent may request that the operator delete that information. *See* Section II.E, *infra*.

[34] The "release of personal information" is defined in the Rule to mean the "sharing, selling, renting, or any other means of providing personal information to any third party." *See* section 312.2 of the Rule. For additional guidance as to whether an entity is a "third party" under the Rule, see discussion, *infra*, regarding definitions of "operator" and "third party."

[35] 64 FR 22752, 22764.

[36] 64 FR at 22752.

[37] *Id.*

[38] 15 U.S.C. 6502(b)(1)(D).

[39] 64 FR at 22752. Some commenters objected to the notion of holding operators liable for the action of contractors because operators have no way of ensuring that contractors will follow the Rule. *See, e.g.*, DMA (Comment 89) at 35. The Act and the Rule require operators to establish and maintain reasonable procedures to protect the confidentiality,

Two commenters expressed a concern that the last clause of the proposed definition, which covered "any other means that would enable a child to reveal personal information to others online," would include an Internet Service Provider ("ISP") or cable company that simply provides Internet access without offering any content or actively collecting any information from children.[40] Although the Commission notes that this language was not meant to reach such entities,[41] it has decided to eliminate this language as confusing and unnecessary.[42]

4. Definition of "Internet"

The proposed Rule's definition of "Internet" made clear that it applied to the Internet in its current form and to any conceivable successor.[43] Given that the technology used to provide access to the Internet will evolve over time, it is imperative that the Rule not limit itself to current access mechanisms. The Commission received three comments regarding this definition.[44] One commenter suggested that the Commission clarify that the definition "clearly includes networks parallel to or supplementary to the Internet such as those maintained by the broadband providers * * * [and] intranets maintained by online services which are either accessible via the Internet or have gateways to the Internet."[45] The Commission believes that the proposed definition of "Internet" was sufficiently broad to encompass such services and adopts that definition in the final Rule.

5. Definition of "Online Contact Information"

The Commission received several comments[46] regarding the definition of "online contact information."[47] One commenter suggested that the Commission include in the definition such identifiers as instant messaging user identifiers, which are increasingly being used for communicating online.[48] The Commission believes that these identifiers already fall within the proposed definition, which includes "any other substantially similar identifier that permits direct contact with a person online."[49] After reviewing the comments, the Commission has determined that no changes to this definition are necessary.

6. Definition of "Operator"

The definition of "operator" is of central importance because it determines who is covered by the Act and the Rule. Consistent with the Act, the proposed Rule defined operator (with some limitations) as "any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users or visitors * * * or on whose behalf such information is collected or maintained * * *."[50] In the NPR, the Commission clarified the scope of the definition by listing a number of factors to consider, including who owns and/or controls the information, who pays for its collection and maintenance, the pre-existing contractual relationships regarding collection and maintenance of the information, and the role of the website or online service in collecting and/or maintaining the information (*i.e.*, whether the site participates in collection or is merely a conduit through which the information flows to another entity).[51] The Commission also clarified that entities that merely provide access to the Internet, without providing content or collecting information from children, would not be considered operators.[52] In the NPR, the Commission asked about the impact of the proposed definition, and whether it was sufficiently clear to provide notice as to who is covered by the Rule.[53] After carefully reviewing the comments received, the Commission has determined that no changes to the proposed definition are necessary.

A number of commenters proposed various tests to determine how corporate affiliates should be treated under the Rule.[54] The Commission believes that an entity's status as an operator or third party under the Rule should be determined not by its characterization as a corporate affiliate, but by its relationship to the information collected under the factors described in the NPR. Not all affiliates play a role in collecting or maintaining the information from children, and making an entity an operator subject to the Act simply because one of its affiliates collects or maintains information from children online would not serve the goals of the COPPA. If, however, the entity has an interest in the data collected under the factors listed in the NPR, then it, too, will be covered by the Rule.[55]

One commenter sought clarification of the status of network advertising companies, or companies that provide banner ads on websites or online

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security, and integrity of personal information collected from children. 15 U.S.C. 6502(b)(1)(D); section 312.8 of the Rule. As long as the operator follows reasonable procedures to ensure that such contractors protect the information (for example, contractual provisions that limit the contractors' ability to use the information), operators should not be liable for the actions of contractors.

[40] *See* CIX, *et al.* (Comment 83) at 8–9; National Cable Television Association ("NCTA") (Comment 71) at 6–8.

[41] *See* 64 FR at 22752. To the extent that ISPs do not operate websites or online services that are directed to children, or knowingly collect information from children, they are not subject to the COPPA.

[42] One commenter also asked whether the term "disclosure" covered the inclusion of a child's name on a list of contest winners, which is often required under state laws. *See* PMA (Comment 107) at 4. If the operator collects only name and online contact information, then the exception under section 312.5(c)(5)(iv) would apply. However, if the operator collects additional information online, then the release of that information would be considered a disclosure under the Rule.

[43] 64 FR at 22752, 22764.

[44] CME/CFA et al. (Comment 80) at 18; E.A. Bonnett (Comment 126) at 1; CDT (Comment 81) at 10–11. Two of the comments praised the proposed definition as comprehensive. E.A. Bonnett (Comment 126) at 1; CDT (Comment 81) at 10–11.

[45] CME/CFA et al. (Comment 80) at 18.

[46] CyberAngels (Comment 120) at 1; CME/CFA et al. (Comment 80) at 6–7; Aftab & Savitt (Comment 118) at 3–4; CDT (Comment 81) at 16–18.

[47] The definition in the proposed Rule was identical to the one contained in the Act. *See* 15 U.S.C. 6501(12); 64 FR at 22752, 22764.

[48] CyberAngels (Comment 120) at 1.

[49] Another example of "online contact information" could be a screen name that also serves as an e-mail address. *See* Section II.A.8, *infra*.

[50] 15 U.S.C. 6501(2); 64 FR at 22752, 22764.

[51] 64 FR at 22752.

[52] Thus, ISPs and cable operators that merely offer Internet access would not be considered operators under the Rule.

[53] 64 FR at 22761.

[54] *See, e.g.*, Council of Better Business Bureaus, Inc. ("CBBB") (Comment 91) at 6–7; Attorneys General of the States of New York, Alabama, California, Florida, Georgia, Hawaii, Illinois, Indiana, Maryland, Nevada, Ohio, Oklahoma, Tennessee, Vermont, and Washington ("Attorneys General") (Comment 114) at 6; PMA (Comment 107) at 4–5; Am. Ass'n of Advertising Agencies ("AAAA") (Comment 134) at 3; Ass'n of Nat'l Advertisers ("ANA") (Comment 93) at 6–7. Some commenters argued in support of automatically including all corporate affiliates as operators. Others thought that all affiliates with identical privacy policies should be considered operators, or, alternatively, that operators should be required to disclose that an affiliate has a different privacy policy and describe how it differs from the primary operator's. As noted in Section II.C.3.c, *infra*, the notice is required to describe the privacy policies of the various operators. One commenter suggested a consumer perception standard: that an affiliate would be considered an operator if a consumer would reasonably expect that the affiliated entities are part of one organization that shares information within itself. PMA (Comment 107) at 5. The Commission believes that the proposed standard, which places responsibility for compliance on the entities that control the information, is the most workable test for who is an operator.

[55] In the NPR, the Commission stated that operators are jointly responsible for implementing the requirements of the Rule. 64 FR at 22752. In an investigation into a potential Rule violation, the Commission will examine all the facts and circumstances in determining the appropriate party or parties to pursue. The Commission likely will not pursue an entity that is an "operator," but has not facilitated or participated in, and has no reason to know of, any Rule violations.

services.[56] If such companies collect personal information directly from children who click on ads placed on websites or online services directed to children, then they will be considered operators who must comply with the Act, unless one of the exceptions applies.[57] Moreover, if such companies collect personal information from visitors who click on their ads at general audience sites, and that information reveals that the visitor is a child, then they will be subject to the Act. In addition, if they do not collect information from children directly, but have ownership or control over information collected at a host children's site, they will be considered operators. If, however, no personal information is collected or maintained by such companies, either directly or through the host website, then they will not be deemed to be operators.

Some commenters sought greater clarity regarding the meaning of "actual knowledge" that a particular visitor is a child and inquired whether an operator of a general audience site has any duty to investigate the age of its visitors.[58] Actual knowledge will be present, for example, where an operator learns of a child's age or grade from the child's registration at the site or from a concerned parent who has learned that his child is participating at the site. In addition, although the COPPA does not require operators of general audience sites to investigate the ages of their site's visitors, the Commission notes that it will examine closely sites that do not directly ask age or grade, but instead ask "age identifying" questions, such as "what type of school do you go to: (a) elementary; (b) middle); (c) high school; (d) college." Through such questions, operators may acquire actual knowledge that they are dealing with children under 13.

Finally, one commenter sought assurance that an operator would not be liable if his site contained a link to another site that was violating the Rule.[59] If the operator of the linking site is not an operator with respect to the second site (that is, if there is no ownership or control of the information collected at the second site according to the factors laid out in the NPR), then the operator will not be liable for the violations occurring at the second site.

7. Definition of "Parent"

The Act and the proposed Rule defined "parent" as "includ[ing] a legal guardian."[60] The Commission received two comments regarding this definition, both of which sought additional guidance concerning the Rule's application in non-traditional family situations.[61] The Commission believes that the proposed definition is sufficiently flexible to account for a variety of family structures and situations, including situations where a child is being raised by grandparents, foster parents, or other adults who have legal custody. Therefore, the Commission retains the definition of parent contained in the proposed Rule.

8. Definition of "Personal Information"

The definition of "personal information" is another critical part of the Rule because it specifies the type of information covered by the Rule. The proposed definition included a number of different types of individually identifiable information, including name, address, and phone number; e-mail address; and other types of information that could be used to locate an individual either online or offline.[62] The proposed definition also covered non-individually identifiable information (*e.g.*, information about a child's hobbies or toys) that is associated with an identifier.[63]

One commenter asked the Commission to clarify that operators are not required to provide parental notice or seek parental consent for collection of non-individually identifiable information that is not and will not be associated with an identifier.[64] The Commission believes that this is clear in both the Act and the Rule.

Several commenters sought further guidance on whether the use of screen names would trigger the Act's requirements.[65] If a screen name is not associated with any individually identifiable information, it is not considered "personal information" under this Rule.[66]

Another commenter criticized the proposed Rule on the grounds that it encourages operators to set up sites using screen names.[67] This commenter argued that it is important to have accountability online—*i.e.*, that it is important for operators to be able to identify and take action against visitors who post inappropriate information or harass other online visitors. The Commission agrees that these are important considerations, but notes that the Rule does not foreclose operators from taking such precautions. Operators are free to request parental consent to collect such information. Moreover, the exception to the requirement of prior parental consent under section 312.5(c)(5)(i) of the Rule allows operators to collect the child's online contact information for this very purpose.[68]

One commenter noted that there are some persistent identifiers that are automatically collected by websites and can be considered individually identifying information, such as a static IP address or processor serial number.[69] If this type of information were considered "personal information," the commenter noted, then nearly every child-oriented website would automatically be required to comply with the Rule, even if no other personal information were being collected. The Commission believes that unless such identifiers are associated with other individually identifiable personal information, they would not fall within the Rule's definition of "personal information."

Several commenters asked whether information stored in cookies falls within the definition of personal information.[70] If the operator either collects individually identifiable information using the cookie or collects non-individually identifiable information using the cookie that is combined with an identifier, then the information constitutes "personal information" under the Rule, regardless of where it is stored.

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[56] Media Inc., AdForce, Inc., DoubleClick, Inc., Engage Technologies, Inc., Flycast Communications Corp., and Real Media, Inc. (Comment 92) at 4–8.

[57] It may be appropriate for such companies to provide a joint notice with the operator of the host website.

[58] *See* PMA (Comment 107) at 6; Attorneys General (Comment 114) at 7. See also MLG Internet (Comment 119) at 1–2.

[59] MaMaMedia, Inc. ("MaMaMedia") (Comment 85) at 7.

[60] 15 U.S.C. 6501(7); 64 FR at 22752, 22764.

[61] Ass'n of Educational Publishers ("EdPress") (Comment 130) at 2; Highlights (Comment 124) at 1.

[62] 64 FR at 22752–22753, 22764.

[63] *Id.*

[64] *See* National Retail Federation ("NRF") (Comment 95) at 2.

[65] ZapMe! (Comment 76) at 8–9; KidsOnLine.com (Comment 108) at 1–2; TRUSTe (Comment 97) at 3.

[66] One commenter also asked whether operators would be required to ensure that a screen name chosen by a child did not contain individually identifiable information. TRUSTe (Comment 97) at 3. Operators do not have a specific duty to investigate whether a screen name contains such information. However, an operator could give children warnings about including such information in screen names, especially those that will be disclosed in a public forum such as a chat room.

[67] KidsOnLine.com (Comment 108) at 1–2.

[68] *See also* 15 U.S.C. 6502(b)(2)(E)(i). As noted above, an operator who wishes to collect name and online contact information under this exception may not use or disclose that information for any other purpose. An operator, however, who collects other personal information and links it with online contact information collected under this exception would be in violation of the Rule unless the operator provided parental notice and obtained verifiable parental consent for the collection of all of that information.

[69] CDT (Comment 81) at 16. *See also* E.A. Bonnett (Comment 126) at 2–3.

[70] *See, e.g.*, Consumers Union (Comment 116) at 4.

After reviewing the comments, the Commission has decided to retain the definition of "personal information" with slight modifications. In response to the suggestion of one commenter, one item was added to subparagraph (f) of the definition: a photograph of the individual, when associated with other information collected online that would enable the physical or online contacting of the individual.[71] The Commission is also making slight modifications to ensure consistency within the definition.

9. Definition of "Third Party"

The proposed Rule defined the term "third party" as "any person who is neither an operator with respect to the collection of personal information * * * nor a person who provides support for the internal operations of the website or online service."[72] Under the Rule, an operator is required to provide notice of its practices with respect to the disclosure of information to third parties and to allow parents to choose whether the operator may disclose their children's information to third parties.[73] Because third parties are not operators, they are not responsible for carrying out the provisions of the Rule.

Comments regarding this definition raised issues similar to those raised in response to the proposed definition of "operator"—specifically, when and whether corporate affiliates would be considered "operators" or "third parties." As noted above, the Commission believes that the most appropriate test for determining an entity's status as an operator or third party is to look at the entity's relationship to the data collected, using the factors listed in the NPR.[74] If an entity does not meet the test for operator, that entity will be considered a third party.

One commenter asked that the Commission require third parties to comply with the Rule.[75] However, the statute applies only to the practices of the operator, and the Commission does not have the authority to extend liability to third parties.

After reviewing the comments, the Commission has made minor revisions to the definition of "third party" to maintain consistency across the Rule. These revisions consist of adding the words "and maintenance" following "collection," and clarifying that, in order to be excluded from the definition, a person who provides internal support for the website may not disclose or use information protected under this Rule for any other purpose.

10. The Definition of "Obtaining Verifiable Parental Consent"

The proposed Rule included a definition of "obtaining verifiable parental consent" that was substantially similar to the definition contained in the COPPA.[76] The term was defined to mean "making any reasonable effort (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child" receives notice of the operator's information practices and consents to those practices. The Commission received no comments suggesting modification to this definition, and therefore retains the proposed definition.

11. Definition of "Website or Online Service Directed to Children"

In the proposed Rule, the Commission listed a number of factors that the Commission would consider in determining whether a site would be "directed to children," including, among other things, the site's "subject matter, visual or audio content, age of models, language or other characteristics of the website or online service. * * *"[77] The Commission also stated in the proposed Rule that it would consider competent and reliable empirical evidence regarding audience composition as well as evidence regarding the intended audience of the site.[78] In addition, under the proposed Rule, a general audience website would not be deemed to be directed to children simply because it referred or linked to another website or online service that is directed to children.[79] Finally, if a general audience site has a distinct children's "portion" or "area," then the operator would be required to provide the protections of the Rule for visitors to that portion of the site.[80]

Several commenters asked for more guidance about the factor analysis laid out in this definition.[81] One commenter asked that the Commission clarify that the presence of only one of the listed factors would not cause a site to be classified as "directed to children"; rather that *all* of the factors would be taken into account.[82] In response, the Commission notes that the proposed definition makes it clear that the Commission will look at the overall character of the site—and not just the presence or absence of one or more factors—in determining whether a website is directed to children.

Another commenter noted that operators should not be able to construct a "veil of ignorance" where the operator can determine through questions whether a visitor is a child without specifically asking for the visitor's age.[83] As discussed above in Section II.A.6 concerning the definition of "operator," the Commission will closely examine such sites to determine whether they have actual knowledge that they are collecting information from children. A similar concern was raised with respect to sites that ask for age ranges that include both children and teens (*e.g.*, a "15 and under" category).[84] Because it is simple for operators to craft a "12 and under" age range, the Commission will look closely at sites that do not offer such a range if it appears that their operators are trying to avoid compliance with the Rule.

B. Section 312.3: Regulation of Unfair or Deceptive Acts or Practices in Connection With the Collection, Use, and/or Disclosure of Personal Information From and About Children on the Internet

Section 312.3 of the proposed Rule set out the Rule's general requirements, which were detailed in the later provisions.[85] The Commission received no comments that directly pertained to section 312.3 of the proposed Rule, which was a restatement of the requirements laid out in the Act,[86] and therefore retains it without change. Comments regarding the sections implementing its requirements are discussed in the relevant sections below.

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[71] Aftab & Savitt (Comment 118) at 4. This commenter also asked the Commission to remove the phrase "collected online" from this definition in order to cover information that is submitted to an operator offline, then posted online by the operator. While we are cognizant of the risks posed by such practices, the Commission believes that the COPPA does not apply to information submitted to an operator offline. *See* Section II.A.2, *supra*, concerning the definition of "collection."

[72] 64 FR at 22753, 22764.

[73] *See* Sections II.C.3.d, and II.D.1. *infra*.

[74] *See* Section II.A.6, *supra;* 64 FR at 22752.

[75] CME/CFA et al. (Comment 80) at 6, 11.

[76] *See* 64 FR 22753, 22764; 15 U.S.C. 6501(9).

[77] 64 FR 22753, 22764.

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] JuniorNet Corp. ("JuniorNet") (Comment 100) at 2; Int'l Digital Software Ass'n ("IDSA") (Comment 103) at 2; CDT (Comment 81) at 20–21; MLG Internet (Comment 119) at 2; Time Warner (Comment 78) at 4, 5.

[82] JuniorNet (Comment 100) at 2.

[83] Consumers Union (Comment 116) at 4–5.

[84] CME/CFA et al. (Comment 80) at 7; Attorneys General (Comment 114) at 7. *See also* TRUSTe (Comment 97) at 2.

[85] 64 FR at 22753, 22764.

[86] 15 U.S.C. 6502(b)(1).

C. Section 312.4: Notice

1. Section 312.4(a): General Principles of Notice

The COPPA mandates that an operator provide notice on its website and to parents of "what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices regarding such information." [87] The proposed Rule set out general principles of notice, followed by a specific set of guidelines for the online placement and content of those notices, to ensure that parents receive all the information that they would find material when reviewing a site.[88] As noted in the NPR, the operator's notice will form the basis for a parent's decision whether to give the operator consent to collect, use, and/or disclose personal information from his or her child.[89] In order to provide informed consent, a parent must have a clear idea of what the operator intends to do.[90] Therefore, the proposed Rule required an operator's notice to "be clearly and understandably written," [91] be complete, and * * * contain no unrelated, confusing, or contradictory materials." [92] The Commission believes that these are the core principles underlying a consent-based system and, therefore, retains this section in the final Rule.[93]

2. Section 312.4(b)(1): Notice on the Website or Online Service—Placement of the Notice

Section 312.4(b)(1) of the proposed Rule set forth the requirements for online placement of the notice of the operator's information practices. It required operators to place a link to the notice on the home page of the website or online service such that a typical visitor would see the link without having to scroll down from the initial viewing screen.[94] In addition, the proposed Rule required operators to post a link to that notice in a similar manner at each place on the website or online service where information is collected from children.[95]

A large number of commenters noted that with the multitude of Web browsers available and the advent of ever-smaller machines that can access the Internet, it may not be technically feasible to ensure that the link to the notice can be seen without scrolling down from the initial viewing screen.[96] The Commission acknowledges that the proposed Rule's requirement regarding the placement of the online notices may not be a workable standard. Therefore, the Commission has modified section 312.4(b)(1)(ii) to require that a link to the notice be placed "in a clear and prominent place and manner on the home page of the website or online service." "Clear and prominent" means that the link must stand out and be noticeable to the site's visitors through use, for example, of a larger font size in a different color on a contrasting background. The Commission does not consider "clear and prominent" a link that is in small print at the bottom of the home page, or a link that is indistinguishable from a number of other, adjacent links.

Some commenters noted that general audience sites with distinct children's areas should be allowed to post the link to the children's privacy policy at the home page of the children's area, rather than the home page of the overall site.[97] The Commission believes that this is a sensible approach to providing notice. Parents who are reviewing the operator's practices with respect to children would likely go directly to the children's area; therefore, operators of sites with distinct children's areas must post a prominent link at the home page of that area.[98]

Further, in response to comment, section 312.4(b)(1)(iii) has been modified to require that a link to the notice be placed "at each area on the website or online service where children directly provide, or are asked to provide, personal information and in close proximity to the requests for information in each such area." The comment noted—and the Commission agrees—that it makes sense to require that the link be in close proximity to the initial request for information in an area so that visitors do not have to scroll up or down the page to find the link.[99] In response to comments, the Commission also changed the requirement of notice at each "place" where children provide information to notice at each such "area" in order to make clear that there does not need to be a link accompanying each question, but simply at each separate area where such information is collected.[100]

3. Section 312.4 (b)(2) and (c)(1)(i)(B): Content of the Notice

Section 312.4(b)(2) of the proposed Rule details the information that operators must include in their notice on the site. That information was also required to be included in the notice to the parent under Section 312.4(c)(1)(i)(B).[101] Under the proposed Rule, operators were required to include in their notices, among other things: (1) names and contact information for all operators; (2) the types of personal information collected through the site and how such information is collected; (3) how the personal information would be used; (4) whether the personal information would be disclosed to third parties, the types of businesses in which those third parties are engaged, whether the third parties have agreed to take steps to protect the information, and a statement that parents have the right to refuse to consent to the disclosure of their child's personal information to third parties; (5) that the operator may not condition a child's participation in an activity on the provision of more personal information than is necessary to participate in the activity; and (6) that the parent may review, make changes to, or have deleted the child's personal information.[102] Many of the comments addressing these sections expressed concern that they required the inclusion of too much information in the notices. As discussed below, the Commission believes that most of the information required in the proposed Rule would be material to parents in deciding whether to consent to their child's participation in a site. However, in order to reduce the length of the notice, the Commission has eliminated certain information that it has determined would be of limited benefit to parents.

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[87] 15 U.S.C. 6502(b)(1)(A)(i). One commenter stated that Congress included these general guidelines in the Act as a performance standard, rather than intending them to be a source of detailed regulations. Yahoo! Inc, theglobe.com, inc., DoubleClick, Inc. ("Yahoo et al.") (Comment 73) at 2. Congress, however, specifically delegated to the Commission the authority to issue regulations to implement the Act.

[88] Sections 312.4(a), (b); 64 FR at 22753–56, 22764–65.

[89] 64 FR at 22754–55.

[90] The Commission notes that it has authority under this section, as well as under Section 5 of the Federal Trade Commission Act, to take action against operators whose notices are deceptive or misleading.

[91] CME/CFA et al. (Comment 80) at 9; The McGraw-Hill Companies ("McGraw-Hill") (Comment 104) at 6. One commenter asked whether the Commission would apply a particular standard in evaluating how a notice is written. Jeff Sovern, St. John's University School of Law ("Sovern") (Comment 33) at 3–4. Traditionally, the Commission has applied a "reasonable consumer" standard in evaluating whether a notice is clearly and understandably written. Because the notices required by the Act are intended for parents, the Commission will look at whether they are written such that a reasonable parent can read and comprehend them.

[92] 64 FR at 22754.

[93] Two commenters voiced support for these general principles. *See* Attorneys General (Comment 114) at 7; Kraft (Comment 67) at 1.

[94] 64 FR at 22754.

[95] *Id.* Several commenters supported the use of other mechanisms for providing notice, such as pop-up or interstitial pages, which typically appear temporarily when visitors move from one part of the site to another. America Online, Inc. ("AOL") (Comment 72) at 11; NRF (Comment 95) at 3; iCanBuy.com (Comment 101) at 2. The Commission notes that pop-up or interstitial pages will only satisfy the notice requirements of the Rule if they are clear, prominent, and easily accessible to users, *i.e.*, they do not disappear after the initial viewing or users can re-access them through a clear and prominent link on the home page.

[96] *See, e.g.*, Am. Advertising Fed. ("AAF") (Comment 87) at 2; ANA (Comment 93) at 5; Dell Computer Corp. ("Dell") (Comment 102) at 3–4; McGraw-Hill (Comment 104) at 7; Time Warner (Comment 78) at 9; Viacom (Comment 79) at 6–7.

[97] ANA (Comment 93) at 5; MPA (Comment 113) at 3–4; DMA (Comment 89) at 22–23; McGraw-Hill (Comment 104) at 7.

[98] One comment argued that the notice requirements would require operators of general audience sites to have two physically separate privacy policies—one for adults and one for children. Kraft (Comment 67) at 4. Operators are free to combine the privacy policies into one document, as long as the link for the children's policy takes visitors directly to the point in the document where the operator's policies with respect to children are discussed, or it is clearly disclosed at the top of the notice that there is a specific section discussing the operator's information practices with regard to children.

[99] Mars, Inc. ("Mars") (Comment 86) at 10.

[100] *See, e.g.*, AOL (Comment 72) at 8–11.

[101] 64 FR at 22754–56, 22765.

a. Section 312.4(b)(2)(i). This section of the proposed Rule required operators to include in the notice the name, address, phone number, and e-mail address of all operators collecting or maintaining personal information from children through the website or online service.[103] Some commenters objected to including this information in the notice because it would make the notice unwieldy. Operators can minimize the length of the notice by designating a single entity as a central contact point for any inquiries regarding the information practices of the site's operators. The Commission, however, believes that it is essential that all operators be identified in the notice, even if full contact information is not provided, so that parents know who will see and use their children's personal information. Therefore, the Commission has modified this provision accordingly. Operators who do not wish to designate a single contact may still minimize the length of the notice by including in the notice on the site a hyperlink to a separate page listing the information.[104]

Several comments also noted that data-sharing relationships in the online world change quickly, sometimes on a weekly basis,[105] and that it would be burdensome for operators to revise their notices with each change, as the proposed Rule required, particularly in the case of the notice to the parent.[106] While the Commission believes that it is reasonable to expect operators to keep the notice on the site current, it agrees that it would be burdensome for operators to send numerous updated notices to parents. Therefore, as discussed in Section II.C.4, below, it has modified the Rule to require a new notice to the parent only where there will be a *material change* in the collection, use, and/or disclosure of personal information from the child. Thus, for example, if the operator plans to disclose the child's personal information to a new operator with different information practices than those disclosed in the original notice, then a new consent would be required.[107]

b. Section 312.4(b)(2)(ii). Under this section of the proposed Rule, operators were required to disclose the types of personal information collected from children and whether that information is collected directly or passively.[108] In the NPR, the Commission clarified that this section did not require operators to disclose to parents every specific piece of information collected from children, but rather the *types* or *categories* of personal information collected, like name, address, telephone number, social security number, hobbies, and investment information.[109] The Commission cautioned operators to use categories that were descriptive enough that parents could make an informed decision about whether to consent to the operator's collection and use of the information.[110]

Some commenters noted that the proposed Rule required operators to provide too much detail in the notice concerning the types of information collected from children.[111] These commenters felt that a more general notice would give the operator more flexibility to change its activities without having to return to the parent for additional consent.[112] The Commission believes that a more general notice may not reveal to parents that the operator collects information that the parent does not want discussed or divulged, like personal financial information. Therefore, the Commission is retaining this portion of the Rule. However, as noted above, these concerns should be alleviated by the Commission's amendment to the Rule regarding "material changes."[113]

c. Section 312.4(b)(2)(iii). Section 312.4(b)(2)(iii) of the proposed Rule required operators to notify parents about how their child's personal information "is or may be used by the operator, including but not limited to fulfillment of a requested transaction, recordkeeping, marketing back to the child, or making it publicly available through a chat room or by other means."[114] In the NPR, the Commission noted that operators must provide enough information for parents to make informed decisions, without listing every specific or possible use of the information.[115] Many commenters expressed the view that the proposed Rule would require an operator to provide such detail that they would inevitably have to send new notices and obtain new consents for every minor change in the operator's practices.[116] Again, these concerns should be alleviated by the Rule amendment regarding "material changes." *See* Section II.C.4, *infra*.

Because this section of the proposed Rule referred only to "the operator," one commenter asked how websites should address situations in which there are multiple operators collecting information through the site but who use children's personal information in different ways.[117] Specifically, the commenter asked whether each operator was required to post a separate notice, or whether a single notice could be used. Where there are multiple operators with different information practices, there should be one notice summarizing all of the information practices that will govern the collection, use, and/or disclosure of children's personal information through the site. Thus, the Commission has modified the Rule to clarify that a discussion of all policies governing the use of children's information collected through the site should be included in the notice.

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[102] *Id.*

[103] 64 FR at 22754, 22765.

[104] In response to two comments, the Commission notes that simply providing a hyperlink to the home pages of the other operators, however, would not provide adequate notice for parents. DMA (Comment 89) at 23–24; AOL (Comment 72) at 12. It would not only be burdensome for parents, but some entities that would be categorized as "operators" (*i.e.*, those "on whose behalf" personal information was collected) may not even have websites.

[105] PMA (Comment 107) at 7–8; DMA (Comment 89) at 23–24. *See also* McGraw-Hill (Comment 104) at 7.

[106] 64 FR at 22755. In the NPR, the Commission stated that additional notices to the parent would be required if the operator wished to disclose the child's personal information to parties not covered by the original consent, including parties created by a merger or other change in corporate structure.

[107] Marketing diet pills, for example, would be a materially different line of business than marketing stuffed animals.

[108] 64 FR at 22754, 22765.

[109] 64 FR at 22754.

[110] *Id.* For example, stating "We collect your child's name, e-mail address, information concerning his favorite sports, hobbies, and books" would be sufficient under the Rule. It would not be necessary for the operator to state "We ask for your child's name and e-mail address, and whether he likes to play baseball, soccer, football, or badminton. * * *"

[111] McGraw-Hill (Comment 104) at 6–7; AAF (Comment 87) at 2.

[112] *Id.*

[113] *See* Section II.C.4, *infra*. In addition, as noted in note 9, *supra*, the Commission plans to develop educational materials to assist operators in complying with the Rule.

[114] 64 FR at 22754–55, 22765.

[115] 64 FR at 22754.

[116] *See supra* note 106 and accompanying text.

[117] Attorneys General (Comment 114) at 8.

d. Section 312.4(b)(2)(iv). Under this provision of the proposed Rule, an operator was required to disclose whether children's personal information was disclosed to third parties, and if so, the types of business in which those third parties were engaged, as well as whether those third parties had agreed to maintain the confidentiality, security, and integrity of the personal information obtained from the operator.[118] In addition, the operator was required to notify the parent that he or she had the option of consenting to the operator's collection and use of the child's information without consenting to the disclosure of that information to third parties.[119] After reviewing all the relevant comments, the Commission has determined that no changes to this section are necessary.

One commenter noted that the COPPA "requires only that an operator describe its own practices. * * *"[120] The Commission believes that the information required in this section of the proposed Rule falls within the rubric of "the operator's disclosure practices for such information."[121] Parents need to know the steps an operator has taken to ensure that third parties will protect their children's data in order to provide meaningful consent.

Some commenters felt that providing information concerning the businesses engaged in by third parties would be overly burdensome.[122] Under this section, however, operators are not required to provide detailed information concerning third party businesses, but only to describe the "*types* of business" in which third parties who will receive children's information are engaged—for example, list brokering, advertising, magazine publishing, or retailing.[123] The Commission believes that it is not unduly burdensome to determine the general line of business of the companies with whom one does business. Moreover, this information will enable parents to provide meaningful consent to third party disclosures.

Commenters again pointed out that relationships between companies in the online environment change rapidly, which would make notices difficult to compose and keep current.[124] Changes in the identities of third parties would necessitate repeated notices to parents, burdening both the operator and the parent.[125] Another commenter suggested that rather than give notice of third parties' information practices, operators should be allowed simply to provide a warning to parents to review those practices.[126] Once again, these concerns should be alleviated by the fact that the disclosure is only of the *types* of businesses engaged in by third parties, and new notice and consent are required only if there has been a material change in the way that the operator collects, uses, and/or discloses personal information. *See* Section II.C.4, below.

Still other commenters stated that the Commission should require operators to disclose more detailed information regarding third parties' information practices than the proposed Rule required, including whether a third party has weaker standards than the operator.[127] The Commission believes that the proposed requirement—that operators state whether or not the third parties have agreed to maintain the confidentiality,[128] security, and integrity of children's data B strikes the appropriate balance between a parent's need for information and an operator's need for an efficient means of complying with the Rule.

Alternatively, one of these commenters requested that operators be prohibited from disclosing children's personal information to any third party unless that party not only complies with the Act, but also has the same privacy policy as the operator.[129] The Act explicitly applies to "any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child."[130] Therefore, the Commission cannot extend liability to third parties.

e. Section 312.4(b)(2)(v). Under Section 312.4(b)(2)(v) of the proposed Rule, operators were required to state in their notices that the Act prohibits them from conditioning a child's participation in an activity on the child's disclosing more personal information than is reasonably necessary to participate in that activity.[131] One commenter objected to including such a statement in the notice, on the grounds that it does not provide parents with helpful information.[132] The Commission believes that this information is material to parents and will assist them in evaluating the reasonableness of an operator's requests for information. Therefore, the Commission has decided to retain this provision.

f. Section 312.4(b)(2)(vi). This section of the proposed Rule required operators to describe in the notice on the site parents' right to review personal information provided by their children.[133] It generally tracked the requirements in section 312.6 of the proposed Rule[134] by requiring notice of a parent's ability to review, make changes to, or have deleted the child's personal information. In the NPR, the Commission sought public comment on whether this information was needed in the notice on the site, or only in the notice to the parent.[135]

Some commenters believed that it was only necessary to include this information in the notice to the parent, because it is only relevant once parents have consented to the collection of their children's information.[136] Other commenters, however, felt notice of parents' right to review children's information should be included in the notice on the site so that parents can evaluate a site while surfing with their children.[137] The Commission also notes that if the parent accidentally deletes or misplaces the notice received from the operator, he or she would likely turn to the notice on the site for information on reviewing the child's information. If that information were not in the notice on the site, the parent may be foreclosed from exercising the right to review the child's information. Therefore, the Commission has retained this provision.

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[118] 64 FR at 22755.

[119] *Id.* For a more detailed discussion of withholding consent to the disclosure of personal information to third parties, *see* Section II.D.1, *infra*.

[120] DMA (Comment 89) at 24, citing 15 U.S.C. 6502(b)(1)(A)(i).

[121] 15 U.S.C. 6502(b)(1)(A)(i).

[122] *See e.g.*, AAF (Comment 87) at 3; CBBB (Comment 91) at 11; PMA (Comment 107) at 8; TRUSTe (Comment 97) at 1.

[123] 64 FR at 22755.

[124] TRUSTe (Comment 97) at 1–2; McGraw-Hill (Comment 104) at 7; AAF (Comment 87) at 3; PMA (Comment 107) at 8.

[125] *Id.*

[126] CBBB (Comment 91) at 11. The Commission believes that requiring parents to search out this information, which may not even be available or accessible, would be unduly burdensome.

[127] CME/CFA et al. (Comment 80) at 23–24; Electronic Privacy Information Center ("EPIC") (Comment 115) at 8–9; Attorneys General (Comment 114) at 8.

[128] The Commission expects that third parties who have agreed to maintain the confidentiality of information received from operators will not disclose that information further.

[129] CME/CFA et al. (Comment 80) at 23. *See also* CDT (Comment 81) at 23.

[130] 15 U.S.C. 6502(b)(1)(A).

[131] 15 U.S.C. 6502(b)(1)(C); 64 FR at 22755, 22765, citing 15 U.S.C. 6502(b)(1)(C). *See also* 64 FR at 22758, 22766.

[132] Mars (Comment 86) at 4.

[133] 64 FR at 22755, 22765.

[134] 64 FR at 22757–58, 22766. For a detailed discussion of section 312.6, *see* Section II.E, *infra*.

[135] *See* 64 FR at 22762.

[136] DMA (Comment 89) at 19–20; PMA (Comment 107) at 8–9 (operator should be able to choose whether to include this information in the notice).

[137] Attorneys General (Comment 114) at 8–9; E.A. Bonnett (Comment 126) at 4; CBBB (Comment 91)

4. Section 312.4(c): Notice to a Parent

This provision of the proposed Rule required operators to "make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives notice of an operator's practices with regard to the collection, use, and/or disclosure of the child's personal information, including any collection, use, and/or disclosure to which the parent has not previously consented." [138] After reviewing the relevant comments, the Commission has amended this provision to require new notice to the parent only when there is a material change in the way the operator collects, uses, and/or discloses personal information from the child.

In the NPR, the Commission noted that "reasonable efforts" to provide a parent with notice under this section could include sending the notice to the parent by postal mail or e-mail, or having the child print out a form to give to the parent. These methods were intended to be non-exclusive examples.[139] The Commission also noted that operators must send the parent an updated notice and request for consent "for any collection, use, or disclosure of his or her child's personal information not covered by a previous consent." [140] Examples of situations where new notice and request for consent would be needed included if the operator wished to use the information in a manner that was not included in the original notice, such as disclosing it to parties not covered by the original consent, including parties created by a merger or other corporate combination.[141]

Many commenters argued that the Commission's interpretation concerning when a new notice and request for consent would be required was burdensome and unnecessary.[142] Given the high rate of merger activity in this industry, the commenters asserted, operators would be required to send many additional notices to parents.[143] Moreover, commenters noted that many mergers do not change the nature of the business the operator engages in or how the operator uses personal information collected from children. Therefore, many additional notices to parents under the proposed interpretation of this provision would not provide parents with meaningful information.

The Commission agrees with these comments. In order to balance an operator's need for efficiency and parents' need for relevant information, the Commission has amended the Rule to require new notice and consent only when there is a *material change* in how the operator collects, uses, or discloses personal information from children. For example, if the operator obtained consent from the parent for the child to participate in games which required the submission of limited personal information but now wishes to offer chat rooms to the child, new notice and consent will be required. In addition, if an operator (*e.g.*, a toy company) merged with another entity (*e.g.*, a pharmaceutical company) and wished to use a child's personal information to market materially different products or services than those described in the original notice (*e.g.*, diet pills rather than stuffed animals), new notice and consent would be required. Likewise, new notice and consent would be required to disclose the information to third parties engaged in materially different lines of business than those disclosed in the original notice (*e.g.*, marketers of diet pills rather than marketers of stuffed animals). On the other hand, if the operator had parental consent to disclose the child's personal information to marketers of stuffed animals, it does not need to obtain a new consent to disclose that information to other marketers of stuffed animals.

One commenter suggested that the Rule also requires the operator to obtain parental confirmation that the notice was received, either through a return e-mail or a business reply postcard.[144] The Commission believes that this proposal would burden parents and operators without adding significantly to the protection of children online. In most cases, the operator's receipt of parental consent will serve as confirmation that the parent received the notice.[145] Likewise, in most instances, if the parent does not receive the notice, then the operator simply will not receive consent.

One commenter suggested that the Commission permit the notice to the parent to take the form of an e-mail with an embedded hyperlink to the notice on the site.[146] In response, the Commission notes that the notice to the parent must contain additional information that is not required in the notice on the site.[147] However, as long as the additional, required information is clearly communicated to parents in the e-mail, and the hyperlink to the notice on the site is clear and prominent, operators may include the hyperlink to the notice on the site in an e-mail to parents.

a. Section 312.4(c)(1) (i) and (ii): information in the notice to a parent. The proposed Rule required an operator's notice to a parent to include all the information included in the notice on the site (section 312.4(c)(1)(i)(B)), as well as additional information. In cases that do not implicate one of the exceptions to prior parental consent under section 312.5(c), an operator must tell the parent that he or she wishes to collect personal information from the child (section 312.4(c)(1)(i)(A)) and may not do so unless and until the parent consents, and the operator must describe the means by which the parent can provide that consent (section 312.4(c)(1)(ii)).[148]

In the NPR, the Commission requested public comment on whether there was additional information that

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at 12; CME/CFA et al. (Comment 80) at 24; TRUSTe (Comment 97) at 1–2.

[138] 64 FR at 22755, 22765.

[139] *Id.* One commenter requested that we include this information in the text of the Rule. DMA (Comment 89) at 27. The Commission believes that the performance standard enunciated in this provision is appropriate in light of the operator's need for flexibility and the additional protections that are provided by the parental consent requirement. As discussed below, the Rule provides more specific guidance as to the appropriate mechanisms for obtaining parental consent *See* Section II.D.2, *infra.*

[140] 64 FR at 22755, 22765

[141] *Id.*

[142] *See, e.g.,* AOL (Comment 72) at 14–15; DMA (Comment 89) at 26; Kraft (Comment 67) at 2, 5–6. *See also* CBBB (Comment 91) at 13–14.

[143] *Id.*

[144] CME/CFA et al. (Comment 80) at 24–25. Similarly, one commenter noted that many parents share an e-mail account with their children. A & E Television Networks ("AETN") (Comment 90) at 17–18. In these situations, the commenter argued, it would be impossible for the operator to determine whether the notice has been received by the parent. *Id.* In many cases, however, the children will have the incentive to give the notice to the parent in order to obtain parental consent. Further, as noted above, in most cases, the operator's receipt of parental consent will confirm that the parent has received the notice.

[145] *See* Section II.D.2 *infra*, for a detailed discussion of the requirements for obtaining verifiable parental consent under Section 312.5 of the Rule.

[146] Mars (Comment 86) at 12.

[147] For example, the notice to the parent must contain information concerning how to provide parental consent (section 312.4(c)(1)(ii)).

[148] 64 FR at 22755, 22765. One commenter thought that the notice should also inform parents that they have the option of denying consent. CME/CFA et al. (Comment 80) at 12. The Commission believes that a right of refusal is implied in a request for consent, and therefore is not modifying this provision.

should be included in the notice.[149] One commenter suggested that the notice include a statement recommending that parents warn their children not to post personal information in chat rooms or other public venues.[150] While the Commission does not believe this information should be required in the notice under the COPPA, it strongly encourages parents, operators, and educators to teach children about the dangers of posting personal information in public fora. After reviewing the comments concerning these provisions, the Commission believes that no changes are necessary.

b. Section 312.4(c)(1)(iii) and (iv): Notices under the multiple-contact exception, section 312.5(c)(3), and the child safety exception, section 312.5(c)(4). In cases where an operator wishes to collect a child's name and online contact information for purposes of responding more than once to a specific request of the child under Section 312.5(c)(3), or for the purpose of protecting the safety of a child participating on the website or online service under Section 312.5(c)(4), the operator was required to provide notice to the parent, with an opportunity to opt out of future use or maintenance of the child's personal information. Section 312.4(c)(1) (iii) and (iv) required the operator to notify the parent of the operator's intended use of the information, the parent's right to refuse to permit further contact with the child, or further use or maintenance of the information, and that "if the parent fails to respond to the notice, the operator may use the information for the purpose(s) stated in the notice."[151] The Commission received only one comment regarding this provision[152] and has determined that no changes are necessary.

Because the types of contact with children covered under section 312.5(c) (3) and (4) do not require a parent's affirmative consent, the operator must clearly notify the parent that, in these instances, if the parent fails to respond to the notice, the operator may use the information for the purpose stated in the notice.[153] The Commission expects operators to process in a timely manner responses from parents prohibiting the use of their children's information.

D. Section 312.5: Verifiable Parental Consent

1. Section 312.5(a): General Requirements

Section 312.5(a) of the proposed Rule set forth two requirements: (1) That operators obtain verifiable parental consent before any collection, use, or disclosure of personal information from children, including any collection, use and/or disclosure to which the parent had not previously consented; and (2) that the operator give the parent the option to consent to collection and use of the child's personal information without consenting to its disclosure to third parties.[154] In the NPR, the Commission also stated that, because the Act required parental consent *prior to any* collection, use, *and/or* disclosure, the parental consent requirement applied to the subsequent use or disclosure of information already in possession of an operator as of the effective date of the proposed Rule.[155]

Commenters generally supported the principle of prior parental consent.[156] However, several argued that, by requiring parental consent for future use of information collected before the effective date of the Rule, the Commission was attempting to apply the Act retroactively.[157] They also stated that it would be extremely costly and burdensome to obtain consent for information collected years ago, especially in instances where they were unaware of a child's past or current age or had no information on how to contact the parents.[158] The Commission is persuaded that the Act should not be interpreted to cover information collected prior to its effective date. While the Act clearly gives parents control over the use and disclosure of information, and not just its collection,[159] it also appears to contemplate that such control be exercised only with regard to information "collected" under the Act—*i.e.*, collected after the Act's effective date.[160] Further, the Commission believes that it could be difficult and expensive for operators to provide notice and consent for information collected prior to the Rule's effective date. Therefore, the Commission has eliminated this requirement from the Rule.

The Commission notes, however, that notwithstanding any prior relationship that an operator has with the child, any collection of "personal information" by the operator after the effective date is covered by the Rule. Thus, for example, if an operator collected a child's name and e-mail address before the effective date, but sought information regarding the child's street address after the effective date, the later collection would trigger the Rule's requirements. Similarly, if after the effective date, an operator continued to offer activities involving the ongoing collection and disclosure of personal information from children (*e.g.*, a chatroom or message board), or began offering such activities for the first time, notice and consent would be required for all participating children regardless of whether they had previously registered or participated at the site.

The Commission also notes that, for information collected prior to the effective date of the Rule, it retains the authority to pursue unfair or deceptive acts or practices under Section 5 of the Federal Trade Commission Act. Thus, the Commission will continue to examine information practices in use before the effective date of the COPPA for deception and unfairness, and will pursue enforcement in appropriate circumstances.[161]

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[149] 64 FR at 22762.

[150] CBBB (Comment 91) at 13.

[151] 64 FR at 22756, 22765.

[152] CME/CFA et al. (Comment 80) at 12 (generally requesting more information in the notices).

[153] 64 FR at 22757, 22765–66.

[154] 64 FR at 22756, 22765.

[155] *Id.* at 22751.

[156] *See, e.g.*, Gail Robinson (Comment 132); Tessin J. Ray (Comment 131); BAWSELADI (Comment 133); Deb Drellack (Comment 20); Valorie Wood (Comment 36); Deanie Billings (Comment 37); Nancy C. Zink (Comment 38); Susan R. Robinson (Comment 42); Joyce Patterson (Comment 43); Elaine Bumpus (Comment 44); Greg Anderson (Comment 46); Deanna (Comment 47); Mark E. Clark (Comment 48); Sue Bray (Comment 50); Cindy L. Hitchcock (Comment 55); Stephanie Brown (Comment 50); Samantha Hart (Comment 59); Tammy Howell (Comment 59); Jean Hughes (Comment 60); dinky (Comment 61); PrivaSeek (Comment 112) at 2; CDT (Comment 81) at 25; Consumers Union (Comment 116) at 1; EPIC (Comment 115) at 5, 9; FreeZone (IRFA comment 01) at 2; Kidsonline.com (IRFA comment 02) at 1; AAF (Comment 87) at 2; CBBB (Comment 91) at 1–2; CARU (Workshop comment 08) at 3; AAAA (Comment 134) at 2, 5; Mars (Comment 86) at 1; Time Warner (Comment 78) at 10; Viacom (Comment 79) at 9–10; Children's Television Workshop ("CTW") (Comment 84) at 2, 6. *See also* 144 Cong. Rec. at S11659 (List of Supporters of Children's Internet Privacy Language).

[157] DMA (*citing Landgraf* v. *U.S. Film Products*, 511 U.S. 244 (1994)). *See also* EdPress (Comment 130) at 2; AAF (Comment 87) at 3–4; ANA (Comment 93) at 3–4; Grolier Enterprises (Comment 111) at 4; IDSA (Comment 103) at 7–8; McGraw-Hill (Comment 104) at 5; MPA (Comment 113) at 4; NRF (Comment 95) at 1–2; Time Warner Inc. (Comment 78) at 3–4; Walt Disney Company and Infoseek Corp. ("Disney, et al.") (Comment 82) at 12–13.

[158] IDSA (Comment 103) at 7; TRUSTe (Comment 97) at 2–3.

[159] *See, e.g.*, 15 U.S.C. 6502(b)(1)(B)(ii) (giving parents the opportunity at any time to refuse to permit further use, disclosure, or maintenance of information collected from their children); 15 U.S.C. 6502(b)(1)(A)(ii) (requiring operators to obtain verifiable parental consent for the collection, use, and/or disclosure of personal information from children).

[160] *See* 144 Cong. Rec. at S11658 (Statement of Sen. Bryan) (stating that parents can opt out of further collection, use, or maintenance of their child's information and that "[t]he opt out * * * operates as a revocation of consent that the parent has previously given").

Many commenters also objected to the requirement that operators obtain a new parental consent for any changes to the collection, use, and/or disclosure practices which were the subject of a previous consent.[162] As in the notice section of the Rule,[163] they argued that notification of minor changes would be extremely burdensome, especially in light of constant changes taking place in the online world, and unnecessary to achieve the purposes of the COPPA.[164] As noted above, the Commission agrees that the proposed requirement is unduly broad and would be overly burdensome, and is therefore amending the Rule to make clear that a new parental consent is required only if there is a material change in the operator's collection, use, and/or disclosure practices.

Finally, some commenters objected to the proposed Rule's requirement that parents be given an opportunity to provide consent for the collection and use of information without consenting to its disclosure to third parties.[165] Commenters argued that this requirement is not included in the COPPA and that it interferes with an operator's right under the COPPA to terminate service to a child whose parent refuses to permit further use, maintenance, or collection of the data.[166] Other commenters supported this requirement as important to the protection of children's privacy.[167]

The Commission believes that giving parents a choice about whether information can be disclosed to third parties implements the clear goals of the COPPA to give parents more control over their children's personal information, limit the unnecessary collection and dissemination of that information, and preserve children's access to the online medium.[168] The Act requires consent for the collection, use, or disclosure of information,[169] thus expressing the intent that parents be able to control all of these practices. Although the Act does not explicitly grant parents a separate right to control disclosures to third parties, the Commission believes that this is a reasonable and appropriate construction of the Act, particularly in light of the rulemaking record and other considerations.

Indeed, the record shows that disclosures to third parties are among the most sensitive and potentially risky uses of children's personal information.[170] This is especially true in light of the fact that children lose even the protections of the Act once their information is disclosed to third parties.[171] The Commission believes that these risks warrant providing parents with the ability to prevent disclosures to third parties without foreclosing their children from participating in online activities. In addition, the Act prohibits collecting more information than is reasonably necessary to participate in an activity,[172] showing Congressional intent to limit information practices (such as disclosures to third parties) that do not facilitate a child's experience at the site. Finally, the Commission believes that allowing parents to limit disclosures to third parties will increase the likelihood that they will grant consent for other activities and therefore preserve children's access to the medium.[173]

Thus, the Commission believes that providing parents with a choice about whether their children's information can be disclosed to third parties is within the authority granted by the COPPA, consistent with the rulemaking record, and important to the protection of children's privacy. The Commission is therefore retaining this provision.

2. Section 312.5(b): Mechanisms

Section 312.5(b) of the proposed Rule required that operators make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology.[174] Consistent with the language of the COPPA, the proposed Rule further clarified that the methods used to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.[175] In the NPR, the Commission provided examples of methods that might satisfy these standards, and sought comment on the feasibility, costs, and benefits of those methods, as well as any others that the Commission should consider.[176] To gather additional relevant information, the Commission held a workshop devoted solely to this issue.[177]

While commenters and participants at the workshop generally supported the concept of prior parental consent, they differed on what would constitute a verifiable mechanism under this provision. In particular, there was considerable debate over whether e-mail based mechanisms could provide adequate assurance that the person providing consent was the child's parent.

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[161] *See GeoCities*, Docket No. C–3849 (Final Order Feb. 12,.1999); *Liberty Financial Cos., Inc.*, Docket No. C–3891 (Final Order Aug. 12, 1999). *See also* Staff Opinion Letter, July 17, 1997, issued in response to a petition filed by the Center for Media Education, at <*www.ftc.gov/os/1997/9707/cenmed.htm*>.

[162] IDSA (Comment 103) at 5–6; CBBB (Comment 91) at 13–14; DMA (Comment 89) at 26; Aftab & Savitt (Comment 118) at 5; ANA (Comment 93) at 6–7.

[163] *See* Section II.C.4, *supra*.

[164] One commenter supported this provision on the basis that not requiring it would render parental consent meaningless. Attorneys General (Comment 114) at 10. However, even one commenter who supported the requirement still expressed concern that parents might be "badgered" by too many of these requests. CME/CFA et al. (Comment 80) at 13.

[165] Section 312.5(a)(2). *See, e.g.*, DMA (Comment 89) at 25; NRF (Comment 95) at 4; McGraw-Hill (Comment 104) at 7; PMA (Comment 107) at 11.

[166] ANA (Comment 93) at 6; IDSA (Comment 103) at 4–5; DMA (Comment 89) at 25; PMA (Comment 107) at 11 (all referring to section 312.6(c) of the proposed Rule and 15 U.S.C. 6502(b)(3)). The purpose of that provision was to enable operators to offer some online activities that require children to provide personal information, *e.g.*, chat rooms, which may require the operator to collect an e-mail address for security purposes. Under that provision, operators may bar children whose parents have revoked consent for the operator's use of the necessary information from participating in those activities. The Commission does not believe that disclosure to outside parties—other than those, such as fulfillment services, that provide support for the internal operations of the website—is reasonably necessary for an operator to provide online activities.

[167] EPIC (Comment 115) at 9–10; Junkbusters (Comment 66) at 1. *See also* CDT (Comment 81) at 25; CME/CFA et al. (Comment 80) at 13; Sovern (Comment 33) at 4; Mars (Comment 86) at 12–13; TRUSTe (Comment 97) at 2.

[168] *See, e.g.*, 144 Cong. Rec. at S11657, S11658 (Statement of Sen. Bryan).

[169] 15 U.S.C. 6502(b)(1)(A)(ii).

[170] *See* CME/CFA et al. (Comment 80) at 26–27; Mars (Comment 86) at 13; Kraft (Comment 67) at 4–5; Viacom (Comment 79) at 13–14. *See also* Attorneys General (Comment 114) at 4 (*citing* 1997 survey showing that 97% of parents whose children use the Internet believe that website operators should not sell or rent children's personal information).

[171] Thus, for example, parents cannot access information in the possession of third parties, or require that it be deleted, as they can for operators subject to the Rule. *See* 15 U.S.C. 6502(b)(1)(B)(ii),(iii). Nor can they prohibit future use of information in the possession of third parties. *Compare* 15 U.S.C. 6502(b)(1)(B)(ii). In fact, parents are likely to be unaware of the identities and specific information practices of many of the third parties that obtain their children's information. *See* Section II.C.3.d, *supra* (operators need only disclose types of business engaged in by third parties and whether those third parties have agreed to maintain the confidentiality, security, and integrity of personal information received from operator).

[172] 15 U.S.C. 6502(b)(1)(C) (prohibiting an operator from conditioning participation on the disclosure of more information than necessary to participate in an activity).

[173] One study found that 97% of parents online did not want their children's information disclosed to third parties, suggesting that those parents would be more likely to grant consent if they could limit such disclosures. Louis Harris & Associates and Dr. Alan F. Westin, "Commerce, Communication, and Privacy Online: A National Survey of Computer Users," 1997, at 75.

[174] 64 FR at 22756, 22765.

[175] *Id.*; 15 U.S.C. 6501(9).

[176] 64 FR at 22756.

[177] 64 FR at 34595.

Because of concerns that a child using e-mail could pretend to be a parent and thereby effectively bypass the consent process,[178] some commenters favored methods that would provide additional confirmation of the parent's identity.[179] These include use of a form to be signed by the parent and returned to the operator by postal mail or fax ("print-and-send"); (2) use of a credit card in connection with a transaction; (3) having the parent call a toll-free number staffed with trained personnel; (4) use of e-mail accompanied by a valid digital signature; and 5) other electronic methods that are currently available or under development.

Some commenters took the position that print-and-send was the method least subject to falsification;[180] they also noted that, because it is used by schools, most parents are familiar with it.[181] In addition, participants at the workshop noted that industry members currently use print-and-send to ensure that they are obtaining parental permission in certain circumstances—for example, when obtaining consent to publish a child's art work or letter, or to send a contest winner a prize.[182] Commenters also supported the use of credit cards in obtaining parental consent on the grounds that few, if any, children under the age of 13 have access to credit cards.[183] With regard to the use of a toll-free number, commenters and workshop participants noted that, with proper training, employees can easily learn to differentiate between children and adult callers, and that parents prefer this method.[184] Commenters also supported use of digital signatures to obtain consent, stating that they would effectively verify identity and are currently available.[185] Finally, testimony at the workshop showed that there are a number of other electronic products and services that are available now, or under development, that could be used to confirm a parent's identity and obtain consent. These included services that would provide a parent with a digital signature, password, PIN number, or other unique identifier after determining that the person seeking the identifier is an adult.[186]

Many commenters, however, criticized some of these methods for the costs and burdens they are likely to impose on operators. Regarding print-and-send, one commenter cited a figure of $2.81 per child to process mailed or faxed parental consent forms.[187] Another noted an 80% decline in online subscriptions to its magazine when it switched from an online subscription model to a form that had to be downloaded and mailed.[188] Still others pointed out that there is no way to authenticate a signature to be sure that it is actually the parent who has signed the form.[189]

Regarding the use of credit cards, commenters noted that operators would be charged a fee for each transaction,[190] that not every parent has a credit card,[191] and that some parents do not like to use credit cards online.[192] One credit card company opposed the use of credit cards in this manner because it could foster unauthorized use and undermine systems used to detect fraud.[193] Commenters also noted that the use of a toll-free number would require operators to hire personnel just to answer phones, and would therefore be costly.[194] Finally, a number of commenters contended that while digital signatures and other electronic methods may be promising alternatives, they are not yet widely available, and therefore are impracticable as current methods of compliance.[195]

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[178] This is of particular concern where a child shares an e-mail account with a parent, which is a common practice. *See* CME/CFA et al. (Comment 80) at 28· APA (Comment 106) at 2; Attorneys General (Comment 114) at 11; AETN (Comment 90) at 17–18. In fact, one workshop participant reported that 40% of its registered parents shared an e-mail address with their children. Aledort/Disney (Workshop Tr.153). Another participant reported that 10–20% of its registered parents shared the same e-mail address as their children. Herman/iCanBuy.com (Workshop Tr 153–54).

[179] CME/CFA et al. (Comment 80) at 28; APA (Comment 106) at 1–2; Nat'l Ass'n of Elementary School Principals ("NAESP") (Comment 96) at 1; CARU (Workshop comment 08) at 1–2; Consumers Union (Comment 116) at 5–6. *See also* Attorneys General (Comment 114) at 11 (supporting the traditional offline consent methods). One commenter stressed the need for a high standard for parental consent because children under the age of 13 do not have the developmental capacity to understand the nature of a website's request for information and its implications for privacy. APA (Comment 106) at 1–2.

[180] CBBB (Comment 91) at 18; CARU (Workshop comment 08) at 2; NAESP (Comment 96) at 1.

[181] NAESP (Comment 96) at 1. This commenter noted that young children rarely falsify their parents' signatures. *Id. See also* Douglas L. Brown (Comment 21); Don and Annette Huston (Comment 22).

[182] Bagwell/MTV Networks Online (Workshop Tr. 30, 35); Randall/MaMaMedia (Workshop Tr. 28); Aledort/Disney (Workshop Tr. 151); FreeZone Network (IRFA comment 01) at 2; Aftab & Savitt (Comment 118) at 6. One comment identified four children's websites that have implemented offline consent mechanisms pursuant to the CARU guidelines. CARU (Workshop comment 08) at 2; *see also* CBBB (Comment 91) at 23.

[183] AOL (Comment 72) at 18–19; iCanBuy.com (Comment 101) at 1; Mars (Comment 86) at 13. Among other things, credit cards can be used to set up a "master account" for the parent with an e-mail address to be used exclusively by the parent. Curtin/AOL (Workshop Tr. 36–7); Aftab (Comment 117) at 3. *See also* KidsOnLine.com (Comment 108) at 3; Talk City (Comment 110) at 3 (supporting the use of a credit card as a method of consent).

[184] CARU (Workshop comment 08) at 2; CME/CFA et al. (Comment 80) at 14; Aftab (Workshop Tr. at 52).

[185] *See* Brandt/VeriSign (Workshop Tr. 199–202) and (Comment 99) at 1–4 (stating that one year to 18 months would be sufficient time for testing and adoption of digital technology applications); Teicher/CyberSmart! (Workshop Tr. 191–92, 199); Lucas/PrivaSeek (Workshop Tr. 244–45, 299–300) and (Comment 112) at 4 (noting that the next step is the adoption of digital signatures by online businesses so that they can be made widely available to consumers); Hill/ZeroKnowledge (Workshop Tr. 269–73); Johnson/Equifax Secure, Inc. (Workshop Tr. 250–59).

[186] For example, one workshop participant described a service now under development which would use schools to assist in issuing a digital certificate to a child after obtaining parental consent. Teicher/CyberSmart! (Workshop Tr. 190–94; 196–97; 199). Another announced that his portal site would soon launch an e-mail authentication system that could verify the age or profession of a person, and then assign that person an e-mail address associated with his age or status, *e.g.*, *John.doe@validadult.com; Mary.teacher@validteacher.com*. Ismach/BizRocket.com (Workshop comment 12) at 1–3; (Workshop Tr. 231–232). Still another has developed a permission-based infomediary service that will enable consumers to set their preferences as to how their information may be disclosed online. PrivaSeek (Comment 112) at 1. Under this service, which is expected to be launched by the end of the year, a parent could be assigned a password or digital signature following initial verification. The charge to participating websites is anticipated to be $0.10-$0.20 per name. Lucas/PrivaSeek (Workshop Tr. 242–49); PrivaSeek (Comment 112) at 1.

In addition, another company is currently providing digital credentials (a certificate, PIN or password) to consumers after authenticating their identity. The company estimates that the cost for sites to use this service is $3 to $4 per customer. Johnson/Equifax Secure (Workshop Tr. 249–59). Another company offers a service that enables a child to make purchases, with a parent's permission, at participating websites. Parents use a credit or debit card to establish an account and then authorize the sites to be accessed and the amounts to spend. Herman/iCanBuy.com (Workshop Tr. 185–190). Yet another company is also planning to launch (by spring 2000) a free verification service that uses both credit and bank cards in conjunction with algorithms to verify the validity of the card numbers. The card number would be checked at the consumer's browser and would not be collected or transferred over the Internet, addressing some consumers' concerns about using credit cards online. Oscar Batyrbaev (Comment 125) at 1; Batyrbaev/eOneID.com (Workshop Tr. 235–39). Parents without online access will be able to obtain verification by telephone. *Id.*

Finally, another online company will provide parents and children with digital pseudonyms that, following initial verification using a digital signature, can be used to verify identity. Hill/ZeroKnowledge (Workshop Tr. 268–73). *See also* Brandt/VeriSign (Workshop Tr. 195–96, 199–202).

[187] Clarke/KidsCom.com (Workshop Tr. 22). *See also* Cartoon Network et al. (Comment 77) at 8 (estimating that cost to open and sort written consent forms is about $0.08 to $0.31 per child). Another comment estimated that the cost per consent by fax and mail, including overhead, were $0.94 and $0.89, respectively. Zeeks.com (IRFA comment 05) at Attachment ("Compliance Cost Estimate").

[188] Time Warner (Comment 78) at 11. Other commenters stated that offline methods might be inconvenient or labor-intensive for parents. Dell (Comment 102) at 2; Cartoon Network et al. (Comment 77) at 6; DMA (Comment 89) at 6–8; Grolier (Comment 111) at 1–2.

[189] Richard Storey (Comment 02) at 1; PMA (Comment 107) at 3–4, 10; PrivaSeek Inc. (Comment 112) at 3.

[190] Disney et al. (Comment 82) at 8; MPA (Comment 113) at 5; DMA (Comment 89) at 7. Two comments stated that credit cards cost up to $3 per verification to process. Cartoon Network et al. (Comment 77) at 10–11; DMA (Comment 89) at 7. One company experienced costs ranging from $2 to $3 per verification. Aftab (Workshop Tr. 17).

[191] McGraw-Hill (Comment 104) at 3; Cartoon Network et al. (Comment 77) at 9; KidsOnLine.com (Comment 108) at 3; DMA (Comment 89) at 7. Some commenters also thought consumers might be troubled by the privacy implications of divulging personal information for the purpose of granting consent. Brian Burke (Comment 05); Disney et al. (Comment 82) at 9; PrivaSeek (Comment 112) at 3; Cartoon Network et al. (Comment 77) at 9–10; PMA

In response to a request for comment on whether e-mail alone would satisfy the Act's requirements, commenters presented a variety of views. A number of commenters opposed use of e-mail on the grounds that it is easily subject to circumvention by children.[196] While a significant number of commenters advocated the use of e-mail,[197] most of them acknowledged that taking additional steps in conjunction with e-mail would increase the likelihood that the consent was submitted by the parent and not the child.[198] Such steps would include: the use of PIN numbers or passwords;[199] sending follow-up e-mails to the parent to increase the likelihood that the parent will see the request for consent;[200] or allowing e-mail consent only if the parent and child have different e-mail addresses.[201] Still others recommended including in the e-mail questions to which the child would be unlikely to know the answer.[202]

Finally, many commenters urged the Commission to temporarily adopt a standard under which the consent mechanism required would depend upon how the operator intended to use the information (*i.e.*, a "sliding scale").[203] Such an approach would permit operators to obtain consent at a reasonable cost until secure electronic mechanisms become more widely available and affordable. Generally, these commenters advocated use of an e-mail based mechanism for purposes of consenting to an operator's *internal* use of information, such as an operator's marketing to a child based on the child's preferences, but a "higher" method of consent, such as use of a credit card or print-and-send form, for purposes of consenting to activities that present greater risks to children.[204] In comments and at the workshop, commenters cited public postings by children (*e.g.*, in chat rooms and on bulletin boards), as well as disclosures of information to third parties, as activities that pose such risks.[205] Other commenters opposed the "sliding scale" on the ground that it could permit the use of consent mechanisms that fall short of the COPPA's requirements.[206]

In determining whether a particular method of obtaining consent is "verifiable" under the COPPA, the Commission must consider: (1) whether the method ensures that it is the parent providing the consent; and (2) whether the method is a "reasonable effort," taking into consideration available technology. In determining what is a "reasonable effort" under the COPPA, the Commission believes it is also appropriate to balance the costs imposed by a method against the risks associated with the intended uses of the information collected. Weighing all of these factors in light of the record, the Commission is persuaded that temporary use of a "sliding scale" is an appropriate way to implement the requirements of the COPPA until secure electronic methods become more available and affordable.

The record shows that certain methods of consent—print-and-send, credit card, toll-free number with trained personnel, and digital signature—provide appropriate assurances that the person providing consent is the child's parent, and thus satisfy the first part of the inquiry.[207] In addition, testimony at the Commission's workshop shows that a number of electronic products and services, which could also be used to verify a parent's identity and obtain consent, are currently available or under development.[208] The record also shows, however, that some of these methods may be costly and others may not be widely available at the present time.

(Comment 107) at 110; EPIC (Comment 115) at 10; DMA (Comment 89) at 7; Viacom (Comment 79) at 11.

[192] Cartoon Network et al. (Comment 77) at 9–11; DMA (Comment 89) at 7; PMA (Comment 107) at 10; Viacom (Comment 79) at 11.

[193] Visa USA, Inc. (Comment 75) at 2. The Commission recognizes that there may be risks in using credit cards for this purpose, but notes that this method is already being used for similar purposes—for example, to verify that a person is over 18 for purposes of obtaining access to adult materials online. *See* amicus of Senators Oxley and Coates; eOneID.com (Workshop comment 09) at Appendix A.

[194] Alison J. Richards (Comment 105) at 1; MPA (Comment 113) at 5; Cartoon Network et al. (Comment 77) at 11–2. One commenter estimated that the cost for telephone consents would be $0.97 for an automated answering system, the tapes of which would then need to be manually swept to weed out children and enter data into the system. Zeeks.com (IRFA Comment 05) at Attachment ("Compliance Cost Estimate"). Another commenter estimated the cost of a live operator to be $55 per hour plus training costs. Cartoon Network et al. (Comment 77) at 12.

[195] Richard Storey (Comment 02) at 1; Viacom (Comment 79) at 12; Disney et al. (Comment 82) at 8–9; DMA (Comment 89) at 5; Alison J. Richards (Comment 105) at 1; Amazon.com (Comment 109) at 3; Cartoon Network et al. (Comment 77) at 13–15; Grolier (Comment 111) at 1; CBBB (Comment 91) at 16–17.

[196] Attorneys General (Comment 114) at 11; Robert F. Reid (Comment 06); Joseph C. DeMeo (Comment 08); Patrick O'Heffernan (Comment 17); NAESP (Comment 96) at 1; APA (Comment 106) at 2; Consumers Union (Comment 116) at 5; CME/CFA et al. (Comment 80) at 15.

[197] Cartoon Network et al. (Comment 77) at 15–18; Disney et al. (Comment 82) at 7–9; Time Warner (Comment 78) at 10–11; DMA (Comment 89) at 5–6. Several commenters stated that Congress must have intended e-mail to be used for consent purposes because the Act allows online contact information to be collected for the purpose of seeking parental consent. *Id.* (*citing* 15 U.S.C. 6502(b)(2)(B)). Some commenters stated that, in their experience, parents preferred to use e-mail to grant consent. Bagwell/MTV Networks Online (Workshop Tr. 33–34); Aftab (Workshop Tr. 31).

[198] *See* Aledort/Disney (Workshop Tr. 149–51); Bruening/TRUSTe (Workshop Tr. 39); CARU (Workshop comment 08) at 2; Viacom (Comment 79) at 13; Cartoon Network et al. (Comment 77) at 17; NRF (Comment 95) at 4.

[199] AAAA (Comment 134) at 2; ANA (Comment 93) at 2; Talk City (Comment 110) at 3.

[200] Disney et al. (Comment 82) at 9; DMA (Comment 89) at 6.

[201] AAAA (Comment 134) at 2; ANA (Comment 93) at 2; NRF (Comment 95) at 4; MPA (Comment 113) at 5; DMA (Comment 89) at 6. The Commission notes that, because children can easily obtain multiple e-mail addresses from free e-mail services, this method may not ensure verifiability.

[202] NRF (Comment 95) at 4; Cartoon Network et al. (Comment 77) at 17; Time Warner (Comment 78) at 11; DMA (Comment 89) at 6. The Commission notes that this method could pose problems if it requires operators to verify the "answer" to the questions, or if the child is reasonably sophisticated.

[203] *See, e.g.*, Cartoon Network et al. (Comment 77) at 18 (suggesting that sliding scale sunset in five years); DMA (Workshop comment 02) at 1–3 (suggesting that the Commission reexamine the scale after a specific period of time or at a point when technology has changed); Viacom (Comment 79) at 9–10, 12–14 (five year sunset date); Kraft (Comment 67) at 5; Bagwell/MTV Networks Online (Workshop Tr. 32–33); CBBB (Comment 91) at 15–18; CTW (Comment 84) at 6–7; CARU (Workshop Comment 08) at 1–2; Mars (Comment 86) at 13–14; PMA (Comment 107) at 4, 11. *See also* Herman/iCanBuy.com (Workshop Tr. 209) (if adopted, should sunset within 12–18 months); Teicher/CyberSmart! (Workshop Tr. 199) (predicting significant changes in technology that would permit sunset within 18 months).

[204] Bagwell/MTV Networks Online (Workshop Tr. 32–33); Kraft (Comment 67) at 5.

[205] Kraft (Comment 67) at 4–5; Cartoon Network et al. (Comment 77) at 18; ANA (Comment 93) at 2; CBBB (Comment 91) at 15–18; PMA (Comment 107) at 11; CARU (Workshop Comment 08) at 1; Viacom (Comment 79) at 13; and Bagwell/MTV Networks Online (Workshop Tr. 33). The legislative history also reflects special concern for children's safety in such online fora as chat rooms, home pages, and pen-pal services in which children may make public postings of identifying information. *See* 144 Cong. Rec. S11657 (Statement of Sen Bryan).

[206] *See, e.g.*, CME/CFA et al. (Comment 80) at 7.

[207] Print-and-send and digital signatures were listed as acceptable consent mechanisms in Senator Bryan's Floor Statement. *See* 144 Cong. Rec. S11657.

[208] *See* note 186, *supra*, describing such services

Therefore, under the second prong of the inquiry, the Commission believes that, until reliable electronic methods of verification become more available and affordable, these methods should be required only when obtaining consent for uses of information that pose the greatest risks to children.

Thus, under the "sliding scale," the more reliable methods of consent will be required for activities involving chat rooms, message boards, disclosures to third parties, and other "disclosures" as defined in Section 312.2 of the Rule.[209] As noted above, these methods include the methods identified in the NPR (print-and-send, credit card, toll-free number, and digital signatures),[210] as well as other reliable verification products and services to the extent that they are currently available. To minimize costs, the Rule makes clear that such methods also include the use of e-mail, as long as it is accompanied by a PIN or password obtained through one of the above procedures.[211]

For internal uses of information, operators will be permitted to use e-mail to obtain consent, as long as some additional steps are taken to provide assurances that the parent is providing the consent. Based on the comments, the Commission is persuaded that e-mail alone does not satisfy the COPPA because it is easily subject to circumvention by children.[212] The additional steps include sending a delayed confirmatory e-mail to the parent following receipt of consent, or obtaining a postal address or telephone number from the parent[213] and confirming the parent's consent by letter or telephone call.[214] If such consent mechanisms are used, the operator must notify parents that they can revoke any consent given in response to the earlier e-mail.

Based on evidence in the record, the Commission believes that use of a "sliding scale" is necessary only in the short term, and that, with advances in technology, companies will soon be able to use more reliable verifiable electronic methods in all of their transactions.[215] Indeed, as noted above, the record shows that a number of products and services, including digital signatures, will soon be more widely available to facilitate verifiable parental consent at reasonable cost. The Commission therefore plans to phase out the "sliding scale" two years from the effective date of the Rule (*i.e.*, April 2002), unless presented with evidence showing that the expected progress in available technology has not occurred.[216] The Commission will conduct a review of this issue, using notice and comment, approximately eighteen months from the effective date of the Rule (*i.e.*, in October 2001).

The Commission believes that temporary adoption of this "sliding scale" fulfills the statutory requirement that efforts to provide "verifiable parental consent" be "reasonable." It provides operators with cost-effective options until more reliable electronic methods become available and affordable, while providing parents with the means to protect their children.

3. Section 312.5(c): Exceptions to Prior Parental Consent

The COPPA sets forth five exceptions to the general requirement that operators obtain verifiable parental consent before collecting personal information from children.[217] These limited exceptions were intended to facilitate compliance with the Rule, allow for seamless interactivity in a wide variety of circumstances, and enable operators to respond to safety concerns.[218] Indeed, many of the concerns raised by the commenters, are, in fact, addressed in these exceptions.[219]

This subsection of the proposed Rule permitted an operator, without prior parental consent, to collect: (1) a parent's or child's name and online contact information to seek parental consent or to provide parental notice;[220] (2) a child's online contact information in order to respond on a one-time basis to a specific request of the child (e.g., to provide one-time homework help or to send a document);[221] (3) a child's online contact information in order to respond directly more than once to a specific request of the child (e.g., to provide an online magazine subscription, or a contest entry and subsequent award)[222] when such information is not used to contact the child beyond the scope of that request, and the operator provides the parent with notice and an opportunity to opt-out;[223] and (4) the name and online contact information of the child to the extent reasonably necessary to protect the safety of a child participating on the website.[224] Furthermore, under the proposed Rule, the operator may collect, use, or disseminate such information as necessary to protect the security or the integrity of the site or service, to take precautions against liability, to respond to judicial process, or, to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation related to public safety.[225] A workshop participant noted that these exceptions include some of the most popular and common online activities.[226]

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[209] *See also* 15 U.S.C. 6501(4).

[210] 64 FR at 22756.

[211] For example, there may be verifying services available to operators that would verify a parent's identity and then provide the parent with a PIN or password for use with e-mail. Upon receipt of the parent's consent via e-mail, an operator could confirm the parent's identity with the verifying service. Similarly, as noted above, an operator could use e-mail, as long as it were sent through an account set up by an adult using a credit card (a "master account"), and reserved for the adult's use. *See* note 184, *supra*.

[212] Attorneys General (Comment 114) at 11; Robert F. Reid (Comment 06); Joseph C. DeMeo (Comment 08); Patrick O'Hefferman (Comment 17); NAESP (Comment 96) at 1; APA (Comment 106) at 2; Consumers Union (Comment 116) at 5; CME/CFA et al. (Comment 80) at 28. In particular, where a parent and child share the same e-mail account, as is often the case, a child may easily pretend to be the parent and provide consent for himself. *See* note 179, *supra*.

[213] The Commission expects that operators will keep confidential any information obtained from parents in the course of obtaining parental consent or providing for parental review of information collected from a child.

[214] One variation on this approach would require not only a confirmatory e-mail to the parent, but also a response from the parent confirming the consent. Aledort/Disney (Workshop Tr. 149–150). *See also* Disney (Workshop comment 06) at 12. Using this method, one workshop participant reported that 33% of parents granted consent; 30% declined consent; and 37% never responded. Aledort/Disney (Workshop Tr. 152).

[215] Likewise, with advances in technology, the use of e-mail (without the more reliable methods of verification) may no longer be regarded as a "reasonable effort" under the Rule.

[216] Comments and testimony at the workshop showed that digital signatures and other reliable electronic methods are likely to be widely available and affordable within approximately a year to eighteen months from the July 1999 the workshop. *See* Brandt/VeriSign (Workshop Tr. 199–202). *See also* note 188, *supra* (other secure electronic methods are available now or will be available within a year from the date of the workshop). Thus, the proposed Rule's longer timetable for implementing the "sliding scale"—two years from the Rule's effective date or almost *three* years from the date of the workshop—should provide ample time for these mechanisms to develop and become widely available.

[217] 15 U.S.C. 6502(b)(2).

[218] *See* 144 Cong. Rec. S11658 (Statement of Sen. Bryan).

[219] *See, e.g.*, Section II.A.8, *supra*, regarding the use of the exception to maintain website security.

[220] Section 312.5(c)(1).

[221] Section 312.5(c)(2). This exception also requires that the operator not use the information to recontact the child and that the operator delete the information from its records. If the website wishes to retain the child's e-mail address for future homework assistance, then it would fall into the scope of the exception in section 312.5(c)(3) and require parental notice and opt-out. Moreover, if the operator wishes to use the information collected under this—or any other—exception for other purposes, then the operator must follow the notice and consent requirements of the Rule.

[222] Section 312.5(c)(3). Sending an electronic postcard where the website retains the online contact information until the postcard is opened would fall under this exception. However, where the operator's postcard system sends the requested postcard without maintaining the online contact information, this collection would fall under section 312.5(c)(2).

[223] Section 312.5(c)(3).

[224] Section 312.5(c)(4). For example, operators may collect online contact information from children participating in their chat rooms in order to report to authorities a child's claim that he is being abused.

A number of commenters had specific suggestions with regard to modifying the exceptions.[227] However, the Commission believes that the exceptions, which closely track the statutory language, strike the appropriate balance between an operator's legitimate need to collect information without prior parental consent and the safety needs of children. It is therefore retaining the language of the exceptions as proposed.

4. Response to Comments Requesting an Exception for Information Collection in the Educational Setting

Numerous commenters raised concerns about how the Rule would apply to the use of the Internet in schools.[228] Some commenters expressed concern that requiring parental consent for online information collection would interfere with classroom activities, especially if parental consent were not received for only one or two children.[229] In response, the Commission notes that the Rule does not preclude schools from acting as intermediaries between operators and parents in the notice and consent process, or from serving as the parents' agent in the process. For example, many schools already seek parental consent for in-school Internet access at the beginning of the school year. Thus, where an operator is authorized by a school to collect personal information from children, after providing notice to the school of the operator's collection, use, and disclosure practices, the operator can presume that the school's authorization is based on the school's having obtained the parent's consent.

Operators may wish to work with schools to educate parents about online educational activities that require websites to collect personal information in the school setting. To ensure effective implementation of the Rule, the Commission also intends to provide guidance to the educational community regarding the Rule's privacy protections.

E. Section 312.6: Right of Parent To Review Personal Information Provided by Child

Section 312.6 of the proposed Rule set forth the requirements for providing parental access to personal information collected from the child, including what information must be disclosed and how the parent could be properly identified.[230] In the NPR, the Commission sought comment regarding methods of identification, particularly in non-traditional family situations, and technological advances under development that might ease the process.[231]

1. Access to Information

The proposed Rule contemplated a two-step approach to parental review under §§ 312.6(a) (1) and (3). First, upon request of a properly identified parent, the operator was required to tell the parent what types of personal information have been collected from the child (*e.g.*, "Your child has given us his name, address, e-mail address, and a list of his favorite computer games"). Second, if requested, the operator was required to provide the specific personal information collected from the child.[232]

One commenter suggested that operators be required to provide parents with the option of directly requesting the specific information collected.[233] As was explained in the NPR, operators, after obtaining proper identification, can in fact skip the first step relating to disclosure of the types of information collected, and simply allow parents to review the specific information.[234] Section 312.6(a) was not intended to mandate unnecessary steps, but rather to allow for flexibility for all parties. In some instances, parents may be satisfied with learning the types of information collected and may not need to see the specific personal information provided by the child. Similarly, if a parent asks only for the specific information collected from the child, the operator need not first provide a general list of the categories of information collected.[235]

Another commenter called for operators to provide information within a reasonable time or within a specified number of days, and suggested that information should be provided to parents on an ongoing basis.[236] The Commission declines to prescribe a specific time period applicable to all parental requests for information, but expects that operators will respond to such requests promptly and without imposing undue burdens on parents. In addition, the Commission believes that requiring operators to provide information to the parent on an ongoing basis would be unduly burdensome for both operators and parents, who may not need or want this information from the operator.

2. Parent's Right To Review Information Provided by the Child

Sections 312.6(a)(2) and (3) of the proposed Rule allowed parents to review, change, and delete personal information collected from their children.[237] Many commenters objected to granting parents the right to change information,[238] asserting that it was unduly burdensome and went beyond the language of the Act.[239] Other commenters noted that a right to alter data is much broader than the right to correct data,[240] and expressed concern that parents might use this right to change or delete grades or test scores at educational sites in conflict with federal education statutes and state policies.[241]

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[225] Section 312.5(c)(5). Thus, an operator may collect limited information in order to protect the security of its site, for example, from hackers.

[226] Sehgal-Kolbet/CARU (Workshop Tr. 40–41). *See also* CARU (Workshop comment 08) at 2–3.

[227] For example, some commenters suggested that the Rule define "a reasonable time" for obtaining consent and deleting information under section 312.5(c)(1). PMA (Comment 107) at 12; Mars (Comment 86) at 14; CBBB (Comment 91) at 19; CME/CFA et al. (Comment 80) at 14. *See also* CDT (Comment 81) at 27. The Commission believes that the time period for obtaining consent may vary depending on the mechanism used; however, it expects operators to delete information obtained under this exception in a timely manner.

[228] Association of American Publishers ("AAP") (Comment 70) at 4–5; EdPress (Comment 130) at 1–2; MaMaMedia (Comment 85) at 3–4; ZapMe! (Comment 76) at 4–5; ALA (Comment 68) at 2–3.

[229] *Id.*

[230] 64 FR at 22757–58, 22766.

[231] 64 FR at 22762–63.

[232] 64 FR at 22757–22758.

[233] CME/CFA et al. (Comment 80) at 16.

[234] 64 FR at 22758 n.11. However, as noted in the discussion of parental verification below, the Commission has modified the Rule to require proper identification only for access to the child's specific personal information, not for the types of information collected, as originally proposed.

[235] One commenter suggested that parental access be limited in cases where the operator has collected minimal personal information, such as an e-mail address for the sole purpose of sending a periodic newsletter or similar mailing, to a simple confirmation that the child is on the mailing list. AOL (Comment 72) at 19. In response, the Commission notes that the COPPA requires access to all information collected from children, regardless of the circumstances. *See* 15 U.S.C. 6502(b)(1)(B).

[236] Sovern (Comment 33) at 5.

[237] 64 FR at 22757–58, 22766.

[238] *See* NRF (Comment 95) at 4; DMA (Comment 89) at 17–19; ANA (Comment 93) at 6; MPA (Comment 113) at 5–6. *See also* McGraw-Hill (Comment 104) at 8.

[239] Commenters also asserted that allowing parents to change the information provided by their children threatens the confidentiality, security, and integrity of information in the operator's possession, putting the operator in jeopardy of violating section 312.8 of the Rule. *See* NRF (Comment 95) at 4; DMA (Comment 89) at 17–19; MPA (Comment 113) at 5–6. *See* also McGraw-Hill (Comment 104) at 8; Section II.G, *infra*. Two commenters also stated that this provision was unnecessary in light of the parent's right under section 312.6(a)(2) to prohibit further collection, use, and maintenance of information and to have information deleted. NRF (Comment 95) at 4; MPA (Comment 113) at 5–6.

[240] DMA (Comment 89) at 17–18; MPA (Comment 113) at 5–6.

Based on the comments, the Commission is revising the Rule to eliminate the proposed Rule's requirement that parents be allowed to change information provided by their children. Even in the absence of a regulatory requirement, however, the Commission believes that operators may choose to permit parents to correct data given operators' strong incentives to maintain accurate information.[242] The Commission also agrees that the opportunity to refuse to permit further use or to delete information under section 312.6(a)(2) adequately protects the interests of the child and parent in this context.

One commenter noted that a child may not want a parent to know about certain information—for example where the child is seeking guidance regarding problems with the parent.[243] The Act does not give the Commission the authority, however, to exempt certain kinds of information from the right of parental review.

Another commenter asked the Commission to consider whether a parent's request to delete data should also extend to third parties who have received that information from the operator.[244] As noted above, the Act covers the actions of "operators," not third parties. However, the Commission encourages operators to structure their contractual arrangements with third parties to require compliance with requests for deletion where practicable.

One commenter asked whether and how long an operator would be required to maintain personal information for review.[245] More specifically, the commenter requested that the Commission revise the Rule to include a statement that an operator is not required to maintain all personal information collected from the child indefinitely in anticipation of a subsequent request for review by a parent.[246] This is particularly important, noted the commenter, where an operator wishes to delete personal information quickly—for example when monitoring a chat room or message board.[247] The Commission does not believe it is necessary to so modify the Rule, but reiterates that if a parent seeks to review his child's personal information after the operator has deleted it, the operator may simply reply that it no longer has any information concerning that child.

Another commenter asserted that Congress did not intend that an operator be required to scour all of its databases for all personal information about a child, whether collected online or offline, in response to a request from the parent.[248] As currently amended, the Rule applies only to personal information submitted online,[249] and, therefore, a parent's access rights under the Act do not generally extend to data collected offline.[250] Nevertheless, if an operator maintains the information such that its source (online or offline) cannot be determined, the Commission would expect the operator to allow the parent to review all of the information. Similarly, if the operator has collected information prior to the effective date of the Rule, but maintains it in a database with information collected online after the effective date in such a way that its source cannot be determined, then the operator should allow the parent access to all of the information.

3. Right To Prohibit Further Use and Collection of the Child's Information

Section 312.6(a)(2) of the proposed Rule allowed parents to refuse to permit the operator's further use or collection of the child's personal information and to direct the operator to delete the information.[251] One commenter asserted that, according to the legislative history, the parental opt-out serves as a revocation of previous consent but does not preclude the operator from seeking consent from the parent for the same or different activities in the future.[252] Therefore, this commenter suggested revising the provision to specify that the refusal was limited to activities covered "under the consent previously given."[253] The Commission agrees with the commenter's interpretation of this provision, but believes that such a modification is not necessary. The Act requires operators to allow parents to refuse to permit further use or future collection of personal information from their children.[254] Operators, however, are free to request a new consent from a parent if the child seeks to participate at the site in the future.[255]

4. Parental Verification

The COPPA requires operators to provide parents with "a means that is reasonable under the circumstances for the parent to obtain any personal information collected from [the] child."[256] In recognition of the danger inherent in requiring an operator to release a child's personal information, the Commission, in section 312.6(a) of the proposed Rule, required operators to ensure that the person seeking to review such information was the child's parent, taking into account available technology, without unduly burdening the parent.[257] In the NPR, the Commission suggested appropriate means of complying with this provision, including using a password in conjunction with the parental consent process.[258]

Some commenters contended that parental verification was not necessary for access to the types or categories of personal information collected from the child under § 312.6(a)(1).[259] The Commission agrees, particularly since the same types or categories of information must already be disclosed in the operator's notice.[260] Accordingly, the Rule has been modified to eliminate the requirement of parental identification for review of the types of information collected from children.[261] However, under § 312.6(a)(3), proper parental identification will be required for access to the specific information collected from a child.

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[241] AAP (Comment 70) at 4; McGraw-Hill (Comment 104) at 4, 8.

[242] One commenter observed that sites should be willing to permit changes as a matter of good customer service if any information is inaccurate. NRF (Comment 95) at 4. Similarly, another commenter noted that it, and many other organizations, already permit customers to correct data in some way. McGraw-Hill (Comment 104) at 8.

[243] MPA (Comment 113) at 5.

[244] Attorneys General (Comment 114) at 9.

[245] AOL (Comment 72) at 19.

[246] Such a statement was included in the NPR. 64 FR at 22758 n.12.

[247] AOL (Comment 72) at 19–20.

[248] IDSA (Comment 103) at 6–7.

[249] *See* Section II.A.2, *supra*.

[250] Operators must, however, allow parents to review information that was collected online but maintained offline.

[251] 64 FR at 22757–58, 22766. The Commission expects that operators will act upon requests under section 312.6(a)(2) in a timely fashion, especially with regard to chat and third party disclosures, where safety concerns are often heightened.

[252] DMA (Comment 89) at 19–20.

[253] Id.

[254] 15 U.S.C. 6502(b)(1)(B)(ii).

[255] Section 312.6(c) of the Rule retains the Act's proviso that an operator may terminate service to a child whose parent has refused to permit the operator's further use or collection of information from the child, or has directed the operator to delete the child's information. 15 U.S.C. 6502(b)(3). As noted in the NPR, the operator's right to terminate service to a child is limited by section 312.7 of the Rule, which prohibits operators from conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in the activity. 64 FR at 22758, 22766. Section 312.7 tracks the language of the statute. *See* 15 U.S.C. 6502(b)(1)(C). *See also* CME/CFA et al. (Comment 80) at 35–36 (supporting this reading of the Act).

[256] 15 U.S.C. 6502(b)(1)(B)(iii).

[257] 64 FR at 22757, 22766. *See also* 15 U.S.C. 6502(b)(1)(B) (requiring "proper identification" of parents).

[258] 64 FR at 22758. The other method suggested was using a photocopy of the parent's driver's license.

[259] CDT (Comment 81) at 29–30. *See also* Time Warner (Comment 78) at 13–14; DMA (Comment 89) at 17 (stringent identification requirements not necessary). One commenter stated that assuming an operator collects the same categories of information from visitors, access requirements could be met with a website form that tells parents the data categories maintained. CDT (Comment 81) at 29–30. The Commission believes that this method would be appropriate in cases where the request for information takes place online.

Another commenter suggested that parents seeking review under this section should be required to provide operators with their children's identifying information (in the categories that the operator collects) in order to prove identity.[262] The operator would then disclose only the non-individually identifiable information (*e.g.*, hobbies) that the operator had collected from the child.[263] The commenter believed that this would prevent a non-parent from obtaining information from the operator that would enable him to contact the child offline.[264] However, this procedure would not, in fact, prevent access to a child's information by someone other than the parent, because many of the child's relatives and friends would be able to provide individually identifying information such as a telephone number or address. Moreover, the Act requires parental access to "any" personal information collected from the child.[265] The Commission therefore cannot limit the disclosures as suggested.

A number of commenters addressed the methods of verification that could be used to identify parents who seek access to their children's specific personal information. Several supported the option of using a password-protected e-mail or other secure method, which was specifically suggested in the NPR.[266] Another commenter noted that, in order to discourage requests from non-parents, requests for information could be made in writing, with confirmation sent to the home address.[267] The Commission recognizes that a number of methods might be appropriate for parental verification under this section, and allows the operator the flexibility to choose among them. Consistent with the verifiable parental consent requirements for "disclosures" under the Rule, acceptable methods would include print-and-send, use of a credit card in connection with a transaction, use of a toll-free number staffed by trained personnel, digital signatures, and use of an e-mail accompanied by a PIN number or a password obtained through one of the verification methods listed above.[268]

One commenter considered photocopies of a driver's license to be unnecessarily invasive, viewing a password system as preferable.[269] While the Commission agrees that submission of a driver's license may not be preferable to some parents, it should be retained as an option.

The Commission did not receive much feedback on technological advances under development that might ease the process of parental identification. Two commenters referred to digital signatures but noted they are not yet generally available.[270] The World Wide Web Consortium's Platform for Privacy Preferences Project (P3P) was also cited as a technology under development that might be used by operators and parents in the future.[271] As noted above, the Commission will continue to monitor technological advances that might play a useful role in identifying parents.[272]

5. Good Faith and Reasonable Procedures Under Section 312.6(b)

Section 312.6(b) of the proposed Rule, which tracked the language of the Act, stated that disclosures under section 312.6(a)(3) that were made in good faith and by following reasonable procedures would not give rise to liability under any Federal or State law.[273] Nonetheless, several commenters raised concerns about liability.[274] Two commenters called for specific examples of precautions that industry could take to protect itself against liability under other laws.[275] Comments also indicated that verification methods that would satisfy section 312.6(a)(3) should be listed in the Rule itself in order to provide certainty regarding the reasonableness of an operator's action under that provision.[276] One commenter asserted that parental requests for information should be in writing so the operator has a record to show good faith compliance with the Rule.[277]

The Commission recognizes the potential risks associated with the access provision and the related concerns about liability. The Commission believes, however, that the language of the Rule, which is identical to the language set forth in the Act,[278] strikes the proper balance in protecting the interests of the child, operator, and parent. An operator can assume that if it employs reasonable procedures to implement section 312.6(a)(3), including those listed above and in the NPR,[279] an inadvertent, good faith disclosure of a child's information to someone who purports to be a parent will not give rise to liability under any Federal or State laws.

Finally, one commenter stated that reasonable procedures for disclosure should account for situations where the consenting parent is unavailable as a result of death, divorce, or desertion.[280] The Commission understands that family situations can change and that circumstances may arise where it will be necessary to provide access to a party other than the consenting parent.[281] The Rule is not intended to preclude disclosures in such circumstances as long as they satisfy the "good faith" and "reasonable procedures" standards.

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[260] *See also* 64 FR at 22758 n.13 (stating that it may be acceptable for an operator to use a less stringent method of parental identification when giving out the types of information collected from children).

[261] However, operators responding to requests under § 312.6(a)(1) may not reveal the names of any children from whom they have collected personal information. This change should also address the concerns of other commenters who felt the Commission's proposed approach to parental review was cumbersome and confusing. EPIC (Comment 115) at 5; Highlights (Comment 124) at 2–3.

[262] CDT (Comment 81) at 29–30.

[263] *Id.*

[264] *Id.*

[265] *See* 15 U.S.C. 6503(b)(1)(B).

[266] CDT (Comment 81) at 29; CME/CFA et al. (Comment 80) at 34 (supporting such a system until digital signatures become widely available); CBBB (Comment 91) at 22–24. *See* 64 FR at 22758 and n.14.

[267] MPA (Comment 113) at 4–5.

[268] As noted in note 213, *supra*, the Commission expects that operators will keep confidential any information obtained from parents in the process of obtaining consent or providing for parental review of information collected from a child.

[269] EPIC (Comment 115) at 5–6. Another commenter found requiring photocopies of drivers' licenses to be problematic since they may reveal additional personal information to the operator (such as parents' social security numbers) which parents should not be required to disclose. CME/CFA et al. (Comment 80) at 35. One commenter identified practicality and feasibility problems in connection with requiring a driver's license. CBBB (Comment 91) at 22.

[270] CME/CFA et al. (Comment 80) at 35; CBBB (Comment 91) at 16, 23–24.

[271] CBBB (Comment 91) at 23–24.

[272] *See* note 186, *supra* (discussing products and services that are available or under development).

[273] 64 FR at 22757–58, 22766. *See also* 15 U.S.C. 6502(a)(2).

[274] *See generally* DMA (Comment 89) at 15–16; Time Warner (Comment 78) at 12–13; EdPress (Comment 130) at 2.

[275] DMA (Comment 89) at 16; Time Warner (Comment 78) at 13.

[276] DMA (Comment 89) at 17; Time Warner (Comment 78) at 13.

[277] DMA (Comment 89) at 17.

[278] *See* 15 U.S.C. 6502(a)(2).

[279] 64 FR at 22757–58.

[280] CME/CFA et al. (Comment 80) at 16.

[281] It should be noted that the Rule's definition of "parent" in section 312.2 provides some flexibility in addressing changing family situations. *See* Section II.A.7, *supra*.

F. Section 312.7: Prohibition Against Conditioning a Child's Participation on Collection of Personal Information

Section 312.7 of the proposed Rule, which tracks the language of the Act and is retained in the final Rule, prohibited operators from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.[282] This section prohibits operators from tying the provision of personal information to such popular and persuasive incentives as prizes or games, while preserving children's access to such activities.

G. Section 312.8: Confidentiality, Security, and Integrity of Personal Information Collected From Children

Under section 312.8 of the proposed Rule, operators were required to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.[283] More specifically, operators must have adequate policies and procedures for protecting children's personal information from loss, misuse, unauthorized access, or disclosure. In the NPR, the Commission offered a number of options that operators could use to implement this provision,[284] and sought comment regarding practices that are commonly used, practices that provide the strongest protection, and the costs of implementation.[285] After reviewing the comments, the Commission has decided to retain this provision, which tracks the requirements of the Act.[286]

Commenters suggested procedures for complying with this provision, including: using secure web servers and firewalls;[287] deleting personal information once it is no longer being used;[288] limiting employee access to data[289] and providing those employees with data-handling training;[290] and carefully screening the third parties to whom such information is disclosed.[291] The Commission agrees that these are appropriate measures to take under this provision.

One commenter noted that security procedures requiring special hardware, software, and/or encryption are costly.[292] The Commission is mindful of the potential costs of complying with the Rule, and thus, allows operators to choose from a number of appropriate methods of implementing this provision.

H. Section 312.9: Enforcement

This section of the proposed Rule stated that a violation of the Commission's rules implementing the COPPA would be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(a)(1)(B). The Commission has modified this provision to incorporate the final citation form for relevant provisions of the Act.[293]

I. Section 312.10: Safe Harbors

1. In General

This section of the Rule provides that an operator's compliance with Commission-approved self-regulatory guidelines serves as a safe harbor in any enforcement action for violations of this Rule.[294] As the Commission noted in the NPR, this section serves as an incentive for industry self-regulation; by allowing flexibility in the development of self-regulatory guidelines, it ensures that the protections afforded children under this Rule are implemented in a manner that takes into account industry-specific concerns and technological developments.[295] To receive safe harbor treatment, an operator can comply with any Commission-approved guidelines. The operator need not independently apply for approval if in fact the operator is fully complying with guidelines already approved by the Commission that are applicable to the operator's business.[296]

In an enforcement action, the Commission has the burden of proving non-compliance with the Rule's requirements. The standards enunciated in the Rule thus remain the benchmark against which industry's conduct will ultimately be judged. Compliance with approved guidelines, however, will serve as a safe harbor in any enforcement action under the Rule. That is, if an operator can show full compliance with approved guidelines, the operator will be deemed in compliance with the Rule. The Commission retains discretion to pursue enforcement under the Rule if approval of the guidelines was obtained based upon incomplete or inaccurate factual representations, or if there has been a substantial change in circumstances, such as the failure of an industry group to obtain approval for a material modification to its guidelines.[297]

2. Criteria for Approval of Self-Regulatory Guidelines

Section 312.10(b)(1) of the proposed Rule stated that, in order to be approved by the Commission, self-regulatory guidelines must require subject operators to implement the protections afforded children under the proposed Rule.[298] Two commenters were concerned that this provision was not sufficiently flexible to serve as an incentive for self-regulation. They expressed the view that the Rule should not dictate the content of self-regulatory guidelines.[299] Another commenter stated that the Commission should allow a wide range of self-regulation.[300] The Commission believes that the language of the proposed Rule conveyed less flexibility in this regard than was originally intended. The Rule therefore clarifies that promulgators of self-regulatory guidelines may comply with this section by requiring subject operators to implement "substantially similar requirements that provide the same or greater protections for children as those contained in sections 312.2–312.8 of the Rule."[301] Under section 312.10(c) of the Rule, the burden remains with persons seeking Commission approval of guidelines to demonstrate that the guidelines in fact meet this standard.

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[282] 64 FR at 22758, 22766; 15 U.S.C. 6502(b)(1)(C). One commenter supporting this provision stated that children should not be enticed to turn over personal information. CDT (Comment 81) at 30.

[283] 64 FR at 22758–59, 22766.

[284] Protections identified in the NPR included: designating an individual in the organization to be responsible for maintaining and monitoring the security of the information; requiring passwords for access to the personal information; creating firewalls; utilizing encryption; implementing access control procedures in addition to passwords; implementing devices and procedures to protect the physical security of the data processing equipment; storing the personal information collected online on a secure server that is not accessible from the Internet; installing security cameras and intrusion-detection software to monitor who is accessing the personal information; or installing authentication software to determine whether a user is authorized to enter through a firewall. 64 FR at 22758.

[285] 64 FR at 22763.

[286] *See* 15 U.S.C. 6502(b)(1)(D).

[287] Attorneys General (Comment 114) at 12; CME/CFA et al. (Comment 80) at 36.

[288] Attorneys General (Comment 114) at 12; CME/CFA et al. (Comment 80) at 36; CDT (Comment 81) at 30.

[289] Attorneys General (Comment 114) at 12; CME/CFA et al. (Comment 80) at 36.

[290] CME/CFA et al. (Comment 80) at 36.

[291] *Id.* at 17.

[292] iCanBuy.com (Comment 101) at 4.

[293] *See* 15 U.S.C. 6502(c).

[294] Seventeen commenters addressed this provision of the proposed Rule. MaMaMedia (Comment 85) at 3–4; IDSA (Comment 103) at 7; ANA (Comment 93) at 2–3; MLG Internet (Comment 119) at 2; AAAA (Comment 134) at 4; Consumers Union (Comment 116) at 6; SNAP/CollegeEdge (Comment 123) at 1; Mars (Comment 86) at 15–16; CBBB (Comment 91) at 27–37; TRUSTe (Comment 97) at 2; Bonnett (Comment 126) at 6; DMA (Comment 89) at 27–29; CME/CFA, et al. (Comment 80) at 37; McGraw-Hill (Comment 104) at 8–9; PrivacyBot.com (Comment 32) (unpaginated); Disney (Comment 82) at 10; EPIC (Comment 115) at 6–7.

[295] 64 FR at 22759.

[296] *Id.*

[297] *Id.*

[298] *Id.*

[299] DMA (Comment 89) at 27 (stating that, rather than prescribe the content of self-regulatory guidelines, the Commission should approve guidelines based upon their "overall merits"); MLG Internet (Comment 119) at 2 (stating that the Commission should allow self-regulatory groups to create rules that meet the COPPA's goals).

[300] Mars (Comment 86) at 16.

In a similar vein, some commenters believed that the particular assessment mechanisms and compliance incentives listed as options in sections 312.10(b)(2) and 312.10(b)(3), respectively, of the proposed Rule were, in fact, mandatory practices.[302] In the NPR, the Commission sought to clarify that these sections set out performance standards and that the listed methods were only suggested means for meeting these standards.[303] In light of the confusion evidenced by the comments, the Commission has amended these sections to make this express.[304]

Thus, section 312.10(b)(2) of the Rule makes explicit that its requirement that guidelines include an effective, mandatory mechanism for the independent assessment of subject operators' compliance is a performance standard. Similarly, section 312.10(b)(3) of the Rule states that its requirement that guidelines include effective incentives for subject operators' compliance is a performance standard. Both section 312.10(b)(2) and 312.10(b)(3) of the Rule include suggested means of meeting their respective performance standards and provide that those performance standards may be satisfied by other means if their effectiveness equals that of the listed alternatives. The Commission believes that the Rule therefore provides the flexibility sought by the commenters.

In the NPR, the Commission stated that operators could not rely solely on self-assessment mechanisms to comply with section 312.10(b)(2).[305] Commenters were divided on the issue of whether the Commission should permit self-assessment as a means of measuring operators' compliance with self-regulatory guidelines. Some believed that self-assessment, without more, is not an adequate means of measuring compliance.[306] Others believed that the Commission should not impose an independent assessment requirement on operators that choose not to join third-party compliance programs, as long as their information practices satisfy the COPPA.[307]

On balance, the Commission believes that a performance standard that incorporates independent assessment is appropriate and necessary. Under the safe harbor provision, the Commission looks to the promulgators of guidelines, in the first instance, to ensure that those guidelines are effectively implemented. The Commission believes that independent assessment is the best way to ensure that operators are complying with the guidelines.[308] The Commission notes, however, that the Rule does not prohibit the use of self-assessment as one part of an organization's efforts under section 312.10(b)(2) to measure subject operators' compliance with the Rule, nor does it preclude individual operators who have not joined third-party programs from assessing their own compliance. The Rule does, however, prohibit the use of self-assessment as the *only* means of measuring compliance with self-regulatory guidelines.

Several commenters suggested that the Commission require that self-regulatory guidelines include an array of specific practices not listed in the proposed Rule. Such practices include, for example: comprehensive information practice reviews as a condition of membership in self-regulatory programs,[309] annual compliance affidavits to be submitted by subject operators to self-regulatory organizations,[310] quarterly monitoring of operators' information practices by self-regulatory groups,[311] public reporting of disciplinary actions taken by trade groups against subject operators in publications other than trade publications,[312] and referral to the Commission of all violations of approved guidelines[313] or all failures to comply with a self-regulatory group's disciplinary dictates.[314] Many of these ideas have merit, and self-regulatory groups may wish to include some or all of them in their proposed guidelines. The Commission does not, however, believe that it should require adoption of any specific practice or practices as a prerequisite to certification under the Rule. Self-regulatory groups or other promulgators of guidelines are best suited to determine the appropriateness of such measures, in light of the Rule's requirements. The Commission will review the adequacy of the proposed enforcement programs in considering specific safe harbor requests.

3. Request for Commission Approval of Self-Regulatory Guidelines

Section 312.10(c)(1)(iii) of the proposed Rule required that persons seeking approval of guidelines submit a statement to the Commission demonstrating that their proposed guidelines, including assessment mechanisms and compliance incentives, comply with the proposed Rule.[315] One commenter suggested that the Commission eliminate this requirement.[316] The Commission believes that the burden of demonstrating compliance properly rests on proponents of Commission approval and that the guideline approval process will benefit from proponents' explanations of their rationale for approval. Therefore, the Commission has retained this requirement in the Rule.

Section 312.10 of the proposed Rule did not include a provision governing approval of changes in previously approved self-regulatory guidelines. Several commenters suggested that the Commission amend the proposed Rule to include such a provision.[317] Therefore, section 312.10(c)(3) of the Rule now provides that promulgators of approved self-regulatory guidelines must submit proposed changes and all supporting documentation for review and approval by the Commission. The Commission recognizes, however, the need for efficiency in reviewing proposed changes to approved guidelines. Only changes in approved guidelines will be subject to public notice and comment, not the unaffected portions of the guidelines.[318] Section 312.10(c)(3) of the Rule also requires that proponents of changes in approved guidelines submit a statement describing how the proposed changes comply with the Rule and how they affect existing guideline provisions.

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[301] Of course, promulgators of guidelines may also require subject operators to implement the precise information practices set forth in the Rule.

[302] DMA (Comment 89) at 28; PrivacyBot.com (Comment 32) (unpaginated). One commenter expressed the view that by requiring self-regulatory groups affirmatively to monitor their members' compliance, rather than take action only in response to consumer complaints, the proposed Rule in effect deputizes industry organizations to police their members on the Commission's behalf. DMA (Comment 89) at 28. However, the Commission believes that, to the contrary, the Rule's safe harbor provisions allow industry to craft effective alternatives to Commission enforcement.

[303] 64 FR at 22759.

[304] One commenter was concerned that section 312.10(b)(2) could be read to require "manual," but not "automated" means of independently assessing subject operators' compliance with self-regulatory guidelines. PrivacyBot.com (Comment 32) (unpaginated) and (IRFA comment 03) at 2.

[305] 64 FR at 22759.

[306] CME/CFA et al. (Comment 80) at 37; CBBB (Comment 91) at 31.

[307] McGraw-Hill (Comment 104) at 9. *See also* Mars (Comment 86) at 15 (stating that the Commission should permit self-assessment).

[308] One commenter suggested that the Commission award safe harbor status only to non-profit self-regulatory programs or for-profit groups whose self-regulatory decisions are insulated from owner or investor control. CBBB (Comment 91) at 33–34. The Commission believes it is unnecessary to so limit eligibility for safe harbor status and further believes that the test for eligibility should be the substance of self-regulatory guidelines, rather than the corporate structure of their promulgators.

[309] CBBB (Comment 91) at 29–30.

[310] *Id.* at 32.

[311] E.A. Bonnett (Comment 126) at 6.

[312] CME/CFA et al. (Comment 80) at 37.

[313] *Id.*

[314] CBBB (Comment 91) at 32.

[315] 64 FR at 22759–60. One commenter requested that the Commission clarify the status under the Freedom of Information Act of proprietary information submitted to the Commission under this section. CBBB (Comment 91) at 37. The Commission believes this is unnecessary, as such information would be protected from disclosure under section 6(f) of the Federal Trade Commission Act and Exemption 4 of the Freedom of Information Act, to the extent that it constitutes "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." FTCA Section 6(f), 15 U.S.C. 46(f); FOIA Exemption 4, 5 U.S.C. 552(b)(4).

[316] CBBB (Comment 91) at 36.

Other comments suggested that the Commission should shorten the 180-day period for Commission action on submissions,[319] specify a time period for public comment (e.g., 30–45 days),[320] "toll" (rather than restart, as proposed in the NPR) the 180-day period for Commission action in the event of an incomplete submission of supporting documents,[321] and make guidelines effective upon publication of the Commission's decision, rather than 45 days from publication in the **Federal Register** as stated in the NPR.[322] After considering the comments, the Commission agrees that the guidelines should become effective upon publication of Commission approval.[323] However, it declines to adopt a single, specific time period for public comment, as the appropriate period may well vary with the complexity and novelty of the guidelines submitted. Further, the Commission does not believe the 180-day time period should be shortened or tolled during the comment period, but notes that it intends to complete its review within the statutory period.

4. Records

Section 312.10(d)(1) of the proposed Rule required that industry groups or other persons seeking safe harbor treatment maintain consumer complaints for a period not to exceed three years.[324] As one commenter noted, however, the proposed Rule did not specify the length of time required for maintaining the other documents specified in this section, *e.g.*, records of disciplinary actions against subject operators and records of independent assessments of subject operators' compliance.[325] The Commission agrees that this inconsistency is unnecessarily confusing. Therefore, the Rule now clarifies that industry groups or other persons seeking safe harbor treatment must maintain all documents required by this section for a period of three years.

J. Section 312.11: Rulemaking Review

Section 312.11 of the proposed Rule retained the Act's requirement that the Commission initiate a review proceeding to evaluate the Rule's implementation no later than five years after the effective date of the Rule and report its results to Congress.[326] The Commission stated in the NPR that the review will address the Rule's effect on: practices relating to the collection and disclosure of children's information; children's ability to access information of their choice online; and the availability of websites directed to children. In addition, eighteen months after the effective date of the Rule, the Commission will conduct a review of available mechanisms for obtaining verifiable parental consent, as discussed above in Section II.D.

K. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (as amended 44 U.S.C. 3507(d)), the Commission submitted the proposed Rule to the Office of Management and Budget (OMB) for review.[327] The OMB has approved the Rule's information collection requirements.[328] The Commission did not receive any comments that necessitate modifying its cost estimates for the Rule's notice requirements.[329]

L. Final Regulatory Flexibility Analysis

The NPR did not include an initial regulatory flexibility analysis (IRFA) under the Regulatory Flexibility Act[330] based on a certification that the proposed Rule would not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invited public comment on the proposed Rule's effect on small entities to ensure that no significant impact would be overlooked.[331] The Commission received two responsive comments suggesting that it publish an IRFA.[332] While the Commission believed that such an analysis was not technically required, it issued an IRFA to provide further information and opportunity for public comment on the small business impact, if any, of the Rule.[333]

This final regulatory flexibility analysis (FRFA) incorporates the Commission's initial findings, as set forth in the NPR; addresses the comments submitted in response to the IRFA notice; and describes the steps the agency has taken in the final Rule to minimize the impact on small entities consistent with the objectives of the COPPA.

Succinct Statement of the Need for, and Objectives of, the Rule

The Rule prohibits unfair or deceptive acts or practices in connection with commercial websites' and online services' collection and use of personal information from and about children by: (1) Enhancing parental involvement in a child's online activities in order to protect the privacy of children in the online environment; (2) helping to protect the safety of children in online fora such as chat rooms, home pages, and pen-pal services in which children may make public postings of identifying information; (3) maintaining the security of children's personal information collected online; and (4) limiting the collection and disclosures of personal information without parental consent. The Commission was required by the COPPA to issue implementing regulations.[334]

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[317] ANA (Comment 93) at 3; Mars (Comment 86) at 17; and MLG Internet (Comment 119) at 2.

[318] 64 FR at 22760.

[319] CBBB (Comment 91) at 36. This commenter suggested a 90-day review period.

[320] *Id.*

[321] *Id.*; Mars (Comment 86) at 17.

[322] CBBB (Comment 91) at 36.

[323] One commenter requested that the Commission maintain a list of parties interested in being contacted by the Commission when proposed guidelines are published in the **Federal Register** and on the Commission's website. EPIC (Comment 115) at 7. The Commission believes that publication of proposed guidelines is, as a general matter, sufficient notice of their submission for approval.

[324] 64 FR at 22760.

[325] CBBB (Comment 91) at 37.

[326] 15 U.S.C. 6506. Two commenters called for conducting the review in three years rather than five. CME/CFA et al. (Comment 80) at 17; CDT (Comment 81) at 31. The Commission believes that the COPPA's five year requirement is appropriate, but will consider undertaking a review sooner if warranted.

[327] The Commission's Supporting Statement submitted to OMB as part of the clearance process has been made available on the public record of this rulemaking. *See* Supporting Statement for Information Collection Provisions at <http://www.ftc.gov/os/1999/9906/childprivsup.htm>.

[328] The assigned OMB clearance number is 3084–0117.

[329] *See* 64 FR at 22761 (estimating total burden of 18,000 hours for first year, and 1800 hours for subsequent years).

[330] 5 U.S.C. 603.

[331] *See* 64 FR at 22761.

[332] Hons. George Gekas and James Talent, U.S. House of Representatives (Comment 74) at 4; U.S. Small Business Administration (Comment 128) at 4–5.

[333] 64 FR 40525.

Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA; Summary of the Assessment of the Agency of Such Issues; and Statement of Any Changes Made in the Rule as a Result of Such Comments

In the IRFA, the Commission sought comment regarding the impact of the proposed Rule and any alternatives the Commission should consider, with a specific focus on the effect of the Rule on small entities.[335] The Commission received five comments, which discussed issues also addressed in the Statement of Basis and Purpose, above, including notice, verifiable parental consent, security, and safe harbors.

1. New Notice and Request for Consent

One commenter contended that the requirement for new notice and consent for different uses of a child's personal information under the notice and consent sections of the proposed Rule threatened smaller operators that rely on mergers and marketing alliances to help build their business.[336] The commenter recommended that new notice and consent should be required only when there is a material change in intended uses or practices.[337] As explained in Section II.C.4 and II.D.1, above, the Commission has modified its position to require new notice and consent only if there is a material change in the collection, use, or disclosure of personal information from children.

2. Verifiable Parental Consent

Another commenter expressed concern that the proposed Rule's consent requirement would result in high compliance costs and a substantial reduction in traffic to small sites.[338] According to the commenter, a child's use of collaborative educational tools on the Internet should be treated differently from the collection and use of personal contact information by marketers. The commenter, who called for parental notification and opt-out for such collaborative uses, was especially concerned about the loss of business from schools.

The Commission does not have discretion under the statute to waive the requirement of verifiable parental consent.[339] As noted above in Section II.D.4, the Rule does not preclude schools from acting as intermediaries between operators and parents in the notice and consent process, or from serving as the parent's agent in the process. Thus, the Rule should not hinder businesses that provide services to schools.

The Commission is sensitive to commenters' concerns about increased costs and reduced traffic to sites. Accordingly, the Commission has temporarily adopted a sliding scale approach to verifiable parental consent to minimize burdens and costs for operators while still providing for parental control of children's personal information. As more fully described in Section II.D, inexpensive e-mail mechanisms may be used to obtain parental consent for the collection of information for internal uses, such as an operator's marketing to a child based on information collected about the child's preferences. Only where information is subject to "disclosure" under section 312.2 of the Rule will the other methods of consent be required and, even then, operators will have a range of mechanisms from which to choose. Further, even after the sliding scale is phased out two years from the Rule's effective date, operators will be able to choose from a number of consent methods, many of which are expected to be less costly and more widely available at that time.[340] Finally, for certain uses of children's personal information, no consent will be required at all under the exceptions to prior parental consent set forth in section 312.5(c) of the Rule.

3. Confidentiality, Security, and Integrity of Information

One commenter found the security methods identified in section 312.8 of the proposed Rule to be effective, but suggested that small entities should not be held to the same standards as larger entities when evaluating adequate protection under the Rule.[341] As noted earlier, the Rule allows operators flexibility in selecting security procedures in accordance with their particular needs.

4. Safe Harbors

A commenter suggested that section 312.10 of the proposed Rule should more clearly recognize the role automation can play in assessing an operator's compliance with privacy seal programs.[342] As explained above in Section II.I.2, section 312.10(b)(2) includes a performance standard requiring only that assessment mechanisms be effective, mandatory, and independent. In addition to the examples listed in the Rule, that performance standard may be satisfied by other equally effective means. Thus, the Rule does not preclude the use of automated assessment tools that meet the performance standard.

Description and Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The Rule applies to any commercial operator of an online service or website directed to children or any commercial operator that has actual knowledge that it is collecting personal information from a child.[343] A precise estimate of the number of small entities that fall within the Rule is not currently feasible, in part, because the definition of a website directed to children turns on a number of factors that will require a factual analysis on a case-by-case basis.[344] In connection with the NPR, IRFA, and the public workshop on verifiable parental consent, the Commission has not received any comments providing an estimate of the number of small entities to which the Rule will apply.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The Commission incorporates by reference its description of the projected reporting, recordkeeping and other compliance requirements of the Rule, as set forth in the IRFA.[345] The Office of Management and Budget has approved the information collection of the Rule[346] based on the Commission's earlier submission for clearance, which has been made available on the public record of this rulemaking.[347] The Commission has not received any comments that necessitate modifying its previous description of projected compliance requirements.

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[334] 15 U.S.C. 6502.

[335] 64 FR at 40527–28.

[336] KidsOnLine.com (IRFA Comment 02) at 1.

[337] *Id.*

[338] Zeeks.com (IRFA Comment 05) at 2.

[339] *See* 15 U.S.C. 6502; section 312.3 of the Rule. Another commenter suggested that operators be permitted to collect some personal information to establish a relationship with the child in exchange for limited access to the site (such as games) without obtaining consent. KidsOnLine.com (IRFA Comment 02) at 2.

[340] *See supra* note 1868. As described more fully above, the Commission will undertake a review eighteen months after the effective date of the Rule to determine through public comment whether technology has progressed as expected. The impact on small businesses will again be carefully considered.

[341] KidsOnLine.com (IRFA Comment 02) at 1.

[342] PrivacyBot.com (IRFA Comment 03) at 2. This commenter noted that the examples listed the NPR appeared to call for manual assessment mechanisms.

[343] Section 312.3. The Rule does not apply to nonprofit entities. Section 312.2 (definition of "operator").

[344] Under section 312.2, in determining whether a commercial website or online service is directed to children, the Commission will consider its subject matter, visual or audio content, age of models, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities, Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The Rule incorporates the many performance standards set forth in the statute.[348] Thus, operators are free to choose among a number of compliance methods based upon their individual business models and needs. Although the Rule's provisions impose some costs, the requirements of notice, verifiable parental consent, access, and security are mandated by the COPPA itself. The Commission has sought to minimize the burden on all businesses, including small entities, by adopting flexible standards;[349] however, it does not have the discretion to create exemptions from the Act based on an operator's size. Likewise, while the Rule attempts to clarify, consolidate, and simplify the statutory requirements for all entities,[350] the Commission has little discretion, if any, to mandate different methods or schedules for small entities that would undermine compliance with the Act.[351]

Nevertheless, throughout the rulemaking proceeding, the Commission has sought to gather information regarding the economic impact of the COPPA's requirements on all operators, including small entities. The NPR, for example, included a number of questions for public comment regarding the costs and benefits associated with notice and consent.[352] Similarly, the subsequent IRFA notice invited public comment specifically on the issue of small business impact.[353] In addition, the agenda for the public workshop on verifiable parental consent included topics designed to elicit economic impact information. In connection with the workshop, the Commission invited additional public comment.

The Commission has carefully considered responsive comments that suggested a variety of alternatives in developing the final Rule. The discussion below reviews some of the significant alternatives considered and the basis for the Commission's decisions with regard to certain notice, parental consent, access, security, and safe harbor requirements.

1. New Notice and Request for Consent

Many commenters contended that requiring operators to undertake new notice and consent under sections 312.4(c) and 312.5 for any use not covered by a parent's previous consent was burdensome and unnecessary.[354] The Commission is sensitive to the objections raised, particularly with respect to mergers, which occur often in this industry and which would trigger new notice and consent requirements even where there was no significant change in the operator's information practices. Eliminating this requirement altogether, however, would prevent parents from receiving material information that could affect their decisions regarding their child's online activities.[355]

In response to comments, including those of small businesses,[356] the Commission has modified the Rule to require new notice and consent only if there will be a material change in how the operator collects, uses, or discloses personal information from children.[357] This modification should substantially reduce the costs of compliance.

2. Verifiable Parental Consent

Throughout the rulemaking, the Commission has sought input on what mechanisms may be used to satisfy the COPPA's verifiable parental consent requirement. As described more fully in Section II.D. above, the Commission has temporarily adopted a "sliding scale" approach that depends upon the use of the child's personal information. This approach was recommended by many industry members seeking to preserve flexibility for operators while achieving the objectives of the Act.[358] To minimize burdens until more reliable electronic methods become more available and affordable, it allows use of e-mail for internal uses of personal information, as long as additional steps are taken to verify a parent's identity.

Some commenters had contended that use of e-mail alone should be an acceptable method of consent under section 312.5 of the Rule.[359] Commenters also criticized methods such as print-and-send, credit card, toll-free numbers, and digital signatures for the costs and burdens they might impose.[360] Based on the comments and workshop discussion, the Commission does not believe that use of e-mail alone adequately satisfies the statutory requirement that operators make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology.[361] According to many commenters, e-mail is easily subject to circumvention by children.[362] In particular, where a child and parent share the same e-mail account, as is often the case, a child may easily pretend to be a parent and provide consent for himself.[363]

The Commission does not expect that declining to permit use of e-mail alone will impose significant costs in terms of foregone activities. Websites will be able to engage in many activities that do not trigger any prior consent requirements pursuant to the exceptions to parental consent set forth in section 312.5(c).[364] According to a workshop participant, these exceptions cover some of the most popular and common online activities, including newsletters, contests, and online magazine subscriptions.[365]

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[345] *See* 64 FR at 40526–27.

[346] The OMB clearance number is 3084–0117.

[347] *See* Supporting Statement for Information Collection Provisions at <http://www.ftc.gov/os/1999/9906/childprivsup.htm>.

[348] *See, e.g.,* sections 312.4(c), 312.5.

[349] *See* 5 U.S.C. 603(c)(3). The notice requirements, for example, have been designed to minimize the burdens on operators in a variety of ways. Section 312.4(b) of the Rule permits operators to post "links" to the required notices, rather than state the complete text. Similarly, in response to industry concerns about technical feasibility, the Commission has eliminated the requirement that the link must be seen without having to scroll down from the initial viewing screen. *See* Section II.C.2, *supra*.

[350] *See* 5 U.S.C. 603(c)(2).

[351] For example, the COPPA requires the online posting of privacy policies by websites and online services. A waiver for small entities of that prior notice requirement (*e.g.*, by permitting notice after the fact) would be inconsistent with the statutory mandate. *See* 15 U.S.C. 6502(b)(1)(A)(i).

[352] 64 FR at 22761–63.

[353] 64 FR 40525.

[354] *See supra* note 143.

[355] For example, an operator might initially use a child's information only for internal marketing purposes and then later undertake a new use involving disclosures to third parties. Such a change would likely be important to the parent's consent decision.

[356] *See* KidsOnLine.com (IRFA Comment 02) at 1.

[357] *See also* Section II.C.3.a, *supra* (discussing section 312.4(b)(2)(i) (content of notice)).

[358] *See supra* note 203 and accompanying text.

[359] *See supra* note 197 and accompanying text.

[360] *See supra* notes 187–195 and accompanying text.

[361] *See* 15 U.S.C. 6501(9).

[362] *See supra* note 196 and accompanying text.

[363] *See supra* note 178 and accompanying text.

[364] *See* Section II.D.3, *supra*. Prior parental consent is not required pursuant to these exceptions. However, in some instances, operators must provide parents with notice and an opportunity to opt out. *See* section 312.5(c)(3).

Moreover, where e-mail mechanisms are employed for internal uses under the sliding scale, the additional steps required under section 312.5 (such as sending a confirmatory e-mail to the parent following receipt of consent) should not be especially onerous given the availability and ease of automated technology.[366] Thus, the additional steps required should have no deterrent effect on operators (or parents).

Only for activities that entail "disclosure" of a child's personal information, as defined in the Rule, such as chat rooms, message boards, pen-pal services, and personal home pages, will the higher method of consent be triggered.[367] The comments and public workshop discussion provide considerable support for the principle that such activities warrant a higher level of protection, given the heightened safety concerns.[368] In order to ensure maximum flexibility within this upper tier of the sliding scale, a range of mechanisms will be acceptable under the Rule, including postal mail, facsimile, credit card in connection with a transaction, toll-free numbers, and digital signatures.[369] To minimize costs, once a parent has provided consent through one of these methods and obtained a PIN or password, an operator may subsequently obtain consent through an e-mail accompanied by such PIN or password.

In adopting the sliding scale for a two-year period following the Rule's effective date, the Commission has sought to minimize any burdens of compliance until advancements in technology provide more reliable electronic methods at low cost. Based on reports from industry members, the Commission expects that this will occur soon.[370] To assess whether such developments have in fact occurred as expected, the Commission will undertake a review, using notice and comment, approximately eighteen months after the Rule's effective date. All businesses, including small entities, will be given the opportunity to comment on.economic impact issues at that time.

If technology progresses as expected, operators should have a wide variety of reasonable and effective options for providing verifiable parental consent. Therefore, phasing out the sliding scale should not impose undue burdens on operators seeking to comply with the Rule. Moreover, the Commission's amendment to the Rule requiring new notice and consent only in the case of Amaterial changes' to an operator's information practices should further reduce operators' burdens.

3. Parental Access to Information

In implementing the COPPA's parental access requirement,[371] the Commission has adopted flexible standards and sought to eliminate any unnecessary provisions in the Rule. For example, section 312.6(a)(3) requires that operators provide a means of review that ensures that the requestor is a parent, taking into account available technology, and that is not unduly burdensome to the parent. In response to comments that the proposed Rule's right to change information went beyond the statute and was onerous, the Commission has omitted that provision from the Rule. To eliminate unnecessary costs, the Rule also no longer requires parental verification for access to the types or categories of personal information collected from the child under section 312.6(a)(1). However, consistent with the COPPA, which recognized the safety concerns inherent in granting access to the child's specific information, proper parental verification will be required for access to that information under section 312.6(a)(3). As with verifiable parental consent, operators may choose from among a variety of verification methods, including both online and offline methods.[372]

4. Confidentiality, Security, and Integrity of Information

As required under the Act, the Rule seeks to ensure a baseline level of protection for children's personal information.[373] The Commission recognizes that certain security procedures may be more costly for smaller entities than larger entities.[374] Accordingly, section 312.8 allows operators flexibility in selecting reasonable procedures in accordance with their business models.[375]

5. Safe Harbors

The safe harbor provisions also utilize performance standards in order to minimize burdens and provide incentives for industry self-regulation, as required by the COPPA.[376] In response to concerns that the proposed Rule appeared inflexible, the Commission has clarified in section 312.10(b)(1) that promulgators of self-regulatory guidelines may comply with the safe harbor provisions by requiring subject operators to implement "substantially similar requirements that provide the same or greater protections for children" as those contained in the Rule. The Commission also has adopted performance standards for the assessment mechanisms and compliance incentives in sections 312.10(b)(2) and (b)(3). In addition to the examples listed in the Rule, these performance standards may be satisfied by other equally effective means. In order to maximize efficiency, the Rule further provides that only material changes in approved guidelines will be subject to the public notice and comment required under this section.

Final Rule

List of Subjects in 16 CFR Part 312

Children, Children's online privacy protection, Communications, Computer technology, Consumer protection, Data protection, Electronic mail, E-mail, Information practices, Internet, Online service, Privacy, Record retention, Safety, Trade practices, Website, Youth.

Accordingly, the Federal Trade Commission amends 16 CFR chapter I by adding a new Part 312 to read as follows:

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

Sec.
312.1 Scope of regulations in this part.
312.2 Definitions.
312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.
312.4 Notice.

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[365] *See supra* note 226.

[366] A number of commenters recognized that taking additional steps would increase the likelihood that it is the parent who is providing consent, and some websites already undertake such measures. *See supra* notes 198–203 and accompanying text.

[367] To minimize burdens on general audience sites, the Commission has revised the Rule so that if a chat room monitor strips any posting of individually identifiable information before it is made public, the operator will not be deemed to have "collected" the child's personal information for purposes of the Rule. *See* Section II.A.2, *supra* (discussing section 312.2's definition of "collects or collection"). Moreover, because the individually identifiable information has been deleted, the operator will not have "disclosed" that information under the Rule.

[368] *See supra* note 205 and accompanying text.

[369] *See* section 312.5(b).

[370] *See* Section II.D.2 and note 186, *supra*.

[371] *See* 15 U.S.C. 6502(b)(1)(B)(iii).

[372] The Commission will continue to monitor technological advances that might play a useful role in identifying parents for purposes of granting access. The Commission agrees with comments that it is currently premature to mandate the use of certain mechanisms still under development or not yet widely available. *See* CBBB (Comment 91) at 24.

[373] *See* 15 U.S.C. 6502(b)(1)(D).

[374] *See* KidsOnLine.com (IRFA Comment 02) at 1.

[375] *See* note 284, supra.

[376] *See* 15 U.S.C. 6503.

312.5 Parental consent.
312.6 Right of parent to review personal information provided by a child.
312.7 Prohibition against conditioning a child's participation on collection of personal information.
312.8 Confidentiality, security, and integrity of personal information collected from children.
312.9 Enforcement.
312.10 Safe harbors.
312.11 Rulemaking review.
312.12 Severability.

Authority: Secs. 15 U.S.C. 6501 *et seq.*

§ 312.1 Scope of regulations in this part.

This part implements the Children's Online Privacy Protection Act of 1998, (15 U.S.C. 6501, *et seq.*,) which prohibits unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet. The effective date of this part is April 21, 2000.

§ 312.2 Definitions.

Child means an individual under the age of 13.

Collects or collection means the gathering of any personal information from a child by any means, including but not limited to:

(a) Requesting that children submit personal information online;

(b) Enabling children to make personal information publicly available through a chat room, message board, or other means, *except where* the operator deletes all individually identifiable information from postings by children before they are made public, and also deletes such information from the operator's records; or

(c) The passive tracking or use of any identifying code linked to an individual, such as a cookie.

Commission means the Federal Trade Commission.

Delete means to remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.

Disclosure means, with respect to personal information:

(a) The release of personal information collected from a child in identifiable form by an operator for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the website or online service and who does not disclose or use that information for any other purpose. For purposes of this definition:

(1) *Release of personal information* means the sharing, selling, renting, or any other means of providing personal information to any third party, and

(2) *Support for the internal operations of the website or online service* means those activities necessary to maintain the technical functioning of the website or online service, or to fulfill a request of a child as permitted by § 312.5(c)(2) and (3); or

(b) Making personal information collected from a child by an operator publicly available in identifiable form, by any means, including by a public posting through the Internet, or through a personal home page posted on a website or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

Federal agency means an agency, as that term is defined in Section 551(1) of title 5, United States Code.

Internet means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

Online contact information means an e-mail address or any other substantially similar identifier that permits direct contact with a person online.

Operator means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce:

(a) Among the several States or with 1 or more foreign nations;

(b) In any territory of the United States or in the District of Columbia, or between any such territory and

(1) Another such territory, or

(2) Any State or foreign nation; or

(c) Between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

Parent includes a legal guardian.

Person means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

Personal information means individually identifiable information about an individual collected online, including:

(a) A first and last name;

(b) A home or other physical address including street name and name of a city or town;

(c) An e-mail address or other online contact information, including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's e-mail address;

(d) A telephone number;

(e) A Social Security number;

(f) A persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier is associated with individually identifiable information; or a combination of a last name or photograph of the individual with other information such that the combination permits physical or online contacting; or

(g) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Third party means any person who is not:

(a) An operator with respect to the collection or maintenance of personal information on the website or online service; or

(b) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

Obtaining *verifiable consent* means making any reasonable effort (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child:

(a) Receives notice of the operator's personal information collection, use, and disclosure practices; and

(b) Authorizes any collection, use, and/or disclosure of the personal information.

Website or online service directed to children means a commercial website or online service, or portion thereof, that is targeted to children. *Provided, however,* that a commercial website or online service, or a portion thereof, shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link. In determining whether a commercial website or online service, or a portion thereof, is targeted to children, the Commission will consider its subject matter, visual or audio content, age of models, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition; evidence regarding the intended audience; and whether a site uses animated characters and/or child-oriented activities and incentives.

§ 312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

General requirements. It shall be unlawful for any operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part. Generally, under this part, an operator must:

(a) Provide notice on the website or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information (§ 312.4(b));

(b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children (§ 312.5);

(c) Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance (§ 312.6);

(d) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity (§ 312.7); and

(e) Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children (§ 312.8).

§ 312.4 Notice.

(a) *General principles of notice.* All notices under §§ 312.3(a) and 312.5 must be clearly and understandably written, be complete, and must contain no unrelated, confusing, or contradictory materials.

(b) *Notice on the website or online service.* Under § 312.3(a), an operator of a website or online service directed to children must post a link to a notice of its information practices with regard to children on the home page of its website or online service and at each area on the website or online service where personal information is collected from children. An operator of a general audience website or online service that has a separate children's area or site must post a link to a notice of its information practices with regard to children on the home page of the children's area.

(1) *Placement of the notice.* (i) The link to the notice must be clearly labeled as a notice of the website or online service's information practices with regard to children;

(ii) The link to the notice must be placed in a clear and prominent place and manner on the home page of the website or online service; and

(iii) The link to the notice must be placed in a clear and prominent place and manner at each area on the website or online service where children directly provide, or are asked to provide, personal information, and in close proximity to the requests for information in each such area.

(2) *Content of the notice.* To be complete, the notice of the website or online service's information practices must state the following:

(i) The name, address, telephone number, and e-mail address of all operators collecting or maintaining personal information from children through the website or online service. *Provided that:* the operators of a website or online service may list the name, address, phone number, and e-mail address of one operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information, as long as the names of all the operators collecting or maintaining personal information from children through the website or online service are also listed in the notice;

(ii) The types of personal information collected from children and whether the personal information is collected directly or passively;

(iii) How such personal information is or may be used by the operator(s), including but not limited to fulfillment of a requested transaction, recordkeeping, marketing back to the child, or making it publicly available through a chat room or by other means;

(iv) Whether personal information is disclosed to third parties, and if so, the types of business in which such third parties are engaged, and the general purposes for which such information is used; whether those third parties have agreed to maintain the confidentiality, security, and integrity of the personal information they obtain from the operator; and that the parent has the option to consent to the collection and use of their child's personal information without consenting to the disclosure of that information to third parties;

(v) That the operator is prohibited from conditioning a child's participation in an activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity; and

(vi) That the parent can review and have deleted the child's personal information, and refuse to permit further collection or use of the child's information, and state the procedures for doing so.

(c) *Notice to a parent.* Under § 312.5, an operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives notice of the operator's practices with regard to the collection, use, and/or disclosure of the child's personal information, including notice of any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.

(1) *Content of the notice to the parent.* (i) All notices must state the following:

(A) That the operator wishes to collect personal information from the child;

(B) The information set forth in paragraph (b) of this section.

(ii) In the case of a notice to obtain verifiable parental consent under § 312.5(a), the notice must also state that the parent's consent is required for the collection, use, and/or disclosure of such information, and state the means by which the parent can provide verifiable consent to the collection of information.

(iii) In the case of a notice under the exception in § 312.5(c)(3), the notice must also state the following:

(A) That the operator has collected the child's e-mail address or other online contact information to respond to the child's request for information and that the requested information will require more than one contact with the child;

(B) That the parent may refuse to permit further contact with the child and require the deletion of the information, and how the parent can do so; and

(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose(s) stated in the notice.

(iv) In the case of a notice under the exception in § 312.5(c)(4), the notice must also state the following:

(A) That the operator has collected the child's name and e-mail address or other online contact information to protect the safety of the child participating on the website or online service;

(B) That the parent may refuse to permit the use of the information and require the deletion of the information, and how the parent can do so; and

(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose stated in the notice.

§ 312.5 Parental consent.

(a) *General requirements.* (1) An operator is required to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, including consent to any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.

(2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

(b) *Mechanisms for verifiable parental consent.* (1) An operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.

(2) Methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include: providing a consent form to be signed by the parent and returned to the operator by postal mail or facsimile; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the verification methods listed in this paragraph. *Provided that:* For the period until April 21, 2002, methods to obtain verifiable parental consent for uses of information other than the "disclosures" defined by § 312.2 may also include use of e-mail coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: sending a confirmatory e-mail to the parent following receipt of consent; or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. Operators who use such methods must provide notice that the parent can revoke any consent given in response to the earlier e-mail.

(c) *Exceptions to prior parental consent.* Verifiable parental consent is required prior to any collection, use and/or disclosure of personal information from a child except as set forth in this paragraph. The exceptions to prior parental consent are as follows:

(1) Where the operator collects the name or online contact information of a parent or child to be used for the sole purpose of obtaining parental consent or providing notice under § 312.4. If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;

(2) Where the operator collects online contact information from a child for the sole purpose of responding directly on a one-time basis to a specific request from the child, and where such information is not used to recontact the child and is deleted by the operator from its records;

(3) Where the operator collects online contact information from a child to be used to respond directly more than once to a specific request from the child, and where such information is not used for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that a parent receives notice and has the opportunity to request that the operator make no further use of the information, as described in § 312.4(c), immediately after the initial response and before making any additional response to the child. Mechanisms to provide such notice include, but are not limited to, sending the notice by postal mail or sending the notice to the parent's e-mail address, but do not include asking a child to print a notice form or sending an e-mail to the child;

(4) Where the operator collects a child's name and online contact information to the extent reasonably necessary to protect the safety of a child participant on the website or online service, and the operator usesd reasonable efforts to provide a parent notice as described in § 312.4(c), where such information is:

(i) Used for the sole purpose of protecting the child's safety;

(ii) Not used to recontact the child or for any other purpose;

(iii) Not disclosed on the website or online service; and

(5) Where the operator collects a child's name and online contact information and such information is not used for any other purpose, to the extent reasonably necessary:

(i) To protect the security or integrity of its website or online service;

(ii) To take precautions against liability;

(iii) To respond to judicial process; or

(iv) To the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

§ 312.6 Right of parent to review personal information provided by a child.

(a) Upon request of a parent whose child has provided personal information to a website or online service, the operator of that website or online service is required to provide to that parent the following:

(1) A description of the specific types or categories of personal information collected from children by the operator, such as name, address, telephone number, e-mail address, hobbies, and extracurricular activities;

(2) The opportunity at any time to refuse to permit the operator's further use or future online collection of personal information from that child, and to direct the operator to delete the child's personal information; and

(3) Notwithstanding any other provision of law, a means of reviewing any personal information collected from the child. The means employed by the operator to carry out this provision must:

(i) Ensure that the requestor is a parent of that child, taking into account available technology; and

(ii) Not be unduly burdensome to the parent.

(b) Neither an operator nor the operator's agent shall be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under this section.

(c) Subject to the limitations set forth in § 312.7, an operator may terminate any service provided to a child whose parent has refused, under paragraph (a)(2) of this section, to permit the operator's further use or collection of personal information from his or her child or has directed the operator to delete the child's personal information.

§ 312.7 Prohibition against conditioning a child's participation on collection of personal information.

An operator is prohibited from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.

§ 312.8 Confidentiality, security, and integrity of personal information collected from children.

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

§ 312.9 Enforcement.

Subject to sections 6503 and 6505 of the Children's Online Privacy Protection Act of 1998, a violation of a regulation prescribed under section 6502 (a) of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

§ 312.10 Safe harbors.

(a) *In general.* An operator will be deemed to be in compliance with the requirements of this part if that operator complies with self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, that, after notice and comment, are approved by the Commission.

(b) *Criteria for approval of self-regulatory guidelines.* To be approved by the Commission, guidelines must include the following:

(1) A requirement that operators subject to the guidelines ("subject operators") implement substantially similar requirements that provide the same or greater protections for children as those contained in §§ 312.2 through 312.9;

(2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the guidelines. This performance standard may be satisfied by:

(i) Periodic reviews of subject operators' information practices conducted on a random basis either by the industry group promulgating the guidelines or by an independent entity;

(ii) Periodic reviews of all subject operators' information practices, conducted either by the industry group promulgating the guidelines or by an independent entity;

(iii) Seeding of subject operators' databases, if accompanied by either paragraphs (b)(2)(i) or (b)(2)(ii) of this section; or

(iv) Any other equally effective independent assessment mechanism; and

(3) Effective incentives for subject operators' compliance with the guidelines. This performance standard may be satisfied by:

(i) Mandatory, public reporting of disciplinary action taken against subject operators by the industry group promulgating the guidelines;

(ii) Consumer redress;

(iii) Voluntary payments to the United States Treasury in connection with an industry-directed program for violators of the guidelines;

(iv) Referral to the Commission of operators who engage in a pattern or practice of violating the guidelines; or

(v) Any other equally effective incentive.

(4) The assessment mechanism required under paragraph (b)(2) of this section can be provided by an independent enforcement program, such as a seal program. In considering whether to initiate an investigation or to bring an enforcement action for violations of this part, and in considering appropriate remedies for such violations, the Commission will take into account whether an operator has been subject to self-regulatory guidelines approved under this section and whether the operator has taken remedial action pursuant to such guidelines, including but not limited to actions set forth in paragraphs (b)(3)(i) through (iii) of this section.

(c) *Request for Commission approval of self-regulatory guidelines.*

(1) To obtain Commission approval of self-regulatory guidelines, industry groups or other persons must file a request for such approval. A request shall be accompanied by the following:

(i) A copy of the full text of the guidelines for which approval is sought and any accompanying commentary;

(ii) A comparison of each provision of §§ 312.3 through 312.8 with the corresponding provisions of the guidelines; and

(iii) A statement explaining:

(A) How the guidelines, including the applicable assessment mechanism, meet the requirements of this part; and

(B) How the assessment mechanism and compliance incentives required under paragraphs (b)(2) and (3) of this section provide effective enforcement of the requirements of this part.

(2) The Commission shall act upon a request under this section within 180 days of the filing of such request and shall set forth its conclusions in writing.

(3) Industry groups or other persons whose guidelines have been approved by the Commission must submit proposed changes in those guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(1). The statement required under paragraph (c)(1)(iii) must describe how the proposed changes affect existing provisions of the guidelines.

(d) *Records.* Industry groups or other persons who seek safe harbor treatment by compliance with guidelines that have been approved under this part shall maintain for a period not less than three years and upon request make available to the Commission for inspection and copying:

(1) Consumer complaints alleging violations of the guidelines by subject operators;

(2) Records of disciplinary actions taken against subject operators; and

(3) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2) of this section.

(e) *Revocation of approval.* The Commission reserves the right to revoke any approval granted under this section if at any time it determines that the approved self-regulatory guidelines and their implementation do not, in fact, meet the requirements of this part.

§ 312.11 Rulemaking review.

No later than April 21, 2005, the Commission shall initiate a rulemaking review proceeding to evaluate the implementation of this part, including the effect of the implementation of this part on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and report to Congress on the results of this review.

§ 312.12 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–27740 Filed 11–2–99; 8:45 am]

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Wednesday
November 3, 1999

Part IV

Department of Health and Human Services

Office of the Secretary

45 CFR Parts 160 Through 164

Standards for Privacy of Individually Identifiable Health Information; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 through 164

RIN 0991-AB08

Standards for Privacy of Individually Identifiable Health Information

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes standards to protect the privacy of individually identifiable health information maintained or transmitted in connection with certain administrative and financial transactions. The rules proposed below, which would apply to health plans, health care clearinghouses, and certain health care providers, propose standards with respect to the rights individuals who are the subject of this information should have, procedures for the exercise of those rights, and the authorized and required uses and disclosures of this information.

The use of these standards would improve the efficiency and effectiveness of public and private health programs and health care services by providing enhanced protections for individually identifiable health information. These protections would begin to address growing public concerns that advances in electronic technology in the health care industry are resulting, or may result, in a substantial erosion of the privacy surrounding individually identifiable health information maintained by health care providers, health plans and their administrative contractors. This rule would implement the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

DATES: Comments will be considered if received as provided below, no later than 5 p.m. on January 3, 2000.

ADDRESSES: Submit electronic comments at the following web site: http://aspe.hhs.gov/admnsimp/.

Mail comments (1 original, 3 copies, and, if possible, a floppy disk) to the following address: U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Attention: Privacy-P, Room G-322A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

If you prefer, you may deliver your written comments (1 original, 3 copies, and, if possible, a floppy disk) to the following address: Room 442E, 200 Independence Avenue, SW, Washington, DC 20201.

See the **SUPPLEMENTARY INFORMATION** section for further information on comment procedures, availability of copies of this document and electronic access to this document.

FOR FURTHER INFORMATION CONTACT: Roxanne Gibson (202) 260-5083.

SUPPLEMENTARY INFORMATION: Comment procedures, availability of copies, and electronic access.

Comment procedures: All comments should include the full name, address and telephone number of the sender or a knowledgeable point of contact. Written comments should include 1 original and 3 copies. If possible, please send an electronic version of the comments on a 3½ inch DOS format floppy disk in Adobe Acrobat Portable Document Format (PDF) (preferred) HTML (preferred), ASCII text, or popular word processor format (Microsoft word, Corel WordPerfect).

Because of staffing and resource limitations, we cannot accept comments by electronic mail or facsimile (FAX) transmission, and all comments and content are to be limited to the 8.5 wide by 11.0 high vertical (also referred to as "portrait") page orientation. Additionally, it is requested that if identical/duplicate comment submissions are submitted both electronically and in paper form that each submission clearly indicate that it is a duplicate submission. In each comment, please specify the section of this proposed rule to which the comment applies.

Comments received in a timely fashion will be available for public inspection (by appointment), as they are received, generally beginning approximately three weeks after publication of a document in Room 442E of the Department's offices at 200 Independence Avenue, SW., Washington, DC 20201 on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-260-5083).

After the close of the comment period, comments submitted electronically and written comments that we are technically able to convert will be posted on the Administrative Simplification web site (http://aspe.hhs.gov/admnsimp/).

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I. Background
  A. Need for privacy standards.
  B. Statutory background.
  C. Administrative costs.
  D. Consultations.
  E. Summary and purpose of the proposed rule.
  1. Applicability.
  2. General rules.
  3. Scalability.
  4. Uses and disclosures with individual authorization.
  5. Uses and disclosures for treatment, payment and health care operations.
  6. Permissible uses and disclosures for purposes other than treatment, payment and health care operations.
  7. Individual rights.
  8. Administrative requirements and policy development and documentation.
  9. Preemption.
  10. Enforcement.
  11. Conclusion.
II. Provisions of the proposed rule.
  A. Applicability.
  1. Covered entities.
  2. Covered information.
  3. Interaction with other standards.
  4. References to other laws.
  B. Definitions.
  1. Act.
  2. Covered entity.
  3. Health care.
  4. Health care clearinghouse.
  5. Health care provider.
  6. Health information.
  7. Health plan.
  8. Secretary.
  9. Small health plan.
  10. Standard.
  11. State.
  12. Transaction.
  13. Business partner.
  14. Designated record set.
  15. Disclosure.
  16. Health care operations.
  17. Health oversight agency.
  18. Individual. 419. Individually identifiable health information.
  20. Law enforcement official.
  21. Payment.
  22. Protected health information.
  23. Psychotherapy notes.
  24. Public health authority.
  25. Research.

26. Research information unrelated to treatment.
27. Treatment.
28. Use.
29. Workforce.
C. General rules.
1. Use and disclosure for treatment, payment, and health care operations.
2. Minimum necessary use and disclosure.
3. Right to restrict uses and disclosures.
4. Creation of de-identified information.
5. Application to business partners.
6. Application to information about deceased persons.
7. Adherence to the notice of information practices.
8. Application to covered entities that are components of organizations that are not covered entities.
D. Uses and disclosures with individual authorization.
1. Requirements when the individual has initiated the authorization.
2. Requirements when the covered entity initiates the authorization.
3. Model forms.
4. Plain language requirement.
5. Prohibition on conditioning treatment or payment.
6. Inclusion in the accounting for uses and disclosures.
7. Revocation of an authorization by the individual.
8. Expired, deficient, or false authorization.
E. Uses and disclosures permitted without individual authorization.
1. Uses and disclosures for public health activities.
2. Use and disclosure for health oversight activities.
3. Use and disclosure for judicial and administrative proceedings.
4. Disclosure to coroners and medical examiners.
5. Disclosure for law enforcement.
6. Uses and disclosure for governmental health data systems.
7. Disclosure of directory information.
8. Disclosure for banking and payment processes.
9. Uses and disclosures for research.
10. Uses and disclosures in emergency circumstances.
11. Disclosure to next-of-kin.
12. Additional uses and disclosures required by other law.
13. Application to specialized classes.
F. Rights of individuals.
1. Rights and procedures for a written notice of information practices.
2. Rights and procedures for access for inspection and copying.
3. Rights and procedures with respect to an accounting of disclosures.
4. Rights and procedures for amendment and correction.
G. Administrative requirements.
1. Designation of a privacy official.
2. Training.
3. Safeguards.
4. Internal complaint process.
5. Sanctions.
6. Duty to mitigate.
H. Development and documentation of policies and procedures.
1. Uses and disclosures of protected health information.
2. Individual requests for restricting uses and disclosures.
3. Notice of information practices.
4. Inspection and copying.
5. Amendment or correction.
6. Accounting for disclosures.
7. Administrative requirements.
8. Record keeping requirements.
I. Relationship to other laws
1. Relationship to State laws.
2. Relationship to other federal laws.
J. Compliance and Enforcement.
1. Compliance
2. Enforcement.
III. Small Business Assistance
1. Notice to individuals of information practices.
2. Access of individuals to protected health information.
3. Accounting for uses and disclosures.
4. Amendment and correction.
5. Designated Privacy official.
6. Training.
7. Safeguards.
8. Complaints.
9. Sanctions.
10. Documentation of policies and procedures.
11. Minimum Necessary.
12. Business partners.
13. Special disclosures that do not require authorization—public health, research, etc.
14. Verification.
IV. Preliminary Regulatory Impact Analysis
A. Relationship of this Analysis to Analyses in Other HIPAA Regulations.
B. Summary of Costs and Benefits.
C. Need for the Proposed Action.
D. Baseline Privacy Protections.
1. Professional Codes of Conduct and the Protection of Health Information.
2. State Laws.
3. Federal Laws.
E. Costs.
F. Benefits.
G. Examination of Alternative Approaches.
1. Creation of de-identified information.
2. General rules.
3. Use and disclosure for treatment, payment, and health care operations.
4. Minimum necessary use and disclosure.
5. Right to restrict uses and disclosures.
6. Application to business partners.
7. Application to information about deceased persons.
8. Uses and disclosures with individual authorization.
9. Uses and disclosures permitted without individual authorization.
10. Clearinghouses and the rights of individuals.
11. Rights and procedures for a written notice of information practices.
12. Rights and procedures for access for inspection and copying.
13. Rights and procedures with respect to an accounting of disclosures.
14. Rights and procedures for amendment and correction.
15. Administrative requirements.
16. Development and documentation of policies and procedures.
17. Compliance and Enforcement.
V. Initial Regulatory Flexibility Analysis
A. Introduction.
B. Economic Effects on Small Entities
1. Number and Types of Small Entities Affected.
2. Activities and Costs Associated with Compliance.
3. The burden on a typical small business.
VI. Unfunded Mandates
A. Future Costs.
B. Particular regions, communities, or industrial sectors.
C. National productivity and economic growth.
D. Full employment and job creation.
E. Exports.
VII. Environmental Impact
VIII. Collection of Information Requirements
IX. Executive Order 12612: Federalism
X. Executive Order 13086: Consultation and Coordination with Indian Tribal Governments
List of Subjects in 45 CFR Parts 160 and 164
Appendix: Sample Provider Notice of Information Practices

I. Background

A. Need for Privacy Standards.

[Please label comments about this section with the subject: "Need for privacy standards"]

The maintenance and exchange of individually identifiable health information is an integral component of the delivery of quality health care. In order to receive accurate and reliable diagnosis and treatment, patients must provide health care professionals with accurate, detailed information about their personal health, behavior, and other aspects of their lives. Health care providers, health plans and health care clearinghouses also rely on the provision of such information to accurately and promptly process claims for payment and for other administrative functions that directly affect a patient's ability to receive needed care, the quality of that care, and the efficiency with which it is delivered.

Individuals who provide information to health care providers and health plans increasingly are concerned about how their information is used within the health care system. Patients want to know that their sensitive information will be protected not only during the course of their treatment but also in the future as that information is maintained and/or transmitted within and outside of the health care system. Indeed, a Wall Street Journal/ABC poll on September 16, 1999 asked Americans what concerned them most in the coming century. "Loss of personal privacy" was the first or second concern of 29 percent of respondents. All other issues, such a terrorism, world war, and global warming had scores of 23 percent or less.

Efforts to provide legal protection against the inappropriate use of individually identifiable health information have been, to date, undertaken primarily by the States. States have adopted a number of laws designed to protect patients against the inappropriate use of health information. A recent survey of these laws indicates, however, that these protections are quite uneven and leave large gaps in their protection. See Health Privacy Project, "The State of Health Privacy: An Uneven Terrain," Institute for Health Care Research and Policy, Georgetown University (July 1999) (http://www.healthprivacy.org).

A clear and consistent set of privacy standards would improve the effectiveness and the efficiency of the health care system. The number of entities who are maintaining and transmitting individually identifiable health information has increased significantly over the last 10 years. In addition, the rapid growth of integrated health care delivery systems requires greater use of integrated health information systems. The expanded use of electronic information has had clear benefits for patients and the health care system as a whole. Use of electronic information has helped to speed the delivery of effective care and the processing of billions of dollars worth of health care claims. Greater use of electronic data has also increased our ability to identify and treat those who are at risk for disease, conduct vital research, detect fraud and abuse, and measure and improve the quality of care delivered in the U.S.

The absence of national standards for the confidentiality of health information has, however, made the health care industry and the population in general uncomfortable about this primarily financially driven expansion in the use of electronic data. Many plans, providers, and clearinghouses have taken steps to safeguard the privacy of individually-identifiable health information. Yet they must currently rely on a patchwork of State laws and regulations that are incomplete and, at times, inconsistent. The establishment of a consistent foundation of privacy standards would, therefore, encourage the increased and proper use of electronic information while also protecting the very real needs of patients to safeguard their privacy.

The use of these standards will most clearly benefit patients who are, in increasing numbers, indicating that they are apprehensive about the use and potential use of their health information for inappropriate purposes. A national survey released in January 1999 indicated that one-fifth of Americans already believe that their personal health information has been used inappropriately. See California HealthCare Foundation, "National Survey: Confidentiality of Medical Records," January 1999 (conducted by Princeton Survey Research Associates) (http://www.chcf.org). Of even greater concern, one-sixth of respondents indicated that they had taken some form of action to avoid the misuse of their information, including providing inaccurate information, frequently changing physicians, or avoiding care. The use of these standards will help to restore patient confidence in the health care system, providing benefits to both patients and those who serve them.

In order to administer their plans and provide services, private and public health plans, health care providers, and health care clearinghouses must assure their customers (such as patients, insurers, providers, and health plans) that the health care information they collect, maintain, use, or transmit will remain confidential. The protection of this information is particularly important where it is individually identifiable. Individuals have an important and legitimate interest in the privacy of their health information, and that interest is threatened where there is improper use or disclosure of the information. The risk of improper uses and disclosures has increased as the health care industry has begun to move from primarily paper-based information systems to systems that operate in various electronic forms. The ease of information collection, organization, retention, and exchange made possible by the advances in computer and other electronic technology afford many benefits to the health care industry and patients. At the same time, these advances have reduced or eliminated many of the logistical obstacles that previously served to protect the confidentiality of health information and the privacy interests of individuals.

Congress recognized the need for minimum national health care privacy standards to protect against inappropriate use of individually identifiable health information by passing the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which called for the enactment of a privacy statute within three years of the date of enactment. The legislation also called for the Secretary of Health and Human Services to develop and send to the Congress recommendations for protecting the confidentiality of health care information, which she did on September 11, 1997. The Congress further recognized the importance of such standards by providing the Secretary of Health and Human Services with authority to promulgate health privacy regulations in lieu of timely action by the Congress. The need for patient privacy protection also was recognized by the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry in its recommendations for a Consumer Bill of Rights and Responsibilities (November, 1997).

B. Statutory Background.

[Please label comments about this section with the subject: "Statutory background"]

The Congress addressed the opportunities and challenges presented by the health care industry's increasing use of and reliance on electronic technology in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which was enacted on August 21, 1996. Sections 261 through 264 of HIPAA are known as the Administrative Simplification provisions. The major part of these Administrative Simplification provisions are found at section 262 of HIPAA, which enacted a new part C of title XI of the Social Security Act (hereinafter we refer to the Social Security Act as the "Act" and we refer to all other laws cited in this document by their names).

In section 262, Congress recognized and sought to facilitate the efficiencies and cost savings for the health care industry that the increasing use of electronic technology affords. Thus, section 262 directs HHS to issue standards to facilitate the electronic exchange of information with respect to financial and administrative transactions carried out by health plans, health care clearinghouses, and health care providers who transmit electronically in connection with such transactions. HHS proposed such standards in a series of Notices of Proposed Rulemaking (NPRM) published on May 7, 1998 (63 FR 25272 and 25320), and June 16, 1998 (63 FR 32784). At the same time, Congress recognized the challenges to the confidentiality of health information presented by the advances in electronic technology and communication. Section 262 thus also directs HHS to develop standards to protect the security, including the confidentiality and integrity, of such information. HHS issued an NPRM proposing security standards on August 12, 1998 (63 FR 43242).

Congress has recognized that privacy standards must accompany the electronic data interchange standards and that the increased ease of transmitting and sharing individually identifiable health information must be accompanied by an increase in the privacy and confidentiality. In fact, a significant portion of the first Administrative Simplification section that was debated on the floor of the Senate in 1994 (as part of the Health Security Act) was made up of privacy provision. Although the requirement for the issuance of concomitant privacy standards remained as part of the bill passed by the House of Representatives, in conference the requirement for privacy standards was removed from the standard-setting authority of title XI (section 1173 of the Act) and placed in a separate section of HIPAA, section 264. Subsection (b) of section 264 required the Secretary of HHS to develop and submit to the Congress recommendations for:

> (1) The rights that an individual who is a subject of individually identifiable health information should have.
>
> (2) The procedures that should be established for the exercise of such rights.
>
> (3) The uses and disclosures of such information that should be authorized or required.

The Secretary's Recommendations were submitted to the Congress on September 11, 1997, and are summarized below. Section 264(c)(1) provides that:

> If legislation governing standards with respect to the privacy of individually identifiable health information transmitted in connection with the transactions described in section 1173(a) of the Social Security Act (as added by section 262) is not enacted by (August 21, 1999), the Secretary of Health and Human Services shall promulgate final regulations containing such standards not later than (February 21, 2000). Such regulations shall address at least the subjects described in subsection (b).

As the Congress did not enact legislation governing standards with respect to the privacy of individually identifiable health information prior to August 21, 1999, HHS has now, in accordance with this statutory mandate, developed proposed rules setting forth standards to protect the privacy of such information.

These privacy standards have been, and continue to be, an integral part of the suite of Administrative Simplification standards intended to simplify and improve the efficiency of the administration of our health care system.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose several requirements on HHS, health plans, health care clearinghouses, and health care providers who conduct the identified transactions electronically.

The first section, section 1171 of the Act, establishes definitions for purposes of part C of title XI for the following terms: code set, health care clearinghouse, health care provider, health information, health plan, individually identifiable health information, standard, and standard setting organization.

Section 1172 of the Act makes the standard adopted under part C applicable to: (1) Health plans, (2) health care clearinghouses, and (3) health care providers who transmit health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act (hereinafter referred to as the "covered entities"). Section 1172 also contains requirements concerning the adoption of standards, including the role of standard setting organizations and required consultations, summarized below.

Section 1173 of the Act requires the Secretary to adopt standards for transactions, and data elements for such transactions, to enable health information to be exchanged electronically. Section 1173(a)(1) describes the transactions that are covered, which include the nine transactions listed in section 1173(a)(2) and other transactions determined appropriate by the Secretary. The remainder of section 1173 sets out requirements for the specific standards the Secretary is to adopt: unique health identifiers, code sets, security standards, electronic signatures, and transfer of information among health plans. Of particular relevance to this proposed rule is section 1173(d), the security standard provision. The security standard authority applies to both the transmission and the maintenance of health information and requires the entities described in section 1172(a) to maintain reasonable and appropriate safeguards to ensure the integrity and confidentiality of the information, protect against reasonably anticipated threats or hazards to the security or integrity of the information or unauthorized uses or disclosures of the information, and to ensure compliance with part C by the entity's officers and employees.

In section 1174 of the Act, the Secretary is required to establish standards for all of the above transactions, except claims attachments, by February 21, 1998. A proposed rule for most of the transactions was published in 1998 with the final rule expected by the end of 1999. The delay was caused by the deliberate consensus building process working with industry and the large number of comments received (about 17,000).

Generally, after a standard is established, it may not be changed during the first year after adoption except for changes that are necessary to permit compliance with the standard. Modifications to any of these standards may be made after the first year, but not more frequently than once every 12 months. The Secretary also must ensure that procedures exist for the routine maintenance, testing, enhancement and expansion of code sets and that there are crosswalks from prior versions.

Section 1175 of the Act prohibits health plans from refusing to process, or from delaying processing of, a transaction that is presented in standard format. It also establishes a timetable for compliance: each person to whom a standard or implementation specification applies is required to comply with the standard within 24 months (or 36 months for small health plans) of its adoption. A health plan or other entity may, of course, comply voluntarily before the effective date. The section also provides that compliance with modifications to standards or implementation specifications must be accomplished by a date designated by the Secretary, which date may not be earlier than 180 days from the notice of change.

Section 1176 of the Act establishes civil monetary penalties for violation of the provisions in part C of title XI of the Act, subject to several limitations. Penalties may not be more than $100 per person per violation and not more than $25,000 per person for violations of a single standard for a calendar year. The procedural provisions of section 1128A of the Act apply to actions taken to obtain civil monetary penalties under this section.

Section 1177 establishes penalties for any person that knowingly uses a unique health identifier, or obtains or discloses individually identifiable health information in violation of the part. The penalties include: (1) A fine of not more than $50,000 and/or imprisonment of not more than 1 year; (2) if the offense is "under false pretenses," a fine of not more than $100,000 and/or imprisonment of not more than 5 years; and (3) if the offense is with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine of not more than $250,000 and/or imprisonment of not more than 10 years. We note that these penalties do not affect any other penalties that may be imposed by other federal programs.

Under section 1178 of the Act, the requirements of part C, as well as any standards or implementation specifications adopted thereunder, preempt contrary State law. There are three exceptions to this general rule of preemption: State laws that the Secretary determines are necessary for certain purposes set forth in the statute; State laws that the Secretary determines address controlled substances; and State laws relating to the privacy of individually identifiable health information that are contrary to and more stringent than the federal requirements. There also are certain areas of State law (generally relating to public health and oversight of health plans) that are explicitly carved out of the general rule of preemption and addressed separately.

Section 1179 of the Act makes the above provisions inapplicable to financial institutions or anyone acting on behalf of a financial institution when "authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for a financial institution." Finally, as explained above, section 264 requires the Secretary to issue standards with respect to the privacy of individually identifiable health information transmitted in connection with the transactions described in section 1173(a)(1). Section 264 also contains a preemption provision that provides that contrary provisions of State laws that are more stringent than the federal standards, requirements, or implementation specifications will not be preempted.

C. Administrative Costs

Section 1172(b) of the Act provides that "(a)ny standard adopted under this part (part C of title XI of the Act) shall be consistent with the objective of reducing the administrative costs of providing and paying for health care." As is more fully discussed in the Regulatory Impact and Regulatory Flexibility analyses below, we recognize that the proposed privacy standards would entail substantial initial and ongoing administrative costs for entities subject to the rules. However, as the analyses also indicate, even if the rules proposed below are considered in isolation, they should produce administrative and other cost savings that should more than offset such costs on a national basis. It is also the case that the privacy standards, like the security standards authorized by section 1173(d) of the Act, are necessitated by the technological advances in information exchange that the remaining Administrative Simplification standards facilitate for the health care industry. The same technological advances that make possible enormous administrative cost savings for the industry as a whole have also made it possible to breach the security and privacy of health information on a scale that was previously inconceivable. The Congress recognized that adequate protection of the security and privacy of health information is a *sine qua non* of the increased efficiency of information exchange brought about by the electronic revolution, by enacting the security and privacy provisions of the law. Thus, even if the rules proposed below were to impose net costs, which we do not believe they do, they would still be "consistent with" the objective of reducing administrative costs for the health care system as a whole.

D. Consultations

[*Please label comments about this section with the subject: "Consultations"*]

The Congress explicitly required the Secretary to consult with specified groups in developing the standards under sections 262 and 264. Section 264(d) of HIPAA specifically requires the Secretary to consult with the National Committee on Vital and Health Statistics (NCVHS) and the Attorney General in carrying out her responsibilities under the section. Section 1172(b)(3) of the Act, which was enacted by section 262, requires that, in developing a standard under section 1172 for which no standard setting organization has already developed a standard, the Secretary must, before adopting the standard, consult with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA). Section 1172(f) also requires the Secretary to rely on the recommendations of the NCVHS and consult with other appropriate federal and State agencies and private organizations.

We engaged in the required consultations including the Attorney General, NUBC, NUCC, WEDI and the ADA. We consulted with the NCVHS in developing the Recommendations, upon which this proposed rule is based. In addition we are continuing to consult with this committee by requesting the committee to review this proposed rule and provide comments, and recommendations will be taken into account in developing the final regulation. We consulted with representatives of the National Congress of American Indians, the National Indian Health Board, and the self governance tribes. We also met with representatives of the National Governors' Association, the National Conference of State Legislatures, the National Association of Public Health Statistics and Information Systems, and a number of other State organizations to discuss the framework for the proposed rule, issues of special interests to the States, and the process for providing comments on the proposed rule.

In addition to the required consultations, we met with numerous individuals, entities, and agencies regarding the regulation, with the goal of making these standards as compatible as possible with current business practices, while still enhancing privacy protection. Relevant federal agencies participated in an interagency working group, with additional representatives from all operating divisions and many staff offices of HHS. The following federal agencies and offices were represented on the interagency working group: the Department of Justice, the Department of Commerce, the Social Security Administration, the Department of Defense, the Department of Veterans Affairs, the Department of Labor, the Office of Personnel Management, and the Office of Management and Budget. The interagency working group developed the policies of the proposed rules set forth below.

E. Summary and Purpose of the Proposed Rule

[*Please label comments about this section with the subject: "Summary and purpose"*]

The following outlines the provisions and operations of this proposed rule and is intended to provide a framework for the following preamble. A more detailed discussion of the authority, rationale, and implementation can be found in Section II of the preamble, Provisions of the Proposed Rule.

As described in more detail in preamble section I.B, above, the HIPAA requires the Secretary of HHS to promulgate a series of standards relating to the electronic exchange of health information. Collectively these are known as the Administrative Simplification provisions. In addition to those standards, the Secretary was required to develop and submit to the Congress recommendations for the privacy rights that an individual who is a subject of individually identifiable health information should have, the procedures that should be established for the exercise of such rights, and the uses and disclosures of such information that should be authorized.

On September 11, 1997, the Secretary presented to the Congress her Recommendations for protecting the “Confidentiality of Individually-Identifiable Health Information” (the “Recommendations”), as required by section 264 (a) of HIPAA. In those Recommendations, the Secretary called for new federal legislation to create a national floor of standards that provide fundamental privacy rights for patients, and that define responsibilities for those who use and disclose identifiable health information.

The Recommendations elaborated on the components that should be included in privacy legislation. These components included new restrictions on the use and disclosure of health information, the establishment of new consumer rights, penalties for misuse of information, and redress for those harmed by misuse of their information. The Recommendations served, to the extent possible under the HIPAA legislative authority, as a template for the rules proposed below. They are available on the HHS website at http://aspe.hhs.gov/admnsimp/pvcrec.htm.

The Secretary's Recommendations set forth the a framework for federal privacy legislation. Such legislation should:

- Allow for the smooth flow of identifiable health information for treatment, payment, and related operations, and for specified additional purposes related to health care that are in the public interest.
- Prohibit the flow of identifiable information for any additional purposes, unless specifically and voluntarily authorized by the subject of the information.
- Put in place a set of fair information practices that allow individuals to know who is using their health information, and how it is being used.
- Establish fair information practices that allow individuals to obtain access to their records and request amendment of inaccurate information.
- Require persons who hold identifiable health information to safeguard that information from inappropriate use or disclosure.
- Hold those who use individually identifiable health information accountable for their handling of this information, and to provide legal recourse to persons harmed by misuse.

We believed then, and still believe, that there is an urgent need for legislation to establish comprehensive privacy standards for all those who pay and provide for health care, and those who receive information from them.

This proposed rule implements many of the policies set forth in the Recommendations. However, the HIPAA legislative authority is more limited in scope than the federal statute we recommend, and does not always permit us to propose the policies that we believe are optimal. Our major concerns with the scope of the HIPAA authority include the limited number of entities to whom the proposed rule would be applicable, and the absence of strong enforcement provisions and a private right of action for individuals whose privacy rights are violated.

The Recommendations call for legislation that applies to health care providers and payers who obtain identifiable health information from individuals and, significantly, to those who receive such information from providers and payers. The Recommendations follow health information from initial creation by a health plan or health care provider, through various uses and disclosures, and would establish protections at each step: “We recommend that everyone in this chain of information handling be covered by the same rules.” However, the HIPAA limits the application of our proposed rule to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act (the “covered entities”). Unfortunately, this leaves many entities that receive, use and disclose protected health information outside of the system of protection that we propose to create.

In particular, the proposed regulation does not directly cover many of the persons who obtain identifiable health information from the covered entities. In this proposed rule we are, therefore, faced with creating new regulatory permissions for covered entities to disclose health information, but cannot directly put in place appropriate restrictions on how many likely recipients of such information may use and re-disclose such information. For example, the Secretary's Recommendations proposed that protected health information obtained by researchers not be further disclosed except for emergency circumstances, for a research project that meets certain conditions, and for oversight of research. In this proposed rule, however, we cannot impose such restrictions. Additional examples of persons who receive this information include workers compensation carriers, researchers, life insurance issuers, employers and marketing firms. We also do not have the authority to directly regulate many of the persons that covered entities hire to perform administrative, legal, accounting, and similar services on their behalf, and who would obtain health information in order to perform their duties. This inability to directly address the information practices of these groups leaves an important gap in the protections provided by the proposed rule.

In addition, only those providers who engage in the electronic administrative simplification transactions can be covered by this rule. Any provider who maintains a solely paper information system would not be subject to these privacy standards, thus leaving another gap in the system of protection we propose to create.

The need to match a regulation limited to a narrow range of covered entities with the reality of information sharing among a wide range of entities leads us to consider limiting the type or scope of the disclosures permitted under this regulation. The disclosures we propose to allow in this rule are, however, necessary for smooth operation of the health care system and for promoting key public goals such as research, public health, and law enforcement. Any limitation on such disclosures could do more harm than good.

Requirements to protect individually identifiable health information must be supported by real and significant penalties for violations. We recommend federal legislation that would include punishment for those who misuse personal health information and redress for people who are harmed by its misuse. We believe there should be criminal penalties (including fines and imprisonment) for obtaining health information under false pretenses, and for knowingly disclosing or using protected health information in violation of the federal privacy law. We also believe that there should be civil monetary penalties for other violations of the law and that any individual whose rights under the law have been violated, whether negligently or knowingly, should be permitted to bring an action for actual damages and equitable relief. Only if we put the force of law behind our rhetoric can we expect people to have confidence that their health information is protected, and ensure that those holding health information will take their responsibilities seriously.

In HIPAA, Congress did not provide such enforcement authority. There is no private right of action for individuals to enforce their rights, and we are concerned that the penalty structure does not reflect the importance of these privacy protections and the need to maintain individuals' trust in the system. For these and other reasons, we continue to call for federal legislation to ensure that privacy protection for health information will be strong and comprehensive.

1. Applicability

a. *Entities covered.* Under section 1172(a) of the Act, the provisions of this proposed rule apply to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act (the "covered entities"). The terms health plan, health care provider, and health care clearinghouse are defined in proposed § 160.103.

As noted above, because we do not have the authority to apply these standards directly to any entity that is not a covered entity, the proposed rule does not directly cover many of the persons who obtain identifiable health information from the covered entities. Examples of persons who receive this information include contractors, third-party administrators, researchers, public health officials, life insurance issuers, employers and marketing firms. We would attempt to fill this gap in our legislative authority in part by requiring covered entities to apply many of the provisions of rule to the entities with whom they contract for administrative and other services. The proposed provision is outlined in more detail below in the discussion of business partners.

b. *Protected health information.* We propose to apply the requirements of this rule to the subset of individual identifiable health information which is maintained or transmitted by covered entities and which is or has been in electronic form. The provisions of the rule would apply to the information itself, referred to as protected health information in this rule, and not to the particular records in which the information is contained. Once information has been maintained or transmitted electronically by a covered entity, the protections would follow the information in whatever form, including paper records, in which it exists (while it is held by a covered entity).

We understand that our proposal would create a situation in which some health information would be protected while other similar information (e.g., health information contained in paper records that has not been maintained or transmitted electronically) would not be protected. We are concerned about the potential confusion that such a system might entail, but we believe that applying the provisions of the rule to information only in electronic form would result in no real protection for health care consumers. We have requested comment on whether we should extend the scope of the rule to all individually identifiable health information, including purely paper records, maintained by covered entities. Although we are concerned that extending our regulatory coverage to all records might be inconsistent with the intent of the provisions in the HIPAA, we believe that we do have the authority to do so and that there are sound rationale for providing a consistent level of protection to all individually identifiable health information held by covered entities.

2. General Rules

The purpose of our proposal is to define and limit the circumstances in which an individual's protected heath information may be used or disclosed by others. We are proposing to make the use and exchange of protected health information relatively easy for health care purposes, and more difficult for purposes other than health care.

Covered entities would be prohibited from using or disclosing protected health information except as provided in the proposed rule. Under the rule, covered entities could use or disclose protected health information with individual authorization, as provided in proposed § 164.508. Covered entities could use or disclose protected health information without authorization for treatment, payment and health care operations, as provided in § 164.506(a). (The terms "treatment," "payment" and "health care operations" are defined in proposed § 164.504). Covered entities also would be permitted to use or disclose a patient's protected health information without authorization for specified public and public policy-related purposes, including public health, research, health oversight, law enforcement, and use by coroners, as provided in proposed § 164.510. Covered entities would be permitted to use and disclose protected health information when required to do so by other law, such as mandatory reporting under state law or pursuant to a search warrant.

Covered entities would be required by this rule to disclose protected health information for only two purposes: to permit individuals to inspect and copy protected health information about them, pursuant to proposed § 164.514, and for enforcement of this rule pursuant to proposed § 164.522.

Under our proposal, most uses and disclosures of an individual's protected health information would not require explicit authorization by the individual, but would be restricted by the provisions of the rule. As discussed in section II.C. of this preamble, we propose to substitute regulatory protections for the pro forma authorizations that are used today. The rules would create a sphere of privacy protection that includes covered entities who engage in treatment or payment, and the business partners they hire to assist them. While written consent for these activities would not be required, new restrictions on both internal uses and external disclosures would be put in place to protect the information.

Our proposal is based on the principle that a combination of strict limits on how plans and providers can use and disclose identifiable health information, adequate notice to patients about how such information will be used, and patients' rights to inspect, copy and amend protected health information about them, will provide patients with better privacy protection and more effective control over the dissemination of their information than alternative approaches to patient protection and control.

A central aspect of this proposal is the principle of "minimum necessary" disclosure. (See proposed § 164.506(a)). With certain exceptions, permitted uses and disclosures of protected health information would be restricted to the minimum amount of information necessary to accomplish the purpose for which the information is used or disclosed, taking into consideration practical and technological limitations (including the size and nature of the covered entity's business) and costs. While we recognize that there are legitimate uses of protected health information for which patient authorization should not be required, the privilege of this access carries with it an obligation to safeguard the information. Covered entities would be required to take steps to limit the amount of protected health information used or disclosed to the information necessary to meet the purpose of the use or disclosure. These policies could include limiting access to the information to a subset of employees who need to use the information in the course of their work, and limiting the amount of information disclosed from a record to the information needed by the recipient to fulfill the purpose of the disclosure.

We propose that individuals be able to request that a covered entity restrict the protected health information that results from that encounter (with the exception of encounters for emergency treatment) from further use or disclosure for treatment, payment, and health care operations. (See proposed § 164.506(c)). Covered entities would not be required to agree to restrictions requested by individuals; the rule would only enforce a restriction that has been agreed to by the covered entity and the individual.

Today's health care system is a complex business involving multiple individuals and organizations engaging in a variety of commercial relationships. An individual's privacy should not be compromised when a covered entity engages in such normal business relationships. To accomplish this result, the rule would, with narrow exceptions, require covered entities to ensure that the business partners with which they share protected health information understand—through contract requirements " that they are subject to standards regarding use and disclosure of protected health information and agree to abide by such rules. (See proposed § 164.506(e)). Other than for purposes of treatment consultation or referral, we would require a contract to exist between the covered entity and the business partner that would, among other specified provisions, limit the business partner's uses and disclosures of protected health information to those permitted by the contract and would impose certain security, inspection and reporting requirements on the business partner.

We do not intend to interfere with business relationships in the health care industry, but rather to ensure that the privacy of the information shared in these relationships is protected. Business partners would not be permitted to use or disclose protected health information in ways that would not be permitted by the covered entity itself.

3. Scalability

The privacy standards would need to be implemented by all covered entities, from the smallest provider to the largest, multi-state health plan. For this reason, we propose the privacy principles and standards that covered entities must meet, but leave the detailed policies and procedures for meeting these standards to the discretion of each covered entity. We intend that implementation of these standards be flexible and scalable, to account for nature of each covered entity's business, as well as the covered entity's size and resources. A single approach to implementation of these requirements would be neither economically feasible nor effective in safeguarding health information privacy. Instead, we would require that each covered entity assess its own needs and devise and implement privacy policies appropriate to its size, its information practices, and its business requirements. Examples of how implementation of these standards are scalable are provided in the relevant sections of this preamble. (See, also, the discussion in preamble sections II.C. and III.)

4. Uses and Disclosures With Individual Authorization

The rule would require that covered entities have authorization from individuals before using or disclosing their protected health information for any purpose not otherwise recognized by this rule. In § 164.508, we propose rules for obtaining authorizations. Authorizations are needed in a wide array of circumstances. Entities not covered by this rule often want access to individually identifiable health information . For example, a potential employer may require health information as part of a background check for security purposes, or the patient may request a plan or provider to disclose information to obtain eligibility for disability benefits or to an attorney for use in a law suit. Covered entities may also seek such an authorization in order to use protected health information for a purpose not otherwise permitted under this rule. For example, a health plan may wish to use a person's records for developing a marketing strategy.

The proposed authorization requirements are intended to ensure that an individual's authorization is truly voluntary. We would prohibit covered entities from conditioning treatment or payment on the individual agreeing to disclose information for other purposes. We also would require authorizations to clearly and specifically describe the information to be disclosed. If an authorization is sought so that a covered entity may sell, barter, or otherwise exchange the information for purposes other than treatment, payment, or health care operations, the covered entity would have to disclose this fact on the authorization form. We would also require authorizations to be revocable. We do not seek to limit the purposes for which authorization of records disclosure may be sought, but rather to ensure that these authorizations are voluntary, fair, and enforceable.

While the provisions of this proposed rule are intended to make authorizations for treatment and payment purposes unnecessary, some States may continue to require them. This rule would not supersede such State requirements generally, but would impose a new requirement that such State-mandated authorizations must be physically separate from an authorization for other purposes described in this rule.

5. Uses and Disclosures for Treatment, Payment and Health Care Operations

Under this rule, covered entities with limited exceptions would be permitted to use and disclose protected health information without individual authorization for treatment and payment purposes, and for related purposes that we have defined as health care operations. (See § 164.506.) We would construe the terms "treatment" and "payment" broadly. In section II.B. of this preamble, we describe the types of activities that would be considered health care operations.

6. Permissible Uses and Disclosures for Purposes Other Than Treatment, Payment and Health Care Operations

Individually identifiable health information is needed to support certain national priority activities, such as reducing health care fraud, improving the quality of treatment through research, protecting the public health, and responding to emergency situations. In many cases, the need to obtain authorization for use of health information would create significant obstacles in efforts to fight crime, understand disease, and protect public health. We examined the many uses that the health professions, related industries, and the government make of health information and we are aware of the concerns of privacy and consumer advocates about these uses.

After balancing privacy and other social values, we are proposing rules that would permit use or disclosure of health information without individual authorization for the following national priority activities and activities that allow the health care system to operate smoothly:

- Oversight of the health care system
- Public health functions
- Research
- Judicial and administrative proceedings
- Law enforcement
- Emergency circumstances
- To provide information to next-of-kin
- For identification of the body of a deceased person, or the cause of death
- For government health data systems
- For facility patient directories
- To banks, to process health care payments and premiums
- For management of active duty military and other special classes of individuals

- Where other law requires such disclosure and no other category of permissible disclosures would allow the disclosure

The rule would specify conditions that would need to be met in order for the use or disclosure of protected health information to be permitted for each of these purposes. (See § 164.514) We have proposed conditions tailored to the need for each type of use or disclosure, and to the types of organizations involved in each such activity. These uses and disclosures, and the conditions under which they may occur, are discussed in section II. F of this preamble.

The uses and disclosures that would be permitted under proposed rule would be just that—permissible. Thus, for disclosures that are not compelled by other law, providers and payers would be free to disclose or not, according to their own policies and ethical principles. We propose these rules as a basic set of legal controls, but ethics and professional practice may dictate more guarded disclosure policies. At the same time, nothing in this rule would provide authority for a covered entity to restrict or refuse to make a disclosure mandated by other law.

7. Individual Rights

We are proposing to establish several basic rights for individuals with respect to their protected health information. We propose that individuals be able to obtain access to protected health information about them, which would include a right to inspect and obtain a copy of such information. See proposed § 164.514. The right of access would extend to an accounting of disclosures of the protected health information for purposes other than treatment, payment, and health care operations. See proposed § 164.515.

In § 164.512, we also propose that individuals have a right to receive a written notice of information practices from covered entities. While the primary purpose of this notice would be to inform individuals about the uses and disclosures that a covered entity would intend to make with the information, the notice also would serve to limit the activities of the covered entity—an otherwise lawful use or disclosure that does not appear in the entity's notice would not be permitted. The covered entity's uses and disclosures could be stated in broad terms, but an entity would not be able to make a use or disclosure that is not included in its notice. The covered entity could modify its notice at any time and apply revised practices to existing and new information held by the covered entity.

In addition, we propose that individuals have the right to request amendment or correction of protected health information that is inaccurate or incomplete. See proposed § 164.516. We are proposing procedural requirements and deadlines to implement each of these individual rights.

8. Administrative Requirements and Policy Development and Documentation

In our Recommendations, we call for a federal law that requires holders of identifiable health information to implement safeguards to protect it from inappropriate access, use or disclosure. No legislation or rule can effectively specify how to do this for every holder of health information. But federal rules can and should require those who hold identifiable health information to develop and implement basic administrative procedures to protect that information and protect the rights of the individual with respect to that information.

To accomplish this goal, we propose that covered entities be required to designate a privacy official, develop a privacy training program for employees, implement safeguards to protect health information from intentional or accidental misuse, provide some means for individuals to lodge complaints about the covered entity's information practices, and develop a system of sanctions for employees and business partners who violate the entity's policies or procedures. (See proposed § 164.518.). We also propose, in § 164.520, to require covered entities to maintain documentation of their policies and procedures for complying with the requirements of this proposed rule. The purpose of these requirements is to ensure that covered entities make explicit decisions about who would have access to protected health information, how that information would be used within the entity, and when that information would or would not be disclosed to other entities.

9. Preemption

The HIPAA provides that the rule promulgated by the Secretary may not preempt state laws that are in conflict with the regulatory requirements and that provide greater privacy protections. The HIPAA also provides that standards issued by the Secretary will not supercede certain other State laws, including: State laws relating to reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention; State regulatory reporting; State laws which the Secretary finds are necessary to prevent fraud and abuse, to ensure appropriate State regulation of insurance, for State reporting on health care delivery or costs, or for other purposes; or, State laws which the Secretary finds address controlled substances. These provisions are discussed in more detail in preamble section II.I.1.

This proposed rule also must be read in conjunction with other federal laws and regulations that address the use and disclosure of health information. These issues are discussed in preamble section II.I.2.

In general, the rule that we are proposing would create a federal floor of privacy protection, but would not supercede other applicable law that provide greater protection to the confidentiality of health information. In general, our rule would not make entities subject to a state laws to which they are not subject today.

10. Enforcement

The HIPAA grants the Secretary the authority to impose civil monetary penalties against covered entities which fail to comply with the requirements of this rule, and also establishes criminal penalties for certain wrongful disclosures of protected health information. The civil fines are capped at $25,000 for each calendar year for each provision that is violated. The criminal penalties are graduated, increasing if the offense is committed under false pretenses, or with intent to sell the information or reap other personal gain. The statute does not provide for a private right of action for individuals.

We propose to create a complaint system to permit individuals to make complaints to the Secretary about potential violations of this rule. We also propose that covered entities develop a process for receiving complaints from individuals about the entities' privacy practices. (See § 164.522.) Our intent would be to work with covered entities to achieve voluntary compliance with the proposed standards.

11. Conclusion

Although the promise of these proposed standards cannot become reality for many patients because of the gaps in our authority, we believe they would provide important new protections. By placing strict boundaries around the ways covered entities could use and disclose information, these rules would protect health information at its primary sources: health plans and health care providers. By requiring covered entities to inform patients about how their information is being used and shared, by requiring covered entities to provide access to that information, and by ensuring that authorizations would be truly voluntary, these rules would provide patients with important new tools for understanding and controlling information about them. By requiring covered entities to document their privacy practices, this rule would focus attention on the importance of privacy, and reduce the ways in which privacy is compromised through inattention or misuse.

With the Secretary's recommendations and these proposed rules, we are attempting to further two important goals: to allow the free flow of health information needed to provide and promote high quality health care, while assuring that individuals' health information is properly protected. We seek a balance that permits important uses of information privacy of people who seek care and healing. We believe our Recommendations find that balance, and have attempted to craft this proposed rule to strike that balance as well.

We continue to believe, however, that federal legislation is the best way to guarantee these protections. The HIPAA legislative authority does not allow full implementation of our recommended policies in this proposed rule. The legislation limits the entities that can be held responsible for their use of protected health information, and the ways in which the covered entities can be held accountable. For these and other reasons, we continue to call upon Congress to pass comprehensive federal privacy legislation. Publication of this proposed rule does not diminish our firm conviction that such legislation should be enacted as soon as possible.

II. Provisions of the Proposed Rule

We propose to establish a new subchapter C to title 45 of the Code of Federal Regulations. Although the rules proposed below would only establish two new parts (parts 160 and 164), we anticipate the new subchapter C will eventually contain three parts, part 160, 162, and 164, with parts 161 and 163 being reserved for future expansion, if needed. Part 160 will contain general requirements and provisions applicable to all of the regulations issued under sections 262 and 264 of Public Law 104–191 (the Administrative Simplification provisions of HIPAA). We anticipate that Part 162 will contain the Administrative Simplification regulations relating to transactions, code sets and identifiers. The new part 164 will encompass the rules relating to the security standards authorized by section 1173(d), the electronic signature standard authorized by section 1173(e), and the privacy rules proposed below.

The new part 164 will be composed of two subparts: subparts A and E, with B, C, and D being reserved. Subpart A will consist of general provisions and subpart E will consist of the final privacy rules. Because the new part 160 will apply to the privacy rules, as well as the other Administrative Simplification rules, it is set out below.

A. Applicability

[Please label comments about this section with the subject: "Applicability"]

The discussion below describes the entities and the information that would be subject to the proposed regulation.

1. Covered Entities

The standards in this proposed regulation would apply to all health plans, all health care clearinghouses, and all health care providers that transmit health information in an electronic form in connection with a standard transaction. In this proposed rule, these entities are referred to as "covered entities." See definition at proposed § 160.103.

A health plan is defined by section 1171 to be an individual or group plan that provides for, or pays the cost of, medical care. The statute expressly includes a significant group of employee welfare benefit plans, state-regulated insurance plans, managed care plans, and essentially all government health plans, including Medicare, Medicaid, the veterans health care program, and plans participating in the Federal Employees Health Benefits Program. See discussion of the definition in section II.B.

A health care provider would be a provider of services as defined in section 1861(u) of the Act, 42 U.S.C. 1395x, a provider of medical or other health services as defined in section 1861(s) of the Act, and any other person who furnishes, bills or is paid for health care services or supplies in the normal course of business. See discussion of the definition in section II.B. Health care providers would be subject to the provisions of the rule if they transmit health information in electronic form in connection with a standard transaction. Standard transactions include claims and equivalent encounter information, eligibility and enrollment transactions, premium payments, claims attachments, and others. See proposed § 160.103. Health care providers who themselves do not directly conduct electronic transactions would become subject to the provisions of the proposed rule if another entity, such as a billing agent or hospital, transmits health information in electronic form in connection with a standard transaction on their behalf.

A health care clearinghouse would be a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. See section 1171(2) of the Act. For purposes of this rule, we would consider billing services, repricing companies, community health management information systems or community health information systems, "value-added" networks, switches and similar organizations to be health care clearinghouses for purposes of this part only if they actually perform the same functions as a health care clearinghouse. See discussion of the definition in section II.B.

2. Covered Information

We propose to apply the standards in this proposed regulation to individually identifiable health information that is or has been electronically transmitted or maintained by a covered entity, including such information when it is in non-electronic form (e.g., printed on paper) or discussed orally. In this proposed regulation, such information is referred to as "protected health information." See discussion of the definition in section II.B. Under HIPAA, our authority to promulgate privacy standards extends to all individually identifiable health information, in any form, maintained or transmitted by a covered entity. For reasons discussed below, we are proposing to limit the application of the proposed standards to protected health information. Below we invite comment on whether we should apply the standards to a broader set of individually identifiable health information in the future.

Under the proposal, the standards apply to information, not to specific records. Thus, once protected health information is transmitted or maintained electronically, the protections afforded by this regulation would apply to the information in any form and continue to apply as the information is printed, discussed orally or otherwise changed in form. It would also apply to the original paper version of information that is at some point transmitted electronically. The authority for, and implications of, this scope are discussed in detail in this section, below.

This proposed regulation would not apply to information that has never been electronically maintained or transmitted by a covered entity.

a. *Legislative authority.* Under HIPAA, we have authority to promulgate a privacy standard that applies to all individually identifiable health information transmitted or maintained by a covered entity, including information in a non-electronic form. We recognize that there may be an expectation that we would apply privacy standards only to information that is electronically maintained and transmitted. Our prior proposals under HIPAA have addressed only electronically maintained and transmitted information. See Notices of Proposed Rulemaking (NPRM) published on May 7, 1998 (63 FR 25272 and 25320), June 16, 1998 (63 FR 32784), and the proposed security standards published on August 12, 1998 (63 FR 43242).

In considering the appropriate reach of the proposed privacy standards, however, we determined that limiting the standards to electronic information would not be consistent with the requirement in HIPAA for the Secretary to address privacy, confidentiality and security concerns relating to individually identifiable health information.

The HIPAA statute, taken as a whole, contemplates an information protection system that assures the privacy, confidentiality and integrity of health information. Two provisions in subtitle F of HIPAA address privacy and confidentiality concerns: section 264, titled "Recommendations with Respect to Privacy of Certain Health Information" and section 1173(d), titled "Security Standards for Health Information." See 42 U.S.C. 1320d–1320d–8, enacted as sections 262 and 264 of HIPAA.

In enacting HIPAA, Congress recognized that the increased accessibility of health information made possible by the widespread and growing use of electronic media and the new federal mandate for increased standardization of data, requires enhanced privacy and confidentiality protections. The House Report links privacy and security concerns stating: "The standards adopted would protect the privacy and confidentiality of health information. Health information is considered relatively "safe" today, not because it is secure, but because it is difficult to access. These standards improve access and establish strict privacy protections." House Report No. 496, 104th Cong., 2d. Sess., at 99.

Section 264(c) authorizes the Secretary to protect the privacy of individually identifiable health information transmitted in connection with the standard transactions. Section 1173(d) authorizes the Secretary to prescribe requirements that address the security, integrity, and confidentiality of health information maintained or transmitted, in any form or medium, by the covered entities.

Neither the privacy authority in section 264(c) nor the security authority in 1173(d) exclusively limit the scope of protection to electronic information. Section 264(c) of HIPAA requires the Secretary to issue a regulation setting privacy standards for individually identifiable health information "transmitted in connection with the transactions described in section 1173(a)." This statutory language is not on its face limited to electronic transmissions of individually identifiable health information, although electronic transmissions of such information are clearly within its scope. Moreover, the section requires the regulations to address "at least" the subjects of the Secretary's Recommendations, which focus on individually identifiable health information, without reference to whether the information is electronic or not.

The security provision also is not limited by its terms to electronically maintained information. Rather, section 1173(d) applies throughout to "health information," a statutorily defined term that clearly covers information in both its electronic and non-electronic forms.

In HIPAA, when Congress intended to limit health information to its electronic form, it did so explicitly. Section 1172(a)(3) of the statute says that the standards apply to health plans and to health care providers who transmit health information *in electronic form* in connection with the standard transactions (emphasis added); by contrast, the section 1173(d) requirements for information maintained or transmitted are not similarly qualified.

Further support for the premise that the standards may reach information that is maintained or transmitted non-electronically is found within section 1173(d) itself. That section explicitly distinguishes within one subsection (§ 1173(d)(1)(A)) between "record systems used to maintain health information" and "*computerized* record systems." Thus, the conclusion may be drawn that the record systems covered by the § 1173(d) security standards are intended to include record systems other than those that are exclusively electronic or "computerized."

Finally, the section that generally defines the HIPAA standard transactions, section 1173(a), is not limited by its terms to transactions that are electronic. Rather, although all of the transactions described can be performed electronically, all take paper and some take oral forms as well. Indeed, the purpose of the standards, including the security and privacy standards, is stated as "to enable electronic exchange." This purpose would not preclude (and in fact would support) requirements that relate to non-electronic media where they support the overall goal of enabling electronic information exchange. Thus, we believe that the statute authorizes a privacy regulation covering health information in any form or medium maintained or transmitted by the covered entities.

Although we believe that HIPAA authorizes the Secretary to issue regulations covering individually identifiable health information in any form, the proposed privacy standards in this NPRM are directed to protecting only individually identifiable health information that is or at some point has been electronically maintained or transmitted by a covered entity. Those standards do not cover health information that has never been in electronic form.

We are proposing this approach because we believe that it focuses most directly on the primary concern raised by HIPAA: the fact that growing use of computerization in health care, including the rapid growth of electronic transfers of health information, gives rise to a substantial concern about the confidentiality of the health care information that is part of this growing electronic commerce. At the same time, could not adequately address the confidentiality concerns associated with electronic transfers of health information unless we address the resulting uses and disclosures of such information, in whatever form. Indeed, the protection offered by this standard would be devoid of meaning if all non-electronic records and transmissions were excluded. In that event, access to "protected" health information would become merely a matter of obtaining the information in a paper or oral form. Such a narrow reading of the statute would lead to a system in which individually identifiable health information transmitted as part of a claim would be protected only until the information was printed or read aloud, at which point protection would disappear. Previously protected information could be freely printed and redistributed, regardless of limits on further electronic redistribution. The statutory language does not compel such an anomalous result.

In developing our proposal, we considered other approaches for determining the information that would be subject to the privacy standards. We considered but rejected limiting the scope of the proposal to information in electronic form. For the reasons discussed above, such a narrow interpretation would render the standards nearly meaningless. We also considered applying the privacy standards to all individually identifiable health information in any form maintained or transmitted by a covered entity. There are clear advantages to this approach, including permitting covered entities to treat all individually identifiable health information under the same standards. We rejected that approach in favor of our proposed approach which we believe is more focused at the public concerns over health information confidentiality in an electronic communications age. We also were concerned about imposing additional burden with respect to health information that was less likely to present privacy concerns: paper records that are never reduced to electronic form are less likely to become disseminated broadly throughout the health care system. We invite comment on the approach that we are proposing and on whether alternate approaches to determining the health information that would be subject to this regulation would be more appropriate.

We also considered making use of other statutory authorities under which we impose general operating or management conditions for programs (e.g., Medicare, grant programs) to enhance these proposed privacy protections. Doing so could enable us to apply these privacy standards to a wider range of entities than are currently affected, such as health care providers who do not transmit standard transactions electronically. We use many other authorities now to impose confidentiality and privacy requirements, although the current rules lack consistency. It is not clear whether using these other authorities would create more uniform protections or expanded enforcement options. Therefore we request comment on the concept of drawing on other authorities to amplify the protections of these privacy standards.

b. *Application to records containing protected and unprotected health information.* Once transmitted or maintained electronically, protected health information is often mixed with unprotected health information in the same record. For example, under the proposed rules, information from a medical record that is electronically transmitted by a provider to a health plan and then returned to the original record would become protected health information, even though the rest of the information contained in the paper record may not be subject to these privacy rules.

We reiterate that under the proposed rule, the protections would apply to the information itself, not to the particular record in which it is contained or transmitted. Therefore, an entity could not maintain duplicate records and only apply the protections to the information contained in the record that is electronically maintained or transmitted. For example, once an individual's name and diagnostic code is transmitted electronically between covered entities (or business partners), that information must be protected by both the transmitting and receiving entities in every record, written, electronic or other, in which it appears.

We recognize that this approach may require some additional administrative attention to mixed records (records containing protected and unprotected health information) to ensure that the handling of protected health information conforms with these regulations. We considered ways to limit application of these protections to avoid such potential administrative concerns. However, these regulations would have little effect if not applicable to otherwise protected health information simply because it was combined with unprotected health information—any information could be lawfully disclosed simply by including some additional information. Likewise, these regulations would have no meaning if entities could then avoid applying the protections merely by maintaining separate duplicate records. A way to limit these rules to avoid application to mixed information without sacrificing basic protections is not apparent.

Unlike the potential issues inherent in the protection of oral information, there may be relatively simple ways to reduce possible confusion in protecting mixed records. The risk of inappropriate use or disclosure of protected health information in a mixed record can be eliminated simply by handling all information in mixed records as if it were protected. It also may be possible to develop a "watermark" analogous to a copyright label, designating which written information is protected. We welcome comments on how best to protect information in mixed records, without creating unnecessary administrative burdens.

Finally, we recognize that these rules may create awkward boundaries and enforcement ambiguities, and seek comment on how best to reduce these ambiguities while maintaining the basic protections mandated by the statute.

3. Interaction With Other Standards

The privacy standards in this proposed regulation would be closely integrated with other standards that have been proposed under the HIPAA Administrative Simplification title. This is particularly true with respect to the proposed security standards published on August 12, 1998 (63 FR 43242).

We understand that we are proposing a broader scope of applicability with respect to covered information under these privacy standards than we have previously proposed under the security standard. We intend to solicit additional comments regarding the scope of information that should be addressed under the security standard in the near future.

We also recognize that in this NPRM we are publishing slightly different definitions for some of the concepts that were defined in previously published NPRMs for the other standards. The differences resulted from the comments received on the previous NPRMs as well as the conceptual work done in the development of this NPRM. As we publish the final rules, we will bring all the definitions into conformance.

4. References to Other Laws

The provisions we propose in this rule would interact with numerous other laws. For example, proposed § 164.510 provides standards for certain uses or disclosures that are permitted in this rule, and in some cases references activities that are authorized by other applicable law, such as federal, State, tribal or territorial laws. In cases where this rule references "law" or "applicable law" we intend to encompass all applicable laws, decisions, rules, regulations, administrative procedures or other actions having the effect of law. We do not intend to exclude any applicable legal requirements imposed by a governmental body authorized to regulate in a given area. Where particular types of law are at issue, such as in the proposed provisions for preemption of State laws in subpart B of part 160, or permitted disclosures related to the Armed Forces in § 164.510(m), we so indicate by referring to the particular type of law in question (e.g., "State law" or "federal law").

When we describe an action as "authorized by law," we mean that a legal basis exists for the activity. The phrase "authorized by law" is a term of art that includes both actions that are permitted and actions that are required by law. When we specifically discuss an action that is "required" or "mandated," we mean that a law compels (or conversely, prohibits) the performance of the activity in question. For example, in the health oversight context, disclosure of health information pursuant to a valid Inspector General subpoena, grand jury subpoena, civil investigative demand, or a statute or regulation requiring production of information justifying a claim would constitute a disclosure required by law.

B. Definitions. (§§ 160.103 and 164.504)

[*Please label comments about this section with the subject: "Definitions"*]

Section 1171 of the Act defines several terms and our proposed rules would, for the most part, simply restate the law or adopt definitions previously defined in the other HIPAA proposed rules. In some instances, we propose definitions from the Secretary's Recommendations. We also propose some new definitions for convenience and efficiency of exposition, and others to clarify the application and operation of this rule. We describe the proposed definitions and discuss the rationale behind them, below.

Most of the definitions would be defined in proposed §§ 160.103 and 164.504. The definitions at proposed § 160.103 apply to all Administrative Simplification standards, including this privacy rule and the security standard. The definitions proposed in § 164.504 would apply only to this privacy rule. Certain other definitions are specific to particular sections of the proposed rule and are provided in those sections. The terms that are defined at proposed § 160.103 follow:

1. *Act.* We would define "Act" to mean the Social Security Act, as amended. This definition would be added for convenience.

2. *Covered entity.* This definition would be provided for convenience of reference and would mean the entities to which part C of title XI of the Act applies. These are the entities described in section 1172(a)(1): Health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction referred to in section 1173(a)(1) of the Act (a "standard transaction"). In the preamble we occasionally refer to health plans and the health care providers described above as "covered plans," "covered providers," or "covered plans and providers."

We note that health care providers who do not submit HIPAA transactions in standard form become covered by this rule when other entities, such as a billing service or a hospital, transmit standard electronic transactions on their behalf. The provider could not circumvent these requirements by assigning the task to its agent, since the agent would be deemed to be acting as the provider.

3. *Health care.* We would define the term "health care" as it is defined in the Secretary's Recommendations. Health care means the provision of care, services, or supplies to a patient and includes any: (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, counseling, service, or procedure with respect to the physical or mental condition, or functional status, of a patient or affecting the structure or function of the body; (2) sale or dispensing of a drug, device, equipment, or other item pursuant to a prescription; or (3) procurement or banking of blood, sperm, organs, or any other tissue for administration to patients.

4. *Health care clearinghouse.* We would define "health care clearinghouse" as defined by section 1171(2) of the Act. The Act defines a "health care clearinghouse" as a "public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements." In practice, clearinghouses receive transactions from health care providers, health plans, other health care clearinghouses, or business partners of such entities, and other entities, translate the data from a given format into one acceptable to the entity receiving the transaction, and forward the processed transaction to that entity. There are currently a number of private clearinghouses that contract or perform this function for health care providers. For purposes of this rule, we would consider billing services, repricing companies, community health management information systems or community health information systems, "value-added" networks, switches and similar organizations to be health care clearinghouses for purposes of this part only if they actually perform the same functions as a health care clearinghouse.

We would note that we are proposing to exempt clearinghouses from a number of the provisions of this rule that would apply to other covered entities (see §§ 164.512, 164.514 and 164.516 below), because in most cases we do not believe that clearinghouses would be dealing directly with individuals. In many instances, clearinghouses would be considered business partners under this rule and would be bound by their contracts with covered plans and providers. See proposed § 164.506(e). We would adopt this position with the caveat that the exemptions would be void for any clearinghouse that had direct contact with individuals in a capacity other than that of a business partner.

5. *Health care provider.* Section 1171(3) of the Act defines "health care provider" as a "provider of medical services as defined in section 1861(u) of the Act, a provider of medical or other health services as defined in section 1861(s) of the Act, and any other person who furnishes health care services or supplies." We are proposing to define "health care provider" as the Act does, and clarify that a health care provider is limited to any person or organization that furnishes, bills, or is paid for, health care services or supplies in the normal course of business. This definition would include a researcher who provides health care to the subjects of research, free clinics, and a health clinic or licensed health care professional located at a school or business.

Section 1861(u) of the Act contains the Medicare definition of a provider, which encompasses institutional providers, such as hospitals, skilled nursing facilities, home health agencies, and comprehensive outpatient rehabilitation facilities. Section 1861(s) of the Act defines other Medicare facilities and practitioners, including assorted clinics and centers, physicians, clinical laboratories, various licensed/certified health care practitioners, and suppliers of durable medical equipment. The last portion of the proposed definition encompasses appropriately licensed or certified health care practitioners or organizations, including pharmacies and nursing homes and many types of therapists, technicians, and aides. It also would include any other individual or organization that furnishes health care services or supplies in the normal course of business. An individual or organization that bills and/or is paid for health care services or supplies in the normal course of business, such as a group practice or an "on-line" pharmacy accessible on the Internet, is also a health care provider for purposes of this statute.

For a more detailed discussion of the definition of health care provider, we refer the reader to our proposed rule (Standard Health Care Provider Identifier) published on May 7, 1998, in the **Federal Register** (63 FR 25320).

6. *Health information.* We would define "health information" as it is defined in section 1171(4) of the Act. "Health information" would mean any information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or

university, or health care clearinghouse; and that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

In this paragraph we attempt to clarify the relationship between the defined terms "health information," "individually identifiable health information" and "protected health information." The term "health information" encompasses the universe of information governed by the administrative simplification requirements of the Act. For example, under section 1173 of the Act, the Secretary is to adopt standards to enable the electronic exchange of all health information. However, protection of personal privacy is primarily a concern for the subset of health information that is "individually identifiable health information," as defined by the Act (see below). For example, a tabulation of the number of students with asthma by school district would be health information, but since it normally could not be used to identify any individuals, it would not usually create privacy concerns. The definition of individually identifiable health information omits some of the persons or organizations that are described as creating or receiving "health information." Some sections of the Act refer specifically to individually identifiable health information, such as section 1177 in setting criminal penalties for wrongful use or disclosure, and section 264 in requesting recommendations for privacy standards. Finally, we propose the phrase "protected health information" (§ 164.504) to refer to the subset of individually identifiable health information that is used or disclosed by the entities that are subject to this rule.

7. *Health plan*. We would define "health plan" essentially as section 1171(5) of the Act defines it. Section 1171 of the Act refers to several definitions in section 2791 of the Public Health Service Act, 42 U.S.C. 300gg–91, as added by Public Law 104–191. For clarity, we would incorporate the referenced definitions as currently stated into our proposed definitions.

As defined in section 1171(5), a "health plan" is an individual plan or group health plan that provides, or pays the cost of, medical care (see section 2791(a) of the Public Health Service Act (PHS Act)). This definition would include, but is not limited to, the 15 types of plans listed in the statute, as well as any combination of them. The term would include, when applied to public benefit programs, the component of the government agency that administers the program. Church plans and government plans are included to the extent that they fall into one or more of the listed categories.

Health plan" includes the following singly or in combination:

a. "Group health plan" (as currently defined by section 2791(a) of the PHS Act). A group health plan is a plan that has 50 or more participants (as the term "participant" is currently defined by section 3(7) of ERISA) or is administered by an entity other than the employer that established and maintains the plan. This definition includes both insured and self-insured plans.

Section 2791(a)(1) of the PHS Act defines "group health plan" as an employee welfare benefit plan (as defined in current section 3(1) of ERISA) to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, or otherwise.

b. "Health insurance issuer" (as currently defined by section 2791(b) of the PHS Act).

Section 2971(b) of the PHS Act defines a "health insurance issuer" as an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance.

c. "Health maintenance organization" (as currently defined by section 2791(b) of the PHS Act). Section 2791(b) of the PHS Act currently defines a "health maintenance organization" as a federally qualified health maintenance organization, an organization recognized as such under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization. These organizations may include preferred provider organizations, provider sponsored organizations, independent practice associations, competitive medical plans, exclusive provider organizations, and foundations for medical care.

d. Part A or Part B of the Medicare program (title XVIII of the Act).

e. The Medicaid program (title XIX of the Act).

f. A "Medicare supplemental policy" as defined under section 1882(g)(1) of the Act. Section 1882(g)(1) of the Act defines a "Medicare supplemental policy" as a health insurance policy that a private entity offers a Medicare beneficiary to provide payment for expenses incurred for services and items that are not reimbursed by Medicare because of deductible, coinsurance, or other limitations under Medicare. The statutory definition of a Medicare supplemental policy excludes a number of plans that are similar to Medicare supplemental plans, such as health plans for employees and former employers and for members and former members of trade associations and unions. A number of these health plans may be included under the definitions of "group health plan" or "health insurance issuer," as defined in paragraphs "a" and "b" above.

g. A "long-term care policy," including a nursing-home fixed indemnity policy. A "long-term care policy" is considered to be a health plan regardless of how comprehensive it is.

h. An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers. This includes plans that are referred to as multiple employer welfare arrangements ("MEWAs").

i. The health care program for active military personnel under title 10 of the United States Code. See paragraph "k", below, for further discussion.

j. The veterans health care program under chapter 17 of title 38 of the United States Code. This health plan primarily furnishes medical care through hospitals and clinics administered by the Department of Veterans Affairs (VA) for veterans enrolled in the VA health care system.

k. The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) as defined in 10 U.S.C. 1072(4). We note that the Act's definition of "health plan" omits several types of health care provided by the Department of Defense (DOD). Sections 1171(5)(I) and 1171(5)(K) cover only the health care program for active duty personnel (see 10 U.S.C. 1074(a)) and the CHAMPUS program (see 10 U.S.C. 1079, 1086). What is omitted is health care provided in military treatment facilities to military retirees (see 10 U.S.C. 1074(b)), to dependents of active duty personnel and to dependents of retirees (see 10 U.S.C. 1076), to Secretarial designees such as members of Congress, Justices of the Supreme Court, and to foreign military personnel under NATO status of forces agreements. Health care provided by the DOD in military facilities to the aforementioned persons is not included as a "health plan" under HIPAA. However, these facilities would still be considered to be health care providers.

l. The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601, *et.*

seq.). This program furnishes services, generally through its own health care providers, primarily to persons who are eligible to receive services because they are of American Indian or Alaskan Native descent.

m. The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89. This program consists of health insurance plans offered to active and retired federal employees and their dependents. Although section 1171(5)(M) of the Act refers to the "Federal Employees Health Benefit Plan," this and any other rules adopting administrative simplification standards will use the correct name, the Federal Employees Health Benefits Program. One health plan does not cover all federal employees; over 350 health plans provide health benefits coverage to federal employees, retirees, and their eligible family members. Therefore, we will use the correct name, The Federal Employees Health Benefits Program, to make clear that the administrative simplification standards apply to all health plans that participate in the Program.

n. An approved State child health plan for child health assistance that meets the requirements of section 2103 of the Act, which established the Children's Health Insurance Program (CHIP).

o. A Medicare Plus Choice organization as defined in 42 CFR 422.2, with a contract under 42 CFR part 422, subpart K.

p. Any other individual plan or group health plan, or combination thereof, that provides or pays for the cost of medical care. This category implements the language at the beginning of the statutory definition of the term "health plan": "The term 'health plan' means an individual or group plan that provides, or pays the cost of, medical care * * * Such term includes the following, and any combination thereof * * *" This statutory language is general, not specific. Moreover, the statement that the term "health plan" "includes" the specified plans implies that the term also covers other plans that meet the stated criteria. One approach to interpreting this introductory language in the statute would be to make coverage decisions about plans that may meet these criteria on a case-by-case basis. Instead we propose to clarify its coverage by adding this category to the proposed definition of "health plan"; we seek public comment on its application. The Secretary would determine which plans that meet the criteria in the preceding paragraph are health plans for purposes of title II of HIPAA.

Consistent with the other parts of HIPAA, the provisions of this rule generally would not apply to certain types of insurance entities, such as workers' compensation and automobile insurance carriers, other property and casualty insurers, and certain forms of limited benefits coverage, even when such arrangements provide coverage for health care services. 29 U.S.C. 1186(c). We note that health care providers would be subject to the provisions of this rule with respect to the health care they provide to individuals, even if such providers seek or receive reimbursement from an insurance entity that is not a covered entity under these rules. However, nothing in this rule would be intended to prevent a health care provider from disclosing protected health information to a non-covered insurance entity for the purpose of obtaining payment for services. Further, under proposed § 164.510(n), this rule would permit disclosures by health care providers of protected health information to such insurance entities and to other persons when mandated by applicable law for the purposes of determining eligibility for coverage or benefits under such insurance arrangements. For example, a State workers' compensation law that requires disclosure of protected health information to an insurer or employer for the purposes of determining an individual's eligibility for medical or other benefits, or for the purpose of determining fitness for duty, would not be disturbed by this rule.

8. *Secretary.* This term means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated. It is provided for ease of reference.

9. *Small health plan.* The HIPAA does not define a "small health plan," but instead explicitly leaves the definition to be determined by the Secretary. We propose to adopt the size classification used by the Small Business Administration. We would therefore define a "small health plan" as a health plan with annual receipts of $5 million or less. 31 CFR 121.201. This differs from the definition of "small health plan" in prior proposed Administrative Simplification rules. We will conform the definitions in the final Administrative Simplification rules.

10. *Standard.* The term "standard" would mean a prescribed set of rules, conditions, or requirements concerning classification of components, specification of materials, performance or operations, or delineation of procedures in describing products, systems, services, or practices. This definition is a general one, to accommodate the varying functions of the specific standards proposed in the other HIPAA regulations, as well as the rules proposed below.

11. *State.* This term would include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. This definition follows the statutory definition of "State" in section 1101(a) of the Act.

12. *Transaction.* We would define "transaction," as we have done in other Administrative Simplification regulations, to mean the exchange of information between two parties to carry out financial or administrative activities related to health care. A transaction would be (1) any of the transactions listed in section 1173(a)(2) of the Act, and (2) any transaction determined appropriate by the Secretary in accordance with Section 1173(a)(1) of the Act.

A "transaction" would mean any of the following:

a. *Health claims or equivalent encounter information.* This transaction could be used to submit health care claim billing information, encounter information, or both, from health care providers to payers, either directly or via intermediary billers and claims clearinghouses.

b. *Health care payment and remittance advice.* This transaction could be used by a health plan to make a payment to a financial institution for a health care provider (sending payment only), to send an explanation of benefits remittance advice directly to a health care provider (sending data only), or to make payment and send an explanation of benefits remittance advice to a health car provider via a financial institution (sending both payment and data).

c. *Coordination of benefits.* This transaction could be used to transmit health care claims and billing payment information between payers with different payment responsibilities where coordination of benefits is required or between payers and regulatory agencies to monitor the furnishing, billing, and/or payment of health care services within a specific health care/insurance industry segment.

d. *Health claims status.* This transaction could be used by health care providers and recipients of health care products or services (or their authorized agents) to request the status of a health care claim or encounter from a health plan.

e. *Enrollment and disenrollment in a health plan.* This transaction could be used to establish communication between the sponsor of a health benefit and the payer. It provides enrollment data, such as subscriber and dependents, employer information, and primary care health care provider information. A sponsor would be the backer of the coverage, benefit, or product. A sponsor could be an employer, union, government agency, association, or insurance company. The health plan would refer to an entity that pays claims, administers the insurance product or benefit, or both.

f. *Eligibility for a health plan.* This transaction could be used to inquire about the eligibility, coverage, or benefits associated with a benefit plan, employer, plan sponsor, subscriber, or a dependent under the subscriber's policy. It also could be used to communicate information about or changes to eligibility, coverage, or benefits from information sources (such as insurers, sponsors, and payers) to information receivers (such as physicians, hospitals, third party administrators, and government agencies).

g. *Health plan premium payments.* This transaction could be used by, for example, employers, employees, unions, and associations to make and keep track of payments of health plan premiums to their health insurers. This transaction could also be used by a health care provider, acting as liaison for the beneficiary, to make payment to a health insurer for coinsurance, copayments, and deductibles.

h. *Referral certification and authorization.* This transaction could be used to transmit health care service referral information between health care providers, health care providers furnishing services, and payers. It could also be used to obtain authorization for certain health care services from a health plan.

i. *First report of injury.* This transaction could be used to report information pertaining to an injury, illness, or incident to entities interested in the information for statistical, legal, claims, and risk management processing requirements.

j. *Health claims attachments.* This transaction could be used to transmit health care service information, such as subscriber, patient, demographic, diagnosis, or treatment data for the purpose of a request for review, certification, notification, or reporting the outcome of a health care services review.

k. *Other transactions as the Secretary may prescribe by regulation.* Under section 1173(a)(1)(B) of the Act, the Secretary may adopt standards, and data elements for those standards, for other financial and administrative transactions deemed appropriate by the Secretary. These transactions would be consistent with the goals of improving the operation of the health care system and reducing administrative costs.

In addition to the above terms, a number of terms are defined in proposed § 164.504, and are specific to the proposed privacy rules. They are as follows:

13. *Business partner.* This term would mean a person to whom a covered entity discloses protected health information so that the person can carry out, assist with the performance of, or perform on behalf of, a function or activity for the covered entity. Such term includes any agent, contractor or other person who receives protected health information from the covered entity (or from another business partner of the covered entity) for the purposes described in the previous sentence. It would not include a person who is an employee, a volunteer or other person associated with the covered entity on a paid or unpaid basis.

14. *Designated record set.* This term would be defined as a group of records under the control of a covered entity from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual, and which is used by the covered entity to make decisions about the individual. The concept of a "designated record set" is derived from the Privacy Act's concept of a "system of records." Under the Privacy Act, federal agencies must provide an individual with access to "information pertaining to him which is contained in [a system of records]." 5 U.S.C. 552a(d)(1). A "system of records" is defined as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. 552a(a)(5). Under this rule, we would substitute the term "covered entity" for "agency" and limit the information to that used by the covered entity to make decisions about the individual.

We would define a "record" as "any item, collection, or grouping of protected health information maintained, collected, used, or disseminated by a covered entity." Under the Privacy Act, "the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph." 5 U.S.C. 552a(a)(4). For purposes of this rule we propose to limit the information to protected health information, as defined in this rule. "Protected health information" already incorporates the concept of identifiability, and therefore our definition of "record" is much simpler.

For health plans, designated record sets would include, at a minimum, the claims adjudication, enrollment, and patient accounting systems. For health care providers, designated record sets would include, at a minimum, the medical records and billing records. Designated record set would also include a correspondence system, a complaint system, or an event tracking system if decisions about individuals are made based, in whole or in part, on information in those systems. Files used to backup a primary data system or the sequential files created to transmit a batch of claims to a clearinghouse are clear examples of data files which would not fall under this definition.

We note that a designated record set would only exist for types of records that a covered entity actually "retrieves" by an identifier, and not records that are only "retrievable" by an identifier. In many cases, technology will permit sorting and retrieving by a variety of fields and therefore the "retrievable" standard would be relatively meaningless.

15. *Disclosure.* This term would be defined as the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

16. *Health care operations.* We propose the term "health care operations" to clarify the activities we consider to be "compatible with and directly related to" treatment and payment and therefore would not require authorization from the individual for use or disclosure of protected health information.

Under our proposal, "health care operations" means the following services or activities if provided by or on behalf of a covered health plan or health care provider for the purposes of carrying out the management functions of such plan or provider necessary for the support of treatment or payment:

- Conducting quality assessment and improvement activities, including evaluating outcomes, and developing clinical guidelines;

- Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which undergraduate and graduate students and trainees in all areas of health care learn under supervision to practice as health care providers (e.g., residency programs, grand rounds, nursing practicums), accreditation, certification, licensing or credentialing activities;
- Insurance rating and other insurance activities relating to the renewal of a contract for insurance, including underwriting, experience rating, and reinsurance, but only when the individuals are already enrolled in the health plan conducting such activities and only when the use or disclosure of such protected health information relates to an existing contract of insurance (including the renewal of such a contract);
- Conducting or arranging for auditing services, including fraud and abuse detection and compliance programs; and
- Compiling and analyzing information in anticipation of, or for use in, civil or criminal legal proceedings.

Our definition proposes to limit health care operations to functions and activities performed by a health plan or provider or by a business partner on behalf of a health plan or a provider. Our definition anticipates that in order for treatment and payment to occur, protected health information would be used within entities, would be shared with business partners, and in some cases would be shared between covered entities (or their business partners). However, a health care operation should not result in protected health information being disclosed to an entity that is not the covered entity (or a business partner of such entity) on whose behalf the operation is being performed. For example, a health plan may request a health care provider to provide protected health information to the health plan, or to a business partner of the health plan, as part of an outcomes evaluation effort relating to providers affiliated with that plan. This would be a health care operation.

We are aware that the health care industry is changing and that these categories, though broad, may need to be modified to reflect different conditions in the future.

17. *Health oversight agency.* We would define the term "health oversight agency" as it is defined in the Secretary's Recommendations. See section II.E. below for further discussion.

18. *Individual.* We would define "individual" to mean the person who is the subject of protected health information. We would define the term to include, with respect to the signing of authorizations and other rights (such as access, copying, and correction), various types of legal representatives. The term would include court-appointed guardians or persons with a power of attorney, including persons making health care decisions for incapacitated persons, persons acting on behalf of a decedent's estate, where State or other applicable law authorizes such legal representatives to exercise the person's rights in such contexts, and parents subject to certain restrictions explained below. We would define this term to exclude foreign military and foreign diplomatic personnel and their dependents who receive health care provided or paid for by the DOD or other federal agency or entity acting on its behalf, and overseas foreign national beneficiaries of health care provided by the DOD or other federal agency, or non-governmental organization acting on its behalf.

a. *Disclosures pursuant to a power of attorney.* The definition of an individual would include legal representatives, to the extent permitted under State or other applicable law. We considered several issues in making this determination.

A "power of attorney" is a legal agreement through which a person formally grants authority to another person to make decisions on the person's behalf about financial, health care, legal, and/or other matters. In granting power of attorney, a person does not give up his or her own right to make decisions regarding the health care, financial, legal, or other issues involved in the legal agreement. Rather, he or she authorizes the other person to make these decisions as well.

In some cases, an individual gives another person power of attorney over issues not directly related to health care (e.g., financial matters) while informally relying on a third person (either implicitly or through verbal agreement) to make health care decisions on his or her behalf. In such situations, the person with power of attorney could seek health information from a health plan or provider in order to complete a task related to his or her power of attorney. For example, a person with financial power of attorney may request health information from a health plan or provider in order to apply for disability benefits on the individual's behalf.

In developing proposed rules to address these situations, we considered two options: (1) Allowing health plans and health care providers to disclose health information without authorization directly to the person with power of attorney over issues not directly related to health care; and (2) prohibiting health plans or health care providers from disclosing health information without authorization directly to such persons and stating that disclosure without authorization is permitted only to persons designated formally (through power of attorney for health care) or informally as the patient's health care decision-maker. We believe that both options have merit.

The first option recognizes that the responsibilities of persons with power of attorney often are broad, and that even when the power of attorney agreement does not relate directly to health care, the person with power of attorney at times has a legitimate need for health information in order to carry out his or her legal responsibility. The second option recognizes that when an individual is competent to make health care decisions, it is appropriate for him or her (or, if the individual wishes, for the informally designated health care decision maker) to decide whether the covered entity should disclose health information to someone with power of attorney over issues not directly related to health care.

In light of the fact that laws vary by State regarding power of attorney and that implementation of either option could be in the individual's interest, we would allow health plans and health care providers to disclose protected health information without authorization directly to persons with power of attorney to handle any issue on the individual's behalf, in accordance with State or other applicable laws regarding this issue.

This definition also accounts for situations in which a competent individual has granted one person power of attorney over health care issues yet, in practice, relies on another person to make health care decisions. We recognize that, by giving power of attorney for health care issues to one person and involving another person informally in making treatment decisions, the individual is, in the first instance, formally granting consent to release his or her health information and, in practice, granting consent to release medical information to the second person. Therefore, we would allow a health plan or provider, pursuant to State or other applicable law, to disclose protected health information without authorization to a person with power of attorney for the patient's health care and to a person informally designated as the patient's health care decision maker.

b. *Disclosures pertaining to incapacitated individuals.* Covered entities would be permitted to disclose protected health information to any person making health care decisions for an incapacitated person under State or other applicable law. This definition defers to current laws regarding health care decision-making when a patient is not a minor and is incapable of making his or her own decisions. We propose to permit information to follow such decision-making authority. It is our intent not to disturb existing practices regarding incapacitated patients.

Applicable laws vary significantly regarding the categories of persons who can make health care decisions when a patient is incapable of making them. For example, some State laws establish a hierarchy of persons who may make medical decisions for the incapacitated person (e.g., first a person with power of attorney, if not then next-of-kin, if none then close friend, etc.). In other States, health care providers may exercise professional judgment about which person would make health care decisions in the patient's best interest. We also recognize that federal agencies have, in some cases, established rules regarding such patients. For example, the DOD has established requirements regarding military personnel who are based overseas and who have become incapable of making their own decisions.

Because laws vary regarding patients unable to make their own decisions and because these patients' interests could be served through a variety of arrangements, we would allow health plans and health care providers to disclose information in accordance with applicable laws regarding incapacitated patients.

c. *Disclosures pertaining to minors.* In general, because the definition of individual would include parents, a parent, guardian, or person acting *in loco parentis* could exercise the rights established under this regulation on behalf of their minor (as established by applicable law) children. However, in cases where a minor lawfully obtains a health care service without the consent of or notification to a parent, the minor would be treated as the individual for purposes of exercising any rights established under this regulation with respect to protected health information relating to such health services. Laws regarding access to health care for minors and confidentiality of their medical records vary widely; this proposed regulation recognizes and respects the current diversity of the law in this area. It would not affect applicable regulation of the delivery of health care services to minors, and would not preempt any law authorizing or prohibiting disclosure of individually identifiable health information of minor individuals to their parents. The disclosure of individually identifiable health information from substance abuse records is also addressed by additional requirements established under 42 CFR part 2.

d. *Foreign recipients of defense related health care.* We would define the term "individual" to exclude foreign military and foreign diplomatic personnel and their dependents who receive health care provided by or paid for by the DOD or other federal agency, or by an entity acting on its behalf, pursuant to a country-to-country agreement or federal statute. We would also exclude from this term overseas foreign national beneficiaries of health care provided by the DOD or other federal agency or by a non-governmental organization acting on behalf of DOD or such agency. This exclusion is discussed in section II.E.13.

e. *Disclosures pertaining to deceased persons.* This provision is discussed in Section II.C.6.

19. *Individually identifiable health information.* We would define "individually identifiable health information" as it is defined in section 1171(6) of the Act. While the definition of individually identifiable health information does not expand on the statutory definition, we recognize that the issue of how the identifying characteristics can be removed from such information (referred to in this rule as de-identification) presents difficult operational issues. Accordingly, we propose in § 164.506(d) an approach for de-identifying identifiable information, along with restrictions designed to ensure that de-identified information is not used inappropriately.

The privacy standards would apply to "individually identifiable health information," and not to information that does not identify the individual. We are aware that, even after removing obvious identifiers, there is always some probability or risk, however remote, that any information about an individual can be attributed. A 1997 MIT study showed that, because of the public availability of the Cambridge, Massachusetts voting list, 97 percent of the individuals in Cambridge whose data appeared in a data base which contained only their nine digit zip code and birth date could be identified with certainty.[1] Their information had been "de-identified" (some obvious identifiers had been removed) but it was not anonymous (it was still possible to identify the individual).

It is not always obvious when information identifies the subject. If the name and identifying numbers (e.g., SSN, insurance number, etc.) are removed, a person could still be identified by the address. With the address removed, the subject of a medical record could be identified based on health and demographic characteristics (e.g., age, race, diagnosis). "Identifiability" varies with the location of the subject; there could be hundreds of people in Manhattan who have the same age, race, gender, and diagnosis, but only one such person in a small town or rural county. Gauging the risk of identification of information requires statistical experience and expertise that most covered entities will not possess.

Obvious identifiers on health information could be replaced with random numbers or encrypted codes, which can prevent the person using the record from identifying the subject, but which allow the person holding the code to re-identify the information. Information with coded or encrypted identifiers would be considered "de-identified" but not "anonymous," because it is still possible for someone to identify the subject.

We considered defining "individually identifiable health information" as any information that is not anonymous, that is, for which there is any possibility of identifying the subject. We rejected this option, for several reasons. First, the statute suggests a different approach. The term "individually identifiable health information" is defined in HIPAA as health information that "* * * identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual." By including the modifier "reasonable basis," Congress appears to reject the absolute approach to defining "identifiable."

Second, covered entities may not have the statistical sophistication to know with certainty when sufficient identifying information has been removed so that the record is no longer identifiable. We believe that covered entities need more concrete guidance as to when information will and will not be "identifiable" for purposes of this regulation.

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[1] Sweeney, L. Guaranteeing Anonymity when Sharing Medical Data, the Datafly System. Masys, D., Ed. Proceedings, American Medical Informatics Association. Nashville, TN: Hanley & Belfus, Inc., 1997:51–55.

Finally, defining non-identifiable to mean anonymous would require covered entities to comply with the terms of this regulation with respect to information for which the probability of identification of the subject is very low. We want to encourage covered entities and others to remove obvious identifiers or encrypt them whenever possible; use of the absolute definition of "identifiable" would not promote this salutary result.

For these reasons, we propose at § 164.506(d)(2)(ii) that there be a presumption that, if specified identifying information is removed and if the holder has no reason to believe that the remaining information can be used by the reasonably anticipated recipients alone or in combination with other information to identify an individual, then the covered entity is presumed to have created de-identified information.

At the same time, in proposed § 164.506(d)(2)(iii), we would leave leeway for more sophisticated data users to take a different approach. We would include a "reasonableness" standard so that entities with sufficient statistical experience and expertise could remove or code a different combination of information, so long as the result is still a low probability of identification. With this approach, our intent is to provide certainty for most covered entities, while not limiting the options of more sophisticated data users.

In § 164.504, we propose to define "individually identifiable health information" to mean health information created or received by a health care provider, health plan, employer or health care clearinghouse, that could be used directly or indirectly to identify the individual who is the subject of the information. Under proposed § 164.506(d)(2)(ii), information would be presumed not to be "identifiable" if:

- All of the following data elements have been removed or otherwise concealed: Name; address, including street address, city, county, zip code, or equivalent geocodes; names of relatives and employers; birth date; telephone and fax numbers; e-mail addresses; social security number; medical record number; health plan beneficiary number; account number; certificate/license number; any vehicle or other device serial number; web URL; Internet Protocol (IP) address; finger or voice prints; photographic images; and any other unique identifying number, characteristic, or code (whether generally available in the public realm or not) that the covered entity has reason to believe may be available to an anticipated recipient of the information, and
- The covered entity has no reason to believe that any reasonably anticipated recipient of such information could use the information alone, or in combination with other information, to identify an individual. Thus, to create de-identified information, entities that had removed the listed identifiers would still have to remove additional data elements if they had reason to believe that a recipient could use the remaining information, alone or in combination with other information, to identify an individual. For example, if the "occupation" field is left intact and the entity knows that a person's occupation is sufficiently unique to allow identification, that field would have to be removed from the relevant record. The presumption does not allow use or disclosure if the covered entity has reason to believe the subject of the information can be re-identified. Our concern with the potential for re-identification is heightened by our limited jurisdiction under HIPAA. Because we can only regulate health care providers, health plans and health care clearinghouses, we cannot prohibit other recipients of de-identified information from attempting to re-identify it.

To assist covered entities in ascertaining whether their attempts to create de-identified information would be successful, the Secretary would from time to time issue guidance establishing methods that covered entities could use to determine the identifiability of information. This guidance would include information on statistical and other tests that could be performed by covered entities in assessing whether they have created de-identified information. The manner in which such guidance would be published and distributed will be addressed in the final regulation. We solicit comment on the best ways in which to inform covered entities of appropriate and useful information on methods that they can use to determine whether information is de-identified.

In enforcing this regulation, the Secretary would consider the sophistication of covered entities when determining whether a covered entity had reason to believe that information that it had attempted to de-identify continued to identify the subject. Covered entities that routinely create and distribute de-identified data would be expected to be aware of and to use advanced statistical techniques, including the guidance issued by the Secretary, to ensure that they are not improperly disclosing individually identifiable health information. Covered entities that rarely create de-identified information would not be expected to have the same level of knowledge of these statistical methods, and generally could rely on the presumption that information from which they have removed the listed identifiers (and provided that they do not know that the information remains identifiable) is de-identified. We solicit comment on whether the enforcement approach that we are suggesting here and our overall approach relating to the creation of de-identified information would provide sufficient guidance to covered entities to permit them to create, use and disclose de-identified information.

In addition, we propose to permit entities with appropriate statistical experience and expertise (obtained through a statistical consultant or staff with statistical expertise) to decide that some of the above named data elements could be retained in the de-identified data set if: (1) The entity determines that the probability of identifying an individual with the remaining information is very low, or (2) the entity has converted the "identifiable" data elements into data elements that, in combination with the remaining information, have a very low probability of being used to identify an individual. An example of such a conversion would be the translation of birth date into age expressed in years or, if still determined to convey "identifiability," age expressed in categories of years (e.g., age 18 to 24). In making these determinations, the entity must consider the data elements taken together as well as any additional information that might reasonably be available to a recipient. Examples of the types of entities that would have the statistical experience and expertise to make this type of judgment include large health research institutions such as medical schools with epidemiologists and statisticians on the faculty; federal agencies such as the National Center for Health Statistics, the Agency for Health Care Policy and Research, FDA, the Bureau of the Census, and NIH; and large corporations that do health research such as pharmaceutical manufacturers with epidemiologists and statisticians on staff.

An important component of this approach to defining "identifiable" would be the prohibition on re-identification of health information. We propose that a covered entity that is a recipient of de-identified information who attempts to re-identify such de-identified information for a purpose for which protected health information could not be used or disclosed under this rule be deemed to be in violation of the law. See proposed § 164.506(d) and section II.C. below. There may be circumstances, however, when recipients of de-identified information will have a legitimate reason to request that the de-identified information be re-identified by the originating covered entity. For example, if a researcher received de-identified information from a covered entity and the research revealed that a particular patient was misdiagnosed, the covered entity should be permitted to re-identify the patient's health information so that the patient could be informed of the error and seek appropriate care. One of the principal reasons entities retain information in coded form, rather than rendering it anonymous, is to enable re-identification of the information for appropriate reasons. Although we would anticipate that the need for re-identification would be rare, entities that expect to have to perform this function should establish a process for determining when re-identification is appropriate. Once covered entities re-identify information, it becomes protected information and may, therefore, be used and disclosed only as permitted by this regulation.

The phrase "individually identifiable" information is already in use by many HHS agencies and others. In particular, the Common Rule regulation includes "identifiable private information" in its definition of "human subject." Because of this, medical records research on "identifiable private information" is subject to Common Rule consent and IRB review requirements. It would not be our intent to suggest changes to this practice. Researchers and others can and are encouraged to continue to use more stringent approaches to protecting information.

We invite comment on the approach that we are proposing and on alternative approaches to standards for covered entities to determine when health information can reasonably be considered no longer individually identifiable.

20. *Law enforcement official.* We propose a new definition of "law enforcement official," to mean an officer of the United States or a political subdivision thereof, who is empowered by law to conduct an investigation or official proceeding inquiring into a violation of, or failure to comply with, any law; or a criminal, civil, or administrative proceeding arising from a violation of, or failure to comply with, any law.

21. *Payment.* We offer a new definition of payment. The term "payment" would mean activities undertaken by a health plan (or by a business partner on behalf of a health plan) to determine its responsibilities for coverage under the health plan policy or contract including the actual payment under the policy or contract, or by a health care provider (or by a business partner on behalf of a provider) to obtain reimbursement for the provision of health care, including:

- Determinations of coverage, improving payment methodologies or coverage policies, or adjudication or subrogation of claims;
- Risk adjusting payments based on enrollee health status and demographic characteristics;
- Billing, claims management, medical review, medical data processing;
- Review of health care services with respect to medical necessity, coverage under a health plan policy or contract, appropriateness of care, or justification of charges; and,
- Utilization review activities, including pre-certification and preauthorization of services.

Our proposed definition is intended to capture the necessary sharing of protected health information among health care providers who provide care, health plans and other insurers who pay for care, their business partners, as well as sponsors of group health plans, such as employers, who pay for care and sometimes provide administrative services in conjunction with health plan payment activities. For example, employers sometimes maintain the eligibility file with respect to a group health plan.

Our proposed definition anticipates that protected health information would be used for payment purposes within entities, would be shared with business partners, and in most cases would be shared between health care providers and health plans (and their business partners). In some cases, a payment activity could result in the disclosure of protected health information by a plan to an employer or to another payer of health care, or to an insurer that is not a covered entity, such as for coordination of benefits or to a workers compensation carrier. For example, a health plan could disclose protected health information to an employer in connection with determining the experience rate for group coverage.

We are concerned that disclosures for payments may routinely result in disclosures of protected health information to non-covered entities, such as employers, which are not subject to the use and disclosure requirements of this rule. We considered prohibiting disclosures to employers without individual authorization, or alternatively, requiring a contractual relationship, similar to the contracts required for business partners, before such disclosures could occur. We note that the National Committee on Quality Assurance has adopted a standard for the year 2000 that would require health plans to "have policies that prohibit sending identifiable personal health information to fully insured or self-insured employers and provide safeguards against the use of information in any action relating to an individual" (Standard R.R.6, National Committee for Quality Assurance 2000 Standards).

We did not adopt either of these approaches, however, because we were concerned that we might disrupt some beneficial activities if we were to prohibit or place significant conditions on disclosures by health plans to employers. We also recognize that employers are paying for health care in many cases, and it has been suggested to us that they may need access to claims and other information for the purposes of negotiating rates, quality improvement and auditing their plans and claims administrators. We invite comment on the extent to which employers currently receive protected health information about their employees, for what types of activities protected health information is received, and whether any or all of these activities could be accomplished with de-identified health information. We also invite other comments on how disclosures to employers should be treated under this rule.

22. *Protected health information.* We would create a new definition of "protected health information" to mean individually identifiable health information that is or has been electronically maintained or electronically transmitted by a covered entity, as well as such information when it takes any other form. For example, protected health information would remain protected after it is read from a computer screen and discussed orally, printed onto paper or other media, photographed, or otherwise duplicated. We note that individually identifiable health information created or received by an employer as such would not be considered protected health information, although such information created or received by an employer in its role as a health plan or provider would be protected health information.

Under this definition, information that is "electronically transmitted" would include information exchanged with a computer using electronic media, even when the information is physically moved from one location to another using magnetic or optical media (e.g., copying information from one computer to another using a floppy disc). Transmissions over the Internet (i.e., open network), Extranet (i.e., using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, and private networks would all be included. Telephone voice response and "faxback" (i.e., a request for information from a computer made via voice or telephone keypad input with the requested information returned as a fax) systems would be included because these are computer output devices similar in function to a printer or video screen. This definition would not include "paper-to-paper" faxes, or person-to-person telephone calls, video teleconferencing, or messages left on voice-mail. The key concept that determines if a transmission meets the definition is whether the source or target of the transmission is a computer. The medium or the machine through which the information is transmitted or rendered is irrelevant.

Also, information that is "electronically maintained" would be information stored by a computer or on any electronic medium from which the information may be retrieved by a computer. These media include, but are not limited to, electronic memory chips, magnetic tape, magnetic disk, or compact disc (CD) optical media.

Individually identifiable health information that is part of an "education record" governed by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, would not be considered protected health information. Congress specifically addressed such information when it enacted FERPA to protect the privacy rights of students and parents in educational settings. FERPA applies to educational records that are maintained by educational agencies and institutions that are recipients of federal funds from the Department of Education. FERPA requires written consent of the parent or student prior to disclosure of education records except in statutorily specified circumstances. We do not believe that Congress intended to amend or preempt FERPA in enacting HIPAA.

Individually identifiable health information of inmates of correctional facilities and detainees in detention facilities would be excluded from this definition because unimpeded sharing of inmate identifiable health information is crucial for correctional and detention facility operations. In a correctional or detention setting, prison officials are required by law to safely house and provide health care to inmates. These activities require the use and disclosure of identifiable health information. Therefore, correctional and detention facilities must routinely share inmate health information among their health care and other components, as well as with community health care facilities. In order to maintain good order and protect the well-being of prisoners, the relationship between such facilities and inmates or detainees involves a highly regulated, specialized area of the law which has evolved as a carefully balanced compromise with due deference to institutional needs and obligations.

Federal and other prison facilities routinely share health information with community health care facilities in order to provide medical treatment to persons in their custody. It is not uncommon for inmates and detainees to be transported from one facility to another, for example, for the purpose of making a court appearance in another jurisdiction, or to obtain specialized medical care. In these and other circumstances, law enforcement agencies such as the Federal Bureau of Prisons (the Bureau), the United States Marshals Service (USMS), the Immigration and Naturalization Service, State prisons, county jails, and U.S. Probation Offices, share identifiable health information about inmates and detainees to ensure that appropriate health care and supervision of the inmate or detainee is maintained. Likewise, these agencies must, in turn, share health information with the facility that resumes custody of the inmate or detainee.

Requiring an inmate's or detainee's authorization for disclosure of identifiable health information for day-to-day operations would represent a significant shift in correctional and detention management philosophy. If correctional and detention facilities were covered by this rule, the proposed provisions for individual authorizations could potentially be used by an inmate or detainee to override the safety and security concerns of the correctional/custodial authority; for example, an inmate being sent out on a federal writ could refuse to permit the Bureau to disclose a suicide history to the USMS. Additionally, by seeking an authorization to disclose the information, staff may give the inmate or detainee advance notice of an impending transfer, which in turn may create security risks.

Therefore we propose to exclude the individually identifiable health information of inmates of correctional facilities and detainees in detention facilities from the definition of protected health information. We note that existing federal laws limiting the disclosure and release of information (e.g., FOIA/Privacy Act) protect the privacy of identifiable federal inmate health information. Subject to certain limitations, these laws permit inmates and detainees to obtain and review a copy of their medical records and to correct inaccurate information.

Under this approach, the identifiable health information held by correctional and detention facilities of persons who have been released would not be protected. The facilities require continued access to such information for security, protection and health care purposes because inmates and detainees are frequently readmitted to correctional and detention facilities. However, concern has been expressed about the possibility that absent coverage by this proposed rule, correctional and detention facilities may disclose information about former inmates and detainees without restriction. We therefore request comments on whether identifiable health information held by correctional and detention facilities about former inmates and detainees should be subject to this rule, and the potential security concerns and burden such a requirement might place on these facilities.

23. *Psychotherapy notes.* We would define "psychotherapy notes" to mean detailed notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session. Such notes are used only by the therapist who wrote them, maintained separately from the medical record, and not involved in the documentation necessary for health care treatment, payment, or operations. Such term would not include medication prescription and monitoring, counseling session start and stop times or the modalities and frequencies of treatment furnished, results of clinical tests, or a brief summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date.

24. *Public health authority.* We would define "public health authority" as an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe that is responsible for public health matters as part of its official mandate.

25. *Research.* We would define "research" as a systematic investigation,

including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. We further explain that "generalizable knowledge" is knowledge related to health that can be applied to populations outside of the population served by the covered entity.

This is the definition of "research" in the federal regulation that protects human subjects, entitled The Federal Policy for the Protection of Human Subjects (often referred to as the "Common Rule," at 45 CFR part 46). This definition is well understood in the research community and elsewhere, and we propose to use it here to maintain consistency with other federal regulations that affect research.

26. *Research information unrelated to treatment.* We would define "research information unrelated to treatment" as information that is received or created by a covered entity in the course of conducting research for which there is insufficient scientific and medical evidence regarding the validity or utility of the information such that it should not be used for the purpose of providing health care;[2] and with respect to which the covered entity has not requested payment from a health plan.

27. *Treatment.* We would define "treatment" to mean the provision of health care by, or the coordination of health care (including health care management of the individual through risk assessment, case management, and disease management) among, health care providers, or the referral of an individual from one provider to another, or coordination of health care or other services among health care providers and third parties authorized by the health plan or the individual. Our definition is intended to relate only to services provided to an individual and not to an entire enrolled population.

28. *Use.* We would propose a new definition of the term "use" to mean the employment, application, utilization, examination or analysis of health information within an entity that holds the information.

29. *Workforce.* We would define "workforce" to mean employees, volunteers, trainees and other persons under the direct control of a covered entity, including persons providing labor on an unpaid basis.

C. General Rules. (§ 164.506)

[Please label comments about this section with the subject: "Introduction to general rules"]

The purpose of our proposal is to define and limit the circumstances in which an individual's protected health information could be used or disclosed by covered entities. As discussed above, we are proposing to make the use and exchange of protected health information relatively easy for health care purposes and more difficult for purposes other than health care.

As a general rule, we are proposing that protected health information not be used or disclosed by covered entities except as authorized by the individual who is the subject of such information or as explicitly provided by this rule. Under this proposal, most uses and disclosures of an individual's protected health information would not require explicit authorization by the individual, but would be restricted by the provisions of the rule. Covered entities would be able to use or disclose an individual's protected health information without authorization for treatment, payment and health care operations. See proposed § 164.506(a)(1)(i). Covered entities also would be permitted to use or disclose an individual's protected health information for specified public and public policy-related purposes, including public health, research, health oversight, law enforcement, and use by coroners. Covered entities would be *permitted* by this rule to use and disclose protected health information when required to do so by other law, such as a mandatory reporting requirement under State law or pursuant to a search warrant. See proposed § 164.510. Covered entities would be *required* by this rule to disclose protected health information for only two purposes: To permit individuals to inspect and copy protected health information about them (see proposed § 164.514) and for enforcement of this rule (see proposed § 164.522(e)).

The proposed rule generally would not require covered entities to vary the level of protection of protected health information based on the sensitivity of such information. We believe that all protected health information should have effective protection from inappropriate use and disclosure by covered entities, and except for limited classes of information that are not needed for treatment and payment purposes, we have not provided additional protection to protected health information that might be considered particularly sensitive. We would note that the proposed rule would not preempt provisions of other applicable laws that provide additional privacy protection to certain classes of protected health information. We understand, however, that there are medical conditions and treatments that individuals may believe are particularly sensitive, or which could be the basis of stigma or discrimination. We invite comment on whether this rule should provide for additional protection for such information. We would appreciate comment that discusses how such information should be identified and the types of steps that covered entities could take to provide such additional protection. We also invite comment on how such provisions could be enforced.

Covered entities of all types and sizes would be required to comply with the proposed privacy standards outlined below. The proposed standards would not impose particular mechanisms or procedures that covered entities must adopt to implement the standards. Instead, we would require that each affected entity assess its own needs and devise, implement, and maintain appropriate privacy policies, procedures, and documentation to address its business requirements. How each privacy standard would be satisfied would be business decisions that each entity would have to make. This allows the privacy standards to establish a stable baseline, yet remain flexible enough to take advantage of developments and methods for protecting privacy that will evolve over time.

Because the privacy standards would need to be implemented by all covered entities, from the smallest provider to the largest, multi-state health plan, a single approach to implementing these standards would be neither economically feasible nor effective in safeguarding health information privacy. For example, in a small physician practice, the office manager might be designated to serve as the privacy official as one of many duties (see proposed § 164.518(a)) whereas at a large health plan, the privacy official may constitute a full time position and have the regular support and advice of a privacy staff or board.

Similarly, a large enterprise may make frequent electronic disclosures of similar data. In such a case, the enterprise would be expected to remove identifiers or to limit the data fields that are disclosed to fit the purpose of the disclosure. The process would be documented and perhaps even automated. A solo physician's office, however, would not be expected to have the same capabilities to limit the amount of information disclosed, although, in the cases of disclosures involving a small number of records, such an office could be expected to hide identifiers or to limit disclosures to certain pages of the medical record that are relevant to the purpose of the disclosure.

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[2] For example, *validity* is an indicator of how well a test measures the property or characteristic it is intended to measure and the reliability of a test, *i.e.*, whether the same result is obtained each time the test is used. Validity is also a measurement of the accuracy with which a test predicts a clinical condition. *Utility* refers to the degree to which the results of test can be used to make decisions about the subsequent delivery of health care.

In taking this approach, we intend to strike a balance between the need to maintain the confidentiality of protected health information and the economic cost of doing so. Health care entities must consider both aspects in devising their solutions. This approach is similar to the approach we proposed in the Notice of Proposed Rulemaking for the administrative simplification security and electronic signature standards.

1. Use and Disclosure for Treatment, Payment, and Health Care Operations. (§ 164.506(a))

[*Please label comments about this section with the subject: "Treatment, payment, and health care operations"*]

We are proposing that, subject to limited exceptions for psychotherapy notes and research information unrelated to treatment discussed below, a covered entity be permitted to use or disclose protected health information without individual authorization for treatment, payment or health care operations.

The Secretary's Recommendations proposed that covered entities be able to use individually identifiable health information without authorization of the identified individual for treatment and payment and for purposes that are "compatible with and directly related to" treatment and payment. The Recommendations further explained that the terms "treatment" and "payment" were to be construed broadly, encompassing treatment and payment for all patients. They also noted that the test of "compatible with and directly related to" is meant to be more restrictive than the test currently used in the Privacy Act, 5. U.S.C. 552a, for determining whether a proposed "routine use" is sufficiently related to the primary purpose for which the information would be collected to permit its release under the proposed "routine use." The Privacy Act permits release of such information if the proposed routine use is "compatible with" the purpose for which the information is collected. Our proposal is intended to be consistent with this discussion from the Secretary's Recommendations.

a. *General rule for treatment, payment, and health care operations.* We are not proposing to require individual authorizations of uses and disclosures for health care and related purposes, although such authorizations are routinely gathered today as a condition of obtaining health care or enrolling in a health plan. Although many current disclosures of health information are made pursuant to individual authorizations, these authorizations provide individuals with little actual control over their health information. When an individual is required to sign a blanket authorization at the point of receiving care or enrolling for coverage, that consent is often not voluntary because the individual must sign the form as a condition of treatment or payment for treatment. Individuals are also often asked to sign broad authorizations but are provided little or no information about how their health information may be or will in fact be used. Individuals cannot make a truly informed decision without knowing all the possible uses, disclosures and re-disclosures to which their information will be subject. In addition, since the authorization usually precedes creation of the record, the individual cannot predict all the information the record may contain and therefore cannot make an informed decision as to what would be released.

Our proposal is intended to make the exchange of protected health information relatively easy for health care purposes and more difficult for purposes other than health care. For individuals, health care treatment and payment are the core functions of the health care system. This is what they expect their health information will be used for when they seek medical care and present their proof of insurance to the provider. Consistent with this expectation, we considered requiring a separate individual authorization for every use or disclosure of information but rejected such an approach because it would not be realistic in an increasingly integrated health care system. For example, a requirement for separate patient authorization for each routine referral could impair care, by delaying consultation and referral, as well as payment.

We therefore propose that covered entities be permitted to use and disclose protected health information without individual authorization for treatment and payment purposes, and for related purposes that we have defined as health care operations. For example, health care providers could maintain and refer to a medical record, disclose information to other providers or persons as necessary for consultation about diagnosis or treatment, and disclose information as part of referrals to other providers. Health care providers also could use a patient's protected health information for payment purposes such as submitting a claim to a payer. In addition, they could use a patient's protected health information for health care operations, such as use for an internal quality oversight review. We would note that, in the case of an individual where the provider has agreed to restrictions on use or disclosure of the patient's protected health information, the provider is bound by such restrictions as provided in § 164.506(c).

Similarly, health plans could use an enrollee's protected health information for payment purposes, such as reviewing and paying health claims that have been submitted to it, pre-admission screening of a request for hospitalization, or post-claim audits of health care providers. Health plans also could use an enrollee's protected health information for health care operations, such as reviewing the utilization patterns or outcome performance of providers participating in their network.

Further, as described in more detail below, health care providers and health plans would not need individual authorization to provide protected health information to a business partner for treatment, payment or health care operations functions if the other requirements for disclosing to business partners are met. See proposed § 164.506(e).

We intend that the right to use and disclose protected health information be interpreted to apply for treatment and payment of all individuals. For example, in the course of providing care to a patient, a physician could wish to examine the records of other patients with similar conditions. Likewise, a physician could consult the records of several people in the same family or living in the same household to assist in diagnosis of conditions that could be contagious or that could arise from a common environmental factor. A health plan or a provider could use the protected health information of a number of enrollees to develop treatment protocols, practice guidelines, or to assess quality of care. All of these uses would be permitted under this proposed rule.

Our proposal would not restrict to whom disclosures could be made for treatment, payment or operations. For example, covered entities could make disclosures to non-covered entities for payment purposes, such as a disclosure to a workers compensation carrier for coordination of benefits purposes. We note, however, that when disclosures are made to non-covered entities, the ability of this proposed rule to protect the confidentiality of the information ends. This points to the need for passage of more comprehensive privacy legislation that would permit the restrictions on use and disclosure to follow the information beyond covered entities.

We also propose to prohibit covered entities from seeking individual authorization for uses and disclosures for treatment, payment and health care operations unless required by State or other applicable law. As discussed above in this section, such authorizations could not provide meaningful privacy protections or individual control and could in fact cultivate in individuals erroneous understandings of their rights and protections.

The general approach that we are proposing is not new. Some existing State health confidentiality laws permit disclosures without individual authorization to other health care providers treating the individual, and the Uniform Health-Care Information Act permits disclosure "to a person who is providing health-care to the patient" (9 part I, U.L.A. 475, 2–104 (1988 and Supp. 1998)). We believe that this approach would be the most realistic way to protect individual confidentiality in an increasingly data-driven, electronic and integrated health care system. We recognize, however, that particularly given the limited scope of the authority that we have under this proposed rule to reach some significant actors in the health care system, that other approaches could be of interest. We invite comments on whether other approaches to protecting individuals' health information would be more effective.

b. *Health care operations.* We considered the extent to which the covered entities might benefit from further guidance on the types of activities that appropriately would be considered health care operations. The term is defined in proposed § 164.504. In the debates that have surrounded privacy legislation before the Congress, there has been substantial discussion of the definition of health care operations, with some parties advocating for a very broad definition and others advocating a more restrictive approach.

Given the lack of consensus over the extent of the activities that could be encompassed within the term health care operations, we determined that it would be helpful to identify activities that, in our opinion, are sufficiently unrelated to the treatment and payment functions to require a individual to authorize use of his or her information. We want to make clear that these activities would not be prohibited, and do not dispute that many of these activities are indeed beneficial to both individuals and the institutions involved. Nonetheless, they are not necessary for the key functions of treatment and payment and therefore would require the authorization of the individual before his/her information could be used. These activities would include but would not be limited to:

- The use of protected health information for marketing of health and non-health items and services;
- The disclosure of protected health information for sale, rent or barter;
- The use of protected health information by a non-health related division of the same corporation, e.g., for use in marketing or underwriting life or casualty insurance, or in banking services;
- The disclosure, by sale or otherwise, of protected health information to a plan or provider for making eligibility or enrollment determinations, or for underwriting or risk rating determinations, prior to the individual's enrollment in the plan;
- The disclosure of information to an employer for use in employment determinations; and
- The use or disclosure of information for fund raising purposes.

We invite comments on the activities within the proposed definitions of "treatment," "payment," and "health care operations," as well as the activities proposed to be excluded from these definitions.

c. *Exception for psychotherapy notes.* We propose that a covered health care provider not be permitted to disclose psychotherapy notes, as defined by this proposed rule, for treatment, payment, or health care operations unless a specific authorization is obtained from the individual. In addition, a covered entity would not be permitted to condition treatment of an individual, enrollment of an individual in a health plan, or payment of a claim for benefits made by or on behalf of an individual on a requirement that the individual provide a specific authorization for the disclosure of psychotherapy notes.

We would define "psychotherapy notes" to mean detailed notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session. Such notes could be used only by the therapist who wrote them, would have to be maintained separately from the medical record, and could not be involved in the documentation necessary for health care treatment, payment, or operations (as defined in § 164.504). Such term would not include medication prescription and monitoring, counseling session start and stop times or the modalities and frequencies of treatment furnished, results of clinical tests, or summaries of the following items: diagnoses, functional status, the treatment plan, symptoms, prognosis and progress to date.

Psychotherapy notes are of primary value to the specific provider and the promise of strict confidentiality helps to ensure that the patient will feel comfortable freely and completely disclosing very personal information essential to successful treatment. Unlike information shared with other health care providers for the purposes of treatment, psychotherapy notes are more detailed and subjective and are subject to unique rules of disclosure. In *Jaffee* v. *Redmond*, 518 U. S. 1 (1996), the Supreme Court ruled that conversations and notes between a patient and psychotherapist are confidential and protected from compulsory disclosure. The language in the Supreme Court opinion makes the rationale clear:

> Like the spousal and attorney-client privileges, the psychotherapist-patient privilege is "rooted in the imperative need for confidence and trust." * * * Treatment by a physician for physical ailments can often proceed successfully on the basis of a physical examination, objective information supplied by the patient, and the results of diagnostic tests. Effective psychotherapy, by contrast, depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears. Because of the sensitive nature of the problems for which individuals consult psychotherapists, disclosure of confidential communications made during counseling sessions may cause embarrassment or disgrace. For this reason, the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment. As the Judicial Conference Advisory Committee observed in 1972 when it recommended that Congress recognize a psychotherapist privilege as part of the Proposed Federal Rules of Evidence, a psychiatrist's ability to help her patients "is completely dependent upon (the patients') willingness and ability to talk freely. This makes it difficult if not impossible for (a psychiatrist) to function without being able to assure * * * patients of confidentiality and, indeed, privileged communication. Where there may be exceptions to this general rule * * *, there is wide agreement that confidentiality is a *sine qua non* for successful psychiatric treatment. * * *"

By protecting confidential communications between a psychotherapist and her patient

> from involuntary disclosure, the proposed privilege thus serves important private interests. * * * The psychotherapist privilege serves the public interest by facilitating the provision of appropriate treatment for individuals suffering the effects of a mental or emotional problem. The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance.
>
> That it is appropriate for the federal courts to recognize a psychotherapist privilege under Rule 501 is confirmed by the fact that all 50 States and the District of Columbia have enacted into law some form of psychotherapist privilege. * * * Because state legislatures are fully aware of the need to protect the integrity of the fact finding functions of their courts, the existence of a consensus among the States indicates that "reason and experience" support recognition of the privilege. In addition, given the importance of the patient's understanding that her communications with her therapist will not be publicly disclosed, any State's promise of confidentiality would have little value if the patient were aware that the privilege would not be honored in a federal court. * * * *Jaffee*, 518 U.S. 7–9.

The special status of the psychotherapist privilege in our society as well as the physical and conceptual segregation of the psychotherapy notes makes this prohibition on disclosures for treatment, payment and health care operations without a specific authorization from the individual reasonable and practical.

We note that the policy being applied to psychotherapy notes differs from the policy being applied to most other types of protected health information. For most protected health information, a covered entity would be prohibited from soliciting an authorization from an individual for treatment, payment and health operations unless such an authorization is required by other applicable law. In this case, because of the special status of psychotherapy notes as described above, we propose that a specific authorization be required before such notes can be disclosed within the treatment and payment systems. We propose this special treatment because there are few reasons why other health care entities should need the psychotherapy notes about an individual, and in those cases, the individual is in the best position to determine if the notes should be disclosed. For example, an individual could authorize disclosure if they are changing health care providers. Since we have defined psychotherapy notes in such a way that they do not include information that health plans would need to process a claim for services, special authorizations for payment purposes should be rare. We would note that the provisions governing authorizations under § 164.508 would apply to the special authorizations under this provision.

We also propose that covered entities not be permitted to condition treatment or payment decisions on a requirement that an individual provide a specific authorization for the use or disclosure of psychotherapy notes. The special protections that are being proposed would not be meaningful if covered entities could coerce individuals by conditioning treatment or payment decisions on a requirement that the individual authorize use or disclosures of such notes. This requirement would not prohibit the provider that creates the psychotherapy notes information from using the notes for treatment of the individual. The provider could not, however, condition the provision of treatment on a requirement that the individual authorize the use of the psychotherapy notes by the covered entity for other purposes or the disclosure of the notes by the provider to others.

We considered including other disclosures permitted under proposed § 164.510 within the prohibition described in this provision, but were unsure if psychotherapy notes were ever relevant to the public policy purposes underlying those disclosures. For example, we would assume that such notes are rarely disclosed for public health purposes or to next of kin. We solicit comment on whether there are additional categories of disclosures permitted under proposed § 164.510 for which the disclosure of psychotherapy notes by covered entities without specific individual authorization would be appropriate.

d. *Exception for research information unrelated to treatment*. Given the voluntary, often altruistic, nature of research participation, and the experimental character of data generated from many research studies, research participants should have assurances that the confidentiality of their individually identifiable information will be maintained in a manner that respects these unique characteristics. In the process of conducting health research, some information that is collected could be related to the delivery of health care to the individual and some could be unrelated to the care of the individual. Some information that is generated in the course of a research study could have unknown analytic validity, clinical validity, or clinical utility. In general, unknown analytic or clinical validity means that the sensitivity, specificity, and predictive value of the research information is not known. Specifically, analytic validity refers to how well a test performs in measuring the property or characteristic it is intended to measure. Another element of the test's analytical validity is its reliability—that is, it must give the same result each time. Clinical validity is the accuracy with which a test predicts a clinical condition. Unknown clinical utility means that there is an absence of scientific and medical agreement regarding the applicability of the information for the diagnosis, prevention, or treatment of any malady, or the assessment of the health of the individual.

We would define "research information unrelated to treatment" as information that is received or created by a covered entity in the course of conducting research for which there is insufficient scientific and medical evidence regarding the validity or utility of the information such that it should not be used for the purpose of providing health care, and with respect to which the covered entity has not requested payment from a health plan.

Such information should never be used in a clinical treatment protocol but could result as a byproduct of such a protocol. For example, consider a study which involves the evaluation of a new drug, as well as an assessment of a genetic marker. The drug trial includes physical and radiographic examinations, as well as blood tests to monitor potential toxicity of the new drug on the liver; all of these procedures are part of the provision of health care, and therefore, would constitute "protected health information," but not "research information unrelated to treatment." In the same study, the investigators are searching for a genetic marker for this particular disease. To date, no marker has been identified and it is uncertain whether or not the preliminary results from this research study would prove to be a marker for this disease. The genetic information generated from this study would constitute "research information unrelated to treatment".

We solicit comment on this definition of "research information unrelated to treatment" and how it would work in practice.

Because the meaning of this information is currently unknown, we would prohibit its use and disclosure for treatment, payment and health care operations unless a specific authorization is obtained from the subject of the information. Failing to limit the uses and disclosures of this information within the health payment system would place research participants at increased risk of discrimination, which could result in individuals refusing to volunteer to participate in this type of research. Without the special protections that we are proposing, we are concerned that much potentially life-saving research could be halted. Moreover, because this information that lacks analytical or clinical validity and clinical utility, and because we have defined it in terms that preclude researchers from seeking third-party reimbursement for its creation, there would not be a reason for this information to be further used or disclosed within the treatment and payment system without individual authorization.

We also propose that covered entities not be permitted to condition treatment or payment decisions on a requirement that an individual provide a specific authorization for the use or disclosure of research information unrelated to treatment. The special protections that are being proposed would not be meaningful if covered entities could coerce individuals into authorizing disclosure by conditioning treatment or payment decisions on a requirement that the individual authorize disclosures of such information. This requirement would not prohibit the covered entity that creates the information from using the information for the research purposes for which it was collected. The entity could not, however, condition the provision of treatment on a requirement that the individual authorize use of research information unrelated to treatment by the covered entity for other purposes or the disclosure of the information by the covered entity to others.

We considered including other of the uses and disclosures that would be permitted under § 164.510 within the prohibition described in this provision, but were unsure if research information unrelated to treatment would ever be relevant to the public policy purposes underlying those disclosures. We solicit comment on whether there are additional categories of uses or disclosures that would be permitted under proposed § 164.510 for which the use or disclosure of such information by covered entities without specific individual authorization would be appropriate.

2. Minimum Necessary Use and Disclosure. (§ 164.506(b))

[*Please label comments about this section with the subject: "Minimum necessary"*]

We propose that, except as discussed below, a covered entity must make all reasonable efforts not to use or disclose more than the minimum amount of protected health information necessary to accomplish the intended purpose of the use or disclosure, taking into consideration practical and technological limitations.

In certain circumstances, the assessment of what is minimally necessary is appropriately made by a person other than the covered entity; in those cases, discussed in this paragraph, and reflected in proposed § 164.506(b)(1)(i), the requirements of this section would not apply. First, the covered entity would not be required to make a "minimum necessary" analysis for the standardized content of the various HIPAA transactions, since that content has been determined through regulation. Second, with one exception, when an individual authorizes a use or disclosure the covered entity would not be required to make a "minimum necessary" determination. In such cases, the covered entity would be unlikely to know enough about the information needs of the third party to make a "minimum necessary" determination. The exception, when the "minimum necessary" principle would apply to an authorization, is for authorizations for use of protected health information by the covered entity itself. See proposed § 164.508(a)(2). Third, with respect to disclosures that are mandatory under this or other law, and which would be permitted under the rules proposed below, public officials, rather than the covered entity, would determine what information is required (e.g., coroners and medical examiners, State reporting requirements, judicial warrants). See proposed §§ 164.510 and 164.506(b)(1)(ii). Fourth, disclosure made pursuant to a request by the individual for access to his or her protected health information presents no possible privacy threat and therefore lies outside this requirement. See proposed § 164.506(b)(1)(i).

Under this proposal, covered entities generally would be required to establish policies and procedures to limit the amount of protected health care information used or disclosed to the minimum amount necessary to meet the purpose of the use or disclosure, and to limit access to protected health information only to those people who need access to the information to accomplish the use or disclosure. With respect to use, if an entity consists of several different components, the entity would be required to create barriers between components so that information is not used inappropriately. For example, a health plan that offers other insurance products would have policies and procedures to prevent protected health information from crossing over from one product line to another. The same principle applies to disclosures. For example, if a covered entity opts to disclose protected health information to a researcher pursuant to proposed § 164.510(j), it would need to ensure that only the information necessary for the particular research protocol is disclosed.

It should be noted that, under section 1173(d) of the Act, covered entities would also be required to satisfy the requirements of the Security standards, by establishing policies and procedures to provide access to health information systems only to persons who require access, and implement procedures to eliminate all other access. Thus, the privacy and security requirements would work together to minimize the amount of information shared, thereby lessening the possibility of misuse or inadvertent release.

A "minimum necessary" determination would need to be consistent with and directly related to the purpose of the use or disclosure and take into consideration the ability of a covered entity to delimit the amount of information used or disclosed and the relative burden imposed on the entity. The proposed minimum necessary requirement is based on a reasonableness standard: covered entities would be required to make reasonable efforts and to incur reasonable expense to limit the use and disclosure of protected health information as provided in this section.

In determining what a reasonable effort is under this section, covered entities should take into consideration the amount of information that would be used or disclosed, the extent to which the use or disclosure would extend the number of individuals or entities with access to the protected health information, the importance of the use or disclosure, the likelihood that further uses or disclosures of the protected health information could occur, the potential to achieve substantially the same purpose with de-identified information, the technology available to limit the amount of protected health information that is used or disclosed, the cost of limiting the use or disclosure, and any other factors that the covered entity believes are relevant to the determination. We would expect that in most cases where covered entities have more information than is necessary to accomplish the purpose of a use or disclosure, some method of limiting the information that is used or disclosed could be found.

We note that all of the uses and disclosures subject to the requirements of this provision are permissive; the minimum necessary provision does not apply to uses or disclosures mandated by law. Covered entities should not make uses or disclosures of protected health information where they are unable to make any efforts to reasonably limit the amount of protected health information used or disclosed for a permissive purpose. Where there is ambiguity regarding the particular information to be used or disclosed, this provision should be interpreted to require the covered entity or make some effort to limit the amount of information used or disclosed.

We note that procedures for implementing the minimum necessary requirement for uses would often focus on limiting the physical access that employees, business partners and others would have to the protected health information. Procedures which limit the specific employees or business partners, or the types of employees or business partners, who would be qualified to gain access to particular records would often be appropriate. Covered entities with advanced technological capabilities should also consider limiting access to appropriate portions of protected health information when it would be practical to do so.

The "minimum necessary" determination would include a determination that the purpose of the use or disclosure could not be reasonably accomplished with information that is not identifiable. Each covered entity would be required to have policies for determining when information must be stripped of identifiers before disclosure. If identifiers are not removed simply because of inconvenience to the covered entity, the "minimum necessary" rule would be violated.

Similarly, disclosure of an entire medical record, in response to a request for something other than the entire medical record, would presumptively violate the "minimum necessary" rule. Except where the individual has specifically authorized use or disclosure of the full medical record, when a covered entity receives a request for an entire medical record, the covered entity could not, under these proposed rules, disclose the entire record unless the request included an explanation of why the purpose of the disclosure could not reasonably be accomplished without the entire medical record.

The decisions called for in determining what would be the minimum necessary information to accomplish an allowable purpose should include both a respect for the privacy rights of the subjects of the medical record and the reasonable ability of covered entities to delimit the amount of individually identifiable health information in otherwise permitted uses and disclosures. For example, a large enterprise that makes frequent electronic disclosures of similar data would be expected to remove identifiers or to limit the data fields that are disclosed to fit the purpose of the disclosure. An individual physician's office would not be expected to have the same capabilities to limit the amount of information disclosed, although, in the cases of disclosures involving a small number of records, such an office could be expected to hide identifiers or to limit disclosures to certain pages of the medical record that are relevant to the purpose of the disclosure.

Even where it might not be reasonable for a covered entity to limit the amount of information disclosed, there could be opportunities, when the use or disclosure does not require authorization by the individual, to reduce the scope of the disclosure in ways that substantially protect the privacy interests of the subject. For example, if a health researcher wants access to relatively discrete parts of medical records that are presently maintained in paper form for a large number of patients with a certain condition, it could be financially prohibitive for the covered entity to isolate the desired information. However, it could be reasonable for the covered entity to allow the researcher to review the records on-site and to abstract only the information relevant to the research. Much records research is done today through such abstracting, and this could be a good way to meet the "minimum necessary" principle. By limiting the physical distribution of the record, the covered entity would have effectively limited the scope of the disclosure to the information necessary for the purpose.

Proposed § 164.506(b) generally would place the responsibility for determining what disclosure is the "minimum necessary" on the covered entity making the disclosure. The exception would be for health plan requests for information from health care providers for auditing and related purposes. In this instance, since the provider is not in a position to negotiate with the payer, the duty would be shifted to the payer to request the "minimum necessary" information for the purpose. See proposed § 164.506(b)(1)(iv). Whenever a health plan requests a disclosure, it would be required to limit its requests to the information to achieve the purpose of the request. For example, a health plan seeking protected health information from a provider or other health plan to process a payment should not request the entire health record unless it is actually necessary.

In addition, the proposal would permit covered entities to reasonably rely on requests by certain public agencies in determining the minimum necessary information for certain disclosures. For example, a covered entity that reasonably relies on the requests of public health agencies, oversight agencies, law enforcement agencies, coroners or medical examiners would be in compliance with this requirement. See proposed § 164.506(b)(3).

As discussed in prior HIPAA proposed rulemakings, it is likely to be easier to limit disclosure when disclosing computerized records than when providing access to paper records. Technological mechanisms to limit the amount of information available for a particular purpose, and make information available without identifiers, are an important contribution of technology to personal privacy. For example, the fields of information that are disclosed can be limited, identifiers (including names, addresses and other data) can be removed, and encryption can restrict to authorized personnel the ability to link identifiers back to the record.

For electronic information covered by the proposed rules, the "minimum necessary" requirement would mean reviewing, forwarding, or printing out only those fields and records relevant to the user's need for information. Where reasonable (based on the size, sophistication and volume of the covered entity's electronic information systems), covered entities would configure their record systems to allow selective access to different portions of the record, so that, for example, administrative personnel get access to only certain fields, and medical personnel get access to other fields. This selective access to information would be implemented using the access control technology discussed in the electronic security regulation.

For non-electronic information covered by the proposed rules, "minimum necessary" would mean the selective copying of relevant parts of protected health information or the use of "order forms" to convey the relevant information. These techniques are already in use in the health care environment today, not because of privacy considerations, but because of the risk of losing access to the full medical record when needed for clinic or emergency visits.

This rule would require, in proposed § 164.520, that each covered entity document the administrative policies and procedures that it will use to meet the requirements of this section. With respect to the "minimum necessary" compliance standard, such procedures would have to describe the process or processes by which the covered entity will make minimum necessary determinations, the person or persons who will be responsible for making such determinations, and the process in place to periodically review routine uses and disclosures in light of new technologies or other relevant changes. Proposed uses or disclosures would have to be reviewed by persons who have an understanding of the entity's privacy policies and practices, and who have sufficient expertise to understand and weigh the factors described above. See proposed § 164.506(b)(2). The policies that would be reasonable would vary depending on the nature and size of the covered entity. For large enterprises, the documentation of policies and procedures might identify the general job descriptions of the people that would make such decisions throughout the organization.

In addition, the procedures would provide that the covered entity will review each request for disclosure individually on its own merits (and, for research, the documentation of required IRB or other approval). Covered entities should not have general policies of approving all requests (or all requests of a particular type) for disclosures or uses without carefully considering the factors identified above as well as other information specific to the request that the entity finds important to the decision.

We understand that the requirements outlined in this section do not create a bright line test for determining the minimum necessary amount of protected health information appropriate for most uses or disclosures. Because of this lack of precision, we considered eliminating the requirement altogether. We also considered merely requiring covered entities to address the concept within their internal privacy procedures, with no further guidance as to how each covered entity would address the issue. These approaches were rejected because minimizing both the amount of protected health information used and disclosed within the health care system and the number of persons who have access to such information is vital if we are to successfully enhance the confidentiality of people's personal health information. We invite comments on the approach that we have adopted and on alternative methods of implementing the minimum necessary principle.

3. Right to Restrict Uses and Disclosures. (§ 164.506(c))

[Please label comments about this section with the subject: "Right to restrict"]

We propose to permit in § 164.506(c) that individuals be able to request that a covered entity restrict further uses and disclosures of protected health information for treatment, payment, or health care operations, and if the covered entity agrees to the requested restrictions, the covered entity could not make uses or disclosures for treatment, payment or health care operations that are inconsistent with such restrictions, unless such uses or disclosures are mandated by law. This provision would not apply to health care provided to an individual on an emergency basis.

This proposal would not restrict the right of a provider to make an otherwise permissible disclosure under § 164.510, such as a disclosure for public health or emergency purposes. While there is nothing in this proposed rule that would prohibit a provider and an individual from agreeing in advance not to make such disclosures, such an agreement would not be enforceable through this proposed rule.

We should note that there is nothing in this proposed rule that requires a covered entity to agree to a request to restrict, or to treat or provide coverage to an individual requesting a restriction under this provision. Covered entities who do not wish to, or due to contractual obligations cannot, restrict further use or disclosure would not be obligated to treat an individual making a request under this provision. For example, some health care providers could feel that it is medically inappropriate to honor patient requests under this provision. The medical history and records of a patient, particularly information about current medications and other therapies, are often very much relevant when new treatment is sought, and the patient cannot seek to withhold this information from subsequent providers without risk.

Under this proposal, individuals could request broad restrictions on further uses and disclosures for treatment, payment or health care operations, or could request more limited restrictions relating to further uses or disclosures of particular portions of the protected health information or to further disclosures to particular persons. Covered entities could choose to honor the individual's request, could decline to treat or provide coverage to the individual, or could propose an alternative restriction of further use or disclosure. The covered entity would not be bound by an individual's request for restriction until its scope has been agreed to by the individual and the provider. Once an agreement has been reached, however, a covered entity that uses or discloses the protected health information resulting from the encounter in any manner that violates such agreement would be in violation of this provision.

We are not proposing to extend this right to individuals receiving emergency medical care, because emergency situations may not afford sufficient opportunity for the provider and patient to discuss the potential implications of restricting further use and disclosure of the resulting medical information. Additionally, a health care provider may not be free to refuse treatment to an emergency patient if the provider does not wish to honor a request to restrict further use or disclosure of health information, leaving the provider in an unfair position where she or he must choose between permitting medical harm to come to the patient or honoring a request that she or he feels may be inappropriate or which may violate the provider's business practices or contractual obligations. Some health care providers are legally required to treat emergency patients (e.g., hospital emergency rooms), and would have no opportunity to refuse treatment as a result of a request to restrict further use and disclosure under this provision. Under the pressure of an emergency, a provider should not be expected to adhere to the restrictions associated with a particular individual's information.

Under this proposal, covered entities would not be responsible for ensuring that agreed-upon restrictions are honored when the protected health information leaves the control of the covered entity or its business partners. For example, a provider would not be out of compliance if information she or he disclosed to another provider (consistent with the agreed upon restrictions and with notice of the applicable restrictions on uses and disclosures) is subsequently used or disclosed in violation of the restrictions.

The agreement to restrict use and disclosure under this provision would have to be documented to be binding on the covered entity. In proposed § 164.520, we would require covered entities to develop and document policies and procedures reasonably designed to ensure that the requests are followed, i.e., that unauthorized uses and disclosures are not made.

We note that this proposed rule would not permit covered entities to require individuals to invoke their right to restrict uses and disclosures; only the patient could make a request and invoke this right to restrict.

We considered providing individuals substantially more control over their protected health information by requiring all covered entities to attempt to accommodate any restrictions on use and disclosure requested by patients. We rejected this option as unworkable. While industry groups have developed principles for requiring patient authorizations, we have not found widely accepted standards for implementing patient restrictions on uses or disclosures. Restrictions on information use or disclosure contained in patient consent forms are sometimes ignored because they may not be read or are lost in files. Thus, it seems unlikely that a requested restriction could successfully follow a patient's information through the health care system—from treatment to payment, through numerous operations, and potentially through certain permissible disclosures. Instead we would limit the provision to restrictions that have been agreed to by the covered entity.

We recognize that the approach that we are proposing could be difficult because of the systems limitations described above. However, we believe that the limited right for patients included in this proposed rule can be implemented because it only applies in instances in which the covered entity agrees to the restrictions. We assume that covered entities would not agree to restrictions that they are unable to implement.

We considered limiting the rights under this provision to patients who pay for their own health care (or for whom no payment was made by a health plan). Individuals and health care providers that engage in self-pay transactions have minimal effect on the rights or responsibilities of payers or other providers, and so there would be few instances when a restriction agreed to in such a situation would have negative implications for the interests of other health care actors. Limiting the right to restrict to self-pay patients also would reduce the number of requests that would be made under this provision. We rejected this approach however, because the desire to restrict further uses and disclosures arises in many instances other than self-pay situations. For example, a patient could request that his or her records not be shared with a particular physician because that physician is a family friend. Or an individual could be seeking a second opinion and might not want his or her treating physician consulted. Individuals have a legitimate interest in restricting disclosures in these situations. We solicit comment on the appropriateness of limiting this provision to instances in which no health plan payment is made on behalf of the individual.

In making this proposal, we recognize that it could be difficult in some instances for patients to have a real opportunity to make agreements with covered entities, because it would not be clear in all cases which representatives of a covered entity could make an agreement on behalf of the covered entity. There also are concerns about the extent to which covered entities could ensure that agreed-upon restrictions would be followed. As mentioned above, current restrictions contained in patient consent forms are sometimes ignored because the person handling the information is unaware of the restrictions. We solicit comments on the administrative burdens this provision creates for covered entities, such as the burdens of administering a system in which some information is protected by federal law and other information is not.

We would note that we expect that systems for handling patient requests to restrict use and disclosure of information will become more responsive as technology develops. Therefore, we will revisit this provision as what is practicable changes over time. Proposed requirements for documenting internal procedures to implement this proposed provision are included in proposed § 164.520. We request comments on whether the final rule should provide examples of appropriate, scalable systems that would be in compliance with this standard.

4. Creation of De-identified Information (164.506(d))

[Please label comments about this section with the subject: "Creation of de-identified information"]

In this rule we are proposing that covered entities and their business partners be permitted to use protected health information to create de-identified health information. Covered entities would be permitted to further use and disclose such de-identified information in any way, provided that they do not disclose the key or other mechanism that would enable the information to be re-identified, and provided that they reasonably believe that such use or disclosure of de-identified information will not result in the use or disclosure of protected health information. See proposed § 164.506(d)(1). This means that a covered entity could not disclose de-identified information to a person if the covered entity reasonably believes that the person would be able to re-identify some or all of that information, unless disclosure of protected health information to such person would be permitted under this proposed rule. In addition, a covered entity could not use or disclose the key to coded identifiers if this rule would not permit the use or disclosure of the identified information to which the key pertains. If a covered entity re-identifies the de-identified information, it may only use or disclose the re-identified information consistent with these proposed rules, as if it were the original protected health information.

In some instances, covered entities creating de-identified health information could want to use codes or identifiers to permit data attributable to the same person to be accumulated over time or across different sources of data. For example, a covered entity could automatically code all billing information as it enters the system, substituting personal identifiers with anonymous codes that permit tracking and matching of data but do not permit people handling the data to create protected health information. Such a mechanism would be permissible as long as the key to unlocking the codes is not available to the people working with the de-identified information, and the entity otherwise makes no attempt to create protected health information from the de-identified information.

There are many instances in which such individually identifiable health information is stripped of the information that could identify individual subjects and is used for analytical, statistical and other related purposes. Large data sets of de-identified information can be used for innumerable purposes that are vital to improving the efficiency and effectiveness of health care delivery, such as epidemiological studies, comparisons of cost, quality or specific outcomes across providers or payers, studies of incidence or prevalence of disease across populations, areas or time, and studies of access to care or differing use patterns across populations, areas or time. Researchers and others often obtain large data sets with de-identified information from providers and payers (including from public payers) to engage in these types of studies. This information is valuable for public health activities (e.g., to identify cost-effective interventions for a particular disease) as well as for commercial purposes (e.g., to identify areas for marketing new health care services).

We intend that this proposed provision will permit the important health care research that is being conducted today to continue under this rule. Indeed, it would be our hope that covered entities, their business partners, and others would make greater use of de-identified health information than they do today, when it is sufficient for the research purpose. Such practice would reduce the confidentiality concerns that result from the use of individually identifiable health information for some of these purposes. The selective transfer of health information without identifiers into an analytic database would significantly reduce the potential for privacy violations while allowing broader access to information for analytic purposes, without the overhead of audit trails and IRB review. For example, providing de-identified information to a pharmaceutical manufacturer to use in determining patterns of use of a particular pharmaceutical by general geographic location would be appropriate, even if the information were sold to the manufacturer. Such analysis using protected health information would be research and therefore would require individual authorization or approval by an IRB or similar board. We note that data that includes an individual's address is "identifiable" by definition and could not be used in such databases.

We invite comment on the approach that we are proposing and on whether alternative approaches to standards for entities determining when health information can reasonably be considered no longer individually identifiable.

5. Application to business partners. (§ 164.506(e))

[*Please label comments about this section with the subject: "Business partners"*]

In § 164.506(e), we propose to require covered entities to take specific steps to ensure that protected health information disclosed to a business partner remains protected. We intend these provisions to allow customary business relationships in the health care industry to continue while providing privacy protections to the information shared in these relationships. Business partners would not be permitted to use or disclose protected health information in ways that would not be permitted of the covered entity itself under these rules.

Other than for purposes of consultation or referral for treatment, we would allow covered entities to disclose protected health information to business partners only pursuant to a written contract that would, among other specified provisions, limit the business partner's uses and disclosures of protected health information to those permitted by the contract, and would impose certain security, inspection and reporting requirements on the business partner. We would hold the covered entity responsible for certain violations of this proposed rule made by their business partners, and require assignment of responsibilities when a covered entity acts as a business partner of another covered entity.

a. *Who is a business partner?* Under this proposed rule, a business partner would be a person to whom the covered entity discloses protected health information so that the person can carry out, assist with the performance of, or perform on behalf of, a function or activity for the covered entity. This would include contractors or other persons who receive protected health information from the covered entity (or from another business partner of the covered entity) for the purposes described in the previous sentence, including lawyers, auditors, consultants, third-party administrators, health care clearinghouses, data processing firms, billing firms, and other covered entities. This would not include persons who would be members of the covered entity's workforce. The key features of the relationship would be that the business partner is performing an activity or function for or on behalf of the covered entity and that the business partner receives protected health information from the covered entity as part of providing such activity or function.

Many critical functions are performed every day by individuals and organizations that we would define as business partners. Under the proposal, billing agents, auditors, third-party administrators, attorneys, private accreditation organizations, clearinghouses, accountants, data warehouses, consultants and many other actors would be considered business partners of a covered entity. Most covered entities will use one or more business partners, to assist with functions such as claims filing, claims administration, utilization review, data storage, or analysis. For example, if a covered entity seeks accreditation from a private accreditation organization and provides such organization with protected health information as part of the accreditation process, the private accreditation organization would be a business partner of the covered entity. This would be true even if a third party, such as an employer or a public agency, required accreditation as a condition of doing business with it. The accreditation is being performed for the covered entity, not the third party, in such cases.

The covered entity may have business relationships with organizations that would not be considered to be business partners because protected health information is not shared or because services are not provided to the covered entity. For example, a covered entity could contract with another organization for facility management or food services; if these organizations do not receive protected health information for these functions or activities, they would not be considered business partners. In the case where a covered entity provides management services to another organization, the other organization would not be a business partner because it would be receiving, not providing, a service or function.

Under the proposal, a covered entity could become a business partner of another covered entity, such as when a health plan acts as a third-party administrator to an insurance arrangement or a self-funded employee benefit plan. In such cases, we propose that the authority of the covered entity acting as a business partner to use and disclose protected health information be constrained to the authority that any business partner in the same situation would have. Thus, the authority of a covered entity acting as a business partner to use and disclose protected health information obtained as a business partner would be limited by the contract or arrangement that created the business partner relationship.

In most cases, health care clearinghouses would fall under our definition of "business partner" because they receive protected health information in order to provide payment processing and other services to health plans, health care providers and their business partners, a case that would fall under our definition of "business partner." Therefore, although health care clearinghouses would be covered entities, in many instances under this proposed rule they would also be treated as business partners of the health care providers or health plans for whom they are performing a service. We would note that because health care clearinghouses would generally be operating as business partners, we are proposing not to apply several requirements to health care clearinghouses that we otherwise would apply to covered plans and providers, such as requiring a notice of information practices, access for inspection and copying, and accommodation of requests for amendment or correction. See proposed §§ 164.512, 164.514 and 164.516.

b. *Limitations on use or disclosure.*

i. *Scope of the covered entity's authority.*

Under this proposed rule, a business partner would be acting on behalf of a covered entity, and we propose that its use or disclosure of protected health information be limited to the same extent that the covered entity for whom they are acting would be limited. Thus, a business partner could have no more authority to use or disclose protected health information than that possessed by the covered entity from which the business partner received the information. For example, a business partner could not sell protected health information to a financial services firm without individual authorization because the covered entity would not be permitted to do so under these proposed rules. We would note that a business partner's authority to use and disclose protected health information could be further restricted by its contract with a covered entity, as described below.

We are not proposing to require the business partners of covered entities to develop and distribute a notice of information practices, as provided in proposed § 164.512. A business partner would, however, be bound by the terms of the notice of the covered entity from which it obtains protected health information. For example, if a covered entity provided notice to its subscribers that it would not engage in certain permissible disclosures of protected health information, we are proposing that such a limitation would apply to all of the business partners of the covered entity that made the commitment. See proposed § 164.506(e). We are proposing this approach so that individuals could rely on the notices that they receive from the covered entities to which they disclose protected health information. If the business partners of a covered entity were able to make wider use or make more disclosures than the covered entity, the patients or enrollees of the covered entity would have difficulty knowing how their information was being used and to whom it was being disclosed.

ii. *Scope of the contractual agreement.*

We are also proposing that a business partner's use and disclosure of protected health information be limited by the terms of the business partner's contractual agreement with the covered entity. We propose that a contract between a covered entity and a business partner could not grant the business partner authority to make uses or disclosures of protected health information that the covered entity itself would not have the authority to make. The contract between a covered entity and a business partner could further limit the business partner's authority to use or disclose protected health information as agreed to by the parties. Further, the business partner would have to apply the same limitations to its subcontractors (or persons with similar arrangements) who assist with or carry out the business partner's activities.

To help ensure that the uses and disclosures of business partners would be limited to those recognized as appropriate by the covered entities from whom they receive protected health information, subject to the exception discussed below, we are proposing that covered entities be prohibited from disclosing protected health information to a business partner unless the covered entity has entered into a written contract with the business partner that meets the requirements of this subsection. See proposed § 164.506(e)(2)(i). The written contract between a covered entity and a business partner would be required to:

- Prohibit the business partner from further using or disclosing the protected health information for any purpose other than the purpose stated in the contract.
- Prohibit the business partner from further using or disclosing the protected health information in a manner that would violate the requirements of this proposed rule if it were done by the covered entity. As discussed above, the covered entity could not permit the business partner to make uses or disclosures that the covered entity could not make.
- Require the business partner to maintain safeguards as necessary to ensure that the protected health information is not used or disclosed except as provided by the contract. We are only proposing a general requirement; the details can be negotiated to meet the particular needs of each arrangement. For example, if the business partner is a two-person firm the contractual provisions regarding safeguards may focus on controlling physical access to a computer or file drawers, while a contract with a business partner with 500 employees would address use of electronic technologies to provide security of electronic and paper records.
- Require the business partner to report to the covered entity any use or disclosure of the protected health information of which the business partner becomes aware that is not provided for in the contract.
- Require the business partner to ensure that any subcontractors or agents to whom it provides protected health information received from the covered entity will agree to the same restrictions and conditions that apply to the business partner with respect to such information.
- Establish how the covered entity would provide access to protected health information to the subject of that information, as would be required under § 164.514, when the business partner has made any material alteration in the information. The covered entity and the business partner would determine in advance how the covered entity would know or could readily ascertain, when a particular individual's protected health information has been materially altered by the business partner, and how the covered entity could provide access to such information.
- Require the business partner to make available its internal practices, books and records relating to the use and disclosure of protected health information received from the covered entity to HHS or its agents for the purposes of enforcing the provisions of this rule.
- Establish how the covered entity would provide access to protected health information to the subject of that information, as would be required under § 164.514, in circumstances where the business partner will hold the protected health information and the covered entity will not.
- Require the business partner to incorporate any amendments or corrections to protected health information when notified by the covered entity that the information is inaccurate or incomplete.
- At termination of the contract, require the business partner to return or destroy all protected health information received from the covered entity that the business partner still maintains in any form to the covered entity and prohibit the business partner from retaining such protected health information in any form.
- State that individuals who are the subject of the protected health information disclosed are intended to be third party beneficiaries of the contract.
- Authorize the covered entity to terminate the contract, if the covered entity determines that the business partner has repeatedly violated a term of the contract required by this paragraph.

Each specified contract term above would be considered a separate implementation specification under this proposal for situations in which a contract is required, and, as discussed below, a covered entity would be responsible for assuring that each such implementation standard is met by the business partner. See proposed § 164.506(e)(2). The contract could include any additional arrangements that do not violate the provisions of this regulation.

The contract requirement that we are proposing would permit covered entities to exercise control over their business partners' activities and provide documentation of the relationship between the parties, particularly the scope of the uses and disclosures of protected health information that business partners could make. The presence of a contract also would formalize the relationship, better ensuring that key questions such as security, scope of use and disclosure, and access by individuals are adequately addressed and that the roles of the respective parties are clarified. Finally, a contract can bind the business partner to return any protected health information from the covered entity when the relationship is terminated.

In lieu of a contracting requirement, we considered imposing only affirmative duties on covered entities to ensure that their relationships with business partners conformed to the standards discussed in the previous paragraph. Such an approach could be considered less burdensome and restrictive, because we would be leaving it to the parties to determine how to make the standards effective. We rejected this approach primarily because we believe that in the vast majority of cases, the only way that the parties could establish a relationship with these terms would be through contract. We also determined that the value of making the terms explicit through a written contract would better enable the parties to know their roles and responsibilities, as well as better enable the Secretary to exercise her oversight role. In addition, we understand that most covered entities already enter into contracts in these situations and therefore this proposal would not disturb general business practice. We invite comment on whether there are other contractual or non-contractual approaches that would afford an adequate level of protection to individuals' protected health information. We also invite comment on the specific provisions and terms of the proposed approach.

We are proposing one exception to the contracting requirement: when a covered entity consults with or makes a referral to another covered entity for the treatment of an individual, we would propose that the sharing of protected health information pursuant to that consultation or referral not be subject to the contracting requirement described above. See proposed § 164.506(e)(1)(i). Unlike most business partner relationships, which involve the systematic sharing of protected health information under a business relationship, consultation and referrals for treatment occur on a more informal basis among peers, and are specific to a particular individual. Such exchanges of information for treatment also appear to be less likely to raise concerns about further impermissible use or disclosure, because health care providers receiving such information are unlikely to have a commercial or other interest in using or disclosing the information. We invite comment on the appropriateness of this exception, and whether there are additional exceptions that should be included in the final regulation.

We note that covered health care providers receiving protected health information for consultation or referral purposes would still be subject to this rule, and could not use or disclose such protected health information for a purpose other than the purpose for which it was received (i.e., the consultation or referral). Further, we note that providers making disclosures for consultations or referrals should be careful to inform the receiving provider of any special limitations or conditions to which the disclosing provider has agreed to impose (e.g., the disclosing provider has provided notice to its patients that it will not make disclosures for research).

Under the system that we are proposing, business partners (including business partners that are covered entities) that have contracts with more than one covered entity would have no authority to combine, aggregate or otherwise use for a single purpose protected health information obtained from more than one covered entity unless doing so would have been a lawful use or disclosure for each of the covered entities that supplied the protected health information that is being combined, aggregated or used. In addition, the business partner must be authorized through the contract or arrangement with each covered entity that supplied the protected health information to combine or aggregate the information. For example, a business partner of a health plan would be permitted to disclose information to another health plan for coordination of benefits purposes, if such a disclosure were authorized by the business partner's contract with the covered entity that provided the protected health information. However, a business partner that is performing an audit of a group medical practice on behalf of several health plans could not combine protected health information that it had received from each of the plans, even if the business partner's contracts with the plans attempted to allow such activity, because the plans themselves would not be permitted to exchange protected health information for such a purpose. A covered entity would not be permitted to obtain protected health information through a business partner that it could not otherwise obtain itself.

We further note that, as discussed above in section II.C.4, under our proposal a business partner generally could create a database of de-identified health information drawn from the protected health information of more than one covered entity with which it does business, and could use and disclose information and analyses from the database as they see fit, as long as there was no attempt to re-identify the data to create protected health information. In the example from the preceding paragraph, the business partner could review the utilization patterns of a group medical practice on behalf of several groups of plans by establishing a data base of de-identified health information drawn from all of its contracts with covered entities and review the use patterns of all of the individuals in the data base who had been treated by the medical group. The results of the analyses could be used by or distributed to any person, subject to the limitation that the data could not be identified. We would caution that business partners releasing such information and analyses would need to ensure that they do not inadvertently disclose protected health information by releasing examples or discussing specific cases in such a way that the information could be identified by people receiving the analysis or report.

c. *Accountability.* We are proposing that covered entities be accountable for the uses and disclosures of protected health information by their business partners. A covered entity would be in violation of this rule if the covered entity knew or reasonably should have known of a material breach of the contract by a business partner and it failed to take reasonable steps to cure the breach or terminate the contract. See proposed § 164.506(e)(2)(iii). A covered entity that is aware of impermissible uses and disclosures by a business partner would be responsible for taking such steps as are necessary to prevent further improper use or disclosures and, to the extent practicable, for mitigating any harm caused by such violations.

This could include, for example, requiring the business partner to retrieve inappropriately disclosed information (even if the business partner must pay for it) as a condition of continuing to do business with the covered entity. A covered entity that knows or should know of impermissible use of protected health information by its business partner and fails to take reasonable steps to end the breach would be in violation of this rule.

Where a covered entity acts as a business partner to another covered entity, the covered entity that is acting as business partner would also be responsible for any violations of the regulation.

We considered requiring covered entities to terminate relationships with business partners if the business partner committed a serious breach of contact terms required by this subsection or if the business partner exhibited a pattern or practice of behavior that resulted in repeated breaches of such terms. We rejected that approach because of the substantial disruptions in business relationships and customer service when terminations occur. We instead require the covered entity to take reasonable steps to end the breach and mitigate its effects. We would expect covered entities to terminate the arrangement if it becomes clear that a business partner cannot be relied upon to maintain the privacy of protected health information provided to it. We invite comments on our approach here and whether requiring automatic termination of business partner contracts would be warranted in any circumstances.

We also considered imposing more strict liability on covered entities for the actions of their business partners, just as principals are strictly liable for the actions of their agents under common law. We decided, however, that this could impose too great a burden on covered entities, particularly small providers. We are aware that, in some cases, the business partner will be larger and more sophisticated with respect to information handling than the covered entity. Therefore we instead opted to propose that covered entities monitor use of protected health information by business partners, and be held responsible only when they knew or reasonably should have known of improper use of protected health information.

Our intention in this subsection is to recognize the myriad business relationships that currently exist and to ensure that when they involve the exchange of protected health information, the roles and responsibilities of the different parties with respect to the protected health information are clear. We do not propose to fundamentally alter the types of business relationships that exist in the health care industry or the manner in which they function. We request comments on the extent to which our proposal would disturb existing contractual or other arrangements among covered entities and business partners.

6. Application to Information About Deceased Persons (§ 164.506(f))

[Please label comments about this section with the subject: "Deceased persons"]

We are proposing that information otherwise protected by these regulations retain that protection for two years after the death of the subject of the information. The only exception that we are proposing is for uses and disclosures for research purposes.

HIPAA includes no temporal limitations on the application of the privacy protections. Although we have the authority to protect individually identifiable health information maintained by a covered entity indefinitely, we are proposing that the requirements of this rule generally apply for only a limited period, as discussed below. In traditional privacy law, privacy interests, in the sense of the right to control use or disclosure of information about oneself, cease at death. However, good arguments exist in favor both of protecting and not protecting information about the deceased. Considering that one of the underlying purposes of health information confidentiality is to encourage a person seeking treatment to be frank in the interest of obtaining care, there is good reason for protecting information even after death. Federal agencies and others sometimes withhold sensitive information, such as health information, to protect the privacy of surviving family members. At the same time, perpetual confidentiality has serious drawbacks. If information is needed for legitimate purposes, the consent of a living person legally authorized to grant such consent must be obtained, and the further from the date of death, the more difficult it may be to identify the person. The administrative burden of perpetual protection may eventually outweigh the privacy interests served.

The proposed two-year period of confidentiality, with an exception for uses and disclosures for research purposes, would preserve dignity and respect by preventing uncontrolled disclosure of information immediately after death while allowing access to the information for proper purposes during this period and for any purpose thereafter. We would not subject the use or disclosure of protected health information of deceased individuals to the requirements in proposed § 164.510(j) governing most uses and disclosures for research because we believe that it is important to remain as consistent as possible with the Common Rule. The Common Rule does not consider deceased persons to be "human subjects" and therefore they have never been covered in the standard research protocol assessments conducted under the Common Rule. The Department of Health and Human Services will examine this issue in the context of an overall assessment of the Common Rule. Pending the outcome of this examination, we concluded that this exception was warranted so as not to interfere with standard research practice. We invite comments on whether the exception that we are proposing is necessary, or whether existing research using the protected health information of deceased individuals could proceed under the requirements of proposed § 164.510(j).

Under our proposal, and subject to the exceptions discussed above, the right to control the individual's health information within that two-year time period would be held by an executor or administrator, or in the absence of such an officer, by next-of-kin, as determined under applicable law, or in absence of both, by the holder of the health information. This is reflected in the proposed definition of "individual" discussed above. The legally authorized representative would make decisions for the individual with regard to uses or disclosures of the information for purposes not related to treatment, payment or health care operations. Likewise, an authorized representative could exercise the individual rights of inspection, copying, amendment or correction under proposed §§ 164.514 and 164.516.

Under our proposal, information holders could choose to keep information confidential for a longer period. These proposed rules also would not override any legally required prohibitions on disclosure for longer periods.

One area of concern regarding the proposed two-year period of protection relates to information on individual genetic make-up or individual diseases and conditions that may be hereditary. Under the proposed rules, covered entities would be legally allowed to use such information or to disclose records to others, such as commercial collectors of information, two years after the death of the individual. Since genetic information about one family member may reveal health information about other members of that family, the health data confidentiality of living relatives could be compromised by such uses or disclosures. Likewise, information regarding the hereditary diseases or conditions of the deceased person may reveal health information about living relatives. In the past, information that may not have been legally protected was *de facto* protected for most people because of the difficulty of its collection and aggregation. With the dramatic proliferation of large electronic databases of information about individuals, growing software-based intelligence, and the declining cost of linking information from disparate sources, such information could now be more readily and cost-effectively accessed.

While various State laws have been passed specifically addressing privacy of genetic information, there is currently no federal legislation that deals with these issues. We considered extending the two-year period for genetic and hereditary information, but were unable to construct criteria for protecting the possible privacy interests of living children without creating extensive burden for information holders and hampering health research. We invite comments on whether further action is needed in this area and what types of practical provisions may be appropriate to protect genetic and hereditary health information.

7. Adherence to the Notice of Information Practices (§ 164.506(g))

[Please label comments about this section with the subject: "Adherence to notice"]

In § 164.506(g), we are proposing that covered plans and providers be required to adhere to the statements reflected in the notice of information practices that would be required under proposed § 164.512. In binding covered plans and providers to their notices, we intend to create a system where open and accurate communication between entities and individuals would become necessary and routine. The corollary to this general rule is that the covered plan or provider would be permitted to modify its notice at any time.

The information practices reflected in the most recent notice would apply to all protected health information regardless of when the information was collected. For example, if information was collected during a period when the notice stated that no disclosures would be made to researchers, and the covered plan or provider later decided that it wanted to disclose information to researchers, the entity would then need to revise its notice. The entity would be permitted to disclose all of the information in its custody to researchers as long as the notice is revised and re-distributed as provided below in § 164.512. We considered permitting a covered entity to change its information practices only with respect to protected health information obtained after it revised its notice. Such a requirement would ensure individuals that the notice they received when they disclosed information to the covered entity would continue to apply to that information. We rejected that approach because compliance with such a standard would require covered entities to segregate or otherwise mark information to be based on the information practices that were in effect at different times. Such an approach would make covered entities extremely reluctant to revise the information practices, and otherwise would be extremely burdensome to administer.

We are concerned that by requiring covered plans and providers to adhere to the practices reflected in their notice, we would encourage entities to create broad, general notices so that all possible uses, disclosures and other practices would be included. Such broad notices would not achieve the goals of open and accurate communication between entities and individuals. We welcome comments on this requirement and alternative proposals to achieve the same goals.

8. Application to Covered Entities That Are Components of Organizations That Are Not Covered Entities

[Please label comments about this section with the subject: "Component entities"]

In this section we describe how the provisions of this proposed rule apply to persons or organizations that provide health care or have created health plans but are primarily engaged in other unrelated activities. Examples of such organizations include schools that operate on-site clinics, employers who operate self-funded health plans, and information processing companies that include a health care services component. The health care component (whether or not separately incorporated) of the organization would be the covered entity. Therefore, any movement of protected health information into another component of the organization would be a "disclosure," and would be lawful only if such disclosure would be authorized by this regulation. In addition, we propose to require such entities to create barriers to prevent protected health information from being used or disclosed for other activities not authorized or permitted under these proposed rules.

For example, schools frequently employ school nurses or operate on-site clinics. In doing so, the nurse or clinic component of the school would be acting as a provider, and must conform to this proposed rule. School clinics would be able to use protected health information obtained in an on-site clinic for treatment and payment purposes, but could not disclose it to the school for disciplinary purposes except as permitted by this rule. Similarly, an employee assistance program of an employer could meet the definition of "provider," particularly if health care services are offered directly by the program. Protected health information obtained by the employee assistance program could be used for treatment and payment purposes, but not for other purposes such as hiring and firing, placement and promotions, except as may be permitted by this rule.

D. Uses and Disclosures With Individual Authorization (§ 164.508)

[Please label comments about this section With the subject: "Individual authorization"]

This section addresses the requirements that we are proposing when protected health information is disclosed pursuant to the individual's explicit authorization. The regulation would require that covered entities have authorization from individuals before using or disclosing their protected health information for any purpose not otherwise recognized by this regulation. Circumstances where an individual's protected health information may be used or disclosed without authorization are discussed in connection with proposed §§ 164.510 and 164.522 below.

This section proposes different conditions governing such authorizations in two situations in which individuals commonly authorize covered entities to disclose information:

- Where the individual initiates the authorization because he or she wants a covered entity to disclose his or her record, and
- Where a covered entity asks an individual to authorize it to disclose or use information for purposes other than treatment, payment or health care operations.

In addition, this section proposes conditions where a covered entity or the individual initiates an authorization for use or disclosure of psychotherapy notes or research information unrelated to treatment. See discussion above in section II.C.1.c.

Individually identifiable health information is used for a vast array of purposes not directly related to providing or paying for an individual's health care. Examples of such uses include targeted marketing of new products and assessing the eligibility of an individual for certain public benefits or for commercial products based on their health status. Under these rules, these types of uses and disclosures could only be made by a covered entity with the specific authorization of the subject of the information. The requirements proposed in this section are not intended to interfere with normal uses and disclosures of information in the health care delivery or payment process, but only to permit control of uses extraneous to health care. The restrictions on disclosure that the regulation would apply to covered entities may mean that some existing uses and disclosures of information could take place only if the individual explicitly authorized them under this section.

Authorization would be required for these uses and disclosures because individuals probably do not envision that the information they provide when getting health care would be disclosed for such unrelated purposes. Further, once a patient's protected health information is disclosed outside of the treatment and payment arena, it could be very difficult for the individual to determine what additional entities have seen, used and further disclosed the information. Requiring an authorization from the patient for such uses and disclosures would enhance individuals' control over their protected health information.

We considered requiring a uniform set of requirements for all authorizations, but concluded that it would be appropriate to treat authorizations initiated by the individual differently from authorizations sought by covered entities. There are fundamental differences in the uses of information and in the relationships and understandings among the parties in these two situations. When individuals initiate authorizations, they are more likely to understand the purpose of the release and to benefit themselves from the use or disclosure. When a covered entity asks the individual to authorize disclosure, we believe the entity should make clear what the information will be used for, what the individual's rights are, and how the covered entity would benefit from the requested disclosure.

Individuals seek disclosure of their health information to others in many circumstances, such as when applying for life or disability insurance, when government agencies conduct suitability investigations, and in seeking certain job assignments where health is relevant. Another common instance is tort litigation, where an individual's attorney needs individually identifiable health information to evaluate an injury claim and asks the individual to authorize disclosure of records relating to the injury to the attorney.

There could also be circumstances where the covered entity asks an individual to authorize use or disclosure of information, for example to disclose it to a subsidiary to market life insurance to the individual. Similarly, the covered entity might ask that the individual authorize it to send information to a person outside that covered entity—possibly another covered entity or class of covered entity—for purposes outside of treatment, payment, or health care operations. See proposed § 164.508(a)(2)(ii).

1. Requirements When the Individual Has Initiated the Authorization

We are proposing several requirements that would have to be met in the authorization process when the individual has initiated the authorization.

The authorization would have to include a description of the information to be used or disclosed with sufficient specificity to allow the covered entity to know to which information the authorization references. For example, the authorization could include a description of "laboratory results from July 1998" or "all laboratory results" or "results of MRI performed in July 1998." The covered entity would then use or disclose that information and only that information. If the covered entity does not understand what information is covered by the authorization, the use or disclosure would not be permitted unless the covered entity were able to clarify the request.

We are proposing no limitations on the information to be disclosed. If an individual wishes to authorize a covered entity to disclose his or her entire medical record, the authorization could so specify. But in order for the covered entity to disclose the entire medical record, the authorization would have be specific enough to ensure that individuals have a clear understanding of what information is to be disclosed under the circumstances. For example, if the Social Security Administration seeks authorization for release of all health information to facilitate the processing of benefit applications, then the description would need to specify "all health information."

We would note that our proposal does not require a covered entity to disclose information pursuant to an individual's authorization. Therefore individuals may face reluctance on the part of covered entities that receive authorizations requiring them to classify and selectively disclose information when they do not benefit from the activity. Individuals would need to consider this when specifying the information in the authorization. Covered entities may respond to requests to analyze and separate information for selective disclosure by providing the entire record to the individual, who may then redact and release the information to others.

We do not propose to require an authorization initiated by an individual to state a purpose. When the individual has initiated the authorization, the entity would not need to know why he or she wants the information disclosed. Ideally, anyone asking an individual to authorize release of individually identifiable health information would indicate the purpose and the intended uses. We are unable to impose requirements on the many entities that make such requests, and it would not be feasible to ask covered entities to make judgments about intended uses of records that are disclosed. In the absence of legal controls in this situation, the prudent individual would obtain a clear understanding of why the requester needs the information and how it would be used.

We are proposing that the authorization would be required to identify sufficiently the covered entity or covered entities that would be authorized to use or disclose the protected health information by the authorization. Additionally, the authorization would be required to identify the person or persons that would be authorized to use or receive the protected health information with sufficient specificity to reasonably permit a covered entity responding to the authorization to identify the authorized user or recipient. When an authorization permits a class of covered entities to disclose information to an authorized person, each covered entity would need to know with reasonable certainty that the individual intended for it to release protected health information under the authorization.

Often, individuals provide authorizations to third parties, who present them to one or more covered entities. For example, an authorization could be completed by an individual and provided to a government agency, authorizing the agency to receive medical information from any health care provider that has treated the individual within a defined period. Such an authorization would be permissible (subject to the other requirements of this part) if it sufficiently identifies the government entity as the recipient of the disclosures and it sufficiently identifies the health care providers who would be authorized to release the individual's protected health information under the authorization.

We are proposing that the authorization must state a specific expiration date. We considered providing an alternative way of describing the termination of the authorization, such as "the conclusion of the clinical trial," or "upon acceptance or denial of this application for life insurance" (an "event"), but we are concerned that covered entities could have difficulty implementing such an approach. We also considered proposing that if an expiration date were indicated on the authorization, it be no more than two or three years after the date of the signature. We are soliciting comment on whether an event can be a termination specification, and whether this proposed rule should permit covered entities to honor authorizations with "unlimited" or extremely lengthy expiration dates or limit it to a set term of years, such as two or three years.

We are proposing that the authorization include a signature or other authentication (e.g., electronic signature) and the date of the signature. If the authorization is signed by an individual other than the subject of the information to be disclosed, that individual would have to indicate his or her authority or relationship with the subject.

The authorization would also be required to include a statement that the individual understands that he or she may revoke an authorization except to the extent that action has been taken in reliance on the authorization.

When an individual authorizes disclosure of health information to other than a covered entity, the information would no longer be protected under this regulation once it leaves the covered entity. Therefore, we propose that the authorization must clearly state that the individual understands that when the information is disclosed to anyone except a covered entity, it would no longer be protected under this regulation.

We understand that the requirements that we are imposing here would make it quite unlikely that an individual could actually initiate a completed authorization, because few individuals would know to include all of these elements in a request for information. We understand that in most instances, individuals accomplish authorizations for release of health records by completing a form provided by another party, either the ultimate recipient of the records (who may have a form authorizing them to request the records from the record holders) or a health care provider or health plan holding the records (who may have a form that documents a request for the release of records to a third party). For this reason, we do not believe that our proposal would create substantial new burdens on individuals or covered entities in cases when an individual is initiating an authorized release of information. We invite comment on whether we are placing new burdens on individuals or covered entities. We also invite comment on whether the approach that we have proposed provides sufficient protection to individuals who seek to have their protected health information used or disclosed.

2. Requirements When the Covered Entity Initiates the Authorization

We are proposing that when covered entities initiate the authorization by asking individuals to authorize disclosure, the authorization be required to include all of the items required above as well as several additional items. We are proposing additional requirements when covered entities initiate the request for authorization because in many cases it could be the covered entity, and not the individual, that achieves the primary benefit of the disclosure. We considered permitting covered entities to request authorizations with only the basic features proposed for authorizations initiated by the individual, for the sake of simplicity and consistency. However, we believe that additional protections would be merited when the entity that provides or pays for health care requests an authorizations to avert possible coercion.

When a covered entity asks an individual to sign an authorization, we propose to require that it provide on the authorization a statement that identifies the purposes for which the information is sought as well as the proposed uses and disclosures of that information. The required statements of purpose would provide individuals with the facts they need to make an informed decision as to whether to allow release of the information. Covered entities and their business partners would be bound by the statements provided on the authorization, and use or disclosure by the covered entity inconsistent with the statement would constitute a violation of this regulation. We recognize that the covered entities cannot know or control uses and disclosures that will be made by persons who are not business partners to whom the information is properly disclosed. As discussed above, authorizations would need to notify individuals that when the information is disclosed to anyone except a covered entity, it would no longer be protected under this regulation.

We propose to require that authorizations requested by covered entities be narrowly tailored to authorize use or disclosure of only the protected health information necessary to accomplish the purpose specified in the authorization. The request would be subject to the minimum necessary requirement as discussed in section II.C.2. We would prohibit the use of broad or blanket authorizations requesting the use or disclosure of protected health information for a wide range of purposes. Both the information that would be used or disclosed and the specific purposes for such uses or disclosures would need to be specified in the notice.

We are proposing that when covered entities ask individuals to authorize use or disclosure for purposes other than for treatment, payment, or health care operations, they be required to advise individuals that they may inspect or copy the information to be used or disclosed as provided in proposed § 164.514, that they may refuse to sign the authorization, and that treatment and payment could not be conditioned on the patient's authorization. For example, a request for authorization to use or disclose protected health information for marketing purposes would need to clearly state that the individual's decision would have no influence on his or her health care treatment or payment. In addition, we are proposing that when a covered entity requests an authorization, it must provide the individual with a copy of the signed authorization form.

Finally, we are proposing that when the covered entity initiates the authorization and the covered entity would be receiving financial or in-kind compensation in exchange for using or disclosing the health information, the authorization would include a statement that the disclosure would result in commercial gain to the covered entity. For example, a health plan may wish to sell or rent its enrollee mailing list. A pharmaceutical company may offer a provider a discount on its products if the provider can obtain authorization to disclose the demographic information of patients with certain diagnoses so that the company can market new drugs to them directly. A pharmaceutical company could pay a pharmacy to send marketing information to individuals on its behalf. Each such case would require a statement that the requesting entity will gain financially from the disclosure.

We considered requiring a contract between the provider and the pharmaceutical company in this type of arrangement, because such a contract could enhance protections and enforcement options against entities who violate these rules. A contract also would provide covered entities a basis to enforce any limits on further use or disclosures by authorized recipients. Although we are not proposing this approach now, we are soliciting comment on how best to protect the interests of the patient when the authorization for use or disclosure would result in commercial gain to the covered entity.

3. Model Forms

Covered entities and third parties that wish to have information disclosed to them would need to prepare forms for individuals to use to authorize use or disclosure. A model authorization form is displayed in Appendix to this proposed rule. We considered presenting separate model forms for the two different types of authorizations (initiated by the individual and not initiated by the individual). However, this approach could be subject to misuse and be confusing to covered entities and individuals, who may be unclear as to which form is appropriate in specific situations. The model in the appendix accordingly is a unitary model, which includes all of the requirements for both types of authorization.

4. Plain Language Requirement

We are proposing that all authorizations must be written in plain language. If individuals cannot understand the authorization they may not understand the results of signing the authorization or their right to refuse to sign. See section II.F.1 for more discussion of the plain language requirement.

5. Prohibition on Conditioning Treatment or Payment

We propose that covered entities be prohibited, except in the case of clinical trial as described below, from conditioning treatment or payment for health care on obtaining an authorization for purposes other than treatment, payment or health care operations. This is intended to prevent covered plans and providers from coercing individuals into signing an authorization for a disclosure that is not necessary for treatment, payment or health care operations. For example, a provider could not refuse to treat an individual because the individual refused to authorize a disclosure to a pharmaceutical manufacturer for the purpose of marketing a new product.

We propose one exception to this provision: health care providers would be permitted to condition treatment provided as part of a clinical trial on obtaining an authorization from the individual that his or her protected health information could be used or disclosed for research associated with such clinical trial. Permitting use of protected health information is part of the decision to receive care through a clinical trial, and health care providers conducting such trials should be able to condition participation in the trial on the individual's willingness to authorize that his or her protected health information be used or disclosed for research associated with the trial. We note that the uses and disclosures would be subject to the requirements of § 164.510(j) below.

Under the proposal, a covered entity would not be permitted to obtain an authorization for use or disclosure of information for treatment, payment or health care operations unless required by applicable law. Where such an authorization is required by law, however, it could not be combined in the same document with an individual authorization to use or disclosure of protected health information for any purpose other than treatment, payment or health care operations (e.g., research). We would require that a separate document be used to obtain any other individual authorizations to make it clear to the individual that providing an authorization for such other purpose is not a condition of receiving treatment or payment.

6. Inclusion in the Accounting and Disclosures

As discussed in section II.H.6, we propose that covered entities be required to keep a record of all disclosures for purposes other than treatment, payment or health care operations, including those made pursuant to authorization. In addition, we propose that when an individual requests such an accounting or requests a copy of a signed authorization form, the covered entity must give a copy to the individual. See proposed § 164.515.

7. Revocation of an Authorization by the Individual

We are proposing that an individual be permitted to revoke an authorization at any time except to the extent that action has been taken in reliance on the authorization. See proposed § 164.508(e). That is, an individual could change her or his mind about an authorization and cancel it, except that she or he could not thereby prevent the use or disclosure of information if the recipient has already acted in reliance on the authorization. For example, an individual might cancel her or his authorization to receive future advertisements, but the entity may be unable to prevent mailing of the advertisements that the covered entity or third party has already prepared but not yet mailed.

An individual would revoke the old authorization and sign a new authorization when she or he wishes to change any of the information in the original authorization. Upon receipt of the revocation, the covered entity would need to stop processing the information for use or disclosure to the greatest extent practicable.

8. Expired, Deficient, or False Authorization

The model authorization form or a document that includes the elements set out at proposed § 164.508 would meet the requirements of this proposed rule and would have to be accepted by the covered entity. Under § 164.508(b), there would be no "authorization" within the meaning of the rules proposed below if the submitted document has any of the following defects:

- The date has expired;
- On its face it substantially fails to conform to any of the requirements set out in proposed § 164.508, because it lacks an element;
- It has not been filled out completely. Covered entities may not rely on a blank or incomplete authorization;
- The authorization is known to have been revoked; or
- The information on the form is known by the person holding the records to be materially false.

We understand that it would be difficult for a covered entity to confirm the identity of the person who signed the authorization. We invite comment on reasonable steps that a covered entity could take to be assured that the individual who requests the disclosure is whom she or he purports to be.

E. Uses and Disclosures Permitted Without Individual Authorization (§ 164.510)

[Please label comments about this section with the subject: "Introduction to uses and disclosures without individual authorization"]

This section describes uses and disclosures of protected health information that covered entities could make for purposes other than treatment, payment, and health care operations without individual authorization, and the conditions under which such uses and disclosures could be made. We propose to allow covered entities to use or disclose protected health information without individual authorization for such purposes if the use or disclosure would comply with the applicable requirements of this section.

These categories of allowable uses and disclosures are designed to permit and promote key national health care priorities, and to ensure that the health care system operates smoothly. For each of these categories, this rule would permit—but not require—the covered entity to use or disclose protected health information without the individual's authorization. Some covered entities could conclude that the records they hold, or portions of them, should not be used or disclosed for one or more of these permitted purposes without individuals' authorization (absent a law mandating such disclosure), even under the conditions imposed here. The proposed regulation is intended to reflect the importance of safeguarding individuals' confidentiality, while also enabling important national priority activities that require protected health information.

We considered permitting uses and disclosures only where law affirmatively requires the covered entity to use or disclose protected health information. However, because the activities described below are so important to the population as a whole, we decided to permit a covered entity to use or disclose information to promote those activities even when such activities are not legally mandated. In some cases, however, we would permit a use or disclosure only when such use or disclosure is authorized by other law. The requirements for verification of legal authority are discussed in each relevant section.

Where another law forbids the use or disclosure of protected health information without the individual's authorization, nothing in this section would permit such use or disclosure.

Other law may require use or disclosure of protected health information. If such a use or disclosure is not otherwise addressed in proposed § 164.510(b) through (m), we would in proposed § 164.510(n) permit covered entities to use or disclose protected health information without individual authorization pursuant to any law that mandates such use or disclosure. To be in compliance with this rule, the covered entity must meet the requirements of such other law requiring the use or disclosure. Similarly, nothing in this rule would provide authority for a covered entity to restrict or refuse to make a use or disclosure mandated by other law.

The HIPAA legislative authority generally does not bring the entities that receive disclosures pursuant to this section, including public health authorities, oversight and law enforcement agencies, researchers, and attorneys, under the jurisdiction of this proposed rule. We therefore generally cannot propose restrictions on the further use and disclosure of protected health information obtained by the recipients of these disclosures (unless the recipient is also a covered entity). We believe, however, that in most instances it is sound policy to restrict further uses and disclosures of such protected health information. For example, the Secretary's Recommendations proposed that protected health information obtained by researchers not be further disclosed except for emergency circumstances, for a research project that meets certain conditions, and for oversight of research. We believe that federal legislation should include appropriate restrictions on further use and disclosure of protected health information received by entities for purposes such as those described in this section. We note that, under S.578 (introduced by Senator Jeffords), protected health information disclosed for oversight could not be used against the subject of the protected health information unless the action arises out of and is directly related to a health care fraud or a fraudulent claim for benefits, unless such use is judicially authorized. We believe such safeguards strike the right balance between encouraging national priority oversight activities and protecting individuals' privacy.

The provisions of this section contain requirements related to use and requirements related to disclosure, as appropriate to each of the purposes discussed. For many of these purposes, only requirements relating to disclosure are proposed because there are no appropriate internal uses for such a purpose. Examples include disclosures for next-of-kin and disclosures for banking and financial purposes.

For many of these permitted disclosures, we would require the covered entity to verify the identity of the requestor and his or her legal authority to make the request. Requirements for verifying the identity and authority of requests for information are further discussed in II.G, "Administrative Requirements." As discussed in more detail in section II.G.3. of this preamble, the verification requirement would apply where the identity of the person making the request is not already known to the covered entity (e.g., where the disclosure is not part of a routine business transaction). We would ask health plans and health care providers to take reasonable steps to verify the identity of persons requesting protected health information, such as asking to see a badge or other proof of the identity of government officials, and would allow covered entities to rely on the statement of government officials and others regarding the legal authority for the activity. We would not require covered entities to make an independent inquiry into the legal authority behind requests for protected health information.

The provisions below would permit covered entities to use or disclose protected health information without individual authorization, pursuant to certain requirements. Although health care clearinghouses would be defined as covered entities under this rule, in most instances clearinghouses will be receiving and maintaining protected health information as the business partner of a covered health plan or provider. In such cases, proposed § 164.510(a)(2) provides that the clearinghouses that hold protected health information as business partners would not be permitted to make uses or disclosures otherwise permitted by this section unless such uses or disclosures also were permitted under the terms of the contract between the clearinghouse and the business partner.

1. Uses and Disclosures for Public Health Activities (§ 164.510(b))

[Please label comments about this section with the subject: "Public health"]

We propose to permit covered entities to disclose protected health information without individual authorization to public health authorities carrying out public health activities authorized by law, to non-governmental entities authorized by law to carry out public health activities, and to persons who may be at risk of contracting or spreading a disease (when other law authorizes notification). Where the covered entity also is a public health agency, such as a public hospital or local health department, it would be permitted to use protected health information in all cases in which it would be permitted to disclose such information for public health activities under this section.

a. *Importance of public health and need for protected health information.* Public health authorities are responsible for promoting health and quality of life by preventing and controlling disease, injury, and disability. Inherent in the collection of information for public health activities is a balancing of individual versus communal interests. While the individual has an interest in maintaining the privacy of his or her health information, public health authorities have an interest in the overall health and well-being of the entire population of their jurisdictions. To accomplish this, public health authorities engage in a number of activities, including: traditional public health surveillance; investigations and interventions with respect to communicable diseases; registries (such as immunization or cancer registries); programs to combat diseases that involve contacting infected persons and providing treatment; and actions to prevent transmission of serious communicable diseases.

Public health activities also include regulatory investigations and interventions such as pre-market review of medical products, and evaluations of the risk-benefit profile of a drug or medical product before and after approval (relying on critical epidemiological techniques and resources such as HMO claims databases and medical records). Public health agencies use the results of analyses to make important labeling changes and take other actions, such as the removal of non-compliant products from the market.

We considered requiring individual authorization for certain public health disclosures, but rejected this approach because many important public health activities would not be possible if individual authorization were required. In the case of contagious diseases, for example, if individual authorization were required before individually identifiable information could be provided to public health workers, many other people who may be harboring contagious diseases may be missed by efforts to halt the spread of disease because they failed to provide the appropriate individual authorization. Their failure to authorize could place the general population at risk for contracting an infectious disease. Furthermore, always requiring individual authorization to disclose protected health information to public health authorities would be impractical due to the number of reports and the variety of sources from which they are made. If individuals were permitted to opt out from having their information included in these public health systems, the number of persons with a particular condition would be undercounted. Furthermore, the persons who did authorize the inclusion of their information in the system might not be representative of all persons with the disease or condition.

We also considered limiting certain public health disclosures to de-identified health information. However, identifiable information could be required in order to track trends in a disease over time, and to assess the safety of medical treatments. While de-identified information could be appropriate for many public health activities, there are also many public health activities that require individual identifiers. We decided not to attempt to define specific public health activities for which only de-identified information could be disclosed, in part because public health data collection requirements would be better addressed in public health laws, and in part to reflect the variation in information technologies available to public health authorities. Instead, we rely on the judgment of public health authorities as to what information would be necessary for a public health activity. See discussion in section II.C.2.

b. *Public health activities.* We intend a broad reading of the term "public health activities" to include the prevention or control of disease, injury, or disability. We considered whether to propose a narrow or broad scope of public health activities for which disclosure without individual authorization would be permitted. For the reasons described above, we believe that both the general public and individual interests are best served by a broad approach to public health disclosures.

We therefore propose that covered entities be permitted to disclose protected health information to public health authorities for the full range of public health activities described above, including reporting of diseases, injuries, and conditions, reporting of vital events such as birth and death to vital statistics agencies, and a variety of activities broadly covered by the terms public health surveillance, public health investigation, and public health intervention. These would include public health activities undertaken by the FDA to evaluate and monitor the safety of food, drugs, medical devices, and other products. These terms would be intended to cover the spectrum of public health activities carried out by federal, State, and local public health authorities. The actual authorities and terminology used for public health activities will vary under different jurisdictions. We do not intend to disturb or limit current public health activities.

c. *Permitted recipients of disclosures for public health activities.* Disclosures without individual authorization for public health activities would be permitted to be made to only three types of persons: public health authorities, non-governmental entities authorized by law to carry out public health activities, and persons who may be at risk of contracting or spreading a disease, if other law authorizes notification.

i. *Public health authorities.*

We propose to define "public health authority" broadly, based on the function being carried out, not the title of the public entity. Therefore, disclosures under this proposed rule would not be limited to traditional public health entities such as State health departments. Other government agencies and entities carry out public health activities in the course of their missions. For example, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, and the National Institute for Occupational Safety and Health conduct public health investigations related to occupational health and safety. The National Transportation Safety Board investigates airplane and train crashes in an effort to reduce mortality and injury by making recommendations for safety improvements. Similar inquiries are conducted by the military services. The Food and Drug Administration reviews product performance prior to marketing, and investigates adverse events reported after marketing by industries, health professionals, consumers, and others. The Environmental Protection Agency investigates the effects of environmental factors on health. The definition of public health authority reflects the need for access to data and information including protected health information by these other agencies and authorities consistent with their official mandates under applicable law.

ii. *Non-governmental entities carrying out public health activities.*

The proposed rule would further provide that disclosures may be made not only to government agencies, but also to other public and private entities as otherwise required or authorized by law. For example, this would include tracking medical devices, where the initial disclosure is not to a government agency, but to a device manufacturer that collects information under explicit legal authority, or at the direction of the Food and Drug Administration. Also, the cancer registries mentioned above could be operated by non-profit organizations such as universities funded by public health authorities which receive reports from physicians and laboratories pursuant to State statutory requirements to report.

We considered limiting public health disclosures to only government entities, but the reality of current public health practice is that a variety of activities are conducted by public health authorities in collaboration with non-governmental entities. Federal agencies also use a variety of mechanisms including contracts, grants, cooperative agreements, and other agreements such as memoranda of understanding to carry out and support public health activities. These relationships could be based on specific or general legal authorities. It is not our intent to disturb these relationships. Limiting the ability to collaborate with other entities and designate them to receive protected health information, could potentially have an adverse impact on public health practice.

iii. *Persons who may be at risk of contracting or spreading a disease.* The proposed rule would allow disclosure to a person who could have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition and is authorized by law to be notified as necessary in the conduct of a public health intervention or investigation. Physicians, in carrying out public health interventions authorized by law, can notify persons who have been exposed to a communicable disease, or who otherwise may be at risk of contracting or spreading a disease or condition. That notification may implicitly or explicitly reveal the identity of the individual with the disease to which the person could have been exposed, but should be permitted as a disclosure in the course of a legally authorized public health intervention or investigation. The proposed rule would not (and, under the HIPAA legislative authority, cannot) impose a confidentiality obligation on the person notified.

d. *Additional requirements.* Under proposed § 164.518(c), covered entities would have to verify the identity of the person requesting protected health information and the legal authority supporting that request, before the disclosure would be permitted under this subsection. Preamble section II.G.3 describes these requirements in more detail.

We note that to the extent that the public health authority is providing treatment as defined in proposed § 164.504, the public health authority would be a covered health care provider for purposes of that treatment, and would be required to comply with this regulation.

We also note that the preemption provision of the HIPAA statute creates a special rule for a subset of public health disclosures: this regulation cannot preempt State law regarding "public health surveillance, or public health investigation or intervention * * *".

2. Use and Disclosure for Health Oversight Activities. (§ 164.510(c))

[*Please label comments about this section with the subject: "Health oversight"*]

In section § 164.510(c), we propose to allow covered entities to disclose protected health information to public oversight agencies (and to private entities acting on behalf of such agencies) without individual authorization, for health oversight activities authorized by law. In cases in which a covered entity is also an oversight agency, it would be permitted to use protected health information in all cases in which it would be permitted to disclose such information for health oversight activities under this section.

a. *Importance of oversight and need for protected health information.* Oversight activities are critical to support national priorities, including combating fraud in the health care industry, ensuring nondiscrimination, and improving the quality of care. The goals of public agencies' oversight activities are: to monitor the fiscal and programmatic integrity of health programs and of government benefit programs; to ensure that payments or other benefits of these programs are being provided properly; to safeguard health care quality; to monitor the safety and efficacy of medical products; and to ensure compliance with statutes, regulations, and other administrative requirements applicable to public programs and to health care delivery.

Oversight activities are a national priority in part because of the losses in the healthcare system due to error and abuse. For example, the HHS Office of Inspector General recently estimated losses due to improper Medicare benefit payments to be about seven percent. See "Improper Fiscal Year 1998 Medicare Fee-For Service-Payments," transmittal from Inspector General June Gibbs Brown to HCFA Administrator Nancy-Ann Min DeParle (February 9, 1999). Similarly, the final report of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry concluded that "employing the extensive knowledge and expertise of organizations that oversee health care quality * * * is essential to quality improvement." (http://www.hcqualitycommission.gov/final/chap09.html)

There are certain oversight activities done as statistical inquiries that can be conducted without direct access to individually identifiable health information. However, many instances exist in which government oversight agencies, and private entities under contracting to act on their behalf, need to examine individually identifiable health information to conduct their investigations effectively. For example, to determine whether a hospital has engaged in fraudulent billing practices, it could be necessary to examine billing records for a set of individual cases. Billing abuses are detected by cross-checking the records of specific patients to see the medical documentation in support of a service. To determine whether a health plan is complying with federal or State health care quality standards, it may be necessary to examine individually identifiable health information. Other inquiries require review of individually identifiable health information to identify specific instances of the anomalies in treatment or billing patterns detected in statistical analysis. Even in most statistical inquiries of the type just described, in a paper environment particular patient charts must be examined, and the patient's name would be disclosed because it would be on each page of the chart.

b. *Proposed requirements.* Specifically, we would permit covered entities to disclose protected health information without individual authorization to a health oversight agency to conduct oversight activities authorized by law. Disclosures also could be made to private entities working under a contract with or grant of authority from one or more of the government oversight agencies described above. As discussed below, oversight activities by private entities operating pursuant to contracts with covered entities, such as accreditation organizations, would not be permitted to receive information under this provision, even if accreditation by such an organization is recognized by law as fulfilling a government requirement or condition of participation in a government program (often referred to as "deemed status").

Under our rule, oversight activities would include conducting or supervising the following activities: Audits; investigations; inspections; civil, criminal or administrative proceedings or actions; and other activities necessary for appropriate oversight of the health care system, of government benefit programs for which health information is relevant to beneficiary eligibility, and of government regulatory programs for which health information is necessary for determining compliance with program standards. This regulation does not create any new right of access to health records by oversight agencies, and could not be used as authority to obtain records not otherwise legally available to the oversight agency.

Under our rule, a health oversight agency would be defined as a public agency authorized by law to conduct oversight activities relating to the health care system, a government program for which health information is relevant to determining beneficiary eligibility or a government regulatory program for which health information is necessary for determining compliance with program standards. Examples of agencies in the first category would include State insurance commissions, State health professional licensure agencies, Offices of Inspectors General of federal agencies, the Department of Justice, State Medicaid fraud control units, Defense Criminal Investigative Services, the Pension and Welfare Benefit Administration, the HHS Office for Civil Rights, and the FDA. Examples of agencies in the second category include the Social Security Administration and the Department of Education. Examples of agencies in the third category include the workplace safety programs such as the Occupational Health and Safety Administration and the Environmental Protection Agency. Agencies that conduct both oversight and law enforcement activities would be subject to this provision when conducting oversight activities.

In cases where health oversight agencies are working in tandem with other agencies overseeing public benefit programs to address compliance, fraud, or other integrity issues that could span across programs, the oversight activities of the team would be considered health oversight and disclosure to and among team members would be permitted under the proposed rule to the extent permitted under other law. For example, a fraud investigation could attempt to find a pattern of abuse across related programs, such as Medicaid and the supplemental security income program. Protected health information could be disclosed to the team of oversight agencies and could be shared among such agencies for oversight activities.

Public oversight agencies sometimes contract with private entities to conduct program integrity activities on a public agency's behalf. Such audits or investigations may include, for example, program integrity reviews of fraud and abuse in billing Federal and State health care programs; investigations conducted in response to consumer complaints regarding the quality or accessibility of a particular provider, health plan, or facility; and investigations related to disciplinary action against a health care provider, health plan, or health care facility. Covered entities may disclose protected health information to these agents to the extent such disclosure would be permitted to the public oversight body.

In many cases today, public agencies' contracts with private entities conducting investigations on their behalf require the private oversight organization to implement safeguards to protect individual privacy. HIPAA does not provide statutory authority to regulate the contracts between public oversight entities and their agents. However, we encourage public oversight entities to include privacy safeguards in all such contracts, and believe it would be appropriate for federal legislation to impose such safeguards.

In developing our proposal, we considered but rejected the option of providing an exemption from the general rules for situations in which a covered entity has a contract with a private accreditation organization to conduct an accreditation inspection. In such instances, the accreditation organization is performing a service for the covered entity much like any other contractor. The situation is not materially different in instances where accreditation from a private organization would have the effect of "deeming" the covered entity to be in compliance with a government standard or condition of participation in a government program. In both cases, the accreditation organization is performing a service for the covered entity, not for the government. In our considerations, we were unable to identify a reason that covered entities should hold these contractors to lesser standards than their other contractors. Individuals' privacy interests would not be diminished in this situation, nor is there any reason why such accreditation organizations should not be held to the requirements described above for business partners. Proposed rules for disclosure to these entities are discussed in section II.C.5., "Application to business partners." We invite comment on our proposed approach.

c. *Additional considerations.* We do not propose any new administrative or judicial process prior to disclosure. This regulation would permit disclosure of protected health information without compulsory process where such disclosure is otherwise allowed. However, this regulation also would not abrogate or modify other statutory requirements for administrative or judicial determinations or for other procedural safeguards, nor would it permit disclosures forbidden by other law.

Under this § 164.518(c), covered entities would have an obligation to verify the identity of the person requesting protected health information and the legal authority behind the request before the disclosure would be permitted under this subsection. Preamble section II.G.3. describes these requirements in more detail.

3. Use and Disclosure for Judicial and Administrative Proceedings (§ 164.510(d))

[*Please label comments about this section with the subject: "Judicial and administrative proceedings"*]

In § 164.510(d), we propose to permit covered entities to disclose protected health information in a judicial or administrative proceeding if the request for such protected health information is made through or pursuant to an order by a court or administrative tribunal. A court order would not be required if the protected health information being requested relates to a party to the proceeding whose health condition is at issue, or if the disclosure would otherwise be permitted under this rule. A covered entity that also is a government entity would be permitted to use protected health information in a judicial or administrative proceeding under the same conditions that it could make a disclosure of protected health information under this paragraph.

a. *Importance of judicial and administrative process and the need for protected health information.* Protected health information is often needed as part of an administrative or judicial proceeding. Examples of such proceedings would include personal injury or medical malpractice cases or other lawsuits in which the medical condition of a person is at issue, and judicial or administrative proceedings to determine whether an illness or injury was caused by workplace conditions or exposure to environmental toxins. The information may be sought well before a trial or hearing, to permit the party to discover the existence or nature of testimony or physical evidence, or in conjunction with the trial or hearing, in order to obtain the presentation of testimony or other evidence. These uses of health information are clearly necessary to allow the smooth functioning of the legal system. Requiring the authorization of the subject prior to disclosure could mean that crucial information would not be available, and could be unfair to persons who have been wronged.

b. *Proposed requirements.* We propose to permit covered entities to disclose protected health information in a judicial or administrative proceeding if the request for such protected health information is made through or pursuant to a court order or an order by an administrative law judge specifically authorizing the disclosure of protected health information. The exception to this requirement is where the protected health information being requested relates to a party to the proceeding whose health condition is at issue, and where the disclosure is made pursuant to lawful process (e.g., a discover order) or is otherwise authorized by law. We note that this would not apply where the disclosure would otherwise be permitted under this rule.

The proposed provisions of this section are intended to apply to the broad spectrum of judicial and administrative procedures by which litigants, government agencies, and others request information for judicial or administrative proceedings, including judicial subpoenas, subpoenas duces tecum, notices of deposition, interrogatories, administrative subpoenas, and any disclosure pursuant to the Federal Rules of Civil Procedures, the Federal Rules of Criminal Procedures, comparable rules of other courts (including State, tribunal, or territorial courts) and comparable rules of administrative agencies. Under the rule, a covered entity could not respond to such requests unless they determined that the request is pursuant to a court order authorizing disclosure of protected health information or if the individual who is the subject of the protected health information is a party to the proceeding and his or her medical condition or history is at issue.

Covered entities generally would not be required to conduct any independent investigation of the legality of the process under which the protected health information is being sought, but would need to review the request protected health information to ensure that the disclosure would meet the terms of this provision. Where the request is accompanied by an order from a court, the covered entity could rely on a statement in the order authorizing disclosure of protected health information. The statement could be a general one, indicating that protected health information is relevant to the matter, or it could identify specifically what protected health information may be disclosed. The covered entity could rely on either type of statement, but it could not disclose more information than was authorized by the court where the scope of the authorized disclosure is clear.

Where the request is not accompanied by a court order or order from an administrative law judge, the covered entity would be required to determine whether the request relates to the protected health information of a litigant whose health is at issue, a written statement from the requester certifying that the protected health information being requested is about a litigant to the proceeding and that the health condition of such litigant is at issue at such proceeding. Such a certification could be from the agency requesting the information (e.g., in an administrative proceeding) or from legal counsel representing a party to litigation. We invite comments on whether this requirement is overly burdensome and on whether it is sufficient to protect protected health information from unwarranted disclosures.

We are not proposing to preclude a covered entity from contesting the nature or scope of the process when the procedural rules governing the proceeding so allow and covered entities could well choose to assert privileges against disclosure on behalf of individuals.

In developing our proposal, we considered permitting covered entities to disclose protected health information pursuant to any request made in conjunction with a judicial or administrative proceeding. We rejected this option because we believe that current procedures for document production could result in unwarranted disclosure of protected health information. Under current practice, requests for documents are developed by the parties to a proceeding, with little review or oversight unless the request is challenged by the opposing party. In many instances, the parties make very broad discovery requests that result in the production of large numbers of documents for review. Recipients of broad motions for document production often provide the requester with a substantial quantity of material, expecting the requester to page through the documents to identify the ones that are relevant to the proceeding. While such a process may be appropriate for many types of records, we are concerned that it could lead to substantial breaches of privacy where the material being requested is protected health information. We are unsure if it is appropriate for private attorneys, government officials and others who develop such requests to be able to circumvent the protections provided by this rule with simple motions for document production that have not been subject to third-party review.

Under our proposal, therefore, a party to a proceeding that wishes production of information that includes protected health information would generally need to seek judicial review of the request. If a court determines that a request for protected health information is appropriate to the proceeding, a covered entity can produce the protected health information pursuant to an otherwise lawful request.

We propose an exception to the general requirement for judicial review for protected health information for instances in which the protected health information of a party to the proceeding is relevant to the proceeding. In such instances, the party will have counsel who can object to an overly broad or unwarranted discovery of the party's protected health information or will receive the discovery request directly and, again, will have an opportunity to object prior to disclosure.

We note that there are other existing legal requirements governing the disclosure of protected health information, and which govern the procedures in federal, State and other judicial and administrative proceedings. For example, 42 U.S.C. 290dd–2 and the implementing regulations, 42 CFR part 2, will continue to govern the disclosure of substance abuse patient records. There may also be provisions of a particular State's law governing State judicial or administrative proceedings, including State medical record privacy statutes, as well as precedential court opinions, which apply to the circumstances described in the section, that will not be preempted by this part. Also, the discovery of psychiatric counseling records in federal proceedings governed by section 501 of the Federal Rules of Evidence, has been restricted in certain circumstances, by *Jaffee* v. *Redmond*, 116 S. Ct. 1923 (1996). These more stringent rules would remain in place.

4. Disclosure to Coroners and Medical Examiners (§ 164.510(e))

[*Please label comments about this section with the subject: "Coroners and medical examiners"*]

In § 164.510(e), we propose to allow covered entities to disclose protected health information without individual authorization to coroners and medical examiners, as authorized by law, for identification of a deceased person or to determine cause of death.

a. *Importance of disclosure to coroners and medical examiners and the need for protected health information.* Coroners and medical examiners, who under State or other law typically are public officials, have a legitimate need to obtain protected health information in an expeditious manner in order to carry out their legal responsibility to identify deceased persons and determine cause of death. Such disclosure would be clearly in the public interest, and should be included among the types of disclosures for which the public interest in efficient sharing of medical information outweighs any individual privacy interests that may be compromised.

b. *Proposed requirements.* Proposed § 164.510(e) would allow covered entities to disclose protected health information about a deceased person without individual authorization to coroners and medical examiners, consistent with other law, for the purpose of a post-mortem investigation.

We recognize that a deceased person's medical record could include information that potentially could reveal health information about others, for example, relatives who have the same genetically linked disease as the deceased individual. In developing this section of the proposed rule, we considered requiring covered entities to redact any protected health information about persons other than the deceased before giving the record to coroners or medical examiners.

We rejected this option for two reasons. First, coroners and medical examiners typically need significant portions of a deceased person's medical record, and, in some cases, all medical records that are available, to conduct a post-mortem investigation, which may also include an autopsy. Second, they need to obtain the record quickly, because there is a limited time period after death within which an autopsy can be conducted. Requiring covered entities to take the time to review and redact portions of the health information before providing it to a coroner or medical examiner would create delays that could make it impossible to conduct an autopsy appropriately. Nothing in this rule would prohibit a covered entity from undertaking such redaction on its own initiative so long as the information provided would meet the needs of the coroner or medical examiner.

In addition to these two reasons, it is our understanding that health care providers, as a standard record keeping practice, rarely identify specific persons other than the patient in the record. We are soliciting comment on whether health care providers routinely identify other persons specifically in a individual's record and if so, whether we should require the provider to redact the information about the other person before providing it to a coroner or medical examiner.

Under § 164.518(c), covered entities would have an obligation to verify the identity of the coroner or medical examiner making the request for protected health information and the legal authority supporting the request, before the disclosure would be permitted under this subsection. Preamble section II.G.3. describes these requirements in more detail.

We intend to allow only those disclosures that are authorized by other applicable law. Laws vary widely regarding release of health information to coroners and medical examiners for the purposes of identifying deceased persons or determining cause of death, and we do not intend to disturb those practices.

5. Disclosure for Law Enforcement (§ 164.510(f))

[*Please label comments about this section with the subject: "Law enforcement"*]

In § 164.510(f), we propose to permit covered entities to disclose protected health information without individual authorization to a law enforcement official conducting a law enforcement inquiry authorized by law if the request for protected health information is made pursuant to a judicial or administrative process, as described below. Similarly, we propose to permit covered entities to disclose protected health information to a law enforcement official without individual authorization for the conduct of lawful intelligence activities. We also propose to permit covered entities to disclose protected health information to a law enforcement official about the victim of a crime, abuse or other harm, if the information is needed to determine both whether a violation of law by a person other than the victim has occurred and whether an immediate law enforcement activity might be necessary. We would further permit such disclosure for the purpose of identifying a suspect, fugitive, material witness, or missing person, if the covered entity discloses only limited identifying information. Finally, we would permit disclosure of protected health information by a health plan or a health care provider without individual authorization to law enforcement officials if the plan or provider believed in good faith that the disclosed protected health information would constitute evidence of criminal conduct that constitutes health care fraud, occurred on the premises of the covered entity, or was witnessed by an employee of the covered entity.

i. *Law enforcement need for protected health information.* Law enforcement officials need protected health information for their investigations in a variety of circumstances. Health information about a victim of a crime may be needed to investigate the crime, or to allow prosecutors to determine the proper charge. For some crimes, the severity of the victim's injuries will determine what charge should be brought against a suspect. The medical condition of a defendant could also be relevant to whether a crime was committed, or to the seriousness of a crime. The medical condition of a witness could be relevant to the reliability of that witness. Medical, billing, accounting or other documentary records in the possession of a covered entity can be important evidence relevant to criminal fraud or conspiracy investigations. Nor is this list of important uses by law enforcement exhaustive.

In many cases, the law enforcement official will obtain such evidence through legal process, such as judicially executed warrant, an administrative subpoena, or a grand jury subpoena. In other circumstances, time constraints preclude use of such process. For example, health information may be needed when a law enforcement official is attempting to apprehend an armed suspect who is rapidly fleeing. Health information may be needed from emergency rooms to locate a fleeing prison escapee or criminal suspect who was injured and is believed to have stopped to seek medical care.

Protected health information could be sought as part of a law enforcement investigation, to determine whether and who committed a crime, or it could be sought in conjunction with the trial to be presented as evidence. These uses of medical information are clearly in the public interest. Requiring the authorization of the subject prior to disclosure could impede important law enforcement activities by making apprehension and conviction of some criminals difficult or impossible.

As described above, this proposed rule seeks to respond appropriately to new risks to privacy that could emerge as the form of medical records changes in coming years. The administrative simplification mandated by HIPAA will lead to far greater exchanges of individually identifiable health information among covered entities in the future, increasingly in electronic form. If a misperception were to develop that law enforcement had instant and pervasive access to medical records, the goals of this proposed regulation could be undermined. For instance, individuals might become reluctant to seek needed care or might report inaccurately to providers to avoid revealing potentially embarrassing or incriminating information. In addition, popular concerns about government access to sensitive medical records might impede otherwise achievable progress toward administrative simplification. We believe that the proposed prophylactic and administrative rules governing disclosure to law enforcement officials, as described below, are justified in order to avoid these harms in the future.

ii. *Proposed requirements.* In § 164.510(f), we propose to permit covered entities to disclose protected health information to law enforcement officials conducting or supervising a law enforcement inquiry or proceeding authorized by law if the request for protected health information is made:

- Pursuant to a warrant, subpoena, or order issued by a judicial officer;
- Pursuant to a grand jury subpoena;
- Pursuant to an administrative subpoena or summons, civil investigative demand, or similar certification or written order issued pursuant to federal or state law where (i) the records sought are relevant and material to a legitimate law enforcement inquiry; (ii) the request is as specific and narrowly drawn as is reasonably practicable to meet the purposes of the inquiry; and (iii) de-identified information could not reasonably be used to meet the purposes of the inquiry;
- For limited identifying information where necessary to identify a suspect, fugitive, witness, or missing person;
- By a law enforcement official requesting protected health information about an individual who is, or who is suspected to be, the victim of a crime, abuse or other harm, if such law enforcement official represents that (i) such information is needed to determine whether a violation of law by a person other than the victim has occurred and (ii) immediate law enforcement activity which depends on the official obtaining such information may be necessary;
- For the conduct of lawful intelligence activities conducted pursuant to the National Security Act of 1947 (50 U.S.C. 401 *et seq.*) or in connection with providing protective services to the President or other individuals pursuant to section 3056 of title 18, United States Code, and the disclosure is otherwise authorized under Federal or state law; or
- To law enforcement officials when a covered entity believes in good faith that the disclosed protected health information constitutes evidence of criminal conduct that: (i) Arises out of and is directly related to the receipt of health care or payment for health care (including a fraudulent claim for health care) or qualification for or receipt of benefits, payments or services based on a fraudulent statement or material misrepresentation of the health of a patient; (ii) occurred on the premises of the covered entity; or (iii) was witnessed by an employee or other workforce member of the covered entity.

In drafting the proposed rule, we have attempted to match the level of procedural protection for privacy with the nature of the law enforcement need for access. Therefore, access for law enforcement under this rule would be easier where other rules would impose procedural protections, such as where access is granted after review by an independent judicial officer. Access would also be easier in an emergency situation or where only limited identifying information would be provided. By contrast, this rule proposes stricter standards for administrative requests, where other rules could not impose appropriate procedural protections.

Under the first part of this proposal, we would authorize disclosure of protected health information pursuant to a request that has been reviewed by a judicial officer. Examples of such requests include State or federal warrants, subpoenas, or other orders signed by a judicial officer. Review by a judicial officer is significant procedural protection for the proper handling of individually identifiable health information. Where such review exists, we believe that it would be appropriate for covered entities to disclose individually identifiable health information pursuant to the order.

Under the second part of this proposal, we would authorize disclosure of protected health information pursuant to a State or federal grand jury subpoena. Information disclosed to a grand jury is covered by significant secrecy protections, such as under Federal Rule of Criminal Procedure 6(e) and similar State laws. Our understanding is that State grand juries have secrecy protections substantially as protective as the federal rule. We solicit comment on whether there are any State grand jury secrecy provisions that are not substantially as protective.

Under the third part of this proposal, we would set somewhat stricter standards than exist today for disclosure pursuant to administrative requests, such as an administrative subpoena or summons, civil investigative demand, or similar process authorized under law. These administrative actions do not have the same procedural protections as review by an independent judicial officer. They also do not have the grand jury secrecy protections that exist under federal and State law. For administrative requests, an individual law enforcement official can define the scope of the request, sometimes without any review by a superior, and present it to the covered entity. We propose, therefore, that a greater showing should be made for an administrative request before the covered entity would be permitted to release protected health information. We also believe that the somewhat stricter test for administrative requests would provide some reason for officials to choose to obtain protected health information through process that includes the protections offered by judicial review or grand jury secrecy.

We therefore propose that a covered entity could disclose protected health information pursuant to an administrative request, issued pursuant to a determination that: (i) The records sought are relevant and material to a legitimate law enforcement inquiry; (ii) the request is as specific and narrowly drawn as is reasonably practicable; and (iii) de-identified information could not reasonably be used to meet the purpose of the request.

Because our regulatory authority does not extend to law enforcement officials, we are seeking comment on how to create an administrable system for implementing this three-part test. We do not intend that this provision require a covered entity to second guess representations by an appropriate law enforcement official that the three part test has been met.

To verify that the three-part test has been met, we propose that a covered entity be permitted to disclose protected health information to an appropriate law enforcement official pursuant to a subpoena or other covered administrative request that on its face indicates that the three-part test has been met. In the alternative, where the face of the request does not indicate that the test has been met, a covered entity could disclose the information upon production of a separate document, signed by a law enforcement official, indicating that the three-part test has been met. Under either of these alternatives, disclosure of the information can also be made if the document applies any other standard that is as strict or stricter than the three-part test.

This approach would parallel the research provisions of proposed § 164.510(j). Under that section, disclosure would be authorized by a covered entity where the party seeking the records produces a document that states it has met the standards for the institutional review board process. We solicit comments on additional, administrable ways that a law enforcement official could demonstrate that the appropriate issuing authority has determined that the three-part test has been met.

We solicit comment on the burdens and benefits of the proposed three-part test for administrative requests. For covered entities, we are interested in comments on how burdensome it would be to determine whether the three-part test has been met, and we would explore suggestions for approaches that would be more easily administered. For law enforcement, we are interested in the potential impact that this approach might have on current law enforcement practices, and the extent to which law enforcement officials believe that their access to information critical to law enforcement investigations could be impaired. We solicit comment on the burden on law enforcement officials, compared to current practice, of writing the administrative requests. We would also like comments on whether there are any federal, State, or local laws that would create an impediment to application of this section, including the proposed three-part test. If there are such impediments, we would solicit comment on whether extending the effective date of this section could help to prevent difficulties. On the benefit side, we are interested in comments on the specific gains for privacy that would result from requiring law enforcement to comply with greater procedures than currently exist for gaining access to protected health information.

As the fourth part of this proposal, we address limited circumstances where the disclosure of health information by covered entities would not be made pursuant to lawful process such as judicial order, grand jury subpoena, or administrative request. In some cases law enforcement officials could seek limited but focused information needed to obtain a warrant. For example, a witness to a shooting may know the time of the incident and the fact that the perpetrator was shot in the left arm, but not the identity of the perpetrator. Law enforcement would then have a legitimate need to ask local emergency rooms whether anyone had presented with a bullet wound to the left arm near the time of the incident. Law enforcement may not have sufficient information to obtain a warrant, but instead would be seeking such information. In such cases, when only limited identifying information is disclosed and the purpose is solely to ascertain the identity of a person, the invasion of privacy would be outweighed by the public interest.

In such instances, we propose to permit covered entities to disclose "limited identifying information" for purposes of identifying a suspect, fugitive, material witness, or missing person. We would define "limited identifying information" as the name, address, social security number, date of birth, place of birth, type of injury, date and time of treatment, and date of death. Disclosure of any additional information would cause the covered entity to be out of compliance with this provision, and subject to sanction. The request for such information could be made orally or in writing. Requiring the request to be in writing could defeat the purposes of this provision. We solicit comment on whether the list of "limited identifying information" is appropriate, or whether additional identifiers, such as blood type, also should be permitted disclosures under this section. Alternatively, we solicit comment on whether any of the proposed items on the list are sufficiently sensitive to warrant a legal process requirement before they should be disclosed.

Under the fifth part of the proposal, we would clarify that the protected health information of the victim of a crime, abuse or other harm could be disclosed to a law enforcement official if the information is needed to determine both whether a violation of law by a person other than the victim has occurred and whether an immediate law enforcement activity might be necessary. There could be important public safety reasons for obtaining medical records or other protected health information quickly, perhaps before there would be time to get a judicial order, grand jury subpoena, or administrative order. In particular, where the crime was violent, information about the victim's condition could be needed to present to a judge in a bond hearing in order to keep the suspect in custody while further evidence is sought. Information about the victim also could be important in making an appropriate charging decision. Rapid access to victims' medical records could reduce the risk of additional violent crimes, such as in cases of spousal or child abuse or in situations where the protected health information could reveal evidence of the identity of someone who is engaged in ongoing criminal activities.

In some of these instances, release of protected health information would be authorized under other sections of this proposed regulation, pursuant to provisions for patient consent, health oversight, circumstances, or disclosure pursuant to mandatory reporting laws for gunshot wounds or abuse cases. (As discussed later in section II.I, our rule would not be construed to invalidate or limit the authority, powers or procedures established under any law that provides for reporting of injury, child abuse or death.) In addition, § 164.510(k) addressing emergency circumstances would permit covered entities to disclose protected health information in instances where the disclosure could prevent imminent harm to the individuals or to the public. However, we propose to include this fifth provision for law enforcement access to ensure that immediate need for law enforcement access to information about a victim would be permitted under this rule.

Under the sixth part of this proposal, we seek to assure that this rule would not interfere with the conduct of lawful security functions in protection of the public interest, as defined by the Congress. Therefore, we would allow disclosure of protected health information for the conduct of lawful intelligence activities conducted pursuant to the National Security Act of 1947. Similarly, we would allow disclosure of protected health information for providing protective services to the President or other individuals pursuant to section 3056 of title 18, United States Code. Where such disclosures are authorized by Federal or state law, we would not interfere with these important national security activities.

Under the final part of this proposal, we would permit covered entities that uncover evidence of health care fraud to disclose the protected health information that evidences such fraud to law enforcement officials without receiving a request from such officials. This provision would permit covered entities to make certain disclosures to law enforcement officials on their own initiative if the information disclosed constitutes evidence of criminal conduct that arises out of and is directly related to (i) the receipt of health care or payment for health care (including a fraudulent claim for health care) or (ii) qualification for or receipt of benefits, payments or services based on a fraudulent statement or material misrepresentation of the health of a patient. Similarly, we would permit covered entities on their own initiative to disclose to law enforcement officials protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that either occurred on the covered entity's premises or was witnessed by an employee (or other workforce member) of the covered entity. In such situations, covered entities should be permitted to take appropriate steps to protect the integrity and safety of their operations or to assure that the such criminal conduct is properly prosecuted.

To be protected by this provision, the covered entity would have to have good faith belief that the disclosed protected health information was evidence of such conduct. If the covered entity disclosed protected health information in good faith but was wrong in its belief that the information evidenced a legal violation, the covered entity would not be subject to sanction under this regulation. We would not require the covered entity to accurately predict the outcome of a criminal investigation.

There also are situations where law enforcement officials would need access to information for emergency circumstances. In those cases, the disclosure could be made under § 164.510(k), "Disclosure in emergency circumstances."

Pursuant to § 164.518(c), covered entities would have an obligation to verify the identity of the person seeking disclosure of protected health information and the legal authority behind the request. As described in section II.H.3. of this preamble, we would permit covered entities to rely on a badge or similar identification to confirm that the request for protected health information is being made by a law enforcement official. If the request is not made in person, we would permit the covered entity to rely on official letter head or similar proof.

Where the covered entity must verify that lawful process has been obtained, § 164.518(c) would require the covered entity to review the document evidencing the order. The covered entity could not disclose more information than was authorized in the document.

Because the regulation applies to covered entities, and not to the law enforcement officials seeking the protected health information, the covered entity would not be in a position to determine with any certainty whether the underlying requirements for the process have been met. For instance, it may be difficult for the covered entity to determine whether the three-part test has been met for an administrative request. In light of this difficulty facing covered entities, the proposed rule would include a good faith provision. Under that provision, covered entities would not be liable under the rule for disclosure of protected health information to a law enforcement official where the covered entity or its business partners acted in a good faith belief that the disclosure was permitted under this title. We solicit comment on the extent to which this good faith provision would make the proposed rule less burdensome on covered entities and law enforcement officials. We also solicit comment on the extent to which the provision could undermine the effectiveness of the provision.

For requests for the conduct of intelligence activities or for protective services, covered entities would be required to verify the identity of the person or entity requesting the information, through a badge or other identification, or official letter head, as just described. If such verification of identity is obtained, covered entities would be permitted to reasonably rely on the representations of such persons that the request is for lawful national security or protective service activities and is authorized by law. Similarly, to disclose limited identifying information, covered entities would be required to obtain verification that the request comes from a law enforcement official, and would be permitted to reasonably rely on such official's representation that the information is needed for the purpose of identifying a suspect, fugitive, material witness, or missing person and is authorized by law.

iii. *Additional considerations.* This section is not intended to limit or preclude a covered entity from asserting any lawful defense or otherwise contesting the nature or scope of the process when the procedural rules governing the proceeding so allow, although it is not intended to create a basis for appealing to federal court concerning a request by state law enforcement officials. Each covered entity would continue to have available legal procedures applicable in the appropriate jurisdiction to contest such requests where warranted. This proposed rule would not create any new affirmative requirement for disclosure of protected health information. Similarly, this section is not intended to limit a covered entity from disclosing protected health information for law enforcement purposes where other sections of the rule permit such disclosure, e.g., as permitted by § 164.510 under emergency circumstances, for oversight or public health activities, to coroners or medical examiners, and in other circumstances permitted by the rule.

In obtaining protected health information, law enforcement officials would have to comply with whatever other law was applicable. In certain circumstances, while this subsection could authorize a covered entity to disclose protected health information to law enforcement officials, there could be additional applicable statutes that further govern the specific disclosure. If the preemption provisions of this regulation do not apply, the covered entity must comply with the requirements or limitations established by such other law, regulation or judicial precedent. See proposed §§ 160.201 through 160.204. For example, if State law would permit disclosure only after compulsory process with court review, a provider or payer would not be allowed to disclose information to state law enforcement officials unless the officials had complied with that requirement. Similarly, disclosure of substance abuse patient records subject to, 42 U.S.C. 290dd–2, and the implementing regulations, 42 CFR part 2, would continue to be governed by those provisions.

In some instances, disclosure of protected health information to law enforcement officials would be compelled by other law, for example, by compulsory judicial process or compulsory reporting laws (such as laws requiring reporting of wounds from violent crimes, suspected child abuse, or suspected theft of prescription controlled substances). Disclosure of protected health information under such other mandatory law would be permitted under proposed § 164.510(n).

In developing our proposal, we considered permitting covered entities to disclose protected health information pursuant to any request made by a law enforcement official, rather than requiring some form of legal process or narrowly defined other circumstances. We rejected this option because we believe that in most instances some form of review should be required. Individuals' expectation of privacy with respect to their health information is sufficiently strong to require some form of process prior to disclosure to the government. At the same time, we recognize that the public interest would not be served by requiring such formal process in every instance. Under our proposal, therefore, law enforcement could obtain certain identifying information in order to identify suspects and witnesses, and could obtain information for national security or protective services activities or in emergency circumstances. Similarly, we would not require process before a law enforcement official could obtain information about the victim of a crime, where the information is necessary as the basis for immediate action. In addition, in seeking an appropriate balance between public safety and individuals' expectation of privacy, we are proposing that covered entities not be subject to enforcement under this regulation if they disclose protected health information to law enforcement officials in a good faith belief that the disclosure was permitted under this title.

We solicit comment on what additional steps, if any, are appropriate for allowing law enforcement access to protected health information. We are interested in comments concerning situations where needed access to protected health information would not be available under these or other provisions of this proposed rule. We also seek comment on specific privacy or other concerns that would apply if the final regulation included provision for law enforcement access to protected health information without requiring a judicial order, grand jury subpoena, or administrative request, under such additional defined circumstances.

In some of these instances, release of protected health information would be authorized under the proposed regulation pursuant to provisions for patient consent, health oversight, emergency circumstances, or under mandatory reporting laws for gunshot wounds or abuse cases. We are interested in comments concerning situations where needed access to protected health information would not be available under these or other provisions of this proposed rule. We also seek comment on specific privacy or other concerns that would apply if the final regulation included provision for law enforcement access to protected health information without requiring a judicial order, grand jury subpoena, or administrative request, under such additional defined circumstances.

Our proposal with respect to law enforcement has been shaped by the limited scope of our regulatory authority under HIPAA, which applies only to the covered entities and not to law enforcement officials. We believe the proposed rule sets the correct standards for when an exception to the rule of non-disclosure is appropriate for law enforcement purposes. There may be advantages, however, to legislation that applies the appropriate standards directly to judicial officers, prosecutors in grand juries, and to those making administrative or other requests for protected health information, rather than to covered entities as in the proposed regulation. These advantages could include measures to hold officials accountable if they seek or receive protected health information contrary to the legal standard. In Congressional consideration of law enforcement access, there have also been useful discussions of other topics, such as limits on re-use of protected health information gathered in the court of oversight activities. These limitations on our regulatory authority provide additional reason to support comprehensive medical privacy legislation.

6. Uses and Disclosures for Governmental Health Data Systems (§ 164.510(g))

[Please label comments about this section with the subject: "Governmental health data systems"]

In § 164.510(g), we propose to permit covered entities to disclose protected health information for inclusion in State or other governmental health data systems without individual authorization when such disclosures are authorized by State or other law in support of policy, planning, regulatory or management functions.

a. *Importance of Governmental health data systems and the need for protected health information.* Governmental agencies collect and analyze individually identifiable health information as part of their efforts to improve public policies and program management, improve health care and reduce costs, and improve information available for consumer choices. Governments use the information to analyze health care outcomes, quality, costs and patterns of utilization, effects of public policies, changes in the health care delivery system, and related trends. These important purposes are related to public health, research and oversight (although the information in State or other governmental data systems usually is not collected specifically to audit or evaluate health care providers or for public health surveillance). The data are an important resource that can be used for multiple public policy evaluations.

The collection of health information by governmental health data systems often occurs without specification of the particular analyses that could be conducted with the information. These governmental data collection programs frequently call for reporting of information for all individuals treated or released by specified classes of providers. For example, many States request and receive from hospitals records containing individual diagnosis and treatment data for all discharges from their facilities. State hospital discharge data have been used to compare treatment practices and costs between hospitals, to evaluate implications for funding of health care, as well as to provide hospital "report cards" to consumers. As part of its general evaluation activities, the DOD maintains a very large database, called the Comprehensive Clinical Evaluation Program, involving military personnel who have reported illnesses possibly arising from service during the Gulf War.

b. *Proposed requirements.* We propose to permit covered entities to disclose protected health information for inclusion in State or other governmental health data systems when such disclosure is authorized by law for analysis in support of policy, planning, regulatory, and management functions. The recipient of the information must be a government agency (or privacy entity acting on behalf of a government agency). Where the covered entity is itself a government agency that collects health data for analysis in support of policy, planning, regulatory, or management functions, it would be permitted to use protected health information in all cases in which it is permitted to disclose such information for government health data systems under this section.

We believe that Congress intended to permit States, Tribes, territories, and other governmental agencies to operate health data collection systems for analyzing and improving the health care system. In section 1178(c), "State regulatory reporting," HIPAA provides that it is not limiting the ability of a State to require a health plan to report, or to provide access to, information for a variety of oversight activities, as well as for "program monitoring and evaluation." We also believe that the considerations Congress applied to State capacities to collect data would apply to similar data collection efforts by other levels of government, such as those undertaken by Tribes, territories and federal agencies. Therefore, we considered two questions regarding governmental health data systems; first, which entities could make such disclosures; and second, what type of legal authority would be necessary for the disclosure to be permitted.

We considered whether to allow disclosure by all covered entities to governmental data collection systems or to limit permitted disclosures to those made by health plans, as specified in the regulatory reporting provision of HIPAA. While this provision only mentions data collected from health plans, the conference agreement notes that laws regarding "State reporting on health care delivery or costs, or for other purposes" should not be preempted by this rule. States would be likely to require sources of information other than health plans, such as health care providers or clearinghouses, in order to examine health care delivery or costs. Therefore, we do not believe it is appropriate to restrict States' or other governmental agencies' ability to obtain such data. This viewpoint is consistent with the Recommendations, which would permit this disclosure of protected health information by all covered entities.

We also asked what type of law would be required to permit disclosure without individual authorization to governmental health data systems. We considered requiring a specific statute or regulation that requires the collection of protected health information for a specified purpose. A law that explicitly addresses the conditions under which protected health information is collected would provide individuals and covered entities with a better understanding of how and why the information is to be collected and used.

We understand, however, that explicit authority to collect information is not always included in relevant law. Governmental agencies may collect health data using a broad public health or regulatory authority in statute or regulation. For example, a law may call on a State agency to report on health care costs, without providing specific authority for the agency to collect the health care cost data they need do so. Consequently, the agency may use its general operating authority to request health care providers to release the information. We recognize that many governmental agencies rely on broad legal authority for their activities and do not intend this proposed rule to hamper those efforts.

Under § 164.518(c), covered entities would have an obligation to verify the identity of the person requesting protected health information, and the legal authority behind the request before the disclosure would be permitted under this subsection. Preamble section II.G.3. describes these requirements in more detail.

7. Disclosure of Directory Information (§ 164.510(h))

[Please label comments about this section with the subject: "Directory information"]

In § 164.510(h), we propose to permit covered entities to disclose information that could reveal protected health information about an individual for purposes of a facility patient directory, if the individual has indicated consent to such disclosures, or if the individual who is incapacitated had not previously expressed a preference in this regard and a covered entity determines that including such information in the directory would be consistent with good medical practice. Directory information could include only the person's name, location in the institution, and general condition.

a. *Importance of directory information and need for protected health information.* When individuals enter inpatient facilities, they are not always able to contact people who may need to know their whereabouts, want to visit them, or want to send them flowers or some other expression of concern. Today, facilities typically operate patient directories, allowing confirmation of a person's presence in a facility, providing the room number for visits and deliveries, and sometime providing general information on the patient's condition. These services cannot be performed without disclosing protected health information. Since most patients find this a welcome convenience, we believe it would be important to allow these practices to continue. However, not everyone may appreciate this service. We are proposing to accommodate the wishes of such people, where possible.

b. *Proposed requirements.* In § 164.510(h), we would require covered entities to ask individuals whether they wish to be included in the entity's directory. For individuals who are incapacitated or otherwise unable to communicate their wishes and who have not previously expressed a preference, the decision would be left to the discretion of the covered entity, consistent with good medical practice. We note that legal representatives could make such decisions on behalf of persons who are incapacitated or otherwise unable to communicate their wishes, consistent with State or other law, since they would stand as the "individual." In the absence of a legal representative or prior expression of a preference by the individual, the decision would be left to the discretion of the covered entity, consistent with good medical practice.

i. *Individuals capable of making decisions.*

For individuals who are not incapacitated, this rule would require the covered entity to ask whether information about the individual's presence in the facility, room number and general condition can be included in the general patient directory. When individuals are capable of making such a determination, their wishes should be respected.

We considered whether also to require covered entities to allow an individual to specify that information can be provided to specific persons but not others. For example, someone may feel that it is acceptable to release information to family members but not to friends. While we would like to respect individuals' wishes to the greatest extent possible, we are concerned about placing on covered entities the burden of verifying the identify of a person requesting directory information. We are therefore not including this additional requirement, but are requesting comments on current practices and how such requests might be accommodated.

We would not require a formal individual authorization pursuant to § 164.508. A verbal or other informal inquiry and agreement would be sufficient. We require only that individuals be given the choice.

ii. *Incapacitated individuals.*

If an individual is not able to make determinations as to whether location or status information should be released to family and friends, and had not in the past expressed a preference in this regard, we would leave the decision as to whether to include the individual in a directory to the discretion of the covered entity. Often individuals are unconscious or otherwise unable due to a medical condition to communicate their wishes to the entity and no representative is available to act for them. In these cases, we encourage the covered entity to take into consideration a number of factors when deciding whether or not to include such an individual in the directory:

- Could disclosing that an individual is in the facility reasonably cause danger of harm to the individual? For example, if a person is unconscious and receiving treatment for injuries resulting from physical abuse from an unknown source, an entity may determine that revealing that the individual is in the facility could give the attacker enough information to seek out the individual and repeat the abuse.

- Could disclosing the location within the facility of the patient give information about the condition of the patient? If a patient's room number would reveal the nature of the medical condition, the entity may decide that it is inappropriate to give that information. For example, if one floor of a hospital has been specifically designated as the psychiatric floor, simply saying that a patient is located on that floor discloses some information about the condition of the individual.
- Is it necessary or appropriate to give the status of a patient to family or friends? Covered entities often need information from family or friends for the treatment of an incapacitated individual. For example, if a patient is unconscious, family or friends may be able to give valuable information that will assist the care giver in making urgent decisions. Family members or friends may be able to give information on drugs or medications that the individual has been taking. On the other hand, it may be that revealing the status of an individual gives more information than the individual would have disclosed if they could make the determination themselves.
- If an individual had, prior to becoming incapacitated, expressed a desire not to be included in such a directory and the covered entity learns of that statement of preference, the covered entity would be required to act in accordance with the stated preference.

Individuals who enter a facility incapacitated and then improve to the point of being able to make their own determinations should be asked within a reasonable time period for permission to include information in the facility's directory.

When the condition of an individual who has opted not to allow protected health information to be included in the facility's directory deteriorates, and the individual is no longer capable of making disclosure decisions, the covered entity would be required to abide by the individual's initial decision. However, such a decision should not prevent a provider from contacting the family if such contact is required for good medical practice. A provider could need information from the family to treat a newly incapacitated person. If good medical practice would include contacting family or friends, the individual's initial request should not prohibit such contact. But the covered entity would still be prohibited from including information about the individual in its directory.

8. Disclosure for Banking and Payment Processes (§ 164.510(i))

[Please label comments about this section with the subject: "Banking and payment processes"]

In § 164.510(i), we propose to allow covered entities to disclose protected health information to financial institutions, or entities acting for financial institutions, if necessary for processing payments for health care and health care premiums.

a. *Importance of financial transactions and the need for protected health information.* Checks that individuals use to pay for health care typically include the names of providers or provider groups that could implicitly identify the medical condition for which treatment was rendered. Similarly, a credit card transaction will also reveal the identify of the provider and thus potentially the nature of the medical condition involved. While such information would constitute protected health information under this rule, there is no practical way of concealing this information when the provider deposits the check or claims credit card payment. Failure to allow this kind of disclosure of protected health information would impede the efficient operations of the health care system.

b. *Proposed requirements.* We propose that covered entities be permitted to disclose protected health information to financial institutions for the specific purposes listed in the section. The permissible purposes are those identified in the statute, and the regulatory text would copy the statutory list of allowable uses.

Under section 1179 of the Act, activities of financial institutions are exempt from HIPAA's Administrative Simplification requirements to the extent that those activities constitute "authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments" for health care or health plan premiums. This section of the statute states that financial institutions can use or disclose protected health information for these purposes. We read this part of the statute as indicating that Congress intended that this regulation not impede the efficient processing of these transactions, and accordingly are allowing covered entities to disclose protected health information to financial institutions for the purposes listed in section 1179 of the statute.

Proposed § 164.510(i) would not allow covered entities to include any diagnostic or treatment information in the data transmitted to financial institutions. Such information is never necessary to process a payment transaction. We believe that, in most cases, the permitted disclosure would include only: (1) The name and address of the account holder; (2) the name and address of the payer or provider; (3) the amount of the charge for health services; (4) the date on which health services were rendered; (5) the expiration date for the payment mechanism, if applicable (i.e., credit card expiration date); and (6) the individual's signature. At this time, we are not proposing to include in the regulation an exclusive list of information that could be lawfully disclosed for this purpose. We are, however, soliciting comment on whether more elements would be necessary for these banking and payment transactions and on whether including a specific list of the protected health information that could be disclosed is an appropriate approach.

We understand that financial institutions may also provide covered entities that accept payment via credit card with software that, in addition to fields for information required to process the transaction, includes blank fields in which health plans or health care providers may enter any type of information regarding their patients, such as diagnostic and treatment information, or other information that the covered entity wished to track and analyze. Other financial institutions could provide services to covered entities that constitute "health care operations" as defined in proposed § 164.504.

We do not know whether and to what extent health plans and health care providers are using such software to record and track diagnostic and treatment and similar information. However, we recognize that the capability exists and that if a plan or provider engages in this practice, information not necessary for processing the payment transaction could be forwarded to financial institutions along with other information used to process payments. Disclosing such information to a financial institution (absent a business partner relationship) would violate the provisions of this rule.

We also understand that banks, in addition to offering traditional banking services, may be interested in offering additional services to covered entities such as claims management and billing support. Nothing in this regulation would prohibit banks from becoming the business partners of covered entities in accordance with and subject to the conditions of § 164.506(e). If a bank offers an integrated package of traditional banking services and health claims and billing services, it could do so through a business partner arrangement that meets the requirements of proposed § 164.506(e). Any services offered by the bank that are not on the list of exempt services in 1179 would be subject to the terms of this rule.

We recognize that financial institutions' role in providing information management systems to customers is evolving and that in the future, banks and credit card companies could develop and market to health plans and health care providers software designed specifically to record and track diagnostic and treatment information along with payment information. In light of the rapid evolution of information management technology available to plans and providers, we seek comment on the types of services that financial institutions are performing or may soon perform for covered entities, and how these services could be best addressed by this proposed rule.

Finally, we note that we would impose no verification requirements for most routine banking and payment activities. However, if a bank or financial institution seeks information outside payment processing transactions (e.g., during a special audit), we would require the covered entity to take reasonable steps to verify the identity of the person requesting the disclosure.

9. Uses and Disclosures for Research (§ 164.510(j))

[Please label comments about this section with the subject: "Research"]

In § 164.510(j), we propose to permit covered entities to use and disclose protected health information for research without individual authorization, provided that the covered entity receives documentation that the research protocol has been reviewed by an Institutional Review Board or equivalent body—a privacy board—and that the board found that the research protocol meets specified criteria (regarding protected health information) designed to protect the subject. Absent such documentation, the subject's protected health information could be disclosed for research only with the individual's authorization, pursuant to the authorization requirements in proposed § 164.508.

Our proposed requirements for this disclosure build on the requirements for such disclosure under the Federal regulation that protects human subjects in research conducted or funded by the Federal government, the Federal Policy for the Protection of Human Subjects (often referred to as the "Common Rule"), first published for several agencies at 56 FR 28,002–028, 032 (1991), and codified for the Department of Health and Human Services at 45 CFR part 46.

a. *Importance of research and the need for protected health information.* Much important and sometimes lifesaving knowledge has come from studies that used individually identifiable health information, including biomedical and behavioral research, epidemiological studies, health services research, and statistical activities. This type of research has lead to dramatic improvements in the nation's health. For example, the results of such research include the association of a reduction in the risk of heart disease with dietary and exercise habits, the association between the use of diethylstilbestrol (DES) by pregnant women and vaginal cancer in their daughters, and the value of beta-blocker therapy in reducing re-hospitalizations and in improving survival among elderly survivors of acute myocardial infarction.

Likewise, research on behavioral, social, and economic factors that affect health, and the effect of health on other aspects of life may require individually identifiable health information. Studies of this kind can yield important information about treatment outcomes and patterns of care, disease surveillance and trends, health care costs, risk factors for disease, functional ability, and service utilization—which may ultimately lead to improvements in the quality of patient care, the identification and eradication of public health threats, and the development of new devices and pharmaceutical products. For example, such research uncovered the fact that disease screening and treatment patterns vary with the race of the person, which in turn has lead to focused outreach programs to improve health. Such research showed that the results of certain highly invasive surgical treatments are better when the care is provided in hospitals that performed a high volume of these procedures.

It is not always possible for researchers to obtain the consent of every subject that a researcher may wish to include within a study. Thousands of records may be involved. Tracking down the subjects may entail costs that make the research impracticable. The requirement to obtain consent also may lead to biased study results, because those who refuse consent may be more or less likely than average to have a particular health problem or condition. This may be a particular concern where the research topic involves sensitive or potentially embarrassing information. At the same time, the privilege of using individually identifiable health information for research purposes without individual authorization requires that the information be used and disclosed under strict conditions that safeguard individuals' confidentiality.

b. *Definition of research.* In proposed § 164.504, we would define "research" as a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. This is the definition of "research" in the Common Rule. This definition is well understood in the research community and elsewhere, and we propose to use it here to maintain consistency with other federal regulations that affect research.

For purposes of determining whether an activity is research under this proposed rule, it would not be relevant whether the information is given gratis, sold, bartered, rented, or otherwise provided for commercial gain. The purpose of this proposed rule regarding disclosure of protected health information for research is to protect the subjects of the information. Where the activity meets the definition of research and involves use or disclosure of protected health information, the rules in this section would apply. We request comments on any aspect of our proposed definition of research.

We understand that research and health care operations often look alike, and may overlap. We have provided definitions for these terms in § 164.504. We solicit comments on ways to further distinguish between research and operations, or otherwise clarify the application of this rule to such activities.

c. *Privacy board review requirement.* In § 154.510(j), we would require covered entities that wish to use or disclose protected health information for research without individual authorization to obtain documentation that a privacy board has reviewed the research protocol and has determined that specified criteria (described below) for waiver of authorization for use or disclosure of the information have been met. The board could be an IRB constituted under the Common Rule, or an equivalent privacy board that meets the requirements in this proposed rule. We propose to apply these requirements to uses and disclosures of protected health information by all covered entities, regardless of the source of funding of the research.

We propose no requirements for the location or sponsorship of the IRB or privacy board. The covered entity could create such a board, and could rely on it to review proposals for uses and disclosure of records. An outside researcher could come to the covered entity with the necessary documentation from his or her own university IRB. A covered entity could engage the services of an outside IRB or privacy board to obtain the necessary documentation. The documentation would have to be reviewed by the covered entity prior to a use or disclosure subject to this provision.

Under our proposal, we would require that the documentation provided by the IRB or privacy board state: (1) That the waiver of authorization has been approved by the IRB or privacy board; (2) that the board either is an IRB established in accordance with the HHS regulations (45 CFR 46.107) or equivalent regulations of another federal agency, or is a privacy board whose members (i) have appropriate expertise for review of records research protocols, (ii) do not have a conflict of interest with respect to the research protocol, and (iii) include at least one person not affiliated with the institution conducting the research; (3) that the eight criteria for waiver of authorization (described below) are met by the protocol; and (4) the date of board approval of the waiver of authorization. We would also require that the documentation be signed by the chair of the IRB or privacy board.

i. *Application to disclosures and uses regardless of funding source.*

The Common Rule describes conditions under which research may be conducted when obtaining authorization is not possible. Those conditions are intended to ensure that research on human subjects, including research using their health records, is conducted in a manner that minimizes or eliminates the risk of harm to individuals. The Common Rule has been adopted by seventeen Federal agencies,[3] representing most of the federal agencies sponsoring human subjects research.

However, a significant amount of research involving protected health information is currently conducted in the absence of these federal protections. Pharmaceutical companies, health plans, and colleges and universities conduct research supported by private funds. Identifiable information currently is being disclosed and used by these entities without individual authorization without any assessment of risk or of whether individual privacy interests are being adequately protected.

The Secretary's Recommendations call for the extension of the Common Rule principles for waiver of authorization for research uses and disclosures of identifiable health information to all research. The Recommendations also propose additional principles that directly address waiver of authorization for research use of such information. The Recommendations would require an external board to review proposals for research on health information under criteria designed to ensure that the need for waiver of authorization is real, that the public interest in the research outweighs the individual's privacy interest, and that privacy will be protected as much as possible. In addition, the Secretary's Recommendations proposed important restrictions on use and re-disclosure of information by researchers, and requirements for safeguarding protected information, that are not currently applied under the Common Rule.

Under the Secretary's Recommendations, these requirements would apply to researchers who want to use or obtain identifiable information without first obtaining the authorization of the individual who is the subject of the information. However, under HIPAA, we do not have the authority to regulate researchers unless the researcher is also acting as a provider, as in a clinical trial. We can only directly regulate health care providers, health plans, and health care clearinghouses. This means that for most research-related disclosures of health information, we can directly regulate the entities that disclose the information, but not the recipients of the information. Therefore, in order to implement the principles in the Secretary's Recommendations, we must impose any protections on the health plans and health care providers that use and disclose the information, rather than on the researcher seeking the information.

We understand that this approach involves imposing burdens on covered entities rather than on researchers. However, our jurisdiction under this statute leaves us the choice of taking this approach, or failing to provide any protection for individuals whose information is made the subject of research, or requiring individual authorization whenever a covered entity wants to disclose protected health information for research. The second approach would provide no protection for individuals, and the third approach would make much important research impossible. Therefore, we are proposing a mechanism that we believe imposes as little burden as possible on the covered entity while providing enhanced protection for individuals. This is not the approach we advocate for new federal privacy legislation, where we would propose that standards be applied directly to researchers, but it would be a useful and appropriate approach under the HIPAA legislative authority.

We considered a number of other approaches for protecting information from research subjects, particularly when covered entities use protected health information internally for research. We considered approaches that would apply fewer requirements for internal research uses of protected health information; for example, we considered permitting covered entities to use protected health information for research without any additional review. We also considered options for a more limited review, including requiring that internal uses for research using protected health information be reviewed by a designated privacy official or by an internal privacy committee. Another option that we considered would require covered entities to have an IRB or privacy board review their administrative procedures, either for research or more generally, but not to require such review for each research project. See the preamble section II.E.9.

We are not recommending these approaches because we are concerned about applying fewer protections to subjects of private sector research than are applied to subjects of federally-funded research subject to Common Rule protections, where IRB review is required for internal research uses of protected health information. At the same time, we recognize that the proposed rule would place new requirements on research uses and disclosures for research projects not federally-funded. We solicit comment on the approach that we are proposing, including on whether the benefits of the IRB or privacy board reviews would outweigh the burdens associated with the proposed requirements. We also solicit comment on whether alternative approaches could adequately protect the privacy interests of research subjects. We are interested in the extent to which the proposed rule could affect the amount and quality of research undertaken by covered entities or by researchers receiving information from covered entities. People commenting on the proposed rule also may wish to address the appropriateness of applying different procedures or different levels of protection to federally and nonfederally-funded research. We would note that, as discussed below, privacy boards or IRBs could adopt procedures for "expedited review" similar to those provided in the Common Rule (Common Rule § ____.110) for review of records research that involves no more than minimal risk. The availability of expedited review may affect the burden associated with the proposed approach.

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[3] The following 17 Departments and Agencies have adopted the Common Rule: (1) Department of Agriculture; (2) Department of Commerce; (3) Department of Defense; (4) Department of Education; (5) Department of Energy; (6) Department of Health and Human Services; (7) Department of Housing and Urban Development; (8) Department of Justice; (9) Department of Transportation; (10) Department of Veterans Affairs; (11) International Development Cooperative Agency: Agency for International Development; (12) Consumer Product Safety Commission; (13) Environmental Protection Agency; (14) National Aeronautics and Space Administration; (15) National Science Foundation; (16) Social Security Administration; (17) Central Intelligence Agency. In addition, the White House Office of Science and Technology Policy is a signatory to the Common Rule, but its policy is not codified in the Code of Federal Regulations.

ii. *Documentation of privacy board approval.* We considered several options for applying Common Rule principles to research not reviewed by Common Rule IRBs through imposing requirements on covered entities. We chose the use of the privacy board because it gives covered entities the maximum flexibility consistent with protecting research subjects. Under this approach, each covered entity that wants to use or disclose protected health information for research without individual authorization could obtain the required documentation directly from an existing privacy board, an internal privacy board created by the covered entity, or from a privacy board used by the researcher.

We considered prohibiting disclosure of protected health information for research unless covered entities enter into contracts, enforceable under law, which would require the researcher to meet the review criteria. Under this approach, the covered entity would be required to enter into a contract with the researcher in order to be permitted to disclose protected health information without individual authorization. In the contract, the researcher would agree to meet the criteria described below, as well as the additional restrictions on reuse and disclosure and the physical safeguards (also described below), in exchange for obtaining the information from the covered entity.

We did not adopt this approach because of the potentially burdensome administrative costs that could stem from the need to negotiate the contracts and ensure that they are legally enforceable under law. In addition, the covered entity may have little incentive to enforce these contracts. However, we seek comments on whether the benefits of this approach outweigh the burdens, whether we could expect the burdens to be eased by the development of model contracts by local universities or professional societies, and whether covered entities could be expected to enforce these contracts. We also seek comments on whether covered entities could be given a choice between the documentation approach proposed in this NPRM and a contract approach. We are particularly interested in comments on this approach, because it appears to be the only mechanism for including restrictions on reuse and disclosure by researchers in this proposed rule.

iii. *Use of boards that are not IRBs.* The Secretary's Recommendations state that privacy protections for private sector records research should be modeled on the existing Common Rule principles. The cornerstone of the Common Rule approach to waiver of authorization is IRB approval. At the same time, we understand that Common Rule IRBs are not the only bodies capable of performing an appropriate review of records research protocols. In working with the Congress to develop comprehensive privacy legislation, we have explored the use of limited purpose privacy boards to review research involving use or disclosure of health information. If the review criteria and operating rules of the privacy board are sufficiently consistent with the principles stated in the Secretary's Recommendations to afford the same level of protection, there would be no need to insist that the review board be a formal Common Rule IRB.

Among the Common Rule requirements for IRB membership, as stated in 45 CFR 46.107, are the following:

- Each IRB must have members with varying backgrounds and appropriate professional competence as necessary to review research protocols.
- Each IRB must include at least one member who is not affiliated with the institution or related to a person who is affiliated with the institution.
- No IRB member may participate in review of any project in which the member has a conflict of interest.

We propose to require that a covered entity could not use or disclose protected health information for research without individual authorization if the board that approved the waiver of authorization does not meet these three criteria.

We considered applying the additional criteria for IRB membership stated in the Common Rule. However, many of the additional criteria are relevant to research generally, but less relevant for a board whose sole function is to review uses or disclosures of health information. In addition, the Common Rule IRB membership criteria are more detailed than the criteria for privacy board membership we propose here. Since our legislative authority reaches to covered entities, but not to the privacy board directly, we decided that imposing additional or more detailed requirements on privacy boards would impose added burdens on covered entities that did not clearly bring concomitant increases in patient protections. We continue to support more complete application of Common Rule criteria directly to these privacy boards through federal legislation. We believe the approach we propose here strikes the appropriate balancing between protecting individuals' privacy interests and keeping burdens on covered entities to a minimum.

d. *Criteria.* In § 164.510(j)(2)(iii), we propose to prohibit the use or disclosure of protected health information for research without individual authorization unless the covered entity has documentation indicating that the following criteria are met:

- The use or disclosure of protected health information involves no more than minimal risk to the subjects;
- The waiver or alteration will not adversely affect the rights and welfare of the subjects;
- The research could not practicably be carried out without the waiver or alteration;
- Whenever appropriate, the subjects will be provided with additional pertinent information after participation;
- The research would be impracticable to conduct without the protected health information;
- The research project is of sufficient importance to outweigh the intrusion into the privacy of the individual whose information would be disclosed;
- There is an adequate plan to protect the identifiers from improper use and disclosure; and
- There is an adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers.

The first four criteria are in the Common Rule. (The Common Rule § ____.116(d)).[4] These criteria were

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[4] It should be noted that for the Department of Defense, 10 U.S.C. 980 prohibits the waiver of informed consent. Only those studies that qualify for exemption per 45 CFR 46.101(b), or studies that do not meet the 45 CFR part 46 definition of human subjects research can be performed in the absence

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designed for research generally, and not specifically to protect individuals' privacy interests regarding medical records research. For this reason, the Secretary's Recommendations include the last four criteria, which were developed specifically for research on medical records.

As part of the IRB or privacy board's review of the use of protected health information under the research protocol, we assume that in case of a clinical trial, it would also review whether any waiver of authorization could also include waiver of the subject's right of access to such information during the course of the trial. See § 164.514(b)(iv).

We recognize that the fourth criterion may create awkward situations for some researchers. Where authorization has been waived, it may be difficult to later approach individuals to give them information about the research project. However, in some cases the research could uncover information that would be important to provide to the individual (e.g., the possibility that they are ill and should seek further examination or treatment). For this reason, we are including this criterion in the proposed rule.

We also recognize that the fifth criterion, which would ask the board to weigh the importance of the research against the intrusion of privacy, would require the board to make a more subjective judgment than that required by the other criteria. This balancing, we feel, goes to the heart of the privacy interest of the individual. We understand, however, that some may view this criterion as a potential impediment to certain types of research. We solicit comment on the appropriateness of the criterion, the burden it would place on privacy boards and IRBs, and its potential effects on the ability of researchers to obtain information for research.

The Secretary's Recommendations propose that a researcher who obtains protected health information this way should be prohibited from further using or disclosing it except when necessary to lessen a serious and imminent threat to the health or safety of an individual or to the public health, or for oversight of the research project, or for a new research project approved by an IRB or similar board. In addition the Recommendations propose an obligation on researchers to destroy the identifiers unless an IRB or similar board determines that there is a research or health justification for retaining them and an adequate plan to protect them from improper disclosure.

We do not have the authority under HIPAA to place such requirements directly on researchers. While criteria to be met in advance can be certified in documentation through board review of a research protocol, a board would have no way to assess or certify a researcher's behavior after completion of the protocol (e.g., whether the researcher was engaging in improper reuse or disclosure of the information, or whether the researcher had actually destroyed identifiers). We instead propose to require the researcher to show a plan for safeguarding the information and destroying the identifiers, which the privacy board or IRB can review and evaluate in determining whether the requested disclosure is proper. We solicit comment on how to include ongoing protections for information so disclosed under this legislative authority without placing excessive burdens on covered entities.

We note that privacy boards or IRBs could adopt procedures for "expedited review" similar to those provided in the Common Rule (Common Rule § ______.110) Under the Common Rule's expedited review procedure, review of research that involves no more than minimal risk, and involves only individuals' medical records may be carried out by the IRB chairperson or by one or more reviewers designated by the chairperson from among the members of the IRB. The principle of expedited review could be extended to other privacy boards for disclosures for records-based research. Like expedited review under the Common Rule, a privacy board could choose to have one or more members review the proposed research.

e. *Additional provisions of this proposed rule affecting research.*

i. *Research including health care.*

To the extent that the researcher studying protected health information is also providing treatment as defined in proposed § 164.504, such as in a clinical trial, the researcher would be a covered health care provider for purposes of that treatment, and would be required to comply with all the provisions of this rule applicable to health care providers.

ii. *Individual access to research information.*

The provisions of § 164.514 of this proposed rule, regarding individual access to records, would also apply where the research includes the delivery of health care. We are proposing an exception for clinical trials where the information was obtained by a covered provider in the course of a clinical trial, the individual has agreed to the denial of access when consenting to participate in the trial (if the individual's consent to participate was obtained), and the trial is in still in progress.

iii. *Research on records of deceased persons.*

In § 164.506(f), we propose that, unlike the protections provided by the remainder of this rule, the protections of this proposed rule will end at the death of the subject for the purpose of disclosure of the subject's information for research purposes. In general, this proposed rule would apply to the protected health information of an individual for two years after the individual's death. However, requiring IRB or privacy board review of research studies that use only health information from deceased persons would be a significant change from the requirements of the Common Rule, which apply to individually identifiable information about living individuals only. In addition, some of the Common Rule criteria for waiver of authorization are not readily applicable to deceased persons. To avoid a conflict between Common Rule requirements and the requirements of this proposed rule, we are proposing that the protections of this proposed rule end at the death of the subject for the purpose of disclosure of the subject's information for research purposes.

iv. *Verification.*

In § 164.518(c), we propose to require covered entities to verify the identity of most persons making requests for protected health information and, in some cases, the legal authority behind that request. For disclosures of protected health information for research purposes under this subsection, the required documentation of IRB or privacy board approval would constitute sufficient verification. No additional verification would be necessary under § 164.518(c).

f. *Application to research covered by the Common Rule.* Some research projects would be covered by both the Common Rule and the HIPAA regulation. This proposed rule would not override the Common Rule. Thus, where both the HIPAA regulation and the Common Rule would apply to research conducted by a covered entity, both sets of regulations would need to be followed. Because only half of the substantive criteria for board approval proposed in this rule are applied by IRBs today, this would entail new responsibilities for IRBs in these situations. However, we believe that the additional burden would be minimal, since the IRBs will already be reviewing the research protocol, and will be asked

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of a process to provide informed consent to prospective subjects. This proposed rule would not affect DOD's implementation of 10 U.S.C. 980.

only to assess the protocol against some additional criteria. This burden is justified by the enhancement of privacy protections gained by applying rules specifically designed to protect the subjects of medical records research.

We considered excluding research covered by the Common Rule from the provisions of this proposed rule. We rejected this approach for two reasons. First, the additional proposed requirements applied through HIPAA are specifically designed to protect the privacy interests of the research subjects, and the small additional burden on IRBs would be outweighed by the improved protections for individuals. Second, such an approach would allow federally-funded research to proceed under fewer restrictions than privately funded research. We believe that the source of funding of the research should not determine the level of protection afforded to the individual.

We note that the definition of "identifiable" information proposed in § 164.504 of this rule differs from the interpretation of the term under the Common Rule. In particular, if a covered entity encodes identifiers as required under § 164.506(d) before undertaking a disclosure of health information for research purposes, the requirements of this section would not apply. However, the encoded information would still be considered "identifiable" under the Common Rule and therefore may fall under the human subjects regulations.

g. *Obtaining the individual's authorization for research use or disclosure of protected health information.* If a covered entity chooses to obtain individual authorization for use or disclosure of information for research, the requirements applicable to individual authorizations for release of protected health information would apply. These protections are described in § 164.508.

For research projects to which both the Common Rule and this proposed rule would apply, both sets of requirements for obtaining the authorization of the subject for research would apply. As with criteria for waiver of authorization, this proposed rule would impose requirements for obtaining authorization that are different from Common Rule requirements for obtaining consent. In particular, the regulation would require more information to be given to individuals regarding who could see their information and how it would be used. For the reasons explained above, we are proposing that both sets of requirements apply, rather than allow federally-funded research to operate with fewer privacy protections than privately-funded research.

h. *Need to assess the Common Rule.* In general, the Common Rule was designed to protect human subjects participating in research projects from physical harm. It was not specifically designed to protect an individual's medical records when used for research. For research in which only the medical information of the human subject is used, i.e., records research, there are several ways in which the Common Rule protections could be enhanced.

In developing these proposed regulations, and in reviewing the comprehensive medical privacy legislation pending before Congress, it has become clear that the Department's human subject regulations (45 CFR part 46, 21 CFR part 50, and 21 CFR part 56) may not contain all of the safeguards necessary to protect the privacy of research participants. Because the source of research funding should not dictate the level of privacy protection afforded to a research subject, the Secretary of HHS will immediately initiate plans to review the confidentiality provisions of the Common Rule.

To further that process, we solicit comments here on how Common Rule protections for the subjects of records review should be enhanced. For example, we will consider the adequacy of the Common Rule's provisions regarding conflict of interest, expedited review, exemptions (such as the exemption for certain research on federal benefits programs), deceased subjects, and whether IRB's should place greater emphasis on confidentiality issues when reviewing research protocols. We also seek comment on whether the Common Rule requirements for obtaining consent for records research should be modified to reflect the specific risks entailed in such research.

In addition, because seventeen other Departments and Agencies are signatories to the Common Rule and each has its own human subject regulations, the Secretary of HHS will consult with these Departments and Agencies regarding potential changes to the Common Rule.

10. Uses and Disclosures in Emergency Circumstances (§ 164.510(k))

[*Please label comments about this section with the subject: "Emergency circumstances"*]

In § 164.510 (k), we propose to permit covered entities to use or disclose protected health information in emergencies, consistent with applicable law and standards of ethical conduct, based on a reasonable belief that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of any person or the public.

a. *Importance of emergency response and the need for protected health information.* Circumstances could arise that are not otherwise covered in the rules proposed in §§ 164.510(b) and 164.510(f) for law enforcement and public health, where covered entities may need to disclose protected health information to prevent or lessen a serious and imminent threat of harm to persons or the public. Persons at risk include the individual who is the subject of the protected health information as well as others. Through their professional activities, covered entities, particularly health care providers, may obtain information that leads them to believe that an individual is at risk of harm to him or herself, or poses a threat to others. This information could be needed by emergency and first responders (including law enforcement officials) to deal with or prevent an emergency situation posing a serious and imminent threat of harm to such persons or the public.

b. *Proposed requirements.* We would permit covered entities, consistent with applicable law and standards of ethical conduct, to disclose protected health information based on a reasonable belief that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. Covered entities would only be permitted to make such disclosures to persons who are reasonably able to prevent or lessen the threat, including to the target of the threat.

Anticipating all circumstances under which emergency disclosure could be necessary is not possible. This section must be stated in somewhat general terms. We intend to permit covered entities to respond to emergency requests for protected health information, where it is reasonable for the covered entity to believe that such disclosure would prevent or reduce a serious emergency situation. Such emergencies may threaten a single person or the general public. We do not intend to permit disclosure of protected health information in response to hypothetical scenarios or potential emergencies that are not imminent and serious. This permitted disclosure would be narrow; it should not become a loophole for disclosures not permitted by the other provisions of the proposed rule.

This provision would permit disclosure of relevant information in response to credible requests from law enforcement, public health, or other government officials. The covered entity would be permitted to reasonably rely on credible representations that an emergency exists and that protected health information could lessen the threat. If the disclosure was made in a good faith belief that these circumstances exist, it would be lawful under this section. A covered entity could also disclose protected health information on its own initiative if it determined that the disclosure were necessary, consistent with other applicable legal or ethical standards. Our proposed rule is intended to permit such disclosures where they are otherwise permitted by law or ethical standards. We do not intend to permit disclosures by health care providers or others that are currently prohibited by other law or ethical standards.

Disclosure for emergency circumstances could be authorized by statute or common law and could also be addressed in medical professional ethics and standards. For example, the American Medical Association Principles of Medical Ethics on Confidentiality provides that:

> [T]he obligation to safeguard patient confidences is subject to certain exceptions that are ethically and legally justified because of overriding social consideration. Where a patient threatens to inflict serious bodily harm to another person or to him or herself and there is a reasonable probability that the patient may carry out the threat, the physician should take reasonable precautions for the protection of the intended victim, including notification of law enforcement authorities.

The duty to warn third persons at risk has been addressed in court cases, and the provision proposed permits disclosures in accord with such legal duties. The leading case on this issue is *Tarasoff* v. *Regents of the University of California*, 17 Cal. 3d 425 (1976). In that case, a therapist's patient made credible threats against the physical safety of a specific person. The Supreme Court of California found that the therapist involved in the case had an obligation to use reasonable care to protect the intended victim of his patient against danger, including warning the victim of the peril. Many States have adopted (judicially or legislatively) versions of the *Tarasoff* duty to warn, but not all States have done so. This proposed rule is not intended to create a duty to warn or disclose but would simply permit the disclosure under the emergency circumstances consistent with other applicable legal or ethical standards.

An emergency disclosure provision does present some risks of improper disclosure. There will be pressures and uncertainties when disclosures are requested under emergency circumstances, and decisions must often be made instantaneously and without the ability to seek individual authorization or to perform complete verification of the request. We believe that this risk would be warranted when balancing the individual's interest in confidentiality against the societal interests to preserve life and protect public safety in those rare emergency circumstances where disclosure is necessary. A covered entity that makes a reasonable judgement under such pressure and discloses protected health information in good faith would not be held liable for wrongful disclosure if circumstances later prove not to have warranted the disclosure.

We would also exempt emergency disclosures from provisions that allow individuals to request restrictions on uses and disclosures of their protected health information for treatment, payment and health care operations. In emergency situations, health care professionals need to have any information that will allow them to respond to the emergency circumstance, and cannot be expected to take the time to remind themselves of restrictions on particular information. See proposed § 164.506(c).

11. Disclosure to Next-of-Kin (§ 164.510(l))

[Please label comments about this section with the subject: "Next-of-kin"]

In § 164.510(l), we propose to require health care providers to obtain a verbal agreement from the individual before disclosing protected health information to next-of-kin, to other family members, or to others with whom the individual has a close personal relationship. Where it is not practical or feasible to request and obtain such verbal agreement, providers could disclose to next-of-kin, to other family members, or to others with whom an individual has a close personal relationship, protected health information that is directly relevant to the person's involvement in the individual's care, consistent with good professional health practice and ethics.

a. *Importance of disclosures to next-of-kin and the need for protected health information.* In some cases, disclosure of protected health information to next-of-kin, to other relatives, or to persons with whom the individual has a close personal relationship and who are involved in caring for or helping the individual, can facilitate effective health care delivery. We do not intend to impede the disclosure of protected health information to relatives or friends when expeditious disclosure of such information clearly would be in the individual's best interest.

b. *Proposed requirements.* We propose that when an individual has the capacity to make his or her own health decisions, providers could disclose protected health information to the individual's next-of-kin, to other relatives, or to persons with whom the individual has a close personal relationship, if the individual has verbally agreed to such disclosure. Verbal agreement could be indicated informally, for example, from the fact that the individual brought a family member or friend to the physician appointment and is actively including the family member or friend in the discussion with the physician. If, however, the situation is less clear and the provider is not certain that the individual intends for the family member or friend to be privy to protected health information about the individual, the provider would be required to ask the individual. In these cases, when verbal agreement can be obtained, that agreement would be sufficient verification of the identity of the person to meet the requirements of § 164.518(c).

We would also permit health care providers to disclose protected health information without verbal agreement to next-of-kin, to other relatives, or to persons with whom the individual has a close personal relationship, if such agreement cannot practicably or reasonably be obtained and the disclosure is consistent with good health professional practice and ethics. When verbal agreement cannot be obtained, the provider would be required to take reasonable steps to verify the identity of the family member or friend in order to meet the verification requirement under § 164.518(c). Verbal inquiry would suffice; we would not require any specific type of identity check.

We considered requiring a written authorization for each disclosure in these situations, but rejected that option because it is not practicable and does not provide sufficient additional privacy protection to justify the burden it would place on health care providers and individuals. Many of these conversations are unscheduled and of short duration, and requiring a written authorization may impede treatment and detain the individual. Therefore we would allow a one-time verbal agreement and (where required) verification to suffice for disclosure of protected health information relevant to the individual's care. For example, a health care provider could disclose protected health information about an individual's treatment plan to the individual's adult child who is taking the individual home from the hospital, if the provider has verbally requested and individual has agreed to providing the adult child with relevant information about aspects of the individual's health care. Disclosure also could be appropriate in cases where a verbal agreement cannot practicably be obtained. For example, a pharmacist could be guided by his or her professional judgment in dispensing a filled prescription to someone who claims to be picking it up on behalf of the individual for whom the prescription was filled.

In such cases, disclosures would have to follow the "minimum necessary" provisions of proposed § 164.506(b). For example, health care providers could not disclose without individual authorization extensive information about the individual's surgery or past medical history to the neighbor who is simply driving the individual home and has no need for this information. We request comment on this approach.

The proposed definition of "individual" addresses related disclosures regarding minors and incapacitated individuals.

12. Additional Uses and Disclosures Required by Other Law (§ 164.510(n))

[*Please label comments about this section with the subject: "Additional uses and disclosures required by other law"*]

In § 164.510(n) we propose to allow covered entities to use or disclose protected health information if such use or disclosure is not addressed elsewhere in § 164.510, is required by other law, and the disclosure meets all the relevant requirements of such law.

Other laws may require uses or disclosures of protected health information for purposes not captured by the other provisions of proposed § 164.510. An example is State workers' compensation laws, which could require health care providers to disclose protected health information to a workers' compensation insurer or to an employer. Covered entities generally could make uses and disclosures required by such other laws.

Where such a use or disclosure would also be addressed by other provisions of this regulation, the covered entity would also have to follow the requirements of this regulation. Where the provisions of the other law requirements are contrary to the provisions in this proposed rule and more protective of the individual's privacy, the provisions of the other law would generally control. See discussion in section II.I below.

We have included this section because it is not our intention to obstruct access to information deemed important enough by other authorities to require it by law. We considered omitting this provision because we are concerned that we do not know enough about the required disclosures it would encompass, but decided to retain it in order to raise the issue of permitting disclosures for other, undetermined purposes. We solicit comment on the possible effects of omitting or narrowing this provision.

Under this section, health care providers could make reports of abuse of any person that are required by State law. All States require reports of abuse. All States require reporting to child protective agencies of instances of child abuse or neglect that they identify, and most States require similar reports of abuse or neglect of elderly persons. These are valuable requirements which we support and encourage. The Act (in section 1178(b)) specifically requires that this regulation not interfere with State requirements for reporting of abuse. Additionally, all States require health care providers to report gunshot wounds and certain other health conditions related to violence; this provision would permit such reports.

Section 164.518(c), requiring verification of the identity and legal authority of persons requesting disclosure of protected health information would apply to disclosures under § 164.510(n). As noted above, we are not familiar with all of the disclosures of protected health information that are mandated by State law, so we cannot be certain that the verification requirements in § 164.518(c) would always be appropriate. We solicit comments on whether those requirements would be appropriate for all disclosures that would be permitted here.

13. Application to Specialized Classes (§ 164.510(m))

In the following categories we propose use and disclosure provisions that respond to the unique circumstances of certain federal programs. We request comment on whether additional provisions are necessary to comply with the suitability and national security determination requirements of Executive Order 10450, as amended, and other national security laws.

a. *Application to military services.*

[*Please label comments about this section with the subject: "Military services"*]

To address the special circumstances of the Armed Forces and their health care systems, we propose to permit military and other federal providers and health plans to use and disclose protected health information about active duty members of the Armed Forces for certain purposes, and to exclude from coverage under this rule health information about certain persons who receive care from military providers.

i. *Members of the Armed Forces.*

The primary purpose of the health care system of the military services differs in its basic character from that of the health care system of society in general. The special nature of military service is acknowledged by the Constitutional provision for separate lawmaking for them (U.S. Constitution, article I, section 8, clause 14) and in their separate criminal justice system under the Uniform Code of Military Justice (10 U.S.C. 801, *et seq.*).

The military health care system, like other federal and civilian health care systems, provides medical care and treatment to its beneficiary population. However, it also serves a critical national defense purpose, ensuring that the Armed Forces are in a state of medical readiness to permit the discharge of those responsibilities as directed by the National Command Authority.

The health and well-being of military members is key and essential. This is true whether such personnel are serving in the continental United States or overseas or whether such service is combat-related or not. In all environments, operational or otherwise, the Armed Forces must be assured that its personnel are medically qualified to perform their responsibilities. This is critical as each and every person performs a vital service upon which others must rely in executing a specified defense requirement. Unqualified personnel not only jeopardize the possible success of an assignment or operation, but they pose an undue risk and danger to others.

To assure that such persons are medically fit, health information is provided to proper command authorities regarding military members performing certain critical functions for medical screening and other purposes so that determinations can be made regarding the ability of such personnel to perform assigned duties. For example, health information is provided regarding:

- A pilot receiving medication that may affect alertness;
- An Armed Forces member with an intolerance for a vaccine necessary for deployment to certain geographical areas;
- Any significant medical or psychological changes in a military member who is a member of the Nuclear Weapons Personnel Reliability Program;
- A military recruit or member with an illness or injury which disqualifies him or her from military service;
- Compliance with controlled substances policies.

The military and the Coast Guard obtain such information from their own health care systems, as well as from other agencies that provide health care to service members, such as the Department of Transportation (DOT), which is responsible for the United States Coast Guard and other federal agencies which provide medical care to members of the Armed Forces (*e.g.*, the Department of State (DOS) provides such care to military attaches and Marine security personnel assigned to embassies and consulates overseas, the Department of Veterans Affairs provides care in certain areas of the country or in cases involving specialized services). Other health care providers could also provide information, for example, when a private sector physician treats a member injured in an accident.

The special needs of the DOD and DOT for accessing information for purposes other than treatment, payment or health care operations were recognized in the Secretary's Recommendations. We considered several options for accommodating the unique circumstances of a military health care environment. We considered providing special rule-making authority to the DOD and other federal agencies which provide care to members of the military, but HIPAA does not allow for such delegation by the Secretary of HHS. Therefore, we propose that health care providers and health plans of the DOD, the DOT, the DOS, the Department of Veterans Affairs as well as any other person or entity providing health care to Armed Forces personnel, could use or disclose protected health information without individual authorization for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission.

The appropriate military command authorities, the circumstances in which use or disclosure without individual authorization would be required, and the activities for which such use or disclosure would occur in order to assure proper execution of the military mission, would be identified through **Federal Register** notices promulgated by the DOD or the DOT (for the Coast Guard). The verification requirements in § 164.518(c) would apply to disclosures permitted without authorization.

This proposal would not confer authority on the DOD or the DOT to enact rules which would permit use or disclosure of health information that is restricted or controlled by other statutory authority.

ii. *Foreign diplomatic and military personnel.*

The Department of Defense, as well as other federal agencies, provide medical care to foreign military and diplomatic personnel, as well as their dependents. Such care is provided pursuant to either statutory authority (*e.g.*, 10 U.S.C. 2549) or international agreement. The care may be delivered either in the United States or overseas. Also, where health care is provided in the United States, it may be furnished by non-government providers when government delivered care is not available or the beneficiary elects to obtain private as opposed to government health care. Examples include:

- Foreign military personnel being trained, or assigned to U.S. military organizations, in the United States who receive care from either government or private health care providers;
- The DOD operated medical clinic which provides care to all allied military and diplomatic personnel assigned to NATO SHAPE Headquarters in Brussels, Belgium;
- The DOS, which also is engaged in arranging health care for foreign diplomatic and military personnel and their families, could also have legitimate needs for information concerning the health services involved.

We believe that the statute was not intended to cover this unique class of beneficiaries. These persons are receiving U.S., either private or governmental, furnished health care, either in the United States or overseas, because of the beneficiary's military or diplomatic status. For such personnel, we believe that the country-to-country agreements or federal statutes which call for, or authorize, such care in furtherance of a national defense or foreign policy purpose should apply. We propose to exclude foreign military and diplomatic personnel and their dependents who receive health care provided by or paid for by the DOD or other federal agency, or by an entity acting on its behalf pursuant to a country-to-country agreement or federal statute, from the definition of an "individual" in § 164.504. Therefore, the health information created about such persons by a DOD or other federal agency health care provider would not be protected under this rule. However, information created about such persons by covered health care providers whose services are not paid for by or provided on behalf of a federal agency would be protected health information.

iii. *Overseas foreign national beneficiaries.*

The Department of Defense, as well as other federal agencies and U.S.-based non-governmental organizations, provide health care to foreign nationals overseas incident to U.S. sponsored missions or operations. Such care is provided pursuant to federal statute, international agreement, international organization sponsorship, or incident to military operations (including humanitarian and peacekeeping operations). Examples include:

- The DOD provides general health care to an indigenous population incident to military deployment;
- The DOD provides health care to captured and detained personnel as a consequence of overseas combat operations. Such care is mandated by international agreement, i.e., the Geneva Conventions. The most recent example involves the surrender or capture of Iraqi soldiers during the conduct of Operation Desert Storm;
- A number of federal agencies and non-governmental organizations provide health care services as part of organized disaster relief or other humanitarian programs and activities around the world.

We believe that the statute did not contemplate these unique beneficiary populations. Under circumstances where healthcare is being furnished to foreign nationals incident to sanctioned U.S. activities overseas, application of these proposed rules could have the unintended effect of impeding or frustrating the conduct of such activities, and producing incongruous results. Examples include:

- Requiring preparation of a notice advising the local population of the information practices of the DOD incident to receiving free medical care as part of disaster relief.
- Medical information involving a prisoner of war could not be disclosed, without the prisoner's consent, to U.S. military authorities who have responsibility for operating the POW camps.

Therefore, we propose to exclude overseas foreign national beneficiaries of health care provided by the DOD or other federal agency, or by non-governmental organizations acting on behalf of a federal agency, from the definition of an individual. This exclusion would mean that any health information created when providing health care to this population would not be protected health information and therefore not covered by these rules.

iv. *Disclosure to the Department of Veterans Affairs.*

Upon completion of an individual's military service, the DOD routinely transfers that person's entire military service record, including protected health information, to the Department of Veterans Affairs so the file can be retrieved quickly if the individual or his/her dependents apply for veterans benefits. This practice was initiated in an effort to expedite veterans benefits eligibility determinations by ensuring timely access to complete, accurate information on the veteran's military service. Under the proposed rule, the transfer of these files would require individual authorization if protected health information is included. While this change could increase the time necessary for benefits processing in some cases, we believe the privacy interests outweigh the related administrative challenges. We invite comment on whether our assessment of costs and benefits is accurate. We also invite comment on alternative methods for ensuring privacy while expediting benefits processing.

b. *Application to the Department of Veterans Affairs.*

[Please label comments about this section with the subject: "Department of Veterans Affairs"]

We propose to permit protected health information to be used without individual authorization by and among components of the Department of Veterans Affairs that determine eligibility for or entitlement to, or that provide, benefits under laws administered by the Secretary of Veterans Affairs.

This exemption recognizes that the Veterans Administration is two separate components: The Veterans Health Administration (which operates health care facilities) and the Veterans Benefits Administration (which operates the Veterans disability program). The close integration of the operations of the two components may make requiring individual authorizations before transferring protected health information particularly disruptive. Further, the Veterans Health Administration transfers medical information on a much larger scale than most other covered entities, and requiring individual authorization for transfers among components could compromise the Department of Veterans Affairs' ability to fulfill its statutory mandates.

Nonetheless, we invite comments on this approach. In particular, we are interested in whether the requirement for individual authorization for disclosure of medical records for use in benefits calculations would increase privacy protections for veterans, or whether it would be of questionable value since most veterans would authorize disclosure if it were tied to their benefits. We also are interested in comments on whether the proposed approach would unreasonably hamper the Department of Veterans Affairs in its ability to make accurate benefits determinations in cases in which individuals chose not to authorize disclosure.

c. *Application to the Department of State.*

[Please label comments about this section with the subject: "Department of State"]

We propose to permit the Department of State to use and disclose protected health information for certain purposes unrelated to its role as a health care provider but necessary for the achievement of its mission.

i. *Importance of Foreign Service determinations and the need for protected health information.*

The Secretary of State administers and directs the Foreign Service. As contemplated in the Foreign Service Act, the Foreign Service is "to serve effectively the interests of the United States" and "provide the highest caliber of representation in the conduct of foreign affairs;" members of the Foreign Service are to be available to serve in assignments throughout the world. As called for under the Foreign Service Act, the DOS has established a health care program to promote and maintain the physical and mental health of members of the Service and that of other Government employees serving abroad under chief of mission authority, as well as accompanying family members. The DOS provides health care services to thousands of Foreign Service officers, other government employees and their families serving abroad, many of whom are frequently changing posts or assignments.

Worldwide availability for service is a criterion for entrance into the Foreign Service, so that applicants with conditional offers of employment must undergo medical clearance examinations to establish their physical fitness to serve in the Foreign Service on a worldwide basis prior to entrance into the Foreign Service. Employees and accompanying family members also must be medically cleared before assignments overseas, to preclude assignment to posts where existing medical conditions would be exacerbated or where resources to support an existing medical condition are inadequate.

The DOS uses protected health information gained through its role as a health care provider to fulfill its other responsibilities. The information is used to make medical clearance and fitness decisions as well as other types of determinations requiring medical information (such as fitness for duty or eligibility for disability retirement of Foreign Service members). Such information is also used to determine whether to immediately evacuate an individual for evaluation or treatment, or to determine whether to allow an employee or family member to remain in a position or at post abroad. An individual's record can include medical information provided to the DOS with the individual's authorization by outside health care providers, protected health information about treatment provided or paid for by the DOS, and medical information collected from non-treatment processes such as the clearance process.

ii. *Proposed requirements.*

We are proposing to exempt the DOS from the requirement to obtain individual authorization (§ 164.508) in order to use or disclose protected health information maintained by its health care program in certain cases. Specifically, the exemption would apply to the disclosure or use of protected health information of the following individuals for the following purposes: (1) Of applicants to the Foreign Service for medical clearance determinations of physical fitness to serve in the Foreign Service on a worldwide basis, including: medical and mental conditions limiting assignability abroad; conformance to occupational physical standards, where applicable; and suitability;

(2) of members of the Foreign Service and other United States Government employees assigned to serve abroad under Chief of Mission authority, for (a) medical clearance determinations for assignment to posts abroad, including: medical and mental conditions limiting such assignment; conformance to occupational physical standards, where applicable; continued fitness for duty, suitability, and continuation of service at post (including decisions on curtailment); (b) separation medical examinations; and (c) determinations of eligibility of members of the Foreign Service for disability retirement (whether on application of the employee or the Secretary);

(3) of eligible family members of Foreign Service or other United States Government employees, for medical clearance determinations like those described in (2) above to permit such family members to accompany employees to posts abroad on Government orders, as well as determinations regarding family members remaining at post and separation medical examinations.

The proposed exemption is intended to maintain the DOS's procedures regarding internal of medical information in conformance with the Privacy Act of 1974, as amended, and 42 CFR Part 2, which would continue to apply to the DOS. The verification requirements of § 164.518(c) would apply to these disclosures.

The DOS is considering the need to add national security determinations under Executive Order 10450, as amended, and other suitability determinations to the exempted purposes listed above. We therefore request comment as to the purposes for which use or disclosure of protected health information without individual authorization by the DOS would be appropriate.

d. *Application to employees of the intelligence community.*

[*Please label comments about this section with the subject: "Intelligence community"*]

We propose to permit covered entities to disclose protected health information about individuals who are employees of the intelligence community (as defined in Section 4 of the National Security Act, 50 U.S.C. 401a), and their dependents, to intelligence community agencies without individual authorization when authorized by law.

This provision addresses the special circumstances of the national intelligence community. The preservation of national security depends to a large degree on the health and well-being of intelligence personnel. To determine fitness for duty, including eligibility for a security clearance, these agencies must have continued access to the complete health records of their employees. To ensure continued fitness for duty, it is critical that these agencies have access to the entire medical record on a continuing basis. An incomplete medical file that excluded mental health information, for instance, could result in an improper job placement and a potential breach in security.

The term "intelligence community" is defined in section 4 of the National Security Act, 50 U.S.C. 401a, to include: the Office of the Director of Central Intelligence, which shall include the Office of the Deputy Director of Central Intelligence, the National Intelligence Council (as provided for in 50 U.S.C. 403–5(b)(3) [1]), and such other offices as the Director may designate; the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Imagery and Mapping Agency; the National Reconnaissance Office; other offices within the DOD for the collection of specialized national intelligence through reconnaissance programs; the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, and the Department of Energy; the Bureau of Intelligence and Research of the Department of State; and such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

We would permit covered entities to disclose protected health information concerning employees of the intelligence community and their dependents where authorized by law. The verification requirements of § 164.518(c) would apply to these disclosures.

F. Rights of individuals.

[*Please label comments about this section with the subject: "Introduction to rights of individuals"*]

The following proposed sections are intended to facilitate individual understanding of and involvement in the handling of their protected health information. Four basic individual rights would be created under this section: the right to a notice of information practices; the right to obtain access to protected health information about them; the right to obtain access to an accounting of how their protected health information has been disclosed; and the right to request amendment and correction of protected health information.

The rights described below would apply with respect to protected health information held by health care providers and health plans. We are proposing that clearinghouses not be subject to all of these requirements. We believe that as business partners of covered plans and providers, clearinghouses would not usually initiate or maintain direct relationships with individuals. The contractual relationship between a clearinghouse (as a business partner) and a covered plan or provider would bind the clearinghouse to the notice of information practices developed by the plan or provider and it will include specific provisions regarding inspection, copying, amendment and correction. Therefore, we do not believe the clearinghouses should be required to provide a notice or provide access for inspection, copying, amendment or correction. We would require clearinghouses to provide an accounting of any disclosures for purposes other than treatment, payment and health care operations to individuals upon request. See proposed § 164.515. It is our understanding that the vast majority of the clearinghouse function falls within the scope of treatment, payment, and health care operations and therefore we do not believe providing this important right to individuals will impose a significant burden on the industry. We invite comment on whether or not we should require clearinghouses to comply with all of the provisions of the individual rights section.

1. *Rights and Procedures for a Written Notice of Information Practices.* (§ 164.512)

[*Please label comments about this section with the subject: "Notice of information practices"*]

a. *Right to a written notice of information procedures.* We are proposing that individuals have a right to an adequate notice of the information practices of covered plans and providers. The notice would be intended to inform individuals about what is done with their protected health information and about any rights they may have with respect to that information. Federal agencies must adhere to a similar notice requirement pursuant to the Privacy Act of 1974 (5 U.S.C. 552a(e)(3)).

We are not proposing that business partners (including health care clearinghouses) be required to develop a notice of information practices because, under this proposed rule, they would be bound by the information practices of the health plan or health care provider with whom they are contracting.

We considered requiring covered plans or providers to obtain a signed copy of the notice form (or some other signed indication of receipt) when they give the form to individuals. There are advantages to including such a requirement. A signed acknowledgment would provide evidence that the notice form has been provided to the individual. Further, the request to the individual to formally acknowledgment receipt would highlight the importance of the notice, providing additional encouragement for the individual to read it and ask questions about its content.

We are concerned, however, that requiring a signed acknowledgment would significantly increase the administrative and paperwork burden of this provision. We also are unsure of the best way for health plans to obtain a signed acknowledgment because plans often do not have face-to-face contact with enrollees. It may be possible to collect an acknowledgment at initial enrollment, for example by adding an additional acknowledgment to the enrollment form, but it is less clear how to obtain it when the form is revised. We solicit comment on whether we should require a signed acknowledgment. Comments that address the relative advantages and burdens of such a provision would be most useful. We also solicit comment on the best way to obtain signed acknowledgments from health plans if such a provision is included in the final rule. We also solicit comments on other strategies, not involving signed acknowledgments, to ensure that individuals are effectively informed about the information practices of covered plans or providers.

b. *Revising the notice.* We are proposing that covered plans and providers be permitted to change their policies and procedures at any time. Before implementing a change in policies and procedures, the covered plan or provider must revise its notice accordingly. However, where the covered plan or provider determines that a compelling reason exists to take an action that violates its notice, it may do so only if it documents the reason supporting the action and revises its notice within 30 days of taking such action. The distribution requirements that would apply when the notice has been materially revised are discussed in detail below.

c. *Content of the notice.* In § 164.512, we propose the categories of information that would be required in each notice of information practices, the specific types of information that would have to be included in each category, and general guidance as to the presentation of written materials. A sample notice is provided in the Appendix to this preamble. This sample notice is provided as an example of how the policies of a specific covered health care provider could be presented in a notice. Each covered health plan and health care provider would be required to create a notice that complies with the requirements of this proposed rule and reflects its own unique information practices. It does not indicate all possible information practices or all issues that could be addressed in the notice. Covered plans and providers may want to include significantly more detail, such as the business hours during which an individual could review their records or its standard time frame for responding to requests to review records; entities could choose to list all types of mandatory disclosures.

In a separate section of this proposed rule, we would require covered plans or providers to develop and document policies and procedures relating to use, disclosure, and access to protected health information. See proposed § 164.520. We intend for the documentation of policies and procedures to be a tool for educating the entity's personnel about its policies and procedures. In addition, the documentation would be the primary source of information for the notice of information practices. We intend for the notice be a tool for educating individuals served by the covered plan or provider about the information practices of that entity. The information contained in the notice would not be as comprehensive as the documentation, but rather provide a clear and concise summary of relevant policies and procedures.

We considered prescribing specific language that each covered plan or provider would include in its notice. The advantages of this approach would be that the recipient would get exactly the same information from each covered plan or provider in the same format, and that it would be convenient for covered plans or providers to use a uniform model notice.

There are, however, several disadvantages to this approach. First, and most important, no model notice could fully capture the information practices of every covered plan or provider. Large entities will have different information practices than small entities. Some health care providers, for example academic teaching hospitals, may routinely disclose identifiable health information for research purposes. Other health care providers may rarely or never make such disclosures. To be useful to individuals, each entity's notice of information practices should reflect its unique privacy practices.

Another disadvantage of prescribing specific language is that it would limit each covered plan or provider's ability to distinguish itself in the area of privacy protections. We believe that if information on privacy protections were readily available, individuals might compare and select plans or providers based on their information practices. In addition, a uniform model notice could easily become outdated. As new communication methods or technologies are introduced, the content of the notices might need to reflect those changes.

A covered plan or provider that adopts and follows the notice content and distribution requirements described below, we would presume, for the purposes of compliance, that the plan or provider has provided adequate notice. However, the proposed requirements for the content of the notice are not intended to be exclusive. Covered plans or providers could include additional information and additional detail, beyond that required. In particular, all federal agencies must still comply with the Privacy Act of 1974. For federal agencies that are covered plans or providers, this would mean that the notice must comply with the notice requirements provided in the Privacy Act as well as those included in this proposed rule.

i. *Uses and disclosures of protected health information.*

In proposed § 164.512, we would require each covered plan and provider to include in the notice an explanation of how it uses and discloses protected health information. The explanation must be provided in sufficient detail as to put the individual on notice of the uses and disclosures expected to be made of his or her protected health information. As explained above in section II.C.5, covered plans and providers may only use and disclose protected health information for purposes stated in this notice.

This section of the notice might be as simple as a statement that information will be used and disclosed for treatment, payment, administrative purposes, and quality assurance. If the entity will be using or disclosing the information for other purposes, the notice must include a brief explanation. For example, some entities might include a statement that protected health information will be used for clinician education and disclosed for research purposes. We are soliciting comment on the level of detail that should be required in describing the uses and disclosures, specifically with respect to uses and disclosures for health care operations.

In addition we would require that notices distinguish between those uses and disclosures the entity makes that are required by law and those that are permitted but not required by law. By distinguishing between uses and disclosures that an entity is required to make those that the entity is choosing to make, the notice would provide the individual with a clearer understanding of the entity's privacy practices.

For uses and disclosures required by law, the notice need only list the categories of disclosures that are authorized by law, and note that it complies with such requirements. This language could be the same for every covered entity within a State, territory or other locale. We encourage states, state professional associations, and other organizations to develop model language to assist covered plans or providers in preparing this section of the notice.

For each type of permissible use or disclosure that the entity makes (e.g., research, public health, and next-of-kin), the notice would include a brief statement explaining the entity's policy with respect to that type of disclosure. For example, if all relevant laws permit health care providers to disclose protected health information to public health without individual authorization, the entity would need to develop policies and procedures regarding when and how it will make such disclosures. The entity would then document those policies and procedures as required by § 164.520 and the notice would include a statement of these policies. For example, the notice might state "we will disclose your protected health information to public health authorities upon request."

We considered requiring the notice to include not only a discussion the actual disclosure practices of the covered entity, but also a listing or discussion of all additional disclosures that are authorized by law. We considered this approach because, under this proposed rule, covered plans or providers would be permitted to change their information practices at any time, and therefore individuals would not be able to rely on the entity's current policies alone to understand how their protected health information may be used in the future. We recognize that in order to be fully informed, individuals need to understand when their information could be disclosed.

We rejected this approach because we were concerned that a notice with such a large amount of information could be burdensome to both the individuals receiving the notices and the entities required to prepare and distribute them. There are a substantial number of required and permitted disclosures under State or other applicable law, and this rule generally would permit them to be made.

Alternatively, we considered requiring that the notice include all of the types of permissible disclosures under this rule (e.g., public health, research, next-of-kin). We rejected that approach for two reasons. First, we felt that providing people with notice of the intended or likely disclosures of their protected health information was more useful than describing all of the potential types of disclosures. Second, in many States and localities, different laws may affect the permissible disclosures that an entity may make, in which case a notice only discussing permissible disclosures under the federal rule would be misleading. While it would be possible to require covered plans or providers to develop notices that discuss or list disclosures that would be permissible under this rule and other law, we were concerned that such a notice may be very complicated because of the need to discuss the interplay of federal, State or other law for each type of permissible disclosure. We invite comments on the best approach to provide most useful information to the individuals without overburdening either covered plans or providers or the recipients of the notices.

In § 164.520, we are proposing to require all covered entities to develop and document policies and procedures for the use of protected health information. The notice would simply summarize those documented policies and procedures and therefore would entail little additional burden.

ii. *Required statements.*

We are proposing that the notice include several basic statements to inform the individual of their rights and interests with respect to protected health information. First, we propose to require the notice to inform individuals that the covered plan or provider will not use or disclose their protected health information for purposes not listed in the notice without the individual's authorization. Individuals need to understand that they can authorize a disclosure of their protected health information and that the covered entity may request the individual to authorize a disclosure, and that such disclosures are subject to their control. The notice should also inform individuals that such authorizations can be revoked.

Second, we propose that the notice inform individuals that they have the right to request that the covered plan or provider restrict certain uses and disclosures of protected health information about them. The notice would also inform individuals that the covered plan or provider is not required to agree to such a request.

Third, we propose that the notice also inform individuals about their right of access to protected health information for inspection and copying and to an accounting of disclosures as provided in proposed §§ 164.514 and 164.515. In addition, the notice would inform individuals about their right to request an amendment or correction of protected health information as proposed in § 164.516. The notice would include brief descriptions of the procedures for submitting requests to the covered plan or provider.

Fourth, the notice would be required to include a statement that there are legal requirements that require the covered plan or provider to protect the privacy of its information, provide a notice of information practices, and abide by the terms of that notice. Individuals should be aware that there are government requirements in place to protect their privacy. Without this statement, individuals may not realize that covered plans or providers are required to take measures to protect their privacy, and may therefore be less interested in pursuing their rights or finding out more information.

Fifth, the notice would be required to include a statement that the entity may revise its policies and procedures with respect to uses or disclosures of protected health information at any time and that such a revision could result in additional uses or disclosures without the individual's authorization. The notice also should inform the individual how a revised notice would be made available when material revisions in policies and procedures are made. For example, when a provider makes a material change to its notice, proposed § 164.512(e) would require the provider to post a new notice.

Finally, we propose that the notice inform individuals that they have the right to complain to the covered entity and to the Secretary if they believe that their privacy rights have been violated.

iii. *Identification of a contact person for complaints and additional information.*

We propose that the notice be required to identify a contact person or office within the covered plan or provider to receive complaints, as provided in proposed § 164.518(a)(2), and to help the individual obtain further information on any of the issues identified in the notice. A specific person would not need to be named in the notice. It could be an office or general number where someone who can answer privacy questions or concerns can be reached.

In § 164.518(d), we are proposing that covered plans and providers permit individuals to submit complaints to the covered entity. We are proposing that the contact person identified in the notice be responsible for initially receiving such complaints. The contact person might or might not be responsible for processing and resolving complaints, but, if not, he or she would forward the complaints to the appropriate personnel or office. See discussion of the complaint process in section II.G.4, below.

In addition to receiving complaints, the contact person would be able to help the individual obtain further information on any of the issues identified in the notice. The contact person would be able to refer to the documented policies and procedures required by proposed § 164.520. We would not prescribe a formal method for responding to questions.

The administrative requirements section below, proposed § 164.518(a), would also require the entity to designate an official to develop policies for the use and disclosure of protected health information and to supervise personnel with respect to use and disclosure of protected health information. We would not require this official to also be the contact person. Depending on the size and structure of the entity, it might be appropriate to require one person to fill both roles.

iv. *Date the notice was produced.*

We are proposing that covered plans and providers include the date that the notice was produced on the face of the notice. We would also encourage the provider to highlight or otherwise emphasize any changes to help the individual recognize such changes.

d. *Requirements for distribution of the notice.* It is critical to the effectiveness of this proposed rule that individuals be given the notice often enough to remind them of their rights, but without overburdening covered plans or providers. We propose that all covered plans and providers would be required to make their notice available to any individual upon request, regardless of whether the requestor is already a patient or enrollee. We believe that broad availability would encourage individuals or organizations to compare the privacy practices of plans or providers to assist in making enrollment or treatment choices. We also propose additional distribution requirements for updating notices, which would be different for health plans and health care providers. The requirements for health plans and health care providers are different because we recognize that they have contact with individuals at different points in time in the health care system.

i. *Health plans.*

We considered a variety of combinations of distribution practices for health plans and are proposing what we believe is the most reasonable approach. We would require health plans to distribute the notice by the effective date of the final rule, at enrollment, within 60 days of a material change to the plan's information practices, and at least once every three years.

We considered requiring health plans to post the notice either in addition to or instead of distribution. Because most individuals rarely visit the office of their health plan, we do not believe that this would be an effective means of communication. We also considered either requiring distribution of the notice more or less frequently than every three years. As compared to most health care providers, we believe that health plans often are larger and have existing administrative systems to cost effectively provide notification to individuals. Three years was chosen as a compromise between the importance of reminding individuals of their plans' information practices and the need to keep the burden health plans to the minimum necessary to achieve this objective. We are soliciting comment on whether requiring a notice every three years is reasonable for health plans.

ii. *Health care providers.*

We are proposing to require that covered health care providers provide a copy of the notice to every individual served at the time of first service delivery, that they post the notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the provider to be able to read the notice, and that copies be available on-site for individuals to take with them. In addition, we are proposing to require that covered health care providers provide a copy of the notice to individuals they are currently serving at their first instances of service delivery within a year of the effective date of the final rule.

We would not require health care providers to mail or otherwise disseminate their notices after giving the notice to individuals at the time of the first service delivery. Health care providers' patient lists may include individuals they have not served in decades. It would be difficult for providers to distinguish between "active" patients, those who are seen rarely, and those who have moved to different providers. While some individuals will continue to be concerned with the information practices of providers who treated them in the distant past, overall the burden of an active distribution requirement would not be outweighed by improved individual control and privacy protection.

We recognize that some health care providers, such as clinical laboratories, pathologists and mail order pharmacies, do not have face-to-face contact with individuals during service delivery. Such providers would be required to provide the required notice in a reasonable period of time following first service delivery, through mail, electronic notice (i.e. e-mail), or other appropriate medium. For example, a web-based pharmacy could meet this distribution requirement by providing a prominent and conspicuous link to its notice on its home page and by requiring review of that notice before processing an order.

If a provider wishes to make a material change in the information practices addressed in the notice, it would be required to revise its notice in advance. After making the revision, the provider would be required to post the new notice promptly. We believe that this approach creates the minimum burden for health care providers consistent with giving individuals a clear source of accurate information.

e. *Plain language requirement.* We are proposing to apply a plain language requirement to notices developed by covered plans or providers under these proposed rules. A covered plan or provider could satisfy the plain language requirement if it made a reasonable effort to: organize material to serve the needs of the reader; write sentences in the active voice, use "you" and other pronouns; use common, everyday words in sentences; write in short sentences; and divide material into short sections.

We also considered proposing formatting specifications such as requiring the covered plan or provider to use easy-to-read design features (e.g., lists, tables, graphics, contrasting colors, and white space), type face, and font size in the notice. We are soliciting comment on whether these additional format specifications should be required.

The purpose of the notice proposed in the rules below is to tell the recipient how protected health information collected about them will be used. Recipients who cannot understand the entity's notice would miss important information about their privacy rights and how the entity is protecting health information about them. One of the goals of this proposed rule is to create an environment of open communication and transparency with respect to the use and disclosure of protected health information. A lack of clarity in the notice could undermine this goal and create misunderstandings. Covered plans or providers have an incentive to make their notice statements clear and concise. We believe that the more understandable notices are, the more confidence the public will have in the entity's commitment to protecting the privacy of health information.

It is important that the content of the notice be communicated to all recipients and therefore we would encourage the covered plan or provider to consider alternative means of communicating with certain populations. We note that any covered entity that is a recipient of federal financial assistance is generally obligated under title VI of the Civil Rights Act of 1964 to provide material ordinarily distributed to the public in the primary languages of persons with limited English proficiency in the recipients' service areas. Specifically, this title VI obligation provides that, where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program need service or information in a language other than English in order to be effectively informed of or participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in language appropriate to such persons. For entities not subject to title VI, the title VI standards provide helpful guidance for effectively communicating the content of their notices to non-English speaking populations.

We also would encourage covered plans or providers to be attentive to the needs of individuals who cannot read. For example, an employee of the entity could read the notice to individuals upon request or the notice could be incorporated into a video presentation that is played in the waiting area.

The requirement of a printed notice should not be interpreted as a limitation. For example, if an individual who is requesting a notice from a covered plan or providers were to ask to receive the notice via e-mail, the requirements of this proposed rule could be met by providing the notice via e-mail. The proposed rule would not preclude the use of alternative forms of providing the notice and we would encourage covered plans or providers to use other forms of distribution, such as posting their privacy notices on their web sites. While this will not substitute for paper distribution when that is requested by an individual, it may reduce the number of requests for paper copies.

2. Rights and Procedures for Access for Inspection and Copying (§ 164.514)

a. *Right of access for inspection or copying.* (§ 164.514(a))

[Please label comments about this section with the subject: "Access for inspection or copying"]

In § 164.514, we are proposing that, with very limited exceptions, individuals have a right to inspect and copy protected health information about them maintained by a covered health plan or health care provider in a designated record set. Individuals would also have a right of access to protected health information in a designated record set that is maintained by a business partner of a covered plan or provider when such information is not a duplicate of the information held by the plan or provider, including when the business partner is the only holder of the information or when the business partner has materially altered the protected health information that has been provided to it.

This right of access means that an individual would be able to either inspect or obtain copies of his or her health information maintained in a designated record set by covered plans and providers and, in limited circumstances, by their business partners. Inspection and copying is a fundamental aspect of protecting privacy; this right empowers individuals by helping them to understand the nature of the health information about them that is held by their providers and plans and to correct errors. In order to facilitate an open and cooperative relationship with providers and allow the individual a fair opportunity to know what information is held by an entity, inspection and copying should be permitted in almost every case.

While the right to have access to one's information may appear somewhat different from the right to keep information private, these two policy goals have always been closely tied. For example, individuals are given an almost absolute right of access to information in federal health record systems under the Privacy Act of 1974 (5 U.S.C. 552a(d)). The Privacy Protection Study Commission recommended that this right be available. (Personal Privacy in an Information Society 299 (1977)). The right of access was a key component of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry recommendations in the Consumer Bill of Rights and Responsibilities. The Commission's report stated that consumers should "have the right to review and copy their own medical records and request amendments to their records." (Consumer Bill of Rights and Responsibilities, Chapter Six: Confidentiality of Health Information, November 1997). Most recently, the Health Privacy Project issued a statement of "Best Principles for Health Privacy" that included the same recommendation. Health Privacy Project, Institute for Health Policy Solutions, Georgetown University (June 1999) (http://www.healthprivacy.org).

Open access to health information can benefit both the individuals and the covered entities. It allows individuals to better understand their own diagnosis and treatment, and to become more active participants in their health care. It can increase communication, thereby enhancing individuals' trust in their health care providers and increasing compliance with the providers' instructions. If individuals have access to and understand their health information, changing providers may not disrupt health care or create risks based on lack of information (e.g., drug allergies or unnecessary duplication of tests).

i. *Information available for inspection and copying.*

In § 164.514(a), we are proposing to give the individual a right of access to information that is maintained in a designated record set. We intend to provide a means for individuals to have access to any protected health information that is used to affect their rights and interests. This would include, for example, information that would be used to make health care decisions or information that would be used in determining whether an insurance claim would be paid. Covered plans or providers often incorporate the same protected health information that is used to make these types of decisions into a variety of different data systems. Not all of those data systems will be utilized to make determinations about specific individuals. For example, information systems that are used for quality control analyses are not usually used to make determinations about a specific patient. We would not require access to these other systems.

In order to ensure that individuals have access to the protected health information that is used, we are introducing the concept of a "designated record set." In using the term "designated record set," we are drawing on the concept of a "system of records" that is used in the Privacy Act. Under the Privacy Act, federal agencies must provide an individual with access to "information pertaining to him which is contained in (a system of records)." 5 U.S.C. 552a(d)(1). A "system of records" is defined as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. 552a(a)(5). Under this rule, a "designated record set" would be "a group of any records under the control of any covered entity from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." See discussion in section II.B.

Files used to backup a primary data system or the sequential files created to transmit a batch of claims to a clearinghouse are clear examples of data files which do not fall under this definition. We rejected requiring individual access to all records in which she or he was identifiable because of the extreme burden it would place on covered plans or providers without providing additional information or protection for the individual. We also rejected using the subset of such records which were accessed directly by individual identifiers because of the redundancy of information involved and the increasing use of database management systems to replace legacy systems that do sequential processing. These would be accessed by individual identifier but would contain redundant data and be used for routine processing that did not directly affect the individual. We concluded that access to only such record sets that were actually accessed by individual identifier and that were used to make substantive decisions that affect individuals would provide the desired information with a minimum of burden for the covered plans or providers.

We note that the standard would apply to records that are "retrieved" by an identifier and not records that are only "retrievable" by an identifier. In many cases, technology will permit sorting and retrieving by a variety of fields and therefore the "retrievable" standard would be relatively meaningless. We intend to limit access to those sets of records actually used to affect the interests of the individual.

We believe that by providing access to protected health information maintained in a designated record set, we would be ensuring that individuals will be able to inspect or copy relevant and appropriate information without placing too significant of a burden on covered plans or providers. We are soliciting comment on whether limiting access to information maintained in a designated record set is an appropriate standard when applied to covered plans and providers and their business partners.

ii. *Right of access to information maintained by business partners.*

In § 164.506(e), we are proposing that covered plans and providers include specific terms in their contract with each business partner. One of the required terms would be that the business partner must provide for inspection and copying of protected health information as provided in this section. Because our authority is limited by HIPAA to the covered entities, we must rely upon covered plans and providers to ensure that all of the necessary protected health information provided by the individual to the plan or provider is available for inspection and copying. We would require covered plans and providers to provide access to information held in the custody of a business partner when it is different from information maintained by the covered plan or provider. We identified two instances where this seemed appropriate: when the protected health information is only in the custody of a business partner and not in the custody of the covered plan or provider; and when protected health information has been materially altered by a business partner. We are soliciting comment on whether there are other instances where access should be provided to protected health information in the custody of a business partner.

Other than in their capacity as business partners, we are not proposing to require clearinghouses to provide access for inspection and copying. As explained above in section II.C.5, clearinghouses would usually be business partners under this proposed rule and therefore they would be bound by the contract with the covered plan or provider. See proposed § 164.506(e). We carefully considered whether to require clearinghouses to provide access for inspection and copying above and beyond their obligations as a business partner, but determined that the typical clearinghouse activities of translating record formats and batching transmissions do not involve setting up designated record sets on individuals. Although the data maintained by the clearinghouse is protected health information, it is normally not accessed by individual identifier and an individual's records could not be found except at great expense. In addition, although clearinghouses process protected health information and discover errors, they do not create the data and make no changes in the original data. They, instead, refer the errors back to the source for correction. Thus, individual access to clearinghouse records provides no new information to the individual but could impose a significant burden on the industry.

As technology improves it is likely that clearinghouses will find ways to take advantage of databases of protected health information that aggregate records on the basis of the individual subject of the information. This technology would allow more cost-effective access to clearinghouse records on individuals and therefore access for inspection and copying could be appropriate and reasonable.

iii. *Duration of the right of access.*

We are proposing that covered plans and providers be required to provide access for as long as the entity maintains the protected health information. We considered requiring covered plans and providers to provide access for a specific period or defining a specific retention period. We rejected that approach because many laws and professional standards already designate specific retention periods and we did not want to create unnecessary confusion. In addition, we concluded that individuals should be permitted to have access for as long as the information is maintained by the covered plan or provider. We are soliciting comments on whether we should include a specific duration requirement in this proposed rule.

b. *Grounds for denial of access for inspection and copying.* Proposed § 164.514 would permit denial of inspection and copying under very limited circumstances. The categories of denials would not be mandatory; the entity could always elect to provide all of the requested health information to the individual. For each request by an individual, the entity could provide all of the information requested or it could evaluate the requested information, consider the circumstances surrounding the individual's request, and make a determination as to whether that request should be granted or denied. We intend to create narrow exceptions to the stated rule of open access and we would expect covered plans and providers to employ these exceptions rarely, if at all.

In proposing these categories of permissible denials, we are not intending to create a legal duty for the entity to review all of the health information before releasing it. Rather, we are proposing them as a means of preserving the flexibility and judgment of covered plans or providers under appropriate circumstances.

Entities subject to the Privacy Act would not be able to deny a request for inspection and copying under all of the circumstances permitted by this proposed rule. They would continue to be governed by the denials permitted by the Privacy Act and applicable regulations. See section II.I.4.a for further discussion.

i. *Disclosures reasonably likely to endanger life or physical safety.*

In § 164.514(b)(1)(i), we propose that covered plans and providers be permitted to deny a request for inspection or copying if a licensed health care professional has determined that, in the exercise of reasonable professional judgment, the inspection and copying requested is reasonably likely to endanger the life or physical safety of the individual or another person. Denial based on this provision, as with all of the provisions in this section, would be discretionary. While it is important to protect the individual and others from physical harm, we are also concerned about the subjectivity of the standard and are soliciting comments on how to incorporate a more objective standard into this provision.

We are proposing that covered plans and providers should only consider denying a request for inspection and copying under this provision in situations where a licensed health care professional (such as a physician, physician's assistant or nurse) makes the determination that access for inspection and copying would be reasonably likely to endanger life or physical safety. We are proposing to require a licensed health care professional to make the determination because it would rely entirely on the existing standards and ethics in the medical profession. In some instances, the covered plan or provider would be a licensed health care professional and therefore, he or she could make the determination independently. However, when the request is made to a health plan, the entity would need to consult with a health care professional in order to deny access under this provision.

We are soliciting comments as to whether the determination under this provision should be limited to health care professionals who have an existing relationship with the individual. While such a limitation would significantly restrict the scope of this provision and could reduce the number of denials of requests for inspection and copying, it could also ensure that the determination of potential harm is as accurate as possible.

By proposing to allow covered plans and providers to deny a request for inspection and copying based on potential endangerment, we are not suggesting that entities should deny a request on that basis. This provision is not intended to be used liberally as a means of denial of individual inspection and copying rights for all mental health records or other "sensitive" health information. Each request for access would have to be assessed on its own merits. We would expect the medical community to rely on its current professional standards for determining what constitutes a threat to life or physical safety.

As explained above, we are not proposing to create a new "duty" whereby entities can be held liable for failure to deny inspection and copying. We simply are acknowledging that some providers, based on reasonable professional judgment, may already assume a duty to protect an individual from some aspect of their health information because of the potential for physical harm. The most commonly cited example is when an individual exhibits suicidal or homicidal tendencies. If a health care professional determines that an individual exhibits such tendencies and that permitting inspection or copying of some of their health information could reasonably result in the individual committing suicide, murder or other physical violence, then the individual could be denied access to that information.

We considered whether covered plans and providers should be permitted to deny access on the basis of sensitivity of the health information or the potential for causing emotional or psychological harm. Many States allow denial of access on similar grounds. In balancing the desire to provide individual access against the need to protect the individual, we concluded that the individual access should prevail because in the current age of health care , it is critical that the individual is aware of his or her health information.

Therefore, if a health care professional determines that inspection and copying of the requested information may cause emotional or psychological harm, but is not reasonably likely to endanger the life or physical safety of the individual or another person, then the covered plan or provider would not be permitted to deny the individual's request. If the entity is concerned about the potential for emotional or psychological harm, we would encourage it to offer special procedures for explaining the information or counseling the individual. For example, an entity could offer to have a nurse or other employee review the information or the format with the individual or provide supplemental written materials explaining a diagnosis. If the entity elects to offer such special procedures, the entity would not be permitted to condition inspection and copying upon compliance with the procedures. We are not proposing to require covered plans or providers to establish any informational or counseling procedures and we are not proposing that individuals be required to comply with any procedures in order to obtain access to their protected health information. We invite comment on whether a standard such as emotional distress or psychological harm should be included as a reason for which a covered plan or provider could deny a request for inspection or copying.

ii. *Disclosures likely to cause harm to another individual.*

We propose that covered plans and providers be permitted to deny a request for inspection or copying if the information requested is about another person (other than a health care provider) and a licensed health care professional has determined that inspection or copying is reasonably likely to cause substantial harm to that other person. We believe that it is rare that information about one person would be maintained within the health records of another without one or both of their knowledge. On some occasions when health information about one person is relevant to the care of another, a physician may incorporate it into the latter's record, such as information from group therapy sessions and illnesses with a genetic component. In some instances the information could be shared without harm, or may already be known to the individual. There may, however, be situations where disclosure could harm the other person, such as by implicitly revealing facts about past sexual behavior, nonpaternity, or similarly sensitive information. This provision would permit withholding of information in such cases.

We believe that this determination should be based on the existing standards and ethics in the medical profession. We are soliciting comments on whether the determination under this provision should be limited to health care professionals who have an existing relationship with the person who is expected to be harmed as a result of the inspection or copying.

Information about a third party may appear in an individual's records unbeknownst to the individual. In such cases if the individual chooses to exercise her right to inspect her protected health information, the covered plan or provider providing her access would be making an unauthorized disclosure unless the third party has provided a written authorization. We considered requiring that access to such information be denied because the third party had not provided an authorization. We considered proposing that the covered plan or provider would be required to deny an individual's request for access to any information about another person, unless there was a potential for harm to the individual who would be denied. This would have been the only instance where we would require that access be denied as a general rule. We recognized that such requirements would ultimately require covered plans and providers to review every piece of protected health information before permitting inspection and copying to determine if information about another person was included and whether the requester would be harmed without such information. We concluded that this would impose a significant burden on covered plans and providers. We seek comment on whether and how often individual health records contain identifiable information about other persons, and current practice relating to the handling of such information in response to individual requests for access.

iii. *Disclosures of confidential information likely to reveal the source.*

We propose that covered plans or providers be permitted to deny a request for inspection and copying if the entity determines that the requested information was obtained under a promise of confidentiality from someone other than a health care provider and such access would be likely to reveal the source of the information. This provision is intended to preserve an entity's ability to maintain an implicit or explicit promise of confidentiality.

Covered plans and providers would not be permitted to deny access when the information has been obtained from another health care provider. An individual is entitled to have access to all information about him or her generated by the health care system (apart from the other exceptions we propose here), and confidentiality promises by health care providers to other providers should not interfere with that access.

iv. *Disclosures of clinical trial information.*

While a clinical trial is research, it is also health care as defined in § 160.103, and the information generated in the course of the trial would be protected health information. In § 164.514(b)(iv), we are proposing that a researcher/provider could deny a request for inspection and copying of the clinical trial record if the trial is still in progress, and the subject-patient had agreed to the denial of access in conjunction with the subject's consent to participate in the trial. The IRB or privacy board would determine whether such waiver of access to information is appropriate, as part of its review of the research protocol. In the rare instances in which individuals are enrolled in trials without consent (such as those permitted under FDA regulations, at 21 CFR 50.23), the covered entity could deny access to information during the course of the trial even without advance subject consent.

Clinical trials are often masked—the subjects do not know the identity of the medication they are taking, or of other elements of their record while the trial is in progress. The research design precludes their seeing their own records and continuing in the trial. Thus it is appropriate for the patient to waive the right to see the record while the trial is in progress. This understanding would be an element of the patient's consent to participate in the trial; if the consent signed by the patient did not include this fact, the patient would have the normal right to see the record. In all cases, the subject would have the right to see the record after the trial is completed.

As with all grounds for denial of access, denial would not be required under these circumstances. We would expect all researchers to maintain a high level of ethical consideration for the welfare of trial participants and provide access where appropriate. For example, if a participant has a severe adverse reaction, disclosure of information during the course of the trial may be necessary to give the participant adequate information for proper treatment decisions.

v. *Disclosure of information compiled for a legal proceeding.*

In § 164.514(b)(1)(v), we are proposing that covered plans and providers be permitted to deny a request for inspection and copying if the information is compiled in reasonable anticipation of, or for use in, a legal proceeding. This provision would permit the entity to deny access to any information that relates specifically to legal preparations but not to the individual's underlying health information. For example, when a procedure results in an adverse outcome, a hospital's attorney may obtain statements or other evidence from staff about the procedure, or ask consultants to review the facts of the situation for potential liability. Any documents containing protected health information that are produced as a result of the attorney's inquiries could be kept from the individual requesting access. This provision is intended to incorporate the attorney work-product privilege. Similar language is contained in the Privacy Act and has been interpreted to extend beyond attorneys to information prepared by "lay investigators."

We considered limiting this provision to "civil" legal proceedings but determined that such a distinction could create difficulties in implementation. In many situations, information is gathered as a means of determining whether a civil or criminal violation has occurred. For example, if several patients were potentially mistreated by a member of a provider's staff, the provider may choose to get copies of the patients' records and interview other staff members. The provider may not know at the time they are compiling all of this information whether any investigation, civil or criminal, will take place. We are concerned that if we were to require the entity to provide the individual with access to this information, we might unreasonably interfere with this type of internal monitoring.

c. *Provision of other protected health information where access for inspection and copying is denied.* In proposed § 164.514(b)(2), we would require a covered plan or provider that elects to deny a request for inspection or copying as provided above to make any other protected health information requested available to the individual to the extent possible consistent with the denial. The plan or provider could redact or otherwise exclude only the information that falls within one or more of the denial criteria described above and would be required to permit inspection and copying of all remaining information. This provision is key to the right to inspect and copy one's health information. We intend to create narrow exceptions to the stated rule of open access for inspection and copying and we would expect covered plans or providers to employ these exceptions rarely, if at all. In the event that a covered plan or provider would find it necessary to deny access, then the denial would need to be as limited in scope as possible.

d. *Procedures to effect right of access for inspection and copying.* In § 164.514(c) and (d), we are proposing that covered plans and providers be required to have procedures that enable individuals to exercise their rights to inspect and obtain a copy of protected health information as explained above.

We considered whether this proposed rule should include detailed procedures governing a individual's request for inspection and copying. Because this proposed rule will affect such a wide range of entities, we concluded that it should only provide general guidelines and that each entity should have the discretion to develop procedures consistent with its own size, systems, and operations.

i. *Time limits.*

In § 164.514(d)(2), we are proposing that the covered plans and providers would take action upon the request as soon as possible but not later than 30 days following receipt of the request. We considered the possibility of not including a time limitation but rather imposing a "reasonableness" requirement on the covered plans or providers. We concluded that the individual is entitled to know when to expect a response. This is particularly important in the context of health information, where an individual may need access to his or her information in order to make decisions about care. Therefore, in order to determine what would be "reasonable," we examined the time limitations provided in the Privacy Act, the Freedom of Information Act (FOIA), and several State laws.

If the entity had fulfilled all of its duties under this proposed rule within the required time period, then the entity should not be penalized for any delay by the individual. For example, if, within the 30 days, a provider approves a request for inspection and copying, makes copies of the requested information, and notifies the individual that this information is available to be picked up and paid for at the provider's office, then the provider's duty would be discharged under the rule. The individual might not be able to pick up the information for another two weeks, but this extra time should not be counted against the provider.

The Privacy Act requires that upon receipt of a request for amendment (not access), the agency would send an acknowledgment to the individual within 10 working days. (5 U.S.C. 552a (d)(2)). We considered several options that included such an acknowledgment requirement. An acknowledgment would be valuable because it would assure the individual that their request was received. Despite the potential value of requiring an acknowledgment, we concluded that it could impose a significant administrative burden on some of the covered plans and providers. This proposed rule will cover a wide range of entities with varying capacities and therefore, we are reluctant to create requirements that would overwhelm smaller entities or interfere too much with procedures already in place. We would encourage plans and providers to have an acknowledgment procedure in place, but would not require it at this point. We are soliciting comment on whether this proposed rule should require such an acknowledgment.

We also considered whether to include specific procedures governing "urgent" or "emergency" requests. Such procedures would require covered plans and providers to respond in a shorter time frame. We recognize that circumstances may arise where an individual will request inspection and copying on an expedited basis and we encourage covered plans or providers to have procedures in place for handling such requests. We are not proposing additional regulatory time limitations to govern in those circumstances. The 30-day time limitation is intended to be an outside deadline, rather than an expectation. Rather, we would expect a plan or provider to always be attentive to the circumstances surrounding each request and respond in an appropriate time frame, not to exceed 30 days.

Finally, we considered including a section governing when and how an entity could have an extension for responding to a request for inspection and copying. For example, the FOIA provides that an agency may request additional time to respond to a request if the agency needs to search for and collect the requested records from facilities that are separate from the office processing the request; to search for, collect, and appropriately examine a voluminous amount of separate and distinct records; and to consult with another entity or component having a substantial interest in the determination of the request. We determined that the criteria established in the FOIA are tailored to government information systems and therefore may not be appropriate for plans and providers covered by this proposed rule. Furthermore, we determined that the 30-day time period would be sufficient for responding to requests for inspection and copying and that extensions should not be necessary. We are soliciting comments on whether a structured extension procedure should be included in this proposed rule.

ii. *Notification of accepted requests.*

In § 164.514(d)(3), we are proposing that covered plans or providers be required to notify the individual of the decision to provide access and of any steps necessary to fulfill the request. In addition we propose that the entity provide the information requested in the form or format requested if it is readily producible in such form or format. Finally, if the covered plan or provider accepts an individual's request, it would be required to facilitate the process of inspection and copying.

For example, if the plan or provider will be making copies and sending them directly to the individual with an invoice for copying costs, then it would need to ensure that the individual is aware of this procedure in advance and then send the information within the 30-day time period. If the plan or provider has procedures that require the individual to inspect the health information on site, then in addition to notifying the individual of the procedure, the entity would need to ensure that there are representatives available during reasonable business hours at the usual business address who can assist with inspection and copying. If the plan or provider maintains health information electronically and the individual requests an electronic copy, the plan or provider would need to accommodate such request if possible.

iii. *Copying fees.*

In proposed § 164.514(d)(3)(iv), we would permit a covered plan or provider to charge a reasonable, cost-based fee for copying health information provided pursuant to this section. We considered whether we should follow the practice in the FOIA and include a structured fee schedule. We concluded that the FOIA was developed to reflect the relatively uniform government costs and that this proposed rule would apply to a broader range of entities. Depending on the size of the entity, copying costs could vary significantly. Therefore, we propose that the entity simply charge a reasonable, cost-based fee.

The inclusion of a fee for copying is not intended to impede the ability of individuals to copy their records. Rather, it is intended to reduce the burden on covered plans and providers. When establishing a fee for copying, we encourage covered plans and providers to consider the impact on individuals of such a cost. If the cost is excessively high, some individuals would not be able to obtain a copy. We would encourage covered plans or providers to make efforts to keep the fee for copying within reach of all individuals.

iv. *Statement of denial of access for inspection and copying.*

In § 164.514(d)(4), we propose that a covered plan or provider that denies an individual's request for inspection and copying in whole or in part be required to provide the individual with a written statement in plain language explaining the reason for the denial. The statement could include a direct reference to the section of the regulation relied upon for the denial, but the regulatory citation alone would not sufficiently explain the reason for the denial. The statement would need to include the name and number of the contact person or office within the entity who is responsible for receiving complaints. In addition, the statement would need to include information regarding the submission of a complaint with the Department pursuant to § 164.522(b).

We considered proposing that covered plans and providers provide a mechanism for appealing a denial of inspection and copying. We believe, however, that the requirement proposed in § 164.518(d) that covered plans and providers have complaint procedures to address patient and enrollee privacy issues generally would allow the individual to raise the issue of a denial with the covered plan or provider. We would expect the complaint procedures to be scalable; for example, a large plan might develop a standard complaint process in each location where it operates whereas, a small practice might simply refer the original request and denial to the clinician in charge for review. We would encourage covered plans and providers to institute a system of appeals, but would not require it by regulation. In addition, the individual would be permitted to file a complaint with the Department pursuant to § 164.522(b).

3. Rights and Procedures With Respect to an Accounting of Disclosures. (§ 164.515)

[Please label comments about this section with the subject: "Accounting of disclosures"]

a. *Right to accounting of disclosures.* In this rule, we propose that individuals have a right to receive an accounting of all instances where protected health information about them is disclosed by a covered entity for purposes other than treatment, payment, and health care operations, subject to certain time-limited exceptions for disclosures to law enforcement and oversight agencies as discussed below. Providing such an accounting would allow individuals to understand how their health information is shared beyond the basic purposes of treatment, payment and health care operations.

We considered whether to require covered entities to account for all disclosures, including those for treatment, payment and health care operations. We rejected this approach because it would be burdensome and because it would not focus on the disclosures of most interest to individuals. Upon entering the health care system, individuals are generally aware that their information will be used and shared for the purpose of treatment, payment and health care operations. They have the greatest interest in an accounting of circumstances where the information was disclosed for other purposes that are less easy to anticipate. For example, an individual might not anticipate that his or her information would be shared with a university for a research project, or would be requested by a law enforcement agency.

We are not proposing that covered entities include uses and disclosures for treatment, payment and health care operations in the accounting. We believe that it is appropriate for covered entities to monitor all uses and disclosures for treatment, payment and health care operations, and they would be required to do so for electronically maintained information by the Security Standard. However, we do not believe that covered entities should be required to provide an accounting of the uses and disclosures for treatment payment and health care operations.

The proposed Security Standard would require that "[e]ach organization * * * put in place audit control mechanisms to record and examine system activity. They would be important so that the organization can identify suspect data access activities, assess its security program, and respond to potential weaknesses." The purpose of the audit control mechanism, or audit trail, in the Security Standard would be to provide a means for the covered entity to police access to the protected health information maintained in its systems. By contrast, the purpose of the accounting would be to provide a means for individuals to know how the covered entity is disclosing protected health information about them. An audit trail is critical to maintaining security within the entity and it could be constructed in such a way to enable the covered plan or provider to satisfy the requirements of both regulations. For example, every time protected health information was used or disclosed, the audit mechanism could prompt the user for a "purpose." If the disclosure was for a purpose other than treatment, payment or health care operations, then the information could be flagged or copied into a separate database. This would allow the entity to both monitor security and have the ability to provide an accurate accounting upon request.

Covered entities should know how all protected health information is used and disclosed, but should not be required to provide an exhaustive accounting of all uses and disclosures to individuals upon request. Such an accounting could be extremely long and detailed. It would place a tremendous burden on the covered entities and it could be far too detailed to adequately inform the individual. We determined that when individuals seek health care, they understand that information about them will be used and disclosed in order to provide treatment or obtain payment and therefore, they would have the most significant interest in knowing how protected health information was used and disclosed beyond the expected realm of treatment, payment and health care operations. We are soliciting comment on whether the scope of accounting strikes an appropriate balance between providing information to the individual and imposing requirements on covered entities.

We are proposing that covered entities be required to provide an accounting of disclosures for as long as the entity maintains the protected health information. We considered only requiring the accounting for a specified period of time, but concluded that individuals should be permitted to learn how their information was disclosed for as long as the information is maintained by the covered plan or provider. We are soliciting comments on whether we should include a specific time period in this proposed rule.

b. *Procedures for providing an accounting of disclosures.*

i. *Form or format.*

This proposed rule does not specify a particular form or format for the accounting. In order to satisfy the accounting requirement, a covered entity could elect to maintain a systematic log of disclosures or it could elect to rely upon detailed record keeping that would permit the entity to readily reconstruct the history when it receives a request from an individual. We would require that covered entities be able to respond to a request for accounting within a reasonable time period. In developing the form or format of the accounting, covered entities should adopt policies and procedures that will permit them to respond to requests within the 30-day time period in this proposed rule.

ii. *Content of the accounting of disclosures.*

We are proposing that the accounting include all disclosures for purposes other than treatment, payment, and health care operations, subject to certain exceptions for disclosures to law enforcement and oversight agencies, discussed below. This would also include disclosures that are authorized by the individual. The accounting would include the date of each disclosure; the name and address of the organization or person who received the protected health information; and a brief description of the information disclosed. For all disclosures that are authorized by the individual, we are proposing that the covered entity maintain a copy of the authorization form and make it available to the individual with the accounting.

We considered whether the accounting of disclosures should include the name of the person who authorized the disclosure of information. The proposed Security Standard would require covered entities to have an audit mechanism in place to monitor access by employees. We concluded that it was unnecessary and inappropriate to require the covered entity to include this additional information in the accounting. If the individual identifies an improper disclosure by an entity, he or she should hold the entit—not the employee of the entity—accountable. It is the responsibility of the entity to train its workforce about its policies and procedures for the disclosure of protected health information and to impose sanctions if such policies and procedures are violated.

We are proposing that protected health information that is disclosed to a health oversight or law enforcement agency would be excluded from the accounting if the oversight or law enforcement agency provides a written request stating that the exclusion is necessary for a specified time period because access by the individual during that time period would be reasonably likely to impede the agency's activities. The written request must specifically state how long the information should be excluded. At the expiration of that period, the covered entity would be required to include the information in an accounting for the individual.

We are proposing this time-limited exclusion for law enforcement and oversight activities because we do not intend to unreasonably interfere with investigations and other activities that are in the public interest. The Recommendations simply provide that disclosures to law enforcement and oversight agencies should be excluded from the accounting where access by the individual could be reasonably likely to impede the agency's activities. We were concerned that it would be difficult for covered entities to determine whether access by the individual was "reasonably likely to impede the agency's activities." In order to address this concern, we considered excluding all disclosures to law enforcement and oversight from the accounting, but concluded that such an exclusion would be overly broad. As a means of creating a clearly defined rule for the covered entity to follow, we are proposing that covered entities require a time-limited, written statement from the oversight or law enforcement agency. We are soliciting comment on whether this time-limited exclusion strikes the appropriate balance between ensuring individual access to an accounting of disclosures and preserving the integrity of law enforcement and oversight investigations.

iii. *Time limits.*

We are proposing that the accounting of disclosures, including copies of signed authorization forms, be made available to the individual as quickly as the circumstances require, but not later than 30 days following receipt of the request.

4. Rights and Procedures for Amendment and Correction (§ 164.516)

[*Please label comments about this section with the subject: "Amendment or correction"*]

a. *Right to request amendment or correction of protected health information.* This proposed rule would provide an individual with the right to request a covered plan or provider to amend or correct protected health information relating to the individual. A covered plan or provider would be required to accommodate requests with respect to any information that the covered plan or provider determines to be erroneous or incomplete, that was created by the plan or provider, and that would be available for inspection and copying under proposed § 164.514.

i. *Accuracy and completeness.*

The first criteria that a covered entity would need to consider is whether the protected health information at issue is either erroneous or incomplete. The basic concept comes from the Privacy Act of 1974, governing records held by Federal agencies, which permits an individual to request correction or amendment of a record "which the individual believes is not accurate, relevant, timely, or complete." (5 U.S.C. 552a(d)(2)). We would adopt the standards of "accuracy" and "completeness" and draw on the clarification and analysis of these terms that has emerged in administrative and judicial interpretations of the Privacy Act over the last 25 years.

We are not proposing to permit correction on the basis of an individual's belief that information is irrelevant or untimely. The Privacy Act of 1974 imposes affirmative obligations on Federal agencies to maintain records with accuracy, relevance, timeliness, and completeness, and permits individuals to seek correction of records that do not meet that standard. The amendment and correction right complements and helps to enforce the agency obligation.

Our view is that the relevance and timeliness standards, while very appropriate for Federal agencies generally, would be difficult to impose by regulation upon health record keeping, which depends to a large extent on clinical judgment. The increasingly-recognized impact of lifestyle and environmental factors on health may, for example, motivate physicians to record information which appears irrelevant, but which may in fact serve as a diagnostic clue, or which may alert later users of the record to clinically relevant aspects of the patient's life. We invite comment on how any such standard might be structured to avoid interfering inappropriately with clinical judgment.

We also are concerned about the burden that requests for amendment or correction may place on covered plans and providers and have tried to limit the process to those situations where amendment or correction would appear to be most important. We invite comment on whether our approach reasonably balances burden with adequately protecting individual interests.

We note that for Federal agencies that are also covered plans or providers, the rule we are proposing would not diminish their present obligations under the Privacy Act of 1974, under which all four factors are bases for amendment and correction.

ii. *Original creator of the information.*

We propose to require a covered plan or provider to accommodate a request for amendment or correction if the plan or provider created the information in dispute.

We considered requiring covered plans and providers to amend or correct any erroneous or incomplete information it maintains, regardless of whether it created the information. Under this approach, if the plan or provider did not create the information, then it would have been required to trace the information back to the original source to determine accuracy and completeness. We rejected this option because we concluded that it would not be appropriate to require the plan or provider that receives a request to be responsible for verifying the accuracy or completeness of information that it did not create. We also were concerned about the burden that would be imposed on covered plans and providers if they were required to trace the source of any erroneous or incomplete information transmitted to them.

We would rely on a combination of three other requirements to ensure that protected health information remains as accurate as possible as it travels through the health care system. First, we are proposing that a covered plan or provider that makes an amendment or correction be required to notify any relevant persons, organizations, or other entities of the change or addition. Second, we are proposing that other covered plans or providers that receive such a notification be required to incorporate the necessary amendment or correction. Finally, we are proposing that covered plans or providers require their business partners who receive such notifications to incorporate any necessary amendments or corrections. See discussion in section II.F.4.c.iii. We are soliciting comments whether this approach would effectively ensure that amendments and corrections are communicated appropriately.

iii. *Information available for amendment or correction.*

We are proposing that the right to request amendment or correction extend to all protected health information that would be available for inspection and copying under § 164.514. We would only require covered plans and providers to amend or correct that information maintained in a designated record set but would encourage the development of systems that would accommodate these types of changes for all data collections. For protected health information that is maintained solely by a business partner or that has been materially altered by a business partner, the covered plan or provider would need to make arrangements with the business partner to accommodate any requests.

This right would not be intended to interfere with medical practice, or modify standard business record keeping practices. Perfect records are not required, but instead a standard of reasonable accuracy and completeness should be used. In addition, this right would not be intended to provide a procedure for substantive review of decisions such as coverage determinations by payers. It would only affect the content of records, not the underlying truth or correctness of materials recounted therein. Attempts under the Privacy Act of 1974 to use this correction mechanism as a basis for collateral attack on agency determinations have generally been rejected by the courts. The same results would be intended here.

iv. *Duration of the right to request amendment or correction.*

We are proposing that covered plans and providers be required to accommodate requests for amendment or correction for as long as the entity maintains the protected health information. We considered requiring covered plans and providers to accommodate requests for a specific period or defining a specific retention period. We rejected that approach because many laws and professional standards already designate specific retention periods and we did not want to create confusion. In addition, we concluded that individuals should be permitted to request amendments or corrections for as long as the information is maintained by the covered plan or provider. We are soliciting comments on whether we should include a specific duration requirement in this proposed rule.

b. *Grounds for denial of request for amendment or correction.* We are proposing that a covered plan or provider would be permitted to deny a request for amendment or correction if, after a reasonable review, the plan or provider determines that it did not create the information at issue, the information would not be available for inspection and copying under proposed § 164.514, the information is accurate and complete, or if it is erroneous or incomplete, it would not adversely affect the individual.

c. *Procedures for requesting amendment or correction.*

i. *Individual requests for amendment or correction.*

In § 164.516, we are proposing that covered plans and providers be required to have procedures that enable individuals to exercise their rights to request amendment or correction, including a means by which individuals can request amendment or correction of protected health information about them. We considered whether this proposed rule should include detailed procedures governing an individual's request. But as with the procedures for requesting inspection and copying, we are only providing a general requirement and permitting each plan or provider to develop procedures in accordance with its needs. Once the procedures are developed, the plan or provider would document them in accordance with section § 164.520 and include a brief explanation in the notice that is provided to individuals pursuant to section § 164.512.

ii. *Time limits.*

We are proposing that the covered plan or provider would take action on a request for amendment or correction as quickly as the circumstances require, but not later than 60 days following the request. The justification for establishing a time limitation for amendment and correction is virtually identical to that provided for the time limitation for inspection and copying. We concluded that the entity should be provided with some additional flexibility in this context. Depending on the nature of the request, an amendment or correction could require significantly more time than a request for inspection and copying. If a covered plan or provider needed more than 30 days to make a decision, we would encourage, but not require, it to send an acknowledgment of receipt to the individual including an explanation of the reasons for the delay and a date when the individual can expect a final decision.

iii. *Acceptance of a request for amendment or correction.*

If a covered plan or provider accepts an individual's request for amendment or correction, it would be required to make the appropriate amendments or corrections. In making the change, the entity would have to either add the amended or corrected information as a permanent part of the record or mark the challenged entries as amended or corrected entries and, if appropriate, indicate the place in the record where the amended or corrected information is located. Covered plans or providers would not be required to expunge any protected health information, but rather mark it as erroneous or incomplete.

We also propose in § 164.506(e) that entities include a contract requirement that when the covered plan or provider notifies the business partner of an amendment or correction, the business partner must make the necessary amendments or corrections to protected health information in its custody.

In § 164.516(c)(3), we are proposing that, upon accepting an amendment or correction, the covered plan or provider would be required to make reasonable efforts to notify relevant persons, organizations, or other entities of the change or addition. An entity would be required to notify such persons that the individual identifies, or that the covered plan or provider identifies as (1) a recipient of the erroneous or incomplete information, and (2) a person who:

- Has relied upon that information to the detriment of the individual; or
- Is a person who may foreseeably rely on such erroneous or incomplete information to the detriment of the individual.

We are concerned about the potential burden that this notification requirement would impose on covered plans and providers. We do not, however, anticipate that a significant number of requests would be submitted to any entity and therefore the need for such notifications would be rare. In addition, we determined that because health information can travel so quickly and efficiently in the modern health care system, the need for notification outweighed the potential burden. It is important to note that a reasonableness standard should be applied to the notification process—if the recipient has not relied upon the erroneous or incomplete information to the detriment of the individual or if it is not foreseeable that the recipient will do so, then it would not be reasonable for the covered plan or provider to incur the time and expense of notification. If, however, the incorrect information is reasonably likely to be used to the detriment of the individual, the entity should make every effort to notify the recipients of the information of the changes as quickly as possible.

iv. *Denial of a request for amendment or correction.*

In proposed § 164.516(c)(4), we would require a covered plan or provider to provide the individual with a written statement in plain language of the reason for the denial and permit the individual to file a written statement of disagreement with the decision to deny the request.

The statement prepared by covered plan or provider would be required to explain the basis for the denial. The statement would include a description of how the individual may complain to the covered plan or provider as provided in § 164.518(d). The statement would include the name and number of the contact person within the plan or provider who is responsible for receiving complaints. The statement also would include information regarding filing a complaint with the Secretary pursuant to § 164.522(b)(1), including the mailing address and any forms that may be available. Finally, the statement would explain that the individual has the right to file a written statement of disagreement that would be maintained with the disputed information and the procedure for filing such a statement of disagreement.

If the individual chooses to file a statement of disagreement, then the covered plan or provider must retain a copy of the statement with the protected health information in dispute. The covered plan or provider could require that the statement be a reasonable length, provided that the individual has reasonable opportunity to state the nature of the disagreement and offer his or her version of accurate and complete information. In all subsequent disclosures of the information requested to be amended or corrected, the covered plan or provider would be required to include a copy of its statement of the basis for denial and, if provided by the individual, a copy of his or her statement of disagreement. If the statement submitted by the individual is unreasonably long, the covered plan or provider could include a summary in subsequent disclosures which reasonably explains the basis of the individual's position. The covered plan or provider would also be permitted to provide a rebuttal to the individual's statement of disagreement and include the rebuttal statement in any subsequent disclosures.

We considered requiring the covered plan or provider to provide a mechanism for appealing denials of amendment or correction but concluded that it would be too burdensome. We are soliciting comment on whether the approach we have adopted reasonably balances the burdens on covered plans or providers with the rights of individuals.

v. *Receipt of a notification of amendment or correction.*

If a covered plan or provider receives a notification of erroneous or incomplete protected health information as provided in proposed § 164.516(d), we are proposing that the covered plan or provider or be required to make the necessary amendment or correction to protected health information in its custody that would be available for inspection and copying. This affirmative duty to incorporate amendments and corrections would be necessary to ensure that individuals' protected health information is as accurate and complete as possible as it travels through the health care system.

G. Administrative Requirements (§ 164.518)

[*Please label comments about this section with the subject: "Introduction to administrative requirements"*]

In § 164.518, we are proposing general administrative requirements for covered entities. We would require all covered entities to designate a privacy official, train members of their workforce regarding privacy requirements, safeguard protected health information, and establish sanctions for members of the workforce who do not abide by the entity's privacy policies and procedures. In addition, we are proposing that covered plans and providers be required to establish a means for individuals to complain to the covered plan or provider if they believe that their privacy rights have been violated. In the discussions of each proposed provision, we provide examples of how different kinds of covered entities could satisfy these requirements.

1. Designation of a Privacy Official (§ 164.518(a))

[*Please label comments about this section with the subject: "Privacy official"*]

In proposed § 164.518(a)(1), we would require covered entities to designate an employee or other person to serve as the official responsible for the development of policies and procedures for the use and disclosure of protected health information. The designation of an official would focus the responsibility for development of privacy policy.

We considered whether covered entities should be required to designate a single official or an entire board. We concluded that a single official would better serve the purposes of focusing the responsibility and providing accountability within the entity. The implementation of this requirement would depend on the size of the entity. For example, a small physician's practice might designate the office manager as the privacy official, and he or she would assume this as one of his or her broader administrative responsibilities. A large entity might appoint a person whose sole responsibility is privacy policy, and he or she might choose to convene a committee representing several different components of the entity to develop and implement privacy policy.

In proposed § 164.518(a)(2), we would require a covered entity to designate a contact person or office to receive complaints and provide information about the matters covered by the entity's notice. The covered entity could, but would not be required to, designate the designated privacy official as the entity's contact person.

In proposed § 164.512, we would require the covered plan or provider's privacy notice to include the name of a contact person for privacy matters. We would not require that the contact person and the designated privacy official be the same person. This would be left to the discretion of each covered entity.

2. Training (§ 164.518(b))

[*Please label comments about this section with the subject: "Training"*]

In proposed § 164.518(b), we would require covered entities to provide training on the entities policies and procedures with respect to protected health information. Each entity would be required to provide initial training by the date on which this proposed rule becomes applicable. After that date, each covered entity would have to provide training to new members of the workforce within a reasonable time period after joining the entity. In addition, we are proposing that when a covered entity makes material changes in its privacy policies or procedures, it would be required to retrain those members of the workforce whose duties are directly affected by the change within a reasonable time of making the change.

The entities would be required to train all members of the workforce (e.g., all employees, volunteers, trainees, and other persons under the direct control of a persons working on behalf of the covered entity on an unpaid basis who are not business partners) who are likely to have contact with protected health information.

Upon completion of the training, the person would be required to sign a statement certifying that he or she received the privacy training and will honor all of the entity's privacy policies and procedures. Entities would determine the most effective means of communicating with their workforce. For example, in a small physician practice, the training requirement could be satisfied by providing each new member of the workforce with a copy of the practice's information policies and requiring members of the workforce to acknowledge that they have reviewed the policies. A large health plan could provide for a training program with live instruction, video presentations or interactive software programs. The small physician practice's solution would not protect the large plan's data, and the plan's solution would be neither economically feasible nor necessary for the small physician practice.

At least once every three years after the initial training, covered entities would be required to have each member of the workforce sign a new statement certifying that he or she will honor all of the entity's privacy policies and procedures. The initial certification would be intended to make members of the workforce aware of their duty to adhere to the entity's policies and procedures. By requiring a recertification every three years, they would be reminded of this duty.

We considered several different options for recertification. We considered proposing that members of the workforce be required to recertify every six months, but concluded that such a requirement would be too burdensome. We considered proposing that recertification be required annually consistent with the recommendations of The American Health Information Management Association (Brandt, Mary D., Release and Disclosure: Guidelines Regarding Maintenance and Disclosure of Health Information, 1997). We concluded that annual recertification could also impose a significant burden on covered entities.

We also considered requiring that the covered entity provide "refresher" training every three years in addition to the recertification. We concluded that our goals could be achieved by only requiring recertification once every three years, and retraining in the event of material changes in policy. We are soliciting comment on this approach.

3. Safeguards (§ 164.518(c))

[Please label comments about this section with the subject: "Safeguards"]

In proposed § 164.518(c), we would require covered entities to put in place administrative, technical, and physical safeguards to protect against any reasonably anticipated threats or hazards to the privacy of the information, and unauthorized uses or disclosures of the information. We proposed similar requirements for certain electronic information in the Notice of Proposed Rulemaking entitled the Security and Electronic Signature Standards (HCFA–0049–P), which can be found at 63 FR 43241. We are proposing parallel and consistent requirements for safeguarding the privacy of protected health information.

a. *Verification procedures.* As noted in section II.E. above, for many permitted disclosures the covered entity would be responding to a request for disclosure of protected health information. For most categories of permitted disclosures, when the request for disclosure of protected health information is from a person with whom the covered entity does not routinely do business, we would require the covered entity to verify the identity of the requestor. In addition, for certain categories of disclosures, covered entities would also be required to verify the requestor's legal authority to make the request.

Under § 164.514, a covered entity would be required to give individuals access to protected health information about them (under most circumstances). The covered entity would also be required to take reasonable steps to verify the identity of the individual making the request for access. We do not propose to mandate particular identification requirements (*e.g.*, drivers licence, photo ID, etc), but rather would leave this to the discretion of the covered entity.

Covered entities would be required to verify both the identity of persons requesting protected health information and their authority for requesting such information when the request is from a person with whom the covered entity does not routinely do business and the disclosure would be permitted by the following subsections of § 164.510: under § 164.510(b) for public health, under § 164.510(c) for oversight, under § 164.510(e) to coroners and medical examiners, under § 164.510(f) for law enforcement, under § 164.510(g) for governmental health data systems, under § 164.510(m) for special classes, and for disclosures required by other laws under § 164.510(n). Covered entities would be required to verify the identity of the requester by examination of reasonable evidence, such as a written statement of identity on agency letterhead, an identification badge, or similar proof of official status. Similarly, covered entities would be required to verify the legal authority supporting the request by examination of reasonable evidence, such as a written request provided on agency letterhead that describes the legal authority for requesting the release. Unless § 164.510 explicitly requires written evidence of legal process or other authority before a disclosure may be made, a public official's proof of identity and the official's oral statement that the request is authorized by law would be presumed to constitute the required reasonable evidence of legal authority. Where § 164.510 does require written evidence of legal process or authority, only the required written evidence will suffice.

We considered specifying the type of documentation or proof that would be acceptable, but decided that the burden of such specific regulatory requirements on covered entities would be unnecessary. Therefore, we propose only a general requirement for reasonable verification of identity and legal authority.

In § 164.522, we would require disclosure to the Secretary for purposes of enforcing this regulation. When a covered entity is asked by the Secretary to disclose protected health information for compliance purposes, the covered entity should verify the same information that it would verify for any other law enforcement or oversight request for disclosure.

In some circumstances a person or entity acting on behalf of a government agency may make a request for disclosure of protected health information under these subsections. For example, public health agencies may contract with a nonprofit agency to collect and analyze certain data. In such cases the covered entity would be required to verify the requestor's identity and authority through examination of reasonable documentation that the requestor is acting on behalf of the government agency. Reasonable evidence would include a written request provided on agency letterhead that describes the legal authority for requesting the release and states that the person or entity is acting under the agency's authority, or other documentation, including a contract, a memorandum of understanding, or purchase order that confirms that the requestor is acting on behalf of the government agency.

For disclosures permitted under § 164.510(k) for emergency circumstances and under § 164.510(l) to next-of-kin, legal authority for the request would not be an issue. Therefore covered entities would only be required to verify the identity of the person requesting the disclosure. Where protected health information is requested by next-of-kin, covered entities would be required to make reasonable verbal attempts to establish the identity of the person making the request. Written proof would not be required. Covered entities could rely on prior acquaintance with the next-of-kin; verbal verification of identity would not be required at each encounter. Where protected health information is requested in an emergency, the covered entity would similarly not be required to demand written proof that the person requesting the protected health information is legally authorized. Reasonable reliance on verbal representations would be appropriate in such situations.

When another person is acting as the individual through power of attorney or other legal authority, covered entities would also be required to make reasonable attempts to ascertain that the person making the request has the necessary legal authority or relationship in order to make the disclosure. For example, a health care provider could require a copy of a power of attorney, or could ask questions to determine that an adult acting for a young child has the requisite relationship to the child.

Most disclosures under § 164.510(i) are routine transactions with banking and other financial institutions. As noted above, for routine transactions there would be no verification requirements. However, should such financial institution make a special request for information in addition to the information routinely provided for payment purposes (*e.g.*, pursuant to a fraud or similar investigation), the covered entity would be required to obtain reasonable evidence of the identity of the person requesting the information.

The conditions for disclosures for judicial and administrative proceedings and research are discussed in § 164.510 (d) and § 164.510(j), respectively. Conditions for permitted disclosures under § 164.510(h) for facility directories include no verification requirements.

b. *Whistleblowers.* In Section § 164.518(c)(4), we would address the issue of disclosures by employees or others of protected health information in whistleblower cases. We would clarify that under the proposed rule, a covered entity would not be held in violation because a member of their workforce or a person associated with a business partner of the covered entity discloses protected health information that such person believes is evidence of a civil or criminal violation, and the disclosure is: (1) Made to relevant oversight agencies and law enforcement or (2) made to an attorney to allow the attorney to determine whether a violation of criminal or civil law has occurred or to assess the remedies or actions at law that may be available to the person disclosing the information.

Allegations of civil and criminal wrongdoing come from a variety of sources. Sometimes an individual not otherwise involved in law enforcement uncovers evidence of wrongdoing, and wishes to bring that evidence to the attention of appropriate authorities. Persons with access to protected health information sometimes discover evidence of billing fraud or similar violations; important evidence of unlawful activities may be available to employees of covered entities, such as billing clerks or nurses.

Some whistleblower activities can be accomplished without individually identifiable health information. There are, however, instances in which only identifiable information will suffice to demonstrate that an allegation of wrongdoing merits the investment of legal or investigatory resources. A billing clerk who suspects that a hospital has engaged in fraudulent billing practices may need to use billing records for a set of specific cases to demonstrate the basis of his suspicion to an oversight agency.

The persons who find such evidence are likely to be employees of the suspect entity. Congress and the states have recognized the importance of whistleblowing activities by acting to protect whistleblowers from retaliation. Federal statutes that include protections for whistleblowers who contact appropriate authorities include the Clear Air Act, the Federal Water Pollution Control Act, the Toxic Substances Control Act, and the Safe Drinking Water Act. Congress also passed the Whistleblower Protection Act, to protect federal employees who complain about improper personnel practices at federal agencies. At least eleven states have passed whistleblower protection laws that protect both private and public employees who provide evidence of wrongdoing to the appropriate authorities, and many more states have laws that provide such protections only for public employees.

The qui tam provisions of the Federal False Claims Act go further, and provide a mechanism for the individual to prosecute a case against a person who has allegedly defrauded the government. Like traditional whistleblower actions, qui tam actions were created by the Congress to further the public interest in effective government. Qui tam suits are an important way that individuals can protect the public interest, by investing their own time and resources to help reduce fraud. And, also like whistleblower actions, the individual may need protected health information to convince an attorney that a viable qui tam case exists.

We would note that this section would not apply to information requested by oversight agencies, law enforcement officials, or attorneys, even prior to initiation of an investigation or law suit. It would apply only to a disclosure initiated by a member of an entity's workforce or a person associated with one of its business partners.

We are concerned that a person, in the guise of "whistleblowing," might, maliciously or otherwise, disclose protected health information without any actual basis to believe that there has been a violation of the law. We are concerned, however, with adding qualifying language that may restrict such disclosures and, therefore, impede the pursuit of law violators. We seek comments regarding whether this provision should include any limitations (*e.g.*, a requirement that only the minimum amount of information necessary for these purposes can be disclosed).

4. Internal Complaint Process (§ 164.518(d))

In proposed § 164.518(d), we would require covered plans and providers to have some mechanism for receiving complaints from individuals regarding the covered plan's or provider's compliance with the requirements of this proposed rule. The covered plan or provider would be required to accept complaints about any aspect of their practices regarding protected health information. For example, individuals would be able to file a complaint when they believe that protected health information relating to them has been used or disclosed improperly, that an employee of the plan or provider has improperly handled the information, that they have wrongfully been denied access to or opportunity to amend the information, or that the entity's notice does not accurately reflect its information practices. We would not require that the entity develop a formal appeals mechanism, nor that "due process" or any similar standard be applied. We would not require that covered entities respond in any particular manner or time frame. We are proposing two basic requirements for the complaint process. First, the covered plan or provider would be required to identify a contact person or office in the notice of information practices for receiving complaints. This person or office could either be responsible for handling the complaints or could put the individual in touch with the appropriate person within the entity to handle the particular complaint. See proposed § 164.512. This person could, but would not have to be, the entity's privacy official. See § 164.518(a)(2). Second, the covered plan or provider would be required to maintain a record of the complaints that are filed and a brief explanation of the resolution, if any.

Covered plans and providers could implement this requirement through a variety of mechanisms based on their size and capabilities. For example, a small practice could assign a clerk to log in written and/or verbal complaints as they are received, and assign one physician to review all complaints monthly, address the individual situations and make changes to policies or procedures as appropriate. Results of the physician's review of individual complaints then could be logged by the clerk. A larger provider or health plan could choose to implement a formal appeals process with standardized time frames for response.

We considered requiring covered plans and providers to provide a formal internal appeal mechanism, but rejected that option as too costly and burdensome for some entities. We also considered eliminating this requirement entirely, but rejected that option because a complaint process would give covered plans or providers a way to learn about potential problems with privacy policies or practices, or training issues. We also hope that providing an avenue for covered plans or providers to address complaints would lead to increased consumer satisfaction. We believe this approach strikes a reasonable balance between allowing covered plans or providers flexibility and accomplishing the goal of promoting attention to improvement in privacy practices. If an individual and a covered plan or provider are able to resolve the individual's complaint, there may be no need for the individual to file a complaint with the Secretary under proposed § 164.522(b). However, an individual has the right to file a complaint with the Secretary at any time. An individual may file a complaint with the Secretary before, during, after, or concurrent with filing a compliant with the covered plan or provider or without filing a complaint with the covered plan or provider.

We are considering whether modifications of these complaint procedures for intelligence community agencies may be necessary to address the handling of classified information and solicit comment on the issue.

5. Sanctions (§ 164.518(e))

[*Please label comments about this section with the subject: "Sanctions"*]

In proposed § 164.518(e), we would require all covered entities to develop and apply when appropriate sanctions for failure to comply with policies or procedures of the covered entity or with the requirements of this proposed rule. All members of the workforce who have regular contact with protected health information should be subject to sanctions, as would the entity's business partners. Covered entities would be required to develop and impose sanctions appropriate to the nature of the issue. The type of sanction applied would vary depending on factors such as the severity of the violation, whether the violation was intentional or unintentional, and whether the violation indicates a pattern or practice of improper use or disclosure of protected health information. Sanctions could range from a warning to termination.

We considered specifying particular sanctions for particular kinds of violations of privacy policy, but rejected this approach for several reasons. First, the appropriate sanction will vary with the entity's particular policies. Because we cannot anticipate every kind of privacy policy in advance, we cannot predict the response that would be appropriate when that policy is violated. In addition, it is important to allow covered entities to develop the sanctions policies appropriate to their business and operations.

6. Duty To Mitigate (§ 164.518(f))

[*Please label comments about this section with the subject: "Duty to mitigate"*]

We propose that covered entities be required to have procedures for mitigating, to the extent practicable, any deleterious effect of a use or disclosure of protected health information by their members of their workforce or business partners.

With respect to business partners, we also propose that covered entities have an affirmative duty to take reasonable steps in response to breaches of contract terms. For example, a covered entity that becomes aware that a business partner has improperly disclosed protected health information could require that business partner to take steps to retrieve the disclosed information. The covered entity also could require that business partner to adopt new practices to better assure that protected health information is appropriately handled. Covered entities generally would not be required to monitor the activities of their business partners, but would be required to take steps to address problems of which they become aware, and, where the breach is serious or repeated, would also be required to monitor the business partner's performance to ensure that the wrongful behavior has been remedied. For example, the covered entity could require the business partner to submit reports or subject itself to audits to demonstrate compliance with the contract terms required by this rule. Termination of the arrangement would be required only if it becomes clear that a business partner cannot be relied upon to maintain the privacy of protected health information provided to it.

We expect that sanctions would be more formally described and consistently carried out in larger, more sophisticated entities. Smaller, less sophisticated entities would be given more latitude and flexibility. For such smaller entities and less sophisticated entities, we would not expect a prescribed sanctions policy, but would expect that actions be taken if repeated instances of violations occur.

H. Development and Documentation of Policies and Procedures (§ 164.520)

[*Please label comments about this section with the subject: "Policies and procedures"*]

In proposed § 164.520, we would require covered entities to develop and document their policies and procedures for implementing the requirements of this rule. This requirement is intended as a tool to facilitate covered entities' efforts to develop appropriate policies to implement this rule, to ensure that the members of its workforce and business partners understand and carry out expected privacy practices, and to assist covered entities in developing a notice of information practices.

The scale of the policies developed should be consistent with the size of the covered entity. For example, a smaller employer could develop policies restricting access to health plan information to one designated employee, empowering that employee to deny release of the information to corporate executives and managers unless required for health plan administration. Larger employers could have policies that include using contractors for any function that requires access to protected health information or requiring all reports they receive for plan administration to be de-identified unless individual authorization is obtained.

Clearly, implementation of these requirements would differ significantly based on the size, capabilities and activities of each covered entity. A solo practitioner's documentation of her policies and procedures could provide relatively straightforward statements, such as:

> This practice does not use or disclose any protected health information that is not authorized or permitted under the federal privacy regulation and therefore does not request any authorized disclosures from patients. Staff R.N. reviews all individually authorized requests for disclosures to ensure they contain all required elements and reviews the copied information to ensure only authorized information is released in response. Information requests that would require extensive redaction will be denied.

Larger entities with many functions and business relationships and who are subject to multi-state reporting and record-keeping requirements would need to develop and document more extensive policies. A health plan would need to describe all activities that would be considered health care operations and identify the use and disclosure requirements of each activity. A health plan may determine that underwriting department employees must provide a written request, approved by a team leader, to access any identifiable claims information; that such requests must be retained and reviewed every quarter for appropriateness; and the underwriting department must destroy such information after use for an approved activity. We urge professional associations to develop model policies, procedures and documentation for their members of all sizes.

We are proposing general guidelines for covered entities to develop and document their own policies and procedures. We considered a more uniform, prescriptive approach but concluded that a single approach would be neither effective in safeguarding protected health information nor appropriate given the vast differences among covered entities in size, business practices and level of sophistication. It is important that each covered entity's internal policies and procedures for implementing the requirements of this regulation are tailored to the nature and number of its business arrangements, the size of its patient population, its physical plant and computer system, the size and characteristics of its workforce, whether it has one or many locations, and similar factors. The internal policies and procedures appropriate for a clearinghouse would not be appropriate for a physician practice; the internal policies and procedures appropriate for a large, multi-state health plan would not be appropriate for a smaller, local health plan.

After evaluating the requirements of federal, State, or other applicable laws, covered entities should develop policies and procedures that are appropriate for their size, type, structure, and business arrangements. Once a covered plan or provider has developed and documented all of the policies and procedures as required in this section, it would have compiled all of the information needed to develop the notice of information practices required in § 164.512. The notice is intended to include a clear and concise summary of many of the policies and procedures discussed in this section. Further, if an individual has any questions about the entity's privacy policies that are not addressed by the notice, a representative of the entity can easily refer to the documented policies and procedures for additional information.

Before making a material change in a policy or procedure, the covered entity would, in most instances, be required to make the appropriate changes to the documentation required by this section before implementing the change. In addition, covered plans and providers would be required to revise the notice of information practices in advance. Where the covered entity determines that a compelling reason exists to take an action that is inconsistent with its documentation or notice before making the necessary changes, it may take such action if it documents the reasons supporting the action and makes the necessary changes within 30 days of taking such action.

In an attempt to ensure that large entities develop coordinated and comprehensive policies and procedures as required by this section, we considered proposing that entities with annual receipts greater than $5 million[5] be required to have a privacy board review and approve the documentation of policies and procedures. As originally conceived, the privacy board would only serve to review research protocols as described in § 164.510(j). We believe that such a board could also serve as "privacy experts" for the covered entity and could review the entity's documented policies and procedures. In this capacity, the overriding objective of the board would be to foster development of up-to-date, individualized policies that enable the organization to protect health information without unnecessarily interfering with the treatment and payment functions or business needs. This type of review is particularly important for large entities who would have to coordinate policies and procedures among a large staff, but smaller organizations would be encouraged, but not required, to take a similar approach (*i.e.*, have a widely representative group participate in the development and/or review of the organization's internal privacy policies and the documentation thereof). We solicit comment on this proposal.

We also considered requiring the covered entity to make its documentation available to persons outside the entity upon request. We rejected this approach because covered entities should not be required to share their operating procedures with the public, or with their competitors.

We recognize that the documentation requirement in this proposed rule would impose some paperwork burden on covered plans and providers. However, we believe that it is necessary to ensure that covered plans and providers establish privacy policies procedures in advance of any requests for disclosure, authorization, or subject access. It is also necessary to ensure that covered entities and members of their workforce have a clear understanding of the permissible uses and disclosures of protected health information and their duty to protect the privacy of such information under specific circumstances.

1. Uses and Disclosures of Protected Health Information

We propose that covered entities be required to develop and document policies and procedures for how protected health information would be used and disclosed by the entity and its business partners. The documentation would include policies to ensure the entity is in compliance with the requirements for use and disclosure pursuant to an individual's authorization. This would also include documentation of how the covered entity would comply with individual's revocation of an authorization, as provided in proposed § 164.508(e). For example, upon receipt of a revocation, the entity may need to take steps to notify each business partner that is responsible for using or disclosing protected health information on behalf of the covered entity based on the individual's authorization. Because the entity is ultimately responsible for the protected health information, it may want written confirmation from the business partner that it received notice of the revocation.

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[5] The Small Business Administration defines small businesses in the health care field as those generating less than $5 million annually. Small businesses represent approximately 85% of health care entities.

The covered entity would be required to include policies and procedures necessary to address disclosures required by applicable law. For example, the covered entity may want to include a list of the relevant reporting requirements such as those for abuse, neglect and communicable disease and its policies and procedures for complying with each requirement.

It would also include policies and procedures for uses and disclosures without the individual's authorization, including uses and disclosures for treatment, payment and health care operations under § 164.506(a)(1)(i). The documentation should address all of the legally permissible uses and disclosures that the covered entity is reasonably likely to make and should clearly specify the policy of the entity with respect to each. For example, all covered plans and providers face a reasonable likelihood of a request for disclosure from a health oversight agency, so every covered plan and provider should develop and document policies and procedures for responding to such requests. However, a provider that only treats adults would not need to specify a policy with respect to state laws that authorize disclosure relating to measles in young children. In this latter case, the provider knows that he or she is not reasonably likely to make such a disclosure and therefore, could wait until he or she is presented with such a request before developing the necessary policies and procedures.

The documentation would include the entity's policies and procedure for complying with the requirements of proposed § 164.506(e) for disclosing protected health information to business partners, including policies and procedures for monitoring the business partners, mitigating harm, and imposing sanctions where appropriate.

It would address the policies and procedures for implementation of the minimum necessary requirement as provided in proposed § 164.506(b). It would also include policies and procedures addressing the creation of de-identified information pursuant to § 164.506(d). For example, a plan could have a policy that requires employees to remove identifiers from protected health information for all internal cost, quality, or performance evaluations. The plan would document this policy and the procedures for removing the identifiers.

2. Individual Requests for Restricting Uses and Disclosures

We propose to require covered health care providers to document how they would implement an individual's request to restrict uses and disclosures. Under proposed § 164.506(c)(1)(iii), a covered entity need not agree to such restrictions. This section of the documentation would describe who (if anyone) in the covered entity is permitted to agree to such restrictions, and if such restrictions were accepted, how they would be implemented. For example, a provider may require that once an individual has requested a limitation on a use or disclosure, the affected information is stamped, marked or kept in a separate file. The provider could also have a policy of never agreeing to requests for such restrictions.

3. Notice of Information Practices

We propose to require covered plans and providers to document their policies and procedures for complying with the requirement in § 164.512 to develop, make available or disseminate, and amend their notices of information practices. This documentation would address, at a minimum, who is responsible for developing and updating the notice, who would serve as the "contact" person on the notice, how the notice would be disseminated to individuals, and how to respond to inquiries regarding information practices.

4. Inspection and Copying

We propose to require covered plans and providers to document policies and procedures to address how they would receive and comply with individual requests for inspection, and copying, in compliance with § 164.514 of this proposed rule. Policies and procedures should address, at a minimum, a listing of the designated record sets to which access will be provided, any fees to be charged, and the reasons (if any) that the entity would deny a request for inspection and copying.

5. Amendment or Correction

We propose to require covered plans and providers to develop and document policies and procedures to address how they would receive and comply with individual requests for amendment or correction of their records, in compliance with § 164.516 of this proposed rule. Policies and procedures should include the process for determining whether a request for amendment or correction should be granted, the process to follow if a request is denied, and how the entity would notify other entities, including business partners, if the request is accepted. For example, if a covered entity accepts an individual's request for an amendment or correction, the entity could document specific procedures regarding how to make the appropriate additions or notations to the original information. Without such documentation, members of the workforce could accidentally expunge or remove the incorrect information.

6. Accounting for Disclosures

We propose to require covered entities to develop and document their policies and procedures for complying with the requirement in § 164.515 to provide on request an accounting for disclosures for purposes other than treatment, payment or health care operations. In order to respond to requests for accounting within a reasonable period of time, the entity would need to have a system for accounting in place well in advance of any potential requests. The entity would need to evaluate its record keeping system and determine how best to build in the capacity to respond to such a request. For example, if the entity chooses to keep a regular log of disclosures, it would have to begin keeping such logs routinely. If instead the entity chooses to rely on a record keeping system to reconstruct an accounting, it should develop appropriate procedures for members of the workforce to follow when faced with an individual's request.

7. Administrative Requirements

We propose to require covered entities to document their policies and procedures for complying with the applicable administrative requirements in proposed § 164.518. This would include designation of the privacy official required by § 164.518(a) including a description of his or her responsibilities; a description of how the entity would comply with the training and certification requirements for members of its workforce under § 164.518(b); a description of the covered entity's safeguards required by § 164.518(c); a description of how the covered plan or provider would meet the requirements of § 164.518(d) to receive individual's complaints; a description of how the covered entity would meet the requirements for sanctioning members of its workforce under § 164.518(e); and a description of how the covered entity would take steps to mitigate any deleterious effect of a use or disclosure of protected health information as required by § 164.518(f).

The documentation would also address how access to protected health information is regulated by the entity, including safeguards, including the procedures that would be required by proposed § 164.518. For covered entities that are part of a larger organization that is not a covered entity (*e.g.*, an on-site clinic at a university or the group health plan component of an employer), we would require such entities to develop and document policies and procedures that ensure that protected health information does not flow outside the health care component of the organization in violation of this proposed rule. For example, a school-based health clinic should have policies and procedures to prevent treatment information from crossing over into the school's record system.

Many disclosures would require verification of the identity of the person making the request, and sometimes also verification of the legal authority behind the request. The documentation required by this section would include a description of the entity's verification policies (*e.g.*, what proof would be acceptable), and who would be responsible for ensuring that the necessary verification has occurred before the information is disclosed.

8. Record Keeping Requirements

We propose record keeping requirements related to several provisions. In addition to the documentation of policies and procedures described above, we would require covered entities, as applicable, to: document restrictions on uses and disclosures agreed to pursuant to § 164.506(c); maintain copies of authorization forms and signed authorizations (§ 164.508) and contracts used with business partners (§ 164.506(e)); maintain notices of information practices developed under § 164.512; maintain written statements of denials of requests for inspection and copying pursuant to § 164.514; maintain any response made to a request from an individual for amendment or correction of information, either in the form of the correction or amendment or the statement of the reason for denial and, if supplied, the individual's statement of disagreement, for as long as the protected health information is maintained (§ 164.516); maintain signed certifications by members of the workforce required by § 164.518(b); and, maintain a record of any complaints received (§ 164.518(d)). Unless otherwise addressed in this proposal, covered entities would be required to retain these documents for six years, which is the statute of limitations period for the civil penalties. We note that additional records or compliance reports may be required by the Secretary for enforcement of this rule. (§ 164.522(d)(1)).

I. Relationship to Other Laws

1. Relationship to State Laws

[*Please label comments about this section with the subject: "Relationship to State laws"*]

Congress addressed the issue of preemption of State law explicitly in the statute, in section 1178 of the Act. Consonant with the underlying statutory purpose to simplify the financial and administrative transactions associated with the provision of health care, the new section 1178(a)(1) sets out a "general rule" that State law provisions that are contrary to the provisions or requirements of part C of title XI or the standards or implementation specifications adopted or established thereunder are preempted by the federal requirements. The statute provides three exceptions to this general rule: (1) For State laws which the Secretary determines are necessary to prevent fraud and abuse, ensure appropriate State regulation of insurance and health plans, for State reporting on health care delivery, and other purposes; (2) for State laws which address controlled substances; and (3) for State laws relating to the privacy of individually identifiable health information which, as provided for by the related provision of section 264(c)(2), are contrary to and more stringent than the federal requirements. Section 1178 also carves out, in sections 1178(b) and 1178(c), certain areas of State authority which are not limited or invalidated by the provisions of part C of title XI; these areas relate to public health and State regulation of health plans.

Section 264 of HIPAA contains a related preemption provision. Section 264(c)(2) is, as discussed above, an exception to the "general rule" that the federal standards and requirements preempt contrary State law. Section 264(c)(2) provides, instead, that contrary State laws that relate to the privacy of individually identifiable health information will not be preempted by the federal requirements, if they are "more stringent" than those requirements. This policy, under which the federal privacy protections act as a floor, but not a ceiling on, privacy protections, is consistent with the Secretary's Recommendations.

Aside from the cross-reference to section 264(c)(2) in section 1178(a)(2)(B), several provisions of section 1178 relate to the proposed privacy standards. These include the general preemption rule of section 1178(a)(1), the carve-out for public health and related reporting under section 1178(b), and the carve-out for reporting and access to records for the regulation of health plans by States under section 1178(c). Other terms that occur in section 264(c)(2) also appear in section 1178: The underlying test for preemption—whether a State law is "contrary" to the federal standards, requirements or implementation specifications—appears throughout section 1178(a), while the issue of what is a "State law" for preemption purposes applies throughout section 1178. In light of these factors, it seems logical to develop a regulatory framework that addresses the various issues raised by section 1178, not just those parts of it implicated by section 264(c)(2). Accordingly, the rules proposed below propose regulatory provisions covering these issues as part of the general provisions in proposed part 160, with sections made specifically applicable to the proposed privacy standard where appropriate.

a. *The "general rule" of preemption of State law.* Section 1178(a)(1) provides the following "general rule" for the preemption of State law:

> Except as provided in paragraph (2), a provision or requirement under this part (part C of title XI), or a standard or implementation specification adopted or established under sections 1172 through 1174, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

As we read this provision, the provisions and requirements of part C of title XI, along with the standards and implementation specifications adopted thereunder, do not supplant State law, except to the extent such State law is "contrary" to the federal statutory or regulatory scheme. Moreover, the provisions and requirements of part C of title XI, along with the standards and implementation specifications adopted thereunder, do not preempt contrary State law where one of the exceptions provided for by section 1178(a)(2) applies or the law in question lies within the scope of the carve-outs made by sections 1178(b) and (c). Thus, States may continue to regulate in the area covered by part C of title XI and the regulations and implementation specifications adopted or established thereunder, except to the extent States adopt laws that are contrary to the federal statutory and regulatory scheme, and even those contrary State laws may continue to be enforceable, if they come within the statutory exceptions or carve-outs.

We note, however, that many of the Administrative Simplifications regulations will have preemptive effect. The structure of many of the regulations, particularly those addressing the various administrative transactions, is to prescribe the use of a particular form or format for the transaction in question. Where the prescribed form or format is used, covered entities are required to accept the transaction. A State may well not be able to require additional requirements for such transactions consistent with the federally prescribed form or format.

b. *Exceptions for State laws the Secretary determines necessary for certain purposes.* Section 1178(a)(2) lists several exceptions to the general preemption rule of section 1178(a)(1). The first set of exceptions are those listed at sections 1178(a)(2)(A)(i) and 1178(a)(2)(A)(ii). These exceptions are for provisions of State law which the Secretary determines are necessary: (1) To prevent fraud and abuse; (2) to ensure appropriate State regulation of insurance and health plans; (3) for State reporting on health care delivery or costs; (4) for other purposes; or (5) which address controlled substances.

Proposed § 160.203(a) below provides for determinations under these statutory provisions. The criteria at proposed § 160.203(a) follow the statute. As is more fully discussed below, however, two of the terms used in this section of the proposed rules are defined terms: "contrary" and "State law." The process for making such determinations is discussed below.

c. *Exceptions for State laws relating to the privacy of individually identifiable health information.* The third exception to the "general rule" that the federal requirements, standards, and implementation specifications preempt contrary State law concerns State laws relating to the privacy of individually identifiable health information. Section 1178(a)(2)(B) provides that a State law is excepted from this general rule, which, "subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information." Section 264(c)(2) of HIPAA provides that the HIPAA privacy regulation, which is proposed in the accompanying proposed subpart B of proposed part 160, will not supersede "a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed" under the regulation at proposed subpart E of proposed part 164.

It is recognized that States generally have laws that relate to the privacy of individually identifiable health information. These laws continue to be enforceable, unless they are contrary to part C of title XI or the standards, requirements, or implementation specifications adopted or established pursuant to the proposed subpart x. Under section 264(c)(2), not all contrary provisions of State privacy laws are preempted; rather, the law provides that contrary provisions that are also "more stringent" than the federal regulatory requirements or implementation specifications will continue to be enforceable.

d. *Definitions.* There are a number of ambiguities in sections 1178(a)(2)(B) and 264(c)(2) of HIPAA. Clarifying the statute through the regulations will generally provide substantially more guidance to the regulated entities and the public as to which requirements, standards, and implementation specifications apply. For these reasons, the rules propose below to interpret several ambiguous statutory terms by regulation.

There are five definitional questions that arise in considering whether or not a State law is preempted under section 264(c)(2): (1) What is a "provision" of State law? (2) What is a "State law"? (3) What kind of State law, under section 1178(a)(2)(B), "relates to the privacy of individually identifiable health information?" (4) When is a provision of State law at issue "contrary" to the analogous provision of the federal regulations? (5) When is a provision of State law "more stringent than" the analogous provision of the federal regulations? We discuss these questions and our proposed regulatory answers below.

i. *What is a "provision" of State law?* The initial question that arises in the preemption analysis is, what does one compare? The statute directs this analysis by requiring the comparison of a "provision of State law [that] imposes requirements, standards, or implementations specifications" with "the requirements, standards, or implementation specifications imposed under" the federal regulation. The statute thus appears to contemplate that what will be compared are the State and federal requirements that are analogous, i.e., that address the same subject matter. Accordingly, a dictionary-type definition of the term "provision" does not seem appropriate, as the contours of a given "provision" will be largely defined by the contours of the specific "requirement[], standard[], or implementation specification" at issue.

What does one do when there is a State provision and no comparable or analogous federal provision, or the converse is the case? The short answer would seem to be that, since there is nothing to compare, there cannot be an issue of a "contrary" requirement, and so the preemption issue is not presented. Rather, the stand-alone requirement—be it State or federal—is effective. There may, however, be situations in which there is a federal requirement with no directly analogous State requirement, but where several State requirements in combination would seem to be contrary in effect to the federal requirement. This situation usually will be addressed through the tests for "contrary," discussed below.

At this juncture, it is difficult to frame options for dealing with this issue, because it is not clear that more of a structure is needed than the statute already provides. Rather, we solicit comment on how the term "provision" might be best defined for the purpose of the preemption analysis under the statute, along with examples of possible problems in making the comparison between a provision of State law and the federal regulations.

ii. *What is a "State law"?* It is unclear what the term "provision of State law" in sections 1178 and 264(c) means. The question is whether the provision in question must, in order to be considered to have preemptive effect, be legislatively enacted or whether administratively adopted or judicially decided State requirements must also be considered. Congress explicitly addressed the same issue in a different part of HIPAA, section 102. Section 102 enacted section 2723 of the Public Health Service Act, which is a preemption provision that applies to issuers of health insurance to ERISA plans. Section 2723 contains in subsection (d)(1) the following definition of "State law": "The term

"State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

By contrast, Congress provided no definition of the term "State law" in section 264. This omission suggests two policy options. One is to adopt the above definition, as a reasonable definition of the term and as an indication of what Congress probably intended in the preemption context (the policy embodied in section 2723 is analogous to that embodied in section 264(c)(2), in the sense that the State laws that are not preempted are ones that provide protections to individuals that go above and beyond the federal requirements). The other option is to argue by negative implication that, since Congress could have but did not enact the above definition in connection with sections 264 and 1178, it intended that a different definition be used, and that the most reasonable alternative is to limit the State laws to be considered to those that have been legislatively enacted.

The Department does not consider the latter option to be a realistic one. It is legally questionable and is also likely to be extremely confusing and unworkable as a practical matter, as it will be difficult to divorce State "laws" from implementing administrative regulations or decisions or from judicial decisions. Also, much State "privacy law"—e.g., the law concerning the physician/patient privilege—is not found in statutes, but is rather in State common law. Finally, since health care providers and others are bound by State regulations and decisions, they would most likely find a policy that drew a line based on where a legal requirement originated very confusing and unhelpful. As a result, we conclude that the language in section 102 represents a legally supportable approach that is, for practical reasons, a realistic option, and it is accordingly proposed in proposed § 160.202 below.

iii. *What is a law that "relates to the privacy of individually identifiable health information"?*

The meaning of the term "relate to" has been extensively adjudicated in a somewhat similar context, the issue of the preemption of State laws by ERISA. Section 514(a) of ERISA (29 U.S.C. 1144(a)) provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan." (Emphasis added.) The U.S. Supreme Court alone has decided 17 ERISA preemption cases, and there are numerous lower court cases. The term also has been interpreted in other contexts. Thus, there would seem to be several options for defining the term "relates to": (1) By using the criteria developed by the Supreme Court as they evolve, (2) by using the criteria developed by the Supreme Court, but on a static basis, and (3) based on the legislative history, by setting federal criteria.

The first option would be based on the definition adopted in an early ERISA case, *Shaw* v. *Delta Airlines, Inc.*, 463 U.S. 85 (1983), as it continues to evolve. In *Shaw*, a unanimous Supreme Court adopted a very broad reading of the term, holding that a law "relates to" an employee benefit plan "if it has a connection with or reference to" such a plan. Later cases have developed a more particularized and complex definition of this general definition. The Supreme Court has also applied the *Shaw* definition outside of the ERISA context. In *Morales* v. *Trans World Airlines*, 504 U.S. 374 (1992), the Court defined the term "relating to" in the Airline Deregulation Act by using the definition of the term "relates to" developed under the ERISA cases above. While this option would appear to be a supportable reading of the statutory term, tying the agency interpretation to an evolving court interpretation will make it more difficult to make judgments, and particular judgments may change as the underlying court interpretations change.

The second option we considered would "freeze" the definition of "relates to" as the Court has currently defined it. This option also is a supportable reading of the statutory term, but is less of a moving target than the prior option. The complexity of the underlying court definition presents problems.

The option selected and reflected in the rules proposed below grows out of the movement in recent years of the Supreme Court away from the literal, textual approach of *Shaw* and related cases to an analysis that looks more at the purposes and effects of the preemption statute in question. In *New York State Conference of Blue Cross* v. *Travelers Insurance Co.*, 514 U.S. 645 (1995), the Court held that the proper inquiry in determining whether the State law in question related to an employee benefit plan was to look to the objectives of the (ERISA) statute as a guide to the scope of the State law that Congress understood would survive. The Court drew a similar line in *Morales*, concluding that State actions that affected airline rates, routes, or services in "too tenuous, remote, or peripheral a manner" would not be preempted. 504 U.S. at 384. The Court drew a conceptually consistent line with respect to the question of the *effect* of a State law in *English* v. *General Electric Co.*, 496 U.S. 72, 84 (1990); see also, *Gade* v. *National Solid Wastes Management Ass'n.*, 505 U.S. 88 (1992). The Court held that deciding which State laws were preempted by the OSH Act required also looking at the effect of the State law in question, and that those which regulated occupational safety and health in a "clear, direct, and substantial way" would be preempted. These cases suggest an approach that looks to the legislative history of HIPAA and seeks to determine what kinds of State laws Congress meant, in this area, to leave intact and also seeks to apply more of a "rule of reason" in deciding which State laws "relate to" privacy and which do not.

The legislative history of HIPAA offers some insight into the meaning of the term "relates to." The House Report (House Rep. No. 496, 104th Cong., 2d Sess., at 103) states that—

> The intent of this section is to ensure that State privacy laws that are more stringent than the requirements and standards contained in the bill are not superseded.

Based on this legislative history, one could argue that the "State laws" covered by the "relates to" clause are simply those that are specifically or explicitly designed to regulate the privacy of personal health information, and not ones that might have the incidental effect of doing so. Thus, the option selected below appears to be consistent with the Court's approach in *Travelers*, and, together with the "effect" test, seems to be closer to how the Court is analyzing preemption issues. It makes sense on a common sense basis as well, and appears, from the little legislative history available, to be what Congress intended in this context.

iv. *When is a provision of State law "contrary" to the analogous federal requirement?*

The statute uses the same language in both section 1178(a)(1) and section 264(c)(2) to delineate the general precondition for preemption: the provision of State law must be "contrary" to the relevant federal requirement, standard, or implementation specification; the term "contrary," however, is not defined. It should be noted that this issue (the meaning of the term "contrary") does not arise solely in the context of the proposed privacy standard. The term "contrary" appears throughout section 1178(a) and is a precondition for any preemption analysis done under that section.

The definition set out at proposed § 160.202 embodies the tests that the courts have developed to analyze what is known as "conflict preemption." In this analysis, the courts will consider a provision of State law to be in conflict with a provision of federal law where it would be impossible for a private party to comply with both State and federal requirements or where the provision of State law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." This latter test has been further defined as, where the State law in question "interferes with the methods by which the federal statute was designed to reach (its) goal." *International Paper Co.* v. *Ouellette,* 479 U.S. 481, 494 (1987). In *Gade,* the Supreme Court applied this latter test to preempt an Illinois law and regulations that imposed additional, non-conflicting conditions on employers, holding that the additional conditions conflicted with the underlying congressional purpose to have one set of requirements apply. This test, then, is particularly relevant with respect to the other HIPAA regulations, where Congress clearly intended uniform standards to apply nationwide.

The Department is of the view that this definition should be workable and is probably what Congress intended in using the term—as a shorthand reference to the case law. We considered a broader definition ("inconsistent with"), but rejected it on the grounds that it would have less legal support and would be no easier to apply than the statutory term "contrary" itself.

v. *What is the meaning of "more stringent'?*

The issue of when a provision of State law is "more stringent" than the comparable "requirements, standards, or implementation specifications" of the HIPAA privacy regulation is not an easy one. In general, it seems reasonable to assume that "more stringent" means "providing greater privacy protection" but, such an interpretation leads to somewhat different applications, depending on the context. For example, a State law that provided for fewer and more limited disclosures than the HIPAA privacy regulation would be "more stringent." At the same time, a State law that provides for more and/or greater penalties for wrongful disclosures than does the HIPAA privacy regulation would also be "more stringent." Thus, in the former case, "more stringent" means less or fewer, while in the latter case, "more stringent" means more or greater. In addition, some situations are more difficult to characterize. For example, if the HIPAA privacy regulation requires disclosure to the individual on request and a State law prohibits disclosure in the circumstance in question, which law is "more stringent" or "provides more privacy protection'?

A continuum of regulatory options is available. At one end of the continuum is the minimalist approach of not interpreting the term "more stringent" further or spelling out only a general interpretation, such as the "provides more privacy protection" standard, and leaving the specific applications to later case-by-case determinations. At the other end of the continuum is the approach of spelling out in the regulation a number of different applications, to create a very specific analytic framework for future determinations. We propose below the latter approach for several reasons: specific criteria will simplify the determination process for agency officials, as some determinations will be already covered by the regulation, while others will be obvious; specific criteria will also provide guidance for determinations where issue of "stringency" is not obvious; courts will be more likely to give deference to agency determinations, leading to greater uniformity and consistency of expectation; and the public, regulated entities, and States will have more notice as to what the determinations are likely to be.

The specific criteria proposed at proposed § 160.202 are extrapolated from the principles of the fair information practices that underlie and inform these proposed rules and the Secretary's Recommendations. For example, limiting disclosure of personal health information obviously protects privacy; thus, under the criteria proposed below, the law providing for less disclosure is considered to be "more stringent." Similarly, as the access of an individual to his or her protected health information is considered to be central to enabling the individual to protect such information, the criteria proposed below treat a law granting greater rights of access as "more stringent." We recognize that many State laws require patients to authorize or consent to disclosures of their health information for treatment and/or payment purposes. We consider individual authorization generally to be more protective of privacy interests than the lack of such authorization, so such State requirements would generally stand, under the definition proposed below.

However, we would interpret a State law relating to individual authorization to be preempted if the law requires, or would permit a provider or health plan to require, as a condition of treatment or payment for health care, an individual to authorize uses or disclosures for purposes other than treatment, payment and health care operations, and if such authorization would override restrictions or limitations in this regulation relating to the uses and disclosures for purposes other than treatment, payment and health care operations. For example, if a State law permitted or required a provider to obtain an individual authorization for disclosure as a condition of treatment, and further permitted the provider to include in the authorization disclosures for research or for commercial purposes, the State law would be preempted with respect to the compelled authorization for research or commercial purposes. At the same time, if a State law required a provider to obtain an individual authorization for disclosure as a condition of treatment, and further required the provider to include an authorization for the provider to disclosure data to a State data reporting agency, such a law would not be preempted, because State laws that require such data reporting are saved from preemption under section § 1178(c) of the statute.

In addition, to the extent that a State consent law does not contain other consent or authorization requirements that parallel or are stricter than the applicable federal requirements, those detailed federal requirements would also continue to apply. We solicit comment in particular on how these proposed criteria would be likely to operate with respect to particular State privacy laws.

e. *The process for making administrative determinations regarding the preemption of State health information privacy laws.* Because States generally have laws that relate to the privacy of individually identifiable health information, there may be conflicts between provisions of various State laws and the federal requirements. Where such conflicts appear to exist, questions may arise from the regulated entities or from the public concerning which requirements apply. It is possible that such questions may also arise in the context of the Secretary's enforcement of the civil monetary penalty provisions of section 1176. The Secretary accordingly proposes to adopt the following process for responding to such comments and making the determinations necessary to carry out her responsibilities under section 1176.

The rules proposed below would establish two related processes: one for making the determinations called for by section 1178(a)(2)(A) of the Act and the other for issuing advisory opinions regarding whether a provision of State law would come within the exception provided for by section 1178(a)(2)(B).

i. *Determinations under section 1178(a)(2)(A).*

The rules proposed below should not usually implicate section 1178(a)(2)(A), which provides that a State law will not be preempted where the Secretary determines it is necessary for one or more of five specific purposes: (1) To prevent fraud and abuse; (2) to ensure appropriate State regulation of insurance and health plans; (3) for State reporting on health care delivery or costs; (4) for other purposes; or (5) which address controlled substances. The process for implementing this statutory provision is proposed here, because the issue of how such preemption issues will be handled has been raised in prior HIPAA rulemakings and needs to be addressed, and, as explained above, the statutory provision itself is fairly intertwined (in terms of the specific terms used), with the preemption provisions of the statute that relate to privacy.

The process proposed below for determinations by the Secretary would permit States to request an exception to the general rule of preemption. The decision to limit, at least as an initial matter, the right to request such determinations to States was made for several reasons. First, States are obviously most directly concerned by preemption, in that it is State legislative, judicial, or executive action that the federal requirements supersede. Principles of comity dictate that States be given the opportunity to make the case that their laws should not be superseded. Second, States are in the best position to address the issue of how their laws operate and what their intent is, both of which are relevant to the determination to be made. Third, we need to control the process as an initial matter, so that the Secretary is not overwhelmed by requests. Fourth, where particular federal requirements will have a major impact on providers, plans, or clearinghouses within a particular State, we assume that they will be able to work with their State governments to raise the issue with the Secretary; the discussion process that such negotiations should entail should help crystallize the legal and other issues for the Secretary and, hence, result in better determinations. We emphasize that HHS may well revisit this issue, once it has gained some experience with the proposed process.

Proposed § 160.204(a)(1) sets out a number of requirements for requests for determinations. In general, the purpose of these requirements is to provide as complete a statement as possible of the relevant information as an initial matter, to minimize the time needed for the Secretarial determination.

The remaining requirements of proposed § 160.204(a) generally are designed to set out an orderly process and effect of the determinations. Of particular note is proposed § 160.204(a)(5), which provides that such determinations apply only to transactions that are wholly intrastate. We recognize that in today's economy, many, perhaps most, transactions will be interstate, so that the effect of a positive determination could be minimal under this provision. Nonetheless, we think that there is no practical alternative to the proposed policy. We do not see how it would be practical to split up transactions that involved more than one State, when one State's law was preempted and the other's was not. We do not see why the non-preempted law should govern the transaction, to the extent it involved an entity in a State whose law was preempted. Quite aside from the sovereignty issues such a result would raise, such a result would be very confusing for the health care industry and others working with it and thus inconsistent with the underlying goal of administrative simplification. Rather, such a situation would seem to be a classic case for application of federal standards, and proposed § 160.204(a)(5) would accordingly provide for this.

ii. *Advisory opinions under section 1178(a)(2)(B).*

The rules proposed below lay out a similar process for advisory opinions under section 1178(a)(2)(B). That section of the statute provides that, subject to the requirements of section 264(c)(2) (the provision of HIPAA that establishes the "more stringent" preemption test), State laws that "relate to the privacy of individually identifiable health information" are excepted from the general rule that the HIPAA standards, requirements, and implementation specifications preempt contrary State law.

Unlike section 1178(a)(2)(A), section 1178(a)(2)(B) does not provide for the making of a determination by the Secretary. Nonetheless, it is clear that the Secretary may make judgments about the legal effect of particular State privacy laws in making compliance and enforcement decisions. It is also foreseeable that the Secretary will be asked to take a position on whether particular State privacy laws are preempted or not. We have concluded that the best way of addressing these concerns is to provide a mechanism by which the Secretary can issue advisory opinions, so that the public may be informed about preemption judgments the Secretary has made. See proposed § 160.204(b).

The process proposed below for requesting advisory opinions is limited to States, for the reasons described in the preceding section. The requirements for requests for advisory opinions are similar to the requirements for determinations in proposed § 160.204(a), but are tailored to the different statutory requirements of sections 1178(a)(2)(A) and 264(c)(2). As with proposed § 164.204(a), the process proposed below would provide for publication of advisory opinions issued by the Secretary on an annual basis, to ensure that the public is informed of the decisions made in this area.

f. *Carve-out for State public health laws.* Section 1178(b) provides that "Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention." This section appears to carve out an area over which the States have traditionally exercised oversight and authority—the collection of vital statistics, the enforcement of laws regarding child abuse and neglect, and the conduct of public health surveillance, investigation, and intervention. State laws in these areas may involve reporting of individually identifiable health information to State or local authorities. Section 1178(b) indicates that existing or future State laws in these areas are enforceable, notwithstanding any privacy requirements adopted pursuant to section 264(c). In addition, covered entities should not be inhibited from complying with requests authorized by State law for release of information by public health authorities for the stated purposes.

It should be noted that the limitation of section 1178(b) applies to the "authority, power, or procedures established under any law." Public health laws often convey broad general authorities for the designated agency to protect public health, including enforcement powers, and these State authorities and powers would remain enforceable. Further, section 1178(b) also covers "procedures" authorized by law; we read this language as including State administrative regulations and guidelines.

The proposed rules propose to address these concerns by treating the disclosures covered by section 1178(b) as allowable disclosures for public health activities under proposed § 164.510(b). Thus, those disclosures permitted under proposed § 164.510(b) are intended to be, with respect to disclosures authorized by State law, at least as broad as section 1178(b). This means that disclosures that are authorized by State law but which do not come within the scope of proposed § 164.510(b) are considered to fall outside of the limitation of section 1178(b). In addition, since similar activities and information gathering are conducted by the federal government, disclosures to public health authorities authorized by federal law would be permitted disclosures under this proposed rule and applicable federal law will govern the use and re-disclosure of the information.

g. *Carve-out for State laws relating to oversight of health plans.* Section 1178(c) provides that nothing in part C of title XI limits the ability of States to require health plans "to report, or to provide access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification." This section thus also carves out an area in which the States have traditionally regulated health care as an area which the statute intends to leave in place. State laws requiring the reporting of or access to information of the type covered by section 1178(c) will in certain cases involve the reporting of, or access to, individually identifiable health information. Accordingly, provision has been made for such reporting and access by making such reporting and access permitted disclosures and uses under this proposed rule. See proposed § 164.510(c).

2. Relationship to Other Federal Laws

[*Please label comments about this section with the subject: "Relationship to other federal laws"*]

The rules proposed below also would affect various federal programs, some of which may have requirements that are, or appear to be, inconsistent with the requirements proposed below. Such federal programs include those programs that are operated directly by the federal government, such as the health benefit programs for federal employees or the health programs for military personnel. They also include a wide variety of health services or benefit programs in which health services or benefits are provided by the private sector or by State or local government, but which are governed by various federal laws. Examples of the latter types of programs would be the Medicare and Medicaid programs, the health plans governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, *et seq.* (ERISA), the various clinical services programs funded by federal grants, and substance abuse treatment programs.

Some of the above programs are explicitly covered by HIPAA. Section 1171 of the Act defines the term "health plan" to include the following federally conducted, regulated, or funded programs: group plans under ERISA which either have 50 or more participants or are administered by an entity other than the employer who established and maintains the plan; federally qualified health maintenance organizations; Medicare; Medicaid; Medicare supplemental policies; the health care program for active military personnel; the health care program for veterans; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); the Indian health service program under the Indian Health Care Improvement Act, 25 U.S.C. 1601, *et seq.;* and the Federal Employees Health Benefits Program. There also are many other federally conducted, regulated, or funded programs in which individually identifiable health information is created or maintained, but which do not come within the statutory definition of "health plan." While these latter types of federally conducted, regulated, or assisted programs are not explicitly covered by part C of title XI in the same way that the programs listed in the statutory definition of "health plan" are covered, the statute may nonetheless apply to transactions and other activities conducted under such programs. This is likely to be the case where the federal entity or federally regulated or funded entity provides health services; the requirements of part c are likely to apply to such an entity as a "health care provider." Thus, the issue of how different federal requirements apply is likely to arise in numerous contexts.

When two federal statutes appear to conflict, the courts generally engage in what is called an "implied repeal" analysis. The first step in such an analysis is to look for some way in which to reconcile the apparently conflicting requirements. Only if the conflicting provisions cannot be reconciled do courts reach the second step of the analysis, in which they look to see whether the later statute repealed the prior statute (to the extent of the conflict) by implication. In making such a determination, the courts look to the later statute and its legislative history, to see if there is evidence as to whether Congress intended to leave the prior statute in place or whether it intended the later statute to supersede the prior statute, to the extent of the conflict between the two. It is not a foregone conclusion that a later statute will repeal inconsistent provisions of a prior statute. Rather, there are cases in which the courts have held prior, more specific statutes not to be impliedly repealed by later, more general statutes.

As noted above, the section 1171 of the Act explicitly makes certain federal programs subject to the standards and implementation specifications promulgated by the Secretary, while entities carrying out others are implicitly covered by the scope of the term "health care provider." The legislative history of the statute is silent with respect to how these requirements were to operate in the federal sector vis-à-vis these and other federal programs with potentially conflicting requirements. Congress is presumed to have been aware that various federal programs that the privacy and other standards would reach would be governed by other federal requirements, so the silence of the legislative history and the limited reach of the statute would seem to be significant. On the other hand, Congress' express inclusion of certain federal programs in the statute also has significance, as it constitutes an express Congressional statement that the HIPAA standards and implementation specifications apply to these programs. In light of the absence of relevant legislative history, we do not consider this Congressional statement strong enough to support a conclusion of implied repeal, where the conflict is one between the HIPAA regulatory standards and implementation specifications and another federal statute. However, it seems strong enough to support an inference that, with respect to these programs, the HIPAA standards and implementation specifications establish the federal policy in the case of a conflict at the regulatory level.

Thus, the first principle that applies where both the HIPAA standards and implementation specifications and the requirements of another federal program apply is that we must seek to reconcile and accommodate any apparently conflicting federal requirements. Two conclusions flow from this principle. First, where one federal statute or regulation permits an activity that another federal statute or regulation requires, and both statutes apply to the entity in question, there is no conflict, because it is possible to comply with both sets of federal requirements.

Second, where one federal statute or regulation permits, but does not require, an activity that another federal statute or regulation prohibits, there is again no conflict, because it is possible to comply with both sets of federal requirements. In each case, the entity has lost some discretion that it would otherwise have had under the more permissive set of requirements, but in neither case has it been required to do something that is illegal under either federal program.

There will, however, also be cases where the privacy or other Administrative Simplification standards and implementation specifications cannot be reconciled with the requirements of another federal program. In such a case the issue of implied repeal is presented. As suggested above, we think that where the conflict is between the privacy or other Administrative simplification regulations and another federal statute, the regulatory requirements would give way, because there is insufficient evidence to support a finding that part C of title XI is intended to repeal other federal laws. For example, if other law prohibits the dissemination of classified or other sensitive information, this rule's requirements for granting individuals' right to copy their own records would give way. Where the conflict is between the Administrative Simplification regulatory requirements and other federal regulatory requirements that are discretionary (not mandated by the other federal law), we think that there is also insufficient evidence to support a finding of implied repeal of the latter regulatory requirements, where the other federal program at issue is not one specifically addressed in section 1171. However, where the other federal program at issue is one of the ones which Congress explicitly intended to have the Administrative Simplification standards and implementation specifications apply to, by including them in the definition of "health plan" in section 1171, we think that there is evidence that the Administrative Simplification standards and implementation specifications should prevail over contrary exercises of discretion under those programs.

We considered whether the preemption provision of section 264(c)(2) of Public Law 104–191, discussed in the preceding section, would give effect to State laws that would otherwise be preempted by federal law. For example, we considered whether section 264(c)(2) could be read to make the Medicare program subject to State laws relating to information disclosures that are more stringent than the requirements proposed in this rule, where such laws are presently preempted by the Medicare statute. We also considered whether section 264(c)(2) could be read to apply such State laws to procedures and activities of federal agencies, such as administrative subpoenas and summons, that are prescribed under the authority of federal law. In general, we do not think that section 264(c)(2) would work to apply State law provisions to federal programs or activities with respect to which the State law provisions do not presently apply. Rather, the effect of section 264(c)(2) is to give preemptive effect to State laws that would otherwise be in effect, to the extent they conflict with and are more stringent than the requirements promulgated under the Administrative Simplification authority of HIPAA. Thus, we do not believe that it is the intent of section 264(c)(2) to give an effect to State law that it would not otherwise have in the absence of section 264(c)(2).

We explore some ramifications of these conclusions with respect to specific federal programs below. We note that the summaries below do not identify all possible conflicts or overlaps of the proposed rules with other federal requirements; rather, we have attempted to explain the general nature of the relationship of the different federal programs. We would anticipate issuing more detailed guidance in the future, when the final privacy policies are adopted, and the extent of conflict or overlap can be ascertained. We also invite comment with respect to issues raised by other federal programs.

a. *The Privacy Act.* The Privacy Act of 1974, 5 U.S.C. 552a, is not preempted or amended by part C of title XI. The Privacy Act applies to all federal agencies, and to certain federal contractors who operate Privacy Act protected systems of records on behalf of federal agencies. It does not, however, apply to non-federal entities that are reached by part C. While the proposed rules are applicable to federal and non-federal entities, they are not intended to create any conflict with Privacy Act requirements. In any situation where compliance with the proposed rules would lead a federal entity to a result contrary to the Privacy Act, the Privacy Act controls. In sections of the proposed rules which might otherwise create the appearance of a conflict with Privacy Act requirements, entities subject to the Privacy Act are directed to continue to comply with Privacy Act requirements.

Because the Privacy Act gives federal agencies the authority to promulgate agency-specific implementing regulations, and because the Privacy Act also allows agencies to publish routine uses that have the status of exceptions to the Privacy Act's general rule prohibiting disclosure of Privacy Act protected information to third parties, the issue of possible conflicts between the proposed Administrative Simplification rules and existing Privacy Act rules and routine uses must be addressed. Where the federal program at issue is one of the ones that Congress explicitly intended to have the Administrative Simplification standards and implementation specifications apply to, by including them in the definition of "health plan" in section 1171, we think that there is evidence that the Administrative Simplification standards and implementation specifications should prevail over contrary exercises of discretion under those programs. That is, to the extent that a routine use is truly discretionary to an agency which is also a covered entity under section 1172(a), the agency would not have discretion to ignore the Administrative Simplification regulations. It is possible, however, that in some cases there might be underlying federal statutes that call for disclosure of certain types of information, and routine uses could be promulgated as the only way to implement those statutes and still comply with the Privacy Act. If this were to happen or be the case, the routine use should prevail.

b. *The Substance Abuse Confidentiality regulations.* Regulations that are codified at 42 CFR part 2 establish confidentiality requirements for the patient records of substance abuse "programs" that are "federally assisted." Substance abuse programs are specialized programs or personnel that provide alcohol and drug abuse treatment, diagnosis, or referral for treatment. 42 CFR 2.11. The term "federally assisted" is broadly defined, and includes federal tax exempt status and Medicare certification, among other criteria. 42 CFR 2.12(b). Such programs may not disclose patient identifying information without the written consent of the patient, unless the information is needed to respond to a medical emergency, or such information is disclosed for purposes of research, audit, or evaluation. Disclosures may not be made in response to a subpoena; rather, a court order is required in order for a disclosure of covered records to be lawfully made. Limited disclosures may also be made by such programs to State or local officials under a State law requiring reporting of incidents of suspected child abuse and neglect and to law enforcement officials regarding a patient's crime on program premises or against program personnel or a threat to commit such a crime. 42 CFR 2.12. Unlike the rules proposed below, the confidentiality protections continue indefinitely after death, although part 2 would permit disclosure of identifying information relating to the cause of death under laws relating to the collection of vital statistics or permitting inquiry into cause of death.

It seems likely that most, if not all, programs covered by the part 2 regulations will also be covered, as health care providers, by the rules proposed below. As can be seen from the above summary, the part 2 regulations would not permit many disclosures that would be permitted under proposed § 164.510 below, such as many disclosures for law enforcement, directory information, governmental health data systems, and judicial and other purposes. In addition, the general permissive disclosure for treatment or payment purposes at proposed § 164.506 below would be inconsistent with the more restrictive requirements at part 2. In such situations, providers (or others) subject to both sets of requirements could not make disclosures prohibited by part 2, even if the same disclosures would be permitted under the rules proposed below.

There are also a number of requirements of the part 2 regulations that parallel the requirements proposed below. For example, the minimum necessary rule, where applicable, would parallel a similar requirement at 42 CFR 2.13(a). Similarly, the notice requirements of part 2, at 42 CFR 2.22 parallel the notice requirements proposed below, although the notice required below would be more detailed and cover more issues. The preemptive effect on State law should be the same under both part 2 and section 264(c)(2). The requirements for disclosures for research proposed below are likewise similar to those in part 2. In such cases, health care providers would have to comply with the more extensive or detailed requirements, but there should be no direct conflict.

Many other provisions of the proposed rules, however, simply have no counterpart in part 2. For example, the part 2 regulations do not require programs to maintain an accounting of uses and disclosures, nor do they provide for a right to request amendment or correction of patient information. Similarly, the part 2 regulations contain no prohibition on conditioning treatment or payment on provision of an individual authorization for disclosure. In such situations, health care providers would be bound by both sets of requirements.

c. *ERISA*. ERISA was enacted in 1974 to regulate pension and welfare employee benefit plans that are established by private sector employers, unions, or both, to provide benefits to their workers and dependents. An employee welfare benefit plan includes plans that provide "through the purchase of insurance or otherwise * * * medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, (or) death." 29 U.S.C. 1002(1). In 1996, Public Law 104–191 amended ERISA to require portability, nondiscrimination, and renewability of health benefits provided by group health plans and group health insurance issuers. Numerous, although not all, ERISA plans are covered under the rules proposed below as "health plans."

As noted above, section 514(a) of ERISA, 29 U.S.C. 1144(a), preempts all State laws that "relate to" any employee benefit plan. However, section 514(b) of ERISA, 29 U.S.C. 1144(b)(2)(A), expressly saves from preemption State laws which regulate insurance. Section of ERISA, 29 U.S.C. 1144(b)(2)(B), provides that an ERISA plan is deemed not to be an insurer for the purpose of regulating the plan under the State insurance laws. Thus, under the deemer clause, States may not treat ERISA plans as insurers subject to direct regulation by State law. Finally, section 514(d) of ERISA, 29 U.S.C. 1144(d), provides that ERISA does not "alter, amend, modify, invalidate, impair, or supersede any law of the United States."

We considered whether the preemption provision of section 264(c)(2) of Public Law 104–191, discussed in the preceding section, would give effect to State laws that would otherwise be preempted by section 514(a) of ERISA. Our reading of the statutes together is that the effect of section 264(c)(2) is simply to leave in place State privacy protections that would otherwise apply and which are more stringent than the federal privacy protections. In the case of ERISA plans, however, if those laws are preempted by section 514(a), they would not otherwise apply. We do not think that it is the intent of section 264(c)(2) to give an effect to State law that it would not otherwise have in the absence of section 264(c)(2). Thus, we would not view the preemption provisions below as applying to State laws otherwise preempted by section 514(a) of ERISA.

Many plans covered by the rules proposed below are also subject to ERISA requirements. To date our discussions and consultations have not uncovered any particular ERISA requirements that would conflict with the rules proposed below. However, we invite comment, particularly in the form of specific identification of statutory or regulatory provisions, of requirements under ERISA that would appear to conflict with provisions of the rules proposed below.

d. *Other federally funded health programs*. There are a number of authorities under the Public Health Service Act and other legislation that contain explicit confidentiality requirements either in the enabling legislation or in the implementing regulations. Many of these are so general that there would appear to be no problem of inconsistency, in that nothing in the legislation or regulations would appear to restrict the assisted provider's discretion to comply with the requirements proposed below. There are, however, several authorities under which either the requirements of the enabling legislation or of the program regulations would impose requirements that would differ from the rules proposed below. We have identified several as presenting potential issues in this regard. First, regulations applicable to the substance abuse block grant program funded under section 1943(b) of the Public Health Service Act require compliance with 42 CFR part 2, and thus raise the issues identified in section 2 above. Second, there are a number of federal programs which, either by statute or by regulation, restrict the disclosure of patient information to, with minor exceptions, disclosures "required by law." See, for example, the program of projects for prevention and control of sexually transmitted diseases funded under section 318(e)(5) of the Public Health Service Act (42 CFR 51b.404); the regulations implementing the community health center program funded under section 330 of the Public Health Service Act (42 CFR 51c.110); the regulations implementing the program of grants for family planning services under title X of the Public Health Service Act (42 CFR 59.15); the regulations implementing the program of grants for black lung clinics funded under 30 U.S.C. 437(a) (42 CFR 55a.104); the regulations implementing the program of maternal and child health projects funded under section 501 of the Act (42 CFR 51a.6); the regulations implementing the program of medical examinations of coal miners (42 CFR 37.80(a)). These legal requirements would restrict the grantees or other entities under the programs involved from making many of the disclosures that proposed § 164.510 would permit. In some cases, permissive disclosures for treatment, payment or health care operations would also be limited. Since proposed § 164.510 is merely permissive, there would not be a conflict between the program requirements, as it would be possible to comply with both. However, it should be recognized that entities subject to both sets of requirements would not have the total range of discretion that the rules proposed below would suggest.

J. Compliance and Enforcement (§ 164.522)

1. Compliance

[*Please label written comments about this section with the subject: "Compliance."*]

The rules proposed below at § 164.522 would establish several requirements designed to enable the Secretary to monitor and seek to ensure compliance with the provisions of this subpart. The general philosophy of this section is to provide a cooperative approach to obtaining compliance, including use of technical assistance and informal means to resolve disputes. However, in recognition of the fact that it would not always be possible to achieve compliance through cooperation, the section also would provide the Secretary with tools for carrying out her statutory mandate to achieve compliance.

a. *Principles for achieving compliance.* Proposed § 164.522(a) would establish the principle that the Secretary will seek the cooperation of covered entities in obtaining compliance. Section 164.522(a)(2) provides that the Secretary could provide technical assistance to covered entities to help them come into compliance with this subpart. It is clearly in the interests of both the covered entities and the individuals they serve to minimize the costs of compliance with the privacy standards. To the extent that the Department could facilitate this by providing technical assistance, it would endeavor to do so.

b. *Individual complaints and compliance reviews.* We are proposing in § 164.522(b) that individuals have the right to file a complaint with the Secretary if they believe that a covered plan or provider has failed to comply with the requirements of this subpart. Because individuals would have received notice, pursuant to proposed § 164.512, of the uses and disclosures that the entity could make and of the entity's privacy practices, they would have a basis for making a realistic judgment as to when a particular action or omission would be improper. The notice would also inform individuals how they could find out how to file such complaints. We thus consider the proposed complaint right to be one that could realistically be exercised by individuals, given the regulatory structure proposed.

We are concerned about the burden that handling the potential volume of such complaints would create for this Department, but we recognize that such a complaint mechanism would provide helpful information about the privacy practices of covered plans or providers and could serve to identify particularly troublesome compliance problems on an early basis.

The procedures proposed in this section are modeled on those used by the Department's Office for Civil Rights, although they would be adapted to reflect the requirements of this subpart. We would require complainants to identify the entities and describe the acts or omissions alleged to be out of compliance and would require individuals to file such complaints within 180 days of those acts or omissions. We have tried to keep the requirements for filing complaints as minimal as possible, to facilitate use of this right. The Secretary would also attempt to keep the identity of complainants confidential, if possible. However, we recognize that it could be necessary to disclose the identity of complainants in order to investigate the substance of their complaints, and the rules proposed below would permit such disclosures.

The Secretary could promulgate alternative procedures for complaints based on agency-specific concerns. For example, to protect classified information, we may promulgate rules that would allow an intelligence community agency to create a separate body within that agency to receive complaints.

The Secretary would try to resolve complaints on an informal basis wherever possible. Where a resolution could not be reached, the Secretary could make a formal finding of noncompliance. However, resolution could occur, and an agreement reached with the covered entity, even after a finding that a violation occurred. The Secretary could use the finding as a basis to initiate an action under section 1176 of the Act or to refer the matter to the Department of Justice for prosecution under section 1177 of the Act. It should be recognized that the decision to initiate an action under either section of the law would be a discretionary one, and proposed § 164.522 would not require such prosecutorial action to be taken. Proposed § 164.522(e)(1)(ii) would, however, permit the use of findings made in connection with a complaint, group of complaints, or compliance review to be acted on in this fashion.

The rules proposed below also would provide that the Secretary would inform both the covered plan or provider and the complainant, whenever a decision was made on a complaint.

We are proposing in § 164.522(c) that the Secretary could conduct compliance reviews to determine whether covered entities are in compliance. A compliance review could be based on information indicating a possible violation of this subpart even though a formal complaint has not been filed. As is the case with a complaint investigation, a compliance review may examine the policies, practices or procedures of a covered entity and may result in voluntary compliance or in a violation or no violation finding.

c. *Responsibilities of covered entities.* Proposed § 164.522(d) establishes certain obligations for covered entities that would be necessary to enable the Secretary to carry out her statutory role to determine their compliance with these requirements. Proposed § 164.522(d)(1) would require covered entities to maintain records as directed. Proposed § 164.522(d)(2) would require them to participate as required in compliance reviews. Proposed § 164.522(d)(3) would affirmatively establish their obligation to provide information to the Secretary upon demand. Finally, paragraph (d)(4) would prohibit intimidating, discriminatory or other retaliatory actions by a covered entity against a person who files a complaint with the Secretary; testifies, assists or participates in any manner in an investigation, compliance review, proceeding, or hearing under this Act; or opposes any act or practice made unlawful by this subpart. This language is modeled after the Americans with Disabilities Act and title VII of the Civil Rights Act of 1964. Prohibitions against retaliation are also common throughout Department programs. The experience of the federal government in enforcing civil rights and other laws has been that voluntary compliance with and effective enforcement of such laws depend in large part on the initiative of persons opposed to illegal practices. If retaliation for opposing practices that a person reasonably believes are unlawful were permitted to go unremedied, it would have a chilling effect upon the willingness of persons to speak out and to participate in administrative processes under this subpart.

Opposition to practices of covered entities refers to a person's communication of his or her good faith belief that a covered entity's activities violate this subpart. Opposition includes, but is not limited to, filing a complaint with the covered entity under § 164.518(d) and making a disclosure as a whistleblower under § 164.518(c)(4). This provision would not protect a person whose manner of opposition is so unreasonable that it interferes with the covered entities' legitimate activities. This provision would cover such situations such as where an employee of a physician is fired in retaliation for confronting the doctor regarding her practice of illegally disclosing individuals' records or where a health plan drops coverage after an enrollee argues to the plan that he has a right to access to his records.

We recognize that under these requirements the covered entity would be disclosing protected health information to representatives of the Department when such information is relevant to a compliance investigation or assessment. We recognize that this would create a mandatory disclosure of protected health information and that such a requirement carries significant privacy concerns. Those concerns must, however, be weighed against the need to obtain compliance by entities with the privacy standards, and to protect against future improper uses and disclosures of protected health information. The proposed rule accordingly attempts to strike a balance between these interests, providing that the Department would not disclose such information, except as may be necessary to enable the Secretary to ascertain compliance with this subpart or in enforcement proceedings or as otherwise required by law.

2. Enforcement

[*Please label written comments about this section with the subject: "Enforcement."*]

Congress established a two-pronged approach to enforcement of all of the requirements established under part C of title XI of the Act. First, section 1176 grants the Secretary the authority to impose civil monetary penalties against those covered entities which fail to comply with the requirements established under part C. These penalties are to be imposed according to the procedures established for imposition of civil monetary penalties in section 1128A of the Act. Second, section 1177 establishes criminal penalties for certain wrongful disclosures of individually identifiable health information.

The selection of the civil monetary penalty process at section 1128A of the Act as the enforcement mechanism for the Administrative Simplification standards and requirements indicates the type of process Congress believes is appropriate for civil enforcement of those standards and requirements. The Secretary's Recommendations call for a privacy right of action to permit individuals to enforce their privacy rights. However, the HIPAA does not provide a private right of action, so the Secretary lacks the authority to provide for such a remedy. Accordingly, we would provide that individuals could file complaints with the Secretary and the Secretary could then, when appropriate, investigate. The Secretary may also conduct compliance reviews. See proposed § 164.522(b) and (c).

Under section 1177(a), the offense of "wrongful disclosure" is a disclosure that violates the standards or requirements established under part C. These would include any disclosures not otherwise permitted under the privacy standards or the parallel security standards.

As we noted in the Notices of Proposed Rulemaking for the other Administrative Simplification regulations, we will propose regulations in the future to establish these procedures. Because such procedures will not constitute "standards" within the meaning of part C, they would not be subject to the delay in effective date provisions that apply to the various Administrative Simplification regulations.

III. Small Business Assistance

This rule is significant because it establishes for the first time a federally required regime of information practices in the medical industry. The length, and at times complexity, of the preamble discussion may impress small businesses as creating overly burdensome and costly requirements. We believe, however, that several features of the rule, combined with initiatives by the Department and professional associations, will make the rule easily administrable for the vast majority of small businesses.

First, a significant portion of the rule addresses the topic of signed individual authorization for disclosure of health information—the information that the authorization would include and when such an authorization would be required. Importantly, no patient written authorization would be required when information is disclosed for purposes of treatment and payment and health care operations, or when disclosure is mandated by law. In other words, doctors who disclose patient health information only to other doctors for treatment purposes, or to insurance companies to process payment, or for operational purposes can continue to do so without any change in current practices under this proposal. Only those covered entities who disclose health information to marketers, reporters, private investigators, researchers, and others for purposes unrelated to treatment, payment, and health care operations are required to get the written consent of the patient in accordance with this rule.

Second, the Department plans to engage in outreach and education programs to ease the implementation of this rule for small businesses. Already, this rule provides model forms for getting patient authorization and provides an example of a notice of information practices (another requirement in the rule, described further below). We also expect that professional associations will develop forms tailored to specific groups' needs. The Department pledges to work with professional associations to provide the greatest possible guidance to small businesses covered by this rule.

Third, in implementing this rule, we will apply the principle of "scalability," so that a particular entity's characteristics—including its size, type of business, and information practices—would be relevant to how that entity adopts procedures to comply with this rule. Take one example—this rule requires the designation of a "privacy official." Large health plans dealing with a vast range of information flows may well consider hiring a full time person to oversee compliance with the rule, to assist in planning systems development, and to draft contracts with business partners, among other tasks. A small doctor's office, on the other hand, may instead determine that an existing office manager could oversee the office's privacy policies. There would be no expectation that this small doctor's office hire a full-time privacy official. In each of these examples, the covered entity would be complying with the rule's requirement that a privacy official be designated—but the ways that each complies would reflect the different circumstances of each entity's practice.

It is important for small businesses to understand what their obligations would be and to implement the necessary procedures to comply, with the help of Department's model forms and other resources from professional associations. While most covered entities would need to be in compliance within two years of the final publication of the rule, small businesses would have an extra year to come into compliance.

Here, we set out the principal (although not exclusive) requirements for small businesses:

1. Notice to Individuals of Information Practices (§ 164.512)

Each covered entity would have to develop a notice of information practices, which, as described above, could be modeled on the form attached to this proposal or on model forms that we expect professional associations to develop. The notice must accurately reflect the entity's practices and include the elements listed in § 164.512.

Covered *health care providers* would have to provide the notice to individuals at first service after the effective date of the rule. Providers are also required to post a current copy of the notice in a clear and prominent location for individuals to see. Covered health *plans* would have to provide the notice to any individual covered by the plan when this rule becomes effective, at enrollment, and after any material change to the notice or at least once every three years.

2. Access of Individuals to Protected Health Information (§ 164.514)

Covered plans and providers would be required to allow individuals to inspect and copy their protected health information. These plans or providers could charge individuals a reasonable cost-based fee for copying.

3. Accounting for Uses and Disclosures (§ 164.515)

Covered plans and providers would have to be able to provide an accounting for uses and disclosures of protected health information for purposes other than treatment, payment, or health care operations. We expect that this burden will be very low for most small businesses, given the nature of most disclosures by such businesses.

4. Amendment and Correction (§ 164.516)

Covered plans and providers would be required to allow individuals to request amendments or corrections to their protected health information.

5. Designated Privacy Official (§ 164.518(a))

Each covered entity would designate a privacy official. As described above, in a small providers office, the office manager may be the official in charge of making sure that the office is implementing its privacy policies and procedures and taking complaints.

6. Training (§ 164.518(b))

All members of covered entities' workforces who have contact with protected health information would be required to have some sort of privacy training about the entity's policies and procedures and to sign a certificate indicating that they had such training. For a small entity, this could simply mean the privacy official briefly discussing how they handle privacy concerns and going over the entity's notice of information practices.

7. Safeguards (§ 164.518(c))

A covered entity would have to establish administrative, technical, and physical safeguards to protect the privacy of protected health information from unauthorized access or use. For a small provider, this may mean having the ability to securely lock up any record that are not being used and ensuring that records are not kept in an area where anyone who is not authorized could view them.

8. Complaints (§ 164.518(d))

Every covered entity would be required to have policies and procedures in place that allow individuals to file complaints about possible privacy violations. For a small entity, this could mean simply that they keep a specific file for complaints.

9. Sanctions (§ 164.518(e))

Covered entities would be required to develop and apply sanctions when a member of a covered entity's work force or business partner fails to comply with the entity's policies and procedures related to this rule. For a small businesses, these could range from requiring a re-training on privacy, to placing a notation of the violation in an employee's record, to dismissal or ending a contract with a business partner.

10. Documentation of Policies and Procedures (§§ 164.520)

Covered entities would be required to document policies and procedures for use and disclosure of protected health information relating to this regulation, including elements listed in § 164.520, and would need to maintain one copy of each version of its notice of information practices, and authorization forms. See § 164.520(f) for a full list of recordkeeping requirements.

11. Minimum Necessary (§ 164.506(b))

When using or disclosing protected health information for treatment, payment, healthcare operations, and other purposes, an entity would be required to disclose only the amount of protected health information necessary to accomplish the intended purpose of the use or disclosure.

12. Business Partners (§ 164.506(e))

For those small businesses that hire "business partners" to assist them in carrying out their operations, this rule would require that they take steps, including having certain terms in a contract, to ensure that their business partners are also protecting the privacy of individually identifiable health information. We expect that model contracts will be developed by potential business partners and others that can be used to fulfill the requirements of this section.

13. Special Disclosures That Do Not Require Authorization—Public Health, Research, etc. (§ 164.510)

This proposed rule would also permit disclosure of patients' health information in special cases and under certain conditions. These disclosures would be optional under this proposed rule but may be mandatory under other laws. The primary examples of such permissible disclosures are for: public health purposes, for health oversight purposes, for judicial and administrative proceedings, to coroners and medical examiners, to law enforcement agencies, to next-of-kin, to governmental health data systems, for research purposes, other disclosures required by law, among others. Each of these disclosures and uses would be subject to specific conditions, described in the proposed rule.

14. Verification (§ 164.518(c)(2))

Entities would be required to have reasonable procedures to verify the identity or authority, as applicable, of persons requesting the disclosure of protected health information if the person making the request is not already known to the entity. In most cases, the covered entity could simply ask for a form of identification like a drivers license.

IV. Preliminary Regulatory Impact Analysis

Section 804(2) of title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or

- Significant adverse effects in competition, employment, investment productivity, innovation, or on the ability of Unites States based enterprises to compete with foreign-based enterprises in domestic and export markets.

We estimate that the impact of this final rule will be over $1 billion in the first year of implementation. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2).

DHHS has examined the impacts of this proposed rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs or if it raises novel legal or policy issues. DHHS finds that this proposed rule is a significant regulatory action as defined by Executive Order 12866. Also in accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

When this proposed rule becomes a final rule, in accordance with the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (the Administrator) has determined that this proposed rule would be a major rule for the purpose of congressional review. A major rule for this purpose is defined in 5 U.S.C. 804(2) as one that the Administrator has determined has resulted or is likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, federal State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) projects a significant increase in the number of medical transactions that will be conducted or transmitted electronically. HIPAA notes the privacy needs that result when individually identifiable health information can be transmitted quickly through electronic information systems. While there is a compelling need to protect the privacy of health information in today's health care system, the expected growth of electronic systems to aide medical diagnostics, claims processing and research makes it even more critical to improve privacy protections.

A fundamental assumption of this regulation is that the greatest benefits of improved privacy protection will be realized in the future as patients gain increasing trust in health care practitioners' ability to maintain the confidentiality of their health information. Furthermore, our analysis rests on the principle that health information privacy is a right, and as such, cannot be valued solely by market costs. Because it is difficult to measure future benefits based on present data, our estimates of the costs and benefits of this regulation are based on the current business environment and do not include projections beyond five years. As a result, we cannot accurately account for all of the regulation's future costs and benefits, but the Department is confident that future benefits will be higher than those stated in this analysis.

In order to achieve a reasonable level of privacy protection, we have three objectives for the proposed rule: (1) To establish baseline standards for health care privacy protection, (2) to establish protection for all health information maintained or transmitted by covered entities, and (3) to protect the privacy of health information that is maintained in electronic form, as well as health information generated by electronic systems.

Establishing minimum standards for health care privacy protection is an attempt to create a baseline level of privacy protection for patients across States. The Health Privacy Project's report, *The State of Health Privacy: An Uneven Terrain*[6] makes it clear that under the current system of state laws, privacy protection is extremely variable. Our statutory authority under HIPAA allows us to preempt state laws when state law provides less stringent privacy protection than the regulation. Only in cases where state law does not protect the patient's health information as stringently as in this proposed rule, or when state law is more restrictive of a patient's right to access their own health care information, will our rule preempt state law. We discuss preemption in greater detail in other parts of the preamble (see the effects of the rule on state laws, section 2 below).

Our second objective is to establish a uniform base of protection for all health information maintained or transmitted by covered entities. As discussed in the preamble, HIPAA restricts the type of entities covered by the proposed rule to three broad categories: health care providers, health care clearinghouses, and health plans. However, there are similar public and private entities that we do not have the authority to regulate under HIPAA. For example, life insurance companies are not covered by this proposed rule but have access to a large amount of protected health information. State government agencies not directly linked to public health functions or health oversight may also have access to protected health information. Examples of this type of agency include the motor vehicle administration, which frequently maintains individual health information, and welfare agencies that routinely hold health information about their clients.

Our third objective is to protect the privacy of health information that is maintained in electronic form, as well as health information generated by electronic systems. Health information is currently stored and transmitted in multiple forms, including in electronic, paper, and oral formats. In order to provide consistent protection to information that has been electronically transmitted or maintained, we propose that this rule cover all personal, protected health information that has ever been maintained or transmitted electronically. This type of information includes output such as computer printouts, X-rays, magnetic tape, and other information that was originally maintained or transmitted electronically. For example, laboratory tests are often computer generated, printed out on paper, and then stored in a patient's record. Because such lab results were originally maintained electronically, the post-electronic (i.e. printed) output of those lab results would also be covered under the proposed rule.

It is important to note that the use of electronic systems to maintain and transmit health information is growing among health care providers, and health plans. Faulkner and Gray report that provider use of electronically processed health transactions grew from 47 percent to 62 percent between 1994 and 1998. Payer use of electronic transactions grew 17 percent between 1996 and 1997. Once all of the HIPAA administrative simplification standards are implemented, we expect the number of electronic transactions processed by payers and providers to grow.

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[6] Janlori Goldman, Institute for Health Care Research and Policy, Georgetown University: www.healthprivacy.org/resources.

The variation in business practice regarding use of paper records versus electronic media for storing and transmitting health information is captured by comparing the percentage of providers that submit paper claims with those that submit electronic claims. Faulkner & Gray's *Health Data Directory*[1] shows that only 40 percent of non-Medicare physician claims and 16 percent of dental claims were submitted electronically in 1998. In contrast, 88 percent of all pharmacy claims were submitted electronically.

We believe that most physicians either have, or will have in the near future, the capacity to submit claims electronically. Faulkner and Gray reported that 81 percent of physicians with Medicare patients submitted their Medicare claims electronically. The difference in the percent of electronic clams submitted to Medicare suggests that the physicians' decisions to submit claims electronically may be heavily influenced by the administrative requirements of the health plan receiving the claim. Since HIPAA requires all health plans to accept electronic transactions and, in order to compete in the technologically driven health care market, more health plans may require electronic claims submissions, physicians will conduct many more electronic transactions in the near future. Therefore, it is extremely important that adequate privacy protections are implemented now.

A. Relationship of This Analysis to Analyses in Other HIPAA Regulations

Historically, Congress has recognized that privacy standards must accompany the electronic data interchange standards and that the increased ease of transmitting and sharing individually identifiable health information must be accompanied by an increase in the privacy and confidentiality. In fact, the majority of the bulk of the first Administrative Simplification section that was debated on the floor of the Senate in 1994 (as part of the Health Security Act) was made up of privacy provisions. Although the requirement for the issuance of concomitant privacy standards remained a part of the bill passed by the House of Representatives, the requirement for privacy standards was removed in conference. This section was moved from the standard-setting authority of Title XI (section 1173 of the Act) and placed in a separate section of HIPAA, section 264. Subsection (b) of section 264 required the Secretary of HHS to develop and submit to the Congress recommendations for:

(1) The rights that an individual who is a subject of individually identifiable health information should have.

(2) The procedures that should be established for the exercise of such rights.

(3) The uses and disclosures of such information that should be authorized or required.

The Secretary's Recommendations were submitted to the Congress on September 11, 1997, and are summarized below. Section 264(c)(1) provides that:

> If legislation governing standards with respect to the privacy of individually identifiable health information transmitted in connection with the transactions described in section 1173(a) of the Social Security Act (as added by section 262) is not enacted by (August 21, 1999), the Secretary of Health and Human Services shall promulgate final regulations containing such standards not later than (February 21, 2000). Such regulations shall address at least the subjects described in subsection (b).

As the Congress did not enact legislation governing standards with respect to the privacy of individually identifiable health information prior to August 21, 1999, HHS has now, in accordance with this statutory mandate, developed proposed rules setting forth standards to protect the privacy of such information.

These privacy standards have been, and continue to be, an integral part of the suite of Administrative Simplification standards intended to simplify and improve the efficiency of the administration of our health care system.

The proposed rule should be considered along with all of the administrative simplification standards required by HIPAA. We assessed several strategies for determining the impact of this proposed rule. We considered whether it would be accurate to view the impact as a subset of the overall HIPAA standards or whether this privacy component should be viewed as an addition to the earlier impact analyses related to HIPAA. We decided that while this proposed rule is considered one of the HIPAA standards, any related costs or benefits should be viewed as an addition to earlier analyses. The original HIPAA analyses did not incorporate the expected costs and benefits of privacy regulation because, at the time of the original analyses, we did not know whether Congress would enact legislation or whether privacy would need to be addressed by regulation. Therefore, much of our cost analysis is based on the expected incremental costs above those related to other HIPAA regulations.

B. Summary of Costs and Benefits.

The Department has estimated the costs and benefits of the proposed rule based on several caveats. In general, it is difficult to estimate the costs and benefits of improved privacy protection. The ability to measure costs of the proposed regulation is limited because there is very little data currently available on the cost of privacy protection. The Department has not been able to estimate costs for a number of requirements of the proposed regulation that we know will impose some cost to covered entities. For those elements for which there are estimated costs, data and information limitations limit the precision of the Department's estimates; for those reasons we have provided an overall range of costs in addition to point estimates, and welcome further information from the public as part of the comment process. Furthermore, the number of new privacy requirements that the regulation will introduce to the health care industry exacerbates difficulties estimating the benefits of privacy. Benefits are difficult to measure because we conceive of privacy primarily as a right and secondarily as a commodity. As discussed below, the significant benefits of the proposed regulation to individuals and society can be demonstrated by illustrating the serious privacy concerns raised by mental health, substance abuse, cancer screening, and HIV/AIDS patients and the benefits that may be derived from greater privacy.

The estimated cost of compliance with the proposed rule would be at least $3.8 billion over five years. The cost includes estimates for the majority of the requirements of the proposed regulation, but not all. These estimates include costs to federal, State, and local governments. Federal, and State and local costs are therefore a subset of total costs. Based on a plausible range of costs for the key components of the analysis, the cost of the regulation would likely be in the range $1.8 to $6.3 billion over five years (not including those elements of the regulation for which we could not make any cost estimates).

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[1] Health Data Directory, Faulkner & Gray; 1999 Edition, pp 22–23.

The compliance costs are in addition to Administrative Simplification estimates. The cost of complying with the privacy regulation represents about 0.09 percent of projected national health expenditures during the first year following the regulation's enactment. The five-year cost of the proposed regulation also represents 1.0 percent of the increase in health care costs that will occur during the same five-year period.[8]

The largest cost item is the amending and correcting of records, which would represent over one-half of total costs. Provider and plan notices, which we estimate would cost $439 million, is the second largest cost, and inspection and copying of records is estimated to be $405 million. The one-time costs for providers to develop policies and procedures represent somewhat less than 10 percent of the total cost, or $333 million. Plans would bear a substantially smaller cost—approximately $62 million. Other systems changes would cost about $90 million over the period. The cost of administering written authorizations would total approximately $271 million over five years.

The cost estimates include private- and public-sector costs. Many of the public-sector cost elements will be the same as those in the private market. However, privacy notices are likely to represent a smaller fraction of total public-sector costs, while systems compliance costs in the public sector may be higher than in the private sector due to oversight and administrative requirements.

The costs presented in this document are the Department's best estimates of the cost of implementing the proposed regulation based on available information and data. Because of inadequate data, we have not made cost estimates for the following components of the regulation: The principle of minimum necessary disclosure; the requirement that entities monitor business partners with whom they share PHI; creation of de-identified information; internal complaint processes; sanctions; compliance and enforcement; the designation of a privacy official and creation of a privacy board; and additional requirements on research/optional disclosures that will be imposed by the regulation. The cost of these provisions may be significant in some cases, but it would be inaccurate to project costs for these requirements given the fact that several of these concepts are new to the industry, and there is little direct evidence on costs. We solicit comment regarding costs of the regulation that we have not quantified.

The privacy protections established by this regulation will provide major social benefits. Establishing privacy protection as a fundamental right is an important goal and will have significant, non-quantifiable social benefits. A well-designed privacy standard can be expected to build confidence among the public about the confidentiality of their health information. Increased confidence in the privacy of an individual's health information can be expected to increase the likelihood that many people will seek treatment for particular classes of disease, particularly mental health conditions, sexually transmitted diseases such as HIV/AIDS, and earlier screening for certain cancers. The increased utilization of medical services that would result from increased confidence in privacy would lead to improved health for the individuals involved, reduced costs to society associated with delayed treatments, and improved public health attributable to reduced transmission of communicable diseases.

TABLE 1.—THE COST OF COMPLYING WITH THE PROPOSED PRIVACY REGULATION

[In dollars]

Provision	Initial or first year cost (2000)	Annual cost after the first year	Five year (2000–2004) cost
Development of Policies and Procedures—Providers (totaling 871,294)	$333,000,000		$333,000,000
Development of Policies and Procedures—Plans (totaling 18,225)	62,000,000		62,000,000
System Changes—All Entities	90,000,000		90,000,000
Notice Development Cost—All Entities	20,000,000		30,000,000
Notice Issuance—Providers	59,730,000	37,152,000	208,340,000
Notice Issuance—Plans	46,200,000	46,200,000	231,000,000
Inspection/Copying	81,000,000	81,000,000	405,000,000
Amendment/Correction	407,000,000	407,000,000	2,035,000,000
Written Authorization	54,300,000	54,300,000	271,500,000
Paperwork/Training	22,000,000	22,000,000	110,000,000
Other Costs*	**N/E	N/E	N/E
Total	$1,165,230,000	$647,652,000	$3,775,840,000

*Other Costs include: minimum necessary disclosure; monitoring business partners with whom entities share PHI; creation of de-identified information; internal complaint processes; sanctions; compliance and enforcement; the designation of a privacy official and creation of a privacy board; additional requirements on research/optional disclosures that will be imposed by the regulation.

**N/E = "Not estimated".

We promote the view that privacy protection is an important personal right, and suggest that the greatest of the benefits of the proposed regulation are impossible to estimate based on the market value of health information alone. However, it is possible to evaluate some of the benefits that may accrue to individuals as a result of proposed regulation, and these benefits, alone, demonstrate that the regulation is warranted.

These benefits are considered both qualitatively and quantitatively. As a framework for the discussion, the cost of the provisions in the regulation that have been quantified is $0.46 per health care encounter. Although the value of privacy cannot be fully calculated, it is worth noting that if individuals would be willing to pay more than $0.46 per health care encounter to improve health information privacy, the benefits of the proposed regulation would outweigh the cost.

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[8] Health Care Finance Administration, Office of the Actuary, 1997.

Several qualitative examples illustrate the benefits of the proposed regulation. In one case, medical privacy concerns may prevent patients from obtaining early testing and screening for certain types of cancer. Of types of cancer for which screening is available, survival rates might increase to 95 percent diagnosed in the early stages[9]. For HIV/AIDS patients, new treatments for patients who are diagnosed with HIV in the early stages may save $23,700 per quality-adjusted year of life saved[10]. Later in this document, the potential to reduce illness and disability associated with sexually transmitted diseases is discussed.

We recognize that many of the costs and benefits of health information privacy are difficult to quantify, but we believe that our estimates represent a reasonable range of the economic costs and benefits associated with the regulation.

C. Need for the Proposed Action.

Privacy is a fundamental right. As such, it has to be viewed differently than any ordinary economic good. Although the costs and benefits of a regulation need to be considered as a means of identifying and weighing options, it is important not to lose sight of the inherent meaning of privacy: it speaks to our individual and collective freedom.

A right to privacy in personal information has historically found expression in American law. All fifty states today recognize in tort law a common law or statutory right to privacy. Many states specifically provide a remedy for public revelation of private facts. Some states, such as California and Tennessee, have a right to privacy as a matter of state constitutional law. The multiple historical sources for legal rights to privacy are traced in many places, including Chapter 13 of Alan Westin's Privacy and Freedom and in Ellen Alderman & Caroline Kennedy, The Right to Privacy (1995).

To take but one example, the Fourth Amendment to the United States Constitution guarantees that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." By referring to the need for security of "persons" as well as "papers and effects" the Fourth Amendment suggests enduring values in American law that relate to privacy. The need for security of "persons" is consistent with getting patient consent before performing invasive medical procedures. The need for security in "papers and effects" underscores the importance of protecting information about the person, contained in sources such as personal diaries, medical records, or elsewhere. As is generally true for the right of privacy in information, the right is not absolute. The test instead is what constitutes an "unreasonable" search of the papers and effects.

The United States Supreme Court has specifically upheld the constitutional protection of personal health information. In *Whalen* v. *Roe*, 429 U.S. 589 (1977), the Court analyzed a New York statute that created a database of persons who obtained drugs for which there was both a lawful and unlawful market. The Court, in upholding the statute, recognized at least two different kinds of interests within the constitutionally protected "zone of privacy." "One is the individual interest in avoiding disclosure of personal matters," such as this proposed regulation principally addresses. This interest in avoiding disclosure, discussed in *Whalen* in the context of medical information, was found to be distinct from a different line of cases concerning "the interest in independence in making certain kinds of important decisions." In the recent case of *Jaffee* v. *Redmond*, 116 S.Ct. 1923 (1996), the Supreme Court held that statements made to a therapist during a counseling session were protected against civil discovery under the Federal Rules of Evidence. The Court noted that all fifty states have adopted some form of the psychotherapist-patient privilege. In upholding the federal privilege, the Supreme Court stated that it "serves the public interest by facilitating the appropriate treatment for individuals suffering the effects of a mental or emotional problem. The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance."

Many writers have urged a philosophical or common-sense right to privacy in one's personal information. Examples include Alan Westin, Privacy and Freedom (1967) and Janna Malamud Smith, Private Matters: In Defense of the Personal Life (1997). These writings emphasize the link between privacy and freedom and privacy and the "personal life," or the ability to develop one's own personality and self-expression. Smith, for instance, states:

> The bottom line is clear. If we continually, gratuitously, reveal other people's privacies, we harm them and ourselves, we undermine the richness of the personal life, and we fuel a social atmosphere of mutual exploitation. Let me put it another way: Little in life is as precious as the freedom to say and do things with people you love that you would not say or do if someone else were present. And few experiences are as fundamental to liberty and autonomy as maintaining control over when, how, to whom, and where you disclose personal material. Id. at 240–241.

Individuals' right to privacy in information about themselves is not absolute. It does not, for instance, prevent reporting of public health information on communicable diseases or stop law enforcement from getting information when due process has been observed. But many people believe that individuals should have some right to control personal and sensitive information about themselves.

Among different sorts of personal information, health information is among the most sensitive. Many people believe that details about their physical self should not generally be put on display for neighbors, employers, and government officials to see. Informed consent laws place limits on the ability of other persons to intrude physically on a person's body. Similar concerns apply to intrusions on information about the person. Moving beyond these facts of physical treatment, there is likely a greater intrusion when the medical records reveal details about a person's mental state, such as during treatment for mental health. If, in Justice Brandeis' words, the "right to be let alone" means anything, then it likely applies to having outsiders have access to one's intimate thoughts, words, and emotions.

In addition to these arguments based on the right to privacy in personal information, market failures will arise to the extent that privacy is less well protected than the parties would have agreed to, if they were fully informed and had the ability to monitor and enforce contracts. The chief market failures with respect to privacy concern information, negotiating, and enforcement costs. The information costs arise because of the information asymmetry between the company and the patient—the company typically knows far more than the patient about how the information will be used by that company. A health care provider or plan, for instance, knows many details about how protected health information will be generated, combined with other databases, or sold to third parties.

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[9] American Cancer Society. http://www.cancer.org/statistics/97cff/97facts.html

[10] John Hornberger et al. "Early treatment with highly active anti-retroviral therapy (HAART) is cost-effective compared to delayed treatment." 12th World AIDS conference, 1998.

Patients face at least two layers of cost in learning about how their information is used. First, as with many aspects of health care, patients face the challenge of trying to understand technical medical terminology and practices. It will often be difficult for a patient to understand the medical records and the implications of transferring various parts of such records to a third party. Second, especially in the absence of consistent national rules, patients may face significant costs in trying to learn and understand the nature of a company's privacy policies.

The costs of learning about companies' policies are magnified by the difficulty patients face in detecting whether companies in fact are complying with those policies. Patients might try to adopt strategies for monitoring whether companies have complied with their announced policies. For instance, if a person received health care from several providers that promised not to sell her name to third parties, she could report a different middle initial to each provider. She could then identify the provider that broke the agreement by noticing the middle initials that later appeared on an unsolicited marketing letter. These sorts of strategies, however, are both costly (in time and effort) and likely to be ineffective. A company using the patient's name, for instance, could cross-check her address with her real name, and thereby insert the correct middle initial. In addition, modern health care often requires protected health information to flow legitimately among multiple entities for purposes of treatment, payment, health care operations, and other necessary uses. Even if the patient could identify the provider whose data ultimately leaked, the patient could not easily tell which of those multiple entities had impermissibly transferred her information.

The cost and ineffectiveness of monitoring logically leads to less than optimal protection of health information. Consider the incentives facing a company that acquires protected health information. That company gains the full benefit of using the information, including in its own marketing efforts or in the fee it can receive when it sells the information to third parties. The company, however, does not suffer the full losses from disclosure of protected health information. Because of imperfect monitoring, customers often will not learn of, and thus not be able to enforce against, that unauthorized use. They will not be able to discipline the company efficiently in the marketplace for its less-than-optimal privacy practices. Because the company internalizes the gains from using the information, but does not bear a significant share of the cost to patients (in terms of lost privacy), it will have a systematic incentive to over-use protected health information. In market failure terms, companies will have an incentive to use protected health information where the patient would not have freely agreed to such use.

These difficulties in contract enforcement are made worse by the third-party nature of many health insurance and payment systems. Even where individuals would wish to bargain for privacy, they may lack the legal standing to do so. For instance, employers often negotiate the terms of health plans with insurers. The employee may have no voice in the privacy or other terms of the plan, facing a take-it-or-leave-it choice of whether to be covered by insurance. The incentive of employers may be contrary to the wishes of employees—employers may in some cases inappropriately insist on having access to sensitive medical information in order to monitor employees' behavior and health status. In light of these complexities, there are likely significant market failures in the bargaining on privacy protection. Many privacy-protective agreements that patients would wish to make, absent barriers to bargaining, will not be reached. The economic, legal and philosophical arguments become more compelling as the medical system shifts from predominantly paper to predominantly electronic records. From an economic perspective, market failures will arise to the extent that privacy is less well protected than the parties would have agreed to, if they were fully informed and had some equality of bargaining power. The chief market failures with respect to privacy concern information and bargaining costs. The information costs arise because of the information asymmetry between the company and the patient—the company typically knows far more than the patient about how the information will be used by that company. A health care provider or plan, for instance, knows many details about how protected health information will be generated, combined with other databases, or sold to third parties.

Rapid changes in information technology mean that the size of the market failures will likely increase greatly in the markets for personal health information. Improvements in computers and networking mean that the costs of gathering, analyzing, and disseminating electronic data are plunging. Market forces are leading many medical providers and plans to shift from paper to electronic records, due both to lower cost and the increased functionality provided by having information in electronic form. These market changes will be accelerated by the administrative simplification implemented by the other regulations promulgated under HIPAA. A chief goal of administrative simplification, in fact, is to create a more efficient flow of medical information where appropriate. This proposed privacy regulation is an integral part of the overall effort of administrative simplification; it creates a framework for more efficient flows for certain purposes, including treatment and payment, while restricting flows in other circumstances except where appropriate institutional safeguards exist.

If the medical system shifts to predominantly electronic records in the near future, without use of accompanying privacy rules, then one can imagine a near future where clerical and medical workers all over the country may be able to pull up protected health information about individuals—without meaningful patient consent and without effective institutional controls against further dissemination. In terms of the market failure, it will become more difficult for patients to know how their health provider or plan is using their personal health information. It will become more difficult to monitor the subsequent flows of protected health information, as the number of electronic flows and possible points of leakage both increase. Similarly, the costs and difficulties of bargaining to get the patients' desired level of use will likely rise due the greater number and types of entities that receive protected health information.

As the benefits section, below, discusses in more detail, the protection of privacy and correcting the market failure have practical implications. Where patients are concerned about lack of privacy protections, they might fail to get medical treatment that they would otherwise seek. This failure to get treatment may be especially likely for certain conditions, including mental health, substance abuse, and conditions such as HIV. Similarly, patients who are concerned about lack of privacy protections may report inaccurately to their providers when they do seek treatment. For instance, they might decide not to mention that they are taking prescription drugs that indicate that they have an embarrassing condition. These inaccurate reports may lead to mis-diagnosis and less-than-optimal treatment, including inappropriate additional medications. In short, the lack of privacy safeguards can lead to efficiency losses in the form of foregone or inappropriate treatment.

The shift from paper to electronic records, with the accompanying greater flows of sensitive health information, also strengthens the arguments for giving legal protection to the right to privacy in protected health information. In an earlier period where it was far more expensive to access and use medical records, the risk of harm to individuals was relatively low. In the potential near future, where technology makes it almost free to send lifetime medical records over the Internet, the risks may grow rapidly. It may become cost-effective, for instance, for companies to offer services that allow purchasers to obtain details of a person's physical and mental treatments. In addition to legitimate possible uses for such services, malicious or inquisitive persons may download medical records for purposes ranging from identity theft to embarrassment to prurient interest in the life of a celebrity or neighbor. Of additional concern, such services might extend to providing detailed genetic information about individuals, without their consent. Many persons likely believe that they have a right to live in society without having these details of their lives laid open to unknown and possibly hostile eyes. These technological changes, in short, may provide a reason for institutionalizing privacy protections in situations where the risk of harm did not previously justify writing such protections into law.

States have, to varying degrees, attempted to enhance confidentiality and correct the market problems by establishing laws governing at least some aspects of medical record privacy. This approach, though a step in the right direction, is inadequate. The states themselves have a patch quilt of laws that fail to provide a consistent or comprehensive policy, and there is considerable variation among the states in the scope of the protections provided. Moreover, health data is becoming increasingly "national"; as more information becomes available in electronic form, it can have value far beyond the immediate community where the patient resides. Neither private action nor state laws provide a sufficiently rigorous legal structure to correct the market failure now or in the future. Hence, a national policy with consistent rules is a vital step toward correcting the market failure that exists.

In summarizing the need for the proposed regulation, the discussion here has emphasized how the proposed regulation would address violations of a right to privacy in the information about oneself, market failures, and the need for a national policy. These arguments become considerably stronger with the shift from predominantly paper to predominantly electronic records. Other arguments could supplement these justifications. As discussed in the benefits section below, the proposed privacy protections may prevent or reduce the risk of unfair treatment or discrimination against vulnerable categories of persons, such as those who are HIV positive, and thereby, foster better health. The proposed regulation may also help educate providers, plans, and the general public about how protected health information is used. This education, in turn, may lead to better information practices in the future.

Clearly, the growing problem of protecting privacy is widely understood and a major public concern. Over 80 percent of persons surveyed in 1999 agreed with the statement that they had "lost all control over their personal information." A Wall Street Journal/NBC poll on September 16, 1999 asked Americans what concerned them most in the coming century. "Loss of personal privacy" topped the list, as the first or second concern of 29 percent of respondents. Other issues such as terrorism, world war, and global warming had scores of 23 percent or less. The regulation is a major step toward addressing this public concern.

D. Baseline Privacy Protections

Determining the impact of the rule on covered entities requires us to establish a baseline for current privacy policies. We must first determine current practices and requirements related to protected information—specifically, practices related to disclosure and use, notification of individuals of information practices, inspection and copying, amendment and correction, administrative policies, procedures, and related documentation.

Privacy practices are most often shaped by professional organizations that publish ethical codes of conduct and by State law. On occasion, State laws defer to professional conduct codes. At present, where neither professional organizations nor States have developed guidelines for privacy practices, an entity may implement privacy practices independently.

Professional codes of conduct or ethical behavior generally can be found as opinions and guidelines developed by organizations such as the American Medical Association, the American Hospital Association, and the American Dental Association. These are generally issued though an organization's governing body. The codes do not have the force of law, but providers often recognize them as binding rules.

State laws are another important means of protecting health information. While professional codes of conduct usually only have slight variations, State laws vary dramatically. Some States defer to the professional codes of conduct, others provide general guidelines for privacy protection, and others provide detailed requirements relating to the protection of information relating to specific diseases or to entire classes of information. In cases where neither State law nor professional ethical standards exist, the only privacy protection individuals have is limited to the policies and standards that the health care entity adopts.

Before we can attempt to determine the impact of the proposed rule on covered entities, we must make an effort to establish the present level of privacy protection. Current privacy protection practices are determined by the standards and practices that the professional associations have adopted for their members and by State laws.

1. Professional Codes of Conduct and the Protection of Health Information

We examined statements issued by five major professional groups, one national electronic network association and a leading managed care association. There are a number of common themes that all the organizations appear to subscribe to:

- The need to maintain and protect an individual's health information;
- Development of policies to ensure the confidentiality of protected health information;
- Only the minimum necessary information should be released to accomplish the purpose for which the information is sought.

Beyond these principles, the major associations differ with respect to the methods used to protect health information. One critical area of difference is the extent to which professional organizations should release protected health information. A major mental health association advocates the release of identifiable patient information "* * * only when de-identified data are inadequate for the purpose at hand." A major association of physicians counsels members who use electronically maintained and transmitted data to require that they and their patients know in advance who has access to protected patient data, and the purposes for which the data will be used. In another document, the association advises physicians not to "sell" patient information to data collection companies without fully informing their patients of this practice and receiving authorization in advance to release of the information.

Only two of the five professional groups state that patients have the right to review their medical records. One group declares this as a fundamental patient right, while the second association qualifies their position by stating that the physician has the final word on a patient's access to their health information. This association also recommends that its members respond to requests for access to patient information within 10 days, and recommends that entities allow for an appeal process when patients are denied access. The association further recommends that when a patient contests the accuracy of the information in their record and the entity refuses to accept the patient's change, the patient's statement should be included as a permanent part of the patient's record.

In addition, three of the five professional groups endorse the maintenance of audit trails that can track the history of disclosures of protected health information.

The one set of standards that we reviewed from a health network association advocated the protection of private health information from disclosure without patient authorization and emphasized that encrypting information should be a principal means of protecting patient information. The statements of a leading managed care association, while endorsing the general principles of privacy protection, were vague on the release of information for purposes other than treatment. They suggest allowing the use of protected health information without the patient's authorization for what they term "health promotion." It is possible that the use of protected health information for "health promotion" may be construed under the proposed rule as part of marketing activities.

Based on the review of the leading association standards, we believe that the proposed rule embodies all the major principles expressed in the standards. However, there are some major areas of difference between the proposed rule and the professional standards reviewed. These include the subject individual's right of access to health information in the covered entity's possession, relationships between contractors and covered entities, and the requirement that covered entities make their privacy policies and practices available to patients through a notice and the ability to respond to questions related to the notice. Because the proposed regulation would require that (with a few exceptions) patients have access to their health information that a covered entity possesses, large numbers of providers may have to modify their current practices in order to allow patient access, and to establish a review process if they deny a patient access. Also, none of the privacy protection standards reviewed require that providers or plans prepare a formal statement of privacy practices for patients (although the major physician association urges members to inform patients about who would have access to their protected health information and how their health information would be used). Only one HMO association explicitly made reference to information released for legitimate research purposes, and none of the other statements we reviewed discuss release of information for research purposes. The proposed rule allows for the release of protected health information for research purposes without an individual's authorization, but only for research that is supervised by an institutional research board or an equivalent privacy board. This research requirement may cause some groups to revise their disclosure authorization standards.

2. State Laws

The second body of privacy protections is found in a myriad of State laws and requirements. To determine whether or not the proposed rule would preempt a State law, we first identified the relevant laws, and second, determined whether state or federal law provides individuals with greater privacy protection.

Identifying the relevant state statutes: Health privacy statutes can be found in laws applicable to many issues including insurance, worker's compensation, public health, birth and death records, adoptions, education, and welfare. For example, Florida has over 60 laws that apply to protected health information. According to the Georgetown Privacy Project [11], Florida is not unique. Every State has laws and regulations covering some aspect of medical information privacy. In many cases, State laws were enacted to address a specific situation, such as the reporting of HIV/AIDS, or medical conditions that would impair a person's ability to drive a car. Identifying every State statute, regulation, and court case that interprets statutes and regulations dealing with patient medical privacy rights is an important task but cannot be completed in this discussion. For the purpose of this analysis, we simply acknowledge the complexity of State requirements surrounding privacy issues.

Lastly, we recognize that the private sector will need to complete a State-by-State analysis to comply with the notice and administrative procedures portion of this proposed rule. This comparison should be completed in the context of individual markets; therefore it is more efficient for professional associations or individual businesses to complete this task.

Recognizing limits of our ability to effectively summarize State privacy laws and our difficulty in determining preemption at the outset, we discuss conclusions generated by the Georgetown University Privacy Project in Janlori Goldman's report, *The State of Health Privacy: An Uneven Terrain*. We consider Georgetown's report the best and most comprehensive examination of State privacy laws currently published. The report, which was completed in July 1999, is based on a 50-state survey. However, the author is quick to point out that this study is not exhaustive.

The following analysis of State privacy statutes and our attempt to compare State laws to the proposed rule is limited as a result of the large amount of State-specific data available. To facilitate discussion, we have organized the analysis into two sections: access to medical information and disclosure of medical information. Our analysis is intended to suggest areas where the proposed rule appears to preempt various State laws; it is not designed to be a definitive or wholly comprehensive State-by-State comparison.

Access to Subject's Information: In general, State statutes provide individuals with access to their own medical records. However, only a few States allow individuals access to virtually all entities that hold health information. In 33 States, individuals may access their hospital and health facility records. Only 13 States guarantee individuals access to their HMO records, and 16 States provide individuals access to their medical information when it is held by insurers. Seven states have no statutory right of patient access; three States and the District of Columbia have laws that only assure individuals' right to access their mental health records. Only one State permits individuals access to records held by providers, but it excludes pharmacists from the definition of provider. Thirteen States grant individuals statutory right of access to pharmacy records.

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[11] *Ibid*. Goldman, p. 6.

The amount that entities are allowed to charge for copying of individuals' records varies widely from State to State. A study conducted by the American Health Information Management Association[12] found considerable variation in the amounts, structure, and combination of fees for search and retrieval, and the copying of the record.

In 35 States, there are laws or regulations that set a basis for charging individuals inspecting and copying fees. Charges vary not only by State, but also by whether the request is related to a worker's compensation case or a patient-initiated request. Charges also vary according to the setting. For example, States differentiate most often between clinics and hospitals. Also, charges vary by the number of pages and whether the request is for X-rays or for standard medical information.

Of the 35 States with laws regulating inspection and copying charges, seven States either do not allow charges for retrieval of records or require that the entity provide the first copy free of charge. Some States may prohibit hospitals from charging patients a retrieval and copying fee, but allow clinics to do so. It is noteworthy that some States that do not permit charges for retrieval sometimes allow entities to charge per-page rates ranging between $0.50 and $0.75. In States that do allow a retrieval charge, the per-page charge is usually $0.25. Eleven states specify only that the record holder may charge "reasonable/actual costs."

Of the States that allow entities to charge for record retrieval and copying, charges range from a flat amount of $1.00 to $20.00. Other States allow entities to charge varying rates depending on the amount of material copied. For example, an entity may charge $5.00 for the first five pages and then a fixed amount per page. In those cases, it appears that retrieval and copying costs were actually combined. The remaining States have a variety of cost structures: One State allows $0.25 per page plus postage plus a $15.00 retrieval charge. Another State allows a $1.00 charge per page for the first 25 pages and $0.25 for each page above 25 pages plus a $1.00 annual retrieval charge. A third state allows a $1.00 per page charge for the first 100 pages and $0.25 for each page thereafter.

According to the report by the Georgetown Privacy Project, among States that do grant access to patient records, the most common basis for denying individuals access is concern for the life and safety of the individual or others. This proposed rule considers the question of whether to deny patient access on the basis of concern for the individual's life or safety, concluding that the benefits of patient access most often outweigh harm to the individual. This issue, which is discussed in greater detail in other sections, has been resolved in favor of promoting patient access.

The amount of time an entity is given to supply the individual with his or her record varies widely. Many States allow individuals to amend or correct inaccurate health information, especially information held by insurers. However, few States provide the right to insert a statement in the record challenging the covered entity's information when the individual and entity disagree.[13]

Disclosure of Health Information: State laws vary widely with respect to disclosure of identifiable health information. Generally, States have applied restrictions on the disclosure of health information either to specific entities or to specific health conditions. Just two states place broad limits on disclosure of protected health information without regard for policies and procedures developed by covered entities. Most States require patient authorization before an entity may disclose health information, but as the Georgetown report points out, "In effect, the authorization may function more as a waiver of consent—the patient may not have an opportunity to object to any disclosures."[14]

It is also important to point out that none of the States appear to offer individuals the right to restrict disclosure of their protected health information for treatment. Thus, the provision of the proposed rule that allows patients to restrict disclosure of the their protected information is not currently included in any State law. Because the ability to restrict disclosure currently is not a standard practice, the proposed rule would require entities to add these capabilities to their information systems.

State statutes often have exceptions to requiring authorization before disclosure. The most common exceptions are for purposes of treatment, payment, or auditing and quality assurance functions—which are similar to the definition we have established for health care operations, are therefore not subject to prior authorization requirements under the proposed rule. Restrictions on re-disclosure of protected health information also vary widely from State to State. Some States restrict the re-disclosure of health information, and others do not. The Georgetown report cites State laws that require providers to adhere to professional codes of conduct and ethics with respect to disclosure and re-disclosure of protected health information. What is not clear is the degree to which individual information is improperly released or used in the absence of specific legal sanctions.

Most States have adopted specific measures to provide additional protections with regard to certain conditions or illnesses that have clear social or economic consequences. Although the Georgetown study does not indicate the number of States that have adopted disease-specific measures to protect information related to sensitive conditions and illnesses, the analysis seems to suggest that nearly all States have adopted some form of additional protection. The conditions and illnesses most commonly afforded added privacy protection are:

- Substance abuse;
- Information derived from genetic testing;
- Communicable and sexually-transmitted diseases;
- Mental health; and
- Abuse, neglect, domestic violence, and sexual assault.

We have included a specific discussion of disclosures for research purposes because if an entity decides to disclose information for research purposes, it will incur costs that otherwise would be associated with other disclosures under this rule. Some States place restrictions on releasing condition-specific health information for research purposes, while others allow release of information for research without the patient's authorization. States frequently require that researchers studying genetic diseases, HIV/AIDS, and other sexually transmitted diseases have different authorization and privacy controls than those used for other types of research. Some States require approval from an IRB or agreements that the data will be destroyed or identifiers removed at the earliest possible time. Another approach has been for States to require researchers to obtain sensitive, identifiable information from a State public health department. One State does not allow automatic release of protected health information for research purposes without notifying the subjects that their health information may be used in research and allowing them opportunity to object to the use of their information.[15]

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[12] "Practice Briefs," Journal of AHIMA; Harry Rhodes, Joan C. Larson, Association of Health Information Outsourcing Service; January 1999.

[13] Ibid, Goldman, p.20.

[14] Ibid, Goldman, p. 21.

Comparing State statutes to the proposed rule: A comparison of State privacy laws with the proposed rule highlights several of the proposed rule's key implications:

- No State law requires covered entities to make their privacy and access policies available to patients. Thus, all covered entities that have direct contact with patients will be required to prepare a statement of their privacy protection and access policies. This necessarily assumes that entities have to develop procedures if they do not already have them in place.
- The proposed rule will affect more entities than are affected under many State laws. In the application of the proposed rule to providers, plans, and clearinghouses, the proposed rule will reach nearly all entities involved in delivering and paying for health care. Yet because HIPAA applies only to information that has been stored and transmitted electronically, the extent to which the proposed rule will reach information held by covered entities is unclear.
- State laws have not addressed the form in which health information is stored. We do not know whether covered entities will choose to treat information that never has been maintained or transmitted electronically in the same way that they treat post-electronic information. We also do not know what portion of information held in non-electronic formats has ever been electronically maintained or transmitted. Nevertheless, the proposed rule would establish a more level floor from which States could expand the privacy protections to include both electronic information and non-electronic information.
- Among the three categories of covered entities, it appears that plans will be the most significantly affected by the access provisions of the proposed rule. Based on the Health Insurance Association of America (HIAA) data,[16] there are approximately 94.7 million non-elderly persons who purchase health insurance in the 35 States that do not provide patients a legal right to inspect and copy their records. We do not have information on how many of those people are in plans that grant patients inspection and copying rights although State law does not require them to do so. We discuss these points more fully in the cost analysis section.
- Although the proposed rule would establish a uniform disclosure and re-disclosure requirement for all covered entities, the groups most likely to be affected are health insurers, benefits management administrators, and managed care organizations. These groups have the greatest ability and economic incentives to use protected health information for marketing services to both patients and physicians without individual authorization. Under the proposed rule, covered entities would have to obtain the individual's authorization before they could use or disclose their information for purposes other than treatment, payment, and health care operations—except in the situations explicitly defined as allowable disclosures without authorization.
- While our proposed rule appears to encompass many of the requirements found in current State laws, it also is clear that within State laws, there are many provisions that cover specific cases and health conditions. Certainly, in States that have no research disclosure requirements, the proposed rule will establish a baseline standard. But in States that do place conditions on the disclosure of protected health information, the proposed rule may place additional requirements on covered entities.
- State privacy laws do not always apply to entities covered by the proposed rule. For example, State laws may provide strong privacy protection for hospitals and doctors but not for dentists or HMOs. State laws protecting particular types of genetic testing or conditions may be similarly problematic because they protect some types of sensitive information and not others. In some instances, a patient's right to inspect his or her medical record may be covered under State laws and regulations when a physician has the medical information, but not under State requirements when the information being sought is held by a plan. Thus, the proposed rule would extend privacy requirements already applicable to some entities within a State to other entities that currently are not subject to State privacy requirements.

3. Federal Laws

The Privacy Act of 1974. Federal agencies will be required to comply with both the Privacy Act of 1974 (5 U.S.C. 552a) and the HIPAA regulation. The Privacy Act provides Federal agencies with a framework and scheme for protecting privacy, and the HIPAA regulation will not alter that scheme. Basic organizational and management features, such as the provision of safeguards to protect the privacy of health information and training for employees—which are required by this proposed rule—already are required by the Privacy Act.

The proposed rule has been designed so that individuals will not have fewer rights than they have now under the Privacy Act. It may require that agencies obtain individual authorization for some disclosures that they now make without authorization under routine uses.

Private-sector organizations with contracts to conduct personal data handling activities for the Federal government are subject to the Privacy Act by virtue of performing a function on behalf of a Federal agency. They too will be required to comply with both rules in the same manner as Federal agencies.

Substance Abuse Confidentiality Statute. Organizations that operate specialized substance abuse treatment facilities and that either receive Federal assistance or are regulated by a Federal agency are subject to confidentiality rules established by section 543 of the Public Health Service Act (42 U.S.C. 290dd–2) and implementing regulations at 42 CFR part 2.

These organizations will be subject both to that statute and to the HIPAA regulation. The proposed rule should have little practical effect on the disclosure policies of these organizations, because the patient confidentiality statute governing information about substance abuse is generally more restrictive than this proposed rule. These organizations will continue to be subject to current restrictions on their disclosures. The substance abuse confidentiality statute does not address patient access to records; the proposed privacy rule makes clear that patient access is allowed.

Federal agencies are subject to these requirements, and currently they administer their records under both these requirements and the Privacy Act. The Department of Veterans Affairs is subject to its own substance abuse confidentiality statute, which is identical in substance to the one of more general applicability. It also covers information about HIV infection and sickle cell anemia (38 U.S.C. 7332).

Rules Regarding Protection of Human Subjects. Health care delivered by covered entities conducting clinical trials typically are subject to both the proposed rule and to Federal regulations for protection of human re search subjects (The Federal Policy for the Protection of Human Subjects, codified for the Department of Health and Human Services in Title 45 CFR part 46, and/or the Food and Drug Administration's human subject regulations for research in support of medical product applications to the Food and Drug Administration, or regulated by that agency, at 21 CFR parts 50 and 56).

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[15] "Medical records and privacy: empirical effects of legislation: A memorial to Alice Hersh'; McCarthy, Douglas B; Shatin, Deborah; *et al. Health Service Research:* April 1, 1999; No. 1, Vol. 34; p. 417. The article details the effects of the Minnesota law conditioning disclosure of protected health information on patient authorization.

[16] *Source Book of Health Insurance Data: 1997–1998*, Health Insurance Association of America, 1998. p. 33.

Current human subjects rules impose no substantive restrictions on disclosure of patient information. Institutional review boards must consider the adequacy of confiden tiality protections for subjects, and researchers must tell subjects to what extent their confidentiality will be protected. There should be no conflict between these requirements and the proposed rules. The proposed HIPAA regulation will expand on the current human subjects requirements by requiring a more detailed description of intended use of patient information. The proposed HIPAA rule also requires additional criteria for waiver of patient authorization.

Medicaid. States may use information they obtain in the process of administering Medicaid only for the purposes of administering the program, pursuant to a State plan condition in section 1902(a)(7) of the Social Security Act, 42 U.S.C. 1396a(a)(7). The proposed HIPAA rule applies to State Medicaid programs, which under the rule are considered health plans. There will be no conflict in the substantive requirements of current rules and this proposed rule. Medicaid rules regarding disclosure of patient information are stricter than provisions of the proposed rule; therefore, Medicaid agencies simply will continue to follow the Medicaid rules.

ERISA. ERISA (29 U.S.C. 1002) was enacted in 1974 to regulate pension and welfare employee benefit plans that are established by private-sector employers, unions, or both, to provide benefits to their workers and dependents. An employee welfare benefit plan provides benefits—through insurance or otherwise—such as medical, surgical benefits, as well as benefits to cover accidents, disability, death, or unemployment. In 1996, HIPAA amended ERISA to require portability, nondiscrimination, and renewability of health benefits provided by group health plans and group health insurance issuers. Many, although not all, ERISA plans are covered under the proposed rule as health plans. We believe that the proposed rule does not conflict with ERISA. Further discussion of ERISA can be found in the preamble for this proposed rule.

E. Costs

Affected entities will be implementing the privacy proposed rules at the same time many of the administrative simplification standards are being implemented. As described in the overall impact analysis for the administrative simplification standards in the **Federal Register**, Vol. 63, No. 88, May 7, 1998, page 25344, the data handling changes occurring due to the other HIPAA standards will have both costs and benefits. To the extent the changes required for the privacy standards implementations can be made concurrently with the changes required for the other standards, costs for the combined implementation should be only marginally higher than for the administrative simplification standards alone. The extent of this additional cost is uncertain, in the same way that the costs associated with each of the individual administrative simplification standards was uncertain.

The costs associated with implementing the privacy standards will be directly related to the number of affected entities and the number of affected transactions in each entity.[17] We chose to use the SBA data in the RFA because we wanted our analysis to be as consistent to SBA definitions as possible to give the greatest accuracy for the RFA purposes. As described in the overall administrative simplification impact estimates (Tables 1 and 2, page 25344), about 20,000 health plans (excluding non-self administered employer plans)[18] and hundreds of thousands of providers face implementation costs. In the administrative simplification analysis, the costs of provider system upgrades were expected to be $3.6 billion over the period 1998–2002, and plan system cost upgrades were expected to be $2.2 billion. (In the aggregate, this $5.8 billion cost is expected to be more than completely offset by $7.3 billion in savings during the 5 year period analyzed).

The relationship between the HIPAA security and privacy standards is particularly relevant. On August 12, 1998, the Secretary published a proposed rule to implement the HIPAA standards on security and electronic standards. That rule specified the security requirements for covered entities that transmit and store information specified in Part C, Title XI of the Act. In general, that rule would establish the administrative and technical standards for protecting "* * * any health information pertaining to an individual that is electronically maintained or transmitted." (63 FR 43243). The security rule is intended to spell out the system and administrative requirements that a covered entity must meet in order to assure itself and the Secretary that the protected health information is safe from destruction and tampering from people without authorization for its access.

By contrast, the privacy rule describes the policies and procedures that would govern the circumstances under which protected health information may be used and released with and without patient authorization and when a patient may have access to his or her protected medical information. This rule assumes that a covered entity will have in place the appropriate security apparatus to successfully carry out and enforce the provisions contained in the security rule.

Although the vast majority of health care entities are privately owned and operated, Federal, State, and local government providers are reflected in the total costs.[19] Federal, state, and locally funded hospitals represent approximately 26 percent of hospitals in the United States. This is a significant portion of hospitals, but represents a relatively small proportion of all provider entities. The number of government providers who are employed at locations other than government hospitals is significantly smaller (approximately 2 percent of all providers). Weighting the relative number of government hospital and non-hospital providers by the revenue these types of providers generate, we estimate that health care services provided directly by government entities represent 3.4 percent of total health care services. IHS and Tribal facilities costs are included in the total, since the adjustments made to the original private provider data to reflect federal providers included them. In drafting the proposed rule the Department consulted with States, representatives of the National Congress of American Indians, representatives of the National Indian Health Board, and a representative of the self-governance tribes. During the consultation we discussed issues regarding the application of Title II of HIPAA to the States and Tribes.

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[17] We have used two different data sources for our estimates of the number of entities. In the regulatory impact analysis (RIA), we chose to use the same number of entities cited in the other Administrative Simplification rules. In the regulatory flexibility analysis (RFA), we used the most recent data available from the Small Business Administration (SBA).

We chose to use the Administrative Simplification estimates in the RIA because we wanted our analysis to be as consistent as possible with those regulations. We also believe that because the Administrative Simplification numbers are higher than those in the SBA data, it was the more conservative data source.

[18] We have not included the 3.9 million "other" employer health plans listed in HCFA's administrative simplification regulations because these plans that are administered by a third party. The proposed regulation will not regulate the employer-plans but will regulate the third party administrators of the plans. Because plan administrators have already been included in our analysis, these other employer-sponsored plans will not incur additional costs.

[19] These costs only represent those of public entities serving in the role of provider plan. The federal costs only reflect those incurred by a provider and plan offering Medicaid or Medicare, and hospitals run by the federal government including those run by the Veteran's Administration and the militry. Federal enforcement and other costs are not included. These estimates do not reflect any larger systems changes necessary to running federal programs. Likewise State costs are incorporated to the extent that States serve as providers or plans (including Medicaid).

Estimating the costs associated with the privacy proposed rule involves, for each provision, consideration of both the degree to which covered entities must modify their records management systems and privacy policies under the proposed rule, and the extent to which there is a change in behavior of both patients and the covered entities as a result of the proposed rule. In the following sections we will examine these provisions as they would apply to the various covered entities as they undertake to comply with the proposed rule. The major costs that covered entities will incur are one time costs associated with implementation of the proposed rules, and ongoing costs that result from changes in behavior that both the covered entities and patients would make in response to the new proposed rules.

We have quantified the costs imposed by the proposed regulation to the extent that we had adequate data. In some areas, however, there was too little data to support quantitative estimates. As a result, the RIA does not include cost estimates for all of the requirements of the regulation. The areas for which explicit cost estimates have not be made are: The principle of minimum necessary disclosure; the requirement that entities monitor business partners with whom they share PHI; creation of de-identified information; internal complaint processes; sanctions; compliance and enforcement; the designation of a privacy official and creation of a privacy board; and additional requirements on research/optional disclosures that will be imposed by the regulation. The cost of some of these provisions may be significant, but it would be inaccurate to project costs for these requirements given the fact that several of these concepts are new to the industry.

The one time costs are primarily in the area of development and codification of procedures. Specific activities include: (1) Analysis of the significance of the federal regulations on covered entity operation; (2) development and documentation of policies and procedures (including new ones or modification of existing ones); (3) dissemination of such policies and procedures both inside and outside the organization; (4) changing existing records management systems or developing new systems; and (5) training personnel on the new policies and system changes.

Covered entities will also incur ongoing costs. These are likely to be the result of: (1) Increased numbers of patient requests for access and copying of their own records; (2) the need for covered entities to obtain patient authorization for uses of protected information that had not previously required an authorization; (3) increased patient interest in limiting payer and provider access to their records; (4) dissemination and implementation both internally and externally of changes in privacy policies, procedures, and system changes; and (5) training on the changes.

Compliance with the proposed rule will cost $3.8 billion over five years. These costs are in addition to the administrative simplification estimates. The cost of complying with the regulation represents 0.09 percent of projected national health expenditures the first year the regulation is enacted. The five year costs of the proposed regulation also represents 1.0 percent of the increase in health care costs experienced over the same five-year period.[20] Because of the uncertainty of the data currently available, the Department has made estimates on "low" and "high" range assumptions of the key variables. These estimates show a range of $1.8 to $6.3 billion over five years. It is important to note that these estimates do not include the areas for which we have made no cost estimates (discussed above).

Initial Costs

Privacy Policies and Procedures

With respect to the initial costs for covered entities, the expectation that most of the required HIPAA procedures will be implemented as a package suggests that additional costs for the privacy standards should be small. Since the requirements for developing formal processes and documentation of procedures mirror what will already have been required under the security regulations, the additional costs should be small. The expectation is that national and state associations will develop guidelines or general sets of processes and procedures and that these will generally be adopted by individual member entities. Relatively few providers or entities are expected to develop their own procedures independently or to modify significantly those developed by their associations. Our estimates are based on assumed costs for providers ranging from $300 to $3000, with the weighted average being about $375. The range correlates to the size and complexity of the provider, and is a reasonable estimate of the cost of coordinating the policies and procedures outlined in the proposed regulation. With fewer than 1 million provider entities, the aggregate cost would be on the order of $300 million.

For plans, our estimate assumes that the legal review and development of written policies will be more costly because of the scope of their operations. They are often dealing with a large number of different providers and may be dealing with requirements from multiple states. Again, we expect associations to do much of the basic legal analysis but plans are more likely to make individual adaptations. We believe this cost will range from $300 for smaller plans and $15,000 for the largest plans. Because there are very few large plans in relation to the number of small plans, the weighted average implementation costs will be about $3050.

The total cost of development of policies and procedures for providers and plans is estimated to be $395 million over five years.

System Compliance Costs

With respect to revisions to electronic data systems, the specific refinements needed to fulfill the privacy obligations ought to be closely tied to the refinements needed for security obligations. The overall administrative simplification system upgrades (procedures, systems, and training) of $5.8 billion would certainly be disproportionately associated with the security standard, relative to the other 11 elements. If in privacy it constitutes 15 percent, then the security standard would represent about $900 million system cost. If the marginal cost of the privacy elements is another 10 percent, then the addition cost would be $90 million.

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[20] Health Care Finance Administration, Office of the Actuary, 1997.

Ongoing Costs

The recurrent costs may be more closely related to total numbers of persons with claims than to the number of covered entities. The number of individuals served by an entity will vary greatly. The number of persons with claims will give a closer approximation of how many people entities will have to interact with for various provisions.

Notice of Privacy Practices

No State laws or professional associations currently require entities to provide patients "notice" of their privacy policies. Thus, we expect that all entities will incur costs developing and disseminating privacy policy notices. Each entity will have a notice cost associated with each person to whom they provide services. Data from the 1996 Medical Expenditure Panel Survey shows that there are approximately 200 million ambulatory care encounters per year, nearly 20 million persons with a hospital episode, 7 million with home-health episodes, and over 170 million with prescription drug use (350 million total). For the remaining four years of the five year period, we have estimated that, on average, a quarter of the remaining population will enter the system, and thus receive a notice. If we account for growth in the number of people who may enter the health care system over the five year period of our analysis, we estimate that approximately 543 million patients will be seen at least once by one or more types of providers.

The development cost for notices is estimated to cost $30 million over five years, though most of this is likely to occur the first year. The first year cost of providing notices to patients, customers and plan enrollees would be $106 million. The total five year cost of providing new and subsequent copies to all provider patients and customers would be approximately $209 million.

The notice obligations of insurers apply on initial enrollment, with updated notices at least every 3 years. However, given enrollment changes and the sophistication of automation, we believe many plans would find it cheaper and more efficient to provide annual notices.

The 1998 National Health Interview Survey (NHIS) from the Census Bureau shows about 174.1 million persons are covered by private health insurance, on an unduplicated basis. NHIS calculates that persons who are privately insured hold approximately 1.3 policies per person. Based on information provided by several plans, we believe most plans would provide an independent mailing the first year, but in subsequent years would provide notices as an inclusion in other mailings. The cost for this would be $0.75 over five years. If we account for these duplicate policies and assume that the cost of sending the notices to a policyholder is $0.75, the total cost to plans would be $231 million over five years. This includes both public and private plans.

We request comments regarding our cost estimates for development and distribution of notices.

The costs for more careful internal operation of covered entities to execute their formal privacy procedures are highly dependent on the extent to which current practice tracks the future procedures. Entities that already have strict data sharing and confidentiality procedures will incur minimal costs, since their activities need not change much. Entities that have not developed explicit health information privacy policies may be compelled to obtain patient authorization in situations where they did not previously. These changes will generate ongoing costs as well as initial costs. We solicit comment with respect to the way current costs differ from those projected by the requirements of the proposed privacy rule. An example of such an area is "the minimum necessary disclosure principle"—because of differing current practices, we do not have data that reliably indicate how much this provision will cost.

Inspection and Copying

The Georgetown report on State privacy laws indicates that 33 states currently give patients some right to access medical information. The most common right of access granted by State law is the right to inspect personal information held by physicians and hospitals. In the process of developing estimates for the cost of providing access and copying, we assumed that most providers currently have procedures for allowing patients to inspect and copying their own record. Thus, we expect that the economic impact of requiring entities to allow individuals to access and copy their records should be relatively small. Copying costs, including labor, should be a fraction of a dollar per page. We expect the cost to be passed on to the consumer.

There are few studies that address the cost of providing medical records to patients. The most recent was a study in 1998 by the Tennessee Comtroller of the Treasury. It found an average cost of $9.96 per request, with an average of 31 pages per request. The total cost per page of providing copies was $0.32 per page. This study was performed on hospitals only. The cost per request may be lower for other types of providers, since those seeking hospital records are more likely to be sick and have more complicated records than those in a primary care or other type of office. An earlier report showed much higher costs than the Tennessee study. In 1992, Rose Dunn published a report based on her experience as a manager of medical records. She estimated a 10 page request would cost $5.32 in labor costs only, equaling labor cost per page of $0.53. However, this estimate appears to reflect costs before computerization. The expected time spent per search was 30.6 minutes; 85 percent of this time could be significantly reduced with computerization (this includes time taken for file retrieval, photocopying, and re-filing; file retrieval is the only time cost that would remain under computerization.) For subsequent estimates, we will use the Tennessee experience.

The proposed regulation states that entities may charge patients a reasonable fee to inspect and copy their health information. For this reason, we expect the cost of inspecting and copying an individual medical record to be passed on to consumers who request the service. Nonetheless, it is important to provide an estimate of the potential costs associated with inspection and copying. We assume that 1.5 percent of patients will request access to inspect and copy their medical record, and that the cost of accessing and copying a record is approximately $10 (as cited in the Tennessee study). The cost of inspection and copying is $81 million a year, or $405 million over five years. This cost is likely to be borne entirely by the consumer.

Amendment and Correction

We have assumed that many providers make provisions to help patients expedite amendment and correction of their medical record where appropriate. However, as with inspection and copying, the right to request amendment and correction of an individual's medical record is not guaranteed by all States. Based on these assumptions and our cost analysis, we conclude that the principal economic effect of the proposed rule would be to expand the right to request amendment and correction to plans and providers that are not covered by state laws or codes of conduct. In addition, we expect that the proposed rule may draw additional attention to the issue of record inaccuracies and stimulate patient demand for access, amendment, and correction of medical records.

Our cost calculations assume that persons who request an opportunity to amend or correct their record have already obtained a copy of their medical record. Therefore, the administrative cost of amending and correcting the patient's record is completely separate from inspection and copying costs. In this section we have only addressed the cost of disputing a factual statement within the patient record, and do not calculate the cost of appeals or third party review.

Administrative review of factual statements contained within a patient's record may be expensive. Most errors may be of a nature that a clerk or nurse can correct (e.g., the date of a procedure is incorrect) but some may require physician review. Thus, we have estimated that the average cost of amending and correcting a patient record may be $75 per instance.

If amendment and correction requests are associated with two-thirds of requests for inspection and copying, and the cost of correcting (or noting the patient's request for correction) is $75, the total cost of amending and correcting patient records will be $407 million annually, or $2 billion over five years. Comments on our estimate of amendment and correction costs would be helpful, particularly if they speak to current amendment and correction costs or frequency in the health care industry.

Reconstructing a History of Disclosures (Other Than for Treatment and Payment)

To our knowledge, no current State law or professional code requires providers and plans to maintain the capability to reconstruct a patient's health information history. Therefore, the requirement in this rule to be able to reconstruct the disclosure history of protected health information is completely new. Although it is likely that some providers and plans have already developed this capability, we assume that all providers and plans would be required to invest in developing the capacity to generate disclosure histories.

With respect to reconstruction of disclosure history, two sets of costs would exist. On electronic records, fields for disclosure reason, information recipient, and date would have to be built into the data system. The fixed cost of the designing the system to include this would be a component of the $90 million additional costs discussed earlier. The ongoing cost would be the data entry time, which should be at de minimis levels. Comments would again be especially useful with respect to the extent to which recording the additional information goes beyond current practice.

Authorizations

Although many States have laws that require entities to obtain patient authorization before releasing individually identified health information to payers and other third parties, many of the authorization requirements either allow for blanket authorizations that deprive the patient of meaningful control over the release of their health information, or the authorization statutes are less stringent than the provisions of the proposed rule. Therefore, for purposes of estimating the economic impact of the NPRM, we are assuming that all providers and plans will have to develop new procedures to conform to the proposed rule.

Written patient authorization requirements will generate costs, to the extent covered entities are currently releasing information in the targeted circumstances without specific authority. Collecting such authorization should have costs on the order of those associated with providing access to records (not on a per page basis). The frequency of such collections is unknown. Since the requirement does not apply to treatment and payment, assuming 1 percent of the 543 million encounters over five years might be reasonable. At a cost of about $10 each, the aggregate cost would be about $54 million annually, or $271 million over five years. Comments would be especially useful from entities currently following such procedures.

Training

The ongoing costs associated with paperwork and training are likely to be minimal. Because training happens as a regular business practice, and employee certification connected to this training is also the norm, we estimate that the marginal cost of paperwork and training is likely to be small. We assume a cost of approximately $20 per provider office, and approximately $60–100 for health plans and hospitals. Thus, we estimate that the total cost of paperwork and training will be $22 million a year.

Conclusion

Overall, the five-year costs beyond those already shown in the administrative simplification estimates would be about $3.8 billion over five years, with an estimated range of $1.8 to $6.3 billion. Table 2 shows the components described above. The largest cost item is for amendment and correction, which is over half of the estimated total cost of the regulation. Inspection and copying, at $405 million over five years, and issuance of notices by providers and plans, at $439 million over five years, are the second biggest components. The one-time costs of development of policies and procedures by providers would represent approximately 10 percent of the total cost, or $333 million. Plans and clearinghouses would have a substantially smaller cost, about $62 million. Other systems changes are expected to cost about $90 million over the period. Finally, the estimates do not consider all of the costs imposed by the regulation.

TABLE 2.—THE COST OF COMPLYING WITH THE PROPOSED PRIVACY REGULATION

[In Dollars]

Provision	Initial or first year cost (2000)	Annual cost after the first year	Five year (2000–2004) cost
Development of Policies and Procedures—Providers (totaling 871,294)	$333,000,000		$333,000,000
Development of Policies and Procedures—Plans (totaling 18,225)	62,000,000		62,000,000
System Changes—All Entities	90,000,000		90,000,000
Notice Development Cost—all entities	20,000,000		30,000,000
Notice Issuance—Providers	59,730,000	37,152,000	208,340,000
Notice Issuance—Plans	46,200,000	46,200,000	231,000,000
Inspection/Copying	81,000,000	81,000,000	405,000,000
Amendment/Correction	407,000,000	407,000,000	2,035,000,000
Written Authorization	54,300,000	54,300,000	271,500,000

TABLE 2.—THE COST OF COMPLYING WITH THE PROPOSED PRIVACY REGULATION—Continued

[In Dollars]

Provision	Initial or first year cost (2000)	Annual cost after the first year	Five year (2000–2004) cost
Paperwork/Training	22,000,000	22,000,000	110,000,000
Other Costs *	**N/E	N/E	N/E
Total	1,165,230,000	647,652,000	3,775,840,000

* Other Costs include: minimum necessary disclosure; monitoring business partners with whom entities share PHI; creation of de-identified information; internal complaint processes; sanctions; compliance and enforcement; the designation of a privacy official and creation of a privacy board; additional requirements on research/optional disclosures that will be imposed by the regulation.

** N/E = "Not estimated".

Costs to the Federal Government

The proposed rule will have a cost impact on various federal agencies that administer programs that require the use of individual health information. Federal agencies or programs clearly affected by the rule are those that meet the definition of a covered entity. The costs when government entities are serving as providers are included in the total cost estimates. However, non-covered agencies or programs that handle medical information, either under permissible exceptions to the disclosure rules or through an individual's expressed authorization, will likely incur some costs complying with provisions of this rule. A sample of federal agencies encompassed by the broad scope of this rule include the: Department of Health and Human Services, Department of Defense, Department of Veterans Affairs, Department of State, and the Social Security Administration.

The federal costs of complying with the regulation are included in the estimates of total costs. The greatest cost and administrative burden on the federal government will fall to agencies and programs that act as covered entities, by virtue of being either a health plan or provider. Examples include the Medicare, Medicaid, Children's Health Insurance and Indian Health Service programs at the Department of Health and Human Services; the CHAMPVA health program at the Department of Veterans Affairs; and the TRICARE health program at the Department of Defense. These and other health insurance or provider programs operated by the federal government are subject to requirements placed on covered entities under this proposed rule, including, but not limited to, those outlined in Section D of the impact analysis. While many of these federal programs already afford privacy protections for individual health information through the Privacy Act, this rule is expected to create additional requirements beyond those covered by existing Privacy Act rule. Further, we anticipate that most federal health programs will, to some extent, need to modify their existing Privacy Act practices to fully comply with this rule.

The cost to federal programs that function as health plans will be generally the same as those for the private sector. The primary difference is the expectation that systems compliance costs may be higher due to the additional burden of compliance and oversight costs.

A unique cost to the federal government will be in the area of enforcement. The Office of Civil Rights (OCR), located at the Department of Health and Human Services, has the primary responsibility to monitor and audit covered entities. OCR will monitor and audit covered entities in both the private and government sectors, will ensure compliance with requirements of this rule, and will investigate complaints from individuals alleging violations of their privacy rights. In addition, OCR will be required to recommend penalties and other remedies as part of their enforcement activities. These responsibilities represent an expanded role for OCR. Beyond OCR, the enforcement provisions of this rule will have additional costs to the federal government through increased litigation, appeals, and inspector general oversight.

Examples of other unique costs to the federal government include such activities as public health surveillance at the Centers for Disease Control and Prevention, health research projects at the Agency for Health Care Policy and Research, clinical trials at the National Institutes of Health, and law enforcement investigations and prosecutions by the Federal Bureau of Investigations. For these and other activities, federal agencies will incur some costs to ensure that protected health information is handled and tracked in ways that comply with the requirements of this title. A preliminary analysis of these activities suggests that the federal cost will be on the order of $31 million. We are currently in the process of refining these estimates and will include better information on them in the final rule.

Costs to State Governments

The proposed rule will also have a cost effect on various state agencies that administer programs that require the use of individual health information. State agencies or programs clearly affected by the rule are those that meet the definition of a covered entity. The costs when government entities are serving as providers are included in the total cost estimates. However, non-covered agencies or programs that handle medical information, either under permissible exceptions to the disclosure rules or through an individual's expressed authorization, will likely incur some costs complying with provisions of this rule. Samples of state agencies encompassed by the broad scope of this rule include the: Medicaid, Children's Health Insurance program at the Department of Health and Human Services.

We have included state costs in the estimation of total costs. The greatest cost and administrative burden on the state government will fall to agencies and programs that act as covered entities, by virtue of being either a health plan or provider. Examples include the Medicaid, Children's Health Insurance program at the Department of Health and Human Services. These and other health insurance or provider programs operated by state government are subject to requirements placed on covered entities under this proposed rule, including, but not limited to, those outlined in Section D of the impact analysis. While many of these state programs already afford privacy protections for individual health information through the Privacy Act; this rule is expected to create additional requirements beyond those covered by existing Privacy Act rule. Further, we anticipate that most state health programs will, to some extent, need to modify their existing Privacy Act practices to fully comply with this rule.

The cost to state programs that function as health plans will be different than the private sector, much as the federal costs vary from private plans. A preliminary analysis suggests that state costs will be on the order of $90 million over five years. We will refine the estimates for the state government costs for enforcement, research and other distinct state government functions in the final rule. We welcome comment by state and local governments which will help the Department improve its analysis on these state costs.

F. Benefits

As we have discussed in the preamble, there are important societal benefits associated with improving health information privacy. Confidentiality is a key component of trust between patients and providers, and some studies indicate that a lack of privacy may deter patients from obtaining preventive care and treatment.[21] For these reasons, traditional approaches to estimating the value of a commodity cannot fully capture the value of personal privacy. It may be difficult for individuals to assign value to privacy protection because most individuals view personal privacy as a right. Because we promote the view that privacy protection is an important personal right, the benefits of the proposed regulation are impossible to estimate based on the market value of health information alone. However, it is possible to evaluate some of the benefits that may accrue to individuals as a result of proposed regulation, and these benefits, alone, suggest that the regulation is warranted. Added to these benefits is the intangible value of privacy, the personal security that we may feel when our records are confidential, which is very real and very significant but for which there is no economic value or proxy.

There are a number of ways to discuss the expected benefits of this proposed regulation. The first option is to discuss the benefits qualitatively. We believe that this is necessary to give the reader a basic understanding of how this proposed regulation will benefit society. The second option that we have used is to quantify the benefits of the proposed rule as they would apply to a few illness categories that may be particularly responsive to privacy concerns. This quantitative discussion is meant to be illustrative of the benefits rather than a comprehensive accounting of all of the benefits of the proposed rule. The combination of the two approaches clearly illustrates that the benefits of the regulation are significant in relation to the economic costs.

Before beginning our discussion of the benefits, it is important to create a framework for how the costs and benefits may be viewed in terms of individuals rather than societal aggregates. We have estimated the value an insured individual would need to place on increased privacy to make the proposed Privacy regulation a net benefit to those who receive health insurance. Our estimates are derived from data produced by the 1998 Current Population Survey from the Census Bureau, and report that 220 million persons are covered by either private or public health insurance. Joining the Census Bureau data with cost assumptions calculated in Section E, we have estimated the cost of the proposed regulation is $3.41 per insured individual. If we assume that individuals who use the health care system will be willing to pay more than $3.41 per year (or approximately $0.28 per month) to improve health information privacy, the benefits of the proposed regulation will outweigh the cost.

This is a conservative estimate of the number of people who will benefit from the regulation because it assumes that only those individuals who have health insurance will use medical services or benefit from the provisions of the proposed regulation. Currently, there are 44 million Americans who do not have any form of health care insurance. In addition, the estimates do not include those who pay for medical care directly, without any insurance or government support. By lowering the number of users in the system, we have inflated our estimate of the per-person cost of the regulation, therefore, we assume that our estimate represents the highest cost to an individual.

An alternative approach to determining how people would have to value increased privacy for this regulation to be beneficial is to look at the costs divided by the number of encounters with health care professionals annually. Data from the Medical Expenditure Panel Survey (MEPS) produced by the Agency for Health Care Policy Research (AHCPR) report approximately 1.62 billion health care visits, or encounters annually (e.g., office visits, hospital and nursing home stays, etc.). As with our calculation of average annual cost per insured patient, we have divided the total cost of complying with the regulation ($751 million per year) by the total annual number of health care encounters. The cost of instituting requirements of the proposed regulation is $0.46 per health care encounter. If we assume that individuals would be willing to pay more than $0.46 per health care encounter to improve health information privacy, the benefits of the proposed regulation will outweigh the cost.

Qualitative Discussion

A well designed privacy standard can be expected to build confidence among the public about the confidentiality of their medical records. The seriousness of public concerns about privacy in general are shown in the 1994 Equifax-Harris Consumer Privacy Survey, where "84 percent of Americans are either very or somewhat concerned about threats to their personal privacy."[22] A 1999 report, "Promoting Health and Protecting Privacy" notes "* * * many people fear their personal health information will be used against them: to deny insurance, employment, and housing, or to expose them to unwanted judgements and scrutiny."[23] These concerns would be partly allayed by the privacy standard. Further, increased confidence will increase the likelihood of some people seeking treatment for particular classes of disease. It will also change the dynamic of current payments. Insured patients currently paying out-of-pocket for confidentiality reasons will be more likely to file with their insurer. The increased utilization that would result from increased confidence in privacy could be beneficial under many circumstances. For many medical conditions, early treatment can lead to lower costs.

Fear of disclosure of treatment is an impediment to health care for many Americans. In the 1993 Harris-Equifax Health Information Privacy Survey, 7 percent of respondents said they or a member of their immediate family had chosen not to seek medical services due to fear of harm to job prospects or other life opportunities. About 2 percent reported having chosen not to file an insurance claim because of concerns with privacy or confidentiality.[24] Increased confidence on the part of patients that their privacy would be protected would lead to increased treatment among people who delay or never begin care, as well as among people who receive treatment but pay directly (to the extent that the ability to use their insurance benefits will reduce cost barriers to more complete treatment).

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[21] Equifax-Harris Consumer Privacy Survey, 1994

[22] *Consumer Privacy Survey*, Harris-Equifax, 1994, p. vi.

[23] *Promoting Health: Protecting Privacy*, California Health Care Foundation and Consumers Union, January 1999, p. 12.

[24] *Health Information Privacy Survey*, Harris-Equifax, 1993, pp. 49–50.

The following are four examples of areas where increased confidence in privacy would have significant benefits. They were chosen both because they are representative of widespread and serious health problems, and because they are areas where reliable and relatively complete data are available for this kind of analysis. The logic of the analysis, however, applies to any health condition. Even for relatively minor conditions, an individual still might be concerned with maintaining privacy, and even a person with no significant health problems is going to value privacy because of the possibility at some time they will have a condition that they want to keep private.

Cancer. The societal burden of disease imposed by cancer is indisputable. Cancer is the second leading cause of death in the US,[25] exceeded only by heart disease. In 1999, 1.38 million new cancer cases will be diagnosed, as well as 900,000 new basal and squamous skin cell cancers. [26] The National Cancer Institute estimates that the overall cost of cancer is $104 billion; $35 billion in direct medical cost, $12 billion for morbidity costs (cost of lost productivity) and $57 billion for mortality costs.[27]

Among the most important elements in the fight against cancer are screening, early detection and treatment of the disease. However, however, many patients are concerned that some screening procedures will make them vulnerable to discrimination by insurers or employers. These privacy concerns have been cited as a reason patients do not seek early treatment for diseases such as cancer. As a result of forgoing early screening, cancer patients may ultimately face a more severe illness. For example, half of new diagnoses occur among types of cancer for which screening is available. Based on this research, studies show that if Americans participated in regular cancer screening, the rate of survival among patients who have screening-accessible cancers could increase to 95 percent.[28]

Approximately 184,300 women will be diagnosed with breast cancer this year,[29] and 25,000 women will be diagnosed with ovarian cancer.[30] In the same year, almost 44,000 women will die of breast cancer,[31] and 14,500 will die from ovarian cancer.[32] Early detection of these cancers could have a significant impact on reducing loss due to disability and death. For example, only 24 percent of ovarian cancers are diagnosed in the early stages. Of these, approximately 90 percent of patients survive treatment. The survival rate of women who detect breast cancer early is similarly high; more than 90 percent of women who detect and treat breast cancer in its early stages will survive.[33]

Researchers have developed screening techniques to identify breast, ovarian, and colon cancers, and tests have been developed to identify the presence or absence of cellular abnormalities that may lead to cancer. Despite these technological advances, the principle of patient autonomy requires that patients must decide for themselves if they will submit to screening procedures. Many individuals fear that employers and insurers will use cancer screening to discriminate against them. Several studies illustrate that persons with and without cancer fear discrimination. Thus, despite the potential benefits that early identification of cancer may yield, many researchers find that patient concerns regarding the confidentiality of cancer screening may prevent them from requesting the test, and result in disability or loss of life.

HIV/AIDS. Early detection is essential for the health and survival of an HIV (Human Immunodeficiency Virus) positive person. Concerns about the confidentiality of HIV status may prevent some people from getting tested. For this reason, each state has passed some sort of legislation regarding the confidentiality of HIV status. However, HIV status can be revealed indirectly through disclosure of HAART (Highly Active Anti-Retroviral Therapy) or similar HIV treatment drug use. In addition, since HIV/AIDS (Acquired Immune Deficiency Syndrome) is often the only specially protected condition, "blacked out" information on medical charts could indicate HIV positive status.[34] Strengthening privacy protections beyond this disease could increase confidence in privacy regarding HIV as well. Drug therapy for HIV positive persons has proven to be a life-extending, cost-effective tool. [35] A 1998 study showed that beginning treatment with HAART in the early asymptomatic stage is more cost-effective than beginning it late. After five years, only 15 percent of patients with early treatment are estimated to develop an ADE (AIDS-defining event), whereas 29 percent would if treatment began later. Early treatment with HAART prolongs survival (adjusted for quality of life) by 6.2 percent. The overall cost-effectiveness of early HAART treatment is estimated at $23,700 per quality-adjusted year of life saved.[36]

Other Sexually Transmitted Diseases. It is difficult to know how many people are avoiding testing for STDs despite having a sexually transmitted disease. A 1998 study by the Kaiser Family Foundation found that the incidence of disease was 15.3 million in 1996, though there is great uncertainty due to under-reporting.[37] For a potentially embarrassing disease such as an STD, seeking treatment requires trust in both the provider and the health care system for confidentiality. Greater trust should lead to more testing and greater levels of treatment. Earlier treatment for curable STDs can mean a decrease in morbidity and the costs associated with complications. These include expensive fertility problems, fetal blindness, ectopic pregnancies, and other reproductive complications.[38] In addition, there could be greater overall savings if earlier treatment translates into reduced spread of infections.

Substance Abuse and Mental Health Treatment. When individuals have a better understanding of the privacy practices that we are requiring in this proposed rule, some will be less reluctant to seek substance abuse and mental health treatment. One way that individuals will receive this information is through the notice requirement.

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[25] American Cancer Society. http://4a2z.com/cgi/rfr.cgi?4CANCER-2-http://www.cancer.org/frames.html

[26] American Cancer Society. http://www.cancer.org/statistics/97cff/97facts.html

[27] American Cancer Society. http://www.cancer.org/statistics/97cff/97facts.html

[28] American Cancer Society. http://www.cancer.org/statistics/97cff/97facts.html

[29] Avon's Breast Cancer Crusade. http://www.pmedia.com/Avon/library/faq.html

[30] Ovarian Cancer National Alliance. http://www.ovariancancer.org/index.shtml

[31] Cancer Statistics. 1999, Landis, Murray, Bolden and Wingo. CA: A Cancer Journal for Clinicians, Jan/Feb, 1999, Vol. 49, No. 1

[32] Ovarian Cancer National Alliance. http://www.ovariancancer.org/index.shtml

[33] Breast Cancer Information Service. http://trfn.clpgh.org/bcis/FAQ/facts2.html

[34] *Promoting Health: Protecting Privacy,* California Health Care Foundation and Consumers Union, January 1999, p. 13.

[35] For example, Roger Detels, M.D., et al., in "Effectiveness of Potent Anti-Retroviral Therapy * * * "JAMA, 1998; 280: 1497–1503 note the impact of therapy on HIV persons with respect to lengthening the time to development of AIDS, not just delaying death in persons who already have AIDS.

[36] John Hornberger *et al.* "Early treatment with Highly Active Anti-Retroviral Therapy (HAART) is cost-effective compared to delayed treatment." 12th World AIDS conference, 1998.

[37] *Sexually Transmitted Diseases in America,* Kaiser Family Foundation, 1998. p. 12.

[38] Standard Medical information; see *http://www.mayohealth.org* for examples.

Increased use of mental health services would be expected to be beneficial to the persons receiving the care, to their families, and to society at large. The individual direct benefit from treatment would include an improved quality of life, reduced disability associated with the mental conditions, and a reduced mortality rate. The benefit to families would include quality of life improvements and reduced medical costs for other family members associated with abusive behavior by the treated individual. The benefit to society would include reduced costs of crime and reduced future public program treatment costs.

The 1998 Substance Abuse and Mental Health Statistics Source Book from SAMHSA reports cost-of-disease estimates from a range of studies, suggesting several hundred billion dollars of non-treatment costs associated with alcohol, drug, and mental (ADM) disorders. As an example of the magnitude of costs associated with mental health treatment, a 1997 National Institutes of Health report suggests that the total economic cost of mental health disorders such as anxiety, depressive (mood) disorders, eating disorders, and schizophrenia is approximately $115.5 billion annually.[39] Evidence suggests that appropriate treatment of mental health disorders can result in 50–80 percent of individuals experiencing improvements in these types of conditions. Improvements in patient functioning and reduced hospital stays could result in hundreds of million of dollars in cost savings annually.

The potential additional economic benefits associated with improving patient confidentiality and thus encouraging some unknown portion of individuals to either seek initial mental health treatment or increase service use are difficult to quantify well. Nevertheless, one can lay out a range of possible benefit levels to illustrate the possibility of cost savings associated with an expansion of mental health treatment to individuals who, due to protections offered by the privacy regulation, might seek mental health treatment that they otherwise would not have absent this regulation. This can be illustrated by drawing upon existing data on both the economic costs of mental illness and the treatment effectiveness of mental health interventions.

Although figures on the number of individuals who avoid mental health treatment due to privacy concerns do not exist, some indirect evidence is available. A 1993 Harris-Equifax Health Information Privacy Survey (noted earlier) found that 7 percent of respondents reported that they or a member of their immediate family had chosen not to seek services for a physical or mental health condition due to fear of harm to job prospects or other life opportunities. It should be noted that this survey is somewhat dated and represents only one estimate. Moreover, given the wording of the question, there are other reasons aside from privacy concerns that led these individuals to respond positively.

For the purpose of an illustration, however, assumptions can be made about what proportion of the 7 percent responding affirmatively to this question may have avoided seeking mental health services due to privacy concerns. Given the proportion of mental health services that compromise total health care services in this country, a reasonable upper limit of the number of individuals avoiding mental health treatment due to privacy concerns might be 1.8 percent (*i.e.*, 25% of 7%), while a reasonable lower limit might be 0.36 percent (*i.e.*, 5% of 7%). Taking these figures as upper and lower limits, it is possible to estimate potential benefits by multiplying these figures by the annual economic cost reductions associated with treatment effectiveness rates. For example, using the upper limit of 1.8 percent, multiplying this by the annual economic costs of mental illness ($115.5 billion) and a treatment effectiveness rate of 80 percent, yields an estimate of potential annual benefits of $1,663,200,000. Similarly, using the upper limit of 1.8 percent coupled with a treatment effectiveness rate of 50 percent yields an estimate of potential annual benefits of $1,039,500,000. Assuming a lower limit of 0.36 percent more individuals seeking mental health treatment due to enhance privacy protections, coupled with a treatment effectiveness rate of 80% yields an estimate of potential annual benefits of $332,640,000. Similarly, using the lower limit of 0.36 percent coupled with a treatment effectiveness rate of 50 percent yields an estimate of potential annual benefits of $207,900,000. Therefore, given the existing data on the annual economic costs of mental illness and the rates of treatment effectiveness for these disorders, coupled with assumptions regarding the percentage of individuals who might seek mental health treatment under conditions of greater privacy protections, the potential additional economic benefit in this one treatment area could range from approximately $208 million to $1.67 billion annually.

TABLE 3.—POTENTIAL BENEFITS OF THE PROPOSED PRIVACY REGULATION FROM COST SAVINGS DUE TO EARLY TREATMENT OF MENTAL HEALTH DISORDERS

Illness	Total annual economic cost of illness (in billions)	Percent net cost reduction if additional care is received
Mental Health—Anxiety Disorders	$46.6	70–90
Mental Health—Depressive (Mood) Disorders	30.4	60–80
Mental Health—Eating Disorders	6.0	40–60
Mental Health—Schizophrenia	32.5	60–85
Total	115.5	N/A

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[39] *Disease-Specific Estimates of Direct and Indirect Costs of Illness and NIH Support; 1997 Update*, 1997.

G. Examination of Alternative Approaches

1. Creation of De-identified Information (164.506(d))

We considered defining "individually identifiable health information" as any information that is not anonymous, that is, for which there is any possibility of identifying the subject. We rejected this option, for several reasons. First, the statute suggests a different approach. The term "individually identifiable health information" is defined in HIPAA as health information that:

> * * * identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

By including the modifier "reasonable basis," Congress appears to reject the absolute approach to defining "identifiable." Covered entities would not always have the statistical sophistication to know with certainty when sufficient identifying information has been removed so that the record is no longer identifiable. We believe that covered entities need more concrete guidance as to when information will and will not be "identifiable" for purposes of this regulation.

Defining non-identifiable to mean anonymous would require covered entities to comply with the terms of this regulation with respect to information for which the probability of identification of the subject is very low. We want to encourage covered entities and others to remove obvious identifiers or encrypt them whenever possible; use of the absolute definition of "identifiable" would not promote this salutary result.

For these reasons, we propose at § 164.506(d)(2)(ii) that there be a presumption that, if specified identifying information is removed and if the holder has no reason to believe that the remaining information can be used by the reasonably anticipated recipients alone or in combination with other information to identify an individual, then the covered entity would be presumed to have created de-identified information.

At the same time, in proposed § 164.506(d)(2)(iii), we are leaving leeway for more sophisticated data users to take a different approach. We are including a "reasonableness" standard so that entities with sufficient statistical experience and expertise could remove or code a different combination of information, so long as the result is still a low probability of identification. With this approach, our intent is to provide certainty for most covered entities, while not limiting the options of more sophisticated data users.

In this rule we are proposing that covered entities and their business partners be permitted to use protected health information to create de-identified health information. Covered entities would be permitted to further use and disclose such de-identified information in any way, provided that they do not disclose the key or other mechanism that would enable the information to be re-identified, and provided that they reasonably believe that such use or disclosure of de-identified information will not result in the use or disclosure of protected health information. See proposed § 164.506(d)(1). This means that a covered entity could not disclose de-identified information to a person if the covered entity reasonably believes that the person would be able to re-identify some or all of that information, unless disclosure of protected health information to such person would be permitted under this proposed rule. In addition, a covered entity could not use or disclose the key to coded identifiers if this rule would not permit the use or disclosure of the identified information to which the key pertains. If a covered entity re-identifies the de-identified information, it may only use or disclose the re-identified information consistent with these proposed rules, as if it were the original protected health information.

We invite comment on the approach that we are proposing and on whether alternative approaches to standards for entities determining when health information can reasonably be considered no longer individually identifiable should be considered.

2. General Rules (§ 164.506)

As a general rule, we are proposing that protected health information not be used or disclosed by covered entities except as authorized by the individual who is the subject of such information or as explicitly provided this rule. Under this proposal, most uses and disclosures of an individual's protected health information would not require explicit authorization by the individual, but would be restricted by the provisions of the rule. Covered entities would be able to use or disclose an individual's protected health information without authorization for treatment, payment and health care operations. See proposed § 164.506(a)(1)(i). Covered entities also would be permitted to use or disclose an individual's protected health information for specified public and public policy-related purposes, including public health, research, health oversight, law enforcement, and use by coroners. Covered entities would be *permitted* by this rule to use and disclose protected health information when required to do so by other law, such as a mandatory reporting requirement under State law or pursuant to a search warrant. See proposed § 164.510. Covered entities would be *required* by this rule to disclose protected health information for only two purposes: to permit individuals to inspect and copy protected health information about them (see proposed § 164.514) and for enforcement of this rule (see proposed § 164.522(d)).

Covered entities of all types and sizes would be required to comply with the proposed privacy standards outlined below. The proposed standards would not impose particular mechanisms or procedures that covered entities must adopt to implement the standards. Instead, we would require that each affected entity assess its own needs and devise, implement, and maintain appropriate privacy policies, procedures, and documentation to address its business requirements. How each privacy standard would be satisfied would be a business decision that each entity would have to make. This permits the privacy standards to establish a stable baseline, yet remain flexible enough to take advantage of developments and methods for protecting privacy that will evolve over time.

Because the privacy standards would need to be implemented by all covered entities, from the smallest provider to the largest, multi-state health plan, a single approach to implementing these standards would be neither economically feasible nor effective in safeguarding health information privacy. For example, in a small physician practice the office manager might be designated to serve as the privacy official as one of many duties (see proposed § 164.518(a)) whereas at a large health plan, the privacy official may constitute a full time position and have the regular support and advice of a privacy staff or board.

In taking this approach, we intend to strike a balance between the need to maintain the confidentiality of protected health information and the economic cost of doing so. Health care entities must consider both aspects in devising their solutions. This approach is similar to the approach we proposed in the Notice of Proposed Rulemaking for the administrative simplification security and electronic signature standards.

3. Use and Disclosure for Treatment, Payment, and Health Care Operations (§ 164.506(a))

We are proposing that, subject to limited exceptions for psychotherapy notes and research information unrelated to treatment discussed below, a covered entity be permitted to use or disclose protected health information without individual authorization for treatment, payment or health care operations.

We are not proposing to require individual authorizations of uses and disclosures for health care and related purposes, although such authorizations are routinely gathered today as a condition of obtaining health care or enrolling in a health plan. Although many current disclosures of health information are made pursuant to individual authorizations, these authorizations provide individuals with little actual control over their health information. When an individual is required to sign a blanket authorization at the point of receiving care or enrolling for coverage, that consent is often not voluntary because the individual must sign the form as a condition of treatment or payment for treatment. Individuals are also often asked to sign broad authorizations but are provided little or no information about how their health information would be or will in fact be used. Individuals cannot make a truly informed decision without knowing all the possible uses, disclosures and re-disclosures to which their information will be subject. In addition, since the authorization usually precedes creation of the record, the individual cannot predict all the information the record could contain and therefore cannot make an informed decision as to what would be released.

Our proposal is intended to make the exchange of protected health information relatively easy for health care purposes and more difficult for purposes other than health care. For individuals, health care treatment and payment are the core functions of the health care system. This is what they expect their health information will be used for when they seek medical care and present their proof of insurance to the provider. Consistent with this expectation, we considered requiring a separate individual authorization for every use or disclosure of information but rejected such an approach because it would not be realistic in an increasingly integrated health care system. For example, a requirement for separate patient authorization for each routine referral could impair care, by delaying consultation and referral as well as payment.

We therefore propose that covered entities be permitted to use and disclose protected health information without individual authorization for treatment and payment purposes, and for related purposes that we have defined as health care operations. For example, providers could maintain and refer to a medical record, disclose information to other providers or persons as necessary for consultation about diagnosis or treatment, and disclose information as part of referrals to other providers. Providers also could use a patient's protected health information for payment purposes such as submitting a claim to a payer. In addition, providers could use a patient's protected health information for health care operations, such as use for an internal quality oversight review. We would note that, in the case of an individual where the provider has agreed to restrictions on use or disclosure of the patient's protected health information, the provider would be bound by such restrictions as provided in § 164.506(c).

We also propose to prohibit covered entities from seeking individual authorization for uses and disclosures for treatment, payment and health care operations unless required by State or other applicable law. As discussed above in section II.C, such authorizations could not provide meaningful privacy protections or individual control and could in fact cultivate in individuals erroneous understandings of their rights and protections.

The general approach that we are proposing is not new. Some existing State health confidentiality laws permit disclosures without individual authorization to other health care providers treating the individual, and the Uniform Health-Care Information Act permits disclosure "to a person who is providing health-care to the patient" (9 Part I, U.L.A. 475, 2–104 (1988 and Supp. 1998)). We believe that this approach would be the most realistic way to protect individual confidentiality in an increasingly data-driven, electronic and integrated health care system. We recognize, however, that particularly given the limited scope of the authority that we have under this proposed rule to reach some significant actors in the health care system, that other approaches could be of interest. We invite comments on whether other approaches to protecting individuals' health information would be more effective.

4. Minimum Necessary Use and Disclosure (§ 164.506(b))

We propose that, except as discussed below, a covered entity must make all reasonable efforts not to use or disclose more than the minimum amount of protected health information necessary to accomplish the intended purpose of the use or disclosure, taking into consideration technological limitations.

Under this proposal, covered entities generally would be required to establish policies and procedures to limit the amount of protected health care information used or disclosed to the minimum amount necessary to meet the purpose of the use or disclosure, and to limit access to protected health information only to those people who need access to the information to accomplish the use or disclosure. With respect to use, if an entity consists of several different components, the entity would be required to create barriers between components so that information is not used inappropriately. The same principle applies to disclosures.

A "minimum necessary" determination would need to be consistent with and directly related to the purpose of the use or disclosure and take into consideration the ability of a covered entity to delimit the amount of information used or disclosed and the relative burden imposed on the entity. The proposed minimum necessary requirement is based on a reasonableness standard: covered entities would be required to make reasonable efforts and to incur reasonable expense to limit the use and disclosure of protected health information as provided in this section.

In our discussions of the minimum necessary requirement, we considered whether or not this should apply to all entities and whether or not it should be applied to all protected health information. We decided that the principle of minimum necessary disclosure is critical to the protection of privacy and that because small entities represent 83 percent of the health care industry, we would not exempt them from this provision without undermining its effectiveness.

We understand that the requirements outlined in this section do not create a bright line test for determining the minimum necessary amount of protected health information appropriate for most uses or disclosures. Because of this lack of precision, we considered eliminating the requirement altogether. We also considered merely requiring covered entities to address the concept within their internal privacy procedures, with no further guidance as to how each covered entity would address the issue. These approaches were rejected because minimizing both the amount of protected health information used and disclosed within the health care system and the number of persons who have access to such information is vital if we are to successfully enhance the confidentiality of people's personal health information. We invite comments on the approach that we have adopted and on alternative methods of implementing the minimum necessary principle.

5. Right To Restrict Uses and Disclosures (§ 164.506(c))

We propose to permit in § 164.506(c) that individuals be able to request that a covered entity restrict further uses and disclosures of protected health information for treatment, payment, or health care operations, and if the covered entity agrees to the requested restrictions, the covered entity could not make uses or disclosures for treatment, payment or health care operations that are inconsistent with such restrictions, unless such uses or disclosures are mandated by law. This provision would not apply to health care provided to an individual on an emergency basis.

We should note that there is nothing in this proposed rule that would require a covered entity to agree to a request to restrict, or to treat or provide coverage to an individual requesting a restriction under this provision. Covered entities who do not wish to, or due to contractual obligations cannot, restrict further use or disclosure are not obligated to agree to a request under this provision.

We considered providing individuals substantially more control over their protected health information by requiring all covered entities to attempt to accommodate any restrictions on use and disclosure requested by patients. We rejected this option as unworkable. While industry groups have developed principles for requiring patient authorizations, we have not found widely accepted standards for implementing patient restrictions on uses or disclosures. Restrictions on information use or disclosure contained in patient consent forms are sometimes ignored because they may not be read or are lost in files. Thus, it seems unlikely that a requested restriction could successfully follow a patient's information through the health care system—from treatment to payment, through numerous operations, and potentially through certain permissible disclosures. Instead we would limit the provision to restrictions that have been agreed to by the covered entity.

We recognize that the approach that we are proposing could be difficult because of the systems limitations described above. However, we believe that the limited right for patients proposed in this proposed rule can be implemented because it only applies in instances in which the covered entity agrees to the restrictions. We assume that covered entities would not agree to restrictions that they are unable to implement.

We considered limiting the rights under this provision to patients who pay for their own health care (or for whom no payment was made by a health plan). Individuals and providers that engage in self-pay transactions have minimal effect on the rights or responsibilities or payers or other providers, and so there would be few instances when a restriction agreed to in such a situation would have negative implications for the interests of other health care actors. Limiting the right to restrict to self-pay patients also would reduce the number of requests that would be made under this provision. We rejected this approach, however, because the desire to restrict further uses and disclosures arises in many instances other than self-pay situations. For example, a patient could not want his or her records shared with a particular physician because that physician is a family friend. Or an individual could be seeking a second opinion and may not want his or her treating physician consulted. Individuals have a legitimate interest in restricting disclosures in these situations. We solicit comment on the appropriateness of limiting this provision to instances in which no health plan payment is made on behalf of the individual.

6. Application to Business Partners (§ 164.506(e))

In § 164.506(e), we propose to require covered entities to take specific steps to ensure that protected health information disclosed to a business partner remains protected. We intend these provisions to allow customary business relationships in the health care industry to continue while providing privacy protections to the information shared in these relationships. Business partners would not be permitted to use or disclose protected health information in ways that would not be permitted of the covered entity itself under these rules.

Other than for purposes of consultation or referral for treatment, we would allow covered entities to disclose protected health information to business partners only pursuant to a written contract that would, among other specified provisions, limit the business partner's uses and disclosures of protected health information to those permitted by the contract, and would impose certain security, inspection and reporting requirements on the business partner. We would hold the covered entity responsible for certain violations of this proposed rule made by their business partners, and require assignment of responsibilities when a covered entity acts as a business partner of another covered entity.

Under this proposed rule, a business partner would be acting on behalf of a covered entity, and we propose that its use or disclosure of protected health information be limited to the same extent that the covered entity for whom they are acting would be limited. Thus, a business partner could have no more authority to use or disclose protected health information than that possessed by the covered entity from which the business partner received the information. We would note that a business partner's authority to use and disclose protected health information could be further restricted by its contract with a covered entity, as described below.

We are not proposing to require the business partners of covered entities to develop and distribute a notice of information practices, as provided in proposed § 164.512. A business partner would, however, be bound by the terms of the notice of the covered entity from which it obtains protected health information. See proposed § 164.506(e). We are proposing this approach so that individuals could rely on the notices that they receive from the covered entities to which they disclose protected health information. If the business partners of a covered entity were able to make wider use or make more disclosures than the covered entity, the patients or enrollees of the covered entity would have difficulty knowing how their information was being used and to whom it was being disclosed.

We are also proposing that a business partner's use and disclosure of protected health information be limited by the terms of the business partner's contractual agreement with the covered entity. We propose that a contract between a covered entity and a business partner could not grant the business partner authority to make uses or disclosures of protected health information that the covered entity itself would not have the authority to make. The contract between a covered entity and a business partner could further limit the business partner's authority to use or disclose protected health information as agreed to by the parties. Further, the business partner would have to apply the same limitations to its subcontractors (or persons with similar arrangements) who assist with or carry out the business partner's activities.

To help ensure that the uses and disclosures of business partners are limited to those recognized as appropriate by the covered entities from whom they receive protected health information, subject to the exception discussed below, we are proposing that covered entities be prohibited from disclosing protected health information to a business partner unless the covered entity has entered into a written contract with the business partner that meets the requirements of this subsection. See proposed § 164.506(e)(2)(i).

The contract requirement that we are proposing would permit covered entities to exercise control over their business partners' activities and provides documentation of the relationship between the parties, particularly the scope of the uses and disclosures of protected health information that business partners could make. The presence of a contract also would formalize the relationship, better assuring that key questions such as security, scope of use and disclosure, and access by subject individuals are adequately addressed and that the roles of the respective parties are clarified. Finally, a contract can bind the business partner to return any protected health information from the covered entity when the relationship is terminated.

In lieu of a contracting requirement, we considered imposing only affirmative duties on covered entities to ensure that their relationships with business partners conformed to the standards discussed in the previous paragraph. Such an approach could be considered less burdensome and restrictive, because we would be leaving it to the parties to determine how to make the standards effective. We rejected this approach primarily because we believe that in the vast majority of cases, the only way that the parties could establish a relationship with these terms would be through contract. We also determined that the value of making the terms explicit through a written contract would better enable the parties to know their roles and responsibilities, as well as better enable the Secretary to exercise her oversight role. In addition, we understand that most covered entities already enter into contracts in these situations and therefore this proposal would not disturb general business practice. We invite comment on whether there are other contractual or non-contractual approaches that would afford an adequate level of protection to individuals' protected health information. We also invite comment on the specific provisions and terms of the proposed approach.

We are proposing one exception to the contracting requirement: when a covered entity consults with or makes a referral to another covered entity for the treatment of an individual, we would propose that the sharing of protected health information pursuant to that consultation or referral not be subject to the contracting requirement described above. See proposed § 164.506(e)(1)(i). Unlike most business partner relationships, which involve the systematic sharing of protected health information under a business relationship, consultation and referrals for treatment occur on a more informal basis among peers, and are specific to a particular individual. Such exchanges of information for treatment also appear to be less likely to raise concerns about further impermissible use or disclosure, because providers receiving such information are unlikely to have a commercial or other interest in using or disclosing the information. We invite comment on the appropriateness of this exception, and whether there are additional exceptions that should be included in the final regulation.

We note that covered health care providers receiving protected health information for consultation or referral purposes would still be subject to this rule, and could not use or disclose such protected health information for a purpose other than the purpose for which it was received (i.e., the consultation or referral). Further, we note that providers making disclosures for consultations or referrals should be careful to inform the receiving provider of any special limitations or conditions to which the disclosing provider has agreed to impose (e.g., the disclosing provider has provided notice to its patients that it will not make disclosures for research).

We are proposing that covered entities be accountable for the uses and disclosures of protected health information by their business partners. A covered entity would be in violation of this rule if the covered entity knew or reasonably should have known of a material breach of the contract by a business partner and it failed to take reasonable steps to cure the breach or terminate the contract. See proposed § 164.506(e)(2)(iii). A covered entity that is aware of impermissible uses and disclosures by a business partner would be responsible for taking such steps as are necessary to prevent further improper use or disclosures and, to the extent practicable, for mitigating any harm caused by such violations. This would include, for example, requiring the business partner to retrieve inappropriately disclosed information (even if the business partner must pay for it) as a condition of continuing to do business with the covered entity. A covered entity that knows or should know of impermissible use of protected health information by its business partner and fails to take reasonable steps to end the breach would be in violation of this rule.

We considered requiring covered entities to terminate relationships with business partners if the business partner committed a serious breach of contact terms required by this subpart or if the business partner exhibited a pattern or practice of behavior that resulted in repeated breaches of such terms. We rejected that approach because of the substantial disruptions in business relationships and customer service when terminations occur. We instead require the covered entity to take reasonable steps to end the breach and mitigate its effects. We would expect covered entities to terminate the arrangement if it becomes clear that a business partner cannot be relied upon to maintain the privacy of protected health information provided to it. We invite comments on our approach here and whether requiring automatic termination of business partner contracts would be warranted in any circumstances.

We also considered imposing more strict liability on covered entities for the actions of their business partners, just as principals are strictly liable for the actions of their agents under common law. We decided, however, that this could impose too great a burden on covered entities, particularly small providers. We are aware that, in some cases, the business partner will be larger and more sophisticated with respect to information handling than the covered entity. Therefore we instead opted to propose that covered entities monitor use of protected health information by business partners, and be held responsible only when they knew or should have known of improper use of protected health information.

Our intention in this section is to recognize the myriad of business relationships that currently exist and to ensure that when they involve the exchange of protected health information, the roles and responsibilities of the different parties with respect to the protected health information are clear. We do not propose to fundamentally alter the types of business relationships that exist in the health care industry or the manner in which they function. We request comments on the extent to which our proposal would disturb existing contractual or other arrangements among covered entities and business partners.

7. Application to Information About Deceased Persons (§ 164.506(f))

We are proposing that information otherwise protected by these regulations retain that protection for two years after the death of the subject of the information. The only exception that we are proposing is for uses and disclosures for research purposes.

HIPAA includes no temporal limitations on the application of the privacy protections. Although we have the authority to protect individually identifiable health information maintained by a covered entity indefinitely, we are proposing that the requirements of this rule generally apply for only a limited period, as discussed below. In traditional privacy law, privacy interests, in the sense of the right to control use or disclosure of information about oneself, cease at death. However, good arguments exist in favor both of protecting and not protecting information about the deceased. Considering that one of the underlying purposes of health information confidentiality is to encourage a person seeking treatment to be frank in the interest of obtaining care, there is good reason for protecting information even after death. Federal agencies and others sometimes withhold sensitive information, such as health information, to protect the privacy of surviving family members. At the same time, perpetual confidentiality has serious drawbacks. If information is needed for legitimate purposes, the consent of a living person legally authorized to grant such consent must be obtained, and the further from the date of death, the more difficult it may be to identify the person. The administrative burden of perpetual protection may eventually outweigh the privacy interests served.

While various State laws have been passed specifically addressing privacy of genetic information, there is currently no federal legislation that deals with these issues. We considered extending the two-year period for genetic and hereditary information, but were unable to construct criteria for protecting the possible privacy interests of living children without creating extensive burden for information holders and hampering health research. We invite comments on whether further action is needed in this area and what types of practical provisions may be appropriate to protect genetic and hereditary health information.

8. Uses and Disclosures With Individual Authorization (§ 164.508)

Covered entities would be required to obtain individual authorization to use individually identifiable health information for purposes other than those allowed under the rule. Activities requiring authorization include, for example, marketing. Costs will be ongoing for staffing and administrative activities related to obtaining authorization from individuals.

Our proposal is based on the precept that a combination of strict limits on how covered entities can use and disclose protected health information, adequate notice to individuals about how their information will be used, and guaranteeing individuals' rights to inspect, copy and amend their health records will provide patients with better privacy protection and more effective control over their information than alternative approaches to privacy protection.

This section addresses the requirements that we are proposing when protected health information is disclosed pursuant to the individual's explicit authorization. The regulation would require that covered entities have authorization from individuals before using or disclosing their protected health information for any purpose not otherwise recognized by this regulation. Circumstances where an individual's protected health information could be used or disclosed without authorization are discussed in connection with proposed §§ 164.510 and 164.522 below.

This section proposes different conditions governing such authorizations in two situations in which individuals commonly authorize covered entities to disclose information:

- Where the individual initiates the authorization because he or she wants a covered entity to disclose his or her record, and
- Where a covered entity asks an individual to authorize it to disclose or use information for purposes other than treatment, payment or health care operations.

The requirements proposed in this section are not intended to interfere with normal uses and disclosures of information in the health care delivery or payment process, but only to allow control of uses extraneous to health care. The restrictions on disclosure that the regulation would apply to covered entities may mean that some existing uses and disclosures of information could take place only if the individual explicitly authorized them under this section.

We considered requiring a uniform set of requirements for all authorizations, but concluded that it would be appropriate to treat authorizations initiated by the individual differently from authorizations sought by covered entities. There are fundamental differences, in the uses of information and in the relationships and understandings among the parties, in these two situations. When individuals initiate authorizations, they are more likely to understand the purpose of the release and to benefit themselves from the use or disclosure. When a covered entity asks the individual to authorize disclosure, we believe the entity should make clear what the information will be used for, what the individual's rights are, and how the covered entity would benefit from the requested disclosure.

We are proposing several requirements that would have to be met in the authorization process when the individual has initiated the authorization. We understand that the requirements that we are imposing here would make it quite unlikely that an individual could actually initiate a completed authorization, because few individuals would know to include all of these elements in a request for information. In most instances, individuals authorize a use or disclosure by completing a form provided by a third party, either the ultimate recipient of the information (who may have a form authorizing them to obtain the records from the record holders) or a health care provider or health plan holding the records (who may have a form that documents a request for the release of records to a third party). For this reason, we do not believe that our proposal would create substantial new burdens on individuals or covered entities in cases when an individual is initiating an authorized release of information. We invite comment on whether we are placing new burdens on individuals or covered entities. We also invite comment on whether the approach that we have proposed provides sufficient protection to individuals who seek to have their protected health information used or disclosed.

We are proposing that when covered entities initiate the authorization by asking individuals to authorize disclosure, the authorization be required to include all of the items required above as well as several additional items. We are proposing additional requirements when covered entities initiate the request for authorization, because in many cases it could be the covered entity, and not the individual, that achieves the primary benefit of the disclosure. We considered permitting covered entities to request authorizations with only the basic features proposed for authorizations initiated by the individual, for the sake of simplicity and consistency. However, we believe that additional protections are merited when the entity that provides or pays for health care requests authorizations to avert possible coercion.

We also acknowledge that there will be costs related to moving away from a blanket authorization system. These costs will be discussed more explicitly in the sections on allowable disclosures (both with and without authorization).

Covered entities and third parties that wish to have information disclosed to them will prepare forms for individuals to use to authorize use or disclosure. A model authorization form is displayed in Appendix A to this proposed rule. We considered presenting separate model forms for the two different types of authorizations (initiated by the individual and not initiated by the individual). However, this approach could be subject to misuse and be confusing to covered entities and individuals, who may be unclear as to which form is appropriate in specific situations. The model in the appendix accordingly is a unitary model, which includes all of the requirements for both types of authorization. By following such a model, covered entities, particularly small entities, could avoid the legal and administrative expenses that would be necessary to develop an authorization form that complies with the rule's requirements. The proposed rule does not prevent entities from developing or modifying their own authorization forms. The alternative to providing this model was to simply state that an authorization would be required and allow entities to develop the authorization independently. While we would specify some information required in the authorization in this alternative, we would not give an actual form. This was considered to be an unnecessary burden for entities.

Finally, we are proposing that an individual be permitted to revoke an authorization at any time except to the extent that action has been taken in reliance on the authorization. See proposed § 164.508(e).

9. Uses and Disclosures Permitted Without Individual Authorization (§ 164.510)

This section describes uses and disclosures of protected health information that covered entities could make for purposes other than treatment, payment, and health care operations without individual authorization, and the conditions under which such uses and disclosures could be made. We propose to allow covered entities to use or disclose protected health information without individual authorization for such purposes if the use or disclosure would comply with the applicable requirements of this section.

Covered entities could need to reevaluate and modify their operating procedures to comply with the proposed rule's prohibition on disclosing individually identifiable health information without patient authorization for any purpose other than treatment, payment, health care operations, or those situations explicitly identified as permissible disclosures under this proposed rule. Many entities could already do this. Entities that do not do this would need to alter information management systems and implement administrative policies and procedures to prevent inappropriate disclosures. Entities would also have to determine whether or not an authorization is necessary for each disclosure beyond treatment, payment, and health care operations that is not explicitly defined as a permissible disclosure under this proposed rule. It should be noted that the minimum necessary principle is an important component of the costs related to any disclosure. We expect that there would be significant initial and ongoing costs.

If an entity chooses to disclose protected health information without authorization from individuals, there would be a number of new provisions that it would have to comply with. For example, if a disclosure is to researchers outside of the organization, the entity must obtain written documentation indicating that the research has been approved by an institutional review board (IRB) or equivalent process by a privacy board. This requirement is associated with ongoing administrative costs. We note that any such costs are optional unless other requirements (state laws, mandatory reporting systems, etc.) mandate these disclosures. In order to minimize the burden of these costs for mandatory disclosures, we have tried to apply as few business partner requirements as possible in areas where these mandatory disclosures are possible. However, in cases where the disclosure is optional, entities would have higher costs if they choose to use these disclosures. We expect that entities would consider these costs before making any such disclosure and determine if the benefits to their business of disclosure are greater than the costs related to making the disclosure. Additionally, other than the new requirements for disclosures for research, most of the disclosures are simply recognizing current practices and would not require large new costs.

We considered permitting uses and disclosures only where law affirmatively requires the covered entity to use or disclose protected health information. However, because the activities described below are so important to the population as a whole, we decided to permit a covered entity to use or disclose information to promote those activities even when such activities are not legally mandated. In some cases, however, we would permit a use or disclosure only when such use or disclosure is authorized by other law. The requirements for verification of legal authority are discussed in section II.G.3.

Disclosures that are required by current law would only require minimal additional costs to entities. The only cost directly attributable to this proposed requirement would be the additional cost of noting these disclosures on the accounting of uses and disclosures.

However, disclosures required by this proposed regulation should be considered new costs. These mandatory disclosures would be extremely rare. For example, we expect that the Department would limit the number of compliance audits conducted. In these cases, some of the more expensive activities, including the minimum necessary principle and determining whether or not to make the disclosure, would not be applicable.

We would restrict the discussion of discretionary disclosures to the general principles behind such disclosures rather than a detailed description of each allowable disclosure. More elaborate discussion of options for individual classes of disclosures can be found in the preamble. These disclosures are optional disclosures and therefore, any costs related to making these disclosures would incur optional costs. We do not have a complete understanding of how often these disclosures are currently made, nor do we understand what procedures are currently in place. We also do not understand how often these disclosures would be made given the new costs associated with such disclosures. Note that the degree of new costs imposed if an entity opts to use a disclosure varies dramatically depending on the type of disclosure. For example, a disclosure of directory information in a hospital would probably not involve significant additional costs, while research that is not subject to the common could would have significant new costs involved. These disclosures, and thus these costs, are optional under this proposed rule. While they may be mandated under other law, such mandated disclosures are already being made, so there would be no additional costs. In this case there are only marginal new costs related to these disclosures.

10. Clearinghouses and the Rights of Individuals

The rights described below would apply with respect to protected health information held by health care providers and health plans. We are proposing that clearinghouses not be subject to all of these requirements. We believe that as business partners of covered plans and providers, clearinghouses would not usually initiate or maintain direct relationships with individuals. The contractual relationship between a clearinghouse (as a business partner) and a covered plan or provider would bind the clearinghouse to the notice of information practices developed by the plan or provider and it would include specific provisions regarding inspection, copying, amendment and correction. Therefore, we do not believe that clearinghouses should be required to provide a notice or provide access for inspection, copying, amendment or correction. We would require clearinghouses to provide an accounting of any disclosures for purposes other than treatment, payment and health care operations to individuals upon request. See proposed § 164.515. It is our understanding that the vast majority of the clearinghouse function falls within the scope of treatment, payment, and health care operations and therefore we do not believe providing this important right to individuals would impose a significant burden on the industry. We invite comment on whether or not we should require clearinghouses to comply with all of the provisions of the individual rights section.

11. Rights and Procedures for a Written Notice of Information Practices (§ 164.512)

We are proposing that individuals have a right to an adequate notice of the information practices of covered plans and providers. The notice would be intended to inform individuals about what is done with their protected health information and about any rights they may have with respect to that information. Federal agencies must adhere to a similar notice requirement pursuant to the Privacy Act of 1974 (5 U.S.C. 552a(e)(3)).

We are not proposing that business partners (including health care clearinghouses) be required to develop a notice of information practices because, under this proposed rule, they would be bound by the information practices of the health plan or health care provider with whom they are contracting.

The rule requires covered entities to prepare and make available a notice that informs patients about their privacy rights and the entity's actions to protect privacy. Entities that do not already comply with the rule's requirements would incur one-time legal and administrative costs in preparing and making the notice available. In addition, plans would incur ongoing costs related to the dissemination of the notice at least once every three years, and all covered entities would have ongoing costs related to preparation of new notices as disclosure practices change, dissemination to new individuals who receive services, and requests for copies of the notice. Entities would also incur ongoing costs related to answering questions stemming from the notice. In addition to requiring a basic notice, we considered requiring a longer more detailed notice, that would be available to individuals on request. However, we decided that making information available on request, and letting the covered entity decide how best to provide such information, is a more balanced approach. We felt that it would be overly burdensome to all entities, especially small entities, to require two notices.

We considered requiring covered plans or providers to obtain a signed copy of the notice form (or some other signed indication of receipt) when they give the form to individuals. There are advantages to including such a requirement. A signed acknowledgment would provide evidence that the notice form has been provided to the individual. Further, the request to the individual to formally acknowledge receipt would highlight the importance of the notice, providing additional encouragement for the individual to read it and ask questions about its content.

We are concerned, however, that requiring a signed acknowledgment would significantly increase the administrative and paperwork burden of this provision. We also are unsure of the best way for health plans to obtain a signed acknowledgment because plans often do not have face-to-face contact with enrollees. It may be possible to collect an acknowledgment at initial enrollment, for example by adding an additional acknowledgment to the enrollment form, but it is less clear how to obtain it when the form is revised. We solicit comment on whether we should require a signed acknowledgment. Comments that address the relative advantages and burdens of such a provision would be most useful. We also solicit comment on the best way to obtain signed acknowledgments from health plans if such a provision is included in the final rule. We also solicit comments on other strategies, not involving signed acknowledgments, to ensure that individuals are effectively informed about the information practices of covered plans or providers.

We believe that the proposed rule appropriately balances a patient's need for information and assurances regarding privacy with the covered entities' need for flexibility in describing their operations and procedures to protect patient privacy. Instead of a model notice, we have included a sample notice to guide the development of notices. We felt that this would be an appropriate way to reduce the burden on all entities including those classified as small.

In § 164.512, we propose the categories of information that would be required in each notice of information practices, the specific types of information that would have to be included in each category, and general guidance as to the presentation of written materials. A sample notice is provided at Appendix A of this preamble.

In a separate section of this proposed rule, we would require covered plans or providers to develop and document policies and procedures relating to use, disclosure, and access to protected health information. See proposed § 164.520. We intend for the documentation of policies and procedures to be a tool for educating the entity's personnel about its policies and procedures. In addition, the documentation would be the primary source of information for the notice of information practices. We intend for the notice to be a tool for educating individuals served by the covered plan or provider about the information practices of that entity. The information contained in the notice would not be as comprehensive as the documentation, but rather would provide a clear and concise summary of relevant policies and procedures.

We considered prescribing specific language that each covered plan or provider would include in its notice. The advantages of this approach would be that the recipient would get exactly the same information from each covered plan or provider in the same format, and that it would be convenient for covered plans or providers to use a uniform model notice.

There are, however, several disadvantages to this approach. First, and most important, no model notice could fully capture the information practices of every covered plan or provider. Large entities would have different information practices than small entities. Some health care providers, for example academic teaching hospitals, may routinely disclose identifiable health information for research purposes. Other health care providers may rarely or never make such disclosures. To be useful to individuals, each entity's notice of information practices should reflect its unique privacy practices.

Another disadvantage of prescribing specific language is that it would limit each covered plan or provider's ability to distinguish itself in the area of privacy protections. We believe that if information on privacy protections were readily available, individuals might compare and select plans or providers based on their information practices. In addition, a uniform model notice could easily become outdated. As new communication methods or technologies are introduced, the content of the notices might need to reflect those changes.

In proposed § 164.512, we would require each covered plan and provider to include in the notice an explanation of how it uses and discloses protected health information. The explanation must be provided in sufficient detail as to put the individual on notice of the uses and disclosures expected to be made of his or her protected health information. As explained above in section II.C.7, covered plans and providers may only use and disclose protected health information for purposes stated in this notice.

We considered requiring the notice to include not only a discussion of the actual disclosure practices of the covered entity, but also a listing or discussion of all additional disclosures that are authorized by law. We considered this approach because, under this proposed rule, covered plans or providers would be permitted to change their information practices at any time, and therefore individuals would not be able to rely on the entity's current policies alone to understand how their protected health information may be used in the future. We recognize that in order to be fully informed, individuals need to understand when their information could be disclosed.

We rejected this approach because we were concerned that a notice with such a large amount of information could be burdensome to both the individuals receiving the notices and the entities required to prepare and distribute them. There are a substantial number of required and permitted disclosures under State or other applicable law, and this rule generally would permit them to be made.

Alternatively, we considered requiring that the notice include all of the types of permissible disclosures under this rule (*e.g.*, public health, research, next-of-kin). We rejected that approach for two reasons. First, we felt that providing people with notice of the intended or likely disclosures of their protected health information was more useful than describing all of the potential types of disclosures. Second, in many States and localities, different laws may affect the permissible disclosures that an entity may make, in which case a notice only discussing permissible disclosures under the federal rule would be misleading. While it would be possible to require covered plans or providers to develop notices that discuss or list disclosures that would be permissible under this rule and other law, we were concerned that such a notice may be very complicated because of the need to discuss the interplay of federal, State or other law for each type of permissible disclosure. We invite comments on the best approach to provide most useful information to the individuals without overburdening either covered plans or providers or the recipients of the notices.

In § 164.520, we are proposing to require all covered entities to develop and document policies and procedures for the use of protected health information. The notice would simply summarize those documented policies and procedures and therefore would entail little additional burden.

It is critical to the effectiveness of this proposed rule that individuals be given the notice often enough to remind them of their rights, but without overburdening covered plans or providers. We propose that all covered plans and providers would be required to make their notice available to any individual upon request, regardless of whether the requestor is already a patient or enrollee. We believe that broad availability would encourage individuals or organizations to compare the privacy practices of plans or providers to assist in making enrollment or treatment choices. We also propose additional distribution requirements for updating notices, which would be different for health plans and health care providers. The requirements for health plans and health care providers are different because we recognize that they have contact with individuals at different points in time in the health care system.

We considered a variety of combinations of distribution practices for health plans and are proposing what we believe is the most reasonable approach. We would require health plans to distribute the notice by the effective date of the final rule, at enrollment, within 60 days of a material change to the plan's information practices, and at least once every three years.

We considered requiring health plans to post the notice either in addition to or instead of distribution. Because most individuals rarely visit the office of their health plan, we do not believe that this would be an effective means of communication. We also considered either requiring distribution of the notice more or less frequently than every three years. As compared to most health care providers, we believe that health plans often are larger and have existing administrative systems to cost effectively provide notification to individuals. Three years was chosen as a compromise between the importance of reminding individuals of their plans' information practices and the need to keep the burden on health plans to the minimum necessary to achieve this objective. We are soliciting comment on whether requiring a notice every three years is reasonable for health plans.

We propose to require that covered health care providers provide a copy of the notice to every individual served at the time of first service delivery, that they post the notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the provider to be able to read the notice, and that copies be available on-site for individuals to take with them. In addition, we propose to require that covered health care providers provide a copy of the notice to individuals they are currently serving at their first instances of service delivery within a year of the effective date of the final rule.

We would not require providers to mail or otherwise disseminate their notices after giving the notice to individuals at the time of the first service delivery. Providers' patient lists may include individuals they have not served in decades. It would be difficult for providers to distinguish between "active" patients, those who are seen rarely, and those who have moved to different providers. While some individuals would continue to be concerned with the information practices of providers who treated them in the distant past, overall the burden of an active distribution requirement would not be outweighed by improved individual control and privacy protection.

If a provider wishes to make a material change in the information practices addressed in the notice, it would be required to revise its notice in advance. After making the revision, the provider would be required to post the new notice promptly. We believe that this approach creates the minimum burden for providers consistent with giving individuals a clear source of accurate information.

12. Rights and Procedures for Access for Inspection and Copying (§ 164.514)

In § 164.514, we are proposing that, with very limited exceptions, individuals have a right to inspect and copy protected health information about them maintained by a covered health plan or health care provider in a designated record set. Individuals would also have a right of access to protected health information in a designated record set that is maintained by a business partner of a covered plan or provider when such information is not a duplicate of the information held by the plan or provider, including when the business partner is the only holder of the information or when the business partner has materially altered the protected health information that has been provided to it.

In § 164.506(e), we are proposing that covered plans and providers include specific terms in their contract with each business partner. One of the required terms would be that the business partner must provide for inspection and copying of protected health information as provided in this section. Because our authority is limited by HIPAA to the covered entities, we must rely upon covered plans and providers to ensure that all of the necessary protected health information provided by the individual to the plan or provider is available for inspection and copying. We would require covered plans and providers to provide access to information held in the custody of a business partner when it is different from information maintained by the covered plan or provider. We identified two instances where this seemed appropriate: when the protected health information is only in the custody of a business partner and not in the custody of the covered plan or provider; and when protected health information has been materially altered by a business partner. We are soliciting comment on whether there are other instances where access should be provided to protected health information in the custody of a business partner.

Other than in their capacity as business partners, we are not proposing to require clearinghouses to provide access for inspection and copying. As explained above in section II.C.5, clearinghouses would usually be business partners under this proposed rule and therefore they would be bound by the contract with the covered plan or provider. See proposed § 164.506(e). We carefully considered whether to require clearinghouses to provide access for inspection and copying above and beyond their obligations as a business partner, but determined that the typical clearinghouse activities of translating record formats and batching transmissions do not involve setting up designated record sets on individuals. Although the data maintained by the clearinghouse is protected health information, it is normally not accessed by individual identifier and an individual's records could not be found except at great expense. In addition, although clearinghouses process protected health information and discover errors, they do not create the data and make no changes in the original data. They, instead, refer the errors back to the source for correction. Thus, individual access to clearinghouse records provides no new information to the individual but could impose a significant burden on the industry.

We are proposing that covered plans and providers be required to provide access for as long as the entity maintains the protected health information. We considered requiring covered plans and providers to provide access for a specific period or defining a specific retention period. We rejected that approach because many laws and professional standards already designate specific retention periods and we did not want to create unnecessary confusion. In addition, we concluded that individuals should be permitted to have access for as long as the information is maintained by the covered plan or provider. We are soliciting comments on whether we should include a specific duration requirement in this proposed rule.

Proposed § 164.514 would permit denial of inspection and copying under very limited circumstances. The categories of denials would not be mandatory; the entity could always elect to provide all of the requested health information to the individual. For each request by an individual, the entity could provide all of the information requested or it could evaluate the requested information, consider the circumstances surrounding the individual's request, and make a determination as to whether that request should be granted or denied. We intend to create narrow exceptions to the stated rule of open access and we would expect covered plans and providers to employ these exceptions rarely, if at all.

We considered whether entities should be permitted to deny access to information based on a number of factors. For more specific discussion of access denials, please refer to earlier preamble text. For the purposes of the economic impacts, it is important to note that these denials are optional and, therefore, any costs associated with utilizing these denials are optional.

In § 164.514(c) and (d), we are proposing that covered plans and providers be required to have procedures that enable individuals to exercise their rights to inspect and obtain a copy of protected health information as explained above.

We considered whether this proposed rule should include detailed procedures governing a individual's request for inspection and copying. Because this proposed rule would affect such a wide range of entities, we concluded that it should only provide general guidelines and that each entity should have the discretion to develop procedures consistent with its own size, systems, and operations.

In § 164.514(d)(2), we are proposing that the covered plans and providers would take action upon the request as soon as possible but not later than 30 days following receipt of the request. We considered the possibility of not including a time limitation but rather imposing a "reasonableness" requirement on the covered plans or providers. We concluded that the individual is entitled to know when to expect a response. This is particularly important in the context of health information, where an individual could need access to his or her information in order to make decisions about care. Therefore, in order to determine what would be "reasonable," we examined the time limitations provided in the Privacy Act, the Freedom of Information Act (FOIA), and several State laws.

The Privacy Act requires that upon receipt of a request for amendment (not access), the agency would send an acknowledgment to the individual within 10 working days. (5 U.S.C. 552a (d)(2)). We considered several options that included such an acknowledgment requirement. An acknowledgment would be valuable because it would assure the individual that their request was received. Despite the potential value of requiring an acknowledgment, we concluded that it could impose a significant administrative burden on some of the covered plans and providers. This proposed rule would cover a wide range of entities with varying capacities and therefore, we are reluctant to create requirements that would overwhelm smaller entities or interfere too much with procedures already in place. We would encourage plans and providers to have an acknowledgment procedure in place, but would not require it at this point. We are soliciting comment on whether this proposed rule should require such an acknowledgment.

We also considered whether to include specific procedures governing "urgent" or "emergency" requests. Such procedures would require covered plans and providers to respond in a shorter time frame. We recognize that circumstances could arise where an individual would request inspection and copying on an expedited basis and we encourage covered plans or providers to have procedures in place for handling such requests. We are not proposing additional regulatory time limitations to govern in those circumstances. The 30-day time limitation is intended to be an outside deadline, rather than an expectation. Rather, we would expect a plan or provider to always be attentive to the circumstances surrounding each request and respond in an appropriate time frame, not to exceed 30 days.

Finally, we considered including a section governing when and how an entity could have an extension for responding to a request for inspection and copying. For example, the FOIA provides that an agency could request additional time to respond to a request if the agency needs to search for and collect the requested records from facilities that are separate from the office processing the request; to search for, collect, and appropriately examine a voluminous amount of separate and distinct records; and to consult with another entity or component having a substantial interest in the determination of the request. We determined that the criteria established in the FOIA are tailored to government information systems and therefore could not be appropriate for plans and providers covered by this proposed rule. Furthermore, we determined that the 30-day time period would be sufficient for responding to requests for inspection and copying and that extensions should not be necessary. We are soliciting comments on whether a structured extension procedure should be included in this proposed rule.

In § 164.514(d)(3), we are proposing that covered plans or providers be required to notify the individual of the decision to provide access and of any steps necessary to fulfill the request. In addition we propose that the entity provide the information requested in the form or format requested if it is readily producible in such form or format. Finally, if the covered plan or provider accepts an individual's request, it would be required to facilitate the process of inspection and copying.

In proposed § 164.514(d)(3)(iv), we would permit a covered plan or provider to charge a reasonable, cost-based fee for copying health information provided pursuant to this section. We considered whether we should follow the practice in the FOIA and include a structured fee schedule. We concluded that the FOIA was developed to reflect the relatively uniform government costs and that this proposed rule would apply to a broader range of entities. Depending on the size of the entity, copying costs could vary significantly. Therefore, we propose that the entity simply charge a reasonable, cost-based fee.

In § 164.514(d)(4), we propose that a covered plan or provider that denies an individual's request for inspection and copying in whole or in part be required to provide the individual with a written statement in plain language explaining the reason for the denial. The statement could include a direct reference to the section of the regulation relied upon for the denial, but the regulatory citation alone would not sufficiently explain the reason for the denial. The statement would need to include the name and number of the contact person or office within the entity who is responsible for receiving complaints. In addition, the statement would need to include information regarding the submission of a complaint with the Department pursuant to § 164.522(b).

We considered proposing that covered plans and providers provide a mechanism for appealing a denial of inspection and copying. We believe, however, that the requirement proposed in § 164.518(d) that covered plans and providers have complaint procedures to address patient and enrollee privacy issues generally would allow the individual to raise the issue of a denial with the covered plan or provider. We would expect the complaint procedures to be scalable; for example, a large plan might develop a standard complaint process in each location where it operates whereas, a small practice might simply refer the original request and denial to the clinician in charge for review. We would encourage covered plans and providers to institute a system of appeals, but would not require it by regulation. In addition, the individual would be permitted to file a complaint with the Department pursuant to § 164.522(b).

13. Rights and Procedures With Respect to an Accounting of Disclosures (§ 164.515)

In this proposed rule, we propose that individuals have a right to receive an accounting of all instances where protected health information about them is disclosed by a covered entity for purposes other than treatment, payment, and health care operations, subject to certain time-limited exceptions for disclosures to law enforcement and oversight agencies as discussed below. Providing such an accounting would allow individuals to understand how their health information is shared beyond the basic purposes of treatment, payment and health care operations.

We considered whether to require covered entities to account for all disclosures, including those for treatment, payment and health care operations. We rejected this approach because it would be burdensome and because it would not focus on the disclosures of most interest to individuals. Upon entering the health care system, individuals are generally aware that their information would be used and shared for the purpose of treatment, payment and health care operations. They have the greatest interest in an accounting of circumstances where the information was disclosed for other purposes that are less easy to anticipate. For example, an individual might not anticipate that his or her information would be shared with a university for a research project, or would be requested by a law enforcement agency.

We are not proposing that covered entities include uses and disclosures for treatment, payment and health care operations in the accounting. We believe that it is appropriate for covered entities to monitor all uses and disclosures for treatment, payment and health care operations, and they would be required to do so for electronically maintained information by the Security Standard. However, we do not believe that covered entities should be required to provide an accounting of the uses and disclosures for treatment payment and health care operations.

This proposed rule would not specify a particular form or format for the accounting. In order to satisfy the accounting requirement, a covered entity could elect to maintain a systematic log of disclosures or it could elect to rely upon detailed record keeping that would permit the entity to readily reconstruct the history when it receives a request from an individual. We would require that covered entities be able to respond to a request for accounting within a reasonable time period. In developing the form or format of the accounting, covered entities should adopt policies and procedures that would permit them to respond to requests within the 30-day time period in this proposed rule.

We also considered whether or not the disclosure history should be a formal document that is constantly maintained or whether we should give more flexibility to entities in this regard. We decided that since our ultimate goal is that individuals have access to a disclosure history of their records upon request, it would be reasonable to require only that they be able to do this. We are not prescribing how they fulfill the requirement. We also believe that it is less burdensome to require that they be able to create a disclosure history than to require that they have a specific format for maintaining a disclosure history.

We are proposing that the accounting include all disclosures for purposes other than treatment, payment, and health care operations, subject to certain exceptions for disclosures to law enforcement and oversight agencies, discussed below. This would also include disclosures that are authorized by the individual. The accounting would include the date of each disclosure; the name and address of the organization or person who received the protected health information; and a brief description of the information disclosed. For all disclosures that are authorized by the individual, we are proposing that the covered entity maintain a copy of the authorization form and make it available to the individual with the accounting.

We considered whether the accounting of disclosures should include the name of the person who authorized the disclosure of information. The proposed Security Standard would require covered entities to have an audit mechanism in place to monitor access by employees. We concluded that it would be unnecessary and inappropriate to require the covered entity to include this additional information in the accounting. If the individual identifies an improper disclosure by an entity, he or she should hold the entity not the employee of the entity accountable. It is the responsibility of the entity to train its workforce about its policies and procedures for the disclosure of protected health information and to impose sanctions if such policies and procedures are violated.

14. Rights and Procedures for Amendment and Correction (§ 164.516)

This proposed rule would provide an individual with the right to request a covered plan or provider to amend or correct protected health information relating to the individual. A covered plan or provider would be required to accommodate requests with respect to any information that the covered plan or provider determines to be erroneous or incomplete, that was created by the plan or provider, and that would be available for inspection and copying under proposed § 164.514.

We are concerned about the burden that requests for amendment or correction could place on covered plans and providers and have tried to limit the process to those situations where amendment or correction would appear to be most important. We invite comment on whether our approach reasonably balances burden with adequately protecting individual interests.

We propose to require a covered plan or provider to accommodate a request for amendment or correction if the plan or provider created the information in dispute. We considered requiring covered plans and providers to amend or correct any erroneous or incomplete information it maintains, regardless of whether it created the information. Under this approach, if the plan or provider did not create the information, then it would have been required to trace the information back to the original source to determine accuracy and completeness. We rejected this option because we concluded that it would not be appropriate to require the plan or provider that receives a request to be responsible for verifying the accuracy or completeness of information that it did not create. We also were concerned about the burden that would be imposed on covered plans and providers if they were required to trace the source of any erroneous or incomplete information transmitted to them.

We would rely on a combination of three other requirements to ensure that protected health information remains as accurate as possible as it travels through the health care system. First, we are proposing that a covered plan or provider that makes an amendment or correction be required to notify any relevant persons, organizations, or other entities of the change or addition. Second, we are proposing that other covered plans or providers that receive such a notification be required to incorporate the necessary amendment or correction. Finally, we are proposing that covered plans or providers require their business partners who receive such notifications to incorporate any necessary amendments or corrections. See the discussion in section II.F.4. We are soliciting comments whether this approach would effectively ensure that amendments and corrections are communicated appropriately.

We are proposing that covered plans and providers be required to accommodate requests for amendment or correction for as long as the entity maintains the protected health information. We considered requiring covered plans and providers to accommodate requests for a specific period or defining a specific retention period. We rejected that approach because many laws and professional standards already designate specific retention periods and we did not want to create confusion. In addition, we concluded that individuals should be permitted to request amendments or corrections for as long as the information is maintained by the covered plan or provider. We are soliciting comments on whether we should include a specific duration requirement in this proposed rule.

In § 164.516, we are proposing that covered plans and providers be required to have procedures that enable individuals to exercise their rights to request amendment or correction, including a means by which individuals could request amendment or correction of protected health information about them. We considered whether this proposed rule should include detailed procedures governing an individual's request. But as with the procedures for requesting inspection and copying, we are only providing a general requirement and permitting each plan or provider to develop procedures in accordance with its needs. Once the procedures are developed, the plan or provider would document them in accordance with section § 164.520 and include a brief explanation in the notice that is provided to individuals pursuant to section § 164.512.

We are proposing that the covered plan or provider would take action on a request for amendment or correction as quickly as the circumstances require, but not later than 60 days following the request. The justification for establishing a time limitation for amendment and correction is virtually identical to that provided for the time limitation for inspection and copying. We concluded that the entity should be provided with some additional flexibility in this context. Depending on the nature of the request, an amendment or correction could require significantly more time than a request for inspection and copying. If a covered plan or provider needed more than 30 days to make a decision, we would encourage, but not require, it to send an acknowledgment of receipt to the individual including an explanation of the reasons for the delay and a date when the individual could expect a final decision.

In § 164.516(c)(3), we are proposing that, upon accepting an amendment or correction, the covered plan or provider would be required to make reasonable efforts to notify relevant persons, organizations, or other entities of the change or addition. An entity would be required to notify such persons that the individual identifies, or that the covered plan or provider identifies as (1) a recipient of the erroneous or incomplete information, and (2) a person who:

- Has relied upon that information to the detriment of the individual; or
- Is a person who could foreseeably rely on such erroneous or incomplete information to the detriment of the individual.

We are concerned about the potential burden that this notification requirement would impose on covered plans and providers. We do not, however, anticipate that a significant number of requests would be submitted to any entity and therefore the need for such notifications would be rare. In addition, we determined that because health information can travel so quickly and efficiently in the modern health care system, the need for notification outweighed the potential burden. It is important to note that a reasonableness standard should be applied to the notification process—if the recipient has not relied upon the erroneous or incomplete information to the detriment of the individual or if it is not foreseeable that the recipient would do so, then it would not be reasonable for the covered plan or provider to incur the time and expense of notification. If, however, if the incorrect information is reasonably likely to be used to the detriment of the individual, the entity should make every effort to notify the recipients of the information of the changes as quickly as possible.

We discussed a number of options regarding the notification of other entities. We considered only requiring that the entity provide the individual with a listing of who else could have received the information. This would place the burden of notification in the hands of the individual rather than the entity. Because individuals would not have the same contacts and relationship with other entities as the original covered entity, we decided that placing the burden on individuals would be more cumbersome for both individuals and the secondary entities receiving the requests. We also considered not including a notification requirement. However, this would mean that individuals would need to both figure out where the information had gone to and make separate requests for amendment or correction to every entity. This also appeared to be overly difficult. We believe that the option we are proposing is fair to both individuals and covered entities.

In proposed § 164.516(c)(4), we would require a covered plan or provider to provide the individual with a written statement in plain language of the reason for the denial and permit the individual to file a written statement of disagreement with the decision to deny the request.

If the individual chooses to file a statement of disagreement, then the covered plan or provider must retain a copy of the statement with the protected health information in dispute. The covered plan or provider could require that the statement be a reasonable length, provided that the individual has reasonable opportunity to state the nature of the disagreement and offer his or her version of accurate and complete information. In all subsequent disclosures of the information requested to be amended or corrected, the covered plan or provider would be required to include a copy of its statement of the basis for denial and, if provided by the individual, a copy of his or her statement of disagreement. If the statement submitted by the individual is unreasonably long, the covered plan or provider could include a summary in subsequent disclosures which reasonably explains the basis of the individual's position. The covered plan or provider would also be permitted to provide a rebuttal to the individual's statement of disagreement and include the rebuttal statement in any subsequent disclosures.

We considered requiring the covered plan or provider to provide a mechanism for appealing denials of amendment or correction but concluded that it would be too burdensome. We are soliciting comment on whether the approach we have adopted reasonably balances the burdens on covered plans or providers with the rights of individuals.

If a covered plan or provider receives a notification of erroneous or incomplete protected health information as provided in proposed § 164.516(d), we are proposing that the covered plan or provider or be required to make the necessary amendment or correction to protected health information in its custody that would be available for inspection and copying. This affirmative duty to incorporate amendments and corrections would be necessary to ensure that individuals' protected health information is as accurate and complete as possible as it travels through the health care system.

15. Administrative Requirements (§ 164.518)

We propose that covered entities be required to implement five basic administrative requirements to safeguard protected health information: Designation of a privacy official, the provision of privacy training, establishment of safeguards, a complaint process, and establishment of sanctions. Implementation of these requirements would vary depending on a variety of different factors such as type of entity (e.g., provider or plan), size of entity (e.g., number of employees, number of patients), the level of automation within the entity (e.g., electronic medical records), and organization of the entity (e.g., existence of an office of information systems, affiliation with a medical school).

a. Designation of a Privacy Official (§ 164.518(a))

In proposed § 164.518(a), we would require covered entities to designate an employee or other person to serve as the official responsible for the development of policies and procedures for the use and disclosure of protected health information. The designation of an official would focus the responsibility for development of privacy policy.

We considered whether covered entities should be required to designate a single official or an entire board. We concluded that a single official would better serve the purposes of focusing the responsibility and providing accountability within the entity. The implementation of this requirement would depend on the size of the entity. For example, a small physician's practice might designate the office manager as the privacy official, and he or she would assume this as one of his or her broader administrative responsibilities. A large entity might appoint a person whose sole responsibility is privacy policy, and he or she might choose to convene a committee representing several different components of the entity to develop and implement privacy policy.

b. Training (§ 164.518(b))

In proposed § 164.518(b), we would require covered entities to provide training on the entities policies and procedures with respect to protected health information. Each entity would be required to provide initial training by the date on which this proposed rule becomes applicable. After that date, each covered entity would have to provide training to new members of the workforce within a reasonable time period after joining the entity. In addition, we are proposing that when a covered entity makes material changes in its privacy policies or procedures, it would be required to retrain those members of the workforce whose duties are directly affected by the change within a reasonable time of making the change.

The entities would be required to train all members of the workforce (*e.g.*, all employees, volunteers, trainees, and other persons under the direct control of all persons working on behalf of the covered entity on an unpaid basis who are not business partners) who are likely to have contact with protected health information.

Upon completion of the training, the person would be required to sign a statement certifying that he or she received the privacy training and would honor all of the entity's privacy policies and procedures. Entities would determine the most effective means of communicating with their workforce. For example, in a small physician practice, the training requirement could be satisfied by providing each new member of the workforce with a copy of the practice's information policies and requiring members of the workforce to acknowledge that they have reviewed the policies. A large health plan could provide for a training program with live instruction, video presentations or interactive software programs. The small physician practice's solution would not protect the large plan's data, and the plan's solution would be neither economically feasible nor necessary for the small physician practice.

At least once every three years after the initial training, covered entities would be required to have each member of the workforce sign a new statement certifying that he or she would honor all of the entity's privacy policies and procedures. The initial certification would be intended to make members of the workforce aware of their duty to adhere to the entity's policies and procedures. By requiring a recertification every three years, they would be reminded of this duty.

We considered several different options for recertification. We considered proposing that members of the workforce be required to recertify every six months, but concluded that such a requirement would be too burdensome. We considered proposing that recertification be required annually consistent with the recommendations of The American Health Information Management Association (Brandt, Mary D., Release and Disclosure: Guidelines Regarding Maintenance and Disclosure of Health Information, 1997). We concluded that annual recertification could also impose a significant burden on covered entities.

We also considered requiring that the covered entity provide "refresher" training every three years in addition to the recertification. We concluded that our goals could be achieved by only requiring recertification once every three years, and retraining in the event of material changes in policy. We are soliciting comment on this approach.

c. Safeguards (§ 164.518(c))

In proposed § 164.518(c), we would require covered entities to put in place administrative, technical, and physical safeguards to protect against any reasonably anticipated threats or hazards to the privacy of the information, and unauthorized uses or disclosures of the information. We proposed similar requirements for certain electronic information in the Notice of Proposed Rulemaking entitled the Security and Electronic Signature Standards (HCFA–0049–P), which can be found at 63 FR 43241. We are proposing parallel and consistent requirements for safeguarding the privacy of protected health information.

i. *Verification procedures.*

As noted in section II.E., for many permitted disclosures the covered entity would be responding to a request for disclosure of protected health information. For most categories of permitted disclosures, when the request for disclosure of protected health information is from a person with whom the covered entity does not routinely do business, we would require the covered entity to verify the identity of the requestor. In addition, for certain categories of disclosures, covered entities would also be required to verify the requestor's legal authority to make the request.

Under § 164.514, a covered entity would be required to give individuals access to protected health information about them (under most circumstances). The covered entity would also be required to take reasonable steps to verify the identity of the individual making the request for access. We do not propose to mandate particular identification requirements (*e.g.*, drivers licence, photo ID, etc), but rather would leave this to the discretion of the covered entity.

We considered specifying the type of documentation or proof that would be acceptable, but decided that the burden of such specific regulatory requirements on covered entities would be unnecessary. Therefore, we propose only a general requirement for reasonable verification of identity and legal authority.

d. Internal Complaint Process (§ 164.518(d))

In proposed § 164.518(d), we would require covered plans and providers to have some mechanism for receiving complaints from individuals regarding the covered plan's or provider's compliance with the requirements of this proposed rule. The covered plan or provider would be required to accept complaints about any aspect of their practices regarding protected health information. We would not require that the entity develop a formal appeals mechanism, nor that "due process" or any similar standard be applied. We would not require that covered entities respond in any particular manner or time frame. We are proposing two basic requirements for the complaint process. First, the covered plan or provider would be required to identify a contact person or office in the notice of information practices for receiving complaints. This person or office could either be responsible for handling the complaints or could put the individual in touch with the appropriate person within the entity to handle the particular complaint. See proposed § 164.512. This person could, but would not have to be, the entity's privacy official. See proposed § 164.518(a)(2). Second, the covered plan or provider would be required to maintain a record of the complaints that are filed and a brief explanation of the resolution, if any.

We considered requiring covered plans and providers to provide a formal internal appeal mechanism, but rejected that option as too costly and burdensome for some entities. We also considered eliminating this requirement entirely, but rejected that option because a complaint process would give covered plans or providers a way to learn about potential problems with privacy policies or practices, or training issues. We also hope that providing an avenue for covered plans or providers to address complaints would lead to increased consumer satisfaction. We believe this approach strikes a reasonable balance between allowing covered plans or providers flexibility and accomplishing the goal of promoting attention to improvement in privacy practices. If an individual and a covered plan or provider are able to resolve the individual's complaint, there could be no need for the individual to file a complaint with the Secretary under proposed § 164.522(b). However, an individual has the right to file a complaint with the Secretary at any time. An individual could file a complaint with the Secretary before, during, after, or concurrent with filing a complaint with the covered plan or provider or without filing a complaint with the covered plan or provider.

We are considering whether modifications of these complaint procedures for intelligence community agencies could be necessary to address the handling of classified information and solicit comment on the issue.

e. Sanctions (§ 164.518(e))

In proposed § 164.518(e), we would require all covered entities to develop and apply when appropriate sanctions for failure to comply with policies or procedures of the covered entity or with the requirements of this proposed rule. All members of the workforce who have regular contact with protected health information should be subject to sanctions, as would the entity's business partners. Covered entities would be required to develop and impose sanctions appropriate to the nature of the issue. The type of sanction applied would vary depending on factors such as the severity of the violation, whether the violation was intentional or unintentional, and whether the violation indicates a pattern or practice of improper use or disclosure of protected health information. Sanctions could range from a warning to termination.

We considered specifying particular sanctions for particular kinds of violations of privacy policy, but rejected this approach for several reasons. First, the appropriate sanction would vary with the entity's particular policies. Because we cannot anticipate every kind of privacy policy in advance, we cannot predict the response that would be appropriate when that policy is violated. In addition, it is important to allow covered entities to develop the sanctions policies appropriate to their business and operations.

We expect that sanctions would be more formally described and consistently carried out in larger, more sophisticated entities. Smaller, less sophisticated entities would be given more latitude and flexibility. For such smaller entities and less sophisticated entities, we would not expect a prescribed sanctions policy, but would expect that actions be taken if repeated instances of violations occur.

f. Sanctions (§ 164.518(f))

We propose in § 164.518(f) that covered entities be required to have procedures for mitigating, to the extent practicable, any deleterious effect of a use or disclosure of protected health information by their members of their workforce or business partners. With respect to business partners, we also propose that covered entities have an affirmative duty to take reasonable steps in response to breaches of contract terms.

16. Development and Documentation of Policies and Procedures (§ 164.520)

In proposed § 164.520, we would require covered entities to develop and document their policies and procedures for implementing the requirements of this proposed rule. This requirement is intended as a tool to facilitate covered entities' efforts to develop appropriate policies to implement this proposed rule, to ensure that the members of its workforce and business partners understand and carry out expected privacy practices, and to assist covered entities in developing a notice of information practices.

The scale of the policies developed should be consistent with the size of the covered entity. For example, a smaller employer could develop policies restricting access to health plan information to one designated employee, empowering that employee to deny release of the information to corporate executives and managers unless required for health plan administration. Larger employers could have policies that include using contractors for any function that requires access to protected health information or requiring all reports they receive for plan administration to be de-identified unless individual authorization is obtained.

We are proposing general guidelines for covered entities to develop and document their own policies and procedures. We considered a more uniform, prescriptive approach but concluded that a single approach would be neither effective in safeguarding protected health information nor appropriate given the vast differences among covered entities in size, business practices and level of sophistication. It is important that each covered entity's internal policies and procedures for implementing the requirements of this regulation are tailored to the nature and number of its business arrangements, the size of its patient population, its physical plant and computer system, the size and characteristics of its workforce, whether it has one or many locations, and similar factors. The internal policies and procedures appropriate for a clearinghouse would not be appropriate for a physician practice; the internal policies and procedures appropriate for a large, multi-state health plan would not be appropriate for a smaller, local health plan.

After evaluating the requirements of federal, State, or other applicable laws, covered entities should develop policies and procedures that are appropriate for their size, type, structure, and business arrangements. Once a covered plan or provider has developed and documented all of the policies and procedures as required in this section, it would have compiled all of the information needed to develop the notice of information practices required in § 164.512. The notice is intended to include a clear and concise summary of many of the policies and procedures discussed in this section. Further, if an individual has any questions about the entity's privacy policies that are not addressed by the notice, a representative of the entity could easily refer to the documented policies and procedures for additional information.

Before making a material change in a policy or procedure, the covered entity would, in most instances, be required to make the appropriate changes to the documentation required by this section before implementing the change. In addition, covered plans and providers would be required to revise their notice of information practices in advance. Where the covered entity determines that a compelling reason exists to take an action that is inconsistent with its documentation or notice before making the necessary changes, it could take such action if it documents the reasons supporting the action and makes the necessary changes within 30 days of taking such action.

In an attempt to ensure that large entities develop coordinated and comprehensive policies and procedures as required by this section, we considered proposing that entities with annual receipts greater than $5 million[40] be required to have a privacy board review and approve the documentation of policies and procedures. As originally conceived, the privacy board would only serve to review research protocols as described in § 164.510(j). We believe that such a board could also serve as "privacy experts" for the covered entity and could review the entity's documented policies and procedures. In this capacity, the overriding objective of the board would be to foster development of up-to-date, individualized policies that enable the organization to protect health information without unnecessarily interfering with the treatment and payment functions or business needs. This type of review is particularly important for large entities who would have to coordinate policies and procedures among a large staff, but smaller organizations would be encouraged, but not required, to take a similar approach (*i.e.*, have a widely representative group participate in the development and/or review of the organization's internal privacy policies and the documentation thereof). We solicit comment on this proposal.

We also considered requiring the covered entity to make its documentation available to persons outside the entity upon request. We rejected this approach because covered entities should not be required to share their operating procedures with the public, or with their competitors.

We recognize that the documentation requirement in this proposed rule would impose some paperwork burden on covered plans and providers. However, we believe that it is necessary to ensure that covered plans and providers establish privacy policies and procedures in advance of any requests for disclosure, authorization, or subject access. It is also necessary to ensure that covered entities and members of their workforce have a clear understanding of the permissible uses and disclosures of protected health information and their duty to protect the privacy of such information under specific circumstances.

17. Compliance and Enforcement

The rules proposed below at § 164.522 would establish several requirements designed to enable the Secretary to monitor and seek to ensure compliance with the provisions of this subpart. The general philosophy of this section is to provide a cooperative approach to obtaining compliance, including use of technical assistance and informal means to resolve disputes. However, in recognition of the fact that it would not always be possible to achieve compliance through cooperation, the section also would provide the Secretary with tools for carrying out her statutory mandate to achieve compliance.

Proposed § 164.522(a) would establish the principle that the Secretary would seek the cooperation of covered entities in obtaining compliance. Section 164.522(a)(2) provides that the Secretary could provide technical assistance to covered entities to help them come into compliance with this subpart. It is clearly in the interests of both the covered entities and the individuals they serve to minimize the costs of compliance with the privacy standards. To the extent that the Department could facilitate this by providing technical assistance, it would endeavor to do so.

V. Initial Regulatory Flexibility Analysis

A. Introduction

Pursuant to the Regulatory Flexibility Act 5 U.S.C. 601 *et. seq.*, HHS must prepare a regulatory flexibility analysis if the Secretary certifies that a proposed rule would have a significant economic impact on a substantial number of small entities.

This analysis addresses six issues: (1) Reasons for promulgating the rule; (2) the proposed rule's objectives and legal basis; (3) the number and types of small entities affected by the proposed rule; (4) the specific activities and costs associated with compliance; (5) options that HHS considered to minimize the rule's economic burdens or increase its benefits for small entities; and (6) the relevant Federal rules that could duplicate, overlap, or conflict with the proposed rule. The following sections provide details on each of these issues.

Reasons for Promulgating the Rule

This proposed rule is being promulgated primarily because we have been statutorily mandated to do so under section 264 of Public Law 104–191. Additional information on the reasons for promulgating the rule can be found in earlier preamble discussions (section I.).

Objectives and Legal Basis

This information can be found in earlier preamble discussions (section I.).

Relevant Federal Provisions

This information can be found in earlier preamble discussions (section I.B.)

B. Economic Effects on Small Entities

1. Number and Types of Small Entities Affected

The Small Business Administration defines small entities in the health care sector as those organizations with less than $5 million in annual revenues.[41] Nonprofit organizations are also considered small entities; however, individuals and States are not included in the definition of a small entity. Similarly, small government jurisdictions with a population of less than 50,000 are considered small entities.

Small health entities affected include: Nonprofit health plans, hospitals, and skilled nursing facilities (SNFs); small businesses providing health coverage; small physician practices; pharmacies; laboratories; and durable medical equipment (DME) suppliers; health care clearinghouses; billing companies; and vendors that supply software applications to health care entities.

The U.S. Small Business Administration reports that as of 1996, there were 1,078,020 small health care establishments[42] classified within the SIC codes we have designated (Table A).

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[40] The Small Business Administration defines small businesses in the health care field as those generating less than $5 million annually. Small businesses represent approximately 85% of health care entities.

[41] We have used two different data sources for our estimates of the number of entities. In the regulatory impact analysis (RIA), we chose to use the same numbers as we used in other Administrative Simplification rules. In the regulatory flexibility analysis (RFA), we used the most recent data available from the Small Business Administration (SBA).

We chose to use the Administrative Simplification estimates in the RIA because we wanted our analysis to be as consistent as possible with those regulations and also believe that because it is higher than the more recent SBA data, it was the more conservative data source.

We chose to use the SBA data in the RFA because we wanted our analysis to be as consistent to SBA definitions as possible to give the greatest accuracy for the RFA purposes.

[42] Establishments are the physical location where an enterprise conducts business. An entrprise may conduct business in more than one establishment.

TABLE A.—NUMBER OF HEALTH CARE ENTITIES THAT MEET SBA SIZE STANDARDS, 1996[1]

Standard Industrial Code (SIC)	Industry	Total Number of Health Care Entities	Number of Entities that Meet SBA Size Standards[2]	Percent of Entities that Meet SBA Size Standards[2]
5910	Drug Stores & Proprietary Stores	44,062	23,771	53.9
6320	Accident & Health Insurance & Medical Service Plans (Accident & Health Insurance and Hospital & Medical Service Plans).	3,346	428	12.8
8010	Offices & Clinics of Doctors of Medicine	188,508	171,750	91.1
8020	Offices & Clinics of Dentists	113,965	113,141	99.3
8030	Offices & Clinics of Doctors of Osteopathy	9,168	9,000	98.2
8040	Offices & Clinics of Other Health Practitioners	85,326	83,563	97.9
8050	Nursing & Personal Care Facilities	24,246	11,736	48.4
8060	Hospitals	7,284	837	11.5
8070	Medical & Dental Laboratories	15,354	12,322	80.3
8080	Home Health Care Services	16,218	9,238	57.0
8090	Miscellaneous Health & Allied Services	20,986	12,712	60.6
N/A	Total	528,463	448,498	84.9

[1] Source: Office of Advocacy, U.S. Small Business Administration, from data provided by the Bureau of the Census, Statistics of U.S. Businesses, 1996.

[2] Less than $5,000,000 in annual revenue.

These small businesses represent 83.8% of all health care entities we have examined.[43] Small businesses represent a significant portion of the total number of health care entities but a small portion of the revenue stream for all health care entities. In 1996, the small businesses represented generated approximately $235 million in annual receipts, or 22.2% of the total revenue generated by small health care entities (Table B).[44] The following sections provide estimates of the number of small health care entities that will be required to comply with the rule. We should note, however, that the SBA's published annual receipts of health care industries differs substantially from the National health expenditure data that the Health Care Finance Administration (HCFA) maintains. HCFA's data are generally considered more accurate because the data are validated by several sources.

TABLE B.—ANNUAL RECEIPTS OF HEALTH CARE ENTITIES, 1996[1]

Standard Industrial Code (SIC)	Industry	Total revenue	Revenue generated by small entities[2]	Percent of total revenue generated by small entities
5910	Drug Stores & Proprietary Stores	$91,701,331	$23,762,195	25.9
6320	Accident & Health Insurance & Medical Service Plans (Accident & Health Insurance and Hospital & Medical Service Plans).	225,866,321	657,074	0.3
8010	Offices & Clinics of Doctors of Medicine	186,598,097	102,355,549	54.9
8020	Offices & Clinics of Dentists	46,131,244	44,811,866	97.1
8030	Offices & Clinics of Doctors Of Osteopathy	4,582,835	3,992,558	87.1
8040	Offices & Clinics of Other Health Practitioners	25,053,745	21,891,338	87.4
	Other Health Practitioners (8030 and 8040)	29,636,580	25,883,896	87.3
8050	Nursing & Personal Care Facilities	63,625,522	14,672,710	23.1
8060	Hospitals	343,314,509	2,021,845	0.6
8070	Medical & Dental Laboratories	16,543,625	4,976,094	30.1
8080	Home Health Care Services	27,690,537	7,960,035	28.7
8090	Miscellaneous Health & Allied Services	26,036,633	7,697,264	29.6

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[43] Office of Advocacy, U.S. Small Business Administration, from data provided by the Bureau of the Census, Statistics of U.S. Businesses, 1996.

[44] Op. cit. 1996

[45] Office of Advocacy, U.S. Small Business Administration, from data provided by the Bureau of the Census, Statistics of U.S. Businesses, 1996.

[46] Op.cit., 1996

TABLE B.—ANNUAL RECEIPTS OF HEALTH CARE ENTITIES, 1996 [1]—Continued

Standard Industrial Code (SIC)	Industry	Total revenue	Revenue generated by small entities [2]	Percent of total revenue generated by small entities
	Other Health Care Services (8070,8080,8090)	70,270,795	20,633,393	29.4
N/A	Total Receipts	1,057,144,399	234,798,528	22.2

[1] Source: Office of Advocacy, U.S. Small Business Administration, from data provided by the Bureau of the Census, Statistics of U.S. Businesses, 1996.

[2] The SBA defines a small business as those businesses with less than $5,000,000 in annual revenue. For consistency with the Regulation, we employ the term "entity" in place of "business".

The Small Business Administration reports that approximately 80 percent of the 15,000 medical laboratories and dental laboratories in the U.S. are small entities.[45] Furthermore, based on HCFA data, we estimate that 98 percent of the 160,000 durable medical equipment suppliers in the U.S. are small entities. Over 90 percent of health practitioner offices are small businesses.[46] Doctor offices (91%), dentist offices (99%), osteopathy (98%) and other health practitioner offices (98%) are primarily considered small businesses.

There are also a small number of hospitals, home health agencies, non-profit nursing facilities, and skilled nursing facilities that will be affected by the proposed rule. According to the American Hospital Association, there are approximately 3,131 nonprofit hospitals nationwide. Additionally, there are 2,788 nonprofit home health agencies in the U.S. The Health Care Finance Administration reports that there are 591 nonprofit nursing facilities and 4,280 nonprofit skilled nursing facilities.[47]

While it is difficult to calculate the number of clearinghouses that meet the definition of a small business, we believe that a significant portion of the 80 health care clearinghouses that process health care claims in the U.S. have annual revenues of less than $5 million annually.[48] We believe that all of the 4,500 billing companies[49] that provide administrative and billing services for physicians' offices have annual revenues below $5 million per year.

Some contractors that work with health care entities will be required to adopt policies and procedures to protect information. We do not expect that the additional burden placed on contractors will be significant. We have not estimated the effect of the proposed rule on these entities because we cannot reasonably anticipate the number or type of contracts affected by the proposed rule. We also do not know the extent to which contractors would be required to modify their policy practices as a result of the rule's implementation.

2. Activities and Costs Associated with Compliance

For a summary of the basic activities that a small entity would need to do to comply with this rule, please refer to section III of the preamble. This discussion summarizes some of the specific activities that covered entities must undertake to comply with the proposed rule's provisions and options considered that would reduce the burden to small entities. In developing this proposed rule, we considered a variety of alternatives for minimizing the economic burden that it will create for small entities. We could not exempt small businesses from the entire proposed rule because they represent such a large and critical proportion of the health care industry (84 percent).

The guiding principle in our considerations of how to address the burden on small entities has been to make provisions scalable. To the extent possible, we have allowed for entities to determine how extensively they will address certain issues. This ability to adapt provisions to minimize burden has been addressed in earlier preamble language and will be briefly discussed again in the following section.

Before discussing specific provisions, it is important to note some of the broader questions that were addressed in formulating this proposed rule. We considered extending the compliance period for small entities but decided that because they represent such a large portion of the health care market, such an extension would be inappropriate. However, HIPAA does create an extended compliance time of 36 months for small plans. For all other time limit questions, we also considered giving small entities the same sort of extensions. For example, entities are required to either approve or deny a request to inspect and copy information within 20 days. We considered allowing small entities a longer response time. Rather than giving small entities extensions, we decided to establish time limits that we believe are reasonable for affected entities of all sizes, with the understanding that larger entities may not need as much time as they have been allocated in certain situations.

While we considered the needs of small entities during our discussions of provisions for this proposed rule, we are highlighting the most significant discussions in the following sections:

a. *Scalability.* Covered entities of all types and sizes would be required to comply with the proposed privacy standards outlined below. The proposed standards would not impose particular mechanisms or procedures that covered entities must adopt to implement the standards. Instead, we would require that each affected entity assess its own needs and devise, implement, and maintain appropriate privacy policies, procedures, and documentation to address its business requirements. How each privacy standard would be satisfied would be business decisions that each entity would have to make. This allows the privacy standards to establish a stable baseline, yet remain flexible enough to take advantage of developments and methods for protecting privacy that will evolve over time.

Because the privacy standards would need to be implemented by all covered entities, from the smallest provider to the largest, multi-state health plan, a single approach to implementing these standards would be neither economically feasible nor effective in safeguarding health information privacy. For example, in a small physician practice the office manager might be designated to serve as the privacy official as one of many duties (see proposed § 164.518(a)) whereas at a large health plan, the privacy official may constitute a full time position and have the regular support and advice of a privacy staff or board.

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[45] Office of Advocacy, U.S. Small Business Administration, from data provided by the Bureau of the Census, Statistics of U.S. Businesses, 1996.

[46] Op.cit., 1996

[47] Health Care Finance Administration, OSCAR

[48] Faulkner & Gray's *Health Data Directory*, 1999

[49] International Billing Association, 1999

In taking this approach, we intend to strike a balance between the need to maintain the confidentiality of protected health information and the economic cost of doing so. Health care entities must consider both aspects in devising their solutions. This approach is similar to the approach we proposed in the Notice of Proposed Rulemaking for the administrative simplification security and electronic signature standards.

We decided to use this scaled approach to minimize the burden on all entities with an emphasis on small entities.

b. *Minimum necessary use and disclosure.* The decisions called for in determining what would be the minimum necessary information to accomplish an allowable purpose should include both a respect for the privacy rights of the subjects of the medical record and the reasonable ability of covered entities to delimit the amount of individually identifiable health information in otherwise permitted uses and disclosures. For example, a large enterprise that makes frequent electronic disclosures of similar data would be expected to remove identifiers or to limit the data fields that are disclosed to fit the purpose of the disclosure. An individual physician's office would not be expected to have the same capabilities to limit the amount of information disclosed, although, in the cases of disclosures involving a small number of records, such an office could be expected to hide identifiers or to limit disclosures to certain pages of the medical record that are relevant to the purpose of the disclosure.

We understand that the requirements outlined in this section do not create a bright line test for determining the minimum necessary amount of protected health information appropriate for most uses or disclosures. Because of this lack of precision, we considered eliminating the requirement altogether. We also considered merely requiring covered entities to address the concept within their internal privacy procedures, with no further guidance as to how each covered entity would address the issue. These approaches were rejected because minimizing both the amount of protected health information used and disclosed within the health care system and the number of persons who have access to such information is vital if we are to successfully enhance the confidentiality of people's personal health information. We invite comments on the approach that we have adopted and on alternative methods of implementing the minimum necessary principle.

c. *Right to restrict.* We propose to permit in § 164.506(c) that individuals be able to request that a covered entity restrict further uses and disclosures of protected health information for treatment, payment, or health care operations, and if the covered entity agrees to the requested restrictions, the covered entity may not make uses or disclosures for treatment, payment or health care operations that are inconsistent with such restrictions, unless such uses or disclosures are mandated by law. This provision would not apply to health care provided to an individual on an emergency basis.

It should be noted that there is nothing in this proposed rule that requires a health care provider to agree to a request to restrict uses or disclosures for treatment, payment, or health care operations. Providers who do not wish to, or due to contractual obligations cannot, restrict further use or disclosure are not obligated to treat an individual making a request under this provision.

If small entities view this proposed provision as overly burdensome, they would not have to provide treatment to individuals requesting restrictions. We considered requiring that providers conform to requests to restrict use or disclosures. We rejected this approach due to the potential ethical conflicts these restrictions could pose to health care professionals and the possible burden to providers. Providers comprise a large proportion of the small businesses covered under this proposed regulation.

d. *Creation of de-identified information.* In this rule we are proposing that covered entities and their business partners be permitted to use protected health information to create de-identified health information. Covered entities would be permitted to further use and disclose such de-identified information in any way, provided that they do not disclose the key or other mechanism that would enable the information to be re-identified, and provided that they reasonably believe that such use or disclosure of de-identified information will not result in the use or disclosure of protected health information. This means that a covered entity could not disclose de-identified information to a person if the covered entity reasonably believes that the person would be able to re-identify some or all of that information, unless disclosure of protected health information to such person would be permitted under this proposed rule. In addition, a covered entity could not use or disclose the key to coded identifiers if this rule would not permit the use or disclosure of the identified information to which the key pertains. If a covered entity re-identifies the de-identified information, it may only use or disclose the re-identified information consistent with these proposed rules, as if it were the original protected health information. See proposed § 164.506(d)(1).

As with other components of this proposed rule, removal of identifiers from data could be scaled. Small entities without the resources to determine at what point information is truly de-identified could remove the full list of possible identifiers listed in this regulation. Unless they have reason to believe that the information could still be linked to an individual, this proposed requirement would be fulfilled. However, larger, more sophisticated entities, could choose to determine independently what information needs to be removed.

Furthermore, efforts to remove identifiers from information would be optional. If an entity believes that removing identifiers would be excessively burdensome, it could choose not to release the information or to obtain an authorization from individuals before releasing any information.

e. *Uses and disclosures with individual authorization.* Covered entities must obtain individual authorization to use protected health information for purposes other than those allowed under the proposed rule. Activities requiring authorization would include, for example, marketing and eligibility determinations for health coverage or employment. Costs would be ongoing for staffing and administrative activities related to obtaining authorization from individuals.

In establishing the requirement for covered entities to obtain patient authorization to use individually identifiable health information for purposes other than those allowed under the proposed rule, we decided to include in the proposed rule a model "request for authorization." By following such a model, covered entities, particularly small entities, could avoid the legal and administrative expenses that would be necessary to develop an authorization form that complies with the proposed rule's standards. The proposed rule would not prevent entities from developing their own patient authorization forms or from modifying existing forms in a manner consistent with the model.

The alternative to providing this model would be to state that an authorization would be required and allow entities to develop the authorization. We believe that providing no guidance in this area would have caused unnecessary difficulties and burdens for small entities.

f. *Uses and disclosures permitted without authorization.* This proposed rule would not require any uses or authorizations other than to the subject individual and to the Secretary for compliance. If small entities believe that the costs of making such discretionary disclosures are considered too high, they could choose not to make such disclosures. We would allow all covered entities, but particularly small entities, to base their decisions about these disclosures on any criteria that they believe to be important. We expect that the additional costs related to these disclosures would be factored into their decisions.

In cases where uses or disclosures without authorization are required by other law, we would attempt to minimize costs by not requiring application of the minimum necessary principle.

g. *Notice to individuals of rights and procedures.* The proposed rule would require covered entities to prepare and make available a notice that informs patients about their privacy rights and the entity's actions to protect privacy. Entities that do not already comply with the proposed rule's requirements would incur one-time legal and administrative costs. In addition, plans would incur ongoing costs related to the dissemination of the notice at least once every three years, and all covered entities would have ongoing costs related to dissemination to new individuals requesting services and requests for copies of the notice. Entities would also incur ongoing costs related to answering questions that are associated with the notice.

In discussing the requirement for covered entities to prepare and make available a notice regarding patient privacy rights and the entity's privacy practices, we considered exempting small businesses. Because this would exempt 84 percent of firms, we decided not to create this exemption. The second option would be to exempt extremely small entities. One discussion defined small entities as those with fewer than 10 employees. We decided that informing consumers of their privacy rights and of the activities of covered entities with which they conduct business was too important to exempt any entities.

In addition to requiring a basic notice, we considered requiring a longer more detailed notice that would be available to individuals on request. However, we decided that making information available on request and allowing the covered entity to decide how best to provide such information represents a more balanced approach. We believe that it would be overly burdensome to all entities, especially small entities, to require two notices.

We considered prescribing specific language that each covered plan or provider would include in its notice. The advantages of this approach would be that the recipient would receive exactly the same information from each covered plan or provider in the same format and that it would be convenient for covered entities to use a uniform model notice.

There are, however, several disadvantages to this approach. First, and most importantly, no model notice could fully capture the information practices of every covered plan or provider. Large entities will have information practices different from those of small entities. Some health care providers, for example, academic teaching hospitals, might routinely disclose identifiable health information for research purposes. Other health care providers might rarely or never make such disclosures. To be useful to individuals, each entity's notice of information practices should reflect its unique privacy practices.

Another disadvantage of prescribing specific language is that it would limit each covered plan or provider's ability to distinguish itself in the area of privacy protections. We believe that if information on privacy protections becomes readily available, individuals might compare and select plans or providers based on their information practices. In addition, a uniform model notice could easily become outdated. As new communication methods or technologies are introduced, the content of the notices might need to reflect those changes.

We believe that the proposed rule appropriately balances a patient's need for information and assurances regarding privacy with the covered entities' need for flexibility in describing their operations and procedures to protect patient privacy. Instead of a model notice, we have included a sample notice to guide the development of notices. We believe that this is an appropriate way to reduce the burden on all entities including those classified as small.

h. *Administrative requirements for covered entities.* We propose that covered entities be required to implement five basic administrative requirements to safeguard protected health information: designation of a privacy official, the provision of privacy training, establishment of safeguards, a complaint process, and establishment of sanctions. Implementation of these requirements would vary depending on a variety of different factors such as type of entity (*e.g.*, provider or plan), size of entity (*e.g.*, number of employees, number of patients), the level of automation within the entity (*e.g.*, electronic medical records), and organization of the entity (*e.g.*, existence of an office of information systems, affiliation with a medical school).

In proposed § 164.518(a), we would require covered plans and providers to designate a privacy official to be responsible for the development of policies for the use and disclosure of protected health information and for the supervision of personnel with respect to use and disclosure of protected health information. The designation of a privacy official would focus the responsibility for development of privacy policy.

The implementation of this requirement would depend on the size of the entity. For example, a small physician's practice might designate the office manager as the privacy official, and he or she would assume this as one of his or her broader administrative responsibilities. A large entity might appoint an individual whose sole responsibility is privacy policy, and that individual could choose to convene a committee representing several different components of the entity to develop and implement privacy policy.

In proposed § 164.518(b), we would require covered entities to provide training on the their policies and procedures with respect to protected health information. Entities would determine the most effective means of communicating with their workforce. For example, in a small physician practice, the training requirement could be satisfied by providing each new member of the workforce with a copy of the practice's information policies and requiring members of the workforce to acknowledge that they have reviewed the policies. A large health plan could provide for a training program with live instruction, video presentations or interactive software programs. The small physician practice's solution would not protect the large plan's data, and the plan's solution would be neither economically feasible nor necessary for the small physician practice.

In proposed § 164.518(c), we would require covered entities to put in place administrative, technical, and physical safeguards to protect against any reasonably anticipated threats or hazards to the privacy of the information, and unauthorized uses or disclosures of the information.

In proposed § 164.518(d), we would require covered plans and providers to have some mechanism for receiving complaints from individuals regarding the covered plan's or provider's compliance with the requirements of this proposed rule. We considered requiring covered plans and providers to provide a formal internal appeal mechanism, but rejected that option as too costly and burdensome for some entities. We also considered eliminating this requirement entirely, but rejected that option because a complaint process would give covered plans or providers a way to learn about potential problems with privacy policies or practices, or training issues. We also hope that providing an avenue for covered plans or providers to address complaints would lead to increased consumer satisfaction. We believe this approach strikes a reasonable balance between allowing covered plans or providers flexibility and accomplishing the goal of promoting attention to improvement in privacy practices.

We expect that sanctions would be more formally described and consistently carried out in larger, more sophisticated entities. Smaller, less sophisticated entities would be given more latitude and flexibility. For such smaller entities and less sophisticated entities, we would not expect a prescribed sanctions policy, but would expect that actions be taken if repeated instances of violations occur. In proposed § 164.518(e), we would require all covered entities to develop and apply when appropriate sanctions for failure to comply with policies or procedures of the covered entity or with the requirements of this proposed rule.

i. *Documentation requirements for covered entities.* We are proposing that covered entities be required to document policies and procedures in several important areas. These areas would include use within the entity; informing business partners; disclosures with and without authorization; limitations on use and disclosure for self-pay; inspection and copying; amendment or correction; accounting for uses and disclosures; notice development, maintenance, and dissemination; sanctions; and complaint procedures. We considered whether formal documentation of these policies would be necessary. A key factor in making this decision was determining the burden on entities, particularly the burden on small entities. We also considered whether it would be reasonable to exempt very small entities from this provision. For example, entities with fewer than ten employees could be able to effectively communicate policies and procedures verbally. We decided that we needed to include all entities in the provision because these documentation requirements are intended as tools to educate the management, employees, and business partners about the consideration that should be given to protecting the privacy of health information.

3. The Burden on a Typical Small Business.

We expect that small entities will face a cost burden as a result of complying with the proposed regulation. We estimate that the burden of developing privacy policies and procedures is lower in dollar terms for small businesses than for large businesses, but we recognize that the cost of implementing privacy provisions will be a larger burden to small entities as a proportion of total revenue. Due to these concerns, we rely on the principle of scalability stated in the proposed rule, and have based our cost estimates on the expectation that small entities will develop less expensive and less complex privacy measures than large entities.

In many cases, we have specifically considered the impact that the proposed rule may have on solo practitioners or rural providers. Where these providers do not have large technical systems, it is possible that the regulation may not apply to small providers, or that small providers will not be required to change their business practices other than adhering to the basic requirements that they state their privacy policies and notify patients of their privacy rights. For both activities, the proposed regulation accounts for the activities and size of the practice. Scalability implies that in developing policies and procedures to comply with the proposed regulation, businesses should consider their basic functions and the amount of health information exchanged electronically. All covered entities must take appropriate steps to address privacy concerns, and in determining the scope and extent of their compliance activities, businesses should weigh the costs and benefits of alternative approaches and should scale their compliance activities to their structure, functions, and capabilities.

Our analysis of the costs to small businesses is divided into three sections: (1) Initial start-up costs associated with development of privacy policy; (2) initial start-up costs associated with system change; and (3) ongoing costs, including notification of privacy policies.

Overall, our analysis suggests that the average start-up cost of complying with the proposed rule is $396 per entity. This includes the cost of developing privacy policies and systems compliance changes (Table C). The ongoing costs of privacy compliance are approximately $337 per entity in the first year and $343 every year thereafter (Table D). The total cost of implementing initial and ongoing costs of the proposed regulation in the first year is $733 per entity. After the first year, the total compliance cost to the entity is $343 per year. We estimate that the relative average cost of initial compliance is approximately 0.12 percent of a small entity's annual expenditures in the first year. The relative average cost of ongoing privacy compliance is approximately 0.05 percent of a small entity's annual expenditures.

Our cost calculations are based on several assumptions. The cost of developing privacy policies is based on figures from the regulatory impact analysis that accompanied the HIPAA National Provider Identifier (63 FR 25320). The cost of initial systems compliance is based on current assumptions about market behavior; including the assumption that a relatively small proportion of the total cost of system compliance (20%) will be absorbed by small covered entities. We evaluated the ongoing costs of an entity's privacy protection by calculating that privacy protection costs should be proportional to the number of patients served by the business. For example, the cost of notifying patients of privacy practices will be directly proportional to the number of patients served. We then multiplied the proportion of small entities by the total ongoing costs of privacy compliance.

Initial Costs

Table C shows the results of our calculations of the cost of initial compliance. We calculated initial privacy policy costs separate from initial system compliance costs because we made different assumptions about the cost of each. To calculate initial privacy policy costs per small entity, we multiplied the estimated cost of developing privacy policies (per entity) by the number of establishments. We then averaged these costs and computed that the average cost of developing privacy policies is $334.31 per small entity. The average cost of implementing privacy policies is greater than the $300 cost we assume most health care provider offices will pay, because we assume that small health plans, hospitals, and nursing and patient care services will spend between $500–$1,000 to implement privacy policies. Calculating the cost of system compliance per entity required us to estimate the percent of total system costs that each type of entity would incur. We used the $90 million figure (cited in the RIA) as the basis for distributing system compliance costs across various types of entities affected by the proposed rule. We estimated how this cost would be divided between small and large entities, and among plans, providers and clearinghouses.

TABLE C.—ANNUAL COST OF IMPLEMENTING PROVISIONS OF THE PROPOSED PRIVACY REGULATION IN THE FIRST YEAR

Industry	Initial costs				Ongoing costs			Total costs	
	Initial privacy policy costs incurred by small entities, per entity	Initial system compliance cost incurred by small entities[1], per entity	Notice development cost, per small entity	Total initial compliance cost, per small entity[2]	First year notice issuance costs for small entities, per small entity	Annual amendment and correction cost to small entities, per small entity	Annual written authorization cost to small entities, per small entity	Total annual ongoing cost in the first year, per small entity	Total annual initial and ongoing cost in the first year, per small entity
Drug Stores & Proprietary Stores[3]	$300	$131.19	$59.40	$490.58	$118.26	$768.64	$102.55	$989.45	$1,480.03
Accident & Health Insurance & Medical Service Plans[3] (Accident & Health Insurance and Hospital & Medical Service Plans)	1,000	1,939.86	203.91	3,143.77	314.02	127.60	17.02	458.65	3,602.41
Offices & Clinics Of Doctors Of Medicine	300	21.04	21.20	342.24	42.21	260.93	34.81	337.96	680.20
Offices & Clinics Of Dentists	300	7.43	13.25	320.68	26.39	163.11	21.76	211.26	531.94
Offices & Clinics Of Other Health Practitioners	300	11.10	17.82	328.92	35.47	219.29	29.26	284.02	612.94
Nursing & Personal Care Facilities	1,500	117.15	49.63	1,666.79	98.82	610.88	81.50	791.20	2,457.99
Hospitals	1,500	7,362.22	79.65	8,941.87	158.59	980.36	130.80	1,269.75	10,211.62
Home Health Care Services	300	58.06	30.66	388.72	61.05	377.38	50.35	488.77	877.49
Other Health Care Services including Lab Services	300	19.83	10.84	330.68	21.59	133.47	17.81	172.87	503.55
Average Cost	334.31	40.13	21.17	395.61	42.05	260.23	34.72	337.00	732.61

[1] The SBA defines small health care entities as those with annual revenue under $5,000,000.

[2] Total Initial Compliance Cost includes policy implementation and systems compliance costs.

[3] Includes some entities not covered by this regulation. Pharmacies are the only component of Drug Stores and Proprietary Stores covered by the regulation. Accident and workers compensation insurance are not covered by the regulation.

TABLE D.—ANNUAL COST OF IMPLEMENTING PROVISIONS OF THE PROPOSED PRIVACY REGULATION, AFTER THE FIRST YEAR

Industry	Ongoing Costs				
	Annual notice issuance costs after the first year, per small entity	Annual amendment and correction cost to small entities, per small entity	Annual written authorization cost to small entities, per small entity	Annual ongoing costs for paperwork and training, per small entity	Total annual ongoing cost after the first year, per small entity
Drug Stores & Proprietary Stores[1]	73.26	768.64	102.55	20	964.45
Accident & Health Insurance & Medical Service Plans[2] (Accident & Health Insurance and Hospital & Medical Service Plans)	314.02	127.60	17.02	60	518.65
Offices & Clinics Of Doctors Of Medicine	26.15	260.93	34.81	20	341.90
Offices & Clinics Of Dentists	16.35	163.11	21.76	20	221.22
Offices & Clinics Of Other Health Practitioners	21.97	219.29	29.26	20	290.52
Nursing & Personal Care Facilities	61.22	610.88	81.50	100	853.59
Hospitals	98.24	980.36	130.80	100	1,309.40
Home Health Care Services	37.82	377.38	50.35	20	485.54
Other Health Care Services including Lab Services	13.38	133.47	17.81	20	184.65
Average Cost	26.16	260.23	34.72	22.28	343.39

[1] The SBA defines small health care entities as those with annual revenue under $5,000,000.

[2] Includes some entities not covered by this regulation. Pharmacies are the only component of Drug Stores and Proprietary Stores covered by the regulation. Accident and workers compensation insurance are not covered by the regulation.

Our calculations regarding division of costs are based on two assumptions: (1) System costs are principally fixed costs associated with the purchase of hardware and software[50]; and (2) large entities will continue to invest more heavily in hardware and software expenditures than small entities. We estimate that 80 percent of the system costs will be born by large entities. The remaining 20 percent of total systems costs will be absorbed by small entities. To calculate the effect on small businesses, we multiplied the system compliance costs cited in the RIA by the proportion of the costs we expect small entities to incur (20 percent of total). We then multiplied the total cost of system compliance for small entities by the percentage of health care revenue by industry and calculated a cost per entity.

We used HCFA's estimate of total national health expenditures to calculate the percent of total health care business that is represented by types of health care entities. We calculated the proportion of business transacted by a type of health care entity (by SIC code) and multiplied this by the total expenditures ($1.084 billion total)[51]. National expenditure data is a useful measure for allocating system compliance costs for two reasons. Even though system compliance costs are primarily fixed costs, we assume that they bear some relationship to the size and level of the activity of the entity.

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[50] We are not suggesting that these investments are exclusively computer-related. They may also include costs for personnel training, reorganization, and contract negotiations with outside entities.

[51] Health Care Finance Administration, 1996 http://www.hcfa.gov/stats/nheoact/tables/t10.htm

Similarly, national expenditures vary according to both size and level of activity. Second, in contrast to the annual receipts compiled by the Business Census Survey, national expenditure information compares its data to other sources in order to validate its results. Thus, we decided that the national expenditure data are a more reliable source of overall business activity for our purposes. Based on these assumptions, we believe that the total cost of system compliance for all small health care entities will be approximately 18 million. Dividing costs by the number of small entities suggests that the average cost of system compliance is $40.13 per entity.

The cost of notice development is approximately $21 per small entity. We assume that many small providers will receive assistance developing their notice policies from professional associations. Thus, the overall cost of developing compliant notices is significant, but the cost per entity is small. The cost to small entities of developing notices is based on the proportion of expenditures generated by small entities. We recognize that this may not adequately capture the costs of developing a provider or plan's notice of their privacy policies, and invite comment on our approach.

We added the per-entity cost of privacy policy implementation to the cost of systems compliance to determine the total average cost of start-up compliance. Our figures indicate that initial compliance will cost an average of $396 per small entity. These costs vary across entity type (Table C). For example, small hospitals have a much higher cost of compliance than the average cost for all small entities, whereas dentists' offices tend to have initial compliance costs that are lower than the average for small entities. Most small practitioner offices have low costs ($320 per dentist office), whereas small hospitals ($8,942 per entity) and small insurance companies have much higher costs ($3,144 per entity) than other health care entities.

Finally, we attempted to estimate the impact of compliance costs on small entities by comparing the cost of complying with the proposed rule to an entity's annual expenditures (Table E). We computed the percent of small entity expenditures as a percent of national expenditures by calculating the proportion of small business receipts (from census data compiled for the SBA) that apply to segments of the health care market. Although we believe that the SBA data understates the amount of annual receipts, we assumed that the underestimates are consistent across all entities. Thus, although the dollar amounts reported by the SBA are incorrect, our assumption is that the proportion of small entity receipts relative to total annual receipts is correct.

Applying the percent of small entity receipts to the national expenditure data allows us to estimate the percent of national expenditures represented by small entities. We then considered the total compliance cost (initial and ongoing cost) as a percent of small business expenditures. Our estimates suggest that the cost of complying with the proposed rule represent approximately 0.12 percent of total annual expenditures for a small health care entity in the first year. The relative cost of complying with the proposed rule is substantially lower in subsequent years, representing 0.04 percent of an entity's annual expenditures. The relative cost of complying with the proposed regulation cost of complying is highest for small health insurers (1.03 percent of expenditures). These costs will be higher due to the volume and complexity of health plan billing systems; health plans are required to implement more policies and procedures to protect health information because they handle so much personally identifiable information. Because health plan costs are higher and there is a smaller number of plans than other type of entities affected by the regulation, these costs result in a higher annual cost per small health plan. Table E further illustrates the cost impact by type of entity in the first year.

TABLE E.—SMALL ENTITY BUSINESS EXPENDITURES AND PROPORTION OF ANNUAL EXPENDITURES REPRESENTED BY INITIAL AND ONGOING COMPLIANCE COSTS IN THE FIRST YEAR[*]

Industry	Total annual initial and ongoing costs in the first year, per small entity	Annual expenditure per small entity[1]	Compliance cost as a percentage of a small entity's annual expenditures
Drug Stores & Proprietary Stores[2]	$1,480.03	$2,046,199	0.07
Accident & Health Insurance & Medical Service Plans[2] (Accident & Health Insurance and Hospital & Medical Service Plans)	3,602.41	350,467	1.03
Offices & Clinics Of Doctors Of Medicine	680.20	695,560	0.10
Offices & Clinics Of Dentists	531.94	434,260	0.12
Offices & Clinics Of Other Health Practitioners	612.94	583,805	0.10
Nursing & Personal Care Facilities	2,457.99	1,629,755	0.15
Hospitals	10,211.62	2,660,215	0.38
Home Health Care Services	877.49	1,003,475	0.09
Other Health Care Services including Lab Services	503.55	351,146	0.14
Average Cost	732.61	625,992	0.12

[*] The SBA defines small health care entities as those with annual revenue under $5,000,000.

[**] Total Initial Compliance Cost includes policy implementation and systems compliance costs

[1] Based on the assumption that the proportion of revenue generated by small businesses approximates the proportion of expenditures faced by small businesses

[2] Includes some entities not covered by this regulation. Pharmacies are the only component of Drug Stores and Proprietary Stores covered by the regulation. Accident and workers compensation insurance are not covered by the regulation.

Ongoing Costs

In this section, we evaluate the ongoing costs of providing patient notices, the annual cost of amending and correcting medical information, the cost of providing written authorizations, and the ongoing cost of paperwork and training. We estimated the ongoing costs of compliance through calculations similar to those used for our systems compliance estimates. Ongoing costs are most heavily influenced by the size of the business. Therefore, we assume that the number of patients an entity serves is directly proportional to its ongoing compliance costs.

We estimated market share using Small Business Administration data estimating total receipts.[52] We divided the small entity receipts by total receipts and arrived at an estimate that 22 percent of the revenue generated by the health care classifications we examined is from small businesses. Using annual receipts to estimate cost burden is more accurate than using information on the number of health care entities. The size of the small entity is more likely to be correlated with the number of patients served than the number of businesses, and therefore, the amount of business conducted by an entity. Because it is difficult to find a single good estimate of market share, we considered estimating market share over a range, using the proportion of annual receipts as a lower bound and number of entities as the higher bound. We concluded that even if the SBA data does not capture the total amount of health care receipts accurately, estimating market share by examining receipts would be much more accurate than using the number of entities.

We multiplied the percent total receipts by the total ongoing costs (by entity type) to obtain a range of ongoing costs for small entities. We were then able to divide these costs by the number of small entities by type of entity. We estimated ongoing costs in the first year that the proposed rule takes effect separately from our estimate of ongoing cost in the following years. The estimates were approximately the same; $337 and $343 respectively.

We estimate that the ongoing cost of compliance will be approximately 0.05 percent of a small entity's annual expenditures. This cost burden is fairly consistent across all types of entities.

Clearinghouses and Nonprofit Entities

We should note that the above discussion does not consider health care clearinghouses, nonprofit hospitals, home health agencies, or nursing and skilled nursing facilities. To the extent that clearinghouses and nonprofit facilities have annual receipts of less than $5 million, they were included in the preceding analysis.

Although we do not have precise information on the number of clearinghouses that qualify as small entities under the RFA, we believe that approximately half would meet the criteria. As noted in the regulatory impact analysis, as long as clearinghouses perform the function of merely reformatting information they receive and transmitting the data to other entities, the cost of complying with the proposed rule should be minimal.

A similar logic applies for nonprofit health plans and hospitals. We do know how many nonprofit organizations currently exist in the U.S., but do not have reliable revenue and expenditure data for these entities. In the absence of such data, we assume that nonprofit entities have a similar ratio of revenues to expenditures as the for-profit entities we have examined. Thus, we believe that the impact of complying with the proposed rule should be similar to that described for-profit plans and hospitals.

The preceding analysis indicates that the expected burden on small entities of implementing the proposed rule would be minimal. However, by necessity, the analysis is based on average costs, and as such, they may not reflect the actual burden on some or even a substantial number of small entities. Therefore, the Secretary does not certify that the proposed rule will not have a significant impact on a substantial number of small entities.

VI. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires cost-benefit and other analyses for rules that would cost more than $100 million in a single year. The proposed rule qualifies as a significant rule under the statute. DHHS has carried out the cost-benefit analysis in sections D and E of this document, which includes a discussion of unfunded costs to the states resulting from this regulation.

A. Future Costs

DHHS estimates some of the future costs of the proposed rule in Section E of the Preliminary Regulatory Impact Analysis of this document. The reported costs include costs incurred during the compliance period and up to 5 years after the effective date. The same section also includes some qualitative discussion of costs that would occur beyond that time period. Most of the costs of the proposed rule, however, would occur in the years immediately after the publication of a final rule. Future costs beyond the five year period will continue but will not be as great as the initial compliance costs.

B. Particular Regions, Communities, or Industrial Sectors.

The proposed rule applies to the health care industry and would, therefore, affect that industry disproportionately. Any long-run increase in the costs of health care services would largely be passed on to the entire population of consumers.

C. National Productivity and Economic Growth

The proposed rule is not expected to substantially affect productivity or economic growth. It is possible that productivity and growth in certain sectors of the health care industry could be slightly lower than otherwise because of the need to divert research and development resources to compliance activities. The diversion of resources to compliance activities would be temporary. Moreover, DHHS anticipates that, because the benefits of privacy are large, both productivity and economic growth would be higher than in the absence of the proposed rule. In section I.A. of this document, DHHS discusses its expectation that this proposed rule would increase communication among consumers, health plans, and providers and that implementation of privacy protections will lead more people to seek health care. The increased health of the population will lead to increased productivity and economic growth.

D. Full Employment and Job Creation.

Some of the human resources devoted to delivery of health care services would be redirected by the proposed rule. The proposed rule could lead to some short-run changes in employment patterns as a result of the structural changes within the health care industry. The growth of employment (job creation) for the roles typically associated with the health care profession could also be temporarily change but be balanced by an increased need for those who can assist entities with complying with this proposed rule. Therefore, while there could be a temporary slowing of growth in traditional health care professions, that will be offset by a temporary increase in growth in fields that may assist with compliance with this proposed rule (e.g. legal professionals, and management consultants).

E. Exports

Because the proposed rule does not mandate any changes in products, current export products will not be required to change in any way.

VII. Environmental Impact

The Department has determined under 21 CFR 25.30(K) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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[52] Office of Advocacy, U.S. Small Business Administration, from data provided by the Bureau of the Census, Statistics of U.S. Businesses, 1996.

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Under the PRA, the time, effort, and financial resources necessary to meet the information collection requirements referenced in this section are to be considered. Due to the complexity of this regulation, and to avoid redundancy of effort, we are referring readers to Section IV (Regulatory Impact Analysis) above, to review the *detailed* cost assumptions associated with these PRA requirements. We explicitly seek, and will consider public comment on our cost assumptions, as they relate to the PRA requirements summarized in this section.

SUMMARY PRA BURDEN HOURS

Provision	Burden (in hours)
§ 160.204 Process for requesting exceptions.	160
§ 164.506 General standards and implementation specifications for uses and disclosures of protected health information.	*TBD
§ 164.508 Standards and implementation specifications for uses and disclosures for which individual authorization would be required.	3,561,076
§ 164.510 Standards and implementation specifications for uses and disclosures for which individual authorization would not be required.	8,903
§ 164.512 Notice of privacy practices; rights and procedures.	7,273,952
§ 164.514 Access to protected health information; rights and procedures.	*TBD
§ 164.515 Accounting for uses and disclosures of protected health information	*TBD
§ 164.516 Amendment and correction; rights and procedures	*TBD
§ 164.520 Development and documentation of policies and procedures	2,927,000
§ 164.522 Compliance and Enforcement	2,500
Total Hours	13,773,591

*Burden to be determined based upon public comment.

Section 160.204 Process for Requesting Exceptions.

Section 160.204 would require States to: (1) Submit a written request, that meets the requirements of this section, to the Secretary to except a provision of State law from preemption under § 160.203; (2) submit a new request to the Secretary, should there be any changes to the standard, requirement, or implementation specification or provision of State law upon which an exception previously was granted, and (3) submit a written request for an extension of the exception prior to the end of the three-year approval period for a given exception. In addition, § 160.204 would require a State to submit a written request for an advisory opinion to the Secretary that meets the requirements of § 160.204.

The burden associated with these requirements is the time and effort necessary for a State to prepare and submit the written request for preemption or advisory opinion to HCFA for approval. On an annual basis it is estimated that it will take 10 States 16 hours each to prepare and submit a request. The total annual burden associated with this requirement is 160 hours.

Section 164.506 General Standards and Implementation Specifications for Uses and Disclosures of Protected Health Information

Given that the burden associated with the following information collection requirements will differ significantly, by the type and size of plan or provider, we are explicitly soliciting comment on the burden associated with the following requirements:

- Except for disclosures of protected health information by a covered entity that is a health care provider to another health care provider for treatment purposes, § 160.204(e) would require a covered entity to maintain documentation demonstrating that they have entered into a contract that meets the requirements of this part with each of their business partners;
- A covered entity would have to make all reasonable efforts not to use or disclose more than the minimum amount of protected health information necessary to accomplish the intended purpose of the use or disclosure;
- A covered entity could use protected health information to create de-identified information if the individually identifiable information has been removed, coded, encrypted, or otherwise eliminated or concealed.

Section 164.508 Standards and Implementation Specifications for Uses and Disclosures for Which Individual Authorization Would Be Required

Pursuant to the conditions set forth in this section, a covered entity would need to obtain a written request from an individual, before it uses or discloses protected health information of an individual. A copy of the model form which appears in Appendix to Subpart E of Part 164, or a form that contains the elements listed in paragraphs (c) or (d) of this section, as applicable, would need to be accepted by the covered entity.

The burden associated with these proposed requirements is the time and effort necessary for a covered entity to obtain written authorization prior to the disclosure of identifiable information. On an annual basis it is estimated that it will take 890,269 entities, a range of 0 to 80 hours per entity to obtain and maintain authorization documentation on an annual basis. Given that we believe the majority of the covered entities will be minimally affected by this requirement, we estimate the annual average burden per entity to be 4 hours for a total annual burden of 3,561,076 hours. Collecting such authorization should have costs on the order of those associated with providing access to records (not on a per page basis). Since the proposed requirement does not apply to treatment and payment, assuming 1% of the 543 million health care encounters might be reasonable. At a cost of about $10 each, the aggregate cost would be about $54 million. Therefore, on average the cost per entity would be about $60, with many entities receiving no requests and thus having no costs.

Section 164.510 Standards and Implementation Specifications for Uses and Disclosures for Which Individual Authorization Would Not Be Required

A covered entity could disclose protected health information to a health researcher for health research purposes subject to 45 CFR part 46 and purposes other than those subject to 45 CFR part 46, provided that the covered entity has obtained written documentation demonstrating that the applicable requirements proposed in this section have been met.

The burden associated with these proposed requirements is the time and effort necessary for a covered entity to maintain documentation demonstrating that they have obtained institutional review board or privacy board approval, which meet the requirements of this section. On an annual basis it is estimated that this proposed requirement will affect 1 % or 8,903 of covered entities. We further estimate that it will take an average of 1 hour per entity to meet these proposed requirements on an annual basis. Therefore, the total estimated annual burden associated with this proposed requirement is 8,903 hours.

Section 164.512 Notice of Privacy Practices; Rights and Procedures

Section 164.512 would require covered entities to provide written notice of the entities' privacy practices, rights, and procedures that meet the requirements of this section to affected parties upon request and as summarized below.

Health plans would provide a copy of the notice to an individual covered by the plan at enrollment and whenever the content of the notice is significantly altered thereafter, but no less frequently than once every three years. Total notice counts are estimated to be about 230 million, assuming plans choose to send them out annually rather than keeping track of duration since last notice. The average number of notices per plan per year would be about 1,200. For the approximately 19,000 plans issuing notices, the number of notices can be as few as 1,000 for a small self-insured self-administered employer, or as many as a million or more for a large commercial insurer or HMO. We further estimate that it will require each plan, on average, 8 hours to disseminate the required notices. This estimate is based upon the assumption that the required notice will be incorporated and disseminated with a plan's annual policy materials. The total burden associated with this requirement is calculated to be 151,800 hours.

Health care providers would provide a copy of the notice to an individual at the time of first service delivery to the individual, provide as promptly as possible a copy of the notice to an individual served by the provider whenever the content of the notice is significantly altered, post a copy of the notice in a location where it is reasonable to expect individuals seeking services from the provider to be able to read the notice, and date each version of the notice. Total notices in the first year are estimated to be about 700 million (based on annual patient contacts with hospitals, physicians, and other providers), with subsequent year counts of 350 million. Small providers could be providing 400 or fewer notices (based on 150 million persons with ambulatory physician contacts per year and approximately 370,000 physician offices). The overall average will also be close to that amount, since the bulk of providers are small entities. Large providers could be sending out 3,000 or more notices (based on 20 million persons with hospitalizations and approximately 6600 hospitals). We further estimate that it will require each provider, on average, 8 hours to disseminate the required notices. This estimate is based upon the assumption that the required notice will be incorporated into and disseminated with other patient materials. The total burden associated with this requirement is calculated to be 7,122,152 hours.

Section 164.514 Access of Individuals to Protected Health Information

Given that the burden associated with the following information collection requirements will differ significantly, by the type and size of plan or provider, we are explicitly soliciting comment on the burden associated with the following proposed requirements:

- An individual has a right of access to, which includes a right to inspect and obtain a copy of, his or her protected health information in a designated record set of a covered entity that is a health plan or a health care provider, including such information in a business partner's designated record set that is not a duplicate of the information held by the provider or plan, for so long as the information is maintained;
- Where the request is denied in whole or in part, the health plan or a health care provider would provide the individual with a written statement of the basis for the denial and a description of how the individual may complain to the covered entity pursuant to the complaint procedures established in § 164.518 or to the Secretary pursuant to the procedures established in § 164.522 of this subpart.

Section 164.515 Accounting for Uses and Disclosures of Protected Health Information

Given that the burden associated with maintaining records to facilitate the recreation of disclosures will differ significantly, be the type and size of plan or provider, we are explicitly soliciting comment on the burden associated with the following proposed record keeping requirement:

- A covered entity that is a plan or provider would need to be able to give individuals an accurate accounting of all uses and disclosures that are for purposes other than treatment, payment, and health care operations; except that such procedures would provide for the exclusion from such accounting of protected health information which is disclosed to a health oversight or law enforcement agency, if the health oversight or law enforcement agency provides a written request stating that the exclusion is necessary because disclosure would be reasonably likely to impede the agency's activities and specifies the time for which such exclusion is required.

Section 164.516 Amendment and Correction

Given that burden will associated with the following information collection requirements will differ significantly, by the type and size of plan or provider, we are explicitly soliciting comment on the burden associated with the following proposed requirements:

- An individual would have the right to request amendment or correction of his or her protected health information in designated records created by a covered entity that is a health plan or health care provider, where the individual asserts that the information is not accurate or complete and where the error or omission may have an adverse effect on the individual.

- Where the request is denied , provide the individual with a written statement of the basis for the denial, a description of how the individual may file a statement of disagreement with the denial, a description of how the individual may file a complaint with the covered entity, including the name and telephone number of a contact person within the covered entity who can answer questions concerning the denial and the complaint process; and a description of how the individual may file a complaint with the Secretary pursuant to § 164.522 of this subpart.

Section 164.520 Internal Privacy Practices; Standards and Procedures

A covered entity would need to ensure that all employees who have access to protected health information have received appropriate training about the entity's policies for use and disclosure of such information. Upon completion of the training and at least once every three years thereafter, covered entities would require each employee to sign a statement that he or she received the privacy training and will honor all of the entity's privacy policies and procedures.

The burden associated with these requirements is the time and effort necessary for a covered entity to obtain and maintain certification documentation demonstrating that applicable employees have received privacy training and will honor all of the entity's privacy policies and procedures. It is estimated that it will take 890,269 entities, a range of 1 hour to 40 hours per entity to obtain and maintain documentation on an annual basis. Given that we believe the majority of the covered entities will be minimally affected by this requirement, we estimate the annual average burden to be 3 hours per entity for a total annual burden of 2,700,000 hours. Using previous calculations, 900,000 (rounded) entities break down to about 95% small, 5% various types of large, and 1 burden hour for 95%, and 40 burden hours for 5%, the average burden would be 3 hours.

In addition, this section would require a covered entity that is a health plan or health care provider to develop and document its policies and procedures for implementing the requirements of this proposed rule, and amend the documentation to reflect any change to a policy or procedure.

The burden associated with these requirements is the time and effort necessary for a covered entity to maintain documentation demonstrating that they have implemented procedures that meet the requirements of this proposed rule. It is estimated that it will take 890,269 entities a range of 15 minutes to 1 hour per entity to maintain procedural documentation on an annual basis. We believe the majority (95%) of the covered entities will be minimally affected by this requirement. Using the 95% small/5% large, the average burden is 17 minutes. Multiplying by 890,269, results in a total annual burden of 256,000 hours (see discussion below).

Since the requirements for developing formal processes and documentation of procedures mirror what will already have been required under the HIPAA security regulations, the burden and additional costs should be small. To the extent that national or state associations will develop guidelines or general sets of processes and procedures which will be reviewed by individual member entity, the costs would be primarily those of the individual reviewers. Assuming this process occurs, we believe that entities will review information from associations in each state and prepare a set of written policies to meet their needs. Our estimates are based on assumed costs for providers ranging from $300 to $3000, with the average being about $375. The range correlates to the size and complexity of the provider. With less than 1 million provider entities, the aggregate cost would be on the order of $300 million. For plans and clearinghouses, our estimate assumes that the legal review and development of written policies will be more costly because of the scope of their operations. They are often dealing with a large number of different providers and may be dealing with requirements from multiple states. We believe the costs for these entities will range from $300 for smaller plans to $15,000 for the largest plans. Because there are very few large plans in relation to the number of small plans, the average implementation costs will be about $3050.

Section 164.522 Compliance and Enforcement

An individual who believes that a covered entity is not complying with the requirements of this subpart may file a complaint with the Secretary within 180 days from the date of the alleged non-compliance, unless the time for filing is extended by the Secretary. The complaint would describe in detail the acts or omissions believed to be in violation of the requirements of this subpart.

The burden associated with these requirements is the time and effort necessary for an individual to prepare and submit a written complaint to the Secretary. On an annual basis it is estimated that 10,000 complaints will be filed on an annual basis. We further estimate that it will take an average of 15 minutes per individual to submit a complaint. Therefore, the total estimated annual burden associated with this requirement is 2,500 hours.

A covered entity would need to maintain documentation necessary for the Secretary to ascertain whether the covered entity has complied or is complying with the requirements of this subpart. While this section is subject to the PRA, the burden associated with this requirement is addressed under sections referenced above, which discuss specific record keeping requirements.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in §§ 160.204, 164.506, 164.508, 164.510, 164.512, 164.514, 164.515, 164.516, 164.520, and § 164.522. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: John Burke HIPAA Privacy-P

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. ATTN: Allison Herron Eydt, HCFA Desk Officer.

IX. Executive Order 12612: Federalism

The Department has examined the effects of provisions in the proposed privacy regulation on the relationship between the Federal government and the States, as required by Executive Order 12612 on "Federalism." The agency concludes that preempting State or local proposed rules that provide less stringent privacy protection requirements than Federal law is consistent with this Executive Order. Overall, the proposed rule attempts to balance both the autonomy of the States with the necessity to create a Federal benchmark to preserve the privacy of personally identifiable health information.

It is recognized that the States generally have laws that relate to the privacy of individually identifiable health information. The HIPAA statute dictates the relationship between State law and this proposed rule. Except for laws that are specifically exempted by the HIPAA statute, State laws continue to be enforceable, unless they are contrary to Part C of Title XI of the standards, requirements, or implementation specifications adopted or pursuant to subpart x. However, under section 264(c)(2), not all contrary provisions of State privacy laws are preempted; rather, the law provides that contrary provisions that are also "more stringent" than the federal regulatory requirements or implementation specifications will continue to be enforceable.

Section 3(b) of Executive Order 12612 recognizes that Federal action limiting the discretion of State and local governments is appropriate "where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope." Personal privacy issues are widely identified as a national concern by virtue of the scope of interstate health commerce. HIPAA's provisions reflect this position. HIPAA attempts to facilitate the electronic exchange of financial and administrative health plan transactions while recognizing challenges that local, national, and international information sharing raise to confidentiality and privacy of health information.

Section 3(d)(2) of the Executive Order 12612 requires that the Federal government refrain from "establishing uniform, national standards for programs and, when possible, defer to the States to establish standards." HIPAA requires HHS to establish standards, and we have done so accordingly. This approach is a key component of the proposed privacy rule, and it adheres to Section 4(a) of Executive Order 12612, which expressly contemplates preemption when there is a conflict between exercising State and Federal authority under Federal statute. Section 262 of HIPAA enacted Section 1178 of the Social Security Act, developing a "general rule" that State laws or provisions that are contrary to the provisions or requirements of Part C of Title XI, or the standards or implementation specifications adopted, or established thereunder are preempted. Several exceptions to this rule exist, each of which is designed to maintain a high degree of State autonomy.

Moreover, Section 4(b) of the Executive Order authorizes preemption of State law in the Federal rule making context when there is "firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the * * * agency the authority to issue regulations preempting State law." Section 1178 (a)(2)(B) of HIPAA specifically preempts State laws related to the privacy of individually identifiable health information unless the State law is more stringent. Thus, we have interpreted State and local laws and regulations that would impose less stringent requirements for protection of individually identifiable health information as undermining the agency's goal of ensuring that all patients who receive medical services are assured a minimum level of personal privacy. Particularly where the absence of privacy protection undermines an individual's access to health care services, both the personal and public interest is served by establishing Federal rules.

The proposed rule would establish national minimum standards with respect to the collection, maintenance, access, transfer, and disclosure of personally identifiable health information. The Federal law will preempt State law only where State and Federal laws are "contradictory" and the Federal regulation is judged to establish "more stringent" privacy protections than State laws.

As required by the Executive Order, States and local governments will be given, through this notice of proposed rule making, an opportunity to participate in the proceedings to preempt State and local laws (section 4(e) of Executive Order 12612). However, it should be noted that the preemption of state law is based on the HIPAA statute. The Secretary will also provide a review of preemption issues upon requests from States. In addition, under the Order, appropriate officials and organizations will be consulted before this proposed action is implemented (section 3(a) of Executive Order 12612).

Finally, we have considered the cost burden that this proposed rule would impose on State-operated health care entities, Medicaid, and other State health benefits programs. We do not have access to reliable information on the number of State-operated entities and programs, nor do we have access to data on the costs these entities and programs would incur in order to comply with the proposed rule. A discussion of possible compliance costs that covered entities may incur is contained in the Unfunded Mandates section above. We believe that requiring State health care entities covered by the proposed rule to comply with the proposed rule would cost less than one percent of a State's annual budget.

The agency concludes that the policy proposed in this document has been assessed in light of the principles, criteria, and requirements in Executive Order 12612; that this policy is not inconsistent with that Order; that this policy will not impose significant additional costs and burdens on the States; and that this policy will not affect the ability of the States to discharge traditional State governmental functions.

During our consultation with the States, representatives from various State agencies and offices expressed concern that the proposed regulation would pre-empt all State privacy laws. As explained in this section, the regulation would only pre-empt state laws where there is a direct conflict between state laws and the regulation, and where the regulation provides more stringent privacy protection than State law. We discussed this issue during our consultation with State representatives, who generally accepted our approach to the preemption issue. During the consultation, we requested further information from the States about whether they currently have laws requiring that providers have a "duty to warn" family members or third parties about a patient's condition other than in emergency circumstances. Since the consultation, we have not received additional comments or questions from the States.

X. Executive Order 13086: Consultation and Coordination with Indian Tribal Governments

In drafting the proposed rule, the Department consulted with representatives of the National Congress of American Indians and the National Indian Health Board, as well as with a representative of the self-governance Tribes. During the consultation, we discussed issues regarding the application of Title II of HIPAA to the Tribes, and potential variations based on the relationship of each Tribe with the IHS for the purpose of providing health services. Participants raised questions about the status of Tribal laws regarding the privacy of health information.

List of Subjects in 45 CFR Parts 160 and 164

Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Privacy, Reporting and recordkeeping requirements, security measures.

Note to reader: This proposed rule is one of several proposed rules that are being published to implement the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996. We propose to establish a new 45 CFR subchapter C, parts 160 through 164. Part 160 will consist of general provisions, part 162 will consists of the various Administrative Simplification regulations relating to transactions and identifiers, and part 164 will consists of the regulations implementing the security and privacy requirements of the legislation. Proposed part 160, consisting of two subparts (Subpart A General Provisions, and Subpart B—Preemption of State Law) will be exactly the same in each rule, unless we add new sections or definitions to incorporate additional general information in the later rules.

Dated: October 26, 1999.

Donna Shalala,

Secretary.

Appendix to the Preamble: Sample Contact of Provider Notice

PROVIDER NOTICE OF INFORMATION PRACTICES (as of 1/1/1999)

Uses and Disclosures of Health Information

We use health information about you for treatment, to obtain payment for treatment, for administrative purposes, and to evaluate the quality of care that you receive.

We may use or disclose identifiable health information about you without your authorization for several other reasons. Subject to certain requirements, we may give out health information without your authorization for public health purposes, for auditing purposes, for research studies, and for emergencies. We provide information when otherwise required by law, such as for law enforcement in specific circumstances. In any other situation, we will ask for your written authorization before using or disclosing any identifiable health information about you. If you choose to sign an authorization to disclose information, you can later revoke that authorization to stop any future uses and disclosures.

We may change our policies at any time. Before we make a significant change in our policies, we will change our notice and post the new notice in the waiting area and in each examination room. You can also request a copy of our notice at any time. For more information about our privacy practices, contact the person listed below.

Individual Rights

In most cases, you have the right to look at or get a copy of health information about you that we use to make decisions about you. If you request copies, we will charge you $0.05 (5 cents) for each page. You also have the right to receive a list of instances where we have disclosed health information about you for reasons other than treatment, payment or related administrative purposes. If you believe that information in your record is incorrect or if important information is missing, you have the right to request that we correct the existing information or add the missing information.

You may request in writing that we not use or disclose your information for treatment, payment and administrative purposes except when specifically authorized by you, when required by law, or in emergency circumstances. We will consider your request but are not legally required to accept it.

Complaints

If you are concerned that we have violated your privacy rights, or you disagree with a decision we made about access to your records, you may contact the person listed below. You also may send a written complaint to the U.S. Department of Health and Human Services. The person listed below can provide you with the appropriate address upon request.

Our Legal Duty

We are required by law to protect the privacy of your information, provide this notice about our information practices, and follow the information practices that are described in this notice.

If you have any questions or complaints, please contact: Office Administrator, 111 Main Street, Suite 101, Anytown, OH 41111. Phone: (111) 555–6789, Email: admin@docshop.com.

For the reasons set forth in the preamble, it is proposed to amend 45 CFR subtitle A by adding a new subchapter C, consisting of parts 160 through 164, to read as follows:

SUBCHAPTER C—ADMINISTRATIVE DATA STANDARDS AND RELATED REQUIREMENTS

Part

160—GENERAL ADMINISTRATIVE REQUIREMENTS
161–163—[RESERVED]
164—SECURITY AND PRIVACY

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

Subpart A—General Provisions

Sec.

160.101 Statutory basis and purpose
160.102 Applicability
160.103 Definitions
160.104 Effective dates of a modification to a standard or implementation specification

Subpart B—Preemption of State Law

160.201 Applicability
160.202 Definitions
160.203 General rule and exceptions
160.204 Process for requesting exception determinations or advisory opinions

Authority: 42 U.S.C. 1320d–2 and 1320d–4.

Subpart A—General Provisions

§ 160.101 Statutory basis and purpose.

The requirements of this subchapter implement sections 1171 through 1179 of the Social Security Act, as amended, which require HHS to adopt national standards to enable the electronic exchange of health information in the health care system. The requirements of this subchapter also implement section 264 of Pub. L 104–191, which requires that HHS adopt national standards with respect to the privacy of individually identifiable health information transmitted in connection with the transactions described in section 1173(a)(1) of the Social Security Act. The purpose of these provisions is to promote administrative simplification.

§ 160.102 Applicability.

Except as otherwise provided, the standards, requirements, and implementation specifications adopted or designated under the parts of this subchapter apply to any entity that is:

(a) A health plan;

(b) A health care clearinghouse; and

(c) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

§ 160.103 Definitions.

Except as otherwise provided, the following definitions apply to this subchapter:

Act means the Social Security Act, as amended.

Covered entity means an entity described in § 160.102.

Health care means the provision of care, services, or supplies to a patient and includes any:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, counseling, service, or procedure with respect to the physical or mental condition, or functional status, of a patient or affecting the structure or function of the body;

(2) Sale or dispensing of a drug, device, equipment, or other item pursuant to a prescription; or

(3) Procurement or banking of blood, sperm, organs, or any other tissue for administration to patients.

Health care clearinghouse means a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. The entity receives health care transactions from health care providers or other entities, translates the data from a given format into one acceptable to the intended payer or payers, and forwards the processed transaction to appropriate payers and clearinghouses. Billing services, repricing companies, community health management information systems, community health information systems, and "value-added" networks and switches are considered to be health care clearinghouses for purposes of this part, if they perform the functions of health care clearinghouses as described in the preceding sentences.

Health care provider means a provider of services as defined in section 1861(u) of the Act, a provider of medical or health services as defined in section 1861(s) of the Act, and any other person or organization who furnishes, bills, or is paid for health care services or supplies in the normal course of business.

Health information means any information, whether oral or recorded in any form or medium, that:

(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Health plan means an individual or group plan that provides, or pays the cost of, medical care. Such term includes, when applied to government funded or assisted programs, the components of the government agency administering the program. "Health plan" includes the following, singly or in combination:

(1) A group health plan, defined as an employee welfare benefit plan (as currently defined in section 3(1) of the Employee Retirement Income and Security Act of 1974, 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act, 42 U.S.C. 300gg–91(a)(2)), including items and services paid for as medical care, to employees or their dependents directly or through insurance or otherwise, that:

(i) Has 50 or more participants; or

(ii) Is administered by an entity other than the employer that established and maintains the plan.

(2) A health insurance issuer, defined as an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and is subject to State or other law that regulates insurance.

(3) A health maintenance organization, defined as a federally qualified health maintenance organization, an organization recognized as a health maintenance organization under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization.

(4) Part A or Part B of the Medicare program under title XVIII of the Act.

(5) The Medicaid program under title XIX of the Act.

(6) A Medicare supplemental policy (as defined in section 1882(g)(1) of the Act, 42 U.S.C. 1395ss).

(7) A long-term care policy, including a nursing home fixed-indemnity policy.

(8) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(9) The health care program for active military personnel under title 10 of the United States Code.

(10) The veterans health care program under 38 U.S.C. chapter 17.

(11) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

(12) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601, *et seq.*).

(13) The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89.

(14) An approved State child health plan for child health assistance that meets the requirements of section 2103 of the Act.

(15) A Medicare Plus Choice organization as defined in 42 CFR 422.2, with a contract under 42 CFR part 422, subpart K.

(16) Any other individual or group health plan, or combination thereof, that provides or pays for the cost of medical care.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

Small health plan means a health plan with annual receipts of $5 million or less.

Standard means a prescribed set of rules, conditions, or requirements concerning classification of components, specification of materials, performance or operations, or delineation of procedures, in describing products, systems, services or practices.

State includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

Transaction means the exchange of information between two parties to carry out financial or administrative activities related to health care. It includes the following:

(1) Health claims or equivalent encounter information;

(2) Health care payment and remittance advice;

(3) Coordination of benefits;

(4) Health claims status;

(5) Enrollment and disenrollment in a health plan;

(6) Eligibility for a health plan;

(7) Health plan premium payments;

(8) Referral certification and authorization;

(9) First report of injury;

(10) Health claims attachments; and

(11) Other transactions as the Secretary may prescribe by regulation.

§ 160.104 Effective dates of a modification to a standard or implementation specification.

The Secretary may modify a standard or implementation specification after the first year in which the standard or implementation specification is required to be used, but not more frequently than once every 12 months. If the Secretary adopts a modification to a standard or implementation specification, the implementation date of the modified standard or implementation specification may be no earlier than 180 days following the adoption of the modification. The Secretary will determine the actual date, taking into account the time needed to comply due to the nature and extent of the modification. The Secretary may extend the time for compliance for small health plans.

Subpart B—Preemption of State Law

§ 160.201 Applicability.

The provisions of this subpart apply to determinations and advisory opinions issued by the Secretary pursuant to 42 U.S.C. 1320d–7.

§ 160.202 Definitions.

For the purpose of this subpart, the following terms have the following meanings:

Contrary, when used to compare a provision of State law to a standard, requirement, or implementation specification adopted under this subchapter, means:

(1) A party would find it impossible to comply with both the State and federal requirements; or

(2) The provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of part C of title XI of the Act or section 264 of Pub. L. 104–191, as applicable.

More stringent means, in the context of a comparison of a provision of State law and a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter, a law which meets one or more of the following criteria, as applicable:

(1) With respect to a use or disclosure, provides a more limited use or disclosure (in terms of the number of potential recipients of the information, the amount of information to be disclosed, or the circumstances under which information may be disclosed).

(2) With respect to the rights of individuals of access to or amendment of individually identifiable health information, permits greater rights or access or amendment, as applicable, provided, however, that nothing in this subchapter shall be construed to preempt any State law to the extent that it authorizes or prohibits disclosure of protected health information regarding a minor to a parent, guardian or person acting *in loco parentis* of such minor.

(3) With respect to penalties, provides greater penalties.

(4) With respect to information to be provided to an individual about a proposed use, disclosure, rights, remedies, and similar issues, provides the greater amount of information.

(5) With respect to form or substance of authorizations for use or disclosure of information, provides requirements that narrow the scope or duration, increase the difficulty of obtaining, or reduce the coercive effect of the circumstances surrounding the authorization.

(6) With respect to recordkeeping or accounting requirements, provides for the retention or reporting of more detailed information or for a longer duration.

(7) With respect to any other matter, provides greater privacy protection for the individual.

Relates to the privacy of individually identifiable health information means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or the effect of affecting the privacy of health information in a direct, clear, and substantial way.

State law means a law, decision, rule, regulation, or other State action having the effect of law.

§ 160.203 General rule and exceptions.

General rule. A standard, requirement, or implementation specification adopted under or pursuant to this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except where one or more of the following conditions is met:

(a) A determination is made by the Secretary pursuant to § 160.204(a) that the provision of State law:

(1) Is necessary:

(i) To prevent fraud and abuse;

(ii) To ensure appropriate State regulation of insurance and health plans;

(iii) For State reporting on health care delivery or costs; or

(iv) For other purposes related to improving the Medicare program, the Medicaid program, or the efficiency and effectiveness of the health care system; or

(2) Addresses controlled substances.

(b) The provision of State law relates to the privacy of health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.

(c) The provision of State law, or the State established procedures, are established under a State law providing for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(d) The provision of State law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification.

§ 160.204 Process for requesting exception determinations or advisory opinions.

(a) *Determinations.* (1) A State may submit a written request to the Secretary to except a provision of State law from preemption under § 160.203(a). The request must include the following information:

(i) The State law for which the exception is requested;

(ii) The particular standard(s), requirement(s), or implementation specification(s) for which the exception is requested;

(iii) The part of the standard or other provision that will not be implemented based on the exception or the additional data to be collected based on the exception, as appropriate;

(iv) How health care providers, health plans, and other entities would be affected by the exception;

(v) The length of time for which the exception would be in effect, if less than three years;

(vi) The reasons why the State law should not be preempted by the federal standard, requirement, or implementation specification, including how the State law meets one or more of the criteria at § 160.203(a); and

(vii) Any other information the Secretary may request in order to make the determination.

(2) Requests for exception under this section must be submitted to the Secretary at an address which will be published in the **Federal Register**. Until the Secretary's determination is made, the standard, requirement, or implementation specification under this subchapter remains in effect.

(3) The Secretary's determination under this paragraph will be made on the basis of the extent to which the information provided and other factors demonstrate that one or more of the criteria at § 160.203(a) has been met. If it is determined that the federal standard, requirement, or implementation specification accomplishes the purposes of the criterion or criteria at § 160.203(a) as well as or better than the State law for which the request is made, the request will be denied.

(4) An exception granted under this paragraph is effective for three years or for such lesser time as is specified in the determination granting the request.

(5) If an exception is granted under this paragraph, the exception has effect only with respect to transactions taking place wholly within the State for which the exception was requested.

(6) Any change to the standard, requirement, or implementation specification or provision of State law upon which an exception was granted requires a new request for an exception. Absent such a request and a favorable determination thereon, the standard, requirement, or implementation specification remains in effect. The responsibility for recognizing the need for and making the request lies with the original requestor.

(7) The Secretary may seek changes to a standard, requirement, or implementation specification based on requested exceptions or may urge the requesting State or other organizations or persons to do so.

(8) Determinations made by the Secretary pursuant to this paragraph will be published annually in the **Federal Register**.

(b) *Advisory opinions.*—(1) The Secretary may issue advisory opinions as to whether a provision of State law constitutes an exception under § 160.203(b) to the general rule of preemption under that section. The Secretary may issue such opinions at the request of a State or at the Secretary's own initiative.

(2) A State may submit a written request to the Secretary for an advisory opinion under this paragraph. The

request must include the following information:

(i) The State law for which the exception is requested;

(ii) The particular standard(s), requirement(s), or implementation specification(s) for which the exception is requested;

(iii) How health care providers, health plans, and other entities would be affected by the exception;

(iv) The reasons why the State law should not be preempted by the federal standard, requirement, or implementation specification, including how the State law meets the criteria at § 160.203(b); and

(v) Any other information the Secretary may request in order to issue the advisory opinion.

(3) The requirements of paragraphs (a)(2), (a)(5)–(a)(7) of this section apply to requests for advisory opinions under this paragraph.

(4) The Secretary's decision under this paragraph will be made on the basis of the extent to which the information provided and other factors demonstrate that the criteria at § 160.203(b) are met.

(5) Advisory opinions made by the Secretary pursuant to this paragraph will be published annually in the **Federal Register**.

PARTS 161–163—[RESERVED]

PART 164—SECURITY AND PRIVACY

Subpart A—General Provisions

Sec.
164.102 Statutory basis
164.104 Applicability

Subparts B–D—[Reserved]

Subpart E—Privacy of Individually Identifiable Health Information

164.502 Applicability
164.504 Definitions
164.506 Uses and disclosures of protected health information: general rules
164.508 Uses and disclosures for which individual authorization is required
164.510 Uses and disclosures for which individual authorization is not required
164.512 Notice to individuals of information practices
164.514 Access of individuals to protected health information
164.515 Accounting for disclosures of protected health information
164.516 Amendment and correction
164.518 Administrative requirements
164.520 Documentation of policies and procedures
164.522 Compliance and enforcement
164.524 Effective date
Appendix to Subpart E of Part 164—Model Authorization Form

Authority: 42 U.S.C. 1320d–2 and 1320d–4.

Subpart A—General Provisions

§ 164.102 Statutory basis.

The provisions of this part are adopted pursuant to the Secretary's authority to prescribe standards, requirements, and implementation standards under part C of title XI of the Act and section 264 of Public Law 104–191.

§ 164.104 Applicability.

Except as otherwise provided, the provisions of this part apply to covered entities: health plans, health care clearinghouses, and health care providers who transmit health information in electronic form in connection with any transaction referred to in section 1173(a)(1) of the Act.

Subpart B–D—[Reserved]

Subpart E—Privacy of Individually Identifiable Health Information

§ 164.502 Applicability.

In addition to the applicable provisions of part 160 of this subchapter and except as otherwise herein provided, the requirements, standards, and implementation specifications of this subpart apply to covered entities with respect to protected health information.

§ 164.504 Definitions.

As used in this subpart, the following terms have the following meanings:

Business partner means, with respect to a covered entity, a person to whom the covered entity discloses protected health information so that the person can carry out, assist with the performance of, or perform on behalf of, a function or activity for the covered entity. "Business partner" includes contractors or other persons who receive protected health information from the covered entity (or from another business partner of the covered entity) for the purposes described in the previous sentence, including lawyers, auditors, consultants, third-party administrators, health care clearinghouses, data processing firms, billing firms, and other covered entities. "Business partner" excludes persons who are within the covered entity's workforce, as defined in this section.

Designated record set means a group of records under the control of a covered entity from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual and which is used by the covered entity to make decisions about the individual. For purposes of this paragraph, the term *record* means any item, collection, or grouping of protected health information maintained, collected, used, or disseminated by a covered entity.

Disclosure means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

Health care operations means the following activities undertaken by or on behalf of a covered entity that is a health plan or health care provider for the purpose of carrying out the management functions of such entity necessary for the support of treatment or payment:

(1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines;

(2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which undergraduate and graduate students and trainees in areas of health care learn under supervision to practice as health care providers, accreditation, certification, licensing or credentialing activities;

(3) Insurance rating and other insurance activities relating to the renewal of a contract for insurance, including underwriting, experience rating, and reinsurance, but only when the individuals are already enrolled in the health plan conducting such activities and the use or disclosure of protected health information relates to an existing contract of insurance (including the renewal of such a contract);

(4) Conducting or arranging for medical review and auditing services, including fraud and abuse detection and compliance programs; and

(5) Compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding.

Health oversight agency means an agency, person or entity, including the employees or agents thereof,

(1) That is:

(i) A public agency; or

(ii) A person or entity acting under grant of authority from or contract with a public agency; and

(2) Which performs or oversees the performance of any audit; investigation; inspection; licensure or discipline; civil, criminal, or administrative proceeding or action; or other activity necessary for appropriate oversight of the health care system, of government benefit programs for which health information is relevant to beneficiary eligibility, or of government regulatory programs for which health information is necessary

for determining compliance with program standards.

Individual means the person who is the subject of protected health information, except that:

(1) "Individual" includes:

(i) With respect to adults and emancipated minors, legal representatives (such as court-appointed guardians or persons with a power of attorney), to the extent to which applicable law permits such legal representatives to exercise the person's rights in such contexts.

(ii) With respect to unemancipated minors, a parent, guardian, or person acting *in loco parentis*, provided that when a minor lawfully obtains a health care service without the consent of or notification to a parent, guardian, or other person acting *in loco parentis*, the minor shall have the exclusive right to exercise the rights of an individual under this subpart with respect to the protected health information relating to such care.

(iii) With respect to deceased persons, an executor, administrator, or other person authorized under applicable law to act on behalf of the decedent's estate.

(2) "Individual" excludes:

(i) Foreign military and diplomatic personnel and their dependents who receive health care provided by or paid for by the Department of Defense or other federal agency, or by an entity acting on its behalf, pursuant to a country-to-country agreement or federal statute; and

(ii) Overseas foreign national beneficiaries of health care provided by the Department of Defense or other federal agency, or by a non-governmental organization acting on its behalf.

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and that:

(1) Is created by or received from a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and

(i) Which identifies the individual, or

(ii) With respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

Law enforcement official means an officer of an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to conduct:

(1) An investigation or official proceeding inquiring into a violation of, or failure to comply with, any law; or

(2) A criminal, civil, or administrative proceeding arising from a violation of, or failure to comply with, any law.

Payment means:

(1) The activities undertaken by or on behalf of a covered entity that is:

(i) A health plan, or by a business partner on behalf of a health plan, to obtain premiums or to determine or fulfill its responsibility for coverage under the health plan and for provision of benefits under the health plan; or

(ii) A health care provider or health plan, or a business partner on behalf of such provider or plan, to obtain reimbursement for the provision of health care.

(2) Activities that constitute payment include:

(i) Determinations of coverage, improving methods of paying or coverage policies, adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, and medical data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges; and

(v) Utilization review activities, including precertification and preauthorization of services.

Protected health information means individually identifiable health information that is or has been electronically transmitted or electronically maintained by a covered entity and includes such information in any other form.

(1) For purposes of this definition,

(i) "Electronically transmitted" includes information exchanged with a computer using electronic media, such as the movement of information from one location to another by magnetic or optical media, transmissions over the Internet, Extranet, leased lines, dial-up lines, private networks, telephone voice response, and "faxback" systems.

(ii) "Electronically maintained" means information stored by a computer or on any electronic medium from which information may be retrieved by a computer, such as electronic memory chips, magnetic tape, magnetic disk, or compact disc optical media.

(2) "Protected health information" excludes:

(i) Individually identifiable health information in education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and

(ii) Individually identifiable health information of inmates of correctional facilities and detainees in detention facilities.

Public health authority means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe that is responsible for public health matters as part of its official mandate.

Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. "Generalizable knowledge" is knowledge related to health that can be applied to populations outside of the population served by the covered entity.

Treatment means the provision of health care by, or the coordination of health care (including health care management of the individual through risk assessment, case management, and disease management) among, health care providers; the referral of a patient from one provider to another; or the coordination of health care or other services among health care providers and third parties authorized by the health plan or the individual.

Use means the employment, application, utilization, examination, or analysis of information within an entity that holds the information.

Workforce means employees, volunteers, trainees, and other persons under the direct control of a covered entity, including persons providing labor on an unpaid basis.

§ 164.506 Uses and disclosures of protected health information: general rules.

(a) *Standard.* A covered entity may not use or disclose an individual's protected health information, except as otherwise permitted or required by this part or as required to comply with applicable requirements of this subchapter.

(1) *Permitted uses and disclosures.* A covered entity is permitted to use or disclose protected health information as follows:

(i) Except for research information unrelated to treatment, to carry out treatment, payment, or health care operations;

(ii) Pursuant to an authorization by the individual that complies with § 164.508; or

(iii) As permitted by and in compliance with this section or § 164.510.

(2) *Required disclosures.* A covered entity is required to disclose protected health information:

(i) To an individual, when a request is made under § 164.514; or

(ii) When required by the Secretary under § 164.522 to investigate or determine the entity's compliance with this part.

(b)(1) *Standard: Minimum necessary.* A covered entity must make all reasonable efforts not to use or disclose more than the minimum amount of protected health information necessary to accomplish the intended purpose of the use or disclosure. This requirement does not apply to uses or disclosures that are:

(i) Made in accordance with §§ 164.508(a)(1), 164.514, or § 164.522;

(ii) Required by law and permitted under § 164.510;

(iii) Required for compliance with applicable requirements of this subchapter; or

(iv) Made by a covered health care provider to a covered health plan, when the information is requested for audit and related purposes.

(2) *Implementation specification: Procedures.* To comply with the standard in this paragraph, a covered entity must have procedures to:

(i) Identify appropriate persons within the entity to determine what information should be used or disclosed consistent with the minimum necessary standard;

(ii) Ensure that the persons identified under paragraph (b)(2)(i) of this section make the minimum necessary determinations, when required;

(iii) Within the limits of the entity's technological capabilities, provide for the making of such determinations individually.

(3) *Implementation specification: Reliance.* When making disclosures to public officials that are permitted under § 164.510 but not required by other law, a covered entity may reasonably rely on the representations of such officials that the information requested is the minimum necessary for the stated purpose(s).

(c)(1) *Standard: Right of an individual to restrict uses and disclosures.* (i) A covered entity that is a health care provider must permit individuals to request that uses or disclosures of protected health information for treatment, payment, or health care operations be restricted, and, if the requested restrictions are agreed to by the provider, not make uses or disclosures inconsistent with such restrictions.

(ii) This requirement does not apply:

(A) To uses or disclosures permitted under § 164.510;

(B) When the health care services provided are emergency services or the information is requested pursuant to § 164.510(k) and

(C) To disclosures to the Secretary pursuant to § 164.522.

(iii) A provider is not required to agree to a requested restriction.

(2) *Implementation specifications.* A covered entity must have procedures that:

(i) Provide individuals an opportunity to request a restriction on the uses and disclosures of their protected health information;

(ii) Provide that restrictions that are agreed to by the entity are reduced to writing or otherwise documented;

(iii) Enable the entity to honor such restrictions; and

(iv) Provide for the notification of others to whom such information is disclosed of such restriction.

(d)(1) *Standard: use or disclosure of de-identified protected health information.* The requirements of this subpart do not apply to protected health information that a covered entity has de-identified, provided, however, that:

(i) Disclosure of a key or other device designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of protected health information; and

(ii) If a covered entity re-identifies de-identified information, it may use or disclose such re-identified information only in accordance with this subpart.

(2) *Implementation specifications.* (i) A covered entity may use protected health information to create de-identified information by removing, coding, encrypting, or otherwise eliminating or concealing the information that makes such information individually identifiable.

(ii) Information is presumed not to be individually identifiable (de-identified), if:

(A) The following identifiers have been removed or otherwise concealed:

(*1*) Name;

(*2*) Address, including street address, city, county, zip code, and equivalent geocodes;

(*3*) Names of relatives;

(*4*) Name of employers;

(*5*) Birth date;

(*6*) Telephone numbers;

(*7*) Fax numbers;

(*8*) Electronic mail addresses;

(*9*) Social security number;

(*10*) Medical record number;

(*11*) Health plan beneficiary number;

(*12*) Account number;

(*13*) Certificate/license number;

(*14*) Any vehicle or other device serial number;

(*15*) Web Universal Resource Locator (URL);

(*16*) Internet Protocol (IP) address number;

(*17*) Finger or voice prints;

(*18*) Photographic images; and

(*19*) Any other unique identifying number, characteristic, or code that the covered entity has reason to believe may be available to an anticipated recipient of the information; and

(B) The covered entity has no reason to believe that any anticipated recipient of such information could use the information, alone or in combination with other information, to identify an individual.

(iii) Notwithstanding paragraph (d)(2)(ii) of this section, entities with appropriate statistical experience and expertise may treat information as de-identified, if they include information listed in paragraph (d)(2)(ii) of this section and they determine that the probability of identifying individuals with such identifying information retained is very low, or may remove additional information, if they have a reasonable basis to believe such additional information could be used to identify an individual.

(e)(1) *Standards: Business partners.* (i) Except for disclosures of protected health information by a covered entity that is a health care provider to another health care provider for consultation or referral purposes, a covered entity may not disclose protected health information to a business partner without satisfactory assurance from the business partner that it will appropriately safeguard the information.

(ii) A covered entity must take reasonable steps to ensure that each business partner complies with the requirements of this subpart with respect to any task or other activity it performs on behalf of the entity, to the extent the covered entity would be required to comply with such requirements.

(2) *Implementation specifications.* (i) For the purposes of this section, *satisfactory assurance* means a contract between the covered entity and the business partner to which such information is to be disclosed that establishes the permitted and required uses and disclosures of such information by the partner. The contract must provide that the business partner will:

(A) Not use or further disclose the information other than as permitted or required by the contract;

(B) Not use or further disclose the information in a manner that would violate the requirements of this subpart, if done by the covered entity;

(C) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by its contract;

(D) Report to the covered entity any use or disclosure of the information not provided for by its contract of which it becomes aware;

(E) Ensure that any subcontractors or agents to whom it provides protected health information received from the covered entity agree to the same restrictions and conditions that apply to the business partner with respect to such information;

(F) Make available protected health information in accordance with § 164.514(a);

(G) Make its internal practices, books, and records relating to the use and disclosure of protected health information received from the covered entity available to the Secretary for purposes of determining the covered entity's compliance with this subpart;

(H) At termination of the contract, return or destroy all protected health information received from the covered entity that the business partner still maintains in any form and retain no copies of such information; and

(I) Incorporate any amendments or corrections to protected health information when notified pursuant to § 164.516(c)(3).

(ii) The contract required by paragraph (e)(2)(i) of this section must:

(A) State that the individuals whose protected health information is disclosed under the contract are intended third party beneficiaries of the contract; and

(B) Authorize the covered entity to terminate the contract, if the covered entity determines that the business partner has violated a material term of the contract required by this paragraph.

(iii) A material breach by a business partner of its obligations under the contract required by paragraph (e)(2)(i) of this section will be considered to be noncompliance of the covered entity with the applicable requirements of this subpart, if the covered entity knew or reasonably should have known of such breach and failed to take reasonable steps to cure the breach or terminate the contract.

(f) *Standard: Deceased individuals.* A covered entity must comply with the requirements of this subpart with respect to the protected health information of a deceased individual for two years following the death of such individual. This requirement does not apply to uses or disclosures for research purposes.

(g) *Standard: uses and disclosures consistent with notice.* Except as provided by § 164.520(g)(2), a covered entity that is required by § 164.512 to have a notice may not use or disclose protected health information in a manner inconsistent with such notice.

§ 164.508 Uses and disclosures for which individual authorization is required.

(a) *Standard.* An authorization executed in accordance with this section is required in order for the covered entity to use or disclose protected health information in the following situations:

(1) *Request by individual.* Where the individual requests the covered entity to use or disclose the information.

(2) *Request by covered entity.* (i) Where the covered entity requests the individual to authorize the use or disclosure of the information. The covered entity must request and obtain an authorization from the individual for all uses and disclosures that are not:

(A) Except as provided in paragraph (a)(3) of this section, compatible with or directly related to treatment, payment, or health care operations;

(B) Covered by § 164.510;

(C) Covered by paragraph (a)(1) of this section; or

(D) Required by this subpart.

(ii) Uses and disclosures of protected health information for which individual authorization is required include, but are not limited to, the following:

(A) Use for marketing of health and non-health items and services by the covered entity;

(B) Disclosure by sale, rental, or barter;

(C) Use and disclosure to non-health related divisions of the covered entity, e.g., for use in marketing life or casualty insurance or banking services;

(D) Disclosure, prior to an individual's enrollment in a health plan, to the health plan or health care provider for making eligibility or enrollment determinations relating to the individual or for underwriting or risk rating determinations;

(E) Disclosure to an employer for use in employment determinations; and

(F) Use or disclosure for fundraising purposes.

(iii) A covered entity may not condition the provision to an individual of treatment or payment on the provision by the individual of a requested authorization for use or disclosure, except where the authorization is requested in connection with a clinical trial.

(iv) Except where required by law, a covered entity may not require an individual to sign an authorization for use or disclosure of protected health information for treatment, payment, or health care operations purposes.

(3) *Authorization required: Special cases.* (i) Except as otherwise required by this subpart or permitted under § 164.510, a covered entity must obtain the authorization of the individual for the following uses and disclosures of protected health information about the individual:

(A) Use by a person other than the creator, or disclosure, of psychotherapy notes; and

(B) Use or disclosure of research information unrelated to treatment.

(ii) The requirements of paragraphs (b) through (e) of this section apply to such authorizations, as appropriate.

(iii) A covered entity may not condition treatment, enrollment in a health plan, or payment on a requirement that the individual authorize use or disclosure of psychotherapy notes relating to the individual.

(iv) For purposes of this section:

(A) *Psychotherapy notes* means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session. For purposes of this definition, "psychotherapy notes" excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date.

(B) *Research information unrelated to treatment* means health information that is received or created by a covered entity in the course of conducting research, for which there is insufficient scientific and medical evidence regarding the validity or utility of the information such that it should not be used for the purpose of providing health care, and with respect to which the covered entity has not requested payment from a third party payor.

(b) *General implementation specifications for authorizations.*—(1) *General requirements.* A copy of the model form which appears in Appendix A hereto, or a document that contains the elements listed in paragraphs (c) or (d) of this section, as applicable, must be accepted by the covered entity.

(2) *Defective authorizations.* There is no "authorization" within the meaning of this section, if the submitted form has any of the following defects:

(i) The expiration date has passed;

(ii) The form has not been filled out completely;

(iii) The authorization is known by the covered entity to have been revoked;

(iv) The form lacks an element required by paragraph (c) or (d) of this section, as applicable;

(v) The information on the form is known by the covered entity to be false.

(3) *Compound authorizations.* Except where authorization is requested in connection with a clinical trial, an authorization for use or disclosure of protected health information for purposes other than treatment or payment may not be in the same document as an authorization for or consent to treatment or payment.

(c) *Implementation specifications for authorizations requested by an individual.*—(1) *Required elements.* Before a covered entity may use or disclose protected health information of an individual pursuant to a request from the individual, it must obtain a completed authorization for use or disclosure executed by the individual that contains at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;

(ii) The name of the covered entity, or class of entities or persons, authorized to make the requested use or disclosure;

(iii) The name or other specific identification of the person(s) or entity(ies), which may include the covered entity itself, to whom the covered entity may make the requested use or disclosure;

(iv) An expiration date;

(v) Signature and date;

(vi) If the authorization is executed by a legal representative or other person authorized to act for the individual, a description of his or her authority to act or relationship to the individual;

(vii) A statement in which the individual acknowledges that he or she has the right to revoke the authorization, except to the extent that information has already been released under the authorization; and

(viii) A statement in which the individual acknowledges that information used or disclosed to any entity other than a health plan or health care provider may no longer be protected by the federal privacy law.

(2) *Plain language requirement.* The model form at appendix A to this subpart may be used. If the model form at appendix A to this subpart is not used, the authorization form must be written in plain language.

(d) *Implementation specifications for authorizations for uses and disclosures requested by covered entities.*—(1) *Required elements.* Before a covered entity may use or disclose protected health information of an individual pursuant to a request that it has made, it must obtain a completed authorization for use or disclosure executed by the individual that meets the requirements of paragraph (c) of this section and contains the following additional elements:

(i) Except where the authorization is requested for a clinical trial, a statement that it will not condition treatment or payment on the individual's providing authorization for the requested use or disclosure;

(ii) A description of the purpose(s) of the requested use or disclosure;

(iii) A statement that the individual may:

(A) Inspect or copy the protected health information to be used or disclosed as provided in § 164.514; and

(B) Refuse to sign the authorization; and

(iv) Where use or disclosure of the requested information will result in financial gain to the entity, a statement that such gain will result.

(2) *Required procedures.* In requesting authorization from an individual under this paragraph, a covered entity must:

(i) Have procedures designed to enable it to request only the minimum amount of protected health information necessary to accomplish the purpose for which the request is made; and

(ii) Provide the individual with a copy of the executed authorization.

(e) *Revocation of authorizations.* An individual may revoke an authorization to use or disclose his or her protected health information at any time, except to the extent that the covered entity has taken action in reliance thereon.

§ 164.510 Uses and disclosures for which individual authorization is not required.

A covered entity may use or disclose protected health information, for purposes other than treatment, payment, or health care operations, without the authorization of the individual, in the situations covered by this section and subject to the applicable requirements provided for by this section.

(a) *General requirements.* In using or disclosing protected health information under this section:

(1) *Verification.* A covered entity must comply with any applicable verification requirements under § 164.518(c).

(2) *Health care clearinghouses.* A health care clearinghouse that uses or discloses protected health information it maintains as a business partner of a covered entity may not make uses or disclosures otherwise permitted under this section that are not permitted by the terms of its contract with the covered entity under § 164.506(e).

(b) *Disclosures and uses for public health activities.*—(1) *Permitted disclosures.* A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

(ii) A public health authority or other appropriate authority authorized by law to receive reports of child abuse or neglect;

(iii) A person or entity other than a governmental authority that can demonstrate or demonstrates that it is acting to comply with requirements or direction of a public health authority; or

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition and is authorized by law to be notified as necessary in the conduct of a public health intervention or investigation.

(2) *Permitted use.* Where the covered entity also is a public health authority, the covered entity is permitted to use protected health information in all cases in which it is permitted to disclose such information for public health activities under paragraph (b)(1) of this section.

(c) *Disclosures and uses for health oversight activities.*—(1) *Permitted disclosures.* A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audit, investigation, inspection, civil, criminal, or administrative proceeding or action, or other activity necessary for appropriate oversight of:

(i) The health care system;

(ii) Government benefit programs for which health information is relevant to beneficiary eligibility; or

(iii) Government regulatory programs for which health information is necessary for determining compliance with program standards.

(2) *Permitted use.* Where a covered entity is itself a health oversight agency, the covered entity may use protected health information for health oversight activities described by paragraph (c)(1) of this section.

(d) *Disclosures and uses for judicial and administrative proceedings.*—(1) *Permitted disclosures.* A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal; or

(ii) Where the individual is a party to the proceeding and his or her medical condition or history is at issue and the disclosure is pursuant to lawful process or otherwise authorized by law.

(2) *Permitted use.* Where the covered entity is itself a government agency, the covered entity may use protected health information in all cases in which it is permitted to disclose such information in the course of any judicial or administrative proceeding under paragraph (d)(1) of this section.

(3) *Additional restriction.* (i) Where the request for disclosure of protected health information is accompanied by a court order, the covered entity may disclose only that protected health information which the court order authorizes to be disclosed.

(ii) Where the request for disclosure of protected health information is not accompanied by a court order, the covered entity may not disclose the information requested unless a request authorized by law has been made by the agency requesting the information or by legal counsel representing a party to litigation, with a written statement certifying that the protected health information requested concerns a litigant to the proceeding and that the health condition of such litigant is at issue at such proceeding.

(e) *Disclosures to coroners and medical examiners.* A covered entity may disclose protected health information to a coroner or medical examiner, consistent with applicable law, for the purposes of identifying a deceased person or determining a cause of death.

(f) *Disclosures for law enforcement purposes.* A covered entity may disclose protected health information to a law enforcement official if:

(1) *Pursuant to process.* (i) The law enforcement official is conducting or supervising a law enforcement inquiry or proceeding authorized by law and the disclosure is:

(A) Pursuant to a warrant, subpoena, or order issued by a judicial officer that documents a finding by the judicial officer;

(B) Pursuant to a grand jury subpoena; or

(C) Pursuant to an administrative request, including an administrative subpoena or summons, a civil investigative demand, or similar process authorized under law, provided that:

(*1*) The information sought is relevant and material to a legitimate law enforcement inquiry;

(*2*) The request is as specific and narrowly drawn as is reasonably practicable; and

(*3*) De-identified information could not reasonably be used.

(ii) For the purposes of this paragraph, "law enforcement inquiry or proceeding" means:

(A) An investigation or official proceeding inquiring into a violation of, or failure to comply with, law; or

(B) A criminal, civil, or administrative proceeding arising from a violation of, or failure to comply with, law.

(2) *Limited information for identifying purposes.* The disclosure is for the purpose of identifying a suspect, fugitive, material witness, or missing person, *provided* that, the covered entity may disclose only the following information:

(i) Name;

(ii) Address;

(iii) Social security number;

(iv) Date of birth;

(v) Place of birth;

(vi) Type of injury or other distinguishing characteristic; and

(vii) Date and time of treatment.

(3) *Information about a victim of crime or abuse.* The disclosure is of the protected health information of an individual who is or is suspected to be a victim of a crime, abuse, or other harm, if the law enforcement official represents that:

(i) Such information is needed to determine whether a violation of law by a person other than the victim has occurred; and

(ii) Immediate law enforcement activity that depends upon obtaining such information may be necessary.

(4) *Intelligence and national security activities.* The disclosure is:

(i) For the conduct of lawful intelligence activities conducted pursuant to the National Security Act (50 U.S.C. 401, *et seq.*);

(ii) Made in connection with providing protective services to the President or other persons pursuant to 18 U.S.C. 3056; or

(iii) Made pursuant to 22 U.S.C. 2709(a)(3).

(5) *Health care fraud.* The covered entity believes in good faith that the information disclosed constitutes evidence of criminal conduct:

(i) That arises out of and is directly related to:

(A) The receipt of health care or payment for health care, including a fraudulent claim for health care;

(B) Qualification for or receipt of benefits, payments, or services based on a fraudulent statement or material misrepresentation of the health of the individual;

(ii) That occurred on the premises of the covered entity; or

(iii) Was witnessed by a member of the covered entity's workforce.

(5) *Urgent circumstances.* The disclosure is of the protected health information of an individual who is or is suspected to be a victim of a crime, abuse, or other harm, if the law enforcement official represents that:

(i) Such information is needed to determine whether a violation of law by a person other than the victim has occurred; and

(ii) Immediate law enforcement activity that depends upon obtaining such information may be necessary.

(g) *Disclosures and uses for governmental health data systems.*—(1) *Permitted disclosures.* A covered entity may disclose protected health information to a government agency, or private entity acting on behalf of a government agency, for inclusion in a governmental health data system that collects health data for analysis in support of policy, planning, regulatory, or management functions authorized by law.

(2) *Permitted uses.* Where a covered entity is itself a government agency that collects health data for analysis in support of policy, planning, regulatory, or management functions, the covered entity may use protected health information in all cases in which it is permitted to disclose such information for government health data systems under paragraph (g)(1) of this section.

(h) *Disclosures of directory information.* (1) *Individuals with capacity.* For individuals with the capacity to make their own health care decisions, a covered entity that is a health care provider may disclose protected health information for directory purposes, provided that, the individual has agreed to such disclosure.

(2) *Incapacitated individuals.* For individuals who are incapacitated, a covered entity that is a health care provider may, at its discretion and consistent with good medical practice and any prior expressions of preference of which the covered entity is aware, disclose protected health information for directory purposes.

(3) *Information to be disclosed.* The information that may be disclosed for directory purposes pursuant to paragraphs (h)(1) and (2) of this section, is limited to:

(i) Name of the individual;

(ii) Location of the individual in the health care provider's facility; and

(iii) Description of the individual's condition in general terms that do not communicate specific medical information about the individual.

(i) *Disclosures for banking and payment processes.* A covered entity may disclose, in connection with routine banking activities or payment by debit, credit, or other payment card, or other payment means, the minimum amount of protected health information necessary to complete a banking or payment activity to:

(1) *Financial institutions.* An entity engaged in the activities of a financial institution (as defined in section 1101 of the Right to Financial Privacy Act of 1978); or

(2) *Entities acting on behalf of financial institutions.* An entity engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments, for an entity described in paragraph (i)(1) of this section.

(j) *Uses and disclosures for research purposes.* A covered entity may use or disclose protected health information for research, regardless of the source of funding of the research, provided that, the covered entity has obtained written documentation of the following:

(1) *Waiver of authorization.* A waiver, in whole or in part, of authorization for use or disclosure of protected health information that has been approved by either:

(i) An Institutional Review Board, established in accordance with 7 CFR 1c.107, 10 CFR 745.107, 14 CFR 1230.107, 15 CFR 27.107, 16 CFR 1028.107, 21 CFR 56.107, 22 CFR 225.107, 28 CFR 46.107.32 CFR 219.107, 34 CFR 97.107, 38 CFR 16.107, 40 CFR 26.107.45 CFR 46.107, 45 CFR 690.107, or 49 CFR 11.107; or

(ii) A privacy board that:

(A) Has members with varying backgrounds and appropriate professional competency as necessary to review the research protocol;

(B) Includes at least one member who is not affiliated with the entity conducting the research or related to a person who is affiliated with such entity; and

(C) Does not have any member participating in a review of any project in which the member has a conflict of interest.

(2) *Date of approval.* The date of approval of the waiver, in whole or in part, of authorization by an Institutional Review Board or privacy board.

(3) *Criteria.* The Institutional Review Board or privacy board has determined that the waiver, in whole or in part, of authorization satisfies the following criteria:

(i) The use or disclosure of protected health information involves no more than minimal risk to the subjects;

(ii) The waiver will not adversely affect the rights and welfare of the subjects;

(iii) The research could not practicably be conducted without the waiver;

(iv) Whenever appropriate, the subjects will be provided with additional pertinent information after participation;

(v) The research could not practicably be conducted without access to and use of the protected health information;

(vi) The research is of sufficient importance so as to outweigh the intrusion of the privacy of the individual whose information is subject to the disclosure;

(vii) There is an adequate plan to protect the identifiers from improper use and disclosure; and

(viii) There is an adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers.

(4) *Required signature.* The written documentation must be signed by the chair of, as applicable, the Institutional Review Board or the privacy board.

(k) *Uses and disclosures in emergency circumstances.*—(1) *Permitted disclosures.* A covered entity may, consistent with applicable law and standards of ethical conduct and based on a reasonable belief that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public, use or disclose protected health information to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(2) *Presumption of reasonable belief.* A covered entity that makes a disclosure pursuant to paragraph (k)(1) of this section is presumed to have acted under a reasonable belief, if the disclosure is made in good faith based upon a credible representation by a person with apparent knowledge or authority (such as a doctor or law enforcement or other government official).

(l) *Disclosures to next-of-kin.*—(1) *Permitted disclosures.* A covered entity may disclose protected health information to a person who is a next-of-kin, other family member, or close personal friend of an individual who possesses the capacity to make his or her own health care decisions, if:

(i) The individual has verbally agreed to the disclosure; or

(ii) In circumstances where such agreement cannot practicably or reasonably be obtained, only the protected health information that is directly relevant to the person's involvement in the individual's health care is disclosed, consistent with good health professional practices and ethics.

(2) *Next-of-kin defined.* For purposes of this paragraph, "next-of-kin" is defined as defined under applicable law.

(m) *Uses and disclosures for specialized classes.*—(1) *Military purposes.* A covered entity that is a health care provider or health plan providing health care to individuals who are Armed Forces personnel may use and disclose protected health information for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, where the appropriate military authority has published by notice in the **Federal Register** the following information:

(i) Appropriate military command authorities;

(ii) The circumstances for which use or disclosure without individual authorization would be required; and

(iii) Activities for which such use or disclosure would occur in order to assure proper execution of the military mission.

(2) *Department of Veterans Affairs.* The Department of Veterans Affairs may use and disclose protected health information among components of the Department that determine eligibility for or entitlement to, or that provide, benefits under laws administered by the Secretary of Veterans Affairs.

(3) *Intelligence community.* A covered entity may disclose protected health information of an individual who is an employee of the intelligence community, as defined in section 4 of the National Security Act, 50 U.S.C. 401a, and his or her dependents, if such dependents are being considered for posting abroad, to intelligence community agencies, where authorized by law.

(4) *Department of State.* The Department of State may use protected health information about the following individuals for the following purposes:

(i) As to applicants to the Foreign Service, for medical clearance determinations about physical fitness to serve in the Foreign Service on a worldwide basis, including about medical and mental conditions limiting assignability abroad; determinations of conformance to occupational physical standards, where applicable; and determinations of suitability.

(ii) As to members of the Foreign Service and other United States Government employees assigned to serve abroad under Chief of Mission authority, for medical clearance determinations for assignment to posts abroad, including medical and mental conditions limiting such assignment; determinations of conformance to occupational physical standards, where applicable; determinations about continued fitness for duty, suitability, and continuation of service at post (including decisions on curtailment); separation medical examinations; and determinations of eligibility of members of the Foreign Service for disability retirement (whether on application of the employee or the Secretary of State).

(iii) As to eligible family members of Foreign Service or other United States Government employees, for medical clearance determinations as described in paragraph (m)(4)(ii) of this section to permit eligible family members to accompany employees to posts abroad on Government orders; determinations regarding family members remaining at post; and separation medical examinations.

(n) *Uses and disclosures otherwise required by law.* A covered entity may use or disclose protected health information where such use or disclosure is required by law and the use or disclosure meets all relevant requirements of such law. This paragraph does not apply to uses or disclosures that are covered by paragraphs (b) through (m) of this section.

§ 164.512 Notice to individuals of information practices.

(a) *Standard.* An individual has a right to adequate notice of the policies and procedures of a covered entity that is a health plan or a health care provider with respect to protected health information.

(b) *Standard for notice procedures.* A covered entity that is a health plan or health care provider must have procedures that provide adequate notice to individuals of their rights and the procedures for exercising their rights under this subpart with respect to protected health information about them.

(c) *General implementation specification.* A covered entity that has and follows procedures that meet the requirements of this section will be presumed to have provided adequate notice under this section.

(d) *Implementation specifications: content of notice.*—(1) *Required elements.* Notices required to be provided under this section must include in plain language a statement of each of the following elements:

(i) *Uses and disclosures.* The uses and disclosures, and the entity's policies and procedures with respect to such uses and disclosures, must be described in sufficient detail to put the individual on notice of the uses and disclosures expected to be made of his or her protected health information. Such statement must:

(A) Describe the uses and disclosures that will be made without individual authorization; and

(B) Distinguish between those uses and disclosures the entity makes that are required by law and those that are permitted but not required by law.

(ii) *Required statements.* State that:

(A) Other uses and disclosures will be made only with the individual's authorization and that such authorization may be revoked;

(B) An individual may request that certain uses and disclosures of his or her protected health information be restricted, and the covered entity is not required to agree to such a request;

(C) An individual has the right to request, and a description of the procedures for exercising, the following with respect to his or her protected health information:

(*1*) Inspection and copying;

(*2*) Amendment or correction; and

(*3*) An accounting of the disclosures of such information by the covered entity;

(D) The covered entity is required by law to protect the privacy of its individually identifiable health information, provide a notice of its policies and procedures with respect to such information, and abide by the terms of the notice currently in effect;

(E) The entity may change its policies and procedures relating to protected health information at any time, with a description of how individuals will be informed of material changes; and

(F) Individuals may complain to the covered entity and to the Secretary if they believe that their privacy rights have been violated.

(iii) *Contact.* The name and telephone number of a contact person or office required by § 164.518(a)(2).

(iv) *Date.* The date the version of the notice was produced.

(2) *Revisions.* A covered health plan or health care provider may change its policies or procedures required by this subpart at any time. When a covered health plan or health care provider materially revises its policies and procedures, it must update its notice as provided for by § 164.520(g).

(e) *Implementation specifications: Provision of notice.* A covered entity must make the notice required by this section available:

(1) *General requirement.* On request; and

(2) *Specific requirements.* As follows:

(i) *Health plans.* Health plans must provide a copy of the notice to an individual covered by the plan:

(A) As of the date on which the health plan is required to be in compliance with this subpart;

(B) After the date described in paragraph (e)(2)(i)(A) of this section, at enrollment;

(C) After enrollment, within 60 days of a material revision to the content of the notice; and

(D) No less frequently than once every three years.

(ii) *Health care providers.* A health care provider must:

(A) During the one year period following the date by which the provider is required to come into compliance with this subpart, provide a copy to individuals currently served by the provider at the first service delivery to such individuals during such period, provided that, where service is not provided through a face-to-face contact, the provider must provide the notice in an appropriate manner within a reasonable period of time following first service delivery;

(B) After the one year period provided for by paragraph (e)(2)(ii)(A) of this section, provide a copy to individuals served by the provider at the first service delivery to such individuals, provided that, where service is not provided through a face-to-face contact, the provider must provide the notice in an appropriate manner within a reasonable period of time following first service delivery; and

(C) Post a copy of the notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the provider to be able to read the notice. Any revision to the notice must be posted promptly.

§ 164.514 Access of individuals to protected health information

(a) *Standard: Right of access.* An individual has a right of access to, which includes a right to inspect and obtain a copy of, his or her protected health information in designated record sets of a covered entity that is a health plan or a health care provider, including such information in a business partner's designated record set that is not a duplicate of the information held by the provider or plan, for so long as the information is maintained.

(b) *Standard: denial of access to protected health information.*—(1) *Grounds.* Except where the protected health information to which access is requested is subject to 5 U.S.C. 552a, a covered entity may deny a request for access under paragraph (a) of this section where:

(i) A licensed health care professional has determined that, in the exercise of reasonable professional judgment, the inspection and copying requested is reasonably likely to endanger the life or physical safety of the individual or another person;

(ii) The information is about another person (other than a health care provider) and a licensed health care professional has determined that the inspection and copying requested is reasonably likely to cause substantial harm to such other person;

(iii) The information was obtained under a promise of confidentiality from someone other than a health care provider and such access would be likely to reveal the source of the information;

(iv) The information was obtained by a covered entity that is a health care provider in the course of a clinical trial, the individual has agreed to the denial of access when consenting to participate in the trial (if the individual's consent to participate was obtained), and the clinical trial is in progress; or

(v) The information was compiled in reasonable anticipation of, or for use in, a legal proceeding.

(2) *Other information available.* Where a denial of protected health information is made pursuant to paragraph (b)(1) of this section, the covered entity must make any other protected health information requested available to the individual to the extent possible consistent with the denial.

(c) *Standard: procedures to protect rights of access.* A covered entity that is a health plan or a health care provider must have procedures that enable individuals to exercise their rights under paragraph (a) of this section.

(d) *Implementation specifications: Access to protected health information.* The procedures required by paragraph (c) of this section must:

(1) *Means of request.* Provide a means by which an individual can request inspection or a copy of protected health information about him or her.

(2) *Time limit.* Provide for taking action on such requests as soon as possible but not later than 30 days following receipt of the request.

(3) *Request accepted.* Where the request is accepted, provide:

(i) For notification of the individual of the decision and of any steps necessary to fulfill the request;

(ii) The information requested in the form or format requested, if it is readily producible in such form or format;

(iii) For facilitating the process of inspection and copying; and

(iv) For a reasonable, cost-based fee for copying health information provided pursuant to this paragraph, if deemed desirable by the entity.

(4) *Request denied.* Where the request is denied in whole or in part, provide the individual with a written statement in plain language of:

(i) The basis for the denial; and

(ii) A description of how the individual may complain to the covered entity pursuant to the complaint procedures established in § 164.518(d)(2) or to the Secretary pursuant to the procedures established in § 164.522(b). The description must include:

(A) The name and telephone number of the contact person or office required by § 164.518(a)(2) of this subpart; and

(B) Information relevant to filing a complaint with the Secretary under § 164.522(b).

§ 164.515 Accounting for disclosures of protected health information.

(a) *Standard: Right to an accounting of disclosures of protected health information.* An individual has a right to receive an accounting of all disclosures of protected health information made by a covered entity as long as such information is maintained by the entity, except for disclosures:

(1) For treatment, payment and health care operations; and

(2) To health oversight or law enforcement agencies, if the health oversight or law enforcement agency has provided a written request stating that the exclusion is necessary because disclosure would be reasonably likely to impede the agency's activities and specifying the time for which such exclusion is required.

(b) *Standard: Procedures for accounting.* A covered entity must have procedures to give individuals an accurate accounting of disclosures for which an accounting is required by paragraph (a) of this section.

(c) *Implementation specifications: Accounting procedures.* The procedures required by paragraph (b) of this section must:

(1) Provide for an accounting of the following:

(i) The date of each disclosure;

(ii) The name and address of the organization or person who received the protected health information;

(iii) A brief description of the information disclosed;

(iv) For disclosures other than those made at the request of the individual, the purpose for which the information was disclosed; and (v) Provision of copies of all requests for disclosure.

(2) Provide the accounting to the individual as soon as possible, but no later than 30 days of receipt of the request therefor.

(3) Provide for a means of accounting for as long as the entity maintains the protected health information.

(4) Provide for a means of requiring business partners to provide such an accounting upon request of the covered entity.

§ 164.516 Amendment and correction.

(a) *Standard: right to request amendment or correction.*—(1) *Right to request.* An individual has the right to request a covered entity that is a health plan or health care provider to amend or correct protected health information about him or her in designated record sets of the covered entity for as long as the covered entity maintains the information.

(2) *Grounds for denial of request.* A covered entity may deny a request for amendment or correction of the individual's protected health information, if it determines that the information that is the subject of the request:

(i) Was not created by the covered entity;

(ii) Would not be available for inspection and copying under § 164.514 or

(iii) Is accurate and complete.

(b) *Standard: Amendment and correction procedures.* A covered entity that is a health plan or health care provider must have procedures to enable individuals to request amendment or correction, to determine whether the requests should be granted or denied, and to disseminate amendments or corrections to its business partners and others to whom erroneous information has been disclosed.

(c) *Implementation specifications: Procedures.* The procedures required by paragraph (b) of this section must provide that the covered entity will:

(1) *Means of request.* Provide a means by which an individual can request amendment or correction of his or her protected health information.

(2) *Time limit.* Take action on such request within 60 days of receipt of the request;

(3) *Request accepted.* Where the request is accepted in whole or in part:

(i) As otherwise required by this part, make the appropriate amendments or corrections;

(ii) As otherwise required by this part, identify the challenged entries as amended or corrected and indicate their location;

(iii) Make reasonable efforts to notify:

(A) Persons, organizations, or other entities the individual identifies as needing to be notified; and (B) Persons, organizations, or other entities, including business partners, who the covered entity knows have received the erroneous or incomplete information and who may have relied, or could foreseeably rely, on such information to the detriment of the individual; and (iv) Notify the individual of the decision to correct or amend the information.

(4) *Request denied.* Where the request is denied in whole or in part:

(i) Provide the individual with a written statement in plain language of:

(A) The basis for the denial;

(B) A description of how the individual may file a written statement of disagreement with the denial; and

(C) A description of how the individual may complain to the covered entity pursuant to the complaint procedures established in § 164.518(d) or to the Secretary pursuant to the procedures established in § 164.522(b). The description must include:

(*1*) The name and telephone number of the contact person or office required by § 164.518(a)(2); and

(*2*) Information relevant to filing a complaint with the Secretary under § 164.522(b).

(ii) The procedures of the covered entity must:

(A) Permit the individual to file a statement of the individual's disagreement with the denial and the basis of such disagreement.

(B) Provide for inclusion of the covered entity's statement of denial and the individual's statement of disagreement with any subsequent disclosure of the information to which the disagreement relates, provided, however, that the covered entity may establish a limit to the length of the statement of disagreement, and may summarize the statement of disagreement if necessary.

(C) Permit the covered entity to provide a rebuttal to the statement of disagreement in subsequent disclosures under paragraph (c)(4)(ii)(B) of this section.

(d) *Standard: Effectuating a notice of amendment or correction.* Any covered entity that receives a notice of amendment or correction must have procedures in place to make the amendment or correction in any of its designated record sets and to notify its business partners, as appropriate, of necessary amendments or corrections of protected health information.

(e) *Implementation specification: effectuating a notice of amendment or correction.* The procedures required by paragraph (d) of this section must specify the process for correction or amendment of information in all appropriate designated record sets maintained by the covered entity and its business partners.

§ 164.518 Administrative requirements.

Except as otherwise provided, a covered entity must meet the requirements of this section.

(a) *Designated privacy official: standard.*—(1) *Responsibilities of designated privacy official.* A covered entity must designate a privacy official who is responsible for the development and implementation of the privacy policies and procedures of the entity.

(2) *Contact person or office.* A covered entity must designate a contact person or office who is responsible for receiving complaints under this section and who is able to provide further information about matters covered by the notice required by § 164.512. If a covered entity designates a contact person, it may designate the privacy official as the contact person.

(b) *Training.*—(1) *Standard.* All members of the covered entity's workforce who, by virtue of their positions, are likely to obtain access to protected health information must receive training on the entity's policies and procedures required by this subpart that are relevant to carrying out their function within the entity.

(2) *Implementation specification.* A covered entity must train all members of its workforce who, by virtue of their positions, are likely to obtain access to protected health information. Such training must meet the following requirements:

(i) The training must occur:

(A) For members of the covered entity's workforce as of the date on which this subpart becomes applicable to such entity, by such date; and

(B) For persons joining the covered entity's workforce after the date in paragraph (b)(2)(i)(A) of this section, within a reasonable period after the person joins the workforce.

(ii) The covered entity must require members of its workforce trained as required by this section to sign, upon completing training, a certification. The certification must state:

(A) The date of training; and

(B) That the person completing the training will honor all of the entity's policies and procedures required by this subpart.

(iii) The covered entity must require members of its workforce trained as required by this section to sign, at least once every three years, a statement certifying that the person will honor all of the entity's policies and procedures required by this subpart.

(iv) The covered entity must provide all members of its workforce with access to protected health information within the entity with further training, as relevant to their function within the entity, whenever the entity materially changes its privacy policies or procedures.

(c) *Safeguards.*—(1) *Standard.* A covered entity must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information.

(2) *Implementation specification: Verification procedures.* A covered entity must have administrative, technical, and physical procedures in place to protect the privacy of protected health information. Such procedures must include adequate procedures for verification of the identity and/or authority, as required by this subpart, of persons requesting such information, where such identity or authority is not known to the entity, as follows:

(i) The covered entity must use procedures that are reasonably likely to establish that the individual or person making the request has the appropriate identity for the use or disclosure requested, except for uses and disclosures that are:

(A) Permitted by this subpart and made on a routine basis to persons or other entities with which the covered entity interacts in the normal course of business or otherwise known to the covered entity; or

(B) Covered by paragraphs (c)(2)(ii), (iii), or (iv) of this section.

(ii) When the request for information is made by a government agency under § 164.510(b), § 164.510(c), § 164.510(e), § 164.510(f), § 164.510(g), § 164.510(m), § 164.510(n), or § 164.522, and the identity and/or authority are not known to the covered entity, the covered entity may not disclose such information without reasonable evidence of identity and/or authority to obtain the information.

(A) For purposes of this paragraph, "reasonable evidence of identity" means:

(*1*) A written request on the agency's letterhead;

(*2*) Presentation of an agency identification badge or official credentials; or

(*3*) Similar proof of government status.

(B) For purposes of this paragraph, *reasonable evidence of authority* means:

(*1*) A written statement of the legal authority under which the information is requested; a request for disclosure made by official legal process issued by a grand jury or a judicial or administrative body is presumed to constitute reasonable legal authority; or

(*2*) Where the request is made orally, an oral statement of such authority.

(iii) When the request for information is made by a person or entity acting on behalf of a government agency under § 164.510(b), § 164.510(c), § 164.510(g), or § 164.510(n), and the identity and/or authority are not known to the covered entity, the covered entity may not disclose such information without reasonable evidence of identity and/or authority to obtain the information.

(A) For the purposes of this paragraph, *reasonable evidence of identity* means:

(*1*) A written statement from the government agency, on the agency's letterhead, that the person or entity is acting under the agency's authority; or

(*2*) Other evidence or documentation, such as a contract for services, memorandum of understanding, or purchase order, that establishes that the person or entity is acting on behalf of or under the agency's authority.

(B) For the purposes of this paragraph, "reasonable evidence of authority" means a statement that complies with paragraph (c)(ii)(B) of this section.

(iv) For uses and disclosures under § 164.510(d), § 164.510(h), or § 164.510(j), compliance with the applicable requirements of those sections constitutes adequate verification under this section.

(v)(A) A covered entity may reasonably rely on evidence of identity and legal authority that meets the requirements of this paragraph.

(B) Where presentation of particular documentation or statements are required by this subpart as a condition of disclosure, a covered entity may reasonably rely on documentation or statements that on their face meet the applicable requirements.

(3) *Implementation specification: Other safeguards.* A covered entity must have safeguards to ensure that information is not used in violation of the requirements of this subpart or by members of its workforce or components of the entity or employees and other persons associated with, or components of, its business partners who are not authorized to access the information.

(4) *Implementation specification: Disclosures by whistleblowers.* A covered entity is not considered to have violated the requirements of this subpart where a member of its workforce or an employee or other person associated with a business partner discloses protected health information that such member or other person believes is evidence of a violation of law to:

(i) The law enforcement official or oversight agency authorized to enforce such law; or

(ii) An attorney, for the purpose of determining whether a violation of law has occurred or assessing what remedies or actions at law may be available to the employee.

(d) *Complaints to the covered entity*—(1) *Standard.* A covered entity that is a health plan or health care provider must provide a process whereby individuals may make complaints concerning the entity's compliance with the requirements established by this subpart.

(2) *Implementation specifications.* A covered entity that is a health plan or health care provider must develop and implement procedures under which an individual may file a complaint alleging that the covered entity failed to comply with one or more requirements of this subpart. Such procedures must provide for:

(i) The identification of the contact person or office required by paragraph (a)(2) of this section; and

(ii) Maintenance by the covered entity of a record of all complaints and their disposition, if any.

(e) *Sanctions: Standard.* A covered entity must develop and apply when appropriate sanctions against members of its workforce who fail to comply with the policies and procedures of the covered entity or the requirements of this subpart in connection with protected health information held by the covered entity or its business partners.

(f) *Duty to mitigate: standard.* A covered entity must have procedures for mitigating, to the extent practicable, any deleterious effect of a use or disclosure of protected health information in violation of this subpart.

§ 164.520 Documentation of policies and procedures.

(a) *Standard.* A covered entity must adequately document its compliance with the applicable requirements of this subpart.

(b) *Implementation specification: General.* A covered entity must document its policies and procedures for complying with the applicable requirements of this subpart. Such documentation must include, but is not limited to, documentation that meets the requirements of paragraphs (c) through (g) of this section.

(c) *Implementation specification: Uses and disclosures.* With respect to uses by the covered entity or its business partners of protected health information, a covered entity must document its policies and procedures regarding:

(1) Uses and disclosures of such information, including:

(i) Uses and disclosures with authorization, including for revocation of authorizations; and

(ii) Uses and disclosures without authorization, including:

(A) For treatment, payment, and health care operations;

(B) For disclosures to business partners, including monitoring and mitigation; and

(C) For uses and disclosures pursuant to § 164.510.

(2) For implementation of the minimum necessary requirement of § 164.506(b).

(3) For implementation of the right to request a restriction under § 164.506(c), including:

(A) Who, if anyone, in the covered entity is authorized to agree to such a request; and

(B) How restrictions agreed to are implemented.

(4) For creation of de-identified information in accordance with § 164.506(d).

(d) *Implementation specification: Individual rights.* A covered entity must document its policies and procedures under §§ 164.512, 164.514, 164.515, and 164.516, as applicable, including:

(1) How notices will be disseminated in accordance with § 164.512;

(2) Designated record sets to which access will be granted under § 164.514;

(3) Grounds for denying requests for access under § 164.514;

(4) Copying fees, if any;

(5) Procedures for providing accounting pursuant to § 164.515;

(6) Procedures for accepting or denying requests for amendment or correction under § 164.516;

(7) How other entities will be notified of amendments or corrections accepted under § 164.516; and

(8) Identification of persons responsible for making decisions or otherwise taking action, including serving as a contact person, under §§ 164.512, 164.514, 164.515, and 164.516.

(e) *Implementation specification: Administrative requirements.* A covered entity must provide documentation of its procedures for complying with § 164.518, including:

(1) Identification of the persons or offices required by § 164.518(a) and their duties;

(2) Training provided as required by § 164.518(b);

(3) How access to protected health information is regulated by the covered entity and its business partners, including safeguards required by § 164.518(c);

(4) For a covered entity that is a health plan or health care provider, for receiving complaints under § 164.518(d);

(5) Sanctions, and the application thereof, required by § 164.518(e); and

(6) Procedures for mitigation under § 164.518(f).

(f) *Implementation specification: Specific documentation required.* A covered entity must retain documentation of the following for six years from when the documentation is created, unless a longer period applies under this subpart:

(1) Restrictions agreed to pursuant to § 164.506(c);

(2) Contracts pursuant to § 164.506(e);

(3) Authorization forms used pursuant to § 164.508;

(4) Samples of all notices issued pursuant to § 164.512;

(5) Written statements required by § 164.514;

(6) The accounting required by § 164.515;

(7) Documents relating to denials of requests for amendment and correction pursuant to § 164.516;

(8) Certifications under § 164.518(b); and

(9) Complaints received and any responses thereto pursuant to § 164.518(d).

(g) *Implementation specification: Change in policy or procedure.* (1) Except as provided in paragraph (g)(2) of this section, a covered entity may not implement a change to a policy or procedure required or permitted under this subpart until it has made the appropriate changes to the documentation required by this section and the notice required by § 164.512.

(2) Where the covered entity determines that a compelling reason exists to make a use or disclosure or take another action permitted under this subpart that its notice and policies and procedures do not permit, it may make the use or disclosure or take the other action if:

(1) It documents the reasons supporting the use, disclosure, or other action; and

(2) Within 30 days of the use, disclosure, or other action, changes its notice, policies and procedures to permit such use, disclosure, or other action.

§ 164.522 Compliance and enforcement.

(a) *Principles for achieving compliance.*—(1) *Cooperation.* The Secretary will, to the extent practicable, seek the cooperation of covered entities in obtaining compliance with the requirements established under this subpart.

(2) *Assistance.* The Secretary may provide technical assistance to covered entities to help them comply voluntarily with this subpart.

(b) *Individual complaints to the Secretary.* An individual who believes that a covered entity is not complying with the requirements of this subpart may file a complaint with the Secretary, provided that, where the complaint relates to the alleged failure of a covered entity to amend or correct protected health information pursuant to § 164.516, the Secretary may determine whether the covered entity has followed procedures that comply with § 164.516, but will not determine whether the information involved is accurate, complete, or whether errors or omissions might have an adverse effect on the individual.

(1) *Requirements for filing complaints.* Complaints under this section must meet the following requirements:

(i) A complaint must be filed in writing, either on paper or electronically.

(ii) A complaint should name the entity that is the subject of the complaint and describe in detail the acts or omissions believed to be in violation of the requirements of this subpart.

(iii) The Secretary may prescribe additional requirements for the filing of complaints, as well as the place and manner of filing, by notice in the **Federal Register**.

(2) *Investigation.* The Secretary may investigate complaints filed under this section. Such investigation may include a review of the pertinent policies, practices, and procedures of the covered entity and of the circumstances regarding any alleged acts or omissions concerning compliance.

(c) *Compliance reviews.* The Secretary may conduct compliance reviews to determine whether covered entities are complying with this subpart.

(d) *Responsibilities of covered entities.*—(1) *Provide records and compliance reports.* A covered entity must keep such records and submit such compliance reports, in such time and manner and containing such information, as the Secretary may determine to be necessary to enable the Secretary to ascertain whether the covered entity has complied or is complying with the requirements of this subpart.

(2) *Cooperate with periodic compliance reviews.* The covered entity shall cooperate with the Secretary if the Secretary undertakes a review of the policies, procedures, and practices of a covered entity to determine whether it is complying with this subpart.

(3) *Permit access to information.* A covered entity must permit access by the Secretary during normal business hours to its books, records, accounts, and other sources of information, including protected health information, and its facilities, that are pertinent to ascertaining compliance with this subpart. Where any information required of a covered entity under this section is in the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails or refuses to furnish the information, the covered entity must so certify and set forth what efforts it has made to obtain the information. Protected health information obtained in connection with a compliance review or investigation under this subpart will not be disclosed by the Secretary, except where necessary to enable the Secretary to ascertain compliance with this subpart, in formal enforcement proceedings, or where otherwise required by law.

(4) *Refrain from intimidating or retaliatory acts.* A covered entity may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for the filing of a complaint under this section, for testifying, assisting, participating in any manner in an investigation, compliance review, proceeding or hearing under this Act, or opposing any act or practice made unlawful by this subpart.

(e) *Secretarial action regarding complaints and compliance reviews.*—(1) *Resolution where noncompliance is indicated.* (i) If an investigation pursuant to paragraph (b)(2) of this section or a compliance review pursuant to paragraph (c) of this section indicates a failure to comply, the Secretary will so inform the covered entity and, where the matter arose from a complaint, the individual, and resolve the matter by informal means whenever possible.

(ii) If the Secretary determines that the matter cannot be resolved by informal means, the Secretary may issue written findings documenting the non-compliance to the covered entity and, where the matter arose from a complaint, to the complainant. The Secretary may use such findings as a basis for initiating action under section 1176 of the Act or initiating a criminal referral under section 1177.

(2) *Resolution where no violation is found.* If an investigation or compliance review does not warrant action pursuant

to paragraph (e)(1) of this section, the Secretary will so inform the covered entity and, where the matter arose from a complaint, the individual in writing.

§ 164.524 Effective date.

A covered entity must be in compliance with this subpart not later than 24 months following the effective date of this rule, except that a covered entity that is a small health plan must be in compliance with this subpart not later than 36 months following the effective date of the rule.

Appendix to Subpart E of Part 164—Model Authorization Form

AUTHORIZATION FOR RELEASE OF INFORMATION

Section A: Must be completed for all authorizations

I hereby authorize the use or disclosure of my individually identifiable health information as described below. I understand that this authorization is voluntary. I understand that if the organization authorized to receive the information is not a health plan or health care provider, the released information may no longer be protected by federal privacy regulations.

Patient name: ______________________________ **ID Number:** ____________________

Persons/organizations providing the information:

____

____

____

____

Persons/organizations receiving the information:

____

____

____

____

Specific description of information (including date(s)): ______________________________

____

____

____

____

Section B: Must be completed only if a health plan or a health care provider has requested the authorization

1. The health plan or health care provider must complete the following:
   a. What is the purpose of the use or disclosure?: ______________________________

   ____

   b. Will the health plan or health care provider requesting the authorization receive financial or in-kind compensation in exchange for using or disclosing the health information described above? Yes_____ No_____

2. The patient or the patient's representative must read and initial the following statements:
   a. I understand that my health care and the payment for my health care will not be affected if I do not sign this form. Initials: _______

   b. I understand that I may see and copy the information described on this form if I ask for it, and that I get a copy of this form after I sign it. Initials: _______

Section C: Must be completed for all authorizations

The patient or the patient's representative must read and initial the following statements:

1. I understand that this authorization will expire on __ __/__ __/__ __ __ __ (DD/MM/YR) Initials: _______
2. I understand that I may revoke this authorization at any time by notifying the providing organization in writing, but if I do it won't have any affect on any actions they took before they received the revocation. Initials: _______

______________________________ ____________

Signature of patient or patient's representative **Date**

(Form MUST be completed before signing.)

Printed name of patient's representative: ______________________________

Relationship to the patient: ______________________________

**** YOU MAY REFUSE TO SIGN THIS AUTHORIZATION ****

You may not use this form to release information for treatment or payment except when the information to be released is psychotherapy notes or certain research information.

[FR Doc. 99–28440 Filed 10–28–99; 4:45 pm]

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November 3, 1999

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 139
Year 2000 Airport Safety Inspections; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–1999–5924; SFAR No. 85]

RIN 2120–AG83

Year 2000 Airport Safety Inspections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule requires operators of certificated airports to conduct one-time operational readiness checks of certain airfield equipment and systems on, or shortly after, January 1, 2000, and report the results of these checks to the FAA. In addition, this rule temporarily revises the time period these airport operators have to repair or replace certain emergency equipment. These temporary requirements are needed to ensure that operators of certificated airports maintain safety by identifying and addressing any unforeseen problems with date-sensitive equipment and systems at the earliest practical time after January 1, 2000.

EFFECTIVE DATES: January 1, 2000 to January 5, 2000.

FOR FURTHER INFORMATION CONTACT: Robert E. David, Airport Safety and Operations Division (AAS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8721.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at *http://www.faa.gov* and may send electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov.*

Background

On January 1, 2000, many computer systems worldwide could malfunction or shut down because of the year change from 1999 to 2000. The problem, often referred to as the Year 2000 (Y2K) problem, is the result of how computers and other microprocessors have traditionally recorded and computed dates. Typically, these machines have used two digits to represent the year, *e.g.*, "98" for 1998, to save electronic storage space and reduce operating costs. However, this format fails to distinguish the year 2000 (represented as "00") from the year 1900. Software and computer experts are concerned that this could cause computers and equipment with internal microprocessors to malfunction in unforeseen ways or to fail completely.

Many airport operators use computers or equipment with embedded microprocessors to meet certain requirements of Title 14, Code of Federal Regulations (14 CFR) part 139, Certification and Operations: Land Airports Serving Certain Air Carriers. For example, an operator of a certificated airport may have computer systems that control when airfield lighting is turned on, or that control access to the airfield through vehicle and passenger gates. Safety and maintenance vehicles, such firefighting trucks, and emergency communications systems may likewise have computerized systems.

Since October 1998, the FAA has worked with operators of airports certificated under part 139 to ensure that all airfield equipment and systems used to comply with part 139 requirements are Y2K compliant, or that the airport operator has developed an alternative means of complying with the part 139 requirements. The FAA also formed an internal Y2K airport team to contact operators of certificated airports to monitor the Y2K status of each of these operator's systems that are used to comply with part 139 requirements. This team will continue to work with the operators of certificated airports throughout the remainder of 1999 to ensure that the agency is kept informed of the Y2K status at each part 139 airport.

Despite these efforts, the FAA is concerned that part 139 inspection and reporting requirements will not be adequate to address the unique circumstances associated with the date rollover to January 1, 2000. Part 139 requires operators of certificated airports to conduct daily inspections of their facilities to ensure compliance with the regulation. Such inspections include a visual check of movement areas (areas used by air carriers to land, takeoff, and taxi) and operational tests of equipment and systems used to comply with part 139 requirements. As a matter of practicality, various elements of the self-inspection are conducted throughout the day. As such, the existing inspection requirements do not require inspections early on January 1, 2000, before most operations begin, and do not necessarily require the kind of tests that would determine if there is a Y2K-related problem that was not detected by pre-January Y2K validation testing.

In addition, part 139 provisions regarding the repair or replacement of inoperative aircraft rescue and firefighting (ARFF) vehicles, and associated reporting requirements, are not well adapted to the unique circumstances of the possible Y2K disruption on equipment. Emergency equipment required by part 139, unlike other aviation systems, is intended for use only in an emergency, and under the current requirement may not be tested and reported to the FAA until an actual emergency or scheduled maintenance require it, both of which may occur well after operations begin on January 1, 2000.

Part 139 also allows certain airport operators a 48-hour grace period to repair or replace inoperative ARFF vehicles, with no effect on the number and type of ARFF equipment an airport must provide, commonly known as the ARFF index. The ARFF index for an airport is determined by the size of the aircraft using the airport and the number of daily departures. The index establishes the number and size of ARFF trucks needed. Conversely, the ARFF equipment available determines the index and, thereby, limits the size of the aircraft that the airport may serve. The 48-hour provision is intended to allow airport operators sufficient time to acquire parts to repair a required ARFF vehicle, or to arrange for a replacement vehicle, without impacting air carrier operations.

Under normal operations, this is an acceptable procedure as an inoperative ARFF vehicle is a rare occurrence, and parts can be obtained quickly. However, since some ARFF vehicles may have embedded computer chips, a Y2K-related problem, while highly unlikely, is possible. Since similar models of ARFF vehicles are widely used, a failure of even one model of ARFF equipment could affect many airports. As such, a delay in repairing a Y2K problem at a number of airports could have a system-wide impact.

Alternatives

The FAA evaluated four alternatives to address Y2K issues. The FAA first considered not making changes to part 139 for the January 1, 2000, date rollover. Under this alternative, operators of certificated airports would continue to comply with current part 139 requirements. Alternatively, the FAA then contemplated making the determination that Y2K compliance is an "unusual condition" under § 139.327(a)(2), thus requiring all certificate holders to conduct an inspection within a specified time period to identify and correct any deficiencies. Further, the FAA considered requiring these inspections only at airports holding an airport operating certificate (those certificate holders serving scheduled operations of air carrier aircraft with more than 30 passenger seats). In this alternative, operational readiness checks would not have been required at airports holding a limited airport operating certificate (those certificate holders serving unscheduled air carrier operations).

Finally, the FAA considered, and ultimately pursued, mandating both the self-inspections and reporting requirements, as well as the suspension of the 48-hour grace period for repair of ARFF vehicles. While this alternative is the most comprehensive and costly of the four alternatives considered, the FAA has determined that associated costs would be minimal and only marginally greater than the other alternatives considered, and that the benefits of mandatory safety inspections fully justify this approach.

The Notice of Proposed Rulemaking (NPRM)

On July 8, 1999, the FAA published in the **Federal Register** a notice of proposed rulemaking (64 FR 37026) that proposed to require operators of airports certificated under part 139 to conduct one-time operational readiness checks of certain airfield equipment and systems starting January 1, 2000. In addition, this notice proposed to temporarily revise the time period these airport operators have to repair or replace certain emergency equipment.

In response to this proposal, the FAA received 14 comments from industry associations, airport operators and owners, and one individual.

Commenters were generally in favor of the SFAR but recommended several modifications to and clarifications of certain testing and reporting requirements. Two commenters (Airports Council International and American Association of Airport Executives) recommended the FAA rescind the proposal, claiming that existing part 139 requirements are more than adequate to address any Y2K issues. In particular, both associations strongly opposed the temporary revocation of the 48-hour grace period for repair and replacement of inoperative ARFF vehicles. Neither association provided operational and cost data to substantiate their positions. All of these comments are discussed in detail in the Section-by-Section analysis below.

Section-by-Section Discussion of Comments

General

After consideration of the comments received, the FAA has modified the proposed SFAR and this final rule reflects those changes.

As noted above, comments received were generally supportive of the proposal. Several airport operators noted that they already plan to conduct readiness tests very similar to those proposed. Air carrier and pilot organizations offered their support of system-wide testing to ensure the safety and integrity of airports certificated under part 139.

While most commenters agreed with the FAA's conclusion that the possibility of a systemic failure due to the date rollover to January 1, 2000, is small, a few commenters challenged the FAA's conclusion that the date rollover is a significant event that warrants special attention. The FAA disagrees with such comments and believes Y2K issues present unique problems for part 139 airports.

One commenter stated that the SFAR is unnecessary since the International Civil Aviation Organization (ICAO) or Transport Canada are not requiring similar Y2K tests. The FAA disagrees. ICAO does not impose requirements, and in any event, the U.S. system of airports is far larger and more complex than Canada's or most member countries of ICAO. If by chance there is a system-wide problem resulting from the date rollover, it will have a far greater impact on the U.S. aviation system.

A majority of commenters further expressed the concern that the testing required by the SFAR would be redundant to those tests airport operators are currently conducting to ensure Y2K compliance. Many airport operators noted that they have spent considerable time and money testing part 139 systems and equipment, and obtaining certification from vendors. As such, they would not support protracting such tests. The FAA concurs and did not intend for this SFAR to require a repeat of the extensive Y2K testing that certificated holders have already completed.

Instead, the FAA intends that this SFAR merely require certificate holders to conduct operational readiness checks to verify that certain part 139 systems and equipment are functioning normally after the Y2K date rollover. For the most part, this will require airport operators to ensure a system, such as runway lighting, has turned on properly, and that equipment is functioning adequately, e.g., vehicle radios turn on and allow for communication between users.

The FAA believes that concerns about the burden of this SFAR are due to the use of the term "test" throughout the SFAR. For clarity, the term "test" has been replaced throughout the SFAR with the term "operational readiness check." To further clarify this rule, the systems and equipment that must be checked, and suggested methods for completing such checks, are discussed in the Operational Readiness Check Requirements section.

Also, many commenters expressed general confusion over the relation of this SFAR to part 139. Unless otherwise noted, the requirements of part 139 are still applicable during the duration of this SFAR. For example, the notification requirements of § 139.339 (Airport condition reporting) will still be applicable from January 1 to January 5, 2000, even though airport operators will have additional reporting requirements under the SFAR.

Finally, another commenter recommended that the FAA prohibit airport operators from closing their facilities to conduct required operational readiness checks. The FAA disagrees with this recommendation. Even though an airport operator has the authority to close its facility, or portions thereof, for safety reasons, the FAA believes that closing an airport to conduct required operational readiness checks will not be an issue. Typically, operators of these airports are able to conduct part 139 self-inspections and accommodate air carrier schedules without interruption of those schedules. However, if an air carrier still is concerned that required Y2K operational readiness checks will affect its operations, the FAA encourages the air carrier to contact the airport operator as soon as possible.

Section 1: Operational Readiness Check Requirements

Paragraph 1(a)

As proposed, this paragraph defines the applicability of this SFAR. Other than clarifying changes, this paragraph remains the same. Several commenters recommended that the FAA revise this section to extend this SFAR to operators of those airports that air carriers use as alternate airports. The FAA disagrees with this recommendation. Under part 121 (Operating Requirements: Domestic, Flag, and Supplemental Operations) air carriers are required to operate at airports that are certificated under part 139. Part 121 also requires that under certain conditions air carriers designate an alternate airport as part of their required flight planning. However, § 121.590 permits an air carrier to designate a required alternate airport that is not certificated under part 139.

Since an air carrier could designate any airport as an alternate, extending this SFAR to operators of alternate airports would effectively extend its requirements to all airport operators. Yet, the requirements of this SFAR are intended to check systems and equipment specially required at airports certificated under part 139 (approximately 568 civilian airports). The FAA does not require compliance with these safety standards at any other U.S. airport. Therefore, it would be inappropriate for the FAA to require airport operators to check systems and equipment that they are not required to have, and in many instances, do not own or maintain.

In addition, the term "unless otherwise authorized by the Administrator" has been added to this paragraph. Since the rule language cannot be specific enough to address every unique circumstance at all certificated airports, the FAA has determined that this change will allow for alternative means of compliance. For example, some airport operators will not be able to conduct the required operational readiness checks of emergency communications with the air traffic control tower prior to the first air carrier operation. Not all air traffic control towers are in operation 24 hours a day and air carrier operations may normally occur when the tower is closed. On a case-by-case basis, the FAA will determine the appropriate compliance methods to address such local issues.

Paragraph 1(b)

As proposed, this paragraph sets forth general descriptions of those systems and equipment that needed to be checked for Y2K compliance. A majority of commenters recommended that this paragraph be expanded to identify all airport systems and equipment that the FAA would require to be checked. The overall concern was that airport operators needed more information to determine whether or not required operational readiness checks could be accomplished within the specified time frame and make adequate preparations. The FAA concurs that this section needs clarification, and has expanded the section to specify each part 139 system and piece of equipment that must undergo an operational readiness check.

In addition, several commenters expressed concern over a reference in the NPRM preamble regarding systems that control access by vehicles and pedestrians to the airfield. This reference was interpreted to mean that required operational readiness checks would include a functionality test of access control systems required under 14 CFR part 107 (Airport security). This is not the case. Operational readiness checks are only required of part 139 systems and equipment. The reference to access control was intended to only illustrate possible part 139 systems and equipment that may contain computers or microprocessors that could be affected by the date rollover, including those automated systems that control inadvertent entry to the movement area by unauthorized personnel, as required under § 139.335, Public protection.

One commenter recommended that airport operators be required to consult with their tenant air carriers when determining which part 139 systems and equipment will be checked. The FAA does not concur with this recommendation. The certificate holder should already know what systems and equipment to check since required operational readiness checks cover the same systems and equipment as the daily checks conducted by airport operators to comply with part 139 self-inspection requirements. These checks should not affect air carrier operations any differently than a daily airfield self-inspection. Further, if problems arise as the result of operational readiness checks, the same procedures airport operators use to notify their tenant air carriers of airfield conditions under § 139.339 still are applicable. Systemic problems will be reported to air carriers on a national basis (see discussion under Reporting Requirements). The FAA encourages any air carrier that is uncertain as to an individual airport's notification procedures to contact the airport operator as soon as possible for clarification.

Based on comments received, the FAA also has modified proposed paragraph 1(b)(5). Several commenters felt that this paragraph is so broad that it would essentially allow the FAA to indiscriminately require any type of system or equipment check. This was not the FAA's intent. Instead, this paragraph of section 1 was included to ensure the flexibility to accommodate local circumstances or address problems with systems and equipment not discovered until after the publication of this SFAR.

In the final rule, this proposed paragraph is renumbered as paragraph 1(b)(9) and has been combined with proposed paragraph 1(d) (notification information). This modification is intended to clarify that the FAA will consult with an airport operator if additional operational checks of part 139 systems or equipment are needed. However, the final determination of any additional operational readiness checks needed to ensure safety of air carrier operations will remain with the FAA.

The FAA still will notify individual certificate holders to confirm systems and equipment that will be checked, address any local or unique issues, and provide specific details on reporting procedures, including regional contact names and telephone numbers. In addition, this notification will provide guidance on methods to conduct operational checks to minimize the impact on operations. For example, certificate holders will be advised that operational readiness checks of snow and ice removal equipment need only involve the starting and operating of each make and model of motorized equipment and corresponding attachments, such as blades, blowers, and brooms.

One commenter suggested that the FAA complete this notification no later than October 15, 1999. While the FAA hopes to complete all such notifications as soon as possible after the publication of the final rule, the FAA believes further time may be needed to address any unforeseen delays and to finalize internal reporting procedures.

Finally, commenters recommended that the FAA conduct operational readiness checks of its own equipment located at part 139 airports, such as navigation aides, and report the results of these checks to the local airport operator. While the FAA concurs with this recommendation, it is beyond the scope of this SFAR. However, to ensure such notification occurs during the effective date of this SFAR, the FAA will instruct managers of its air traffic control towers to meet with airport operators prior to the date rollover and develop a mutually acceptable notification procedure. This type of coordination already exists at many airports certificated under part 139, but this additional effort will help ensure there are no gaps in the information flow. At airports where there are no air traffic control towers, the FAA will use existing notification procedures to alert airport and aircraft operators of equipment problems.

Paragraph 1(c)

As proposed, paragraph 1(c) would require that all ARFF vehicles discharge fire extinguishing agents, regardless of the type of agent. ARFF vehicles typically carry two types of fire extinguishing agents, aqueous film forming foam (AFFF) that is dispensed with water and dry chemical that is dispensed by pressured gas. Several airport operators raised concerns regarding the operational readiness checks of ARFF vehicles that carry dry chemical extinguishing agents. These commenters pointed out that most dry chemical extinguishing agents are harmful to the environment and special care must be taken to dispose of it once discharged from an ARFF vehicle. They stated this would be difficult, and possibly unsafe, to do during hours of darkness. Also, these commenters noted that once a truck that carries dry chemical discharges its agent, it takes more time to recharge pressurized gas tanks and restore the truck to service than a truck that carries AFFF.

The FAA agrees that dispensing dry chemical agent is more problematic than dispensing AFFF. Further, systems used to discharge dry chemicals are mechanical and do not contain microprocessors. As such, the FAA has determined that it is not necessary for certificate holders to conduct an operational readiness check of systems that dispense dry chemical or other similar secondary agents. Subsequently, paragraph 1(c) has been modified to require certificate holders to dispense only AFFF extinguishing agents. Regardless of the type of fire extinguishing agent that these vehicles carry, the certificate holder is still required to check the operation of all ARFF vehicles, i.e., starting the vehicle and driving it at speeds typically used to respond to an emergency and verifying that radios and emergency communications are operational.

Finally, this paragraph has been modified to clarify the extent of operational readiness checks of ARFF vehicles. This change requires that the certificate holder start vehicles and drive them at speeds normally driven in an emergency, in addition to dispensing fire-extinguishing agents. The FAA believes this change will eliminate any confusion as to the extent of the operational readiness check required for each ARFF vehicle.

Section 2: Schedule

Prior to the discussion of scheduling requirements, it should be noted that the order of proposed section 2 (Reporting Requirements) and section 3 (Test Schedule) have been reversed and renumbered. Section 2 is now titled Schedule, and section 3 is now titled Reporting Requirements. This change is intended to present the requirements of this SFAR in a more logical sequence.

Paragraph 2(a)(1)

This paragraph (proposed paragraph 3(a)) establishes schedules for conducting operational readiness checks. This paragraph has been modified based on comments received.

Some airport operators recommended that the certificate holders be given additional time to complete required operational readiness checks, particularly at those airports where air carrier operations are scheduled before 1:00 a.m. on January 1, 2000. Suggestions ranged from one to six additional hours to complete operational readiness checks.

The FAA believes these commenters based their concerns on the assumption that operational readiness checks proposed in section 1 were more extensive than the FAA intended (see above discussion under Operational readiness checks). As such, it was difficult for these commenters to determine whether or not required operational readiness checks could be accomplished within the specified time frame. Even so, the FAA has reevaluated time estimates for airport operators to complete required operational readiness checks and concurs that an additional hour is warranted, especially for those operators with early morning operations on January 1, 2000.

Conversely, another commenter recommended that the FAA require certificate holders to conduct all operational readiness checks within two hours after midnight on January 1, 2000, regardless of when the first flight is scheduled to occur. This commenter also suggested that the FAA allow a certificate holder that can document no air carrier operations within the first 48 hours of the date rollover additional time to complete operational readiness checks so long as required checks are completed 24 hours before the first scheduled operations. While this approach would simplify the schedule for required checks by requiring certificated holders with air carrier operations on the first two days of the new year to complete operational readiness checks at the same time, the FAA believes it would be unduly burdensome for most certificate holders. In particular, for those certificate holders that do not have scheduled air carrier operations until later in the day on January 1, 2000, and would be required to make arrangements for staff to be available at times other than their normal duty hours.

Many certificate holders have indicated to the FAA that, regardless of the time of the first scheduled air carrier operation, they plan to have operational and maintenance personnel on duty during the date rollover, and will begin operational readiness checks immediately after midnight on January 1, 2000. Not all certificate holders have such staffing levels and the FAA believes that it is a more reasonable approach to allow operational readiness checks to be conducted closer to the time of the first scheduled operation when airport personnel are routinely on duty.

Paragraph 2(b)

Proposed paragraph 3(b) that would require all operational readiness checks to be completed by January 5, 2000, has been renumbered 2(c). A new paragraph 2(b) has been added to allow those certificate holders at airports that have scheduled air carrier operations on January 1, 2000, some flexibility in completing operational readiness checks of systems and equipment that are operating and remain operational during the date rollover, but that may pose a safety hazard if they are turned off and could not be returned to operation.

A majority of commenters expressed concern that certain operational readiness checks of systems that are operational at the time of the date rollover may inadvertently initiate a failure of these systems or pieces of equipment. On the other hand, if these systems or pieces of equipment were left alone, they would continue to work on January 1, 2000, until their normal shut down time. At that point, commenters suggested they could be checked without adversely affecting air carrier operations scheduled to occur in the early morning. The FAA concurs with this recommendation.

A good example of such systems and equipment is runway and taxiway lighting systems that automatically turn on at dusk and remain lit until sunrise the following day. On the evening of December 31, 1999, such a lighting system would automatically turn on, and if there is no interruption in its power source, should remain lit until daybreak the following morning. While unlikely, if such a system has a date sensitive micro-processor it is most likely used to turn the system on or off, and if it were to fail, this would probably occur when the system switches on the evening of January 1, 2000.

A new paragraph 2(b) has been added to address systems and equipment that are operational at the time of the date rollover to January 1, 2000. Specifically, certificate holders that have scheduled air carrier operations on January 1 will have until 1 p.m. that day to check runway/taxiway lighting and lighted sign systems, and motorized snow and ice removal equipment if such systems and equipment are operational as of midnight on January 2000. In some instances, this means a certificate holder whose first scheduled operation will occur in the afternoon or evening of January 1 will be required to complete operational readiness checks on these systems or pieces of equipment earlier than other checks required by this SFAR.

Another commenter requested that the final rule clarify that times required for conducting operational readiness checks be based on published or scheduled times, not actual arrival or departure time of the first air carrier operation. Without clarification, the commenter worried that if a flight scheduled for departure on the evening of December 31 is delayed until early the next morning, this flight could be interpreted as the first air carrier operation scheduled for January 1, 2000, rather than a flight scheduled to depart later in the day.

The FAA agrees. Since it is difficult to plan for unforeseen delays and other schedule problems, certificate holders should interpret the phase "first air carrier operation is scheduled to occur" as meaning required operational readiness checks shall be planned around the departure or arrival time that is published or scheduled for first air carrier operation after midnight on January 1, 2000, not actual arrival or departure times.

In addition, comments were received suggesting that the schedule for completing operational readiness checks be expanded to include other possible problematic dates, such as February 29, 2000. The FAA disagrees with this recommendation. During the duration of this SFAR, the FAA believes problematic systems or equipment will be identified during both operational readiness checks and routine operations. Based on this experience, certificate holders can repair or replace such systems and equipment in order to remain in compliance with part 139 safety standards during other similar date rollovers.

Section 3: Reporting Requirements

As noted above, the order of proposed section 2 (Reporting Requirements) and section 3 (Test Schedule) has been reversed and those sections have been renumbered. New section 3 is now titled, Reporting Requirements. As proposed, this section establishes a deadline for reporting the results of operational readiness checks. The FAA has modified and reorganized the reporting requirements under new section 3 pursuant to comments received.

Several commenters requested clarification on the type of information certificate holders are required to report and how this information should be reported. Other commenters recommended that the expansion of reporting requirements include any contingency measures that are implemented, and additional reports once the airport has returned to normal operations.

New paragraph (a) of this section requires all certificate holders to report the results of required operational readiness checks, plus report contingency measures implemented, and any changes that may affect ARFF Index levels or air carrier operations. New paragraph (b) of this section specifies when a certificate holder is required to report. Finally, new paragraph (c) reminds certificate holders of their obligations under part 139 to collect and disseminate airport condition information to air carriers, including use of the Notice to Airmen (NOTAM) system.

The FAA believes these modifications will clarify the certificate holder's reporting responsibilities under this SFAR. In addition, the FAA will include reporting guidance that is specific to each airport in the confirmation notice to be sent to each certificate holder (see discussion of paragraph 1(b)). This guidance will include a reporting form, airport-specific information on how and when to report, and alternative means to contact the FAA in the event of a telephone system failure.

Two commenters also recommended that the FAA amend the SFAR to require certificate holders that experience no Y2K problems, and do not implement any contingency measures, to report an "all clear." These commenters felt that this would eliminate any ambiguity regarding the status of part 139 airports, and allow pilots and dispatchers as much time as possible to take appropriate action. The FAA agrees, and has modified proposed section 2 (new paragraph 3(a)) to clarify that all certificate holders must report the results of required operational readiness checks, even if these checks reveal no problems. Information that an airport has experienced no Y2K problems with airfield safety systems will be useful to the FAA, air carriers, other airport operators, and the traveling public.

In addition, several commenters expressed concern about the FAA's ability to gather and disseminate information reported by certificate holders. One commenter went so far to remind the FAA of how many airports it certificates and questioned the agency's ability to field telephone calls from all of these airports.

The FAA does not agree with these comments. The FAA is satisfied that the existing communication system established through the FAA's Regional Airports Division Managers is adequate for reporting the results of required operational readiness checks. Certificate holders routinely report information regarding part 139 compliance to the Regional Airports Division Manager using these established procedures.

These established communication procedures will be utilized to report the results of operational readiness checks to the FAA. FAA regional offices will then communicate these results to FAA Headquarters for further dissemination. In addition, air carrier operations occur at different times at each part 139 airport so certificate holders will be contacting the FAA at various times between January 1 and January 5, 2000, so the FAA does not anticipate a flood of telephone calls at the same time.

As noted above, each certificate holder will be notified of reporting procedures specific to its locality. This will include procedures to notify the

FAA in the event of a failure of telephone systems. Working with its telephone service providers, and air traffic control and flight service systems, the FAA has developed several alternative communication systems for both local and systemic telephone failures.

Finally, a commenter suggested that the results of operational readiness checks be disseminated to airlines, airports, and other users through FAA's Air Traffic Control System Command Center. The commenter felt this would greatly assist all parties involved in taking timely and adequate actions should problems arise.

The FAA concurs. As the FAA receives reports from airport operators, those reports will be disseminated through the FAA's air traffic control system and regional airports division offices. The status report for each part 139 airport will either contain an "all clear;" or include a brief description of changes to ARFF Index level, failure of any part 139 systems and equipment, and a description of any limitation or reduction in airport services, up to a notice of closure. Again, such status reports required by this SFAR would be in addition to local airport condition reporting, required under § 139.339.

Section 4: Contingency Measures (New)

Comments were received from several airport operators that the proposed SFAR was unclear as to what action a certificate holder would be required to take if a system or equipment required to be checked failed due to the date rollover to January 1, 2000. The FAA agrees and has added this section to clarify certificate holders' obligations to implement contingency measures.

The FAA assumed that certificate holders would revert to existing contingency measures contained in the Airport Certification Manual (Specifications) in the event of equipment or system failure. As noted above, the requirements of part 139 are still applicable during the duration of this SFAR (with the exception of certain ARFF vehicle readiness requirements—see discussion under section 5, Vehicle Readiness). Operators of part 139 certificated airports already have developed and specified such contingency measures in their Airport Certification Manual (Specifications) to address failure of part 139 systems and equipment.

However, to eliminate any possible confusion, the final SFAR contains a new section 4, Contingency Measures. This section specifies that a certificate holder will implement contingency measures to remain compliant with part 139 in the event that a system or equipment required to be checked fails to operate, or functions improperly due to the date change to January 1, 2000.

This new section is not intended to allow part 139 certificate holders to use their discretion in implementing contingency measures if they believe that a system or equipment failure is not due to the date rollover. If a required system or piece of equipment fails to operate, or performs improperly after a required operational readiness check is performed, the certificate holder must implement contingency measures and sort out the cause of the problem later.

Section 5: Vehicle Readiness

This section (proposed section 4) temporarily rescinded the requirements of § 139.319(h)(3) pertaining to inoperative ARFF vehicles. This section has been renumbered as section 5 and modified based on comments received.

Most comments received concerned the proposed changes to the ARFF vehicle readiness provisions of § 139.319(h)(3). These comments varied widely, ranging from suggestions to expand the proposal to recommendations that it be rescinded.

Commenters that requested the FAA to reinstate the 48-hour grace period to replace or repair ARFF vehicles felt the temporary elimination of this provision of part 139 would increase the likelihood of disruptions and do nothing to accelerate repair of ARFF equipment. Instead, they suggested the FAA contact the manufacturers of ARFF vehicle about the possibility of systemic failures, and then simply require airport operators to arrange for adequate back up prior to the date rollover.

The FAA disagrees. The FAA has contacted the manufacturers of ARFF vehicles and they have not provided adequate certification that all components of their vehicles are Y2K compliant, particularly those components that they did not manufacture. Without such assurances, the FAA believes additional efforts must be made to address the possibility, however small, of a system-wide failure of similar models of ARFF vehicles. Part 139 provisions regarding the repair or replacement of inoperative ARFF vehicles do not adequately address this possibility.

Further, these same commenters seemed unclear as to the applicability of part 139 during the effective dates of the SFAR or do not have a clear understanding of the regulation. In particular, these commenters questioned how many backup ARFF vehicles would be needed in the event primary equipment become inoperable and were alarmed by the language of this section that would require any inoperative equipment to be replaced "immediately with equipment having at least equal capabilities."

The only part 139 ARFF requirement that changes while the SFAR is in effect is the time period for replacing or repairing inoperable ARFF vehicles. Instead of 48 hours, the time period temporarily has been reduced. Otherwise, certificate holders would comply with part 139 as they do under normal conditions, including implementing contingency measures in the event required ARFF equipment cannot be repaired or replaced in the time specified. Such contingency measures may include lowering the ARFF index (some airport operators maintain a higher Index level than required), implementing mutual aid agreements with the local community, bringing into service older vehicles that are no longer used to meet the required ARFF Index, or closing the airport to certain air carrier operations. Further, the requirement to replace inoperative equipment immediately with the equivalent equipment is currently a requirement of part 139 and would not change under this SFAR.

In addition, part 139 allows for some flexibility in the event the certificate holder cannot maintain its ARFF index level, and this SFAR will not change this. Specifically, part 139.315(c) allows the certificate holder to serve up to four daily operations of an air carrier aircraft requiring the next higher ARFF index level before the operator is required to have more equipment or limit the operations of these larger aircraft. Also, a certificate holder may temporarily deviate from part 139 requirements in the event of an extreme emergency situation, as described under § 139.113.

Due to this confusion, a commenter interpreted the proposal to mean that a certificate holder was required to provide duplicate ARFF vehicles if a primary vehicle failed its operational readiness checks. This commenter noted that it is unlikely that sufficient redundant vehicles could be procured or leased at any price, and such new vehicles would be more likely to contain hidden computer chips and be more susceptible to Y2K problems. As such, the commenter disagreed with the FAA's conclusion that because the probability of an ARFF vehicle failing its operational readiness check is low, the expense of ARFF backup is minimal. In actuality, this commenter felt, this section would be more expensive than calculated because certificate holders would be required to purchase backup

ARFF vehicles at an average cost of $200,000 each.

The FAA disagrees and believes these concerns are the result of the commenter making an assumption that certificate holders must have ARFF vehicle backup available the instant that an ARFF vehicle fails its operational readiness check, and that an identical replacement to the vehicle is required. As explained above, the FAA did not intend that duplicate vehicles be idling next to the ARFF station during operational readiness checks, rather that the certificate holder must initiate contingency measures immediately. Several options are available for contingency measures and are currently used by certificate holders if a required ARFF vehicle becomes inoperative and cannot be repaired or replaced within 48 hours.

These contingency measures would be used until the inoperative vehicle is fixed or, in an extreme case, replaced. So the cost to repair or replace an ARFF vehicle would eventually be incurred even if the FAA did not implement this SFAR. However, if an ARFF vehicle were to fail its operational readiness check, the certificate holder will incur costs for implementing contingency measures that it would not normally incur during the 48-hour grace period. Thus an assessment of the expected cost that may be incurred should include the probability of a Y2K failure even if this probability is small.

Two commenters supported the temporary suspension of the 48-hour grace period but recommended that airport operators be required to make arrangements with local governments to ensure that backup equipment also remains operational. The FAA does not concur with this recommendation. It would be unreasonable to require certificate holders to conduct operational readiness checks on equipment that they do not own. Such backup equipment is the property of local governments, national guard units or the Department of Defense, all of which have their own efforts underway to ensure such equipment is Y2K compliant and remains operational after the date rollover to January 1, 2000.

Also, comments were received from individual operators of part 139 airports. These were very helpful in refining this section, and the FAA has adopted a modified approach to vehicle readiness as a result of their input. Primarily, these commenters were concerned that if no grace period was allowed, then certificate holders could not comply with the SFAR, as backup measures cannot be implemented immediately. For example, certificate holders relying on assistance through a mutual aid agreement need time to initiate this assistance, and emergency personnel responding need time to assemble and reposition equipment to the airport. Recommendations were made to allow certificate holders a minimum of six to eight hours to implement their ARFF contingency measures.

The FAA agrees with these concerns, and did not intend when it proposed to eliminate the grace period to mean that backup personnel and equipment must be on ready status as the certificate holder conducts required operational readiness checks of primary equipment. Instead, the FAA intended for certificate holders to implement contingency measures immediately to ensure compliance with part 139 requirements. To remedy this, the final SFAR allows certificate holders to repair or replace inoperative vehicles as soon as possible, but within four hours of completion of operational readiness checks with equipment having at least equal capabilities of inoperative equipment. If the vehicle cannot be replaced within four hours (and is needed to maintain the index for aircraft currently serving the airport), the revised section requires the certificate holder to either implement contingency measures required under new section 4 or lower the ARFF index to that corresponding to the remaining operative equipment.

Another airport operator noted that the SFAR lacks a provision that would allow certificate holders, during the effective period of the SFAR, to revert to the 48-hour grace period for repairing or replacing vehicles once these vehicles successfully pass their operational readiness checks. For example, if a certificate holder successfully conducts a operational readiness check of an ARFF vehicle on January 2 and reports this to the FAA but two days later the same vehicle breaks down due to a mechanical problem. Under the proposal, this commenter worried that such a mechanical problem would require immediate repair or replacement even though the breakdown was not Y2K related. The FAA agrees, and has added a new paragraph to this section (paragraph 5(b)) that allows the certificate holder, after complying with the section 3 reporting requirements, 48 hours to repair or replace aircraft rescue and firefighting vehicles that subsequently become inoperative.

Finally, several airport operators also raised concerns regarding the operational readiness checks of ARFF vehicles that carry dry chemical extinguishing agents. These comments are addressed under paragraph 1(c).

Section 6: Self-Inspection Requirements

Proposed section 5 (new section 6) has been shortened for clarity. The requirements of the section did not change.

Section 7: Effective Times

Proposed section 6 (new section 7) specifies all times in the SFAR are in local time at the airport.

Several comments were received regarding the requirements of this section. Some commenters agreed with the use of local time, while others recommended using Universal Time Coordinate (UTC). One commenter even suggested that required checks should commence at 1:00 a.m. local time at the International Dateline.

All these recommendations are valid. There are several different times that time-sensitive equipment could be using. For example, a date-sensitive micro-processor manufactured in California for worldwide distribution may be set to the local, Pacific time zone. Conversely, such a part manufactured for a specific airport may be set to the local time of the airport. So the uncertainty of the functionality of unknown date-sensitive systems and equipment is further complicated by the uncertainty of which time such systems and equipment are set to.

To simplify matters, the FAA has determined the final rule will continue to reference local time. At some airports, this may result in certain time-sensitive systems or equipment making the date change to January 1, 2000, prior to midnight local time, while at other airports this event may take place well after midnight local time. Nevertheless, the FAA believes using local time is the most reasonable approach for certificate holders to comply with the requirements of this SFAR.

To lessen the potential impact of varying times, the FAA is exploring the possibility of operators of certificated airports located in the South Pacific voluntarily conducting additional operational readiness checks to obtain information on the reliability of commonly used systems and equipment as soon as possible after midnight at the International Dateline. These airports will be the first part 139 certificated airports to experience the date rollover to January 1, 2000.

Such operational readiness checks will help alert the FAA, and subsequently certificate holders, of equipment and systems that are experiencing problems. Further, as the FAA receives reports from other airport operators, both domestic airports and international airports, this information will be disseminated to those certificate holders still waiting the date rollover (see discussion under Reporting Section).

Section 8: Expiration.

Proposed section 7 (new section 8) has been shortened for clarity. The requirements of the section did not change.

Paperwork Reduction Act

Information collection requirements in the amendment to part 139 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0063.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, or $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rulemaking does not meet the standards for a "significant regulatory action" under section 3(f) of Executive Order 12866 and under the Department of Transportation's Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 FR 11034, February 26, 1979) and, therefore, is not subject to review by the Office of Management and Budget. Additionally, this rule would not have a significant impact on a substantial number of small entities, would not constitute a barrier to international trade, and does not contain a significant intergovernmental or private sector mandate.

If an agency determines that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect, and the basis for it, is included in the preamble to the final rule. The FAA has determined that the expected impact of this rule will be so minimal as to not warrant a full regulatory evaluation.

In summary, this SFAR establishes a one-time operational readiness check and reporting requirement that is essentially identical to the existing self-inspection requirements. The SFAR requires that certain airport operators arrange for backup ARFF services or implement contingency measures, as currently required, but in a more timely manner, if an ARFF vehicle fails its operational readiness check. Since self-inspections and reporting are already required under § 139.327(a), this regulation imposes little additional costs on airport operators The FAA estimates that the operational readiness checks required by this rule may be completed in less than two hours, including reporting results to the FAA. In addition, the expense of complying with the ARFF backup requirement in a more timely manner is small and considered a low-probability event.

This SFAR requires airports certificated under part 139 to maintain the current ARFF Index level, reduce their ARFF Index level, or implement contingency measures, as currently required. Operators of most certificated airports are required to maintain the required ARFF Index to serve current scheduled air carrier operations. Many of these operators already have in place an ARFF backup plan. Those that do not have a backup plan can, on short notice, make such arrangements, at a nominal cost. Such contingency measures may include lowering the ARFF Index (some airport operators maintain a higher ARFF Index level than required), implementing mutual aid agreements with the local community, bringing into service older vehicles that are no longer used to meet the required ARFF Index, or closing the airport to certain air carrier operations. Further, the requirement to replace inoperative equipment immediately with equivalent equipment is currently a requirement of part 139 and would not change under this SFAR.

An economic impact could occur in the following scenario. For those operators of certificated airports that are required to meet a specified ARFF Index, this rule does not allow the currently permitted 48-hour grace period to repair or replace inoperative ARFF equipment. Rather, this time period has been temporarily reduced to 4 hours in which the certificate holders must implement ARFF backup measures, as described above. Using this scenario, the rule could result in ARFF costs equal to the 44-hour expense of providing these backup ARFF measures.

In such an event, the cost of maintaining an airport's current ARFF Index for 44 hours is very low in terms of overall airport expenses. For such an expense to occur, all of the following conditions must be met:

1. A vehicle necessary to maintain the ARFF Index does not pass the Y2K operational readiness check.
2. No other ARFF equipment is readily available to maintain the ARFF Index.
3. Air carrier aircraft serving the airport on that day do not allow the airport operator to temporarily step down to a lower ARFF Index.

The probability of a series of connected events in which each event must occur is calculated by multiplying across all events the probability assigned to each event. In this case, the probability of the first event (a required ARFF vehicle does not pass the Y2K operational readiness check) is multiplied by the probability assigned to the second, and then multiplied by the probability of the third event. If the probability of just two events each equal 10 percent, the probability assigned to an airport incurring an ARFF expense resulting from this rule cannot be higher than one percent. Thus, while an ARFF expense can occur, the expected likelihood is thought to be very low.

The FAA has determined that it is unlikely that all three events will occur. However, in the event an airport does incur the cost of having backup ARFF vehicles available, only 44 hours of that cost is attributable to this rule because the current rule imposes the same requirement after a 48-hour grace period. The cost for an airport that might need to provide a backup vehicle could be zero, if the vehicle is obtained from other fire units of the airport owner, or from other local governments through a mutual aid agreement. Accordingly, the costs that an airport operator may incur to obtain the services of one or more backup ARFF vehicles is expected to be very small. Finally, if the ARFF Index level is affected, an airport operator may choose to accept a lower ARFF Index level temporarily, with no effect on scheduled service, if aircraft currently used for scheduled service at the airport do not require the higher index. Thus the FAA expects this element of the rule to be minimal.

The benefit of the rule is that it provides assurances that airport operator's preparations for the date rollover have been effective and that compliance with part 139 requirements is not compromised due to the January 1, 2000 date rollover. In the unlikely event that this date rollover will interrupt systems that are used to comply with part 139, the rule will ensure an early knowledge of such interruption and facilitate immediate action to maintain safety.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (the Act), as amended, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a Regulatory Flexibility Analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, § 605(b) of the Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As detailed above in the regulatory evaluation summary there are two costs that may be incurred. First, the inspection costs are expected to be minimal as the expected inspection time is thought to be two hours or less. Second, the probability that the requirement may impose an ARFF cost is expected to be very low.

Of the 568 civilian certificated airports, 177 meet the criteria for small entities. At least 135 of those 177 airports are approved for air carrier operations using mutual aid, or have other arrangements that do not require the airport operator to have ARFF equipment on the airport to meet a particular index requirement. These airports will not be financially affected by the reduction of the 48-hour ARFF grace period. The remaining 42 airports that are considered small entities must comply with ARFF Index requirements of part 139 and potentially could be affected by the SFAR. The expected ARFF cost that this rule could impose on these 42 airports is expected to be minimal.

The rule will allow airport operators only 4 hours, versus the currently permitted 48-hour grace period, to repair or replace inoperative ARFF equipment or implement contingency measures. Thus, using this scenario, the rule could impose an ARFF cost equal to a 44-hour expense to implement ARFF backup measures, as described above in the Regulatory Evaluation Summary.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries, or the import of foreign goods and services into the United States.

Federalism Implications

The regulations herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year.

Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) P.L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 139 of Title 14, Code of Federal Regulations as follows:

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

1. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C 106(g), 40113, 44701–44706, 44709, and 44719.

2. Part 139 is amended by adding Special Federal Aviation Regulation No. 85 to read as follows:

SFAR 85—YEAR 2000 AIRPORT SAFETY INSPECTIONS

1. *Operational readiness check requirements.* (a) Unless otherwise authorized by the Administrator, each certificate holder shall conduct an operational readiness check of each piece of equipment and system described in paragraph (b) of this section to verify that compliance with part 139 requirements has not been affected by the date change to January 1, 2000. The operational readiness checks shall demonstrate that the equipment and system is sufficiently operational to continue to support the certificate holder's compliance with the requirements of part 139.

(b) The operational readiness checks required by paragraph (a) of this section shall include a check of—

(1) Each lighting system and lighted sign system;

(2) Each system used to notify aircraft rescue and firefighting units during an emergency;

(3) Each aircraft rescue and firefighting vehicle identified in the Airport Certification Manual or Airport Certification Specifications;

(4) Each radio used to communicate with Air Traffic Control and aircraft;

(5) Each radio used for communication between aircraft rescue and firefighting vehicles and fire dispatch or command;

(6) Each system used by airport operations and maintenance personnel for internal airport communications;

(7) Each piece of motorized equipment used to remove snow and ice from movement areas;

(8) Each system used to transmit airfield condition information to air carriers, including the system used to issue a NOTAM; and

(9) Any other system or piece of equipment that the Administrator determines, after consultation with the certificate holder, is used to support the holder's compliance with part 139 requirements, and is critical to the safety and efficiency of aircraft operations.

(c) The operational readiness check of each aircraft rescue and firefighting vehicle shall include starting the vehicle and driving the vehicle at speeds typically used to respond to an emergency. In addition, the operational readiness check of each vehicle that carries AFFF and water fire extinguishing agent shall include dispensing of this agent.

2. *Schedule.* (a) Except as provided in paragraph (b) of this section, after midnight December 31, 1999, each certificate holder shall complete the operational readiness checks required by section 1 of this SFAR, as follows:

(1) By 2:00 a.m. on January 1, 2000, if the first air carrier operation is scheduled to occur at or before 3:00 a.m. on this date.

(2) At least one hour before the first air carrier operation is scheduled to occur, if the operation is scheduled to occur after 3:00 a.m. on January 1, 2000.

(b) For an airport where air carrier operations are scheduled to occur on January 1, 2000, each certificate holder shall have until 1:00 p.m. on January 1, 2000, to complete the required operational readiness checks of lighting and lighted sign systems, and motorized snow and ice removal equipment that are in use on 12:00 a.m. on January 1, 2000.

(c) All required operational readiness checks shall be completed before January 5, 2000, whether or not the airport has served air carrier operations from January 1 through January 4, 1999.

3. *Reporting Requirements.* (a) Each certificate holder shall report the results of its operational readiness checks to the Regional Airports Division Manager. This report shall include—

(1) A confirmation that the systems and equipment specified under section 1(b) are functioning as required under part 139;

(2) A description of any changes to ARFF Index level required under § 139.315;

(3) Any failure of part 139 systems and equipment specified under section 1(b) and the subsequent contingency measure implemented; and

(4) Any limitations or reductions in part 139 measures that would place a restriction on air carrier operations, including a notice of closure.

(b) The report required by paragraph (a) of this section shall be submitted no later than one hour following the completion of operational readiness checks required by section 1 of this SFAR. For systems and equipment described in section 2(b), a report on the required operational readiness checks shall be submitted no later than one hour following the completion of those checks.

(c) This reporting requirement is in addition to the notification requirements of part 139.

4. *Contingency measures.* Except as provided in section 5, the certificate holder shall implement contingency measures, if necessary, to remain compliant with part 139 in the event that a system or piece of equipment required to be checked under this SFAR becomes inoperative due to the date change to January 1, 2000.

5. *Vehicle readiness.* (a) Except as provided in paragraph (b) of this section, until January 5, 2000, each vehicle required under § 139.317 that becomes inoperative shall be replaced as soon as possible with equipment having at least equal capabilities, notwithstanding § 139.319(h)(3). A vehicle is considered inoperative if it cannot perform as required by § 139.319(h)(1). In any event, the vehicle must be replaced with four hours of failure to pass its operational readiness check. If the vehicle cannot be replaced within four hours, the certificate holder shall—

(1) Implement contingency measures required under section (4); or

(2) Limit air carrier operations on the airport to those compatible with the ARFF Index corresponding to the remaining operative rescue and firefighting equipment.

(b) Any ARFF vehicle that subsequently becomes inoperative after the certificate holder complies with the reporting requirements of section 3(a), may be replaced, as provided in § 139.319(h)(3), if the vehicle:

(1) Passed the operational readiness check required by section 1, or

(2) Is a replacement vehicle provided in accordance with paragraph (a) of this section.

6. *Self-inspection requirements.* Operational readiness checks conducted in compliance with this SFAR may be used to fulfill applicable part 139 self-inspection requirements.

7. *Effective times.* All of the times described in this SFAR are in the local time of the airport.

8. *Expiration.* This SFAR expires on January 5, 2000.

Issued in Washington, DC, on October 28, 1999.

Jane F. Garvey,
Administrator.

[FR Doc. 99–28616 Filed 11–2–99; 8:45 am]

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Part VI

Department of Housing and Urban Development

Funding Availability; Public Housing Drug Elimination Program; Gun Buyback Violence Reduction Initiative; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4451-N-05]

Notice of Funding Availability; Public Housing Drug Elimination Program; Gun Buyback Violence Reduction Initiative

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Public Housing Drug Elimination Program Gun Buyback Violence Reduction Initiative.

SUMMARY: The purpose of this notice is to affirm that gun buyback initiatives are an eligible activity under the public housing drug elimination program and to provide funding information and program guidelines for gun buyback programs. PHAs may reprogram a portion of their FY 1999 PHDEP grant dollars in order to devote such resources to gun buyback violence reduction initiatives. To encourage PHAs to devote a nationwide total of up to $10.5 million of their FY99 PHDEP grant funds to gun buyback violence reduction initiatives in cooperation with local law enforcement agencies, HUD through this notice is making an additional $4.5 million available for gun buyback violence reduction initiatives. This $4.5 million will be awarded on a first-come, first-served basis to PHAs that submit their reprogramming requests in accordance with this notice to provide approximately an additional $43 dollars for every $100 of FY 1999 PHDEP funds reprogrammed for gun buyback violence reduction initiatives.

This notice also provides guidance to PHAs on the use of the additional $4.5 million of Drug Elimination grant funds that the Department is making available to PHAs to increase the amount available for buybacks and for the development, outreach, technical assistance, training, assessment and execution activities related to the gun buyback violence reduction initiatives. HUD estimates that this initiative has the potential to remove more than 300,000 guns from circulation.

Contained in the body of this document is further information concerning the purpose of the NOFA, applicant eligibility, available amounts, submission requirements, and application processing, including how to apply, and how selections will be made.

DATES: Applications may be submitted at any time after publication of this notice. The application due date is December 3, 1999, or until all available funds have been awarded. Eligible applications that comply with the requirements of this notice will be funded on a first-come, first-served basis to the extent funding remains available.

ADDRESSES: To participate in this initiative and apply for funding under this Notice, a housing agency must submit an application to the U.S. Department of Housing and Urban Development, Grants Management Center, 501 School Street, SW, Suite 800, Washington, DC 20024, Attention: Gun Buyback Initiative. Applications may simply consist of a letter of request as long as it contains the information required by this Notice.

FOR FURTHER INFORMATION CONTACT: Cedric Brown, Program Analyst, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4206, Washington, DC 20410, telephone (202) 708-1197 x.4057. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339. Also, please see HUD's website at http://www.hud.gov/pih/legis/titlev.html for additional PHDEP information.

SUPPLEMENTARY INFORMATION:

I. Authority

The Public Housing Drug Elimination Program is authorized under the Public and Assisted Housing Drug Elimination Act (42 U.S.C. 11901 *et. seq*).

II. Amount Allocated

Public Law 105-276 (the FY 1999 HUD Appropriations Act) appropriated $310,000,000 for the Public and Assisted Housing Drug Elimination Program. Of that amount, approximately $230,750,000 is being made available for PHDEP grants in FY99. Of the total $310,000,000 appropriated for the Public and Assisted Housing Drug Elimination Program, the FY 1999 HUD Appropriations Act also set aside $10,000,000 for "grants, technical assistance, contracts and other assistance, training, and program assessment and execution". Approximately $4,500,000 of this $10,000,000 set aside amount is being made available under this notice for the development, outreach, technical assistance, training, assessment and execution activities related to gun buyback violence reduction initiatives.

As discussed in this notice, HUD is encouraging PHAs to reprogram a portion of their FY 1999 PHDEP grant funds to implement and operate gun buyback violence reduction initiatives in cooperation with local law enforcement agencies. Under this notice, HUD will use the $4.5 million set aside amount described in the paragraph above to match up to $10.5 million of the $230,750,000 of PHDEP grant funds that are reprogrammed to implement and operate gun buyback violence reduction initiatives. PHAs may request to use PHDEP funds for gun buyback violence reduction efforts until the established due date, December 3, 1999, or until available funds are exhausted. The Department will no longer approve PHA applications for further gun buyback violence reduction initiatives under this notice after the established due date, December 3, 1999, or after available funds have been awarded.

III. Background

With almost one gun for every man, woman and child, America is drowning today in a flood of guns and we're paying a heavy price for this proliferation, particularly in urban areas where much of public housing is located. In 1996, we lost more Americans to gunfire than we lost in the entire Korean War. Currently, over 600 people die in gun-related incidents in the U.S. each week. That's over 30,000 every year. This includes over 1,000 accidental deaths and over 18,000 suicides. Another 100,000 are injured annually in non-fatal shootings.

Our children pay the highest price. The rate of accidental shooting deaths for children under fifteen in the United States is nine times higher than the other 25 industrialized countries combined. And the great increase in suicides among teenagers and young adults in the past four decades has been mostly due to an increase in gun related suicides. Easy access to weapons is the single most overwhelming factor contributing to the high rate of gun deaths and injuries in this country.

In an effort to curtail the hazards of accidental shootings, suicides, the tragedies of domestic violence, the dangers of gun violence, and the devastating effects that often accompany such acts, police agencies and local community organizations around the country have created various types of gun buyback initiatives. Gun reduction efforts operate on the premise that accidental shootings, unintentional injuries, suicides and violent crimes can be reduced in communities if there are fewer weapons available with which to commit such acts. PHAs have an important role to play in the reduction of the number of guns and incidents of gun-related violence in our communities.

HUD is sponsoring the initiative announced in this notice through its Public Housing Drug Elimination Program to promote the cooperation of PHAs and local law enforcement agencies in conducting gun buyback initiatives aimed at reducing accidental or unintentional shootings, suicides, domestic violence and other forms of gun violence. HUD is inviting PHAs who are recipients of FY 1999 PHDEP funding to reprogram a portion of their PHDEP funding to implement gun reduction initiatives in their localities. To encourage the participation of PHAs in this initiative, HUD will provide a participating PHA with additional funding to increase the amounts available for gun buybacks and maximize the number of guns taken out of circulation, and for the development, outreach, technical assistance, training, assessment and execution activities related to gun buyback violence reduction initiatives. Funding being made available for this purpose will be equal to approximately 43 percent of the amount of PHDEP funding the PHA devotes to the gun buyback violence reduction initiative.

In addition to reducing the number of accidental shootings, suicides, domestic and gun violence, gun reductions efforts have other positive aspects for housing and community residents such as:

- Raising public consciousness about community safety and soliciting neighborhood participation in crime control efforts.
- Acting as a visible deterrent to criminal activity.
- Increasing police presence in communities.
- Establishing stronger bonds between the community and the police, which might aid in more cooperative crime prevention and crime resolutions.
- Increasing trust in the police on the part of the community.
- Affording the community an active role in the fight against accidental shootings, suicides, domestic violence, violent crimes and firearm related criminal activity.
- Involving community businesses as cosponsors of these programs, which could bring about more resources and publicity in support of the gun reduction efforts.

While these factors and reports of the success of gun buyback initiatives have been sufficiently favorable to encourage HUD to undertake this effort, the total amount of HUD assistance being devoted to this effort under this notice is capped at a total of $10.5 million in Fiscal Year 1999 (FY99) PHDEP program funding, plus the additional $4.5 million. HUD will sponsor an independent assessment of this initial effort to more accurately and objectively determine the effectiveness of such initiatives before expanding this effort further. PHAs and local law enforcement agencies participating in the initiative under this notice may be contacted to participate in this assessment.

IV. Application Procedures and Requirements

A. General Overview

PHDEP funds are made available to a PHA to be used in a manner consistent with the PHA's PHDEP plan to address drug-related, violent and criminal activity in and around public housing. Therefore, to participate in this initiative, a PHA must reprogram a portion of the funds in its PHDEP plan for gun buyback violence reduction activities. Before funds are awarded under this notice, a PHA will have to submit a reprogramming request for HUD approval. HUD will review each reprogramming request as it is received and upon approval of the request will authorize additional funding at a rate of approximately $43 for every $100 dollars of FY 1999 PHDEP funding reprogrammed. This represents an additional 43 percent of funding for the PHA's gun buyback violence reduction. HUD approval will consist of HUD signing off on the reprogramming request and MOU (an executed agreement to carry out the gun buyback initiative) between the PHA and the local police, and having HUD amend the PHDEP grant award to the PHA to support the gun reduction effort.

Because of the security issues involved, the gun buyback activities must be conducted by the local law enforcement agency. The FY 1999 PHDEP funds for this gun reduction initiative fall under the categories of eligible PHDEP activities of "programs designed to reduce use of drugs in and around public or federally assisted low-income housing projects, including drug-abuse prevention, intervention, referral, and treatment programs", as provided in 42 U.S.C. 11903(a)(6) and, under appropriate circumstances, reimbursement of local law enforcement agencies for additional security and protective services, as provided in 42 U.S.C. 11903(a)(2). Funds for buyback activities may not be drawn until the grantee has executed an agreement or Memorandum of Understanding for the additional law enforcement services. The full amount of PHDEP funds that are reprogrammed should be used for the actual buyback costs. HUD also strongly recommends that the additional 43 percent of funding made available be used for gun buyback costs to maximize the number of guns taken out of circulation.

In addition to the use of reprogrammed FY 1999 PHDEP funds and the additional funding made available under this NOFA, PHAs may and are encouraged to use funding from other sources, such as contributions from local government or the private sector, for their gun buyback/violence reduction initiatives. PHAs may, for example, negotiate with businesses in the community that vouchers exchanged for guns under the initiative provide an additional discount or value increase when redeemed at that business. PHAs and local law enforcement agencies are also strongly encouraged to seek out and obtain community cooperation and resources to leverage the costs of the development, outreach, technical assistance, training, assessment and execution activities related to the initiative, because a community-wide effort is likely to have the greatest positive impact.

B. Eligible Applicants

PHAs that are (1) recipients of FY 1999 PHDEP funding, (2) devoting a portion of that funding to gun buyback violence reduction initiatives, and (3) implementing their gun buyback initiatives in cooperation with local law enforcement agencies, as evidenced by letters of intent and executed agreement, may apply for a portion of the additional $4,500,000 TA funding under this notice.

C. Amount of Funding Per Applicant

Consistent with this notice, HUD will permit a PHA to reprogram up to $500,000 of its FY 1999 PHDEP funding to gun buyback violence reduction initiatives. In addition to the amount reprogrammed, PHAs will receive an additional amount of funding equal to approximately 43 percent of the FY99 PHDEP dollars devoted to the gun buyback initiative.

D. Eligible Activities.

Police conducting the buyback activity should accept for buyback firearms as defined under Federal, State or local law. The Federal law definition of a firearm is found at 18 U.S.C. 921(a)(3). In deference to local conditions and judgments, HUD will consider a wide range of gun buyback violence reduction activities, in accordance with the following:

1. *Form of buyback exchange.* HUD encourages these initiatives to offer gift certificates, food vouchers, certificates for merchandise such as toys, or other

incentives of value to those who turn in guns, in addition to or in place of cash payments.

2. *Amount of value per exchange.* HUD suggests value equivalent to $50 of the HUD assistance provided to be offered for each gun exchanged. Additional value in the form of discounts or extra merchandise made available by businesses participating in the initiative may also be offered.

3. *Site of gun buyback activities.* While PHDEP activities must be planned to reduce drug-related, violent and criminal activity in or around the premises of public housing, perpetrators of gun violence are frequently non-resident predators of public housing. Gun buyback activities, therefore, do not need to be conducted on the PHA premises in order to be effective. However, it is anticipated that the gun reduction effort will have a noticeable impact on reducing the number of guns and the risk of unintentional shootings in the homes and communities of public housing residents.

4. *Disposal of guns.* Once the police collect the weapons from the buyback initiatives, the guns must be destroyed so as not to be put back into use or circulation, unless law enforcement needs call for another action, such as preservation of a gun as evidence or a determination of whether a gun was stolen or used in the commission of a crime. If a gun is determined to be stolen, it must be returned to its lawful owner. Guns may not be resold or exchanged for value, except in connection with their destruction and conversion to scrap; however, a gun determined to be a curio or relic under 27 CFR 178.11 may be donated to a State or Federal museum. Local law enforcement agencies will be required to include the following recovery, tracing and destruction procedures in their disposal of firearms obtained under this initiative:

(a) Certain firearms defined under the National Firearms Act (NFA), 26 U.S.C. 5845(a), e.g., short-barreled shotguns, generally must be registered with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Local police will consult with the ATF where NFA firearms are surrendered in a buyback program;

(b) Local police will conduct a search of each surrendered firearm in the National Crime Information Center (NCIC).

(c) Where available, local police will test each surrendered firearm using an automated ballistics information system such as IBIS or DRUGFIRE.

(d) Where appropriate, certain surrendered firearms should be traced. For example, firearms possessed in violation of local law or ordinance, NFA firearms, firearms with an obliterated serial number, or firearms that are determined by local law enforcement to be associated with crime must be traced where possible.

E. Application Submission Requirements

Each application for funding under this notice must include the following:

1. A written statement briefly describing which activities in the PHA's PHDEP plan would be reprogrammed, and the resulting reprogrammed amount of FY 1999 PHDEP funding to be used for the gun buyback reduction activities;

2. A brief description of the proposed gun buyback initiative, including the gun recovery, tracing, and destruction procedures that will be followed, in accordance with the requirements and guidelines of this notice;

3. *Letters of intent.* A letter of intent signed by the chief of the local law enforcement agency to conduct the gun buyback initiative in accordance with the description submitted, and a letter of intent from the chief executive officer (generally the mayor or county executive) of the unit of local government for the jurisdiction indicating the cooperation and support of the local jurisdiction.

F. Award Process

As HUD receives applications, it will log them in by date and time. HUD will notify each PHA applicant that it is eligible to reprogram its PHDEP funds in the amount indicated in the application until a total of $10.5 million of FY 1999 PHDEP funding has been designated eligible for reprogramming. Before additional funds are awarded, the PHA will be required to submit its formal programming request describing which activities in the PHA's PHDEP plan are being reprogrammed, and the reprogrammed amount of FY 1999 PHDEP funding to be used for the gun buyback reduction activities. The PHA must also submit an executed agreement with the local law enforcement agency to conduct the gun buyback initiative in accordance with the description in the reprogramming request. Upon approval of the PHA's reprogramming request and executed agreement, HUD will award the additional 43 percent of funding through an amendment to the PHDEP grant agreement. All grants to PHAs and their sub-grants to local law enforcement agencies are subject to the applicable administrative requirements for grants of 24 CFR part 85, including the monitoring and reporting program performance requirements of § 85.40 and the financial reporting requirements of § 85.41.

V. Certifications and Findings

Environmental Impact

This notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Paperwork Reduction Act Statement

The information collection requirements for the Public Housing Drug Elimination Program were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0124. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the notice seeks to encourage the undertaking of a specific eligible activity under the Public Housing Drug Elimination Program, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the notice is not subject to review under the Order.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance number for the Public Housing Drug Elimination Program is 14.854.

Dated: October 28, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–28856 Filed 11–2–99; 8:45 am]

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Vol. 64, No. 212

Wednesday, November 3, 1999

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

58755–59106	1
59107–59602	2
59603–60082	3

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3CFR

Proclamations:
7245 59103
Executive Orders:
13067 (See Notice of October 29, 1999) 59105
Administrative Orders:
Notices:
Notice of October 29, 1999 59105
Presidential Determinations:
No. 00–2 of October 21, 1999 58755
No. 00–3 of October 25, 1999 58757

5 CFR

Proposed Rules:
1201 58798

7 CFR

319 59603
905 58759
928 59604
944 58759
981 .... 58763, 59107
1439 58766
1477 58766
Proposed Rules:
278 59665
770 59131
1217 59669
1823 59131
1956 59131

9 CFR

77 58769

10 CFR

Proposed Rules:
2 .... 59669, 59671
50 59671
72 59677
73 59684

11 CFR

100 59113
110 59606
114 59113
9004 59606
9034 59606
9036 59607

12 CFR

211 58780
229 59607
1805 59076
Proposed Rules:
1102 58800

14 CFR

39 (4 documents) 59113, 59115, 59116, 59117, 59613, 59614
71 59615
139 60068
Proposed Rules:
39 .... 59137, 59685
71 .... 59687, 59688, 59689, 59690

15 CFR

285 59616
801 59119
Proposed Rules:
287 59691

16 CFR

312 59888

17 CFR

271 59877
Proposed Rules:
1 59694
239 59826
240 59826
270 59826
274 59826

21 CFR

5 59617
801 59618
Proposed Rules:
801 59695

24 CFR

982 59620

26 CFR

1 .... 58782, 59139
301 58782
Proposed Rules:
1 59139

28 CFR

0 58782
2 59622
27 58782
50 59122

29 CFR

Proposed Rules:
1401 59697

31 CFR

538 58789
550 58789
560 58789

33 CFR

100 59623
117 .... 59123, 59624

34 CFR

668 (3 documents) 58974,

59016, 59060
682 (2 documents) 58938, 59016
685(2 documents) 58938, 59016

37 CFR

Proposed Rules:
1 59701
201 59140

40 CFR

51 58792
52 (8 documents) 59625, 59629, 59633, 59635, 59638, 59642, 59644
62 59648
63 59650
68 59650
180 59652
Proposed Rules:
52 (9 documents) 59703, 59704, 59705, 59706
62 59718
63 59719
68 59719
82 59141
141 59245
142 59245
180 58792

41 CFR

101 59591
102 59591

42 CFR

410 59379
411 59379
414 59379
415 59379
485 59379

43 CFR

414 58986

45 CFR

Proposed Rules:
160 59918
161 59918
162 59918
163 59918
164 59918

47 CFR

1 59656
20 59656
73 (3 documents) 59124, 59655
90 59148
95 59656
101 59663
Proposed Rules:
1 59719
20 59719
43 59719
73 (3 documents) 59147, 59148, 59728
90 59148

48 CFR

201 58908
213 58908

49 CFR

Proposed Rules:
Ch. II 59046
209 59046

50 CFR

17 58910
622 (2 documents) 59126
635 58793
640 59126
660 59129
Proposed Rules:
16 59149
17 59729
622 (2 documents) 59152, 59153
648 59156
654 59153
679 ....58796, 59730
Proposed Rules:
17 58934

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 3, 1999

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Plant-related quarantine, foreign:
  - Fumigated imported logs, lumber, and other unmanufactured wood articles; aeration; published 11-3-99

COMMERCE DEPARTMENT

National Institute of Standards and Technology

- Organization, functions, and authority delegations:
  - Laboratory Accreditation Program, Chief; published 11-3-99

ENVIRONMENTAL PROTECTION AGENCY

- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Buprofezin; published 11-3-99

FEDERAL RESERVE SYSTEM

- Depository institutions; reserve requirements (Regulation D):
  - Low reserve tranche annual indexing, etc.; published 10-4-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

- Low income housing:
  - Housing assistance payments (Section 8)—
    - Moderate rehabilitation units; lease execution or termination when remaining term of contract is less than one year; published 10-4-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Electronic benefit transfer system; adjustments; comments due by 11-8-99; published 9-9-99

AGRICULTURE DEPARTMENT

Forest Service

- National Forest System land and resource management planning; comments due by 11-9-99; published 10-5-99

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

- Americans with Disabilities Act; implementation:
  - Accessibility guidelines—
    - Recreation facilities; comments due by 11-8-99; published 7-9-99

COMMERCE DEPARTMENT

Economic Analysis Bureau

- International services surveys:
  - U.S. direct investments abroad—
    - BE-10; benchmark survey-1999; reporting requirements; comments due by 11-8-99; published 9-7-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Endangered and threatened species:
  - Sea turtle conservation; shrimp trawling requirements—
    - Cape Lookout, NC, offshore waters affected by Hurricanes Dennis and Floyd; limited tow times use as alternative to turtle excluder devices; comments due by 11-12-99; published -10-15-99

COMMODITY FUTURES TRADING COMMISSION

- Commodity Exchange Act:
  - Electronic signatures by customers, participants, and clients of registrants; comments due by 11-12-99; published 11-3-99

DEFENSE DEPARTMENT

- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

ENERGY DEPARTMENT

- Acquisition regulations:
  - Management and operating contracts; purchasing from contractor affiliated sources; comments due by 11-12-99; published 10-13-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-8-99; published 9-23-99
  - Colorado; comments due by 11-8-99; published 10-7-99
  - Delaware; comments due by 11-12-99; published 10-12-99
  - New York; comments due by 11-8-99; published 10-8-99
  - Source-specific plans—
    - Navajo Nation, AZ and NM; comments due by 11-8-99; published 10-8-99
- Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Texas; comments due by 11-12-99; published 10-13-99
- Hazardous waste program authorizations:
  - Washington; comments due by 11-12-99; published 10-12-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Avermectin B1 and its delta-8,9-isomer; comments due by 11-8-99; published 9-7-99
  - Processing fees; comments due by 11-8-99; published 9-24-99

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Wireless telecommunications services—
    - Extension to Tribal lands; comments due by 11-9-99; published 9-10-99
- Digital television stations; table of assignments:
  - Illinois; comments due by 11-9-99; published 9-29-99
- Radio services, special:
  - Private land mobile services—
    - 87.9 MHz band; emergency signals transmission; comments due by 11-8-99; published 11-4-99
- Radio stations; table of assignments:
  - New York; comments due by 11-8-99; published 10-12-99
  - Texas; comments due by 11-8-99; published 9-29-99
  - Wisconsin; comments due by 11-8-99; published 9-29-99

FEDERAL DEPOSIT INSURANCE CORPORATION

- Resolution and receivership rules:
  - Financial assests transferred by insured depository institution in connection with securitization or participation; comments due by 11-8-99; published 9-9-99

FEDERAL ELECTION COMMISSION

- Rulemaking petitions:
  - Project on Government Oversight; comments due by 11-12-99; published 10-13-99

FEDERAL RESERVE SYSTEM

- Equal credit opportunity (Regulation B):
  - Revision; comments due by 11-10-99; published 8-16-99

GENERAL SERVICES ADMINISTRATION

- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Medical devices:
  - Cardiovascular, orthopedic, and physical medicine diagnostic devices—
    - Cardiopulmonary bypass accessory equipment, goniometer device, and electrode cable devices; comments due by 11-8-99; published 8-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

- Medicaid:
  - Tuberculosis-related services to TB-infected individuals; optional coverage; comments due by 11-9-99; published 9-10-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

- Risk-based capital:

Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 11-10-99; published 6-14-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:

Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 11-12-99; published 10-15-99

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:

Rights-of-way—

Principles and procedures under Mineral Leasing Act; comments due by 11-12-99; published 10-13-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

National Wildlife Refuge System:

Land usage; compatibility policy; comments due by 11-8-99; published 9-9-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Virginia; comments due by 11-8-99; published 10-8-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Foreign proposals to NASA research announcements; implementation on no-exchange-of-funds basis; comments due by 11-8-99; published 9-7-99

Federal Acquisition Regulation (FAR):

Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:

Angel, Jeffery C.; comments due by 11-8-99; published 8-23-99

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list additions; comments due by 11-8-99; published 8-23-99

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

Patapsco River, MD; New Year's Celebration Fireworks; comments due by 11-8-99; published 10-8-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Advisory circulars; availability, etc.:

Aircraft products and parts—

Brakes and braking systems certification tests and analysis; comments due by 11-8-99; published 8-10-99

Airworthiness directives:

Airbus; comments due by 11-8-99; published 10-8-99

AlliedSignal Inc.; comments due by 11-8-99; published 9-8-99

British Aerospace; comments due by 11-8-99; published 10-8-99

General Electric Co.; comments due by 11-8-99; published 9-8-99

Airworthiness standards:

Transport category airplanes—

Braking systems; harmonization with European standards; comments due by 11-8-99; published 8-10-99

Braking systems; harmonization with European standards; correction; comments due by 11-8-99; published 8-20-99

Technical standard orders:

Transport airplane wheels and wheel and brake assemblies; comments due by 11-8-99; published 8-10-99

TREASURY DEPARTMENT

Customs Service

Merchandise entry:

Anticounterfeiting Consumer Protection Act; Customs entry documentation; comments due by 11-12-99; published 9-13-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes, etc.:

Partnerships and branches; guidance under Subpart F; withdrawal and new guidance involving hybrid branches; comments due by 11-10-99; published 7-13-99

Income taxes:

Capital gains, partnership, Subchapter S, and trust provisions; comments due by 11-8-99; published 8-9-99

Correction; comments due by 11-8-99; published 9-10-99

Income tax return preparer; identifying number; cross reference; comments due by 11-10-99; published 8-12-99

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H.R. 659/P.L. 106–86

Pennsylvania Battlefields Protection Act of 1999 (Oct. 31, 1999; 113 Stat. 1298)

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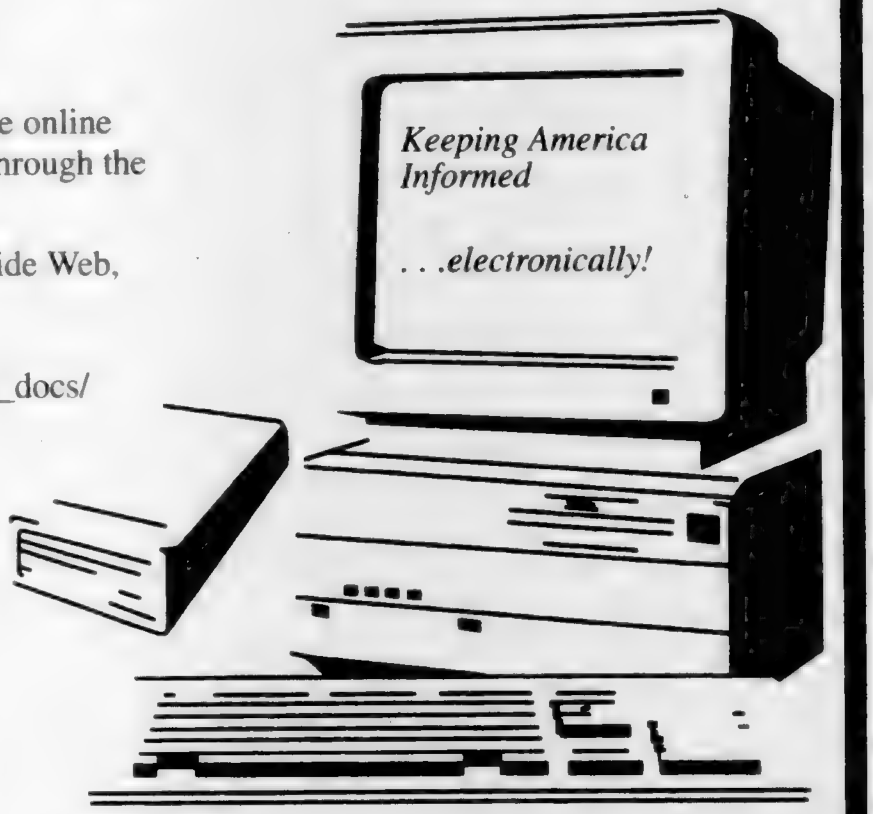

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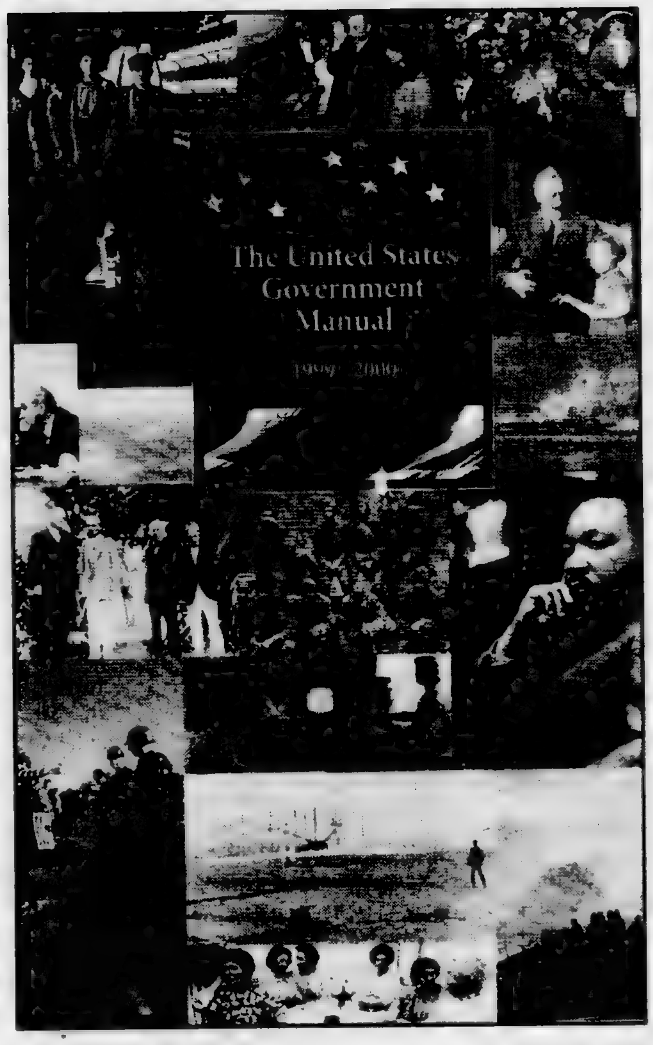

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Thursday
November 4, 1999

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Contents

Federal Register
Vol. 64, No. 213
Thursday, November 4, 1999

Agency for Health Care Policy and Research
NOTICES
Meetings:
  Health Care Policy and Research Special Emphasis Panel, 60207

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See Natural Resources Conservation Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
  Citrus canker, 60088–60092

Army Department
NOTICES
Privacy Act:
  Systems of records, 60177–60180

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 60207–60209
Grants and cooperative agreements; availability, etc.:
  National Immunization Coalition and Information Network, 60209–60211

Children and Families Administration
NOTICES
Meetings:
  President's Committee on Mental Retardation, 60211

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Comptroller of the Currency
RULES
Investment securities; corporate activities rules, policies, and procedures; and bank activities and operations, 60092–60100

Defense Department
See Army Department
See Defense Logistics Agency
See Navy Department
NOTICES
Privacy Act:
  Systems of records, 60174–60177

Defense Logistics Agency
NOTICES
Privacy Act:
  Systems of records, 60180–60184

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
  Schedules I and II—
    2000 proposed aggregate; correction, 60264
Applications, hearings, determinations, etc.:
  Chiragene, Inc., 60226–60227
  National Center for Development of Natural Products, 60227
  Norac Co., Inc., 60227
  Sigma Aldrich Research Biochemicals, Inc., 60227–60228

Education Department
NOTICES
Meetings:
  National Assessment Governing Board, 60185–60186
  Web-Based Education Commission, 60186–60187

Employment and Training Administration
NOTICES
Adjustment assistance:
  Alliance Leathers, Inc., 60232
  Border Apparel Laundry, Inc., 60232–60233
  Contract Apparel, Inc., 60233
  Eagle Ottawa, 60233
  FWA Drilling Co., Inc., 60233
  Halliburton Energy Services, 60233–60234
  Harrison Alloys, Inc., 60234
  King Manufacturing Co., Inc., 60234
  Lincoln Automotive Co., 60234–60235
  Little Tikes Co., 60235
  Mark Thompson Co., 60235
  PennzEnergy Exploration & Production L.L.C., 60235
  Sappi Fine Papers North America, Inc., 60235–60236
  Schlumberger Technology Corp., 60236
  Texaco US Production West USA, 60236
  Voith Sulzer Papertech et al., 60236–60237
Adjustment assistance and NAFTA transitional adjustment assistance:
  Consolidated Papers, Inc., 60229
  Steward Cable Repair, Inc., et al., 60230–60232
Federal-State unemployment compensation program:
  Federal Unemployment Tax Act; certifications, 60237–60238
NAFTA transitional adjustment assistance:
  EIEIO, Inc., 60238
  Georgia-Pacific Corp., 60239

Employment Standards Administration
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 60239

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
  National Coal Council, 60187
  National Petroleum Council, 60187

Engraving and Printing Bureau
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 60262–60263

Environmental Protection Agency

RULES

- Air quality implementation plans; approval and promulgation; various States:
  - California, 60109–60112
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Glufosinate ammonium, 60112–60121
- Superfund program:
  - National oil and hazardous substances contingency plan—
    - National priorities list update, 60121–60122

NOTICES

- Confidential business information and data transfer, 60191
- Meetings:
  - National Environmental Justice Advisory Council, 60191–60192
- Pesticide registration, cancellation, etc.:
  - Wilbur-Ellis Co. et al., 60192–60194
- Superfund; response and remedial actions, proposed settlements, etc.:
  - Sanders Aviation Site, AZ, 60194
- Toxic and hazardous substances control:
  - Persistent, bioaccumulative, and toxic new chemical substances; category; policy statement, 60194–60204
- Water pollution control:
  - Clean Water Act—
    - Class II administrative penalty assessments, 60204–60205

Executive Office of the President

See Presidential Documents

Federal Aviation Administration

RULES

- Airworthiness directives:
  - Bell Helicopter Textron Canada, 60100–60104

PROPOSED RULES

- Airworthiness directives:
  - Airbus, 60138–60140
  - Cessna, 60136–60138
  - McDonnell Douglas, 60134–60136

NOTICES

- Aviation Rulemaking Advisory Committee; task assignments; correction, 60264

Federal Communications Commission

RULES

- Common carrier services:
  - Commercial mobile radio services—
    - Wireless services compatibility with enhanced 911 services, 60126–60131
  - Telecommunications Act of 1996; implementation—
    - Access charge reform; local exchange carriers price cap performance review, 60122–60123
- Radio services, special:
  - Private land mobile services—
    - 700 MHz band; Federal, State, and local public safety agency communication requirements through Year 2010, 60123–60126
- Radio stations; table of assignments:
  - Ohio, 60131
- Television broadcasting:
  - Annual report (Form 325); biennial regulatory review
    - Effective date, 60131–60132

PROPOSED RULES

- Digital television stations; table of assignments:
  - Florida, 60149–60150
  - Georgia, 60150
- Radio services, special:
  - Private land mobile services—
    - 87.9 MHz band; emergency signals transmission, 60151
- Radio stations; table of assignments:
  - Louisiana, 60151
  - Ohio, 60150

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 60205–60206

Federal Deposit Insurance Corporation

NOTICES

- Meetings; Sunshine Act, 60206

Federal Election Commission

NOTICES

- Meetings; Sunshine Act, 60206

Federal Energy Regulatory Commission

PROPOSED RULES

- Practice and procedure:
  - FERC Form Nos. 423, 714, and 715; electronic filing, 60140–60143

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request; correction, 60264
- Environmental impact statements; third party contractors qualified to prepare statements; list, 60190
- Hydroelectric applications, 60190–60191
- *Applications, hearings, determinations, etc.:*
  - AES Redondo Beach, LLC, 60187–60188
  - CNG Transmission Corp., 60188
  - East Tennessee Natural Gas Co., 60189
  - Michigan Gas Storage Co., 60189
  - Nautilus Pipeline Co., L.L.C., 60189
  - Transcontinental Gas Pipe Line Corp., 60189–60190
  - Transcontinental Gas Pipe Line Corp.; correction, 60264
  - Williams Gas Pipelines Central, Inc.; correction, 60264

Federal Highway Administration

NOTICES

- Environmental statements; notice of intent:
  - Weber County, UT, 60260

Federal Railroad Administration

NOTICES

- Exemption petitions, etc.:
  - Metro-North Commuter Railroad and Connecticut Transportation Department, 60260–60261

Federal Reserve System

NOTICES

- Banks and bank holding companies:
  - Formations, acquisitions, and mergers, 60206–60207
  - Permissible nonbanking activities, 60207

Fish and Wildlife Service

NOTICES

- Endangered and threatened species permit applications, 60221
- Marine mammals permit applications, 60221–60222

Food and Drug Administration

RULES

- Food additives:
  - Adhesive coatings and components—
    - 2,2'-[(1-methylethylidine)bis[4,1-phenyleneoxy[1-(butoxymethyl)-2,1-ethanediyl]oxymethylene]]bisoxirane, 60104–60106

PROPOSED RULES

- Freedom of Information Act; implementation, 60143–60149

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 60211–60213

Food and Nutrition Service

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request, 60158

Forest Service

NOTICES

- Environmental statements; availability, etc.:
  - Off-highway vehicle use; correction, 60222
- Environmental statements; notice of intent:
  - Boise National Forest, ID, 60158–60160
- Meetings:
  - Southwest Washington Provincial Advisory Committee, 60160

Health and Human Services Department

See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Care Financing Administration

RULES

- Medicare:
  - Skilled nursing facilities; prospective payment system and consolidated billing
    - Correction, 60122

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 60213

Health Resources and Services Administration

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 60213–60215
- Meetings:
  - Maternal and Child Health Research Grants Review Committee, 60215

Interior Department

See Fish and Wildlife Service
See Land Management Bureau

NOTICES

- Committees; establishment, renewal, termination, etc.:
  - Joint Fire Science Program Stakeholder Advisory Group, 60220–60221

International Trade Administration

NOTICES

- Antidumping:
  - Antifriction bearings from—
    - France, 60321–60326
    - Germany, 60309–60313
    - Japan, 60275–60282
    - Sweden, 60282–60287
    - United Kingdom, 60326–60332
  - Ball bearings from—
    - Italy, 60295–60301
    - Romania, 60313–60317
    - Singapore, 60287–60291
  - Cylindrical roller bearings from—
    - Italy, 60291–60295
  - Tapered roller bearings, four inches or less, from—
    - Japan, 60317–60321
  - Tapered roller bearings from—
    - Hungary, 60272–60275
    - Romania, 60269–60272
  - Tapered roller bearings, over four inches, and parts, finished and unfinished, from—
    - Japan, 60265–60269
- Antidumping and countervailing duties:
  - Adminstrative review requests, 60161–60162
- Countervailing duties:
  - Live swine from—
    - Canada, 60301–60309

International Trade Commission

NOTICES

- Import investigations:
  - Brass sheet and strip from—
    - Various countries, 60223
  - Circular seamless stainless steel hollow products from—
    - Japan, 60223–60224
  - Conductive coated abrasives, 60224–60225
  - Potassium permanganate from—
    - China and Spain, 60225
  - Solid urea from—
    - Various countries, 60225
  - Tin- and chromium-coated steel sheet from—
    - Japan, 60225–60226

Justice Department

See Drug Enforcement Administration

Labor Department

See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 60228–60229

Land Management Bureau

NOTICES

- Environmental statements; availability, etc.:
  - Off-highway vehicle use; correction, 60222
- Land-use designations:
  - Colorado, 60222
- Withdrawal and reservation of lands:
  - Arizona; correction, 60223

National Institutes of Health

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request, 60215–60216

Meetings:
National Cancer Institute, 60216–60217
National Human Genome Research Institute, 60217–60218
National Institute of Child Health and Human Development, 60218–60219
National Institute of Mental Health, 60218
National Institute on Deafness and Other Communication Disorders, 60218
Scientific Review Center, 60219–60220

National Oceanic and Atmospheric Administration

RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Puerto Rico and Virgin Islands coral reef resources, 60132–60133
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Chinook salmon, 60157
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 60151–60157
NOTICES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic surf clam and ocean quohog; 2000 cage tags from vendor, 60163
Grants and cooperative agreements; availability, etc.:
Coastal Services Center—
Landscape Characterization and Restoration, Integration and Development, Coastal Change and Analysis Program, etc., 60163–60172
Meetings:
Pacific Fishery Management Council, 60172
Western Pacific Fishery Management Council, 60172–60173
National Weather Service; modernization and restructuring:
Weather Service offices—
Consolidation, automation, and closure certifications, 60173
Permits:
Exempted fishing, 60173–60174

Natural Resources Conservation Service

NOTICES
Agency information collection activities:
Proposed collection; comment request, 60160
Field office technical guides; changes:
Indiana, 60160–60161

Navy Department

NOTICES
Privacy Act:
Systems of records, 60184–60185

Nuclear Regulatory Commission

NOTICES
Commercial nuclear power plants; safety performance:
Regulatory oversight program; pilot program; comment request, 60244
Meetings:
Pilot Program Evaluation Panel, 60244–60245
Reactor Safeguards Advisory Committee, 60245–60246
Reports and guidance documents; availability, etc.:
Materials licenses; consolidated guidance—
Possession licenses for manufacturing and distribution; program-specific guidance, 60246
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 60241
Kansas Gas & Electric Co. et al., 60241–60242
Mallahan, Jasen, 60242–60243
Northern States Power Co., 60243–60244

Occupational Safety and Health Administration

NOTICES
Nationally recognized testing laboratories, etc.:
Canadian Standards Association, 60240–60241

Personnel Management Office

RULES
Prevailing rate systems, 60087–60088
NOTICES
Agency information collection activities:
Proposed collection; comment request, 60246–60247
Submission for OMB review; comment request, 60247
Privacy Act:
Systems of records, 60247–60250

Postal Service

RULES
International Mail Manual:
Priority Mail Global Guaranteed; enhanced expedited service from selected U.S. locations to selected European countries, 60106–60109

Presidential Documents

PROCLAMATIONS
Special observances:
American Indian Heritage Month, National (Proc. 7247), 60085–60086
Child Mental Health Month (Proc. 7246), 60083–60084

Public Health Service

See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Securities and Exchange Commission

NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 60254–60256
National Association of Securities Dealers, Inc., 60256–60259
Pacific Exchange, Inc., 60259–60260
Applications, hearings, determinations, etc.:
T. Rowe Price Associates, Inc., et al., 60250–60254

Surface Transportation Board

NOTICES
Railroad services abandonment:
Dallas Area Rapid Transit, 60261–60262

Transportation Department

See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Surface Transportation Board

Treasury Department

See Comptroller of the Currency
See Engraving and Printing Bureau

NOTICES

Meetings:
  International Child Labor Enforcement Advisory Committee, 60262
  International Financial Institution Advisory Commission, 60262

Separate Parts In This Issue

Part II

Commerce Department, International Trade Administration, 60325–60332

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

7246 60083
7247 60085

Executives Orders:

13096 (See Proc. 7247) 60085

5 CFR

532 60087

7 CFR

301 60088

12 CFR

1 60092
5 60092
7 60092

14 CFR

39 (2 documents) 60100, 60102

Proposed Rules:

39 (3 documents) 60134, 60136, 60138

18 CFR

Proposed Rules:

141 60140
385 60140

21 CFR

175 60104

Proposed Rules:

20 60143

39 CFR

20 60106

40 CFR

52 60109
180 60112
300 (2 documents) 60121

42 CFR

409 60122
411 60122
413 60122
489 60122

47 CFR

0 60122
1 60122
2 60123
20 60126
61 60122
69 60122
73 60131
76 60131
90 60123

Proposed Rules:

73 (5 documents) 60149, 60150, 60151
90 60151

50 CFR

622 60132

Proposed Rules:

622 60151
679 60157

Federal Register
Vol. 64, No. 213
Thursday, November 4, 1999

Presidential Documents

Title 3—

The President

Proclamation 7246 of October 30, 1999

Child Mental Health Month, 1999

By the President of the United States of America

A Proclamation

As a Nation, we have made much progress in ensuring the physical health of our young people. But we are only beginning to make similar strides in protecting their mental health. The symptoms of mental illness in children and adolescents too often go unrecognized and therefore untreated—a tragic failing that can lead to profound effects on their development. Even very young children can experience anxiety and depressive disorders that can have a long-term negative impact on their social interactions at home and at school.

Unfortunately, our attitudes regarding mental illness have compounded this problem. While we now know that more than one in five Americans experiences some form of mental illness each year, that many mental disorders are biological, and that they can be treated medically, too many people still believe that mental illness is a personal failure. Because of this widespread misconception, many parents are reluctant to acknowledge that their children need help, and many children who need help are afraid to ask for it.

During Child Mental Health Month, I encourage all parents, teachers, pediatricians, school nurses, other health care professionals, and concerned citizens across our country to learn more about children's mental health. By doing so, we can recognize more quickly the early warning signs of mental illnesses and disorders. We can detect depression before it deepens into serious illness, raise awareness of risk factors for suicide, and work to prevent more acts of youth violence.

We must do all we can to intervene in the lives of young people who are mentally or emotionally unstable before they cause harm to themselves or to others. I am pleased that some schools have responded to the recent youth violence tragedies by improving mental health services, expanding after-school and mentoring programs, and offering in-home counseling for vulnerable families. To ensure the success of these efforts, we must work to fight the stigma and dispel the myths that surround mental illness. By engaging in efforts that raise public awareness of our children's mental health, we can replace stigma with acceptance, ignorance with understanding, and fear with new hope for the future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1999 as Child Mental Health Month. I call upon families, schools, communities, and governments to dedicate themselves to promoting the mental health and well-being of all our children.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J Clinton

[FR Doc. 99–29048
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Presidential Documents

Proclamation 7247 of November 1, 1999

National American Indian Heritage Month, 1999

By the President of the United States of America

A Proclamation

Ours is a nation inextricably linked to the histories of the many peoples who first inhabited this great land. Everywhere around us are reminders of the legacy of America's first inhabitants. Their history speaks to us through the names of our cities, lakes, and rivers; the food on our tables; the magnificent ruins of ancient communities; and, most important, the lives of the people who retain the cultural, spiritual, linguistic, and kinship bonds that have existed for millennia.

As we reflect on the heritage of American Indians, Alaska Natives, and Native Hawaiians, we also reaffirm our commitment to fostering a prosperous future for native youth and children. At the foundation of these efforts is our work to provide a quality education to all Native American children. In particular, we have sought significantly increased funding to support Bureau of Indian Affairs school construction and 1,000 new teachers for American Indian youth. My 1998 Executive order on American Indian and Alaska Native Education sets goals to improve high school completion rates and improve performance in reading and mathematics. And we are working to get computers into every classroom and to expand the use of educational technology.

We are also seeking ways to empower Native American communities and help them prosper. My Administration is expanding consultation and collaborative decision-making with tribal governments to promote self-determination. We also support tribal government economic development initiatives, particularly those that increase or enhance the infrastructure necessary for long-term economic growth. My New Markets Initiative seeks to leverage public and private investment to boost economic development in areas that have not shared in our recent national prosperity. In July, I visited the Pine Ridge Reservation of the Oglala Sioux, as part of my New Markets Tour, to explore opportunities for economic development in Indian Country.

Among the most serious barriers to economic growth facing tribal communities is a lack of housing, physical infrastructure, and essential services. My Administration is working with tribal leaders to build and renovate affordable housing on tribal lands, bring quality drinking water to economically distressed Indian communities, and improve public safety. We are moving to assist tribal governments in developing the physical infrastructure needed for economic development, including roads, fiber-optic cabling, and electric power lines.

In working together to shape a brighter future for Indian Country, we must not lose sight of the rich history of Native Americans. Just weeks ago, the Smithsonian Institution broke ground on the National Mall for the National Museum of the American Indian. This wonderful facility will preserve and celebrate the art, history, and culture of America's indigenous peoples. It is also fitting that the first U.S. dollar coin of the new millennium will bear the likeness of Sacajawea and her infant son—an image that captures the importance of our shared history.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1999 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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Rules and Regulations

Federal Register
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Thursday, November 4, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI90

Prevailing Rate Systems; Abolishment of the Dubuque, IA Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule that will remove the requirement that a full-scale wage survey be conducted in the Dubuque, Iowa, Federal Wage System (FWS) wage area. It will also abolish the Dubuque, IA, FWS wage area and redefine the counties of Clinton, Dubuque, and Jackson, IA, and Carroll, Jo Daviess, and Whiteside, Illinois, to the area of application of the Davenport-Rock Island-Moline, IA, FWS wage area. The interim rule is necessary because of the pending closure of the Dubuque wage area's host installation, the Savannah Army Depot, which is no longer capable of hosting annual wage surveys.

DATES: *Effective date:* This interim rule is effective on October 31, 1999. *Applicability date:* Employees in the Dubuque wage area will be transferred to the Davenport wage area on the first day of the first applicable pay period beginning on or after December 19, 1999. Comments must be received by December 6, 1999.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: Because of the pending closure of the Savannah Army Depot, the Department of Defense (DOD) has requested that the Office of Personnel Management (OPM) abolish the requirement to conduct a full-scale wage survey in the Dubuque wage area. DOD has also requested that OPM abolish the Dubuque wage area and redefine its counties to the Davenport, IA, FWS wage area. The Dubuque wage area is presently composed of six survey counties: Clinton, Dubuque, and Jackson, IA, and Carroll, Jo Daviess, and Whiteside, IL.

The Dubuque wage area's host installation, the Savannah Army Depot, is preparing to close in March 2000. This closure will leave the lead agency, DOD, without an installation in the survey area capable of hosting annual local wage surveys. A full-scale wage survey is scheduled to begin in the Dubuque wage area in October 1999. Since the host installation is preparing to close and is downsizing its operations, it no longer has the capacity to host the annual local full-scale wage survey.

Under section 5343 of title 5, United States Code, OPM is responsible for defining wage areas and follows regulatory criteria under section 532.211 of title 5, Code of Federal Regulations. Under the regulatory criteria, OPM considers the following factors when defining wage areas:

(i) Distance, transportation facilities, and geographical features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Based on an analysis of these regulatory criteria, OPM is defining the Dubuque wage area to the area of application of the Davenport wage area. The closest major Federal installation to the Savannah Army Depot is the Rock Island Arsenal in the Davenport survey area, which is approximately 113 km (70 miles) away. Transportation facilities, geographic features, and commuting patterns do not favor one wage area more than another. A review of overall population, employment, and kinds and sizes of private industrial establishment shows that the Dubuque wage area has a population and workforce that most closely resemble the population and workforce of the Davenport survey area. The Dubuque survey area is similar to the Davenport survey area in terms of the distribution of employment in surveyable industries, with a high proportion of employment in the manufacturing sector.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed these recommendations and by consensus recommended approval of these changes.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3) I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because the Dubuque wage survey would otherwise be ordered in October 1999 and preparations for the wage survey must begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B—[Amended]

2. Appendix A to subpart B of part 532 is amended for the State of Iowa by removing the entry for Dubuque.

3. Appendix C to subpart B is amended by removing the wage area listing for Dubuque, Iowa, and revising the Davenport-Rock Island-Moline, IA, listing to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Iowa

* * * * *

Davenport-Rock Island-Moline

Survey Area

Iowa:
  Scott
Illinois:
  Henry
  Rock Island

Area of Application. Survey Area Plus

Iowa:
  Clinton
  Des Moines
  Dubuque
  Jackson
  Lee
  Louisa
  Muscatine
Illinois:
  Adams
  Brown
  Bureau
  Carroll
  Cass
  Fulton
  Hancock
  Henderson
  Jo Daviess
  Knox
  McDonough
  Marshall
  Mason
  Mercer
  Peoria
  Putnam
  Schuyler
  Stark
  Tazewell
  Warren
  Whiteside
  Woodford

[FR Doc. 99–28875 Filed 11–3–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–080–1]

Citrus Canker Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations to allow citrus fruit produced outside the quarantined areas to be moved into a quarantined area for packing and then moved from that quarantined area to any destination in the United States, including commercial citrus-producing areas. The citrus fruit produced outside the quarantined areas would have to be moved and handled according to specific conditions designed to prevent the artificial spread of citrus canker, including conditions to prevent its commingling with, and possible contamination by, citrus fruit produced within a quarantined area. We are taking this action to relieve unnecessary restrictions on regulated fruit originating outside a quarantined area but packed within a quarantined area.

DATES: This interim rule was effective October 29, 1999. We invite you to comment on this docket. We will consider all comments that we receive by January 3, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–080–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–080–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which renders the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–14 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. The regulations currently list parts of Broward, Collier, Dade, and Manatee Counties, FL, as quarantined areas for citrus canker.

Among the entities that are affected by the restrictions of the regulations are producers of regulated fruit and packing plants that handle regulated fruit. With regard to the packing and movement of regulated fruit, the regulations have provided for the three sets of circumstances that may face producers and packers when areas within a State are quarantined for citrus canker:

- The regulated fruit is both produced and packed in a quarantined area (§ 301.75–7(a));
- The regulated fruit is produced in a quarantined area and packed outside the quarantined areas (§ 301.75–4(d)(2)(ii)); and
- The regulated fruit is produced outside the quarantined areas and packed in a quarantined area (§ 301.75–7(b)).

In each of these three situations, the regulations provide specific conditions that must be met in order for the fruit to qualify for interstate movement after packing, and in each case the regulated fruit may not be moved into commercial citrus-producing areas of the United States after packing.

When the most recent additions were made to the quarantined areas in an interim rule effective January 26, 1999, and published in the **Federal Register** on February 1, 1999 (64 FR 4777–4780, Docket No. 95–086–2), approximately 13 citrus fruit packing plants fell within the quarantined areas. It has come to our attention that at least one of the packing plants located in the quarantined areas could expect to encounter significant financial hardship as a result of that quarantine action due to the fact that a large portion of the packer's business involves shipping gift fruit to areas of Florida located outside the quarantined areas. As noted in the previous paragraph, regulated fruit packed in a quarantined area may not be moved into commercial citrus-producing areas, so the operator of this packing plant could expect to see his business drastically curtailed as a direct result of the inclusion of his plant in a quarantined area.

In an effort to minimize the expected significant economic effects on this, and potentially other, fruit packing operations, we reexamined our citrus canker regulations with an eye toward identifying potential alternatives to the prohibition on the movement of regulated fruit that has been packed within a quarantined area. After consulting with our Citrus Canker Eradication Program staff, various citrus packer groups, and the Florida Department of Agriculture and Consumer Services, we concluded that a regulatory approach that incorporated the segregation of fruit within the packing plant—*i.e.*, keeping regulated fruit produced outside the quarantined areas physically separated from regulated fruit produced within a quarantined area—and other safeguards would allow packing plants located within a quarantined area to move regulated fruit from outside a citrus canker quarantined area into a quarantined area for packing under certain conditions and then ship it to any area of the United States, including commercial citrus-producing areas. This approach is consistent with § 301.75–4(d)(2)(ii) of the regulations, which provides conditions, including fruit segregation, that allow regulated fruit produced both within and outside the quarantined areas to be packed in plants located outside the quarantined areas without affecting the ability of those plants to move regulated fruit produced outside the quarantined areas to any destination, including commercial citrus-producing areas. Similarly, Florida's State-run Caribbean fruit fly (Carib fly) program has for several years successfully provided for fruit produced both within and outside the areas regulated for Carib fly to be packed in plants located within regulated areas under conditions that include fruit segregation.

Based on these considerations, we have amended the citrus canker regulations to provide conditions under which regulated fruit produced outside the quarantined areas may be packed within a quarantined area and subsequently moved into any area of the United States, including commercial citrus-producing areas. These conditions, which incorporate features drawn from elsewhere in our citrus canker regulations and include specific documentation, cleaning, disinfection, and handling requirements in addition to fruit segregation, are explained in detail below.

We believe that most producers and packers of regulated fruit will be willing to observe the conditions set forth in this interim rule in order to qualify regulated fruit produced outside the quarantined areas but packed within a quarantined area for movement to all areas of the United States, including commercial citrus-producing areas. However, we acknowledge that there may be some producers or packers who wish to continue to use the current provisions in § 301.75–7(b) for the packing of fruit within a quarantined area, which is not then eligible to be shipped to commercial citrus-producing areas. These provisions may be preferred by packers who do not wish to take the extra step of keeping regulated fruit produced outside the quarantined areas segregated from fruit produced within a quarantined area. Therefore, we are retaining the original provisions of § 301.75–7(b) in this interim rule; those provisions will now be found in § 301.75–7(b)(1).

New § 301.75–7(b)(2) contains conditions under which regulated fruit produced outside the quarantined areas but packed within a quarantined area may be moved interstate to any area of the United States, including commercial citrus-producing areas. We have revised the introductory text of § 301.75–7(b) to indicate that there are now two options available to qualify regulated fruit produced outside the quarantined areas for subsequent movement when that fruit is packed in a plant located within a quarantined area.

Under the provisions of new paragraph § 301.75–7(b)(2), regulated fruit produced outside the quarantined areas but packed in a plant located within a quarantined area will be eligible for movement into any area of the United States, including commercial citrus-producing areas, under the following conditions:

Documentation. The regulated fruit produced outside the quarantined areas must be accompanied to the packing plant by a document that states the location of the grove where the fruit was produced, the variety and quantity of fruit, the address to which the fruit will be delivered for packing, and the date the movement of the fruit began. This documentation serves to establish that the regulated fruit was produced in an area outside the quarantined areas and, by providing a record of the amount and type of fruit in the shipment, helps ensure that regulated fruit from other sources is not added to the shipment during movement.

Unloading and loading. The regulated fruit produced outside the quarantined areas must be moved through the quarantined area without being unloaded, and no regulated article may be added to the shipment in the quarantined area. Keeping the regulated fruit produced outside the quarantined areas separated from fruit produced within a quarantined area is one of the primary safeguards of these new provisions, so this requirement is necessary to ensure that the integrity of the shipment is maintained from the time the fruit is loaded in the nonquarantined production area to the time it is unloaded at the packing plant. Producers or packers who wish to pick up additional regulated fruit produced within the quarantined area while en route to the packing plant may still do so under the provisions of § 301.75–7(b)(1), but, as noted above, fruit from that packing plant will be ineligible for movement into commercial citrus-producing areas.

Protecting the shipment. The regulated fruit produced outside the quarantined areas must be completely covered, or enclosed in containers or in a compartment of a vehicle, both during its movement to a packing plant in a quarantined area and during its movement from a packing plant in a quarantined area to destinations outside that quarantined area. This requirement is necessary to protect the regulated fruit produced outside the quarantined areas from the possibility of contamination during its movement through the quarantined area.

Segregation and treatment. At the packing plant, the regulated fruit produced outside the quarantined areas must be stored separately from, and have no contact with, regulated fruit produced in a quarantined area. Any equipment at the packing plant that comes in contact with regulated fruit produced in a quarantined area must be treated in accordance with § 310.75–11(d) of this subpart before being used to handle any regulated fruit not produced in a quarantined area. Requiring the regulated fruit produced outside a quarantined area to be segregated from other fruit within the packing plant will prevent the commingling of the two types of fruit, thus preventing the contamination that could occur as a result of that commingling, and will ensure that only fruit produced outside the quarantined areas is moved interstate to commercial citrus-producing areas. Similarly, the application of the cleaning and disinfection measures of § 301.75–11(d) to the handling equipment in the plant will prevent regulated fruit produced outside a quarantined area from becoming contaminated by equipment that has been used to handle fruit produced within a quarantined area.

Fruit treatment. The regulated fruit produced outside the quarantined areas must be treated at the packing plant in accordance with § 301.75–11(a) of the regulations. While regulated fruit produced outside a quarantined area does not present the same citrus canker risks as fruit produced within a regulated area, we are nonetheless requiring it to be treated with sodium hypochlorite or sodium o-phenyl phenate (SOPP) in accordance with § 301.75–11(a) as a redundant safeguarding measure, given that the fruit is being packed within a quarantined area and will be eligible for movement into commercial citrus-producing areas. Beyond the role of those treatments in mitigating the risks posed by citrus canker, we understand that sodium hypochlorite and SOPP treatments, as well as additional measures such as fruit waxing, are standard packing industry practices even outside the quarantined areas because such measures help prevent fruit spoilage. That consideration, plus the fact that packing plants within the quarantined areas are already equipped to apply the required treatments, lead us to believe that this requirement will not impose any additional burdens on the operators of packing plants.

Handling of culls and debris. Due to the likelihood that they will be commingled with similar regulated articles collected from regulated fruit produced in a quarantined area, all leaves, litter, and culls collected at the packing plant from the shipment of regulated fruit produced outside the quarantined areas must be handled as prescribed in § 301.75–4(d)(2)(ii)(E) of the regulations. Paragraph (d) of § 301.75–4 contains the conditions that must be met in order for less than an entire State to be designated as a quarantined area; those conditions include the specific provisions for the intrastate movement and handling of leaves, litter, and culls cited above as appearing in § 301.75–4(d)(2)(i)(E). Those requirements, which include the incineration or burying in a fenced public landfill of such articles and the option of processing culls into a product other than fresh fruit (e.g., juice or juice concentrate), are intended to prevent the artificial spread of citrus canker that could occur through the movement of leaves, litter, and culls. Given that it usually takes some time before a sufficiently large load of, for example, leaves and litter to be collected to warrant a trip to the landfill, we believe that it is likely that packing plant operators will store the leaves, litter, and culls collected from the shipment of regulated fruit produced outside the quarantined areas with similar articles collected from shipments of regulated fruit produced within the quarantined area. Therefore, we believe that it is necessary to require that all those regulated articles, regardless of their origin, be handled in the same manner as the regulated articles presenting the highest risk.

Certificate. The regulated fruit produced outside the quarantined areas maybe moved interstate from the packing plant to any destination if it is accompanied by a certificate issued in accordance with § 301.75–12 of the regulations. The certificate will provide documentation that the requirements of this interim rule have been met. Under the regulations, a certificate is used to authorize the interstate movement of a regulated article from a quarantined area into any area of the United States, and a limited permit is used to authorize the movement of regulated articles from the quarantined areas, but with restrictions on the areas of the United States into which the articles may be moved. Because regulated fruit produced outside the quarantined areas and handled in accordance with the new provisions of this interim rule will be eligible for movement to any area of the United States, including commercial citrus-producing areas, a certificate, and not a limited permit, will be required.

Regulated fruit produced outside the quarantined areas can be packed within a quarantined area and moved into any area of the United States, including commercial citrus-producing areas, under the conditions set forth in this interim rule without contributing to the artificial spread of citrus canker. Although our pest data sheet for citrus canker[1] indicates that the causal pathogen could potentially move long distances on diseased fruit, that data sheet also states that there is no authenticated example of a citrus canker outbreak that was initiated by diseased fruit. If diseased fruit is an unlikely pathway for the spread of citrus canker, then it is reasonable to expect that fruit produced outside the quarantined areas, which is the only fruit affected by this rule, will present an even lower risk, even if it is packed within a quarantined area. Given the preponderance of evidence and expert opinion that the long-distance spread of citrus canker occurs primarily through the movement of infected planting and propagative materials, and given the absence of documented cases of citrus canker outbreaks attributable to the movement of infected fruit, we have concluded that regulated fruit produced outside the quarantined areas and handled, treated, and packed under the conditions of this rule will present a negligible disease risk.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to provide, prior to the start of the winter shipping season, conditions under which regulated fruit produced outside the quarantined areas but packed within a quarantined area may be moved into any area of the United States, including commercial citrus-producing areas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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[1] This pest data sheet may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

This rule amends the citrus canker regulations to allow citrus fruit produced outside the quarantined areas to be moved into a quarantined area for packing and then moved from that quarantined area to any destination in the United States, including commercial citrus-producing areas. The citrus fruit produced outside the quarantined areas would have to be moved and handled according to specific conditions designed to prevent the artificial spread of citrus canker, including conditions to prevent its commingling with, and possible contamination by, citrus fruit produced within a quarantined area. We are taking this action to relieve restrictions that are no longer warranted due to our development of alternatives to address the disease risks presented by regulated fruit packed within a quarantined area.

The overall economic effect of this interim rule is expected to be small. Prior to this interim rule, the regulations already provided for fruit produced within a quarantined area to be packed in plants located outside the quarantined areas and vice versa, and the experience of the cooperative Citrus Canker Eradication Program administered by APHIS and the State of Florida has shown that packing fresh fruit from quarantined and nonquarantined areas in the same facility can be safely conducted. Whereas the regulations had previously prohibited regulated fruit packed within a quarantined area from being moved into commercial citrus-producing areas of the United States, regardless of where the fruit was produced, this interim rule provides conditions under which packing plants located within a quarantined area may ship regulated fruit produced outside the quarantined areas to all areas of the United States, including commercial citrus-producing areas. In so doing, this interim rule makes it possible for packing plants to move regulated fruit into markets that had been denied to them from the time the plants were included in a quarantined area.

Effect on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. The Small Business Administration's (SBA) definition of a "small entity" packaging fresh or farm-dried fruits and vegetables is one whose total sales are less than $5 million annually. In 1997, there were 850 firms in Standard Industrial Classification (SIC) 0723, Crop Preparation Services for Market in the United States, which includes fresh citrus packers. Under SBA guidelines, 634 of these 850 firms (74 percent) would be considered small entities.

Within the quarantined areas, there are approximately 13 citrus fruit packers and 13 gift fruit shippers that could be affected by this rule. We do not currently have the data necessary to determine the percentage of these businesses that would be considered small entities under the SBA's criteria. However, while we expect that this rule will allow some of those packing plants to maintain their established business patterns and others to reestablish business relationships that were disrupted by the packing plants' inclusion in the areas quarantined for citrus canker, the overall economic effect of this rule is expected to be small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.75–7, paragraph (b) is revised to read as follows:

§ 301.75–7 Interstate movement of regulated fruit from a quarantined area.

* * * * *

(b) Regulated fruit not produced in a quarantined area. Regulated fruit not produced in a quarantined area but moved into a quarantined area for packing may be subsequently moved out of the quarantined area only if all the conditions of either paragraph (b)(1) or (b)(2) of this section are met.

(1) Conditions for subsequent movement into any area of the United States except commercial citrus-producing areas. (i) The regulated fruit was accompanied to the packing plant by a bill of lading stating the location of the grove in which the regulated fruit was produced.

(ii) The regulated fruit was treated in accordance with § 301.75–11(a) of this subpart.

(iii) The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than one inch long and attached to the regulated fruit.

(iv) The regulated fruit is accompanied by a limited permit issued in accordance with § 301.75–12 of this subpart.

(2) Conditions for subsequent movement into any area of the United States including commercial citrus-producing areas. (i) The regulated fruit is accompanied by a bill of lading that states the location of the grove where the fruit was produced, the variety and quantity of fruit, the address to which the fruit will be delivered for packing, and the date the movement of the fruit began.

(ii) The regulated fruit is moved through the quarantined area without being unloaded and no regulated article is added to the shipment in the quarantined area.

(iii) The regulated fruit is completely covered, or enclosed in containers or in a compartment of a vehicle, both during its movement to a packing plant in a quarantined area and during its movement from a packing plant in a quarantined area to destinations outside that quarantined area.

(iv) At the packing plant, regulated fruit produced outside the quarantined areas is stored separately from and has had no contact with regulated fruit produced in a quarantined area. Any equipment at the packing plant that comes in contact with regulated fruit produced in a quarantined area is treated in accordance with § 310.75–11(d) of this subpart before being used to handle any regulated fruit not produced in a quarantined area.

(v) The regulated fruit is treated at the packing plant in accordance with § 301.75–11(a) of this subpart.

(vi) Due to the likelihood that they will be commingled with similar regulated articles collected from regulated fruit produced in a quarantined area, all leaves, litter, and culls collected from the shipment of regulated fruit at the packing plant are handled as prescribed in § 301.75–4(d)(2)(ii)(E) of this subpart.

(vii) The regulated fruit is accompanied by a certificate issued in accordance with § 301.75–12 of this subpart.

Done in Washington, DC, this 29th day of October 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–28876 Filed 11–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 5, and 7

[Docket No. 99–14]

RIN 1557–AB61

Investment Securities; Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is updating and clarifying its rules regarding investment securities, corporate activities, and bank activities and operations. Most of the changes involve the OCC's interpretations regarding national bank activities and operations. This final rule clarifies existing rules, adds new provisions based on recent statutory changes, judicial rulings, OCC decisions, and other developments, and makes technical changes. This final rule reflects the OCC's continuing commitment to assess the effectiveness of our rules and to make changes where necessary.

EFFECTIVE DATE: December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lussier, Senior Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC published a notice of proposed rulemaking in the **Federal Register** on June 14, 1999 (64 FR 31749) inviting comments on proposed changes to several of the OCC's regulations. The OCC received a total of 16 comments, including seven from banks and banking industry representatives, three from states, four from community groups, and one from two individuals. Eight of the commenters favored all or some of the proposed changes, while eight opposed one or more of the proposal's provisions.

The final rule implements most of the initiatives contained in the proposal. However, the OCC has made a number of changes in response to the comments received and to further clarify the rules. The following discussion summarizes the proposed rule, the comments received, and describes the action the OCC has taken in the final rule.

Part 7—Bank Activities and Operations

This final rule changes the name of part 7 from "Interpretive rulings" to "Bank activities and operations" to better describe the content of part 7.

Messenger Service (§ 7.1012)

The OCC proposed to amend § 7.1012 to conform to caselaw that streamlined the criteria for determining when a national bank is operating a branch. Under the current rule, in order to avoid being treated as a bank branch, a messenger service, including both a messenger service affiliated with a bank and a service that is independent of a bank, generally must both make its services available to the public, including other depository institutions, and retain the ultimate discretion to determine which customers and geographic areas it will serve. 12 CFR 7.1012(c)(2)(ii)(A) and (B).

The recent cases indicate that this test should apply differently depending on whether the service is affiliated with a bank.[1] Pursuant to these cases, a nonaffiliated service need show only that it has the discretion to determine, in its own business judgment, which customers it will serve and where. In contrast, an affiliated service, because it may be more likely to favor its affiliates as a result of its common ownership or control, must show that it actually serves the public generally, including nonaffiliated depository institutions.

The OCC proposed to combine the criteria in §§ 7.1012(c)(2)(ii)(A) and (c)(2)(ii)(B) into one new paragraph and apply the resulting criteria differently depending on whether or not the messenger service is affiliated with the bank. The OCC also proposed a stylistic amendment to § 7.1012(c)(2)(i).

The OCC received three comment letters addressing these proposed changes. Letters from two commenters supported adopting the changes. The third letter, representing the views of three commenters, opposed the changes on the ground that they would encourage national banks to make small loans with short maturities and high rates of interest. The commenters' discussion on this point relies on two premises; first, that the messenger service rule set forth in § 7.1012 authorizes national banks to make loans at non-branch facilities; and, second, that banks will therefore rely on the messenger service rule to make certain types of loans, including so-called payday loans, that would not be permissible if the branching laws applied. Both premises are incorrect.

First, the messenger service rule does not, and could not lawfully, authorize a national bank to conduct the core banking activities of taking deposits, paying checks, or lending money in a non-branch facility. By statute, a branch is defined, subject to certain specified exceptions, as an office or place of business where deposits are received, checks paid, or money lent. 12 U.S.C. 36(j). Section 7.1012 permits a national bank to use a messenger service—a courier, for example—to pick-up and deliver items related to transactions between a bank and its customer, but neither the existing rule, nor the amendment proposed by the OCC, expands the authority of a national bank to conduct core banking activities only at branches. Thus, a bank may find it convenient to use a messenger service to deliver loan proceeds to its customer, but its use of the service in that way does not mean that the loan is made at the offices of the messenger service or that the messenger service is a branch.

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[1] In the proposal, the OCC cited two cases supporting the revision to § 7.1012: *Cades* v. *H&R Block*, 43 F.3d 869 (4th Cir. 1994), *cert. denied*, 515 U.S. 1103 (1995); *Christiansen* v. *Beneficial Nat'l Bank*, 972 F. Supp. 681 (S.D. Ga. 1997). *See* 64 FR at 31749 n.1. These cases held that a tax preparation firm that delivered tax refund anticipation loan (RAL) proceeds to mutual customers of the firm and a national bank was not a branch within the meaning of the branching laws. The standards articulated by both courts in reaching this conclusion formed the basis for the amendment to § 7.1012 that the OCC proposed, and the OCC continues to rely on those cases for that purpose. The principal issue in the cases, however, was the permissibility of certain fees charged by the national bank in connection with the RAL. The fee issue, which both courts resolved in the bank's favor based upon 12 U.S.C. 85, is not relevant to the OCC's amendment to § 7.1012.

Second, the messenger service rule does not control the loan terms, such as maturity or interest rate, that a national bank may offer. The rate of interest a national bank may charge, for example, is governed by 12 U.S.C. 85. The applicability of such laws is unaffected by the OCC's proposed amendment to § 7.1012, which has the distinctly different purpose of conforming to recent judicial precedents the tests used to distinguish affiliated non-branch messenger services from unaffiliated non-branch messenger services in order to ensure that the branching laws are not evaded.

For these reasons, the amendment to § 7.1012 cannot be viewed as affecting payday lending. Accordingly, the OCC believes the concerns of the commenters opposing the amendment are misplaced. The amendment is adopted as proposed.

Independent Undertakings To Pay Against Documents (§ 7.1016)

Section 7.1016 codifies interpretations concerning the issuance by national banks of letters of credit and other independent undertakings. The proposal suggested five technical amendments to update this section.

Two commenters addressed these proposed changes. Both supported adopting the changes. One commenter suggested several additional technical amendments to clarify certain references contained in footnote 1 to § 7.1016 and to make the text of the regulation more precise. For instance, the commenter noted that it is appropriate to refer to the Convention on Independent Guarantees and Stand-by Letters of Credit as a United Nations convention, rather than as a United Nations Commission on International Trade Law convention.

The OCC agrees with the commenter's suggestions for clarifying the rule and adopts them in the final rule. The OCC adopts § 7.1016 as proposed, but with the modifications suggested by the commenter.

National Bank as Guarantor or Surety on Indemnity Bond (§ 7.1017)

The OCC proposed adding a cross-reference in § 7.1017 to § 28.4(c), which states that a national bank may guarantee the liabilities of its foreign operations. This change was proposed in order to remove whatever doubt that may have been created by the relocation[2] of the foreign operations guarantee provision from part 7 to part 28.

The OCC received one comment on this proposed change, from a commenter favoring adoption of the change. The OCC adopts § 7.1017 as proposed.

Ownership of Stock Necessary To Qualify as Director (§ 7.2005)

The OCC proposed revising § 7.2005(b)(4) to codify guidance provided in OCC interpretive letters[3] approving buyback or repurchase agreements between shareholders and prospective directors. This guidance, proposed to be added in new paragraphs (b)(4)(ii), (iii), and (iv) of § 7.2005, states that a buyback agreement may give a director the option of transferring shares back to the transferring shareholder if the director no longer needs those shares to satisfy the ownership requirement. The transferring shareholder may retain a right of first refusal to reacquire the shares if the director seeks to transfer ownership to a third person. Further, a director may assign the right to receive dividends or distributions on the shares back to the original shareholder and execute an irrevocable proxy authorizing the original shareholder to vote the shares. This change was proposed to make it easier for banks, especially community banks, to attract qualified persons to serve on bank boards of directors.

Three commenters addressed this proposed change. All supported its adoption. One commenter requested the OCC to go further and examine whether it is necessary to maintain the qualifying share requirement. However, this requirement is imposed by statute (12 U.S.C. 72). The OCC has recently recommended to Congress that the Comptroller be given the authority to waive the qualifying share requirement, in whole or in part, in the case of national banks that elect Subchapter S status in order to facilitate this form of corporate organization for national banks.[4] In light of the comment received, the OCC will evaluate whether it should recommend to Congress additional changes to section 72.

The OCC adopts § 7.2005(b)(4) as proposed.

Oath of Directors (§ 7.2008)

The OCC proposed adding new paragraph (c) to § 7.2008 and revising the last sentence of § 7.2008(b) to inform national banks that they are to file original executed oaths with the OCC and retain a copy in the bank's records in accordance with the instructions set forth in the Comptroller's Corporate Manual. This guidance is consistent with 12 U.S.C. 73, which states that each director's executed and subscribed oath must be transmitted to the Comptroller of the Currency and filed and preserved in the Comptroller's office for a period of 10 years.

One commenter addressed these proposed changes. This commenter supported their adoption. The OCC adopts § 7.2008(b) and (c) as proposed.

Acquisition and Holding of Shares as Treasury Stock (§ 7.2020)

The OCC proposed amending § 7.2020 to provide examples of legitimate corporate purposes justifying the acquisition by a national bank of its outstanding shares and holding them as treasury stock. These examples include: (a) holding shares in connection with an officer or employee stock option, bonus or repurchase plan; (b) holding shares for sale to a potential director to meet "qualifying share" requirements; (c) purchasing a director's qualifying shares upon his or her resignation or death if there is no ready market for the shares; (d) reducing the number of shareholders in order to qualify the bank for reorganization as a Subchapter S corporation; and (e) reducing the number of shareholders to lower the bank's costs associated with shareholder communications and meetings.

As noted in the preamble to the proposed rule,[5] while the OCC expects that this guidance will benefit all national banks, certain of the examples listed as legitimate purposes (namely, purchasing shares upon a director's resignation or death if there is no ready market for the shares and to aid in qualifying the bank for treatment under the tax laws as a Subchapter S corporation) are expected to provide a particular benefit to community banks.

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[2] 61 FR 4849 (Feb. 9, 1996) (amending part 7); 61 FR 19524 (May 2, 1996) (amending 12 CFR part 28).

[3] *See, e.g.*, Letter from Julie L. Williams, Chief Counsel (Mar. 31, 1997) (unpublished); Letter from Jonathan Rushdoony, Attorney (Mar. 27, 1986) (unpublished); Letter from Leslie G. Linville, Senior Attorney (Jan. 9, 1986) (unpublished). You can inspect and photocopy the unpublished OCC staff interpretive letters cited in this preamble (in redacted form) at the OCC's Public Disclosure Room, First Floor, 250 E Street, SW, Washington, DC 20219. You can make an appointment to inspect the letters by calling (202) 874–5043.

[4] *See* Testimony of John D. Hawke, Jr., Comptroller of the Currency, Before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Banking and Financial Services, U.S. House of Representatives, May 12, 1999. You can inspect and photocopy the Comptroller's testimony at the OCC's Public Disclosure Room, First Floor, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the testimony by calling (202) 874–5043. The testimony is also available on the OCC's web site at http://www.occ.treas.gov/ftp/release/99–44a.pdf.

[5] 64 FR 31749, 31751 (June 14, 1999).

The OCC received three comments on this proposed change, all of which supported its adoption. One commenter suggested that the text of the regulation be modified slightly to clarify that approval of the OCC under 12 U.S.C. 59 is required before a bank may acquire and hold its shares. The OCC agrees that this clarification is helpful and adopts it in the final rule by modifying the first sentence of proposed § 7.2020(a).

The examples listed as legitimate corporate purposes are non-exclusive, and the OCC included paragraph (c) in proposed § 7.2020 stating that purposes other than those enumerated in paragraph (b) of proposed § 7.2020 may satisfy the legitimate corporate purpose test. The OCC will continue its practice of evaluating other purposes for the acquisition and retention of a bank's shares on a case-by-case basis. In addition, the OCC notes that the word "include" in paragraph (b) of proposed § 7.2020 is not exhaustive and therefore believes that paragraph (c) is redundant. In the final rule, the OCC removes paragraph (c) from § 7.2020 as proposed and renumbers paragraph (d) of proposed § 7.2020 as § 7.2020(c). The OCC also makes a technical change substituting the word "and" for "or" in paragraph (b) of proposed § 7.2020.

The OCC adopts § 7.2020 as proposed, but with the modifications discussed.

Reverse Stock Splits (New § 7.2023)

The OCC proposed adding new § 7.2023 codifying the OCC's interpretation that a national bank may engage in a reverse stock split, as long as the bank provides adequate protection for dissenting shareholders' rights and the transaction serves a legitimate corporate purpose.[6] A "reverse stock split" is a restructuring of ownership interests in which a national bank reduces the number of its outstanding shares of stock by, for instance, replacing outstanding shares with fewer shares of a new issuance and paying cash to the minority shareholders for their fractional interests. This codification clarifies the flexibility national banks have to restructure their ownership interests, and benefits particularly community banks that desire, for instance, to restructure in order to qualify as a Subchapter S corporation.

Three commenters addressed the proposed change. All supported adoption in its entirety.

In the final rule, the OCC is making a technical change substituting the word "and" for "or" in § 7.2023(b) as proposed. The OCC adopts § 7.2023 as proposed, but with the modification discussed.

The examples listed in § 7.2023(b) as legitimate corporate purposes are non-exclusive, and the OCC will continue its practice of evaluating other purposes for reverse stock splits on a case-by-case basis.

Visitorial Powers (§ 7.4000)

The OCC proposed to revise § 7.4000, "Books and records of national banks," to clarify the extent of the OCC's visitorial powers under 12 U.S.C. 484 and other federal statutes. As proposed, § 7.4000 codified the definition of visitorial powers and illustrated what visitorial powers include by providing a non-exclusive list of these powers. These powers include: (a) examination of a bank; (b) inspection of a bank's books and records[7]; (c) regulation and supervision of activities authorized or permitted under federal banking law; and (d) enforcing compliance with any applicable federal or state laws concerning those activities. The proposal also reorganized § 7.4000 by grouping together, in proposed paragraph (b), the exceptions noted in several different places in the current rule that are explicitly provided by federal law to the OCC's exclusive visitorial powers.

Eight commenters addressed this proposed change. The commenters were evenly split between those favoring adoption of the change and those opposed. Of those favoring adoption of the proposed change, two supported its adoption without any changes to the proposal, while two others suggested edits to the proposed text to elaborate on the extent of the visitorial powers listed in proposed § 7.4000(a)(2) and the general exceptions to those powers listed in proposed § 7.4000(b). Those opposing the proposed change maintained that 12 U.S.C. 484 does not preclude a role for the states, particularly in the area of consumer protection.[8]

The OCC agrees that Congress did not intend to preclude any role for the states by enacting 12 U.S.C. 484. As noted in the preamble to the proposal,[9] there are instances where federal statutory authority provides for a state agency to inspect a national bank's books and records (as is the case, for instance, with state escheat laws). The OCC does not object to state insurance regulators inspecting the records of national banks related to their insurance activities that are regulated under applicable state law, and the pending Gramm-Leach-Bliley Act would clarify that authority.[10]

However, Congress clearly intended for the role of states to be defined by those instances authorized by federal law. *See* 12 U.S.C. 484(a). Except where so authorized, the exclusive visitorial authority with respect to national banks has been vested in the OCC. *Id. See also* 12 U.S.C. 1813(q)(1); 1818(b) *et seq.*; *Guthrie* v. *Harkness*, 199 U.S. 148, 159 (1905); and *National State Bank, Elizabeth, N.J.* v. *Long*, 630 F.2d 981, 988–89 (3d Cir. 1980).

Congress recently reaffirmed the exclusive visitorial authority of the OCC in the context of interstate branching. *See* the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act),[11] which amended 12 U.S.C. 36, among other statutes, to permit interstate branching. In the Interstate Act, Congress provided that certain types of state laws apply to interstate branches of national banks. 12 U.S.C. 36(f)(1)(A). However, at the same time, Congress also expressly granted to the OCC the exclusive enforcement authority over interstate branches' compliance with those state laws. 12 U.S.C. 36(f)(1)(B).

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[6] Interpretive Letter No. 786 (June 9, 1997), *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–213. This conclusion is consistent with the recent court decision, *NoDak Bancorp.* v. *Clarke*, 998 F.2d 1416 (8th Cir. 1993), in which the court upheld the OCC's approval of a cash-out merger where the OCC found that there was a valid corporate purpose for the transaction and that minority shareholders were entitled to dissenters' rights. An earlier decision reversed an OCC approval of a reverse stock split. *See Bloomington Nat'l Bank* v. *Telfer*, 916 F.2d 1305 (7th Cir. 1990). However, that case is distinguishable on the grounds that the court reached its decision after concluding that the transaction had no legitimate business purpose and failed to provide for dissenters' rights. The court expressly declined to answer whether 12 U.S.C. 83 (the statute at issue in the case) prohibits all reverse stock split transactions, noting that its opinion was limited to the facts of the case. *Id.* at 1308 n.4, 1309. *See also Lewis* v. *Clark*, 911 F.2d 1558 (11th Cir. 1990) (concluding that minority shareholders in a merger could not be required to accept cash rather than stock in the new bank).

[7] The rule recognizes that bank-created records may be obtained through normal judicial processes. However, "non-public OCC information," as defined in 12 CFR § 4.32(b), held by a bank may be obtained only by following the procedures set forth in 12 CFR part 4, subpart C. This final rule revises the last sentence of § 7.4000(a) by adding a parenthetical statement that non-public OCC information in the possession of a bank, such as the bank's examination report and supervisory correspondence, may be obtained by complying with the procedures set forth in 12 CFR part 4, subpart C.

[8] Three commenters supported this position by suggesting that the proposed interpretation is inconsistent with the holding of the federal district court in *Bank One, Utah* v. *Guttau*, No. 4–98–CV–10247 (D. Iowa July 24, 1998), that a state ATM law is not preempted by the National Bank Act. However, the Court of Appeals for the Eighth Circuit subsequently reversed the district court's decision and upheld the position of the bank and the OCC in that case. *Bank One, Utah* v. *Guttau*, No. 98–3166, slip op. 8–9, 10 (8th Cir. Sept. 2, 1999) (pet. for rehearing en banc pending) (Eighth Circuit's opinion hereinafter cited as *Guttau*).

[9] 64 FR 31749, 31751 n.9 (June 14, 1999).

[10] *See* H.R. 10, 106th Cong., 1st Sess. § 303 (functional regulation of insurance); S. 900, 106th Cong., 1st Sess. § 201 (same).

[11] Pub. L. 103–328, 108 Stat. 2338, enacted Sept. 29, 1994.

As discussed in the preamble to the proposed rule,[12] courts have defined "visitation" expansively to include the inspection, regulation, or control of the operations of a bank to enforce the bank's observance of the law. *See First National Bank of Youngstown* v. *Hughes,* 6 F. 737, 740 (6th Cir. 1881), *appeal dismissed,* 106 U.S. 523 (1883); *Peoples Bank* v. *Williams,* 449 F. Supp. 254 (W.D. Va. 1978) (visitorial powers involve the exercise of the right of inspection, superintendence, direction, or regulation over a bank's affairs). This expansive definition is consistent with the intent of creating a national banking system that is subject to cohesive, uniform supervision by the primary regulator of national banks.

One commenter contended that, because the federal Electronic Funds Transfer Act (15 U.S.C. 1693–1693r) (EFTA) expressly states that it does not preempt state electronic funds transfer (EFT) laws that provide consumers greater protections than those provided by the federal EFTA, the OCC may not preempt consumer protections afforded by a state's EFT laws.[13] The OCC agrees that the *federal EFTA* does not preempt state EFT laws that afford greater consumer protections than does the federal EFTA. However, as the OCC concluded in a previous interpretation, a state EFT law that impairs or impedes a national bank's ability to engage in an activity that is authorized under another federal law could be preempted by that federal law.[14] The Eighth Circuit recently upheld this position in *Guttau.* In addressing the State of Iowa's contention that the federal EFTA permits the states to regulate the electronic transfer of funds, the court stated:

> Despite the State's claims, this anti-preemption provision [in the federal EFTA] is specifically limited to the provisions of the federal EFTA, and nothing therein grants the states any additional authority to regulate national banks. State regulation of national banks is proper where "doing so does not prevent or significantly interfere with the national bank's exercise of its powers." *Barnett Bank* [v. *Nelson*], 116 S. Ct. [1103, 1996] at 1109. Congress has made clear in the [National Bank Act] its intent that ATMs are not to be subject to state regulation, and thus the provisions of the Iowa EFTA that would prevent or significantly interfere with [the national bank's] placement and operation of its ATMs must be held to be preempted.
>
> Slip op. at 9.

Three commenters suggested that, because the question of whether states may enforce compliance with their consumer protection laws by national banks is the subject of pending litigation,[15] it is inappropriate for the OCC to promulgate a rule at this time related to the OCC's visitorial powers.[16] However, an agency is not precluded from issuing a rule that affects a provision that is the subject of ongoing litigation. *See Smiley* v. *Citibank,* 517 U.S. 735, 135 L. Ed. 2d 25, 116 S. Ct. 1730 (1996).

Based on the statutory authority and the caselaw discussed earlier, the OCC concludes that proposed § 7.4000 contains an accurate statement of the OCC's exclusive visitorial authority.

One commenter who favored adoption of the rule suggested that the OCC clarify that its exclusive visitorial powers extend to operating subsidiaries of national banks. As stated in 12 CFR 5.34(d)(3), each operating subsidiary is subject to examination and supervision by the OCC. This does not mean, however, that the OCC's jurisdiction necessarily is exclusive over a given subsidiary, and many subsidiaries have "functional" regulators, such NASD Regulation, Inc., the Securities and Exchange Commission, or a state insurance department.

Another commenter who favored adoption of the rule requested that the OCC add to the text of the final rule the statement that the list of visitorial powers in proposed § 7.4000(a)(2) is non-exclusive. This commenter pointed out that the preamble to the proposed rule stated that this list was illustrative of what visitorial powers include and was non-exclusive. The commenter urged the OCC to add this clarification to the regulation to avoid any ambiguity that might result from the statements in the proposal. The OCC notes that the word "include" is not exhaustive and therefore believes the recommended clarification is not necessary.

The same commenter also suggested another technical change relating to the rule's exceptions. The regulatory text in proposed § 7.4000(a) provided that state officials may not exercise visitorial powers with respect to national banks "except in limited circumstances authorized by federal law." Similar language was used in proposed § 7.4000(b). The commenter suggested that the language in paragraph (a) of § 7.4000 refer the reader to paragraph (b), so that the language in paragraph (a) would read "except as provided in paragraph (b) of this section." The commenter stated that this change would clarify the regulation by demonstrating that the two paragraphs are interrelated. The OCC agrees that this suggestion would add clarity to the regulation and adopts this recommendation in the final rule.

Finally, the OCC is making a technical change substituting the word "and" for "or" in paragraphs (a) and (b) of proposed § 7.4000.

The OCC adopts § 7.4000 as proposed, but with the modification suggested by the commenter, the change to the last sentence of paragraph (a) of proposed § 7.4000 concerning the procedure for obtaining non-public OCC information in accordance with 12 CFR part 4, subpart C, and the technical changes discussed.

Establishment and Operation of Remote Service Units (New § 7.4003)

The OCC proposed to add a new § 7.4003 codifying the OCC's interpretations that, because automated teller machines (ATMs) and other remote service units (RSUs)[17] are expressly excluded from the definition of "branch" in 12 U.S.C. 36(j), an ATM or RSU established by a national bank is not subject to any state-imposed geographic or operational restrictions or licensing laws.[18]

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[12] 64 FR 31749, 31751 (June 14, 1999).

[13] This position also was advanced by two commenters in response to the proposed amendments to § 7.4003.

[14] *See* Interpretive Letter No. 789 (June 27, 1997), *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–216.

[15] *See First Union Nat'l Bank* v. *Burke,* 48 Fed. Supp. 2d 132 (D. Conn. 1999) (in which a federal district court upheld, in its Ruling on Motion for Preliminary Injunction, the OCC's right to exercise exclusive regulatory authority to enforce applicable state law against national banks when it enjoined a state banking authority's administrative enforcement proceeding against three national banks) (further proceedings stayed pending state court interpretation of state law); and *First Nat'l Bank of McCook* v. *Fulkerson,* No. 98–D–1024 (D. Colo. filed April 28, 1998) (action for declaratory judgment and injunction against state banking authority's administrative enforcement action against combination loan production office, deposit production office, and ATM on ground that the combination constitutes a branch). The commenters also cited the federal district court decision in the *Guttau* case. However, as previously noted, the Court of Appeals for the Eighth Circuit recently reversed the district court's holding, and found that federal law preempts state law restrictions on national bank ATMs. *Guttau,* slip op. at 8–9.

[16] This point also was made in comments concerning proposed §§ 7.4003, 7.4004, and 7.4005.

[17] An RSU is an automated facility, operated by a customer of a bank, that engages in one or more of the core banking functions of receiving deposits, paying checks, or lending money. An RSU includes ATMs, automated loan machines, and automated devices for receiving deposits, and may be equipped with a telephone or televideo device that allows contact with bank personnel.

The OCC received seven comments on this proposed new rule. Commenters who favored adoption of the rule suggested that it was appropriate in light of the amendment to section 36(j). One commenter stated that the interpretation would add clarity and guidance to national banks in their deployment of ATMs and RSUs. None of the commenters who favored adoption of the rule suggested changes to the proposed language.

Three commenters opposed adoption of the rule. One maintained that, because 12 U.S.C. 93a [19] states that the authority it confers does not apply to 12 U.S.C. 36, the OCC is precluded from adopting the rule as proposed. However, the language to which the commenter referred is not a bar to the OCC's authority. Rather, it simply makes clear that, whatever authority the OCC has pursuant to other statutes to adopt regulations affecting national bank branching, 12 U.S.C. 93a does not expand that authority.[20] Moreover, even if 12 U.S.C. 93a were to preclude the OCC from issuing rules under section 36, the fact that section 36(j) expressly excludes ATMs and RSUs from the scope of section 36 leads to the conclusion that any rulemaking clarifying the status of ATMs and RSUs as not constituting branches is a rulemaking concerning a matter explicitly outside 12 U.S.C. 36.

Two commenters who opposed adoption of the rule concluded that the proposal was defective because it did not list each state law that is proposed to be preempted, as they maintain is required by section 114 of the Interstate Act (codified at 12 U.S.C. 43) (section 114).[21] Section 114 was designed to supply a public comment process in situations where preemption decisions would otherwise be announced without notice of the issue and an opportunity for public comment. Thus, section 114 does not apply to rulemakings, including this rulemaking, conducted pursuant to the notice-and-comment procedures prescribed by the Administrative Procedure Act (APA). 5 U.S.C. 553. Rules adopted pursuant to 5 U.S.C. 553 provide interested parties with the notice and opportunity to comment that section 114 is intended to ensure, making it unnecessary to subject them to duplicative publication requirements under section 114.

In light of the express exclusion of ATMs and RSUs from the definition of "branch" in 12 U.S.C. 36(j) and the comments received in response to proposed § 7.4003, the OCC adopts § 7.4003 as proposed.

Deposit Production Offices (New § 7.4004)

The OCC proposed to codify its interpretation,[22] in new § 7.4004, that a national bank deposit production office (DPO) is not a branch because it does not engage in any of the core banking functions that would cause it to be a branch under 12 U.S.C. 36. Paragraph (a) of proposed § 7.4004 states that a DPO must not receive deposits in order for it to be excluded from 12 U.S.C. 36(j)'s definition of "branch," and that all deposit and withdrawal transactions by customers using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer, or a similar method of transfer. Paragraph (b) of proposed § 7.4004 states that a national bank may use the services of, and compensate, persons not employed by the bank for its deposit production activities.

Three commenters addressed this proposed new section. Of the two commenters supporting adoption, one questioned the appropriateness of permitting, as paragraph (b) of proposed § 7.4004 does, a national bank to use persons not employed by the bank in its DPOs. The OCC notes that the provision in question merely permits a national bank the flexibility to use agents in its DPOs; a bank remains free to use its employees if it so chooses. This flexibility is the same as has been available for national banks using loan production offices (LPOs), which has not resulted in supervisory concerns.

The commenter opposed to proposed new § 7.4004 stated that it, along with proposed new § 7.4005, circumvents the intent of Congress as articulated in the Interstate Act to require national banks to adhere to state laws governing the establishment and operation of interstate branches. The OCC agrees that national banks' interstate branches are to comply with those state laws.[23] However, since a DPO does not perform any of the activities listed in 12 U.S.C. 36(j) that would cause it to be a "branch," the provisions of those state laws do not apply.

The OCC adopts § 7.4004 as proposed.

Combination of LPO, DPO, and RSU (New § 7.4005)

The OCC proposed to add a new § 7.4005 to codify its interpretation that a facility that combines the non-branch functions of an LPO, DPO, and RSU is not a branch by virtue of that combination.[24]

Eight commenters addressed this proposed new section. Those favoring its adoption agreed with the OCC that the combination of facilities that individually are not branches would not create a branch. Those opposed maintained that the combined functions would create what is effectively a branch, thereby enabling banks to circumvent branching laws. Two of these commenters also suggested that, by permitting banks to set up a combined LPO, DPO, and RSU in one facility without first applying to the OCC for approval pursuant to 12 CFR 5.30, the OCC would undermine the Community Reinvestment Act (12 U.S.C. 2901–2907) (CRA) by legitimizing narrower assessment areas.[25]

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[18] *See, e.g.*, Interpretive Letter No. 838 (April 15, 1998), *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–293; Interpretive Letter No. 821 (Feb. 17, 1998), *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–271; Interpretive Letter No. 789 (June 27, 1997), *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–216; Interpretive Letter No. 772 (Mar. 6, 1997), *reprinted in* [1996–97 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–136. The OCC's interpretation recently was upheld by the Court of Appeals for the Eighth Circuit. *Bank One, Utah* v. *Guttau*, No 98–3166 (8th Cir. Sept. 2, 1999), *rev'g* No. 4–98–CV–10247 (D. Iowa July 24, 1998) (which had held that Iowa's ATM law is not preempted by the National Bank Act).

[19] 12 U.S.C. 93a states: "Except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to another regulatory agency, the Comptroller of the Currency is authorized to prescribe rules and regulations to carry out the responsibilities of the office, except that the authority conferred by this section does not apply to section 36 of [Title 12] or to securities activities of National Banks under the Act commonly known as the "Glass-Steagall Act'."

[20] The legislative history of the statute that added 12 U.S.C. 93a to the federal banking law supports this reading. *See, e.g.*, House Conf. Rep. No. 96–842, 96th Cong., 2d Sess. 83 (1980), *reprinted in* 1980 U.S.C.C.A.N. 236, 313 ("[T]he rulemaking provision carries no authority to permit otherwise impermissible activities of national banks with specific reference to the provisions of the McFadden Act [12 U.S.C. 36].").

[21] Section 114 requires the OCC, before issuing an opinion letter or interpretive rule that concludes that federal law preempts any state law regarding community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches, to publish notice in the **Federal Register** of the preemption issue that the OCC is considering (including a description of each state law at issue), and give interested parties at least 30 days in which to comment. Section 114 by its terms does not require a listing of each state law that may be preempted.

[22] Interpretive Letter No. 691 (Sept. 25, 1995), *reprinted in* [1995–96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–006 (deposit production offices are not branches as long as deposits are not accepted at the DPO but rather are mailed by the customer to the bank after filling out preliminary forms at the DPO); Interpretive Letter No. 638 (Jan. 6, 1994), *reprinted in* [1993–94 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,525 (a non-branch facility may perform deposit origination functions such as providing information on deposit products or handling application forms, as long as the activity stops short of actually receiving deposits).

[23] In the Interstate Act, Congress expressly authorized the OCC to enforce the provisions of state law to which a branch of a national bank is subject. 12 U.S.C. 36(f)(1)(B).

[24] The proposal cites Interpretive Letter No. 843 (Sept. 29, 1998), *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–298 (IL 843). The proposal also cites the position the OCC has taken as *amicus curiae* in litigation pending in the federal district court of Colorado in a case with substantially similar facts as those in IL 843. *See* OCC's Brief *Amicus Curiae* filed in *First Nat'l Bank of McCook* v. *Fulkerson*, Civil Action No. 98–D–1024 (brief filed Jan. 4, 1999).

After carefully considering all the comments, the OCC remains of the view that the combination of facilities that separately are not branches does not transform the whole into something greater than its parts. ATMs and RSUs are expressly excluded from the definition of "branch" in 12 U.S.C. 36(j). Similarly, LPOs and DPOs do not engage in activities that would cause them to be branches under section 36(j). Combining these entities does not change this fact. As long as a national bank operates the facilities within the limits identified in the interpretations concerning LPOs (12 CFR 7.1004), RSUs (*id.* at § 7.4003), and DPOs (*id.* at § 7.4004), the combined activities still will not meet the definition of "branch" in section 36(j).[26]

The OCC recognizes that national banks that are predominantly non-branch based present unique supervisory and regulatory issues in several areas, including the CRA. The OCC and other banking agencies have addressed certain of these issues already. For instance, the agencies require a bank with a deposit-taking ATM to delineate an assessment area around the ATM to ensure that the bank is meeting the needs of the community from which it is receiving deposits. *See* 12 CFR 25.41(b) and (c).[27] Remaining issues affecting non-branch based institutions will require further analysis by the OCC and other banking agencies, but exceed the scope of this rulemaking.

The OCC adopts § 7.4005 as proposed.

Part 1—Investment Securities

The OCC proposed amending 12 CFR 1.3(e)(1) to clarify a provision that has led to some confusion. Current § 1.3(e)(1) sets forth the regulatory treatment of Type IV securities that are fully secured by Type I securities. The OCC proposed to eliminate the statement in § 1.3(e)(1) that a national bank may deal in Type IV securities that are fully secured by Type I securities, because that language has created issues about the treatment of Type V securities and about the relationship of the current provision with § 1.3(g) regarding securitization. As noted in the preamble to the proposed rule, the OCC, consistent with previous judicial rulings and OCC decisions,[28] proposed to clarify that it will continue to apply its long-standing regulatory treatment of asset-backed instruments that are fully secured by Type I securities and treat those instruments as Type I securities.

Two commenters addressed this proposed change. Both favored adoption without suggesting any changes.

The OCC adopts proposed § 1.3(e)(1) as proposed.

Part 5—Rules, Policies, and Procedures for Corporate Activities

The OCC proposed to conform references to the interagency Uniform Financial Institutions Rating System—commonly referred to as the CAMELS rating—to reflect the addition of a sixth component, "sensitivity to market risk." [29] The OCC also proposed technical amendments to several sections in part 5 to conform them to provisions in the Comptroller's Corporate Manual that have been revised since part 5 last was amended and to amend an incorrect reference that currently appears in § 5.35(g)(3).

One commenter addressed these proposed changes. This commenter favored adoption of these changes to part 5.

The OCC adopts the proposed amendments without change.

Effective Date

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553, this final rule has a 30-day delayed effective date. The Community Development and Regulatory Improvement Act of 1994 (CDRI Act) separately requires that the OCC's regulations take effect on the first day of the first calendar quarter following publication if the regulations impose additional reporting, disclosures, or other new requirements on national banks. *See* 12 U.S.C. 4802(b). The final rule imposes no new requirements on national banks. Therefore, the CDRI Act delayed effective date provision does not apply.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule is clarifying in nature and will reduce somewhat the regulatory burden on national banks.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the annual expenditure of $100 million or more in any one year by state, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating a rule.

The OCC has determined that the final rule does not include a federal mandate that will result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

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[25] As a general matter, financial institutions subject to the CRA are required to delineate one or more assessment areas within which an institution's primary regulator evaluates that institution's record of helping to meet the credit needs of its community. For the requirements applicable to national banks' delineation of assessment areas, see 12 CFR 25.41.

[26] *See, e.g.*, OCC Conditional Approval No. 313, Decision of the OCC on the Application by Canadian Imperial Bank of Commerce to Charter CIBC National Bank, Maitland, Fla., dated July 9, 1999. This conditional approval was published in the OCC's "Interpretations and Actions" for July, 1999.

[27] *See also* 64 FR 23618, 23647–48 (May 3, 1999) (in which the OCC and other banking agencies published a question and answer in which the agencies discuss how CRA ratings will be assigned in a situation in which a bank uses non-branch delivery systems to obtain deposits and deliver loans).

[28] *See Securities Indus. Ass'n v. Clarke*, 885 F.2d 1034 (2d Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990) (national bank authority to securitize assets); Interpretive Letter No. 514 (May 5, 1990), *reprinted in* [1990–91 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (bonds collateralized by Gov't Nat'l Mortgage Ass'n (GNMA), Fed. Nat'l Mortgage Ass'n (FNMA) and Fed. Home Loan Mortgage Ass'n (FHLMC) pass-through certificates); Interpretive Letter No. 362 (May 22, 1986), *reprinted in* [1985–87 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532 (issuing, underwriting and dealing in evidences of indebtedness collateralized by GNMA, FNMA or FHLMC certificates); Interpretive Letter No. 378 (April 24, 1987), *reprinted in* [1988–89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,602 (issuance and sale of collateralized mortgage obligations—bonds representing interests in pools of mortgages or mortgage-related obligations); Interpretive Letter No. 257 (April 12, 1983), *reprinted in* [1983–84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,421 (underwriting and dealing in mortgage-backed pass-through certificates evidencing undivided interests in Fed. Housing Admin. insured mortgage pools purchased by the bank from GNMA); Investment Securities Letter No. 29 (Aug. 3, 1988), *reprinted in* [1988–89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,899 (investment limits for asset-backed securities consisting of General Motors Acceptance Corp. receivables).

[29] *See* 61 FR 67021 (Dec. 19, 1996).

One commenter asserted that § 7.4003 will result in an expenditure by the private sector of $100 million or more because, in this commenter's estimation, that provision will cause consumers to pay higher fees for using RSUs. The OCC notes that the relevant test under the statute is whether a regulation includes a federal mandate that may result in the threshold expenditure. The provision cited by the commenter as support for the conclusion that the rule will cause the private sector to spend $100 million or more is not a mandate. Instead, it simply codifies the conclusion that an RSU is not a branch, and is not subject to state geographic or operational restrictions or licensing laws. Accordingly, no further analysis of that provision under the Unfunded Mandates Act is required.

List of Subjects

12 CFR Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 1—INVESTMENT SECURITIES

1. The authority citation for part 1 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), and 93a.

2. In § 1.3, paragraph (e)(1) is revised to read as follows:

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

* * * * *

(e) *Type IV securities*—(1) *General.* A national bank may purchase and sell Type IV securities for its own account. Except as described in paragraph (e)(2) of this section, the amount of the Type IV securities that a bank may purchase and sell is not limited to a specified percentage of the bank's capital and surplus.

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

3. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

4. In § 5.3, paragraph (c) is revised and paragraph (g)(2) is amended by revising the term "(CAMEL)" to read "(CAMELS)", to read as follows:

§ 5.3 Definitions.

* * * * *

(c) *Appropriate district office means:*

(1) Bank Organization and Structure for all national bank subsidiaries of certain holding companies assigned to the Washington, D.C., licensing unit;

(2) The appropriate OCC district office for all national bank subsidiaries of certain holding companies assigned to a district office licensing unit;

(3) The OCC's district office where the national bank's supervisory office is located for all other banks; or

(4) The OCC's International Banking and Finance Department for federal branches and agencies of foreign banks.

* * * * *

§ 5.11 [Amended]

5. In § 5.11, paragraph (i)(1) is amended by revising the phrase "representative of the OCC" to read "presiding officer".

6. In § 5.33, paragraph (d)(2)(i) is revised to read as follows:

§ 5.33 Business combinations.

* * * * *

(d) * * *

(2) * * *

(i) A business combination between eligible banks, or between an eligible bank and an eligible depository institution, that are controlled by the same holding company or that will be controlled by the same holding company prior to the combination; or

* * * * *

§ 5.35 [Amended]

7. In § 5.35, paragraph (g)(3) is amended by revising the term "paragraph (h)" to read "paragraph (i)".

§ 5.37 [Amended]

8. In § 5.37, paragraphs (d)(1)(i) and (d)(3) are amended by revising the term "district" to read "supervisory", and paragraph (d)(3) is amended further by revising the term "(CAMEL)" to read "(CAMELS)".

§ 5.51 [Amended]

9. In § 5.51, paragraph (c)(6)(i) is amended by revising the term "(CAMEL)" to read "(CAMELS)".

§ 5.64 [Amended]

10. In § 5.64, paragraph (b) is amended by revising the term "district" to read "supervisory".

PART 7—BANK ACTIVITIES AND OPERATIONS

11. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

12. The title of part 7 is revised to read as set forth above.

13. In § 7.1012, paragraphs (c)(2)(i) and (c)(2)(ii) are revised and paragraphs (c)(2)(iii), (c)(2)(iv), (c)(2)(v), and (c)(2)(vi) are added to read as follows:

§ 7.1012 Messenger service.

* * * * *

(c) * * *

(2) * * *

(i) A party other than the national bank owns or rents the messenger service and its facilities and employs the persons who provide the service;

(ii)(A) The messenger service retains the discretion to determine in its own business judgment which customers and geographic areas it will serve; or

(B) If the messenger service and the bank are under common ownership or control, the messenger service actually provides its services to the general public, including other depository institutions, and retains the discretion to determine in its own business judgment which customers and geographic areas it will serve;

(iii) The messenger service maintains ultimate responsibility for scheduling, movement, and routing;

(iv) The messenger service does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is providing the service, although the bank may advertise that its customers may use one or more third party messenger services to transact business with the bank;

(v) The messenger service assumes responsibility for the items during transit and for maintaining adequate insurance covering thefts, employee fidelity, and other in-transit losses; and

(vi) The messenger service acts as the agent for the customer when the items are in transit. The bank deems items intended for deposit to be deposited when credited to the customer's account at the bank's main office, one of its branches, or another permissible facility, such as a back office facility that is not a branch. The bank deems items representing withdrawals to be paid when the items are given to the messenger service.

* * * * *

14. In § 7.1016, paragraphs (a) including the footnote, (b)(1)(iii)(C), (b)(1)(iv), and (b)(2)(ii) are revised to read as follows:

§ 7.1016 Independent undertakings to pay against documents.

(a) *General authority.* A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law.[30] Under such letters of credit and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) * * *

(1) * * *

(iii) * * *

(C) Entitle the bank to cash collateral from the applicant on demand (with a right to accelerate the applicant's obligations, as appropriate); and

(iv) The bank either should be fully collateralized or have a post-honor right of reimbursement from the applicant or from another issuer of an independent undertaking. Alternatively, if the bank's undertaking is to purchase documents of title, securities, or other valuable documents, the bank should obtain a first priority right to realize on the documents if the bank is not otherwise to be reimbursed.

(2) * * *

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should be consistent with the bank's ability to make any necessary credit assessments prior to renewal;

* * * * *

15. In § 7.1017, the introductory text is revised to read as follows:

§ 7.1017 National bank as guarantor or surety on indemnity bond.

A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor (including, pursuant to 12 CFR 28.4, guaranteeing the deposits and other liabilities of its Edge corporations and Agreement corporations and of its corporate instrumentalities in foreign countries), if:

* * * * *

16. In § 7.2005, paragraph (b)(4) is revised to read as follows:

§ 7.2005 Ownership of stock necessary to qualify as director.

* * * * *

(b) * * *

(4) *Other arrangements*—(i) *Shares held through retirement plans and similar arrangements.* A director may hold his or her qualifying interest through a profit-sharing plan, individual retirement account, retirement plan, or similar arrangement, if the director retains beneficial ownership and legal control over the shares.

(ii) *Shares held subject to buyback agreements.* A director may acquire and hold his or her qualifying interest pursuant to a stock repurchase or buyback agreement with a transferring shareholder under which the director purchases the qualifying shares subject to an agreement that the transferring shareholder will repurchase the shares when, for any reason, the director ceases to serve in that capacity. The agreement may give the transferring shareholder a right of first refusal to repurchase the qualifying shares if the director seeks to transfer ownership of the shares to a third person.

(iii) *Assignment of right to dividends or distributions.* A director may assign the right to receive all dividends or distributions on his or her qualifying shares to another, including a transferring shareholder, if the director retains beneficial ownership and legal control over the shares.

(iv) *Execution of proxy.* A director may execute a revocable or irrevocable proxy authorizing another, including a transferring shareholder, to vote his or her qualifying shares, provided the director retains beneficial ownership and legal control over the shares.

* * * * *

17. In § 7.2008, the last sentence of paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 7.2008 Oath of directors.

* * * * *

(b) *Execution of the oath.* * * * Appropriate sample oaths are located in the "Comptroller's Corporate Manual."

(c) *Filing and recordkeeping.* A national bank must file the original executed oaths of directors with the OCC and retain a copy in the bank's records in accordance with the Comptroller's Corporate Manual filing and recordkeeping instructions for executed oaths of directors.

18. Section 7.2020 is revised to read as follows:

§ 7.2020 Acquisition and holding of shares as treasury stock.

(a) *Acquisition of outstanding shares.* Pursuant to 12 U.S.C. 59, including the requirements for prior approval by the bank's shareholders and the OCC imposed by that statute, a national bank may acquire its outstanding shares and hold them as treasury stock, if the acquisition and retention of the shares is, and continues to be, for a legitimate corporate purpose.

(b) *Legitimate corporate purpose.* Examples of legitimate corporate purposes include the acquisition and holding of treasury stock to:

(1) Have shares available for use in connection with employee stock option, bonus, purchase, or similar plans;

(2) Sell to a director for the purpose of acquiring qualifying shares;

(3) Purchase a director's qualifying shares upon the cessation of the director's service in that capacity if there is no ready market for the shares;

(4) Reduce the number of shareholders in order to qualify as a Subchapter S corporation; and

(5) Reduce costs associated with shareholder communications and meetings.

(c) *Prohibition.* It is not a legitimate corporate purpose to acquire or hold treasury stock on speculation about changes in its value.

19. A new § 7.2023 is added to subpart B to read as follows:

§ 7.2023 Reverse stock splits.

(a) *Authority to engage in reverse stock splits.* A national bank may engage in a reverse stock split if the transaction serves a legitimate corporate purpose and provides adequate dissenting shareholders' rights.

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[30] Examples of such laws or rules of practice include: The applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West Publishing Co., 1/800/328–4880); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 500) (available from ICC Publishing, Inc., 212/206–1150; http://www.iccwbo.org); the International Standby Practices (ISP98) (ICC Publication No. 590) (available from the Institute of International Banking Law & Practice, 301/869–9840; http://www.iiblp.org); the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997) (available from the U.N. Commission on International Trade Law, 212/963–5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206–1150; http://www.iccwbo.org); as any of the foregoing may be amended from time to time.

(b) *Legitimate corporate purpose.* Examples of legitimate corporate purposes include a reverse stock split to:

(1) Reduce the number of shareholders in order to qualify as a Subchapter S corporation; and

(2) Reduce costs associated with shareholder communications and meetings.

20. In § 7.4000, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 7.4000 Visitorial powers.

(a) *General rule.* (1) Only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks, except as provided in paragraph (b) of this section. State officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions, except in limited circumstances authorized by federal law. However, production of a bank's records (other than non-public OCC information under 12 CFR part 4, subpart C) may be required under normal judicial procedures.

(2) For purposes of this section, visitorial powers include:

(i) Examination of a bank;

(ii) Inspection of a bank's books and records;

(iii) Regulation and supervision of activities authorized or permitted pursuant to federal banking law; and

(iv) Enforcing compliance with any applicable federal or state laws concerning those activities.

(b) *Exceptions to the general rule.* Federal law expressly provides special authority for state or other federal officials to:

(1) Inspect the list of shareholders, provided the official is authorized to assess taxes under state authority (12 U.S.C. 62; this section also authorizes inspection of the shareholder list by shareholders and creditors of a national bank);

(2) Review, at reasonable times and upon reasonable notice to a bank, the bank's records solely to ensure compliance with applicable state unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with those laws (12 U.S.C. 484(b));

(3) Verify payroll records for unemployment compensation purposes (26 U.S.C. 3305(c));

(4) Ascertain the correctness of federal tax returns (26 U.S.C. 7602); and

(5) Enforce the Fair Labor Standards Act (29 U.S.C. 211).

* * * * *

21. A new § 7.4003 is added to read as follows:

§ 7.4003 Establishment and operation of a remote service unit by a national bank.

A remote service unit (RSU) is an automated facility, operated by a customer of a bank, that conducts banking functions, such as receiving deposits, paying withdrawals, or lending money. A national bank may establish and operate an RSU pursuant to 12 U.S.C. 24(Seventh). An RSU includes an automated teller machine, automated loan machine, and automated device for receiving deposits. An RSU may be equipped with a telephone or televideo device that allows contact with bank personnel. An RSU is not a "branch" within the meaning of 12 U.S.C. 36(j), and is not subject to state geographic or operational restrictions or licensing laws.

22. A new § 7.4004 is added to read as follows:

§ 7.4004 Establishment and operation of a deposit production office by a national bank.

(a) *General rule.* A national bank or its operating subsidiary may engage in deposit production activities at a site other than the main office or a branch of the bank. A deposit production office (DPO) may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. A DPO is not a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30(d)(1) so long as it does not receive deposits, pay withdrawals, or make loans. All deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer, or a similar method of transfer.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its deposit production activities.

23. A new § 7.4005 is added to read as follows:

§ 7.4005 Combination of loan production office, deposit production office, and remote service unit.

A location at which a national bank operates a loan production office (LPO), a deposit production office (DPO), and a remote service unit (RSU) is not a "branch" within the meaning of 12 U.S.C. 36(j) by virtue of that combination. Since an LPO, DPO, or RSU is not, individually, a branch under 12 U.S.C. 36(j), any combination of these facilities at one location does not create a branch.

Dated: October 25, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–28819 Filed 11–3–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–51–AD; Amendment 39–11400; AD 99–23–04]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, and 222U Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron Canada (BHTC) Model 222, 222B, and 222U helicopters. This action requires verifying the torque on each vertical fin attachment bolt (bolt); inspecting the vertical fin and tailboom fittings for cracks, elongation of bolt holes, distortion and corrosion; and re-verifying the torque on the bolts after inspecting the fittings. This amendment is prompted by a report of a loose vertical fin, which was discovered during a post-flight inspection. The actions specified in this AD are intended to prevent loss of torque of the bolts, which could lead to fracture of the bolts, separation of the vertical fin from the helicopter, and subsequent loss of control of the helicopter.

DATES: Effective November 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 3, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–51–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, and 222U helicopters. Transport Canada advises that, in one instance, loss of torque on the bolts resulted in fracture of four of the eight bolts and a loose vertical fin on a Model 230 helicopter, which is of similar design to the Model 222 series helicopters.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222–98–82, Revision A, and ASB No. 222U–98–53, Revision A, both dated June 9, 1998, which specify a bolt torque check within 25 hours after receipt of the ASB; removal, inspection and modification, if necessary, and installation of the vertical fin at the next scheduled 150-hour inspection after receipt of the ASB; and verifying the bolt torque within 5 to 10 hours after each fin removal and installation, and at every 150 hours of operation. BHTC also issued Bell Helicopter Textron Technical Bulletin (TB) No. 222–98–156 (applicable to Model 222 and 222B helicopters) and TB No. 222U–98–84 (applicable to Model 222U helicopters), both dated June 17, 1998, which specify a modification of the vertical fin attachment fitting and tailboom fitting to permit installation of increased diameter fin attachment hardware. Transport Canada classified these service bulletins as mandatory and issued AD CF–98–21, dated August 7, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 222, 222B, and 222U helicopters of the same type design registered in the United States, this AD is being issued to prevent loss of torque of the bolts, which could lead to fracture of the bolts, separation of the vertical fin from the helicopter, and subsequent loss of control of the helicopter. This AD requires verifying the bolt torque; inspecting the vertical fin and tailboom fittings for cracks, elongation of bolt holes, distortion and corrosion; and re-verifying the torque on the bolts after inspecting the fittings. The bolt torque must also be verified at specified intervals after accomplishing the initial inspections. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, verifying the torque is required within 25 hours time-in-service, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Cost Impact

The FAA estimates that 78 helicopters will be affected by this AD, that it will take approximately 8 work hours to accomplish the torque verifications and vertical fin inspection, 1 work hour to accomplish repetitive torque verification and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators for the initial inspection and 1 recurring inspection is estimated to be $42,120, assuming no helicopters require modification due to elongated bolt holes.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–51–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–23–04 Bell Helicopter Textron Canada: Amendment 39–11400. Docket No. 98–SW–51–AD.

Applicability: Model 222 helicopters, serial numbers (S/N) 47006 through 47089; Model 222B helicopters, S/N 47131 through 47156, and Model 222U helicopters, S/N 47501 through 47574, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of torque of the vertical fin attachment bolts (bolts), which could lead to fracture of the bolts, separation of the vertical fin from the helicopter, and subsequent loss of control of the helicopter accomplish the following:

(a) Within 25 hours time-in-service (TIS), verify the torque on the bolts in accordance with Part I of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222–98–82, Revision A (applicable to Model 222 and Model 222B helicopters), or ASB No. 222U–98–53, Revision A (applicable to Model 222U helicopters), both dated June 9, 1998.

(b) On or before the next 150 hour TIS inspection, inspect the vertical fin fitting and tailboom fitting for cracks, elongated bolt holes, distortion and corrosion in accordance with Part II of the Accomplishment Instructions in ASB No. 222–98–82, Revision A (applicable to Model 222 and Model 222B helicopters), or ASB No. 222U–98–53, Revision A, (applicable to Model 222U helicopters), both dated June 9, 1998. If bolt holes are elongated, modify the vertical fin fitting and tailboom fitting in accordance with the Accomplishment Instructions in Bell Helicopter Textron Technical Bulletin (TB) No. 222–98–156 (applicable to Model 222 and 222B helicopters), or TB No. 222U–98–84 (applicable to Model 222U helicopters), both dated June 17, 1998.

(c) After the inspection required by paragraph (b) and after at least 5 hours TIS but within 10 hours TIS, re-verify the torque on the bolts in accordance with Part III, Special Inspections, Step 1 of the Accomplishment Instructions in ASB No. 222–98–82, Revision A (applicable to Model 222 and Model 222B helicopters), or ASB No. 222U–98–53, Revision A, (applicable to Model 222U helicopters), both dated June 9, 1998.

(d) Thereafter, at intervals not to exceed 150 hours TIS, verify the torque of the vertical fin attachment bolts in accordance with the 150 flight hour, Part III, Scheduled Inspections of the Accomplishment Instructions in the ASB No. 222–98–82, Revision A (applicable to Model 222 and Model 222B helicopters), or ASB No. 222U–98–53, Revision A, (applicable to Model 222U helicopters), both dated June 9, 1998.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin No. 222–98–82, Revision A (applicable to Model 222 and Model 222B helicopters), or Bell Helicopter Textron Alert Service Bulletin 222U–98–53, Revision A (applicable to Model 222U helicopters), both dated June 9, 1998; and Bell Helicopter Textron Technical Bulletin No. 222–98–156 (applicable to Model 222 and 222B helicopters), or Bell Helicopter Textron Technical Bulletin No. 222U–98–84 (applicable to Model 222U helicopters), both dated June 17, 1998. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 19, 1999.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–21, dated August 7, 1998.

Issued in Fort Worth, Texas, on October 26, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–28653 Filed 11–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–50–AD; Amendment 39–11399; AD 99–23–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron Canada (BHTC) Model 430 helicopters. This action requires verifying the torque on each vertical fin attachment bolt (bolt); modifying the vertical fin and tailboom and replacing the attachment hardware; and re-verifying the torque on the bolts after inspecting the fittings. This amendment is prompted by a report of a loose vertical fin, which was discovered during a post-flight inspection. The actions specified in this AD are intended to prevent loss of torque of the bolts, which could lead to fracture of the bolts, separation of the vertical fin from the helicopter, and subsequent loss of control of the helicopter.

DATES: Effective November 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 3, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–50–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 430 helicopters. Transport Canada advises that, in one instance, loss of torque on the bolts resulted in fracture of four of the eight bolts and a loose vertical fin on a Model 230 helicopter which is of similar design to the Model 430 series helicopters.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 430–98–5, dated June 12, 1998 (ASB), which specifies a bolt torque check within 25 hours after receipt of the ASB; removal, inspection, and installation of the tailboom and vertical fin modification with attaching hardware replacement at the next scheduled 150-hour inspection after receipt of the ASB; and verifying the bolt torque within 5 to 10 hours after each fin removal and installation, and at every 150 hours of operation. Transport Canada classified this ASB as mandatory and issued AD CF–98–23, dated August 7, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 430 helicopters of the same type design registered in the United States, this AD is being issued to prevent loss of torque of the bolts, which could lead to fracture of the bolts, separation of the vertical fin from the helicopter, and subsequent loss of control of the helicopter. This AD requires verifying the bolt torque within 25 hours time-in-service (TIS); modifying the vertical fin and tailboom fittings and replacing the attachment hardware at or before the next 150-hour TIS inspection; and re-verifying the torque on the bolts within 10 hours TIS after inspecting the vertical fin. The actions are required to be accomplished in accordance with the bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, verifying the torque is required within 25 hours time-in-service (TIS), and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Cost Impact

The FAA estimates that 14 helicopters will be affected by this AD, that it will take approximately 3 work hours to accomplish the initial torque verifications and vertical fin inspection, 12 work hours to modify the vertical fin and install the attachment hardware, 1 work hour to accomplish the repetitive torque verification after the modification, and 1 work hour to accomplish each 150-hour inspection, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,692 if the CA430–98–5–2 kit is used or $2,399 if the CA430–98–05–1 kit is used. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $47,866, assuming only the CA430–98–05–1 kit is installed and one repetitive 150-hour inspection on each helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–50–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory

Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–23–03 Bell Helicopter Textron Canada: Amendment 39–11399. Docket No. 98–SW–50–AD.

Applicability: Model 430 helicopters, serial numbers 49001 through 49036, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of torque of the vertical fin attachment bolts (bolts), which could lead to fracture of the bolts, separation of the vertical fin from the helicopter, and subsequent loss of control of the helicopter accomplish the following:

(a) Within 25 hours time-in-service (TIS), verify the torque on the bolts in accordance with Part I of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 430–98–5, dated June 12, 1998 (ASB).

(b) On or before the next scheduled 150-hour TIS inspection, modify the tailboom and vertical fin and replace the attachment hardware in accordance with Part II of the Accomplishment Instructions in the ASB.

(c) After accomplishing the modification required by paragraph (b) and after at least 5 hours TIS but within 10 hours TIS, verify the torque on the bolts in accordance with Part III of the Accomplishment Instructions in the ASB.

(d) Thereafter, at intervals not to exceed 150 hours TIS, verify the torque of the vertical fin attachment bolts in accordance with the 150 flight hour scheduled inspections, Part III, of the Accomplishment Instructions in the ASB.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with Bell Helicopter Textron Canada Alert Service Bulletin No. 430–98–5, dated June 12, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 19, 1999.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–23, dated August 7, 1998.

Issued in Fort Worth, Texas, on October 26, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–28652 Filed 11–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 91F–0431]

Indirect Food Additives: Resinous and Polymeric Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2'-[(1-methylethylidene)bis[4,1-phenyleneoxy[1-(butoxymethyl)-2,1-ethanediyl]oxymethylene]]bisoxirane as a component of epoxy coatings intended for use in contact with bulk dry foods. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: This regulation is effective November 4, 1999; written objections and requests for a hearing by December 6, 1999.

ADDRESS: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vivian Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of December 5, 1991 (56 FR 63737), FDA announced that a food additive petition (FAP 1B4278) had been filed by Ciba–Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of 2,2'-[(1-methylethylidene)bis[4,1-phenyleneoxy[1-(butoxymethyl)-2,1-ethanediyl]oxymethylene]]bisoxirane as a component of resinous and polymeric coatings intended for use in contact with dry bulk foods.

In FDA's evaluation of the safety of this additive, the agency reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of epichlorohydrin, a carcinogenic impurity resulting from the manufacture of the additive. Residual amounts of impurities are commonly found as constituents of chemical products, including food additives.

II. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 348(c)(3)(A), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive. (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

III. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, 2,2'-[(1-methylethylidene)bis[4,1-phenyleneoxy[1-(butoxymethyl)-2,1-ethanediyl]oxymethylene]]bisoxirane, will result in exposure no greater than 4.4 parts per (pp) trillion of the additive in the daily diet (3 kilograms (kg)) or an estimated daily intake (EDI) of 13 nanograms per person per day (ng/p/d)(Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by epichlorohydrin, a carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of epichlorohydrin has two aspects: (1) Assessment of the exposure to the impurity from the petitioned use of the additive and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

A. Epichlorohydrin

FDA has estimated the exposure to epichlorohydrin from the petitioned use of the additive as a component of epoxy coatings to be no more than 0.013 pp trillion of the daily diet (3 kg), or 39 picograms/person/day (pg/p/d) (Ref.3). The agency used data from a carcinogenesis bioassay conducted on rats fed epichlorohydrin via their drinking water (Ref. 4), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of stomach papillomas and carcinomas in rats.

Based on the agency's estimate that exposure to epichlorohydrin will not exceed 39 pg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 1.8 X 10–12, or 1.8 in one trillion (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to epichlorohydrin is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to epichlorohydrin would result from the petitioned use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of epichlorohydrin present as an impurity in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because the low levels at which epichlorohydrin may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to epichlorohydrin is very low, 1.8 in a trillion.

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. The agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 175.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment (EA) nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 6, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Division of Product Manufacture and Use, Chemistry Review Team (HFS–246), to the Division of Petition Control (HFS–215), entitled "FAP 1B4278 (MATS #583, M2.2.1): Ciba–Geigy Corp., Request from DHEE dated 12–16–97 for a revised exposure estimate to Araldite XU GY 376, an epoxy resin for use as a repeat-use coating component that will contact bulk grains and dry foods," dated February 27, 1998.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, published by S. Karger, New York, NY, pp. 24 to 33, 1985.

3. Memorandum from the Chemistry Review Branch (HFS–247) to the Indirect Additives Branch (HFS–216), entitled "FAP–1B4278 (MATS #583) Ciba-Geigy Corp., Submission dated 10–23–92. Araldite XU GY 376 as a component of food-contact coatings," dated May 12, 1993.

4. Konishi, Y. et al.,"Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," *Gann*, 71: pp. 922 to 923, 1980.

5. Memorandum from the Indirect Additives Branch (HFS–216) to the Executive Secretary, Quantitative Risk Assessment Committee (QRAC) (HFS–308) entitled "Estimation of the upper bound lifetime risk from epichlorohydrin in 2,2'-[(1-methylethylidene)bis[4,1-phenyleneoxy[1-(butoxymethyl)-2,1-ethanediyl]oxymethylene]] bisoxirane, the subject of FAP 1B4278 (Ciba-Geigy Corp.)," dated November 22, 1993.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.300 is amended in paragraph (b)(3)(viii)(*a*) by alphabetically adding an entry to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(viii) * * *

(*a*) * * *

* * * * *

2,2'-[(1-methylethylidene)bis[4,1-phenyleneoxy[1-(butoxymethyl)-2,1-ethanediyl]oxymethylene]]bisoxirane, CAS Reg. No. 71033–08–4, for use only in coatings intended for contact with bulk dry foods at temperatures below 100 ½F.

* * * * *

Dated: October 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28850 Filed 11–3–99; 8:45 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 20

Priority Mail Global Guaranteed

AGENCY: Postal Service.

ACTION: Amendment to interim rule.

SUMMARY: On April 19, 1999, the Postal Service announced in the **Federal Register** (62 FR 19039–19042) the introduction of Priority Mail Global Guaranteed on an interim basis and requested comment from the public. Comments were received until May 19, 1999. The Postal Service is amending the interim rule to increase the number of acceptance locations and destination countries and territories. All other conditions of service, including rates, remain the same. Additionally, the Postal Service is responding to the public comments.

EFFECTIVE DATE: November 1, 1999. Comments on the amendment to the interim rule must be received on or before December 6, 1999.

ADDRESSES: Written comments should be mailed or delivered to the Manager, International Finance, International Business, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in International Business, 10th Floor, 901 D Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256.

SUPPLEMENTARY INFORMATION: On April 19, 1999, the Postal Service announced in the **Federal Register** (62 FR 19039–19042) the introduction of Priority Mail Global Guaranteed on an interim basis and requested comment from the public.

The U.S. Postal Service, through an alliance with DHL Worldwide Express Inc., is offering an enhanced expedited service, Priority Mail Global Guaranteed, from selected locations in the United States to selected countries. This service offers day-certain delivery with postage refund guarantee and document reconstruction coverage of $100 for allowable contents. Comments were requested by May 19, 1999.

By that date the Postal Service received comments from one company, United Parcel Service (UPS), concerning the interim rule. UPS challenged the service in two areas. First, UPS argued that the Postal Service-DHL contract pursuant to which the service is provided appears to be an unauthorized transaction that is contrary to law. Second, UPS asserts that the rates for Priority Mail Global Guaranteed may be below cost, in violation of the Postal Reorganization Act.

UPS states that the arrangement with DHL provides for the air transportation of mail. UPS asserts that this is a contract for air transportation services and that such a contract must comply with 39 U.S.C. 5402, which requires that contracts be filed with the Secretary of Transportation, that contracts be for at least 750 pounds of mail per flight, and that mail transported under contract consist of not more than 5 percent letter mail by weight. UPS's premise for these comments, that there is a contract between the Postal Service and DHL for the transportation of PMGG, is not correct. No such contract has been made. PMGG items are tendered to DHL as an air carrier authorized to transport mail by its certificate of public convenience and necessity in the same manner as mail is tendered to other certificated air carriers. The rates of compensation for the international air transportation service performed by DHL are as prescribed by the Secretary of Transportation under section 41901(b). As there is no contract for air carriage, there is no basis for UPS's comments in this respect.

UPS asserts that the rates for Priority Mail Global Guaranteed may be below cost, in violation of the Postal Reorganization Act. The basis for this assertion is that the rates for Priority Mail Global Guaranteed are alleged to be as much as 65 percent lower than the published rates charged by courier companies for comparable services and lower than the rates charged by DHL for comparable service. UPS further asserts that the rates for other USPS delivery services are below cost, and that this also is grounds for suspecting that the rates for Priority Mail Global Guaranteed are below cost. UPS does not, however, provide any tangible evidence that the revenues from Priority Mail Global Guaranteed do not cover costs.

In general, rates for postal services should cover costs over some relevant period of time. The rates for Priority Mail Global Guaranteed were designed to do that, based on the unique costs of that service. Nothing in UPS's comments provides any basis for changing the Postal Service's conclusion that the rates for Priority Mail Global Guaranteed cover its costs. The prices courier companies charge for their services are not probative evidence that rates for Priority Mail Global Guaranteed are non-compensatory, since courier prices are based on the costs incurred by those companies and on their perceptions of what their users are willing to pay for the service provided. Similarly, the prices charged by DHL for the services it provides by itself are not a reliable guide to what Priority Mail Global Guaranteed rates should be, nor do they provide any probative evidence that Priority Mail Global Guaranteed rates do not cover costs. The costs DHL incurs in its own services are not the same as the costs the Postal Service incurs in performing similar functions in providing Priority Mail Global Guaranteed. Finally, the allegation that the rates for some other Postal Service offerings do not produce revenues that cover costs does not provide any evidence that the rates for Priority Mail Global Guaranteed do not produce revenues that cover costs. The rates for each Postal Service offering are based on the costs incurred in providing that particular offering and that offering alone. In each case, Postal Service offerings are priced to produce revenues greater than costs, although in rare cases unforeseen circumstances or events can produce results that might not be as projected. In any event, UPS has provided no information that would cause the Postal Service to change its view that the rates developed for Priority Mail Global Guaranteed will produce revenues greater than costs.

The Postal Service is not adopting a final rule at this time. The Postal Service is amending the interim rule to increase the number of metropolitan areas that can accept Priority Mail Global Guaranteed and the number of destinations to which it may be sent. This is an expansion of origins and destinations only, and all other conditions of service remain the same.

Service will be available from the following ZIP Code areas:

Metropolitan area	ZIP code
Arizona: Phoenix	850, 852–853.
California:	
Los Angeles, Oakland, San Francisco/San Jose	900, 902–908, 910–918, 926–928, 937, 939–941, 943–944, 946, 949–951, 954.
Colorado: Denver	802.
Connecticut: Stamford	060–069.
Delaware: Wilmington	197–199.
District of Columbia	200, 202–203, 205.
Florida:	
Fort Lauderdale, Jacksonville, Miami, Orlando, Tampa	320, 322, 327–338, 342, 346–347.
Georgia: Atlanta	300–303, 305–306, 311.
Illinois: Chicago	600–608, 610–611, 620, 622, 629.
Indiana: Indianapolis	460–470, 472–475, 478–479.
Kentucky: Newport	410, 452.
Maine: Portland	039–041.
Maryland: Baltimore	206–212, 214, 217, 219.
Massachusetts: Boston	010–027.
Michigan:	
Detroit, Grand Rapids	481–482, 486–491, 493–497, 530–531.
Minnesota:	
Minneapolis, Saint Paul	550–551, 553–554, 558–559.
Missouri: St. Louis	630–631, 633.
New Hampshire: Manchester	030–034, 038.
New Jersey:	
Jersey City, Newark	070–085, 087–089.
New York:	
Flushing, New York City	100–101, 103–105, 107, 109–119, 124–127.
North Carolina:	
Charlotte, Greensboro, Raleigh	270–278, 280–282, 286.
Ohio:	
Akron, Cincinnati, Cleveland, Columbus, Dayton, Toledo, Youngstown.	430–438, 440–458.
Pennsylvania: Philadelphia	189–191, 193–196.
Rhode Island: Providence	028–029.
Tennessee: Nashville	372.
Texas:	
Dallas, Fort Worth, Houston, Lubbock, San Antonio	750–752, 760–764, 769–770, 772–778, 780–782, 784, 791, 794.
Virginia: Richmond	201, 220–225, 230–232, 238–239.
Vermont: Burlington	054, 056.
Washington: Seattle	980–982.
Wisconsin: Milwaukee	530–532, 534.

Service will be available to the following countries and territories:

Anguilla, Antigua and Barbuda, Aruba, Australia, Austria, Bahamas, Barbados, Belgium, Bermuda, British Virgin Islands, Canada, Cayman Islands, Denmark, Dominica, Dominican Republic, Finland, France (includes Monaco), Germany, Gibraltar, Great Britain and Northern Ireland (includes Guernsey and Jersey), Greece, Grenada, Guadeloupe (includes St. Barthelemey), Haiti, Hong Kong, Indonesia, Ireland, Italy, Jamaica, Korea, Republic of (South Korea), Liechtenstein, Luxembourg, Macao, Malaysia, Malta, Martinique, Mexico, Montserrat, Netherlands, Netherlands Antilles (includes Bonaire, Curacao, St. Eustatius, and St. Maarten), New Zealand, Norway, Philippines, Portugal, Saint Christopher (St. Kitts) and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Singapore, Spain (includes Canary Islands), Sweden, Switzerland, Taiwan, Thailand, Trinidad and Tobago, Turks and Caicos Islands, and Vietnam.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment on the amendment to the interim rule at the above address.

The Postal Service is amending International Mail Manual Chapter 2, Conditions for Mailing, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

A transmittal letter changing the relevant pages in the International Mail Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

The Postal Service adopts the following amendments to the International Mail Manual.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended as follows:

2 Conditions for Mailing

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210 Express Mail International Service

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215 Priority Mail Global Guaranteed

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215.3 Service Areas

215.31 Origins

Priority Mail Global Guaranteed service is available only from the following ZIP Code areas:

Metropolitan area	ZIP code
Arizona: Phoenix	850, 852–853.
California:	
Los Angeles, Oakland, San Francisco/San Jose	900, 902–908, 910–918, 926–928, 937, 939–941, 943–944, 946, 949–951, 954.
Colorado: Denver	802.
Connecticut: Stamford	060–069.
Delaware: Wilmington	197–199.
District of Columbia	200, 202–203, 205.
Florida:	
Fort Lauderdale, Jacksonville, Miami, Orlando, Tampa	320, 322, 327–338, 342, 346–347.
Georgia: Atlanta	300–303, 305–306, 311.
Illinois: Chicago	600–608, 610–611, 620, 622, 629.
Indiana: Indianapolis	460–470, 472–475, 478–479.
Kentucky: Newport	410, 452.
Maine: Portland	039–041.
Maryland: Baltimore	206–212, 214, 217, 219.
Massachusetts: Boston	010–027.
Michigan: Detroit, Grand Rapids	481–482, 486–491, 493–497, 530–531.
Minnesota:	
Minneapolis, Saint Paul	550–551, 553–554, 558–559.
Missouri: St. Louis	630–631, 633.
New Hampshire: Manchester	030–034, 038.
New Jersey: Jersey City Newark Newark.	070–085, 087–089.
New York: Flushing, New York City	100–101, 103–105, 107, 109–119, 124–127.
North Carolina: Charlotte, Greensboro, Raleigh	270–278, 280–282, 286.
Ohio:	
Akron, Cincinnati, Cleveland, Columbus, Dayton, Toledo, Youngstown.	430–438, 440–458.
Pennsylvania: Philadelphia	189–191, 193–196.
Rhode Island: Providence	028–029.
Tennessee: Nashville	372.
Texas:	
Dallas, Fort Worth, Houston, Lubbock, San Antonio	750–752, 760–764, 769–770, 772–778, 780–782, 784, 791, 794.
Virginia: Richmond	201, 220–225, 230–232, 238–239.
Vermont: Burlington	054, 056.
Washington: Seattle	980–982.
Wisconsin: Milwaukee	530–532, 534.

215.32 Destinations

Priority Mail Global Guaranteed service is available only to the following countries and territories:

Anguilla, Antigua and Barbuda, Aruba, Australia, Austria, Bahamas, Barbados, Belgium, Bermuda, British Virgin Islands, Canada, Cayman Islands, Denmark, Dominica, Dominican Republic, Finland, France (includes Monaco), Germany, Gibraltar, Great Britain and Northern Ireland (includes Guernsey and Jersey), Greece, Grenada, Guadeloupe (includes St. Barthelemey), Haiti, Hong Kong, Indonesia, Ireland, Italy, Jamaica, Korea, Republic of (South Korea), Liechtenstein, Luxembourg, Macao, Malaysia, Malta, Martinique, Mexico, Montserrat, Netherlands, Netherlands Antilles (includes Bonaire, Curacao, St. Eustatius, and St. Maarten), New Zealand, Norway, Philippines, Portugal, Saint Christopher (St. Kitts) and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Singapore, Spain (includes Canary Islands), Sweden, Switzerland, Taiwan, Thailand, Trinidad and Tobago, Turks and Caicos Islands, and Vietnam.

* * * * *

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 99–28650 Filed 11–3–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0189; FRL–6466–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 17, 1999. This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from adhesive and sealant products. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because this revision, while strengthening the SIP, also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on December 6, 1999.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is Bay Area Air Quality Management District, BAAQMD, Rule 8–51, Adhesive and Sealant Products. This rule was submitted by the California Air Resources Board, CARB, to EPA on June 23, 1998.

II. Background

On March 17, 1998 in 64 FR 13143, EPA proposed granting limited approval and limited disapproval of BAAQMD Rule 8–51, Adhesive and Sealant Products into the California SIP. Rule 8–51 was adopted by the BAAQMD on January 7, 1998. This rule was submitted by the CARB to EPA on June 23, 1998. This rule was submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for this rule and nonattainment area is provided in the proposed rule (PR) cited above.

EPA has evaluated the rule for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of this rule in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. The rule contains inadequate recordkeeping, director's discretion, and unsubstantiated deviations from RACT level controls. A detailed discussion of the rule provisions and evaluation have been provided in the PR and in the February 1999 technical support document (TSD) available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 13143. EPA received one comment letter on the PR from the BAAQMD. The comments have been evaluated by EPA and a summary of the comments and EPA's responses are set forth below.

Comment: The BAAQMD commented that no clear guidance on recordkeeping intervals exists for rules like Rule 8–51 which specify product VOC limits. The BAAQMD argues that, although section 113(b) of the CAA establishes a daily penalty limit of $25,000 and might serve as a rationale for a daily recordkeeping requirement, no regulatory language compels daily recordkeeping. BAAQMD asserts that monthly recordkeeping as required by Section 501 is sufficient. Furthermore, BAAQMD emphasized that daily recordkeeping is burdensome for small businesses and does not enhance enforceability.

Response: Rule 8–51 was evaluated against the CAA and the documents cited in the TSD. The EPA's recordkeeping policies have been further interpreted and clarified in other EPA rulemakings and communications, including a June 19, 1996 guidance document on recordkeeping which was distributed to all air districts in Region IX including the BAAQMD (Rule Development Recordkeeping Policy, under June 27, 1996 cover letter from Daniel Meer). The June 19, 1996 guidance document states that "if a source uses only compliant materials, recordkeeping on a less frequent basis than daily may be acceptable." Records kept on a less frequent basis than daily are not acceptable when noncompliant materials are used. Daily records are the rule and monthly records are the exception to that rule. Requiring daily records does not impose any additional burden; rather, allowing monthly records provides relief for sources that use only compliant materials. On a practical level, we expect most sources will take advantage of this relief because compliant materials are widely available. EPA's recordkeeping requirements may allow flexibility for sources that operate in compliance with prohibitory rules, however, rules that allow additional flexibility must sufficiently deter sources that operate in a deliberately noncompliant manner by designating significant monetary penalties. EPA maintains that daily records are necessary for enforcement purposes whenever noncompliant materials are used.

Comment: BAAQMD contends that section 501.4 which allows for alternate recordkeeping plans was previously approved into the SIP in a similar rule. BAAQMD believed that it had addressed all approvability issues concerning this provision. The District indicated that rule revisions consume valuable time and limited resources and are less justifiable when little or no emissions reductions will result.

Response: Each EPA action on State submitted SIP revisions clearly notes that nothing in that particular action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP is considered independently in light of specific technical, economic, and environmental factors. Therefore, approval of certain language in one rule does not justify or necessitate the approval of similar language in another rule. Section 501.4 currently fails to indicate what constitutes an acceptable reporting period and allows the Executive Officer to approve changes to the reporting period without submitting a SIP revision. This violates the requirement in section 110 of the CAA that SIPs must be enforceable. Minimally, section 501.4 should require monthly records for sources using only compliant coatings and daily records for sources using any noncompliant coatings. Furthermore, any violation of rule standards should constitute a violation for each day of the reporting period. Modification of this provision will not impose an undue burden on the District since other areas of the rule already need to be modified as discussed in this rulemaking.

Comment: BAAQMD acknowledges that several VOC content limits contained in Rule 8–51 exceed the limits contained in the State of California's guidance document and attribute this to the fluidity of that document. BAAQMD contends that all deviations from the state's guidance were substantiated in an equivalency determination using the best available data. BAAQMD asserts that a source-by-source accounting of emissions is impossible since Rule 8–51 regulates thousands of sources in many industrial categories. BAAQMD indicates that they will revise Rule 8–51 to be consistent with the state's guidance document for deviations (a) and (d) through (i) as identified in the TSD. With regard to deviation (b), BAAQMD states that the 540 g/L limit complies with the state's guidance document and that a 250 g/L limit represents best available retrofit control technology (BARCT) which is more stringent than federal RACT. To justify deviation (c), BAAQMD provided additional information to indicate that the 100 g/L limit for retreading large tires is technologically infeasible because chlorinated solvents are regulated in BAAQMD as hazardous air pollutants. Other districts comply with the 100 g/L limit by allowing the use of certain chlorinated solvents. Furthermore, BAAQMD commented that the costs to abate emissions from large tire retreading were economically infeasible. BAAQMD asserted that the 480 g/L limit identified in the TSD as deviation (j) was included in the rule to accommodate a product that functions to both bond and seal polyvinyl chloride (PVC). BAAQMD asserts that the product should be allowed to meet the 480 g/L limit, instead of the 420 g/L limit which applies to other sealants, in order to account for the product's ability to bond PVC. The manufacturer had two customers in 1997, both outside the BAAQMD, and sold their product in containers with a capacity less than 16 ounces. BAAQMD states that it will adopt a small container exemption allowed by the state's guidance document during the next revision to Rule 8–51 to address deviation (j).

Response: EPA appreciates the difficulty of regulating and characterizing the emissions from this varied source category. BAAQMD committed to remedying deviations (a) and (d) through (i) and should proceed with those rule corrections in a timely manner to avoid the sanctions described above. With regard to deviation (b), EPA agrees with BAAQMD that the 250 g/L limit is BARCT and is not required to meet federal RACT requirements. The additional information provided in relation to deviation (c) adequately justifies this exemption for retreading large tires. BAAQMD should also correct the deficiency identified as deviation (j) as promised possibly by adopting a small container exemption. However, EPA questions the need to revise the rule to accommodate a product that BAAQMD indicates is not sold in the District.

III. EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rule. The limited approval of this rule is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rule strengthens the SIP. However, the rule does not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which are discussed above. Thus, in order to strengthen the SIP, EPA is granting limited approval of this rule under sections 110(k)(3) and 301(a) of the CAA. This action approves the rule into the SIP as a federally enforceable rule.

At the same time, EPA is finalizing the limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. As stated in the PR, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rule covered by this final rulemaking has been adopted by the BAAQMD and is currently in effect in the BAAQMD. EPA's limited disapproval action will not prevent the BAAQMD or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: October 20, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(256)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(256) * * *

(i) * * *

(A) * * *

(*2*) Rule 8–51, adopted on November 18, 1992 and amended on January 7, 1998.

* * * * *

[FR Doc. 99–28723 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300945; FRL–6391–5]

RIN 2070–AB78

Glufosinate Ammonium; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-mono ammonium salt) and metabolite(s) (3-methylphosphinico-propionic acid and 2-acetamido-4-methylphosphinico-butanoic acid), expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents in or on almond hulls; apples; bananas; cattle fat, meat and meat-byproducts; eggs; goat fat, meat, and meat-by-products; grapes, hog fat, meat, and meat-by-products; horse fat, meat, and meat-by-products; milk; potatoes, potato chips and granules/flakes; poultry fat, meat, and meat-by-products; sheep fat, meat, and meat-by-products; transgenic aspirated grain fractions, transgenic corn, field, forage; transgenic corn, field, grain; transgenic corn, field, stover; transgenic soybean hulls, transgenic soybeans, and tree nuts group. AgrEvo USA Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. This regulation also corrects the existing regulation for time-limited tolerances for transgenic canola and sweet corn commodities.

DATES: This regulation is effective November 4, 1999. Objections and requests for hearings, identified by docket control number OPP–300945, must be received by EPA on or before January 3, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300945 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–6224 and e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300945. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 8, 1997, (62 FR 52544) (FRL– 5746–9) and July 14, 1999 (64 FR 37973) (FRL–6085–5), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by AgrEvo USA Company, Little Falls

Centre One, 2711 Centerville Road, Wilmington, DE 19808. These notices included a summary of the petition prepared by AgrEvo USA Company, the registrant. There were no comments received in response to the notices of filing.

These petitions requested that 40 CFR 180.473 be amended by establishing permanent tolerances for combined residues of the herbicide glufosinate ammonium and its metabolite(s) expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid in or on almond hulls at 0.50 part per million (ppm), apples at 0.05 ppm, bananas at 0.3 ppm (not more than 0.2 ppm shall be present in the pulp after peel is removed), cattle, fat and meat at 0.05 ppm; cattle, meat-by-products at 0.10 ppm; eggs at 0.05 ppm, goats, fat and meat at 0.05 ppm; goats, meat-by-products at 0.10 ppm; grapes at 0.05 ppm; hogs, fat and meat at 0.05 ppm; hogs, meat-by-product at 0.10 ppm; horses, fat and meat at 0.05 ppm; horses, meat-by-products at 0.10 ppm; milk at 0.02 ppm, potatoes at 0.8 ppm, potato chips at 1.6 ppm, potato granules/flakes at 2.0 ppm, poultry, fat and meat at 0.05 ppm; poultry, meat-by-products at 0.10 ppm; sheep, fat and meat at 0.05 ppm; sheep, meat-by-products at 0.10 ppm; transgenic aspirated grain fractions at 25.0 ppm, transgenic corn, field, forage at 4.0 ppm; trangenic corn, field, grain at 0.2 ppm; transgenic corn, field stover at 6.0 ppm; transgenic soybeans hulls at 5.0 ppm, transgenic soybeans at 2.0 ppm and tree nut group at 0.1 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for permanent tolerances for combined residues of glufosinate ammonium and its metabolite(s) in or on almond hulls at 0.50 ppm, apples at 0.05 ppm, bananas at 0.3 ppm (not more that 0.2 ppm shall be present in the pulp after peel is removed), cattle, fat and meat at 0.05 ppm; cattle, meat-by-products at 0.10 ppm, eggs at 0.05 ppm, goats, fat and meat at 0.05 ppm; goats, meat-by-products at 0.10 ppm; grapes at 0.05 ppm, hogs, fat and meat at 0.05 ppm; hogs, meat-by-product at 0.10 ppm; horses, fat and meat at 0.05 ppm; horses, meat-by-products at 0.10 ppm; milk at 0.02 ppm; potatoes at 0.8 ppm; potato chips at 1.6 ppm; potato granule/flakes at 2.0 ppm; poultry, fat and meat at 0.05 ppm; poultry, meat-by-products at 0.10 ppm; sheep, fat and meat at 0.05 ppm; sheep, meat-by-products at 0.10 ppm; transgenic aspirated grain fractions at 25.0 ppm, transgenic corn, field, forage at 4.0 ppm; transgenic corn, field, grain at 0.2 ppm; transgenic corn, field, stover at 6.0 ppm; transgenic soybeans, hulls at 5.0 ppm; transgenic soybeans at 2.0 ppm and tree nuts group at 0.1 ppm. The addition (a corrective action on the Administrator's own initiative under section 408(e)(A)(C) of a second metabolite (2-acetamido-4-methylphosphinico-butamoic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents) to the residues of glufosinate ammonium found in transgenic canola and sweet corn commodities is consistent with section 408(b)(2)(D) and is appropriate because the second metabolite consistently occurs in commodities derived from transgenic plants. The risk assessment included the second metabolite found in canola and sweet corn commodities. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by are discussed in this unit.

1. Glufosinate ammonium (also referred to as DL-glufosinate ammonium or HOE 039866) is toxicity category III for acute oral, dermal, and eye irritation toxicities. It is toxicity category III for inhalation toxicity. It is not a dermal irritant (toxicity category IV) nor is it a dermal sensitizer.

2. In a sub-chronic oral toxicity study, glufosinate-ammonium (95.3% active ingredient (a.i.)) was administered to 10 NMRI mice/sex/dose in the diet at levels of 0, 80, 320 or 1,280 ppm (equivalent to 0, 12, 48 or 192 millgrams/kilogram/day (mg/kg/day)) for 13 weeks. Significant ($p < 0.05$) increases were observed in serum aspartate aminotransferase and in alkaline phosphatase in high-dose (192 mg/kg/day) males. Also observed were increases in absolute and relative liver weights in mid-(48 mg/kg/day) and high-dose males. The no observed adverse effect level (NOAEL) is 12 mg/kg/day, the lowest observed adverse effect level (LOAEL) is 48 mg/kg/day based on the changes in clinical biochemistry and liver weights.

3. In a 21–day repeated dose dermal toxicity study, groups of 6 male and 6 female Wistar rats were treated with HOE 039866 (95.3%) in deionized water by dermal occlusion at doses of 0, 100, 300 or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 applications in 30 days. An additional five males and five females/dose group were dose and observed for 44 days in a "recovery study". Two of 6 LDT males at 300 mg/kg/day, and 4 of 11 males and two of 11 females at 1,000 mg/kg/day displayed aggressive behavior, piloerection and a high startle response. There were no effects of toxicological importance on body weights, food consumption, hematology, clinical chemistry, urinalysis, organ weights, or gross or microscopic pathology. Based on clinical observations, the LOAEL is 300 mg/kg/day and the NOAEL is 100 mg/kg/day.

4. In an oncogenicity study, HOE 039866 (glufosinate ammonium) was administered to 50 NMRI mice/sex/dose in the diet at dose levels of 0, 80, 160 (males only) or 320 (females only) ppm for 104 weeks. Dose levels corresponded to 0, 2.83, 10.82, 22.60 mg/kg/day in males and 0, 4.23, 16.19, 66.96 mg/kg/

day in females. The NOAEL for systemic toxicity is 80 ppm (10.82/16.19 mg/kg/day in males/females (M/F)), and the LOAEL is 160/320 ppm (22.60/63.96 mg/kg/day in M/F), based on increased mortality in males, increased glucose levels in males and females, and consistent changes in glutathione levels in males. No increase in tumor incidence was found in any treatment group.

5. In a chronic feeding study, HOE 039866 technical was fed to male and female beagle dogs for 12 months in the diet at levels of 2.0, 5.0 or 8.5 mg/kg/day. There were no overt signs of toxicity or dose-related effects on body weight, food consumption, ophthalmology, hematology, clinical chemistry, urinalyses or organ weights. Two dogs receiving 8.5 mg/kg/day died during the study as a result of heart and circulatory system failure from rapid diet consumption and necrotizing aspiration pneumonia. Electrocardiogram results of dosed males and females indicated a dose-related decrease in heart rate at 6 months; heart rates of dosed animals at 12 months were considered to be normal. The NOAEL is 5.0 mg/kg/day, the LOAEL is 8.5 mg/kg/day based on mortality.

6. In a rat oncogenicity study, glufosinate-ammonium (95.2–96.0% a.i.) was administered to Wistar rats (60/sex/group) for up to 24 months at 0, 1,000, 5,000, or 10,000 ppm (equivalent to 0, 45.4, 228.9, or 466.3 mg/kg/day in males and 0, 57.1, 281.5, or 579.3 mg/kg/day in females). The LOAEL for chronic toxicity is 5,000 ppm (equivalent to 228.9 mg/kg/day for male rats and 281.5 mg/kg/day for females), based on increased incidences of retinal atrophy. The chronic NOAEL is 1,000 ppm. Under the conditions of this study, there was no evidence of carcinogenic potential. Dosing was considered adequate based on increased incidences of retinal atrophy.

7. In a combined chronic toxicity/oncogenicity study, glufosinate ammonium was administered to 50 Wistar rats/sex/dose in the diet for 24 months at dose levels of 0, 40, 140, or 500 ppm (mean compound intake in males was 0, 1.9, 6.8, and 24.4 mg/kg/day and for females was 0, 2.4, 8.2 and 28.7 mg/kg/day, respectively). The LOAEL is 2.4 mg/kg/day (LDT) based on the increase in kidney glutamine synthetase activity and increased kidney weights in females. A NOAEL was not established. There was no clear demonstration of increased tumor incidence following exposure to glufosinate ammonium. Dosing was considered adequate based on the increase in kidney glutamine synthetase activity and increased kidney weights in females.

8. In a developmental toxicity study, groups of 20 pregnant female Wistar rats were administered by gavage HOE 039866 (glufosinate ammonium, 96.9 a.i.) at doses of 0, 0.5, 2.24 10, 50 and 250 mg/kg/day from days 7 to 16 of pregnancy. The NOAEL for maternal toxicity is 10 mg/kg/day; the LOAEL is 50 mg/kg/day based on vaginal bleeding and hyperactivity in dams. In the fetus, the NOAEL is 50 mg/kg/day, based on dilated renal pelvis at the LOAEL of 250 mg/kg/day.

9. In a developmental toxicity study, groups of 15 pregnant female Himalayan rabbits were administered by gavage HOE 039866 at doses of 0, 2.0, 6.3 or 20.0 mg/kg/day from days 7 to 19 of pregnancy. The NOAEL for both maternal toxicity and developmental toxicity was 2.0 mg/kg/day. The LOAEL is 6.3 mg/kg/day based on reduced food consumption, body weight and weight gains and increased kidney weights in dams, and incomplete ossification in fetuses with fetal death at 20 mg/kg/day.

10. In a multigeneration reproduction study, glufosinate ammonium was administered to groups of 30 male and 30 female Wistar/Han rats in the diet at concentrations of 0, 40, 120 or 360 ppm (approximately 2.0, 6.0, 18.0 mg/kg). The LOAEL for systemic toxicity is 120 ppm (6 mg/kg/day) based on increased kidney weights in both sexes and generations. The systemic toxicity NOAEL is 40 ppm (2 mg/kg/day). The LOAEL for reproductive/developmental toxicity is 360 ppm (18 mg/kg/day) based on decreased number of viable pups in all generations. The NOAEL is 120 ppm.

11. There is no concern for mutagenic activity in several studies, including: *Salmonella* spp., *E. coli, in vitro* mammalian cell gene mutation assays, mammalian cell chromosome aberration assays, *in vivo* mouse bone marrow micronucleus assays, and unscheduled DNA synthesis assays.

12. A rat metabolism study with dermal application showed that about 50% of the given radioactivity is absorbed 48 hours after a single dose application. In other metabolism studies, it was shown that over 80% of administered radioactivity is excreted within 24 to 48 hours as the parent compound in the feces and kidneys. Highest tissue levels were found in liver, kidney and gonads.

A consistent pattern of neurotoxicity was seen in several studies, including the subchronic, developmental and chronic studies in rats, mice and dogs. In addition to the clinical signs such as hyperactivity, aggressive behavior, piloerection, high startle response, retinal atrophy was observed. Changes in glutamine synthetase levels were observed in liver, kidney and brain in rats. These occurrences raise concern for the mechanism of neurotoxicity in these studies, an area where there are data gaps. It is expected that the requested neurotoxicity studies will provide the information needed for further characterization of these effects.

Additional testing was conducted with the major metabolites, HOE 061517 and HOE 099730, as well as the L-isomer, identified as HOE 058192. These compounds, tested in subchronic rat, mouse and dog studies, and in developmental toxicity studies in rat and rabbit showed a similar profile of toxicity as the parent compound (HOE 039866).

B. Toxicological Endpoints

1. *Acute toxicity*. An acute Reference dose (RfD) was not established for the general population. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicity studies. However, an acute RfD of 0.063 mg/kg/day was established for the females 13+ subgroup, based on a developmental NOAEL of 6.3 mg/kg/day in the rabbit and a 100x uncertainty factor (10x inter-10x intra-species extrapolation). The developmental LOAEL (20 mg/kg/day) was based on reduced fetal body weight and increased fetal death. The FQPA safety factor of 10x was reduced to 3x because there was no qualitative or quantitative indication of increased susceptibility in the prenatal developmental toxicities in rats and rabbits or in the 2–generation reproductive study in rats with parent compound, the isomer or metabolites of concern. Toxicological studies showed neurological effects in short term studies described as aggressive behavior, piloerection and a high startle response at dosages of 300 mg/kg/day. Based on these effects, EPA determined that a 3x FQPA safety factor was appropriate for the risk assessment for the food and feed used of glufosinate ammonium. Using the 3x FQPA safety factor, the acute population adjusted dose (aPAD) for glufosinate ammonium is 0.021 mg/kg/day.

2. *Short-, intermediate-, and long-term toxicity.—i. Dermal.* Short- and intermediate-term dermal toxicity risk assessments were recommended based on neurological clinical signs (hyperactivity, aggressive behavior, pilo erection) observed in the 21–day dermal study at 300 mg/kg/day (LOAEL). The NOAEL was 100 mg/kg/day. A long-

term dermal risk assessment was recommended based on the NOAEL of 2.1 mg/kg/day established in the 2–year chronic study in rats (see chronic dietary; 50% dermal absorption).

ii. *Inhalation*. With the exception of an acute inhalation study, no other inhalation studies were available. Therefore, oral NOAELs were selected for inhalation risk assessments. Because an oral dose was used, the exposure assessments was conducted by converting the application rate to oral equivalents and assuming 100% absorption.

Short-term inhalation risk assessments were recommended based on the developmental NOAEL of 6.3 mg/kg/day in the rabbit (see acute dietary endpoint). Intermediate-term inhalation risk assessments were recommended based on the NOAEL of 2.1 mg/kg/day from the 2–year chronic rat study (see chronic dietary endpoint below).

3. *Chronic toxicity*. EPA has established the RfD for glufosinate ammonium at 0.021 mg/kg/day based on the NOAEL of 2.1 mg/kg/day in the 2–year chronic study in rats and a 100x uncertainty factor (10x inter- 10x intra-species extrapolation). The LOAEL in the study was based on increased kidney weight and kidney/brain weight in males at 52 weeks (6.8 mg/kg/day) and decreased survival in females at 130 weeks (8.2 mg/kg/day). Using the 3x FQPA safety factor, the chronic population adjusted dose (cPAD) for glufosinate ammonium is 0.007 mg/kg/day.

4. *Carcinogenicity*. Based on a lack of mutagenic potential as assessed in a battery of mutagenicity assays and the absence of treatment-related tumors in rats and mice at dose levels adequate for assessment, the EPA has determined that glufosinate ammonium is not likely a carcinogen; and has classified it as a "Group E -- Evidence of Non-Carcinogenicity for Humans" chemical.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.473 for the combined residues of glufosinate ammonium and its metabolites, in or on a variety of raw agricultural commodities. All tolerances listed under Unit III of this Rule except those for potatoes at 0.8 ppm, potato chips at 1.6 ppm, potato granules/flakes at 2.0 ppm, were previously established as time-limited tolerances with expiration dates. This rule addresses a pending petition for these tolerances and the establishment of the time-limited tolerances as permanent tolerances for this pesticide. Risk assessments were conducted by EPA to assess dietary exposures from tolerance levels of residue as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant sub-population group; and that if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

The chronic dietary exposure analysis assumed tolerance level residues for all registered and proposed commodities. The weighted average percent crop treated was incorporated for all registered commodities. Sweet corn and proposed commodities were maintained at 100% crop treated.

The Agency believes that the three conditions listed above have been met. The percent of crop treated estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average percent crop treated for chronic dietary exposure estimates. This weighted average percent crop treated figure is derived by averaging state-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the percent crop treated reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average percent crop treated over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum percent crop treated. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed,and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which pesticide glufosinate ammonium may be applied in a particular area.

i. *Acute exposure and risk*. The acute dietary exposure analysis for females 13+ (no acute dietary endpoint was identified for the general U.S. population including infants and children) assumed tolerance level residues and 100% crop treated for all registered and proposed commodities (Tier 1 analysis). The most highly exposed population was females 13+/nursing at 58% of the aPAD (95th percentile). Acute dietary food exposure to glufosinate ammonium is below EPA's level of concern.

ii. *Chronic exposure and risk*. The chronic dietary exposure analysis assumed tolerance level residues for all registered and proposed commodities. The weighted average percent crop treated was incorporated for all registered commodities. Sweet corn and proposed commodities were maintained at 100% crop treated. The most highly exposed population was children 1–6 years old at 71% of the cPAD (0.004974 mg/kg/day). Chronic dietary food exposure to glufosinate ammonium is below EPA's level of concern.

2. *From drinking water*. Aggregate exposures are generally calculated by summing dietary (food and water) and residential exposures. If the aggregate exposure is less than the specified PAD, the exposure is not expected to be a concern. Because EPA does not have ground and surface water monitoring data to calculate a quantitative aggregate exposure, a drinking water level of concentration (DWLOC) was calculated. The DWLOC is the upper limit of a chemical's concentration in drinking water that will result in an acceptable aggregate exposure. The DWLOC is used as a point of comparison against model estimates of a pesticide's concentration

in water. DWLOC values are not regulatory standards for drinking water. They do have indirect regulatory impact through aggregate exposure and risk assessments.

To calculate the acceptable acute and chronic exposure to glufosinate ammonium in drinking water, the dietary food exposure estimate was subtracted from the appropriate PAD (only short-term residential exposure). A DWLOC was then calculated by using default body weights and drinking water consumption figures (70kg/2L (adult male), 60kg/2L (adult female) and 10kg/1L (infant/child)).

The estimated maximum and average concentration of glufosinate ammonium in ground and surface water are less than EPA's DWLOC for glufosinate ammonium as a contribution to acute and chronic aggregate exposure (for all population subgroups).

i. *Acute exposure and risk.* The Agency's analysis based on the information available is presented in the following table 1:

TABLE 1.— ACUTE DWLOCs

Population Subgroup[1]	aPAD mg/kg/day	Food Exposure mg/kg/day	Maximum Water Exposure[2] mg/kg/day	DWLOC[3] ppb	SCI-GROW ppb	PRZM-EXAMS ppb
Females (13+, nursing)	0.021	0.012131	0.008869	270	1.16	34.1

[1] Highest exposed subgroup among females 13+

[2] Maximum water exposure (mg/kg/day) = 0.021 mg/kg/day - acute food exposure (mg/kg/day)

[3] DWLOC = [(maximum water exposure mg/kg/day)(body weight kg)/(water consumption liters)] * 1,000.

ii. *Chronic exposure and risk.* The Agency's analysis based on the information available is presented in the following table.

TABLE 2.— CHRONIC (NON-CANCER) DWLOC

Population Subgroup[1]	cPAD mg/kg/day	Food Exposure mg/kg/day	Maximum Water Exposure[2] mg/kg/day	DWLOC[3] ppb	SCI-GROW ppb	PRZM-EXAMS ppb
U.S. Population	0.007	0.002120	0.004880	170	1.16	0.79
Non-Hispanic blacks	0.007	0.002246	0.004754	170	1.16	0.79
Non-Hispanic/non-.white/non-black	0.007	0.002256	0.004744	170	1.16	0.79
Non-Hispanic whites	0.007	0.002132	0.004868	170	1.16	0.79
Children 1–6 yrs	0.007	0.004974	0.002026	20	1.16	0.79
Females 13+ nursing	0.007	0.002035	0.004965	150	1.16	0.79
Males 13–19 yrs	0.007	0.002449	0.004551	160	1.16	0.79

[1] The subgroups listed above are the following: (1) U.S. Population, (2) the other general subgroups for which the %cPAD is greater than that of the U.S. Population and (3) the most highly exposed population among infants and children, females, and males.

[2] Maximum water exposure (mg/kg/day) = (0.007 mg/kg/day - acute food exposure, (mg/kg/day)); no residential exposure.

[3] DWLOC = [(maximum water exposure mg/kg/day)(body weight kg)/(water consumption liters)]* 1,000.

3. *From non-dietary exposure.* Glufosinate ammonium is currently registered for use on the following non-food sites: areas around ornamentals, shade trees, Christmas trees, shrubs, walks, driveways, flower beds, farmstead buildings, in shelter belts, and along fences. It is also registered for use as a post-emergent herbicide on farmsteads, areas associated with airports, commercial plants, storage and lumber yards, highways, educational facilities, fence lines, ditch banks, dry ditches, schools, parking lots, tank farms, pumping stations, parks, utility rights-of -way, roadsides, railroads, and other public areas and similar industrial and non-food crop areas. It is also registered for lawn renovation uses.

In a pharmacokinetics study with dermal application in rats radioactive glufosinate ammonium at levels of 0.1, 1.0, or 10.0 mg/rat on 6 cm square of shaved skin and exposed for 0.5, 1, 2, 4, 10, 24, or 168 hrs. At the low dose (0.1 mg) 42.5 to 50.8% of the applied radioactivity was absorbed whereas at the high dose (10.0 mg) 26% was absorbed. After removal and washing of the treated skin a substantial amount of the radioactivity still remained in the skin. and it was gradually absorbed and eliminated. Radioactivity was found in both fecies and urine samples, but the majority of glufosinate ammonium was eliminated in the urine. In all organs/tissues examined, radioactivity was found to reach a maximum level either at 4 or 10 hours after exposure. Subsequently, the radioactivity dropped rapidly. The amount of radioactivity found in the brain was minimal relative to that of kidneys and liver. Based on this study, a 50% dermal absorption factor was determined based on the range of 42.5% to 50.8% of radioactivity absorbed at 0.10 mg/kg.

i. *Acute exposure and risk.* There are no acute non-dietary exposure scenarios.

ii. *Chronic exposure and risk.* There are no chronic non-dietary exposure scenarios.

iii. *Short- and intermediate-term exposure and risk.* It is not appropriate to aggregate short- and intermediate-term non-dietary exposure with dietary exposures in this risk assessment because the end-points are different.

iv. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether glufosinate ammonium has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glufosinate ammonium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that glufosinate ammonium has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk*. The acute dietary exposure analysis assumed tolerance level residues and 100% crop treated for all commodities derived from glufosinate ammonium treated crops. For the most highly exposed subgroup among females 13+ (nursing females), 58% of the aPAD is occupied by dietary (food) exposure, an acute RfD was not established for the general population including infants and children. The estimated glufosinate ammonium concentration in surface and ground water are less than EPA's DWLOC (for all population subgroups). Acute aggregate exposure to glufosinate ammonium and related metabolites, as a result of all registered and proposed uses, is below EPA's level of concern.

2. *Chronic risk*. There are no chronic non-dietary exposure scenarios. Therefore, only food and water are included in the chronic aggregate risk. The chronic dietary exposure analysis assumed tolerance level residues for all commodities derived from the crop use of glufosinate ammonium and incorporated the weighted average percent crop treated for all commodities derived from glufosinate ammonium treated crops, except for sweet corn, registered under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. For the most highly exposed subgroup (children, 1–6 years), 71% of the cPAD is occupied by dietary (food) exposure. The estimated glufosinate ammonium concentrations in surface and ground water are less than EPA's DWLOC for all population subgroups. Chronic aggregate exposure to glufosinate ammonium as a result of all registered and proposed uses is below EPA's level of concern. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a life time will not pose appreciable risks to human health. Despite the potential for chronic exposure to glufosinate ammonium in drinking water, after calculating a DWLOC (236 parts per billion (ppb)) for the U.S. population and comparing it to conservative model estimates of concentrations of glufosinate ammonium surface and ground water (59.43 ppb and 1.16 ppb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (consider to be a background exposure level) plus indoor and outdoor residential exposure. There are registered residential uses for glufosinate ammonium. The potential dermal exposures were not aggregated because the toxic effects for short- and intermediate-term exposure (neurological clinical signs) and chronic exposure (increases in absolute and relative kidney weights) are different.

4. *Aggregate cancer risk for U.S. population*. There is no cancer concern based on negative results observed in three guideline studies available for the carcinogenicity screen: a chronic feeding study in rats, a carcinogenicity study in rats and a carcinogenicity study in mice, each described under the "Toxicology Profile" of this Rule. Glufosinate ammonium has been classified as a "not likely" carcinogen according to the EPA Proposed Guidelines for Carcinogn Risk Assessment. Therefore, a cancer risk assessment was not necessary.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to glufosinate ammonium residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of glufosinate ammonium, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals, and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*. Two studies were described in the Toxicology Profile section (See Unit III.A.8. and 9. of this Rule.).

iii. *Reproductive toxicity study*. A reproductive toxicity study was described in the Toxicology Profile (See Unit III.A.10. of this Rule.).

iv. *Pre- and post-natal sensitivity*. The toxicological data base for evaluating prenatal and postnatal toxicity for glufosinate ammonium is complete with respect to current data requirements. There are no prenatal or postnatal susceptibility concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproduction study.

v. *Other studies*. Based on clinical signs of neurological toxicity in short and intermediate dermal toxicity studies with rats, EPA has determined that an added FQPA safety factor of 3x is appropriate for the risk assessment for the tolerances in the commodities listed in this Final Rule. The FQPA safety factor of 10x was reduced to 3x because there were no qualitative or quantitative indications of increased susceptibility in the prenatal developmental toxicities in rats and rabbits, or in the 2–generation reproductive studies in rats with the parent compound, the isomer or metabolites of concern.

vi. *Conclusion*. There is a complete toxicity database for glufosinate ammonium, and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* The acute dietary exposure analysis assumed tolerance level residues and 100% crop treated for all registered and proposed commodities. For the most highly exposed subgroup among females 13 – 50 (nursing females), 58% of the aPAD is occupied by dietary (food) exposure (no acute RfD was established for the general population including infants and children). The estimated glufosinate ammonium concentration in surface and ground water are less than EPA's DWLOC (for all population subgroups). Acute aggregate exposure to glufosinate ammonium and related metabolites, as a result of all registered and proposed uses, is below EPA's level of concern.

3. *Chronic risk.* Based on exposure assumptions described above, EPA has concluded that aggregate exposure to glufosinate ammonium from food will utilize 71% of the cPAD for children 1–6 years of age, the most highly exposed subgroup. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for chronic exposure to glufosinate ammonium in drinking water, after calculating a DWLOC (64 ppb) for non-nursing infants and comparing it to conservative model estimates of concentrations of glufosinate ammonium in surface and ground water (59.43 ppb and 11.16 ppb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses. There are registered residential uses for glufosinate ammonium, however, the potential dermal exposures were not aggregated because the toxic effects for short- and intermediate-term exposure (neurological clinical signs) and chronic exposure (increases in absolute and relative kidney weights) are different.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues of glufosinate ammonium residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. *Plants.* The nature of the residues of glufosinate ammonium is considered to be understood. The Agency has concluded that the residues of concern are glufosinate ammonium and its metabolites 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid expressed as glufosinate ammonium free acid equivalents.

2. *Animals* A rat metabolism study with dermal application indicated that about 50% of the given radioactivity was absorbed 48 hours after a single dose application. In other metabolism studies, it was shown that over 80% of administered radioactivity is excreted within 24 to 48 hours as the parent compound in the feces and kidneys. Highest tissue levels were found in liver, kidney and gonads. The nature of glufosinate ammonium residues in lactating goats and hens is considered to be understood. Glufosinate ammonium and its metabolite (3-methylphosphinico propionic acid) are largely excreted and do not accumulate too any great degree in animal tissues. The only identifiable compounds in feces, urine, milk, eggs and tissues were the parent and 3-methylphosphinico propionic acid. EPA has concluded that the residues of concern in commodities derived from ruminants and poultry are glufosinate ammonium and its metabolite 3-methylphospinico propionic acid, expressed as glufosinate ammonium free acid equivalents.

B. Analytical Enforcement Methodology

In Pesticide Analytical Manual II (PAM II), method HRAV-5A describes an adequate analytical method for determining residues of glufosinate ammonium and its metabolite 3-methylphosphinico propionic acid in or on apples, bananas, grape, potatoes and tree nuts. In PAM II, method HRAV–12, is an adequate method for determining residues of glufosinate ammonium and its metabolite 3-methylphosphinico-propionic acid in or on milk, eggs and tissues of ruminants and poultry. Method XAM–24A, which is a modification of method HRAV–5A is an adequate method for determining residues of glufosinate ammonium and its metabolites in or on transgenic field corn, and transgenic soybeans. The method describes an additional post-extraction cation exchange procedure to allow for separate detection and measurement of each residue component. Final determination is made by gas chromatography with flame photometric detection operating in the phosphorus selective mode (p-mode). Residues are expressed as glufosinate ammonium free acid equivalents.

Adequate enforcement methodology (gas chromatography with mass spectrophotometry) is available to enforce the tolerances for commodities derived from potatoes. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

The residues established by this regulation are qualified and quantified in Unit V of this Rule.

D. International Residue Limits

The Codex Alimentarius Commission has established maximum residue limits (CODEX MRLs) for the combined residues of glufosinate ammonium and 3-methylphosphinico propionic acid, expressed as glufosinate free acid equivalents, in or on potatoes at 0.5 ppm. Because the appropriate U.S. tolerance for potatoes (0.8 ppm) is greater than the CODEX MRL of 0.5 ppm and CODEX MRLs for residues in or on potato chips and potato granules and flakes do not exist, harmonization is not possible. The Codex Alimentarius Commission did not establish MRLs for glufosinate ammonium in processed potato commodities because earlier processing studies in cooked potatoes did not show any concentration of residues after cooking in water. The difference in residues represented by the CODEX MRL of 0.5 ppm and the 0.8 ppm tolerance for residues in or on potatoes established by this Rule was apparently due to differences in the methods used by the two Agencies in determining the level of residues that would be appropriate. The EPA sets tolerances based on the residue level from the highest average field trial where as the CODEX and European authorities use statistical calculations derived from all residue data covering one worst case label for the calculation of MRL proposals.

E. Rotational Crop Restrictions

A 120 day plant-back interval is required for all crops with the exceptions of buckwheat, barley, millet oats, rye, sorghum, triticale and wheat that requires a 70–day plant-back interval. Field corn and soybeans may be planted back any time.

V. Conclusion

Therefore, permanent tolerances are established for combined residues of glufosinate ammonium and its metabolite(s) in or on almond hulls at 0.50 ppm, apples at 0.05 ppm, bananas at 0.3 (not more than 0.2 ppm shall be present in the pulp after peel is removed), cattle, fat and meat at 0.05 ppm; cattle, meat by-products at 0.10 ppm; eggs at 0.05 ppm; goats, fat and meat at 0.05 ppm; goats, meat-by-products at 0.10 ppm; grapes at 0.05 ppm; hogs, fat and meat at 0.05 ppm; hogs, meat-by-products at 0.10 ppm; horses, fat and meat at 0.05 ppm; horses, meat-by-products at 0.10 ppm; milk at 0.02 ppm; potatoes at 0.8 ppm; potato chips at 1.6 ppm; potato granule/flakes at 2.0 ppm; poultry, fat and meat at 0.05 ppm; poultry, meat-by-products at 0.10 ppm; sheep, fat and meat at 0.05 ppm; sheep, meat-by-products at 0.10 pm; transgenic aspirated grain fractions at 25.0 ppm; transgenic corn, field, forage at 4.0 ppm; transgenic corn, field, grain at 0.2 ppm; transgenic corn, field, stover at 6.0 ppm; transgenic soybeans, hulls at 5.0 ppm; transgenic soybeans at 2.0 ppm and tree nuts group at 0.1 ppm.

The time-limited tolerances for residues in transgenic canola and transgenic sweet corn commodities under Section 18 emergency exemptions (64 FR 44829–44836, August 18, 1999)) are not replaced. These time-limited tolerances will expire December 1, 1999.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300945 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 3, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission be labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." (cite). For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A. of this preamble, you should also send a copy of your request to the PIRB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300945, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, entitled Federalism (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: October 26, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. By revising § 180.473 to read as follows:

§ 180. 473 Glufosinate ammonium; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide glufosinate ammonium (butonoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxmethylphosphinyl) butanoic acid equivalents, in or on the following food commodities:

Commodity	Parts per million
Almond hulls	0.50
Apples	0.05
Bananas	0.30
Bananas, pulp	0.20
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, mbyp	0.10
Eggs	0.05
Goats, fat	0.05
Goats, meat	0.05
Goats, mbyp	0.10
Grapes	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, mbyp	0.10
Horses, fat	0.05
Horses, meat	0.05
Horses, mbyp	0.10
Milk	0.02
Potatoes	0.80
Potato chips	1.60
Potato granules and flakes	2.00
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.10
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, mbyp	0.10
Tree nuts group	0.10

(2) Tolerances are established for the combined residues of glufosinate ammonium (butanoic acid, 2-ammino-4-(hydroxymethylphosphinyl)-monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents, in or on the following raw agricultural commodities derived from transgenic field corn and transgenic soybeans and that are tolerant to the herbicide glufosinate ammonium as follows:

Commodity	Parts per million
Aspirated Grain Fractions	25.0
Corn, field, forage	4.0
Corn, field, grain	0.2
Corn, field, stover	6.0
Soybean hulls	5.0
Soybeans	2.0

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of the herbicide (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl) -monoamonium salt and its metabolites , 2-acetamido-4-methylphosphinico-butamoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents in or on the following raw agricultural commodities derived from transgenic canola and transgenic sweet corn in connection with use of section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/ Revocation Date
Canola meal	1.1	12/1/99
Canola Seed	0.4	12/1/99
Corn, sweet, forage ..	4.0	12/1/99
Corn, sweet, kernels and cobs with husks removed	4.0	12/1/99
Corn, sweet, stover ..	6.0	12/1/99

(c) *Tolerances with regional restrictions.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–28887 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6468–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Joseph Forest Products site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces the deletion of the Joseph Forest Products Site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Oregon Department of Environmental Quality have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Chip Humphrey, U.S. Environmental Protection Agency, Region 10, 811 SW Sixth Avenue, Portland, Oregon 97204, (503) 326–2678.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Joseph Forest Products, Joseph, Oregon.

A Notice of Intent to Delete for this site was published on August 31, 1999, (64 FR 47478). The closing date for comments was September 30, 1999. The only comment EPA received was a comment letter from the Department of Interior, Fish and Wildlife (the Department) requesting information about the impact of contamination on the Department's trust resources, e.g., migratory birds. EPA is providing the information requested by the Department. EPA believes that the remedial actions performed at the site are protective of trust resources. Further remedial activities are not necessary.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 21, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O.12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing—Joseph Forest Products, Joseph, Oregon.

[FR Doc. 99–28543 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6468–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the McCarty's/Pacific Hide & Fur Recycling Co. site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces the deletion of the McCarty's/Pacific Hide and Fur Site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Idaho Division of Environmental Quality have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop ECL–110, Seattle, Washington 98101, (206) 553–1066.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Pacific Hide & Fur Recycling Co., Pocatello, Idaho.

A Notice of Intent to Delete for this site was published on August 31, 1999, (64 FR 47481). The closing date for comments was September 30, 1999. The only comment EPA received was a comment letter from the Department of Interior, Fish and Wildlife (the Department) requesting information about the impact of contamination on the Department's trust resources, e.g., migratory birds. EPA is providing the information requested by the Department. EPA believes that the remedial actions performed at the site are protective of trust resources. Further remedial activities are not necessary.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 21, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing "Pacific Hide & Fur Recycling Co., Pocatello, Idaho."

[FR Doc. 99–28542 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 411, 413, and 489

[HCFA–1913–CN]

RIN 0938–AI47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects a technical error that appeared in the final rule published in the **Federal Register** on July 30, 1999 entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities."

EFFECTIVE DATE: This correction is effective September 28, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 99–19478 of July 30, 1999 (64 FR 41644), there was a technical error in the preamble. This error relates to the counting of minutes of therapy provided by a therapy student on the Minimum Data Set (MDS) resident assessment instrument. The correction appears in this document under the heading "Correction of Errors."

In the preamble to the final rule (page 41661, column 2) we stated, "Medicare recognizes the costs associated with approved educational activities as a pass-through" and referenced regulations at 42 CFR 413.85 that refer to the costs incurred by approved medical education programs. Based on this section of the regulations, we indicated that the minutes of therapy provided by a therapy student may not be recorded on the MDS resident assessment instrument of the beneficiary receiving the service.

However, in this notice we are now retracting our statement with regard to recording of therapy minutes because, contrary to what was indicated in the preamble, § 413.85 (Cost of educational activities) is not applicable to therapy student field experience in the skilled nursing facility (SNF) setting. Except for possible rare instances, SNFs are not approved medical education programs under that section of the regulations. Approved programs, such as a residency program operated by the institution in which it takes place, are actively engaged in the training process and incur costs in that regard. By contrast, SNFs provide only the setting in which the training for these students takes place, not the management of the program itself. Because § 413.85 does not apply, our statement as to the counting of student therapy minutes is also inapplicable.

We are, therefore, retracting the statement in the final rule that the minutes of therapy provided by a therapy student are not to be recorded on the MDS as minutes of therapy received by the beneficiary. Providers should record the minutes of therapy provided by therapy students in accordance with the past practice established under the instructions in the *Long Term Care Resident Assessment Instrument User's Manual* and other HCFA guidelines.

The provision in this correction notice is effective as if it had been included in the document published in the **Federal Register** on July 30, 1999, that is September 28, 1999.

Correction of Errors

In FR Doc. 99–19478 of July 30, 1999 (64 FR 41644), we are making the following correction:

Correction to Preamble

On page 41661, in column 2, line 18, the following sentence is removed: "Further, none of the minutes of therapy services provided by the students may be recorded on the MDS as minutes of therapy received by the beneficiary."

(Authority: Section 1888 of the Social Security Act (42 U.S.C. 1395yy))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 20, 1999.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 99–28575 Filed 11–3–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 61 and 69

[CC Docket Nos. 96–262, 94–1, 98–157; CCB/CPD File No. 98–63; FCC 99–206]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The document announces the effective date of the rules published September 22, 1999, in the Commission's Access Charge Reform proceeding. The Commission revised the rules that govern the provision of certain interstate access services by price cap local exchange carriers. With these revisions, the Commission continues to reform the regulation of interstate access charges to accelerate the development of competition and to ensure that the Commission's regulations do not unduly interfere with the operation of these markets as competition develops.

DATES: The amendments to 47 CFR 1.774, 61.47, 69.709, 69.711, 69.713, and 69.729, published at 64 FR 51258

(September 22, 1999), are effective November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Tamara Preiss, Deputy Division Chief, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520. For additional information concerning the information collections, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: On August 27, 1999, the Commission released its Fifth Report and Order in its Access Charge Reform Proceeding, CC Docket No. 96–262, a summary of which was published in the **Federal Register**. See 64 FR 51258, September 22, 1999. 47 CFR 1.774, 61.47, 69.709, 69.711, 69.713, and 69.729, as amended, contain modified information collection requirements. We stated that "the Commission will publish a document in the **Federal Register** announcing the effective date" of those rules. The information collections were approved by OMB on October 18 and October 20, 1999. See OMB 3060–0526, 3060–0760, and 3060–0770. By this publication, the Commission announces that these rules are effective November 4, 1999.

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 61

Communications common carriers, Telephone.

47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28794 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[FCC 99–85; WT Docket No. 96–86]

Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document modifies the provisions governing the newly reallocated public safety spectrum at 764–776 MHz band and 794–806 MHz. The action was taken in response to petitions for reconsideration of a previous Commission order. These modifications are intended to provide the National Coordination Committee (NCC) the flexibility to proceed more efficiently without constraints that may have unnecessarily delayed the completion of its work to address and advise the Commission on certain public safety communication matters. The document also provides new procedures that will promote competition in the market for public safety communications equipment.

DATES: Effective January 3, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room 4–C207, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael Pollak, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order on Reconsideration* in WT Docket No. 96–86, FCC 99–85, adopted April 26, 1999, and released May 4, 1999. The full text of the *Memorandum Opinion and Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY–A257, Washington, D.C. 20554. The full text of the *Memorandum Opinion and Order on Reconsideration* may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036, telephone (202) 857–3800, facsimile (202) 857–3805. The full text of the *Memorandum Opinion and Order on Reconsideration* may also be downloaded at: <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99085.wp>. Alternative formats (computer diskette, large print, audiocassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–2555, or at mcontee@fcc.gov.

Synopsis of the Memorandum Opinion and Order on Reconsideration

This *Memorandum Opinion and Order* (*MO&O*) modifies a *First Report and Order and Third Notice of Proposed Rulemaking*, 63 FR 58645 (November 2, 1998) (*First Report and Order*), which established a band plan and adopted service rules in the newly reallocated public safety spectrum at 764–776 MHz and 794–806 MHz, in three respects. First, the Commission is expanding the standards development options available to the National Coordination Committee (NCC) by providing that the NCC may, but is not required to, become accredited by the American National Standards Institute (ANSI). In this regard, we also clarify that the NCC is allowed to make use of and base its recommendations on the standards development work of other existing ANSI-accredited Standards Developers (ASDs). This expands the options available to the NCC for developing the standards it is required to recommend under the provisions of the *First Report and Order*. ANSI states, from its experience, that development and approval of an individual standard as an American National Standard can take from six months to three years and the NCC is required to complete its work within four years. These new options could potentially save time by allowing the NCC to build on standards work already accomplished or by allowing other technical standards development work to begin immediately, under ANSI procedures, without the necessity of waiting for the potentially lengthy process of accreditation of the NCC itself.

Second, the Commission is rescinding the requirement that the fees and terms of license agreements involving proprietary technologies contained in NCC-recommended standards be approved by ANSI. ANSI is not an appropriate entity to approve proprietary technology license terms and fees involved with standards recommended by the NCC because such a role for ANSI would not meet with the approval of the voluntary standards community.

Third, the Commission is implementing a self-policing policy similar to the ANSI patent policy that is structured to adequately protect the rights of both intellectual property right holders and consensus standard users while at the same time encouraging competition. Proprietary technology may be incorporated, however the Commission will require the owner or holder of the rights to proprietary technologies to file a statement with the NCC indicating that they will make such rights available to applicants either without cost or without unfair discrimination.

The changes provided in the *MO&O* will allow the work of the NCC to proceed in a timely fashion, with the flexibility to operate more efficiently, and without constraints that may have unnecessarily delayed the completion of that work. In addition, this *MO&O* provides new procedures that will promote competition in the market for public safety communications equipment by protecting users of standards recommended by the NCC from unfair discrimination in the licensing of proprietary technology.

Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix A of the *First Report and Order* issued in this proceeding.[1] The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Memorandum Opinion and Order on Reconsideration (*Order on Reconsideration*) contains information additional to that contained in the FRFA and is thus limited to matters raised on reconsideration with regard to the *First Report and Order* and addressed in this *Order on Reconsideration*. This SFRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.[2]

I. Need for and Purpose of This Action

In the *Order on Reconsideration*, the Commission responds to the Petition for Reconsideration filed in connection with the *First Report and Order* in this docket by the American National Standards Institute (ANSI and ANSI Petition). The Commission clarifies certain aspects of the *First Report and Order* relating to the operation of the National Coordination Committee (NCC). The NCC was established as provided in the *First Report and Order* pursuant to the provisions of the Federal Advisory Committee Act (FACA) to develop and recommend to the Commission technical standards to be used in public safety interoperability spectrum across the country.

In response to the ANSI Petition, the Commission modifies its initial decision in three respects. First, in order to allow the NCC to make more efficient use of ANSI standards processes, the Commission expands the standards development options available to the NCC by providing that the NCC may, but is not required to, become ANSI-accredited. The Commission also clarifies that the NCC is allowed to make use of and base its recommendations on the standards development work of existing ANSI-Accredited Standards Developers (ASDs). Second, the Commission rescinds the requirement from the *First Report and Order* that the fees and terms of license agreements involving proprietary technologies contained in NCC-recommended standards be approved by ANSI. And third, the Commission revises the process for allowing the incorporation of proprietary technologies into standards recommended by the NCC by requiring the owner or holder of the rights to such technologies to file with the NCC a statement that they will make such rights available to applicants either without cost or without unfair discrimination.

As a result of the Commission's action in the *Order on Reconsideration*, it has addressed the fundamental concerns raised by ANSI in its petition, thus allowing the work of the NCC to proceed in a timely fashion, with the flexibility to operate with increased efficiency, and without the constraints that may have unnecessarily delayed the completion of that work. In addition, the *Order on Reconsideration* provides new procedures for the NCC that will promote competition in the market for public safety communications equipment by protecting users of standards recommended by the NCC from unfair discrimination in the licensing of proprietary technology contained in such standards.

II. Summary of Significant Issues Raised by the Public Comments in Response to the Final Regulatory Flexibility Analysis

No comments were filed in direct response to the FRFA. In the ANSI Petition, and in certain other pleadings, issues were raised that might affect small entities. Specifically, ANSI argued that it had no authority to approve the license terms and fees offered by owners or holders of rights to proprietary technology and that better protection of licensees of this technology could be offered by adoption of the ANSI patent policy. ANSI also asserted that the NCC should not be required to become an ASD to develop its own standards but instead should be able to make use of American National Standards, or preliminary or in-process standards developed by other ASDs. In its comments to the *Second Notice*, FLEWUG supported the concept of requiring that the NCC choose an open standard created by an ANSI-accredited entity.

III. Changes Made to the Proposed and Final Rules

In the *Second NPRM* the Commission proposed to set technical standards for public safety interoperability spectrum. In the *First Report and Order*, the Commission determined instead, to seek to create the NCC to advise the Commission on the standards to be used in such spectrum. The *First Report and Order* required the NCC to become an ASD in order to develop itself the standards that it would recommend to the Commission. This *Order on Reconsideration* rescinds that requirement and allows the NCC to make use of, and base its recommendations on, the work of other ASDs.

In addition, the *Order on Reconsideration* eliminates the requirement that fees and license terms for proprietary technology contained in any NCC-recommended standard be approved by ANSI. Instead, the Commission requires that before the NCC recommends any standard containing proprietary technology, where the technology is the subject of an actual or proposed license agreement, the owner or holder of such proprietary right must file with the NCC a statement that they will make such rights available to applicants either without cost or without unfair discrimination.

IV. Description and Number of Small Entities Affected by Rule Amendment

The changes in the operations of the NCC provided in this *Order on Reconsideration* would principally affect the NCC, ANSI, the public safety and commercial entities who contribute members and/or resources to the NCC, and the persons or entities that hold the rights to proprietary technology that might be included in an NCC-recommended standard. The public safety equipment manufacturers who might enter into agreements to use such standards in the construction of public safety communications equipment and the government and non-government entities that will purchase such equipment are only indirectly affected by the *Order on Reconsideration*.

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[1] *See* Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96/86, *First Report and Order and Third Notice of Proposed Rulemaking* (herein *First Report and Order*). As required by Section 603 of the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the initial *Notice of Proposed Rulemaking* in WT Docket No. 96–86. *See* Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96–86, *Notice of Proposed Rulemaking*, 61 FR 25185 (May 20, 1996) (*First Notice*). The proposals in the *First Notice* were refined and modified in a *Second Notice of Proposed Rulemaking*, 62 FR 60199 (November 7, 1997) in this docket, into which a second IFRA was incorporated. *See* Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96–86, *Second Notice of Proposed Rulemaking*, (*Second Notice*). The Commission sought written comment on the proposals in the *Second Notice* including the IRFA. The FRFA in the First Report and *Order* addressed issued raised by commenters that might affect small entities.

[2] Public Law 104–121, 110 Stat. 846 (1996) (CWAAA). Title II of the Contract with America Act is entitled "The Small Regulatory Enforcement Fairness Act of 1996" (SBREFA), and is codified at 5 U.S.C. 601–611.

On January 29, 1999, the Commission released a Public Notice soliciting nominations for membership. Membership is open to any interested member of the public safety communications community, including representatives of federal, state and local government entity radio users, licensees and organizations, manufacturers, consulting firms, frequency coordinators and trade associations. A similar open membership structure was adopted for the most recent FCC-appointed federal advisory committee for public safety matters. This committee, formed in 1996 and called the Public Safety Wireless Advisory Committee (PSWAC), attracted approximately 500 members. It is anticipated that the NCC will have a similar number of members.

The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." [6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] ANSI has fewer than 300 employees, is independently owned and operated and we conclude that it is a small organization. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." [8] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[9] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[10] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted. As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[11] Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337. Non-Federal governmental entities as well as private businesses are licensees for these services.

We anticipate that at least six radio equipment manufacturers might be affected by our decision in this *Order on Reconsideration*. According to the SBA's regulations, a communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[12] Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.[13] We do not have information that indicates how many of the six radio equipment manufacturers associated with this proceeding are among these 778 firms. However, Motorola and Ericsson, firms that control approximately ninety-five percent of the public safety communications equipment market, are major, nationwide radio equipment manufacturers, and, thus, we conclude that these manufacturers would not qualify as small businesses.

V. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements pertaining to the issues addressed in the *Order on Reconsideration* that were adopted in the *First Report and Order* include the provision that the NCC was to become accredited by ANSI as an ASD. Further, the *First Report and Order* required that no proprietary data was to be incorporated in any standard ultimately recommended by the NCC unless the proprietary data was made available on a fair, reasonable, unbiased and non-discriminatory basis, with license fees approved by ANSI and on terms and conditions set by that standards body. The *Order on Reconsideration* eliminates the requirement that the NCC become NCC accredited and the requirement that license fees terms and conditions be approved by ANSI. The *Order on Reconsideration* requires that before any standard may the owner or holder of the any rights to proprietary technologies that are incorporated into standards recommended by the NCC, where such owner or holder has licensed or announced and intention to license such proprietary technology, to file with the NCC a statement that they will make such rights available to applicants either without cost or without unfair discrimination.

VI. Steps Taken To Minimize the Economic Impact on Small Entities

The Commission has reduced the impact on small entities of the provisions governing the operations of the NCC by eliminating the requirement that the NCC become ANSI-certified as an ASD and by eliminating the requirement that all fees, terms and conditions of licenses for proprietary technology contained in any NCC-recommended standard be approved by ANSI. In addition, the Commission has adopted on reconsideration an alternative procedure to protect users of NCC-recommended standards from unfair discrimination. The requirement that owners or holders of rights to proprietary technology contained in NCC-recommended standards that seek to license such rights must file statements with the NCC will burden a handful of entities that may or may not be small entities. In contrast, the requirement will benefit thousands of small governmental jurisdictions and their agencies by protecting their suppliers from unfair discrimination in the acquisition of technologies, and by encouraging greater competition in the public safety communications equipment market.

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[3] *See* 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[5] Small Business Act, 15 U.S.C. 632 (1996).

[6] 5 U.S.C. 601(4).

[7] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[8] 5 U.S.C. 601(5).

[9] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[10] *Id.*

[11] *See* Subparts A and B of part 90 of the Commissions's Rules, 47 CFR 90.1–90.22. Police licensees include 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). Fire licensees include 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. Public Safety Radio Pool licensees also include 40,512 licensees that are state, county, or municipal entities that use radio for official purposes. There are also 7,325 forestry service licensees comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees (1,460) use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Another 19,478 licensees include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

[12] 13 CFR 121.201, (SIC) Code 3663.

[13] U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663.

VII. Significant Alternatives Considered and Rejected

The alternative approaches contained in the *First Report and Order* were considered and rejected as too burdensome, unnecessarily restrictive, or inefficient, thus leading the Commission to eliminate the above-described compliance requirements on ANSI and the NCC. With regard to a mechanism to protect users of NCC-recommended standards from unfair discrimination in the licensing of proprietary technology, the alternative of providing no protection was considered and deemed anti-competitive, unnecessarily expensive and insufficiently responsive to the communications needs of the large and small members of public safety community that the Commission is bound by law to support. The chosen mechanism of requiring owners and holders of rights to proprietary technology to agree with their licensees to make the technologies available, either without cost or on terms that are free from unfair discrimination, and to evidence that agreement by filing a statement to that effect with the NCC, was determined to be the least expensive and burdensome alternative available. Moreover, given its probable effect of encouraging competition in the relevant equipment market, this mechanism was determined to generate the most favorable ratio of cost to benefit in the overall public safety communications community.

Report to Congress

The Commission shall send a copy of this Supplemental Final Regulatory Flexibility Analysis, along with the *Order on Reconsideration*, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Supplemental Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 90

Administrative practice and procedure, Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28549 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 99–245]

Wireless Radio Services; Compatibility With Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises rules applicable to wireless carriers to permit the use of handset-based solutions, or hybrid solutions that require changes both to handsets and wireless networks, in providing caller location information as part of Enhanced 911 (E911) services. These actions are intended to encourage the deployment of the best location technology for each area being served, promote competition in E911 location technology, and speed implementation of E911.

DATES: Effective March 3, 2000, except for § 20.18(i), which contains an information collection requirement that has not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for that section. Public comments on the information collection are due January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Legal Information: Daniel Grosh, 202–418–1310; Technical Information: Martin Liebman, 202–418–1310. For further information concerning the information collection contained in this Report and Order, contact Les Smith, Federal Communications Commission, Room 1A–804, 445 12th Street, SW, Washington, DC 20054, or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* (Third R&O) in CC Docket No. 94–102; FCC 99–245, adopted September 15, 1999, and released October 6, 1999. The complete text of this Third R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW, Washington, DC.

Synopsis of the Third Report and Order

1. The Commission adopts a Third Report and Order (Third R&O) in CC Docket No. 94–102, regarding implementation of Enhanced 911 (E911) emergency calling systems. Specifically, in the Third R&O, the Commission takes several steps to enable handset-based methods of providing Automatic Location Identification (ALI) to compete in a reasonable way with network-based solutions in meeting the Commission's E911 Phase II requirements. The new rules will benefit both wireless callers and public safety entities by providing accurate and efficient automatic caller location information in emergencies.

2. The rule change was needed because, when the Commission originally adopted its Phase II rules in 1996, it was believed that location information could only be effectively provided by technologies based in or overlaid on carrier networks, using approaches such as triangulation of the handset's signal. Since that time, advancements in location technologies that employ new or upgraded handsets have demonstrated important progress. While no single solution appears to be perfect in all situations, each type of solution has its advantages and limitations and each may be improved or combined with other technologies in the future to support further improvements in 911 service.

3. The Commission's original rules, adopted in the Report and Order and Further Notice of Proposed Rulemaking (61 FR 40348, August 2, 1996), as a practical matter, only permitted network-based solutions to meet the Commission's Phase II requirements

because they required that ALI be provided for all 911 calls in a requesting Public Safety Answering Point's (PSAP's) area as of a fixed date. In order to enable handset-based solutions to be a viable competitor for initial deployment under Phase II, the Commission decided to allow for a phase-in of new or upgraded handsets. To offset the potential delay in full availability of Phase II location information that may be caused by this action, the Commission imposed a higher accuracy standard on handset-based solutions, required handset deployment to begin earlier than the current October 1, 2001, deployment date, and required that this deployment occur, for carriers deploying a handset-based solution, regardless of whether a PSAP has requested Phase II.

4. As a result, in the Third R&O, the Commission mandates that wireless carriers employing a technology that requires new, modified or upgraded handsets must comply with the following deployment and penetration requirements, without respect to whether any PSAP has requested Phase II deployment:

(1) Begin selling ALI-capable handsets no later than March 1, 2001;

(2) Ensure that at least 50 percent of all new handsets activated are ALI-capable no later than October 1, 2001; and

(3) Ensure that at least 95 percent of all new digital handsets activated are ALI-capable no later than October 1, 2002.

5. Once a PSAP request is received, a carrier deploying a handset-based solution is required to satisfy the following requirements, in the area served by the PSAP:

(1) Within six months or by October 1, 2001, whichever is later:

(a) Ensure that 100 percent of all new handsets activated are ALI-capable;

(b) Implement any network upgrades or other steps necessary to locate handsets; and,

(c) Begin delivering to the PSAP location information that satisfies Phase II requirements.

(2) Within two years or by December 31, 2004, whichever is later, undertake reasonable efforts to ensure that all handsets used by its subscribers are ALI-capable.

6. For roamers and other callers without ALI-capable handsets, carriers must support Phase I ALI and other available best practice methods of providing the location of the handset to the PSAP. In addition, to be allowable under the rules, an ALI technology that requires new, modified, or upgraded handsets must conform to general standards and be interoperable, allowing roaming among carriers employing handset-based location technologies.

7. For carriers employing network-based location technologies, the Third R&O modifies the applicable deployment schedule to require the carrier to deploy Phase II to 50 percent of callers within 6 months of a PSAP request and to 100 percent of callers within 18 months of such a request. The Commission determined that such a phase-in for network-based solutions was reasonable in recognition of the likelihood that installing equipment throughout a carrier's network will often require more time than the six months previously allowed under the rules.

8. The Third R&O also imposes the following revised standards for Phase II location accuracy and reliability: (1) For network-based solutions: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls; and (2) for handset-based solutions: 50 meters for 67 percent of calls, 150 meters for 95 percent of calls. The Commission decided to replace the Root Mean Square (RMS) reliability methodology with this more workable and understandable standard.

9. Additionally, the Third R&O directs wireless carriers to report to the Commission their plans for implementing E911 Phase II, including the technology they plan to use to provide caller location, by October 1, 2000. This report shall provide information to permit planning for Phase II implementation by public safety organizations, equipment manufacturers, local exchange carriers, and the Commission, in order to support Phase II deployment by October 1, 2001.

Paperwork Reduction Act of 1995 Analysis

10. The actions contained in this Third R&O have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose a new reporting requirement or burden on the public. Implementation of this new reporting requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act. The new paperwork requirement contained in the Third Report and Order will go into effect March 3, 2000, dependent on OMB approval.

Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Further Notice of Proposed Rule Making (Further Notice) issued in this proceeding, 61 FR 40348, August 2, 1996. The Commission sought written public comments in the Further Notice, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Third R&O conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. 104–121, 110 Stat. 847 (1996).[1]

(1) Need for and Purpose of This Action

12. The Commission's current rules, as a practical matter, only permit network-based solutions to meet Phase II requirements. The Third R&O revises the Commission's 911 rules to permit handset-based solutions, or hybrid solutions that require changes both to handsets and wireless networks, to compete in a reasonable way with the network-based solutions in providing automatic location identification (ALI). The Third R&O is therefore intended to ensure that E911 regulation reflects the most current technological advances possible and accordingly the most effective and responsive E911 service possible.

(2) Summary of Significant Issues Raised by the Public in Response to the IRFA

13. No comments were submitted in direct response to the IRFA. However, the Commission made every effort to gather as much data as possible and to solicit public comment on the issues resolved in the Third R&O. (*See,* for example, 64 FR 31530, June 11, 1999.) For example, on June 28, 1999, the Commission sponsored a roundtable discussion of technical issues involved in implementing the performance and accuracy standards for E911 Phase II ALI technologies. Roundtable participants included representatives of network-based solution technologies, handset-based technologies, manufacturers, wireless carriers, and public safety organizations.

(3) Description and Estimates of the Number of Entities Affected by This Order on Reconsideration

14. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted (5 U.S.C. 603(b)(3)). The RFA generally defines the term "small entity" as having the same meaning as the term "small business" (5 U.S.C. 602(6)). In addition, the term "small business" has the same

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[1] Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et. seq.*

meaning as the term "small business concern" under the Small Business Act (5 U.S.C. 601(6)). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA) (15 U.S.C. 632).

15. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 Mhz SMR licenses (60 FR 48913, September 21, 1995), 800 MHz SMR licenses for the upper 200 channels (61 FR 6212, February 16, 1996), and 800 MHz SMR licenses for the lower 230 channels (62 FR 41190, July 31, 1997) as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. This small business size standard for the 800 MHz and 900 MHz auctions has been approved by the SBA. The rule amendments adopted in this Third R&O affect geographic and wide area SMR providers if they offer real-time, two-way PSN-interconnected voice service utilizing an in-network switching facility.

16. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. It is not possible to determine which of these licensees intend to offer real-time, two-way PSN-interconnected voice or data service utilizing an in-network switching facility. Therefore, the Commission concludes that the number of 900 MHz SMR geographic area licensees affected by this rule modification is at least 60.

17. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. It is not possible to determine which of these licensees intend to offer real-time, two-way PSN-interconnected voice or data service utilizing an in-network switching facility. Therefore, the Commission concludes that the number of 800 MHz SMR geographic area licensees for the upper 200 channels affected by this rule modification is at least ten.

18. The Commission has determined that 3,325 geographic area licenses will be awarded in the 800 MHz SMR auction for the lower 230 channels. Because the auction of these licenses has not yet been conducted, there is no basis to estimate how many winning bidders will qualify as small businesses under the Commission's $15 million size standard. Nor is it possible to determine which of these licensees will offer real-time, two-way PSN-interconnected voice or data service utilizing an in-network switching facility. Therefore, the Commission concludes that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be affected by this rule modification is at least 3,325.

19. With respect to licensees operating under extended implementation authorizations, approximately 6,800 such firms provide 800 MHz or 900 MHz SMR service. However, it is uncertain how many of these intend to offer real-time, two-way PSN-interconnected voice or data service utilizing an in-network switching facility or which of this subset qualify as small businesses under the $15 million size standard. The Commission assumed, for purposes of the FRFA, that all of the remaining existing authorizations are held by licensees qualifying as small businesses under the $15 million size standard. Of these, the Commission assumes, for purposes of its evaluations and conclusions in this FRFA, that all of these licensees intend to offer real-time, two-way PSN-interconnected voice or data service utilizing an in-network switching facility. Therefore, the Commission concludes that the number of SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that may be affected by this rule modification is up to 6,800.

20. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[2] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Carrier Locator: Interstate Service Providers* data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[3] The Commission has no data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, it estimates that there are fewer than 732 small cellular service carriers that may be affected by the policies adopted in this Third R&O.

21. *Broadband Personal Communications Service* (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. (*See* 61 FR 33859, July 1, 1996; *see also* 47 CFR 24.720(b).) For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

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[2] U.S. Department of Commence, 1992 Census of Transportation, Communications, and Utilities (issued May 1995), Series UC92 S1, at Table 5, SIC Code 4812.

[3] Carrier Locator: Interstate Service Providers, Carrier Providers, Figure, Figure 1 (Jan. 1999). The most reliable source of current information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its "Carrier Locator" report, derived from filings made in connection with the Telecommunications Relay Service (TRS).

22. *Providers of Location Technologies.* The Commission's requirement that wireless carriers provide the location of wireless 911 callers has created a business opportunity for companies that are able to develop and provide the technology to meet this obligation. Several apparently small location technology companies have participated in this proceeding, for example, by presenting their technologies and filing comments. The Commission estimates that as many as 20 small companies are involved in developing location technologies that may be affected by these rules, either directly in the case of handset-based technology companies or largely indirectly in the case of network-based technology companies.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. Among the rules enacted by the Third R&O is a requirement that wireless carriers report their plans for implementing E911 Phase II, including the technology they plan to use to provide caller location, by October 1, 2000. This report shall provide information to permit planning for Phase II implementation by public safety organizations, equipment manufacturers, local exchange carriers, and the Commission in order to support Phase II deployment by October 1, 2001. This reporting requirement is discussed in Section IV.E of the full text of the Third R&O.

24. With respect to other compliance requirements, the Third R&O adopts rules that: (1) Allow a phased-in implementation schedule for carriers employing a handset-based solution; (2) establish a higher accuracy standard for handset-based solutions than required for network-based solutions; (3) require that handset deployment begin earlier than the current October 1, 2001, deployment date and that this deployment occur, for wireless carriers employing a handset solution, regardless of whether the PSAP has requested Phase II; (4) require that wireless carriers employing handset-based solutions take additional steps to provide location information for roamers and callers with non-ALI capable handsets; (5) require that carriers take action to ensure that any phase-in for handset-based solutions is brief and complete; (6) replace the Root Mean Square (RMS) reliability methodology with a more workable and understandable standard; and (7) allow wireless carriers employing network-based location technology to reach 50 percent coverage within six months of a PSAP request for Phase II service and 100 percent coverage eighteen months after a PSAP request.

(5) Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The Commission is taking this action to provide all affected licensees, regardless of size, with the flexibility to comply with the E911 Phase II regulations in the way that they feel best takes advantage of available technology. The rules adopted in the Third R&O will allow the use of handset-based solutions, or hybrid solutions, as well as network-based solutions for providing location information. The phased-in approach to implementation of handset-based solutions provided in the Third R&O may potentially delay the full availability of Phase II location information for callers and PSAPs. To offset the effects of a delay on public safety, the Third R&O requires that handset-based solutions be held to a higher accuracy standard. This will help locate callers more quickly and assist PSAPs in handling 911 calls more efficiently. The Third R&O also requires that handset deployment begin earlier than the current October 1, 2001, deployment date and that this deployment occur for carriers employing a handset solution, regardless of whether the PSAP has requested Phase II.

26. These steps should promote the rapid rollout of handset-based solutions through normal handset turnover and growth. While it does not appear that any single network-based or handset-based location technology is perfect in all situations or for all wireless transmission technologies, both network and handset-based solutions may provide location information by 2001 that meets or exceeds the Commission's accuracy requirements. The Commission is aware that each type of solution has its advantages and limitations, and each may also be improved or combined with other technologies in the future to support further improvements in 911 service and public safety. The Commission is not recommending one method over another, and is aware of the limitations apparent in handset-based solutions; however, the Commission concluded that any disadvantages of actions in the Third R&O are far outweighed by the possible benefits.

27. All of the actions taken in the Third R&O, as described above, may have a certain amount of negative impact on affected entities, but the Commission expects that few, if any, small entities will feel an impact from its actions. Providers of network-based technologies may be affected indirectly as they confront more vigorous competition from companies offering handset-based and hybrid solutions, but will also benefit directly from rule revisions that allow more time to install network-based location equipment, a more workable accuracy standard, and a best practice obligation for carriers that may encourage the use of network-based technologies to supplement handset-based technologies. The limited negative affects of the Third R&O are offset by the flexibility that will be provided in allowing use of handset-based technology in complying with E911 regulations. This flexibility should be especially beneficial to small rural wireless carriers. Taken together, the Commission expects that this revised program for Phase II deployment will encourage the deployment of the best and most efficient technologies, speed actual implementation of E911, and promote competition in E911 location technology and service. The Commission also expects that its actions in the Third R&O will provide the clear guidance needed to enable the many necessary participants in wireless E911 deployment to implement Phase II as soon as possible.

(6) Report to Congress

28. The Commission shall send a copy of this Third R&O, including a copy of this Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

29. Part 20 of the Commission's Rules is accordingly amended.

30. The rule amendments made by this Third R&O shall become effective March 3, 2000, except for § 20.18(i), which contains an information collection requirement that has not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for that section.

32. The Office of Public Affairs, Reference Operations Division, shall send a copy of this Third R&O, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

33. All petitions for waiver of the Commission's wireless E911 rules submitted in response to the Wireless Telecommunications Bureau's *Waiver*

Public Notice are dismissed as moot in light of the rule changes adopted in this Third R&O.

34. The Petition to Modify the wireless 911 rules filed by the Wireless Consumers Alliance, Inc. is denied.

Paperwork Reduction Act

The Third R&O contains a new information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Third R&O, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 3, 2000. OMB comments are due March 3, 2000. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained in this Order should be submitted to Les Smith, Federal Communications Commission, Room 1A–804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to lesmith@fcc.gov, and to Virginia A. Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov.

OMB Approval Number: N./A.

Title: Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Third Report and Order

Form No.: N./A.

Type of Review: New information collection

Respondents: Business or other for profit

Number of Respondents: 4,000

Estimated Time Per Response: 1 hour

Total Annual Cost Burden: $400,000 for the one-time initial filing. In addition, the Commission estimates that each licensee will file one additional report, reporting any changes in their plans for implementing E911 Phase II, for an additional $400,000 and a total burden of $800,000.

Total Annual Burden: 1 burden hour for the initial filing, and an additional hour for any additional reports, for an estimated total burden hour of 2.

Needs and Uses: The information required to be reported to the Commission by wireless carriers will provide PSAPs, providers of location technology, investors, manufacturers, local exchange carriers, and the Commission with valuable information necessary for preparing for full Phase II E911 implementation. The advance reports will provide helpful, if not essential, information for coordinating carrier plans with those of manufacturers and PSAPs. Also, they will assist the Commission's efforts to monitor Phase II developments and to take necessary actions to maintain the Phase II implementation schedule.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.3 is amended by adding the following definitions in alphabetical order:

§ 20.3 Definitions.

* * * * *

Handset-based location technology. A method of providing the location of wireless 911 callers that requires the use of special location-determining hardware and/or software in a portable or mobile phone. Handset-based location technology may also employ additional location-determining hardware and/or software in the CMRS network and/or another fixed infrastructure.

* * * * *

Location-capable handsets. Portable or mobile phones that contain special location-determining hardware and/or software, which is used by a licensee to locate 911 calls.

* * * * *

Network-based Location Technology. A method of providing the location of wireless 911 callers that employs hardware and/or software in the CMRS network and/or another fixed infrastructure, and does not require the use of special location-determining hardware and/or software in the caller's portable or mobile phone.

* * * * *

3. Section 20.18 is amended by revising paragraph (e), redesignating paragraphs (f) and (g) as (j) and (k) and adding new paragraphs (f), (g), (h), and (i) to read as follows:

§ 20.18 911 Service.

* * * * *

(e) *Phase II enhanced 911 service.* Licensees subject to this section must provide to the designated Public Safety Answering Point Phase II enhanced 911 service, *i.e.*, the location of all 911 calls by longitude and latitude in conformance with Phase II accuracy requirements (*see* paragraph (h) of this section).

(f) *Phase-in for network-based location technologies.* Licensees subject to this section who employ a network-based location technology shall provide Phase II 911 enhanced service to at least 50 percent of their coverage area or 50 percent of their population beginning October 1, 2001, or within 6 months of a PSAP request, whichever is later; and to 100 percent of their coverage area or 100 percent of their population within 18 months of such a request or by October 1, 2002, whichever is later.

(g) *Phase-in for handset-based location technologies.* Licensees subject to this section who employ a handset-based location technology may phase in deployment of Phase II enhanced 911 service, subject to the following requirements:

(1) Without respect to any PSAP request for deployment of Phase II 911 enhanced service, the licensee shall:

(i) Begin selling and activating location-capable handsets no later than March 1, 2001;

(ii) Ensure that at least 50 percent of all new handsets activated are location-capable no later than October 1, 2001; and

(iii) Ensure that at least 95 percent of all new digital handsets activated are location-capable no later than October 1, 2002.

(2) Once a PSAP request is received, the licensee shall, in the area served by the PSAP:

(i) Within six months or by October 1, 2001, whichever is later:

(A) Ensure that 100 percent of all new handsets activated are location-capable;

(B) Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II enhanced 911 service; and

(C) Begin delivering Phase II enhanced 911 service to the PSAP.

(ii) Within two years or by December 31, 2004, whichever is later, undertake reasonable efforts to achieve 100 percent penetration of location-capable handsets among its subscribers.

(3) For all 911 calls from portable or mobile phones that do not contain the hardware and/or software needed to enable the licensee to provide Phase II enhanced 911 service, the licensee shall, after a PSAP request is received, support, in the area served by the PSAP, Phase I location for 911 calls or other available best practice method of providing the location of the portable or mobile phone to the PSAP.

(4) Licensees employing handset-based location technologies shall ensure that location-capable portable or mobile phones shall conform to industry interoperability standards designed to enable the location of such phones by multiple licensees.

(h) *Phase II accuracy.* Licensees subject to this section shall comply with the following standards for Phase II location accuracy and reliability:

(1) For network-based technologies: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls;

(2) For handset-based technologies: 50 meters for 67 percent of calls, 150 meters for 95 percent of calls.

(3) For the remaining 5 percent of calls, location attempts must be made and a location estimate for each call must be provided to the appropriate PSAP.

(i) *Reports on phase II plans.* Licensees subject to this section shall report to the Commission their plans for implementing Phase II enhanced 911 service, including the location-determination technology they plan to employ and the procedure they intend to use to verify conformance with Phase II accuracy requirements, by October 1, 2000. Licensees are required to update these plans within thirty days of the adoption of any change. These reports and updates may be filed electronically in a manner to be designated by the Commission.

[FR Doc. 99–28483 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2378; MM Docket No. 98–123; RM–9291]

Radio Broadcasting Services; Marysville and Hilliard, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Citicasters Co., reallots Channel 289A from Marysville to Hilliard, Ohio, as the community's first local aural service, and modifies the license of Station WZAZ–FM accordingly. *See* 63 FR 49252, July 28, 1998. Channel 289A can be allotted to Hilliard in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.8 miles) northeast, at coordinates 40–03–26 North Latitude and 83–08–36 West Longitude, to accommodate petitioner's desired transmitter site. Canadian concurrence in the allotment has been obtained since Hilliard is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATE: Effective December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–123, adopted October 20, 1999, and released October 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Marysville, Channel 289A and adding Hilliard, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28852 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–61; FCC 99–13]

1998 Biennial Regulatory Review—“Annual Report of Cable Television Systems,” Form 325

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission's amendments to 47 CFR 76.403 which contain information collection requirements became effective on July 1, 1999. These amendments which were published in the **Federal Register** on May 25, 1999 relate to revising and streamlining the Form 325, “Annual Report of Cable Television Systems,” which solicits basic operational information from cable television systems.

DATES: The amendments to 47 CFR 76.403 published at 64 FR 28106 (May 25, 1999) became effective on July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Karen Kosar, Consumer Protection and Competition Division, Cable Services Bureau at (202) 418–1053.

SUPPLEMENTARY INFORMATION:

1. On March 31, 1999, the Commission released a Report and Order regarding the Form 325, a summary of which was published in the **Federal Register**. See 64 FR 28106 (May 25, 1999). The Report and Order modifies and streamlines the Form 325 and reduces the number of cable system operators required to file the form. Because the rule imposed modified information collection requirements, the amendments to 47 CFR 76.403 could not become effective until approved by the Office of Management and Budget (“OMB”). OMB approved the rule changes on July 1, 1999.

2. The **Federal Register** summary stated that the Commission would publish a document announcing the

effective date of the rule changes requiring OMB approval. The amendments to 47 CFR 76.403 became effective July 1, 1999. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28662 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990722200–9292–02; I.D. 060899D]

RIN 0648–AG88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands; Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the US Virgin Islands (FMP). The rule establishes a marine conservation district (MCD) in the exclusive economic zone in an area known as the Hind Bank, southwest of St. Thomas, U.S. Virgin Islands (USVI). Within the MCD, fishing for any species and anchoring by fishing vessels is prohibited. The intended effect is to protect important marine resources.

DATES: This final rule is effective December 6, 1999.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) for this final rule may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Copies of Amendment 1, which includes a regulatory impact review (RIR), a initial regulatory flexibility analysis (IRFA), and a final supplemental environmental impact statement (FSEIS), may be obtained from the Caribbean Fishery Management Council (Council), 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577; telephone 787–766–5926.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, Southeast Regional Office, NMFS; telephone 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coral reef resources off Puerto Rico and the US Virgin Islands is managed under the FMP prepared by the Caribbean Fishery Management Council (Council) and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On June 21, 1999, NMFS announced the availability of Amendment 1 and requested comments on the amendment through August 20, 1999 (64 FR 33041). On August 3, 1999, NMFS published a proposed rule to implement the measures in Amendment 1 and requested comments on the rule through September 17, 1999 (64 FR 42068). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here. On September 17, 1999, after considering the comments on the amendment and proposed rule received through August 20, 1999, NMFS approved Amendment 1.

Comments and Responses

NMFS received three comments supporting Amendment 1 and the proposed rule. One commenter stated in two separate comments that the Hind Bank MCD: Will provide valuable protection to spawning aggregations of depleted reef fish and offer protection to essential fish habitat from physical damage from fishing and anchoring gear; more than meets the FMP's conservation-related criteria for establishing marine conservation districts; will make the area involved off limits to fishing gear and to anchoring on coral so that further damage will be prevented and the habitat given a chance to recover; will protect depleted snappers and groupers and provide the only existing federal replenishment refuge off St. Thomas to help rebuild these stocks; and will offer full protection for red hind spawning aggregations with the eventual result of there being more red hind outside the no-take zone. The third commenter, the U.S. Fish and Wildlife Service, indicated that it supports Amendment 1 as necessary to achieve habitat management benefits to allow the Council and the Territory to meet fishery population protection and recovery goals. NMFS concurs with these comments and has approved Amendment 1 and is implementing it by this rule.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, determined that Amendment 1 is necessary for the conservation and management of the fisheries and coral resources of the USVI. Furthermore, Amendment 1 was determined to be consistent with the Magnuson-Stevens Act and other applicable law.

A FSEIS was prepared for Amendment 1 and filed with the Environmental Protection Agency. A notice of FSEIS availability was published on July 30, 1999 (64 FR 41420).

NMFS prepared an FRFA for this final rule implementing Amendment 1. The FRFA was based on the IRFA, which in turn was based on the Council's RIR supporting Amendment 1. No public comments on the IRFA were received. A summary of the FRFA follows.

The coral habitats in the US Caribbean are considered to be limited and have been seriously degraded, resulting in negative impacts on the fishery resources and the surrounding ecosystem. The MCD is established to protect the coral habitat and the ecosystem and to evaluate the effectiveness of a reserve in increasing the level of fish stocks surrounding the reserve. Relevant FMP conservation and management objectives are: (1) To conserve and protect the species in the fishery management unit; (2) To minimize adverse human impacts on the resources; and (3) To provide for special management of reef and sea grass habitats of particular concern through the establishment of reserves or other protected areas. There were no public comments on the IRFA, and no economic impact issues were raised by public comments. During 1995–96, 121 commercial fishermen reported harvests occurring in the general vicinity of the MCD, and an estimated 20 to 30 of these small entities are thought to have conducted fishing activities within the MCD. The IRFA defined the universe to be all 121 of the small entities because all will be affected either by displacement from the MCD or because of competition from other vessels displaced from the MCD. The 121 vessels landed about 390,000 lb

(176,901 kg) of fish valued at about $1.7 million in aggregate; operated vessels in the 16-to 40-ft (4.9- to 12.2-m) range; and had 1 or 2 crew members. There are no additional reporting, recordkeeping, or other compliance requirements associated with this rule. In addition to the status quo, the Council originally considered six different geographical locations for an MCD, including the preferred alternative. The status quo alternative was rejected because it would not meet the stated objectives. After further consideration, the Council dropped three of the other alternatives, either because the location and size for these MCDs would not meet the objectives or because it was clear that the economic impacts on small business entities would exceed the benefits from establishing an MCD. A fourth MCD alternative was rejected because the objectives would have been met, but larger negative impacts would have been incurred than for the preferred alternative. The fifth MCD alternative was rejected because it was not clear if the objectives would have been met, yet the negative impacts were similar to those for the preferred alternative. The preferred alternative was chosen because it met the stated FMP objectives while minimizing negative economic impacts. The Council also considered a set of alternatives that would have applied to allowable activities within the MCD. The Council chose the most restrictive alternative, a pure no-take MCD, over three alternative proposals. The first of the rejected alternatives would have allowed the removal of organisms for restoration, educational, or scientific purposes; the second would have allowed the use of handlines within the MCD as long as the fishing vessel was not anchored; and the third would have prohibited all gear except trolling. The RIR examined all these scenarios in detail, and the Council determined that the short-term negative impacts associated with the pure no-take restriction (preferred alternative) would be exceeded by the long-term benefits of protecting all the resources in the MCD. The reasoning for rejecting the other alternatives was that allowing exemptions to a pure no-take regime, even for scientific or educational purposes, could provide loopholes that would present problems with compliance and enforcement. This could lead to a situation whereby the FMP objectives would not be met. Accordingly, the Council took the more restrictive approach even though the short-term negative impacts were fully described and acknowledged. This final rule also prohibits anchoring by commercial or recreational fishing vessels within the boundaries of the MCD. The status quo of allowing anchoring was rejected to lessen the environmental impact of anchoring and to make it easier to enforce the ban on fishing in the MCD.

Copies of the FRFA are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 29, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 622.33 is revised to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures.* (1) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in that part of the following area that is in the EEZ. The area is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	17°37.8′	64°53.0′
B	17°39.0′	64°53.0′
C	17°39.0′	64°50.5′
D	17°38.1′	64°50.5′
E	17°37.8′	64°52.5′
A	17°37.8′	64°53.0′

(2) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in those parts of the following areas that are in the EEZ. Each area is bounded by rhumb lines connecting, in order, the points listed.

(i) East of St. Croix.

Point	North lat.	West long.
A	17°50.2′	64°27.9′
B	17°50.1′	64°26.1′
C	17°49.2′	64°25.8′
D	17°48.6′	64°25.8′
E	17°48.1′	64°26.1′
F	17°47.5′	64°26.9′
A	17°50.2′	64°27.9′

(ii) *West of Puerto Rico*—(A) Bajo de Cico.

Point	North lat.	West long.
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.4′
D	18°12.7′	67°26.4′
A	18°15.7′	67°26.4′

(B) *Tourmaline Bank.*

Point	North lat.	West long.
A	18°11.2′	67°22.4′
B	18°11.2′	67°19.2′
C	18°08.2′	67°19.2′
D	18°08.2′	67°22.4′
A	18°11.2′	67°22.4′

(C) *Abrir La Sierra Bank.*

Point	North lat.	West long.
A	18°06.5′	67°26.9′
B	18°06.5′	67°23.9′
C	18°03.5′	67°23.9′
D	18°03.5′	67°26.9′
A	18°06.5′	67°26.9′

(3) *Queen conch closure.* From July 1 through September 30, each year, no person may fish for queen conch in the Caribbean EEZ and no person may possess on board a fishing vessel a queen conch in or from the Caribbean EEZ.

(b) *Year-round area closures.* (1) *Hind Bank Marine Conservation District (MCD).* The following activities are prohibited within the Hind Bank MCD: Fishing for any species, and anchoring by fishing vessels. The Hind Bank MCD is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	18°13.2′	65°06.0′
B	18°13.2′	64°59.0′
C	18°11.8′	64°59.0′
D	18°10.7′	65°06.0′
A	18°13.2′	65°06.0′

(2) [Reserved]

[FR Doc. 99–28830 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 213
Thursday, November 4, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes. For certain airplanes, this proposal would require inspection(s) to detect cracks of the doorjamb corners and follow-on actions. For certain other airplanes, this proposal would require installation of a preventative modification; an inspection to detect cracks at the corners of the doorjambs of the passenger and service doors; and follow-on actions. This proposal is prompted by reports indicating that fatigue cracks were found in the fuselage skin and doublers at the corners of the doorjambs of the passenger and service doors. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by December 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5231; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–135–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the fuselage skin and doublers at the corners of the doorjambs of the passenger and service doors on McDonnell Douglas Model DC–8 series airplanes. These cracks were discovered during inspections conducted as part of the Supplemental Inspection Document (SID) program, required by AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993). Investigation revealed that such cracking was caused by fatigue related stress. Fatigue cracking in the fuselage skin or doublers at the corners of the doorjambs of the lower cargo doors, if not detected and corrected in a timely manner, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995. For certain airplanes, the service bulletin describes procedures for various inspection(s) to detect cracks of the doorjamb corners and follow-on actions. The follow-on actions include either performing repetitive inspections or installing a preventative modification, and repairing cracks, if necessary. For certain other airplanes, the service bulletin describes procedures for installation of a preventative modification; an inspection to detect cracks at the corners of the doorjambs of the passenger and service doors; and follow-on actions similar to those described above. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between the Relevant Service Information and the Proposed AD

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

For Group 3 airplanes, the service bulletin describes procedures for accomplishing a preventative modification, an inspection of the corners of the doorjamb of the passenger and service doors, and follow-on actions (i.e., repetitive inspections or contact manufacturer for disposition instructions for cracked doors, as applicable). "Group 3 airplanes" in the service bulletin is defined as aircraft with Douglas approved permanent repairs other than those outlined in the Structural Repair Manual or SR0850021. The service bulletin recommends that operators contact Douglas Aircraft Company two years prior to the accumulation of 17,000 total landings after accomplishment of the permanent repair, and that the inspection be conducted after accomplishment of the preventative modification. However, the proposed AD would require a revision of the FAA-approved maintenance or inspection program to include an inspection program for the doorjamb corners identified in the service bulletin. The proposed compliance for this revision is within 6 years following accomplishment of the permanent repair or 3 years after the effective date of this AD, whichever occurs later. The new inspection program shall be approved by the FAA.

After review of the average utilization rates for U.S. operators of Model DC–8 series airplanes, the FAA has determined that a compliance time of prior to the accumulation of 17,000 landings would not provide an acceptable level of safety. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the revision of the FAA-approved maintenance or inspection program. In consideration of these items, as well as the thresholds established in the repair assessment program (RAP), the FAA has determined that the proposed compliance time represents an appropriate interval of time wherein the requirements of the proposed AD can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained.

Operators also should note that, although the service bulletin specifies that the result of inspections be reported to the manufacturer, this proposal would not require a reporting requirement.

Cost Impact

There are approximately 294 airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD.

Should an operator be required to accomplish the proposed inspection(s), it would take 48 (Group 1 airplanes) and 74 (all other groups of airplanes) work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection(s) proposed by this AD on U.S. operators is estimated to be $2,880 (Group 1 airplanes) and $4,440 (all other groups of airplanes) per airplane, per inspection cycle.

Should an operator be required or elect to accomplish the proposed preventative modification, it would take approximately 1,440 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,000 per airplane. Based on these figures, the cost impact of the preventative modification proposed by this AD on U.S. operators is estimated to be $88,400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 98–NM–135–AD.

Applicability: Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin and doublers at the corners of the doorjambs of the passenger and service doors, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words "repair" and "modify/modification" in this AD and in the referenced service bulletin are used interchangeably.

Note 4: This AD is related to AD 93–01–15, amendment 39–8469, and will affect Principal Structural Elements (PSE) 53.08.038, 53.08.039, 53.08.040, and 53.08.041 of the DC–8 Supplemental Inspection Document (SID), Report L26–011, Volume I, Revision 3, dated March 1991.

(a) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 2,000 landings or 3 years after the effective date of this AD, whichever occurs first, perform the applicable inspection(s) to detect cracks of the doorjamb corners in accordance with the service bulletin.

(1) If no crack is detected during any inspection required by paragraph (a) of this AD, repeat the applicable inspection(s) required by paragraph (a) of this AD thereafter at intervals specified for Group 1 airplanes in paragraph 1.E. of the service bulletin; or accomplish the preventative modification in accordance with the service bulletin. Accomplishment of the preventative modification constitutes terminating action for the repetitive inspection requirements of this paragraph.

(2) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (f) of this AD.

(b) Within 17,000 landings following accomplishment of the modification/repair required by either paragraph (a)(1) or (a)(2) of this AD, perform an inspection to detect cracks of the doorjamb corners, in accordance with McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is detected, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (f) of this AD.

(c) For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 2,000 landings or 3 years after the effective date of this AD, whichever occurs first, accomplish the preventative modification in accordance with the service bulletin. Within 17,000 landings following accomplishment of the preventative modification, perform an inspection to detect cracks of the doorjamb corners, in accordance with the service bulletin.

(1) If no crack is detected during any inspection required by paragraph (c) of this AD, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is detected during any inspection required by paragraph (c) of this AD, prior to further flight, repair it in accordance the service bulletin, except as provided by paragraph (f) of this AD.

(d) For airplanes identified as Group 3 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 6 years following accomplishment of the permanent repair or within 3 years after the effective date of this AD, whichever occurs later, revise the FAA-approved maintenance or inspection program to include an inspection program for the doorjamb corners identified in the service bulletin. The new inspection program shall be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 5: Requests for approval of inspection procedures of the permanent repairs that are proposed for inclusion in the FAA-approved maintenance or inspection program, as required by this AD, should include a damage tolerance assessment.

(e) For airplanes identified as Group 4 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 17,000 landings following accomplishment of the modification specified in the service bulletin, perform an inspection to detect cracks of the doorjamb corners, in accordance with the service bulletin.

(i) If no crack is detected during any inspection required paragraph (e) of this AD, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(ii) If any crack is detected during any inspection required by paragraph (e) of this AD, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (f) of this AD.

(f) Where McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995, specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28849 Filed 11–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–218–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 750 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Cessna Model 750 airplanes. This proposal would require replacement of reset circuit breakers for the auxiliary hydraulic pump system and the King KHF 950 high frequency communication system(s) with new circuit breakers. This proposal is prompted by a report from the airplane manufacturer indicating that the trip levels for the reset circuit breakers installed in the auxiliary hydraulic pump system and the King KHF 950 high frequency system(s) are too high, which can prevent corresponding high current remote control circuit breakers from tripping when excessive electrical loads are present. The actions specified by the proposed AD are intended to prevent overloading of the affected airplane electrical wiring and circuits, which could result in a fire.

DATES: Comments must be received by December 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Raymond Johnston, Aerospace Engineer, Systems and Propulsion Branch, ACE–

116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4151; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–218–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report from the manufacturer of Cessna Model 750 airplanes indicating that the trip levels for the reset circuit breakers installed in the auxiliary hydraulic pump system and the King KHF 950 high frequency communication system(s) are too high. Investigation has revealed that engineering drawings incorrectly called out 5.0-ampere reset circuit breakers instead of 0.5-ampere reset circuit breakers. This condition can prevent the reset circuit breakers' corresponding high current remote control circuit breakers from tripping when excessive electrical loads are present. This condition, if not corrected, could lead to overloading of the affected airplane electrical wiring and circuits, and a possible fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Cessna Service Bulletin SB750–24–15, Revision 1, dated May 24, 1999, which describes procedures for replacement of the 5.0-ampere reset circuit breakers for the auxiliary hydraulic pump system and the King KHF 950 high frequency communication systems, with 0.5-ampere circuit breakers. Accomplishment of the actions specified in this service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 82 airplanes of the affected design in the worldwide fleet. The FAA estimates that 80 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. The airplane manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the costs of those parts are not attributable to this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $14,400, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for parts and labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Cessna Aircraft Company: Docket 99–NM–218–AD.

Applicability: Model 750 airplanes, serial numbers –0001 through –0100 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overloading of certain airplane electrical wiring and circuits, which could result in a fire, accomplish the following:

Replacement

(a) Within 90 days after the effective date of this AD, replace the 5.0-ampere reset circuit breakers for the auxiliary hydraulic pump system and the King KHF 950 high frequency communication system(s) with 0.5-ampere reset circuit breakers, in accordance with Cessna Service Bulletin SB750–24–15, Revision 1, dated May 24, 1999.

Note 2: Circuit breaker replacement accomplished prior to the effective date of this AD in accordance with Cessna Service Bulletin SB750–24–15, dated May 7, 1999, is considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 29, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28848 Filed 11–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–247–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require either replacement of the spring rod assemblies of the rudder servo controls with improved spring rod assemblies; or modification of the existing spring rod assemblies. For certain airplanes, this proposed AD would require a one-time visual inspection to determine whether certain parts of the spring rod assemblies of the rudder servo controls are installed; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent corrosion of the spring rod assemblies of the rudder servo controls, which could result in the jamming of the rudder servo controls and consequent reduced controllability of the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–247–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Génerale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that it has received reports of jammed spring rods of the rudder servo controls. Investigation revealed that the internal mechanism parts of the spring rod assemblies of the rudder servo controls were heavily corroded and the drain holes were clogged. Such corrosion, if not corrected, could result in the jamming of the rudder servo controls and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A300–27–182, Revision 2 (for Model A300 series airplanes); A310–27–2065, Revision 2 (for Model A310 series airplanes); and A300–27–6023, Revision 2 (for Model A300–600 series airplanes); each dated June 30, 1999. These service bulletins describe procedures for either replacement of the spring rod assemblies of rudder servo controls with improved spring rod assemblies, or modification of the existing spring rod assemblies of the rudder servo controls. The modification involves enlarging the drain holes of the spring rod assembly housing, replacing the retainers, and removing the lubrication between the retainer spring and rod body. If a modified spring rod assembly is installed, the modification also includes re-identification of the modified spring rod assembly to the correct part number.

For certain airplanes, the service bulletins describe procedures for a one-time visual inspection to determine whether certain part numbers of the spring rod assemblies of the rudder servo controls are installed; and corrective actions, if necessary. The corrective actions involve re-identifying all spring rod assemblies to the part number specified in the service bulletin.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 1999–240–288(B), dated June 30, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 156 airplanes of U.S. registry would be affected by this proposed AD.

If an operator elects to replace the spring rod assemblies: It would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,720 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $3,960 per airplane.

If an operator elects to modify the spring rod assemblies: It would take approximately 7 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $294 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $714 per airplane.

If an operator is required to accomplish the one-time inspection: It would take approximately 1 work hour per airplane to accomplish that proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–247–AD.

Applicability: Model A300, A310, and A300–600 series airplanes except those airplanes on which Airbus Modification 10438 has been installed, or Airbus Service Bulletins A300–27–0182, Revision 2, A300–27–6023, Revision 2, or A300–27–2065, Revision 2, each dated June 30, 1999, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the spring rod assemblies of the rudder servo controls.

which could result in the jamming of the rudder servo controls and consequent reduced controllability of the airplane, accomplish the following:

(a) For airplanes on which the spring rod assemblies of the rudder servo controls have not been modified in accordance with Airbus Service Bulletin A300–27–182, dated March 16, 1995, or Revision 1, dated November 21, 1996 (for Model A300 series airplanes); A310–27–2065, dated March 16, 1995, or Revision 1, dated March 10, 1997 (for Model A310 series airplanes); or A300–27–6023, dated March 16, 1995, or Revision 1, dated March 10, 1997 (for Model A300–600 series airplanes); as applicable; as of the effective date of this AD: Within 1 year after the effective date of this AD, accomplish the actions specified in either paragraph (a)(1) or (a)(2) in accordance with Airbus Service Bulletin A300–27–182, Revision 2 (for Model A300 series airplanes); or A310–27–2065, Revision 2 (for Model A310 series airplanes); or A300–27–6023, Revision 2 (for Model A300–600 series airplanes); each dated June 30, 1999; as applicable.

(1) Replace the spring rod assemblies with improved spring rod assemblies; or

(2) Modify the existing spring rod assemblies and re-identify all modified spring rod assemblies.

(b) For airplanes on which the spring rod assemblies of the rudder servo controls have been modified in accordance with Airbus Service Bulletin A300–27–182, dated March 16, 1995, or Revision 1, dated November 21, 1996 (for Model A300 series airplanes); or A310–27–2065, dated March 16, 1995, or Revision 1, dated March 10, 1997 (for Model A310 series airplanes); or A300–27–6023, dated March 16, 1995, or Revision 1, dated March 10, 1997 (for Model A300–600 series airplanes); as applicable; as of the effective date of this AD: Within 1 year after the effective date of this AD, perform a one-time visual inspection to verify that all spring rod assemblies of the rudder servo controls have the same part numbers, in accordance with Airbus Service Bulletin A300–27–182, Revision 2 (for Model A300 series airplanes); or A310–27–2065, Revision 2 (for Model A310 series airplanes); or A300–27–6023, Revision 2 (for Model A300–600 series airplanes); each dated June 30, 1999; as applicable.

(1) If all three spring rod assemblies have either P/N A2727086500400 or A2727086500600, no further action is required by this AD.

(2) If any spring rod assembly has a part number other than P/N A2727086500400 or A2727086500600, prior to further flight, re-identify all spring rod assemblies to the part number specified in the applicable service bulletin, in accordance with the applicable service bulletin.

(c) As of the effective date of this AD, no person shall install on any airplane a spring rod assembly having P/N A2727086500200.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–240–288(B), dated June 30, 1999.

Issued in Renton, Washington, on October 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28847 Filed 11–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 385

[Docket No. RM00–1–000]

Electronic Filing of FERC Form Nos. 423, 714 and 715; Notice of Proposed Rulemaking

October 28, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTIONS: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations under the Federal Power Act (FPA) to provide for the electronic filing of FERC Form Nos. 423, 714 and 715 (collectively, Forms). Commencing with filings for the year 2000, filings would be required to be made electronically over the Commission's web site thereby eliminating the need for paper copies. The Commission is developing the capacity to accept such filings electronically and will conduct tests of the software and related elements of the electronic filing mechanism for each of the forms prior to formal implementation. The automation of the Forms will yield significant benefits to the Commission, the respondents, and to the electric industry as a whole. These benefits include more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design and an eventual overall reduction in filing burden.

DATES: Comments on the Notice of Proposed Rulemaking are due December 6, 1999. Comments should be filed with the Office of the Secretary and should refer to Docket No. RM00–1–000.

ADDRESS: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426

FOR FURTHER INFORMATION CONTACT:

Meesha M. Bond (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–1414

Camilla Ng (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0706

S.L. Higginbottom (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2168

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 8.0. User assistance is available at (202) 208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's

Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at (202) 208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend 18 CFR Parts 141 and 385 to provide for the electronic filing using web-based applications of FERC Form No. 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants" (Form 423), FERC Form No. 714, "Annual Electric Control and Planning Area Report" (Form 714), and FERC Form No. 715, "Annual Transmission Planning and Evaluation Report" (Form 715), (collectively, Forms). This will eliminate the filing of paper copies of these Forms. Electronic filing of the Forms would be required commencing in the year 2000 as follows: the electronic filing of Form 423 will commence with the Form 423 for reporting month January 2000, which is due no later than March 16, 2000; the electronic filing of Form 714 will commence with the Form 714 for reporting calendar year 1999, which is due no later than June 1, 2000; and the electronic filing of Form 715 will commence with the Form 715 for reporting calendar year 1999, which is due no later than April 1, 2000.

II. Reporting Burden

The Commission anticipates a decrease in reporting burden for collection of information resulting from this proposed rule. For the last few years, most entities required to submit these Forms have been preparing their Forms' paper copies from computer-based systems. This proposed rule, requiring the filing of the Forms electronically using web-based applications, would avoid the need to prepare and submit paper copies.

The automation of the Forms will yield significant benefits to the Commission, the respondents, and to the electric industry as a whole. These benefits include more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design and an eventual overall reduction in filing burden. These benefits conform to the Commission's plan for efficient information collection and communication.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Office of Chief Information Officer, phone: (202) 208–1415, fax: (202) 208–2425, e-mail: *mike.miller@ferc.fed.us*].

For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

III. Background

The Commission, in the exercise of its authority under the Federal Power Act, collects data pertaining to the electric industry in the United States.[1] Forms 423, 714 and 715 are some of the forms used for the collection of this information.

The Form 423 data are, at present, submitted monthly in hard copy form by approximately 227 entities for 702 electric generation plants. Currently, Form 423 respondents must file an original and 3 copies, no later than forty-five (45) days after the end of the report month. The Form 423 data are used by Commission staff for ratemaking purposes, by other government agencies for market oversight and other assessments and by the public for various fuel-related studies and analyses.

The Form 714 data are submitted annually by approximately 237 electric utilities and/or control areas having a load greater than 200 MW. Portions of the data are filed in hard copy form, with the remainder of the data filed electronically. The Form 714 data are used by Commission staff to evaluate utility operations related to proposed mergers, interconnections, wholesale rate investigations, and wholesale market changes and trends under emerging competitive forces. Such evaluations also are made to assess reliability, costs and other operating attributes.

The Form 715 data are submitted annually by 117 respondents for approximately 283 transmitting utilities. Portions of the data are filed in hard copy form, with the remainder of the data filed electronically. The Form 715 data are used by Commission staff and others to evaluate transmission capacity availability and constraints.

In recent years, the Commission and its staff have been approached by individual electric utilities and energy information research groups inquiring whether the Commission either had or planned to develop automated data filing systems for the Forms. These parties suggested that such procedures could yield significant benefits in terms of process simplification and savings of time and expense.

The Commission has given careful consideration to this matter and believes it is now appropriate to implement electronic filing using web-based applications for the Forms. The Commission believes this automation of the Forms will yield significant benefits to the Commission, the respondents, and to the electric industry as a whole. These benefits include more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design, and overall reduction of filing burden.

IV. Summary of Proposal

The Commission proposes to use a web-based, electronic-filing application for each of the Forms. The applications for filing each of these Forms will be available over the Commission's web site sufficiently in advance to allow respondents to meet the filing deadlines for data submitted for (Form 423) or in (Forms 714 and 715) the year 2000. Each of these applications will display the respective form's format and provide the capability for respondents to file on-line. The applications will also permit a respondent the option either to "import" the required data from its computer directly into the software package or to manually enter the data. When the data entry is completed, the filing will be officially submitted electronically to the Commission through the Commission's web site.

V. Procedure for Implementation

The Commission has already initiated the process of developing the necessary web-based, electronic-filing applications for each of the Forms. The Commission will conduct field tests of the applications with volunteer Form respondents. It is anticipated that during the field tests the volunteer respondents will be in contact with the Commission staff. The results of the testing process will be evaluated and, if necessary, the applications will be modified.

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[1] 16 U.S.C. 825, 825c.

The Commission expects the applications to be completed for each Form sufficiently in advance to allow respondents to meet the deadlines for data submitted for (Form 423) or in (Forms 714 and 715) the year 2000.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[2] requires rulemakings to contain either a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities. Because most respondents do not fall within the definition of "small entity,"[3] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Information Collection Statement

The regulations of the Office of Management and Budget (OMB)[4] require that OMB approve certain information and record keeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in Form 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants" (OMB approval No. 1902–0024); in Form 714, "Annual Electric Control and Planning Area Report" (OMB approval No. 1902–0140); and in Form 715, "Annual Transmission Planning and Evaluation Report" (OMB approval No. 1902–0171). OMB recertifications are coincidently occurring with this NOPR.

The Commission uses the data collected in the Form 423 reports to carry out its regulatory responsibilities, including comparing delivered fuel costs for utilities receiving like fuels of similar quality; detecting consistently high cost patterns or irregularities indicative of possible uneconomic fuel purchase practices; evaluating the economic effect of unusual fuel purchase practices (such as buying fuel from affiliate fuel sources, as opposed to selecting suppliers by competitive bids); and investigating a broad range of fuel cost and fuel purchase practice issues raised in contested rate proceedings. Such data are also used by other government agencies and the public for similar purposes.

Form 714 gathers utility operating and planning information, primarily on a control area basis, for the purpose of evaluating utility operations related to proposed mergers, interconnections, wholesale rate investigations, and wholesale market changes and trends under emerging competitive forces. Such evaluations also are made to assess reliability, costs and other operating attributes.

The information reported on Form 715 is used to inform Commission staff, potential transmission customers, state regulatory authorities, and the public of, among other things, potentially available transmission capacity and transmission constraints on electric transmission systems. Potential transmission system customers will use the information to determine transmission availability. Transmission dependent utilities will use the information to determine transmission availability to access alternative wholesale suppliers.

The automation of the Forms will yield significant benefits to the Commission, the respondents, and to the electric industry as a whole. These benefits include more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design, and an eventual overall reduction in filing burden.

VIII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[5] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended,[6] and also for information gathering, analysis, and dissemination.[7] The proposed rule changes do not substantially change the effect of the underlying legislation or change the Forms, and also involve information gathering. Accordingly, no environmental considerations are necessary.

IX. Public Comment Procedure

The Commission invites all interested persons to submit written comments on this proposal. An original and 14 copies of such comments should be received by the Commission before 5:00 p.m. December 6, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, and should refer to Docket No. RM00–1–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet e-mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, Microsoft Word 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM00–1–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of the contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM00–1–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at (202) 501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington, DC 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at (202) 208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties,

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[2] 5 U.S.C. 601–612.

[3] See 5 U.S.C. 601(3).

[4] 5 CFR 1320.13.

[5] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. 30,783 (1987).

[6] 18 CFR 380.4(a)(2)(ii).

[7] 18 CFR 380.4(a)(5).

Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 141 and 385, Chapter I, Title 18, of the Code of Federal Regulations, as follows:

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for Part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 141.51 is amended by revising paragraph (c) to read as follows:

§ 141.51 FERC Form No. 714, Annual Electric Control and Planning Area Report.

* * * * *

(c) *What to file.* FERC Form No. 714, "Annual Electric Control and Planning Area Report," must be filed with the Commission as prescribed in § 385.2011 and as indicated in the general instructions set out in this report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 will be required commencing with the report required to be submitted for the reporting year 1999, to be submitted on or before June 1, 2000.

3. Section 141.61 is revised to read as follows:

§ 141.61 FERC Form No. 423, Monthly Report of Cost and Quality of Fuels for Electric Plants.

(a) *Who must file.* Every electric power producer having electric generating plants with a rated steam-electric generating capacity of 50 megawatts or greater during the reporting month must file with the Federal Energy Regulatory Commission for each such plant the FERC Form No. 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants," pursuant to the General Instructions set out in that form.

(b) *When to file and what to file.* This report form must be filed on or before the 45th day after the end of each reporting month. This report form must be filed with the Federal Energy Regulatory Commission as prescribed in § 385.2011 and as indicated in the general instructions set out in this report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 will be required commencing with the report required to be submitted for the reporting period of January 2000.

4. Section 141.300 is amended by revising paragraphs (b) and (c) to read as follows:

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation Report.

* * * * *

(b) *When to file.* FERC Form No. 715 must be filed on or before April 1 for the preceding calendar year.

(c) *What to file.* FERC Form No. 715 must be filed with the Federal Energy Regulatory Commission as prescribed in § 385.2011 and as indicated in the general instructions set out in this report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the report required to be submitted for the reporting year of 1999, to be submitted on or before April 1, 2000.

PART 385—RULES OF PRACTICE AND PROCEDURE

5. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

6. Section 385.2011 is amended by adding paragraphs (a)(7), (a)(8), and (a)(9) and by revising paragraph (c)(3) to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

(a) * * *

(7) FERC Form No. 423, Monthly report of cost and quality of fuels for electric plants (No paper copies required).

(8) FERC Form No. 714, Annual electric control and planning area report (No paper copies required).

(9) FERC Form No. 715, Annual transmission planning and evaluation report (No paper copies required).

* * * * *

(c) * * *

(3) The electronic media must be accompanied by the traditional prescribed numbers of paper copies, unless otherwise provided in paragraph (a) of this section.

* * * * *

[FR Doc. 99–28821 Filed 11–3–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 99N–2637]

Public Information Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its public information regulations to comply with the requirements of the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). EFOIA is designed to broaden public access to government documents by making them more accessible in electronic form and by streamlining the process by which agencies generally disclose information.

DATES: Written comments by February 2, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Betty B. Dorsey, Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6567.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 1996, the President signed into law the EFOIA (Public Law 104–231). EFOIA authorizes, and in some instances requires, agencies to issue regulations implementing certain of its provisions, including provisions regarding the aggregation of Freedom of Information Act (FOIA) requests, the expedited processing of FOIA requests, and the establishment of separate queues for the processing of FOIA requests. In addition, EFOIA amends the time limits for responding to a FOIA request from 10 to 20 working days, the process by which an agency may extend the time for responding to an FOIA request, and the requirements for reporting on FOIA activities. EFOIA also includes provisions regarding the availability of records in electronic form and the establishment of "electronic reading rooms," as well as provisions requiring agencies to inform requesters about the amount of information not being released to them. FDA is proposing to amend its Public Information Regulations (part 20 (21 CFR part 20)) to implement EFOIA and to clarify and update certain provisions unrelated to EFOIA.

II. Proposed New and Revised Provisions

A. Proposed Changes to FDA's Public Information Regulations to Implement EFOIA

The proposed rule would make the following changes to FDA's Public Information Regulations to implement EFOIA:

1. Definitions

New definitions will be added for the following terms:

a. *"Record"*—section 3 of EFOIA amends 5 U.S.C. 552(f) to define "record" for purposes of FOIA as including any information that would be an agency record subject to the requirements of 5 U.S.C. 552 (FOIA) when maintained by an agency in any format, including an electronic format. Section 20.20 will be revised to incorporate this definition.

b. *"Search"*—section 5 of EFOIA amends 5 U.S.C. 552(a)(3) to clarify that when an FOIA request is received, an agency should not only search for hard copies, but should also make reasonable efforts to search for records in their electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems. This provision will be implemented at § 20.34.

2. Information Provided When the Agency Makes a Denial or Partial Disclosure

The amendments (5 U.S.C. 552(a)(6)(F)), require agencies to make a reasonable effort to estimate the volume of any records that are denied either in whole or in part, and to provide the estimate to the requester, unless providing such an estimate would harm an interest protected by an FOIA exemption. FDA will provide an estimate of the volume of records denied if the volume is not otherwise indicated through deletions on records disclosed in part. Such estimates will be provided in terms of number of pages or some other reasonable measure. FDA will implement this new requirement at § 20.49(c).

Additionally, EFOIA amends 5 U.S.C. 552(b) by adding the requirement that when an agency withholds only a portion of a record, the agency shall indicate the amount of information deleted on the released portion of the record to the extent possible, except where doing so would harm an interest protected by an FOIA exemption. If technically feasible, FDA will indicate the amount of information deleted at the place in the record where the deletion is made.

The purpose of this deletion specification requirement is to make it readily apparent to a requester that a deletion has been made. When possible, the extent of the deletion will ordinarily be indicated through the use of some self-evident means. For example, a deletion may be shown by physically obscuring or removing the nondisclosable information by covering the text or figure with opaque marker or dark colored editing tape, cutting out a portion of a microfiche, or by describing in writing the extent of the deletion (e.g., "pages 3 through 7 are not disclosable"). In those cases in which a record is provided on disk, tape, or in some other electronic form, deletions may also be indicated by using special characters or other indicators. This requirement will be implemented at § 20.22(b).

3. Electronic Reading Room Information and Indexes

Section 4 of EFOIA amends 5 U.S.C. 552(a)(2) which requires agencies to make available for public inspection and copying certain information, such as final agency opinions and orders, certain statements of policy and interpretations, and administrative staff manuals and instructions that affect a member of the public. EFOIA (5 U.S.C. 552(a)(2)(D)) adds a new category of records that agencies must make available in their public reading rooms. This new category consists of copies of records which have been released to any person under FOIA and which, because of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records. (Examples of such records at FDA might include warning letters and product approval packages.) EFOIA further requires agencies to make available for public inspection and copying a general index of frequently requested records. In addition, EFOIA requires agencies to make available by "computer telecommunications" (or by other electronic means, if computer telecommunications means have not been established) all reading room records that were created on or after November 1, 1996, as well as the general index of frequently requested records. FDA will implement these EFOIA requirements at §§ 20.26(a)(4) and 20.120. In addition, at its discretion, the agency may also make available other records and information that EFOIA does not require to be made available on the agency's website but which may be useful to the public. FDA's electronic FOI reading room can be accessed on the Internet through the World Wide Web at http://www.fda.gov.

4. Form or Format of FDA's Response

Section 5 of EFOIA amends 5 U.S.C. 552(a)(3) by adding the requirement for agencies making records available under FOIA to do so "in the form or format requested by the person if the record is readily reproducible by the agency" in the requested form or format. "Form" refers to the medium in which the record will be provided, such as paper, microfiche, floppy diskette, CD–ROM, or tape. "Format" refers to the particular manner of storing or presenting a record within a given medium, such as a particular computer program used to generate the record. Examples would include word processing, spreadsheet, data base or graphics programs and the specific software used.

When converting a record from one form or format to another, the agency will not be required to make special efforts to ensure that the physical appearance of the record is preserved. This means that in some cases, such as when the document contains tables, the appearance of the converted record may vary from the original. If the agency is unable to accommodate a particular request, the requester may be given an opportunity to choose from available alternative forms or formats. If the requester does not express a preference for an alternative form or format, the agency may choose the form or format in which the records will be provided.

FDA's FOIA operations are decentralized and each component office is responsible for responding to FOIA requests for the materials maintained by that office. These component offices shall make reasonable efforts to maintain their records in forms or formats that are readily reproducible for FOIA purposes. Because of the wide range of possible forms and formats, a specific agency component responding to an FOIA request may not have the means to provide records in all requested forms and formats. Agency components are not required to purchase special equipment or software to accommodate a request for a particular form or format, and are not required to send records to another component to accommodate an FOIA request. The agency is striving toward a common records filing structure that will enhance the agency's ability to respond to requests for records in a particular form or format. FDA will implement EFOIA's form and format requirement at § 20.33.

5. Search for Records

Section 5 of EFOIA amends 5 U.S.C. 552(a)(3) to clarify that when an FOIA request is received, an agency should not only search for hard copies, but should also make reasonable efforts to search for records kept in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems. Under § 20.34, the agency makes clear that searches for records include and extend to records maintained in an electronic form or format. FDA has included such records in its searches under FOIA for many years, so this provision simply clarifies and formalizes existing practice. The agency will not search for electronic records when to do so would significantly interfere with the operation of the agency's automated information systems. Decisions about when there is significant interference will be made on a case-by-case basis.

6. Time Limits for Responding to Requests

EFOIA amends 5 U.S.C. 552(a)(6)(A)(i) by increasing the time to respond to an FOIA request from 10 to 20 working days. Section 20.41(b) will be revised to reflect this change.

7. Unusual Circumstances

FOIA (5 U.S.C. 552(a)(6)(B)), permits agencies to extend the initial time limit for responding in "unusual circumstances." FOIA specifies various reasons for such an extension. These reasons include the need to search for and collect records from field facilities or other components that are separate from the office processing the request; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and the need for consultation among two or more components of FDA, or with another Federal agency having a substantial interest in the determination of the request. In unusual circumstances, the agency may extend the time for informing a requester, by written notice, of the agency's determination of the extent to which the agency will comply with or deny an FOIA request for an additional period beyond the normal 20 days. The agency may extend the time for a response by up to an additional 10 days by providing a written notice to the requester. If the agency is unable to comply within the additional 10 days, the agency may further extend the time for a response by notifying the requester and providing the requester an opportunity to limit the scope of the request so that it can be processed in a shorter time, and/or an opportunity to agree to an alternative timeframe for processing the request. In the event there is a legal dispute concerning a request, section 6(c)(iii) of EFOIA requires the court to take into account a requester's failure to modify the request or arrange for an alternative timeframe when determining whether "exceptional circumstances" exist. When exceptional circumstances exist, the court may allow the agency additional time to complete its processing of the request. FDA will implement this provision at § 20.41(b)(3).

8. Aggregation of Certain Requests

Section 7 of EFOIA provides at 5 U.S.C. 552(a)(6)(B)(iv) that agencies may issue regulations allowing for the aggregation of certain FOIA requests by the same requester or by a group of requesters acting together, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances that could justify an extension of the response time. FDA has decided to issue such a regulation and will do so at § 20.42.

9. Multitrack Processing

Section 7 of EFOIA (5 U.S.C. 552(a)(6)(D)(i)) authorizes agencies that experience difficulties in meeting FOIA's time limits to issue regulations providing for multitrack processing of FOIA requests rather than processing them on a first-in, first-out basis. A multitrack system provides two or more tracks for processing requests based on the amount of work and/or time required for a request to be processed. The purpose of multitrack processing is to promote faster and more efficient processing of FOIA requests.

As amended, FDA regulations would permit, but not require, each FDA component to establish a multitrack processing system for responding to FOIA requests. Because FDA has a decentralized system for processing FOIA requests, the agency will allow each of its component offices to make its own decision on whether to use a multitrack processing system or single track processing system. The nature and volume of FOIA requests received and the types of records maintained can differ greatly from one FDA component to another. If a component does choose multitrack processing, that component may determine how many tracks to establish and the specific criteria for assigning requests to each track. Requests assigned to a given track generally will be processed on a first-in, first-out basis within that track. Although requests assigned to a faster track will ordinarily have a faster response time than requests assigned to other tracks, the agency will exercise due diligence in processing all requests, regardless of track. The requester may be provided an opportunity to limit the scope of the request in order to qualify for a faster processing track. If a component chooses not to establish multitrack processing, it ordinarily will use a first-in, first-out single track processing system. This provision will be implemented at § 20.43.

10. Expedited Processing

Section 8 of EFOIA (5 U.S.C. 552(a)(6)(E)) requires agencies to issue regulations to provide for expedited processing of FOIA requests in cases where the person requesting the records demonstrates a "compelling need" and in other cases as determined by the agency. The amendments define "compelling need" in two ways. One way is where "failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." The other way is "with respect to a request made by a person primarily engaged in disseminating information, [there is an] urgency to inform the public concerning actual or alleged Federal Government activity." If a requester demonstrates a compelling need, FDA will process the request out of turn and give it expedited treatment. Granting a request for expedited processing does not constitute a promise to meet any particular deadline for responding. Rather, requests that qualify for expedited processing will be processed "as soon as practicable."

Where records are required to avoid an imminent threat to the life or physical safety of an individual, the request for expedited processing must be made by the individual whose life or safety is threatened, or by an authorized representative of that individual. Where records are required due to an urgency to inform the public concerning actual or alleged Federal Government activity, the requester must be primarily engaged in disseminating information to the general public and not merely to a narrow interest group. General circulation newspapers and magazines, and radio and television stations are examples of media that are primarily engaged in disseminating information to the general public. In addition, the requested records should pertain to a matter of current exigency to the public and must have a value that will be lost if not obtained and disseminated quickly. A routine publication or broadcast deadline alone shall not constitute urgency.

Requests for expedited processing must be accompanied by appropriate documentation, including the requester's certification that the information provided in the request is true and correct to best of the requester's knowledge and belief. A requester who knowingly provides false information in support of a request for expedited processing will be subject to criminal penalties under 18 U.S.C. 1001, the False Reports to the Government Act.

Within 10 days of receipt by FDA's Freedom of Information Staff (FOI Staff) of a request for expedited processing and all documentation needed to make a decision on the request, the agency will determine whether to provide expedited processing. The agency will exercise its discretion with fairness and diligence in making a determination about whether to provide expedited processing, giving appropriate consideration to limited resources available to FDA for fulfilling FOIA requests. If the agency denies a request for expedited processing, it will process the request for records with other nonexpedited requests. A requester may appeal FDA's decision to deny expedited processing by writing to the official identified in the denial letter. This new requirement will be implemented at §§ 20.41(c) and 20.44.

B. Proposed Changes to FDA's Public Information Regulations Unrelated to EFOIA

The proposed rule would make the following changes to FDA's public information regulations unrelated to EFOIA:

1. Filing a Request for Records

Section 20.40(a) is being revised to clarify the agency's existing practice of accepting requests submitted to the FOI Staff via facsimile as well as via mail.

2. Revocation of Presubmission Review

The agency proposes to revise § 20.44 concerning presubmission review. This provision allows any person who is considering submission of data or information voluntarily to FDA to request a presubmission review of records involved to determine whether FDA will or will not make part or all of the records available for public disclosure upon request if they are submitted. The FOIA does not require this provision, and the agency has found that presubmission review has not met the underlying policy objective of encouraging the submission to the agency of information bearing on important public health and safety concerns. The provision has fallen into disuse and only rarely has been invoked in the past several years. In addition, the validity of this provision has been questioned by a Federal District Court in the case *Teich* v. *Food and Drug Admin.*, 751 F. Supp. 243 (D.D.C. 1990).

3. Fees to be Charged

Section 20.45 (formerly § 20.42) is being revised to reflect the fact that FDA's fee schedule is in accordance with the fee schedule of the Department of Health and Human Services (DHHS). Section 20.45(c)(6) of the proposed rule would require a requester who wishes to use a courier service for delivery of the agency's response to a request to directly pay, or be directly charged by, the courier service.

4. Records Available in FDA's Public Reading Rooms

Section 20.120 provides the locations and hours of operation of the agency's public reading rooms and outlines the types of records that are available there. This provision essentially summarizes existing agency practice for the convenience of the public.

5. Denial of a Request for Records and Waiver or Reduction of Fees

Sections 20.46 and 20.49 (formerly §§ 20.43 and 20.47) are being revised to indicate that the Associate Commissioner for Public Affairs may delegate his or her authority to deny a request for FDA records or to waive or reduce FOIA fees. FDA is proposing this change to increase the efficiency of its FOIA operations and to make its regulations consistent with DHHS' FOIA regulations at 45 CFR part 5. Section 20.49(c) is also being revised in accordance with current DHHS procedures to indicate that appeals of FDA denials are to be sent to the Deputy Assistant Secretary for Public Affairs (Media), DHHS.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required (21 CFR 25.23(a)).

IV. Economic Impact and Regulatory Flexibility Act

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires an analysis of regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In this proposal, the agency is amending its FOIA regulations to reflect the statutory changes made by the EFOIA. The amendments allow greater flexibility to the requesters of information by providing electronic access to information and provide the agency with greater flexibility in providing the requested information through the use of electronic dissemination. The agency is required to make certain records available over the Internet to enable greater public access to this information. The agency is also permitted to adopt multitrack processing systems as a means of decreasing the overall processing time for requests. FDA is updating its record searching and retrieval fees in accordance with the most recent Federal pay increase. Despite the insignificant cost increase for those requesting information, the public will receive the benefits of greater flexibility in making requests, increased access to public information, and in certain cases, a faster agency response.

This rule is not a significant regulatory action as defined by the Executive Order, and is not subject to review under the Executive Order. This rule does not impose any mandates on State, local, or tribal governments, nor is it a significant regulatory action under the Unfunded Mandates Reform Act. Furthermore, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further regulatory flexibility analysis is required.

V. Paperwork Reduction Act

The agency has determined that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

VI. Request for Comments

Interested persons may, on or before February 2, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Freedom of Information Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 20 be amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

2. Section 20.20 is amended by adding paragraph (e) to read as follows:

§ 20.20 Policy on disclosure of Food and Drug Administration records.

* * * * *

(e) "Record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this part when maintained by the agency in any format, including an electronic format.

3. Section 20.22 is amended by redesignating the existing paragraph as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 20.22 Partial disclosure of records.

(a) * * *

(b)(1) Whenever information is deleted from a record that contains both disclosable and nondisclosable information, the amount of information deleted shall be indicated on the portion of the record that is made available, unless including that indication would harm an interest protected by an exemption under the Freedom of Information Act.

(2) When technically feasible, the amount of information deleted shall be indicated at the place in the record where the deletion is made.

4. Section 20.26 is amended by adding new paragraph (a)(4) and by revising paragraph (b) to read as follows:

§ 20.26 Indexes of certain records.

(a) * * *

(4) Records which have been released to any person in response to a Freedom of Information request and which the agency has determined have become, or are likely to become, the subject of subsequent requests for substantially the same records.

(b) Each such index will be made available through the Internet at http://www.fda.gov. A printed copy of each index is available by writing to the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, or by visiting the Freedom of Information public reading room located in rm. 12A–30 at the same address.

5. Subpart B is amended by adding §§ 20.33 and 20.34 to read as follows:

§ 20.33 Form or format of response.

(a) The Food and Drug Administration shall make reasonable efforts to provide a record in any requested form or format if the record is readily reproducible by the agency in that form or format.

(b) If the agency determines that a record is not readily reproducible in the requested form or format, the agency may notify the requester of alternative forms and formats that are available. If the requester does not express a preference for an alternative in response to such notification, the agency may provide its response in the form and format of the agency's choice.

§ 20.34 Search for records.

(a) In responding to a request for records, the Food and Drug Administration shall make reasonable efforts to search for records kept in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems.

(b) The term "search" means to review, manually or by automated means, agency records for the purpose of locating those records that are responsive to the request.

6. Section 20.40 is amended by revising paragraph (a) to read as follows:

§ 20.40 Filing a request for records.

(a) All requests for Food and Drug Administration records shall be made in writing by mailing or delivering the request to the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, or by faxing it to 301–443–1726. All requests must contain the postal address and telephone number of the requester and the name of the person responsible for payment of any fees that may be charged.

* * * * *

7. Section 20.41 is amended by revising the introductory text of paragraph (b) and paragraph (b)(3), and by adding new paragraph (c) to read as follows:

§ 20.41 Time limitations.

* * * * *

(b) Within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after a request for records is logged in at the Freedom of Information Staff, the agency shall send a letter to the requester providing the agency's determination as to whether, or the extent to which, the agency will comply with the request, and, if any records are denied, the reasons for the denial.

* * * * *

(3)(i) In unusual circumstances, the agency may extend the time for sending the letter for an additional period.

(A) The agency may provide for an extension of up to 10 working days by providing written notice to the requester setting out the reasons for the extension and the date by which a determination is expected to be sent.

(B) The agency may provide for an extension of more than 10 working days by providing written notice to the requester setting out the reasons for the extension. The notice also will give the requester an opportunity to limit the scope of the request so that it may be processed in a shorter time and/or an opportunity to agree on a timeframe longer than the 10 extra working days for processing the request.

(ii) Unusual circumstances may exist under any of the following conditions:

(A) There is a need to search for and collect the requested records from field facilities or other components that are separate from the agency component responsible for processing the request;

(B) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the Food and Drug Administration having substantial subject-matter interest in the determination.

* * * * *

(c) The Food and Drug Administration shall provide a determination of whether to provide expedited processing within 10 calendar days of receipt by the Freedom of Information Staff of the request and the required documentation of compelling need in accordance with § 20.44(b).

8. Sections 20.45 through 20.53 are redesignated as §§ 20.47 through 20.55; §§ 20.42 and 20.43 are redesignated as §§ 20.45 and 20.46; new §§ 20.42 and 20.43 are added; and newly redesignated § 20.44 is revised to read as follows:

§ 20.42 Aggregation of certain requests.

The Food and Drug Administration may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the requests involve clearly related matters and the agency reasonably believes that such requests actually constitute a single request which would otherwise satisfy the unusual circumstances specified in § 20.41(b)(3)(ii)(B). FDA may extend the time for processing aggregated requests in accordance with the unusual circumstances provisions of § 20.41.

§ 20.43 Multitrack processing.

(a) Each Food and Drug Administration component is responsible for determining whether to use a multitrack system to process requests for records maintained by that component. A multitrack system provides two or more tracks for processing requests, based on the amount of work and/or time required for a request to be processed. The availability of multitrack processing does not affect expedited processing in accordance with § 20.44.

(b) If multitrack processing is not adopted by a particular agency component, that component will process all requests in a single track, ordinarily on a first-in, first-out basis.

(c) If a multitrack processing system is established by a particular agency component, that component may determine how many tracks to establish and the specific criteria for assigning requests to each track. Multiple tracks may be established for requests based on the amount of work and/or time required for a request to be processed.

(d) Requests assigned to a given track will ordinarily be processed on a first-in, first-out basis within that track.

(e) If a request does not qualify for the fastest processing track, the requester may be provided an opportunity to limit the scope of the request in order to qualify for faster processing.

§ 20.44 Expedited processing.

(a) The Food and Drug Administration will provide expedited processing of a request for records when the requester demonstrates a compelling need, or in other cases as determined by the agency. A compelling need exists when:

(1) A failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, there is a demonstrated urgency to inform the public concerning actual or alleged Federal Government activity.

(b) A request for expedited processing made under paragraph (a)(1) of this section must be made by the specific individual who is subject to an imminent threat, or by a family member, medical or health care professional, or other authorized representative of the individual, and must demonstrate a reasonable basis for concluding that failure to obtain the requested records on an expedited basis could reasonably be expected to pose a specific and identifiable imminent threat to the life or safety of the individual.

(c) A request for expedited processing made under paragraph (a)(2) of this section must demonstrate that:

(1) The requester is primarily engaged in disseminating information to the general public and not merely to a narrow interest group;

(2) There is an urgent need for the requested information and that it has a particular value that will be lost if not obtained and disseminated quickly; however, a news media publication or broadcast deadline alone does not qualify as an urgent need, nor does a request for historical information; and

(3) The request for records specifically concerns identifiable operations or activities of the Federal Government.

(d) All requests for expedited processing shall be filed in writing as provided by § 20.40. Each such request shall include information that demonstrates a reasonable basis for concluding that a compelling need exists within the meaning of paragraph (a) of this section and a certification that the information provided in the request is true and correct to the best of the requester's knowledge and belief. Any statements made in support of a request for expedited processing are subject to the False Reports to the Government Act (18 U.S.C. 1001).

(e) The Associate Commissioner for Public Affairs (or delegatee) will determine whether to grant a request for expedited processing within 10 days of receipt by the Freedom of Information Staff of all information required to make a decision.

(f) If the agency grants a request for expedited processing, the agency shall process the request as soon as practicable.

(g) If the agency denies a request for expedited processing, the agency shall process the request with other nonexpedited requests.

(h) If the agency denies a request for expedited processing, the requester may appeal the agency's decision by writing to the official identified in the denial letter.

9. Newly redesignated § 20.45 is amended by revising the introductory text of paragraph (c), by removing the third sentence in paragraph (c)(1), and by revising paragraph (c)(6) to read as follows:

§ 20.45 Fees to be charged.

* * * * *

(c) *Fee schedule.* The Food and Drug Administration charges the following fees in accordance with the regulations of the Department of Health and Human Services at 45 CFR part 5.

* * * * *

(6) *Sending records by express mail or other special methods.* This service is not required by the Freedom of Information Act. If the Food and Drug Administration agrees to provide this service, the requester will be required to directly pay, or be directly charged by, the courier. The agency will not agree to any special delivery method that does not permit the requester to directly pay or be directly charged for the service.

* * * * *

10. Newly redesignated § 20.46 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 20.46 Waiver or reduction of fees.

(a) *Standard.* The Associate Commissioner for Public Affairs (or delegatee) will waive or reduce the fees that would otherwise be charged if disclosure of the information meets both of the following tests:

* * * * *

11. Newly redesignated § 20.49 is amended by revising paragraphs (a) and (c) to read as follows:

§ 20.49 Denial of a request for records.

(a) A denial of a request for records, in whole or in part, shall be signed by the Associate Commissioner for Public Affairs (or delegatee).

* * * * *

(c) A letter denying a request for records, in whole or in part, shall state the reasons for the denial and shall state that an appeal may be made to the Deputy Assistant Secretary for Public Affairs (Media), Department of Health and Human Services. The agency will also make a reasonable effort to include in the letter an estimate of the volume of the records denied, unless providing such an estimate would harm an interest protected by an exemption under the Freedom of Information Act. This estimate will ordinarily be provided in terms of the approximate number of pages or some other reasonable measure. This estimate will not be provided if the volume of records denied is otherwise indicated through deletions on records disclosed in part.

* * * * *

12. Section 20.107 is amended by revising paragraph (a) to read as follows:

§ 20.107 Food and Drug Administration manuals.

(a) Food and Drug Administration administrative staff manuals and instructions that affect a member of the public are available for public disclosure. An index of all such manuals is available by writing to the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, or by visiting the Freedom of Information public reading room, located in rm. 12A–30 at the same address. The index and all manuals created by the agency on or after November 1, 1996, will be made available through the Internet at http://www.fda.gov.

* * * * *

13. Section 20.120 is added to subpart F to read as follows:

§ 20.120 Records available in Food and Drug Administration Public Reading Rooms.

(a) The Food and Drug Administration operates two public reading rooms. The Freedom of Information Staff's public reading room is located at 5600 Fishers Lane, rm. 12A–30, Rockville, MD 20857; the phone number is 301–827–6500. The Dockets Management Branch's public reading room is located at 5630 Fishers Lane, rm. 1061, Rockville, MD 20852; the phone number is 301–827–6860. Both public reading rooms are open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal public holidays.

(b) The following records are available at the Freedom of Information Staff's public reading room:

(1) A guide for making requests for records or information from the Food and Drug Administration;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Food and Drug Administration records which have been released to any person in response to a Freedom of Information request and which the agency has determined have become or are likely to become the subject of subsequent requests for substantially the same records;

(4) Indexes of records maintained in the Freedom of Information Staff's public reading room; and

(5) Such other records and information as the agency determines are appropriate for inclusion in the public reading room.

(c) The following records are available in the Dockets Management Branch's public reading room:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by the agency that are still in force and not published in the **Federal Register**;

(3) Indexes of records maintained in the Dockets Management Branch's public reading room; and

(4) Such other records and information as the agency determines are appropriate for inclusion in the public reading room.

(d) The agency will make reading room records created by the Food and Drug Administration on or after November 1, 1996, available electronically through the Internet at the agency's World Wide Web site which can be found at http://www.fda.gov. At the agency's discretion, the Food and Drug Administration may also make available through the Internet such additional records and information as it believes will be useful to the public.

Dated: September 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28857 Filed 11–3–99; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2303, MM Docket No. 99–318, RM–9745]

Digital Television Broadcast Service; Panama City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Waitt License Company of Florida, Inc., licensee of station WPGX (TV), NTSC Channel 28, Panama City, Florida, proposing the substitution of DTV Channel 9 for station WPGX's assigned DTV Channel 29c. DTV Channel 9 can be substituted and allotted to Panama City, Florida, as proposed, in compliance with the principle community requirements of Section 73.625(a) at coordinates 30–23–42 N. and 85–32–02 W. DTV Channel 9 can be allotted to Panama City with a power of 100 (kW) and a height above average terrain (HAAT) of 207 meters.

DATES: Comments must be filed on or before December 23, 1999, and reply comments on or before January 7, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence Bernstein, 1818 N Street, NW, Suite 700, Washington, DC 20036 (Counsel for Waitt License Company of Florida, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–318, adopted October 29, 1999, and released November 1, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–28663 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2304, MM Docket No. 99–319, RM–9756]

Digital Television Broadcast Service; Albany, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Waitt License Company of Georgia, L.L.C., licensee of station WFXL (TV), NTSC 31, Albany, Georgia, proposing the substitution of DTV Channel 12 for station WFXL (TV)'s assigned DTV Channel 30. DTV 30 can be substituted and allotted to Albany, Georgia, as proposed, in compliance with the principle community requirements of Section 73.625(a) at coordinates 31–19–52 N. and 83–51–43 W. DTV Channel 12 can be allotted to Albany with a power of 60 (kW) and a height above average terrain (HAAT) of 287 meters.

DATES: Comments must be filed on or before December 23, 1999, and reply comments on or before January 7, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence Bernstein, 1818 N Street, NW, Suite 700, Washington, DC 20036 (Counsel for Waitt License Company of Georgia, L.L.C.)

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–319, adopted October 29, 1999, and released November 1, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–28661 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2356, MM Docket No. 99–322, RM–9762]

Radio Broadcasting Services; Chillicothe and Ashville, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Secret Communications II, L.L.C. seeking the reallotment of Channel 227B from Chillicothe to Ashville, OH, as the community's first local aural service, and the modification of Station WKKJ's license to specify Ashville as its community of license. Channel 227B can be allotted to Ashville with a site restriction of 11.9 kilometers (7.4 miles) southeast, at coordinates 39–37–17 North Latitude and 82–53–13 West Longitude. Station WKKJ is a pre-1964 grandfathered short-spaced station with respect to Station WAKW, Channel 227B, Cincinnati, Ohio, and the proposed transmitter site is that specified in its outstanding construction permit (BPH–19981201IA). Therefore, adoption of this proposal would maintain the existing grandfathered short-spacing.

DATES: Comments must be filed on or before December 20, 1999, and reply comments on or before January 4, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Jason S. Roberts, Fisher Wayland Cooper Leader & Zaragoza L.L.P., 2001 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–322, adopted October 20, 1999, and released October 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28851 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2353; MM Docket No. 99–321; RM–9733]

Radio Broadcasting Services; Grand Isle and Empire, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Blue Dolphin Communications, Inc., permittee of Station KBIL(FM), Channel 283A, Grand Isle, Louisiana, requesting the substitution of Channel 283C2 for Channel 283A, the reallotment of Channel 283C2 to Empire, Louisiana, as that community's first local aural transmission service, and modification of its authorization accordingly. Coordinates used for this proposal are 29–29–07 NL and 89–46–39 WL.

DATES: Comments must be filed on or before December 20, 1999, and reply comments on or before January 4, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Esq., Post Office Box 403, Westfield, MA 01086.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–321, adopted October 20, 1999, and released October 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–28853 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 90

[RM–9719, DA 99–2351]

Transmission of Emergency Signals on Channel 200; Extension of Time for Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Communications Commission extended the period for filing replies to comments filed in response to a petition for rulemaking requesting the Commission to amend its rules to allocate Channel 200 (87.9 MHz) for the use and operation of an Emergency Radio Data System.

DATES: Reply comments are due on or before November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine Fox of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, (202) 418–0680. *TTY:* (202) 418–7233.

SUPPLEMENTARY INFORMATION:

1. On August 2, 1999, the Commission received a petition for rulemaking (Petition) filed by Federal Signal Corporation (Federal Signal) requesting that the Commission amend its rules to allocate Channel 200 (87.9 MHz) for the use and operation of an Emergency Radio Data System (ERDS) by public safety licensees. On September 14, 1999, the Commission issued a *Public Notice* instructing parties interested in commenting on Federal Signal's Petition to do so within thirty days (*i.e.*, by October 14, 1999). Consequently, Federal Signal had until October 29, 1999, to file reply comments. On October 25, 1999, the Commission received a Motion for Extension of Time filed by Federal Signal.

2. Federal Signal requests that the Commission grant a ten day extension of time until November 8, 1999, for filing a reply to those comments filed in opposition to its Petition. Federal Signal maintains that several of the comments raise technical and engineering concerns that will require considerable preparation by its consulting engineers, and that an additional ten-days would afford it more adequate time to prepare a full and complete reply in order that the Commission may develop as complete a record as possible. In addition, Federal Signal only recently became apprised of comments which were filed with the Commission, but not served on Federal Signal's counsel as required by § 1.405(a) of the Commission's rules. Finally, Federal Signal indicates that no party will be prejudiced by grant of a ten-day extension.

3. It is the policy of the Commission that extensions of time are not routinely granted. Upon review, however, we agree that a ten-day extension, until November 8, 1999, would afford Federal Signal the necessary time to prepare and file a responsive and complete reply in this proceeding.

4. Accordingly, *it is hereby ordered* that, pursuant to § 1.46 of the Commission's rules, 47 CFR 1.46, the Motion for Extension of Time filed by Federal Signal on October 25, 1999, *is granted.* Parties shall file reply comments no later than November 8, 1999.

5. This action is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's rules.

Federal Communications Commission.

Herb Zeiler,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–28796 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991008273–9273–01; I.D. 062399B]

RIN 0648–AK89

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 9 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 9). For Gulf migratory group king mackerel, this rule would establish a moratorium on issuance of gillnet endorsements that would include eligibility criteria and restrictions on transferability of endorsements; restrict the area in which the gillnet fishery could operate; reallocate the eastern zone quota between the Florida east coast and Florida west coast subzones; and divide the Florida west coast subzone into northern and southern subzones with respective quotas. This rule also would allow retention and sale of cut-off (damaged) king and Spanish mackerel that are greater than the minimum size limits and possessed within the trip limits. The intended effect of this rule would be to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

DATES: Comments must be received at the appropriate address or fax number, (see ADDRESSES), no later than 5:00 p.m., eastern standard time, on December 20, 1999.

ADDRESSES: Written comments on the rule should be sent to Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submited via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of Amendment 9, which includes an environmental assessment and a regulatory impact review (RIR), and copies of a minority report submitted by one Gulf Council member may be obtained from the Gulf of Mexico Fishery Management Council, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL 33619; Phone: 813-228-2815; Fax: 813-225-7015; E-mail: gulf.council@noaa.gov; or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; Phone: 843-571-4366; Fax: 843-769-4520; E-mail: safmc@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727-570-5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council (Councils), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Hook-and-Line Fishery - Florida West Coast Subzone

To prevent disproportionate commercial harvest of Gulf group king mackerel by northwest and southwest components of the hook-and-line fishery, this rule proposes to subdivide the Florida west coast subzone and establish separate quotas for the proposed northern and southern subzones described here. The southern boundary of the southern subzone would change along with the seasonal boundaries that separate the Gulf and Atlantic migratory groups of king mackerel.

The southern subzone would extend from the Lee/Collier County line to the Monroe/Dade County line (i.e., off Collier and Monroe Counties) from November 1 through March 31, and from the Lee/Collier County line to the Collier/Monroe County line (i.e., off Collier County) from April 1 through October 31. The northern subzone would extend from the Alabama/Florida boundary to the Lee/Collier County line year-round.

NMFS would establish a quota for the proposed northern subzone by allocating 7.5 percent of the eastern zone quota to the northern subzone. NMFS would allocate the remaining portion (92.5 percent) of the eastern zone quota according to percentages prescribed in the FMP (i.e., 50 percent each to the Florida east coast subzone and southern west coast subzone, the latter being divided equally between harvesters using hook-and-line gear and run-around gillnets). This proposed measure would reallocate the eastern zone quota between the Florida east and west coast subzones from the current east/west ratio of 50/50 to 46.25/53.75, respectively. Existing and proposed quotas of Gulf group king mackerel for the Florida east and west coast subzones are listed here based on the current eastern zone quota level of 2,340,000 lb (1,061,406 kg).

QUOTAS

SUBZONE	CURRENT		PROPOSED	
	lb	kg	lb	kg
East Coast	1,170,000	530,703	1,082,250	490,900
West Coast	1,170,000	530,703	1,257,750	570,506
Hook-and-Line	585,000	265,352		
Run-Around Gillnet	585,000	265,352		
Northern Subzone				
Hook-and-Line			175,500	79,606
Southern Subzone			1,082,250	490,900
Hook-and-Line			541,125	245,450
Run-Around Gillnet			541,125	245,450

The Councils consider the proposals to subdivide the Florida west coast subzone into separate northern and southern subzones and to provide each a quota for vessels using hook-and-line gear a reasonable approach to allocate equitably the eastern zone quota between the fishery components harvesting in the northern and southern subzones. Separate quotas would prevent the northwest Florida Panhandle fishery from taking all or most of the quota before Gulf group king mackerel migrate south to overwintering grounds off southwest Florida and the Florida Keys where almost all of the Florida west coast harvest has been taken historically. When this occurred previously, NMFS published an emergency rule (60 FR 7134, February 7, 1995) that added 300,000 lb (136,078 kg) to the quota and reopened the fishery during the 1994/95 fishing year under a 125–fish trip limit to avert a potential socioeconomic crisis for southwest Florida fishing communities. Consequently, with no other viable alternatives available to avoid a future recurrence of this situation, the Councils believe that the proposals are necessary until more practicable and less cumbersome management options become available.

Run-Around Gillnet Fishery—Florida West Coast Subzone

To prevent expansion of the run-around gillnet fishery for Gulf group king mackerel in the southern Florida west coast subzone, this rule proposes several measures while the Councils consider future management strategies. A king mackerel gillnet endorsement, issued by NMFS with some commercial vessel permits for king mackerel, is required to harvest king mackerel under the run-around gillnet quota. This rule proposes that gillnet endorsements not be issued to new applicants, be reissued only to those vessels that meet the stipulated criteria, and be transferred only to another vessel owned by the same entity or to immediate family members (i.e., husband, wife, son, daughter, brother, sister, father, or mother) to allow for gillnet harvest by historical participants during the proposed moratorium.

Under the moratorium, an initial king mackerel gillnet endorsement would be issued only if: (1) The vessel owner was the owner of a vessel with a commercial mackerel permit with a gillnet endorsement on or before October 16, 1995 (the control date for the Gulf and South Atlantic king mackerel fisheries); and (2) the vessel owner was the owner of a vessel that had gillnet landings of Gulf migratory group king mackerel in one of the two fishing years, July 1, 1995, through June 30, 1996, or July 1, 1996, through June 30, 1997. Such landings must have been documented by NMFS or by the Florida Department of Environmental Protection trip ticket system as of December 31, 1997. Only landings when a vessel had a valid commercial permit for king mackerel with a gillnet endorsement, and only landings that were harvested, landed, and sold in compliance with State and Federal regulations may be used to establish eligibility. NMFS would not issue an owner more initial king mackerel gillnet endorsements under the moratorium than the number of vessels with king mackerel gillnet endorsements that the owner owned simultaneously on or before the control date, October 16, 1995.

Under the moratorium, NMFS would also issue a gillnet endorsement to the owner of a vessel that received a commercial king mackerel permit through transfer, between March 4, 1998, and the date of publication of the final rule implementing the moratorium, from a vessel that met the eligibility requirements for an initial gillnet endorsement as specified under the moratorium.

Under the proposed moratorium, an owner or operator of a vessel that does not have a king mackerel gillnet endorsement on the date the final rule implementing Amendment 9 is published in the **Federal Register** could submit an application to NMFS to obtain a king mackerel gillnet endorsement within 90 days from that date. NMFS would make application forms available. After the 90-day period has expired, NMFS would no longer accept applications for king mackerel gillnet endorsements other than renewal applications.

Also, to prevent further expansion of the gillnet fishery, this rule proposes to restrict the operational area within which qualified vessels may fish under the run-around gillnet quota to the proposed southern subzone. Currently, run-around gillnets may be used to harvest Gulf group king mackerel under prescribed trip limits anywhere in the exclusive economic zone (EEZ) from off Texas through the seasonal boundaries of the Florida east coast subzone.

The Councils have determined that the moratorium is necessary during an interim period while the Councils determine the biological, fishery management, socioeconomic, and state/Federal impacts of maintaining or phasing out this fishery segment. The Councils believe that limiting the number of participants in the gillnet fishery is imperative to prevent expansion, overcapitalization, and quota overruns. Issuing permits only to owners of vessels that can demonstrate landings under the run-around gillnet quota during the designated fishing years and allowing transfer of gillnet endorsements only to family members would restrict participation to businesses and families that historically have been dependent on this fishery. Restricting the use of run-around gillnets to the southern subzone would also decrease the opportunity for user conflicts and the likelihood of interactions with northern right whales calving and nursing off the northeast Florida (east coast subzone) overwintering grounds.

Possession and Sale of Cut-Off Fish

For both the Atlantic and Gulf groups of king and Spanish mackerel, this rule proposes to allow the retention and sale of cut-off (damaged) fish that meet the minimum size limit and that are taken and possessed within the established commercial trip limits. This would not affect the current regulatory provision that allows a maximum of five cut-off (damaged) king mackerel to be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on vessels operating under commercial trip limits. Such fish are not counted against the trip limits, are not subject to the minimum size limit, and may not be sold or purchased.

The Councils recommended these changes after reconsidering the regulations for cut-off king mackerel implemented under Amendment 8 (63 FR 10561, March 4, 1998) to the FMP. Because both cut-off king and Spanish mackerel have food and market value, the Councils now believe that the regulations should allow for their possession, landing, and sale, provided that the cut-off fish comply with the minimum size limits and that fishermen do not exceed applicable trip limits. Such changes potentially will increase revenue, decrease wastage, and increase accuracy of fishing mortality estimates. Nevertheless, the Councils realize that such benefits may not be realized in situations where fishermen may have the opportunity to discard cut-off fish, replacing them with more valuable whole fish that would be retained and sold under the trip limits.

Management Measures Proposed by the Councils for Gulf Group King Mackerel Not Included in this Proposed Rule

Two management actions proposed by the Councils for Gulf group king mackerel are not included in this proposed rule because they have already been implemented by another rule. These two management measures are a 3,000–lb (1,361–kg) trip limit for vessels fishing under the commercial quota in the western zone (Texas through Alabama) and an increase in the minimum size limit from 20 inches to 24 inches (50.8 cm to 61.0 cm). These measures were published as part of a proposed rule (64 FR 29622, June 2, 1999) implementing mackerel specifications under the FMP framework procedure for adjusting management measures and were subject to public comment. After considering the public comment, NMFS approved those measures and implemented them through a final rule (64 FR 45457, August 20, 1999). Consequently, to avoid redundancy and confusion, these two measures and associated text are not included in this proposed rule.

Change Proposed by NMFS

NMFS is proposing a clarification of one aspect of the Council's proposal in Amendment 9 regarding eligibility for a king mackerel gillnet endorsement under the proposed moratorium. As an exception to the basic eligibility requirements, the Council proposed that a vessel that received a king mackerel permit through transfer, between February 12, 1996, and the date of publication of the final rule implementing these regulations, from a vessel that was qualified for an initial king mackerel gillnet endorsement would qualify for an initial king mackerel gillnet endorsement. The Council selected the date of February 12, 1996, because that was the end of the 1995/1996 fishing season. However, king mackerel permits were not transferable until March 4, 1998. Therefore, in § 622.4(o)(2) of this proposed rule, NMFS has modified the date concerning king mackerel permit transfer from February 12, 1996, to March 4, 1998, to accurately reflect the period during which king mackerel permits could have been transferred.

Classification

The Administrator, Southeast Region, NMFS, has determined on October 7, 1999, that Amendment 9 is necessary for the conservation and management of the FMP and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

> The proposed rule contains provisions to change the allocation of Gulf group king mackerel from the present formula of 50 percent for each coast of Florida to 46.15 percent east coast and 53.85 percent west coast; to establish Florida west coast hook-and-line subzone percentage allocations based on historical catches in the subzones; to establish a moratorium on the issuance of new king mackerel gillnet endorsements for the Florida west coast; and, to allow retention and sale of "cut off" king and Spanish mackerel ("cut off" refers to fish that are damaged by predators while being landed). In aggregate these proposals could potentially affect a maximum of 987 permitted commercial small business entities that operate in the areas where the proposed actions will be effective. However, the economic effects will be small. The proposal to reallocate king mackerel for the east and west coasts of Florida will result in a maximum redistribution of about 118,000 lb. (53,524 kg) of king mackerel worth about $147,000 in favor of the west coast fishermen. The official west coast allocation of 1,170,000 lb. (530,703 kg) has an exvessel value of about $1.46 million, so there would be roughly a 10 percent revenue effect if the redistribution actually occurs. However, this effect will not be realized because the west coast historically exceeds its quota by an amount well in excess of the proposed reallocation. Hence, the redistribution of quota will not likely result in an increase in revenue for the west coast fishermen. For the east coast fishermen, the change will also likely be small or zero because other restrictive rules have recently been implemented for the east coast. According to information contained in the Regulatory Impact Review (RIR), these restrictive rules effectively curtail east coast landings by an amount greater than implied by the redistribution of landings, and landings for the most recent fishing season were 267,000 lb. (121,109 kg) below quota. Accordingly, the quota would not likely be met if the reallocation goes into effect because the implied reallocation is 117,000 lb. (53,070 kg) or less than half the current quota shortfall. The proposal for an official percentage allocation of the Florida west coast hook-and-line quota by subzone will have no effect because the allocations would be set based on historical catches in the subzones. The moratorium on the issuance of new king mackerel gillnet endorsements for the Florida west coast is expected to have no effect or only a minor effect on landings because the current gillnet quota for king mackerel is met very early in the season. Also, the RIR indicates that the gillnet fishery is not very profitable at the current time due to restrictive trip limits and the current level of TAC and subquotas. Gillnet gear tends to become more profitable when trip limits are high enough to make that gear efficient. Hence, few, if any, new entrants would be expected under the present scenario. However, as the fishery continues to recover, the TAC would be expected to rise and some of the current trip limit regulations could be relaxed to the point where the use of gillnet gear becomes more profitable and additional entry might be expected. The current number of gillnet operations could take their portion of a higher TAC with larger trip limits and the Councils do not desire to encourage additional fishing effort. Accordingly, and as a precautionary measure to discourage new effort, a moratorium on new gillnet endorsements has been proposed. The provision to allow the retention of "cut off" king and Spanish mackerel will have little or no impact because current rules allow the retention of five "cut off" fish in addition to existing trip limits, and the new provision merely allows the retention of additional "cut off" fish if the fishermen choose to do so. However, this would occur only when the trip limits would not otherwise be met because the "cut off" fish have a reduced market value and any number over five would count against the trip limit. Hence, there is not much incentive to retain these fish, and the expected result is a very minor, approaching nil, increase in revenue attributed to the retention of more than five "cut off" fish for the few number of trips that might be affected. The overall conclusion is that the proposed rule, if implemented, will not have a significant impact on a substantial number of small business entities, and this conclusion applies to the actions considered singly or in aggregate.

As a result, a regulatory flexibility analysis was not required.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule includes a collection-of-information requirement regarding applications for an initial king mackerel gillnet endorsement. That collection of information is currently approved under OMB control no. 0648-0205 and its public reporting burden is estimated at 20 minutes per response. This reporting burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Public comment is sought regarding whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collection of information, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 29, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraphs (a)(2)(ii) through (a)(2)(iv), the first sentence of paragraph (g), and paragraph (o) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(ii) *Gillnets for king mackerel in the southern Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the southern Florida west coast subzone (see § 622.42(c)(1)(i)(A)(*3*)), a commercial vessel permit for king mackerel with a gillnet endorsement must have been issued to the vessel and must be on board. See paragraph (o) of this section regarding a moratorium on endorsements for the use of gillnets for king mackerel in the southern Florida west coast subzone and restrictions on transferability of king mackerel gillnet endorsements.

(iii) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application. See paragraph (q) of this section regarding a moratorium on commercial vessel permits for king mackerel, initial permits under the moratorium, transfers of permits during the moratorium, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Spanish mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

* * * * *

(g) *Transfer.* A vessel permit, license, or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in § 622.17(c) for a commercial vessel permit for golden crab, or in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper. * * *

* * * * *

(o) *Moratorium on endorsements for the use of gillnets for king mackerel in the southern Florida west coast subzone.* (1) Effective on the date of publication of the final rule that contains this paragraph (o)(1), an initial king mackerel gillnet endorsement will be issued only if—

(i) The vessel owner was the owner of a vessel with a commercial mackerel permit with a gillnet endorsement on or before October 16, 1995; and

(ii) The vessel owner was the owner of a vessel that had gillnet landings of Gulf migratory group king mackerel in one of the two fishing years, July 1, 1995 through June 30, 1996 or July 1, 1996 through June 30, 1997. Such landings must have been documented by NMFS or by the Florida Department of Environmental Protection trip ticket system as of December 31, 1997. Only landings when a vessel had a valid commercial permit for king mackerel with a gillnet endorsement and only landings that were harvested, landed, and sold in compliance with state and Federal regulations may be used to establish eligibility.

(2) Paragraphs (o)(1)(i) and (o)(1)(ii) of this section notwithstanding, the owner of a vessel that received a commercial king mackerel permit through transfer, between March 4, 1998, and the date of publication of the final rule that contains this paragraph (o)(2), from a vessel that met the requirements in paragraphs (o)(1)(i) and (o)(1)(ii) also qualifies for an initial king mackerel gillnet endorsement.

(3) To obtain an initial king mackerel gillnet endorsement under the moratorium, an owner or operator of a vessel that does not have a king mackerel gillnet endorsement on the date of publication of the final rule that contains this paragraph (o)(3) must submit an application to the RD, postmarked or hand delivered not later than 90 days after the date of publication of the final rule that contains this paragraph (o)(3). Except for applications for renewals of king mackerel gillnet endorsements, no applications for king mackerel gillnet endorsements will be accepted after the date that is 90 days after the date of publication of the final rule that contains this paragraph (o)(3). Application forms are available from the RD.

(4) The RD will not issue an owner more initial king mackerel gillnet endorsements under the moratorium than the number of vessels with king mackerel gillnet endorsements that the owner owned simultaneously on or before October 16, 1995.

(5) An owner of a vessel with a king mackerel gillnet endorsement issued under this moratorium may transfer that endorsement upon a change of ownership of a permitted vessel with such endorsement from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. Such endorsement also may be transferred to another vessel owned by the same entity.

(6) A king mackerel gillnet endorsement that is not renewed or that is revoked will not be reissued. An endorsement is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit that includes the endorsement.

* * * * *

3. In § 622.38, paragraph (g) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(g) Cut-off (damaged) king or Spanish mackerel that comply with the minimum size limits in § 622.37(c)(2) and (c)(3), respectively, and the trip limits in § 622.44(a) and (b), respectively, may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under the respective trip limits. Such cut-off fish also may be sold. A maximum of five additional cut-off (damaged) king mackerel, not subject to the size limits or trip limits, may be possessed or offloaded ashore but may not be sold or purchased and are not counted against the trip limit.

* * * * *

4. In § 622.41, paragraphs (c)(1)(ii) and (c)(2)(iv) are revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(1) * * *

(ii) King mackerel, Gulf migratory group—hook-and-line gear and, in the southern Florida west coast subzone only, run-around gillnet. (See § 622.42(c)(1)(i)(A)(*3*) for a description of the southern Florida west coast subzone.)

* * * * *

(2) * * *

(iv) *Exception for king mackerel in the Gulf EEZ.* The provisions of this paragraph (c)(2)(iv) apply to king mackerel taken in the Gulf EEZ and to such king mackerel possessed in the Gulf. Paragraph (c)(2)(iii) of this section notwithstanding, a person aboard a vessel that has a valid commercial permit for king mackerel is not subject to the bag limit for king mackerel when the vessel has on board on a trip unauthorized gear other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone. Thus, the following applies to a vessel that has a commercial permit for king mackerel:

(A) Such vessel may not use unauthorized gear in a directed fishery for king mackerel in the Gulf EEZ.

(B) If such a vessel has a drift gillnet or a long gillnet on board or a run-around gillnet in an area other than the southern Florida west coast subzone, no king mackerel may be possessed.

(C) If such a vessel has unauthorized gear on board other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone, the possession of king mackerel taken incidentally is restricted only by the closure provisions of § 622.43(a)(3) and the trip limits specified in § 622.44(a). See also paragraph (c)(4) of this section regarding the purse seine incidental catch allowance of king mackerel.

* * * * *

5. In § 622.42, paragraphs (c)(1)(i)(A)(*1*) through (c)(1)(i)(A)(*3*) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) * * *

(*1*) *Florida east coast subzone*—1,082,250 lb (490,900 kg).

(*2*) *Florida west coast subzones*—(*i*) *Southern*—1,082,250 lb (490,900 kg), which is further divided into a quota of 541,125 lb (245,450 kg) for vessels fishing with hook-and-line and a quota of 541,125 lb (245,450 kg) for vessels fishing with run-around gillnets.

(*ii*) *Northern*—175,500 lb (79,606 kg).

(*3*) *Description of Florida subzones.* The Florida east coast subzone is that part of the eastern zone north of 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from 25°20.4' N. lat. to 26°19.8' N. lat., a line directly west from the Lee/Collier County, FL boundary (i.e., the area off Collier and Monroe Counties). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary (i.e., off Collier County). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary.

* * * * *

6. In § 622.44, paragraphs (a)(2)(i) and (a)(2)(ii) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(i) *Eastern zone-Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(iii), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 50 fish per day.

(ii) *Eastern zone-Florida west coast subzone*—(A) *Gillnet gear.* (*1*) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the southern Florida west coast subzone's fishery for vessels fishing with run-around gillnets has been effected under § 622.43(a)—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(*2*) In the southern Florida west coast subzone:

(*i*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial permit for king mackerel with a gillnet endorsement.

(*ii*) King mackerel from the southern west coast subzone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*i*).

(*iii*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(B) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.4(a)(2)(iii), and operating under the hook-and-line gear quotas in § 622.42(c)(1)(i)(A)(*2*)(*i*) or (c)(1)(i)(A)(*2*)(*ii*):

(*1*) From July 1, each fishing year, until 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) From the date that 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested, until a closure of the respective northern or southern subzone's fishery for vessels fishing with hook-and-line gear has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day.

* * * * *

7. In § 622.45, paragraph (h) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(h) *Cut-off (damaged) king or Spanish mackerel.* A person may not sell or purchase a cut-off (damaged) king or Spanish mackerel that does not comply with the minimum size limits specified in § 622.37(c)(2) or (c)(3), respectively, or that is in excess of the trip limits specified in § 622.44(a) or (b), respectively.

[FR Doc. 99–28938 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 102699B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Amendment 58 to Revise the Chinook Salmon Savings Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 58 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) for Secretary of Commerce review. The intended effect of this amendment is to reduce bycatch of chinook salmon by trawl fisheries in the Bering Sea Aleutian Islands Area (BSAI).

DATES: Comments on Amendment 58 must be submitted by January 3, 2000.

ADDRESSES: Comments on Amendment 58 should be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted by e-mail or Internet. Copies of Amendment 58 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION: To reduce bycatch of chinook salmon by trawl fisheries in the BSAI, the Council recommended changes to both the FMP and the regulations implementing it. Amendment 58 would revise the FMP's management measures for chinook salmon by (1) removing the prohibited species catch (PSC) limit of 48,000 chinook salmon from the FMP and replacing it with a framework that would allow NMFS to establish the chinook PSC limit through regulations; and (2) revising the boundaries of the chinook salmon savings area (CHSSA).

The Council also recommended that NMFS use the framework proposed in Amendment 58 to reduce the chinook PSC limit from 48,000 to 29,000 salmon over a 4-year period, to implement year-round accounting of chinook salmon bycatch in the pollock fishery beginning on January 1 of each year, to revise the boundaries of the CHSSA, and to set new CHSSA closure dates.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider all public comments received during the comment period in determining whether to approve the FMP or amendment. Public comments on Amendment 58 must be received by January 3, 2000 to be considered by NMFS in the decision to approve/disapprove this amendment. After evaluating Amendment 58 pursuant to the Magnuson-Stevens Act, NMFS will publish a proposed rule to implement the amendment and the related regulatory changes the Council recommended in the **Federal Register** for public comment. Public comments on the proposed rule must be received by January 3, 2000, the end of the comment period for this notice of availability on Amendment 58, to be considered in the approval/disapproval decision on the amendment. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. All comments received on the amendment or on the proposed rule will be responded to in the preamble to the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 29, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28937 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 213
Thursday, November 4, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service announces its intention to request the Office of Management and Budget's (OMB) review of the information collections related to the Summer Food Service Program, OMB number 0584–0280.

DATES: Comments on this notice must be received by January 3, 2000 to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments and requests for copies of this information collection may be sent to Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1006, Alexandria, Virginia 22302.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION: Contact Mr. Terry Hallberg at (703) 305–2600.

SUPPLEMENTARY INFORMATION:

Title: Summer Food Service Program.

OMB Number: 0584–0280.

Expiration Date: 12/31/99.

Type of Request: Extension of a currently approved collection.

Abstract: Section 13 of the National School Lunch Act (NSLA), as amended, authorizes the Summer Food Service Program. The Summer Food Service Program provides assistance to States to initiate and maintain nonprofit food service programs for needy children during the summer months and at other approved times. The food service to be provided under the Summer Food Service Program is intended to serve as a substitute for the National School Lunch Program and the School Breakfast Program during times when school is not in session. Under the program, a sponsor receives reimbursement for serving nutritious, well-balanced meals to eligible children at food service sites. Subsection 13(m) of the NSLA directs that "States and service institutions participating in programs under this section shall keep accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary." Pursuant to this provision, the Food and Nutrition Service has issued Part 225 of Title 7 of the Code of Federal Regulations to implement the Summer Food Service Program.

Respondents: State agencies, sponsors, food service management companies, camps, households.

Estimated Number of Respondents: 50 State agencies, 3,616 sponsors, 308 food service management companies, 3,037 camps and other sites, and 69,722 households.

Average Number of Responses per Respondent: The number of responses is estimated to be 4 responses per respondent per year.

Estimated Total Annual Burden on Respondents: The recordkeeping burden hours are estimated at 18,949, and the reporting burden hours are estimated at 306,842, for an estimated total annual burden of 325,791.

Dated: October 25, 1999.

Samuel Chambers, Jr.,
Administrator.

[FR Doc. 99–28831 Filed 11–3–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

West Mountain North Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Cascade Range District of the Boise National Forest will prepare an environmental impact statement (EIS) for an integrated resource management project in the North Fork of the Payette River. The entire project area is within watersheds that drain directly into Cascade Reservoir or into the North Fork Payette River above Cascade Reservoir. The project area is located 12 miles northwest of Cascade, Idaho, and about 100 miles north of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of environmental analysis decisionmaking process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision. At this time, no public meetings to discuss the project are planned.

Proposed Action: Four primary objectives have been identified to the project: (1) reduce current and future stand susceptibility to western spruce budworm; (2) improve long-term stand growth to or near levels indicative of healthy, sustainable forests; (3) implement the Total Maximum Daily Load (TMDL) Plan by reducing by 30 percent the total phosphorus delivery from existing sources within the project area, and resulting in an no net increase of total phosphorus from proposed activities; and; (4) contribute to the local economy through the supply of forest products and associated employment opportunities.

The proposed action would treat a total of 1,659 acres in the 10,048-acre project area. The project area itself encompasses all of the 2,800-acre Poison Creek Management Area 52A, and a portion of the 19,069-acre West Mountain North Management Area 52. An estimated 12.0 MMBF of timber would be harvested using ground-based (827 acres), skyline (319 acres), and helicopter (513 acres) yarding systems. The proposed action would employ variety of silvicutural prescriptions including commercial thin (148 acres), improvement cut (512 acres), sanitation/salvage (340 acres), individual tree selection (18 acres), seed cut shelterwood (224 acres), and final removal shelterwood (417 acres). The existing transportation system would be improved to facilitate long haul and reduce sedimentation with individual sections of 17.9 miles of road being reconstructed. An estimated 0.8 mile of specified road and 0.4 mile of temporary road would be constructed to facilitate harvest. In addition, 4.9 miles of road not needed for the long-term management of the area would be decommissioned, and, 1.8 miles closed year-round and 1.1 miles closed seasonally (September 15 to June 1) to motorized use with the exception of snowmobiles and administrative use.

Management direction in the Boise National Forest Land and Resource Management Plan (LRMP) of the 2,800-acre Poison Creek Management Area (MA) 52A was developed in anticipation of the proposed ValBois Resort. The VlBois project, which was still in its conceptual stage when the LRMP was published in 1990, included numerous developments associated with skiing on Forest Service administered lands with in MA 52A. Due to a number of circumstances, the ValBois project is no longer being considered. Although a similar proposal, WestRock, is currently under consideration on adjacent private and State-owned lands, WestRock officials have stated they have no intention of requesting a permit to operate on Forest Service administered lands. Nonetheless, the LRMP direction for MA 52A still reflects ValBois as a potential activity and would require amending prior to implementation of the proposed action. Given the ongoing LRMP revision and the anticipated timeframes of the effort, proposed amendments would be specific to the West Mountain North Project. Future management of the area would be deferred to that prescribed in the revised LRMP. The following LRMP amendments are included as a part of the proposed action:

Amend the Visual Quality Objectives on page IV–438 of the LRMP to foreground retention and middleground partial retention for the West Mountain Cascade Reservoir Road No. 422, and, middleground partial retention for the Cascade Reservoir Area. Visual Quality Objectives specific to Proposed Developments associated with the ValBois Resort would not apply to this project.

Amend the standard on page IV–439 of the LRMP that limits timber harvesting to allow management activities, including timber harvest, proposed with the West Mountain North Project.

Preliminary Issues: Preliminary concerns with the proposed action include: (1) impacts on phosphorus delivery to Cascade Reservoir; (2) economic returns of the project given projected implementation costs and revenues; (3) impacts on the visual quality of the area as seen from sensitive viewpoints, and (4) potential impacts on boreal owl.

Possible Alternative to the Proposed Action: Two alternatives to the proposed action have been discussed thus far: (1) a no action alternative, and, (2) an alternative that would increase the number of acres treated. Other alternatives may be developed as issues are identified and information received.

Decision to be Made: The Boise National Forest Supervisor will decide the following: Should roads be built and timber harvested within the West Mountain North Project Area at this time, and if so, where within the project area, and how many miles of road should be built; and which stands should be treated and what silvicultural systems should be use? What mitigation/watershed enhancement measures should be applied to the project? Should the decommissioning of portions of roads Nos. 186H1, 186C, 186A3, and other existing roads be implemented at this time? Should the LRMP be amended to allow proposed activities in MA 52A?

DATES: Written comments concerning the proposed project and analysis are encouraged and should be postmarked on or before December 6, 1999.

ADDRESSES: Comments should be addressed to Keith Dimmett, Cascade Ranger District, P.O. Box 696, Cascade, ID 83611. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Keith Dimmett at the address mentioned above or by calling 208–382–7433.

SCHEDULE: Draft Environmental Impact Statement (DEIS), February 2000. Final Environmental Impact Statement (FEIS), May 2000.

SUPPLEMENTARY INFORMATION: The NFMA planning for this project was initiated in the fall of 1997 with the Cascade Reservoir Ecosystem Analysis at the Watershed Scale. In addition to public announcements in The Idaho Statesman (May 14, 1998) and The Long Valley Advocate (May 13, 1998), a scoping package describing a similar proposed action was mailed to 50 individuals and/or groups. A predecisional environmental assessment (EA) was distributed for a 30-day comment period in November 1998. Five letters were received commenting on the EA. A Decision Notice and Finding of No Significant Impacts was distributed in February 1999. The Forest Supervisor withdrew that decision in April 1999 citing recent judicial interpretations of NEPA at the rationale for preparation of a DEIS.

A large portion of an unroaded area, roughly 5,300 acres in size, occurs within the southern portion of the West Mountain North Project Area. Although this area was not identified in the roadless inventory completed in preparation of the LRMP in 1990, it was identified in September 1999 during the ongoing LRMP revision effort. While the proposed action does not include any management activities within this unroaded area, other alternatives developed over the course of this analysis may include timber harvest activities within this area.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings relates to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803

F.2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of DEIS 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: David D. Rittenhouse, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: October 28, 1999.

W. Wayne Patton,

Range, Watershed, Air, Minerals, Wildlife, and Fisheries Officer.

[FR Doc. 99–28846 Filed 11–3–99; 8:45 am]

BILLING CODE 3410–12–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, November 17, 1999, at the U.S. Fish and Wildlife Office, located at 510 Desmond Drive SE, Suite 102, Lacy, Washington. The meeting will begin at 9:30 a.m. and continue until 4:45 p.m. The purpose of the meeting is to: (1) Discuss Successful Natural Resources Conservation Service programs; (2) Present Late Successional Reserve Analyses; (3) Review the Committee Vision Statement; and (4) Provide for a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (4) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: October 27, 1999.

Peggy Kain,

Acting Forest Supervisor.

[FR Doc. 99–28944 Filed 11–3–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent To Extend a Currently Approved Form NRCS–FNM–141, Application for Payment

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 320 (60 FR 44978, August 29,1995) this announces the Natural Resources Conservation Service's (NRCS) intention to request an extension for and update a currently approved Form NRCS–FNM–141, Application for Payment.

DATES: Comments on this notice must be received by January 3, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Edward Biggers, Director, Management Services Division, Natural Resources Conservation Service , U.S. Department of Agriculture, 5601 Sunnyside Avenue, Stop 5460, Beltsville, MD 20705–5460, (202) 720–2162.

SUPPLEMENTARY INFORMATION:

Title: Application for Payment.

OMB Number: 0578–0018.

Expiration Date of Approval: Indefinite.

Type of Request: Extend and update a currently approved payment form.

Abstract: The Natural Resources Conservation Service is responsible for the administration of various conservation programs through NRCS delivery systems and assists land users to voluntarily develop plans and apply conservation measures for these programs.

The application for payment for these programs is submitted on the Application for Payment form whenever a conservation program producer (primarily farmers and ranchers) complete a conservation practice or measure as prescribed by their contract or agreement with the U. S. Department of Agriculture, NRCS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farmers and Ranchers, individuals or households.

Estimated Number of Respondents: 30,723.

Estimated Total Annual Burden on Respondents: 7681.

Copies of this information collection and repeated instructions can be obtained without charge from Edward Biggers, Director, Management Services Division, at (202) 720–2162.

Comments: Comments are invited on: (a) ways to enhance the quality, utility, and clarity of the information to be collected; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information and (c) ways to minimize the burden of the collection of information on those who are to respond. Comments may be sent to: Edward Biggers, Director, Management Services Division, U.S. Department of Agriculture, 5601 Sunnyside Avenue, Stop 5460, Beltsville, MD 20705–5460.

Dated: October 22, 1999.

P. Dwight Holman,

Deputy Chief for Management.

[FR Doc. 99–28834 Filed 11–3–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue new conservation practice standards in Section IV of the FOTG. The new standards are Forage Harvest Management (Code 511) and

Prescribed Grazing (Code 528A). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received by December 6, 1999.

ADDRESSES: Address all requests and comments to Robert L. Eddleman, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: October 21, 1999.

Robert L. Eddleman,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 99–28833 Filed 11–3–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on certain cut-to-length carbon steel plate from Canada and oil country tubular goods from Mexico. The request for revocation with respect certain cut-to-length carbon steel plate from Canada and oil country tubular goods from Mexico was inadvertently omitted from the previous initiation notice. (64 FR 53318, October 1, 1999).

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2000.

	Period to be reviewed
Antidumping duty proceedings	
ARGENTINA: Silicon Metal, A–357–804	9/1/98–8/31/99
Electrometalurgica Andina S.A.I.C.	
CANADA: Certain Cut-to-Length Carbon Steel Plate, A–122–823	8/1/98–7/31/99
Gerdau MRM Steel [1]	
GERMANY:	
Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled	9/1/97–8/31/98
Koeing & Bauer-Albert AG	9/1/98–8/31/99
MAN Roland Druckmaschinen AG	9/1/98–8/31/99
GERMANY: Certain Cut-to-Length Carbon Steel Plate, A–428–816	*8/1/97–7/31/98*
Novosteel SA.	
*Inadvertently omitted from previous initiation notice.	
ITALY: Granular Polytetrafluoroethylene Resin*, A–475–703	8/1/98–7/31/99
Ausimont Spa	
*Inadvertently omitted from previous initiation notice.	
JAPAN: Large Newspaper Printing Presses and Components, Thereof, Whether Assembled or Unassembled	9/1/98–8/31/99
Mitsubishi Heavy Industries, Ltd.	
Tokyo Kikai Seisakusho, Ltd.	
KOREA: Stainless Steel Wire Rod	3/5/98–8/31/99
Changwon Specialty Steel Co., Ltd.	
Dongbang Special Steel Co., Ltd.	
Pohang Iron and Steel Co., Ltd.	
ROMANIA: Certain Cut-to-Length Carbon Steel Plate	8/1/98–7/31/99
Windmill International PTE, Ltd. of Singapore*	
*Inadvertently omitted from previous initiation notice.	
SPAIN: Stainless Steel Wire Rod	3/5/98–8/31/99
Roldan, S.A.	
SWEDEN: Stainless Steel Wire Rod	3/5/98–8/31/99
Fagersta Stainless AB	
THE PEOPLE'S REPUBLIC OF CHINA: Freshwater Crawfish Tail Meat*	9/1/98–8/31/99

	Period to be reviewed
Ningbo Nanlian Frozen Foods Co., Ltd.	
Qingdao Rirong Foodstuff Co., Ltd.	
Lianyungang Haiwang Aquatic Products Co., Ltd.	
Yancheng Haiteng Aquatic Products & Foods Co., Ltd.	
Huaiyin Foreign Trade Corp.	
Huaiyin	
Hua Yin	
Huaiyin Foreign Trade Corp. (5)	
Huaiyin Foreign Trade Corporation (No. 30), aka Huaiyin Foreign Trade Corp. (30)	
Yancheng Baolong Biochemical Products Co., Ltd.	
China Everbright Trading Company	
Binzhou Prefecture Foodstuffs Import & Export Corp.	
Yancheng Foreign Trade Corp.	
Jiangsu Cereals, Oils & Foodstuff Import & Export Corp.	
Yancheng Baolong Aquatic Foods Co., Ltd.	
Huaiyin Ningtai Fisheries Co., Ltd.	
Nanlong Delu Aquatic Food Co., Ltd.	
Zhenfeng Foodstuff Company	
Weishan Hongfa Lake Foodstuff Co., Ltd.	
Ever Concord	
Hua Yin Foreign Trading	
Huaiyin Foreign Trading	
Lianyungang Hailong Aquatic Product	
Qifaco	
Seatrade International	
Weishan Jinmuan Foodstuff	
Welly Shipping, aka Kenwa Shipping	
Yancheng Foreign Trading	
Jiangsu Baolong Group	
Asia-Europe	
Jiangsu Yangheng Aquatic Products Freezing Plant	
Yupeng Fishery	
*If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Countervailing Duty Proceedings	
GERMANY: Certain Cut-to-Length Carbon Steel Plate	*1/1/97–12/31/97
Novosteel SA	
*Inadvertently omitted from previous initiation notice.	
ITALY: Stainless Steel Wire Rod	1/1/98–12/31/98
Acciaierie Valbruna S.r.l.	
Acciaierie di Bolzano SpA	
ITALY: Certain Pasta	1/1/98–12/31/98
LaMolisana Industrie Alimentari S.p.A.*	
Rummo S.p.A. Molino e Pasificio*	
Pasificio Riscossa F.lli Mastromauro S.r.l*	
*Inadvertently omitted from initiation notice published on August 30, 1999 (64 FR 47167).	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 28, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary, Group II for AD/CVD Enforcement.

[FR Doc. 99–28916 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102699C]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fisheries; Vendor for Year 2000 Cage Tags

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Vendor for year 2000 cage tags.

SUMMARY: NMFS announces that surf clam and ocean quahog allocation owners will be required to purchase their year 2000 cage tags from a vendor, National Band and Tag Company, Newport, KY.

ADDRESSES: Send written inquiries to Tom Warren, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–3799.

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Management Specialist, (978) 281–9347.

SUPPLEMENTARY INFORMATION: Regulations for the Atlantic surf clam and ocean quahog fisheries at 50 CFR 648.75(b) require that prior to the beginning of each fishing year (January 1), the Regional Administrator, Northeast Region (Regional Administrator) either issue a supply of tags to each individual vessel owner qualifying for an allocation or specify in the **Federal Register** a vendor from whom the tags must be purchased. NMFS announces that allocation owners must purchase their year 2000 cage tags from the National Band and Tag Company of Newport, KY, as the authorized vendor of cage tags for the year 2000 Federal surf clam and ocean quahog fisheries. NMFS used the same vendor in 1999. This option is more economical and efficient than issuance of tags by the Regional Administrator. The Regional Administrator will provide detailed instructions for purchasing these cage tags in a letter to allocation owners within the next several weeks.

Dated: October 29, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28939 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 991014275–9275–01 I.D. 102799B]

RIN 0648–ZA73

Coastal Services Center Broad Area Announcement

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: The NOAA Coastal Services Center announces the availability of Federal assistance for fiscal year (FY) 2000 in the following areas: Landscape Characterization and Restoration, Integration and Development, Coastal Change and Analysis Program, Coastal Technology Services, and Special Projects. This announcement provides guidelines for these program areas and includes details for the technical program, evaluation criteria, and selection procedures of each. Selected recipients will either enter into a cooperative agreement with the Center or receive a grant depending upon the amount of the Center's involvement in the project–substantial involvement means a cooperative agreement, while independent work requires a grant.

DATES: For the specific dates of each program, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Send all proposals to NOAA Coastal Services Center, 2234 South Hobson Ave., Charleston, SC 29405–2413. Particularly, send proposals for

Landscape Characterization and Restoration to Pace Wilber;

Integration and Development to Cindy Fowler;

Coastal Change and Analysis Program to Dorsey Worthy;

Coastal Technology Services to Jeff Payne;and Special Project to Jan Kucklick.

FOR FURTHER INFORMATION CONTACT:

Violet Legette, (843)–740–1222, Administrative questions.

Pace Wilber, (843)–740–1235, Landscape Characterization and Restoration.

Cindy Fowler, (843)–740–1249, Integration and Development.

Dorsey Worthy, (843)–740–1234, Coastal Change and Analysis Program.

Jeff Payne, (843)–740–1207, Coastal Technology Services.

Jan Kucklick, (843)–740–1279, Special Projects.

For detail information about electronic e-mail address, see Electronic Access under **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Authority

Statutory authority for these programs is provided under 16 U.S.C. 1456c (Technical Assistance); 15 U.S.C. 1540 (Cooperative Agreements); 33 U.S.C. 1442 (research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems); 33 U.S.C. 883a (surveys and other activities); 33 U.S.C. 883b (dissemination of data); 33 U.S.C. 883C (geomagnetic data collection, correlation, and dissemination); 33 U.S.C. 883d (improvement of methods, instruments, and equipments; investigations and research); and 33 U.S.C. 883E (cooperative agreement for surveys and investigations).

Electronic Access

Submit comments or questions for specified programs by sending electronic mail to:

Violet.Legette @noaa.gov;
Pace.Wilber @noaa.gov;
Cindy.Fowler @noaa.gov
Dorsey.Worthy @noaa.gov
Jeff.Payne @noaa.gov
Janet.Kucklick @noaa.gov

All applicants are required to submit a NOAA grants application package and project proposal. The standard NOAA grants application package (which includes forms SF–424, SF–424A, SF–424B, SF–424C, SF–424D, CD–511, CD–512, and SF-LLL) can be obtained from the NOAA grants website at http://www.rdc.noaa.gov/grants/pdf/. Funding will be subject to the availability of Federal appropriations.

The recipients must comply with Executive Order 12906 regarding any and all geospatial data collected or produced under grants or cooperative agreements. This includes documenting all geospatial data in accordance with the Federal Geographic Data Committee Content Standard for digital geospatial data.

Catalog of Federal Domestic Assistance (CFDA)

The NOAA Coastal Services Center Program is listed in the Catalog of Federal Domestic Assistance under Number 11.473.

General Background

Guiding the conservation and management of coastal resources is a primary function of NOAA. NOAA accomplishes this goal through a variety of mechanisms, including collaborations with the coastal resource management programs of the nation's states and territories. The mission of the NOAA Coastal Services Center is to foster and sustain the environmental and economic well being of the coast by linking people, information, and technology. The goal of the Center is to build capabilities throughout the nation to address pressing issues of coastal health and change by promoting coastal resource conservation and efficient and sustainable commercial and residential development.

Landscape Characterization and Restoration - Information Resource for the Management Needs of a Northeastern United States Estuarine Watershed or Coastal Management Area.

Project Description

NOAA's Coastal Services Center seeks proposals from regional, state, or local government agencies; academic institutions; or nonprofit organizations for a 2-year cooperative agreement under which a cooperator and the Center will jointly develop a digital information resource for an estuarine watershed or management area within the northeastern United States. For this announcement, "northeastern United States" is defined as an area extending from North Carolina through Maine. Cooperators can choose any estuarine watershed or coastal management area within these boundaries. The information resource must focus on one or more resource management needs of the chosen watershed or area. The cooperator will choose the management needs that will be focused on, such as a regional habitat restoration plan, non-point source pollution management plan, long-term dredged material management plan, watershed management plan, or detailed environmental characterization. The information resource must integrate the ecological and socioeconomic information needed to address the management issues chosen and clearly help coastal managers make resource management, regulatory, or land-use planning decisions. Total anticipated funding is $270,000 over 2-year and is subject to the availability of Federal FY 2000 and FY 2001 appropriations. Only one award is anticipated from this announcement.

Background

This announcement is a call for proposals for work under the Center's Landscape Characterization and Restoration (LCR) Program. The goal of the program is to help Federal, state, and local coastal managers include ecosystem processes in their resource management, regulatory, and land-use planning decisions. The program and program partners will work toward this goal by examining interrelationships among ecological, land use, human demographic, and socioeconomic trends in coastal watersheds and by developing tools needed to integrate those relationships into management practices.

LCR projects directly address management issues that are both locally significant and of regional importance (e.g., habitat restoration, non-point source pollution reduction, growth management). Projects generally include development of habitat, wetland function, demographic, and land use maps; information syntheses; natural resource databases; environmental models; and customized geographic information system (GIS) or similar software to forecast results of management alternatives.

The program's principal products are environmental characterizations of watersheds that integrate the ecological and socioeconomic information needed to address management issues identified by cooperators. Final products are in a digital format and distributed via CD-ROM and the Internet and include a spatial database, a customized GIS interface, and a narrative that provides a detailed overview of the focal management issues, how the accompanying information was used to examine potential solutions, and how the overall product can be used in future examinations of coastal management issues. The program and its cooperators are currently working on, or have completed, characterizations of Otter Island (South Carolina), the ACE Basin (South Carolina), Kachemak Bay (Alaska), and Rookery Bay/Belle Meade (Florida). Overviews of the program and these projects are available through the Internet (http://www.csc.noaa.gov/lcr/).

Roles and Responsibilities

By working in a cooperative partnership, the unique skills, capabilities, and experiences of the Center and the cooperator will be combined and offer an opportunity for each organization to further its goals. In their proposals, potential cooperators shall propose the respective roles and responsibilities of the Center and the cooperator. In past projects, the Center provided general guidance on how to develop the information resource and the application of spatial analysis to address the identified management issues; led design of GIS and HTML architectures, user interfaces, and any needed software customization; contributed to the development of GIS-based models of the management issues and proposed solutions; and compiled the final products onto a CD-ROM.

At a minimum, the roles and responsibilities of the cooperators shall include: identifying the management issues that guide development of the information resource; identifying the information needed to address the issues; developing partnerships with other members of the coastal management community; developing and collecting the information (text, tables, graphics, charts, and maps) and tools (organizational structure and models) needed to address the management issues; developing all metadata and other information needed to assess the quality of the data and tools; and determining how the products should be organized to maximize utility to the cooperator and other members of the coastal management community.

Project Proposals

The Center must receive proposals by 5 p.m. (Eastern time) on December 21, 1999. Proposals postmarked December 21, 1999, but not received until after December 21, 1999, will NOT be accepted. In addition to providing the following requested information, the cooperator must submit a complete NOAA grants package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must include the sections listed here and total no more than 10 pages (double spaced, 12–point font, and exclusive of appendices):

Goal, Objective(s), and Geographic Area–Identify the specific geographic area that will be examined. Identify the specific management objective(s) of the project, including description of current management goals that are not being achieved, how products from this cooperative agreement will significantly address that deficiency, and the benefits that will result to the cooperators, partners, public, and coastal management community.

Background/Introduction – Provide sufficient background information for reviewers to independently assess the local significance and regional importance of the management objectives that will be addressed by the project. Summarize the status of any existing efforts by the cooperator and partners to address these objectives.

Audience–Identify potential users of the product, how those users will incorporate the product in their management of coastal resources, and identify any training that will be needed for users to make full use of the information resource.

Project Description/Methodology–Provide a general work plan that divides the project into discrete steps, identifies critical decision points, and discusses any obstacles to completing the project that may require special planning. One of the initial tasks of the cooperative agreement will be for the Center and the cooperator to prepare a detailed task plan that explains how the resources of both groups will be leveraged to produce the information resource. The work plan requested for this part of the proposal should demonstrate that the cooperator and partners have sufficient local knowledge of the management problems to lead a joint effort directed toward developing appropriate solutions.

Project Partners and Support–Identify project partners and describe their respective roles. Include a letter from partners acknowledging their participation in the project. Describe the resources the cooperators and partners have for conducting the project, including personnel qualifications (education, experience, and time available to work on the project), facilities, equipment, and, to the extent practicable, the information and tools already available. Describe how widely the project is supported within the coastal management community and offer evidence of that support.

Milestone Schedule–List target milestones, timelines, and describe how each milestone addresses project objectives.

Project Budget–Provide a detailed budget breakdown that follows the categories and formats in the NOAA grants package and a brief narrative justification of the budget.

Evaluation Criteria (with weights) and Selection Process

Review panels will be set up using two NOAA and at least two non-NOAA reviewers to assist in the evaluation of the proposals. All proposals received will be ranked according to score, and the selecting official (Center Director) will use those scores to aid in making the final decision. The selecting official may also consider program policy factors in the final decision to ensure that Center projects are balanced geographically and institutionally. Evaluation criteria are:

Significance (20 points) – How well the proposal demonstrates the local significance and regional importance of the issues(s) or management objective(s) that will guide development of the information resource. At a minimum, the proposal must identify management goals that currently are not being achieved, describe how products from this cooperative agreement will significantly address that deficiency, and state the benefits that will result to the public and coastal management community.

Technical Approach (30 points)–How well the proposal divides the project into discrete tasks that make effective use of the technical capabilities of the cooperator, partner(s), and Center. This factor also includes the technical merit of the process that the cooperator has outlined for developing the information resource.

Outcomes (20 points)–How well the proposing agency demonstrates that the project outcomes will significantly address the management issue(s) targeted by the project and that the collective resources of the proposing agency and partners will ensure projected outcomes are met.

Partnerships (20 points) – How well the proposal demonstrates that the project is broadly supported by the coastal management community, that a broad groups of coastal managers and constituents will contribute to the design and assembly of product(s); that a broad group of coastal managers will use the product(s); and that the knowledge and expertise of the cooperator, partner(s), and Center will be effectively leveraged.

Cost Efficiency (10 points)–How well the proposing agency demonstrates that the budget is commensurate with project needs and that the partnerships employed will improve the overall cost effectiveness of the project and value of the products. There is no requirement for cost sharing; however, up to 5 additional points (beyond the 10 allotted to this category) will be awarded for cost sharing.

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for grants and/or cooperative agreements:

Proposal Deadline (with completed grant package) December 21, 1999

Earliest Approximate Grant Start Date May 1, 2000

NOTE: All deadlines are for receipt by close of business [5 p.m. Eastern time] on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. E-mail or fax copies will not be accepted. One original and one copy of the proposal and grant paperwork is required.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for FY 2000 are authorized. Total funding available for this cooperative agreement with the LCR program is anticipated to be $270,000 over two years. One award is anticipated from this announcement. Publication of this notice does not obligate NOAA toward any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to these guidelines, however, proposals that include cost sharing will likely score highly under evaluation criteria #5 above.

Eligibility Criteria

Applications for cooperative agreements under this announcement may be submitted, in accordance with the procedures set forth in these specific guidelines, by any regional, state or local government agency; college or university; nonprofit organization; or cooperative research unit. Other Federal agencies or institutions are not eligible to receive assistance under this notice but may be project partners.

Integration and Development - Bathymetric Data Collection

Project Description

The NOAA Coastal Services Center seeks proposals from state, local or regional resource management agencies, port authorities, and academic institutions for projects that conduct new acquisition and supporting documentation of bathymetric data in the Southeastern Atlantic region. Private companies and agencies in partnership with the above mentioned collaborators are also invited to submit proposals. The intent of this program is to support high quality hydrographic digital data collection efforts for public resource management needs that can be used to supplement current NOAA NOS nautical chart data collection programs. It is expected that this funding will supplement agencies who are already considering hydrographic surveys for beach renourishment projects, sand and sediment transport studies, fisheries management, benthic habitat evaluations, dredging, dredge disposal siting projects, and other related projects. A major objective of this program is to rescue, document, and make available bathymetric data for marine applications. The geographic extent of desired data is from the area (on-shore) of tidal influence out to the

Exclusive Economic Zone in the four-state region of Florida, Georgia, South Carolina, and North Carolina. Maximum anticipated funding for FY 2000 is $200,000 and it is intended that this funding will be distributed amongst multiple projects. The award level is contingent on methodology, the level of detail, and the geographic scope of the project. It is also expected that proposal recipients will cost–share in the project.

Background

Under the NOAA, NOS strategic efforts to support safe navigation, hydrographic surveys are conducted to produce nautical charts. For safety reasons, these surveys are conducted using strict hydrographic survey procedures (see http://chartmaker.ncd.noaa.gov/ocs/text/prodserv.htm). In addition to its intended charting purpose, hydrographic survey data is very useful to the coastal and ocean resource management community in the production of bathymetry. Moreover, hydrographic survey requirements for resource management need not be as rigorous as navigation surveys that protect life and limb. Supporting this community is an additional mandate of NOS under its coastal stewardship strategic goal. Due to financial constraints, NOS has only been able to commit to new surveys in major commercial shipping areas. Near shore and estuarine areas not generally deemed a navigational hazard are currently not routinely surveyed. Many of these areas are of interest to the coastal resource managers for projects related to dredging, dredge disposal, habitat studies, sediment transport, and beach renourishment projects.

NOAA is interested in supplementing its current hydrographic survey data collection with data from non-NOAA sources to meet strategic goals. In addition, NOAA is interested in helping non-NOAA sources acquire data using standards and documentation that will increase the usability and longevity of the data. NOAA is committed to helping third-party data creators document and make these data available to the marine community using standards and protocols outlined in the Geographic Data Committee (FGDC). Specifically, the Center is interested in helping foster the development of high quality accurate digital bathymetric data for use in desktop GIS for coastal and ocean resource management.

Project Proposals

The Center must receive proposals by 5 PM (Eastern time) on December 21, 1999. Proposals postmarked December 21, 1999, but not received until after December 21, 1999, will NOT be accepted. In addition to providing the information requested below, the cooperator must submit a complete NOAA grants package (with signed originals). No E-mail or FAX copies will be accepted. All project proposals must include the following sections and total no more than 20 pages (double spaced, 12–point font, and exclusive of appendices):

Project Description/Methodology–This section should address the general work plan and deliverables. Methodology should address specific methods of data collection and documentation that as a minimum include the methods of sounding, methods of correcting for motion of the survey platform, methods of horizontal positioning, and methods of corrections for tide. In addition, proposal should include limits of survey area and density of line spacing and sounding interval. Proposal should include a section of chart that outlines the survey area and orientation to the depth contour. Database format must be adequately described and include a supplemental descriptor file or metadata that contains the information necessary for completing a FGDC-compliant metadata record for the survey.

Project Partners and Subcontractors–Proposal should identify project partners and describe their respective roles. Include a letter from partners and subcontractors acknowledging their participation and area of responsibility. All projects must have a state, local or regional coastal resource management agency as a primary participant.

Milestone Schedule–Proposal should list target milestones and their respective time lines.

Project Budget–Proposal should provide a detailed budget breakdown that follows the categories and formats in the NOAA grants package and a brief narrative that justifies each item.

Evaluation Criteria (With Weights) and Selection Process

Review panels will be set up using four NOAA and two non-NOAA experts in the field of hydrographic survey methodology and spatial data acquisition. All proposals received will be ranked according to score and the selecting official (Center Director) will use those scores to aid in making the final decision. The selecting official may also consider program policy factors in the final decision to ensure Center projects are balanced geographically and institutionally. Evaluation criteria are:

Technical Merit (65 points)–The proposal will be judged on the methodology used to collect the data. This includes the corrections for vessel motion (heave, roll and pitch), equipment used, and method of sounding and corrections for tide. It is expected that differential Global Positioning System (GPS) will be used as the method of horizontal positioning, but this should be specifically addressed. Though not required, any corrections for sound velocity (in shallow water) or settlement and squat could positively influence this weighting.

Data Density, Geographic Scope, and Orientation (10 points)–This weighting will be based on the level of detail of the survey. Project description should include a map or graphic that outlines the intended spatial extent of the survey, the density of the line spacing, or number of soundings and the orientation of the survey platform to the depth contour.

Data Delivery Mechanism and Documentation (10 points)–Project will be judged on the database schema and documentation of the delivered data. Points will be awarded or deleted for the inclusion or absence of a coherent metadata strategy.

Cost Sharing and Theme (15 points)–There is no requirement for cost sharing; however, additional points will be awarded to proposals based on the level of funding provided by the proposing agency(s). The purpose or theme of the survey will be part of the weighting criteria. As stated above, one of the objectives of the Center is to foster improved bathymetric data access for the coastal and ocean resource community. Projects deemed to fall within this scope will be given additional weight. Additional weight will be given for the project's demonstrated applicability to coastal or ocean resource management.

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for grants and/or cooperative agreements:

Proposal Deadline (with completed grant package) December 21, 1999

Earliest Approximate Grant Start Date May 1, 2000

NOTE: All deadlines are for receipt by close of business [5 p.m. Eastern time] on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. or fax copies will not be accepted. One original and one copy of the proposal and grant paperwork is required.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for FY 2000 are authorized. Total funding available for this grant or cooperative agreement with the Integration and Development program is anticipated to be no more than $200,000 and funding will be distributed over multiple projects. Publication of this notice does not obligate NOAA toward any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to these guidelines, however, proposals that include cost sharing will likely score highly under evaluation criteria #4 above.

Eligibility Criteria

Applications for grants under this program announcement may be submitted in accordance with the procedures set forth in these specific guidelines by any state, local or regional resource management agency, ports authority, non-profit agency, or academic institution. Private industry is encouraged to apply and must have an active state or local coastal resource management partner to qualify.

Coastal Change and Analysis Program

Project Description

The NOAA Coastal Services Center is seeking to expand its national effort to monitor change in coastal habitats. The Center will be soliciting proposals from regional, state, and local government agencies, academic institutions, and nonprofit organizations for two to three year cooperative agreements. Under these agreements, a cooperator and the Center's Coastal Change and Analysis Program (C-CAP) will jointly develop terrestrial land cover change data and benthic habitat. Combined funding for all proposals is anticipated at $100,000, with a maximum limit of $75,000 per proposal. A 20 percent cost share will be required.

Background

The NOAA Coastal Services Center's C-CAP is a nationwide effort to produce standardized and consistent terrestrial and benthic habitat maps and change data for coastal areas of the United States. C-CAP data are used for identifying and protecting essential fish habitat, to help determine the impacts of nearshore habitat change on living marine resources, and to provide a context for more informed coastal decision making. Consideration for funding will be limited to project proposals for Hawaii or Florida based on gaps in previous C-CAP habitat characterization efforts. These projects must be accomplished in close cooperation with state and local resource management agencies. This work must be based on the established NOAA C-CAP land cover and benthic characterization protocol: NOAA Coastal Change Analysis Program Guidance for Regional Implementation (Dobson, *et al.*, 1995, NOAA Technical Report - NMFS 123, United States Department of Commerce). The C-CAP protocol is available via the web at http://www.csc.noaa.gov/ccap/protocol/protocoltxt.html.

Roles and Responsibilities

These projects are intended to be cooperative in nature. The project proposals should demonstrate cooperative efforts among various participants such as , state, and local governments. Successful proposals will establish a consortium of key participants, and identify appropriate responsibilities for these project partners. The following items identify the minimum project participation expected by the Center and the project applicant. Additional roles and responsibilities should be identified by the applicant.

NOAA Coastal Services Center: C-CAP and the Center shall have primary responsibility for the following activities associated with the project:

- Provide all Landsat Thematic Mapper imagery or aerial photography needed for the project. The original, government-provided data are property of the Center and must be returned to the Center upon completion of the project.
- Provide technical guidance for image processing, field verification, and accuracy assessment to ensure all procedures and products meet the guidelines presented in Dobson *et al.*, 1995 (which is available on the C-CAP homepage of the Center web site or upon request from the Center library). This includes:
  - The provision of guidance and manpower in all field exercises deemed necessary by both parties; and
  - Site visits by Center personnel to the facilities of the cooperator(s) to provide technical assistance as necessary during data processing.
- Provide all necessary forms, information and assistance to document Geographic Data Committee (FGDC) compliant metadata for the change detection product.

Monitor progress and evaluate biannual progress reports.

Cooperator: The cooperator shall have primary responsibility for the following activities associated with the project:

- Organize and manage project planning and partnership development.
- Administer the cooperative agreement in accordance with the terms of the cooperative agreement award.
- Identify a technical coordinator that will take the lead for all technical aspects of the change detection and a management coordinator that will be responsible for relating the data to key management issues and ensuring that the data are integrated into pertinent coastal management programs.
- Perform a change detection analysis for the study area as per this announcement presented in Dobson *et al.*, 1995.
- Furnish for the change detection analysis all digital (i.e. NWI) or hard copy (i.e. aerial photos) data at their disposal that may be valuable as ancillary data.
- Provide complete FGDC-compliant metadata for the change detection products.
- Provide all georeferenced field data collected during image verification and accuracy assessment.
- Submit biannual progress reports.

Both Parties: Both C-CAP and the cooperator will provide final field accuracy assessment of the product, which may require either party to supply such equipment as laptop computers for field use, GPS units, four-wheel drive vehicles, etc.

Project Proposals

The Center must receive proposals by 5 p.m. (Eastern time) on December 21, 1999. Proposals postmarked December 21, 1999, but not received until after December 21, 1999, will NOT be accepted. In addition to providing the information requested below, the cooperator must submit a complete NOAA grants package (with signed originals). No or fax copies will be accepted. All project proposals must include the following sections and total no more than 8 pages (double spaced, 12–point font, and exclusive of appendices):

- Goals and Objectives–Identify broad project goals and quantifiable objectives.
- Background/Introduction– State the problem and summary of existing /state/ local efforts.
- Audience–Describe specifics of how the project will contribute to improving or resolving coastal management issues with the primary target audience, and explicitly identify the audience.

- Project Description/Methodology–Describe the specifics of the project (in 3 pages maximum), with a complete and explicit description of the project area (i.e. Thematic Mapper scene path, row; number and location of aerial photos, flightlines, etc.) and a demonstration of understanding and adherence to the C-CAP protocol.
- Project Partners–Identify project partners and their respective roles.

Milestones and Outcomes–List target milestones, timelines, and desired outcomes in terms of products or services.

- Project Budget–Provide a detailed budget breakdown by category and provide a brief narrative budget justification, including identification of 20% cost share.

Evaluation Criteria (with weights) and Selection Process

Review panels will be set up using two NOAA and at least two non-NOAA reviewers to assist in the evaluation of the proposals. All proposals received will be ranked according to score and the selecting official (Center Director) will use those scores to aid in making the final decision. The selecting official also may consider program policy factors in the final decision to ensure Center projects are balanced geographically and institutionally. It is not anticipated that funding will be sufficient to award grants in all state project areas. Applications that do not meet the required 20% cost share will not be considered. Evaluation criteria are:

Coastal management relevance (40 points).

- Does the project tie into ongoing , state or local management activities and/or programs? (25 points).
- Does the project address critical , state or local coastal management policies relating to benthic and coastal land cover and land cover change (i.e. non-point source runoff)? (15 points).

Strength of partnerships (25 points).

- Does the project have a clearly defined audience, and products have clearly defined users? (10 points).
- Will the project foster ongoing , state or local partnerships for use of land cover change to answer coastal management needs? (15 points).

Technical merit (35 points).

- Does the proposed project maximize the use of existing information and technical resources? (10 points).
- Is the approach scientifically sound and relevant at the local level? (10 points).
- Is the approach consistent with the C-CAP protocol? (15 points).

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for grants and/or cooperative agreements:

Proposal Deadline (with completed grant package) December 21, 1999

Earliest Approximate Grant Start Date May 1, 2000

NOTE: All deadlines are for receipt by close of business [5 p.m. Eastern time] on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. or fax copies will not be accepted. One original and one copy of the proposal and grant paperwork is required.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for FY 2000 are authorized. Total funding available for this cooperative agreement with C-CAP will be $100,000, with a maximum of $75,000 per proposal. Publication of this notice does not obligate NOAA toward any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

Cost sharing at 20% of the total project funding cost is required in response to these guidelines and should be provided by the applicant or third party contributions.

Eligibility Criteria

Applications for grants under this program announcement may be submitted, in accordance with the procedures set forth in these specific guidelines, by any state or local resource management agency, college or university, private industry, nonprofit organization, or cooperative research unit. Other agencies or institutions are not eligible to receive assistance under this notice.

Coastal Technical Services - Coastal Technology Demonstration and Verification

Project Description

NOAA's Coastal Services Center seeks proposals from state or local resource management agencies, academic institutions, nonprofit organizations, and private sector companies for projects in two areas:

Pilot projects under which a cooperator(s) and the Center will scope out or design and apply prototype decision making tools and information products for coastal resource management. Emphasis will be placed on projects that address coastal habitat management and coastal hazards mitigation. Projects must be based on "market research" of , state, and local coastal managers' needs and assessment of their capabilities to address these needs. Scoping (initial pilot) projects will seek to develop a conceptual framework to clearly define the applications of new decision support tools. Full-scale pilot projects will include the design of customized training products for advanced, distributed, learning platforms to accelerate introduction of project products to the target audience and to guide users through performing procedures and making decisions using new tools. Total available funding for all proposals is anticipated at $200,000 to $300,000 per year, subject to the availability of appropriations. The maximum available annual funding for individual pilot scoping projects is $25,000 while maximum funding for full-scale pilot projects is $150,000.

Technology verification and transfer projects under which a cooperator(s) and the Center will work together to demonstrate and validate innovative technologies that target the coastal resource management and regulatory communities' most urgent technological needs. The Center currently is focused on three areas of technology need: in-situ coastal and ocean monitoring, coastal habitat restoration and enhancement, and estuarine contaminant mitigation. Lab-proven technologies are moved to the field for rigorous trials that document their cost, performance, and market potential. Total available funding for all proposals may be in the range of $75,000 to $200,000 per year. The maximum available annual funding for individual projects is $200,000, although projects of special merit may be considered at annual levels above $200,000, subject to the availability of appropriations.

Background

The goal of the Coastal Technology Demonstration and Verification program is to make it possible for coastal managers and regulators at all levels to use the latest, best, and most efficient technology and information to make science-based decisions for managing coastal resources. The program works toward this goal by establishing coalitions of the Center and government agencies at all levels, academia, and the private and non-profit organizations to:

(1) develop and test prototype decision making tools and information products for coastal management; and (2) demonstrate and verify existing and

lab-proven coastal and marine technologies.

Pilot projects to develop and test new decision making tools and information products must directly address management issues that are both locally significant and of regional importance. Products must be market driven and compatible with end users' capabilities. Full-scale pilot projects would involve design and development of a prototype, field application and evaluation with end users, final product development, and training. Past experience has revealed that this iterative process is best accomplished by coalitions of technology developers, technology deliverers, and end users.

Technology verification and transfer programs are conducted in two phases. The initial phase will include an assessment of technologies and user needs. Once this phase is completed, an evaluation by the Center will be conducted to determine whether a verification program should be implemented. If the evaluation is favorable, project cooperators and end users will begin establishing priorities and defining procedures and protocols for implementing the demonstration and verification activities. Following each verification project, a comprehensive technology delivery system will be designed to employ report dissemination, training, and public outreach to meet technology users' and developers' information needs. The Center currently is working to establish programs on in situ environmental monitoring sensors and habitat restoration technologies.

Roles and Responsibilities

Projects are intended to be cooperative partnerships among the Center, project cooperators, and end-users of the project's products. By working in a cooperative partnership, the unique skills, capabilities, and experiences of the Center and the cooperator will be combined and offer an opportunity for each organization to further their goals. In their proposals, potential cooperators should propose the respective roles and responsibilities of the Center, the cooperator, and project partners. In general, the Center will provide basic guidance on the desired nature of the project product to address the identified management issues. At a minimum, the roles and responsibilities of the cooperators shall include:

- Identifying the management issues that guide development of the product.
- Identifying the information needed to address the issues.
- Developing partnerships with other end users, including members of the coastal management community.
- Developing and collecting the information and tools needed to address the management issues.
- Developing all other information needed to assess the quality and utility of the data and tools.
- Determining how the products should be organized to maximize utility to the cooperator and end users.

Project Proposals

The Center will accept proposals twice during the year (see "Selection Schedule" below). All proposals are due by 5 p.m. (Eastern time) on the date specified below. Proposals postmarked on the due date but not received until after the due date will NOT be accepted. In addition to providing the information requested below, the cooperator must submit a complete NOAA grants package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must include the following sections and total no more than 15 pages (double spaced, 12–point font, and exclusive of appendices):

Goal and Objective(s) – Identify the specific management objective(s) of the project, including description of current management goals that are not being achieved, how products from the project will significantly address that deficiency, and the benefits that will result to the coastal management community and other end users.

Background/Introduction – Provide sufficient background information for reviewers to independently assess the local significance and regional importance of the management objectives that will be addressed by the project. Summarize the status of any existing efforts to address these objectives.

Audience–Identify potential users of the product, how those users will incorporate the product into their management of coastal resources, and identify any training that will be needed for users to make full use of the products.

Project Description/Methodology–Provide a general work plan that divides the project into discrete steps, identifies critical decision points, and discusses any obstacles to completing the project that may require special planning. One of the initial tasks of the project will be for the Center and the cooperator to prepare a detailed task plan that explains how the resources of both groups will be leveraged to produce the information resource. The work plan requested for this part of the proposal should demonstrate that the cooperator and partners have sufficient local knowledge of the management problems to lead a joint effort directed towards developing appropriate solutions.

Project Partners and Support – Identify project partners and describe their respective roles. Include a letter from partners acknowledging their participation in the project. Describe the resources the cooperators and partners have for conducting the project, including personnel qualifications (education, experience, and time available to work on the project), facilities, equipment, and, to the extent practicable, the information and tools already available. Describe how widely the project is supported within the coastal management community and provide evidence of that support.

Milestone Schedule–List target milestones, timelines, and describe how each milestone addresses project objectives.

Project Budget–Provide a detailed budget breakdown that follows the categories and format in the NOAA grants package and a brief narrative justification of the budget.

Evaluation Criteria (with weights) and Selection Process

Review panels will be set up using two NOAA and at least two non-NOAA reviewers to assist in the evaluation of the proposals. All proposals received will be ranked according to score and the selecting official (Center Director) will use those scores to aid in making the final decision. The selecting official may also consider program policy factors in the final decision to ensure Center projects are balanced geographically and institutionally. Evaluation criteria are:

Significance (20 points) – How well the proposal demonstrates the local significance and regional importance of the issues(s) or management objective(s) that will guide development of the project products. At a minimum, the proposal must identify management goals that currently are not being achieved, describe how products from the project will significantly address that deficiency, and the benefits that will result to the public and coastal management community.

Technical Approach (30 points)–How well the proposal divides the project into discrete tasks that make effective use of the technical capabilities of the cooperator, partner(s), and Center. This factor also includes the technical merit of the process that the cooperator has outlined for developing the project's products.

Outcomes (20 points)–How well the cooperator demonstrates that the project outcomes significantly will address the management issue(s) targeted by the project and that the collective resources of the cooperator and partners will ensure projected outcomes are met.

Partnerships (20 points)–How well the proposal demonstrates that the project is broadly supported by the coastal management community, that a broad group of end users, including coastal managers and constituent groups, will contribute to design and assembly of product(s); that a broad group of coastal managers and other end users will use the product(s); and that the knowledge and expertise of the cooperator, partner(s) and Center will be effectively leveraged.

Cost Efficiency (10 points)–How well the proposing agency demonstrates that the budget is commensurate with project needs and that the partnerships employed will improve the overall cost effectiveness of the project and value of the products. There is no requirement for cost sharing; however, up to 5 additional points (beyond the 10 allotted to this category) will be awarded for cost sharing.

Selection Schedule

Proposals will be reviewed twice during the year. The following schedule lists the dates for the project selection and award process for cooperative agreements. An unsuccessful application for cycle 1 (December 1 due date) will have to be resubmitted for cycle 2 (June 1 due date):

Proposal Deadline (with completed grant package) December 1, 1999

Earliest Approximate Grant Start Date April 1, 2000

Proposal Deadline (with completed grant package) June 1, 2000

Earliest Approximate Grant Start Date September 1, 2000

NOTE: All deadlines are for receipt by close of business [5 p.m. Eastern time] on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. E-mail or FAX copies will not be accepted. One original and one copy of the proposal and grant paperwork is required.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for FY 2000 are appropriated. Funding available under this announcement for pilot projects to scope, develop and test prototype decision-making tools and information products will be between $25,000 and $150,000 per year. Funding for projects to establish technology demonstration and evaluation programs may range from $75,000 to $200,000 per year, although projects of special merit may be considered at annual levels above $200,000. Publication of this notice does not obligate NOAA toward any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to these guidelines. However, proposals that include cost sharing or other in-kind resources will likely score highly under evaluation criteria #5 above.

Eligibility Criteria

Applications for projects under this announcement may be submitted, in accordance with the procedures set forth in these specific guidelines, by any regional, state or local government agency; college or university; nonprofit organization; cooperative research unit; or private sector firm. Other agencies or institutions are not eligible to receive assistance under this notice but may be project partners.

Special Projects

Project Description

The NOAA Coastal Services Center is seeking proposals for special technical, management, or planning projects that relate to growth management in coastal areas or human use of coastal resources. Project proposals are due December 21, 1999, (with earliest start date of May 1, 2000). See "Selection Schedule" below. Anticipated funding in FY 2000 will be between $100,000 and $150,000. Four to six projects will be funded in the $20,000 to $25,000 range for one year with the potential for option years (depending on the availability of funds through the appropriation process). Projects above $25,000 will not be considered.

Background

The Center conducts a variety of projects that directly apply to the state and local coastal management community. The goal of Special Projects is to provide assistance to the local coastal management community for technical or management issues on specific topics relating directly to growth management in coastal areas or human use of coastal resources.

In FY 2000, the Center expects to award grants and cooperative agreements (for those projects with substantial Center involvement) to organizations across the United States with proven abilities to implement practical solutions at a state and local level. Proposed study topics must relate to growth management in coastal areas or to human use of coastal resources. All project proposals received that meet the above topic criteria will be reviewed for technical merit and management relevance.

Project Proposals

The Center must receive proposals by 5 PM (Eastern time) on December 21, 1999. Proposals postmarked December 21, 1999, but not received until after December 21, 1999, will NOT be accepted. In addition to providing the information requested below, the cooperator must submit a complete NOAA grants package (with signed originals). No or fax copies will be accepted. All project proposals must include the following sections and total no more than 10 pages (double spaced, 12–point font, and exclusive of appendices):

Goals and Objectives–Identify broad project goals and quantifiable objectives.

Background/Introduction – state the problem and summarize existing efforts at all levels.

Audience–Describe specifics of how the project will contribute to improving or resolving an issue with the primary target audience. The target audience must be explicitly stated.

Project Description/Methodology–Describe the specifics of the projects (3 pages maximum).

Project Partners – Identify project partners and their respective roles.

Milestones and Outcomes–List target milestones, timelines, and desired outcomes in terms of products and services.

Project Budget – Proposal should provide a detailed budget breakdown that follows the categories and formats in the NOAA grant package and a brief narrative that justifies each item.

Evaluation Criteria (with weights) and Selection Process

Review panels will be set up using two NOAA and at least two non-NOAA reviewers to assist in the evaluation of the proposals. All proposals received will be ranked according to score and the selecting official (Center Director) will use those scores to aid in making the final decision. The selecting official also may consider program policy factors in the final decision to ensure Center projects are balanced geographically and institutionally. Evaluation criteria are:

Management Relevance (30 points)

- Does the proposed project (directly or indirectly) address a critical national, regional, state, or local management need relating directly to growth management of coastal areas or human use of coastal resources?

- Are the project goals and objectives clear and concise?
- Are there direct ties to the state coastal management agency, National Estuarine Research Reserve, and/or National Marine Sanctuary?
- Does the proposed project have a clearly defined management audience and do the products have clearly defined users?
- Will the outreach/transfer mechanisms be effective (in transferring science tools and information to management)?

Technical Merit (25 points)

- Is the approach technically sound?
- Does the proposed project build on existing knowledge?
- Is the approach innovative?

Applicability and Effectiveness of Products and their Delivery (25 points)

- Will the proposed project produce useful (and easily used) products, services, or an understanding for the target audience and users?
- Is project implementation likely to be flexible and responsive to public and user input?
- Will the products be delivered in a timely and appropriate manner to appropriate recipients?
- Will the products have long-term (lasting) value and widespread applicability?
- Will the outreach/transfer mechanisms be effective (in transferring science tools and information to management)?
- Is an effective evaluation mechanism built into the project process?

Efficiency (15 points)

- Is the budget commensurate with the project needs?
- Are appropriate partnerships going to be employed to achieve the highest quality content and maximal efficiency?

Overall Qualifications (5 points)

- Are the proposers capable of conducting a project of the scope and scale proposed? (i.e., Are there adequate professional, facility, and administrative capabilities?)

Selection Schedule

Special projects will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for grants and/or cooperative agreements:

Proposal Deadline (with completed grant package) December 21, 1999

Earliest Approximate Grant Start Date May 1, 2000

NOTE: All deadlines are for receipt by close of business [5 p.m. Eastern time] on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. E-mail or FAX copies will not be accepted. One original and one copy of the proposal and grant paperwork is required.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for FY 2000 are authorized. Total funding available for this announcement will be between $100,000 and $150,000. Publication of this notice does not obligate NOAA toward any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to this program announcement and no additional weight will be given to proposals with cost sharing.

Eligibility Criteria

Applications for grants under this program announcement may be submitted, in accordance with the procedures set forth in these specific guidelines, by any state or local resource management agency, college or university, private industry, nonprofit organization, or cooperative research unit. Other agencies or institutions are not eligible to receive assistance under this notice.

General Information For All Programs

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under any of these programs must not exceed the current indirect cost rate negotiated and approved by the applicant's cognizant agency, prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. If a rate has not been established, one will be negotiated by the Department of Commerce (DOC) Office of Inspector General.

Policies and Procedures

Recipients and sub-recipients are subject to all laws and DOC policies, regulations, and procedures applicable to assistance awards.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity.

Past Performance

Unsatisfactory performance under prior awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs should an award not be made or funded at a level less than requested.

No Obligation for Future Funding

If the application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Delinquent Debts

No award of funds shall be made to an applicant who has an outstanding delinquent debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

Primary Applicant Certifications

All organizations or individuals preparing grant applications must submit a completed Form CD–511 "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and explanations are hereby provided:

- Non-Procurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

- Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart f, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

- Anti-Lobbying

Persons (as defined at 15 CFR 28, 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000.

- Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL form, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower-tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the aware document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Programs."

Buy American-Made Equipment or Products

Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866. Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act (APA) or any other law for this notice concerning grants, cooperative agreements, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (RFA).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This notice contains a collection-of-information requirements subject to the Paperwork Reduction Act. The collection-of-information has been approved by OMB, OMB Control Numbers 0348–0041, 0348–0042, 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Dated: October 29, 1999.

Captain Ted I. Lillestolen,

Deputy Assistant Administratorfor Ocean Services and Coastal Zone Management.

[FR Doc. 99–28787 Filed 10–29–99; 4:53 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102599A]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Groundfish Strategic Plan Development Committee (Committee) will hold six 2-day work sessions which are open to the public.

DATES: The six 2-day work sessions will be held over a 6-month period. See **SUPPLEMENTARY INFORMATION** for specific dates and times for the work sessions. All work sessions will be held from 10 a.m. to 5 p.m. on the first day, and 8 a.m. to 4 p.m. on the second day.

ADDRESSES: The six 2-day work sessions will be held at the Pacific States Marine Fisheries Commission, Large Conference Room, 45 SE 82nd Drive, Suite 100, Gladstone, Oregon; telephone (503) 650–5400.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of these work sessions is to prepare a West Coast groundfish strategic plan for Council review and approval. The six–2 day workshops will be held on the following dates:

1. Tuesday, November 16, 1999 and Wednesday, November 17, 1999.
2. Tuesday, December 14, 1999 and Wednesday, December 15, 1999.
3. Tuesday, January 18, 2000 and Wednesday, January 19, 2000.
4. Tuesday, February 15, 2000 and Wednesday, February 16, 2000.
5. Tuesday, April 18, 2000 and Wednesday, April 19, 2000.
6. Monday, May 22, 2000 and Tuesday, May 23, 2000.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These work sessions are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting dates.

Dated: October 29, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28800 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102999A]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Council's Recreational Fisheries Data Task Force (RFDTF) will hold a meeting.

DATES: The meeting will be held November 16, 1999, from 8:30 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: This will be the second meeting of the RFDTF which will discuss the following topics: review of recommendations from the first task force meetings and progress to date, U.S. Coast Guard safety requirements for small-scale commercial fishing vessels, support for recreational fishing in Hawaii, economic impact of recreational fishing in the Western Pacific Region, impacts of current and proposed fishery management plans on recreational fisheries in Hawaii, and other business as required.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: October 29, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28801 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990921259–9259–01]

National Weather Service (NWS) Modernization and Associated Restructuring

AGENCY: NWS, NOAA, Commerce.

ACTION: Deferral of public comment period and clarification regarding NWS proposed actions for the Erie, Pennsylvania, Weather Service Office (WSO).

SUMMARY: The NWS published in 64 FR 52491, Sept. 29, 1999, a notice and opportunity for public comment on proposed certifications for the consolidation, automation, and closure of WSO Erie, Pennsylvania, and WSO Fairbanks, Alaska. This notice defers the public comment period on proposed certifications of WSO Erie and provides updated and clarifying information regarding NWS proposed actions for WSO Erie.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300 extension 136.

SUPPLEMENTARY INFORMATION: The NWS published in 64 FR 52491, Sept. 29, 1999, a notice and opportunity for public comment on the proposed certifications for the consolidation, automation, and closure of WSO Erie, Pennsylvania, and WSO Fairbanks, Alaska. With respect to WSO Erie certifications, the notice informed the public that the NWS determined removal of the WSR–74C radar would cause a degradation of service for some lake-effect snow events in the Erie, Pennsylvania, service area. It further informed the public that to address this degradation, the NWS would continue operating the WSR–74C radar at Erie during the winter season until a new Federal Aviation Administration (FAA) radar is installed at the Erie airport and suitability of weather data from the FAA radar is validated by the NWS in consultation with users.

Since the publication of the September 29, 1999, FR notice, certain information in the notice has changed. In addition, the NWS believes its planned course of action for WSO Erie requires clarification. First, the NWS has been advised that installation of the new FAA radar at Erie will begin in May 2002, not 2001 as indicated in the September 29, 1999, FR notice. Second, regarding the NWS planned course of action, the NWS stresses it will not seek the Modernization Transition Committee's endorsement of the Erie consolidation, automation, and closure certifications nor will it seek the Secretary's final approval of these certifications until actions to address the identified degradation have been fully and successfully implemented and user groups have been appropriately consulted. Therefore, NWS believes seeking comments from the public at this time is premature since the NWS plan for use of data from the new FAA radar is several years from completion. Accordingly, NWS is deferring the public comment period on its proposed certifications for WSO Erie until actions to address the identified degradation have been fully and successfully implemented and user groups have been appropriately consulted. The NWS will provide advance notice in the FR of the public comment period at that time.

Dated: October 29, 1999.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99–28854 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071599E]

Magnuson-Stevens Act Provisions; Atlantic Tuna Fisheries; Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for EFPs; request for comments.

SUMMARY: NMFS announces the receipt of applications for EFPs. If issued, these EFPs would authorize the retention of Atlantic tunas (other than bluefin tuna) by vessels participating in the coastal driftnet fishery for Atlantic bonito. NMFS anticipates the receipt of several more EFP applications for this same purpose. If EFPs are issued for the coastal driftnet fishery, NMFS would collect information on target catch and bycatch and,assess the potential impacts of authorizing driftnet gear for certain Atlantic Highly Migratory Species (HMS) fisheries. While this information is being collected, issuance of EFPs will reduce regulatory discards of Atlantic tunas.

DATES: Written comments on NMFS' consideration to issue such EFPs must be received on or before December 6, 1999.

ADDRESSES: Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the EFP applications and the regulations governing issuance of EFPs are available upon request.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260; fax: 978–281–9340.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity, and regulations at 50 CFR 635.32 concerning specifically authorized activities.

The final rule to implement the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan (HMS FMP) prohibits the use of driftnets in the Atlantic tuna and swordfish fisheries (64 FR 29090, May 28, 1999). In responding to comments on the proposed rule, NMFS recognized that the prohibition on driftnets for Atlantic tunas would preclude participants in the mid-Atlantic coastal driftnet fishery from retaining their catch of skipjack tuna, and advised coastal driftnet vessel operators who wish to use driftnet gear when targeting species other than Atlantic tunas (*e.g.*, bait fish and Atlantic bonito) to apply to NMFS for an EFP to land incidentally caught Atlantic tunas (other than bluefin tuna). NMFS may issue EFPs to these individuals in 2000 in order to collect more information on catch and bycatch in this fishery and help determine NMFS' future course of action relative to the current prohibition on driftnet gear; issuance of EFPs would reduce regulatory discards while NMFS collects this information. NMFS estimates that the prohibition of driftnet gear in the Atlantic tuna fisheries affects approximately 20 vessel operators in the coastal gillnet fishery.

NMFS is seeking public comment on the potential impacts of issuing EFPs for the purpose of landing Atlantic tunas (other than bluefin tuna) incidentally caught in the coastal driftnet fishery. The two EFP requests received to date specifically request authorization to retain skipjack tuna. Based on 1997 landings information from the fishery conducted prior to the prohibition, NMFS estimates that up to 20 vessels may request an EFP for the retention of skipjack tuna and may retain up to a total of 32,000 lb. (14.5 mt) of skipjack tuna. In 1998, Atlantic-wide landings of 31,455 mt and U.S. landings of 84.3 mt were reported to ICCAT for 1997. It is probable that such incidental catch of skipjack cannot be practically avoided and would otherwise be discarded dead.

All EFPs issued during the 2000 season would expire December 31, 2000, and reports on catch and bycatch would be required of participants in the exempted fishery prior to any consideration of renewal. A final decision on issuance of EFPs will depend on the submission of such required information, NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 28, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–28936 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

U.S. Marine Corps

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps, DoD.

ACTION: Amend records systems.

SUMMARY: The U.S. Marine Corps proposes to amend three systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on December 6, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed actions are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: October 27, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

MMN00014

SYSTEM NAME:

Work Measurement Labor Distribution Cards *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 5013, Secretary of the Navy; and 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper and electronic files.'

RETRIEVABILITY:

Delete entry and replace with 'Records retrieved alphabetically by last name of the individual.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only by supervisory personnel. Access to electronic records is controlled by password or other user identification code.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual and individual's supervisor.'

* * * * *

MMN00014

SYSTEM NAME:

Work Measurement Labor Distribution Cards.

SYSTEM LOCATION:

All Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps employees, civilian, military and occasional summer hires funded by state and local programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Labor distribution cards which have been prepared by either the concerned individual or the supervisor to record the number of hours worked, the number of units produced by the employee, the function of the employee during that time, and the job number of the job. Also, the system contains summarizations of said card and computer input and output relative to said card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record of labor distribution on individuals assigned to work organizations for use in the management of work assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic files.

RETRIEVABILITY:

Records retrieved alphabetically by last name of the individual.

SAFEGUARDS:

Records are maintained in areas accessible only by supervisory personnel. Access to electronic records is controlled by password or other user identification code.

RETENTION AND DISPOSAL:

Record destroyed one year after the last week of subject's work.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of activity. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the system manager.

Requests should include name of employee, work center number, and work week for which data is requested. Personal visits and telephone calls should be made directly to the employee's work center supervisor.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in the Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and individual's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMN00016

SYSTEM NAME:

Accident and Injury Reporting System *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Paper and electronic records.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records maintained 5 years after incident, then destroyed.'

* * * * *

MMN00016

SYSTEM NAME:

Accident and Injury Reporting System.

SYSTEM LOCATION:

Organizational elements of the U.S. Marine Corps. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military or civilian employees who are involved in accidents which result in lost time, government or private property damage or destruction and personnel injury or death.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, Social Security Number, type of accidents and injuries. Reports include consolidated accident injury report, and report of motor vehicle accident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of all individuals involved in accidents for use in resolving the disposition of such accidents and establishing appropriate safety programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

Access provided on a need-to-know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Records maintained 5 years after incident, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, military police traffic accident investigation reports, accident injury reports, other records of the activity, witness, and other correspondents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMN00017

SYSTEM NAME:

Armory Access and Individual Weapons Assignments *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Paper and electronics records.'

RETRIEVABILITY:

Delete entry and replace with 'By name and social security number.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to authorized personnel. Access to electronic records is controlled by password or other user identification code.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records retained until weapons are returned, then destroyed.'

* * * * *

MMN00017

SYSTEM NAME:

Armory Access and Individual Weapons Assignments.

SYSTEM LOCATION:

Organizational elements of the U.S. Marine Corps. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel assigned government weapons. All personnel authorized access to individual armories.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records depict name of individual, type of weapon assigned, serial number of that weapon, accessories in the individual's possession, condition of the weapon and accessories, and individual's signature acknowledging receipt.

Name, rank, Social Security Number of personnel authorized access to individual armories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of weapons accountability, management and control of all U.S. Government weapons/accessories issued to personnel and to provide record of personnel authorized access to armory spaces.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronics records.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel. Access to electronic records is controlled by password or other user identification code.

RETENTION AND DISPOSAL:

Records retained until weapons are returned, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–28673 Filed 11–3–99; 8:45 am]

BILLING CODE 5001-10-F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amended systems of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 6, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C.. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 27, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AD640–10b NGB

SYSTEM NAME:

Military Personnel Records Jacket (NGB) *December 23,1997, 62 FR 67055).*

CHANGES:

SYSTEM IDENTIFIER

Change system identifier to 'A0600–8–104b'.

* * * * *

SYSTEM LOCATION:

Add to end of entry 'Addresses for each state headquarters may be obtained from the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB–ARP–S, 111 South George Mason Drive, Arlington, VA 22204–1382.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry 'AR 600–8–104, Military Personnel Information Management/ Records.'

* * * * *

A0500–8–104b

SYSTEM NAME:

Military Personnel Records Jacket (NGB).

SYSTEM LOCATION:

The custodian of the Military Personnel Record will either be the State Personnel Service Center (PSC) located in conjunction with the Office of the Adjutant General or each National Guard Armory in those non-PSC states: Guam, Puerto Rico, the Virgin Islands, and the District of Columbia. Addresses for each state headquarters may be obtained from the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB–ARP–S, 111 South George Mason Drive, Arlington, VA 22204–1382.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the Army National Guard not on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

The individual's service agreement, record of emergency data, certificates of release or discharge from active duty (DD Form 214) and other service computation documents, active duty orders, military occupational specialty orders, Servicemen's Group Life Insurance election, security questionnaire and clearance, transfer requests and orders, promotions, reductions, personnel qualification record (DD Form 2091), oath of extensions of enlistment, selective reserve incentive program agreements, notice of basic eligibility (NOBE) for GI Bill, and discharge documents and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; E.O. 9397 (SSN); and AR 600–8–104, Military Personnel Information Management/Records.

PURPOSE(S):

These records are created and maintained to manage the member's National Guard Service effectively; Historically document the member's military service; and Safeguard the rights of members and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Central Intelligence Agency; Department of Agriculture; Department of Commerce; Department of Health and Human Services; Department of Education; Department of Labor; Department of State; Department of the Treasury; Department of Transportation; Federal Aviation Agency; National Transportation Safety Board; American Battle Monuments Commission; Department of Veterans Affairs; Federal Communications Commission; U.S. Postal Service Selective Service System; Social Security Administration; state, county and city welfare organizations when information is required to consider applications for benefits; penal institutions when the individual is a patient or an inmate; state, county and city law enforcement authorities.

Note: Records of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, as amended, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket Routine Uses do not apply to these records.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records maintained in areas accessible only to authorized personnel having need therefor in the performance of official business. The Military Personnel Records Jacket is transferred from station to station in the personnel possession of the individual whose record it is, or by U.S. Postal Service.

RETENTION AND DISPOSAL:

Military personnel records are retained until updated or service of individual is terminated. Following separation, the transfer of the records is to the U.S. Army Reserve Personnel Command or to the National Personnel Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB–ARP–C, 111 South George Mason Drive, Arlington, VA 22204–1382.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned.

For separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Command, One Reserve Way, St. Louis, MO 63132–5200.

For discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service identification number current military status and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned.

For separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Command, One Reserve Way, St. Louis, MO 63132–5200.

For discharged or deceased personnel contact the National Personnel Records Center, 9700 page Avenue, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service identification number, current military status, and current address.

For personal visits, the requester should provide acceptable identification i.e., military identification care or other identification normally acceptable in the transaction of business.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determination are contained in Army Regulation 340–21: 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–28672 Filed 11–3–99 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The routine use being added to AAFES 0702.34, entitled Accounts Receivable Files, allows disclosure of information to employers for the purpose of collecting debts owed to the United States. The routine use reads as follows: 'To any employer (person or entity) that employs the services of others and that pays their wages or salaries, where the employee owes a delinquent nontax debt to the United States. The term employer includes, but is not limited to, State and local governments, but does not include any agency of the Federal Government.

DATES: This proposed action will be effective without further notice on December 6, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC–PDR–P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the privacy Act of 1974, (5 U.S.C. 552a) as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 19, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 27, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0702.34

SYSTEM NAME:

Accounts Receivable Files (August 20, 1997, 62 FR 44263).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army and 10 U.S.C. 8013, Secretary of the Air Force; Federal Claims Collection Act of 1966 (Pub. L. 89–508, as amended); Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 Pub. L. 104–134, section 31001); AR 60–20/AFR 147–14, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN); 31 CFR 285.11, Administrative Wage Garnishment; DoD 7000.14–4, DoD Financial Management Regulation.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To any employer (person or entity) that employs the services of others and that pays their wages or salaries, where the employee owes a delinquent nontax debt to the United States. The term employer includes, but is not limited to, State and local governments, but does not include any agency of the Federal Government'.

* * * * *

AAFES 0702.34

SYSTEM NAME:

Accounts Receivable Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236-1598;

Army and Air Force Exchange Service-Europe, Europe Accounting Support Office, CMR 429, APO AE 09054;

Army and Air Force Exchange Service-Pacific Rim, Accounting Support Center, Unit 35163, APO AP 96378-5163; and

Post and base exchanges within the Army and Air Force Exchange Service (AAFES) system. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army and Air Force Exchange Service customers (military, retirees, civilian, and civilian dependents).

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files relating to debts owed by individuals, including dishonored checks, deferred payment plans, home layaway, salary/travel advances, pecuniary liability claims and credit cards. These files include all correspondence to the debtor/his or her commander, notices from banks concerning indebtedness, originals or copies of returned checks, envelopes showing attempts to contact the debtor, payment documentation, pay adjustment authorizations, deferred payment plan applications, charges and statements or accounts, and home layaway cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and 10 U.S.C. 8013, Secretary of the Air Force; Federal Claims Collection Act of 1966 (Pub. L. 89-508, as amended); Debt Collection Act of 1982 (Pub. L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001); AR 60-20/AFR 147-14, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN); 31 CFR 285.11, Administrative Wage Garnishment; DoD 700.14-R, DoD Financial Management Regulation.

PURPOSES(S):

To process, monitor, and post audit accounts receivable, to administer the Federal Claims Collection Act, and to answer inquiries pertaining thereto.

To collect indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of Justice/U.S. Attorneys for legal action and/or final disposition of the debt claim.

To the Internal Revenue Service (IRS) to obtain locator status for delinquent accounts receivables (controls exist to preclude redisclosure of solicited IRS address data; and/or to report write-off amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age).

To private collection agencies for collection action when the internal collection efforts have been exhausted.

To the Department of the Treasury, Financial Management Service, for the purpose of collecting delinquent debts owed to the U.S. Government via administrative offset.

To any employer (person or entity) that employs the services of others and that pays their wages or salaries, where the employee owes a delinquent nontax debt to the United States. The term employer includes, but is not limited to, State and local governments, but does not include any agency of the Federal Government.

The 'Blanket Routine Uses' that appear at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Retrieved by customer's surname or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only by authorized personnel within AAFES-FA-O/R.

RETENTION AND DISPOSAL:

Records are retained in current files until close of fiscal year in which receivable is cleared. At year end, files are stored for 10 years and subsequently destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236-1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Chief, Accounts Receivable Division, Comptroller Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236-1598.

Individuals should provide full name, Social Security Number, or other acceptable identifying information that will facilitate locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Chief, Accounts Receivable Division, Comptroller Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236-1598.

Individuals should provide full name, Social Security Number, or other acceptable identifying information that will facilitate locating the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the customer and from correspondence between AAFES and Vendors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–28675 Filed 11–3–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on December 6, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 20, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 27, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(September 21, 1999, 64 FR 51104).*

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In paragraph 5b, replace 'military members' with 'members of the Uniformed Services.'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972.

All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub.L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606 – Selected Reserve and Title 38 U.S.C., Chapter 30 – Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does

permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub.L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

b. To the Bureau of Supplemental Security Income to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired members of the Uniformed Services or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub.L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub.L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub.L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 3: Data obtained from such organizations and used by DoD does not contain any information which identifies the individual about whom the data pertains.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 4: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DLA's 'Blanket Routine Uses' *do not* apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–28674 Filed 11–3–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add systems of records.

SUMMARY: The Department of the Navy proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on December 6, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on October 20, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: October 27, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N06150–4

SYSTEM NAME:

DoD Birth Defects Registry.

SYSTEM LOCATION:

Naval Health Research Center, Emerging Illness Division, PO Box 85122, San Diego, CA 92186–5122.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD beneficiary infants born in both military and civilian medical facilities beginning January 1, 1999, and their parents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic data and health data related to the birth defect.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2358, Research and Development Projects; E.O. 9397 (SSN); and OASD/HA Policy for National Surveillance for Birth Defects Among Department of Defense (DoD) Health care Beneficiaries Clinical Policy 99–006 dated November 17, 1998.

PURPOSE(S):

To determine those birth defects that are most common within this population; to provide information regarding increases, if any, in the incidence of specific malformations; to compare rates stratified by beneficiary status (military or dependent) and among active-duty personnel, by occupation; to identify geographical or military service-related areas of reproductive concern for cluster analysis; to identify any correlation of rates of defects with changing trends in cultural, social, and environmental factors; and to provide a data repository that future investigators and policy makers might use to study militarily important birth defects hypotheses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 522a(b)(3) as follows:

To the Social Security Administration (SSA) for considering individual claims for benefits for which SSA is responsible.

To the Department of Veterans Affairs (DVA) for considering individual claims for benefits for which the DVA is responsible, and for use in scientific, medical and other analysis regarding reproductive outcomes research associated with military service.

To the Department of Health and Human Services, Centers for Disease Control and Prevention and state birth defect registries for use in scientific, medical and other analysis regarding reproductive outcomes research associated with military service.

The "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases; electronic records are stored on magnetic media.

RETRIEVABILITY:

Records are retrieved by military sponsor's name and Social Security Number.

SAFEGUARDS:

Access to areas where records are maintained is limited to authorized personnel. Areas are protected by access control devices during working hours and intrusion alarm devices during non-duty hours. Access to data is provided on need-to-know basis only. Access to data is controlled by password or other user code.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent). The files will be maintained at the Naval Health Research Center, Emerging Illness Division, PO Box 85122, San Diego CA 92186–5122. Any paper copies which are generated are shredded following data entry/analysis; electronic copies will be maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commanding Officer, Naval Health Research Center, Box 85122, San Diego, CA 92186–5122.

Record Holder: Senior Investigator, DoD birth Defects Registry, Naval Health Research Center, Emerging Illness Division, PO Box 85122, San Diego, CA 92186–5122.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Senior Investigator, DoD Birth Defects Registry, Naval Health Research Center, Emerging Illness Division, PO Box 85122, San Diego, CA 92186–5122.

The request should contain name and Social Security Number of military sponsor to effect a search and must be signed by the individual requesting the information.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Senior Investigator, DoD Birth Defects Registry, Naval Health Research Center, Emerging Illness Division, PO Box 85122, San Diego, CA 92186–5122.

The request contain name and Social Security Number of military sponsor to effect a search and must be signed by the individual requesting the information.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Composite Health Care System (CHCS); Corporate Executive Information Systems (CEIS); Defense Manpower Data Center (DMDC); Defense Enrollment Eligibility Reporting System (DEERS); Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); and medical records at Naval Medical Center, San Diego.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–28676 Filed 11–3–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 18–20, 1999.

TIME: November 18—Subject Area Committee #1, 3:30–5:30 p.m., (open); Design and Methodology Committee, 3:30–5:30 p.m., (open); and Executive Committee, 5:30–6:15 p.m., (open);

6:15–7:00 p.m. (closed). November 19—Full Board, 8:30–10:00 a.m., (open); Joint Meeting of Achievement Levels and Reporting and Dissemination Committees, 10:00–10:30 a.m., (open); Joint Meeting Achievement Levels Committee and Subject Area Committees 1 and 2, 11:00–11:30 a.m; Subject Area Committees #2, 11:00–11:30 a.m., (open); 11:30 a.m.–12 noon, (closed); Achievement Levels Committee, 11:30 a.m.–12:00 noon, (open); Reporting and Dissemination Committee, 10:30 a.m.–12:00 noon, (open); Full Board, 12:00 noon–4:30 p.m., (open). November 20—Full Board, 8:30 a.m. until adjournment, approximately 11:30 a.m., (open).

LOCATION: Madison Hotel, 15th and M Streets, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (P.L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Education Progress, (NAEP). The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests, (VNT) pursuant to contact number RJ9753001.

On Thursday, November 18, there will be meetings of three committees of the Governing Board. Subject Area Committees #1 will meet from 3:30–5:30 p.m. to discuss the NAEP Foreign Language framework development project; the NAEP writing online study; and the National Academy Year 2 Evaluation of the Voluntary Nation test in reading.

The Design and Methodology Committee will meet from 3:30–5:30 p.m. to review the technical issues and the inclusion and accommodations chapters of the NRC Report: Evaluation of the VNT, Year 2. The Committee will hear the proposed field test design for the VNT and take action on the proposed plans for VNT in FY 2000. For the National Assessment of Educational Project, the Committee will take action on two draft policies: NAEP short-form, and NAEP testing window. Also, the Committee will hear a progress report on the NAS evaluation of NAEP.

The Executive Committee will meet from 5:30 to 6:15 p.m. in open session. In the open session the Executive Committee will review the final appropriations bill; consider plans for the Voluntary National Tests; develop new initiatives for NAGB; hear an update on NAGB redesign issues. Then the Executive Committee will meet in closed session from 6:15 to 7:00 p.m. The Committee will discuss the development of cost estimates for NAEP and future contract initiatives. This portion of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

On November 19, the full Board will convene in open session beginning at 8:30 a.m. The agenda for this session of the full Board meeting includes approval of the agenda. Also, the morning agenda will include a report from the Executive Director, and an update of the NAEP project. This session will conclude with the administration of the oath of office to new members and remarks by the Secretary of Education.

Subject Area Committee #2 will meet in open session from 10:00–11:00 a.m. to discuss the National Academy Year 2 Evaluation of the Voluntary National Test in Mathematics.

From 11:00–11:30 a.m., Subject Area Committees 1 and 2, and the Achievement Levels Committee will meet in joint session to hear a presentation on the use of technology in the development, delivery, and analysis of NAEP assessments of the future.

Subject Area Committee #2 will meet in closed session from 11:30 a.m.–12:00 noon to review a draft RFP for the NAEP math online study. This meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in an open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title of 5 U.S.C.

There will be open meetings of the Achievement Levels and Reporting and Dissemination Committees. From 10:00–10:30 a.m., the Achievement Levels and the Reporting and Dissemination Committees will meet in joint to receive a briefing on a report to Congress concerning the public perception of achievement levels.

From 11:00 a.m.–12:00 noon, the Achievement Levels Committee will review the preliminary findings from the VNT Achievement Levels study. The Reporting and Dissemination Committee will hear an update on "market-basket" reporting of NAEP results; review categories of race/ethnicity reporting; review the work plan on score reporting for proposed VNT; and will hear an update on district-level reporting.

The full Board will reconvene 12:00 noon to 4:30 p.m. The agenda includes a briefing on the NAEP 1998 Civics Report Card; an update and discussion on NAEP, NAGB, and VNT legislation; an update on a report to Congress on Achievement Levels, and a report on ALLSTATES 2000. The Board recess is scheduled for 4:30 p.m.

On Saturday, November 20 the full Board will meet in open session from 8:30 a.m. until adjournment, approximately 11:30 a.m. The agenda for this session is an update on the NAEP Foreign Language Framework and the presentation of reports from the various Board committee meetings.

A summary of activities of the closed and partially close sessions and other related matters which are informative to the public and consistent with the policy of the section 5 U.S.C. 552b(c), will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, D.C. from 8:30 a.m. to 5:00 p.m.

Dated: November 1, 1999.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–28940 Filed 11–3–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Web-Based Education Commission; Meeting

AGENCY: Office of Postsecondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the first meeting of the Web-Based Education Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend this meeting.

DATES: The meetings will be held on November 16, from 3:00–5:00 p.m. and on November 17, 1999 from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meetings will be held at 366 Dirksen Senate Office Building, Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Dr. Jay Noell, Designated Federal Official, Web-Based Education Commission, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 4020, Washington, DC 20202. Telephone: (202) 708–5620. Fax: (202) 260–5872. The e-mail address for M. Noell is: jay_noell@ed.gov.

SUPPLEMENTARY INFORMATION: The Web-Based Education Commission is authorized by Title VIII, Part J of the Higher Education Amendments of 1998. This commission will conduct a thorough study to assess the educational software available in retail markets for secondary and postsecondary students who choose to use such software. The commission will issue a final report to the President and the Congress, not later than six months after this first meeting on November 9, 1999. The final report will contain a detailed statement of the commission's findings and conclusions, as well as recommendations. Recommendations will address legislative and administrative actions the commission considers appropriate, and what it regards as the appropriate federal role in determining the quality of educational software products. At this initial meeting of the Web-Based Education Commission, commissioners will elect a chairperson and establish an agenda. This meeting is open to the public.

Due to scheduling problems associated with unusual circumstances, this notice is not published for at least 15 calendar days prior to the first meeting, as allowed by 41 CFR 101–6.1015(b)(2).

Program Authority: Title VIII, Part J, Higher Education Amendments of 1998.

Dated: October 29, 1999.

Claudio Prieto,

Acting Assistant Secretary Office of Postsecondary Education.

[FR Doc. 99–28840 Filed 11–3–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council; Notice of Charter Renewal

AGENCY: Department of Energy.

ACTION: Notice of charter renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463) and in accordance with title 41 of the Code of Federal Regulations, sections 101-6.1029 (c) 101–6.1007, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed for a two-year period ending November 1, 2001. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on a continuing basis, regarding general policy matters relating to coal issues.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has diverse members who represent interests outside the coal industry, including environmental interests, labor, research, and academia. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel M. Samuel at 202/586–3279.

Issued at Washington, DC on: November 1, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–28933 Filed 11–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy, National Petroleum Council; Notice of Charter Renewal

AGENCY: Department of Energy.

ACTION: Notice of charter renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463) and in accordance with title 41 of the Code of Federal Regulations, sections 101-6.1029 (c) and 101–6.1007, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period ending November 1, 2001. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the petroleum industry, and from large and small companies. The Council also has diverse members who represent interest outside the petroleum industry, including representatives from environmental, labor, research, academia, and State utility regulatory commissions. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Committee Act and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel M. Samuel at (202) 586–3279.

Issued at Washington, DC on November 1, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–28934 Filed 11–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2843–009]

AES Redondo Beach, LLC; Notice of Filing

October 29, 1999.

Take notice that on October 19, 1999, and on October 20, 1999, the California Independent System Operator

Corporation (ISO), tendered for filing with the Federal Energy Regulatory Commission the "Report on Redesign of California Real-Time Energy and Ancillary Services Markets" prepared by Frank Wolak, Chairman of the ISO's Market Surveillance Committee, in compliance with the Commission's October 28, 1998 Order and May 26, 1999 Order in the above-captioned proceedings. The ISO has served the report upon each person on the official service list in the above-captioned proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 9, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28870 Filed 11–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP87–203–007]

CNG Transmission Corporation; Notice of Availability of the Environmental Assessment for the Proposed CNG Transmission Corporation Tioga Expansion Project

October 29, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on both the natural gas storage field and pipeline facilities proposed by CNG Transmission Corporation (CNG) in the above-referenced docket.

The purpose of the proposed facilities would be to maintain CNG's current certificated deliverability of the Tioga Storage Pool in Tioga County, Pennsylvania. In addition, CNG requests authorization to expand the boundaries of the Tioga Storage Pool to reflect the current area used for gas storage operations. CNG also seeks authorization for a 2,000 foot protective boundary around the active limits of the storage pool.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Specifically, the EA assesses the potential environmental effects of the construction and operation of CNG's proposed modifications to the Tioga Storage Pool and related pipeline facilities including:

- The operation of four storage wells (well Nos. TW–209, TW–707, TW–708, and TW–800) which were previously drilled as observation wells and converted to storage wells in 1989 (well No. TW–209), March 20, 1995 (well No. TW–707), and December 31, 1996 (well Nos. TW–708 and TW–800) and the interconnecting 50 feet, 8.625-inch-diameter pipeline; 169 feet of 6.625-inch-diameter pipeline, 1,680 feet of 6.625-inch-diameter pipeline, and 1,851 feet of 4.5-inch-diameter pipeline, respectively;
- Conversion of observation well Nos. TW–605 and TW–403 to storage wells; and
- Construction of 536 feet of 6-inch-diameter (LN–2465–S) and 1,117 feet of 4-inch-diameter pipeline (LN–2464–S) to connect well Nos. TW–605 and TW–403 to existing gas storage pipeline facilities.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA has been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send *two* copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label *one* of those copies for the attention of the Environmental Review and Compliance Branch II, PR–11.2;
- Reference Docket No. CP87–203–007; and
- Mail your comments so that they will be received in Washington, DC on or before November 29, 1999.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file later interventions must show good cause, as required by sections 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for later intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of Extenal Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.is) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, and CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28824 Filed 11–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–002]

East Tennessee Natural Gas Company; Notice of Negotiated Rate Filing

October 29, 1999.

Take notice that on October 25, 1999, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing an original and five (5) copies of the Firm Transportation Service Agreements and all related documents under Rate Schedules FT–A and FT–GS, and Liquefied Natural Gas Storage (LNGS) Agreements (the Firm Service Agreements) listed in and attached as Appendix A to the filing. East Tennessee is also submitting for approval an original and five (5) copies of the Firm Transportation Rate Adjustment Letter Agreements and Firm Storage Rate Adjustment Letter Agreements (collectively, the Letter Agreements) listed in and attached as Appendix B to the filing. East Tennessee states that the Letter Agreements detail fifty-two negotiated rate arrangements between East Tennessee and the customers identified in Appendix A (the Firm Customers) for transportation and storage service, as applicable, under the Firm Service Agreements (referred to collectively as the Negotiated Rate Arrangements).

East Tennessee requests that the Commission approve the Negotiated Rate Arrangements to be effective on November 1, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 999 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28826 Filed 11–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–33–000]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

October 29, 1999.

Take notice that on October 25, 1999, Michigan Gas Storage Company (MGSCo) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the tariff sheets attached as Appendix A to the filing, to become effective December 1, 1999.

The revised cover sheet and Second Revised Tariff Sheet No. 56 reflect the naming of a new President of MGSCo. Second Revised Tariff Sheet No. 2 (Preliminary Statement) reflects updated information about MGSCo's corporate parent. All of the rest of the revised sheets are from Forms of Service Agreement and are being revised to accommodate dates later than December 31, 1999. None of the changes affect rates or services.

MGSCo states that a copy of this filing is available for public inspection during regular business hours at MGSCo's offices at 212 W. Michigan Avenue, Jackson, MI 49201. In addition, copies of this filing are being served on all customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28828 Filed 11–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commision

[Docket No. RP00–32–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 29, 1999.

Take notice that on October 25, 1999, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheet no. 166 proposed to be effective September 1, 1999.

The purposed of this filing is to change the Natural Gas Intelligence Weekly Gas Price Index to reflect the "Louisiana-Regional Avg." as the previous index price of "South Louisiana Region, Interstate Avg. (On)" has been discounted effective September 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28829 Filed 11–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of proposed Changes in FERC Gas Tariff

October 29, 1999.

Take notice that on October 21, 1999 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) Twenty Third Revised Sheet No. 50 to its FERC Gas Tariff, Third Revised Volume No. 1. The attached tariff sheet is proposed to be effective November 1, 1999.

Transco states that the purpose of the instant filing is to track fuel percentage changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT–NT.

Included in Appendix B attached to the filing are the explanations of the fuel percentage changes and details regarding the computation of the revised Rate Schedule FT–NT fuel percentages.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Pubic Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28827 Filed 11–3–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Third Party Contractors Qualified To Prepare Environmental Impact Statements Under the Provisions of Section 2403(a) of the Energy Policy Act of 1992

October 29, 1999.

On April 9, 1999, the Federal Energy Regulatory Commission (Commission) solicited in the Commerce Business Daily, qualification statements from contractors seeking status to prepare environmental impact statements under the third party contracting provisions of section 2403(a). Qualified contractors will be available for selection by potential licensees with oversight by the Commission to prepare third party environmental impact statements.

A technical panel of 7 Commission employees independently evaluated the statements of qualifications submitted. The panel has determined that 28 contractors meet the qualifications; their names are listed below.

1. Burns and McDonnell Engineering Co., Inc.
2. Tams Consultants, Inc.
3. EDAW Inc.
4. Parametrix, Inc.
5. Parsons Brinckerhoff Quade & Douglas, Inc.
6. Greystone
7. EA Engineering, Science and Technology, Inc.
8. Environmental Sciences Associates
9. Normandeau Associates, Inc.
10. Dames and Moore
11. Louis Berger and Associates, Inc.
12. Stone and Webster
13. Kleinschmidt Associates
14. Environmental Resources Management (ERM)
15. ICF Kaiser Consulting Group, Inc.
16. Maxim Technologies, Inc.
17. Gomez and Sullivan Engineers, Inc.
18. Bechtel National Inc.
19. KEA Environmental, Inc.
20. Fish and Wildlife Associates, Inc.
21. Harza Engineering Company
22. Jones and Stokes Associates, Inc.
23. Versar, Inc.
24. HDR Engineering, Inc.
25. Mead and Hunt, Inc.
26. Entrix, Inc.
27. CH2M Hill, Inc.
28. Acres International Corp.

Subsequent updating of this source list will be done on an as needed basis depending on: (1) Additional contractors wishing to be added to the list; (2) listed contractors wishing to be removed from the list; and (3) contractor determined to be no longer qualified by the Commission to remain on the list. The list of qualified contractors and information on how to apply for qualification will be available on the web at *http:www.ferc.fed.us.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28823 Filed 11–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of License Application Amendment for Applicant Name Change

October 29, 1999.

Take notice that the following hydroelectric application amendment has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Notice of License Application Amendment.

b. *Project No.:* 4738–002.

c. *Date Filed:* Ocober 13, 1999.

d. *Applicant:* McGrew, McMaster, Koch, and the city of Tacoma, Washington—previous applicant; McGrew & Associates (DBA Renewables, Inc.)—new applicant.

e. *Name of Project:* Glacier Creek Hydroelectric Project.

f. *Location:* Proposed to be located on Glacier Creek, a tributary of the North Fork Nooksack River in Whatcom County, Washington. The project would occupy federal lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Thomas R. Childs, McGrew & Associates (DBA Renewables, Inc.), P.O. Box 1691, Bellingham, WA, *renewables@worldnet.att.net* (360) 734–0923.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us,* (202) 219–2778.

j. *Locations of the application:* A copy of the application is available for insepection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28825 Filed 11–3–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100151; FRL–6386–3]

Dynamac Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Dynamac Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Dynamac Corporation has been awarded this contract to perform work for OPP, and access to this information will enable Dynamac Corporation to fulfill the obligations of the contract.

DATES: Dynamac Corporation will be given access to this information on or before November 9, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

The Agency has established an official record for this action under docket control number OPP–100151. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Contractor Requirements

Under contract number 68–W9–9053, the contractor will perform the following: (1) Support EPA's Health Effects Division, Office of Pesticides Programs, in the registration and reregistration of pesticides under the mandates of FIFRA, FFDCA, and the Food Quality Protection Act of 1996; (2) support EPA cooperative efforts with the Food and Drug Administration and the United States Department of Agriculture in monitoring pesticides; and (3) support EPA cooperative efforts with the Codex Alimentarius Commission of the Joint Food and Agriculture Organization/World Health Organization, North American Free Trade Agreement and Canadian and United States Trade Agreement members with review of product and chemistry data on pesticides.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Dynamac Corporation, prohibits use of the information for any purpose not specified in this contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Dynamac Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Dynamac Corporation until the requirements in this document have been fully satisfied. Records of information provided to Dynamac Corporation will be maintained by EPA Project Officers for this contract. All information supplied to Dynamac Corporation by EPA for use in connection with this contract will be returned to EPA when Dynamac Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: October 25, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–28889 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6470–3]

National Environmental Justice Advisory Council; Notification of Meeting and Public Comment Period(s); Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), along with the various subcommittees will meet on the dates and times described below. All times noted are Eastern Standard Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC. The NEJAC and subcommittee meetings will take place at the Crystal City Hilton at National Airport, 2399 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting dates are as follows: November 30, 1999 through December 2, 1999. This is the first in a series of focused policy issue meetings for the NEJAC. To help prepare for this specific focused policy issue meeting the following background information is provided:

Request

The Charter for the National Environmental Justice Advisory Council (NEJAC) states that NEJAC shall provide independent advice to the Administrator on areas relating to environmental justice that may include, among other things, "EPA's framework for integrating socioeconomic planning, annual planning and management accountability for achieving environmental justice results agencywide." In order to provide such independent advice, the Agency, through the Office of Environmental Justice (OEJ), requests that the NEJAC convene a focused and issue-oriented public meeting in Washington, D.C. to receive comments, discuss, and analyze a major public policy issue. The Agency, furthermore, requests that the NEJAC produce a comprehensive report on the differing views, interests, concerns, and perspectives expressed by the stakeholder participants on the issue, and provide advice and recommendations for the Agency's review and consideration.

Issue

In order to secure protection from environmental degradation for all citizens, what factors should be considered by a federal permitting authority, as well as state or local agencies with delegated permitting responsibilities, in the decision-making process prior to allowing a new pollution-generating facility to operate in a minority and/or low-income community that may already have a number of such facilities?

Background

Federal statutes, many of which are implemented by state and local permitting authorities, have established criteria for, or methods of, administering their permit programs. Typically, these permit programs have not taken into consideration the composition of the community affected by a proposed pollution-generating facility. Moreover, these permit programs frequently do not list as issues to be considered by regulators such factors as quality-of-life, aesthetic, historic, cultural, economic, or social impacts or issues such as the adequacy of meaningful public participation. Although permitting programs are required to consider ecological and health impacts, the evaluations tend not to be oriented towards the issues confronting minority and/or low-income communities.

Discussion

Staff in the EPA Office of General Counsel (OGC) has conducted a preliminary analysis of the Agency's permitting statutes and regulations that suggests there are opportunities for addressing environmental justice situations. (Memorandum dated June 25, 1996) Professor Richard Lazarus, as a member of the NEJAC's Enforcement Subcommittee, authored at the request of NEJAC a subsequent memorandum which further explored the implications of OGC's initial analysis. (Memorandum dated July 18, 1996) The NEJAC adopted at its December 10–12, 1996, meeting a resolution requesting the EPA to undertake a comprehensive survey of its existing statutory and regulatory authority to promote environmental justice under existing statutory authorities. These memoranda identified opportunities under seven statutes and their implementing regulations, *i.e.*, CAA, CWA, CERCLA, RCRA, EPCRA, TSCA, and FIFRA. To address instances of environmental injustice through the implementation of the existing statutes and regulations, the EPA may, in some cases, need to issue regulations: in other instances, the EPA may have to issue appropriate guidance.

Meeting

Registration for the NEJAC meeting will begin on Tuesday, November 30, 1999 at 8:00 a.m. A focused "policy issue" public comment period has a been scheduled for Tuesday, November 30, 1999 from 6:00 p.m. to 9:00 p.m. On Wednesday, December 1, 1999, an "all other EJ issues" public comment period has been scheduled from 6:00 p.m. to 9:00 p.m. The full NEJAC will convene Tuesday, November 30, 1999, from 8:00 a.m. to 9:00 p.m., and on Wednesday, December 1, 1999, from 8:00 a.m. to 5:00 p.m. Business will include a series of panels with expert testimony on the focused policy issue, a review of ongoing NEJAC activities and a discussion of new business items. All subcommittees of the NEJAC, will meet on Wednesday, December 1, 1999, from 8:00 a.m. to 4:30 p.m. Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Subcommittee and Federal Official and Telephone Number

Enforcement—Ms. Shirley Pate, 202/564–2607
Health & Research—Mr. Lawrence Martin, 202/564–6497; Mr. Chen Wen, 202/260–4109
International—Ms. Wendy Graham, 202/564–6602
Indigenous Peoples—Mr. Danny Gogal, 202/564–2576; Mr. Tony Hanson, 202/260–8106
Waste/Facility Siting—Mr. Kent Benjamin, 202/260–2822
Air & Water—Mr. Will Wilson, 202/564–1954; Ms. Alice Walker, 202/260–1919

Members of the public who wish to participate in one of the public comment periods should register to do so by November 22, 1999. Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative from a community, organization, or group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals making public comment should be as follows:

SPEAKER'S TEMPLATE
NAME OF SPEAKER: ____________
NAME OF ORGANIZATION/COMMUNITY: ____________
ADDRESS/PHONE/FAX/EMAIL: ____________
DESCRIPTION OF CONCERN: ____________
RECOMMENDATIONS/DESIRED OUTCOME: ____________

If you wish to submit written comments of any length (at least 50 copies), they should also be received by November 22, 1999. Comments received after that date will be provided to the Council as logistics allow. Correspondence concerning registration should be sent to Tama Clare of Tetra Tech Environmental Management, Inc. at: 1881 Campus Commons, Suite 200, Reston, VA 20191, phone: 703/390–0641 or fax: 703/391–5876. Hearing-impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also.

In addition, NEJAC offers a toll-free Registration Hotline at 888/335–4299. For on-line registration, you may visit the Internet site: http://www.epa.gov/oeca/oej/nejac/register.

Dated: October 28, 1999.

Charles Lee,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 99–28884 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34200; FRL–6384–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on May 2, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm., 224, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number [OPP–34200]. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents.

The public version of the official record does not include any information claimed as CBI. The public version o this official record, which includes printed, paper versions of any electronic comments submitted during as applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name/active ingredient and specific uses deleted:

Table 1 -- Registrations with Requests for Amendments to Delete Uses In Certain Pesticide Registrations

EPA Reg. No.	Product Name (Active Ingredient)	Delete From Label
002935–00414 ...	Nu-Flow D (Chloroneb)	Use on cotton
010163–00245 ...	Methidathion Technical (Methidathion)	Use on potatoes & sorghum
034704–00066 ...	Clean Crop Chlorpyrifos 4E Insecticide (Chlorpyrifos)	Control of fire ants in commercial sod
067760–00023 ...	Cyren Turf & Ornamental Insecticide (Chlorpyrifos)	Use on popcorn, cherries, citrus, field & sweet corn, peaches, nectarines, peanuts, sunflowers, sugarbeets, tree fruits

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before May 2, 2000 to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

Table 2 -- Registrants requesting Amendments to Delete Uses in Certain Pesticide Registrations

EPA Company Number	Company Name and Address
002935	Wilbur-Ellis Company, 191 W. Shaw Avenue, Suite 107, Fresno, CA 93704.
010163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
034704	Platte Chemical Co., 419 18th St., P.O. Box 667, Greeley, CO 80632.
067760	Cheminova, Inc., 1700 Route 23, Suite 210, Wayne, NJ 07470.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked May 2, 2000.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18–months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection,

Dated: October 4, 1999.

Richard D. Schmitt,

Acting Director, Information Resources & Services Division.

[FR Doc. 99–28890 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6458–9]

Sanders Aviation Superfund Site, Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Sanders Aviation Superfund Site in Tempe, Arizona with the Alfred P. Sanders Trust ("Trust") and the trustees of the Trust. Pursuant to the Agreement, the Trust will arrange for the sale of the Trust property. Seventy-five percent of the proceeds of the sale will be paid to the Hazardous Substance Superfund and twenty-five percent will be paid to the Trust. This allocation is a close approximation of the costs each party has contributed to cleaning up the site. The settlement includes a covenant not to sue the settling parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606, 9607(a). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The United States' response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before December 6, 1999.

ADDRESSES: Comments should reference the Sanders Aviation Removal Site, Tempe, Arizona and EPA Docket No. 99–06 and should be addressed to Kara Christenson, Office of Regional Counsel, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

AVAILABILITY: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Kara Christenson, Office of Regional Counsel U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; and at the Tempe Public Library, 3500 South Rural Road, Tempe, Arizona.

FOR FURTHER INFORMATION CONTACT: Kara Christenson, Office of Regional Counsel U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744–1330.

Dated: October 25, 1999.

Michael Feeley,

Deputy Director, Superfund Division, Region IX.

[FR Doc. 99–28885 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–53171A; FRL–6097–7]

Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy statement.

SUMMARY: EPA groups new chemical substances with similar structural and toxicological properties into categories to facilitate premanufacture assessment and regulation. These groupings enable both Toxic Substances Control Act (TSCA) section 5(a)(1) Premanufacture Notice (PMN) submitters and EPA reviewers to benefit from accumulated data and decisional precedents and have streamlined the process for Agency review of and regulatory follow-up on new chemical substances. Consistent with TSCA section 26(c), which allows EPA action under TSCA with respect to categories of chemical substances or mixtures, EPA is issuing this policy statement regarding a category of persistent, bioaccumulative, and toxic (PBT) new chemical substances.

DATES: This document will become effective January 3, 2000.

FOR FURTHER INFORMATION CONTACT: For general information contact: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Kenneth Moss, Chemical Control Division (7405), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 202–260–3395; fax number: 202–260–0118; e-mail address: moss.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION: On October 5, 1998 (63 FR 53417) (FRL–5571–6), EPA published a **Federal Register** notice soliciting comments on proposed criteria for identifying PBT chemical substances and their supporting scientific rationale. This policy statement responds to comments on the proposed criteria for identifying PBT new chemical substances and their supporting scientific rationale. Please consult the October 5, 1998 (63 FR 53417) **Federal Register** notice for further information on the TSCA new chemicals program. The docket control number for this document is OPPTS-53171A.

I. General Information

A. Does This Document Apply to Me?

You may be potentially affected by this document if you are or may in the future be a submitter of a PMN under TSCA. Potentially affected entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
Chemical manufacturers or importers	325, 32411	28, 2911	Anyone who plans to manufacture or import a new chemical substance (as defined in TSCA Section 3) for a non-exempt commercial purpose is required to provide the EPA with a PMN at least 90 days prior to the activity. Any TSCA chemical substance that is not on the TSCA Inventory is classified as a new chemical. New chemical substances submitted by chemical manufacturers or importers as PMNs and which are determined by EPA to meet the PBT criteria described here may be subject to regulatory controls under TSCA section 5(e).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this document. Other types of entities not listed above could also be affected. The four-digit Standard Industrial Classification (SIC) codes or the six-digit North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this document might apply to certain entities. To determine whether you or your business is affected by this document, you should carefully examine the applicability provisions in 40 CFR 720.22. If you have any questions regarding the applicability of this document to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. To access information about the TSCA New Chemicals Program, go directly to the Home Page for the New Chemicals Program, within the Office of Pollution Prevention and Toxics, at http://www.epa.gov/opptintr/newchms/.

2. *In person*. The Agency has established an official record for this document under docket control number OPPTS-53171A. The official record consists of the documents specifically referenced in this document, any public comments received during an applicable comment period, and other information related to this document, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202-260-7099.

3. *By phone*. If you need additional information about this document, you may also contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

II. Background

A. Overview of the PMN Process

Under section 5(a) of TSCA, persons must notify EPA at least 90 days before manufacturing or importing a new chemical substance for non-exempt purposes. A new chemical substance, as defined in section 3(9) of TSCA, is any chemical substance (as defined by section 3(2)) that is not included on the Inventory compiled under section 8(b) of TSCA.

Section 5 of TSCA gives EPA 90 days to review a PMN (also referred to as a "section 5 notice"). However, the review period can be extended under TSCA section 5(c) for good cause; it may also be suspended voluntarily by the mutual consent of EPA and the PMN submitter. During the review period, EPA may take action under TSCA section 5(e) or (f) to prohibit or limit the production, processing, distribution in commerce, use, and disposal of new chemical substances that raise health or environmental concerns. If EPA has not taken action under TSCA section 5(e) or (f), the PMN submitter may manufacture or import the new chemical substance when the review period expires.

No later than 30 days after the PMN submitter initiates manufacturing or importing, it must provide EPA with a notice of commencement of manufacture or import. Section 8(b) of TSCA provides that, upon receipt of such a notice, EPA must add the substance to the TSCA Inventory. Thereafter, other manufacturers and importers may engage in activities involving the new substance without submitting a PMN, unless the Agency has used its Significant New Use Rule (SNUR) authority under TSCA section 5(a)(2) to designate a use of a chemical substance as a "significant new use." Section 5(a)(1)(B) of TSCA would then require persons to submit a Significant New Use Notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the substance for the use designated as significant. The required SNUN provides EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs.

B. History

Since 1979, EPA has reviewed over 30,000 TSCA section 5 submissions for new chemical substances. During the intervening years, EPA has implemented various initiatives which have enabled the Agency to review a greater number of new chemicals more efficiently. In 1988, for example, EPA's Office of Toxic Substances (now the Office of Pollution Prevention and Toxics) first used its accumulated experience to group chemical substances with similar physicochemical, structural, and toxicological properties into working categories (USEPA, 1988, see Unit VI.8.). These categories, including the subject one for PBT chemical substances, are developed by EPA based on available data and experience reviewing PMNs on similar substances. Such groupings enable both PMN submitters and EPA reviewers to benefit from the accumulated data and decisional precedents and facilitates the assessment of new chemical substances.

PBT chemical substances possess characteristics of persistence (P) in the environment, accumulation in biological organisms (bioaccumulation (B)), and toxicity (T) that make them priority pollutants and potential risks to humans and ecosystems. Prominent examples of PBT chemical substances include the insecticide DDT and polychlorinated biphenyls (PCBs).

Establishment of a PBT category alerts potential PMN submitters to possible assessment or regulatory issues associated with PBT new chemicals review. It also provides a vehicle by which the Agency may gauge the flow of PBT chemical substances through the TSCA New Chemicals Program and measure the results of its risk screening and risk management activities for PBT new chemical substances; as such, it is a major element in the Agency's overall strategy to further reduce risks from PBT pollutants.

As described in the **Federal Register** notice of October 5, 1998 (63 FR 53417), development of the TSCA new PBT chemicals policy has occurred in coordination with U.S. national, U.S./Canada binational, and international efforts to identify and control the environmental release of persistent organic pollutants (POPs). The proposed TSCA PBT category has been provided to the Criteria Expert Group (CEG) established at the first session of the Intergovernmental Negotiating Committee (INC) for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants, in accordance with the mandate given by the Governing Council of the United Nations Environment Programme (UNEP) in paragraph 9 of its decision 19/13 C (http://irptc.unep.ch/pops/gcpops_e.html). The CEG is an open-ended technical working group with a mandate to present to the INC proposals for science-based criteria and a procedure for identifying additional POPs as candidates for future international action. The CEG is to incorporate criteria pertaining to persistence, bioaccumulation, toxicity and exposure in different global regions and should take into account the potential for regional and global transport, including dispersion mechanisms for the atmosphere and the hydrosphere, migratory species, and the need to reflect possible influences of marine transport and tropical climates. At its first meeting, October 26–30, 1998 in Bangkok, the CEG recommended that the INC consider developing a provision encouraging countries and regions to include in their new chemicals schemes elements relating to development and introduction of new chemical POPs. The U.S. described its proposed TSCA new chemicals program policy for the category of PBT new chemicals, and the full text of the October 5, 1998 **Federal Register** notice was distributed to all delegations as a Conference Room Paper. The CEG's recommendation was accepted at the second meeting of the INC (January 25–29, 1999 in Nairobi) and the INC will consider it further in its deliberations.

This policy statement is important in our new chemical assessment and TSCA regulatory programs, and represents the first formal statement of national policy regarding new chemical "persistent organic pollutants." Under our domestic program, the policy statement provides guidance criteria for persistence, bioaccumulation, and toxicity for new chemicals and advises the industry about our regulatory approach for chemicals meeting the criteria. Internationally, the **Federal Register** notice of October 5, 1998 (63 FR 53417) alerted the parties involved in negotiation of the POPs Convention to the need for inclusion of a new chemicals provision in the Convention. The issuance of the final policy statement will reaffirm US leadership on this issue and serve as a model for other countries in taking steps to discourage the introduction of POPs as new chemicals and pesticides.

III. Discussion of Final Policy Statement and Response to Comments

Today's policy statement adopts the criteria and testing strategy of the **Federal Register** notice of October 5, 1998 (63 FR 53417), with minor revisions. The Agency reviewed and considered all comments received on the October 5, 1998 (63 FR 53417) notice. A complete copy of all comments received is available in the public docket for this document. A discussion of the policy statement, including a summary of significant comments and the Agency's response follows:

A. Pigments

Comment 1-Pigments. Commenters suggested that EPA not identify pigments as bioaccumulators and were concerned that testing could end up being expensive for pigments, which are persistent by design.

Response. EPA assesses PMN chemical substances for PBT attributes on a chemical-by-chemical basis, regardless of whether or not they fall into a chemical use category such as pigments. Not all pigments are the same and a precise definition of the term "pigment" is not available. As a result, EPA does not have general "pigments" or "dyes" assessment categories; there are, however, more specifically described categories of dyes or pigments that have been described by EPA (e.g., acid or amphoteric dyes, dichlorobenzidine-based pigments, and others; see categories document at http://www.epa.gov/opptintr/newchms/chemcat.htm). Moreover, the fact that a substance is "persistent by design" by itself is not a sufficient basis for identifying a PBT new chemical substance. Persistence is only one of three criteria used to identify a chemical as PBT. When combined with a potential to bioaccumulate, toxicity concern, and sufficient release to the environment to result in potential risk or significant exposure, pigments may be of concern, whether or not they are persistent by design. If a PMN chemical is persistent by design, and becomes subject to testing requirements by EPA, it would be counterproductive to test initially for persistence, but rather to address the "B" and "T" criteria instead.

B. Ready Biodegradability Testing

Comment 2-Ready biodegradability testing. Commenters suggested that EPA avoid the use of strict pass/fail criteria for ready biodegradability of poorly water-soluble substances.

Response. Poor water solubility does not necessarily lead to inability to pass a ready biodegradability test, as amply demonstrated by the fact that many fats, oil, petroleum hydrocarbons, etc. easily pass ready biodegradability tests. While strict OECD (Organization for Economic Co-operation and Development) pass/fail criteria are given in the OPPTS Ready Biodegradability test guidelines (see http://www.oecd.org//ehs/test/degrad.htm and Testing Strategy for PBT Chemical Substances, Unit IV.B. of this document), the Agency recognizes the limitations in applying such criteria rigidly given that many substances of concern as potential PBTs are unlikely to pass ready biodegradability tests. A variety of critical aspects beyond the pass/fail result will be considered when evaluating potential new chemical PBTs or when testing decisions are made about specific PMN substances. These more critical aspects include those related to chemical structure (e.g., degree of branching) and bioavailability (e.g., uptake of a substance by fish or microorganisms), and their influence on both biodegradation and bioaccumulation.

C. Bioconcentration Factor and Kow

Comment 3-Bioconcentration factor. Commenters requested clarification on how bioconcentration factor (BCF) will be estimated using calculations based on octanol-water partition coefficient.

Response. The octanol-water partition coefficient (Kow) is correlated with the potential for a chemical to bioaccumulate in organisms; the BCF can be predicted from log Kow, via computer programs based on structure activity relationship (SAR). The Agency process for predicting bioaccumulation factors (BAFs) and BCFs, along with literature references, is described in some detail in the proposed rule for lowering of reporting thresholds for certain PBT toxic chemicals subject to reporting under section 313 (Toxic Release Inventory, or TRI) of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 (January 5, 1999 (64 FR 688) (FRL–6032–3), see page 704).

Comment 4-Log Kow and low solubility chemicals. Commenters suggested that the October 5, 1998 (63 FR 53417) **Federal Register** notice identified methods for calculating log Kow that are not appropriate for organic pigments, which are insoluble in octanol. They wanted to know how EPA handles low octanol or water soluble chemicals.

Response. EPA believes that the methods cited in the October 5, 1998 (63 FR 53417) **Federal Register** notice for experimental measurement of the octanol/water partition coefficient (Kow), or SAR to predict Kow, are appropriate, and the results of either can then be used to predict the Fish BCF. Chemicals are unlikely to be accorded special treatment in the new chemicals review process solely because of low solubility in octanol or water alone. The test guidelines (OPPTS 830.7570 or 830.7560) cited in the October 5, 1998 (63 FR 53417) **Federal Register** notice are viewed as the most appropriate for measuring Kow, and alternatively, the shake-flask method (OPPTS 830.7550 test guideline) or the new "slow-stir" method currently under development by the OECD, can be used. However, if the chemical manufacturer still views these methods as inappropriate for a given chemical, it would be advisable to proceed to more definitive testing to address bioaccumulation potential (i.e., the Fish BCF study). This approach can be applied to other testing endpoints as well; for example, based on physicochemical properties of a particular PMN chemical substance, a company might forgo a lower tier acute Daphnia toxicity study in favor of the chronic study because it would yield the best information for the screening level risk assessment.

Comment 5-Use of octanol solubility data alone. Commenters wanted to know if octanol or fat solubility data can be used before determining which chemical substances have the potential for bioaccumulation.

Response. By itself, solubility in octanol (as a surrogate for fat) is not a good predictor of potential bioaccumulation in fish. Kow is correlated with the potential for a chemical to bioaccumulate in organisms; the bioconcentration factor (BCF) can be predicted from log Kow, via SAR. Kow is a coefficient which serves as a surrogate for the partitioning of chemicals between water and fat, and cannot be accurately estimated via separate determinations of solubility in pure octanol and water (i.e., by calculating the ratio of the pure-solvent solubilities) (Sijm et al., 1999, see Unit VI.1.). The Agency uses and recommends the use of computer models to predict Kow where there are no measured data.

D. Environmental Half-Life

Comment 6-Calculation of half-life. Commenters wanted to know how half-life is calculated in the review of PBT new chemicals.

Response. Multimedia fate models like the Environmental Quality Criteria (EQC) model (Mackay et al., 1996, see Unit VI.2.) require compartmental half-lives for air, water, soil and sediment, which cannot necessarily be interpreted as half-lives for any specific process such as biodegradation. Data on air half-lives for input to models would be either measured or derived from the Atmospheric Oxidation Program (AOP or AOPWIN) or similar methodology. Studies by Boethling et al. (1995, see Unit VI.3.) and Federle et al. (1997, see Unit VI.4.) suggest that half-lives in bulk soil may be assumed for screening purposes to be about the same as for surface water, and that sediment half-lives may be assumed to be 3–4 times longer. EPA's current suggested approach to finding water half-life is to use the Ultimate Survey Model (USM) in the EPI BIOWIN program (Boethling et al., 1994, see Unit VI.5.). Estimation of bulk compartment half-lives from USM model data requires several assumptions, including that (1) biodegradation is the only significant fate process in water, soil, sediment; (2) water and soil half-lives are the same; and (3) sediment is dominated by anaerobic conditions and therefore sediment half-life is four times longer than water half-life.

E. Computer Models and the Use of Models vs. Actual Data

Comment 7-Use of models vs. actual data. Commenters support the use of the Mackay/EQC model, but stressed the importance of having a process for using actual data in place of the model.

Response. This is a reasonable suggestion. The EQC model is based on the fugacity approach and subsequently applied to numerous environmental processes. It uses an "evaluative environment" in which environmental parameters such as bulk compartment dimensions and volumes (e.g., total area, volume of soil and sediment, etc.) are standardized, so that overall persistence for chemicals with different properties and rates of transformation may be compared on an equal basis. In general, measured values of toxicity, chemical properties, compartmental transformation half-lives, etc., provided the data are of acceptable quality, are preferred over those that are predicted or estimated via a model or computer program.

Comment 8-Modeling of air releases. Commenters noted that the October 5, 1998 (63 FR 53417) **Federal Register** notice considered only biodegradation and aqueous hydrolysis and asked about fate of a chemical upon release to air. They suggested that EPA estimate atmospheric oxidation using AOPWIN.

Response. Although the testing strategy for this policy statement focuses on biodegradability, all relevant transport and transformation processes will be considered in evaluating the potential for a PMN substance to behave as a PBT. Transformation processes not mentioned in the **Federal Register** notice but which may be important for specific PMN substances include atmospheric oxidation and photolysis, photolysis in water, and redox transformations (of which there are various types) in water, soil, and sediment. Although EPA believes that for most organic chemicals, biodegradation in water, soil, and sediment will be the most important transformation process, each suspected PBT chemical substance will be evaluated on its use and disposal patterns.

Clearly the atmosphere is an important environmental medium, and is especially relevant where a substance is emitted directly to the atmosphere or transported there via volatilization or aerosolization. We know by deduction that it is only, or at least chiefly, through the atmosphere that POPs like dioxins and Polychlorinated biphenyls (PCBs) reach remote locations, and it will be an important factor in determining the ultimate fate of many PMN substances as well. It is through multimedia fate models such as EQC that atmospheric fate will be considered in developing an overall prediction of environmental persistence for suspected PBT substances. Where measured data are not available, appropriate estimation methods such as that in the AOPWIN program will be used to generate screening-level estimates of atmospheric half-lives.

F. Use of "Weight of Evidence" and Professional Judgment

Comment 9-Laboratory vs. field behavior of chemicals. Commenters indicated that EPA needs to incorporate any differences between lab and field behavior of chemicals into its analysis of new chemical substances, acknowledge the limitations of screening-level biodegradation tests, and acknowledge the value of using professional judgment when interpreting data from extended (> 60 day) degradation studies.

Response. EPA recognizes that laboratory tests at best provide a snapshot of expected environmental behavior, which ideally is studied in the field. But since field testing is nearly always impractical for PMN chemical substances, it is necessary to conduct laboratory tests and to apply scientific judgment in extrapolating from lab to field. EPA similarly acknowledges the limitations of ready biodegradability and other screening tests as indicators of ultimate environmental behavior. Finally, it is well known that even this policy statement's higher tier (Testing Tiers 2 and 3) environmental fate guidelines, despite being designed to provide test conditions closer to those expected in the field, become less reliable when tests are run for longer than the maximum duration specified in the guidelines. EPA will give appropriate weight to these and other complexities in its assessments.

Comment 10-"Check the box" vs. "weight of evidence." Commenters noted that the TSCA PMN requirements for PBT chemicals look more like "check-the-box" than "weight of evidence" and wanted to know how EPA will make professional judgment and use SAR and assessment methods to identify PBT new chemicals.

Response. These tools (professional judgment, SAR, computer models, assessment methods, etc.) would be applied to potential PBT chemical substances in the same way they are applied to any other chemical substance in the PMN review process. Using predictive tools (in the absence of test data) and professional judgment, EPA leans towards a "reasonable worst case" when there is lack of chemical-specific data. Industry always has the option of assisting and enhancing the Agency's determinations by submitting scientifically valid test data. There are a number of existing documents describing the PMN process and the critical role played by SAR and professional judgment in that process, including the Chemistry Assistance Manual for Premanufacture Notification Submitters (USEPA, 1997, see Unit VI.6.) and parts of the report on the joint U.S./European Union study that evaluated the predictive power of the SAR (USEPA, 1994, see Unit VI.7.). EPA believes that, where no or insufficient actual toxicity data exist upon which to base a decision, toxicity estimates generated by SARs and other predictive techniques may constitute sufficient evidence to be used in human health and environmental hazard and environmental fate assessment as components in certain risk determinations under TSCA (see also the **Federal Register** of December 1, 1993 (58 FR 63507) for a similar statement related to meeting section 313 listing criteria under EPCRA of 1986).

Comment 11-Implement PBT policy within risk assessment framework. Commenters suggested that EPA risk management decisions should not be made solely on hazard information; these PBT criteria should be implemented within a risk assessment framework. They indicated that toxicity has been largely overlooked in the PBT scheme and no criteria have been provided for toxicity. Commenters suggested that EPA needs to take into account P and B and T before requiring further testing or identifying a chemical as a "true" PBT, and asked whether persistence and log Kow would be sufficient to determine that a PBT PMN chemical substance may pose a significant risk. Commenters also suggest that EPA should except non-toxic and low exposure/release substances from consideration under this category and were concerned that the current proposed criteria do not consider any health and safety benefits of a PBT chemical substance.

Response. New chemicals identified as potential PBT chemicals are assessed on a case-by-case basis. Section 5(e) of TSCA authorizes EPA to control commercial activities involving a new chemical substance for which available information is insufficient to permit a reasoned evaluation of potential health and environmental effects if EPA determines either (1) that the manufacture (including import), processing, distribution in commerce, use, or disposal of the substance may present an unreasonable risk of injury to health or the environment ("risk-based" finding), or (2) that the substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance ("exposure-based" finding). The restrictions under TSCA section 5(e) are imposed pending the development of the test data or other information needed to evaluate the new substance's health or environmental effects. EPA draws on information and data submitted with the PMN form, other information available to the Agency, and modeling (e.g., exposure, release, SAR, etc.).

The Agency will consider P and B and T, individually and together, and exposure in making risk-based judgments. Risk, specific to the PMN substance as well as its risk relative to substitutes currently on the market, is predicted as a function of the potential hazard of the substance and the expected exposure. In other instances, as discussed in the October 5, 1998 (63 FR 53417) **Federal Register** notice, during PMN review EPA may determine that a new substance will be produced in substantial quantities and "may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance," and that the available information is insufficient to determine the effects of the substance. For such exposure-based determinations on suspected PBT new chemicals, EPA will use a case-by-case approach for making findings by applying considerations beyond P and B (i.e., toxicity or physical/chemical properties), and consider P and B aspects as factors which might argue for regulatory action under TSCA section 5(e) at lower levels of production or exposure/release than are described in the general guidelines for the new chemicals program's exposure-based policy (USEPA, 1988, USEPA, 1989, see Unit VI.8. and 9.). Overall, companies are not being prevented from developing and using new substances that are judged to be potential PBT chemicals, but EPA may require certain controls (e.g., limiting the release of the PMN chemical to the environment) or testing as a result of its assessments.

In order to be so identified as a PBT new chemical based on a risk-based finding, all three criteria must be satisfied. The Agency has adopted a 1 to 3 rating system for each of P, B, and T. If chemical has a low Kow (i.e., "B1," with BCF estimated as less than 1,000), the B1 rating does not support the new chemical's identification as a potential "PBT chemical." For example, some surfactants could be P3B1T3; they are highly persistent in the environment and chronically toxic to organisms, but with low bioaccumulation potential. However, Agency action may still be taken under TSCA on chemicals not meeting all of the PBT criteria, if they otherwise meet the risk or exposure-based elements of TSCA section 5(e). Similarly, calcium would also not be considered a PBT chemical, as it would be ranked P3B3T1; it is persistent in the environment, it bioaccumulates, but it is not considered toxic. Although the Agency does not promote the environmental discharge of more persistent materials, the environmental "desirability" of a given chemical often depends on a balance of various factors, including toxicity and ability of the chemical to bioaccumulate. Like the previous surfactant example, the Agency may nonetheless take action on a P3B3T1 chemical (not calcium per se), most likely under its exposure-based authority.

The toxicity rating for a PBT chemical applies to repeated exposures which result in human or environmental toxicity, including, for example, systemic toxicity, mutagenic damage, reproductive toxicity, or developmental toxicity. An example of this is chronic toxicity towards aquatic organisms of organotins from contaminated marine environments, which ultimately resulted in the regulation of use of tributyl tin in marine anti-fouling paints. Repeated exposures result from a PBT chemical after it has been released into the environment, usually via contaminated water, sediments, or food. The classic PBT problems (i.e., PCBs and Dichloro diphenyl trichloroethane (DDT)) have been associated with food chain contamination.

G. Scientific Justification for PBT Technical Criteria

Comment 12-Support for lower threshold criteria for "P" and "B." Commenters believed that there is little precedent, scientific justification, evidence or data to support the lower regulatory threshold of bioaccumulation factor of 1,000 and environmental persistence of 2 months. They suggested that EPA needs a rationale for these criteria beyond "...are characterized by a tendency to accumulate in organisms."

Response. There is no "bright line" that clearly identifies a bioaccumulation factor of 1,000 or a half-life of 2 months as the best bioaccumulation or persistence criterion from a scientific perspective. However, it is not accurate to state that there is no precedent or basis for using these values. As outlined in EPA's recent proposal to lower the reporting thresholds for PBT chemicals that are subject to reporting under section 313 of EPCRA (64 FR 688; January 5, 1999), similar values have been proposed by several authorities, including the Ontario, Canada Ministry of Environment and Energy (MOEE) for its Candidate Substances List for Bans or Phaseouts (MOEE, 1992, see Unit VI.10.); the Canadian initiative for Accelerated Reduction/Elimination of Toxics (ARET) (ARET, 1995 and ARET, 1994, see Unit VI.11. and 12.); the International Joint Commission (IJC)'s Great Lakes Water Quality Agreement (GLWQA) (IJC, 1993, see Unit VI.13.); and the United Nations Economic Commission for Europe Convention on Long-Range Transboundary Air Pollution (UNECE-LRTAP), which did adopt 2 months as the persistence criterion of record for water (UNECE-LRTAP, 1998, see Unit VI.14.).

In determining the thresholds for this policy statement, EPA concluded that it would be appropriate to reflect the levels of concern that the various PBT chemicals presented, based on the differing degrees to which the chemicals persist and bioaccumulate. The Agency ultimately chose to adopt a two-tier approach, and to establish two separate thresholds to reflect the chemicals' varying potentials to persist and bioaccumulate, as well as to reflect the Agency's belief that the different levels of regulatory action under TSCA are warranted for the two tiers. As discussed in detail in the preamble to the mentioned EPCRA proposed rule, EPA found that generally the criteria selected by various U.S. and international regulatory bodies for either persistence or bioaccumulation clustered around two values. For persistence in water, soil, and sediment, the criteria were grouped around half-lives of 1 to 2 months and 6 months, and for persistence in air, either 2 or 5 days. Bioaccumulation criteria were grouped around BAF/BCF values of 1,000 and 5,000. The preamble to the EPCRA proposed rule states "Bearing in mind that one of Congress' articulated purposes for EPCRA section 313 was to provide local communities with relevant information on the release and other waste management activities of chemicals in their community that may present a hazard, EPA determined that the criteria that were most consistent with these purposes were, for persistence, half-lives of 2 months for water, sediment, and soil, and 2 days in air, and for bioaccumulation, bioaccumulation/bioconcentration factor values of 1,000 or greater" (64 FR 692; January 5, 1999). EPA is making a similar determination for the PBT new chemicals policy under TSCA. The PMN process is one of EPA's cornerstone Pollution Prevention programs and plays a critical gatekeeper role in making sure that all new chemical substances do not present unreasonable risks when they are commercialized. Given this, and the uncertainty which often accompanies Agency review of a PMN chemical substance due to lack of data, the TSCA new chemicals program is and must be conservative by nature, which suggests that a half-life shorter than 6 months and a BCF criterion lower than 5,000—values that were selected solely or primarily to isolate substances already widely acknowledged to be POPs are appropriate for regulatory scrutiny of new chemicals under TSCA. Note that the CEG, at the October 26–30, 1998 Bangkok meeting described in Unit II.B. of this document, developed indicative numerical values as bracketed criteria text which included persistence of 2 vs. 6 months in water and log Kow of 4 vs. 5 (equivalent to a BCF of approximately 1,000 vs. 5,000, respectively).

A series of PMNs submitted to EPA in 1990 (Zeeman et al., 1999, see Unit VI.15.) illustrates (1) why EPA believes that the persistence criterion for bioaccumulating substances in soil, water, or sediment should be set substantially lower than 6 months; and (2) that concern for potential exposures to persistent and bioaccumulative toxics must extend beyond the UNEP's 12 widely acknowledged POPs. The substances in question were alkylated diphenyls, for which EPA expected discharge to receiving streams and rivers. The submitter supplied data on use and disposal, aquatic toxicity, and biodegradability. The submitted environmental fate data and EPA estimates of biodegradability based on structural analogs suggested that half-lives in water would be well below 6 months, but not necessarily lower than 2 months. As a result of concerns expressed by EPA, use was limited to sites where resulting water concentrations could be limited to 1 microgram per liter or less; concomitantly, the submitter was also informed of EPA's belief that a potential for long-term risk existed, but that EPA could not quantify this risk since assessments typically evaluated releases over a period of only 1 year. In 1998, results of monitoring revealed that the PMN substances had been found in fish fillets and sediment samples from the receiving stream. If, for these 1990 PMNs, EPA were to have had in place the 2 month persistence criterion described in today's policy statement, further scrutiny under the new chemicals program would have been warranted, and beyond simply informing the PMN submitter of the potential for long-term risk, the Agency would likely have required further testing to obtain an experimental value for environmental persistence of the chemicals. This in turn would have given the Agency a better picture of the behavior of the chemicals in the environment and the environmental half-life relative to the 2 month value.

Comment 13-Deny commercialization to lower threshold PBT chemicals. Some commenters supported exercising the "Precautionary Principle" by not allowing commercialization under a TSCA 5(e) consent order or SNUR pending testing of the PMN chemicals which meet the P=2 month and BCF=1,000 criteria. They suggested that these chemicals should be banned instead, pending the necessary testing.

Response. Whereas a half-life of 2 months and BCF of 1,000 can be justified as lower-tier cutoffs in a deliberately conservative TSCA new chemicals program that is designed to prevent commercialization of potentially risky substances, it would not be appropriate to automatically trigger a "ban pending testing" at these cutoffs given the uncertainties about substance properties, release, and environmental behavior that normally characterize PMN review. The Agency believes that the available predictive tools and current knowledge of POPs lend support for this two-phased approach to screening of PBT chemicals and collection of information "sufficient to permit a reasoned evaluation of potential health and environmental effects" if EPA makes the requisite risk- or exposure-based findings under TSCA section 5(e).

Comment 14-Relationship of P, B, and T criteria. Commenters suggested that the October 5, 1998 (63 FR 53417) notice is inaccurate when it states that 2 months is adequate for detecting many long-term toxic effects as well as any tendency for a substance to bioaccumulate in aquatic organisms. Commenters pointed out that the persistence criterion is not related to detection of long-term toxicity.

Response. The statement in question was intended simply to note that the 2 months half-life in water persistence criterion closely tracks the duration of long-term environmental toxicity or bioaccumulation tests. If a new chemical substance is predicted to or measurably demonstrates chronic toxicity, potential to bioaccumulate, and environmental persistence over that same time period (2 months), it would meet the minimum TSCA PBT criteria. It is true that, in general, half-life cutoffs for identifying POPs warranting international action (e.g., in programs like UNECE-LRTAP and UNEP Global Negotiations on POPs) have not been selected based on the duration of toxicity or bioaccumulation tests. There are no cutoffs or "fence lines" for environmental persistence criteria that emerge as immutable quantities solely from scientific analysis; the choice of screening criteria is a policy decision guided by the anticipated scope of a negotiation or regulatory activity. In the case of the PMN program, 2 months represents a reasonable screening level value for "persistence" which is more than the 1-month period in a ready biodegradation study and less than the 6 month value widely agreed to internationally (U.S.-Canada binational agreement to control the discharge or release of POPs in the Great Lakes Basin, UNECE-LRTAP, North American Free Trade Agreement Commission for Environmental Cooperation (NAFTA-CEC), etc.) as reflecting the persistence of known POPs chemicals (e.g., DDT, hexachlorobenzene). As mentioned in the previous response, there is international support, through the CEG, for persistence values of 2 or 6 months in water.

Comment 15-Relationship of P and B. Commenters suggested that the October 5, 1998 (63 FR 53417) notice's statement, "Generally, persistent bioaccumulators are chemical substances that partition to water, sediment or soil and are not removed at rates adequate to prevent their bioaccumulation in aquatic or terrestrial species," should be revised to reflect that persistence alone is not sufficient to cause a substance to bioaccumulate.

Response. EPA did not intend that the sentence be read to mean that persistence alone is sufficient to result in bioaccumulation. The point that was intended to be conveyed was that a certain level of persistence is a necessary condition for bioaccumulation to occur. There are other conditions that affect bioaccumulation, such as bioavailability and the metabolic transformation rate in the target species. These and other factors will be evaluated by EPA in the determination of the PBT concern level for PMN chemical substances.

H. Relationship of TSCA PBT Policy to Other Agency and International PBT Initiatives

Comment 16-Finalize overall Agency multimedia strategy first. Commenters suggested that the PBT classification criteria being proposed for TSCA section 5(e) may have broader application, e.g., international or other Agency PBT initiatives, and may be used to establish precedent in other programs. In addition to the TSCA October 5, 1998 (63 FR 53417) **Federal Register** notice, there have been three other notices published in **Federal Register** dealing with (1) the promotion of voluntary waste minimization efforts to reduce the generation of those PBT chemicals which are found in hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA) (63 FR 60332; November 9, 1998 (FRL-6186-7)), (2) the Agency draft Multimedia PBT Strategy (63 FR 63926; November 17, 1998 (FRL-6045-2)), and (3) the lowering of reporting thresholds for certain PBT toxic chemicals subject to reporting under section 313 (Toxic Release Inventory, or TRI) of EPCRA of 1986 (64 FR 688; January 5, 1999). These commenters stated that the TSCA notice is premature, occurring before adoption of the overall Agency strategy, and is inconsistent with other initiatives, domestic and international, which have lists of chemicals and more selective criteria (i.e., specific to environmental media, fate and transformation processes). Commenters recommended that EPA finalize the Agency strategy first, before proceeding with the TSCA, RCRA, and TRI actions, and that there should be coordination among them all with uniform PBT criteria as part of the Agency strategy.

Response. The PBT Multimedia Strategy formalizes an Agency process for integration of program activities involving these types of substances. While the strategy intends to coordinate Agency PBT-related activities under its framework, the strategy does not establish rigid criteria with respect to PBTs. Program offices must operate within the parameters of their legislative mandates and established regulatory and policy frameworks. For some programs such as the Toxics Release Inventory, the TSCA New Chemicals Program and the RCRA National Waste Minimization Plan, actions involving PBTs are a historical reality and their experience has, in fact, largely shaped the strategy. Therefore, EPA does not intend to halt all ongoing work involving PBTs until the strategy is "finalized." With respect to the PMN process, it is important to understand and acknowledge its fundamental purpose, which is to allow EPA to evaluate the hazards, exposures, and risks of new chemicals, and the opportunity to protect against unreasonable risks, if any. The structure of that process and the tools used to implement it flow logically from its statutory purpose and suggest that the category approach outlined in this policy statement is the most appropriate means of addressing potential concerns for substances possessing PBT characteristics. It is EPA's intention that the strategy be a living document. Therefore, the strategy will be updated based upon public comment; it will not be "finalized" in the more traditional sense of a rulemaking. EPA does agree that consistency is a laudable goal where the criteria are meant to be used for similar purposes and is seriously considering comments within the context of the strategy regarding establishment of consistent criteria for priority PBTs.

Comment 17-Carefully communicate lower thresholds. Commenters suggested that EPA should use only the environmental persistence of 6 months/BCF of 5,000 screening levels for consistency among EPA and U.S./international programs and should carefully communicate proposed lower criteria internationally.

Response. As discussed in the response to Comment 12, EPA believes that a lower tier of 2 month/BCF of 1,000 is appropriate for risk screening activities under TSCA. Communication is occurring in the international forum. Unit II.B. of this document discusses the CEG for POPs, established under UNEP mandate. At its first meeting, on October 30, 1998 in Bangkok, the CEG recommended that the INC consider developing a provision encouraging countries and regions to include in their new chemicals schemes elements relating to development and introduction of new chemical POPs. The U.S. described its proposed TSCA new chemicals program policy for the category of PBT new chemicals, and the full text of the October 5, 1998 (63 FR 53417) **Federal Register** notice was distributed to all delegations as a Conference Room Paper. The CEG's recommendation was accepted at the second meeting of the INC (January 25–29, 1999 in Nairobi) and the INC will consider it further in its deliberations.

I. Testing Strategy

Comment 18-Toxicity testing. Commenters asked whether toxicity was considered at each testing tier or only in tier 3. It was not clear to them when toxicity testing would be requested, nor what results will be considered acceptable by the Agency.

Response. Each of P and B and T are weighed in the Agency's assessment. The testing strategy outlined in this policy statement is intended to build the case, starting with testing to establish persistence and bioaccumulation, and then determining toxicity and confirming a chemical's status as a PBT chemical in tier 3. Once a chemical becomes distributed in the environment at low concentrations, the combination of persistence and bioconcentration in organisms can result in residues high enough to approach a toxic dose. The first two tiers focus on P and B because of the critical role these aspects play in PBT determinations and because of their relatively lower cost to determine P and B. Thus, chronic toxicity testing, which is expected to be the most expensive testing, is reserved until tier 3 where it serves to establish PBT status. Although the early tier P and B testing may either obviate the need for toxicity testing or result in more directed and cost-effective toxicity testing, the need for toxicity testing is considered in each testing tier and will be obtained in lower tiers where needed on a case-specific basis. As with all new chemicals reviewed by the Agency under TSCA, the potential toxicity of the chemical is determined from test data, if any, or by analogy to structurally similar chemicals. If a company knows or suspects prior to testing that their chemical is likely to be persistent and bioaccumulative, consideration should be given to conducting chronic toxicity testing in the first tier. For any suspected PBT chemicals for which a risk finding has not been made, but which meet production, release, and exposure thresholds under the Agency's exposure-based policy (USEPA, 1988, USEPA, 1989, see Unit VI.8. and 9.), the standard screening level battery of testing (or an appropriate subset thereof) currently utilized for exposure-based cases in the new chemicals program could be required in addition to PBT testing.

Comment 19-Equivalent tests. Commenters suggested that all tests referenced in the testing strategy should also state "or an equivalent test."

Response. EPA realizes that often there are a number of different but acceptable means to providing testing information. However, EPA's acceptance of a guideline not specified in this policy statement and/or use of data generated under such guidelines depends on multiple factors including the specifics of the test substance, purpose of the testing, familiarity with specific procedures and equipment, validation of the method, etc. Typical TSCA 5(e) consent orders require that testing performed pursuant to the order must be conducted according to TSCA Good Laboratory Practice Standards at 40 CFR part 792 and using methodologies generally accepted at the time the study is initiated. Before starting to conduct any such study, the PMN submitter must obtain approval of test protocols from EPA by submitting written protocols. Published test guidelines specified in the Test Strategy section (see Unit IV. B. of this document) provide general guidance for development of test protocols, but are not themselves acceptable protocols.

J. Applicability of PBT Criteria to Metals

Comment 20-PBT criteria are not appropriate for metals. Commenters suggested that the application of Persistence and Bioaccumulation criteria appropriate for organic chemicals does not make sense for metals and metal compounds. They also suggested that EPA needs criteria to identify potential problems generated by organometals.

Response. The approach and the criteria are sufficiently flexible to apply to organic chemicals, inorganic metals and organometallics. It is important to distinguish between criteria for identifying potential PBTs, on the one hand, and on the other: (1) the means of generating information on the P, B, and T endpoints for comparison to the criteria, and (2) the applicability of existing test guidelines for generating such information experimentally.

EPA understands that metals are intrinsically not degradable in the sense of ultimate degradation of organics (although they may undergo biologically as well as chemically induced changes in, e.g., oxidation state), and therefore are persistent by definition, but nevertheless may not be bioaccumulative. It is widely accepted that elemental metals are persistent by definition, since they may take different forms that can be interconverted, but the elemental metal itself cannot be destroyed. All elemental metals therefore meet the 6 month half-life criterion. Given this, it is not correct that EPA's proposed persistence criteria cannot be applied to metals. It may be more accurate to state that the persistence criteria are not themselves very helpful in screening or assessing metals and metal compounds with respect to the potential for risk, whether from direct exposure or through bioaccumulation. Relative to applicability of test guidelines, the same level of judgment will be brought to bear such that, for example, EPA would not require ready biodegradability testing for a metal or metal salt. (EPA may, however, request such testing for organometallics, which, depending on chemical structure, could still show significant degradation in such tests.)

EPA understands that bioavailability is important in determining the potential for risk, and notes that the same generalization applies to any substance whether metallic or not. Metals and organometallic compounds are no different from other organic chemicals with respect to the applicability of the proposed criteria for identifying persistent, bioaccumulative, and toxic substances, except that Kow determination may not be relevant for metals (although the fish BCF study is relevant). Similarly, it is not necessary to develop different criteria or assessment strategies for pigments (see first comments/responses in this policy statement) or any other specific classes of organics. What is necessary is to consider what is known about the behavior of substances like metals during the TSCA PMN review process, both in the assessment of whether a given chemical substance meets the established criteria and in subsequent testing decisions. For any untested PMN chemical substance, if there are no close analogs with data and no clear evidence that available estimation methods are unreliable for this or closely related substances, then the estimation methods can be assumed to apply and the resulting data compared to PBT criteria. Put another way, a metal or organometallic (or, similarly, a pigment) that is judged sufficiently persistent and meets the criteria for bioaccumulation potential and toxicity is of concern for "PBTness" regardless of theoretical arguments or generalizations.

The key is how persistence and bioaccumulation potential are determined in the PMN process, and by implication, how bioavailability is determined. This policy statement leaves unspecified how EPA intends to do this, but the Agency will consider all available and relevant data, and will use its professional judgment in considering issues like bioavailability of metals. Using lead as an example, many processes commonly observed in the environment can result in the presence of bioavailable (ionic) lead where it can be bioaccumulated by organisms. These processes may occur in soil and aquatic environments with low pH and low levels of organic matter. Under these conditions, the solubility of lead is enhanced and, in the absence of sorbing surfaces and colloids, lead ion can remain in solution for a sufficient period to be taken up by biota. Lead sorption to soil organic matter has been shown to be pH dependent. Decreasing pH can lead to increasing concentrations of lead in soil and water. Microbial transformations in soil, water, and sediment are also important in determining the overall fate of metals and metal compounds, and therefore the potential for formation of bioavailable forms. Metals are generally taken into cells by nutrient metal transport systems, and these are not sufficiently specific to completely exclude nonessential metals, some of which may be toxic and/or bioaccumulative. In this situation, nutrient metals can be displaced from their binding sites by undesirable, toxic metals, which then gain access to the cell interior with concomitant exclusion of the essential metal (Stumm and Morgan, 1996 see Unit VI.16.). Toxic metal ions are then free to react with critical enzymes or otherwise disrupt cellular functions if they reach certain levels. EPA concludes that under many environmental conditions, metals and metal compounds may be available to express toxicity and to bioaccumulate, and that these effects are not necessarily limited to metals that are not essential nutrients. It is appropriate, therefore, to be concerned about the potential for risk from these effects. It is the policy of the TSCA New Chemicals Program that if the metal in a metal compound cannot become available as a result of biotic or abiotic processes then the metal will not be available to express its toxicity, and by extension, to bioaccumulate. If the intact metal compound is not toxic and the metal is not available from the metal compound, then such a chemical would not be a strong candidate for regulation under TSCA section 5(e).

IV. Final TSCA New Chemicals Program Policy for PBT Chemical Substances

A. Evaluation Criteria and Process for New PBT Chemical Substances

EPA is adopting the following specific identification criteria and associated process for use in evaluating new chemical substances.

NEW CHEMICALS PROGRAM PBT CATEGORY CRITERIA AND PROCESS

	TSCA Section 5(e) Action	
	5(e) Order Pending Testing/Significant New Use Rule (SNUR)[1]	5(e) Ban Pending Testing[2]
Persistence (transformation half-life).	> 2 months	> 6 months
Bioaccumulation (Fish BCF or BAF)[3].	≥ 1,000	≥ 5,000
Toxicity	Develop toxicity data where necessary[4].	Develop toxicity data where necessary[4]

[1] Exposure/release controls included in order; testing required.

[2] Deny commercialization; testing results may justify removing chemical from "high risk concern".

[3] Chemicals must also meet criteria for MW (< 1000) and cross-sectional diameter (< 20A , or < 20 × 10^{-8} cm).

[4] Based upon various factors, including concerns for persistence, bioaccumulation, other physical/chemical factors, and toxicity based on existing data.

Chemical substances suspected as persistent bioaccumulators under the criteria listed in the table in Unit IV.A. of this document may need to undergo testing on "P" and "B" endpoints which, if confirmed, would be followed by appropriate toxicity testing to identify "PBT chemical substances." Control action under TSCA section 5(e) may be needed in varying degrees, based upon the level of risk concern. Agency control actions taken under TSCA section 5(e) for chemical substances meeting these criteria would be based upon the level of certainty for the PBT properties of a PMN substance (e.g., measured vs. estimated values), the magnitude of Agency concerns, and conditions of expected use and release of the chemical. For example, new chemical substances meeting the PBT criteria listed under "5(e) Order Pending Testing/Significant New Use Rule (SNUR)" could be addressed via a negotiated consent agreement under which necessary testing is "triggered" by specific production limits. While the PMN submitter would be allowed to commercialize the substance, certain controls could be stipulated, including annual TRI-type reporting on environmental releases of the PMN substance and specific limits on exposures, releases, or uses. The "ban pending testing" criteria are equivalent to those that have been used internationally to identify POPs. For the chemical substances meeting these criteria, the concern level is higher and the Agency would look carefully at any and all environmental releases. Because of the increased concern, more stringent control action would be a likely outcome, up to a ban on commercial production until data are submitted which allow the Agency to determine that the level of risk can be appropriately addressed by less restrictive measures. The control actions described in the table in Unit IV.A. of this document represent just one body of possible decisions and should not be considered as exclusive of other risk management options.

B. Testing Strategy for PBT Chemical Substances

Where EPA is unable to adequately determine the potential for bioaccumulation, persistence in the environment, and toxicity which may result from exposure of humans and environmental organisms to a possible PBT chemical substance, the Agency may conclude, pursuant to sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) and (II) of TSCA, that the information available to the Agency is insufficient to permit a reasoned evaluation of the human health and environmental effects of that PMN substance, that the manufacturing, processing, distribution in commerce, use, or disposal of the substance may present an unreasonable risk of injury to human health or the environment, and/or that the PMN substance will be produced in substantial quantities and that there may be significant or substantial human exposure to the substance or the PMN substance may reasonably be anticipated to enter the environment in substantial quantities. Accordingly, the Agency may find it appropriate to prohibit or otherwise limit the manufacture, import, processing, distribution in commerce, use, or disposal of the PMN substance in the United States pending the development of information necessary for a reasoned evaluation of these effects. The following testing strategy describes test data which EPA believes are needed to evaluate the persistence, bioaccumulation, and toxicity of a PBT chemical substance for which EPA has made the above described risk and/or exposure-based findings under section 5(e)(1)(A)(i) and (ii) of TSCA. The tests are tiered; depending upon the circumstances, such as magnitude of environmental releases, results of testing, or SAR, testing could begin above Tier 1 or additional, higher levels of testing may be required. As discussed in the response to Comment 19 in Unit III.I. of this document, testing must be conducted according to TSCA Good Laboratory Practice Standards at 40 CFR part 792 and using methodologies generally accepted at the time the study is initiated. Before starting to conduct any such study under the terms of a Consent Order under TSCA section 5(e), the PMN submitter must obtain approval of test protocols from EPA by submitting written protocols. Published test guidelines specified in Unit IV.B. of this document provide general guidance for development of test protocols, but are not themselves acceptable protocols.

Tier 1. If, based upon available test data, SAR, and professional judgment, the Agency identifies a new chemical substance as a possible PBT chemical substance, Log Kow should be determined experimentally, using either the liquid chromatography (OPPTS 830.7570 test guideline) or generator column (OPPTS 830.7560 test guideline) method. Hydrolysis in water (OPPTS 835.2110 test guideline) should be determined if, based upon SAR, susceptibility to hydrolysis is suspected. Ready biodegradability should be determined according to either one of the following test guidelines:

1. Ready biodegradability (OPPTS 835.3110 test guideline) 6 methods (choose one): DOC Die-Away, CO_2 Evolution, Modified MITI (I), Closed Bottle, Modified OECD Screening, Manometric Respirometry.
2. Sealed-vessel CO_2 production test (OPPTS 835.3120 test guideline).

If the measured log Kow is < 4.2 (equivalent to an estimated BCF of 1,000) or if the test chemical passes (pass criteria are described in the test guidelines) the ready biodegradability test (i.e., not persistent in the environment), no further PBT-related testing is required. If the measured log Kow is greater than or equal to 4.2, and the chemical does not pass the ready biodegradability test, no further testing will normally be deemed necessary in tier 1; the Agency would likely require tier 2 testing. If hydrolysis testing is conducted and results in a half-life of < 60 days, further testing may not be needed, but the need for testing must be determined after consideration of factors specific to the case, such as physical/chemical properties, persistence and bioaccumulative qualities of hydrolysis products, and the nature of the expected releases.

Tier 2. Biodegradability should be determined according to the Shake-flask die-away test (OPPTS 835.3170 test guideline). This test is based on the principle of aerobic incubation of the test chemical in natural water with and without suspended sediment, requires a chemical-specific analytical method, and allows for the development of a first-order rate constant and half-life. It provides information on persistence that is relevant to the natural environment and is intermediate in cost between ready biodegradability tests (tier 1) and sediment/water microcosm biodegradation test (tier 3).

Bioaccumulation potential should be determined by experimental measurement of the bioconcentration factor (BCF), using the Fish bioconcentration test (OPPTS 850.1730 test guideline (public draft)). Measured BCF should be based on 100 percent active ingredient and measured concentration(s).

If the measured biodegradation half-life is > 60 days and measured BCF is > 1,000, tier 3 testing will normally be required. If only one condition is met, releases and exposure are further considered to determine if additional testing is required.

Tier 3. Toxicity/advanced environmental fate testing. Human health hazards should be determined in the combined repeated dose oral toxicity with the reproductive/developmental toxicity screening test (OECD No. 422 test guideline) in rats. Other health testing will be considered where appropriate.

Environmental fate testing should be conducted according to the Sediment/water microcosm biodegradation test (OPPTS 835.3180 test guideline). The principle of this method is the determination of the test chemical's fate, including transport and transformation, in core chambers containing intact benthic sediment and overlying site water. The method permits more accurate and reliable extrapolation to natural aquatic environments than is possible with lower tier test methods.

Chronic toxicity to fish (rainbow trout) and daphnids should be determined according to 40 CFR 797.1600 (same as OPPTS test guideline 850.1400 (public draft)) and 40 CFR 797.1330 (same as OPPTS test guideline 850.1300 (public draft)), respectively. Additional testing to evaluate other biota (e.g., avian, sediment dwelling organisms) or other effects (e.g., endocrine disrupting potential) will be considered where appropriate.

V. Intended Legal Affect of this Policy Statement

The policy discussed in this document provides general guidance on the Agency's use of a category grouping for PBT new chemical substances to facilitate the PMN assessment process for PMN submitters and EPA reviewers. EPA uses groupings of new chemical substances with similar structural and toxicological properties to allow PMN submitters and EPA reviewers to benefit from accumulated data and decisional precedents, as well as streamlined procedural requirements related to the review of and follow-up for new chemical substances.

As guidance, the policy presented in this document is not binding on either EPA or any outside parties, and this document is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. Although this guidance provides a starting point for assessing PBT new chemical substances, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that this policy is not appropriate for a specific PMN or that the circumstances surrounding a specific PMN demonstrate that this policy should not be applied. Although the Agency has provided an opportunity for public comment on the guidance provided in this policy statement and is likely to request additional feedback if changes are necessary at some point in the future, the Agency may revise, clarify, or update the text of this guidance without public notice.

VI. References

The OPPTS harmonized test guidelines referenced in this document are available on EPA's World Wide Web site (http://www.epa.gov/OPPTS_Harmonized/).

1. Sijm, D.T.H.M., Schuurmann, G., de Vries, P.J., Opperhuizen, A. Aqueous Solubility, Octanol Solubility, and Octanol/Water Partition Coefficient of Nine Hydrophobic Dyes. *Environ. Toxicol. and Chem.* 18:1109–1117.

2. Mackay, D., Di Guardo, A., Paterson, S., Cowan, C.E. 1996. Evaluating the environmental fate of a variety of types of chemicals using the EQC model. *Environ. Toxicol. Chem.* 15:1627–1637.

3. Boethling RS, PH Howard, JA Beauman and ME Larosche. 1995. Factors for intermedia extrapolation in biodegradability assessment. *Chemosphere* 30: 741–752.

4. Federle TW, SD Gasior and BA Nuck. 1997. Extrapolating mineralization rates from the ready CO2 screening test to activated sludge, river water, and soil. *Environ. Toxicol. Chem.* 16: 127–134.

5. Boethling RS, Howard PH, Meylan W, Stiteler W, Beauman J, Tirado N. 1994. Group contribution method for predicting probability and rate of aerobic biodegradation. *Environ. Sci. Technol.* 28: 459–465.

6. USEPA. March, 1997. Chemistry Assistance Manual for Premanufacture Notification Submitters. EPA 744–R–97–003. Also available as Premanufacture Notification: Chemistry Assistance for Submitters, by Steven C. DeVito and Carol A. Farris (ISBN: 0–471–19151–5) through the publisher, John Wiley and Sons, at 1–800–225–5945 or the TSCA Hot Line, at 202–554–1404.

7. USEPA. March, 1994. U.S. EPA/EC Joint Project on the Evaluation of (Quantitative) Structure Activity Relationships. EPA 743–R–94–001.

8. USEPA. 1988. Letter from Charles L. Elkins to Geraldine V. Cox (Chemical Manufacturers Association). Office of Toxic Substances, USEPA (September 22, 1988).

9. USEPA. 1989. Letter from Charles L. Elkins to Geraldine V. Cox (Chemical Manufacturers Association). Office of Toxic Substances, USEPA (August 31, 1989).

10. Ministry of Environment and Energy for Ontario (MOEE). 1992. Candidate substances list for bans or phase-outs. Report perpared by the Hazardous Contaminants Branch and the Water Resources Branch, MOEE. Ontario, Canada, ISBN 0–7729–9764–0.

11. Accelerated Reduction/Elimination of Toxics (ARET) Secretariat. 1995. Environment leaders 1. Voluntary commitments to action on toxics through ARET. March 95.

12. Accelerated Reduction/Elimination of Toxics (ARET) Secretariat. 1994. The ARET substance selection process and guidelines. January 94.

13. International Joint Commission (IJC). 1993. A strategy for the virtual elimination of persistent toxic substances. Vol. 1, report of the Virtual Elimination Task Force to the IJC. Windsor, Ontario, Canada, 72 pp.

14. United Nations Economic Commission for Europe, Convention on Long-Range Transboundary Air Pollution (UNECE-LRTAP). 1998. Draft composite negotiating text for a protocol on persistent organic pollutants. UNECE, EB.AIR/1998/2, 31 March 1998.

15. Zeeman, M., D Rodier, and JV Nabholz. 1999. Chapter 2. Ecological Risks of a New Industrial Chemical. Under TSCA. In Ecological Risk Assessment in the Federal Government (Executive Office of the President, National Science and Technology Council, Committee on Environment and Natural Resources, Ed.). CENR/5–99/001, May, 1999, pp 2–1 to 2–30.

16. Stumm, W. and JJ Morgan. 1996. *Aquatic Chemistry*, 3rd ed. New York: Wiley.

List of Subjects

Environmental protection, Chemical substances, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 22, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–28888 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6469–6]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 311(b)(6), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility in violation of the regulations issued under section 311(j) of the Clean Water Act, 33 U.S.C. 1321(j), ("Oil Pollution Prevention Regulations"—40 CFR part 112) may be assessed a civil penalty of up to $137,500 by EPA in a "Class II" administrative penalty proceeding. Class II proceedings under section 311(b)(6) of the Clean Water Act are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits at 40 CFR part 22 ("part 22")."

Pursuant to section 311(b)(6)(C) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(C), EPA is providing notice of the following proposed Class II penalty proceeding initiated by the Superfund Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105:

In the Matter of Paramount Petroleum Corporation, Inc. and Eott Energy Operating Limited Partnership, Docket No. OPA–09–99–0002, filed September 30, 1999; proposed penalty $137,500; for violations of the Oil Pollution Prevention Regulations (40 CFR part 112) at the asphalt storage, processing and distribution facility located in Flagstaff, AZ.

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of part 22, review the Complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Danielle Carr, Regional Hearing Clerk (RC–1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this document.

Dated: September 22, 1999.

Michael Feeley,

Acting Director, Superfund Division, Region IX.

[FR Doc. 99–28886 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 27, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0627.

Title: Application for AM Broadcast Station License.

Form No.: FCC Form 302–AM.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 380.

Estimated Time Per Response: 92–512 hours per respondent.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,800 hours.

Total Annual Cost: $10,070,000.

Needs and Uses: On October 22, 1998, the Commission adopted a Report and Order in MM Docket Nos. 98–43 and 94–149. Among other things, this Report and Order substantially revised the FCC Form 302–AM to facilitate electronic filing by replacing narrative exhibits with the use of certifications and an engineering technical box. The Commission also removed and narrowed overly burdensome questions. The FCC Form 302–AM will be supplemented with detailed instruction to explain processing standards and rule interpretations to help ensure that applicants certify accurately. These changes will reduce applicant filing burdens in the preparation and submission of exhibits in support of applications. In addition, these changes will streamline the Commission's processing of FCC 302–AM applications. The Commission has also adopted a formal program of pre-and post-application grant random audits to preserve the integrity of our streamlined application process.

The data will be used by FCC staff to confirm that the station has been built to the terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from the FCC 302–AM for inclusion in the subsequent license to operate the station.

OMB Control No.: 3060–0506.

Title: Application for FM Broadcast Station License.

Form No.: FCC Form 302–FM.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 925.

Estimated Time Per Response: 4–0 hours per respondent.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,840 hours.

Total Annual Cost: $665,500.

Needs and Uses: On October 22, 1998, the Commission adopted a Report and Order in MM Docket Nos. 98–43 and 94–149. Among other things, this Report and Order substantially revised the FCC Form 302–FM to facilitate electronic filing by replacing narrative exhibits with the use of certifications and an engineering technical box. The Commission also removed and narrowed overly burdensome questions. The FCC Form 302–FM will be supplemented with detailed instruction to explain processing standards and rule interpretations to help ensure that applicants certify accurately. These changes will reduce applicant filing burdens in the preparation and submission of exhibits in support of applications. In addition, these changes will streamline the Commission's processing of FCC 302–FM applications. These Commission has also adopted a formal program of pre-and post-application grant random audits to preserve the integrity of our streamlined application process.

The data will be used by FCC staff to confirm that the station has been built to the terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from the FCC 302–FM for inclusion in the subsequent license to operate the station. Applications using the new one-step process will be reviewed to ensure that he minor changes made by the station will not have any significant impact on other stations and the public.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28795 Filed 11–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:30 p.m. on Monday, November 8, 1999, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Uniform Retail Credit Classification and Account Management Policy.

Memorandum and resolution re: Final Rescission of 12 CFR Part 343—Insured State Nonmember Banks Which Are Municipal Securities Dealers.

Memorandum and resolution re: Technical Amendments to FDIC's Regulations Relating to Rules of Practice and Procedure and Deposit Insurance Coverage, 12 CFR Parts 308 and 330.

Memorandum re: Final Publication of Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness.

Discussion Agenda:

Memorandum re: BIF Assessment Rates for the First Semiannual Assessment Period of 2000.

Memorandum re: SAIF Assessment Rates for the First Semiannual Assessment Period of 2000.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW, Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 1, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–28983 Filed 11–1–99; 5:06 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, November 9, 1999, 10 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C.437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Wednesday, November 10, 1999, 10 a.m.

PLACE: 999 E Street, NW, Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–24: Election Zone LLC ("EZone") by Ryan E. Arney, President and CEO.

Advisory Opinion 1999–29: Bill Bradley for President, Inc. by counsel. Robert F. Bauer.

Status of Y2K Compliance.

Status of PricewaterhouseCoopers (PwC) Recommendations.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99–28985 Filed 11–2–99; 11:19 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer)

230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Fentura Bancorp, Inc.*, Fenton, Michigan; to acquire 100 percent of the voting shares of Davison State Bank (in organization), Davison, Michigan.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *CSB Bancshares, Inc.'s Amended ESOP*, Ellsworth, Kansas; to become a bank holding company by acquiring 26.68 percent of the voting shares of CSB Bancshares, Inc., Ellsworth, Kansas, and thereby indirectly acquire Citizens State Bank and Trust Company, Ellsworth, Kansas.

2. *First Ada Bancshares, Inc.*, Ada, Oklahoma; to merge with Prague Bancorp, Inc., Prague, Oklahoma, and thereby indirectly acquire Prague National Bank, Prague, Oklahoma.

Board of Governors of the Federal Reserve System, October 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28812 Filed 11–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Skandinaviska Enskilda Banken AB (publ)*, Stockholm, Sweden; to engage *de novo* through its subsidiary, Enskilda Securities Inc., New York, New York, in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, October 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28813 Filed 11–3–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Special Emphasis Panel (SEP) meeting.

SEPs are committees used for scientific review activities. These committees have members drawn from a list of experts who are designated to serve for particular individual meetings rather than for extended fixed terms of service.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of SEP:* HIV/AIDS.

Date: November 19, 1999 (Open from 2:00 p.m. to 2:15 p.m. and closed for remainder of the meeting)

Place: AHCPR, 2101 E. Jefferson Street, suite 400W Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meeting should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHCPR, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the November 19 meeting due to the time constraints of reviews and funding cycles.

Dated: October 29, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–28946 Filed 11–3–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–06]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Evaluation of Viral Hepatitis Educational Materials—New—National Center for Infectious Disease (NCID). The purpose of the proposed study is to assess the usefulness of hepatitis educational materials developed and

distributed by the Hepatitis Branch, CDC. Annually, 125,000–200,000 Americans are infected with hepatitis A virus (HAV) and results in approximately 100 deaths. The estimated cost associated with HAV infections is estimated at $200 million a year in medical care and lost work days. An estimated 1 million to 1.25 million Americans are chronically infected with hepatitis B virus (HBV) and 4,000 to 5,000 die each year due to resultant cirrhosis and liver cancer. The estimated cost associated with HBV infections is estimated at $700 million a year in medical care and lost work days. It is estimated that 3.9 million Americans have been infected with hepatitis C virus (HCV), 2.7 million of which are chronically infected. Not including the cost of liver transplantation, the estimated cost associated with HCV infections is $600 million a year in medical care and lost work days.

There are no costs to respondents other than their time to participate.

Form name	Number of respondents	Number of responses/respondent	Avg. burden per responses (in hours)	Total burden (in hours)
Phone	200	1	0.33	66
Written	2400	1	0.33	792
Total				858

Date: October 28, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–28844 Filed 11–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Telephone Survey Measuring HIV/STD Risk Behavior Using Standard Methodology—New—The Behavioral Surveillance Working Group, coordinated by the National Center for HIV, STD and Tuberculosis Prevention (NCHSTP). Proposes to conduct testing of a set of survey questions intended to obtain measures of risk behaviors for Human Immunodeficiency Virus (HIV) and Sexually Transmitted Diseases (STDs). Knowledge about the level of HIV risk behaviors in populations is essential for effective HIV prevention programs. Currently, survey-based assessment of these behaviors depends on a range of survey questions that differ across survey, and that are difficult to compare and to reconcile. Therefore, CDC has developed a draft set of items to be proposed as standard survey questions on the topics of sexual behavior, HIV testing, drug use, and other behaviors related to risk of contracting HIV and/or STDs. As part of this effort, CDC will sponsor a telephone-based pretest of 150 households, selected randomly from within an urban area, in order to test these questions.

Further, because some of the survey questions are private and potentially sensitive, the project will entail the testing of a survey administration mode: Telephone-based audio computer-assisted self-interview (T–ACASI), in which a computer will be used to administer the most sensitive questions, and in which the surveyed individual enters responses directly onto the telephone keypad. This procedure eliminates the need for communication of sensitive questions from the interviewer to the respondent, as well as the need for respondents to answer the questions verbally. In order to test the effectiveness of this procedures, half of the interviews will be conducted using the T–ACASI procedure for the most sensitive questions, and half using standard, interviewer-based administration of all questions. Data analysis will rely on an assessment of the response rate under each mode, and on the nature of the data obtained to the sensitive questions.

Information and data obtained from this evaluation will help direct future surveys by determining whether it is feasible to attempt to administer these standard risk questions using a telephone survey and whether a T–ACASI-based procedure represents a technological innovation that will positively contribute to such an effort, through improvements in data quality.

The total cost to respondents is $505.60.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hours)	Total burden (in hours)
Screening	660	1	0.02	13.2
Interview	150	1	0.33	50.0

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hours)	Total burden (in hours)
Total				63.2

Dated: October 28, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–28845 Filed 11–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00009]

Availability of Funds for Fiscal Year 2000; Cooperative Agreement for a National Immunization Coalition and Information Network

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for a National Immunization Coalition and Information Network. This program addresses the "Healthy People 2000" priority area of Immunization and Infectious Diseases.

The purpose of this program is to create a national coalition and information network to improve the effectiveness of efforts to reduce vaccine preventable disease among children, adolescents, and adults. This program will be accomplished through fostering collaboration among public and private nonprofit organizations, Federal government agencies, State and local governments, National Immunization Program partners and grantees, and others.

This program will improve knowledge and awareness of health care providers, public and private health organizations, and other public health groups about immunization recommendations, practices, programs, and benefits by:

1. Fostering the creation of new partnerships and working to build new and effective coalitions to identify and address educational needs regarding immunization issues.
2. Developing materials which translate technical immunization guidelines, recommendations, and information into formats which are appropriate, understandable, and useful to targeted audience(s).
3. Identifying successful interventions among immunization programs by networking with private providers and public health organizations to identify successful programs and effective immunization strategies and tactics, including case examples, educational materials, media and partner relationship strategies, and public relations practices.
4. Distributing appropriate, understandable, and useful technical immunization guidelines, educational materials, and information regarding successful immunization programs to national, State, and local health care providers, advocacy groups, private providers, and public health organizations, including State and local health departments and other National Immunization Program partners.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations. Tax-exempt status may be confirmed by either providing a copy of the pages from the Internal Revenue Service's (IRS) most recent list of 501(c)(3) tax-exempt organizations or a copy of the current IRS Determination Letter. Proof of tax-exempt status must be provided in the application.

C. Availability of Funds

Approximately $500,000 will be available to fund one cooperative agreement. It is expected that this award will begin on or about February 1, 2000, and will be made for a 12-month budget period within a project period of up to three years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds cannot be used for construction or renovation, to purchase or lease vehicles or vans, to purchase a facility to house project staff or carry out project activities, or to supplant existing support.

D. Cooperative Activities

To achieve the purpose of this cooperative agreement, the recipient will be responsible for the activities under "Recipient Activities" below. CDC will be responsible for activities under "CDC Activities" below.

Recipient Activities

1. Convene 1–2 meetings per year of public and private health care providers, volunteer groups, community-based organizations, members of the corporate sector, and other public health organizations to inform them of the most current immunization issues, identify and address education needs regarding immunizations in an effort to gain support in reaching national immunization goals.
2. Utilize recommendations by the National Immunization Program, Advisory Committee on Immunization Practice (ACIP), American College of Physicians (ACP), American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP) to create new materials which facilitate the understanding, adoption, and use of those recommendations by the targeted audience(s).
3. Identify major immunization issues, promotional literature and activities, educational materials, and immunization statistics on the national, State, and local levels that involves, or affects, efforts to reduce vaccine preventable disease among children, adolescents, and adults.
4. Establish and implement mechanisms for promoting effective immunization practices and programs and distributing collected materials and information to health care organizations and interest groups around the country. For example, promote current programs such as the CDC National Immunization Information Hotline.
5. Actively participate in conferences and meetings on the National and State level that focus on highlighting model programs and strategies, information exchange, addressing immunization issues, and maintaining or increasing child, adolescent, and adult immunization coverage levels.
6. Establish and implement mechanisms for evaluating the reach of the program and effectiveness of the materials produced.

CDC Activities

1. Provide technical assistance in implementing activities, identifying major immunization issues and effective programs.

2. Provide scientific collaboration for appropriate aspects of the activities, including information on disease impact, vaccination coverage levels, and prevention strategies.

3. Assist in development and review of relevant immunization information made available to Federal, State, and local health agencies, health care providers, and volunteer organizations.

4. In conjunction with the recipient, evaluate the reach of the program and effectiveness of the materials produced.

E. Application Content

Use the information in the Cooperative Activities, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The application should be no more than 35 double-spaced pages, printed on one side, with one-inch margins, and 12 point font, not including attachments.

Organization Profile

1. Provide a narrative, including background information and information on the applicant organization, evidence of relevant experience in coordinating activities among constituents, and a clear understanding of the purpose of the project.

2. Include details of past experiences working with the target population(s). Provide information on organizational capability to conduct proposed project activities.

3. Profile qualified and experienced personnel who are available to work on the project and provide evidence of the organizational structure that is proposed to meet the requirements of the project. Include an organizational chart of the applicant organization specifying the location and staffing plan for the proposed project.

Program Plan

1. Include goals and measurable impact and process objectives that are specific, realistic, measurable, and time-phased. Include an explanation of how the objectives contribute to the purposes of the request for assistance and evidence that demonstrates the potential effectiveness of the proposed objectives.

2. Detail an action plan, including a timeline of activities and personnel responsible for implementing each segment of the plan.

3. Prepare a plan to include impact and process evaluation utilizing both quantitative and qualitative measures for the achievement of program objectives to determine the reach and effectiveness of the message promoted by the awardee, and monitor the implementation of proposed activities. Indicate how the quality of services provided will be ensured.

4. Provide a plan for disseminating project results indicating when, to whom, and in what format the material will be presented.

5. Provide a plan for obtaining additional resources from non-Federal sources to supplement program activities and ensure continuation of the activities after the end of the project period.

Collaboration Activities

1. Obtain and include letters of support, written in the last 12 to 24 months, from local and national organizations and constituents.

2. Provide memoranda of agreement from collaborating organizations indicating a willingness to participate in the project, the nature of their participation, period of performance, names and titles of individuals who will be involved in the project, and the process of collaboration. Each memorandum should also show an understanding and endorsement of immunization activities.

3. Provide evidence of collaborative efforts with health departments, provider organizations, coalitions, and other local organizations.

Budget Information

1. Provide a detailed budget with justification. The budget proposal should be consistent with the purpose and program plan of the proposed project.

2. Provide an itemized (line-item) budget categorized by objective.

3. Also provide, if known at the time of application, the name of the contractor, method of selection, budget etc.

F. Submission and Deadline

Submit the original and two copies of the application PHS 5161–1, (OMB Number 0937–0189). Forms are in the application kit.

On or before December 20, 1999, submit the application to: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement Number 00009, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. *Background and Need:* The extent to which the applicant understands the problem of under-immunization and proposes a plan to address the issues specific to their constituents. (15 points)

2. *Capability:* The extent to which the applicant appears likely to succeed in implementing proposed activities as measured by relevant past experience, a sound management structure, and staff qualifications, including the appropriateness of their proposed roles and responsibilities and job descriptions. The applicant:

a. Must have three years of demonstrated history of producing or disseminating written health promotion, disease prevention, or immunization related written communication materials, such as newsletters, media kits, posters, brochures, or information sharing documents.

b. Must have three years of demonstrated history of sponsoring and/or organizing meetings at a regional or national level with the purpose of sharing information, transferring skills, and promoting immunization initiatives.

c. Must have three years of demonstrated history of working with and accessing major agencies, private and public sector public health organizations, professional health associations, volunteer groups, and other organizations across the country, and demonstrate their capability to motivate and manage other organizations to participate with a national immunization coalition. (25 points)

3. *Program Plan:* The feasibility and appropriateness of the applicant's action plan to identify immunization issues and new developments (e.g., new recommendations), communicate with, and reach, targeted populations, translate technical immunization information into appropriate new formats, develop and disseminate effective immunization materials and information, and establish and implement a national immunization information sharing/dissemination network. (30 points)

4. *Coordination and collaboration:* The extent to which the applicant proposes to develop and maintain a National Immunization Coalition and Information Network, and coordinate the activities of that coalition with State and local immunization programs, State and local coalitions, provider organizations, and other appropriate agencies. (20 points)

5. *Evaluation Plan:* The extent to which the applicant proposes to evaluate the proposed plan, including impact and process evaluation, as well as quantitative and qualitative measures for achievement of program objectives, determining the health effect on the population, and monitoring the implementation of proposed activities. (10 points)

6. *Budget and Justification:* The extent to which the proposed budget is adequately justified, reasonable, and consistent with proposed project activities and this program announcement. (Not Scored)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Progress reports (annual, semiannual, or quarterly);
2. Financial status report, no more than 90 days after the end of the budget period;
3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Appendix II in the application kit.

AR98–10—Smoke-Free Workplace

AR98–11—Healthy People 2000

AR98–12—Lobbying Restriction

AR98–14—Accounting System Requirements

AR98–15—Proof of Non-Profit Status

AR98–20—Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 311 [42 U.S.C. 243] and 317(k)(2), [42 U.S.C. 247b(k)(2)] of the Public Health Service Act as amended. The Catalog of Federal Domestic Assistance number is 93.185.

J. Where To Obtain Additional Information

This and other CDC announcements and application forms may be downloaded from the CDC Internet home page—http://www.cdc.gov. Click on "funding."

Interested parties without Internet access may request an application kit by calling 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00009, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341, Telephone (770) 488–2716; FAX (770) 488–2777); E-mail address: spo2@cdc.gov.

For program technical assistance, contact: Glen Nowak, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop E–05, Atlanta, Georgia 30333, Telephone (404) 639–8200; FAX (404) 639–8626, E-mail address: gjn0@cdc.gov.

Dated: October 28, 1999.

Henry S. Cassell,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–28842 Filed 11–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY: President's Committee on Mental Retardation, HHS.

ACTION: Notice of meeting.

DATES: The meeting of the President's Committee on Mental Retardation will be held on Tuesday, November 30, 1999, from 1 p.m. to 5:30 p.m., Wednesday, December 1, 1999, from 9 a.m. to 5:30 p.m. and Thursday, December 2, 1999, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held in the Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC 20001. Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

AGENDA: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

FOR FURTHER INFORMATION CONTACT: Jane L. Browning, Executive Director, President's Committee on Mental Retardation, 370 L'Enfant Promenade, SW, Washington, DC 20447, (202) 619–0634.

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

Dated: October 26, 1999.

Jane L. Browning,

Executive Director, PCMR.

[FR Doc. 99–28799 Filed 11–3–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2250]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 6, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection—21 CFR 606.100, 606.160, 610.46, and 610.47 (OMB Control No. 0910–0336)—Extension

Under the biologics licensing and quarantine provisions of the Public Health Service Act (42 U.S.C. 262–264) and the general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351–353, 355–360, and 371–374), FDA has the authority to issue regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the introduction, transmission, or spread of communicable diseases. FDA has implemented an extensive system of donor screening and testing procedures performed by blood establishments before, during, and after donation, to help prevent the transfusion of blood products that are at increased risk for transmitting human immunodeficiency virus (HIV). HIV is the virus that causes acquired immune deficiency syndrome (AIDS), a communicable disease that can be transmitted through transfusion. Despite the best practices of blood establishments, however, a person may donate blood early in infection, during the period when the antibody to HIV is not detectable by a screening test, but HIV is present in the donor's blood (a so-called "window" period). If the donor attempts to donate blood at a later date, the test for antibody to HIV may, at that time, be repeatedly reactive. Therefore, FDA believes such circumstances require clarification of the donor's status through testing with a more specific antibody test and procedures to "lookback" at prior collections.

FDA issued regulations that require blood establishments to follow written standard operating procedures (SOP's) when the blood establishments have collected Whole Blood, blood components, Source Plasma, and Source Leukocytes later determined to be at increased risk for transmitting HIV. When a donor who previously donated blood is tested on a later donation, and tests repeatedly reactive for antibody to HIV, the regulations require blood establishments to perform more specific testing using a licensed test, and notify consignees who received Whole Blood, blood components, Source Plasma, and Source Leukocytes from prior collections so that appropriate action is taken. Blood establishments and consignees are required to quarantine previously collection Whole Blood, blood components, Source Plasma, and Source Leukocytes from such donors, and if appropriate, notify transfusion recipients. Upon completion of more specific testing, hospital transfusion services that do not participate in Medicare, and are therefore not subject to Health Care Financing Administration's (HCFA's) regulations, are required to take steps to notify transfusion recipients, as appropriate. These regulations are intended to help ensure the continued safety of the blood supply by providing necessary information is provided to users of blood and blood components and appropriate notification of recipients of transfusion at increased risk for transmitting HIV infection.

Section 606.100(b)(19) (21 CFR 606.100(b)(19)) requires written SOP's for the following procedures: (1) Review prior donations of blood and blood products from donors with no previous history of antibody to HIV who subsequently test repeatedly reactive for the antibody to HIV; (2) quarantine in-house blood and blood products; (3) notify consignees regarding the need to quarantine such products; (4) determine the suitability for release of such products from quarantine; (5) notify consignees of such products with antibody testing results from "lookback" donors; and (6) notify attending physicians so that transfusion recipients are informed that they may have received blood and blood components at increased risk for transmitting HIV. Section 606.160(b)(1)(vii) (21 CFR 606.160(b)(1)(vii)) requires records to relate the donor with the unit number of each previous donation from that donor. Section 606.160(b)(1)(viii) requires records of quarantine, notification, testing, and disposition performed under §§ 610.46 and 610.47 (21 CFR 610.46 and 610.47). Section 610.46(a) requires blood establishments to notify consignees, within 72 hours, of repeatedly reactive tests results so that previously collected blood and blood components are appropriately quarantined. Section 610.46(b) requires blood establishments to notify consignees of licensed, more specific test results for HIV within 30-calendar days after the donors's repeatedly reactive test. Section 610.47(b) requires transfusion services not subject to HCFA regulations to notify physicians of prior donation recipients or to notify recipients themselves of the need for HIV testing and counseling. There are approximately 3,076 registered blood establishments that annually collect an estimated 24 million units of Whole Blood and Source Plasma, and that are required to follow FDA "lookback" procedures. Of these establishments, approximately 180 are registered transfusion services that are not subject to HCFA's "lookback" regulations.

The following reporting and recordkeeping estimates are based on information provided by industry, and FDA experience. In Table 1 of this document, it is estimated that an average of 60 repeat donors per establishment will test repeatedly reactive annually. This estimate results in a total number of 184,560 notifications of these test results to consignees by blood establishments for the purpose of quarantine of affected products, and another 184,560 notifications to consignees of subsequent test results. It is estimated that transfusion services not subject to HCFA's regulations will need to notify physicians, or in some cases recipients, an average of 16 times per year resulting in a total number of 2,880 notifications. FDA estimates an average of 10 minutes per notification of consignees, physicians, and recipients. The estimate of one-half hour for § 610.47(b) is based on the minimum requirement of three attempts to notify recipients by transfusion services. In Table 2 of this document, the estimate of 154 recordkeepers and 160 records is based on the estimate that the requirement is already implemented voluntarily by more than 95 percent of the facilities, which collect 98 percent of the Nation's blood supply. FDA estimates that it takes approximately 5 minutes to document and maintain the records to relate the donor with the unit number of each previous donation. The establishment of SOP's under § 606.100(b)(19) is a one-time burden. The maintenance of the SOP's is considered usual and customary business practice, therefore no burden is calculated for the preparation and updating of the SOP.

In the **Federal Register** of August 3, 1999 (64 FR 42132), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.46(a)	3,076	60	184,560	0.17	31,375
610.46(b)	3,076	60	184,560	0.17	31,375
610.47(b)	180	16	2,880	0.5	1,440
Total					64,190

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
606.160(b)(1)(vii)	154	160	24,640	12.8	1,971
606.160(b)(1)(viii)	3,076	60	184,560	4.8	14,765
Total					16,736

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 27, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–28808 Filed 11–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–276]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Prepaid Health Plan Cost Report;

Form No.: HCFA–276 (OMB# 0938–0165);

Use: These forms are needed to establish the reasonable cost providing covered services to the enrolled Medicare population of Health Maintenance Organizations and Competitive Medical Plans (HMO/CMP) in accordance with Section 1876 of the Social Security Act and Health Care Prepayment Plans (HCPP) in accordance with Section 1833 of the Social Security Act;

Frequency: Quarterly, Annually;

Affected Public: Business or other for-profit;

Number of Respondents: 62;

Total Annual Responses: 327;

Total Annual Hours: 11,600.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access

HCFA's WEB SITE ADDRESS at

http://www.hcfa.gov/regs/prdact95.htm,

or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 20, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–28837 Filed 11–3–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Uncompensated Services Assurance Report (OMB No. 0915–0077)—Extension

Under the Hill-Burton Act, the Government provides grants and loans for construction or renovation of health care facilities. As a condition of receiving this construction assistance, facilities are required to provide services to persons unable to pay. A condition of receiving this assistance requires facilities to provide assurances periodically that the required level of uncompensated care is being provided, and that certain notification and recordkeeping procedures are being followed. These requirements are referred to as the uncompensated services assurance.

ESTIMATE OF INFORMATION COLLECTION BURDEN

Type of requirement and regulatory citation	Number of Respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Disclosure Burden (42 CFR):					
Published Notices (124.504(a))	389	1	389	0.75	292
Individual Notices (124.504(c))	389	1	389	43.6	16,960
Determinations of Eligibility (124.507)	389	396	154,044	0.75	115,533
Reporting:					
Uncompensated Services Report—HRSA–710 Form (124.509(a))	10	1	10	11.0	110
Application for Compliance Alternatives:					
Public Facilities (124.513)	4	1	4	6.0	24
Small Obligation Facilities (124.514(c))	0				
CHC, MHC, NHSC (124.515(b)(2)(ii) and 124.515(b)(3)(iii)(B))	0				
Charitable Facilities (124.516(c))	2	1	2	6.0	12
Annual Certification for Compliance Alternatives:					
Public Facilities (124.509(b))	195	1	195	0.5	98
Charitable Facilities (124.509(b))	26	1	26	0.5	13
Small Obligation Facilities (124.509(c))	1	1	1	0.5	0.5
Complaint Information (124.511(a)):					
Individuals	10	1	10	0.25	3
Facilities	10	1	10	0.5	5
Total Reporting and Notification Burden	617		155,080		133,051

Recordkeeping requirements	Number of recordkeepers	Hours per year	Total hour burden
Non-alternative Facilities (124.510(a))	389	50	19,450

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 29, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–28810 Filed 11–3–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Annual Administrative Reporting System for the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990 for Titles I amd II (OMB No. 0915–0166): Revision

OMB approval is requested for the Annual Administrative Reporting System (AAR) established in 1994 to collect information from grantees and their subcontracted service providers. The AAR collects aggregate information from grantees about the disbursal of funds, number of clients served and services provided, demographic information about clients served, and cost of providing services funded under Title I and II of the Ryan White CARE Act.

The primary purpose of the AAR is to: (1) Document the use of Title I and Title II funds and the providers who received them, (2) assess the effects of these funds on the number and diversity of individuals served, (3) evaluate the quantity of services received, and (4) help examine the effectiveness of coordinated systems of care in meeting the needs of individuals living with HIV. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, the AAR supports critical efforts by HRSA, state and local grantees, and providers to assess the status of existing HIV-related service delivery systems.

Separate reports were developed to collect aggregate data from the three program types that receive funds under Title I and/or Title II: (1) Title I programs, Title II programs; (2) centrally administered state programs for the continuation of health insurance; and (3) state programs providing HIV prescription drug assistance.

The following changes to the AAR are proposed to improve the accuracy of the data collected and facilitate local analysis of primary medical care outcome measures: Certain funding questions will be eliminated, all questions will require numerical responses, not percentages; some questions will be restricted to certain providers; and a set of questions has been added to help evaluate primary medical services.

The estimated response burden is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Standard Annual Administrative Report (SAAR)					
Medical providers	660	1	660	35	23,100
Non-medical providers	1,975	1	1,975	20	39,500
Grantees	105	1	105	24	2,520
AIDS Pharmaceutical Assistance Annual Administrative Report (includes State ADAP and local APA pharmaceutical programs)					
Administrator/Grantee	76	1	76	25	1,900
Health Insurance Continuation Program					
Administrative/Grantee	66	1	66	18.5	1,221
Total	2,882	1	2,882	....	68,241

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 29, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–28811 Filed 11–3–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1999.

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: November 17–19, 1999; 8:00 a.m.–5:00 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting is open to the public on Wednesday, November 17 from 8–10 a.m., and closed for the remainder of the meeting.

Agenda: The open portion of the meeting will cover opening remarks by the Acting Director, Division of Research, Training and Education, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on Wednesday, November 17, 1999, from 10:00 a.m., to the remainder of the meeting, for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, or by telephone at (301) 443–2190.

Dated: October 28, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–28809 Filed 11–3–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; California Health Interview Survey (CHIS)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: California Health Interview Survey (CHIS) Cancer Control Topical Module (CCTM). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* NCI has sponsored two Cancer Control

Topical Modules to the National Health Interview Survey (NHIS) in 1987 and 1992, and will sponsor a third to be administered in 2000. While these national data have proven extremely useful in monitoring risk factors and screening related to cancer control, the national sample does not provide adequate numbers of racial-ethnic minorities to analyze particular domains within them, such as age by gender and income or education. The CHIS is a new telephone survey designed to provide population-based, standardized health-related data for California counties. Initiated by the California Department of Health Services (CDHS) Center for Health Statistics, the Public Health Institute (PHI), and the UCLA Center for Health Policy Research (UCLA), the survey will largely be funded by California sources. The 2000 CHIS CCTM will be similar in content to the 2000 NHIS CCTM, and will be administered to one sample adult in 55,000 households. California, the most populous state in the nation, is also the most racially and ethnically diverse. Specific populations of interest include Black or African American, Hispanic or Latino, Asian, Native Hawaiian or Other Pacific Islander, and American Indian or Alaska Native. NCI anticipates comparing the CHIS and NHIS data in order to conduct comparative and pooled analyses that will enable better estimates of health-related behaviors and cancer risk factors for smaller racial/ethnic minority populations. In this way, NCI anticipates improving its estimates for cancer risk factors and screening among racial/ethnic minority populations. *Frequency of response:* One-time. *Affected public:* Individuals. *Types of Respondents:* U.S. adults. The annual reporting burden is as follows:

TABLE A.12–1.—ANNUALIZED BURDEN ESTIMATES FOR CHIS DATA COLLECTION

Data collection	Estimated number of respondents	Frequency of response	Average time per response	Annual hour burden
Adult Core	55,000	1	.5	27,500
CCTM	55,000	1	.2004	11,022
Totals	55,000			38,522

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For further Information: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nancy Breen, Ph.D., Project Officer, National Cancer Institute, EPN 313, 6130 Executive Boulevard MSC 7344, Bethesda Maryland 20892–7344, or call non-toll-free number (301) 496–8500, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to nb19k@nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before January 3, 2000.

Dated: October 26, 1999.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 99–28919 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Minority Based Community Clinical Oncology Program.

Date: November 30–December 2, 1999.

Time: 7 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact person: Ray Bramhall, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd, Rockville, MD 20892, (301) 496–3428.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393; Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 26, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28922 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Northern Indiana Cancer Research Consortium.

Date: November 30, 1999.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Ray Bramhall, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd. Rockville, MD 20892, (301) 496–3428.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnostic Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 26, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28923 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Special Review Committee for Training (T 32) Grants.

Date: November 17, 1999.

Time: 1 to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Harvey P. Stein, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301–496–7481.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control National Institutes of Health, HHS)

Dated: October 26, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28924 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Early Detection Research Network: Data Management and Coordinating Center.

Date: November 18, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–7987.

(Catalog of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: October 26, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28925 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Review of a Cancer Education Grant.

Date: November 4, 1999.

Time: 5 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Olivia T. Preble, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—Rm. 643B, Rockville, MD 20892–7405, 301/496–7929.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 26, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28926 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: December 20, 1999.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B32, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 26, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28920 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: November 16, 1999.

Time: 1 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Craig A. Jordan, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: November 30, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Westin Fairfax Hotel, 2100 Massachusetts Ave, N.W. Washington, DC 20008.

Contact Person: Stanley C. Oaks, Jr., Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 28, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28927 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 29, 1999.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 3, 1999.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 6, 1999.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research

Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 28, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28928 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Regulation of Developmental Signaling.

Date: November 3–4, 1999.

Time: 7:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, Orange county Airport, 2120 Main Street, Irvine, CA 92614.

Contact Person: Gopal M.Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 28, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28931 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 1999.

Time: 3 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Fair Lakes, 12777 Fair Lakes Circle, Fairfax, VA 22033.

Contact Person: Cheryl M. Corsaro, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–1045, corsaroc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 26, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28921 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1999.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George M. Barnas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–0696.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 21–23, 1999.

Time: 8 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, University Center, Pittsburgh, PA 15213.

Contact Person: Mike Radtke, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

Name of Committee: Center for Scientific Special Emphasis Panel.

Date: November 21–23, 1999.

Time: 8 am to 1 am.

Agenda: To review and evaluate grant applications.

Place: NIH Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Center for Scientific Special Emphasis Panel.

Date: November 23, 1999.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gordon L. Johnson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29, 1999.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29, 1999.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Calbert A. Laing, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, laingc@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30, 1999.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28929 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 1999.

Time: 1 to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alec S. Liacouras, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28930 Filed 11–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FA–108–2810–00–24–1E]

Reopening of the Call for Non-Federal Nominations to the Joint Fire Science Program Stakeholder Advisory Group

AGENCY: Office of the Secretary, Interior.

ACTION: Reopening of the public call for nominations to the Joint Fire Science Program Stakeholder Advisory Group.

SUMMARY: The Secretary of the Interior and the Secretary of Agriculture are reopening the call for public nominations to the Joint Fire Science Program Stakeholder Advisory Group to allow more time for the public to assemble and submit nomination materials. The initial notice was published in the **Federal Register** on Monday, June 21, 1999 (64 FR 33112). A second notice was published in the **Federal Register** on Tuesday, August 10, 1999 (64 FR 43404).

The purpose of this Stakeholder Advisory Group is to provide advice concerning priorities and approaches for research and implementation of research findings for the management of wildland fuels on lands administered by the Department of the Interior, through the Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service, and the Department of Agriculture, through the Forest Service.

DATES: Nominations should be submitted to the address listed below no later than December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Bob Clark, Joint Fire Science Program Manager, National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho 83705, (208) 387–5349. Internet: bob_clark@blm.gov.

SUPPLEMENTARY INFORMATION: The Stakeholder Advisory Group will consist of 30 members, 15 Federal and 15 nonfederal. This call for nominations will establish the nonfederal membership on the Group. Group membership will be balanced in terms of categories of interest and geographic area represented.

Any individual or organization may nominate one or more persons to serve on the Joint Fire Science Program Stakeholder Advisory Group. Individuals may also nominate themselves for Group membership. All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to the above address. Letters of support should be from interests or groups that nominees claim to represent. This material will be used to evaluate nominees in terms of their expertise and qualifications for advising the Secretaries on matters pertaining to research into wildland fuels problems and implementation of strategies and solutions for managing the increasing fuel loadings on federally administered wildlands.

Nominations may be made for the following categories of interest:

Wildland fire management
Wildland fuels management
Air quality management
Public lands management
Forest ecology
Rangeland ecology
Hydrology
Conservation
Social science

Computer science and modeling
Tribal government
Public-at-large

The specific category that the nominee will represent should be identified in the letter of nomination.

Agency administrators will nominate Federal representatives, including: four (4) members from the U.S. Forest Service, and one member each from the Bureau of Land Management, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service, the U.S. Geological Survey, the Department of Energy, the Department of Defense, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the Natural Resources Conservation Service.

Each Stakeholder Advisory Group Member will be appointed to serve a 2-year term. Members will serve without salary, but non-federal members will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Group will meet at least once annually. Additional meetings may be called in connection with special needs for advice. The Department's Senior Policy Advisor, Office of Managing Risk and Public Safety, will be the Designated Federal Officer who will call meetings of the Group.

Dated: October 29, 1999.

John Berry,

Assistant Secretary for Policy, Management and Budget.

[FR Doc. 99–28935 Filed 11–3–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–016664

Applicant: Spirit Valley Wildlife Sanctuary, Spearfish, SD

The applicant requests a permit to import 1 captive born tiger (*Panthera tigris*) from Canada for public display and conservation education.

PRT–012014

Applicant: Rare Feline Breeding Center, Center Hill, FL

This is an amendment to the applicant's initial request to sell in foreign commerce and export a male and a female tiger (*Panthera tigris*) to Jinan Zoological Gardens in Shandong Province, China. The applicant now intends to export two males and two females for the purpose of enhancement of the survival of the species through propagation and conservation education.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–018948

Applicant: David H. Hitzhusen, Rockford, IA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management authority of the Republic of South Africa, for the purpose of enhancement of the species.

PRT–018938

Applicant: Jere Brunette, Essexvill, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use

PRT–018939

Applicant: Brad Farrow, Alamo, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–018949

Applicant: Joseph Bartnicki, Old Forge, PA 18518

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203. Telephone: 703/358–2104 or Fax: 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 29, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–28917 Filed 11–3–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On July, 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 137, Page 38687, that an application had been filed with the Fish and Wildlife Service by Randy Pope for a permit (PRT–013353) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on October 18, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On Aug. 12, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 155, Page 38687, that an application had been filed with the Fish and Wildlife Service by David N. Rain for a permit (PRT–015154) to import one polar bear (*Ursus maritimus*) trophy taken from the McClintock Channel population, Canada for personal use.

Notice is hereby given that on Sept. 18, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On Aug. 5, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 150, Page 42708, that an application had been filed with the Fish and Wildlife Service by Larry Smith for a permit (PRT–015311) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on Oct. 6, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On Aug. 12, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 155, Page 44040, that an application had been filed with the Fish and Wildlife Service by Ron Watson for a permit (PRT–015398) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on Oct. 12, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 7, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 130, Page 36890, that an application had been filed with the Fish and Wildlife Service by John F. Babler for a permit (PRT–014002) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea Sound population, Canada for personal use.

Notice is hereby given that on Sept. 29, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 3, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 109, Page 30533, that an application had been filed with the Fish and Wildlife Service by Frank R. Daigle for a permit (PRT–010431) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea Sound population, Canada for personal use.

Notice is hereby given that on Oct. 18, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 24, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 160, Page 45268, that an application had been filed with the Fish and Wildlife Service by Harry Koch for a permit (PRT–016090) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea Sound population, Canada for personal use.

Notice is hereby given that on Oct. 19, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Notice is hereby given that on August 12, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On October 27, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 155, Page 44040, that an application had been filed with the Fish and Wildlife Service by Joe T. Lock for a permit (PRT–014012) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea Sound population, Canada for personal use.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–28918 Filed 11–3–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF AGRICULTURE

Bureau of Land Management

Forest Service

[MT–900–08–1220–00, 1616P]

Correction to a Notice of Availability for a Draft Off-Highway Vehicle Environmental Impact Statement and Plan Amendment

AGENCY: Bureau of Land Management, Interior and Forest Service, Agriculture.

ACTION: Notice correction.

SUMMARY: This is a correction to a notice of availability for the Bureau of Land Management (BLM) and Forest Service (FS) Draft Off-Highway Vehicle Environmental Impact Statement (EIS) and Plan Amendment for public lands administered by the BLM and FS Northern Region in Montana, North Dakota, and portions of South Dakota which was published in the **Federal Register** on October 22, 1999 (Volume 64, Number 204). The Draft EIS/Plan Amendment will not be distributed or available to the public until mid-November 1999. The agencies will issue a new notice of availability when the Draft EIS/Plan Amendment is distributed to the public. Open houses on the Draft EIS/Plan Amendment will be rescheduled. The dates, locations, and times will appear with the agencies notice of availability and in local newspapers.

ADDRESSES: Questions regarding this correction should be addressed to OHV Plan Amendment, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457–1160.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, 406–538–1924 or Dick Kramer, 406–329–1008.

(Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712), Sec. 6, Pub. L. 94–588, 90 Stat. 2949 (16 U.S.C. 1604))

Dated: October 27, 1999.

Larry E. Hamilton,

State Director, Bureau of Land Management.

Dale N. Bosworth,

Regional Forester, U.S. Forest Service.

[FR Doc. 99–28843 Filed 11–3–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–13000–00–1150–PC]

Additional 32 Acres to the Unaweep Seep Research Natural Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of land-use designation.

SUMMARY: Public lands within the Unaweep Seep area, heretofore outside the Unaweep Seep Research Natural Area, are designated as a Research Natural Area coincident with the earlier designation (48 FR 23716, May 26, 1983) under the authority of 43 CFR part 8223. The designated area contains 32 acres located in Mesa County, Colorado and described as: T.15 S., R.103 W., 6th P.M., Sec. 10 NW¼NE¼ (portion of), NE¼NW¼ (portion of). The total area of the Unaweep Seep Natural Area becomes 80 acres.

DATES: This action is effective November 5, 1999.

SUPPLEMENTARY INFORMATION: Following a transfer of property to public ownership in 1997 along the boundary of The Palisade Wilderness Study Area, at a site on the southern edge of the Unaweep Seep Research Natural Area, a 32 acre portion of this property meeting the criteria of the Research Natural Area becomes available for inclusion into this land management designation. This action is compatible with the Grand Junction Resource Area Resource Management Plan (1987). Including the area in the Unaweep Seep Research Natural Area accomplishes a 24 year objective in the Whitewater Management Framework Plan. The addition completes the enclosure of the entire natural feature known as the Unaweep Seep in a protective designation. It extends the conditions contained in 48 FR 23716 (5–26–83) to these additional acres.

FOR FURTHER INFORMATION CONTACT: Ron Lambeth (970) 244–3013 or in writing to the Field Office Manager, Bureau of Land Management, 2815 H Road, Grand Junction, CO 81506.

Catherine Robertson,

Field Office Manager.

[FR Doc. 99–28784 Filed 11–3–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–1430–01; AZA 31024]

Notice of Proposed Withdrawal; Arizona; Correction

AGENCY: Bureau of Land Management.

ACTION: Notice; Correction.

SUMMARY: A notice concerning a proposed Bureau of Land Management withdrawal was published on August 6, 1999. This notice corrects the legal description in two places.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 602–417–9437.

Correction

1. In the **Federal Register** publication of August 6, 1999, page 42959 (third column), Sec. 17 under T. 11 N., R. 2 E., is corrected to read:

Sec. 17, W½W½E½;

2. In the **Federal Register** publication of August 6, 1999, page 42960 (first column), Sec. 19 under T. 10 N., R. 3 E., is corrected to read:

Sec. 19, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼.

Dated: October 25, 1999.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 99–28835 Filed 11–3–99; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–269–270 (Review) and 731–TA–311–317 and 379–380 (Review)]

Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year reviews.

EFFECTIVE DATE: October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: Effective July 12, 1999, the Commission established a schedule for the conduct of the subject five-year reviews (64 FR 38688, July 19, 1999). On September 28, 1999, pursuant to its authority under 19 U.S.C. 1675(c)(5)(B), the Commission revised that schedule (64 FR 54352, October 6, 1999). The Commission has again determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), and is hereby further revising its schedule.

The Commission's new schedule for the five-year reviews is as follows: the prehearing staff report will be placed in the nonpublic record on January 21, 2000; the deadline for filing prehearing briefs is February 1, 2000; requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 2, 2000; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on February 7, 2000; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on February 10, 2000; the deadline for filing posthearing briefs is February 22, 2000; the Commission will make its final release of information on March 15, 2000; and final party comments are due on March 17, 2000.

For further information concerning these five-year reviews see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 29, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28891 Filed 11–3–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–859 (Preliminary)]

Circular Seamless Stainless Steel Hollow Products From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–859 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of circular seamless stainless steel hollow products, including pipes, tubes, redraw hollows, and hollow bars, provided for in subheadings 7304.10.50, 7304.41.30, 7304.41.60, and 7304.49.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must

reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 10, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by December 17, 1999.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or fruggles@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on October 26, 1999, by Altx, Inc., Watervliet, NY; American Extruded Products Corp., Beaver Falls, PA; DMV Stainless USA, Inc., Houston, TX; Salem Tube, Inc., Greenville, PA; Sandvik, Steel Co., Scranton, PA; International Extruded Products LLC d/b/a Wyman-Gordon Energy Products—IXP Buffalo, Buffalo, NY; and the United Steelworkers of America, AFL–CIO/CLC, Pittsburgh, PA.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 16, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than November 12, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 19, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 29, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28805 Filed 11–3–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–423]

In the Matter of Certain Conductive Coated Abrasives; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) granting the joint motion of complainant Minnesota Mining & Manufacturing Co. and respondents KWH Mirka Ab Oy of Finland, and Mirka Abrasives, Inc. to terminate the above-captioned investigation based on a consent order.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3104. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 28, 1999, based on a complaint filed by Minnesota Mining & Manufacturing Co. ("3M") alleging violations of section 337 in the importation and sale of certain coated abrasive articles such as sandpaper by reason of infringement of claims 1, 15, 17, or 36 of U.S. Letters Patent 5,108,463, as amended by Reexamination Certificate B1 5,108,463 (the '463 patent). The '463 patent is owned by 3M. 64 *FR* 34678 (June 28, 1999). Two respondents were named, KWH Mirka Ab Oy of Finland, and Mirka Abrasives, Inc. of Twinsburg, Ohio (collectively, Mirka).

On July 29, 1999, Mirka and 3M filed a joint motion to terminate the investigation based on a proposed consent order. The joint motion contained a stipulation and proposed consent order. On August 11, 1999, the Commission investigative attorney filed a response in support of the joint motion. On September 24, 1999, the ALJ issued an ID (Order No. 2) terminating the investigation based on the proposed consent orders. No petition for review was filed.

Copies of the ALJ's ID, the consent order, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. § 210.42.

Issued: October 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28802 Filed 11–3–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–125–126 (Review)]

Potassium Permanganate From China and Spain

Determinations

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on potassium permanganate from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines that revocation of the antidumping duty order on potassium permanganate from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on November 2, 1998 (63 FR 58765) and determined on February 4, 1999 that it would conduct full reviews (64 FR 9177, February 24, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 8, 1999 (64 FR 11041). The hearing was held in Washington, DC, on August 31, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 27, 1999. The views of the Commission are contained in USITC Publication 3245 (October 1999), entitled Potassium Permanganate from China and Spain: Investigations Nos. 731–TA–125–126 (Review).

Issued: October 29, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28804 Filed 11–3–99; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Carol T. Crawford dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–339 and 340–A–I (Review)]

Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

Determinations

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on solid urea from Armenia[2] would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders on solid urea from Belarus.[3] Estonia,[4] Lithuania,[4] Romania,[4] Russia, Tajikistan,[4] Turkmenistan,[3] Ukraine, and Uzbekistan 3 would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on March 1, 1999 (64 FR 10020, March 1, 1999) and determined on June 3, 1999 that it would conduct expedited reviews (64 FR 31610, June 11, 1999).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on October 27, 1999. The views of the Commission are contained in USITC Publication 3248 (October 1999), entitled Solid Urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: Investigations Nos. 731–TA–339 and 340–A–I (Review).

Issued: October 28, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28803 Filed 11–3–99; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Bragg and Commissioner Koplan dissenting.

[3] Commissioners Crawford and Askey dissenting.

[4] Commissioners Crawford, Hillman, and Askey dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Preliminary)]

Tin- and Chromium-Coated Steel Sheet From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–860 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an

industry in the United States is materially retarded, by reason of imports from Japan of tin- and chromium-coated steel sheet, provided for in subheadings 7210.11.00, 7210.12.00, 7210.50.00, 7212.10.00, 7212.50.00, 7225.99.00, and 7226.99.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 13, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by December 20, 1999.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on October 28, 1999, by Weirton Steel Corp., Weirton, WV; the United Steelworkers of America (USW), AFL–CIO; and the Independent Steelworkers Union (ISU).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for Thursday, November 18, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than November 16 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 23, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 29, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–28892 Filed 11–3–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENMT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 22, 1999, and published in the **Federal Register** on June 29, 1999, (64 FR 3425), Chiragene, Inc., 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The firm plans to manufacture the listed controlled substance to supply their customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 832(a) and determined that the registration of Chiragene, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Chiragene, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 25, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Controls, Drug Enforcement Administration.

[FR Doc. 99-28866 Filed 11-3-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 14, 1998, and published in the **Federal Register** on August 25, 1998 (63 FR 45259), the National Center for Development of Natural Products, The University of Mississippi, 135 Cox Waller Comlex, University, Mississippi 38677, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the controlled substances listed below:

Drug	Schedule
Marihuana	I
Tetrahydrocannabinols	I

Two registered bulk manufacturers of tetrahydrocannabinols filed written comments requesting that DEA ascertain whether the National Center for Development of Natural Products' application to bulk manufacturer tetrahydrocannabinols met the public interest factors of the Controlled Substances Act before registration is granted. Review of the APA's definitions of license and licensing reveals that the granting or denial of a manufacturer's registration is a licensing action, not a rulemaking. Courts have frequently distinguished between agency licensing actions and rulemaking proceedings. *See, e.g. Gateway Transp. Co.* v. *United States,* 173 F. Supp. 822, 828 (D.C. Wis. 1959); *Underwater Exotics, Ltd.* v. *Secretary of the Interior,* 1994 U.S. Dist. LEXIS 2262 (1994). Courts have interpreted agency action relating to licensing as not falling within the APA's rulemaking provisions.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of the National Center for Development of Natural Products to manufacture the listed products is consistent with the public interest at this time. This determination was based on, among things, DEA's on-site investigation of the National Center for Development of Natural Products. The investigation included inspection and testing of the applicant's physical security systems, verification of the applicant's qualifications and experience, verification of the applicants compliance with state and local laws, and review of the firm's background and history. DEA has further determined that the registration will be consistent with United States obligations under international treaties. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Division Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 20, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99-28867 Filed 11-3-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1998, and published in the **Federal Register** on October 9, 1998, (63 FR 54492), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91792, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture tetrahydrocannabinols (THC) for use in treatment of AIDS wasting syndrome and as an antiemetic.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Norac Company, Inc. to manufacture tetrahydrocannabinols is consistent with the public interest at this time. DEA has investigated Norac Company, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: October 22, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99-28868 Filed 11-3-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 26, 1999, and published in the **Federal Register** on May 10, 1999, (64 FR 25080), Sigma Aldrich Research Biochemicals, Inc., Attn: Richard Miliius, 1-3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391)	I

Drug	Schedule
4-Bromo-2, 5-dimethoxyphenethylamine (7392)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxymethamphetamine (7405)	I
1-[1-(2-Thienyl) cyclohexyl] piperidine (7470)	I
Heroin (9200)	I
Psilocyn (7438)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metzaocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for laboratory reference standards and neurochemicals.

DEA has considered the factors in Title 21, United States Code, Section 823 (a) and determined that the registration of Sigma-Aldrich Research Biochemicals to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 20, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–28869 Filed 11–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 8, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 Public Law 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comment should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Office for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Representative Fee Request.

OMB Number: 1215–0078.

Frequency: On occasion.

Affected Public: Businesses or other for-profit; Individuals or households.

Number of Respondents: 13,720.

Estimated Time Per Respondent: 30–90 minutes

Total Burden Hours: 9,860.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $17,210.

Description: The Office of Federal Workers' Compensation (OWCP) reviews requests for approval of a fee for services provided to OWCP claimants/beneficiaries submitted by attorneys/representatives.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28797 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 28, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: 29 CFR Part 1904 Recording and Reporting Occupational Inquiries and Illnesses.

OMB Number: 1218–0176.

Frequency: Recordkeeping.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 1,086,264.

Estimated Time Per Respondent: 1.60 hours.

Total Burden Hours: 1,739,157.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The OSHA No. 200, Log and Summary; the OSHA No. 101, Supplementary Record; and the recordkeeping guidelines provide employers with the means and specific instructions needed to maintain records of work-related injuries and illnesses. Response to this collection of information is mandatory, as specified in 29 CFR Part 1904. Data recorded under this information collection is collected in two major nationwide surveys. One survey is conducted by OSHA and the other by the Bureau of Labor Statistics (BLS). The information generated from these surveys is used by OSHA for targeting its programmed inspections. OSHA is also using these data for performance measurement purposes in compliance with the Government Performance and Results Act. The BLS uses the data for producing national statistics on occupational injuries and illnesses.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28798 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,240 and NAFTA–3145]

Consolidated Papers, Inc., Niagara Division, Niagara, WI; Notice of Determinations on Reconsideration

On September 10, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration of Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 24, 1999 (64 FR 51790).

Investigation findings show that workers of the subject firm are primarily engaged in the production of coated groundwood printing papers. The workers were denied TAA because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 as amended, was not met. The workers were denied NAFTA–TAA based on the finding that there was no shift in production from the workers' firm to Mexico or Canada. Other findings showed that there were no company or customer imports of coated groundwood paper from Mexico or Canada.

The company submitted a list of additional declining customers. The Department surveyed these customers regarding their purchases of coated groundwood printing paper during the time period relevant to the investigation. Results of the survey show that a major declining customer increased reliance on imports of coated groundwood paper while reducing purchases of like and directly competitive articles from Consolidated Paper's Niagara Division, in Niagara, Wisconsin. The survey respondents reported a negligible amount of import purchases of coated groundwood paper from Mexico and Canada.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Consolidated Papers, Inc., Niagara Division, Niagara, Wisconsin were adversely affected by increased imports from countries other than Mexico or Canada of articles like or directly competitive with coated groundwood printing paper produced at the subject firm.

All workers of Consolidated Papers, Inc., Niagara Division, Niagara, Wisconsin engaged in employment related to the production of coated groundwood printing paper, who became totally or partially separated from employment on or after April 29, 1998 through two years from the date of this issuance are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;" and I further determine that "All workers of Consolidated Papers, Inc., Niagara Division, Niagara, Wisconsin engaged in employment related to the production of coated groundwood printing paper are denied eligibility to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 28th day of October 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28908 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–36,529; Steward Cable Repair,. Inc., Midland, TX
TA–W–36,343; California Webbing Industries, Inc., Los Angeles, CA
TA–W–36,775; Hart Metals, Inc., Tamagua, PA
TA–W–36,385; Chicago Miniature Lamps, Wynnewood, OK
TA–W–36,623; Interplast Universal Industries, Lodi, NJ
TA–W–36,655; Akre, Inc., Oldtown, ID
TA–W–36,648; Hoke, Inc., Cresskill, NJ
TA–W–36,664; Hayes Albion, Ripley, TN
TA–W–36,472; International Paper, Decorative Products Div., Spring Hope, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–36,604; Total Minatome Corp., Houston, TX
TA–W–36,880; Compass Group USA, Duncan, OK
TA–W–36,902; Scovill Fasteners, Inc., El Paso, TX
TA–W–36,855; Doyon Universal Services, Inc., Anchorage, AK
TA–W–36,811; John E. Fox, Inc., El Paso, TX
TA–W–36,743; Universal Music & Video Distribution, Inc., Illinois Return Processing Center, Pinekneyville, IL
TA–W–36,856; Levingston Engineers, Inc., Sulphur, LA
TA–W–36,860; Dos Cuervos Enterprises, El Paso Inspection, Gulfport, MS
TA–W–36,677; Clark Oil Co., Ada, OK
TA–W–36,757; Duro Industries, New York, NY
TA–W–36,882; Robinson Knife Co., Buffalo, NY
TA–W–36,836; Tricon Geophysical, Inc., Denver, CO
TA–W–36,738; ALM Antillean Airline, Reservations Dept., Miami, FL
TA–W–36,695; Karina, Inc., Wayne, NJ
TA–W–36,881; Canteen Corp., Fayetteville, NC
TA–W–36,652; Stewart & Stevenson Power, Inc., Williston, ND

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–36,649; Cabletron Systems, Ironton, OH
TA–W–36,831; Williamson Dickies Manufacturing Co., Plant #22, Eagle Pass, TX
TA–W–36,858; General Assembly Corp., El Paso, TX
TA–W–36,461; J.R. Simplot Co., Caldwell, ID
TA–W–36,390; Motorola Corp., Semiconductor Products Sector, Semiconductor Components Group, (SCG), Phoenix, AZ
TA–W–36,821; AMP, Inc., Polymer Processing Center, Glen Rock, PA
TA–W–36,637; Motorola Cellular Div., Libertyville, IL
TA–W–36,451; AMP, Inc., Quick Trun Shop, Winston-Salem, NC
TA–W–36,428; Skinner Engine Co., Erie, PA
TA–W–36,134; Huntsman, Woodbury, NJ
TA–W–36,908; Remington Products, Co. LLC, Milford, CT
TA–W–36,830; S & B Engineers & Constructors, LTD, Odessa, TX
TA–W–36,709; AMP, Inc., Printed Circuit Board (PCB), Div., Loganville West Plant, Building 143, Loganville, PA
TA–W–36,804; Key Manufacturing Co., Jasper, AL
TA–W–36,812; Salem Lumber Services, A Div. of Woodward & Dickerson, Salem, OR
TA–W–36,568; The Boeing Co., Commercial Aircraft Production, Long Beach, CA
TA–W–36,850; Ross Mould, Inc., Washington, PA
TA–W–36,824; Crouse-Hinds Div. of Cooper Industries, Syracuse, NY
TA–W–36,832; AMCO, Convertible Fabrics, Adrian, MI
TA–W–36,750; Anchor Service, Inc., Kilgore, TX
TA–W–36,708; Invensys Appliance Controls, New Stanton, PA
TA–W–36,361; Alta Gold Co., Griffin Mine, Ely, NV
TA–W–36,846; Louisiana Pacific Corp., Kelckikan Pulp Co., Annette Hemlock Sawmill, Mellakatta, AK
TA–W–36,843; Comptec, Inc., Custer WA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–36,667; Heinz Pet Products El Paso, TX

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–36,829; Milco Industries, Inc., Bloomsburg, PA

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–36,670; GE Lighting, Mattoon Lamp Plant, Mattoon, IL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

A–W–37.837; Ricks Exploration, Oklahoma City, OK

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–36,280A; Eagle Ottawa Leather Co., Grand Haven, MI

The company made a business decision to shift production of finished leather from Grand Haven, MI to facilities in Mexico, but products were not re-imported as tanned leather but as part of finished products containing tanned leather.

Affirmative Determination for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–36,6862, A, B, C, & D; Aalfs Manufacturing, Inc., Spencer, IA, Sioux City, IA, LeMars, IA, Sheldon, IA and Yankton, SD: September 15, 1998.

TA–W–36,574; Ametek, Lamb Electric Div., Cambridge, OH: July 12, 1998.

TA–W–36,696; Kesu Systems & Service, Inc., Tempe, AZ: August 5, 1998.

TA–W–36,853; North-American Refractories Co., Curwensville, PA: September 7, 1998.

TA–W–36,689; Magliano Pants Co., Cincinnati, OH: July 30, 1998.

TA–W–36,786 EIEIO, Inc., Fall River, MA: August 14, 1998.

TA–W–36,186; International Electronic Research Corp., ACTS Co., Burbank, CA: April 23, 1998.

TA–W–36,835; Fleetwood Shirt Corp., Fleetwood, PA: September 1, 1998.

TA–W–36,628; Paramount Headwater, Inc., Bourbon, MO: July 20, 1998.

TA–W–36,280; Eagle Ottawa Leather Co., Milwaukee, WI: April 26, 1998.

TA–W–36,773; Eagle Geophysical, Inc., Houston, TX: July 19, 1998.

TA–W–36,785; Marion Mills, LLC, Marion, NC: August 19, 1998.

TA–W–36,266; Spenco Manufacturing, Inc., Glenville, WV: April 30, 1999.

TA–W–36,594; Brazos Sportswear, Inc., Batavia, OH: July 13, 1998.

TA–W–36,805; Uni-Tone Soles and Heels, Hanover, PA: August 24, 1998.

TA–W–36,626; Black Diamond, Sportswear, Inc., Barre, VT: July 19, 1998.

TA–W–36,810; Ikon Office of Solutions, Remanufacturing Div., Jefferson City MO: August 24, 1998.

TA–W–36,614; International Business Machines Corp. (IBM), Storage Systems Div., San Jose, CA: July 19, 1998.

TA–W–36,629; ASARCO, Inc., Mission Complex, Sahurarita, AZ: July 14, 1998.

TA–W–36,562, A,B, C & D; Baker Oil Tools, Odessa, TX, McCamey, TX, Hobbs, NM, Denver City, TX, Snyder, TX: July 19, 1998.

TA–W–36,634; Hirsch Speidel, Inc., Providence, RI: July 22, 1998.

TA–W–36,129; D & E Wood Products, Inc., Prineville, OR: April 20, 1998.

TA–W–36,814; Grand Rapids Diecast, Walker, MI: August 27, 1998.

TA–W–36,260; The Oilgear, Co., Longview, TX: May 24, 1998.

TA–W–36,691; Hirsch Industries, Formerly Steelworkers, Inc., Skokie, IL: July 29, 1998.

TA–W–36,906; Prewash & Pressing, Inc., a/k/a Prewash and Pressing Service, Inc., El Paso, TX: October 27, 1998.

TA–W–36,899; GKN Sinter Metals, Van Wert, OH: September 14, 1998.

TA–W–36,504; Galax Apparel Corp., Galax, VA: June 23, 1998.

TA–W–36,907; Electric Cord Sets, Inc., Angola, IN: September 16, 1998.

TA–W–36,660; Brake Parts, Inc., Amherst, NY: July 26, 1998.

TA–W–36,379; Ayers Manufacturing Co., Inc., Coward, SC: May 25, 1998.

TA–W–36,777; Candlewood Industries, Inc., Bayshore, NY: August 10, 1998.

TA–W–36,710; American Eagle Well Logging, Inc., Wichita Falls, TX: August 2, 1998.

TA–W–36,729; Garan, Inc., Adamsville, TN: August 6, 1998.

TA–W–36,904; Bass Energy, Inc., Breckenridge, TX: September 15, 1998.

TA–W–36,912; Ultramar Diamond Shamrock, Total Petroleum Products Div. (TPI), Alma, MI: September 23, 1998.

TA–W–36,685; A, B, C; AMP, Inc., Lowell, NC, Charlotte, NC, Gastonia, NC, Rock Hill, SC: July 27, 1998.

TA–W–36,686; CTI Communications, Formerly Valor Enterprises, Piqua, OH: August 3, 1998.

TA–W–36,779; C & D Manufacturing, Madisonville, TN: August 9, 1998.

TA–W–36,878; Kanthal Globar, Niagara Falls, NY: September 14, 1998.

TA–W–36,422; Warnaco, Inc., Stratford, CT: May 21, 1998.

TA–W–36,791; MK Contract Services, Inc., El Paso, TX: August 19, 1998.

TA–W–36,774; Plews/Edelman, Div. of Stant/Schrader Group, Granite Falls, MN: August 10, 1998.

TA–W–36,834; Takata Restraint Systems, Inc., Greenwood, MS: August 25, 1998.

TA–W–36,366; Southern Lady Sportswear, Killen, AL: May 24, 1998.

TA–W–36,752; Veritas DGC Land, Inc., Houston, TX: July 10, 1998.

TA–W–36,642; General Instrument Corp., Low Volume Manufacturing Operations, Horsham, PA: July 21, 1998.

TA–W–36,593; Shaer Shoe, Franklin Shoe Div., Farmington, ME: July 12, 1998.

TA–W–36,887; Unitog Co (Cintas), Warsaw, MO: September 9, 1998.

TA–W–36,744; Financial Systems, Div. of Datacard Corp, Minnetonka, MN: August 11, 1998.

TA–W–36,877; Kreations, Inc., Inc., Hallandale, FL: September 9, 1998.

TA–W–36,941; The Mexmil Co., Everett Facility, Everett, WA: September 29, 1998.

TA–W–36,935; McElveen Mfg. Co., Inc., New Zion, SC: September 29, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistant hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production , or both, of such firms or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determination NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separation. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-03336; Hayes Albion Reply, TN
NAFTA-TAA-03445; Grant City Manufacturer, Grant City, MO
NAFTA-TAA-03320 & A; Paramount Headwear, Inc., Bourdon, MO and Dixon, MO
NAFTA-TAA-03448; Kerry McGee Chemical, L.L.C., Forest Product Div., The Dalles, OR
NAFTA-TAA-03135; International Electronic Research Corp., A CTS Co., Burbank, CA
NAFTA-TAA-03208; Alta Gold Co., Griffin Mine, Ely, NV
NAFTA-TAA-03434; TRW, Vehicle Safety Systems, Inc., Washington, MI
NAFTA-TAA-03365; Wellman, Inc., Wool Div., Johnsonsville, SC
NAFTA-TAA-03387; Garan, Inc., Adamsville, TN
NAFTA-TAA-03438; Ross Mould, Inc., Washington, PA
NAFTA-TAA-03453; Williamson Dickie Manufacturing Co., Plant #22, Eagle Pass, TX
NAFTA-TAA-03260; Parker Hannifin Corp., Parkflex Div., Mooresville, NC
NAFTA-TAA-03427; Fleetwood Shirt Corp., Fleetwood, PA
NAFTA-TAA-03429; Crouse-Hinds Div., of Cooper Industries, Syracuse, NY
NAFTA-TAA-03269; International Paper, Decorative Products Div., Spring Hope, NC
NAFTA-TAA-03310; Shaer Shoe, Inc., Franklin Shoe Div., Farmington, ME
NAFTA-TAA-03509; Penn Mould Industries, Inc., Washington, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA-TAA-0373; Coupon Processing Associates, Inc., El Paso, TX

The investigation revealed that the workers of the subject firm did not product an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA-TAA-03342; Heinz Pet Products, El Paso, TX

The investigation revealed that criteria (1) and (2) have not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—Sales or production, or both of such firm or subdivision have decreased absolutely.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-03374; High View Church Farm, Inc., Greenhouse Div., Lempster, NH: August 3, 1998.
NAFTA-TAA-03437; North American Refractories, Co., Curwensville, PA: September 7, 1998.
NAFTA-TAA-03460; Prewash & Pressing Service, Inc., El Paso, TX: October 27, 1999.
NAFTA-TAA-03359; Hot Property, Inc., d/b/a Lorraine Wardy Enterprises, Opal, El Paso, TX: August 4, 1998.
NAFTA-TAA-03303; Motoral, Inc., Personal Communications Sector, Paging Products Group, Boynton Beach, FL: April 5, 1998.
NAFTA-TAA-03330; A, B, & C; AMP, Inc., Lowell, NC, Charlotte, NC, Gastonia, NC, Rock Hill, SC: July 27, 1998.
NAFTA-TAA-03291 & A; Eagle Ottawa Leather Co., Milwaukee, WI, Grand Haven, MI: May 20, 1999.
NAFTA-TAA-03443; Ametek, Inc., Lamb Electric Div., Cambridge, OH: July 13, 1998.
NAFTA-TAA-03369; CTI Communications, Formerly Valor Enterprises, Piqua, OH: September 22, 1998.
NAFTA-TAA-03439; General Assembly Corp., El Paso, TX: September 10, 1999.
NAFTA-TAA-03455; The Mexmil Co., Everett Facility, Everett, WA: September 13, 1998.
NAFTA-TAA-03223; Motorola Corp., Semiconductor Products Sector, Semiconductor Components Group (SCG), Phoenix, AR: May 31, 1998.
NAFTA-TAA-03442; Unitog Co. (Cintas), Warsaw, MO: September 9, 1998.
NAFTA-TAA-03435; Illinois Tool Works (ITW), Inc., Electronic Component Packaging Systems Div., Including Leased Workers of Dixie Staffing Services, Arlington, TX: September 7, 1998.
NAFTA-TAA-03482; Huffy Bicycle Co., Farmington, MO: September 29, 1998.
NAFTA-TAA-03495; Tultex Corp., Bastian Plant, Bastian, VA: September 26, 1998.
NAFTA-TAA-03490; Hewlett Packard, Commercial Hardcoy Support Div., Corvallis, OR: September 30, 1998.
NAFTA-TAA-03174; Unger Fabrik, LLC, Los Angeles, CA: May 3, 1998.

I hereby certify that the aforementioned determinations were issued during the month of October, 1999. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 during normal business hours or will be mailed to person who write to the above address.

Dated: October 27, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99-28899 Filed 11-3-99; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-36,349]

Alliance Leathers, Inc., Johnstown, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 7, 1999, in response to a worker petition which was filed on behalf of workers at Alliance Leathers, Inc., Johnstown, New York.

This case is being terminated because the information necessary to conduct the investigation is not available from the petitioner or company officials. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 19th day of October, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99-28903 Filed 11-3-99; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-36,925]

Border Apparel Laundry, Inc., El Paso, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 12, 1999 in response to a worker petition which was filed on behalf of workers at Border Apparel Laundry, Incorporated, El Paso, Texas.

Two of the three petitioners were separated from the subject firm more than a year prior to the date of the petition. In Accordance with Section 223(b)(1) of the Trade Act of 1974, no certification may apply to any worker whose last total or partial separation occurred more than a year before the date of the petition. Therefore, the petition is deemed invalid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 19th day of October, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28896 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,698]

Contract Apparel, Inc., El Paso, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 16, 1999, in response to a petition filed on behalf of workers at Contract Apparel, Inc., El Paso, Texas.

On October 5, 1999, the petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 6th day of October 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28901 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,867]

Eagle Ottawa, Milwaukee, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 27, 1999 in response to a worker petition which was filed on behalf of workers at Eagle Ottawa, Milwaukee, Wisconsin.

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–36,280). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 15th day of October 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28904 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,550]

FWA Drilling Company, Inc. a/k/a JSM & Associate A/K/A UTI Drilling, Midland, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 29, 1998, applicable to workers of FWA Drilling Company, Inc., Midland, Texas. This notice was published in the **Federal Register** on August 28, 1998 (63 FR 46073).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings show that some workers separated from employment at FWA Drilling Company had their wages reported under two separate unemployment insurance (UI) tax accounts, JSM & Associates and UTI Drilling, Midland, Texas. The workers are engaged in providing contract drilling services in the crude oil and natural gas industry.

The intent of the Department's certification is to include all workers of FWA Drilling Company, Inc. who were adversely affected by increased imports. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–34,550 is hereby issued as follows:

> All workers of FWA Drilling Company, Inc., also known as JSM & Associates and also known as UTI Drilling, Midland, Texas (TA–W–34,550) who became totally or partially separated from employment on or after April 18, 1997 through July 29, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 27th day of October, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28907 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,056 et al.]

Halliburton Energy Services, Subsidiary of Dresser Industries, Inc. Wholly Owned by Halliburton Company, Headquartered in Houston, TX; Amended Certification Regarding Eligibility To Apply to Worker Adjustment Assistance

Operating at other locations in the following States:

TA–W–35,056A	ALASKA
TA–W–35,056B	ALABAMA
TA–W–35,056C	ARKANSAS
TA–W–35,056D	CALIFORNIA
TA–W–35,056E	FLORIDA
TA–W–35,056F	ILLINOIS
TA–W–35,056G	INDIANA
TA–W–35,056H	KANSAS
TA–W–35,056I	LOUISIANA
TA–W–35,056J	MICHIGAN
TA–W–35,056K	MISSISSIPPI
TA–W–35,056L	NEW MEXICO
TA–W–35,056M	NORTH DAKOTA
TA–W–35,056N	OHIO
TA–W–35,056O	OKLAHOMA
TA–W–35,056P	PENNSYLVANIA
TA–W–35,056Q	TEXAS
TA–W–35,056R	VIRGINIA
TA–W–35,056S	WYOMING
TA–W–35,056T	COLORADO
TA–W–35,056U	MONTANA
TA–W–35,056V	UTAH
TA–W–35,056W	WEST VIRGINIA

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 28, 1998 applicable to workers of Halliburton Energy Services headquartered in Houston, Texas and operating at various locations in the above cited states. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 67140).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to exploration and drilling for unaffiliated firms in the oil industry. New findings show that in September, 1998 Halliburton Energy Services merged with Dresser Industries, Inc. and became known as Halliburton Energy Services, Inc., a subsidiary of Dresser Industries, Inc., wholly owned by Halliburton Company. Information provided by the State also shows that some workers separated from employment at Halliburton Energy Services had their wages reported under two separate unemployment insurance (UI) tax accounts. Halliburton Energy Services, Inc. and Dresser Industries, Inc., headquartered in Houston, Texas and operating at other locations in the above cited states.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–35,056 is hereby issued as follows:

> All workers of Halliburton Energy Services, a subsidiary of Dresser Industries, Inc., wholly owned by Halliburton Company, headquartered in Houston, Texas (TA–W–35,056) and operating at other locations in the States listed below who became totally or partially separated from employment on or after September 4, 1997 through October 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–35,056A	ALASKA
TA–W–35,056B	ALABAMA
TA–W–35,056C	ARKANSAS
TA–W–35,056D	CALIFORNIA
TA–W–35,056E	FLORIDA
TA–W–35,056F	ILLINOIS
TA–W–35,056G	INDIANA
TA–W–35,056H	KANSAS
TA–W–35,056I	LOUISIANA
TA–W–35,056J	MICHIGAN
TA–W–35,056K	MISSISSIPPI
TA–W–35,056L	NEW MEXICO
TA–W–35,056M	NORTH DAKOTA
TA–W–35,056N	OHIO
TA–W–35,056O	OKLAHOMA
TA–W–35,056P	PENNSYLVANIA
TA–W–35,056Q	TEXAS
TA–W–35,056R	VIRGINIA
TA–W–35,056S	WYOMING
TA–W–35,056T	COLORADO
TA–W–35,056U	MONTANA
TA–W–35,056V	UTAH
TA–W–35,056W	WEST VIRGINIA.

Signed at Washington, D.C. this 18th day of October, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28911 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,414]

Harrison Alloys, Incorporated Harrison, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 20, 1999, applicable to workers of Harrison Alloys, Incorporated located in Harrison, New Jersey. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 55751).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The petitioner and State agency provided information showing that the date of the petition used to establish the impact date for the worker group was May 5, 1999, not June 3, 1999. Therefore, the Department is amending the certification to reflect an impact date of May 5, 1998, one year prior to the date of the petition.

The amended notice applicable to TA–W–36,414 is hereby issued as follows:

> All workers of Harrison Alloys, Incorporated, Harrison, New Jersey, who became totally or partially separated from employment on or after May 5, 1998 through September 20, 2001, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 22nd day of October 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28898 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,936]

King Manufacturing Company, Incorporated, Corinth, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 12, 1999 in response to a worker petition which was filed on behalf of all workers at King Manufacturing Company, Incorporated, located in Corinth, Mississippi (TA–W–36,936).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of October 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28913 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,103, TA–W–36,103A]

Lincoln Automotive Company Including Leased Workers of Staffmark and Manpower Jonesboro, AR, Lincoln Automotive Company, St. Louis, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 14, 1999, applicable to all workers of Lincoln Automotive Company, including leased workers of Staffmark and Manpower, Jonesboro, Arkansas. The notice was published in the **Federal Register** on August 11, 1999 (64 FR 43724).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at the St. Louis, Missouri location of Lincoln Automotive Company due to its closing in October, 1999. The St. Louis, Missouri location was the headquarters office, where workers provided sales, marketing and customer service to support the production of lifting equipment, lubrication tools and equipment, and miscellaneous parts and equipment for the automotive aftermarket at the Jonesboro, Arkansas facility of Lincoln Automotive Company.

Accordingly, the Department is amending the certification to cover workers at Lincoln Automotive Company, St. Louis, Missouri.

The intent of the Department's certification is to include all workers of Lincoln Automotive Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–36,103 is hereby issued as follows:

> All workers of Lincoln Automotive Company including leased workers of Staffmark and Manpower, Jonesboro, Arkansas (TA–W–36,103) and all workers of Lincoln Automotive Company, St. Louis, Missouri (TA–W–36,103A) who became totally or partially separated from employment on or after April 6, 1998 through July 14, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 18th day of October, 1998.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99-28894 Filed 11-3-99; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-36,307]

Little Tikes Company, Shippensburg, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Little Tikes Company, Shippensburg, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-36,307; Little Tikes Company, Shippensburg, Pennsylvania (October 22, 1999)

Signed at Washington, D.C. this 27th day of October, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99-28897 Filed 11-3-99; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-36,746]

The Mark Thompson Company Graham, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 23, 1999 in response to a worker petition which was filed on August 10, 1999 on behalf of workers at The Mark Thompson Company, Graham, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 6th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99-28902 Filed 11-3-99; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-36,526 and TA-W-36,526A]

PennzEnergy Exploration & Production L.L.C., Currently Known as Devon Energy, Formerly Known as Pennzoil Exploration and Production Company, Houston, and Midland, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 3, 1999 applicable to workers of PennzEnergy Exploration & Production L.L.C., formerly known as Pennzoil Exploration & Production Company, Houston, Texas. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52540).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that in August, 1999 PennzEnergy Exploration & Production merged with Devon Energy and is currently known as Devon Energy. Findings also show that worker separations occurred at the Midland, Texas location of PennzEnergy Exploration and Production. The workers are engaged in employment related to the production of crude oil and natural gas and provided office and management services.

Accordingly, the Department is amending the certification to correctly identify the new title name to read "PennzEnergy Exploration & Production L.L.C., currently known as Devon Energy, formerly known as Pennzoil Exploration and Production Company", Houston, Texas and to cover the workers at the subject firm's Midland, Texas location.

The intent of the Department's certification is to include all workers of PennzEnergy Exploration & Production L.L.C. adversely affected by increased imports.

The amended notice applicable to TA-W-36,526 is hereby issued as follows:

All workers of PennzEnergy Exploration & Production L.L.C., currently known as Devon Energy, formerly known as Pennzoil Exploration and Production Company, Houston, Texas (TA-W-36,526) and Midland, Texas (TA-W-36,526A) who became totally or partially separated from employment on or after June 22, 1998 through August 3, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

Signed at Washington, D.C. this 26th day of October, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99-28910 Filed 11-3-99; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,991]

Sappi Fine Papers North America, Inc., Including Leased Workers of Springborn Staffing Services, Westbrook, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 2, 1998, applicable to workers of Sappi Fine Papers North America, Inc. located in Westbrook, Maine. The notice was published in the **Federal Register** on December 23, 1998 (63 FR 71165).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Sappi Fine Papers were leased from Springborn Staffing Services to provide administrative support function services for the production of coated graphic freesheet and specialty paper at the Westbrook, Maine facility. Worker separations occurred at Springborn Staffing Services as a result of worker separations at Sappi Fine Papers North America.

Based on these findings, the Department is amending the certification to include workers of Springborn Staffing Services leased to Sappi Fine Papers North America, Inc., Westbook, Maine.

The intent of the Department's certification is to include all workers of Sappi Fine Papers North America, Inc. adversely affected by imports.

The amended notice applicable to TA–W–34,991 is hereby issued as follows:

All workers of Sappi Fine Papers North America, Inc., Westbrook, Maine and leased workers of Springborn Staffing Services, Westbrook, Maine engaged in employment related to administrative support function services for the production of coated graphic freesheet and specialty paper for Sappi Fine Papers North America, Inc., Westbrook, Maine who became totally or partially separated from employment on or after September 9, 1997 through December 2, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 26th day of October, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28909 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,463 et al]

Schlumberger Technology Corporation, Schlumberger Oilfield Services; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 26, 1999, applicable to all workers of Schlumberger Oilfield Services, a/k/a Dowell Schlumberger and a/k/a Anadrill Schlumberger, headquartered in Sugarland, Texas. The notice was published in the **Federal Register** on February 25, 1999 (64 FR 9354). The certification was subsequently amended to reflect other operating names under which the workers wages were reported.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers separated from employment at Schlumberger Technology Corporation, Schlumberger Oilfield Services had their wages reported under three separate unemployment insurance (UI) tax accounts, Camco Industries, International Chandlers and Coastal Management operating at various locations in the above cited states. The workers provide oilfield and gas drilling and exploration services, as well as related support and warehouse duties.

The intent of the Department's certification is to include all workers of Schlumberger Oilfield Services, a/k/a Dowell Schlumberger and a/k/a Anadrill Schlumberger adversely affected by imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–35,463, TA–W–35,060, TA–W–35,144 and TA–W–35,145 is hereby issued as follows:

All workers of Schlumberger Technology Corporation, Schlumberger Oilfield services, a/k/a Dowell Schlumberger, a/k/a Anadrill Schlumberger, a/k/a Geco-Prakla, a/k/a IPM, a/k/a Product Centers, a/k/a GeoQuest, a/k/a Sedco-Forex, a/k/a Wireline, a/k/a Shared Services, a/k/a Camco Industries, a/k/a International Chandlers, and a/k/a Coastal Management, headquartered in Sugarland, Texas (TA–W–35,463) and operating at various locations in the following States cited below:

TEXAS TA–W–35,463A
WYOMING TA–W–35,463B
CALIFORNIA TA–W–35,463C
ALASKA TA–W–35,463D
COLORADO TA–35,463E
ARKANSAS TA–W–35,463F
ALABAMA TA–W–35,463G
NORTH DAKOTA TA–W–35,463H
WEST VIRGINIA TA–W–35,463I
ILLINOIS TA–W–35,463J
KANSAS TA–W–35,463K
MICHIGAN TA–W–35,463L
MISSISSIPPI TA–W–35,463M
UTAH TA–W–35,463N
VIRGINIA TA–W–35,463O
NEW JERSEY TA–W–35,463P
PENNSYLVANIA TA–W–35,463Q

who became totally or partially separated from employment on or after December 21, 1997 through January 26, 2001; all workers located in Roswell, New Mexico (TA–W–35,060) and operating at various locations in the State of New Mexico (TA–W–35,060A) who became totally or partially separated from employment on or after September 15, 1997 through January 26, 2001; all workers located in Youngsville, Louisiana (TA–W–35,144) and operating at various locations in the State of Louisiana (TA–W–35,144A) who became totally or partially separated from employment on or after October 13, 1997 through January 26, 2001; and all workers located in Duncan, Oklahoma (TA–W–35,145) and operating at various locations in the state of Oklahoma (TA–W–35,145A) who became totally or partially separated from employment on or after October 1, 1997 through January 26, 2001, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 26th day of October, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28912 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,911]

Texaco US Production West USA, Midland, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 1999 in response to a worker petition which was filed on behalf of workers at Texaco US Production West USA, Midland, Texas.

The investigation revealed that an active certification covering the petitioning group of workers remains in effect (TA–W–35,792). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 7th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28905 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–32–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 15, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 15, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 12th day of October, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

Petitions Instituted On 10/12/1999

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,915	Voith Sulzer Papertech (Wkrs)	Monroe, OH	09/27/1999	Paper Producing Machines.
36,916	General Electric (IUE)	Tuscon, AZ	09/30/1999	Copper Mining Equipment.
36,917	G.H. Bass Caribbean (Wkrs)	Manati, PR	10/01/1999	Shoes—Bass.
36,918	Kimberly Clark (Co.)	Munising, MI	09/16/1999	Abrasive Backing Paper.
36,919	Huffy Corp., Bicycle Div (Wkrs)	Farmington, MO	09/29/1999	Bicycles.
36,920	CMT Industries (Wkrs)	El Paso, TX	09/21/1999	Ladies' Blazers, Pants & Skirts.
36,921	William Carter Co. (Wkrs)	Barnesville, GA	09/24/1999	Cloth for Baby Garments.
36,922	West Coast Circuits (Co.)	Watsonville, CA	09/23/1999	Circuit Boards.
36,923	Converter Concepts, Inc (Wkrs)	Pardeeville, WI	09/24/1999	Switching Power Supplies.
36,924	FCI Electronics (Co.)	Hazleton, PA	09/27/1999	Cable Assemblies.
36,925	Border Apparel Laundry (Wkrs)	El Paso, TX	09/15/1999	Launder Jeans.
36,926	Standard Motors Products (Wkrs)	Dyersburg, TN	09/21/1999	Automotive Temperature Control Parts.
36,927	MBU, Inc (UNITE)	New York, NY	09/21/1999	Coats, Suits and Jackets.
36,928	Operators and Consulting (Co.)	Lafayette, LA	09/09/1999	Consulting Service.
36,929	Framatome Connectors (Co.)	Boyne City, MI	09/22/1999	Electrical Terminals & Connectors.
36,930	Houze Glass Co. (Wkrs)	Point Marion, PA	09/09/1999	Silk Screen Printing.
36,931	Highland Forest (Wkrs)	Sweethome, OR	09/09/1999	Mushrooms.
36,932	P and M Cedar Products (Co.)	McCloud, CA	09/30/1999	Pencil Stock Lumber.
36,933	North State Garment Co. (Comp)	Farmville, NC	09/28/1999	Ladies' Pants, Skirts and Shorts.
36,934	ColumbiaKnit, Inc (Wkrs)	Portland, OR	09/23/1999	Cablecloth Knit Shirts.
36,935	McElveen Manufacturing (Co.)	New Zion, SC	09/29/1999	Athletic Wear.
36,936	King Manfacturing Co. (Co.)	Corinth, MS	09/29/1999	Metal Stampings.
36,937	Wagener Manufacturing Co (Co.)	Wagener, SC	09/30/1999	Apparel.
36,938	Purcell Services (Wkrs)	Anchorage, AK	09/27/1999	Armed Security & Medical Services.
36,939	Blair Turner Construction (Wkrs)	Silver City, NM	09/05/1999	Construction.
36,940	Simpson Industries, Inc (Co.)	Troy, OH	09/27/1999	Automotive Assembly Parts-Air Condition.
36,941	The Mexmil Company (Co.)	Everett, WA	09/29/1999	Airplane Insulation Blankets.
36,942	Magnolia Garment Corp. (Wkrs)	Magnolia, MS	09/27/1999	Children's Sleepwear.
36,943	SECO Warwick (Wkrs)	Meadville, PA	09/24/1999	Large Industrial Furnaces.
36,944	TAM Industries (Wkrs)	Glennville, GA	09/27/1999	Shirts.
36,945	Moll Industries—Anchor (Wkrs)	Morristown, TN	09/23/1999	Maybelline Cosmetics Bottle Caps.
36,946	Tektronix, Inc—Video (Wkrs)	Willsonville, OR	09/09/1999	Networking Computers.
36,947	Stone Container Corp. (Wkrs)	El Paso, TX	09/27/1999	Boxes.
36,948	Chromium Corporation (Co.)	Lufkin, TX	09/30/1999	Diesel Engine Components.
36,949	Spring Ford Industries (Wkrs)	Chilhowie, VA	09/28/1999	Fashion Tee-Shirts.
36,950	Parsons Energy and Chem. (Wkrs)	Houston, TX	09/22/1999	Engineered Refineries—Oil and Gas.
36,951	Cosema Mining (Wkrs)	Bruai, TX	09/27/1999	Uranium Mining.
36,952	Ann Loy Original (Wkrs)	New York, NY	10/01/1999	Ladies; Suits and Dresses.
36,953	SieMatic Corp (Wkrs)	Bensalem, PA	09/30/1999	Kitchen Cabinets.

[FR Doc. 99–28900 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 1999 Under the Federal Unemployment Tax Act

On October 31, 1999, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to State unemployment funds to obtain certain credits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 1999.

Raymond L. Bramucci,

Assistant Secretary.

Secretary of Labor

Washington, DC

October 31, 1999.

The Honorable Lawrence H. Summers,
Secretary of the Treasury,
Washington, DC 20220

Dear Secretary Summers: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending on October 31, 1999. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,

Alexis M. Herman

Enclosures.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31,1999, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Maryland
Massachusetts
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Oregon
Pennsylvania
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, D.C., on October 31, 1999.

Alexis M. Herman,

Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1999:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Maryland
Massachusetts
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Oregon
Pennsylvania
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1999.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 99–28914 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03497]

EIEIO, Incorporated Fall River, MA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act Public Law 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on August 20, 1999 in response to a petition filed on behalf of former workers at EIEIO, Incorporated, located in Fall River, Massachusetts (NAFTA–03497).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 5th day of October 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28893 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3265]

Georgia-Pacific Corporation Bellingham, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 5, 1999, the Association of Western Pulp and Paper Workers on behalf of Local 194, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance (NAFTA–3265) for workers of the subject firm. The denial notice was signed on August 10, 1999, and published in the **Federal Register** on September 29, 1999 (64 FR 52542).

The Union presents evidence that warrants examination of imports of articles competitive with the liquefied chlorine gas produced by workers of the subject firm.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 27th day of October 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–28895 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Agency Information Collection Activities; Proposed Collection; Comment Request; Survey of Physicians Board Certified in Internal Medicine with a Subspecialty in Pulmonary Medicine, Pulmonary Clinics and Facilities

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and the burden placed on survey recipients, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3505(c)(2)(A)]. The program helps to ensure that the data requested can be provided in the desired format, that the reporting burden (in terms of time and financial resources) is minimized, that collection instruments are clearly understood, and that the impact of the proposed collection on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comment concerning a one-time survey of physicians, pulmonary clinics and facilities.

DATES: Written comments must be submitted by January 3, 2000.

ADDRESSES: Comments are to be submitted to James L. DeMarce, Director, Division of Coal Mine Workers' Compensation Programs, Room C–3520, Frances Perkins Building, 200 Constitution Ave., N.W. Washington, DC 20210. They may also be sent by facsimile to (202) 693–1398.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection request are available for inspection in the Division of Coal Mine Workers' Compensation, and will be mailed or sent by facsimile to persons who request copies by telephoning James L. DeMarce at (202) 693–0046.

SUPPLEMENTARY INFORMATION:

I. Background

On October 8, 1999, the Department published a notice of proposed rulemaking containing proposed revisions to the rules governing the adjudication of claims under the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.* 64 FR 54965–55072 (Oct. 8, 1999). In proposing these revisions, the Department announced that it intends to seek additional information on two subjects from physicians, pulmonary clinics and facilities that perform medical evaluations of claimant eligibility. First, the Department would like to ascertain the extent to which such physicians, clinics and facilities use spirometers that are capable of producing a flow-volume loop. *See* 64 FR 54975. In addition, the Department seeks information on the fees necessary to attract highly qualified physicians to perform the medical testing and evaluation that the Department is required to provide under the Black Lung Benefits Act. *See* 64 FR 54989. The information obtained from this survey will assist the Department in administering the program.

II. Desired Focus of Comments

The Agency is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

—Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including the possible use of appropriate automated, electronic, mechanical, or other technological collection techniques or information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

This notice requests comment on the proposed survey to be conducted by the Department in connection with its notice of proposed rulemaking.

Type of Review: Regular Submission (new).

Agency: Employment Standards Administration.

Title: Survey of Physicians Board Certified in Internal Medicine with a subspecialty in Pulmonary Medicine, Pulmonary Clinics and Facilities.

OMB Number: New.

Affected Public: Physicians Board Certified in Internal Medicine with a subspecialty in Pulmonary Medicine, pulmonary clinics and facilities.

Frequency: Once.

Total Respondents: 2,000.

Average Time per Response: 10 minutes.

Estimated Total Burden hours: 333.3 hours.

Total Annualized capital/startup costs: 0.

Total Operation and Maintenance costs: $360.00.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

Signed at Washington, D.C., this 29th day of October, 1999.

T. Michael Kerr,

Deputy Assistant Secretary for Employment Standards.

[FR Doc. 99–28906 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association, Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of the Canadian Standards Association (CSA) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on November 4, 1999 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while CSA remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of the Canadian Standards Association (CSA) as a Nationally Recognized Testing Laboratory (NRTL). CSA's expansion request covers the use of an additional test standard. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

CSA submitted a request, dated December 23, 1998 (see Exhibit 22A), to expand its recognition as an NRTL to include one: (1) Additional test standard, and provided some additional information relative to its request on January 5, 1999 (see Exhibit 22B). OSHA published the required notice of preliminary finding in the **Federal Register** (64 FR 38926, 7/20/99) to announce the application. The notice included a preliminary finding that CSA could meet the requirements for expansion of its recognition, and OSHA invited public comment on the application by September 20, 1999. OSHA received no comments concerning this application.

In the July 20 notice, OSHA also noted several changes that it would make to its records on the CSA recognition. As mentioned in the notice, CSA requested these changes and, although it has no requirements to give public notice of such changes, OSHA did so because some changes related to information that the Agency had previously made public. We also mentioned that we would not repeat, and we are not repeating, any details of the changes in the notice of our final decision, i.e., in this current notice. In the notice of preliminary finding, OSHA also announced the voluntary withdrawal of recognition by the American Gas Association (AGA) and, in accordance with our regulations, this withdrawal became effective on July 20, 1999.

CSA's previous application as an NRTL covered its expansion of recognition for additional programs (60 FR 36763, 7/12/96), which OSHA granted on November 20, 1996 (61 FR 59110).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210, telephone: (202) 693–2350. You should refer to Docket No. NRTL–2–92, the permanent records of public information on the CSA recognition.

The current addresses of the testing facilities (sites) that OSHA recognizes for CSA are:

Canadian Standards Association, Etobicoke (Toronto), 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3

CSA International, Pointe-Claire (Montreal), 865 Ellingham Street, Pointe-Claire, Quebec H9R 5E8

CSA International, Richmond (Vancouver), 13799 Commerce Parkway, Richmond, British Columbia V6V 2N9

CSA International, Edmonton, 1707–94th Street, Edmonton, Alberta T6N 1E6 CSA International, Cleveland, 8501 East Pleasant Valley Road, Cleveland, Ohio 44131 (formerly part of the American Gas Association)

CSA International, Irvine, 2805 Barranca Parkway, Irvine, California 92606 (formerly part of the American Gas Association)

Final Decision and Order

The NRTL Program staff has examined the application and other pertinent information, and the assessment staff recommended, in a memo dated February 10, 1999 (see Exhibit 23), expansion of CSA's recognition to include the additional test standard listed below. Based upon this examination and recommendation, OSHA finds that CSA has met the requirements of 29 CFR 1910.7 for expansion of its recognition to use the additional test standard, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of CSA, subject to these limitations and conditions. As is the case for any NRTL, CSA's recognition is further limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace.

Limitations

OSHA hereby expands the recognition of CSA for testing and certification of products to demonstrate compliance to the following test standard: UL 6500 Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use. OSHA has determined this standard meets the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c). The designation and title of the test standard were current at the time of the preparation of this notice.

Conditions

The Canadian Standards Association must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to CSA's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSA must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

CSA will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

CSA will continue to meet the requirements for recognition in all areas where it has been recognized; and

CSA will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC this 27th day of October 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–28915 Filed 11–3–99; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN–454, STN–455, STN–456 and STN 50–457]

Commonwealth Edison Company; Byron Station, Units 1 and 2; Braidwood Station, Units 1 and 2; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its May 29, 1998, application for proposed amendments to Facility Operating License Nos. NPF–37 and NPF–66 for the Byron Station, Units 1 and 2, located in Ogle County, Illinois; and Facility Operating License Nos. NPF–72 and NPF–77 for the Braidwood Station, Units 1 and 2, in Will County, Illinois.

The proposed amendments would have revised the technical specifications to credit the automatic function of the pressurizer power operated relief valves (PORVs) for providing mitigation for inadvertent safety injection at power accident. The limiting condition for operation and surveillance requirements for the PORVs would also have been revised.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing published in the **Federal Register** on July 15, 1998 (63 FR 38199). However, by letter dated July 16, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 29, 1998, and the licensee's letter dated July 16, 1999, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 29th day of October 1999.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28865 Filed 11–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Kansas Gas and Electric Company Kansas City Power and Light Company, Wolf Creek Nuclear Operating Corporation (Wolf Creek Generating Station, Unit No. 1); Order Approving Transfer of License and Conforming Amendment

I

Wolf Creek Nuclear Operating Corporation (WCNOC) is authorized to act as agent for the three joint owners of the Wolf Creek Generating Station, Unit 1 (WCGS) and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility as reflected in Facility Operating License No. NPF–42. Kansas Gas and Electric Company (KGE) and Kansas City Power and Light Company (KCPL) each hold 47 percent possessory interests in WCGS. Kansas Electric Power Cooperative, Inc. (KEPCo) holds a 6 percent possessory interest. The Nuclear Regulatory Commission issued Facility Operating License No. NPF–42 on June 4, 1985, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in Coffey County, Kansas.

II

By letter dated October 27, 1998, WCNOC forwarded an application requesting approval of the proposed transfer of KGE's and KCPL's rights under the WCGS operating license, and requesting approval of a conforming license amendment to reflect the transfer. The initial application was supplemented on November 10, 1998 (collectively referred to as the application unless otherwise noted).

According to the application, KGE and KCPL have agreed to sell each of their 47 percent ownership interests (94 percent in total) in WCGS to Westar Energy, Inc., subject to obtaining all necessary regulatory approvals. WCNOC would remain as the Managing Agent for the joint owners of the facility and would continue to have exclusive responsibility for the management, operation and maintenance of WCGS. The conforming amendment would remove KGE and KCPL from the facility operating license, including the antitrust license conditions, and would add Westar Energy, Inc. in their place.

Approval of the transfer and conforming license amendment was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on January 29, 1999 (64 FR 4726). A supplemental correction notice was published on February 8, 1999 (64 FR 6119), clarifying that hearing requests concerning the application were due by February 18, 1999. On that date, KEPCo filed a hearing request. The Commission denied the request on June 18, 1999. *Kansas Gas and Electric Company, et al.* (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441 (1999).

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission give its consent in writing. Upon review of the information submitted in the application, and other information before the Commission, the NRC staff has determined that Westar Energy, Inc. is qualified to hold the license to the extent now held by KGE and KCPL, and that the transfer of the license, to the extent held by KGE and KCPL, to Westar Energy, Inc., is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for amendment to Facility Operating License No. NPF–42 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation which is Enclosure 3 to the staff's letter dated October 29, 1999.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the license transfer referenced above is approved, subject to the following conditions:

(1) Westar Energy, Inc. shall, prior to the completion of the subject merger and transfer, provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that Westar Energy, Inc. has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) After receipt of all required regulatory approvals of the transfer of KGE's and KCPL's interests in WCGS to Westar Energy, Inc., KGE, KCPL, and WCNOC shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt within five business days, and of the date of the closing of the transfer no later than seven business days prior to the date of closing. Should the transfer not be completed by October 30, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosures 2 and 3 of the staff's letter dated October 29, 1999, to conform the license to reflect the subject license transfer is approved. Such amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 27, 1998, supplement dated November 10, 1998, and staff's letter dated October 29, 1999, with enclosures, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and the Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 29th day of October 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28863 Filed 11–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 99–047]

Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

In the Matter of Jasen Mallahan.

Mr. Jasen Mallahan (Mr. Mallahan) was employed as a radiographer by Professional Service Industries, Inc. (PSI or Licensee). The Licensee is the holder of License No. 12–16941–03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 on September 13, 1995. The license authorizes possession and use of sealed sources in the conduct of industrial radiography in accordance with the conditions specified therein.

II

On April 6, 1999, an investigation was initiated by the NRC Office of Investigations (OI) to determine if a radiographer and a radiographer's assistant, employees of an NRC licensee, deliberately violated NRC requirements at a jobsite in Pocatello, Idaho. Mr. Mallahan and a radiographer's assistant conducted radiographic operations at a plant in Idaho during the evening of September 14 and early morning of September 15, 1998. A radiography camera containing a sealed source of about 60 curies of cobalt-60 was being used to complete panoramic radiographic testing of a large steel tank. The tank had four welded seams and each one required a one-hour shot and about 36 pieces of film. After the last shot, two plant employees breached the boundary set by the PSI workers. The plant employees became concerned that they may have received radiation exposures. However, it was determined that the source had been returned to its shielded position and locked prior to the employees' entry into the barricaded area. Therefore, the individuals did not receive a radiation exposure. As a result of this incident, OI determined that several violations of NRC requirements occurred during the third and fourth radiographic shots and that two violations occurred because of the deliberate actions of Mr. Mallahan. The violations include failure to supervise the radiographer's assistant (10 CFR 34.46) and to follow the two-person rule (10 CFR 34.41). Specifically, after the third one-hour shot was started, Mr. Mallahan began developing film in the dark room, leaving the assistant alone to maintain constant surveillance of the barricaded area. At the conclusion of the shot, Mr. Mallahan came out of the dark room and retracted the source into the device. After the fourth shot was started, Mr. Mallahan returned to the dark room, as before, leaving the assistant to maintain constant surveillance of the barricaded area. Upon completion of the 4th shot, Mr. Mallahan remained in the dark room and the assistant retracted the source, completed surveys of the device and guide tube, locked the device, and removed the key. According to the interview with OI, Mr. Mallahan acknowledged receiving radiation safety training which included the requirement for two-person surveillance during the conduct of radiographic operations. He further acknowledged receiving training on the prohibition of allowing a radiographer's assistant to conduct radiographic operations without direct supervision of a radiographer.

III

Based on the above, the NRC has determined that Mr. Mallahan, an employee of the Licensee, engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of 10 CFR 34.41(a) and 34.46. Specifically, the NRC has concluded that Mr. Mallahan deliberately failed to observe the two-person rule and failed to supervise a radiographer's assistant at a temporary jobsite on September 14 and 15, 1998. The NRC must be able to rely on the

Licensee and its employees to comply with NRC requirements. This deliberate act is significant because Mr. Mallahan, an experienced radiographer, failed to observe the safeguards designed to protect him and others from potentially dangerous radiation exposures. Mr. Mallahan's actions during this incident have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Mallahan were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Mr. Mallahan be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. If Mr. Mallahan is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally for a period of one year after the one year period of prohibition has expired, Mr. Mallahan is required to notify the NRC of his first employment in NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Mallahan's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *It is hereby ordered, effective immediately, that:*

1. Mr. Mallahan is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Mallahan is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the one year period of prohibition has expired, Mr. Mallahan shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Mr. Mallahan shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Mallahan of good cause.

V

In accordance with 10 CFR 2.202, Mr. Mallahan must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Mallahan or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to Mr. Mallahan if the answer or hearing request is by a person other than Mr. Mallahan. If a person other than Mr. Mallahan requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Mallahan or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Mallahan may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated this 22nd day of October 1999, Rockville, Maryland.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 99–28864 Filed 11–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–10]

Northern States Power Company, Prairie Island Nuclear Power Plant; Notice of Docketing of the Materials License SNM–2506 Amendment, Application for the Prairie Island Independent Spent Fuel Storage Installation

By letter dated August 31, 1999, Northern States Power Company (NSP) submitted an application to the Nuclear Regulatory Commission (NRC or the

Commission) in accordance with 10 CFR Part 72 requesting the amendment of the Prairie Island independent spent fuel storage installation (ISFSI) license (SNM–2506) and the Technical Specifications for the ISFSI located in Goodhue County, Minnesota. NSP is seeking Commission approval to amend the materials license and the ISFSI Technical Specifications to allow storage of burnable poison rod assemblies and thimble plug devices in the TN–40 storage casks at the Prairie Island ISFSI.

This application was docketed under 10 CFR Part 72; the ISFSI Docket No. is 72–10 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing or whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated August 31, 1999, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the Local Public Document Room located at the Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 20th day of October 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–28861 Filed 11–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Comment on the Pilot Program for the New Regulatory Oversight Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing significant revisions to its processes for overseeing the safety performance of commercial nuclear power plants that include integrating the inspection, assessment, and enforcement processes. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a method for consistently determining the appropriate regulatory actions in response to varying levels of safety performance. The changes are the result of continuing work on a concept as described in SECY–99–007, "Recommendations for Reactor Oversight Process Improvements" dated January 8, 1999, and SECY–99–007A, "Recommendations for Reactor Oversight Improvements (Follow-Up to SECY–99–007)" dated March 22, 1999. In June 1999, the NRC began a six-month pilot program with two sites participating from each region. The purpose of the pilot program is to exercise the new oversight process, identify problems, develop lessons learned, and make any necessary changes before full implementation at all sites currently scheduled for April 2000. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens. The NRC staff will consider comments it receives for further development and refinement of the new oversight process.

Given that inspection related information, while publically available, was not available on the newly established website this public comment period has been extended at the request of some stakeholders to allow for more comprehensive review of the Revised Reactor Oversight Process.

DATES: The comment period expires December 31, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail. Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

Comments may be submitted electronically at the "NRC Initiatives 1999" web page at": *http://www.nrc.gov/NRC/COMMISSION/INITIATIVES/1999/COMMENTS/2acmt.html*

Copies of the Pilot Program Guidelines may be obtained at the following web site: *http://www.nrc.gov/NRC/NRR/OVERSIGHT/INDEX.html*

Additional information on the pilot program may be obtained from the NRC's Public Document Room at 2120 L St., N.W., Washington, D.C. 20003–1527, telephone 202–634–3273.

FOR FURTHER INFORMATION CONTACT: Alan Madison, Mail Stop: O–5 H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone 301–415–1490.

Dated at Rockville, Maryland, this 29th day of October 1999.

For the Nuclear Regulatory Commission.

William M. Dean,

Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28860 Filed 11–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Pilot Program Evaluation Panel; Meeting Notice

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC) announced the establishment of the Pilot Program Evaluation Panel (PPEP). The PPEP functions as a management-level oversight group to monitor and evaluate the success of the Commission's Reactor Oversight Process Improvements program. A Charter governing the PPEP functions as a Federal Advisory Committee was filed with Congress on June 30, 1999, after consultation with the Committee Management Secretariat, General Services Administration. The PPEP will hold its forthcoming meetings on November 16 and 17, 1999, at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852 (Phone 301–468–1100/Fax 301–468–0308). Hotel accommodations may be arranged directly with DoubleTree Hotel. Parking is available at $5.00 per day.

The PPEP meeting participants are listed below along with their affiliation:

Frank P. Gillespie—Nuclear Regulatory Commission
Mohan C. Thadani—Nuclear Regulatory Commission
James T. Wiggins—Nuclear Regulatory Commission
Heidi Hahn—Los Alamos National Laboratories
Bruce Mallet—Nuclear Regulatory Commission
Geoffrey Grant—Nuclear Regulatory Commission
Kenneth E. Brockman—Nuclear Regulatory Commission
James Lieberman—Nuclear Regulatory Commission
Steve Floyd—Nuclear Energy Institute
David Garchow—Public Service Electric and Gas
Masoud Bajestani—Tennessee Valley Authority
George Barnes—Commonwealth Edison Company
James Chase—Omaha Public Power District
Gary Wright—Illinois Department of Nuclear Safety
David Lochbaum—Union of Concerned Scientists

Additionally, the representatives of the following States and interested groups have been invited to provide their views and their stakeholders' views:

Public Citizen-Washington, DC;
Manager of Projects and Programs-Southern California Edison , San Clemente, CA;
The State of North Carolina;
The State of Pennsylvania;
The State of New Jersey;
The State of Nebraska;
The State of New York;
The State of Vermont;
The State of Florida;
The State of Tennessee; and
The State of Minnesota

Tentative agendas of the meetings are outlined as follows:

November 16, 1999 Meeting

8:00 a.m. Introduction/Meeting Objectives and Goals
8:30 a.m. Performance indicators and Risk Informed Baseline Inspections Input from each non-NRC participant (10 minutes each) PPEP Discussion and questions (30 minutes)
11:00 a.m. Significance Determination Process and Assessments Input from each non-NRC participant (10 minutes each)
12:00 Noon Lunch
1:00 p.m. Significance Determination Process and Assessments (Continued) PPEP Discussion and questions (30 minutes)
2:00 p.m. Enforcement and Overall Evaluation Input from each non-NRC participant (10 minutes each) PPEP Discussion and questions (30 minutes)
3:30 p.m. General Discussion
4:00 p.m. Adjourn

November 17, 1999 Meeting

8:00 a.m. Recap of previous day/Meeting objectives and Goals
8:30 a.m. Performance Indicators and Risk Informed Baseline Inspections; NRC Headquarter's Panel Presentation (45 minutes); NRC Regional Panel Presentation (15 minutes); PPEP Discussion and questions (30 minutes)
10:15 a.m. Significance Determination Process and Assessments; NRC Headquarter's Panel Presentation (45 minutes); NRC Regional Panel Presentation (15 minutes); PPEP Discussion and questions (30 minutes)
12:00 Noon Lunch
1:00 p.m. Enforcement and Overall; NRC Headquarter's Panel Presentation (45 minutes); NRC Regional Panel Presentation (15 minutes); PPEP Discussion and questions (30 minutes)
3:00 p.m. PPEP Teams Caucus
3:30 p.m. PPEP Discussion
4:00 p.m. Adjourn

Meetings of the PPEP are open to the members of the public. Oral or written views may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make oral statements should notify Mr. Frank P. Gillespie (Telephone 301/415–1004, e-mail FPG@nrc.gov) or Mr. Mohan C. Thadani (Telephone 301/415–1476, e-mail MCT@nrc.gov) five days prior to the meeting date, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; and the Panel Chairman's ruling regarding requests to present oral statements and time allotted, may be obtained by contacting Mr. Frank P. Gillespie or Mr. Mohan C. Thadani between 8:00 a.m. and 4:30 p.m. EDT.

PPEP meeting transcripts and meeting reports will be available from the Commission's Public Document Room. Transcripts will be placed on the agency's web page at the address below. *http://www.nrc.gov/NRR/OVERSIGHT/index.html.*

Transcripts of previous PPEP meetings can be viewed as background material at the above web site.

Dated: October 29, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–28858 Filed 11–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on November 17, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Wednesday, November 17, 1999—8:30 a.m. until the conclusion of business.

The Subcommittee will review the industry effort coordinated by the Electric Power Research Institute to address the issue of waterhammer in low-pressure fluid systems, pursuant to resolution of Generic Letter 96–06, and continue its review of the NRC code review guideline documents (draft Regulatory Guide and Standard Review Plan Section). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Portions of the meeting may be closed to public attendance to discuss Electric Power Research Institute (EPRI) proprietary information pursuant to 5 U.S.C. 552b(c)(4).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of EPRI, the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 29, 1999.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–28859 Filed 11–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Possession Licenses for Manufacturing and Distribution, Availability of Draft NUREG

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability and request for comments.

SUMMARY: The NRC is announcing the availability of and requesting comment on draft NUREG–1556, Volume 12, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Possession Licenses for Manufacturing and Distribution," dated July 1999.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the12th guidance document developed to support an improved materials licensing process.

This guidance is intended for use by applicants, licensees, and the NRC staff, and will also be available to Agreement States. This document combines and updates the guidance found in Regulatory Guide 10.7, "Guide for the Preparation of Applications for Licenses for Laboratory and Industrial Use of Small Quantities of Byproduct Material," dated August 1979; Nuclear Material Safety and Safeguards (NMSS) Policy and Guidance Directive FC 84–1, "Review Responsibility—Manufacturing and Distribution of Products to Persons Exempt Pursuant to 10 CFR 32.11 through 32.26," dated April 1984; NMSS Policy and Guidance Directive FC 85–6, "Standard Review Plan for Applications for Licenses and Approvals to Authorize Distribution of Various Items to Group Medical Licensees," dated February 1985; and Draft Regulatory Guide DG–0007, "Guide for the Preparation of Applications for Licenses to Authorize Distribution of Various Items to Commercial Nuclear Pharmacies and Medical Use Licensees," dated March 1997. This draft report takes a more risk-informed, performance-based approach to licensing possession for manufacturing and distribution, and reduces the amount of detailed information needed to support an application. Note that this document is strictly for public comment and is not for use in preparing or reviewing possession licenses for manufacturing and distribution licenses until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends February 2, 2000. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 12, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, D.C. 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 12, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, D.C. 20555–0001.

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this licensing guidance NUREG specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION, CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–7874; electronic mail address: *slm2@nrc.gov.*

Electronic Access

Draft NUREG–1556, Vol. 12 is available electronically by visiting the NRC's Home Page (*http://www.nrc.gov/nrc/nucmat.html).*

Dated at Rockville, Maryland, this 17 day of September, 1999.

For the Nuclear Regulatory Commission.

Catherine Haney,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 99–28862 Filed 11–3–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38–128

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38–128, It's Time to Sign Up for Direct Deposit, is used to give recent retirees the opportunity to waive Direct Deposit of their payments from OPM. The form is sent only if the separating agency did not give the retiring employee this election opportunity.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 45,500 forms are completed annually. The form takes approximately 30 minutes to complete. The annual estimated burden is 22,750 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before January 3, 2000.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–28818 Filed 11–3–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 25–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 25–7, Marital Status Certification, is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from us.

Approximately 45,000 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 11,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before December 4, 1999.

ADDRESSES: Send or deliver comments to—

William C. Jackson, Chief, Eligibility Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 2336, Washington, DC 20415–3560

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–28817 Filed 11–3–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to amend a system of records.

SUMMARY: OPM proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency.

DATES: The changes will be effective without further notice on December 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: This notice serves to update OPM/Central-13, Executive Personnel Records, to reflect organizational and statutory changes and to delete references to obsolete storage methods.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/CENTRAL–13

SYSTEM NAME:

Executive Personnel Records.

SYSTEM LOCATION:

Office of Executive Resources Management, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former appointees in the Senior Executive Service; current and former incumbents of Executive Schedule, Scientific and Professional research and development, Senior Level, Board of Contract Appeals, and similar positions; former incumbents of General Schedule 16–18 positions; and participants in and graduates of OPM-approved agency Senior Executive candidate development programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include:

a. Demographic, appointment, and assignment information (*e.g.*, name, office address, date of birth, Social Security Number, sex, race and ethnic designation, titles of positions, pay rates, and types of appointments).

b. Background data on work experience, educational experience, publications or awards (includes performance ratings and any performance, rank, or incentive awards received), and career interests.

c. Determinations on nominees for Meritorious and Distinguished Presidential Rank awards.

d. Determinations concerning executive (managerial) qualifications (*i.e.*, Qualification Review Board records).

e. Information on performance of executives (*e.g.*, performance ratings, performance awards, and incentive awards).

f. Information relating to participants (current and former) in the sabbatical leave program (*e.g.*, dates of participation and reasons for the leave).

g. Applications from individuals who, within the 90-day period provided for under 5 U.S.C. 3593(b), seek reemployment in the Senior Executive Service.

h. Information concerning the reason(s) why an individual leaves an executive position (*e.g.*, retired, resigned, to enter private industry, to work for a State government, or removed during probation or after because of performance).

i. Information about the recruitment of individuals for executive positions (*e.g.*, recruited from another Federal agency or from outside the Federal service).

Note: Automated and manual duplicates of records in this system, maintained by agencies for purposes of actual administration of the SES, along with other records agencies have on Federal executives, are not considered part of this system. Such records are considered general personnel records and are covered by the OPM/GOVT–1, General Personnel Records system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions and amendments:

5 U.S.C. 2101 through 2103; 3104; 3131 through 3134; 3136; 3324; 3325; 3391 through 3397; 3591 through 3596; 4311 through 4315; 4507; 5108; 5381 through 5385; 5752 through 5754; and 7541 through 7543.

PURPOSE(S):

The records are used to:

a. Assist OPM in carrying out its responsibilities under title 5, U.S. Code, and OPM rules and regulations promulgated thereunder, including the allocation and establishment of SES, Senior Level, and Scientific and Professional research and development positions, development of qualification standards for SES positions, establishment and operation of one or more qualifications review boards, establishment of programs to develop candidates for and incumbents of executive positions, and development of performance appraisal systems.

b. Pursuant to section 415 of the Civil Service Reform Act, assist OPM in meeting its mandate to evaluate the effectiveness of the SES and the manner in which the Service is administered.

c. Provide data used in policy formulation, program planning and administration, research studies, and required reports regarding the Government-wide executive program.

d. Locate specified groups of individuals for personnel research (while protecting their individual privacy). Race and ethnic data and performance ratings are collected for statistical use only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1 through 5, and 7 through 11, of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To identify and refer qualified current or former Federal employees to Federal agencies for executive vacancies.

b. To refer qualified current or former Federal employees or retirees to State and local governments and international organizations for employment considerations.

c. To provide an employing agency with extracts from the records of that agency's employees in the system.

d. By OPM to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the functions for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To disclose information to any member of an agency's Performance Review Board or other board or panel (*e.g.*, one convened to select or review nominees for awards of merit pay increases), when the member is not an official of the employing agency; information would then be used for the purposes of approving or recommending selection of candidates for executive development programs, issuing a performance appraisal rating, issuing performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

f. To provide information to the White House on executives with noncareer appointments in the Senior Executive Service, in positions formerly in the General Schedule filled by noncareer executive assignments, in excepted positions paid at Executive Schedule pay rates, and in positions in the Senior Level pay system or other pay systems equivalent to those described which are filled by Presidential appointment or excepted from the competitive service because they are of a confidential or policy-determining character.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hardcopy, magnetic media, and microfiche.

RETRIEVABILITY:

Records are retrieved by the name and Social Security Number of the individual to whom they pertain.

SAFEGUARDS:

Manual records are maintained in lockable metal filing cabinets or in secured rooms with access limited to those whose official duties require access. Access to computerized records is limited to those whose official duties require access. Access to race and ethnic data is restricted to specially designated OPM personnel.

RETENTION AND DISPOSAL:

Records are retained for varying lengths of time, in accordance with disposition schedules approved by NARA. Disposal of manual records is by shredding or burning, electronic databases are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Executive Resources Management, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–0001.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system or records contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Social Security Number.
c. Address where employed.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Social Security Number.
c. Address where employed.

An individual requesting access must also follow OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

c. Address where employed.

Individuals requesting amendment must also follow OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual named in the record.

b. His or her employing agency.

c. Official documents of OPM.

[FR Doc. 99–28815 Filed 11–3–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to amend a system of records.

SUMMARY: OPM proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency.

DATES: The changes will be effective without further notice on December 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: This notice serves to update OPM/Central-5, Intergovernmental Personnel Act Assignment Records, by amending the system manager, the records maintained in the system, and the records storage and retrievability practices.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/CENTRAL–5

SYSTEM NAME:

Intergovernmental Personnel Act Assignment Records.

SYSTEM LOCATION:

Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street NW., Washington DC 20415–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have completed or are presently on an assignment in a State or local government agency, an educational institution, or in Indian tribal government, or other organizations under the provisions of the Intergovernmental Personnel Act (IPA).

b. Current or former State or local government or educational institution employees, employees of Indian tribal governments, or other organizations who have completed or are presently on an assignment in a Federal agency under the provisions of the Intergovernmental Personnel Act (IPA).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of the name of the IPA assignee and the name of his/her permanent organization and IPA assignment organization, type of IPA assignment, salary, percentage of salary funded by the Federal Government, title of the IPA position, and beginning and ending dates of the IPA assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions and amendments:

The Intergovernmental Personnel Act of 1970 (84 Stat. 1909), 5 U.S.C. 3371–3376, and E.O. 11589.

PURPOSE(S):

These records are maintained to document and track mobility assignments (including extensions, modifications, and terminations thereof) made under the Intergovernmental Personnel Act. Internally, OPM may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1 through 6 of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) apply to the records maintained within this system. The routine use listed below is specific to this system of records only:

a. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an OPM decision regarding possible termination of an assignment.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an electronic database on a personal computer, floppy disks, and in file folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained or any of the data elements in the database.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access. Confidential passwords are required for access to automated records.

RETENTION AND DISPOSAL:

Records are retained for 5 years from the signing of the agreement. Manual records are destroyed by shredding or burning, electronic records are destroyed by erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Merit Systems Effectiveness, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Federal agency involved in the assignment.

c. Non-Federal organization involved in the assignment.

d. Date of each assignment.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Federal agency involved in the assignment.
c. Non-Federal organization involved in the assignment.
d. Date of each assignment.

An individual requesting access must also follow OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals seeking to amend their records should contact the system manager. Requesters must furnish the following information for their records to be located and identified:

a. Full name.
b. Federal agency involved in the assignment.
c. Non-Federal organization involved in the assignment.
d. Date of each assignment.

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in these records is obtained from:

a. The individual subject of the records.
b. Officials in the agencies, educational institutions, Indian tribal governments or other organizations where the individual is employed and where the individual is serving on the IPA assignment.
c. Agency personnel files and records.

[FR Doc. 99–28816 Filed 11–3–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24116; 812–11726]

T. Rowe Price Associates, Inc., et. al.; Notice of Application

October 29, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act") under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would supersede an existing order permitting certain registered investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Price Blue Chip Growth Fund, Inc., T. Rowe Price Capital Appreciation Fund, T. Rowe Price Capital Opportunity Fund, Inc., T. Rowe Price Diversified Small-Cap Growth Fund, Inc., T. Rowe Price Dividend Growth Fund, Inc., T. Rowe Price Equity Income Fund, T. Rowe Price Equity Series, Inc., T. Rowe Price Equity Income Portfolio, T. Rowe Price Mid-Cap Growth Portfolio, T. Rowe Price New America Growth Portfolio, T. Rowe Price Personal Strategy Balanced Portfolio, T. Rowe Price Financial Services Fund, Inc., T. Rowe Price Growth & Income Fund, Inc., T. Rowe Price Growth Stock Fund, Inc., T. Rowe Price Health Sciences Fund, Inc., T. Rowe Price Index Trust, Inc., T. Rowe Price Equity Index 500 Fund, T. Rowe Price Extended Equity Market Index Fund, T. Rowe Price Total Equity Market Index Fund, Institutional International Funds, Inc., Foreign Equity Fund, T. Rowe Price International Funds, Inc., T. Rowe Price International Discovery Fund, T. Rowe Price International Stock Fund, T. Rowe Price European Stock Fund, T. Rowe Price New Asia Fund, T. Rowe Price Japan Fund, T. Rowe Price Latin America Fund, T. Rowe Price Emerging Markets Stock Fund, T. Rowe Price Global Stock Fund, T. Rowe Price International Bond Fund, T. Rowe Price Global Government Bond Fund, T. Rowe Price Emerging Markets Bond Fund, T. Rowe Price International Series, Inc., T. Rowe Price International Stock Portfolio, T. Rowe Price Mid-Cap Growth Fund, Inc., T. Rowe Price Mid-Cap Value Fund, Inc., T. Rowe Price New America Growth Fund, T. Rowe Price New Era Fund, Inc., T. Rowe Price New Horizons Fund, Inc., T. Rowe Price Real Estate Fund, Inc., T. Rowe Price Small Cap Stock Fund, Inc., T. Rowe Price Small Cap Stock Fund, T. Rowe Price Science & Technology Fund, Inc., T. Rowe Price Small-Cap Value Fund, Inc., T. Rowe Price Spectrum Fund, Inc., Spectrum Growth Fund, Spectrum Income Fund, Spectrum International Fund, T. Rowe Price Value Fund, Inc., T. Rowe Price Media & Telecommunications Fund, Inc., T. Rowe Price California Tax-Free Income Trust, California Tax-Free Bond Fund, California Tax-Free Money Fund, T. Rowe Price Corporate Income Fund, Inc., T. Rowe Price Fixed Income Series, Inc., T. Rowe Price Limited-Term Bond Portfolio, T. Rowe Price Prime Reserve Portfolio, T. Rowe Price GNMA Fund, T. Rowe Price High Yield Fund, Inc., T. Rowe Price New Income Fund, Inc., T. Rowe Price Personal Strategy Funds, Inc., T. Rowe Price Personal Strategy Balanced Fund, T. Rowe Price Personal Strategy Growth Fund, T. Rowe Price Personal Strategy Income Fund, T. Rowe Price Prime Reserve Fund, Inc., Reserve Investment Funds, Inc., Government Reserve Investment Fund, Reserve Investment Fund, T. Rowe Price Short-Term Bond Fund, Inc., T. Rowe Price Short-Term U.S. Government Fund, Inc., T. Rowe Price Tax Efficient Fund, Inc., T. Rowe Price Tax-Efficient Balanced Fund, T. Rowe Price Tax-Efficient Growth Fund, T. Rowe Price State Tax-Free Income Trust, Maryland Tax-Free Bond Fund, Maryland Short-Term Tax-Free Bond Fund, New York Tax-Free Bond Fund, New York Tax-Free Money Fund, Virginia Tax-Free Bond Fund, Virginia Short-Term Tax-Free Bond Fund, New Jersey Tax-Free Bond Fund, Georgia Tax-Free bond Fund, Florida Insured Intermediate Tax-Free Fund, T. Rowe Price Summit Funds, Inc., T. Rowe Price Summit Cash Reserves Fund, T. Rowe Price Summit Limited-Term Bond Fund, T. Rowe Price Summit GNMA Fund, T. Rowe Price Summit Municipal Funds, Inc., T. Rowe Price Summit Municipal Money Market Fund, T. Rowe Price Summit Municipal Intermediate Fund, T. Rowe Price Summit Municipal Income Fund, T. Rowe Price Tax-Exempt Money Fund, Inc., T. Rowe Price Tax-Free High Yield Fund, Inc., T. Rowe Price Tax-Free Income Fund, Inc., T. Rowe Price Tax-Free Insured Intermediate Bond Fund, Inc., T. Rowe Price Tax-Free Short-Intermediate Fund, Inc., T. Rowe Price U.S. Treasury Funds, Inc., U.S. Treasury Intermediate Fund, U.S. Treasury Long-Term Fund, U.S. Treasury Money Fund, Institutional Domestic Equity Funds, Inc., and Mid-Cap Equity Growth Fund (collectively, the "'Price Funds"); T. Rowe Price Associates, Inc. ("T. Rowe Price") and Rowe Price-Fleming International, Inc. ("Price-Fleming"); and all other registered investment companies and their series that are advised or subadvised by T. Rowe Price or Price-Fleming or a person controlling, controlled by, or under common control with T. Rowe Price or Price-Fleming, and all other registered investment companies and their series for which T. Rowe Price or Price-Fleming in the future acts as an investment adviser or subadviser, other than funds which are not sponsored by T. Rowe Price or Price-Fleming (together with the Price Funds, the "Funds" or the "Price Funds").

FILING DATES: The application was filed on July 21, 1999, and amended on October 6, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 22, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, T. Rowe Price Associates, Inc., 100 E. Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC, 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Price Fund is registered under the Act as an open-end management investment company and is organized either as a Maryland corporation or a Massachusetts business trust. Additional funds or series may be added in the future.[1] T. Rowe Price and Price Fleming (together, "Price") are registered under the Investment Advisers Act of 1940, and serve as investment advisers to the Price Funds. T. Rowe Price also provides the Price Funds with certain administrative services. Each Fund has entered into an investment advisory agreement with Price under which Price exercises discretionary authority to purchase and sell securities for the Funds.

2. Under an existing order, the Price Funds (other than the municipal funds) can use their cash reserves to purchase shares of the Reserve Investment Funds, Inc. ("Reserve Investment Funds").[2] There are two series of the Reserve Investment Funds and each is a money market fund that complies with rule 2a-7 under the Act.[3] Each manages the cash reserves of T. Rowe Price clients, principally the Price Funds, and neither is offered to the public. T. Rowe Price receives no compensation for managing the Reserve Investment Funds.

3. Applicants have an existing SEC order that permits the Price Funds to participate in a joint lending and borrowing facility (the "Original Order").[4] T. Rowe Price administers the credit facility under its existing advisory agreements with the Funds, and does not receive any additional compensation for this service. Applicants request an order that would supersede the Original Order.

4. Applicants state that the credit facility permits the Price Funds to lend money to each other for temporary purposes, such as when redemptions exceed anticipated levels. The credit facility can reduce substantially the Price Funds' borrowing costs and enhance their ability to earn higher rates of interest on investment of their short-term cash balances. While bank borrowings are a source of liquidity pending the sale and settlement of portfolio securities, the rates charged under the credit facility are normally below those offered by banks on short-term loans, and Price Funds making loans through the credit facility are able to earn interest at a rate higher than they could obtain from investing their cash in short-term repurchase agreements or, for the Price Funds that invest in them, the Reserve Investment Fund and the Government Reserve Investment Fund.

5. When the Price Funds lend money to and borrow money from each other through the credit facility ("Interfund Loans"), interest rates ("Interfund Loan Rates") are based on the average of the highest rate available to the Reserve Investment Funds from investments in overnight repurchase agreements (the "Repo Rate") and a benchmark rate established periodically by the directors or trustees ("Directors") of each Price Fund to approximate the lowest interest rate at which bank short-term loans would be available to the Funds (the "Bank Loan Rate").

6. T. Rowe Price's fund accounting and treasury departments (collectively, the "Credit Facility Team") make cash available for Interfund Loans only if: (a) the Interfund Loan Rate is more favorable to the lending Fund than the Repo Rate and, for the Funds that invest in them, the yield on the Reserve Investment Fund or the Government Reserve Investment Fund, and (b) more favorable to the borrowing Fund than the Bank Loan rate.

7. T. Rowe Price on each business day collects data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. T. Rowe Price will not solicit cash for loans from any Funds or publish or disseminate the amount of current borrowing demand to portfolio managers. Once it determines the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team allocates loans among borrowing Funds without any further communication from portfolio managers. The Credit Facility Team allocated borrowing demand and cash available for lending among the Funds on what the Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. After allocating cash for Interfund Loans, T. Rowe Price will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

8. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.[5] The money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

9. Except as noted above, the prospectus of each Price Fund discloses that the Funds may borrow money and lend securities and other assets. The

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[1] All existing Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

[2] Reserve Investment Funds, Inc., Investment Company Act Release Nos. 22732 (July 2, 1997) (notice) and 22770 (July 29, 1997) (order).

[3] The Reserve Investment Fund invests in a variety of taxable money market instruments, and the Government Reserve Investment Fund invests only in money market securities backed by the full faith and credit of the U.S. government and fully collateralized repurchase agreements on those securities.

[4] T. Rowe Price Associates, Inc., Investment Company Act Release Nos. 23532 (Nov. 12, 1998) (notice) and 23590 (Dec. 8, 1998) (order).

[5] The T. Rowe Price Spectrum Funds, Inc. (the "Spectrum Funds"), all municipal Funds, and all Funds that invest only in full faith and credit obligations of the U.S. government do not participate as lenders under the credit facility because that would be inconsistent with their investment program.

Statement of Additional Information ("SAI") for the Price Funds also discloses the interfund lending arrangements.

10. Applicants seek to amend the Original Order to reduce certain administrative burdens associated with the credit facility and give participating Funds greater flexibility consistent with the purposes of the credit facility and investor protection. Applicants state that the anticipated benefits of the Original Order may not be realized because of administrative burdens and related costs of complying with certain conditions of the Original Order. Applicants assert that modifying these conditions would benefit both those Funds that are borrowers and those Funds that are lenders.

11. Applicants seek to modify the condition in the Original Order that permitted an equity, taxable bond, or money market fund to lend through the credit facility only if the Fund's aggregate outstanding loans through the credit facility do not exceed 5%, 7.5%, and 10%, respectively, of the Fund's net assets at the time of the loan. Applicants seek to permit any type of Fund to make loans through the credit facility up to 15% of its current net assets at the time of the loan. Applicants state that the percentage limitations in the Original Order created artificial distinctions that are not related to a Fund's particular circumstances and unnecessarily restrict a Fund's ability to effectively manage its cash balances. Applicants further state that, if a Fund has large cash balances, its ability to invest the cash at a more attractive rate should not be limited unnecessarily.

12. Applicants also seek to remove the condition in the Original Order that provided that a Fund's borrowing through the credit facility will not exceed 125% of the Fund's total net cash redemptions for the preceding seven calendar days. Applicants assert that this condition is difficult to monitor and ineffective. Applicants state that the condition was designed to protect the Funds from the dangers of borrowing for investment, and the resulting leverage, especially in a declining securities market. Applicants assert that this condition may be ineffective in addressing a Fund's need for cash in the case of unanticipated levels of redemption (such as in the event of a sharp market correction). Applicants also assert that the condition may not necessarily prevent a Fund from borrowing for investment. Applicants state that each Fund's fundamental investment limitations provide that Fund borrowings be for non-leveraging purposes and temporary or emergency in nature. Applicants contend that this fundamental policy is a more effective safeguard that will prevent inappropriate use of the credit facility. Applicants propose as a condition to the requested order that each Fund borrowing through the facility have this fundamental policy.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having Price as their common investment adviser, and because of the overlap of Directors and officers of the Funds.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and it shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) Price would administer the program as a disinterested fiduciary; (ii) All Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Reserve Investment Funds; (iii) The Interfund Loans would not involve a greater risk than other similar investments; (iv) The lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (v) The borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants content that the standards under sections 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that Price would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, Price will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and the yield on the Reserve Investment Fund (for Price Funds which invest in that Fund) and the yield on the Government Reserve Investment Fund (for Price Funds which invest in that Fund), and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interset rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets, or such lesser amount permitted under the Fund's fundamental policies.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each Interfund Loans may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

10. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents. No Fund may borrow through the credit facility unless the Fund has a fundamental policy that required Fund borrowings to be for non-leveraging purposes and temporary or emergency in nature.

11. T. Rowe Price's Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. T. Rowe price will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

12. T. Rowe Price will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Directors concerning the participation of Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

13. The Directors of each Fund, including a majority of Directors who are not "interested persons" of the Fund as the term is defined in section 2(a)(19) of the Act: (a) will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

14. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the tie the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, T. Rowe Price will promptly refer the loan for arbitration to an independent arbitrator selected by the Directors of any Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[6] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Directors setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Directors in connection with the review required by conditions 13 and 14.

16. T. Rowe Price will prepare and submit to the Directors for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After commencement of operations of the credit facility, T. Rowe Price will report on the operations of the credit facility at the Directors' quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund that is a registered investment company shall prepare an annual report that evaluates Price's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Rate will be higher than the Repo Rate and, if applicable the yield of the Reserve Investment Funds, but lower than the Bank Loan Rate: (b) compliance with the collateral requirements as set forth in the application: (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Directors; and (c) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

17. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28871 Filed 11–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42067; File No. SR–Amex-99–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Revised Equity Fee Schedule and Specialist Commissions

October 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (1) amend the Amex Equity Fee Schedule for certain orders entered electronically into the Amex Order File[3] from off the floor of the Amex ("System Orders"); (2) eliminate specialist commissions on certain System Orders; and (3) implement a program of revenue sharing with exchange specialists. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

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[6] If the dispute involves Funds with separate Boards of Directors, the Directors, the Direction of each Fund will select an independent arbitrator that is satisfactory to each Fund.

[1] 15 USC 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Equity Fee Schedule

The Amex Equity Fee Schedule currently imposes transaction charges on equity orders entered on the Exchange which include both a share-based charge (total shares per month) and a value-based charge (total gross dollar value per month). These charges are not imposed on System Orders up to 1,099 shares except for that System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker. System Orders less than or equal to 1,099 shares of a member or member organization trading as an agent for the account of a non-member competing market maker are subject to transaction charges. In addition, the Exchange imposes a regulatory fee for orders in equities with the exception of certain trades executed in SPDRs®, Select Sector SPDRs®MidCap SPDRs™, DIAMONDS®, and Nasdaq-100 Shares.™

The Exchange is amending the Amex Equity Fee Schedule to provide that certain System Orders up to 2,099 shares will not be assessed a share or value charge. This provision does not apply to the System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker. In addition, the revised Equity Fee Schedule also provides that System Orders for up to 2,099 shares will not be assessed a regulatory fee, except for the System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker.

The Exchange imposes a separate fee schedule for executing trades in Exchange-traded fund products. This fee schedule currently applies to SPDRs, MidCap SPDRs, DIAMONDS, Select Sector SPDRs, and the Nasdaq-100® Index Trust.[4] The Amex proposes to revise the separate fee schedule for exchange-traded fund products to apply it to all Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts traded on the Exchange,[5] as well as those that commence trading in the future. Thus, World Equity Benchmark Shares™ ("WEBS™"), for example, which currently are traded on the Exchange, will become subject to the separate fee schedule.

Currently, all trades executed on the Amex in SPDRs, MidCap SPDRs, DIAMONDS, Select Sector SPDRs, and Nasdaq-100 Shares are exempt from the Amex's regulatory fee, except for System Orders of a member or member organization trading as agent for the account of a non-member competing market maker. Under the new Equity Fee Schedule, all trades on the Exchange in Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts will be exempt from the regulatory fee, except for System Orders of a member or member organization trading as agent for the account of a non-member competing market maker.

The Exchange anticipates that the revised Equity Fee Schedule will become effective as of November 1, 1999. In the event that the Exchange has not implemented system changes to permit billing under the new schedule by November 1, 1999, members and member organizations will continue to be billed under the previous schedule but, after implementation of the revised billing system, will receive a credit for the excess amount billed. The Exchange will issue an Information Circular to members and member organizations regarding the revised schedule prior to its implementation.

Elimination of Specialist Commissions

In conjunction with implementation of the revised Equity Fee Schedule described above, the Amex is implementing a policy to eliminate specialist commissions for System Orders up to 2,099 shares, *i.e.*, orders entered electronically into the Amex Order File from off the Amex floor. System Orders greater than 2,099 shares, manually delivered orders, and all orders in Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts will continue to be subject to applicable specialist commissions. In addition, System Orders up to 2,099 shares of a member or member organization trading as an agent for the account of a non-member competing market maker will continue to be subject to specialist commissions. This policy will be implemented on the date of implementation of the revised Equity Fee Schedule.

The elimination of specialist commissions for System Orders of less than 2,099 shares will reduce the cost of executions on the Amex, with the aim of attracting additional order flow, and, in particular, small sized retail orders, to the Exchange. The lower cost of executions is intended to improve the cost competitiveness of Amex executions, which the Amex believes will inure to the benefit of investors and institutions as well as members and member organizations.

Exchange Revenue Sharing

In order to offset the specialists' loss of commissions, the Exchange is instituting a program of revenue sharing with Exchange specialists. Revenue sharing payments to specialists will be made from the Exchange's general revenues and will not be limited to a particular revenue source. The applicable rate for revenue sharing will be calculated on the basis of average daily Amex (not consolidated) trading volume, excluding Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts, and based on the following incremental rates per 100 shares:

Average daily volume (millions)	Rate per 100 shares
Up to 40	$.25
From 40 to 60	.23
From 60 to 80	.20
Over 80	.18

The applicable rate(s) will be calculated monthly. Payments on qualified orders will be made monthly in arrears to qualifying specialists at a rate calculated as a single weighted average rate based on volume for the month most recently ended. A qualifying specialists is an equity specialist. Qualifying orders are certain orders delivered electronically from off the floor of the Exchange, excluding all orders for Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts. System Orders up to 2,099 shares of a member or member organization trading as an agent for the account of a non-member competing market maker will not be subject to revenue sharing.

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[3] The Amex Order File, previously referred to as the Post Execution Report ("PER") system provides member firms with the means to electronically transmit equity orders, up to volume specified by the Amex, directly to a specialist's post on the trading floor of the Amex.

[4] *See* Securities Exchange Act Release No. 40881 (January 4, 1999), 64 FR 1836 (January 12, 1999) (notice of filing and immediate effectiveness of File No. SR–Amex–98–46).

[5] The Commission approved Amex's listing of Trust Issued Receipts in Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 188 (September 29, 1999) (order approving File No. SR–Amex–99–20).

In its pending filing with the Commission relating to the Exchange's proposed New Equity Market Structure,[6] the Exchange has stated that specialists will not be permitted to charge commissions upon the execution of orders delivered electronically from off the floor for securities traded under the New Equity Market Structure. Specialists would continue to be able to charge floor brokerage on manually delivered orders and could charge a fee on hand delivered orders when acting as principal if the member leaving the order consents. In addition, following the implementation of the New Equity Market Structure, the Amex will share Exchange revenue with specialists based on a specified rate schedule to effectively offset the specialists' loss of floor brokerage with respect to orders delivered electronically from off the floor. The elimination of specialist commissions and the Exchange's revenue sharing initiative that are the subject of the instant filing are independent from and not conditioned upon implementation of the New Equity Market Structure.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among members, issuers, and other persons using the Exchange facilities.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–44 and should be submitted by November 26, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28872 Filed 11–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42073; File No. SR–NASD–99–62]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Trade Reporting of Listed Securities

October 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On October 28, 1999, Nasdaq filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to grant accelerated approval to the proposed rule change, as amended, on a pilot basis through March 1, 2000.

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[6] *See* Securities Exchange Act Release No. 41527 (June 15, 1999), 64 FR 33533 (June 23, 1999) (notice of filing of File No. SR–Amex–99–08).

[7] The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, Exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b–10 and 11Ac1–3 under the Act, 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2). In reviewing the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 USC 78c(f).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated October 28, 1999 ("Amendment No. 1"). In Amendment No. 1, Nasdaq changes the start date for mandatory 90-second trade reporting for listed securities from October 25, 1999 to November 15, 1999. Nasdaq also notes it will make available its ITS/CAES system until 6:30 pm. Eastern Time beginning on or about October 29, 1999. Finally, Nasdaq states it will coordinate with both the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") regarding the dissemination of material news by those exchanges' listed companies during the 4:00 p.m. to 6:30 p.m. time period, and will, if appropriate, initiate trading and quotation halts in the Third Market in consultation with those markets.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] Nasdaq is filing a proposed rule change to mandate 90-second trade reporting for over-the-counter transactions in listed securities that take place between 4:00 p.m. and 6:30 p.m. Eastern Time. This rule change will conform the trade reporting obligations for transactions involving listed securities with those for Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity issues that were amended as part of a separately proposed pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. Eastern Time.[5] Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

6400. Reporting Transactions in Listed Securities

6420. Transaction Reporting

(a) When and How Transactions are Reported

(1) Registered Reporting Members shall transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed during the trading hours of the Consolidated Tape otherwise than on a national securities exchange. Registered Reporting Members shall also transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4:00 p.m. and [5:15] *6:30* p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(2) (A) No Change.

(B) Non-registered Reporting Members shall, within 90 seconds after execution, transmit through ACT or the ACT Service Desk (if qualified pursuant to Rule 7010(i), or if ACT if unavailable due to system or transmission failure, by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4:00 p.m. and [5:15] *6:30* p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(3)(A) All members shall report transactions in eligible securities executed outside the hours of 9:30 a.m. and [5:15] *6:30* p.m. Eastern Time as follows:

(i) by transmitting the individual trade reports through ACT on the next business day (T+1) between 8:00 a.m. and [5:15] *6:30* p.m. Eastern Time:

(ii) No Change; and

(iii) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In Nasdaq's third market, NASD members trade stocks listed on the NYSE and AMEX using Nasdaq's quotation, communication and execution system. The NASD collects quotations from broker-dealers that trade these securities over-the-counter and provides such quotations to the Consolidated Quotation System ("CQS") for dissemination. Additionally, the NASD collects trade reports to the Consolidated Tape Association ("CTA") for inclusion in the Consolidated Tape. From 9:30 a.m. to 4:00 p.m. Eastern Time, NASD members registered as CQS market makers use Nasdaq's Computer Assisted Execution System ("CAES") to access the quotes of other CQS market makers and the Intermarket Trading System ("ITS") to access the quotes of other U.S. exchanges. Trades executed through Nasdaq's ITS/CAES system are automatically forwarded to ACT for trade reporting purposes. Pursuant to NASD Rule 6340, participation as a CQS market maker between 4:00 p.m. and 6:30 p.m. Eastern Time is strictly voluntary.

In response to requests from Nasdaq CQS market makers that wish to have the option of expanding their trading activity after 4:00 p.m. Eastern Time, Nasdaq has determined to expand, until 6:30 p.m. Eastern Time, the availability of ITS/CAES and ACT services for listed securities effective October 29, 1999. This expansion will be on a pilot basis beginning October 29, 1999 and terminating on March 1, 2000. Participation in the Third Market after 4:00 p.m. Eastern Time will continue to be voluntary.

Currently, NASD rules mandate submission of trade reports in listed securities within 90 seconds after execution only until 5:15 p.m. Eastern Time. In order to conform listed trade reporting obligations with those for Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity securities, Nasdaq is proposing to modify its ACT trade reporting rules to require 90-second trade reporting of listed securities until 6:30 p.m. Eastern Time. By extending 90-second listed trade reporting to 6:30 p.m. Eastern Time, the rule will be consistent with the Normal Business Hours of the CQS. In addition, expansion of listed trade reporting obligations to 6:30 p.m. Eastern Time will allow NASD member firms to modify their Nasdaq-related trade reporting programming to the same time parameters. To allow sufficient time for NASD members to modify their internal systems to comply with the expansion of 90-second trade reporting for listed securities, Nasdaq requests that, like its 90-second trade reporting rules for Nasdaq securities, its proposed changes to NASD Rule 6240 not take effect until November 15 1999. All member firms participating in the Third Market are expected, however, to report trades as soon as possible after execution and, to the extent they are able to do so before November 15, 1999, within 90 seconds.

In addition, Nasdaq will make available, on or about October 29, 1999, its ITS/CAES system until 6:30 p.m. Eastern Time. Operation of Nasdaq's ITS/CAES system beyond its current 4:00 p.m. close will be consistent with all rules and procedures that are currently applicable to ITS/CAES trading and quotation activity during the 9:30 a.m. to 4:00 p.m. Eastern Time period.

Finally, Nasdaq has agreed to coordinate with both NYSE and AMEX regarding the dissemination of material news by their listed companies during 4:00 p.m. to 6:30 p.m. Eastern Time, and will, if appropriate, initiate trading and quotation halts in the Third Market in consultation with those markets.

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[4] 15 U.S.C. 78s(b)(1).

[5] *See* Securities Exchange Act Release No. 42003 (October 13, 1999) (SR–NASD–99–57). In SR–NASD–99–57, Nasdaq proposed, and the SEC approved, the following changes (in italics) to NASD Rule 4617:

4617. Normal Business Hours

A Nasdaq market maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. Should a market maker wish to *voluntarily* remain open for business later than 4:00 p.m. Eastern Time, it shall so notify the Nasdaq Market Operations via a Nasdaq terminal and shall close only on the hour or the half hour, but no later than 6:30 p.m. Eastern Time. *Nasdaq market makers whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, wihile their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of the Association, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.*

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–62 and should be submitted by November 26, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed carefully the NASD's proposal,[7] and for the reasons discussed below, finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Sections 11A and 15A.[8]

Specifically, the Commission finds that the proposed rule change furthers the goals of the national market system as reflected in Sections 11A(a)(1)(C)(iii) and (iv) of the Act.[9] Congress found in those provisions that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market. Section 11A(a)(1) further provides that the linking of all markets for qualified securities through communication and data processing facilities would foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders. The proposed rule will make available with respect to listed securities the same trade reporting information currently available for transactions involving Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity issues until 6:30 p.m. Eastern Time. The proposed rule will enhance transparency in the after-hours market, allowing investors an opportunity to better evaluate the after-hours market before deciding to participate. Ultimately, the proposed rule should enhance investor protection and confidence, because it will provide more complete information upon which to base trading decisions.

The Commission finds that the proposed rule change is consistent with Section 15A of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal accomplishes these objectives by extending to listed securities Nasdaq's systems, so that market participants who choose to offer trading to customers in the after-hours market reap the benefits of greater transparency, and linkage of the various market participants engaged in after-hours trading through ITS/CAES.

Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act[10] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds good cause for granting accelerated approval for the proposed rule change because the pilot will benefit investors by improving the transparency of the after-hours market and assisting broker-dealers in fulfilling their duty of best execution for their customer orders.

The Commission further finds that good cause exists for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The first item in Amendment No. 1 merely changes the start date for mandatory 90-second trade reporting for listed securities until 6:30 p.m. Eastern Time from October 25, 1999, to November 15, 1999. The second item in Amendment No. 1 makes Nasdaq's ITS/CAES, system available until 6:30 p.m. Eastern Time beginning on or about October 29, 1999. The filing originally stated that ITS/CASES would not be available until on or about November 8, 1999. Finally, in Amendment No. 1, Nasdaq states it will coordinate with both the NYSE and the AMEX regarding the dissemination of material news by those exchanges' listed companies during 4:00 p.m. to 6:30 p.m. Eastern Time, and will, if appropriate, initiate trading and quotation halts in the Third Market in consultation with those markets. The availability of ITS/CAES during the 4:30 p.m. to 6:30 p.m. Eastern Time period, and the coordination with the NYSE and AMEX regarding trading halts, further ensure investor protection. Accordingly, the Commission believes that there is good cause for accelerating the approval of all of the items in Amendment No. 1.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–99–62), as amended, is approved as a pilot program through March 1, 2000.

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[6] 15 U.S.C. 78o–3(b)(6).

[7] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78k–1 and 78o–3.

[9] 15 U.S.C. 78k–1(a)(1)(C)(iii) and (iv).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28874 Filed 11–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42068; File No. SR–PCX–99–40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Order Book Officials

October 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify its rules pertaining to the Exchange's Order Book Officials ("OBO") on the Options Trading Floor by clarifying existing provisions, eliminating superfluous provisions, incorporating current policies and procedures, and deleting certain Option Floor Procedure Advices ("OFPAs") and incorporating relevant language from the OFPAs into the text of PCX Rule 6. The text of the proposed rule change is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend PCX Rule 6 ("Options Trading—Rules Principally Applicable to Trading of Options Contracts"). Specifically, the Exchange proposes to delete the following OFPs: OFPA E–2, Subject: Posting of Market Maker Assignments; OFPA A–4, Subject: Timeliness of Entering Orders in the Book: OFPA B–7, Subject: Issuing a Call for Market Makers and; OFPA G–4, Subject: Transactions Following a Change in the Status of Orders in the Book. The Exchange proposes to delete these OFPAs and to incorporate the relevant language from them into the text of PCX Rule 6. The Exchange believes this will centralize the rules and obligations of OBOs.

The Exchange proposes to add the language of OFPA E–2, regarding the posting of Market Maker assignments, to PCX Rule 6.51(b). The proposal requires that a list of Market Makers holding primary appointments in a particular issue be maintained by the OBO at each trading post where the issue is traded. The Exchange proposes this rule change to clarify and centralize the responsibilities of the OBO and to simplify the process of posting Market Maker assignments. The Exchange proposes to require the OBO to maintain the list of Market Makers holding primary appointments in a particular issue, instead of the Options Floor Manager in cooperation with the Options Appointment Committee, currently required in OFPA E–2, because the Exchange believes that the OBO will be able to maintain such list more easily and quickly.

The Exchange proposes to add the language from OFPA A–4, regarding the timeliness of entering orders in the Book, to PCX Rule 6.52(c). The proposal requires that OBOs report to Floor Officials, instead of the Option Floor Trading Committee, any instances that appear to violate a Floor Brokers' obligation to ensure that the urgency of the need to deal with the Book at a given moment is consistent with the maintenance of a fair and orderly Book market. The Exchange proposes this change because more immediate action may be necessary and can be taken if reported to Floor Official on the Floor when such a violation occurs.

The Exchange proposes to eliminate unnecessary and superfluous language in PCX Rule 6.52, Commentary .01, which states that "[a]s of the effective date of these Rules, the Committee has not designated any additional types of orders that may be accepted by Order Book Officials." The Exchange believes this language is unnecessary given that Commentary .01 states that "an Order Book Official may only accept such other types of orders that have been designated by the Options Floor Trading Committee."

The Exchange proposes to change the reference in PCX Rule 6.53 From "Department of Member Firms" to "Options Surveillance Department" to reflect the current practice regarding where copies of recodes are sent.

To replace of OFPA B–7, regarding when a call for Market Makers is issued, the Exchange proposes to add Commentary .01 to PCX Rule 6.53. Specifically, the Exchange proposes that OBOs should have the responsibility for issuing a call for Markers Makers to come to specified post. Only the OBO may cause this call to be made. In addition, the Exchange proposes that a call for Market Makers be made only after it has been determined that those Market Makers present at the post are not carrying out the functions of Markers as stipulated in PCX Rule 6.37, and not only on the basis of the number of Market Makers present at the post.

The Exchange also proposes that if as few as two Market Makers are present and the OBO determines that an orderly market is being maintained with respect to quote and size, then a call will not be issued merely to bring more Market Makers to the post. However, the provision is not in any way to be taken as limitation on the responsibilities of the OBO to issue such calls for Market Makers as may be necessary to implement the full requirements of PCX Rule 6.37. The Exchange proposes this rule change to centralize OBO obligations regarding the issuing of a call for Market Makers to come to a post in the text of PCX Rule 6.

Finally, the Exchange proposes to clarify language in PCX Rule 6.56 regarding the term "displayed" as currently stated in OFPA G–4, Subject: Transactions Following a Change in the Status of Orders in the Book. Specifically, the Exchange proposes to define the term "displayed," as used in PCX Rule 6.56 to include either verbally made known a new bid or offer or having entered the new bid or offer on the quotation screen. The Exchange proposes this rule change to centralize

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

OBO obligations regarding the treatment of transactions outside of the OBO's last quoted range.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act[3] because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

a. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–40 and should be submitted by November 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[FR Doc. 99–28873 Filed 11–3–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Ogden, Weber County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will not be prepared for a proposed highway project in the City of Ogden, Weber County, Utah.

FOR FURTHER INFORMATION CONTACT: Tom Allen, Project Development Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0078 ext. 229; or Rod Terry, Preconstruction Engineer, Utah Department of Transportation, Region 1, P.O. Box 12580, Ogden, Utah 84412, Telephone (801) 399–5921 ext. 305.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, have determined that an EIS will not be prepared for the proposal to reconstruct approximately 2 miles of State Road (SR) 79 from east of the existing Interstate 15 interchange to Harrison Boulevard (SR–203), and to widen approximately 1.5 miles of Wall Avenue (SR–204) from approximately 22nd Street to 34th Street in the urban portion of Ogden, Utah. The proposed reconstruction of SR–79 would provide the necessary east-west arterial roadway capacity to meet urban infrastructure needs, and to meet existing and future transportation demand. The widening of SR–204 would provide a uniform roadway width for the north-south arterial roadway and an appropriate roadway capacity for the entrance to the Central Business District of the City of Ogden.

Improvements being considered will have no significant impact on the environment. An environmental assessment is being prepared to evaluate the project impacts.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction is used. The regulations implementing Executive Order 12372 regarding intergovernment consultation on Federal programs and activities apply to this program.)

Michael G. Ritchie,

Division Administrator, Salt Lake City, Utah.

[FR Doc. 99–28942 Filed 11–3–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.41, notice is hereby given that the Metro-North Commuter Railroad (Metro-North) and the Connecticut Department of Transportation (CONNDOT) have submitted a petition, dated June 1, 1999, seeking a waiver of compliance from certain requirements of Title 49, Code of Federal Regulations, Part 220: Railroad Communications. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioners' arguments in favor of relief.

Metro-North Commuter Railroad and Connecticut Department of Transportation [Docket No. FRA–1999–5876]

The petition requests that the Federal Railroad Administration (FRA) grant Metro-North and CONNDOT a three-year extension of time past the mandatory compliance date of July 1, 1999, to comply with provisions of 49 CFR 220.9 and 220.11 of the Railroad Communication Standards. Metro-North provides commuter rail service on four lines operating on rights of way owned by CONNDOT. Petitioners have asked to be granted until July 1, 2002 to install working radios on locomotives operating on these territories:

(1) The New Haven Line between Mile Post (MP) 26.1 (the State Line between New York and Connecticut) and MP 72.9;

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[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12)

(2) The New Canaan Branch between MP 0.0 (Stamford, Connecticut) and MP 7.9;

(3) The Danbury Branch between MP 0.0 (South Norwalk, Connecticut) and MP 24.2; and

(4) The Waterbury Branch between MP 0.0 (Devon, Connecticut) and MP 27.1.

Petitioners assert that they need the additional three years to conduct a radio propagation study that will result in a location plan for wayside radio base stations and repeaters.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (in this case, FRA–1999–5876) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20005. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on October 25, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–28838 Filed 11–3–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–439 (Sub–No. 4X) and STB Docket No. AB–33 (Sub-No. 139X)]

Dallas Area Rapid Transit—Abandonment Exemption—in Dallas County, TX and Union Pacific Railroad Company—Discontinuance of Service Exemption—in Dallas County, TX

Dallas Area Rapid Transit (DART) and Union Pacific Railroad Company (UP) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* for DART to abandon and UP to discontinue service over a 3.04-mile line of railroad known as the Athens Branch East between milepost 308.80 at Pleasant Drive to the end of the track at milepost 305.76 at Rylie Road, in Dallas County, TX.[1] The line traverses United States Postal Service Zip Codes 75217 and 75253.

DART and UP have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past two years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 4, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 15, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 24, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representatives: Judith H. Caldwell, Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye Street, N.W., Suite 200, Washington, DC 20005–3324; and Joseph D. Anthofer, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179–0001.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

DART and UP have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 9, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), DART shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by DART's filing of a notice of consummation by November 4, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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[1] DART acquired this line from the Southern Pacific Transportation Company in 1988. *See Dallas Area Rapid Transit—Acquisition and Operation Exemption—Rail Lines of Southern Pacific Transportation Company*, Finance Docket No. 31267 (ICC served May 20, 1988). SPT concurrently acquired trackage rights over the line. *See Southern Pacific Transportation Company—Trackage Rights Exemption—Dallas Area Rapid Transit*, Finance Docket No. 31270 (ICC served May 20, 1988).

The City of Dallas (City) filed a request for issuance of a notice of interim trail use (NITU) for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the City's trail use request, and any others that may be filed in a subsequent decision.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 26, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–28520 Filed 11–3–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on International Child Labor Enforcement

AGENCY: Department Office, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and time for the next meeting of the Advisory Committee.

DATES: The next meeting of the Treasury Advisory Committee on International Child Labor Enforcement will be held on Friday November 19, 1999, at 9:30 a.m. in the Secretary's large conference room, Room 3327, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC. The duration of the meeting will be approximately three hours.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622–0220. The meeting location is subject to change. Final meeting details, including the meeting time, location, and agenda, can be confirmed by contacting the above number one week prior to the meeting date.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to private sector and ex officio Committee members and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting should give advance notice by contacting Theresa Manning at (202) 622–0220, no later than November 12, 1999.

Dated: October 29, 1999.

John P. Simpson,

Deputy Assistant Sacretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 99–28806 Filed 11–3–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Departmental Offices

International Financial Institution Advisory Commission

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 603 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the "Commission") shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation), the World Trade Organization, and the Bank for International Settlements.

DATES: The fifth meeting of the Advisory Commission will continue on November 17, 1999, beginning at 10 a.m. and tentatively ending at 3 p.m. in Room SC5 in the U.S. Capitol, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda will focus on continued discussion by the Commission members of IFI's with selected NGO's and trade associations.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the fifth meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than November 9, 1999.

Dated: October 28, 1999.

Lauren M. Vaughan,

Acting Designated Federal Official.

[FR Doc. 99–28719 Filed 11–3–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Survey Card.

DATES: Written comments should be received on or before December 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, SW, Washington, DC 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of the Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Street, SW., Washington, DC 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

Title: Survey Card.

OMB Number: 1520–0004.

Form Number: BEP 1882–1.

Abstract: The Bureau of Engraving and Printing solicit voluntary feedback from the public regarding displays at numismatic and philatelic shows and events at which it participates. Feedback will be used o improve both quality and informational content of its displays on the history of currency and associated manufacturing processes.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 8.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 14, 1999

Pamela V. Grayson,

Management Analyst.

[FR Doc. 99–28836 Filed 11–3–99; 8:45 am]

BILLING CODE 4840–01–P

Corrections

Federal Register
Vol. 64, No. 213
Thursday, November 4, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99-598-001; FERC-598]

Information Collection Submitted for Review and REquest for Comments

Correction

In notice document 99–27709 beginning on page 57446 in the issue of October 25, 1999, the docket number should read as set forth above.

[FR Doc. C9–27709 Filed 11–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-24-000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

Correction

In notice document 99–28022 appearing on page 57872 in the issue of Wednesday, October 27, 1999, the docket number should read as set forth above.

[FR Doc. C9–28022 Filed 11–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-451-002]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

Correction

In notice document 99–28019 appearing on page 57872 in the issue of Wednesday, October 27, 1999, the docket number should read as set forth above.

[FR Doc. C9–28019 Filed 11–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 186P]

Controlled Substances: Proposed Aggregate Production Quotas for 2000

Correction

In notice document 99–27428, beginning on page 56809, in the issue of Thursday, October 21, 1999, make the following correction:

On page 56811, in the table, under Methamphetamine in the 24th line, “devo-desxyephedine” should read “ levo-desoxyephedrine”.

[FR Doc. C9–27428 Filed 11–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

Correction

In notice document 99–28011 beginning on page 57921, in the issue of Wednesday, October 27, 1999, make the following correction:

On page 57922, in the second column, under the heading **Participation in the Working Group**, in the second paragraph, in the tenth line, after “be” add “received no later than November 30, 1999. The requests will be”.

[FR Doc. C9–28011 Filed 11–3–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
November 4, 1999

Part II

Department of Commerce

International Trade Administration

Final Results of Expedited Sunset Review: Bearings; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–604]

Final Results of Expedited Sunset Review: Tapered Roller Bearings, Over Four Inches, and Parts Thereof, Finished and Unfinished, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Tapered Roller Bearings, Over Four Inches, and Parts Thereof, Finished and Unfinished, from Japan.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on tapered roller bearings from Japan (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, a waiver) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping order is tapered roller bearings ("TRBs") and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks), incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the finding on TRBs, four inches or less in outside diameter (A–588–054) are not included in the scope of this order, except for those manufactured by NTN Corporation. The subject merchandise is currently classifiable under HTS items 8482.20.20, 8482.91.00, 8482.99.30, 8483.20.40, 8483.20.80, 8483.90.20, 8483.90.30, 8483.90.60, and 8484.30.80. While the HTS item numbers are provided for convenience and customs purposes, the written description remains dispositive.

The Department has made two scope rulings with respect to the order. In the first ruling, the Department ruled that green rings which had not been heat-treated are within the scope of the order.[1] The Department also ruled that Koyo's rough forgings, including hot forgings, cold forgings, and tower forgings are within the scope of the order.[2]

History of the Order

On August 17, 1987, the Department published its final determination of sales at less than fair value ("LTFV") with respect to TRBs from Japan (52 FR 30700). The Department published the antidumping duty order on October 6, 1987 (52 FR 37352).

Over the life of the order, the Department has conducted several administrative reviews.[3]

This sunset review covers imports from all known Japanese producers/exporters.

The Department made a duty absorption finding in the final results of the 1995–96 administrative review.[4]

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping order on TRBs from Japan (64 FR 15727), pursuant to section 751(c) of the Act. The Department received notices of intent to participate on behalf of the Timken Company ("Timken") and the Torrington

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[1] *See* unpublished scope ruling dated May 16, 1989.

[2] *See Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof from Japan*, 60 FR 6519 (February 2, 1995).

[3] *See Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 41508 (August 21, 1991); *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 4951 (February 11, 1992); *Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, from Japan: Final Results of Antidumping Duty Administrative Review*, 57 FR 4960 (February 11, 1992); as amended, *Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, from Japan; Amendment to Final Results of Antidumping Duty Administrative Review*, 57 FR 9104 (March 16, 1992); *Final Results of Antidumping Duty Administrative Reviews: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*, 58 FR 64720 (December 9, 1993); as amended, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*, 59 FR 2594 (January 18, 1994); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Japan; Affirmation of the Results of Redetermination Pursuant to Court Remand*, 59 FR 23828 (May 9, 1994); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation Unfinished, from Japan in Part of an Antidumping Finding*, 61 FR 57629 (November 7, 1996); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558 (January 15, 1998); as amended, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13391 (March 19, 1998); *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan, and Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 17815 (April 10, 1998); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 63 FR 20585 (April 27, 1998); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 63860 (November 17, 1998).

[4] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558 (January 15, 1998).

Company ("Torrington"), American NTN Bearing Manufacturing Corporation ("ANBM") and the NTN Bower Corporation, and Koyo Corporation of the U.S.A.—Manufacturing Division ("KCUM") on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* We received complete substantive responses on behalf of Timken and Torrington, ANBM and NTN Bower, and KCUM on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).

Timken and Torrington claimed interested party status under 19 U.S.C. 1677(9)(C) as U.S. manufacturers of TRBs. Timken stated that it filed the original petition that led to the antidumping order. In addition, Timken stated that it has participated in all administrative reviews of the order. Torrington, however, stated that it did not participate in the original investigation nor any of the administrative reviews. ANBM and NTN Bower also claimed interested party status under 19 U.S.C. 1677(9)(C) as U.S. manufacturers of a domestic like product. Additionally, ANBM and NTN Bower stated that they are related to a foreign producer/exporter and are importers of subject merchandise. ANBM and/or NTN Bower state that they have participated in every administrative review of the order, with the exception of the 1994–95 annual review. KCUM also claimed interested party status under 19 U.S.C. 1677(9)(C) as a U.S. manufacturer of a domestic like product. KCUM stated that it is a division of Koyo Corporation of U.S.A., a wholly-owned subsidiary of Koyo Seiko Co., Ltd., a producer in Japan of subject merchandise and an importer of subject merchandise. Moreover, KCUM stated that it has participated in all administrative reviews conducted by the Department.

On May 3, 1999, the Department received a waiver from Koyo Seiko Corp., Ltd. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

On May 12, 1999, the Department received rebuttal comments from ANBM and NTN Bower and Timken and Torrington.[5]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On August 5, 1999, the Department determined that the sunset review of the antidumping duty order on TRBs from Japan is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[6]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In this instant review, the Department received a waiver from Koyo and did not receive a substantive response from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, Timken and Torrington argue that revocation of the order on TRBs from Japan would be likely to lead to continuation or recurrence of dumping due, in part, to the fact that there has been continuous dumping of subject TRBs for more than twelve years (*see* May 3, 1999, substantive response of Timken and Torrington at 8). Timken and Torrington further argue that the Asian financial and economic crisis has had the effect of limiting the market for TRBs in Japan and the rest of Asia, leaving Japanese TRB producers with excess capacity and the need to export more than they have in the past, specifically to non-Asian countries. Timken and Torrington maintain that the result of the Asian crisis has been a forty percent increase of exports of TRBs to the U.S. from 1997 to 1998 (*see id.* at 12). Moreover, Timken and Torrington argue that Japanese selling patterns in such non-Asian countries as Canada and Mexico indicate that absent the order, Japanese producers would increase exports to the U.S. by lowering prices. Timken and Torrington conclude that since the Japanese are presently selling in the U.S. at LTFV, even lower prices would mean greater levels of dumping (*see id.* at 13). In sum, Timken and Torrington argue that the consistent history of dumping with the discipline of the order in place, together with the impact of the Asian crisis and Japanese sales activity in other countries demonstrate that dumping would continue or recur if the order were revoked.

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[5] On May 6, 1999, the Department received and granted a request from Timken and Torrington for a two working-day extension of the deadline for filing rebuttal comments in this sunset review. This extension was granted for all participants eligible to file rebuttal comments in this review. The deadline for filing rebuttals to the substantive comments therefore became May 12, 1999.

[6] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et al.: Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 42672 (August 5, 1999).

In their substantive response, ANBM and NTN Bower (collectively, "NTN") argue that revocation of the order would have minimal, or no, impact upon the U.S. market for the following reasons. First, they maintain that producers in Japan have invested in production facilities in the U.S. since the imposition of the order, thereby decreasing the need to import subject merchandise from Japan. They further claim that imports from non-subject countries will continue to increase, therefore reducing the competitive threat from the subject country to the U.S. market. Finally, they argue that the U.S. bearing industry is financially secure (*see* May 3, 1999, substantive response of NTN at 3).

KCUM, in its substantive response, argues that revocation of the antidumping order would not have much of an effect on the U.S. market, prices, or the industry for two reasons. First, KCUM maintains that the U.S. market and the role of imports in the market have changed substantially over the past twenty years, and foreign producers whose imports have been subject to the order have moved substantial production facilities to the U.S. Therefore, KCUM argues, if the order is revoked, KCUM will continue to produce significant quantities of bearings in the U.S. because companies would not abandon their U.S. production facilities solely in response to the revocation of the order. Second, KCUM argues that foreign producers subject to the order have much smaller market shares with limited ability to influence prices in the market. The conclusion KCUM draws is that the TRB market in the U.S. is subject to conditions that affect prices to which the existence or revocation of the antidumping order is irrelevant (*see* May 3, 1999, substantive response of KCUM at 4–5).

In their rebuttal comments, Timken and Torrington maintain that the existence of manufacturing facilities in the U.S. is not relevant to the likelihood determination because despite the fact that such facilities have been in operation for many years, dumping of subject merchandise from Japan in substantial amounts has continued for many years (*see* May 12, 1999, rebuttal of Timken and Torrington at 3–4). Timken and Torrington further argue that any significant effect that onshore production was going to have on dumped imports would have demonstrated itself by now (*see id.* at 5). Moreover, Timken and Torrington rebut NTN's assertion that revocation will not have any effect because non-subject imports of TRBs will increase. Timken and Torrington argue that there is no evidence that, should the order be revoked, NTN or any other Japanese producer would raise its import prices. Timken and Torrington maintain that since Japanese producers currently sell at LTFV prices or lower, there is little likelihood that foreign producers of non-subject merchandise would be able to increase their market share (*see id.* at 5). Finally, Timken and Torrington rebut KCUM's argument that the U.S. market and the role of imports in the market have changed substantially over the past twenty years. Timken and Torrington maintain that since KCUM does not affirm that market conditions will change in any significant way, on the surface, KCUM's assertion supports the proposition that dumping will continue if the order were revoked because dumping occurs at present (*see id.* at 4–5).

NTN, in its rebuttal, argues that Timken and Torrington rely heavily on the assumption that the Asian economic situation will continue as it has for the foreseeable future. NTN, however, states that more recent economic trends indicate that the Japanese, and Asian, economies are on the verge of recovery (*see* May 12, 1999, rebuttal of NTN at 2). Finally, NTN maintains that Timken and Torrington also heavily rely on the duty absorption rates in arguing likely dumping levels. However, NTN points out that the rates cited by Timken and Torrington, as well as the order of duty absorption itself, are the subject of litigation before the Court of International Trade (*see id.* at 2).

The Department agrees, based on an examination of the final results of administrative reviews, that dumping margins above de minimis levels have continued throughout the life of the order for at least one Japanese producer/exporter.[7] As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. The Department also agrees that imports of the subject merchandise have continued throughout the life of the order. Since the imposition of the order, imports of TRBs from Japan have fluctuated greatly, showing no overall trend.[8]

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a de minimis level continues in effect for exports of the subject merchandise for at least one known Japan producer/exporter. Therefore, given that dumping has continued over the life of the order and respondent interested parties waived their right to participate in this review before the Department, we determine that dumping is likely to continue or recur if the order were revoked. Whatever relevance the arguments of those parties in support of revocation might have had concerning possible disincentives for producers and/or exporters to dump in the U.S. market, those arguments are mooted by the evidence that dumping continues and has continued over the life of the order.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

In their substantive response, Timken and Torrington suggest that the Department deviate from its general practice of selecting the margins from the original investigation due to the fact that two major Japanese producers were found to be absorbing duties (*see* May 3, 1999, substantive response of Timken and Torrington at 18). Timken and Torrington also point out that where the Department has found duty absorption, for companies that were absorbing duties, it will report the greater of the margin it would normally report or the most recent margin for that company adjusted to account for the Department's findings on duty absorption (*see id.* at 16 and *Sunset Policy Bulletin*). In sum, Timken and Torrington recommend that if the Department conducts an expedited review, it should rely on the evidence from the 1995–96 administrative review and forward the margins, as adjusted for duty absorption, for the companies from this review (*see id.* at 17).

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[7] *See* footnote 3.

[8] The Department bases this determination on information submitted by Timken and Torrington in its May 3, 1999, submission, as well as U.S. IM146 Reports, U.S. Department of Commerce statistics, U.S. Department of Treasury statistics, and information obtained from the U.S. International Trade Commission.

NTN, in its substantive response, maintains that the dumping margin likely to prevail if the order were revoked is 0.00 percent. However, NTN alternatively requests that the Department employ margins that were determined during one of the more recent administrative reviews of the subject merchandise (*see* May 3, 1999, substantive response of NTN at 3–4).

In its substantive response, KCUM states that it cannot predict the likely effect of revocation of the order since the existence of the order does not have much of an effect on the prices at which bearings are sold in the United States, and, hence, on the margins generated on those sales (*see* May 3, 1999, substantive response of KCUM at 5). Moreover, KCUM argues that fluctuations in the exchange rate between the dollar and the Japanese yen have a significant impact on dumping margins (*see id.* at 6). They argue that the results of past administrative reviews reveal that antidumping margins tend to increase in periods in which the yen appreciates against the dollar and vice versa. As a result, KCUM argues, the margins that would prevail if the order were revoked cannot be determined because they are dependent on an entirely exogenous factor (*see id.* at 6). In any case, KCUM strenuously objects to the use of the margins calculated in the LTFV determination, arguing that the order is hopelessly obsolete and cannot serve as a realistic indicator of the market and pricing conditions that would exist today if the order were revoked (*see id.* at 6). Therefore, KCUM concludes that the Department should use the results of more recent administrative reviews when determining the margins that would exist for Koyo (*see id.* at 7).

As noted above, the Department determined in the final results of the 1995–96 administrative review that two Japanese producers/exporters, Koyo Seiko and NSK, were absorbing duties.[9] Consistent with the statute and the *Sunset Policy Bulletin*, the Department will notify the Commission of its findings regarding duty absorption when conducting a sunset review.

Additionally, the *Sunset Policy Bulletin* refers to the SAA at 885 and the House Report at 60, and provides that where the Department has found duty absorption, the Department normally will report to the Commission the higher of the margin that the Department otherwise would have reported or the most recent margin for that company, adjusted to account for the Department's findings on duty absorption.

In this case, the margins adjusted to account for the Department's duty absorption findings are less than the margins we would otherwise report to the Commission. As such, the Department will report to the Commission the company-specific and "all others" rates from the original investigation as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter	Margin (percent)
Koyo Seiko Co., Ltd.	70.44
NTN Toyo Bearing Co., Ltd.	47.05
All Others	47.57

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28767 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–DS–P

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[9] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558 (January 15, 1998).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–602]

Final Results of Expedited Sunset Review: Tapered Roller Bearings From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: tapered roller bearings from Romania.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on tapered roller bearings from Romania (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, a waiver) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping duty order is tapered roller bearings and parts thereof ("TRBs") from Romania. These include flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use.

This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item numbers 8482.20.00.10, 8482.20.00.20, 8482.20.00.30, 8482.20.00.40, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8708.99.80.15, and 8708.99.80.80.[1] The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

The Timken Company ("Timken") and the Torrington Company ("Torrington"), in their substantive response, argue that two scope clarifications the Department made with regard to the antidumping order on TRBs, over four inches, from Japan are relevant to this order (*see* May 3, 1999, Substantive Response of Timken & Torrington at 12). Timken and Torrington argue that since the product description for that order is included in the Romanian order, the two Japanese rulings are relevant to the scope of the Romanian order. In the first ruling, the Department ruled that green rings which had not been heat-treated were within the scope of the order.[2] The Department also ruled that unfinished green forged rings and tower forgings were within the scope of the order.[3]

The Department makes its scope determinations on an order-specific basis. Therefore, we conclude that the two scope clarifications the Department made on the antidumping order on TRBs, over four inches, from Japan cannot be applied to this order.

History of the Order

The Department, in its final determination of sales at less than fair value ("LTFV"), published a country-wide weighted-average dumping margin for Romania (52 FR 17433, May 8, 1987). The antidumping duty order on TRBs from Romania was published in the **Federal Register** on June 19, 1987 (52 FR 23320). Since that time, the Department has conducted several administrative reviews.[4] This sunset review covers imports from all known Romanian producers/exporters. To date, the Department has issued no duty absorption findings in this case.

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping order on TRBs from Romania (64 FR 15727), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Timken and Torrington on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* We received a complete substantive response from Timken and Torrington on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* in section 351.218(d)(3)(i). Both Timken and Torrington claimed interested party status pursuant to section 771(9)(C) of the Act as U.S. manufacturers of TRBs. In addition, Timken stated that it participated in the original investigation and all administrative reviews of the order. Torrington, on the other hand, stated that it did not participate in the original investigation. On May 3, 1999, we received a waiver of participation from one respondent interested party to this proceeding, Tehnoimportexport S.A. As a result, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On August 5, 1999, the Department determined that the sunset review of the antidumping duty order on TRBs from Romania is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the *Sunset Policy Bulletin*).

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[1] Per phone conversation with United States Customs officials, the HTS numbers listed above are those that Customs uses for official duty collection. *See* memo to file dated June 8, 1999, re. HTS numbers for TRBs.

[2] *See* unpublished scope ruling dated May 16, 1989.

[3] *See Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof from Japan*, 60 FR 6519 (February 2, 1995).

[4] *See Tapered Roller Bearings from Romania; Final Results of Antidumping Duty Administrative Review*, 56 FR 1169 (January 11, 1991); as amended, *Tapered Roller Bearings from Romania; Amended Final Results of Antidumping Duty Administrative Review*, 57 FR 29288 (July 1, 1992); *Tapered Roller Bearings from Romania; Final Results of Antidumping Duty Administrative Review*, 56 FR 41518 (August 21, 1991); *Tapered Roller Bearings from Romania; Final Results of Antidumping Duty Administrative Review*, 61 FR 51427 (October 2, 1996); as amended, *Tapered Roller Bearings from Romania; Amended Final Results of Antidumping Duty Administrative Review*, 61 FR 59416 (November 22, 1996); *Tapered Roller Bearings from Romania; Final Results of Antidumping Duty Administrative Review*, 62 FR 37194 (July 11, 1997); *Tapered Roller Bearings from Romania; Final Results of Antidumping Duty Administrative Review*, 62 FR 31075 (June 6, 1997); and *Tapered Roller Bearings from Romania; Final Results of Antidumping Duty Administrative Review*, 63 FR 36390 (July 6, 1998).

[5] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et al.; Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did receive a waiver of participation from one respondent interested party and did not receive a response from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, Timken and Torrington argue that revocation of the order on TRBs from Romania would be likely to lead to continuation or recurrence of dumping due to the fact that dumping margins above *de minimis* have been calculated after the issuance of the order. Timken and Torrington argue that the zero margins determined in the 1988–89 and 1993–94 reviews are not representative of the behavior of Romanian producers of TRBs because Romania lost its most-favored-nation (MFN) status from 1989–1993 (*see* May 3, 1999, Substantive Response of Timken & Torrington at 7–8). During that time, imports declined sharply. Whenever there have been significant imports of TRBs from Romania, argue Timken and Torrington, they have been sold at less than fair value (*see id.* at 8).

Timken and Torrington further assert that one major Japanese producer of TRBs, Koyo Seiko, has majority ownership of one of the Romanian bearings companies, Rulmenti Alexandria. Timken and Torrington suggest that since Koyo Seiko has a history of exporting TRBs from Japan to the U.S. at less than fair value, Koyo will not hesitate to sell its Romanian products at less than fair value, given the opportunity (*see id.* at 9).

With respect to whether imports of the subject merchandise ceased immediately following the issuance of the order, Timken and Torrington do not provide any information in their substantive response. They do, however, maintain that in the years during which Romania lost its MFN status (1989–93), imports declined significantly (*see id.* at 8).

In sum, Timken and Torrington maintain that Romania's focus on exports, history of sales in the U.S., the continuing importance of the U.S. market, and enhanced corporate resources provide Romanian producers with incentives to dump the subject merchandise in the U.S. if the order is revoked (*see id.* at 9). They conclude that the Department should determine that there is a likelihood that dumping would continue or recur if the order is revoked because above *de minimis* margins have existed throughout the life of the order.

The Department agrees, based on an examination of the final results of administrative reviews, that dumping margins above *de minimis* levels, with the exception of one country-wide margin of zero[6] and one company-specific margin of zero,[7] have continued throughout the life of the order.[8] Currently, dumping margins above *de minimis* exist on both a country-wide and company-specific basis. As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

With respect to import levels, the Department agrees that imports of the subject merchandise decreased in 1988, the year following the imposition of the order. However, since that time, imports of TRBs from Romania have fluctuated greatly, showing no overall trend.[9]

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a *de minimis* level continues in effect for exports of the subject merchandise for at least one known Romanian producer/exporter. Given that dumping has continued over the life of the order and respondent interested parties waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the order were revoked.

Because the Department based this determination on the continued existence of margins above *de minimis* and respondent interested parties' waiver of participation, it is not necessary to address Timken and Torrington's arguments concerning the Japanese bearing producer's ownership of one Romanian company.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

As noted above, the Department, in its final determination of sales at LTFV, published a country-wide weighted-average dumping margin for Romania (52 FR 17433, May 8, 1987). To date, the Department has not made any duty absorption findings in this case.

In their substantive response, Timken and Torrington suggest that if economic conditions in Romania were normal, the Department should forward to the Commission the margin from the original investigation. However, they suggest that the Department deviate from its general practice of selecting the margin from the original investigation. They argue that the current economic conditions in Romania are not "normal" conditions, and therefore, these abnormal circumstances warrant the use of a newly-calculated margin. They elaborate on their argument by stating that the Romanian economy is in a state of flux, such that industries, including the bearing industries, are undergoing significant change and responding to constantly changing circumstances (*see* May 3, 1999, Substantive Response of Timken & Torrington at 10–11). They suggest that Koyo Seiko's twenty-five year history of dumping, at an average margin above 25 percent, coupled with its majority ownership of Rulmenti Alexandria, makes it reasonable to conclude that this company would export TRBs to the United States with dumping margins significantly higher than the original Romania rate. Finally, they note that per kilogram values of Romanian exports of the subject merchandise dropped by over 25 percent between the 1994–95 and 1998–99 review periods (*see id.* at 11–12). In conclusion, Timken and Torrington urge the Department to identify a margin, based on the most recent data available, other than the calculated one for forwarding to the Commission (*see id.* at 11).

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[6] *See Tapered Roller Bearings from Romania; Final Results of Antidumping Duty Administrative Review*, 62 FR 31075 (June 6, 1997).

[7] *See Tapered Roller Bearings from Romania; Final Results of Antidumping Duty Administrative Review*, 56 FR 41518 (August 21, 1991).

[8] *See* footnote 4.

[9] The Department bases this determination on information submitted by Timken and Torrington in their May 3, 1999, submission, as well as U.S. IM146 Reports, U.S. Department of Commerce statistics, U.S. Department of Treasury statistics, and information obtained from the U.S. International Trade Commission.

As noted in the *Sunset Regulations* and *Sunset Policy Bulletin*, only under the most extraordinary circumstances will the Department rely on dumping margins other than those it calculated and published in its prior determinations. The *Sunset Regulations*, at section 351.218(e)(2)(i), explain that "extraordinary circumstances" may be considered by the Department in the context of a full sunset review, where the substantive response from both domestic and respondent interested parties are adequate. In this case, however, the Department determined to conduct an expedited review because of a waiver of participation from respondent interested parties.

Further, we are not persuaded that calculation of a new margin is appropriate based on the assertions by Timken and Torrington concerning the state of the Romanian economy, alleged changes in the Romanian bearings industry, Koyo Seiko's ownership of one of the Romanian companies, and whether per kilogram values of exports to the United States have radically declined.

As explained above, the Department may consider the calculation of new margins only in full reviews. However, even if the Department had determined to conduct a full review of this order, Timken's and Torrington's assertions do not give rise to extraordinary circumstances that would warrant the calculation of a new dumping margin.

Therefore, consistent with the *Sunset Policy Bulletin*, the Department determines that the margin calculated in the original investigation is probative of the behavior of Romanian producers/exporters if the order were revoked as it is the only rate that reflects the behavior of these producers and exporters without the discipline of the order. As such, the Department will report to the Commission the country-wide rate from the original investigation as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/Exporter	Margin (percent)
Country-wide rate	8.70

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28768 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–601]

Final Results of Expedited Sunset Review: Tapered Roller Bearings From Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Tapered roller rearings from Hungary.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on tapered roller bearings from Hungary (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The products covered by this review are tapered roller bearings ("TRBs"), finished and unfinished, from Hungary. This merchandise includes tapered roller bearings and parts thereof, flange, take-up cartridge, and hanger units incorporating tapered roller bearings and tapered roller housings (excluding pillow block) incorporating tapered rollers, with or without spindles, whether or not for automotive use.

The Timken Company ("Timken") and the Torrington Company ("Torrington"), in their substantive response, argue that two scope clarifications the Department made with regard to the antidumping order on TRBs, over four inches, from Japan are relevant to this order (*see* May 3, 1999, Substantive Response of Timken & Torrington at 12). Timken and Torrington argue that since the product description for that order is included in the Hungarian order, the two Japanese rulings are relevant to the scope of the Hungarian order. In the first ruling, the

Department ruled that green rings which had not been heat-treated were within the scope of the order.[1] The Department also ruled that unfinished green forged rings and tower forgings were within the scope of the order.[2]

The Department makes its scope determinations on an order-specific basis. Therefore, we conclude that the two scope clarifications the Department made on the antidumping order on TRBs, over four inches, from Japan cannot be applied to this order.

Tapered roller bearings are currently classified under the following item numbers of the Harmonized Tariff Schedule ("HTS") of the United States: 8482.20.00.10, 8482.20.00.20, 8482.20.00.30, 8482.20.00.40, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8708.99.80.15, and 8708.99.80.80.[3] The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

History of the Order

The Department, in its final determination of sales at less than fair value ("LTFV"), published a country-wide weighted-average dumping margin for all exports from Hungary of 7.42 percent *ad valorem*.[4] The antidumping duty order on TRBs was published in the **Federal Register** on June 19, 1987, and, in the order, the dumping margins that were found in the final determination were confirmed. Since the imposition of this order, the Department has conducted four administrative reviews.[5] The order remains in effect for all manufacturers and exporters of the subject merchandise. To date, the Department has issued no duty absorption findings in this case.

This review covers all producers and exporters of TRBs from Hungary.

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping order on TRBs from Hungary (64 FR 15727), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of Timken and Torrington (collectively "the domestic parties") on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We then received a complete substantive response from the domestic parties on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The domestic parties claimed interested party status under section 771(9)(C) of the Act as U.S. manufacturers of TRBs. Timken stated that it was the petitioner in the original LTFV investigation and has participated in all of the subsequent reviews of this order. Torrington stated that it has not participated in any of the proceedings before the Department regarding this order, but that it supports preservation of this order and will participate in this proceeding. We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on August 5, 1999, the Department determined that the sunset review of the antidumping duty order on TRBs from Hungary is extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[6]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In this instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

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[1] *See* unpublished scope ruling dated May 16, 1989.

[2] *See Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof from Japan*, 60 FR 6519 (February 2, 1995).

[3] Per phone conversation with United States Customs officials, the HTS numbers listed above are those that customs uses for official duty collection. *See* Memorandum to File regarding HTS numbers for tapered roller bearings, dated June 8, 1999.

[4] *See Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Hungarian People's Republic*, 52 FR 17428 (May 8, 1987).

[5] *See Final Results of Antidumping Duty Administrative Review; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary*, May 22, 1990 (55 FR 21066); *Final Results of Antidumping Duty Administrative Review; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary*, November 19, 1990 (55 FR 48146); *Final Results of Antidumping Duty Administrative Review; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary*, August 23, 1991 (56 FR 41819); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary; Final Results of Antidumping Duty Administrative Review*, September 13, 1993 (58 FR 47861).

[6] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et al.; Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

In their substantive response, the domestic parties argue that revocation of the order will likely lead to continuation or recurrence of dumping of TRBs from Hungary. Citing the SAA at 889, the domestic parties argue that the continued existence of dumping margins above *de minimis* over the life of the order is indicative of the fact that foreign producers would have to dump in order to compete in the U.S. market. The domestic parties argue that dumping margins above *de minimis* levels have been in existence throughout the entire life of the order on TRBs from Hungary and, therefore, dumping would likely continue if the order were revoked (*see* May 3, 1999, Substantive Response of the domestic parties at 7).

With respect to whether imports of the subject merchandise declined significantly or ceased after the issuance of the order, the domestic parties maintain that imports of TRBs began to decline with the succession of confirmed dumping determinations in November 1990 and August 1991. The domestic parties assert that these determinations resulted in a decline in imports of TRBs from $1.8 million in 1992 to less than $400,000 in 1993, with import volumes falling from over 5 million units in 1992 to less than 1 million units. Moreover, they argue that import volumes of TRBs from Hungary have remained at low levels since 1993. The domestic parties argue that, while in the years immediately following the imposition of the order, from 1988 to 1991, import volumes remained high and even increased in 1988, the year immediately following the order, the low level of imports that has existed since 1993 is probative of the fact that Hungarian producers/exporters are unable to sell at high volumes in the U.S. without dumping (*see id.* at 8–9).

In addition to arguments regarding dumping margins and import volumes, the domestic parties also argue that there are other outside pressures on Hungarian producers and exporters that would lead to continuation or recurrence of dumping of TRBs from Hungary if the order were revoked. Specifically, the domestic parties argue that since most of the TRBs produced in Hungary are exported and Hungary has limited export markets, it is likely that TRBs from Hungary would be dumped in the U.S. market. Additionally, the domestic parties assert that it is likely that dumping would continue or recur if the order were to be revoked because of the openness of the U.S. market and because the current low level of imports of TRBs from Hungary is due primarily to the existence of the antidumping duty order, rather than any changes in the market for this product (*see id.* at 9–10).

In conclusion, the domestic parties argue that the Department should determine that there is a likelihood that dumping of imports of TRBs from Hungary would continue or recur if the antidumping duty order were revoked. The domestic parties argue that the continued existence of dumping margins above *de minimis* over the life of the order, the decline in import volumes following imposition of the order, and the accessibility of the U.S. market compared to other countries indicate that dumping of TRBs from Hungary is likely to continue or recur if the order were revoked.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Since the imposition of the antidumping duty order in 1987, dumping margins above *de minimis* have been in existence for all producers and exporters of TRBs from Hungary.

With respect to whether imports of the subject merchandise declined significantly or ceased after the imposition of the order, it is evident from the data provided by the domestic parties, and confirmed by the Department using U.S. Census Bureau IM146s, that imports did not cease or decline significantly immediately following the imposition of the order. While imports of TRBs from Hungary have decreased over the life of the order, recently declining to minimal levels, in the years immediately following the order, imports remained fairly constant. The domestic parties recognize this fact, as stated in their response, that Hungarian exports did not immediately decline after the imposition of the order (*see* May 3, 1999, Substantive Response of the domestic parties at 8). Therefore, the Department determines that, while imports did not decline immediately following the imposition of the order, they have fallen over the life of the order.

According to the *Sunset Policy Bulletin*, the Department will normally find that revocation of the antidumping duty order will likely lead to continuation or recurrence of dumping where dumping margins continued at any level after the issuance of the order or where dumping was eliminated after the issuance of the order and import volumes of the subject merchandise declined significantly. (*See Sunset Policy Bulletin* at section II.A.3.) Therefore, given the continued existence of dumping margins, as well as the fact that respondent parties waived participation, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at LTFV, published a weighted-average country-wide dumping margin of 7.42 percent for all producers/exporters of TRBs from Hungary (55 FR 21066, May 22, 1987). Since the original investigation, as noted above, there have been four administrative reviews of this order.

The domestic parties, in their substantive response, citing the *Sunset Policy Bulletin*, argue that, absent a finding of unusual circumstances, the Department should suggest to the Commission the country-wide rate from the original investigation as the rate that is likely to prevail if the order were to be revoked. However, the domestic parties argue that the Department should find that unusual circumstances exist in Hungary and, on that basis, should calculate a new rate to provide to the Commission. The domestic parties argue that the economic conditions in Hungary are not "normal" conditions since the Hungarian economy is in the process of changing from a state-run economy to a free-market economy. Because of this change, the domestic parties argue that more recent information is more likely to be accurate than older information based on economic conditions that no longer exist. Therefore, it is the opinion of the domestic parties that a newly calculated dumping margin based on exports of Hungarian TRBs to the European Union should be used to determine a new rate. Without explanation, the domestic parties project the new dumping margin to be 45.96 percent (*see* May 3, 1999, Substantive Response of the domestic parties at 11–12).

As noted in the *Sunset Regulations* and *Sunset Policy Bulletin*, only under the most extraordinary circumstances will the Department rely on dumping margins other than those it calculated and published in its prior determinations. The *Sunset Regulations* at 19 CFR 351.218(e)(2)(i) explain that "extraordinary circumstances" may be considered by the Department in the context of a full sunset review, where the substantive response from both domestic and respondent interested parties are adequate. In this case, however, the Department determined to conduct an expedited review because respondent interested parties waived participation. While only in full reviews will the Department consider the calculation of new margins, it must be further noted that even if the Department had determined to conduct a full review of this order, we are not persuaded by the evidence presented by the domestic parties that such extraordinary circumstances exist in this case as to warrant the calculation of a new dumping margin.

Further, we are not persuaded that calculation of a new margin is appropriate based on the assertions by the domestic parties concerning the state of the Hungarian economy, alleged changes in the Hungarian bearings industry, and the accessibility of the U.S. market for Hungarian producers/exporters.

Therefore, consistent with the *Sunset Policy Bulletin*, the Department determines that the margin calculated in the original investigation is probative of the behavior of Hungarian producers/exporters if the order were revoked as it is the only rate that reflects the behavior of these producers and exporters without the discipline of the order. As such, the Department will report to the Commission the country-wide rate from the original investigation as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below.

Manufacturer/ Exporter	Margin (percent)
Country-wide rate	7.42

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28769 Filed 11–3–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: antifriction bearings from Japan.

SUMMARY: On April 1, 1999, the U.S. Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on ball bearings ("BBs"), cylindrical roller bearings ("CRBs"), and spherical plain bearings ("SPBs") (collectively, antifriction bearings) from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and inadequate response from respondent interested parties in each of these reviews, the Department conducted expedited sunset reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Result of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR 351(1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following three types of subject merchandise:

Ball Bearings and Parts Thereof: These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof. Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof: These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends. Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50,10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90.

The Department notes that the HTS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive. Furthermore, we note that the size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.[1]

History of the Orders

The Department published its less-than-fair-value ("LTFV") determination of antifriction bearings from Japan on May 3, 1989.[2] In this determination, the Department published the following weighted-average dumping margins for these companies with respect to BBs: 73.55 for Koyo; 106.61 for Minebea; 48.69 for Nachi; 42.99 for NSK; 21.36 for NTN; and 45.83 for all other producers and/or exporters. The Department also published the following weighted-average dumping margins for these companies with respect to CRBs: 51.21 for Koyo; 4.00 for Nachi; 12.28 for NSK; 9.30 for NTN; and 25.80 for all other producers and/or exporters. In addition, the Department published the following weighted-average dumping margins for these companies with respect to SPBs: 84.26 for Minebea; 92.00 for NTN; and 84.33 for all other producers and/or exporters. Since that time, the Department has conducted nine administrative reviews.[3] With respect to duty absorption, the Department issued duty absorption findings in the 1995–1996 and 1997–1998 administrative reviews.[4]

Background

On April 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on AFBs from Japan, pursuant to section 751(c) of the Act. By April 16, 1999, within the deadline specified in section

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[1] There have been a number of clarifications to the scopes of these orders. For a complete listing, *see* Appendix A.

[2] *See Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan*, 54 FR 19101 (May 3, 1989).

[3] *See Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan*, 54 FR 19101 (May 3, 1989); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews*, 56 FR 31754 (July 11, 1991); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany; et al.; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 32755 (June 17, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 57 FR 59080 (December 14, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 8908 (February 23, 1998); *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 58 FR 42288 (August 9, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 59 FR 9469 (February 28, 1994); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 18877 (April 16, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900 (February 28, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan and Germany; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 60 FR 10967 (February 28, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Review*, 60 FR 65264 (December 19, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472 (December 17, 1996); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, Japan, and the United Kingdom: Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 3003 (January 21, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081 (January 15, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, and Singapore; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 14391 (March 26, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 45795 (August 29, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore; Sweden and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 61963 (November 20, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998); *Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

[4] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997); *Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

351.218(d)(1)(i) of the *Sunset Regulation*, we received notices of intent to participate from the following: Link-Belt Bearing Division ("Link-Belt"); The Torrington Company ("Torrington") and MPB Corporation ("MPB"); Koyo Corporation of U.S.A.—Manufacturing Division ("KCUM"); NTN Bearing Corporation of America ("NBCA"), American NTN Bearing Manufacturing Corporation ("ANBM") and NTN–BCA Corporation ("NTN–BCA") (collectively ("NTN"); Roller Bearing Company of America, Inc. ("RBC"); New Hampshire Ball Bearings, Inc. ("NHBB"), and NSK Corporation. Each of these parties claimed status as domestic interested parties on the basis that they are a domestic producer, manufacturer, or wholesaler of one or more of the products subject to these orders.[5]

Within the deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), on May 3, 1999, the Department received complete substantive responses from each of these domestic interested parties, with the exception of Link-Belt. In addition, Koyo Seiko Corp. Ltd., and Koyo Corporation of the U.S.A. (collectively "Koyo") notified the Department that they would not file a substantive response in the reviews of the AFB orders. Finally, we received a complete substantive response on behalf of Nippon Pillow Block Manufacturing Company Limited, Nippon Pillow Block Sales Company Limited, and FYH Bearing Units USA, Inc. (collectively "Nippon Pillow Block"). Nippon Pillow Block asserts that it is a foreign manufacturer and exporter of BBs and is, therefore, an interested party within the meaning of section 771(9)(A) of the Act. We received rebuttal comments from Torrington and MPB (collectively "the companies") and from NTN on May 12, 1999, within the deadline.

On May 21, 1999, we informed the International Trade Commission ("Commission") that, on the basis of inadequate response from respondent interested parties, we were conducting expedited sunset reviews of these orders consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). (*See* Letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.)

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on August 5, 1999, the Department determined that the sunset reviews of the antidumping duty orders on AFBs from Japan are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[6]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the Commission the magnitude of the margin likely to prevail if the order is revoked.

The Department's determinations concerning adequacy, continuation or recurrence of dumping, and magnitude of the margin are discussed below. In addition, the parties' comments with respect to adequacy, the continuation or recurrence of dumping, and the magnitude of the margin are addressed within the respective sections below.

Adequacy

As noted above, we notified the Commission that we intended to conduct expedited reviews of these orders. On June 10, 1999, we received comments on behalf of MPB and Torrington supporting our determination to conduct expedited reviews. NHBB and NSK Corporation also submitted comments on whether expedited sunsets review were warranted. In their submissions, both parties assert that most of the domestic interested parties that submitted substantive responses are in favor of revocation of the orders. These parties also offered new argument regarding the likely effect of revocation of the orders.

The magnitude of domestic support for continuation or revocation of an order, however, does not enter into the Department's determination of adequacy of participation nor, for that matter, the Department's determination of likelihood. The Department made clear in its regulations that a complete substantive response from one domestic interested party would be considered adequate for purpose of continuing a sunset review (see section 351.218(e)(1)). Nowhere in the statute or legislative history is there reference to consideration of domestic industry support during the course of a sunset review (other than the statutory provision that, if there is *no* domestic industry interest in continuation of the order, the Department will revoke the order automatically). In fact, the Senate Report (at Rep. No. 103–412 at 46 (2nd Session)) makes clear that the purpose of adequacy determinations in sunset reviews is for the Department to determine whether to issue a determination based on the facts available without further fact-gathering. Further, the statute, at section 751(c)(1), specifies that the Department is to determine whether revocation of an order would be likely to lead to continuation or recurrence of dumping. Section 752(c) specifies that the Department is to consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the order.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

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[5] Torrington, RBC, and NHBB filed with respect to BBs, CRBs, and SPBs. Link-Belt, MPB, and NTN filed with respect to BBs and CRBs. KCUM and NSK filed with respect to BBs only.

[6] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et. al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

In their substantive response, Torrington and MPB argue that revocation of the antidumping duty orders on the subject merchandise would be likely to lead to continuation of dumping. They base this conclusion on the fact that dumping continued at levels above *de minimis* levels after the issuance of the orders. RBC also argues that given that dumping margins continue to exist after the issuance of the orders, the Department must conclude that dumping would be likely to continue or recur if the orders were revoked. Torrington and MPB also assert that an examination of import volumes is not necessary because dumping continued. Using pre-and post-order statistics for complete unmounted BBs, which Torrington and MPB assert is the only category for which statistics are available on a consistent basis, they nonetheless argue that post-order declines in import volume provide strong additional support for a determination the dumping is likely to continue or recur were the orders revoked. In conclusion, Torrington and MPB assert that no "good cause" exists to consider other factors, such as sales below the cost of production. However, if the Department were to consider other factors, it should acknowledge that, in each review period, it has found that home market sales by Japanese producers were below the cost of production, requiring that such sales be disregarded for purposes of determining foreign market value or normal value.

NHBB and NSK Corporation assert that revocation of the orders is not likely to result in continuation or recurrence of dumping. NHBB bases its assertion on the fact that dumping would undercut the U.S. domestic price structure, thus causing injury to the very industry of which foreign owners are a part. NSK Corporation appears to support its assertion on the basis that the margin of dumping would be no higher than the margin found in the most recent administrative review (*i.e.*, 2.30 percent). KCUM and NTN argue that revocation of the antidumping duty orders would not be likely to have much of an effect on the U.S. market, prices, or the industry, or would it result in no or minimal impact upon the U.S. market. In addition, the respondent interested party in the review of Bbs, Nippon Pillow Block, asserts that revocation or the order would have minimal or *de minimis* effects on the BB market in the United States and the operations of the domestic producers. Further, Nippon Pillow Block argues that dumping would not be likely to continue or resume, although it also suggests that, if the order were revoked, the antidumping duty margin likely to prevail is 2.30 percent.

In their rebuttal comment, Torrington and MPB assert that the Department should take into account the submitter's affiliation in its consideration of comments of various parties filing as domestic producers. Further, citing to Ball Bearings and Parts Thereof From Thailand; Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order, 61 FR 20799, 20800 (May 8, 1996), they argue that the Department has recognized that domestic producers who are affiliated with subject foreign producers and exporters do not have a common "stake" with the petitioner in the maintenance of the order. Additionally, Torrington and MPB argue that other parties' comments addressing issues other than margins and import volumes should not be considered unless such parties establish "good cause" to consider such additional factors, which, in these reviews, they have not done.

In its rebuttal comments, NTN argues that the factors discussed in Torrington's, MPB's, and RBC's responses do not indicate that revocation of the orders would be likely to lead to the continuation or recurrence of dumping. NTN asserts that the inclusion by RBC of margins from companies which do not currently ship to the United States and which have not been the subject of recent reviews is distortive of the current situation. Further, NTN asserts that the responses rely heavily on duty absorption determinations that are the subject of litigation before the Court of International Trade.

As discussed in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were removed. Thus, as noted above, in determining whether revocation of an order is likely to lead to continuation or recurrence of dumping, the Department considers the margins determined in the investigation and subsequent administrative reviews and the volume of imports. Whatever relevance the arguments of NHBB, NSK Corporation, KCUM, and NTN concerning possible disincentives for producers and/or exporters to dump in the U.S. market might have had is mooted by the evidence that dumping continues and has continued over the lives of the orders.

In the instant proceedings, dumping margins above *de minimis* continue to exist with respect to each of the orders. Therefore, given that dumping has continued over the life of the orders, the Department determines that dumping is likely to continue if the orders were revoked. Because we have based this determination on the fact that dumping continued at levels above *de minimis*, we have not addressed the comments submitted by Torrington and MPB with respect to "good cause," nor have we addressed the arguments of other interested parties regarding the condition of the U.S. market.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department will normally provide to the Commission a margin from the investigation because that is the only calculated rate that reflects the behavior or exporters without the discipline of an order in place. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department wil normally provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the Sunset Policy Bulletin.)

In their substantive response, Torrington and MPB argue that the margins that are likely to prevail should the orders be revoked are the dumping margins found for each company in the original investigation (as opposed to margins calculated in succeeding annual administrative reviews), including margins based on best information available, except where the most current margin, increased by the Department's duty absorption determination, exceeds the original investigation margin. With respect to BBs, RBC argues that the margins from the original investigation are the margins likely to prevail were the order revoked.

NHBB argues that the dumping margins likely to prevail if the orders were revoked are *de minimis*. NHBB goes on to argue that it would be illogical for companies with significant U.S. bearings investments to undercut that investment by dumping. In addition, NHBB argues that the Department should not report margins from the original investigation, asserting that the SAA provides that, in certain instances, it is more appropriate to rely on more recently calculated margin. NHBB also asserts that one such instance is where, as in the AFB cases, dumping margins have declined over the lives of the orders and imports have remained steady or increased. Finally, NHBB argues that, in light of changes in the methodology used to calculate antidumping duty margins introduced by the Uruguay Round, use of margins calculated by the Department prior to the URAA would be unfair and would be contrary to the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Similarly, NSK Corporation argues that the margins likely to prevail are *de minimis*. As support, NSK Corporation argues that, were the orders not in existence, the Department would apply the average-to-average methodology used in an investigation as opposed to the transaction-to-average methodology common to administrative reviews to measure the extent of any dumping. In such a case, NSK Corporation states that it believes any margin found would be below the two percent *de minimis* level applicable in investigations. NSK Corporation argues that further that the Department's unorthodox approach during the original investigation, plus the liberal use of best information available, skewed the results of the original investigation seriously, rendering those results inappropriate indicators of the magnitude of the margin likely to prevail were the orders revoked. Finally, NSK Corporation also argues that dumping margins have declined over time with respect to importations of BBs while, at the same time, importations have remained at or around 20 percent of the U.S. market. As support, it cites to The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, USITC Pub. 2900, Inv. No. 332–334, at 14–26—14–31 (June 1995).

KCUM argues that it cannot predict the effect revocation would have on the margins because the existence of the orders does not have much of an effect on prices. Further, KCUM states that any likely margins are dependent on an entirely exogenous factor, such as the fluctuation in the exchange rate between the dollar and the Japanese yen. KCUM asserts that the Department cannot rely on the margins from the original investigation as (1) the final determinations were almost 10 years ago and thus are far too old to serve as realistic indicators, and (2) Koyo's rate was based in large part on best information available and thus is enormously inflated when compared to actual margins from administrative reviews. KCUM argues that, therefore, the Department must use the results of more recent administrative reviews to determine the margins likely to prevail for Koyo.

NTN argues that, were the orders revoked, the dumping margins that would likely prevail would be zero percent. In the alternative, NTN requests that the Department employ margins that were determined during the more recent administrative reviews.

Nippon Pillow Block argues that, in cases where imports have increased and the magnitude of dumping has declined since the imposition of the order, as is the case with respect to exports of BBs by Nippon Pillow Block, consistent with the Sunset Policy Bulletin the Department should find that a dumping margin no higher than the margin found in the most recent review is likely to prevail. Therefore, Nippon Pillow Block suggests that the magnitude of the margin likely to prevail with respect to its exports if the order on BBs were revoked is the 2.30 percent margin from the administrative review covering May 1, 1996, through April 30, 1997.

In their rebuttal comments, Torrington and MPB argue that other parties' comments ignore the Department's stated policies regarding the selection of margins likely to prevail and ignore the Department's duty absorption findings. Citing to the Sunset Policy Bulletin, Torrington and MPB argue that the Department's policies are clear—normal reliance on the margins from the investigation as the only margins that reflect the behavior of exporters without the discipline of the order and rejection of margins from administrative reviews in which the Department found duty absorption. Torrington and MPB argue that the two percent *de minimis* standard is not applicable to sunset reviews. Further, they contend that there is no authority which would authorize or justify the rejection of the investigation rates on the basis of the particular methodology used at the time of the investigation. Additionally, they argue that, with respect to claims that more recent margins should be used based on declining margins accompanied by steady or increasing imports, Torrington and MPB argue that it is the responsibility of such claimants to provide information regarding companies' relative market share. Since no such information was provided, the Department should not accept these assertions. In fact, imports of certain BBs have actually declined since the imposition of the order.

In their rebuttal comments NTN asserts that the inclusion by RBC of margins from companies which do not currently ship to the United States and which have not been the subject of recent reviews is distortive of the current situation. Further, NTN asserts that the responses rely heavily on duty absorption determinations that are the subject of litigation before the Court of International Trade.

We agree with Torrington, MPB, and RBC that, normally, we will provide a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. As noted above, exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

With respect to NSK's argument concerning the magnitude of the margin likely to prevail, we disagree. As discussed above, we do find that there is a likelihood of continuation or recurrence of dumping. Furthermore, we find the level of dumping likely to prevail is best reflected by our dumping margins calculated in the original investigations. Specifically, the Department finds that there is no basis to reject margins calculated in an investigation because of subsequent changes in methodology. Such changes do not invalidate margins calculated under the prior methodology. Therefore, the dumping margins from the original investigation are the only rates which reflect the behavior of exporters without the discipline of the order, regardless of the methodology used to calculate that margin or the use of best information available (*see* section 752(c)(3) of the Act).

With respect to NHBB's argument concerning the dumping margin likely to prevail, the Department disagrees. First, NHBB claims that dumping margins have declined over the lives of the orders and imports have remained steady or increased. However, NHBB provided no evidence to support these claims. Nothing submitted in the course of this sunset proceeding indicates that imports have remained steady or increased. In fact, evidence submitted by Torrington and MPB indicate that imports of the subject merchandise have decreased. Regardless of the level of imports, dumping margins above *de minimis* levels continue as do imports of the subject merchandise; dumping continues to exist.

In the Sunset Policy Bulletin we indicated that, consistent with the SAA at 889–90 and the House Report at 63, we may determine, in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, that a more recently calculated rate reflects that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order were revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company. The Sunset Policy Bulletin provides that we will entertain such considerations in response to argument from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporter's behavior absent the discipline of an order, we will normally consider the company's relative market share, with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market share information, in past sunset reviews where market share information was not available, the Department relied on changes in import volumes between the periods before and after the issuance of the order. *See, e.g.,* Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden, 63 FR 67658 (December 8, 1998), and Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China, 64 FR 30310 (June 7, 1999).

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information. Generic arguments that margins decreased over the life of the orders while, at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic argument may disguise company-specific behavior demonstrating increased dumping coupled with increased market share.

In these reviews, only Nippon Pillow Block provided statistics regarding its company-specific exports of BBs both prior to the issuance of the order and for the most recent five years. We reviewed the statistics provided and found that, although its export volume and values fluctuated during the period 1994 through 1998, its exports during 1996 were at an all-time high. Coinciding with this increase, the Department calculated margins for Nippon Pillow Block of 7.87 percent for the May 1995 through April 1996 review and 2.30 percent for the May 1996 through April 1997 review. Further, the Department calculated a margin of 1.20 percent for Nippon Pillow Block during the most recently completed review covering the period May 1997 through April 1998. Given the correlation between increased exports and the decreased margin in the 1996/97 administrative review, we agree with Nippon Pillow Block that a more recently calculated margin may be an appropriate indicator of the magnitude of margin likely to prevail were the order revoked.

The SAA at 885 and the House Report at 60 provide, however, that duty absorption is a strong indicator that the current dumping margins calculated in reviews may not be indicative of the margins that would exist in the absence of an order. Once an order is revoked, the importer could achieve the same pre-revocation return on its sales by lowering its prices in the United States in the amount of the duty that was previously being absorbed. Therefore, in the Sunset Policy Bulletin the Department indicated that it normally will determine that a company's current dumping margin is not indicative of the margin likely to prevail were the order revoked. Further, we indicated that we normally will provide to the Commission the higher of the margin that we would otherwise have reported to the Commission or the most recent margin for that company adjusted to account for our findings on duty absorption.

In their comments, Torrington and MPB argue that the Sunset Policy Bulletin requires that the Department report to the Commission the higher of the margin from the original investigation or the margin from a more recent administrative review adjusted to reflect duty absorption findings. We do not agree. As noted above, the Sunset Policy Bulletin provides that, where we have found duty absorption in an administrative review initiated in 1998 (for transition orders such as these) we will normally select the higher of the margin we would otherwise have reported or the margin adjusted to account for duty absorption findings. With respect to Nippon Pillow Block, as noted above, we would otherwise report to the Commission the margin from the 1996/97 administrative review. The Department was not required to investigate duty absorption during the 1996/97 administrative review; in the 1995/96 and the 1997/98 administrative reviews, the Department found that Nippon Pillow Block was absorbing duties on 55.46 and 9.75 percent of its U.S. affiliate's sales, respectively. Because all of Nippon Pillow Block's U.S. sales were constructed export price sales, total sales and U.S. affiliate's sales are the same. Therefore, for purposes of considering duty absorption, we relied on the level of duty absorption found in the administrative review initiated in 1998. Consistent with the methodology described in the Sunset Policy Bulletin and we used in Preliminary Results of Sunset Review: Porcelain-on-Steel Cooking Ware from Mexico, 64 FR 46651 (August 26, 1999), and Final Results of Expedited Sunset Review: Brass Sheet and Strip from Germany, 64 FR 49767 (September 14, 1999), we adjusted Nippon Pillow Block's margin from the 1996/97 administrative review (the year corresponding to the highest volume of imports) to account for duty absorption. Because the result is higher than the rate we would otherwise report to the Commission, we will report the adjusted rate.

With respect to all other producers/exporters of the subject merchandise, as noted above, there is no evidence on the record to indicate that the margin of dumping for any particular producer/exporter decreased at the same time that it was increasing or maintaining U.S. market share nor is there evidence on the record to indicate corresponding increases in dumping margins and exports. Therefore, we are relying on the margins from the original investigations as probative of the behavior of producers/exporters without the discipline of the orders.

Based on the above analysis, we will report to the Commission the margins indicated in the Final Results of the Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping orders would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturers/Exporters	Margin (Percent)
Ball Bearings:	
Nippon Pillow Block	2.55
Koyo	73.55
Minebea	106.61
Nachi	48.69
NSK	42.99
NTN	21.36
All Other Producers/Exporters	45.83
Cylindrical Roller Bearings:	
Koyo	51.21
Nachi	4.00
NSK	12.28
NTN	9.30
All Other Producers/Exporters	25.80
Spherical Plain Bearings:	
Minebea	84.26
NTN	92.00
All Other Producers/Exporters	84.33

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 19 CFR 351.305 of the Department's regulation. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation.

This five-year ("sunset") review and notice are published in accordance with sections 751(c) 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix A

*The following includes clarifications to the scopes of the Department's various antidumping duty orders on antifriction bearings.

Scope Determinations Made in the Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 19006, 19019 (May 3, 1989):

Products covered:

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination (*See International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom*, 54 FR 21488 (May 18, 1989))
- Wave generator bearings
- Bearings (including mounted or housed units and flanged or enhanced bearings) ultimately utilized in textile machinery

Products excluded:

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope Rulings Completed Between April 1, 1990, and June 30, 1990 (See Scope Rulings, 55 FR 42750 (October 23, 1990))

Products excluded:

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope Rulings Completed Between July 1, 1990, and September 30, 1990 (See Scope Rulings, 55 FR 43020 (October 25, 1990))

Products covered:

- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope Rulings Published in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I), 56 FR 31692, 31696 (July 11, 1991)

Products covered:

- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope Rulings Completed Between April 1, 1991, and June 30, 1991 (See Notice of Scope Rulings, 56 FR 36774 (August 1, 1991))

Products excluded:

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope Rulings Completed Between July 1, 1991, and September 30, 1991 (See Scope Rulings, 56 FR 57320 (November 8, 1991)):

Products covered:

- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products excluded:

- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope Rulings Completed Between October 1, 1991, and December 31, 1991 (See Notice of Scope Rulings, 57 FR 4597 (February 6, 1992))

Products covered:

- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers
- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope Rulings Completed Between January 1, 1992, and March 31, 1992 (See Scope Rulings, 57 FR 19602 (May 7, 1992))

Products covered:

- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products excluded:

- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope Rulings Completed Between April 1, 1992, and June 30, 1992 (See Scope Rulings, 57 FR 32973 (July 24, 1992))

Products excluded:

- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope Rulings Completed Between July 1, 1992, and September 30, 1992 (See Scope Rulings, 57 FR 57420 (December 4, 1992))

Products covered:

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products excluded:

- Certain textile machinery components

Scope Rulings Completed Between October 1, 1992, and December 31, 1992 (See Scope Rulings, 58 FR 11209 (February 24, 1993))

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products excluded:

- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope Rulings Completed Between January 1, 1993, and March 31, 1993 (See Scope Rulings, 58 FR 27542 (May 10, 1993))

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope Rulings Completed Between April 1, 1993, and June 30, 1993 (See Scope Rulings, 58 FR 47124 (September 7, 1993))

Products covered:
- Certain series of INA bearings

Products excluded:
- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

Scope Rulings Completed Between October 1, 1993, and December 31, 1993 (See Scope Rulings, 59 FR 8910 (February 24, 1994))

Products excluded:
- Certain textile machinery components

Scope Rulings Completed Between January 1, 1994, and March 31, 1994

Products excluded:
- Certain textile machinery components

Scope Rulings Completed Between October 1, 1994 and December 31, 1994 (See Scope Rulings, 60 FR 12196 (March 6, 1995))

Products excluded:
- Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order.

Scope Rulings Completed Between April 1, 1995 and June 30, 1995 (See Scope Rulings, 60 FR 36782 (July 18, 1995))

Products covered:
- Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order.
- Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order.

Scope Rulings Completed Between January 1, 1996 and March 31, 1996 (See Scope Rulings, 61 FR 18381 (April 25, 1996))

Products covered:
- Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order.

Scope Rulings Completed Between April 1, 1996 and June 30, 1996 (See Scope Rulings, 61 FR 40194 (August 1, 1996))

Products excluded:
- Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order.
- Rockwell International Corporation—Automotive component, known variously as a cushion suspension unit, cushion assembly unit, or center bearing assembly, is outside the scope of the order.
- Enkotec Company, Inc.—"Main bearings" imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, are outside the scope of the order.

[FR Doc. 99–28770 Filed 11–3–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–801]

Final Results of Expedited Sunset Review: Antifriction Bearings From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: antifriction bearings from Sweden.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on ball bearings ("BBs") and cylindrical roller bearings ("CRBs") (collectively, antifriction bearings) from Sweden (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1] On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited sunset reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders on antifriction bearings from Sweden would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—"*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The products covered by these orders are CRBs and BBs and parts thereof from Sweden. For a detailed description of the products covered by these orders, including a compilation of all pertinent scope determinations, refer to the notice of final results of expedited sunset review on antifriction bearings from Japan (A–588–804), publishing concurrently with this notice.

History of the Order

The Department published its less-than-fair-value ("LTFV") determination of antifriction bearings from Sweden on May 3, 1989.[2] In this determination, the Department published a weighted-average dumping margin of 105.92 percent for BBs for SKF Sverige AB ("SKF") and 105.92 percent for all other producers and/or exporters of Swedish BBs. The Department also published a weighted-average dumping margin of 13.69 percent for CRBs for SKF and 13.69 percent for all other producers and/or exporters of Swedish CRBs. Since that time, the Department has conducted eight administrative reviews.[3] These sunset reviews cover imports from all Swedish producers and/or exporters of antifriction bearings. With respect to duty absorption, the Department issued a duty-absorption finding for SKF for BBs from Sweden in the 1995–1996 administrative review. In addition, the Department determined that SKF was absorbing duties with respect to BBs and CRBs in the 1997–1998 administrative review.[4]

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[1] The orders on antifriction bearings from Sweden include CRBs and BBs. The Department has no antidumping duty order on spherical plain bearings from Sweden.

[2] *See Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Needle Roller Bearings, Spherical Plain Bearings, and Tapered Roller Bearings) and Parts Thereof From Sweden; and Final Determinations of Sales at Not Less Than Fair Value: Needle Roller Bearings and Spherical Plain Bearings, and Parts Thereof, From Sweden*, 54 FR 19114 (May 3, 1989); *Notice of Redetermination of Final Margin of Sales at Less Than Fair Value, Pursuant to Court Remand: Ball Bearings and Parts Thereof From Italy and Sweden*, 58 FR 12932 (March 8, 1993).

[3] *See Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Needle Roller Bearings, Spherical Plain Bearings, and Tapered Roller Bearings) and Parts Thereof From Sweden; and Final Determinations of Sales at Not Less Than Fair Value: Needle Roller Bearings and Spherical Plain Bearings, and Parts Thereof, From Sweden*, 54 FR 19114 (May 3, 1989); *Notice of Redetermination of Final Margin of Sales at Less Than Fair Value, Pursuant to Court Remand: Ball Bearings and Parts Thereof From Italy and Sweden*, 58 FR 12932 (March 8, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Sweden; Final Results of Antidumping Duty Administrative Review*, 56 FR 31762 (July 11, 1991); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany; et al.; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 32755 (June 17, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992); *Antifriction Bearings (Other Than Tapered*

Background

On April 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on antifriction bearings from Sweden (64 FR 15727), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of The Torrington Company ("Torrington"), MPB Corp. ("MPB"), the Roller Bearing Company of America ("RBC"), the NSK Corp. ("NSK"), New Hampshire Ball Bearings, Inc. ("NHBB"), and Link-Belt Bearing Division ("Link-Belt") on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received complete substantive responses from Torrington, MPB, RBC and NHBB on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The Department also received the complete substantive response from NSK on April 30, 1999. The Department did not receive a complete substantive response from Link-Belt.[5]

Torrington, MPB, RBC and NHBB claimed interested-party status under 19 U.S.C. 1677(9)(C) as U.S. manufacturers of bearings. NSK claimed interested-party status under 19 U.S.C. 1677(9). In addition, Torrington stated that it was the petitioner in the original investigations and has participated actively in all administrative reviews of these orders. MPB stated that it had participated in the International Trade Commission's ("the Commission") injury investigations. RBC and NHBB stated that they have not participated previously in any segment of these proceedings before the Department.

On May 3, 1999, the Department received a waiver of participation on behalf of SKF. We did not receive a response from any other respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.[6]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On August 5, 1999, the Department determined that the sunset reviews of the antidumping duty orders on antifriction bearings from Sweden are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[7]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Adequacy

As noted above, we notified the Commission that we intended to conduct expedited reviews of these orders. On June 10, 1999, we received comments on behalf of MPB and Torrington supporting our determination to conduct expedited reviews. NHBB and NSK also submitted comments on whether expedited sunsets review were warranted. In their submissions, both parties assert that most of the domestic interested parties that submitted substantive responses are in favor of revocation of the orders. These parties also offered new arguments regarding the likely effect of revocation of the orders.

The magnitude of domestic support for continuation or revocation of an order, however, does not enter into the Department's determination of adequacy of participation nor, for that matter, the Department's determination of likelihood. The Department made clear in its regulations that a complete substantive response from one domestic interested party would be considered adequate for purpose of continuing a sunset review (*see* section 351.218(e)(1)). Nowhere in the statute or legislative history is there reference to consideration of domestic industry

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Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews, 57 FR 32969 (July 24, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom: Amendment to Final Results of Antidumping Duty Administrative Reviews*, 57 FR 59080 (December 14, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 8908 (February 23, 1998); *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, and Sweden: Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 38369 (July 16, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900 (February 28, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472 (December 17, 1996); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998); *Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

[4] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997), and *Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

[5] All participants, except Link-Belt and NSK, filed substantive responses on both CRBs and BBs from Sweden. Link-Belt did not file a substantive response to the notice of initiation for either of these sunset reviews. NSK filed a substantive response on only BBs from Sweden.

[6] On May 24, 1999, we informed the Commission that, on the basis of inadequate response from respondent interested parties, we were conducting expedited sunset reviews of these orders consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). (*See* Letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.)

[7] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

support during the course of a sunset review (other than the statutory provision that if there is *no* domestic industry interest in continuation of the order, the Department will revoke the order automatically). In fact, the Senate Report (at Rep. No. 103–412 at 46 (2nd Session 1994)) makes clear that the purpose of adequacy determinations in sunset reviews is for the Department to determine whether to issue a determination based on the facts available without further fact-gathering. Further, the statute, at section 751(c)(1), specifies that the Department is to determine whether revocation of an order would be likely to lead to continuation or recurrence of dumping. Section 752(c) specifies that the Department is to consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the order.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant reviews, the Department received a waiver of participation on behalf of SKF and did not receive a response from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, Torrington and MPB argue that revocation of the antidumping duty orders on the subject merchandise would be likely to lead to continuation of dumping. They base this conclusion on the fact that dumping continued at above *de minimis* levels after the issuance of the orders. RBC also argues that, given that dumping margins continue to exist after the issuance of the orders, the Department must conclude that dumping would be likely to continue or recur if the orders were revoked. Torrington and MPB assert further that an examination of import volumes is not necessary because dumping continued.

Torrington and MPB contend, however, that should the Department decide to consider import volumes, Torrington and MPB assert that the data will demonstrate that 1998 import volumes are significantly below the 1988 pre-order volumes. Moreover, according to Torrington and MPB, post-order import volumes are lower than pre-order volumes in every year since the imposition of the orders. Using pre- and post-order statistics for complete unmounted BBs, which Torrington and MPB assert is the only category for which statistics are available on a consistent basis, they argue that post-order declines in import volumes provide strong additional support for a determination that dumping is likely to continue or recur were the orders revoked. In conclusion, Torrington and MPB assert that no "good cause" exists to consider other factors, such as sales below the cost of production.

NHBB and NSK assert that revocation of the orders is not likely to result in continuation or recurrence of dumping. NHBB bases its assertion on the fact that dumping would undercut the U.S. domestic price structure, thus causing injury to the very industry of which foreign owners are a part. NSK appears to support its assertion on the basis that the margin of dumping has fallen during the life of the order.

In their rebuttal comments, Torrington and MPB assert that the Department should take into account the submitter's affiliation in its consideration of comments of various parties filing as domestic producers. Further, citing to *Ball Bearings and Parts Thereof From Thailand; Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order*, 61 FR 20799, 20800 (May 8, 1996), they argue that the Department has recognized that domestic producers who are affiliated with subject foreign producers and exporters do not have a common "stake" with the petitioner in the maintenance of the order. Additionally, Torrington and MPB argue that other parties' comments addressing issues other than margins and import volumes should not be considered unless such parties establish "good cause" to consider such additional factors, which, in these reviews, they have not done.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were removed. Thus, as noted above, in determining whether revocation of an order is likely to lead to continuation or recurrence of dumping, the Department considers the margins determined in the investigation and subsequent administrative reviews and the volume of imports. Whatever relevance the arguments of NHBB and NSK concerning possible disincentives for producers and/or exporters to dump in the U.S. market might have had is mooted by the evidence that dumping continues and has continued over the life of the order.

In the instant proceedings, dumping margins above *de minimis* continue to exist with respect to each of the orders. Therefore, given that dumping has continued over the life of the orders and respondent interested parties have waived their right to participate in this review before the Department, we determine that dumping is likely to continue if the orders were revoked. Because we have based this determination on the fact that dumping continued at levels above *de minimis*, we have not addressed the comments submitted by Torrington and MPB with respect to "good cause," nor have we addressed the arguments of other interested parties regarding the condition of the U.S. market.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in its LTFV determinations, published a weighted-average dumping margin of 105.92 percent for BBs for SKF and 105.92 percent for all other producers and/or exporters of Swedish BBs. The Department also published a weighted-average dumping margin of 13.69 percent for CRBs for SKF and 13.69 percent for all other producers and/or exporters of Swedish CRBs. As noted above, the Department issued duty-absorption findings for SKF for BBs from Sweden in the 1995–1996 administrative review and for BBs and CRBs in the 1997–1998 administrative review.[8]

In their substantive responses, Torrington and MPB argue that the margins likely to prevail are those from the Department's original investigations. They also note that the Department issued a duty-absorption finding with respect to BBs from Sweden in the 1995–1996 administrative review and should consider this in determining the margin likely to prevail. Specifically, Torrington and MPB argue that the dumping margins found for each company in the original investigation (as opposed to margins calculated in succeeding annual administrative reviews) are the dumping margins likely to prevail, including margins based on best information available, except where the most current margin, increased by the Department's duty-absorption determination, exceeds the original investigation margin. RBC states that the margins from the original investigations are most probative of the rates likely to prevail as they are the only calculated rates that reflect the behavior of exporters without the discipline of the orders in place.

NHBB argues that the dumping margins likely to prevail if the orders were revoked would be *de minimis*. NHBB goes on to argue that it would be illogical for companies with significant U.S. bearings investments to undercut that investment by dumping. In addition, NHBB argues that the Department should not report margins from the original investigation. In support of this argument, NHBB notes that the SAA provides that, in certain instances, it is more appropriate to rely on a more recently calculated margin. NHBB asserts that one such instance is where, as in the antifriction bearings cases, dumping margins have declined over the life of the order and imports have remained steady or increased. Finally, NHBB argues that, in light of changes in the methodology used to calculated antidumping duty margins introduced by the Uruguay Round, use of margins calculated by the Department prior to the URAA would be unfair and would be contrary to the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Similarly, NSK argues that the margins likely to prevail would be *de minimis*. As support, NSK argues that, were the order not in existence, the Department would apply the average-to-average methodology used in an investigation, as opposed to the transaction-to-average methodology common to administrative reviews, to measure the extent of any dumping. In such a case, NSK states that it believes any margin found would be below the 2.0 percent *de minimis* level applicable in investigations. NSK argues further that the Department's unorthodox approach during the original investigation, plus the liberal use of best information available, skewed the results of the original investigation seriously, rendering those results inappropriate indicators of the magnitude of the margin likely to prevail were the orders revoked. Finally, NSK also argues that dumping margins have declined over time with respect to BBs while, at the same time, imports have remained at or around 20 percent of the U.S. market. As support, NSK cites to *The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements*, USITC Pub. 2900, Inv. No. 332–334, at 14–26—14–31 (June 1995).

In their rebuttal comments, Torrington and MPB argue that other parties' comments ignore the Department's stated policies regarding the selection of margins likely to prevail and ignore the Department's duty-absorption findings. Citing to the *Sunset Policy Bulletin*, Torrington and MPB argue that the Department's policies are clear—normal reliance on the margins from the investigation as the only margins that reflect the behavior of exporters without the discipline of the order and rejection of margins from administrative reviews in which the Department found duty absorption. Torrington and MPB argue that the two-percent *de minimis* standard is not applicable to sunset reviews. Further, they contend that there is no authority which would authorize or justify the rejection of the investigation rate on the basis of the particular methodology used at the time of the investigation. Additionally, with respect to claims that more recent margins should be used based on declining margins accompanied by steady or increasing imports, Torrington and MPB argue that it is the responsibility of such claimants to provide information regarding companies' relative market share. Since no such information was provided, they contend, the Department should not accept these assertions. In fact, they assert, imports of BBs have actually declined since the imposition of the orders.

We agree with Torrington, MPB, and RBC that, normally, we will provide the Commission with a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. As noted above, exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations.

With respect to NSK's argument concerning the magnitude of the margin likely to prevail, we disagree. As discussed above, we do find that there is a likelihood of continuation or recurrence of dumping. Furthermore, we find the level of dumping likely to prevail is best reflected by the dumping margins calculated in the original investigations. Specifically, the Department finds that there is no basis to reject margins calculated in an investigation due to subsequent changes in methodology because such changes do not invalidate margins calculated under the prior methodology. Therefore, the dumping margins from the original investigations are the only rates which reflect the behavior of exporters without the discipline of the orders, regardless of the methodology used to calculate those margins or the use of best information available (*see* section 752(c)(3) of the Act).

With respect to NHBB's argument concerning the dumping margin likely to prevail, the Department disagrees. First, NHBB claims that dumping margins have declined over the lives of the orders and imports have remained steady or increased. However, NHBB provided no evidence to support these claims. Nothing submitted in the course of these sunset proceedings indicates that imports have remained steady or increased. In fact, evidence submitted by Torrington and MPB indicate that post-order import volumes (1989–1998) are lower than pre-order volumes (1989) in each year. Furthermore, the Department finds no consistent downward trend in dumping margins over the lives of the orders with respect to either BBs or CRBs from Sweden. Regardless of the level of imports, dumping margins above *de minimis* levels continue as do imports of the subject merchandise; dumping continues to exist.

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[8] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997); *Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

In the *Sunset Policy Bulletin* we indicated that, consistent with the SAA at 889–90 and the House Report at 63, we may determine, in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, that a more recently calculated rate reflects that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order were revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company. The *Sunset Policy Bulletin* provides that we will entertain such considerations in response to arguments from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporters behavior absent the discipline of an order, we normally will consider the company's relative market share, with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market-share information, in past sunset reviews where market-share information was not available, we relied on changes in import volumes between the periods before and after the issuance of the order. (*See, e.g., Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden*, 63 FR 67658 (December 8, 1998), and *Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China*, 64 FR 30310 (June 7, 1999).)

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information. Generic arguments that margins decreased over the life of the orders while, at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic arguments may disguise company-specific behavior demonstrating increased dumping coupled with increased market share. In these reviews, we did not receive any such company-specific arguments.

In their comments, Torrington and MPB argue that the Department should report to the Commission the higher of the margin from the original investigation or the margin from a more recent final results of administrative review, adjusted to reflect the finding of duty absorption. In the instant cases, the Department agrees. As noted above, the Department determined in the final results of the 1995–96 administrative review of BBs that SKF was absorbing duties.[9] Furthermore, the Department determined in the final results of the 1997–1998 administrative review of BBs and CRBs that SKF was absorbing duties.[10] Therefore, consistent with the statute and the *Sunset Policy Bulletin*, the Department will notify the Commission of its findings regarding duty absorption when conducting a sunset review.

Additionally, the *Sunset Policy Bulletin* refers to the SAA at 885 and the House Report at 60 and provides that, where the Department has found duty absorption, the Department normally will provide to the Commission the higher of the margin that the Department otherwise would have reported or the most recent margin for that company, adjusted to account for the Department's findings on duty absorption. In the case of BBs from Sweden in both the 1995–1996 and 1997–1998 administrative reviews, the margins adjusted to account for duty-absorption findings are less than the margins we would otherwise report to the Commission. In the case of CRBs from Sweden in the 1997–1998 administrative review, SKF's margins adjusted to account for duty-absorption findings are higher than the margins we would otherwise report to the Commission.

Therefore, the Department agrees with the domestic interested parties concerning the margins likely to prevail. We find that the dumping margin calculated in the original investigation for BBs is the only calculated rate that reflects the behavior of exporters without the discipline of the order. With respect to CRBs produced and/or exported by SKF, the Department finds that the margin adjusted for the Department's duty-absorption findings from the 1997–1998 administrative review is the most appropriate to report to the Commission. Consistent with the *Sunset Policy Bulletin*, we will report to the Commission the company-specific and "all others" rates for BBs from the original investigation and the adjusted margin from the 1997–1998 administrative review for CRBs produced and/or exported by SKF. These margins are contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter	Margin (percent)
For BBs:	
SKF	105.92
All Other Producers/Exporters	105.92
For CRBs:	
SKF	27.38
All Other Producers/Exporters	13.69

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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[9] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997).

[10] *See Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28771 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–559–801]

Final Results of Expedited Sunset Review: Ball Bearings From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final Results of expedited sunset review: ball bearings from Singapore.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on ball bearings ("BBs") from Singapore (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The products covered by this order are BBs and parts thereof from Singapore. For a detailed description of the products covered by this order, including a compilation of all pertinent scope determinations, refer to the notice of final results of expedited sunset review on antifriction bearings from Japan (A–588–804), publishing concurrently with this notice.

History of the Order

The Department published its less-than-fair-value ("LTFV") determination of BBs from Singapore on May 3, 1989.[1] In this determination, the Department published a weighted-average dumping margin of 25.08 percent for NMB/Pelmec Singapore ("NMB/Pelmec"). The Department also published an all others rate of 25.08. Since that time, the Department has conducted eight administrative reviews.[2] This sunset review covers imports from all Singaporean producers and/or exporters of BBs. With respect to duty absorption, the Department issued a duty absorption finding for NMB/Pelmec in the 1995–1996 administrative review.[1]

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping duty order on BBs from Singapore (64 FR 15727), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of The Torrington Company ("Torrington"), MPB Corp. ("MPB"), the Roller Bearing Company of America ("RBC"), NSK Corp. ("NSK"), New Hampshire Ball Bearings, Inc. ("NHBB") and Link-Belt Bearing Division ("Link-Belt") on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from Torrington, MPB, RBC, and NHBB on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The Department received the complete substantive response from NSK on April 30, 1999. The Department did not receive a complete substantive response from Link-Belt.

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[1] *See Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Singapore*, 52 FR 19112 (May 3, 1989).

[2] *See Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Singapore*, 52 FR 19112 (May 3, 1989); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore; Final Results of Antidumping Duty Administrative Review*, 56 FR 31759 (July 11, 1991); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany; et al.: Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 32755 (June 17, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.: Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 57 FR 32969 (July 24, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 8908 (February 23, 1998); *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 18877 (April 16, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900 (February 28, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore: Amended Final Results of Antidumping Duty Administrative Review*, 61 FR 68228 (December 27, 1996); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081 (January 15, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, and Singapore; Amended Final Results of Antidumping Duty Administrative Reviews*; 62 FR 14391 (March 26, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore; Sweden and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 61963 (November 20, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998).

[1] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR, 54043 (October 17, 1997).

Torrington, MPB, RBC, and NHBB claimed interested party status under 19 U.S.C. 1677(9)(C) as U.S. manufacturers of BBs. NSK claimed interested party status under 19 U.S.C. 1677(9). In addition, Torrington stated that it was the petitioner in the original investigation and has participated actively in all administrative reviews of this order. MPB stated that it had participated in the International Trade Commission's (the "Commission") injury investigation. RBC and NHBB stated that they have not participated previously in any segment of this proceeding before the Department. We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.[4]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on August 5, 1999, the Department determined that the sunset review of the antidumping duty order on BBs from Singapore is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Adequacy

As noted above, we notified the Commission that we intended to conduct an expedited review of this order. On June 10, 1999, we received comments on behalf of MPB and Torrington supporting our determination to conduct an expedited review. NHBB and NSK also submitted comments on whether an expedited sunset review was warranted. In their submissions, both parties assert that most of the domestic interested parties that submitted substantive responses are in favor of revocation of the Department's various antidumping duty orders on antifriction bearings. These parties also offered new argument regarding the likely effect of revocation of these orders.

The magnitude of domestic support for continuation or revocation of an order, however, does not enter into the Department's determination of adequacy of participation nor, for that matter, the Department's determination of likelihood. The Department made clear in its regulations that a complete substantive response from one domestic interested party would be considered adequate for purpose of continuing a sunset review (see section 351.218(e)(1)). Nowhere in the statute or legislative history is there reference to consideration of domestic industry support during the course of a sunset review (other than the statutory provision that if there is *no* domestic industry interest in continuation of the order, the Department will revoke the order automatically). In fact, the Senate Report (at Rep. No. 103–412 at 46 (2nd Session 1994)) makes clear that the purpose of adequacy determinations in sunset reviews is for the Department to determine whether to issue a determination based on the facts available without further fact-gathering. Further, the statute, at section 751(c)(1), specifies that the Department is to determine whether revocation of an order would be likely to lead to continuation or recurrence of dumping. Section 752(c) specifies that the Department is to consider the weighted average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the order.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, Torrington and MPB argue that revocation of the antidumping duty order on the subject merchandise would be likely to lead to continuation of dumping. They base this conclusion on the fact that dumping continued at levels above *de minimis* after the issuance of the order. RBC also argues that, given that dumping margins continue to exist after the issuance of the order, the Department must conclude that dumping would be likely to continue or recur if the order were revoked. Torrington and MPB assert further that an examination of import volumes is not necessary because dumping continued.

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[4] On May 21, 1999, we informed the Commission that, on the basis of inadequate response from respondent interested parties, we were conducting an expedited sunset review of this order consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). (*See* Letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.)

[5] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et al.; Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

Should the Department decide to consider import volumes, Torrington and MPB assert that the data will demonstrate that 1998 import volumes of the subject merchandise are more than nineteen percent below the 1988 pre-order volumes. Using pre-and post-order statistics for complete unmounted BBs, which Torrington and MPB assert is the only category for which statistics are available on a consistent basis, they argue that post-order declines in import volumes provide strong additional support for a determination that dumping is likely to continue or recur were the order revoked. In conclusion, Torrington and MPB assert that no "good cause" exists to consider other factors, such as sales below the cost of production.

NHBB and NSK assert that revocation of the order is not likely to result in continuation or recurrence of dumping. NHBB bases its assertion on the fact that dumping would undercut the U.S. domestic price structure, thus causing injury to the very industry of which foreign owners are a part. NSK appears to support its assertion on the basis that the margin of dumping has fallen during the life of the order.

In their rebuttal comments, Torrington and MPB assert that the Department should take into account the submitter's affiliation in its consideration of comments of various parties filing as domestic producers. Further, citing to *Ball Bearings and Parts Thereof From Thailand; Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order*, 61 FR 20799, 20800 (May 8, 1996), they argue that the Department has recognized that domestic producers who are affiliated with subject foreign producers and exporters do not have a common "stake" with the petitioner in the maintenance of the order. Additionally, Torrington and MPB argue that other parties' comments addressing issues other than margins and import volumes should not be considered unless such parties establish "good cause" to consider such additional factors, which, in these reviews, they have not done.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were removed. Thus, as noted above, in determining whether revocation of an order is likely to lead to continuation or recurrence of dumping, the Department considers the margins determined in the investigation and subsequent administrative reviews and the volume of imports. Whatever relevance the arguments of NHBB and NSK concerning possible disincentives for producers and/or exporters to dump in the U.S. market might have had is mooted by the evidence that dumping continues and has continued over the life of the order.

Dumping margins above *de minimis* continue to exist. Therefore, given that dumping has continued over the life of the order and respondent interested parties have waived their right to participate in this review before the Department, we determine that dumping is likely to continue if the order were revoked. Because we have based this determination on the fact that dumping has continued at levels above *de minimis*, we have not addressed the comments submitted by Torrington and MPB with respect to "good cause," nor have we addressed the arguments of other interested parties regarding the condition of the U.S. market.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in the LTFV determination of BBs from Singapore, published a weighted-average dumping margin of 25.08 for NMB/Pelmec. In addition, the Department also published a weighted-average dumping margin of 25.08 percent on all other imports of the subject merchandise from Singapore.[6] As noted above, the Department issued a duty absorption finding for NMB/Pelmec in the 1995–1996 administrative review with respect to BBs from Singapore.

In their substantive response, Torrington and MPB argue that the margins likely to prevail are those from the Department's original investigation. They also note that the Department issued a duty absorption finding with respect to BBs from Singapore in the 1995–1996 administrative review and should consider this in determining the margin likely to prevail. Specifically, Torrington and MPB argue that the dumping margins found for each company in the original investigation (as opposed to margins calculated in succeeding annual administrative reviews) are the dumping margins likely to prevail, including margins based on best information available, except where the most current margin, increased by the Department's duty absorption determination, exceeds the original investigation margin. Furthermore, RBC states that the margins from the original investigation are most probative of the rates likely to prevail as they are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place.

NHBB argues that the dumping margins likely to prevail if the order were revoked would be *de minimis*. NHBB goes on to argue that it would be illogical for companies with significant U.S. bearings investments to undercut that investment by dumping. In addition, NHBB argues that the Department should not report margins from the original investigation to the Commission. In support of this argument, NHBB notes that the SAA provides that, in certain instances, it is more appropriate to rely on a more recently calculated margin. NHBB asserts that one such instance is where, as in the antifriction bearings cases, dumping margins have declined over the life of the order and imports have remained steady or increased. Finally, NHBB argues that, in light of changes in the methodology used to calculate antidumping duty margins introduced by the Uruguay Round, use of margins calculated by the Department prior to the URAA would be unfair and would be contrary to the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Similarly, NSK argues that the margins likely to prevail would be *de minimis*. As support, NSK argues that, were the order not in existence, the Department would apply the average-to-average methodology used in an investigation, as opposed to the transaction-to-average methodology common to administrative reviews, to measure the extent of any dumping. In such a case, NSK states that it believes any margin found would be below the two percent *de minimis* level applicable in investigations. NSK argues further that, the Department's unorthodox approach during the original investigation, plus the liberal use of best information available, skewed the results of the original investigation seriously, rendering those results inappropriate indicators of the magnitude of the margin likely to prevail were the order revoked. Finally, NSK also argues that dumping margins have declined over time with respect to BBs while, at the same time, imports have remained at or around 20 percent of the U.S. market. As support, it cites to *The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements*, USITC Pub. 2900, Inv. No. 332–334, at 14–26—14–31 (June 1995).

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[6] *See Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Singapore*, 52 FR 19112 (May 3, 1989).

In their rebuttal comments, Torrington and MPB argue that other parties' comments ignore the Department's stated policies regarding the selection of margins likely to prevail and ignore the Department's duty absorption findings. Citing to the *Sunset Policy Bulletin*, Torrington and MPB argue that the Department's policies are clear—normal reliance on the margins from the investigation as the only margins that reflect the behavior of exporters without the discipline of the order and rejection of margins from administrative reviews in which the Department found duty absorption. Torrington and MPB argue that the two percent *de minimis* standard is not applicable to sunset reviews. Further, they contend that there is no authority which would authorize or justify the rejection of the investigation rate on the basis of the particular methodology used at the time of the investigation. Additionally, they argue that, with respect to claims that more recent margins should be used based on declining margins accompanied by steady or increasing imports, Torrington and MPB argue that it is the responsibility of such claimants to provide information regarding companies' relative market share. Since no such information was provided, they assert that the Department should not accept these assertions, given that, imports BBs from Singapore have actually declined since the imposition of the order.

We agree with Torrington, MPB, and RBC that, normally, we will provide a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. As noted above, exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

With respect to NSK's argument concerning the magnitude of the margin likely to prevail, we disagree. As discussed above, we do find that there is a likelihood of continuation or recurrence of dumping. Furthermore, we find the level of dumping likely to prevail is best reflected by the Department's dumping margins we calculated in the original investigation. Specifically, the Department finds that there is no basis to reject margins calculated in an investigation because of subsequent changes in methodology. Such changes do not invalidate margins calculated under the prior methodology. Therefore, the dumping margins from the original investigation are the only rates which reflect the behavior of exporters without the discipline of the order, regardless of the methodology used to calculate that margin or the use of best information available (*see* section 752(c)(3) of the Act).

With respect to NHBB's argument concerning the dumping margin likely to prevail, the Department disagrees. First, NHBB claims that dumping margins have declined over the life of the order and imports have remained steady or increased. However, NHBB provided no evidence to support these claims. Nothing submitted in the course of this sunset proceeding indicates that imports have remained steady or increased. In fact, evidence submitted by Torrington and MPB indicate that 1998 import volumes of the subject merchandise are more than nineteen percent below pre-order volumes. Regardless of the level of imports, dumping margins above *de minimis* levels continue as do imports of the subject merchandise; dumping continues to exist.

In the *Sunset Policy Bulletin* we indicated that, consistent with the SAA at 889–90 and the House Report at 63, we may determine, in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, that a more recently calculated rate reflects that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order were revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company. The *Sunset Policy Bulletin* provides that we will entertain such considerations in response to arguments from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporters behavior absent the discipline of an order, we will normally consider the company's relative market share, with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market share information, in past sunset reviews where market share information was not available, we relied on changes in import volumes between the periods before and after the issuance of the order. (*See, e.g., Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden*, 63 FR 67658 (December 8, 1998), and *Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China*, 64 FR 30310 (June 7, 1999).)

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that we base our determinations regarding the magnitude of the margin likely to prevail on company-specific information. Generic arguments that margins decreased over the life of the orders while, at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic argument may disguise company-specific behavior demonstrating increased dumping coupled with increased market share. In this review, we did not receive any such company-specific arguments.

As noted above, the Department determined in the final results of the 1995–1996 administrative review that NMB/Pelmec was absorbing duties.[7] Consistent with the statute and the *Sunset Policy Bulletin*, the Department will notify the Commission of its findings regarding duty absorption when conducting a sunset review.

Additionally, the *Sunset Policy Bulletin* refers to the SAA at 885 and the House Report at 60 and provides that, where the Department has found duty absorption, the Department will normally provide to the Commission the higher of the margin that the Department otherwise would have reported or the most recent margin for that company, adjusted to account for our findings on duty absorption. In this case, the margins adjusted to account for the Department's duty absorption findings are less than the margins we would otherwise report to the Commission.

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[7] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997).

Therefore, the Department agrees with the domestic interested parties concerning the margin likely to prevail if the order were to be revoked. We find that the dumping margins calculated in the original investigation are the only calculated rates that reflect the behavior of exporters without the discipline of the order. Consistent with the *Sunset Policy Bulletin,* we determine that the margin calculated in the Department's original investigation is probative of the behavior of Singaporean producers and exporters of BBs if the order were revoked. Therefore, we will report to the Commission the company-specific and "all others" rates from the original investigation contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/ Exporter	Margin (percent)
NMB/Pelmec	25.08
All Other Producers/Exporters	25.08

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-28772 Filed 11-3-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-801]

Final Results of Expedited Sunset Review: Cylindrical Roller Bearings From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: cylindrical roller bearings from Italy.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on cylindrical roller bearings ("CRBs") from Italy (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-6397 or (202) 482-1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and 19 CFR Part 351(1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The products covered by this order are CRBs and parts thereof from Italy. For a detailed description of the products covered by this order, including a compilation of all pertinent scope determinations, refer to the notice of final results of expedited sunset reviews on antifriction bearings from Japan (A-588-804), publishing concurrently with this notice.

History of the Order

The Department published its less-than-fair-value ("LTFV") determination on CRBs from Italy on May 3, 1989.[1] In this determination, the Department published a weighted-average dumping margin of 212.45 percent for SKF Industrie S.p.A. ("SKF"). The Department also published an all others rate of 212.45 percent. Since that time, the Department has conducted nine administrative reviews.[2] This sunset

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[1] *See Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Spherical Plain and Tapered Roller Bearings) and Parts Thereof From Italy; and Final Determination of Sales at Not Less Than Fair Value: Spherical Plain Bearings and Parts Thereof, From Italy,* 54 FR 19096 (May 3, 1989). This determination was subsequently amended. *See Notice of Redetermination of Final Margin of Sales at Less Than Fair Value, Pursuant to Court Remand: Ball Bearings and Parts Thereof From Italy and Sweden,* 54 FR 20910 (March 8, 1993).

[2] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Antidumping Duty Administrative Reviews,* 56 FR 31751 (July 11, 1991); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany; et al ; Amended Final Results of Antidumping Duty Administrative Reviews,* 62 FR 32755 (June 17, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al ; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360 (June 24, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews,* 57 FR 32969 (July 24, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews,* 57 FR 59080 (December 14, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al ; Amended Final Results of Antidumping Duty Administrative Reviews,* 63 FR 8908 (February 23, 1998); *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729 (July 26, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Amendment to Final Results of Antidumping Duty Administrative Review,* 58 FR 53914 (October 19, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France and Italy; Amendment to Final Results of Antidumping Duty Administrative Reviews,* 58 FR 65576 (December 15, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of*

Continued

review covers imports from all Italian producers and/or exporters of CRBs, excluding those imports from SKF.[3] We note that, to date, we have made no duty absorption findings with regards to CRBs from Italy.[4]

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping duty order on CRBs from Italy (64 FR 15727), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of The Torrington Company ("Torrington") and MPB Corp. ("MPB"), and on behalf of the Roller Bearing Company of America ("RBC"), New Hampshire Ball Bearings, Inc. ("NHBB"), and Link-Belt Bearing Division ("Link-Belt") on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from the domestic interested parties on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a complete substantive response from Link-Belt.

Torrington, MPB, RBC, and NHBB claimed interested party status under 19 U.S.C. 1677(9)(C) as U.S. manufacturers of CRBs. In addition, Torrington stated that it was the petitioner in the original investigation and has participated actively in all administrative reviews of this order. MPB stated that it participated in the Commission's injury investigation. RBC and NHBB stated that they had not previously participated in any segment of this proceeding before the Department.

The Department also received a complete substantive response from FAG Italia S.p.A and FAG Bearings Corporation (collectively, "FAG") on May 3, 1999. FAG stated that it participated in the original investigation and each subsequent administrative review of the Department's proceeding on CRBs from Italy.

Based on the information submitted by FAG concerning the volume and value of its exports and volume of imports as reported in U.S. Census Bureau IM146 Reports, the Department determined that FAG's exports of subject merchandise to the United States accounted for less than 50 percent of the total volume of subject merchandise to the United States over the five calendar years preceding the initiation of this sunset review.[5] Therefore, respondent interested parties provided inadequate response to the notice of initiation and, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.[6]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on August 5, 1999, the Department determined that the sunset review of the antidumping duty order on CRBs from Italy is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[7]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Adequacy

As noted above, we notified the Commission that we intended to conduct an expedited review of this order. On June 10, 1999, we received comments on behalf of MPB and Torrington supporting our determination to conduct an expedited review. NHBB also submitted comments on whether an expedited sunset review was warranted. In its submission, it asserts that most of the domestic interested parties that submitted substantive responses are in favor of revocation of the Department's various

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Antidumping Duty Administrative Reviews, 63 FR 18877 (April 16, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, and Sweden; Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 38369 (July 16, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 70100 (December 18, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 60 FR 10959 (February 28, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany and Italy; Amended Final Results of Antidumping Duty Administrative Reviews*, 60 FR 31142 (June 13, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy; Amended Final Results of Antidumping Duty Administrative Review*, 60 FR 33791 (June 29, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472 (December 17, 1996); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, Japan, and the United Kingdom: Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 3003 (January 21, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081(January 15, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, and Singapore; Amended Final Results of Antidumping Duty Administrative Reviews*, (March 26, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy, Romania, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 40878 (July 31, 1998).

[3] The order was revoked with respect to SKF. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Administrative Reviews and Revocation in Part of Antidumping Duty Order*, 60 FR 10959 (February 28, 1995).

[4] The Department has issued duty absorption findings for two producers and/or exporters of ball bearings from Italy in the 1995–1996 and 1997–1998 administrative reviews. However, no duty absorption findings have been issued with respect to CRBs from Italy. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997); *Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

[5] FAG stated that it has not sold any CRBs in the United States over the past five years.

[6] On May 24, 1999, the Department informed the Commission that, on the basis of inadequate response from respondent interested parties, it was conducting an expedited sunset review of this order consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). (*See* Letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.)

[7] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et al.; Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

antidumping duty orders on antifriction bearings. NHBB also offered new argument regarding the likely effect of revocation of these orders.

The magnitude of domestic support for continuation or revocation of an order, however, does not enter into the Department's determination of adequacy of participation nor, for that matter, the Department's determination of likelihood. The Department made clear in its regulations that a complete substantive response from one domestic interested party would be considered adequate for purpose of continuing a sunset review (see section 351.218(e)(1)). Nowhere in the statute or legislative history is there reference to consideration of domestic industry support during the course of a sunset review (other than the statutory provision that if there is *no* domestic industry interest in continuation of the order, the Department will revoke the order automatically). In fact, the Senate Report (at Rep. No. 103–412 at 46 (2nd Session 1994)) makes clear that the purpose of adequacy determinations in sunset reviews is for the Department to determine whether to issue a determination based on the facts available without further fact-gathering. Further, the statute, at section 751(c)(1), specifies that the Department is to determine whether revocation of an order would be likely to lead to continuation or recurrence of dumping. Section 752(c) specifies that the Department is to consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the order.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that it will normally determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In their substantive responses, Torrington and MPB argue that revocation of the antidumping duty order on the subject merchandise would be likely to lead to continuation of dumping. They base this conclusion on the fact that dumping continued at levels above *de minimis* after the issuance of the order. RBC also argues that, given that dumping margins continue to exist after the issuance of the order, the Department must conclude that dumping would be likely to continue or recur if the order were revoked. Torrington and MPB assert further that an examination of import volumes is not necessary because dumping continued.

Arguing that the Department's import statistics do not permit a comparison of pre- and post-order import volumes of CRBs, Torrington and MPB suggest that the Department examine data regarding the import value of all roller bearings, the narrowest category of products for which a consistent set of data is available regarding pre- and post-order imports. Torrington and MPB suggest that these data are conservative because declines in import volumes could be obscured by increases in import values and inclusion of non-covered products. They argue that the data will demonstrate that total import value of CRBs dropped dramatically following the order, from more than $6 million in 1988 to less than $1 million in 1993 and import values were below 1988 totals in every year until (and including) 1995.[8] This data, they argue, provides strong additional support for a determination that dumping is likely to continue or recur were the order revoked. In conclusion, Torrington and MPB assert that no "good cause" exists to consider other factors, such as sales below the cost of production.

NHBB assert that revocation of the order is not likely to result in continuation or recurrence of dumping. NHBB bases its assertion on the fact that dumping would undercut the U.S. domestic price structure, thus causing injury to the very industry of which foreign owners are a part.

FAG asserts that the dumping margin likely to prevail if the order were to be revoked would be 0.00 percent, the dumping margin it has maintained since the 1993–1994 administrative review. With respect to whether import volumes ceased following the imposition of the order, FAG states that it has not shipped subject merchandise to the United States over the past five years. In addition, FAG indicates that total exports of the subject merchandise from Italy have continued throughout the life of the order (*see* May 3, 1999, substantive response of FAG, Appendix 2).

Torrington and MPB, in their rebuttal comments, state that the cessation of imports from FAG strongly supports an affirmative determination of likelihood of dumping in this case. Further, Torrington and MPB note that the Department's sunset determinations are made on an order-wide basis.

In addition, Torrington and MPB assert that the Department should take into account the submitter's affiliation in its consideration of comments of various parties filing as domestic producers. Further, citing to *Ball Bearings and Parts Thereof From Thailand; Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order*, 61 FR 20799, 20800 (May 8, 1996), they argue that the Department has recognized that domestic producers who are affiliated with subject foreign producers and exporters do not have a common "stake" with the petitioner in the maintenance of the order. Additionally, Torrington and MPB argue that other parties' comments addressing issues other than margins and import volumes should not be considered unless such parties establish "good cause" to consider such additional factors, which, in these reviews, they have not done.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were removed. Further, as noted above, in determining whether revocation of an order is likely to lead to continuation or recurrence of dumping, the Department considers the margins determined in the investigation and subsequent administrative reviews and the volume of imports. Therefore, the arguments of NHBB with respect to the effect revocation would have on the U.S. market, even if correct, do not rebut the fact that dumping continues and has continued over the life of the order.

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[8] Torrington and MPB note that imports of CRBs from Italy increased sharply after 1995, coincident with the revocation of the order on CRBs exported by SKF. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Administrative Reviews and Revocation in Part of Antidumping Duty Order*, 60 FR 10959 (February 28, 1995).

In the instant proceeding, dumping margins above *de minimis* continue to exist for at least one known producer and/or exporter. Therefore, given that dumping has continued over the life of the order, the Department determines that dumping is likely to continue if the order were revoked. Because we have based this determination on the fact that dumping continued at levels above *de minimis*, we have not addressed the comments submitted by Torrington and MPB with respect to "good cause," nor have we addressed the arguments of other interested parties regarding the condition of the U.S. market.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its LTFV investigation of CRBs from Italy, published a weighted-average dumping margin of 212.45 percent for SKF. In addition, the Department also published a weighted-average dumping margin of 212.45 percent on all other imports of the subject merchandise from Italy.[9] As noted above, the Department has not issued any duty absorption findings with respect to CRBs from Italy.

In their substantive response, Torrington and MPB argue that the margins likely to prevail are those from the Department's original investigation. Specifically, Torrington and MPB argue that the dumping margins found for each company in the original investigation (as opposed to margins calculated in succeeding annual administrative reviews) are the dumping margins likely to prevail, including margins based on best information available, except where the most current margin, increased by the Department's duty absorption determination, exceeds the original investigation margin. Furthermore, RBC states that the margins from the original investigation are most probative of the rates likely to prevail as they are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place.

NHBB argues that the dumping margins likely to prevail if the order were revoked would be *de minimis*. NHBB goes on to argue that it would be illogical for companies with significant U.S. bearings investments to undercut that investment by dumping. In addition, NHBB argues that the Department should not report margins from the original investigation. In support of this argument, NHBB notes that the SAA provides that, in certain instances, it is more appropriate to rely on a more recently calculated margin. NHBB asserts that one such instance is where, as in the antifriction bearings cases, dumping margins have declined over the life of the order and imports have remained steady or increased. Finally, NHBB argues that, in light of changes in the methodology used to calculated antidumping duty margins introduced by the Uruguay Round, use of margins calculated by the Department prior to the URAA would be unfair and would be contrary to the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

As noted above, FAG argues that the dumping margin likely to prevail if the order were revoked is its current dumping margin of 0.00 percent. FAG states that it has remained at a 0.00 percent dumping level since the 1993–1994 administrative review period. FAG states further that this is due principally to the absence of any imports of Italian CRBs by FAG Bearings Company. Lastly, FAG states that, were the dumping order revoked, there would be no change in FAG's current sourcing and resale patterns of Italian CRBs.

Torrington and MPB, in their rebuttal comments, stated that FAG's reliance on its current rate ignores the fact that current rates do not reflect the behavior of producers and/or exporters without the discipline of the antidumping duty order. As such, they contend, the Department should not rely on this current rate.

Additionally, in their rebuttal comments, Torrington and MPB argue that other parties' comments ignore the Department's stated policies regarding the selection of margins likely to prevail and ignore the Department's duty absorption findings. Citing to the *Sunset Policy Bulletin*, Torrington and MPB argue that the Department's policies are clear—normal reliance on the margins from the investigation as the only margins that reflect the behavior of exporters without the discipline of the order and rejection of margins from administrative reviews in which the Department found duty absorption. Torrington and MPB argue that there is no authority which would authorize or justify the rejection of the investigation rate on the basis of the particular methodology used at the time of the investigation. Additionally, with respect to claims that more recent margins should be used based on declining margins accompanied by steady or increasing imports, Torrington and MPB argue that it is the responsibility of such claimants to provide information regarding companies' relative market share. Since no such information was provided, they contend the Department should not accept these assertions since imports of CRBs from Italy have actually declined since the imposition of the order.

We agree with Torrington, MPB, and RBC that, normally, we will provide a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. As noted above, exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

With respect to NSK's argument concerning the magnitude of the margin likely to prevail, we disagree. As discussed above, we do find that there is a likelihood of continuation or recurrence of dumping. Furthermore, we find the level of dumping likely to prevail is best reflected by the Department's dumping margins we calculated in the original investigation. Specifically, the Department finds that there is no basis to reject margins calculated in an investigation because of subsequent changes in methodology since such changes do not invalidate margins calculated under the prior methodology. Therefore, the dumping margins from the original investigation are the only rates which reflect the behavior of exporters without the discipline of the order, regardless of the methodology used to calculate that margin or the use of best information available (*see* section 752(c)(3) of the Act).

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[9] *See Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Spherical Plain and Tapered Roller Bearings) and Parts Thereof From Italy; and Final Determination of Sales at Not Less Than Fair Value: Spherical Plain Bearings and Parts Thereof, From Italy*, 54 FR 19096 (May 3, 1989). This determination was subsequently amended. *See Notice of Redetermination of Final Margin of Sales at Less Than Fair Value, Pursuant to Court Remand: Ball Bearings and Parts Thereof From Italy and Sweden*, 54 FR 20910 (March 8, 1993).

With respect to NHBB's argument concerning the dumping margin likely to prevail, the Department disagrees. First, NHBB claims that dumping margins have declined over the life of the order and imports have remained steady or increased. However, NHBB provided no evidence to support these claims and nothing submitted in the course of this sunset proceeding indicates that imports have remained steady or increased. In fact, FAG submitted information claiming that it ceased exporting subject merchandise, indicating that import volumes may have decreased. Furthermore, evidence submitted by Torrington and MPB indicate that post-order import volumes (1989–1998) are lower than pre-order volumes (1989) in each year.

In the *Sunset Policy Bulletin* we indicated that, consistent with the SAA at 889–90 and the House Report at 63, we may determine, in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, that a more recently calculated rate reflects that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order were revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company. The *Sunset Policy Bulletin* provides that we will entertain such considerations in response to arguments from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporters behavior absent the discipline of an order, we normally will consider the company's relative market share, with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market share information, in past sunset reviews where market share information was not available, we relied on changes in import volumes between the periods before and after the issuance of the order. (*See, e.g., Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden*, 63 FR 67658 (December 8, 1998), and *Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China*, 64 FR 30310 (June 7, 1999).)

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information. Generic arguments that margins decreased over the life of the orders while, at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic argument may disguise company-specific behavior demonstrating increased dumping coupled with increased market share.

With respect to FAG's arguments concerning the dumping margin likely to prevail, the Department disagrees. FAG participated in and had shipments during both the 1991–1992 and 1993–1994 administrative reviews. The SAA at 890 and the House Report at 63–64 state that the cessation of imports after the order is highly probative of the likelihood of continuation or recurrence of dumping. Furthermore, if imports ceased after the order is issued, it is reasonable to assume that exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping. As such, we find that the 0.00 percent dumping margin we calculated for FAG for the 1993–1994 administrative review is not probative of the dumping margin likely to prevail if the order were to be revoked. The cessation of imports by FAG following the establishment of this margin strongly suggests to the Department that FAG cannot sell subject merchandise in the United States without dumping. Consequently, we find that the dumping margins calculated in the original investigation are the only calculated rates that reflect the behavior of exporters without the discipline of the order. Consistent with the *Sunset Policy Bulletin*, we determine that the margins we calculated in the Department's original investigation is probative of the behavior of Italian producers and exporters of CRBs if the order were revoked. Therefore, we will report to the Commission the "all others" rate from the original investigation contained in the Final Results of Review section of this notice.[10]

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/Exporter	Margin (percent)
SKF	Revoked
All Other Producers/Exporters	212.45

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28773 Filed 11–3–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–801]

Final Results of Expedited Sunset Review: Ball Bearings From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of expedited sunset review: ball bearings from Italy.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on ball

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[10] The Department calculated only one company-specific rate in the original investigation. The order was subsequently revoked with respect to this one company, SKF (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Administrative Reviews and Revocation in Part of Antidumping Duty Order*, 60 FR 10959 (February 28, 1995). Because of this, the Department will report to the Commission only the "all others" rate from the original investigation.

bearings ("BBs") from Italy (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and 19 CFR part 351(1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The products covered by this order are BBs and parts thereof from Italy. For a detailed description of the products covered by this order, including a compilation of all pertinent scope determinations, refer to the notice of final results of expedited sunset reviews on antifriction bearings from Japan (A–588–804), publishing concurrently with this notice.

History of the Order

The Department published its less-than-fair-value ("LTFV") determination on BBs from Italy on May 3, 1989.[1] In this determination, the Department published weighted-average dumping margins of 68.29 percent for FAG Italia S.p.A. ("FAG") and 69.99 percent for SKF Industrie S.p.A. ("SKF"). The Department also published an all others rate of 155.57 percent. Since that time, the Department has conducted nine administrative reviews.[2] This sunset review covers imports from all Italian producers and/or exporters of BBs. With respect to duty absorption, the Department issued duty absorption findings for two producers and/or exporters of ball bearings from Italy in the 1995–1996 and 1997–1998 administrative reviews.[3]

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping duty order on BBs from Italy (64 FR 15727), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of The Torrington Company ("Torrington"), MPB Corp. ("MPB"), the Roller Bearing Company of America ("RBC"), the NSK Corp. ("NSK"), New Hampshire Ball Bearings, Inc. ("NHBB"), and Link-Belt Bearing Division ("Link-Belt") on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from Torrington, MPB, RBC, and NHBB on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The Department received the complete substantive response from NSK on April 30, 1999. The Department did not receive a complete substantive response from Link-Belt. In addition, the Department received a complete substantive response from a respondent interested party, FAG, on May 3, 1999.

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[1] *See* Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Spherical Plain and Tapered Roller Bearings) and Parts Thereof From Italy; and Final Determination of Sales at Not Less Than Fair Value: Spherical Plain Bearings and Parts Thereof, From Italy, 54 FR 19096 (May 3, 1989). This determination was subsequently amended. *See Notice of Redetermination of Final Margin of Sales at Less Than Fair Value, Pursuant to Court Remand: Ball Bearings and Parts Thereof From Italy and Sweden*, 54 FR 20910 (March 8, 1993).

[2] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Antidumping Duty Administrative Reviews*, 56 FR 31751 (July 11, 1991); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany; et al.; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 32755 (June 17, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 57 FR 32969 (July 24, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 57 FR 59080 (December 14, 1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 8908 (February 23, 1998); *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Amendment to Final Results of Antidumping Duty Administrative Review*, 58 FR 53914 (October 19, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France and Italy; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 58 FR 65576 (December 15, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 18877 (April 16, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, and Sweden: Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 38369 (July 16, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 70100 (December 18, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 60 FR 10959 (February 28, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany and Italy; Amended Final Results of Antidumping Duty Administrative Reviews*, 60 FR 31142 (June 13, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy; Amended Final Results of Antidumping Duty Administrative Review*, 60 FR 33791 (June 29, 1995); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472 (December 17, 1996); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, Japan, and the United Kingdom: Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 3003 (January 21, 1997): *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081(January 15, 1997): *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, and Singapore; Amended Final Results of Antidumping Duty Administrative Reviews*, (March 26, 1997): *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997): *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy, Romania, and the United Kingdom: Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 40878 (July 31, 1998); *Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

[3] The two companies were SKF and FAG. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997); *Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

Torrington, MPB, RBC, and NHBB claimed interested party status under 19 U.S.C. 1677(9)(C) as U.S. manufacturers of BBs. NSK claimed interested party status under 19 U.S.C. 1677(9). In addition, Torrington stated that it was the petitioner in the original investigation and has actively participated in all administrative reviews of this order. MPB stated that it had participated in the International Trade Commission's ("the Commission") injury investigation. RBC and NHBB stated that they have not participated in any segment of this proceeding before the Department.

The foreign interested party, FAG, claimed interested party status under 19 U.S.C. 1677(9). FAG stated that it participated in the original investigation and each subsequent administrative review of this proceeding. In addition, the Department received a waiver of participation from another respondent interested party, SKF, on May 3, 1999.

Based on the information submitted by FAG concerning the volume and value of its exports and volume of imports as reported in U.S. Census Bureau IM146 Reports, FAG's exports of subject merchandise to the United States accounted for less than 50 percent of the total volume of subject merchandise to the United States over the five calendar years preceding the initiation of this sunset review. Therefore, based on the information submitted by FAG and the waiver of participation submitted on behalf of SKF, respondent interested parties have provided an inadequate response to the notice of initiation and, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department has determined to conduct an expedited, 120-day, review of this order.[4]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on August 5, 1999, the Department determined that the sunset review of the antidumping duty order on BBs from Italy is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Adequacy

As noted above, we notified the Commission that we intended to conduct an expedited review of this order. On June 10, 1999, we received comments on behalf of MPB and Torrington supporting our determination to conduct an expedited review. NHBB and NSK also submitted comments on whether an expedited sunset review was warranted. In their submissions, both parties assert that most of the domestic interested parties that submitted substantive responses are in favor of revocation of the Department's various antidumping duty orders on antifriction bearings. These parties also offered new argument regarding the likely effect of revocation of these orders.

The magnitude of domestic support for continuation or revocation of an order, however, does not enter into the Department's determination of adequacy of participation nor, for that matter, the Department's determination of likelihood. The Department made clear in its regulations that a complete substantive response from one domestic interested party would be considered adequate for purpose of continuing a sunset review (see section 351.218(e)(1)). Nowhere in the statute or legislative history is there reference to consideration of domestic industry support during the course of a sunset review (other than the statutory provision that, if there is *no* domestic industry interest in continuation of the order, the Department will revoke the order automatically). In fact, the Senate Report (at Rep. No. 103–412 at 46 (2nd Session 1994)) makes clear that the purpose of adequacy determinations in sunset reviews is for the Department to determine whether to issue a determination based on the facts available without further fact-gathering. Further, the statute, at section 751(c)(1), specifies that the Department is to determine whether revocation of an order would be likely to lead to continuation or recurrence of dumping. Section 752(c) specifies that the Department is to consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the order.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In their substantive response, Torrington and MPB argue that revocation of the antidumping duty order on the subject merchandise would be likely to lead to continuation of dumping. They base this conclusion on the fact that dumping continued at levels above *de minimis* after the issuance of the order. RBC also argues that given that, dumping margins continue to exist after the issuance of the order, the Department must conclude that dumping would be likely to continue or recur if the order were revoked. Torrington and MPB assert further that an examination of import volumes is not necessary because dumping continued.

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[4] On May 24, 1999, we informed the Commission that, on the basis of inadequate response from respondent interested parties, we were conducting an expedited sunset review of this order consistent with 19 CFR 351.218(e)(1)(ii)(C)(*2*). (*See* Letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.)

[5] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

Should the Department decide to consider import volumes, Torrington and MPB assert that the data will demonstrate that 1998 import volumes of the subject merchandise are significantly below the 1988 pre-order volumes. Using pre-and post-order statistics for complete unmounted BBs, which Torrington and MPB assert is the only category for which statistics are available on a consistent basis, they argue that post-order declines in import volumes provide strong additional support for a determination that dumping is likely to continue or recur were the order revoked. In conclusion, Torrington and MPB assert that no "good cause" exists to consider other factors, such as sales below the cost of production.

NHBB and NSK assert that revocation of the order is not likely to result in continuation or recurrence of dumping. NHBB bases its assertion on the fact that dumping would undercut the U.S. domestic price structure, thus causing injury to the very industry of which foreign owners are a part. NSK appears to support its assertion on the basis that the margin of dumping has fallen during the life of the order.

FAG indicates that revocation of the antidumping duty order on BBs from Italy will likely result in a statistically insignificant dumping margin for itself or a reduction in its dumping margin to a *de minimis* level. With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, FAG indicates, in its Summary of Case History, that it has continued to dump subject merchandise at a level above *de minimis* throughout the life of the order (*see* May 3, 1999, substantive response of FAG, Appendix 2). With respect to whether imports of the subject merchandise ceased after the issuance of the order, FAG indicates that imports of the subject merchandise have continued throughout the life of the order. FAG argues that value and volume of subject merchandise has generally decreased since the inception of this case in 1987. Further, it contends this trend has continued into the current review period with a further reduction in FAG's exports of the subject merchandise over the last two quarters.

In its rebuttal comments, FAG states that the dumping margins for producers and/or exporters of the subject merchandise have not only steadily declined in recent review periods but the levels of imports have remained steady. Specifically, FAG states that import levels of the subject merchandise remained relatively stable, decreasing by 25 percent between fiscal year 1993 and fiscal year 1997.

In their rebuttal comments, Torrington and MPB disagree with FAG. They state that FAG's admission that its imports and sales decreased strongly supports a determination that FAG cannot resume selling at pre-order volumes without resorting to dumping. Furthermore, according to Torrington and MPB, FAG disregards the Department's duty absorption findings when it suggests that the Department rely upon FAG's 0.95 percent dumping margin found in the most recent administrative review.

In addition, Torrington and MPB assert that the Department should take into account the submitter's affiliation in its consideration of comments of various parties filing as domestic producers. Citing to *Ball Bearings and Parts Thereof From Thailand; Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order*, 61 FR 20799, 20800 (May 8, 1996), they argue that the Department has recognized that domestic producers who are affiliated with subject foreign producers and exporters do not have a common "stake" with the petitioner in the maintenance of the order. Additionally, Torrington and MPB argue that other parties' comments addressing issues other than margins and import volumes should not be considered unless such parties establish "good cause" to consider such additional factors, which, in these reviews, they have not done.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were removed. Thus, as noted above, in determining whether revocation of an order is likely to lead to continuation or recurrence of dumping, the Department considers the margins determined in the investigation and subsequent administrative reviews and the volume of imports. Whatever relevance the arguments of NHBB and NSK concerning possible disincentives for producers and/or exporters to dump in the U.S. market might have had is mooted by the evidence that dumping continues and has continued over the life of the order.

In the instant proceeding, dumping margins above *de minimis* continue to exist. Therefore, given that dumping has continued over the life of the order, the Department determines that dumping is likely to continue if the order were revoked. Because we have based this determination on the fact that dumping continued at levels above *de minimis*, we have not addressed the comments submitted by Torrington and MPB with respect to "good cause," nor have we addressed the arguments of other interested parties regarding the condition of the U.S. market.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in the LTFV determination of BBs from Italy, published a weighted-average dumping margin of 69.99 percent for SKF and a weighted-average dumping margin of 68.29 for FAG. In addition, the Department published a weighted-average dumping margin of 155.57 percent on all other imports of the subject merchandise from Italy.[6] As noted above, the Department issued duty absorption findings in the 1995–1996 administrative review for SKF and FAG with respect to BBs from Italy.

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[6] *See Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Spherical Plain and Tapered Roller Bearings) and Parts Thereof From Italy; and Final Determination of Sales at Not Less Than Fair Value: Spherical Plain Bearings and Parts Thereof, From Italy*, 54 FR 19096 (May 3, 1989). This determination was subsequently amended. *See Notice of Redetermination of Final Margin of Sales at Less Than Fair Value, Pursuant to Court Remand: Ball Bearings and Parts Thereof From Italy and Sweden*, 54 FR 20910 (March 8, 1993).

In their substantive response, Torrington and MPB argue that the margins likely to prevail are those from the Department's original investigation. They also note that the Department issued a duty absorption finding with respect to BBs from Italy in the 1995–1996 administrative review and should consider this in determining the margin likely to prevail. Specifically, Torrington and MPB argue that the dumping margins found for each company in the original investigation (as opposed to margins calculated in succeeding annual administrative reviews) are the dumping margins likely to prevail, including margins based on best information available, except where the most current margin, increased by the Department's duty absorption determination, exceeds the original investigation margin. Furthermore, RBC states that the margins from the original investigation are most probative of the rates likely to prevail as they are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place.

NHBB argues that the dumping margins likely to prevail if the order were revoked would be *de minimis.* NHBB goes on to argue that it would be illogical for companies with significant U.S. bearings investments to undercut that investment by dumping. In addition, NHBB argues that the Department should not report margins from the original investigation. In support of this argument, NHBB notes that the SAA provides that, in certain instances, it is more appropriate to rely on a more recently calculated margin. NHBB asserts that one such instance is where, as in the antifriction bearings cases, dumping margins have declined over the life of the order and imports have remained steady or increased. Finally, NHBB argues that, in light of changes in the methodology used to calculated antidumping duty margins introduced by the Uruguay Round, use of margins calculated by the Department prior to the URAA would be unfair and would be contrary to the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Similarly, NSK argues that the margins likely to prevail would be *de minimis.* As support, NSK argues that, were the order not in existence, the Department would apply the average-to-average methodology used in an investigation, as opposed to the transaction-to-average methodology common to administrative reviews, to measure the extent of any dumping. In such a case, NSK states that it believes any margin found would be below the two percent *de minimis* level applicable in investigations. NSK further argues that the Department's unorthodox approach during the original investigation, plus the liberal use of best information available, skewed the results of the original investigation seriously, rendering those results inappropriate indicators of the magnitude of the margin likely to prevail were the orders revoked. Finally, NSK also argues that dumping margins have declined over time with respect to BBs while at the same time, imports have remained at or around 20 percent of the U.S. market. As support, it cites to *The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements,* USITC Pub. 2900, Inv. No. 332–334, at 14–26—14–31 (June 1995).

FAG states the dumping margin likely to prevail for itself is its current dumping margin of 0.95 percent or even a lower dumping margin, given its current importing and pricing trends. FAG claims that its dumping margin may actually be lowered in the future because it has fundamentally changed its sourcing patterns to rely more heavily on domestic (*i.e.,* U.S.) or third country purchase of certain ranges of BBs. Furthermore, FAG claims that it has implemented price monitoring programs with respect to its sales of subject merchandise. FAG also argues that it has attained a 0.95 percent dumping margin in the face of what it considers the "arbitrary, capricious and commercially absurd" methodology used by the Department in the calculation of constructed value. Finally, FAG states it is a large producer of a highly differentiated, mature industrial product and that because of this, and the Department's sampling methodology, a certain inevitable percentage of dumping does recur from year to year.

In their rebuttal comments, Torrington and MPB argue that other parties' comments ignore the Department's stated policies regarding the selection of margins likely to prevail and ignore the Department's duty absorption findings. Citing to the *Sunset Policy Bulletin,* Torrington and MPB argue that the Department's policies are clear—normal reliance on the margins from the investigation as the only margins that reflect the behavior of exporters without the discipline of the order and rejection of margins from administrative reviews in which the Department found duty absorption. Torrington and MPB argue that the two percent *de minimis* standard is not applicable to sunset reviews. Further, they contend there is no authority which would authorize or justify the rejection of the investigation rate on the basis of the particular methodology used at the time of the investigation. Additionally, they assert that, with respect to claims that more recent margins should be used based on declining margins accompanied by steady or increasing imports, it is the responsibility of such claimants to provide information regarding companies' relative market share. Since no such information was provided, Torrington and MPB argue, the Department should not accept these assertions since imports BBs from Italy have actually declined since the imposition of the order.

We agree with Torrington, MPB, and RBC that, normally, we will provide a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. As noted above, exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

With respect to NSK's argument concerning the magnitude of the margin likely to prevail, we disagree. As discussed above, we do find that there is a likelihood of continuation or recurrence of dumping. Furthermore, we find the level of dumping likely to prevail is best reflected by the Department's dumping margins we calculated in the original investigation. Specifically, the Department finds that there is no basis to reject margins calculated in an investigation because of subsequent changes in methodology since such changes do not invalidate margins calculated under the prior methodology. Therefore, the dumping margins from the original investigation are the only rates which reflect the behavior of exporters without the discipline of the order, regardless of the methodology used to calculate that margin or the use of best information available (*see* section 752(c)(3) of the Act).

With respect to NHBB's argument concerning the dumping margin likely to prevail, the Department disagrees. First, NHBB claims that dumping margins have declined over the life of the order and imports have remained steady or increased. However, NHBB provided no evidence to support these claims and nothing submitted in the course of this sunset proceeding indicates that imports have remained steady or increased. In fact, evidence submitted by Torrington and MPB indicate that post-order import volumes (1989–1998) are lower than pre-order volumes (1989) in each year. Regardless of the level of imports, dumping margins above *de minimis* levels continue as do imports of the subject merchandise; dumping continues to exist.

In the *Sunset Policy Bulletin* we indicated that, consistent with the SAA at 889–90 and the House Report at 63, we may determine, in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, that a more recently calculated rate reflects that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order were revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company. The *Sunset Policy Bulletin* provides that we will entertain such considerations in response to arguments from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporters behavior absent the discipline of an order, we will normally consider the company's relative market share, with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market share information, in past sunset reviews where market share information was not available, we relied on changes in import volumes between the periods before and after the issuance of the order. (*See, e.g., Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden*, 63 FR 67658 (December 8, 1998), and *Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China*, 64 FR 30310 (June 7, 1999).)

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information. Generic arguments that margins decreased over the life of the orders while at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while, at the same time maintaining or increasing market share. In fact, such generic argument may disguise company-specific behavior demonstrating increased dumping coupled with increased market share.

With respect to FAG's argument concerning the margin likely to prevail, the Department disagrees. FAG argues that the margin likely to prevail is its current margin of 0.95 percent (or a lower margin). The Department finds this current margin is not reflective of the margin likely to prevail if the order were to be revoked. On the issue of import volumes, the SAA at 889, the House Report at 63, and the Senate Report at 52 state that declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.

FAG states that exports of the subject merchandise have generally decreased since the inception of this case in 1987. The Department can confirm that current exports of the subject merchandise are indeed lower than pre-order exports. FAG also claims that it has shifted production to its U.S. facilities and has changed its sourcing patterns to rely more heavily on domestic (*i.e.*, U.S.) or third-country purchases of certain ranges of BBs. FAG also states that it has sourced product from third countries that are not covered by antidumping duty orders. In addition, it states that it has shifted production to its U.S. facilities for certain product ranges and sizes. These moves, coupled with FAG's decrease in exports of the subject merchandise to the United States over the life of the order, indicate to the Department that such action was necessary because FAG was, and is, unable to sell subject merchandise in the United States without dumping. Therefore, absent such evidence, the Department finds no reason to deviate from its standard practice in this matter.

As noted above, the Department determined in the final results of the 1995–1996 and 1997–1998 administrative reviews that two Italian producers/exporters, FAG and SKF, were absorbing duties.[7] Consistent with the statute and the *Sunset Policy Bulletin*, the Department will notify the Commission of its findings regarding duty absorption when conducting a sunset review.

Additionally, the *Sunset Policy Bulletin* refers to the SAA at 885 and the House Report at 60, and provides that where the Department has found duty absorption, the Department normally will provide to the Commission the higher of the margin that the Department otherwise would have reported or the most recent margin for that company, adjusted to account for the Department's findings on duty absorption. In this case, the margins adjusted to account for the Department's duty absorption findings are less than the margins we would otherwise report to the Commission.

Therefore, the Department agrees with the domestic interested parties concerning the margin likely to prevail if the order were to be revoked. We find that the dumping margins calculated in the original investigation are the only calculated rates that reflect the behavior of exporters without the discipline of the order. Consistent with the *Sunset Policy Bulletin*, we determine that the margins calculated in the Department's original investigation is probative of the behavior of Italian producers and exporters of BBs if the order were revoked. Therefore, we will report to the Commission the company-specific and "all others" rates from the original investigation contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/ Exporter	Margin (percent)
SKF	69.99
FAG	68.29
All Other Producers/Exporters	155.57

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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[7] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997); *Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28774 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–404]

Final Results of Full Sunset Review: Live Swine From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: live swine from Canada.

SUMMARY: On June 25, 1999, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the countervailing duty order on live swine from Canada (64 FR 34209) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties and held a public hearing. As a result of this review, the Department finds that revocation of this order would not be likely to lead to continuation or recurrence of a countervailable subsidy.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"*) and in 19 CFR part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year* ("Sunset") *Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this countervailing duty order is shipments of live swine, except U.S. Department of Agriculture ("USDA") certified purebred breeding swine, slaughter sows and boars, and weanlings from Canada.[1] Weanlings are swine weighing up to 27 kilograms or 59.5 pounds.[2] This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Background

On June 25, 1999, the Department issued the *Preliminary Results of Full Sunset Review: Live Swine from Canada* (64 FR 34209) ("*Preliminary Results*"). In our preliminary results, we found that revocation of the order would likely result in the continuation or recurrence of a countervailable subsidy. In addition, we preliminarily determined that the net countervailable subsidy likely to prevail if the order were revoked would be Can$0.01802234/lb.

On August 9, 1999, within the deadline specified in 19 CFR 351.209(c)(1)(i), we received comments on behalf of National Pork Producers Council ("NPPC").[3] We also received comments from the Gouvernement du Quebec ("GOQ"), the Government of Canada ("GOC") and the Canadian Pork Council and its Members ("CPC"), the Canadian respondents in this proceeding (collectively, "the Canadian respondents"). On August 16, 1999, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from the NPPC and each of the Canadian respondents. On August 18, 1999, the Department held a public hearing. We have addressed the comments received below.

As a result of our reconsideration, we find that the net subsidy rate likely to prevail were the order revoked is *de minimis.* Because any subsidy rate would be *de minimis,* we find that it is not likely that revocation would result in the continuation or recurrence of a countervailable subsidy.

Comments

Comment 1: The NPPC states that it agrees with the Department's preliminary finding that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The NPPC argues that given the extensive federal and provincial programs available, there can be little question that the Department properly found that subsidization would be likely to continue if the order were revoked.

The Canadian respondents argue that, when corrected for errors in the *Preliminary Results,* any net countervailable subsidy likely to prevail is zero or *de minimis.* As such, the Department should find that subsidization would not be likely to continue or recur if the order were revoked.

Department Response: Based on comments received, we have recalculated the net countervailable subsidy likely to prevail were the order revoked. Because, as discussed below, we find that the subsidy likely to prevail is *de minimis,* for our final results of full sunset review we determine that revocation of this countervailing duty order would not be likely to result in the continuation or recurrence of a countervailable subsidy.

Comment 2: The NPPC argues that although, in the *Preliminary Results,* the Department identified the Newfoundland Hog Price Stabilization Program as a program that was created after the imposition of the order which still exists, the Department failed to include this program in its net subsidy calculation. The NPPC requests the Department correct this error for its final determination.

As discussed in more detail below, the CPC argues that the Newfoundland Hog Price Stabilization Program was terminated on March 31, 1994.

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[1] On August 29, 1996, the Department issued the final results of a changed circumstances review revoking the order, in part, with respect to slaughter sows and boars. The revocation became effective on April 1, 1991 (*see Live Swine from Canada; Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Partial Revocation In Part of Countervailing Duty Order,* 61 FR 45402 (August 29, 1996).

[2] In the *Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled and Frozen Pork Products from Canada,* 50 FR 25097 (June 17, 1985), the Department also calculated a net subsidy for dressed-weight swine. However, the Department terminated its investigation with respect to fresh, chilled, and frozen pork products from Canada based on a finding by the Commission that no material injury, threat of material injury, or retardation of an infant industry existed.

[3] The NPPC is a trade organization representing U.S. hog and pork producers through a federation of 44 affiliated state pork producer associations with a total membership of 85,000. NPPC's membership consists of small family farms and large hog operations.

Department Response: We disagree that we incorrectly failed to include a subsidy rate from the Newfoundland Hog Price Stabilization Program in our preliminary calculation of the net subsidy likely to prevail if the order were revoked. Leaving aside the question of termination, we note that the Department never calculated a subsidy rate for this program because it had not been used. Therefore, we do not believe it appropriate to include a rate from this program in the calculation of the net countervailable subsidy likely to prevail were the order revoked.

Comment 3: The NPPC notes that, in addition to the ten programs used in the net subsidy calculation in the *Preliminary Results,*[4] the Department identified six programs for which no subsidy rate has ever been calculated—the Newfoundland Farm Products Corporation Hog Price Support Program, Western Diversification Program, Agricultural Products Board Program, Newfoundland Weanling Bonus Incentive Policy, Federal Atlantic Livestock Initiative, and Ontario Swine Sales Assistance Program. Further, the NPPC argues that the Department acknowledged that none of these six programs has been found to be terminated or modified in such a way that they would not confer any countervailable benefit in the future. Therefore, to ensure the most accurate net countervailable subsidy rate is reported to the Commission, the NPPC requests that the Department include in its final calculation of the net countervailable subsidy likely to prevail a rate for each of these programs. The NPPC recommends the use of neutral "facts available" in order to identify a subsidy rate for each of the six programs.

As discussed in more detail below, the Canadian respondents assert that the Western Diversification Program, Agricultural Products Board Program, and Federal Atlantic Livestock Initiative were never found to provide a countervailable subsidy on the subject merchandise and, therefore, cannot be included in any rate likely to prevail. Further, they argue that there has been a long track record on non-use of the Ontario Swine Sales Assistance Program. Therefore, this program should not be included in the calculation. Finally, with respect to the Newfoundland Farm Products Corporation Hog Price Support Program and the Newfoundland Weanling Bonus Incentive Policy, the Canadian respondents argue that these programs have been terminated and should thus be excluded from any calculation. We note that the CPC alleges that the Newfoundland Farm Products Corporation Hog Price Support Program is the same as the Newfoundland Hog Price Support Program.

Department Response: The Department disagrees with the NPPC that we should include a neutral facts available rate for these programs in calculating the net subsidy likely to prevail were the order revoked. In the *Preliminary Results* the Department did not include these six programs in the calculation of the net subsidy rate on the basis that, despite no finding that any of these programs had been terminated, the Department had never calculated a subsidy rate for any of these programs because the Department has never been presented with evidence establishing the countervailability of these programs and/or these programs have not been used.

As discussed below, over the life of this order the Department has never been presented with sufficient evidence that the Western Diversification Program, Agricultural Products Board Program, or Federal Atlantic Livestock Initiative provide a countervailable subsidy with respect to subject merchandise. In addition, with respect to the Newfoundland Weanling Bonus Incentive Policy, and the Ontario Swine Sales Assistance Program, although found countervailable, the Department has never calculated a subsidy rate during the POI or any administrative review because the Department had determined the programs had not been used. Additionally, as discussed below, we agree with the CPC that the Newfoundland Farm Products Corporation Hog Price Support Program is the same as the Newfoundland Hog Price Support Program.

Over the fourteen year life of the order, neither of these programs has been found to provide a measurable countervailable subsidy. The NPPC has provided no convincing argument or evidence that, were the order revoked, these programs would be used and found to provide a measurable countervailable subsidy. Therefore, the Department does not agree that it is appropriate to calculate a facts available subsidy rate likely to prevail for these programs were the order revoked.

Comment 4: The NPPC argues that the Department prematurely decided that British Columbia Feed Grain Market Development Program ("Program 1"); (2) Canada/Alberta Swine Improvement Programs Study ("Program 2"); (3) Prince Edward Island Interest Payments on Assembly Yard Loan Program ("Program 3"); and (4) British Columbia Special Hog Payment Program ("Program 4") were terminated. The NPPC argues that the Department should utilize different criteria in the course of sunset reviews with respect to determinations regarding program termination. Specifically, the NPPC asserts that the sunset criteria for program termination should be more rigorous than for administrative reviews because sunset determinations may have the effect of terminating the order. Termination through administrative action, rather than through legislative means, the NPPC argues, is insufficient for the Department, in the course of a sunset review, to determine that the program has indeed been terminated.

The GOQ argues that the Department applied the appropriate standard to programs determined terminated in administrative reviews. The GOQ asserts that neither the statute nor its legislative history supports the argument that the Department may apply a more stringent standard to programs that the Department previously determined to be terminated before they may be considered terminated for sunset review purposes. Further, the GOQ argues that, in the context of a sunset review, the Department's prior determination that a program is terminated is sufficient to support revocation of an order unless contrary evidence has been shown that the program is likely to be reinstated.

Department Response: The Department agrees with the NPPC, in part. The Department agrees that the elimination of a program administratively is not as strong a basis for a finding of termination as elimination through legislative action (see *Sunset Policy Bulletin*). However, where a program was put in place administratively, it is reasonable to expect that the government would terminate the program in the same manner (*see Final Results of Expedited Sunset Review: Heavy Iron Construction Castings from Brazil,* 64 FR 30313 (June 7, 1999)). In these circumstances, unless there is a basis for concluding that the government is likely to reinstate the program, we continue to believe it is appropriate to treat a program previously found to be terminated in an administrative review as terminated for the purpose of sunset reviews.

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[4] The ten programs used in the net subsidy calculation in the *Preliminary Results* were: Technology Innovation Program under the Agri-Food Agreement, Ontario Livestock and Poultry and Honeybee Compensation Program, Ontario Bear Damage to Livestock Compensation Program, Ontario Rabies Indemnification Program, New Brunswick Swine Industry Financial Restructuring Program, Newfoundland Hog Price Support Program, Quebec Farm Income Stabilization Insurance Program, New Brunswick Livestock Incentives Program, Support for Strategic Alliances Program under the Agri-Food Agreement, and Nova Scotia Improved Sire Program.

With respect to Program 1, the Department determined that the program was terminated with no residual benefits in the 1990–1991 administrative review. The Department has information on the record of this proceeding which indicates that this program was terminated at the end of the 1988 crop year and that final payments were made in February, 1990. Since the Department's determination in the 1990–1991 administrative review regarding this program's termination, the Department has not found any grounds for reconsideration of this program or its termination. Based on these facts, the Department continues to find this program terminated.

With respect to Program 2 and Program 3, the Department determined that these programs were terminated with no residual benefits in the 1991–1992 administrative review. Specifically, the Department found that these programs were terminated prior to April 1, 1991, with no residual benefits after this date. Since the Department's determination in the 1991–1992 administrative review regarding the termination of these programs, the Department has not found any grounds for a reconsideration of these programs or their termination. Based on these facts, the Department continues to find these programs terminated.

With respect to the Program 4, the Department determined that the program was terminated with no residual benefits in the 1994–1995 administrative review. Specifically, the Department found that this program was terminated prior to April 1, 1994, with no residual benefits after this date. Further, information on the record indicates that this program was only in existence during fiscal year 1988–1989 and that all benefits were countervailed during the 1988–1989 administrative review. Since the Department's determination in the 1994–1995 administrative review regarding this program's termination, the Department has not found any grounds for a reconsideration of this program or its termination. Based on these facts, the Department continues to find this program terminated.

Comment 5: The NPPC argues that the Department should take into consideration new programs that have not been investigated and include such programs in its analysis. The NPPC argues that the Department should consider new programs proposed by both federal and provincial governments and should consider programs determined to provide subsidies in other proceedings.

Specifically, the NPPC alleges that the Farm Improvement and Marketing Cooperative Loans Act ("FIMCLA"), identified in the Department's *Preliminary Negative Countervailing Duty Determination; Live Cattle from Canada* (64 FR 25279, May 11, 1999) ("*Cattle Prelim*"), provides countervailable benefits to Canadian hog producers. In addition, the NPPC alleges that the Manitoba Pork Council will impose a twenty cent levy on each iso-wean and weanling pig exported out of the province. This export tax is apparently being used to fund Manitoba manure disposal. Therefore, the NPPC requests that the Department include these programs in its final sunset determination as programs likely to provide a countervailable subsidy were the order revoked.

The CPC asserts that the news release, relied upon by the NPPC in its request that the Department identify subsidy rates from levies being imposed by the Manitoba Pork Council, does not discuss a new government program, but rather, on-going producer-funded activities. The CPC argues that the NPPC has not identified a new program, nor has it even attempted to explain how producer-collected and producer-funded promotion, education and research activities could ever provide a countervailable benefit. On this basis, the CPC argues that the statutory likelihood the Department must have in making its calculations is not present.

With respect to the program currently under investigation in the live cattle investigation, the CPC argues that the Department need not consider such programs and, in the *Preliminary Results*, correctly rejected the NPPC's suggestion to do so.

Department Response: The Department disagrees with the NPPC. With respect to new programs proposed by the federal and provincial governments of Canada, the NPPC merely claims that these governments are discussing the possibility of establishing new subsidies for Canada's hog farmers. Furthermore, the NPPC argues that the Canadian federal government is contemplating a recovery plan that would include a comprehensive financial aid package that could potentially provide subsidies. The Department finds that reports of mere "contemplation" or "possibility" of new programs do not provide sufficient justification for the Department to determine that new programs will provide a countervailable subsidy were the order revoked.

With respect to FIMCLA, the Department disagrees with the NPPC. First, the FIMCLA program was enacted in 1987 with the purpose of increasing the availability of loans for the improvement and development of farms and the processing, distribution or marketing of farm products by cooperative associations. The SAA at 889 states that "subsidy allegations normally should be made in the context of [administrative] reviews . . . however, where there have been no recent [administrative] reviews or where the alleged countervailable subsidy program came into existence after the most recently completed [administrative] review, [the Department] may consider new subsidy allegations in the context of a . . . [sunset] review." However, the FIMCLA program has been in existence for over a decade, providing ample opportunity for domestic interested parties to allege countervailable benefits to swine producers during the course of administrative reviews.

In addition, the information included in the verification report of our investigation of live cattle from Canada relates only to benefits received by cattle producers, not cattle and swine producers (*see* Verification Report: Live Cattle from Canada, dated August 27, 1999). Thus, the Department has no information regarding the extent of usage of the FIMCLA program, if any, by swine producers and, therefore, whether there is any benefit provided to swine producers. Because the Department has no information with which to make a determination regarding any countervailable benefits of this program with respect to live swine because NPPC provided no evidence that this program was used by swine producers, and because domestic interested parties had ample opportunity but failed during the administrative review process to allege the countervailability of this program, the Department finds that an analysis of this program, in the context of this sunset review, is not warranted.

Comment 6: The CPC and GOC claim that four programs identified in the Department's *Preliminary Results* as providing countervailable subsidies have been terminated.[5] The CPC argues that it has repeatedly provided documentation demonstrating that these programs have been terminated (with no residual benefits) over the past three successive administrative reviews, although the Department did not make a determination regarding termination in any of the administrative reviews. The CPC re-submitted the documentation concerning the termination of these programs for this sunset review and requests that the Department make a determination concerning their termination in the course of this sunset review.

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[5] The four programs are: Nova Scotia Improved Sire Policy, Newfoundland Hog Price Support Program, Newfoundland Weanling Bonus Incentive Policy, and Newfoundland Hog Price Stabilization Program.

The NPPC argues that the Department, even applying the less rigorous standards of administrative reviews, has never made a formal finding that these programs were officially terminated. Further, the NPPC argues that the documentation provided by the CPC to support a finding of termination is insufficient to demonstrate that these programs have been terminated in such a way that they would not be reinstituted, as the SAA and the Department's policy bulletin anticipate.

Department Response: The Department agrees with the CPC that it is appropriate to consider possible termination of these programs during the course of this sunset review. Because there were no exports of the subject merchandise from the provinces in question during administrative reviews in which the CPC raised the issue of program termination, the fact that the Department did not consider possible termination during the reviews could not have had an effect on the outcome of those administrative reviews. Thus, the Department has not had a real opportunity to address respondents' evidence of termination. However, because the existence or termination of these programs may have an effect on the outcome of this sunset review, the Department will consider such information during the course of this review.

According to documentation presented by the Government of the Province of Newfoundland, the Newfoundland Hog Price Support Program was terminated on March 18, 1993, the Newfoundland Weanling Bonus Incentive Policy was terminated on March 31, 1993, and the Newfoundland Hog Price Stabilization Program was terminated on March 31, 1994.[6] According to documentation presented by the Government of the Province of Nova Scotia, the Nova Scotia Improved Sire Policy was terminated on May 15, 1996.[7]

With respect to the Newfoundland programs, the Government of the Province of Newfoundland submitted, in support of its argument for termination, a provincial budget report from 1993 indicating that production subsidies to hog producers were eliminated in 1993. Given this documentation submitted by the Government of the Province of Newfoundland, we are satisfied that the three Newfoundland programs have been terminated. Further, because the benefits from these programs would not be allocated over time, we find no residual benefits from any of these programs.

With respect to the Nova Scotia Improved Sire Program, the Government of the Province of Nova Scotia submitted an affidavit in support of its argument that this program had been terminated. No other evidence in support of termination was provided. We do not find an affidavit, in and of itself, sufficient for the Department to consider this program terminated. Therefore, the Department will not consider this program terminated in this sunset review and will include the subsidy rate for this program in its net subsidy calculation.

Comment 7: The CPC and GOC argue with respect to the Western Diversification Program, the Agricultural Products Board Program, and the Federal Atlantic Livestock Feed Initiative, that the Department never made a determination that any of these programs conferred a countervailable subsidy to producers and exporters of swine. Rather, although each of the programs was included in one or more administrative review questionnaires, none of the programs has ever been used or found countervailable with respect to exports of subject merchandise. As such, the CPC argues that the existence of these programs cannot support a decision that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy.

The NPPC suggests that the status of a program that has yet to be countervailed should not be treated differently from a program that has not been used in recent administrative reviews. The NPPC argues that the order acts as a general deterrent to the continued use of countervailable programs or to exporting products that are subject to an order and thus it should not be viewed as unusual that a particular program has never conferred a benefit on exported products. On this basis, the NPPC contends that simply because some programs have not been countervailed does not mean that the programs are not likely to confer a benefit in the future if the order were revoked. The NPPC therefore requests that for the purpose of the final results, the Department should calculate a proposed benefit for each such program.

In rebuttal, the Canadian respondents argue that there is no factual basis for including a subsidy rate from programs that have not been found to confer subsidies. Moreover, the GOQ argues that the Department must reject NPPC's argument and proposed facts available rates. Referring to the language of the SAA regarding the undue speculation associated with the calculation of future net countervailable subsidies, the GOQ asserts that the NPPC is asking the Department to unduly speculate what the subsidy rates might be for programs that never had subsidy rates calculated throughout the investigation and twelve administrative reviews. The GOQ further argues that the NPPC has submitted no evidence for the record that its proposed facts available rates bear any relation whatsoever to the rates likely to prevail for these programs.

Department Response: We do not agree with the NPPC that we should include a proposed benefit from any of these three programs in our final calculation of the net subsidy likely to prevail. Rather, the Department agrees with the CPC that these programs, having never been found to be countervailable with respect to exports of the subject merchandise, do not support a likelihood finding. Further, we agree with the GOQ that calculation of a rate for any of these programs would be unduly speculative. Therefore, we are not including a proposed benefit for any of these programs in our final results.

Comment 8: The CPC argues that the Ontario Swine Sales Assistance Program should be excluded from the Department's determination concerning the likelihood of continuation or recurrence of a countervailable subsidy. The CPC claims that benefits from this grant program were last provided to producers and/or exporters of the subject merchandise in 1982. Thus, the length of non-use of this program is in accordance with the Department's policy concerning a "long track record" of non-use of a program. The CPC, therefore, requests that this program be excluded from the Department's final determination.

The NPPC argues that other factors outweigh the CPC's objections to the inclusion of this program. Specifically, the NPPC argues that, by its own title, the Ontario Swine Sales Assistance Program is specifically related to swine. Further, despite its non-use, this program has remained in existence for one particular industry for an extensive period of time and is indicative of the special nature and special benefits that have been and continue to be available to this industry. The NPPC argues that a hog farmer's decision not to a avail itself of one particular program that has remained in existence while a variety of other programs are available and have been widely used does not demonstrate the requisite track record of non-use. Rather, it suggests that hog farmers have not been required to use that particular program because they have been able to benefit from the wide variety of other programs available. Under these circumstances, the NPPC argues that a long track record of non-use has not been established.

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[6] *See* Questionnaire Response for the Government of the Province of Newfoundland, 1996–1997 administrative review and as submitted by the CPC in its August 9, 1999, case brief.

[7] *See* Supplemental Questionnaire Response for the Government of the Province of Nova Scotia, 1996–1997 administrative review and as submitted by the CPC in its August 9, 1999, case brief.

Department Response: We disagree with the NPPC's argument that a long track record of non-use cannot be established in cases where exporters benefit from other countervailable programs that exist. We believe that such a standard would inappropriately make moot the question of program non-use in cases where any program continues to be used.

Further, we agree with the CPC that there is a long track record of non-use of the Ontario Swine Sales Assistance Program. During the original investigation of live swine from Canada, the Department found that countervailable subsidies in the form of grants were provided under this program during 1982, a period prior to the fiscal year 1984 period of investigation ("POI"). The Department has not found this program used during the POI or during any subsequent administrative review period (a period of over 14 years). As stated in the *Sunset Policy Bulletin*, where a company has a long track record of not using a program, including during the investigation, the Department normally will determine that the mere availability of the program does not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy. Because the Ontario Swine Sales Assistance Program was not used during the POI or in any subsequent administrative review of the countervailing duty order on live swine from Canada, the Department determines that there is a "long track record" of non-use. Therefore, we find that the mere availability of this program does not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy. Further, because we have determined that the program is not likely to provide a countervailable subsidy were the order revoked, we have not included a subsidy rate from this program in our calculation of the net subsidy likely to prevail if the order were revoked.

Comment 9: The GOQ argues that three programs which the Department preliminarily found likely to provide a countervailable benefit, specifically the Quebec Farm Income Stabilization Insurance Program, the Ontario Bear Damage to Livestock Compensation Program, and the Ontario Rabies Indemnification Program, in fact, have a "long track record" of non-use and should be excluded from the Department's final determination. The GOQ acknowledges that the *Sunset Policy Bulletin* states that where a company has a long track record of not using a program, including during the investigation, the Department normally will determine that the mere availability of the program does not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy. The GOQ claims, however, that holding transition orders (*i.e.* orders in place as of January 1, 1995) to the same standard as non-transition orders places an unreasonable and inappropriate time-specific burden on parties that was not intended by Congress. According to the GOQ, the long track record standard was clearly established for non-transition orders, orders that will be reviewed after five years. As such, the Department is unjustified in requiring a more lengthy long track record of non-use for transition orders based solely on the fact that the order *is* a transition order. Further, the GOQ argues that an order may be otherwise revoked through administrative review based on non-receipt or non-application for benefits for a period of five years. As such, the appropriate standard for determining long track record of non-use in a sunset review should be whether, for a majority of the recent five years, there is non-use. Based on this standard, the GOQ requests the Department determine that these three programs have a long track record of non-use and, as a result, exclude them from the Department's final determination.

The NPPC argues that the continued existence of these programs is not in question. Further, the NPPC asserts that the non-use of one particular program among many other programs suggests only that the hog farmers have not been required to use that particular program because they have been able to benefit from other programs available. Under these circumstances, the NPPC asserts that a long track record of non-use has not been established and, therefore, the Department properly included these programs as likely to provide a countervailable subsidy were the order revoked.

Department Response: The Department disagrees with the GOQ that two of these programs have a long track record of non-use. The Ontario Bear Damage to Livestock Compensation Program was found to provide a countervailable subsidy during the 1994–1995 administrative review (62 FR 18087, April 14, 1997). The Quebec Farm Income Stabilization Insurance Program provided a countervailable subsidy as recently as April 1, 1996 (*see* Substantive Response of GOQ at 11). Therefore, even if the appropriate standard for determining long track record was five years, these two programs do not have a long track record of non-use.

With respect to the Ontario Rabies Indemnification Program, this program was last found to provide a countervailable subsidy during the 1993–1994 administrative review (61 FR 52408, October 7, 1996; Amended, 61 FR 58383, November 14, 1996). Although the Department does not agree with the GOQ that because an order could be revoked through administrative review based on five years of non-use, the long track record standard in sunset reviews must be five years, we do agree that there is a long track record of non-use of the Ontario Rabies Indemnification Program. Therefore, we have not included a subsidy rate from this program in our calculation of the net countervailable subsidy likely to prevail if the order were revoked. Department does not agree that this constitutes a long track record of non-use.

Comment 10: The GOC and GOQ argue that the Department has twice refused to consider the requests of the GOQ and the GOC for "green-box" treatment for the Support for Strategic Alliances and Technology Innovation programs under the Agri-Food Agreement because the benefits conferred by them are *de minimis* and would not affect the subsidy rate. Having refused to consider requests for green-box treatment, the GOC and GOQ argue, the Department cannot now find these programs to be countervailable. If the Department is to consider these programs, the GOQ asserts that the Department must make a determination regarding its "green-box" requests and the countervailability of these programs in the course of this sunset review.

In addition, the GOC and GOQ argue that these programs expired March 31, 1998. The GOQ states that the Department, in its 1996–1997 administrative review, noted that the Agri-Food Agreement was enacted by both the governments of Canada and Quebec for the period April 1, 1993 through March 31, 1998. The GOQ states that this program has not been replaced. The GOQ also provided an affidavit from a Quebec government official stating that the program has expired and has not been replaced. As such, the GOQ requests that the Department find the Agri-Food Agreement has expired and eliminate it from the Department's final sunset determination.

The NPPC did not address these programs.

Department Response: With regard to the Technology Innovations program and the Support for Strategic Alliances program, the Department continues to find that any benefit to the subject merchandise under either program, or both programs combined, is so small that there is no cumulative impact on the overall subsidy rate. Accordingly, because there is no impact on the overall subsidy rate in this sunset review, we have not included the benefits from Technology Innovations program and the Support for Strategic Alliances program in the calculated net subsidy for this review. Therefore, as in prior administrative reviews, we determine that it is not necessary to address the issue of whether benefits under these programs are non-countervailable as green box subsidies pursuant to section 771(5B)(F) of the Act.[8]

Comment 11: The Canadian respondents argue that the Department's decision to continue to treat the Quebec Farm Income Stabilization Insurance ("FISI") program as countervailable is contrary to law. The GOQ states that in two administrative reviews, the Department treated the FISI program as non-countervailable as instructed by Binational Panels convened under the United States-Canada Free Trade Agreement. Furthermore, the GOQ adds, the Department has never found an above *de minimis* net subsidy for FISI in any administrative review of this order. Based on this information, the GOQ argues, the Department should determine that the FISI program is not countervailable.

Department Response: The Department disagrees with the Canadian respondents. As we explained in *Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews,* 61 FR 52408 (October 7, 1996), the remand determinations issued pursuant to panel decisions in prior reviews requested the Department to reconsider certain aspects of the underlying methodology used in those determinations. Because panel decisions are binding only on the proceeding of that respective review, none of these remand determinations requires the Department to establish a policy affecting all subsequent reviews, as they are based on different administrative records. Therefore, because the Department is not bound by these panel decisions with respect to its decision in this sunset review, because the Department has found the FISI program countervailable even after the latest remand determination concerning FISI and because the FISI program continues to exist, the Department continues to find the FISI program countervailable.

Furthermore, as explained in *Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews,* 61 FR 52408 (October 7, 1996), where the Department has determined a program to be countervailable, it is the Department's policy not to reexamine the issue in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration. In this sunset review, the GOQ has presented essentially the same arguments as in previous reviews but provided no new information or evidence of changed circumstances concerning the countervailability of FISI. Because the cumulative information on the record of this proceeding provides no evidence that FISI is not countervailable, the Department will continue to treat this program as a countervailable subsidy.

Comment 12: The CPC argues that the Newfoundland Hog Price Support Program and the Newfoundland Farm Products Corporation Hog Price Support Program, identified separately by the Department in its *Preliminary Results* are, in actuality, the same program. The CPC requests that the Department correct this error in the final results of this sunset review.

The NPPC did not address this issue. However, as discussed above, the NPPC requested that the Department apply a neutral facts available rate to this program.

Department Response: As discussed above, for the purposes of these final results, we determine that the Newfoundland Hog Price Support Program was terminated without residual benefits. Therefore, we have not included any benefit from this program in our calculation of the net countervailable subsidy likely to prevail were the order to be revoked. With respect to the Newfoundland Farm Products Corporation Hog Price Support Program, the Department agrees with the CPC that this is the same program as the Newfoundland Hog Price Support Program. In the notice of preliminary results of the 1987–1988 administrative review, the Department first identifies the program by name as the Newfoundland Hog Price Support Program Farm and then discusses the Newfoundland Farm Products Corporation Hog Price Support Program (*see* 55 FR 20812 (May 21, 1990)).

Comment 13: The Canadian respondents argue that three program rates from the original investigation, which used a different calculation methodology, must be trade weighted in order to be combined with rates from subsequent administrative reviews. The CPC argues that the subsidy rates calculated in the original investigation of this order use a methodology which the Department subsequently reexamined and ultimately rejected in the first administrative review. This new methodology weight-averages benefits from individual provincial programs by that province's share of exports to the United States ("trade-weighting"). This trade-weighted methodology has been used in every administrative review of this order. The CPC argues that the inclusion of three programs from the original investigation, which were not trade-weighted, and seven programs from subsequent administrative reviews, which were trade-weighted, is illogical. The CPC argues that the Department is combining the rates of programs that were calculated in completely different manners. As such, the CPC requests that the rates from the original investigation be trade-weighted to reflect the Department's most current and accepted methodology.

The NPPC argues that the Department properly used the rates found in the investigation, or review. Acknowledging that different calculation methodologies may have been used in subsequent proceedings, the NPPC argues nonetheless that the Department should not undertake to recalculate these rates based on different methodologies in different administrative reviews that are based on different records. The NPPC asserts that, accordingly, the

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[8] *See,* e.g., *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany,* 62 FR 54990, 54995 (October 22, 1997); *Certain Carbon Steel Products from Sweden: Preliminary Results of Countervailing Duty Administrative Review,* 61 FR 64062, 64065 (December 3, 1996) and *Certain Carbon Steel Products from Sweden: Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997); *Final Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring ("LHF") From Canada,* 62 FR 5201 (February 4, 1997); *Industrial Phosphoric Acid From Israel; Preliminary Results of Countervailing Duty Administrative Review,* 61 FR 28845 (June 6, 1996) and *Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review,* 61 FR 53351 (October 11, 1996).

Department's preliminary calculations are correct and should not be revised.

Department Response: The Department agrees with the Canadian respondents. Following the original investigation, the Department adopted a trade-weighting methodology for the calculation of subsidy rates for the programs benefitting live swine from Canada. The Department stated, in *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review,* 54 FR 651 (January 9, 1989), that the trade-weighted methodology provides a better measure of the subsidy on exports to the United States than the methodology used in the original investigation. This is because it gives greater weight to those provinces which export more hogs to the United States and therefore more accurately reflects the level of subsidy on the subject merchandise. The Department continues to find this true. Therefore, for purposes of combining subsidy rates from the investigation (which were not trade-weighted) with those calculated in the administrative reviews, the Department finds that it is appropriate to trade weight the rates from the original investigation. We do not view this as the calculation of new rates. Rather, the Department is using the rates from the original investigation as adjusted by the methodology currently in use. The two programs from the original investigation which the Department applied the trade-weighting methodology to are the Quebec Farm Income Stabilization Insurance Program ("FISI") and the New Brunswick Livestock Incentives Program ("NBLI"). The trade-weighted subsidy rate for FISI is Can$0.00320542/lb. and the trade-weighted subsidy rate for NBLI is Can$0.00000054/lb.

Comment 14: The CPC argues that the remaining eight programs[9] used by the Department in its preliminary net subsidy calculation have never collectively provided more than a *de minimis* level of benefit in any of the twelve administrative reviews of this order. As such, the existence of these programs does not support a finding of likelihood of continuation or recurrence of a countervailable subsidy were the order revoked.

The CPC argues that the fact that none of these programs is national in scope but, rather, each is limited to a particular province, is crucial to the Department's sunset analysis. Asserting that the SAA contemplates that the Department will take into account a company's history of use or non-use of a particular program, the CPC argues that, because the order is administered and rates are calculated on a country-wide basis, the Department should take into account provincial shares of exports over time to determine use or non-use of particular provincial programs.

The CPC notes that the Department has never calculated an above *de minimis* benefit from the two New Brunswick programs and argues that the minimal exports from New Brunswick have never contributed to the overall CVD rate. Thus, Canadian exports have a long history of not benefitting from these provincial programs. Additionally, the CPC asserts that, based on the fact that Quebec has virtually no exports of the subject merchandise to the United States, as with the New Brunswick programs, Canadian exports have a long history of not using Quebec programs. The CPC adds that the reason for both New Brunswick's and Quebec's consistently very low share of exports is the growth of the pork packing industry in Quebec and the constant demand by packers in that province for live swine. This factor has been constant and will not change according to the CPC.

With respect to Ontario, the CPC argues that although Ontario exports significant numbers of live swine to the United States, because of the very small nature of benefits from the Ontario programs, the Department has never calculated an above *de minimis* benefit for these programs over the history of these proceedings. In conclusion, the CPC argues that the existence of these eight programs do not support a finding of a likelihood of continuation or recurrence of a countervailable subsidy were the order to be revoked.

The NPPC argues that in an administrative review, the Department properly weight-averages the subsidy rate on the basis of actual shipments because it is attempting to calculate a precise cash deposit rate that will actually be applied to exports. However, the NPPC argues that the sunset proceeding is substantially different from an administrative review, and thus the calculations in a sunset review are also substantially different from the calculations made in an administrative review. Given the objective of the sunset review is to calculate an estimated rate that would result if the order were revoked, the NPPC argues that it would not be proper to weight average the rate on the basis of past levels of exports given that the absence of exports may have been the direct result of the countervailing duty order and elimination of the order would likely result in the resumption of shipments. Accordingly, the NPPC argues that the Department has properly calculated the net subsidy rate.

Department Response: The Department continues to find that where a countervailable subsidy program continues to exist and provides benefits to producers and/or exporters of the subject merchandise, it is appropriate to include such a program in the calculation of the net countervailable subsidy likely to prevail were the order revoked. Despite the limited use of some of these eight programs, producers and/or exporters of live swine from Canada have received, and/or have the potential to receive, countervailable benefits from each of these programs.[10] However, because the Department is combining rates calculated during administrative reviews, during which benefits were weighted based on province-specific exports, and the Department has determined it is appropriate to trade-weight the benefits from the original investigation in order to make a comparison based on the same methodology over the life of the order, we believe that the CPC's arguments and concerns are adequately addressed. As to the NPPC's arguments, while we agree that any rate calculated in a sunset review will not be applied to entries, we do not agree that our calculations should not be as precise as possible. Because the Department administers this order on a country-wide basis and has consistently, in every administrative review, determined that it is appropriate to trade weight benefits by province-specific exports, for the purpose of determining the net countervailable subsidy likely to prevail were the order revoked, as discussed above, we determine that trade weighting of benefits is appropriate.

Comment 15: The Canadian respondents disagree with the Department's use of the *de minimis* rate from the 1989–1990 administrative review for the purpose of this sunset review. The CPC asserts that the Department provided no explanation for its choice of $0.0030/lb. as the *de minimis* rate. The CPC further asserts that the Department revised the methodology used to calculate the *de minimis* rates in the 1995–1996 administrative review so that the weighted-average selling price used in the calculation reflects the weight of a live swine. The CPC argues that the Department should, using pricing data from the most recently completed review, determine that the *de minimis* rate is C$0.0035/lb.

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[9] The eight programs are: Quebec Farm Income Stabilization Program, New Brunswick Livestock Incentives Program, New Brunswick Swine Industry Financial Restructuring Program, Technology Innovation Program under the Agri-Food Agreement, Support for Strategic Alliances Program under the Agri-Food Agreement, Ontario Livestock and Poultry and Honeybee Compensation Program, Ontario Bear Damage to Livestock Compensation Program, and Ontario Rabies Indemnification Program.

[10] The CPC claims that the Technology Innovation Program under the Agri-Food Agreement and the Support for Strategic Alliances Program under the Agri-Food Agreement were terminated on March 31, 1998 and argue that neither program can provide a basis of support for the Department's *Preliminary Results*.

The NPPC did not address this issue.

Department Response: The Department agrees with the CPC that the *de minimis* rate from the 1989–1990 administrative review, by itself, is not the appropriate *de minimis* rate for the purpose of this sunset review. Because the net subsidy has never been reported on an *ad valorem* basis over the life of this order, the Department calculated the *de minimis* rate in terms of cents per pound (or kilogram) in the administrative reviews. We agree with the CPC that the Department adjusted the methodology for calculating the *de minimis* rate so that the weighted-average selling price used in the calculation reflects the weight of a live swine. However, we are not persuaded that such a change in methodology negates the validity of *de minimis* rates calculated prior to the change in methodology. Nor are we convinced that the use of the most recently calculated rate is appropriate. In considering the appropriate *de minimis* rate for purposes of this sunset review, we note that the *de minimis* rates have fluctuated over the life of the order, ranging from C$0.0028/lb. to C$0.0041/lb. Therefore, we determined not to rely on any one rate, but rather to apply as the *de minimis* standard in this sunset review an average of previously calculated rates. For this purpose, we calculated the simple average of the rate from the 1986–1997 administrative reviews,[11] in terms of cents per pound. As a result, we find the *de minimis* rate to be C$0.0033/lb. (*see* Memo to File, RE: *De Minimis* Calculation, dated October 28, 1999).

Comment 16: The CPC claims that mathematical errors exist in the Department's calculations of the subsidy rates for six programs cited in the *Preliminary Results.*[12] Specifically, the CPC argues that the Department's conversions from Canadian cents per kilogram to Canadian cents per pound in its *Preliminary Results* were done incorrectly for these six programs. They request that the Department correct these errors for its final determination. In addition, the CPC states that the Department, in its *Preliminary Results,* used both subsidy rates rounded to the fourth decimal place and subsidy rates rounded to the eighth decimal place.[13] The CPC requests that the Department round all subsidy rate calculations to the same decimal place.

The NPPC did not address these issues.

Department Response: The Department agrees with the CPC and will correct for the final the conversion of the subsidy rates from cents per kilogram to cents per pound. As a result of our corrections, we find the net countervailable subsidies likely to prevail were the order revoked: Can$0.00000003/lb. for the Ontario Bear Damage to Livestock Compensation; Can$0.00000004/lb. for Ontario Livestock and Poultry and Honeybee Compensation Program; and Can$0.00000013/lb. for Ontario Rabies Indemnification; and Can$0.00000002/lb. for Nova Scotia Improved Sire Program. As such, the Department will rely on these values for its net subsidy calculations in its final determination.

Final Results of Review

As discussed more fully above, we determine that the Technology Innovation and Support for Strategic Alliances Programs under the Agri-Food Agreement are programs that, even if countervailable, would not have a measurable impact on the Department's net subsidy calculation. Further, we find that the Newfoundland Hog Price Support Program, the Newfoundland Hog Price Stabilization Program, and the Newfoundland Weanling Bonus Incentive Program are programs that have been terminated without residual benefits and we note that, even if these programs had been found to continue, they would have no measurable impact on the Department's net subsidy calculation. Additionally, we find there is a long track record of non-use of the Ontario Rabies Indemnification Program.

We find that the Ontario Livestock and Poultry and Honeybee Compensation Program, the Ontario Bear Damage to Livestock Compensation Program, the New Brunswick Swine Industry Financial Restructuring Program, the Quebec Farm Income Stabilization Insurance Program, and the New Brunswick Livestock Incentives Program continue to exist and provide, or have the potential to provide, countervailable benefits were the order revoked. We combined the subsidy rates from these programs and found the net countervailable subsidy to be Can$0.0032/lb., below the *de minimis* level of Can$0.0033/lb. (*see* Memo to File, RE: Final Net Subsidy Calculations).

Based on the reasons cited above and those set forth in our *Preliminary Results,* the Department finds that the net countervailable subsidy likely to prevail were the order revoked is *de minimis.* Therefore, as a result of this sunset review, the Department finds that revocation of the countervailing duty order would not be likely to lead to continuation or recurrence of a countervailable subsidy.

As result of this determination by the Department that revocation of the countervailing duty order on live swine from Canada would not be likely to lead to continuation or recurrence of a countervailable subsidy, the Department, pursuant to section 751(d)(2) of the Act, will revoke this countervailing duty order. Pursuant to 751(c)(6)(A)(iv) of the Act, this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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[11] Of the twelve administrative reviews of this order, the Department is creating an average of the *de minimis* levels using the last eleven. The *de minimis* level calculations are not available from the first administrative review (1985–1986 administrative review). The Department attempted to obtain the *de minimis* level calculations from the sunset review participants, however, these calculations either do not exist or could not be located (*see* Memo to File, RE: Request for *De Minimis* Calculations, dated October 28, 1999).

[12] The six programs are: Nova Scotia Improved Sire Program, Technology Innovation Program under the Agri-Food Agreement, Support for Strategic Alliances Program under the Agri-Food Agreement, Ontario Livestock and Poultry and Honeybee Compensation Program, the Ontario Bear Damage to Livestock Compensation Program, and Ontario Rabies Indemnification Program.

[13] The Department used subsidy rates rounded to the fourth decimal place for the following subsidy programs: Nova Scotia Improved Sire Program, Technology Innovation Program under the Agri-Food Agreement, Ontario Rabies Indemnification Program, Ontario Bear Damage to Livestock Compensation, and Ontario Livestock and Poultry and Honeybee Compensation Program.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28775 Filed 11–3–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–801]

Final Results of Expedited Sunset Reviews: Antifriction Bearings From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: antifriction bearings from Germany.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on ball bearings, cylindrical roller bearings, and spherical plain bearings (collectively, "antifriction bearings") from Germany pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and an inadequate response from respondent interested parties in each of these reviews, the Department decided to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The products covered by these reviews are antifriction bearings ("AFBs") from Germany, which include ball bearings ("BBs"), cylindrical roller bearings ("CRBs"), and spherical plain bearings ("SPBs") and parts thereof. For a detailed description of the products covered by these orders, including a compilation of all pertinent scope determinations, refer to the notice of final results of expedited sunset reviews on AFBs from Japan, published concurrently with this notice.

History of the Orders

On May 3, 1989, the Department issued final determinations of sales at less than fair value ("LTFV") with respect to imports of AFBs from Germany.[1] The antidumping duty orders on AFBs were issued by the Department on May 15, 1989, and the dumping margins that were found in the final determinations of sales at LTFV were affirmed.[2] Since the imposition of these orders, the Department has conducted nine administrative reviews.[3] The orders remain in effect for all manufacturers and exporters of the subject merchandise. In the final results of the 1995–1996 and 1997–1998 administrative reviews of these antidumping duty orders, the Department found that antidumping duties were being absorbed by German producers of AFBs.[4] This review covers all producers and exporters of AFBs from Germany.

Background

On April 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on AFBs from Germany, pursuant to section 751(c) of the Act. By April 16,1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulation*, we received notices of intent to participate from the following parties: Link-Belt Bearing Division ("Link-Belt"); The Torrington Company ("Torrington"); MPB Corporation ("MPB"); Roller Bering Company of America ("RBC"); New Hampshire Ball Bearing, Inc. ("NHBB"); and NSK Corporation ("NSK Corporation"). Each of these parties claimed status as domestic interested parties on the basis that they are a domestic producer, manufacturer, or wholesaler of one or more of the products subject to these orders.[5]

Within the deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), on May 3, 1999, the Department received complete substantive responses from each of these domestic interested parties with the exception of Link-Belt. In addition, SKF USA and SKF GmbH (collectively "SKF") notified the Department that they would not file a substantive response in the sunset reviews of the AFBs orders. Finally, we received a complete substantive response on behalf of FAG Kugelfischer Georg Schäfer AG and FAG Bearings Corporation (collectively "FAG"). FAG asserts that it is a foreign manufacturer and exporter of BBs and CRBs and is, therefore, an interested party within the meaning of section 771(9)(A) of the Act. We received rebuttal comments from Torrington and MPB, RBC, NHBB, NSK Corporation, and FAG on May 12, 1999, within the deadline. On May 21 and May 24, 1999, we informed the International Trade Commission ("Commission") that, on the basis of inadequate response from respondent interested parties, we were conducting expedited sunset reviews of these orders consistent with 19 CFR 351.218(e)(1)(ii)(C)(*2*). (*See* Letters to Lynn Featherstone, Director, Office of Investigations, USITC, from Jeffrey A. May, Director, Office of Policy.)

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[1] See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, May 3, 1989, 54 FR 18992.

[2] See Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings and Parts Thereof From the Federal Republic of Germany; Antidumping Duty Order, May 15, 1989 54 FR 20900.

[3] See Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 64 FR 35590 (July 1, 1999); 63 FR 33320 (June 18, 1998); 62 FR 54043 (October 17, 1997); 62 FR 2081(January 15, 1997); 61 FR 66472 (December 17, 1996); 60 FR 10900 (February 28, 1995); 58 FR 39729 (July 26, 1993); 57 FR 28360 (June 24, 1992); and 56 FR 31692 (July 11, 1991).

[4] See Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043 (October 17, 1997) (1995–96); and Final Results of Antidumping Duty Administrative Reviews, 64 Fed. Reg. 35590 (July 1, 1999) (1997–98).

[5] Torrington, RBC, and NHBB filed with respect to BBs, CRBs, and SPBs. Link-Belt and MPB filed with respect to BBs and CRBs. NSK Corporation filed with respect to BBs only.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on August 5, 1999, the Department determined that the sunset reviews of the antidumping duty orders on AFBs from Germany are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[6]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the Commission the magnitude of the margin likely to prevail if the order is revoked.

The Department's determinations concerning adequacy, continuation or recurrence of dumping, and the magnitude of the margin are discussed below. In addition, the parties' comments with respect to adequacy, the continuation or recurrence of dumping, and the magnitude of the margin are addressed within the respective sections below.

Adequacy

As noted above, we notified the Commission that we intended to conduct expedited reviews of these orders. On June 10, 1999, we received comments on behalf of Torrington and MPB supporting our determination to conduct expedited reviews. NHBB and NSK Corporation also submitted comments on whether expedited sunsets review were warranted. In their submissions, both parties assert that most of the domestic interested parties that submitted substantive responses are in favor of revocation of the various orders on antifriction bearings. These parties also offered new argument regarding the likely effect of revocation of the orders.

The magnitude of domestic support for continuation or revocation of an order, however, does not enter into the Department's determination of adequacy of participation nor, for that matter, the Department's determination of likelihood. The Department made clear in its regulations that a complete substantive response from one domestic interested party would be considered adequate for purpose of continuing a sunset review (see section 351.218(e)(1)). Nowhere in the statute or legislative history is there reference to consideration of domestic industry support during the course of a sunset review (other than the statutory provision that, if there is *no* domestic industry interest in continuation of the order, the Department will revoke the order automatically). In fact, the Senate Report (at 46) makes clear that the purpose of adequacy determinations in sunset reviews is for the Department to determine whether to issue a determination based on the facts available without further fact-gathering. Further, the statute, at section 751(c)(1), specifies that the Department is to determine whether revocation of an order would be likely to lead to continuation or recurrence of dumping. Section 752(c) specifies that the Department is to consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the order.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In their joint substantive response, Torrington and MPB argue that revocation of the antidumping duty orders on the subject merchandise would be likely to lead to continuation of dumping. They base this conclusion on the fact that dumping continued at levels above *de minimis* levels after the issuance of the orders. RBC also argues that, given that dumping margins continued to exist after the issuance of the orders, the Department must conclude that dumping would be likely to continue or recur if the orders were revoked. Torrington and MPB also assert that an examination of import volumes is not necessary because dumping continued. Using pre- and post-order statistics for complete unmounted BBs, which Torrington and MPB assert is the only category for which statistics are available on a consistent basis, they argue that post-order declines in import volumes provide strong additional support for a determination that dumping is likely to continue or recur were the orders revoked. In conclusion, Torrington and MPB assert that no "good cause" exists to consider other factors. However, if the Department were to consider other factors, they contend, it should acknowledge that, in each review period, it has found that home market sales by German producers were below the cost of production requiring that such sales be disregarded for purposes of determining formal market value or normal value.

NHBB and NSK Corporation assert that revocation of the orders is not likely to result in continuation or recurrence of dumping. NHBB bases its assertion on the fact that dumping would undercut the U.S. domestic price structure, thus causing injury to the very industry of which foreign owners are a part. NSK Corporation supports its assertion on the basis that the margin of dumping would be *de minimis*. In addition, the respondent interested party in these sunset reviews of BBs and CRBs, FAG, asserts that revocation of the order would lead to a continued decrease in dumping, as evidenced by the decline in the level of dumping in recent years. FAG bases its conclusion on the following factors: the decrease in value and volume of exports of the subject merchandise; its significant reduction of its U.S. resales of subject merchandise; its shift in production to its U.S. facilities and its ability to source product from third countries that are not covered by the antidumping duty orders; and decreasing dumping margins.

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[6] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

Furthermore, the respondent argues that the range of subject merchandise sold by FAG and other large bearing companies consists of thousands of different models, sold in differing quantities and into many different market sectors, tends to breed a certain percentage of "random dumping." FAG uses charts to support its argument that the analysis of the top ten sales for BBs and CRBs in the 1994–1995 and 1995–1996 reviews alone account for nearly 50 percent of the dumping margins in each case.[7] They argue that these sales were only ten of tens of thousands of sales made during a full review period and this would tend to negate any argument that there was chronic pattern of dumping by FAG. Therefore, it asserts that these dumped sales were extrapolated onto the wider selling and pricing patterns of the company as a whole, which led to arbitrary and unfair results. FAG notes further that the "random dumping" can explain the inevitable percentage of dumping that recurs from year to year, as evidenced by the fact that none of the large bearing manufacturers/exporters have achieved a *de minimis* margin in the past nine reviews.

In their rebuttal comments, Torrington and MPB assert that the Department should take into account the submitter's affiliation in its consideration of comments of various parties filing as domestic producers. Further, citing to Ball Bearings and Parts Thereof From Thailand; Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order, 61 FR 20799, 20800 (May 8, 1996), they argue that the Department has recognized that domestic producers who are affiliated with subject foreign producers and exporters do not have a common "stake" with the petitioner in the maintenance of the orders. Additionally, Torrington and MPB argue that other parties' comments addressing issues other than margins and import volumes should not be considered unless such parties establish "good cause" to consider such additional factors, which, in these reviews, they have not done.

Torrington and MPB argue further that FAG's admission that its imports and sales have decreased strongly supports a determination that FAG cannot resume selling at pre-order volumes without resorting to dumping. Torrington and MPB also note that FAG's reliance on current margins to predict likely post-revocation margins ignores the fact that the investigation margins are the only margins which reflect the exporter's behavior without the discipline of the orders. Finally, Torrington and MPB note that if FAG's "random dumping" is in fact "inevitable," then under FAG's own argument dumping will continue.

In its rebuttal comments, FAG concurs with the substantive response of NSK Corporation which pointed out that the Department's methodology for calculating dumping margins in an investigation has fundamentally changed since the original LTFV investigation in AFBs ten years ago. FAG argues further that Torrington, MPB, and RBC erred in their reasoning to use the original investigation margins for purposes of these sunset reviews. According to FAG, the analyses presented by these domestic parties were not supported by empirical data, and that they erroneously presumed that even if dumping continued at levels above *de minimis*, and import volume decreased, there is a *prima facie* assumption of continued dumping at investigation levels and a mandatory requirement that these original margins be adopted.

FAG maintains that import levels for the subject merchandise increased 40 percent between fiscal years 1993 and 1997, and that dumping margins have decreased. Where margins have not declined over time, FAG contends, an explanation exists insofar as the Department changed its methodologies during the 1994–1995 administrative review. In light of the above, FAG argues, the Department should calculate projected dumping rates based on more recent reviews.

As discussed in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were removed. Further, as noted above, in determining whether revocation of an order is likely to lead to continuation or recurrence of dumping, the Department considers the margins determined in the investigation and subsequent administrative reviews and the volume of imports. Whatever relevance the arguments of NHBB and NSK concerning possible disincentives for producers and/or exporters to dump in the U.S. market might have had is mooted by the evidence that dumping continues and has continued over the life of the orders.

In the instant proceedings, dumping margins above *de minimis* continue to exist with respect to each of the orders. Therefore, given that dumping has continued over the life of the orders, the Department determines that dumping is likely to continue if the orders were revoked. Because we have based this determination on the fact that dumping continued at levels above *de minimis*, we have not addressed the comments submitted by Torrington and MPB with respect to "good cause" and sales below the cost of production, nor have we addressed the arguments of other interested parties regarding the condition of the U.S. market.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department will normally provide to the Commission a margin from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department will normally provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the Sunset Policy Bulletin.)

In their joint substantive response, Torrington and MPB argue that the margins that are likely to prevail should the orders be revoked are the dumping margins found for each company in the original investigations (as opposed to margins calculated in succeeding annual administrative reviews), including margins based on best information available, except where the most current margin, increased by the Department's duty absorption determination, exceeds the original investigation margin. With respect to BBs, RBC argues that the margins from the original investigation are the margins likely to prevail were the order revoked.

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[7] *See* May 3, 1999, Substantive Response of the Respondent at Appendix 5 Chart 3.

NHBB argues that the dumping margins likely to prevail if the orders were revoked are *de minimis*. NHBB goes on to argue that it would be illogical for companies with significant U.S. bearings investments to undercut that investment by dumping. In addition, NHBB argues that the Department should not report margins from the original investigation, asserting that the SAA provides that, in certain instances, it is more appropriate to rely on a more recently calculated margin. NHBB also asserts that one such instance is where, as in the AFBs cases, dumping margins have declined over the life of the orders and imports have remained steady or increased. Additionally, NHBB argues that, because the structure of the U.S. domestic industry that exists today bears little resemblance to the industry when the antidumping duty orders were imposed in 1989, the rates from the original investigation are inappropriate as indicators of the rates that would be found upon revocation. Finally, NHBB argues that, in light of changes in the methodology used to calculated antidumping duty margins introduced by the Uruguay Round, use of margins calculated by the Department prior to the URAA would be unfair and would be contrary to the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Similarly, NSK Corporation and FAG argue that the margins likely to prevail are *de minimis*. As support, NSK Corporation argues that, were the orders not in existence, the Department would apply the average-to-average methodology used in an investigation as opposed to the transaction-to-average methodology common to administrative reviews to measure the extent of any dumping. In such a case, NSK Corporation states that it believes any margin found would be below the two-percent *de minimis* level applicable in investigations. NSK Corporation argues further that the Department's unorthodox approach during the original investigation, plus the liberal use of best information available, skewed the results of the original investigation seriously, rendering those results inappropriate indicators of the magnitude of the margin likely to prevail were the orders revoked. Finally, NSK Corporation also argues that dumping margins have declined over time with respect to importations of BBs while, at the same time, importations have remained at or around 20 percent of the U.S. market. As support, it cites to The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, USITC Pub. 2900, Inv. No. 332–334, at 14–26—14–31 (June 1995).

FAG points out that 751(a)(4) of the Act permits the Department to conduct a duty absorption inquiry during any administrative review initiated two years or four years after the publication of an antidumping duty order. Notwithstanding this provision, FAG notes that the Department conducted duty absorption inquiries in the 1995–1996 and 1997–1998 administrative reviews, and, therefore, its duty absorption inquiry is unlawful and cannot be used.

In addition to the aforementioned argument, FAG challenges the methodology chosen by the Department to calculate duty absorption rates, stating that it was arbitrary and capricious, as well as contrary to language found in 19 U.S.C. 1675(a)(4). FAG asserts that the Department has merely calculated the percentage of FAG's U.S. affiliate's sales with dumping margins versus total sales and concluded that this figure demonstrates duty absorption within the meaning of the statute. FAG claims that there is no connection between the percentage of sales of a U.S. importer with dumping margins and any alleged duty absorption by the affiliated foreign producer or exporter.

In their rebuttal comments, Torrington and MPB argue that other parties' comments ignore the Department's stated policies regarding the selection of margins likely to prevail and ignore the Department's duty absorption findings. Citing to the Sunset Policy Bulletin, Torrington and MPB argue that the Department's policies are clear " normal reliance on the margins from the investigation as the only margins that reflect the behavior of exporters without the discipline of the order and rejection of margins from administrative reviews in which the Department found duty absorption. Torrington and MPB argue that the two-percent *de minimis* standard is not applicable to sunset reviews. Further, they contend that there is no authority which would authorize or justify the rejection of the investigation rates on the basis of the particular methodology used at the time of the investigations. Additionally, they argue that, with respect to claims that more recent margins should be used based on declining margins accompanied by steady or increasing imports, it is the responsibility of such claimants to provide information regarding companies' relative market share. Since no such information was provided, the Department should not accept these assertions since imports of certain BBs have actually declined since the imposition of the order.

In its rebuttal comments, FAG notes that Torrington erred in relying on the highest dumping margins calculated in each review period rather than the average. Furthermore, FAG argues that Torrington relied upon margins calculated using facts available. FAG asserts that, if the Department assesses margin levels based on actual calculated dumping rates, taken as averages for each review period, it will determine that, but for changes in calculation methodologies, margins have decreased over time.

We agree with Torrington, MPB, and RBC that, normally, we will provide a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. As noted above, exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

In the Sunset Policy Bulletin we indicated that, consistent with the SAA at 889–90 and the House Report at 63, we may determine, in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, that a more recently calculated rate reflects that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order were revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company. The Sunset Policy Bulletin provides that we will entertain such considerations in response to argument from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporters behavior absent the discipline of an order, we will normally consider the company's relative market share, with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market share information, in past sunset reviews where market share information was not available, we relied on changes in import volumes between the periods before and after the issuance of the order. *See, e.g.*, Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden, 63 FR 67658 (December 8, 1998), and Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China, 64 FR 30310 (June 7, 1999).

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information. Generic arguments that margins decreased over the life of the orders while at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic argument may disguise company-specific behavior demonstrating increased dumping coupled with increased market share.

FAG provided company-specific value and volume information concerning its exports of BBs and CRBs, and it argued that exports of the subject merchandise have generally decreased since the inception of this case in 1987. The Department can confirm that current exports of the subject merchandise are indeed lower than pre-order exports. FAG's decrease in exports of the subject merchandise to the United States over the life of the orders indicate that FAG is unable to sell subject merchandise in the United States at pre-order volumes without dumping. Therefore, absent such evidence, we find no reason to deviate from our standard practice of using the margin we calculated in the original investigation.

In the final results of the 1995/96[8] and 1997/98 administrative reviews of these orders, the Department found that antidumping duties have been absorbed by foreign producers. With respect to the 1997/98 administrative reviews we made the following determinations[9]:

Ball bearings	Percent of sales
SKF	3.17
FAG	10.31
INA	9.14
Cylindrical Roller Bearings:	
SKF	33.52
FAG	24.59
Torrington Nadellage	0.26
INA	9.24
Spherical Plain Bearings:	
INA	3.53
SKF	20.31

Consistent with the statute and the Sunset Policy Bulletin, the Department will notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a sunset review.

Additionally, the *Sunset Policy Bulletin* refers to the SAA at 885 and the House Report at 60 and provides that, where the Department has found duty absorption, the Department normally will provide to the Commission the higher of the margin that the Department otherwise would have reported or the most recent margin for that company, adjusted to account for the Department's findings on duty absorption. In this case, the margins adjusted to account for our duty absorption findings are less than the margins we would otherwise report to the Commission.

Therefore, the Department agrees with Torrington, MPB, and RBC concerning the margin likely to prevail if the order were to be revoked. We find that the dumping margins calculated in the original investigation are the only calculated rates that reflect the behavior of exporters without the discipline of the orders. Consistent with the *Sunset Policy Bulletin*, we determine that the margins we calculated in the original investigation are probative of the behavior of German producers and exporters of BBs, CRBs, and SPBs if the order were revoked. Therefore, we will report to the Commission the company-specific and "all others" rates from the original investigation contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins indicated below:

Manufacturer/ Exporter	Margin (percent)
Ball Bearings:	
SKF	132.25
FAG	70.41
INA	31.29
GMN	35.43
All Others	68.89
Cylindrical Roller Bearings:	
SKF	76.27
FAG	52.43
INA	52.43
All Others	55.65
Spherical Plain Bearings:	
SKF	118.98
FAG	74.88
All Others	114.52

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28776 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–801]

Final Results of Expedited Sunset Review: Ball Bearings From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Ball Bearings from Romania.

SUMMARY: On April 1, 1999, the U.S. Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on ball bearings from Romania pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate response filed on behalf of a domestic interested party and inadequate response from respondent interested parties in this review, the Department conducted an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to recurrence of dumping at

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[8] See Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043 (October 17, 1997) (1995–96).

[9] See Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590 (July 1, 1999) (1997–98).

the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The products covered by this order are ball bearings ("BBs") and parts thereof from Romania. For a detailed description of the products covered by this order, including a compilation of all pertinent scope determinations, refer to the notice of final results of expedited sunset reviews on antifriction bearings from Japan, publishing concurrently with this notice.

History of the Order

On May 3, 1989, the Department issued a final determination of sales at less than fair value ("LTFV") with respect to imports of BBs from Romania.[1] The antidumping duty order on BBs was issued by the Department on May 15, 1989, and the dumping margins that were found in the final determination of sales at LTFV were confirmed.[2] Since the imposition of this order, the Department has conducted several administrative reviews.[3] The order remains in effect for all manufacturers and exporters of the subject merchandise.

This review covers all producers and exporters of BBs from Romania.

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping duty order on BBs from Romania pursuant to section 751(c) of the Act. By April 16,1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*, we received notices of intent to participate from The Torrington Company ("Torrington") and MPB Corporation ("MPB"), Roller Bearing Company of America ("RBC"), Link-Belt Bearing Division ("Link-Belt"), New Hampshire Ball Bearing, Inc. ("NHBB"), and NSK Corporation ("NSK"). Each of these parties claimed status as domestic interested parties on the basis that they are domestic producers, manufacturers, or wholesalers of BBs.

Within the deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), on May 3, 1999, the Department received complete substantive responses from each of these domestic interested parties. In addition, Tehnoimportexport S.A. ("TIE") notified the Department that it would not file a substantive response in the review of the BBs order. We received substantive comments from Torrington and MPB, RBC, NHBB, and NSK, on May 12, 1999, within the deadline. We did not receive a substantive response from Link-Belt.

On May 21, 1999, we informed the International Trade Commission ("Commission") that, on the basis of inadequate response from respondent interested parties, we were conducting an expedited sunset review of this order consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). (*See* Letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.)

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on August 5, 1999, the Department determined that the sunset review of the antidumping duty order on BBs from Romania is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the Commission the magnitude of the margin likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Adequacy

As noted above, we notified the Commission that we intended to conduct an expedited review of this order. On June 10, 1999, we received comments on behalf of Torrington and MPB supporting our determination to conduct an expedited review. NHBB and NSK also submitted comments on whether an expedited sunset review was warranted. In both submissions, both parties assert that most of the domestic interested parties that submitted substantive responses are in favor of revocation of the Department's various antidumping duty orders on antifriction bearings. These parties also offered new argument regarding the likely effect of revocation of these orders.

The magnitude of domestic support for continuation or revocation of an order, however, does not enter into the Department's determination of adequacy of participation nor, for that matter, the Department's determination of likelihood. We made clear in our regulations that a complete substantive response from one domestic interested party, which we have received in this case from Torrington and MPB, RBC, NHBB, and NSK, would be considered adequate for purpose of continuing a sunset review (*see* section 351.218(e)(1)). Nowhere in the statute or legislative history is there reference to consideration of domestic industry support during the course of a sunset review (other than the statutory provision that if there is *no* domestic industry interest in continuation of the order, the Department will revoke the order automatically). In fact, the Senate Report (at S. Rep. No. 103–412, at 46 (1994)) makes clear that the purpose of adequacy determinations in sunset reviews is for the Department to determine whether to issue a determination based on the facts available without further fact-gathering. Further, the statute, at section 751(c)(1), specifies that the Department is to determine whether revocation of an order would be likely to lead to continuation or recurrence of dumping. Section 752(c) specifies that the Department is to consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the order.

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[1] See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania, May 3, 1989 54 FR 18992.

[2] See Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings and Parts Thereof From Romania: Antidumping Duty Order, May 15, 1989 54 FR 20900.

[3] See Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings and Parts Thereof From Romania; Final Results of Antidumping Duty Administrative Review, 64 FR 35590 (July 1, 1999); 63 FR 33320 (June 18, 1998); 62 FR 54043 (October 17, 1997); 58 FR 39729 (July 26, 1993); 57 FR 28360 (June 24, 1992); and 56 FR 31692 (July 11, 1991).

[4] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et. al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* Section II.A.3).

In their substantive responses, Torrington, MPB, and RBC argue that revocation of the antidumping duty order on the subject merchandise would likely lead to the recurrence of dumping. They base this conclusion on the fact that imports declined significantly while dumping margins remained at de minimis levels. Torrington and MPB argue that the post-order volume of imports for complete unmounted BBs, which they assert is the only category for which statistics are available on a consistent basis, have declined significantly since the issuance of the order. They argue further that, since the post-order import volume was 83% lower than the pre-order volume, the Department should conclude that dumping is likely to recur if the order were revoked. In conclusion, Torrington and MPB assert that no "good cause" exists to consider other factors, such as sales below the cost of production.

NHBB and NSK assert that revocation of the order is not likely to result in continuation or recurrence of dumping. NHBB bases its assertion on the fact that dumping would undercut the U.S. domestic price structure, thus causing injury to the very industry of which foreign owners are a part. NSK claims that the margin of dumping would be no higher than the margin for TIE found in the most recent administrative review (*i.e.*, 0.02 percent).

In their rebuttal comments, Torrington and MPB assert that the Department should take into account the submitter's affiliation in its consideration of comments of various parties filing as domestic producers. Further, citing to Ball Bearings and Parts Thereof From Thailand; Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order, 61 FR 20799, 20800 (May 8, 1996), they argue that the Department has recognized that domestic producers who are affiliated with subject foreign producers and exporters do not have a common "stake" with the petitioner in the maintenance of the order. Additionally, Torrington and MPB argue that other parties' comments addressing issues other than margins and import volumes should not be considered unless such parties establish "good cause" to consider such additional factors, which, in this review, they have not done.

As discussed in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were removed. Therefore, as noted above, in determining whether revocation of an order is likely to lead to continuation or recurrence of dumping, the Department considers the margins determined in the investigation and subsequent administrative reviews and the volume of imports. Whatever relevance the arguments of NHBB and NSK concerning possible disincentives for producers and/or exporters to dump in the U.S. market might have had is mooted by the evidence that dumping continues and has continued over the life of the order.

As set forth in the Sunset Policy Bulletin (section II.A.3) and consistent with the SAA at 889–90 and the House Report at 63, where dumping was eliminated after the issuance of the order and import volumes from the subject merchandise declined significantly, the Department normally will determine that revocation of the antidumping duty order would be likely to lead to recurrence of dumping. Although dumping has been eliminated, shipments of the subject merchandise have declined dramatically. In addition, respondent interested parties waived participation in this review. Therefore, we determine that, consistent with section II.A.3 of the Sunset Policy Bulletin, dumping is likely to recur if the order were revoked. Because we have based this determination on the fact that import volumes of the subject merchandise declined significantly after the issuance of the order, we have not addressed the comments submitted by Torrington and MPB with respect to "good cause" nor have we addressed the arguments of other interested parties regarding the condition of the U.S. market.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department normally will provide to the Commission a margin from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.)

In their substantive responses, Torrington, MPB, and RBC argue that the margins that are likely to prevail should the order be revoked are the dumping margins found for each company in the original investigation (as opposed to margins calculated in succeeding annual administrative reviews), including margins based on best information available, except where the most current margin, increased by the Department's duty-absorption determination, exceeds the original investigation margin.

NHBB argues that the dumping margins likely to prevail if the order were revoked are *de minimis*. NHBB goes on to argue that it would be illogical for companies with significant U.S. bearings investments to undercut that investment by dumping. In addition, NHBB argues that the Department should not report margins from the original investigation. In support of this argument, NHBB notes that the SAA provides that, in certain instances, it is more appropriate to rely on a more recently calculated margin. NHBB asserts that one such instance is where, as in the bearings cases, dumping margins have declined over the life of the order and imports have remained steady or increased. Additionally, NHBB argues that, because the structure of the U.S. domestic industry that exists today bears little resemblance to the industry when the antidumping duty order was imposed in 1989, the rates from the original investigation are inappropriate as indicators of the rates that would be found upon revocation. Finally, NHBB argues that, in light of changes in the methodology used to calculated antidumping duty margins introduced by the Uruguay Round, use of margins calculated by the Department prior to the URAA would be unfair and would be contrary to the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Similarly, NSK argues that the margins likely to prevail are *de minimis*. As support, NSK argues that, were the order not in existence, the Department would apply the average-to-average methodology used in an investigation as opposed to the transaction-to-average methodology common to administrative reviews to measure the extent of any dumping. In such a case, NSK believes any margin found would be below the two percent *de minimis* level applicable in investigations. NSK argues further that, the Department's unorthodox approach during the original investigation, plus the liberal use of best information available, skewed the results of the original investigation seriously, rendering those results inappropriate indicators of the magnitude of the margin likely to prevail if the order were revoked. Finally, NSK also argues that dumping margins have declined over time while, at the same time, importations have remained at or around 20 percent of the U.S. market. As support, it cites to The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, USITC Pub. 2900, Inv. No. 332–334, at 14–26—14–31 (June 1995).

In their rebuttal comments, Torrington and MPB argue that other parties' comments ignore the Department's stated policies regarding the selection of margins likely to prevail. Citing to the Sunset Policy Bulletin, Torrington and MPB argue that the Department's policies are clear—normal reliance on the margins from the investigation as the only margins that reflect the behavior of exporters without the discipline of the order. Torrington and MPB argue that the two-percent *de minimis* standard is not applicable to sunset reviews. Further, there is no authority which would authorize or justify the rejection of the investigation rate on the basis of the particular methodology used at the time of the investigation. Additionally, with respect to claims that more recent margins should be used based on declining margins accompanied by steady or increasing imports, Torrington and MPB argue that it is the responsibility of such claimants to provide information regarding companies' relative market share. Since no such information was provided, Torrington and MPB argue that the Department should not accept these assertions.

We agree with Torrington, MPB, and RBC that, normally, we will provide a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. As noted above, exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations.

In the Sunset Policy Bulletin we indicated that, consistent with the SAA at 889–90 and the House Report at 63, we may determine, in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, that a more recently calculated rate reflects that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order was revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company. The Sunset Policy Bulletin provides that we will entertain such considerations in response to argument from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporter's behavior absent the discipline of an order, the Department normally will consider the company's relative market share, with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market-share information, in past sunset reviews, where market-share information was not available, we relied on changes in import volumes between the periods before and after the issuance of the order. *See, e.g.*, Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden, 63 FR 67658 (December 8, 1998), and Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China, 64 FR 30310 (June 7, 1999).

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information. Generic arguments that margins decreased over the life of the order while, at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic argument may disguise company-specific behavior demonstrating increased dumping coupled with increased market share.

Our review of import statistics, provided by Torrington and MPB, covering BBs from Romania demonstrates that imports have declined significantly since 1988, dropping from 13.5 million units to 0.7 million units. Although imports increased to 2.5 million units in 1997, they remain significantly below pre-order volumes. While we acknowledge that we may select a more recently calculated margin when declining (or no) margins are accompanied by steady or increasing imports, we do not agree that the facts of this case support such a determination. Although dumping margins, in the instant case, have remained at levels below *de minimis* levels from 1990 through 1998, the record reflects a dramatic decline in import levels. As mentioned above, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where there is a significant decline in import levels. Therefore, we find that the use of a more recently calculated margin in its report to the Commission would be inappropriate. Rather, we find that the margins from the original investigation reflect the behavior of exporters absent the discipline of the order. Therefore, consistent with the Sunset Policy Bulletin, we will report to the Commission the margins indicated in the Final Results of the Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to recurrence of dumping at the margins indicated below:

Manufacturer/ Exporter	Margin (percent)
Ball Bearings:	
TIE	39.61
All Others	39.61

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28777 Filed 11–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054]

Final Results of Expedited Sunset Review: Tapered Roller Bearings, Four Inches or Less, from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Tapered roller bearings, four inches or less, from Japan.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping finding on tapered roller bearings from Japan (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, a waiver) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping finding is tapered roller bearings ("TRBs"), four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately, from Japan. The scope of the finding was clarified in 1981. At that time, the Department ruled that TRBs that are greater than four inches in outer diameter were outside the scope. Moreover, the Department found that unfinished TRB components (cups, cones, and retainers) that had been forged and rough machined but not finished were outside the scope.[1] The subject merchandise is currently classifiable under HTS items 8482.20.00 and 8482.99.30. While the HTS item numbers are provided for convenience and customs purposes, the written description remains dispositive.

History of the Finding

On September 6, 1974, the Treasury Department ("Treasury") published its antidumping determination of sales at less than fair value ("LTFV") (39 FR 32337). On August 18, 1976, Treasury published its Final Affirmative Antidumping Duty Determination, T.D. 76–227 (41 FR 34974). Treasury did not publish any dumping margins in its original finding.

Over the life of the finding, the Department has conducted several administrative reviews.[2] This sunset

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[1] *See Tapered Roller Bearings and Certain Components Thereof from Japan: Clarification of Scope of Antidumping Finding*, 46 FR 40350 (August 10, 1981).

[2] *See Tapered Roller Bearings and Certain Components Thereof from Japan: Final Results of Administrative Review and Revocation in Part of Antidumping Finding*, 47 FR 25757 (June 15, 1982); *Tapered Roller Bearings and Certain Components Thereof from Japan; Final Results of Administrative Review of Antidumping Finding*, 49 FR 8976 (March 9, 1984); *Tapered Roller Bearings Four Inches or Less in Outside Diameter from Japan; Final Results of Antidumping Duty Administrative Review*, 55 FR 22369 (June 1, 1990); *Tapered Roller Bearings Four Inches or Less in Outside Diameter from Japan; Final Results of Antidumping Duty Administrative Review*, 55 FR 38720 (September 20, 1990); *Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 26054 (June 6, 1991); as amended, *Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Amendment to Final Results of Antidumping Finding Administrative Review*, 56 FR 31113 (July 9, 1991); *Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 65228 (December 16, 1991); *Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR

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review covers imports from all known Japanese producers/exporters, except NTN Toyo Bearing Company, Ltd. and NTN Bearing Corporation of America, for which the finding was revoked.[3]

The Department made a duty absorption finding in the final results of the 1995–96 administrative review.[4]

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping finding on TRBs, four inches and under, from Japan (64 FR 15727), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of the Timken Company ("Timken") and the Torrington Company ("Torrington"), American NTN Bearing Manufacturing Corporation ("ANBM") and the NTN Bower Corporation, and Koyo Corporation of the U.S.A.—Manufacturing Division ("KCUM") on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* We received complete substantive responses on behalf of Timken, ANBM and NTN Bower, and KCUM on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).

Timken and Torrington claimed interested party status under 19 U.S.C. 1677(9)(C) as U.S. manufacturers of TRBs. Timken stated that it filed the original petition that led to the antidumping finding. In addition, Timken stated that it has participated in all administrative reviews of the finding. ANBM and NTN Bower also claimed interested party status under 19 U.S.C. 1677(9)(C) as U.S. manufacturers of a domestic like product. Additionally, ANBM and NTN Bower stated that they are related to a foreign producer/exporter and are importers of subject merchandise. KCUM also claimed interested party status under 19 U.S.C. 1677(9)(C) as a U.S. manufacturer of a domestic like product. KCUM stated that it is a division of Koyo Corporation of U.S.A., a wholly-owned subsidiary of Koyo Seiko Co., Ltd. a producer in Japan of subject merchandise and an importer of subject merchandise. Moreover, KCUM stated that it participated in all administrative reviews by the Department.

On May 3, 1999, the Department received a waiver from Koyo Seiko Corp., Ltd. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this finding.

On May 12, 1999, the Department received rebuttal comments from ANBM and NTN Bower and Timken.[5]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On August 5, 1999, the Department determined that the sunset review of the antidumping duty finding on TRBs, four inches and under, from Japan is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[6]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

4975 (February 11, 1992); as amended, *Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Amended Final Results of Antidumping Duty Administrative Review,* 57 FR 9105 (March 16, 1992); *Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 58 FR 64720 (December 9, 1993); as amended, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 59 FR 2594 (January 18, 1994); *Tapered Roller Bearings, Four Inches or Less in Diameter, and Components Thereof, from Japan; Final Results and Partial Termination of Antidumping Duty Administrative Review,* 59 FR 56035 (November 10, 1994); *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Affirmation of the Results of Redetermination Pursuant to Court Remand,* 60 FR 3624 (January 18, 1995); as amended, *Tapered Roller Bearings, Four Inches or Less In Outside Diameter, and Components Thereof, from Japan; Amendment to Affirmation of the Results of Redetermination Pursuant to Court Remand,* 60 FR 45398 (August 31, 1995); *Tapered Roller Bearings, Four Inches or Less In Outside Diameter, and Components Thereof, from Japan; Amendment to the Final Results of Review,* 60 FR 62386 (December 6, 1995); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding,* 61 FR 57629 (November 7, 1996); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 2558 (January 15, 1998); as amended, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Amended Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13391 (March 19, 1998); *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan, and Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews,* 63 FR 17815 (April 10, 1998); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 63 FR 20585 (April 27, 1998); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 63860 (November 17, 1998); *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews,* 64 FR 15729 (April 1, 1999).

[3] *See Tapered Roller Bearings and Certain Components Thereof from Japan; Final Results of Administrative Review and Revocation in Part of Antidumping Finding,* 47 FR 25757 (June 15, 1982).

[4] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 2558 (January 15, 1998).

[5] On May 6, 1999, the Department received and granted a request from Timken for a two working-day extension of the deadline for filing rebuttal comments in this sunset review. This extension was granted for all participants eligible to file rebuttal comments in this review. The deadline for filing rebuttals to the substantive comments therefore became May 12, 1999.

[6] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et al.; Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 42672 (August 5, 1999).

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of a antidumping finding is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the finding, (b) imports of the subject merchandise ceased after the issuance of the finding, or (c) dumping was eliminated after the issuance of the finding and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of a finding is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In this instant review, the Department received a waiver of participation from Koyo and did not receive a substantive response from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, Timken argues that revocation of the finding on TRBs from Japan would be likely to lead to continuation or recurrence of dumping due to the fact that there has been continuous dumping for more than twenty-five years of significant import volumes of subject TRBs and Japanese producers have continued to export significant quantities of subject merchandise to the United States (*see* May 3, 1999, substantive response of Timken at 7). Timken further argues that the Asian financial crisis has had the effect of limiting the market for TRBs in Japan and the rest of Asia, leaving Japanese TRB producers with excess capacity and the need to export more than they have in the past. Timken maintains that the result has been a forty percent increase of exports of TRBs to the U.S. from 1997 to 1998 (*see id.* at 10). Moreover, Timken argues that Japanese selling patterns in Canada and Mexico indicate that absent the finding, Japanese producers would increase exports to the U.S. by lowering prices. Timken concludes that since the Japanese are presently selling in the U.S. at LTFV, even lower prices would mean greater levels of dumping (*see id.* at 11). In sum, Timken argues that the consistent history of dumping with the discipline of the finding in place, together with the impact of the Asian financial crisis and Japanese sales behavior in other countries demonstrate that dumping would continue or recur if the finding were revoked.

In their substantive response, ANBM and NTN Bower (collectively, "NTN") argue that revocation of the finding would have a minimal, if any, impact upon the U.S. market for the following reasons. First, they maintain that producers in the subject country have invested in production facilities in the U.S. since the imposition of the finding, thereby decreasing the need to import subject merchandise from Japan. They further claim that imports from non-subject countries will continue to increase, therefore reducing the competitive threat from the subject country to the U.S. market. Finally, they argue that the U.S. bearing industry is financially secure (*see* May 3, 1999, substantive response of NTN at 3).

KCUM, in its substantive response, argues that revocation of the antidumping finding would not have much of an effect on the U.S. market, prices, or the industry for two reasons. First, KCUM maintains that the U.S. market and the role of imports in the market have changed substantially over the past twenty years, and foreign producers whose imports have been subject to the finding have moved substantial production facilities to the U.S. Therefore, KCUM argues, if the finding is revoked, KCUM will continue to produce significant quantities of bearings in the U.S. Second, KCUM argues that foreign producers subject to the finding have much smaller market shares with limited ability to influence prices in the market. The conclusion KCUM draws is that the TRB market in the U.S. is subject to conditions that affect prices to which the existence or revocation of the antidumping finding is irrelevant (*see* May 3, 1999, substantive response of KCUM at 4–5).

In its rebuttal comments, Timken states that the existence of manufacturing facilities in the U.S. is not relevant to the likelihood determination because despite the fact that such facilities have been in operation for many years, dumping of subject merchandise from Japan in substantial amounts has continued (*see* May 12, 1999, rebuttal of Timken at 3–4). Timken further argues that any significant effect that onshore production was going to have on dumped imports would have demonstrated itself by now (*see id.* at 5). Moreover, Timken rebuts NTN's assertion that revocation will not have an effect because non-subject imports of TRBs will increase. Timken argues that there is no evidence that, should the finding be revoked, NTN or any other Japanese producer would raise its import prices. Timken maintains that since Japanese producers sell at current LTFV prices or lower, there is little likelihood that foreign producers of non-subject merchandise would be able to increase their market share (*see id.* at 5–6). Finally, Timken rebuts KCUM's argument that the U.S. market and the role of imports in the market have changed substantially over the past twenty years. Timken maintains that since KCUM does not affirm that market conditions will change in any significant way, on the surface, KCUM's assertion supports the proposition that dumping will continue if the finding were revoked because dumping occurs at present (*see id.* at 4–5).

NTN, in its rebuttal, argues that Timken relies heavily on the assumption that the Asian economic situation will continue as it has for the foreseeable future. NTN, however, states that more recent economic trends indicate that the Japanese, and Asian economies in general, are on the verge of recovery (*see* May 12, 1999, rebuttal of NTN at 1–2). Finally, NTN maintains that Timken also heavily relies on the duty absorption rates in arguing likely dumping levels. However, NTN points out that the rates cited by Timken, as well as the finding of duty absorption itself, are the subject of litigation before the Court of International Trade (see id. at 1–2).

The Department agrees, based on an examination of the final results of administrative reviews, that dumping margins above *de minimis* levels have continued throughout the life of the finding for many Japanese producers/exporters.[7] As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of a finding in place, the Department may reasonably infer that dumping would continue if the discipline were removed. The Department also agrees that following the imposition of the finding, imports of the subject merchandise have continued throughout the life. Since that time, imports of TRBs from Japan have fluctuated greatly, showing no overall trend.[8]

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[7] *See* footnote 2.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the finding is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a *de minimis* level continues in effect for exports of the subject merchandise for at least one known Japan producer/exporter. Therefore, given that dumping has continued over the life of the finding and respondent interested parties waived their right to participate in this review before the Department, we determine that dumping is likely to continue or recur if the finding were revoked. Whatever relevance the arguments of those parties in support of revocation might have had concerning possible disincentives for producers and/or exporters to dump in the U.S. market, those arguments are mooted by the evidence that dumping continues and has continued over the life of the order.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the finding was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.) Further, the *Sunset Policy Bulletin* states that in a sunset review of an antidumping finding where the original investigation was conducted by Treasury and no company-specific margin or "all others" rate was included in the Treasury finding, the Department normally will provide to the Commission the company-specific margin from the first administrative review published by the Department in the **Federal Register**. For any company not covered in the first administrative review, the Department normally will provide to the Commission, as the margin for any new company not reviewed by Treasury, the first "new shipper" rate established by the Department for that order (*see* section II.B.1).

As noted above, Treasury, in its original finding, did not publish any dumping margins. Therefore, consistent with section II.B.1 of the *Sunset Policy Bulletin*, the Department normally will select the company-specific margins from the first final results of administrative review conducted by the Department as the magnitude of the margin of dumping likely to prevail if the finding is revoked. Exceptions to this rule include the use of a more recently calculated rate, where appropriate, and consideration of duty absorption findings.

In its substantive response, Timken recommends that the Department report the following dumping margins to the Commission: 20.56 percent for Koyo Seiko, 17.42 percent for NSK, and the new shipper's rate of 18.07 percent for all companies not reviewed in the first review period (*see* May 3, 1999, substantive response of Timken at 14). Moreover, Timken suggests that the Department deviate from its general practice of selecting the margins from the original investigation due to the fact that two major Japanese producers were found to be absorbing duties (*see id.* at 15–16). Timken also points out that in the *Sunset Policy Bulletin* the Department stated that where it has found company-specific duty absorption, it will report the greater of the margin it would normally report or the most recent margin for that company adjusted to account for the Department's findings on duty absorption (*see id.* at 15 and *Sunset Policy Bulletin*). In sum, Timken recommends that if the Department conducts an expedited review, it should rely on the evidence from the 1995–96 administrative review and forward the margins, as adjusted for duty absorption, for the companies from this review (*see id.* at 16).

NTN, in its substantive response, maintains that the dumping margin likely to prevail if the order is revoked would be 0.00 percent. However, NTN alternatively requests that the Department employ margins that were determined during the more recent administrative reviews of the subject merchandise (*see* May 3, 1999, substantive response of NTN at 3).

In its substantive response, KCUM states that it cannot predict the likely effect of revocation of the finding since the existence of the finding does not have much of an effect on the prices at which bearings are sold in the United States, and, hence, on the margins generated on those sales (*see* May 3, 1999, substantive response of KCUM at 5). Moreover, KCUM argues that fluctuations in the exchange rate between the dollar and the Japanese yen have a significant impact on dumping margins (*see id.* at 6). They argue that the results of past administrative reviews reveal that antidumping margins tend to increase in periods in which the yen appreciates against the dollar and vice versa. As a result, KCUM argues, the margins that would prevail if the finding were revoked cannot be determined because they are dependent on an entirely exogenous factor (*see id.* at 6). In any case, KCUM strenuously objects to the use of the margins determined in the first administrative review conducted by the Department, arguing that the finding is hopelessly obsolete and cannot serve as a realistic indicator of the market and pricing conditions that would exist today if the finding were revoked (*see id.* at 6). Therefore, KCUM concludes that the Department should use the results of more recent administrative reviews when determining the margins that would exist for Koyo (*see id.* at 7).

Because no information is available regarding the magnitude of the margins calculated by Treasury, the Department normally would find that the margins calculated in its first administrative review are probative of the behavior of exporters absent the discipline of the order. Although both NTN and KCUM suggest that margins from the more recent administrative reviews are more appropriate than margins from the first administrative review, they merely cite to the age of such margins. They do not demonstrate, based on a pattern of decreasing margins coupled with steady or increasing imports, that the more recent margins are probative of the behavior of exporters absent the discipline of the order. Therefore, the Department finds that the margins from the first administrative review are probative of the behavior of Japanese producers/exporters of subject merchandise absent the disciple of the order.

As noted above, the Department determined in the final results of the 1995–96 administrative review that two Japanese producers/exporters, Koyo

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[8] The Department bases this determination on information submitted by Timken in its May 3, 1999, submission, as well as U.S. IM146 Reports, U.S. Department of Commerce statistics, U.S. Department of Treasury statistics, and information obtained from the U.S. International Trade Commission.

Seiko and NSK, were absorbing duties.[9] Consistent with the statute and the *Sunset Policy Bulletin*, the Department will notify the Commission of its findings regarding duty absorption.

Additionally, the *Sunset Policy Bulletin* refers to the SAA at 885 and the House Report at 60, and provides that where the Department has found duty absorption, the Department normally will report to the Commission the higher of the margin that the Department otherwise would have reported or the most recent margin for that company, adjusted to account for the Department's findings on duty absorption.

In this case, the margins adjusted to account for the Department's duty absorption findings are less than the margins we would otherwise report to the Commission. As such, the Department will report to the Commission the margins from the first administrative review as contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter	Margin (percent)
Koyo Seiko Co.	20.56
Nippon Seiko K.K. Ltd. (NSK)	17.42
Auto Dynamics International of Japan	18.07
Caterpillar Mitsubishi, Ltd.	16.92
Deer Island Industries, Ltd.	9.80
Nachi Fujikoshi Corp./ Kanematsu-Gosho, Ltd./ Nachi America	8.30
Nachi Fujikoshi Corp./ Kanematsu/Gosho, Ltd./ Nachi Western	18.07
Nachi Fujikoshi Corp./ Kanematsu/Gosho, Ltd./ all other purchasers	8.30
Kobe Steel	18.07
Komatsu, Ltd.	18.07
Kubota, Ltd.	18.07
Maekawa Bearing Manufacturing Co., Ltd.	0.71
Maekawa Bearing Manufacturing Co., Ltd./Daido Enterprising Co., Ltd.	16.92
Maekawa Bearing Manufacturing Co., Ltd./Hajime Industries, Ltd.	16.92
Maekawa Bearing Manufacturing Co., Ltd./Taisei Industries, Ltd.	16.92
Maekawa Bearing Manufacturing Co., Ltd./Schneider Engineering, Ltd.	18.07
Marubeni Corp.	18.07
Mitsubishi Corp.	16.92
Nachi Fujikoshi Corp.	18.07
Naniwa Kogyo Co., Ltd.	18.07
Nichimen Co.	16.92
Nissho-Iwai Co., Ltd.	16.92
Sumitomo Shoji Kaisha	3.40
Sumitomo Yale Co., Ltd.	16.92
Tatsumiya Kogyo Co., Ltd.	18.07
Toyo Kogyo Co., Ltd.	3.40
Toyosha Co., Ltd.	16.92
United Trading Co., Ltd.	9.80
All Others	18.07

Third country resellers	Margin (percent)
Federal Mogul Canada, Ltd.	18.07
Flanders Enterprises, Ltd.	16.92
John Deere Welland Works (Canada)	18.07
Nachi Canada, Ltd.	18.07
Superior Bearing Industrial Supplies, Ltd. (Canada)	18.07

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28778 Filed 11–3–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801]

Final Results of Expedited Sunset Reviews: Antifriction Bearings From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Antifriction Bearings from France.

SUMMARY: On April 1, 1999, the U.S. Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on ball bearings, cylindrical roller bearings, and spherical plain bearings (collectively, "antifriction bearings") from France pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and inadequate responses from respondent interested parties in each of these reviews, the Department conducted expedited sunset reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Result of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The products covered by these orders are antifriction bearings ("AFBs") from France, which include ball bearings ("BBs"), cylindrical roller bearings ("CRBs"), and spherical plain bearings ("SPBs") and parts thereof from France. For a detailed description of the products covered by these orders, including a compilation of all pertinent scope determinations, refer to the notice of final results of expedited sunset reviews on AFBs from Japan, publishing concurrently with this notice.

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[9] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558 (January 15, 1998).

History of the Orders

On May 3, 1989, the Department issued a final determination of sales at less than fair value on imports of AFB's from France (54 FR 19092). On May 15, 1989, the Department published in the **Federal Register** (54 FR 20902) the antidumping duty orders on the subject merchandise.

As part of these antidumping duty orders, the Department established a estimated weighted-average dumping margin for three respondents, Compagnie d'Applications Mecaniques S.A. (SKF), Societe Nouvelle de Roulements (SNR), and Roulements S.A. (INA), and an "all others" rate.[1] There have been several administrative reviews of these orders.[2] In the 1995–1996, 1997–1998 administrative reviews, the Department found that antidumping duties were being absorbed.[3]

The antidumping duty orders remain in effect for all French producers and exporters of AFBs from France.

Background

On April 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on AFBs from France pursuant to section 751(c) of the Act. By April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulation*, we received notices of intent to participate from the following parties: Link-Belt Bearing Division ("Link-Belt"); The Torrington Company ("Torrington") and MPB Corporation ("MPB"); Roller Bearing Company of America, Inc. ("RBC"); New Hampshire Ball Bearings, Inc. ("NHBB")[4]; and NSK Corporation ("NSK"). Each of these parties claimed status as domestic interested parties on the basis that they are a domestic producer, manufacturer, or wholesaler of one or more of the products subject to these orders.[5]

Within the deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), on May 3, 1999, the Department received complete substantive responses from each of these domestic interested parties, with the exception of Link-Belt. In addition, SKF France and Sarma (collectively "SKF") notified the Department that they would not file a substantive response in the sunset reviews of the AFB orders. We received rebuttal comments from Torrington, MPB, and NSK on May 12, 1999, within the deadline.

On May 21, 1999, we informed the International Trade Commission ("Commission") that, on the basis of inadequate responses from respondent interested parties, we were conducting expedited sunset reviews of these orders consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). (*See* Letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.)

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). Therefore, on August 5, 1999, the Department determined that the sunset reviews of the antidumping duty orders on AFBs from France are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[6]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and import volume of the subject merchandise for the period before the issuance of the antidumping duty order and the period after the issuance of the antidumping duty order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the Commission the magnitude of the margin likely to prevail if the order is revoked.

The Department's determinations concerning adequacy, continuation or recurrence of dumping, and magnitude of the margin are discussed below. In addition, the parties' comments with respect to adequacy, the continuation or recurrence of dumping, and the magnitude of the margin are addressed in the respective sections below.

Adequacy

As noted above, we notified the Commission that we intended to conduct expedited reviews of these orders. On June 10, 1999, we received comments on behalf of MPB and Torrington, supporting our determination to conduct expedited reviews.[7] On June 10, 1999, NHBB and NSK Corporation also submitted comments on whether expedited sunsets review were warranted. In their submissions, NHBB and NSK assert that most of the domestic interested parties that submitted substantive responses favor revocation of the various orders on antifriction bearings. These parties also offered new argument regarding the likely effect of revocation of the orders.

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[1] In the Antidumping Duty Orders of AFBs from France, dumping margins for French producers and exporters of BBs, CRBs, and SPBs ranged from 11.03 percent to 66.42 percent.

[2] 1. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France: Final Results of Antidumping Duty Administrative Review*, 56 FR 31748 (July 11, 1991). 2. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; et al.: Final Results of Antidumping Duty Administrative Review*, 57 FR 28360 (June 24, 1992). 3. *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993). 4. *Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Order*, 60 FR 10900 (February 28, 1995). 5. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472 (December 17, 1996), as corrected, *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 62 FR 149 (January 2, 1997). 6 *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081 (January 15, 1997). 7. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997). 8. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998). 9. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999)

[3] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore; Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore; Sweden and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 61963 (November 20, 1997), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999).

[4] NHBB states that it is affliated with the following respondent producers, exporters, and importers: Minebea Co., Ltd., NMB Singapore Ltd., Pelmec Industries (Pte.) Ltd., and NMB Corporation.

[5] Torrington, RBC, and NHBB filed with respect to BBs, CRBs, and SPBs. Link-Belt filed with respect to BBs and CRBs. MPB filed with respect to BBs and CRBs. NSK filed with respect to BBs only.

[6] *See Tapered Roller Bearings, 4 Inches and Under From Japan, et. al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 42672 (August 5, 1999).

The magnitude of domestic support for continuation or revocation of an order, however, is not a consideration in the Department's determination of adequacy of participation nor, for that matter, the Department's determination of likelihood. The Department made clear in its regulations that a complete substantive response from one domestic interested party would be considered adequate for purpose of continuing a sunset review (see section 351.218(e)(1)). Nowhere in the statute or legislative history is there reference to consideration of domestic industry support during the course of a sunset review (other than the statutory provision that, if there is *no* domestic industry interest in continuation of the order, the Department will revoke the order automatically). In fact, the Senate Report (at 46) makes clear that the purpose of adequacy determinations in sunset reviews is for the Department to determine whether to issue a determination based on the facts available without further fact-gathering. Further, the statute, at section 751(c)(1), specifies that the Department is to determine whether revocation of an order would be likely to lead to continuation or recurrence of dumping. Section 752(c) specifies that the Department is to consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the order.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. In its Sunset Policy Bulletin, the Department indicates that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive responses, Torrington, MPB, and RBC argue that revocation of the antidumping duty orders on the subject merchandise would be likely to lead to continuation of dumping. All three point out that, because dumping continued at levels above *de minimis* after the issuance of the orders, therefore, a consideration of import volumes is not necessary.

Nonetheless, using pre-and post-order import statistics for complete unmounted BBs, which Torrington and MPB assert is the only product category for which full time series data are available on a consistent basis, Torrington and MPB argue that post-order volumes are significantly lower than pre-order volumes. Torrington and MPB also assert that the same decline is evident from slightly aggregated value data covering CRBs. Based on the continued existence of dumping margins and the declining trend in imports after the imposition of the orders, Torrington and MPB assert that no "good cause" exists to consider other factors. However, in this regard, Torrington and MPB observe that, in each administrative review, the Department has found French producers selling below the cost of production.

NHBB argues that, given the "internationalization of operations" and the large percentage of foreign ownership of U.S. based companies, dumping would not be likely if the orders were revoked because any such dumping would undercut the U.S. domestic price structure, thus causing injury to the very industry of which foreign owners are a part. In addition, NHBB argues that the downward trend in the margins coupled with the change in the Department's margin-calculation methodology, brought about by the URAA, results in margins that are *de minimis*. NHBB asserts that dumping margins have declined significantly and trade data generally show that import volumes have not declined since the time of the investigations. For these reasons, NHBB claims that the decline in dumping margins and imports show that French producers do not need to dump to maintain U.S. market share. Therefore, it concludes, revocation of the orders will not likely lead to dumping.

NSK also argues that dumping margins have declined significantly and that imports have declined since the issuance of the antidumping duty orders. NSK explains that the fact that dumping margins have declined and imports remain at or around 20 percent of market share demonstrates that foreign companies do not have to dump if the orders were revoked. NSK adds that other factors for the Department's consideration in support of revocation of these orders include the lack of industry support and a change in the U.S. bearings industry.

In their rebuttal comments, Torrington and MPB assert that the Department should take into account the submitter's affiliation in its consideration of comments of various parties filing as domestic producers. Further, citing to Ball Bearings and Parts Thereof From Thailand: Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order, 61 FR 20799, 20800 (May 8, 1996), they argue that the Department has recognized that domestic producers who are affiliated with subject foreign producers and exporters do not have a common "stake" with the petitioner in the maintenance of the order. Additionally, Torrington and MPB argue that other parties' comments addressing issues other than margins and import volumes should not be considered unless such parties establish "good cause" to consider such additional factors, which in these reviews, they have not done.

As discussed in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were removed. Further, as noted above, in determining whether revocation of an order is likely to lead to continuation or recurrence of dumping, the Department considers the margins determined in the investigation and subsequent administrative reviews and the volume of imports.

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[7] These companies filed one submission providing comments on all ongoing sunset reviews covering bearings.

In the instant proceedings, dumping margins above *de minimis* continue to exist with respect to each of the orders. Therefore, given that dumping has continued over the life of the order and respondent interested parties waived their participation, we determine that dumping is likely to continue if the orders were revoked. Because we based this determination on the fact that dumping continued at levels above *de minimis*, we have not addressed the comments submitted by Torrington and MPB with respect to "good cause" and sales below the cost of production nor have we addressed the arguments of other interested parties regarding the condition of the U.S. market.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department normally will provide to the Commission a margin from the investigation because that is the only calculated rate that reflects the behavior or exporters without the discipline of an order in place. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, we normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations. (*See* sections II.B.2 and 3 of the Sunset Policy Bulletin.)

In their substantive responses, Torrington and MPB argue that the margins that are likely to prevail should the orders be revoked are the dumping margins found for each company in the original investigations (as opposed to margins calculated in succeeding annual administrative reviews), including margins based on best information available, except where the most current margin, increased by the Department's duty-absorption determination, exceeds the original investigation margin. With respect to BBs, RBC argues that the margins from the original investigation are the margins likely to prevail were the order to be revoked.

NHBB argues that the dumping margins likely to prevail if the orders were revoked would be *de minimis*. NHBB goes on to argue that it would be illogical for companies with significant U.S. bearings investments to undercut that investment by dumping. In addition, NHBB argues that the Department should not report margins from the original investigations. In support of this argument, NHBB notes that the SAA provides that, in certain instances, it is more appropriate to rely on a more recently calculated margin. NHBB asserts that one such instance is where, as in the bearings cases, dumping margins have declined over the life of the order and imports have remained steady or increased. Additionally, NHBB argues that, because the structure of the U.S. domestic industry that exists today bears little resemblance to the industry when the antidumping duty orders were imposed in 1989, the rates from the original investigation are inappropriate as indicators of the rates that would be found upon revocation. Finally, NHBB argues that, in light of changes in the methodology used to calculate antidumping duty margins introduced by the Uruguay Round, use of margins calculated by the Department prior to the URAA would be unfair and contrary to the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Similarly, NSK Corporation argues that the margins likely to prevail would be *de minimis*. As support, NSK Corporation argues that, were the orders not in existence, the Department would apply the average-to-average methodology used in an investigation as opposed to the transaction-to-average methodology common to administrative reviews to measure the extent of any dumping. In such a case, NSK Corporation believes that any margin found would be below the two percent *de minimis* level applicable in investigations. NSK Corporation argues further that, the Department's unorthodox approach during the original investigation, plus the liberal use of best information available, skewed the results of the original investigation seriously rendering those results inappropriate indicators of the magnitude of the margin likely to prevail were the orders to be revoked.

In their rebuttal comments, Torrington and MPB argue that other parties' comments ignore the Department's stated policies regarding the selection of margins likely to prevail and ignore the Department's duty-absorption findings. Citing to the Sunset Policy Bulletin, Torrington and MPB argue that the Department's policies are clear " normal reliance on the margins from the investigation as the only margins that reflect the behavior of exporters without the discipline of the order and rejection of margins from administrative reviews in which the Department found duty absorption. Torrington and MPB argue that the two-percent *de minimis* standard is not applicable to sunset reviews. Further, they contend that there is no authority which would authorize or justify the rejection of the investigation rate on the basis of the particular methodology used at the time of the investigation. Additionally, they argue that, with respect to claims that more recent margins should be used based on declining margins accompanied by steady or increasing imports, Torrington and MPB argue that it is the responsibility of such claimants to provide information regarding companies' relative market share. Since no such information was provided they contend, the Department should not accept these assertions since imports of certain BBs have actually declined since the imposition of the order.

In its rebuttal comments, NSK Corporation repeats its point that dumping margins have declined significantly over time with respect to imports of BBs while, at the same time, importations have remained steady or around 20 percent of the U.S. market, showing that foreign exporters do not have to dump to maintain market share.[8]

We agree with Torrington, MPB, and RBC that, normally, we will provide a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. With respect to NSK's argument concerning the magnitude of the margin likely to prevail, we disagree. As discussed above, we do find that there is a likelihood of continuation or recurrence of dumping. Furthermore, we find the level of dumping likely to prevail is best reflected by the dumping margins we calculated in the original investigation. Specifically, the Department finds that there is no basis to reject margins calculated in an investigation because of subsequent changes in methodology since changes do not invalidate margins calculated under the prior methodology. Therefore, the dumping margins from the original investigation are the only rates which reflect the behavior of exporters without the discipline of the order, regardless of the methodology used to calculate that margin or the use of best information available (*see* section 752(c)(3) of the Act). As noted above, exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations.

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[8] As support, NSK Corporation cites to The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, USITC Pub. 2900, Inv. No. 332–334, at 14–26—14–31 (June 1995).

With respect to NHBB's argument concerning the dumping margin likely to prevail, the Department disagrees. First, NHBB claims that dumping margins have declined over the life of the order and imports have remained steady or increased. However, NHBB provides no evidence to support these claims. Nothing submitted in the course of sunset proceedings indicates that imports have remained steady or increased. In fact, evidence submitted by Torrington and MPB indicate that 1998 import volumes of the subject merchandise are more than 8.1 percent below pre-order volumes (*see* Torrington and MPB's Substantive Response at 10). Regardless of the level of imports, dumping margins at levels above *de minimis* continue, as do imports of the subject merchandise.

In the Sunset Policy Bulletin, consistent with the SAA at 889–90 and the House Report at 63, we indicated that in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, it may be more appropriate to use a more recently calculated rate. Such a rate would reflect the fact that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order were revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company.

The Sunset Policy Bulletin provides that we will entertain considerations of such fact patterns in response to argument from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporter behavior absent the discipline of an order, we normally will consider a company's relative market-share data with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market-share information, in past sunset reviews where market-share information was not available, we relied on changes in import volumes between the periods before and after the issuance of the order. (*See, e.g., Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden,* 63 FR 67658 (December 8, 1998), and *Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China,* 64 FR 30310 (June 7, 1999).

Generic arguments that margins decreased over the life of the orders while, at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic arguments may disguise company-specific behavior demonstrating increased dumping coupled with increased market share. In the instant proceedings, we did not receive any company-specific arguments.

Additionally, the SAA at 885 and the House Report at 60, provide that duty absorption is a strong indicator that the current dumping margins calculated in reviews may not be indicative of the margins that would exist in the absence of an order. Since, once an order is revoked, the importer could achieve the same pre-revocation return on its sales by lowering its prices in the United States in the amount of the duty that was previously being absorbed. Therefore, in the Sunset Policy Bulletin we indicated that, in the case of duty absorption, we normally will determine that a company's current dumping margin is not indicative of the margin likely to prevail were the order to be revoked. Further, we indicated that normally we will provide to the Commission the higher of (1) the margin that we would otherwise have reported to the Commission or (2) the most recent margin for that company, adjusted to account for our findings on duty-absorption. For purposes of considering duty absorption for these sunset reviews, we relied on the level of duty absorption found in the administrative review initiated in 1998. See 64 FR 35590 (July 1, 1999).

In their comments, Torrington and MPB argue that the Sunset Policy Bulletin requires that the Department report to the Commission the higher of the margin from the original investigation or the margin from a more recent administrative review adjusted to reflect duty absorption findings. Although we found that duties were being absorbed during the 1998 administrative review (64 FR 35590) for BBs and CRBs from France by SKF and SNR, our calculations found the adjusted margins to be less than the rates from the original investigation.

As noted above, there is no evidence on the record to indicate that the margin of dumping for any particular producer/exporter decreased at the same time that it was increasing or maintaining U.S. market share nor is there evidence on the record to indicate corresponding increases in dumping margins and exports. Therefore, we are relying on the margins from the original investigations as probative of the behavior of producers/exporters without the discipline of the orders.

Based on the above analysis, we will report to the Commission the margins indicated in the Final Results of the Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturers/ Exporters	Margin (percent)
Ball Bearings:	
INA	66.18
SKF (including all relevant affiliates)	66.42
SNR	56.50
All others	65.13
Cylindrical Roller Bearings:	
INA	11.03
SNR	18.37
All others	17.31
Spherical Plain Bearings	
SKF	39.00
All others	39.00

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 19 CFR 351.305 of the Department's regulation. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation.

These five-year ("sunset") reviews and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28779 Filed 11–3–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–801]

Final Results of Expedited Sunset Reviews: Antifriction Bearings From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: antifriction bearings from the United Kingdom.

SUMMARY: On April 1, 1999, the Department of Commerce (the "Department") initiated sunset reviews of the antidumping duty orders on ball bearings, cylindrical roller bearings, and spherical plain bearings (collectively, antifriction bearings) from the United Kingdom (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 4, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The products covered by these orders are antifriction bearings ("AFBs") from the U.K., which includes ball bearings ("BBs") and cylindrical roller bearings ("CRBs") and parts thereof. For a detailed description of the products covered by these orders, including a compilation of all pertinent scope determinations, refer to the notice of final results of expedited sunset reviews on antifriction bearings from Japan, publishing concurrently with this notice.

History of the Order

The antidumping duty orders on antifriction bearings from the United Kingdom were published in the **Federal Register** on May 15, 1989 (54 FR 20910).[1] In those orders, the Department announced the weighted-average dumping margins for the following companies and all others:

Company	Ball bearings ("BBs")	Cylindrical roller bearings ("CRBs")
Barden Corporation (U.K.) Ltd.; the Barden Corporation.(Barden) *		
NSK Bearings Europe, Ltd. RHP Bearings; RHP Bearings, Inc. (NSK/RHP)	44.02	43.36
SKF (U.K.) Limited (SKF)	61.14	(**)
All-others	54.27	43.36

* Barden was not subjected to the original antidumping investigation.

** SKF made no shipments or sales pertaining to this category during the period of investigation.

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[1] See Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the United Kingdom, 54 FR 19120 (May 3, 1989), as amended, Antidumping Duty Orders and Amendments to the Final Determinations of Sales at Less than Fair Value: Ball Bearings, and Cylindrical Roller Bearings and Parts Thereof From the United Kingdom, 54 FR 20910 (May 15, 1989). The crux of the amendment was to reflect the International Trade Commission's determination that critical circumstances for certain respondents did not exist, which was contrary to the affirmative findings thereof by the Department, and to correct ministerial errors.

The Department has conducted numerous administrative reviews since that time.[2] The order remains in effect for all manufacturers and exporters of the subject merchandise. We note that, in the 1995–1996 and 1997–1998 administrative reviews, the Department found that duty absorption had occurred with respect to NSK/RPH and Barden's exports of the subject merchandise to the United States.[3]

Background

On April 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on AFBs from the U.K. (64 FR 15727) pursuant to section 751(c)(6)(A)(i) of the Act. The Department received Notices of Intent to Participate on behalf of Link-Belt Bearing Division ("Link-Belt"), The Torrington Company ("Torrington"), MPB Corporation ("MPB"), Roller Bearing Company of America, Inc. ("RBC"), NSK Corporation ("NSK"), and New Hampshire Ball Bearings, Inc. ("NHBB")[4] on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Also, the Department received a Notice of Intent to Participate on behalf of The Barden Corporation (U.K.) Ltd. and The Barden Corporation (collectively referred to as "Barden") on April 14, 1999.[5]

We received complete substantive responses on behalf of Torrington, RBC, and NHBB on May 3, 1999 and on behalf of NSK on April 30, 1999. Torrington, RBC, NSK, and NHBB claimed interested-party status as wholesalers, manufacturers, and producers of domestic like products under section 771(9)(C) of the Act. The Department received a complete substantive response from Barden on May 3, 1999. Barden claimed interested-party status under section 771(9)(A) of the Act as a producer, exporter, and importer of the subject merchandise. The Department received all the above substantive responses within 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i).

Also, except NHBB, all the above interested parties, both domestic and respondent, filed rebuttal comments according to section 351.218(d)(4) of the Sunset Regulations. Moreover, NSK and NHBB filed additional comments purportedly pertaining to the propriety of the Department's decision to execute an expedited, 120-day, sunset review.[6]

The Department also received, on May 3, 1999, a Waiver of Participation on behalf of SKF USA Inc. and SKF (U.K.) Limited (collectively referred to as "SKF"), within the deadline and according to the contents specified in section 351.218(d)(2) of the Sunset Regulations. SKF claimed interested-party status under section 771(9)(A) of the Act as a foreign producer and importer of the subject merchandise.

On May 21 and May 24, 1999, we informed the International Trade Commission ("Commission") that, on the basis of inadequate response from respondent interested parties, we were conducting expedited sunset reviews of these orders consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). (*See* letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.)

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on August 5, 1999, the Department determined that the sunset reviews of the antidumping duty orders on AFBs from the U.K. are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[7]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty

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[2] See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 56 FR 31769 (July 11, 1991), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany; et al., Amended Final Results of Antidumping Duty Administrative Reviews, 62 FR 32755 (June 17, 1997); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 57 FR 32969 (July 24, 1992), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews, 57 FR 59080 (December 14, 1992), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews, 63 FR 8908 (February 23, 1998); Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews, 58 FR 42288 (August 9, 1993), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews, 63 FR 18877 (April 16, 1998); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the United Kingdom; Notice of United States Court of International Trade Decision, 62 FR 42745 (August 8, 1997), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews, 62 FR 45795 (August 29, 1997); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom, 64 FR 49442 (September 13, 1999); Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews, 62 FR 61963 (November 20, 1997); Antifriction Bearings (Other Than Tapered Roller Bearings) and Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 63 FR 33320 (June 18, 1998), as amended, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy, Romania, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews, 63 FR 40878 (July 31, 1998). Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590 (July 1, 1999).

[3] See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043 (October 17, 1997); and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590 (July 1, 1999).

[4] In their Notices of Intent to Participate, both NSK and NHBB stipulated that they are affiliated with British exporter(s) and are domestic importers of the subject merchandise.

[5] Although the Sunset Regulations do not require a respondent interested party to file a Notice of Intent to Participate, Barden filed the notice anyway.

[6] See adequacy section of this notice, infra.

[7] *See* Tapered Roller Bearings, 4 Inches and Under From Japan, *et al.*; Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 42672 (August 5, 1999).

[8] However, when NSK presents information that is relevant with respect to the sunset reviews, it

[6] See adequacy section of this notice, infra.

[7] *See* Tapered Roller Bearings, 4 Inches and Under From Japan, *et al.*; Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 42672 (August 5, 1999).

orders would be likely to lead to the continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning adequacy, continuation or recurrence of dumping, and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Adequacy

As noted above, we notified the Commission that we intended to conduct expedited reviews of these orders. On June 10, 1999, we received comments on behalf of NHBB and NSK regarding our determination to conduct expedited reviews. Rather than arguing the propriety of the Department's decision to execute an expedited sunset review, both NSK and NHBB offered new arguments. In their submissions, both parties assert that most of the domestic interested parties that submitted substantive responses are in favor of revocation of the Department's various antidumping duty orders on antifriction bearings. These parties also offered new argument regarding the likely effect of revocation of these orders.

The magnitude of domestic support for continuation or revocation of an order, however, does not enter into the Department's determination of adequacy of participation nor, for that matter, the Department's determination of likelihood. The Department made clear in its regulations that a complete substantive response from one domestic interested party would be considered adequate for purpose of continuing a sunset review (*see* section 351.218(e)(1)). Nowhere in the statute or legislative history is there reference to consideration of domestic industry support during the course of a sunset review (other than the statutory provision that, if there is no domestic industry interest in continuation of the order, the Department will revoke the order automatically). In fact, the Senate Report (at 46) makes clear that the purpose of adequacy determinations in sunset reviews is for the Department to determine whether to issue a determination based on the facts available without further fact-gathering. Further, the statute, at section 751(c)(1), specifies that the Department is to determine whether revocation of an order would be likely to lead to continuation or recurrence of dumping. Section 752(c) specifies that the Department is to consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the order.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis. (See section II.A.2.) In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. (*See* section II.A.3.)

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant reviews, the Department received a waiver of participation from one respondent interested party, SKF. However, at the same time, the Department also received a complete substantive response from another respondent interested party, Barden.

Torrington and MPB assert that dumping of the subject merchandise would resume if the antidumping duty orders were revoked. (*See* May 3, 1999, joint substantive response of Torrington and MPB at 6.) In support of their assertion, Torrington and MPB point to continued dumping of the subject merchandise at levels above *de minimis* after the issuance of the orders. Likewise, while urging the Department to conclude that the dumping of the subject merchandise would continue or recur if the orders were revoked, RBC claims that dumping margins have continued to exist above the *de minimis* level since the issuance of the orders. (*See* May 3, 1999, Substantive Response of RBC at 4 and 5.)

With respect to the import volumes of the subject merchandise, while insisting that the consideration of the import volumes is irrelevant because dumping of the subject merchandise did not cease after the issuance of the orders, Torrington and MPB argue that the post-order declines in import volumes of the subject merchandise provide additional support for their claim that resumption of dumping is likely were the orders revoked. (See May 3, 1999, Substantive Response of Torrington at 9.) Between 1988 and 1989, Torrington and MPB indicate that imports of the BBs from the United Kingdom fell 32 percent in value. *Id.* Also, Torrington and MPB state that the post-order import value of CRBs in each year is lower than the pre-order import value thereof. *Id.* at 10.

On the other hand, NSK argues that revocation of the orders is not likely to lead to the recurrence of dumping of the subject merchandise. (See April 30, 1999, Substantive Response of NSK at 3.) In support of its contention, NSK appears to argue that the dumping margins of the subject merchandise have declined over time and the market share of the subject merchandise remained steady.[8] *Id.* at 14. NSK advocates that the Department's methodology in calculating the weighted-average dumping margins in the original investigation was flawed,[9] that the domestic interested parties lack domestic industry support (therefore their opposition to revocation of the order is insufficient),[10] and that conditions and trends in the U.S. market for bearings are such that producers of the domestic like product prefer the U.S. domestic production.[11] Therefore, by incorporating all the above factors, the only logical conclusion that can be drawn, according to NSK, is that continuation or recurrence of dumping is unlikely if the orders are revoked.

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[8] However, when NSK presents information that is relevant with respect to the sunset reviews, it does not put forth order-specific factual information or evidence. In other words, NSK only makes general references. For example, NSK states that the dumping margins for many of the most significant foreign producers and exporters have decreased over time (NSK's substantive response at 5) and that dumping margins from various countries have declined while subject importations have remained at or around 20 percent of the U.S. market share (*id.* at 14).

[9] In effect, NSK is asking the Department to retroactively apply a post-World Trade Organization ("WTO") methodology to a pre-WTO antidumping duty determination.

Similarly, NHBB argues that revocation of the orders would not result in continuation or recurrence of dumping. (*See* NHBB's May 3, 1999, substantive response at 5–6.) According to NHBB, internationalization of ball bearing production a significant portion of bearing producers from the countries subject to antidumping duty orders have production facilities in the United States. Thus, NHBB claims that the profit motive of those foreign parent companies would preclude any future dumping because such dumping would undercut the U.S. domestic price structure, thereby causing injury to the very industry of which foreign owners are a part. *Id* NHBB also asserts that import volumes have not declined since the time of the original investigation while, at the same time, dumping margins have declined significantly. *Id.*

Barden, on the other hand, notes that the likely effects of revocation would be a status quo at current low dumping margins or even further reduced *de minimis* levels. (*See* May 3, 1999, Substantive Response of Barden at 5.) Barden acknowledges that the value and volume of imports of the subject merchandise declined substantially immediately after the issuance of the orders and that its export volume of the subject merchandise in 1998 is much less than that of 1987 before the order. *Id.* at 6.

As for the consideration of the weighted-average dumping margins, although Barden deems its most recently determined dumping margin of 2.89 percent statistically insignificant and *de minimis*,[12] Barden does not negate outright the existence of current dumping margin (*Id.* at 5.) nor does Barden try to argue that dumping of the subject merchandise did not exist for any other investigated or reviewed periods.

Barden spends the majority of its resources and energy trying to convince the Department why Barden would not increase, and perhaps may even decrease, its dumping margins in the future. In support of this notion, Barden stresses that it has shifted and continues to shift its production of the subject merchandise to its U.S. facilities, that its dumping margins have been decreasing over time, that it should not bear the margins from the original investigation (because it did not participate in the original investigation), that removing home market sales below the cost of production in the profit component of constructed value is utterly improper and bears absolutely no relation to the actual, profit realized on sales of foreign like product, and that the subject merchandise, which is a highly differentiated and mature industrial product with multifarious application, tends to breed a certain percentage of random or intrinsic dumping. *Id.* at 6–9.

In its rebuttal, Torrington argues that Barden's own admission of decreased import volumes of the subject merchandise after the issuance of the orders strongly supports Torrington's suggestion that continuation or recurrence of dumping is likely should the Department revoke the orders. (*See* May 12, 1999, Rebuttal Comments of the Torrington at 14.) Torrington again insists that continued dumping at levels above *de minimis* since the issuance of the orders should lead the Department to determine that recurrence or continuation of dumping likely. *Id.*

Similarly, in its rebuttal comments, RBC argues that the Department should determine that revocation of the orders is likely to lead to the continuation or recurrence of dumping of the subject merchandise because the import volumes of the subject merchandise substantially declined and dumping continued after the issuance of the orders. (*See* May 12, 1999, Rebuttal Comments of RBC at 2–3.)

NSK argues, while insisting that the Department should conduct a full sunset review rather than an expedited (120-day) review, that the major domestic bearing companies do not agree with the position of Torrington and RBC that revocation of the orders would be likely to lead to continuation or recurrence of dumping.[13] (*See* NSK's May 12, 1999, Rebuttal Comments at 2–3.) NSK also claims that Torrington's other-factors argument, which was primarily based on a history of below-cost-sales argument, is irrelevant to the instant review.[14] *Id.* at 6–7. Last, NSK insists that the lack of industry support should be a crucial factor for the Department to consider in determining the sunset review.[15] *Id.* 7–8.

In its rebuttal, Barden notes that, between 1993 and 1997, imports of the subject merchandise increased 50 percent and that dumping margins have declined over time. (*See* May 6, 1999, Rebuttal Submission of Barden, at 4.) Barden argues that the Department should acknowledge that, during the above five-year period, imports of the subject merchandise have increased or remained stable and that dumping margins have steadily decreased. *Id.* at 6. Therefore, should the orders be revoked, Barden contends, dumping is not likely to recur or continue. *Id.*

As indicated in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and House Report at 63–64, the Department considers whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to the weighted-average dumping margins in previous administrative reviews, the Department agrees with the domestic interested parties that the weighted-average dumping margins at levels above *de minimis* have persisted over the life of the orders and currently remain in place for all U.K. producers and exporters of the subject merchandise, in general, and Barden, in particular.[16]

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[10] But see section 351.281(e)(i)(A) of the Sunset Regulation. A complete substantive response from at least one domestic interested party would suffice for the Department to conclude that the domestic interested parties have provided adequate response to a notice of initiation. Also, *see* adequacy section of this notice.

[11] As a result, NSK argues that it has expanded its BB production facilities in Ann Arbor, Michigan, and Clarinda, Iowa, and has built new facilities in Franklin and Liberty, Indiana. According to NSK, these were expanded to strengthen its competitiveness as a U.S. producer of BBs in the U.S. market.

[12] However, Barden's suggestion that 2 percent is the *de minimis* standard in an administrative review does not comport with law. In an administrative review, the Department will treat as *de minimis* any weighted-average dumping margin that is less than 0.5 % *ad valorems* or the equivalent specific rate. *See* section 351.106(c)(1) of the Sunset Regulations.

[13] NSK identifies NHBB, NTN Bearing Corporation of America, FAG Bearings Corporation, Koyo Corporation of U.S.A., NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, and NTN-BCA Corporation as opposing Torrington's view. NSK deems this list overwhelming evidence of record that recurrence or continuation is not likely if the orders were revoked.

[14] According to NSK, the fact that British producers/manufacturers could sustain or even increase their exports of the subject merchandise to the United States while, at the same time, substantially reducing the weighted-average dumping margins would indicate that a history of below-the-cost-sale argument does not amount much.

[15] *See*, however, footnote 11, *supra*.

[16] *See* footnote 2 and 3, supra. The relevant rates for Barden in the BB order and the subsequently

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In addition, consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after the issuance of the orders. The data supplied by the domestic interested parties and those of the United States Census Bureau IM146s and the Commission Data indicate that, since the imposition of the orders, the import volumes of the subject merchandise have declined substantially. Although the import volumes of the subject merchandise during the period 1994–1998 have stabilized and shown an increasing trend, as Barden argued in its substantive response, the highest volume since the issuance of the orders, that of 1997, is still well below the pre-order import volume. (*See* May 3, 1999, Substantive Response of Barden at 6.) Therefore, the Department determines that the import volumes of the subject merchandise decreased significantly after the issuance of the orders.

Given that dumping has continued over the life of the orders and that import volumes of the subject merchandise decreased significantly after the issuance of the orders, the Department agrees with Torrington, MPB, and RBC that dumping is likely to continue if the orders were revoked.

Insofar as the Department made this determination based on the fact that dumping continued at levels above *de minimis* and that the import volumes of the subject merchandise declined substantially after the issuance of the orders, it is not necessary for the Department to address Torrington's arguments regarding a history of below-cost-sales of the subject merchandise in the British market, NSK's contention that the U.S. market conditions and trends are such that future dumping of the subject merchandise is not likely, NHBB's claim that the shifts of production facilities by respondent interested parties and their consequent profit motive preclude future dumping, and Barden's stipulations that the exports of the subject merchandise invariably engender a certain percentage of random or intrinsic dumping, nor is it necessary for the Department to discuss any effects thereof upon this finding.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department will normally provide a margin based on the all-others rate from the investigation. (*See* section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations. (*See* sections II.B.2 and 3 of the Sunset Policy Bulletin.)

The Department, in its notice of the antidumping duty orders on antifriction bearings from the U.K., established both company-specific and all-others weighted-average dumping margins for the subject merchandise from the United Kingdom (54 FR 20910, May 15, 1989).[17] Since the antidumping orders, we have determined twice that duty absorption has occurred with respect to NSK/RHP and Barden's exports of the subject merchandise.[18]

In their substantive response, at 13–16, Torrington and MPB argue that the likely-to-prevail dumping margins, if the order were revoked, are either the ones determined for each company in the original investigation or the most recently calculated margins adjusted to incorporate duty-absorption rates, whichever are larger. Similarly, RBC raises the duty-absorption issue; however, in the end, RBC just advocates that the Department should apply the margins from the original investigation. (*See* May 3, 1999, Substantive Response of RBC at 6.)

NSK advocates that the Department should reject the weighted-average dumping margins determined in the original investigation and should instead calculate the likely-to-prevail margins based on the average-to-average methodology.[19] (*See* NSK's substantive response at 5 and 7.) NSK argues that, if the Department follows NSK's suggestion and use the average-to-average method, the Department would find that the likely-to-prevail dumping margins would be *de minimis*.[20] *Id.*

NHBB insists that it would be illogical for respondent companies with such significant investments in the United States to undercut their interests in the United States by dumping in the future. (*See* NHBB's May 3, 1999, substantive response at 6–8.) Also, NHBB claims that, since the dumping margins have declined significantly from the margins found in the original investigation, the Department should not report margins from the original investigation. *Id.* Furthermore, in light of changes of methodology in calculating antidumping duty margins to reflect the WTO agreements, NHBB believes that it would be unfair to use the rates found in the original investigation, which preceded the WTO agreements. *Id.*

Also, NHBB argues that the Department arbitrarily presumed the existence of duty absorption in the 1995–1996 and 1997–1998 administrative reviews, thereby making it impossible for respondent interested parties to rebut. To wit, NHBB contends that the Department's current approach pertaining to duty absorption is unreasonable, illogical, circular, groundless, without statutory support, and therefore contrary to law. *Id.* at 8–10.

Meantime, in its substantive response, at 9, Barden argues that the dumping margin that is likely to prevail is either 2.89 percent found in the most recent administrative review or one that is even lower because its dumping margins have been declining while at the same time its export of the subject merchandise remained steady.

In its rebuttal, Torrington argues that Barden's suggestion to select a more recently calculated margin ignores the Department's duty-absorption findings. (*See* Torrington's rebuttal response at 4 and 14.) Moreover, even in the absence of duty-absorption findings,[21] Torrington contends that the Department should select the investigation margins as the margins which would likely to prevail because such margins reflect the behavior of exporters without the discipline of the orders in place. *Id.*

Similarly, RBC argues, in its rebuttal, that the Department should choose the margins from the original investigations because such margins are the best gauge for understanding the behavior of

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administrative reviews are as follows: all others-rate for BBs in the order—54.27; first review—14.73; second review—0.85; third review—7.57; fourth review—4.65; fifth review—1.48; sixth review—did not participate; seventh review—3.99; eighth review—6.63; ninth review—2.89.

[17] *See* footnote 1, supra.

[18] *See* footnote 3, supra.

[19] As for reasons, NSK claims that the Department departed from its standard procedure in the investigation in order to complete the case in a fair and timely manner, that the Department's liberal usage of best information available seriously skewed the results of the investigation, and that the Department did not use an average-to-average methodology in calculating the margins. However, *see* the SAA at 891. (The SAA explicitly and unequivocally prohibits the Department, in a sunset review, from calculating margins except under the most extraordinary circumstances.)

[20] According to NSK, this would result for many of the interested parties that export most, if not all, the ball bearings from relevant countries. Therefore, the Department is not even sure whether British producers/manufacturers, such as Barden, are included in NSK's argument.

[21] In its rebuttal, Torrington rejects respondent's arguments, which denounce and reject the Department's duty-absorption findings, by denoting the duty-absorption principle delineated in the Sunset Policy Bulletin.

exporters without the discipline of an order in place. (*See* RBC's rebuttal response at 3.) Also, RBC asserts that Barden's attempt to find a defect in the Department's calculation in determining weighted-average is not persuasive. *Id.*

NSK, in its rebuttal comments at 3–5, disagrees with Torrington's suggestion that the Department should consider the duty-absorption findings. Instead, NSK urges the Department to refrain from utilizing information obtained from the duty-absorption investigations which, according to NSK, violated the antidumping law.[22]

Similarly, in its rebuttal response at 2–6, Barden opposes Torrington and RBC's suggestion that the Department choose the margins from the original investigations as the likely-to-prevail margins because the margins determined in the original investigations are obsolete. Barden argues that because its dumping margins have declined and its imports have increased or remained stable, the Department should use more recently calculated margins. Barden asserts further that, in any event, there is no mandatory requirement that these original margins be selected as likely-to-prevail margins were the orders revoked—in short, the Department should not presume that dumping would continue at the original investigation margins. *Id.* In addition, Barden reiterates that the duty-absorption findings should not be used by the Department because the findings were not calculated in accordance with the statue.[23]

We agree with Torrington, MPB, and RBC that, normally, we will provide a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. As noted above, exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations.

With respect to NSK and NHBB's argument concerning the magnitude of the margin likely to prevail, we disagree. As discussed above, we do find that there is a likelihood of continuation or recurrence of dumping. Furthermore, we find the level of dumping likely to prevail is best reflected by the dumping margins we calculated in the original investigations. Specifically, the Department finds that there is no basis to reject margins calculated in an investigation because of subsequent changes in methodology. Since such changes do not invalidate margins calculated under the prior methodology. Therefore, the dumping margins from the original investigation are the only rates which reflect the behavior of exporters without the discipline of the order, regardless of the methodology used to calculate that margin or the use of best information available (*see* section 752(c)(3) of the Act).

With respect to Barden's argument that we should use a more recently calculated margin, we do not agree. By Barden's own admission, the import volume of the subject merchandise declined immediately after the imposition of the orders and thereafter stabilized at the lower level.[24] Moreover, during the period 1994 through 1995, the increases of Barden's export of the subject merchandise to the United States correspond with increased weighted-average dumping margins found by the Department. For example, after steady decline of the weighted-average margins, in the 1995–1996 administrative review, the Department found that Barden's margin increased from 1.48 percent to 3.99 percent. Coincidently, during the same period, Barden's exports increased. Similarly, Barden's further increase (from 3.99 to 6.63 percent) of the weighted-average margins during the 1996–1997 administrative review coincided with further increased imports of the subject merchandise. However, when Barden's weighted-average dumping margins declined (from 6.63 to 2.89 percent) in the 1997–1998 review, so did the import volume of the subject merchandise. Thus, Barden's situation does not merit consideration of a more recently calculated margin.

Accordingly, but for the consideration of duty-absorption findings, the Department would have determined that the likely-to-prevail dumping margins for all British producers/exporters are those from the original investigation were the orders revoked.[25]

Section II.B.3.b of the Sunset Policy Bulletin, the SAA at 885, and the House Report at 60, provide that, if the Department has found duty absorption, the Department normally will provide to the Commission the higher of the margin that the Department otherwise would have reported to the Commission or the most recent margin for that company adjusted to account for the Department's findings on duty absorption. The Department explained that it normally will adjust a company's most recent margin to reflect its findings on duty absorption by incorporating the amount of duty absorption to those sales for which the Department found duty absorption.

In the most recent review,[26] the Department found that duty absorption existed on Barden's exports of BBs (19.43 percent) and NSK–RHP's exports of BBs (31.46 percent) and CRBs (47.88 percent) to the United States. Consistent with the statute and the Sunset Policy Bulletin, the Department will notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting its sunset review.

Consistent with the Sunset Policy Bulletin, we adjusted the most recent margins to account for duty-absorption findings:[27] for Barden, the adjusted rate for BBs is 3.45 percent; for NSK/RHP, the adjusted rates for BBs and CRBs are 27.63 percent and 72.65 percent, respectively. (See October 4, 1999, Memorandum to File Regarding Calculation of the Likely to Prevail

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[22] NSK deems the Department' duty-absorption investigation *ultra vires*. Furthermore, NSK argues that, even if the Department was authorized to conduct such duty-absorption investigations, the Department's use of presumption in the investigation did not fulfill its legal obligations. Thus, NSK argues that the Department should wait until the court has ruled on this matter.

[23] *See* May 6, 1999, Barden's Rebuttal to Domestic Party Substantive Responses at 5. Barden considers the Department's interpretation, expressed in the Sunset Policy Bulletin, too expansive, thus unlawful in applying "transition orders" under 751(c)(6)(C) of the Act to duty absorption. In other words, Barden argues that the Department should not have done the duty-absorption investigations in administrative reviews that were initiated in 1996 and 1998. In addition, Barden argues that the methodology chosen by the Department in calculation of duty-absorption rates is arbitrary and capricious. Last, Barden notes its objection to the duty absorption findings is pending with the Court of International Trade. Therefore, it contends that the Department should not use the duty-absorption findings in the instant sunset reviews. *Id.* at 9–11.

[24] Barden notes that import figures are leveling off over the past five years after falling immediately after the issuance of the orders (*see* May 3, 1999, Substantive Response of Barden at 6).

[25] As for Barden's argument that it was not party to the original investigation, and therefore should not be subjected to the margins from the original investigation, section II.B.1 of the Sunset Policy Bulletin provides that for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all-others rate from the investigation. Inasmuch as Barden did not participate in the original investigation, the all-others rate from the original investigation, as amended, is the appropriate one to report to the Commission as the rate that is likely to prevail if the order is revoked.

[26] *See* Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590 (July 1, 1999).

[27] With respect to methodology, also *see* Preliminary Results of Sunset Review: Porcelain-on-Steel Cooking Ware from Mexico, 64 FR 46651 (August 26, 1999), and Final Results of Expedited Sunset Review: Brass Sheet and Strip from Germany, 64 FR 49767 (September 14, 1999).

Margins.) For Barden's BBs, the all-others rate from the original investigation is higher than the absorption-adjusted rate. For NSK/RHP, the rate from the original investigation is higher than the absorption-adjusted rate for BBs, whereas the opposite is true for CRBs. Therefore, we will report to the Commission the rates as contained in the Final Results of Review section of this notice.

Final Results of Review

Based on the above analysis, the Department finds that the revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter	Margin (percent)	
	BBs	CRBs
Barden	54.27	
NSK/RHP	44.02	72.65
All others	54.27	43.36

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28780 Filed 11–3–99; 8:45 am]

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Vol. 64, No. 213

Thursday, November 4, 1999

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

58755–59106	1
59107–59602	2
59603–60082	3
60083–60332	4

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7245.....59103
7246.....60083
7247.....60085

Executive Orders:

13067 (See Notice of October 29, 1999).....59105
13096 (See Proc. 7247).....60085

Administrative Orders:

Notices:

Notice of October 29, 1999.....59105

Presidential Determinations:

No. 00–2 of October 21, 1999.....58755
No. 00–3 of October 25, 1999.....58757

5 CFR

532.....60087

Proposed Rules:

1201.....58798

7 CFR

301.....60088
319.....59603
905.....58759
928.....59604
944.....58759
981.....58763, 59107
1439.....58766
1477.....58766

Proposed Rules:

278.....59665
770.....59131
1217.....59669
1823.....59131
1956.....59131

9 CFR

77.....58769

10 CFR

Proposed Rules:

2.....59669, 59671
50.....59671
72.....59677
73.....59684

11 CFR

100.....59113
110.....59606
114.....59113
9004.....59606
9034.....59606
9036.....59607

12 CFR

1.....60092
5.....60092
7.....60092
211.....58780
229.....59607
1805.....59076

Proposed Rules:

1102.....58800

14 CFR

39.....59113, 59115, 59116, 59117, 59613, 59614, 60100, 60102
71.....59615
139.....60068

Proposed Rules:

39.....59137, 59685, 60134, 60136, 60138
71.....59687, 59688, 59689, 59690

15 CFR

285.....59616
801.....59119

Proposed Rules:

287.....59691

16 CFR

312.....59888

17 CFR

271.....59877

Proposed Rules:

1.....59694
239.....59826
240.....59826
270.....59826
274.....59826

18 CFR

Proposed Rules:

141.....60140
385.....60140

21 CFR

5.....59617
175.....60104
801.....59618

Proposed Rules:

20.....60143
801.....59695

24 CFR

982.....59620

26 CFR

1.....58782, 59139
301.....58782

Proposed Rules:

1.....59139

28 CFR

0.....58782

2 59622
27 58782
50 59122

29 CFR

Proposed Rules:
1401 59697

30 CFR

Proposed Rules:

31 CFR

538 58789
550 58789
560 58789

33 CFR

100 59623
117 .... 59123, 59624

34 CFR

668 .... 58974, 59016, 59060
682 .... 58938, 59016
685 .... 58938, 59016

37 CFR

Proposed Rules:
1 59701
201 59140

38 CFR

Proposed Rules:

39 CFR

20 60106

40 CFR

51 58792
52 .... 59625, 59629, 59633, 59635, 59638, 59642, 59644, 60109
62 59648
63 59650
68 59650
180 .... 59652, 60112
300 (2 documents) 60121

Proposed Rules:
52 .... 59703, 59704, 59705, 59706
62 59718
63 59719
68 59719
82 59141
141 59245
142 59245
180 58792

41 CFR

101 59591
102 59591

42 CFR

409 60122
410 59379
411 .... 59379, 60122
414 59379
415 59379
485 59379
489 60122
413 60122

43 CFR

414 58986

45 CFR

Proposed Rules:
160 59918
161 59918
162 59918
163 59918
164 59918

46 CFR

47 CFR

0 60122
1 .... 59656, 60122
2 60123
20 .... 59656, 60126
61 60122
69 60122
73 .... 59124, 59655, 60131
76 60131
90 .... 59148, 60123
95 59656
101 59663

Proposed Rules:
1 59719
20 59719
43 59719
73 .... 59147, 59148, 59728, 60149, 60150, 60151
90 .... 59148, 60151

48 CFR

201 58908
213 58908

Proposed Rules:

49 CFR

Proposed Rules:
Ch. II 59046
209 59046

50 CFR

17 58910
622 .... 59126, 60132
635 58793
640 59126
660 59129

Proposed Rules:
16 59149
17 59729
622 .... 59152, 59153, 60151
648 59156
654 59153
679 .... 58796, 59730, 60157

Proposed Rules:
17 58934

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 4, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Papayas grown in—
  - Hawaii; published 11-3-99

AGRICULTURE DEPARTMENT

Rural Utilities Service

- Telecommunications standards and specifications:
  - Materials, equipment, and construction—
    - Central office equipment contract (not including installation) (RUS Form 545); published 10-5-99

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

- Energy conservation:
  - Commercial and industrial equipment, energy efficiency program—
    - Electric motors; test procedures, labeling, and certification requirements; published 10-5-99

ENVIRONMENTAL PROTECTION AGENCY

- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Glufosinate ammonium; published 11-4-99
- Superfund program:
  - National oil and hazardous substances contingency plan—
    - National priorities list update; published 11-4-99
    - National priorities list update; published 11-4-99

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Telecommunications Act of 1996; implementation—
    - Access charge reform; local exchange carriers price cap performance review; published 11-4-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Food additives:
  - Adhesive coatings and components—
    - 2,2'-[(1-methylethylidine)bis[4,1-phenyleneoxy[1-(butoxymethyl)-2,1-ethanediyl] oxymethylene]] bisoxirane; published 11-4-99
- Medical devices:
  - General and plastic surgery devices—
    - Nonresorbable gauze/sponge for external use, etc.; classification; published 10-5-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Fokker; published 10-20-99
  - MD Helicopters Inc.; published 9-30-99
- Class C airspace; published 8-31-99
- Class C and Class D airspace; published 9-1-99
- Class D airspace; published 7-16-99
- Class D airspace; correction; published 9-2-99
- Class D and Class E airspace; published 8-13-99
- Class D and Class E airspace; correction; published 9-2-99
- Class E airspace; published 6-21-99
- Class E Airspace; published 8-9-99
- Class E airspace; published 8-9-99
- Class E airspace; correction; published 8-4-99
- Restricted areas; published 9-1-99
- VOR Federal airways; published 9-7-99
- VOR Federal airways; correction; published 9-16-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Electronic benefit transfer system; adjustments; comments due by 11-8-99; published 9-9-99

AGRICULTURE DEPARTMENT

Forest Service

- National Forest System land and resource management planning; comments due by 11-9-99; published 10-5-99

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

- Americans with Disabilities Act; implementation:
  - Accessibility guidelines—
    - Recreation facilities; comments due by 11-8-99; published 7-9-99

COMMERCE DEPARTMENT

Economic Analysis Bureau

- International services surveys:
  - U.S. direct investments abroad—
    - BE-10; benchmark survey-1999; reporting requirements; comments due by 11-8-99; published 9-7-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Endangered and threatened species:
  - Sea turtle conservation; shrimp trawling requirements—
    - Cape Lookout, NC, offshore waters affected by Hurricanes Dennis and Floyd; limited tow times use as alternative to turtle excluder devices; comments due by 11-12-99; published 10-15-99

COMMODITY FUTURES TRADING COMMISSION

- Commodity Exchange Act:
  - Electronic signatures by customers, participants, and clients of registrants; comments due by 11-12-99; published 11-3-99

DEFENSE DEPARTMENT

- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

ENERGY DEPARTMENT

- Acquisition regulations:
  - Management and operating contracts; purchasing from contractor affiliated sources; comments due by 11-12-99; published 10-13-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-8-99; published 9-23-99
  - Colorado; comments due by 11-8-99; published 10-7-99
  - Delaware; comments due by 11-12-99; published 10-12-99
  - New York; comments due by 11-8-99; published 10-8-99
  - Source-specific plans—
    - Navajo Nation, AZ and NM; comments due by 11-8-99; published 10-8-99
- Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Texas; comments due by 11-12-99; published 10-13-99
- Hazardous waste program authorizations:
  - Washington; comments due by 11-12-99; published 10-12-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Avermectin B1 and its delta-8,9-isomer; comments due by 11-8-99; published 9-7-99
  - Processing fees; comments due by 11-8-99; published 9-24-99

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Wireless telecommunications services—
    - Extension to Tribal lands; comments due by 11-9-99; published 9-10-99
- Digital television stations; table of assignments:
  - Illinois; comments due by 11-9-99; published 9-29-99
- Radio services, special:
  - Private land mobile services—
    - 87.9 MHz band; emergency signals transmission; comments due by 11-8-99; published 11-4-99
- Radio stations; table of assignments:
  - New York; comments due by 11-8-99; published 10-12-99
  - Texas; comments due by 11-8-99; published 9-29-99

Wisconsin; comments due by 11-8-99; published 9-[illegible]

FEDERAL DEPOSIT INSURANCE CORPORATION

[illegible] rules:

Financial assests transferred by insured d[illegible] institution in connection with securitization or participation; comments [illegible] 9-9-99

FEDERAL ELECTION COMMISSION

Rulemaking petitions:

Project on Government Oversight; comments due by 11-12-99, published 10-13-99

FEDERAL RESERVE SYSTEM

Equal credit opportunity (Regulation B):

Revision; comments due by 11-10-99; published 8-16-[illegible]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices

Cardiovascular, orthopedic and physical medicine diagnostic devices—

Cardiopulmonary bypass accessory equipment goniometer device, and electrode cable devices comments due by 11-8-99; published 8-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Tuberculosis-related services to TB-infected individuals; optional coverage; comments due by 11-9-99; published 9-10-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Risk-based capital

Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 11-10-99; published 6-14-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:

Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 11-12-99; published 10-15-99

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management

Rights-of-way—

Principles and procedures under Mineral Leasing Act; comments due by 11-12-99; published 10-13-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

National Wildlife Refuge System:

Land usage; compatibility policy; comments due by 11-8-99; published 9-9-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Virginia, comments due by 11-8-99; published 10-8-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations

Foreign proposals to NASA research announcements; implementation on no-exchange-of-funds basis; comments due by 11-8-99; published 9-7-99

Federal Acquisition Regulation (FAR)

Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions

Angel, Jeffery C.; comments due by 11-8-99; published 8-23-99

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements

Approved spent fuel storage casks; list additions; comments due by 11-8-99, published 8-23-99

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

Patapsco River, MD; New Year's Celebration Fireworks, comments due by 11-8-99; published 10-8-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Advisory circulars; availability, etc.:

Aircraft products and parts—

Brakes and braking systems certification tests and analysis; comments due by 11-8-99; published 8-10-99

Airworthiness directives

Airbus; comments due by 11-8-99; published 10-8-99

AlliedSignal Inc.; comments due by 11-8-99; published 9-8-99

British Aerospace; comments due by 11-8-99; published 10-8-99

General Electric Co.; comments due by 11-8-99; published 9-8-99

Airworthiness standards:

Transport category airplanes—

Braking systems; harmonization with European standards, comments due by 11-8-99; published 8-10-99

Braking systems; harmonization with European standards; correction; comments due by 11-8-99; published 8-20-99

Technical standard orders:

Transport airplane wheels and wheel and brake assemblies; comments due by 11-8-99; published 8-10-99

TREASURY DEPARTMENT

Customs Service

Merchandise entry:

Anticounterfeiting Consumer Protection Act; Customs entry documentation; comments due by 11-12-99; published 9-13-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes, etc.:

Partnerships and branches; guidance under Subpart F; withdrawal and new guidance involving hybrid branches comments due by 11-10-99; published 7-13-99

Income taxes:

Capital gains, partnership, Subchapter S, and trust provisions; comments due by 11-8-99; published 8-9-99

Correction; comments due by 11-8-99; published 9-10-99

Income tax return preparer; identifying number; cross reference; comments due by 11-10-99; published 8-12-99

Wisconsin; comments due by 11-8-99; published 9-29-99

FEDERAL DEPOSIT INSURANCE CORPORATION

Resolution and receivership rules:

Financial assests transferred by insured depository institution in connection with securitization or participation; comments due by 11-8-99; published 9-9-99

FEDERAL ELECTION COMMISSION

Rulemaking petitions:

Project on Government Oversight; comments due by 11-12-99; published 10-13-99

FEDERAL RESERVE SYSTEM

Equal credit opportunity (Regulation B):

Revision; comments due by 11-10-99; published 8-16-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Cardiovascular, orthopedic, and physical medicine diagnostic devices—

Cardiopulmonary bypass accessory equipment, goniometer device, and electrode cable devices; comments due by 11-8-99; published 8-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Tuberculosis-related services to TB-infected individuals; optional coverage; comments due by 11-9-99; published 9-10-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Risk-based capital:

Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 11-10-99; published 6-14-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:

Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 11-12-99; published 10-15-99

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:

Rights-of-way—

Principles and procedures under Mineral Leasing Act; comments due by 11-12-99; published 10-13-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

National Wildlife Refuge System:

Land usage; compatibility policy; comments due by 11-8-99; published 9-9-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Virginia; comments due by 11-8-99; published 10-8-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Foreign proposals to NASA research announcements; implementation on no-exchange-of-funds basis; comments due by 11-8-99; published 9-7-99

Federal Acquisition Regulation (FAR):

Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:

Angel, Jeffery C.; comments due by 11-8-99; published 8-23-99

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list additions; comments due by 11-8-99; published 8-23-99

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

Patapsco River, MD; New Year's Celebration Fireworks; comments due by 11-8-99; published 10-8-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Advisory circulars; availability, etc.:

Aircraft products and parts—

Brakes and braking systems certification tests and analysis; comments due by 11-8-99; published 8-10-99

Airworthiness directives:

Airbus; comments due by 11-8-99; published 10-8-99

AlliedSignal Inc.; comments due by 11-8-99; published 9-8-99

British Aerospace; comments due by 11-8-99; published 10-8-99

General Electric Co.; comments due by 11-8-99; published 9-8-99

Airworthiness standards:

Transport category airplanes—

Braking systems; harmonization with European standards; comments due by 11-8-99; published 8-10-99

Braking systems; harmonization with European standards; correction; comments due by 11-8-99; published 8-20-99

Technical standard orders:

Transport airplane wheels and wheel and brake assemblies; comments due by 11-8-99; published 8-10-99

TREASURY DEPARTMENT

Customs Service

Merchandise entry:

Anticounterfeiting Consumer Protection Act; Customs entry documentation; comments due by 11-12-99; published 9-13-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes, etc.:

Partnerships and branches; guidance under Subpart F; withdrawal and new guidance involving hybrid branches; comments due by 11-10-99; published 7-13-99

Income taxes:

Capital gains, partnership, Subchapter S, and trust provisions; comments due by 11-8-99; published 8-9-99

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Income tax return preparer; identifying number; cross reference; comments due by 11-10-99; published 8-12-99

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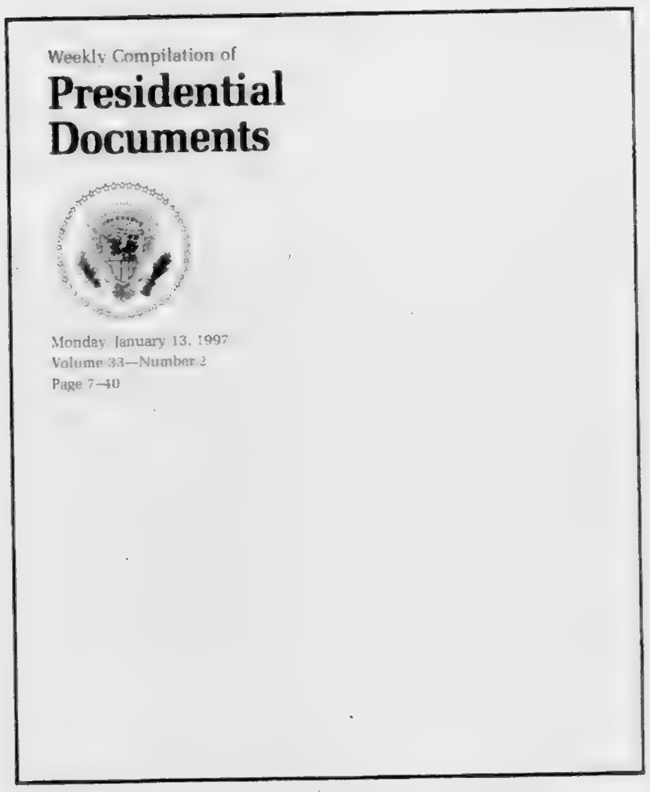
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Monday, January 13, 1997
Volume 33—Number 2
Page 7–40

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Vol. 64 N
Pages 6033

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Pages 60333–60646

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Friday
November 5, 1999

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Contents

Federal Register
Vol. 64, No. 214
Friday, November 5, 1999

Agriculture Department
- *See* Animal and Plant Health Inspection Service
- *See* Forest Service
- *See* National Agricultural Statistics Service
- *See* Rural Telephone Bank

Alcohol, Tobacco and Firearms Bureau
NOTICES
- Agency information collection activities:
  - Proposed collection; comment request, 60468–60473

Animal and Plant Health Inspection Service
RULES
- Plant-related quarantine, domestic:
  - Fire ant, imported, 60333–60335

Army Department
NOTICES
- Environmental statements; availability, etc.:
  - Base realignment and closure—
    - Fort Chaffee, AR, 60429
    - Sierra Army Depot, CA, 60429–60430

Arts and Humanities, National Foundation
- *See* National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
- *See* Committee for Purchase From People Who Are Blind or Severely Disabled

Children and Families Administration
NOTICES
- Agency information collection activities:
  - Proposed collection; comment request, 60450

Coast Guard
PROPOSED RULES
- Anchorage regulations:
  - New York, 60399–60400

Commerce Department
- *See* Export Administration Bureau
- *See* Foreign-Trade Zones Board
- *See* International Trade Administration
- *See* National Institute of Standards and Technology
- *See* National Oceanic and Atmospheric Administration
- *See* National Telecommunications and Information Administration

NOTICES
- Agency information collection activities:
  - Submission for OMB review; comment request, 60408

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
- Procurement list; additions and deletions, 60406–60408

Committee for the Implementation of Textile Agreements
NOTICES
- Cambodia-U.S. Bilateral Textile Agreement:
  - Cambodian textile and apparel sector working conditions; compliance with Cambodian labor law and internationally recognized core labor standards, 60428

Defense Department
- *See* Army Department

Education Department
PROPOSED RULES
- Postsecondary education:
  - Teacher Quality Enhancement Grants Program, 60631–60646

NOTICES
- Meetings:
  - National Commission on Mathematics and Science Teaching for 21st Century, 60430

Employment Standards Administration
NOTICES
- Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 60457–60459

Energy Department
- *See* Federal Energy Regulatory Commission

NOTICES
- Environmental statements; availability, etc.:
  - Lawrence Livermore National Laboratory, CA; stockpile stewardship and management, 60430–60431
- Grants and cooperative agreements; availability, etc.:
  - Science Office Financial Assistance Program, 60431–60434
- Meetings:
  - Nonproliferation and National Security Advisory Committee, 60434
  - Nuclear Energy Research Advisory Committee, 60435
  - U.S.-Africa Energy Ministers Conference, 60435

Environmental Protection Agency
RULES
- Air quality implementation plans; approval and promulgation; various States:
  - Tennessee, 60343–60348

PROPOSED RULES
- Air pollution control; new motor vehicles and engines:
  - Light-duty vehicles and trucks—
    - Pre-production certification procedures; compliance assurance programs; reconsideration petition, 60401–60402
- Air programs:
  - Ozone areas attaining 1-hour standard; identification of areas where standard will cease to apply
    - Findings rescission, 60477–60553
- Air quality implementation plans; approval and promulgation; various States:
  - Tennessee, 60400–60401

NOTICES

- Environmental statements; availability, etc.:
  - Agency statements—
    - Comment availability, 60440
    - Weekly receipts, 60439–60440
- Grants and cooperative agreements; availability, etc.:
  - Brownfields Cleanup Revolving Loan Fund Pilots, 60440–60441
  - National Brownfields Assessment Demonstration Pilots, 60441–60442
- Meetings:
  - State FIFRA Issues Research and Evaluation Group, 60442–60443
- Project XL (excellence and leadership) innovative technologies projects:
  - Elmendorf Air Force Base, AK, 60443–60444
- Superfund; response and remedial actions, proposed settlements, etc.:
  - Blackburn and Union Privileges Site, MA, 60444

Executive Office of the President

See National Drug Control Policy Office

Export Administration Bureau

RULES

- Export licensing:
  - Kosovo; exemption from license requirements for exports and reexports to Serbia, 60339–60342

Farm Credit Administration

PROPOSED RULES

- Farm credit system:
  - Organization—
    - Termination of FCS charter to become financial institution under another Federal or State chartering authority, 60370–60383

Federal Aviation Administration

RULES

- Aircraft:
  - Turbine engine powered airplanes—
    - Emission standards and revised test procedures; correction, 60335–60336
- Airworthiness directives:
  - Eurocopter France, 60336–60337
- Low offshore airspace areas, 60337–60339
- Restricted areas, 60339

PROPOSED RULES

- Airworthiness directives:
  - Boeing, 60386–60388
  - New Piper Aircraft, Inc., 60383–60386
- Class C airspace, 60388–60390

Federal Communications Commission

RULES

- Common carrier services:
  - Federal-State Joint Board on Universal Service—
    - Access charge reform, 60349–60359

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 60445–60446

Federal Election Commission

PROPOSED RULES

- Internet use for campaign activity; inquiry, 60360–60368

Federal Emergency Management Agency

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 60446
- Disaster and emergency areas:
  - Arizona, 60447
  - Connecticut, 60447
  - Florida, 60447–60448
  - New York, 60448

Federal Energy Regulatory Commission

PROPOSED RULES

- Electric utilities (Federal Power Act):
  - Rate schedules filing—
    - Electric rate schedule sheets; designation procedures, 60390–60395

NOTICES

- Electric rate and corporate regulation filings:
  - Morgan Stanley Capital Group et al., 60436–60439
- *Applications, hearings, determinations, etc.:*
  - KN Interstate Gas Transmission Co., 60435–60436
  - National Fuel Gas Supply Corp., 60436
  - Transcontinental Gas Pipe Line Corp., 60436

Federal Housing Finance Board

NOTICES

- Federal home loan bank system:
  - Pilot mortgage purchase program—
    - Cincinnati, Indianapolis, and Seattle, 60448–60449

Federal Maritime Commission

NOTICES

- Meetings; Sunshine Act, 60449

Federal Reserve System

RULES

- Truth in lending (Regulation Z):
  - Mortgage rates and fees; dollar amount adjustment, 60335

PROPOSED RULES

- Truth in lending (Regulation Z):
  - Short-term cash advances (payday loans), 60368–60370

NOTICES

- Banks and bank holding companies:
  - Formations, acquisitions, and mergers, 60449
- Meetings; Sunshine Act, 60449–60450

Fish and Wildlife Service

NOTICES

- Endangered and threatened species:
  - Wolf control plan for northern Rocky Mountains, 60453–60454
- Meetings:
  - Red wolves in North Carolina; nonessential experimental population; public open houses, 60454

Foreign-Trade Zones Board

NOTICES

- *Applications, hearings, determinations, etc.:*
  - Texas, 60408–60409

Forest Service

NOTICES

- Environmental statements; notice of intent:
  - Gallatin National Forest, MT, 60405–60406

General Services Administration
RULES
Federal property management:
  Information and records management and use—
    Records management program; FIRMR provisions reestablishment, 60348–60349

Health and Human Services Department
See Children and Families Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 60450–60451

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
  Facilities to assist homeless—
    Excess and surplus Federal property, 60452–60453

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
  Treasury securities, reopening; original issue discount, 60342–60343
PROPOSED RULES
Income taxes:
  Treasury securities, reopening; original issue discount, 60395–60399
NOTICES
Meetings:
  Citizen Advocacy Panels—
    South Florida District, 60473–60474
Senior Executive Service:
  Performance Review Board; membership, 60474

International Trade Administration
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 60409
Antidumping:
  Canned pineapple fruit from—
    Thailand, 60409
  Cold-rolled flat-rolled carbon-quality steel products from—
    Various countries, 60410–60417
  Porcelain-on-steel cookware from—
    Mexico, 60417–60422
  Solid fertilizer grade ammonium nitrate from—
    Russian Federation, 60422–60424
Countervailing duties:
  Hot-rolled lead and bismuth carbon steel products from—
    Germany, 60424

International Trade Commission
NOTICES
Meetings; Sunshine Act, 60457

Labor Department
See Employment Standards Administration

Land Management Bureau
NOTICES
Closure of public lands:
  Oregon, 60454–60455

National Agricultural Statistics Service
NOTICES
Meetings:
  Agriculture Statistics Advisory Committee, 60406

National Council on Disability
NOTICES
Meetings:
  International Watch Advisory Committee, 60459–60460

National Drug Control Policy Office
NOTICES
High intensity drug trafficking areas designations; list, 60444–60445

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
  Humanities National Council, 60460

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
  Occupant crash protection—
    Air bag requirements for passenger cars and light trucks; upgrade, 60555–60629
NOTICES
Meetings:
  Motor vehicles and equipment; international regulatory harmonization, 60466–60467

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
  Data encryption standard—
    Triple DES, 60424–60427

National Institutes of Health
NOTICES
Meetings:
  National Center for Complementary and Alternative Medicine, 60451
  National Institute of Arthritis and Musculoskeletal and Skin Diseases, 60451
  National Institute of Dental and Craniofacial Research, 60451
  National Institute of Diabetes and Digestive and Kidney Diseases, 60451–60452
  National Institute of Nursing Research, 60452
  Scientific Review Center, 60452

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
  Northeastern United States fisheries—
    Atlantic sea scallop, 60359
PROPOSED RULES
Fishery conservation and management:
  Caribbean, Gulf, and South Atlantic fisheries—
    South Atlantic snapper-grouper, 60402
  West Coast States and Western Pacific fisheries—
    Western Pacific Region pelagics, 60402–60404

National Park Service
NOTICES
Environmental statements; availability, etc.:
Chiricahua National Monument, AZ, 60455
Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, WY and MT; winter use plan, 60455–60456
Meetings:
Selma to Montgomery National Historic Trail Advisory Council, 60456
National Register of Historic Places:
Eligibility determinations, 60456–60457

National Science Foundation
NOTICES
Meetings:
Bioengineering and Environmental Systems Special Emphasis Panel, 60460
Electrical and Communications Systems Special Emphasis Panel, 60460–60461
Experimental and Integrative Activities Special Emphasis Panel, 60461
Experimental Program To Stimulate Competitive Research Special Emphasis Panel, 60461
Geosciences Advisory Committee, 60462
Geosciences Special Emphasis Panel, 60462
Materials Research Special Emphasis Panel, 60462
Social, Behavioral, and Economic Sciences Special Emphasis Panel, 60463

National Telecommunications and Information Administration
NOTICES
Meetings:
Digital Divide Summit, 60427–60428

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Northeast Nuclear Energy Co. et al., 60463–60464
Applications, hearings, determinations, etc.:
Entergy Operations, Inc., 60463

Public Health Service
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 60464

Rural Telephone Bank
NOTICES
Meetings; Sunshine Act, 60406

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Deregistration applications—
BlackRock Fund Investors I et al., 60464–60466

State Justice Institute
NOTICES
Meetings; Sunshine Act, 60466

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Ameren Corp., 60467–60468

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
NOTICES
Meetings:
International Monetary Fund Advisory Committee, 60468

Twenty-First Century Workforce Commission
NOTICES
Meetings, 60474

U.S. Trade Deficit Review Commission
NOTICES
Hearings, 60474–60475

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 60475

Separate Parts In This Issue

Part II
Environmental Protection Agency, 60477–60553

Part III
Department of Transportation, National Highway Traffic Safety Administration, 60555–60629

Part IV
Department of Education, 60631–60646

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR

301	60333

11 CFR

Proposed Rules:

100	60360
102	60360
103	60360
104	60360
106	60360
107	60360
109	60360
110	60360
114	60360
116	60360

12 CFR

226	60335

Proposed Rules:

226	60368
611	60370

14 CFR

34	60335
39	60336
71	60337
73	60339

Proposed Rules:

39 (2 documents)	60383, 60386
71	60388

15 CFR

738	60339
740	60339
746	60339

18 CFR

Proposed Rules:

35	60390

26 CFR

1	60342

Proposed Rules:

1	60395

33 CFR

Proposed Rules:

110	60399

34 CFR

Proposed Rules:

611	60632

40 CFR

52 (2 documents)	60343, 60346

Proposed Rules:

52 (2 documents)	60400, 60401
81	60478
86	60401

41 CFR

101-11	60348

47 CFR

54	60349
69	60349

49 CFR

Proposed Rules:

552	60556
571	60556
585	60556
595	60556

50 CFR

648	60359

Proposed Rules:

622	60402
660	60402

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7 CFR Part 3

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ACTION: Inter
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SUMMARY: W
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–078–1]

Imported Fire Ant; Quarantined Areas and Treatment Dosage

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas portions of two counties in California. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. We are also amending the treatment provisions in the Appendix to the imported fire ant regulations by lowering the dosage rate of bifenthrin wettable powder for the treatment of containerized nursery plants.

DATES: This interim rule is effective November 5, 1999. We invite you to comment on this docket. We will consider all comments that we receive by January 4, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–078–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–078–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10, and referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of regulated articles for the purpose of preventing the artificial spread of the imported fire ant.

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. The imported fire ant is not native to the United States. The regulations prevent the imported fire ant from spreading throughout its ecological range within this country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

We are amending § 301.81–3(e) by designating additional portions of Los Angeles and Riverside Counties in California as quarantined areas. We are taking this action because recent surveys conducted by APHIS and State and county agencies reveal that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new quarantined areas.

We are also revising the dosage rate of a treatment described in the Appendix to the regulations. Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment before interstate movement must be treated in accordance with the methods and procedures prescribed in the Appendix to the imported fire ant regulations. The Appendix sets forth the treatment provisions of the "Imported Fire Ant Program Manual." We are amending paragraph III.C.4. of the Appendix by changing the dosage rate of bifenthrin wettable powder from 50 ppm to 25 ppm. On December 4, 1992, we published a final rule in the **Federal Register** at 57 CFR 57322–57335 (Docket No. 86–328–2) that lowered the dosage rate of granular bifenthrin from 50 ppm to 25 ppm for the treatment of containerized nursery plants. The dosage rate for bifenthrin wettable powder was not changed at that time. However, bifenthrin wettable powder has been proven effective for the treatment of containerized nursery plants at a dosage rate of 25 ppm, and that dosage rate is consistent with current product labeling approved by the U.S. Environmental Protection Agency. The lower dosage rate will prevent unnecessary use of the pesticide.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action to quarantine newly infested areas is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States. Immediate action to change the dosage rate for bifenthrin wettable powder is necessary to prevent unnecessary use of the pesticide.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the imported fire ant regulations by designating portions of Los Angeles and Riverside Counties in California as quarantined areas. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary on an emergency basis to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. We are also amending the Appendix to the imported fire ant regulations by changing the dosage rate of a chemical to reduce its use and the costs associated with its use.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this program. The assessment provides a basis for the conclusion that the methods employed to regulate the imported fire ant will not significantly affect the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.81–3, paragraph (e), the list of quarantined areas is amended by adding, under California, a second paragraph for Los Angeles County and a fourth paragraph for Riverside County to read as follows:

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

California

Los Angeles County. * * *

That portion of Los Angeles County in the Azusa area bounded by a line beginning at the intersection of Irwindale Avenue and Foothill Boulevard; then east along Foothill Boulevard to Azusa Avenue; then south along Azusa Avenue to East Fifth Street; then east along East Fifth Street to North Cerritos Avenue; then south along North Cerritos Avenue to Arrow Highway; then west along Arrow Highway to Azusa Avenue, then south along Azusa Avenue to Covina Boulevard; then west along an imaginary line to the intersection of Martinez Street and Irwindale Avenue; then north along Irwindale Avenue to the point of beginning.

* * * * *

Riverside County. * * *

That portion of Riverside County in the Palm Springs area bounded by a line beginning at the intersection of Tramway Road, State Highway 111, and San Rafael Drive; then east along San Rafael Drive to Indian Canyon Drive; then south along Indian Canyon Drive to Francis Drive; then east along Francis Drive to North Farrell Drive; then south along North Farrell Drive to Verona Road; then east along Verona Road to Whitewater Club Drive; then east along an imaginary line to the intersection of Verona Road and Ventura Drive; then east along Verona Road to Avenida Maravilla; then east and south along Avenida Maravilla to 30th Avenue; then west along 30th Avenue to its end; then due west along an imaginary line to the Whitewater River; then southeast along the Whitewater River to Dinah Shore Drive; then west along an imaginary line to the east end of 34th Avenue; then west along 34th Avenue to Golf Club Drive; then south along Golf Club Drive to East Palm Canyon Drive; then south along an imaginary line to the intersection of Desterto Vista and Palm Hills Drive; then south along Palm Hills Drive to its end; then southwest along an imaginary line to the intersection of Murray Canyon and Palm Canyon Drive; then northwest along Palm Canyon Drive to the Palm Springs city limits; then west and north along Palm Springs city limits to Tahquitz Creek; then due north along an imaginary line to Tramway Road; then northeast along Tramway Road to the point of beginning.

* * * * *

3. In part 301, Subpart—Imported Fire Ant (§§ 301.81–301.81–10), the Appendix to the subpart is amended at paragraph III.C.4., under the heading "Exclusion," and under the heading

"Bifenthrin," by removing the phrase "for wettable powder it is 50 ppm" in the last sentence of the first paragraph and adding in its place the phrase "for wettable powder it is 25 ppm".

Done in Washington, DC, this 1st day of November 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–29046 Filed 11–4–99; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1051]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of adjustment of dollar amount.

SUMMARY: The Board is publishing an adjustment to the dollar amount that triggers Regulation Z (Truth in Lending) requirements for certain mortgages bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. The adjustment for 2000 is $451.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf *only*, please contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226).

On March 24, 1995, the Board published amendments to Regulation Z implementing the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, which became effective on October 1, 1995, are contained in § 226.32 of the regulation and impose additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA rules if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The Board adjusted the $400 amount to $441 for 1999.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not "report" a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 80 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 15, 1999, was the CPI–U index "in effect" on June 1, and reflects the percentage increase from April 1998 to April 1999. The adjustment to the $400 figure below reflects a 2.3 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

Adjustment

For the reasons set forth in the preamble, for purposes of determining whether a mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $451 or 8 percent of the total loan amount, effective January 1, 2000.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, November 1, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–29003 Filed 11–4–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 34

[Docket No. FAA–1999–5018; Amendment No. 34–3]

RIN 2120–AG68

Emission Standards for Turbine Engine Powered Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** of February 3, 1999 (64 FR 5556). That document revised emission standards for turbine engine-powered airplanes by incorporating the current standards of the International Civil Aviation Organization (ICAO) to bring the United States emissions standards into alignment with those of ICAO. This document corrects references to appendices and the effective dates of ICAO-referenced standards.

EFFECTIVE DATE: November 5, 1999.

FOR FURTHER INFORMATION CONTACT: Edward McQueen, telephone (202) 267–3560.

Correction

In the final rule FR Doc. 99–1608, published in the **Federal Register** of February 3, 1999 (64 FR 5556), make the following corrections:

1. On page 5557, in the first column, under Section 34.71, sixth line, correct "Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of gaseous emissions" to read "Appendix 6 of this document specifies the compliance procedure for gaseous emissions and smoke."

2. On page 5557, in the first column, under Section 34.82, sixth line, correct "Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of smoke emissions" to read "Appendix 2 of this document specifies the system and procedures for sampling and measurement of smoke emissions."

3. On page 557, in the first column, under Section 34.89, sixth line, correct "Appendices 3 and 5 of this document

specify the system and procedures for sampling and measurement of smoke emissions" to read "Appendix 6 of this document specifies the compliance procedure for gaseous emissions and smoke."

§ 34.64 [Corrected]

4. On page 559, in the third column, in § 34.64, eighth line, add ", effective March 20, 1997" to the end of the first sentence of the section.

§ 34.71 [Corrected]

5. On page 5559, in the third column, in § 34.71, thirteenth line, correct "effective March 20, 1997" to read "effective July 26, 1993."

§ 34.82 [Corrected]

6. On page 5560, in the first column, in § 34.82, seventh line, add ", effective July 26, 1993" to the end of the first sentence of the section.

§ 34.89 [Corrected]

7. On page 5560, in § 34.89, in the third column, fourth line, add ", effective July 26, 1993" to the end of the third sentence of the section.

Issued in Washington, DC, on November 1, 1999.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 99–29043 Filed 11–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–01–AD; Amendment 39–11403; AD 99–23–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA330F, G, J, and AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Eurocopter France Model SA330F, G, J, and AS332C, L, and L1 helicopters. This action requires inserting statements into the Limitations section of the Rotorcraft Flight Manual (RFM) prohibiting flight under certain atmospheric conditions. This amendment is prompted by one incident in which a Multi-Purpose Air Intake (MPAI) inlet seal deflated after the P2 air system line, which feeds the seal, clogged due to the formation of ice. The actions specified in this AD are intended to prevent clogging of the MPAI seal P2 air system line due to ice formation, which could result in deflation of the MPAI seal, loss of engine power, and subsequent loss of control of the helicopter.

DATES: Effective November 22, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 4, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Model SA330F, G, J, and AS332C, L, and L1 helicopters. The DGAC has advised that there was an incident in which an MPAI seal deflated. This deflation could lead to ice formation in the MPAI during flight in moist atmospheric conditions.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA330F, G, J, and AS332C, L, and L1 helicopters of the same type design registered in the United States, this AD is being issued to prevent clogging of the MPAI seal P2 air system line due to ice formation, which could result in deflation of the MPAI seal, loss of engine power, and subsequent loss of control of the helicopter. This AD requires, before further flight, inserting statements into the Limitations section of the RFM which prohibit flight in certain atmospheric conditions, and prohibit flight in specific conditions unless operation of the MPAI seal has been visually checked. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inserting the pages into the RFM is required prior to further flight, and this AD must be issued immediately.

None of the helicopters affected by this action are registered in the U.S. All helicopters included in the applicability of this rule are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to insert the statements into the RFM, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–01–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation, and therefore it can be issued immediately to correct an unsafe condition since none of these model helicopters are registered in the U.S. It is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–23–07 Eurocopter France: Amendment 39–11403. Docket No. 99–SW–01–AD.

Applicability:

- Model SA330F or G helicopters not modified by MOD 0723672;
- Model SA330J helicopters not modified by either MOD 0723672 or optional Eurocopter Service Bulletin 30.16, dated January 19, 1999; and
- AS332C, L, and L1 helicopters not modified by either MOD 0725855 or both MOD 0725974 and MOD 0725998 as noted in Eurocopter Service Bulletin 01.00.54R1, dated July 12, 1999, with Multi-Purpose Air Intakes (MPAI) installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To prevent clogging of the MPAI seal P2 air system line due to ice formation, which could result in deflation of the MPAI seal, loss of engine power, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following statement prohibiting flight in certain atmospheric conditions into the Limitations section of the Rotorcraft Flight Manual (RFM):

"A. Flight under the following conditions is prohibited:

1. Flight in clouds or fog at an OAT equal to or lower than 3 degrees Celsius (37.4 degrees Fahrenheit).

2. Flight in rain at an OAT within the temperature range of −3 degrees to +3 degrees Celsius (26.6 degrees to 37.4 degrees Fahrenheit).

B. Flight under the following conditions is prohibited unless the Multi-Purpose Air Intake seals have been visually checked for proper inflation immediately prior to entering the specified atmospheric conditions:

1. Flight in falling or recirculating snow at an OAT equal to or higher than −3 degrees Celsius (26.6 degrees Fahrenheit).

2. Takeoff after extended ground taxiing or holding in falling snow at an OAT equal to or above −3 degrees Celsius (26.6 degrees Fahrenheit)."

(b) This AD revises the Limitations section in the RFM by prohibiting flight in certain atmospheric conditions and prohibiting flight in other specified atmospheric conditions unless operation of the MPAI seal has been visually checked prior to entering the specific atmospheric conditions.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on November 22, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 98–201–068(A)R2, dated September 22, 1999, and AD 98–202–080(A)R1, dated January 27, 1999.

Issued in Fort Worth, Texas, on October 29, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–28945 Filed 11–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–1]

RIN 2120–AA66

Modification of the San Juan Low Offshore Airspace Area, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the San Juan Low Offshore Airspace Area by extending it to include the airspace northwest of San Juan, PR, between the 100-mile radius of the Fernando Luis Ribas Dominicci Airport and the San Juan Control Area/Flight Information Region (CTA/FIR) and Miami CTA/FIR boundary. This action increases the airspace managed by domestic air traffic control (ATC). Extension of this Class E airspace area will enhance the management of air traffic operations and result in more efficient use of that airspace.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1993, the FAA published a final rule (58 FR 12128) which, in part, designated the San Juan Low Offshore Airspace Area. This designation was necessary to comply with the Airspace Reclassification final rule (56 FR 65638; December 17, 1991). The San Juan Low Offshore Airspace Area consists of Class E airspace from 5,500 feet mean sea level (MSL) up to, but not including, FL 180 within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport, San Juan, PR. This airspace, however, is inadequate to support the Caribbean Special Area Navigation (RNAV) Routes currently being evaluated in the Bahamas/Caribbean area due to the rapid growth of air traffic activity in the area. Therefore, there is a need to designate additional airspace wherein domestic ATC procedures will be used to provide more efficient control of aircraft operations.

On June 7, 1999, the FAA proposed to amend the San Juan Low Offshore Airspace Area (64 FR 30261). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the notice, the FAA received one comment from the Air Line Pilots Association supporting this action. Except for editorial changes, this rule is the same as that proposed in the notice.

The Rule

This action amends 14 CFR part 71 by amending the San Juan Low Offshore Airspace Area. This extended area will consist of that portion of offshore airspace northwest of San Juan, PR, between the 100-mile radius of the Fernando Luis Ribas Dominicci Airport and the San Juan CTA/FIR and Miami CTA/FIR boundary.

This modification will support the implementation of the Caribbean Special RNAV Routes for aircraft equipped with advanced navigation systems by creating a seamless environment of controlled airspace between Florida and Puerto Rico. Increasing the airspace managed by domestic ATC procedures will enhance safety, increase system capacity, reduce the cost of aircraft operations, and decrease controller workload.

Offshore airspace area designations are published in paragraph 6007 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Offshore airspace area listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. This regulation therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Civil Aviation Organization (ICAO) Considerations

As part of this rule relates to navigable airspace outside the United States, this notice was submitted in accordance with the ICAO International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic Airspace Management, in areas outside U.S. domestic airspace is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Because this amendment involves, in part, the designation of navigable airspace outside of the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6007 Offshore Airspace Areas

* * * * *

San Juan Low, PR [Revised]

That airspace extending upward from 5,500 feet MSL from the point of intersection of the San Juan Oceanic CTA/FIR and Miami Oceanic CTA/FIR boundary at lat. 21°08′00″ N., long. 67°45′00″ W., thence from that point southeast via a straight line to intersect a 100-mile radius of the Fernando Luis Ribas Dominicci Airport at lat. 19°47′28″ N., long. 67°09′37″ W., thence clockwise via a 100-mile radius of the Fernando Luis Ribas Dominicci Airport to lat. 18°53′05″ N., long. 67°47′43″ W., thence from that point northwest via a straight line to intersect the point where the Santo Domingo FIR turns northwest at lat. 19°39′00″ N., long. 69°09′00″ W., thence from that point northeast along the San Juan CTA/FIR and

Miami CTA/FIR boundary to the point of beginning.

* * * * *

Issued in Washington, DC, on November 1, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–29042 Filed 11–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–AEA–12]

RIN 2120–AA66

Change Name of Using Agency for Restricted Area R–5203; Oswego, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of the using agency for Restricted Area R–5203; Oswego, NY, from "Air National Guard, Northeast Air Defense Sector/DOS, Rome, NY," to "Air National Guard, 174th Fighter Wing, Hancock Field, NY." This change is required due to a realignment of responsibilities within the Air National Guard.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a realignment of responsibilities within the Air National Guard, the using agency for Restricted Area R–5203 is being changed from the Northeast Air Defense Sector, Rome, NY, to the 174th Fighter Wing, Hancock Field, NY. The Air National Guard requested this change to facilitate more efficient scheduling of the restricted area.

The Rule

This action amends 14 CFR part 73 by changing the using agency for Restricted Area R–5203, Oswego, NY, from "Air National Guard, Northeast Air Defense Sector/DOS, Rome, NY," to "Air National Guard, 174th Fighter Wing, Hancock Field, NY."

Since this administrative change will not alter the boundaries, altitudes, or time of designation for R–5203 or the activities conducted therein; I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.52 of part 73 was republished in FAA Order 7400.8G, dated September 1, 1999.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action involves a minor administrative change to amend the name of the using agency of an existing restricted area. There are no changes to the dimensions of the restricted area, or to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.52 [Amended]

2. § 73.52 is amended as follows:

* * * * *

R–5203 Oswego, NY [Amended]

By removing "Using agency. Air National Guard, Northeast Air Defense Sector/DOS, Rome, NY," and adding "Using agency. Air National Guard, 174th Fighter Wing, Hancock Field, NY."

* * * * *

Issued in Washington, DC, on October 28, 1999.

Paul Gallant,

Acting Manager, Airspace and Rules Division.

[FR Doc. 99–29040 Filed 11–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 738, 740, and 746

[Docket No. 990923261–9261–01]

RIN 0694–AB99

Exports to Kosovo

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to exempt the Serbian province of Kosovo ("Kosovo") from certain license requirements for exports and reexports to Serbia of items subject to the Export Administration Regulations (EAR).

EFFECTIVE DATE: This rule is effective November 5, 1999.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION:

Background

In Resolution 1203 (adopted on October 24, 1998), the United Nations Security Council (UNSC) expressed alarm at what it described as the continuing grave humanitarian situation throughout Kosovo and the impending humanitarian catastrophe there. In response to the Serbian government's continued ethnic cleansing in its Kosovo province and its rejection of the proposed peace agreement accepted by the Kosovars, NATO (including the United States) took military action intended to halt the mass killing and dislocation of ethnic Albanians in Kosovo and to prevent a widening of the conflict.

In response to the situation in Kosovo, Executive Order 13121 of April 30, 1999, tightened existing U.S. economic sanctions against Serbia, including the province of Kosovo. On May 4, 1999, BXA published a rule amending the

EAR to require a license for exports and reexports of all items subject to the EAR to Serbia, including Kosovo (64 FR 24018). Executive Order 13121 delegated authority to administer the sanctions to the Department of the Treasury's Office of Foreign Assets Control (OFAC). By issuing General License 3 under the Kosovo Sanctions Regulations (31 CFR Part 586) on May 20, 1999, OFAC generally authorized certain transactions incident to exports licensed by BXA, thereby eliminating the need to seek separate authorization from two agencies for most export and reexport transactions.

In the wake of the cessation of hostilities and the withdrawal of Serbian troops from Kosovo, the United States Government is by this rule exempting Kosovo from the additional license requirements imposed on Serbia by the May 4, 1999, rule, thus returning Kosovo to the status it had prior to that date. General License No. 4, issued by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury on August 17, 1999, effects a complementary exemption of Kosovo from OFAC's "Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations' (see 31 CFR part 586).

For purposes of the EAR, this rule eliminates the term "Federal Republic of Yugoslavia" and establishes Serbia, Kosovo, and Montenegro as distinct destinations under the EAR. This distinction does not address issues of sovereignty; it merely clarifies the applicability of export controls under the EAR to different destinations. Although comprehensive sanctions on Serbia (excluding Kosovo) remain in place, both Kosovo and Montenegro retain, for License Exception eligibility purposes, membership in "Country Group B" (see Supplement No. 1 to part 740) and "Computer Tier 3" (see § 740.7). Serbia, Kosovo, and Montenegro are now listed separately in the Commerce Country Chart (see Supplement No. 1 to part 738).

On July 14, 1998, BXA implemented an embargo on arms and arms-related items in the Export Administration Regulations (EAR) that applied to Serbia (including Kosovo) and Montenegro. The arms embargo continues in effect, and this rule leaves provisions regarding the arms embargo unaltered, except that "Federal Republic of Yugoslavia (Serbia and Montenegro)" is revised to read "Serbia, Kosovo, and Montenegro."

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101, August 13, 1999).

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, and 746 of the Export Administration Regulations (15 CFR parts 730–99) are amended as follows:

1. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; and Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; and Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

3. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; and Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 738—[AMENDED]

4. Supplement No. 1 to Part 738 is amended by removing "Serbia and Montenegro" and adding, in alphabetical order, "Kosovo," "Montenegro," and "Serbia," to read as follows:

Supplement No. 1 to Part 738—COMMERCE COUNTRY CHART

* * * * *

COMMERCE COUNTRY CHART

[Reason for Control]

Countries	Chemical & Biological Weapons			Nuclear Non-proliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FS 1	CC 1	CC 2	CC 3	AT 1	AT 2
Kosovo (Serbian province of)	X	X		X		X	X	X	X	X		X		X		
Montenegro	X	X		X		X	X	X	X	X		X		X		
Serbia (not including Kosovo)	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															

* * * * *

PART 740—[AMENDED]

5. Section 740.7 is amended by removing "Serbia & Montenegro" from paragraph (d)(1) and by adding, in alphabetical order, "Kosovo (Serbian province of)," "Montenegro," and "Serbia".

6. Supplement No. 1 to part 740 is amended by removing "Serbia & Montenegro" from the list of "Country Group B" countries and by adding, in alphabetical order, "Kosovo (Serbian province of)" and "Montenegro".

PART 746—[AMENDED]

7. Section 746.9 is revised to read as follows:

§ 746.9 Serbia, Kosovo, and Montenegro.

The Department of Commerce maintains a comprehensive embargo on exports and reexports to Serbia, excluding the Serbian province of Kosovo ("Kosovo"). For purposes of the EAR, Serbia (excluding Kosovo), Kosovo, and Montenegro are separate destinations under the EAR. Additionally, a United Nations mandated arms embargo applies to certain items destined to Serbia, Kosovo, and Montenegro.

(a) *Serbia.* (1) *License requirements.* You will need a license to export or reexport all items subject to the EAR to Serbia, except as specified in paragraph (a)(3) of this section. This requirement does not apply to Kosovo or Montenegro; controls set forth in other parts of the EAR (e.g., the Commerce Country Chart) remain in effect for items destined to Kosovo or Montenegro.

(2) *Licensing policy.* Applications for export or reexport of all items subject to the EAR to Serbia will be reviewed on a case-by-case basis, with a presumption of denial for any items other than humanitarian items. BXA will approve sales of agricultural commodities and products, medicine, and medical equipment for civilian end-use when appropriate safeguards can be developed to prevent diversion to military, paramilitary or political use.

(3) *License Exceptions.* Items consigned to and for use by personnel and agencies of the U.S. Government under License Exception GOV (see § 740.11(b)(2) of the EAR) and individual gift parcels under License Exception GFT (see § 740.12(a) of the EAR) may be exported or reexported to Serbia, and temporary exports or reexports by the news media may be made to Serbia under License Exception TMP (see § 740.9(a)(2)(viii) of the EAR). No other License Exceptions are available for Serbia.

(b) *Serbia, Kosovo, and Montenegro.* (1) *License requirements.* Under Executive Order 12918 of May 26, 1994 (59 FR 28205, 3 CFR, 1994 Comp., p. 899) (which authorizes the Secretary of State and the Secretary of Commerce, under section 5 of the United Nations Participation Act and other authorities available to the respective Secretaries, to take all actions necessary to implement any arms embargo mandated by resolution of the United Nations Security Council), and in conformity with United Nations Security Council (UNSC) Resolution 1160 of March 31, 1998, an embargo applies to the sale or supply to Serbia, Kosovo, or Montenegro of arms and related matériel of all types and regardless of origin, such as weapons and ammunition, military vehicles and equipment, and spare parts for such items. You will therefore need a license for the sale, supply or export to Serbia, Kosovo, or Montenegro from the United States of embargoed items, as listed in paragraphs (b)(1)(i) and (ii) of this section. You will also need a license for the sale, supply, export or reexport to Serbia, Kosovo, or Montenegro of such items by any United States person in any foreign country or other location. (Reexport controls imposed under this paragraph (b)(1) apply only to reexports by U.S. persons. Reexport controls on U.S.-origin items to Serbia, Kosovo, or Montenegro set forth in other parts of the EAR remain in effect.) You will also need a license for the use of any U.S.-registered aircraft or vessel to supply or transport to Serbia, Kosovo, or Montenegro any such items. These requirements apply to embargoed items specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, regardless of origin.

(i) Crime Control and Detection Equipment as identified on the CCL under CC Columns No. 1, 2 or 3 in the Country Chart column of the "License Requirements" section of the applicable ECCN.

(ii) Items described by ECCNs ending in "018"; and 0A982, 0A983, 0A984, 0A985, 0A986, 0A988, 0A989, 0B986, 0E984, 1A005, 1A984, 1C998, 2A993, 3A980, 3A981, 3D980, 3E980, 4A980, 4D980, 4E980, 5A980, 6A002, 6A003.b.3 and b.4, 6E001, 6E002, 9A980, and 9A991.a.

(2) *Date of embargo.* The licensing requirements in paragraph (b) of this section were effective on July 14, 1998.

(3) *License policy.* Applications for export or reexport of all items listed in paragraphs (b)(1)(i) and (ii) of this section are subject to a general policy of denial. Consistent with United Nations Security Council Resolution 1160, this embargo is effective notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to July 14, 1998, except to the extent provided in regulations, orders, directives or licenses that may be issued in the future under Executive Order 12918 or under the EAR.

(c) *Related controls.* The Department of State, Office of Defense Trade Controls, maintains related controls on arms and military equipment under the International Traffic in Arms Regulations (22 CFR parts 120 through 130). You should also contact the Department of the Treasury's Office of Foreign Assets Control concerning any restrictions which might apply to U.S. persons involving financial transactions with Serbia, Kosovo, or Montenegro, including those transactions related to the export or reexport of services and non-U.S.-origin items.

Dated: October 28, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–28855 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8840]

RIN 1545–AX61

Reopenings of Treasury Securities; Original Issue Discount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the Federal income tax treatment of reopenings of Treasury securities. The temporary regulations change the definition of a qualified reopening. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. The regulations in this document provide needed guidance to holders of reopened Treasury securities.

DATES: The regulations are effective November 5, 1999.

FOR FURTHER INFORMATION CONTACT: William E. Blanchard, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Sections 163(e) and 1271 through 1275 of the Internal Revenue Code (Code) provide rules for the Federal income tax treatment of interest and original issue discount (OID). On February 2, 1994, final regulations relating to these sections of the Code (TD 8517, 1994–1 C.B. 38) were published in the **Federal Register** (59 FR 4799). Section 1.1275–2(d)(2) of the regulations provides rules for the treatment of certain reopenings of Treasury securities.

On January 6, 1997, temporary regulations relating to the Federal income tax treatment of inflation-indexed debt instruments (TD 8709, 1997–1 C.B. 167) were published in the **Federal Register** (62 FR 615). Section 1.1275–7T(g) of those temporary regulations provided rules for the treatment of certain reopenings of Treasury Inflation-Indexed Securities. On September 7, 1999, § 1.1275–7T was redesignated as § 1.1275–7 (TD 8838, 64 FR 48545).

Explanation of Provisions

The Secretary of the Treasury is authorized to issue Treasury securities, including Treasury Inflation-Indexed Securities, and to prescribe terms and conditions for their issuance and sale. The Treasury Department sells securities throughout the year.

In January 1992, the Treasury Department determined that it will be prepared to provide additional quantities of a security to the public when an acute, protracted shortage develops. These reopenings are necessary to preserve the integrity and efficient functioning of the market in Treasury securities. See Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, *Joint Report on the Government Securities Market* (January 1992).

In order to ensure that the original and additional Treasury securities are fungible, § 1.1275–2(d) provides that the additional Treasury securities issued in a reopening are part of the same issue as the original Treasury securities if (1) The additional Treasury securities have the same terms as the original Treasury securities, (2) The additional Treasury securities are issued not more than 12 months after the original Treasury securities were first issued to the public, and (3) The additional Treasury securities are issued in a reopening intended to alleviate an acute, protracted shortage of the original Treasury securities (a qualified reopening). As a result, any discount generated upon the issuance of the additional Treasury securities in the reopening is market discount rather than OID.

Under § 1.1275–7(g), a reopening of Treasury Inflation-Indexed Securities is a qualified reopening for purposes of § 1.1275–2(d) even though the reopening is not intended to alleviate an acute, protracted shortage of the original Treasury securities.

For debt management and liquidity concerns, the Treasury Department has decided that it needs the ability to reopen an issue of Treasury securities within one year. Therefore, the temporary regulations in this document (§ 1.1275–2T) revise the rules for when a reopening is a qualified reopening by eliminating the acute, protracted shortage requirement. As a result, the Treasury Department can reopen an issue of outstanding Treasury securities at any time within 12 months after the issue date of the securities for any reason and the securities will be fungible for Federal income tax purposes.

The temporary regulations also revise the rules to determine the issue price and issue date of an issue of Treasury securities auctioned on or after November 2, 1998, to reflect changes in how Treasury securities are sold. On November 2, 1998, the Treasury Department switched from an average price auction to a single price auction for selling Treasury securities.

In response to comments, the IRS is proposing rules for reopenings of debt instruments other than Treasury securities. See the Proposed Rules section of this issue of the **Federal Register**.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of the regulations is William E. Blanchard, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1275–2T also issued under 26 U.S.C. 1275(d). * * *

Par. 2. Section 1.1271–0 is amended by:

1. Revising the entry for § 1.1275–2(d) in paragraph (b).
2. Adding an entry for § 1.1275–2T in numerical order in paragraph (b).
3. Revising the entry for § 1.1275–7(g) in paragraph (b).

The revisions and additions read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) * * *

* * * * *

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(d) [Reserved]

* * * * *

§ 1.1275–2T Special rules relating to debt instruments (temporary).

(a) through (c) [Reserved]
(d) Special rules for Treasury securities.
(1) Issue price and issue date.
(2) Reopenings of Treasury securities.

* * * * *

§ 1.1275–7 Inflation-indexed debt instruments.

* * * * *

(g) [Reserved]

* * * * *

Par. 3. Section 1.1275–2 is amended by revising paragraph (d) to read as follows:

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(d) [Reserved] For further guidance, see § 1.1275–2T(d).

* * * * *

Par. 4. Section 1.1275–2T is added to read as follows:

§ 1.1275–2T Special rules relating to debt instruments (temporary).

(a) through (c) [Reserved] For further guidance, see § 1.1275–2(a) through (c).

(d) *Special rules for Treasury securities*—(1) *Issue price and issue date*—(i) *In general*. The issue price of an issue of Treasury securities is the price of the securities sold at auction. In addition, the issue date of the issue is the first settlement date of a substantial amount of the securities.

(ii) *Treasury securities auctioned before November 2, 1998*. For an issue of Treasury securities auctioned before November 2, 1998, the issue price of the issue is the average price of the securities sold. In addition, the issue date of the issue is the first settlement date on which a substantial amount of the securities in the issue is sold.

(2) *Reopenings of Treasury securities*—(i) *Treatment of additional Treasury securities*. Additional Treasury securities issued in a qualified reopening are part of the same issue as the original Treasury securities and have the same issue price and issue date as the original Treasury securities. This paragraph (d)(2) applies to qualified reopenings that occur on or after March 25, 1992.

(ii) *Definitions*—(A) *Additional Treasury securities*. Additional Treasury securities are Treasury securities with terms that are in all respects identical to the terms of the original Treasury securities.

(B) *Original Treasury securities*. Original Treasury securities are securities comprising any issue of outstanding Treasury securities.

(C) *Qualified reopening*. A qualified reopening is a reopening that occurs not more than one year after the original Treasury securities were first issued to the public. For reopenings of Treasury securities (other than Treasury Inflation-Indexed Securities) that occur prior to November 5, 1999, a qualified reopening is a reopening of Treasury securities that satisfies the preceding sentence and that was intended to alleviate an acute, protracted shortage of the original Treasury securities.

§ 1.1275–7 [Amended]

Par. 5. Section 1.1275–7 is amended by removing and reserving paragraph (g).

Approved: October 29, 1999.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–28741 Filed 11–3–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–192–1–9962(a); TN–193–1–9963(a); FRL–6465–1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Source Specific Revisions to the Nonregulatory Portion of the Tennessee SIP Regarding Emission Limits for Particulate Matter and Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving two requests by the Tennessee Department of Air Pollution Control (TDAPC) to incorporate revised permits for eight facilities into the Tennessee State Implementation Plan (SIP). All of the permits affected by this action were previously approved into the SIP to meet various Clean Air Act (CAA) and regulatory requirements. EPA is approving an April 9, 1997, submittal from TDAPC that amends permits for the Soda Recovery Furnace and the Smelt Tank at Willamette Industries Inc., Kingsport, to establish revised particulate matter (PM) emission limits for these units. The revised emission limits will have a net positive impact on ambient air quality. An April 14, 1997, submittal from the Chattanooga-Hamilton County Air Pollution Control Bureau (CHCAPCB), through TDAPC, revises the permits as amended by agreed order for seven miscellaneous metal parts coaters located in Hamilton County to qualify them as a synthetic minor sources. Based on supplemental information received from CHCAPCB, EPA has concluded that one of these seven facilities is now a new source and thus need not be included in this approval action. EPA is approving the revised permits for the remaining six facilities into the SIP.

DATES: This direct final rule is effective January 4, 2000 without further notice, unless EPA receives adverse comment by December 6, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

Chattanooga-Hamilton County Air
Pollution Control Bureau, 3511
Rossville Boulevard, Chattanooga,
Tennessee, 37407–2495. 423/867–
4321.

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION:

I. Background

A. Willamette Industries, Inc.—Kingsport, Tennessee

On December 7, 1982, EPA approved permits establishing PM emission limits for the Soda Recovery Furnace and the Smelt Tank at Mead Paper Company (now Willamette Industries Inc.), Kingsport, Tennessee, into the Tennessee SIP (47 FR 54936). These permits, along with numerous other facility permits, satisfied Reasonably Available Control Technology (RACT) requirements and comprised part of the Kingsport secondary particulate nonattainment area plan. On April 9, 1997, TDAPC submitted revised permits which establish alternate emission standards for these two units. The revised emission limits lower the permitted PM emission limit for the Soda Recovery Furnace from 44.1 pounds per hour (lb/hr) to 35.0 lb/hr to offset an increase in the permitted PM emission limit for the Smelt Tank from 1.3 lb/hr to 3.0 lb/hr. In a letter dated March 26, 1998, EPA informed TDAPC that the revised permits were unapprovable, as they failed to include conditions to verify ongoing compliance with these emission limits. On September 16, 1999, TDAPC submitted supplemental information consisting of practically enforceable conditions that amend the revised permits to address EPA's concerns. The amended revised permits specify operating parameters for the Soda Recovery Furnace, and production rates for the Smelt Tank, that must be maintained to ensure compliance with the permitted emission limits.

B. Seven Miscellaneous Metal Parts Coaters—Hamilton County, Tennessee

On June 28, 1989, EPA approved the permits as amended by agreed order for fourteen facilities into the Tennessee SIP to demonstrate full implementation of the ozone SIP in Hamilton County, thereby partially fulfilling CAA requirements for redesignating this area to attainment for ozone (54 FR 27164). The permits as amended by agreed order for ten of these facilities restricted the volatile organic compound (VOC) emissions of each to below the 25 ton per year (TPY) applicability limit for sources subject to VOC RACT regulations. On April 14, 1997, CHCAPCB submitted revised permits as amended by order for seven of these ten facilities to establish additional, more stringent, federally enforceable limits on their potential to emit to qualify them as synthetic minor sources. These limits restrict total VOC emissions from metal coating operations to below 25 tons per year (TPY), total VOC emissions to below 100 TPY, total hazardous air pollutant (HAP) emissions to below 25 TPY and individual HAP emissions to below 10 TPY. Prior to this action, the potential VOC and HAP emissions of all seven facilities exceeded one or more of these criteria. The seven facilities include:

(1) Browning-Ferris Industries of TN, Inc. (formerly Browning-Ferris Industries)
(2) Cannon Equipment Southeast, Inc. (formerly Cumberland Corporation)
(3) EK Associates, L.P. (formerly Ekco/Gladco, Inc.)
(4) Mckee Foods Corporation (formerly McKee Baking Company)
(5) Metal Systems, Inc. (formerly Electrical Systems, Inc.)
(6) Sherman & Reilly, Inc.
(7) Tuftco Corporation

On December 23, 1998, EPA informed CHCAPCB that the revised permits as amended by agreed order for EK Associates, L.P. and Metal Systems Inc. were unapprovable, as they failed to include conditions to verify ongoing compliance with the revised emission limits. In a letter dated February 19, 1998, CHCAPCB indicated that, subsequent to the April 14, 1997 submittal, the facility owned and operated by EK Associates, L.P. was purchased by Pressco. Inc., who sold the existing equipment, purchased new equipment and commenced a new operation. EPA notified CHCAPC that, based on this information, Pressco could be considered a new source, and did not need to submit a revised permit for inclusion in the SIP. In supplemental information dated April 22, 1999, CHCAPCB submitted a revised permit as amended by agreed order for Metal Systems Inc. that included conditions restricting the maximum usage and VOC content of materials used by this facility, thereby addressing the second of EPA's concerns with the original submittal.

II. Analysis of State's Submittal

A. Willamette Industries, Inc.—Kingsport, Tennessee

Following review of TDAPC's April 9, 1997 submittal and subsequent supplemental information, EPA is incorporating the revised permits for the Soda Recovery Furnace and the Smelt Tank at Willamette Industries, Inc. into the SIP. The PM emission limits contained in the revised permits will reduce the existing total allowable PM emissions for these two units from 45.4 lb/hr to 38.0 lb/hr. The results of atmospheric dispersion modeling conducted by the facility also show that the revised emission limits for these two units will have a net positive impact on ambient air quality. The alternate emission standards to be granted to this facility are thus consistent with existing SIP requirements, as they will reduce PM emissions at least as much as is required under other applicable rules.

B. Seven Miscellaneous Metal Parts Coaters—Hamilton County, Tennessee

Following review of CHCAPCB's April 14, 1997 submittal and subsequent supplemental information, EPA is incorporating the revised permits as amended by agreed order for six of the seven above-listed miscellaneous metal parts coaters into the SIP. The revised permits are consistent with existing State and local SIP requirements, as they replace the emission limits contained in the existing permits with more stringent emission limits. Moreover, EPA has determined that all six revised permits include conditions adequate to verify ongoing compliance with the revised emission limits (*i.e.* quantifiable limits on VOC coating content and usage). Based on supplemental information received from CHCAPCB, the seventh facility included in the April 14, 1997 submittal, EK Associates, L.P., is now a new source (Pressco, Inc.). The revised permit for this facility thus need not be incorporated into the SIP and is not included in this approval action.

III. Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with Clean Air Act and EPA requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 4, 2000 without further notice unless the Agency receives adverse comments by December 6, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 4, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 18, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2220(d) is amended by revising the entries for "Revised Permits for the Kingsport Particulate Nonattainment Area" and "Miscellaneous Metal Parts" to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(d) EPA-approved State Source-specific Requirements.

EPA-APPROVED TENNESSEE SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Revised Permits for the Kingsport Particulate Nonattainment Area	N/A	09/15/99	11/5/99	Various permits.
* * * * * * *				
Miscellaneous Metal Parts	N/A	04/05/99	11/5/99	13 sources.
* * * * * * *				

* * * * *

[FR Doc. 99–28211 Filed 11–4–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–105–1–9949a; TN–209–1–9950a; FRL–6469–4]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to Knox County portion of Tennessee Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Knox County portion of the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee Department of Environment and Conservation on February 26, 1993, and June 23, 1998. The revisions add clarification to the section regarding exceptions to prohibition with a permit in the Open Burning rule by replacing the existing language in Section 16.3 with new language. Private residences and farming operations are defined in more detail as purposes for which open burning is allowed, and church congregational property is being added to excepted purposes. In addition, an open burning exemption is being removed from the permits chapter.

DATES: This direct final rule is effective January 4, 2000 without further notice, unless EPA receives adverse comment by December 6, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61

Forsyth Street, SW, Atlanta, Georgia 30303. Steven M. Scofield, 404/562–9034.
Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.
Knox County Department of Air Pollution Control, 400 West Main Avenue, Suite 339, City-County Building, Knoxville, Tennessee 37902–2405. 423/215–2488.

FOR FURTHER INFORMATION CONTACT: Steven M. Scofield at 404/562–9034.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1993, the State of Tennessee, through the Department of Environment and Conservation, submitted a revision incorporating Section 16.3.A-C of the Open Burning rule into the Knox County portion of the SIP. This section identifies exceptions to the prohibitions to open burning in Knox County. The revisions add clarification to the section regarding exceptions to prohibition with a permit in the Open Burning rule by replacing the existing language in Section 16.3 with new language to add exceptions for land clearing of brush wood (of which no part may exceed three (3) inches in diameter) grown on that land where the land is being maintained for established private residences, farming operations and established church congregational property.

On June 23, 1998, the State of Tennessee, through the Department of Environment and Conservation, submitted a revision incorporating a revision to section 25.6.E by removing the permit exemption for operations regulated by section 16 and reserving section 25.6.E.

II. Final Action

The EPA is approving the revisions to the open burning and permits regulations because they are consistent with EPA policy and the Clean Air Act (CAA).

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 4, 2000 without further notice unless the Agency receives adverse comments by December 6, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 4, 2000 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

Part 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2239 is amended by adding paragraph (c)(128) to read as follows:

§ 52.2239 Original identification of plan section.

* * * * *

(c) * * *

(128) Revisions to Chapter 16, "Open Burning", of the Knox County portion of the Tennessee State Implementation Plan were submitted by the Tennessee Department of Environment and Conservation on February 26, 1993. Revisions to Chapter 25, "Permits", of the Knox County portion of the Tennessee State Implementation Plan were submitted by the Tennessee Department of Environment and Conservation on June 23, 1998.

(i) Incorporation by reference.

(A) Section 16.3 Exceptions to Prohibition—With Permit, adopted on January 13, 1993.

(B) Section 25.6 Exemptions, paragraph E, adopted on June 10, 1998.

(ii) Other material. None.

[FR Doc. 99–28879 Filed 11–4–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–11

RIN 3090–AG02

Relocation of FIRMR Provisions Relating to GSA's Role in the Records Management Program

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule; extension of expiration date.

SUMMARY: The General Services Administration (GSA) is extending the expiration date of an interim rule on Federal Property Management Regulations provisions regarding records management.

DATES: *Effective date:* The interim rule published at 61 FR 41000 was effective August 8, 1996.

Expiration Date: The expiration date of the interim rule published at 61 FR 41000 is extended through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr. Office of Governmentwide Policy, telephone 202–501–4469.

SUPPLEMENTARY INFORMATION: FPMR interim rule B–1 was published in the **Federal Register** on August 7, 1996, 61 FR 41000. The expiration of the interim rule was December 31, 1997. A supplement published in the **Federal Register** on October 31, 1997, 62 FR 58922, extended the expiration date through December 31, 1998. Another supplement was published in the **Federal Register** on January 19, 1999, 64 FR 2857, that extended the expiration date through December 31, 1999. This supplement further extends the expiration date through December 31, 2000.

List of Subjects in 41 CFR part 101–11

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

Therefore the expiration date for interim rule B–1 adding 41 CFR part 101–11 published at 61 FR 41000, August 7, 1996, and extended until December 31, 1999 at 64 FR 2857, January 19, 1999, is further extended until December 31, 2000.

Dated: October 26, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–28962 Filed 11–4–99; 8:45 am]

BILLING CODE 6820–34–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket Nos. 96–45 and 96–262; FCC 99–290]

Federal-State Joint Board on Universal Service Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service: Access Charge Reform adopts modifications to the Commission's rules consistent with the portions of the United States Court of Appeals for the Fifth Circuit decision concerning the assessment and recovery of universal service contributions, and the Lifeline program.

DATES: Effective November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixteenth Order on Reconsideration in CC Docket No. 96–45, Eighth Report and Order in CC Docket No. 96–45, and Sixth Report and Order in CC Docket No. 96–262 released on October 8, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. On July 30, 1999, a three-judge panel of the United States Court of Appeals for the Fifth Circuit issued a decision affirming in part, remanding in part, and reversing in part the Commission's May 8, 1997 *Universal Service Order*, 62 FR 32862 (June 17, 1997). Several of the court's rulings in that decision affect the assessment and recovery of universal service contributions, as well as the Commission's Lifeline program for low-income consumers. The court's mandate from the decision is scheduled to take effect on November 1, 1999. Accordingly, in this Order, we adopt modifications to our rules consistent with those portions of the court's decision concerning the assessment and recovery of universal service contributions, and the Lifeline program. These rule changes shall become effective on November 1, 1999.

2. This Order reflects our effort to respond promptly to the court's forthcoming mandate. The actions we take are transitional in view of the limited time and data available to us in implementing the court's mandate that we change our rules and past practices by a specific date. In view of these constraints, our actions represent our best effort to take short-term action, subject to later refinement if necessary, in order to assure compliance with the court's mandate.

II. Opinion by the Fifth Circuit Court of Appeals

3. Numerous parties filed petitions for review of the Commission's Universal Service Order. Those petitions were consolidated before the Fifth Circuit, which issued an opinion on July 30, 1999. In response to the arguments of Petitioner COMSAT Corporation (COMSAT), the court reversed and remanded to the Commission for further consideration the Commission's decision to assess contributions based on contributors' combined interstate and international revenues. COMSAT did not challenge the Commission's jurisdiction to include international revenues in calculating carriers' contributions. COMSAT argued, however, that including the international revenues of interstate carriers in the revenue base was unreasonable for carriers such as COMSAT whose interstate revenues account for a small percentage of their total annual revenues and whose annual contribution to universal service would exceed their annual interstate revenues. COMSAT argued, and the court agreed, that this result is contrary to the statutory requirement in section 254(d) of the Act, that contributions be made on an "equitable and nondiscriminatory basis." Specifically, the court found that the Commission failed to demonstrate how requiring COMSAT to pay more in universal service contributions than it derives in interstate revenues satisfies the "equitable" language of section 254(d). Additionally, the court criticized the contribution requirement at issue as "discriminatory" under section 254(d), on the basis that the application of that requirement "damages some international carriers like COMSAT more than it harms others." Accordingly, the court reversed and remanded for further consideration the Commission's decision to assess the international revenues of interstate carriers.

4. With respect to the Commission's methodology for assessing contributions for the universal service support mechanisms for schools and libraries, and rural health care providers, the court found that the Commission had exceeded its jurisdictional authority by assessing contributions for those programs based, in part, on the intrastate revenues of universal service contributors. Accordingly, the court reversed the Commission's decision to include intrastate revenues in the contribution base for the schools and libraries, and rural health care support mechanisms.

5. The court also reversed the Commission's "decision to require [incumbent LECs] to recover universal service contributions from their interstate access charges." Finding that the Commission had "required" incumbent LECs to recover their contributions from interstate access charges, the court held that this requirement maintained an implicit subsidy in violation of section 254(e) of the Act.

6. Finally, the court reversed the Commission's decision to prohibit carriers eligible for universal service support from disconnecting Lifeline service to consumers who fail to pay toll charges. The court held that the Commission lacked jurisdiction under the Act to impose this "no disconnect" requirement on carriers.

III. Response to the Fifth Circuit's Opinion

A. Procedural Response

7. On September 9, 1999, the Commission filed a motion to stay the court's mandate, which had been scheduled to take effect on September 20, 1999. On September 13, 1999, the Commission, GTE, and AT&T each filed petitions for rehearing with the court. On September 28, 1999, the court denied all of the petitions for rehearing, and granted, in part, the Commission's motion for stay. In its order granting, in part, the Commission's motion for stay, the court ordered its July 30, 1999 mandate to issue on November 1, 1999. In light of the court's September 28, 1999 rulings, the rule changes shall become effective on November 1, 1999.

B. Changes to the Commission's Rules

1. Single Contribution Base for Universal Service Support Mechanisms

8. Overview. In light of the court's ruling, we amend §§ 54.706 and 54.709 of our rules to provide for a single contribution base for purposes of funding all of the universal service support mechanisms. Specifically, in response to the court's determination that the Commission lacks jurisdiction to assess providers' intrastate revenues, we have eliminated intrastate revenues from the contribution base. Consistent with the court's ruling, we also reconsider the basis for assessing the international revenues of interstate providers. No party has challenged the Commission's decision to include international revenues generally. The court, however, agreed with COMSAT's argument that our rules, as applied, are in some instances inequitable and discriminatory. We modify §§ 54.706 and 54.709 of our rules to exclude from the contribution base the international end-user telecommunications revenues of each interstate telecommunications provider whose interstate end-user telecommunications revenues constitute less than 8 percent of its combined interstate and international end-user telecommunications revenues. Except for revenues excluded pursuant to revised § 54.706(c), the new contribution base will consist of interstate providers' interstate and international end-user telecommunications revenues.

9. Our rules provide that the Commission will determine contribution factors on a quarterly basis. Because the court's mandate will issue on November 1, 1999, however, the Commission must establish contribution factors in the middle of the quarter, to comply with the court's decision. The Commission's rules permit us, on our own motion, to waive our rules for good cause shown. Because it is necessary to issue new contribution factors before the start of the next quarter in order to comply with the judicial mandate, we find that good cause exists to waive § 54.709(a) on this occasion to the extent that it provides that contribution factors will be adopted on a quarterly basis. In addition, because of the need to revise our rules so that they will be in compliance with the mandate as of November 1, 1999, we find good cause to dispense with notice and comment requirements that might otherwise apply, pursuant to the Administrative Procedure Act, because those requirements are impracticable and contrary to the public interest.

10. *Revised Fourth Quarter Contribution Factor.* On September 10, 1999, the Commission released proposed fourth quarter 1999 contribution factors, which USAC is using to bill contributors for their October 1999 contributions. Consistent with the Commission's rules in effect on that date, one of those contribution factors was calculated based on contributors' intrastate, interstate, and international end-user telecommunications revenues for the July 1998 through December 1998 period, as reported by contributors on the March 1999 Universal Service Worksheet (FCC Form 457). In order to comply with the Fifth Circuit's decision, we must eliminate intrastate revenues from the contribution base. Eliminating intrastate revenues from the new contribution base will eliminate the need for two contribution factors. Specifically, our revised rules provide for a single contribution factor that will be calculated based on contributors' interstate and international end-user telecommunications revenues. That factor will be applied to individual contributors' combined interstate and international end-user telecommunications revenues to calculate contributions for all of the universal service support mechanisms. The elimination of intrastate revenues from the contribution base will reduce the contributions of incumbent LECs. To the extent an incumbent LEC is recovering its universal service contributions in interstate access charges, it must file tariffs reducing its access charges correspondingly.

11. In order to implement this change by November 1, 1999, the effective date of the court's mandate, the Common Carrier Bureau (Bureau) is releasing today a revised proposed fourth quarter contribution factor that will be applicable to carrier contributions for November and December 1999. We direct USAC to calculate all contributor bills for November and December 1999 based on this revised fourth quarter 1999 contribution factor. For the month of October 1999, USAC shall continue to bill contributors, and contributors shall continue making contributions to universal service, in accordance with the Commission's current contribution rules. Providers that fail to contribute to the universal service support mechanisms in accordance with the Commission's rules will be subject to enforcement action by the Commission.

12. *Limited International Revenues Exception.* Consistent with the court's ruling, we modify §§ 54.706 and 54.709 of our rules. A provider of interstate and international telecommunications shall not be required to contribute based on its international end-user telecommunications revenues if its interstate end-user telecommunications revenues constitute less than 8 percent of its combined interstate and international end-user telecommunications revenues. This modification is consistent with the court's ruling because it will exclude from the contribution base the international end-user telecommunications revenues of any telecommunications provider whose annual contribution to the federal universal service support mechanisms, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of the provider's interstate end-user telecommunications revenues. We do not anticipate that the universal service contribution factor will exceed 8 percent in the near future. Thus, this 8 percent rule ensures that a provider's universal service contribution will not exceed the amount

of its interstate end-user telecommunications revenues.

13. The operation of this rule is demonstrated in the following example. Assume a hypothetical provider with $100 of interstate and international end-user telecommunications revenues, consisting of $5 of interstate revenues and $95 of international revenues. Also assume a contribution factor of 0.06, or 6 percent. In the absence of the 8 percent rule, the provider's contribution ($6) would exceed its interstate revenues ($5)—a result contrary to the court's ruling. Under our 8 percent rule, however, the provider's interstate revenues ($5) are less than 8 percent of its combined interstate and international revenues and, therefore, the provider is not required to contribute on the basis of its international revenues—a result consistent with the court's ruling. The provider must still contribute, however, on the basis of its $5 of interstate revenues. This hypothetical is only for purposes of illustration. Under existing rules, if such a provider's annual contribution to universal service would be less than $10,000 in a given year, the provider would not be required to submit a contribution for that year, *see* § 54.708.

14. *Equitable Requirement of Section 254(d).* We believe that the international revenues exception adopted here is responsive to the court's concerns regarding the fairness of our assessment methodology in that it will permit a contributor that derives the substantial majority of its revenues from the provision of international services to calculate its contribution to universal service based solely on its domestic interstate revenues. We conclude that this exception further addresses the court's concerns by ensuring that a provider is not assessed a contribution in an amount exceeding that provider's annual interstate end-user telecommunications revenues. Because providers will receive a financial benefit, overall, from providing interstate service, we conclude that our revised rule is equitable.

15. We decline to adopt a more expansive exception than the rule adopted here or to exclude international revenues from the contribution requirement altogether in light of section 254(d)'s mandate requiring all interstate telecommunications providers to contribute without regard to whether those providers' revenues are interstate or international. Moreover, nothing in the court's decision suggests that the Commission's decision to assess international revenues is inconsistent with the Act, outside of the impact it had on Comsat and similarly situated carriers. In addition, we conclude that providers whose interstate revenues account for a greater amount of their combined interstate and international revenues than the threshold adopted here clearly receive a direct benefit from universal service insofar as their domestic interstate business benefits from the expanded network that is fostered by universal service. For these providers, their interstate telecommunications services are not merely ancillary to their provision of international telecommunications services. Accordingly, as direct beneficiaries of an expanded domestic network, such carriers reasonably should be required to contribute to universal service based on their combined interstate and international revenues.

16. *Nondiscriminatory Requirement of Section 254(d).* The international revenues exception that we adopt here also addresses the court's concerns regarding the potentially discriminatory impact of our previous assessment methodology. As stated by the court, the FCC's interpretation is "discriminatory," because the agency concedes that its rule damages some international carriers like COMSAT more than it harms others. Any competitive disparity claimed by COMSAT or by similarly situated carriers should be minimized as a result of the exception that we adopt today. Specifically, such a provider of interstate and international telecommunications shall not be required to contribute based on its international revenues if its interstate end-user telecommunications revenues constitute less than 8 percent of its combined interstate and international end-user telecommunications revenues. Therefore, providers whose interstate telecommunications services are merely ancillary to their international operations will not be in a worse position than providers that, by virtue of their status as exclusively international providers, are not subject to the universal service contribution requirements.

17. *Specific, Predictable, and Sufficient Requirement of Section 254(d).* The limited international revenues exception that we adopt today also meets the requirement in section 254(d) of the Act that universal service support mechanisms be specific, predictable, and sufficient. By setting the international exception at the predetermined level of 8 percent, we establish a bright-line rule for providers. As soon as providers prepare their worksheets, they will know with certainty whether their interstate end-user telecommunications revenues comprise 8 percent or more of their total interstate and international end-user telecommunications revenues and, thus, whether they must contribute on the basis of their international end-user telecommunications revenues during the upcoming quarters in which their reported revenues will be assessed. In sum, the 8 percent rule allows the provider to make decisions based on the specific and predictable operation of the support mechanism.

18. As an alternative, we considered creating an exception based not on a fixed percentage of a provider's interstate revenues, but instead on the relationship between a provider's actual contribution and the amount of its interstate revenues. Under this alternative, a carrier would not contribute in a given quarter if its contribution for the quarter exceeded its interstate end-user telecommunications revenues applicable to that quarter. While this approach would address the equitable and nondiscriminatory requirements of section 254(d), we conclude that it does not meet the specific and predictable requirements as well as the 8 percent rule. If we were to base the international revenues exception on the amount of a provider's contribution in relation to its interstate end-user telecommunications revenues, then the provider's eligibility for the exception would depend on the level of the quarterly contribution factor, which varies from quarter to quarter. Providers with a percentage of interstate end-user telecommunications revenues close to the contribution factor would not know with certainty whether they qualify for the exception until the contribution factor is announced shortly before the beginning of each quarter. Thus, this approach is not as specific and predictable as the 8 percent rule, and we decline to adopt it.

19. We also conclude that the 8 percent rule meets section 254(d)'s requirement that universal service support mechanisms be sufficient. In order to address the court's concerns, any approach that we adopt must necessarily exclude a certain amount of international revenue from the contribution base. The 8 percent rule excludes only slightly more international revenue from the contribution base than would an approach that is tied directly to the level of the quarterly contribution factor. Moreover, the relatively small amount of international revenue excluded from the contribution base by the 8 percent rule should not dramatically affect the level of the quarterly contribution factor

or the ability of providers to meet their contribution obligations. Thus, we conclude that the 8 percent rule will allow us to maintain universal service support mechanisms that are sufficient.

20. *Implementation of Limited International Revenues Exception.* Because providers currently report their interstate and international end-user telecommunications revenues as a combined amount on the Telecommunications Reporting Worksheet (FCC Form 499), the Commission does not have revenue data for contributors that distinguish their interstate and international revenues. Although the worksheet that carriers will submit in April 2000 will be revised to provide for separate reporting of contributors' interstate and international revenues, two potential implementation problems arise in the interim with respect to our adoption of the international revenues exception pending the issuance of a revised Worksheet. First, without revenue data reflecting the amount of international revenues that will be excluded from the contribution base pursuant to the international revenues exception, the Commission cannot accurately calculate the revised contribution factor for the fourth quarter of 1999. Second, without revenue data separately identifying each contributor's interstate and international revenues, USAC cannot determine which contributors qualify for the international revenues exception and, therefore, cannot accurately bill individual contributors. To remedy these problems, this Order: (1) estimates the amount of international revenues that we anticipate will be excluded from the contribution base by operation of the international revenues exception described; and (2) requires each contributor that qualifies for the international revenues exception adopted in this Order to file an amendment to its March 1999 and September 1999 worksheets within 30 days of the effective date of this Order, identifying the amount and percentages of the contributor's interstate and international revenues.

21. The Common Carrier Bureau's Industry Analysis Division has estimated that, as a result of our adoption of the limited international revenues exception, approximately $0.617 billion of international end-user telecommunications revenues will be excluded from the $38.204 billion of interstate and international end-user telecommunications revenues previously reported for the second half of 1998. Thus, we direct that the amount of interstate and international end-user telecommunications revenues reported for July to December 1998 ($38.204 billion), as filed with the Commission by USAC, should be reduced to $37.587 billion when calculating a contribution base using revenue data from that period. In the event that our estimate of the amount of international revenues excluded by operation of the limited international revenues exception proves inaccurate once actual revenue data become available, we direct USAC to adjust future revenue estimates and future contributor bills to correct for any inaccuracy in our estimate.

22. To enable USAC to bill individual carriers, each contributor that qualifies for the international revenues exception adopted in this Order must file with USAC an amendment to its March 1999 Form 457 and September 1999 Form 499–S worksheets within 30 days of the effective date of this Order, identifying the amount and percentages of the contributor's interstate and international revenues. Only a contributor whose interstate end-user telecommunications revenues constituted less than 8 percent of the contributor's combined interstate and international end-user telecommunications revenues in 1998 should submit these forms. Until the Telecommunications Reporting Worksheet (FCC Form 499–A, FCC Form 499–S) can be revised and approved by the Office of Management and Budget (OMB), we conclude that the interim procedure just described will provide a reasonable estimate of the contribution base and allow individual contributors to obtain the benefit of the limited international revenues exception with minimal disruption to USAC's billing, collection, and disbursement operations. A revised worksheet that separately lists contributors' interstate and international revenues will be made available in time for filing of the April 2000 Worksheet (FCC Form 499–A). A contributor that qualifies for the international revenues exception shall continue making its contributions to universal service in accordance with the Commission's current contribution rules regarding the assessment of international revenues until such time as: (1) the contributor files the Form 457 and Form 499–S amendments with USAC, and (2) the contributor has received a bill or reimbursement from USAC in which USAC has adjusted the contributor's payment obligation, effective November 1, 1999, to take into account changes resulting from our adoption of the 8 percent rule.

2. Recovery of Universal Service Contributions by Incumbent Local Exchange Carriers

23. In Texas Office of Public Utility Counsel v. FCC, the court reversed the Commission's decision that incumbent LECs could only recover their universal service contributions through access charges, stating that:

> forcing GTE to recover its universal service contributions from its access charges * * * maintains an implicit subsidy. * * * [R]equiring carriers to recover their contributions from access charges on interstate calls shifts the costs of intrastate universal service to the interstate jurisdiction.
>
> * * * Because the agency continues to require implicit subsidies for ILECs in violation of a plain, direct statutory command, we reverse its decision to require ILECs to recover universal service contributions from their interstate access charges.

24. The U.S. Court of Appeals for the Eighth Circuit held in *Southwestern Bell Telephone Co.* v. *FCC* that section 254(e) does not preclude the Commission from permitting incumbent LECs to recover universal service contributions through access charges. That court noted that contribution costs are "real costs of doing business" that carriers may pass through to customers that use their services. Rather than requiring explicit universal service support, section 254(e) states that such support "should" be explicit. Moreover, section 254(e) does not address contributions to the universal service fund, but support flowing from the fund. As the Eighth Circuit observed, "[t]he flow-through of LEC universal service costs to its IXC customers is akin to the flow-through of IXC universal service costs to its long-distance customers—neither can be categorized as an implicit subsidy in violation of section 254(e)."

25. The Fifth Circuit's analysis of section 254(e) can be harmonized with the Eighth Circuit's decision in Southwestern Bell. We believe that the Fifth Circuit intended to hold only that section 254(e) barred the FCC from requiring incumbent LECs to recover universal service contributions through access charges. The Eighth Circuit, on the other hand, simply held that section 254(e) does not preclude the FCC from permitting incumbent LECs to recover universal service contributions through access charges. Thus, we read the Fifth Circuit decision, consistent with the Eighth Circuit's decision, as permitting incumbent LECs to adopt this method of cost recovery.

26. To comply with the Fifth Circuit's order, we will expand incumbent LECs'

options for recovering their universal service contributions to include an end-user charge. Because incumbent LECs are dominant in the provision of local exchange and exchange access services, we conclude that some regulation of the way in which these carriers may recover their universal service contributions from end-users remains necessary. Competition is not sufficient to constrain their rates and ensure that they remain just and reasonable. We require any such recovery to be equitable and nondiscriminatory. Incumbent LECs will thus be able to recover their contributions through access charges or through end-user charges. To the extent they choose to implement an interstate end-user charge, however, incumbent LECs that are currently recovering their universal service contributions in interstate access charges must make corresponding reductions in their interstate access charges to avoid any double recovery.

3. Elimination of the "No Disconnect" Rule

27. Section 54.401(b) of the Commission's rules prohibits carriers eligible for universal service support from disconnecting Lifeline service to consumers that fail to pay toll charges. In light of the court's ruling that the Commission does not have jurisdiction under the Act impose this "no disconnect" rule, we amend part 54 of our rules to eliminate that provision.

C. Authority Delegated to the Bureau

28. Pursuant to § 54.711(c) of the Commission's rules, the Bureau has authority to waive, reduce, eliminate, or add to the Commission's universal service reporting requirements. To the extent that the reporting requirements described in this Order require subsequent modification, the Bureau has authority to make such modifications without further Commission action.

IV. Procedural Matters

A. Supplemental Final Regulatory Flexibility Analysis

29. The Regulatory Flexibility Act (RFA) requires that a Regulatory Flexibility Analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This Supplemental Final Regulatory Flexibility Analysis supplements the Final Regulatory Flexibility Analysis (FRFA) included in the Universal Service Order, only to the extent that changes to that order adopted here require changes in the conclusions reached in the FRFA. As required by section 603 of the Regulatory Flexibility Act, the FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Notice of Proposed Rulemaking and Order Establishing the Joint Board (NPRM), 61 FR 63778 (December 2, 1996), and an IRFA, prepared in connection with the Recommended Decision, which sought written public comment on the proposals in the NPRM and the Recommended Decision. The Commission has prepared this Supplemental Final Regulatory Flexibility Analysis of the possible significant economic impact this Order might have on small entities, in conformance with the RFA.

1. Need for and Objectives of Rules

30. The decisions and rules adopted in this Order are designed to implement as quickly and effectively as possible the court's July 30, 1999 decision. In formulating these rules, we have been mindful of the impact of our rules on small business entities, particularly regarding their impact on (1) small international providers whose interstate operations represent a modest amount of their combined interstate and international revenues, and (2) small incumbent local exchange carriers that wish to recover their universal service contributions from their end-user customers through an explicit interstate end-user charge.

2. Summary of Significant Issues Raised by the Public Comments to the IRFA

31. The Commission performed an IRFA in connection with both the NPRM and Recommended Decision in this proceeding, which sought written public comment on the proposals in the NPRM and Recommended Decision. In the IRFAs, the Commission sought comment on possible exemptions from the proposed rules for small telecommunications companies and measures to avoid significant economic impact on small entities, as defined by the RFA. No comments in response to the IRFAs, other than those summarized in the *Universal Service Order*, were filed. In response to the FRFA contained in the *Universal Service Order*, RTC argued that the Commission did not satisfy the requirements of the RFA by considering alternatives to the cap on recovery of corporate operations expenses. Those comments were fully addressed in the *Fourth Order on Reconsideration*.

32. No comments or petitions for reconsideration in response to the IRFAs or FRFA, other than those described, were filed and none of the comments filed pertain to the issues raised in the present Order. We have nonetheless addressed small business concerns by giving incumbent LECs greater flexibility in structuring their recovery of universal service contributions and by creating an exception from the contribution requirements for certain providers of international telecommunications services, as described in "Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered."

3. Description and Estimate of Number of Small Entities to Which the Rules May Apply

33. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the new rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. And finally, "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. In this Order, the

Commission stated that the new rules will affect all providers of interstate telecommunications and interstate telecommunications services. We further describe and estimate the number of small business concerns that may be affected by the rules adopted in this Order.

34. As noted, under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

35. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,604 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

36. We have included small incumbent LECs in this present RFA analysis. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other non-RFA contexts.

37. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules in this Order.

38. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules in this Order.

39. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,410 LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers that may be affected by the decisions and rules in the order and order on reconsideration.

40. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules in this Order.

41. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules

adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies. To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services. According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and rules in this Order.

42. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

43. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA, and approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in this Order.

44. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the order and order on reconsideration includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules in this Order.

45. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

46. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 16004 (April 3, 1997), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses. As a result, we estimate that 16

or fewer of these final winning bidders are small or very small businesses.

47. *Paging.* On June 7, 1999, the Wireless Telecommunications Bureau announced the first in a series of auctions of paging licenses, the first to commence on December 7, 1999. The Bureau has proposed that the first auction be composed of 2,499 licenses. The Commission utilizes a two-tiered definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA has approved this definition. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. In addition, according to the most recent *Carrier Locator* data, 137 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data. Because the auction has yet to occur, we do not have data specifying the number of winning bidders that will meet the above small business definition. Also, we will assume that there currently are 137 or fewer small business paging carriers.

48. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

49. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

50. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

51. *Private Land Mobile Radio (PLMR).* PLMR systems, also known as Private Mobile Radio Service (PMRS) systems, serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of, if any, small businesses that could be impacted by the new rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the rules in this context could potentially impact any small U.S. business that chooses to become licensed in this service. On July 21, 1999, the Wireless Telecommunications Bureau requested public comment on whether the licensing of PMRS frequencies in the 800 MHz band for commercial SMR use would serve the public interest.

52. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

53. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

54. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules in this Order includes these eight entities.

55. *Multipoint Distribution Systems (MDS):* The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

56. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which

includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules in this Order.

57. *International Service Providers.* The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. We note that those entities providing only international service will not be affected by our revised rules. We do not, however, have sufficient data to estimate with greater detail those providing both international and interstate services. Consequently, we estimate that there are fewer than 775 small international service entities potentially impacted by our rules.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

58. In this Order, we adopt revisions to Part 54 that are responsive to the court's July 30, 1999 ruling. In response to the court's concern that our assessment rules were unduly burdensome as applied to small providers whose interstate operations represent a modest amount of their combined interstate and international revenues, we modify our rules to create an exception from the contribution requirements for certain providers of international telecommunications services. In doing so, we have asked providers claiming entitlement to this exception to prepare and submit to USAC two short forms amending their two most recently filed Worksheets. Those forms ask contributors claiming entitlement to the exception to separately list their interstate and international revenues. To the extent that this reporting obligation is not unduly burdensome and is adopted in order to establish certain providers' entitlement to an exception from the contribution requirements, we project that this Order will impose no significant new reporting requirements on small carriers.

59. In light of the court's determination that the Commission may not require incumbent LECs to recover the cost of their universal service contributions through interstate access charges, we give incumbent LECs flexibility in the manner in which they recover their universal service contributions. For those that elect to continue recovering their contributions through interstate access charges, no additional requirements are imposed by this Order. For those that elect to recover their contributions through an explicit end-user charge, this Order requires such carriers to take steps to make corresponding reductions in their interstate access charges to avoid double recovery.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

60. In this Order, we have taken several steps to minimize the economic impact of our Part 54 rule changes on all carriers, including small carriers. For example, in response to the court's concern that our contribution requirement, as applied to certain small providers, was unduly burdensome, we have sought to reduce the contribution obligation of providers, many of which are small entities, whose interstate operations represent a modest amount of their combined interstate and international revenues. We take this action in response to the court's concerns and to help primarily international providers with a small portion of interstate business to compete on a more equal footing with international providers that, by virtue of their status as exclusively international carriers, are not subject to the universal service contribution requirements.

61. In light of the court's determination that the Commission may not require incumbent LECs to recover the cost of their universal service contributions through interstate access charges, we give incumbent LECs flexibility in the manner in which they recover their universal service contributions. For those that elect to continue recovering their contributions through interstate access charges, no additional requirements are imposed by this Order. For those that elect to recover their contributions through an explicit end-user charge, this Order requires such carries to take steps to make corresponding reductions in their interstate access charges to avoid double recovery. Given that the compliance obligations associated with transitioning to an end-user method of recovery for incumbent LECs are in large measure voluntary, and insofar as carriers, including small carriers, are given no deadlines for implementing such changes, we conclude the compliance requirements adopted in this Order will not be unduly burdensome on small carriers.

6. Report to Congress

62. The Commission will send a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. A summary of the rules adopted in this Order and this Supplemental Final Regulatory Flexibility Analysis will also be published in the **Federal Register**, and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

B. Effective Date of Final Rules

63. In this Order, the Commission amends its rules to implement the court's July 30, 1999 mandate with respect to the assessment and recovery of universal service contributions. Consistent with the court's September 28, 1999 rulings, we make this Order and the rule changes adopted herein effective on November 1, 1999. The court's directive that its July 30, 1999 mandate will issue on November 1, 1999 provides good cause to depart in the manner described from the general requirement of 5 U.S.C. 553(d) that final rules take effect not less than thirty (30) days after their publication in the **Federal Register**. The information collections contained in this Order was approved by OMB under control number 3060–0907.

V. Ordering Clauses

64. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1–4, 201, 205, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403, 410, the Sixteenth Order on Reconsideration in CC Docket No. 96–45 is adopted.

65. The Eighth Report and Order in CC Docket No. 96–45 is adopted.

65. The Sixth Report and Order in CC Docket No. 96–262 is adopted.

67. Parts 54 and 69 of the Commission's Rules, 47 CFR Parts 54

and 69, are amended, effective November 1, 1999.

68. The authority is delegated to the Chief of the Common Carrier Bureau pursuant to 47 CFR 0.291 and 54.711(c) to modify, or require the filing of, any forms that are necessary to implement the decisions and rules adopted in this Order and that are required to ensure the sound and efficient functioning of the universal service support mechanisms.

69. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 54

Universal service.

47 CFR Part 69

Communications common carrier.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 54 and 69 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 214, and 254 unless otherwise noted.

§ 54.401 [Amended].

2. In § 54.401, remove and reserve paragraph (b).

3. Amend § 54.706 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 54.706 Contributions.

* * * * *

(b) Except as provided in paragraph (c) of this section, every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and every payphone provider that is an aggregator shall contribute to the federal universal service support mechanisms on the basis of its interstate and international end-user telecommunications revenues.

(c) Any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than 8 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms for high cost areas, low-income consumers, schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues. For purposes of this paragraph, an "entity" shall refer to the entity that is subject to the universal service reporting requirements in 47 CFR 54.711 and shall include all of that entity's affiliated providers of telecommunications services.

(d) Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

4. Amend § 54.709 by revising paragraph (a) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and a contribution factor determined quarterly by the Commission.

(1) For funding the federal universal service support mechanisms, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services.

(2) The quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to total end-user interstate and international telecommunications revenues. The Commission shall approve the Administrator's quarterly projected costs of the universal service support mechanisms, taking into account demand for support and administrative expenses. The total subject revenues shall be compiled by the Administrator based on information contained in the Telecommunications Reporting Worksheets described in § 54.711(a).

(3) Total projected expenses for the federal universal service support mechanisms for each quarter must be approved by the Commission before they are used to calculate the quarterly contribution factor and individual contributions. For each quarter, the Administrator must submit its projections of demand for the federal universal service support mechanisms for high-cost areas, low-income consumers, schools and libraries, and rural health care providers, respectively, and the basis for those projections, to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. For each quarter, the Administrator must submit its projections of administrative expenses for the high-cost mechanism, the low-income mechanism, the schools and libraries mechanism and the rural health care mechanism and the basis for those projections to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. Based on data submitted to the Administrator on the Telecommunications Reporting Worksheets, the Administrator must submit the total contribution base to the Common Carrier Bureau at least sixty (60) days before the start of each quarter. The projections of demand and administrative expenses and the contribution factor shall be announced by the Commission in a public notice and shall be made available on the Commission's website. The Commission reserves the right to set projections of demand and administrative expenses at amounts that the Commission determines will serve the public interest at any time within the fourteen-day period following release of the Commission's public notice. If the Commission takes no action within fourteen (14) days of the date of release of the public notice announcing the projections of demand and administrative expenses, the projections of demand and administrative expenses, and the contribution factor shall be deemed approved by the Commission. Except as provided in § 54.706(c), the Administrator shall apply the quarterly contribution factor, once approved by the Commission, to contributors' interstate and international end-user telecommunications revenues to calculate the amount of individual contributions.

* * * * *

PART 69—ACCESS CHARGES

5. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403 unless otherwise noted.

6. Amend § 69.4 by adding paragraph (d) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(d) Recovery of Contributions to the Universal Service Support Mechanisms by Incumbent Local Exchange Carriers.

(1) Incumbent local exchange carriers may recover their contributions to the universal service support mechanisms through carriers' carrier charges.

(i) Price cap incumbent local exchange carriers may do so by exogenously adjusting the price cap indices of each basket on the basis of relative end-user revenues.

(ii) Non-price cap incumbent local exchange carriers may do so by applying a factor to their carrier common line charge revenue requirements.

(2)(i) In lieu of the carriers' carrier charges described in paragraph (d)(1), incumbent local exchange carriers may recover their contributions to the universal service support mechanisms through explicit, interstate, end-user charges that are equitable and nondiscriminatory.

(ii) To the extent that incumbent local exchange carriers choose to implement explicit, interstate, end-user charges to recover their contributions to the universal service support mechanisms, they must make corresponding reductions in their access charges to avoid any double recovery.

§ 69.5 [Amended]

7. In § 69.5, remove and reserve paragraph (d).

[FR Doc. 99–28964 Filed 11–4–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990527146–9146–01; I.D. 110199B]

Fisheries of the Northeastern United States; Atlantic Sea Scallop and Northeast Multispecies Fisheries; Georges Bank Sea Scallop Exemption Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Termination of the Georges Bank Sea Scallop Exemption Program.

SUMMARY: NMFS issues this announcement that the Regional Administrator, Northeast Regional Office, NMFS (Regional Administrator), has determined that the 387 metric tons (MT) of the total allowable catch (TAC) of yellowtail flounder allowed in the Georges Bank Sea Scallop Exemption Program (Exemption Program) has been projected to be caught as of 0001 hours (local time), November 2, 1999, and entry into the Exemption Program is terminated. Vessels may not declare and begin an Exemption Program trip after midnight (local time), November 2, 1999. Vessels enrolled in the Exemption Program will be required to complete their trip by November 12, 1999 or when the vessel harvests 10,000 lb (4,536.0 kg) of sea scallop meats, whichever comes first. The entire exemption area remains closed to vessels not enrolled in the Exemption Program until midnight (local time), November 12, 1999.

DATES: The Georges Bank Sea Scallop Exemption Program is terminated on November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Walter J. Gardiner, Fishery Management Specialist, (978) 281–9326.

SUPPLEMENTARY INFORMATION: On June 10, 1999, NMFS published a final rule to implement measures contained in Framework Adjustment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 29 to the Northeast Multispecies FMP (64 FR 31144). This rule, which allows sea scallop dredge vessels access to the Exemption Program area contains a provision to ensure that the yellowtail flounder bycatch/incidental catch remains within the 387 MT total allowable catch (TAC) level established for this fishery. Section 648.58(f)(2) specifies that this mechanism is triggered when the Regional Administrator projects that 387 MT will be caught. Further, this section stipulates that NMFS will publish notification in the **Federal Register** informing the public of the date of the termination of the Exemption Program. Based on an analysis of information obtained through vessel observer reports, the Regional Administrator has determined that 387 MT was reached on November 2, 1999. Vessels may not declare and begin an Exemption Program trip after midnight (local time), November 2, 1999. Therefore, vessels will no longer be allowed to elect to fish in the Exemption Program through their Vessel Monitoring System units after midnight (local time), November 2, 1999. Vessels enrolled in the Exemption Program will be required to complete their trip by November 12, 1999, or when the vessel harvests 10,000 lb (4,536.0 kg) of sea scallop meats, whichever comes first. The entire exemption area remains closed to vessels not enrolled in the Exemption Program until midnight (local time), November 12, 1999.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 2, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–29025 Filed 11–2–99; 4:42 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 214
Friday, November 5, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 103, 104, 106, 107, 109, 110, 114, and 116

[Notice 1999—24]

Use of the Internet for Campaign Activity

AGENCY: Federal Election Commission.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The Commission is currently examining the issues raised by the use of the Internet to conduct campaign activity. The Commission is conducting this review in order to assess the applicability of the Federal Election Campaign Act and the Commission's current regulations to campaign activity conducted using this medium. In order to assist in its review, the Commission invites comments on the application of the Act and the current regulations to Internet campaign activity. The Commission will use the comments received to determine whether or not to issue a Notice of Proposed Rulemaking ("NPRM"), which may include proposed changes to its regulations. An NPRM would seek further comment on any proposed revisions to the Commission's rules. The Commission has made no final decisions regarding the issues discussed in this notice, and may ultimately decide to take no action. Further information is provided in the supplementary information that follows.

DATES: Comments must be submitted on or before January 4, 2000.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Acting Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to internetnoi@fec.gov, and should include the full name, electronic mail address and postal service address of the commenter. Additional information on electronic submission is provided below.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Acting Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In recent years, there has been a dramatic increase in the use of the Internet to conduct campaign activity related to federal elections. Candidates, parties and political action committees ("PACs") have apparently concluded that the Internet is a powerful campaign tool with the potential to significantly influence the outcome of federal elections. Individuals and other organizations have also used the Internet to participate directly in election campaigns, taking advantage of the medium's capacity to reach large numbers of people at very little cost.

The dramatic increase in campaign activity conducted on the Internet raises a number of issues regarding the applicability of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* ("FECA" or "the Act"). The Act requires candidates, parties and PACs to file disclosure reports regarding their election-related activity, and also imposes restrictions and limitations on the amounts that may be contributed to candidates, parties and PACs by individuals, corporations, labor organizations and other committees.

Although the FECA was enacted long before widespread use of the Internet, and has, in some instances, been narrowed by court decisions, *see e.g., Buckley* v. *Valeo*, 424 U.S. 1 (1976), *FEC* v. *Massachusetts Citizens for Life*, 479 U.S. 238 (1986), it remains broad enough to potentially encompass some election-related activity conducted on the Internet. For example, section 431(8) states that the term "contribution" includes "any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i), 11 CFR 100.7(a)(1). The Commission has historically interpreted the phrase "anything of value" in section 431(8)(A)(i) to include in-kind contributions, i.e., the provision of goods or services without charge or at less than the usual or normal charge. 11 CFR 100.7(a)(1)(iii). The term "contribution" also includes "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. 431(8)(A)(ii), 11 CFR 100.7(a)(3).

Similarly, section 431(9) states that the term "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(9)(A), 11 CFR 100.8(a). In-kind contributions are also expenditures. 11 CFR 100.8(a)(1)(iv).

Section 441b of the Act generally prohibits contributions and expenditures by corporations and labor organizations, and states that, for the purposes of this prohibition, the term "contribution or expenditure" includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party in connection with any election to any federal office. *Id.*

Thus, the Act, and in particular, the contribution and expenditure definitions, are at least facially applicable to a wide range of activity, including some activity that could be conducted on the Internet. However, the Act also contains a number of exemptions from the contribution and expenditure definitions. For example, the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution. 2 U.S.C. 431(8)(B)(i). The Act also excludes costs incurred by state and local party committees for (1) slate cards and sample ballots, (2) campaign materials (such as pins, bumper stickers, brochures, yard signs, etc.) used in connection with volunteer activities, and (3) voter registration and get-out-the-vote activities on behalf of Presidential and Vice Presidential nominees, under certain circumstances. 2 U.S.C. 431(8)(B)(v), (x), (xii), (9)(B)(iv), (viii), (ix).

News stories, commentaries and editorials distributed by a broadcasting station, newspaper, magazine or other periodical publication are not expenditures, unless the broadcaster or publisher is owned or controlled by a candidate, political committee or political party. 2 U.S.C. 431(9)(B)(i). In addition, communications on any subject between a corporation and its stockholders, executive and administrative personnel, and their families, and between a labor organization, its members and their families, are not expenditures under the Act. 2 U.S.C. 441b(b)(2)(A). Costs incurred by publicly funded Presidential primary candidates "in connection with the solicitation of contributions" are also exempt from the expenditure definition. 2 U.S.C. 431(9)(B)(vi).

Although there are no minimum dollar thresholds for something of value to be considered a contribution or expenditure, the Act excludes activity that falls below certain dollar thresholds from some of the reporting requirements. For example, individuals that make independent expenditures are not required to submit disclosure reports unless their expenditures aggregate in excess of $250 during a calendar year. 2 U.S.C. 434(c). Similarly, organizations are not required to register and report as political committees until their contributions or expenditures aggregate in excess of $1000 in a calendar year. 2 U.S.C. § 431(4). Political committees are only required to provide the identification (name, mailing address, occupation, name of employer, 2 U.S.C. 431(13)) of those contributors whose contributions aggregate in excess of $200 in a calendar year. 2 U.S.C. 434(b)(3)(A).

As the agency responsible for administering the Federal Election Campaign Act, the Federal Election Commission ("FEC" or "Commission"), must determine the extent to which the Act applies to campaign activity conducted on the Internet. In an effort to begin the process of making this determination, the Commission requests comments on the application of the Act and the Commission's current regulations to Internet campaign activity.

One threshold question upon which the Commission invites comments is whether campaign activity conducted on the Internet should be subject to the Act and the Commission's regulations at all. Are Internet campaign activities analogous to campaign activities conducted in other contexts, or do they differ to such a degree as to require different rules?

In addition, commenters are encouraged to discuss aspects of the Commission's current regulations that may affect or inhibit the use of the Internet in ways that may not have been anticipated or intended when the regulations were promulgated, and which may now be inappropriate when applied to Internet activity. Commenters are also encouraged to identify and discuss provisions of the FECA or the regulations the application of which is unclear in the context of political activity conducted on the Internet.

Several significant issues relating to the use of the Internet are discussed in detail below. Comments are also welcome on any other Internet-related issues that should be addressed in the regulations.

Internet Activities as Contributions or Expenditures

1. Introduction

The threshold question raised when the Internet is used for activity relating to federal candidates and elections is whether that activity should be treated as a contribution or an expenditure under the Act. If so, under what circumstances? The contribution and expenditure definitions are summarized above. The Commission invites general comments on the application of these definitions to candidate and election-related activity conducted on the Internet. The Commission is also interested in comments on the issues raised by these definitions in the particular situations described below.

2. Candidate Web Sites

Increasing numbers of candidates are establishing web sites to support their campaigns. The most basic question raised is how the candidate's committee should treat costs associated with establishing a campaign web site. Are these costs expenditures under the Act? Or, should they be treated as some other type of committee disbursement?

The Commission is also interested in comments on several specific issues that arise in relation to hyperlinks on candidate web sites. A hyperlink is an electronic link to another web site. If a candidate's site contains a hyperlink to the site of another candidate or a political party, should that link be treated as a contribution from the candidate who operates the originating site to the linked candidate or party committee? If so, how should the value of that contribution be determined? When does that contribution occur? If the link remains on the site for an extended period, does the contribution occur in each reporting period during which it remains on the site? When should it be reported? (Reporting issues will be discussed more extensively below.)

What if the candidate's web site contains a link to the site of a vendor that sells items such as pins, T-shirts, bumper stickers, etc., that express support for the candidate? In this situation, the link serves as a form of advertising for the vendor. Are there circumstances under which this would raise issues under the FECA? What if the vendor is a corporation, and is paying the campaign to provide the link? Would this payment be a contribution, or should the committee treat it as a permissible "other receipt?" Is it a contribution only if the vendor pays more than the usual and normal charge for the link?

3. Web Sites of Publicly Funded Candidates

The Commission invites comments on whether there are special considerations involving web sites established by Presidential candidates who accept public funding under the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* What issues arise when publicly funded Presidential candidates use the Internet to promote their candidacies?

For example, the Commission recently reversed a long-standing policy to allow for matching of credit card contributions received by Presidential primary candidates via the Internet. 64 FR 32,394 (June 17, 1999). This raises an issue regarding solicitation costs incurred by publicly funded candidates.

Under 2 U.S.C. 431(9)(B)(vi) and 11 CFR 100.8(b)(21), costs incurred by publicly funded Presidential primary candidates "in connection with the solicitation of contributions" are not expenditures under the Act. Similarly, solicitation costs incurred by publicly funded general election candidates are not expenditures if contributions are being solicited to make up for deficiencies in amounts received from Presidential Election Campaign Fund. *Id.* As a result, these costs do not count toward the expenditure limits set out in section 441a(b). *See* 2 U.S.C. 431(9)(B)(vi), 26 U.S.C. 9003(b)(1), 9033(b)(1). If a publicly funded candidate uses its web site to solicit contributions, should a portion of the cost of establishing and maintaining the site be exempt from the definition of expenditure under this provision? If so, how should the exempt amount be determined?

The Commission invites comments on this issue and any other issues raised by the use of the Internet by publicly funded candidates.

4. Web sites created by individuals

a. Text and other materials

Many web sites created by individuals contain references to candidates and political parties. Some sites, often referred to as "fan sites," are devoted entirely to urging support for or opposition to one or more candidates. In other situations, only a portion of an individual's web site might be devoted to candidate advocacy.

The FECA distinguishes between activities conducted by individuals in cooperation or consultation with a candidate, and activities undertaken independently of a candidate. Generally, if an individual conducts campaign activity in cooperation or consultation with a candidate, the cost of that activity is an in-kind contribution. 2 U.S.C. 431(8)(A)(ii), 431(17). An individual may make no more than $1000 in contributions to a candidate per election. 2 U.S.C. 441a(a)(1)(A). In addition, the receipt of in-kind contributions must be reported by the candidate. 2 U.S.C. 434(b), 11 CFR 104.3(a)(4)(i).

In contrast, if an individual conducts activity "without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate," that activity is not a contribution. However, if the activity expressly advocates the election or defeat of a candidate, the expenses incurred in that activity are an independent expenditure. 2 U.S.C. 431(17). Although individuals may make unlimited independent expenditures on behalf of a candidate, "every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year" must file disclosure reports. 2 U.S.C. 434(c).

How should these definitions be applied to web sites created by individuals that contain references to candidates or political parties? Are costs incurred by individuals in posting materials relating to candidates or parties covered by the FECA? If so, how should the value of the individual's contribution or independent expenditure be determined? What costs should be taken into account? Should the individual posting the materials be required to treat a portion of the initial cost of the computer hardware used to operate the web site as part of the contribution or expenditure? Should the individual be required to treat any other expenses, such as the costs of software purchased to create the site and fees paid to maintain it, as a contribution or expenditure?

What if the site contains both candidate or party-related materials and other unrelated materials? Should a portion of the costs of the site be treated as a contribution or expenditure? What if an individual who already owns a computer and already has access to the Internet posts candidate or party-related materials on the Internet? An individual in this situation may incur little or no additional cost in posting these materials. Does this mean that no contribution or expenditure has occurred?

With regard to the issue of whether an individual's Internet activities should be treated as an in-kind contribution or independent expenditure, 2 U.S.C. 431(17) states that "[t]he term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." What types of contacts between an individual and a candidate should be regarded as "cooperation or consultation," often referred to as "coordination," with the candidate within the meaning of this section? Should the types of contact considered coordination with a candidate be different for Internet activities than for activities that take place in other contexts? The Commission is currently engaged in a rulemaking on the issue of coordination with a candidate, and has published two Notices of Proposed Rulemaking seeking comments on this issue. 63 FR 69,523 (Dec. 16, 1998), 62 FR 24,367 (May 5, 1997). Two recent court decisions also discussed the concept of coordination. *Federal Election Commission* v. *Christian Coalition*, 52 F. Supp. 2d (D.D.C. 1999), *Federal Election Commission* v. *Public Citizen*, 1999 WL 731056 (N.D.Ga. 1999). *See also, Clifton* v. *Federal Election Commission*, 114 F.3d 1309 (1st Cir. 1997) *cert. denied* 118 S. Ct. 1036 (1998), *Colorado Republican Federal Campaign Committee* v. *FEC*, 518 U.S. 604 (1996). Comments are invited on how coordination should be defined in the context of campaign activity conducted on the Internet.

How should the regulations address the republication of candidate-generated materials on web sites created by individuals? For example, a visitor to a candidate's web site might download files known as "banners" that can be posted like electronic bumper stickers on the visitor's own site. In other cases, a visitor might download textual materials, such as speeches or position papers, and make these materials available on his or her own site. Ordinarily, the republication of campaign materials prepared by the candidate would be an in-kind contribution. 2 U.S.C. 441a(a)(7)(B), 11 CFR 109.1(d)(1). Should this rule apply to republication of materials on the Internet? If so, how should the in-kind contribution be valued for FECA purposes? Or, should the Commission create an exception to this rule for the republication of materials on the Internet, since the marginal cost to the individual of adding a banner or other downloaded material to his or her web site is near zero?

If an individual posts candidate-related materials on the Internet without cooperation or consultation with the candidate, the question raised is whether the candidate-related content should be treated as an independent expenditure. Generally, a communication must contain express advocacy in order to be an independent expenditure. 2 U.S.C. 431(17). How should this test be applied to the contents of a web site? Should the test be applied to the site as a whole, or should it be applied separately to different areas of the site?

b. Hyperlinks

Some web sites created by individuals contain hyperlinks to a candidate's site or to the site of another political committee. Under what circumstances should posting a hyperlink be treated as a contribution or independent expenditure?

A hyperlink on an individual's web site may have value to the linked candidate, since the link will inevitably steer visitors from the individual's site to the candidate's site. If the individual has been in contact with the campaign and has agreed to provide the link at no charge or less than the usual and normal charge, the link could be regarded as an in-kind contribution. On the other hand, the costs of providing the link are often negligible or nonexistent. In addition, the practice in some areas of the Internet industry may be to place no value on these links. Thus, the usual and normal charge for providing a link may be zero.

How widespread is the practice of providing free links? Should the result be that no contribution or expenditure occurs when an individual posts a hyperlink to a candidate or party web site?

If the individual that posts the link does so without any consultation or coordination with the linked candidate's campaign, the link would not be a contribution to the candidate's campaign. In these circumstances, the issue is whether the link should be treated as an independent expenditure. Generally, a communication must contain express advocacy in order to be an independent expenditure. 2 U.S.C. 431(17). Should the express advocacy test be applied to the text of the hyperlink itself, or to the contents of the candidate's site? Would a hyperlink that appears as "JonesMiller2000" be express advocacy? What if the text of the hyperlink does not constitute express advocacy, but the linked site contains express advocacy?

Assuming that the text of the link contains express advocacy, how should the value of the independent expenditure be determined? As explained above regarding possible contributions, the owner of the site may incur little or no additional cost in posting the link. Thus, although the link might fall within the definition of "independent expenditure," it may fall below the $250 reporting threshold in 2 U.S.C. 434(c). Should the fact that the cost of the link is incremental relieve the individual of his or her reporting obligation?

c. Web Sites Created by Campaign Volunteers

The Commission invites comments on the extent to which Internet services provided by volunteers should be covered by the volunteer exemption in section 431(8)(B)(ii) of the Act. Section 431(8)(B)(ii) exempts "the use of real or personal property * * * voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises." Are Internet services covered by this section?

d. Disclaimers

Section 441d of the FECA states that "[w]henever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising," the communication must contain a disclaimer statement. *See also* 11 CFR 110.11. Generally, this statement must indicate who paid for the advertisement and whether it was authorized by a candidate or candidate's committee. If so, the candidate or committee must also be identified.

In Advisory Opinion 1998–22, an independent voter sought guidance on the application of the disclaimer requirement to a web site that urged the election of a candidate and the defeat of that candidate's opponent. The Commission noted its conclusion in previous advisory opinions that, because of the Internet's general availability, a web site would be considered general public political advertising. Since the site expressly advocated the election and defeat of candidates, it was an independent expenditure that required a disclaimer under section 441d. *See also* Advisory Opinions 1995–9 and 1995–35.

The Commission is interested in comments on the conclusion reached in Advisory Opinion 1998–22, and on the application of the disclaimer requirement to the Internet. Should web sites created and maintained by individuals be considered general public political advertising within the meaning of section 441d? Internet users generally have to take the affirmative step of directing their browsers to a web site in order to view the contents of that site. In contrast, individuals are often exposed to broadcast messages, newspaper advertisements and direct mail involuntarily, without any deliberate action on their part. Should web sites be treated differently than newspapers and broadcast stations for this reason? The Commission invites comments on this issue.

5. Nonconnected Committees and Other Unincorporated Organizations

Since nonconnected political committees (other than multicandidate committees) and other unincorporated organizations are treated the same as individuals under the FECA, many of the same issues arise when these entities use the Internet for candidate-related activity. The Commission invites commenters to discuss the issues raised above as they apply to these entities.

The Commission is also interested in comments on the circumstances under which the inclusion of a hyperlink on the web site of a nonconnected committee or other unincorporated organization should be treated as "nonpartisan activity designed to encourage individuals to vote or to register to vote" under section 431(9)(B)(ii). In Advisory Opinion 1999–7, the Commission responded to a inquiry from a state government agency that posted hyperlinks to candidates on its web site. The Commission concluded that providing information about all ballot-qualified candidates in a nonpartisan manner without first attempting to determine recipients' candidate or party preferences falls within section 431(9)(B)(ii) and 11 CFR 100.8(b)(3). Section 100.8(b)(3) states that "[a]ny cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote."

Should the Commission revise the regulations to specifically exclude hyperlinks posted in this manner from the definition of "expenditure?" In its opinion, the Commission noted that the state agency's site already included candidate mailing addresses and telephone numbers, and concluded that "[t]he addition of campaign web addresses in the form of hyperlinks does not change this analysis." Should hyperlinks be treated as the equivalent of campaign mailing addresses in all circumstances?

Commenters are also welcome to raise any other issues relating to the use of the Internet by nonconnected committees and other unincorporated organizations.

6. Corporations and Labor Organizations

a. Communications

Many corporations and labor organizations operate web sites to communicate with the general public. Section 441b of the Act prohibits corporations and labor organizations from making contributions or expenditures in connection with federal elections. Thus, the Act generally prohibits these entities from using their web sites to assist or advocate on behalf of any federal candidate.

The question raised is under what circumstances should a candidate or election-related communication on a corporate or labor organization be treated as a prohibited contribution or independent expenditure? If the election-related communication is in the form of a hyperlink to the web site of a candidate or party committee, the issues that arise are similar to those discussed in section 4(b), above, regarding hyperlinks posted on an individual's web site. The Commission invites comments on these issues, as they arise in the context of web sites operated by corporations and labor organizations.

The FECA also contains a number of exceptions from the contribution and expenditure definitions that enable a corporation or labor organization to engage in certain election-related activity without violating the Act. For example, the Act exempts "communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject." 2 U.S.C. 441b(b)(2)(A). The Commission's regulations refer to these groups as the "restricted class" of a corporation or labor organization. 11 CFR 114.1(j).

Section 114.4(c) of the regulations also contains a series of exceptions that allow corporations and labor organizations to distribute certain candidate and election-related materials to the general public without violating section 441b. Under this section, a corporation or labor organization may make registration and get-out-the vote communications to the general public, provided that: (1) They do not expressly advocate the election or defeat of any clearly identified candidate or candidates of a clearly identified political party, and (2) they do not coordinate their efforts with any candidate or political party. 11 CFR 114.4(c)(2). Similarly, a corporation or labor organization may also distribute officially-produced registration or voting information, official registration-by-mail forms, and absentee ballots, provided the corporation or labor organization does not expressly advocate, does not coordinate, and does not encourage registration with any particular political party. 11 CFR 114.4(c)(3).

A corporation or labor organization may also prepare and distribute the voting records of Members of Congress, provided that the voting record and all communications distributed with it do not expressly advocate, and that decisions on content and distribution of the record are not coordinated with any candidate, group of candidates or political party. 11 CFR 114.4(c)(4). *But see Clifton* v. *Federal Election Commission*, 114 F.3d 1309 (1st Cir. 1997) *cert. denied* 118 S. Ct. 1036 (1998). A corporation or labor organization may also prepare and distribute voter guides consisting of two or more candidates' positions on campaign issues under certain conditions set out in the section 114.4(c)(5). Finally, the rules allow a corporation or labor organization to endorse a candidate and announce the endorsement to the general public through a press release and press conference, so long as the press release and notice of the press conference are distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing nonpolitical press releases or holding press conferences for other purposes. 11 CFR 114.4(c)(6).

The Commission invites comments on the issues raised by corporate and labor organization use of the Internet for communication of candidate and election-related information. One threshold issue is whether, and under what circumstances, communication via the Internet should be regarded as communication to the general public, and when it should be treated as communication to a more limited audience. Advisory Opinion 1997–16 involved, *inter alia*, a corporate endorsement posted on the corporation's web site. The Commission concluded that communication of the endorsement via the web site would, in effect, be communication with the general public for purposes of section 441b, unless access was limited to members of the restricted class using a password or similar method. Should the Commission incorporate this interpretation into the regulations? Under what circumstances should the Commission treat information posted on a web site as communication to the restricted class? Under what circumstances should it be treated as distribution to the general public?

If the web site is treated as communication to the general public, under what circumstances should a candidate or election-related communication on a corporate or labor organization web site be treated as a prohibited contribution or independent expenditure? If the election-related communication is in the form of a hyperlink to the web site of a candidate or party committee, the issues that arise are similar to those discussed in section 4(b), above, regarding hyperlinks posted on an individual's web site. The Commission invites comments on these issues, as they arise in the context of web sites operated by corporations and labor organizations.

With regard to the types of communication permitted under section 114.4(c) of the regulations, what special issues arise? How does the use of the Internet to distribute voter guides, voting records, absentee ballots or other registration or voting information impact the current regulations? Are there aspects of these regulations that should be revised?

For example, the Commission is interested in comments on several issues that arise within the specific context of endorsements. As explained above, the rules allow a corporation or labor organization to announce an endorsement to the general public through a press release and press conference, so long as distribution of the press release and notice of the press conference is limited to those media representatives that the organization ordinarily contacts when issuing press releases or holding press conferences. 11 CFR 114.4(c)(6). Should a corporation or labor organization that routinely posts press releases on the Internet be allowed to post a press release announcing a candidate endorsement? Would it matter if the corporation or labor organization posts the endorsement release more prominently than it posts other press releases? What if the release received no special prominence or treatment? Or, should the endorsement be made accessible only to members of the restricted class and other employees?

The Commission invites comments on these issues, and any other issues raised by corporate and labor organization communication via the Internet.

b. Internet Services as In-kind Contributions

Some corporations are in the business of providing Internet-related services, such as Internet access, web site creation and maintenance, technical support, etc. The Commission is interested in comments on whether, and under what circumstances, the costs of Internet-related services should be treated as in-kind contributions.

For example, in Advisory Opinion 1996–2, a corporation that provided Internet services and other on-line information services proposed to provide free member accounts to federal candidates on a nonpartisan basis, and asked whether these accounts would be prohibited in-kind contributions under the Act. The Commission concluded that the accounts would be in-kind contributions unless the corporation could show that it provided the accounts to nonpolitical customers in the ordinary course of business and on the same terms and conditions, *i.e.*, the "usual and normal charge." The Commission also said that even if the corporation could show that it provided free accounts in the ordinary course of business, the promotional value derived by the vendor in the form of prestige, goodwill, and increased usage by other members did not constitute adequate consideration to satisfy the "usual and normal charge" requirement.

The Commission invites comments on whether this conclusion should be revised or incorporated into the regulations, and on whether there are circumstances under which the provision of Internet services at less than the usual and normal charge should not be regarded as a contribution or expenditure.

c. Use of Corporate Facilities

Section 114.9 of the regulations places limits on the extent to which the stockholders and employees of a corporation, or the officials, members and employees of a labor organization, may make use of the facilities of the corporation or labor organization for individual volunteer activities in connection with federal elections. Generally, the rule allows occasional, isolated or incidental use of the facilities, and requires users to reimburse the corporation or labor organization only to the extent that the corporation or labor organization's overhead costs are increased. The rule provides additional guidance as to what will be considered occasional, isolated or incidental use in particular situations.

The Commission is interested in comments on the application of this rule to the use of corporate or labor organization facilities for Internet activities conducted in connection with federal elections. To what extent should a computer network be treated as part of a corporation or labor organization's facilities within the meaning of this provision? What level of use of such a network should be considered occasional, isolated or incidental use? How should this be determined?

If a corporation allows an employee to post candidate-related materials on a web site that resides on the corporation's computer network, should the employee be required to reimburse the corporation for the costs of the site? What if the corporation's network has enough surplus capacity that the web site would not increase its overhead or operating costs? What if an employee uses the corporation or labor organization's computer network to send an electronic mail message soliciting contributions or expressly advocating the election or defeat of a candidate? Has the corporation or labor organization provided something of value?

7. News Organizations

a. On-line Publications

The Act contains an exception from the definition of "expenditure" for "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. 431(9)(B)(i). Section 100.8(b)(2) of the regulations also excludes "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication" from the definition of "contribution," unless the media outlet is owned or controlled by a political party, political committee, or candidate.

The Commission is interested in comments on how these provisions, generally referred to collectively as the "news story exemption," should be applied to the Internet. Under what circumstances should the Commission regard an Internet site as a "newspaper, magazine, or other periodical publication" within the meaning of the exemption in section 431(9)(B)(i)? Should it make a difference whether the site owner also produces a broadcast or print publication? Should a site be treated as a periodical publication if the owner regularly revises or updates the site? What, if any, additional characteristics should be required?

Some Internet publishers use "list serves" or other types of electronic mailing lists that enable the publisher to send the publication to all subscribers using a bulk e-mail message. Using this method, the publisher can distribute the publication to a large number of subscribers instantly, at very little cost. The Commission is interested in comments on whether publication and distribution via a list serve or other widely-distributed electronic mail communication should fall within the news story exemption? Should it make a difference whether recipients receive these communications without requesting them, only after requesting them, or only after paying a subscription fee? The Commission invites comments on these issues.

Questions also arise as to whether and when information distributed via these sites would be a "news story, commentary or editorial" within in the meaning of the exemption. A similar issue arose in *Reader's Digest Association* v. *Federal Election Commission*, 509 F. Supp. 1210 (S.D.N.Y. 1981), in which Reader's Digest Association, a magazine publisher, produced a videotape that featured a federal candidate, and distributed it to various television stations and networks. The videotape related to a story to be run in its print edition. The court noted that the news story exemption "would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function." *Id.* at 1214. The court concluded that the Commission was entitled to investigate the question of whether Reader's Digest Association was acting as a press entity when it produced and distributed the videotape.

The Commission invites comments on whether new rules are needed to determine whether a news organization's Internet activities fall within its legitimate press function. Are there types of web site content that should be regarded as unrelated to the press function?

b. Candidate Appearances

The Commission is interested in comments on how the Act and regulations should be applied when candidates make public appearances via a web site operated by a news organization. These appearances can take many different forms. New technologies make it possible for candidates to appear on the Internet and interact with viewers in real time. In some cases, the candidate might make a speech that is broadcast on-line using streaming video technology. In other cases, a web site or Internet service provider might invite its members, subscribers, or the general public to attend a real-time on-line interview with a candidate, and may also invite viewers to submit questions for the candidate by electronic mail. It is also possible that, in the future, candidate debates will either be conducted entirely on-line, or will be simulcast on-line. In either case, viewers may be invited to submit questions or comments to the participating candidates.

The Commission addressed some of the issues raised by this activity in Advisory Opinion 1996–16, in which a news and information service proposed to invite presidential candidates to appear in a series of electronic town meetings with the news service's subscribers. During these town meetings, the candidates were linked via two-way television to a live audience consisting of subscribers and other invited guests. The candidates made brief introductory remarks and then answered questions from the live audience. Other subscribers were able to listen by telephone line and submit questions by electronic mail. Later, they could view a multimedia version of the program on the service's dedicated computer terminals.

The Commission concluded that town meetings fall within the press exemption when the news service is a *bona fide* press entity. The Commission reiterated two relevant considerations set out in the statute: (1) Whether the press entity is owned by a political party or candidate; and (2) whether the press entity is acting as a press entity in performing the media activity. The Commission noted that the media entity planned the meetings and therefore controlled the means of presentation, the duration, and the format of the candidates' appearances. Thus, the activity fell within the scope of the news story exemption. The Commission invites comments on whether this conclusion should be revised or incorporated into the regulations, and on other issues raised by candidate appearances on the Internet.

c. On-line Discussions

Another area of campaign-related activity on the Internet is the use of "chat rooms" and other fora for interactive discussions of issues and candidates. Are there circumstances under which the sponsor of such a forum should be responsible for statements made by persons participating in the discussion? Does the sponsor make an expenditure by providing a venue for individuals to expressly advocate on behalf of a candidate?

8. Party Committees

The Commission is interested in comments on the impact of the Act and regulations on the use of the Internet by political party committees. One area in which the rules may impact party committee use of the Internet is in the allocation of expenses between candidates under 11 CFR 106.1. Section 106.1(a) states that

> [e]xpenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates.

Party committee web sites often contain references to multiple candidates. Should party committees be required to allocate the costs of their web sites to the candidates mentioned on the site? If so, should the "time-space" allocation method set out in section 106.1(a) be applied? Should a party committee be required to take any reference to a candidate, no matter how brief, into account in allocating the web site's costs? Or, should the committee be able to limit its allocation to more extensive references, and exclude candidates to whom only minimal reference is made? Would it be adequate to exempt hyperlinks to candidate web sites from the time-space allocation of a web site, but include more extensive references?

Alternatively, should some or all of the expenses of a web site be treated as "overhead, general administrative, fund-raising, and other day-to-day costs of political committees" that need not be attributed to individual candidates under section 106.1(c)(1)? The Commission invites comments on these issues.

The Commission is also interested in the related issue of whether the costs associated with references to candidates on a party committee web site should count toward the party committee's coordinated expenditure limit. Section 441a(d) of the Act states that the national committee of a political party and a state committee of a political party may make expenditures in connection with the general election campaign of candidates for Federal office, up to certain dollar limits. These limits apply to expenditures that are coordinated with the party's candidates. *See Colorado Republican Federal Campaign Committee* v. *FEC*, 518 U.S. 604 (1996). Under what circumstances should a party committee's Internet expenditures count toward this limit?

Finally, the Commission encourages commenters to discuss any other issues relating to the use of the Internet by party committees.

Reporting and Recordkeeping

The use of new avenues for conducting campaign activity often raises reporting issues. Consequently, the Commission is interested in comments on how the use of the Internet impacts the disclosure process.

1. Contributions Received Via the Internet

a. Reporting

In Advisory Opinion 1995–9, the Commission concluded that a political committee could use the Internet to solicit and accept contributions so long as the recordkeeping and reporting requirements were met. The Commission cited previous advisory opinions in which it "recognized that the Act and regulations allow lawful contributions to be made not only by personal check, but also in other ways, including properly documented use of credit cards (Advisory Opinions 1978–68 and 1984–45)." As discussed above, the Commission also recently revised its regulations to allow for matching of credit card contributions received by Presidential primary candidates via the Internet. 64 FR 32,394 (June 17, 1999). See also Advisory Opinion 1999–9.

The Commission listed the reporting requirements that the nonconnected committee in Advisory Opinion 1995–9 was required to follow. The committee was required to itemize its receipts, and use best efforts to obtain and submit the full name, mailing address, occupation and name of employer of any person who makes contributions that aggregate in excess of $200 in a calendar year. The Commission also said that if a credit card company or other processing entity deducts fees from the contribution before forwarding it to the committee, those fees would be operating expenses of the committee, and must be reported as such. (Note that, for publicly funded candidates, these fees would be exempt fundraising expenses under 11 CFR 100.8(b)(21)). The committee was also required to report the full amount paid by the contributor as a contribution, notwithstanding any deductions by the credit card company. *See* 2 U.S.C. 434(b)(5)(A), 11 CFR 104.3(b)(3).

The Commission invites comments on whether these conclusions should be revised or incorporated into the regulations, and on whether any additional reporting requirements should be imposed on committees that receive contributions via the Internet.

b. Screening prohibited and excessive contributions

Section 103.3(b) of the regulations states that the treasurer of a political committee shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR 110.1 or 110.2.

The Commission is interested in comments on whether additional safeguards are needed to ensure that contributions received via the Internet do not come from sources that are prohibited from making contributions under the Act, and do not exceed the contributions limits. Should the regulations regarding the process of the screening contributions be revised? Are more specific processing requirements needed to screen out contributions from foreign nationals?

In Advisory Opinion 1995–9, the Commission endorsed a screening procedure in which the web site soliciting contributions would list the prohibitions in the Act, and ask contributors to specifically attest that their contributions were both voluntary and permissible under each prohibition. Potential contributors that did not do so would receive a message stating that Federal law prohibits their contribution, and inviting those who think they have filled out the contribution form incorrectly to try again. The Commission also addressed the issue of screening procedures in Advisory Opinion 1999–9. Should aspects of the screening procedures described in these advisory opinions be incorporated into the regulations? Should these procedures be modified? The Commission invites comments on these issues.

2. Disbursements for Expenses Incurred in Internet Activity

The Commission is interested in comments on whether or not disbursements for Internet-related expenses should be subject to the reporting requirements? If so, how should costs associated with establishing a campaign web site be reported? Should they be operating expenses, or as some other type of expense? If the committee of a publicly funded candidate uses its web site to solicit contributions, should a portion of the cost of establishing and maintaining the site be treated as exempt fundraising expenses under 2 U.S.C. 431(9)(B)(vi) and 11 CFR 100.8(b)(21)? How should a committee report the initial costs of the computer hardware obtained to host the site? What about the costs of software purchased to create and maintain the site? How should fees paid to Internet service providers be reported?

Comments are also welcome on whether the reporting requirements should be applied to a web site that is only partially devoted to candidate advocacy. If so, how should the costs associated with the candidate-related portion of the site be determined and reported?

Similar issues arise in relation to a multicandidate committee web site that mentions several candidates. As discussed above in relation to party committees, section 106.1 of the Commission's current regulations requires multicandidate committees to attribute expenditures made on behalf of more than one candidate to each candidate according to the benefit reasonably expected to be derived. 11 CFR 106.1(a)(1). Should a multicandidate committee whose web site expresses support for several candidates be required to allocate the costs of the site? If so, should the time-space allocation method in section 106.1(a)(1) be used to allocate those costs between the specifically identified candidates? Or, should the costs of the web site be treated the same as the committee's other administrative expenses, and allocated in accordance with 11 CFR 106.6(c)?

3. Recordkeeping

The use of the Internet for campaign activity also raises questions regarding the retention of campaign records. Sections 432(c) and (d) of the FECA require treasurers to create and maintain records of committee transactions, and preserve those records for three years after filing the associated report. In the case of reports filed electronically, machine-readable copies of committee reports must be maintained for three years.

In Advisory Opinion 1995–9, discussed above, the Commission concluded that the requesting committee could maintain records of contributions received via the Internet in non-paper form so long as the electronic records contained the information required by the statute, and were retained for three years.

The Commission is interested in comments on the types of records committees should be required to keep regarding transactions conducted via the Internet. Should these records be maintained differently than those made using traditional media? Should the conclusion reached in Advisory Opinion 1995–9 regarding retention of records be revised or explicitly stated in the regulations?

Other Issues

1. Electronic Mail

Many aspects of the campaign finance process involve the use of the mail. The Commission is interested in comments on how broadly it should treat electronic mail as a substitute for regular mail.

For example, section 432(i) of the FECA requires treasurers of political committees to exercise "best efforts" to report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. 2 U.S.C. 434(b)(3)(A). For an individual, "identification" means the full name, mailing address, occupation and employer. 2 U.S.C. 431(13). If a contributor fails to provide this information, the Commission's rules require the recipient committee to make one oral or written follow-up attempt to obtain the contributor information for any contribution that exceeds $200 per calendar year. 11 CFR 104.7(b)(2)

The threshold question presented is whether a follow-up attempt sent by electronic mail should satisfy the best efforts requirement. In Advisory Opinion 1995–9, the Commission determined that, in the case of a contribution received via the Internet, the follow-up request could consist of an electronic message sent to the contributor's e-mail address. However, the request must be sent after the committee received the credit card company's confirmation of the contribution, and must meet the specific "best efforts" requirements set forth in 11 CFR 104.7(b)(2).

The Commission is interested in comments on whether the conclusion reached in Advisory Opinion 1995–9 regarding the use of electronic mail for best efforts follow-up communications should be revised or incorporated into the regulations. If so, how should the rules address situations where a committee's follow-up request is not successfully delivered to the contributor? For example, if the contributor has changed his or her e-mail address, he or she would not receive the follow-up request directly. Furthermore, if the contributor has not arranged for e-mail sent to his or her old address to be forwarded, he or she may not receive the request at all. In addition, the committee's follow-up request might reach the contributor's former address before that account has been completely deactivated by the Internet service provider. In that case, the committee would not receive an error message indicating that its follow-up request was undeliverable, and thus might not be aware that its follow-up request had not reached the contributor. How should the rules address these situations?

Should the Commission extend Advisory Opinion 1995–9 to allow committees to use electronic mail to follow up on contributions received by regular mail? Are contributors more likely to provide information when prompted to do so by a computer than they are when they are prompted by regular mail or a phone call?

Finally, the Commission is interested in comments on whether there are circumstances in which the disclaimer requirement should apply to electronic mail. As explained above, section 441d of the FECA states that "[w]henever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising," the communication must contain a disclaimer statement. *See also* 11 CFR 110.11. Comments are welcome on the question of whether list serves or other forms of electronic mail that are distributed to large numbers of recipients in bulk should be regarded as general public political advertisements for which a disclaimer is required.

The Commission is also interested in comments on any other issues raised by the use of electronic mail for candidate or election-related activity.

2. Membership

Section 441b(b)(4)(A) prohibits a corporation and its separate segregated fund from soliciting contributions from persons other than its stockholders and their families or its executive or administrative personnel and their families. However, under paragraph (b)(4)(C), a membership organization or its the separate segregated fund may solicit contributions from "members" of the organization. The Commission recently approved new rules defining the term "member." 64 FR 41,266 (Jul. 30, 1999). These rules are currently before Congress pending legislative review.

Because of the increasing availability of the Internet, there may now be organizations that exist almost entirely on-line. Persons visiting the web site of such an organization may be invited to become members of the organization. Are there special considerations in determining whether these organizations qualify as "membership organizations?" Are there additional factors in evaluating whether someone is a "member" of an on-line membership organization?

3. Draft Committees

Periodically, groups form to encourage, or "draft," someone to become a candidate for a particular office. The Internet may be the ideal vehicle for draft committees to use to generate support for their prospective candidates.

The Commission is interested in comments on the use of the Internet by draft committees. The current rules contain only one provision that is directed specifically at draft committees. Section 102.14(b)(2) states that "[a] political committee established solely to draft an individual or to encourage him or her to become a candidate may include the name of such individual in the name of the committee provided the committee's name clearly indicates that it is a draft committee." Should the rules be revised to address other aspects of draft committee activities? Do web sites established by draft committees raise any special issues under the FECA? The Commission is interested in comments on these issues.

Conclusion

The Commission invites comments on these issues, and on any other issues related to the use of the Internet for campaign activity.

Dated: November 1, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–28982 Filed 11–4–99; 8:45 am]

BILLING CODE 6715–01–U

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1050]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update addresses short-term cash advances commonly called "payday loans" and includes technical revisions.

DATES: Comments must be received on or before January 10, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1050, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 in the Board's Martin Building between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor, Michael E. Hentrel, or David A. Stein, Staff Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate. Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. The act is implemented by the Board's Regulation Z (12 CFR part 226).

The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 2000; to the extent the revisions impose new requirements on creditors, compliance would be optional until October 1, 2000, the effective date for mandatory compliance.

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(14) Credit

The Board has been asked to clarify whether "payday loans"—also known as "cash advance loans," "check advance loans," and "post-dated check loans"—constitute credit for purposes of TILA. Typically in such transactions, a short-term cash advance is made to a consumer in exchange for the consumer's personal check in the amount of the advance, plus a fee; sometimes the advance is made in exchange for the consumer's authorization to debit electronically the consumer's checking account in the amount of the advance, plus a fee. The transaction occurs with knowledge by both parties that the amount advanced is not, or may not be, available from the consumer's checking account at the time of the transaction. Thus, the parties agree that the consumer's check will not be cashed or the account electronically debited until a designated future date. On that date, the consumer usually has the option to repay the obligation by allowing the party advancing the funds to cash the check or electronically debit the consumer's checking account, or by providing cash or some other means of payment. The consumer may also have the option to defer repayment beyond the initial period by paying an additional fee.

Section 226.2(a)(14) defines credit as the right to defer the payment of debt or the right to incur debt and defer its payment. In the case of payday loans, this includes the agreement to defer cashing the check or debiting the consumer's account. Comment 2(a)(14)-2 would be added to clarify that payday loan transactions constitute credit for purposes of TILA. Persons that regularly extend payday loans and impose a finance charge are required to provide TILA disclosures to consumers.

Subpart C—Closed-End Credit

Section 226.19—Certain Residential Mortgage and Variable-rate Transactions

19(b) Certain variable-rate transactions

In December 1997, the Board revised the requirements in § 226.19(b)(2) concerning the disclosure of a fifteen-year historical example of interest rates and payments. (62 FR 63441, December 1, 1997.) The amendments to § 226.19(b)(2) provide creditors with the option of giving a statement that the periodic payments may increase or decrease substantially together with the maximum interest rate and payment amount for a $10,000 loan amount in lieu of having to give the fifteen-year historical example.

The Board proposes technical amendments to comment 19(b)-5 to conform the citations in the comment to § 226.19(b)(2), as amended. No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(a) Coverage

32(a)(1)(ii)

TILA imposes additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. See § 226.32. Creditors must follow the rules in § 226.32 if the total points and fees payable by the consumer at or before loan closing exceed the greater of $400 or 8 percent of the total loan amount. The Board is required to adjust the $400 amount each year. The adjusted amount for 2000 ($451) is published elsewhere in today's **Federal Register** and would be added to comment 32(a)(1)(ii)–2.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1050, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction*, under *2(a)(14) Credit.*, a new paragraph 2. would be added to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(14) Credit.

* * * * *

► 2. *Payday loans.* Credit includes a payday loan transaction in which a short-term cash advance is made to a consumer in exchange for the consumer's personal check, in the amount of the advance plus a fee, or in exchange for the consumer's authorization to debit the consumer's checking account, for the amount of the advance plus a fee. In both instances the parties agree that the check will not be cashed, or that the consumer's checking account will not be debited, until a designated future date.◄

3. In Supplement I to Part 226, under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions*, paragraph 5. would be revised to read as follows:

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

5. *Examples of variable-rate transactions.* The following transactions, if they have a term greater than one year and are secured by the consumer's principal dwelling, constitute variable-rate transactions subject to the disclosure requirements of § 226.19(b).

i. Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (See comment 17(c)(1)–11 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.)

ii. Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures under § 226.19(b)(1) and 226.19(b)(2)(v), (viii), (ix), [(x) and (xiii)] ►and (xii)◄ are not applicable to such loans.

iii. "Price level adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. The disclosures under § 226.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest-rate, or interest-rate discounts: Section 226.19(b)(2)(i), (iii), (iv), (v), (vi), (vii), (viii), ◆and◆ (ix)[, and (x)]. (See comments 20(c)–2 and 30–1 regarding the inapplicability of variable-rate adjustment notices and interest-rate limitations to price-level-adjusted or similar mortgages.)

iv. Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions.

* * * * *

4. In Supplement I to Part 226, under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *32(a)(1)(ii)*, paragraph 2.v. would be added to read as follows:

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

* * * * *

Paragraph 32(a)(1)(ii). * * *

* * * * *

2. *Annual adjustment of $400 amount.* * * *

* * * * *

◆v. For 2000, $451, reflecting a 2.3 percent increase in the CPI–U from June 1998 to June 1999, rounded to the nearest whole dollar.◆

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, November 1, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–29004 Filed 11–4–99; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AB86

Organization; Termination of Farm Credit Status

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend Farm Credit Administration's (FCA) regulations that will allow a Farm Credit System (FCS, Farm Credit or System) institution to terminate its FCS charter and become a financial institution under another Federal or State chartering authority. The purpose of our proposal is to amend the existing regulations so they apply to all banks and associations and to make other changes. We also withdraw a proposed termination rule published in 1993.

DATES: Please send your comments to us on or before February 3, 2000.

ADDRESSES: We encourage you to send comments via electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of our interactive website at "www.fca.gov." You may mail or deliver comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, 1501 Farm Credit Drive, McLean, VA, 22102–5090 or send by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, FCA.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed rule are to:

- Provide a termination procedure for Farm Credit associations and banks that implements section 7.10 of the Farm Credit Act of 1971, as amended (1971 Act);
- Ensure that all equity holders of a terminating institution are treated fairly and equitably;
- Ensure that stockholder disclosure materials are easy to read and understand;
- Ensure that the remaining FCS institutions can continue fulfilling their congressional mandate of serving the credit needs of farmers, ranchers, and cooperatives; and
- Ensure that the remaining FCS institutions are able to operate safely and soundly.

II. Background

The Agricultural Credit Act of 1987[1] (1987 Act) amended the 1971 Act by adding section 7.10—Termination of System Institution Status. Section 7.10 allows an FCS institution to terminate its status as a Farm Credit institution if the institution:

- Provides advance notice to us at least 90 days before termination;
- Receives Federal or State approval of a charter for a bank, savings and loan or other financial institution;
- Receives our approval;
- Receives the approval of a majority of the institution's voting stockholders;
- Pays or adequately provides for the payment of all its outstanding debt obligations;
- Pays to the Farm Credit Insurance Fund (Insurance Fund) an amount by which the institution's capital exceeds 6 percent of its assets; and
- Fulfills any other conditions that we, by regulation, consider appropriate.

In addition to the requirements of section 7.10, section 7.11 of the 1971 Act requires that any plan of termination, including all information to be distributed to the stockholders, must be submitted to us for approval prior to the stockholder vote. Section 7.11 requires us to act on the plan of termination and related disclosure materials within 60 days of their submission to us. If we take no action, the institution may submit its proposal to stockholders. If we disapprove the plan, our notice to the institution must specify the reasons for disapproval.

On December 18, 1989, we published an Advance Notice of Proposed Rulemaking (ANPRM)[2] requesting comments on the manner and process for implementing the new termination procedures. On July 12, 1990, we published a proposed rule authorizing the termination of Farm Credit status for small associations only.[3] An association is defined as "small" when its investment in its affiliated Farm Credit Bank (FCB) is 25 percent or less of the bank's capital, or when its loan from the FCB totals 25 percent or less of the bank's total loans. On January 30, 1991, we published the current final rule that establishes the procedure for small associations.[4]

On March 19, 1993, we published a proposed rule establishing a procedure for the termination of large associations, FCBs and banks for cooperatives (BCs) and revisions to the regulations on the termination of FCS status for small associations (1993 proposed rule).[5] The 1993 proposed rule also included requirements enacted in the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act).[6] The 1992 Act amended the 1971 Act by increasing our time to review the application from 30 days to 60 days and clarifying provisions for the repayment of assistance for debt obligations issued by the Farm Credit System Financial Assistance Corporation (FAC).

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[1] Public Law 100–233, 101 Stat. 1568 (1988).

[2] *See* 54 FR 51763.

[3] *See* 55 FR 28639.

[4] *See* 56 FR 3397.

[5] *See* 58 FR 15099.

[6] Public Law 102–552, 106 Stat. 4102 (1992).

After the comment period for the 1993 proposed rule closed, we decided that additional public comment was needed. On July 26, 1993, we published a resolicitation of comments that explained how the exit fee was to be calculated and provided examples. In addition, we clarified other provisions of the 1993 proposed rule.

We took no further action on the 1993 proposed rule. We now withdraw the 1993 proposal and propose amendments to the existing rule. This proposal has similarities to the existing rule and the 1993 proposal but differs in several significant respects as follows:

1. There are no separate subparts for FCB and agricultural credit bank terminations. The 1993 proposal had three separate subparts.

2. The date on which a terminating institution's exit fee is calculated is the termination date. The information statement will include a "preliminary exit fee estimate," calculated as of the quarterend before the termination application is filed, with any adjustments we may require. In the existing rule and 1993 proposal, the date of the exit fee calculation is the quarterend before the termination application is filed.

3. A terminating institution must pay 110 percent of the preliminary exit fee estimate, with any adjustments we may require, into an escrow account on the termination date. It must also pay into escrow 110 percent of the amount of stock retirements to dissenting stockholders and System institutions. After an independent audit to determine the final exit fee, the escrow agent will disburse the funds.

4. A terminating association may repay its direct loan on a schedule agreed to by its bank, without a time limit on the repayment period. In the existing rule and the 1993 proposal, the association must repay the loan in 3 years or less.

5. A Farm Credit bank does not have to enter into an agreement with a terminating affiliated association regarding when the bank will retire the association's investment. Instead, the bank may retire the investment according to an existing capital revolvement plan or may make some other retirement agreement with the association. In the absence of a revolvement plan or other agreement with the association, the bank must retire the investment on or before the date the association (or the successor institution) repays its direct loan. In the existing rule and the 1993 proposal, the FCA must specify how the investment is retired if the bank and the association cannot agree.

6. System institutions with investments in a terminating institution have the option to exchange their investments for equity in the successor institution. In the existing rule and the 1993 proposal, the terminating institution must retire equity held by other System institutions (other than an affiliated bank) at termination.

7. In the existing rule and the 1993 proposal, the adjusted book value of dissenting stockholders' equities is calculated after the exit fee. The terminating institution must, in effect, pay dissenting stockholders out of the total capital the successor institution may retain. In our proposal, a dissenting stockholder receives the adjusted book value for his equity, calculated before the exit fee is paid. The terminating institution pays dissenting stockholders before the calculation of the total capital it may retain for the successor institution. In addition, the calculation of a non-terminating association's interest in a terminating bank is unchanged from the 1993 proposal.

8. A terminating bank's payment to the FAC is to be based only on the retail loan volume of the bank, the associations terminating with it, and any association maintaining its direct loan with the terminating bank after termination. The 1993 proposal did not specify whether the retail loan volume of a non-terminating affiliated association would be included in the calculation of a terminating bank's FAC payment.

9. We have rewritten the rule using plain language principles. Those principles are: short sentences; minimal use of defined terms and highly technical words; the active voice; and the use of "we" or "us" for the FCA and "you" for the terminating institution.

Below is a section-by-section analysis of the proposed rule.

III. Section-by-Section Analysis

Our section-by-section analysis of the proposed rule generally discusses only those sections where we have recommended substantive changes.

Section 611.1200 Applicability of These Regulations

This section is amended to be applicable to all FCS banks and associations. The existing rule applies only to small associations.

Section 611.1205 Definitions That Apply in Subpart P

We propose a number of changes to this section. The terms "terminating association," "terminating resolution," and "termination vote" would be deleted since they are explained in other sections of these regulations. We propose to replace the definition of "GAAP" with a reference to the definition of "generally accepted accounting principles" in our accounting regulations, which are in part 621 of this chapter. Our proposal would move the definition of "assets" from existing § 611.1240 to this section, because the term is also used in other sections of the termination regulations.

Section 611.1210 Commencement Resolution and Advance Notice

We propose to amend § 611.1210(b)(1) by requiring the terminating institution to send a certified copy of the commencement resolution to us and the Farm Credit System Insurance Corporation (FCSIC). A terminating association must also send a copy to its affiliated bank. A terminating bank must also send a copy to its affiliated associations, the other FCS banks, and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). We would revise § 611.1210(b)(2) to clarify that the brief announcement to all equity holders must describe the specific effect of termination on the equities held and on any borrower rights.

Existing § 611.1210(c)(1) requires a terminating institution to submit to us an estimate of its exit fee with an explanation of how it was calculated. We propose to eliminate this requirement. We also propose to eliminate existing § 611.1210(c)(2) and (3), which contain a procedure for the FCA to confirm the terminating institution's exit fee before submission of the termination application. We believe that we can review the terminating institution's exit fee calculations during our 60-day statutory review period.

Proposed § 611.1210(c) would require a terminating bank to begin negotiations with the remaining FCS banks on the terminating bank's satisfaction of its share of Systemwide obligations under section 4.4 of the 1971 Act. The Funding Corporation, at its option, may participate in these negotiations and be a party to the agreement referred to in § 611.1260(c) to the extent necessary for the Funding Corporation to fulfill its duties with respect to financing and disclosure.

Proposed § 611.1210(e) allows a terminating bank to continue to participate in Systemwide debt obligations until the date of termination. Existing § 611.1210(e) has been redesignated as (f).

Section 611.1215 Prohibited Acts

We propose to redesignate existing § 611.1226 as § 611.1215. This section is substantially similar to the existing rule on prohibited acts, except that we have expanded its application to prospective, as well as current, equity holders.

Section 611.1220 Filing of Termination Application

We propose to redesignate existing § 611.1211 as § 611.1220. The substance of this section is unchanged from the existing rule, except that we would require five copies of a termination application. This is the same number of copies we require for other types of corporate applications, such as mergers. However, should an institution send us the application in electronic form, it must send us at least one hard copy application with original signatures.

Section 611.1221 Filing of Termination Application—Timing

We propose to redesignate existing § 611.1212 as § 611.1221. We propose to eliminate the references to the filing date and the 10-day review period for technical completeness in existing § 611.1212(a) and (b). We also propose to reduce the 60-day advance notice requirement in existing § 611.1212(c) to 30 days. If we receive the termination application less than 30 days after receiving the advance notice as required by redesignated § 611.1221(b), we may disapprove the application. The 30-day time period is now adequate as a result of statutory changes that provided us with an additional 30 days to act on a termination application.

Section 611.1222 Plan of Termination—Contents

We propose to redesignate existing § 611.1230 as § 611.1222. This section is substantially similar to the existing rule.

Section 611.1223 Information Statement—Contents

We propose to redesignate § 611.1225 as § 611.1223. Proposed § 611.1223 has a new requirement to draft the information statement according to plain language principles. We believe System institutions should make their communications with stockholders easy to read and understand, just as we have undertaken to do in communications with System institutions and the public. Since last October, we have been complying with a Presidential directive to write communications in plain, everyday language and use short sentences, the active voice, and the pronoun "you" where appropriate. We strongly endorse the President's directive and believe that using plain language saves the Government and the public time, effort, and money.[7]

Our proposal has a requirement to draft the information statement in a clear, concise and understandable manner using:

- Short sentences;
- Active voice;
- Tabular presentation or bullet lists for complex material, whenever possible; and
- No legal jargon or highly technical business terms.

Our proposal is modeled on the plain English rule of the Securities and Exchange Commission (SEC) that applies to prospectuses.[8] The SEC's rule, which went into effect on October 1, 1998, is the result of a joint effort by that agency and a number of regulated companies to improve their disclosure documents for the benefit of investors, their ultimate users. Our new requirement would give the same benefit to the stockholders of a terminating institution by applying the same general principles to the information statement.

Proposed § 611.1223(d)(2) contains a new requirement to specify the amounts of the estimated exit fee and the estimated expenses of termination and organization of the successor institution. It also separates the statutory requirement to list the benefits and disadvantages of the termination from the explanation of the board's basis for recommending the termination. We believe a separate discussion of this information will be important to stockholders in their evaluation of the termination proposal. The rest of proposed § 611.1223 contains substantially the same requirements as the existing rule except that we propose to require a balance sheet and income statement for each of the 3 preceding years. We believe it is important for stockholders to have an additional year of financial information to review to provide a complete picture of the proposed termination.

Section 611.1230 FCA Review and Approval

We propose to redesignate § 611.1215 as § 611.1230. We propose to amend this section to remove the references to the filing date and extend our review period from 30 days to 60 days, to implement the change made to section 7.11(a)(2) of the 1971 Act by the 1992 Act. In proposed new § 611.1230(b), we would retain the right to deny a termination if we determine that the termination would have a material adverse effect on the ability of the remaining FCS institutions to adequately serve agriculture. We do not believe Congress intended section 7.10 to jeopardize the ability of the System to continue to fulfill its congressional mandate of serving the credit needs of farmers, ranchers and their cooperatives.

Finally, existing § 611.1215(f) is redesignated as § 611.1230(d). We propose to clarify that, if a reconsideration vote is held, the termination cannot occur earlier than 15 days after the reconsideration vote.

Section 611.1240 Voting Record Date and Stockholder Approval

We propose to redesignate existing § 611.1220 as § 611.1240. While we have rewritten this section, it does not differ in substance from the existing rule.

Section 611.1245 Stockholder Reconsideration

We propose to redesignate existing § 611.1235 as § 611.1245. We have streamlined and simplified this section and amended the provision to require that stockholders submit the petition to us rather than the institution for review.

Section 611.1250 Preliminary Exit Fee Estimate

This proposal contains significant revisions to the timing of the exit fee calculations for banks and associations. First, in proposed § 611.1250 we add a "preliminary exit fee estimate" requirement to be calculated as of the quarterend before the institution files its termination application. Second, the computation date for the "final exit fee," which is described in proposed § 611.1255, would be the actual termination date. These proposals differ from the existing rule, which requires the institution to estimate its exit fee after the commencement resolution and to calculate the actual exit fee as of the quarterend before filing the termination application.

We believe that calculating the exit fee on the termination date is more consistent with the 1971 Act's requirement. A calculation at this later date allows us to take into account all of the financial changes that occur up to and including the final date on which the institution is chartered as a System institution. We would still require an estimate of the exit fee as of the quarterend before the terminating institution files its application. This estimated exit fee, with any adjustments we require, would be used to explain the costs of termination to stockholders in the information statement.

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[7] Presidential Memorandum on Plain Lanauge in Government Writing (63 FR 31883, June 10, 1998). The FCA, as an independent agency, is not obligated to comply but is doing so voluntarily.

[8] The SEC's plain English rule for prospectuses is set forth at 17 CFR 230.421. For additional guidance, you should consult the SEC's plain English Handbook, which is available on the SEC's website at *www.sec.gov*.

Proposed § 611.1250(a) explains how to calculate the preliminary exit fee estimate for an association. Assets and liabilities would continue to be based on the average daily balances for the 12 months ending on the computation date. We have also kept the requirements that the account balances be independently audited and conform with GAAP. We may waive the requirement for an independent audit if one was performed as of a date less than 6 months before the filing of the termination application.

As described below, we propose to require a terminating association to add or subtract certain amounts from the assets and liabilities. Some of these amounts must be calculated on an average daily balance in order not to distort the effect of adding or subtracting the amounts. Other amounts, which are estimates of future transactions or expenses that we expect to be recorded on or close to the termination date, will not be averaged for this calculation.

We have kept the requirement that the terminating association must add back to assets expenses it has incurred because it is seeking to terminate its System status. We continue to believe that termination expenses are organizational expenses of the successor institution and are its responsibility. Thus, we propose not allowing such expenses when determining the exit fee.

In the 1993 proposed rule, we proposed to allow terminating institutions to subtract from their exit fees the FAC liabilities and certain tax liabilities that are due as a result of terminating. We are again allowing the deductions in this proposed rule, but the deductions will be from assets instead of the exit fee. This proposed amendment would not materially affect the amount of the exit fee to be paid.

The tax liability we refer to in proposed § 611.1250(a)(4)(ii)(B) generally relates to patronage distributions that some banks allocated to their associations prior to the issuance of Statement of Financial Accounting Standards No. 109. We believe that the net value of such patronage to the institution should be the same, whenever received, and therefore believe that it is appropriate to calculate capital based on the after-tax impact of all patronage distributions.

A terminating institution must make adjustments to assets and liabilities for significant future transactions that it reasonably expects to occur on or before the termination date. This is not intended to include nominal transactions or most expenses that occur in the normal course of business. We do expect a terminating institution to include non-routine or significant transactions such as retirements of equities, loan repayments, gains or losses on the sale of assets, and patronage distributions.

On the liability side of the balance sheet, a terminating must subtract from liabilities any GAAP liability that we treat as regulatory capital for capital or collateral purposes. We believe this approach is fair and equitable, and it is consistent with the treatment of regulatory capital by the other Federal financial institution regulatory agencies.

A terminating institution must also make any adjustments that we require under § 611.1250(c), as we do under existing § 611.1240(e).

After making the necessary adjustments to assets and liabilities, the preliminary total capital will be calculated by subtracting liabilities from assets. The preliminary exit fee estimate will be the amount by which the total capital exceeds 6 percent of assets, as adjusted.

Proposed § 611.1250(b) explains how to calculate the preliminary exit fee estimate when the terminating institution is a bank. The exit fee for a bank is based on the combined balance sheets of the bank and any affiliated associations that are terminating with it. The bank's portion would be the difference between the exit fee based on the combined balance sheets and the exit fees for the terminating associations calculated as if they were terminating alone. If there are no associations terminating with the bank, the exit fee is based solely on the bank's balance sheet.

The first of four steps in calculating a bank's preliminary exit fee estimate is to calculate the exit fee for the terminating associations as if they were terminating alone, according to § 611.1250(a). The second step is to adjust the bank's assets in the same manner as for an association, with the following three exceptions. A terminating bank must:

- Subtract from assets the average daily balances of the equity investments held by affiliated associations that are not terminating.
- Subtract from assets and liabilities the direct loans to affiliated associations that are not terminating.
- Add to assets the estimated amount of FAC payments it will receive from the terminating institutions. This offsets the deduction the bank makes when it adjusts its balance sheet for its payment to the FAC.

The third step is combining the bank's adjusted balance sheet with the adjusted balance sheets of the terminating associations in conformity with GAAP, using cross-elimination methods. For purposes of termination, total capital is calculated by subtracting the adjusted liabilities from adjusted assets of the combined balance sheets. Lastly, the adjusted assets of the combined balance sheets are multiplied by 6 percent. Subtracting this amount from the total capital results in the preliminary exit fee estimate for the combined entity. The bank's portion will be the difference between the preliminary exit fee estimate of the combined balance sheets and the total of exit fees for the terminating associations calculated in the first step. Although it is unlikely, if the exit fees of the terminating associations exceed the exit fee of the combined entity, the associations would pay their exit fees, and the bank would have no exit fee.

Proposed § 611.1250(c) is essentially the same as § 611.1240(e) in the existing regulations. It provides that we will review the transactions of the institution for the 3-year period prior to the termination resolution and will require adjustments, in order to assure that account balances are accurate. In addition, we may require adjustments to reverse the effect of transactions outside the ordinary course of business.

Section 611.1255 Exit Fee Calculation

We propose to redesignate existing § 611.1240 as § 611.1255. We are proposing to move the definition for assets that is in existing § 611.1240 to § 611.1205 and to remove the definitions for total capital and contingent liabilities as unnecessary. Proposed § 611.1255(a) describes the exit fee calculation for a terminating association. The final exit fee calculation is similar to the preliminary exit fee estimate, but there are several differences. One difference is that amounts estimated for the preliminary exit fee estimate will be known, and adjustments will be made for actual amounts. Another difference is that a terminating association must account for the retirement of equities of dissenting stockholders. To account for these retirements, the association must subtract from assets the equity retired to dissenting stockholders on the termination date before computing the exit fee. Dissenters' equity is not deducted in the preliminary exit fee estimate because a terminating institution would not know or be able to reasonably estimate the number of dissenters or the amount of their equity.

Subtracting payments to dissenters from assets before calculating total capital is a change from the existing regulation. In the existing regulation, because the exit fee is calculated before dissenting stockholders' equities are retired, the terminating institution in effect pays the dissenters out of the capital it would otherwise take to the successor institution. Another change from the existing regulation is in determining the book value of dissenting stockholders' equity. We propose to determine it before the exit fee is calculated. In the existing regulation, the book value is determined based on the capital the institution has after it pays the exit fee. In re-examining this issue, we decided to make this change so that all stockholders whose equity in the terminating institution is retired, including retail borrowers and non-terminating associations, would be treated in the same manner. Another reason for the change is that the book value would be similar to what it would be if the association liquidated instead.

Proposed § 611.1255(b) describes the final exit fee calculation for a terminating bank. As is the case with a terminating association, the final exit fee calculation for a bank is similar to the preliminary exit fee estimate. Again, the main differences between the preliminary estimate and the final exit fee are that actual values are used instead of estimates and the bank must subtract the equity retirements of dissenting stockholders as part of the final exit fee calculation. The amount is subtracted from assets before calculating the exit fee. In addition, the bank must subtract from assets and liabilities the direct loans to non-terminating affiliated associations only if they repay or transfer their loans before the bank terminates.

Proposed § 611.1255(c) covers payment of the exit fee and retirements of equity to dissenting stockholders. The terminating institution must deposit in an escrow account, acceptable to the FCSIC and us, an amount equal to 110 percent of the preliminary exit fee estimate with adjustments based on information available on the termination date. We will adjust the preliminary exit fee estimate to account for stock retirements to dissenting stockholders and System institutions, and any other adjustments we require. We believe this will be more accurate than using the preliminary exit fee estimate disclosed in the information statement because it replaces the estimated amounts for FAC obligations, taxes, and other expenses with actual amounts. It also includes stock retirements. As stated above, the final exit fee must be based on an independent audit of the terminating institution as of the termination date. The final account balances and final exit fee will not be known, and the final audit will not be completed, for several weeks or months after the termination. Thus, the estimated exit fee must be held in escrow until we know the final account balances and have calculated the final exit fee. In addition, the terminating institution also must deposit in escrow an amount equal to 110 percent of the equity retired to dissenting stockholders pending the final audit.

Proposed § 611.1255(d) describes the pay-out of escrow following completion of the independent audit. Following the audit, we will calculate the final exit fee and the amount owed to stockholders. We will direct the escrow agent to pay the exit fee to the Insurance Fund and to pay amounts owed to dissenting stockholders. The escrow agent will then return any remaining amounts to the successor institution. If the escrowed funds are not enough to cover the exit fee or the amounts owed to stockholders, proposed § 611.1255(e) requires the successor institution to pay any shortfall to the escrow agent for distribution to the appropriate parties. We will require the terminating institution to sign a statement binding the successor institution to pay additional amounts owed to dissenting stockholders and System institutions.

Section 611.1260 Payment of Debts and Assessments—Terminating Association

We propose to redesignate existing § 611.1250 as § 611.1260. Proposed § 611.1260 would continue to apply only to terminating associations. We propose to delete existing § 611.1250(b) because we believe it is unnecessary. We propose to redesignate § 611.1250(c) as § 611.1260(b) and remove the 3-year limitation for a terminating association that does not become an "other financing institution" to repay its debt obligations to its affiliated bank. Without the time limit, a bank will have the flexibility to set its own repayment terms as necessary for the bank to manage the risk on its balance sheet and its debt structure. However, if a terminating association is unable to reach agreement with its bank for repaying its obligations, the association must repay its obligations at termination. We also propose new § 611.1260(d) that requires a terminating association to pay its FAC debt obligations to its affiliated bank as required by section 6.26 of the 1971 Act. In response to comments received in response to the 1993 proposal, proposed § 611.1260(d) defines the appropriate discount rate that would be used. The rate would be the non-interest bearing U.S. Treasury security rate with a maturity as near as possible to the period remaining until the terminating association's FAC obligations would be due.

Section 611.1265 Retirement of equities—Terminating Association

We propose to redesignate § 611.1255 as § 611.1265. This section would continue to apply only to the termination of an association. Existing § 611.1255(a) authorizes a Farm Credit Bank to retire equities owned by a terminating association on the date of termination or in phases after the date of termination, in accordance with a written agreement between the bank and the association. The existing rule limits the phased retirement to the earlier of the date on which the terminating association repays all indebtedness to its bank or 3 years from the date of termination. Should the bank and the terminating association fail to reach an agreement on when to retire the bank's equities, existing § 611.1255(b) authorizes either party to request our review of the most recent proposals along with the points of disagreement. The existing rule states that we may require the bank to retire the terminating association's equities under conditions that we impose.

We propose to amend existing § 611.1255(a) and (b) by: (1) Removing the 3-year limitation for a terminating association's affiliated bank to retire purchased and allocated equities held by the association; (2) eliminating our role in deciding how retirements must occur when a terminating association and its affiliated bank cannot agree; and (3) redesignating § 611.1255(a) and (b) as § 611.1265(b) and (c). Our proposal would authorize the affiliated bank to retire purchased and allocated equities held by the terminating association in accordance with the terms of a capital revolvement plan or other agreement between the bank and the association. If there is no agreement, these equities must be retired no later than when the terminating association pays off its loan from the bank. However, any equity retirement by the bank is subject to its having adequate capital and remaining in a safe and sound condition as required by proposed § 611.1265(a).

Section 611.1255(a) of the existing rule prohibits a bank from retiring equities owned by a terminating association if such retirement would result in the bank's failure to meet minimum capital requirements. In addition, existing § 611.1255(c) states that no retirement of equities may occur if we determine that the retirement would threaten the viability of the bank. We propose changes by: (1) Redesignating § 611.1255(c) as § 611.1265(a); and (2) prohibiting a bank from retiring a terminating association's equities if we determine that the bank would otherwise be in an unsafe or unsound condition.

In new § 611.1265(c), we clarify that a bank's retirement of a terminating association's equity is limited to the par or face value of purchased or allocated equities. A bank may not pay any portion of its unallocated surplus to a terminating association.

We propose to delete the requirements in existing § 611.1255(d) and (e) for associations to retire FAC-preferred stock prior to termination since all shares of FAC-preferred stock were redeemed before 1995. We also propose changes to § 611.1255(e) to give a Farm Credit institution with an equity interest in a terminating association the option of having the investment retired or maintaining its investment in that association after it terminates. However, should a Farm Credit institution decide to maintain its investment in a terminating institution, that investment would be included in the assets on which the exit fee is calculated. This could result in a reduction in the value of the investment when compared to the value of the equity if it were retired at termination.

Section 611.1270 Repayment of Obligations—Terminating Bank

Proposed § 611.1270 establishes the procedure for a terminating bank to satisfy its obligations. We have simplified the procedure that was published in the 1993 proposal. In addition, we have clarified several provisions as a result of comments received from both the 1993 proposal and the resolicitation. A terminating bank must pay or make adequate provision for payment of all its outstanding obligations as of the termination date. In the 1993 proposal, we listed three options a terminating bank may use to satisfy the Systemwide and consolidated obligations on which it is primarily liable. We have replaced this with a requirement in proposed § 611.1270(c) to allow any method that would be acceptable to the remaining FCS banks and us.

Proposed § 611.1270(c)(1) requires the terminating bank and the other FCS banks to enter into an agreement, subject to our approval, to satisfy obligations issued under section 4.2 of the 1971 Act on which it is not primarily liable. This agreement must specify how the successor institution will satisfy its joint and several liability to holders of obligations other than those obligations on which the terminating bank is primarily liable.

We propose in § 611.1270(c)(2) that the banks enter into an agreement to make adequate provision for payment of the terminating bank's joint and several liability. If the terminating bank and the other FCS banks are unable to reach agreement within 90 days before the proposed date of termination, the FCA will specify the manner in which the terminating bank will make adequate provision for the payment of its joint and several liability and the manner in which we will make joint and several calls for those obligations outstanding on the termination date.

Proposed § 611.1270(c)(3) clarifies that, notwithstanding any other provision in the regulations on how calls would be made by us on defaulted obligations, the terminating bank would remain liable under section 4.4 of the 1971 Act for all issues outstanding on the termination date until they are repaid.

Proposed § 611.1270(d) reflects the statutory amendments made by the 1992 Act governing the repayment of FAC obligations by a terminating bank. We propose to require a terminating bank to base the calculation of its FAC payment on the retail loan volume of the bank and those associations that are terminating with the bank or that will continue to have a direct loan relationship with the successor institution. If any of the bank's affiliated associations choose to remain in the System and transfer their direct loans to another Farm Credit bank, the calculation of the bank's FAC payment would not include the retail loan volume of those associations. In addition, it is our intention in this section to require the FAC to take into consideration loan volumes of previous years but not to require that the average of those years be used to project future loan volumes for the remaining years before FAC obligations mature. We invite your comment and suggestions on this point.

Section 611.1275 Retirement of equities—Terminating Bank

Proposed § 611.1275(a) states that System institutions that hold equities in a terminating bank have the right to have their equities retired on the termination date. Institutions may choose to maintain investments in a terminating bank even if they vote against the termination. However, the value of such equity could be reduced by the exit fee payment. Proposed § 611.1275(c) authorizes an association that is not terminating to require its terminating bank to transfer its investment to another FCS bank after its bank adopts a commencement resolution. The investment must include purchased and allocated equities and the association's pro rata share of the bank's unallocated surplus.

Section 611.1280 Dissenters' Rights

This section appears in the existing rule as § 611.1260. Proposed § 611.1280 addresses the rights of equity holders who dissent from the termination and requires that dissenters receive cash in exchange for their interests in the terminating institution. A dissenting stockholder is:

- An equityholder other than a System institution that was eligible to vote on the termination resolution and voted against the termination, or
- An equityholder on the termination date that was ineligible to vote.

The proposal would give dissenting stockholders the right to have their equities in the terminating institution retired on the termination date. The proposal would entitle dissenting stockholders to the adjusted book value of their equity in accordance with the priorities set forth in the liquidation provisions of the terminating institution's bylaws. The proposal differs from existing § 611.1260(c), which requires the amount paid to dissenting stockholders to be calculated after the amount of the exit fee is deducted from assets. Proposed § 611.1280 eliminates deduction of the exit fee. We believe that the proposed method provides dissenting stockholders their pro rata share of capital. However, this change is likely to result in a lower exit fee than in the existing regulation. We specifically seek comments on this.

Existing § 611.1260(c)(ii) authorizes a successor institution to issue subordinated debt to dissenting stockholders for amounts in excess of par or face value. Proposed § 611.1280(e) eliminates the payment of subordinated debt to dissenting stockholders. Since dissenting stockholders are paid before the calculation of the exit fee, there is no longer a need for an institution to issue subordinated debt. The terminating institution must pay dissenting stockholders in cash or make some other arrangement that is satisfactory to each dissenting equityholder for their share of capital.

Section 611.1285 Loan Refinancing by Borrowers

We have redesignated § 611.1266 as § 611.1285. Proposed § 611.1285(a), like existing § 611.1266, would require a terminating institution to provide credit and loan information about a borrower to another FCS institution when requested by a borrower seeking refinancing with such institution. Proposed § 611.1285(b) would also authorize any FCS institution to lend in a terminating institution's territory provided:

- We have not assigned the terminating institution's territory to another FCS institution; and
- The FCS institution seeking to lend in a terminating institution's territory is otherwise authorized by the 1971 Act and regulations to extend the type of credit provided by the terminating institution.

Section 611.1290 Continuation of Borrower Rights

This section appears in the existing rule as § 611.1270. While we have rewritten this section, it does not differ in substance from the existing rule.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Organization and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, we propose to amend part 611 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Public Law 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Public Law 100–399, 102 Stat. 989, 1003, and 1004.

2. Revise subpart P to read as follows:

Subpart P—Termination of System Institution Status

Sec.

611.1200 Applicability of this subpart.
611.1205 Definitions that apply in this subpart.
611.1210 Commencement resolution and advance notice.
611.1215 Prohibited acts.
611.1220 Filing of termination application.
611.1221 Filing of termination application-timing.
611.1222 Plan of termination-contents.
611.1223 Information statement-contents.
611.1230 FCA review and approval.
611.1240 Voting record date and stockholder approval.
611.1245 Stockholder reconsideration.
611.1250 Preliminary exit fee estimate.
611.1255 Exit fee calculation.
611.1260 Payment of debts and assessments-terminating association.
611.1265 Retirement of equities-terminating association.
611.1270 Repayment of obligations-terminating bank.
611.1275 Retirement of equities-terminating bank.
611.1280 Dissenters' rights.
611.1285 Loan refinancing by borrowers.
611.1290 Continuation of borrower rights.

Subpart P—Termination of System Institution Status

§ 611.1200 Applicability of this subpart.

These regulations apply to each bank and association that desires to terminate its System institution status and become chartered as a bank, savings association or other financial institution.

§ 611.1205 Definitions that apply in this subpart.

Assets means all assets (less appropriate valuation adjustments) determined in conformity with GAAP, except as otherwise required in this subpart.

GAAP means "generally accepted accounting principles" as that term is defined in § 621.2(c) of this chapter.

OFI means an "other financing institution" that has a funding and discount agreement with a Farm Credit bank under section 1.7(b)(1) of the Act.

Successor institution means the bank, savings association, or other financial institution that the terminating bank or association will become when we revoke its Farm Credit charter.

§ 611.1210 Commencement resolution and advance notice.

(a) *Adoption of commencement resolution.* Your board of directors must begin the termination process by adopting a commencement resolution stating your intention to terminate Farm Credit status under section 7.10 of the Act.

(b) *Advance notice.* Within 5 days after adopting the commencement resolution, you must:

(1) Send a certified copy of the commencement resolution to us and the Farm Credit System Insurance Corporation (FCSIC). If you are an association, also send a copy to your affiliated bank. If you are a bank, also send a copy to your affiliated associations, the other Farm Credit banks and the Federal Farm Credit Banks Funding Corporation (Funding Corporation);

(2) Mail an announcement to all equity holders stating you are taking steps to terminate Farm Credit status and describing the following:

(i) The process of termination;

(ii) The expected effect of termination on equity holders, including the effect on borrower rights and the consequences of any stock retirements before termination;

(iii) The type of charter the successor institution will have; and

(iv) Any bylaw creating a special class of borrower stock and participation certificates under paragraph (f) of this section.

(c) *Bank negotiations on joint and several liability.* If you are a terminating bank, within 10 days of adopting the commencement resolution you and the other Farm Credit banks must begin negotiations to provide for your satisfaction of joint and several liability on consolidated and Systemwide obligations under section 4.4 of the Act. The Funding Corporation may, at its option, be a party to the negotiations to the extent necessary to fulfill its duties with respect to financing and disclosure. The agreement must comply with the requirements in § 611.1270(c).

(d) *Disclosure to customers after commencement resolution.* Between the date of the commencement resolution and the termination date, you must give the following information to your customers:

(1) For each applicant who is not a current stockholder, describe at the time of loan application:

(i) The effect of the proposed termination on the borrower's loan; and

(ii) Whether the borrower will continue to have any of the borrower rights provided under the Act and regulations.

(2) For any equity holders who ask to have their equities retired, explain that the retirement would extinguish the holder's right to exchange those equities for an interest in the successor institution. In addition, inform holders of equities entitled to your residual assets in liquidation that retirement before termination would extinguish their right to dissent from the termination and receive the adjusted book value of their equities.

(e) *Terminating bank's right to continue issuing debt.* Until the termination date, a terminating bank may continue to participate in the issuance of consolidated and Systemwide obligations to the same extent it would be able to participate if it were not terminating.

(f) *Special class of stock.* Notwithstanding any requirements to the contrary in § 615.5230(b) of this chapter, you may adopt bylaws providing for the issuance of a special class of stock and participation certificates between the date of adoption of a commencement resolution and the termination date. Your stockholders must approve the special class before you adopt the commencement resolution. The equities must comply with section 4.3A of the Act and be identical in all respects to existing classes of equities that are entitled to the residual assets of the institution in a liquidation, except for the value a holder will receive in a termination. In a termination, the holder of the special class of stock receives value equal to the lower of either par (or face) value, or adjusted book value. A holder must have the same right to vote (if the equity is held on the voting record date) and to dissent as holders of similar equities issued before the commencement resolution. If the termination does not occur, the special classes of stock and participation certificates must automatically convert into shares of the otherwise identical equities.

§ 611.1215 Prohibited acts.

(a) *Statements about termination.* Neither the institution nor any director, officer, employee or agent may make any untrue or misleading statement of a material fact, or fail to disclose any material fact, about the termination to a current or prospective equity holder.

(b) *Representations regarding FCA approval.* Neither the institution nor any director, officer, employee or agent may make an oral or written representation to anyone that a preliminary or final approval of the termination by us is, directly or indirectly, either a recommendation on the merits of the proposal or an assurance that the information given by you to your equity holders is adequate or accurate.

§ 611.1220 Filing of termination application.

(a) *Adoption of termination resolution.* Your board must adopt a termination resolution authorizing the application for termination and for a new charter.

(b) *Contents of termination application.* Send us an original and five copies of the termination application for review and preliminary approval. If you send us the application in electronic form, you must send us at least one hard copy application with original signatures. The application must contain:

(1) A certified copy of the termination resolution;

(2) A copy of the plan of termination required under § 611.1222;

(3) An information statement that complies with § 611.1223;

(4) All other information that you give to current or prospective equity holders in connection with the termination; and

(5) Any additional information that either we request or your board of directors wishes to submit in support of the application.

(c) *Requirement to update application.* You must immediately send us any material changes to information in the plan of termination, including financial information, that occur between the date you file the application and the termination date. In addition, send us copies of any additional written information on the termination that you give to current or prospective equity holders before termination.

§ 611.1221 Filing of termination application—timing.

If we receive the termination application required in § 611.1220 less than 30 days after receiving the advance notice, we may in our discretion disapprove the application.

§ 611.1222 Plan of termination—contents.

The plan of termination must include:

(a) Copies of all contracts, agreements, and other documents on the proposed termination and organization of the successor institution.

(b) A statement of how you will transfer assets to, and have your liabilities assumed by, the successor institution.

(c) Your plan to retire outstanding equities or convert them to equities of the successor institution.

(d) A copy of the charter application for the successor institution, with any exhibits or other supporting information.

(e) A statement, if applicable, whether the successor institution will continue to borrow from a Farm Credit bank and how such a relationship will affect your provision for payment of debts. The plan of termination must include evidence of any agreement and plan for satisfaction of outstanding debts (including amounts you owe to the Farm Credit System Financial Assistance Corporation (FAC) because of the termination).

§ 611.1223 Information statement—contents.

(a) *Plain language requirements.*

(1) Present the contents of the information statement in a clear, concise and understandable manner.

(2) Use short, explanatory sentences, bullet lists or charts where helpful, and descriptive headings and subheadings.

(3) Minimize the use of glossaries or defined terms.

(4) Write in the active voice when possible.

(5) Avoid legal and highly technical business terminology.

(b) *Disclaimer.* Place the following statement in boldface type in the material sent to equity holders, either on the notice of meeting or the first page of the information statement:

The Farm Credit Administration has not determined if this information is accurate or complete. You should not rely on any statement to the contrary.

(c) *Summary.* The first part of the information statement must be a summary that concisely explains:

(1) Which stockholders have a right to vote on termination;

(2) The material changes the termination will cause to the rights of stockholders, borrowers, and other equity holders;

(3) The effect of those changes;

(4) The potential benefits and disadvantages of the termination;

(5) The right of certain stockholders to dissent and receive cash for their existing equities; and

(6) The proposed termination date.

(d) *Remaining requirements.* The rest of the information statement must contain the following:

(1) *Plan of termination.* Describe the plan of termination.

(2) *Benefits and disadvantages.* Provide the following information:

(i) An enumerated statement of the anticipated benefits and potential disadvantages of the termination;

(ii) An explanation of the preliminary exit fee estimate, with any adjustments we require, and estimated expenses of termination and organization of the successor institution; and

(iii) An explanation of the board's basis for recommending the termination.

(3) *Initial board of directors.* List the initial board of directors and senior officers for the successor institution, with a brief description of the business experience of each person, including principal occupation and employment during the past 5 years.

(4) *Bylaws and charter.* Summarize the provisions of the bylaws and charter of the successor institution that differ materially from your bylaws and charter. The summary must state:

(i) Whether the successor institution will require a borrower to hold an equity interest as a condition for having a loan; and

(ii) Whether the successor institution will require stockholders to do business with the institution.

(5) *Changes to equity.* Explain any changes in the nature of equity investments in the successor institution, such as changes in dividends, patronage, voting rights, preferences, retirement of equities, and liquidation priority. If equities protected under section 4.9A of the Act are outstanding, the information statement must state that the Act's protections will be extinguished on termination.

(6) *Effect of termination on statutory and regulatory rights.* Explain the effect of termination on rights granted by the Act and FCA regulations. You must explain the effect termination will have on borrower rights granted in the Act and subparts K, L, and N of part 614 of this chapter.

(7) *Loan refinancing by borrowers.* (i) State, as applicable, that borrowers may seek to refinance their loans with the System institution(s) that already serve, or will be permitted to serve, your territory. State that no System institution is obligated to refinance your loans.

(ii) If we have assigned your territory to another System institution before the information statement is mailed to equity holders, or if another System institution is already chartered to make the same type of loans you make in your territory, identify such institution(s) and provide the following information:

(A) The name, address, and telephone number of the institution; and

(B) An explanation of the institution's procedures to apply for refinancing.

(iii) If we have not assigned the territory before you mail the information statement, give the name, address and telephone number of the System institution specified by us and state that borrowers may contact the institution for information about loan refinancing.

(8) *Equity exchanges.* Explain the formula and procedure to exchange equity in your institution for equity in the successor institution.

(9) *Employment, retirement, and severance agreements.* Describe any employment agreement or arrangement between the successor institution and any of your senior officers (as defined in § 620.1 of this chapter) or directors. Describe any severance and retirement plans that cover your employees or directors and state the costs you expect to incur under the plans in connection with the termination.

(10) *Exit fee calculation.* Explain how the exit fee will be calculated.

(11) *New charter.* Describe the nature and type of financial institution the successor institution will be and any conditions of approval of the new chartering authority or regulator.

(12) *Differences in successor institution's programs and policies.* Summarize any differences between you and the successor institution on:

(i) Interest rates and fees;

(ii) Collection policies;

(iii) Services provided; and

(iv) Any other item that would affect a borrower's lending relationship with the successor institution, including whether a stockholder's ability to borrow from the institution will be restricted.

(13) *Capitalization.* Discuss expected capital requirements of the successor institution, and the amount and method of capitalization.

(14) *Sources of funding.* Explain the sources and manner of funding the successor institution's operations.

(15) *Contingent liabilities.* Describe how the successor institution will address any contingent liability it will assume from you.

(16) *Tax status.* Summarize the differences in tax status between your institution and the successor institution, and explain how the differences will affect stockholders.

(17) *Regulatory environment.* Describe briefly how the regulatory environment for the successor institution will differ from your current regulatory environment, and any effect on the cost of doing business or the value of stockholders' equity.

(18) *Dissenters' rights.* Explain which equity holders are entitled to dissenters' rights and what those rights are. The explanation must include the estimated liquidation value of the stock, procedures for exercising dissenters' rights, and a statement of when the rights may be exercised.

(19) *Financial information.* (i) Present the following financial data:

(A) A balance sheet and income statement for each of the 3 preceding fiscal years;

(B) A balance sheet as of a date within 90 days of the date you mail the termination application to us, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

(C) An income statement for the interim period between the end of the last fiscal year and the date of the balance sheet required by paragraph (d)(19)(i)(B) of this section, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

(D) A pro forma balance sheet of the successor institution presented as if termination had occurred as of the date of the most recent balance sheet presented in the statement; and

(E) A pro forma summary of earnings for the successor institution presented as if the termination had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheet presented under paragraph (d)(19)(i)(D) of this section.

(ii) The format for the balance sheet and income statement must be the same as the format in your annual report and must contain appropriate footnote disclosures, including data on high-risk assets, other property owned, and allowance for losses.

(iii) The financial statements must include either:

(A) A statement signed by the chief executive officer and each board member that the various financial statements are unaudited, but have been prepared in all material respects in conformity with GAAP (except as otherwise disclosed) and are, to the best of each signer's knowledge, a fair and accurate presentation of the financial condition of the institution; or

(B) A signed opinion by an independent certified public accountant that the various financial statements have been examined in conformity with generally accepted auditing standards and included such tests of the accounting records and other such auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the institution in conformity with GAAP applied on a consistent basis, except as otherwise disclosed.

(20) *Subsequent financial events.* Describe any event after the date of the financial statements, but before the date you send the termination application to us, that would have a material impact on your financial condition or the condition of the successor institution.

(21) *Other subsequent events.* Describe any event after you send the termination application to us that could have a material impact on any information in the termination application.

(22) *Other material disclosures.* Describe any other material fact or circumstance that a stockholder would need to know to make an informed decision on the termination, or that is necessary to make the disclosures not misleading.

(23) *Ballot and proxy.* Include a ballot and proxy, with instructions on the purpose and authority for their use, and the proper method for the stockholder to sign the proxy.

(24) *Board of directors certification.* Include a certification signed by the entire board of directors as to the truth, accuracy, and completeness of the information contained in the

information statement. If any director refuses to sign the certification, the director must inform us of the reasons for refusing.

§ 611.1230 FCA review and approval.

(a) *FCA review period.* We will review a termination application and either give preliminary approval or disapprove the application no later than 60 days after we receive the application.

(b) *Reservation of right to disapprove termination.* In addition to any other reason for disapproval, we may disapprove a termination if we determine that the termination would have a material adverse effect on the ability of the remaining System institutions to fulfill their statutory purpose.

(c) *Conditions of final FCA approval.* We will give final approval to your termination application only if:

(1) Your stockholders vote in favor of termination in the termination vote and in any reconsideration vote;

(2) You give us executed copies of all contracts, agreements, and other documents submitted under § 611.1222;

(3) You have paid or made adequate provision for payment of debts and retirement of equities;

(4) A Federal or State chartering authority has granted a new charter to the successor institution;

(5) You deposit into escrow an amount equal to 110 percent of the estimated exit fee plus 110 percent of the estimated amount you must pay to retire equities of dissenting stockholders, as described in § 611.1255(c); and

(6) You have fulfilled any other condition of termination we have imposed.

(d) *Effective date of termination.* If we grant final approval, we will revoke your charter, and the termination will be effective on the last to occur of—

(1) Fulfillment of all conditions listed in paragraph (c) of this section;

(2) Your proposed termination date;

(3) Ninety (90) days after we receive the notice described in § 611.1240(e); and

(4) Fifteen (15) days after any reconsideration vote.

§ 611.1240 Voting record date and stockholder approval.

(a) *Stockholder meeting.* You must call the meeting by written notice in compliance with your bylaws. The stockholder meeting to vote on the termination must occur within 60 days of our preliminary approval (or, if we take no action, within 60 days of the end of our approval period).

(b) *Voting record date.* The voting record date may not be more than 70 days before the stockholders' meeting.

(c) *Information statement.* You must provide all equity holders with a notice of meeting and the information statement required by § 611.1222 at least 30 days before the stockholder vote.

(d) *Voting procedures.* The voting procedures must comply with § 611.330. You must have an independent third party count the ballots. If a voting stockholder notifies you of the stockholder's intent to exercise dissenters' rights, the tabulator must be able to verify to you that the stockholder voted against the termination. Otherwise, the votes of stockholders must remain confidential.

(e) *Notice to FCA and equity holders of voting results.* Within 10 days of the termination vote, you must send us a certified record of the results of the vote. You must notify all equity holders of the results within 30 days after the stockholder meeting. If the stockholders approve the termination, you must give the following information to equity holders:

(1) Stockholders who voted against termination and equity holders who were not entitled to vote have a right to dissent as provided in § 611.1280; and

(2) Voting stockholders have a right, under § 611.1245, to file a petition with the FCA for reconsideration within 35 days after the date you mail to them the notice of the results of the termination vote.

(f) *Requirement to notify new equity holders.* You must provide the information described in paragraph (e)(1) of this section to each person that becomes an equityholder after the termination vote and before termination.

§ 611.1245 Stockholder reconsideration.

(a) *Right to reconsider termination.* Voting stockholders have the right to reconsider their approval of the termination if a petition signed by 15 percent of the stockholders is filed with us within 35 days after you mail notices to stockholders that the termination vote was approved. If we determine that the petition complies with the requirements of section 7.9 of the Act, you must call a special stockholders' meeting to reconsider the vote. The meeting must occur within 60 days after the date on which you mailed to stockholders the results of the termination vote. If a majority of the stockholders voting, in person or by proxy, vote against the termination, the termination may not take place.

(b) *Stockholder list and expenses.* You must, at your expense, timely give stockholders who request it a list of the names and addresses of stockholders eligible to vote in the reconsideration vote. The petitioners must pay all other expenses for the petition. You must pay expenses that you incur for the reconsideration vote.

§ 611.1250 Preliminary exit fee estimate.

(a) *Preliminary exit fee estimate-terminating association.* You must provide a preliminary exit fee estimate to us when you submit the termination application. Calculate the preliminary exit fee estimate in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities. Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as "dollar amount."

(2) Determine account balances in conformity with GAAP and have them independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter, as of the quarterend immediately before the date you send us your termination application. We may, in our discretion, waive the audit requirement if an independent audit was performed as of a date less than 6 months before you submit the termination application.

(3) Calculate the 12-month balances of assets and liabilities as of the quarterend immediately before the date you send us your termination application.

(4) Make adjustments to assets as follows:

(i) Add back expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, and application fees for the termination and reorganization.

(ii) Subtract the following:

(A) The dollar amount of your estimated payment (to your affiliated bank) related to FAC obligations; and

(B) The dollar amount of your estimated taxes due to the termination.

(iii) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarterend before you file your termination application and termination. Examples of these transactions include, but are not limited to, gains or losses on the sale of assets, retirements of equity, loan repayments, and patronage distributions. Do not make adjustments for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(5) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(6) Make any adjustments we require under paragraph (c) of this section.

(7) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your preliminary total capital for purposes of termination.

(8) Multiply assets as adjusted above by 6 percent, and subtract this amount from preliminary total capital. This is your preliminary exit fee estimate.

(b) *Preliminary exit fee estimate—terminating bank.* (1) Affiliated associations that are terminating with you must calculate their individual preliminary exit fee estimates as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities. Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as "dollar amount."

(3) The account balances must be in conformity with GAAP and independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter, as of the quarterend immediately before the date you send us your termination application. We may, in our discretion, waive this requirement if an independent audit was performed as of a date less than 6 months before you submit the termination application.

(4) Calculate the 12-month balances of assets and liabilities as of the quarterend immediately before the date you send us your termination application.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back to assets the following:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, and application fees for the termination and reorganization; and

(B) Any specific allowance for losses, and a *pro rata* portion of any general allowance for loan losses on direct loans to an association that you do not expect to incur before or at termination.

(ii) Subtract from your assets and liabilities an amount equal to the average daily balances of your direct loans to your affiliated associations that are not terminating.

(iii) Subtract the following from assets:

(A) Equity investments in you held by non-terminating associations. A non-terminating association's investment consists of purchased equities, allocated equities, and a *pro rata* share of the bank's unallocated surplus;

(B) The dollar amount of your estimated termination payment to the FAC; and

(C) The dollar amount of estimated taxes due to the termination.

(iv) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(v) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarterend before you file your termination application and termination. Examples of these transactions include, but are not limited to, retirements of equity, loan repayments, and patronage distributions. Do not make adjustments for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(6) Add to assets the dollar amount of estimated termination payments of the terminating associations related to FAC obligations.

(7) Make any adjustments we require under paragraph (c) of this section.

(8) After the above adjustments, combine your balance sheet with the balance sheets of your terminating associations after they have made the adjustments required in paragraph (a) of this section. Subtract liabilities from assets. This is your preliminary total capital for purposes of termination.

(9) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the preliminary total capital of the combined balance sheet. This is the preliminary exit fee estimate of the bank and terminating affiliated associations.

(10) Your preliminary exit fee estimate is the amount by which the exit fee for the combined entity exceeds the total of the individual preliminary exit fee estimates of your affiliated terminating associations.

(c) *Three-year look-back.* (1) We will review your transactions over the 3 years before the date of the termination resolution under § 611.1220. Our review will include, but not be limited to, the following:

(i) Additions to or subtractions from any allowance for losses;

(ii) Additions to assets or liabilities, or subtractions from assets or liabilities, due to transactions that are outside your ordinary course of business;

(iii) Dividends or patronage refunds exceeding your usual practices;

(iv) Changes in the institution's capital plan, or in implementing the plan, that increased or decreased the level of borrower investment;

(v) Contingent liabilities, such as loss-sharing obligations, that can be reasonably quantified; and

(vi) Assets that may be overvalued, undervalued or not recorded on your books.

(2) If we determine the account balances do not accurately show the value of your assets and liabilities, we will make any adjustments we deem necessary. In addition, we may require you to reverse the effect of a transaction if we determine that:

(i) You have retired capital outside the ordinary course of business,

(ii) You have taken any other actions unrelated to core business that have the effect of changing the exit fee, or

(iii) You incurred expenses related to termination prior to the 12-month average daily balance period on which the exit fee calculation is based.

(3) We may require you to make these adjustments to the exit fee estimate that is disclosed in the information statement and to the final exit fee calculation.

§ 611.1255 Exit fee calculation.

(a) *Final exit fee calculation-terminating association.* Calculate the final exit fee in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities. Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as "dollar amount."

(2) The account balances must be in conformity with GAAP and independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter, as of the termination date.

(3) Calculate the 12-month balances of assets and liabilities as of the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (a)(4)(ii) of this section.

(4) Make adjustments to assets and liabilities as follows:

(i) Add back expenses related to termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, payments of severance and special retirements, and application fees for the termination and reorganization.

(ii) Subtract from assets the following:

(A) The dollar amount of your termination payment (to your affiliated bank) related to FAC obligations;

(B) The taxes you will have to pay due to the termination; and

(C) Payments to retire the equities of dissenting stockholders and Farm Credit institutions at termination.

(iii) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(iv) Make the adjustments that we require under § 611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(5) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your total capital for purposes of termination.

(6) Multiply assets by 6 percent, and subtract this amount from total capital. This is your final exit fee.

(b) *Final exit fee calculation-terminating bank.* (1) The individual exit fees of affiliated associations that are terminating with you must be calculated as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities. Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as "dollar amount."

(3) The account balances must be in conformity with GAAP and independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter, as of the termination date.

(4) Calculate the 12-month balances of assets and total capital as of the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (b)(5)(iii)(B), (C), and (D) of this section.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back the following to your assets:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, payments of severance and special retirements, and application fees for the termination and reorganization.

(B) The amount of the termination payments to you by the terminating associations related to FAC obligations.

(ii) Subtract from your assets and liabilities your direct loans to affiliated associations that were paid off or transferred in the 12-month period before termination.

(iii) Subtract from your assets the following:

(A) Equity investments held in you by affiliated associations that you retired or transferred during the 12 months before termination. A non-terminating association's investment consists of purchased equities, allocated equities, and a pro rata share of the bank's unallocated surplus;

(B) The dollar amount of your termination payment to the FAC;

(C) The dollar amount of taxes paid or accrued due to the termination; and

(D) Payments to retire the equities of dissenting stockholders and Farm Credit institutions.

(iv) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(v) Make the adjustments that we require under § 611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(6) After the above adjustments, combine your balance sheet with the balance sheets of terminating associations after making the adjustments required in paragraph (a) of this section.

(7) Subtract combined liabilities from combined assets. This is the total capital of the combined balance sheet.

(8) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the total capital of the combined balance sheet. This amount is the combined final exit fee for you and the terminating affiliated associations.

(9) Your final exit fee is the amount by which the combined final exit fee exceeds the total of the individual final exit fees of your affiliated terminating associations.

(c) *Payment of exit fee.* On the termination date, you must:

(1) Deposit into an escrow account acceptable to us and the FCSIC an amount equal to 110 percent of the preliminary exit fee estimate, adjusted to account for stock retirements to dissenting stockholders and Farm Credit institutions, and any other adjustments we require.

(2) Deposit into an escrow account acceptable to us an amount equal to 110 percent of the equity you must retire for dissenting stockholders and System institutions holding stock that would be entitled to a share of the remaining assets in a liquidation.

(d) *Pay-out of escrow.* Following the independent audit of the institution's account balances as of the termination date, we will determine the amount of the final exit fee and the amounts owed to stockholders to retire their equities. We will then direct the escrow agent to:

(1) Pay the exit fee to the Farm Credit Insurance Fund;

(2) Pay the amounts owed to dissenting stockholders; and

(3) Return any remaining amounts to the successor institution.

(e) *Additional payment.* If the amount held in escrow is not enough to pay the amounts under paragraph (d)(1) and (2) of this section, the successor institution must pay any remaining liability to the escrow agent for distribution to the appropriate parties. The termination application must include evidence that, after termination, the successor institution will pay any remaining amounts owed to dissenting stockholders.

§ 611.1260 Payment of debts and assessments—terminating association.

(a) *General rule.* If you are a terminating association, you must pay or make adequate provision for the payment of all outstanding debt obligations and assessments.

(b) *No OFI relationship.* If the successor institution will not become an OFI, you must either:

(1) Pay debts and assessments owed to your affiliated Farm Credit bank at termination; or

(2) With your affiliated Farm Credit bank's concurrence, arrange to pay any obligations or assessments to the bank after termination.

(c) *Obligations to other Farm Credit institutions.* You must pay or make adequate provision for payment of obligations to any Farm Credit institution (other than your affiliated bank) under any loss-sharing or other agreement.

(d) *FAC debt payments.* Before termination, you must pay future assessments and payment obligations to your affiliated Farm Credit bank to the extent required by subparagraphs (c)(5)(F) and (d)(1)(C)(v) of section 6.26 of the Act. The FAC must make the payment calculations this paragraph requires, subject to FCA approval, based on an appropriate discount rate. The appropriate discount rate is the non-interest bearing U.S. Treasury security rate for securities with a maturity as near as possible to the period remaining until the terminating association's obligations under this paragraph would be due.

§ 611.1265 Retirement of equities—terminating association.

(a) *Safety and soundness restrictions.* Notwithstanding anything in these regulations to the contrary, we may prohibit a bank from retiring your equities if the retirement would cause the bank to fall below its regulatory capital requirements after retirement, or if we determine that the bank would be in an unsafe or unsound condition after retirement.

(b) *Retirement agreement.* Your affiliated bank may retire the purchased and allocated equities held by you in the bank according to the terms of the bank's capital revolvement plan or an agreement between you and the bank.

(c) *Retirement in absence of agreement.* Your affiliated bank must retire any equities not subject to an agreement or revolvement plan no later than when you or the successor institution pays off your loan from the bank.

(d) *No retirement of unallocated surplus.* When your bank retires equities you own in the bank, the bank must pay par or face value for purchased and allocated equities, less any impairment. The bank may not pay you any portion of its unallocated surplus.

(e) *Exclusion of equities from capital ratios.* If another Farm Credit institution makes an agreement to retire equities you hold in that institution after termination, we may require that institution to exclude part or all of those equities from assets and capital when the institution calculates its capital and net collateral ratios under subparts H and K of part 615 of this chapter.

(f) *Retirement of equities held by other Farm Credit institutions.* If a Farm Credit institution other than the affiliated bank owns equities you have issued, the other Farm Credit institution may require you to retire the equities on or before termination. The equities must be retired at book value revised to reflect the adjustments required for the final exit fee calculation in § 611.1255(a)(4)(iii).

§ 611.1270 Repayment of obligations—terminating bank.

(a) *General rule.* If you are a terminating bank, you must pay or make adequate provision for the payment of all outstanding debt obligations.

(b) *Satisfaction of primary liability.* After consulting with other Farm Credit banks, the Funding Corporation, and the FCSIC, you must pay or make adequate provision for payment of your primary liability on consolidated or Systemwide obligations in a method that we deem acceptable. Before we make a final decision on your proposal and as we deem necessary, we may consult with the other Farm Credit banks, the Funding Corporation, and the FCSIC.

(c) *Satisfaction of joint and several liability.* (1) You and the other Farm Credit banks must enter into an agreement covering obligations issued under section 4.2 of the Act and outstanding on the termination date. The Funding Corporation may, at its option, be a party to the agreement to the extent necessary to fulfill its duties with respect to financing and disclosure. The agreement, which is subject to our approval, must specify how you will make adequate provision for the payment of your joint and several liability to holders of obligations other than those obligations on which you are primarily liable.

(2) If you and the other Farm Credit banks are unable to reach agreement within 90 days before the proposed termination date, we will specify the manner in which you will make adequate provision for the payment of your joint and several liability and how we will make joint and several calls for those obligations outstanding on the termination date.

(3) Notwithstanding any other provision in these regulations, the successor institution will be jointly and severally liable for consolidated and Systemwide debt outstanding on the termination date (other than the obligations on which you are primarily liable), as well as for interest on individual obligations issued and outstanding on the termination date by other banks operating under the same title of the Act. The termination application must include evidence that the successor institution will continue to have this joint and several liability for consolidated and Systemwide debt.

(d) *Payment to the FAC.* (1) Before termination, you must pay to the FAC the amounts required by section 6.9(e)(3)(C)(ii) of the Act and by subparagraphs (c)(5)(E)(i) and (d)(1)(C)(iv) of section 6.26 of the Act. For purposes of this calculation, you must include your retail loan volume, the retail loan volume of the associations that are terminating with you, and the retail loan volume of the affiliated associations that continue their direct lending relationships with the successor institution.

(2) The FAC must make the present value estimation, subject to our approval, based on an appropriate discount rate. The appropriate discount rate is the non-interest bearing U.S. Treasury security rate for securities with a maturity as near as possible to the period remaining until the terminating association's obligations under this paragraph would be due.

§ 611.1275 Retirement of equities—terminating bank.

(a) *Retirement at option of equity holder.* System institutions that own your equities have the right to require you to retire the equities on the termination date.

(b) *Value of equity holders' interests.* For retirement purposes, the value of the equities held by System institutions is the book value on the termination date, revised to reflect the adjustments required for the final exit fee calculation in § 611.1255(b)(5)(iv).

(c) *Transfer of affiliated association's investment.* As an alternative to retirement, an affiliated association that is not terminating has the right to require you to transfer its investment in the bank, including a pro rata share of unallocated surplus, to another Farm Credit bank. The transfer of the investment, which must include purchased equities and allocated and unallocated surplus, must occur on or before the termination date.

§ 611.1280 Dissenters' rights.

(a) *Definition.* A dissenting stockholder is an equity holder (other than a System institution) in a terminating institution on the termination date who either:

(1) Was eligible to vote on the termination resolution and voted against termination;

(2) Was an equity holder on the voting record date but was not eligible to vote; or

(3) Became an equity holder after the voting record date.

(b) *Retirement at option of dissenting stockholder.* A dissenting stockholder may require a terminating institution to retire the stockholder's equity interest in the terminating institution.

(c) *Value of a dissenting stockholder's interest.* You must pay a dissenting stockholder according to the liquidation provisions in your bylaws, except that you must pay at least par or face value for eligible borrower stock (as defined in section 4.9A(d)(2) of the Act).

(d) *Calculation of interest of a dissenting stockholder entitled to the remaining assets.* Except as paragraph (f) of this section provides, when you retire equities of the class entitled to the remaining assets in a liquidation, you must pay the adjusted book value.

(1) The adjusted book value for a terminating association is the book

value on the termination date, after making the adjustments required by us for the final exit fee calculation in § 611.1255(a)(4), except for the subtraction of dissenting stockholders' equity described in § 611.1255 (a)(4)(ii)(C).

(2) The adjusted book value for a terminating bank is the book value on the termination date, after making the adjustments required by us for the final exit fee calculation in § 611.1255(b)(5)(iv), except for the subtraction of dissenting stockholders' equity described in § 611.1255(b)(5)(iii)(D).

(e) *Form of payment to a dissenting stockholder.* You must pay cash or make some other payment arrangement satisfactory to the dissenting stockholder for the stockholder's equities.

(f) *Payment to holders of special class of stock.* If you have adopted bylaws under § 611.1210(f), you must pay a dissenting stockholder who owns shares of the special class of stock an amount equal to the lower of the par (or face) or adjusted book value of such stock.

(g) *Notice to equity holders.* The notice to equity holders required in § 611.1240(e) must include a form for stockholders to send back to you, stating their intention to exercise dissenters' rights. The notice must contain the following information:

(1) A description of the rights of dissenting stockholders set forth in this section, and the approximate value per share that a dissenting stockholder can expect to receive. State whether the successor institution will require borrowers to be stockholders or whether it will require stockholders to be borrowers.

(2) A description of the current book and par value per share of each class of equities, and the expected book and market value of the stockholder's interest in the successor institution.

(3) A statement that a stockholder must return the enclosed form to you within 30 days if the stockholder chooses to exercise dissenters' rights.

(h) *Notice to subsequent equity holders.* Equity holders that acquire their equities after the termination vote must also receive the notice described in paragraph (g) of this section. You must give them at least 5 business days to decide whether to request retirement of their stock.

(i) *Reconsideration.* If a reconsideration vote is held and the termination is disapproved, the right of stockholders to exercise dissenters' rights is rescinded. If a reconsideration vote is held and the termination is approved, you must retire the equities of dissenting stockholders as if there had been no reconsideration vote.

§ 611.1285 Loan refinancing by borrowers.

(a) *Disclosure of credit and loan information.* At the request of a borrower seeking refinancing with another System institution before you terminate, you must give credit and loan information about the borrower to such institution.

(b) *No reassignment of territory.* If, at the termination date, we have not assigned your territory to another System institution, any System institution may lend in your territory, to the extent otherwise permitted by the Act and regulations.

§ 611.1290 Continuation of borrower rights.

You may not require a waiver of contractual borrower rights provisions as a condition of borrowing from and owning equity in the successor institution. Institutions that become OFIs on termination must comply with the applicable borrower rights provisions in the Act and subparts K, L, and N of part 614 of this chapter.

Dated: October 29, 1999.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 99–28732 Filed 11–4–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–112–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise Airworthiness Directive (AD) 99–15–04, which currently requires calibrating the turbine inlet temperature system to assure the accuracy of the existing turbine inlet temperature indicator and wiring on all The New Piper Aircraft, Inc. (Piper) Models PA–46–310P and PA–46–350P airplanes, and repairing or replacing any turbine inlet temperature system that fails the calibration test. AD 99–15–04 also requires repetitively replacing the turbine inlet temperature probe on the Model PA–46–350P airplanes, and inserting a copy of the AD into the Pilot's Operating Handbook (POH) of certain airplanes. Since AD 99–15–04 became effective, the Federal Aviation Administration (FAA) has determined that the AD should not apply to airplanes where the factory installed turbine inlet temperature gauge and associated probe have been replaced through supplemental type certificate (STC). The proposed AD retains the actions of AD 99–15–04, and restricts the applicability accordingly. The actions specified by the proposed AD are intended to prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane.

DATES: Comments must be received on or before January 4, 2000.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–112–AD, Room 506, 901 Locust, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Young, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6079; facsimile: (770) 703–6097; e-mail address: "Donald.Young@faa.gov".

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–112–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–112–AD, Room 506, 901 Locust, Kansas City, Missouri 64106.

Discussion

AD 99–15–04, Amendment 39–11223 (64 FR 37669, July 13, 1999), currently requires the following:

—calibrating the turbine inlet temperature system to assure the accuracy of the existing turbine inlet temperature indicator and wiring for all Piper Models PA–46–310P and PA–46–350P airplanes, and repairing or replacing any turbine inlet temperature system that fails the calibration test;

—repetitively replacing the turbine inlet temperature probe on the Model PA–46–350P airplanes; and

—inserting a copy of this AD into the POH of airplanes that do not have a certain POH revision incorporated.

AD 99–15–04 was the result of field reports that indicated service accuracy problems with the existing turbine inlet temperature system on the affected airplanes.

The actions specified in AD 99–15–04 are intended to prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane.

Actions Since Issuance of Previous Rule

Since AD 99–15–04 became effective, the FAA has determined that the AD should not apply to airplanes that do not have a Lewis or Transicoil Turbine Inlet Temperature Gauge and associated probe installed, where this system was replaced in accordance with a supplemental type certificate (STC). Relief from the AD is available only if the gauge and probe are *replaced* through STC and not if a second turbine inlet temperature gauge was installed while retaining the Lewis or Transicoil gauge and probe.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that:

—the actions of AD 99–15–04 should be revised to exclude those airplanes that do not have a Lewis or Transicoil turbine inlet temperature gauge and associated probe installed and the system was replaced through STC; and

—additional AD action should be taken to continue to prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA–46–310P and PA–46–350P airplanes of the same type design, the proposed AD would revise AD 99–15–04. The proposed AD would continue to require calibrating the turbine inlet temperature system to assure the accuracy of the existing turbine inlet temperature indicator and wiring on all affected airplanes, and repairing or replacing any turbine inlet temperature system that fails the calibration test. The proposed AD would also require repetitively replacing the turbine inlet temperature probe on the Model PA–46–350P airplanes, and inserting a copy of the AD into the POH of certain airplanes. Those airplanes that do not have a Lewis or Transicoil Turbine Inlet Temperature Gauge and associated probe installed, where this system was replaced in accordance with an STC, would be excluded from the AD. Relief from the AD is available only if the gauge and probe are *replaced* through STC and not if a second turbine inlet temperature gauge was installed while retaining the Lewis or Transicoil gauge and probe.

Cost Impact

The FAA estimates that 580 airplanes in the U.S. registry would be affected by the proposed calibration, that it would take approximately 4 workhours per airplane to accomplish the proposed calibration, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed calibration on U.S. operators is estimated to be $139,200, or $240 per airplane.

The FAA estimates that it would take approximately 1 workhour per airplane to accomplish the proposed initial turbine inlet temperature probe replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $518. Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $335,240, or $578 per airplane. These figures only take into account the initial replacement and do not take into account the cost of subsequent repetitive replacements. The FAA has no way of determining the number of replacements each owner/operator will incur over the life of the affected airplanes.

The cost impact of the proposed AD is the same as that specified in AD 99–15–04. The only difference between AD 99–15–04 and the proposed AD is the exemption of certain airplanes from the proposed AD if they have a certain turbine inlet temperature gauge and associated probe installed.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 99–15–04, Amendment 39–11223 (64 FR 37699, July 13, 1999), and adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 98–CE–112–AD; Revises AD 99–15–04, Amendment 39–11223.

Applicability: Models PA–46–310P and PA–46–350P airplanes, all serial numbers, certificated in any category. (See paragraph (f) of this AD for configurations that would exclude airplanes from the applicability of this AD).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane, accomplish the following:

(a) For all affected airplanes (Models PA–46–310P and PA–46–350P), within the next 100 hours time-in-service (TIS) after August 31, 1999 (the effective date of AD 99–15–04), accomplish the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection, and Turbine Inlet Temperature System Calibration, as follows:

(1) *For Model PA–46–310P airplanes:* Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection in accordance with the PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (section A.(1)(d), pages 1 and 2); and accomplish the Turbine Inlet Temperature System Calibration in accordance with the PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (pages 3 and 4); and

(2) *For Model PA–46–350P airplanes, serial numbers 4622001 through 4622200 and 4636001 through 4636020:* Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection in accordance with the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.C, page 1); and accomplish the Turbine Inlet Temperature System Calibration in accordance with the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.I., pages 4 through 7).

(3) *For Model PA–46–350P airplanes, all serial numbers beginning with 4636021:* Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection in accordance with the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.C, page 1).

Note 2: Operators of the Model PA–46–350P airplanes with over 150 hours TIS on the currently installed turbine inlet temperature probe will have to replace the probe as required in paragraph (c) of this AD. In this case, the operator may want to accomplish the replacement prior to the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection, and Turbine Inlet Temperature System Calibration.

(b) For all affected airplanes (Models PA–46–310P and PA–46–350P), if the results of paragraph (a) of this AD cannot be met (the turbine inlet temperature system indicator cannot be calibrated or the turbine inlet temperature probe fails the inspection), prior to further flight, repair or replace the failed parts with serviceable parts of the following part numbers:

(1) Lewis Turbine Inlet Temperature Analog Indicator, part number 471–008.

(2) Lewis Turbine Inlet Temperature Digital Indicator, part number 548–811.

(3) Turbine Inlet Temperature Probe, part number 471–009 for the Model PA–46–310P airplanes and part number 481–389 or 481–392 for the Model PA–46–350P airplanes.

(4) Only the Lewis Turbine Inlet Temperature Analog Indicator (referenced in paragraph (b)(1) of this AD) has a zero adjustment screw. The Lewis Turbine Inlet Temperature Digital Indicator (referenced in paragraph (b)(2) of this AD) must be returned to the factory for adjustment or replacement.

(c) For the Model PA–46–350P airplanes, upon accumulating 250 hours TIS on the currently installed turbine inlet temperature probe or within the next 100 hours TIS after August 31, 1999 (the effective date of AD 99–15–04), whichever occurs later, and thereafter at intervals not to exceed 250 hours TIS: replace the part number 481–392 turbine inlet temperature probe with a new part number 481–389 or 481–392 probe.

(d) For the operators of the airplanes presented in paragraphs (d)(1) and (d)(2) of this AD, within the next 100 hours TIS after August 31, 1999 (the effective date of AD 99–15–04), incorporate the emergency operation procedures specified in paragraph (e) of this AD for when a turbine inlet temperature system failure occurs while in-flight by inserting a copy of this AD into the applicable Pilots' Operating Handbook/Airplane Flight Manual (AFM/POH):

(1) For all operators of the Model PA–46–310P airplanes that do not have the applicable POH revision incorporated as follows:

POH	Revision/Date	Affected serial numbers
VB–1200	16/March 19, 1999	46–8408001 through 46–8608067 and 4608001 through 4608007.
VB–1300	13/February 25, 1999	4608008 through 4608140.

(2) For those operators of the Model PA–46–350P airplanes that do not have the applicable POH revision incorporated as follows:

POH	Revision/Date	Affected serial numbers
VB–1332	16/November 14, 1997	4622001 through 4622200.
VB–1609	1/November 21, 1997	463001 through 4636020.
VB–1602	1/November 28, 1997	4636021 through 4636131.
VB–1446	New/December 3, 1997	4636132 through 4636195.
VB–1710	New/February 23, 1999	All serial numbers beginning with 4636196.

(e) The following are emergency operation procedures for when a turbine inlet temperature system failure occurs while in-flight:

(1) *For Model PA–46–310P airplanes:*

(i) If the turbine inlet temperature indication fails during takeoff, climb, descent, or landing, maintain FULL RICH mixture to assure adequate fuel flow for engine cooling.

(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain cruise power setting and lean to 6 gallons per hour (GPH) fuel flow above that specified in the Power Setting Table in Section 5 of the AFM/POH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

(2) *For Model PA–46–350P airplanes:*

(i) If the turbine inlet temperature indication fails during takeoff, climb, descent or landing, set power per the POH Section 5 Power Setting Table and then lean to the approximate POH Power Setting Table fuel flow plus 4 GPH.

(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain the power setting and increase indicated fuel flow by 1 GPH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

(f) This AD does not apply to any airplane that does not have a Lewis or Transicoil Turbine Inlet Temperature Gauge and associated probe installed, where this system was replaced in accordance with a supplemental type certificate (STC). Relief from the AD is available only if the gauge and probe are *replaced* through STC and not if a second turbine inlet temperature gauge was installed while retaining the Lewis or Transicoil gauge and probe.

(g) Inserting a copy of this AD into the applicable POH/AFM as required by paragraph (d) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with paragraph (d) of this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 99–15–04 are considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(j) Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–112–AD, Room 506, 901 Locust, Kansas City, Missouri 64106.

(k) This amendment revises AD 99–15–04, Amendment 39–11223.

Issued in Kansas City, Missouri, on October 27, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29057 Filed 11–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–231–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes. This proposal would require repetitive inspections to detect cracking of the forward and aft inner chords and the splice fitting of the forward inner chord of the station 2598 bulkhead, and repair, if necessary. This proposal is prompted by reports of fatigue cracking found in those areas. The actions specified by the proposed AD are intended to detect and correct such cracking, which could result in reduced structural capability of the bulkhead and the inability of the structure to carry horizontal stabilizer flight loads.

DATES: Comments must be received by December 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–231–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fatigue cracking has been detected in the forward and aft inner chords and the splice fitting of the forward inner chord of the station 2598 bulkhead on Boeing Model 747 series airplanes. The horizontal stabilizer hinge fittings are attached to the station

2598 bulkhead. The bulkhead includes a large cutout that gives access to the rear spar of the horizontal stabilizer. The reports indicate that the cracking was detected around the upper corners of the cutout. In addition, a recent report indicates that a fatigue crack was detected in the station 2598 splice fitting where it attaches to the upper and lower sections of the bulkhead forward inner chord. Such cracking, if not detected and corrected, could result in reduced structural capability of the bulkhead and the inability of the structure to carry horizontal stabilizer flight loads.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998, which describes procedures for a one-time high frequency eddy current (HFEC) inspection and repetitive detailed visual inspections to detect cracking of the forward and aft inner chords of the station 2598 bulkhead, and repair, if necessary.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time HFEC inspection and repetitive detailed visual inspections to detect cracking of the forward and aft inner chords of the station 2598 bulkhead, and repair, if necessary. These actions would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below. The proposed AD also would require a one-time HFEC inspection and repetitive detailed visual inspections to detect cracking of the splice fitting of the forward inner chord of the station 2598 bulkhead. Such inspections of the splice fitting of the forward inner chord would be required to be accomplished in accordance with procedures included in paragraphs (a)(2) and (b)(2) of this AD. If any cracking is found during such inspections, repair would be required to be accomplished in accordance with a method approved by the FAA, as specified in paragraph (d) of this proposed AD.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators also should note that, as described previously, this proposed AD would require a one-time HFEC inspection and repetitive detailed visual inspections to detect cracking of the splice fitting of the forward inner chord of the station 2598 bulkhead. The alert service bulletin does not specify such inspections of the splice fitting. Also, though this inspection area is shown in Figure 2, Detail A, and Figure 3, Detail A, of the alert service bulletin, the inspection area is not highlighted in those figures.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 1,301 airplanes of the affected design in the worldwide fleet. The FAA estimates that 260 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed HFEC inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $31,200, or $120 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed detailed visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $31,200, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–231–AD.

Applicability: All Model 747 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the forward and aft inner chords and the splice fitting of the forward inner chord of the station 2598 bulkhead, which could result in reduced structural capability of the bulkhead and the inability of the structure to carry horizontal stabilizer flight loads, accomplish the following:

Initial Inspection

(a) Prior to the accumulation of 13,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the requirements specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a high frequency eddy current inspection (HFEC) to detect cracking of the forward and aft inner chords of the station 2598 bulkhead, in accordance with Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998.

(2) Perform an HFEC inspection to detect cracking of the splice fitting along the upper and lower attachment to the forward inner chord of the station 2598 bulkhead, as shown in Figure 2, Detail A, of Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998.

Note 2: Operators should note that the inspection area specified in paragraph (a)(2) of this AD is NOT highlighted in Figure 2, Detail A, of Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998.

Repetitive Inspections

(b) Within 3,000 flight cycles after accomplishment of the inspections required by paragraph (a) of this AD: Accomplish the inspections specified in paragraphs (b)(1) and (b)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(1) Perform a detailed visual inspection to detect cracking of the forward and aft inner chords of the station 2598 bulkhead, in accordance with Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Perform a detailed visual inspection to detect cracking of the splice fitting along the upper and lower attachment to the forward inner chord of the station 2598 bulkhead, as shown in Figure 3, Detail A, of Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998.

Note 4: Operators should note that the inspection area specified in paragraph (b)(2) of this AD is NOT highlighted in Figure 3, Detail A, of Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998.

Repair

(c) If any cracking is detected during the inspections required by paragraph (a)(1) or (b)(1) of this AD, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998, except as provided by paragraph (d) of this AD.

(d) If any cracking is detected during the inspections required by paragraph (a)(2) or (b)(2) of this AD, or where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, or a Boeing DER, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on November 1, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29056 Filed 11–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWA–10]

RIN 2120–AA66

Proposed Revocation of the El Toro Marine Corps Air Station (MCAS) Class C Airspace Area, and Revision of the Santa Ana Class C Airspace Area; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revoke the El Toro MCAS, CA, Class C airspace area and to remove reference to the El Toro MCAS Class C airspace area in the description of the Santa Ana, CA, Class C airspace area. The FAA is taking this action due to the closure of the El Toro MCAS air traffic control (ATC) facilities. This proposal would not change the dimensions, operating requirements, or flight paths of the current Santa Ana Class C airspace area.

DATES: Comments must be received on or before December 23, 1999.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 99–AWA–10, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the FAA Western-Pacific Regional Office.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AWA–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Effective July 2, 1999, the United States Marine Corps permanently terminated ATC service at El Toro MCAS as a result of the Base Realignment and Closure (BRAC) recommendations and decisions. Therefore, there is no longer a requirement to retain a Class C airspace area at El Toro MCAS.

The Proposal

This action proposes to amend 14 CFR part 71 by revoking the El Toro MCAS Class C airspace area. The proposed removal of the airspace area is necessary due to the closure of the ATC facilities at El Toro MCAS. The current Class C airspace area would revert to Class E controlled airspace. This proposed action also would revise the Santa Ana Class C airspace area by removing references to El Toro MCAS from the description. These proposed actions revoke the Class C airspace designation and revise the description for the Santa Ana Class C airspace area, but do not change the dimensions, operating requirements, or flight patterns in the area.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed action: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be removed from the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 4000 Subpart C—Class C Airspace.

* * * * *

AWP CA C El Toro MCAS, CA [Removed]

* * * * *

AWP CA C Santa Ana, CA [Revised]

John Wayne Airport/Orange County, CA
(lat. 33°40′32″ N., long. 117°52′06″ W.)

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the John Wayne Airport/Orange County excluding that airspace east of a line between lat. 33°44′12″ N., long. 117°48′00″ W.; and lat. 33°36′55″ N., long. 117°47′58″ W.; and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the John Wayne Airport/Orange County, west of a line from lat. 33°36′55″ N., long. 117°47′58″ W.; to lat. 33°31′09″ N., long. 117°47′56″ W. clockwise to the 175° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 1,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the 175° bearing clockwise to the 201° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 3,500 feet MSL to and including 5,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the 201° bearing from the airport to the shoreline, excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 2,500 feet MSL to and including 5,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the shoreline to the San Diego Freeway (I–405), excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the San Diego Freeway clockwise to the 360° bearing from the John Wayne Airport/Orange County, excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 2,000 feet MSL to and including 4,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the 360° bearing from the John Wayne Airport/Orange County clockwise to a line from lat. 33°49′58″ N., long. 117°48′02″ W.; to lat. 33°44′12″ N., long. 117°48′00″ W. This Class C airspace area is effective during the specific days and hours of operation of the Orange County Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC on November 1, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–29041 Filed 11–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM99–12–000]

Designation of Electric Rate Schedule Sheets October 28, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to require prospectively the inclusion of a proposed designation for all rate schedule sheets filed with the Commission by public utilities. The proposed rule would streamline rate schedule sheet designation procedures for the Commission and the electric industry. The proposed rule also would conform public utility tariff filing procedures with those for interstate natural gas and oil pipelines. This revision to the regulations is necessary to accommodate the movement toward an integrated energy industry and to facilitate the development of common standards for the electronic filing of all electric, gas, and oil rate schedule sheets.

DATES: Comments are due December 6, 1999.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0525.

Julia Tuzun (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0256.

Connie Caldwell (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2027.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS on ASCII and WordPerfect 8.0. user assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to require prospectively the inclusion of a proposed designation[1] on all rate schedule sheets filed with the Commission by public utilities. The proposed rule would streamline rate schedule sheet designation procedures for the Commission and the electric industry.

The proposed rule also would conform the procedures for identifying public utility tariff filings with those for interstate natural gas and oil pipelines. This revision to the regulations is necessary to accommodate the movement toward an integrated energy industry and to facilitate the development of common standards for the electronic filing of all electric, gas, and oil rate schedule sheets. However, it has not been determined what the common standards for electronic filing will be or the format that will be followed. For example, it has not been decided whether a page-based or non-page-based system would be most effective. These determinations will be developed by the Commission as it moves forward with electronic filing.

I. Background

Section 205(c) of the Federal Power Act (FPA)[2] and section 4(c) of the Natural Gas Act[3] provide that the Commission is charged with the responsibility to keep schedules showing all rates and charges, in such form as the Commission may designate, for any jurisdictional transmission or sale of electricity and for any jurisdictional transportation or sale of natural gas, respectively. Similarly, section 6 of the Interstate Commerce Act (ICA)[4] requires that the rate schedules for oil pipelines be published, filed, and posted in the form and manner prescribed by the Commission. Parts 35, 154, and 341 of the Commission's Rules and Regulations implement these sections of the FPA, NGA, and ICA, respectively.[5]

Pursuant to current Commission regulations under Parts 154 and 341, gas and oil pipelines are required to include proposed pagination on all tariff sheets filed with the Commission; the proposed pagination must be unique to the pertinent tariff sheets, i.e., the proposed pagination is newly created and has never been used previously. Additionally, both Parts 154 and 341 require that the proposed pagination convey information as to whether the tariff sheet being filed contains changes proposed by the pipeline or is filed in compliance with a Commission order. Gas or oil tariff sheets filed without pagination or incorrect pagination are deemed incomplete, and may be rejected as such.[6]

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[1] For purposes here, "designation" refers to both the practice of assigning rate schedule numbers and sheet designations for purposes of identification and document tracking.

[2] 16 USC 824d.

[3] 15 USC 717(c).

[4] 49 USC app. 1.

[5] 18 CFR Part 35; 18 CFR Part 154; 18 CFR Part 341.

With regard to public utility rate schedules, Part 35 of the Commission's regulations provides that every rate schedule filing under the FPA "will be numbered by the Commission and the filing public utility advised of the Rate Schedule FERC number."[7] Therefore, pursuant to that regulation, the Commission routinely designates each rate schedule filed by a public utility and informs the utility of the designation.

II. Discussion

The proposed rule would streamline tariff sheet designation procedures for the Commission and the electric industry. Under current procedures, a significant amount of staff time is required to assign designations for public utility tariff sheets.[8] Staff is required to physically research underlying tariff sheets and proceedings to identify the status of the superseded tariff sheet (effective without suspension, suspended, or effective under suspension) and the nature of the proposed tariff sheet (a proposed rate change or a compliance filing) in order to establish the proper designation. This information must then be conveyed to the utility and the public through issuance of Commission orders.

Alternatively, under the proposed designation procedure, staff would only need to confirm the appropriateness of the proposed pagination. Commission orders, including delegated orders, would not have to always list tariff sheets individually, since the filings and the tariff sheets would be cross-referenced electronically. This would simplify the identification of any specific tariff sheet for any purpose from the time of filing. Also, the proposed designation procedure would allow tariff sheets to be more easily kept up-to-date, with superseded sheets archived for future reference.

Filing requirements for tariff sheets for the electric, gas, and oil industries have evolved independently over time. However, with the movement toward an integrated energy industry it now makes sense to have a common standard for all tariff sheets filed with the Commission. Further, as the Commission increases its use of electronic media for filing, storage, retrieval, and tracking of information and documents, greater uniformity in filing procedures, wherever practical, will greatly expedite and simplify this conversion to electronic media. Conforming the requirements for public utilities, interstate natural gas pipelines, and oil pipelines will position the Commission and the affected industries for a smooth transition to filing tariff sheets electronically and having those sheets tracked and archived electronically. Designing the electronic format for these filings will be greatly simplified as well if all tariff sheets are filed uniformly.

In terms of the transition from the existing designation procedure to the proposed designation procedure, the Commission believes that the transition to the proposed designation system would occur most smoothly if currently effective and paginated/designated tariff sheets remain as filed; however, if a change is proposed in an existing tariff or rate schedule, the entire tariff or rate schedule must be re-filed according to the new system. In this way, as tariff sheets are replaced over time, the old designations will disappear and the new system would be implemented in an orderly and efficient manner. Further, changes would be prospective only, alleviating any need to retroactively alter, modify, or re-file the tariff sheets currently on file.

"Tariff, Rate Schedule and Service Agreement Pagination Guidelines" have been developed and are attached hereto as an appendix. The guidelines offer definitions and examples to assist during the period of transition. The guidelines also provide the name and telephone number of a staff person who can answer questions and provide additional guidance.

III. Information Collection Statement

The following collection of information contained in this proposed rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[9] FERC identifies the information provided under Part 35 as FERC–516. The additional reporting burden to implement this proposed rule is as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–516	858	3.42	2.83	8,320

Total Additional Annual Hours for Collection (Reporting+Recordkeeping, if appropriate)=8,320.

The total annual reporting burden for FERC–516 under the current regulations is 536,800 hours. Currently, the Commission devotes approximately 8,320 hours per year to assign tariff designations to an estimated 2,934 filings per year. The proposed change will require the utilities to perform the designation duties currently performed by Commission staff. There will, therefore, be an increase in reporting burden from 536,800 hours to 545,120 hours as utilities adopt the proposed designation system for changes proposed in existing tariffs or rate schedules and/or if an entire tariff or rate schedule must be re-filed.[10]

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs $205,424 (tariff designations).

Annualized Costs (Operations & Maintenance): $28,359,815. (tariff + rate schedule filings).

Total Annualized Costs: $28,565,239. (tariff designations + rate schedule filings).

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[11] Accordingly, pursuant to OMB regulations the Commission is providing notice of its proposed information collection to OMB.

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[6] *See* 18 CFR 154.5; 18 CFR 341.11.

[7] 18 CFR 35.9.

[8] For the convenience of the reader, unless the context otherwise indicates, we will use the term "tariff sheet" in the remainder of the narrative discussion when referring to public utility rate schedules.

[9] 44 U.S.C. 3507(d).

[10] The proposed change may have even less impact on utilities, as the Commission assumes utilities currently maintain an informal record keeping system for proposed tariff sheets pending a final designation from the Commission. This informal system will no longer be necessary to maintain, as tariff sheet designations will be assigned by the utilities prior to filing the tariff sheets.

Title: FERC–516, Electric Rate Schedule Filings.

Action: Proposed Data Collection.

OMB Control No.: 1902–0096 The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On Occasion.

Necessity of Information: The proposed rule revises the requirements contained in 18 CFR Part 35.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. Section 205 of the Federal Power Act (FPA) (16 U.S.C. 824d) requires that rates, terms, and conditions for jurisdictional service be filed with the Commission. In addition, the Commission uses the information provided to make determinations as to whether the rates, terms and conditions of jurisdictional service are unjust, unreasonable, or unjustly discriminatory or preferential and to prescribe the just and reasonable rates, terms and conditions. Failure to issue these requirements would mean the Commission is not meeting its statutory obligations under Sections 205 and 206 of the FPA (16 U.S.C. 824d–e). These requirements also conform to the Commission's plan for the efficient collection, communication, and management of information for the electric industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, email: mike.miller@ferc.fed.us].

For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285.

IV. Environmental Statement

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. The actions proposed to be taken here fall within categorical exclusions found in 18 CFR 380.4(a)(1) and (15). Therefore, environmental considerations are unnecessary.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic effect on a substantial number of small entities. Most filing entities do not fall within the RFA's definition of a small entity.[12] Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

The Commission invites interested persons to submit written comments on this proposal.

An original and 14 copies of such comments must be received by the Commission before 5:00 p.m. December 6, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 and should refer to Docket No. RM99–12–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–12–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM99–12–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE, Washington, DC 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Home Page using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects in 18 CFR 35

Electric power rates, Electric utilities, Electricity, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791–a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 710–7352.

2. Section 35.5 is amended by designating the existing text as paragraph (a) and by adding a paragraph (b) to read as follows:

§ 35.5 Rejection of material submitted for filing.

(a) The Secretary, pursuant to the Commission's Rules of Practice and

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[11] 5 CFR 1320.11.

[12] See 5 U.S.C. 601(3).

Procedure and delegation of Commission authority, shall reject any material submitted for filing with the Commission which patently fails to substantially comply with the applicable requirements set forth in this Part, or the Commission's Rules of Practice and Procedure.

(b) A rate filing that fails to comply with this Part may be rejected by the Director of the Office of Electric Power Regulation pursuant to the authority delegated to the Director in § 375.308(a)(3) of this chapter.

3. Section 35.9 is revised to read as follows:

§ 35.9 Identification and numbering of tariffs and rate schedules (including service agreements).

(a) All tariffs and rate schedules (including service agreements) must be numbered sequentially from the beginning of that tariff or rate schedule.

(b) All tariffs and rate schedules (including service agreements) must have the following information placed in the margins of each sheet:

(1) *Identification.* At the top left of each page, the exact name of the company must be shown, under which must be set forth the words "FERC Electric Tariff" or "FERC Electric Rate Schedule No." together with volume identification.

(2) *Numbering of sheets.* Except for the title page, at the top right, the sheet number must appear as "(Original or Revised) Sheet No. (number)." All sheets must be numbered in the manner set forth in the Tariff, Rate Schedule and Service Agreement Pagination Guidelines, as modified from time to time.

(3) *Issuing officer and issue date.* On the lower left must be placed "Issued by:" followed by the name and title of the person authorized to issue the sheet. Immediately below must be placed "Issued on" followed by the date of issue.

(4) *Effective date.* On the lower right must be placed "Effective:" followed by the specific effective date proposed by the company.

(5) *Filings made to comply with Commission orders.* Tariffs and rate schedules (including service agreements) filed to comply with Commission orders must carry the following notation in the bottom margin: "Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. (number), issued (date), (FERC Reports citation)."

§ 35.18 [Removed and Reserved]

4. Section 35.18 is removed and reserved.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A to Part 35

Tariff, Rate Schedule and Service Agreement Pagination Guidelines

Due to the complexity of tariff filing situations, the Commission Staff provides the following guidelines. If you have questions or need assistance, please call Tina Lyles at (202) 208–0751 or Brian Stephenson at (202) 208–1277, or such other persons as may be identified from time to time.

(1) Original Sheets. Paginate as "Original Sheet No.____" (a) all pages in initial filings, (b) added sheets, and (c) all sheets in a revised tariff volume. Guideline (11) gives an exception for reserved sheets.

(2) Substitute Sheets. Paginate a sheet as "Substitute" if it is filed to replace a sheet filed in the same proceeding (e.g., as a result of a hearing order, or of a correction to a tariff sheet filed prior to the issuance of an order, or of a compliance filing) with the same effective date. If a substitute sheet needs to be replaced, paginate the new sheet as "Second Substitute", and so on. (See Example No. 1.)

(3) Revised Sheets. Paginate a sheet as "Revised" if it is (a) replacing a sheet filed in a different proceeding or (b) replacing a sheet filed in the same proceeding but given a new proposed effective date. Each subsequent "Revised" pagination should be numbered sequentially, i.e., First Revised, Second Revised, Third Revised, etc. (See Examples Nos. 1 and 2.)

(4) Superseded Sheets. Each designation must refer to the designation of the sheet being superseded, if any. The superseded sheet is the sheet being replaced by a revised sheet. (There is an exception to this guideline for retroactive filings—see Guideline (9).) Never designate a rejected or suspended sheet as the superseded sheet. However, if a sheet designated as superseded is subsequently rejected, it is not necessary to re-file solely to correct the superseded sheet designation. (See Example No. 1.)

(5) Rejected Sheets. Do not reuse the pagination of a rejected sheet. Paginate a sheet "Substitute" if it is filed to replace a rejected sheet in the same proceeding, but do not refer to a rejected sheet as the superseded sheet in the designation. (See Guidelines (3) and (4).)

(6) Alternate Sheets. When filing two versions of a proposed tariff sheet, paginate the sheet " __ Revised Sheet No. __" and "Alternate __ Revised Sheet No. __ ". Paginate a replacement alternate sheet "Sub Alternate __".

(7) Inserted Sheets. Paginate sheets inserted between two consecutively numbered sheets using an uppercase letter following the first sheet number (*e.g.*, sheets inserted between sheets 8 and 9 would be 8A, 8B, etc.). For sheets inserted between two consecutively lettered sheets, add a "." followed by a two digit number (*e.g.*, sheets inserted between sheets 8A and 8B would be 8A.01 through 8A.99). For further insertions, add a lowercase letter (*e.g.*, between sheets 8A.01 and 8A.02 would be 8A.01a, 8A.01b, etc.).

(8) "Squeezed" Sheets. When a sheet needs to be made effective between two sequentially paginated sheets already on file (all in different proceedings), paginate the new sheet by adding a "1st Rev" designation to the older sheet's pagination. Commonly, this situation occurs when a sheet is suspended for five months and subsequent sheets need to be made effective prior to when the suspended sheet becomes effective. (See Example No. 3.)

(9) "Retroactive" Sheets. When filing a "retroactive" sheet change back to a certain date, all sheets in effect from that date forward need to be changed. The first sheet should be paginated either as "Substitute" (see Guideline (3) above) or "1st Rev" (see Guideline (8) above) depending on whether the retroactive filing is in the same or different docket as the sheet being replaced. For simplicity, the rest of the sheets should be paginated as a "Substitute" of each effective sheet already on file. Follow Guideline (4) in designating the superseded sheet for the first new sheet. However, the rest of the sheets should supersede each other in order, even though they are all filed in the same docket. In this way the superseded designation will reflect the latest sheet in effect on each given date. (See Examples Nos. 4 and 5.)

(10) Canceled Sheets. When canceling individual sheets, but retaining the tariff or rate schedule, designate a blank sheet as a revised sheet superseding the prior sheet.

(11) Canceled Tariff or Rate Schedule. When canceling an entire tariff or rate schedule, file one sheet paginated as the last sheet of the tariff volume or rate schedule and refer to the tariff volume or rate schedule as canceled. (See Example No. 7.)

(12) Sheets Reserved For Future Use. When reserving a number of sheets for future use, file one sheet paginated "Sheet Nos. A–Z", where "A" and "Z" refer to the first and last reserved sheet numbers. In the body of the sheet state "Reserved for Future Use." (See Example No. 8.)

(13) Abbreviations. Abbreviate from left to right using the Abbreviation Conventions List at the end of this document. *Abbreviate only as needed.* (See Example No. 6.)

The following examples reflect the types of changes and corresponding designations that may be made over the life of a given tariff or rate schedule (all docket numbers and dates are hypothetical, and are not intended to refer to actual proceedings):

Example No. 1

Revised and Substitute Sheets

"Original Sheet No. 4" is filed in Docket No. ER99–44–000 to be effective January 1, 1999. Subsequently, a sheet filed in Docket No. ER99–123–000 is to be effective February 1, 1999. Paginate the latter sheet as "First Revised Sheet No. 4 superseding Original Sheet No. 4". If a mistake is discovered and a corrected sheet needs to be filed in Docket No. ER99–123–001, paginate that sheet "Substitute First Revised Sheet No. 4 superseding Original Sheet No. 4" or "First Revised Sheet No. 4" (whichever may apply).[13] Note the superseded sheet is from the prior proceeding.

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–44–000	11/30/98	1/1/99	Original	
ER99–123–000	12/31/98	2/1/99	First Revised	Original.
ER99–123–001[14]	2/15/99	2/1/99	Sub First Revised	First Revised.

[14] The Commission is issuing a notice contemporaneous with this NOPR informing the public of its intent, should the NOPR become final, to change its assignment of docket numbers to electric filings to a method similar to that used for the gas and oil programs.

If the utility proposes two separate changes to be effective the same date, and the second filing reflects the first filing's proposed changes, then it is appropriate to show the first filing's pagination as superseded.

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–44–000	11/30/98	1/1/99	Original	
ER99–123–000	12/31/98	2/1/99	First Revised	Original.
ER99–124–000	2/15/99	2/1/99	Second Revised	First Revised.

Example No. 2

Sheets Effective on the Same Date

"Second Revised Sheet No. 4" is filed in Docket No. ER99–200–000 to be effective April 1, 1999. Subsequently, a sheet is filed in Docket No. ER99–504–000 to be effective on the same date. Paginate that sheet with the next revision number, "Third Revised Sheet No. 4" even though it is to be effective on the same date.

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–200–000	2/28/99	4/1/99	Second Revised	Sub First Rev.
ER99–504–000	3/31/99	4/1/99	Third Revised	Second Rev.

Example No. 3

Squeezed Sheets

"Fourth Revised Sheet No. 4" is filed July 31, 1999, in Docket No. ER99–601–000 to be effective September 1, 1999. An order suspends this sheet until February 1, 2000. Subsequently, two filings are made to be effective prior to February 1, 2000. Paginate these sheets as "1st Rev Third Revised Sheet No. 4" and "2nd Rev Third Revised Sheet No. 4". The utility will be required, if necessary, to file revised tariff sheets to update the suspended tariff sheets to include any changes to the tariff sheets that have been accepted by the Commission between the date of the suspension and the effective date of the suspended rates. When filing to update the revised tariff sheets, paginate the revised tariff sheet as "Sub Fourth Revised Sheet No. 4". Note: using the alphanumeric "1st, 2nd" for the additional revision number assists in keeping the pagination clear.

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–601–000	7/31/99	2/1/00	Fourth Revised	Third Revised.
ER99–761–000	8/31/99	10/1/99	1st Rev Third Rev	Third Revised.
ER00–822–000	10/31/99	11/1/99	2nd Rev Third Rev	1st Rev Third Rev.
ER99–601–001	1/31/00	2/1/00	Sub Fourth Revised	2nd Rev Third Rev.

Example No. 4

Retroactive Sheets

The sheet paginated in Example No. 1, "Sub First Revised Sheet No. 4" filed in Docket No. ER99–123–001 is in effect February 1, 1999, subject to the resolution of issues. A year later, settlement is reached resulting in a restatement of base rates back to that date. The revised sheets filed under Docket No. ER99–123–002 (using prior examples):

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–123–002	2/15/99	2/1/99	2nd Sub First Revised	Sub First Revised.
		4/1/99	Sub Second Revised	2nd Sub First Rev.
		4/1/99	Sub Third Revised	Sub Second Rev.
		10/1/99	Sub 1st Rev Third Rev	Sub Third Rev.
		11/1/99	Sub 2nd Rev Third Rev	Sub 1st Rev Third Rev.
		2/1/00	2nd Sub Fourth Rev	Sub 2nd Rev Third Rev.

Example No. 5

Retroactive Sheets

Continuing from Example 4, a subsequent tracker filing retroactive to November 1, 1999:

Docket	Filed	Effective	Pagination	Superseded sheet
ER00–77–000	4/30/00	11/1/99	3rd Rev Third Rev	Sub 2nd Rev Third Rev.

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[13] The Commission is issuing a notice contemporaneous with this NOPR informing the public of its intent, should the NOPR become final, to change its assignment of docket numbers to electric filings to a method similar to that used for the gas and oil programs.

Docket	Filed	Effective	Pagination	Superseded sheet
	2/1/00	....	3rd Sub Fourth Rev	3rd Rev Third Rev.

Example No. 6

Abbreviations

Abbreviate "Fourth Revised Twenty-Third Revised Sheet No. 4" as "4th Rev Twenty-Third Revised Sheet No. 4".

Example No. 7

Canceled Rate Schedules and Tariffs

To cancel FERC Electric Rate Schedule FERC No. 26, which consists of sheets 1–39, file "Original Sheet No. 40":

Company name	Original sheet No. 40
FERC Electric Rate Schedule No. 26	Cancels FERC Electric Rate Schedule No. 26.

Notice of Cancellation.

Example No. 8

Reserved Sheets

Your general terms and conditions end on page 75 and you want to reserve sheets 76 through 99 for future use:

Electric company	Sheet Nos. 76 through 99
FERC Electric Tariff, Original Volume No. 2.	

Sheet Nos. 76 through 99 are reserved for future use.

Abbreviation Conventions List

Substitute: Sub
Alternate: Alt
Revised: Rev
First, Second, etc.: 1st, 2nd, etc.
Sheet No.: (omit these words)

SAMPLE PAGE

Day and light power company	Original sheet No. 4
FERC Electric Tariff, Original Volume No. 1: Issued by: Harriet Officer, Rates Manager .... Issued on: June 10, 2000	Effective: July 1, 2000.

To comply with order of the Federal Energy Regulatory Commission, Docket No. ER99–5374–000, issued October 27, 1999, 90 FERC ¶ 61,010 (1999).

[FR Doc. 99–28822 Filed 11–4–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115932–99]

RIN 1545–AX60

Reopenings of Treasury Securities and Other Debt Instruments; Original Issue Discount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: This document proposes, by cross reference to temporary regulations, amendments to the final regulations concerning the Federal income tax treatment of certain reopenings of Treasury securities. The temporary regulations, published in the Rules and Regulations section of this issue of the **Federal Register**, remove the requirement that the issuance of the Treasury securities in the reopening must be intended to alleviate an acute, protracted shortage of the original securities. The text of the temporary regulations also serves as the text of the proposed regulations. This document also contains proposed regulations that would provide guidance on the Federal income tax treatment of reopenings of debt instruments other than Treasury securities. The proposed regulations would provide guidance to holders and issuers of debt instruments. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written and electronic comments must be received by February 3, 2000. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for March 22, 2000, at 10 a.m., must be received by March 1, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–115932–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–115932–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. A public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William E. Blanchard, (202) 622–3950; concerning submissions and the hearing, Michael L. Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1275 of the Internal Revenue Code (Code). The temporary regulations provide rules for qualified reopenings of Treasury securities. See § 1.1275–2T(d).

This document also proposes new rules under sections 163(e) and 1275 of the Code for qualified reopenings of debt instruments other than Treasury securities.

Explanation of Provisions

Reopenings of Treasury Securities

The text of the temporary regulations (§ 1.1275–2T(d)) also serves as the text of the proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Reopenings of Debt Instruments Other Than Treasury Securities

A. In General

Over the past few years, a number of issuers have developed programs or practices where debt instruments with identical terms and CUSIP numbers are sold subsequent to their original issue date. These subsequent sales are often called "reopenings." The original issue discount (OID) rules generally accommodate reopenings during periods of stable or falling market interest rates. As is explained in more detail below, during periods of rising market interest rates, the OID rules can effectively prohibit reopenings. The proposed regulations in this document would modify the OID rules to accommodate certain qualified reopenings.

Under § 1.1275–1(f), two or more debt instruments are part of the same issue if they have the same payment and credit terms and are sold reasonably close in time either pursuant to a common plan or as part of a single transaction or series of related transactions. Usually, there is little doubt as to what constitutes an issue because all of the relevant debt instruments have identical terms, have the same CUSIP number, and are sold on the same day. When the third condition is not met, however, there is a question as to whether the subsequently sold debt instruments are part of the original issue or are themselves a new issue.

This question—whether the subsequently sold debt instruments are part of the original issue—has important tax consequences. If the subsequently sold debt instruments are considered part of the original issue, they have OID only to the extent the debt instruments in the original issue have OID. Thus, if the original debt instruments were issued without OID, the subsequently sold debt instruments also do not have OID. In this case, any discount on the subsequently sold debt instruments generally is market discount, not OID. Conversely, if the subsequently sold debt instruments are a separate issue for tax purposes, any discount that arises as part of their issuance is OID if it equals or exceeds the OID de minimis amount for the debt instruments. See § 1.1273–1(d) to determine the de minimis amount.

The holder and issuer have different tax consequences depending upon whether the discount is characterized as OID or market discount. For the holder, the primary difference is whether the holder has to include the discount in income on a current basis as it accrues. If it is OID, the holder must include the accruals in income currently; if it is market discount, the holder generally does not have to include discount in income until the debt instrument is disposed of or redeemed. The issuer's tax consequences also depend on whether the discount is OID or market discount. If the subsequently sold debt instruments are part of a separate issue and if the discount is OID, the issuer (or a broker or middleman) generally is required to make OID information reports for these debt instruments. See § 1.6049–5. To comply with this reporting obligation, the issuer must be able to distinguish the subsequently sold debt instruments (which require OID information reports) from the originally sold debt instruments. As a practical matter, the only way the subsequently sold debt instruments can be distinguished is if they are assigned new CUSIP numbers. The assignment of new CUSIP numbers prevents the debt instruments from being fungible and, thereby, defeats the purpose of the reopening.

B. Qualified Reopenings

This document proposes new qualified reopening rules. Under these rules, additional debt instruments sold in a qualified reopening would be part of the same issue as the original debt instruments. As a result, the additional debt instruments would have the same issue date, the same issue price, and (with respect to holders) the same adjusted issue price as the original debt instruments.

A qualified reopening would be a reopening of original debt instruments that meets the following conditions: (1) The original debt instruments are publicly traded; (2) The issue date of the additional debt instruments (treated as a separate issue) is not more than 6 months after the issue date of the original debt instruments; (3) Seven days before the date on which the price of the additional debt instruments is established, the yield of the original debt instruments (based on their fair market value) is not more than 107.5 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a de minimis amount of OID, the coupon rate); and (4) The yield of the additional debt instruments (based on the sales price of the additional debt instruments) is not more than 115 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a de minimis amount of OID, the coupon rate).

A qualified reopening also would include a reopening of original debt instruments if the first two conditions described above are met and the additional debt instruments (treated as a separate issue) were issued with no more than a de minimis amount of OID. A qualified reopening, however, would not include a reopening of tax-exempt obligations or contingent payment debt instruments.

The qualified reopening rules attempt to strike a balance between tax policy concerns about the conversion of OID into market discount and the need to have the tax rules reflect current capital market practices. The IRS and the Treasury Department believe the appropriate balance is to provide reopening rules for situations where the issuer can prove by objective, market-based information that the reopening will convert, at most, only a small amount of OID into market discount. To clearly and accurately measure the conversion benefit across different interest rate environments and debt instrument terms, the proposed regulations use a yield-based standard. The 107.5 percent standard was designed to give some relief to the reopening of relatively short-term issues (that is, issues with a remaining term of

10 years or less). These issues tend to be the most impacted by the OID de minimis rule standard.

The two yield-based rules are designed to work in tandem. The 107.5 percent of yield restriction is tested 7 days before the anticipated pricing date. This rule is designed to give the issuer a preliminary indication that its reopening will be a qualified reopening prior to the issuer's announcement of the reopening. Importantly, this preliminary indication is not controlling. Absent the 115 percent rule, if market interest rates were to move sharply upward in the week between the announcement date and the pricing date, the reopened debt instruments would go out with a significant amount of market discount (instead of OID) notwithstanding the fact that seven days before the pricing date the instruments satisfied the 107.5 percent rule. In this presumably rare and unusual case, the tax policy concern of converting a significant amount of OID into market discount becomes relatively more important. The proposed regulations, therefore, limit the total amount of discount that can be converted into market discount with the 115 percent rule.

C. Definition of Issue

The proposed regulations also change the definition of issue that is currently in § 1.1275–1(f) of the final OID regulations (described above). Essentially, the proposed regulations limit the "reasonably close in time" standard of current law to 13 days. The IRS and the Treasury Department believe that reopenings should be done through the proposed qualified reopening rule (discussed above), not through an expansive interpretation of the regulatory definition of issue. The 13-day limitation was chosen to prevent an issuer that comes to market every two weeks from stretching the definition of issue to cover two consecutive market sales. If an issuer wants to reopen more than 13 days after the initial offering, the sole test should be whether the reopening qualifies under the proposed qualified reopening rules.

D. Issuer's Treatment

This document also proposes rules that clarify the issuer's treatment of the debt instruments comprising an issue when there is a qualified reopening. The proposed regulations require the issuer to take into account, as an adjustment to its interest expense, any difference between the amounts paid by the holders to acquire the additional debt instruments issued in the qualified reopening and the adjusted issue price of the original debt instruments. This difference would either increase or decrease the aggregate adjusted issue prices of all of the debt instruments in the issue (both original and additional) with respect to the issuer (but not the holder). The issuer would then, as of the reopening date, recompute the yield of the debt instruments in the issue based on this aggregate adjusted issue price and the remaining payment schedule of the debt instruments. The issuer would use this redetermined yield for purposes of applying the constant yield method to determine its accruals of interest expense over the remaining term of the debt instruments in the issue.

During the consideration of the issuer's treatment of the additional debt instruments, a question arose as to whether the issuer's all-in-cost-of-capital should be used to determine the issuer's interest expense for a particular borrowing. Under current law, the costs of anticipatory hedges and bond issuance costs (such as underwriter fees) are not treated as interest expense even though they affect the issuer's cost of acquiring funds (the issuer's all-in-cost-of-capital). The IRS and the Treasury Department request comments on whether the issuer's all-in-cost-of-capital should be used to determine the issuer's interest expense for a particular borrowing.

E. Proposed Effective Dates

Section 1.163–7(e) of the proposed regulations would apply to qualified reopenings where the reopening date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register**. Section 1.1275–2(k) of the proposed regulations would apply to debt instruments that are part of a reopening where the reopening date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register**.

The proposed revision to the definition of the term *issue* would apply to debt instruments whose issue date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register**. For debt instruments issued prior to the effective date of the regulations, no inference is intended as to how the term *issue* should be interpreted under the current final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies, if written) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how the regulations may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 22, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identifications to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by February 3, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 1, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is William E. Blanchard, Office of Assistant Chief Counsel

(Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.163–7 is amended by:

1. Redesignating paragraph (e) as paragraph (f).
2. Adding a new paragraph (e).
3. Revising newly designated paragraph (f).

The revision and addition read as follows:

§ 1.163–7 Deduction for OID on certain debt instruments.

* * * * *

(e) *Qualified reopening*—(1) *In general.* In a qualified reopening of an issue of debt instruments, if a holder pays more or less than the adjusted issue price of the original debt instruments to acquire an additional debt instrument, the issuer treats this difference as an adjustment to the issuer's interest expense for the original and additional debt instruments. As provided by paragraphs (e)(2) through (e)(5) of this section, the adjustment is taken into account over the term of the instrument using constant yield principles.

(2) *Positive adjustment.* If the difference is positive (that is, the holder pays more than the adjusted issue price of the original debt instrument), then, with respect to the issuer but not the holder, the difference increases the aggregate adjusted issue prices of all of the debt instruments in the issue, both original and additional.

(3) *Negative adjustment.* If the difference is negative (that is, the holder pays less than the adjusted issue price of the original debt instrument), then, with respect to the issuer but not the holder, the difference reduces the aggregate adjusted issue prices of all of the debt instruments in the issue, both original and additional.

(4) *Determination of issuer's interest accruals.* As of the reopening date, the issuer must redetermine the yield of the debt instruments in the issue for purposes of applying the constant yield method described in § 1.1272–1(b) to determine the issuer's accruals of interest expense over the remaining term of the debt instruments in the issue. This redetermined yield is based on the aggregate adjusted issue prices of the debt instruments in the issue (as determined under this paragraph (e)) and the remaining payment schedule of the debt instruments in the issue. If the aggregate adjusted issue prices of the debt instruments in the issue (as determined under this paragraph (e)) are less than the aggregate stated redemption price at maturity of the instruments (determined as of the reopening date) by a de minimis amount (within the meaning of § 1.1273–1(d)), the issuer may use the rules in paragraph (b) of this section to determine the issuer's accruals of interest expense.

(5) *Effect of adjustments on issuer's adjusted issue price.* The adjustments made under this paragraph (e) are taken into account for purposes of determining the issuer's adjusted issue price under § 1.1275–1(b).

(6) *Definitions.* The terms *additional debt instrument, original debt instrument, qualified reopening,* and *reopening date* have the same meanings as in § 1.1275–2(k).

(f) *Effective dates.* This section (other than paragraph (e) of this section) applies to debt instruments issued on or after April 4, 1994. Taxpayers, however, may rely on this section (other than paragraph (e) of this section) for debt instruments issued after December 21, 1992, and before April 4, 1994. Paragraph (e) of this section applies to qualified reopenings where the reopening date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register**.

Par. 3. In § 1.1275–1, paragraph (f) is revised to read as follows:

§ 1.1275–1 Definitions.

* * * * *

(f) *Issue*—(1) *Definition.* Two or more debt instruments are part of the same issue if the debt instruments—

(i) Have the same credit and payment terms;

(ii) Are issued either pursuant to a common plan or as part of a single transaction or a series of related transactions; and

(iii) Are issued within a period of 13 days beginning with the date on which the first debt instrument that would be part of the issue is issued to a person other than a bond house, broker, or similar person or organization acting in the capacity of an underwriter, placement agent, or wholesaler.

(2) *Cross-references for reopening and aggregation rules.* See § 1.1275–2(d) and (k) for rules that treat debt instruments issued in certain reopenings as part of an issue of original (outstanding) debt instruments. See § 1.1275–2(c) for rules that treat two or more debt instruments as a single debt instrument.

(3) *Effective date.* This paragraph (f) applies to debt instruments whose issue date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register**.

* * * * *

Par. 4. In § 1.1275–2, paragraph (d) is revised and paragraph (k) is added to read as follows:

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(d) [The text of this proposed paragraph (d) is the same as the text of § 1.1275–2T(d) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(k) *Reopenings*—(1) *In general.* Notwithstanding § 1.1275–1(f), additional debt instruments issued in a qualified reopening are part of the same issue as the original debt instruments. As a result, the additional debt instruments have the same issue date, the same issue price, and (with respect to holders) the same adjusted issue price as the original debt instruments.

(2) *Definitions*—(i) *Original debt instruments.* Original debt instruments are debt instruments comprising any single issue of outstanding debt instruments. For purposes of determining whether a particular reopening is a qualified reopening, debt instruments issued in prior qualified reopenings are treated as original debt instruments and debt instruments issued in the particular reopening are not so treated.

(ii) *Additional debt instruments.* Additional debt instruments are debt instruments that, without the application of this paragraph (k)—

(A) Are part of a single issue of debt instruments;

(B) Are not part of the same issue as the original debt instruments; and

(C) Have terms that are in all respects identical to the terms of the original debt instruments as of the reopening date.

(iii) *Reopening date.* The reopening date is the issue date of the additional debt instruments (determined without the application of this paragraph (k)).

(iv) *Qualified reopening.* A qualified reopening is a reopening of original debt instruments (other than tax-exempt obligations, as defined in section 1275(a)(3), and contingent payment debt instruments, within the meaning of § 1.1275–4) that meets all of the following conditions:

(A) The original debt instruments are publicly traded (within the meaning of § 1.1273–2(f)).

(B) The reopening date of the additional debt instruments is not more than 6 months after the issue date of the original debt instruments.

(C) The debt instruments satisfy either the test described in paragraph (k)(3) of this section or the test described in paragraph (k)(4) of this section.

(3) *Yield test.* For purposes of paragraph (k)(2)(iv)(C) of this section—

(i) Seven days before the date on which the price of the additional debt instruments is established, the yield of the original debt instruments (based on their fair market value) is not more than 107.5 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a *de minimis* amount of OID, the coupon rate); and

(ii) The yield of the additional debt instruments (based on the sales price of the additional debt instruments) is not more than 115 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a *de minimis* amount of OID, the coupon rate).

(4) *De minimis OID test.* For purposes of paragraph (k)(2)(iv)(C) of this section, the additional debt instruments are issued with no more than a *de minimis* amount of OID (determined without the application of this paragraph (k)).

(5) *Special rule for Treasury reopenings.* See paragraph (d) of this section for special rules for reopenings of Treasury securities.

(6) *Issuer's treatment of a qualified reopening.* See § 1.163–7(e) for the issuer's treatment of the debt instruments that are part of a qualified reopening.

(7) *Effective date.* This paragraph (k) applies to debt instruments that are part of a reopening where the reopening date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register**.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 99–28742 Filed 11–3–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD09–99–081]

RIN 2115–AA98

Special Anchorage Area: Henderson Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to enlarge the existing special anchorage area in Henderson Harbor, New York. This action is taken at the request of the Town of Henderson harbormaster, and is intended to make space available within the special anchorage area for additional moorings.

DATES: Comments must be received on or before January 4, 2000.

ADDRESSES: Comments may be mailed to Commander (map-1), Marine Safety Division, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060. Commander (map-1) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, Ninth Coast Guard District, 1240 E. Ninth Street, Room 2069, Cleveland, Ohio 44199–2060, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Lynn Goldhammer, Marine Safety Division, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, (216) 902–6050.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD09–99–081) and the specific section of this proposal to which each comment applies. Give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed envelope or postcard. Comments should be submitted to the address under **ADDRESSES**.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to Lieutenant Goldhammer at the address under **ADDRESSES**. If the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Discussion of Proposed Rules

The proposed rule is in response to a request from the Town of Henderson harbormaster to accommodate an increased number of vessels mooring in this area and to offset the loss of available moorings in the special anchorage area because of lower water levels in Lake Ontario. The proposed rule would expand *Area A* of the existing special anchorage near Henderson Harbor, New York, described in 33 CFR 110.87(a), to allow its use by additional boats. Vessels not more than 65 feet in length, when at anchor in any special anchorage, are not required to carry or exhibit the white anchor lights required by Navigation Rules. The proposed rule would provide additional moorings in which vessel owners may enjoy the convenience of a special anchorage. The existing anchorage, located near Graham Creek, is split into two areas by a short fairway channel. The proposed change would extend the eastern most length of the *Area A* anchorage by approximately 900 feet, increasing the length of the fairway channel by the same distance.

The descriptions of *Area A* and *Area B* are being changed to latitude and longitude position points in order to more accurately describe the special anchorage area and for consistency with other established special anchorage area descriptions. No other changes to the anchorage area other than that described above for *Area A* are intended by this change to latitude and longitude description.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of

DOT is unnecessary. No person will be required to spend any money in order to comply with this regulation. The proposed regulation will exempt persons operating in the expanded area from complying with the more stringent vessel lighting regulations they would ordinarily be obliged to follow.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard expects that this proposed rule, if adopted, will not have any significant impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think your business or organization qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 13132 and has determined that this proposed rule does not have implications for federalism under that order.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concludes that under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying and may be obtained by contacting the Coast Guard office listed under **ADDRESSES** in this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

For the reason set out in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 1221 through 1236, 2030, 2035, 2071, 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 110.87 is revised to read as follows:

§ 110.87 Henderson Harbor, N.Y.

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht Club bounded by a line beginning at latitude 43°51′08.8″ N, longitude 76°12′08.9″ W, thence to latitude 43°51′09.0″ N, longitude 76°12′19.0″ W, thence to latitude 43°51′23.8″ N, longitude 76°12′19.0″ W, thence to latitude 43°51′33.4″ N, longitude 76°12′09.6″ W, thence to the point of beginning.

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at latitude 43°51′21.8″ N, longitude 76°11′58.2″ W, thence to latitude 43°51′21.7″ N, longitude 76°12′05.5″ W, thence to latitude 43°51′33.4″ N, longitude 76°12′06.2″ W, thence to latitude 43°51′33.6″ N, longitude 76°12′00.8″ W, thence to the point of beginning. All nautical positions are based on North American Datum of 1983.

(c) Permission must be obtained from the Town of Henderson Harbormaster before any vessel is moored or anchored in this special anchorage area.

Dated: October 21, 1999.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 99–29029 Filed 11–4–99; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–192–1–9962(b); TN–193–1–9963(b); FRL–6464–9]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Source Specific Revisions to the Nonregulatory Portion of the Tennessee SIP Regarding Emission Limits for Particulate Matter and Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve two requests by the Tennessee Department of Air Pollution Control (TDAPC) to incorporate revised permits for eight facilities into the Tennessee State Implementation Plan (SIP). All of the permits affected by this action were previously approved into the SIP to meet various Clean Air Act (CAA) and regulatory requirements. EPA proposes to approve an April 9, 1997, submittal from TDAPC that amends permits for the Soda Recovery Furnace and the Smelt Tank at Willamette Industries Inc., Kingsport, to establish revised particulate matter (PM) emission limits for these units. The revised emission limits will have a net positive impact on ambient air quality. An April 14, 1997, submittal from the Chattanooga-Hamilton County Air Pollution Control Bureau (CHCAPCB), through TDAPC, revises the permits as amended by agreed order for seven miscellaneous metal parts coaters located in Hamilton County to qualify them as a synthetic minor sources. Based on supplemental information received from CHCAPCB, EPA has concluded that one of these seven facilities is now a new source and thus need not be included in this approval action. EPA proposes to approve the revised permits for the remaining six facilities into the SIP. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA

will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 6, 1999.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407–2495. 423/867–4321.

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: October 18, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–28212 Filed 11–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–105–1–9949b; TN–209–1–9950b; FRL–6469–3]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Knox County portion of Tennessee Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Tennessee for the purpose of revising the rule for exceptions to the open burning and permits regulations for the Knox County portion of the Tennessee SIP. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 6, 1999.

ADDRESSES: All comments should be addressed to Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Steven M. Scofield, 404/562–9034.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

Knox County Department of Air Pollution Control, 400 West Main Avenue, Suite 339, City-County Building, Knoxville, Tennessee 37902–2405. 423/215–2488.

FOR FURTHER INFORMATION CONTACT: Steve M. Scofield at 404/562–9034.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: October 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–28880 Filed 11–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–6470–7]

Control of Air Pollution From New Motor Vehicles; Compliance Programs for New Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice requesting comment on Ethyl Corporation petition for reconsideration.

SUMMARY: EPA requests comment on a petition submitted to EPA by the Ethyl Corporation (Ethyl). The petition requests reconsideration of the CAP 2000 final rule at 64 FR 23906 (May 4, 1999).

DATES: Comments must be received on or before December 20, 1999.

ADDRESSES: Interested parties should submit written comments (in duplicate, if possible) to: EPA Air and Radiation Docket, Attention Docket No.A–96–50, room M–1500 (mail code 6102), 401 M St., SW, Washington, D.C. 20460. The docket may be inspected at this location from 8:30 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Linda Hormes, Office of Mobile Sources, Vehicle Programs and Compliance Division, 2000 Traverwood, Ann Arbor, MI 48105. Phone: (734) 214–4502. Email: lhormes@epa.gov.

SUPPLEMENTARY INFORMATION: On July 2, 1999, the Ethyl Corporation submitted a petition to EPA requesting reconsideration of the CAP 2000 final rule. Ethyl based its request for reconsideration on the argument that certain aspects of the CAP 2000 rule are inconsistent with the Clean Air Act (Act). In brief, Ethyl focused on the durability demonstration requirements of the regulation and stated that section 206(d) of the Act requires EPA to establish certification test procedures by regulation and that EPA can not avoid its rulemaking responsibilities under 307(d) by characterizing the certification process as an adjudicatory type proceeding. Ethyl's petition also states that maintaining the secrecy of certification test procedures is not in the public interest. Ethyl also submitted comments during the CAP 2000 rulemaking; the preamble to the final rule discusses these, explains EPA's reasons for adopting the durability demonstration procedures contained in the rule, and why EPA believes these provisions are consistent with the Act.

Because of the potential impact the Agency's decision could have on the automotive industry and on other concerned parties, EPA is requesting comment on all the issues raised in Ethyl's petition for reconsideration. EPA also requests that commenters address any specific impacts the decision (whether approval or denial) would have on the commenter. EPA will consider all comments and publish its final decision in a separate **Federal Register** document.

The Ethyl petition and other related documents may be found in the docket listed above in the **ADDRESSES** section. An electronically scanned copy of Ethyl's petition can be found at http://www.epa.gov/oms/ld-hwy.htm#regs.

Dated: November 1, 1999.

Margo T. Oge,

Director, Office of Mobile Sources.

[FR Doc. 99-29076 Filed 11-4-99; 8:45 am]

BILLING CODE 6560-50-U

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 622

[I.D. 101299F]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper Grouper Fishery off the Southern Atlantic States; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments; correction.

SUMMARY: NMFS published a document in the **Federal Register** of October 25, 1999, announcing public hearings on Draft Amendment 12 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region and its draft supplemental environmental impact statement. The document contained an error in the subject line.

FOR FURTHER INFORMATION CONTACT: Kerry O'Malley, South Atlantic Fishery Management Council, 803-571-4366; Fax: 803-769-4520; E-mail address: kerry.omalley@noaa.gov

Correction

In the **Federal Register** issue of October 25, 1999, in FR Doc. 99-27769, on page 57436, in the first column, correct the Subject line to read as follows:

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper Grouper Fishery off the Southern Atlantic States; Public Hearings.

Dated: October 29, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99-29058 Filed 11-4-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 102899A]

Pelagics Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of scoping meetings; notice of cancellation of one scoping meeting; request for comments.

SUMMARY: On October 6, 1999, and on October 20, 1999, NMFS announced its intent to prepare an Environmental Impact Statement (EIS) on Federal management of the fishery for pelagic species in the Exclusive Economic Zone (EEZ) waters of the Western Pacific Region. The scope of the EIS analysis will include all activities related to the conduct of the fishery authorized and managed under the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (FMP) and all amendments thereto. Additionally, NMFS announced its intention to prepare an Environmental Assessment (EA) on the fishery for pelagic species in the EEZ waters of the Western Pacific Region. The scope of the analysis of the EA will include all activities related to the conduct of the fishery for the 2-year period NMFS anticipates is necessary to prepare the EIS. NMFS is holding concurrent scoping meetings to provide for public input into the range of actions, alternatives, and impacts that the EIS and EA should consider. Scoping for the EIS and EA commenced with publication of the document on October 6, 1999. In addition to holding the scoping meetings, NMFS is accepting written comments on the range of actions, alternatives, and impacts it should be considering for this EIS, as well as comments on the scope of the EA.

DATES: Written comments will be accepted through December 6, 1999. See **ADDRESSES** for location to mail or fax written comments. See **SUPPLEMENTARY INFORMATION** for meeting times and special accommodations.

ADDRESSES: The Responsible Program Manager for this EIS is Rodney R. McInnis, Acting Southwest Regional Administrator, NMFS. Written comments and requests to be included on a mailing list of persons interested in the EIS should be sent to Marilyn Luipold, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700. Comments also may be sent, via facsimile, to 808-973-2941. NMFS will not accept comments sent by e-mail or the Internet. See **SUPPLEMENTARY INFORMATION** for meeting locations and special accommodations.

FOR FURTHER INFORMATION CONTACT: Marilyn Luipold, 808-973-2937 or 2935 extension 204.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act, the United States has exclusive fishery management authority over all living marine resources within the EEZ between the seaward boundary of each state or U.S. island possession seaward to 200 nautical miles from the baseline used to measure the territorial sea. The management of these marine resources is vested in the Secretary of Commerce and in eight regional fishery management councils. The Western Pacific Fishery Management Council (Council) has the responsibility to prepare FMPs for the marine resources that require conservation and management in the Western Pacific Region. The National Environmental Policy Act (NEPA) requires preparation of EISs for major Federal actions significantly affecting the quality of the human environment (42 U.S.C. 4332).

The FMP was developed by the Council, and regulations implementing management measures were published on February 17, 1987 (52 FR 5983). An EA was prepared for the action implementing the FMP. The FMP has been amended seven times, and NEPA environmental documents (environmental assessments, categorical exclusions, findings of no significant impact, and an EIS) have been prepared for each FMP and regulatory amendment. However, many of these earlier documents have become outdated and/or focused on individual management actions, making it difficult to obtain a comprehensive view of issues and management options for the fishery as it exists today. NMFS is undertaking preparation of a comprehensive EIS in order to analyze the fishery as it is currently conducted, to address any and all impacts that might have been overlooked in earlier analyses, and to improve management of the fishery. The Federal action under review is defined as, among other things, all activities authorized and managed under the FMP, as amended.

The EIS will present an overall picture of the environmental effects of fishing as conducted under the FMP, rather than focusing narrowly on one management action, and will include a range of reasonable management alternatives and an analysis of their impacts in order to define issues and provide a clear basis for choice among options by the public, the Council, and NMFS. NMFS intends to assess the biological and socio-economic impacts that result from regulation of the pelagic fisheries of the Western Pacific Region, including license limitation, as well as present and potential controls on effort, harvest levels, location, timing, and methods of fishing. The effects on associated species, including interactions with protected species, will be assessed. NMFS intends to evaluate the significant changes that have occurred in the pelagic fisheries, including the significant cumulative effects of changes in fishing activities, socio-economics, the environment, and management. The assessment will include analysis of the cumulative or incremental impacts of actions and alternatives. Impacts associated with status quo management (*i.e.*, continuation of fishing as currently conducted) will be presented and compared to situations simulating limits on fishing areas and/or gears over all or parts of the management area. Possible alternatives to the current conduct of the fishery include a range of area and/or seasonal closures for the longline fishery, gear restrictions and/or modifications, including prohibitions on the use of longline gear in some or all of the management area, and adjustments to requirements for handling incidental hookings and takings of protected species. The impacts of EEZ fishing activity and harvest on the marine environment will be assessed under representative alternative management scenarios that will ensure consideration of impacts that may reach beyond the EEZ. As the number of possible alternatives is virtually infinite, the EIS will not consider detailed alternatives for every aspect of the FMP. Therefore, a principal objective of the scoping and public input process is to identify a reasonable set of management alternatives that, with adequate analysis, will sharply define critical issues and provide a clear basis for choice among the alternatives.

Issues

The environmental consequences section of the EIS will display the impacts of pelagics harvest accruing with present management regulations and under a range of representative alternative management regulations on Western Pacific ecosystem issues. These issues include: Essential fish habitat (EFH), target and non-target species of fish (including tunas, swordfish, and sharks), fish that are discarded, marine mammals (Hawaiian monk seals and cetaceans), sea turtles, and seabirds present in the Western Pacific ecosystem. In addition, the environmental consequences section will contain a summary, interpretation, and predictions for socio-economic issues associated with conduct of the fishery on the following groups of individuals: (1) Those who participate in harvesting the fishery resources and other living marine resources, (2) those who process and market the fish and fishery products, (3) those who are involved in allied support industries, (4) those who consume fishery products, (5) those who rely on living marine resources in the management area either for subsistence needs or for recreational benefits, (6) those who benefit from non-consumptive uses of living marine resources, (7) those involved in managing and monitoring fisheries, and (8) fishing communities.

EA Issues

In the EA, NMFS intends to evaluate whether the conduct of the current fisheries over the next 2 years will have significant environmental impacts. The Federal action under review in the EA is defined as all activities authorized and managed under the FMP, as amended, for the 2-year period anticipated to be necessary for preparation of the EIS. The EA will present an overall picture of the environmental effects over the next 2 years of fishing as conducted under the FMP. Efforts will be made to quantify and explain the intensity of projected impacts on EFH, target and non-target species of fish (including tunas, swordfish, and sharks), fish that are discarded, marine mammals (Hawaiian monk seals and cetaceans), sea turtles, and seabirds present in the Western Pacific ecosystem. Additionally, the EA will evaluate socio-economic impacts associated with the fishery on groups of individuals, including fishing communities, harvesters, processors and marketers, consumers, subsistence and recreational users of living marine resources in the management area, non-consumptive users, and individuals involved in allied support industries and management and monitoring of the fisheries. Although the focus of the EA will be analysis of impacts associated with continuation of fishing as currently conducted, reasonable alternatives for application in the 2-year period, including area and/or seasonal closures for the longline fishery, gear restrictions and/or modifications including prohibitions on the use of longline gear in part or all of the management area, and adjustments to requirements for handling incidental hookings and takings of protected species, will be addressed.

Public Involvement

Scoping for the EIS and EA began with publication of the document at 64 FR 54272, October 6, 1999. An informational presentation of the project will be made at a scoping meeting to be held in the Hawaiian Islands on Oahu at the following time and location:

Waianae, Oahu, HI—November 30, 1999, 6—8 p.m., Waianae Public Library, 85625 Farrington Hwy., Waianae, HI 96792.

Scoping meetings in American Samoa, Commonwealth of the Northern Mariana Islands, and Guam will be held at the following times and locations:

1. Fagatogo, American Samoa, —November 15, 1999, 3—5 p.m., Department of Marine and Wildlife Resources (DMWR) Conference Room, AS. Phone contact c/o DMWR (684) 633–4456.
2. Agana (Hagatna), GUAM, —November 16, 1999, 7—8 p.m., Guam Fishermen's Cooperative Association, Hagatna Boat Basin, Agana (Hagatna), GU. Phone contact c/o Guam Dept. of Commerce (671) 475–0321.
3. Susupe, Saipan, Commonwealth of the Northern Mariana Islands (CNMI), —November 17, 1999, from 7:00–8:00 p.m., Joeten-Kiyu Library, Beach Road, Susupe, Saipan, CNMI. Phone Division of Fish and Wildlife Resources (DFWR) 670–322–9627 for information.

The meeting scheduled for Haleiwa, Oahu, HI for November 8, 1999, from 6—8 p.m., at Haleiwa Alii Beach Park, 66167 Haleiwa Rd., Haleiwa, HI 96712 has been canceled. The cancellation is due to loss of access to the Haleiwa Alii Beach Park site. Interested persons are invited to attend the meeting scheduled for November 30, 1999, 6—8 p.m., at the Waianae Public Library, 85625 Farrington Hwy., Waianae, HI 96792.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Marilyn Luipold, (see **ADDRESSES**), 808–973–2937 (voice) or 808–973–2941 (fax), at least 5 days before the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 2, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–29081 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 64, No. 214
Friday, November 5, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Issue an Easement To Access Private Land in the Taylor Fork Area; Gallatin National Forest, Gallatin County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of issuing an easement to access private land in the Taylor Fork area. The Federal Land Policy and Management Act (FLPMA, Pub. L. 94–579, 10/21/76) provided authority for the Forest Service to condition private requests for road access and use upon the private party's grant of reciprocal acquisition of USDA easements from the private landowner for the following facility: Public and administrative trail easement across Section 1 for the Eldridge Creek Trail and the Lincoln Mountain Trail.

DATES: Written comments and suggestions should be received on or before December 6, 1999.

ADDRESSES: Submit written comments and suggestions on this proposed activity or a request to be placed on the project mailing list to Gary 'Stan' Benes, District Ranger, Hebgen Lake Ranger District, Gallatin National Forest, P.O. Box 520, West Yellowstone, Montana, 59758.

FOR FURTHER INFORMATION CONTACT: Cathey Hardin, EIS Team Leader, Phone (406) 646–7369.

SUPPLEMENTARY INFORMATION: Private landowner has requested access across National Forest System land. Section 1323(a) of the Alaskan National Interest Lands Conservation Act (ANILCA) provides for a right of access to non-federally owned land. Federal Land Policy and Management Act of October, 1976 (FLPMA, Pub. L. 94–579) provides authority for the Forest Service to issue permits to private landowner. Landowners shall be authorized such access as the authorized officer deems to be adequate to secure them the reasonable use and enjoyment of their land (36 CFR 251.110 (c)). The Gallatin National Forest Land and Resource Management Plan provides guidance for land management activities, including access to private landowners.

The proposed access is located on Forest Service System land in Section 12, T.9S., R.3E., in the Taylor Fork area. Access would require the construction of a bridge across Taylor Fork Creek and approximately 400 feet of road reconstruction, or up to approximately ¼ mile of road construction. The landowner would be responsible for the bridge and road construction meeting Forest Service design. The private landowner will be required to obtain a 310 or 124 permit from Montana State Fish, Wildlife and Parks before any bridge construction.

One of the standards of the Gallatin Forest Plan is that rights-of-way across National Forest System lands will be granted in situations involving a statutory right of access, subject to compliance with applicable rules and regulations of the Secretary of Agriculture. The proposed access is located within Management Area 15, and Management Area 7 when crossing Taylor Fork Creek. Below are the management goals.

Management Area 15: 1. Meet grizzly bear mortality reduction goals as established by the Interagency Grizzly Bear Committee. 2. Manage vegetation to provide habitat necessary to recover the grizzly bear. 3. Provide forage for livestock consistent with goal 1. 4. Provide dispersed recreation opportunities consistent with goal 1.

Management Area 7: Manage the riparian resource to protect the soil, water, vegetation, fish, and wildlife dependent upon it.

The Forest Service will consider a range of alternatives. The IES will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7). A scoping document was mailed to interested individuals and groups in January of 1999. The comment period has been extended. The public is welcome to visit Forest Service officials anytime during the analysis and prior to the decision. No public meetings are scheduled at this time. The following issues have been identified so far:

1. Potential effects to westslope cutthroat trout and arctic grayling trout.
2. Potential effects on water quality and stream condition of Taylor Fork Creek.
3. Potential effects to grizzly bear habitat.
4. Potential effects to elk habitat. Including elk calving, cumulative effects of road densities, hiding and thermal cover.
5. Potential effects to recreation.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February of 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this project participate at that time. The Final EIS is scheduled to be completed by May, 2000.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alters an agency to the reviewers' position and contention. *Vermont Yankee Nuclear Power Corp.* v. *NRDS, 435 U.S. 519,553 (1978)*. Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the court. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 S. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30 days scoping comment so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives. To assist the Forest Service in identifying and considering issues, comments should be as specific to this proposal as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: October 26, 1999.

Gary L. 'Stan' Benes,

District Ranger.

[FR Doc. 99–28989 Filed 11–4–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of the Advisory Committee on Agriculture Statistics Meeting

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the National Agricultural Statistics Service (NASS) announces a meeting of the Advisory Committee on Agriculture Statistics.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Avenue SW, Room 4117 South Building, Washington, DC 20250–2000. Telephone: 202–720–4333, Fax: 202–720–9013, or e-mail: rallen@nass.usda.gov.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Agriculture Statistics, which consists of 25 members appointed from 7 categories covering a broad range of agricultural disciplines and interests, has scheduled an Advisory Committee on Agriculture Statistics meeting, November 30–December 1, 1999. The Committee meeting will be held 8 a.m.–8 p.m. on Tuesday, November 30 and 8 a.m.–11:30 a.m. on Wednesday, December 1. During this time the Advisory Committee will (1) elect a committee chair; (2) review NASS survey procedures and products; (3) discuss NASS program review; and (4) discuss future agriculture statistics issues.

Dates and Locations:

November 30—8 a.m. to 11:30 a.m., Advisory Committee General Meeting, Jamie L. Whitten Federal Building, Room 104A, 12th and Jefferson Davis Drive, SW, Washington, DC.

November 30—1 p.m. to 5 p.m., Advisory Committee General Meeting, DoubleTree Hotel, 300 Army Navy Drive, Arlington, VA.

November 30—5:30 p.m. to 8 p.m., Special Session with a Guest Speaker, DoubleTree Hotel, 300 Army Navy Drive, Arlington, VA.

December 1—8 a.m. to 11:30 a.m., Advisory Committee General Meeting, with an opportunity for public questions and comments at 10 a.m., DoubleTree Hotel, 300 Army Navy Drive, Arlington, VA.

Note: Meeting location may vary.

Type of Meeting: Open to the public.

Comments: The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Agriculture Statistics and will be kept on file for public review in the office of the Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, Washington, DC 20250.

Signed at Washington, DC, November 1, 1999.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 99–29045 Filed 11–4–99; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting; Staff Briefing for the Board of Directors

TIME AND DATE: 2:00 p.m., Monday, November 8, 1999.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Fiscal year 2000 agency budget.
3. Status of PBO planning and general discussion on privatization of the Bank.
4. Options relating to the conversion of B stock to C stock.
5. Current method for allocating patronage refunds to class B stockholders.
6. Administrative issues.

ACTION: Board of Directors Meeting; Correction.

TIME AND DATE: 9:00 a.m., Tuesday, November 9, 1999.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the August 6, 1999, board meeting.
3. Report on loans approved in FY 1999.
4. Summary of financial activity for FY 1999.
5. Privatization committee report.
6. Consideration of resolution to convert class B stock to class C stock.
7. Consideration of resolution of appreciation for former Governor Wally Beyer.
8. Establish dates and locations for Year 2000 board meetings.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: November 3, 1999.

Christopher A. McLean,

Acting Governor, Rural Telephone Bank.

[FR Doc. 99–29107 Filed 11–3–99; 10:37 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 6, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Knife, Kitchen
  7340–00–406–6531
  7340–00–686–0863
NPA: Suburban Adult Services, Inc., Sardinia, New York
Holder, Card
  7510–00–155–5174
NPA: York County Blind Center, York, Pennsylvania

Services

Administrative/General Support Services, Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Cumberland, Maryland
NPA: Columbia Lighthouse for the Blind, Washington, DC
Administrative Services, Puget Sound Area, Navy Region Northwest, Bremerton, Washington
NPA: St. Vincent DePaul Rehabilitation Service, Inc., Portland, Oregon
Commissary Shelf Stocking, Custodial and Warehousing, Grand Forks Air Force Base, North Dakota
NPA: Minot Vocational Adjustment Workshop, Inc., Minot, North Dakota

Janitorial/Grounds Maintenance

Oxnard Border Patrol Station, 275 Skyway Drive, Camarillo, California
NPA: Association for Retarded Citizens—Ventura County, Inc., Ventura, California
Operation of Individual Equipment Element Store, Altus Air Force Base, Oklahoma
NPA: San Antonio Lighthouse, San Antonio, Texas
Operation of Individual Equipment Element Store, Goodfellow Air Force Base, Texas
NPA: San Antonio Lighthouse, San Antonio, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Fasteners, Fence Post
  5660–00–148–7251
Stay, Fence
  5660–00–943–9927
  5660–00–904–8023
  5660–00–607–0286
  5660–00–607–0287
Water Bag, Nylon Duck
  8465–01–185–5511

Beverly L. Milkman,
Executive Director.

[FR Doc. 99–29051 Filed 11–4–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 6, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 11, July 23, August 13, 20, and 27, and September 10, and 24, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 31539, 39968, 44198, 45506, 46880, 49147 and 51736) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity and

services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Folder, File, Farmer's Home Administration 7530–FMHA ITEM 39

Services

Administrative Services, Federal Center/Battle Creek, Defense Reutilization & Marketing Service (DRMS), 74 North Washington, Battle Creek, Michigan
Base Supply Center, New London U.S. Naval Submarine Base, Groton, Connecticut
Commissary Shelf Stocking, Custodial and Warehousing, Camp Pendleton, California
Grounds Maintenance, Naval and Marine Corps Reserve Center, 6735 North Basin Avenue, Portland, Oregon
Grounds Maintenance, Naval Air Station, Joint Reserve Base, Fort Worth, Texas
Grounds Maintenance, Keyport Naval Undersea Warfare Center, Keyport, Washington
Janitorial/Custodial, Naval Reserve Center 7401 W. Roosevelt Road, Forest Park, Illinois

Janitorial/Custodial

Gamelin USARC, Bristol, Rhode Island
Management and Operation of Depoty Safety Store, Corpus Christi Army Depot, Corpus Christi, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–29052 Filed 11–4–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 Public Law 104–13.

Agency: Bureau of Economic Analysis, DOC.

Title: Institutional Remittances to Foreign Countries.

Form Number(s): BE–40.

Agency Approval Number: 0608–0002.

Type of Request: Renewal of an existing collection.

Burden: 1,521 reporting hours.

Number of respondents: 480.

Average Hours Per Response: 1.5 hours.

Needs and Uses: The survey is required in order to obtain comprehensive initial data concerning the cash transfer by private U.S. institutions to foreign countries and their expenditures in foreign countries. The data are needed primarily to compile the U.S. international accounts.

Affected Public: U.S. Institutions.

Frequency: Quarterly for institutions transferring $1 million or more each year, annually for all others.

Respondents Obligation: Voluntary.

OMB Desk Officer: Paul Bugg 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Forms Clearance Officer, Linda Engelmeier, (202) 482–3272, Department of Commerce, Room 5027, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Financial Officer.

[FR Doc. 99–29065 Filed 11–4–99; 8:45 am]

BILLING CODE: 3510–CW–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–99]

Foreign-Trade Zone 68—El Paso, TX; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, Texas, grantee of FTZ 68, requesting authority to expand its zone in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 26, 1999.

FTZ 68 was approved on April 14, 1981 (Board Order 175, 46 FR 22918; 4/22/81). On September 30, 1982, the grant of authority was reissued to the City of El Paso, Texas (Board Order 193, 47 FR 45065; 10/13/82). The zone was expanded in 1984 (Board Order 255, 49 FR 22842; 6/1/84), in 1991 (Board Order 504, 56 FR 1166; 1/11/91) and in 1999 (Board Order 1019, 64 FR 5765; 2/5/99). FTZ 68 currently consists of five sites (2,635 acres) in the El Paso, Texas, area:

Site 1 (590 acres)—El Paso Airport's Butterfield Trail Industrial Park;

Site 2 (670 acres)—Lower Valley Site, which is composed of the Americas Avenue/Zaragoza Bridge Industrial Parks (470 acres), the Americas Industrial Park (60 acres), and two adjacent parcels owned by Alderete Farms & Development (140 acres). In addition, a minor boundary modification was approved in June of 1998 (A(27f)21–98) to temporarily include a nearby site (Thomson, 44 acres, expires 7/1/02).

Site 3 (1,150 acres)—includes the Eastern Region Industrial Park sites located at Americas Avenue and Interstate 10 in eastern El Paso (700 acres), the entire 10/375 Industrial Park and two adjacent parcels (210 acres) and a 240-acre tract within the 2,230-acre Vista del Sol Industrial Park;

Site 4 (130 acres)—Copperfield Industrial Park located on Hawkins Boulevard at Tony Lama Street in Central El Paso, and;

Site 5 (95 acres)—WWF Industries Park located on Highway 54 in northeastern El Paso.

The applicant is now requesting authority to update, expand and reorganize Sites 2 and 3 as described below. The proposal includes a request to restore zone status to parcels (located within the existing or proposed zone sites) that had been deleted from the zone boundary in earlier changes.

Site 2: Include the entire 145-acre industrial development in Socorro, of which the existing Thomson site is a part, thereby making it a permanent zone site, and add a 17-acre parcel adjacent to the Pan American Center for Industry increasing the size of Site 2 to 832 acres.

Site 3: Clarify existing FTZ boundaries (1029 acres) and include the 232-acre Montana Avenue site located east of Loop 375 within the zone boundary and increase the Vista del Sol Industrial Park Site by 95 acres (including the reinstatement of the 58 acres previously deleted), increasing the size of Site 3 to 1,356 acres.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 4, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 19, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 797 S. Zaragoza Road, El Paso, Texas 79907

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: October 29, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–29063 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Government Trade Event Information Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 4, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms, Clearance Officer, (202) 482–3272, Email *Lengelme@doc.gov.*, Department of Commerce, Room 5027, 14th & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Susan Hamrock, The Advocacy Center, Room 3814A, The U.S. Department of Commerce, 14th & Constitution Ave., NW, Washington, DC 20230; Phone number: (202) 482–3896, and fax number: (202) 482–3508.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center is under the umbrella of the Trade Promotion Coordination Committee (TPCC), which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. The mission of the Advocacy Center is to promote U.S. exports and create U.S. jobs and coordinate U.S. Government (USG) advocacy among the TPCC. The purpose of the questionnaire is to collect the necessary information to make an evaluation as to whether a firm qualifies for senior-level USG support, in the form of attendance at an event including witnessing a commercial agreement signing. The event could be a company sponsored activity or a foreign or USG sponsored event to highlight a commercial trade success for more than one firm. Without this information we will be unable to determine if a U.S. firm is eligible for USG support for the firm's role in the event.

II. Method of Collection

Form ITA–4136P is sent to U.S. firms that request USG advocacy assistance.

III. Data

OMB Number: None.

Form Number: ITA–4136P.

Type of Review: Regular Submission.

Affected Public: Companies who desire senior level USG support a trade activity.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 50 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $3,000. ($1,250 for federal government and $1,750 for respondents).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 1, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–28980 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

1997/1998 Antidumping Duty Administrative Review of Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit of the final results of the 1997/1998 antidumping duty administrative review of canned pineapple fruit from Thailand. This review covers the period July 1, 1997, through June 30, 1998.

EFFECTIVE DATE: November 5, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, AD/CVD Enforcement, Group 2, Office 5, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0650.

SUPPLEMENTARY INFORMATION: The Department of Commerce is extending the time limit for completion of this administrative review until December 6, 1999 because it is not practicable to complete it within the original time limit or the time limit specified in *1997/1998 Antidumping Duty Administrative Review of Canned Pineapple Fruit from Thailand*, 64 FR 55697 (October 14, 1999). The proposed completion date of December 6, 1999 is within the limits set forth in section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary For Import Administration.

[FR Doc. 99–29060 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-811, A-588-849, A-549-814]

Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 5, 1999.

FOR FURTHER INFORMATION CONTACT: LaVonne Jackson at (202) 482–3003 or Gabriel Adler at (202) 482–1442, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Preliminary Determinations

We preliminarily determine that cold-rolled flat-rolled carbon-quality steel products ("cold-rolled steel products") from Argentina, Japan, and Thailand are being sold, or are likely to be sold, in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

These investigations were initiated on June 21, 1999. *See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela* ("*Initiation Notice*"), 64 FR 34194 (June 25, 1999). Since the initiation of the investigations, the following events occurred:

On June 22, 1999, the Department issued Section A antidumping questionnaires to all known producers/exporters of subject merchandise, including those named in the petitions. The Department received responses to this questionnaire from Siderar Limited ("Siderar"), in the Argentina proceeding, and Nippon Steel Corporation ("NSC"), Kawasaki Steel Corporation ("KSC"), NKK Corporation ("NKK") and Sumitomo Metals Industries, Ltd. ("Sumitomo") in the Japan proceeding. The Department did not receive responses to the questionnaire from the following companies: Kobe Steel Ltd. ("Kobe"), and Nisshin Steel Co., Ltd. ("Nisshin) in the Japan proceeding, or TCRSSC/Sahaviriya (the sole producer and exporter of subject merchandise from Thailand during the POI [1]), in the Thailand proceeding.

On July 9, 1999, the Department selected the following companies as mandatory respondents in these investigations: Siderar (the sole Argentine producer of subject merchandise) in the Argentina proceeding; NSC and KSC in the Japan proceeding; and TCRSSC/Sahaviriya in the Thailand proceeding. *See* Respondent Selection, below. On July 9, 1999, the Department issued Section B, C, and D antidumping questionnaires to each of the selected respondents.

On July 16, 1999, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to each of these antidumping investigations are materially injuring the United States industry. See *Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey and Venezuela*, 64 FR 41458 (July 30, 1999).

In August 1999, the mandatory respondent in the Thailand case notified the Department that it would not be responding at all to the Department's questionnaire, and all the mandatory respondents in the Argentina and Japan proceedings notified the Department that they would not be responding to the Section B, C, and D questionnaires.

Period of Investigations

The period of the investigations (POI) is April 1, 1998, through March 31, 1999. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 1999).

Scope of Investigations

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or

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[1] On July 8, 1999, the Royal Thai Embassy in Washington, DC confirmed that Thai Cold Rolled Steel and Sheet Company ("TCRSSC"), an affiliate of Sahaviriya Steel Industries Public Co., Ltd., collectively "TCRSSC/Sahaviriya", was the only Thai exporter of subject merchandise to the United States during the POI. *See Memorandum to the File: Conversation with Royal Thai Embassy* ("*Conversation with Thai Embassy*"), (July 8, 1999).

0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and

(a) Fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or

(b) Semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);

- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inches
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	< 0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤ 152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤ 0.03	≤ 0.006

MECHANICAL PROPERTIES

Tensile Strength	≥ 162 Kgf/mm^2
Hardness	≥ 475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	< 0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤ 0.04
Oxide Inclusion	≤ 0.05

Compressive Stress: 10 to 40 Kgf/mm2.

SURFACE ROUGHNESS

Thickness (mm)	Roughness (µm)
t ≤ 0.209	Rz ≤ 0.5
0.209 < t ≤ 0.310	Rz ≤ 0.6
0.310 < t ≤ 0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8
0.560 < t	Rz ≤ 1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:

Thickness: ≤ 0.100 mm ±7%
Width: 100 to 600 mm

Chemical Composition

Element Weight %	C	Mn	P	S	Al	Fe
	≤ 0.07	0.2—0.5	≤ 0.05	≤ 0.05	≤ 0.07	Balance

Mechanical Properties

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	< 3%
Tensile Strength	600 to 850 N/mm^2

Physical Properties

Surface Finish	≤ 0.3 micron
Camber (in 2.0 m)	< 3.0 mm
Flatness (in 2.0 m)	≤ 0.5 mm
Edge Burr	< 0.01 mm greater than thickness
Coil Set (in 1.0 m)	< 75.0 mm

- Certain silicon steel, which meets the following characteristics:

Thickness: 0.024 inches ±.0015 inches
Width: 33 to 45.5 inches

Chemical Composition:

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

Mechanical Properties

Hardness	B 60–75 (AIM 65)

Physical Properties

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20 I-UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1⁄16 inch
Coil Size I.D	20 inches

Magnetic Properties

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

- Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm
Width: 381—1000 mm

Chemical Composition

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	≤0.007

- Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	[1] 0.023	0.03	0.08	0.02	0.08		[2] 0.008

[1] Aiming 0.018 Max.
[2] Aiming 0.05
[3] Aiming 0.005.

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, *etc.*) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5(0.1)	0(0)	7(0.2)

- Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	[1] 0.023	0.03	0.08	0.02	0.08		[3] 0.008

[1] Aiming 0.018 Max.
[2] Aiming 0.005
[3] Aiming 0.005.

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, *etc.*) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16(0.4)	8(0.2)	24(0.6)

- Certain "blued steel" coil (also know as "steamed blue steel" or "blue oxide") with a thickness and size of 0.38 mm × 940 mm × coil, and with a bright finish;
- Certain cold-rolled steel sheet, which meets the following characteristics:

Thickness (nominal): ≤ 0.019 inches
Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

- Certain band saw steel, which meets the following characteristics:

Thickness: ≤ 1.31 mm
Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: fully spheroidized having <80% of carbides, which are ≤0.003 mm and uniformly dispersed

Surface finish: bright finish free from pits, scratches, rust, cracks, or seams Smooth edges

Edge camber (in each 300 mm of length): ≤7 mm arc height Cross bow (per inch of width): 0.015 mm max.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings:
7209.15.0000, 7209.16.0030,
7209.16.0060, 7209.16.0090,
7209.17.0030, 7209.17.0060,
7209.17.0090, 7209.18.1530,
7209.18.1560, 7209.18.2550,
7209.18.6000, 7209.25.0000,
7209.26.0000, 7209.27.0000,
7209.28.0000, 7209.90.0000,
7210.70.3000, 7210.90.9000,
7211.23.1500, 7211.23.2000,
7211.23.3000, 7211.23.4500,
7211.23.6030, 7211.23.6060,
7211.23.6085, 7211.29.2030,
7211.29.2090, 7211.29.4500,
7211.29.6030, 7211.29.6080,
7211.90.0000, 7212.40.1000,
7212.40.5000, 7212.50.0000,
7225.19.0000, 7225.50.6000,
7225.50.7000, 7225.50.8010,
7225.50.8085, 7225.99.0090,
7226.19.1000, 7226.19.9000,
7226.92.5000, 7226.92.7050,
7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

The Department set aside a period for all interested parties to raise issues regarding product coverage. From July through October 1999, the Department received responses from a number of parties including importers, respondents, consumers, and petitioners, aimed at clarifying the scope of the investigation. *See Memorandum to Joseph A. Spetrini ("Scope Memorandum")*, November 1, 1999, for a list of all persons submitting comments and a discussion of all scope comments. There are several scope exclusion requests for products which are currently covered by the scope of this investigation that are still under consideration by the Department. These items are considered to be within the scope for this preliminary determination; however, these requests will be reconsidered for the final determination. *See Scope Memorandum*.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined.

After consideration of the complexities expected to arise in these proceedings and the resources available to the Department, we determined that it was not practicable in these investigations to examine all known producers/exporters of subject merchandise. This was not a concern in the investigations involving Argentina and Thailand, since there was only one producer/exporter of subject merchandise in each of those countries during the POI. However, with respect to Japan, which had multiple producers/exporters of subject merchandise during the POI, we determined that, given our resources, we would be able to investigate two such companies. The respondents selected for Japan were those with the greatest export volume; together they accounted for more than 50 percent of all known exports of the subject merchandise during the POI from Japan. For a more detailed discussion of respondent selection in these investigations, *see Respondent Selection Memorandum* (July 9, 1999).

Facts Available

The following companies failed to respond to our questionnaires: Siderar in the Argentina case; NSC, KSC, Kobe, and Nisshin in the Japan case; and TCRSSC/Sahaviriya in the Thailand case. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because Siderar, NSC, KSC, Kobe, Nisshin and TCRSSC/Sahaviriya failed to respond to our questionnaire, pursuant to section 776(a)(2)(A) of the act we resorted to facts otherwise available to calculate the dumping margins for these companies.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994) (SAA). Failure by Siderar, KSC, NSC, Kobe, Nisshin, and TCRRSC/Sahaviriya to respond to the Department's antidumping questionnaire constitutes a failure to act to the best of their ability to comply with a request for information, within the meaning of section 776 of the Act. Because Siderar, KSC, NSC, Kobe, Nisshin, and TCRSSC/Sahaviriya failed to respond, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted in selecting the facts available for these companies.

Because we were unable to calculate margins for the respondents in Argentina, Japan, or Thailand, consistent with Department practice, we assigned these respondents, in the cases of Argentina and Thailand, the highest margins alleged in the amendments to the respective petitions and in the case of Japan, the highest margin alleged in the petition. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany ("Wire Rod from Germany")*, 63 FR 10847 (March 5, 1998). The highest petition margins are 24.53 percent for Argentina, 53.04 percent for Japan, and 80.67 percent for Thailand. *See Initiation Notice*.

Section 776(b) states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

We reviewed the adequacy and accuracy of the information in the petitions during our pre-initiation analysis of the petitions, to the extent appropriate information was available for this purpose. *See Import Administration AD Investigation Initiation Checklist* (June 21, 1999), for a discussion of the margin calculations in the petitions. In addition, in order to determine the probative value of the margins in the petitions for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petitions. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price ("EP") and normal value ("NV") calculations on which the margins in the petitions were based. Our review of the EP and NV calculations indicated that the information in the petitions has probative value, as certain information included in the margin calculations in the petitions is from public sources concurrent, for the most part, with the POI (*e.g.*, international freight and insurance, customs duty, interest rates). For purposes of this preliminary determination, the Department compared the export prices alleged by the petitioners for sales to unaffiliated first purchasers with contemporaneous, average unit values of U.S. imports classified under the appropriate HTS number. We noted that the U.S. price quotes of the per unit values of the subject merchandise derived by the petitioners were well within the range of the average unit values reported by U.S. Customs. U.S. official import statistics are sources which we consider to require no further corroboration by the Department. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410, (October 1, 1997).

However, with respect to certain other data included in the margin calculations of the petition (*e.g.*, home market unit prices), neither respondents nor other interested parties provided the Department with further relevant information and the Department is aware of no other independent sources of information that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation for section 776 of the Act, at 19 CFR 351.308(c), states "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Accordingly, we find, for purposes of this preliminary determination, that this information is sufficiently corroborated.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "all others" rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada ("Stainless Steel Plate from Canada"*), 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy ("Stainless Steel Plate from Italy"*), 64 FR 15458, 15459 (March 21, 1999).

With respect to Argentina, because the petition contained only a single margin, and there is no other information on the record on which to base an "all others" rate, we have also based the "all others" rate on the sole petition margin, *i.e.*, 24.53 percent. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela*, 63 FR 8946 (February 23, 1998). With respect to Japan, we are basing the "all others" rate on the simple average of margins in the petition, which is 39.28 percent. Finally, with respect to Thailand, we also are basing the "all others" rate on the simple average of margins in the amendment to the petition, which is 67.97 percent.

Critical Circumstances

The petitioners made a timely allegation, in the petitions, that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from Japan and Thailand. According to section 733(e)(1) of the Act, if critical circumstances are alleged under section 733(e) of the Act, the Department must examine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the "relatively short period" of over 15 percent may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later.

Because we are not aware of any antidumping order in any country on cold-rolled steel products from Japan or Thailand, we do not find that a reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise exists. Therefore, we must look to whether there was importer knowledge under section 733(e)(1)(A)(ii) of the Act.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the cold-rolled steel at less than fair value, the Department's normal practice is to consider for EP sales margins of 25 percent or more sufficient to impute knowledge of dumping. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). As discussed above, we have applied, as adverse facts available for NSC, KSC, Kobe and Nisshin in the Japan investigation and TCRSSC/Sahaviriya in the Thailand investigation, the highest of the dumping margins presented in the petitions and corroborated by the Department. These margins are in excess of 25 percent. Therefore, we impute knowledge of dumping in regard to exports by these companies.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally looks to the preliminary injury determination of the ITC.

If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department normally determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. The ITC has found that a reasonable indication of present material injury exists in regard to both Japan and Thailand. *See ITC Preliminary Determination.* As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports from NSC, KSC, Kobe, Nisshin and TCRRSC/Sahaviriya.

In determining whether there are "massive imports" over a "relatively short period," the Department typically compares the import volume of the subject merchandise for at least three months immediately preceding and following the filing of the petition. Imports normally will be considered massive when imports have increased by 15 percent or more during this "relatively short period." Since there is no verifiable information on the record with respect to NSC, KSC, Kobe, Nisshin, and TCRRSC/Sahaviriya's import volumes, we must use the facts available in accordance with section 776(a) of the Act. Accordingly, we examined U.S. Customs data on imports of cold-rolled steel products from Japan and Thailand in order to determine whether these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for any of these companies.

These statistics, in the case of cold-rolled steel from Japan, cover numerous HTS categories that include merchandise other than subject merchandise. Therefore, we cannot rely on these data in determining if massive shipments of cold-rolled steel from Japan occurred over a relatively short time. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan* ("*Stainless Steel from Japan*"), 64 FR 30574 (June 8, 1999). Moreover, these data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information. As a result, in accordance with section 776(b) of the Act, we have used an adverse inference in applying facts available, and determine that there were massive imports from NSC, KSC, Kobe, and Nisshin during a relatively short period. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan* ("*Roofing Nails from Taiwan*"), 62 FR 51427 (October 1, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India* ("*Elastic Rubber Tape from India*"), 64 FR 19123 (April 19, 1999). Because all of the necessary criteria have been met, in accordance with section 733(e)(1) of the Act, the Department preliminarily finds that critical circumstances exist with respect to cold-rolled steel products imported from NSC, KSC, Kobe, and Nisshin.

With respect to Thailand, we were able to determine that the U.S. Customs data on imports of cold-rolled steel products from Thailand covers HTS categories that include only subject merchandise. Based on our analysis of these statistics and other information on the record, we determined that massive imports of subject merchandise from TCRSSC/Sahaviriya did not occur over the comparison period (three months following the filing of the petition). Because the criterion necessary to find critical circumstances, in accordance with section 733(e)(1) of the Act, has not been met, the Department preliminarily finds that critical circumstances do not exist for imports of cold-rolled steel products from Thailand imported from TCRSSC/Sahaviriya.

It is the Department's normal practice to conduct its critical circumstances analysis of companies in the "all others" group based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey* ("*Rebars from Turkey*"), 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated, and therefore concluded that critical circumstances also existed for companies covered by the "all others" rate). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate. *See Stainless Steel from Japan.* Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "all others" rate.

Consistent with *Stainless Steel from Japan,* the Department has, in this case, applied the traditional critical circumstances criteria to the "all others" category for the antidumping investigations of cold rolled steel from Japan and Thailand. First, the dumping margins for the "all others" categories, 39.28 percent for Japan and 67.97 percent for Thailand (*see Suspension of Liquidation,* below), exceed the 25 percent threshold necessary to impute knowledge of dumping. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from sales of the dumped merchandise by respondents other than NSC, KSC, Kobe, Nisshin and TCRSSC/ Sahaviriya.

However, the Department has not found that there are massive imports for the "all others" companies in the Japan and Thailand investigations. First, we have not used adverse facts available concerning massive imports. Unlike the mandatory respondents and other companies that refused to provide information upon request at the outset of the case, the "all others" companies have not failed to act to the best of their ability. The Department does not use adverse inferences with respect to firms whose individual data have not been analyzed due to the Department's own administrative constraints, as is the case in the Japan proceeding.[2] *See, e.g., Notice of Preliminary Critical Circumstances Determination: Honey from the People's Republic of China,* 60 FR 29824, (June 6, 1995)). Second, there is no evidence of massive imports from "all others" companies in the Japan and Thailand cases.

While we normally rely on our findings for the selected mandatory respondents, in the Japan case our determinations with respect to all of the mandatory respondents were based on adverse facts available. Therefore, we have not used these findings as a basis for our determination with respect to all other companies. Further, in accordance with *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24239 (May 6, 1999), the Department considered whether U.S. Customs data on imports of cold rolled steel products from Japan could be used to make a determination regarding the "all others" category. In the case of Japan, however, these statistics cover numerous HTS categories that include merchandise other than subject merchandise. Therefore, we cannot rely on these data in determining if there were massive imports for the "all others" category for Japan. *See Stainless Steel from Japan.* The Department does not have any other data indicating massive imports from the companies in question. Therefore, the Department does not find massive imports with regard to the "all others" category in the Japan case.

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[2] As far as the Department has been able to determine, there was only a single producer/ exporter of subject merchandise from Thailand during the POI.

In the case of Thailand, we determined that there were not massive imports from the one mandatory respondent. Although we made this determination on the basis of the facts available, we did not use an adverse inference. Therefore, we have considered this as evidence of no massive imports from all other companies. Further, we were able to analyze the U.S. Customs data on imports of cold rolled steel products from Thailand because these statistics did not include HTS categories covering merchandise other than subject merchandise. However, our analysis showed that massive imports did not occur during the "relatively short period". As a result, the Department does not find massive imports in regard to the "all others" categories in the Thailand case.

Because the massive imports criterion necessary to find critical circumstances has not been met with respect to firms other than NSC, KSC, Kobe, and Nisshin, the Department preliminarily finds that critical circumstances do not exist for the "all others" category in the Japan and Thailand investigations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cold-rolled steel products exported from Japan by KSC, NSC, Kobe and Nisshin that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. For entries of cold-rolled steel products from Argentina and Thailand, and merchandise exported by all other companies in Japan, we are directing the U.S. Customs Service to suspend liquidation of those entries that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are provided below.

Manufacturer/exporter	Margin (percent)
Argentina:	
Siderar Limited	24.53
All Others	24.53
Japan:	
Nippon Steel Corporation	53.04
Kawasaki Steel Corporation	53.04
Kobe Steel, Ltd	53.04
Nisshin Steel Co., Ltd	53.04
All Others	39.28
Thailand:	
TCRSSC/Sahaviriya	80.67
All Others	67.97

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final antidumping determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of these preliminary determinations or 45 days after the date of our final determinations.

Public Comment

For the investigations of cold-rolled steel products from Argentina, Japan and Thailand, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If these investigations proceed normally, we will make our final determinations in the investigations of cold-rolled steel products from Argentina, Japan and Thailand no later than 75 days after the date of this preliminary determination.

These determinations are published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29064 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, Columbian Home Products, LLC (formerly General Housewares Corporation), the Department of Commerce is conducting an administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico. This review covers Cinsa, S.A. de C.V. and Esmaltaciones de Norte America, S.A. de C.V., manufacturers/exporters of the subject merchandise to the United States. The twelfth period of review is December 1, 1997, through November 30, 1998.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If

these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: November 5, 1999.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April 1998).

Background

On October 10, 1986, the Department published in the **Federal Register**, 51 FR 36435, the final affirmative antidumping duty determination on certain porcelain-on-steel (POS) cookware from Mexico. We published an antidumping duty order on December 2, 1986, 51 FR 43415.

On December 8, 1998, the Department published in the **Federal Register** a notice advising of the opportunity to request an administrative review of this order for the period December 1, 1997, through November 30, 1998 (the POR), 63 FR 67646. The Department received a request for an administrative review of Cinsa, S.A. de C.V. (Cinsa) and Esmaltaciones de Norte America, S.A. de C.V. (ENASA) from Columbian Home Products, LLC (CHP), formerly General Housewares Corporation (GHC) (hereinafter, the petitioner). We published a notice of initiation of the review on January 25, 1999, 64 FR 3682. The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this review are porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7323.94.00. Kitchenware currently classifiable under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Allegation of Reimbursement

For the reasons discussed below, the Department has preliminarily determined that the producers/exporters, Cinsa and ENASA, will reimburse their affiliated importer Cinsa International Corporation (CIC) for antidumping duties assessed on entries of POS cookware from Mexico made during this review period. As a result of this determination, we deducted from the export price (EP) and constructed export price (CEP) the amount of the antidumping duty that we preliminarily found for Cinsa and ENASA for this review period in accordance with 19 CFR 351.402 (1998).

In the eleventh review of this order, we found that Cinsa and ENASA had reimbursed CIC for antidumping duties through a capital infusion provided to CIC, through a holding company, by their common parent company, Grupo Industrial Saltillo ("GIS"). We found that, in making this transfer of funds dedicated to the payment of antidumping duties, GIS acted on behalf of Cinsa and ENASA, such that the transfer may be attributed to those two firms. *See Porcelain-On-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 26934, 26936–37 (May 18, 1999) ("*POS Cookware*").

The Department has previously stated that "where the Department determines in the final results of an administrative review that an exporter or producer has engaged in the practice of reimbursing the importer, the Department will presume that the company has continued to engage in such activity in subsequent reviews, absent a demonstration to the contrary." *See Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review*, 63 FR 13204, 13213 (March 18, 1998) ("*Dutch Steel*"). "The establishment of a rebuttable presumption allows the Department to administer the law fairly and effectively." *See Dutch Steel*, 63 FR at 13214. "The Department's policy is crafted to address the instances in which there has been a finding of reimbursement and the importer is financially unable to pay the duty on its own. In that circumstance, the Department will determine that the importer must continue to rely on reimbursements, such as intracorporate transfers, from the producer or exporter in order to meet its obligations to pay the duties." *Id.*

We gave Cinsa and ENASA an opportunity to submit factual information to rebut the presumption of reimbursement with respect to current review entries. To rebut the presumption that reimbursement will continue to take place when current entries are liquidated, a respondent must normally demonstrate that, during the POR in question (in this case the 12th POR), antidumping duties were assessed against the affiliated importer and the affiliated importer did in fact pay all antidumping duties assessed during that POR, without reimbursement, directly or indirectly, by the exporter/producer. *See POS Cookware*, 64 FR at 26938. In such a case, the importer's financial ability to pay antidumping duties during the current POR is sufficient evidence of the importer's ability, without reimbursement, to pay the antidumping duties to be assessed on entries during the current review. *Id.* Alternatively, respondents may rebut the presumption by demonstrating that there are changed circumstances (*e.g.*, completed corporate restructuring) sufficient to obviate the need for reimbursement of antidumping duties to be assessed on the entries under review. *Id.; see also Dutch Steel*, 63 FR at 13213.

In order to establish that CIC is no longer being reimbursed for antidumping duties and that changed circumstances exist sufficient to obviate the need for reimbursement as to twelfth review entries when they are liquidated, respondents submitted the following:

1. The relevant pages of CIC's general ledger from year-end 1997 and 1998 showing that CIC's capital account did not change during 1998. Respondents also submitted the January 1999 general ledger page showing the return of the April 1997 capital contribution upon which the Department's finding of reimbursement was based in the prior review.
2. Recent audited financial data for 1998 showing CIC's earnings and profit margin for that year and interim financial data for the first half of 1999, as well as projected figures through 2002.
3. A statement that CIC has ceased being the importer of record for POS cookware imported from Mexico effective September 1, 1999. Respondents state that Cinsa is now the importer of record of the subject merchandise, with title passing to CIC

after the merchandise clears Customs. They claim that the result of this restructuring is to eliminate the cost to CIC of posting the estimated antidumping duty deposits, and thus to increase the profitability of CIC.

4. A statement that, in August 1, 1999, CIC will begin to market a new line of products in the U.S. and Canada that will further enhance CIC's profitability, and information in support of the level of income they expect to realize from this new line.

We find that the information that Cinsa and ENASA have submitted fails to satisfactorily demonstrate changed circumstances sufficient to obviate the need for reimbursement of CIC as to twelfth-review entries when they are liquidated. The primary basis of Cinsa and ENASA's argument that CIC is financially self-sufficient and will not need assistance to pay antidumping duties are sales projections which contrast markedly with CIC's actual performance in 1999 versus its performance in 1998. In addition, the limited actual financial data on the record is insufficient to enable us to determine that CIC's resources will be adequate to cover the liquidation of twelfth review entries. Because much of this information is business proprietary, it is discussed more fully in the November 1, 1999, Analysis Memorandum for the Preliminary Results (*Analysis Memo*). We will continue to evaluate whether CIC will have the financial capacity to independently meet its antidumping duty obligations and, in so doing, will solicit additional financial data from CIC when it becomes available for purposes of the final results. Furthermore, we will revisit our interpretation of the reimbursement regulation as it applies to this case.

Accordingly, based on our finding that the respondents have failed to satisfactorily rebut the presumption of reimbursement established in the eleventh review of this order, we preliminarily presume that antidumping duties to be assessed on twelfth-review entries will be reimbursed as well. Therefore, in accordance with our regulations, we deducted from EP and CEP the amount of the antidumping duty that we preliminarily found for Cinsa and ENASA for this review period.

Fair Value Comparisons

To determine whether sales of POS cookware by Cinsa and ENASA to the United States were made at less than normal value (NV), we compared EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2), we compared the EPs or CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade at prices above the cost of production (COP), as discussed in the "Cost of Production Analysis" section, below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Cinsa and ENASA covered by the description in the "Scope of the Review" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we compared individual cookware pieces with identical or similar pieces, and cookware sets to identical or similar sets. Within these groupings, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: quality, gauge, cookware category, model, shape, wall shape, diameter, width, capacity, weight, interior coating, exterior coating, grade of frit (a material component of enamel), color, decoration, and cover, if any.

Export Price and Constructed Export Price

For certain sales made by Cinsa, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and because CEP methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for billing adjustments, U.S. and foreign inland freight, U.S. and Mexican brokerage and handling expenses, and U.S. duty in accordance with section 772(c)(1) of the Act and 19 CFR 351.402(a). We reclassified pre-sale warehousing expenses, that were incorrectly reported by the respondents as movement expenses, as factory overhead expenses, based on information in the questionnaire response and in accordance with 19 CFR 351.401(e)(2). We also deducted the amount of antidumping duties reimbursed to CIC by Cinsa and ENASA, consistent with our reimbursement finding discussed above. (*See* Calculation Memorandum dated November 1, 1999) (*Calculation Memo*).

For the CEP sales made by Cinsa and ENASA during the POR, we calculated CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by CIC in the United States. We reclassified as CEP certain sales sold by U.S. agents that Cinsa reported as EP sales, because the limited information on the record indicates that the merchandise was first sold (or agreed to be sold) by CIC after importation into the United States. *See* Calculation Memo for further details. We excluded ENASA's sample sales from the margin calculation, in accordance with *NSK, Ltd.* v. *United States*, 115 F.3d 965, 975 (Fed. Cir. 1997). We based CEP on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for billing adjustments, discounts, U.S. and foreign inland freight, U.S. and Mexican brokerage and handling expenses, and U.S. duty in accordance with section 772(c)(1) of the Act and 19 CFR 351.402(a). We reclassified pre-sale warehousing expenses, that were incorrectly reported by the respondents as movement expenses, as a factory overhead expenses, based on information in the questionnaire response and in accordance with 19 CFR 351.401(e)(2). We recalculated respondents' reported inventory carrying costs because respondents did not use the Department's standard methodology to report these expenses in their questionnaire response. *See* Calculation Memo.

We made further deductions, where appropriate, for credit, commissions, repacking expenses, warehousing expenses, and indirect selling expenses that were associated with economic activities occurring in the United States pursuant to section 772(d)(1) of the Act and 19 CFR 351.402(b). For those home market sales for which the payment date was not reported, we calculated credit based on the average number of days between shipment and payment using the sales for which payment information was reported. We recalculated CIC's indirect selling expenses to include bad debt and depreciation expenses. For purposes of calculating the indirect selling expense ratio, we also reallocated certain of CIC's total expenses pertaining only to the CEP sales over the total sales value excluding the value of EP sales. *See* Calculation Memo. We performed this reallocation because CIC performs limited sales-related functions with respect to EP sales and equal allocation of all CIC expenses across all U.S. sales in which CIC is involved would disproportionately shift these costs from CEP to EP sales. Finally, we made an adjustment for profit in accordance with section 772(d)(3) of the Act. We also deducted the amount of antidumping duties to be reimbursed to CIC by Cinsa and ENASA, consistent with our reimbursement finding discussed above. *See* Calculation Memo.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, we based NV on the price (exclusive of value-added tax) at which the foreign like product was first sold for consumption in the home market, in accordance with section 773(a)(1)(B)(i) of the Act, as noted below.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to an unaffiliated U.S. customer. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer, after the deductions required under section 772(d) of the Act. To determine whether NV sales are at a LOT different from EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level, and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In this review, Cinsa and ENASA reported that comparison-market and CEP sales were made at different LOTs, and that comparison-market sales were made at a more advanced LOT than were Cinsa's sales to CIC in the United States. The respondents requested that the Department make a CEP offset in lieu of an LOT adjustment, as they were unable to quantify the price differences related to sales made at the different LOTs. Respondents made no claim for differences in LOT between comparison-market and EP sales.

Cinsa and ENASA reported four channels of distribution in the home market: (1) Direct sales to customers from the Saltillo plant, (2) sales shipped from their Mexico city warehouse, (3) sales shipped from their Guadalajara warehouse, and (4) sales shipped to discount stores. In analyzing the data in the home market sales listing by distribution channel and sales function, we found that the four home market channels did not differ significantly with respect to selling functions. Similar services were offered to all or some portion of customers in each channel. Based on this analysis, we find that the four home market channels of distribution comprise a single LOT.

Cinsa made both EP and CEP sales in the U.S. market during the POR, while ENASA made only CEP sales in the U.S. market. The EP sales were made by the exporter to the unaffiliated customer, who received the merchandise at the border between Mexico and the United States (FOB Laredo, Texas). As Cinsa did not provide the selling function information necessary to evaluate LOT(s) associated with EP sales in response to the Department's questionnaire, we have not performed a LOT analysis for purposes of making a LOT adjustment for any differences between comparison-market and EP sales.

All CEP sales were made through the same distribution channel: By the Mexican exporter to CIC, the U.S. affiliated reseller, who then sold the merchandise directly to unaffiliated purchasers in the United States. The same selling functions/services were provided by Cinsa and ENASA to all customers in this distribution channel. Therefore, we preliminarily determine that all CEP sales constitute a single LOT in the United States.

To determine whether sales in the comparison market were at a different LOT than CEP sales, we examined the selling functions performed at the CEP level, after making the appropriate deductions under section 772(d) of the Act, and compared those selling functions to the selling functions performed in the home market LOT.

In the comparison market, Cinsa and ENASA sold subject merchandise to their affiliated sales organization, COMESCO, which then resold the POS product to unaffiliated customers. In the United States, Cinsa sold its and ENASA's subject merchandise to its affiliate, CIC, which then sold the subject merchandise directly to unaffiliated purchasers. Therefore, we compared the selling functions and the level of activity associated with Cinsa's sales to CIC with the sales by COMESCO to unaffiliated purchasers in the Mexican market. We found that several of the functions performed in making the starting price sale in the comparison market either were not performed in connection with sales to CIC (*e.g.*, market research, order solicitation, after sale services/warranties, and advertising), or were only performed to a small degree in connection with sales to CIC (*e.g.* inventory maintenance), thus supporting respondents' contention that different LOTs exist between comparison-market and CEP sales.

These differences also support the respondents' assertion that the comparison-market merchandise is sold at a more advanced LOT (*see* the Preamble to the Department's Regulations, 62 FR 27295, 27371 (May 19, 1997)) ("Each more remote level must be characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function.") Furthermore, many of the same selling functions that are performed at the comparison-market LOT are performed, not at the CEP LOT, but by the respondents' U.S. affiliate. Based on this analysis, we preliminarily conclude that the comparison-market and CEP channels of distribution are sufficiently different to determine that two different LOTs exist, and that the comparison-market sales are made at a more advanced LOT than are the CEP sales.

As there is no comparison-market LOT that is comparable to that in the

United States, we have no basis for determining whether the difference in LOTs affects price comparability. Therefore, we made a CEP offset to NV. In accordance with section 773(a)(7) of the Act, we calculated the CEP offset as the lesser of the following:

1. The indirect selling expenses on the comparison-market sale, or
2. The indirect selling expenses deducted from the starting price in calculating CEP.

Cost of Production Analysis

The Department disregarded certain sales made by Cinsa and ENASA for the period December 1, 1996, through November 30, 1997 (the most recently completed review of Cinsa and ENASA), pursuant to a finding in that review that sales were made below cost. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that respondents Cinsa and ENASA made sales in the home market at prices below the cost of producing the merchandise in the current review period. As a result, the Department initiated investigations to determine whether the respondents made home market sales during the POR at prices below their COP within the meaning of section 773(b) of the Act.

A. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of Cinsa's and ENASA's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A and packing costs in accordance with section 773(b)(3) of the Act. Because Cinsa and ENASA reported monthly costs, we created an annual average COP on a product-specific basis.

We relied on COP information submitted by Cinsa and ENASA, except in the following instances where it was not appropriately quantified or valued: (1) Frit prices from an affiliated supplier did not approximate fair market value prices; therefore, we increased Cinsa's and ENASA's frit prices to account for the portion of the reported cost savings to affiliated parties which was not due to market-based savings; (2) we recalculated Cinsa's depreciation expenses to account for idle assets; (3) we excluded Cinsa's and ENASA's negative interest expense; (4) for sales reported without COP data, we assigned the weighted-average COP reported for other sales in the database; and (5) we reclassified pre-sale warehousing expenses, that were incorrectly reported by the respondents as movement expenses, as factory overhead expenses.

B. Test of Home Market Prices

We compared the weighted-average, per-unit COP figures for the POR to home market sales of the foreign like product, as required by section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP (net of selling expenses) to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales where such sales were found to be made at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act).

The results of our cost tests for Cinsa and ENASA indicated for certain home market models, less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV. Our cost tests also indicated that for certain other home market models more than twenty percent of home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded the below-cost sales of these models from our analysis and used the remaining sales as the basis for determining NV.

Price-to-Price Comparisons

For both of the respondents, we calculated NV based on the VAT-exclusive, home market gross unit price and deducted, where appropriate, inland freight, and early payment discounts in accordance with section 773(a)(6) of the Act and 19 CFR 351.401. We reclassified pre-sale warehousing expenses, that were incorrectly reported by the respondents as movement expenses, as a factory overhead expenses, based on information in the questionnaire response and in accordance with 19 CFR 351.401(e)(2).

For comparisons to Cinsa's EP sales, we made a circumstance-of-sale adjustment, where appropriate, for differences in credit expenses pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). For comparisons to Cinsa's and ENASA's CEP sales, we also deducted from NV credit expenses, commissions, and the lesser of comparison-market indirect selling expenses and the indirect selling expenses deducted from CEP (the CEP offset) pursuant to section 773(a)(7)(A) of the Act and 19 CFR 351.412(f). For those comparison-market sales for which the payment date was not reported, we calculated credit based on the average number of days between shipment and payment using the sales for which payment information was reported. We made adjustments to NV for differences in packing expenses. We also made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period December 1, 1997, through November 30, 1998, are as follows:

Manufacturer/exporter	Period	Margin
Cinsa	12/1/97–11/30/98	16.89
ENASA	12/1/97–11/30/98	54.59

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these administrative reviews, including the results of its analysis of issues raised in any written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total entered value of the sales examined. In calculating these importer-specific assessment rates, we will take into account the amount of the reimbursement calculated on sales during the POR. *See Calculation Memo* for details.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 29.52 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is published in accordance with sections 751(a)(1) of the Act and CFR 351.221.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29059 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Preliminary Determination of Critical Circumstances: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 5, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen at (202) 482–0408 or Rick Johnson at (202) 482–3818, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Preliminary Determination of Critical Circumstances

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1999).

Critical Circumstances

On August 12, 1999, the Department of Commerce ("the Department") initiated an investigation to determine whether imports of solid fertilizer grade ammonium nitrate from the Russian Federation ("Russia") are being, or are likely to be, sold in the United States at less than fair value. In the petition filed on July 23, 1999, petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of solid fertilizer grade ammonium nitrate from Russia. On September 3, 1999, the International Trade Commission ("ITC") determined that there was threat of material injury to the domestic industry from imports of solid fertilizer grade ammonium nitrate from Russia.

In accordance with 19 CFR 351.206(c)(2)(i), because petitioner submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination no later than the date of the preliminary determination. In a policy bulletin issued on October 8, 1998 (Policy Bulletin Number 98.4), the Department stated that it may issue a preliminary critical circumstances determination prior to the date of the preliminary LTFV determination, assuming adequate evidence of critical circumstances exists (*see Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998)). In accordance with this policy, we are issuing a preliminary critical circumstances decision in the investigation of imports of solid fertilizer grade ammonium nitrate from Russia.

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

History of Dumping and Importer Knowledge

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i), the Department considers evidence of existing antidumping orders on solid fertilizer grade ammonium nitrate from Russia in the United States or elsewhere to be sufficient. To support a finding of history of injurious dumping of Russian ammonium nitrate, the petition states that the European Community ("EC") issued an antidumping order in 1995 on imports of ammonium nitrate from Russia. This order remains in effect today. The existence of an antidumping order on Russian ammonium nitrate in the EC is sufficient evidence of a history of injurious dumping. Accordingly, there is no need to examine importer knowledge.

Massive Imports

In determining whether there are "massive imports" over a "relatively short time period," the Department ordinarily bases its analysis on import data for at least the three months preceding (the "base period") and following (the "comparison period") the filing of the petition. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. However, as stated in the Department's regulations at section 351.206(i), if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time.

In this case, petitioner argues that importers, exporters, or producers of Russian solid fertilizer grade ammonium nitrate had reason to believe that an antidumping proceeding was likely before the filing of the petition. The Department examined whether conditions in the industry and published reports and statements provide a basis for inferring knowledge that an antidumping investigation on the subject merchandise was likely. The Department found that, as a result of an investigation on Russian ammonium nitrate imports by the International Trade Commission under section 332(g) of the Tariff Act of 1930, as amended (published on May 6, 1998), there was considerable press coverage discussing concerns of ammonium nitrate producers, among others, concerning the influx of imports of subject merchandise and the likelihood of a remedial trade action, including the filing of an antidumping petition. On December 3, 1998, a coalition of U.S. producers of solid fertilizer grade ammonium nitrate formed the Committee for Fair Ammonium Nitrate Trade ("COFANT"), to monitor developments with respect to the importation of ammonium nitrate and to pursue available remedies, should unfair trade practices be identified. On December 7, 1998, the formation of this coalition was reported in a trade publication. Significantly, this trade publication also reported in the same article that "some of the committee members already have been active in trying to get federal officials to find evidence of Russian AN dumping." *See Petition for the Imposition of Antidumping Duties: Solid Agricultural Grade Ammonium Nitrate from the Russian Federation* (July 23, 1999) at Exhibit 37, p. 5.

The press coverage leading up to the formation of COFANT and the announcement thereof in early December 1998, including the explicit reference to a dumping action against imports of ammonium nitrate from Russia, are sufficient evidence that the Russian producers and importers were on notice that an antidumping proceeding concerning the subject merchandise was likely. Thus, we preliminarily determine that by early December 1998, importers, exporters, or producers knew or should have known that a proceeding was likely concerning solid fertilizer grade ammonium nitrate from Russia (*see* discussion in the *Determination of Critical Circumstances Memorandum*, November 1, 1999).

Therefore, we examined the increase in import volumes during the period of December 1998 through May 1999 as compared to June 1998 through November 1998. The Department found that imports of subject merchandise escalated by over 257.88 percent (*see* Attachment 1 to the *Determination of Critical Circumstances Memorandum*). Furthermore, while the record indicated that seasonality might account for some of that increase, we preliminary determine that the 257.88 percent increase is not simply a function of seasonality, as the actual volume increase from the period December to May compared to the same period in the previous two years indicates an actual volume increase of 88.31 percent (*see* Attachment 2 to the *Determination of Critical Circumstances Memorandum*). Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily determine that there have been massive imports of solid fertilizer grade ammonium nitrate from Russia over a relatively short time.

Conclusion

We preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of solid fertilizer grade ammonium nitrate from Russia.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, upon issuance of an affirmative preliminary determination of sales at less than fair value in the investigation, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of solid fertilizer grade ammonium nitrate from Russia, as appropriate, that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at less than fair value. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin reflected in the preliminary determination of sales at less than fair value published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Russia when we make our final determination regarding sales at less than fair value in this investigation, which will be 75 days after the preliminary determination regarding sales at less than fair value, unless this investigation is extended.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. This notice is published pursuant to section 777(i) of the Act.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29062 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–812]

Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Extension of Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of countervailing duty administrative review.

EFFECTIVE DATE: November 5, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Copyak at 202–482–2209, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On April 30, 1999, the Department published a notice of initiation of administrative review of the countervailing duty order on hot-rolled lead and bismuth carbon steel products from Germany, covering the period January 1, 1998, through December 31, 1998, (64 FR 23269, 23280). The preliminary results are currently due no later than December 1, 1999.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limits for completion of the preliminary results until no later than March 30, 2000. *See* Decision Memorandum from Holly A. Kuga to Robert S. LaRussa, dated October 27, 1999, which is on file in the Central Records Unit. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 28, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–29061 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 98109262–919–02]

RIN 0693–ZA 27

Announcing Approval of Federal Information Processing Standard (FIPS) 46–3, Data Encryption Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce has approved Federal Information Processing Standard (FIPS) 46–3, Data Encryption Standard, which supersedes FIPS 46–2. FIPS 46–3 provides for the use of the Triple DES as specified in American National Standard (ANSI) X9.52. NIST expects that Triple DES will provide Federal agencies with strong protective measures against associated risks until the Advanced Encryption Standard (AES) is available, probably in 2001.

EFFECTIVE DATE: This standard is effective March 25, 2000.

ADDRESSES: FIPS 46–3 is available on the NIST web page at: <http// csrc.nist.gov/publications/drafts.html>.

Copies of the ANSI X9.52 (Triple DES) standard are available from American Bankers Assoc./DC,X9 Customer Service Dept., P.O. Box 79064, Baltimore, MD 21279–0064, telephone 1–800–338–0626.

Information on the Advanced Encryption Standard under development is available at: <http:// www.nist.gov/aes>.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Barker, (301) 975–2911, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930.

SUPPLEMENTARY INFORMATION: Federal Information Processing Standard 46, Data Encryption Standard (DES), first issued in 1977, specified the Data Encryption algorithm, to be implemented in hardware devices, for the cryptographic protection of computer data. The standard provided that it be reviewed within five (5) years to assess its adequacy. In 1981, the DES was adopted as an American National Standard and became widely used by the financial community. The first review of the DES was completed in 1983, and the DES was reaffirmed for Federal government use (48 FR 41062). The second review, completed in 1987, again resulted in the reaffirmation of the standard for Federal government use (52 FR 7006). The standard was re-issued as FIPS 46–1 with minor editorial updating. The third review was completed in 1993, and the standard was reaffirmed as FIPS 46–2 for Federal government use (58 FR 69347). FIPS 46–2 provided for software implementations, as well as hardware implementations, of the DES.

When the DES was reaffirmed in 1993, NIST stated that it would "consider alternatives which offer a higher level of security" at the next review in 1998. There was concern that the DES 56–bit key was not long enough to prevent an attack by trying all of the possible keys. NIST believed that the key was sufficiently long for the expected life of the standard and that the security could be increased, when needed, by using the DES for three sequential encryption operations with different keys. This approach is called Triple DES. In 1997, NIST advised Federal organizations that they could use Triple DES if they needed security beyond that provided by the DES.

Since 1998, there have been reports that the DES could be attacked through an exhaustion attack whereby possible keys are tested one at a time until the correct key is found. Because of this, NIST proposed to replace FIPS 46–2 with FIPS 46–3 to specify use of Triple DES. Triple DES was documented and specified as an American National Standard (ANSI X9.52) by Accredited Standards Committee X9 for Financial Services, which develops cryptography and public key infrastructure standards. Triple DES was developed by the private sector with NIST assistance and is used by many government and private sector organizations, particularly in the financial services industry.

Public comments were solicited on the draft of FIPS 46–3 in the **Federal Register** (January 15, 1999, Volume 64, Number 10, pp. 2625–2628). The draft standard was also made available on NIST's web page. NIST received comments from three industry organizations and individuals and one Canadian government organization. The comments supported revision of the standard; minor technical and editorial changes were recommended and have been incorporated into FIPS 46–3.

Related to FIPS 46–3 is NIST's project to develop an Advanced Encryption Standard (AES), anticipated for completion in 2001. It is anticipated that Triple DES and the Advanced Encryption Standard (AES) will coexist as FIPS approved algorithms allowing for a gradual transition to AES. (The AES is a new symmetric-based encryption standard under development by NIST. AES is intended to provide strong cryptographic security for the protection of sensitive information well into the 21st century.) NIST is working with industry and the cryptographic community to develop the AES, which will offer improved security and efficiency over Triple DES, and provide needed cryptographic protection will into the next century. Information on the AES is available at <http://www.nist.gov/aes>.

Authority: This work effort is being conducted pursuant to NIST's responsibilities for the development of security standards and guidelines for the protection of sensitive federal information technology systems under the Computer Security Act of 1987, the Information Technology Management Reform Act of 1996, Executive Order 13011, and Appendix III to Office of Management and Budget (OMB) Circular A–130.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 (Public Law 104–106), and Computer Security Act of 1987 (Public Law 100–235).

1. *Name of Standard.* Data Encryption Standard (DES).

2. *Catgegory of Standard.* Computer Security, Cryptography.

3. *Explanation.* The Data Encryption Standard (DES) specifies two FIPS approved cryptographic algorithms as required by FIPS 140–1. When used in conjunction with the American National Standards Institute (ANSI) X9.52 standard, this publication provides a complete description of the mathematical algorithms for encrypting (enciphering) and decrypting (deciphering) binary coded information. Encrypting data converts it to an unintelligible form called cipher. Decrypting cipher converts the data back to its original form called plaintext. The algorithms described in this standard specify both enciphering and deciphering operations that are based on a binary number called a key.

A DES key consists of 64 binary digits ("0"s or "1"s) of which 56 bits are randomly generated and used directly by the algorithm. The other 8 bits, which are not used by the algorithm, may be used for error detection. The 8 error detecting bits are set to make the parity of each 8-bit byte of the key odd, *i.e.*, there is an odd number of "1"s in each 8-bit byte.[1] A TDEA key consists of three DES keys, which is also referred to as a key bundle. Authorized users of encrypted computer data must have the key that was used to encipher the data in order to decrypt it. The encryption algorithms specified in this standard are commonly known among those using the standard. The cryptographic security of the data depends on the security provided for the key used to encipher and decipher the data.

Data can be recovered from cipher only by using exactly the same key used to encipher it. Unauthorized recipients of the cipher who know the algorithm but do not have the correct key cannot derive the original data algorithmically. However, it may be feasible to determine the key by a brute force "exhaustion attack." Also, anyone who does have the key and the algorithm can easily decipher the cipher and obtain the original data. A standard algorithm based on a secure key thus provides a basis for exchanging encrypted computer data by issuing the key used to encipher it to those authorized to have the data.

Data that is considered sensitive by the responsible authority, data that has a high value, or data that represents a high value should be cryptographically protected if it is vulnerable to unauthorized disclosure or undetected modification during transmission or while in storage. A risk analysis should be performed under the direction of a responsible authority to determine potential threats. The costs of providing cryptographic protection using this standard as well as alternative methods of providing this protection and their respective costs should be projected. A responsible authority then should make a decision, based on these analyses, whether or not to use cryptographic protection and this standard.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology, Information Technology Laboratory.

6. *Applicability.* This standard may be used by Federal departments and agencies when the following conditions apply:

1. An authorized official or manager responsible for data security or the security of any computer system decides that cryptographic protection is required; and

2. The data is not classified according to the National Security Act of 1947, as amended, or the Atomic Energy Act of 1954, as amended.

Federal agencies or departments, which use cryptographic devices for protecting data classified according to either of these acts, can use those devices for protecting sensitive data in lieu of the standard.

Other FIPS approved crytographic algorithms may be used in addition to or in lieu of this standard when implemented in accordance with FIPS 140–1.

In addition, this standard may be adopted and used by non-Federal Government organizations. Such use in encouraged when it provides the desired security for commercial and private organizations.

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[1] Sometimes keys are generated in an encrypted form. A random 64-bit number is generated and defined to be the cipher formed by the encryption of a key using a key encrypting key. In this case the parity bits of the encrypted key cannot be set until after the key is decrypted.

7. *Applications.* Data encryption (cryptography) is utilized in various applications and environments. The specific utilization of encryption and the implementation of the DES and TDEA [2] will be based on many factors particular to the computer system and its associated components. In general, crytography is used to protect data while it is being communicated between two points or while it is stored in a medium vulnerable to physical theft. Communication security provides protection to data by enciphering it at the transmitting point and deciphering it at the receiving point. File security provides protection to data by enciphering it when it is recorded on a storage medium and deciphering it when it is read back from the storage medium. In the first case, the key must be available at the transmitter and receiver simultaneously during communication. In the second case, the key must be maintained and accessible for the duration of the storage period. FIPS 171 provides approved methods for managing the keys used by the algorithms specified in this standard. Public-key based protocols may also be used (*e.g.*, ANSI X9.42).

8. *Implementations.* Crytographic modules that implement this standard shall conform to the requirements of FIPS 140–1. The algorithms specified in this standard may be implemented in software, firmware, hardware, or any combination thereof. The specific implementation may depend on several factors such at the application, the environment, the technology used, *etc.* Implementations which may comply with this standard include electronic devices (*e.g.*, VLSI chip packages), micro-processors using Read Only Memory (ROM), Programmable Read Only Memory (PROM), or Electronically Erasable Read Only Memory (EEROM), and mainframe computers using Random Access Memory (RAM). When an algorithm is implemented in software or firmware, the processor on which the algorithm runs must be specified as part of the validation process. Implementations of an algorithm that are tested and validated by NIST will be considered as complying with the standard. Note that FIPS 140–1 places additional requirements on crytographic modules for Government use. Information about devices that have been validated and procedures for testing and validating equipment for conformance with this standard and FIPS 140–1 are available from the National Institute of Standards and Technology, Information Technology Laboratory, 100 Bureau Dr. Stop 8930, Gaithersburg, MD 20899–8930.

9. *Export Control.* Cryptographic devices and technical data regarding them are subject to Federal Government export controls and exports of cryptographic modules implementing this standard and technical data regarding them must comply with these Federal regulations and be licensed by the Bureau of Export Administration of the U.S. Department of Commerce.

10. *Patents.* Cryptographic devices implementing this standard may be covered by U.S. and foreign patents, including patents issued to the International Business Machines Corporation. However, IBM has granted nonexclusive, royalty-free licenses under the patents to make, use and sell apparatus that complies with the standard. The terms, conditions and scope of the licenses are set out in notices published in the May 13, 1975, and August 31, 1976, issues of the Official Gazette of the United States Patent and Trademark Office (934 O.G. 452 and 949 O.G. 1717).

11. *Alternative Modes of Using the DES and TDEA.* FIPS PUB 81, DES Modes of Operation, describes four different modes for using DES described in this standard. These four modes are called the Electronic Codebook (ECB) mode, the Cipher Block Chaining (CBC) mode, the Cipher Feedback (CFB) mode, and the Output Feedback (OFB) mode. ECB is a direct application of the DES algorithm to encrypt and decrypt data; CBC is an enhanced mode of ECB which chains together blocks of cipher text; CFB uses previously generated cipher text as input to the DES to generate pseudorandom outputs which are combined with the plain text to produce cipher, thereby chaining together the resulting cipher; OFB is identical to CFB except that the previous output of the DES is used as input in OFB while the previous cipher is used as imput in CFB. OFB does not chain the cipher.

The ANSI X9.52 standard, "Triple Data Encryption Algorithm Modes of Operation" describes seven different modes for using TDEA described in this standard. These seven modes are called the TDEA Electronic Codebook Mode of Operation (TECB) mode, the TDEA Cipher Block Chaining Mode of Operation (TCBC), the TDEA Cipher Block Chaining Mode of Operation—Interleaved (TCBC–I), the TDEA Cipher Feedback Mode of Operation (TCFB), the TDEA Cipher Feedback Mode of Operation—Pipelined (TCFB–P), the TDEA Output Feedback Mode of Operation (TOFB), and the TDEA Output Feedback Mode of Operation—Interleaved (TOFB–I). The TECB, TCBC, TCFB and TOBF modes are based upon the ECB, CBC, CFB and OFB modes, respectively, obtained by substituting the DES encryption/decryption operation with the TDEA encryption/decryption operation.

12. *Implementation of this standard.* FIPS 46–3 supersedes FIPS 46–2 on March 25, 2000. It applies to all Federal agencies, contractors of Federal agencies, or other organizations that process information (using a computer or telecommunications system) on behalf of the Federal Government to accomplish a Federal function. Each Federal agency or department may issues internal directives for the use of this standard by their operating units based on their data security requirement determinations.

a. Triple DES (*i.e.*, TDEA), as specified in ANSI X9.52, is recognized as a FIPS approved algorithm.

b. Triple DES is the FIPS approved symmetric encryption algorithm of choice.

c. Single DES (*i.e.*, DES) is permitted for legacy systems only. New procurements to support legacy systems should, where feasible, use Triple DES products running in the single DES configuration.

d. Government organizations with legacy DES systems are encouraged to transition to Triple DES based on a prudent strategy that matches the strength of the protective measures against the associated risk.

Note: It is anticipated that triple DES and the Advanced Encryption Standard (AES) will coexist as FIPS approved algorithms allowing for a gradual transition to AES. (The AES is a new symmetric-based encryption standard under development by NIST. AES is intended to provide strong cryptographic security for the protection of sensitive information well into the 21st century.)

NIST provides technical assistance to Federal agencies in implementing data encryption through the issuance of standards, guidelines and through individual reimbursable projects.

13. *Specifications.* Federal Information Processing Standard (FIPS) 46–3, Data Encryption Standard (DES) (affixed).

14. *Cross Index.*

a. FIPS PUB 31, Guidelines to ADP Physical Security and Risk Management.

b. FIPS PUB 39, Glossary for Computer Systems Security.

c. FIPS PUB 73, Guidelines for Security of Computer Applications.

d. FIPS PUB 74, Guidelines for Implementing and Using the NBS Data Encryption Standard.

e. FIPS PUB 81, DES Modes of Operation.

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[2] DES forms the basis for TDEA.

f. FIPS PUB 87, Guidelines for ADP Contingency Planning.

g. FIPS PUB 112, Password Usage.

h. FIPS PUB 113, Computer Data Authentication.

i. FIPS PUB 140–1, Security Requirements for Cryptographic Modules.

j. FIPS PUB 171, Key Management Using ANSI X9.17.

k. ANSI X9.42, Agreement of Symmetric Keys on Using Discrete Logarithm Cryptography.©

l. ANSI X9.52, Triple Data Encryption Algorithm Modes of Operation.

15. *Qualifications.* Both this standard and possible threats reducing the security provided through the use of this standard will undergo review by NIST as appropriate, taking into account newly available technology. In addition, the awareness of any breakthrough in technology or any mathematical weakness of the algorithm will cause NIST to reevaluate this standard and provide necessary revisions.

With regard to the use of single DES, exhaustion of the DES (*i.e.*, breaking a DES encrypted ciphertext by trying all possible keys) has become increasingly more feasible with technology advances. Following a recent hardware based DES key exhaustion attack, NIST can no longer support the use of single DES for many applications.

16. *Comments.* Comments and suggestions regarding this standard and its use are welcomed and should be addressed to the National Institute of Standards and Technology, Attn: Director, Information Technology Laboratory, 100 Bureau Dr., Stop 8900, Gaithersburg, MD 20899–8900.

17. *Waiver Procedure.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Waiver shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system; or

b. Compliance with a standard would cause a major adverse financial impact on the operator that is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision that explains the basis on which the agency head made the required finding(s). A copy of each decision, with procurement sensitive or classified portions clearly identified, shall be sent to National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any accompanying documents, with such deletions as the agency is authorized and decides to make under 5 United States Code Section 552(b), shall be part of the procurement documentation and retained by the agency.

18. *Special Information.* In accordance with the Qualifications Section of this standard, reviews of this standard have been conducted every 5 years since its adoption in 1977. The standard was reaffirmed during each of those reviews. This revision to the text of the standard contains changes which allow software implementations of the algorithm, permit the use of other FIPS approved cryptographic algorithms, and designate Triple DES (i.e., TDEA) as a FIPS approved cryptographic algorithm.

19. *Where to Obtain Copies of the Standard.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 46–3 (FIPSPUB46–3), and identify the title. When microfiche is desired, this should be specified. Prices are published by NTIS in current catalogs and other issuances. Payment may be made by check, money order, deposit account or charged to a credit card accepted by NTIS.

Dated: October 29, 1999.

Karen H. Brown,

Deputy Director, NIST

[FR Doc. 99–28947 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 991101293–9293–01]

Public Meeting, Digital Divide Summit

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce, William M. Daley, will host a Digital Divide Summit, focused on expanding access to new technologies for underserved populations and areas. Secretary Daley will lead the dialogue among participants from the U.S. Government, technology industry, civil rights and non-profit communities, grass-roots community organizations, and the general public.

DATES: The Digital Divide Summit will be held on December 9, 1999 from 8:00 a.m. to 1:00 p.m.

ADDRESSES: The Digital Divide Summit will be held at the U.S. Department of Commerce, Main Auditorium, 1401 Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jeffrey Joyner, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4713, Washington, D.C. 20230; telephone (202) 482–1816; facsimile (202) 501–8013; or electronic mail <digitaldivide@ntia.doc.gov>.

MEDIA INQUIRIES: Please contact the Office of Public Affairs, U.S. Department of Commerce, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: Information tools, such as the personal computer and the Internet, are increasingly critical to economic success and personal advancement. On July 8, 1999, the National Telecommunications and Information Administration (NTIA) issued a report, Falling Through the Net: Defining the Digital Divide, that found a growing gap between those with access to these tools and those without. As information technology plays an ever-increasing role in Americans' economic and social lives, the prospect that some will be left behind in the information age can have serious repercussions. The digital divide threatens to impede the health of our communities, development of a skilled workforce, and the economic welfare of our nation.

On December 9, 1999, the Secretary of Commerce, William M. Daley, will host a Digital Divide Summit, focused on expanding access to information technologies for underserved populations and areas. Secretary Daley will lead the dialogue among participants from the U.S. Government, technology industry, civil rights and non-profit communities, grass-roots community organizations, and the general public. The participants will examine existing public and private initiatives aimed at closing the technology gap and will discuss how to expand upon and coordinate these efforts. Closing the digital divide is an essential part of President Clinton's New Markets Initiative, which seeks to bring America's prosperity to economically underserved areas.

The Digital Summit will be held at the Department of Commerce and will include an address by Secretary Daley; a roundtable discussion with representatives from the public and private sectors; and six breakout sessions. The topics of these smaller sessions include Technology and Economic Development in Underserved Areas; Sustainable Public Access Points; Lowering Barriers to Access through New Product Development; Marketing to and Content for Underserved Populations; Rural Communities—Targeted Solutions; and Workforce Development—Training and Education.

Agenda:

7:30–8:30 a.m. Registration, Lobby
8:30–9:50 a.m. Breakout Sessions, Various Rooms
9:50–10:00 a.m. Break
10:15–10:30 a.m. Secretary Daley, Remarks, Main Auditorium
10:30–12:30 a.m. Roundtable, Audience Questions, Main Auditorium
12:30–12:40 p.m. Secretary Daley, Closing, Main Auditorium

The agenda is subject to change. For current agenda information, please see the National Telecommunications and Information Administration's website at http://www.ntia.doc.gov/ntiahome/digitaldivide/summit/.

Public Participation: The Digital Divide Summit is open to the public and physically accessible to people with disabilities. To enter the Commerce Department building, you must have photo identification available and/or a U.S. Government building pass if applicable. To facilitate entry, you should also bring your registration form with you, if available. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Sarah Maloney, NTIA, U.S. Department of Commerce, at least five (5) working days prior to the Summit, at either telephone number (202) 482–1835 or electronic mail at <smaloney@ntia.doc.gov>.

Registration: Information about paper and electronic registration for the Digital Divide Summit will be available on the National Telecommunications and Information Administration website at http://www.ntia.doc.gov/ntiahome/digitaldivide/summit/. Or contact Jeffrey Joyner, NTIA, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4713, Washington, D.C. 20230; telephone (202) 482–1816; facsimile (202) 501–8013; or electronic mail <digitaldivide@ntia.doc.gov>. Please indicate on the registration form which breakout session you wish to attend. In addition, space is provided at the end of the registration material if you would like to share a description of activities you are undertaking on ideas you have to address the digital divide. You can also raise questions or concerns that relate to the topic. We will collect and distribute these ideas and questions to Summit participants.

National Telecommunications and Information Administration.

Kathy D. Smith,

Acting Chief Counsel.

[FR Doc. 99–29028 Filed 11–4–99; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Cambodian Labor Law and Standards Pursuant to the U.S.-Cambodia Bilateral Textile Agreement

November 3, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice concerning Cambodian labor law and standards.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice and letter to the Commissioner of Customs published in the **Federal Register** on February 8, 1999 (see 64 FR 6050) outlined the bilateral textile agreement of January 20, 1999 in which the Governments of the United States and Cambodia agreed to limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported to the United States during three one-year periods beginning on January 1, 1999 and extending through December 31, 2001.

Pursuant to the bilateral textile agreement, the United States must make a determination by December 1, 1999 as to whether working conditions in the Cambodian textile and apparel sector substantially comply with Cambodian labor law and internationally recognized core labor standards. If the United States makes a positive determination, textile and apparel specific limits will be increased for the subsequent agreement year.

Anyone wishing to comment or provide data or information regarding this matter is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Becky Geiger. The deadline for receipt of comments is November 19, 1999.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption to the rulemaking provisions contained in 5 U.S.C.553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29161 Filed 11–3–99; 2:23 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of Fort Chaffee, Arkansas

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality, the Army has prepared an FEIS for the Disposal and Reuse of Fort Chaffee, Arkansas. The approved 1995 base closure and realignment actions required by the Base Closure and Realignment Act of 1990 (Pub. L. 101–510), and subsequent actions in compliance with this law, mandated the closure of Fort Chaffee. It is Department of Defense (DoD) policy to dispose of property no longer needed by DoD. Consequently, as a result of the mandated closure of Fort Chaffee, the Army is disposing of excess property at Fort Chaffee.

DATES: The review period will end December 6, 1999.

ADDRESSES: Questions and/or written comments regarding the FEIS, or a request for a copy of the document may be directed to Mr. Jim Ellis, Little Rock District, U.S. Army Corps of Engineers (ATTN: CESWL–ET–WD), P.O. Box 867, Little Rock, Arkansas 72203.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Ellis at (501) 324–5033 or by telefax at (501) 324–5605.

SUPPLEMENTARY INFORMATION: The FEIS analyzes three disposal alternatives: (1) The no action alternative, which entails maintaining the property in caretaker status after closure; (2) the encumbered disposal alternative, which entails transferring the property to future owners with Army-imposed limitations, or encumbrances, on the future use of the property; and (3) the unencumbered disposal alternative, which entails transferring the property to future owners with fewer or no Army-imposed restrictions on the future use of the property. The preferred action identified in this FEIS is encumbered disposal of excess property at Fort Chaffee. Based upon the analysis contained in the FEIS, encumbrances and deed restrictions associated with the Army's disposal actions for Fort Chaffee will be mitigation measures.

Planning for the reuse of the property to be disposed of is a secondary action resulting from closure. The local community has established the Fort Chaffee Redevelopment Authority (FCRA) to produce a reuse development plan for the surplus property. The impacts of reuse are evaluated in terms of land use intensities. This reuse analysis is based upon implementing one of three reuse alternatives, all of which are based upon the FCRA reuse plan. The Army has not selected one of these three reuse alternatives as the preferred action. Selection of the preferred reuse plan will be made by the Fort Chaffee Public Trust, a follow-on organization to the FCRA.

Copies of the FEIS have been forwarded to the Environmental Protection Agency (EPA), other Federal, state and local agencies; public officials; and organizations and individuals who previously provided substantive comments to the DEIS. Copies of the FEIS are available for review at the following libraries: Arkansas River Valley Regional Library, 501 N Front Street, Dardanelle, Arkansas 72834; Charleston Public Library, 510 Main Street, Charleston, Arkansas 72933; Clarksville Public Library, 2 Taylor Circle, Clarksville, Arkansas 72830; Franklin County Library, 407 W. Market, Ozark, Arkansas 72949; Fort Smith Public Library, 61 S 8th Street, Fort Smith, Arkansas 72901; Gattis—Logan County Library, 100 E. Academy, Paris, Arkansas 72855; Logan County Library, 419 N. Kennedy Street, Booneville, Arkansas 72927, Sebastion County Library, 18 North Adair, Greenwood, Arkansas 72936; Van Buren Public Library, 111 N. 12th Street, Van Buren, Arkansas 72956; Yell County Library, 902 Atlanta Street, Danville, Arkansas 72833; and Little Rock District, Army Corps of Engineers, 700 West Capitol, Little Rock, Arkansas 72201. Comments on the FEIS will be used in preparing the record of Decision for the Army action.

Dated: November 1, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 99–28992 Filed 11–4–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Supplemental Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the Disposal of Utility Systems at Sierra Army Depot (SIAD), California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the Supplemental EA and FNSI for the proposed action evaluated by this Supplemental EA to dispose of Sierra Army Depot (SIAD) utility systems and the child development center (CDC) (property made available by the realignment of SIAD) in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The EA supplements the February 1998 EA for the Disposal and Reuse of the BRAC parcels at SIAD.

DATES: Submit comments on or before November 22, 1999.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. Glen Coffee, U.S. Army Corps of Engineers, Mobile District, ATTN: CESAM–PD–E, 109 St. Joseph Street, Mobile, Alabama 36602.

FOR FURTHER INFORMATION CONTACT: Mr. Glen Coffee by facsimile at (334) 690–2721.

SUPPLEMENTARY INFORMATION: The proposed action is to dispose of SIAD's utility systems and the CDC (building P–172) by conveyance to the Lassen County Local Reuse Authority (LRA). The Army proposes to dispose of SIAD's utility systems for electrical power distribution, potable water production, treatment, and wastewater collection. The CDC lies within the Herlong Parcel. The Herlong Parcel was addressed in the February 1998 EA as excess property to be conveyed to the Lassen County LRA. The LRA may dispose of the utility systems to the Herlong Utilities Cooperative for operation and maintenance and transfer the CDC to the Susanville Indian Rancheria.

Alternatives examined in the Supplemental EA include conveyance, long-term lease, and no action. Under the conveyance alternative (preferred alternative) the Army would transfer its utility systems to the Lessen County LRA. The Army would retain ownership and responsibility only for those utility components located within retained buildings and facilities. Under the long-term lease alternative, the Army would retain ownership of the utility systems, but would transfer operation and maintenance responsibilities to a private entity. The no action alternative would consist of the Army's retention of all of its excess property.

Based on the analysis of the EA, it has been determined that implementation of the proposed action will have no significant direct, indirect, or cumulative impacts on the quality of the natural or human environment. Because no significant environmental impacts will result from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

The Army will not initiate the proposed action for 15 days following the completion of the EA and FNSI and publication of a public notice in a local newspaper. This EA is available for review at the following repositories: Lassen Community College Library, Highway 139, P.O. Box 3000, Susanville, CA 96130; Lassen County Public Works, 707 Nevada Street, Suite 2, Susanville, CA 96130; and the Washoe County Library, Downtown Branch, 301 South Center Street, Reno NV 89501.

Dated: November 1, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 99–28993 Filed 11–4–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Commission on Mathematics and Science Teaching for the 21st Century; Meeting

AGENCY: National Commission on Mathematics and Science Teaching for the 21st Century, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Commission on Mathematics and Science Teaching for the 21st Century (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the general public of their opportunity to attend.

DATE AND TIME: Monday, November 29, 1999, from 3:30 to approximately 6:30 p.m. and Tuesday, November 30 from 8:30 a.m. to adjournment at approximately 4:30 p.m.

ADDRESS: The Washington Hilton and Towers, International Ballroom West, 1919 Connecticut Avenue, NW, Washington, DC 20009, telephone: (202) 483–3000, fax: (202) 232–0438.

FOR FURTHER INFORMATION CONTACT: Dr. Linda P. Rosen, Executive Director, The National Commission on Mathematics and Science Teaching for the 21st Century, US Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202, telephone: (202) 260–8229, fax: (202) 260–7216.

SUPPLEMENTARY INFORMATION: The National Commission on Mathematics and Science Teaching for the 21st Century was established by the Secretary of Education and is governed by the provisions of the Federal Advisory Committee Act (FACA) (P.L. 92–463, as amended; 5 U.S.C.A. Appendix 2). The Commission was established to address the pressing need to significantly raise student achievement in mathematics and science by focusing on the quality of mathematics and science instruction in K–12 classrooms nationwide. The Commission will develop a set of recommendations with a corresponding, multifaceted action strategy to improve the quality of teaching in mathematics and science.

The meeting of the Commission is open to the public. The proposed agenda will focus on (1) What is known about effective teaching that leads to high levels of mathematical and scientific understanding among all students, and (2) What it takes to enable teachers to teach in this way. The proposed agenda will include both plenary sessions and presentations.

Space may be limited and you are encouraged to register if you plan to attend. You may register through the Internet at America_Counts@ed.gov or Jamila_Rattler@ed.gov. Please include your name, title, affiliation, complete address (including e-mail, if available), telephone and fax numbers. If you are unable to register through the Internet, you may fax your registration information to The National Commission on Mathematics and Science Teaching for the 21st Century at (202) 260–7216 or mail to The National Commission on Mathematics and Science Teaching for the 21st Century, US Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202. The registration deadline is November 22, 1999. Any individual who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Jamila Rattler at (202) 260–8229 by no later than November 17, 1999. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records will be kept of all Commission proceedings, and will be available for public inspection at The National Commission on Mathematics and Science Teaching for the 21st Century, 400 Maryland Avenue, SW, Room 6W252 from the hours of 8:30 a.m. to 5:00 p.m. weekdays, except Federal holidays.

Dated: October 27, 1999.

Marshall S. Smith,

Acting Deputy Secretary.

[FR Doc. 99–28839 Filed 11–4–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Draft Supplemental Environmental Impact Statement for the National Ignition Facility Project Specific Analysis Portion of the Stockpile Stewardship and Management Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Availability and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Supplemental Environmental Impact Statement (SEIS) for the National Ignition Facility(NIF) Project Specific Analysis portion (Volume III, Appendix I) of the Stockpile Stewardship and Management Programmatic Environmental Impact Statement (SSM PEIS) DOE/EIS–0236–S1 for public review and comment.

DATES: Written comments on the Draft NIF SEIS are invited from the public during the comment period which ends December 20, 1999. Comments must be postmarked by December 20, 1999, to ensure consideration; late comments will be considered to the extent practicable. The DOE will use the comments received to help prepare the Final SEIS.

ADDRESSES: To submit comments in writing to DOE and for additional information contact: Richard Scott, Document Manager, U.S. Department of Energy, L–293, P.O. Box 808, Livermore, CA 94550. Mr. Scott may also be contacted by telephone (925) 423–3022, facsimile (925) 424–3755, or toll-free: (877) 388–4930. Comments may also be sent to the e-mail address richard.scott@oak.doe.gov.

Requests for copies of the Draft NIF SEIS should be addressed to the DOE Oakland Operations Office, Energy Information Center, 1st floor in the North Tower of the Federal Building at 1301 Clay Street in Oakland, CA, (510) 637–1762. The Draft NIF SEIS is available under the NEPA Analysis

Module of the DOE NEPA Web Site at http://tis.eh.doe.gov/nepa/.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Ms. Borgstrom may be contacted by calling (202) 586–4600 or by leaving a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Draft NIF SEIS was prepared pursuant to a Joint Stipulation and Order approved and entered as an order of the U.S. District Court for the District of Columbia on October 27, 1997, in partial settlement of the lawsuit, *Natural Resources Defense Council [NRDC]* v. *Richardson*, Civ. No. 97–936 (SS) (D.D.C.). In that Joint Stipulation and Order, DOE agreed to prepare an SEIS evaluating the reasonably foreseeable significant adverse environmental impacts of continuing to construct and of operating NIF at Lawrence Livermore National Laboratory (LLNL) with respect to any potential or confirmed contamination in the area by hazardous, toxic, and/or radioactive materials.

Availability of Draft SEIS

DOE has distributed copies of the Draft NIF SEIS to appropriate Congressional members and committees, the State of California, local governments, other federal agencies, and other interested parties. The Draft NIF SEIS is also available for public review and copying at the following locations: DOE Oakland Operations Office, Energy Information Center, 1st floor in the North Tower of the Federal Building at 1301 Clay Street in Oakland, CA, (510) 637–1762; Lawrence Livermore National Laboratory, East Gate Visitors Center on Greenville Road in Livermore CA, (925) 424–4026; and DOE's Freedom of Information Reading Room, Rm. 1E–190, 1000 Independence Avenue, SW, Washington, DC, (202) 586–3142.

DOE will hold several public meetings to discuss the Draft NIF SEIS, as well as for submitting prepared statements on the Draft NIF SEIS: Wednesday, December 1, 1999, at 2:00 p.m. at the U.S. Department of Energy, 1000 Independence Avenue, SW, Room 6E–069, Washington, DC; and Wednesday, December 8, 1999, at 3:00 p.m. and 6:30 p.m. at LLNL, 7000 East Avenue, Building 312, South Cafeteria Multi-Purpose Room, (located off East Avenue at the intersection of South Gate Drive), Livermore CA.

After the public comment period, which ends December 20, 1999, the Department will consider and respond to the comments received, revise the Draft NIF SEIS as appropriate, and issue a Final NIF SEIS. The Department will consider the analyses in the Final NIF SEIS in making a final Record of Decision.

Issued in Washington, DC on October 25, 1999.

Jonathan S. Ventura,

Acting Executive Assistant, Office of Defense Programs.

[FR Doc. 99–29016 Filed 11–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Continuation of Solicitation for the Office of Science Financial Assistance Program—Notice 00–01

AGENCY: U.S. Department of Energy.

ACTION: Annual notice of continuation of availability of grants and cooperative agreements.

SUMMARY: The Office of Science of the Department of Energy hereby announces its continuing interest in receiving grant applications for support of work in the following program areas: Basic Energy Sciences, High Energy Physics, Nuclear Physics, Computational and Technology Research, Fusion Energy Sciences, and Biological and Environmental Research. On September 3, 1992 (57 FR 40582), DOE published in the **Federal Register** the Office of Energy Research Financial Assistance Program (now called the Office of Science Financial Assistance Program), 10 CFR Part 605, Final Rule, which contained a solicitation for this program. Information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures are specified in 10 CFR Part 605.

DATES: Applications may be submitted at any time in response to this Notice of Availability.

ADDRESSES: Applications must be sent to: Director, Grants and Contracts Division, Office of Science, SC–64, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. When preparing applications, applicants should use the Office of Science Financial Assistance Program Application Guide and Forms located on the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html. Applicants without Internet access may call 301–903–5212 for information.

SUPPLEMENTARY INFORMATION: This Notice is published annually and remains in effect until it is succeeded by another issuance by the Office of Science. This annual Notice 00–01 succeeds Notice 99–01 which was published November 12, 1998.

It is anticipated that approximately $400 million will be available for grant and cooperative agreement awards in FY 2000. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this Notice.

In addition, the following program descriptions are offered to provide more in-depth information on scientific and technical areas of interest to the Office of Science:

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. The science divisions and their objectives are as follows:

(a) Materials Sciences

The objective of this program is to increase the understanding of phenomena and properties important to materials behavior that will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, condensed matter physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

Program Contact: (301) 903–3427.

(b) Chemical Sciences

The objective of this program is to expand, through support of basic research, knowledge of various areas of chemistry, chemical engineering and atomic molecular and optical physics with a goal of contributing to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas where research is supported include atomic molecular and optical physics; physical, inorganic and organic chemistry; chemical physics; photochemistry; radiation chemistry; analytical chemistry; separations science; actinide chemistry; and chemical engineering sciences.

Program Contact: (301) 903–5804.

(c) Engineering Research

This program's objectives are: (1) to extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output performance, and environmental quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies. Long-term research topics of current interest include: foundations of bioprocessing of fuels and energy related wastes, micro- and nano-scale energy transport, fracture mechanics, fundamental studies of multiphase flows and heat transfer, robotics and intelligent machines, nanotechnology, and diagnostics and control for plasma processing of materials.

Program Contact: (301) 903–5822.

(d) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of geologic processes related to energy, and related to environmental quality. The emphasis is on the upper levels of the earth's crust and the focus is on geophysics, geomechanics, hydrogeology and geochemistry of rock-fluid systems and interactions emphasizing processes taking place at the atomic and molecular scale. Specific topical areas receiving emphasis include: high resolution geophysical imaging; rock physics, physics of fluid transport, and fundamental properties and interactions of rocks, minerals, and fluids. The resulting improved understanding and knowledge base will form the foundation for utilization of the Nation's energy resources in an environmentally acceptable fashion.

Program Contact: (301) 903–5822.

(e) Energy Biosciences

The primary objective of this program is to generate the fundamental understanding of biological mechanisms in the areas of botanical and microbiological sciences that will support biotechnological developments related to DOE's mission. The research serves as the basic information foundation with respect to an environmentally responsible renewable resource production for fuels and chemicals, microbial conversions of renewable materials and biological systems for the conservation of energy. Research focusing on the fundamental mechanistic biosciences underlying carbon management is a particular emphasis. This office has special requirements for the submission of preapplications, when to submit, and the length of the applications. Applicants are encouraged to contact the office regarding these requirements.

Program Contact: (301) 903–2873.

2. High Energy and Nuclear Physics

This program supports about 90% of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) High Energy Physics

The primary objectives of this program are to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents, and to understand the nature and relationships among the fundamental forces of nature. The research falls into three broad categories: experimental research, theoretical research, and technology R&D in support of the high energy physics program.

Program Contact: (301) 903–3624.

(b) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter.

Program Contact: (301) 903–3613.

3. Computational and Technology Research

This program fosters and supports fundamental research in advanced computing research (applied mathematics, computer science and networking), and operates supercomputer, networking, and related facilities to enable the analysis, modeling, simulation, and prediction of complex phenomena important to the Department of Energy.

(a) Mathematical, Information, and Computational Sciences

This subprogram supports a spectrum of fundamental research in applied mathematical sciences, computer science, and networking from basic through prototype development. Results of these efforts are used to form partnerships with users in scientific disciplines to validate the usefulness of the ideas and to develop them into tools. Testbeds on important applications for DOE are supported by this subprogram. Areas of particular focus are:

Applied Mathematics

Research on the underlying mathematical understanding and numerical algorithms to enable effective description and prediction of physical systems such as fluids, magnetized plasmas, or protein molecules. This includes, for example, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

Computer Science

Research in computer science to enable large scientific applications through advances in massively parallel computing such as very lightweight operating systems for parallel computers, distributed computing such as development of the Parallel Virtual Machine (PVM) software package which has become an industry standard, and large scale data management and visualization. The development of new computer and computational science techniques will allow scientists to use the most advanced computers without being overwhelmed by the complexity of rewriting their codes every 18 months.

Networking

Research in high performance networks and information surety required to support high performance applications—protocols for high performance networks, methods for measuring the performance of high performance networks, and software to enable high speed connections between high performance computers and networks. The development of high speed communications and collaboration technologies will allow scientists to view, compare, and integrate data from multiple sources remotely.

Program Contact: (301) 903–5800.

4. Fusion Energy Sciences

The mission of the Fusion Energy Sciences program is to advance plasma science, fusion science, and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source. This program is supported by the Office of Fusion Energy Sciences (OFES), which fosters both applied and basic research and emphasizes international collaboration to accomplish this mission.

(a) Research Division

This Division seeks to develop the physics knowledge base needed to advance the Fusion Energy Sciences program toward its goals. Research into physics issues associated with medium to large scale confinement devices is essential to studying conditions relevant to the production of fusion energy. Experiments on these scale of devices are used to explore the limits of specific confinement concepts, as well as study associated physical phenomena. Specific areas of interest include: (1) The production of increased plasma densities and temperatures, (2) the understanding of the physical laws governing plasma energy of high plasma pressure, (3) the investigation of plasma interaction with radio frequency waves, and (4) the study and control of particle transport and exhaust in plasmas.

Research is also carried out in the following areas: (1) Basic plasma science research directed at furthering the understanding of fundamental processes in plasmas; (2) improving the theoretical understanding of fusion plasmas necessary for interpreting results from present experiments and the planning and design of future confinement devices, (3) obtaining the critical data on plasma properties, atomic physics and new diagnostic techniques for support of confinement experiments, (4) supporting exploratory research on innovative confinement concepts, and (5) carrying out research on issues that support the development of Inertial Fusion Energy, for which target development is carried out by the Department of Energy's Defense Programs.

Program Contact: (301) 903–4095.

(b) Facilities and Enabling Technologies Division

This Division is responsible for overseeing the facility operations and enabling research and development activity budgets within the OFES. Grant program opportunities are in the enabling research and development activity. (Grants for scientific use of the facilities operated/maintained by this Division should be addressed to the Research Division.) The enabling technologies program supports the advancement of fusion science in the nearer-term by carrying out research on technological topics that: (1) Enable domestic experiments to achieve their full performance potential and scientific research goals, (2) permit scientific exploitation of the performance gains being sought from physics concept improvements, (3) allow the US to enter into international collaborations gaining access to experimental conditions not available domestically, and (4) explore the science underlying these technological advances.

The enabling technologies program supports pursuit of fusion energy science for the longer-term by conducting research aimed at innovative technologies, designs and materials to point toward an attractive fusion energy vision and affordable pathways for optimized fusion development.

Program Contact: (301) 903–306.

5. Biological and Environmental Research Program

For over 50 years the Biological and Environmental Research (BER) Program has been investing to advance environmental and biomedical knowledge connected to energy. The BER program provides fundamental science to underpin the business thrusts of the Department's strategic plan. Through its support of peer-reviewed research at national laboratories, universities, and private institutions, the program develops the knowledge needed to identify, understand, and anticipate the long-term health and environmental consequences of energy production, development, and use.

(a) Life Sciences Research

Research is focused on utilizing unique DOE resources and facilities to develop fundamental biological information and advanced technologies for understanding and mitigating the potential health effects of energy development, energy use, and waste cleanup. The objectives are: (1) To create and apply new technologies and resources in mapping, sequencing, and information management for characterizing the molecular nature of the human genome; (2) to develop and support DOE national user facilities for use in fundamental structural biology; (3) to use model organisms to understand human genome organization, human gene function and control, and the functional relationships between human genes and proteins; (4) to characterize and exploit the genomes and diversity of microbes with potential relevance for energy, bioremediation, or global climate; (5) to understand and characterize the risks to human health from exposures to low levels of radiation and chemicals; (6) to develop novel technologies for high throughput determination of protein structure; and (7) to anticipate and address ethical, legal, and social implications arising from genome research.

Program Contact: (301) 903–5468.

(b) Medical Applications and Measurement Science

The research is designed to develop beneficial applications of nuclear and other energy-related technologies for medical diagnosis and treatment. The research is directed at discovering new applications of radiotracer agents for medical research as well as for clinical diagnosis and therapy. A major emphasis is placed on application of the latest concepts and developments in genomics, structural biology, computational biology, and instrumentation. Much of the research seeks breakthroughs in noninvasive imaging technologies such as positron emission tomography. The measurement science activities focus on research in the basic science of chemistry, physics and engineering as applied to bioengineering.

Program Contact: (301) 903–3213.

(c) Environmental Remediation

The research is primarily focused on the fundamental biological, chemical, geological, and physical processes that must be understood for the development and advancement of new, effective, and efficient processes for the remediation and restoration of the Nation's nuclear weapons production sites. Priorities of this research are bioremediation and operation of the William R. Wiley Environmental Molecular Sciences Laboratory (EMSL). Bioremediation activities are centered on the Natural and Accelerated Bioremediation Research (NABIR) program, a basic research program focused on determining the conditions under which bioremediation will be a reliable, efficient, and cost-effective technique. This subprogram also includes basic research in support of pollution prevention, sustainable technology development and other fundamental research to address problems of environmental contamination.

Program Contact: (301) 903–3281.

(d) Environmental Processes

The program seeks to understand the basic chemical, physical, and biological processes of the Earth's atmosphere, land, and oceans and how these processes may be affected by energy production and use. The research is designed to provide the data that will enable an objective assessment of the potential for, and consequences of, global warming. The program is comprehensive with an emphasis on understanding the radiation balance from the surface of the Earth to the top of the atmosphere (including the role of clouds) and on enhancing the quantitative models necessary to predict possible climate change at the global and regional scales.

The Climate Change Technology Initiative (CCTI) seeks the understanding necessary to exploit the biosphere's natural processes to enhance the sequestration of atmospheric carbon dioxide in terrestrial systems and the ocean. The CCTI includes research to identify and understand the environmental and biological factors or processes that limit the sequestration of carbon in these systems, and to develop approaches for overcoming such limitations to enhance sequestration. The research includes studies on terrestrial and ocean carbon sequestration, including the role of marine microorganisms and other types of terrestrial ecosystems.

Program Contact: (301) 903–3281.

6. Experimental Program to Stimulate Competitive Research (EPSCoR)

The objective of the EPSCoR program is to enhance the capabilities of EPSCoR states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. This program addresses research needs across all of the Department of Energy research interests. Research supported by the EPSCoR program is concerned with the same broad research areas addressed by the Office of Science programs that are described above. The EPSCoR program is restricted to applications which originate in eighteen states (Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming) and the commonwealth of Puerto Rico. It is anticipated that only a limited number of new competitive research grants will be awarded under this program due to prior commitments to ongoing EPSCoR grant projects.

Program Contact: (301) 903–3427.

Issued in Washington, DC on October 18, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–29018 Filed 11–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Nonproliferation and National Security, Nonproliferation and National Security Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice announces a meeting of the Nonproliferation and National Security Advisory Committee. The Federal Advisory Committee Act, 5 U.S.C. App. 2 § 10(a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 30, 1999, 9:00 a.m. to 5:00 p.m.; Wednesday, December 1, 1999, 9:00 a.m. to 5:00 p.m.; and Thursday, December 2, 1999, 9:00 a.m. to 12:00 noon.

ADDRESSES: Department of Energy, Room 4A104, Forrestal Building, 1000 Independence Avenue, SW, Washington D.C. 20585.

Note: Members of the public are requested to contact Leslie Pitts at (202) 586–7994, in advance of the meeting (if possible), to expedite their entry to the Forrestal Building on the day of the public meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Waldron (202–586–2400), Designated Federal Officer, Office of Nonproliferation Research and Engineering (NN–20), Office of Nonproliferation and National Security, 1000 Independence Avenue, SW, Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: The purpose of the Committee: To provide the Secretary of Energy and the Assistant Secretary for Nonproliferation and National Security with advice, information, and recommendations on national research needs and priorities.

Purpose of the Meeting: To discuss the nonproliferation and national security research, development, and policy programs.

Tentative Agenda

Tuesday, November 30, 1999

9:00 a.m.–11:00 a.m. Introduction of the members of the Committee. Discussion of the role of DOE advisory committees in general and this Committee in particular.

11:00 a.m.–12:00 p.m. Public comment period (oral presentations are limited to 10 minutes).

Tuesday, November 30, 1999

1:00 p.m.–5:00 p.m. Closed Meeting

Wednesday, December 1, 1999

9:00 p.m.–12:00 p.m. Closed Meeting
12:00 p.m.–1:00 p.m. Working Lunch
1:00 p.m.–5:00 p.m. Closed Meeting

Thursday, December 2, 1999

9:00 a.m.–12:00 p.m. Closed Meeting

Public Participation: The meeting on the morning of November 30, 1999, is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in the Chairman's judgement, facilitate the orderly conduct of business. Persons wishing to attend the open meeting should contact Leslie Pitts at (202) 586–7994 by November 24, 1999 to arrange for visitor passes to the Forrestal Building.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact Leslie Pitts at the phone number given above. Requests must be received before 3:00 p.m. (e.s.t.) Wednesday, November 24, 1999. Reasonable provisions will be made to include the presentation during the public comment period. It is requested that oral presenters provide 25 copies of their statements at the time of their presentations.

Written statements pertaining to agenda items may also be submitted prior to the meeting. Written statements must be received by the Designated Federal Officer at the address shown above before 3:00 p.m. (e.s.t.) Wednesday, November 24, 1999 to assure that they are considered by the Committee members during the meeting.

Closed Meeting: In the interest of national security, after the public meeting on the morning of November 30, 1999, the remainder of the meeting will be closed to the public, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 10 (d), and the Federal Advisory Committee Management regulation, 41 C.F.R. § 101–6.1023, "Procedures for Closing an Advisory Committee Meeting", which incorporate by reference the Government in Sunshine Act, 5 U.S.C. § 552b, which, at §§ 552b(c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters are discussed.

Minutes: Minutes of the open portion of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, Room 1E–190, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, D.C. on October 29, 1999

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer

[FR Doc. 99–29020 Filed 11–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Monday, December 6 1999, 10:30 a.m. to 5:30 p.m.; and Tuesday, December 7, 1999 8:00 a.m. to 12:30 p.m.

ADDRESSES: Hyatt Regency Crystal City 2799 Jefferson Davis Highway Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, S.W. Washington DC 20585, Telephone Number 202.586.0136, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Monday, December 6, 1999

Welcome remarks
Nuclear Energy Research Initiatives
  DOE Laboratory Update
Report of NERAC Subcommittees
  Accelerator Transmutation of Waste

Tuesday, December 7, 1999

Report of NERAC Subcommittees
New NERAC Study Panels
Public comment period

Public Participation: The day and a half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on November 1, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–29019 Filed 11–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of International Affairs; U.S.-Africa Energy Ministers Conference

AGENCY: Department of Energy.

ACTION: Notice of upcoming conference.

SUMMARY: The U.S. Department of Energy and the City of Tucson, Arizona will co-sponsor the U.S.-Africa Energy Ministers Conference: A Partnership for the 21st Century, in Tucson, Arizona. The focus of the three-day Conference will be in the creation of a positive environment for investment in Africa's energy infrastructure, creating new markets for oil and gas development and promoting technologies that will foster economic development and engineering growth in a way which protects Africa's environment for the 21st century.

DATES: The three-day conference will be held from December 13–15, 1999.

Attendees: Approximately 600 participants are expected to attend the event, including African energy ministers, international organizations, private sector representatives, regional African organizations and academic institutions.

FOR FURTHER INFORMATION CONTACT: For further information and to register on line, please visit our website on *www.africaenergy.org.* You may also contact Soma Martin, a representative with SOBRAN Inc., on 703–352–9511, for further information regarding the conference. For inquiries regarding exhibits for industry displays, please contact Mary Okoye in Tucson, Arizona by telephone on 520–791–4204, or by email at *MOkoye1@mail.ci.tucson.az.us.*

SUPPLEMENTARY INFORMATION: The meeting will be the first continent-wide gathering of Africa energy ministers. Initial plans for the conference were announced in April as part of Secretary of Energy Richardson's Africa Energy Initiative following President Clinton's U.S.-Africa Partnership to promote democracy, good governance, human rights, trade and investment, and global integration.

Issued in Washington, D.C. on November 1, 1999.

David L. Goldwyn,

Assistant Secretary for International Affairs.

[FR Doc. 99–29017 Filed 11–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–008]

K N Interstate Gas Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

November 1, 1999.

Take notice that on October 21, 1999, K N Interstate Gas Transmission Co. (KNI), requested that the Commission reconsider, or in the alternative, grant rehearing of its October 6 Letter Order, and filed tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1–A and First Revised Volume No. 1–C, set out below. However, KNI has also requested reconsideration or rehearing of the October 6, 1999 Letter Order mandating this filing.

The following tariff sheets to become effective August 1, 1998:

Third Revised Volume No. 1–A

Fourth Sub. Second Revised Sheet No. 4A
Fourth Sub. Second Revised Sheet No. 4C
Fourth Sub. Fifth Revised Sheet No. 4D

The following tariff sheets to become effective January 1, 1999:

Third Revised Volume No. 1–A

Third Sub. Sixth Revised Sheet No. 4D

The following tariff sheets to become effective June 1, 1999:

Third Revised Volume No. 1–A

Second Sub. Third Revised Sheet No. 4A
Second Sub. Third Revised Sheet No. 4C
Second Sub. Seventh Revised Sheet No. 4D

First Revised Volume No. 1–C

Second Sub. Twelfth Revised Sheet No. 4

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28977 Filed 11–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–331–011]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 1, 1999.

Take notice that on October 21, 1999, National Fuel Gas Supply Corporation (National Fuel), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Original Sheet No. 13, with a proposed effective date of November 1, 1999.

National Fuel states that the filing is made to implement firm storage agreements between National Fuel and National Fuel Resources, Inc. (NFR), TXU Energy Trading Company (TXU), and Engage U.S., L.P. (Engage). National Fuel states that each of these agreements provides for negotiated rates pursuant to GT&C Section 17.2 of National Fuel's tariff and the Commission's policy regarding negotiated rates. National Fuel states that under its agreements with NFR, TXU and Engage, firm storage service would be provided under its FSS Rate Schedule at a formula rate based upon the difference between the price of gas at Niagara, as published by Gas Daily, applicable at the time of injection, and such price applicable at the time of withdrawal. The specific formula is set forth in the amendments to the agreements, which accompany National Fuel's tariff filing.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28976 Filed 11–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–24–001]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

November 1, 1999.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing in the referenced docket on October 21, 1999 a revised tariff sheet to its FERC Gas Tariff, Third Revised Volume No. 1. The effective date for the revised tariff sheet is December 1, 1999.

Transco states that its Cash Out Modification filing of October 13, 1999 in Docket No. RP00–24 (October 13 Filing) inadvertently left out part of a phrase in the General Terms and Conditions Section 37.1(b) that describes how the imbalance percentage for a shipper is calculated. The imbalance percentage calculation process is currently in Transco's tariff and not among the cash out provisions that Transco proposes to modify in its October 13 filing. The purpose of the filing is to supplement the October 13 Filing to reflect the correct imbalance percentage calculation.

In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas. In addition, Transco is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be riewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28978 Filed 11–4–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1384–026, et al.]

Morgan Stanley Capital Group, et al.; Electric Rate and Corporate Regulation Filings

October 29, 1999.

Take notice that the following filings have been made with the Commission:

1. Morgan Stanley Capital Group, Inc., Niagara Mohawk Energy Marketing, Inc. and North American Energy Conservation, Inc.

[Docket Nos. ER94–1384–026, ER96–2525–013 and ER94–152–023]

Take notice that on October 26, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

2. Exact Power Co., Inc.

[Docket No. ER97–382–011]

Take notice that on October 27, 1999, Exact Power Co. filed its quarterly report for the quarter ending September 30, 1999 for information only.

3. PECO Energy Company

[Docket No. ER00–229–000]

Take notice that on October 26, 1999, PECO Energy Company filed their quarterly report for the quarter ending September 30, 1999.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. ISO New England Inc.

[Docket No. ER00–244–000]

Take notice that on October 27, 1999, ISO New England Inc. filed their quarterly report for the quarter ending September 30, 1999.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company, Cadillac Renewable Energy LLC and Indeck-Olean Limited Partnership

[Docket Nos. ER00–249–000, ER00–250–000 and ER00–251–000]

Take notice that on October 26, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. DTE-CoEnergy, L.L.C.

[Docket No. EC00–14–000]

Take notice that on October 25, 1999, DTE-CoEnergy, L.L.C., tendered for filing an application for authorization to transfer a master sales agreement between itself and Green Mountain Energy Resources, L.L.C., to DTE Energy Trading, Inc.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. EC00–15–000]

Take notice that on October 26, 1999, Carolina Power & Light Company (CP&L), tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization to implement a corporate reorganization involving the creation of a new holding company to be known as CP&L Holdings, Inc., that will hold the common stock of CP&L.

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Cherokee County Cogeneration Partners, L.P. v. Duke Electric Transmission, a Division of Duke Energy Corporation

[Docket No. EL00–9–000]

Take notice that on October 27, 1999, Cherokee County Cogeneration Partners, L.P., tendered for filing a complaint against Duke Electric Transmission, a division of Duke Energy Corporation, alleging violations of the Federal Power Act and the Commission's Regulations.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall also be due on or before November 16, 1999.

9. Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc.

[Docket No. ER98–4510–002]

Take notice that on October 26, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc., and it jurisdictional subsidiaries (O&R), tendered for filing a letter requesting that the effective date of the revised tariff sheets, which were filed on August 9, 1999, amending the Consolidated Edison Operating Companies FERC Electric Tariff Original Volume No. 1 (Joint OATT), be deferred to December 1, 1999.

The proposed tariff sheets were filed in compliance with the requirement of the January 27, 1999 order in this proceeding (86 FERC ¶61,063) that Con Edison and O&R establish rates to apply under the Joint OATT in the event that the New York Independent System Operator (NYISO) was not operational by the date of the Con Edison and O&R merger.

In anticipation of a commencement of NYISO operations on November 11, 1999, Con Edison and O&R propose to defer the effective date of the Joint OATT rates.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Energy, Inc.

[Docket No. ER00–204–000]

Take notice that on October 25, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Dynegy Power Marketing, Inc. (DPMI).

A copy of the filing was served upon DPMI.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Energy, Inc.

[Docket No. ER00–205–000]

Take notice that on October 25, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Reliant Energy Services, Inc. (Reliant).

A copy of the filing was served upon Reliant.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Maine Public Service Company

[Docket No. ER00–206–000]

Take notice that on October 25, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with WPS Energy Services Inc.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER00–211–000]

Take notice that on October 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 117, an agreement to provide interconnection and transmission service to Keyspan/Long Island Power Authority (Keyspan). The Supplement provides for a decrease in the annual fixed rate carrying charges.

Con Edison has requested that this decrease take effect as of September 1, 1999.

Con Edison states a copy of this filing has been served by mail upon Keyspan.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER00–212–000]

Take notice that on October 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 130, a facilities agreement with the New York Power Authority (NYPA).

Con Edison has requested that the Supplement take effect as of July 1, 1999.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER00–216–000]

Take notice that on October 25, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Notice of Cancellation of a Service Agreement filed under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Dynegy Marketing and Trade (Dynegy).

PSE states that a copy of the filing was served upon Dynegy Marketing and Trade.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER00–217–000]

Take notice that on October 25, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Notice of Cancellation of a Service Agreement filed under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with NorAm Energy Services, Inc., (NorAm).

PSE states that a copy of this filing was served upon Reliant Energy Services, Inc., (formerly known as NorAm).

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER00–218–000]

Take notice that on October 25, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Notice of Cancellation of a Service Agreement filed under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Pacific Gas & Electric Company (PG&E).

PSE states that a copy of the filing was served upon PG&E.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER00–227–000]

Take notice that on October 26, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges.

Con Edison has requested that this decrease take effect as of August 1, 1999.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: November 15, 1999, in accordance with Standrd paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER00–228–000]

Take notice that on October 26, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with InPOwer Marketing Corp., providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER00–230–000]

Take notice that on October 26, 1999, Florida Power Corporation (Florida Power), tendered for filing a service agreement and a network operating agreement providing for network contract demand transmission service by Florida Power to the City of Tallahassee (Tallahassee) pursuant to its open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on October 27, 1999.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Public Service Corporation

[Docket No. ER00–231–000]

Take notice that on October 26, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with InPOwer Marketing Corp., providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Consolidated Edison Company of New York, Inc.

[Docket No. ER00–226–000]

Take notice that on October 26, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges.

Con Edison has requested that this decrease take effect as of October 1, 1999.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Seminole Electric Cooperative, Inc.

[Docket No. OA97–140–001]

Take notice that on September 30, 1999, Seminole Electric Cooperative, Inc. (Seminole) filed standards of conduct under Order Nos. 889 *et seq.*[1]

Seminole states that it has served a copy of its standards of conduct filing on all parties listed on the service list in this proceeding.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–209–000]

Take notice that on October 25, 1999, Louisville Gas Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing and executed unilateral Service Agreement between the Companies and Southeast Power Administration under the Companies Rate Schedule MBSS.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. White River Electric Association Incorporated

[Docket No. ER00–208–000]

Take notice that on October 25, 1999, White River Electric Association Incorporated (White River), tendered for filing its Letter of Agreement for Sale and Transmission of Emergency Power Between White River Electric Association Incorporated and Yampa Valley Electric Association, Inc. (YVEA Agreement) and Agreement to Allow Coordination Transactions Regarding Transfer of C-a Transmission Line and Substation Between Moon Lake Electric Association, Inc., and White River Electric Association, Inc. (Moon Lake Agreement) pursuant to § 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and 35.12 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.12. White River's filing is available for public inspection at its offices in Meeker, Colorado.

White River requests that the Commission accept the agreements with an effective date of October 26, 1999.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

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[1] Open Access Same-time Information System (Formerly Real-Time Information network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 (November 25, 1997).

David P. Boergers,

Secretary.

[FR Doc. 99–28979 Filed 11–4–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6247–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7157 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements Filed October 25, 1999 Through October 29, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990404, FINAL EIS, NPS, CA, Backcounty and Wilderness Management Plan, General Management Plan Amendment, Joshua Tree National Park, Riverside and San Bernardino Counties, CA, Due: December 06, 1999, Contact: Alan Schmierer (415) 427–1441.

EIS No. 990405, FINAL EIS, NPS, CA, Fort Baker Site, Golden Gate National Recreation Area, Comprehensive Management Plan, Implementation, Marin County, CA, Due: December 06, 1999, Contact: Alan Schmierer (415) 427–1441.

EIS No. 990406, FINAL EIS, AFS, ID, WY, Targhee National Forest Open Road and Open Motorized Trail Analysis, To Implement a new Travel Plan, several counties, ID and Lincoln and Teton Counties, WY, Due: December 06, 1999, Contact: Alan Silker (208) 624–3151.

EIS No. 990407, FINAL EIS, USN, NC, Introduction of the V–22 "Osprey" a new Type of Tiltrotor Aircraft, Replacement or Renovation of the facilities used to house Aircraft, Full Basing at MCAS Cherry Point and/or Partial Basing at both MCAS New River and Cherry Point, COE Section 404 Permit, NC, Due: December 06, 1999, Contact: James Haluska (757) 322–4889.

EIS No. 990408, DRAFT EIS, FHW, PA, Mon/Fayette Transportation Project, Improvements from Uniontown to Brownsville Area, Funding and COE Section 404 Permit, Fayette and Washington Counties, PA, Due: January 07, 2000, Contact: Ronald W. Carmichael, P.E. (717) 221–3461.

EIS No. 990409, FINAL EIS, FTA, OR, WA, OR, South/North Corridor Project, Improvements to the Existing Urban Transportation, Funding, Multnomah, Clackamas and Washington Counties, OR and Clark County, WA, Due: December 06, 1999, Contact: Ross Roberts (503) 797–1756.

EIS No. 990410, DRAFT SUPPLEMENT, DOE, TN, GA, TX, SC, MO, Programmatic EIS-Stockpile Stewardship and Management Project, Reduced Nuclear Weapons Stockpile in the Absence of Underground Testing, Eight Sites: Oak Ridge Reservation (ORR), Savannah River Site (SRS), Kansas City Plant (KCP) Pantex Plant, Los Alamos Nat'l Lab., Lawrence Livermore Nat'l Lab., Sandia Nat'l and Nevada Test Site, Due: December 20, 1999, Contact: Richard Scott (925) 423–3022.

EIS No. 990411, DRAFT EIS, FHW, CA, CA–70 Upgrade in Sutter and Yuba Counties, To Four-Lane Expressway/Freeway, From 0.6 miles South of Striplin Road to 0.3 miles South of McGowan Road Overcrossing, Funding and COE Section 404 Permit, Sutter and Yuba Counties, CA, Due: December 20, 1999, Contact: Robert F. Talley (916) 498–5041.

EIS No. 990412, FINAL EIS, AFS, UT, Brighton Ski Resort Master Development Plan Updated, Implementation, Wasatch-Cache National Forest, Salt Lake City, UT, Due: December 6, 1999, Contact: Steve Scheid (801) 733–2689.

EIS No. 990413, DRAFT EIS, AFS, ID, Salmon River Canyon Project, Implementation, Nez Perce, Payette, Bitterroot and Salmon-Challis National Forests, Idaho County, ID, Due: December 20, 1999, Contact: Bill Shields (208) 983–1950.

EIS No. 990414, DRAFT EIS, NPS, AZ, Chiricahua National Monument, General Management Plan, To Protect Certain National Formations, Known as "the Pinnacles', AZ, Due: January 30, 2000, Contact: Christine Maylath (303) 969–2851.

EIS No. 990415, DRAFT EIS, IBR, CA, Lower Mokelumne River Restoration Program, Implementation, Resource Management Plan, San Joaquin County, CA, Due: January 4, 2000, Contact: Buford Holt (530) 275–1554.

EIS No. 990416, FINAL EIS, FTA, WA, Central Link Light Rail Transit Project, (Sound Transit) Construct and Operate an Electric Rail Transit System, Funding and COE Section 10 and 404 Permits, In the Cities of Seattle, Sea Tac and Tuckwila, King County, WA, Due: December 6, 1999, Contact: Helen Knoll (206) 220–7954.

EIS No. 990417, FINAL EIS, IBR, CA, Programmatic EIS—Central Valley Project Improvement Act (CVPIA) of 1992 Implementation, Central Valley, Trinity, Contra Costa, Alameda, Santa Clara and San Benito Counties, CA, Due: December 6, 1999, Contact: Alan Candish (916) 978–5197.

Amended Notices

EIS No. 990229, DRAFT EIS, AFS, MT, NB, WY, ND, SD, Dakota Prairie Grasslands, Nebraska National Forest Units and Thunder Basin National Grassland, Land and Resource Management Plans 1999 Revisions, Implementation, MT, NB, WY, ND and SD, Due: November 29, 1999, Contact: Pam Gardner (308) 432–0300. Published FR–10–01–99—Review Period Extended. From 11–15–99 to 01–07–2000.

EIS No. 990317, DRAFT EIS, COE, OH, Ashtabula River and Harbor Dredging and Disposal Project, Design, Construction, Operation and Maintenace, Ashtabula River Partnership (ARP), Ashtabula County, OH, Due: October 25, 1999, Contact: John Mahan (440) 964–0277. Published FR 09–10–99—Review Period extended. From 10–25–99 to 11–09–99.

EIS No. 990332, DRAFT EIS, FRC, IL, MI, IN, TriState Pipeline Project, Construction and Docket Nos.: CP99–61–000, CP99–62–000, CP99–63–000 and CP99–64–000, Presidential Permit, IL, IN and MI, Due: January 15, 2000, Contact: Paul McKee (202) 208–1088. Published FR 09–24–99 Review Period Extended. From 11–08–99 to 01–15–2000.

EIS No. 990397, DRAFT EIS, FAA, OH, Cleveland Hopkins International Airport, To Provide Capacity, Facilities, Highway Improvements, and Enhancement to Safety, Funding, Cuyahoga County, OH, Due: December 29, 1999, Contact: Ernest P. Guby (734) 487–7280. Published FR–10–29–99—Correction to Comment Period.

Dated: November 2, 1999.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–29079 Filed 11–4–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6247–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 18, 1999 Through October 22, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1999 (63 FR 17856).

Draft EISs

ERP No. D-AFS-J65314-MT Rating EC2, Flathead National Forest, Swan Lake Ranger District, Meadow Smith Project, Vegetative Treatments and Other Activities to Maintain and Restore Large-Tree Old Grow Forest Characteristics, Lake and Missoula Counties, MT.

Summary: EPA expressed environmental concerns with potential adverse impacts to the watershed from proposed road density.

EPA believes additional monitoring information is needed to fully assess and mitigate all potential impacts of the management actions.

ERP No. D-BLM-G65069-NM Rating EC2, Rio Puerco Resource Management Plan Amendment, Managing Land and Resource for EL Malpais National Conservation Area and Chain of Craters Wilderness Study Area, Lies South of the City of Grants, Cibola County, NM.

Summary: EPA has identified environmental concerns in the areas of mitigation, livestock grazing, water quality, recreation, transportation, cultural resources, wildlife habitat, and environmental justice. EPA requested that these issues be clarified in the final document.

ERP No. D-COE-C30010-NJ Rating EC2, Barnegat Inlet to Little Egg Inlet Hurricane and Storm Damage Protection, Implementation, Long Beach Island, Ocean County, NJ.

Summary: EPA expressed environmental concerns about the potential cumulative impacts associated with this and other related erosion/storm damage protection projects in the area. EPA requested that additional information be presented in the final EIS to address this issue.

ERP No. D-FHW-E40780-NC Rating EC2, US–1 Transportation Improvements, From Sandhill Road (SR–197) to North to Fox Road (SR–1606), Funding and COE Section 404 Permit, City of Rockingham, Richmond County, NC.

Summary: EPA expressed concern regarding purpose and need, alternatives and wetland impacts. EPA requested that these issues be clarified and mitigated as necessary.

ERP No. D-FHW-J40150-ND Rating LO, Interstate 29 Reconstruction Project, Improvements from Rose Coulee to Cass County Road No. 20, Funding, City of Fargo, ND.

Summary: EPA requested additional information and clarification related to project alternatives. The review did not identify and potential impacts requiring substantive changes to the proposal.

ERP No. D-USN-K11103-GU Rating EC2, Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94) for Disposal and Reuse, Implementation, GU.

Summary: EPA expressed concerns about the air modeling data and cumulative impacts analysis. EPA requested that the air quality data be corrected and that additional cumulative impacts analysis be provided in the final document.

Final EISs

ERP No. F-AFS-L65308-ID, Eagle Bird Project Area, Timber Harvesting and Road Construction, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID.

Summary: EPA continues to be concerned that funding for road improvements and obliteration are uncertain. Thus, impacts from the project may not be completely mitigated.

ERP No. F-FHW-F40374-MN, MN-TH-14 Corridor Reconstruction, MN-TH-60 to I-35, Funding and COE Section 404 Permit Issuance, Blue Earth, Waseca and Steele Counties, MN.

Summary: EPA expressed environmental concerns with the completeness of the traffic analysis used in the FEIS and a potential discrepancy in the FEIS regarding the total amount of wetland impacts. EPA recommends that these two issues be resolved in the Record of Decision and that narrow construction limits be used to reduce wetland impacts.

ERP No. F-USN-K11094-00, Developing Home Port Facilities For Three NIMITZ-Class Aircraft Carriers in Support of the U.S. Pacific Fleet, Construction and Operation, Coronado, CA; Bremerton and Everett, WA, Pearl Harbor, HI.

Summary: EPA expressed a continuing concern regarding sediment quality, dredging and dredged material disposal issues at Pearl Harbor Naval Shipyard and, to a lesser extent, at North Island Naval Air Station, asking that the Navy address these issues in its NEPA Record of Decision and/or in any subsequent permit application(s) to the Army Corps of Engineers. On other issues the FEIS was generally responsive to prior concerns EPA raised on the Draft EIS.

ERP No. FA-NIH-D81023-MD, National Institutes of Health Bethesda Main Campus Comprehensive Master Plan, Updated and Additional Information for the Revision to the Northwest Sector Plan, Montgomery County, MD.

Summary: EPA has determined that the U.S. Department of Health and Human Services has adequately addressed its comments within the Final Supplemental EIS.

ERP No. FS-NRC-A00164-00, Generic EIS—License Renewal of Nuclear Power Plants Operating Licenses, NUREG–1437 Addendum 1.

Summary: No formal comment letter sent to preparing agency.

Dated: November 2, 1999.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–29080 Filed 11–4–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6471–2]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104, Announcement of Proposal Deadline for the Competition for the FY 2000 Brownfields Cleanup Revolving Loan Fund Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal deadlines, revised guidelines.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for the FY

2000 Brownfields Cleanup Revolving Loan Fund Pilots on November 5, 1999. The Brownfields Cleanup Revolving Loan Fund pilots (each funded up to $500,000) test cleanup and redevelopment planning models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated environmental cleanup and redevelopment efforts at the federal, state, and local levels. EPA expects to select up to 70 additional Brownfields Cleanup Revolving Loan Fund pilots by May 2000. The deadline for new proposals for the FY 2000 Brownfields Cleanup Revolving Loan Fund pilots is February 7, 2000. Proposals must be postmarked by February 7, 2000, and sent to U.S. EPA Headquarters. In addition, duplicate copies of the proposal must also be submitted to the appropriate U.S. EPA Regional Office, ATTN: Brownfields Cleanup Revolving Loan Fund Coordinator.

The Brownfields Cleanup Revolving Loan Fund pilot proposals are selected on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the newly revised guidelines, entitled The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund (November 1999).

DATES: All proposals must be postmarked or sent to U.S. EPA Headquarters and a duplicate copy sent to the appropriate U.S. EPA Regional Office via registered or tracked mail no later than February 7, 2000.

ADDRESSES: BCRLF guidelines can be obtained by calling the Superfund Hotline at the following numbers:

Washington, DC Metro Area at 703–412–9810

Outside Washington, DC Metro at 1–800–424–9346

TDD for the Hearing Impaired at 1–800–553–7672

Copies of the Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund are available via the Internet: http://www.epa.gov/brownfields/

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Outreach and Special Projects Staff, Barbara Bassuener (202) 260–9347 or Jennifer Millett Wilbur (202) 260–6454.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative is designed to empower states, local governments, communities, and other stakeholders involved in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. As part of this Initiative, EPA has awarded cooperative agreements to States (including U.S. territories), political subdivisions (including cities, towns, counties), and Indian tribes to capitalize Brownfields Cleanup Revolving Loan Fund pilots. The purpose of these pilots is to test brownfields cleanup revolving loan fund models that direct special efforts toward facilitating coordinated public and private brownfields cleanup efforts at the federal, state, and local levels.

In FY 2000, the EPA expects to select up to 70 new BCRLF pilots to be funded up to $500,000 per eligible entity by the end of May 2000.

Eligible entities for FY 2000 BCRLF pilots, as in previous years, will be entities that have been awarded Brownfields Assessment Demonstration Pilots prior to FY00. In addition, political subdivisions with jurisdiction over sites that have either (1) been the subject of a targeted brownfields assessment (formerly called targeted site assessments), or (2) been selected by the U.S. EPA prior to January 1, 2000, to be the subject of a targeted brownfields assessment, are also eligible for a single BCRLF pilot award. BCRLF pilot proposals do not have to be limited to sites identified, characterized, or assessed under a previously awarded assessment pilot or targeted brownfields assessment.

Proposals from coalitions are permitted to apply, but a single entity must be identified as the applicant. Additionally, a letter of support from each coalition member must be included as an attachment.

Applicants must demonstrate through their proposal: (1) An ability to manage a revolving loan fund and environmental cleanups; (2) a need for cleanup funds; (3) commitment to creative leveraging of EPA funds with public-private partnerships and in-kind services; and (4) a clear plan for sustaining the environmental protection and related economic development activities initiated through the BCRLF program. The eligible entities must meet EPA's threshold and evaluation criteria. There is no guarantee of an award. Also, the size of the awards may vary (for example, from $50,000 to $500,000 per eligible entity), depending on the proposal's responses to the evaluation criteria.

Funding for the Brownfields Cleanup Revolving Loan Fund pilots is authorized under section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA or Superfund), 42 U.S.C. 9604(d)(1).

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2).

Date Signed: October 27, 1999.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 99–29072 Filed 11–4–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6471–1]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; Announcement of Proposal Deadline for the Competition for Fiscal Year 2000 Supplemental Assistance to the National Brownfields Assessment Demonstration Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal deadline and guidelines.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for supplemental assistance for the National Brownfields Assessment Pilots on November 5, 1999. Assessment pilots awarded on or before September 30, 1998, may apply for up to $150,000 for continuance and expansion of their brownfields assessment efforts. This supplemental funding will be awarded on a competitive basis.

In fiscal year 2000, an additional $50,000 may be awarded to an applicant

to assess the contamination of a brownfields site(s) that is or will be used for greenspace purposes. Greenspace purposes may include, but are not limited to, parks, playgrounds, trails, gardens, habitat restoration, open space, and/or greenspace preservation.

EPA expects to select up to 50 National brownfields assessment pilots to receive supplemental assistance by March 2000. The deadline for proposals for the 2000 supplemental assistance is December 22, 1999. Proposals must be post-marked or sent to EPA via registered or tracked mail by the stated deadline.

The supplemental assistance for the National brownfields assessment pilots will be administered on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff will assess how well the proposals meet the selection criteria outlined in the application booklet The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Supplemental Assistance for the Brownfields Assessment Demonstration Pilots (October 1999). Applicants are encouraged to contact and, if possible, meet with EPA Regional Brownfields Coordinators.

DATES: All proposals must be post-marked or sent to EPA via registered or tracked mail by December 22, 1999.

ADDRESSES: The proposal guidelines can be obtained by calling the Superfund Hotline at the following numbers:

Washington, DC Metro Area at 703–412–9810
Outside Washington, DC Metro at 1–800–424–9346
TDD for the Hearing Impaired at 1–800–553–7672

Copies of the guidelines are also available via the Internet: http://www.epa.gov/brownfields/

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: As a part of the Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative, the Brownfields Assessment Demonstration Pilots are designed to empower States, communities, tribes, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup and promote the sustainable reuse of brownfields. EPA has awarded cooperative agreements to States, cities, towns, counties and Tribes for demonstration pilots that test brownfields assessment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated public and private efforts at the Federal, State, tribal and local levels. To date, the Agency has funded 307 Brownfields Assessment Pilots.

In fiscal year 2000, EPA has determined that brownfields assessment pilots awarded on or before September 30, 1998, may apply for up to $150,000 for continuance and expansion of their brownfields assessment efforts. These pilots focus on EPA's primary mission—protecting human health and the environment. They are also an essential piece of the nation's overall community revitalization efforts. EPA works closely with other federal agencies through the Interagency Working Group on Brownfields, and builds relationships with other stakeholders on the national and local levels to develop coordinated approaches for community revitalization.

Supplemental funding for the brownfields assessment pilots is authorized under Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA or Superfund), 42 U.S.C. 9604(d)(1). States (including U.S. Territories), political subdivisions (including cities, towns, counties), and federally recognized Indian Tribes which received a brownfields assessment pilot grant on or before September 30, 1998, are eligible to apply. EPA welcomes and encourages brownfields projects by coalitions of such entities, but only a single eligible entity may receive a cooperative agreement. Cooperative agreement funds will be awarded only to a state, a political subdivision of a state, or a federally recognized Indian tribe.

Through a brownfields cooperative agreement, EPA provides funds to an eligible state, political subdivision, or Indian Tribe to undertake activities authorized under CERCLA section 104. Use of these supplemental assistance pilot funds must be in accordance with CERCLA, and all CERCLA restrictions on use of funds also apply to the assessment pilots.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the selection criteria, briefly outlined below:

Part I (Required)
1. Established Brownfields Program (4 points out of 20)
2. Accomplishments Under Existing Brownfields Assessment Pilot (4 points out of 20)
3. Demonstrated Ability To Administer Existing Brownfields Assessment Demonstration Pilot (4 points out of 20)
4. Work To Be Performed (8 points out of 20)

Part II (Optional)
5. Greenspace
—Authority and Context (2 points out of 8)
—Community Involvement (2 points out of 8)
—Site Identification, Site Assessment Plan, Flow of Ownership, and Reuse Planning (4 points out of 8)

Dated: October 26, 1999.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 99–29071 Filed 11–4–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00628; FRL–6392–1]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Pesticide Operations and Management and Water Quality and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Pesticide Operations and Management and Water Quality and Pesticide Disposal will hold a 3-day meeting, beginning on November 8, 1999, and ending on November 10, 1999. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The SFIREG Pesticide Operations and Management Working Committee will meet alone on Monday, November 8, 1999, from 8:30 a.m. to 4:30 p.m. The Pesticide Operations and Management and Water Quality and Pesticide Disposal Working Committees will meet jointly on Tuesday, November 9, 1999, from 8:30 a.m. to 12 noon. The Water Quality and Pesticide Disposal Working Committee will meet on Tuesday, November 9, 1999, from 1 p.m. to 5 p.m. and again on Wednesday, November 10, 1999, from 8:30 a.m. to 12 noon.

ADDRESSES: The meeting will be held at The Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, SFIREG Executive Secretary, P. O. Box 1249, Hardwick, VT

05843–1249; telephone number: (802) 472–6956; fax number: (802) 472–6957; e-mail address: aapco@plainfield.bypass.com or Elaine Y. Lyon, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5306; fax number: (703) 308–1850; e-mail address: lyon.elaine@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, but all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into the EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. You may also obtain electronic copies of the minutes, and certain other related documents that might be available electronically, from the Association of American Pesticide Control Officials (AAPCO) Internet Home Page at http://aapco.ceris.purdue.edu/doc/index.html. To access this document, on the Home Page select "SFIREG" and then look up the entry for this document under the "SFIREG Meetings."

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00628. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. Purpose of the Meeting

A. Pesticide Operations Management Working Committee Tentative Agenda

1. Update and discussion of Pesticide Field Data Plan.
2. Cooperative Agreement Grant Funding.
3. Office of Enforcement and Compliance Assurance topics for discussion:
   a. Federal Inspector credentials.
   b. Inspector training.
   c. Inspector manual.
   d. Custom Blend policy.
   e. Worker Protection issues.
4. Outcome of National Endangered Species meeting.
5. Registration and labeling issues on fumigants:
   a. Methyl bromide.
   b. Phosphide REDS.
6. Rodenticide project - "Rats are Us."
7. Region 9 Issue Paper on Increased EPA Support for State Lead Agency Laboratory Formulation Work.
8. Working Committee reports.
9. Updates from the Office of Pesticide Programs and the Office of Enforcement and Compliance Assurance.
10. Other topics as appropriate.

B. Pesticide Operations and Management Working Committee and Water Quality and Pesticide Disposal Working Committee Joint Meeting Tentative Agenda

1. Labeling issues:
   a. Status of Label Accountability project.
   b. Consumer Labeling/Disposal Initiative (CLI).
   c. Use directions on labels.
   d. Update on Pesticide Registration Notice on Mandatory v. Advisory Language.
2. Pesticide management plan issues.
3. Status on language for spray drift minimization update and discussion.
4. Conditional Registration update and discussion.
5. Aquatic Pesticide update and discussion.
6. Laboratory Issue Paper: "State Lab Capabilities for Analysis of New Pesticide Products."
7. AAPCO Initiative.
   a. State lab needs - present and future.
   b. Support for regulatory programs.
8. National Pollutant Discharge Elimination System update and discussion.
9. Total Maximum Daily Load update and discussion.
10. Active Ingredient Isomers issues.
11. Inert distributions of EPA registered and non registered pesticides.
12. EPA Strategic Plan Workshop update.
13. Updates from the Office of Pesticide Programs and the Office of Enforcement and Compliance Assurance.
14. Other topics as appropriate.

C. Water Quality and Pesticide Disposal Working Committee Tentative Agenda

1. Pesticide Biocumulative Toxins (PBT) National Action Plan for Level One Pesticides.
2. Status of Pesticide Management Plan.
3. California Ground Water Initiative Workshops.
4. EPA Ground Water report to Congress.
5. U.S. Geological Survey reports - "Distribution of Major Herbicides in Ground Water."
6. Updates from the Office of Pesticide Programs and Office of Enforcement and Compliance Assurance.
7. Working Committee reports.
8. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: October 29, 1999.

Anne E. Lindsay,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 99–29044 Filed 11–2–99; 4:42 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6470–9]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Elmendorf Project XL Draft Final Project Agreement.

SUMMARY: EPA is today requesting comments on a draft Project XL Final Project Agreement (FPA) for Elmendorf Air Force Base (EAFB). The FPA is a

voluntary agreement developed collaboratively by EAFB, stakeholders, the State of Alaska, and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

If implemented, the draft FPA would streamline the application, implementation, management, and renewal process for EAFB's Title V permit, through reduced monitoring and record keeping. EAFB estimates that total monitoring, record keeping, reporting, and overall management costs would decrease by about 80 percent, yielding about $1.5 million in savings. These realized cost savings would be directed toward pollution prevention (P2) opportunities. One such P2 project involves installation of a compressed natural gas (CNG) fueling station, the purchase of new CNG vehicles, and the conversion of certain base fleet vehicles to be capable of using CNG as an alternative fuel. EAFB has assembled a list of other feasible P2 opportunities available at the base, along with the estimated costs and environmental benefits of each opportunity. EPA, the State of Alaska, and EAFB have expressed a preference for hazardous air contaminant reduction projects. A supplemental agreement setting forth the specific additional P2 opportunities to be implemented will be developed with the assistance of stakeholders.

DATES: The period for submission of comments ends on November 26, 1999.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: Dave Bray, Office of Air Quality, OAQ–107, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW, Room 1025WT (1802), Washington, DC 20460. Comments may also be faxed to Mr. Bray at (206) 553–0110 or Ms. Birnbaum at (202) 401–2474. Comments will also be received via electronic mail sent to: bray.dave@epa.gov or birnbaum.nancy@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement, contact: Dave Bray, Office of Air Quality, OAQ–107, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW, Room 1025WT (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at EPA Region 10 in Seattle. Questions to EPA regarding the documents can be directed to Dave Bray at (206) 553–4253 or L. Nancy Birnbaum at (202) 260–2601. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL".

Dated: November 1, 1999.

Richard T. Farrell,

Associate Administrator, Office of Reinvention.

[FR Doc. 99–29077 Filed 11–4–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6470–2]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Blackburn and Union Privileges Superfund Site, Walpole, Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Blackburn and Union Privileges Superfund Site, Walpole, Massachusetts. The settlement requires the settling parties, the Kendall Company (a division of Tyco Healthcare Group, LP) and W.R. Grace & Co.—Conn., to reimburse the Environmental Protection Agency (the "Agency") for past response costs incurred at the Blackburn and Union Privileges Superfund Site. The settling parties will pay $400,000 plus an additional sum for interest on that amount calculated from March 16, 1999 through the date of the payment. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214.

DATES: Comments must be submitted on or before December 6, 1999.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: Blackburn and Union Privileges Superfund Site, U.S. EPA Docket No. CERCLA–1–99–0027.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement can be obtained from Peter DeCambre, U.S. Environmental Protection Agency, Region I, One Congress Street, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1890.

Dated: September 29, 1999.

Patricia Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 99–29074 Filed 11–4–99; 8:45 am]

BILLING CODE 6560–50–U

OFFICE OF NATIONAL DRUG CONTROL POLICY

Designation of Three (3) Additional Counties in New Mexico as Part of the New Mexico Partnership/Southwest Border High Intensity Drug Trafficking Area

AGENCY: Office of National Drug Control Policy, Executive Office of the President.

ACTION: Notice.

SUMMARY: This notice lists the counties of Rio Arriba, Santa Fe, and San Juan in New Mexico designated by the Director of National Drug Control Policy, as additions to the New Mexico Partnership/Southwest Border High Intensity Drug Trafficking Area (HIDTA). The New Mexico Partnership currently consists of 10 counties and municipalities New Mexico. HIDTAs are domestic regions identified as having the most critical drug trafficking problems that adversely affect the United States. These new counties are designated pursuant to 21 USC 1706 (b), as amended, to promote more effective coordination of drug control efforts. This action will support local, New Mexico, and federal law enforcement officers in assessing regional drug threats, designing strategies to combat

the threats, developing initiatives to implement the strategies, and evaluation of the effectiveness of these coordinated efforts.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding this notice should be directed to Mr. Kurt F. Schmid, Acting National HIDTA Director, Office of National Drug Control Policy (ONDCP), Executive Office of the President, Washington, DC 20503; 202–395–6692.

SUPPLEMENTARY INFORMATION: In 1990, the Director of ONDCP designated the first five HIDTAs. These original HIDTAs, areas through which most illegal drugs enter the United States, are the Southwest Border, Houston, Los Angeles, New York/New Jersey, and South Florida. In 1994, the Director designated the Washington/Baltimore HIDTA to address the extensive drug distribution networks serving hardcore drug users and the Puerto Rico/U.S. Virgin Islands HIDTA based upon the significant amount of drugs entering the United States through this region. In 1995, HIDTAs were designated in Atlanta, Chicago, and Philadelphia/Camden to target drug abuse and drug trafficking in those areas. In 1997, the Gulf Coast HIDTA (includes parts of Alabama, Louisiana, and Mississippi), the Lake County HIDTA, the Midwest HIDTA (includes parts of Iowa, Kansas, Missouri, Nebraska, and South Dakota, with the focus on methamphetamine), the Northwest HIDTA (includes seven counties of Washington State), the Rocky Mountain HIDTA (includes parts of Colorado, Utah, and Wyoming), and the San Francisco HIDTA were designated. In 1998, new HIDTAs were designated in Appalachia (includes parts of Kentucky, Tennessee, and West Virginia), Central Florida, Milwaukee, North Texas, and Southeast Michigan. In 1999, new HIDTA's were designated in Central Valley Califronina, Hawaii, New England, Ohio and Oregon.

The HIDTA Program supports over 250 co-located joint task forces in twenty regions of the country, including the entire Southwest Border. The HIDTA Program strengthens local, state, and federal drug trafficking and money laundering task forces, bolsters drug enforcement information networks and, improves integration of law enforcement, drug treatment, and drug abuse prevention programs, where appropriate.

Signed October 18, 1999.

Barry R. McCaffrey,

Director.

[FR Doc. 99–28988 Filed 11–4–99; 8:45 am]

BILLING CODE 3180–02–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

October 21, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0436.

Title: Equipment Authorization-Cordless Telephone Security Coding, 47 CFR Sec.15.121.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 200.

Estimated Time Per Response: 1 hour.

Frequency of Response: On-occasion reporting requirements.

Total Annual Burden: 200 hours.

Total Annual Cost: None.

Needs and Uses: Cordless telephone security features protect the public switched telephone network from unintentional line seizure and telephone dialing. These features prevent unauthorized access to the telephone line, the dialing of calls in response to signals other than those from the owner's handset and the unintentional ringing of a cordless telephone handset. Use of the cordless telephone security features reduces the harm caused by some cordless telephones to the "911" Emergency Service Telephone System and the telephone network in general.

OMB Control Number: 3060–0387.

Title: On-Site Verification of Field Disturbance Sensors, 47 CFR Sec.15.201(d) and Sec. 68.200(k).

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 200.

Estimated Time Per Response: 18 hours.

Frequency of Response: Recordkeeping; on-occasion reporting requirements.

Total Annual Burden: 3,600 hours.

Total Annual Cost: $40,000.

Needs and Uses: Commission rules permit the operation of field disturbance sensors in the low VHF region of the spectrum. In order to monitor non-licensed field disturbance sensors operating in the low VHF television bands, a unique procedure for on-site equipment testing of the systems is required to ensure suitable safeguards for the operation of these devices. Data are retained by the holder of the equipment authorizations issued by the Commission and made available only at the request of the Commission.

OMB Control Number: 3060–0564.

Title: Section 76.924, Allocation to Service Cost Categories.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 50.

Estimated Time Per Response: 40 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 2,000 hours.

Total Annual Cost: None.

Needs and Uses: Section 76.924 of the Commission's rules specifies cost accounting and cost allocation requirements for regulated cable operators. Section 76.924 was established as part of the cable rate regulation requirements set forth in the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). This collection accounts for the burden imposed on cable operators to rearrange their accounting records to be in compliance with the requirements set forth in Section 76.924. At this time, that burden should be considered a one-time only recordkeeping requirement for new cable operators. The original requirements set forth in Section 76.924 became effective July 21, 1993. Existing operators are therefore assumed to have already rearranged their accounting records and are in compliance with this recordkeeping requirement. Information derived from accounting records that are arranged in compliance with Section 76.924 is used by the cable operators themselves when completing rate filings and by local franchising authorities when reviewing rate filings.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-29005 Filed 11-4-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

SUPPLEMENTARY INFORMATION: This collection is in accordance with FEMA's responsibilities under 44 CFR section 206.3 to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that results from major disasters and emergencies. Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, FEMA may provide assistance to meet immediate threats to life and property or provide for temporary housing resulting from a major disaster. Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, FEMA determines eligibility for disaster assistance through verification of citizenship or qualified alien status.

Collection of Information:

Title: Disaster Assistance Registration, Applicant Statement/Authorization, Declaration of Applicant.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0009.

Form Numbers: FEMA Forms 90–69, 90–69A (Spanish version) Disaster Assistance Registration; 90–69B, 90–69C (Spanish version) Applicant Statement/uthorization; 90–69 D, 90–69 E (Spanish version) Declaration of Applicant. The forms serve as a basic screening and referral document for a number of other Federal and State disaster aid programs by identifying applicant's disaster related needs and, in some cases, determining whether applicants meet the basic eligibility requirements of these other programs.

Abstract: The information serves as the application for FEMA's Disaster Housing Program and the Individual and Family Grant Program and is relayed to other Federal and State agencies administering disaster relief programs appropriate to the applicant's needs. Without this information, eligibility for disaster assistance cannot be determined. The information is obtained by telephone calls to the Teleregistration Center or from a face-to-face interview. Applicants are provided a statement regarding the Privacy Act and they sign a statement certifying the accuracy of their information. They also sign a statement reflecting their United States citizenship or qualified alien status.

Affected Public: The forms are used only in Presidentially declared major disasters or emergencies to allow individuals, farmers, small business owners, private non-profit organizations to apply for Federal disaster assistance and to be referred to other appropriate State and local agencies.

Estimated Total Annual Burden Hours:

FEMA Forms	Number of respondents	Frequency of response	Hours per response	Annual burden hours (rounded)
90–69, 90–69A, 90–69B, 90–69C	460,900	1 time	Avg. 21 minutes or .35 minutes	161,315
90–69D, 90–69E	294,976	1 time	2 minutes or .033 minutes	*9,833
Total				171,148

* Rounded up.

Estimated Cost: All costs are part of customary and usual business practices.

Comments: Interested persons are invited to submit written comments on the proposed collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for FEMA, 725 17th Street, NW, Room 10102, Washington, DC 20503. Comments should be submitted by December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625, FAX number (202) 646–3524, e-mail: muriel.anderson@fema.gov.

Dated: October 29, 1999.

Muriel B. Anderson,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99-29030 Filed 11-4-99; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1304–DR]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1304–DR), dated October 15, 1999, and related determinations.

EFFECTIVE DATE: October 15, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 15, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Arizona, resulting from severe storms, flooding and high winds on September 14–23, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Arizona.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Lowder of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arizona to have been affected adversely by this declared major disaster:

> Maricopa County for Individual Assistance.

All counties within the State of Arizona are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–29033 Filed 11–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1302–DR]

Connecticut; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Connecticut (FEMA–1302–DR), dated September 23, 1999, and related determinations.

EFFECTIVE DATE: October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Connecticut is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1999:

> Litchfield County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Patricia Stahlschmidt,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–29032 Filed 11–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1306–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1306–DR), dated October 20, 1999, and related determinations.

EFFECTIVE DATE: October 22, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida is hereby amended to include the Public Assistance program among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 20, 1999:

> Brevard, Broward, Dade, Indian River, Martin, Monroe, Okeechobee, Palm Beach, and St. Lucie for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–29034 Filed 11–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1306–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1306–DR), dated October 20, 1999, and related determinations.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 20, 1999:

Flagler County for Public Assistance.

Volusia County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Assoiate Director, Response and Recovery Directorate.

[FR Doc. 99–29035 Filed 11–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1296–DR]

New York; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1296–DR), dated September 19, 1999, and related determinations.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 1999:

The counties of Suffolk and Nassau for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–29031 Filed 11–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[99–N–16]

Pilot Mortgage Program Proposed by the Federal Home Loan Banks of Cincinnati, Indianapolis and Seattle

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: On October 4, 1999, the Federal Housing Finance Board (Finance Board) adopted Finance Board Resolution No. 99–50 (Res. 99–50) authorizing Federal Home Loan Banks (FHLBanks) to offer single-family Member Mortgage Asset (MMA) programs within certain defined parameters, terms and conditions, including the Mortgage Purchase Program (MPP) proposal that was jointly submitted to the Finance Board by the FHLBanks of Cincinnati, Indianapolis and Seattle. Notice of the proposed MPP program was published in the **Federal Register** on August 12, 1999, 64 FR 44016, and the application was subsequently made available to the public through the Finance Board's website, 64 FR 49187 (September 10, 1999). While it is not obligated to provide further notice of the MPP program before it is implemented, the Finance Board hereby provides notice that the MPP program will not be implemented by the FHLBanks of Cincinnati, Indianapolis or Seattle until the staff of the Office of Supervision has conducted a pre-implementation examination of each FHLBank and has confirmed that appropriate program policies, procedures and controls have been established at each FHLBank. In no case shall implementation occur prior to 30-days from the date of this notice.

DATES: Comments must be received in writing on or before December 6, 1999.

ADDRESSES: Individuals wishing to submit comments should provide written comments by mail to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for public inspection at this address.

BACKGROUND: The FHLBanks of Cincinnati, Indianapolis and Seattle jointly submitted to the Finance Board a proposal to initiate a pilot program to purchase fixed-rate, single-family mortgages from member financial institutions subject to the establishment of a first loss account through which the member financial institution bears responsibility for losses up to the amount of expected losses on the mortgages or mortgage pools. The member would provide additional loss coverage through supplemental loan-level mortgage insurance from a mortgage insurer rated not lower than double-A.

Res. 99–50 authorized the FHLBanks to establish and operate MMA programs, a generic designation for programs that efficiently allocate mortgage risks so as to best use the core competencies of the entities involved, provide appropriate capital treatment to the participating financial institution members, and provide capital market funding and risk management alternatives, all for the ultimate benefit of consumers. MPP, as proposed, conforms to the provisions of Res. 99–50 and the FHLBanks of Cincinnati, Indianapolis and Seattle were thereby authorized to establish and operate MPP as a program, pursuant to the provisions, terms and conditions of Res. 99–50.

The terms and conditions of Res. 99–50 require, among other things, that Finance Board staff determinations regarding a FHLBank's request to operate a single-family MMA program shall be subject to a pre-implementation safety and soundness examination. Therefore, the MPP program will not be implemented by the FHLBanks of Cincinnati, Indianapolis or Seattle until the completion of a pre-implementation examination, and in no case shall implementation occur prior to the end of the 30-day notice period provided hereby. This notice applies only to MPP and not to previously authorized and currently operating MMA programs that have already undergone pre-implementation and other safety and soundness examinations. Comments on the concept of MMA may be submitted to the Finance Board on or before December 27, 1999 in the context of the Finance Board's ongoing Financial Management and Mission Achievement rulemaking proposal, 64 FR 52163 (September 27, 1999). In this regard, the Finance Board is making Res. 99–50 available through its website (http://www.fhfb.gov) in the "What's New" section

FOR FURTHER INFORMATION CONTACT: Christina K. Muradian, Senior Financial Analyst, Office of Policy, Research and Analysis (202) 408–2584, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–29027 Filed 11–4–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64 FR 59177

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 A.M.—November 9, 1999.

CHANGE IN THE MEETING:

Removal of item in the OPEN portion of the meeting.

Item 1—Docket No. 99–10—Ocean Common Carriers Subject to the Shipping Act of 1984. The Federal Maritime Commission has withdrawn this item to allow it additional time to analyze the issues raised.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–29197 Filed 11–3–99; 2:39 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Coastal Banking Company, Inc.*, Beaufort, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Lowcountry National Bank (in organization), Beaufort, South Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Bob S. Prince Insurance Agency, Inc.*, McLeansboro, Illinois; to become a bank holding company by acquiring 7.12 percent of the voting shares of Market Street Bancshares, Inc., Mount Vernon, Illinois, and The Peoples National Bank of McLeansboro, McLeansboro, Illinois.

In connection with this application, Applicant also has applied to engage in insurance activities in a town with a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Ruff Partners, Ltd.*, Longview, Texas; to become a bank holding company by acquiring 44.89 percent of the voting shares of The First State Bank of Hallsville, Hallsville, Texas.

Board of Governors of the Federal Reserve System, November 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28969 Filed 11–4–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 10, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–29139 Filed 11–3–99; 11:44 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

Title: Head Start Grant Application and Budget Instrument.

OMB No.: 0970–0207.

Description: The Head Start program is promulgating a Head Start Grant Application and Budget Instrument to standardize the grant application information which is requested from all grantees applying for continuation grants. The Bureau is also instituting a three-year grant funding cycle so that applicants will only submit full applications in their first year of their three-year funding cycle. In addition, the Grant Application and Budget Instrument will be available on a data disk and can be transmitted electronically to Regional Offices. The Administration on Children, Youth and Families believes that, in promulgating this application document, the process of applying for grants for the Head Start program will be more efficient for the applicants.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start GABI	1513	1	33	49,929

Estimated Total Annual Burden Hours: 49,929.

In Compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 1, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–29021 Filed 11–4–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0276]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Title of Information Collection:* Feedback Postcard; *HCFA Form Number:* HCFA–R–0276 (OMB approval #: 0938–0766); *Use:* The purpose of this collection is post-distribution testing. This feedback postcard will be printed with Medicare & You 2000. This is the primary vehicle for presenting Medicare information to beneficiaries. Each household with up to 4 Medicare beneficiaries will receive one book. Households with over 4 beneficiaries will have one book sent to each beneficiary. (It is assumed these may be nursing homes/care facilities.) The beneficiaries have the option of completing the postcard, which will provide HCFA with valuable information that will assist in improving future versions of the publication.; *Frequency:* On occasion and Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 16,834,000 (estimate); *Total Annual Responses:* 510,000 (3% estimate); *Total Annual Burden Hours:* 25,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 12, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–29026 Filed 11–4–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: December 2, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Bldg 31, Room 5B50, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eugene G. Hayunga, Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–594–2014, hayungae@ad.nih.gov.

Dated: November 1, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28995 Filed 11–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, NIAMS, November 8, 1999, 8:00 a.m. to November 8, 1999, 5:00 p.m., National Institutes of Health, 9000 Rockville Pike, Building 31; Room 4C32, NIAMS Conference Room, Bethesda, Maryland 20892 which was published in the **Federal Register** on October 28, 1999, 64 FR 58076.

The meeting that was advertised as November 8, 1999 will now begin on November 7, 1999 at 6:30 p.m. at the Bethesda Marriott, Bethesda, Maryland. The second day of the meeting remains in the original location and at the same time. The meeting is closed to the public.

Dated: November 1, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28994 Filed 11–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research Craniofacial Dev. Biology & Regeneration Br., Craniofacial Epi. & Genetics Br. and Gene Therapy & Therapeutics Br.

Date: December 2–3, 1999.

Closed: December 2, 1999, 8:30 am to 9:00 am.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Institute of Dental & Craniofacial Res., Building 30, Conference 117, Bethesda, MD 20892.

Open: December 2, 1999, 9:00 am to 11:45 am.

Agenda: Oral Presentations of laboratories.

Place: National Institutes of Health, National Institute of Dental & Craniofacial Res., Building 30, Conference 117, Bethesda, MD 20892.

Closed: December 2, 1999, 11:45 am to 6:00 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Institute of Dental & Craniofacial Res., Building 30, Conference 117, Bethesda, MD 20892.

Open: December 3, 1999, 8:30 am to 11:45 am.

Agenda: Oral Presentations of Laboratories.

Place: National Institutes of Health, National Institute of Dental & Craniofacial Res., Building 30, Conference 117, Bethesda, MD 20892.

Contact Person: Wendy A. Liffers, Director, Office of Science Policy & Analysis, National Institute of Dental & Craniofacial Res., 31 Center Drive, Rm. 5B55, Bethesda, MD 20892–2190.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 29, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28996 Filed 11–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning invididuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB B(C1).

Date: November 16, 1999.

Time: 12:00 pm to 1:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Natcher Building, 45 Center Drive, Room 6AS.25S, Bethesda, Maryland, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building Room 6AS25s, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB 4 J2.

Date: December 1–2, 1999.

Time: 7:30 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hobby Drury Inn, 7902 Mosley Road, Houston TX 77061.

Contact Person: William E. Elzinga, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building Room 6AS25E, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB 1 (J2).

Date: December 9–10, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203.

Contact Person: Carolyn Miles, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–43A, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–2 J3P.

Date: December 15–17, 1999.

Time: 7:00 pm to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Houston Marriott Medical Center, 6580 Fannin Street, Houston, TX 77030.

Contact Person: Shan S. Wong, Scientific Review Administrator, Review Branch, DEA NIDDK, Natcher Building Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 29, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28997 Filed 11–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National institute of Nursing Research Special Emphasis Panel.

Date: November 9, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Building 45, Room 3AN–18B, MD 20892, (Telephone Conference Call).

Contact Person: Mary J. Stephens-Frazier, Phd, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: October 29, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28999 Filed 11–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 15, 1999, 8:00 AM to November 16, 1999, 6:00 PM, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD, 20814 which was published in the **Federal Register** on October 28, 1999, 64FR58079.

The meeting will be held from 8:30 AM to 5:00 PM. The dates and location remain the same. The meeting is closed to the public.

Dated: October 29, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28998 Filed 11–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 5, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 28, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–28692 Filed 11–4–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Reassessment of the Interim Wolf Control Plan for the Northern Rocky Mountains

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the Reassessment of the Interim Wolf Control Plan for the Northern Rocky Mountains, which includes northwestern Montana and the Panhandle of northern Idaho (Exclusive of the Experimental Population Area). Our 1988 Interim Wolf Control Plan (Control Plan) was developed in response to a recommendation in the 1987 Northern Rocky Mountain Wolf Recovery Plan (Recovery Plan) to conserve and enhance survival and propagation of the gray wolf, and is implemented under an Endangered Species Act section 10 permit. The Control Plan has been carried out for 11 years to control problem wolves.

A notice of availability of the draft reassessment was published in the **Federal Register**, Volume 63, Number 78, on April 23, 1998, soliciting review and comments from the public for 30 days. Based on the review and the comments received, we have modified the Control Plan to include changes in the following areas—(1) Management zones; (2) encouraging research in deterring wolf depredations on livestock; (3) recordkeeping and analysis; (4) non-lethal control techniques and; (5) monitoring of the wolf population in northwestern Montana. The Control Plan also was amended to include the need to control wolves that kill pets and an increased educational effort about wolf recovery and management in northwestern Montana.

ADDRESSES: Persons wishing to obtain a copy of the Reassessment and the Modified Interim Wolf Control Plan may do so by contacting the Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, 100 North Park, Suite 320, Helena, Montana 59604, or by accessing the website. The Control Plan and the Reassessment can be retrieved from the Service's Region 6 website at <www.r6.fws.gov/wolf>. The complete administrative record of this action is on file at the above address and is available for inspection, by appointment, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Wolf Recovery Coordinator (see **ADDRESSES** above), or at telephone (406) 449–5225, extension 204, or e-mail <rockymtwolf@fws.gov>.

SUPPLEMENTARY INFORMATION:

Background

The primary goal of our endangered species program is to restore an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting the species, and estimate time and cost for implementing the recovery measures identified.

Under provisions of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), the northern Rocky Mountains wolf population was listed as endangered, and we approved the Wolf Recovery Plan for the Northern Rocky Mountains (Recovery Plan) in 1987. The Recovery Plan recognized that, where ranges of wolves and livestock overlap, some livestock would be killed by wolves. In order to address this issue, the Recovery Plan identified the need "to delineate recovery areas and identify and develop conservation strategies and management plan(s) to ensure perpetuation of the Northern Rocky Mountain wolf." To respond to this need, a task was included to develop and implement a wolf control/contingency plan for dealing with wolf depredations. An Interim Wolf Control Plan for Montana and Wyoming (Control Plan) was approved by the Service's Regional Director on August 5, 1988. The Control Plan included criteria for determining problem wolves, criteria for their disposition, and protocols and techniques for control actions.

We conduct control of problem wolves through our section 10 permit authority. Under section 10(a)(1)(A) of the Act, "The Secretary (of the Interior) may permit, under such terms and conditions as he may prescribe—(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species."

The Control Plan has been carried out for 11 years to control problem wolves. On February 27, 1998, a draft evaluation of the Control Plan was completed to see if it was achieving its goal of helping recovery of the Northern Rocky Mountain endangered wolf population. The evaluation looked at—(1) the effectiveness of the program in facilitating wolf recovery, (2) effectiveness of the guidelines for determining problem wolves, conducting wolf control actions and the disposition of problem wolves, (3) the analysis, accuracy, consistency and value of the reporting and recording of actions for the record, and (4) recommendations for the wolf control program.

A recommendation in the draft reassessment was to subject the review to a wider and more professional scrutiny by publishing a notice of availability in the **Federal Register**, and sending it to experts experienced in managing wolf/livestock conflicts. A notice of availability was published in the **Federal Register**, Volume 63, Number 78, on April 23, 1998, soliciting review and comments from the public for 30 days. Copies of the notice were sent to congressional delegates and the Governors in Montana, Idaho, and Wyoming. Copies were sent to U.S. Department of Agriculture Wildlife Services State directors and their Regional Office. All cooperators were made aware of the notice of availability through the gray wolf weekly report mailing list and postings on several Internet websites.

We received 25 written and 1 verbal response to the draft reassessment. Comments were reviewed and 22 relevant issues regarding the Control Plan were categorized and addressed. The categories, number of comments, and responses to relevant issues are listed in the final version of the Reassessment. After careful review and analysis of comments received, and the evaluation of the Control Plan, some of the recommendations in the draft reassessment were modified and several additional recommendations have been added to the Modified Interim Control Plan. We have modified the Control Plan for the Northern Rocky Mountains to include changes in the following areas—(1) management zones; (2) encouraging research in deterring wolf depredations on livestock; (3) recordkeeping and analysis; (4) non-lethal control techniques and; (5) monitoring of the wolf population in northwestern Montana. The Control Plan also was amended to include the need to control wolves that kill pets and a recommendation to increase educational efforts about wolf recovery and management in northwestern Montana.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 28, 1999.

Terry Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 99–29001 Filed 11–4–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Three Public Open Houses Prior to Proposing a Revision to the Special Rule for a Nonessential Experimental Population of Red Wolves in North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public open houses.

SUMMARY: We, the Fish and Wildlife Service, announce three public open houses in eastern North Carolina to present information to, and answer questions from the public prior to proposing a change to the special rule for the nonessential experimental population (NEP) of red wolves in eastern North Carolina under section 10(j) of the Endangered Species Act of 1973, as amended (Act).

DATES AND ADDRESSES: We will hold the first open house on Tuesday, November 16, 1999, at the Mattamuskeet Lodge, Mattamuskeet National Wildlife Refuge, 1 Mattamuskeet Refuge Road, Swan Quarter, North Carolina 27885, from 4:30 pm to 7:30 pm. The second open house will be on Wednesday, November 17, 1999, at the Vernon James Research & Extension Conference Center, 207 Research Station Road, Plymouth, North Carolina 27962, from 4:30 pm to 7:30 pm. The third open house will be on Thursday, November 18, 1999, at Tyrrell Hall, 108 South Water Street, Columbia, North Carolina 27925, from 4:30 pm to 7:30 pm.

FOR FURTHER INFORMATION CONTACT: Mr. Brian T. Kelly, Wildlife Biologist/Field Projects Coordinator, U.S. Fish and Wildlife Service, P.O. Box 1969, 708 North Highway 64/264, Manteo, North Carolina 27954 (telephone 252/473–1131, extension 27).

SUPPLEMENTARY INFORMATION:

Background

The red wolf is an endangered species that is currently found in the wild only as a NEP in northeastern North Carolina on the Alligator River, Pocosin Lakes, and Mattamuskeet National Wildlife Refuges; the U.S. Air Force's Dare County Bombing Range; and adjacent private land in Beaufort, Dare, Hyde, Tyrrell, and Washington Counties, North Carolina; and as an endangered species in three small island propagation projects located on Bulls Island in South Carolina and Cape St. George and St. Vincent Islands in Florida. These four carefully managed wild populations contained a minimum of 48 animals as of September 30, 1999. The remaining red wolves are located in 33 captive-breeding facilities in the United States. The captive population numbered 161 animals as of September 30, 1999.

We published a proposed rule in the **Federal Register** of July 24, 1986 (51 FR 26564), to introduce red wolves into Alligator River, Dare County, North Carolina. We published a final rule on November 19, 1986 (51 FR 41790), making a determination to implement the proposed action with some modifications. We determined that the red wolf population in Dare County and adjacent Hyde, Tyrrell, and Washington Counties would be a NEP, according to Section 10(j) of the Act. We revised the rule in the **Federal Register** of November 4, 1991 (56 FR 56325), to add Beaufort County to the list of counties where the NEP designation would apply. We reevaluated the status of the population after 5 years and included input from public meetings in this reevaluation.

We published a proposed rule in the **Federal Register** of November 24, 1993 (58 FR 62086), to revise the special rule for NEPs of red wolves in North Carolina and Tennessee. We published a final rule in the **Federal Register** of April 13, 1995 (60 FR 18940), making a determination to implement the proposed action with some modifications.

We will hold three public open houses in eastern North Carolina. Through these open houses, we will provide the public with a forum to obtain information and ask questions of us before we request their formal comment through the rulemaking process.

Author

The primary author of this notice is Brian T. Kelly (see **FOR FURTHER INFORMATION CONTACT** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: October 29, 1999.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 99–29000 Filed 11–4–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–00–2822–JL–N843; GP0–0024]

Closure of Public Lands in Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure of public lands and access road in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access road in Lane County, Oregon are indefinitely closed to all public use, including vehicle operation, recreation, hunting, parking, camping, shooting, hiking and sightseeing. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this closure are located within the Austa Fire Unit and are specifically identified as follows:

Willamette Meridian, Oregon

T. 18 S., R. 8 W.
  Sec. 9: All lands south of the north right-of-way line of the Bonneville Power Administration Transmission line
  Sec. 10: BLM Road No. 18–8–10 in the S½S½
  Sec. 15: N½NW¼, SW¼NW¼

Containing approximately 450 acres.

SUPPLEMENTARY INFORMATION: The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau of Land Management (BLM) and Bonneville Power Administration (BPA) employees; BLM and BPA contractors and their subcontractors; State of Oregon, local and other federal government employees; State of Oregon, local and other federal contractors and their subcontractors; the holders of BLM road use permits that include roads within the closure area; purchasers of BLM resources within the closure area and their employees and subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to, but not limited to, the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as well as the penalties provided under Oregon State law.

The public lands closed to public use under this order will be posted with signs at points of public access.

The purpose of this closure is to protect persons from injury incurred by falling or moving debris and/or conditions which create potential for slips and falls, especially on steep slopes. The recent Austa Fire created extreme hazards. Dead and dying trees were left on unstable, vegetationless ground. Unstable objects are numerous throughout the unit. Weather conditions such as rain and wind will escalate the likelihood that objects will break loose and roll down hill and dead trees will fall unexpectedly. These hazardous conditions are expected to remain for several years as this fire occurred in Late Successional Reserve (LSR) lands which are reserved from intense management practices. Lane County has already closed a segment of its county road (#4386), Stagecoach Road, at the bottom of this unit due to debris falling and rolling onto the road. A gate will be installed on BLM Road No. 18–8–10.

DATES: This closure is effective from November 1, 1999 and will continue until further notice.

ADDRESSES: Copies of this closure notice and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Diane Chung, Coast Range Field Manager, Eugene District Office, at (541) 683–6600 or 1–888–442–3061.

Dated: November 1, 1999.

Dan Howells,

Acting Field Manager, Coast Range Resource Area.

[FR Doc. 99–29002 Filed 11–4–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Draft Environmental Impact Statement, Chiricahua National Monument, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Draft Environmental Impact Statement and General Management Plan for Chiricahua National Monument.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Chiricahua National Monument, Arizona.

DATES: The DEIS/GMP will remain available for public review through January 30, 2000. If any public meetings are held concerning the DEIS/GMP, they will be announced at a later date.

ADDRESSES: Comments on the DEIS/GMP should be sent to the Superintendent, Chiricahua National Monument, Dos Cabezas Route, Box 6500, Willcox, Arizona 85643–9737. Public reading copies of the DEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Chiricahua NM, Dos Cabezas Route, Box 6500, Willcox, Arizona 85643–9737, telephone: (520) 824–3560

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851 or (303) 969–2377

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, D.C. 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes 3 alternatives to identify and assess the various management alternatives and related environmental impacts relative to park operations, visitor use and access, natural and cultural management, and general development at the monument. The General Management Plan would guide the management of the Chiricahua National Monument for the next 12 to 15 years.

Alternative A, The National Park Service proposal, identified as one of the alternatives, would retain most existing visitor experiences and would construct a new headquarters/visitor orientation/administrative area just outside park boundaries.

Alternative B provides for a traditional park experience with increased personal services and a small number of facility enhancements.

The No-Action Alternative would maintain visitor services and resource protection at current limited levels throughout the life of the plan.

The DEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on visitor experience, cultural resources, long-term health of natural ecosystems, economic contribution to gateway communities, adjacent landowners, and operational efficiency.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Chiricahua National Monument, at the above address and telephone number.

Dated: October 27, 1999.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 99–28974 Filed 11–4–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of extension of time for review of draft environmental impact statement (DEIS).

SUMMARY: The National Park Service is extending the public review period to December 1, 1999 for the DEIS for the Winter Use Plan for Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, Wyoming. The notice of availability for the DEIS was published in the **Federal Register** on October 1, 1999 (64 FR 53379). The public review period was originally to end on November 15, 1999.

DATES: Pulic comments on the DEIS should be submitted on or before December 1, 1999. There will be hearings on the DEIS. The hearing dates and locations are:

- October 14, 1999, from 3 p.m. to 9 p.m., in the Teton and Yellowstone Rooms, at the Cavanaughs on the Falls, 475 River Parkway, Idaho Falls, Idaho.
- October 21, 1999, from 3 p.m. to 9 p.m., in the Multi-purpose Room at the West Yellowstone School, 500 Delacy Avenue (Entrance on N. Geyser Street), West Yellowstone, Montana.
- October 23, 1999, from 9 a.m. to 3 p.m., at the City/County Complex, 414 E. Callendar, Livingston, Montana.
- October 26, 1999, from 3 p.m. to 9 p.m., in the Cody Auditorium, 1240 Beck Avenue, Cody, Wyoming.
- October 28, 1999, from 3 p.m. to 9 p.m., at the Teton County Library Auditorium, 125 Virginian Lane, Jackson, Wyoming.
- November 3, 1999, from 3 p.m. to 9 p.m., at the Four Points Denver West Hotel, 137 Union Boulevard, Lakewood, Colorado.

ADDRESSES: Comments on the Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway should be sent to Clifford Hawkes, National Park Service, Denver Service Center, 12795 West Alameda Parkway, Lakewood, Colorado 80228. Public reading copies of the plan are available on the Internet (nps.gov/planning/yell/winteruse) and will be available for review at the following locations:

Office of the Superintendent, National Park Service, P.O. Box 168, Yellowstone National Park, Wyoming 82190, Telephone: (307) 344–2002

Office of the Superintendent, National Park Service, P.O. Drawer 170, Moose, Wyoming 83012, Telephone: (307) 739–3410

Clifford Hawkes, National Park Service, Denver Service Center, 12795 W. Alameda Parkway, Lakewood, Colorado 80228, Telephone: (303) 969–2262

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843

FOR FURTHER INFORMATION CONTACT: Clifford Hawkes, National Park Service, Denver Service Center 12795 West Alameda Parkway, Lakewood, Colorado 80228.

Dated: October 28, 1999.

Clifford L. Hawks,

Job Captain, Denver Service Center, National Park Service.

[FR Doc. 99–28972 Filed 11–4–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held December 6, 1999 at 9:00 a.m. until 4:00 p.m., at the town hall in Whitehall, Alabama.

The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Selma to Montgomery National Historic Trail. This law was put in place to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

A. Review comments and make recommendations for preferred alternative.

B. Update on status of Cultural Resource Inventory.

C. Update on Scenic Byway Application.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Any member of the public may file a written statement concerning the matters to be discussed with Lee Edwards, Trial Superintendent.

Person wishing further information concerning this meeting, or who wish to submit written statements may contact Lee Edwards, Trail Superintendent, Selma to Montgomery National Historic Trail, P.O. Box 5690, Montgomery, Al 36103, telephone 334–353–3744 or 334–727–6390.

Lee Edwards,

Trail Superintendent.

[FR Doc. 99–28970 Filed 11–4–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Ocmulgee Old Fields Historic District; Determination of Eligibility for the National Register of Historic Places

ACTION: Request for comments.

On August 14, 1997, the National Register of Historic Places determined that the Ocmulgee Old Fields Historic District, near Macon, in Bibb County, Georgia, was eligible for listing in the National Register of Historic Places. The district was determined to meet National Register Criterion A (associated with important events) in the area of Ethnic Heritage: Native American, because of the cultural and historical significance of this area to the Muscogean peoples who were forced to abandon it in the early 19th century and who still revere it as their ancestral homeland. The district also was determined to meet National Register Criterion D (likely to yield important information), because it has provided and can be expected to continue to provide important information on the long history of the Macon Plateau and the Ocmulgee River valley. The finding of eligibility was based on a request from the Advisory Council on Historic Preservation and included a review of extensive documentation submitted by the Advisory Council, the Federal Highway Administration, the Georgia Department of Natural Resources, representatives of a number of Muscogean Indian tribes, and other interested parties. A copy of the determination of eligibility is available from the National Register of Historic Places, National Park Service, 1849 C Street, NW, Room NC400, Washington, DC 20240.

To establish precise boundaries for the eligible district, the Keeper requested additional documentation. On July 23, 1999, the National Register completed the determination of eligibility for this property based on additional material provided by the Federal Highway Administration, Indian tribal representatives, and others. Boundaries were established based on the extent of the historically significant area that still retains the imprint of traditional Muscogean culture, excluding those areas which have lost their ability to testify to their cultural or archeological significance because of non-historic residential, commercial, or industrial development. A copy of the determination and a map showing the boundaries are also available from the National Register of Historic Places.

Since the determination of eligibility was made, the Keeper of the National Register has received written comments from a property owner within the boundary of the determined eligible area and from other interested parties questioning the boundaries established for the district. In order to accommodate those who wish to provide new information to define the scope of the area that meets the National Register Criteria for Evaluation, the National Park Service is providing a 60-day comment period on this issue. The National Register Criteria for Evaluation are set forth below.

Anyone wishing to submit additional information bearing on the scope of the area of the Ocmulgee Old Fields Historic District that meets the National Register Criteria for Evaluation should do so within 60 days of the date of this notice. A written statement on the determination of eligibility will be issued by the National Park Service within 30 days of the close of the comment period.

The determination of eligibility remains in effect pending review of responses submitted during the comment period. In order to revise the boundary the National Park Service must receive authoritative information, which, evaluated in conjunction with documentation already on file, results in a finding that the boundary for the determined eligible district does not accurately delineate the scope of the district in accordance with established National Register standards.

Comments should be addressed to the National Register of Historic Places, National Park Service, 1849 C Street, NW, Room NC400, Washington, DC 20240.

Carol D. Shull,

Keeper of the National Register of Historic Places, National Register, History and Education.

National Register Criteria for Evaluation

The National Register criteria define, for the nation as a whole, the scope and nature of historic and archeological properties that are considered for listing in the National Register of Historic Places.

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

A. That are associated with events that have made a significant contribution to the broad patterns of our history; or

B. That are associated with the lives of persons significant in our past; or

C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

D. That have yielded, or may be likely to yield, information important to prehistory or history.

Ordinarily, cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

(a) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

(b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or

(d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

(g) A property achieving significance within the past 50 years if it is of exceptional importance.

[FR Doc. 99–28973 Filed 11–4–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

Emergency Notice of Removal of Agenda Item

Agency Holding the Meeting: United States International Trade Commission

Time and Date: November 9, 1999 at 11:00 a.m.

Place: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Removal of Agenda Item: Agenda Item #5: Inv. No. 701–TA–224 (Review) (Live Swine from Canada)—briefing and vote.

On October 29, 1999, the Department of Commerce released its negative final determination of the likelihood of continuation or recurrence of a countervailable subsidy in connection with the subject five-year review. Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), the five-year review of the countervailing duty order on Live Swine from Canada (Inv. No. 701–TA–224 (Review)), is terminated. In accordance with 19 C.F.R. § 201.35, the Commission hereby announces removal of this five-year review from the agenda (agenda item #5) for the meeting of Tuesday, November 9, 1999. Earlier announcement of such change to the agenda was not possible.

Issued: November 2, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–29162 Filed 11–3–99; 1:16 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor Pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and States:

Volume III

- North Carolina
  - NC990054 (Nov. 5, 1999)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitle "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

- Connecticut
  - CT990001 (Mar. 12, 1999)
  - CT990003 (Mar. 12, 1999)
- Massachusetts
  - MA990003 (Mar. 12, 1999)
  - MA990007 (Mar. 12, 1999)
  - MA990008 (Mar. 12, 1999)
  - MA990010 (Mar. 12, 1999)
  - MA990020 (Mar. 12, 1999)
  - MA990021 (Mar. 12, 1999)
- Maine
  - ME990005 (Mar. 12, 1999)
  - ME990010 (Mar. 12, 1999)
  - ME990019 (Mar. 12, 1999)
  - ME990022 (Mar. 12, 1999)
  - ME990025 (Mar. 12, 1999)
  - ME990026 (Mar. 12, 1999)
  - ME990037 (Mar. 12, 1999)
- New Hampshire
  - NH990017 (Mar. 12, 1999)
- New Jersey
  - NJ990001 (Mar. 12, 1999)
  - NJ990002 (Mar. 12, 1999)
  - NJ990003 (Mar. 12, 1999)
  - NJ990005 (Mar. 12, 1999)
  - NJ990007 (Mar. 12, 1999)
  - NJ990009 (Mar. 12, 1999)
- New York
  - NY990001 (Mar. 12, 1999)
  - NY990002 (Mar. 12, 1999)
  - NY990003 (Mar. 12, 1999)
  - NY990005 (Mar. 12, 1999)
  - NY990008 (Mar. 12, 1999)
  - NY990012 (Mar. 12, 1999)
  - NY990018 (Mar. 12, 1999)
  - NY990020 (Mar. 12, 1999)
  - NY990026 (Mar. 12, 1999)
  - NY990049 (Mar. 12, 1999)
  - NY990052 (Mar. 12, 1999)
  - NY990053 (Mar. 12, 1999)
  - NY990061 (Mar. 12, 1999)
  - NY990078 (Mar. 12, 1999)

Volume II

- Disctrict of Columbia
  - DC990001 (Mar. 12, 1999)
  - DC990003 (Mar. 12, 1999)
- Maryland
  - MD990001 (Mar. 12, 1999)
  - MD990002 (Mar. 12, 1999)
  - MD990008 (Mar. 12, 1999)
  - MD990009 (Mar. 12, 1999)
  - MD990011 (Mar. 12, 1999)
  - MD990012 (Mar. 12, 1999)
  - MD990017 (Mar. 12, 1999)
  - MD990021 (Mar. 12, 1999)
  - MD990026 (Mar. 12, 1999)
  - MD990030 (Mar. 12, 1999)
  - MD990034 (Mar. 12, 1999)
  - MD990035 (Mar. 12, 1999)
  - MD990036 (Mar. 12, 1999)
  - MD990037 (Mar. 12, 1999)
  - MD990039 (Mar. 12, 1999)
  - MD990042 (Mar. 12, 1999)
  - MD990043 (Mar. 12, 1999)
  - MD990046 (Mar. 12, 1999)
  - MD990047 (Mar. 12, 1999)
  - MD990048 (Mar. 12, 1999)
  - MD990050 (Mar. 12, 1999)
  - MD990053 (Mar. 12, 1999)
  - MD990054 (Mar. 12, 1999)
  - MD990056 (Mar. 12, 1999)
  - MD990057 (Mar. 12, 1999)
  - MD990058 (Mar. 12, 1999)
- Virginia
  - VA990008 (Mar. 12, 1999)
  - VA990012 (Mar. 12, 1999)
  - VA990014 (Mar. 12, 1999)
  - VA990015 (Mar. 12, 1999)
  - VA990022 (Mar. 12, 1999)
  - VA990025 (Mar. 12, 1999)
  - VA990027 (Mar. 12, 1999)
  - VA990039 (Mar. 12, 1999)
  - VA990048 (Mar. 12, 1999)
  - VA990052 (Mar. 12, 1999)
  - VA990053 (Mar. 12, 1999)
  - VA990054 (Mar. 12, 1999)
  - VA990055 (Mar. 12, 1999)
  - VA990058 (Mar. 12, 1999)
  - VA990063 (Mar. 12, 1999)
  - VA990078 (Mar. 12, 1999)
  - VA990079 (Mar. 12, 1999)
  - VA990080 (Mar. 12, 1999)
  - VA990081 (Mar. 12, 1999)
  - VA990092 (Mar. 12, 1999)
  - VA990099 (Mar. 12, 1999)

Volume III

- Alabama
  - AL990018 (Mar. 12, 1999)
- Florida
  - FL990001 (Mar. 12, 1999)
  - FL990016 (Mar. 12, 1999)
  - FL990076 (Mar. 12, 1999)
- Mississippi
  - MS990007 (Mar. 12, 1999)
- North Carolina
  - NC990047 (Mar. 12, 1999)

Volume IV

- Illinois
  - IL990001 (Mar. 12, 1999)
  - IL990002 (Mar. 12, 1999)
  - IL990008 (Mar. 12, 1999)
  - IL990010 (Mar. 12, 1999)
  - IL990011 (Mar. 12, 1999)
  - IL990012 (Mar. 12, 1999)
  - IL990013 (Mar. 12, 1999)
  - IL990014 (Mar. 12, 1999)
  - IL990016 (Mar. 12, 1999)
  - IL990020 (Mar. 12, 1999)
  - IL990024 (Mar. 12, 1999)
  - IL990025 (Mar. 12, 1999)
  - IL990026 (Mar. 12, 1999)
  - IL990027 (Mar. 12, 1999)
  - IL990030 (Mar. 12, 1999)
  - IL990032 (Mar. 12, 1999)
  - IL990035 (Mar. 12, 1999)
  - IL990037 (Mar. 12, 1999)
  - IL990039 (Mar. 12, 1999)
  - IL990041 (Mar. 12, 1999)
  - IL990042 (Mar. 12, 1999)
  - IL990045 (Mar. 12, 1999)
  - IL990048 (Mar. 12, 1999)
  - IL990050 (Mar. 12, 1999)
  - IL990051 (Mar. 12, 1999)
  - IL990052 (Mar. 12, 1999)
  - IL990053 (Mar. 12, 1999)
  - IL990054 (Mar. 12, 1999)
  - IL990055 (Mar. 12, 1999)
  - IL990056 (Mar. 12, 1999)
  - IL990066 (Mar. 12, 1999)
  - IL990069 (Mar. 12, 1999)
  - IL990070 (Mar. 12, 1999)
- Indiana
  - IN990001 (Mar. 12, 1999)
  - IN990002 (Mar. 12, 1999)
  - IN990003 (Mar. 12, 1999)
  - IN990004 (Mar. 12, 1999)
  - IN990005 (Mar. 12, 1999)
  - IN990006 (Mar. 12, 1999)

IN990010 (Mar. 12, 1999)
IN990024 (Mar. 12, 1999)
IN990039 (Mar. 12, 1999)

Volume V:

Iowa
IA990002 (Mar. 12, 1999)
IA990004 (Mar. 12, 1999)
IA990005 (Mar. 12, 1999)
IA990010 (Mar. 12, 1999)
IA990014 (Mar. 12, 1999)
IA990016 (Mar. 12, 1999)
IA990071 (Mar. 12, 1999)
IA990078 (Mar. 12, 1999)
Kansas
KS990006 (Mar. 12, 1999)
KS990009 (Mar. 12, 1999)
KS990012 (Mar. 12, 1999)
KS990016 (Mar. 12, 1999)
KS990018 (Mar. 12, 1999)
KS990019 (Mar. 12, 1999)
KS990020 (Mar. 12, 1999)
KS990021 (Mar. 12, 1999)
KS990022 (Mar. 12, 1999)
KS990023 (Mar. 12, 1999)
KS990025 (Mar. 12, 1999)
KS990026 (Mar. 12, 1999)
KS990069 (Mar. 12, 1999)
KS990070 (Mar. 12, 1999)
Missouri
MO990001 (Mar. 12, 1999)
MO990002 (Mar. 12, 1999)
MO990003 (Mar. 12, 1999)
MO990004 (Mar. 12, 1999)
MO990005 (Mar. 12, 1999)
MO990006 (Mar. 12, 1999)
MO990007 (Mar. 12, 1999)
MO990009 (Mar. 12, 1999)
MO990010 (Mar. 12, 1999)
MO990011 (Mar. 12, 1999)
MO990014 (Mar. 12, 1999)
MO990015 (Mar. 12, 1999)
MO990020 (Mar. 12, 1999)
MO990041 (Mar. 12, 1999)
MO990049 (Mar. 12, 1999)
MO990050 (Mar. 12, 1999)
MO990051 (Mar. 12, 1999)
MO990053 (Mar. 12, 1999)
MO990056 (Mar. 12, 1999)
MO990066 (Mar. 12, 1999)
MO990069 (Mar. 12, 1999)
Texas
TX990003 (Mar. 12, 1999)
TX990007 (Mar. 12, 1999)
TX990009 (Mar. 12, 1999)
TX990010 (Mar. 12, 1999)
TX990017 (Mar. 12, 1999)
TX990019 (Mar. 12, 1999)
TX990060 (Mar. 12, 1999)
TX990061 (Mar. 12, 1999)
TX990063 (Mar. 12, 1999)

Volume VI

Alaska
AK990001 (Mar. 12, 1999)
AK990002 (Mar. 12, 1999)
AK990003 (Mar. 12, 1999)
AK990006 (Mar. 12, 1999)
Idaho
ID990001 (Mar. 12, 1999)
North Dakota
ND990001 (Mar. 12, 1999)
ND990002 (Mar. 12, 1999)
ND990019 (Mar. 12, 1999)
ND990026 (Mar. 12, 1999)
ND990027 (Mar. 12, 1999)
ND990029 (Mar. 12, 1999)
ND990049 (Mar. 12, 1999)
Washington
ND990050 (Mar. 12, 1999)
WA990001 (Mar. 12, 1999)
WA990002 (Mar. 12, 1999)
WA990003 (Mar. 12, 1999)
WA990007 (Mar. 12, 1999)

Volume VII

California
CA990001 (Mar. 12, 1999)
CA990002 (Mar. 12, 1999)
CA990004 (Mar. 12, 1999)
CA990009 (Mar. 12, 1999)
CA990028 (Mar. 12, 1999)
CA990029 (Mar. 12, 1999)
CA990030 (Mar. 12, 1999)
CA990031 (Mar. 12, 1999)
CA990032 (Mar. 12, 1999)
CA990033 (Mar. 12, 1999)
CA990034 (Mar. 12, 1999)
CA990035 (Mar. 12, 1999)
CA990036 (Mar. 12, 1999)
CA990037 (Mar. 12, 1999)
CA990038 (Mar. 12, 1999)
CA990039 (Mar. 12, 1999)
CA990040 (Mar. 12, 1999)
CA990041 (Mar. 12, 1999)
Hawaii
HI990001 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 29th day of October 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99-28704 Filed 11-4-99; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92-463).

International Watch: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's International Committee on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATES: December 15, 1999, 12:00 noon-1:00 p.m. est.

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Kathleen A. Blank, Attorney/Program Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004; 202-272-2004 (Voice), 202-272-2074 (TTY) 202-272-2022 (Fax), kblank@ncd.gov (e-mail).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Open Meeting/Conference Call: This advisory committee meeting/conference call of the National Council on

Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above. Records will be kept of all International Watch meetings/conference calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on November 2, 1999.

Ethel D. Briggs,

Executive Director.

[Doc. 99–29066 Filed 11–4–99; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL COUNCIL ON THE HUMANITIES

Meeting

November 1, 1999.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, D.C. on November 18–19, 1999.

The purpose of the meeting is to advise the Chairman of the National Council on the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on November 18–19, 1999, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on November 18, 1999 will be as follows:

Committee Meetings

(Open to the Public) Policy Discussion

9–10:30 a.m.—Preservation and Access/ Challenge Grants—Room 415
Public Programs—Room 420
Federal/State Partnership—Room 507
11:30 a.m. until Adjourned—Research Programs—Room M07
Education Programs—Room M07

(Closed to the Public) Discussion of specific grant applications and programs before the Council

9–11:30 a.m.—Research Programs—Room M07
Education Programs—Room M07
10:30 a.m. until Adjourned—Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Federal/State Partnership—Room 507
1:30–2:30 p.m.—Regional Humanities Center Meeting—Room 415
1:30–2:30 p.m.—Jefferson Lecture—Room 430

The morning session on November 19, 1999 will convene at 9:15 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports

A. Introductory Remarks and Presentations
B. Staff Report
C. Congressional Report
D. Reports on Policy and General Matters
  1. Overview
  2. Research Programs
  3. Education Programs
  4. Preservation and Access and Challenge Grants
  5. Public Programs
  6. Federal/State Partnership
  7. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 99–28948 Filed 11–4–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: November 18–19, 1999; 8:00 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Sochi Rastegar, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Exploratory Research and Biosystems at the Nanoscale proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28957 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date/Time: November 8–9, 1999, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Rajinder P. Khosla, Program Director, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals submitted in response to the program announcement (NSF 99–110).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28951 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196)

Date/Time: November 16–17, 1999, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 580, Arlington, VA

Type of Meeting: Closed.

Contact Person: Dr. Rajinder Khosla, Program Director, Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1340.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Computational Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28953 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196)

Date/Time: November 15–16, 1999, 8:30 a.m.–5:00 p.m. each day.

Place: National Science Foundation. 4201 Wilson Blvd., Room 380, Arlington, VA

Type of Meeting: Closed

Contact Person: Dr. Paul Werbos and Marjia Llic, Program Directors, Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1340.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Computational Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28954 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental and Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Experimental and integrative Activities (#1193).

Date/Time: December 7, 1999, 8 a.m.—5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contract Person: Dr. Dragana Brzakovic, CISE Research Experiences for Undergraduates, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230. Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Research Experiences for Undergraduates proposals submitted in response to the program announcement (NSF 96-102).

Reason For Closing. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Office.

[FR Doc. 99–28956 Filed 11–4–99; 8:45am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental Program To Stimulate Competitive Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Experimental Program to Stimulate Competitive Research (#1198).

Date/Time: December 3, 1999, 8 a.m.–5:30 p.m.

Place: Renaissance Hotel, 999 9th Street, NW, Washington, D.C.

Type of Meeting: Closed.

Contract Person: Mr. James Hoehn, Head Office of Experimental Program to Stimulate Competitive Research (EPSCoR), National Science Foundation, 4201 Wilson Boulevard, Room 875, Arlington, VA 22230. Telephone: (703) 306–1683.

Purpose of Meeting: To provide advice and recommendations concerning EPSCoR Cooperative Agreement proposals submitted to the NSF EPSCoR program for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28955 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (#1755).

Date/time: November 30, 1999, 8:30 a.m.–5:30 p.m., December 1, 1999, 8 a.m.–4:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA.

Type of meeting: Open.

Contact person: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1502.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda: NSF Strategic Planning, Unmet Opportunities, GPRA Performance Assessment, Innovation Partnerships, Future of GEO Education Strategy.

Note: A detailed agenda will be posted on the NSF Homepage approximately one week prior to the meeting on http://www.geo.nsf.gov/adgeo/advcomm/start.htm.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28952 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (#1756).

Date/Time: November 14–19, 1999; 8:30 a.m.–5 p.m..

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1587.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Science Research Programs proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28958 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (#1756).

Date/Time: December 1, 1999; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael Reeve, Section Head, Ocean Sciences Research Section, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1580.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Experience for Undergraduates proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28959 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (#1756).

Date/Time: December 9–10, 1999; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 130, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael Reeve, Section Head, Ocean Sciences Research Section, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1580.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Long Term Ecological Research Special Panel proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28960 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (#1203)

Date/Time: November 19, 1999; 8:00 a.m.–5 p.m.

Place: National Science Foundation; 4201 Wilson Blvd., Room 1060, Arlington, VA

Type of Meeting. Closed.

Contact Person: Dr. Bruce A. MacDonald, Program Director, Metals Research Program, Division of Materials Research, Room 1065, National Science Foundation, Arlington, VA 22230. (703) 306–1835.

Purpose of Meeting: To provide advice and recommendations concerning CAREER proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for FY2000 Faculty Early Career Development Proposals by the Metals Research Program.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28950 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel In Social, Behavorial, and Economic Sciences (#1766)

Date/Time: January 20–21, 2000; from 8:30 a.m. to 5:00 p.m., each day.

Place: National Science Foundation, 4201 Wilson Blvd., Rooms 360, 365 and 370, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Christopher A. Loretz, Associate Program Manager, and Ms. Thomasina Edwards, Senior Program Assistant, East Asia and Pacific Program, Room 935, Division of International Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1701.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate proposals submitted to the NSF Summer Programs in Japan, Korea and Taiwan (Program Announcement NSF 99–152).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28949 Filed 11–4–99; 8:45 am]

BILLING CODE 2555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Social, Behavioral, and Economic Sciences (#1766).

Date/Time: January 6–7, 2000; 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 390, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Ms. Susan Parris, Program Manager, International Research Fellow Awards Program, Division of International Programs, National Science Foundation, 4201 Wilson Boulevard, Room 935, Arlington, VA 22230. (703) 306–1711.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate applications to the International Research Fellow Awards Program submitted in response to the program announcement (NSF 96–14).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personnel information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28961 Filed 11–4–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–313]

Entergy Operations, Inc.; Arkansas Nuclear One, Unit No. 1; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee), to withdraw its September 19, 1999, application for proposed amendment to Facility Operating License No. DPR–51 for the Arkansas Nuclear One, Unit No. 2, located in Pope County, Arkansas.

The proposed amendment would have modified the facility technical specifications to allow the use of steam generator repair roll technology as a repair method for tubesheet defects identified in the steam generator upper tubesheet region.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 23, 1999 (64 FR 51561). However, by letter dated September 30, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 19, 1999, and the licensee's letter dated September 30, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and publicly available electronically from the ADAMS Public Library Component on the NRC Web site at http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 28th day of October 1999.

For the Nuclear Regulatory Commission.

M. Christopher Nolan,

Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–29047 Filed 11–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Unit No. 3 Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–423]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (NNECO or the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 (MP3), located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action:

The proposed action would correct existing editorial and typographical errors in the Technical Specifications (TS). Each proposed change has been verified to meet the intent of what was originally proposed by NNECO and approved by the NRC in previously processed amendments to the TS. These changes are purely administrative and do not impact the operation of the facility. The proposed changes are summarized below.

1. TS 3.8.3.2—Change 3.8.3.2.b.4.1 to 3.8.3.2.b.4.a.
2. TS 4.6.2.1.a.1 and TS 4.6.2.2.a—Add the word "that" after the words "flow path."
3. TS 4.8.1.1.2.i—Change TS 4.8.1.1.2.i.1 to TS 4.8.1.1.2.i.
4. TS 4.9.12—Change TS 4.9.12 to TS 4.9.12.1.

The proposed action is in accordance with the licensee's application for amendment dated August 5, 1999.

The Need for the Proposed Action

Changes to TS 3.8.3.2 and TS 4.9.12 are needed to correct sequential numbering in the TS. Changes to TS

4.6.2.1.a.1 and TS 4.6.2.2.a are needed to address a TS modification that was previously approved by the NRC in Amendment 50. The word "that" was inadvertently omitted from these TS Sections when Amendments 100 and 122 were approved. The change to TS 4.9.12 is needed to clarify that there is only one surveillance requirement in this paragraph.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the modifications to the TS are administrative in nature.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Millstone Nuclear Power Station, Unit No. 3," dated December 1984 (NUREG–1064).

Agencies and Persons Consulted

In accordance with its stated policy, on August 19, 1999, the staff consulted with the Connecticut State official, Mr. Denny Galloway of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 5, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 1st day of November 1999.

For the Nuclear Regulatory Commission.

John A. Nakoski, Sr.

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–29050 Filed 11–4–99; 8:45 am]

BILLING CODE 7590–01–U

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Benefits Due but Unpaid at Death; OMB 3220–0055.

Under Section 2(g) of the Railroad Unemployment Insurance Act (RUIA), benefits under that Act that accrued but were not paid because of the death of an employee shall be paid to the same individual(s) to whom benefits are payable under Section 6(a)(1) of the Railroad Retirement Act. The provisions relating to the payment of such benefits are prescribed in 20 CFR 325.5 and 20 CFR 335.5.

The RRB provides Form UI–63 for use in applying for the accrued sickness or unemployment benefits unpaid at the death of the employee and for securing the information needed by the RRB to identify the proper payee. Completion is voluntary. One response is requested of each respondent.

The RRB proposes minor editorial changes to the UI–63. The completion time for the UI–63 is estimated at 7 minutes. The RRB estimates that approximately 200 responses are received annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–28991 Filed 11–4–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24118]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 29, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 22, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

BlackRock Fund Investors I [File No. 811–8986], BlackRock Fund Investors II [File No. 811–8990], BlackRock Fund Investors III [File No. 811–8988] and BlackRock Asset Investors [File No. 811–8984]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 27, 1999, each applicant made a final liquidating distribution to its common shareholders at net asset value per share. Preferred shares of BlackRock Asset Investors also were redeemed on September 27, 1999. On September 10, 1999, each applicant redeemed its outstanding notes. BlackRock Fund Investors I, BlackRock Fund Investors II, and BlackRock Fund Investors III each incurred expenses of $12,500 in connection with the liquidations. BlackRock Asset Investors incurred expenses of $92,500 in connection with the liquidation.

Filing Dates: Each application was filed on September 30, 1999. BlackRock Asset Investors filed an amended application on October 20, 1999.

Applicants' Address: 345 Park Avenue, New York, New York 10022.

TCW/DW Income and Growth Fund [File No. 811–7372]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 28, 1999, applicant transferred its assets to Morgan Stanley Dean Witter Income Builder Fund, based on net asset value. Expenses of $95,645 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on October 12, 1999.

Applicant's Address: Two World Trade Center, 70th Floor, New York, New York 10048

Morgan Stanley Dean Witter Global Short-Term Income Fund Inc. [File No. 811–6148]; Morgan Stanley Dean Witter Mid-Cap Growth Fund [File No. 811–7179]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment Company. On March 15, 1999, Morgan Stanley Dean Witter Global Short-Term Income Fund Inc. transferred its assets to Morgan Stanley Dean Witter Worldwide Income Trust, based on net asset value. On June 28, 1999, Morgan Stanley Dean Witter Mid-Cap Growth Fund transferred its assets to Morgan Stanley Dean Witter Mid-Cap Equity Trust, based on net asset value. Expenses of $119,373 and $209,654, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Dates: Each application was filed on October 12, 1999.

Applicant's Address: Two World Trade Center, 70th Floor, New York, New York 10048.

Blackrock MQE Investors [File No. 811–7903]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 10, 1999, applicant made a final liquidating distribution to its common shareholders at net asset value per share. Preferred units of applicant were redeemed on March 4, 1999. Expenses of $10,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on September 27, 1999.

Applicant's Address: 345 Park Avenue, New York, New York 10154.

Northstar Strategic Income Fund [File No. 811–8414]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 20, 1998, applicant transferred its assets to Northstar High Yield Fund (the "Acquiring Fund"), based on net asset value. Expenses of $57,538 incurred in connection with the reorganization were paid by the Acquiring Fund.

Filing Date: The application was filed on September 15, 1999.

Applicant's Address: Northstar Investment Management Corporation, 300 First Stamford Place, Stamford, Connecticut 06902.

TCW/DW Emerging Markets Opportunities Trust [File No. 811–8240]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 21, 1999, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses of $26,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on September 24, 1999.

Applicant's Address: Two World Trade Center, New York, New York 10048.

VAM Institutional Funds, Inc. [File No. 811–4546]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 1, 1999, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses of $35,000 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on July 19, 1999, and amended on September 29, 1999.

Applicant's Address: 90 South Seventh Street, Suite 4300, Minneapolis, Minnesota 55402.

Balanced Portfolio [File No. 811–8502]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 1, 1999, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses of $10,000 incurred in connection with the liquidation were paid by Citibank, N.A., applicant's investment adviser.

Filing Date: The application was filed on October 26, 1999.

Applicant's Address: Elizabethan Square, George Town, Grand Cayman, Cayman Islands, BWI.

Voyageur Investment Trust II [File No. 811–8350]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 18, 1998, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses of $360 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on October 25, 1999.

Applicant's Address: 1818 Market Street, Philadelphia, Pennsylvania 19103.

MBL Growth Fund, Inc. [File No. 811–3593]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 22, 1999, applicant made a liquidating distribution to its shareholders based on net asset value per share. Expenses of $4,175 were incurred in connection with the liquidation and were paid by applicant.

Filing Dates: The application was filed on July 22, 1999, and amended on September 29, 1999.

Applicant's Address: 520 Broad Street, Newark, New Jersey 07102–3111.

MBL Variable Contract Account—2 [File No. 811–2047]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 30, 1999, and July 14, 1999, applicant made liquidating distributions to its shareholders based on net asset value per share. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on July 29, 1999.

Applicant's Address: 520 Broad Street, Newark, New Jersey 07102–3111.

MBL Variable Contract Account—3 [File No. 811–2313]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 30, 1999, and July 14, 1999, applicant made liquidating distributions to its shareholders based on net asset value per share. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on July 29, 1999, and amended on September 29, 1999, and October 4, 1999.

Applicant's Address: 520 Broad Street, Newark, New Jersey 07102–3111.

MBL Variable Contract Account—7 [File No. 811–3853]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 30, 1999, applicant made a liquidating distribution to its shareholders based on net asset value per share. No. expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on July 29, 1999.

Applicant's Address: 520 Broad Street, Newark, New Jersey 07102–3111.

MBL Variable Contract Account—9 [File No. 811–5224]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 30, 1999, applicant made a liquidating distribution to its shareholders based on net asset value per share. No. expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on July 30, 1999.

Applicant's Address: 520 Broad Street, Newark, New Jersey 07102–3111.

MBL Variable Contract Account—11 [File No. 811–5798]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 30, 1999, applicant made a liquidating distribution to its shareholders based on net asset value per share. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on July 30, 1999.

Applicant's Address: 520 Broad Street, Newark, New Jersey 07102–3111.

Empire Life Deferred Variable Annuity Account [File No. 811–05478]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Date: The application was filed on August 17, 1999.

Applicant's Address: 5069 154th Place NE, Redmond, Washington 98052.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28975 Filed 11–4–99; 8:45 am]

BILLING CODE 8010–01–M

STATE JUSTICE INSTITUTE

Sunshine Act Meeting

Notice of Public Meeting

STATE JUSTICE INSTITUTE

Date: Friday, November 12, 1999; 9 am–5 pm.

Place: Harrahs, South Tahoe, NV.

Matters To Be Considered: Consideration of proposals submitted for Institute funding.

Portions Open to the Public: All matters other than those noted as closed below.

Portions Closed to the Public: Internal personnel matters and Board of Directors' committee meetings.

Contact Person: David Tevelin, Executive Director, State Justice Institute, 1650 King Street Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 99–29163 Filed 11–3–99; 1:18 pm]

BILLING CODE 6820–SC–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6433]

International Regulatory Harmonization, Motor Vehicle Safety; Motor Vehicles and Motor Vehicle Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of technical meeting.

SUMMARY: NHTSA is hosting the second in a series of informal technical meetings relating to global tire harmonization issues before the Working Party on Brakes and Running Gear (GRRF). The GRRF is one of several subsidiary bodies, known as working parties, formed by the United Nations/Economic Commission for Europe Working Party on the Construction of Motor Vehicles (WP.29) to address particular aspects of motor vehicle performance. The decision to initiate the series of informal technical meetings was made by the Chair of the GRRF. The meetings are focusing on two issues: (1) Globally harmonizing tire regulations, and (2) establishing minimum performance requirements for tire grip (traction).

DATES: The informal technical meeting will be held on Thursday and Friday, November 18–19, 1999, at the address given below, and will begin at 9 p.m. and end at 5 p.m. each day.

In view of seating limitations, organizations and individuals wishing to attend the meeting are requested to contact Mr. George Soodoo by Monday, November 15, 1999.

ADDRESSES: On November 18, 1999, the meeting will be in Room 4438 of the Nassif Building, 400 Seventh St, SW, Washington, DC 20590. On November 19, 1999, the meeting will be in Room 3328 of the Nassif Building.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Group Leader, Vehicle Dynamics Division, Office of Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590. Tel: (202)–366–2720, and Fax: (202)–366–4329, email: gsoodoo@nhtsa.dot.gov.

Ms. Julie Abraham, Director, Office of International Policy and Harmonization, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590. Tel: (202)–366–2114, and Fax: (202)–366–2559.

SUPPLEMENTARY INFORMATION: This notice is to advise interested parties that, on November 18 and 19, 1999, NHTSA will host an informal technical meeting relating to global tire harmonization activities of the Working Party on Brakes and Running Gear (GRRF). The GRRF is one of several subsidiary bodies, known as working parties, formed by the United Nations Economic Commission for Europe Working Party on the Construction of Vehicles to address particular aspects of motor vehicle performance.

I. Background

At the 45th Session of the GRRF, held in Geneva, Switzerland, in February 1999, the European Tyre and Rim Technical Organisation (ETRTO) submitted a proposal for a global technical regulation for passenger cars tires.[1] (The GRRF is responsible for developing safety regulations not only on tires, but also on brakes, wheels and other chassis components of motor vehicles.) In response, the chair of the GRRF encouraged interested participating countries to host informal technical meetings to address the global harmonization of tire regulations. He also asked that these meetings address minimum performance requirements for tire grip (traction), which was originally proposed by the U.K. in February 1998, as an amendment to ECE Regulation 30, Pneumatic Tyres.

The United Kingdom's Department of Environment, Transport, and Regions (DETR) hosted the first informal technical meeting in London, England on July 1–2, 1999. Mr. Gordon Burford of the DETR chaired the meeting on behalf of Mr. Geoff Harvey, the Chair of the informal technical group, who was unable to participate in the meeting. The meeting was attended by sixteen representatives from the following governments and organizations: The United States, the United Kingdom, Germany, Japan, Hungary, the Netherlands, ETRTO, and RMA. The participants spent the first day discussing the technical aspects associated with developing a global tire standard, including tire dimensions, markings, and specific performance tests. They spent the second day discussing what requirements should be included in the tire grip test. The minutes from the first meeting are available in NHTSA Docket 98–3592 (See document #12).

II. Second Informal Technical Meeting on Global Tire Harmonization

On November 18 and 19, 1999, the United States will host the second informal technical meeting on global tire harmonization of the GRRF at the U.S. Department of Transportation. The meeting will follow the informal discussion format of the first meeting. Mr. Geoff Harvey of the DETR will chair the meeting. The goal of the meeting is to address the specific research and development needs associated with global tire harmonization and minimum performance requirements for tire grip (traction). The first day of the meeting will focus on the technical issues associated with the global harmonization of tire standards. The group will begin the process of drafting a technical regulation that will eventually be submitted to the GRRF.

The second day of the meeting will address issues related to tire grip. The group intends to address the form of testing that should be used to measure tire grip (e.g., surface selection, testing mode, *etc.*).

The minutes of the meeting will be kept and placed in the public docket for this notice.

All persons and organizations wishing to attend the meeting are asked to contact George Soodoo at the address or telephone number indicated above.

Seating is limited. Therefore, we ask that organizations limit the number of their representatives to one or two persons in order to ensure that all individuals and organizations who wish to participate are able to do so.

Following is the provisional agenda for the meeting:

UN ECE GRRF Ad-hoc Group—Global Harmonization of Tyre Regulations and Tyre Grip

Provisional Agenda: 2nd meeting 18 and 19 November 1999, to be held in Washington DC, U.S.A.

Thursday 18 November—Global Harmonization of Tire Regulations

- Minutes of the first meeting.
- Draft document for global tire harmonization.
- Response of tire industry to U.S. request for information.

Friday 18 November—Tire Grip

- U.K. proposal on tire grip.
- Discussion on variety of issues including research needs, test surface, and selection of control tire.

Issued on: November 2, 1999.

Martin Koubek,

Assistant to the Director Office of International Policy and Harmonization.

[FR Doc. 99–29140 Filed 11–3–99; 2:19 pm]

BILLING CODE 4910–59–P

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[1] The proposed new global tire standard (also known as Global Tire Standard 2000 for New Pneumatic Passenger Car Tires (GTS–2000)) seeks to harmonize the tire standards of the United States, Europe and Japan. It was developed in the context of the TransAtlantic Business Dialogue with the cooperation and support of members from the international tire industry (specifically, the Rubber Manufacturers Association (RMA) from the United States, the Liaison Office of the Rubber Industry of the European Union (BLIC), and the Japan Automobile Tire Manufacturers Association (JATMA)). During the process, the RMA consulted with consumer groups. The tire industry developed the proposed new global tire standard with the intent of recommending its adoption by the United States, other interested governments, WP.29, and the International Standards Organization (ISO). Before developing the proposed new global tire standard, the tire industry reviewed and compared the tire standards of the United States, Europe, Australia, Brazil, Canada, China, Mexico, and Saudi Arabia. A copy of the proposed new global tire standard was submitted to NHTSA by BLIC and is available in NHTSA Docket 98–4367 (See document #30).

As described by RMA, the proposed new global tire standard "lists the following test criteria: (1) Physical dimensions for overall width and outer diameter; (2) strength test (plunger energy) for bias-ply and bias-belted tires; (3) bead unseating resistance tests for bias-ply and bias-belted tires; (4) low speed (not less than 50 mph) endurance tests for bias-ply and bias-belted tires plus all radial tires with a speed symbol of "Q" or below; and (5) high speed endurance test for all tires (bias-ply, bias-belted, and radial)." In addition, it contains labeling requirements covering tire pressure, load rating, and tire construction.

The proposed new global tire standard was announced at the November 1998 TABD Conference in Charlotte, North Carolina.

On January 25, 1999, the RMA, the Tire and Rim Association (TRA), the Rubber Association of Canada (RAC), JATMA, ETRTO, and BLIC petitioned NHTSA requesting that we revise and update Federal Motor Vehicle Safety Standard No. 109, New Pneumatic Tires, to conform to the proposed new global tire standard. On June 8, 1999, we granted the petition. In a September 3, 1999 letter to all of the petitioners, we solicited additional information regarding each of the petitioners' requests. A copy of the letter is available in the docket for this notice.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33805]

Ameren Corporation—Control Exemption—Missouri Central Railroad Company

Ameren Corporation (Ameren), the parent of wholly owned subsidiary Ameren ERC, Inc. (ERC), has filed a verified notice of exemption to continue in control of the Joppa & Eastern Railroad (JERR) and to acquire control of Missouri Central Railroad Company (MCRR). On October 13, 1999, Ameren and ERC also filed a motion for protective order under 49 CFR 1104.14 and a protective order was granted.[1]

The transaction was scheduled to be consummated on or shortly after October 20, 1999.

Ameren, a noncarrier holding company, currently controls one railroad, the JERR, through Ameren's controlling interest in Electric Energy, Inc. (EEI).[2] ERC is not a rail carrier and does not control any rail carriers. ERC purchased 95% of the stock of MCRR.[3] Because ERC's parent is already in control of one railroad (JERR), the MCRR stock purchased by ERC was placed in a voting trust on October 7, 1999. On or shortly after the October 20, 1999 effective date of this control exemption, ERC was expected to assume control of MCRR. The stock of MCRR had been owned 100% by General Railway Corporation, with the principal shareholder being John F. Larkin.

Ameren states that: (i) These railroads do not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33805, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John R. Molm, Esq., Troutman Sanders LLP, 1300 I Street, NW, Suite 500 East, Washington, DC 20005–3314.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 29, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–28878 Filed 11–4–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Monetary Fund Advisory Committee

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 610 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the Secretary of the Treasury is required to establish an International Monetary Fund Advisory Committee (the "Committee") to advise the Secretary on IMF policy.

DATES: The second meeting of the Committee will be held on November 22, 1999, beginning at 1:30 p.m. in the Diplomatic Room located on the third floor of the main Department of the Treasury building, 1500 Pennsylvania Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Washington, D.C., 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The IMF Advisory Committee will discuss the legislated mandates that affect the financial services sector, with a focus on questions related to strengthening the domestic market and questions that relate to burden sharing and crisis resolution.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. If you wish to attend please FAX your full name, birthday, and social security number to the Designated Federal Official no later than 4 p.m., November 17, for clearance into the Treasury Building.

Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Committee in advance of the second meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than November 15, 1999.

Dated: October 28, 1999.

Lauren M. Vaughan,

Designated Federal Official.

[FR Doc. 99–28820 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the

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[1] *See Ameren Corporation—Control Exemption—Missouri Central Railroad Company*, STB Finance Docket No. 33805 (STB served Oct. 22, 1999).

[2] The JERR owns and operates approximately 5 miles of track within Illinois. EEI was authorized by the Board's predecessor, the Interstate Commerce Commission (ICC), to construct the approximately 5-mile line in *Joppa and Eastern Railroad Co.—Construction Exemption—Joppa, IL*, Finance Docket No. 31656 (ICC served July 5 and Dec. 24, 1990). The ICC also authorized the JERR to lease approximately 2.5 miles of existing trackage in the same vicinity in *Joppa and Eastern Railroad Co.—Petition for Exemption—Lease—Missouri Pacific Railroad Co.*, Finance Docket No. 31656 (Sub-No. 1) (ICC served May 16, 1991).

[3] All of MCRR's rail line will be within Missouri. The verified notice states that MCRR will own and operate approximately 278 miles of railroad. The notice also states that MCRR was to acquire ownership of approximately 244.5 miles of line and trackage rights over 33.5 miles of line on the date of filing of this verified notice (October 13, 1999), upon consummation of noncarrier GRC Holdings Corporation's acquisition and immediate conveyance to MCRR of rail assets from Union Pacific Railroad Company. *See GRC Holdings—Acquisition Exemption—Union Pacific Railroad Co.*, STB Finance Docket No. 33537 (STB served Jan. 27, 1998) and *Missouri Central Railroad Co.—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Co.*, STB Finance Docket No. 33508 (STB served Jan. 27, 1998).

Airlines Withdrawing Stock From Customs Custody.

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Jim Ficaretta, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Airlines Withdrawing Stock From Customs Custody.

OMB Number: 1512–0384.

Recordkeeping Requirement ID Number: ATF REC 5620/2.

Abstract: Airlines may withdraw tax exempt distilled spirits, wine, and beer from Customs custody for foreign flights. The required record shows amount of spirits and wine withdrawn and flight identification, also shows Customs certification. Enables ATF to verify that tax is not due, allows spirits and wines to be traced and maintains accountability. The record retention period for this information collection is 2 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 100 annually.

Estimated Total Annual Burden Hours: 2,500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29006 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application to Establish and Operate Wine Premises and Wine Bond.

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Busey, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Application to Establish and Operate Wine Premises and Wine Bond.

OMB Number: 1512–0058.

Form Number: ATF F 5120.25 and ATF F 5120.36.

Abstract: ATF F 5120.25 is used to establish the qualifications of an applicant for a wine premises. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use. ATF F 5120.36 is used by the proprietor and a surety company as a contract to ensure the payment of the wine excise tax.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,720.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 810.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29007 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations (Variations in Format or Preparation of Records).

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to William Foster, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8374.

SUPPLEMENTARY INFORMATION:

Title: Wholesale Dealers Applications, Letterhead, and Notices Relating to Operations (Variations in Format or Preparation of Records)

OMB Number: 1512–0357

Recordkeeping Requirement ID Number: ATF REC 5170/6

Abstract: This recordkeeping requirement pertains only to those wholesale liquor and beer dealers submitting applications for a variance from the regulations dealing with preparation, format, type, or place of retention of records of receipt or disposition for alcoholic beverages. The record retention requirement for this information collection is 6 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,029.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 515.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29008 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Jim Ficaretta, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.

OMB Number: 1512–0354.

Recordkeeping Requirement ID Number: ATF REC 5170/3.

Abstract: The primary objective of this recordkeeping requirement is revenue protection by establishment of accountability data available for audit purposes. A second objective, consumer protection, is afforded by subject record traceability of alcoholic beverages to the retail liquor dealer level of distribution in the event of defective products. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 455,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1 hour.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29009 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Stills: Notices, Registration, and Records.

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Stills: Notices, Registration, and Records.

OMB Number: 1512–0341.

Recordkeeping Requirement ID Number: ATF REC 5150/8.

Abstract: The information is used to account for and regulate the distillation of distilled spirits to protect the revenue and to provide for identification of distillers. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 21.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29010 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Tax-Exempt Transfer and Registration of a Firearm.

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dave Marshall, National Firearms Act Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8330.

SUPPLEMENTARY INFORMATION:

Title: Application for Tax-Exempt Transfer and Registration of a Firearm.

OMB Number: 1512–0028.

Form Number: ATF F 5 (5320.5).

Abstract: The National Firearms Act requires that the information contained on this form be submitted to the Secretary for a tax exempt transfer of a NFA firearm. The form identifies current and prospective owners, and the firearm, as well as to ensure the legality of transfer under Federal, State and local law.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 62,321.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 498,568.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29011 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Tax-Paid Transfer and Registration of a Firearm.

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dave Marshall, National Firearms Act Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8330.

SUPPLEMENTARY INFORMATION:

Title: Application for Tax-Paid Transfer and Registration of a Firearm.

OMB Number: 1512–0027.

Form Number: ATF F 4 (5320.4).

Abstract: ATF 4 (5320.4) must be submitted to ATF to obtain approval for tax paid transfers of NFA firearms. Approval of a transfer and registration of a firearm to a new owner are accomplished with the information supplied on this document. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 7,853.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 31,412.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

Willaim T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29012 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dave Marshall, National Firearms Act Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8330.

SUPPLEMENTARY INFORMATION:

Title: Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

OMB Number: 1512–0022.

Form Number: ATF F 5320.20.

Abstract: ATF F 5320.20 is used to request permission to move certain NFA firearms in interstate or foreign commerce.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 800.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 400.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29013 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the

Application and Permit for Permanent Exportation of Firearms.

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dave Marshall, National Firearms Act Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8330.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit for Permanent Exportation of Firearms.

OMB Number: 1512–0020.

Form Number: ATF F 9 (5320.9).

Abstract: ATF F 9 (5320.9) is required of any person desiring to export an NFA firearm without payment of transfer tax and to establish such exportation to relieve the exporter from payment of the transfer tax.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households

Estimated Number of Respondents: 70.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 1,050.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29014 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the ATF Distribution Center Contractor Survey.

DATES: Written comments should be received on or before January 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dirck Harris, Document Services Branch, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: ATF Distribution Center Contractor Survey.

OMB Number: 1512–0002.

Form Number: ATF F 1600.7.

Abstract: ATF 1600.7 provides users of the Bureau's forms and publications an opportunity to comment on the Bureau's Distribution Center contractor and the services it provides. The users can evaluate and comment on the services of the Distribution Center contractor.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review:. Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 21,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 168.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–29015 Filed 11–4–99; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, South Florida District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the So. Fla. Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Friday, November 12, 1999 and Saturday, November 13, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, November 12, 1999 from 6:00 pm to 9:00 pm and Saturday, November 13, 1999 from 9:00 am to 1:00 pm, in Room 225, CAP Office, 7771 W. Oakland Park Blvd., Sunrise, Florida 33351. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd., Rm. 225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973.

The agenda will include the following: Various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 29, 1999.

Cathy VanHorn,

Chief, CAP and Communications.

[FR Doc. 99–28967 Filed 11–4–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service, Treasury

Performance Review Board

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, M:ES, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in Field Offices are as follows:

Charles Fowler III, National Director, EEO and Diversity

Dale Hart, Regional Commissioner, Midstates Region

Herma Hightower, Regional Commissioner, Northeast Region

Robert Johnson, Regional Commissioner, Southeast Region

Jimmy Smith, Acting Executive Officer for Service Center Operations

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43FR52122).

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 99–28968 Filed 11–4–99; 8:45 am]

BILLING CODE 4830–01–U

TWENTY-FIRST CENTURY WORKFORCE COMMISSION

Notice of Open Meeting

AGENCY: Twenty-First Century Workforce Commission.

ACTION: Notice of open meeting.

SUMMARY: Establishment of the Twenty-First Century Workforce Commission was mandated by Subtitle C of Title III of the Workforce Investment Act, Sec. 331 of Public Law 105–220, 112 Stat. 1087–1091, (29 U.S.C. 2701 note), signed into law on August 7, 1998. The 15 voting member Twenty-First Century Workforce Commission will be a body within the Legislative Branch, and is charged with studying all aspects of the information technology workforce in the United States.

TIME & PLACE: The meeting will be held from 10 a.m. to approximately 4 p.m. on Tuesday, November 16, 1999, at the U.S. Department of Labor, 200 Constitution Ave, NW, Washington DC 20210, in the Policy Center, Room S–2312. Some Commissioners may attend by telephone conference call. The occurrence of this meeting will depend on the availability of appropriations, which may not be determined until shortly before the meeting. For up-to-date information, please contact Ruth Samardick at (202) 219–6197, ext 130.

AGENDA: The agenda for the Commission meeting will include: introduction of Commissioners; election of Chair and Vice Chair; Adoption of Charter; Commission Organization and Staffing; and time line.

PUBLIC PARTICIPATION: The meeting, from 10 a.m. to 4 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Ruth Samardick at (202) 219–6197, ext. 130, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Ruth Samardick, Secretary of Labor's Designated Liaison to the Twenty-First Century Workforce Commission, at (202) 219–6197, ext 130.

Due to difficulties of scheduling the members, we are unable to provide a full 15-day advance notice of this meeting.

Signed at Washington, DC, this 1st day of November, 1999.

Susan M. Green,

Ex-Officio Member, Twenty-First Century Workforce Commission.

[FR Doc. 99–29108 Filed 11–4–99; 8:45 am]

BILLING CODE 4510–23–U

U.S. TRADE DEFICIT REVIEW COMMISSION

Notice of Open Hearing

AGENCY: U.S. Trade Deficit Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S. Trade Deficit Review Commission.

The Commission is mandated to report to the Congress and the President on the causes, consequences, and solutions to the U.S. trade deficit. The purpose of this public hearing is to discuss high technology and software trade and U.S.-Asia financial relations. There will be two sessions, one in the morning and one in the afternoon, for presentations by invited witnesses on their views on the interrelationship between the trade deficit and the topics of the hearing. There will be a question and answer period between the Commissioners and the witnesses.

Public participation is invited and there will be an open-mike session for public comment at the conclusion of the afternoon session. Sign-up for the open-mike session will take place in the afternoon and will be on a first come first served basis. Each individual or group making an oral presentation will be limited to a total time of 3 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

DATES: Monday, November 15, 1999, 8:30 am–4:00 pm Pacific Time inclusive.

ADDRESSES: The hearing will be held at the Hyatt Rickeys Hotel in Palo Alto in the Camino Ball Conference Room, 4219 El Camino Real, Palo Alto, CA 94306. Public seating is limited to about 150 seats and will be on a first come first served basis. Free public parking is available at the hotel.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing or who wishes to submit oral or written comments should contract Kathy Michels, Administrative Officer for the U.S. Trade Deficit Review Commission, 444 North Capitol Street, NW, Suite 706, Washington, DC 20001; phone 202/624–1407; or via e-mail at: *tdrc@sso.org*.

Providing Oral or Written comments at the Palo Alto Hearing

Copies of the draft meeting agenda, when available, may be obtained from the U.S. Trade Deficit Review Commission by going to the Commission's website at www.ustdrc.gov. The Commission requests that written public statements submitted for the record be brief and concise and limited to two pages in length. Written comments (at least 35 copies) must be received at the USTDRC Headquarters Office in Washington, DC by November 10, 1999. Comments received too close to the hearing date will normally be provided to the Commission Members at its hearing. Written comments may be provided up until the time of the hearing.

Authority: The Trade Deficit Review Commission Act, Pub. L. No. 105–277, Div. A, section 127, 112 Stat. 2681–547 (1998), established the Commission to study the nature, causes and consequences of the United States merchandise trade and current accounts deficits and report its findings to the President and the Congress. By statute, the Commission must hold at least 4 regional field hearings and 1 hearing in Washington, DC. This is the second in a series of field hearings to be conducted. The schedule of hearings is available at the US Trade Deficit Review Commission website <www.ustdrc.gov≤.

For the U.S. Trade Deficit Review Commission.

Dated Washington, DC, November 2, 1999.

Allan I. Mendelowitz,

Executive Director, U.S. Trade Deficit Review Commission.

[FR Doc. 99–29022 Filed 11–4–99; 8:45 am]

BILLING CODE 6820–46–M

U.S. TRADE DEFICIT REVIEW COMMISSION

Notice of Open Hearing

AGENCY: U.S. Trade Deficit Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S. Trade Deficit Review Commission.

The Commission is mandated to report to the Congress and the President on the causes, consequences, and solutions to the U.S. trade deficit. The purpose of this public hearing is to discuss aerospace and other high-technology exports, and U.S.-Asia trade and market access. There will be two sessions, one in the morning and one in the afternoon, for presentations by invited witnesses on their views on the interrelationship between the trade deficit and the topics of the hearing. There will be a question and answer period between the Commissioners and the witnesses.

Public participation is invited and there will be an open-mike session for public comment at the conclusion of the afternoon session. Sign-up for the open-mike session will take place in the afternoon and will be on a first come first served basis. Each individual or group making an oral presentation will be limited to a total time of 3 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

DATES: Tuesday, November 16, 1999, 9 am–5 pm Pacific Time inclusive.

ADDRESSES: The hearing will be held at King County Courthouse, Snoqualmie Room, 516 3rd Avenue, Seattle, WA 98104. Public seating is limited to 75 to 100 seats and will be on a first come first served basis. Commercial public parking lots are available within the vicinity of the King County Courthouse.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing or who wishes to submit oral or written comments should contact Kathy Michels, Administrative Officer for the U.S. Trade Deficit Review Commission, 444 North Capitol Street, NW, Suite 706, Washington, DC 20001; phone 202/624–1407; or via e-mail at: *tdrc@sso.org*.

Providing Oral or Written Comments at the Seattle Hearing

Copies of the draft meeting agenda, when available, may be obtained from the U.S. Trade Deficit Review Commission by going to the Commission's website at www.ustdrc.gov. The Commission requests that written public statements submitted for the record be brief and concise and limited to two pages in length. Written comments (at least 35 copies) must be received at the USTDRC Headquarters Office in Washington, DC by November 11, 1999. Comments received too close to the hearing date will normally be provided to the Commission Members at its hearing. Written comments may be provided up until the time of the hearing.

Authority: The Trade Deficit Review Commission Act, Pub. L. No. 105–277, Div. A, section 127, 112 Stat. 2681–547 (1998), established the Commission to study the nature, causes and consequences of the United States merchandise trade and current accounts deficits and report its findings to the President and the Congress. By statute, the Commission must hold at least 4 regional field hearings and 1 hearing in Washington, DC. This is the third in a series of field hearings to be conducted. The schedule of hearings is available at the U.S. Trade Deficit Review Commission website <www.ustdrc.gov>.

For the U.S. Trade Deficit Review Commission.

Dated at Washington, DC, November 2, 1999.

Allan I. Mendelowitz,

Executive Director, U.S. Trade Deficit Review Commission.

[FR Doc. 99–29023 Filed 11–4–99; 8:45 am]

BILLING CODE 6820–46–M

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

Date/Time: Thursday, November 18, 1999, 9:00 a.m.–5:30 p.m.

Location: 1200 17th Street, NW, Suite 200—Conference Room, Washington, DC 20036.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: November 1999 Board Meeting; Approval of Minutes of the Ninety-First Meeting (September 16, 1999) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Reports on Appropriation for Fiscal Year 2000 and Budget Request for Fiscal Year 2001; Other General Issues.

Contact: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: November 1, 1999.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 99–29102 Filed 11–2–99; 4:43 pm]

BILLING CODE 6820–AR–M

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federal register

Friday
November 5, 1999

Part II

Environmental Protection Agency

40 CFR Part 81

Rescinding Findings; 1-Hour Ozone Standard No Longer Applies In Certain Areas; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–6463–9]

Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 25, 1999, the EPA published the preamble to this proposed rule, proposing to rescind its prior findings that the 1-hour ozone national ambient air quality standard (NAAQS) and its accompanying designations and classifications no longer apply in certain areas. Under the proposal, the designations and classifications that previously applied in such areas with respect to the 1-hour standard would be reinstated. Today's action includes the proposed regulatory language for Part 81, as was noted in the published preamble would follow in a subsequent **Federal Register**.

DATES: Your comments must be submitted on or before December 1, 1999 in order to be considered.

ADDRESSES: You may comment in various ways:

On paper. Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–99–22, U.S. Environmental Protection Agency, 401 M St., SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548.

Electronically. Send electronic comments to EPA at: A-and-R-Docket@epamail.epa.gov. Avoid sending confidential business information. We accept comments as e-mail attachments or on disk. Either way, they must be in WordPerfect 5.1 or 6.0 or ASCII file format. Avoid the use of special characters and any form of encryption. You may file your comments on this proposed rule online at many Federal Depository Libraries. Be sure to identify all comments and data by Docket number A–99–22.

Public inspection. You may read the proposed rule (including paper copies of comments and data submitted electronically, minus anything claimed as confidential business information) at the Docket and Information Center. They are available for public inspection from 8 a.m. to 5:30 p.m., Monday through Wednesday, excluding legal holidays. We may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Questions about this proposal should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238 or e-mail to nikbakht.annie@epamail.epa.gov or gilbert.barry@epamail.epa.gov. To ask about policy matters or monitoring data for a specific geographic area, call one of these contacts:

Region I—Richard P. Burkhart (617) 918–1664,
Region II—Ray Werner (212) 637–3706,
Region III—Marcia Spink (215) 814–2104,
Region IV—Kay Prince (404) 562–9026,
Region V—Todd Nettesheim (312) 353–9153,
Region VI—Lt. Mick Cote (214) 665–7219,
Region VII—Royan Teter (913) 551–7609,
Region VIII—Tim Russ (303) 312–6479,
Region IX—Morris Goldberg (415) 744–1296,
Region X—William Puckett (206) 553–1702

SUPPLEMENTARY INFORMATION:

On October 25, 1999, the Agency published the preamble to this proposal. As noted in the **Federal Register** (64 FR 57424) on that day, today's action provides the regulatory language for Part 81.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 20, 1999.

Carol M. Browner,
Administrator.

For the reasons stated in the preamble, published on October 25, 1999 (64 FR 57424), part 81 of chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In § 81.301, the table entitled "Alabama-Ozone (1–Hour standard)" is revised to read as follows:

§ 81.301 Alabama.

* * * * * * *

ALABAMA-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Birmingham Area:				
Jefferson County		Nonattainment		Marginal.
Shelby County		Nonattainment		Marginal.
Rest of State		Unclassifiable/Attainment		
Autauga County				
Baldwin County				
Barbour County				
Bibb County				
Blount County				
Bullock County				
Butler County				
Calhoun County				
Chambers County				
Cherokee County				
Chilton County				
Choctaw County				
Clarke County				
Clay County				

ALABAMA-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Cleburne County				
Coffee County				
Colbert County				
Conecuh County				
Coosa County				
Covington County				
Crenshaw County				
Cullman County				
Dale County				
Dallas County				
De Kalb County				
Elmore County				
Escambia County				
Etowah County				
Fayette County				
Franklin County				
Geneva County				
Greene County				
Hale County				
Henry County				
Houston County				
Jackson County				
Lamar County				
Lauderdale County				
Lawrence County				
Lee County				
Limestone County				
Lowndes County				
Macon County				
Madison County				
Marengo County				
Marion County				
Marshall County				
Mobile County				
Monroe County				
Montgomery County				
Morgan County				
Perry County				
Pickens County				
Pike County				
Randolph County				
Russell County				
St. Clair County				
Sumter County				
Talladega County				
Tallapoosa County				
Tuscaloosa County				
Walker County				
Washington County				
Wilcox County				
Winston County				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

3. In § 81.302, the table entitled "Alaska—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.302 Alaska.

* * * * * * *

ALASKA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 08 Cook Inlet Intrastate		Unclassifiable/Attainment		
Anchorage Election District				
Kenai Penninsula Election District				
Matanuska-Susitna Election District				
Seward Election District				

ALASKA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 09 Northern Alaska Intrastate		Unclassifiable/Attainment		
Barrow Election District				
Denali Borough				
Fairbanks Election District				
Kobuk Election District				
Nome Election District				
North Slope Election District				
Northwest Arctic Borough				
Southeast Fairbanks Election District				
Upper Yukon Election District				
Yukon-Koyukuk Election District				
AQCR 10 South Central Alaska Intrastate		Unclassifiable/Attainment		
Aleutian Islands Election District				
Aleutians East Borough				
Aleutians West Census				
Bethel Election District				
Bristol Bay Borough Election District				
Bristol Bay Election District				
Cordova-McCarthy Election District				
Dillingham Election District				
Kodiak Island Election District				
Kuskokwim Election District				
Lake and Peninsula Borough				
Valdez-Cordova Election District				
Wade Hampton Election District				
AQCR 11 Southeastern Alaska Intrastate		Unclassifiable/Attainment		
Angoon Election District				
Haines Election District				
Juneau Election District				
Ketchikan Election District				
Outer Kethcikan Election District				
Prince Of Wales Election District				
Sitka Election District				
Skagway-Yakutat Election District				
Wrangell-Petersburg Election District				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

4. In § 81.303, the table entitled "Arizona—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.303 Arizona.

* * * * * * *

ARIZONA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Phoenix Area:				
Maricopa County (part)	11/15/90	Nonattainment	2/13/98	Serious.
The Urban Planning Area of the Maricopa Association of Governments is bounded as follows:				
1. Commencing at a point which is at the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area, which is the point of beginning;				

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
2. Thence, proceed northerly along the eastern line of Range 7 East which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statute Section 11–109, to a point where the eastern line of Range 7 East intersects the northern line of Township 1 North, said point is also the intersection of the Maricopa County Line and the Tonto National Forest Boundary, as established by Executive Order 869 dated July 1, 1908, as amended and showed on the U.S. Forest Service 1969 Planimetric Maps;				
3. Thence, westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, said point being the boundary of the Tonto National Forest and Usery Mountain Semi-Regional Park;				
4. Thence, northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the northeast corner of the Usery Mountain Semi-Regional Park;				
5. Thence, westerly along the Tonto National Forest Boundary, which is generally the south line of Sections 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East;				
6. Thence, northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel;				
7. Thence, northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation and the southeast corner of the Fort McDowell Indian Reservation, as shown on the plat dated July 22, 1902, and recorded with the U.S. Government on June 15, 1902;				
8. Thence, northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation;				
9. Thence, southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common boundary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East;				

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
10. Thence, northerly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of McDowell Mountain Regional Park;				
11. Thence, westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park;				
12. Thence, northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest;				
13. Thence, westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects with the easterly line of Range 4 East, said line is the boundary of Tonto National Forest;				
14. Thence, northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest;				
15. Thence, westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statute Section 11–109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant);				
16. Thence, southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statute Section 11–109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek;				
17. Thence, southerly along the center line of Aqua Fria River to the intersection of the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964;				
18. Thence, southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of Beardsley Canal where it intersects with the center line of Indian School Road;				
19. Thence, westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail;				

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
20. Thence, southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West;				
21. Thence, northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West;				
22. Thence, southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South;				
23. Thence, easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park;				
24. Thence, southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation;				
25. Thence, easterly along the southern boundary of the Gila River Indian Reservation which is the southern line of Sections 13, 14, 15, 16, 17, and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statues Section 11–109 and 11–113, which is the eastern line of Range 1 East;				
26. Thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River;				
27. Thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and				
28. Thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line Range 7 East				
Tucson Area				
Pima County (part)				
Tuscon area		Unclassifiable/Attainment		
Rest of State		Unclassifiable/Attainment		
Apache County				
Cochise County				
Coconino County				
Gila County				
Graham County				
Greenlee County				
La Paz County				
Maricopa County (part) area outside of Phoenix				
Mohave County				
Navajo County				
Pima County (part) Remainder of county				
Pinal County				

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Santa Cruz County				
Yavapai County				
Yuma County				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

5. In § 81.304, the table entitled "Arkansas—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.304 Arkansas.

* * * * * * *

ARKANSAS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 016 Central Arkansas Intrastate (part) Pulaski County.	....	Unclassifiable/Attainment		
AQCR 016 Central Arkansas Intrastate (Remainder of)	....	Unclassifiable/Attainment		
Chicot County				
Clark County				
Cleveland County				
Conway County				
Dallas County				
Desha County				
Drew County				
Faulkner County				
Garland County				
Grant County				
Hot Spring County				
Jefferson County				
Lincoln County				
Lonoke County				
Perry County				
Pope County				
Saline County				
Yell County				
AQCR 017 Metropolitan Fort Smith Interstate	....	Unclassifiable/Attainment		
Benton County				
Crawford County				
Sebastian County				
Washington County				
AQCR 018 Metropolitan Memphis Interstate	....	Unclassifiable/Attainment		
Crittenden County				
AQCR 019 Monroe-El Dorado Interstate	....	Unclassifiable/Attainment		
Ashley County				
Bradley County				
Calhoun County				
Nevada County				
Ouachita County				
Union County				
AQCR 020 Northeast Arkansas Intrastate	....	Unclassifiable/Attainment		
Arkansas County				
Clay County				
Craighead County				
Cross County				
Greene County				
Independence County				
Jackson County				
Lawrence County				
Lee County				
Mississippi County				
Monroe County				
Phillips County				
Poinsett County				
Prairie County				
Randolph County				
Sharp County				
St. Francis County				

ARKANSAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
White County				
Woodruff County				
AQCR 021 Northwest Arkansas Intrastate		Unclassifiable/Attainment		
Baxter County				
Boone County				
Carroll County				
Cleburne County				
Franklin County				
Fulton County				
Izard County				
Johnson County				
Logan County				
Madison County				
Marion County				
Montgomery County				
Newton County				
Pike County				
Polk County				
Scott County				
Searcy County				
Stone County				
Van Buren County				
AQCR 022 Shreveport-Texarkana-Tyler Interstate		Unclassifiable/Attainment		
Columbia County				
Hempstead County				
Howard County				
Lafayette County				
Little River County				
Miller County				
Sevier County				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

6. In § 81.305, the table entitled "California—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.305 California.

* * * * * * *

CALIFORNIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Chico Area:				
Butte County		Nonattainment		Sec. 185A Area.[2]
Imperial County Area:				
Imperial County		Nonattainment		Sec. 185A Area.[2]
Los Angeles-South Coast Air Basin Area		Nonattainment		Extreme.
Los Angeles County (part)—that portion of Los Angeles County which lies south and west of a line described as follows:				
1. Beginning at the Los Angeles—San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian;				
2. then north along the range line common to Range 8 West and Range 9 West;				
3. then west along the Township line common to Township 4 North and Township 3 North;				
4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West;				

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West;				
6. then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West);				
7. then west along the Township line common to Township 7 North and Township 6 North;				
8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West;				
9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West;				
10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North);				
11. then west along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant;				
12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				
Orange County	....	Nonattainment	....	Extreme.
Riverside County (part)—that portion of Riverside County which lies to the west of a line described as follows:	....	Nonattainment	....	Extreme.
1. Beginning at the Riverside—San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;				
2. then east along the Township line common to Township 8 South and Township 7 South;				
3. then north along the range line common to Range 5 East and Range 4 East;				
4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;				
5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;				
6. then west along the Township line common to Township 5 South and Township 6 South;				
7. then north along the range line common to Range 4 East and Range 3 East;				
8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East;				
9. then north along the range line common to Range 2 East and Range 3 East;				
10. then west along the Township line common to Township 4 South and Township 3 South to the intersection of the southwest boundary of partial Section 31, Township 3 South, Range 1 West;				
11. then northwest along that line to the intersection with the range line common to Range 2 West and Range 1 West;				
12. then north to the Riverside-San Bernardino County line,				

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
San Bernardino County (part)—that portion of San Bernardino County which lies south and west of a line described as follows:. 1. Beginning at the San Bernardino—Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; 2. then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino—Los Angeles County boundary;		Nonattainment		Extreme.
Monterey Bay Area	3/18/97	Attainment.		
Monterey County				
San Benito County				
Santa Cruz County				
Sacramento Metro Area		Non-attainment	6/01/95	Severe-15.
El Dorado County (part): All portions of the county except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake.				
Placer County (part): All portions of the county except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian (M.D.B.&M.), and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, M.D.B.&M., thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, M.D.B.&M., to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.		Nonattainment	6/01/95	Severe-15.
Sacramento County		Nonattainment	6/01/95	Severe-15.
Solano County (part) That portion of Solano County which lies north and east of a line described as follows: Description of boundary in Solano county between San Francisco and Sacramento: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T. 6 N., R. 2 W., M.D.B.&M., thence east along said ¼ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W., thence east along a line common to T. 5 N. and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10, T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8, T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties		Nonattainment	6/01/95	Severe-15.
Sutter County (part—southern portion)South of a line connecting the northern border of Yolo Co. to the SW tip of Yuba Co. and continuing along the southern Yuba County border to Placer County.		Nonattainment	6/01/95	Severe-15.
Yolo County		Nonattainment	6/01/95	Severe-15.
San Diego Area:				
San Diego County	2/21/95	Nonattainment	2/21/95	Serious.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
San Francisco-Bay Area	8/10/98	Nonattainment	8/10/98/ 8/23/99	Not classified/Moderate under 23 U.S.C. 104(b)(2).
Alameda County	8/10/98	......do	8/23/99	Do.
Contra Costa County	8/10/98	......do	8/23/99	Do.
Marin County	8/10/98	......do	8/23/99	Do.
Napa County	8/10/98	......do	8/23/99	Do.
San Francisco County	8/10/98	......do	8/23/99	Do.
San Mateo County	8/10/98	......do	8/23/99	Do.
Santa Clara County	8/10/98	......do	8/23/99	Do.
Solano County (part)	8/10/98	......do	8/23/99	Do.
That portion of the county that lies south and west of the line described that follows: Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection at the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T.6 N., R. 2 W., M.D.B.&M., thence east along said ½ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W, thence east along a line common to T. 5 N., and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10 T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8 T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties.				
Sonoma County (part)	8/10/98	......do	8/23/99	Do.

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
That portion of Sonoma county which lies south and east of a line described as follows: Beginning at the south-easterly corner of the Rancho Estero Americano, being on the boundary line between Marin Sonoma Counties, California; thence running northerly along the easterly boundary line of said Rancho Estero Americano to the northeasterly corner thereof, being an angle corner in the westerly boundary line of Rancho Canada de Jonive, thence running along said boundary of Rancho Canada de Jonive westerly,; northerly and easterly to its intersection with the easterly line of Granton Road; thence running along the easterly and southerly line of Granton Road northerly and easterly to its intersection with the easterly line of Sullivan Road; thence running northerly along said easterly line of Sullivan Road to the southerly line of Green Valley Road; thence running easterly along the said southerly line of Green Valley Road and easterly along the southerly line of State Highway 116, to the westerly and northerly line of Vine Hill Road; thence running along the westerly and northerly line of Vine Hill Road, northerly and easterly to its intersection with the westerly line of Laguna Road; thence running northerly along the westerly line of Laguna Road and the northerly projection thereof to the northerly line of Trenton Road; thence running westerly along the northerly line of said Trenton Road to the easterly line of Trenton-Healdsburg Road to the easterly line of Eastside Road: thence running northerly along said easterly line of Eastside Road to its intersection with the southerly line of Ranco Sotoyome; thence running easterly along said southerly line of Rancho Sotoyome to its intersection with the Township line common to Townships 8 and 9 north, Mt. Diablo Base and Meridian; thence running easterly along said Township line to its intersection with the boundary line between Sonoma and Napa Counties, State of California.				
San Joaquin Valley Area:				
Fresno County		Nonattainment		Serious.
Kern County		Nonattainment		Serious.
Kings County		Nonattainment		Serious.
Madera County		Nonattainment		Serious.
Merced County		Nonattainment		Serious.
San Joaquin County		Nonattainment		Serious.
Stanislaus County		Nonattainment		Serious.
Tulare County		Nonattainment		Serious.
Santa Barbara-Santa Maria-Lompoc Area:				
Santa Barbara County		Nonattainment	1/09/98	Serious.
Southeast Desert Modified AQMA Area		Nonattainment		Severe-17.
Los Angeles County (part)—that portion of Los Angeles County which lies north and east of a line described as follows:				
1. Beginning at the Los Angeles—San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian;				
2. then north along the range line common to Range 8 West and Range 9 West;				
3. then west along the Township line common to Township 4 North and Township 3 North;				
4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West;				

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West;				
6. then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West);				
7. then west along the Township line common to Township 7 North and Township 6 North;				
8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West;				
9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West;				
10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North);				
11. then west along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant;				
12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				
Riverside County (part)—that portion of Riverside County which lies to the east of a line described as follows:	....	Nonattainment	....	Severe-17.
1. Beginning at the Riverside—San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;				
2. then east along the Township line common to Township 8 South and Township 7 South;				
3. then north along the range line common to Range 5 East and Range 4 East;				
4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;				
5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;				
6. then west along the Township line common to Township 5 South and Township 6 South;				
7. then north along the range line common to Range 4 East and Range 3 East;				
8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East;				
9. then north along the range line common to Range 2 East and Range 3 East;				
10. then west along the Township line common to Township 4 South and Township 3 South to the intersection of the southwest boundary of partial Section 31, Township 3 South, Range 1 West;				
11. then northwest along that line to the intersection with the range line common to Range 2 West and Range 1 West;				
12. then north to the Riverside-San Bernardino County line, and that portion of Riverside County which lies to the west of a line described as follows:				
13. beginning at the northeast corner of Section 4, Township 2 South, Range 5 East, a point on the boundary line common to Riverside and San Bernardino Counties;				

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
14. then southerly along section lines to the centerline of the Colorado River Aquaduct;				
15. then southeasterly along the centerline of said Colorado River Aquaduct to the southerly line of Section 36, Township 3 South, Range 7 East;				
16. then easterly along the Township line to the northeast corner of Section 6, Township 4 South, Range 9 East;				
17. then southerly along the easterly line of Section 6 to the southeast coner thereof;				
18. then easterly along section lines to the northeast corner of Section 10, Township 4 South, Range 9 East;				
19. then southerly along section lines to the southeast corner of Section 15, Township 4 South, Range 9 East;				
20. then easterly along the section lines to the northeast corner of Section 21, Township 4 South, Range 10 East;				
21. then southerly along the easterly line of Section 21 to the southeast corner thereof;				
22. then easterly along the northerly line of Section 27 to the northeast corner thereof;				
23. then southerly along section lines to the southeast corner of Section 34, Township 4 South, Range 10 East;				
24. then easterly along the Township line to the northeast corner of Section 2, Township 5 South, Range 10 East;				
25. then southerly along the easterly line of Section 2, to the southeast corner thereof;				
26. then easterly along the northerly line of Section 12 to the northeast corner thereof;				
27. then southerly along the range line to the southwest corner of Section 18, Township 5 South, Range 11 East;				
28. then easterly along section lines to the northeast corner of Section 24, Township 5 South, Range 11 East;				
29. then southerly along the range line to the southeast corner of Section 36, Township 8 South, Range 11 East, a point on the boundary line common to Riverside and San Diego Counties.				
San Bernadino County (part)—that portion of San Bernardino County which lies north and east of a line described as follows:		Nonattainment:		Severe-17.
1. Beginning at the San Bernardino—Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian;				
2. then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino—Los Angeles County boundary; and that portion of San Bernardino County which lies south and west of a line described as follows:				
3. latitude 35 degrees, 10 minutes north and longitude 115 degrees, 45 minutes west.				
Ventura County Area:				
Ventura County		Nonattainment		Severe-15.
Yuba City Area:				
Sutter County (part—northern portion)		Nonattainment		Sec. 185A Area.[2]
North of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County.				
Yuba County		Nonattainment		Sec. 185A Area.[2]
Great Basin Valleys Air Basin		Unclassifiable/Attainment		
Alpine County				
Inyo County				
Mono County				

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Lake County Air Basin		Unclassifiable/Attainment		
Lake County				
Lake Tahoe Air Basin		Unclassifiable/Attainment		
El Dorado County (part)				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Placer County (part)				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Mountain Counties Air Basin (Remainder of):				
Amador County		Unclassifiable/Attainment		
Calaveras County		Unclassifiable/Attainment		
Mariposa County		Unclassifiable/Attainment		
Nevada County		Unclassifiable/Attainment		
Plumas County		Unclassifiable/Attainment		
Sierra County		Unclassifiable/Attainment		
Tuolumne County		Unclassifiable/Attainment		
North Coast Air Basin		Unclassifiable/Attainment		
Del Norte County				
Humboldt County				
Mendocino County				
Sonoma County (part)				
Remainder of County				
Trinity County				
Northeast Plateau Air Basin		Unclassifiable/Attainment		
Lassen County				
Modoc County				
Siskiyou County				
Sacramento Valley Air Basin (Remainder of):				
Colusa County		Unclassifiable/Attainment		
Glenn County		Unclassifiable/Attainment		
Shasta County		Unclassifiable/Attainment		
Tehama County		Unclassifiable/Attainment		
South Central Coast Air Basin (Remainder of):				
Channel Islands		Unclassifiable/Attainment		
San Luis Obispo County		Unclassifiable/Attainment		
Southeast Desert NON–AQMA:				
Riverside County (part)				
Remainder of county		Unclassifiable/Attainment		
San Bernadino County (part)				
Remainder of county		Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

[2] An area designated as an ozone nonattainment area as of the date of enactment of the CAAA of the 1990 that did not violate the ozone NAAQS during the period of 1987–1989.

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7. In § 81.306, the table entitled "Colorado—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.306 Colorado.

* * * * * * *

COLORADO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Denver—Boulder Area:				
Adams County (part)				
West of Kiowa Creek		Nonattainment		Sec. 185A Area.[2]
Arapahoe County (part)				
West of Kiowa Creek		Nonattainment		Sec. 185A Area.[2]
Boulder County (part)		Nonattainment		Sec. 185A Area.[2]
excluding Rocky Mtn. National Park				
Denver County		Nonattainment		Sec. 185A Area.[2]
Douglas County		Nonattainment		Sec. 185A Area.[2]
Jefferson County		Nonattainment		Sec. 185A Area.[2]
State AQCR 01		Unclassifiable/Attainment		
Logan County				
Morgan County				
Phillips County				
Sedgwick County				

COLORADO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Washington County				
Yuma County				
State AQCR 02		Unclassifiable/Attainment		
Larimer County				
Weld County				
State AQCR 03 (Remainder of)		Unclassifiable/Attainment		
Adams County (part)				
East of Kiowa Creek				
Arapahoe County (part)				
East of Kiowa Creek				
Boulder County (part)				
Rocky Mtn. National Park Only				
Clear Creek County				
Gilpin County				
State AQCR 11		Unclassifiable/Attainment		
Garfield County				
Mesa County				
Moffat County				
Rio Blanco County				
Rest of State		Unclassifiable/Attainment		
Alamosa County				
Archuleta County				
Baca County				
Bent County				
Chaffee County				
Cheyenne County				
Conejos County				
Costilla County				
Crowley County				
Custer County				
Delta County				
Dolores County				
Eagle County				
El Paso County				
Elbert County				
Fremont County				
Grand County				
Gunnison County				
Hinsdale County				
Huerfano County				
Jackson County				
Kiowa County				
Kit Carson County				
La Plata County				
Lake County				
Las Animas County				
Lincoln County				
Mineral County				
Montezuma County				
Montrose County				
Otero County				
Ouray County				
Park County				
Pitkin County				
Prowers County				
Pueblo County				
Rio Grande County				
Routt County				
Saguache County				
San Juan County				
San Miguel County				
Summit County				
Teller County				

[1] This date is November 15, 1990, unless otherwise noted.

[2] An area designated as an ozone nonattainment area as of the date of enactment of the CAAA of the 1990 that did not violate the ozone NAAQS during the period of 1987–1989.

* * * * *

8. In § 81.307, the table entitled "Connecticut—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.307 Connecticut.

* * * * *

CONNECTICUT—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Greater Connecticut Area:				
Farfield County (part)		Nonattainment		Serious.
Shelton City				
Hartford County		Nonattainment		Serious.
Litchfield County (part)		Nonattainment		Serious.
all cities and townships except: Bridgewater Town, New Milford Town				
Middlesex County		Nonattainment		Serious.
New Haven County		Nonattainment		Serious.
New London County		Nonattainment		Serious.
Tolland County		Nonattainment		Serious.
Windham County		Nonattainment		Serious.
New York—N. New Jersey-Long Island Area:				
Fairfield County (part)		Nonattainment		Severe-17.
all cities and towns except Shelton City				
Litchfield County (part)		Nonattainment		Severe-17.
Bridgewater Town, New Milford Town				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

9. In § 81.308, the table entitled "Delaware—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.308 Delaware.

* * * * *

DELAWARE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Philadelphia-Wilmington-Trenton Area:				
Kent County		Nonattainment		Severe-15.
New Castle County		Nonattainment		Severe-15.
Sussex County Area:	xl	xl		
Sussex County	1/6/92	Nonattainment	1/6/92	Marginal.

[1] This date is November 15, 1990, unless otherwise noted.

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10. In § 81.309, the table entitled "District of Columbia—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.309 District of Columbia.

* * * * * * *

DISTRICT OF COLUMBIA—OZONE (1-HOUR STANDARD)

Designated area	Designation	Type	Classification	
	Date [1]		Date [1]	Type
Washington Area				
Washington Entire Area		Nonattainment		Serious.

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

11. In § 81.310, the table entitled "Florida—Ozone (1–Hour Standard)" is revised to read as follows:

§ 81.310 Florida.

* * * * * * *

FLORIDA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		Unclassifiable/Attainment		
Alachua County				
Baker County				
Bay County				
Bradford County				
Brevard County				
Broward County	4/25/95			
Calhoun County				
Charlotte County				
Citrus County				
Clay County				
Collier County				
Columbia County				
Dade County	4/25/95			
De Soto County				
Dixie County				
Duval County	3/6/95			
Escambia County				
Flagler County				
Franklin County				
Gadsden County				
Gilchrist County				
Glades County				
Gulf County				
Hamilton County				
Hardee County				
Hendry County				
Hernando County				
Highlands County				
Hillsborough County	2/05/96			
Holmes County				
Indian River County				
Jackson County				
Jefferson County				
Lafayette County				
Lake County				
Lee County				
Leon County				
Levy County				
Liberty County				
Madison County				
Manatee County				
Marion County				
Martin County				
Monroe County				
Nassau County				
Okaloosa County				
Okeechobee County				
Orange County				
Osceola County				
Palm Beach County	4/25/95			
Pasco County				
Pinellas County	02/05/96			
Polk County				
Putnam County				
Santa Rosa County				
Sarasota County				
Seminole County				
St. Johns County				
St. Lucie County				
Sumter County				
Suwannee County				
Taylor County				
Union County				
Volusia County				
Wakulla County				
Walton County				
Washington County				

[1] This date is November 15, 1990, unless otherwise noted.

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12. In § 81.311, the table entitled "Georgia—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.311 Georgia.

* * * * * *

GEORGIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Atlanta Area:				
Cherokee County		Nonattainment		Serious.
Clayton County		Nonattainment		Serious.
Cobb County		Nonattainment		Serious.
Coweta County		Nonattainment		Serious.
De Kalb County		Nonattainment		Serious.
Douglas County		Nonattainment		Serious.
Fayette County		Nonattainment		Serious.
Forsyth County		Nonattainment		Serious.
Fulton County		Nonattainment		Serious.
Gwinnett County		Nonattainment		Serious.
Henry County		Nonattainment		Serious.
Paulding County		Nonattainment		Serious.
Rockdale County		Nonattainment		Serious.
Rest of State		Unclassifiable/Attainment		
Appling County				
Atkinson County				
Bacon County				
Baker County				
Baldwin County				
Banks County				
Barrow County				
Bartow County				
Ben Hill County				
Berrien County				
Bibb County				
Bleckley County				
Brantley County				
Brooks County				
Bryan County				
Bulloch County				
Burke County				
Butts County				
Calhoun County				
Camden County				
Candler County				
Carroll County				
Catoosa County				
Charlton County				
Chatham County				
Chattahoochee County				
Chattooga County				
Clarke County				
Clay County				
Clinch County				
Coffee County				
Colquitt County				
Columbia County				
Cook County				
Crawford County				
Crisp County				
Dade County				
Dawson County				
Decatur County				
Dodge County				
Dooly County				
Dougherty County				
Early County				
Echols County				
Effingham County				
Elbert County				
Emanuel County				
Evans County				
Fannin County				
Floyd County				
Franklin County				

GEORGIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Gilmer County				
Glascock County				
Glynn County				
Gordon County				
Grady County				
Greene County				
Habersham County				
Hall County				
Hancock County				
Haralson County				
Harris County				
Hart County				
Heard County				
Houston County				
Irwin County				
Jackson County				
Jasper County				
Jeff Davis County				
Jefferson County				
Jenkins County				
Johnson County				
Jones County				
Lamar County				
Lanier County				
Laurens County				
Lee County				
Liberty County				
Lincoln County				
Long County				
Lowndes County				
Lumpkin County				
Macon County				
Madison County				
Marion County				
McDuffie County				
McIntosh County				
Meriwether County				
Miller County				
Mitchell County				
Monroe County				
Montgomery County				
Morgan County				
Murray County				
Muscogee County				
Newton County				
Oconee County				
Oglethorpe County				
Peach County				
Pickens County				
Pierce County				
Pike County				
Polk County				
Pulaski County				
Putnam County				
Quitman County				
Rabun County				
Randolph County				
Richmond County				
Schley County				
Screven County				
Seminole County				
Spalding County				
Stephens County				
Stewart County				
Sumter County				
Talbot County				
Taliaferro County				
Tattnall County				
Taylor County				
Telfair County				

GEORGIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Terrell County				
Thomas County				
Tift County				
Toombs County				
Towns County				
Treutlen County				
Troup County				
Turner County				
Twiggs County				
Union County				
Upson County				
Walker County				
Walton County				
Ware County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
White County				
Whitfield County				
Wilcox County				
Wilkes County				
Wilkinson County				
Worth County				

[1] This date is November 15, 1990, unless otherwise noted.

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13. In § 81.312, the table entitled "Hawaii—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.312 Hawaii.

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HAWAII—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		Unclassifiable/Attainment		
Hawaii County				
Honolulu County				
Kalawao				
Kauai County				
Maui County				

[1] This date is November 15, 1990, unless otherwise noted.

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14. In § 81.313, the table entitled "Idaho—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.313 Idaho.

* * * * * * *

IDAHO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 61 Eastern Idaho Intrastate		Unclassifiable/Attainment		
Bannock County				
Bear Lake County				
Bingham County				
Bonneville County				
Butte County				
Caribou County				
Clark County				
Franklin County				
Fremont County				

IDAHO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Jefferson County				
Madison County				
Oneida County				
Power County				
Teton County				
AQCR 62 E Washington-N Idaho Interstate		Unclassifiable/Attainment		
Benewah County				
Kootenai County				
Latah County				
Nez Perce County				
Shoshone County				
AQCR 63 Idaho Intrastate		Unclassifiable/Attainment		
Adams County				
Blaine County				
Boise County				
Bonner County				
Boundary County				
Camas County				
Cassia County				
Clearwater County				
Custer County				
Elmore County				
Gem County				
Gooding County				
Idaho County				
Jerome County				
Lemhi County				
Lewis County				
Lincoln County				
Minidoka County				
Owyhee County				
Payette County				
Twin Falls County				
Valley County				
Washington County				
AQCR 64 Metropolitan Boise Interstate		Unclassifiable/Attainment		
Ada County				
Canyon County				

[1] This date is November 15, 1990, unless otherwise noted.

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15. In § 81.314, the table entitled "Illinois—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.314 Illinois.

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ILLINOIS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Chicago-Gary-Lake County Area:				
Cook County		Nonattainment		Severe-17.
Du Page County		Nonattainment		Severe-17.
Grundy County (part)				
Aux Sable Township		Nonattainment		Severe-17.
Goose Lake Township		Nonattainment		Severe-17.
Kane County		Nonattainment		Severe-17.
Kendall County (part)				
Oswego Township		Nonattainment		Severe-17.
Lake County		Nonattainment		Severe-17.
McHenry County		Nonattainment		Severe-17.
Will County		Nonattainment		Severe-17.
Jersey County Area:				
Jersey County		*Attainment		
St. Louis Area:				
Madison County		Nonattainment		Moderate.
Monroe County		Nonattainment		Moderate.
St. Clair County		Nonattainment		Moderate.

ILLINOIS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Adams County		Unclassifiable/Attainment		
Alexander County		Unclassifiable/Attainment		
Bond County		Unclassifiable/Attainment		
Boone County		Unclassifiable/Attainment		
Brown County		Unclassifiable/Attainment		
Bureau County		Unclassifiable/Attainment		
Calhoun County		Unclassifiable/Attainment		
Carroll County		Unclassifiable/Attainment		
Cass County		Unclassifiable/Attainment		
Champaign County		Unclassifiable/Attainment		
Christian County		Unclassifiable/Attainment		
Clark County		Unclassifiable/Attainment		
Clay County		Unclassifiable/Attainment		
Clinton County		Unclassifiable/Attainment		
Coles County		Unclassifiable/Attainment		
Crawford County		Unclassifiable/Attainment		
Cumberland County		Unclassifiable/Attainment		
De Kalb County		Unclassifiable/Attainment		
De Witt County		Unclassifiable/Attainment		
Douglas County		Unclassifiable/Attainment		
Edgar County		Unclassifiable/Attainment		
Edwards County		Unclassifiable/Attainment		
Effingham County		Unclassifiable/Attainment		
Fayette County		Unclassifiable/Attainment		
Ford County		Unclassifiable/Attainment		
Franklin County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Gallatin County		Unclassifiable/Attainment		
Greene County		Unclassifiable/Attainment		
Grundy County (part)				
All townships except Aux Sable and Goose Lake		Unclassifiable/Attainment		
Hamilton County		Unclassifiable/Attainment		
Hancock County		Unclassifiable/Attainment		
Hardin County		Unclassifiable/Attainment		
Henderson County		Unclassifiable/Attainment		
Henry County		Unclassifiable/Attainment		
Iroquois County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jasper County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
Jo Daviess County		Unclassifiable/Attainment		
Johnson County		Unclassifiable/Attainment		
Kankakee County		Unclassifiable/Attainment		
Kendall County (part)				
All townships except Oswego		Unclassifiable/Attainment		
Knox County		Unclassifiable/Attainment		
La Salle County		Unclassifiable/Attainment		
Lawrence County		Unclassifiable/Attainment		
Lee County		Unclassifiable/Attainment		
Livingston County		Unclassifiable/Attainment		
Logan County		Unclassifiable/Attainment		
Macon County		Unclassifiable/Attainment		
Macoupin County		Unclassifiable/Attainment		
Marion County		Unclassifiable/Attainment		
Marshall County		Unclassifiable/Attainment		
Mason County		Unclassifiable/Attainment		
Massac County		Unclassifiable/Attainment		
McDonough County		Unclassifiable/Attainment		
McLean County		Unclassifiable/Attainment		
Menard County		Unclassifiable/Attainment		
Mercer County		Unclassifiable/Attainment		
Montgomery County		Unclassifiable/Attainment		
Morgan County		Unclassifiable/Attainment		
Moultrie County		Unclassifiable/Attainment		
Ogle County		Unclassifiable/Attainment		
Peoria County		Unclassifiable/Attainment		
Perry County		Unclassifiable/Attainment		
Piatt County		Unclassifiable/Attainment		
Pike County		Unclassifiable/Attainment		
Pope County		Unclassifiable/Attainment		

ILLINOIS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Pulaski County		Unclassifiable/Attainment		
Putnam County		Unclassifiable/Attainment		
Randolph County		Unclassifiable/Attainment		
Richland County		Unclassifiable/Attainment		
Rock Island County		Unclassifiable/Attainment		
Saline County		Unclassifiable/Attainment		
Sangamon County		Unclassifiable/Attainment		
Schuyler County		Unclassifiable/Attainment		
Scott County		Unclassifiable/Attainment		
Shelby County		Unclassifiable/Attainment		
Stark County		Unclassifiable/Attainment		
Stephenson County		Unclassifiable/Attainment		
Tazewell County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		
Vermilion County		Unclassifiable/Attainment		
Wabash County		Unclassifiable/Attainment		
Warren County		Unclassifiable/Attainment		
Washington County		Unclassifiable/Attainment		
Wayne County		Unclassifiable/Attainment		
White County		Unclassifiable/Attainment		
Whiteside County		Unclassifiable/Attainment		
Williamson County		Unclassifiable/Attainment		
Winnebago County		Unclassifiable/Attainment		
Woodford County		Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.
[*] April 13, 1995.

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16. In § 81.315, the table entitled "Indiana—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.315 Indiana.

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INDIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Chicago-Gary-Lake County Area:				
Lake County		Nonattainment		Severe-17
Porter County		Nonattainment		Severe-17
Evansville Area:				
Vanderburgh County	12/09/97	Attainment		
Indianapolis Area:				
Marion County	11/30/94	Attainment		
Louisville Area:				
Clark County		Nonattainment		Moderate[2]
Floyd County		Nonattainment		Moderate[2]
South Bend-Elkhart Area:				
Elkhart County	11/30/94	Attainment		
St Joseph County	11/30/94	Attainment		
Allen County		Unclassifiable/Attainment		
Adams County		Unclassifiable/Attainment		
Bartholomew County		Unclassifiable/Attainment		
Benton County		Unclassifiable/Attainment		
Blackford County		Unclassifiable/Attainment		
Boone County		Unclassifiable/Attainment		
Brown County		Unclassifiable/Attainment		
Carroll County		Unclassifiable/Attainment		
Cass County		Unclassifiable/Attainment		
Clay County		Unclassifiable/Attainment		
Clinton County		Unclassifiable/Attainment		
Crawford County		Unclassifiable/Attainment		
Daviess County		Unclassifiable/Attainment		
De Kalb County		Unclassifiable/Attainment		
Dearborn County		Unclassifiable/Attainment		
Decatur County		Unclassifiable/Attainment		
Delaware County		Unclassifiable/Attainment		
Dubois County		Unclassifiable/Attainment		

INDIANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Fayette County		Unclassifiable/Attainment		
Fountain County		Unclassifiable/Attainment		
Franklin County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Gibson County		Unclassifiable/Attainment		
Grant County		Unclassifiable/Attainment		
Greene County		Unclassifiable/Attainment		
Hamilton County		Unclassifiable/Attainment		
Hancock County		Unclassifiable/Attainment		
Harrison County		Unclassifiable/Attainment		
Hendricks County		Unclassifiable/Attainment		
Henry County		Unclassifiable/Attainment		
Howard County		Unclassifiable/Attainment		
Huntington County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jasper County		Unclassifiable/Attainment		
Jay County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
Jennings County		Unclassifiable/Attainment		
Johnson County		Unclassifiable/Attainment		
Knox County		Unclassifiable/Attainment		
Kosciusko County		Unclassifiable/Attainment		
La Porte County		Unclassifiable/Attainment		
Lagrange County		Unclassifiable/Attainment		
Lawrence County		Unclassifiable/Attainment		
Madison County		Unclassifiable/Attainment		
Marshall County		Unclassifiable/Attainment		
Martin County		Unclassifiable/Attainment		
Miami County		Unclassifiable/Attainment		
Monroe County		Unclassifiable/Attainment		
Montgomery County		Unclassifiable/Attainment		
Morgan County		Unclassifiable/Attainment		
Newton County		Unclassifiable/Attainment		
Noble County		Unclassifiable/Attainment		
Ohio County		Unclassifiable/Attainment		
Orange County		Unclassifiable/Attainment		
Owen County		Unclassifiable/Attainment		
Parke County		Unclassifiable/Attainment		
Perry County		Unclassifiable/Attainment		
Pike County		Unclassifiable/Attainment		
Posey County		Unclassifiable/Attainment		
Pulaski County		Unclassifiable/Attainment		
Putnam County		Unclassifiable/Attainment		
Randolph County		Unclassifiable/Attainment		
Ripley County		Unclassifiable/Attainment		
Rush County		Unclassifiable/Attainment		
Scott County		Unclassifiable/Attainment		
Shelby County		Unclassifiable/Attainment		
Spencer County		Unclassifiable/Attainment		
Starke County		Unclassifiable/Attainment		
Steuben County		Unclassifiable/Attainment		
Sullivan County		Unclassifiable/Attainment		
Switzerland County		Unclassifiable/Attainment		
Tippecanoe County		Unclassifiable/Attainment		
Tipton County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		
Vermillion County		Unclassifiable/Attainment		
Vigo County		Unclassifiable/Attainment		
Wabash County		Unclassifiable/Attainment		
Warren County		Unclassifiable/Attainment		
Warrick County		Unclassifiable/Attainment		
Washington County		Unclassifiable/Attainment		
Wayne County		Unclassifiable/Attainment		
Wells County		Unclassifiable/Attainment		
White County		Unclassifiable/Attainment		
Whitley County		Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

[2] Attainment date extended to November 15, 1997.

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17. In § 81.316, the table entitled "Iowa—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.316 Iowa.

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IOWA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide	....	Unclassifiable/Attainment		
Adair County				
Adams County				
Allamakee County				
Appanoose County				
Audubon County				
Benton County				
Black Hawk County				
Boone County				
Bremer County				
Buchanan County				
Buena Vista County				
Butler County				
Calhoun County				
Carroll County				
Cass County				
Cedar County				
Cerro Gordo County				
Cherokee County				
Chickasaw County				
Clarke County				
Clay County				
Clayton County				
Clinton County				
Crawford County				
Dallas County				
Davis County				
Decatur County				
Delaware County				
Des Moines County				
Dickinson County				
Dubuque County				
Emmet County				
Fayette County				
Floyd County				
Franklin County				
Fremont County				
Greene County				
Grundy County				
Guthrie County				
Hamilton County				
Hancock County				
Hardin County				
Harrison County				
Henry County				
Howard County				
Humboldt County				
Ida County				
Iowa County				
Jackson County				
Jasper County				
Jefferson County				
Johnson County				
Jones County				
Keokuk County				
Kossuth County				
Lee County				
Linn County				
Louisa County				
Lucas County				
Lyon County				
Madison County				
Mahaska County				
Marion County				
Marshall County				

IOWA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Mills County				
Mitchell County				
Monona County				
Monroe County				
Montgomery County				
Muscatine County				
O'Brien County				
Osceola County				
Page County				
Palo Alto County				
Plymouth County				
Pocahontas County				
Polk County				
Pottawattamie County				
Poweshiek County				
Ringgold County				
Sac County				
Scott County				
Shelby County				
Sioux County				
Story County				
Tama County				
Taylor County				
Union County				
Van Buren County				
Wapello County				
Warren County				
Washington County				
Wayne County				
Webster County				
Winnebago County				
Winneshiek County				
Woodbury County				
Worth County				
Wright County				

[1] This date is November 15, 1990, unless otherwise noted.

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18. In § 81.317, the table entitled "Kansas—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.317 Kansas.

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KANSAS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Allen County	....	Unclassifiable/Attainment		
Anderson County	....	Unclassifiable/Attainment		
Atchison County	....	Unclassifiable/Attainment		
Barber County	....	Unclassifiable/Attainment		
Barton County	....	Unclassifiable/Attainment		
Bourbon County	....	Unclassifiable/Attainment		
Brown County	....	Unclassifiable/Attainment		
Butler County	....	Unclassifiable/Attainment		
Chase County	....	Unclassifiable/Attainment		
Chautauqua County	....	Unclassifiable/Attainment		
Cherokee County	....	Unclassifiable/Attainment		
Cheyenne County	....	Unclassifiable/Attainment		
Clark County	....	Unclassifiable/Attainment		
Clay County	....	Unclassifiable/Attainment		
Cloud County	....	Unclassifiable/Attainment		
Coffey County	....	Unclassifiable/Attainment		
Comanche County	....	Unclassifiable/Attainment		
Cowley County	....	Unclassifiable/Attainment		
Crawford County	....	Unclassifiable/Attainment		
Decatur County	....	Unclassifiable/Attainment		
Dickinson County	....	Unclassifiable/Attainment		

KANSAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Doniphan County		Unclassifiable/Attainment		
Douglas County		Unclassifiable/Attainment		
Edwards County		Unclassifiable/Attainment		
Elk County		Unclassifiable/Attainment		
Ellis County		Unclassifiable/Attainment		
Ellsworth County		Unclassifiable/Attainment		
Finney County		Unclassifiable/Attainment		
Ford County		Unclassifiable/Attainment		
Franklin County		Unclassifiable/Attainment		
Geary County		Unclassifiable/Attainment		
Gove County		Unclassifiable/Attainment		
Graham County		Unclassifiable/Attainment		
Grant County		Unclassifiable/Attainment		
Gray County		Unclassifiable/Attainment		
Greeley County		Unclassifiable/Attainment		
Greenwood County		Unclassifiable/Attainment		
Hamilton County		Unclassifiable/Attainment		
Harper County		Unclassifiable/Attainment		
Harvey County		Unclassifiable/Attainment		
Haskell County		Unclassifiable/Attainment		
Hodgeman County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
Jewell County		Unclassifiable/Attainment		
Johnson County	7/23/92	Unclassifiable/Attainment		
Kearny County		Unclassifiable/Attainment		
Kingman County		Unclassifiable/Attainment		
Kiowa County		Unclassifiable/Attainment		
Labette County		Unclassifiable/Attainment		
Lane County		Unclassifiable/Attainment		
Leavenworth County		Unclassifiable/Attainment		
Lincoln County		Unclassifiable/Attainment		
Linn County		Unclassifiable/Attainment		
Logan County		Unclassifiable/Attainment		
Lyon County		Unclassifiable/Attainment		
Marion County		Unclassifiable/Attainment		
Marshall County		Unclassifiable/Attainment		
McPherson County		Unclassifiable/Attainment		
Meade County		Unclassifiable/Attainment		
Miami County		Unclassifiable/Attainment		
Mitchell County		Unclassifiable/Attainment		
Montgomery County		Unclassifiable/Attainment		
Morris County		Unclassifiable/Attainment		
Morton County		Unclassifiable/Attainment		
Nemaha County		Unclassifiable/Attainment		
Neosho County		Unclassifiable/Attainment		
Ness County		Unclassifiable/Attainment		
Norton County		Unclassifiable/Attainment		
Osage County		Unclassifiable/Attainment		
Osborne County		Unclassifiable/Attainment		
Ottawa County		Unclassifiable/Attainment		
Pawnee County		Unclassifiable/Attainment		
Phillips County		Unclassifiable/Attainment		
Pottawatomie County		Unclassifiable/Attainment		
Pratt County		Unclassifiable/Attainment		
Rawlins County		Unclassifiable/Attainment		
Reno County		Unclassifiable/Attainment		
Republic County		Unclassifiable/Attainment		
Rice County		Unclassifiable/Attainment		
Riley County		Unclassifiable/Attainment		
Rooks County		Unclassifiable/Attainment		
Rush County		Unclassifiable/Attainment		
Russell County		Unclassifiable/Attainment		
Saline County		Unclassifiable/Attainment		
Scott County		Unclassifiable/Attainment		
Sedgwick County		Unclassifiable/Attainment		
Seward County		Unclassifiable/Attainment		
Shawnee County		Unclassifiable/Attainment		
Sheridan County		Unclassifiable/Attainment		
Sherman County		Unclassifiable/Attainment		

KANSAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Smith County	....	Unclassifiable/Attainment		
Stafford County	....	Unclassifiable/Attainment		
Stanton County	....	Unclassifiable/Attainment		
Stevens County	....	Unclassifiable/Attainment		
Sumner County	....	Unclassifiable/Attainment		
Thomas County	....	Unclassifiable/Attainment		
Trego County	....	Unclassifiable/Attainment		
Wabaunsee County	....	Unclassifiable/Attainment		
Wallace County	....	Unclassifiable/Attainment		
Washington County	....	Unclassifiable/Attainment		
Wichita County	....	Unclassifiable/Attainment		
Wilson County	....	Unclassifiable/Attainment		
Woodson County	....	Unclassifiable/Attainment		
Wyandotte County	7/23/92	Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

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19. In § 81.318, the table entitled "Kentucky—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.318 Kentucky.

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KENTUCKY—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Cincinnati-Hamilton Area:				
Boone County	....	Nonattainment	....	Moderate.[2]
Campbell County	....	Nonattainment	....	Moderate.[2]
Kenton County		Nonattainment		Moderate.[2]
Edmonson County Area:				
Edmonson County	1/3/95	Unclassifiable/Attainment		
Louisville Area:				

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Bullitt County (part): The area boundary is as follows: Beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 2723; proceeding north on Ky 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of KY 2673; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.	....	Nonattainment	....	Moderate.[2]
Jefferson County	....	Nonattainment	....	Moderate.[2]

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Oldham County (part): The area boundary is as follows: Beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71; proceeding to the northwest on Ky 329 to the intersection of Zaring Road and Ky 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road; proceeding to the south-southeast on Ky 393 to the junction of (the access road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on the access road to the junction with Dawkins Lane and the access road; proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on Ky 146; proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange; then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712; proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northeast on Zale Smith Road to the junction of KY 53 and Zale Smith Road; proceeding on Ky 53 to the north-northwest to the junction of New Moody Lane and Ky 53; proceeding on New Moody Lane to the south-southwest until meeting the city limits of La Grange; then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits; proceeding southwest on the north-bound lane of Interstate 71 until inter-secting with the North Fork of Currys Fork; proceeding south-southwest beyond the con-fluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.	....	Nonattainment	....	Moderate.[2]
Owensboro Area:				
Daviess County	1/3/95	Unclassifiable/Attainment		
Hancock County	1/3/95	Unclassifiable/Attainment		
The area boundary is as follows: Beginning at the Intersection of U.S. 60 and the Hancock-Daviess County Line; proceeding east along U.S. 60 to the intersection of Yellow Creek and U.S. 60; proceeding north and west along Yellow Creek to the confluence of the Ohio River; proceeding west along the Ohio River to the confluence of Blackford Creek; proceeding south and east along Blackford Creek to the beginning.				
Adair County	....	Unclassifiable/Attainment		
Allen County	....	Unclassifiable/Attainment		
Anderson County	....	Unclassifiable/Attainment		
Ballard County	....	Unclassifiable/Attainment		
Barren County	....	Unclassifiable/Attainment		
Bath County	....	Unclassifiable/Attainment		

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Bell County		Unclassifiable/Attainment		
Bourbon County		Unclassifiable/Attainment		
Boyd County	6/29/95	Unclassifiable/Attainment		
Boyle County		Unclassifiable/Attainment		
Bracken County		Unclassifiable/Attainment		
Breathitt County		Unclassifiable/Attainment		
Breckinridge County		Unclassifiable/Attainment		
Bullitt County (part)				
Remainder of county		Unclassifiable/Attainment		
Butler County		Unclassifiable/Attainment		
Caldwell County		Unclassifiable/Attainment		
Calloway County		Unclassifiable/Attainment		
Carlisle County		Unclassifiable/Attainment		
Carroll County		Unclassifiable/Attainment		
Carter County		Unclassifiable/Attainment		
Casey County		Unclassifiable/Attainment		
Christian County		Unclassifiable/Attainment		
Clark County		Unclassifiable/Attainment		
Clay County		Unclassifiable/Attainment		
Clinton County		Unclassifiable/Attainment		
Crittenden County		Unclassifiable/Attainment		
Cumberland County		Unclassifiable/Attainment		
Elliott County		Unclassifiable/Attainment		
Estill County		Unclassifiable/Attainment		
Fayette County	11/13/95	Unclassifiable/Attainment		
Fleming County		Unclassifiable/Attainment		
Floyd County		Unclassifiable/Attainment		
Franklin County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Gallatin County		Unclassifiable/Attainment		
Garrard County		Unclassifiable/Attainment		
Grant County		Unclassifiable/Attainment		
Graves County		Unclassifiable/Attainment		
Grayson County		Unclassifiable/Attainment		
Green County		Unclassifiable/Attainment		
Greenup County	6/29/95	Unclassifiable/Attainment		
Hancock County (part)				
Remainder of county		Unclassifiable/Attainment		
Hardin County		Unclassifiable/Attainment		
Harlan County		Unclassifiable/Attainment		
Harrison County		Unclassifiable/Attainment		
Hart County		Unclassifiable/Attainment		
Henderson County		Unclassifiable/Attainment		
Henry County		Unclassifiable/Attainment		
Hickman County		Unclassifiable/Attainment		
Hopkins County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jessamine County		Unclassifiable/Attainment		
Johnson County		Unclassifiable/Attainment		
Knott County		Unclassifiable/Attainment		
Knox County		Unclassifiable/Attainment		
Larue County		Unclassifiable/Attainment		
Laurel County		Unclassifiable/Attainment		
Lawrence County		Unclassifiable/Attainment		
Lee County		Unclassifiable/Attainment		
Leslie County		Unclassifiable/Attainment		
Letcher County		Unclassifiable/Attainment		
Lewis County		Unclassifiable/Attainment		
Lincoln County		Unclassifiable/Attainment		
Livingston County	4/10/95	Unclassifiable/Attainment		
Logan County		Unclassifiable/Attainment		
Lyon County		Unclassifiable/Attainment		
Madison County		Unclassifiable/Attainment		
Magoffin County		Unclassifiable/Attainment		
Marion County		Unclassifiable/Attainment		
Marshall County	4/10/95	Unclassifiable/Attainment		
Martin County		Unclassifiable/Attainment		
Mason County		Unclassifiable/Attainment		
McCracken County		Unclassifiable/Attainment		
McCreary County		Unclassifiable/Attainment		

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
McLean County	11/13/95	Unclassifiable/Attainment		
Meade County		Unclassifiable/Attainment		
Menifee County		Unclassifiable/Attainment		
Mercer County		Unclassifiable/Attainment		
Metcalfe County		Unclassifiable/Attainment		
Monroe County		Unclassifiable/Attainment		
Montgomery County		Unclassifiable/Attainment		
Morgan County		Unclassifiable/Attainment		
Muhlenberg County		Unclassifiable/Attainment		
Nelson County		Unclassifiable/Attainment		
Nicholas County		Unclassifiable/Attainment		
Ohio County		Unclassifiable/Attainment		
Oldham County (part).				
Remainder of county		Unclassifiable/Attainment		
Owen County		Unclassifiable/Attainment		
Owsley County		Unclassifiable/Attainment		
Pendleton County		Unclassifiable/Attainment		
Perry County		Unclassifiable/Attainment		
Pike County		Unclassifiable/Attainment		
Powell County		Unclassifiable/Attainment		
Pulaski County		Unclassifiable/Attainment		
Robertson County		Unclassifiable/Attainment		
Rockcastle County		Unclassifiable/Attainment		
Rowan County		Unclassifiable/Attainment		
Russell County		Unclassifiable/Attainment		
Scott County		Unclassifiable/Attainment		
Shelby County		Unclassifiable/Attainment		
Simpson County		Unclassifiable/Attainment		
Spencer County		Unclassifiable/Attainment		
Taylor County		Unclassifiable/Attainment		
Todd County		Unclassifiable/Attainment		
Trigg County		Unclassifiable/Attainment		
Trimble County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		
Warren County		Unclassifiable/Attainment		
Washington County		Unclassifiable/Attainment		
Wayne County		Unclassifiable/Attainment		
Webster County		Unclassifiable/Attainment		
Whitley County		Unclassifiable/Attainment		
Wolfe County		Unclassifiable/Attainment		
Woodford County		Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

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20. In § 81.319, the table entitled "Louisiana—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.319 Louisiana.

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LOUISIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge Area:				
Ascension Parish		Nonattainment		Serious.
East Baton Rouge Parish		Nonattainment		Serious.
Iberville Parish		Nonattainment		Serious.
Livingston Parish		Nonattainment		Serious.
West Baton Rouge Parish		Nonattainment		Serious.
Beauregard Parish Area:				
Beauregard Parish	10/17/95	Attainment		
Grant Parish Area:				
Grant Parish	10/17/95	Attainment		
Lafayette Area:				
Lafayette Parish	10/17/95	Attainment		
Lafourche Parish Area:				
Lafourche Parish	1/05/98	Nonattainment	1/05/98	Incomplete Data.

Louisiana—Ozone (1-Hour Standard)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Lake Charles Area:				
Calcasieu Parish	6/2/97	Attainment		
New Orleans Area:				
Jefferson Parish	12/1/95	Attainment		
Orleans Parish	12/1/95	Attainment		
St. Bernard Parish	12/1/95	Attainment		
St. Charles Parish	12/1/95	Attainment		
Pointe Coupee Area:				
Pointe Coupee Parish	12/20/96	Attainment		
St. James Parish Area:				
St. James Parish	11/13/95	Attainment		
St. Mary Parish Area:				
St. Mary Parish	10/17/95	Attainment		
AQCR 019 Monroe-El Dorado Interstate		Unclassifiable/Attainment		
Caldwell Parish				
Catahoula Parish				
Concordia Parish				
East Carroll Parish				
Franklin Parish				
La Salle Parish				
Madison Parish				
Morehouse Parish				
Ouachita Parish				
Richland Parish				
Tensas Parish				
Union Parish				
West Carroll Parish				
AQCR 022 Shreveport-Texarkana-Tyler Inters		Unclassifiable/Attainment		
Bienville Parish				
Bossier Parish				
Caddo Parish				
Claiborne Parish				
De Soto Parish				
Jackson Parish				
Lincoln Parish				
Natchitoches Parish				
Red River Parish				
Sabine Parish				
Webster Parish				
Winn Parish				
AQCR 106 S. Louisiana-S.E. Texas Interstate				
St. John The Baptist Parish		Unclassifiable/Attainment		
AQCR 106 S. Louisiana-S.E. Texas Interstate		Unclassifiable/Attainment		
Acadia Parish				
Allen Parish				
Assumption Parish				
Avoyelles Parish				
Cameron Parish				
East Feliciana Parish				
Evangeline Parish				
Iberia Parish				
Jefferson Davis Parish				
Plaquemines Parish				
Rapides Parish				
St. Helena Parish				
St. Landry Parish				
St. Martin Parish				
St. Tammany Parish				
Tangipahoa Parish				
Terrebonne Parish				
Vermilion Parish				
Vernon Parish				
Washington Parish				
West Feliciana Parish				

[1] This date is November 15, 1990, unless otherwise noted.

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21. In § 81.320, the table entitled "Maine—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.320 Maine.

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MAINE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Franklin County Area:				
Franklin County (part)	5/27/97	Unclassifiable/Attainment		
Hancock County and Waldo County Area:				
Hancock County	4/29/97	Attainment		
Waldo County	4/29/97	Attainment		
Knox County and Lincoln County Area:				
Knox County		Nonattainment		Moderate.
Lincoln County		Nonattainment		Moderate.
Lewiston-Auburn Area:				
Androscoggin County		Nonattainment		Moderate.
Kennebec County		Nonattainment		Moderate.
Oxford County Area:				
Oxford County (part)	5/27/97	Unclassifiable/Attainment		
Portland Area:				
Cumberland County		Nonattainment		Moderate.[2]
Sagadahoc County		Nonattainment		Moderate.[2]
York County		Nonattainment		Moderate.[2]
Somerset County Area:				
Somerset County (part)	5/27/97	Unclassifiable/Attainment		
AQCR 108 Aroostook Intrastate		Unclassifiable/Attainment		
Aroostook County (part) see 40 CFR 81.179				
AQCR 109 Down East Intrastate		Unclassifiable/Attainment		
Penobscot County (part), as described under 40 CFR 81.181				
Piscataquis County (part) see 40 CFR 81.181				
Washington County				
AQCR 111 Northwest Maine Intrastate (Remainder of) see 40 CFR 81.182		Unclassifiable/Attainment		
Aroostook County				
Franklin County (part)				
Oxford County (part)				
Penobscot County (part)				
Piscataquis County (part)				
Somerset County (part)				

[1] This date is November 15, 1990, unless otherwise noted.

[2] Attainment date extended to November 15, 1997.

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22. In § 81.321, the table entitled "Maryland—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.321 Maryland.

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MARYLAND—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baltimore Area:				
Anne Arundel County		Nonattainment		Severe-15.
Baltimore				
City of Baltimore		Nonattainment		Severe-15.
Baltimore County		Nonattainment		Severe-15.
Carroll County		Nonattainment		Severe-15.
Harford County		Nonattainment		Severe-15.
Howard County		Nonattainment		Severe-15.
Kent County and Queen Anne's County Area:				
Kent County	1/6/92	Nonattainment	1/6/92	Marginal.
Queen Anne's County	1/6/92	Nonattainment	1/6/92	Marginal.
Philadelphia-Wilmington-Trenton Area:				
Cecil County		Nonattainment		Severe-15.
Washington, DC Area:				
Calvert County		Nonattainment		Serious.
Charles County		Nonattainment		Serious.

MARYLAND—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Frederick County		Nonattainment		Serious.
Montgomery County		Nonattainment		Serious.
Prince George's County		Nonattainment		Serious.
AQCR 113 Cumberland-Keyser Interstate		Unclassifiable/Attainment		
Allegany County				
Garrett County				
Washington County				
AQCR 114 Eastern Shore Interstate (Remainder of)		Unclassifiable/Attainment		
Caroline County				
Dorchester County				
Somerset County				
Talbot County				
Wicomico County				
Worcester County				
AQCR 116 Southern Maryland Intrastate (Remainder of)		Unclassifiable/Attainment		
St. Mary's County				

[1] This date is November 15, 1990, unless otherwise noted.

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23. In § 81.322, the table entitled "Massachusetts—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.322 Massachusetts.

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MASSACHUSETTS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Boston-Lawrence-Worcester (E. Mass) Area:				
Barnstable County		Nonattainment		Serious.
Bristol County		Nonattainment		Serious.
Dukes County		Nonattainment		Serious.
Essex County		Nonattainment		Serious.
Middlesex County		Nonattainment		Serious.
Nantucket County		Nonattainment		Serious.
Norfolk County		Nonattainment		Serious.
Plymouth County		Nonattainment		Serious.
Suffolk County		Nonattainment		Serious.
Worcester County		Nonattainment		Serious.
Springfield (W. Mass) Area:				
Berkshire County		Nonattainment		Serious.
Franklin County		Nonattainment		Serious.
Hampden County		Nonattainment		Serious.
Hampshire County		Nonattainment		Serious.

[1] This date is November 15, 1990, unless otherwise noted.

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24. 81.323, the table entitled "Michigan—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.323 Michigan.

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MICHIGAN—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Allegan County Area:				
Allegan County		Nonattainment		Incomplete Data.
Barry County Area:				
Barry County	3/15/96	Unclassifiable/Attainment		
Battle Creek Area:				
Calhoun County	3/15/96	Unclassifiable/Attainment		
Benton Harbor Area:				
Berrien County	3/15/96	Unclassifiable/Attainment		
Branch County Area:				

MICHIGAN—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Branch County	3/15/96	Unclassifiable/Attainment		
Cass County Area:				
Cass County	3/15/96	Unclassifiable/Attainment		
Detroit-Ann Arbor Area:				
Livingston County	4/6/95	Attainment		
Macomb County	4/6/95	Attainment		
Monroe County	4/6/95	Attainment		
Oakland County	4/6/95	Attainment		
St. Clair County	4/6/95	Attainment		
Washtenaw County	4/6/95	Attainment		
Wayne County	4/6/95	Attainment		
Flint Area:				
Genesee County		Nonattainment		Sec. 185A Area.[2]
Grand Rapids Area:				
Kent County	6/21/96	Attainment		
Ottawa County	6/21/96	Attainment		
Gratiot County Area:				
Gratiot County	3/15/96	Unclassifiable/Attainment		
Hillsdale County Area:				
Hillsdale County	3/15/96	Unclassifiable/Attainment		
Huron County Area:				
Huron County	3/15/96	Unclassifiable/Attainment		
Ionia County Area:				
Ionia County	3/15/96	Unclassifiable/Attainment		
Jackson Area:				
Jackson County	3/15/96	Unclassifiable/Attainment		
Kalamazoo Area:				
Kalamazoo County	3/15/96	Unclassifiable/Attainment		
Lansing-East Lansing Area:				
Clinton County	3/15/96	Unclassifiable/Attainment		
Eaton County	3/15/96	Unclassifiable/Attainment		
Ingham County	3/15/96	Unclassifiable/Attainment		
Lapeer County Area:				
Lapeer County	3/15/96	Unclassifiable/Attainment		
Lenawee County Area:				
Lenawee County	3/15/96	Unclassifiable/Attainment		
Montcalm Area:				
Montcalm County	3/15/96	Unclassifiable/Attainment		
Muskegon Area:				
Muskegon County	12/30/92	Nonattainment		Moderate.
Saginaw-Bay City-Midland Area:				
Bay County		Nonattainment		Incomplete Data.
Midland County		Nonattainment		Incomplete Data.
Saginaw County		Nonattainment		Incomplete Data.
Sanilac County Area:				
Sanilac County	3/15/96	Unclassifiable/Attainment		
Shiawassee County Area:				
Shiawassee County	3/15/96	Unclassifiable/Attainment		
St. Joseph County Area:				
St. Joseph County	3/15/96	Unclassifiable/Attainment		
Tuscola County Area:				
Tuscola County	3/15/96	Unclassifiable/Attainment		
Van Buren County Area:				
Van Buren County	3/15/96	Unclassifiable/Attainment		
AQCR 122 Central Michigan Intrastate (Remainder of): Arenac County Clare County Gladwin County Iosco County Isabella County Lake County Mason County Mecosta County Newaygo County Oceana County Ogemaw County Osceola County Roscommon County		Unclassifiable/Attainment		
AQCR 126 Upper Michigan Intrastate (part) Marquette County		Unclassifiable/Attainment		

MICHIGAN—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 126 Upper Michigan Intrastate (Remainder of):		Unclassifiable/Attainment		
Alcona County				
Alger County				
Alpena County				
Antrim County				
Baraga County				
Benzie County				
Charlevoix County				
Cheboygan County				
Chippewa County				
Crawford County				
Delta County				
Dickinson County				
Emmet County				
Gogebic County				
Grand Traverse County				
Houghton County				
Iron County				
Kalkaska County				
Keweenaw County				
Leelanau County				
Luce County				
Mackinac County				
Manistee County				
Menominee County				
Missaukee County				
Montmorency County				
Ontonagon County				
Oscoda County				
Otsego County				
Presque Isle County				
Schoolcraft County				
Wexford County				

[1] This date is November 15, 1990, unless otherwise noted.

[2] An area designated as an ozone nonattainment area as of the date of enactment of the CAAA of the 1990 that did not violate the ozone NAAQS during the period of 1987–1989.

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25. In § 81.324, the table entitled "Minnesota—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.324 Minnesota.

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MINNESOTA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Minneapolis-Saint Paul Area:				
Anoka County		Unclassifiable/Attainment		
Carver County		do		
Dakota County		do		
Hennepin County		do		
Ramsey County		do		
Scott County		do		
Washington County		do		
Aitkin County		do		
Becker County		do		
Beltrami County		do		
Benton County		do		
Big Stone County		do		
Blue Earth County		do		
Brown County		do		
Carlton County		do		
Cass County		do		
Chippewa County		do		
Chisago County		do		
Clay County		do		
Clearwater County		do		

MINNESOTA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Cook County		do		
Cottonwood County		do		
Crowe County		do		
Dodge County		do		
Douglas County		do		
Faribault County		do		
Fillmore County		do		
Freeborn County		do		
Goodhue County		do		
Grant County		do		
Houston County		do		
Hubbard County		do		
Isanti County		do		
Itasca County		do		
Jackson County		do		
Kanabec County		do		
Kandiyohi County		do		
Kittson County		do		
Koochiching County		do		
Lac qui Parle County		do		
Lake County		do		
Lake of the Woods County		do		
Le Sueur County		do		
Lincon County		do		
Lyon County		do		
Mahnomen County		do		
Marshall County		do		
Martin County		do		
McLeod County		do		
Meeker County		do		
Mille Lacs County		do		
Morrison County		do		
Mower County		do		
Murray County		do		
Nicollet County		do		
Nobles County		do		
Norman County		do		
Olmsted County		do		
Otter Tail County		do		
Pennington County		do		
Pine County		do		
Pipestone County		do		
Polk County		do		
Pope County		do		
Red Lake County		do		
Redwood County		do		
Renville County		do		
Rice County		do		
Rock County		do		
Roseau County		do		
Saint Louis County		do		
Sherburne County		do		
Sibley County		do		
Stearns County		do		
Steele County		do		
Stevens County		do		
Swift County		do		
Todd County		do		
Traverse County		do		
Wabasha County		do		
Wadena County		do		
Waseca County		do		
Watonwan County		do		
Wilkin County		do		
Winona County		do		
Wright County		do		
Yellow Medicine County		do		

[1] This date is November 15, 1990, unless otherwise noted.

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26. In § 81.325, the table entitled "Mississippi—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.325 Mississippi.

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MISSISSIPPI—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Minneapolis-Saint Paul Area:				
Statewide		Unclassifiable/Attainment		
Adams County				
Alcorn County				
Amite County				
Attala County				
Benton County				
Bolivar County				
Calhoun County				
Carroll County				
Chickasaw County				
Choctaw County				
Claiborne County				
Clarke County				
Clay County				
Coahoma County				
Copiah County				
Covington County				
De Soto County				
Forrest County				
Franklin County				
George County				
Greene County				
Grenada County				
Hancock County				
Harrison County				
Hinds County				
Holmes County				
Humphreys County				
Issaquena County				
Itawamba County				
Jackson County				
Jasper County				
Jefferson County				
Jefferson Davis County				
Jones County				
Kemper County				
Lafayette County				
Lamar County				
Lauderdale County				
Lawrence County				
Leake County				
Lee County				
Leflore County				
Lincoln County				
Lowndes County				
Madison County				
Marion County				
Marshall County				
Monroe County				
Montgomery County				
Neshoba County				
Newton County				
Noxubee County				
Oktibbeha County				
Panola County				
Pearl River County				
Perry County				
Pike County				
Pontotoc County				
Prentiss County				
Quitman County				
Rankin County				
Scott County				
Sharkey County				

MISSISSIPPI—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Simpson County				
Smith County				
Stone County				
Sunflower County				
Tallahatchie County				
Tate County				
Tippah County				
Tishomingo County				
Tunica County				
Union County				
Walthall County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wilkinson County				
Winston County				
Yalobusha County				
Yazoo County				

[1] This date is November 15, 1990, unless otherwise noted.

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27. In § 81.326, the table entitled "Missouri—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.326 Missouri.

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MISSOURI-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Kansas City Area:				
Clay County	7/23/92	Unclassifiable/Attainment		
Jackson County	7/23/92	Unclassifiable/Attainment		
Platte County	7/23/92	Unclassifiable/Attainment		
St. Louis Area:				
Franklin County		Nonattainment		Moderate.
Jefferson County		Nonattainment		Moderate.
St. Charles County		Nonattainment		Moderate.
St. Louis		Nonattainment		Moderate.
St. Louis County		Nonattainment		Moderate.
AQCR 094 Metro Kansas City Interstate (Remainder of)		Unclassifiable/Attainment		
Buchanan County				
Cass County				
Ray County				
AQCR 137 N. Missouri Intrastate (part)				
Pike County		Unclassifiable/Attainment		
Ralls County		Unclassifiable/Attainment		
AQCR 137 N. Missouri Intrastate (Remainder of)		Unclassifiable/Attainment		
Adair County				
Andrew County				
Atchison County				
Audrain County				
Boone County				
Caldwell County				
Callaway County				
Carroll County				
Chariton County				
Clark County				
Clinton County				
Cole County				
Cooper County				
Daviess County				
DeKalb County				
Gentry County				
Grundy County				
Harrison County				
Holt County				

MISSOURI-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Howard County				
Knox County				
Lewis County				
Lincoln County				
Linn County				
Livingston County				
Macon County				
Marion County				
Mercer County				
Moniteau County				
Monroe County				
Montgomery County				
Nodaway County				
Osage County				
Putnam County				
Randolph County				
Saline County				
Schuyler County				
Scotland County				
Shelby County				
Sullivan County				
Warren County				
Worth County				
Rest of State		Unclassifiable/Attainment		
Barry County				
Barton County				
Bates County				
Benton County				
Bollinger County				
Butler County				
Camden County				
Cape Girardeau County				
Carter County				
Cedar County				
Christian County				
Crawford County				
Dade County				
Dallas County				
Dent County				
Douglas County				
Dunklin County				
Gasconade County				
Greene County				
Henry County				
Hickory County				
Howell County				
Iron County				
Jasper County				
Johnson County				
Laclede County				
Lafayette County				
Lawrence County				
Madison County				
Maries County				
McDonald County				
Miller County				
Mississippi County				
Morgan County				
New Madrid County				
Newton County				
Oregon County				
Ozark County				
Pemiscot County				
Perry County				
Pettis County				
Phelps County				
Polk County				
Pulaski County				
Reynolds County				
Ripley County				

MISSOURI-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Scott County				
Shannon County				
St.Clair County				
St. Francois County				
Ste. Genevieve County				
Stoddard County				
Stone County				
Taney County				
Texas County				
Vernon County				
Washington County				
Wayne County				
Webster County				
Wright County				

[1] This date is November 15, 1990, unless otherwise noted.

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28. In § 81.327, the table entitled "Montana—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.327 Montana.

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MONTANA—OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Beaverhead County		Unclassifiable/Attainment		
Big Horn County (part)		Unclassifiable/Attainment		
excluding Crow, Northern Cheyenne Indian Reservations				
Blaine County (part)				
excluding Fort Belknap Indian Reservation				
Broadwater County		Unclassifiable/Attainment		
Carbon County		Unclassifiable/Attainment		
Carter County		Unclassifiable/Attainment		
Cascade County		Unclassifiable/Attainment		
Chouteau County (part)				
excluding Rocky Boy Indian Reservation		Unclassifiable/Attainment		
Custer County		Unclassifiable/Attainment		
Daniels County (part)				
excluding Fort Peck Indian Reservation		Unclassifiable/Attainment		
Dawson County		Unclassifiable/Attainment		
Deer Lodge County		Unclassifiable/Attainment		
Fallon County		Unclassifiable/Attainment		
Fergus County		Unclassifiable/Attainment		
Flathead County (part)				
excluding Flathead Indian Reservation		Unclassifiable/Attainment		
Gallatin County		Unclassifiable/Attainment		
Garfield County		Unclassifiable/Attainment		
Glacier County (part)				
excluding Blackfeet Indian Reservation		Unclassifiable/Attainment		
Golden Valley County		Unclassifiable/Attainment		
Granite County		Unclassifiable/Attainment		
Hill County (part)				
excluding Rocky Boy Indian Reservation		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
Judith Basin County		Unclassifiable/Attainment		
Lake County (part)				
excluding Flathead Indian Reservation		Unclassifiable/Attainment		
Lewis and Clark County		Unclassifiable/Attainment		
Liberty County		Unclassifiable/Attainment		
Lincoln County		Unclassifiable/Attainment		
Madison County		Unclassifiable/Attainment		
McCone County		Unclassifiable/Attainment		
Meagher County		Unclassifiable/Attainment		
Mineral County		Unclassifiable/Attainment		
Missoula County (part)				
excluding Flathead Indian Reservation		Unclassifiable/Attainment		

MONTANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Musselshell County		Unclassifiable/Attainment		
Park County		Unclassifiable/Attainment		
Petroleum County		Unclassifiable/Attainment		
Phillips County (part)				
excluding Fort Belknap Indian Reservation		Unclassifiable/Attainment		
Pondera County (part)				
excluding Blackfeet Indian Reservation		Unclassifiable/Attainment		
Powder River County		Unclassifiable/Attainment		
Powell County		Unclassifiable/Attainment		
Prairie County		Unclassifiable/Attainment		
Ravalli County		Unclassifiable/Attainment		
Richland County		Unclassifiable/Attainment		
Roosevelt County (part)				
excluding Fort Peck Indian Reservation		Unclassifiable/Attainment		
Rosebud County (part)				
excluding Northern Cheyenne Indian Reservation		Unclassifiable/Attainment		
Sanders County (part).				
excluding Flathead Indian Reservation		Unclassifiable/Attainment		
Sheridan County (part)				
excluding Fort Peck Indian Reservation		Unclassifiable/Attainment		
Silver Bow County		Unclassifiable/Attainment		
Stillwater County		Unclassifiable/Attainment		
Sweet Grass County		Unclassifiable/Attainment		
Teton County		Unclassifiable/Attainment		
Toole County		Unclassifiable/Attainment		
Treasure County		Unclassifiable/Attainment		
Valley County (part)				
excluding Fort Peck Indian Reservation		Unclassifiable/Attainment		
Wheatland County		Unclassifiable/Attainment		
Wibaux County		Unclassifiable/Attainment		
Yellowstone County (part)				
excluding Crow Indian Reservation		Unclassifiable/Attainment		
Yellowstone Natl Park		Unclassifiable/Attainment		
Blackfeet Indian Reservation		Unclassifiable/Attainment		
Glacier County (part)				
area inside Blackfeet Reservation				
Pondera County (part)				
area inside Blackfeet Reservation				
Crow Indian Reservation		Unclassifiable/Attainment		
Bighorn County (part)				
area inside Crow Reservation				
Yellowstone (part)				
area inside Crow Reservation				
Flathead Indian Reservation		Unclassifiable/Attainment		
Flathead County (part)				
area inside Flathead Reservation				
Lake County (part)				
area inside Flathead Reservation				
Missoula County (part)				
area inside Flathead Reservation				
Sanders County (part)				
area inside Flathead Reservation				
Fort Belknap Indian Reservation		Unclassifiable/Attainment		
Blaine County (part)				
area inside Fort Belknap Reservation				
Phillips County (part)				
area inside Fort Belknap Reservation				
Fort Peck Indian Reservation		Unclassifiable/Attainment		
Daniels County (part)				
area inside Fort Peck Reservation				
Roosevelt County (part)				
area inside Fort Peck Reservation				
Sheridan County (part)				
area inside Fort Peck Reservation				
Valley County (part)				
area inside Fort Peck Reservation				
Northern Cheyenne Indian Reservation		Unclassifiable/Attainment		
Bighorn County (part)				
area inside Northern Cheyenne Reservation				
Rosebud County (part)				

MONTANA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
area inside Northern Cheyenne Reservation				
Rocky Boy Indian Reservation		Unclassifiable/Attainment		
Chouteau County (part)				
area inside Rocky Boy Reservation				
Hill County (part)				
area inside Rocky Boy Reservation				

[1] This date is November 15, 1990, unless otherwise noted.

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29. In § 81.328, the table entitled "Nebraska—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.328 Nebraska.

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NEBRASKA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Adams County				
Antelope County				
Arthur County				
Banner County				
Blaine County				
Boone County				
Box Butte County				
Boyd County				
Brown County				
Buffalo County				
Burt County				
Butler County				
Cass County				
Cedar County				
Chase County				
Cherry County				
Cheyenne County				
Clay County				
Colfax County				
Cuming County				
Custer County				
Dakota County				
Dawes County				
Dawson County				
Deuel County				
Dixon County				
Dodge County				
Douglas County				
Dundy County				
Fillmore County				
Franklin County				
Frontier County				
Furnas County				
Gage County				
Garden County				
Garfield County				
Gosper County				
Grant County				
Greeley County				
Hall County				
Hamilton County				
Harlan County				
Hayes County				
Hitchcock County				
Holt County				
Hooker County				
Howard County				
Jefferson County				
Johnson County				

NEBRASKA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Kearney County				
Keith County				
Keya Paha County				
Kimball County				
Knox County				
Lancaster County				
Lincoln County				
Logan County				
Loup County				
Madison County				
McPherson County				
Merrick County				
Morrill County				
Nance County				
Nemaha County				
Nuckolls County				
Otoe County				
Pawnee County				
Perkins County				
Phelps County				
Pierce County				
Platte County				
Polk County				
Red Willow County				
Richardson County				
Rock County				
Saline County				
Sarpy County				
Saunders County				
Scotts Bluff County				
Seward County				
Sheridan County				
Sherman County				
Sioux County				
Stanton County				
Thayer County				
Thomas County				
Thurston County				
Valley County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
York County				

[1] This date is November 15, 1990, unless otherwise noted.

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30. In § 81.329, the table entitled "Nevada—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.329 Nevada.

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NEVADA—OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Reno Area:				
Washoe County	1/6/92	Nonattainment	1/6/92	Marginal.
Rest of State		Unclassifiable/Attainment		
Carson City				
Churchill County				
Clark County				
Douglas County				
Elko County				
Esmeralda County				
Eureka County				
Humboldt County				
Lander County				

NEVADA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Lincoln County				
Lyon County				
Mineral County				
Nye County				
Pershing County				
Storey County				
White Pine County				

[1] This date is November 15, 1990, unless otherwise noted.

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31. In § 81.330, the table entitled "New Hampshire—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.330 New Hampshire.

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NEW HAMPSHIRE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Belknap County Area:				
Belknap County	5/27/97	Unclassifiable/Attainment		
Boston-Lawrence-Worcester Area:				
Hillsborough County (part)		Nonattainment		Serious.
Pelham Town, Amherst Town, Brookline Town, Hollis Town, Hudson Town, Litchfield Town, Merrimack Town, Milford Town, Mont Vernon Town, Nashua City, Wilton Town.				
Rockingham County (part)		Nonattainment		Serious.
Atkinson Town, Brentwood Town, Danville Town, Derry Town, E. Kingston Town, Hampstead Town, Hampton Falls Town, Kensington Town, Kingston Town, Londonderry Town, Newton Town, Plaistow Town, Salem Town, Sandown Town, Seabrook Town, South Hampton Town Windham Town.				
Cheshire County Area:				
Cheshire County		Nonattainment		Incomplete Data.
Manchester Area:				
Hillsborough County (part)		Nonattainment		Marginal.
Antrim Town, Bedford Town, Bennington Town, Deering Town, Francestown Town, Goffstown Town, Greenfield Town, Greenville Town, Hancock Town, Hillsborough Town, Lyndeborough Town, Manchester city, Mason Town, New Boston Town, New Ipswich Town, Petersborough Town, Sharon Town, Temple town, Weare Town, Windsor Town.				
Merrimack County		Nonattainment		Marginal.
Rockingham County (part)		Nonattainment		Marginal.
Auburn Town, Candia Town, Chester Town, Deerfield Town, Epping Town, Fremont Town, Northwood Town, Nottingham Town, Raymond Town.				
Portsmouth-Dover-Rochester Area:				
Rockingham County (part)		Nonattainment		Serious.
Exeter Town, Greenland Town, Hampton Town, New Castle Town, Newfields Town, Newington Town, Newmarket Town, North Hampton Town, Portsmouth city, Rye Town, Stratham Town.				
Strafford County		Nonattainment		Serious.
Sullivan County Area:				
Sullivan County	5/27/97	Unclassifiable/Attainment		
AQCR 107 Androscoggin Valley Interstate:				
Coos County		Unclassifiable/Attainment		
AQCR 149 Central New Hampshire Interstate:				
Carroll County		Unclassifiable/Attainment		
Grafton County		Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

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32. In § 81.331, the table entitled "New Jersey—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.331 New Jersey.

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NEW JERSEY—OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Allentown-Bethlehem Easton Area:				
Warren County		Nonattainment		Marginal.
Atlantic City Area:				
Atlantic County		Nonattainment		Moderate.
Cape May County		Nonattainment		Moderate.
New York-N. New Jersey-Long Island Area:				
Bergen County		Nonattainment		Severe-17.
Essex County		Nonattainment		Severe-17.
Hudson County		Nonattainment		Severe-17.
Hunterdon County		Nonattainment		Severe-17.
Middlesex County		Nonattainment		Severe-17.
Monmouth County		Nonattainment		Severe-17.
Morris County		Nonattainment		Severe-17.
Ocean County		Nonattainment		Severe-17.
Passaic County		Nonattainment		Severe-17.
Somerset County		Nonattainment		Severe-17.
Sussex County		Nonattainment		Severe-17.
Union County		Nonattainment		Severe-17.
Philadelphia-Wilmington-Trenton Area:				
Burlington County		Nonattainment		Severe-15.
Camden County		Nonattainment		Severe-15.
Cumberland County		Nonattainment		Severe-15.
Gloucester County		Nonattainment		Severe-15.
Mercer County		Nonattainment		Severe-15.
Salem County		Nonattainment		Severe-15.

[1] This date is November 15, 1990, unless otherwise noted.

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33. In § 81.332, the table entitled "New Mexico—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.332 New Mexico.

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NEW MEXICO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 012 New Mexico-Southern Border Intrastate		Unclassifiable/Attainment		
Grant County				
Hidalgo County				
Luna County				
AQCR 014 Four Corners Interstate		Unclassifiable/Attainment		
see 40 CFR 81.121				
McKinley County (part)				
Rio Arriba County (part)				
San Juan County				
Sandoval County (part)				
Valencia County (part)				
AQCR 152 Albuquerque-Mid Rio Grande Intrastate		Unclassifiable/Attainment		
Bernalillo County (part)				
AQCR 152 Albuquerque-Mid Rio Grande		Unclassifiable/Attainment		
Sandoval County (part)				
see 40 CFR 81.83.				
Valencia County.				
see 40 CFR 81.83.				
AQCR 153 El Paso-Las Cruces-Alamogordo	7/12/95	Nonattainment	7/12/95	Marginal.
Dona Ana County (part)—(Sunland Park Area) The Area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, the Range 3E-Range 2E line on the west, and the N3200 latitude line on the north.				

NEW MEXICO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Remainder of Dona Ana County		Unclassifiable/Attainment		
Lincoln County		Unclassifiable/Attainment		
Otero County		Unclassifiable/Attainment		
Sierra County		Unclassifiable/Attainment		
AQCR 154 Northeastern Plains Intrastate		Unclassifiable/Attainment		
Colfax County				
Guadalupe County				
Harding County				
Mora County				
San Miguel County				
Torrance County				
Union County				
AQCR 155 Pecos-Permian Basin Intrastate		Unclassifiable/Attainment		
Chaves County				
Curry County				
De Baca County				
Eddy County				
Lea County				
Quay County				
Roosevelt County				
AQCR 156 SW Mountains-Augustine Plains		Unclassifiable/Attainment		
Catron County				
Cibola County				
McKinley County (part) see 40 CFR 81.241				
Socorro County				
Valencia County (part) see 40 CFR 81.241				
AQCR 157 Upper Rio Grande Valley Intrastate		Unclassifiable/Attainment		
Los Alamos County				
Rio Arriba County (part) see 40 CFR 81.239.				
Santa Fe County				
Taos County				

[1] This date is November 15, 1990, unless otherwise noted.

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34. In § 81.333, the table entitled "New York—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.333 New York.

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NEW YORK—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[2]	Type
Albany-Schenectady-Troy Area:				
Albany County	1/6/92	Nonattainment	1/6/92	Marginal.
Greene County	1/6/92	Nonattainment	1/6/92	Marginal.
Montgomery County	1/6/92	Nonattainment	1/6/92	Marginal.
Rensselaer County	1/6/92	Nonattainment	1/6/92	Marginal.
Saratoga County	1/6/92	Nonattainment	1/6/92	Marginal.
Schenectady County	1/6/92	Nonattainment	1/6/92	Marginal.
Buffalo-Niagara Falls Area:				
Erie County	1/6/92	Nonattainment	1/6/92	Marginal.
Niagara County	1/6/92	Nonattainment	1/6/92	Marginal.
Essex County Area:				
Essex County (part)	1/6/92	Nonattainment	1/6/92	Rural Transport (Marginal).
The portion of Whiteface Mountain above 4500 feet in elevation in Essex County				
Jefferson County Area:				
Jefferson County	1/6/92	Nonattainment	1/6/92	Marginal.
New York-Northern New Jersey-Long Island Area:				
Bronx County		Nonattainment		Severe-17.
Kings County		Nonattainment		Severe-17.
Nassau County		Nonattainment		Severe-17.
New York County		Nonattainment		Severe-17.

NEW YORK—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[2]	Type
Orange County (part)	1/15/92	Nonattainment	1/15/92	Severe-17.
Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury.				
Queens County		Nonattainment		Severe-17.
Richmond County		Nonattainment		Severe-17.
Rockland County		Nonattainment		Severe-17.
Suffolk County		Nonattainment		Severe-17.
Westchester County		Nonattainment		Severe-17.
Poughkeepsie Area:				
Dutchess County	1/6/92	Nonattainment	11/7/94	Moderate.
Orange County (remainder)	[2]4/21/94	Nonattainment	[2]11/7/94	Moderate.
Putnam County	1/15/92	Nonattainment	11/7/94	Moderate.
AQCR 158 Central New York Intrastate (Remainder of)		Unclassifiable/Attainment		
Cayuga County.				
Cortland County.				
Herkimer County.				
Lewis County.				
Madison County.				
Oneida County.				
Onondaga County.				
Oswego County.				
AQCR 159 Champlain Valley Interstate (Remainder of)		Unclassifiable/Attainment		
Clinton County				
Franklin County				
Hamilton County				
St. Lawrence County				
Warren County				
Washington County				
AQCR 160 Genessee-Finger Lakes Intrastate		Unclassifiable/Attainment		
Genessee County				
Livingston County				
Monroe County				
Ontario County				
Orleans County				
Seneca County				
Wayne County				
Wyoming County				
Yates County				
AQCR 161 Hudson Valley Intrastate (Remainder of)		Unclassifiable/Attainment		
Columbia County				
Fulton County				
Schoharie County				
Ulster County				
AQCR 163 Southern Tier East Intrastate		Unclassifiable/Attainment		
Broome County				
Chenango County				
Delaware County				
Otsego County				
Sullivan County				
Tioga County				
AQCR 164 Southern Tier West Intrastate		Unclassifiable/Attainment		
Allegany County				
Cattaraugus County				
Chautauqua County				
Chemung County				
Schuyler County				
Steuben County				
Tompkins County				

[1] This date is November 15, 1990, unless otherwise noted.

[2] However, the effective date is November 15, 1990, for purposes of determining the scope of a "covered area" under section 211 (k)(10)(D), opt-in under section 211 (k)(6), and the baseline determination of the 15% reduction in volatile organic compounds under section 182 (b)(1).

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35. In § 81.334, the table entitled "North Carolina—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.334 North Carolina.

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NORTH CAROLINA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		Unclassifiable/Attainment		
Alamance County				
Alexander County				
Alleghany County				
Anson County				
Ashe County				
Avery County				
Beaufort County				
Bertie County				
Bladen County				
Brunswick County				
Buncombe County				
Burke County				
Cabarrus County				
Caldwell County				
Camden County				
Carteret County				
Caswell County				
Catawba County				
Chatham County				
Cherokee County				
Chowan County				
Clay County				
Cleveland County				
Columbus County				
Craven County				
Cumberland County				
Currituck County				
Dare County				
Davidson County	9/9/93			
Davie County	9/9/93			
Durham County	6/17/94			
Duplin County				
Edgecombe County				
Forsyth County	9/9/93			
Franklin County				
Gaston County	7/5/95			
Gates County				
Graham County				
Granville County	6/17/94			
Greene County				
Guilford County	9/9/93			
Halifax County				
Harnett County				
Haywood County				
Henderson County				
Hertford County				
Hoke County				
Hyde County				
Iredell County				
Jackson County				
Johnston County				
Jones County				
Lee County				
Lenoir County				
Lincoln County				
McDowell County				
Macon County				
Madison County				
Martin County				
Mecklenburg County	7/5/95			
Mitchell County				
Montgomery County				
Moore County				
Nash County				
New Hanover County				
Northhampton County				
Onslow County				
Orange County				

NORTH CAROLINA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Pamlico County				
Pasquotank County				
Pender County				
Perquimans County				
Person County				
Pitt County				
Polk County				
Randolph County				
Richmond County				
Robeson County				
Rockingham County				
Rowan County				
Rutherford County				
Sampson County				
Scotland County				
Stanly County				
Stokes County				
Surry County				
Swain County				
Transylvania County				
Tyrrell County				
Union County				
Vance County				
Wake County	6/17/94			
Warren County				
Washington County				
Watauga County				
Wayne County				
Wilkes County				
Wilson County				
Yadkin County				
Yancey County				

[1] This date is November 15, 1990, unless otherwise noted.

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36. In § 81.335, the table entitled "North Dakota—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.335 North Dakota.

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NORTH DAKOTA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 130 Metropolitan Fargo-Moorhead Interstate.				
Cass County		Unclassifiable/Attainment		
Rest of State, AQCR 172		Unclassifiable/Attainment		
Adams County				
Barnes County				
Benson County				
Billings County				
Bottineau County				
Bowman County				
Burke County				
Burleigh County				
Cavalier County				
Dickey County				
Divide County				
Dunn County				
Eddy County				
Emmons County				
Foster County				
Golden Valley County				
Grand Forks County				
Grant County				
Griggs County				
Hettinger County				

NORTH DAKOTA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Kidder County				
La Moure County				
Logan County				
McHenry County				
McIntosh County				
McKenzie County				
McLean County				
Mercer County				
Morton County				
Mountrail County				
Nelson County				
Oliver County				
Pembina County				
Pierce County				
Ramsey County				
Ransom County				
Renville County				
Richland County				
Rolette County				
Sargent County				
Sheridan County				
Sioux County				
Slope County				
Stark County				
Steele County				
Stutsman County				
Towner County				
Traill County				
Walsh County				
Ward County				
Wells County				
Williams County				

[1] This date is November 15, 1990, unless otherwise noted.

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37. In § 81.336, the table entitled "Ohio—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.336 Ohio.

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OHIO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type[2]	Date[1]	Type[2]
Canton Area:				
Stark County	4/1/96	Attainment		
Cincinnati-Hamilton Area:				
Butler County		Nonattainment		Moderate[2]
Clermont County		Nonattainment		Moderate[2]
Hamilton County		Nonattainment		Moderate[2]
Warren County		Nonattainment		Moderate[2]
Cleveland-Akron-Lorain Area:	5/7/96	Attainment		
Ashtabula County				
Cuyahoga County				
Geauga County				
Lake County				
Lorain County				
Medina County				
Portage County				
Summit County				
Clinton County Area:				
Clinton County	3/21/96	Attainment		
Columbiana County Area:				
Columbiana County	3/10/95	Attainment		
Columbus Area:				
Delaware County	4/1/96	Attainment		
Franklin County	4/1/96	Attainment		
Licking County	4/1/96	Attainment		

OHIO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type [2]	Date [1]	Type [2]
Dayton-Springfield Area:				
Clark County	7/5/95	Attainment		
Greene County	7/5/95	Attainment		
Miami County	7/5/95	Attainment		
Montgomery County	7/5/95	Attainment		
Preble County Area:				
Preble County	3/10/95	Attainment		
Steubenville Area:				
Jefferson County	3/10/95	Attainment		
Toledo Area:				
Lucas County	8/1/95	Attainment		
Wood County	8/1/95	Attainment		
Youngstown-Warren-Sharon Area:				
Mahoning County	4/1/96	Attainment		
Trumbull County	4/1/96	Attainment		
Adams County		Unclassifiable/Attainment		
Allen County		Unclassifiable/Attainment		
Ashland County		Unclassifiable/Attainment		
Athens County		Unclassifiable/Attainment		
Auglaize County		Unclassifiable/Attainment		
Belmont County		Unclassifiable/Attainment		
Brown County		Unclassifiable/Attainment		
Carroll County		Unclassifiable/Attainment		
Champaign County		Unclassifiable/Attainment		
Coshocton County		Unclassifiable/Attainment		
Crawford County		Unclassifiable/Attainment		
Darke County		Unclassifiable/Attainment		
Defiance County		Unclassifiable/Attainment		
Erie County		Unclassifiable/Attainment		
Fairfield County		Unclassifiable/Attainment		
Fayette County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Gallia County		Unclassifiable/Attainment		
Guernsey County		Unclassifiable/Attainment		
Hancock County		Unclassifiable/Attainment		
Hardin County		Unclassifiable/Attainment		
Harrison County		Unclassifiable/Attainment		
Henry County		Unclassifiable/Attainment		
Highland County		Unclassifiable/Attainment		
Hocking County		Unclassifiable/Attainment		
Holmes County		Unclassifiable/Attainment		
Huron County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Knox County		Unclassifiable/Attainment		
Lawrence County		Unclassifiable/Attainment		
Logan County		Unclassifiable/Attainment		
Madison County		Unclassifiable/Attainment		
Marion County		Unclassifiable/Attainment		
Meigs County		Unclassifiable/Attainment		
Mercer County		Unclassifiable/Attainment		
Monroe County		Unclassifiable/Attainment		
Morgan County		Unclassifiable/Attainment		
Morrow County		Unclassifiable/Attainment		
Muskingum County		Unclassifiable/Attainment		
Noble County		Unclassifiable/Attainment		
Ottawa County		Unclassifiable/Attainment		
Paulding County		Unclassifiable/Attainment		
Perry County		Unclassifiable/Attainment		
Pickaway County		Unclassifiable/Attainment		
Pike County		Unclassifiable/Attainment		
Putnam County		Unclassifiable/Attainment		
Richland County		Unclassifiable/Attainment		
Ross County		Unclassifiable/Attainment		
Sandusky County		Unclassifiable/Attainment		
Scioto County		Unclassifiable/Attainment		
Seneca County		Unclassifiable/Attainment		
Shelby County		Unclassifiable/Attainment		
Tuscarawas County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		

OHIO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type [2]	Date [1]	Type [2]
Van Wert County	....	Unclassifiable/Attainment		
Vinton County	....	Unclassifiable/Attainment		
Washington County	....	Unclassifiable/Attainment		
Wayne County	....	Unclassifiable/Attainment		
Williams County	....	Unclassifiable/Attainment		
Wyandot County	....	Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1998.

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38. In § 81.337, the table entitled "Oklahoma—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.337 Oklahoma.

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OKLAHOMA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 017 Metropolitan Fort Smith Interstate	....	Unclassifiable/Attainment		
Adair County				
Cherokee County				
Le Flore County				
Sequoyah County				
AQCR 022 Shreveport-Texarkana-Tyler Intrastate	....	Unclassifiabl/Attainment		
McCurtain County				
AQCR 184 Central Oklahoma Intrastate (part)	....			
Cleveland County	....	Unclassifiable/Attainment		
Oklahoma County	....	Unclassifiable/Attainment		
AQCR 184 Central Oklahoma Intrastate (Remainder of)	....	Unclassifiable/Attainment		
Canadian County				
Grady County				
Kingfisher County				
Lincoln County				
Logan County				
McClain County				
Pottawatomie County				
AQCR 185 North Central Oklahoma Intrastate	....	Unclassifiable/Attainment		
Garfield County				
Grant County				
Kay County				
Noble County				
Payne County				
AQCR 186 Northeastern Oklahoma Intrastate	....	Unclassifiable/Attainment		
Craig County				
Creek County				
Delaware County				
Mayes County				
Muskogee County				
Nowata County				
Okmulgee County				
Osage County				
Ottawa County				
Pawnee County				
Rogers County				
Tulsa County				
Wagoner County				
Washington County				
AQCR 187 Northwestern Oklahoma Intrastate	....	Unclassifiable/Attainment		
Alfalfa County				
Beaver County				
Blaine County				
Cimarron County				
Custer County				
Dewey County				
Ellis County				
Harper County				

OKLAHOMA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Major County				
Roger Mills County				
Texas County				
Woods County				
Woodward County				
AQCR 188 Southeastern Oklahoma Intrastate	....	Unclassifiable/Attainment		
Atoka County				
Bryan County				
Carter County				
Choctaw County				
Coal County				
Garvin County				
Haskell County				
Hughes County				
Johnston County				
Latimer County				
Love County				
Marshall County				
McIntosh County				
Murray County				
Okfuskee County				
Pittsburg County				
Pontotoc County				
Pushmataha County				
Seminole County				
AQCR 189 Southwestern Oklahoma Intrastate	....	Unclassifiable/Attainment		
Beckham County				
Caddo County				
Comanche County				
Cotton County				
Greer County				
Harmon County				
Jackson County				
Jefferson County				
Kiowa County				
Stephens County				
Tillman County				
Washita County				

[1] This date is November 15, 1990, unless otherwise noted.

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39. In § 81.338, the table entitled "Oregon—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.338 Oregon.

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OREGON-OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Portland-Vancouver AQMA Area:	....	Attainment		
Air Quality Maintenance Area				
Clackamas County (part)				
Multnomah County (part)				
Washington County (part)				
Salem Area:				
Salem Area Transportation Study.				
Marion County (part)	....	Nonattainment	....	Incomplete Data.
Polk County (part)	....	Nonattainment	....	Incomplete Data.
AQCR 190 Central Oregon Intrastate (Remainder of)	....	Unclassifiable/Attainment		
Crook County				
Deschutes County				
Hood River County				
Jefferson County				
Klamath County				
Lake County				
Sherman County				
Wasco County				

OREGON-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 191 Eastern Oregon Intrastate		Unclassifiable/Attainment		
Baker County				
Gilliam County				
Grant County				
Harney County				
Malheur County				
Morrow County				
Umatilla County				
Union County				
Wallowa County				
Wheeler County				
AQCR 192 Northwest Oregon Intrastate		Unclassifiable/Attainment		
Clatsop County				
Lincoln County				
Tillamook County				
AQCR 193 Portland Interstate (part)		Unclassifiable/Attainment		
Lane County (part) Eugene Springfield Air Quality Maintenance Area.				
AQCR 193 Portland Interstate (Remainder of)		Unclassifiable/Attainment		
Benton County				
Clackamas County (part)				
Remainder of county				
Columbia County				
Lane County (part)				
Remainder of county				
Linn County				
Marion County (part)				
area outside the Salem Area Transportation Study				
Multnomah County (part)				
Remainder of county				
Polk County (part)				
area outside the Salem Area Transportation Study				
Washington County (part)				
Remainder of county				
Yamhill County				
AQCR 194 Southwest Oregon Intrastate (part)				
Jackson County (part)				
Medford-Ashland Air Quality Maintenance Area		Unclassifiable/Attainment		
AQCR 194 Southwest Oregon Intrastate (Remainder of)		Unclassifiable/Attainment		
Coos County				
Curry County				
Douglas County				
Jackson County (part)				
Remainder of county				
Josephine County				

[1] This date is November 15, 1990, unless otherwise noted.

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40. In § 81.339, the table entitled "Pennsylvania—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.339 Pennsylvania.

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PENNSYLVANIA—OZONE (1-HOUR STANDARD)

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Allentown-Bethlehem-Easton Area:				
Carbon County		Nonattainment		Marginal.
Lehigh County		Nonattainment		Marginal.
Northampton County		Nonattainment		Marginal.
Altoona Area:				
Blair County	1/6/92	Nonattainment	1/6/92	Marginal.
Crawford County Area:				
Crawford County		Nonattainment		Incomplete Data.
Erie Area:				

PENNSYLVANIA—OZONE (1-HOUR STANDARD)—Continued

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Erie County		Nonattainment		Marginal.
Franklin County Area:				
Franklin County		Nonattainment		Incomplete Data.
Greene County Area:				
Greene County		Nonattainment		Incomplete Data.
Harrisburg-Lebanon-Carlisle Area:				
Cumberland County		Nonattainment		Marginal.
Dauphin County		Nonattainment		Marginal.
Lebanon County		Nonattainment		Marginal.
Perry County		Nonattainment		Marginal.
Johnstown Area:				
Cambria County	1/6/92	Nonattainment	1/6/92	Marginal.
Somerset County	1/6/92	Nonattainment	1/6/92	Marginal.
Juniata County Area:				
Juniata County		Nonattainment		Incomplete Data.
Lancaster Area:				
Lancaster County		Nonattainment		Marginal.
Lawrence County Area:				
Lawrence County		Nonattainment		Incomplete Data
Northumberland County Area:				
Northumberland County		Nonattainment		Incomplete Data.
Philadelphia-Wilmington-Trenton Area:				
Bucks County		Nonattainment		Severe-15.
Chester County		Nonattainment		Severe-15.
Delaware County		Nonattainment		Severe-15.
Montgomery County		Nonattainment		Severe-15.
Philadelphia County		Nonattainment		Severe-15.
Pike County Area:				
Pike County		Nonattainment		Incomplete Data.
Pittsburgh-Beaver Valley Area:				
Allegheny County		Nonattainment		Moderate (2).
Armstrong County		Nonattainment		Moderate (2).
Beaver County		Nonattainment		Moderate (2).
Butler County		Nonattainment		Moderate (2).
Fayette County		Nonattainment		Moderate (2).
Washington County		Nonattainment		Moderate (2).
Westmoreland County		Nonattainment		Moderate (2).
Reading Area:				
Berks County	6/23/97	Unclassifiable/Attainment		
Schuylkill County Area:				
Schuylkill County		Nonattainment		Incomplete Data.
Scranton-Wilkes-Barre Area:				
Columbia County		Nonattainment		Marginal.
Lackawanna County		Nonattainment		Marginal.
Luzerne County		Nonattainment		Marginal.
Monroe County		Nonattainment		Marginal.
Wyoming County		Nonattainment		Marginal.
Snyder County Area:				
Snyder County		Nonattainment		Incomplete Data.
Susquehanna County Area:				
Susquehanna County		Nonattainment		ncomplete Data.
Warren County Area:				
Warren County		Nonattainment		Incomplete Data.
Wayne County Area:				
Wayne County		Nonattainment		Incomplete Data.
York Area:				
Adams County		Nonattainment		Marginal.
York County		Nonattainment		Marginal.
Youngstown-Warren-Sharon Area:				
Mercer County		Nonattainment		Marginal.
AQCR 151 NE Pennsylvania Intrastate (Remainder of)				
Bradford County		Unclassifiable/Attainment		
Sullivan County		Unclassifiable/Attainment		
Tioga County		Unclassifiable/Attainment		
		Unclassifiable/Attainment		
AQCR 178 NW Pennsylvania Interstate (Remainder of)				
Cameron County		Unclassifiable/Attainment		
Clarion County		Unclassifiable/Attainment		
Clearfield County		Unclassifiable/Attainment		
Elk County		Unclassifiable/Attainment		

PENNSYLVANIA—OZONE (1-HOUR STANDARD)—Continued

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Forest County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
McKean County		Unclassifiable/Attainment		
Potter County		Unclassifiable/Attainment		
Venango County		Unclassifiable/Attainment		
AQCR 195 Central Pennsylvania Intrastate (Remainder of)				
Bedford County		Unclassifiable/Attainment		
Centre County		Unclassifiable/Attainment		
Clinton County		Unclassifiable/Attainment		
Fulton County		Unclassifiable/Attainment		
Huntingdon County		Unclassifiable/Attainment		
Lycoming County		Unclassifiable/Attainment		
Mifflin County		Unclassifiable/Attainment		
Montour County		Unclassifiable/Attainment		
Union County		Unclassifiable/Attainment		
AQCR 197 SW Pennsylvania Intrastate (Remainder of)				
Indiana County		Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

[2] Attainment date extended to 11/15/97.

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41. In § 81.340, the table entitled "Rhode Island—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.340 Rhode Island.

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RHODE ISLAND—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Providence (all of RI) Area:				
Bristol County		Nonattainment		Serious.
Kent County		Nonattainment		Serious.
Newport County		Nonattainment		Serious.
Providence County		Nonattainment		Serious.
Washington County		Nonattainment		Serious.

[1] This date is November 15, 1990, unless otherwise noted.

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42. In § 81.341, the table entitled "South Carolina—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.341 South Carolina.

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SOUTH CAROLINA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Abbeville County				
Aiken County				
Allendale County				
Anderson County				
Bamberg County				
Barnwell County				
Beaufort County				
Berkeley County				
Calhoun County				
Charleston County				
Cherokee County	2/16/93			
Chester County				
Chesterfield County				
Clarendon County				
Colleton County				
Darlington County				

SOUTH CAROLINA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Dillon County				
Dorchester County				
Edgefield County				
Fairfield County				
Florence County				
Georgetown County				
Greenville County				
Greenwood County				
Hampton County				
Horry County				
Jasper County				
Kershaw County				
Lancaster County				
Laurens County				
Lee County				
Lexington County				
Marion County				
Marlboro County				
McCormick County				
Newberry County				
Oconee County				
Orangeburg County				
Pickens County				
Richland County				
Saluda County				
Spartanburg County				
Sumter County				
Union County				
Williamsburg County				
York County				

[1] This date is November 15, 1990, unless otherwise noted.

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43. In § 81.342, the table entitled "South Dakota-Ozone (1–Hour Standard)" is revised to read as follows:

§ 81.342 South Dakota.

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SOUTH DAKOTA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Aurora County				
Beadle County				
Bennett County				
Bon Homme County				
Brookings County				
Brown County				
Brule County				
Buffalo County				
Butte County				
Campbell County				
Charles Mix County				
Clark County				
Clay County				
Codington County				
Corson County				
Custer County				
Davison County				
Day County				
Deuel County				
Dewey County				
Douglas County				
Edmunds County				
Fall River County				
Faulk County				
Grant County				

SOUTH DAKOTA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Gregory County				
Haakon County				
Hamlin County				
Hand County				
Hanson County				
Harding County				
Hughes County				
Hutchinson County				
Hyde County				
Jackson County				
Jerauld County				
Jones County				
Kingsbury County				
Lake County				
Lawrence County				
Lincoln County				
Lyman County				
Marshall County				
McCook County				
McPherson County				
Meade County				
Mellette County				
Miner County				
Minnehaha County				
Moody County				
Pennington County				
Perkins County				
Potter County				
Roberts County				
Sanborn County				
Shannon County				
Spink County				
Stanley County				
Sully County				
Todd County				
Tripp County				
Turner County				
Union County				
Walworth County				
Yankton County				
Ziebach County				

[1] This date is November 15, 1990, unless otherwise noted.

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44. In § 81.343, the table entitled "Tennessee—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.343 Tennessee.

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TENNESSEE—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Anderson County				
Bedford County				
Benton County				
Bledsoe County				
Blount County				
Bradley County				
Campbell County				
Cannon County				
Carroll County				
Carter County				
Cheatham County				
Chester County				
Claiborne County				
Clay County				

TENNESSEE—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Cocke County				
Coffee County				
Crockett County				
Cumberland County				
DeKalb County				
Decatur County				
Dickson County				
Davidson County	10/30/96			
Dyer County				
Fayette County				
Fentress County				
Franklin County				
Gibson County				
Giles County				
Grainger County				
Greene County				
Grundy County				
Hamblen County				
Hamilton County				
Hancock County				
Hardeman County				
Hardin County				
Hawkins County				
Haywood County				
Henderson County				
Henry County				
Hickman County				
Houston County				
Humphreys County				
Jackson County				
Jefferson County				
Johnson County				
Knox County	10/27/93			
Lake County				
Lauderdale County				
Lawrence County				
Lewis County				
Lincoln County				
Loudon County				
Macon County				
Madison County				
Marion County				
Marshall County				
Maury County				
McMinn County				
McNairy County				
Meigs County				
Monroe County				
Montgomery County				
Moore County				
Morgan County				
Obion County				
Overton County				
Perry County				
Pickett County				
Polk County				
Putnam County				
Rhea County				
Roane County				
Robertson County				
Rutherford County	10/30/96			
Scott County				
Sequatchie County				
Sevier County				
Shelby County	2/16/95			
Smith County				
Stewart County				
Sullivan County				
Sumner County	10/30/96			
Tipton County				

TENNESSEE—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Trousdale County				
Unicoi County				
Union County				
Van Buren County				
Warren County				
Washington County				
Wayne County				
Weakley County				
White County				
Williamson County	10/30/96			
Wilson County	10/30/96			

[1] This date is November 15, 1990, unless otherwise noted.

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45. In § 81.344, the table entitled "Texas—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.344 Texas.

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TEXAS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Beaumont/Port Arthur Area:				
Hardin County		Nonattainment	6/03/96	Moderate.
Jefferson County		Nonattainment	6/03/96	Moderate.
Orange County		Nonattainment	6/03/96	Moderate.
Dallas-Fort Worth Area:				
Collin County		Nonattainment	3/20/98	Serious.
Dallas County		Nonattainment	3/20/98	Serious.
Denton County		Nonattainment	3/20/98	Serious.
Tarrant County		Nonattainment	3/20/98	Serious.
El Paso Area:				
El Paso County		Nonattainment		Serious.
Houston-Galveston-Brazoria Area:				
Brazoria County		Nonattainment		Servere-17.
Chambers County		Nonattainment		Servere-17.
Fort Bend County		Nonattainment		Servere-17.
Galveston County		Nonattainment		Servere-17.
Harris County		Nonattainment		Servere-17.
Liberty County		Nonattainment		Servere-17.
Montgomery County		Nonattainment		Servere-17.
Waller County		Nonattainment		Servere-17.
Longview Area:				
Gregg County		Unclassifiable/Attainment		
Victoria Area:				
Victoria County	5/8/95	Attainment		
AQCR 022 Shreveport-Texarkana-Tyler Interstate		Unclassifiable/Attainment		
Anderson County				
Bowie County				
Camp County				
Cass County				
Cherokee County				
Delta County				
Franklin County				
Gregg County				
Harrison County				
Henderson County				
Hopkins County				
Lamar County				
Marion County				
Morris County				
Panola County				
Rains County				
Red River County				
Rusk County				
Smith County				
Titus County				

TEXAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Upshur County				
Van Zandt County				
Wood County				
AQCR 106 S Louisiana-SE Texas Interstate (Remainder of)	....	Unclassifiable/Attainment		
Angelina County, Houston County, Jasper County, Nacogdoches County, Newton County, Polk County, Sabine County, San Augustine County, San Jacinto County, Shelby County, Trinity County, Tyler County				
AQCR 153 El Paso-Las Cruces-Alamogordo Interstate	....	Unclassifiable/Attainment		
Brewster County				
Culberson County				
Hudspeth County				
Jeff Davis County				
Presidio County				
AQCR 210 Abilene-Wichita Falls Intrastate	....	Unclassifiable/Attainment		
Archer County, Baylor County, Brown County, Callahan County, Clay County, Coleman County, Comanche County, Cottle County, Eastland County, Fisher County, Foard County, Hardeman County, Haskell County, Jack County, Jones County, Kent County, Knox County, Mitchell County, Montague County, Nolan County, Runnels County, Scurry County, Shackelford County, Stephens County, Stonewall County, Taylor County, Throckmorton County, Wichita County, Wilbarger County, Young County				
AQCR 211 Amarillo-Lubbock Intrastate	....	Unclassifiable/Attainment		
Armstrong County, Bailey County, Briscoe County, Carson County, Castro County, Childress County, Cochran County, Collingsworth County, Crosby County, Dallam County, Deaf Smith County, Dickens County, Donley County, Floyd County, Garza County, Gray County, Hale County, Hall County, Hansford County, Hartley County, Hemphill County, Hockley County, Hutchinson County, King County, Lamb County, Lipscomb County, Lubbock County, Lynn County, Moore County, Motley County, Ochiltree County, Oldham County, Parmer County, Potter County, Randall County, Roberts County, Sherman County, Swisher County, Terry County, Wheeler County, Yoakum County				
AQCR 212 Austin-Waco Intrastate	....	Unclassifiable/Attainment		
Bastrop County				
Bell County				
Blanco County				
Bosque County				
Brazos County				
Burleson County				
Burnet County				
Caldwell County				
Coryell County				
Falls County				
Fayette County				
Freestone County				
Grimes County				
Hamilton County				
Hays County				
Hill County				
Lampasas County				
Lee County				
Leon County				
Limestone County				
Llano County				
Madison County				
McLennan County				
Milam County				
Mills County				
Robertson County				
San Saba County				
Travis County				
Washington County				

TEXAS—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Williamson County				
AQCR 213 Brownsville-Laredo Intrastate	....	Unclassifiable/Attainment		
Cameron County				
Hidalgo County				
Jim Hogg County				
Starr County				
Webb County				
Willacy County				
Zapata County				
AQCR 214 Corpus Christi-Victoria Intrastate (Remainder of)	....	Unclassifiable/Attainment		
Aransas County, Bee County, Brooks County, Calhoun County, De Witt County, Duval County, Goliad County, Gonzales County, Jackson County, Jim Wells County, Kenedy County, Kleberg County, Lavaca County, Live Oak County, McMullen County, Refugio County, San Patricio County,				
AQCR 214 Corpus Christi-Victoria Intrastate (part)	....	Unclassifiable/Attainment		
Nueces County				
AQCR 215 Metro Dallas-Fort Worth Intrastate (Remainder of).	....	Unclassifiable/Attainment		
Cooke County				
Ellis County				
Erath County				
Fannin County				
Grayson County				
Hood County				
Hunt County				
Johnson County				
Kaufman County				
Navarro County				
Palo Pinto County				
Parker County				
Rockwall County				
Somervell County				
Wise County				
AQCR 216 Metro Houston-Galveston Intrastate (Remainder of).	....	Unclassifiable/Attainment		
Austin County, Colorado County, Matagorda County, Walker County, Wharton County				
AQCR 217 Metro San Antonio Intrastate (part)	....	Unclassifiable/Attainment		
Bexar County				
AQCR 217 Metro San Antonio Intrastate (Remainder of)	....	Unclassifiable/Attainment		
Atascosa County, Bandera County, Comal County, Dimmit County, Edwards County, Frio County, Gillespie County, Guadalupe County, Karnes County, Kendall County, Kerr County, Kinney County, La Salle County, Maverick County, Medina County, Real County, Uvalde County, Val Verde County, Wilson County, Zavala County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (part)	....	Unclassifiable/Attainment		
Ector County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (Remainder of).	....	Unclassifiable/Attainment		
Andrews County, Borden County, Coke County, Concho County, Crane County, Crockett County, Dawson County, Gaines County, Glasscock County, Howard County, Irion County, Kimble County, Loving County, Martin County, Mason County, McCulloch County, Menard County, Midland County, Pecos County, Reagan County, Reeves County, Schleicher County, Sterling County, Sutton County, Terrell County, Tom Green County, Upton County, Ward County, Winkler County				

[1] This date is November 15, 1990, unless otherwise noted.

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46. In § 81.345, the table entitled "Utah—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.345 Utah.

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UTAH—OZONE (1-HOUR STANDARD)

Designation area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Salt Lake City Area:				
Davis County	8/18/97	Attainment		
Salt Lake County	8/18/97	Attainment		
Rest of State		Unclassifiable/Attainment		
Beaver County				
Box Elder County				
Cache County				
Carbon County				
Daggett County				
Duchesne County				
Emery County				
Garfield County				
Grand County				
Iron County				
Juab County				
Kane County				
Millard County				
Morgan County				
Piute County				
Rich County				
San Juan County				
Sanpete County				
Sevier County				
Summit County				
Tooele County				
Uintah County				
Utah County				
Wasatch County				
Washington County				
Wayne County				
Weber County				

[1] This date is November 15, 1990, unless otherwise noted.

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47. In § 81.346, the table entitled "Vermont—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.346 Vermont.

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VERMONT—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 159 Champlain Calley Interstate (part)				
Addison County Unclassifiable		Unclassifiable/Attainment		
Chittenden County		Unclassifiable/Attainment		
AQCR 159 Champlain Calley Interstate (Remainder of)		Unclassifiable/Attainment		
Franklin County				
Grand Isle County				
Rutland County				
AQCR 221 Vermont Intrastate (part)		Unclassifiable/Attainment		
Windsor County				
AQCR 221 Vermont Intrastate (Remainder of)		Unclassifiable/Attainment		
Bennington County				
Caledonia County				
Essex County				
Lamoille County				
Orange County				
Orleans County				
Washington County				
Windham County				

[1] This date is November 15, 1990, unless otherwise noted.

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48. In § 81.347, the table entitled "Virginia—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.347 Virginia.

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VIRGINIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Norfolk-Virginia-Beach Newport News (Hampton Roads) Area.	7/28/97	Attainment		
Chesapeake				
Hampton				
James City County				
Newport News				
Norfolk				
Poquoson				
Portsmouth				
Suffolk				
Virginia Beach				
Williamsburg				
York County				
Richmond Area:				
Charles City County (part) Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.	12/17/97	Attainment		
Chesterfield County	12/17/97	Attainment		
Colonial Heights	12/17/97	Attainment		
Hanover County	12/17/97	Attainment		
Henrico County	12/17/97	Attainment		
Hopewell	12/17/97	Attainment		
Richmond	12/17/97	Attainment		
Smyth County Area:				
Smyth County (part)	1/6/92	Nonattainment	1/6/92	Rural transport (Marginal).
The portion of White Top Mountain above the 4,500 foot elevation in Smyth County Washington Area:				
Washington Area:				
Alexandria		Nonattainment		Serious.
Arlington County		Nonattainment		Serious.
Fairfax		Nonattainment		Serious.
Fairfax County		Nonattainment		Serious.
Falls Church		Nonattainment		Serious.
Loudoun County		Nonattainment		Serious.
Manassas		Nonattainment		Serious.
Manassas Park		Nonattainment		Serious.
Prince William County		Nonattainment		Serious.
Stafford County		Nonattainment		Serious.
AQCR 207 Eastern Tennessee—SW Virginia Interstate (Remainder of).		Unclassifiable/Attainment		
Bland County				
Bristol				
Buchanan County				
Carroll County				
Dickenson County				
Galax				
Grayson County				
Lee County				
Norton				
Russell County				
Scott County				
Smyth County (part)				
Remainder of county				
Tazewell County				
Washington County				
Wise County				
Wythe County				
AQCR 222 Central Virginia Intrastate		Unclassifiable/Attainment		
Amelia County				

VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Amherst County				
Appomattox County				
Bedford				
Bedford County				
Brunswick County				
Buckingham County				
Campbell County				
Charlotte County				
Cumberland County				
Danville				
Franklin County				
Halifax County				
Henry County				
Lunenburg County				
Lynchburg				
Martinsville				
Mecklenburg County				
Nottoway County				
Patrick County				
Pittsylvania County				
Prince Edward County				
South Boston				
AQCR 223 Hampton Roads Intrastate (Remainder of)	....	Unclassifiable/Attainment		
Franklin				
Isle Of Wight County				
Southampton County				
AQCR 224 NE Virginia Intrastate (Remainder of)	....	Unclassifiable/Attainment		
Accomack County				
Albemarle County				
Caroline County				
Charlottesville				
Culpeper County				
Essex County				
Fauquier County				
Fluvanna County				
Fredericksburg				
Gloucester County				
Greene County				
King and Queen County				
King George County				
King William County				
Lancaster County				
Louisa County				
Madison County				
Mathews County				
Middlesex County				
Nelson County				
Northampton County				
Northumberland County				
Orange County				
Rappahannock County				
Richmond County				
Spotsylvania County				
Westmoreland County				
AQCR 225 State Capital Intrastate (Remainder of)				
Charles City County (part)	....	Unclassifiable/Attainment		
Remainder of County				
Dinwiddie County				
Emporia				
Goochland County				
Greensville County				
New Kent County				
Petersburg				
Powhatan County				
Prince George County				
Surry County				
Sussex County				
AQCR 226 Valley of Virginia Intrastate	....	Unclassifiable/Attainment		
Alleghany County				
Augusta County				

VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Bath County				
Botetourt County				
Buena Vista				
Clarke County				
Clifton Forge				
Covington County				
Craig County				
Floyd County				
Frederick County				
Giles County				
Harrisonburg				
Highland County				
Lexington				
Montgomery County				
Page County				
Pulaski County				
Radford				
Roanoke				
Roanoke County				
Rockbridge County				
Rockingham County				
Salem				
Shenandoah County				
Staunton				
Warren County				
Waynesboro				
Winchester				

[1] This date is November 15, 1990, unless otherwise noted.

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49. In § 81.348, the table entitled "Washington—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.348 Washington.

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WASHINGTON—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Portland-Vancouver AQMA Area:				
Clark County (part)	....	Attainment		
Air Quality Maintenance Area				
Seattle-Tacoma Area:				

WASHINGTON—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
The following boundary includes all of Pierce County, and all of King County except a small portion on the north-east corner and the western portion of Snohomish County: Starting at the mouth of the Nisqually river extend northwesterly along the Pierce County line to the southernmost point of the west county line of King County; thence northerly along the county line to the southernmost point of the west county line of Snohomish County; thence northerly along the county line to the intersection with SR 532; thence easterly along the north line of SR 532 to the intersection of I–5, continuing east along the same road now identified as Henning Rd., to the intersection with SR 9 at Bryant; thence continuing easterly on Bryant East Rd. and Rock Creek Rd., also identified as Grandview Rd., approximately 3 miles to the point at which it is crossed by the existing BPA electrical transmission line; thence southeasterly along the BPA transmission line approximately 8 miles to point of the crossing of the south fork of the Stillaguamish River; thence continuing in a southeasterly direction in a meander line following the bed of the River to Jordan Road; southerly along Jordan Road to the north city limits of Granite Falls; thence following the north and east city limits to 92nd St. N.E. and Menzel Lake Rd.; thence south-southeasterly along the Menzel Lake Rd. and the Lake Roesiger Rd. a distance of approximately 6 miles to the northernmost point of Lake Roesiger; thence southerly along a meander line following the middle of the Lake and Roesiger Creek to Woods Creek; thence southerly along a meander line following the bed of the Creek approximately 6 miles to the point the Creek is crossed by the existing BPA electrical transmission line; thence easterly along the BPA transmission line approximately 0.2 miles; thence southerly along the BPA Chief Joseph-Covington electrical transmission line approximately 3 miles to the north line of SR 2; thence southeasterly along SR 2 to the intersection with the east county line of King County; thence south along the county line to the northernmost point of the east county line of Pierce County; thence along the county line to the point of beginning at the mouth of the Nisqually River.	11/25/96	Attainment		
AQCR 062 E Washington-N Idaho Interstate (part)	11/25/96	Attainment		
Spokane County		Unclassifiable/Attainment		
AQCR 062 E Washington-N Idaho Interstate (Remainder of)		Unclassifiable/Attainment		
Adams County				
Asotin County				
Columbia County				
Garfield County				
Grant County				
Lincoln County				
Whitman County				
AQCR 193 Portland Interstate (Remainder of)		Unclassifiable/Attainment		
Clark County (part) Remainder of county				
Cowlitz County				
Lewis County				
Skamania County				
Wahkiakum County				
AQCR 227 Northern Washington Intrastate		Unclassifiable/Attainment		
Chelan County				
Douglas County				
Ferry County				
Okanogan County				
Pend Oreille County				
Stevens County				
AQCR 228 Olympic-Northwest Washington Intrastate		Unclassifiable/Attainment		
Clallam County				
Grays Harbor County				
Island County				

WASHINGTON—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Jefferson County				
Mason County				
Pacific County				
San Juan County				
Skagit County				
Thurston County				
Whatcom County				
AQCR 229 Puget Sound Intrastate (Remainder of)	....	Unclassifiable/Attainment		
King County (Part) Remainder of County				
Kitsap County				
Snohomish County (Part) Remainer of County				
AQCR 230 South Central Washington Intrastate	....	Unclassifiable/Attainment		
Benton County				
Franklin County				
Kittitas County				
Klickitat County				
Walla Walla County				
Yakima County				

[1] This date is November 15, 1990, unless otherwise noted.

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50. In § 81.349, the table entitled "West Virginia—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.349 West Virginia.

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WEST VIRGINIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Charleston Area:				
Kanawha County	10/6/94	Unclassifiable/Attainment		
Putnam County	10/6/94	Unclassifiable/Attainment		
Greenbrier Area:				
Greenbrier County	9/18/95	Unclassifiable/Attainment		
Huntington-Ashland Area:				
Cabell County	12/21/94	Unclassifiable/Attainment		
Wayne County	12/21/94	Unclassifiable/Attainment		
Parkersburg-Marietta Area:				
Wood County	10/6/94	Unclassifiable/Attainment		
Rest of State	....	Unclassifiable/Attainment		
Barbour County				
Berkeley County				
Boone County				
Braxton County				
Brooke County				
Calhoun County				
Clay County				
Doddridge County				
Fayette County				
Gilmer County				
Grant County				
Hampshire County				
Hancock County				
Hardy County				
Harrison County				
Jackson County				
Jefferson County				
Lewis County				
Lincoln County				
Logan County				
Marion County				
Marshall County				
Mason County				
McDowell County				
Mercer County				
Mineral County				
Mingo County				

WEST VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Monongalia County				
Monroe County				
Morgan County				
Nicholas County				
Ohio County				
Pendleton County				
Pleasants County				
Pocahontas County				
Preston County				
Raleigh County				
Randolph County				
Ritchie County				
Roane County				
Summers County				
Taylor County				
Tucker County				
Tyler County				
Upshur County				
Webster County				
Wetzel County				
Wirt County				
Wyoming County				

[1] This date is November 15, 1990, unless otherwise noted.

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51. In § 81.350, the table entitled "Wisconsin—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.350 Wisconsin.

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WISCONSIN-OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Door County Area:				
Door County	1/6/92	Nonattainment	1/6/92	Rural Transport (Marginal).
Kewaunee County Area:				
Kewaunee County	8/26/96	Attainment.		
Manitowoc County Area:				
Manitowoc County	1/6/92	Nonattainment	8/22/97	Moderate.[2]
Milwaukee-Racine Area:				
Kenosha County		Nonattainment		Severe—17.
Milwaukee County		Nonattainment		Severe—17.
Ozaukee County		Nonattainment		Severe—17.
Racine County		Nonattainment		Severe—17.
Washington County		Nonattainment		Severe—17.
Waukesha County		Nonattainment		Severe—17.
Sheboygan County Area:				
Sheboygan County	8/26/96	Attainment		
Walworth County Area:				
Walworth County	8/26/96	Attainment		
Adams County		Unclassifiable/Attainment		
Ashland County		Unclassifiable/Attainment		
Barron County		Unclassifiable/Attainment		
Bayfield County		Unclassifiable/Attainment		
Brown County		Unclassifiable/Attainment		
Buffalo County		Unclassifiable/Attainment		
Burnett County		Unclassifiable/Attainment		
Calumet County		Unclassifiable/Attainment		
Chippewa County		Unclassifiable/Attainment		
Clark County		Unclassifiable/Attainment		
Columbia County		Unclassifiable/Attainment		
Crawford County		Unclassifiable/Attainment		
Dane County		Unclassifiable/Attainment		
Dodge County		Unclassifiable/Attainment		
Douglas County		Unclassifiable/Attainment		
Dunn County		Unclassifiable/Attainment		

WISCONSIN-OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Eau Claire County		Unclassifiable/Attainment		
Florence County		Unclassifiable/Attainment		
Fond du Lac County		Unclassifiable/Attainment		
Forest County		Unclassifiable/Attainment		
Grant County		Unclassifiable/Attainment		
Green County		Unclassifiable/Attainment		
Green Lake County		Unclassifiable/Attainment		
Iowa County		Unclassifiable/Attainment		
Iron County		Unclassifiable/Attainment		
Jackson County		Unclassifiable/Attainment		
Jefferson County		Unclassifiable/Attainment		
Juneau County		Unclassifiable/Attainment		
La Crosse County		Unclassifiable/Attainment		
Lafayette County		Unclassifiable/Attainment		
Langlade County		Unclassifiable/Attainment		
Lincoln County		Unclassifiable/Attainment		
Marathon County		Unclassifiable/Attainment		
Marinette County		Unclassifiable/Attainment		
Marquette County		Unclassifiable/Attainment		
Menominee County		Unclassifiable/Attainment		
Monroe County		Unclassifiable/Attainment		
Oconto County		Unclassifiable/Attainment		
Oneida County		Unclassifiable/Attainment		
Outagamie County		Unclassifiable/Attainment		
Pepin County		Unclassifiable/Attainment		
Pierce County		Unclassifiable/Attainment		
Polk County		Unclassifiable/Attainment		
Portage County		Unclassifiable/Attainment		
Price County		Unclassifiable/Attainment		
Richland County		Unclassifiable/Attainment		
Rock County		Unclassifiable/Attainment		
Rusk County		Unclassifiable/Attainment		
St. Croix County		Unclassifiable/Attainment		
Sauk County		Unclassifiable/Attainment		
Sawyer County		Unclassifiable/Attainment		
Shawano County		Unclassifiable/Attainment		
Taylor County		Unclassifiable/Attainment		
Trempealeau County		Unclassifiable/Attainment		
Vernon County		Unclassifiable/Attainment		
Vilas County		Unclassifiable/Attainment		
Washburn County		Unclassifiable/Attainment		
Waupaca County		Unclassifiable/Attainment		
Waushara County		Unclassifiable/Attainment		
Winnebago County		Unclassifiable/Attainment		
Wood County		Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

[2] Attainment date temporarily delayed until November 15, 2007.

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52. In § 81.351, the table entitled "Wyoming—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.351 Wyoming.

* * * * * * *

WYOMING—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		Unclassifiable/Attainment		
Albany County				
Big Horn County				
Campbell County				
Carbon County				
Converse County				
Crook County				
Fremont County				
Goshen County				
Hot Springs County				

WYOMING—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Johnson County				
Laramie County				
Lincoln County				
Natrona County				
Niobrara County				
Park County				
Platte County				
Sheridan County				
Sublette County				
Sweetwater County				
Teton County				
Uinta County				
Washakie County				
Weston County				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

53. In § 81.352, the table entitled "American Samoa—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.352 American Samoa.

* * * * * * *

AMERICAN SAMOA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide	....	Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

54. In § 81.353, the table entitled "Guam—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.353 Guam.

* * * * * * *

GUAM—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide	....	Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

55. In § 81.354, the table entitled "Northern Mariana Islands—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.354 Northern Mariana Islands.

* * * * * * *

NORTHERN MARIANA ISLANDS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Whole State	....	Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

56. In § 81.355, the table entitled "Puerto Rico—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.355 Puerto Rico.

* * * * * * *

PUERTO RICO—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide	....	Unclassifiable/Attainment		
Adjuntas Municipio				
Aguada Municipio				
Aguadilla Municipio				
Aguas Buenas Municipio				
Aibonito Municipio				
Anasco Municipio				
Arecibo Municipio				
Arroyo Municipio				
Barceloneta Municipio				
Barranquitas Munic.				
Bayamon County				
Cabo Rojo Municipio				
Caguas Municipio				
Camuy Municipio				
Canovanas Municipio				
Carolina Municipio				
Catano County				
Cayey Municipio				
Ceiba Municipio				
Ciales Municipio				
Cidra Municipio				
Coamo Municipio				
Comerio Municipio				
Corozal Municipio				
Culebra Municipio				
Dorado Municipio				
Fajardo Municipio				
Florida Municipio				
Guanica Municipio				
Guayama Municipio				
Guayanilla Municipio				
Guaynabo County				
Gurabo Municipio				
Hatillo Municipio				
Hormigueros Municipio				
Humacao Municipio				
Isabela Municipio				
Jayuya Municipio				
Juana Diaz Municipio				
Juncos Municipio				
Lajas Municipio				
Lares Municipio				
Las Marias Municipio				
Las Piedras Municipio				
Loiza Municipio				
Luquillo Municipio				
Manati Municipio				
Maricao Municipio				
Maunabo Municipio				
Mayaguez Municipio				
Moca Municipio				
Morovis Municipio				
Naguabo Municipio				
Naranjito Municipio				
Orocovis Municipio				
Patillas Minicipio				
Penuelas Municipio				
Ponce Municipio				
Quebradillas Municipio				
Rincon Municipio				
Rio Grande Municipio				
Sabana Grande Municipio				
Salinas Municipio				
San German Municipio				
San Juan Municipio				
San Lorenzo Municipio				
San Sebastian Municipio				
Santa Isabel Municipio				
Toa Alta Municipio				

PUERTO RICO—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Toa Baja County Trujillo Alto Municipio Utuado Municipio Vega Alta Municipio Vega Baja Municipio Vieques Municipio Villalba Municipio Yabucoa Municipio Yauco Municipio				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * * *

57. In § 81.356, the table entitled "Virgin Islands—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.356 Virgin Islands.

* * * * * * *

VIRGIN ISLANDS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide .... St. Croix St. John St. Thomas	....	Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

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[FR Doc. 99–28031 Filed 11–4–99; 8:45 am]

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federal register

Friday
November 5, 1999

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 552, 571, 585, and 595

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 552, 571, 585, and 595

[Docket No. NHTSA 99–6407; Notice 1]

RIN 2127–AG70

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: In September 1998, we proposed to upgrade our air bag requirements for passenger cars and light trucks to meet the twin goals mandated by the Transportation Equity Act for the 21st Century: improving protection for occupants of all sizes, belted and unbelted, in moderate to high speed crashes; and minimizing the risks posed by air bags to infants, children, and other occupants, especially in low speed crashes. In response to the public comments on our 1998 proposal and to other new information obtained since issuing the proposal, we are issuing a supplemental proposal that updates and refines the amendments under consideration.

With respect to the goal of improving protection, we are proposing to adopt one of the following alternative crash tests to evaluate the protection of unbelted occupants in moderate to high speed crashes, i.e., those that are potentially fatal. One alternative is an unbelted rigid barrier test (perpendicular and up to ± 30 degrees oblique to perpendicular) with a maximum speed to be established in the final rule within the range of 40 to 48 km/h (25 to 30 mph). If we reduce the maximum speed to 40 km/h (25 mph) permanently, we might also increase the maximum speed of the belted rigid barrier test from the current 48 km/h to 56 km/h (30 to 35 mph). Another alternative is an unbelted offset deformable barrier test with a maximum speed to be established in the final rule within the range of 48 to 56 km/h (30 to 35 mph). The vehicle would have to meet the requirements both in tests with the driver side of the vehicle engaged with the barrier and in tests with the passenger side engaged.

With respect to the goal of minimizing the risks of air bags in low speed crashes, we continue to propose performance requirements to ensure that future air bags do not pose unreasonable risk of serious injury to out-of-position occupants. We continue to propose to adopt a number of options for complying with those requirements so that vehicle manufacturers would be free to choose from a variety of effective technological solutions and to develop new ones if they so desire. With this flexibility, they could use technologies that modulate or otherwise control air bag deployment so deploying air bags do not cause serious injuries, technologies that prevent air bag deployment if children or out-of-position occupants are present, or a combination thereof.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than December 30, 1999.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call Docket Management at 202–366–9324 and visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: *For information about air bags and related rulemakings:* Visit the NHTSA web site at http://www.nhtsa.dot.gov and select "Air Bags" under "Popular Information."

For non-legal issues, you may contact Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11. Telephone: (202) 366–2264. Fax: (202) 366–4329. E-mail: Charper@NHTSA.dot.gov.

For legal issues, you may contact Edward Glancy, Office of Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Note to readers: As an aid to readers who are outside the engineering community, we have provided at the end of this document a glossary that briefly explains the key technical terms used in this preamble. In the case of the term, "fixed barrier crash test," we have supplemented the explanation with illustrations. That glossary appears in Appendix B. Interested persons may find it helpful to review that glossary before reading the rest of this document.

Table of Contents

I. Executive Summary
II. Background
  A. Statutory Requirements
  B. Existing Air Bag Requirements
  C. September 1998 NPRM
  D. Public Comments
  1. Tests for Requirements to Improve Occupant Protection for Different Size Occupants, Belted and Unbelted
  a. Belted Rigid Barrier Test
  b. Unbelted Rigid Barrier Test
  c. Up-to-40 km/h (25 mph) Offset Deformable Barrier Test
  2. Tests for Requirements to Minimize the Risk to Infants, Children and Other Occupants from Injuries and Deaths Caused by Air Bags
  a. Tests to Minimize Risks to Infants
  b. Tests to Minimize Risks to Children
  c. Tests to Minimize Risks to Adults
  3. Injury Criteria
  E. Events since September 1998
III. SNPRM for Advanced Air Bags
  A. Introduction
  B. Existing and Proposed Test Requirements
  1. Tests for Requirements to Improve Occupant Protection for Different Size Occupants, Belted and Unbelted
  a. September 1998 NPRM
  b. Comments on September 1998 NPRM
  c. SNPRM
  (i) Requirements for Tests with Unbelted Dummies
  (ii) Proposed Array of Crash Test Requirements
  (iii) Location and Seating Procedures for 5th Percentile Adult Female Dummy
  2. Tests for Requirements to Minimize the Risk to Infants, Children and Other Occupants from Injuries and Deaths Caused by Air Bags
  a. Safety of Infants
  b. Safety of Young Children
  c. Safety of Small Teenage and Adult Drivers
  C. Injury Criteria
  1. Head Injury Criteria
  2. Neck Injury Criteria
  3. Thoracic Injury Criteria
  4. Lower Extremity Injury Criteria
  5. Other Criteria
  D. Lead Time and Proposed Effective Date
  1. Large Manufacturers
  2. Small Manufacturers and Multi-stage Manufacturers
  E. Availability of Original Equipment and Retrofit Manual On-Off Switches
  F. Warning Labels and Consumer Information
  G. Miscellaneous Issues
  1. Selection of Child Restraints
  2. Due Care Provision
  3. Selection of Options
  4. Relationship of Proposed New Injury Criteria to Existing Test Requirements
  5. Time Parameters for Measuring Injury Criteria During Tests
  6. Cruise Controls
  7. Rescue Operations
  8. Assessing Lower Extremity Injury Potential in Offset Deformable Crash Tests
  9. Hybrid III Dummy Neck

H. Relationship between the NPRM, Comments on the NPRM and this SNPRM
IV. Costs and Benefits
V. Rulemaking Analyses and Notices
VI. Submission of Comments
Proposed Regulatory Text
Appendix A—Response to Petition
Appendix B—Glossary

I. Executive Summary

Since the early 1990's, NHTSA has been taking steps to reduce the risk that air bags will sometimes cause deaths, particularly to unrestrained children and small adults, and to maintain and improve the benefits of air bags. Our initial efforts to reduce the risks focused on a public education campaign to alert the public about the dangers of air bags to children in general and to infants in particular. We urged parents to place their children in the back seat whenever possible and to ensure that they were always properly restrained.

Later, to speed the redesigning and recertifying of air bags that reduce the risks to out-of-position occupants, we established a temporary option allowing vehicle manufacturers to certify their vehicles based on an unbelted sled test. The sled test is simpler, less expensive, and easier to meet than the pre-existing 30 mph unbelted crash test. Limited available data appear to indicate that these redesigned air bags have reduced the risks from air bags for the at-risk populations. However, it is not possible at this time to draw statistically significant conclusions about this.

There is a greater amount of data on the overall benefits of air bags. These data indicate that the redesigned air bags[1] provide essentially the same protection as that provided by earlier air bags. We have considered this information in light of agency tests showing that most of the tested vehicles, although certified to the sled tests, also passed the more stringent 30 mph unbelted crash test.

Manufacturers are developing an assortment of technologies, commonly referred to as advanced air bag technologies, to reduce the risks still further, for children, as well as adults. These technologies include dual-stage inflators which enable air bags to inflate with two different levels of power and which can be linked to various types of sensors including those that sense crash severity, belt use, and seat position (i.e., the location of a vehicle seat on its track). Occupant weight sensors and pattern sensors can be used to prevent an air bag from deploying at all in the presence of children.

These advanced air bag technologies are not just hypothetical possibilities; vehicle manufacturers are beginning to install them in an increasing variety of vehicles. The MY 1999 Hyundai Sonata has a weight sensor designed to prevent the passenger air bag from deploying unless a weight of more than 66 pounds is detected on the passenger seat. Honda introduced a dual stage inflator in its MY 1999 Acura. The MY 2000 Ford Taurus and Honda Accord, which are among the highest selling models in this country, have dual-stage air bags. Some luxury vehicles also have advanced air bag technologies. For example, Mercedes and BMW have dual-stage air bags in some of their MY 2000 cars. The MY 2000 Cadillac Seville has weight and pattern sensors in the passenger seat that work together to turn off the passenger air bag when children are present.

In the Transportation Equity Act for the 21st Century (TEA 21),[2] Congress mandated that we issue a final rule that requires the installation of air bags meeting, by means that include advanced air bag technologies, two goals: first, improving occupant protection for occupants of different sizes, regardless of whether they use their seat belts, and second, minimizing the risk to infants, children and other occupants of deaths and injuries caused by air bags. In accordance with TEA 21, we published a proposal in September 1998 to require the timely introduction of advanced air bags by all vehicle manufacturers and to establish procedures for testing the risk-reducing capabilities of the various types and combinations of advanced air bag technologies. Given the twin goals mandated by TEA 21, the proposal was necessarily both expansive and complex.

To meet the first goal of improving occupant protection, we proposed a variety of tests using belted and unbelted dummies. We also proposed adding a new dummy representing short-statured adult females. Included in these proposals was a proposal to terminate the unbelted sled test option so that vehicles with advanced air bags would be tested in unbelted barrier crashes. The sled test option was valuable as a short-run expedient to make it easier for manufacturers to bring redesigned air bags to market quickly. However, for the long-run purpose of testing air bags to ensure that they are, and that they will continue to be, effective in protecting people in real world crashes, the agency tentatively concluded that air bags should be evaluated in tests simulating those crashes. In particular, the agency proposed to rely on an unbelted 48 km/h (30 mph) rigid barrier crash test that approximates many of the real world crashes severe enough to pose significant risk of serious or fatal injury. Among the tests for belted occupants was a new 40 km/h (25 mph) offset deformable barrier test which was intended to evaluate the ability of crash sensors to sense soft pulse crashes.

With respect to the second goal of minimizing the risks of air bags, the very breadth of the different technological approaches for meeting that goal necessitated we make our proposal even more expansive and complex. We proposed to adopt in the final rule an array of tests to accommodate these different technological approaches and the different choices being made by individual manufacturers about which types of those technologies to adopt. In some cases, we were able to propose generic tests that are suitable for all advanced air bags. In other cases, however, we had to propose tests that are tailored to particular technologies and that would apply to only those air bags incorporating those technologies. This array of tests was intended to provide the manufacturers with technology and design flexibility, while providing the agency with effective means of evaluating the performance of all of the different advanced air bag systems.

The public comments and the agency research and analysis since our 1998 NPRM have enabled us to refine and in some cases simplify the proposed amendments that we are considering. In view of the importance of some of the changes, we have decided to publish this SNPRM to obtain further public comment before making any final decisions and issuing a final rule.

We have reduced the number of proposed dynamic and static tests, especially those relating to the proposed requirements for reducing the risks of air bags. We have reduced, from 14 to nine,[3] the number of proposed dynamic crash tests that would be applicable to all vehicles. We originally proposed that vehicles equipped with static air bag suppression systems (e.g., weight sensors and pattern sensors) be subject to being tested with any child restraint manufactured over a ten-year period.

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[1] See footnote 15 for an explanation of the term, "redesigned air bags."

[2] The provisions in TEA 21 regarding air bags were contained in a part called The NHTSA Reauthorization Act of 1998. Given the greater public familiarity with the name TEA 21, we will refer to it, instead of the Reauthorization Act, in this document.

[3] The methodology for counting the number of proposed tests is explained later in this notice.

This would have created the possibility of testing with any one of several hundred different models of child restraints. Recognizing that, we solicited comments to aid us in identifying a much more limited number of specific models that would be representative of the array of available child restraints. Based on the public comments, we are now proposing to require that vehicles be able to meet the applicable requirements when tested with any one of a far more limited number of child restraints representing a cross-section of the restraints currently on the market.[4] We have also significantly reduced the number of positions in which test dummies or child restraints could be placed for testing a static suppression system. This was accomplished largely by eliminating positions that were substantially similar to other positions.

We are proposing to expressly provide that manufacturers may use children or small women instead of dummies in static tests to provide a basis for certifying compliance with the proposed tests for static suppression systems. These are simple tests in which the vehicle does not move, and the air bags cannot deploy. We are making this proposal because existing anthropomorphic test dummies were not designed to replicate the weight distribution of sitting humans in a manner that would adequately test all suppression technologies, e.g., pressure/pattern recognition sensors in the vehicle seat. Since the ultimate goal of our provisions concerning suppression systems is to achieve high reliability in detecting the presence of humans, the use of humans for the simple and limited purpose of testing the static suppression systems would make good sense. It is unnecessary to propose the use of infants for certification purposes, since all of the infant restraints should be detectable by any suppression system, regardless of whether they are occupied by a dummy or an infant.

We have eliminated the proposed test for dynamic automatic suppression systems (DASS) and the proposed full scale out-of-position test including pre-crash braking. Public comments and our further testing have led us to conclude that these tests would require enhancements to dummy biofidelity and test procedure development that we could not complete in time for this rulemaking. Further, the commenters did not suggest any workable, effective tests that we could propose as replacements.

Instead, we are taking a different approach that will provide flexibility to manufacturers that may wish in the future to certify advanced air bag systems incorporating a DASS to Standard No. 208. We believe that it is important in crafting our proposals regarding advanced air bags to facilitate efforts by the manufacturers to develop new and possibly better ways of reducing air bag risks. Accordingly, we are proposing to establish very general performance requirements for DASS and a special expedited petitioning and rulemaking process for considering procedures for testing advanced air bags incorporating one of these systems. Target time limits for each phase of such a rulemaking are proposed. Anyone wishing to market such advanced air bags could develop test procedures for demonstrating the compliance of their particular DASS with the performance requirements and submit those test procedures to the agency for its consideration. If the agency deems it appropriate to do so after evaluating the petition, the agency would publish a notice proposing to adopt the manufacturer's test procedure. After considering those comments, the agency would then decide whether the procedure should be added to Standard No. 208. If it decided to do so, and if the procedure were suitable for the DASS of any other vehicles, then the procedure could be used by those manufacturers of those vehicles as well as by the petitioning manufacturer. The agency intends to minimize the number of different test procedures that are adopted for DASS and to ensure ultimately that similar DASS are tested in the same way.

We have also decided to change our proposed injury criteria. We have decided to drop our proposal for a new combined thoracic index (CTI) and instead maintain separate limits for thoracic acceleration and deflection.[5] While CTI may be a better predictor of thoracic injury than chest acceleration and chest deflection independently, there is debate in the biomechanics community about the interpretation of the data. Consequently, we are pursuing further research to resolve the issues.

We are also proposing to change the existing head injury criterion (HIC) for the 50th percentile adult male dummy.[6] HIC is currently required not to exceed 1,000 and is evaluated over a 36 millisecond period. We are proposing to evaluate the HIC over a maximum 15 millisecond time interval with a requirement that it not exceed a maximum of 700. The agency historically has used a 36 millisecond time interval to measure HIC primarily because this method allowed the HIC measurement to indirectly capture risk of neck injury (until recently, a direct indication of neck injury risk was not a part of Standard 208). With the addition of specific neck injury criteria to Standard 208, the agency can switch to a 15 ms measurement interval which better corresponds to the underlying biomechanical research. We are proposing to change the HIC time interval to a maximum of 15 milliseconds for all dummy sizes and to revise the HIC limits by commensurate amounts, based on a scaling from the proposed new limit for the 50th percentile adult male dummy.

We are proposing a neck injury criteria (Nij) limit of 1.0, the calculation of which has been revised since the NPRM. In the NPRM, we requested comments on performance limits of Nij=1 and Nij=1.4. After considering the comments, the available biomechanical data, and testing which indicates that the more conservative or stringent value of 1.0 can be met in current production vehicles, we are proposing a limit of 1.0. The formulae underlying the calculation of Nij for smaller dummies incorporate scaling in recognition of the greater susceptibility of children to injury.

Finally, we are proposing two alternative crash tests for evaluating the effectiveness of an advanced air bag in protecting *unbelted* occupants in a relatively high speed crash. These tests would be conducted with dummies representing 50th percentile adult males as well as with ones representing 5th percentile adult females. We contemplate adopting one of these tests in a final rule, although we could decide to require elements of both alternatives. We believe that crashing a complete vehicle into a barrier is needed to address the type of situation for which air bags are designed: frontal crashes involving vehicles striking another object with sufficient force that the impact of an occupant with the steering wheel, dashboard, or other interior surface could result in severe injuries or death.

The first alternative is an unbelted rigid barrier test (perpendicular and up to ± 30 degrees oblique to perpendicular) with a maximum speed to be established in the final rule within the range of 40 to 48 km/h (25 to 30 mph). This alternative is similar to the test included in our 1998 NPRM. The agency's intent in this rulemaking is to maximize, to the extent consistent with TEA 21, the protection that air bags offer in crashes potentially resulting in fatal injuries. Thus, the agency's preference is to establish such a test requirement at as high a severity as practicable. The 40 km/h (25 mph) lower end of the maximum test speed range is set forth for comment in this notice to ensure that commenters address a crash test recommended by the Alliance of Automobile Manufacturers in late August 1999. If we reduce the maximum speed to 40 km/h (25 mph) permanently, we might increase the maximum speed of the belted rigid barrier test from the current 48 km/h to 56 km/h (30 to 35 mph). The increase could go into effect after the TEA 21 phase-in period.

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[4] For the infant dummy, 19 different seats; for the 3-year-old dummy, 12 different seats; and for the 6-year-old dummy, 5 different seats. These figures are not additive since some seats are used for tests with two different dummies. A total of 24 seats (12 infant seats, 7 convertible seats, and 5 booster seats) would be used.

[5] The thorax is the chest area.

[6] HIC consists of a formula which utilizes data regarding the acceleration of the dummy head in vehicle tests to produce a number to determine compliance.

The second alternative is an unbelted offset deformable barrier test with a maximum speed to be established in the final rule within the range of 48 to 56 km/h (30 to 35 mph). The vehicle would have to meet the requirements both in tests with the driver side of the vehicle engaged with the barrier and in tests with the passenger side engaged. As in the case of the first alternative, if the agency selected this second alternative for the final rule, it would establish the maximum speed at as high a level as practicable, consistent with TEA 21, to maximize the improvement in occupant protection in potentially fatal crashes.

Regardless of which unbelted test or tests we ultimately adopt, we would retain a *belted* rigid barrier test with a maximum speed of 48 km/h (30 mph) with both 50th percentile adult male and 5th percentile adult female dummies during the TEA 21 phase-in period.[7] Further, we are continuing to propose an up-to-40 km/h (25 mph) offset deformable barrier test requirement, using belted 5th percentile adult female dummies.

We are also continuing to propose to eliminate provisions which allow original equipment (OE) and retrofit on-off switches under specified circumstances. Instead of proposing to phase these provisions out as advanced air bags are phased in, as proposed in the NPRM, we are proposing to allow OE and retrofit on-off switches to be installed under the same conditions that currently apply for all vehicles produced prior to September 1, 2005, the date by which all vehicles must have an advanced air bag system. We believe that by that time consumer confidence in the advanced air bag systems will be sufficiently strong to remove any desire for a manual on-off switch in vehicles produced with an advanced air bag.

NHTSA is proposing a replacement for the permanent sun visor label for vehicles certified as meeting the requirements of this proposed rule. The label would have new graphics and contain statements regarding belt use and seating children in the rear seat. In addition, we are proposing a new temporary label that states that the vehicle meets the new requirements for advanced air bags. This label would replace the existing temporary label and include statements regarding seat belt use and children in rear seats.

II. Background

A. Statutory Requirements

As part of TEA 21, Congress required us to issue an NPRM and final rule meeting two different, equally important goals:

> to *improve occupant protection* for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, *while minimizing the risk* to infants, children, and other occupants from injuries and deaths caused by air bags, *by means that include advanced air bags.*

(Emphasis added.)[8]

The Act provided that we were to issue the final rule by September 1, 1999. However, if we determined that the final rule could not be completed by that date, the Act provided that the final rule could be issued as late as March 1, 2000. Because of the complexity of the issues and the need to issue this SNPRM, we determined that the final rule could not be completed by September 1, 1999. Under the Act, the final rule must therefore be issued by March 1, 2000.

TEA 21 addressed various other issues, including the effective date for the final rule. A complete discussion of the Act's provisions is included in the 1998 NPRM. See 63 FR 49961.

B. Existing Air Bag Requirements

Pursuant to a provision in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Standard No. 208 requires all passenger cars and light trucks to provide automatic protection by means of air bags.[9]

The automatic protection requirements are performance requirements. The standard does not specify the design of an air bag. Instead, when tested under specified test conditions, vehicles must meet specified limits for injury criteria, including criteria for the head, chest and thighs, measured on 50th percentile adult male test dummies.

Until recently, these criteria limits had to be met for air bag-equipped vehicles in barrier crashes at speeds up to 48 km/h (30 mph), both with the dummies belted and with them unbelted. However, on March 19, 1997, we published a final rule providing manufacturers with the option of certifying the air bag performance of their vehicles with an unbelted dummy in a sled test incorporating a 125 millisecond standardized crash pulse instead of in a vehicle-to-barrier crash test. We made this amendment primarily to expedite manufacturer efforts to reduce the force of air bags as they deploy.

Under the March 1997 final rule, the sled test option was scheduled to terminate on September 1, 2001. We believed there was no need to permanently reduce Standard No. 208's performance requirements, since a variety of longer term alternatives were available to manufacturers to address adverse effects of air bags.

The September 1, 2001 termination date for the sled test option was superseded by a provision in TEA 21. In a paragraph titled "Coordination of Effective Dates," the Act provides that the unbelted sled test option "shall remain in effect unless and until changed by [the final rule for advanced air bags]."

C. September 1998 NPRM

Pursuant to TEA 21, on September 18, 1998, we published in the **Federal Register** (63 FR 49958) a notice of proposed rulemaking (NPRM) to upgrade Standard No. 208, *Occupant Crash Protection*, to require vehicles to be equipped with advanced air bags that meet new, more rigorous performance requirements. The advanced air bags would be required in some new passenger cars and light trucks beginning September 1, 2002, and in all new cars and light trucks beginning September 1, 2005.

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[7] As noted above, if we permanently reduce the maximum test speed for the unbelted rigid barrier test to 40 km/h (25 mph), we might increase the maximum test speed for the belted rigid barrier test to 56 km/h (35 mph), effective sometime after that phase-in period.

[8] The treatment by this provision of the twin goals and of the protection of belted and unbelted occupants differs significantly from the treatment that would have been given them by an earlier version of this mandate. That earlier version would have established a hierarchy of priorities, placing minimizing the risks of air bags above improving the protection they provide, and placing the protection of belted occupants above the protection of unbelted occupants.

[9] TEA 21 is thus the second in a succession of Congressional acts modifying the Department's 1984 final rule regarding automatic protection. That final rule mandated automatic protection, but explicitly provided discretion with respect to the type of automatic protection (automatic seat belts and air bags), and implicitly provided discretion with respect to the use of advanced air bag technologies. ISTEA eliminated the first area of discretion, mandating the installation of air bags. TEA 21 eliminates the second area of discretion, mandating the use of advanced air bag technologies.

As we explained in that document, air bags have been shown to be highly effective in saving lives. They reduce fatalities in frontal crashes by about 30 percent. However, they also sometimes cause fatalities to infants in rear facing child safety seats and out-of-position occupants.

In the 1998 NPRM, we presented a full discussion of the safety issues related to air bags. We also presented a discussion of our comprehensive plan to address air bag fatalities, which includes requiring advanced air bags as a long-term solution.

We proposed to add a new set of requirements to prevent air bags from causing injuries and to improve the protection that they provide occupants in frontal crashes. There would be several new performance requirements to ensure that the advanced air bags do not pose unreasonable risks to out-of-position occupants.

The NPRM gave alternative options for complying with those requirements so that vehicle manufacturers would be free to choose from a variety of effective technological solutions and to develop new ones if they so desire. With this flexibility, they could use technologies that modulate or otherwise control air bag deployment so deploying air bags do not cause serious injuries or that prevent air bag deployment if children or out-of-position occupants are present.

To ensure that the new air bags are designed to avoid causing injury to a broad array of occupants, we proposed test requirements using dummies representing 12-month-old, 3-year-old and 6-year-old children, and 5th percentile adult females, as well as tests representing 50th percentile adult males. We noted that many of the proposed test procedures were new, and specifically requested comments with respect to their suitability for measuring the performance of the various advanced systems under development.

We also proposed requirements to ensure that the new air bags are designed to cushion and protect an array of belted and unbelted occupants, including teenagers and small women. The standard's current dynamic crash test requirements specify the use of 50th percentile adult male dummies only. We proposed also to specify use of 5th percentile adult female dummies in dynamic crash tests. The weight and size of these dummies are representative of not only small women, but also many teenagers.

In addition to the existing rigid barrier test, representing a relatively "stiff" or "hard" pulse crash in perpendicular tests and a more moderate pulse crash in oblique tests, we proposed to add a deformable barrier crash test, representing a relatively "soft" pulse crash. This proposed new crash test requirement was intended to ensure that air bag systems are designed so that they do not deploy too late. Some current air bags deploy relatively late in certain types of crashes. If an air bag deploys too late, normally seated occupants may move too close to the air bag before it starts to inflate. In such a situation, the air bag is less likely to protect the occupant and may pose a risk to the occupant. We proposed to use 5th percentile adult female dummies in this test.

We also proposed to phase out the unbelted sled test option as we phased in requirements for advanced air bags. We acknowledged that the sled test option has been an expedient and useful temporary measure to ensure that the vehicle manufacturers could quickly redesign all of their air bags and to help ensure that some protection would continue to be provided. Nevertheless, we stated that we did not consider sled testing to be an adequate long-term means of assessing the extent of occupant protection that a vehicle and its air bag will afford occupants in the real world.

Finally, we proposed new and/or upgraded injury criteria for each of the proposed new test requirements, and also proposed to upgrade some of the injury criteria for the standard's existing test requirements.

D. Public Comments

We received comments from a wide range of interested persons including vehicle manufacturers, air bag manufacturers, insurance companies, public interest groups, academia, and government. Commenters generally supported the goals mandated by TEA 21—improving the benefits of air bags, while minimizing risks from air bags—but expressed widely differing views as to how to accomplish those goals.

In this section of the preamble, we summarize the comments, particularly those relating to the major issues. Because of the large number of public comments, we have included a representative sample of the comments and the commenters who made them.

1. Tests for Requirements To Improve Occupant Protection for Different Size Occupants, Belted and Unbelted

a. Belted Rigid Barrier Test.

A number of vehicle manufacturers opposed adding a belted rigid barrier test using 5th percentile adult female dummies. These commenters argued that this particular test is redundant given the existing belted barrier test using 50th percentile adult male dummies and the other proposed tests using 5th percentile adult female dummies.

The comments of the vehicle manufacturers on this issue were reflective of a more general theme running through their comments, i.e., they believed the NPRM was overly complex and included too many tests.

b. Unbelted Rigid Barrier Test.

Commenters had sharply different views on our proposal to phase out the unbelted sled test option and reinstate the up-to-48 km/h (30 mph) unbelted rigid barrier test. Many commenters, including all vehicle manufacturers and the Insurance Institute for Highway Safety (IIHS), strongly opposed reinstating the unbelted rigid barrier test. These commenters generally argued that reinstating this test would necessitate a return to "overly aggressive" air bags and that the test is not representative of typical real world crashes. Vehicle manufacturers requested that the sled test option remain available for the long term. On the issue of possible alternative unbelted tests, IIHS suggested that, if we wish to phase out the sled test, we should consider replacing it with a 56 km/h (35 mph) offset deformable barrier test.

On August 31, 1999, however, vehicle manufacturers and their trade associations, Alliance and AIAM, announced to the agency a recently reached consensus recommendation for an unbelted crash test. The industry recommended an unbelted rigid barrier crash test at 40 km/h (25 mph) using both 50th percentile adult male dummies and 5th percentile adult female dummies. The test would be conducted in the perpendicular mode only, i.e., there would be no oblique tests. No supporting data or written analyses were submitted to the agency at that meeting.

Other commenters, including a number of advocacy groups, argued that the up-to-48 km/h (30 mph) unbelted rigid barrier test is representative of a significant portion of real world crashes, and that improvements in vehicle and air bag designs will enable manufacturers to meet the test without safety tradeoffs. Public Citizen argued that while the manufacturers attempt to blame the unbelted barrier test for the deaths and injuries caused by air bags, a closer examination suggests that manufacturers' design selection is the real cause of injuries. It further argued that TEA 21 contemplates that neither belted occupants nor unbelted occupants be favored under Standard 208 and that both deserve safe and effective protection by air bags.

c. Up-to-40 km/h (25 mph) Offset Deformable Barrier Test.

Commenters' views on the proposed up-to-25-mph belted offset deformable barrier test were mixed, but mostly supportive. Many commenters, including several advocacy groups and a number of vehicle manufacturers, supported the addition of an offset deformable barrier test.

Some vehicle manufacturers requested that the test be conducted only with the driver's side engaged, instead of with either side engaged as proposed in the NPRM. The Association of International Automobile Manufacturers (AIAM) stated that a test with the driver's side engaged would more likely produce "worst case" driver out-of-position locations and possible driver-side intrusion, and that a passenger side offset test would be redundant. Another suggestion made by some vehicle manufacturers was to conduct the test only at 40 km/h (25 mph), rather than at speeds up to 40 km/h (25 mph).

General Motors (GM) stated that it agreed with the addition of the offset deformable barrier test only if the unbelted sled test option remained in effect. GM stated that the offset deformable barrier test augments the sled test by addressing the crash sensing aspects of performance.

DaimlerChrysler argued that the addition of a 40 km/h (25 mph) belted offset deformable barrier test for the 5th percentile female is unnecessary in light of future "depowered" and/or advanced air bags. That commenter stated that injury risks to small occupants sitting near the driver air bag are adequately assessed using the proposed out-of-position, low-risk deployment tests, which it endorses.

Some vehicle manufacturers indicated that air bags might be designed so that they would not deploy in 40 km/h (25 mph) offset crashes.

2. Tests for Requirements To Minimize the Risk to Infants, Children and Other Occupants From Injuries and Deaths Caused by Air Bags

a. Tests to minimize risks to infants.

While commenters generally supported adding tests for infant safety, they raised a number of issues about the proposed tests.

The vehicle manufacturers opposed the proposal to test with any infant seat manufactured during approximately the 10 years prior to the date of vehicle manufacture, citing practicability concerns. A number of vehicle manufacturers also argued that the agency proposed too many test positions. Commenters raised numerous concerns about the specific details of the proposed test procedures.

Some commenters suggested that the agency require suppression in the presence of infants, instead of permitting a low-risk deployment option as well. These commenters cited uncertainties related to injury risk for infants and the lack of infant biomechanical data. They further questioned if there is any benefit from air bag deployments for infants.

A number of commenters also raised concerns about whether suppression devices will be ready in time to meet the requirements for advanced air bags, and how reliable they will be.

b. Tests to minimize risks to children.

Commenters' views on the proposed tests for child safety were similar to those for infant safety. While supportive of adding tests in this area, vehicle manufacturers raised concerns about the number of child restraints, number of tests, and, in some cases, availability of reliable suppression devices.

A number of commenters raised concerns about whether current child dummies are sufficiently human-like to be appropriate test devices for some of the advanced technologies under development. By way of example, concern was expressed that suppression devices that work by sensing the distributed weight pattern of a child on a seat may not recognize the pattern of a test dummy.

Commenters raised numerous technical issues concerning the proposed options for automatic suppression features that suppress the air bag when an occupant is out-of-position (S27 of the regulatory text proposed in the NPRM). Some commenters argued that the proposal to test automatic suppression features using a moving headform is not appropriate for some of the devices under development, such as sensors designed to track the full body of the occupant and not just the head. Others expressed difficulties related to defining the size, shape, and orientation of the suppression plane, as well as the maximum response time of the system.

Commenters also raised numerous technical issues concerning the dynamic out-of-position test (S29 of the regulatory text proposed in the NPRM). Some commenters stated that the dummy trajectories resulting in this test are unrealistic, and that the proposed vehicle crash test is neither repeatable nor reproducible. Others stated that the dummies do not move close enough to the air bag prior to deployment to represent a worst case out-of-position situation.

c. Tests to minimize risks to adults.

Commenters generally supported adding a low-risk deployment test using a 5th percentile adult female dummy at the driver seating position, although they raised a number of issues about the proposed test procedure. GM recommended that the driver low risk deployment test be made into a component test, outside of the vehicle.

Commenters also raised the same concerns about the proposed options for automatic suppression features that suppress the air bag when an occupant is out-of-position (S27) and for the dynamic out-of-position test (S29) as they did in the context of tests to minimize risks to children.

GM recommended that the agency also propose a low-risk deployment test using a 5th percentile adult female dummy at the passenger position. That company noted that if manufacturers selected the suppression (presence) option for child safety, there would be no out-of-position test limiting aggressivity for adult passengers.

3. Injury Criteria

Commenters raised numerous highly technical issues concerning several of proposed injury criteria and performance limits. Some commenters questioned the biomechanical basis for certain of the proposed new injury criteria. The AAMA suggested essentially a completely revised set of injury criteria.

E. Events Since September 1998

A number of events relevant to this rulemaking have occurred since publication of the NPRM in September 1998. First, the development of advanced air bags by suppliers and vehicle manufacturers has continued.

Acura introduced dual stage passenger side air bags in its MY 1999 Acura RL. According to Acura's press release, "(t)he dual stage air bags were designed to reduce the inflation speed to help protect children or small-framed adults. In a low speed collision, the dual-stage inflator system is triggered in sequence resulting in slower air bag deployment with less initial force. In higher speed collisions, both inflators operate simultaneously for full immediate inflation. The air bag system logic also controls the operation of the seat belt pretensioners. A new feature of the system detects whether the passenger's seat belt is fastened. If the seat belt is not fastened, the air bag deploys at full force at a lower collision speed to help offer more protection to the unbelted occupant."

Ford publicly announced in January 1999 that it will introduce advanced technology enabling its cars and trucks to analyze crash conditions and to use the results of the analyses in activating safety devices to better protect a range of occupants in a variety of frontal crash situations. Ford stated that its Advanced Restraints System features nearly a dozen technologically advanced components that work together to give front-seat occupants significantly enhanced protection during frontal crashes, taking into account their seating position, safety belt use and crash severity. That company indicated that elements of the system, which features technologies such as crash severity sensors, a driver-seat position sensor, a passenger weight sensor, safety belt usage sensors, dual-stage inflating air bags, safety belt pretensioners and energy management retractors, will debut in vehicles beginning in the 1999 calendar year. Ford stated that the company will introduce these new technologies on new and significantly freshened models until all its passenger cars, trucks and sport utility vehicles have the complete Advanced Restraints System.

GM publicly announced in February 1999 that it will introduce technology in MY 2000 that is designed to detect the presence of a small child in the front passenger seat and suppress the deployment of the passenger frontal air bag in the event of a frontal crash. GM stated that weight-based sensors, coupled with pattern recognition technology, will distinguish between a child and a small adult female whose weight may be similar to a large child restrained in a child safety seat. If the front passenger seat is occupied by a small child, whether in a child safety seat or not, GM said that the air bag will not deploy. GM stated that it will introduce this technology on the Cadillac Seville in the 2000 calendar year, and that it has a roll-out plan to extend this technology throughout its product line.

We have received more detailed confidential information from GM and Ford concerning their plans, as well as confidential information from other auto manufacturers concerning their latest plans to introduce various advanced technologies. We have also received confidential information from suppliers.

Second, in April 1999, we held a public technical workshop concerning biomechanical injury criteria. The purpose of the workshop was to provide an additional opportunity for a continuing dialog with the biomechanics community and the public to assure that we considered appropriate injury criteria.

Third, we have analyzed the public comments and also conducted additional testing. We conducted additional tests of current vehicles with redesigned air bags to determine how they perform in 48 km/h (30 mph) rigid barrier crash tests. We selected vehicles that varied by class, stiffness, and manufacturer. We also used both 5th percentile adult female dummies and 50th percentile adult male dummies, belted and unbelted. We also conducted tests of several current vehicles with redesigned air bags to determine how they perform in 40 km/h (25 mph) rigid barrier crash tests, 48 km/h (30 mph) 30 degree right/left angular barrier tests (belted/unbelted), 56 km/h (35 mph) left/right side offset fixed deformable barrier crash tests, low speed 24 to 40 km/h (15 to 25 mph) offset deformable crash tests and static out-of-position tests. We also conducted sled tests at different crash severities with 95th percentile adult male dummies and MY 1999 and MY 1997 replacement air bags.

Fourth, we have continued to analyze available data to see how redesigned air bags are performing in the real world. We analyzed 1996 to 1998 Fatality Analysis Reporting System (FARS) data and found essentially the same number of fatalities in frontal impacts for MY 1996 vehicles in 1996 FARS (730), as in MY 1997 vehicles in 1997 FARS (776), as in MY 1998 vehicles in 1998 FARS (732). The fatality rates per million registered vehicles indicate that MY 1996 (56 per million registered vehicles) had essentially the same fatality rates as MY 1997 vehicles (55), while MY 1998 vehicles had a lower fatality rate (50). After controlling for safety belt use rates, that is, estimating the number of fatalities in each year if all three years had the same 1998 usage rate, the fatality rates per million registered vehicles were the same for MY 1996 and MY 1997 (53), while MY 1998 had a lower fatality rate (50). Since an estimated 87 percent of MY 1998 vehicles have redesigned air bags, this suggests that there is essentially the same or slightly better protection provided by the redesigned air bags compared to pre-MY 1998 air bags. In assessing the significance of this information, we will consider the agency tests in which most of the tested vehicles, although certified to the sled tests, met or exceeded the historical performance requirements of the 48 km/h (30 mph) rigid barrier crash test.

Another analysis compared the percent of fatalities in frontal impacts to all impacts for MY 1996 vehicles in calendar year 1996 (38.9%), to MY 1997 vehicles in calendar year 1997 (41.3%), and to MY 1998 vehicles in the first 6-months of calendar year 1998 (39.6%). As noted above, most of the MY 1998 vehicles have redesigned air bags. No statistically significant difference was found between the three sets of data. Again, this implies that the overall protection provided by the redesigned air bags is essentially the same as that provided by pre-MY 1998 air bags.

Fifth, on August 31, 1999, and again on September 14, 1999, the vehicle manufacturers and their trade associations met with the agency and presented a consensus recommendation for an unbelted crash test. The industry recommended an unbelted rigid barrier crash test at 40 km/h (25 mph) using both 50th percentile adult male dummies and 5th percentile adult female dummies. A letter regarding this recommendation was received from the Alliance (dated September 2, 1999).[10]

In a letter dated September 16, 1999, an assortment of commenters, including vehicle manufacturers, vehicle insurers, the American Automobile Association, the National Automobile Dealers Association, the American International Automobile Dealers Association, the American Trauma Society, the National Safety Council, IIHS, and the National Association of Governors' Highway Safety Representatives, opposed a return to the 30 mph unbelted rigid barrier test. This letter argued that a return to this test would require an overall increase in air bag maximum energy levels with a concomitant increase in risk. No supporting data or analysis accompanied the letter. The letter also urged that NHTSA focus this rulemaking on reducing the risk of air bags to children and others, especially in low speed crashes, as compared to the agency's attempting to increase air bag-related benefits for unbelted occupants in higher speed crashes.

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[10] This letter recommended that the agency adopt the following unbelted barrier test as an alternative to the current unbelted sled test:

A 40 km/h (25 mph) unbelted rigid barrier, using 5th percentile adult female dummies and 50th percentile adult male dummies, and the injury criteria recommended by AAMA in its Dec 98 submission to agency and endorsed by the Alliance in 1999. The test would be conducted perpendicularly only at 25 mph (w/ allowance for test variability) only, *not* up to 25 mph. The test would be fully phased-in during TEA 21 phase-in period (MY's 2003–2006). Further, optional early compliance should be allowed. Upon publication of final rule, vehicle manufacturers should be allowed to comply with this recommended test (as opposed to either the sled test or 30 mph unbelted rigid barrier test), even in the absence of compliance with requirements intended to reduce the risks associated with air bags.

In a letter dated September 29, 1999, Public Citizen, the Center for Auto Safety, and Parents for Safer Air Bags stated that they were "concerned by news reports that a consortium of vehicle manufacturers and insurers is pressing the agency not to reinstate the 30 mph barrier crash test for unbelted occupants." These organizations argued that the industry's position is based on the erroneous premise that protection of unbelted occupants in high-speed collisions causes the bags to be hazardous to small occupants in low-speed collisions.[11] They also argued that abandonment of the unbelted 30 mph unbelted test would obviate the very purpose of the present rulemaking, the development and introduction of advanced air bags, and result in the use of generic "lowest common denominator" systems that can be readily be fitted in any vehicle but which seriously compromise safety. The letter stated that it should not be forgotten that air bags were originally conceived to protect unbelted occupants in horrific frontal collisions, and that this remains their principal efficacy to this day.

III. SNPRM for Advanced Air Bags

A. Introduction

Our primary goals in this rulemaking continue to be those set for us by TEA 21, i.e., to improve occupant protection for occupants of different sizes, belted and unbelted, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags. Further, we are seeking to ensure that the needed improvements in occupant protection are made in accordance with the statutory implementation schedule. After carefully reviewing the comments on the NPRM and other available information, we have developed an SNPRM to accomplish these goals.

In developing this SNPRM, we focused on picking the most appropriate tests so that we could reduce the number of originally proposed tests without significantly affecting the benefits of the NPRM. We were persuaded by the commenters that reducing the amount of testing was important, given resource limitations, and the costs to manufacturers associated with certifying vehicles to such a large number of new test requirements. At the same time, we wanted to be sure that the SNPRM includes sufficient tests to ensure that air bags are redesigned to meet the goals mandated by TEA 21.

Given the continued debate over what requirements should be relied upon to ensure protection to unbelted occupants, we also wanted to be sure that we have considered and received the benefit of public comments on the various alternative approaches reflecting the views and information now available to us.

The most significant differences between the NPRM and the SNPRM can be summarized as follows:

- *Two alternative unbelted tests.* While we proposed one unbelted test in the NPRM, an up-to-48 km/h (30 mph) rigid barrier test, we are proposing and seeking comments on two alternative unbelted tests in this SNPRM. The first alternative is an unbelted rigid barrier test with a minimum speed of 29 km/h (18 mph) and a maximum speed to be established within the range of 40 to 48 km/h (25 to 30 mph). Within this alternative, the potential exists for a phase-in sequence in which the maximum speed would initially be set at 40 km/h (25 mph) to provide vehicle manufacturers additional flexibility when they are introducing advanced air bags during the phase-in. Under this phase-in sequence, the final rule could provide that a maximum speed of 48 km/h (30 mph) would apply after a reasonable period of time. If we reduce the maximum speed to 40 km/h (25 mph) permanently, we might also increase the maximum speed of the belted rigid barrier test from the current 48 km/h to 56 km/h (30 to 35 mph). The second alternative is an unbelted offset deformable barrier test with a minimum speed of 35 km/h (22 mph) and a maximum speed to be established within the range of 48 to 56 km/h (30 to 35 mph). The latter alternative was developed in response to a recommendation made by IIHS in its comment on the NPRM.[12] We are proposing the 29 and 35 km/h (18 and 22 mph) lower ends of the ranges of test speeds because we want to be sure that the standard does not inadvertently create incentives to push deployment thresholds downward, i.e., cause air bags to be deployed at lower speeds.
- *Possible higher speed belted rigid barrier test.* We are also specifically requesting comment on a similar option for the belted test requirement, in which a 48 km/h (30 mph) test would be in effect through the TEA 21 phase-in, to be subsequently replaced with a 56 km/h (35 mph) test, using both 5th percentile adult female and 50th percentile adult male dummies.
- *Reduced number of tests.* We have significantly reduced the total number of proposed tests. In a number of situations, we have tentatively concluded that a proposed test could be deleted because the performance we sought to secure by means of that test would largely be assured by one or more of the other tests.
- *Reduced offset testing.* The proposed up-to-40 km/h (25 mph) offset crash test using belted 5th percentile adult female dummies would be conducted only with the driver side of the vehicle engaged, instead of both with the driver side and with the passenger side engaged.
- *Ensuring that certain static suppression systems can detect real children and adults.* For our proposed static test requirements for systems (*e.g.*, weight sensors) which suppress air bags in the presence of infants and children, we are proposing a new option which would permit manufacturers to certify to requirements referencing children, instead of 3-year-old and 6-year-old child dummies, in a stationary vehicle to test the suppression systems. (This option would not apply to systems designed to suppress the air bags only when an infant is present.) Adult human beings could also be used in the place of 5th percentile adult female dummies for the portions of those static test requirements which make sure that the air bag is activated for adults. Steps would be taken to ensure the safety of all subjects used for these tests.
- *Reduced number of child restraints used for testing suppression systems.* Instead of requiring manufacturers to assure compliance of a vehicle in tests using any child restraint which was manufactured for sale in the United States any time during a specified period prior to the manufacture of the vehicle, we would require them to assure compliance using any child restraint on a relatively short list of specific child restraint models. Those models would be chosen to be representative of the array of available child restraints. The list would be

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[11] The letter argued that the safety record of many well-designed air bag systems over a ten year period belies this premise. The letter stated that a variety of design features allow for protection of unbelted occupants in severe crashes without imposing significant inflation risks in low-speed collisions, and cited vehicle structures with a longer crash pulse, variable inflation forces based on crash severity, higher thresholds (including "dual thresholds") and laterally-biased inflation.

[12] IIHS's views have changed since making that recommendation. Its current views are discussed below.

updated from time to time to reflect changes in the types of available child restraints.

- *Modified requirements for systems that suppress the air bag for out-of-position occupants.* We have significantly modified the proposed requirements for systems that suppress the air bag when an occupant is out of position during a crash. In the NPRM, we proposed a single test procedure for all types of such suppression systems. We were persuaded by the commenters that the proposed test procedure was not appropriate for some of the systems that are currently under development. Because we did not have sufficient information or prototype hardware to develop a new test procedure, and because no one test procedure may be appropriate for a number of comparably effective suppression technologies, we are proposing a provision that would permit manufacturers or others to petition the agency to establish technology-specific test procedures under an expedited rulemaking process.
- *No full scale dynamic out-of-position test requirements.* We are eliminating from this rulemaking the proposed option for full scale dynamic out-of-position test requirements (the option which included pre-impact braking as part of the test procedure). We were persuaded by the commenters that the proposed test procedure is not workable at this time. Moreover, we believe this option is unnecessary at this time, since other options are available for the range of effective technologies we understand to be under development.

The existing tests that would be retained as well as those proposed in this SNPRM are identified in Figures 1a, 1b and 2, below. Figures 1a and 1b show the two alternative sets of test requirements to improve occupant protection for different size occupants, belted and unbelted, in moderate to high speed crashes. Figure 2 shows test requirements to minimize the risk to infants, children, and other occupants from injuries and deaths caused by air bags, especially in low speed crashes.

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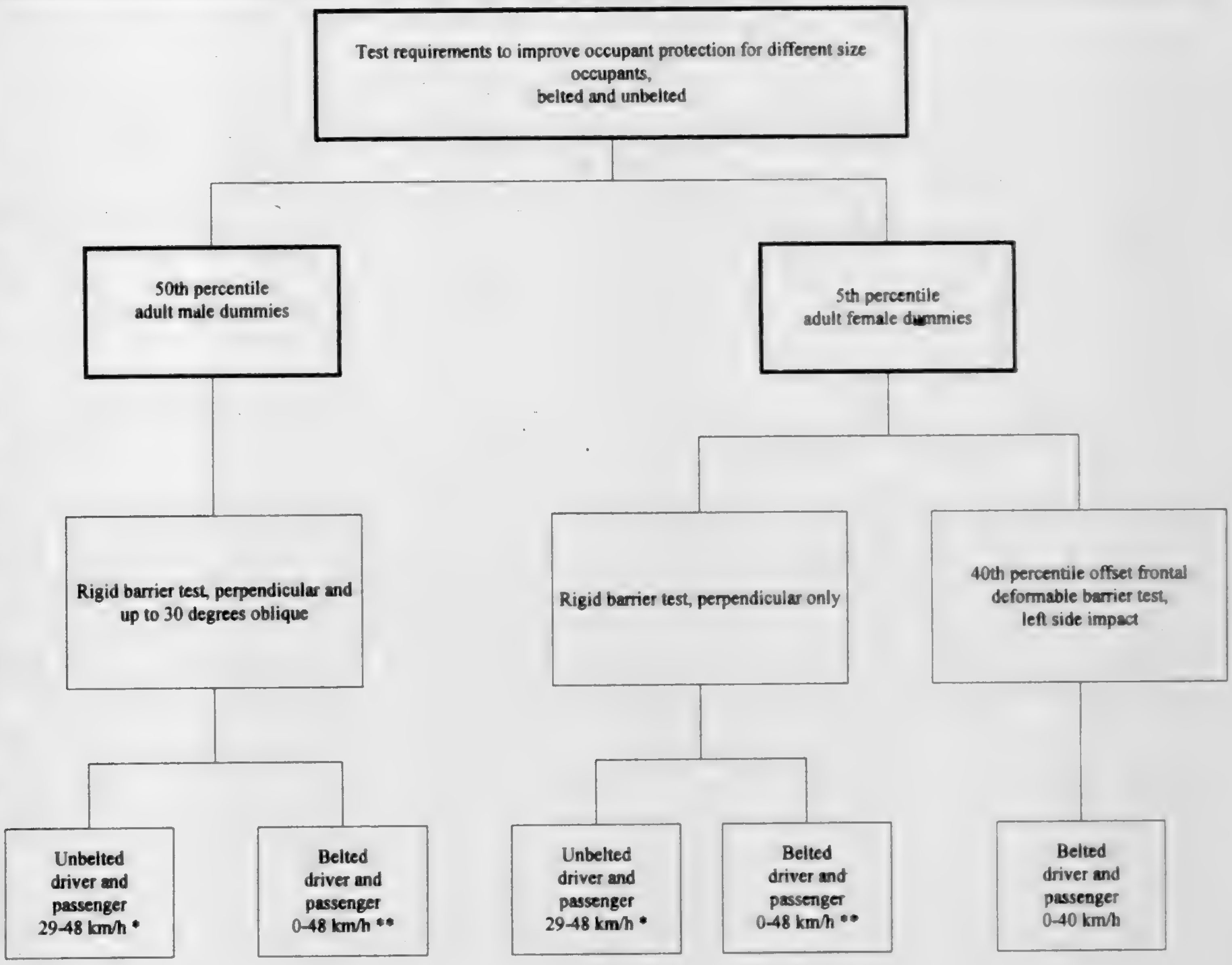
Test requirements to improve occupant protection for different size occupants, belted and unbelted
50th percentile adult male dummies
5th percentile adult female dummies
Rigid barrier test, perpendicular and up to 30 degrees oblique
Rigid barrier test, perpendicular only
40th percentile offset frontal deformable barrier test, left side impact
Unbelted driver and passenger 29-48 km/h *
Belted driver and passenger 0-48 km/h **
Unbelted driver and passenger 29-48 km/h *
Belted driver and passenger 0-48 km/h **
Belted driver and passenger 0-40 km/h

* The maximum speed would be established within the range of 40 to 48 km/h (25 to 30 mph)

** The maximum speed might be established at 56 km/h (35 mph) if the maximum speed for the unbelted rigid barrier test were permanently reduced to 40 km/h (25 mph)

Figure 1a. Alternative 1: Test Requirements to Improve Occupant Protection for Different Size Occupants, Belted and Unbelted

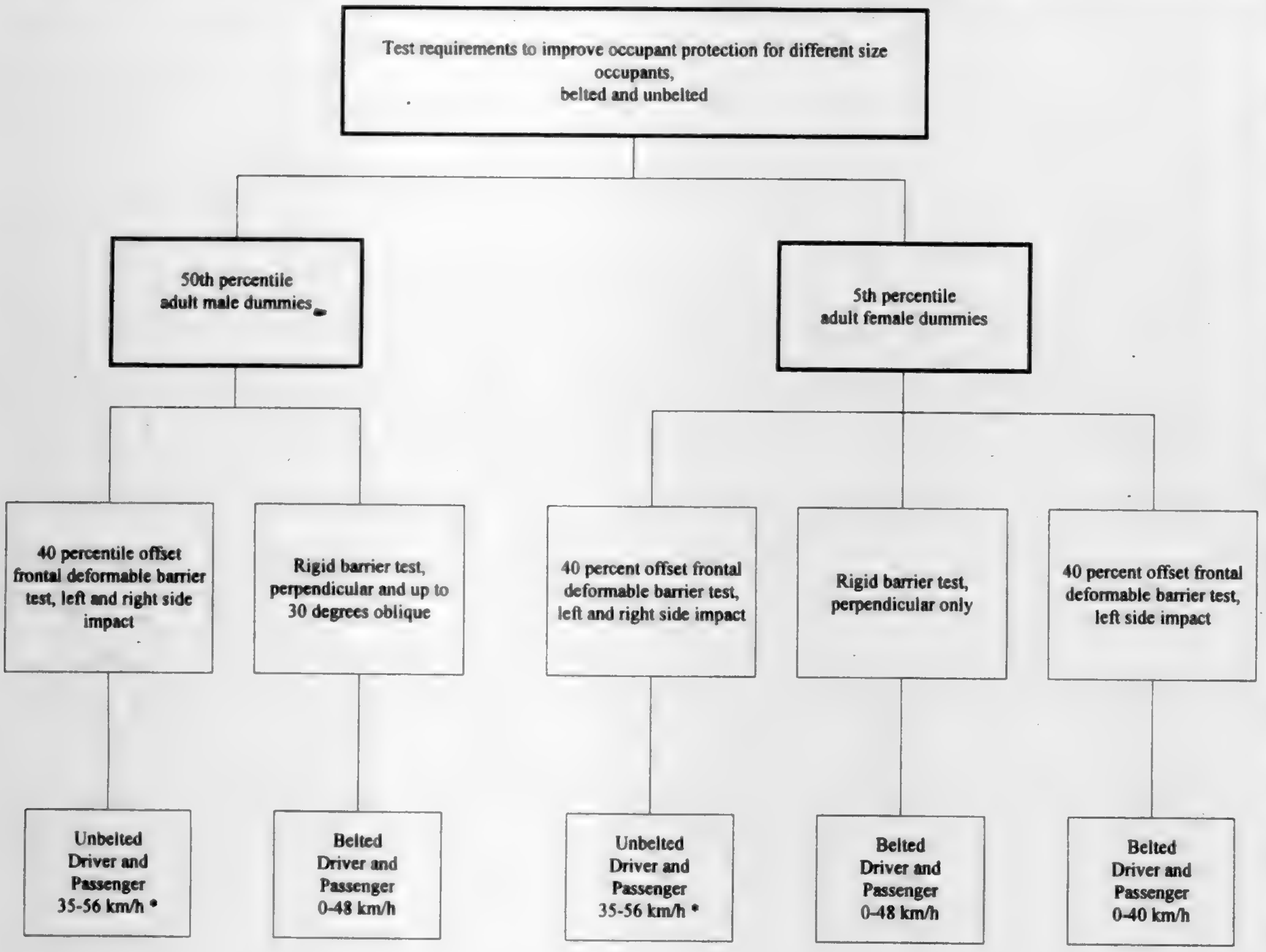
Test requirements to improve occupant protection for different size occupants, belted and unbelted
50th percentile adult male dummies
5th percentile adult female dummies
40 percentile offset frontal deformable barrier test, left and right side impact
Rigid barrier test, perpendicular and up to 30 degrees oblique
40 percent offset frontal deformable barrier test, left and right side impact
Rigid barrier test, perpendicular only
40 percent offset frontal deformable barrier test, left side impact
Unbelted Driver and Passenger 35-56 km/h *
Belted Driver and Passenger 0-48 km/h
Unbelted Driver and Passenger 35-56 km/h *
Belted Driver and Passenger 0-48 km/h
Belted Driver and Passenger 0-40 km/h

* The maximum speed would be established within the range of 48 to 56 km/h (30 to 35 mph)

Figure 1b. Alternative 2: Test Requirements to Improve Occupant Protection for Different Size Occupants, Belted and Unbelted

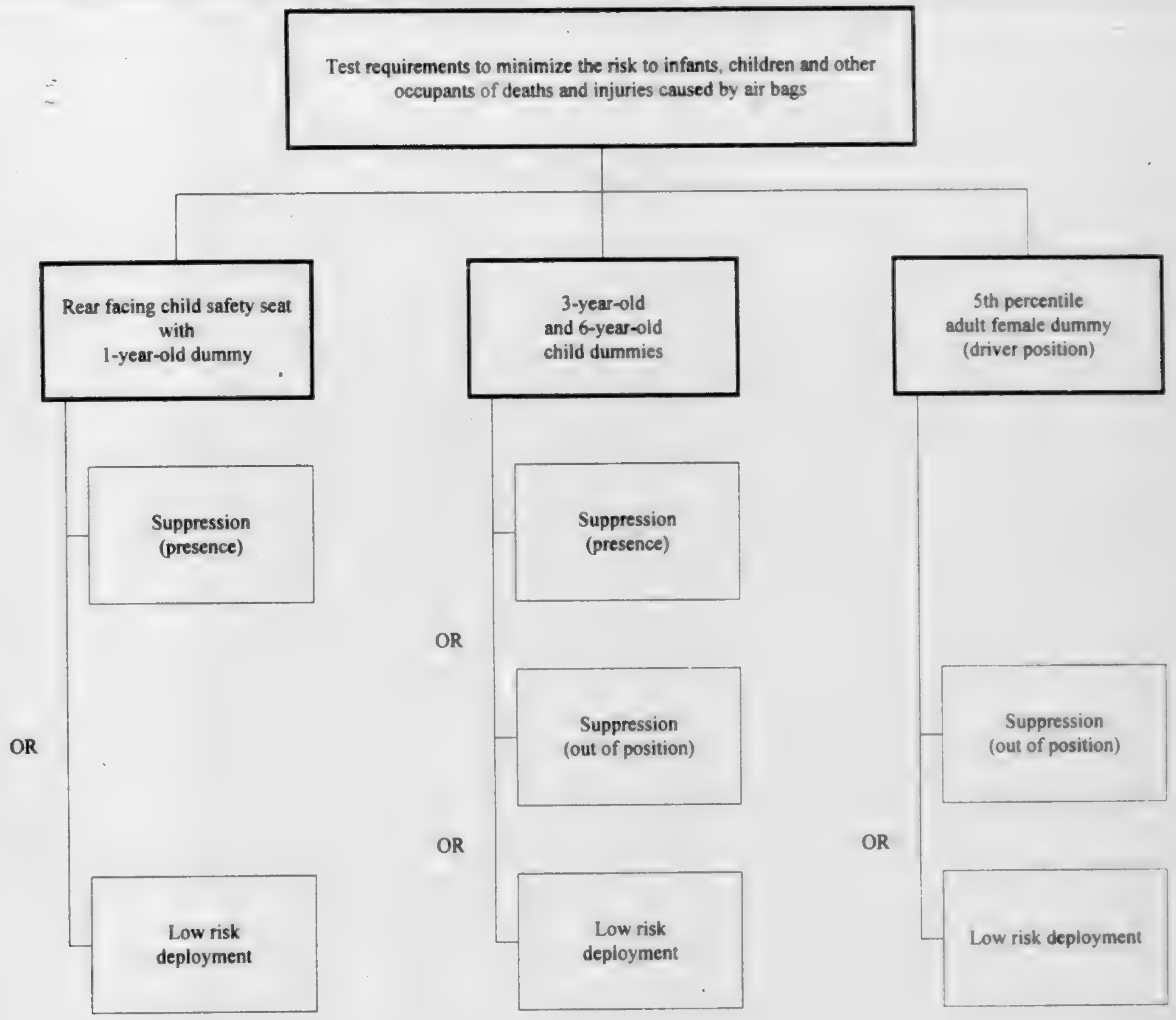
Test requirements to minimize the risk to infants, children and other occupants of deaths and injuries caused by air bags
Rear facing child safety seat with 1-year-old dummy
3-year-old and 6-year-old child dummies
5th percentile adult female dummy (driver position)
Suppression (presence)
OR
Low risk deployment
Suppression (presence)
OR
Suppression (out of position)
OR
Low risk deployment
Suppression (out of position)
OR
Low risk deployment

Figure 2. Test Requirements to Minimize the Risk to Infants, Children, and Other Occupants from Injuries and Deaths Caused by Air Bags

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A discussion of the specific proposed test requirements follows. We will first discuss requirements to improve protection for different size occupants, belted and unbelted, and will then discuss requirements to minimize risks from air bags. We also discuss in detail the major differences from the NPRM.

B. Existing and Proposed Test Requirements

1. Tests for Requirements To Improve Occupant Protection for Different Size Occupants, Belted and Unbelted

a. September 1998 NPRM.

In the NPRM, we proposed test requirements to improve occupant protection for different size occupants, belted and unbelted. The proposed requirements included rigid barrier tests and offset deformable barrier tests.

Under the proposed rigid barrier test requirements in the NPRM, vehicles would have been required to meet injury criteria performance limits, including ones for the head, neck, chest, and femurs, measured on 50th percentile adult male and 5th percentile adult female test dummies during rigid barrier crash tests at any speed up to 48 km/h (30 mph) and over the range of vehicle-to-crash-barrier angles from -30 degrees to +30 degrees. Tests with 50th percentile adult male dummies would be conducted with the vehicle seat in the mid-track position; tests with 5th percentile adult female dummies would be conducted with the vehicle seats in the full forward position.[13] Vehicles were to meet the injury criteria with belted and unbelted dummies. The purpose of the rigid barrier tests was to help ensure that vehicles protect different size occupants, belted and unbelted, from risk of serious or fatal injury in moderate to high speed crashes.

Under the proposed offset deformable barrier test requirements, vehicles would have been required to meet injury criteria performance limits during an up-to-40 km/h (25 mph) frontal offset deformable barrier test, using belted 5th percentile adult female dummies. The frontal offset test would have been conducted with either the driver side of the vehicle or the passenger side of the vehicle engaged with the barrier. The purpose of this test was to help ensure that vehicle manufacturers design their crash sensing and software systems to adequately address soft and long duration crash pulses.

Our NPRM would have required as many as a total of 14 crash tests to improve occupant protection. This number is based on counting each rigid barrier test specifying use of a particular dummy as three tests, reflecting the assumption that, for typical vehicle and air bag designs, there would be three worst case conditions: 48 km/h (30 mph) at -30 degrees, 48 km/h (30 mph) at 0 degrees, and 48 km/h (30 mph) at +30 degrees.[14]

Our proposed requirements for improving occupant protection in potentially fatal crashes differed from the existing Standard No. 208 in several important respects.

First, vehicles would for the first time be required to be certified to crash test requirements using 5th percentile adult female dummies, which would be seated in the full forward seat track position. Historically, the standard has only specified the use of 50th percentile adult male dummies seated further back.

Second, vehicles would be required for the first time to meet neck injury criteria performance limits in a crash test. Neck injuries are a particular concern for persons sitting close to the air bag.

Third, vehicles would for the first time be required to comply with injury criteria limits in a 40 km/h (25 mph) frontal offset deformable barrier test with belted 5th percentile adult female dummies. The only frontal crash tests previously specified by the standard were rigid barrier tests.

Fourth, we proposed to phase out the unbelted sled test option and return to the up-to-48 km/h (30 mph) unbelted rigid barrier test requirement.[15] However, it would be more than simply returning to the previous test requirement, since the unbelted rigid barrier test would now be conducted with 5th percentile adult female dummies as well as 50th percentile adult male dummies. In addition, we proposed added injury criteria for the chest and neck.

We proposed to phase out the sled test option as we phased in the requirements for advanced air bags. We stated that while we believe the sled test option has been an expedient and useful temporary measure to ensure that the vehicle manufacturers could quickly redesign all of their air bags and to help ensure that some protection would continue to be provided by air bags, we did not consider sled testing to be an adequate long-term means of assessing the extent of occupant protection that a vehicle and its air bag will afford occupants in real world crashes.

We noted that the sled test, first, does not address vehicle factors that can significantly affect the level of protection provided in the real world and, second, is not representative of a significant number of potentially fatal real world crashes. Each of these limitations is significant. The first means that sled test results may have limited relationship to real world performance in many types and levels of severity of crash. The second means that sled test results may not be a good measure of air bag performance in the kinds of crashes in which air bags are supposed to save lives. While we proposed to return to the up-to-48 km/h (30 mph) unbelted rigid barrier test requirement, we requested comments on possible alternative unbelted crash test requirements.

b. Comments on 1998 NPRM.

Our proposal to reinstate the up-to-48 km/h (30 mph) unbelted rigid barrier test requirement was by far the most extensively debated issue of this rulemaking. As noted earlier, commenters had sharply different views on this aspect of the NPRM. In their initial comments, motor vehicle manufacturers and their trade associations strongly opposed returning to the up-to-48 km/h (30 mph) unbelted rigid barrier test and urged that the sled test option remain in effect permanently. They argued that reinstating the up-to-48 km/h (30 mph) unbelted rigid barrier test would prevent continued use of "depowered" air bags and require a return to "overly aggressive" air bags and that the test is not representative of typical real world crashes. They argued that the sled test includes a crash pulse that is more representative of typical real world crashes.

On August 31, 1999, however, vehicle manufacturers and their trade associations presented to the agency a consensus recommendation for an unbelted crash test. The industry recommended an unbelted rigid barrier crash test at 40 km/h (25 mph) using both 50th percentile adult male dummies and 5th percentile adult female dummies. The test would be conducted in the perpendicular mode only, i.e., there would be no unbelted oblique tests. Industry representatives argued that oblique tests are not needed to ensure wide air bags as vehicle manufacturers will provide them in light of other considerations, e.g., general safety considerations, the 48 km/h (30 mph) belted rigid barrier crash testing, and IIHS and European high speed belted offset deformable barrier testing.

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[13] More specifically, the seat would be placed in the full forward position if the 5th percentile adult female dummy can be placed in the seat when it is in that position. Otherwise, the seat is moved back to the closest position to full forward that will allow the dummy to be placed in the seat.

[14] The count of 14 tests reflects four rigid barrier tests (belted 50th percentile adult male dummy, unbelted 50th percentile adult male dummy, belted 5th percentile adult female dummy, and unbelted 5th percentile adult female dummy), each of which are counted as three tests. Thus, the rigid barrier tests account for 12 of the 14 tests. The other two tests were the offset test with the driver side of the vehicle engaged with the barrier, and the offset test with the passenger side of the vehicle engaged with the barrier.

[15] We explained in the NPRM that we added the sled test to Standard No. 208 in March 1997 as a temporary option to simplify and expedite the testing and certification of redesigned air bags that inflate less aggressively. We did so because the lead time needed for the relatively straightforward redesign measures contemplated by the manufacturers for MY 1998 vehicles, including the reduction of inflator power, was significantly shorter than the lead time for the technological solutions that are the subject of this rulemaking.

In its comments on the NPRM, IIHS also opposed returning to the up-to-48 km/h (30 mph) unbelted rigid barrier test, for reasons similar to those cited by the vehicle manufacturers. However, that organization suggested that if we wish to phase out the sled test, we should consider replacing it with the 56 km/h (35 mph) European offset crash into a deformable barrier, using unbelted dummies, instead of the rigid barrier test. IIHS stated that this configuration would address not only protection in asymmetric crashes, but also some issues of intrusion that are related to restraint system performance, e.g., steering column movement. IIHS also stated that adoption of this test would be in the direction of harmonizing European and U.S. test procedures, the only difference being using unbelted versus belted dummies.

On September 14, 1999, however, IIHS advised us that it now believes that an unbelted 56 km/h (35 mph) offset deformable barrier crash test would be inappropriate. That organization is concerned that including this test in Standard No. 208 might lead to an increase in unintended high-energy air bag deployments, posing risks to out-of-position occupants, because of uncertainties in the sensing and algorithm capabilities in making proper deployment decisions. This potential problem is related to the nature of this crash test. During the initial phase of the test, i.e., during the crushing of the deformable barrier face, vehicles experience a long duration, low magnitude acceleration. The crash pulse in this phase of the test resembles that of a low speed crash. After the vehicle crushes the barrier face and reaches the underlying rigid portion, the remaining phase of the test is similar to a rigid barrier test. IIHS is concerned that because the initial phase of the test results in a crash pulse similar to that experienced in a low speed crash, air bag systems might not be able to distinguish between the offset test and a low speed crash during the time the decision whether to deploy the air bag must be made. If this were the case, an air bag system that was designed to meet an unbelted 56 km/h (35 mph) offset deformable barrier crash test by means of a high-energy air bag deployment might inappropriately provide the same kind of deployment in a low speed crash, thereby posing unnecessary risks to out-of-position occupants.

The Automotive Occupant Restraints Council (AORC), representing manufacturers of air bags and seat belts, stated that while it believes the current sled test option serves a useful purpose, a sled test cannot provide a complete assessment of the crash protection provided by a vehicle/restraint system. That organization stated it believes that to fully assess crash protection for belted and unbelted occupants, barrier crash tests of complete vehicles should be included in the test requirements of Standard No. 208. AORC noted that complete vehicle barrier tests permit the evaluation of the vehicle's structure and its contribution to occupant protection. AORC recommended that additional analysis be conducted concerning what barrier and test conditions should be included in Standard No. 208.

A number of commenters, including several public interest groups, argued that the up-to-48 km/h (30 mph) unbelted rigid barrier test is representative of a significant portion of real world crashes, and that improvements in vehicle and air bag designs will enable manufacturers to meet the test without safety tradeoffs.

As to the proposed belted tests, some vehicle manufacturers argued in their comments on the NPRM that a belted rigid barrier test using 5th percentile adult female dummies would be redundant. They argued that the combination of other tests using 5th percentile adult female dummies plus the existing rigid barrier test using belted 50th percentile adult male dummies would address the same area of safety.

Commenters' views on the proposed up-to-40 km/h (25 mph) belted offset deformable barrier test were mixed, but mostly supportive. Many commenters, including several safety advocacy groups and a number of vehicle manufacturers, supported the addition of an offset deformable barrier test.

As noted earlier, some vehicle manufacturers requested that the test be conducted only with the driver's side engaged, instead of with either side engaged as proposed in the NPRM. The Association of International Automobile Manufacturers (AIAM) stated that a test with the driver's side engaged would more likely produce worst case driver out-of-position locations and possible driver-side intrusion, and that a passenger side offset test would be redundant. Another suggestion made by some vehicle manufacturers was to conduct the test only at 40 km/h (25 mph), rather than at speeds up to 40 km/h (25 mph).

General Motors (GM) stated that it agreed with the addition of the offset deformable barrier test only if the unbelted sled test option remained in effect. GM stated that the offset deformable barrier test augments the sled test by addressing the crash sensing aspects of performance.

DaimlerChrysler argued that the addition of a 40 km/h (25 mph) belted offset deformable barrier test for the 5th percentile adult female is unnecessary in light of future "depowered" and/or advanced air bags. That commenter stated that injury risks to small occupants sitting near the driver air bag are adequately assessed using the proposed out-of-position, low-risk deployment tests, which it endorses.

c. SNPRM.

We believe that the comments on the proposed test requirements to improve occupant protection for different size occupants, belted and unbelted, raise two primary questions:

(1) What type and severity level of an unbelted crash test should be included in Standard No. 208?

(2) Are some of the tests proposed in the NPRM redundant, given the other proposed tests?

In the sections which follow, we will address what unbelted test requirements are needed to address the protection of unbelted teenagers and adults, and what overall set of requirements is needed to improve protection for different size occupants, belted and unbelted.

(i) Requirements for Tests With Unbelted Dummies

As we address the issue of what unbelted requirements should be included in Standard No. 208 to address the protection of unbelted teenagers and adults, we believe the ultimate question for regulators, industry and the public is how the required safety features work in the real world. We will consider that question as we separately address two issues: (1) sled testing versus crash testing, and (2) alternative unbelted crash tests (e.g., rigid barrier crash tests, offset deformable tests, etc.) at various severity levels.

Crash testing vs. sled testing. In a full-scale crash test, instrumented test dummies are placed in a production vehicle, and the vehicle is actually crashed. Measurements from the test dummies are used to determine the forces, and injury potential, human beings would have experienced in the crash.

Many different types of crash tests can be conducted, and the various types of crash tests can be conducted at different levels of severity. Commonly conducted crash tests include: (1) rigid barrier tests, in which a vehicle is crashed head-on (perpendicular) or at an angle into a rigid barrier, (2) offset deformable barrier tests, in which a vehicle is crashed into a barrier with a deformable face, with only a portion of the front of the vehicle (e.g., 40 percent) engaging the barrier, and (3) moving deformable barrier tests, in which a moving deformable barrier designed to be representative of particular vehicles is crashed into the test vehicle. Vehicle-to-vehicle crash tests, in which one vehicle is crashed into another vehicle, are sometimes used in research or product development.

In a sled test, no crash takes place. The vehicle is essentially undamaged. The vehicle is placed on a sled-on-rails, and instrumented test dummies are placed in the vehicle. The sled is accelerated very rapidly backwards (relative to the direction that the occupants would be facing), so that the occupant compartment experiences the same motion as might be experienced in a crash. The air bags are manually deployed at a pre-selected time during the sled test. Measurements from the test dummies are used to determine the forces, and injury potential, human beings would have experienced during the test.

In the NPRM, we explained that the agency has long specified full scale vehicle crash tests using instrumented dummies, in a variety of our standards, because it is only through such tests that the protection provided by the vehicle occupant protection *system* can be fully measured.

In the NPRM, we cited several significant limitations of the current sled test, some of which are inherent to any sled test. We explained:

> Unlike a full scale vehicle crash test, a sled test does not, and cannot, measure the actual protection an occupant will receive in a crash. The current sled test measures limited performance attributes of the air bag, but cannot measure the performance provided by the vehicle structure in combination with the air bags or even the full air bag system by itself.
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> Among other shortcomings, the sled test does not evaluate the actual timing of air bag deployment. Deployment timing is a critical component of the safety afforded by an air bag. If the air bag deploys too late, the occupant may already have struck the interior of the vehicle before deployment begins.
>
> Air bag timing is affected by parts of the air bag system which are not tested during a sled test, i.e., the crash sensors and computer crash algorithm. A barrier crash test evaluates the ability of sensors to detect a crash and the ability of an algorithm to predict, on the basis of initial sensing of the rate of increase in force levels, whether crash forces will reach levels high enough to warrant deployment. However, the sled test does not evaluate these critical factors. The ability of an algorithm to correctly, and quickly, predict serious crashes is critical. The signal for an air bag to deploy must come very early in a crash, when the crash forces are just beginning to be sensed by the air bag system. A delay in an air bag's deployment could mean that the air bag deploys too late to provide any protection. In a sled test, the air bag is artificially deployed at a predetermined time. The time of deployment in a sled test is artificial and may differ significantly from the time when the air bag would deploy during an actual crash involving the same vehicle.
>
> Second, the current generic sled pulse does not replicate the actual crash pulse of a particular vehicle model, i.e., the specific manner in which the front of the vehicle deforms during a crash, thereby absorbing energy. The actual crash pulse of a vehicle is a critical factor in occupant protection. A crash pulse affects the timing of air bag deployment and the ability of an air bag to cushion and protect an occupant. However, the current sled test does not use the crash pulse of the vehicle being tested. In many cases, the crash pulse used in the sled test is not even one approximately representative of the test vehicle. The sled test uses the crash pulse of a large passenger car for all vehicles, regardless of their type or size. This crash pulse is appropriate for large passenger cars, but not for light trucks and smaller cars since they typically have much "stiffer" crash pulses than that of the sled test. In the real world, deceleration of light trucks and smaller cars, and their occupants, occurs more quickly than is simulated by the sled test. Thus, the sled test results may overstate the level of occupant protection that would be provided by a vehicle and its air bag system in the real world. An air bag that can open in a timely fashion and provide adequate cushioning in a soft pulse crash may not be able to do so in a stiffer pulse crash. This is because an occupant of a crashing vehicle moves forward, relative to the vehicle, more quickly in a stiffer pulse crash than in a softer pulse crash.
>
> Third, a sled test does not measure the potential for harm from vehicle components that are pushed back into the occupant compartment during a crash. Examples of components that may intrude into the occupant compartment include the steering wheel, an A-pillar and the toe-board. Since a sled test does not involve any kind of crash or deformation of the vehicle, it implicitly assumes that such intrusion does not occur in crashes. Thus, the sled test may indicate that a vehicle provides good protection when, as a result of steering wheel or other intrusion, the vehicle will actually provide poor protection in a real world crash.
>
> Fourth, the sled test does not measure how a vehicle performs in angled crashes. It only tests vehicles in a perpendicular crash. In the real world, frontal crashes occur at varying angles, resulting in occupants moving toward the steering wheel and instrument panel in a variety of trajectories. The specification of angled tests in conjunction with the barrier test requirement ensures that a vehicle is tested under these real world conditions. 63 FR 49971.

Commenters supporting retention of the sled test did not dispute the inherent limitations of sled tests as compared to crash tests.

AAMA argued that the single best argument for retaining the existing sled test is that "it's working;" AAMA contended that "depowered" air bags in vehicles certified according to the sled test are saving the lives of occupants of all sizes, while reducing the harm to children and other out-of-position occupants.

It is not clear, however, that the sled test is responsible for any of the benefits of redesigned air bags other than to the extent it made it easier for vehicle manufacturers to redesign and certify their existing air bags more quickly.

As noted earlier, limited available data appear to indicate that redesigned air bags have reduced the risks from air bags for the at-risk populations. However, it is not possible at this time to draw statistically significant conclusions about this. There is a greater amount of data on the overall benefits of air bags. These data indicate that there is essentially the same or slightly better protection provided by the redesigned air bags compared to earlier air bags.

Regardless of how well vehicles with redesigned air bags are currently performing, however, the sled test itself cannot guarantee that future air bags would perform nearly so well. These vehicles and their air bags were initially designed to the unbelted barrier test, and their current air bags represent quick, partial redesigns of those air bags. Thus, their performance is still highly reflective of the unbelted test.

While the sled test has made it easier for manufacturers to redesign and certify their vehicles more quickly, manufacturers could and did depower air bags under Standard No. 208's unbelted barrier test. As discussed below, available data suggest that most vehicles, while certified to the sled test, continue to meet the unbelted barrier test requirements (including the new neck injury criteria) with the 50th percentile adult male dummies.

Our goal in this rulemaking is to determine what requirements to protect unbelted and other occupants should apply to vehicles in the future. AAMA's argument that the sled test is working does not take into account all of the kinds of less protective vehicles and air bags that would be permitted by the sled test, given its mildness, and which might be produced if the sled test were allowed to remain in effect on a long-term basis.

The sled test is unable to offer any assurance that current vehicles and air bags are representative of what manufacturers would offer in the long run if the sled test were available as a permanent option. Nothing in the standard would inhibit manufacturers from making their air bags significantly smaller in both depth and width, and thus less protective in high speed crashes. In particular, narrower air bags could provide less protection in crashes involving oblique angles. The sled test also might permit "face bags" which do not provide chest protection or restraint for portions of the lower torso. In addition, the absence of an unbelted full-vehicle test at an appropriate severity level would permit vehicles to be designed with stiffer, less energy-absorbing front ends, e.g., to provide more interior passenger or cargo-carrying space at the expense of frontal "crush" space.

Moreover, unless balanced by an effective unbelted crash test requirement, the proposed new requirements to minimize air bag risks to out-of-position occupants have the potential to create an incentive for manufacturers to make their current air bags smaller and less protective. An inexpensive and relatively easy way to reduce risks from the air bag to out-of-position occupants is to further depower air bags and make them smaller. However, if air bags are depowered too much or made too small, they will not provide meaningful protection in high speed crashes.

Our basic obligation is to issue Federal motor vehicle safety standards that establish a minimum level of performance that protects the public against unreasonable risk of crashes occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in a crash. In this particular rulemaking, we are facing an array of safety problems, and TEA 21 as well as our pre-existing statutory authority, require that we address each of them.

The most reliable way to determine how vehicles will perform in real world crashes is to crash them. That is why we believe that a crash test is needed. Sled tests are useful research tools, but they do not provide as full or accurate a measure of the occupant protection that a vehicle will provide in the real world.

Given the importance of unbelted protection, we believe it is necessary to provide the public with assurance that the minimum level of performance for each vehicle will be required to be meaningful, based on careful scientific and engineering analysis. While we have carefully considered all of the comments concerning the sled test, we continue to believe that sled testing is an inadequate long-term means for ensuring that current levels of unbelted occupant protection are improved. This is based on the above-noted inherent limitations of sled tests, as compared to crash tests, in evaluating occupant protection. Whether one looks at IIHS with its offset crash test program, Europe with its offset NCAP program, or our experience with our NCAP, Standard No. 208 and Standard No. 214, it is widely acknowledged that crash tests, set at appropriate severity levels, provide the best means of evaluating the protection that occupants will receive in real world crashes.

For this SNPRM, we urge commenters to focus on what specific unbelted complete vehicle crash tests are the most appropriate.

Alternative unbelted crash tests. As we noted above, many different types of crash tests can be conducted, and the various types of crash tests can be conducted at different levels of severity and orientation. Commonly conducted crash tests include: (1) fixed rigid barrier tests, (2) fixed offset deformable barrier tests and (3) moving deformable barrier tests.

If government or anyone else wants to determine whether a vehicle provides an appropriate degree of occupant protection in a potentially fatal or serious injury producing crash, the crash test must have the severity representative of those crashes. The fact that a test might indicate that an occupant would not be injured or killed in a relatively mild crash says nothing about whether the occupant would likely be killed in a more serious crash. That is why it is important to distinguish between the universe of all typical real world crashes and those typical real world crashes serious enough to pose a significant risk of serious or fatal injury. While one could argue that the most "typical" crash is probably a fender bender resulting in little or no personal injury, basing Standard No. 208 on such a test would not result in any savings in lives or reductions in serious injuries. Of course, there are many issues to consider in selecting a specific crash test, but we must focus on seeking to represent the kind of typical crashes that are potentially fatal, rather than typical crashes as a whole.

When we issued the NPRM, we released a paper titled "Review of Potential Test Procedures for FMVSS No. 208." The paper provided a detailed technical analysis of the various alternative crash tests. To accompany this SNPRM, we are releasing an updated version of that paper, which has been revised in light of comments and other new information. The paper shows that, among the currently available alternative crash tests, the rigid barrier test (perpendicular and up to ±30 degrees oblique to perpendicular) represents the greatest number of real world crashes involving serious to fatal injuries. The only alternative crash test that would represent a greater number of such crashes would be one involving a moving deformable barrier, which is still undergoing research.

In the NPRM, we noted that while the perpendicular rigid barrier test results in crash pulses of short duration, e.g., the kind of pulse that a vehicle experiences when it fully engages another similar-sized or larger vehicle directly head-on or strikes a bridge abutment, the oblique rigid barrier tests result in crash pulses of longer duration, i.e., a "softer" crash pulse, which may occur when vehicles strike each other at various angles.

We also noted that vehicles and air bags designed to comply with the unbelted rigid barrier test have been effective in saving lives. At the time of the NPRM, we estimated that air bags had saved the lives of about 3,148 drivers and passengers. Of these, 2,267 were unbelted. The rest, 881, were belted. If these levels of effectiveness are maintained (i.e., 21 percent in frontal crashes for restrained occupants and 34 percent in frontal crashes for unrestrained occupants), air bags will save more than 3,000 lives each year in passenger cars and light trucks when all light vehicles on the road are equipped with dual air bags.

Commenters opposing the 48 km/h (30 mph) unbelted barrier test raised two primary issues. First, they argued that the test is not representative of typical crashes. Second, they argued that returning to this test would prevent continued use of "depowered" air bags and would require a return to "overly aggressive" air bags.

We note that, in arguing that the 48 km/h (30 mph) unbelted barrier test is not representative of typical crashes, the commenters did not define what they meant by "typical crashes." Given that the purpose of Standard No. 208 is primarily to reduce serious-to-fatal injuries, we believe that question is whether that test is representative of the crashes that produce those injuries. More than 18,000 drivers and right front passengers are killed each year in frontal impacts, and more than 290,000 drivers and right front passengers experience moderate to critical non-fatal injuries. These numbers would be significantly higher without effective air bags.

In order to promulgate safety standards that protect the public against unreasonable risk of death or injury in a crash, and to fulfill our specific duty under TEA 21 to improve occupant protection for occupants of different sizes, belted and unbelted, it is necessary for Standard No. 208 to address these crashes. In addition, by requiring vehicles to provide protection over a range of crash severities, e.g., in tests at speeds "up to" a given velocity, we also address protection for lower severity crashes. The upper level severity must, however, be sufficient to ensure that manufacturers provide life-saving occupant protection in higher speed crashes.

The following figures, derived from National Automotive Sampling System (NASS) data for years 1993–1997, show the cumulative distribution of injuries and fatalities in frontal crashes by delta V,[16] for all occupants, belted occupants, and unbelted occupants:

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[16] As used here, "delta V" refers to the crash-induced change in velocity of a vehicle in a crash. When looking at the severity of a crash and its influence on air bag design, delta V is not the only important factor. Another important factor is the time to reach that delta V. The time is important because it affects the speed at which the occupant strikes the interior of the vehicle, i.e., for a given delta V crash, the shorter the time duration, the higher the occupant impact speed.

Figure 3: Cumulative Distribution of Injuries: All Occupants
by Delta V & Injury Severity (Frontals) - CDS 93-97

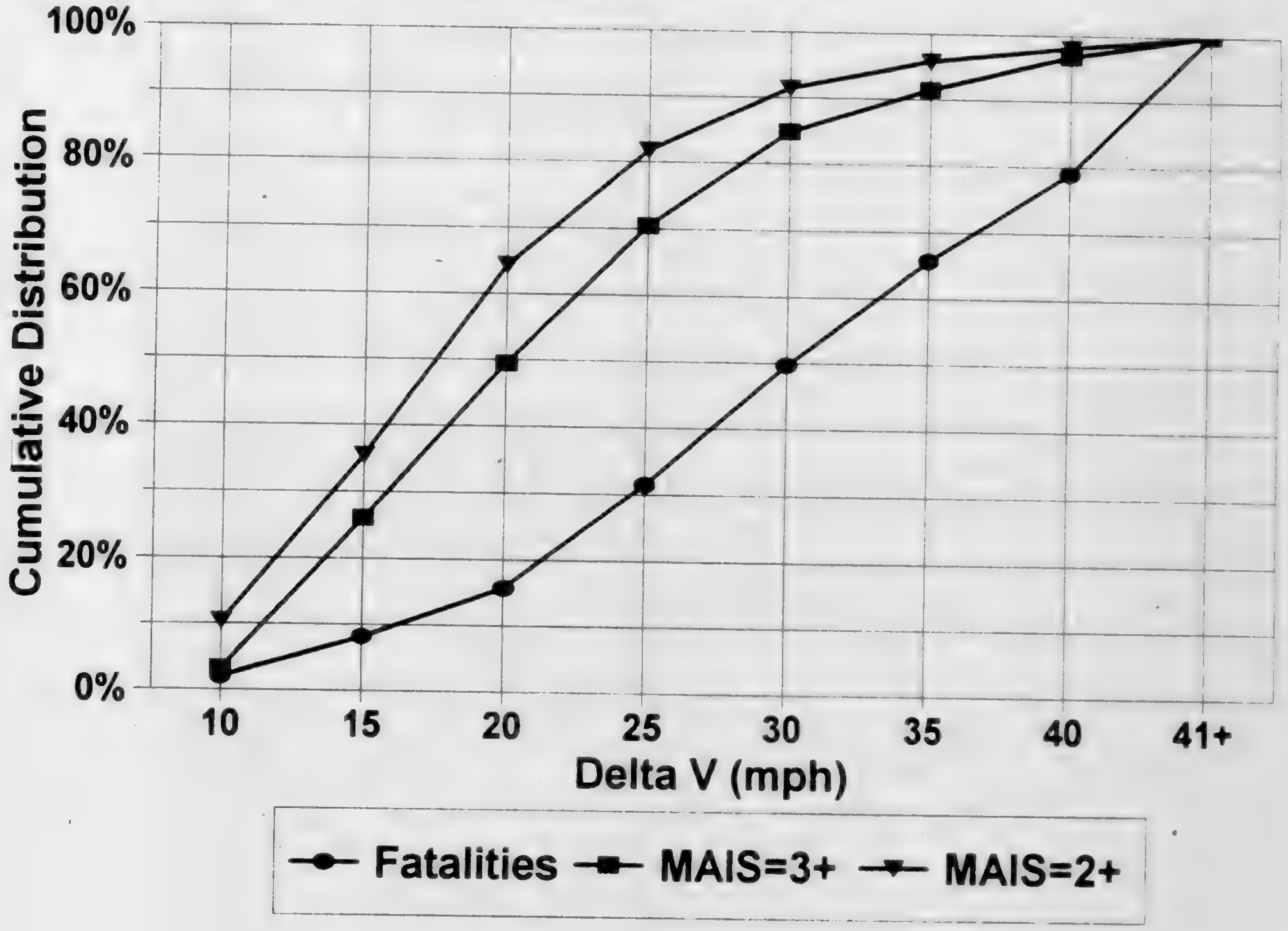

Figure 4: Cumulative Distribution of Injuries: Belted Occupants
by Delta V & Injury Severity (Frontals) – CDS 93-97

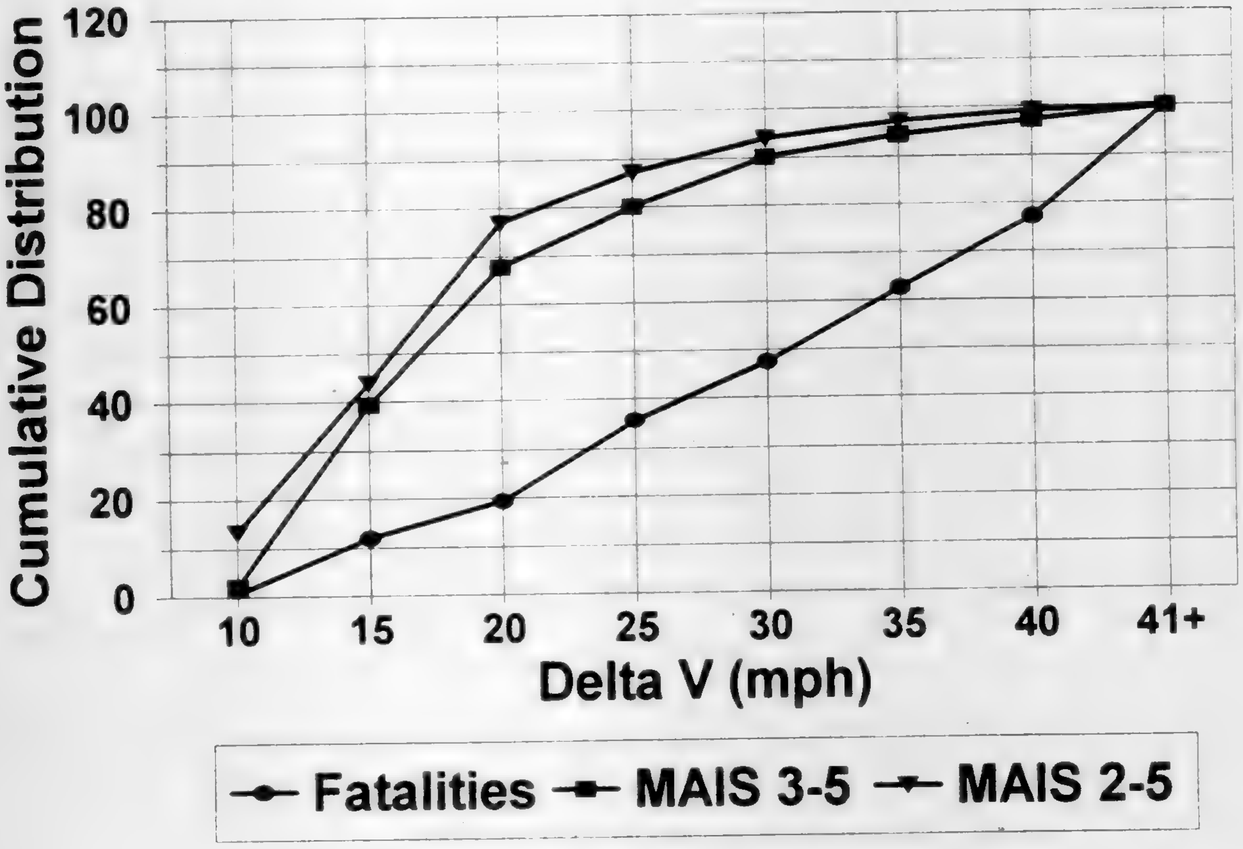

Figure 5: Cumulative Distribution of Injuries: Unbelted Occupants by Delta V & Injury Severity (Frontals) - CDS 93-97

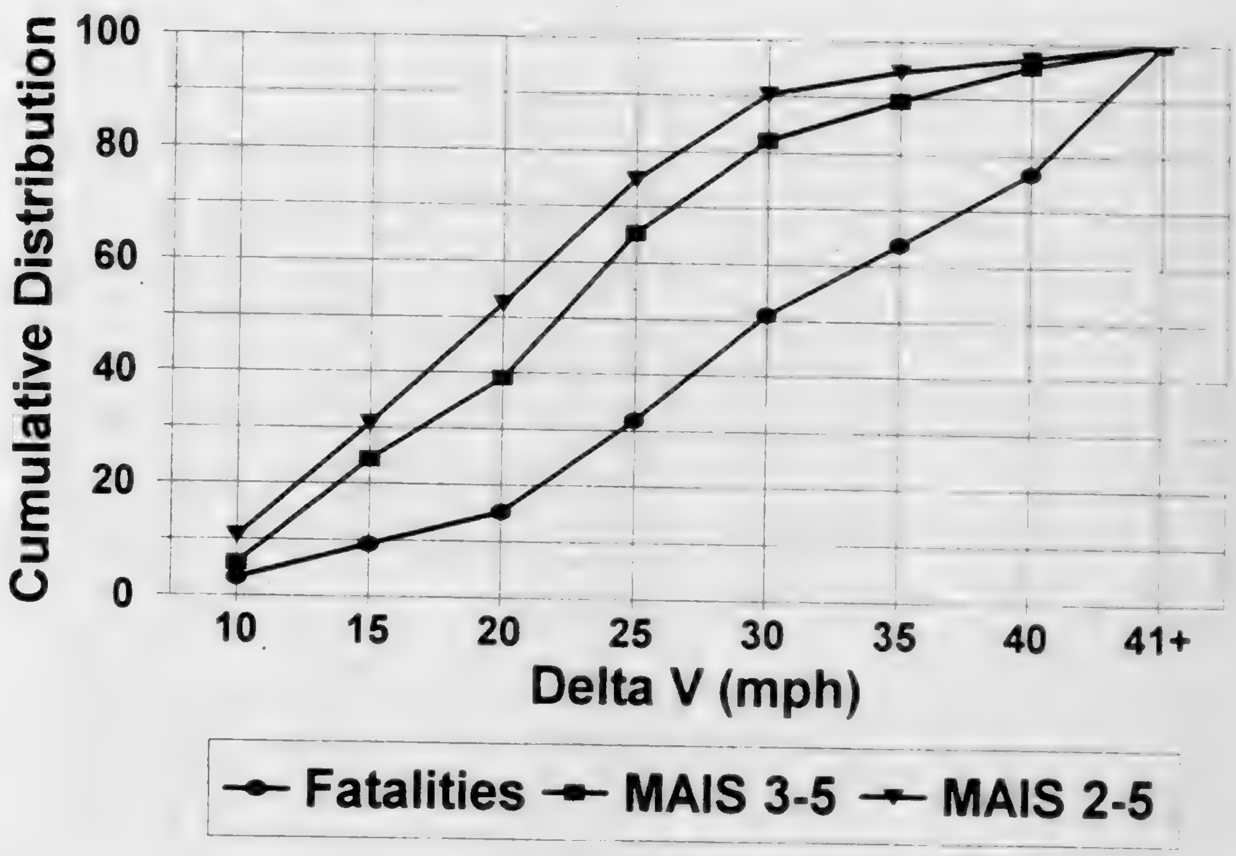

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The figures show the cumulative distribution of injuries by delta V for fatalities, for MAIS 3+ injuries, and for MAIS 2+ injuries. MAIS 3+ injuries are those which are classified as serious or greater injury, while MAIS 2+ are those which are classified as moderate or greater.[17]

We can see several things by examining the figures. About 50 percent of fatalities in frontal crashes occur at delta V's below 48 km/h (30 mph), and about 50 percent occur at delta V's above 48 km/h (30 mph). Looking separately at unbelted and belted occupants, 51 percent of the fatalities involving unbelted occupants and 47 percent of the fatalities involving belted occupants occur in frontal crashes at delta V's below 48 km/h (30 mph). We note that the delta V in NASS represents the speed at which the vehicle would strike a rigid barrier to duplicate the amount of energy absorbed in the crash. Thus, about half of fatalities in frontal crashes occur in crashes that are more severe than a 48 km/h (30 mph) rigid barrier crash, and half of all frontal crash fatalities occur in crashes that are less severe than a 48 km/h (30 mph) rigid barrier crash. Given that Standard No. 208's unbelted crash test requirements are intended to save lives, we disagree that 48 km/h (30 mph) rigid barrier crashes are unrepresentative of the kinds of crashes in which we are seeking to ensure protection.

As to the argument that returning to the unbelted 48 km/h (30 mph) rigid barrier test would prevent continued use of "depowered" air bags and require use of "overly aggressive" air bags, the agency will have to consider the information available to it in making a final decision.[18]

In the NPRM, we noted that, based on very limited data, it appeared that many, perhaps most, vehicles with redesigned air bags continue to meet the historical 48 km/h (30 mph) rigid barrier requirements of Standard No. 208 (using 50th percentile adult male dummies and applying the current injury criteria performance limits) by fairly wide margins. At that time, we had tested five vehicles with redesigned driver air bags in unbelted 48 km/h (30 mph) rigid barrier tests, and all passed Standard No. 208's previous injury criteria by significant margins. We had tested six vehicles with redesigned passenger air bags in unbelted 48 km/h (30 mph) rigid barrier tests, and all but one passed the standard's injury criteria performance limits by significant margins.

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[17] The AIS or Abbreviated Injury Scale, first developed by the Association for the Advancement of Automotive Medicine in 1971, is a consensus-derived, anatomically based system that ranks individual injuries by body region on a scale of 1 to 6 as follows: 1=minor, 2=moderate, 3=serious, 4=severe, 5=critical, and 6=maximum/currently untreatable. The AIS is intended as a measure of the severity of the injury itself and not as a measure of impairments or disabilities that may result from the injury. It does not assess the combined effects of multiple injuries to a patient. The AIS was revised and updated several times, with the most recent revision in 1990. MAIS represents the maximum injury severity (expressed in terms of AIS) of any injury received by a person, regardless of the nature or location of the injury.

[18] It is difficult to respond to the industry argument that the 48 km/h (30 mph) barrier test would prevent continued use of "depowered" air bags because "depowered" is an amorphous, relative concept, not an absolute one. The term simply means "less power than before." Saying that an air bag is depowered is not a statement that the air bag has more or less than some specific pressure rise rate or overall peak pressure of the air bag inflator. Thus, there is no way of examining or testing an air bag to determine whether it is "depowered."

Further, not all pre-depowered air bags had the same level of power. Indeed, there was a wide variation in the level of power of pre-depowered air bags. Likewise, there is variation in the level of power of depowered air bags. In addition, Parents for Safer Air Bags (Parents) noted that many of today's vehicles incorporate a whole array of air bag design improvements, making it difficult to attribute the apparent decrease in air bag fatalities and injuries to any particular feature or combination of features.

Accordingly, in this document, we generally use the term "redesigned" in referring to air bags that have been changed in various ways since MY 1997, including, in many cases, a reduction in the pressure rise rate and/or overall peak pressure of the air bag inflator. These air bags have not been depowered as much as the sled test permits. Further, most of the redesigned air bags tested by the agency meet the unbelted 48 km/h (30 mph) barrier test.

Some vehicle manufacturers objected to our analysis in this area. They argued that, given the variability associated with testing different vehicles of the same design, the fact that a particular vehicle had passed a single test would not necessarily allow them to certify that model vehicle as complying with Standard No. 208 because there would not be a sufficient margin of compliance to ensure that all vehicles of that model would pass the test. Some manufacturers indicated that they need a 20 percent margin of compliance in order to so certify. Vehicle manufacturers also stated that they need to ensure that all variations and configurations of a model would pass the test and that, in some cases, we tested a configuration which would result in lower injury criteria readings than other variations and configurations.

We continue to believe that a key way of assessing the validity of the argument that a return to the 48 km/h (30 mph) barrier test would—at least in the absence of additional technological improvements—prevent continued use of redesigned air bags is to test vehicles with those air bags in 48 km/h (30 mph) barrier tests and see how they perform. Therefore, since issuing our NPRM, we have conducted more barrier tests of vehicles with redesigned air bags.

We have now tested a total of 13 MY 1998–99 vehicles with redesigned air bags in a perpendicular rigid barrier crash test at 48 km/h (30 mph) with unbelted 50th percentile adult male driver and passenger dummies. The vehicles represented a wide range of vehicle types and sizes. In particular, the 13 vehicles included one sub-compact car, one compact car, four mid-size cars (representing high sales volume vehicles), one full-size car, two mid-size sport utility vehicles, one full-size sport utility vehicle, one pickup truck, one minivan, and one full-size van.[19]

For the driver position, 12 of the 13 vehicles passed all the relevant injury criteria performance limits we are proposing in this SNPRM. In the one vehicle with a failure, the MY 1999 Acura RL, the driver dummy exceeded the femur load criteria. For the passenger position, 12 of the 13 vehicles also passed all of the relevant injury criteria performance limits. The MY 1998 Dodge Neon slightly exceeded the 60 g chest acceleration limit (with a value of 61.4 g). The other proposed injury criteria performance limits, (i.e., for HIC, chest deflection, and Nij) were easily met in all the tests; for most there was a greater than 20 percent margin of compliance for both the driver and passenger.

Thus, the tested vehicles with redesigned air bags, ranging widely in vehicle type and size, appear to continue to meet Standard No. 208's 48 km/h (30 mph) unbelted rigid barrier test requirements for 50th percentile adult male dummies, many of them by wide margins.

As to any vehicles that do not meet that test, at this point we simply note that TEA 21 affords lead time before all vehicles must meet whatever tests are incorporated in the final rule to be issued in this rulemaking.

As to the issue of margin of compliance, we agree that manufacturers need to ensure that all of their vehicles meet a test requirement established by a Federal safety standard. However, we do not agree that this means a 20 percent margin of compliance is necessary. The chest g value is the injury criterion that is most likely to be the limiting factor in certifying to the 48 km/h (30 mph) unbelted rigid barrier test requirements for the 50th percentile adult male dummy. Examination of compliance and certification data for pre-redesigned air bags shows that manufacturers often certified vehicles to the requirement with much less than a 20 percent margin of compliance. In fact, margins of compliance for our 48 km/h (30 mph) tests of vehicles with redesigned air bags were not that different from those with pre-redesigned air bags.

We are not suggesting that every current production vehicle would comply with the unbelted 48 km/h (30 mph) rigid barrier test. Instead, we are pointing out that a wide ranging sample of vehicle types and sizes meet the 48 km/h (30 mph) rigid barrier test, for 50th percentile adult male dummies, with redesigned air bags.

However, the ultimate issue of this rulemaking is not whether some MY 1998–99 vehicles with redesigned, single-inflation level air bags currently would not meet the 48 km/h (30 mph) unbelted barrier test requirement. As noted above, many of the air bags in current vehicles were not comprehensively redesigned, but are merely older designs of air bags with less power. TEA 21 mandates the issuance of a final rule based on means that include advanced air bag technologies. We believe the selection of future compliance tests under TEA 21 must be made in the context of those technologies, and not in the context of today's less sophisticated one-size-fits-all air bag designs. Today's air bag systems are not advanced air bags and thus do not respond to factors such as crash severity, occupant weight and occupant location. By contrast, the incorporation of advanced technologies would make air bag systems responsive to those factors. If a manufacturer decided to use a somewhat more powerful air bag to meet a 48 km/h (30 mph) unbelted rigid barrier test, or to provide protection in more severe crashes, the manufacturer could use advanced air bag technologies to provide less powerful levels of inflation in lower severity crashes, for smaller occupants, for belted occupants, and for occupants sitting with the seat in the full-forward position. Manufacturers could also reduce aggressivity of air bags by various means such as optimizing fold patterns, different cover designs, lighter fabrics, etc. Advanced technologies would also enable the manufacturer to suppress air bag deployment in appropriate circumstances, such as when children are present.

As we assess the type and severity level of an unbelted crash test should be included in Standard No. 208, we recognize that we must bear in mind that the issue of the suitability of a unbelted 48 km/h (30 mph) rigid barrier test cannot be determined solely based on whether manufacturers can meet that test with redesigned air bags using 50th percentile male dummies. In the NPRM, we proposed not only to return to that test requirement, but also to require vehicles to be certified to several new crash test requirements and new injury criteria performance limits, including tests using 5th percentile adult female dummies in the full forward seat track position, and to requirements to minimize air bag risks. Vehicle manufacturers commented that some of the design options that are available in redesigning their air bags involve potential trade-offs in meeting the different proposed requirements. For example, the optimum size air bag for meeting test requirements for 50th percentile adult dummies may make it more difficult to meet requirements for 5th percentile adult female dummies, and vice versa. This issue, and the agency's testing of current vehicles to a variety of the proposed test requirements, are discussed later in this notice.

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[19] The specific vehicles and their classes included a Saturn (sub-compact car), a Neon (compact car), an Intrepid, Camry, Taurus, and Accord (mid-size cars), an Acura RL (full-size car), an Explorer and Cherokee (mid-size SUV's), an Expedition (large SUV), a Tacoma (pickup truck), a Voyager (minivan), and an Econoline (full-size van).

Proposed alternative unbelted crash tests. In the NPRM, we indicated that while we believe the 48 km/h (30 mph) unbelted rigid barrier test is a good approach, we were also willing to consider alternative unbelted crash tests. The only alternative unbelted crash test advocated by a commenter that could realistically be implemented within the time frame of this rulemaking is the unbelted 56 km/h (35 mph) offset deformable barrier test suggested by IIHS. As noted earlier, IIHS stated that this configuration would address not only protection in asymmetric crashes but also some issues of intrusion that are related to restraint system performance, e.g., steering column movement.

Given the continued debate over what requirements should apply to ensure protection to unbelted occupants, we want to be sure that we have considered and received the benefit of public comments on the various alternative approaches that are available at this time. One approach, of course, is the one we proposed in the NPRM, the unbelted rigid barrier test. We note that some have suggested that, instead of conducting this test at speeds up to 48 km/h (30 mph), we reduce the maximum speed. Ford, for example, suggested in 1995 that we adopt an upper speed of 40 km/h (25 mph). It coupled this suggestion with the further suggestion that the speed of the belted test be increased to 56 km/h (35 mph).[20] In its recent consensus statement, the Alliance has suggested a single speed test (perpendicular impact only) of 40 km/h (25 mph).

A second possible approach is an unbelted fixed offset deformable barrier test, along the lines suggested by IIHS in its comment on the September 1998 NPRM. While, as discussed above, that organization has recently identified some concerns about that test, we believe an unbelted offset deformable barrier test represents a sufficiently interesting alternative approach to warrant seeking public comment. As to the concern that IIHS recently identified about air bag systems possibly having difficulty distinguishing between the offset test and a low speed crash during the time the decision whether to deploy the air bag must be made, we note that it may be possible to address this potential problem by using advanced sensing systems. That is one of the issues for which we would like to receive public comments. By requesting public comments, we will obtain additional data and views to better enable us to make a thorough evaluation of the merits of including such a test in Standard No. 208.

For this SNPRM, we are proposing and seeking comments on two alternative unbelted tests. The first alternative is the unbelted rigid barrier test (perpendicular and up to ±30 degrees oblique to perpendicular with 50th percentile adult male dummies, but perpendicular only in tests with 5th percentile adult female dummies) with a maximum speed to be established within the range of 40 to 48 km/h (25 to 30 mph). As part of this alternative, we are considering the possibility of coupling a lower speed for the unbelted barrier test with a higher speed for the belted barrier test. The second alternative is an unbelted offset deformable barrier test with a maximum speed to be established within the range of 48 to 56 km/h (30 to 35 mph). A vehicle would have to meet the requirements both in tests with the driver side of the vehicle engaged with the barrier and in tests with the passenger side engaged.

We note that, in considering a range of upper severity levels, the upper severity level could be adjusted by either changing the test speed or applying different injury criteria limits at higher speeds. For example, in our rulemaking to facilitate quick redesign of air bags, in lieu of the sled test, we identified the possibility of maintaining the 48 km/h (30 mph) unbelted rigid barrier test, but relaxing the limit on chest g's. We also note the possibility of specifying relaxed injury criteria performance limits or lower maximum test speeds that would apply during the TEA 21 phase-in period and more stringent ones that would apply thereafter.

For all of the unbelted crash tests proposed in this document, protection would be required in crashes ranging from a specified minimum speed to a specified highest speed, rather than at all speeds "up to" that specified highest speed.

Under the unbelted rigid barrier test alternative, the agency would not test at a speed of less than 29 km/h (18 mph), and under the unbelted offset deformable barrier test alternative, the agency would not test at a speed of less than 35 km/h (22 mph). (We are proposing a higher minimum test speed for the latter alternative because, for a given speed, it is a less severe test.) This is a departure from the proposal in the NPRM and from prior agency practice. One reason for this change is that we want to be sure that the standard does not push deployment thresholds downward, i.e., cause air bags to be deployed at lower speeds than are appropriate for maximum occupant protection. Commenters indicated that, in order to meet neck injury criteria, air bag deployments might be required at very low speeds, even in crashes with a delta-V lower than 10 mph, particularly with the 5th percentile adult female dummy in the full forward position. While the issue of the most appropriate threshold for air bag deployment is complex, we believe there is a consensus that "no fire" thresholds should not be any lower than they are at present. Moreover, neck injuries are not a significant problem in lower speed crashes.

The proposed high speed unbelted offset deformable barrier test would involve the same crash configuration as we proposed in the NPRM for the up-to-40 km/h (25 mph) belted offset deformable barrier test. Vehicles would have to meet the requirements in tests with both the vehicle and the passenger side of the vehicle engaged. The test would, of course, be conducted at higher speeds, and unbelted 50th percentile adult male dummies and 5th percentile adult female dummies would be used.

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[20] The agency examined Ford's recommendation in a status report titled "On the Issue of Testing Air-Bag Equipped Vehicles with and without Belt Restraints at Different Speeds," November 2, 1995. Originally docketed in the docket (No. 74–14; Notice 97–001) for a request for comments published by the agency November 9, 1995 (60 FR 56554); more recently docketed in NHTSA–96–1772–002. In the 1995 request for comments, the agency said:

> While NHTSA anticipates that these smart bag systems will substantially minimize adverse side effects of air bags in the not too distant future, this still leaves the question of what can be done in addition to public education for the near future. Manufacturers may be able to make adjustments to existing air bag systems. Further, NHTSA may be able to make temporary adjustments to its regulations if it is shown to be necessary to enable manufacturers to minimize any adverse side effects during this period.
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> For example, Ford has requested that NHTSA amend its crash testing procedures in Standard No. 208. The standard currently requires test dummies to be protected in a 30 mile per hour (mph) crash both when wearing safety belts and when not wearing the belts (i.e., protected by the air bag alone). Ford asked that the test speed for the unbelted dummies be lowered to 25 mph, while the test speed for the belted dummies be raised to 35 mph. According to Ford, this change would allow manufacturers to better "tune" the interaction between the air bag and the safety belt so as to optimize the protection afforded to occupants who use their belts. Ford stated that the current testing procedure forces manufacturers to base occupant protection designs solely on the air bag, rather than the interaction between the air bag and the belt. Ford believes that such a change can reduce air bag-induced injuries.

The offset deformable barrier test is used in several ways in different parts of the world. The test has been adopted as a requirement in Europe at a speed of 56 km/h (35 mph), using belted 50th percentile adult male dummies, pursuant to EU Directive 96/79 EC. The test is also conducted in Europe at a higher speed, 64 km/h (40 mph), as part of the European New Car Assessment Program. The Australian New Car Assessment Program conducts the same test at the same speed. IIHS also conducts this test at the same speed, using belted 50th percentile adult male dummies to evaluate the crashworthiness of vehicles. Transport Canada is developing a test procedure using belted 5th percentile adult female dummies at impact speeds up to 40 km/h (25 mph) to evaluate air bag sensor performance and air bag aggressivity.

While a great deal has been written on the subject of unbelted rigid barrier tests over the years, the high speed *unbelted* offset deformable barrier test is relatively new. We note that we have been conducting research for several years with the intention of proposing to add a high speed *belted* frontal offset test to Standard No. 208. For information about this research program, see our Report to Congress, Status Report on Establishing a Federal Motor Vehicle Safety Standard for Frontal Offset Crash Testing, April 1997. This report is available on our web site at *http://www.nhtsa.dot.gov/cars/rules/CrashWorthy/offrt.html.*

In our Report to Congress, and in the NPRM (63 FR 49958, at 49960), we stated that we were considering adding the European high speed belted frontal offset test to Standard No. 208 as a supplement to the existing tests. We stated in the Report that the Standard No. 208 rigid barrier test is most effective in preventing head and chest injuries and fatalities, but noted that it does not address lower limb and neck injuries.

We stated further in the Report that while the frontal rigid barrier test of Standard No. 208 does not produce the vehicle intrusion observed in many real world crashes, it does depict those impacts which produce the highest risk of serious to fatal injuries resulting from frontal crashes. We stated that the European frontal test procedure does not address the highest risk of serious to fatal injuries occurring in frontal crashes and that, from our viewpoint, the European test conditions were not acceptable as an alternative to Standard No. 208. We stated, however, that adoption of the European test could yield benefits in terms of a reduction in lower limb injuries.

While our analysis of the European test was made in the context of a belted condition, it nonetheless raises the issue of whether the test is adequately representative of potentially fatal crashes. To address this issue, we have sought to compare the 56 km/h (35 mph) offset deformable barrier crash test recommended by IIHS to a 48 km/h (30 mph) rigid barrier test.

Among other things, we have conducted 56 km/h (35 mph) offset deformable barrier crash tests on MY 1999 Dodge Intrepid and Toyota Tacoma vehicles. Comparing the crash pulses for these tests with the pulses of 40 and 48 km/h (25 and 30 mph) rigid barrier tests that we also conducted using these vehicles, we can make several observations. For each vehicle, there is a long duration, low magnitude acceleration during the initial phase of the test that is associated with the crushing of the deformable barrier face. After the crushing of the barrier face, the remaining segment of the crash pulse is similar to that for the 40 and 48 km/h (25 and 30 mph) rigid barrier tests, and this portion of the acceleration profile generally would fall in between the pulses for those two rigid barrier tests if adjusted with a time shift.

A close look at these pulses suggests that, from the perspective of delta-V, the deformable barrier test is approximately equal in severity to a 45 km/h (28 mph) rigid barrier test. This is consistent with a rule of thumb within the research community that the offset test's barrier equivalent velocity is approximately 20 percent less than the impact speed.

This observation is also supported by findings from our Advanced Frontal Research Program. We provided a number of vehicles tested in both collinear and oblique offset tests to NASS investigators for analysis. The investigators estimated delta Vs that were substantially lower than the impact speeds.[21] Also, IIHS conducted a similar study and observed similar results,[22] *i.e.*, the range of delta Vs were 15 to 28 percent lower than the impact speeds.

It is important to note that although we estimate 45 km/h (28 mph) as the rigid barrier equivalent speed for the 56 km/h (35 mph) offset deformable barrier test, this does not mean that air bags designed to meet the 56 km/h (35 mph) offset deformable barrier test would provide a level of protection equivalent to that provided by air bags designed to meet a 45 km/h (28 mph) barrier-like crashes.

When looking at the severity of a crash and its influence on air bag design, delta V is not the only important factor. Another important factor is the time to reach that delta V. The time is important because it affects the speed at which the occupant strikes the interior of the vehicle, *i.e.*, for a given delta V crash, the shorter the time duration, the higher the occupant impact speed.

As discussed in the test procedures paper, the offset crash test has a long duration deceleration pulse. As a result, occupants in a vehicle involved in such a crash would impact the interior components at lower speeds than occupants who were in a vehicle involved in barrier-like crashes. Because of this aspect of offset crashes, the test procedures paper separates the crash events in NASS and estimates a substantially lower target population for the offset test than for the rigid barrier test.

The high speed unbelted rigid barrier test and the high speed unbelted offset deformable barrier test are significantly different, and each has potential advantages as compared to the other.

Among the considerations that are relevant to the high speed unbelted rigid barrier test are the following—

- It involves a stiffer crash, thereby promoting the design of soft frontal structure and deeper air bags that provide more protection against AIS ≥ 3, life-threatening, head/chest injuries in higher speed crashes.
- It promotes the design of wider air bags which provide head and chest protection in the angular component of the test.
- It is a well known test condition. It has been part of Standard No. 208 since 1984.
- It may result in more repeatable test results than an offset test would provide. Since the offset test involves striking a soft structure, there may be a chance of air bag sensor timing variability. Variations in air bag sensor timing can lead to variations in occupant kinematics. The rigid barrier test, on the other hand, results in relatively consistent air bag deployment timings.
- The full frontal rigid barrier test represents a vehicle striking a like vehicle.

Among the considerations that are relevant to the high speed unbelted offset deformable barrier test are the following:

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[21] Stucki, Sheldon L. and Fessahaie, Osvaldo, "Comparison of Measured Velocity Change in Frontal Crash Tests to NASS Computed Velocity Change," SAE Paper No. 980649, 1991 SAE International Congress and Exposition, Detroit, March 1998.

[22] O'Neill, Brian, Preuss, Charles A., and Nolan, James M., Insurance Institute for Highway Safety, "Relationships Between Computed Delta V and Impact Speeds for Offset Crashes", Paper No. 96–S9–O–11, Proceedings of Fifteenth International Technical Conference on the Enhanced Safety of Vehicles, Melbourne, Australia, May 1996.

- It provides a more challenging test of the vehicle crash sensors. In order to provide optimal protection to the occupant in a crash, the crash sensors need to make a determination of when to fire the air bag as early as possible. However, the challenge in an offset deformable barrier crash test arises from the fact that the engagement of the offset deformable barrier results in a soft crash pulse which needs to be detected by the sensor for the algorithm to make the decision to deploy, and a harder crash pulse later in the event.
- It provides a more challenging test of the vehicle structure. The offset deformable barrier test engages only 40% of the front structure of the vehicle. Therefore, the crush is concentrated on one side and produces more intrusion into the occupant compartment. The full frontal rigid barrier test engages the entire front of the vehicle in a distributed loading pattern.
- It has greater potential for benefits related to injury from intrusion.
- The deformable barrier is known and used in other test configurations. The European offset crash test requirement and the IIHS crashworthiness evaluations are two examples.
- The deformable barrier can be bottomed out by sports utility vehicles and full size pick-up trucks due to their increased mass and stiffness of the structures involved. To the extent that the deformable barrier is bottomed out, it becomes more like an offset rigid barrier test, thereby potentially providing a more severe crash test for larger, heavier vehicles.
- The offset deformable barrier test is not representative of a vehicle-to-vehicle crash. It is perhaps most easily understood by comparing it to a full frontal rigid barrier test and an offset rigid barrier test. An offset rigid barrier test simulates a crash where the entire crash energy is absorbed by the structural members of the struck side. In an offset deformable barrier test, this energy is shared by the barrier and the vehicle structures. Comparing a full frontal rigid barrier test to an offset rigid barrier test conducted at the same speed, there is greater likelihood of intrusion. The crash pulse for the offset rigid barrier test would likely have about the same peak acceleration but a longer time duration. An offset deformable barrier test at the same speed would likely result in a lower peak acceleration and about the same time duration as the rigid offset barrier test.
- Comparing a 35 mph offset test to a 30 mph full frontal rigid barrier test, the peak g's are likely to less in the offset test, and the time duration of the crash pulse is likely to be substantially longer.

As noted above, the concept of a high speed unbelted offset deformable barrier test is new, so there are very few available data for this test. However, we have tested two vehicles, the MY 1999 Toyota Tacoma and Dodge Intrepid, in unbelted 56 km/h (35 mph) offset tests using both 50th percentile adult male and 5th percentile adult female test dummies. One vehicle, the Tacoma, was able to meet the proposed injury criteria performance limits without difficulty (for both types of dummies and both left and right impacts), while the other vehicle, the Intrepid, had difficulty, particularly with the Nij injury criteria performance limits. Of course, neither of these vehicles was designed with the offset test in mind, so these tests have little relevance to the issue of whether vehicles could satisfy such a requirement.

Some vehicle manufacturers have expressed concerns about an unbelted high speed offset test. GM has expressed concern about the ability of vehicle sensing systems to be able to sense the soft, deformable barrier face of the offset deformable barrier, and still be able to perform well in real world crashes. According to that company, its review of actual vehicle data traces plotting deceleration over time indicates that the frontal offset barrier impact initially looks much like a low speed crash, where no air bag or just a first stage air bag might be used. Because of this, a sensor system might not recognize until well into the crash that the vehicle is undergoing a higher speed, severe crash. GM believes that if this test were made a part of the standard, manufacturers would either have to design their sensors to fire any time they see a lower speed, soft impact, which would cause more low speed deployments, or design the sensors to optimize for real world crashes and risk failing this performance test in the standard.

Honda expressed concern about the similarity in pulses between the 40 km/h (25 mph) offset deformable barrier and the 56 km/h (35 mph) offset deformable barrier crashes. In an August 26, 1999 comment submitted to the docket, Honda stated that, even though these tests are dissimilar in terms of ultimate severity, the crash pulses looked similar during the initial decision period of up to 30 ms. This in part reflects the fact that the initial phase of the test is measuring the deformation of the soft barrier. According to Honda, the vehicle's analytical system will be unable to discern the crash severity and will not be able to accurately predict what stage to fire, or even whether to fire the air bag in a timely fashion. That company indicated that this may result in poor algorithm design.

For additional analysis of the two alternative unbelted tests, readers are referred to the aforementioned paper and supplement prepared by our Office of Vehicle Safety Research concerning potential test procedures for Standard No. 208 and to the Preliminary Economic Assessment which accompanies this SNPRM.

It is important to note that, whatever unbelted test is included in Standard No. 208, manufacturers will be required under the final rule to certify all of their vehicles to a wide variety of new test requirements, and in a very short period of time. The analysis we presented earlier in this document concerning how many vehicles currently appear to meet the 48 km/h (30 mph) unbelted rigid barrier requirements for 50th percentile adult male dummies was intended to address the allegation that a return to the test would prevent continued use of redesigned air bags and require a return to overly aggressive air bags; it did not represent an analysis of how easy it would be to meet that particular test requirement in the context of the overall set of proposed requirements.

In commenting on the NPRM, vehicle manufacturers indicated that, as they consider various air bag designs, they face trade-offs in meeting different proposed test requirements. For example, the optimum air bag for meeting the unbelted rigid barrier test for the 50th percentile adult male driver dummy would be a large air bag filling the space between the dummy and the steering wheel. This would allow the restraining forces to be imparted earlier in the crash event and exert lower g forces on the occupant to allow optimal ride-down from the crash. A smaller air bag would be optimum for meeting the unbelted perpendicular rigid barrier test for 5th percentile adult female dummy in the full forward seating position, since she is positioned closer to the air bag and has less ride-down space to fill between the dummy and the steering wheel. If an excessively large air bag is used, neck readings for the 5th percentile adult female dummy will increase as the larger air bag pushes the head back. Of course, the smallest possible air bag would be optimum for meeting the proposed low risk deployment tests intended to minimize risks from air bags to out-of-position occupants. However, as air bags shrink, so does their ability to provide protection, especially to larger occupants in crashes with potential for serious or fatal injuries. We note that while large air bags may be optimum for meeting the 30 mph unbelted rigid barrier test with 50th percentile adult male dummies, vehicle manufacturers have been able to meet the test with air bags of varying sizes.

Recognizing the issues associated with the need to meet all of the proposed tests together, we have tested current vehicles under a variety of proposed test procedures. For four of the vehicles for which we conducted a 48 km/h (30 mph) rigid barrier test using unbelted 50th percentile adult male dummies, we also conducted a 48 km/h (30 mph) rigid barrier test using unbelted 5th percentile adult female dummies. For all these tests, it bears emphasizing that these vehicles were not designed to comply with the final rule that will be issued in this rulemaking. Thus, while it is useful to know whether current vehicles already meet the tests, the test failures can tell us only which vehicles need to be redesigned. They do not indicate that vehicles cannot be redesigned in the time provided by TEA 21 to comply with that final rule.

Three of the four unbelted 5th percentile adult female driver dummy responses in these tests passed all the injury criteria performance limits we are proposing in the SNPRM. (For the same make model vehicles, the 50th percentile adult male driver dummy also passed all the injury criteria performance limits.). In the fourth test, of the MY 1999 Dodge Intrepid, the 5th percentile adult female driver dummy failed both the chest displacement and Nij performance limits; however the 50th percentile adult male driver dummy passed all the relevant injury criteria performance limits when tested in the same vehicle.

Two of the four unbelted 5th percentile adult female passenger dummy responses passed all the injury criteria performance limits. The MY 1999 Dodge Intrepid slightly exceeded the chest g performance limit (with a value of 62.2 g) and the MY 1999 Toyota Tacoma significantly failed to meet the Nij performance limit (with a value of 2.65).

Two of the four vehicles, the MY 1999 Saturn SL1 and the MY 1998 Ford Taurus, however, passed all the injury criteria performance limits for the driver and passenger using both unbelted 5th percentile adult female and unbelted 50th percentile adult male dummies in the rigid barrier crash tests at 48 km/h (30 mph).

We have also recently conducted rigid barrier tests at 48 km/h (30 mph) using belted 50th percentile adult male and belted 5th percentile adult female dummies in MY 1998 and 1999 vehicles. In 18 tests conducted with the belted 50th percentile adult male dummies, the vehicles passed all the proposed injury criteria performance limits for both driver and passenger. In 17 tests conducted with belted 5th percentile adult female dummies, the vehicles passed all the injury criteria performance limits for the passenger dummy; however, the driver dummy exceeded the proposed Nij injury criteria performance limit in approximately 35% of the tests.

We also conducted static out-of-position tests using the 5th percentile adult female driver dummy and 6-year-old child passenger dummy on six MY 1999 vehicles. The vehicles that were selected were the same as those used in the 48 km/h (30 mph) rigid barrier test with unbelted 50th percentile adult male dummies. (Again, we note that the vehicles were not designed with these test requirements in mind.) Four out of six vehicles, including the MY 1999 Saturn SL1, passed all the static out-of-position test requirements on the driver's side. The remaining two vehicles failed the Nij criteria in Position 1, but passed all the criteria in Position 2.

With the 6-year-old child dummies on the passenger side, only one vehicle, the MY 1999 Acura RL with a dual stage inflator, met all the proposed injury criteria performance limits in both Position 1 and Position 2 tests. Only the primary stage was fired in the tests.

Looking at the various tests we have conducted, it appears that the proposed test requirements are achievable by a number of vehicles even though they were not designed to comply with those requirements. These vehicles meet the 48 km/h (30 mph) unbelted barrier test with both unbelted 50th percentile adult male dummies *and* unbelted 5th percentile adult female dummies, *and* the driver side out-of-position test, with single level inflators. The MY 1999 Saturn SL1 appears to be such a vehicle.

Dual level inflators could make it easier to meet the tests. For example, a higher inflation rate could be used for 50th percentile adult males, while a lower inflation rate could be used for 5th percentile adult female drivers with the seat full forward and for child passengers.

We note that, for the passenger side, a weight sensor or other suppression device might be needed to meet passenger side out-of-position requirements for children, even if a dual level inflator is used. Moreover, a weight sensor or other suppression device would likely be needed to meet requirements for rear facing infant seats. However, the use of a weight sensor or other suppression device on the passenger side should not affect the ability of the vehicle to meet the proposed unbelted and belted crash test requirements using 50th percentile adult male dummies and 5th percentile adult female dummies, since the addition of such a device does not affect the characteristics of the air bag itself.

While the proposed requirements appear to be achievable, the number of failures illustrate that many vehicles will need to be redesigned in a short period of time to meet a highly complex set of new requirements. In many cases, manufacturers will be introducing several new technologies simultaneously: dual level inflators, seat belt sensors, weight/pattern seat sensors, seat track position sensors, more complex algorithms, etc.

In this context, we recognize that simultaneous implementation of these various proposals for minimizing risk and enhancing protection will necessitate considerable care and effort by the vehicle manufacturers. In a normal rulemaking, we would have broad discretion to adjust the implementation schedule to facilitate initial compliance. In this rulemaking, our discretion to set the schedule for implementing the amendments required by TEA 21 is limited by that Act. Our final rule must provide that the phasing-in of those amendments begins not later than September 1, 2003, and ends not later than September 1, 2006.

However, we believe that nothing in TEA 21 derogates our inherent authority to make temporary adjustments in the requirements we adopt if, in our judgment, such adjustments are necessary or prudent to promote the smooth and effective achievement of the goals of the amendments. For example, adjustments could be made to test speeds or injury criteria. One possibility would be to issue a final rule temporarily reducing the maximum speed for the unbelted rigid barrier test to 40 km/h (25 mph) (or some other speed, e.g., 44 km/h (27.5 mph)) and then increasing it to 48 km/h (30 mph) after an appropriate period of time, e.g., after the TEA 21 phase-in. Another possibility would be to temporarily permit relaxed injury criteria performance limits (e.g., 72 g chest acceleration limit instead of 60 g chest acceleration limit) in unbelted rigid barrier tests between 25 mph and 30 mph.

This document seeks comment on still another possibility for the final rule: permanently reducing the unbelted rigid barrier test speed to 40 km/h (25 mph) and temporarily leaving the belted rigid barrier test speed at 48 km/h (30 mph). Under the final rule, the latter test speed would later, sometime after the TEA 21 phase-in schedule, increase to 56 km/h (35 mph).[23]

We note that we have previously considered, in rulemaking, a 40 km/h (25 mph) maximum speed for the unbelted rigid barrier test. However, we considered this issue in the context of Standard No. 208's historic requirements, i.e., testing only with 50th percentile adult male dummies and the old injury criteria, which did not include neck criteria.

Fifteen years ago, in our rulemaking establishing automatic protection requirements, GM advocated a 40 km/h (25 mph) unbelted rigid barrier test to facilitate passive interiors, *i.e.*, building in safety by improving such things as the steering columns and padding. At that time, GM believed passive interiors would be better than automatic restraints, *i.e.*, air bags or automatic seat belts.

Based on available test data, we concluded that it was generally evident that it was within the state-of-the art to pass Standard No. 208's head and chest injury criteria at 40 km/h (25 mph) with unbelted 50th percentile adult male dummies without air bags. We stated that we had virtually no data on what diminution in safety would occur if the lower standard were used and that there was no basis for making such a change. See final rule published in the **Federal Register** (49 FR 28962, 28995; July 17, 1984).

We also note that, for the vehicles we recently tested at 48 km/h (30 mph) for this rulemaking, we also tested a small subset at 40 km/h (25 mph) with unbelted 50th percentile male driver and passenger dummies. In the three tests, the vehicles passed all the proposed driver and passenger injury criteria performance limits with one exception involving a model year 1999 Toyota Tacoma. The passenger dummy exceeded the proposed Nij limit in this test. We also conducted two 40 km/h (25 mph) rigid barrier crash tests with unbelted 5th percentile adult female driver and passenger dummies. Again, the vehicles passed all the proposed driver and passenger injury criteria performance limits with one exception involving the model year 1999 Toyota Tacoma. Again, the passenger dummy exceeded the proposed Nij limit on the passenger side.

In light of the fact that vehicle manufacturers are now recommending an unbelted rigid barrier crash test alternative that omits the oblique tests, we also note that we addressed the possibility of eliminating the unbelted oblique tests in the aftermath of that same rulemaking. See NPRM published in the **Federal Register** (50 FR 14589, 14592–14594) on April 12, 1985, and final rule published in the **Federal Register** (51 FR 9800, 9801–9802) on March 21, 1986.

We decided to retain the oblique tests in that rulemaking. We noted that although oblique tests generally produce lower injury levels, they do not consistently produce that result. We also expressed concern that air bags that only need to meet a perpendicular impact could be made much smaller. We stated that, in such a case, in an oblique crash, an unbelted occupant could roll off the smaller bag and strike the A-pillar or instrument panel.

We welcome comments on how we should consider our past decisions and the rationales underlying them in this current rulemaking.

We note that while we are seeking comments on alternative unbelted tests, including alternative speeds and injury criteria, we plan to adopt a single unbelted test or set of unbelted tests for the final rule. That is, we do not plan to provide a manufacturer option in this area. Depending on the comments, we may adopt some combination of the tests discussed above.

To help us reach a decision on what unbelted test requirements should be included in Standard No. 208, we request commenters to address the following questions:

1. How do the two proposed alternative unbelted crash tests compare in representing the range of frontal crashes which have a potential to cause serious injuries or fatalities? Please answer this separately for the low and high end of the proposed range of upper speeds for each alternative, *i.e.*, 40 and 48 km/h (25 and 30 mph) for the unbelted rigid barrier test and 48 and 56 km/h (30 mph and 35 mph) for the unbelted offset deformable barrier test. In answering this question, please consider the entire range of tests incorporated into each alternative. Please specifically address representativeness with respect to (a) crash pulses, (b) crash severities, and (c) occupant positioning, and provide separate answers for crashes likely to cause fatalities and crashes likely to cause serious but not fatal injuries.

2. How do the two alternatives compare with respect to repeatability, reproducibility, objectivity, and practicability issues?

3. What effects would each of the alternative types of unbelted tests and each of the alternative maximum test speeds discussed in this SNPRM have on air bag design, performance, risks and benefits, and on amount of depowering permitted? Answers should focus particularly on unbelted 40 km/h (25 mph)/belted 56 km/h (35 mph) versus unbelted 48 km/h (30 mph)/belted 48 km/h (30 mph), and on unbelted 56 km/h (35 mph)offset/belted 48 km/h (30 mph) versus unbelted 48 km/h (30 mph)/belted 48 km/h (30 mph). To what extent can it be concluded that a countermeasure needed to meet each alternative would ensure protection in frontal crashes not directly represented by the tests included in that alternative, e.g., crashes with different pulses (harder or softer) or different severities (more severe or less severe)? Please quantify, to the extent possible, the amount of protection that would be ensured in other types of crashes, i.e., what the injury criteria measurements would be. Please address whether and how the answer to this question would differ for the low and high end of the proposed range of upper speeds for each alternative.

4. To what extent would current air bag systems (or air bag systems being developed for near-term application) have difficulty distinguishing between a high speed offset deformable barrier test and a low speed crash during the time the decision whether to deploy the air bag must be made? What technological solutions, e.g., advanced sensing systems (including use of satellite sensors and improved algorithms) are available to address this potential problem? How should we consider this issue in selecting among the available unbelted crash test alternatives?

5. One reason for adopting a test requirement that is less stringent than another during the TEA 21 phase-in period would be to provide an extra margin of flexibility and facilitate compliance during the time vehicle manufacturers are introducing advanced air bags incorporating multiple new technologies. An example of such an approach would be the phase-in sequence described above in which the final rule would provide that the maximum speed for the unbelted rigid barrier test would initially be 40 km/h

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[23] We recognize that this alternative would increase the test speed of the belted test to the level of the belted test currently conducted under NHTSA's NCAP program. If this alternative were chosen, NHTSA contemplates retaining the current NCAP test speed through the end of the TEA 21 phase-in period. The agency would then review that NCAP test.

(25 mph) (or some other speed) and then increase to 48 km/h (30 mph) after an appropriate fixed period of time. If we were to adopt a less stringent test requirement for an initial period, how long should that period be and why?

6. What factors should we consider in selecting a maximum speed for the two alternatives?

7. The severity of a crash test requirement could be adjusted either by reducing the maximum speed at which the test is conducted or by leaving the maximum speed unchanged, but relaxing the injury criteria performance limits for the tests that are conducted near the upper end of the range of test speeds. For example, if we were to reduce temporarily the severity of the unbelted up-to-48 km/h (30 mph) rigid barrier test, one possible way of doing this would be to reduce the stringency of the injury criteria performance limits between 40 km/h (25 mph) (or some other speed) and 48 km/h (30 mph). While this could provide significant increased flexibility to vehicle manufacturers, it could still address the issue of protection in higher speed crashes. Also, certification and compliance test data could be directly compared to that obtained in 48 km/h (30 mph) rigid barrier crash tests over many years. We specifically request comments on this approach and what injury criteria performance limits would be appropriate if we were to adopt it.

8. Should we consider combining aspects from each of the two unbelted alternatives? For example, the unbelted rigid barrier test alternative includes both perpendicular and angle tests. A variation on this approach might be to retain the perpendicular test, but replace the angle tests with offset deformable barrier tests. We request comments on this or any other possible ways of combining aspects from the two unbelted alternatives.

9. Given the existing and anticipated advanced air bag technologies, to what extent is it necessary, and why, to link decisions about improving protection to decisions about minimizing the risks? What portion of those risks would remain after full use of existing and anticipated advanced air bag technologies?

10. If it is believed that a return to the 48 km/h (30 mph) unbelted barrier test would necessitate an increase in the power of any vehicle's air bags, indicate which models would need air bags with increased power and indicate the potential amount of increase. Explain how the amount of needed increase was determined and the effects on safety of such an increase.

11. To what extent could non-air bag changes, such as improved crush zones, be used to avoid any increases in air bag aggressivity if there were a return to the 48 km/h (30 mph) unbelted barrier test? To what extent can advanced features such as improved fold patterns, lighter fabrics and recessed air bag modules be used to offset, or more than offset, any increases in power so that those increases do not result in increased air bag aggressivity?

12. To what extent could the various types of static suppression be used to reduce the risk to children? In what circumstances would such suppression not minimize risk? To what extent could the lower level of dual-level inflators be linked with sensors of such factors as crash severity, seat position, belt use and weight/pattern be used to reduce the risk to drivers who adjust their seats full forward or nearly full forward? In what circumstances would such technology not minimize risk? If there would be residual risk to children or to those drivers after the use of those technologies, what is the magnitude of that risk? To what extent would that residual risk be affected by the decision regarding an unbelted test requirement?

13. To what extent does each vehicle manufacturer plan to take full advantage, across their vehicle fleets, of the advanced air bag and other technologies mentioned in questions 11 and 12 above?

14. Given that available test data indicate that some vehicles already meet or exceed the injury criteria for 50th percentile male dummies in unbelted 48 km/h (30 mph) tests, explain why those margins of compliance cannot be increased in the time provided by the TEA 21 schedule and why other vehicles cannot be designed to achieve similar margins of compliance.

15. Provide test data and analysis to support the answers to questions 1–14.

16. To what extent do available test data regarding advanced air bag technologies support the appropriateness of or need for each of the alternative types unbelted tests and each of the alternative maximum test speeds discussed in this SNPRM? Answers should focus particularly on unbelted 40 km/h (25 mph)/belted 56 km/h (35 mph) versus unbelted 48 km/h (30 mph)/belted 48 km/h (30 mph), and on unbelted 56 km/h (35 mph)offset/belted 48 km/h (30 mph) versus unbelted 48 km/h (30 mph)/belted 48 km/h (30 mph).

17. What lead time would be needed for a 56 km/h (35 mph) belted rigid barrier test requirement?

ii. Proposed Array of Crash Test Requirements.

As noted earlier, vehicle manufacturers argued that some of the crash test requirements we proposed in the NPRM were redundant, given the other tests. In developing this SNPRM, we have carefully considered whether we could reduce the number of proposed tests without significantly affecting the benefits of the NPRM. Using the methodology for counting tests discussed earlier in this document, we are proposing a total of nine crash tests instead of 14.

The specific nine tests differ, of course, depending on which alternative unbelted tests are included.

The set of nine tests which includes the unbelted rigid barrier test includes the following tests:

—belted rigid barrier test (perpendicular and up to ± 30 degrees) using 50th percentile adult male dummies (counts as three tests: one at +30 degrees, one perpendicular, and one at −30 degrees);

—belted rigid barrier test (perpendicular only) using 5th percentile adult female dummies;

—unbelted rigid barrier test using 50th percentile adult male dummies (counts as three tests);

—unbelted rigid barrier test (perpendicular only) using 5th percentile adult female dummies; and

—belted up-to-40 km/h (25 mph) offset deformable barrier test (driver side of the vehicle engaged with the barrier) using 5th percentile adult female dummies.

This set of proposed tests eliminates five tests that were included in the NPRM. First, for both the belted and unbelted rigid barrier tests, we are proposing to test the 5th percentile adult female dummy in the perpendicular test only, i.e., not in oblique tests. This would eliminate four tests.

In many cases, crash tests become less stringent as dummies become lighter and/or closer to the air bag. However, this is not true if the dummy is so close that it contacts the air bag early in the deployment process. For the rigid barrier test using 5th percentile adult female dummies, the condition in which this would most likely occur is in a perpendicular impact. Therefore, we believe that the perpendicular tests (belted and unbelted) would address this concern. We also believe that, if the vehicle can pass the perpendicular test with 5th percentile female dummies and the oblique tests with 50th percentile adult male dummies, it will also pass the oblique tests using 5th percentile adult female dummies.

The primary function of the oblique test is to assure a wide air bag. The 50th percentile adult male dummy presents a greater challenge than the 5th percentile adult female dummy does in such a test. Thus, the oblique tests with the 5th percentile adult female dummy would add test costs without providing additional safety benefits.

Second, for the belted up-to-40 km/h (25 mph) offset deformable barrier test, we are proposing that the test be conducted only with the driver side of the vehicle engaged with the barrier. This would eliminate one additional test. We believe that testing the vehicle on the driver side only would be a sufficient means of testing air bag sensing systems.

We note, by contrast, that we believe it would be necessary to test the vehicle with each side of the vehicle engaged if we adopted the unbelted high speed offset deformable barrier test instead of the unbelted rigid barrier test to ensure that the air bags are wide enough to provide protection for occupants that move forward in a direction that is either to the right or left of perpendicular.

The set of nine tests which includes the unbelted high speed offset deformable barrier test includes the following tests:

—belted rigid barrier test (perpendicular and ± 30 degrees) using 50th percentile adult male dummies (counts as three tests);

—belted rigid barrier test (perpendicular only) using 5th percentile adult female dummies;

—unbelted offset deformable barrier test (driver and passenger sides of vehicle engaging the barrier) using 50th percentile adult male dummies (counts as two tests);

—unbelted offset deformable barrier test (driver and passenger sides of vehicle engaging the barrier) using 5th percentile adult female dummies (counts as two tests); and

—belted up-to-40 km/h (25 mph) offset deformable barrier test (driver side of the vehicle engaged with the barrier) using 5th percentile adult female dummies.

In the NPRM, we proposed specifications for the deformable barrier to be used in offset deformable barrier tests. The specifications for this barrier would be included in Part 587. We are not republishing the specifications in this SNPRM but expect to proceed to a final rule in a separate document. We do not expect any significant changes from the NPRM.

We also proposed in the NPRM to include, for all crash tests specified by the standard, certain vehicle integrity requirements. The proposal specified that vehicle doors may not open during the crash test and that, after the crash test, it must be possible for technicians to open the doors and move the seats as necessary to allow evacuation of all occupants.

Several commenters raised concerns about these proposed requirements, including ones relating to objectivity. After considering the comments, we have decided to drop these requirements from the SNPRM.

While we believe it is important for doors to remain closed during crashes, and for occupants to be extricated from a vehicle after a crash, we believe that significant additional development of the proposed test procedures would be necessary for a final rule. Moreover, we believe this subject is sufficiently distinct from advanced air bags so as to best be considered in other contexts, particularly with the need for us to issue a final rule on advanced air bags by March 1, 2000.

iii. Location and Seating Procedure for 5th Percentile Adult Female Dummy

A seating procedure for the 5th percentile adult female test dummy is detailed in section S16 of the proposed regulatory text. The procedure takes into account two separate concerns. The first issue is where to place the vehicle seat during testing; the second issue is how to place the dummy in the vehicle seat.

From the outset, crash tests with 50th percentile adult male dummies have been conducted with the seat in the middle seat track position. We do not propose to change that provision. However, we have proposed in the NPRM and this SNPRM to conduct tests with 5th percentile adult female dummies with both the driver and passenger seats in the full forward position. We believe that this is the most vulnerable position for occupants in the real world and is also the most demanding for the occupant protection system. Individual drivers who are approximately the size of the 5th percentile adult female dummy are the most likely, because of their size, to sit farther forward than the middle seat track position and are more likely than larger drivers to use the full forward position. Occupants of any size may occasionally use that seat position on the passenger side, depending on the passenger or cargo space needs in the back seat. As a general principle, we believe that people should be able to safely use a seat as it was designed to be used.

If manufacturers find they cannot provide protection to individuals properly positioned in the forward track position, they have the option of moving that position back, particularly on the passenger side. With respect to the driver side, manufacturers might have to make other adjustments to the vehicle, such as providing adjustable pedals, that would allow small-statured drivers to operate the vehicle.

Nevertheless, we are aware that the placement of the 5th percentile adult female dummy in the full forward position tests the occupant restraint system under a condition that may rarely occur in the real world. The University of Michigan Transportation Research Institute (UMTRI) has found that drivers who are approximately the same size as the 5th percentile adult female dummy generally do not sit in the full forward seat track position. Other commenters have stated that the front passenger seat would never need to be placed in the full forward position due to occupant size. Rather, placement of the passenger seat in that track position would only occur on those rare occasions when the entire space in the back seat was needed for cargo or other purposes.

Another concern is whether, in order to meet tests for conditions that rarely occur in the real world, manufacturers might select air bag designs that offer reduced fatality-reducing protection for conditions that are more common.

We also note that, under our proposal, the 5th percentile adult female dummy would also be tested on the driver side in two out-of-position tests that place the dummy directly on the air bag module. While this would not ensure protection in a high speed crash, it would ensure that the air bag does not cause harm.

Accordingly, we are interested in comments on whether testing the 5th percentile adult female dummy with the seat position in something other than the full forward seat track position would adequately protect properly-seated individuals of all sizes while potentially allowing more design freedom.

The proposed seating procedure was developed considering the work performed by the SAE Hybrid III 5th Seating Procedure Task Group and by NHTSA's Vehicle Research and Test Center (VRTC). The 50th percentile Hybrid III adult male dummy is the only dummy currently used for Standard No. 208 compliance crash testing. For that testing, the dummy is positioned according to S10 of the standard. As part of that procedure, the H-point of the dummy is located using the manikin and procedures in SAE Standard J826.[24] For the 5th percentile adult female dummy, the SAE task group is currently voting and commenting on the acceptability of a procedure that uses an SAE Standard J826 50th percentile adult male manikin with reduced length legs to locate the H-point of the 5th percentile adult female dummy. Then a dummy positioning procedure is used to place the female dummy at the H-point located by the modified manikin. It is unknown when this procedure will be completed.

Given the absence of an SAE-accepted seating procedure for the 5th percentile adult female dummy, we decided to perform some of our own positioning tests so that a 5th percentile adult female procedure would be available for this rule. VRTC positioned a 5th percentile adult female dummy several times in various vehicles using a positioning procedure without intermediate seating devices. The H-point location was measured and the variation in H-point location between repeats was reviewed. Then the 5th percentile adult female prototype manikin (supplied by Ford Motor Company) was used to locate the H-point with respect to the seat. The variation in H-point location between repeats was reviewed.

The procedures demonstrated that the location of the H-point of the 5th percentile adult female dummy and the H-point of the 5th percentile adult female prototype manikin with respect to the seat were very similar. Longitudinally, the difference in the average "H" point location between the dummy and the manikin varied from 1 mm to 17 mm (0.04 in. to 0.67 in.). Vertically, the comparable figures were 4 mm to 10 mm (0.16 in. to 0.41 in.). Since there was little difference between the two methods, the extra step of using the manikin to determine the H-point location was found to be unnecessary. In addition, there is no guarantee of when the 5th percentile adult female manikin would be available and accepted for use by the safety community. Therefore, VRTC developed the procedures that are in section S16 of the proposed rule.

We believe it would be appropriate to use the manikin procedure for the 50th percentile adult male dummy and not for the 5th percentile adult female dummy. The 50th percentile adult male dummy (78 kg (171 pounds)) is 28 kg (63 pounds) heavier than the 5th percentile adult female (49 kg (108 pounds)) and therefore much more difficult to maneuver into position. The 50th percentile adult male manikin H-point provides a specific target for this heavy dummy so that it can be positioned in the seat. The lighter 5th percentile adult female dummy does not need this target. In addition, the 5th percentile adult female buttocks profile may fit differently into a highly curved fitted seat than the 50th percentile adult male dummy and therefore the use of the 50th percentile adult manikin for the 5th percentile adult female dummy seating procedure may cause more variability in dummy positioning. Thus we believe the proposed non-manikin procedure makes it easier to repeatedly position the 5th percentile adult female dummy.

2. Tests for Requirements To Minimize the Risk to Infants, Children and Other Occupants From Injuries and Deaths Caused by Air Bags

a. Safety of Infants.

Infants in rear-facing child safety seats (RFCSS) are at significant risk from deploying air bags, since the rear facing orientation of the child seat places their heads extremely close to the air bag cover. This is why we emphasize that infants in RFCSS must never be placed in the front seat unless the air bag is turned off.

In the NPRM, in order to address the risks air bags pose to infants in RFCSS, we proposed two alternative test requirements, the selection of which would be at the option of the manufacturer. The two manufacturer options were: (1) test requirements for an automatic air bag suppression feature or (2) test requirements for low-risk deployment involving deployment of the air bag in the presence of a 12-month old Child Restraint Air Bag Interaction (CRABI) dummy in a RFCSS.

Under the NPRM, if the automatic suppression feature option were selected, the air bag would need to be suppressed during several static tests using, in the right front passenger seat, a 12 month old child dummy in a RFCSS, and also during rough road tests. The RFCSS would be placed in a variety of different positions during the static tests. In order to ensure that the suppression feature did not inappropriately suppress the air bag for small-statured adults, the air bag would need to be activated during several static tests using a 5th percentile adult female dummy in the right front passenger seat, and also during rough road tests using that dummy.

If the low risk deployment option were selected, a vehicle would be required to meet specified injury criteria when the passenger air bag is deployed in the presence of a 12 month old child dummy placed in a RFCSS. In the case of air bags with multiple inflation levels, the injury criteria would need to be met for all levels.

For our SNPRM, we are proposing the same two basic options, but with several changes.

First, under the NPRM, manufacturers would have been required to assure compliance in tests using any child restraint capable of being used in the rear facing position which was manufactured for sale in the United States between two years and ten years prior to the date the first vehicle of the MY carline of which the vehicle is a part was first offered for sale to a consumer. For our SNPRM, manufacturers would be required to assure compliance using any child restraint included in a list of representative child restraints that we are proposing to add as an appendix to Standard No. 208. The list would be periodically updated to reflect changes in the types and designs of available child restraints. We believe this approach addresses the practicability and cost concerns raised by commenters but still ensures that vehicle manufacturers take account of the variety of different RFCSS as they design their systems. The issue of how we selected the proposed list of child restraints is discussed later in this notice.

Second, our SNPRM drops the proposed rough road tests. We proposed those tests to address the possibility that some types of automatic suppression features, e.g., weight sensors, might be "fooled" by occupant movement associated with riding on rough roads. The proposed tests were intended to ensure such devices were designed so they do not turn on the air bag in the presence of a small child who is bouncing as a result of riding on a rough road, and so that they do not turn off the air bag in the presence of a small-statured adult who is bouncing as a result of riding on a rough road.

After considering the comments, we have tentatively concluded that it is not necessary to include rough road tests in Standard No. 208. As we have discussed in other areas, in the context of a statutory scheme requiring us to issue performance requirements (as opposed to one requiring design requirements or government approval), it is neither appropriate nor possible for us to address every real world variable that can affect safety. Ultimately, the vehicle manufacturers must be expected to design their vehicles not only so they meet the performance requirements specified by the Federal motor vehicle safety standards, but also in light of the full range of real world conditions their vehicles will experience.

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[24] The following dockets discussed the use of the J826 manikin for the 50th percentile adult male dummy.

1. 74–14–Notice 39: NPRM to amend Part 572, allowing optional use of Hybrid II or III, sunset for use of Hybrid II.

2. 74–14–Notice 45: Final Rule adopting Hybrid III.

We believe rough road performance is an area that vehicle manufacturers will consider and address in the absence of Federal requirements. We also note that a number of technical issues have been raised about the proposed rough road tests, including how to keep dummies from falling over during the tests. We do not believe it would be a good use of agency resources at this time to make further efforts to develop test procedures in this area. If necessary, failures to assure adequate air bag performance in the rough road context could be addressed under our authority to investigate safety-related defects.

Third, for the proposed static tests that must result in deactivation of the passenger air bag, we have reduced the number of positions in which the infant dummy/child seat is tested from seven to five. Our proposal adds one new position, where the RFCSS is oriented so that the infant faces forward and the seat is then tipped against the instrument panel. This is a position that could occur as a result of pre-impact braking if the RFCSS is not secured by the vehicle belt system. We have dropped four of the positions proposed in the NPRM in order to reduce test complexity and costs. We believe that systems that would be suppressed at the five proposed positions would also be suppressed at the other positions.

Fourth, for the tests designed to ensure that the suppression feature does not inappropriately suppress the air bag for small statured adults, human beings could be used in the place of 5th percentile adult female dummies. The subject of permitting human beings to be used in place of dummies for certain static tests is discussed in the next section.

Fifth, we have made a change with respect to how air bags with multiple inflation levels would be tested for the low risk deployment test. As indicated above, we proposed in the NPRM to require injury criteria to be met for all levels of inflation. This reflected the fact that a child in a RFCSS would be extremely close to the passenger air bag in any crash.

We have not changed our basic philosophy on this issue, but want to address the possibility that vehicles might be designed so that only a lower inflation level deploys in the presence of a RFCSS, regardless of crash severity. To address this possibility, we are proposing in this SNPRM to require injury criteria to be met for any stage or combination of stages which may deploy in the presence of an infant in a RFCSS in a rigid barrier crash test at speeds up to 64 km/h (40 mph). We believe that all stages of inflation that would deploy in the presence of a RFCSS would be encompassed in crash tests at that range of severity levels.

b. Safety of Young Children.

Young children are at special risk from air bags because, when unbelted, they are easily propelled close to the air bag as a result of pre-crash braking. Their small size and weight also makes them more vulnerable to injury when interacting with a deploying air bag. We strongly recommend that young children ride in the back seat, because the back seat is safer whether or not a vehicle has air bags.

In the NPRM, in order to address the risks air bags pose to young children who do ride in the front seat, we proposed requirements using both 3-year old and 6-year old child dummies. We proposed four alternative test requirements, the selection of which would be at the option of the manufacturer. Manufacturers could select different options for the 3-year-old and 6-year-old dummies.

The four manufacturer options were: (1) test requirements for an air bag suppression feature that suppresses the air bag when a child is present, e.g., a weight or size sensor, (2) test requirements for an air bag suppression feature that suppresses the air bag when an occupant is out of position, (3) test requirements for low risk deployment involving deployment of the air bag in the presence of out-of-position 3-year old and 6-year-old child dummies, or (4) full scale dynamic out-of-position test requirements, which include pre-impact braking as part of the test procedure.

Our SNPRM follows the same basic approach as the NPRM, but with several differences.

Most significantly, the number and type of manufacturer options are changed somewhat. Our SNPRM continues to include, with certain changes, the first and third of the options listed above, i.e., test requirements for an air bag suppression feature that suppresses the air bag when a child is present, e.g., a weight or size sensor, and test requirements for low risk deployment involving deployment of the air bag in the presence of out-of-position 3-year-old and 6-year-old child dummies.

Our SNPRM also includes the second option, test requirements for an air bag suppression feature that suppresses the air bag when an occupant is out-of-position, but with major changes. The fourth option, testing with dynamic pre-crash braking, has been dropped from this rulemaking.

In the sections which follow, we discuss the three options we are including in this SNPRM, as well as our reasons for any significant changes and for dropping the fourth option.

Requirements for an air bag suppression feature (e.g., weight or size sensor) that suppresses the air bag when a child is present. As discussed in the NPRM, these requirements would be very similar to those being proposed with respect to a suppression feature for infants in RFCSS. Under the NPRM, if this option were selected, the air bag would need to be deactivated during several static tests using, in the right front passenger seat, a 3-year-old or 6-year-old child dummy and also during rough road tests. The child dummy would be placed in a variety of different positions during the static tests. Some of the positions specify placing the dummy in a forward-facing child seat or booster seat. The air bag would be required to be activated during specified tests using a 5th percentile adult female dummy.

For the SNPRM, we have made a number of changes similar to those discussed above with respect to a suppression feature for infants in RFCSS. In particular:

- Instead of requiring manufacturers to assure compliance in tests using any child restraint which was manufactured for sale in the United States for a specified number of years prior to manufacture, we would require them to assure compliance using any child restraint included in a list of representative child restraints that we are proposing to add as an appendix to Standard No. 208.
- We are dropping the proposed rough road tests.
- For the proposed static tests which must result in deactivation of the passenger air bag, we have reduced the number of positions in which the child dummy or child dummy/child seat are tested. For the three-year-old child dummy, the number of positions is reduced from 17 to 10. For the six-year-old child dummy, the number of positions is reduced from nine to six. We believe that systems that would be suppressed at the proposed positions would also be suppressed at the other positions.

We are also proposing to allow manufacturers to comply with and certify to these suppression requirements using children, instead of

3-year-old and 6-year-old child dummies. Adult females could also be used in the place of 5th percentile adult female dummies for the portions of those test requirements which make sure that the air bag is activated for adults.

We are proposing to permit manufacturers to use human beings in light of concerns that current dummies may not be sufficiently human-like to be recognized by some of the advanced technologies under development. For example, suppression devices that work by sensing the distributed weight pattern of a human being may not recognize the pattern of a test dummy. If a manufacturer selects this option, the requirements would need to be met at each of the relevant positions for any human being within a specified weight/height range for 3-year-old and 6-year-old children and 5th percentile adult females.

It is important to emphasize that these tests simply involve a child or adult assuming specified positions in the vehicle, with a technician checking (typically by looking at a light) whether the air bag would be activated or deactivated; these tests do not involve deploying the air bag or moving the vehicle. To ensure absolute safety, we are proposing to require manufacturers selecting this option to provide a method to assure that the air bag will not activate during testing; such assurance may be made by removal of the air bag. The manufacturer would also be required to provide a method to assure that the same test results would be obtained if the air bag had not been deactivated or removed.

Test requirements for a feature that suppresses the air bag when a child is out-of-position. As discussed in the NPRM, we believe that a feature that suppresses the air bag when an occupant is out-of-position, either initially or because of moving into such a location during pre-crash braking, needs to be tested very differently from one that suppresses the air bag whenever a child is present. While various static tests can be used to determine whether the latter type of suppression device is effective, they would be of limited utility in testing a feature that suppresses the air bag when an occupant moves into an out-of-position location. This is because one of the key criteria in determining whether the dynamic out-of-position suppression feature is effective is timing, *i.e.*, whether the feature works quickly enough in a situation where an occupant is propelled out of position as a result of pre-crash braking (or other pre-crash maneuvers). We have accordingly developed separate requirements for such dynamic suppression devices.

Under the NPRM, if this option were selected by the vehicle manufacturer, the manufacturer would be required to provide a telltale indicating whether the air bag was activated or deactivated. Operation of the suppression feature would be tested through the use of a moving test device which would be guided toward the area in the vehicle where the air bag is stored.

In the NPRM, we summarized the proposed test requirements as follows:

> [The] test device would begin its course of travel in a forward direction toward a target area inside the vehicle. This target area, the air bag suppression zone, consists of a portion of a circle centered on the geometric center of the vehicle's air bag cover. The function of the air bag suppression system would be tested through the use of a headform propelled toward the air bag suppression zone at any speed up to 11 km/h (7 mph)—equivalent to a typical speed that the head of an occupant attains in pre-crash braking. When the test fixture enters the area near the air bag—the air bag suppression zone—where injuries are likely to occur if the air bag deploys, the telltale is monitored to determine if the suppression feature has disabled the air bag. . . .
>
> The automatic suppression plane of the vehicle, the point at which the air bag suppression feature must be activated when the plane is crossed by the headform, is located at that point rearward of the air bag and forwardmost of the center of gravity of the head of a seated occupant which the manufacturer determines to be that point where, if the air bag is deployed, a 3-year-old child dummy would meet specified injury criteria.

63 FR 49974, September 18, 1998.

We received a number of comments on our proposal in this area. These comments were submitted by manufacturers, suppliers, industry groups and safety organizations.

While the comments indicated general support for a test option that would permit this type of suppression design, the commenters raised many issues about the feasibility and appropriateness of the agency's proposed test procedure. We note that while much work is currently being done on the development of dynamic automatic suppression systems (DASS), the technology is still not mature. In addition, a number of differing technologies are currently being considered. Each one of these technologies has particular attributes which affect the appropriateness of the means used to evaluate its performance. This makes our task in formulating performance requirements and test procedures much more difficult.

For this SNPRM, we have decided to drop the out-of-position suppression system test proposed in the NPRM. After considering the comments, we have concluded that procedure has several flaws.

First, the use of a test headform, while allowing a quasi-static, in-vehicle test, appears to be inappropriate for several technologies now under consideration. In particular, the use of a headform alone, without an accompanying torso, presents severe difficulties for ultrasound based systems. In actual use, as opposed to a test, these systems use sound reflections from the torso as well as the head, in order to locate and track an occupant.

We are also concerned that the use of a headform alone would not be appropriate for a DASS that uses information from multiple types of sensors. For example, seat belt sensors, seat mat pressure sensors, seat-mounted capacitance sensors, and seat location sensors might be incorporated in a suppression system to locate an occupant or measure the characteristics of an occupant and to assist the system in deciding whether to suppress an air bag.

Second, the proposed test procedure's inclusion of a quasi-static, in-vehicle test may be inappropriate for evaluating the performance of some DASS designs. A system using inputs such as crash severity (change in velocity, rate of deceleration, etc.) could not be adequately tested by a quasi-static test. Similarly, such a test may not be adequately representative of an actual crash.

However, we believe that DASS holds significant promise for improving occupant safety. Instead of foreclosing the use of such technology as a means of compliance, we have tentatively concluded that continued development of this technology warrants a different approach to rulemaking.

We are therefore proposing an option which would specify minimum performance requirements for DASS, in conjunction with an amendment to our procedures governing petitions for rulemaking (49 CFR Part 552) that would facilitate expedited consideration and, if appropriate, adoption of a test procedure when technological advances make such dynamic suppression systems feasible. Under this SNPRM, we are proposing to require manufacturers seeking to manufacture vehicles under this compliance option to equip those vehicles with a DASS that automatically controls air bag deployment by sensing the location and the characteristics of an occupant, and determining, based on that information, whether the air bag should be deployed. The DASS must be capable of turning off the air bag when an occupant enters into an Automatic Suppression Zone (ASZ) defined by the vehicle manufacturer.

The proposal provides for specific expedited rulemaking procedures regarding the test procedures for evaluating these systems. Under these procedures, interested persons (which as a practical matter would likely be either vehicle manufacturers or air bag manufacturers) could submit a petition for rulemaking to establish, on an expedited basis, a test procedure for evaluating a DASS. Target time limits for each phase of such a rulemaking are proposed. As the petition would serve as a basis for our expedited adoption of a test procedure, it would need to contain specific detailed information. Included in this required information would be a complete description of the specifications, design, and performance of the system or systems to be tested by the suggested test; drawings and/or representative samples of the test devices and equipment to be employed in the test; test procedures, including test device positioning procedures for the suggested test; and data and films generated in performing the proposed test. Of course, the test must meet applicable statutory requirements relating to Federal motor vehicle safety standards.

We could reject or withhold consideration of any petition that is incomplete. The petition would need to be submitted nine months before the requested effective date, to allow sufficient time for agency review and public comment.

While a petitioner could submit confidential information in support of its petition, it would need to make public the complete test procedure and a sufficient general description of the system to enable us to provide a meaningful opportunity for public comment.

If the agency published a notice proposing the adoption of the requested test procedure, it would then consider the public comments and decide whether the procedure should be added to Standard No. 208. If it decided to do so, and if the procedure were suitable for the DASS of any other vehicles, then the procedure could be used by those manufacturers of those vehicles as well as by the petitioning manufacturer.

The agency emphasizes that its intention is that Standard No. 208 ultimately provide that all similar DASSs, e.g., those relying on the same types of sensors, would be tested in the same fashion. Initially, however, the agency's efforts to facilitate the quick introduction of DASSs by conducting expedited rulemakings might result, in some cases, in the adoption of different procedures for similar DASSs. To minimize this possibility, the agency would expect manufacturers which decide to petition for the adoption of a procedure for a DASS, instead of relying upon a previously adopted procedure for the same or similar type of DASS, to justify the need for a new and different procedure. Further, the agency would seek in the long run to amend Standard No. 208 to eliminate any unnecessary duplication or variation in test procedures.

Static tests to assure low-risk deployment of the air bag in the presence of out-of-position 3-year-old and 6-year-old child dummies. Our proposal in this area is not significantly different from the NPRM. If the low risk deployment option were selected, a vehicle would be required to meet specified injury criteria when the passenger air bag is deployed in the presence of out-of-position 3-year-old and 6-year-old child dummies. We are proposing that it be conducted at two positions which tend to be "worst case" positions in terms of injury risk. We are also proposing more detailed positioning procedures for these two tests than for many of those proposed for the static suppression tests, since injury measures may vary considerably with position.

In the case of air bags with multiple inflation levels, the injury criteria would need to be met only for the levels that would be deployed in lower severity crashes. While an infant in a RFCSS would always be extremely close to the passenger air bag, this is not true for older children. An older child would most likely be extremely close to the air bag in lower severity crashes, following pre-crash braking.

In the NPRM, we proposed that the injury criteria would need to be met only for the inflation levels that would be deployed in crashes of 32 km/h (20 mph) or below. In order to determine what inflation levels would deploy in such crashes, we proposed a test procedure which included three types of crash tests: a rigid barrier test, an offset frontal deformable barrier test, and a pole test.

For the SNPRM, we are proposing that the injury criteria in static out-of-position tests would need to be met only for the levels that would be deployed in crashes of 29 km/h (18 mph) or below. We have reduced the upper speed from 32 to 29 km/h (20 mph to 18 mph) because some vehicle manufacturers may need to deploy both stages of a dual stage inflator in crashes with delta V's just over 32 km/h (20 mph), and because of the "gray zone" where it is uncertain whether one or both stages may deploy. We are also proposing to specify only a rigid barrier test for purposes of determining what inflation level would deploy in such crashes. To the extent that higher inflation level air bag deployments do not occur in rigid barrier tests at speeds up to 29 km/h (18 mph), we do not believe that those higher inflation level air bag deployments would occur in offset frontal deformable barrier tests or pole crashes at the same speed.

As noted earlier, we have tested six MY 1999 vehicles to the proposed out-of-position tests using 6-year-old child dummies. Only one vehicle, the MY 1999 Acura RL with a dual stage inflator, met all the proposed injury criteria performance limits for the 6-year-old child dummy in both Position 1 and Position 2 tests. This was the only one of the six vehicles with a dual stage inflator. Only the first stage was fired in the tests. This test illustrates the potential of dual stage inflators to meet the proposed out-of-position requirements using 3-year-old and 6-year-old child dummies.

Elimination of option for full scale dynamic out-of-position test requirements, which include pre-impact braking as part of the test procedure. In the NPRM, we included an option under which a vehicle would be required to meet injury criteria in a rigid barrier crash test that included pre-impact braking as part of the test procedure, using unrestrained 3-year-old or 6-year-old child dummies. We have decided to drop this option.

As discussed in the NPRM, this was a new test and there were many uncertainties. After considering the comments, we have decided to drop this option at this time. We were persuaded by the commenters that significant additional development would be needed in the proposed test procedure to make it appropriate for a Federal motor vehicle safety standard. Moreover, we do not believe that such development could be completed in a timely manner for this rulemaking. We also believe the other options address the various types of technologies under development, and that this one is not necessary. However, as noted before, a manufacturer petitioning for a test procedure for dynamic automatic suppression systems could suggest a procedure using a full scale dynamic barrier test with pre-crash braking.

c. Safety of Small Teenage and Adult Drivers.

Out-of-position drivers are at risk from air bags if they are extremely close to the air bag at time of deployment. While any driver could potentially become out of position, small-statured drivers are more likely to become out of position because they sit closer to the steering wheel than larger drivers.

The NPRM, in order to address the risks air bags pose to out-of-position drivers, we proposed requirements using 5th percentile adult female dummies. We proposed three alternative test requirements, the selection of which would be at the option of the manufacturer.

The manufacturer options proposed in the NPRM were similar to those using 3-year-old and 6-year-old child dummies, with one significant exception. Since air bags provide safety benefits to small-statured drivers, it is not appropriate to permit manufacturers to suppress air bag deployment under all conditions in the presence of such occupants. Therefore, this type of suppression feature would not be permitted in tests with 5th percentile adult female dummies.

The three manufacturer options proposed in the NPRM were: (1) test requirements for an air bag suppression feature that suppresses the driver air bag when the driver is out of position, (2) test requirements for low risk deployment involving deployment of the air bag in the presence of out-of-position 5th percentile adult female dummies, and (3) full scale dynamic out-of-position test requirements, which include pre-impact braking as part of the test procedure.

For our SNPRM, we have made a number of changes similar to those discussed above with respect to three-year-old and six-year-old children, and for the same reasons. Our proposal for test requirements for low risk deployment involving deployment of the air bag in the presence of out-of-position 5th percentile adult female dummies is largely unchanged, although we have made the same change concerning level of inflation (i.e., levels that could deploy in a rigid barrier crash of up to 29 km/h (18 mph)) for which the test is conducted as discussed above with respect to child dummies. Our proposal for test requirements for an air bag suppression feature that suppresses the driver air bag when the driver is out of position has been replaced with one specifying a procedure by which manufacturers can petition for a test procedure to be added to Standard No. 208. Finally, we have dropped our proposal for full scale dynamic out-of-position test requirements.

While we have carefully considered GM's suggestion that we add out-of-position tests for adult passengers, we have decided not to make such a proposal at this time. Air bag risks to adult passengers are relatively low. Air bags do not pose the same risks for adult passengers as adult drivers and child passengers. Risks are higher for adult drivers because small-statured adults may need to sit relatively close to the air bag in order to drive. However, small-statured adults do not need to sit close to the passenger air bag. Young children are at special risk from air bags because, when unbelted or improperly belted, they are easily propelled against the air bag module during pre-crash braking.

C. Injury Criteria

In the NPRM, we proposed injury criteria and performance limits for each size dummy. We placed in the public docket a technical paper which explained the basis for each of the proposed injury criteria, and for the proposed performance limits.

Standard No. 208 currently specifies five injury criteria for the Hybrid III 50th percentile adult male dummy in barrier crash tests: (1) dummy containment—all portions of the dummy must be contained in the vehicle passenger compartment throughout the test, (2) HIC (Head Injury Criterion) must not exceed 1,000, evaluated over a 36 millisecond (msec) duration (3) chest acceleration must not exceed 60 g's, (4) chest deflection must not exceed 76 mm (3 inches), and (5) upper leg forces must not exceed 10 kilonewtons (kN) (2,250 pounds).

Under the NPRM, these and certain additional injury criteria would generally have been applied to all of the dummies covered by the proposal. However, the criteria would be adjusted to maintain consistency with respect to the injury risks faced by different size occupants.

For some types of injuries, we proposed alternative injury criteria. For chest injury, we proposed two alternatives: a new criterion, Combined Thoracic Index (CTI), which we had recently developed, or separate limits on chest acceleration and chest deflection. We also proposed two alternatives for neck injury criteria: an improved neck injury criterion, called Nij, or separate limits on flexion, extension, tension, compression and shear.

For this SNPRM, we have reviewed all relevant comments on the NPRM as well as comments and documents submitted by biomechanics specialists at NHTSA-sponsored public meetings. Combining this new information with our previous analyses, we are proposing, in a number of instances, modified injury criteria and performance limits.

A general discussion of the proposed injury criteria and performance limits is presented below. A detailed technical explanation is provided in a technical paper which is being placed in the public docket. The title of the paper is: "Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraints Systems—II."

1. Head Injury Criteria

As discussed in the technical report which accompanied the September 1998 NPRM, titled "Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraint Systems," limits for the head injury criterion (HIC), evaluated over a 36 millisecond time interval, were proposed for the 50th percentile adult male, 5th percentile adult female, 6 year-old child, 3 year-old child and 12-month-old infant dummies.

Due to uncertainties regarding head injuries for children, we had investigated various scaling methods for developing HIC performance limits for the various size test dummies. The HIC limits proposed in the NPRM reflected a methodology that included both geometrical and material property scaling using the properties of the cranial sutures. This method was based on the assumption that the pediatric skull deformation is controlled by properties of the cranial sutures, rather than the skull bones.

Comments received in response to the NPRM and at a public meeting held on April 20, 1999 focused primarily on two issues: (1) the time duration used for the computation of HIC and (2) the scaling of HIC for the child dummies. In general, commenters urged that more conservative values for HIC should be adopted for the child dummies and especially for the 12-month-old CRABI infant dummy. Commenters cited differences in structure between the compliant infant skull with soft cranial sutures and the adult skull in addition to the uncertain tolerances of the infant's brain.

AAMA recommended that the duration for the HIC computations be limited to 15 milliseconds with a limit of 700 for the 50th percentile adult male dummy, which is consistent with Canadian Motor Vehicle Safety Standard No. 208. By way of comparison, Standard No. 208 currently specifies, for that dummy, HIC computed over 36 milliseconds but with a limit of 1000.

The basis for AAMA's recommended 15 millisecond duration was that, in the original biomechanical skull fracture data from which HIC was derived, no specimen experienced a skull fracture and/or brain damage with a HIC duration greater than 13 milliseconds. AAMA also argued that HIC 36 overestimates the risk of injury for long-duration head impacts with air bags. That organization cited a study where human volunteers who were restrained by air bags experienced HIC 36 greater than 1000 and did not experience brain injury or skull fracture.

We note that NHTSA has previously been asked to limit the HIC duration to 15 or 17 milliseconds. In its earliest form, the HIC was calculated over the whole acceleration-time pulse duration without an imposed limiting time interval. Essentially, HIC values were calculated for all possible time increments starting with one millisecond and ending with the whole duration of the pulse including every time duration increment in between. The maximum value from this entire set was the HIC value used.

On October 17, 1986, we issued a final rule adopting a maximum time interval of 36 milliseconds for calculating HIC. 51 FR 37028. We recognized that available human volunteer tests demonstrated that the probability of injury in long duration events was low, but reasoned that the agency should take a cautious approach and not significantly change the expected pass/fail ratios that the then unlimited HIC provided. Evaluation of a 17 millisecond limit against various test sets from NCAP and FMVSS 208 testing available at the time was found to reduce the failure rate from 46% to 35%. This fact led us to reject a request to reduce the HIC time interval to 15 to 17 milliseconds without a commensurate reduction of the maximum HIC value.

However, to somewhat accommodate to the apparent over-stringency of the limited HIC for long duration events, we did limit the maximum time interval to 36 milliseconds. This allowed the maximum average long duration acceleration to rise to a limit of 60 g's.

Today's proposal for reducing the 36 millisecond HIC time to 15 milliseconds differs from what we previously considered because it is accompanied by a reduction in the maximum allowed value of HIC from 1000 to 700. Based on an analysis of 295 recent NCAP tests, we have determined that the stringency of HIC15/700 and HIC36/1000 appear to be equivalent for long duration pulses. This is because while the HIC 15 produces a lower numerical value for long duration events, its lower failure threshold, 700, compensates for this reduction. This is borne out by the fact that of the 295 NCAP tests examined, 260 passed and 18 failed both criteria, 10 tests that failed HIC 15 passed HIC 36, while 7 tests that failed HIC 36, passed HIC 15. We also note that for pulse durations shorter than approximately 25 milliseconds, the HIC 15=700 requirement is more stringent than the HIC 36=1000 requirement. We believe this increased stringency would provide a desirable added measure of safety for the highly scaled, short duration HIC limits proposed for evaluating those impact events where children and small statured adults are involved. Thus, we are proposing to employ a 15 millisecond time interval whenever calculating the HIC function and limiting the maximum response of the adult male to 700 and limiting the response of the smaller dummies to suitably scaled maximums.

AAMA recommended employing a scaling technique for HIC15 that accounts for the differences in geometry and failure properties between children and adults. Several other researchers have also recommended, using similar techniques and assumptions, scaled performance limits for HIC15. We have also performed additional analysis using finite element modeling to develop yet another approach to scaling HIC. Recognizing that all of these techniques and the scaling relationships they produce are approximate, we have combined these results to develop modified, conservative, scaled HIC performance limits for the various child dummies.

2. Neck Injury Criteria

In the NPRM, we proposed two alternatives: (1) The Nij neck injury criterion, for which we solicited comments on performance limits of Nij=1 and Nij=1.4, and (2) separate limits on neck flexion, extension, tension, compression, and shear. AAMA and others commented that the Nij concept makes biomechanical sense. However, they recommended the use of individual limits for neck forces and moments. Other commenters stated that Nij=1 was more appropriate than Nij=1.4 for affording adequate protection to children. Some commenters suggested even lower limits for neck forces and moments for the child dummies.

After considering the comments, we continue to believe that the superposition of loads and moments performed in the Nij calculation is the most appropriate metric to quantify neck injury risk. Therefore, in the SNPRM, we are proposing Nij as the neck injury criterion. However, in light of the comments, we have made some modifications to the proposed Nij calculations.

We originally developed the Nij criterion using data from matched air bag exposure tests, using anesthetized pigs and the 3-year-old child dummy, conducted by Mertz *et al.* and Prasad *et al.* For the modified Nij, we decided to use certain assumptions made by Mertz (SAE paper No. 973318) in combining the measured tension force and extension moment. Re-analysis of the data after applying these assumptions results in new Nij tension and extension intercept values for the 3-year-old dummy with Nij=1. The resulting Nij=1 threshold limit represents a 22% probability of Abbreviated Injury Scale (AIS) ≥3 neck injury using logistic regression. For this SNPRM, we are also using a scaling procedure recommended by AAMA which takes into account the failure strength of ligaments. The details of the development of the revised Nij neck injury criteria and the revised Nij critical values for all dummy sizes are provided in the technical paper cited above.

As noted above, we requested comments on performance limits of Nij=1 and Nij=1.4. After considering the comments, the available biomechanical data, and testing which indicates that the more conservative value of 1.0 can be met in current production vehicles, we are proposing a limit of 1.0.

3. Thoracic Injury Criteria

For chest injury, we proposed two alternatives in the NPRM: (1) A newly developed injury criterion called the Combined Thoracic Index (CTI), or (2) individual limits on chest acceleration and chest deflection. The CTI is a formula that linearly combines measured chest deflection and acceleration levels into a single value which is then limited to a maximum value. It was derived from our extensive cadaver test data base and was demonstrated to have the best injury predictive capability of all measures examined. The second alternative consisted of individual limits for chest acceleration and deflection, the approach currently used in Standard No. 208. The standard specifies, for the 50th percentile adult male dummy, a 60 g acceleration limit and a 76 mm (3 inch) deflection limit.

Many commenters on the NPRM recommended maintaining individual limits for acceleration and deflection. AAMA recommended that the acceleration limit be maintained at 60 g but suggested that the deflection limit be reduced from 76 mm to 64 mm (3 inches to 2.5 inches). Our analysis indicates that the recommended AAMA limits, when both at their maximum, would be at a CTI level of approximately 1.2. However, because the CTI would allow greater accelerations with lesser deflection and greater deflection with lesser accelerations at allowable operational points, we believe the AAMA-recommended two independent level criterion would be somewhat more stringent overall. Therefore, we believe the CTI limit proposed in the NPRM and AAMA's recommended individual limits are largely equivalent and that there is a slight safety benefit to adopting the individual limits of 60 g's of acceleration and 64 mm (2.5 inches) of chest deflection for the 50th percentile adult male dummy. For the SNPRM, we are proposing individual limits as recommended by AAMA.

To obtain equivalent performance limits for the other size dummies, i.e., the 5th percentile adult female, 3- and 6-year-old child, and the 12-month-old infant, the mid-size male dummy limits were scaled considering both geometric and material differences.

4. Lower Extremity Injury Criteria

Standard No. 208 currently specifies an axial load limit of 10kN (2250 pounds) for the 50th percentile adult male dummy, as measured by a load cell at the location of the mid-shaft of the femur. The purpose of the axial load limit on the femur is to reduce the probability of fracture of the femur and also surrounding structures in the thigh, such as the patella and pelvis. In the NPRM, we proposed to maintain the current limit of 10 kN (2,250 pounds) for the 50th percentile adult male and proposed a new scaled down limit of 6.8 kN (1,529 pounds) for the 5th percentile adult female to account for the smaller bone size for all proposed test configurations.

There was general support by commenters for including the femoral compressive loads for the 5th percentile adult female dummy specified in the NPRM in addition to maintaining the currently specified value for the 50th percentile adult male dummy. In the SNPRM, we are proposing the same axial femur limits as the NPRM: 10 kN (2,250 pounds) for the 50th percentile adult male and 6.8 kN (1,529 pounds) for the 5th percentile adult female.

AAMA recommended adding femoral compressive load limits for the 6-year-old child dummy. Although we agree with AAMA that femoral compressive load limits for the 6-year-old child dummy are important to consider, the NPRM did not specify such limits because none of the proposed testing configurations imposed substantial loading on the lower extremities. We are therefore not proposing femoral compressive load limits in the SNPRM.

The National Transportation Safety Board (NTSB) recommended that tolerance levels of lower extremities be further investigated and validated. NTSB also suggested that we consider dummies such as an advanced lower extremity dummy for future incorporation into the standards. We are continuing the development of an advanced lower extremity test device, and continue to sponsor experimental impact injury research to determine the mechanisms and tolerances of the lower extremities, including the foot, ankle and leg. When this effort is complete, we will consider incorporating additional injury criteria into our safety standards.

The assessment of lower extremity injury potential in high speed offset deformable crash tests is discussed in a separate section later in this notice.

5. Other Criteria

As we consider adding new injury criteria or modifying existing injury criteria for Standard No. 208, it is logical to consider whether the injury criteria and performance limits we are considering would be appropriate for other safety standards, including Standards No. 201 and 213, particularly if new child dummies were incorporated into Standard No. 213. While we are not proposing to amend those standards in this rulemaking, we request commenters to address whether the injury criteria and performance limits proposed in this SNPRM would be appropriate for those standards, and why or why not.

D. Lead Time and Proposed Effective Date

TEA 21 specifies that the final rule on advanced air bags must become effective in phases as rapidly as practicable beginning not earlier than September 1, 2002, and no sooner than 30 months after the issuance of the final rule, but not later than September 1, 2003. Except as noted below, the phase-in of the required amendments must be completed by September 1, 2005. If the phase-in of the rule does not begin until September 1, 2003, we are authorized to delay the completion of the phase-in until September 1, 2006. As also noted below, other amendments may be phased-in later.

As discussed in the NPRM, we have sought information by a variety of means to help us determine when the vehicle manufacturers can provide advanced air bag systems to consumers. This is known as lead time. Vehicle lead time is a complex issue, especially when it involves technology and designs that are still under development.

In the NPRM, taking account of all available information, including but not limited to the wide variety of available technologies that can be used to improve air bags (and thereby meet the proposed requirements) and information concerning where the different suppliers and vehicle manufacturers were in developing and implementing available technologies, we proposed to phase in the new requirements in accordance with the following implementation schedule:

25 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2002;

40 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2003;

70 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2004;

All vehicles manufactured on or after September 1, 2005.

We proposed a separate alternative to address the special problems faced by limited line manufacturers in complying with phase-ins. We noted that a phase-in generally permits vehicle manufacturers flexibility with respect to which vehicles they choose to initially redesign to comply with new requirements. However, if a manufacturer produces a very limited number of lines, *e.g.*, one or two, a phase-in would not provide such flexibility.

We accordingly proposed to permit manufacturers which produce two or fewer carlines the option of omitting the first year of the phase-in if they achieve full compliance effective September 1, 2003. We proposed to limit this alternative to manufacturers which produce two or fewer carlines in light of the statutory requirement concerning when the phase-in is to begin.

As with previous phase-ins, we proposed to exclude vehicles manufactured in two or more stages and altered vehicles from the phase-in requirements. These vehicles would be subject to the advanced air bag requirements effective September 1, 2005. They would, of course, be subject to Standard No. 208's existing requirements before and throughout the phase-in.

Also as with previous phase-ins, we proposed amendments to 49 CFR Part 585 to establish reporting requirements to accompany the phase-in.

A number of commenters raised issues concerning the proposed phase-in. We will discuss the issues separately for the large vehicle manufacturers and for small manufacturers and multi-stage manufacturers.

1. Large Manufacturers

Honda stated that it would be virtually impossible to comply with the proposed phase-in. It cited the number of tests, the need for new testing facilities and personnel, and the lack of completed dummies. That company stated that assuming the final rule was reasonable and practical, it needs at least three years leadtime after the final rule and before the start of the phase-in, and a five-year phase-in. Volvo also stated that it needs three years after the final rule.

We note that, for this particular rulemaking, we have limited discretion as to how much lead time we can provide. Under the statutory requirements discussed earlier in this section, assuming that the final rule is issued on March 1, 2000, it must become effective in phases beginning not earlier than September 1, 2002 (which is 30 months after March 1, 2000) and not later than September 1, 2003. Moreover, there is a limit as to how long the phase-in may be. If the phase-in begins on September 1, 2002, the required amendments must be fully effective by September 1, 2005. Only if the phase-in begins on September 1, 2003 may the agency delay making the required amendments fully effective until September 1, 2006.

Under the statute, the agency is therefore precluded from providing the five-year phase-in requested by Honda. Whether the phase-in begins on September 1, 2002 or September 1, 2003, the required amendments must be fully effective not more than three years later.

For this SNPRM, we are proposing the same phase-in for large manufacturers as in the NPRM. The proposed date for the start of the phase-in, September 1, 2002, would be 30 months after a final rule that was issued on March 1, 2000. This proposed date reflects the seriousness of the safety problem being addressed and the statutory requirement that the final rule become effective as rapidly as possible. Honda and Volvo did not demonstrate that this date cannot be met. We note that, as discussed earlier, several manufacturers will be introducing air bags with many of the features needed to comply with the proposed requirements for advanced air bags during MY 2000.

Comments are requested on phase-in schedules and percentages other than the 25%–40%–70%–100% schedule proposed in this document. One example is a 40%–70%–100% schedule beginning one year later than the proposed schedule, but ending at the same time. This alternative is like the proposed one, except that the first year of the proposed phase-in is eliminated. This alternative schedule would offer additional leadtime at the beginning of the phase-in, while not compromising the final effective date for all new vehicles. With the availability of credits for early compliance, a manufacturer also would have additional time to develop and produce early-complying vehicles to meet the initial phase-in percentages.

We recognize that simultaneous implementation of these various proposals will necessitate considerable care and effort by the vehicle manufacturers. In a normal rulemaking, we would have broad discretion to adjust the implementation schedule to facilitate compliance. In this rulemaking, our discretion to set the schedule for implementing the amendments required by TEA 21 is limited by that Act. As indicated above, our final rule must not provide that the phasing-in of those amendments begins any later than September 1, 2003, or ends any later than September 1, 2006.

However, above and beyond our discretion to adjust the amendments for reasons of practicability, we also have some discretion to make temporary adjustments in them if, in our judgment, such adjustments are necessary or prudent to promote the smooth and effective implementation of the goals of TEA 21 through the introduction of advanced air bags. As discussed above, the final rule could temporarily reduce the injury criteria or test speeds during the TEA 21 phase-in and then terminate those reductions at the end or after the end of that phase-in.

2. Small Manufacturers and Multi-Stage Manufacturers

The Coalition of Small Volume Automobile Manufacturers (COSVAM) stated that the extra year of leadtime we proposed for small volume manufacturers is insufficient to meet its members' needs. That organization requested that small volume manufacturers be treated the same as final stage manufacturers, i.e., not be required to meet the new requirements for advanced air bags until the end of the phase-in.

COSVAM stated that small volume manufacturers need until the end of the phase-in because they cannot obtain new technology at the same time it is made available to large manufacturers, because they have difficulty getting suppliers to sell to them at all, and because some small volume manufacturers source from large manufacturers and may source parts from a model which will not comply until the end of the phase-in. AIAM stated that the law does not allow a reasonable timetable for phase-in even for large volume manufacturers, which will be given access to technology first, and that there is certainly no evidence that small volume manufacturers have the ability to comply in the second year of the phase-in.

After considering the comments, we have decided to propose that small volume manufacturers be permitted to wait until the end of the phase-in to meet the new requirements. We note that we are proposing to treat small volume manufacturers differently than in previous rulemakings involving phase-ins because of two factors.

The first factor is the complexity of the new requirements. Even the more streamlined set of requirements proposed in this SNPRM will require significant design changes and significant new testing for all cars and light trucks. The second factor is the relatively short leadtime before the phase-in is scheduled to begin.

The proposed special treatment of small volume manufacturers would be in addition to our proposal to permit limited line manufacturers to wait until the second year of the phase-in to begin compliance if they then meet the new requirements for all of their vehicles.

Because our new proposal for small volume manufacturers will have the effect of permitting them to avoid the phase-in entirely, it is critical to establish eligibility criteria that are as narrow as possible. Accordingly, we are proposing to limit this phase-in option to manufacturers which produce fewer than 5,000 vehicles per year worldwide.

We specifically request comments on this proposed limitation. We note that COSVAM indicated that all of its members produce fewer than 5,000 vehicles per year worldwide. However, that organization requested that we make this phase-in option available to all manufacturers which produce fewer than 10,000 vehicles per year worldwide. COSVAM did not explain why it believes the limitation should be set at this level.

Several commenters, including the National Truck Equipment Association (NTEA) and the Recreation Vehicle Industry Association (RVIA), requested that multi-stage manufacturers and alterers be given a one-year extension after the end of the phase-in for large manufacturers. NTEA stated that given the level of research and testing likely to be required by the final rule, chassis manufacturers will be hard pressed to complete work on time for their standard lineup of vehicles let alone those chassis to be used by multi-stage industry. That organization stated that an extra year would give chassis manufacturers more time to generate compliance information needed for commercial vehicles produced in two or more stages.

RVIA stated that guidance from incomplete vehicle manufacturers is generally not available until at or very near the startup of new or updated model production and that, therefore, final stage manufacturers will need at least one additional year to meet the new requirements.

While we have carefully considered the comments, we are not proposing an additional extension for final stage manufacturers, beyond the end of the phase-in. We note that, as discussed above, we have limited discretion as to how much leadtime we can provide. Under TEA 21, if the phase-in begins on September 1, 2002, the final rule must become fully effective by September 1, 2005. There are no exceptions for multi-stage manufacturers.

Moreover, we believe this is an issue which can be handled by the industry. Final stage manufacturers are used to completing vehicles within limitations identified by chassis manufacturers so that they can certify their vehicles with limited or no additional testing. We do believe it is important that the chassis manufacturers communicate with their final stage manufacturer customers as soon as possible concerning any new limitations that may be made as a result of the advanced air bag requirements. The chassis manufacturers should be able to identify the type and likely scope of any such new limitations well before the end of the phase-in. Even now, the chassis manufacturers should be able to identify the types of new limitations that are likely, given the proposed requirements and planned design changes. We would encourage chassis manufacturers and final stage manufacturers to begin discussions on these issues now.

Atwood, a supplier of seating components, asked whether a generic type test could be developed to eliminate testing the entire family of test dummies. That company stated that it runs sled tests consisting of baseline tests of OE components and additional tests of its components. We do not believe it would be possible to develop a generic type test, for purposes of Standard No. 208, that could eliminate tests incorporating the family of dummies. Different size human beings respond differently in crashes, and it is therefore necessary to use different size dummies to test for the injury risks posed to occupants of varying sizes. Also, if a weight/pattern sensor in a seat is designed to suppress air bags for children and not for adults, it is necessary to test them both for children and adults.

E. Availability of Original Equipment and Retrofit Manual On-Off Switches

As discussed in the NPRM, Standard No. 208 currently includes a temporary provision permitting manufacturers to provide manual on-off switches for air bags in vehicles without rear seats or with rear seats too small to accommodate a RFCSS. This provision is scheduled to expire on September 1, 2000. However, in the NPRM, we proposed to extend this provision so that it phases out as the new requirements for advanced air bags are phased in. During the phase-in, OE manual on-off switches would not be available for vehicles certified to the upgraded requirements, but would be available for other vehicles under the same conditions as they are currently available.

Also as discussed in the NPRM, on November 11, 1997, we published in the **Federal Register** (62 FR 62406) a final rule exempting, under certain conditions, motor vehicle dealers and repair businesses from the "make inoperative" prohibition in 49 U.S.C. 30122 by allowing them to install retrofit manual on-off switches for air bags in vehicles owned by people whose request for a switch is authorized by NHTSA. The final rule is set forth as Part 595, *Retrofit On-Off Switches for Air Bags.*

The purpose of the exemption was to preserve the benefits of air bags while reducing the risk of serious or fatal injury that current air bags pose to identifiable groups of people. In issuing that final rule, we explained that although vehicle manufacturers are beginning to replace current air bags with new air bags having some advanced attributes, i.e., attributes that will automatically minimize or avoid the risks created by current air bags, an interim solution was needed for those groups of people at risk from current air bags in existing vehicles.

In the NPRM, we proposed to phase out the availability of this exemption in the same manner as the temporary provision permitting manufacturers to provide manual on-off switches for air bags in vehicles without rear seats or with rear seats too small to accommodate a RFCSS. Under the proposal, retrofit on-off switches would not be available for vehicles certified to the new advanced air bag requirements.

We requested comments, however, on whether retrofit on-off switches should continue to be available under eligibility criteria revised to be appropriately reflective of the capabilities of advanced air bag technology. We observed that if such switches were to be available at all, the criteria would need to be much narrower since the risks would be smaller than they are currently. For example, the passenger air bag in a vehicle with a weight sensor would not deploy at all in the presence of young children. Therefore, there would be no safety reason to permit a retrofit on-off switch because of a need for a young child to ride in the front seat.

Only a few commenters addressed the issue of OE and retrofit on-off switches. Two basic positions were given: either allow on-off switches regardless of the existence of advanced air bag technology, or phase-out the switches as proposed in the NPRM. The central issue to each position is whether the advanced air bag systems will be sufficiently reliable to obviate the need for a manual switch.

While we believe that reliable systems can be developed in a timely manner, thus removing the need for an on-off switch, we are concerned that those individuals who are currently at risk from air bags may lack confidence in the new systems, particularly when they are first introduced. However, we believe this problem will diminish during the course of the phase-in, as consumers hear about, and become familiar with, advanced air bags.

Accordingly, in this SNPRM, we are proposing to allow both OE switches and retrofit switches to be installed under the same conditions that currently govern such installation in all vehicles produced prior to September 1, 2005, the date by which all vehicles must have an advanced air bag system. We believe that by that time consumer confidence in the advanced systems will be sufficiently strong to remove any desire for a manual switch in vehicles produced with an advanced air bag.

F. Warning Labels and Consumer Information

As discussed in the NPRM, on November 27, 1996, we published in the **Federal Register** (61 FR 60206) a final rule which, among other things, amended Standard No. 208 to require improved labeling on new vehicles to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children. These warning label requirements did not apply to vehicles with passenger air bags meeting specified criteria.

In the NPRM, we similarly proposed that vehicles certified to the new advanced air bag requirements would not be subject to those warning label requirements. We requested comments, however, concerning whether any of the existing labeling requirements should be retained for vehicles with advanced air bags and/or whether any other labeling requirements should be applied to these vehicles.

Thirteen commenters addressed the issue of retaining the existing air bag warning labels, including manufacturers, manufacturer associations, and consumer groups. At least until the reliability of newer air bag designs are proven by experience, all of the commenters supported the retention of a warning regarding the importance of children in rear seats. Most supported the inclusion of a seat belt use warning. Some commenters also addressed the issue of requiring manufacturers to provide information about which vehicles meet the new requirements. Consumer groups strongly supported such a requirement, while manufacturers and some others believed such a requirement was not necessary since the information would be provided voluntarily.

Given the importance of the safety information at issue and in light of the widespread support for continued labeling, NHTSA is proposing a replacement for the permanent sun visor label for vehicles that meet the requirements of this proposed rule. The label would contain statements regarding belt use and seating children in the rear seat. These statements are good general advice; however, NHTSA requests comments on any currently known risks which would require more specific statements.

The word "CAUTION" would be substituted for the word "WARNING" in the heading of the label. According to ANSI Z535.2, "WARNING indicates a potentially hazardous situation which, if not avoided, could result in death or serious injury." "CAUTION indicates a potentially hazardous situation which, if not avoided, may result in minor or moderate injury. It may also be used to alert against unsafe practices." Since there are currently no known specific risks associated with advanced air bags, "Caution" appears to be more appropriate as an alert against unsafe practices.

We believe that the existing graphic is inappropriate for air bags meeting these requirements, as this risk is specifically tested for in the new requirements. Therefore, a new graphic has been developed which shows a cut-away side view of a vehicle with a belted driver and a child in a child seat in the rear.

In addition, we are proposing a new temporary label that states that the vehicle meets the new requirements for advanced air bags. This label would replace the existing temporary label and include statements regarding seat belt use and children in rear seats. We request comment on how and where additional information regarding how the vehicle complies and other information about the new air bags should be made available. The options under consideration include requiring the information on the temporary label, in the owners manual, or in a separate required informational brochure.

We are proposing to retain all other existing label requirements regarding location, size, etc. for the new labels. Also, as with the current labels, manufacturers may provide translations of the required English language message as long as all the requirements for the English label are met, including size.[25]

Consistent with our proposal to require labels for vehicles with advanced air bags, we are proposing to drop the current definition of "smart passenger air bags" contained in S4.5.5 and the existing option to remove warning labels in vehicles with air bags that meet that definition (S4.5.1). The term "smart air bag" is simply an older term for advanced air bag. For the reasons discussed above, we believe that some warning label is needed for vehicles with advanced air bags. We also note that no manufacturer has taken advantage of the existing compliance option, and we believe that they will not do so in the future. Manufacturers have urged us to develop a single warning label that would apply to vehicles with advanced air bags. Thus, even if they do develop a system that meets the existing definition of smart passenger air bags, we do not think they would decide to produce vehicles without warning labels.

In order to provide consumers with adequate information about their occupant restraint system, a manufacturer would also need to provide a written discussion of the vehicle's advanced passenger air bag system. This discussion would probably be included in the vehicle owner's manual, although we are interested in knowing whether it would be desirable to have this information located elsewhere. The discussion would need to explain the proper functioning of the advanced passenger air bag system and provide a summary of the actions that may affect the proper functioning of the system.

We anticipate that several topics would need to be addressed. The information provided might need to include discussions of the following topics, as appropriate:

- A presentation and explanation of the main components of the advanced passenger air bag system.
- An explanation of how the components function together as part of the advanced passenger air bag system.
- The basic requirements for proper operation, including an explanation of the occupant actions that may affect the proper functioning of the system.
- A complete description of any passenger air bag suppression system installed in the vehicle including a discussion of the suppression zone and a discussion of the telltale light on the instrument panel, explaining that the light is only illuminated when the advanced passenger air bag system is suppressed, is not illuminated when the advanced passenger air bag system is activated, and informing the vehicle owner of the method used to indicate that the air bag suppression system is not operating properly.
- An explanation of the interaction of the advanced passenger air bag system with other vehicle components, such as seat belts, seats or other components.
- A summary of the expected outcomes when child restraint systems, children and small teenagers or adults are both properly and improperly positioned in the vehicle, including cautionary advice against improper placement of child restraint systems.
- Tips and guidelines to improve consumer understanding of the proper use of the advanced passenger air bag system.
- Information on how to contact the vehicle manufacturer concerning modifications for persons with disabilities that may affect the advanced air bag system.

G. Miscellaneous Issues

1. Selection of Child Restraints

As discussed earlier in this notice, in order to reduce testing costs, we are proposing to require manufacturers to assure compliance with tests to minimize the risks from air bags to infants and young children using any child restraint on a specified list of representative child restraints. In developing the proposed list of representative child restraints, we attempted to select seats that are produced by various manufacturers while limiting the overall number of restraints. The list was derived from a much more comprehensive list of restraints to be purchased by NHTSA's Office of Vehicle Safety Compliance for use in the agency's FY 2000 compliance test program.

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[25] For further information about our policies in this area, see 59 FR 11200, 11201–202, March 10, 1994.

We believe the more comprehensive list represents the majority of child restraints currently on the market. That list was reduced, in part, by eliminating similar restraint systems, *e.g.*, restraints that are sold as different models but which we believe provide the same footprint. For example, a particular restraint may come with both a T-shield and a five-point harness system. We do not believe it would be necessary to test a suppression system using both restraints, since the difference between the two models is the type of system used to restrain the child and not the basic design of the seat. We further shortened the comprehensive list by eliminating restraints produced by a manufacturer who was already represented at least once within the particular class of child restraints. Other restraints, like the car bed, are the only one of their type and were placed on the list for that reason.

We have tentatively decided to add the list of child restraints as an appendix to the proposed regulatory text. However, we plan to propose updating the list from time to time (with appropriate lead time). Of particular concern is the introduction of child restraints that will be developed to comply with the agency's recently issued rule on uniform child restraint anchorages.

2. Due Care Provision

Since March 1986, Standard No. 208 has included as part of its various crash test requirements a provision stating that "a vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard." In adding this provision, the agency cited the complexity of the Standard No. 208 test and stated that, because of this complexity, it believed that manufacturers needed assurance from the agency that, if they have made a good faith effort in designing their vehicles and have instituted adequate quality control measures, they will not face the recall of their vehicles because of an isolated apparent failure to meet one of the injury criteria.

In the September 1998 NPRM, we did not propose to extend the "due care provision" to the various new proposed test requirements. Vehicle manufacturers commented that there may be greater variability associated with the new proposed test requirements than the old ones and that the "due care provision" is needed more than ever.

In addressing this issue, we note that the "due care provision" is unique to Standard No. 208. The provision was initially adopted as part of the 1984 rulemaking requiring automatic protection, and was then extended as the various crash test requirements were extended. We did not, however, adopt a "due care provision" for the subsequent crash or other dynamic tests in other standards, such as Standards No. 201 or 214.

As a general matter, we disfavor including a "due care provision" in the Federal motor vehicle safety standards. There are several reasons for this.

First, the inclusion of such a provision in a safety standard does not fit very well with the overall statutory scheme. Safety standards are required to be objective. To the extent the question of whether a manufacturer exercised due care becomes a compliance issue, a measure of subjectivity is introduced into the standard. Also, the Safety Act itself includes a different "due care provision." While the statutory due care defense can relieve a manufacturer of paying civil penalties for failure to comply with a safety standard, it does not relieve the manufacturer of recalling non-complying vehicles.

Second, we do not believe there is an intrinsic need for a "due care provision." Nothing in the history of Standard No. 208 compliance activities since 1984 indicates there is a need for such a provision. We also note, with respect to enforcement, that we have consistently taken the position that we will not require a manufacturer to recall large numbers of vehicles merely because of an isolated test failure, where there is evidence that other tested units have met the standard's performance requirements and there is no indication of the absence of adequate quality control procedures.

Notwithstanding the fact that we generally disfavor including a "due care provision" in a safety standard, we also recognize that Standard No. 208 has included such a provision as part of its crash test requirements for the past 13 years. Recognizing that this rulemaking for advanced air bags will require manufacturers to certify their vehicles to a significantly greater number of test requirements in a limited amount of time, we do not believe that now is an appropriate time to delete this provision.

Accordingly, for this SNPRM, we are proposing to maintain the same "due care provision" for the new crash test requirements as for the existing ones. However, we are not proposing to apply the provision to test requirements that do not involve crashes, as these tests are not affected by the variability associated with dynamically induced dummy movement and/or vehicle deformation.

3. Selection of Options

In the NPRM, we proposed to require that where manufacturer options are specified, the manufacturer must select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. This would mean that failure to comply with the selected option would constitute a noncompliance with the standard (as well as a violation of the certification requirement), regardless of whether a vehicle complies with another option. We noted situations in the past where vehicle manufacturers have advised us that they had selected one compliance option, but then sought to change the option after being confronted with an apparent test failure.

Vehicle manufacturers objected to this proposed requirement. AAMA stated that the proposed requirement would not meet the need for motor vehicle safety, since both options meet the need for motor vehicle safety.

For this SNPRM, we are not changing this part of our proposal, except to add a provision clarifying that upon request, manufacturers will be required to advise the Office of Vehicle Safety Compliance (OVSC) of particular compliance options selected for a given vehicle or vehicle model. We note that this issue has arisen in the context of several recent and ongoing rulemakings, and we are continuing to review the various comments and other submissions from manufacturers concerning this issue.

4. Relationship of the Proposed New Injury Criteria to Existing Test Requirements

In this SNPRM, we are proposing a number of new and/or modified injury criteria and performance limits for vehicles certified to the requirements for advanced air bags. Some of these injury criteria and performance limits would apply to new tests, and some would apply to existing tests that are being retained in Standard No. 208.

We are not proposing to change the injury criteria for vehicles not certified to the requirements for advanced air bags. As a general matter, vehicles produced between the time the final rule becomes effective and the time the phase-in is complete will be required to comply with and be certified to the current requirements and current injury criteria or to the requirements for advanced air bags and new injury criteria; there will be no opportunity to mix and match.

We believe it would be unnecessary and potentially counterproductive to apply the new injury criteria or performance limits to vehicles produced in the next several years which are not certified to all of the requirements for advanced air bags. It is our intention that the vehicle manufacturers focus their attention on designing vehicles that comply with the new requirements for advanced air bags, consistent with the phase-in period, rather than attempting in the short term to modify and/or recertify existing vehicles to meet new injury criteria.

We also do not believe it would be a good use of our resources to conduct the analyses that would be needed to reevaluate what injury criteria and limits should apply to what test requirements for vehicles not yet redesigned to meet the requirements for advanced air bags. We note that injury criteria cannot be viewed in isolation. They apply both in the context of individual tests and in the context of arrays of tests. If the tests are more (or less) severe, the appropriate criteria may be less (or more) severe. There may be no direct relationship between the two.

As a possible exception to requiring vehicles produced between the time the final rule becomes effective and the time the phase-in is complete to comply with and be certified to the current requirements and current injury criteria or to the requirements for advanced air bags and new injury criteria, we request comments on whether we should permit manufacturers to immediately certify their vehicles to whatever set of unbelted crash test requirements applicable to 50th percentile adult male dummies is adopted for the final rule, as an alternative to the currently available sled test or unbelted up-to-48 km/h (30 mph) rigid barrier test. As discussed earlier in this document, we believe the sled test has significant limitations as compared to a crash test. Therefore, to the extent vehicle manufacturers wished to immediately design and certify vehicles to whatever set of unbelted crash test requirements is included in the final rule, there could be safety benefits.

5. Time Parameters for Measuring Injury Criteria During Tests

We have decided to propose specific end points for measuring injury criteria in both crash tests and low-risk deployment tests in order to resolve any uncertainty on the part of vehicle manufacturers and NHTSA as to when the measured injury criteria are relevant.

In dynamic crash tests, we historically have not measured injury criteria more than 300 milliseconds after the vehicle impacts the barrier. In our experience, additional measurement is unnecessary. Accordingly, we are proposing a 300 millisecond time duration for the dynamic crash tests.

The low risk deployment tests, which do not involve a complete vehicle crash and are intended only to address the potential adverse effects of an air bag, would not require as long a period of time to measure potential injuries. Accordingly, we are proposing injury measurements up to 100 milliseconds after the air bag deploys.

Regardless of the time frame used to measure other injury criteria, all dummies would continue to be required to remain fully contained within the test vehicle until physically removed by a technician.

6. Cruise Controls

In the NPRM, we asked about possible requirements for turning the cruise controls off when the air bag deploys. We were concerned that the cruise control, if not deactivated, would continue to provide power to the vehicle. This could lead to a runaway condition. Responding auto manufacturers (DaimlerChrysler, General Motors, Ford, Isuzu and the AIAM) saw no justification in turning off the cruise controls when the air bag deploys. Several commenters (JCW Consulting and Parents for Safer Air Bags) supported a requirement for deactivating cruise controls during a crash.

We are concerned that cruise controls could create a safety problem if they continue to operate after air bag deployment. No manufacturer provided information that its vehicles would not continue to operate on cruise control after a crash for which the air bags deployed. Nor did any indicate that it would be impracticable, or even difficult, to implement an automatic air bag shut-off system. Accordingly, we have decided to propose that cruise controls be deactivated when any stage of an air bag system is deployed. We have included a brief procedure to test whether this requirement is met.

7. Rescue Operations

In the NPRM, we also raised the possibility of adding requirements to prevent air bag deployments during rescue operations following a crash. We are aware of scattered reports of air bag deployments that take place after rescue personnel or "first responders" begin rescue operations. Many of the responding auto manufacturers (DaimlerChrysler, General Motors, Ford, VW, Toyota and AIAM) saw no justification in going forward with rescue provisions, believing that deactivation time requirements may limit design freedom. However, General Motors pointed out that rescue personnel frequently work under conditions so adverse as to preclude easy "look-up" of the information they need to know about deactivation times for a given model and MY of vehicle in any published rescue guideline. The National Transportation Safety Board stated that some universal method of deactivation should be incorporated into air bags to neutralize any potential danger for rescuers.

We believe that a standardized air bag deactivation time would eliminate confusion and unnecessary delays during rescue work. As stated in our recent publication titled "Rescue Procedures for Air Bag-equipped Vehicles," the air bags in most vehicles are deactivated within a minute or less after battery power is disconnected. We believe that deactivation times are generally decreasing and that a one minute "keep alive" period is adequate for deployment requirements. Accordingly, we are proposing to require that all air bags become deactivated after a maximum one-minute "keep alive" period has elapsed after the vehicle battery power is disconnected. Again, we have included a brief procedure to test whether this requirement is met.

8. Assessing Lower Extremity Injury Potential in Offset Deformable Crash Tests

In the discussion about possible adoption of a 48 to 56 km/h (30 to 35 mph) unbelted offset deformable barrier crash test, we note that the test would have greater potential to produce benefits related to injury from intrusion. This would include addressing injuries sustained by lower extremities, such as ankle/foot, tibia, knees, femurs, and the pelvis bone. This type of injury can result in life-long disability.

Crash data indicate a higher prevalence of lower extremity injuries in offset frontal collisions than in fully distributed frontal impacts. Lower extremity injuries occur at higher frequency at lower offset collision speeds than at comparable distributed collisions, particularly if floor pan intrusion is involved. Analysis of hospital data involving 42 front seat occupants who sustained below-the-knee lower limb injuries in frontal crashes showed that the foot ankle-complex accounted for nearly two thirds of all lower extremity trauma. This study indicated that direct foot contact with vehicle interior was the major injury mechanism (approximately 70%) while inversion-eversion and dorsiflexion made up the rest of the trauma. Since lower extremity injuries occur frequently, are disabling, and involve large medical costs, vehicle modifications to create a more crashworthy environment for the lower extremities would be an effective means to reduce the incidence and severity of these injuries.

To assess the likelihood of lower limb injuries in an offset deformable barrier crash test, it would be necessary to modify the existing and proposed Part 572 dummies to add instrumentation to the lower limbs. Currently, none of the Part 572 dummies incorporate instrumentation for measured assessment of potential tibia and ankle-foot injuries. However, two instrumented lower limb designs are available for installation on Hybrid III dummies. Denton, Inc. has been selling since the mid-1980's an instrumented tibia for the 50th percentile adult male dummy to assess tibia injury potential primarily due to axial loading. This tibia is a direct replacement for the regular Part 572 Subpart E non-instrumented tibia. The other design, still at the experimental-prototype stage is the THOR–LX being developed under our direction by General Engineering Systems Analysis Company (GESAC) and Applied Safety Technologies Corporation (ASTC). The THOR–LX includes tibia and an ankle foot complex with extensive instrumentation.

In October 1998, Denton, Inc., announced commercial availability of a 12 channel instrumented tibia for the 5th percentile adult female Hybrid III dummy which can also be used as a direct replacement for the proposed Subpart O dummy's tibia. The Denton-design tibias are covered by Denton patents and to the best of our knowledge Denton is its sole manufacturer and supplier. While the automotive manufacturers have used the Denton tibia for the assessment of injuries based on the tibia index, some researchers have criticized this design for its unusual geometry, which could induce measurement errors. As a result, the tibia index has been considered to be a questionable injury assessment parameter. See ESU paper 98–37–0–11, SAE paper 962424 and SAE paper 973301. We have performed limited evaluation of the 50th percentile adult male Denton tibia and found no significant problems in its use for tibia index measurement at the laboratory level, but have little experience in its application on dummies in vehicle crash tests.

Inasmuch as the 5th percentile adult female instrumented Denton tibia has been commercially available for less than a year, we have neither laboratory nor vehicle experience to determine its utility and practicality when used as part of the Subpart O dummy for lower limb injury assessment purposes.

The prototype THOR–LX for the 50th percentile adult male Hybrid III dummy has extensive biomechanical benchmarking incorporating a number of humanlike features, and is capable of assessing the potential of tibia, ankle and foot injuries with an extensive array of sensors. The THOR–LX has had limited application in sled tests and vehicle crash tests both at NHTSA and at several vehicle manufacturers.

Completion of certification of prototype THOR–LX is currently expected by November 1, 1999. Extensive subsequent tests will be required to establish the repeatability and reproducibility of its commercial version in laboratory and vehicle tests, the consistency and utility of the measurements relative to the injury assessment potential and its merits in comparison to the Denton design.

The design of THOR–LX for the 5th percentile adult female dummy is still to be completed, prototypes built, and evaluated. Earliest estimated availability of THOR–LX prototypes for the 5th percentile adult female Hybrid III dummy is in late spring of 2000. Inasmuch as the design of the THOR–LX has been sponsored by the government, its availability for manufacturing will be free of any restrictions.

Injury assessment reference values (IARVs) for the Denton type design have been established and published in several technical documents. The IARVs, as published in proceedings of the Advisory Group for Aerospace Research and Development (AGARD), specify for the 5th percentile adult female dummy's tibia an axial compression limit of 5104 N (1,147 pounds), and a Tibia Index of 1 for which the critical bending moment is 115 N-m (1,018 lbfin.) and critical compression force at 22.9 kN (5,148 pounds).

IARVs for the THOR–LX are still to be developed. There is a considerable amount of biomechanics literature to provide a basis for setting of appropriate IARVs, but their interpretation for and applicability to the THOR–LX for injury assessment purposes is still to be done.

As indicated above, a potential significant advantage to adopting a 48 to 56 km/h (30 to 35 mph) unbelted offset deformable barrier crash test would be the benefits associated with reducing the number and severity of lower limb injuries. Recognizing the possibility of adopting this test, we request comments on how we should proceed in upgrading the 5th percentile adult female and 50th percentile adult male dummies so that they are capable of measuring lower limb injury potential, and in selecting/developing appropriate injury criteria.

9. Hybrid III Dummy Neck

There have been crash test situations where the agency has observed high neck moments being generated at the upper load cell of the Hybrid III dummy within 20 milliseconds of the initiation of large neck shear loads without observing substantial angular deformation of the dummy neck. While we believe that these are true loads being generated by the restraint system and not artifacts of an inappropriately designed neck transducer, we are uncertain whether this loading condition is biomechanically realistic. That is, the current Hybrid III neck exhibits considerable bending resistance (i.e., inflexibility) at its occipital condyle joint. The inflexibility may allow large moments to be transmitted to the neck by the head without much relative motion. This, in turn, can create a situation in which the angular deflection due to the applied moment is opposed and even sometimes nullified by the superimposed angular deflection induced by the neck's shear force. Thus, high moments can be produced with little observable rotational deformation of the neck. In contrast to this, the human occipital condyle joint appears to have considerable laxity which requires it to experience significant rotation (± 20 degrees of the head with respect to C1) before it can sustain a substantial moment across it. This would suggest that rapid, high moments generated on a dummy without any concomitant head/neck rotation are possibly an artifact of Hybrid III's neck design and not necessarily a real load that contribute to the potential for neck injury.

We seek comment on whether anyone else using the Hybrid III dummy has experienced this rapidly produced high moment/low angular deflection condition, whether they agree or disagree with our analysis of the mechanics and possible consequences of the situation, and whether they have any biomechanical data supporting either maintaining the current neck design or justifying its modification.

We note that it would not be possible to modify in any significant way the current neck design within the time frame of this rulemaking, *i.e.*, before the March 1, 2000 deadline for a final rule. Moreover, we believe that dummies with the current neck are adequate for measuring risk of neck injury in the proposed tests. To the extent that commenters advocate modifying the neck, we ask them to address how dummies with the current neck should be used in the final rule to measure risk of neck injury.

There is another technical issue related to the Hybrid III dummy neck for which we are seeking public comment. On the selection of data channel, SAE J 211, paragraph 5, states "that selection of frequency response class is dependent upon many considerations, some of which may be unique to a particular test." Further, SAE J211 notes that "(t)he channel class recommendations for a particular application should not be considered to imply that all the frequencies passed by that channel are significant for the application." In the case of head-to-air bag interaction, the agency observed that the specified channel frequency class (CFC) for the neck at 1,000 for force and 600 for the bending moment admits neck data that has spikes of very short duration that may not be appropriate for evaluating the potential for neck injury to the human. Preliminary evidence indicates that the human neck response under similar impact would respond with considerably lower frequency response class data, which implies that the neck response data when processed for injury assessment should be filtered to a lower CFC level than suggested by SAE J211. Accordingly, the agency seeks comments on an appropriate CFC for evaluating data from neck load cells for injury assessment purposes and whether that CFC should depend on the impact environment (e.g., vehicle crash tests, out-of-position tests, etc.)

H. Relationship Between the NPRM, Comments on the NPRM and This SNPRM

In developing this SNPRM, we have carefully considered all of the comments received in response to the NPRM. Moreover, as discussed throughout this document, we have made many changes in our proposal in response to the public comments.

Because our SNPRM differs significantly in many aspects from the NPRM, we do not contemplate any further consideration of the comments on the NPRM in developing the final rule. If any persons believe that we did not adequately consider particular issues raised in comments on the NPRM, they should raise those issues again in commenting on the SNPRM. Moreover, they should not merely cite the old comments, but should explain why they believe the issues remain valid in the context of the SNPRM.

IV. Costs and Benefits

We are placing in the docket a revised Preliminary Economic Assessment (PEA) to accompany this SNPRM. The PEA analyzes the potential impact of the proposed performance requirements and associated test procedures for advanced air bag systems. A summary of the PEA follows. We request comments on the analyses and estimates of costs and benefits presented in that document.

Benefits

The assessment provides analyses of the safety benefits from tests that reduce the risk of injury from air bags in low-speed crashes, as well as from tests that improve the overall effectiveness of air bags in high speed crashes. For out-of-position occupants that are at risk of being injured by air bags, the agency estimates that out of 45 at-risk drivers that would have been killed with pre-MY 1998 air bags, 21 to 39 would be saved with low-risk air bags for the driver side. The agency also estimates that out of 136 passengers that would have been killed with pre-MY 1998 air bags, 91 would be saved with weight sensors and 122 to 132 would be saved with low-risk air bags. Of an estimated 37 drivers that would have an MAIS 3–5 injury, 20 to 33 could be prevented by low-risk deployment air bags. Of an estimated 218 passengers that would receive MAIS 3–5 injuries, about 149 could be prevented by a weight sensor and 168 to 202 could be prevented with a low-risk deployment air bag.

The PEA also contains estimates of the benefits of incremental improvements in safety compared to a baseline of pre-MY 1998 air bag vehicles for each compliance scenario. These are calculated by taking the available test data (based on vehicles designed to the 48 kmph (30 mph) unbelted test) and determining the benefits of bringing those test scores that are above the proposed injury criteria performance levels down to the level of the proposal in this SNPRM. This methodology assumes that manufacturers would make as few changes as possible to their fleet to meet the new proposals. Thus, it does not assume that manufacturers might completely redesign their air bag fleet if the final rule had a test for the high speed unbelted test other than the 48 kmph (30 mph) rigid barrier test. This analysis found that improved safety from vehicles passing the high speed Alternative 1 proposals would save 70 to 226[26] lives and prevent 342 to 691 MAIS 2–5 injuries. Combining the at-risk benefits and the high speed Alternative 1 benefits results in a range of benefits of 161 to 226 lives saved and 491 to 691 non-fatal MAIS 2–5 injuries prevented.

A similar analysis was prepared for Alternative 2, however, there are such limited data available that the impact is uncertain. To the best of our knowledge, no vehicles have been designed to a 35–56 kmph (22–35 mph) offset deformable barrier test. The analysis for Alternative 2 uses test results from vehicles designed to meet a 30 mph unbelted rigid barrier test. It is questionable whether this gives appropriate results for the future benefits of such a test.

Another set of analyses compares the data available on redesigned MY 1998/99 air bags compared to pre-MY 1998 air bags to examine how well the redesigned bags are doing compared to their predecessors. Based on the limited data available for analysis, redesigned MY 1998/99 air bags appear to have significantly reduced the fatality rate to out-of-position occupants in low-speed crashes (less than 25 mph delta V) to about 30 percent of the fatality rate of pre-MY 1998 air bags. However, limited real-world data indicate no statistically significant difference in *overall* fatality rates between the pre-MY 1998 and MY 1998/99 air bags. Most test data between matched pairs of air bag vehicles show no difference for belted occupants and small differences for unbelted occupants when comparing the pre-MY 1998 and MY 1998/99 air bags.

The agency also estimated the benefits of an unbelted 29 to 40 kmph (18 to 25 mph) frontal rigid barrier test coupled with an increase in the belted test from the current up to 48 kmph (30 mph) test to an up to 56 kmph (35 mph) test. Assuming *all* vehicles air bags were designed to *only* meet the unbelted 25 mph rigid barrier and oblique tests, an estimated 214 to 397 lives saved by pre-MY 1998 air bags would not be saved. Assuming minor changes to the seat belt and air bag systems of these vehicles to meet the 56 kmph (35 mph) belted test, it is estimated that 6 to 13 belted occupant's lives could be saved by increasing the belted test speed to 56 kmph (35 mph). Overall, 201 to 391 lives saved by pre-MY 1998 air bags might not be saved by the 48 kmph (25 mph) unbelted/56 kmph (35 mph) belted option.

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[26] Estimated benefits from at-risk groups and high speed tests can not be added to get a total since there is an overlap in benefits.

Sensitivity analyses are provided on increases in safety belt use and the impact of using the MY 1998/99 air bags as a baseline for determining benefits.

Sled Tests

NHTSA performed several analyses to estimate the impact of using the sled test in place of the 30 mph barrier test. One analytical approach assumed the possibility that air bags designed to the frontal sled test would provide benefits in full frontal impacts (12 o'clock strikes), but might provide no benefit in partial frontal impacts (10, 11, 1, and 2 o'clock strikes). This analysis estimates that if all passenger and driver side air bags were changed to only provide benefits in pure frontals, the only test mode in the sled test, there could be as many as 245 lives that would not be saved by air bags every year for unbelted occupants.

While the generic sled test has been part of FMVSS 208 since MY 1998, these vehicles were not designed from the start with only the generic sled test as the unbelted test, but were redesigned from vehicles originally designed to meet the pre-MY 1998 standards which included a 48 kmph (30 mph) unbelted rigid barrier test. Another set of analyses attempts to provide estimates of the potential loss in benefits if all vehicles were designed to the minimum performance of the generic sled test instead of a full vehicle barrier test in terms of impact severity and speed. The agency estimates that the generic sled test is equivalent to a barrier test of 22 to 25 mph in velocity. The range of estimates are that 214 to 722 fewer fatalities could be prevented if all vehicles were designed to the minimum requirements of a sled test.

Costs

Potential compliance costs for this proposal vary considerably and are dependent upon the method chosen by manufacturers to comply. Methods such as modified fold patterns and inflator adjustments can be accomplished for little or no cost. More sophisticated solutions such as proximity sensors can increase costs significantly. The range of potential costs for the compliance scenarios examined in this analysis is $20–$127 per vehicle (1997 dollars). This amounts to a total potential annual cost of up to $2 billion, based on 15.5 million vehicle sales per year.

Property Damage Savings

Compliance methods that involve the use of suppression technology have the potential to produce significant property damage cost savings because they prevent air bags from deploying unnecessarily. This saves repair costs to replace the passenger side air bag, and frequently to replace windshields damaged by the air bag deployment. Property damage savings from these requirements could total up to $85 over the lifetime of an average vehicle. This amounts to a potential cost savings of nearly $1.3 billion.

Net Cost Per Fatality Prevented

Based on the analysis which assumes manufacturers would make the minimal amount of changes necessary to meet the proposals, net costs per equivalent fatality prevented estimates were made. Property damage savings have the potential to offset all, or nearly all of the cost of meeting this proposal. The maximum range of cost per equivalent fatality saved from the scenarios examined in this analysis is a net savings of $1.3 million per equivalent fatality saved to a net cost of $2.6 million per equivalent fatality saved.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document is economically significant and was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action has also been determined to be significant under the Department's regulatory policies and procedures. NHTSA is placing in the public docket a Preliminary Economic Assessment (PEA) describing the costs and benefits of this rulemaking action. The costs and benefits are summarized earlier in this document.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) We have prepared an Initial Regulatory Flexibility Analysis (IFRA), which is part of the PEA. The IFRA tentatively concludes that the proposal could affect a substantial number of small businesses, but the economic impact on a substantial number of small businesses need not be significant. Small organizations and small governmental units would not be significantly affected since the potential cost impacts associated with this proposed action should only slightly affect the price of new motor vehicles.

The proposed rule would directly affect motor vehicle manufacturers and indirectly affect air bag manufacturers, seating manufacturers and dummy manufacturers.

For passenger car and light truck manufacturers, NHTSA estimates that there are only about four small manufacturers in the United States. These manufacturers serve a niche market, and the agency believes that small manufacturers do not manufacture even 0.1 percent of total U.S. passenger car and light truck production per year. The agency notes that these manufacturers are already required to provide air bags and certify compliance to Standard No. 208's dynamic impact requirements. Since the proposal would add additional test requirements for air bags, it would increase compliance costs for these, as well as other, vehicle manufacturers.

The agency does not believe that there are any small air bag manufacturers.

There are several manufacturers of dummies and/or dummy parts. All of them are considered small businesses. While the proposed rule would not impose any requirements on these manufacturers, it would be expected to have a positive impact on these types of small businesses by increasing demand for dummies.

NHTSA notes that several hundred final stage vehicle manufacturers and alterers could also be affected by this proposal. These manufacturers buy incomplete vehicles, add seating systems to vehicles without seats, and replace existing seats with new ones. If a manufacturer uses a sensing system in the seat for weight or presence sensing, then the second-stage manufacturer or alterer may need to use seats from the original manufacturer or will need to rely on a seat manufacturer to provide the same technology. Otherwise the second-stage manufacturer may need to use the existing seat or else certify compliance with the standard after replacing the seats. We do not have estimates of the costs to these manufacturers at this time. We request those manufacturers to submit estimates as part of their comments on this SNPRM.

NHTSA knows of 11 suppliers of seating systems that are small businesses. There are about 10 suppliers of seating systems that are not small businesses. The small businesses serve a niche market and provide seats for less than two percent of vehicles. Depending on the technology chosen to meet the proposed advanced air bag rule, these suppliers will need to keep up with emerging technology.

The agency believes that the economic impact on many of the manufacturers affected by this proposal would be small. While the small vehicle manufacturers would face additional compliance costs, the agency believes that air bag suppliers would likely provide much of the engineering expertise necessary to meet the new requirements, thereby helping to keep the overall impacts small. The agency also notes that, in the unlikely event that a small vehicle manufacturer did face substantial economic hardship, it could apply for a temporary exemption for up to three years. See 49 CFR Part 555. It could subsequently apply for a renewal of such an exemption. The greatest burden would likely be borne by seating manufacturers who do not supply seats to anyone other than second-stage manufacturers and alterers. Depending on the technology employed by the vehicle manufacturers, these seating manufacturers may need to engage in new business arrangements to permit their seats to work with an existing sensing system. While the proposed requirements would increase the demand for dummies, thereby having a positive impact on dummy manufacturers, the agency does not believe that such increased demand would be sufficient to create a significant economic impact on the dummy manufacturers. The agency requests comments concerning the economic impact on small vehicle manufacturers and dummy manufacturers.

Additional information concerning the potential impacts of the proposed requirements on small entities is presented in the PEA.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

The agency has analyzed this proposed amendment in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that the proposed amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). These effects are discussed above in Section IV of this preamble and in the PEA. The preamble and the PEA also identify and consider a reasonable number of regulatory alternatives for achieving the objectives of TEA 21. Given the requirement that an agency issuing a final rule subject to the Act select the "least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule," we request comments that will aid the agency in making that selection.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

If made final, this supplemental notice of proposed rulemaking would include the following "collections of information," as that term is defined in 5 CFR Part 1320 *Controlling Paperwork Burdens on the Public:*

Air Bag Phase-In Reporting Requirements—Once a year for four years, manufacturers would be required to report to NHTSA their annual production of vehicles with advanced air bags. As previously explained, we have proposed a four year phase-in period that ends in 2005. The Office of Management and Budget has approved NHTSA's collection of this information, assigning the collection OMB clearance no. 2127–0599. If this rule is made final, there would be 1,260 burden hours a year on the public resulting from this collection.

Air Bag Warning Labels—New air bag warning labels are proposed in this SNPRM. At present, OMB has approved NHTSA's collection of labeling requirements under OMB clearance no. 2127–0512, *Consolidated Labeling Requirements for Motor Vehicles (Except the Vehicle Identification Number)*. This clearance will expire on 6/30/2001, and is cleared for 71,095 burden hours on the public.

NHTSA estimates that the air bag warning labels would increase the information burden on the public as follows. There are 24 motor vehicle manufacturers that would be affected by the air bag warning label requirement, and the labels would be placed on approximately 15,000,000 vehicles per year. The label would be placed on each vehicle once. Since NHTSA would specify the exact content of the labels, the manufacturers would spend 0 hours developing the labels. The technical burden (time required for affixing labels) would be .0002 hours per label. NHTSA estimates that the total annual burden imposed on the public as a result of the air bag warning labels would be 3,000 hours (15 million vehicles multiplied by .0002 hours per label). Since the proposed labels would replace existing labels, this constitutes no additional burden on manufacturers.

Another way of estimating the burden associated with the labels is to assess the non-time related burden, i.e., the costs. The agency requests comments on the costs associated with labeling.

Advanced Air Bag Information in the Owner's Manual—This rulemaking would require advanced air bag information in the owner's manual that is additional to the information already required under the standard. At present, OMB has approved NHTSA's collection of owner's manual requirements under OMB clearance no. 2127–0541 *Consolidated Justification of Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.* This collection includes the burdens that would be imposed as a result of owners' manual information about air bags. This clearance will expire on 10/31/2001 and is cleared for 1,371 burden hours on the public.

Public comment is sought on NHTSA's estimate of the additional burden imposed on the public by the air bag warning label and whether the SNPRM would impose "collections of information" in addition to that for which NHTSA has already obtained clearances from OMB.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this SNPRM.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking directly involves decisions based on health risks that disproportionately affect children, namely, the risk of deploying air bags to children. However, this rulemaking serves to reduce, rather than increase, that risk.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards[27] in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We have incorporated the out-of-position tests one and two developed by the International Standards Organization (ISO) as part of the proposed low-risk deployment tests for the out-of-position 5th percentile adult female on the driver-side air bag and for the 6-year-old child on the passenger-side air bag. No other voluntary consensus standards are addressed by this rulemaking.

VI. Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing this SNPRM, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this proposed rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

Explain your views and reasoning as clearly as possible.

- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of the SNPRM you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the SNPRM, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

In addition, for those comments of 4 or more pages in length, we request that you send 10 additional copies, as well as one copy on computer disc, to: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. We emphasize that this is not a requirement. However, we ask that you do this to aid us in expediting our review of all comments. The copy on computer disc may be in any format, although we would prefer that it be in WordPerfect 8.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

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[27] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on "search."

(3) On the next page *(http://dms.dot.gov/search/)*, type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects

49 CFR Part 552

Administrative practice and procedure, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 585

Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Chapter V as follows:

PART 552—PETITIONS FOR RULEMAKING, DEFECT, AND NON-COMPLIANCE ORDERS

1. The authority citation for Part 552 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 30111, 30118, and 30162; delegation of authority at 49 CFR 1.50.

§552.1 through 552.10 [Redesignated as Subpart A]

2. Sections 552.1 through 552.10 would be designated as Subpart A and a new subpart heading would be added to read as follows:

Subpart A—General

3. A new subpart B would be added to Part 552 to read as follows:

Subpart B—Petitions for Expedited Rulemaking To Establish Dynamic Automatic Suppression System Test Procedures for Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection

Sec.

552.11 Application.
552.12 Definitions.
552.13 Form of petition.
552.14 Content of petition.
552.15 Processing of petition.

Subpart B—Petitions for Expedited Rulemaking To Establish Dynamic Automatic Suppression System Test Procedures for Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection

§552.11 Application.

This subpart establishes procedures for the submission and disposition of petitions filed by interested parties to initiate rulemaking to add a test procedure to 49 CFR 571.208, S28.

§552.12 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Dynamic automatic suppression system (DASS)* means a portion of an air bag system that automatically controls whether or not the air bag deploys during a crash by:

(1) Sensing the location of an occupant, moving or still, in relation to the air bag;

(2) Interpreting the occupant characteristics and location information to determine whether or not the air bag should deploy; and

(3) Activating or suppressing the air bag system based on the interpretation of characteristics and occupant location information.

(b) *Automatic suppression zone or ASZ* means a three-dimensional zone adjacent to the air bag cover, specified by the vehicle manufacturer, where air bag deployment will be suppressed by the DASS if a vehicle occupant enters the zone under specified conditions.

(c) *Standard No.* 208 means 49 CFR 571.208.

§552.13 Form of petition.

Each petition filed under this subpart shall—

(a) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

(b) Be written in the English language.

(c) State the name and address of the petitioner.

(d) Set forth in full the data, views and arguments of the petitioner supporting the requested test procedure, including all of the content information specified by §552.14. Any documents incorporated by reference in the procedure must be submitted with the petition.

(e) Specify and segregate any part of the information and data submitted that the petitioner wishes to have withheld from public disclosure in accordance with Part 512 of this chapter.

(f) Not request confidential treatment for any aspect of the requested test procedure and, to the extent confidential treatment is requested concerning a particular DASS or data and analysis submitted in support of the petition, provide a general non-confidential description of the operation of the DASS and of the data and analysis supporting the petition.

(g) Set forth a requested effective date and be submitted at least nine months before that date.

§552.14 Content of petition.

The petitioner shall provide the following information:

(a) A set of proposed test procedures for S28.1, S28.2, S28.3, and S28.4 of Federal Motor Vehicle Safety Standard No. 208 which the petitioner believes are appropriate for assessing a particular dynamic automatic suppression system.

(1) For S28.1 of Standard No. 208, the petitioner shall specify at least one specific position for the Part 572, subpart O 5th percentile female dummy that is:

(i) Outside but adjacent to the ASZ, and

(ii) Representative of an occupant position that is likely to occur during a frontal crash.

(2) For S28.2 of Standard No. 208, the petitioner shall specify at least one specific position for the Part 572 Subpart P 3-year-old child dummy and at least one specific position for the Part 572 Subpart N 6-year-old child dummy that are:

(i) Outside but adjacent to the ASZ, and

(ii) Representative of occupant positions that are likely to occur during a frontal crash where pre-crash braking occurs.

(3) For S28.3 of Standard No. 208, the petitioner shall specify a procedure which tests the operation of the DASS by moving a test device toward the driver air bag in a manner that simulates the motion of an occupant during pre-crash braking or other pre-crash maneuver. The petitioner shall include a complete description, including drawings and instrumentation, of the test device employed in the proposed test. The petitioner shall include in the procedure a means for determining whether the driver air bag was suppressed before any portion of the specified test device entered the ASZ during the test. The procedure must also include a means of determining when the specified test device occupies the ASZ.

(4) For S28.4 of Standard No. 208, the petitioner shall specify a procedure which tests the operation of the DASS by moving a test device toward the passenger air bag in a manner that simulates the motion of an occupant during pre-crash braking or other pre-crash maneuver. The petitioner shall include a complete description, including drawings and instrumentation, of the test device employed in the proposed test. The petitioner shall include in the procedure a means for determining whether the passenger air bag was suppressed before any portion of the specified test device entered the ASZ during the test. The procedure must also include a means of determining when the specified test device occupies the ASZ.

(b) A complete description and explanation of the particular DASS that the petitioner believes will be appropriately assessed by the recommended test procedures. This must include:

(1) A complete description of the logic used by the DASS in determining whether to suppress the air bag or allow it to deploy. Such description must include flow charts or similar materials outlining the operation of the system logic, the system reaction time, the time duration used to evaluate whether the air bag should be suppressed or deployed, changes, if any, in system performance based on the size of an occupant and vehicle speed, and a description of the size and shape of the zone where under similar circumstances and conditions the DASS may either allow or suppress deployment. Such description shall also address whether and how the DASS discriminates between an occupant's torso or head entering the ASZ as compared to an occupant's hand or arm, and whether and how the DASS discriminates between an occupant entering the ASZ and an inanimate object such as a newspaper or ball entering the ASZ.

(2) Detailed specifications for the size and shape of the ASZ, including whether the suppression zone is designed to change size or shape depending on the vehicle speed, occupant size, or other factors.

(c) Analysis and data supporting the appropriateness, repeatability, reproducibility and practicability of each of the proposed test procedures.

(1) For the procedures proposed for inclusion in S28.1 and S28.2 of Standard No. 208, the petitioner shall provide the basis for the proposed dummy positions, including but not limited to, why the positions are representative of what is likely to occur in real world crashes.

(2) For the procedures proposed for inclusion in S28.3 and S28.4 of Standard No. 208, the petitioner shall provide:

(i) A complete explanation of the means used in the proposed test to ascertain whether the air bag is suppressed or activated during the test.

(ii) A complete description of the means used to evaluate the ability of a dynamic system to detect and respond to an occupant moving toward an air bag, including the method used to move a test device toward an air bag at speeds representative of occupant movement during pre-crash braking or other pre-crash maneuver.

(iii) The procedure used for locating the test device inside a test vehicle in preparation for testing, including an accounting of the reference points used to specify such location.

(iv) An explanation of the methods used to measure the amount of time needed by a suppression system to suppress an air bag once a suppression triggering event occurs.

(v) High speed film or video of at least two tests of the DASS using the proposed test procedure.

(vi) Data generated from not less than two tests of the DASS using the proposed test procedure, including an account of the data streams monitored during testing and complete samples of these data streams from not less than two tests performed under the proposed procedure.

(d) Analysis concerning the variety of potential DASS designs for which the requested test procedure is appropriate; e.g., whether the test procedures are appropriate only for the specific DASS design contemplated by the petitioner, for all DASS designs incorporating the same technologies, or for all DASS designs.

§552.15 Processing of petition.

(a) NHTSA will process any petition that contains the information specified by this subpart. If a petition fails to provide any of the information, NHTSA will not process the petition but will advise the petitioner of the information that must be provided if the agency is to process the petition. The agency will seek to notify the petitioner of any such deficiency within 30 days after receipt of the petition.

(b) At any time during the agency's consideration of a petition submitted under this part, the Administrator may request the petitioner to provide additional supporting information and data and/or provide a demonstration of any of the requested test procedures. The agency will seek to make any such request within 60 days after receipt of the petition. Such demonstration may be at either an agency designated facility or one chosen by the petitioner, provided that, in either case, the facility must be located in North America. If such a request is not honored to the satisfaction of the agency, the petition will not receive further consideration until the requested information is submitted.

(c) The agency will publish in the **Federal Register** either a Notice of Proposed Rulemaking proposing adoption of the requested test procedures, possibly with changes and/or additions, or a notice denying the petition. The agency will seek to issue either notice within 120 days after receipt of a complete petition. However, this time period may be extended by any time period during which the agency is awaiting additional information it requests from the petitioner or is awaiting a requested demonstration. The agency contemplates a 30 day comment period for any Notice of Proposed Rulemaking, and will endeavor to issue a final rule within 60 days thereafter.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

4. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

5. Section 571.208 would be amended by revising S3, S4.5.1 heading, S4.5.1(b)(1), S4.5.1(b)(2), 4.5.1(e), S4.5.1(f), S4.5.4, S5.1, S5.1.1, S5.1.2, S6.1, S6.2, 6.4, S8.1.5 and S13, removing S4.5.5, adding S4.1.5.4, S4.2.6.3, S4.7, S4.8, S4.9, S5.4, S5.4.1, S5.4.2, S5.4.2.1, S5.4.2.2, S5.4.2.3, S5.4.2.4, S6.6, S6.7, S14 through S33.5, and adding new figures 8, 9 and 10 in numerical order and adding Appendix A at the end of the section after the figures to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

[*Proposed high speed test Alternative 1*—unbelted rigid barrier (29–48 km/h) (18–30 mph), belted rigid barrier (0–48 km/h) (0–30 mph)—consists of proposed sections S5.1.1, S5.1.2, S6.1, S6.2(b), S6.3, S6.4(b), S6.5, S6.6, S6.7, S14.3, S15.1, S15.2, S15.3, S15.4, S16.1(a), S16.1(b), S16.2, S16.3, S17.1, and S18. It does not include S5.4 or S17.2, i.e., if Alternative 1 were adopted, neither S5.4 nor S17.2 would be adopted. *Proposed high speed test Alternative 2*—unbelted offset deformable barrier (35–56 km/h) (22–35 mph), belted rigid barrier(0–48 km/h) (0–30 mph)—consists of proposed sections S5.1.1, S5.4, S6.1, S6.2(b), S6.3, S6.4(b), S6.5, S6.6, S6.7, S14.3, S15.1, S15.3, S15.4, S16.1(a), S16.2, S16.3, S17.1, S17.2, and S18. It does not include S5.1.2, S15.2, or S16.1(b), i.e., if Alternative 2 were adopted, neither S5.1.2 nor S15.2 nor S16.1(b) would be adopted.]

* * * * *

S3. *Application.*

(a) This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. In addition, S9, *Pressure vessels and explosive devices*, applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash.

(b) Notwithstanding any language to the contrary, any vehicle manufactured after March 19, 1997 and before September 1, 2005 that is subject to a dynamic crash test requirement conducted with unbelted dummies may meet the requirements specified in S13 instead of the applicable unbelted requirement, unless the vehicle is certified to meet the requirements specified in S14.3, S15, S17, S19, S21, S23, S25, S30, and S32.

(c) For vehicles which are certified to meet the requirements specified in S13 instead of the otherwise applicable dynamic crash test requirement conducted with unbelted dummies, compliance with S13 shall, for purposes of Standards No. 201, 203 and 209, be deemed as compliance with the unbelted frontal barrier requirements of S5.1.

* * * * *

S4.1.5.4 *Passenger cars certified to S14.* At each front outboard designated seating position meet the frontal crash protection requirements of S5.1.2 [under Alternative 1] [or] S5.4 [under Alternative 2] by means that require no action by vehicle occupants. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

S4.2.6.3 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less certified to S14.* Each truck, bus, or multipurpose passenger vehicle with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less certified to S14 shall, at each front outboard designated seating position, meet the frontal crash protection requirements of S5.1.2 [under Alternative 1] [or] S5.4 [under Alternative 2] by means that require no action by vehicle occupants. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

S4.5.1 *Labeling and owner's manual information.*

* * * * *

(b) * * *

(1) Except as provided in S4.5.1(b)(2), each vehicle shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in either Figure 6a or 6b of this standard, as appropriate, and shall comply with the requirements of S4.5.1(b)(1)(i) through S4.5.1(b)(1)(iv).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm (1.2 inches) in diameter.

(iv) If the vehicle does not have a back seat, the label shown in Figure 6a or 6b may be modified by omitting the statement: "The BACK SEAT is the SAFEST place for children."

(2) Vehicles manufactured after September 1, 2002 and certified to meet the requirements specified in S19, S21, and S23, shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in Figure 8 of this standard and shall comply with the requirements of S4.5.1(b)(2)(i) through S4.5.1(b)(2)(iv).

(i) The heading area shall be yellow with the word "CAUTION" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm2 (4.7 in^2).

(iii) The pictogram shall be black on a white background. The pictogram shall be no less than 30 mm (1.2 inches) in length.

(iv) If the vehicle does not have a back seat, the label shown in Figure 8 may be modified by omitting the statement: "The BACK SEAT is the SAFEST place for CHILDREN."

* * * * *

(e) *Label on the dashboard.*

(1) Except as provided in S4.5.1(e)(2), each vehicle that is equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible

from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 7 of this standard, and shall comply with the requirements of S4.5.1(e)(1)(i) through S4.5.1(e)(1)(iii).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) If the vehicle does not have a back seat, the label shown in Figure 7 may be modified by omitting the statement: "The back seat is the safest place for children 12 and under."

(2) Vehicles manufactured after September 1, 2002 and certified to meet the requirements specified in S19, S21, and S23, that are equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 9 of this standard, and shall comply with the requirements of S4.5.1(e)(2)(i) through S4.5.1(e)(2)(iii).

(i) The heading area shall be yellow with black text.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) If the vehicle does not have a back seat, the label shown in Figure 9 may be modified by omitting the statement: "The back seat is the safest place for children."

(f) *Information to appear in owner's manual.*

(1) The owner's manual for any vehicle equipped with an inflatable restraint system shall include a description of the vehicle's air bag system in an easily understandable format. The owner's manual shall include a statement to the effect that the vehicle is equipped with an air bag and lap/shoulder belt at one or both front outboard seating positions, and that the air bag is a supplemental restraint at those seating positions. The information shall emphasize that all occupants, including the driver, should always wear their seat belts whether or not an air bag is also provided at their seating position to minimize the risk of severe injury or death in the event of a crash. The owner's manual shall also provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. The owner's manual shall also explain that no objects should be placed over or near the air bag on the instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

(2) For any vehicle certified to meet the requirements specified in S14.3, S15, S17, S19, S21, S23, S25, S30, and S32, the manufacturer shall also include in the vehicle's owner's manual a discussion of the advanced passenger air bag system installed in the vehicle. The discussion shall be written to explain the proper functioning of the advanced air bag system and shall provide a summary of the actions that may affect the proper functioning of the system. The discussion shall include, as a minimum, the following topics:

(a) presentation and explanation of the main components of the advanced passenger air bag system.

(b) explanation of how the components function together as part of the advanced passenger air bag system.

(c) basic requirements for proper operation, including an explanation of the actions that may affect the proper functioning of the system.

(d) a complete description of the passenger air bag suppression system installed in the vehicle including a discussion of any suppression zone.

(e) an explanation of the interaction of the advanced passenger air bag system with other vehicle components, such as seat belts, seats or other components.

(f) a summary of the expected outcomes when child restraint systems, children and small teenagers or adults are both properly and improperly positioned in the passenger seat, including cautionary advice against improper placement of child restraint systems.

(g) tips and guidelines to improve consumer understanding of the proper use of the advanced passenger air bag system.

(h) information on how to contact the vehicle manufacturer concerning modifications for persons with disabilities that may affect the advanced air bag system.

* * * * *

S4.5.4 *Passenger air bag manual cut-off device.* Passenger cars, trucks, buses, and multipurpose passenger vehicles manufactured before September 1, 2005 may be equipped with a device that deactivates the air bag installed at the right front passenger position in the vehicle, if all the conditions in S4.5.4.1 through S4.5.4.4 are satisfied.

* * * * *

S4.7 *Selection of compliance options.* Where manufacturer options are specified, the manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. Each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information regarding which of the compliance options it has selected for a particular vehicle or make/model.

S4.8 *Values and tolerances.* Wherever a range of values or tolerances are specified, requirements shall be met at all values within the range of values or tolerances. All angles and directions (*e.g.,* vertical or horizontal) specified are approximate.

S4.9 *Metric values.* Specifications and requirements are given in metric units with English units provided for reference. The metric values are controlling.

* * * * *

S5 *Occupant crash protection requirements.*

S5.1 *Frontal barrier crash test.*

S5.1.1 *Belted test.* Impact a vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle, under the applicable conditions of S8 and S10, including S10.9 (manual belt adjustment). For vehicles certified to S14 of this standard, the test dummy specified in S8.1.8 placed in each front outboard designated seating position shall meet the injury criteria of S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 of this standard. All other vehicles to which S5.1.1 is applicable shall meet the injury criteria of S6.1, S6.2(a), S6.3, S6.4(a), and S6.5.

S5.1.2 *Unbelted test.* Impact a vehicle traveling longitudinally forward at any speed, between 29 km/h (18 mph) and 48 km/h (30 mph), inclusive, into a fixed rigid barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle under the applicable conditions of S8 and S10, excluding S10.9. The test dummy specified in S8.1.8 placed in each front outboard designated seating position shall meet the injury criteria of S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 of this standard.

* * * * *

S5.4 *Offset deformable barrier crash test.*

S5.4.1 *General provisions.* Place a Part 572 Subpart E Hybrid III 50th percentile adult male test dummy at each front outboard seating position of the vehicle, in accordance with procedures specified in S10. Impact the vehicle traveling longitudinally forward at any speed, between 35.4 km/h (22 mph) and 56 km/h (35 mph), inclusive, into a fixed offset deformable barrier under the conditions specified in S5.4.2 of this standard. The test dummies shall meet the injury criteria specified in S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 of this standard.

S5.4.2 *Test conditions.*

S5.4.2.1 *Offset frontal deformable barrier.* The offset frontal deformable barrier shall conform to the specifications set forth in Subpart B of Part 587 of this chapter.

S5.4.2.2 *General test conditions.* All of the test conditions specified in S8.1 of this standard apply.

S5.4.2.3 *Dummy seating and positioning.* The anthropomorphic test dummies are seated and positioned as specified in S10 of this standard.

S5.4.2.4 *Impact configuration.* The test vehicle shall impact the barrier with the longitudinal line of the vehicle parallel to the line of travel, and perpendicular to the barrier face. The test vehicle shall be aligned so that the vehicle strikes the barrier with 40 percent overlap on either the left or the right side of the vehicle, with the vehicle's width engaging the barrier face such that the vehicle's longitudinal centerline is offset outboard of the edge of the barrier face by 10 percent of the vehicle's width ± 25 mm (1.0 inch) as illustrated in Figure 10. The vehicle width is defined as the maximum dimension measured across the widest part of the vehicle, including bumpers and molding but excluding such components as exterior mirrors, flexible mud flaps, marker lamps, and dual rear wheel configurations.

* * * * *

S6.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.

S6.2 *Head injury criteria.*

(a) The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 1,000 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

(b) The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 700 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points in time during the crash of the vehicle which are separated by not more than a 15 millisecond time interval.

* * * * *

S6.4 *Chest deflection.*

(a) Compression deflection of the sternum relative to the spine, as determined by instrumentation shown in drawing 78051–218, revision U incorporated by reference in Part 572, subpart E of this chapter, shall not exceed 76 mm (3 inches).

(b) Compressive deflection of the sternum relative to the spine, as determined by instrumentation shown in drawing 78051–317, revision A, incorporated by reference in Part 572, subpart E, shall not exceed 63 mm (2.5 inches).

* * * * *

S6.6 *Neck injury.* The biomechanical neck injury predictor, Nij, shall not exceed a value of 1.0 at any point in time. The following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely tension-extension (N_{TE}), tension-flexion (N_{TF}), compression-extension (N_{CE}), and compression-flexion (N_{CF}) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600. Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by:

Nij = (Fz / Fzc) + (My / Myc)

where Fzc and Myc are critical values corresponding to:

Fzc = 4500 N (1012 lbf) for tension
Fzc = 4500 N (1012 lbf) for compression
Myc = 310 Nm (229 lbf-ft) for flexion about occipital condyles
Myc = 125 Nm (92 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed 1.0 at any point in time. When calculating N_{TE} and N_{TF}, all compressive loads shall be set to zero. Similarly, when calculating N_{CE} and N_{CF}, all tensile loads shall be set to zero. In a similar fashion, when calculating N_{TE} and N_{CE}, all flexion moments shall be set to zero. Likewise, when calculating N_{TF} and N_{CF}, all extension moments shall be set to zero.

S6.7 *Test duration for purpose of measuring injury criteria.* For tests conducted pursuant to S5.1.1, S5.1.2, and S5.4, the injury criteria shall be met up to 300 milliseconds after the vehicle strikes the barrier.

* * * * *

S8.1.5 Movable vehicle windows and vents are placed in the fully closed position, unless the vehicle manufacturer chooses to specify a different adjustment position prior to the time it certifies the vehicle.

* * * * *

S13 *Alternative unbelted test available, under S3(b) of this standard, for certain vehicles manufactured before September 1, 2005.*

* * * * *

S14 *Advanced air bag requirements for passenger cars and for trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service.*

S14.1 *Vehicles manufactured on or after September 1, 2002 and before September 1, 2005.*

(a) For vehicles manufactured on or after September 1, 2002 and before September 1, 2005, a percentage of the manufacturer's production, as specified in S14.1.1, shall meet the requirements specified in S14.3, S15, S17, S19, S21, S23, S25, S30, and S32 (in addition to the other requirements specified in this standard).

(b) Manufacturers that manufacture two or fewer carlines, as that term is defined at 49 CFR 583.4, may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2003 and before September 1, 2005 shall meet the requirements specified in S14.3, S15, S17, S19, S21, S23, S25, S30, and S32 (in addition to the other requirements specified in this standard).

(c) Each vehicle that is manufactured in two or more stages or that is altered (within the meaning of section 567.7 of this chapter) after having previously been certified in accordance with Part 567 of this chapter is not subject to the requirements of S14.1.

(d) Vehicles manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually are not subject to the requirements of S14.1.

S14.1.1 *Phase-in schedule.*

S14.1.1.1 *Vehicles manufactured on or after September 1, 2002 and before September 1, 2003.* Subject to S14.1.2(a), for vehicles manufactured by a manufacturer on or after September 1, 2002 and before September 1, 2003, the amount of vehicles complying with S14.3, S15, S17, S19, S21, S23, S25, S30, and S32 shall be not less than 25 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2000 and before September 1, 2003, or

(b) The manufacturer's production on or after September 1, 2002 and before September 1, 2003.

S14.1.1.2 *Vehicles manufactured on or after September 1, 2003 and before September 1, 2004.* Subject to S14.1.2(b), for vehicles manufactured by a manufacturer on or after September 1, 2003 and before September 1, 2004, the amount of vehicles complying with S14.3, S15, S17, S19, S21, S23, S25, S30, and S32 shall be not less than 40 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2001 and before September 1, 2004, or

(b) The manufacturer's production on or after September 1, 2003 and before September 1, 2004.

S14.1.1.3 *Vehicles manufactured on or after September 1, 2004 and before September 1, 2005.* Subject to S14.1.2(c), for vehicles manufactured by a manufacturer on or after September 1, 2004 and before September 1, 2005, the amount of vehicles complying with S14.3, S15, S17, S19, S21, S23, S25, S30, and S32 shall be not less than 70 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2002 and before September 1, 2005, or

(b) The manufacturer's production on or after September 1, 2004 and before September 1, 2005.

S14.1.2 *Calculation of complying vehicles.*

(a) For the purposes of complying with S14.1.1.1, a manufacturer may count a vehicle if it is manufactured on or after [the date 30 days after publication of the final rule would be inserted], but before September 1, 2003.

(b) For purposes of complying with S14.1.1.2, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after [the date 30 days after publication of the final rule would be inserted], but before September 1, 2004, and

(2) Is not counted toward compliance with S14.1.1.1.

(c) For purposes of complying with S14.1.1.3, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after [the date 30 days after publication of the final rule would be inserted], but before September 1, 2005, and

(2) Is not counted toward compliance with S14.1.1.1 or S14.1.1.2.

S14.1.3 *Vehicles produced by more than one manufacturer.*

S14.1.3.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S14.1.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S14.1.3.2.

(a) A vehicle which is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

S14.1.3.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S14.1.3.1.

S14.2 *Vehicles manufactured on or after September 1, 2005.* Each vehicle shall meet the requirements specified in S14.3, S15, S17, S19, S21, S23, S25, S30, and S32 (in addition to the other requirements specified in this standard).

S14.3 *Barrier test requirements using 50th percentile adult male dummies.*

S14.3.1 *Rigid barrier belted test.* Each vehicle that is certified as complying with S14 shall, at each front outboard designated seating position, meet the injury criteria specified in S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 when tested under S5.1.1. A vehicle shall not be deemed to be in noncompliance with this paragraph if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirements of this paragraph.

S14.3.2 *Rigid barrier unbelted test.* Each vehicle that is certified as complying with S14 shall comply with the requirements of S4.1.5.4 or S4.2.6.3 by means of an inflatable restraint system at the driver's and right front passenger's position that meets the injury criteria specified in S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 when tested under S5.1.2. A vehicle shall not be deemed to be in noncompliance with this paragraph if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirements of this paragraph.

S14.3.2 *Offset deformable barrier unbelted test.* Each vehicle that is certified as complying with S14 of this standard shall comply with the requirements of S4.1.5.4 or S4.2.6.3 that meets the injury criteria specified in S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 when tested under S5.4. A vehicle shall not be deemed to be in noncompliance with this paragraph if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirements of this paragraph.

S15 *Rigid barrier test requirements using 5th percentile adult female dummies.*

S15.1 *Belted test.* Each vehicle subject to S15 shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S16 of this standard with the anthropomorphic test dummy restrained by a Type 2 seat belt assembly. A vehicle shall not be deemed to be in noncompliance with this paragraph if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirements of this paragraph.

S15.2 *Unbelted test.* Each vehicle subject to S15 shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S16 of this standard with the anthropomorphic test dummy unbelted. A vehicle shall not be deemed to be in noncompliance with this paragraph if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirements of this paragraph.

S15.3 *Injury criteria (5th percentile adult female dummy).*

S15.3.1 *All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.*

S15.3.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2 - t_1)$$

shall not exceed 700 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points in time during the crash of the vehicle which are separated by not more than a 15 millisecond time interval.

S15.3.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S15.3.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 52 mm (2.0 inches).

S15.3.5 The force transmitted axially through each thigh shall not exceed 6805 N (1530 pounds).

S15.3.6 The biomechanical neck injury predictor, Nij, shall not exceed a value of 1.0 at any point in time. The following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely tension-extension (N_{TE}), tension-flexion (N_{TF}), compression-extension (N_{CE}), and compression-flexion (N_{CF}) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600 Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by:

$N_{ij} = (Fz / Fzc) + (My / Myc)$

where Fzc and Myc are critical values corresponding to:

Fzc = 3370 N (758 lbf) for tension
Fzc = 3370 N (758 lbf) for compression
Myc = 155 Nm (114 lbf-ft) for flexion about occipital condyles
Myc = 62 Nm (46 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed 1.0 at any point in time. When calculating N_{TE} and N_{TF}, all compressive loads shall be set to zero. Similarly, when calculating N_{CE} and N_{CF}, all tensile loads shall be set to zero. In a similar fashion, when calculating N_{TF} and N_{CF}, all flexion moments shall be set to zero. Likewise, when calculating N_{TF} and N_{CF}, all extension moments shall be set to zero.

S15.4 *Test duration for purpose of measuring injury criteria.* For tests conducted pursuant to S15 and S17, the injury criteria of S15.3 shall be met up to 300 milliseconds after the vehicle strikes the barrier. For tests conducted pursuant to S26, the injury criteria shall be met up to 100 milliseconds after the air bag deploys.

S16. *Test procedures for rigid barrier test requirements using 5th percentile adult female dummies.*

S16.1 *General provisions.* Crash testing to determine compliance with the requirements of S15 of this standard is conducted as specified in the following paragraphs (a) and (b).

(a) *Belted test.* Place a Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with procedures specified in S16.3 of this standard, including S16.3.5. Impact the vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ± [illegible] degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard. The dummies shall meet the injury criteria specified in S15.3 of this standard.

(b) *Unbelted test.* Place a Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with procedures specified in S16.3 of this standard, except S16.3.5. Impact the vehicle traveling longitudinally forward at any speed, from 29 km/h (18 mph) to 48 km/h (30 mph), inclusive, into a fixed rigid barrier that is perpendicular within a tolerance of ±5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard. The test dummies shall meet the injury criteria specified in S15.3 of this standard.

S16.2 *Test conditions.*

S16.2.1 The vehicle, including test devices and instrumentation, is loaded as in S8.1.1.

S16.2.2 Movable vehicle windows and vents are placed in the fully closed position, unless the vehicle manufacturer chooses to specify a different adjustment position prior to the time the vehicle is certified.

S16.2.3 Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S16.2.4 Doors are fully closed and latched but not locked.

S16.2.5 The dummy is clothed in form fitting cotton stretch garments with short sleeves and above the knee length pants. A size 8W shoe which meets the configuration and size specifications of MIL-S 13912 change "P" or its equivalent is placed on each foot of the test dummy.

S16.2.6 Limb joints are set at 1 g, barely restraining the weight of the limb when extended horizontally. Leg joints are adjusted with the torso in the supine position.

S16.2.7 Instrumentation shall not affect the motion of dummies during impact.

S16.2.8 The stabilized temperature of the dummy is at any level between 20° C and 22° C (68° F to 71.6° F).

S16.2.9 *Steering wheel adjustment.*

S16.2.9.1 Adjust a tiltable steering wheel, if possible, so that the steering wheel hub is at the geometric center when moved through its full range of driving positions.

S16.2.9.2 If there is no setting detent at the mid position, lower the steering wheel to the detent just below the mid position.

S16.2.9.3 If the steering column is telescoping, place the steering column as close as possible to the mid position.

S16.2.10 *Pedal adjustment.* If pedals can be adjusted, adjust them to the full rear position (towards the rear of the vehicle) or until the pedal makes contact with the feet as defined in S16.3.2.3.

S16.2.11 *Driver and passenger seat set-up.*

S16.2.11.1 *Seat position adjustment.*

S16.2.11.1.1 If a seat is adjustable in the fore and aft and/or vertical directions, move the seat to the forwardmost seat track position and full down vertical position.

S16.2.11.1.2 Establish a reference line on the seat pan in a horizontal plane.

S16.2.11.1.3 Measure and record the seat pan angle with respect to the reference line established in S16.2.11.1.2.

S16.2.11.1.4 Adjust the seat vertically to the mid-height position. If possible, maintain the seat pan reference angle measured in the full down and full forward condition in S16.2.11.1.3.

S16.2.11.2 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S16.2.11.3 *Side bolster adjustment.* Position adjustable seat cushion or seat back side bolsters so that they are in the lowest or most open adjustment position.

S16.3 *Dummy seating positioning procedures.* The Part 572 Subpart O 5th percentile adult female test dummy is positioned as follows.

S16.3.1 *General provisions and definitions.*

S16.3.1.1 All angles are measured with respect to the horizontal plane.

S16.3.1.2 The dummy's neck bracket is adjusted to align the zero degree index marks.

S16.3.1.3 The term "midsagittal plane" refers to the vertical plane that separates the dummy into equal left and right halves.

S16.3.1.4 The term "vertical longitudinal plane" refers to a vertical plane parallel to the vehicle's longitudinal centerline.

S16.3.1.5 The term "vertical plane" refers to a vertical plane, not necessarily parallel to the vehicle's longitudinal centerline.

S16.3.1.6 The term "transverse instrumentation platform" refers to the transverse instrumentation surface inside the dummy's skull casting to which the neck load cell mounts. This surface is perpendicular to the skull cap machined inferior superior mounting surface.

S16.3.1.7. The term "thigh" refers to the femur between, but not including, the knee and the pelvis.

S16.3.1.8 The term "leg" refers to the lower part of the entire leg including the knee.

S16.3.2 *Driver dummy positioning.*

S16.3.2.1 *Driver torso/head/seat back angle positioning.*

S16.3.2.1.1 Fully recline the seat back, if adjustable.

S16.3.2.1.2 Install the dummy into the driver's seat. If necessary, move the seat rearward to facilitate dummy installation. If the seat cushion angle automatically changes as the seat is moved from the full forward position, restore the correct seat cushion angle when measuring the pelvic angle as specified in S16.3.2.1.11.

S16.3.2.1.3 *Bucket seats.* Center the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the longitudinal center of the seat cushion.

S16.3.2.1.4 *Bench seats.* Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and aligned with the center of the steering wheel rim.

S16.3.2.1.5 Hold the dummy's thighs down and push rearward on the upper torso until the dummy's pelvic angle measures 30–35 degrees. If it is not possible to achieve a pelvic angle of at least 30 degrees, maximize the dummy's pelvic angle.

S16.3.2.1.6 Place the legs at 90 degrees to the thighs. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion such that the angle between the dummy's thighs and legs begins to change.

S16.3.2.1.7 Gently rock the upper torso relative to the lower torso laterally in a side to side motion three times through a ± 5 degree arc (approximately 51 mm (2 inches) side to side) to reduce friction between the dummy and the seat.

S16.3.2.1.8 Before proceeding, make sure that the seat has been returned to the full forward position if it has been moved from that location as specified in S16.3.2.1.2. Adjust legs if required.

S16.3.2.1.9 While holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat bight. In addition, inspect the abdomen to insure that it is properly installed.

S16.3.2.1.10 If it is not possible to achieve the head level within ± 0.5 degrees, minimize the angle and continue to S16.3.2.1.11.

S16.3.2.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gage (drawing TE–2504, incorporated by reference in Part 572, subpart O, of this chapter). The angle shall be set to within 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees ± 2.5 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible as specified in S16.3.2.1.9 and S16.3.2.1.10.

S16.3.2.1.12. If the transverse instrumentation platform of the head is still not level, adjust the seat back angle to minimize the angle as much as possible.

S16.3.2.1.13 In vehicles with a fixed seat back, the lower neck bracket can be adjusted to level the head within ± 0.5 degrees or to minimize the angle as much as possible.

S16.3.2.2 *Driver thigh/knee/leg positioning.*

S16.3.2.2.1 Rest the dummy's thighs against the seat cushion to the extent permitted by the placement of the feet in S16.3.2.3.

S16.3.2.2.2 Set the initial transverse distance between the longitudinal centerline of the dummy's thighs at the knees at 160 to 170 mm (6.3 to 6.7 inches), with the thighs and legs of the dummy in vertical longitudinal planes.

S16.3.2.2.3. Move the dummy's right foot to the accelerator pedal by rotating the entire right thigh and leg at the dummy's hip joint while maintaining the dummy's torso setting.

S16.3.2.2.4 If either knee of the dummy is in contact with the vehicle interior, translate the thigh(s) and leg(s) at the hip joint inboard or outboard with respect to the dummy midsagittal plane until no contact occurs while maintaining the thigh and leg in a vertical plane.

S16.3.2.2.5 If contact still occurs, rotate the thigh(s) and leg(s) laterally at the hip joint with respect to the dummy midsagittal plane so that it is no longer in the vertical plane and no contact occurs.

S16.3.2.3 *Driver feet positioning.*

S16.3.2.3.1 Rest the right foot of the dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal.

S16.3.2.3.2 If the ball of the foot does not contact the pedal, change the angle of the foot relative to the leg such that the toe of the foot contacts the undepressed accelerator pedal.

S16.3.2.3.3 If the foot still cannot contact the undepressed accelerator pedal, place the toe of the foot as close as possible to the pedal.

S16.3.2.3.4 Place the left foot on the toe board with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toe board and the floor pan.

S16.3.2.3.5 If the left foot cannot be positioned on the toe board, place the foot flat on the floor pan as far forward as possible.

S16.3.2.3.6 If the left foot does not contact the floor pan, place the foot parallel to the floor and place the leg as perpendicular to the thigh as possible.

S16.3.2.4 *Driver arm/hand positioning.*

S16.3.2.4.1 Place the dummy's upper arm adjacent to the torso with the arm centerlines as close to vertical as possible.

S16.3.2.4.2 Place the palms of the dummy in contact with the outer part of the steering wheel rim at its horizontal centerline with the thumbs inside the steering wheel rim.

S16.3.2.4.3 If it is not possible to position the thumbs inside the steering wheel rim at its horizontal centerline, then position them above and as close to the horizontal centerline of the steering wheel rim as possible.

S16.3.2.4.4 Lightly tape the hands to the steering wheel rim so that if the hand of the test dummy is pushed upward by a force of not less than 9 N (2 pounds) and not more than 22 N (5 pounds), the tape releases the hand from the steering wheel rim.

S16.3.3 *Passenger dummy positioning.*

S16.3.3.1 *Passenger torso/head/seat back angle positioning.*

S16.3.3.1.1 Fully recline the seat back, if adjustable.

S16.3.3.1.2 Install the dummy into the passenger's seat. If necessary, move the seat rearward to facilitate dummy installation. If the seat cushion angle automatically changes as the seat is moved from the full forward position, restore the correct seat cushion angle when measuring the pelvic angle in S16.3.3.1.11.

S16.3.3.1.3 *Bucket seats.* Center the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the longitudinal center of the seat cushion.

S16.3.3.1.4 *Bench seats.* The midsagittal plane shall be vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the midsaggital plane of the driver dummy.

S16.3.3.1.5 Hold the dummy's thighs down and push rearward on the upper torso until the dummy's pelvic angle measures 30–35 degrees. If it is not possible to achieve a pelvic angle of at least 30 degrees, maximize the dummy's pelvic angle.

S16.3.3.1.6 Place the legs at 90 degrees to the thighs. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion such that the angle of the dummy's legs begins to change.

S16.3.3.1.7 Gently rock the upper torso relative to the lower torso laterally side to side three times through a ± 5 degree arc (approximately 51 mm (2 inches) side to side) to reduce friction between the dummy and the seat.

S16.3.3.1.8 Before proceeding, make sure that the seat has been returned to the full forward position if it had been moved from that location as specified in S16.3.3.1.2.

S16.3.3.1.9 While holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat bite. In addition, inspect the abdomen to insure that it is properly installed.

S16.3.3.1.10 If it is not possible to achieve the head level within ± 0.5 degrees, minimize the angle and continue to S16.3.3.1.11.

S16.3.3.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gage (drawing TE–2504, incorporated by reference in Part 572, Subpart O, of this chapter). The angle shall be set within 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees ± 2.5 degrees as possible while keeping the transverse instrumentation platform of the head as level as specified in S16.3.3.1.9 and S16.3.3.1.10..

S16.3.3.1.12 If the transverse instrumentation platform of the head is still not level, adjust the seat back angle to minimize the angle as much as possible.

S16.3.3.1.13 In vehicles with a fixed seat back, the lower neck bracket can be adjusted to level the head within ± 0.5 degrees or to minimize the angle as much as possible.

S16.3.3.2 *Passenger thigh/knee/leg positioning.*

S16.3.3.2.1 Rest the dummy's thighs against the seat cushion to the extent permitted by the placement of the feet in S16.3.3.3.

S16.3.3.2.2 Set the initial transverse distance between the longitudinal centerline of the dummy's thighs at the knees at 160 to 170 mm (6.3 to 6.7 inches), with the thighs and legs of the dummy in vertical longitudinal planes.

S16.3.3.2.3 If either knee of the dummy is in contact with the vehicle interior translate the thigh(s) and leg(s) at the hip joint inboard or outboard with respect to the dummy midsagittal plane until no contact occurs while maintaining the thigh and leg in a vertical plane.

S16.3.3.2.4 If contact still occurs, rotate the thigh(s) and leg(s) laterally at the hip joint with respect to the dummy midsagittal plane so that it is no longer in the vertical plane and no contact occurs.

S16.3.3.3 *Passenger feet positioning.*

S16.3.3.3.1 Place the passenger's feet flat on the floor pan as far forward as possible.

S16.3.3.3.2 If either foot does not entirely contact the floor pan, place the foot parallel to the floor and place the legs as perpendicular to the thighs as possible.

S16.3.3.4 *Passenger arm/hand positioning.*

S16.3.3.4.1 Place the dummy's upper arms in contact with the upper seat back and adjacent to the torso.

S16.3.3.4.2 Place the palms of the dummy in contact with the outside of the thigh.

S16.3.3.4.3 Place the little fingers in contact with the seat cushion.

S16.3.4 *Driver and passenger head restraint adjustment.*

S16.3.4.1. Place each adjustable head restraint so that the vertical center of the head restraint is aligned with the center of gravity (CG) of the dummy head.

S16.3.4.2 If the above position is not attainable, move the vertical center of the head restraint to the closest detent below the center of the head CG.

S16.3.4.3 If the head restraint has a fore and aft adjustment, place the restraint in the forwardmost position or until contact with the head is made.

S16.3.4.4 If the head restraint has an automatic adjustment, leave it where the system positions the restraint after the dummy is placed in the seat.

S16.3.5 *Driver and passenger manual belt adjustment (This applies only for tests conducted with a belted dummy.)*

S16.3.5.1 If an adjustable seat belt D-ring anchorage exists, place it in the full down position.

S16.3.5.2 Place the Type 2 manual belt around the test dummy and fasten the latch.

S16.3.5.3 Ensure that the dummy's head remains as level as possible, as specified in S16.3.2.1.9 and S16.3.2.1.10.

S16.3.5.4 Remove all slack from the lap belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times. Apply a 9 N (2 pound force) to 18 N (4 pound force) tension load to the lap belt. If the belt system is equipped with a tension-relieving device, introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer in the owner's manual for the vehicle. If the belt system is not equipped with a tension-relieving device, allow the excess webbing in the shoulder belt to be retracted by the retractive force of the retractor.

S17 *Offset frontal deformable barrier requirements using 5th percentile adult female dummies.*

S17.1 Each vehicle subject to S17 of this standard shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S18.1(a) of this standard with the Part 572 Subpart O 5th percentile adult female test dummy restrained by a Type 2 seat belt assembly. A vehicle shall not be deemed to be in noncompliance with this paragraph if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirements of this paragraph.

S17.2 Each vehicle subject to S17 of this standard shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S18.1(b) of this standard with the dummy unbelted. A vehicle shall not be deemed to be in noncompliance with this paragraph if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirements of this paragraph.

S18 *Test procedure for offset frontal deformable barrier requirements using 5th percentile adult female dummies.*

S18.1 *General provisions.* Crash testing to determine compliance with the requirements of S17 of this standard is conducted as specified in the following paragraphs (a) and (b).

(a) *Belted test.* Place a Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with procedures specified in S16.3 of this standard, including S16.3.5. Impact the vehicle traveling longitudinally forward at any speed, up to and including 40 km/h (25 mph), into a fixed offset deformable barrier under the conditions specified in S18.2 of this standard, impacting only the driver side of the vehicle. The dummies shall meet the injury criteria specified in S15.3 of this standard.

(b) *Unbelted test.* Place a Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with procedures specified in S16.3 of this standard, but not including S16.3.5. Impact the vehicle traveling longitudinally forward at any speed, from 35.4 km/h (22 mph) to 56 km/h (35 mph), inclusive, into a fixed offset deformable barrier under the conditions specified in S18.2 of this standard. The dummies shall meet the injury criteria specified in S15.3 of this standard.

S18.2 *Test conditions.*

S18.2.1 *Offset frontal deformable barrier.* The offset frontal deformable barrier shall conform to the specifications set forth in Subpart B of Part 587 of this chapter.

S18.2.2 *General test conditions.* All of the test conditions specified in S16.2 of this standard apply.

S18.2.3 *Dummy seating procedures.* Position the anthropomorphic test dummies as specified in S16.3 of this standard.

S18.2.4 *Impact configuration.* The test vehicle shall impact the barrier with the longitudinal line of the vehicle parallel to the line of travel and perpendicular to the barrier face. The test vehicle shall be aligned so that the vehicle strikes the barrier with 40 percent overlap on either the left or right side of the vehicle, with the vehicle's width engaging the barrier face such that the vehicle's longitudinal centerline is offset outboard of the edge of the barrier face by 10 percent of the vehicle's width +/− 25 mm (1.0 inch) as illustrated in Figure 10. The vehicle width is defined as the maximum dimension measured across the widest part of the vehicle, including bumpers and molding but excluding such components as exterior mirrors, flexible mud flaps, marker lamps, and dual rear wheel configurations.

S19 *Requirements to provide protection for infants in rear facing child restraints.*

S19.1 Each vehicle shall, at the option of the manufacturer, meet the requirements specified in S19.2 or S19.3, under the test procedures specified in S20.

S19.2 *Option 1—Automatic suppression feature.* Each vehicle shall meet the requirements specified in S19.2.1 through S19.2.2.

S19.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests specified in S20.2 (using the Part 572 Subpart R 12-month-old CRABI child dummy restrained in any of the child restraints set forth in sections B and C of Appendix A to this section), and activation of the air bag during each of the static tests specified in S20.3 (using the Part 572 Subpart O 5th percentile Hybrid III adult female dummy).

S19.2.2 The vehicle shall be equipped with a mechanism that indicates whether the occupant restraint system is suppressed. The mechanism need not be located in the occupant compartment.

S19.2.3 The vehicle shall be equipped with a telltale light on the instrument panel which is illuminated whenever the passenger air bag is deactivated and not illuminated whenever the passenger air bag is activated, except that the telltale need not illuminate when the passenger seat is unoccupied. The telltale:

(a) Shall be clearly visible from all front seating positions;

(b) Shall be yellow;

(c) Shall have the identifying words "PASSENGER AIR BAG OFF" on the telltale or within 25 mm (1.0 inch) of the telltale; and

(d) Shall not be combined with the readiness indicator required by S4.5.2 of this standard.

S19.3 *Option 2—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S19.4 of this standard when the passenger air bag is statically deployed in accordance with the procedures specified in S20.4 of this standard.

S19.4 *Injury criteria (12-month-old CRABI dummy).*

S19.4.1 All portions of the test dummy and child restraint shall be contained within the outer surfaces of the vehicle passenger compartment.

S19.4.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2 - t_1)$$

shall not exceed 390 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points in time during the crash of the vehicle which are separated by not more than a 15 millisecond time interval.

S19.4.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 50 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S19.4.4 The biomechanical neck injury predictor, Nij, shall not exceed a value of 1.0 at any point in time. The following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely tension-extension (N_{TE}), tension-flexion (N_{TF}), compression-extension (N_{CE}), and compression-flexion (N_{CF}) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600.

Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by:

Nij = (Fz/Fzc) + (My/Myc)

where Fzc and Myc are critical values corresponding to:

Fzc = 1465 N (329 lbf) for tension
Fzc = 1465 N (329 lbf) for compression
Myc = 43 Nm (32 lbf-ft) for flexion about occipital condyles
Myc = 17 Nm (13 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed 1.0 at any point in time. When calculating N_{TE} and N_{TF}, all compressive loads shall be set to zero. Similarly, when calculating N_{CE} and N_{CF}, all tensile loads shall be set to zero. In a similar fashion, when calculating N_{TE} and N_{CE}, all flexion moments shall be set to zero. Likewise, when calculating N_{TF} and N_{CF}, all extension moments shall be set to zero.

S19.4.5 *Test duration for purpose of measuring injury criteria.* For tests conducted pursuant to S20.4, the injury criteria shall be met up to 100 milliseconds after the air bag deploys.

S20 *Test procedure for S19.*

S20.1 *General provisions.* Tests specifying the use of a rear facing child restraint, a convertible child restraint, or car bed may be conducted using any such restraint listed in sections A, B, and C of Appendix A of this standard. The rear facing child restraint, convertible child restraint, or car bed may be unused or used; if used, there must not be any visible damage prior to the test.

S20.2 *Static tests of automatic suppression feature which must result in deactivation of the passenger air bag.*

S20.2.1 *Test one—belted rear facing and convertible child restraints.*

S20.2.1.1 Position the right front passenger vehicle seat at any seat track location, at any seat height, and at any seat back angle between the manufacturer's nominal design position for the 50th percentile adult male as specified in S8.1.3 and an additional 25 degrees in the rearward direction (inclusive).

S20.2.1.2 Tests in S20.2.1 may be conducted using any child restraint specified in section B or section C of Appendix A.

S20.2.1.3 If the child restraint is equipped with a handle, tests may be conducted with the handle at either the child restraint manufacturer's recommended position for use in vehicles or in the upright position.

S20.2.1.4 If the child restraint is equipped with a sunshield, tests may be conducted with the sunshield either fully open or fully closed.

S20.2.1.5 Tests may be conducted with the child restraint uncovered or with a towel or blanket weighing up to 1.0 kg (2.2 pounds) placed on or over the child restraint in any of the following positions:

(a) With the blanket covering the top and sides of the child restraint, or

(b) With the blanket placed from the top of the vehicle's seat back to the forwardmost edge of the child restraint.

S20.2.1.6 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as "Plane A".

S20.2.1.7 Locate a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front passenger vehicle seat pan. This will be referred to as "Plane B". For vehicles with bench seats, locate a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the air bag cover. This will be referred to as "Plane B".

S20.2.1.8 *Facing rear.*

(a) Align the child restraint system facing rearward such that "Plane A" is aligned with "Plane B".

(b) While maintaining the child restraint position achieved in S20.2.1.8(a), secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the rear facing mode.

(c) Cinch the vehicle belts to secure the child restraint in accordance with the procedures specified in Standard No. 213, except that any tension from zero up to 134 N (30 pounds) may be used.

(d) Position the Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions for seating infants provided with the child restraint.

(e) Start the vehicle engine and close all vehicle doors. Check whether the air bag is deactivated.

S20.2.1.9 *Facing forward (convertible restraints only).*

(a) Align the child restraint system facing forward such that "Plane A" is aligned with "Plane B".

(b) While maintaining the forward facing position achieved in S20.2.1.9(a), secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the forward facing mode.

(c) Cinch the vehicle belts to secure the child restraint in accordance with the procedures specified in Standard No. 213, except that any tension from zero up to 134 N (30 pounds) may be used.

(d) Position the Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions for seating infants provided with the child restraint.

(e) Start the vehicle engine and close all vehicle doors. Check whether the air bag is deactivated.

S20.2.2 *Test two—unbelted rear facing and convertible child restraints.*

S20.2.2.1 Position the right front passenger vehicle seat at any seat track location, at any seat height, and at any seat back angle between the manufacturer's nominal design position for the 50th percentile adult male as specified in S8.1.3 and an additional 25 degrees in the rearward direction (inclusive).

S20.2.2.2 Tests in S20.2.2 may be conducted using any child restraint specified in section B or section C of Appendix A to this section.

S20.2.2.3 If the child restraint is equipped with a handle, tests may be conducted with the handle at either the child restraint manufacturer's recommended position for use in vehicles or in the upright position.

S20.2.2.4 If the child restraint is equipped with a sunshield, tests may be conducted with the sunshield either fully open or fully closed.

S20.2.2.5 Tests may be conducted with the child restraint uncovered or with a towel or blanket weighing up to 1.0 kg (2.2 pounds) placed on or over the child restraint in any of the following positions:

(a) With the blanket covering the top and sides of the child restraint, or

(b) With the blanket placed from the top of the vehicle's seat back to the forwardmost edge of the child restraint.

S20.2.2.6 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as "Plane A".

S20.2.2.7 Locate a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front passenger vehicle seat pan. This will be referred to as "Plane B". For vehicles with bench seats, locate a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the air bag cover. This will be referred to as "Plane B".

S20.2.2.8 *Facing rear.*

(a) Align the child restraint system facing rearward such that "Plane A" is aligned with "Plane B" and adjust the forwardmost part of the child restraint in "Plane A" at any angle up to 45 degrees from "Plane B".

(b) Position the Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions for seating infants provided with the child restraint.

(c) Start the vehicle engine and close all vehicle doors. Check whether the air bag is deactivated.

S20.2.2.9 *Facing forward.*

(a) Align the child restraint system facing forward such that "Plane A" is aligned with "Plane B" and adjust the forwardmost part of the child restraint in "Plane A" at any angle up to 45 degrees from "Plane B".

(b) Position the Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions for seating infants provided with the child restraint.

(c) Start the vehicle engine and close all vehicle doors. Check whether the air bag is deactivated.

S20.2.2.10 *Facing forward, tipped on instrument panel (convertible child restraints only).*

(a) Align the child restraint system facing forward such that "Plane A" is aligned with "Plane B".

(b) Position the Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions for seating infants provided with the child restraint.

(c) Tip the rearwardmost part of the child restraint forward toward the instrument panel, while keeping the bottom portion of the child seat in contact with the vehicle seat. Position the child restraint such that it rests against the instrument panel. If the child restraint cannot reach the instrument panel and remain in contact with the vehicle seat, move the vehicle seat forward until contact can be achieved.

(d) Start the vehicle engine and close all vehicle doors. Check whether the air bag is deactivated.

S20.2.3 *Test three-belted car bed.*

S20.2.3.1 Position the right front passenger vehicle seat at any seat track location, at any seat height, and at any seat back angle between the manufacturer's nominal design position for the 50th percentile adult male as specified in S8.1.3 and an additional 25 degrees in the rearward direction (inclusive).

S20.2.3.2 Tests may be conducted using any car bed specified in section A of Appendix A.

S20.2.3.3 If the car bed is equipped with a handle, tests may be conducted with the handle at either the child restraint manufacturer's recommended position for use in vehicles or in the upright position.

S20.2.3.4 If the car bed is equipped with a sunshield, tests may be conducted with the sunshield either fully open or fully closed.

S20.2.3.5 Tests may be conducted with the car bed uncovered or with a towel or blanket weighing up to 1.0 kg (2.2 pounds) placed on or over the child restraint in any of the following positions:

(a) With the blanket covering the top and sides of the car bed, or

(b) With the blanket placed from the top of the vehicle's seat back to the forwardmost edge of the car bed.

S20.2.3.6 *Nominal position*:

(a) Install the car bed by following to the extent possible the car bed manufacturer's directions regarding proper installation of the car bed.

(b) Cinch the vehicle belts to secure the child restraint in accordance with the procedures specified in Standard No. 213, except that any tension from zero up to 134 N (30 pounds) may be used.

(c) Position the Part 572 Subpart K newborn dummy in the car bed by following, to the extent possible, the car bed manufacturer's instructions for seating infants provided with the car bed.

(d) Start the vehicle engine and close all vehicle doors. Check whether the air bag is deactivated.

S20.3 *Static tests of automatic suppression feature which must result in activation of the passenger air bag.*

S20.3.1 Place the right front passenger vehicle seat at any seat track location, any seat height, and any seat back angle between the manufacturer's nominal design position for the 50th percentile adult male as specified in S8.1.3 and an additional 25 degrees in the rearward direction (inclusive).

S20.3.2 Place a Part 572 Subpart O 5th percentile adult female test dummy at the right front seating position of the vehicle, in accordance with procedures specified in S16.3 of this standard, to the extent possible with the seat position that has been selected pursuant to S20.3.1.

S20.3.3 Start the vehicle engine and then close all vehicle doors.

S20.3.4 Check whether the air bag is activated.

S20.4 *Low risk deployment test.*

S20.4.1 Position the right front passenger vehicle seat in the full forward seat track position, the highest seat position (if adjustment is available), and adjust the seat back to the nominal design position for a 50th percentile adult male dummy as specified by the vehicle manufacturer.

S20.4.2 Tests in S20.4 may be conducted using any child restraint specified in section B or section C of Appendix A.

S20.4.3 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as "Plane A".

S20.4.4 Locate a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the air bag cover. This will be referred to as "Plane B".

S20.4.4 Align the child restraint system facing rearward such that "Plane A" is aligned with "Plane B".

S20.4.5 While maintaining the child restraint position achieved in S20.4.4, secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the rear facing mode.

S20.4.6 Position the Part 572 subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions for seating infants provided with the child restraint.

S20.4.7 Deploy the right front passenger air bag system. If the air bag contains a multistage inflator, any stage or combination of stages may be fired that could deploy in the presence of an infant in a rear-facing child restraint positioned according to S20.2.1 or S20.2.2 in a rigid barrier crash test at speeds up to 64 km/h (40 mph).

S21 *Requirements using 3 year old child dummies.*

S21.1 Each vehicle shall, at the option of the manufacturer, meet the requirements specified in S21.2, S21.3, or S21.4 under the test procedures specified in S22.

S21.2 *Option 1—Automatic suppression feature that always suppresses the air bag when a child is present.* Each vehicle shall meet the requirements specified in S21.2.1 through S21.2.2.

S21.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests specified in S22.2 (using a child or a Part 572 Subpart P Hybrid III 3-year-old child dummy), and activation of the air bag during each of the static tests specified in S20.3 (using a female or a Part 572 Subpart O Hybrid III 5th percentile adult female dummy).

S21.2.2 The vehicle shall be equipped with a mechanism that indicates whether the occupant restraint system is suppressed. The mechanism need not be located in the occupant compartment.

S21.2.3 The vehicle shall be equipped with a telltale light on the instrument panel meeting the requirements specified in S19.2.3.

S21.3 *Option 2—Dynamic automatic suppression system that suppresses the air bag when an occupant is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for the passenger air bag which meets the requirements specified in S27.

S21.4 *Option 3—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S21.5 of this standard when the passenger air bag is statically deployed in accordance with the low risk deployment test procedures specified in S22.3.

S21.5 *Injury criteria for Hybrid III 3-year-old child dummy.*

S21.5.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.

S21.5.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 570 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points in time during the crash of the vehicle which are separated by not more than a 15 millisecond time interval.

S21.5.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 55 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S21.5.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 34 millimeters (1.3 inches).

S21.5.5 The biomechanical neck injury predictor, Nij, shall not exceed a value of 1.0 at any point in time. The following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely tension-extension (N_{TE}), tension-flexion (N_{TF}), compression-extension (N_{CE}), and compression-flexion (N_{CF}) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600. Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by:

Nij=(Fz/Fzc)+(My/Myc)

where Fzc and Myc are critical values corresponding to:

Fzc=2120 N (477 lbf) for tension
Fzc=2120 N (477 lbf) for compression
Myc=68 Nm (50 lbf-ft) for flexion about occipital condyles
Myc=27 Nm (20 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed 1.0 at any point in time. When calculating N_{TE} and N_{TF}, all compressive loads shall be set to zero. Similarly, when calculating N_{CE} and N_{CF}, all tensile loads shall be set to zero. In a similar fashion, when calculating N_{TE} and N_{CE}, all flexion moments shall be set to zero. Likewise, when calculating N_{TF} and N_{CF}, all extension moments shall be set to zero.

S21.5.5 *Test duration for purpose of measuring injury criteria.* For tests conducted pursuant to S22.3, the injury criteria shall be met up to 100 milliseconds after the air bag deploys.

S22 *Test procedure for S21.*

S22.1 *General provisions and definitions.*

S22.1.1 Tests specifying the use of a forward-facing child seat or booster seat may be conducted using any such seat listed in section C and section D of Appendix A of this standard. The child restraint may be unused or used; if used, there must not be any visible damage prior to the test.

S22.1.2 The definitions provided in S16.3.1 apply to the tests specified in S22.

S22.2 *Static tests of automatic suppression feature which must result in deactivation of the passenger air bag when a child is present.*

S22.2.1 *Test one—child in a forward-facing child seat or booster seat.*

S22.2.1.1 Position the right front passenger vehicle seat at any seat track location, at any seat height, and at any seat back angle between the manufacturer's nominal design position for the 50th percentile adult male as specified in S8.1.3.

S22.2.1.2 Install the forward-facing child seat or booster seat in the right front passenger seat in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat.

S22.2.1.3 Cinch the vehicle belts to secure the child restraint in accordance with the procedures specified in Standard No. 213, except that any tension from zero up to 134 N (30 pounds) may be used.

S22.2.1.4 Position the Part 572 Subpart P Hybrid III 3-year-old child dummy seated in the forward-facing child seat or booster seat such that the dummy's lower torso is centered on the forward-facing child seat or booster seat cushion and the dummy's spine is parallel to the forward-facing child seat or booster seat back or, if there is no booster seat back, the vehicle seat back. Place the lower arms at the dummy's side.

S22.2.1.5 Attach all appropriate forward-facing child seat or booster seat belts, if any, by following, to the extent possible, the manufacturer's instructions for seating children provided with the child restraint.

S22.2.1.6 Start the vehicle engine and then close all vehicle doors.

S22.2.1.7 Check whether the air bag is deactivated.

S22.2.2 *Test two—unbelted child.*

S22.2.2.1 Position the right front passenger vehicle seat at any seat track location, at any seat height, and at any seat back angle between the manufacturer's nominal design position for the 50th percentile adult male as specified in S8.1.3.

S22.2.2.2 Place the Part 572 Hybrid III 3-year old child dummy on the right front passenger seat in any of the following positions (without using a forward-facing child restraint or booster seat or the vehicle's seat belts):

(a) *Sitting on seat with back against seat.*

(1) Position the dummy in the seated position and place it on the right front passenger seat.

(2) Position the upper torso of the dummy against the seat back. In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the

bucket seat. Position the dummy's thighs against the seat cushion.

(3) Allow the legs of the dummy to extend off the surface of the seat. If this positioning of the dummy's legs is prevented by contact with the instrument panel, rotate the leg toward the floor until there is no contact with the instrument panel.

(4) Rotate the dummy's upper arms down until they contact the seat.

(5) Rotate the dummy's lower arms until the dummy's hands contact the seat.

(6) Start the vehicle engine and then close all vehicle doors.

(7) Check whether the air bag is deactivated.

(b) *Sitting on seat with back not against seat:*

(1) Position the dummy in the seated position and place it on the right front passenger seat.

(2) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat. Position the dummy so that the horizontal distance from the dummy's back to the seat back is no less than 25 mm (1 inch) and no more than 150 mm (6 inches), as measured from the dummy's mid-sagittal plane at the mid-sternum level.

(3) Position the dummy's femurs against the seat cushion.

(4) Allow the legs of the dummy to extend off the surface of the seat. If this positioning the dummy's legs is prevented by contact with the instrument panel, rotate the leg toward the floor until there is no contact with the instrument panel.

(5) Rotate the dummy's lower arms until the dummy's hands contact the seat.

(6) Start the vehicle engine and then close all vehicle doors.

(7) Check whether the air bag is deactivated.

(c) *Sitting on seat edge, spine vertical, hands by the dummy's side*:

(1) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat. Position the dummy in the seated position and place it on the right front passenger seat with the dummy's legs positioned 90 degrees (*i.e.*, right angle) from the horizontal.

(2) Position the dummy forward in the seat such that the legs rest against the front of the seat with the spine in the vertical direction. If the dummy's feet contact the floorboard, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy spine vertical.

(3) Extend the dummy's arms directly in front of the dummy parallel to the floor of the vehicle.

(4) Lower the dummy's arms such that they contact the seat.

(5) Start the vehicle engine and then close all vehicle doors.

(6) Check whether the air bag is deactivated.

(d) *Standing on seat, facing forward:*

(1) Position the dummy in the standing position. The arms may be at any position.

(2) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat. Position the dummy on the right front passenger seat cushion facing the front of the vehicle while placing the heels of the dummy feet in contact with the seat back.

(3) Rest the dummy against the seat back.

(4) Start the vehicle engine and then close all vehicle doors.

(5) Check whether the air bag is deactivated.

(e) *Kneeling on seat, facing forward:*

(1) Position the dummy in a kneeling position by rotating the dummy's legs 90 degrees behind the dummy (from the standing position).

(2) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat. Position the kneeling dummy in the right front passenger seat with the dummy facing the front of the vehicle. Position the dummy such that the dummy's toes are in contact with the seat back. The arms may be at any position.

(3) Start the vehicle engine and then close all vehicle doors.

(4) Check whether the air bag is deactivated.

(f) *Kneeling on seat, facing rearward:*

(1) Position the dummy in a kneeling position by rotating the dummy's legs 90 degrees behind the dummy (from the standing position).

(2) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat. Position the kneeling dummy in the right front passenger seat with the dummy facing the rear of the vehicle. Position the dummy such that the dummy's head is in contact with the seat back. The arms may be at any position.

(3) Start the vehicle engine and then close all vehicle doors.

(4) Check whether the air bag is deactivated.

(g) *Lying on seat:*

(1) Lay the dummy on the right front passenger seat such that the following criteria are met:

(i) The mid-sagittal plane of the dummy is horizontal,

(ii) The dummy's spine is perpendicular to the vehicle longitudinal axis,

(iii) The dummy's upper arms are parallel to its spine,

(iv) A plane passing through the two shoulder joints of the dummy is vertical and intersects the geometric center of the seat bottom (the seat bottom is the plan view part of the seat from the forward most part of the seat back to the forward most part of the seat),

(v) The anterior of the dummy is facing the vehicle front, and the head is positioned towards the passenger door, and

(vi) Leg position is not set and can be articulated to fit above conditions.

(2) If the top of the dummy's head is not within 50 to 100 mm (2-4 inches) of the vehicle side door structure, translate the dummy laterally so that the top of the dummy head is 50 to 100 mm (2-4 inches) from the vehicle door structure.

(3) Rotate the thighs toward the chest of the dummy and rotate the legs against the thighs.

(4) Place the dummy's upper left arm parallel to the vehicle's transverse plane and the lower arm 90 degrees to the upper arm. Rotate the left lower arm down about the elbow joint until movement is obstructed. The final position should resemble a fetal position.

(5) Start the vehicle engine and then close all vehicle doors.

(6) Check whether the air bag is deactivated.

(h) *Low risk deployment test position 1.*

(1) Position the dummy in accordance with the position set forth in S22.3.2.

(2) Start the vehicle engine and then close all vehicle doors.

(3) Check whether the air bag is deactivated.

(i) *Sitting on seat edge, head contacting the mid-face of the instrument panel.*

(1) Locate and mark the center point of the dummy's rib cage or sternum plate. (The vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as "Point A."

(2) Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as "Point B".

(3) Locate the horizontal plane that passes through Point B. This will be referred to as "Plane 1".

(4) "Plane 2" is defined as the vertical plane which passes through Point B and is parallel to the vehicle's longitudinal axis.

(5) Move the passenger seat to the full rearward seating position.

(6) Place the dummy in the front passenger seat such that:

(i) Point A is located in Plane 2.

(ii) A vertical plane through the shoulder joints of the dummy is 90 degrees to the longitudinal axis of the vehicle.

(iii) The legs are positioned 90 degrees (right angle) from horizontal.

(iv) The dummy is positioned forward in the seat such that the legs rest against the front of the seat and such that the dummy's upper spine plate is vertical.

(7) Rotate the dummy's torso by applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints. Continue applying force until the head C.G. is in Plane 1, or the spine angle at the upper spine plate is 45 degrees, whichever produces the greatest rotation.

(8) Move the seat forward until the dummy comes in contact with the forward structure of the vehicle, or the seat is full forward, whichever occurs first.

(9) To keep the dummy in position, a thread with a maximum breaking strength of 311 N (70 pounds) that does not interfere with the suppression device may be used to hold the dummy.

(10) Start the vehicle engine and then close all vehicle doors.

(11) Check whether the air bag is deactivated.

S22.3 *Low risk deployment test (Hybrid III 3-year-old child dummy).*

S22.3.1 Position the dummy according to any of the following positions: Position 1 (S22.3.2) or Position 2 (S22.3.3).

S22.3.2 *Position 1 (chest on instrument panel).*

S22.3.2.1 Locate and mark the center point of the dummy's chest/rib plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as "Point A."

S22.3.2.2 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This is referred to as "Point B."

S22.3.2.3 Locate the horizontal plane that passes through Point B. This will be referred to as "Plane 1."

S22.3.2.4 Locate the vertical plane parallel to the vehicle longitudinal axis and passing through Point B. This will be referred to as "Plane 2."

S22.3.2.5 Move the passenger seat to the full rearward seating position. Place the seat back in the nominal design position for a 50th percentile adult male dummy (S8.1.3) as specified by the vehicle manufacturer.

S22.3.2.6 Place the dummy in the front passenger seat such that:

S22.3.2.6.1 Point A is located in Plane 2.

S22.3.2.6.2 A vertical plane through the dummy shoulder joints is at 90 degrees to the longitudinal axis of the vehicle.

S22.3.2.6.3 The legs are positioned 90 degrees to the thighs.

S22.3.2.6.4 The dummy is positioned forward in the seat such that the dummy's upper spine plate is vertical, and the legs rest against the front of the seat.

S22.3.2.7 Move the dummy forward until the upper torso or head of the dummy makes contact with the instrument panel of the vehicle.

S22.3.2.8 Once contact is made, raise the dummy vertically until Point A lies within Plane 1 (the vertical height to the center of the air bag) or until a minimum clearance of 6 mm (0.25 inches) between the dummy head and the windshield is attained. If additional height is required, the dummy may be raised with the use of spacers (foam blocks, etc.) placed on the floor of the vehicle.

S22.3.2.9 Position the upper arms parallel to the spine and rotate the lower arms forward (at the elbow joint) sufficiently to prevent contact with or support from the seat.

S22.3.2.10 Position the lower limbs of the dummy so that the feet rest flat on the floorboard (or the feet are positioned parallel to the floorboard) of the vehicle and the legs are vertical. If necessary, raise the dummy vertically with the use of spacers (foam blocks, etc.) placed on the floor of the vehicle.

S22.3.2.11 Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy.

S22.3.2.12 If necessary, tether the upper torso with a thread with a maximum breaking strength of 311 N (70 pounds) such that the tether is not situated in the air bag deployment envelope.

S22.3.3 Position 2 (head on instrument panel).

S22.3.3.1 Locate and mark the center point of the dummy's chest/rib plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as "Point A."

S22.3.3.2 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as "Point B."

S22.3.3.3 Locate the vertical plane which passes through Point B and is parallel to the vehicle longitudinal axis. This will be referred to as "Plane 2."

S22.3.3.4 Move the passenger seat to the full rearward seating position. Place the seat back in the nominal design position for a 50th percentile adult male (S8.1.3) as specified by the vehicle manufacturer.

S22.3.3.4 Place the dummy in the front passenger seat such that:

S22.3.3.4.1 Point A is located in Plane 2.

S22.3.3.4.2 A vertical plane through the shoulder joints of the dummy is at 90 degrees to the longitudinal axis of the vehicle.

S22.3.3.4.3 The legs are positioned 90 degrees (right angle) from horizontal.

S22.3.3.4.4 The dummy is positioned forward in the seat such that the legs rest against the front of the seat and such that the dummy's upper spine plate is from vertical. Note: For some seats, it may not be possible to position the dummy with the legs in the prescribed position. In this situation, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy's upper spine plate is vertical.

S22.3.3.5 Move the seat forward, while maintaining the upper spine plate orientation until some portion of the dummy contacts the vehicle's instrument panel.

S22.3.3.5.1 If contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward on the seat until contact is made. Maintain the upper spine plate orientation.

S22.3.3.5.2 Once contact is made, rotate the dummy forward until the head and/or upper torso are in contact with the vehicle's instrument panel. Rotation is achieved by applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints.

S22.3.3.5.3 Rotate the thighs downward and rotate the legs and feet rearward (toward the rear of vehicle) so as not to impede the rotation of the head/torso into the vehicle's instrument panel.

S22.3.3.5.4 Reposition the legs so that the feet rest flat on (or parallel to) the floorboard with each ankle joint positioned as nearly as possible to the midsaggital plane of the dummy.

S22.3.3.5.5 If necessary, tether the upper torso with a thread with a maximum breaking strength of 311 N (70 pounds) and/or place a wedge under the dummy's pelvis. The tether may not be situated in the air bag deployment envelope. Note: If contact with the instrument panel cannot be made by sliding the dummy forward in the seat, then place the dummy in the forward-most position on the seat that will allow the head/upper torso to rest against the instrument panel of the vehicle.

S22.3.3.6 Position the upper arms parallel to the upper spine plate and rotate the lower arm forward sufficiently to prevent contact with or support from the seat.

S22.3.4 Deploy the right front passenger air bag. If the air bag contains a multistage inflator, any stage or combination of stages may be fired that could deploy in crashes at or below 29 km/h (18 mph), under the test procedure specified in S22.4.

S22.4 *Test procedure for determining stages of air bags subject to low risk deployment test requirement.* In the case of an air bag with a multistage inflator, any stage or combination of stages that fires in the following rigid barrier test may be deployed when conducting the low risk deployment tests described in S22.3, S24.4, and S26.3. Impact the vehicle traveling longitudinally forward at any speed, up to and including 29 km/h (18 mph), into a fixed rigid barrier that is perpendicular ±5 degrees to the line of travel of the vehicle under the applicable conditions of S8 of this standard.

S23 *Requirements using 6-year-old child dummies.*

S23.1 Each vehicle shall, at the option of the manufacturer, meet the requirements specified in S23.2, S23.3, or S23.4, under the test procedures specified in S24.

S23.2 *Option 1—Automatic suppression feature that always suppresses the air bag when a child is present.* Each vehicle shall meet the requirements specified in S23.2.1 through S23.2.2.

S23.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests specified in S24.2 (using a Part 572 Subpart N Hybrid III 6-year-old child dummy), and activation of the air bag during each of the static tests specified in S20.3 (using a Part 572 Subpart O Hybrid III 5th percentile adult female dummy).

S23.2.2 The vehicle shall be equipped with a mechanism that indicates whether the occupant restraint system is suppressed. The mechanism need not be located in the occupant compartment.

S23.2.3 The vehicle shall be equipped with a telltale light on the instrument panel meeting the requirements specified in S19.2.3.

S23.3 *Option 2— Dynamic automatic suppression system that suppresses the air bag when an occupant is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for the passenger air bag which meets the requirements specified in S27.

S23.4 *Option 3—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S23.5 of this standard when the passenger air bag is statically deployed in accordance with the procedures specified in S24.3.

S23.5 *Injury criteria (Hybrid III 6-year-old child dummy).*

S23.5.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.

S23.5.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 700 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points in time during the crash of the vehicle which are separated by not more than a 15 millisecond time interval.

S23.5.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S23.5.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 40 mm (1.6 inches).

S23.5.5 The biomechanical neck injury predictor, Nij, shall not exceed a value of 1.0 at any point in time. The following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely, tension-extension (N_{TE}), tension-flexion (N_{TF}), compression-extension (N_{CE}), and compression-flexion (N_{CF}) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600. Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by:

Nij=(Fz/Fzc)+(My/Myc)

where Fzc and Myc are critical values corresponding to:

Fzc=2800 N (629 lbf) for tension
Fzc=2800 N (629 lbf) for compression
Myc=93 Nm (69 lbf-ft) for flexion about occipital condyles
Myc=39 Nm (29 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed 1.0 at any point in time. When calculating N_{TE} and N_{TF}, all compressive loads shall be set to zero. Similarly, when calculating N_{CE}

and N_{CF}, all tensile loads shall be set to zero. In a similar fashion, when calculating N_{TE} and N_{CE}, all flexion moments shall be set to zero. Likewise, when calculating N_{TF} and N_{CF}, all extension moments shall be set to zero.

S23.5.6 *Test duration for purpose of measuring injury criteria.* For tests conducted pursuant to S23.5, the injury criteria shall be met up to 100 milliseconds after the air bag deploys.

S24 *Test procedure for S23.*

S24.1 *General provisions and definitions.* Tests specifying the use of a forward-facing child seat or booster seat may be conducted using any seat listed in Section D of Appendix A of this standard. The seat may be used or unused; if used there must not be any visible damage.

S24.1.2 The definitions provided in S16.3.1 apply to the tests specified in S24.

S24.2 *Static tests of automatic suppression feature which must result in deactivation of the passenger air bag when a child is present.*

S24.2.1 Except as provided in S24.2.2, all tests specified in S22.2 shall be conducted using the 6-year-old Hybrid III child dummy.

S24.2.2 *Exceptions.* The tests specified in the following paragraphs of S22.2 shall not be conducted using the 6-year-old Hybrid III child dummy: S22.2.2.2(d), (e), (f), (g), and (h).

S24.2.3 *Sitting back in the seat and leaning on the right front passenger door (This test is conducted using the 6-year-old Hybrid III child dummy but not the 3-year-old Hybrid III child dummy).*

(a) Position the right front passenger vehicle seat at any seat track location, at any seat height, and at any seat back angle between the manufacturer's nominal design position for the 50th percentile adult male as specified in S8.1.3.

(b) Position the dummy in the seated position and place the dummy in the right front passenger seat.

(c) Place the dummy's lower torso on the outboard portion of the seat with the dummy's back against the seat back and the dummy's thighs resting on the seat cushion.

(d) Allow the legs of the dummy to extend off the surface of the seat. If this positioning of the dummy's legs is prevented by contact with the instrument panel, rotate the leg toward the floor until there is no contact with the instrument panel.

(e) Rotate the dummy's upper arms toward the seat back until they make contact.

(f) Rotate the dummy's lower arms down until they contact the seat.

(g) Lean the dummy against the outboard door.

(h) Close the vehicle's passenger-side vehicle and then start the vehicle engine; close all remaining doors.

(i) Check whether the air bag is deactivated.

S24.3 *Low risk deployment test (Hybrid III 6-year old child dummy).*

S24.3.1 Position the dummy according to any of the following positions: Position 1 (S24.3.2) or Position 2 (S24.3.3).

S24.3.2 *Position 1 (chest on instrument panel).*

S24.3.2.1 Locate and mark the center point of the dummy's rib cage or sternum plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as "Point A."

S24.3.2.2 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as "Point B."

S24.3.2.3 Locate the horizontal plane that passes through Point B. This will be referred to as "Plane 1."

S24.3.2.4 Locate the vertical plane parallel to the vehicle longitudinal axis and passing through Point B. This will be referred to as "Plane 2."

S24.3.2.5 Position the right front passenger vehicle seat at any seat track location, at any seat height, and at any seat back angle between the manufacturer's nominal design position for the 50th percentile adult male as specified in S8.1.3.

S24.3.2.6 Place the dummy in the front passenger seat such that:

S24.3.2.6.1 Point A is located in Plane 2.

S24.3.2.6.2 A vertical plane through the dummy shoulder joints is at 90 degrees to the longitudinal axis of the vehicle.

S24.3.2.6.3 The legs are positioned 90 degrees to the thighs.

S24.3.2.6.4 The dummy is positioned forward in the seat such that the dummy's upper spine plate is 6 degrees forward (toward the front of the vehicle) of the vertical position, and the legs rest against the front of the seat or the feet are resting flat on the floorboard of the vehicle.

S24.3.2.6.5 Mark this position, and remove the legs at the pelvic interface.

S24.3.2.7 Move the dummy forward until the upper torso or head of the dummy makes contact with the vehicle's instrument panel.

S24.3.2.8 Once contact is made, raise the dummy vertically until Point A lies within Plane 1 (the vertical height to the center of the air bag) or until a minimum clearance of 6 mm (0.25 inches) between any part of the dummy head and windshield is attained.

S24.3.2.9 Position the upper arms parallel to the spine and rotate the lower arms forward (at the elbow joint) sufficiently to prevent contact with or support from the seat.

S24.3.2.10 Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy.

S24.3.2.10.1 If necessary, tether the upper torso with a thread with a maximum breaking strength of 311 N (70 pounds) such that the tether is not situated in the air bag deployment envelope.

S24.3.3 *Position 2 (head on instrument panel).*

S24.3.3.1 Locate and mark the center point of the dummy's chest/rib plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as "Point A."

S24.3.3.2 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as "Point B."

S24.3.3.3 Locate the vertical plane which passes through Point B and is parallel to the vehicle longitudinal axis. This will be referred to as "Plane 2."

S24.3.3.4 Position the right front passenger vehicle seat at any seat track location, at any seat height, and at any seat back angle between the manufacturer's nominal design position for the 50th percentile adult male as specified in S8.1.3.

S24.3.3.5 Place the dummy in the front passenger seat such that:

S24.3.3.5.1 Point A is located in Plane 2.

S24.3.3.5.2 A vertical plane through the shoulder joints of the dummy is at 90 degrees to the longitudinal axis of the vehicle.

S24.3.3.5.3 The legs are positioned 90 degrees (right angle) from horizontal.

S24.3.3.5.4 The dummy is positioned forward in the seat such that the legs rest against the front of the seat and such that the dummy's upper spine plate is 6 degrees forward (toward front of vehicle) of the vertical position.

Note: For some seats, it may not be possible to position the dummy with the legs in the prescribed position. In this situation, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy's upper spine plate is 6 degrees forward (toward the front of the vehicle) of the vertical position.

S24.3.3.6 Move the seat forward, while maintaining the upper spine plate orientation until some portion of the dummy contacts the vehicle's instrument panel.

S24.3.3.6.1 If contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward on the seat until contact is made. Maintain the upper spine plate orientation.

S24.3.3.6.2 Once contact is made, rotate the dummy forward until the head and/or upper torso are in contact with the vehicle's instrument panel. Rotation is achieved by applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints.

S24.3.3.6.3 Rotate the legs and feet rearward (toward rear of vehicle) so as not to impede the rotation of the head/torso into the vehicle's instrument panel.

S24.3.3.6.4 Reposition the legs so that the feet rest flat on (or parallel to) the floorboard with the ankle joints positioned as nearly as possible to the midsaggital plane of the dummy.

S24.3.3.6.5 If necessary, tether the upper torso with a thread with a maximum breaking strength of 311 N (70 pounds) and/or place a wedge under the dummy's pelvis. The tether may not be situated in the air bag's deployment envelope.

Note: If contact with the instrument panel cannot be made by sliding the dummy forward in the seat, then place the dummy in the forward-most position on the seat that will allow the head/upper torso to rest against the vehicle's instrument panel.

S24.3.3.7 Position the upper arms parallel to the torso and rotate the lower arms forward sufficiently to prevent contact with or support from the seat.

S24.3.4 Deploy the right front passenger air bag. If the air bag contains a multistage inflator, any stage or combination of stages may be fired that could deploy in crashes at or below 29 km/h (18 mph), under the test procedure specified in S22.4.

S25 *Requirements using an out-of-position 5th percentile adult female dummy at the driver position.*

S25.1 Each vehicle shall, at the option of the manufacturer, meet the requirements specified in S25.2 or S25.3 of this standard.

S25.2 *Option 1—Dynamic automatic suppression system.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for the driver air bag which meets the requirements specified in S27.

S25.3 *Option 2—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S15.3 of this standard when the driver air bag is statically deployed in accordance with the procedures specified in S26 of this standard.

S26 *Test procedure for low risk deployment of driver-side air bag.*

S26.1 Position the Part 571 Subpart O 5th percentile adult female test dummy according to any of the following positions: Driver position 1 (S26.2) or Driver position 2 (S26.3).

S26.2 *Driver position 1 (chin on module).*

26.2.1 Adjust the steering controls so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center.

S26.2.2 Locate the point on the air bag module cover that is the geometric center of the steering wheel. This will be referred to as "Point B."

S26.2.3 Locate and mark the center point of the dummy's rib cage or sternum plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as "Point A."

S26.2.4 Locate the horizontal plane that passes through Point B. This will be referred to as "Plane 1."

S26.2.5 Locate the vertical plane perpendicular to Plane 1 and parallel to the vehicle longitudinal axis which passes through Point B. This will be referred to as "Plane 2."

S26.2.6 Move the driver seat to the full rearward seating position. Place the seat back in the nominal design position for a 50th percentile adult male (S8.1.3) as specified by the vehicle manufacturer.

S26.2.7 Place the dummy in the seat such that:

S26.2.7.1 Point A is located in Plane 2.

S26.2.7.2 A vertical plane through the dummy shoulder joints is at 90 degrees to the longitudinal axis of the vehicle.

S26.2.7.3 The legs are positioned 90 degrees to the thighs.

S26.2.7.4 Rotate the dummy forward until its upper spine plate angle is 6 degrees forward (toward the front of the vehicle) of the steering wheel angle.

S26.2.8 Adjust the height of the dummy so that the bottom of the chin is in the same horizontal plane as the highest point of the module cover (dummy height can be adjusted using the seat position and/or spacer blocks). If the seat height prevents the bottom of chin from being in the same horizontal plane as the module cover, adjust the dummy height to as close to the prescribed position as possible.

S26.2.9 Move the dummy forward, maintaining the upper spine plate angle and dummy height until the head or torso contacts the steering wheel.

S26.2.10 If necessary, a thread with a maximum breaking strength of 311 N (70 pounds) may be used to hold the dummy against the steering wheel. Position the thread so as to eliminate or minimize any contact with the deploying air bag.

S26.3 *Driver position 2 (chin on rim).*

S26.3.1 The driver's seat track is not specified and may be positioned to best facilitate the positioning of the dummy.

S26.3.2 Locate the point on the air bag module cover that is the geometric center of the steering wheel. This will be referred to as "Point B."

S26.3.3 Locate and mark the center point of the dummy's rib cage or sternum plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as "Point A."

S26.3.4 Locate the horizontal plane that passes through Point B. This will be referred to as "Plane 1."

S26.3.5 Locate the vertical plane perpendicular to Plane 1 which passes through Point B. This will be referred to as "Plane 2."

S26.3.6 Place the dummy in the front driver seat so that Point A is located in Plane 2.

S26.3.7 Rotate the dummy forward until its upper spine plate is 6 degrees forward (toward the front of the vehicle) of the steering wheel angle.

S26.3.8 Position the dummy so that the center of the chin is in contact with the uppermost portion of the rim of the steering wheel. Do not hook the chin over the top of the rim of the steering wheel. Position the chin to rest on the upper edge of the rim, without loading the neck. If the dummy head contacts the vehicle upper interior before the prescribed position can be obtained, the dummy height may be adjusted as close to the prescribed position as possible, while maintaining a 10±2 mm (0.4±.08 inches) clearance from the vehicle's upper interior.

S26.3.9 To raise the height of the dummy to attain the required positioning, spacer blocks (foam, etc.) may be placed on the driver's seat beneath the dummy. If necessary, a thread with a maximum breaking strength of 311 N (70 pounds) is used to hold the dummy against the steering wheel. Position the thread so as to eliminate or minimize any contact with the deploying air bag.

S26.4 Deploy the driver air bag. If the air bag contains a multistage inflator, any stage or combination of stages is fired that may deploy in crashes at or below 29 km/h (18 mph), under the test procedure specified in S22.4.

S27 *Option for dynamic automatic suppression system that suppresses the air bag when an occupant is out-of-position.*

S27.1 *Availability of option.* This option is available for either air bag, singly or in conjunction, subject to the requirements of S27, if:

(a) A petition for rulemaking to establish dynamic automatic suppression system test procedures is submitted pursuant to Subpart B of Part 552 and a test procedure applicable to the vehicle is added to S28 pursuant to the procedures specified by that subpart, or

(b) A test procedure applicable to the vehicle is otherwise added to S28.

S27.2 *Definitions.* For purposes of S27 and S28, the following definitions apply:

Dynamic automatic suppression system or DASS means a portion of an air bag system that automatically controls whether or not the air bag deploys during a crash by:

(1) Sensing the location of an occupant, moving or still, in relation to the air bag;

(2) Interpreting the occupant characteristics and location information to determine whether or not the air bag should deploy; and

(3) Activating or suppressing the air bag system based on the interpretation of occupant characteristics and location information.

Automatic suppression zone or ASZ means a three-dimensional zone adjacent to the air bag cover, specified by the vehicle manufacturer, where the deployment of the air bag will be suppressed by the DASS if a vehicle occupant enters the zone under specified conditions.

S27.3 *Requirements.* Each vehicle shall, at each applicable front outboard designated seating position, when tested under the conditions of S28 of this standard, comply with the requirements specified in S27.4 through S27.6.

S27.4 Each vehicle shall be equipped with a DASS.

S27.5 *Static test requirement (low risk deployment for occupants outside the ASZ).*

S27.5.1 *Driver (Part 572, Subpart O 5th percentile female dummy).* Each vehicle shall meet the injury criteria specified in S15.3 of this standard when the driver air bag is statically deployed in accordance with the procedures specified in S28.1.

S27.5.2 *Passenger (Part 572, Subpart P 3-year-old child dummy and Part 572, Subpart N 6-year-old child dummy).* Each vehicle shall meet the injury criteria specified in S21.5 and S23.5, as appropriate, when the passenger air bag is statically deployed in accordance with the procedures specified in S28.2.

S27.6 *Dynamic test requirement (suppression of air bag for occupants inside the ASZ).*

S27.6.1 *Driver.* The DASS shall suppress the driver air bag before the head, neck, or torso of the specified test device enters the ASZ when the vehicle is tested under the procedures specified in S28.3.

S27.6.2 *Passenger.* The DASS shall suppress the passenger air bag before head, neck, or torso of the specified test device enters the ASZ when the vehicle is tested under the procedures specified in S28.4.

S28 *Test procedure for S27 of this standard.* [Reserved]

S28.1 *Driver suppression zone verification test (part 572, subpart O 5th percentile female dummy). [Reserved]*

S28.2 *Passenger suppression zone verification test (part 572, subpart P 3-year-old child dummy and Part 572, subpart N 6-year-old child dummies).* [Reserved)]

S28.3 *Driver dynamic test procedure for DASS requirements. [Reserved]*

S28.4 *Passenger dynamic test procedure for DASS requirements.* [Reserved]

S29 *Manufacturer option to certify vehicles to certain static suppression test requirements using human beings rather than test dummies.*

S29.1 At the option of the manufacturer, instead of using test dummies in conducting the tests for the following static test requirements, human beings may be used as specified. If human beings are used, they shall assume, to the extent possible, the final physical position specified for the corresponding dummies for each test.

(a) If a manufacturer decides to certify a vehicle using a human being for a static test, it must use humans for the entire series of tests, *e.g.*, 3-year-old children for each static test involving 3-year-old test dummies. If a manufacturer decides to certify a vehicle using a test dummy for a static test, it must use test dummies for the entire series of tests, *e.g.*, a Hybrid III 3-year-old child dummy for each static test involving 3-year-old test dummies.

(b) For S21.2, instead of using the Part 572 Subpart P Hybrid III 3-year-old child dummy, a human child who weighs between 13.4 and 18 kg (29.5 and 39.5 lb), and who is between 89 and 99 cm (35 and 39 inches) tall may be used.

(c) For S23.2, instead of using the Part 572 Subpart N Hybrid III 6-year-old child dummy, a human child who weighs between 21 and 25.6 kg (46.5 and 56.5 lb), and who is between 114 and 124.5 cm (45 and 49 inches) tall may be used.

(d) For S19.2, S21.2, and S23.2, instead of using the Part 572 Subpart O Hybrid III 5th percentile adult female test dummy, a female who weighs between 46.7 and 51.25 kg (103 lb and 113 lb), and who is between 139.7 and 150 cm (55 and 59 inches) tall may be used.

S29.2 Human beings shall be dressed in a cotton T-shirt, full length cotton trousers, and sneakers. Specified weights and heights include clothing.

S29.3 A manufacturer exercising this option shall upon request—

(a) Provide NHTSA with a method, and identify any parts or equipment necessary to deactivate the air bag during compliance testing under S20.3, S22.2, and S24.2; such assurance may be made by removing the air bag; and

(b) Provide NHTSA with a method to assure that the same test results would be obtained if the air bag were not deactivated.

S30 *Cruise control deactivation.*

S30.1 If a vehicle is equipped with a cruise control device, this device shall be deactivated whenever any stage of the air bag system deploys.

S30.2 The cruise control device shall be deactivated when the device is tested under the procedures specified in S31.

S31 *Test procedure for determining deactivation of cruise control.*

S31.1 Each vehicle that is equipped with a cruise control device shall be equipped with an electrical terminal that permits measurement of the cruise control voltage.

S31.2 Start the vehicle engine and engage the cruise control.

S31.3 Deploy any stage of the vehicle's frontal air bag system.

S31.4 The voltage at the cruise control voltage terminal shall be zero within 100 ms after any stage of the vehicle's frontal air bag system deploys.

S32 *Provisions for emergency rescue operations.*

S32.1 The air bag system shall deactivate whenever battery power to the vehicle is interrupted for at least 60 seconds, and shall reactivate once power from the battery is restored.

S32.2 The air bag system shall deactivate when the system is tested under the procedures specified in S33.

S33 *Test procedure for air bag deactivation during emergency rescue operations.*

S33.1 Each vehicle shall be equipped with an electrical terminal that permits measurement of the frontal air bag firing voltage. This terminal will be referred to as the "air bag firing voltage terminal."

S33.2 Start the vehicle engine. Disconnect the vehicle's battery power. Record the time of disconnect as time TD.

S33.3 Measure the voltage at the air bag firing terminal at time TD plus 61 seconds.

S33.4 The voltage at the air bag firing terminal shall remain zero after time TD plus 61 seconds until power is manually restored to the terminal.

S33.5 Reconnect the battery. Start the vehicle engine. Record the time of engine start as time TR. Monitor the air bag readiness indicator (S4.5.2) at time TR plus 60 seconds to check if the air bag is activated, i.e., the indicator shall not be illuminated.

Figures to § 571.208

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BILLING CODE 4910–59–P

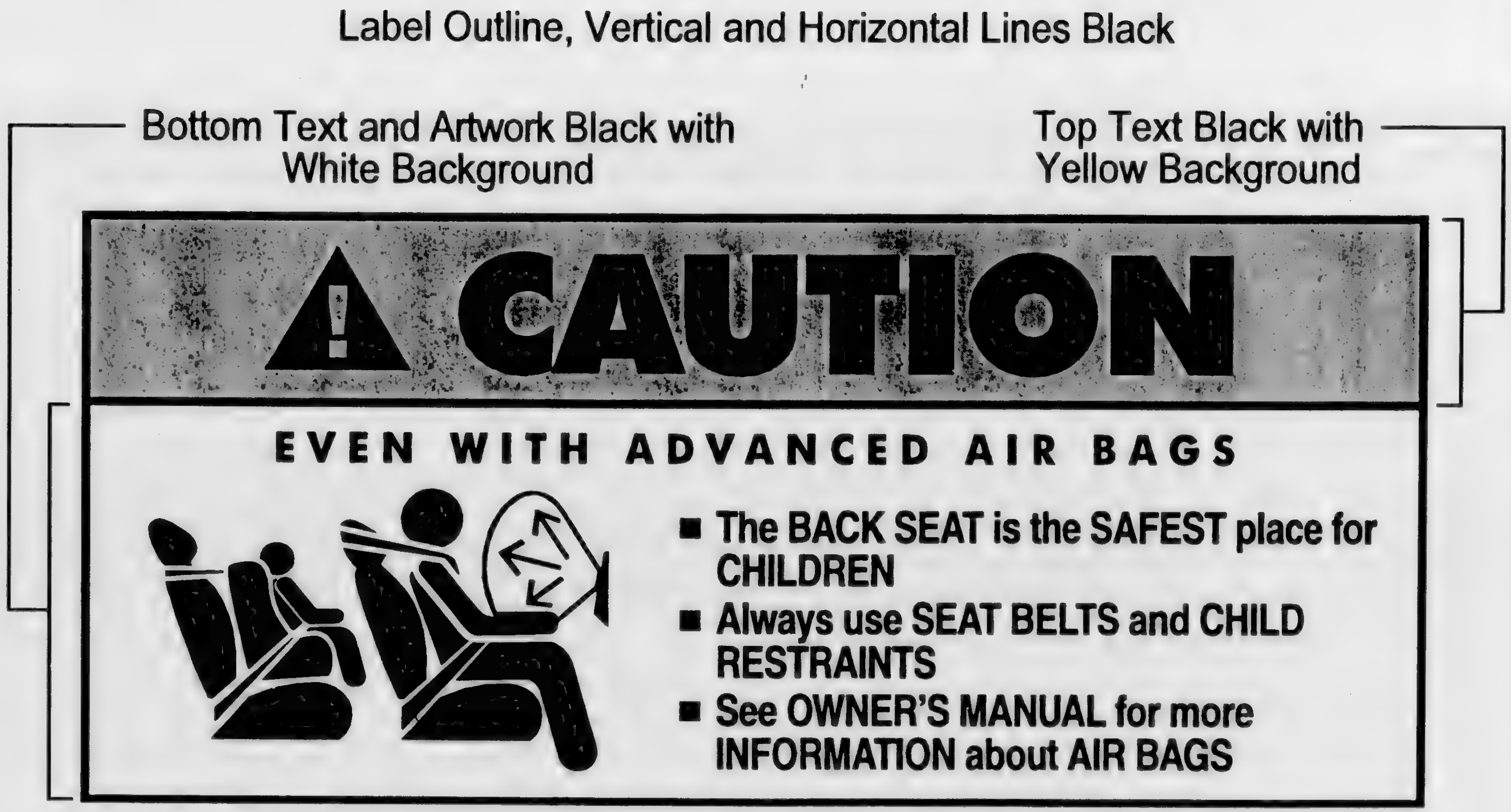
Label Outline, Vertical and Horizontal Lines Black
Bottom Text and Artwork Black with White Background
Top Text Black with Yellow Background
CAUTION
EVEN WITH ADVANCED AIR BAGS
The BACK SEAT is the SAFEST place for CHILDREN
Always use SEAT BELTS and CHILD RESTRAINTS
See OWNER'S MANUAL for more INFORMATION about AIR BAGS

Figure 8. Sun Visor Label Visible when Visor is in Down Position.

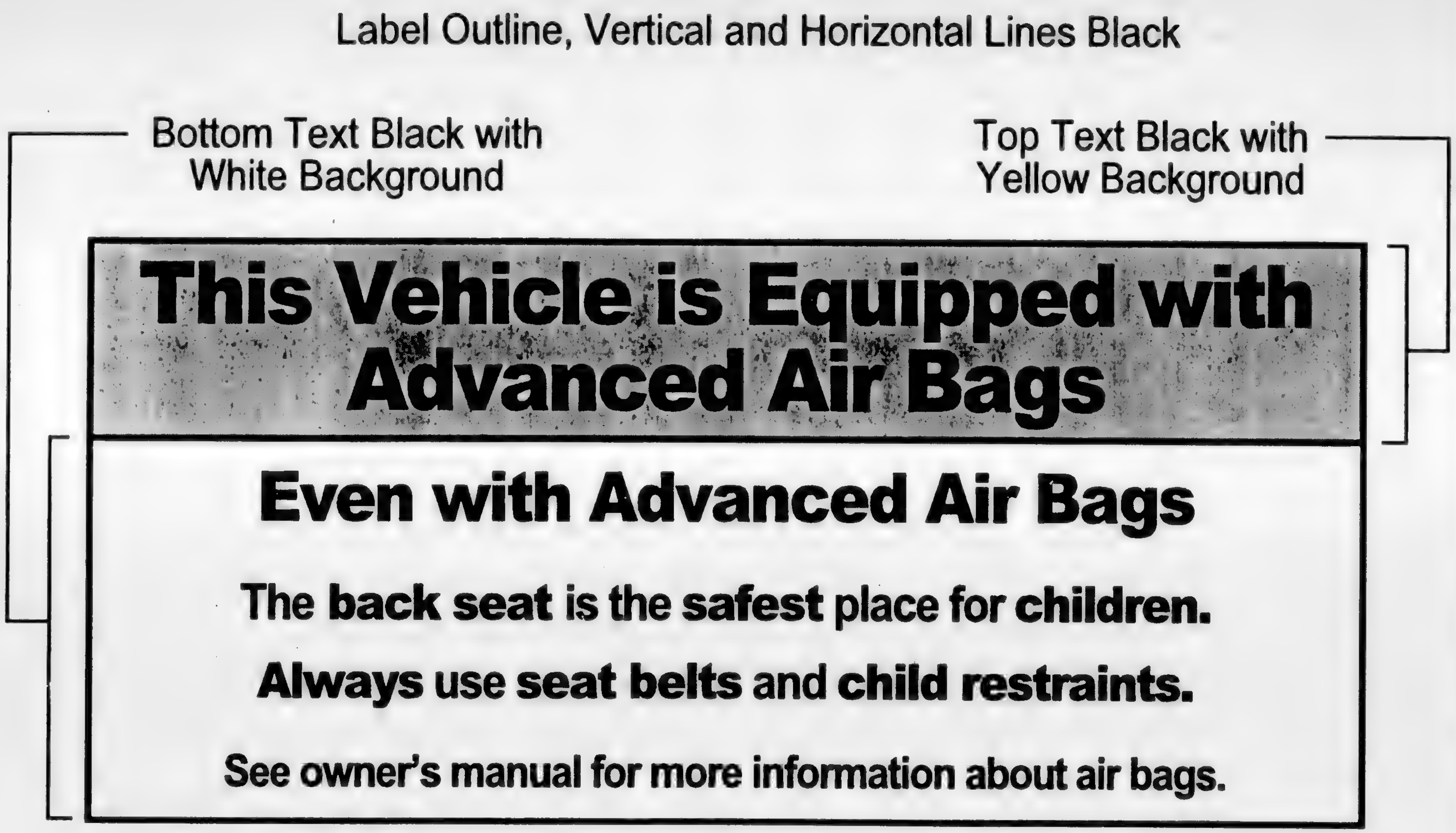
Label Outline, Vertical and Horizontal Lines Black
Bottom Text Black with White Background
Top Text Black with Yellow Background

This Vehicle is Equipped with Advanced Air Bags

Even with Advanced Air Bags

The **back seat** is the **safest** place for **children.**

Always use **seat belts** and **child restraints.**

See owner's manual for more information about air bags.

Figure 9. Removable Label on Dash.

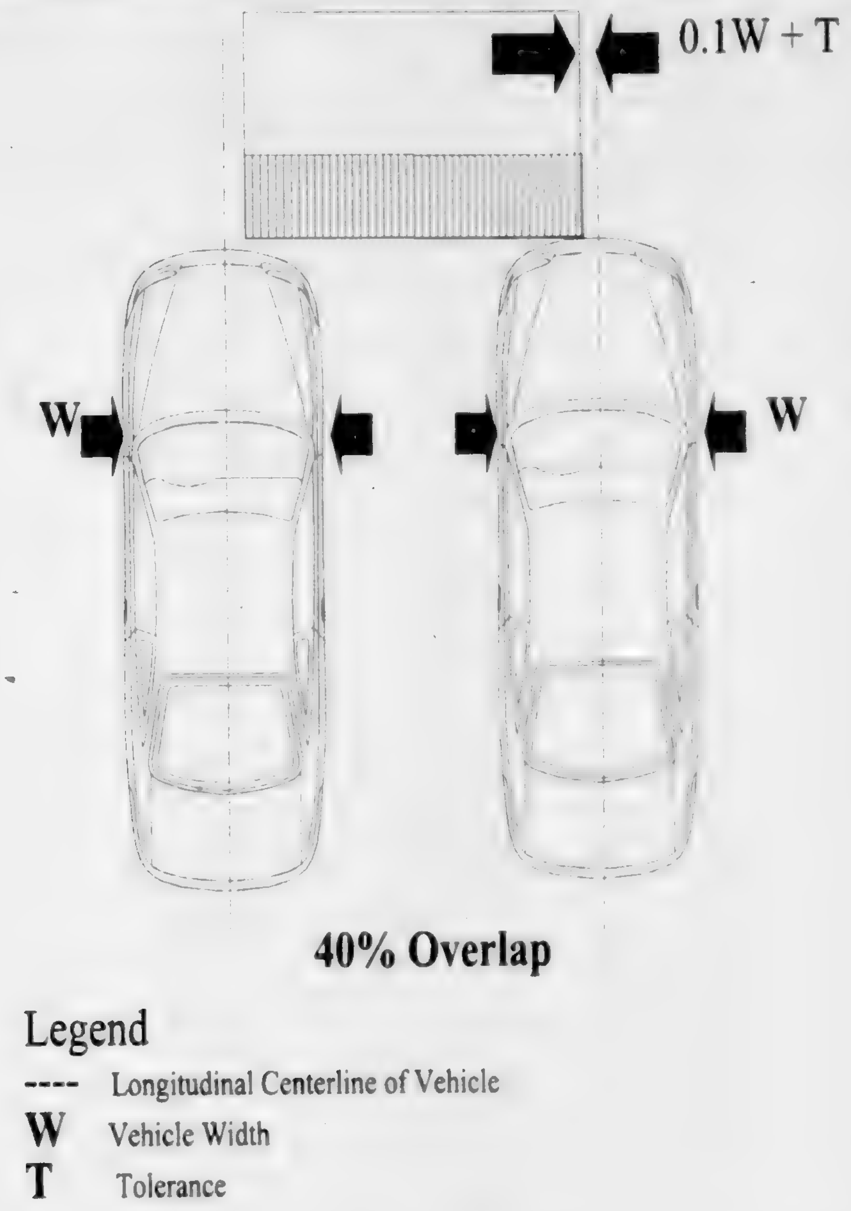
0.1W + T
W
W
40% Overlap
Legend
---- Longitudinal Centerline of Vehicle
W Vehicle Width
T Tolerance

Figure 10. Configuration for Frontal Offset Deformable Barrier Test

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Appendix A to § 571.208—Selection of Child Restraint Systems

A. The following car bed, manufactured between January 1, 1999 and [insert date of final rule], may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR Part 571.208 S19.

Cosco Dream Ride Car Bed

B. Any of the following rear facing child restraint systems, manufactured between January 1, 1999 and [insert date of final rule], may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR Part 571.208 S19. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

Century Assura
Century 560 Institutional
Century Smart Fit
Cosco Arriva
Cosco Turnabout
Evenflo Discovery
Evenflo First choice
Evenflo On My Way
Fisher-Price Safe Embrace Infant
Graco Infant 7493
Kolcraft Secura

C. Any of the following forward-facing convertible child restraint systems, manufactured between January 1, 1999 and [insert date of final rule], may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR Part 571.208 S19, or S21.

Britax Roundabout
Century Encore
Cosco Touriva
Evenflo Scout
Early Development Folder A-Lock
Fisher Price Safe-Embrace
Kolcraft Secure Fit

D. Any of the following forward-facing toddler/belt positioning booster systems, manufactured between January 1, 1999 and [insert date of final rule], may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR Part 571.208 S21 or S23.

Britax Cruiser
Century Next Step
Cosco High Back Booster
Evenflo Evolution
Kolcraft Prodigy

6. Part 585 would be revised to read as follows:

PART 585—ADVANCED AIR BAG PHASE-IN REPORTING REQUIREMENTS

Sec.
585.1 Scope.
585.2 Purpose.
585.3 Applicability.
585.4 Definitions.
585.5 Reporting requirements.
585.6 Records.
585.7 Petition to extend period to file report.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 585.1 Scope.

This part establishes requirements for manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the advanced air bag requirements of Standard No. 208, "Occupant crash protection" (49 CFR 571.208).

§ 585.2 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the advanced air bag requirements of Standard No. 208.

§ 585.3 Applicability.

This part applies to manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less. However, this part does not apply to any manufacturers whose production consists exclusively of walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

§ 585.4 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, passenger car, and truck are used as defined in § 571.3 of this chapter.

(c) *Advanced air bag requirements of Standard No. 208* refers to the requirements set forth in S14.3, S15, S17, S19, S21, S23, S25, S30, and S32 of Federal Motor Vehicle Safety Standard No. 208, 49 CFR 571.208.

(d) *Production year* means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 585.5 Reporting requirements.

(a) *Advanced credit phase-in reporting requirements.* Within 60 days after the end of the production years ending August 31, 2000, August 31, 2001, and August 31, 2002, each manufacturer choosing to certify vehicles according to the advanced air bag requirements of Standard No. 208 shall submit a report to the National Highway Traffic Safety Administration concerning its passenger cars, trucks, buses, and multipurpose passenger vehicles produced in that production year for advance credit for production years ending August 31, 2003, August 31, 2004, or August 31, 2005. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Provide the information specified in paragraph (c) of this section;

(5) Be written in the English language; and

(6) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

(b) *Phase-in reporting requirements.* Within 60 days after the end of the production years ending August 31, 2003, August 31, 2004 and August 31, 2005, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the advanced air bag requirements of Standard No. 208 for its passenger cars, trucks, buses, and multipurpose passenger vehicles produced in that production year. Each report shall also include the number of pre-phase-in vehicles, if any, that are being applied to the production year being reported. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the phase-in schedule paragraph from S14.1 of 49 CFR 571.208 for which it has chosen to comply with until September 1, 2005;

(4) Identify the production year being reported on;

(5) Contain a statement regarding whether or not the manufacturer complied with the advanced air bag requirements of Standard No. 208 for the period covered by the report and the basis for that statement;

(6) Provide the information specified in paragraph (d) of this section;

(7) Be written in the English language; and

(8) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

(c) *Advanced credit phase-in report content.* (1) Manufacturers are not required to report any information with respect to those vehicles that are walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(2) *Production.* Each manufacturer shall report for the production year for which the report is filed the number of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less that meet the advanced air bag requirements of Standard No. 208.

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S14.1.3.2 of Standard No. 208 shall:

(i) Report the existence of each contract, including the names of all parties to the contract and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

(d) *Phase-in report content.* (1) Manufacturers are not required to report any information with respect to those vehicles that are walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(2) *Basis for phase-in production goals.* For production years ending August 31, 2003, August 31, 2004 and August 31, 2005, each manufacturer shall provide the number of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured passenger cars and trucks, buses and multipurpose passenger vehicles with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less for sale in the United States must report the number of such vehicles manufactured during the current production year.

(3) *Production.* Each manufacturer shall report for the production year for which the report is filed the number of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds or less that meet the advanced air bag requirements of Standard No. 208.

(4) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S14.1.3.2 of Standard No. 208 shall:

(i) Report the existence of each contract, including the names of all parties to the contract and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

§ 585.6 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each passenger car, multipurpose passenger vehicle, truck and bus for which information is reported under §§ 585.5(c)(2) and (d)(3) until December 31, 2006.

§ 585.7 Petitions to extend period to file report.

A petition for extension of the time to submit a report must be received not later than 15 days before expiration of the time stated in § 585.5(a) and (b). The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest.

PART 595—RETROFIT ON-OFF SWITCHES FOR AIR BAGS

7. The authority citation for part 595 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

8. Section 595.5 would be amended by revising paragraph (a) to read as follows:

§ 595.5 Requirements.

(a) Beginning January 19, 1998, a dealer or motor vehicle repair business may modify a motor vehicle manufactured before September 1, 2005 by installing an on-off switch that allows an occupant of the vehicle to turn off an air bag in that vehicle, subject to the conditions in paragraphs (b)(1) through (5) of this section.

* * * * *

Issued on: October 26, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A to the Preamble—Response to Petition

In conjunction with commenting on the NPRM, Carl Nash and Donald Friedman submitted a petition for rulemaking to amend Standard No. 208 to "require effective belt use inducement." The petitioners noted that such an amendment would need to be consistent with a provision of the National Traffic and Motor Vehicle Safety Act which prohibits ignition interlocks and continuous buzzers.

The petitioners stated that the inducements could include, but need not be limited to: (1) A continuous visual reminder to buckle seat belts located prominently on the instrument panel, (2) an intermittent, repeating audible suggestion (such as with a synthesized voice) warning occupants to buckle their seat belt, and (3) disruption of electrical power to such "non-essential" accessories as the radio, tape or CD player, and air conditioning. Mr. Nash and Mr. Friedman argued that a belt use inducement has the potential to save a minimum of 7,000 additional lives per year, and that, with an effective belt use inducement, NHTSA could simultaneously rescind Standard No. 208's unbelted test.

After carefully considering the petition submitted by Mr. Nash and Mr. Friedman, we have decided to deny it. We note that Standard No. 208 already requires both a warning light and an audible signal to remind occupants to wear their seat belts. The required warning system is tied to the driver seat belt, and the light and audible signal are only required for a brief period after the driver starts the vehicle.

In evaluating Mr. Nash's and Mr. Friedman's petition, we have considered whether the new requirements they recommend would (1) likely result in additional safety benefits, (2) be acceptable to the public, and (3) be within our statutory authority. None of their recommended requirements meet all of these criteria.

We note that our agency's previous experience with ignition interlocks indicates that great care must be taken in requiring vehicle modifications to induce higher belt use, to avoid consumer backlash. As of August 1973, Standard No. 208 required all new cars to be equipped either with automatic protection or an ignition interlock for both front outboard seating positions. General Motors sold about ten thousand of its 1974 model year cars equipped with air bags that met the automatic protection requirement. Every other 1974 model year car sold in the United States came with an ignition interlock, which prevented the engine from operating if either the driver or front seat outboard passenger failed to fasten their manual seat belt.

In a notice published in the **Federal Register** (39 FR 10272) on March 19, 1974, we described the public reaction to the ignition interlock as follows: "Public resistance to the belt-starter interlock system * * * has been substantial, with current tallies of proper lap-shoulder belt usage on 1974 models running at or below the 60% level. Even that figure is probably optimistic as a measure of results to be achieved, in light of the likelihood that as time passes the awareness that the forcing systems can be disabled, and the means for doing so will become more widely disseminated * * *"

There were also speeches on the floor of both houses of Congress expressing the public's anger at the interlock requirement. On October 27, 1974, President Ford signed into law a bill that prohibited any Federal motor vehicle safety standard from requiring or permitting as a means of compliance any seat belt interlock system. In response to this change in the law, we published a final rule in the **Federal Register** (39 FR 38380) on October 31, 1974 that deleted the interlock option from Standard No. 208 effective immediately.

We believe that the petitioner's recommendation for a Federal requirement for disruption of electrical power to such accessories as the radio, tape or CD player, and air conditioning, if a person is not wearing their seat belts, would be unacceptable to a significant portion of the public. Such a requirement would be indistinguishable in nature from a requirement for an interlock.

As to the petitioners' recommendation that we require an intermittent, repeating audible suggestion (such as with a synthesized voice) warning occupants to buckle their seat belt, we are expressly prohibited from promulgating a requirement under the 1974 amendments to the Safety Act. The petitioners recognized that the amendments prohibited us from requiring "continuous buzzers." However, the term "continuous buzzer" was defined to mean any buzzer other than one which operates only during the 8 second period after the ignition is turned to the "start" or "on" position.[1] Thus, we do not have the authority to require audible warnings outside that 8 second period.

While we would have authority to require a continuous visual reminder, as also recommended by the petitioners, they did not provide any information indicating that such a reminder would likely result in additional safety benefits over the existing warning systems.

We also note that, even if we believed that there existed an effective belt use inducement that we had authority to require and that was publicly acceptable, we could not simultaneously rescind Standard No. 208's unbelted test. First, there would be no way of knowing how effective any belt use inducement would be until after it had been in place for several years. Second, as we noted in the September 1998 NPRM, even in countries where seat belt use is 90 percent, unbelted occupants still represent about 33 percent of all fatalities. We also note that TEA 21 requires us to conduct rulemaking to improve occupant protection for occupants of different sizes, belted and unbelted, while minimizing risks. Rescission of Standard No. 208's test requirements for unbelted occupants would not be consistent with the statutory requirement to improve protection for unbelted occupants.

While we have decided to deny Mr. Nash's and Mr. Friedman's petition, for the reasons discussed above, we recognize that increased seat belt use offers the potential of enormous safety benefits. Even small increases in seat belt use offer the potential of significant savings in lives. We therefore encourage vehicle manufacturers to evaluate whether vehicle warning and other systems can be improved to increase seat belt use in ways that are acceptable to their customers.

We note that, earlier this year, Ford announced plans to use a new "Belt-Minder" system that warns unbuckled drivers with an intermittent chime until they buckle their seat belts. Drivers who don't want to wear their belts can disable the intermittent chime by buckling, then unbuckling their belt. While we note that this is a system that we would not have authority to require, we are encouraged by Ford's innovative approach and are hopeful that it will result in increased seat belt use and savings in lives.

Appendix B to the Preamble—Glossary

Air Bags—In General

Air bags are inflatable restraints. Enough gas must be pumped into them to cushion occupants. Otherwise, occupants, especially large ones, could "bottom out" the air bag and hit the vehicle interior in a crash. Thus, the amount of pressure within air bags must be carefully controlled. This is done by controlling both the rate at which gas is pumped into the air bag and the rate at which the gas is released from the air bag through vents or microscopic holes in the fabric itself.

Categories of Frontal Air Bags

Advanced air bags. Advanced air bags are air bags that minimize the risk of serious injury to out-of-position occupants and provide improved protection to occupants in high speed crashes. They accomplish this either by incorporating various technologies that enable the air bags to adapt their performance to a wider range of occupant sizes and crash conditions and/or by being designed to both inflate in a manner that does not pose such risk as well as to provide improved protection. Some of these technologies are multi-stage inflators, occupant position sensors, occupant weight and pattern sensors, and new air bag fold patterns. (The inflators and sensors are explained below.)

Redesigned air bags.[1] Redesigned air bags are bag systems used in vehicles that have been certified to the unbelted sled test option instead of the unbelted crash test option in Standard No. 208. Typically, a redesigned air bag in a MY 1998 or 1999 vehicle model has less power than the air bags in earlier model years of that vehicle model. However, the power levels of current air bags vary widely. For example, the redesigned air bags in some current vehicles are more powerful than the unredesigned air bags in some earlier vehicles.

Inflators

Inflators are the devices which pump the gas into air bags to inflate them in a crash.

Single stage inflators. Single stage inflators fill air bags with the same level of power in all crashes, regardless of whether the crash is a relatively low or high speed crash.

Multi-stage inflators. Multi-stage inflators (also known as multi-level inflators) operate at different levels of power, depending on which stage is activated. The activation of the different stages can be linked to crash severity sensors. In a vehicle with dual-stage inflators, only the first stage (lowest level of power) will be activated in relatively low speed crashes, while the first and second stages (highest level of power) will be activated in higher speed crashes. As crash severity increases, so must the pressure inside the air bag in order to cushion the occupants.

Sensors

Many advanced air bag systems utilize various sensors to obtain information about crashes, vehicles and their occupants. This information is used to adapt the performance of the air bag to the particular circumstances of the crash. It is used in determining whether an air bag should deploy and, if it should, and if the air bag has multiple inflation levels, at what level. Examples of these sensors include the following:

Crash severity sensors. Crash severity sensors measure the severity of a crash, *i.e.*, the rate of reduction in velocity when a vehicle strikes another object. If a relatively low severity crash is sensed, only the lowest stage of a dual-stage inflator will fill the air bag; if a more severe crash is sensed, both stages will fill the air bag, inflating it at a higher level.

Belt use sensors. Belt use sensors determine whether an occupant is belted or not. An advanced air bag system in vehicles with crash severity sensors and dual-stage inflators might use belt use information to adjust deployment thresholds for unbelted and belted occupants. Since an unbelted occupant needs the protection of an air bag at lower speeds than a belted occupant does, the air bag would deploy at a lower threshold for an unbelted occupant. (Deployment thresholds are explained below.)

Seat position sensors. Seat position sensors determine how far forward or back a seat is adjusted on its seat track. An advanced air bag system could be designed so a dual-stage air bag deploys at a lower level when the seat is all the way forward than it does when the seat is farther back. This would benefit those short-statured drivers who move their seats all the way forward.

Occupant weight sensors. Occupant weight sensors measure the weight of an occupant. An advanced air bag system might use this information to prevent the air bag from deploying at all in the presence of children.

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[1] This provision was later codified using different language but without substantive change at 49 U.S.C. 30124.

[1] These air bags are also sometimes called depowered air bags, second generation air bags or next generation air bags.

Pattern sensors. Pattern sensors evaluate the impression made by an occupant or object on the seat cushion to make determinations about occupant presence and the overall size and position of the occupant. They could also sense the presence of a particular object like a child seat. An advanced air bag system might use this information to prevent the air bag from deploying in the presence of children. An advanced air bag system might utilize both an occupant weight sensor and an occupant pattern sensor.

Deployment Thresholds

The term "deployment threshold" is typically used to refer to the lowest rate of reduction in vehicle velocity in a crash at which a particular air bag is designed to deploy.

No-fire threshold. The no-fire threshold is the crash speed below which the air bag is designed to never deploy.

All-fire threshold. The all-fire threshold is the crash speed at or above which the air bag is designed to always deploy.

Gray zone. The gray zone is the range of speeds between the no-fire and all-fire thresholds in which the air bag may or may not deploy.

Vehicles with advanced air bags may have different deployment thresholds for belted and unbelted occupants, *e.g.*, the deployment threshold may be higher if an occupant is belted. (See belt use sensors above.)

Crash Tests vs. Sled Tests

In crash tests, instrumented test dummies are placed in a production vehicle which is then crashed into a barrier. Measurements from the test dummies are used to determine the forces, and estimate the risk of serious injury, that people would have experienced in the crash.

In sled tests, no crash takes place. The vehicle is placed on a sled-on-rails, and instrumented test dummies are placed in the vehicle. The sled and vehicle are accelerated very rapidly backward. As the vehicle moves backward, the dummies move forward inside the vehicle in much the same way that people would in a frontal crash. The air bags are manually deployed at a pre-selected time during the sled test. Measurements from the dummies are used to determine the forces, and estimate the risk of serious injury, that people would have experienced in the crash.

Fixed Barrier Crash Tests

All of the crash tests proposed in this SNPRM are fixed barrier crash tests, i.e., the test vehicle is crashed into a barrier that is fixed in place (as opposed to moving). The types of proposed fixed barrier crash tests are shown in Figure B1.

Rigid barrier test, perpendicular impact. In a rigid barrier, perpendicular impact test, the vehicle is crashed straight into a rigid barrier that does not absorb any crash energy. The full width of the vehicle's front end hits the barrier.

Rigid barrier, oblique impact test. In a rigid barrier, oblique impact test, the vehicle is crashed at an angle into a rigid barrier.

Offset deformable barrier test. In an offset deformable barrier test, one side of a vehicle's front end, not the full width, is crashed into a barrier with a deformable face that absorbs some of the crash energy.

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Figure B1

Types of Fixed Barrier Crash Tests

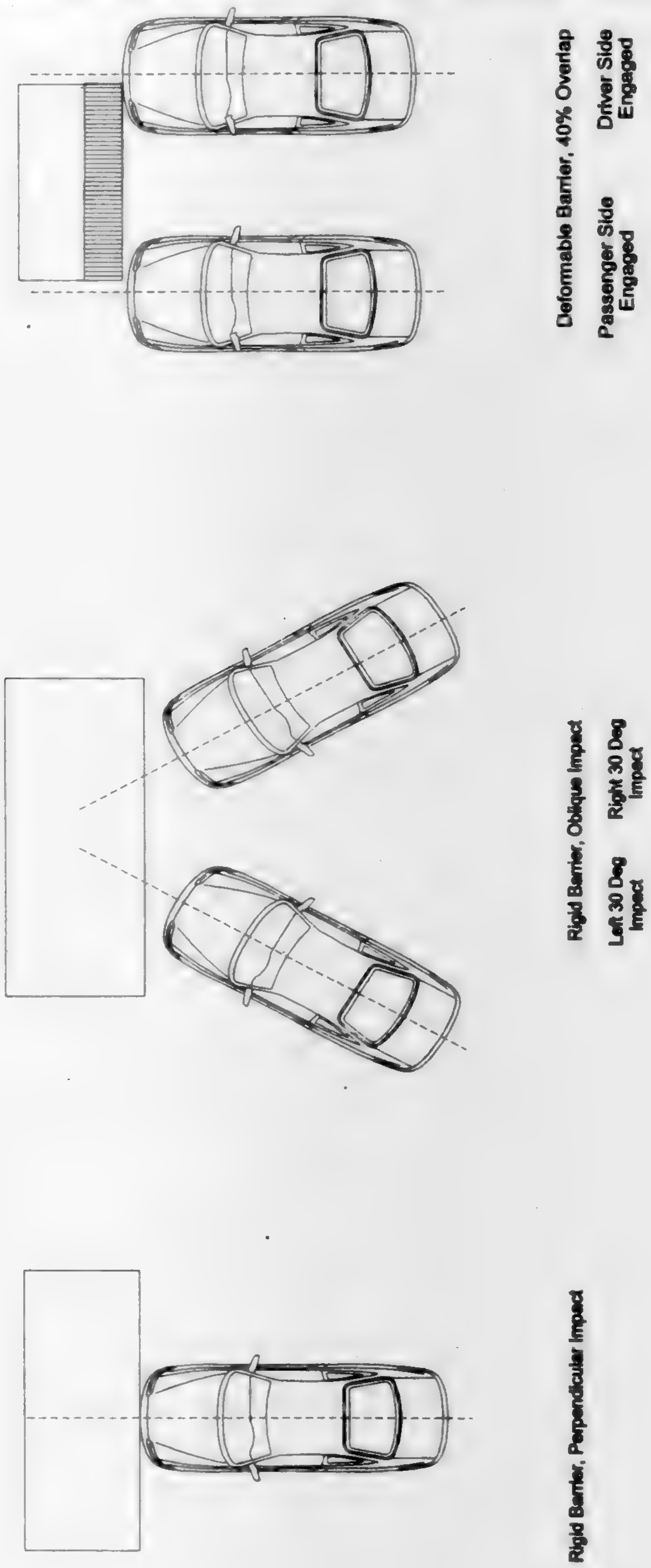
Deformable Barrier, 40% Overlap
Driver Side Engaged
Passenger Side Engaged
Rigid Barrier, Oblique Impact
Right 30 Deg Impact
Left 30 Deg Impact
Rigid Barrier, Perpendicular Impact

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Crash Pulses

A crash pulse is the graph or picture of how quickly the vehicle occupant compartment is decelerating at different times during a crash.

Stiff crash pulses. In crashes with stiff pulses, the occupant compartment decelerates very abruptly. An example of a crash with a stiff pulse would be a full head-on crash of a vehicle into a like vehicle. The perpendicular rigid barrier crash test produces a stiff crash pulse.

Soft crash pulses. In crashes with soft pulses, the occupant compartment decelerates less abruptly, compared to crashes with hard pulses. An example of a crash with a soft pulse would be the crash of a vehicle into sand-filled barrels such as those seen at toll booths or at the leading edge of a concrete median barrier. The offset deformable barrier crash test and the 30 degree oblique rigid barrier crash test produce soft crash pulses.

In crashes involving comparable reductions in velocity, an unrestrained occupant would hit the vehicle interior (*i.e.*, steering wheel, instrument panel and windshield) at a much higher speed in a crash with a stiff pulse than in a crash with a soft pulse.

Belted and Unbelted Tests

Belted tests use belted dummies, while unbelted tests use unbelted dummies. Despite increases in seat belt use, nearly 50 percent of all occupants in potentially fatal crashes are unbelted. Unbelted tests are intended to evaluate the protection provided these persons, many of whom are teenagers and young adults.

Static Out-of-Position Tests

Static out-of-position tests are called "static" because the vehicle does not move during the test. These tests are used to measure the risk that an air bag poses to out-of-position occupants. Test dummies are placed in specified positions that are extremely close to the air bag, typically with some portion of the dummy touching the air bag cover. The air bag is deployed. Measurements from the test dummy are used to determine the forces, and estimate the risk of serious injury, that people would have experienced in the crash.

Injury Criteria and Performance Limits—In General

In a crash test, sled test, or static out-of-position test, measurements are taken from the test dummy instruments that indicate the forces that a person would have experienced under the same conditions. Standard No. 208 specifies several injury criteria. For each criterion, the Standard also specifies a performance limit, based on the level of forces that create a significant risk of producing serious injury.

Injury Criteria

This SNPRM proposes performance limits for various injury criteria to address the risk of several types of injuries. Among these injury criteria are:

Head Injury Criterion or HIC. Head Injury Criterion or HIC address the risk of head injury;

Nij. Nij addresses the risk of neck injury; and

Chest Acceleration and Chest Deflection. Chest Acceleration and Chest Deflection address the risk of chest injury.

Test Dummies

This SNPRM proposes to use several test dummies to represent children and adults of different sizes. These dummies are:

12-month old Crash Restraints Air Bag Interaction (CRABI) dummy, representing an infant;

Hybrid III 3-year-old and 6-year-old child dummies, representing young children;

Hybrid III 5th percentile adult female dummy, representing a small woman;

Hybrid III 50th percentile adult male dummy, representing an average-size man.

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federal register

Friday
November 5, 1999

Part IV

Department of Education

34 CFR Part 611
Teacher Quality Enhancement Grants Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 611

RIN: 1840–AC65

Teacher Quality Enhancement Grants Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Acting Assistant Secretary for Postsecondary Education proposes regulations that would implement a requirement of section 204(e) of the Higher Education Act (HEA), as amended by the Higher Education Amendments of 1998. Section 204(a) requires that students in teacher preparation programs funded under the Teacher Recruitment Program must repay scholarships provided with program funds if they do not teach in high-need local educational agencies for the period of time for which they receive scholarship assistance. These proposed regulations also would extend the provisions implementing section 204(e) to any scholarships awarded to students in teacher preparation programs funded under the State and Partnership Programs authorized in sections 202 and 203 of the HEA.

DATES: We must receive your comments on or before December 6, 1999.

ADDRESSEES: All comments concerning these proposed regulations should be addressed to: Dr. Louis Venuto, Office of Policy, Planning, and Innovation, Office of Postsecondary Education, 400 Maryland Ave. SW, Washington, DC 20202–5131: Telephone: (202) 708–8847, or by FAX to: (202) 260–9272. If you prefer to send your comments through the Internet use the following address: comments@ed.gov

You must include the term "Scholarship Repayment" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, Office of Policy, Planning, and Innovation, 400 Maryland Avenue, SW, Washington, DC 20202–5131: Telephone: (202) 708–8847. Inquiries also may be sent by e-mail to: Louis_Venuto@ed.gov or by FAX to: (202) 260–9272. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in the Department of Education, Teacher Quality Program Office, 1990 K Street NW, 6th floor, Washington, DC. Comments are available for inspection between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

General

Background

On October 8, 1998, the President signed into law the Higher Education Amendments of 1998 (Pub. L. 105–244). Title II of this law addresses the Nation's need to ensure that new teachers enter the classroom prepared to teach all students to high standards by authorizing, as Title II of the Higher Education Act (HEA), Teacher Quality Enhancement Grants for States and Partnerships. The new Teacher Quality Enhancement Grants Program provides an historic opportunity to effect positive change in the recruitment, preparation, licensing, and on-going support of teachers in America.

The new Teacher Quality Enhancement Grants Program consists of three different competitive grant programs: (1) The State Grants Program, which is designed to help States promote a broad array of improvements in teacher licensure, certification, preparation, and recruitment; (2) The Partnership Grants for Improving Teacher Preparation Program, which is designed to have schools of education, schools of arts and sciences, high-need local educational agencies (LEAs), and others work together to ensure that new teachers have the content knowledge and skills their students need of them when they enter the classroom; and (3) The Teacher Recruitment Program, which is designed to help schools and school districts with severe teacher shortages to secure the high-quality teachers that they need. Together, these programs are designed to increase student achievement by supporting comprehensive approaches to improving teacher quality.

In particular, the Teacher Recruitment Grants Program is designed to address a significant national need for recruiting, preparing, and hiring more individuals to become highly qualified teachers, especially in high-poverty communities. The Teacher Recruitment Grants—awarded either to States or to partnerships among high-need LEAs, teacher preparation institutions, and schools of arts and sciences—are designed to reduce shortages of highly qualified teachers in high-need school districts. In this regard, local partnerships between school districts and teacher preparation institutions have been found to be very effective at providing teachers for communities where they are most needed. The "grow your own" approach is also effective for these communities because individuals who are already members of a community are likely to remain there after they become teachers. The recruitment grants will allow individual communities to determine their needs for teachers and to recruit and prepare teachers who meet those needs. States also can play an important role in ensuring that high-need school districts are able to recruit highly qualified teachers, and can use recruitment grants to develop and implement effective mechanisms for doing so.

One key aspect of the Teacher Recruitment Grants Program is the availability of scholarships to students who are enrolled in teacher preparation programs at the grantee institutions of higher education (IHEs) (or at IHEs working with State Teacher Recruitment Program grantees), and who agree to teach in high-need school districts. As provided in section 204(e) of the HEA, in exchange for scholarship support recipients must agree to incur a contractual obligation, under terms the Department establishes, to teach in high-need LEAs for a period equivalent to the period for which they receive the scholarship. This notice proposes the terms and conditions of this contractual agreement.

As explained more fully in this Notice of Proposed Rulemaking, scholarship recipients who do not meet this teaching obligation would have to repay the scholarship, accrued interest, and any costs of collection. Providing the Department the information it needs to determine when a recipient has met the service obligation and, alternatively, when a recipient needs to repay these sums, would become a shared responsibility of the institutions, scholarship recipients, and the high-need LEAs in which they will teach. IHEs and States that accept Teacher Recruitment Program grants would need to report to the Department the information that identifies the scholarship recipients and the amount of scholarships they receive. Students who receive scholarships would have certain reporting responsibilities that would begin upon graduation or withdrawal from the teacher training program and extend until they had fulfilled the service obligation or had repaid the scholarship, interest, and any costs of collection. Among other things, they would assume responsibility for having LEAs in which they teach after graduating from the teacher training programs provide the Department with basic employment information to confirm that they are fulfilling their service obligation.

Sections 202((d)(7) and 203(e)(4) of the HEA expressly permit recipients of State and Partnership grants to use program funds for activities that are authorized under the Teacher Recruitment Program. Hence, consistent with their approved applications, grantees of all three Teacher Quality Enhancement Grant programs may use program funds to provide scholarships to students attending teacher preparation programs who agree, upon graduation, to teach in high-need school districts. This Notice of Proposed Rulemaking would have the requirements governing scholarships provided under the Teacher Recruitment Program apply also to any scholarship provided under the State and Partnership Programs.

Finally, to receive scholarship assistance under any of the Teacher Quality Enhancement Grant programs, students do not need to be eligible for Federal student financial assistance provided under Title IV of the HEA. However, section 471 of the HEA does require IHEs to include the amount of any Teacher Quality Program scholarship as available resources in determining the amount of student financial assistance that a student may receive under Title IV.

Need To Regulate

The Department announced the initial competition for grants under the State, Partnership, and Teacher Recruitment Programs in a notice published in the **Federal Register** on February 8, 1999 (64 FR 6139). The Department announced grant awards under the State and Teacher Recruitment Programs on July 28, 1999, and grant awards under the Partnership Program on September 7, 1999.

The need for these regulations is clear. Section 204(e) of the HEA directs the Secretary to establish requirements to ensure that recipients of scholarships provided under this program either teach, upon graduation, in a high-need LEA for a period equivalent to the period for which they received scholarship assistance, or repay the amount of the scholarships. Use of program funds for these scholarships is a centerpiece of the Teacher Recruitment Program strategy for addressing teacher shortages in high-need areas. Hence, without these regulations, recipients of Teacher Recruitment Program grants will lack the capacity to implement a financial incentive that is a key aspect of the program. Likewise, recipients of State and Partnership grants will be unable to implement key activities that depend upon the use of program funds for scholarships to those attending teacher preparation programs.

The February 8, 1999 Notice of Eligibility and Selection Criteria to govern the initial competitions under the three Teacher Quality Programs established a definition of "high-need LEA" (64 FR 6145). That notice also requires States and partnerships that receive initial Teacher Recruitment Program grant awards to work to place those receiving scholarships through this program in teaching positions in high-need schools of high-need LEAs (64 FR 6145). However, the February 8 notice did not establish (1) The terms and conditions that will govern the receipt of this scholarship assistance; (2) A specific requirement that scholarship recipients agree to teach in high-need schools of high-need LEAs as a condition of receiving scholarship assistance; (3) The applicability of these provisions to scholarships provided under the State, Partnership, or Teacher Recruitment Program; or (4) The responsibilities of the scholarship recipients, teacher preparation programs in which they are enrolled, and the LEAs in which they later teach, to provide information to the Department that it needs to properly administer the scholarship program.

Therefore, regulations now are needed to establish requirements for scholarships under the Teacher Recruitment Program in areas such as—

- Whether all those provided scholarships with Teacher Recruitment Program funds should have to meet their service obligations by teaching in high-need schools of high-need LEAs;
- The definition of a "high-need LEA" and a "high-need school" in which scholarship recipients would need to teach in order to avoid responsibility for repaying their scholarships;
- How, in order to retain the financial assistance as a scholarship, the Department will calculate the period of time in which the scholarship recipient must teach in a high-need school of a high-need LEA;
- Conditions under which the Department may defer a scholarship recipient's service obligation;
- The amount of the scholarship recipient's indebtedness to the Federal government for failure to meet the service obligation, terms of repayment, and any limited circumstances under which the Department would discharge this indebtedness;
- The content of the scholarship agreement that the scholarship recipient would execute;
- The respective responsibilities of the scholarship recipient, teacher preparation program in which the recipient is enrolled, and the LEA in which he or she is later employed, to provide periodically to the Department basic employment and other information on the recipient until the Department has determined that the recipient has fulfilled the service obligation or has repaid the scholarship, interest, and any costs of collection; and
- Whether the rules governing the receipt of scholarships provided under the Teacher Recruitment Program should also apply to the receipt of scholarships that grantees provide under the State and Partnership Programs.

In issuing these proposed regulations, we have sought to keep administrative requirements and responsibilities that the public must bear as simple as possible. For example, while scholarship recipients are attending teacher preparation programs, grantees would only report to the Department on their status at the beginning of each term. In addition, to confirm that scholarship recipients had met their service obligations, the application packages for the Teacher Recruitment Program available in February 1999 had proposed that grantees assume some responsibility to track recipients once they had graduated or withdrawn from the teacher training programs. Under these proposed regulations grantees would not have these responsibilities. They instead would shift to the scholarship recipients, the LEAs in which they teach, and the Department. Moreover, these proposed regulations and the scholarship agreement that would reflect them are consistent with the basic terms and conditions of other Department student financial assistance programs, such as the Federal Perkins Loan Program authorized in Title IV, part E, of the HEA.

The remainder of this section of this notice explains in more detail the regulations that the Department proposes to adopt for the Teacher Recruitment Program and, by extension, to the State and Partnership Programs as well.

A. Definition of High-Need LEA and High-Need School

Under these proposed regulations, individuals who are provided scholarships with Teacher Recruitment Program funds would first need to agree, upon graduation, to teach in a "high-need school" of a "high-need LEA" for at least a period of time that is equivalent to the period for which they received scholarship assistance. Proposed § 611.1, which includes definitions that would apply to the Teacher Quality Enhancement Grants Program as a whole, defines those high-need schools and high-need LEAs in which scholarship recipients must teach to meet their service obligations. These definitions would apply both to Fiscal Year 1999 funds that the Department awarded to States and partnerships in July 1999 under the initial Teacher Recruitment Program competition, and to funds that the Department will award under future competitions.

Under proposed § 611.1, a high-need school would be an elementary or secondary school that meets one of the following definitions:

1. A school that is located in an area in which 50 percent or more of the enrolled students are eligible for free and reduced lunch subsidies.

2. A school that has—

More than 34 percent of academic classroom teachers overall (across all academic subjects) who do not have a major, minor, or significant course work in their main assignment field; or

More than 34 percent of the main assignment faculty in two of the core-subject departments who do not have a major, minor, or significant work in their main assigned field.

Note: For purposes of the definition above—"Main assignment field" means the academic field in which teachers have the largest percentage of their classes.

"Significant course work" means four or more college-or graduate-level courses in the content area.

3. A school that has had an attrition rate among classroom teachers of 15 percent or more in the last three school years.

An LEA that serves at least one elementary or secondary school meeting one of these three tests would be a "high-need LEA."

As noted in the preceding section of this preamble, the February 8, 1999 rule governing the initial program competition (64 FR 6145) requires all Teacher Recruitment Program grantees (and any high-need LEAs that participate in their projects) to ensure that scholarship recipients are placed, to the extent possible, in high-need schools within the participating high-need LEAs. Consistent with this requirement, the definitions in § 611.1 of these proposed regulations would clarify that these high-need schools are schools in high-need LEAs that meet one or more of the three tests explained immediately above. Section 611.34(a)(1) would clarify that, as a condition of receiving scholarship assistance, a recipient must execute a binding agreement either to teach in a high-need school in a high-need LEA or repay the scholarship, interest, and any collection costs.

These proposed definitions of high-need LEA and high-need school differ in one respect from the definitions of these terms that we included in the February 8, 1999 rules (64 FR 6147) to govern the initial Teacher Quality program competitions. That notice provided that the first eligibility test would depend upon the school's having at least 40 percent of its enrolled students eligible for free lunch subsidies. As now proposed, the test would instead be whether at least 50 percent of the school's enrolled students are eligible for free and reduced lunch subsidies. The Department had adopted the former test because it then believed that this measure was the closest available proxy, for which LEAs would have data, for the definition of high-need LEA in section 201(b)(2)(A) of the HEA. Section 201(b)(2)(A) extends the definition of a high-need LEA to any LEA with at least one school located in an area with a high percentage of individuals from families with incomes below the poverty line.

However, we have since determined that 40 percent eligibility of enrolled students for free lunch subsidies is a measure that is equivalent to nearly 50 percent eligibility of enrolled students for free and reduced lunch subsidies. For several reasons, this 50-percent test based on enrolled students eligible for free and reduced lunch subsidies is preferable to the existing 40 percent test based on eligibility for free lunch subsidies. First, this 50 percent eligibility test is itself the same measure that Congress recognizes, and most LEAs use, to determine a school's eligibility to operate as a "schoolwide program" under Title I of the Elementary and Secondary Education Act (ESEA). (See also the discussion of Title I schoolwide programs and targeted assistance programs in the following section of this notice.) Use of the 50-percent test here will promote a common definition of "high-poverty" in these two programs. Moreover, there is a strong convergence between the purposes of the Teacher Quality programs and the teaching needs of schools that are eligible to use their Title I, ESEA funds in schoolwide programs.

In particular, section 204 of the HEA requires states and partnerships that receive Teacher Recruitment Program grants to work collaboratively with specific high-need LEAs to recruit and train individuals who, upon graduation from teacher preparation programs, will help to address those LEAs' shortages of qualified teachers. Consistent with this statutory requirement, proposed § 611.40(d) would require each grantee that provides scholarship assistance under this program to work with high-need LEAs that participate in its project so that scholarship recipients are placed, to the extent possible, in high-need schools of those LEAs. Adapting the Title I, ESEA, schoolwide program criterion to Title II of the HEA will significantly reduce confusion among educators and scholarship recipients alike about schools in which recipients may teach and fulfill their service obligation.

B. Relationship of Service Obligation to Conditions for Debt Forgiveness Under the Federal Perkins Loan Program

Some Teacher Recruitment Program scholarship recipients also may be recipients of student loans provided under the Federal Perkins Loan Program. The Perkins Loan Program authorizes loan forgiveness for those who subsequently teach in certain schools receiving funds provided under

Title I, part A, of the ESEA. Hence, the Perkins Loan Program and the Title II, HEA, scholarship authority offer comparable incentives to individuals to become teachers in high-need schools. However, the incentives are not identical. We therefore believe that it would be useful to clarify in what schools graduates of teacher preparation programs who have received both forms of financial assistance must teach in order both to secure Perkins Program loan forgiveness and to meet their Teacher Recruitment Program service obligation.

Regulations governing the Perkins Loan Program in 34 CFR 674.54 identify the conditions under which an institution of higher education (IHE) providing a Federal Perkins loan must cancel up to 100 percent of a student's outstanding loan balance. In particular, they require cancellation of the loan for a student who teaches in a school that (1) is in an LEA that is eligible to receive funds under Title I, part A, of ESEA, and (2) the Secretary selects, based on a ranking of schools in the State by the State educational agency and a determination that more than 30 percent of the school's enrollment is comprised of Title I students. If a Federal Perkins loan recipient also has received a Teacher Recruitment Program scholarship, the individual will be able to avoid payment of the Perkins loan and repayment of the scholarship if the school has been designated for Perkins Program loan forgiveness and is a high-need school within a high-need LEA.

For the recipient, the key will be to confirm that the school is one that meets tests under both the Perkins Loan Program and Teacher Recruitment Program. The institution providing the Perkins loan will be able to identify for the recipient which Title I schools qualify for Perkins Program loan forgiveness. Then, through information obtained either directly from the IHE or from the administrative office of the LEA in which the scholarship recipient would teach, the recipient will be able to learn whether the school also meets a Teacher Recruitment Program definition of a high-need school. As the proposed regulations announced in this notice would offer three alternative definitions of high-need school, meeting any one of these three would suffice.

However, we believe that scholarship recipients likely would find it easiest to rely upon this proposed first definition—that a particular school have at least 50 percent of its enrolled students eligible for free and reduced lunch subsidies. This is because this proposed definition has such programmatic importance under Title I of the ESEA that all LEAs will know which of their schools receiving Title I assistance meet this test.

In particular, this particular proposed definition of high-need LEA and high-need school is the same commonly used test of whether a school receiving Title I assistance may, under section 1114 of the ESEA operate as a schoolwide program. (Section 1114 of Title I provides that schools may do so if 50 percent or more of their students are from low-income families. Schools with lower percentages of students from low-income families may not operate as schoolwide programs; they may only operate as more traditional "targeted-assistance schools." Title I permits schools and LEAs to determine the percentage of students from low-income families, among other ways, by using a variety of methods. However, the eligibility of enrolled students for free and reduced lunch subsidies is by far the most widely used.)

Thus, any Title I school that (1) Has been designated by the Secretary as one in which a teacher may receive Perkins Program loan forgiveness, and (2) also is eligible to operate as a Title I schoolwide program, would be one in which that teacher can meet the service obligation. Conversely, teaching in a Title I school that the Secretary designates under the Perkins Program, but which is not eligible to operate as a schoolwide program, would only qualify the teacher for Perkins Program loan forgiveness. It would not also enable the teacher to satisfy his or her Teacher Recruitment Program's service obligation unless the school met one of the other proposed definitions of a high-need school—more than 34 percent of the school's teachers teaching out-of-field, or a teacher attrition rate of at least 15 percent.

C. Terms of the Scholarships—General

Proposed § 611.34(a) provides that, before receiving scholarship assistance under the Teacher Recruitment Program, individuals would need to execute an agreement that embodies their service obligation. Sections 611.35–611.39 of these proposed regulations contain recipient repayment and informational requirements that would apply to these scholarships. Section 611.34(b) would have the scholarship agreements include these requirements, as the Secretary determines to be necessary.

Note: We have included a copy of the proposed scholarship agreement in Appendix A to this notice. This proposed agreement includes those provisions that, for scholarships provided with Teacher Recruitment Program funds, program grantees would need to include in scholarship agreements they offer to individuals attending teacher preparation programs. The proposed agreement is included in Appendix A for information purposes only; while its terms reflect the content of the proposed regulations, the agreement itself would not be included as a regulation in the Code of Federal Regulations. Any written comment on the content of the proposed Agreement should be sent to the person listed in the PAPERWORK REDUCTION ACT OF 1995 section of this preamble. Any written comment on the proposed regulations themselves, whose terms the scholarship agreement would reflect, should be separately sent to the person listed in the **ADDRESSES** section of this preamble.

The provisions of proposed §§ 611.35–611.39 concern matters such as:

- The responsibilities of the scholarship recipient to teach in a high-need school of a high-need LEA once he or she is eligible to teach;
- How the period of time in which the scholarship recipient must teach in a high-need school of a high-need LEA would be determined;
- Conditions under which the scholarship recipient's service responsibility would be deferred;
- The amount of the scholarship recipient's indebtedness to the Federal government and terms of repayment, should the recipient not meet these conditions; and
- The responsibility of the scholarship recipient, either alone or through the high-need LEA in which he or she begins teaching after graduating from the teacher training program, periodically to provide employment and other information to the Department.

These provisions are similar to those used in other student financial assistance programs that the Department administers. However, given the relatively small size of the Teacher Recruitment Program, these provisions have been tailored to provide as much flexibility and as little administrative burden as possible.

D. The Service Obligation

More specifically, before receiving a scholarship under the Teacher Recruitment Program, an individual would need to sign an agreement both to—

- Begin to teach in a high-need school of a high-need LEA (as those terms are defined in § 611.1 of these proposed regulations) within six months of the date from which he or she completes a teacher training program, *and*
- Continue to teach in a high-need school of a high-need LEA for a period equivalent to at least the period of time

that the individual received the scholarship assistance;

or to—

- Repay the Department the full amount of the scholarship assistance, interest, and any costs of collection.

Scholarship recipients who fail to complete the teacher preparation program would be required to repay the full amount of scholarship assistance that they receive, plus interest and any costs of collection. (Proposed § 611.40(a)(3) would require the IHE's teacher training program to establish policies for determining when to withdraw scholarship support for a student who does not remain in good academic standing, and when to re-negotiate the scholarship package over an extended period of time.)

E. Length of the Service Obligation

Proposed § 611.35 provides how the Secretary would calculate the period of the scholarship recipient's service obligation. Whether attending a teacher training program on a full- or part-time basis, a scholarship recipient would need to teach in a high-need school of a high-need LEA for a period that is comparable to the full-time equivalent period of time that the student received scholarship assistance. The Department would treat both the full academic year of the teacher training program, excluding summer, and the full academic year of the LEA, excluding summer and any intersession periods (for LEAs that operate year-round programs), as equivalent one-year periods.

Example: An individual receives a scholarship for the costs of attending a teacher training program on a part-time basis. While the program extends for two full years of coursework and clinical experience, the scholarship recipient is enrolled part-time, and completes the program in three years. The Secretary would consider the period for which the individual receives a scholarship as two academic years.

Upon graduating (and receiving two full years of scholarship support), the individual begins teaching half-time in a high-need school of a high-need LEA. If the individual continues to teach half-time, he or she would meet the program's service obligation by teaching in a high-need school of a high-need LEA for the standard contractual period of four school-years. This four-year period is equivalent to the two full school-years that a full-time teacher would teach.

As explained below in part I, "Recipient and LEA Reporting Requirements," a Teacher Recruitment Program grantee would be required to provide information to the Department that it needs to calculate the period of a scholarship recipient's service obligation. Specifically, the grantee would need to provide the Department the length of time for which each recipient receives scholarship assistance converted to a full-time student equivalent relative to students taking a normal, full academic load. After graduating and beginning to teach, the scholarship recipient would have the high-need LEA in which he or she teaches provide the Department with comparable information on the recipient's employment relative to those who teach for the LEA on a full-time basis.

F. Repayment

Proposed § 611.36 contains provisions for repayment of the scholarship for failure to meet the service obligation. As explained in proposed § 611.36(a), a scholarship recipient who the Department determines has not met the scholarship's service obligation would become responsible for repaying the scholarship, along with accrued interest and costs, six months after the date he or she—

(1) Completes the teacher training program;

(2) Is no longer enrolled in that program; or

(3) Is no longer employed as a teacher in a high-need school of a high-need LEA.

Proposed § 611.36(b) would require a recipient who fulfills some, but not all, of his or her service obligation to repay the amount of the scholarship that is proportionate to the unmet portion of the service obligation, along with accrued interest on this portion of the scholarship and costs of collection, if any.

Example: An individual receives a scholarship in the total amount of $10,000 to attend a teacher preparation program for two academic years. The individual graduates from the program, and works in a high-need school of a high-need school district for one full school year. The individual then moves, and takes a teaching position in a school and school district that are not high-need.

The individual has fulfilled one-half of his or her service obligation. Therefore, the recipient must repay one-half of the scholarship, interest on this amount that begins to accrue six months after he or she graduated from the teacher preparation program, and any costs of collection.

Proposed § 611.36(c) would permit an individual who must repay the scholarship and accrued interest to obtain a payment schedule upon request. Consistent with the Department's practice for student financial assistance programs authorized in Title IV of the HEA. The Department generally would establish a minimum monthly payment of no less than $50. Proposed § 611.36(e) also would clarify that any minimum monthly payment must permit the full amount of scholarship and interest to be repaid within ten years of the date the recipient becomes responsible for repayment.

As included in proposed § 611.36(d), the Secretary would charge interest in accordance with 31 U.S.C. 3717 and 34 CFR part 30 on the unpaid balance that the scholarship recipient owes.

Note: For calendar year 1999, the rate of interest is five percent.

Except where a scholarship recipient does not fulfill the service obligation after receiving a deferment (see section G: "Deferment of the Service Obligation"), no interest would be charged for a period that precedes the date on which the scholarship recipient must begin repayment.

In this regard, proposed § 611.36(e) would provide that a recipient's failure to meet repayment or reporting requirements results in the recipient's being in non-compliance with its terms and so liable for repayment of the scholarship, interest and any costs of collection. Proposed § 611.36(f) would entitle the Department to take appropriate legal action to collect any indebtedness.

In proposing these requirements, we considered other periods of time—both longer and shorter than six months—between the time a recipient graduates or withdraws from the teacher preparation program and the time the service obligation or obligation to repay begins. In view of the various options proposed under which the service obligation may be deferred (see the following section of this notice), six months seems to offer recipients ample time to find employment in high-need schools of high-need LEAs or reconsider any decision to withdraw from the teacher preparation program.

G. Deferment of the Service Obligation

Recognizing that illness or other personal circumstances may create legitimate reasons for a scholarship recipient's inability to meet his or her service obligation, proposed § 611.37(b) identifies conditions under which the Department would defer a service obligation. These would include: Serious physical or mental disability that prevents or substantially impairs the scholarship recipient's employability as a teacher; an inability, despite due diligence, to pass a required teacher licensure or certification examination or otherwise secure employment as a teacher in a high-need school of a high-need LEA; membership in the armed forces of the United States on active duty for no more than three years; or other extraordinary circumstances that the Secretary accepts.

For the student financial assistance programs authorized in Title IV of the HEA, the Department generally also offers loan deferment to those who participate in the Peace Corps, Americorps, or other national service. However, the express purpose of these Teacher Recruitment Program scholarships is to address the immediate teacher shortages of high-need LEAs by recruiting and training qualified individuals who will become teachers in their schools. Individuals who are unable or unwilling to accept these teaching positions after graduating from a teacher preparation program should not accept the scholarships. Accordingly, we do not believe that these proposed regulations should make deferments of the service obligation available to scholarship recipients who choose to work in these other areas.

Proposed § 611.37(c) would provide that unless the Secretary determines otherwise, a scholarship recipient would apply to renew a deferment on a yearly basis. The Department intends to prepare guidance, which grantees and institutions offering scholarships would provide to scholarship recipients, on the kind of information the Department would expect to receive in any acceptable request for deferment of the service obligation. Proposed § 611.37(c) also would require a scholarship recipient to begin teaching in a high-need school of a high-need LEA within 60 days of the end of a deferment, or become liable for repaying the scholarship, accrued interest, and any costs of collection.

As provided in proposed § 611.37(d), interest would continue to accrue during periods in which the service obligation is deferred. However, the scholarship recipient would not be liable for this accrued interest if he or she fulfills the service obligation once the period of deferment has ended.

H. Discharge of Repayment Responsibility

Proposed § 611.38 would identify the very limited circumstances—death, and total and permanent physical or mental disability that prevents a scholarship recipient from teaching—in which the Secretary would cancel the responsibility to repay a scholarship and accrued interest for failure to fulfill the service obligation.

I. Recipient and LEA Reporting Requirements

The scholarship agreement also would clarify the recipient's responsibility, as a condition of receipt of the scholarship, to ensure that the Department has the information it needs to administer the scholarship and payback provisions of the HEA. In particular, as noted in proposed § 611.39(a), within six months of the date a scholarship recipient graduates from a teacher preparation program, he or she would either—

- Have the high-need LEA in which he or she is employed provide the Department information that the Secretary may require that (1) identifies the scholarship recipient through such basic information as name, address, phone number, and social security number; (2) confirms that he or she is teaching in a high-need school of a high-need LEA; and (3) states whether the individual is teaching full- or part-time and, if part-time, the full-time equivalency of this teaching compared to the district's full-time teachers; or
- Submit to the Department, along with his or her home address, telephone number, and social security number (1) The required repayment; (2) A request to repay the obligation in installments; or (3) A request that the Secretary defer a required repayment, for reasons that the proposed regulations permit, along with a sufficient statement of justification.

Note: Before the scholarship recipient's graduation, the IHE in which the recipient is enrolled would provide him or her with written information that explains the information the LEA would need to submit to the Department for the first item above. This information would contain the elements that the Office of Management and Budget approves under the Paperwork Reduction Act. See the Paperwork Reduction Act of 1995 section of this preamble.

In this regard, we have included in Appendix B of this notice the information that we are proposing that an LEA provide each year until the Department has determined that the teacher has met his or her service obligation. The content of Appendix B is included for information purposes only; while its terms reflect the content of the proposed regulations, these terms would not be included as a regulation in the Code of Federal Regulations. Any written comment on the content of the proposed reporting instrument should be sent to the person listed in the Paperwork Reduction Act of 1995 section of this preamble. Any written comment on the proposed regulations themselves, whose terms the LEA reporting instrument would reflect, should be separately sent to the person listed in the **ADDRESSES** section of this preamble.

Proposed § 611.39(b)(1) would require scholarship recipients, who within six months of graduation report (through their LEAs) that they are teaching in a high-need school of a high-need LEA, to have their LEAs also provide updated employment information at the end of the school year. Proposed § 611.39(b)(2) would require the recipient in subsequent years to have the LEA continue to provide this information until the Department notifies the recipient that he or she has fulfilled the service obligation. Proposed § 611.39(b)(3) offers to credit summer and intersession teaching in high-need schools of high-need LEAs toward the recipient's fulfillment of the service obligation.

Conversely, proposed § 611.39(c) would require those scholarship recipients who (1) Do not complete the teacher training program, or (2) Do not retain scholarships provided with program funds because of a failure to remain in good academic standing, to submit to the Department—

- The required repayment;
- A request to repay the obligation in installments; or
- A request that the Secretary defer a required repayment for reasons that the proposed regulations provide, along with a sufficient statement of justification.)

Proposed § 611.39(c) also would have the Department, upon receipt of this information, notify these individuals of the status of their obligation, and of any schedule under which they would need to repay their scholarship, interest, and any costs of collection.

Finally, Proposed § 611.39(d) would make the scholarship recipient's agreement to continue providing this information (or, if the recipient teaches in a high-need school, have the high-need LEA provide this information) an ongoing condition of the scholarship. In addition, until the Department has determined that the recipient either has met the service obligation or has repaid the full amount of scholarship, interest, and costs that are due, the recipient would need to ensure that the Department has a current home address and telephone number, and a current work address and telephone number.

J. Responsibilities of Teacher Recruitment Program Grantees

Section 611.40 of these proposed regulations would require each Teacher Recruitment Program grantee to undertake certain basic responsibilities with regard to scholarship recipients. These include:

- Ensuring that, before any prospective scholarship recipient executes a Teacher Recruitment Program scholarship agreement, the individual understands its terms and conditions;

- Providing to the Department periodic information the Department needs to identify the scholarship recipient and the scholarship amount he or she received. This information includes (1) The amount of the scholarship provided with program funds; (2) The full-time equivalency (over each academic year) of the recipient's enrollment in the teacher training program for which he or she receives scholarship assistance; (3) The date of the scholarship recipient's graduation or withdrawal from the teacher preparation program; and (4) Whether the institution has withdrawn scholarship support because of a failure to maintain good academic standing.
- Providing the Department, after a scholarship recipient's graduation or withdrawal from the teacher preparation program, the original of the scholarship agreement that the recipient and the grantee (or its partnering IHE, if the grantee is not an IHE) had signed;
- Holding an exit conference with each scholarship recipient before the recipient's graduation or withdrawal from the teacher preparation program to review (1) The recipient's responsibilities under the scholarship agreement, and (2) The follow-up services that the institution will provide during the recipient's first three years of teaching.
- As required by section 204 of the Act, providing (a) scholarship recipients—both before and after graduation—with appropriate support and follow-up services, including job counseling and placement assistance, and (b) high-need LEAs with which the grantees collaborate with information about the terms and conditions of scholarships, and the availability of recipients to become teachers in their high-need schools. These support services are intended to help ensure that, upon graduation, scholarship recipients are able to secure teaching positions in these schools.

K. Applicability of Proposed Regulations to State and Partnership Program Grantees

As explained in the BACKGROUND section of this preamble, recipients of Title II, HEA, State and Partnership Program grants may conduct activities authorized under the Teacher Recruitment Program if these activities are described in their approved grant applications. Proposed § 611.42 would make the provisions governing scholarships awarded under the Teacher Recruitment Program also applicable to any scholarships awarded with funds provided under these other two Teacher Quality Enhancement Grant programs.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goal that the Nation's teaching force will have the content knowledge and teaching skills needed to instruct all American students for the next century.

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 611.36 What are the consequences of a scholarship recipient's failure to meet the service obligation?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities that would be affected by these regulations are IHEs and States that provide scholarship assistance under the Teacher Recruitment, State, and Partnership Programs; LEAs in which scholarship recipients teach upon graduation from IHE teacher preparation programs; and scholarship recipients. The information burden on each of these groups is minimal, and consists of reporting basic information that the IHE, LEA, or individual already has available. Individuals are not considered to be "small entities" under the Regulatory Flexibility Act. Hence, the final regulations would not have a significant impact on any entity because they would not impose excessive regulatory burden or require unnecessary Federal supervision. Rather, the regulations would impose minimal requirements to determine whether scholarship recipients are entitled to retain their scholarship assistance.

Paperwork Reduction Act of 1995

Proposed §§ 611.34—611.40 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this notice and these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Teacher Quality Enhancement Grant Programs

Recipients of scholarships provided with any Teacher Quality Enhancement Grant program funds would first execute a scholarship agreement with IHEs that are associated with grantee States or partnerships. These agreements would provide that, unless the Department defers the service obligation, the recipient would either (1) Fulfill the service obligation or (2) Repay to the Department the scholarship with interest and costs of collection, if any. The agreements also would describe how the Department would administer the service-obligation requirement, and identify the information the Department would need for this purpose from the recipient, program grantees, and high-need LEAs.

Beyond the need for an executed scholarship agreement, these proposed regulations would impose minimal additional information burden on program grantees, scholarship recipients and the LEAs in which they will teach in order to ensure that scholarship recipients meet their service obligations.

Program grantees. At the beginning of each school term, program grantees would provide the Department with basic identifying on each scholarship recipient. This information would include items such as name, address, telephone number, date of birth and social security number, as well as the amount and term of the scholarship. (This information is the same as in Sections A and B of the Proposed Scholarship Terms and Conditions contained in the appendix A of this notice.) After the recipient's graduation from the teacher preparation program, the grantee would notify the Department of the date of the recipient's graduation and the total amount of scholarship provided to the recipient with program funds. In addition, should a recipient withdraw from the teacher preparation program during the school year, or lose a scholarship because of poor academic performance, the grantee would promptly notify the Department of the date of the individual's withdrawal from the program or loss of scholarship assistance. The grantee also would inform the Department of the total amount of program funds that the individual had received in scholarship assistance, and would provide the Department the original of all scholarship agreements that any scholarship recipient had executed.

Scholarship recipients. The recipient would have the LEA in which he or she becomes employed provide the Department information that (a) Identifies the school in which he or she teaches; (b) States whether the recipient is teaching full- or part-time; and (c) Confirms that the school and LEA are of "high-need"as defined by program regulations. (See the discussion immediately following in this section on "LEAs.") The scholarship recipient would continue to have the LEA provide this information until the Department notifies the recipient that he or she has fulfilled the service obligation. Consistent with section 204(e) of the HEA, the Department will use the information the LEA provides to determine whether the recipient needs to repay scholarship assistance and accrued interest and, where appropriate, to begin implementing debt collection procedures.

Alternatively, the scholarship recipient would either (1) Repay the scholarship, interest, and any costs of collection, (2) Request a repayment schedule, or (3) Request a deferment of the service obligation and explain why the deferment is appropriate.

LEAs. LEAs would provide the Department information to confirm that (1) The school and LEA in which the scholarship recipient teaches is "high -need,"and (2) The recipient is employed as a teacher full- or part-time (and if part-time, the percentage of full-time equivalency). The LEA would provide this data at the beginning of the school year or term in which the recipient begins teaching. At the end of the school year, the LEA would provide the Department follow-up information that confirms the individual's employment status for the prior year (or term). In subsequent years the LEA would continue to provide this information to the Department until the Department notifies the scholarship recipient that he or she has fulfilled his or her service obligation, or the recipient no longer works for the LEA, whichever comes first.

Before graduating, the IHE awarding the scholarship would provide the scholarship recipient information on what data the LEA needs to provide the Department. The Department's proposal for this LEA data in contained in Appendix B of this notice.

We estimate annual reporting and recordkeeping burden for this collection of information to average approximately 0.6 hours for each of the 5,000 anticipated scholarship recipients, approximately 17.7 hours for each of the anticipated 75 IHEs and other program grantees, and approximately 2.5 hours for each of the anticipated 375 LEAs. This annual reporting and recordkeeping burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 5,408.5 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of these sites. If you have questions about using the PDF, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

Note: The official version of the document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1021 *et seq.* and 1024(e)

List of Subjects in 34 CFR Part 611

Colleges and universities, Elementary and secondary education, Grant programs—education.

(Catalog of Federal Domestic Assistance Number 84.336: Teacher Quality Enhancement Grants Program)

Dated: October 28, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

For the reasons stated in the preamble, the Secretary proposes to amend part 611 of Chapter VI of title 34 of the Code of Federal Regulations as follows:

PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM

1. The authority citation for part 611 is revised to read as follows:

Authority: 20 U.S.C. 1021 *et seq.* and 1024(e), unless otherwise noted.

2. A new subpart A consisting of § 611.1 is added to read as follows:

Subpart A—General Provisions

§ 611.1 What definitions apply to the Teacher Quality Enhancement Grants Program?

The following definitions apply to this part:

High-need local educational agency (LEA) means an LEA that meets one of the following definitions:

(a) An LEA with at least one school in which 50 percent or more of the enrolled students are eligible for free and reduced lunch subsidies.

(b) An LEA that has one school where—

(1) More than 34 percent of academic classroom teachers overall (across all academic subjects) do not have a major, minor, or significant course work in their main assignment field; or

(2) More than 34 percent of the main assignment faculty in two of the core-subject departments do not have a major, minor, or significant work in their main assigned field.

(c) An LEA that serves a school whose attrition rate among classroom teachers was 15 percent or more over the last three school years.

High-need school means an elementary or secondary school operated by a high-need LEA in which the school's students or teaching staff meet the elements in paragraph (a), (b), or (c) of the definition of a high-need LEA.

Main assignment field means the academic field in which teachers have the largest percentage of their classes.

Significant course work means four or more college-or graduate-level courses in the content area.

(Authority: 20 U.S.C. 1024(e))

3. A new subpart D consisting of §§ 611.34 through 611.40 is added to read as follows:

Subpart D—Teacher Recruitment Program

Sec.

611.30–.33 [Reserved]
611.34 Under what circumstances may an individual receive a scholarship of program funds to attend a teacher training program?
611.35 How does the Secretary calculate the period of the scholarship recipient's service obligation?
611.36 What are the consequences of a scholarship recipient's failure to meet the service obligation?
611.37 Under what circumstances may the Secretary defer a scholarship recipient's service requirement?
611.38 Under what circumstances does the Secretary discharge a scholarship recipient's obligation to repay for failure to meet the service obligation?
611.39 What are a scholarship recipient's reporting responsibilities?
611.40 What are a grantee's responsibilities for helping to implement the scholarship requirements?

Subpart D—Teacher Recruitment Program

§§ 611.30–611.32 [Reserved]

§ 611.34 Under what circumstances may an individual receive a scholarship of program funds to attend a teacher training program?

(a) *General: The service obligation.* An individual, whom a grantee finds eligible to receive a scholarship funded by the Teacher Recruitment Program to attend a teacher preparation program, may receive the scholarship only after executing a binding agreement with the institution of higher education (IHE) offering the scholarshipthat, after completing the program, the individual will either—

(1) Teach in a high-need school of a high-need LEA for a period of time equivalent to the period for which the individual receives the scholarship; or

(2) Repay, as set forth in § 611.36, the Teacher Recruitment Program funds provided as a scholarship.

(b) *Content of the scholarship agreement.* To implement the service-obligation requirement, the scholarship agreement must include terms, conditions, and other information consistent with §§ 611.35–611.39 that the Secretary determines to be necessary.

(Authority: 20 U.S.C. 1024(e))

§ 611.35 How does the Secretary calculate the period of the scholarship recipient's service obligation?

(a) *Calculation of period of scholarship assistance.* (1) The Secretary calculates the period of time for which a student received scholarship assistance on the basis of information provided by the grantee under § 611.40(b).

(2) The period for which the recipient received scholarship assistance is the period during which an individual enrolled in the teacher preparation program on a full-time basis, excluding the summer period, would have completed the same course of study.

(b) *Calculation of period needed to teach to meet the service obligation.* (1) The period of the scholarship recipient's service obligation is the period of the individual's receipt of scholarship assistance as provided in paragraph (a) of this section.

(2) The Secretary calculates the period that a scholarship recipient must teach in a high-need school of a high-need LEA in order to fulfill his or her service obligation by—

(i) Comparing the period in which the recipient received a scholarship as provided in paragraph (a) of this section with the information provided by the high-need LEA under § 611.39(a) and (b) on the period the recipient has taught in one of its high-need schools; and

(ii) Adjusting the period in which the recipient has taught in a high-need school to reflect the individual's employment, if any, as a teacher on a part-time basis relative to classroom teachers the LEA employs on a full-time basis under the LEA's standard yearly contract (excluding any summer or intersession period).

(c) The Secretary adjusts the period of a scholarship recipient's service obligation as provided in paragraph (b) of this section to reflect information the high-need LEA provides under § 611.39(a) and (b) that the scholarship recipient also has taught in a high-need school in a summer or intersession period.

(Authority: 20 U.S.C. 1024(e))

§ 611.36 What are the consequences of a scholarship recipient's failure to meet the service obligation?

(a) *Obligation to repay: General.* (1) A scholarship recipient who does not fulfill his or her service obligation must—

(i) Repay the Department the full amount of the scholarship, including the principal balance, accrued interest, and any collection costs charged under paragraphs (c) and (d) of this section; or

(ii) Be discharged of any repayment obligation as provided in § 611.38.

(2) Unless the service obligation is deferred as provided in § 611.37 or the repayment requirement is discharged, the obligation to repay the amount provided in paragraph (a)(1) of this section begins six months after the date the recipient—

(i) Completes the teacher training program without beginning to teach in a high-need school of a high-need LEA; or

(ii) Is no longer enrolled in the teacher training program.

(3) The Secretary determines whether a scholarship recipient has fulfilled the service obligation on the basis of information that the Department receives as provided in § 611.39(a) and (b).

(b) *Obligation to Repay: Partial performance of the service obligation.* (1) A scholarship recipient who teaches in a high-need school of a high-need school district for less than the period of his or her service obligation must repay—

(i) The amount of the scholarship that is proportional to the unmet portion of the service obligation;

(ii) Interest that accrues on this portion of the scholarship beginning six months after the recipient's graduation from the teacher preparation program; and

(iii) Costs of collection, if any.

(2) Unless the service obligation is deferred or the repayment requirement is discharged, the obligation to repay the amount provided in paragraph (b)(1) of this section begins six months after the date the recipient is no longer employed as a teacher in a high-need school of a high-need LEA.

(c) *Availability of payment schedule.* (1) Upon request to the Secretary, the scholarship recipient may repay the scholarship and accrued interest according to a payment schedule that the Secretary establishes.

(2) A payment schedule must permit the full amount of the scholarship and accrued interest to be repaid within ten years. The minimum monthly payment is $50 unless a larger monthly payment is needed to enable the full amount that is due to be paid within this timeframe.

(d) *Interest.* In accordance with 31 U.S.C. 3717 and 34 CFR part 30, the Secretary charges interest on the unpaid balance that the scholarship recipient owes. However, except as provided in § 611.37(d), the Secretary does not charge interest for the period of time that precedes the date on which the scholarship recipient is required to begin repayment.

(e) *Failure to meet requirements.* A scholarship recipient's failure to satisfy the requirements of §§ 611.35–611.39 in a timely manner results in the recipient being—

(1) In non-compliance with the terms of the scholarship;

(2) Liable for repayment of the scholarship and accrued interest; and

(3) Subject to collection action.

(f) *Action by reason of default.* The Secretary may take any action authorized by law to collect the amount of scholarship, accrued interest and collection costs, if any, on which a scholarship recipient obligated to repay under this section has defaulted. This action includes, but is not limited to, filing a lawsuit against the recipient, reporting the default to national credit bureaus, and requesting the Internal Revenue Service to offset the recipient's Federal income tax refund.

(Authority: 20 U.S.C. 1024(e))

§ 611.37 Under what circumstances may the Secretary defer a scholarship recipient's service requirement?

(a) Upon written request, the Secretary may defer a service obligation for a scholarship recipient who—

(1) Has not begun teaching in a high-need school of a high-need LEA as required by § 611.34(a); or

(2) Has begun teaching in a high-need school of a high-need LEA, and who requests the deferment within six months of the date he or she no longer teaches in this school.

(b) To obtain a deferment of the service obligation, the recipient must provide the Secretary satisfactory information of one or more of the following circumstances:

(1) Serious physical or mental disability that prevents or substantially impairs the scholarship recipient's employability as a teacher.

(2) The scholarship recipient's inability, despite due diligence (for reasons that may include the failure to pass a required teacher certification or licensure examination), to secure employment as a teacher in a high-need school of a high-need school LEA.

(3) Membership in the armed forces of the United States on active duty for a period not to exceed three years.

(4) Other extraordinary circumstances that the Secretary accepts.

(c) Unless the Secretary determines otherwise—

(1) A scholarship recipient must apply to renew a deferment of the service obligation on a yearly basis; and

(2) The recipient has 60 days from the end of the deferment period to begin teaching in a high-need school of a high-need LEA or become liable for repayment of the scholarship, any accrued interest, and any costs of collection.

(d)(1) As provided in § 611.36(e), during periods for which the Secretary defers a scholarship recipient's service obligation, the scholarship recipient does not have an obligation to repay the scholarship. However, interest continues to accrue on the amount of the scholarship.

(2) If the scholarship recipient fulfills his or her service obligation after the end of the deferment, the Secretary waives the obligation to repay accrued interest.

(Authority: 20 U.S.C. 1024(e))

§ 611.38 Under what circumstances does the Secretary discharge a scholarship recipient's obligation to repay for failure to meet the service obligation?

(a) The Secretary discharges the obligation of a scholarship recipient to repay the scholarship, interest, and any costs for failure to meet the service obligation based on information acceptable to the Secretary of—

(1) The recipient's death; or

(2) The total and permanent physical or mental disability of the recipient that prevents the individual from being employable as a classroom teacher.

(b) Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the scholarship recipient, or for a discharge based on death to the recipient's estate, those payments received after the date the eligibility requirements for discharge were met. The Secretary returns these payments whether they are received before or after the date the discharge was approved.

(Authority: 20 U.S.C. 1024(e))

§ 611.39 What are a scholarship recipient's reporting responsibilities?

(a) *Upon graduation.* Within six months of graduating from a teacher preparation program, a scholarship recipient must either—

(1) Have the LEA in which the recipient is employed as a teacher provide the Department information, which the Secretary may require, to confirm—

(i) The home address, phone number, social security number, and other identifying information about the recipient;

(ii) That he or she is teaching in a high-need school of a high-need LEA; and

(iii) Whether the individual is teaching full- or part-time and, if part-time, the full-time equivalency of this teaching compared to the LEA's full-time teachers; or

(2) Provide the Department a current home address and telephone number, a work address and telephone number, the recipient's social security number, and one of the following:

(i) The required repayment of the scholarship.

(ii) A request that the Secretary permit the recipient to repay the scholarship and accrued interest in installments as permitted by § 611.36(c).

(iii) A request that the Secretary defer the service obligation as permitted by § 611.37.

(b) *Upon the close of the LEA's academic year.* (1) At the close of the LEA's academic year, a scholarship recipient—whose LEA reports under paragraph (a)(1) of this section that he or she is teaching in a high-need school of a high-need LEA—must have the LEA provide information to the Department as the Secretary may require that confirms the recipient's actual employment status for the preceding period.

(2) In subsequent school years, the recipient must have the LEA continue to provide information to the Department on the recipient's employment as the Secretary may require, until the Department notifies the recipient that the service obligation has been fulfilled.

(3)(i) The Secretary provides a scholarship recipient with credit toward the service obligation for teaching in a high-need school of a high-need LEA during a summer or intersession period (for LEAs that operate year-round programs).

(ii) To receive this credit, the recipient must have the LEA at the end of the summer or intersession period provide information to the Department, as the Secretary may require, that confirms that the recipient has taught during this period in a high-need school.

(c) *Upon failure to graduate or withdrawal of scholarship support.* (1) Within six months of the date the scholarship recipient is no longer enrolled in the teacher training program, or within six months of the IHE's withdrawal of scholarship support for failure to maintain good academic standing, , the recipient must submit to the Department—

(i) The required repayment of the scholarship;

(ii) A request that the Secretary establish a binding schedule under which the recipient is obligated to repay the scholarship, accrued interest, and any costs of collection; or

(iii) A request that the Secretary defer the service obligation as permitted by § 611.37.

(2) Upon review of the repayment or information provided under paragraph (c)(1) of this section, the Department notifies the recipient of the status of the recipient's obligations and of any schedule under which the recipient must repay the scholarship.

(d) *Continuing responsibilities to report.* Until the Secretary determines that the individual either has satisfied his or her service obligation or has repaid the full amount of the scholarship, accrued interest, and any costs, the recipient also remains responsible for providing the Department—

(1) The information identified in this part; and

(2) A current home address and telephone number, and a current work address and work telephone number.

(Authority: 20 U.S.C. 1024(e))

§ 611.40 What are a grantee's responsibilities for helping to implement the scholarship requirements?

(a) *Before awarding a scholarship.* Before awarding scholarship assistance with funds provided under the Teacher Recruitment Program to any student attending a teacher preparation program, a grantee must—

(1) Ensure that the student understands the terms and conditions that the Secretary has determined must be included in the scholarship agreement;

(2) Have the student and the institution awarding the scholarship execute a scholarship agreement that contains these terms and conditions; and

(3) Establish policies for—

(i) The withdrawal of scholarship support for any student who does not remain in good academic standing; and

(ii) Determining when and if re-negotiation of a student's scholarship package over an extended period of time is appropriate.

(b) *Reporting requirements.* (1) Within 30 days of the beginning of the teacher preparation program's academic term or within 30 days of the execution of any scholarship agreement, whichever is later, the grantee must provide to the Department the following information:

(i) The identity of each scholarship recipient.

(ii) The amount of the scholarship provided with program funds to each recipient.

(iii) The full-time equivalency, over each academic year, of each recipient's enrollment in the teacher training program for which he or she receives scholarship assistance.

(iv) Other information as the Secretary may require.

(2) Within 30 days of a scholarship recipient's graduation or withdrawal from the teacher preparation program, the grantee must provide to the Department the following information:

(i) The date of the recipient's graduation or withdrawal.

(ii) The total amount of program funds the grantee awarded as a scholarship to the recipient.

(iii) The original of any scholarship agreement executed by the scholarship recipient and the grantee (or its partnering IHE if the grantee is not an IHE) before the recipient was awarded a scholarship with program funds.

(iv) A statement of whether the institution has withdrawn scholarship support because of the recipient's failure to maintain good academic standing.

(v) Other information as the Secretary may require.

(c) *Exit conference.* An institution providing a scholarship with funds provided under this part must conduct an exit conference with each scholarship recipient before that individual leaves the institution. During the exit conference the institution must give the recipient a copy of any scholarship agreement the recipient has executed. The institution also must review with the recipient—

(1) The terms and conditions of the scholarship. including —

(i) The recipient's service obligation;

(ii) How the recipient can confirm whether a school and LEA in which he or she would teach will satisfy the service obligation;

(iii) Information that the recipient will need to have the LEA provide to the Department to enable the Secretary to confirm that the recipient is meeting the service obligation;

(iii) How the recipient may request a deferment of the service obligation, and information that the recipient should provide the Department in any deferment request;

(v) The consequences of failing to meet the service obligation including, at a minimum, the amount of the recipient's potential indebtedness; the possible referral of the indebtedness to a collection firm, reporting it to a credit bureau, and litigation; and the availability of a monthly payment schedule;

(vi) The amount of scholarship assistance and interest charges that the recipient must repay for failing to meet the service obligation; and

(vii) The recipient's responsibility to ensure that the Department has a home address and telephone number, and a work address and telephone number until the Secretary has determined that the recipient has fulfilled the service obligation or the recipient's debt has been paid or discharged; and

(2) The follow-up services that the institution will provide the student during his or her first three years of teaching in a high-need school of a high-need LEA.

(d) *Programmatic responsibilities.* (1) In implementing its approved Teacher Recruitment Program grant, the grantee must—

(1) Provide scholarship recipients both before and after graduation with appropriate support services, including academic assistance, job counseling, placement assistance, and teaching support that will help to ensure that—

(i) Upon graduation, scholarship recipients are able to secure teaching positions in high-need schools of high-need LEAs; and

(ii) After beginning to teach in a high-need school of a high-need LEA, former scholarship recipients have appropriate follow-up services and assistance during their first three years of teaching;

(2) Provide LEAs with which the grantees collaborate in Teacher Recruitment Program activities with information and other assistance they need to recruit highly-qualified teachers effectively; and

(3) Work with the high-need LEAs participating in its project to ensure that scholarship recipients are placed, to the extent possible, in high-need schools of those LEAs.

(Authority: 20 U.S.C. 1024(e))

Subpart E—Other Grant Conditions

4. A new § 611.42 is added to subpart E to read as follows:

§ 611.42 What rules govern scholarships funded by the State or Partnership Program for individuals attending teacher preparation programs?

The provisions in §§ 611.34–611.40 governing the receipt of scholarships awarded under the Teacher Recruitment Program also apply to any scholarships that are awarded with federal funds provided under the State or Partnership Program authorized by section 202 or 203 of the Higher Education Act.

(Authority: 20 U.S.C. 1021 *et seq.*)

Appendix A

(This appendix is provided for information purposes only, and will not be included in final regulations issued for this program.)

Teacher Quality Enhancement Grant Programs—Title II, Higher Education Act (HEA)

Proposed Scholarship Terms and Conditions

Section I: Recipient Section

Name (last, first, middle initial):
Permanent Address (street, city, State, ZIP code):
Date of Birth:
Area Code/Phone No.:
Social Security Number:

Section II: Institution Section

Part A

Name of Institution:
Address (street, city, State, ZIP code):
Institution's DUNS Number:
Name of Contact (last, first, middle initial):
Area Code/Phone No. of Institution Contact:
E-mail Address of Institution Contact:

Part B

Amount of Title II, HEA Funds Awarded as Scholarship:
Period of Scholarship:
Recipient Enrolled as Percentage of Full-Time Equivalent Student:
ED Grant Award Number:

Section III: Terms and Conditions

Applicable Law: The terms of this agreement and any scholarship assistance received with funds provided under Title II, sections 202–204, of the Higher Education Act of 1965, as amended (the "Act") that the recipient receives will be interpreted in accordance with Title II, section 204, of the Act and any applicable Federal regulations. Section 204 of the Act embodies the Teacher Recruitment Program, whose purpose is to address the severe shortages of qualified teachers in many school districts and schools throughout the nation.

Purpose of the Scholarship—the Recipient's Service Obligation: Section 204(e) of the Act authorizes institutions and States that receive Teacher Recruitment Program funds from the U.S. Department of Education (the Department) to use these funds to provide scholarships to qualified individuals who agree to become teachers and then work in school districts and schools that face a serious teacher shortage. Similarly, sections 202(d)(7) and 203(e)(4) of the Act authorize States and institutions that receive State or Partnership Program grants respectively to use these funds to carry out activities permitted under the Teacher Recruitment Program. Therefore, recipients of scholarships provided with federal funds under these two programs also are subject to the requirements of section 204(e) of the Act.

Consistent with section 204(e), the recipient accepts the scholarship with the understanding that it carries with it a service obligation. More specifically, in exchange for the scholarship, the recipient agrees upon graduating from the institution's teacher training program to teach in a "high-need school" of a "high-need school local educational agency (hereinafter "high-need school district") for at least as long as the period for which the recipient receives scholarship assistance. The recipient understands that the period of time for which he or she receives scholarship assistance will be determined in comparison to full-time enrollment in the teacher preparation program (exclusive of summers). Similarly, the recipient understands that the period of time he or she must teach in a high-need school of a high-need school district will be determined in comparison to what the school district considers to be teaching on a full-time basis. Full-time basis does not include summers or optional intersession periods for those school districts that operate year-round programs.

The recipient also understands that the institution has received funds from the Department of Education to provide teacher recruitment services to the scholarship recipient and so, consistent section 204 of the Act, is responsible among other things for—

1. Providing support services, if needed, to help the recipient complete the teacher training program;
2. Working with one or more high-need school districts, in securing placement of the scholarship recipient, upon his or her graduation, into a teaching position at a high-need school in the school district; and
3. Working with the high-need school and school district in which the recipient begins to teach to provide the recipient with follow-up services during his or her first three years of teaching.

Recipient's Retention of Scholarship Assistance for Meeting the Service Obligation: The recipient does not have to repay to the Department the scholarship provided with funds under Title II of the Act if the Department determines that the recipient has fulfilled his or her service obligation. To determine that the recipient has met the service obligation, the Department must receive information to confirm that the recipient (1) Within six months of graduation from the teacher training program, has teaching in a high-need school of a high-need school district: and (2) Continues teaching in a high-need school of a high-need school district for a period of time that is equivalent to the period of time for which the recipient receives this scholarship assistance.

So that the Department may obtain the information it needs to make these determinations, the recipient agrees within six (6) months of graduation from the institution's teacher training program to have the high-need school district in which he or she is teaching provide to the Department information as the Department may require that confirms:

1. The school and school district in which the recipient is teaching are "high-need"as defined in the "DEFINITION OF HIGH-NEED SCHOOL DISTRICT AND HIGH-NEED SCHOOL."below: and

2. The recipient is teaching on a full-time basis or, if teaching on a part-time basis, the amount of time the recipient is teaching as a percentage of the time spent teaching by the district's full-time teachers.

Before graduating, the institution will provide the recipient written guidance that explains the information the recipient must have the school district provide the Department, and the date or dates that this information is due.

Scholarship recipients who attend the institution on a part-time basis must teach in a high-need school of a high-need school district for a period that is comparable to the full-time equivalent period that the student receives scholarship assistance. The Department treats both the full academic year of the teacher training program, excluding summer, and the full academic year of the school district in which the recipient will teach, excluding summers and any intersession periods (for school districts that operate year-round programs), as equivalent one-year periods of time.

Example: An individual receives a scholarship for the costs of attending a teacher preparation program on a part-time basis. While the program extends for two full years of coursework and clinical experience, the scholarship recipient is enrolled part-time, and completes the program in three years. The Department would consider the period for which the individual receives a scholarship as two academic years.

Upon graduation, the individual begins teaching half time in a high-need school of a high-need school district after receiving the two full years of scholarship support. If the individual continues to teach half time, he or she would meet the program's service obligation by teaching in a high-need school of a high-need school district for the standard contractual period of four school years. This four-year period is equivalent to the period that a full-time teacher would teach for two full school years.

At the end of each school year, the recipient will have the high-need school district in which he or she teaches provide the Department with information to confirm that the recipient has taught for the preceding period in a high-need school. The Department will provide the recipient with credit towards meeting the service obligation for time that a high-need school district confirms the recipient has taught in a high-need school during a summer period (or intersession period for districts that operate year-round programs).

Until the Department notifies the recipient that he or she has met the service obligation, at the beginning and end of each subsequent academic year the recipient will continue to have the high-need school district inform the Department whether the recipient is teaching in a high-need school. The recipient will have the school district provide this information on or before October 1 and within seven days of the end of the school year, respectively.

Before graduation, the institution will provide the recipient forms that contain the information that the school districts will need to provide to the Department.

Definition of High-Need School District and High-Need School: For purposes of this agreement, a "high-need school district" is a school district that meets one of the following definitions:

1. An school district with at least one school in which 50 percent or more of the enrolled students are eligible for free and reduced lunch subsidies.

2. A school district that has one school where—

More than 34 percent of academic classroom teachers overall (across all academic subjects) do not have a major, minor, or significant course work in their main assignment field; or

More than 34 percent of the main assignment faculty in two of the core-subject departments do not have a major, minor, or significant work in their main assigned field.

(For purposes of the definition above, "Main assignment field" means the academic field in which teachers have the largest percentage of their classes. "Significant course work" means four or more college- or graduate-level courses in the content area.)

3. A school district that serves a school whose attrition rate among classroom teachers was 15 percent or more in the last three school years.

For purposes of this Agreement, a "high-need school" is an elementary or secondary school that meets one of the three tests that enables a school district to be considered a "high-need school district."

Deferment of Service Obligation: The Department may defer the scholarship recipient's responsibility to teach in a high-need school of a high-need school district if the recipient provides satisfactory information to confirm that he or she—

1. Suffers from a serious physical or mental disability that temporarily prevents or impairs the scholarship recipient from working as a teacher;

2. Is a member of the Armed Forces of the United States on active duty;

3. Is conscientiously seeking but is unable to secure employment (for reasons that may include the failure to pass a required teacher certification or licensure examination) as a teacher in a high-need school of a high-need school district; or

4. Is affected by other extraordinary circumstances that prevent the scholarship recipient from securing such employment.

The recipient must apply to the Department for a deferment of the service obligation. The recipient must do so within six (6) months of his or her graduation (or withdrawal) from the teacher training program or, if the recipient has already begun teaching in a high-need school of a high-need school district, within six (6) months of the date he or she no longer teaches in this school. Unless the Department determines otherwise, the recipient must apply to the Department to renew a deferment on a yearly basis. Deferments for military service may not exceed three years. During the period of any deferment, the recipient agrees to provide the Department with current information (including updating information) on the recipient's home address and phone number, and work address and telephone number.

The obligation to repay the scholarship, as set forth below in "Repayment for Failure to Meet Service Obligation," is not deferred until the Department determines that a deferment is appropriate.

Repayment for Failure to Meet Service Obligation: The recipient agrees to repay to the Department the full amount of the scholarship (with accrued interest and costs of collection, if any, as described below) if he or she does not—

(1) Meet the service obligation or reporting requirements identified above in "Recipient's Retention of Scholarship Assistance for Meeting the Service Obligation;" or

(2) Receive a deferment of this obligation as explained above in "Deferment of Service Obligation."

If the scholarship recipient does not teach in a high-need school of a high-need school district within six (6) months of his or her graduation from the teacher preparation program, the recipient becomes obligated to repay the scholarship six months after the date of completion of the teacher training program.

If the scholarship recipient withdraws from the teacher preparation program prior to graduating, the recipient becomes obligated to repay the scholarship six (6) months after his or her withdrawal from the program.

If upon graduation from the institution's teacher preparation program the scholarship recipient teaches in a high-need school of a high-need school district for a period that is *less than* the period of his or her service obligation, the recipient becomes responsible for repayment of the percentage of the scholarship (and interest that accrues on this portion of the scholarship) equal to the percentage of the period for which the service obligation was not fulfilled.

Example: An individual receives a scholarship in the total amount of $10,000 to attend a teacher preparation program for two academic years. The individual graduates from the program, and works in a high-need school of a high-need school district for one full school year. The individual then moves, and takes a teaching position in a school and school district that are not high-need.

The individual has fulfilled one-half of his or her service obligation, and so must repay one-half of the scholarship, plus interest that accrues on this amount beginning six months after graduation from the teacher preparation program (see "INTEREST," below), and any costs of collection. This indebtedness attaches to the recipient six months after the individual is no longer employed as a teacher in the high-need school of a high-need school district.

Until the scholarship recipient either satisfies the service obligation or repays the scholarship, interest, and costs of collection, if any, the recipient agrees to provide the Department a current home address and telephone number and a work address and telephone number, as well as other needed identifying information. In addition, the recipient understands that the Department, the institution, and the high-need LEA are or will be using the recipient's social security number so that the Department can, if necessary, secure payment of these amounts from the recipient if he or she fails to meet the service obligation.

Availability of Monthly Repayment Schedule: Upon request, the Department will provide to the recipient a monthly repayment schedule. Unless, for cause, the Department establishes another repayment schedule, the schedule will require the recipient to repay the Department the full amount of the scholarship and accrued interest in minimum monthly payments of no less than $50 per month. However, the payment schedule must enable the recipient to repay all scholarship and accrued interest that is due within ten years of the date the recipient becomes responsible for repaying these amounts.

The first payment will be due 30 days after the Department notifies the recipient of the payment schedule, or at such subsequent time that the Department may identify.

Interest: In accordance with 31 U.S.C. 3717 and 34 CFR part 30, the recipient agrees to pay interest on the unpaid balance that the scholarship recipient owes for failure to meet the service obligation. Interest will begin to accrue as of the date the recipient becomes responsible for repayment of the scholarship. See "*Repayment for Failure to Meet Service Obligation,*" above. No interest is charged for the period of time that precedes the date on which the scholarship recipient becomes responsible for repayment. Interest accrues during any period in which the Department defers the service obligation, but is waived if the scholarship recipient completes the service obligation.

The rate of interest that would apply to repayment of this scholarship is __%.

Collection of Defaulted Repayment Obligation: The Department may take any action authorized by law to collect the amount of scholarship, accrued interest and collection costs, if any, on which a scholarship recipient obligated to repay under this section has defaulted. Actions available to the Department include, but are not limited to, filing a lawsuit against the recipient, reporting the default to national credit bureaus, and requesting the Internal Revenue Service to offset the recipient's Federal income tax refund.

Discharge of a Required Repayment: The Department discharges an obligation to repay the scholarship and interest of a scholarship recipient who has died or who demonstrates to the Department's satisfaction that, because of permanent physical or mental disability, he or she is not employable as a teacher.

Upon receipt of acceptable documentation and approval of the discharge request, the Department returns to the scholarship recipient, or for a discharge based on death, the recipient's estate, those payments received after the date the eligibility requirements for discharge were met and prior to the date the discharge was approved. The Department also returns any payments received after the date the discharge was approved.

Exit Conference: Before the recipient graduates or withdraws from the institution, the institution will provide the recipient an opportunity to review fully the terms and conditions of this scholarship agreement.

My signature certifies that I have read, understand, and agree to the terms and conditions of this scholarship agreement.

Scholarship Recipient's Signature *Date:*
Name of Scholarship Recipient:
Authorized Institutional Official *Date:*
Name of Official:
Title:

Appendix B

(This appendix is provided for information purposes only, and will not be included in final regulations issued for this program)

Teacher Quality Enhancement Grant Programs

Title II, Higher Education Act

Verification of Teaching Obligation

The individual identified below is a teacher employed by your school district. He or she received a scholarship provided under the Teacher Quality Enhancement Grant Programs to attend a teacher preparation program. As a condition of that scholarship, within six months of completing the program the individual must begin teaching in a high-need school, as that term is defined in Section II, Part C of this form. The individual must continue teaching in a high-need school for a period equivalent to the length of time during which he or she received the scholarship. The U.S. Department of Education needs the information identified in this document so that it can confirm that the individual has fulfilled this service obligation.

For Sections I and II, we ask that you furnish this information by October 1 for individuals who begin teaching at the beginning of the school year, and within seven days of receipt for individuals who begin teaching at other times. The Department needs to obtain the information only once during the school year.

For Section III, we ask that you furnish the information on the teacher's regular school-year employment in your school district (Parts A1 and A2 and Part B) within seven days of the end of the school year. If the individual teaches during the summer (or intersession period if the school district operates a year-round program) in a high-need school, we ask that you furnish the information in Part A3 within seven days of the end of the summer session. Please also include any changes in the name, address, telephone number, fax number, or E-mail address of the school district's reporting official that was previously provided in Section I.

Please feel free to use this form or any other format you prefer. Please mail this information to: U.S. Department of Education, Office of Postsecondary Education, Teacher Quality Program Office, 1990 K Street, NW, 6th Floor, Washington, DC 20202–____. If you prefer to provide this information over the Internet, please contact the Teacher Quality program office at:____. You will be sent an electronic copy of this document.

Thank you for your assistance.

Section I: Scholarship Recipient/Teacher Information

Name:
Permanent Address:
Permanent Telephone Number:
Social Security Number:
Date of Birth:

Section II: Scholarship Recipient/Teacher Information

Part A

School District:
Address:
Name of District Official Providing This Information:
Telephone Number:
Fax Number:
E-mail:

(Name of Teacher) has been employed by the school district as a teacher at (Name of School):

__ since the beginning of this school year
__ beginning on ____(date) (____weeks after the school year began).

Part B

During the current academic year, he/she will be teaching at this school ____ full-time ____ part-time.

If part-time, he/she has a teaching schedule that is ____ % of the district's full-time teachers

Part C

To retain his/her financial assistance as a scholarship, (Name of School) must be a "high-need school" as the term is used in the Teacher Quality Enhancement Grant Programs. Please check at least one number that applies to the school:

1. ____ 50% or more of the enrolled students are eligible for free and reduced lunch subsides.
2. ____ 34% or more of the school's academic classroom teachers do not have a major, minor, or significant course work in their main assignment field.
3. ____ 34% or more of the main assignment faculty in two of the core-subject departments do not have a major, minor or significant work in their main assigned field.
4. ____ The school has had an attrition rate among classroom teachers of 15% or more in the last three school years.

Note: *If none of these categories applies to the school in which the individual is teaching, please notify the individual immediately. He or she is at risk of becoming legally responsible for repaying of the full amount of his or her scholarship.*

Questions/Comments

I certify that the information contained in this document is correct.

Signature of School District Official:
Date:

Section III: Confirmation of School-Year/ Summer/Intersession Employment

(To be completed within seven days of the end of the school year or summer/ intersession period. Please submit to the U.S. Department of Education along with the previously completed Sections I and II.)

Part A

(Name of Teacher):

1. ____ continued to teach at (Name of School) for the remainder of the school year in the same full-time or part-time capacity as reported earlier this year.
2. ____ became a teacher at another school in this school district (School Name) beginning (date) and taught there in the same

full-time or part-time capacity as previously reported. This school is a high-need school because it meets the criterion in No. ____ in Section II.C of this document.

3. ____ taught this summer / intersession period at (Name of School). This school is a high-need school because it meets the criterion in No. ____ in Part II.C of this document. The individual taught at this school from (date) to (date).

Part B

If neither 1 nor 2 of Part A is true, please explain the change of the individual's employment status from what the school district previously reported in Section II. If applicable, please also provide the date on which the individual no longer was employed by the school district or worked in a high-need school.

Questions/Comments

I certify that the information contained in this document is correct.

Signature of School District Official:

Date:

[FR Doc. 99–28666 Filed 11–4–99; 8:45 am]

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Federal Register
Vol. 64, No. 214
Friday, November 5, 1999

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

58755–59106	1
59107–59602	2
59603–60082	3
60083–60332	4
60333–60646	5

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7245....................59103
7246....................60083
7247....................60085
Executive Orders:
13067 (See Notice of October 29, 1999)........59105
13096 (See Proc. 7247)....................60085
Administrative Orders:
Notices:
Notice of October 29, 1999....................59105
Presidential Determinations:
No. 00–2 of October 21, 1999....................58755
No. 00–3 of October 25, 1999....................58757

5 CFR

532....................60087
Proposed Rules:
1201....................58798

7 CFR

301....................60088, 60333
319....................59603
905....................58759
928....................59604
944....................58759
981....................58763, 59107
1439....................58766
1477....................58766
Proposed Rules:
278....................59665
770....................59131
1217....................59669
1823....................59131
1956....................59131

9 CFR

77....................58769

10 CFR

Proposed Rules:
2....................59669, 59671
50....................59671
72....................59677
73....................59684

11 CFR

100....................59113
110....................59606
114....................59113
9004....................59606
9034....................59606
9036....................59607
Proposed Rules:
100....................60360
102....................60360
103....................60360
104....................60360
106....................60360
107....................60360
109....................60360
110....................60360
114....................60360
116....................60360

12 CFR

1....................60092
5....................60092
7....................60092
211....................58780
226....................60335
229....................59607
1805....................59076
Proposed Rules:
226....................60368
611....................60370
1102....................58800

14 CFR

34....................60335
39....................59113, 59115, 59116, 59117, 59613, 59614, 60100, 60102, 60336
71....................59615, 60337
73....................60339
139....................60068
Proposed Rules:
39....................59137, 59685, 60134, 60136, 60138, 60383, 60386
71....................59687, 59688, 59689, 59690, 60388

15 CFR

285....................59616
738....................60339
740....................60339
746....................60339
801....................59119
Proposed Rules:
287....................59691

16 CFR

312....................59888

17 CFR

271....................59877
Proposed Rules:
1....................59694
239....................59826
240....................59826
270....................59826
274....................59826

18 CFR

Proposed Rules:
35....................60390
141....................60140
385....................60140

21 CFR

5 59617
175 60104
801 59618

Proposed Rules:

20 60143
801 59695

24 CFR

982 59620

26 CFR

1 .... 58782, 59139, 60342
301 58782

Proposed Rules:

1 .... 59139, 60395

28 CFR

0 58782
2 59622
27 58782
50 59122

29 CFR

Proposed Rules:

1401 59697

30 CFR

Proposed Rules:

31 CFR

538 58789
550 58789
560 58789

33 CFR

100 59623
117 .... 59123, 59624

Proposed Rules:

110 60399

34 CFR

668 .... 58974, 59016, 59060
682 .... 58938, 59016
685 .... 58938, 59016

Proposed Rules:

611 60632

37 CFR

Proposed Rules:

1 59701
201 59140

38 CFR

Proposed Rules:

39 CFR

20 60106

40 CFR

51 58792
52 .... 59625, 59629, 59633, 59635, 59638, 59642, 59644, 60109, 60343, 60346
62 59648
63 59650
68 59650
180 .... 59652, 60112
300 (2 documents) 60121

Proposed Rules:

52 .... 59703, 59704, 59705, 59706, 60400, 60401
62 59718
63 59719
68 59719
81 60478
82 59141
86 60401
141 59245
142 59245
180 58792

41 CFR

101-11 60348
101 59591
102 59591

42 CFR

409 60122
410 59379
411 .... 59379, 60122
414 59379
415 59379
485 59379
489 60122
413 60122

43 CFR

414 58986

45 CFR

Proposed Rules:

160 59918
161 59918
162 59918
163 59918
164 59918

46 CFR

47 CFR

0 60122
1 .... 59656, 60122
2 60123
20 .... 59656, 60126
54 60349
61 60122
69 .... 60122, 60349
73 .... 59124, 59655, 60131
76 60131
90 .... 59148, 60123
95 59656
101 59663

Proposed Rules:

1 59719
20 59719
43 59719
73 .... 59147, 59148, 59728, 60149, 60150, 60151
90 .... 59148, 60151

48 CFR

201 58908
213 58908

Proposed Rules:

49 CFR

Proposed Rules:

Ch. II 59046
209 59046
552 60556
571 60556
585 60556
595 60556

50 CFR

17 58910
622 .... 59126, 60132
635 58793
640 59126
648 60359
660 59129

Proposed Rules:

16 59149
17 59729
622 .... 59152, 59153, 60151, 60402
648 59156
654 59153
660 60402
679 .... 58796, 59730, 60157

Proposed Rules:

17 58934

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 5, 1999

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Plant-related quarantine, domestic:
  - Fire ant; imported; published 11-5-99

COMMERCE DEPARTMENT

Export Administration Bureau

- Export licensing:
  - Kosovo; exemption from license requirements for exports and reexports to Serbia; published 11-5-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - Caribbean, Gulf, and South Atlantic fisheries—
    - Gulf of Mexico reef fish; published 10-26-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Aircraft:
  - Turbine engine powered airplanes—
    - Emission standards and revised test procedures; published 11-5-99
- Airworthiness directives:
  - Airbus; published 10-1-99
  - Short Brothers; published 10-1-99
- Class E airspace; published 10-26-99

TREASURY DEPARTMENT

Internal Revenue Service

- Income taxes:
  - Treasury securities, reopening; original issue discount; published 11-5-99

VETERANS AFFAIRS DEPARTMENT

- Medical benefits:
  - Veterans' Health Care Eligibility Reform Act of 1996; implementation—
    - National enrollment system; provision of hospital and outpatient care; published 10-6-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Electronic benefit transfer system; adjustments; comments due by 11-8-99; published 9-9-99

AGRICULTURE DEPARTMENT

Forest Service

- National Forest System land and resource management planning; comments due by 11-9-99; published 10-5-99

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

- Americans with Disabilities Act; implementation:
  - Accessibility guidelines—
    - Recreation facilities; comments due by 11-8-99; published 7-9-99

COMMERCE DEPARTMENT

Economic Analysis Bureau

- International services surveys:
  - U.S. direct investments abroad—
    - BE-10; benchmark survey-1999; reporting requirements; comments due by 11-8-99; published 9-7-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Endangered and threatened species:
  - Sea turtle conservation; shrimp trawling requirements—
    - Cape Lookout, NC, offshore waters affected by Hurricanes Dennis and Floyd; limited tow times use as alternative to turtle excluder devices; comments due by 11-12-99; published 10-15-99

COMMODITY FUTURES TRADING COMMISSION

- Commodity Exchange Act:
  - Electronic signatures by customers, participants, and clients of registrants; comments due by 11-12-99; published 11-3-99

DEFENSE DEPARTMENT

- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

ENERGY DEPARTMENT

- Acquisition regulations:
  - Management and operating contracts; purchasing from contractor affiliated sources; comments due by 11-12-99; published 10-13-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-8-99; published 9-23-99
  - Colorado; comments due by 11-8-99; published 10-7-99
  - Delaware; comments due by 11-12-99; published 10-12-99
  - New York; comments due by 11-8-99; published 10-8-99
  - Source-specific plans—
    - Navajo Nation, AZ and NM; comments due by 11-8-99; published 10-8-99
- Air quality implementation plans; \A\approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Texas; comments due by 11-12-99; published 10-13-99
- Hazardous waste program authorizations:
  - Washington; comments due by 11-12-99; published 10-12-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Avermectin B1 and its delta-8,9-isomer; comments due by 11-8-99; published 9-7-99
  - Processing fees; comments due by 11-8-99; published 9-24-99

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Wireless telecommunications services—
    - Extension to Tribal lands; comments due by 11-9-99; published 9-10-99
- Digital television stations; table of assignments:
  - Illinois; comments due by 11-9-99; published 9-29-99
- Radio services, special:
  - Private land mobile services—
    - 87.9 MHz band; emergency signals transmission; comments due by 11-8-99; published 11-4-99
- Radio stations; table of assignments:
  - New York; comments due by 11-8-99; published 10-12-99
  - Texas; comments due by 11-8-99; published 9-29-99
  - Wisconsin; comments due by 11-8-99; published 9-29-99

FEDERAL DEPOSIT INSURANCE CORPORATION

- Resolution and receivership rules:
  - Financial assests transferred by insured depository institution in connection with securitization or participation; comments due by 11-8-99; published 9-9-99

FEDERAL ELECTION COMMISSION

- Rulemaking petitions:
  - Project on Government Oversight; comments due by 11-12-99; published 10-13-99

FEDERAL RESERVE SYSTEM

- Equal credit opportunity (Regulation B):
  - Revision; comments due by 11-10-99; published 8-16-99

GENERAL SERVICES ADMINISTRATION

- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Medical devices:
  - Cardiovascular, orthopedic, and physical medicine diagnostic devices—
    - Cardiopulmonary bypass accessory equipment, goniometer device, and electrode cable devices; comments due by 11-8-99; published 8-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

- Medicaid:
  - Tuberculosis-related services to TB-infected individuals; optional coverage; comments due by 11-9-99; published 9-10-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

- Risk-based capital:
  - Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 11-10-99; published 6-14-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

- Land and water:
  - Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 11-12-99; published 10-15-99

INTERIOR DEPARTMENT

Land Management Bureau

- Land resource management:
  - Rights-of-way—
    - Principles and procedures under Mineral Leasing Act; comments due by 11-12-99; published 10-13-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

- National Wildlife Refuge System:
  - Land usage; compatibility policy; comments due by 11-8-99; published 9-9-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Virginia; comments due by 11-8-99; published 10-8-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

- Acquisition regulations:
  - Foreign proposals to NASA research announcements; implementation on no-exchange-of-funds basis; comments due by 11-8-99; published 9-7-99
- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 11-8-99; published 7-9-99

NUCLEAR REGULATORY COMMISSION

- Rulemaking petitions:
  - Angel, Jeffery C.; comments due by 11-8-99; published 8-23-99
- Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
  - Approved spent fuel storage casks; list additions; comments due by 11-8-99; published 8-23-99

TRANSPORTATION DEPARTMENT

Coast Guard

- Regattas and marine parades:
  - Patapsco River, MD; New Year's Celebration Fireworks; comments due by 11-8-99; published 10-8-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Advisory circulars; availability, etc.:
  - Aircraft products and parts—
    - Brakes and braking systems certification tests and analysis; comments due by 11-8-99; published 8-10-99
- Airworthiness directives:
  - Airbus; comments due by 11-8-99; published 10-8-99
  - AlliedSignal Inc.; comments due by 11-8-99; published 9-8-99
  - British Aerospace; comments due by 11-8-99; published 10-8-99
  - General Electric Co.; comments due by 11-8-99; published 9-8-99
- Airworthiness standards:
  - Transport category airplanes—
    - Braking systems; harmonization with European standards; comments due by 11-8-99; published 8-10-99
    - Braking systems; harmonization with European standards; correction; comments due by 11-8-99; published 8-20-99
- Technical standard orders:
  - Transport airplane wheels and wheel and brake assemblies; comments due by 11-8-99; published 8-10-99

TREASURY DEPARTMENT

Customs Service

- Merchandise entry:
  - Anticounterfeiting Consumer Protection Act; Customs entry documentation; comments due by 11-12-99; published 9-13-99

TREASURY DEPARTMENT

Internal Revenue Service

- Income taxes, etc.:
  - Partnerships and branches; guidance under Subpart F; withdrawal and new guidance involving hybrid branches; comments due by 11-10-99; published 7-13-99
- Income taxes:
  - Capital gains, partnership, Subchapter S, and trust provisions; comments due by 11-8-99; published 8-9-99
    - Correction; comments due by 11-8-99; published 9-10-99
  - Income tax return preparer; identifying number; cross reference; comments due by 11-10-99; published 8-12-99

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Contents

Federal Register
Vol. 64, No. 215
Monday, November 8, 1999

Agricultural Marketing Service
PROPOSED RULES
Cherries (sweet) grown in—
  Washington, 60733–60735
NOTICES
Corn, canned whole kernel (whole grain); grade standards, 60763–60764

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Forest Service
See Rural Utilities Service

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
Americans with Disabilities Act; implementation:
  Accessibility guidelines—
    Acoustical performance of school classrooms and other buildings and facilities; response to rulemaking petition, 60753–60758

Children and Families Administration
NOTICES
Reports and guidance documents; availability, etc.:
  Evaluating Head Start; Framework for Studying Impact of Head Start Program; advisory committee report, 60820

Coast Guard
RULES
Drawbridge operations:
  Connecticut, 60673–60675
  Maine, 60672–60673

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 60765–60766

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
  Bangladesh, 60792
  Colombia, 60792
  Hong Kong, 60793
  Laos, 60794
  Pakistan, 60793–60794
  Qatar, 60794–60795
  Taiwan, 60795–60798
  Thailand, 60799

Commodity Credit Corporation
NOTICES
Agricultural commodities available for donation overseas; types and quantities; correction, 60879

Corporation for National and Community Service
NOTICES
Meetings:
  Civilian Community Corps Advisory Board, 60799

Defense Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
  TRICARE program—
    Reimbursement; correction, 60671–60672

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
  Sandia National Laboratories, NM, 60799–60800

Engraving and Printing Bureau
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 60876–60877

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
  Municipal solid waste landfills that commenced construction prior to May 30, 1991 and have not been modified or reconstructed since then, 60689–60706
Air quality implementation plans; approval and promulgation; various States:
  Arizona, 60678–60683
  California, 60687–60689
  Oklahoma, 60683–60687
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
  Arizona, 60759
  Oklahoma, 60759
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 60814–60815
Grants and cooperative agreements; availability, etc.:
  Home improvement projects, etc.; lead hazards to occupants, technical studies to minimize, 60815–60819

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 60819

Federal Aviation Administration
RULES
Class E airspace, 60653–60654
Class E airspace; correction, 60879

PROPOSED RULES

Airworthiness directives:
- Airbus, 60745
- British Aerospace, 60748–60750
- Dornier, 60742–60743
- Eurocopter France, 60743–60744
- Fokker, 60745–60748
- Lockheed, 60750–60753

NOTICES

Meetings:
- Aviation Rulemaking Advisory Committee, 60874

Federal Communications Commission

RULES

Organization, functions, and authority delegations:
- Enforcement and Consumer Information Bureaus; establishment, 60715–60726

Federal Emergency Management Agency

RULES

Flood elevation determinations:
- Various States, 60707–60715

PROPOSED RULES

Flood elevation determinations:
- Various States, 60759–60762

NOTICES

Disaster and emergency areas:
- North Carolina, 60819

Grants and cooperative agreements; availability, etc.:
- Disaster grant amounts adjustment, 60819

Federal Energy Regulatory Commission

NOTICES

Electric rate and corporate regulation filings:
- FortisUS Energy Corp. et al., 60805–60807
- Southwestern Public Service Co. et al., 60807–60810

Environmental statements; notice of intent:
- Texas Eastern Transmission Corp., 60810–60811

Hydroelectric applications, 60811–60812

Meetings; Sunshine Act, 60812–60814

Applications, hearings, determinations, etc.:
- Atlanta Gas Light Co., 60800
- Buccaneer Gas Pipeline Co., L.L.C., 60800–60802
- East Tennessee Natural Gas Co.; correction, 60879
- Great Lakes Gas Transmission L.P., 60803
- National Fuel Gas Supply Corp., 60803
- Natural Gas Pipeline Co. of America, 60803
- Tennessee Gas Pipeline Co., 60804
- Transcontinental Gas Pipe Line Corp., 60804
- Trunkline Gas Co., 60804–60805

Federal Railroad Administration

RULES

Locomotive engineers; qualification and certification:
- Miscellaneous amendments, 60965–60997

Federal Reserve System

NOTICES

Banks and bank holding companies:
- Formations, acquisitions, and mergers, 60819–60820
- Permissible nonbanking activities, 60820

Fish and Wildlife Service

NOTICES

Environmental statements; notice of intent:
- Migratory bird permits—
  - Double-crested cormorant; national management plan, 60826–60828

Food and Drug Administration

NOTICES

Food for human consumption:
- Identity standards deviation; marketing testing permits—
  - Sartori Foods Corp.; grated parmesan cheese, 60820–60821

Foreign Assets Control Office

RULES

Sanctions; blocked persons, specially designated nationals, terrorists, narcotics traffickers, and blocked vessels; lists consolidation
- Additional designations and removals, 60660–60671

Foreign-Trade Zones Board

NOTICES

Applications, hearings, determinations, etc.:
- Tennessee
  - Brother Industries (U.S.A.) Inc.; postage franking machines and electronic business equipment, 60766

Forest Service

RULES

National Forest System:
- Cooperative funding; contributions for cooperative work, reimbursable payments by cooperators, and protection of Government's interest, 60675–60678

NOTICES

Environmental statements; notice of intent:
- Salmon-Challis National Forest, ID, 60764

Meetings:
- Klamath Provincial Advisory Committee, 60764–60765

Health and Human Services Department

See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

RULES

Medical care and examinations:
- Indian Health Service eligibility regulations
  - Correction, 60879

Health Care Financing Administration

PROPOSED RULES

Medicaid:
- Children's Health Insurance Program; State allotments and grants, 60881–60963

NOTICES

Committees; establishment, renewal, termination, etc.:
- Practicing Physicians Advisory Council, 60821–60822

Health Resources and Services Administration

NOTICES

Meetings:
- Graduate Medical Education Council, 60822

Housing and Urban Development Department

NOTICES

Agency information collection activities:
- Proposed collection; comment request, 60823
- Submission for OMB review; comment request, 60823–60824

- Grants and cooperative agreements; availability, etc.:
  - Capacity building for community development and affordable housing, 60824–60826
  - Small Cities Community Development Block Grant Program—
    - New York, 60999–61013

Indian Affairs Bureau

NOTICES

- Environmental statements; availability, etc.:
  - Flathead Indian Reservation, MT; forest management plan, 60828–60829

Interior Department

See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request, 60877–60878

International Trade Administration

NOTICES

- Antidumping:
  - Extruded rubber thread from—
    - Malaysia, 60766–60771
  - Helical spring lock washers from—
    - China, 60771
  - Polyester staple fiber from—
    - Korea, 60776–60784
    - Taiwan, 60771–60776
  - Silicomanganese from—
    - China, 60784–60787
  - Stainless steel bar from—
    - India, 60787–60788
    - Japan, 60788–60791
- *Applications, hearings, determinations, etc.:*
  - University of—
    - Wisconsin-Madison, 60791

International Trade Commission

NOTICES

- Import investigations:
  - Circular welded carbon quality line pipe, 60831
  - Live swine from—
    - Canada, 60831–60832

Justice Department

PROPOSED RULES

- Privacy Act; implementation, 60753

NOTICES

- Privacy Act:
  - Systems of records, 60832–60852

Labor Department

NOTICES

- Agency information collection activities:
  - Submission for OMB review; comment request, 60852

Land Management Bureau

NOTICES

- Meetings:
  - Resource Advisory Councils—
    - Butte, 60829
    - Northwest California, 60829
- Realty actions; sales, leases, etc.:
  - New Mexico; correction, 60879
- Survey plat filings:
  - California, 60829–60830

National Aeronautics and Space Administration

NOTICES

- Meetings:
  - Advisory Council
    - Life and Microgravity Sciences and Applications Advisory Committee, 60852
    - Technology and Commercialization Advisory Committee, 60852–60853

National Institutes of Health

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request; correction, 60879

National Oceanic and Atmospheric Administration

RULES

- Endangered and threatened species:
  - "Harm" definition, 60727–60731
- Fishery conservation and management:
  - Magnuson-Stevens Act provisions—
    - Essential fish habitat, 60731–60732

NOTICES

- Grants and cooperative agreements; availability, etc.:
  - National Sea Grant College Program—
    - Marine biotechnology application to assess health of coastal ecosystems; correction, 60791

National Park Service

NOTICES

- Meetings:
  - San Francisco Maritime National Historical Park Advisory Commission, 60830–60831
- Reports and guidance documents; availability, etc.:
  - Federal Land Managers' Air Quality Related Values Work Group (FLAG); Phase I Report, 60831

Nuclear Regulatory Commission

NOTICES

- Agency information collection activities:
  - Proposed collection; comment request, 60853
- *Applications, hearings, determinations, etc.:*
  - Energy Department; Fort St. Vrain independent spent fuel storage installation, 60853–60854
  - Northeast Nuclear Energy Co., 60854
  - Power Authority of State of New York, 60854–60856
  - Virginia Electric & Power Co., 60856–60857

Patent and Trademark Office

NOTICES

- Meetings:
  - Trademark Affairs Public Advisory Committee, 60791

Presidential Documents

ADMINISTRATIVE ORDERS

- Burma; conditions and U.S. policy (Memorandum of October 27, 1999), 60647
- India and Pakistan; waiver of sanctions (Presidential Determination No. 2000-4 of October 27, 1999), 60649
- Iraq; military assistance (Presidential Determination No. 2000-5 of October 29, 1999), 60651

Public Health Service

See Food and Drug Administration

See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 60875
Meetings:
  International standards on transport of dangerous goods, 60875–60876

Rural Utilities Service
NOTICES
Grants and cooperative agreements; availability, etc.:
  Distance Learning and Telemedicine Loan and Grant Program, 60765

Securities and Exchange Commission
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 60857–60859
Investment Company Act of 1940:
  Exemption applications—
    Elk Associates Funding Corp. et al., 60859–60862
Meetings; Sunshine Act, 60862–60863
Self-regulatory organizations; proposed rule changes:
  Boston Stock Exchange, Inc., 60863–60864
  Chicago Stock Exchange, Inc., 60864–60865
  Municipal Securities Rulemaking Board, 60865–60869
  National Association of Securities Dealers, Inc., 60869–60870
  New York Stock Exchange, Inc., 60870–60873

Small Business Administration
PROPOSED RULES
Business loans:
  Certified development companies; areas of operations, 60735–60742
NOTICES
Disaster loan areas:
  Florida, 60873
  North Carolina, 60873

State Department
NOTICES
Cultural property:
  El Salvador; request for U.S. protection of certain categories of archaeological material from pillage, 60873–60874
Meetings:
  Cultural Property Advisory Committee, 60874

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 60822–60823

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
  North Dakota, 60654–60660

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
  Pennsylvania Lines LLC, 60876

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Engraving and Printing Bureau
See Foreign Assets Control Office
See Internal Revenue Service

Separate Parts In This Issue

Part II
Health Care Financing Administration, 60881–60963

Part III
Federal Railroad Administration, 60965–60997

Part IV
Housing and Urban Development Department, 60999–61013

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Presidential Determinations:

No. 99–13 of February 4, 1999 (See Presidential Determination No. 2000–5 of October 29, 1999) 60651
No. 2000–4 of October 27, 1999 60649
No. 2000–5 of October 29, 1999 60651

Administrative Orders:

Memorandums:
October 27, 1999 60647

7 CFR

Proposed Rules:

923 60733

13 CFR

Proposed Rules:

120 60735

14 CFR

71 (3 documents) 60653, 60654

Proposed Rules:

39 (6 documents) 60742, 60743, 60745, 60748, 60750

28 CFR

Proposed Rules:

16 60753

30 CFR

934 60654

31 CFR

Ch. V 60660

32 CFR

199 60671

33 CFR

117 (3 documents) 60672, 60673, 60674

36 CFR

211 60675

Proposed Rules:

Ch. XI 60753

40 CFR

52 (5 documents) 60678, 60681, 60683, 60687, 60688
62 60689

Proposed Rules:

52 (2 documents) 60759

42 CFR

Proposed Rules:

431 60882
433 60882
435 60882
457 60882

44 CFR

65 (2 documents) 60706, 60709
67 60711

Proposed Rules:

67 60759

47 CFR

0 60715
1 60715
21 60715
27 60715
68 60715
90 60715

49 CFR

240 60966

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Federal Register
Vol. 64, No. 215
Monday, November 8, 1999

Presidential Documents

Title 3—

The President

Memorandum of October 27, 1999

Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Policy Toward Burma" in section 570(d) of the FY 97 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

(1) progress toward democratization in Burma;

(2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourist industry, and environmental quality; and

(3) progress made in developing a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council (SPDC) and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the attached report fulfilling this requirement to the appropriate committees of the Congress and to arrange for publication of this memorandum in the **Federal Register**.

William J Clinton

THE WHITE HOUSE,
Washington, October 27, 1999.

[FR Doc. 99–29334
Filed 11–5–99; 8:45 am]
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Presidential Documents

Presidential Determination No. 2000–4 of October 27, 1999

Pakistan and India

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President of the United States, including under title IX of the Department of Defense Appropriations Act, 2000 (Public Law 106–79), I hereby waive the sanctions contained in sections 101 and 102 of the Arms Export Control Act, section 620E(e) of the Foreign Assistance Act of 1961, and section 2(b)(4) of the Export-Import Bank Act of 1945:

(1) with respect to India, insofar as such sanctions would otherwise apply to activities of the Export-Import Bank, the Overseas Private Investment Corporation, and the Trade and Development Agency; assistance under the "International Military Education and Training" program; the making of any loan or the providing of any credit to the Government of India by any U.S. bank; assistance to the Asian Elephant Conservation Fund, the Rhinoceros and Tiger Conservation Fund, and the Indo-American Environmental Leadership program; and any credit, credit guarantee, or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity; and

(2) with respect to Pakistan, insofar as such sanctions would otherwise apply to any credit, credit guarantee, or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity; and the making of any loan or the providing of any credit to the Government of Pakistan by any U.S. bank.

You are hereby authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J Clinton

THE WHITE HOUSE,
Washington, October 27, 1999.

[FR Doc. 99–29335
Filed 11–5–99; 8:45 am]
Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 2000–5 of October 29, 1999

Determination To Authorize the Furnishing of Drawdown Assistance to the Iraqi National Congress Under Section 4(a)(2) of the Iraq Liberation Act of 1998

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me as President of the United States, including section 4(a)(2) of the Iraq Liberation Act of 1998 (Public Law 105–338) (the "Act"), and consistent with Presidential Determination 99–13 of February 4, 1999, I hereby direct the furnishing of up to $5 million in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training in order to provide assistance to the Iraqi National Congress.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J Clinton

THE WHITE HOUSE,
Washington, October 29, 1999.

[FR Doc. 99–29336
Filed 11–5–99; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 64, No. 215
Monday, November 8, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–22]

Modification of Class E Airspace; Willows-Glen County Airport, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Willows-Glen County Airport, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 34 at Willows-Glen County Airport has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 34 SIAP to Willows-Glen County Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Willows-Glen County Airport, Willows, CA.

EFFECTIVE DATE: 0901 UTC December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On September 29, 1999, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Willows-Glen County Airport, CA (64 FR 52475). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 34 SIAP at Willows-Glen County Airport. This action will provide adequate controlled airspace for aircraft executing the GPS RWY 34 SIAP at Willows-Glen County Airport, Willows, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Willows-Glen County Airport, CA. The development of a GPS RWY 34 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 34 SIAP at Willows-Glen County Airport, Willows, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS.

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Willows-Glen County Airport, CA [Revised]

Willows-Glen County Airport, CA
(Lat. 39°30′59″ N, long. 122°13′03″ W)
Maxwell VORTAC
(Lat. 39°19′03″ N, long. 122°13′18″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Willow-Glen County Airport and within 2 miles each side of the Maxwell VORTAC 360° radial, extending from the 6.4-mile radius to 3 miles north of the Maxwell VORTAC.

* * * * *

Issued in Los Angeles, California, on October 27, 1999.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–29144 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–44]

Establishment of Class E Airspace; Montague, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E controlled airspace for Siskiyou County Airport, Montague, CA. The establishment of Class E airspace 1,200 feet or more above ground level (AGL) is necessary to provide controlled airspace for Instrument Flight Rules (IFR) operations, specifically the departure procedure from runway 35 for Siskiyou County Airport. In addition, this action corrects two minor errors to the geographical coordinates for this airspace designation.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–521.10, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On January 8, 1996, the FAA published a Notice of Proposed Rulemaking (NPRM) to amend Class E Airspace at Siskiyou County Airport to provide adequate controlled airspace for IFR operations (61 FR 550). The proposed airspace action was published as an amendment to existing airspace and should have been published as a proposal to establish additional airspace. The existing Class E airspace does not require an amendment. The establishment of additional Class E airspace 1,200 feet or more AGL is necessary to provide controlled airspace for IFR operations, specifically the departure procedure from runway 35 for Siskiyou County Airport.

After issuance of the original NPRM, the FAA discovered this error in the proposal. Therefore, on June 18, 1999, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM), which corrected this error and reopened the comment period (64 FR 32828). Again, interested parties were invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. No comments were received.

Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace 1,200 feet or more AGL, at Siskiyou County Airport, Montague, CA. Additionally, this rule corrects two minor errors in the geographical coordinates in the new airspace description for Siskiyou County Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adaption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows.

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Montague, CA [New]

Montague, Siskiyou County Airport, CA
(Lat. 41°46′54″ N, long. 122°28′05″ W)
Montague NDB
(Lat. 41°43′38″ N, long. 122°28′55″ W)
Klamath Fall VORTAC
(Lat 42°09′12″ N, long. 121°43′39″ W)

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of Siskiyou County Airport. That airspace extending upward from 1,200 feet above the surface within 8.3 miles east and 5.2 miles west of the 356° and 176° bearings from the Montague NDB, extending from 7 miles north to 1 mile south of the NDB and within 8.3 miles east and 5.2 miles west of the 180° bearing from the Montague NDB, extending from the NDB to 16.5 miles south of the NDB, and from lat 41°52′23″ N, long, 122°24′32″ W, thence clockwise along the 34.8 mile radius of Klamath Falls VORTAC to lat 42°13′02″ N, long 122°30′11″ W, to lat 42°11′00″ N, long. 122°16′30″ W, to lat 41°51′00″ N, long. 122°22′02″ W and thence counterclockwise along the 6.1 mile radius of the Siskiyou County Airport to the point of beginning

* * * * *

Issued in Los Angeles, California on October 27, 1999.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western Pacific Region.

[FR Doc. 99–29145 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–038–FOR, Amendment No. XXVII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the North Dakota regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

North Dakota proposed revisions to rules for the definition of replacement of water supply, the issuance of rules, consolidation for multiple permit operations, the submission of an annual map to the Commission for all permit areas, and performance standards for the disposal of noncoal wastes. North Dakota intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–6550, Internet address: GPadgett@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can find later actions on North Dakota's program and program amendments at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated September 2, 1998, (Administrative Record No. ND–BB–01) North Dakota sent us an amendment to its program under SMCRA. North Dakota's amendment was in response to a July 17, 1997 letter (administrative record No. ND–BB–02) that we sent in accordance with 30 CFR 732.17(c), and in response to the required program amendments at 30 CFR 934.16(cc), and at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise and add were: (1) NDAC 69–05.2–01–02.90, Replacement of water supply; (2) NDAC 69–05.2–01–03, publication of hearing notices; (3) NDAC 69.05.2–05–09, Permit Applications—Consolidation for multiple permit operations; (4) NDAC 69–05.2–09–09, Permit applications—Operation plans—Surface water management—Ponds, impoundments, banks, dams, embankments, and diversions; (5) NDAC 69–05.2–13–02, Performance standards—General requirements—Annual map; (6) NDAC 69–05.2–13–08, Performance standards—General requirements Protection of fish, wildlife, and related environmental values; (7) NDAC 69–05.2–15–02, Performance standards—Suitable plant growth material—Removal; (8) NDAC 69–05.2–15–04, Performance standards—Suitable plant growth material—Redistribution; (9) NDAC 69–05.2–16–09, Performance standards—Hydrologic balance—Sedimentation ponds; and (10) NDAC 69–05.2–19–04, Performance standards—Waste materials—Disposal of noncoal wastes.

We announced receipt of the amendment in the September 21, 1998, **Federal Register** (63 FR 50177). In the same document we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. Because no one requested a public hearing or meeting, we did not hold one. The public comment period closed on October 21, 1998.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. As discussed below, in accordance with SMCRA and 30 CFR 732.15 and 732.17, we find that the proposed program amendment submitted by North Dakota on September 2, 1998, is no less effective than the corresponding Federal regulations. Accordingly, we approve the proposed amendment.

1. *NDAC 69–05.2–01–02.90, Replacement of water supply.* North Dakota submitted a definition of "Replacement of Water Supply," in accordance with the Federal definition at 30 CFR 701.5 and pursuant to a June 5, 1996 letter from OSM (administrative record No. ND–BB–13).

The proposed definition is very similar to the OSM definition except for the last part. Paragraph b(2) of the definition places additional requirements on a mining company when the water supply is not needed and the water supply owner waives the replacement of a premine water delivery system. The new language will require mining companies, when applying for final bond release, to provide public notice if the landowner waives the replacement of a premine water delivery system. The waiver would have to be clearly discussed in a newspaper advertisement and in letters that the mining company must provide as part of the bond release process. Based on comments received by the State on the final bond release application, the Commission will decide if a replacement water delivery system is needed to protect the public interest. If the Commission determines that a replacement water delivery system is needed, it would have to be installed by the mining company prior to the Commission granting final bond release. Providing the notice as part of the bond release process also gives interested persons the opportunity to request an informal conference on the bond release application and a formal hearing on the Commission's bond release decision. In accordance with Section 505(b) of SMCRA and the Federal regulations at 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations that are more stringent than those imposed under SMCR and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations for which no federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such provisions shall not be construed to be inconsistent with the Federal program. Accordingly, the Director is approving the proposed revision to 69–05.2–01–02.90.

2. *NDAC 69–05.2–01–03, Publication of hearing notices.* Current NDAC 69–05.2–01–03(5) deals with public hearings required in connection with the proposal of the issuance, amendment, or repeal of a rule and provides as follows:

> The commission will publish notice of hearing twice in the official newspapers of each county in which surface coal mining operations occur and each daily newspaper of general circulation in the state. The commission will file the notice of hearing with the legislative council. The commission will cause the first publication and the filing with the legislative council to occur at least thirty days before the hearing.

The State proposed to change the provision to require that the commission will cause the last (rather than the first) publication, as well as the filing with the legislative council, to occur at least thirty days before the hearing. This change is being made to be consistent with legislative changes to North Dakota's Administrative Practices Act and will result in more advance notice of hearings. There is no Federal counterpart regulation. This proposed rule is not inconsistent with any provision of the Federal program; therefore, we approve it.

3. *NDAC 69.05.2–05–09, Permit Applications—Consolidation for multiple permit operations.* There is no federal counterpart to this proposed rule. The current North Dakota rule allows permit monitoring plans to be consolidated into a single plan if a plan covers multiple permits. Most mines in North Dakota are incrementally permitted and therefore have multiple permits that apply to a given mine site.

Each of these permits contains nearly identical surface water, ground water, and wildlife monitoring plans. Any revision to the consolidated plan requires the filing of only one revision (to the most recently issued permit) rather than multiple revisions. We approved North Dakota's use of consolidated monitoring plans in the April 13, 1995 **Federal Register** (60 FR 18744, administrative record No. ND–BB–16). North Dakota's proposed revision would give the North Dakota Public Service Commission discretion to allow other required permit information and plans to be consolidated into a single document that covers more than one permit. Some examples of other permit information that could be appropriately consolidated are ownership and control information, violation history, lease information, permit and license listings.

North Dakota believes that consolidation is logical and appropriate where the same information applies to more than one permit. Thus consolidation would save time and effort for both the permittee and the State with no loss of information required by the approved State Program. The Commission would not allow the consolidation of site-specific mining and reclamation plans that apply to only one permit and therefore would not be appropriate for consolidation.

In a September 30, 1999 telephone conversation with Jim Deutsch, director of North Dakota Public Service Commission's Reclamation Division (administrative record No. ND–BB–17), Mr. Deutsch stated that the proposed rule has similar requirements and the same rationale that was submitted in writing to us with State Program Amendment ND–31–FOR (North Dakota amendment XXI) which OSM approved in the April 13, 1995 **Federal Register** (60 FR 18744, administrative record No. ND–BB–16). As outlined in the April 13, 1995 **Federal Register**, each consolidated document would be subject to the following requirements:

1. The consolidation of information and plans will be limited to sections of the permit application where the same information and plans cover more than one permit area. Each consolidated document will is subject to the approval procedures established for permit revisions.
2. Each mining permit must be revised to describe the specific information and plans to be consolidated into a single document covering the entire surface coal mining and reclamation under permit.
3. Each consolidated document is subject to review by the Commission at the time of the midterm review or renewal for each permit covered by the consolidated document in accordance with section 69–05.2–11–01.
4. A permittee may propose modifications to a consolidated document by filing a permit revision application to the most recently issued permit covered by the consolidated document.

In addition, a separate consolidated plan would have to be developed for each category of plans (e.g., violation history, lease information, permit and license listings, ownership and control information). This would allow for easier review of the consolidated plans by both the regulatory authority and the public where one mine is covered by multiple permits.

Also, individual permits would contain appropriate references to the various consolidated plans and the consolidated plans would be part of each permit. Since consolidated plans will be considered part of each mining permit they cover, failure to comply with the consolidated plans will subject the permittee to the same enforcement action as would the failure to comply with any other part of a mining permit. A single violation would be issued that lists all permits covered by the consolidated plan. North Dakota uses this same practice for violations of performance standards or requirements that are the same in more than one permit.

Since consolidated plans may have to be revised, the reference in each permit must be to the most current consolidated plan. North Dakota will review each consolidated plan as part of its midterm and permit renewal reviews and will require any necessary revisions that result from these reviews. The North Dakota Public Service Commission is not precluded from reviewing permits an requiring permit revisions more frequently than at midterm or permit renewal (every five years). This applies to more frequent reviews of consolidated plans if necessary. The permittee may request revision of a consolidated plan by applying for a permit revision to the most recently issued permit covered by the consolidated plan. When new areas are added to a mining operation by application for new permits, the consolidated plan for the operation will have to be updated, and the updated consolidated plan will be subject to the approval procedures for permit applications. Following final bond release of any portion of the area covered by the consolidated plan, the permittee would have to continue monitoring that area (and/or continue complying with the applicable consolidated plan) until the consolidated plan was revised to delete the released area from the applicable plan(s).

Based upon the above discussion, this proposed rule is not inconsistent with the Federal regulations; therefore, we approve it.

4. *NDAC 69–05.2–09–09, Permit application—Operation Plans—Surface Water Management—Ponds, impoundments, banks, dams, embankments, and diversions.* North Dakota is proposing to have operators submit a general surface water management plan that identifies and describes each water management structure and provides preliminary technical information on the structures. North Dakota's rules do not use the term, "siltation structure," which is used in the Federal regulations. Use of that term, however, is not mandatory. Both North Dakota's rules and the Federal rules, however, require the same thing: that drain-off water from disturbed areas pass through sedimentation ponds and meet effluent standards before it leaves the permit area. The State will require that detailed plans must be submitted and approved prior to the construction of a structure and that detailed plans must be included with the application for any structure to be built within the first year of the permit term. North Dakota will require the operator to submit with the general plan a schedule for construction of the structures.

Federal regulations at 30 CFR 780.25(a) allow for a general plan to be submitted as long as no structures are built without prior approval and a timetable for construction of proposed structures is included with the submittal.

Also included in the proposed rule change is the incorporation of new OSM provisions of ponds meeting certain Natural Resources Conservation Service (NRCS) criteria. In 1994 (59 FR 53028, Oct. 20, 1994), OSM added additional information requirements for impoundments meeting Class B and C size criteria at 30 CFR 780.25(a). These changes were listed as a required program amendment in OSM's July 17, 1997 letter to the Public Service Commission. The State is requiring operators to submit this additional information for Class B and C impoundments. Mining Safety and Health Administration (MSHA) standards require that plans be prepared and certified by a qualified registered professional engineer. North Dakota states in NDAC 69–05.2–09–16.1(h) that "plans must be certified as meeting the requirements of this article" and "this article" refers to NDAC 69–05.2 which includes a references to the MSHA provision on certification by a professional engineer at 30 CFR 77.216–2(17), as well as to a requirement (at 30 CFR 77.216(b)) that "plans . . . be approved by the District Manager (of MSHA) prior to the beginning of any work associated with the construction of the impounding structure."

A new addition to North Dakota rule at NDAC 69–05.2–09–09.2(j) requires information on any direct connections of the impoundment basin to ground water flow in the area. This added provision has no Federal counterpart.

30 CFR 780.25(a)(1)(v) requires that the general plan include a "certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the regulatory authority." The State's counterpart is NDAC 69–05.2–09–09 which states:

> d. Include a schedule of the approximate construction dates for each structure and, if appropriate, a timetable to remove each structure.

In addition, as stated above, the referenced 30 CFR 77.216(b) states that plans be approved by the District Manager (of MSHA) prior to the beginning of any work associated with the construction of the impounding structure.

Based on the above discussion, the revised rule requires the submittal of all information that is required by the Federal regulations and is no less effective than the Federal regulations; therefore, we approve it.

5. *NDAC 69–05.2–13–02, Performance standards—General requirements—Annual map.* There is no federal counterpart to this proposed rule. The required submission date for the annual map depicting permit areas and section lines is being moved back one month, from February to March. The reason is that coal operators in North Dakota have many other reports due near the beginning of the calendar year and need the additional month. In addition, the requirement for quarter lines is being eliminated because it is unnecessary and clutters the map. We find that this rule is not inconsistent with the Federal regulations and therefore approve it.

6. *NDAC 69–05.2–13–08, Performance standards—General requirements—Protection of fish, wildlife, and related environmental values.* North Dakota's existing rules include a requirement for the applicant to report to the Public Service Commission by each February 15 with the management plan results and data derived from the monitoring plan for the calendar year. The State has proposed to change the submittal of the monitoring reports to once every 2 years, in even numbered years. Yearly monitoring must still be carried out in accordance with approved monitoring plans.

The Federal regulations for protection and enhancement plans (30 CFR 780.16(b)) and performance standards (30 CFR 816.97) do not require a periodic report from the operator with management plan results and data derived from the monitoring plan for conducting fish and wildlife monitoring. Accordingly, we are approving the proposed revisions to NDAC 69–05.2–13–08.

7. NDAC 69–05.2–15–02, Performance standards—Suitable plant growth material—Removal. Existing North Dakota rule NDAC 69–05.2–15–02(2)(a) requires that

> (t)he suitable plant growth materials, commonly referred to as topsoil (first lift suitable plant growth material) and subsoil (second lift suitable plant growth material) as identified by the soil survey required by NDAC 69–05.2–08–10 must be removed and segregated in two separate operations, unless otherwise approved by the Commission. The topsoil removal operation for an area must be completed before subsoil removal begins or before any other disturbances occur in that area. If use of other suitable strata is approved as a supplement to suitable plant growth material, all such materials to be saved must be removed and segregated. Further disturbances which significantly alter an area must not begin until the subsoil or other suitable strata removal operations for that area have been completed and approved by the commission.

North Dakota proposes to add the following statement to the end of rule NDAC 69–05.2–15–02(2)(a),

> (h)owever, the commission may waive the approval of subsoil removal operations if the operator demonstrates, in a detailed soil removal plan, surplus subsoil is available and that subsoil to be removed has good and relatively uniform characteristics. A request for such a waiver must be included as part of a detailed soil removal plan or permit revision application that contains the necessary information.

The Federal Regulations at 30 CFR 816.22(e) state that for subsoil segregation, "[t]he regulatory authority may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of §§ 816.111, 816.113, 816.114, and 816.116 of this Chapter."

North Dakota is proposing additional language to subsection 2 of NDAC 69–05.2–15–02 to allow the Commission to waive subsoil removal approvals when the operator demonstrates in a detailed soil removal plan that there is a surplus of stockpiled subsoil and the subsoil characteristics are good and relatively uniform. The Commission's rule has required operators to obtain approvals from the Reclamation Division once subsoil removal has been completed and before additional disturbance of the areas occur. The rule change will allow the Commission to waive such approvals in some instances. The waiving of this approval process will not reduce the amount of subsoil that must be removed and saved by the mine operator. A waiver request would be included as part of an annual soil removal plan or permit revision that provides the necessary information of soil inventories and a discussion of subsoil characteristics.

The Federal regulations allow the regulatory authority to require subsoil segregation. There is no counterpart or discussion in the Federal regulations for the need for regulatory approval following completion of subsoil salvage operations and prior to initiation of additional disturbance. The North Dakota rules would continue to require subsoil salvage. The proposed amendment would only allow the State to waive the requirement that operators obtain approvals from the Reclamation Division once subsoil removal has been completed and before additional disturbance of the areas occur and only if the operator makes the required demonstration.

Based on the above discussion, the proposed revisions to NDAC 69–05.2–15–02(2)(a) are not inconsistent with the Federal regulations and therefore we approve them.

8. *NDAC 69–05.2–15–04, Performance standards—Suitable plant growth material—Redistribution.* Under rule NDAC 69–05.2–15–04(4)(a)(2) North Dakota includes a tabled title "Suitable Plant Growth Material Redistribution Thickness" that identifies certain spoil properties (i.e., texture, sodium absorption ratio, and saturation percentage) and the total redistribution thickness of topsoil plus subsoil that must be used based on the given spoil properties.

North Dakota rule NDAC 69–05.2–15–04(4)(c) states that this paragraph is effective only for those areas disturbed prior to the year 1999.

North Dakota proposes to eliminate saturation percentage as one of the spoil properties that must be used to determine total topsoil plus subsoil redistribution thickness. North Dakota also proposed to delete NDAC 69–05.2–15–04(4)(c).

The Federal regulations at 30 CFR 816.102(f) require that exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with Section 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

In the May 24, 1983 **Federal Register** promulgating the final rule in the Permanent Regulatory Program for backfilling and grading, two commenters were quoted as advocating retaining the 4-foot-cover requirement for acid- and toxic-forming material. We responded that:

> OSM is aware of the many potential problems that attend the proper disposal of toxic materials. However, a national standard for cover thickness is not the solution to these problems. Instead, the regulatory authority should set whatever standards, specific or otherwise, which provide the best solution within the state. The problems of interpretation will be avoided by allowing the state regulatory authorities to set and explain standards designed for local conditions. These standards must be based on the national performance standard requiring successful covering or treatment in accordance with the provisions of 30 CFR 816.102(f).

The change proposes to eliminate saturation percentage as a parameter used for determining the total soil respread thickness when it is based on graded spoil characteristics. This change is supported by North Dakota State University technical report No. 8, (*Relation of Saturation Percentage to Absorption Ratios in North Dakota Soils* by Eugene C. Doll and F. Scott Carter, February 1991) recommended that the saturation percentage parameter be eliminated since it is of little practical value. The other change to this rule would eliminate the sunset clause for allowing total soil respread thicknesses to be based on regraded spoil characteristics. The North Dakota public Service Commission originally adopted provisions to base the total soil respread thickness on graded spoil properties as a result of reclamation research findings from studies conducted on mined lands in North Dakota in the late 1970's and early 1980's. The studies were primarily conducted on small plots and occurred over a relatively short period of time. Therefore, when the original provision was adopted, the Commission added a sunset clause (subdivision c of subsection 4) to require a future review to determine if the provision should be retained or deleted. While waiting for additional research findings, the Commission extended the sunset clause on two occasions.

The sunset clause is now being eliminated since a 1997 research report by North Dakota State University (*Reducing the Management Variable in Assessing Reclamation Success* by Gary A. Albertson, February, 1997) found that yields on areas where the total soil respread thicknesses were based on the graded spoil properties were as good as reclaimed areas where all available topsoil and subsoil (up to 60 inches) has been respread.

While the Federal regulations require that exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining be adequately covered with nontoxic and noncombustible material, they do not include specific spoil properties requiring burial or the depth of burial required. North Dakota's proposed amendment to NDAC 69–05.2–15–04(4)(a)(2), does not reduce the effectiveness of the existing State rules, and the revised rule is not inconsistent with the Federal requirements at 30 CFR 816.102(f) and therefore we approve it.

There is no federal counterpart to NDAC 69–05.2–15–04(4)(c). The deletion of this rule does not in any way render the State program less effective than the Federal regulations and therefore we approve it.

9. *NDAC 69–05.2–16–09, Performance standards—Hydrologic balance—Sedimentation ponds.* Revisions to this North Dakota rule are being made by the State to: (1) satisfy program amendment changes required in a July 17, 1997 letter from the U.S. Office of Surface Mining. (specifically, the reference to ponds meeting Mining Safety and Health Administration (MSHA) design criteria has been modified); and (2) to add performance standards for impoundments that meet the Class B or C criteria for dams in NRCS Technical Release No. 60 as required by the U.S. Office of Surface Mining in its July 17, 1997 letter).

As proposed, North Dakota's rules at 69–05.2–16–09.17 and 69–05.2–16–09.18 are no less effective than the corresponding Federal regulation at 30 CFR 816.49 dealing with stability, spillway, foundation investigations, and freeboard hydrograph. However, only NDAC 69–05.2–16–09.18, which refers to impoundments meeting class B or C criteria for dams, specify foundation testing, not .17, which refers to the MSHA criteria at 30 CFR 77.216. NDAC 69–05.2–16–09.17.d, however, states that "The criteria of the mine safety and health administration as published in 30 CFR 77.216 must be met." Mine Safety and Health Administration regulations at 30 CFR 77.216–2(a)(5) state that "The plan * * * shall contain * * * the following information: *A description of the physical engineering properties of the foundation materials on which the structure is or will be constructed*" (underlining added for emphasis). In order to make a description of the physical engineering properties of the foundation materials, foundation testing must be done. North Dakota's rule is therefore the equivalent of the Federal regulations and we approve it.

10. *NDAC 69–05.2–19–04, Performance standards—Waste materials—Disposal of noncoal wastes.* This revision is in response to Program Requirement 934.16(cc) which calls for "placement and storage standards for all types of noncoal hazardous wastes." North Dakota proposed adding wording to its rule dealing with disposal of noncoal wastes generated as part of a mining operation to read as follows:

Placement and storage of all types of noncoal wastes, including any hazardous materials, * * *

The addition of the language makes the North Dakota rule no less effective than the Federal regulations at 30 CFR 816.89 and we approve the revision. We also are removing the required program amendment at 30 CFR 934.16(cc).

11. *NDAC 69–05.2–08–15(3)(a).* The required program amendment at 30 CFR 934.16(n) requires revision to North Dakota rules for submission of site-specific fish and wildlife resource information when the permit or adjacent areas are likely to include species listed or proposed to be listed by North Dakota under State statutes similar to the Endangered Species Act.

This required program amendment resulted through a misunderstanding of the State's statute at NDCC (North Dakota Century Code) 20.1–02–05, "Powers of the (Game and Fish Department) Director." It was interpreted in the January 9, 1992 **Federal Register** (57 FR 814) to mean that North Dakota had its own Endangered Species Act and if in fact it did, then it needed to refer to it, as the Federal regulations require at 30 CFR 780.16(a)(2).

After an extensive review of both North Dakota's statute and its regulations, it is clear that the State statute is referring to the U.S. Endangered Species Act of 1973. In a

June 19, 1997 letter (administrative record No. ND–BB–12) to ND Reclamation Division Director, James R. Deutsch, Natural Resource Biologist, John Schumacher, who is with the ND Game and Fish Department, stated that "North Dakota does not have legislation governing endangered species," and "We instead defer to the Federal laws and regulations." Therefore the existing State regulations, NDAC (North Dakota Administrative Code) 69–05.2–08–15(3)(a) are no less effective than the Federal regulations at 30 CFR 780.16(a)(2)(i) and we are eliminating the required program amendment at 30 CFR 934.16(n).

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

No individual or State agency name responded to OSM's invitation for comments.

2. Federal Agency Comments

Under 30 CFR 732.17(h)(11)(I), we requested comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program.

The Agricultural Research Service of the U.S. Department of Agriculture responded on October 5, 1998 that it saw no problems with the proposed changes (administrative record No. ND–BB–05).

The U.S. Fish and Wildlife Service responded on October 9, 1998 that the proposed changes are logical and reasonable and that it did not anticipate any significant impacts to fish and wildlife resources as a result of the proposed rules (administrative record No. ND–BB–07).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are to get a written agreement from the EPA for those provisions of the proposed amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

We requested EPA's written agreement with the proposed amendment (administrative record No. ND–BB–03). On October 8, 1998, EPA gave its written agreement (administrative record No. ND–BB–06).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we asked for comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND–BB–03). Neither SHPO nor ACHP responded to our request.

V. Director's Decision

Based on the above findings, we approve the proposed amendment as submitted on September 2, 1998.

To implement this decision we are amending the Federal regulations at 30 CFR Part 934, which codify decisions concerning the North Dakota program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage North Dakota to bring its programs into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(c)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 13, 1999.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	*	*
9/2/98	11-8-99	NDAC 69-05.2.90 NDAC 69-05.2-01-03 NDAC 69-05.2-05-09 NDAC 69-05.2-09-09 NDAC 69-05.2-13-02 NDAC 69-05.2-13-08 NDAC 69-05.2-15-02 NDAC 69-05.2-15-04 NDAC 69-05.2-16-09 NDAC 69-05.2-19-04

§ 934.16 [Amended]

3. Section 934.16 is amended by removing paragraphs (cc) and (n).

[FR Doc. 99-29152 Filed 11-5-99; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Addition of Persons Blocked pursuant to Executive Order 13088

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is adding to appendix A to 31 CFR chapter V the names of persons determined to be state- or socially-owned entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro) and of individuals determined to be acting for or on behalf of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and/or the Government of the Republic of Serbia because of senior positions such individuals hold in those governments. Names of blocked persons appearing in section II of appendix A and blocked vessels appearing in appendix B pursuant to part 585 of 31 CFR chapter V are removed.

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622-2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"). Appendix B to 31 CFR chapter V contains the names of vessels that are the property of blocked persons or specially designated nationals. Pursuant to Executive Order 13088 of June 9, 1998, "Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting New Investment in the Republic of Serbia in Response to the Situation in Kosovo," (63 FR 32109, 3 CFR, 1998 Comp., p. 191), and the implementing Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations, 31 CFR part 586 (63 FR 54575, October 13, 1998) (the "Regulations"), 650 entities are added to appendix A as entities organized or located in the Federal Republic of Yugoslavia (the "FRY (S&M)") which have been determined to be state- or socially-owned. Seventy-six individuals are also added to appendix A as having been determined to be acting for or on behalf of the Governments of the FRY (S & M) and/or the Republic of Serbia by virtue of the high-level positions they hold in those governments. These governments are defined in §§ 586.306 and 586.308 of the Regulations, respectively, and include "all financial institutions and state-owned and socially-owned entities organized or located" in the territories of the FRY (S&M) and the Republic of Serbia, respectively, as well as "any persons acting or purporting to act for or on behalf of" those governments. (The FRY (S&M) state- or socially-controlled entities and designated individuals are hereinafter referred to as "Blocked Persons.")

Any property subject to the jurisdiction of the United States in which a Blocked Person has an interest is blocked, and U.S. persons are prohibited from engaging in any transaction or in dealing in any property in which a Blocked Person has an interest. The notes to the appendices are amended to revise the identifying abbreviation for Government of the FRY (S&M) Blocked Persons. All entries for entities and individuals listed in section II of appendix A as FRY (S&M) blocked persons, as well as for vessels listed in appendix B pursuant to the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR part 585, are removed. Assets blocked pursuant to part 585 remain blocked, and are not affected by this removal.

Designations of foreign persons blocked pursuant to the relevant statute, Executive order, or regulations are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking or unblocking is effective upon the date of filing for public inspection with the Federal Register, or upon prior actual notice.

Since this rule involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of (1) 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1641, 1701–1706; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191, with respect to the addition of blocked Government of the FRY (S&M) entities, and (2) 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 49 U.S.C. 40106; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat 890 (28 U.S.C. 2461 note); E.O. 12808, 57 FR 23299, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 57 FR 24347, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, 3 CFR, 1993 Comp., p. 576; E.O. 12846, 58 FR 25771, 3 CFR, 1993 Comp., p. 501; E.O. 12934, 59 FR 54117, 3 CFR, 1994 Comp., p. 930, with respect to the removal of blocked persons and vessels from the appendices pursuant to part 585, appendices A and B to 31 CFR chapter V are amended as set forth below:

1. The notes to the appendices to chapter V are amended by revising notes 4 and 6 to read as follows:

APPENDICES TO CHAPTER V

Notes: * * *

* * * * *

4. Abbreviations: "a.k.a." means "also known as"; "f.k.a." means "formerly known as"; "n.k.a." means "now known as"; "DOB" means "date of birth"; "DWT" means "Deadweight"; "FRYK" means "Federal Republic of Yugoslavia (Serbia and Montenegro) — Kosovo"; "GRT" means "Gross Registered Tonnage"; "POB" means "place of birth".

* * * * *

6. References to regulatory parts in chapter V or other authorities:

[CUBA]: Cuban Assets Control Regulations, part 515;
[FRYK]: Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations, part 586 (63 FR 54575, October 13, 1998);
[FTO]: Foreign Terrorist Organizations Sanctions Regulations, part 597;
[IRAQ]: Iraqi Sanctions Regulations, part 575;
[LIBYA]: Libyan Sanctions Regulations, part 550;
[NKOREA]: Foreign Assets Control Regulations, part 500;
[SDNT]: Narcotics Trafficking Sanctions Regulations, part 536;
[SDT]: Terrorism Sanctions Regulations, part 596;
[SUDAN]: Sudanese Sanctions Regulations, part 538;
[UNITA]: UNITA (Angola) Sanctions Regulations, part 590.

* * * * *

Appendix A [Amended]

2. Appendix A to 31 CFR chapter V is amended by removing the designation "I" and its heading at the beginning of the appendix, and removing the designation "II", its heading, and the list of entities that follows the designation "II" in its entirety, and by adding the following names to appendix A inserted in alphabetical order to read as follows:

21 MAJ, Belgrade, Serbia [FRYK]
A.D. IZVOZNA BANKA, Belgrade, Serbia [FRYK]
ABM GRAFIKA, Novi Sad, Serbia [FRYK]
AERODROM BEOGRAD (a.k.a. AIRPORT BELGRADE), Belgrade, Serbia [FRYK]
AEROINZINJERING, Belgrade, Serbia [FRYK]
AGENCIA D.D., New York, U.S.A. [FRYK]
AGRO–UNIVERZAL, Kanijiza, Vojvodina (Serbia) [FRYK]
AGROBANKA BELGRADE (All offices worldwide) [FRYK]
AGROEXPORT, Belgrade, Serbia [FRYK]
AGROOPREMA, Belgrade, Serbia [FRYK]
AGROPANONIJA, Vrsac, Vojvodina (Serbia) [FRYK]
AGROPROMET, Kikinda, Vojvodina (Serbia) [FRYK]
AGROVOJVODINA (a.k.a. AGROVOJVODINA EXPORT–IMPORT), 23 Oktobra blvd. 61, 21000 Novi Sad, Vojvodina (Serbia) (All offices worldwide) [FRYK]
AGROVOJVODINA EXPORT–IMPORT (a.k.a. AGROVOJVODINA), 23 Oktobra blvd. 61, 21000 Novi Sad, Vojvodina (Serbia) (All offices worldwide) [FRYK]
AIK BANKA A.D., Nis, Serbia [FRYK]
AIK BANKA A.D., Senta, Serbia [FRYK]
AIK SUMADIJA, Kragujevac, Serbia [FRYK]
AIK VRANJE, Vranje, Serbia [FRYK]
AIR JUGOSLAVIA, Belgrade, Serbia [FRYK]
AIRPORT BELGRADE (a.k.a. AERODROM BEOGRAD), Belgrade, Serbia [FRYK]
ALCO BANKA A.D., Belgrade, Serbia [FRYK]
ALFA PLAM, Vranje, Serbia [FRYK]
ANDJELKOVIC, Zoran, Minister of Sports and Youth, Republic of Serbia, Serbia (DOB 1958) (individual) [FRYK]
ANGLO–YUGOSLAV BANK (n.k.a. AY BANK LIMITED), London, England [FRYK]
APATEX–APATIN, Industrijska Zona, 25260 Apatin, Serbia [FRYK]
APATINSKA PIVARA, Apatin, Serbia [FRYK]
ARENAL SHIPPING S.A., Office 803, Nicolaou Pentadromos Centre, Pentadromos Junction, Limassol, Cyprus [FRYK]
AS BANKA A.D., Belgrade, Serbia [FRYK]
AS IMPEX/AEROSERVIS, Serbia [FRYK]
ASI BANKA A.D., Belgrade, Serbia [FRYK]
ASNA BANKA A.D., Belgrade, Serbia [FRYK]
ASSOCIATED BANK OF KOSOVO (a.k.a. UDRUZENA KOSOVSKA BANKA) (All offices worldwide) [FRYK]
ASSOCIATED BELGRADE BANK (a.k.a. BEOBANKA, D.D.; a.k.a. BEOGRADSKA BANKA D.D.; a.k.a. UDRUZENA BEOGRADSKA BANKA) (All offices worldwide) [FRYK]
ASSOCIATION OF YUGOSLAV RAILWAYS (a.k.a. ZAJEDNICA JUGOSLOVENSKIH ZELEZNICA), Belgrade, Serbia [FRYK]
ASTRO–ORION, Serbia [FRYK]
ATEKS, Belgrade, Serbia [FRYK]
ATLAS BANKA A.D., Belgrade, Serbia [FRYK]
AUTOMOBILE INDUSTRY — CRVENA ZASTAVA (a.k.a. ZASTAVA; a.k.a. ZAVODI CRVENA ZASTAVA — KRAGUJEVAC), Kragujevac, Serbia [FRYK]
AUTOTEHNA, Belgrade, Serbia [FRYK]
AVIOGENEX, Milentia Popovica, 11070 Belgrade, Serbia [FRYK]
AVNOJA 57, Serbia [FRYK]
AY BANK LIMITED (f.k.a. ANGLO–YUGOSLAV BANK), London, England [FRYK]
B.B. INTERNATIONAL A.D., Belgrade, Serbia [FRYK]
B.B. NISKA BANKA A.S., Nis, Serbia [FRYK]
B.S.E. GENEX CO. LTD. (f.k.a. B.S.E. TRADING LIMITED), Heddon House, 149–151 Regent Street, London, W1R 8HP, England [FRYK]
B.S.E. TRADING LIMITED (n.k.a. B.S.E. GENEX CO. LTD.), Heddon House, 149–151 Regent Street, London, W1R 8HP, England [FRYK]
BABOVIC, Jovan, Minister of Agriculture, Forestry and Water Management, Republic of Serbia, Serbia (DOB 1946) (individual) [FRYK]
BAGERSKO BRODARSKO PREDUZECE, Hajduk Veljkov Venac 46, 11000 Belgrade, Serbia [FRYK]
BALKAN, Suva Reka, Serbia [FRYK]
BALKANIJA, Belgrade, Serbia [FRYK]
BAMBI, Pozarevac, Serbia [FRYK]
BANCA DE CREDIT COOPERAIST, Vrsac, Serbia [FRYK]
BANK FOR DEVELOPMENT OF KOSOVO AND METOHIJA (All offices worldwide) [FRYK]
BANK FOR FOREIGN TRADE AD (a.k.a. JUGOBANKA; a.k.a. JUGOBANKA D.D.; a.k.a. YUGOBANKA) (All offices worldwide) [FRYK]

BANK OF VOJVODINA (f.k.a. VOJVODINA BANK–ASSOCIATED BANK, NOVI SAD; n.k.a. VOJVODJANSKA BANKA, D.D.), Serbia (All offices worldwide) [FRYK]

BANQUE FRANCO YOUGOSLAVE, Paris, France [FRYK]

BANQUE NATIONALE DE YOUGOSLAVIE (a.k.a. NARODNA BANKA JUGOSLAVIJE; a.k.a. NATIONAL BANK OF YUGOSLAVIA), Belgrade, Serbia [FRYK]

BB CACANSKA BANKA A.D., Cacak, Serbia [FRYK]

BB LOZNICKA BANKA A.D., Loznica, Serbia [FRYK]

BB PIROTSKA BANKA A.D., Pirot, Serbia [FRYK]

BB POZAREVACKA BANKA A.D., Pozarevac, Serbia [FRYK]

BB PRIVREDNA BANKA A.D., Pancevo, Serbia [FRYK]

BB PROKUPACKA BANKA A.D., Prokuplje, Serbia [FRYK]

BB SABACKA BANKA A.D., Sabac, Serbia [FRYK]

BB UZICKA BANKA A.D., Uzice, Serbia [FRYK]

BB VALJEVSKA BANKA A.D., Valjevo, Serbia [FRYK]

BB VRANJSKA BANKA A.D., Vranje, Serbia [FRYK]

BC EXPORT CREDIT BANK A.D., Belgrade, Serbia [FRYK]

BEGEJ SHIPYARD, Temisvarski drum bb, 23000 Zrenjanin, Serbia [FRYK]

BEKO, Bulevar Vojvode Bojovica 6–8, 11000 Belgrade, Serbia [FRYK]

BEKO, Milan, Minister without Portfolio, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1961) (individual) [FRYK]

BELGRADE BAKERY INDUSTRY, Belgrade, Serbia [FRYK]

BELGRADE BUS STATION, Belgrade, Serbia [FRYK]

BELGRADE FAIR, Belgrade, Serbia [FRYK]

BELGRADE HOLDING COMPANY — FREE ZONE, Belgrade, Serbia [FRYK]

BELGRADE–PREDUZECE ROBNIH KUCA, Belgrade, Serbia [FRYK]

BELGRADE RAILROAD TRANSPORTATION ORGANIZATION (a.k.a. ZELEZNICKO TRANSPORTNO PREDUZECE BEOGRAD), Belgrade, Serbia [FRYK]

BELGRADE WOOL COMBINAT, Belgrade, Serbia [FRYK]

BEOBANKA, D.D. (a.k.a. ASSOCIATED BELGRADE BANK; a.k.a. BEOGRADSKA BANKA D.D.; a.k.a. UDRUZENA BEOGRADSKA BANKA) (All offices worldwide) [FRYK]

BEOCINASKA FABRIKA CEMENTA, Trg Ive Lole Ribara 1, 21300 Beocin, Serbia [FRYK]

BEOGRAD AGRICULTURAL COMPLEX PKB, 11213 Padinska Skela, Belgrade, Serbia [FRYK]

BEOGRAD–PREDUZECE ZA UPRAVA ELEKTROENERGICNIK SISTEMA, Belgrade, Serbia [FRYK]

BEOGRADELEKTRO, Belgrade, Serbia [FRYK]

BEOGRADSKA BANKA D.D. (a.k.a. ASSOCIATED BELGRADE BANK; a.k.a. BEOBANKA, D.D.; a.k.a. UDRUZENA BEOGRADSKA BANKA) (All offices worldwide) [FRYK]

BEOGRADSKA CYPRUS OFFSHORE BANKING UNIT (COBU), Nicosia, Cyprus [FRYK]

BEOGRADSKA PLOVIDBA (a.k.a. BEOPLOV), Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]

BEOPETROL, Belgrade, Serbia [FRYK]

BEOPLOV (a.k.a. BEOGRADSKA PLOVIDBA), Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]

BETA BANKA A.D., Kraljevo, Serbia [FRYK]

BIMEL LIMITED, Cyprus [FRYK]

BINGO FRANCE (n.k.a. SIMPO FRANCE), 28 Rue du Puits Dixmes Sennia 606, 94320 Thiais–CEDEX, France [FRYK]

BIP, Bulevar Vojvode Putnika 5, 11000 Belgrade, Serbia [FRYK]

BJELASICA, Bijelo Polje, Serbia [FRYK]

BLAZIC, Branislav, Minister of Environmental Protection (a.k.a. Minister of Environment), Republic of Serbia, Serbia (DOB 1957) (individual) [FRYK]

BOJIC, Milovan, Deputy Prime Minister, Republic of Serbia, Serbia (DOB 1955) (individual) [FRYK]

BOR–TOPIONICA I RAFINERIJA BAKRA, Bor, Serbia [FRYK]

BOROVO — BORELI, Sombor, Serbia [FRYK]

BOZIC, Milan (D.Sc.), Minister without Portfolio, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1952) (individual) [FRYK]

BRODOGRADILISTE NOVI SAD, Kamenicka ada 1, 21000 Novi Sad, Serbia [FRYK]

BRODOIMPEX, Belgrade, Serbia [FRYK]

BUKOVICKA BANJA, Arandjelovac, Serbia [FRYK]

BULATOVIC, Momir, Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 21 Sep 1956) (individual) [FRYK]

BULATOVIC, Pavle, Minister of Defense, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1948; POB Montenegro) (individual) [FRYK]

BYE LTD., Morley House, 314–322 Regent Street, London W1R 5AE, England [FRYK]

C MARKET, Belgrade, Serbia [FRYK]

CANNED FRUIT AND VEGETABLE PRODUCTION OF PROKUPLJE (a.k.a. HISAR — FABRIKA ZA PRERADU VOCA I POVRCA), Prokuplje, Serbia [FRYK]

CENTRAL COMMERZ CONSULTING ENGINEERING TRADING GMBH, Zeppelinallee 71, 6000 Frankfurt 90, Germany [FRYK]

CENTROBANKA A.D., Belgrade, Serbia [FRYK]

CENTROCOOP — BELKAMEN, Kavadarci, Serbia [FRYK]

CENTROCOOP — INVEST, Belgrade, Serbia [FRYK]

CENTROCOOP — PROIZVODNJA, Belgrade, Serbia [FRYK]

CENTROCOOP (a.k.a. CENTROCOOP EXPORT–IMPORT ENTERPRISE) [FRYK]

CENTROCOOP EXPORT–IMPORT ENTERPRISE (a.k.a. CENTROCOOP) [FRYK]

CENTROCOOP FRANCE EXPORT IMPORT, 31 Rue St Ferdinand, 75017 Paris, France [FRYK]

CENTROCOOP GMBH, Winkelsfelderstrasse 21, 4000 Dusseldorf 30, Germany [FRYK]

CENTROCOOP ITALIANA, c/o Intex Srl., Via Della Greppa 4, 34100 Trieste, Italy (Branch office) [FRYK]

CENTROCOOP ITALIANA, Via Vitruvio 43, 20124 Milan, Italy [FRYK]

CENTROCOOP LTD., 162–168 Regent Street, London W1 5TB, England [FRYK]

CENTROCOOP PRAGUE, Gorkeho N16, Prague, Czech Republic [FRYK]

CENTROCOOP WARSAW, Warsaw, Poland [FRYK]

CENTROEXPORT, Belgrade, Serbia [FRYK]

CENTROMARKET, Belgrade, Serbia [FRYK]

CENTROPRODUCT (a.k.a. YUGOTOURS), Eisenberg Business Center, House Asia, Tel Aviv, Israel [FRYK]

CENTROPRODUCT HELLAS S.A.R.L., Xanthou 5, Kolonaki Square, Athens 10673, Greece [FRYK]

CENTROPRODUCT ROME (a.k.a. YUGOTOURS), Via Bissolati 76, 00187, Rome, Italy [FRYK]

CENTROPRODUCT S.A., c/o Orense 85, Esc. IV, 4A, Madrid 28020, Spain [FRYK]

CENTROPRODUCT S.R.L. (a.k.a. YUGOTOURS), Via Agnello 2, 20121 Milan, Italy [FRYK]

CENTROPRODUCT, BARI (a.k.a. YUGOTOURS), Via Principe Amedeo 25, 70121 Bari, Italy [FRYK]

CENTROPRODUCT, S.A.R.L. (a.k.a. YUGOTOURS S.A.R.L.), 39 avenue de Friedland, 75008 Paris, France [FRYK]

CENTROPRODUCT, TRIESTE, Via Fabrio Filzi 10, Trieste, Italy [FRYK]

CENTROPROJEKT, Belgrade, Serbia [FRYK]

CENTROPROM, Knez Mihailova 20, 11000 Belgrade, Serbia [FRYK]

CENTROSLAVIJA, Novi Sad, Vojvodina (Serbia) [FRYK]

CENTROTEKSTIL, Belgrade, Serbia [FRYK]

CENTROTEXTIL AUSSENHANDELS GMBH, Hochstrasse 48, 6000 Frankfurt am Main, Germany [FRYK]

CENTROTEXTIL AUSSENHANDELS GMBH, Karlstrasse 60, 8000 Munich, Germany [FRYK]

CENTROTEXTIL INC., New York, New York, U.S.A. [FRYK]

CEROVIC, Slobodan, Minister of Tourism, Republic of Serbia, Serbia (DOB 1955) (individual) [FRYK]

CHAMBER OF ECONOMY OF SERBIA (a.k.a. PRIVREDNA KOMORA SRBIJE), Belgrade, Serbia [FRYK]

CHAMBER OF ECONOMY OF YUGOSLAVIA (a.k.a. PRIVREDNA KOMORA JUGOSLAVIJE), Belgrade, Serbia [FRYK]

CINEX, Singerstrasse 2/8, 1010 Vienna, Austria [FRYK]

COMBICK AUSSENHANDELS GMBH (All offices worldwide) [FRYK]

COMBICK GMBH, Neuer Markt 1, 1010 Vienna, Austria [FRYK]

COMBICK GMBH, Post Office Box 322079, Militaerstrasse 90, 8004 Zurich, Switzerland [FRYK]

CONTINENTAL BANKA A.D., Belgrade, Serbia [FRYK]
CONTROLBANK (All offices worldwide) [FRYK]
COOPEX, Vienna, Austria [FRYK]
COSIC, Zivota, Minister of Mining and Energy (a.k.a. Minister of Energy and Mining), Republic of Serbia, Serbia (DOB 1942) (individual) [FRYK]
COTRA BV, J Luykenstraat 12 3HG, 1071 CM Amsterdam, Netherlands [FRYK]
CREDIBEL (All offices worldwide) [FRYK]
DAFIMENT BANK (All offices worldwide) [FRYK]
DANUBE (a.k.a. DUNAV), Smederevo, Serbia [FRYK]
DELTA BANKA A.D., Belgrade, Serbia [FRYK]
DEPOZITNO–KREDITNA BANKA A.D., Belgrade, Serbia [FRYK]
DES–SUBOTICA, Gavrila Principa 8, 24000 Subotica, Serbia [FRYK]
DIJAMANT BANKA DD, Zrenjanin, Serbia [FRYK]
DIJAMANT, Zrenjanin, Serbia [FRYK]
DIKOMBAU GMBH (branch office), Flandricher Strasse 13–15, 5000 Koln, Germany [FRYK]
DIKOMBAU GMBH, Lager Weg 16, 6000 Frankfurt am Main, Germany [FRYK]
DIMONT GMBH (a.k.a. DIMONT MONTAGE UND BAU GMBH), Wilhelm–Leuschner–Strasse 68, 6000 Frankfurt am Main, Germany [FRYK]
DIMONT MONTAGE UND BAU GMBH (a.k.a. DIMONT GMBH), Wilhelm–Leuschner–Strasse 68, 6000 Frankfurt am Main, Germany [FRYK]
DINARA BANKA A.D., Belgrade, Serbia [FRYK]
DINARA, Belgrade, Serbia [FRYK]
DIP (a.k.a. DRVNO INDUSTRIJSKO PREDUZECE), Belgrade, Serbia [FRYK]
DISBANKA A.D., Belgrade, Serbia [FRYK]
DOLPHINA BANK (All offices worldwide) [FRYK]
DROBNJAKOVIC, Dejan, Minister of Transportation, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1933) (individual) [FRYK]
DRVNO INDUSTRIJSKO PREDUZECE (a.k.a. DIP), Belgrade, Serbia [FRYK]
DTD BANKA A.D., Novi Sad, Serbia [FRYK]
DUNAV–TISA–DUNAV (a.k.a. DUNAV TISA DUNAV), Bulevar Marsala Tita 25, 21000 Novi Sad, Vojvodina (Serbia) [FRYK]
DUNAV (a.k.a. DANUBE), Smederevo, Serbia [FRYK]
DUNAV BANKA A.D., Belgrade, Serbia [FRYK]
DUNAV TISA DUNAV (a.k.a. DUNAV–TISA–DUNAV), Bulevar Marsala Tita 25, 21000 Novi Sad, Vojvodina (Serbia) [FRYK]
DUVANSKA INDUSTRIJA, Nis, Serbia [FRYK]
EI BULL HN, Nis, Serbia [FRYK]
EI–FABRIKA RADIO CEVI, Nis, Serbia [FRYK]
EI–NIS, Nis, Serbia [FRYK]
EKOS–BANKA A.D., Pec, Serbia [FRYK]
EKSKIMBANKA A.D., Belgrade, Serbia [FRYK]
ELEKTRODISTRIBUCIJA, Belgrade, Serbia [FRYK]
ELEKTROMETAL, Belgrade, Serbia [FRYK]
ELEKTRONSKA INDUSTRIJA, Bulevar Velijka Vlahovica 80–82, 18000 Nis, Serbia [FRYK]
ELEKTROPRIVEDA–PREDUZECE ZA PROIZVODNJU EL. ENERGIJE UGLJA, Belgrade, Serbia [FRYK]
ELEKTROPRIVREDA KOSOVA (a.k.a. KOSOVO ELECTRIC POWER COMPANY), Pristina, Kosovo (Serbia) [FRYK]
ELEKTROPRIVREDA SRBIJE (a.k.a. SERBIA ELECTRIC POWER INDUSTRY), Belgrade, Serbia [FRYK]
ELEKTROSRBIJA–DISTRIBUCIJA, Kraljevo, Serbia [FRYK]
ELEKTROTIMOK, Zajecar, Serbia [FRYK]
ELEKTROVOJVODINA, Novi Sad, Vojvedina (Serbia) [FRYK]
ELIND, Valjevo, Serbia [FRYK]
ENERGOGAS, Novi Beograd, Serbia [FRYK]
ENERGOPROJEKT, Belgrade, Serbia (All offices worldwide) [FRYK]
EXIMKOS (a.k.a. KOSOVO EXPORT IMPORT GMBH; a.k.a. KOSOVO GMBH; a.k.a. OMEGA GMBH), Maillingerstrasse 34, 8000 Munich 2, Germany [FRYK]
EXPORT IMPORT KOSOVO, Trg Republike 2, 38000 Pristina, Kosovo, Serbia [FRYK]
FABEG, Belgrade, Serbia [FRYK]
FABRIKA KABLOVA, Zajecar, Serbia [FRYK]
FABRIKA OPREME I DELOVA, Bor, Serbia [FRYK]
FABRIKA PUMPI JASTREBAC NIS, 12 Februara Bulevar 82, 18000 Nis, Serbia [FRYK]
FABRIKA STAKLA — ZAJECAR, Zajecar, Serbia [FRYK]
FABRIKA VENTILA ZA PNEUMATIKU, Bor, Serbia [FRYK]
FAM, Krusevac, Serbia [FRYK]
FAP–FAMOS, Belgrade, Serbia [FRYK]
FARKAS, Geza, Chief of Intelligence and Systems Directorate, GS, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1942; POB Becelji, Vojvodina, Serbia) (individual) [FRYK]
FEDERAL DIRECTORATE OF SUPPLY AND PROCUREMENT, Belgrade, Serbia [FRYK]
FERONIKL — GLOGOVAC, Glogovac, Kosovo (Serbia) [FRYK]
FERROUS EAST CORPORATION, Elizabeth, New Jersey, U.S.A. [FRYK]
FILIPOVIC, Rade (Ph.D.), Minister of Economy, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1946) (individual) [FRYK]
FINCOMTRA ESTABLISHMENT, Post Office Box 185, Vaduz, Liechtenstein [FRYK]
FINCONTRUST, Belgrade, Serbia [FRYK]
FIRST CORPORATE BANK (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
FIRST TEXTIL BANK A.D., Belgrade, Serbia [FRYK]
FOREIGN TRADE INSTITUTE (a.k.a. INSTITUT ZA SPOLJNU TRGOVINU), Belgrade, Serbia [FRYK]
FRIKOM, Padinska Skela, Serbia [FRYK]
FURNITURE AMERICANA, Hackensack, New Jersey, U.S.A. [FRYK]
GAS, Novi Sad, Vojvodina (Serbia) [FRYK]
GENERAL COMMERCE GMBH, Kaufinger Strasse 35, 8000 Munich 2, Germany [FRYK]
GENERAL IKL CORPORATION, Blauvelt, New York, U.S.A. [FRYK]
GENERAL MOTORS YU, Belgrade, Serbia [FRYK]
GENERALEXPORT (a.k.a. GENEX), Belgrade, Serbia [FRYK]
GENERALEXPORT ALEXANDRIA, 43, Saphia Zaghloul Street, Alexandria, Egypt [FRYK]
GENERALEXPORT ALMA ATA, Alma Ata, Khazakstan [FRYK]
GENERALEXPORT BAGHDAD, P.O. Box 2324 Alwiyah, Sa'adoun Street, Shaheen Building, Dard Al–Pasha, Baghdad, Iraq [FRYK]
GENERALEXPORT BEIJING, Unit 08–06/07, Liang Ma Tower, 8 North Dong San Huan Road, Chao Yang District, Beijing, People's Republic of China [FRYK]
GENERALEXPORT BRATISLAVA (a.k.a. YUGOTOURS), Palisady 31/II, 81106 Bratislava, Slovak Republic [FRYK]
GENERALEXPORT BUCHAREST, P.O. 22, Bd. N Balcescu Nr. 26, Sector 1, Bucharest, Romania [FRYK]
GENERALEXPORT BUDAPEST, Vaci Utca 19–21 (5th Floor), 1052 Budapest V, Hungary [FRYK]
GENERALEXPORT CAIRO, 21, Ahmed Heshmet Str. Zamalek, 1st Floor, Suite 4, Cairo, Egypt [FRYK]
GENERALEXPORT DAMASCUS, P.O. Box 2883, Tajhiz Street, Kardous Building, Damascus, Syria [FRYK]
GENERALEXPORT ISTANBUL (a.k.a. GENERALEXPORT LIAISON OFFICE), Dag. Apt. Daire No. 10, Cumhuriyet Cad. No. 10, Elmadag, Istanbul, Turkey [FRYK]
GENERALEXPORT KHARTOUM (a.k.a. GENERALEXPORT REPRESENTATIVE OFFICE; a.k.a. GENEX LTD. SUDAN), P.O. Box 6013, El Nugumi Str., 10 Khartoum, Sudan [FRYK]
GENERALEXPORT KIEV, Kiev, Ukraine [FRYK]
GENERALEXPORT KUWAIT, P.O. Box 1661 Safat, 13017 Safat Al Kuwait, Kuwait [FRYK]
GENERALEXPORT LIAISON OFFICE (a.k.a. GENERALEXPORT ISTANBUL), Dag. Apt. Daire No. 10, Cumhuriyet Cad. No. 10, Elmadag, Istanbul, Turkey [FRYK]
GENERALEXPORT LOME (a.k.a. GENEX LOME — TOGO), P.O. Box 4410, Lome, Togo [FRYK]
GENERALEXPORT MOSCOW, Ul. Raevskogo 4, 121248 Moscow, Russia [FRYK]
GENERALEXPORT NORILSK, Norilsk, Russia [FRYK]
GENERALEXPORT PRAGUE (a.k.a. YUGOTOURS), Stepanska 57/II, 11000 Prague, Czech Republic [FRYK]
GENERALEXPORT REPRESENTATIVE OFFICE (a.k.a. GENERALEXPORT KHARTOUM; a.k.a. GENEX LTD. SUDAN), P.O. Box 6013, El Nugumi Str., 10 Khartoum, Sudan [FRYK]
GENERALEXPORT RIGA, Kirowa 21, 2 floor, kv. 4, Riga, Latvia [FRYK]
GENERALEXPORT SAINT PETERSBURG, Kirowski Prospekt 26/28 kv 101, St. Petersburg, Russia [FRYK]

GENERALEXPORT SOCHI, Pirogowa 30 a, Sochi, Russia [FRYK]
GENERALEXPORT SOFIA, Aleksandar Stambolijski 49/III, 1000 Sofia, Bulgaria [FRYK]
GENERALEXPORT TASHKENT, Tashkent, Uzbekistan [FRYK]
GENERALEXPORT TEHRAN, P.O. Box 11365–7633, Str. Kharim Khane zand No. 1/53, Tehran, Iran [FRYK]
GENERALEXPORT ULAN BATOR, 6 Mikrorajon, Dom 41, Kvartira 9/4, Ulan Bator, Mongolia [FRYK]
GENERALEXPORT VOLGOGRAD, Chuikowa 37, 4 floor, kv. 4, Volgograd, Russia [FRYK]
GENERALEXPORT WARSAW, Ul. Wspolna 35 m. 8, 00–519 Warszawa, Poland [FRYK]
GENERALEXPORT YEREVAN, Yerevan, Armenia [FRYK]
GENEX (a.k.a. GENERALEXPORT), Belgrade, Serbia [FRYK]
GENEX–AGRAR, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX–ENGINEERING, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX–INVEST, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX KRISTAL, Belgrade, Serbia [FRYK]
GENEX LOME — TOGO (a.k.a. GENERALEXPORT LOME), P.O. Box 4410, Lome, Togo [FRYK]
GENEX LTD. SUDAN (a.k.a. GENERALEXPORT KHARTOUM; a.k.a. GENERALEXPORT REPRESENTATIVE OFFICE), P.O. Box 6013, El Nugumi Str., 10 Khartoum, Sudan [FRYK]
GENEX MAGREB, Tunisia [FRYK]
GENEX–METALS, Post Office Box 636, Narodnih Heroja 43, 11070 Novi Beograd, Serbia [FRYK]
GENEX–PHARM, CHEMICALS AND CRUDE OIL, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX–REPRESENTATION, Post Office Box 636, Dure Dakovica 31, 11000 Belgrade, Serbia [FRYK]
GENEX–TEXTILES, LEATHER AND FOOTWEAR, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX–TIMBER, PAPER AND PRINTING, Post Office Box 636, Narodnih Heroja 43, 11070 Novi Beograd, Serbia [FRYK]
GEOINSTITUT, Rovinjska 12, 11000 Belgrade, Serbia [FRYK]
GLIMMER MARITIME S.A., Panama City, Panama, c/o Beogradska Plovidba, Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]
GLOBAL, Novi Sad, Vojvodina (Serbia) [FRYK]
GOJKOVIC, Maja, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1963) (individual) [FRYK]
GOLD INTERNATIONAL BANKA D.D., Belgrade, Serbia [FRYK]
GOSA, 11420 Smederevska Palanka, Industrijska 70, Serbia [FRYK]
GOSA, Smederevo, Serbia [FRYK]
GRANEXPORT, Belgrade, Serbia [FRYK]
GRUPO ICD–PAMS–SG, Belgrade, Serbia [FRYK]
GUMAPLAST, Indija, Vojvodina (Serbia) [FRYK]
HELINCO LTD., Amerikis 10, Athens 134, Greece [FRYK]
HELSER LTD., 7 Lassani Street, Thiseos 64 Ampelokipi, Thessaloniki, Greece [FRYK]
HEMOFARM, Vrsac, Vojvodina (Serbia) [FRYK]
HEMPRO — EXPORT UND IMPORT GMBH, Luisenstrasse 46 IV, 1040 Berlin, Germany [FRYK]
HEMPRO–BELGRADE REPRESENTATION, Str. Uiliam Gladston 38 fl 1, 1000 Sofia, Bulgaria [FRYK]
HEMPRO BELGRADE, Mala Stepanska 15, Prague, Czech Republic [FRYK]
HEMPRO EXPORT UND IMPORT GMBH, Luisenstrasse 46 IV, 1040 Berlin, Germany [FRYK]
HEMPRO–JUGOSLAWISCH–DEUTSCHE GMBH, Eschersheimer Landstrasse 61, 6000 Frankfurt am Main, Germany [FRYK]
HEMPRO, Belgrade, Serbia [FRYK]
HEMPRO, Kutuzovskii Prospekt d 13 kv 2, Moscow, Russia [FRYK]
HIP–PETROHEMIJA, Pancevo, Vojvodina (Serbia) [FRYK]
HIPOL, Odzaci, Serbia [FRYK]
HIPOZAL BANKA (All offices worldwide) [FRYK]
HISAR — FABRIKA ZA PRERADU VOCA I POVRCA (a.k.a. CANNED FRUIT AND VEGETABLE PRODUCTION OF PROKUPLJE), Prokuplje, Serbia [FRYK]
I.P.T. COMPANY, INC., Warminster, Pennsylvania, U.S.A. [FRYK]
IKARUS, Belgrade, Serbia [FRYK]
IKL (a.k.a. INDUSTRIJA KOTRLJAJUCIH LEZAJA), Kneza Danila 23–25, 11000 Belgrade, Serbia [FRYK]
IMK 14 OKTOBAR (a.k.a. METALWORKING MACHINES AND COMPONENTS INDUSTRY 14 OCTOBER), Krusevac, Serbia [FRYK]
IMLEK, Zajecar, Serbia [FRYK]
IMPEX OVERSEAS CORPORATION, New York, New York, U.S.A. [FRYK]
IMPEXPRODUKT, Wipplingerstrasse 36, 1010 Vienna, Austria [FRYK]
IMR — INDUSTRIJA MOTORA RAKOVICA (a.k.a. MOTOR INDUSTRY OF RAKOVICA), Belgrade, Serbia [FRYK]
IMT — INDUSTRIJA MASINA I TRAKTORA (a.k.a. MACHINES AND TRACTORS INDUSTRY), Belgrade, Serbia [FRYK]
INCETRA ETABLISSEMENT S.A., Corso Elvezia 10/II, Lugano, Switzerland [FRYK]
INCETRA ETABLISSEMENT S.A., Vaduz, Liechtenstein [FRYK]
INDUSTRIJA KABLOVA, Svetozarevo, Serbia [FRYK]
INDUSTRIJA KOTRLJAJUCIH LEZAJA (a.k.a. IKL), Kneza Danila 23–25, 11000 Belgrade, Serbia [FRYK]
INEC ENGINEERING CO. LTD., 175 Regent Street, London W1, England [FRYK]
INEC UK LTD., R/O Albion Street, London W2 2AS, England [FRYK]
INEX (a.k.a. INEX–INTEREXPORT LTD; a.k.a. INTEREXPORT LTD. CO.), 27 Marta 69, Belgrade, Serbia [FRYK]
INEX AG, Bahnhofquai 15, 8001 Zurich, Switzerland (All offices worldwide) [FRYK]
INEX BANKA D.D. (All offices worldwide) [FRYK]
INEX FRANCE SARL, 40 rue des Mathurins, 75008 Paris, France [FRYK]
INEX GMBH (a.k.a. INEX IMPORT EXPORT GMBH) (All offices worldwide) [FRYK]
INEX IMPORT EXPORT GMBH (a.k.a. INEX GMBH) (All offices worldwide) [FRYK]
INEX–INTEREXPORT (All offices worldwide) [FRYK]
INEX–INTEREXPORT ENGINEERING, 4, Shawarbi Street, Apt. 15, Cairo, Egypt [FRYK]
INEX–INTEREXPORT HIP DEVELOPMENT AND ENGINEERING CONSORTIUM TRIPOLI, That Al Emad Complex, Tripoli, Libya [FRYK]
INEX–INTEREXPORT LTD (a.k.a. INEX; a.k.a. INTEREXPORT LTD. CO.), 27 Marta 69, Belgrade, Serbia [FRYK]
INEX ITALIANA SRL (All offices worldwide) [FRYK]
INEX PETROL AG, Bahnhofquai 15, 8001 Zurich, Switzerland [FRYK]
INEX PETROL AG, Karntner Ring 17/15, A–1010 Vienna, Austria [FRYK]
INEX TOURS INTERNATIONAL SRL, Via Vittor Pisani, 20124 Milan, Italy [FRYK]
INEX TURIST, Belgrade, Serbia [FRYK]
INEXAMER COMMERCIAL CORPORATION, New York, New York, U.S.A. [FRYK]
INEXPRODUCT LTD., 40–43, Chancery Lane, London W.C. 2, England [FRYK]
INKOTEHNA, Belgrade, Serbia [FRYK]
INLIT SRL, V. le Vittorio Veneto 24, 20124 Milan, Italy [FRYK]
INOS, Belgrade, Serbia [FRYK]
INSTITUT MIHAJLO PUPIN, Belgrade, Serbia [FRYK]
INSTITUT ZA SISTEME, Belgrade, Serbia [FRYK]
INSTITUT ZA SPOLJNU TRGOVINU (a.k.a. FOREIGN TRADE INSTITUTE), Belgrade, Serbia [FRYK]
INTEREXPORT BRUXELLES, Blvd. E Jacqmain 162, WTC–V19e etage, 1000 Brussels, Belgium [FRYK]
INTEREXPORT COMPANY LTD., Mutende Road, Woodlands Residential Area, Lusaka, Zambia [FRYK]
INTEREXPORT LTD. CO. (a.k.a. INEX; a.k.a. INEX–INTEREXPORT LTD), 27 Marta 69, Belgrade, Serbia [FRYK]
INTEREXPORT, Belgrade, Serbia [FRYK]
INTERKOMERC BANKA A.D., Belgrade, Serbia [FRYK]
INTERKOMERC, Belgrade, Serbia [FRYK]
INTERNATIONAL GENEX BANK (All offices worldwide) [FRYK]
INTERNATIONAL TRADE MARKETING, Belgrade, Serbia [FRYK]
INTERPROGRESS A.G., Renggerstrasse 50 CH–8037, Zurich, Switzerland [FRYK]
INTERPROGRESS EUROPE, 16 Avenue Hoche, 75008 Paris, France [FRYK]
INTERPROGRESS FRANKFURT (a.k.a. INTERPROGRESS GMBH), Hermann–Mattern Strasse 46/III, Zweigstelle, Berlin, Germany [FRYK]
INTERPROGRESS FRANKFURT (a.k.a. INTERPROGRESS GMBH), Reuterweg 93, 6000 Frankfurt am Main, Germany [FRYK]

INTERPROGRESS GMBH (a.k.a. INTERPROGRESS FRANKFURT), Hermann–Mattern Strasse 46/III, Zweigstelle, Berlin, Germany [FRYK]
INTERPROGRESS GMBH (a.k.a. INTERPROGRESS FRANKFURT), Reuterweg 93, 6000 Frankfurt am Main, Germany [FRYK]
INTERPROGRESS IMPORT EXPORT CO. LTD., 63–66 Hatton Garden, EC1N 8LE London, England [FRYK]
INTERPROGRESS PRT. LTD., P.O. Box 937, Pymble NSW 2073, Sydney, Australia [FRYK]
INTERPROGRESS S.T.R.I., 16 Avenue Hoche, 75008 Paris, France [FRYK]
INTERPROGRESS TRADING CORPORATION, New York, New York, U.S.A. [FRYK]
INTERSERVIS, Vojvodina (Serbia) [FRYK]
INTERSPED, Subotica, Serbia [FRYK]
INTERTEHNA, Belgrade, Serbia [FRYK]
INTYBRA REPRESENTACAO & COMERCIO SA, Rua Visc de Inhauma 134 S/927, Rio de Janeiro, Brazil [FRYK]
INVEST–COMMERCE SARL, 65 Rue de Paris, 92110 Clichy, France [FRYK]
INVEST IMPORT, Belgrade, Serbia (All offices worldwide) [FRYK]
INVESTBANKA (a.k.a. OSNOVNA PRIVREDNO–INVESTICIONA BANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
INVESTBANKA BELGRADE (All offices worldwide) [FRYK]
INVESTINZENJERING, Belgrade, Serbia [FRYK]
ITALKOPRODUCT, Piazza Cavour 3, 20121 Milan, Italy [FRYK]
ITRANS, Serbia [FRYK]
IVKOVIC, Branislav, Minister of Science and Technology, Republic of Serbia, Serbia (DOB 1952) (individual) [FRYK]
IVO LOLA RIBAR — BEOGRAD, Belgrade, Serbia [FRYK]
J.I.B. INSPECTION LTD. (a.k.a. JUGOINSPEKT (CYPRUS) LTD.; a.k.a. JUGOINSPEKT LTD.), 57 Ledra St, No. 7, Nicosia, Cyprus [FRYK]
J.U.B. HOLDINGS LTD, 2 Sofoules Street, Chanteclair Bldg., 2nd Floor, No. 205, Nicosia, Cyprus; registered address: Xenios Commercial Centere, Archbishop Makarios III Avenue, Suite 504, Nicosia, Cyprus [FRYK]
JABUKA, Belgrade, Serbia [FRYK]
JANKOVIC, Dragoljub, Minister of Justice, Republic of Serbia, Serbia (DOB 1945) (individual) [FRYK]
JAT (a.k.a. JAVNO PREDUZECE ZA VAZDUSNI SAOBRACAJ; a.k.a. JUGOSLOVENSKI AEROTRANSPORT; a.k.a. YUGOSLAV AIRLINES), Belgrade, Serbia (All offices worldwide) [FRYK]
JAVNO PREDUZECE PTT SRBIJE (a.k.a. PUBLIC ENTERPRISE OF POST, TELEGRAPH, AND TELEPHONE OF SERBIA), Serbia [FRYK]
JAVNO PREDUZECE ZA VAZDUSNI SAOBRACAJ (a.k.a. JAT; a.k.a. JUGOSLOVENSKI AEROTRANSPORT; a.k.a. YUGOSLAV AIRLINES), Belgrade, Serbia (All offices worldwide) [FRYK]
JB INTERNATIONAL SHIPPING AND COMMERCIAL GMBH, Alter Wall 36, 2000 Hamburg 11, Germany [FRYK]
JIK BANKA D.D. (a.k.a. JUGOSLOVENSKA IZVOZNA I KREDITNA BANKA D.D.; a.k.a. YUGOSLAV EXPORT AND CREDIT BANK INC.), P.O. Box 234, Knez Mihailova 42, 11000 Belgrade, Serbia (All offices worldwide) [FRYK]
JNA (a.k.a. JUGOSLOVENSKA NARODNA ARMIJA; a.k.a. YUGOSLAV NATIONAL ARMY), Belgrade, Serbia [FRYK]
JOINT REPRESENTATIVE OFFICE OF YUGOSLAV BANKS, Mosfiljmovskaja 42, 7332 Moscow, Russia [FRYK]
JOINT REPRESENTATIVE OFFICE OF YUGOSLAV BANKS, No. 17 2nd Street Pakistan Avenue, Dr. Beheshti Avenue, Teheran, Iran [FRYK]
JOINT REPRESENTATIVE OFFICE OF YUGOSLAV BANKS, Piazza Santa Maria Beltrade 2, 20121 Milan, Italy [FRYK]
JOINT REPRESENTATIVE OFFICE OF YUGOSLAV BANKS, Ta Yuan Cun–Dipl. Office bldg. 2–8–1, Beijing, People's Republic of China [FRYK]
JOVANOVIC, Perisa, Secretary for Legislation, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1946) (individual) [FRYK]
JOVANOVIC, Zivadin, Vice President, Socialist party of Serbia; Minister of Foreign Affairs (a.k.a. Federal Secretary for Foreign Affairs), Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 14 Nov 1938; POB Oparic, the commune of Rekovac, Serbia) (individual) [FRYK]
JRB — YUGOSLAV RIVER SHIPING COMPANY, Belgrade, Serbia [FRYK]
JUBANKA A.D., Belgrade, Serbia [FRYK]
JUBMES A.D., Belgrade, Serbia [FRYK]
JUGOAGENT, Belgrade, Serbia [FRYK]
JUGOAGENT, HAMBURG REPRESENTATIVE OFFICE, Hamburg, Germany [FRYK]
JUGOALAT, Novi Sad, Vojvodina (Serbia) [FRYK]
JUGOAUTO, Belgrade, Serbia [FRYK]
JUGOAZBEST, Milanovac, Serbia [FRYK]
JUGOBANKA (a.k.a. BANK FOR FOREIGN TRADE AD; a.k.a. JUGOBANKA D.D.; a.k.a. YUGOBANKA) (All offices worldwide) [FRYK]
JUGOBANKA D.D. (a.k.a. BANK FOR FOREIGN TRADE AD; a.k.a. JUGOBANKA; a.k.a. YUGOBANKA) (All offices worldwide) [FRYK]
JUGOBROD, Belgrade, Serbia [FRYK]
JUGODRVO, Belgrade, Serbia [FRYK]
JUGODUVAN, Nis, Serbia [FRYK]
JUGOELEKTRO, Belgrade, Serbia [FRYK]
JUGOELEKTRO, BERLIN BRANCH OFFICE, Berlin, Germany [FRYK]
JUGOEXPORT GMBH, Bronnerstrasse 17, 6000 Frankfurt am Main 1, Germany [FRYK]
JUGOEXPORT, Belgrade, Serbia [FRYK]
JUGOHEMIJA, Belgrade, Serbia [FRYK]
JUGOINSPEKT (CYPRUS) LTD. (a.k.a. J.I.B. INSPECTION LTD.; a.k.a. JUGOINSPEKT LTD.), 57 Ledra St, No. 7, Nicosia, Cyprus [FRYK]
JUGOINSPEKT LTD. (a.k.a. J.I.B. INSPECTION LTD.; a.k.a. JUGOINSPEKT (CYPRUS) LTD.), 57 Ledra St, No. 7, Nicosia, Cyprus [FRYK]
JUGOINSPEKT, Serbia [FRYK]
JUGOLABORATORIJA, Belgrade, Serbia [FRYK]
JUGOLEK, Belgrade, Serbia [FRYK]
JUGOMETAL, 92 Archbishop Makarios III Avenue, Nicosia, Cyprus [FRYK]
JUGOMETAL, Belgrade, Serbia [FRYK]
JUGOPAPIR, Belgrade, Serbia [FRYK]
JUGOPETROL, Belgrade, Serbia [FRYK]
JUGOPREVOZ, Belgrade, Serbia [FRYK]
JUGOSKANDIA A.B., Noerrebrogade 26, 2200 Copenhagen N, Denmark [FRYK]
JUGOSKANDIA AB, Raadhusgt 17, 0158 Oslo 1, Norway [FRYK]
JUGOSKANDIA AB, Sveavagen 59, 113 59 Stockholm, Sweden [FRYK]
JUGOSKANDIA AB, Topeliuksenkatu 3b, A5, 00260 Helsinki 26, Finland [FRYK]
JUGOSKANDIK D.D. (All offices worldwide) [FRYK]
JUGOSLOVENSKA BANKA ZA MEDJUNARODNU EKONOMSKU SARADNJU (a.k.a. YUBMES; a.k.a. YUGOSLAV BANK FOR INTERNATIONAL ECONOMIC COOPERATION) (All offices worldwide) [FRYK]
JUGOSLOVENSKA IZVOZNA I KREDITNA BANKA D.D. (a.k.a. JIK BANKA D.D.; a.k.a. YUGOSLAV EXPORT AND CREDIT BANK INC.), P.O. Box 234, Knez Mihailova 42, 11000 Belgrade, Serbia (All offices worldwide) [FRYK]
JUGOSLOVENSKA NARODNA ARMIJA (a.k.a. JNA; a.k.a. YUGOSLAV NATIONAL ARMY), Belgrade, Serbia [FRYK]
JUGOSLOVENSKA POMORSKA AGENCIJA (a.k.a. YUGOSLAV SHIPPING AGENCY), Belgrade, Serbia [FRYK]
JUGOSLOVENSKI AEROTRANSPORT (a.k.a. JAT; a.k.a. JAVNO PREDUZECE ZA VAZDUSNI SAOBRACAJ; a.k.a. YUGOSLAV AIRLINES), Belgrade, Serbia (All offices worldwide) [FRYK]
JUGOTEHNA, Belgrade, Serbia [FRYK]
JUMCO, Vranje, Serbia [FRYK]
KAPITAL BANKA A.D., Belgrade, Serbia [FRYK]
KARIC BANKA CYPRUS OFFSHORE BANKING UNIT, 66 Makarios III Avenue, Cronos Court, 2nd Floor, Nicosia, Cyprus [FRYK]
KARIC BANKA, Palmira Toljatija 3, 11070 Novi Beograd, Serbia [FRYK]
KARIC, Palmira Bogoljub, Minister without Portfolio, Republic of Serbia, Toljatija 3, 11070, Novi Beograd, Serbia (DOB 17 Jan 1954; POB Pec, Kosovo) (individual) [FRYK]
KERTES, Mihalj, Customs Director, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 29 AUG 1947; POB Palanka, Vojvodina, Serbia) (individual) [FRYK]
KIKIC, Zlatan, Director, MFA Europe (a.k.a. Director, European Department), Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1940) (individual) [FRYK]
KLUZ, Belgrade, Serbia [FRYK]
KMG TRUDBENIK, Belgrade, Serbia [FRYK]
KNEZEVIC, Zoran, Minister of Justice, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1948) (individual) [FRYK]

KOIMPEX, Novi Sad, Vojvodina (Serbia) [FRYK]
KOMERCIJALNA BANKA A.D., Belgrade, Serbia [FRYK]
KOMGRAP (a.k.a. KOMGRAP–GRO), Terazije 4, P.O. Box 468, 11001 Belgrade, Serbia [FRYK]
KOMGRAP–GRO (a.k.a. KOMGRAP), Terazije 4, P.O. Box 468, 11001 Belgrade, Serbia [FRYK]
KOMNENIC, Milan, Minister for Information, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1940) (individual) [FRYK]
KONSTRUKTOR, Pancevo, Vojvodina (Serbia) [FRYK]
KOOPERATIVA, Novi Sad, Vojvodina (Serbia) [FRYK]
KOPAONIK, Belgrade, Serbia [FRYK]
KOPRODUCT LTD., 2 Albion Place, King's Terrace, Galena Road, London W6 0QT, England [FRYK]
KOPRODUKT (a.k.a. KOPRODUKT ZA UNUTRASNJU I SPOLJNU TRGOVINU I ZASTUPANJE STRANIH PREDUZECA), Bulevar Marsala Tita 6, 21000 Novi Sad, Vojvodina (Serbia) [FRYK]
KOPRODUKT ZA UNUTRASNJU I SPOLJNU TRGOVINU I ZASTUPANJE STRANIH PREDUZECA (a.k.a. KOPRODUKT), Bulevar Marsala Tita 6, 21000 Novi Sad, Vojvodina (Serbia) [FRYK]
KOSOVO ELECTRIC POWER COMPANY (a.k.a. ELEKTROPRIVREDA KOSOVA), Pristina, Kosovo (Serbia) [FRYK]
KOSOVO EXPORT IMPORT GMBH (a.k.a. EXIMKOS; a.k.a. KOSOVO GMBH; a.k.a. OMEGA GMBH), Maillingerstrasse 34, 8000 Munich 2, Germany [FRYK]
KOSOVO GMBH (a.k.a. EXIMKOS; a.k.a. KOSOVO EXPORT IMPORT GMBH; a.k.a. OMEGA GMBH), Maillingerstrasse 34, 8000 Munich 2, Germany [FRYK]
KOSOVSKA BANKA (All offices. Bank is headquartered in Pristina, Kosovo (Serbia)) [FRYK]
KOSTIC, Jugoslav, Minister without Portfolio, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1939) (individual) [FRYK]
KOVAC, Dr. Miodrag, Minister of Labor, Health and Social Work, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1948) (individual) [FRYK]
KOVACEVIC, Dejan, Minister of Construction Industries (a.k.a Minister of Civil Engineering), Republic of Serbia, Serbia (DOB 1937) (individual) [FRYK]
KRAJISKA BANKA A.D., Zemun, Serbia [FRYK]
KRASIC, Zoran (a.k.a. KRASNIC, Zoran), Minister of Trade, Republic of Serbia, Serbia (DOB 1956) (individual) [FRYK]
KRASNIC, Zoran (a.k.a. KRASIC, Zoran), Minister of Trade, Republic of Serbia, Serbia (DOB 1956) (individual) [FRYK]
KREDITNA BANKA BEOGRAD (All offices worldwide) [FRYK]
KREDITNA BANKA BEOGRAD CYPRUS OFFSHORE BANKING UNIT, Nicosia, Cyprus [FRYK]
KREDITNA BANKA PRISTINA (All offices worldwide) [FRYK]
KREDITNA BANKA SUBOTICA (All offices worldwide) [FRYK]
KRGA, Branko, Chief, Intelligence Department (a.k.a. Head of Second Department, Intelligence), Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 18 FEB 1945) (individual) [FRYK]
KRUSEVAC PROMET, Krusevac, Serbia [FRYK]
KRUSIK, Valjevo, Serbia [FRYK]
KUGLEX, Belgrade, Serbia [FRYK]
KULSKA BANKA A.D., Kula, Serbia [FRYK]
KUTLESIC, Dr. Vladan, Deputy Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1955; POB Belgrade, Serbia) (individual) [FRYK]
LAMEDON TRADING LTD., Evagoras Papachristoufourou Street, Themis Court Bldg, 1st Floor, P.O. Box 561, Limassol, Cyprus [FRYK]
LAZIC, Djura, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1953) (individual) [FRYK]
LETEKS — LESKOVAC (a.k.a. WOOL AND TEXTILE INDUSTRY OF LESKOVAC), Leskovac, Serbia [FRYK]
LILIC, Zoran, Vice President, Socialist party of Serbia; Deputy Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 27 Aug 1953; POB Brza Palanka, Serbia) (individual) [FRYK]
LIRIJA, Prizren, Kosovo (Serbia) [FRYK]
LITALIA SHIPPING S.A., Panama City, Panama; c/o Beogradska Plovidba, Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]
LIVNICA, Kikinda, Vojvodina (Serbia) [FRYK]
LZTK, Kikinda, Vojvodina (Serbia) [FRYK]
MACHINE INDUSTRY OF NIS (a.k.a. MIN — MASINSKA INDUSTRIJA), Nis, Serbia [FRYK]
MACHINES AND TRACTORS INDUSTRY (a.k.a. IMT — INDUSTRIJA MASINA I TRAKTORA), Belgrade, Serbia [FRYK]
MAG INTERTRADE, Serbia [FRYK]
MAG PETROL, Belgrade, Serbia [FRYK]
MAGNOHROM, Kraljevo, Serbia [FRYK]
MARJANOVIC, Mirko, Prime Minister, Republic of Serbia, Serbia (DOB 27 Jul 1937; POB Knin, Croatia) (individual) [FRYK]
MARKONIZONI, Serbia [FRYK]
MARKOVIC, Ratko, Deputy Prime Minister, Republic of Serbia, Serbia (DOB 1944) (individual) [FRYK]
MASINOKOMERC, Belgrade, Serbia [FRYK]
MASINOKOMERC, Knez Mihajlova 1–3, P. Fah 232, 11000 Belgrade, Serbia [FRYK]
MATIC, Goran, Minister without Portfolio, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1959) (individual) [FRYK]
MATKOVIC, Dusko, Vice President, Socialist party of Serbia; Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 10 Apr 1956; POB Bitolj, F.Y.R.O.M.) (individual) [FRYK]
MATROZ — CELLULOSE AND PAPER INDUSTRY (a.k.a. MATROZ SREMSKA MITROVICA), Sremska Mitrovica, Vojvodina (Serbia) [FRYK]
MATROZ SREMSKA MITROVICA (a.k.a. MATROZ — CELLULOSE AND PAPER INDUSTRY), Sremska Mitrovica, Vojvodina (Serbia) [FRYK]
MB BANKA A.D., Nis, Serbia [FRYK]
MEDCHOICE HOLIDAYS LTD. (a.k.a. YUGOTOURS LTD.), Chesham House, 150 Regent Street, London WIR 6BB, England [FRYK]
MEDIFARM, Belgrade, Serbia [FRYK]
MEDIFINANCE BANK (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
MEDISA SARAJEVO, Sarajevo, Bosnia–Herzegovina [FRYK]
MERIMA, Krusevac, Serbia [FRYK]
MESOVITA BANKA D.D. (a.k.a. PKB BANKA; a.k.a. POLJOPRIVREDNI KREDITNA BEOGRAD BANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
METAL AND PLASTIC COMPONENTS PRODUCTION (a.k.a. PROGRES PRIZREN), Prizren, Kosovo (Serbia) [FRYK]
METAL UND STAHL HANDELS GMBH, Seilergasse 14, 1010 Vienna, Austria [FRYK]
METAL UND STAHL HANDELS GMBH, Strase Lutherana Corp. D–2, Bucharest, Romania [FRYK]
METALAC, Suboticka 23, 11050 Belgrade, Serbia [FRYK]
METALCHEM BOMBAY, Yugoslav Trade Commission Office, Vaswani Mansion 1st Floor, 120/4 Dinsha Caccha Road, Bombay 400020, India [FRYK]
METALCHEM DIS TICARET LTD, Iskele Cadd., Iskele Arkasi, Sokak No 13 (Cami Yani), Uskudar–Salacak, Istanbul, Turkey [FRYK]
METALCHEM FRANCE S.A.R.L., 16 Avenue Franklin Roosevelt, 75008 Paris, France [FRYK]
METALCHEM INTERNATIONAL LTD., 79/83 Great Portland Street, London W1N 5FA, England [FRYK]
METALCHEMICAL COMMERCIAL CORPORATION, New York, New York, U.S.A. [FRYK]
METALIA S.R.L., Via Vittor Pisani 14, 20124 Milan, Italy [FRYK]
METALLIA HANDELS GMBH, Berliner Allee 61, Postf. 20 05 20, 4000 Dusseldorf 1, Germany [FRYK]
METALLIA MADRID, Plaza Castillia 3/1702, 28046 Madrid, Spain [FRYK]
METALLURGICAL COOPERATIVE OF SMEDEREVO (a.k.a. MKS — METALURSKI KOMBINAT SMEDEREVO), Smederevo, Serbia [FRYK]
METALOPLASTIKA, Jevrenova br 111, 15000 Sabac, Serbia [FRYK]
METALS–BANKA A.D., Novi Sad, Serbia [FRYK]
METALSERVIS, Belgrade, Serbia [FRYK]
METALWORKING MACHINES AND COMPONENTS INDUSTRY 14 OCTOBER (a.k.a. IMK 14 OKTOBAR), Krusevac, Serbia [FRYK]
METTA TRADING LTD., 79–83 Great Portland Street, London WIN 5FA, England [FRYK]
MG NORD TRADING COMPANY, Belgrade, Serbia [FRYK]

MILACIC, Borislav, Minister of Finances, Republic of Serbia, Serbia (DOB 1953) (individual) [FRYK]
MILENKOVIC, Tomislav, Minister of Labor, and Veteran and Public Welfare Issues, Republic of Serbia, Serbia (DOB 1950) (individual) [FRYK]
MILICEVIC, Leposava, Minister of Public Health (a.k.a. Minister of Health), Republic of Serbia, Serbia (DOB 1950) (individual) [FRYK]
MILOSEVIC, Slobodan, President, Federal Republic of Yugoslavia; President, Socialist party of Serbia (DOB 20 AUG 1941; POB Pozarevac, Serbia) (individual) [FRYK]
MILUTINOVIC, Milan, President, Republic of Serbia (DOB 19 DEC 1942; POB Belgrade, Serbia) (individual) [FRYK]
MIN — MASINSKA INDUSTRIJA (a.k.a. MACHINE INDUSTRY OF NIS), Nis, Serbia [FRYK]
MINEL, Belgrade, Serbia [FRYK]
MINEX AD. CO., 33 Vsegradska Street, Nis, Serbia [FRYK]
MINING METALLURGY–CHEMICAL COMBINATION OF LEAD AND ZINC (a.k.a. TREPCA–KOSOVSKA MITROVICA), Kosovska Mitrovica, Kosovo (Serbia) [FRYK]
MIRCIC, Miroslav, Minister for Liaison with Serbs Living Outside Serbia (a.k.a. Minister of Relations with Serbs Outside of Serbia) Republic of Serbia, Serbia (DOB 1956) (individual) [FRYK]
MITROVIC, Luka, Minister of Industry, Republic of Serbia, Serbia (DOB 1951) (individual) [FRYK]
MKS — METALURSKI KOMBINAT SMEDEREVO (a.k.a. METALLURGICAL COOPERATIVE OF SMEDEREVO), Smederevo, Serbia [FRYK]
MOMCILOV, Paja, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1948) (individual) [FRYK]
MONTE ROYAL BANK A.D., Belgrade, Serbia [FRYK]
MONTENEGRO EXPORT NIKSIC, 1052 Vaci u 19/21, Budapest, Hungary [FRYK]
MONTENEGRO EXPORT YUGOSLAVIA, Kuruclesi ut 19/b, Budapest II, Hungary [FRYK]
MONTEX BANKA D.D. (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
MONTINVEST, Bulevar Revolucije 84, P.O.Box 821, 11001 Belgrade, Serbia [FRYK]
MONTINVEST, Wilhelm–Leuschner Strasse 68, 6000 Frankfurt am Main 1, Germany [FRYK]
MORAVA, Serbia [FRYK]
MOSTOGRADNJA–GRADJEVNO PREDUZECE, Vlajkoviceva 19A, 11000 Belgrade, Serbia [FRYK]
MOTOR INDUSTRY OF RAKOVICA (a.k.a. IMR — INDUSTRIJA MOTORA RAKOVICA), Belgrade, Serbia [FRYK]
NACIONAL SHOP, Belgrade, Serbia [FRYK]
NACIONAL, Serbia [FRYK]
NAFTAGAS–PROMET, Novi Sad, Vojvodina (Serbia) [FRYK]
NAFTAGAS–REFINERIJA, Pancevo, Vojvodina (Serbia) [FRYK]
NAFTAGAS, Novi Sad, Vojvodina (Serbia) [FRYK]
NAP–COMBICK OEL GMBH, Windmuehlstrasse 1, 6000 Frankfurt am Main 1, Germany [FRYK]
NARODNA BANKA JUGOSLAVIJE (a.k.a. BANQUE NATIONALE DE YOUGOSLAVIE; a.k.a. NATIONAL BANK OF YUGOSLAVIA), Belgrade, Serbia [FRYK]
NARODNA BANKA SRBIJE (a.k.a. NATIONAL BANK OF SERBIA), Belgrade, Serbia [FRYK]
NATIONAL BANK OF SERBIA (a.k.a. NARODNA BANKA SRBIJE), Belgrade, Serbia [FRYK]
NATIONAL BANK OF YUGOSLAVIA (a.k.a. BANQUE NATIONALE DE YOUGOSLAVIE; a.k.a. NARODNA BANKA JUGOSLAVIJE), Belgrade, Serbia [FRYK]
NEDELJKOVIC, Dr. Miroslav, Minister of Family Care (a.k.a. Minister of Welfare), Republic of Serbia, Serbia (DOB 1955; POB Gornji Milanovac, Serbia) (individual) [FRYK]
NENADOVIC, Slobodan, Minister for Domestic Trade, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1963) (individual) [FRYK]
NEOPLANTA, Novi Sad, Serbia [FRYK]
NIGERIAN ENGINEERING AND CONSTRUCTION CO. LTD., Ebute–Metta, Lagos, Nigeria [FRYK]
NIKOLIC, Tomislav, Deputy Prime Minister, Republic of Serbia, Serbia (DOB 15 Feb 1952; POB Kragujevac, Serbia) (individual) [FRYK]
NIKSA BANKA (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
NIS–NAFTA INDUSTRIJA SRBIJE (a.k.a. SERBIAN PETROLEUM INDUSTRY), Novi Sad, Vojvodina (Serbia) [FRYK]
NISSAL, Bulevar Veljka Vlahovica bb, 18000 Nis, Serbia [FRYK]
NOLIVEL, Belgrade, Serbia [FRYK]
NOVAKOVIC, Zoran, Deputy Minister for Foreign Affairs, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 20 SEP 1950; POB Cetinje, Montenegro, Federal Republic of Yugoslavia) (individual) [FRYK]
NOVI DOM, Belgrade, Serbia [FRYK]
NOVI SAD FAIR, Novi Sad, Serbia [FRYK]
NOVI SAD RAILROAD TRANSPORTATION ORGANIZATION (a.k.a. ZELEZNICKO TRANSPORTNO PREDUZECE NOVI SAD), Novi Sad, Vojvodina (Serbia) [FRYK]
NOVI SHIPPING COMPANY S.A., Panama City, Panama, c/o Beogradska Plovidba, Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]
NOVINSKA AGENCIJA TANJUG (a.k.a. TANJUG), Belgrade, Serbia [FRYK]
NOVKABEL, Novi Sad, Vojvodina (Serbia) [FRYK]
NOVOSADSKA BANKA D.D. (All offices. Bank is headquartered in Novi Sad, Vojvodina (Serbia)) [FRYK]
NOVOSADSKA FABRIKA KABELA, Novi Sad, Vojvodina (Serbia) [FRYK]
OBUCA, Belgrade, Serbia [FRYK]
OJDANIC, Dragoljub, Chief of the General Staff, The Armed Forces of the Federal Republic of Yugoslavia (DOB 1 JUN 1941; POB Ravni, Serbia) (individual) [FRYK]
OMEGA GMBH (a.k.a. EXIMKOS; a.k.a. KOSOVO EXPORT IMPORT GMBH; a.k.a. KOSOVO GMBH), Maillingerstrasse 34, 8000 Munich 2, Germany [FRYK]
OMNIAUTO, Belgrade, Serbia [FRYK]
OMNIKOMERC, Belgrade, Serbia [FRYK]
OPTIKA — BEOGRAD, Belgrade, Serbia [FRYK]
OSA CHARTERING, Belgrade, Serbia [FRYK]
OSA CHARTERING, Cyprus [FRYK]
OSBORNE TRADING COMPANY LTD., Berengaria Bldg., 25 Spyrou Araouzou Street, Limassol, Cyprus [FRYK]
OSNOVNA BANKA POLJOPRIVEDNA BANKA, Novi Sad, Vojvodina (Serbia) [FRYK]
OSNOVNA PRIVREDNO–INVESTICIONA BANKA (a.k.a. INVESTBANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
PALOMA WEST HANDELS GMBH, Frankfurt am Main, Germany [FRYK]
PAMUCNI KOMBINAT YUMKO, Vranje, Serbia [FRYK]
PANCEVO HEMIJSKA INDUSTRIJA, Spoljnostarcevacka 80, 26000 Pancevo, Serbia [FRYK]
PANONSKA BANKA D.D. (All offices. Bank is headquartered in Novi Sad, Vojvodina (Serbia)) [FRYK]
PAVKOVIC, Nebojsa, Commander, VJ 3rd Army, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 10 APR 1946; POB Senjski Rudnik, Despotovac Municipality, Pozarevac, Serbia) (individual) [FRYK]
PCL PELCAM TRADE LTD. (a.k.a. UBB INVESTMENTS & FINANCE), 2 Sofoules Street, Chanteclair Bldg., 2nd Floor, No. 205, Nicosia, Cyprus [FRYK]
PEKABETA, Belgrade, Serbia [FRYK]
PESIC, Dragisa, Minister of Finances, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1954) (individual) [FRYK]
PIK BECEJ, Becej, Vojvodina (Serbia) [FRYK]
PIK POZAREVAC, Pozarevac, Serbia [FRYK]
PIK SIRMIUM, Sremska Mitrovica, Vojvodina (Serbia) [FRYK]
PIK SOMBOR, Sombor, Vojvodina (Serbia) [FRYK]
PIK TAKOVO, Gornji Milanovac, Serbia [FRYK]
PIK TAMIS, Pancevo, Vojvodina (Serbia) [FRYK]
PKB (a.k.a. POLJOPRIVREDNI KOMBINAT BEOGRAD), Padinska Skela, Serbia [FRYK]
PKB BANKA (a.k.a. MESOVITA BANKA D.D.; a.k.a. POLJOPRIVREDNI KREDITNA BEOGRAD BANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
PKB COMMERCE, Belgrade, Serbia [FRYK]
POLJOPRIVREDNA BANKA OSNOVNA BANKA (All offices worldwide) [FRYK]
POLJOPRIVREDNI KOMBINAT BEOGRAD (a.k.a. PKB), Padinska Skela, Serbia [FRYK]

POLJOPRIVREDNI KREDITNA BEOGRAD BANKA (a.k.a. MESOVITA BANKA D.D.; a.k.a. PKB BANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]

POP–LAZIC, Gordana, Minister of Local Government (a.k.a. Minister of Local Self–Administration; a.k.a. Minister of Civil Engineering), Republic of Serbia, Serbia (DOB 1956) (individual) [FRYK]

POPOVIC, Ljubisa, Secretary–General of the Federal Government, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1952) (individual) [FRYK]

PORT DUNAV, Pancevo, Serbia [FRYK]

PORT OF BELGRADE, Belgrade, Serbia [FRYK]

PORT OF NOVI SAD, Novi Sad, Serbia [FRYK]

PREDUZECE ZA GAZDOVANJE SUMAMA — SRBIJASUME (a.k.a. PUBLIC FORESTRY ENTERPRISE — SRBIJASUME), Serbia [FRYK]

PREDUZETNICKA BANKA D.D. (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]

PRISTINSKA BANKA D.D. (All offices. Bank is headquartered in Pristina, Kosovo (Serbia)) [FRYK]

PRIVREDNA BANKA BEOGRAD D.D. (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]

PRIVREDNA BANKA NOVI SAD D.D. (All offices. Bank is headquartered in Novi Sad, Vojvodina (Serbia)) [FRYK]

PRIVREDNA KOMORA JUGOSLAVIJE (a.k.a. CHAMBER OF ECONOMY OF YUGOSLAVIA), Belgrade, Serbia [FRYK]

PRIVREDNA KOMORA SRBIJE (a.k.a. CHAMBER OF ECONOMY OF SERBIA), Belgrade, Serbia [FRYK]

PROGRES BAGHDAD BRANCH OFFICE, Section 929 Street, 12 House 35/9/35, Baghdad, Iraq [FRYK]

PROGRES BUCHAREST (a.k.a. PROGRES BUCUREST), B–Dul Balcesku No 32–34/I, Bucharest, Romania [FRYK]

PROGRES BUCUREST (a.k.a. PROGRES BUCHAREST), B–Dul Balcesku No 32–34/I, Bucharest, Romania [FRYK]

PROGRES INTERAGRAR, Belgrade, Serbia [FRYK]

PROGRES PRIZREN (a.k.a. METAL AND PLASTIC COMPONENTS PRODUCTION), Prizren, Kosovo (Serbia) [FRYK]

PROGRES TRADE REPRESENTATION IN IRAN, Ayattolah Teleghani Ave No. 202/V, Teheran, Iran [FRYK]

PROGRES, Belgrade, Serbia [FRYK]

PROGRESGAS TRADING, Belgrade, Serbia [FRYK]

PROGRESS BEOGRAD (a.k.a. PROGRESS BEOGRAD PREDSTAVITELYSTVO VSSSR), St. Gorkog 56 kv 112, 12 50 47 Moscow, Russia [FRYK]

PROGRESS BEOGRAD PREDSTAVITELYSTVO VSSSR (a.k.a. PROGRESS BEOGRAD), St. Gorkog 56 kv 112, 12 50 47 Moscow, Russia [FRYK]

PROGRESS BUDAPEST, Kepviselet 6, Ferenczi Istvan 12/I, 1053 Budapest, Hungary [FRYK]

PROGRESS REPRESENTATION OFFICE, Sipka No. 7, Sofia 7, Bulgaria [FRYK]

PROGRESS REPRESENTATIVE OFFICE, Szpitalna 6, Przedstawicielstvo w Warszawie, Warsaw, Poland [FRYK]

PROITAL S.R.L., Filiale Di Trieste, 34122 Trieste, Italy [FRYK]

PROITAL S.R.L., Via napo Torriani 3L/I, Milan, Italy [FRYK]

PROMIMPRO EXPORTS AND IMPORTS LTD., 70 Archbishop Makarios III Avenue, Afemia Bldg., 3rd Floor, Nicosia, Cyprus [FRYK]

PRVA JUGOSLOV.–SVAJCARSKA BANKA A.D., Belgrade, Serbia [FRYK]

PRVA PETROLETKA, Trstenik, Serbia [FRYK]

PRVA SRPSKA KOMERCIALJNA BANKA (All offices. Bank is headquartered in Nis, Serbia) [FRYK]

PRVI MAJ, 18300 Pirot, Serbia [FRYK]

PRZEDSTAWICIELSTWO JUGOSLOWIANSKIEJ HANDLU ZAGRANICZNEGO HEMPRO, Szpitalna 6 m 16, Warsaw, Poland [FRYK]

PTT JUGOSLAVIJE (a.k.a. YUGOSLAV POST, TELEGRAPH AND TELEPHONE), Belgrade, Serbia (Including all affiliates) [FRYK]

PTT SRBIJA (a.k.a. SERBIA POST, TELEGRAPH AND TELEPHONE), Belgrade, Serbia [FRYK]

PUBLIC ENTERPRISE OF POST, TELEGRAPH, AND TELEPHONE OF SERBIA (a.k.a. JAVNO PREDUZECE PTT SRBIJE), Serbia [FRYK]

PUBLIC FORESTRY ENTERPRISE — SRBIJASUME (a.k.a. PREDUZECE ZA GAZDOVANJE SUMAMA — SRBIJASUME), Serbia [FRYK]

PUTNIK, Belgrade, Serbia [FRYK]

RAD GRADJEVINSKO PREDUZECE, Belgrade, Serbia [FRYK]

RAD, Belgrade, Serbia [FRYK]

RADIO TELEVIZIJA BEOGRAD (a.k.a. RTB), Belgrade, Serbia [FRYK]

RADIO TELEVIZIJA NOVI SAD (a.k.a. RTV NOVI SAD), Novi Sad, Vojvodina (Serbia) [FRYK]

RADIO TELEVIZIJA PRISTINA (a.k.a. RTV PRISTINA), Pristina, Kosovo (Serbia) [FRYK]

RADIO TELEVIZIJA SRBIJE (a.k.a. RTV SRBIJE), Belgrade, Serbia (Including all affiliates) [FRYK]

RADOJEVIC, Dojcilo, Minister for Telecommunications, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 9 Feb 1942) (individual) [FRYK]

RADOVANOVIC, Milovan, Minister of the Religions (a.k.a. Minister of Religious Affairs), Republic of Serbia, Serbia (DOB 1954) (individual) [FRYK]

RAFINERIJA, Novi Sad, Vojvodina (Serbia) [FRYK]

RAJ BANKA A.D., Pec, Serbia [FRYK]

RANK XEROX YU, Belgrade, Serbia [FRYK]

RAPID CO, Studentski trg 4, 11000 Belgrade, Serbia [FRYK]

RAPID, Belgrade, Serbia [FRYK]

RAS BANKA A.D., Belgrade, Serbia [FRYK]

RATKO MITROVIC — BEOGRAD, Belgrade, Serbia [FRYK]

REKORD, Belgrade, Serbia [FRYK]

RESAVSKA BANKA A.D., Despotovac, Serbia [FRYK]

ROBNE KUCE BEOGRAD, Belgrade, Serbia [FRYK]

ROZAJE, Polimlje, Serbia [FRYK]

RTB (a.k.a. RADIO TELEVIZIJA BEOGRAD), Belgrade, Serbia [FRYK]

RTB BOR, Bor, Serbia [FRYK]

RTV NOVI SAD (a.k.a. RADIO TELEVIZIJA NOVI SAD), Novi Sad, Vojvodina (Serbia) [FRYK]

RTV PRISTINA (a.k.a. RADIO TELEVIZIJA PRISTINA), Pristina, Kosovo (Serbia) [FRYK]

RTV SRBIJE (a.k.a. RADIO TELEVIZIJA SRBIJE), Belgrade, Serbia (Including all affiliates) [FRYK]

RUDEX INTERNATIONAL LTD, 37–38 Margaret St, London W1N 8PS, England [FRYK]

RUDIMEX GMBH, Landstrasse Hauptstrasse 1/3–25, 1030 Vienna, Austria [FRYK]

RUDNAP DD (a.k.a. RUDNAP EXPORT–IMPORT), 10 Ul. Vuka Karadzica–Strasse, 11001 Belgrade, Serbia (All offices worldwide) [FRYK]

RUDNAP EXPORT–IMPORT (a.k.a. RUDNAP DD), 10 Ul. Vuka Karadzica–Strasse, 11001 Belgrade, Serbia (All offices worldwide) [FRYK]

RUDNICI BAKRA I NEMETALA, Bor, Serbia (Including all affiliates) [FRYK]

RUDNIK — GORNJI MILANOVAC, Gornji Milanovac, Serbia (Including all affiliates) [FRYK]

RUDNIK BAKRA, Majdanpek, Serbia [FRYK]

RUL — LESKOVAC, Leskovac, Serbia [FRYK]

S.A.V. MUENCHEN (a.k.a. SAV SYSTEM AGROVOJVODINA VERTRIEBS GMBH; a.k.a. SEVER–AGROVOJVODINA GMBH), Germany (All offices) [FRYK]

SAINOVIC, M.S., Nikola, Deputy Prime Minister, Federal Republic of Yugoslavia (DOB 7 DEC 1948; POB Bor, Serbia) (individual) [FRYK]

SAMARDZIC, Dusan, Chief of Military Readiness Inspectorate, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 30 APR 1939; POB Kralice (a.k.a Srbica), Kosovo, Serbia) (individual) [FRYK]

SAV SYSTEM AGROVOJVODINA VERTRIEBS GMBH (a.k.a. S.A.V. MUENCHEN; a.k.a. SEVER–AGROVOJVODINA GMBH), Germany (All offices) [FRYK]

SAVA, Serbia [FRYK]

SDK (a.k.a. SLUZBA DRUSTVENOG KNJIGOVODSTVA; a.k.a. SOCIAL ACCOUNTING SERVICE), Belgrade, Serbia [FRYK]

SECERANA ≥DIMITRIJE TUCOVIC≥, Belgrade, Serbia [FRYK]

SEDLAK, Ivan, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1951) (individual) [FRYK]

SEME, Belgrade, Serbia [FRYK]

SERB BANKA A.D., Belgrade, Serbia [FRYK]

SERBIA ELECTRIC POWER INDUSTRY (a.k.a. ELEKTROPRIVREDA SRBIJE), Belgrade, Serbia [FRYK]

SERBIA POST, TELEGRAPH AND TELEPHONE (a.k.a. PTT SRBIJA), Belgrade, Serbia [FRYK]

SERBIAN PETROLEUM INDUSTRY (a.k.a. NIS–NAFTA INDUSTRIJA SRBIJE), Novi Sad, Vojvodina (Serbia) [FRYK]

SERBIAN RAILROAD TRANSPORTATION ORGANIZATION (a.k.a. ZELEZNICKO TRANSPORTNO PREDUZECE SRBIJE), Belgrade, Serbia (Including all affiliates) [FRYK]

SERVO MIHALJ BANKA, Zrenjanin, Serbia [FRYK]

SERVO MIHALJ, Zrenjanin, Vojvodina (Serbia) [FRYK]

SESELJ, Vojislav, Deputy Prime Minister, Republic of Serbia, Serbia (DOB 11 Oct 1954; POB Sarajevo, Bosnia–Herzegovina) (individual) [FRYK]

SEVER–AGROVOJVODINA GMBH (a.k.a. S.A.V. MUENCHEN; a.k.a. SAV SYSTEM AGROVOJVODINA VERTRIEBS GMBH), Germany (All offices) [FRYK]

SEVER, Subotica, Vojvodina (Serbia) [FRYK]

SEVOJNO OVERSEAS CORPORATION, Englewood, New Jersey, U.S.A. [FRYK]

SIAF SA, 11, rue du C Beaux, Casablanca, Morocco [FRYK]

SIMA POGACAREVIC–SIMPO (a.k.a. SIMPO), Vranje, Serbia (All offices worldwide) [FRYK]

SIMIC, Zeljko, Minister of Culture, Republic of Serbia, Serbia (DOB 21 May 1958) (individual) [FRYK]

SIMPO (a.k.a. SIMA POGACAREVIC–SIMPO), Vranje, Serbia (All offices worldwide) [FRYK]

SIMPO (UK) LTD., 14–15 Berners Street, London, England [FRYK]

SIMPO BRD, Moll–Strasse 10, 1020 Berlin, Germany [FRYK]

SIMPO FRANCE (f.k.a. BINGO FRANCE), 28 Rue du Puits Dixmes Sennia 606, 94320 Thiais–CEDEX, France [FRYK]

SIMPO FURNITURE (CYPRUS) LTD., 1 Myklas Street, Flat 303, Nicosia, Cyprus [FRYK]

SIMPO FURNITURE (CYPRUS) LTD., Nicosia, Cyprus [FRYK]

SIMPO–INDUSTRIJA NAMESTAJA TAPETARIJE, Deuseka 1, Belgrade, Serbia [FRYK]

SIMPO INTERNATIONAL (BRANCH OFFICE), Dufourstrasse 107, Zurich, Switzerland [FRYK]

SIMPO INTERNATIONAL, London, England [FRYK]

SIMPO SPOL GMBH, Prague, Czech Republic [FRYK]

SIMPO SRL, Bassano Del Vialle Dele Fosse 30, Grappa, Italy [FRYK]

SINTELON, Bela Palanka, Serbia [FRYK]

SIPOVAC, Nedeljko, Minister of Agriculture, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1942) (individual) [FRYK]

SIRMIUM BANKA A.D., S. Mitrovica, Serbia [FRYK]

SLAVIJA BANKA (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]

SLUZBA DRUSTVENOG KNJIGOVODSTVA (a.k.a. SDK; a.k.a. SOCIAL ACCOUNTING SERVICE), Belgrade, Serbia [FRYK]

SMEDEREVSKA BANKA D.D. (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]

SOCIAL ACCOUNTING SERVICE (a.k.a. SDK; a.k.a. SLUZBA DRUSTVENOG KNJIGOVODSTVA), Belgrade, Serbia [FRYK]

SOCIETE GENERALE YUGOSLAV BANK D.D., Belgrade, Serbia [FRYK]

SOJAPROTEIN, Becej, Serbia [FRYK]

SOKO — NADA STARK, Belgrade, Serbia [FRYK]

SOKOLOVIC, Zoran, Minister of Internal Affairs, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1938; POB Lepen, Serbia) (individual) [FRYK]

SOMBOR PROMET–AGROSAVEZ, Sombor, Vojvodina (Serbia) [FRYK]

SOMBORSKA BANKA A.D., Sombor, Serbia [FRYK]

SRBIJA — KRAGUJEVAC, Kragujevac, Serbia [FRYK]

SRBIJATURIST, Nis, Serbia [FRYK]

SRBOCOOP, Belgrade, Serbia [FRYK]

SRPSKA FABRIKA STAKLA, Paracin, Serbia [FRYK]

SRPSKA KOMERCIJALNA BANKA A.D., Nis, Serbia [FRYK]

STANKOM BANKA A.D., Belgrade, Serbia [FRYK]

STOCAR BANKA A.D., Cacak, Serbia [FRYK]

STOJILJKOVIC, Vlajko, Minister of Internal Affairs, Republic of Serbia (DOB 1937; POB Mala Krsna, Serbia) (individual) [FRYK]

SUKO, Pirot, Serbia [FRYK]

SUMADIJA BANKA A.D., Kragujevac, Serbia [FRYK]

SUNBOW MARITIME S.A., Panama City, Panama, c/o Beogradska Plovidba, Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]

SVAJCARSKO–JUGOSLOVENSKA BANKA (All offices. Bank is headquartered in Serbia) [FRYK]

T.S.M. LTD., China HK City Tower II 1109, 33 Canton Road, T.S.T. (Tsim Sha Tsui), Kowloon, Hong Kong [FRYK]

TABAKOVIC, Jorgovanka, Minister of Economic and Ownership Transformation (a.k.a. Minister of Economic and Property Transformation), Republic of Serbia, Serbia (DOB 1960) (individual) [FRYK]

TACON GROUP, Serbia [FRYK]

TAKOVO, Belgrade, Serbia [FRYK]

TAMIS BANKA A.D., Pancevo, Serbia [FRYK]

TANJUG (a.k.a. NOVINSKA AGENCIJA TANJUG), Belgrade, Serbia [FRYK]

TECNOPROM (CYPRUS) LTD., 57 Ledra Street, No. 7, Nicosia, Cyprus [FRYK]

TEHNOGAS, Kraljevo, Serbia [FRYK]

TEHNOHEMIJA, Belgrade, Serbia [FRYK]

TEHNOPROMET, Belgrade, Serbia [FRYK]

TEHNOSERVIS, Belgrade, Serbia [FRYK]

TEKING–INVEST, Belgrade, Serbia [FRYK]

TEKNOX, Belgrade, Serbia [FRYK]

TEKSTILNI KOMBINAT RASKA, Novi Pazar, Serbia [FRYK]

TELEOPTIK, Belgrade, Serbia [FRYK]

TEXTILE INDUSTRY OF GRDELICA (a.k.a. TIG — TEKSTILNA INDUSTRIJA GRDELICA), Grdelica, Serbia [FRYK]

TIG — TEKSTILNA INDUSTRIJA GRDELICA (a.k.a. TEXTILE INDUSTRY OF GRDELICA), Grdelica, Serbia [FRYK]

TIGAR AMERICA, Jacksonville, Florida, U.S.A. [FRYK]

TIGAR, Pirot, Serbia [FRYK]

TIPOPLASTIKA, Gornji Milanovac, Serbia [FRYK]

TK BANK A.D., Kraljevo, Serbia [FRYK]

TODOROVIC, Dragan, Minister of Transport and Communications (a.k.a. Minister of Transport), Republic of Serbia, Serbia (DOB 1953) (individual) [FRYK]

TODOROVIC, Jovo, Minister of Education, Republic of Serbia, Serbia (DOB 1937) (individual) [FRYK]

TOMIC, Dragan, Speaker, Serbian Assembly, Serbia (DOB 9 DEC 1935; POB Gornja Bukovica, Bosnia and Herzegovina) (individual) [FRYK]

TOMIC, Dragomir, Deputy Prime Minister, Republic of Serbia, Serbia (DOB 1937) (individual) [FRYK]

TOMOVIC, Slobodan, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1946) (individual) [FRYK]

TOURIST ASSOCIATION OF YUGOSLAVIA (a.k.a. TURISTICKI SAVEZ JUGOSLAVIJE), Belgrade, Serbia [FRYK]

TREPCA–KOSOVSKA MITROVICA (a.k.a. MINING METALLURGY–CHEMICAL COMBINATION OF LEAD AND ZINC), Kosovska Mitrovica, Kosovo (Serbia) [FRYK]

TRGOPRODUKT, Pancevo, Vojvodina (Serbia) [FRYK]

TRGOVACKA BANKA D.D., Belgrade, Serbia [FRYK]

TRGOVINA KOSOVO, Prizren, Kosovo (Serbia) [FRYK]

TRSTENICKA BANKA A.D., Trstenik, Serbia [FRYK]

TRYAL, Krusevac, Serbia [FRYK]

TURIST BANKA A.D., Belgrade, Serbia [FRYK]

TURISTICKI SAVEZ JUGOSLAVIJE (a.k.a. TOURIST ASSOCIATION OF YUGOSLAVIA), Belgrade, Serbia [FRYK]

TWEPICO LTD., 209 Archbishop Makarios III Avenue, Fytides Bldg., Apt. 102, Limassol, Cyprus [FRYK]

UBB INVESTMENTS & FINANCE (a.k.a. PCL PELCAM TRADE LTD.), 2 Sofoules Street, Chanteclair Bldg., 2nd Floor, No. 205, Nicosia, Cyprus [FRYK]

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UDRUZENA KOSOVSKA BANKA (a.k.a. ASSOCIATED BANK OF KOSOVO) (All offices worldwide) [FRYK]

UDRUZENJE YU VISA, Belgrade, Serbia [FRYK]

UNION BANKA D.D., Belgrade, Serbia [FRYK]

UNIONPROMET, Novi Sad, Vojvodina (Serbia) [FRYK]

UNITED CONSULTING CO. LTD., Cester Ho, Third Fl., Lusaka, Zambia [FRYK]

UNIVERZAL, Belgrade, Serbia [FRYK]

UNIVERZAL, Mjevrosime 51, 11000 Belgrade, Serbia [FRYK]

UTVA, Pancevo, Vojvodina (Serbia) [FRYK]

VALJAONICA ALUMINIJUMA, Sevojno Uzice, Serbia [FRYK]

VASILJEVIC, Cedomir, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1947) (individual) [FRYK]

VELICKOVIC, Ljubisa, Deputy Minister of Defense, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1 MAR 1946; POB Crljencac, Serbia) (individual) [FRYK]

VERIMPEX GMBH — IMPORT AND EXPORT, Bohmerstrasse 6, 6000 Frankfurt am Main 1, Germany [FRYK]

VETPROM, Belgrade, Serbia [FRYK]

VISCOSE AND CELLULOSE INDUSTRY OF LOZNICA (a.k.a. VISKOZA — LOZNICA), Loznica, Serbia [FRYK]

VISKOZA — LOZNICA (a.k.a. VISCOSE AND CELLULOSE INDUSTRY OF LOZNICA), Loznica, Serbia [FRYK]

VOCARCOOP — UNION, Belgrade, Serbia [FRYK]

VOJVODINA — SREMSKA MITROVICA, Sremska Mitrovica, Vojvodina (Serbia) [FRYK]

VOJVODINA BANK–ASSOCIATED BANK, NOVI SAD (a.k.a. BANK OF VOJVODINA; n.k.a. VOJVODJANSKA BANKA, D.D.), Serbia (All offices worldwide) [FRYK]

VOJVODINA TOURS, Novi Sad, Vojvodina (Serbia) [FRYK]

VOJVODJANSKA BANKA, D.D. (a.k.a. BANK OF VOJVODINA; f.k.a. VOJVODINA BANK–ASSOCIATED BANK, NOVI SAD), Serbia (All offices worldwide) [FRYK]

VRSACKA BANKA D.D., Vrsac, Serbia [FRYK]

VUCIC, Aleksandar, Minister of Information, Republic of Serbia, Serbia (DOB 1970) (individual) [FRYK]

VUKOVIC, Borislav, Minister for Foreign Trade, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1951) (individual) [FRYK]

VUKSANOVIC, Danilo, Deputy Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1946) (individual) [FRYK]

WOOL AND TEXTILE INDUSTRY OF LESKOVAC (a.k.a. LETEKS — LESKOVAC), Leskovac, Serbia [FRYK]

YATZO Group, Serbia [FRYK]

YES HOLDING INTERNATIONAL LTD., Archbishop Makarios III Avenue, Xenios Commercial Center, 5th Floor, No. 501, Nicosia, Cyprus [FRYK]

YESIC LTD., 57 Ledra Street, Nicosia, Cyprus [FRYK]

YOUGO–ARAB COMPANY LTD, 58–60 Dighenis Akritas Avenue, Ghinis Building, 3rd, 8th, and 9th Floors, P.O. Box 2217, Nicosia, Cyprus [FRYK]

YU GARANT BANKA A.D., Belgrade, Serbia [FRYK]

YUBMES (a.k.a. JUGOSLOVENSKA BANKA ZA MEDJUNARODNU EKONOMSKU SARADNJU; a.k.a. YUGOSLAV BANK FOR INTERNATIONAL ECONOMIC COOPERATION) (All offices worldwide) [FRYK]

YUCO–BANK A.D., Novi Sad, Serbia [FRYK]

YUEKIBANKA A.D., Belgrade, Serbia [FRYK]

YUGO CANADA INC. (a.k.a. YUGOCANADA INC. TORONTO; a.k.a. YUGOTOURS OF CANADA), 100 Adelaide Street W. Ste. 1350, Toronto, Ontario M5H 1S3, Canada [FRYK]

YUGO CARS (a.k.a. ZASTAVA (GB) LTD.), Gloucester House, Basingstoke Road, Reading, Berkshire, RG2 OQW, England [FRYK]

YUGOBANKA (a.k.a. BANK FOR FOREIGN TRADE AD; a.k.a. JUGOBANKA; a.k.a. JUGOBANKA D.D.) (All offices worldwide) [FRYK]

YUGOCANADA INC. TORONTO (a.k.a. YUGO CANADA INC.; a.k.a. YUGOTOURS OF CANADA), 100 Adelaide Street W. Ste. 1350, Toronto, Ontario M5H 1S3, Canada [FRYK]

YUGOEXPORT, New York, New York, U.S.A. [FRYK]

YUGOSLAV AIRLINES (a.k.a. JAT; a.k.a. JAVNO PREDUZECE ZA VAZDUSNI SAOBRACAJ; a.k.a. JUGOSLOVENSKI AEROTRANSPORT), Belgrade, Serbia (All offices worldwide) [FRYK]

YUGOSLAV BANK FOR INTERNATIONAL ECONOMIC COOPERATION (a.k.a. JUGOSLOVENSKA BANKA ZA MEDJUNARODNU EKONOMSKU SARADNJU; a.k.a. YUBMES) (All offices worldwide) [FRYK]

YUGOSLAV EXPORT AND CREDIT BANK INC. (a.k.a. JIK BANKA D.D.; a.k.a. JUGOSLOVENSKA IZVOZNA I KREDITNA BANKA D.D.), P.O. Box 234, Knez Mihailova 42, 11000 Belgrade, Serbia (All offices worldwide) [FRYK]

YUGOSLAV NATIONAL ARMY (a.k.a. JNA; a.k.a. JUGOSLOVENSKA NARODNA ARMIJA), Belgrade, Serbia [FRYK]

YUGOSLAV POST, TELEGRAPH AND TELEPHONE (a.k.a. PTT JUGOSLAVIJE), Belgrade, Serbia (Including all affiliates) [FRYK]

YUGOSLAV SHIPPING AGENCY (a.k.a. JUGOSLOVENSKA POMORSKA AGENCIJA), Belgrade, Serbia [FRYK]

YUGOSLAVIA COMMERCE, Belgrade, Serbia [FRYK]

YUGOTOURS (a.k.a. CENTROPRODUCT ROME), Via Bissolati 76, 00187, Rome, Italy [FRYK]

YUGOTOURS (a.k.a. CENTROPRODUCT S.R.L.), Via Agnello 2, 20121 Milan, Italy [FRYK]

YUGOTOURS (a.k.a. CENTROPRODUCT), Eisenberg Business Center, House Asia, Tel Aviv, Israel [FRYK]

YUGOTOURS (a.k.a. CENTROPRODUCT, BARI), Via Principe Amedeo 25, 70121 Bari, Italy [FRYK]

YUGOTOURS (a.k.a. GENERALEXPORT BRATISLAVA), Palisady 31/II, 81106 Bratislava, Slovak Republic [FRYK]

YUGOTOURS (a.k.a. GENERALEXPORT PRAGUE), Stepanska 57/II, 11000 Prague, Czech Republic [FRYK]

YUGOTOURS A.B., Sveavagen 59, 113 59 Stockholm, Sweden [FRYK]

YUGOTOURS A.G., Militaerstrasse 90, 8004 Zurich, Switzerland [FRYK]

YUGOTOURS AB, P.O. Box 3097, Olof Palmes Gata 24, 10361 Stockholm, Sweden [FRYK]

YUGOTOURS B.V., Buikslotermeerplein 6, 1025 EX Amsterdam, Netherlands [FRYK]

YUGOTOURS GMBH, Post Office Box 16848, Windmuehlstrasse 1, 6000 Frankfurt am Main 1, Germany [FRYK]

YUGOTOURS LTD. (a.k.a. MEDCHOICE HOLIDAYS LTD.), Chesham House, 150 Regent Street, London WIR 6BB, England [FRYK]

YUGOTOURS LTD., 115 Bath Street, Glasgow G2 2SZ, Scotland [FRYK]

YUGOTOURS LTD., 37a Great Charles Street, York House, Birmingham, B3 3JY, England [FRYK]

YUGOTOURS LTD., Cheshire House, 18/0 Booth Street, Manchester M2 4AN, England [FRYK]

YUGOTOURS OF CANADA (a.k.a. YUGO CANADA INC.; a.k.a. YUGOCANADA INC. TORONTO), 100 Adelaide Street W. Ste. 1350, Toronto, Ontario M5H 1S3, Canada [FRYK]

YUGOTOURS–REISEN GMBH, Kaerntnerstrasse 26, Vienna, Austria [FRYK]

YUGOTOURS S.A., Rue de Princes 8–10, 1000 Brussels, Belgium [FRYK]

YUGOTOURS S.A.R.L. (a.k.a. CENTROPRODUCT, S.A.R.L.), 39 avenue de Friedland, 75008 Paris, France [FRYK]

YUGOTOURS, Belgrade, Serbia (All offices worldwide) [FRYK]

YUNIVERSAL, Singer Strasse 2/15, 1010 Vienna, Austria [FRYK]

YUSACO, Serbia [FRYK]

ZAJEDNICA JUGOSLOVENSKIH ZELEZNICA (a.k.a. ASSOCIATION OF YUGOSLAV RAILWAYS), Belgrade, Serbia [FRYK]

ZAMBIA ENGINEERING AND CONTRACTING CO., Zecco Bldg. Mukwa Road, Lusaka, Zambia [FRYK]

ZASTAVA (a.k.a. AUTOMOBILE INDUSTRY — CRVENA ZASTAVA; a.k.a. ZAVODI CRVENA ZASTAVA — KRAGUJEVAC), Kragujevac, Serbia [FRYK]

ZASTAVA (GB) LTD. (a.k.a. YUGO CARS), Gloucester House, Basingstoke Road, Reading, Berkshire, RG2 OQW, England [FRYK]

ZASTAVA IMPEX, Belgrade, Serbia [FRYK]

ZASTAVA JUGO AUTOMOBILI, Kragujevac, Serbia [FRYK]

ZASTAVA–PRIVREDNA VOZILA, Kragujevac, Serbia [FRYK]

ZASTAVA PROMET, Kragujevac, Serbia [FRYK]

ZAVOD ZA E. EKSP., Belgrade, Serbia [FRYK]

ZAVODI CRVENA ZASTAVA — KRAGUJEVAC (a.k.a. AUTOMOBILE INDUSTRY — CRVENA ZASTAVA; a.k.a. ZASTAVA), Kragujevac, Serbia [FRYK]

ZCZ/YUGOMEDICA, Kragujevac, Serbia [FRYK]

ZDRAVLJE, Leskovac, Serbia [FRYK]

ZEBIC, Jovan, Deputy Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1939; POB Runjani, Loznica, Serbia) (individual) [FRYK]

ZEC, Milan, Commander, Navy, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 20 SEP 1943; POB Cajnice, Bosnia and Herzegovina) (individual) [FRYK]

ZELENGORA, Belgrade, Serbia [FRYK]

ZELENOVIC, Jagos (Ph.D.), Minister for Development, Science and the Environment (a.k.a. Minister for Development, Science and Ecology), Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1944) (individual) [FRYK]
ZELEZNICKO TRANSPORTNO PREDUZECE BEOGRAD (a.k.a. BELGRADE RAILROAD TRANSPORTATION ORGANIZATION), Belgrade, Serbia [FRYK]
ZELEZNICKO TRANSPORTNO PREDUZECE NOVI SAD (a.k.a. NOVI SAD RAILROAD TRANSPORTATION ORGANIZATION), Novi Sad, Vojvodina (Serbia) [FRYK]
ZELEZNICKO TRANSPORTNO PREDUZECE SRBIJE (a.k.a. SERBIAN RAILROAD TRANSPORTATION ORGANIZATION), Belgrade, Serbia (Including all affiliates) [FRYK]
ZELVOZ, Smederevo, Serbia [FRYK]
ZEPTER BANKA A.D., Belgrade, Serbia [FRYK]
ZORKA, Sabac, Serbia [FRYK]
ZTP BELGRADE, Belgrade, Serbia (Including all affiliates) [FRYK]
ZUPA — KRUSEVAC, Krusevac, Serbia [FRYK]

Appendix B [Amended]

3. Appendix B to 31 CFR chapter V is amended by removing all entries with the column two program designation "FRY S&M".

Dated: November 1, 1999.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: November 1, 1999.

Elisabeth A. Bresee,
Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 99–29086 Filed 11–3–99; 11:48 am]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 1999

RIN 0720–AA37

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Reimbursement

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule, correction.

SUMMARY: This final rule makes an administrative correction to the final rule published in the **Federal Register** on Thursday, September 10, 1998 (63 FR 48439). The second set of amendatory instructions for §199.14 did not include the word "revised". Therefore, the Department of Defense is republishing amendments to § 199.14 which were unable to be incorporated into the CFR because of the missing word. All other amendments remain unchanged.

EFFECTIVE DATE: This rule is effective October 13, 1998, except amendments to § 199.14(h) introductory text, which are effective January 1, 1999.

ADDRESSES: Tricare Management Activity, (TMA), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity, telephone (703) 681–3628.

Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this rule was submitted to OMB for review under 3507(d) of the Act.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disability, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

2. Section 199.14 is amended by revising paragraph (a)(1)(iii)(B), paragraph (a)(1)(iii)(D)(*1*) first sentence and paragraph (a)(1)(iii)(D)(*5*), paragraph (a)(1)(iii)(E)(*1*)(*i*)(*A*) and paragraph (a)(1)(iii)(E)(*1*)(*i*)(*B*), paragraph (a)(1)(iii)(E)(*1*)(*ii*)(*A*) and (a)(1)(iii)(E)(*1*)(*ii*)(*B*), paragraph (a)(1)(iii)(G)(*3*) introductory text, paragraph (d)(3)(iv), and paragraph (h) introductory text to read as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *

(1) * * *

(iii) * * *

(B) *Empty and low-volume DRGs.* For any DRG with less than ten (10) occurrences in the CHAMPUS database, the Director, TSO, or designee, has the authority to consider alternative methods for estimating CHAMPUS weights in these low-volume DRG categories.

* * * * *

(D) * * *

(*1*) Differentiate large urban and other area charges. All charges in the database shall be sorted into large urban and other area groups (using the same definitions for these categories used in the Medicare program. * * *

* * * * *

(*5*) Preliminary base year standardized amount. A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban or other area group and dividing by the total number of discharges in the respective group.

* * * * *

(E) * * *

(*1*) * * *

(*i*) * * *

(*A*) *Short-stay outliers.* Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's arithmetic LOS shall be classified as a short-stay outlier. Short-stay outliers shall be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount. The per diem rate shall equal the DRG amount divided by the arithmetic mean length-of-stay for the DRG.

(*B*) *Long-stay outliers.* Any discharge (except for neonatal services and services in children's hospitals) which has a length-of-stay (LOS) exceeding a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.82 shall be classified as a long-stay outlier. Any discharge for neonatal services or for services in a children's hospital which has a LOS exceeding the lesser of 1.94 standard deviations or 17 days from the DRG's arithmetic mean LOS also shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier threshold. The per diem rate shall equal the DRG amount divided by the arithmetic mean LOS for the DRG. For admissions on or after October 1, 1997, the long stay outlier has been eliminated for all cases except children's hospitals and neonates. For admissions on or after October 1, 1998, the long stay outlier has been eliminated for children's hospitals and neonates.

(*ii*) * * *

(*A*) Cost outliers except those in children's hospitals or for neonatal services. Any discharge which has standardized costs that exceed a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.84 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in paragraph (a)(1)(iii)(D)(*4*) of this section and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1997, the standardized costs are no longer adjusted for indirect medical education costs.

(*B*) Cost outliers in children's hospitals for neonatal services. Any discharge for services in a children's hospital or for neonatal services which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $13,500 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in paragraph (a)(1) (iii) (D) (*4*) of this section (adjusted to include average capital and direct medical education costs) and adjusting this amount for indirect medical education costs. Cost outliers for services in children's hospitals and for neonatal services shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1998, standardized costs are no longer adjusted for indirect medical education costs. In addition, CHAMPUS will calculate the outlier payments that would have occurred at each of the 59 Children's hospitals under the FY99 outlier policy for all cases that would have been outliers under the FY94 policies using the most accurate data available in September 1998. A ratio will be calculated which equals the level of outlier payments that would have been made under the FY94 outlier policies and the outlier payments that would be made if the FY99 outlier policies had applied to each of these potential outlier cases for these hospitals. The ratio will be calculated across all outlier claims for the 59 hospitals and will not be hospital specific. The ratio will be used to increase cost outlier payments in FY 1999 and FY 2000, unless the hospital has a negotiated agreement with a managed care support contractor which would affect this payment. For hospitals with managed care support agreements which affect these payments, CHAMPUS will apply these payments if the increased payments would be consistent with the agreements. In FY 2000 the ratio of outlier payments (long stay and cost) that would have occurred under the FY 94 policy and actual cost outlier payments made under the FY 99 policy will be recalculated. If the ratio has changed significantly, the ratio will be revised for use in FY 2001 and thereafter. In FY 2002, the actual cost outlier cases in FY 2000 and 2001 will be reexamined. The ratio of outlier payments that would have occurred under the FY94 policy and the actual cost outlier payments made under the FY 2000 and FY 2001 policies. If the ratio has changed significantly, the ratio will be revised for use in FY 2003.

* * * * *

(G) * * *

(*3*) Information necessary for payment of capital and direct medical education costs. All hospitals subject to the CHAMPUS DRG-based payment system, except for children's hospitals, may be reimbursed for allowed capital and direct medical education costs by submitting a request to the CHAMPUS contractor. Beginning October 1, 1998, such request shall be filed with CHAMPUS on or before the last day of the twelfth month following the close of the hospitals' cost reporting period, and shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. An extension of the due date for filing the request may only be granted if an extension has been granted by HCFA due to a provider's operations being significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change). The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

* * * * *

(d) * * *

(3) * * *

(iv) *Step 4*: standard payment amount per group. The standard payment amount per group will be the volume weighted median per procedure cost for the procedures in that group. For cases in which the standard payment amount per group exceeds the CHAMPUS-determined inpatient allowable amount, the Director, TSO or his designee, may make adjustments.

* * * * *

(h) Reimbursement of individual health care professionals and other non-institutional, non-professional provers. The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the service of an individual health care professional or other non-institutional, non-professional provider (even if employed by or under contract to an institutional provider) shall be determined by one of the following methodologies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

* * * * *

Dated: October 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–29093 Filed 11–5–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–024]

RIN 2115–AE47

Drawbridge Operation Regulations: Kennebunk River, ME

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the Dock Square Drawbridge mile 1.0, across the Kennebunk River between Kennebunk and Kennebunkport, Maine. The bridge owner has asked the Coast Guard to change the regulations to allow the draw

to not open for vessel traffic because the bridge has not had a request to open since 1985. This final rule is expected to relieve the bridge owner of the requirement to open the bridge and still meet the needs of navigation.

DATES: This final rule is effective December 8, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 25, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Kennebunk River, Maine, in the **Federal Register** (64 FR 46322). The Coast Guard received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background

The Dock Square Drawbridge has a vertical clearance at mean high water of 5 feet and 14 feet at mean low water. The existing regulations listed at 33 CFR 117.527, require the bridge to open on signal from April 15 through October 15; except that, from 5 p.m. to 7 a.m., the draw shall open if notice is given to the drawtender during his shift, from 7 a.m. to 5 p.m. At all other times the draw shall open after 24 hours advance notice is given.

The bridge owner, Maine Department of Transportation, asked the Coast Guard to change the regulations governing the Dock Square Drawbridge to allow that the drawbridge need not open for vessel traffic because the bridge has not opened since 1985.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has not had a request to open since 1985.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have federalism implications under that order.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.527 is revised to read as follows:

§ 117.527 Kennebunk River.

The Dock Square drawbridge at mile 1.0, across the Kennebunk River, between Kennebunk and Kennebunkport, Maine, need not open for vessel traffic. The owners of the bridge shall provide and keep in good legible condition, two board gages in accordance with 33 CFR 118.160, of this chapter.

Dated: October 28, 1999.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 99–29147 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–085]

RIN 2115–AE47

Drawbridge Operation Regulations: Housatonic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the US 1 Bridge, mile 3.5, across the Housatonic River in Stratford, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six-hour advance notice for openings at night during the winter months because there have been few requests to open the bridge during that time period. This final rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

DATES: This final rule is effective December 8, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 13, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Housatonic River, Connecticut, in the **Federal Register** (64 FR 44147). The Coast Guard received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background

The US 1 Bridge, mile 3.5, across the Housatonic River, in Stratford, Connecticut, has a vertical clearance of 32 feet at mean high water and 37 feet at mean low water.

The existing operating regulations listed at 33 CFR 117.207(a) for the bridge require it to open on signal; except that, from 7 a.m. to 9 a.m., Monday through Friday and 4 p.m. to 5:45 p.m. daily, the draw need not be opened for the passage of vessels.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT) has asked the Coast Guard to change the regulations to require a six-hour advance notice for openings from, 8 p.m. to 4 a.m., December 1 through March 31. The bridge opening log data for 1998, and 1999, December 1 through March 31, from 8 p.m. to 4 a.m., indicate the following number of openings: December 1, N/A, January 5, 6, February 4, 3, March 0, 3, respectively.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has not had many requests to open at night during the winter months. Mariners will still be able to obtain bridge openings at night during the winter months provided they give a six-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have federalism implications under that order.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.207(a) is revised to read as follows:

§ 117.207 Housatonic River

(a) The draw of the US 1 Bridge, mile 3.5, at Stratford, shall open on signal; except that, from 7 a.m. to 9 a.m., Monday through Friday, and 4 p.m. to 5:45 p.m. daily, the draw need not open for the passage of vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six-hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: October 28, 1999.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 99–29148 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–079]

RIN 2115–AE47

Drawbridge Operation Regulations: Mystic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the US 1 Bridge, mile 2.8, across the Mystic River in Mystic, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six-hour advance notice for openings in the evening during the winter months because there have been no requests to open the bridge during that time period. This final rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

DATES: This final rule is effective December 8, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 13, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Mystic River, Connecticut, in the **Federal Register** (64 FR 44145). The Coast Guard received no comments on the notice of proposed rulemaking. No public hearing was requested and none was held.

Background

The US 1 Bridge, mile 2.8, across the Mystic River, has a vertical clearance of 4 feet at mean high water and 7 feet at mean low water.

The existing operating regulations for the bridge listed at 33 CFR 117.211(b) require it to open on signal with a maximum delay of 20 minutes; except, from May 1 through October 31 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour, and from November 1 through April 30 from 7:15 p.m. to 5:15 a.m., the draw shall open on signal upon eight-hours advance notice.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT), asked the Coast Guard to change the regulations to require a six-hour advance notice for openings from November 1 through April 30, 8 p.m. to 4 a.m. This change is less restrictive than the existing regulations which require eight-hours advance notice. The bridge opening log data for 1998, and 1999, November through April, indicate no requests to open the bridge during the time period 8 p.m. to 4 a.m.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has not had any requests to open in the evening during the winter months. Mariners will still be able to obtain bridge openings during the regulated time period provided they give six-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have federalism implications under that order.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.211(b)(2) is revised to read as follows:

§ 117.211 Mystic River

* * * * *

(b) * * *

(2) From November 1 through April 30, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six-hours notice is given by calling the number posted at the bridge.

Dated: October 28, 1999.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 99–29149 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

RIN 0596–AB63

Administration; Cooperative Funding

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is amending current regulations to establish minimum requirements applicable to written agreements between the Forest Service and cooperators, such as individuals, States and local governments, and other non-Federal entities. This rulemaking implements amendments to the Act of June 30, 1914, which expand the basis for accepting contributions for cooperative work, allow reimbursable payments by cooperators, and adequately protect the Government's interest. The intended effect is to fully implement the new statutory provisions to facilitate cooperative ventures.

EFFECTIVE DATE: This rule is effective December 8, 1999.

FOR FURTHER INFORMATION CONTACT: Debbie Pressman, Wildlife, Fish and Rare Plants Staff, 202–205–1205.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 1998, the Forest Service published a proposed rule (63 FR 27245) that would implement recent amendments to the Act of June 30, 1914 (16 U.S.C. 498). This Act authorizes the Secretary of Agriculture to receive and subsequently use money as contributions toward cooperative work in forest investigations or for the protection and improvement of the national forests. The proposed rule would implement amendments to the Act of June 30, 1914, (16 U.S.C. 498) by: (1) Providing for the use of contributions for cooperative work on the entire National Forest System; (2) Adding "management" to the list of activities for which contributions for cooperative work may be accepted; and (3) Providing specific authority to accomplish cooperative work using Forest Service funds prior to reimbursement by the cooperator pursuant to a written agreement.

Response to Comments Received

Public comment on the proposed rule was invited. The comment period closed on July, 17, 1998. Seven respondents provided comments on the proposed rule: 4 national conservation organizations, 1 State fish and wildlife agency, 1 utility company, and 1 Member of Congress. All respondents expressed support of the agency's effort to enhance cooperative partnerships on National Forest System lands by removing administrative barriers requiring cooperators to contribute funds in advance of any work to be accomplished.

A summary of specific comments by broad subject and the Department's response to these comments follows.

Comment: Interpretation of Allowable Management Activities. One respondent suggested adding the word "evaluation" to the list of management activities proposed at § 211.6(a), Purpose and scope, that can be cooperatively funded.

Response: The word "management" is a broad term that would include "such work as planning, analysis, related studies and evaluations, as well as resource activities." The examples provided in the rule are added for clarity and are not intended to be inclusive of all potential "management" activities. Therefore, this suggestion has not been adopted in the final rule.

Comment: Use of Cooperator Contributions for Administrative Support. At § 211.6(a), Purpose and scope, the proposed rule described National Forest management activities which may be cooperatively funded as including such work as planning, analysis, and related studies, as well as resource activities. One respondent raised the issue of whether this language is inconsistent with the intent of the law. This respondent also expressed concern that cooperator funds could be used for administration, planning, and research, instead of field work and that the proposed rule lacked safeguards limiting the amount that the Forest Service can use from contributed funds for non-field work.

Response: The Department interprets the management of National Forest System lands to include field resource work, administrative studies, project planning, and all related tasks necessary to carry out the mission of the Forest Service. The development of cooperative projects and associated cooperative agreements requires the full disclosure of all costs associated with the project. Negotiations and joint discussions between the Forest Service and cooperators afford cooperators the opportunity to fund as much or as little of the project cost as they deem appropriate. Cooperators must agree on how their funds will be expended. Given that cooperative project costs are fully disclosed and mutually agreed upon, the Department is of the opinion that the proposed rule was consistent with the Act of June 30, 1914, as amended, and that additional language prohibiting non-field work is not necessary in the final rule.

Comment: Reimbursements to the Forest Service. One respondent suggested that a cooperator be permitted to provide the required reimbursement payments within the first 60 days of the fiscal year immediately following the fiscal year in which the expenditure of Forest Service funds was completed, if such expenditures by the Forest Service occur within the last 60 days of a fiscal year.

Response: The Department agrees with this suggestion but does not believe that a change in rule text is necessary. Forest Service Manual § 6533.3 already instructs employees on how to handle such situations. Moreover, Forest Service bills for collection specify the time period in which payment is due.

Comment: In-Kind Contributions. One respondent recommended that in-kind contributions, such as goods and services, contributed by cooperators in conjunction with cooperative agreements, not be subject to the bonding provisions required in § 211.6(b), Reimbursements and bonding, of the proposed rule.

Response: In-kind contributions are not affected by this rule. The Act of June 30, 1914, as amended, addresses only those situations in which monies are received by the Forest Service as contributions toward cooperative work. If a cooperator is making in-kind contributions rather than financial contributions, the bonding provisions specified in § 211.6(c), Bonding, of the final rule would not be applicable.

Comment: Application of Bonding Threshold. One respondent expressed support for protecting the government's interest by requiring bonds for project costs exceeding $25,000, but expressed concern that the provision should apply to the cost of individual projects, rather than to total cooperative funds provided by partners on an annual basis.

Response: Paragraph § 211.6(b), Reimbursements and bonding, of the proposed rule would require a payment bond for agreements of $25,000 or more to guarantee the cooperator's reimbursement, thereby ensuring that the public interests are protected. This requirement applies to individual cooperative agreements, rather than to individual cooperative projects. The distinction is that a particular cooperative agreement may encompass more than one cooperative project. The text of § 211.6(c), Bonding, of the final rule has been revised to clarify this distinction.

Comment: Payment Assurances and Creditworthiness. One respondent suggested that, on a case-by-case basis, assurances of payment, other than the payment bonds required in § 211.6(b), Reimbursements and bonding, of the proposed rule should be acceptable, and further, that the payment bond requirement should be waived where the cooperator has a significant history of successfully completing payments in accordance with other agreements or provides some other reliable assurance that payment will be provided.

Response: The Department has carefully considered this comment but remains convinced that the bonding requirement (§ 211.6(b), Reimbursement and bonding, of the proposed rule) is necessary to protect the interests of the public and should not be waived or otherwise modified on a case-by-case basis. As specified in the proposed rule, the bonding requirement would be consistently applied throughout the agency whenever a non-Government cooperator agrees to contribute $25,000 or more to the Forest Service on a reimbursable basis. By providing a consistent mechanism for handling the bonding requirement, all cooperators are assured of equitable treatment across administrative units, thus eliminating the potential for conflicting "creditworthy determinations" for cooperative agreements at similar funding levels. Accordingly, the Department has decided to retain the payment assurance requirements set out in § 211.6(b) of the proposed rule in a separate paragraph § 211.6(c), Bonding, of the final rule as the more appropriate mechanism for protecting government interests as required by the statute.

Comment: Effect of Rule on Existing Memorandums of Understanding. One respondent asked if cooperators operating under existing Memorandums of Understanding (MOUs) would be required to enter into new MOUs to clarify the fiscal relationship between the cooperator and the Forest Service.

Response: Memorandums of Understanding (MOUs) are viewed as agreements documenting cooperation in those circumstances where nothing of value transfers between parties or documenting a common understanding of the nature of a relationship between parties. Therefore, MOUs are not affected by this rule.

However, a written cooperative agreement, completed in accordance with specific cooperative authority, must be executed prior to: (1) The agency's receipt of contributions for cooperative work; or (2) The expenditure of agency funds on a reimbursable basis. While the final rule does not require revision of existing cooperative agreements, any party to existing cooperative agreements may request changes in payment terms or any other aspect of the agreement at any time.

Additional Modification

In the course of considering the comments on the proposed rule, the agency became aware of the need to clarify the meaning of "non-Government cooperator." This has been addressed by adding a new sentence to paragraph § 211.6(c) in the final rule.

Conclusion

Having considered the comments received, the Department is adopting a final rule implementing the recent statutory amendments to the Act of June 30, 1914, which expand the basis for accepting contributions for cooperative work between the Forest Service and cooperators. The final rule provides for the planning and completion of projects using Forest Service funds with reimbursement from cooperators. The Government's interests are protected by securing reimbursement payments from non-Government cooperators with payment bonds when payments due under a cooperative agreement are $25,000 or more.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Act.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule does not compel any expenditure of funds by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

This final rule affects the administrative requirements for reimbursement payments to the agency by cooperators. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions." Based on consideration of the comments received and the nature and scope of this rulemaking, the Department has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the final rule does not pose the risk of a taking of constitutionally-protected private property since it sets forth administrative requirements regarding the deposit of cooperator funds for forest investigations or the protection, management, and improvement of the National Forest System.

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Upon adoption of this final rule, (1) All State and local laws and regulations that are in conflict with this final rule or which would impede its full implementation would be preempted; (2) No retroactive effect would be given to this final rule; and (3) It would not require administrative proceedings before parties may file suite in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This final rule does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR 1320 do not apply.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Intergovernmental relations (Federal/State cooperation), and National forests.

Therefore, for the reasons set forth in the preamble, Part 211 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 211—ADMINISTRATION

1. The authority citation for part 211 is revised to read as follows:

Authority: 16 U.S.C. 472, 498, 551.

Subpart A—Cooperation

2. Revise the heading for subpart A to read as set out above.

3. Add a new § 211.6 to read as follows:

§211.6 Cooperation in forest investigations or the protection, management, and improvement of the National Forest System.

(a) *Purpose and scope.* Forest Service officers, when engaged in cooperative activities otherwise authorized, may receive monies from cooperators only for cooperative work in forest investigations or for the protection, management, and improvement of the National Forest System and only in accordance with written cooperative agreements. Management of the National Forest System may include such work as planning, analysis, and related studies, as well as resource activities.

(b) *Reimbursements.* Agency expenditures for work undertaken in accordance with this section may be made from Forest Service appropriations available for such work, with subsequent reimbursement from the cooperator, in accordance with established written agreements. Forest Service officers shall issue written bills for collection for cooperator reimbursement payments within the same fiscal year as Forest Service expenditures.

(c) *Bonding.* Each written agreement involving a non-Government cooperator's total contribution of $25,000 or more to the Forest Service on a reimbursable basis, must include a provision requiring a payment bond to guarantee the cooperator's reimbursement payment. Acceptable security for a payment bond includes Department of the Treasury approved corporate sureties, Federal Government obligations, and irrevocable letters of credit. For the purposes of this section, a non-Government cooperator is an entity that is not a member, division, or affiliate of a Federal, State, or local government.

(d) *Avoiding conflict of interest.* Forest Service officers shall avoid acceptance of contributions from cooperators when such contributions would reflect unfavorably upon the ability of the Forest Service to carry out its responsibilities and duties. Forest Service officers shall be guided by the provisions of 18 U.S.C. parts 201–209, 5 CFR part 2635, and applicable Department of Agriculture regulations, in determining if a conflict of interest or potential conflict of interest exists in a proposed cooperative effort. Forest Service ethics officials or the designated Department of Agriculture ethics official should be consulted on conflict of interest issues.

Dated: October 26, 1999.

Anne Kennedy,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 99–29083 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 086–0018a; FRL–6468–6]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Arizona State Implementation Plan. The revisions concern rules from Maricopa County (Maricopa). The rules control particulate matter (PM) emissions from residential wood combustion. This final approval action will incorporate these rules into the federally approved SIP. In addition, this action will serve as a final determination that deficiencies in the rules (identified by EPA in a final limited approval/limited disapproval action on March 31, 1998) have been corrected and that any sanctions or Federal Implementation Plan (FIP) clocks are permanently stopped. An Interim Final Determination published in today's **Federal Register** will stay the imposition of sanctions until the effective date of this action. The intended effect of approving these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these rules into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This rule is effective on January 7, 2000 without further notice, unless EPA receives relevant adverse comments by December 8, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue #201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT: Patricia Bowlin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the Arizona SIP are Maricopa Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance. These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on August 4, 1999.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the Maricopa Association of Governments (MAG) Urban Planning Area (43 FR 8964; 40 CFR 81.303). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On

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[1] On July 18, 1997 EPA promulgated revised PM–10 standards (62 FR 38651). On May 14, 1999, the U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc., et al.* v. *USEPA*, No. 97–1440 issued an opinion that, among other things, vacated the 1997 standards for PM–10. The PM–10 standards promulgated on July 1, 1987, however, were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards. Codification of the 1987 PM–10 standards continues to be recorded at 40 CFR 50.6. In the document promulgating the 1997 PM–10 standards, the EPA Administrator decided that the previous PM–10 standards that were promulgated on July 1, 1987, and provisions associated with them, would continue to apply in areas subject to

November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). The Phoenix Planning Area was among the areas designated non-attainment. On June 10, 1996 EPA reclassified Phoenix Planning Area from moderate to serious nonattainment pursuant to section 188(b)(2). See 61 FR 21372 (May 10, 1996).

Section 189(a) of the CAA requires moderate PM–10 nonattainment areas to adopt reasonably available control measures (RACM) for PM–10 and to submit these measures by November 15, 1991. Section 189(b) requires serious non-attainment areas to adopt best available control measures (BACM) rules and to submit these rules within 18 months of reclassification.

In response to section 110(a) and Part D of the Act, the State of Arizona submitted many PM–10 rules for incorporation into the Arizona SIP on August 4, 1999, including the rules being acted on in this document. This document addresses EPA's direct-final action for Maricopa Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance (Woodburning Ordinance). Maricopa adopted Rule 318 and the Woodburning Ordinance on April 21, 1999. These submitted rules were found to be complete on August 25, 1999 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[2] and are being finalized for approval into the SIP.

Rule 318 and the Woodburning Ordinance control PM emissions from residential wood combustion. PM emissions can harm human health and the environment. The rules were originally adopted as part of Maricopa's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for PM–10 and in response to the CAA section 189(a) RACM requirement. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

The statutory provisions relating to RACM are discussed in EPA's "General Preamble", which gives the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the CAA. See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). For the purpose of assisting state and local agencies in developing RACM rules, EPA prepared a series of technical guidance documents on PM–10 source categories (See CAA section 190). The RACM guidance applicable to this rule is entitled, "Guidance Document for Residential Wood Combustion Emission Control Measures" (EPA–450/2–89–015, September 1989). In this rulemaking action, EPA is applying these policies to this submittal, taking into consideration the specific factual issues presented.

On March 31, 1998, EPA published a limited approval and a limited disapproval of Rule 318, Approval of Residential Woodburning Devices, and Residential Woodburning Restriction Ordinance, which had been adopted by Maricopa on October 5, 1994 (63 FR 15303). The limited approval action incorporated these rules into the SIP despite deficiencies in the rules that precluded full approval. The SIP rules contain director's discretion in the approval of woodburning devices.

Maricopa's submitted Rule 318 and the Woodburning Ordinance, which were revised on April 21, 1999, correct the deficiencies in the current SIP rules by requiring EPA approval of woodburning devices that are determined by the Maricopa director to be equivalent to EPA-certifed wood heaters.

EPA has evaluated the submitted rules and has determined that they fulfill the RACM requirements of CAA section 189(a). In subsequent action on the Maricopa PM–10 BACM Plan, EPA will determine if the submitted rules also fulfill the BACM requirements of CAA section 189(b). Maricopa Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance are consistent with the CAA, EPA regulations, and EPA PM–10 RACM policy. Therefore, the rules are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. A more detailed evaluation can be found in EPA's evaluation report for these rules.

This approval action will incorporate these rules into the federally approved SIP and also stop the sanctions and Federal Implementation Plan clocks that were started by EPA's limited disapproval action published on March 31, 1998 (63 FR 15303).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 7, 2000 without further notice unless the Agency receives relevant adverse comments by December 8, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 7, 2000 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds

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the 1987 PM–10 standards until certain conditions specified in 40 CFR 50.6(d) are met. See 62 FR at 38701. EPA has not taken any action under 40 CFR 50.6(d) for this area. Today's proposed action relates only to the CAA requirements concerning the PM–10 standards as originally promulgated in 1987.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Dated: October 25, 1999

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(94)(i)(B) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(94) * * *

(i) * * *

(B) Rule 318 and Residential Woodburning Restriction Ordinance, revised on April 21, 1999.

* * * * *

[FR Doc. 99–28881 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 086–0018c; FRL–6468–8]

Interim Final Determination That State Has Corrected Deficiencies; State of Arizona; Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving revisions to the Arizona State Implementation Plan (SIP). EPA has also published a proposed rulemaking on the same subject. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's SIP revisions. Based on the full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on April 30, 1998. This action will stay both the imposition of the offset sanction and the imposition of the highway sanction. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's SIP revisions, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's approval EPA with publish a timely withdrawal of the direct final rule. If comments are received on this interim final action, EPA will publish a final determination taking into consideration any comments received.

DATES: *Effective Date:* November 8, 1999.

Comments: Comments must be received by December 8, 1999.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the SIP revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue #201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT: Patricia Bowlin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Background

On August 31, 1995, the State of Arizona submitted Maricopa County Rule 318, Approval of Residential Woodburning Devices, and the Maricopa County Residential Woodburning Restriction Ordinance which EPA disapproved in part on March 31, 1998. 63 FR 15303. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted revised rules on August 4, 1999. EPA has taken direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the State of Arizona's SIP revision. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's revision.

Based on the direct final full approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's direct final full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will withdraw the direct final rule and either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on April 30, 1998. However, this action will stay the imposition of the offset sanction and will stay the imposition of the highway sanction. See 59 FR 39832 (Aug. 4, 1994). If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed, or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be stayed until EPA's direct final action fully approving the State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this document is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: October 27, 1999.

Debbie Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 99–28882 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK–3–1–5201a; FRL–6470–4]

Approval and Promulgation of Implementation, Plans Oklahoma; Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving a revision to the Oklahoma State Implementation Plan (SIP) involving the Oklahoma Visibility Protection Plan for the Federal Class I area. This action approves the general plan revisions and the long-term strategy and removes the disapproval of the Oklahoma SIP and resultant Federal Implementation Plan (FIP) for failure to meet the Federal requirements. This action does not apply to areas of "Indian Country" over which the State of Oklahoma has not demonstrated authority.

DATES: This rule is effective on January 7, 2000, without further notice, unless EPA receives adverse comment by December 8, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," and "our" is used, we mean EPA.

I. What Is the Purpose of This Action?

This action approves the Oklahoma Visibility Protection Plan submitted by the Governor of Oklahoma on June 18, 1990, as a revision to the Oklahoma SIP. This plan includes revisions to sections 1.4.4(b), 1.4.4(f), and 1.4.4(g) of the Prevention of Significant Deterioration (PSD) rules in the Oklahoma Air Quality Control Regulations. This action removes the EPA disapproval of the Oklahoma visibility plan and resultant FIPs published in the **Federal Register** on June 24, 1986 (51 FR 22937), and November 24, 1987 (52 FR 45137), and codified in 40 CFR 52.1933.

II. Why Is EPA Taking This Action?

Section 169A of the Federal Clean Air Act (the Act) requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. Mandatory Class I Federal areas are defined as certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act. Mandatory Class I Federal areas in each State are listed in 40 CFR part 81, subpart D—Identification of Mandatory Class I Federal Areas Where Visibility is an Important Value.

Section 169A of the Act specifically required EPA to promulgate regulations requiring certain states to amend their SIPs to provide for visibility protection. These regulations have been promulgated in 40 CFR part 51, subpart P, Visibility Protection. *See* 45 FR 80089, December 2, 1980.

III. Does Oklahoma Have Any Federal Class I Areas?

Oklahoma has one mandatory Class I area. It is the Wichita Mountains National Wildlife Refuge in Comanche County near Fort Sill Military Reservation.

IV. What Is Meant by Part I and Part II Visibility SIPs?

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. We were required to promulgate FIPs for visibility in States where SIPs were deficient with respect to the visibility regulations. Specifically, the first part of the agreement required us to propose and promulgate FIPs which cover the visibility monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307, respectively. These requirements became known as the Part I Visibility SIP requirements. However the settlement allowed a State an opportunity to avoid Federal promulgation if it submitted an approvable part I SIP by May 6, 1985. Oklahoma was one of the States listed as having an inadequate NSR and monitoring plan for visibility protection.

The second part of the settlement agreement required EPA to determine the adequacy of the SIPs to meet the remaining provisions of the visibility regulations and to propose and promulgate FIPs for states with deficient

SIPs. These remaining provisions cover the general plan provisions including visibility implementation control strategy (40 CFR 51.302) and long-term strategies (section 51.306). These provisions became known as the part II visibility SIP requirements. However, the settlement agreement allowed a State an opportunity to avoid Federal promulgation if it submitted an approvable part II visibility SIP by August 31, 1987. Oklahoma was one of the States listed as having an inadequate part II visibility protection SIP.

For more information on details of the provisions of the settlement agreement, see EPA's announcement of the agreement at 49 FR 20647 (May 16, 1984).

V. Why Did EPA Disapprove the Oklahoma Visibility SIP?

On October 23, 1984 (49 FR 42670), we proposed to disapprove the SIPs of 34 states, including Oklahoma, for failure to meet the visibility monitoring and visibility NSR requirements and proposed to incorporate Federal visibility regulations into the State plans.

On July 12, 1985, to avoid the national disapproval action, the Governor of Oklahoma submitted to us the Oklahoma Visibility Protection Plan (1985 Plan). On April 7, 1986 (51 FR 13029), we proposed to disapprove the 1985 Plan because it did not include an approvable part I visibility monitoring strategy required in 40 CFR 51.305 and the plan did not include an approvable NSR portion required in 40 CFR 51.307. The 1985 Plan incorporated existing Oklahoma Air Pollution Control Regulation, section 1.4.4(f)(7), Post-construction Monitoring, stating that the permit application would be reviewed for compliance with all current and applicable Oklahoma Air Pollution Control Regulations. However, the State failed to adopt additional regulations to meet the requirements in 40 CFR 51.307, Visibility NSR. A review of the existing Oklahoma section 1.4.4(g), Source Impacting Class I Areas, did not meet these NSR requirements.

On June 24, 1986 (51 FR 22937), we published a final disapproval of the Oklahoma Visibility Protection Plan submitted on June 12, 1985, and promulgated a FIP. The disapproval and the FIP promulgation, codified at 40 CFR 52.1933(a) and (b), incorporated into the Oklahoma SIP the Federal requirements in 40 CFR 52.26, Visibility monitoring strategy; § 52.27, Protection of visibility from sources in attainment areas; and § 52.28, Protection of visibility from sources in nonattainment areas.

On March 12, 1987 (52 FR 7802), EPA proposed to disapprove the SIPs of States (including Oklahoma) which failed to comply with the provisions of 40 CFR 51.302 and 51.306. The EPA was required by the EDF settlement agreement to promulgate visibility SIPs on a specific schedule. For States (including Oklahoma) which failed to submit a part II visibility protection SIP by August 31, 1987, EPA was required to promulgate a part II FIP. These FIPs were promulgated in the **Federal Register** on November 24, 1987 (52 FR 45137). The disapproval of the Oklahoma SIP and the FIP promulgation, codified in 40 CFR 52.1933(c), incorporated into the Oklahoma SIP the requirements of 40 CFR 52.29, Visibility long-term strategy.

VI. Review of the 1990 Oklahoma Visibility Plan

On June 18, 1990, the Governor of Oklahoma submitted to EPA a revised Oklahoma visibility protection plan to meet the part I and part II requirements of 40 CFR part 51, subpart P, Visibility Protection. The plan, entitled "Visibility Protection Plan" (1990 Plan), was developed by the Air Quality Service of the Oklahoma State Department of Health.

The EPA has reviewed the State's submittal and developed an evaluation report entitled "Evaluation Report for the Oklahoma Visibility Protection Plan."

The text of the 1990 Plan is similar to the text of the 1985 Plan. The major difference in the plans is that the 1990 Plan includes section 1.4.4(b) and revised sections 1.4.4(f) and 1.4.4(g) of the PSD regulations in Oklahoma Air Quality Control Regulations. The revisions to sections 1.4.4(f) and 1.4.4(g) are as amended by the Oklahoma State Department of Health on July 9, 1987, effective August 10, 1987.

All definitions in section 1.4.4(b), Definitions, in the June 18, 1990, submittal have already been approved by EPA or have been superceded by revisions submitted after June 18, 1990.

Section 1.4.4(f), Air Quality Impact Evaluation, was revised to include visibility impact evaluation requirements and gives the Commissioner authority to require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification.

Section 1.4.4(g), Sources Impacting Class I Areas, was revised to require the Commissioner to notify the Federal Land Manager (FLM) of the receipt of any analysis of the anticipated impacts on visibility in any Federal Class I area, and include a complete copy of the permit application of any proposed new major stationary source or major modification that may effect visibility in any Federal Class I area. The Commissioner is required to consider any timely analysis performed by the FLM that he receives. Where the Commissioner finds that such an analysis does not demonstrate to the satisfaction of the State that an adverse impact will result in the Federal Class I area, the Commissioner will, in the notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained. The revisions also added to section 1.4.4(g) the definitions of "Adverse impact on visibility," "Natural conditions," "Visibility impairment," "Federal land manager," and "Installation."

As stated above, the Wichita Mountains National Wildlife Refuge in Comanche County near Fort Sill Military Reservation is the only mandatory Class I area in Oklahoma. The refuge is managed by the U.S. Fish and Wildlife Service. The 1990 Plan commits the State to visibility protection within the refuge boundary consistent with the Act and EPA's regulatory requirements. In addition, the SIP is to be reviewed every three years consistent with the requirements of 40 CFR 51.306(c) and revised as necessary. The strategy which the State plan adopted includes a determination that there is no existing visibility impairment in the one mandatory Class I Federal area in Oklahoma that is reasonably attributable to specific sources. Currently, there are no integral vistas in Oklahoma.

States do not have jurisdiction over "Indian Country" (as defined in 18 U.S.C. 1151, and referenced in 40 CFR 51.1(i)) unless specifically granted by Congress. Since the State of Oklahoma has not submitted a demonstration of authority over "Indian Country," we are limiting our approval to those areas that do not constitute Indian Country. For a more detailed discussion of Tribal authority under the Act, see 59 FR 43956 (August 25, 1994) and 63 FR 7254 (February 12, 1998).

Based on our review, we find that the approval of sections 1.4.4(f) and 1.4.4(g) will result in the Oklahoma SIP regulations meeting all of the Federal NSR requirements of 40 CFR part 51, subpart P, Visibility Protection. Section 8, Visibility Monitoring Program, of the 1990 Plan, provides that the Oklahoma State Department of Health will monitor the background visibility conditions in the mandatory Class I Federal area by monthly review of local airport visibility data as collected by the

National Weather Service in Lawton, Oklahoma, airport located 22 miles southeast of the Wichita Mountains Wilderness and the Fort Sill Military Reservation airport located 19 miles southeast of the Wilderness in almost flat terrain. The airport visibility data should be representative of the conditions in the Class I area. The 1990 Plan includes an emission inventory of sources within 55 kilometers radius from the Wichita Mountains Refuge. The Oklahoma State Department of Health determined that there are no existing sources with a 55 kilometer radius from the Refuge with emissions that would significantly impact upon the Federal Class I area.

The Department will consider any available visibility data for use in making its decisions. The Department will coordinate with the FLM in conducting any monitoring of visibility in the mandatory Federal Class I area.

Our review also finds that the State of Oklahoma has satisfied the visibility general plan requirements of 40 CFR 51.302 and 51.306. These are the part II requirements for visibility long-term strategy and for implementation control strategies. The FLM has been afforded the opportunity to identify visibility impairment and to recommend elements for inclusion in the long-term strategy. The State has accorded the FLM opportunities to participate and comment on its visibility SIP revision. Comments by the FLM were submitted to the State during the State's public notice period, and they were considered by the State and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program.

The 1990 Plan contains the following provisions of the part II Visibility Protection Plan requirements:

(1) A determination that there is no existing visibility impairment that is reasonably attributable to specific sources,

(2) A discussion of the SIP elements and how each element of the plan relates to the national goal, and

(3) A long-term (10–15 years) strategy.

Since no existing reasonably attributable impairment has been identified, all elements of the plan are intended to prevent future impairment of visibility. If existing reasonably attributable impairment is later identified, the State will revise its plan to remedy the impairment. The part II revision consists of a narrative only, no regulatory revisions. Currently, there are no integral vistas in Oklahoma.

The Oklahoma visibility long-term strategy section included the following:

(1) Coordination with the FLM;

(2) Consideration of the six required factors for a long-term strategy;

(3) A provision for the review of the impact of new sources, and discussion of current visibility monitoring efforts; and

(4) Provisions for periodic review (*i.e.*, every three years) of the plan, which review must include consultation with the FLM and a report to the public and to EPA on progress toward the national goal.

VII. Final Action

We are approving the Oklahoma "Visibility Protection Plan" submitted by the Governor on June 18, 1990. We are approving revisions to sections 1.4.4(f) and 1.4.4(g) of the Oklahoma Air Pollution Control Regulations in the Oklahoma SIP submitted with the plan. We are removing and reserving 40 CFR 52.1933, Visibility Protection, because the Oklahoma SIP meets the requirements of section 169A of the Act and EPA's regulatory requirements.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on January 7, 2000, without further notice unless we receive adverse comment by December 8, 1999. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VIII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective January 7, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 27, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Oklahoma

2. Section 52.1920 is amended by adding paragraph (c)(49) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(49) Oklahoma visibility protection plan submitted by the Governor of Oklahoma on June 18, 1990.

(i) Incorporation by reference. Oklahoma Air Pollution Control Regulations, Sections 1.4.4(f)(2), 1.4.4(f)(7), 1.4.4(f)(11), and 1.4.4(g), as amended by the Oklahoma State Department of Health on July 9, 1987, effective August 10, 1987.

(ii) Additional information. "Oklahoma Visibility Protection Plan," submitted by the Governor of Oklahoma on June 18, 1990.

2. Section 52.1933 is removed and reserved.

§ 52.1933 [Reserved]

[FR Doc. 99–29069 Filed 11–5–99; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 034–0181; FRL–6470–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing full approval of a revision to the California State Implementation Plan (SIP) for the South Coast Air Basin (SCAB) proposed in the **Federal Register** on April 12, 1999. This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate particulate matter (PM–10) emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule regulates PM–10 emissions from open burning. Thus, EPA is finalizing the approval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority.

EFFECTIVE DATE: This action is effective on December 8, 1999.

ADDRESSES: Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.
Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.
South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is the South Coast Air Quality Management District (SCAQMD) Rule 208, Permit for Open Burning (adopted on January 5, 1990). This rule was submitted by the California Air Resources Board (CARB) to EPA on May 13, 1991.

II. Background

On April 12, 1999 at 64 FR 17589, EPA proposed granting full approval of the following rule into the California SIP for the SCAB: SCAQMD Rule 208, adopted on January 5, 1990 and submitted by the CARB to EPA on May 13, 1991. This PM–10 rule was submitted by the State of California in response to section 110(a) and part D of the CAA for incorporation into the California SIP. A detailed discussion of the background of the above rule and the nonattainment area in which it applies is provided in the proposed rule cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) and EPA's interpretation of these requirements as expressed in various EPA policy guidance documents referenced in the proposed rule. EPA is finalizing the full approval of SCAQMD Rule 208, because it strengthens the SIP by requiring that a written permit for any open outdoor fires be obtained from the Executive Officer of the SCAQMD. EPA has determined that SCAQMD Rule 208 meets the RACM requirements of part D of the CAA.

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 17589. EPA did not receive any comment letters on SCAQMD Rule 208.

IV. EPA Action

EPA has evaluated submitted SCAQMD Rule 208, Permit for Open Burning, and has determined that it is consistent with the CAA, EPA regulations, and meets RACM requirements. EPA is finalizing full approval of SCAQMD Rule 208 into the California SIP.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 20, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(184)(i)(B)(*8*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(B) * * *

(*8*) Rule 208, adopted on January 5, 1990.

* * * * *

[FR Doc. 99–29075 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 172–0188–FRL–6462–9]

California State Implementation Plan Revision, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Due to an adverse comment, EPA is removing the addition of a paragraph included in a direct final rule approving revisions to the California State Implementation Plan. EPA

published the direct final rule on August 19, 1999 (64 FR 45178), approving rule revisions from the Kern County Air Pollution Control District (KCAPCD). As stated in that **Federal Register** document, if adverse or critical comments were received by September 20, 1999, notice of timely withdrawal would be published in the **Federal Register**. However, because the effective date has passed, EPA is removing one amendment. EPA has received adverse comments on that amendment in the direct final rule and will address these comments in a final action within the near future. EPA will not institute a second comment period on this future final action.

DATES: This rule is effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION: Please see the information provided in the direct final rule located in the final rules section of the August 19, 1999 **Federal Register** (64 FR 45178), and in the proposed rule published in the proposed rule section of the August 19, 1999 **Federal Register** (64 FR 45216).

EPA received an adverse comment concerning KCAPCD Rule 410.4—Surface Coating of Metal Parts and Products and the addition of 40 CFR 52.220(c)(231)(i)(B)(6). Consequently, we are removing that amendment. All other amendments in this August 19, 1999 direct final rule concerning Bay Area Air Quality Management District Rule 8–26—Magnet Wire Coating, Monterey Bay Unified Air Pollution Control District Rule 434—Coating of Metal Parts and Products, and South Coast Air Quality Management District Rule 1107—Coating of Metal Parts and Products are unaffected by this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 8, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 52.220 [Amended]

2. Section 52.220 is amended by removing paragraph (c)(231)(i)(B)(6).

[FR Doc. 99–27797 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6469–8]

RIN 2060–AI50

Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action EPA is promulgating (adopting) a Federal plan to implement emission guideline requirements for existing municipal solid waste (MSW) landfills located in States and Indian country where State plans or Tribal plans are not currently in effect. For most areas, the Federal plan is an interim action because, on the effective date of an approved State or Tribal plan, the Federal plan will no longer apply to MSW landfills covered by the State or Tribal plan. This MSW landfills Federal plan includes the same required elements specified in 40 CFR part 60, subparts B, Cc, and WWW for a State plan: identification of legal authority and mechanisms for implementation; inventory of affected facilities; emissions inventory; emission limits; compliance schedules; a process for EPA or State review of design plans for site-specific gas collection and control systems; testing, monitoring, reporting and recordkeeping requirements; public hearing requirements; and progress reporting requirements. This Federal plan will most likely affect the industry sectors Air and Water Resource and Solid Waste Management, and Refuse Systems—Solid Waste Landfills, which are North American Industrial Classification System Codes 92411 and 562212 and Standard Industrial Classification Codes 9511 and 4953.

EFFECTIVE DATE: The effective date of this MSW landfills Federal plan is January 7, 2000.

ADDRESSES: *Docket.* Docket numbers A–98–03 and A–88–09 contain the supporting information for this promulgated rule and EPA's promulgation of standards of performance for new MSW landfills and emission guidelines for existing MSW landfills, respectively. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260–7548. The fax number for the Center is (202) 260–4000 and the e-mail address is "A-and-R-Docket@epamail.epa.gov". The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For procedural and implementation information regarding this Federal plan, contact Ms. Mary Ann Warner at (919) 541–1192, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For technical information, contact Ms. Michele Laur at (919) 541–5256, Waste & Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 3) as shown in section J of Supplementary Information.

SUPPLEMENTARY INFORMATION:

Judicial Review. The EPA proposed this section 111(d) rule for MSW landfills on December 16, 1998 (63 FR 69364). This action adopting a rule for MSW landfills constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the Clean Air Act (Act), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 7, 2000. Under section 307(d)(7)(B) of the Act, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

Electronic Copy. In addition to being available in the docket, an electronic copy of today's document that includes the regulatory text is available through the EPA Technology Transfer Network Website (TTN Web) recent actions page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/ramain.html). The TTN Web provides information and technology exchange in various areas of air pollution control. For TTN help information, call the TTN Web helpline at (919) 541–5384.

Regulated Entities. Entities regulated by this action are all existing MSW landfills unless the landfill is covered by an EPA-approved section 111(d) State or Tribal plan that is currently effective. Existing landfills are those that:

(i) commenced construction, modification, or reconstruction prior to May 30, 1991;

(ii) have not been modified or reconstructed since May 30, 1991; and

(iii) have accepted waste since November 8, 1987 or have additional capacity for future waste deposition.

Regulated categories and entities include the following North American Industrial Classification System (NAICS) and Standard Industrial Classification System (SIC) codes:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management.	92411	9511	Municipal solid waste landfills that commenced construction, modification, or reconstruction before May 30, 1991.
Industry: Refuse systems—solid waste landfills	562212	4953	
State, local, and Tribal government agencies.			

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether a facility, company, or business organization is regulated by this action, carefully examine the applicability criteria in §§ 62.14350 and 62.14352 of subpart GGG.

Based on the status of State plans as of June 14, 1999 (A–98–03, IV–J–20) and the MSW landfills inventory (A–98–03, IV–B–3), EPA projects that the MSW landfills Federal plan could initially affect more than 3,800 MSW landfills in approximately 28 States, protectorates, and municipalities. However, EPA expects many State plans to be approved and become effective in the next few months; therefore, the number of landfills affected by this Federal plan will continue to decrease as State and Tribal plans are approved and become effective.[1]

Outline. The following outline shows the organization of the remainder of the **SUPPLEMENTARY INFORMATION** section of this preamble.

- I. Background of Landfills Regulations and Affected Facilities
  - A. Background of MSW Landfills Regulations
  - B. MSW Landfills Federal Plan and Affected Facilities
  - C. MSW Landfills Federal Plan and Negative Declaration Letters
  - D. MSW Landfills Federal Plan and the New Source Performance Standards
  - E. Implementing Authority
  - F. MSW Landfills Federal Plan and Indian Country
  - G. MSW Landfills Federal Plan and Compliance Schedules
  - H. MSW Landfills Excluded From Federal Plan Applicability
  - I. Status of State Plan Submittals
  - J. Regional Office Contacts
- II. Required Elements of this Municipal Solid Waste Landfills Federal Plan
- III. Summary of Comments and Changes Since Proposal
  - A. State Plan Interim Approval
  - B. Design Capacity Estimates and Reports
  - C. Inventory of Landfills
  - D. Calculating Emissions Rate for Control Applicability
  - E. Final Control Plan
  - F. Increments of Progress
  - G. Delegation
- IV. Implementation of Federal Plan and Delegation
  - A. Background of Authority
  - B. Delegation of the Federal Plan and Retained Authorities
  - C. Mechanisms for Transferring Authority
- V. Title V Operating Permits
- VI. Summary of Federal Plan
- VII. Administrative Requirements
  - A. Docket
  - B. Paperwork Reduction Act
  - C. Executive Order 12866
  - D. Executive Orders on Federalism
  - E. Executive Order 13045
  - F. Executive Order 13084
  - G. Unfunded Mandates Reform Act
  - H. Regulatory Flexibility Act
  - I. Submission to Congress and the General Accounting Office
  - J. National Technology Transfer and Advancement Act

I. Background of Landfills Regulation and Affected Facilities

A. Background of MSW Landfills Regulations

On March 12, 1996 the EPA promulgated in the **Federal Register** emission guidelines (61 FR 9905) for existing MSW landfills (40 CFR part 60, subpart Cc) under authority of section 111 of the Act. The guidelines apply to existing MSW landfills, i.e., those that:

(i) commenced construction, modification, or reconstruction before May 30, 1991;

(ii) have not been modified or reconstructed since May 30, 1991; and

(iii) have accepted waste since November 8, 1987 or have additional capacity for future waste deposition.

On June 16, 1998 and February 24, 1999, EPA published notices to amend, correct errors, and clarify regulatory text for 40 CFR part 60, subpart Cc (63 FR 32743 and 64 FR 9258). These clarifications and amendments did not affect the due date or the required content of State plans for existing MSW landfills which were originally due on December 12, 1996. They did, however, trigger a requirement under 40 CFR 60.23(a)(2) for States, territories, localities, and Tribes to submit proposed revisions to State or Tribal plans to EPA. These plans would incorporate the requirements of the clarifications and amendments.

To make the guidelines enforceable, States with existing MSW landfills subject to the guidelines were required to submit to EPA a State plan that implements and enforces the emission guidelines within 9 months of promulgation of the guidelines (December 12, 1996). States without existing landfills or without existing landfills that require control must submit a negative declaration letter. Following receipt of the State plan, EPA has up to 4 months to approve or disapprove the plan. In appropriate circumstances, case-by-case extensions can be granted (40 CFR 60.27(a)). In some cases, local agencies or protectorates of the United States submit plans for landfills in their jurisdictions. As discussed in section I.F. of this preamble, Indian Tribes may, but are not required to, submit Tribal plans.

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[1] While the inventory was completed June 14, 1999, table 2 in the preamble and tables 1 and 2 in the regulation were updated as of October 19, 1999 and reflect more current information.

If a State does not have an approved State plan, section 111 of the Act and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan for existing MSW landfills located in that State. In addition, section 301(d)(2) authorizes the Administrator to treat an Indian tribe in the same manner as a State for this MSW landfill requirement. (See section 49.3 of "Indian Tribes: Air Quality Planning and Management," hereafter "Tribal Authority Rule," 63 FR 7254, February 12, 1998.) For Indian tribes that do not have an approved MSW landfills Tribal plan, EPA must develop, implement and enforce a Federal plan for them.

Today's action, which will be codified as subpart GGG of 40 CFR part 62, adopts a MSW landfills Federal plan that includes the elements described in section II of this preamble.

B. MSW Landfills Federal Plan and Affected Facilities

This final MSW landfills Federal plan affects existing MSW landfills that:

(i) commenced construction, reconstruction or modification prior to May 30, 1991;

(ii) have not been modified or reconstructed since May 30, 1991; and

(iii) have accepted waste since November 8, 1987 or have capacity for future waste deposition.

The MSW landfills Federal plan applies to existing MSW landfills located in: (1) Any State or portion of Indian country for which a State or Tribal plan has not become effective; (2) Any State or portion of Indian country for which the State or Tribe submitted a negative declaration; (3) Any State or portion of Indian country with an effective State or Tribal plan that subsequently is vacated in whole or in part; or (4) Any State or portion of Indian country with an effective plan that subsequently revises any component of the plan (e.g., the underlying legal authority or enforceable mechanism) such that the State or Tribal plan is no longer as stringent as the emission guidelines. A landfill that meets any of these criteria is covered by the Federal plan until an applicable State or Tribal plan is approved and becomes effective. An approved State or Tribal plan is a plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. The State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

The effective date of this Federal plan is January 7, 2000. The effective date is 60 days after the date of this publication, rather than 30 days after publication as proposed. This extra 30 days will allow EPA to approve additional State plans. The EPA does not expect the delay to affect the environmental benefits of this regulation.

C. MSW Landfills Federal Plan and Negative Declaration Letters

A negative declaration is a letter to EPA declaring that either there are no existing MSW landfills in the State or portion of Indian country or there are no existing MSW landfills in the State or portion of Indian country that must install collection and control systems according to the requirements of the emission guidelines. States or Indian tribes that submit negative declarations are not expected to submit State or Tribal plans, but existing MSW landfills with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) in the State or portion of Indian country are subject to the MSW landfills Federal plan. Existing MSW landfills with a design capacity less than 2.5 million Mg or 2.5 million m^3 that are located in States or portion of Indian country that submitted a negative declaration letter are not required to submit an initial design capacity report if the negative declaration letter includes the design capacity for the landfills.

The preamble to the proposed rule incorrectly indicated that submission of the initial design capacity report was the only requirement applicable to a MSW landfill with a design capacity below 2.5 million Mg and 2.5 million m^3. Such MSW landfills, however, continue to be subject to the requirements in the definition of design capacity in § 62.14351 to recalculate the site-specific density annually and in § 62.14355 to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million m^3. Section 62.14355 as proposed and as finalized herein, accurately states that these landfills are only exempt from the requirement to submit an initial design capacity report. The EPA has added language to § 62.14352(c) to make it clearer that a MSW landfill located in a State, locality or portion of Indian country that submitted a negative declaration remains subject to the requirements to recalculate site-specific density annually and to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million m^3.

Existing MSW landfills overlooked by a State or Indian tribe that submitted a negative declaration letter and existing landfills not included in a State or Tribal plan are subject to the Federal plan until a State or Tribal plan that includes these sources is approved and effective. For instance, in the event that an existing MSW landfill that must install a collection and control system according to the emission guidelines is subsequently identified where a negative declaration has been submitted, the Federal plan requirement to install a collection and control system would apply. As discussed in section I.F. of this preamble, the Federal plan applies throughout Indian country until an approved State or Tribal plan becomes effective. As discussed in section I.H. of this preamble, the Federal plan, by its own terms, no longer applies to a MSW landfill appropriately covered by an approved State or Tribal plan that becomes effective after promulgation of the Federal plan. The specific applicability of this plan is described in §§ 62.14350 and 62.14352 of subpart GGG.

D. MSW Landfills Federal Plan and the New Source Performance Standards

An existing MSW landfill that increases its permitted volume design capacity through vertical or horizontal expansion (i.e., is modified) on or after May 30, 1991, is subject to the New Source Performance Standards (NSPS), 40 CFR part 60, subpart WWW (see 63 FR 32743, June 16, 1998). Existing MSW landfills that make operational changes without increasing the horizontal or vertical dimensions of the landfill continue to be subject to the Federal or State plan that implements the emission guidelines, rather than the NSPS. Examples of such operational changes at a MSW landfill include changing the moisture content of the waste, increasing the physical compaction on the surface, changing the cover material or thickness of the daily cover, and changing baling or compaction practices. This interpretation is consistent with the amendments to the landfills emission guidelines and NSPS, which are consistent with the landfill litigation settlement agreement. A MSW landfill that has been reconstructed on or after May 30, 1991 would also be subject to the NSPS, not the Federal or State plan that implements the emission guidelines. Reconstructions are unlikely for landfills. As specified in the NSPS General Provisions, reconstructions are "the replacement of components of an existing facility [landfill] to such an extent that: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new facility [landfill]." The EPA knows of no situation where this would occur at a landfill.

E. Implementing Authority

The EPA Regional Administrators are the delegated authority for implementing the MSW landfills Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Administrator. Table 1 lists the States located in each region and the addresses of the EPA Regional Administrators.

TABLE 1.—EPA REGIONAL ADMINISTRATORS

Regional contact	State or protectorate
EPA Region I, One Congress Street, John F. Kennedy Federal Bldg., Boston, MA 02203–0001	CT, MA, ME, NH, RI, VT.
EPA Region II, 290 Broadway, New York, NY 10007–1866	NJ, NY, PR, VI.
EPA Region III, 1650 Arch Street, Philadelphia, PA 19106	DC, DE, MD, PA, VA, WV.
EPA Region IV, 61 Forsyth Street, SW, Atlanta, GA 30303	AL, FL, GA, KY, MS, NC, SC, TN.
EPA Region V, 77 W. Jackson Blvd., Chicago, IL 60604–3507	IL, IN, MI, MN, OH, WI.
EPA Region VI, Fountain Place, 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733	AR, LA, NM, OK, TX.
EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101	IA, KS, MO, NE.
EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466	CO, MT, ND, SD, UT, WY.
EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105	AS, AZ, CA, GU, HI, NMI, NV.
EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101	AK, ID, OR, WA.

F. MSW Landfills Federal Plan and Indian Country

The MSW landfills Federal plan applies throughout Indian country to ensure that there is not a regulatory gap for existing MSW landfills in Indian country. The EPA requested comments, but received none, on its proposed approach to applying the landfills Federal plan in Indian country; therefore, the proposed approach, which is repeated here, is final.

Indian tribes have the authority under the Act to develop Tribal plans in the same manner States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the Act for which EPA is authorized to treat Tribes in the same manner as States (see 63 FR 7254, Tribal Authority Rule; codified at 40 CFR part 49). Upon the effective date of the Tribal Authority Rule, March 16, 1998, EPA has the authority to approve Tribal programs, such as Tribal plans or programs to implement and enforce MSW landfill emission guidelines, under the Act. Section 301(d)(2) authorizes the Administrator to treat an Indian tribe in the same manner as a State for the Clean Air Act provisions identified in 40 CFR section 49.3 if the Indian tribe meets the following criteria:

(a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(d) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgement, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations (see section 49.6 of the Tribal Authority Rule, 63 FR 7272). In addition, if a Tribe meets these criteria, the EPA can delegate authority to implement the Federal plan to an Indian tribe the same way it can delegate authority to the State.

In addition to giving Indian tribes authority to develop Tribal plans, the Act also provides EPA with the authority to administer Federal programs in Indian country. This interpretation of EPA's authority under the Act is based in part on the general purpose of the Act, which is national in scope. In addition, section 301(a) of the Act provides EPA broad authority to issue regulations that are necessary to carry out the functions of the Act. The EPA believes that Congress intended for EPA to have the authority to operate a Federal program in instances when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the Act. Finally, section 301(d)(4) of the Act authorizes the Administrator to directly administer provisions of the Act to achieve the appropriate purpose, where Tribal implementation of those provisions is not appropriate or administratively feasible. The EPA's interpretation of its authority to directly implement Clean Air Act programs in Indian county is discussed in more detail in the final Federal Operating Permits Program, 64 FR 8247, (February 19, 1999) and in the Tribal Authority Rule.

Many Tribes may have delayed development of air quality regulations and programs pending promulgation of the Tribal Authority Rule. As mentioned previously, Tribes may, but are not required to, submit a MSW landfills plan or negative declaration letter under section 111(d) of the Act. The EPA is not aware of any Tribes that have developed plans to implement the MSW emission guidelines or submitted negative declaration letters.

The impact of this Federal plan on Indian tribes is not expected to be significant. There are very few existing MSW landfills in Indian country large enough to require the installation of a collection and control system. For most existing MSW landfills in Indian country, the only requirements this Federal plan imposes are to submit an initial design capacity report and to recalculate the site-specific density and design capacity annually and to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million m^3.

The Federal plan will apply throughout Indian country except where a State or Tribal plan has been explicitly approved by EPA to cover an area of Indian country. The EPA will administer the plan in Indian country without requiring any jurisdictional showing on the part of the Tribe. To assure there are no gaps in coverage, EPA will treat disputed areas, i.e., areas for which EPA believes the Indian country status may be in question, as Indian country. The EPA will continue to implement the Federal plan in these areas until a Tribal plan covering an area of Indian country becomes effective, or the area is determined not to be Indian country and the source is subject to an effective State plan. This approach is consistent with the final Federal Operating Permits Program cited above.

The term "Indian country," as used in this MSW landfills Federal plan, means (a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition is consistent with the final Federal Operating Permits Program.

G. MSW Landfills Federal Plan and Compliance Schedules

The emission guidelines require the owner or operator of a MSW landfill to submit a design capacity report within 90 days after the effective date of the State or Tribal plan (or within 90 days after the effective date of the promulgated Federal plan). An emission rate report showing nonmethane organic compounds (NMOC) emissions from the landfill must also be submitted within the same time period if the landfill has a design capacity of 2.5 million Mg and 2.5 million m^3 or more. Both of the requirements have been incorporated in the Federal plan. The emission guidelines and this Federal plan further require the owner or operator of a MSW landfill with a design capacity greater than or equal to 2.5 million Mg and 2.5 million m^3 to submit a collection and control system design plan within 1 year of first reporting NMOC emissions of 50 Mg per year or more. The collection and control system must be installed and operating within 30 months of first reporting NMOC emissions of 50 Mg per year or more. The compliance schedule in this Federal plan also sets the dates for awarding contracts and beginning construction, however, States, Tribes, and owners or operators have the option of setting these two dates (see option 3 below), which are not specifically defined in the emission guidelines. (See the discussion in section II.E of the proposal preamble (63 FR 69373).)

As discussed in the proposal preamble, the EPA believes that it would be inappropriate for the owner or operator of a MSW landfill who is subject to the requirements of this Federal plan to install a collection and control system to obtain additional time for achieving final compliance by virtue of the subsequent approval of a State or Tribal plan. The EPA did not receive any adverse comments regarding this interpretation. Therefore, to guard against this occurring, the EPA has added a sentence to § 62.14356(c)(1) to make it clear that once the Federal plan becomes effective, any designated facility to which the Federal plan applies will remain subject to the schedule in the Federal plan if a subsequently approved State or Tribal plan contains a less stringent schedule (i.e., a schedule that provides more time to comply with increments 1, 4 and/or 5 as specified in § 62.14356(a) than does this Federal plan).

Also discussed in the proposal preamble were three options for establishing dates for the increments of progress that make up the compliance schedule. They are: (1) Comply with the generic compliance schedule in the landfill Federal plan (table 2 of subpart GGG of the proposed Federal plan and table 3 of subpart GGG of this final Federal plan), (2) States or Tribes submit compliance schedules to the EPA before the end of the comment period of the proposed Federal plan, and (3) Landfill owners or operators or the State or Tribe submit a compliance schedule for increments 2 and 3 to the EPA at the time the final control plan is due. The EPA requested and received no comments on these options. Although the time period for submitting increments of progress under option 2 has passed, options 1 and 3 will remain available in this final Federal plan. This will allow for increased regulatory efficiency and flexibility.

H. MSW Landfills Excluded From Federal Plan Applicability

The MSW landfills Federal plan does not apply to landfills appropriately covered by an approved and effective State or Tribal plan or to landfills in a State or portion of Indian country that has submitted a negative declaration as long as the landfills in fact have a design capacity less than 2.5 million Mg or 2.5 million m^3. If a State or Tribal plan becomes effective before this Federal plan becomes effective, this Federal plan will not apply to landfills appropriately covered by that State or Tribal plan. Promulgation of this MSW landfills Federal plan does not preclude a State or Tribe from submitting a plan later. If a State or Tribe submits a plan after the effective date of this Federal plan, EPA will review and approve or disapprove the plan. Upon the effective date of the State or Tribal plan, the Federal plan no longer applies. States are, therefore, encouraged to continue their efforts to develop and submit State plans to EPA for approval. Similarly, EPA encourages Tribes to develop and submit Tribal plans.

I. Status of State Plan Submittals

The following States have EPA approved and effective State plans: Alabama, Allegheny County (Pennsylvania), Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nashville (Tennessee), Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, and Wyoming.

The following States have EPA approved State plans that are approved but not yet effective: Arizona,[2] California,[3] Delaware,[4] Maryland,[5] Nevada,[6] South Carolina,[7] and Tennessee.[8] States that have approved or approved and effective State plans are listed in table 1 of subpart GGG. (MSW landfills located in those States would become subject to the Federal plan in the event that the State plan is subsequently disapproved, in whole or in part.) States that submitted negative declaration letters are listed in table 2 of subpart GGG.

States without approved plans are making significant progress on their State plans and EPA expects many State plans to be approved in the next few months. (The EPA is not aware of any Indian tribes that are developing Tribal plans.) Table 2 of this preamble summarizes the status of States without approved and effective State plans and those that have submitted negative declarations as of October 19, 1999. The table is based on information from EPA Regional Offices (Docket No. A–98–03, Item No. IV–J–23). Copies of **Federal Register** notices of approvals and negative declaration letters are located in Docket No. A–98–03.

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[2] The Arizona State plan is scheduled to become effective on November 19, 1999 (64 FR 50768, September 20, 1999).

[3] The California State plan is scheduled to become effective on November 22, 1999 (64 FR 51447, September 23, 1999).

[4] The Delaware State plan is scheduled to become effective on November 16, 1999 (64 FR 50453, September 17, 1999).

[5] The Maryland State plan is scheduled to become effective on November 8, 1999 (64 FR 48714, September 8, 1999).

[6] The Nevada State plan is scheduled to become effective on November 19, 1999 (64 FR 50764, September 20, 1999).

[7] The South Carolina State plan is scheduled to become effective on October 25, 1999 (64 FR 46148, August 24, 1999).

[8] The Tennessee State plan is scheduled to become effective on November 29, 1999 (64 FR 52660, September 30, 1999).

TABLE 2.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN [a]

State
I. Negative declaration submitted to EPA and no State plan is expected. (See discussion in section I.C of this preamble.)
Region I
New Hampshire
Rhode Island
Vermont
Region III
District of Columbia
Philadelphia, PA
II. State plan submitted and is being reviewed by EPA. The promulgated Federal plan will cover existing MSW landfills in these States until the State plan is approved and becomes effective.
Region III
Pennsylvania
West Virginia
Region IV
Knox County, Tennessee
North Carolina
III. State plan or negative declaration not submitted. The existing MSW landfills in these States will be subject to the promulgated Federal plan unless a State plan applicable to existing landfills is approved by EPA and becomes effective.
Region I
Connecticut
Maine
Massachusetts
Region II
New Jersey
Puerto Rico
Virgin Islands
Region III
Virginia
Region IV
Chattanooga, Tennessee
Mississippi
Region V
Indiana
Michigan
Wisconsin
Region VI
Albuquerque, New Mexico
Arkansas
Region IX
American Samoa
Clark County, Nevada
Guam
Hawaii
Northern Mariana Islands
Region X
Alaska
Idaho
Washington

[a] Current as of October 19, 1999. See Docket No. A–98–03; Item No. IV–J–23.

To assist in identifying which MSW landfills are and are not covered by the Federal plan, table 1 of subpart GGG lists States and Indian tribes that have approved and effective plans as of October 19, 1999 that cover MSW landfills in the State or Indian country. MSW landfills not appropriately covered by an effective plan are covered by the Federal plan. For example, if a landfill is located in a State that is listed in table 1 of subpart GGG and the State plan does not apply to the landfill, then the landfill is subject to the Federal plan. As stated above, EPA expects additional State plans to become effective prior to the effective date of this Federal plan. The EPA will periodically amend table 1 of subpart GGG to identify States with approved and effective State plans. These amendments will be published in the **Federal Register** and codified in the CFR. The inclusion or the failure to include a State in table 1 of subpart GGG is not controlling in determining whether a MSW landfill is subject to the MSW landfill Federal plan. Any MSW landfill not covered by an approved and currently effective State or Tribal plan, or any MSW landfill with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 located in a State that submitted a negative declaration, is subject to the MSW landfill Federal plan.

The EPA will keep an up-to-date list of State plan submittals and approvals on the EPA TTN Web at http://www.epa.gov/ttn/oarpg and http://www.epa.gov/ttn/uatw/landfill/landflpg.html. The list will help landfill owners or operators determine whether their landfill is affected by a State or Tribal plan or the Federal plan.

J. Regional Office Contacts

For information regarding the implementation of the MSW landfills Federal plan, contact the appropriate EPA Regional Office as shown in table 3.

TABLE 3.—EPA REGIONAL CONTACTS FOR MUNICIPAL SOLID WASTE LANDFILLS

Regional contact	Phone No.	Fax No.
Region I (CT, MA, ME, NH, RI, VT)		
Jeanne Cosgrove, U.S. EPA/CAQ, John F. Kennedy Federal Bldg., Boston, MA 02203–0001	(617) 918–1669	(617) 918–1505
Region II (NJ, NY, PR, VI)		
Craig Flamm, U.S. EPA/25th Floor, 290 Broadway, New York, NY 10007–1866	(212) 637–4021	(212) 637–3901
Region III (DC, DE, MD, PA, VA, WV)		
James B. Topsale, U.S. EPA/Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029	(215) 814–2190	(215) 814–2114
Region IV (AL, FL, GA, KY, MS, NC, SC, TN)		
Scott Davis, U.S. EPA/APTMD, 61 Forsyth Street, SW, Atlanta, GA 30303	(404) 562–9127	(404) 562–9095
Region V (IL, IN, MI, MN, OH, WI)		
Charles Hatten, U.S. EPA, 77 W. Jackson Blvd., Chicago, IL 60604	(312) 886–6031	(312) 886–0617

TABLE 3.—EPA REGIONAL CONTACTS FOR MUNICIPAL SOLID WASTE LANDFILLS—Continued

Regional contact	Phone No.	Fax No.
Region VI (AR, LA, NM, OK, TX)		
Mick Cote, U.S. EPA, 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733	(214) 665–7219	(214) 665–7263
Region VII (IA, KS, MO, NE)		
Ward Burns, U.S. EPA/RME, 726 Minnesota Ave./ARTDAPCO, Kansas City, KS 66101–2728	(913) 551–7960	(913) 551–7065
Region VIII (CO, MT, ND, SD, UT, WY)		
Martin Hestmark, U.S. EPA/8ENF–T, 999 18th Street, Suite 500, Denver, CO 80202–2466	(303) 312–6776	(303) 312–6409
Region IX (AS, AZ, CA, GU, HI, NMI, NV)		
Patricia Bowlin, U.S. EPA/RM HAW/17211, 75 Hawthorne Street/AIR–4, San Francisco, CA 94105	(415) 744–1188	(415) 744–1076
Region X (AK, ID, OR, WA)		
Catherine Woo, U.S. EPA, 1200 Sixth Ave., Seattle, WA 98101	(206) 553–1814	(206) 553–0404

II. Required Elements of This Municipal Solid Waste Landfills Federal Plan

Section 111(d) of the Act, 42 U.S.C. 7411(d), requires States to develop and implement State plans for MSW landfills that implement and enforce the published emission guidelines. Subparts B and Cc of 40 CFR part 60 require States to submit State plans that include specified elements. Because the Federal plan is being adopted for areas where State plans are not yet in effect, the Federal plan includes the same essential elements as required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) Inventory of affected facilities, (3) Emissions inventory, (4) Emission limits, (5) Compliance schedules, (6) A process for EPA or State review of design plans for site-specific gas collection and control systems, (7) Testing, monitoring, reporting and recordkeeping requirements, (8) Public hearing requirements, and (9) Progress reporting requirements. Each State plan element was discussed in detail as it relates to the MSW landfills Federal plan in the preamble to the proposed rule (63 FR 69370–69375). Table 4 identifies each element and indicates where it is located or codified.

TABLE 4.—REQUIRED ELEMENTS AND LOCATION

Required element of the landfills federal plan	Where located or codified
1. Identification of legal authority and mechanisms for implementation	Section 111(d)(2) of the Act and Sections II.A and III.A of the proposal preamble (63 FR 69370).
2. Inventory of affected facilities	Docket No. A–98–03, Item No. IV–B–3.
3. Emission inventory	Docket No. A–98–03, Item No. IV–B–3.
4. Emission limits	40 CFR 62.14353.
5. Compliance schedules	40 CFR 62.14356.
6. Process for review of site-specific gas collection and control system design plans.	Section II.F of the proposal preamble (63 FR 69375).
7. Testing, monitoring, reporting and recordkeeping requirements	40 CFR 62.14354 and 62.14355.
8. Public hearing requirements	Section II.I of the proposal preamble (63 FR 69375).
9. Progress reports	Section II.H of proposal preamble (63 FR 69375).

III. Summary of Comments and Changes Since Proposal

In this section of the preamble, the EPA presents a brief summary of its responses to the public comments it received on the MSW landfills Federal plan. The full comment summaries and responses are documented in the promulgation background information document (EPA–456/R–99–001, Docket No. A–98–03, item III–B–1). The document addresses additional comments that are not summarized in this preamble.

The EPA requested comments on the proposed options for establishing the incremental compliance dates. The EPA received no comments on the proposed options for establishing the incremental compliance dates, nor did it receive site-specific compliance schedules to be included in the final rule. The EPA did receive comments on its approval of State plans, design capacity estimates and reports, the inventory, calculating the emissions rate for control applicability, the final control plan, and delegation. The EPA also received one comment on the Information Collection Request. That comment is discussed in section VII.B of this preamble.

A. State Plan Interim Approval

Commenters suggested that EPA issue a final rulemaking to provide interim approval of State plans that have been submitted to EPA but have not yet been approved or disapproved. These commenters suggested that if EPA approved State plans on an interim basis, the landfill owner or operator would be subject to only the State regulations without duplication of Federal requirements. One commenter suggested that EPA should defer to the provisions of State plans that have been submitted in order to avoid the costs and other burdens of duplicate or inconsistent regulation during the review period.

The EPA will not approve State plans on an interim basis for two reasons: (1) There is no legal basis for interim approval and (2) Overlapping requirements are not likely. The EPA only has the authority to approve or disapprove a State plan, or any portion thereof, based on whether it is consistent with 40 CFR part 60, subparts B and Cc. While section 502 of the Act and 40 CFR 70.4(d) specifically authorize interim approval for title V permit programs, neither subpart B nor section 111(d) of the Act authorizes EPA to grant similar interim approval of State or Tribal plans. The EPA will continue to accept and review State plans according to the criteria for State plans that are described in "Municipal Solid Waste Landfill, Volume 2: Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Emission Guidelines" (guidance document).

In addition, the EPA does not expect landfill owners or operators to be subject to duplicate or inconsistent regulation. The EPA expects that State plans that were submitted by December 1998 (when the Federal plan was proposed) will be approved or disapproved before the landfills Federal plan becomes effective. Once the State plan is approved and becomes effective, the owner or operator of a landfill covered by the State plan will not be subject to the Federal plan. If, as expected, State plans become effective prior to promulgation of the Federal plan, landfill owners or operators of landfills covered in those State plans will have to comply only with the State plans and will not be subject to two different time lines or other inconsistent requirements.

B. Design Capacity Estimates and Reports

One commenter contended that it is a meaningless task for towns (the owners or operators of the landfills) to create design capacity reports based on uncertain data and where the landfills are no longer operating. According to the commenter, many of the small towns in the State do not know and cannot determine the design capacity of their landfills. The height and density, which would be used to calculate the design capacity, are not available. The commenter further stated that there is no way to recreate the history needed to get the height or density. Many of the State's landfills have been closed and have no additional capacity for future waste disposal. The commenter also stated that most of the landfills in the State are much smaller than the design capacity cutoff.

The emission guidelines require owners and operators subject to the Federal plan to submit design capacity reports regardless of the size of the landfill. The Federal plan must be as stringent as the emission guidelines, therefore, the requirement to submit a design capacity report remains in the final Federal plan. The purpose of the design capacity report is to help determine which landfills may be subject to the requirement to install a collection and control system. Closed landfills that accepted waste since 1987 are included because landfills continue to emit nonmethane organic compounds (NMOC) years after they have closed and they are subject to the emission guidelines that are implemented by the Federal plan.

If data are not available on waste acceptance rates, then owners and operators should estimate their landfill's design capacity based on the best information available. For example, if owners or operators know the acreage of their landfills (the commenter provided the acreage for 396 landfills in the State), they could estimate the depth of waste based on available information, and document their assumption on depth. Then they could calculate the approximate volumetric design capacity of the landfill and submit the report. If capacity is clearly below 2.5 million cubic meters (or 2.5 million megagrams) no further action is required.

C. Inventory of Landfills

One commenter stated that one purpose of the Federal plan appears to be to create a database of MSW landfills in order to estimate emissions. The commentor stated that the vast majority of small, closed landfills will never be able to be assessed due to lack of information. Two commenters provided information on landfills in their States. The information was submitted in response to EPA's request for supplemental information on the landfills inventory that EPA prepared as part of the Federal plan (Docket no. A–98–03, Item no. II–B–2). The EPA appreciates the commenters' information on landfills. The information provided by the commenters is a useful supplement to EPA's inventory and will help in determining which landfills may be affected by the landfills Federal plan.

The EPA revised the Federal plan inventory since proposal to remove States that it no longer expects to be covered by the landfills Federal plan. The updated inventory can be found in Docket No. A–98–03, Item No. IV–B–3.

The EPA will continue to require States that develop State plans to submit an inventory of existing landfills that accepted waste after November 8, 1987, consistent with 40 CFR 60.25. The purpose of the inventory is to provide a record to the public of existing MSW landfills in a State or Indian country. The EPA is encouraging States to continue work on State plans, including inventories. Where inventory data is lacking, States should use whatever information is available to develop a reasonable estimate of emissions.

D. Calculating Emissions Rate For Control Applicability

One commenter recommended that the landfills Federal plan defer to alternative emission estimation methods, particularly State-approved methods. This would ensure that consistent and accurate emissions estimates are used in determining actions under the emission guidelines and new source performance standards (40 CFR part 60, subparts Cc and WWW) and related State programs, such as Title V permitting and New Source Review. The commenter stated that facilities should be allowed to employ the most accurate emissions estimates. The commenter also expressed concern that EPA may rely on default estimates based on AP–42 estimation methodology while States are using more recent and sophisticated emission methods that are proving more accurate.

The emission guidelines do not allow the use of AP–42 emission factors to determine whether a landfill must install controls; they require the MSW landfill owner or operator to use the tiered calculation procedure described in 40 CFR 60.754 of subpart WWW to determine the eventual need for controls. The Federal plan implements the emission guidelines and must, therefore, require the use of the same procedure. (The appropriate time to comment on the procedure was during the public comment periods for these regulations.) The procedure involves the calculation of the NMOC emission rate from a landfill. If the emission rate equals or exceeds a specified threshold (50 Mg NMOC/yr), the landfill owner or operator must install a gas collection and control system.

The first tier of the tiered calculation procedure is purposefully conservative to ensure that landfill emissions are controlled. Tiers 2 and 3 allow site-specific measurements to determine emissions more accurately. However, if the landfill owner or operator wants to use an alternative more accurate method, they can seek approval from the Administrator. Section 60.754(b)(3) of subpart WWW (which is cross-referenced to § 62.14354 of subpart GGG) allows landfill owners or operators to use another method to determine landfill gas flow rate and

NMOC concentration if the method has been approved by the Administrator. The landfill owner or operator can use the approved alternative methods to provide a better estimate of emissions for a particular landfill.

To ensure national consistency, the Administrator is retaining the authority to approve alternative methods to determine site-specific NMOC concentrations and methane generation rate constants and is not transferring this authority to the State or Tribe upon delegation of authority to implement and enforce the Federal plan. The EPA will review and consider any applications for site-specific methods that it receives.

To estimate emissions for State inventories and related State programs such as Title V permitting and New Source Review, a State may use its own procedures. Tier 1 default values are not recommended for inventories because they tend to overestimate emissions from many landfills. As mentioned previously, the default values are purposefully conservative because they serve as an indicator of the need to install a collection and control system. The Federal plan, the emission guidelines, and the guidance document recommend using AP–42 unless site-specific information is available or can be developed. AP–42 has values that are more typical than Tier 1 defaults, for permitting and inventories. Other procedures approved by the State may also be used for permitting and inventory purposes.

E. Final Control Plan

One commenter suggested that the final control plan (design plan) should be consistent with the new source performance standards. The commenter noted that the last sentence of the definition of final control plan in § 62.14351 of subpart GGG could be deleted without consequence. That sentence reads: "The final control plan also must include the same information that will be used to solicit bids to install the collection and control system." The commenter believes the requirement is more stringent than the new source performance standards' requirement and that bid information in the design plan would not be practical for sites that will install collection and control systems in multiple phases. The commenter contended that the purpose of the design plan is to demonstrate that the landfill gas collection system planned for the facility will meet the control requirements of the regulations, not as a tool for bidding purposes.

The EPA agrees that it is appropriate to delete the last sentence from the proposed definition of final control plan. This change makes the definition consistent with the emission guidelines and the guidance document. However, other requirements for submitting the final control plan remain the same. The owner or operator must submit the final control plan within 1 year after the NMOC emission rate first equals or exceeds 50 megagrams per year.

F. Increments of Progress

One commenter stated that the proposed Federal plan increments of progress are more stringent than the emission guidelines for existing landfills and the new source performance standards for new landfills. The commenter contended that the proposed Federal plan would impose a more burdensome regulatory requirement on existing landfills above and beyond that which is included in the emission guidelines. The commenter recommended eliminating the increments of progress and in their place requiring owners or operators to comply with the recordkeeping and reporting provisions of the new source performance standards. The commenter stated that existing landfills should be given the same flexibility for achieving compliance with Federal plan emission guidelines as are new landfills under the new source performance standards.

The requirements for existing landfills under the emission guidelines and the Federal plan are essentially the same as the requirements for new landfills under the new source performance standards. For existing MSW landfills, five increments of progress are required by 40 CFR part 60, subpart B. These five increments of progress are:

(1) Submit final control plan;
(2) Award contracts;
(3) Begin construction;
(4) Complete construction, and
(5) Reach final compliance.

Increments 1, 4, and 5 are also required by the emission guidelines for existing landfills. For new MSW landfills, three increments of progress are required by the new source performance standards. These three increments of progress are:

- Submit final control plan (collection and control system design plan),
- Complete construction (install collection and control system; and
- Reach final compliance.

Subpart B does not apply to new landfills, thus, the increments to award contracts and begin construction are not required for new landfills.[9] Although these two increments of progress do apply to existing landfills, there is flexibility in the dates for meeting them. Unlike the compliance time periods for increments 1, 4, and 5, which are specified in the emission guidelines, no time periods are specified for increments 2 and 3 in either subpart B or the emission guidelines. Thus, the Federal plan allows the State, local or Tribal authority, or the landfill owner or operator, to request different time periods for these increments versus the generic time periods specified in the Federal plan.

G. Delegation

One commenter from a State environmental protection agency recommended that States should not be the enforcement agent under the Federal plan. The commenter noted that it did not want to take delegation of the Federal plan, especially if it requires collection of design capacity reports from hundreds of rural towns with small, closed landfills.

Although a State is not obligated to take delegation of the Federal plan, the EPA believes that the State, Tribal, and local agencies are in the best position to design, adopt, and implement the control programs needed to meet the requirements of the MSW landfills Federal plan in their jurisdictions. This is consistent with Congress' overarching intent that the primary responsibility for air pollution control rests with State and local agencies. See 63 FR 69375, December 16, 1998 and the Act section 101(a)(3).

The EPA continues to strongly encourage States, Tribes, and local agencies to submit approvable State plans. For States that are unable to submit plans, the EPA strongly encourages them to request delegation of the Federal plan, if feasible.

IV. Implementation of Federal Plan and Delegation

The EPA designed the landfills Federal plan to facilitate the transfer of authority from EPA to States, Tribes, and local agencies. The EPA believes that it is advantageous and the best use of resources for State, local, or Tribal agencies to undertake roles in implementing this Federal plan. Such roles could include development of a process for reviewing collection and control system design plans, administrating reporting and recordkeeping requirements, and conducting source inspections.

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[9] While subpart B does not apply to new MSW landfills, the general provisions (40 CFR 60.7) do and they require that owners or operators of affected facilities (which include new MSW landfills) provide notification to EPA of certain actions they plan to take or have taken. One of these actions is when they begin construction. This notification requirement for new MSW landfills is not altered by EPA's promulgation of the MSW landfills Federal plan.

A. Background of Authority

The EPA is required to adopt emission guidelines that are applicable to existing MSW landfills under section 111(d) of the Act. The emission guidelines are not enforceable, however, until EPA approves a State or Tribal plan or adopts a Federal plan. In cases where a State or Tribe does not have an EPA approved plan, the EPA must adopt a Federal plan for MSW landfills in the State or in Indian country as an interim measure to implement the emission guidelines until the State or Tribal plan is approved. A few States may not submit a State plan and EPA is not aware of any Tribes that are developing Tribal plans.

Congress has determined that the primary responsibility for air pollution control rests with State and local agencies. *See* the Act 101(a)(3). Consistent with that overall determination, Congress established section 111 of the Act with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Congress explicitly required that EPA establish procedures under section 111(d) that are similar to those under section 110 for State Implementation Plans. The section 110 procedures are based on States having the primary responsibility. Congress has shown a consistent intent for the States and local agencies to have the primary responsibility, but also included the requirement for EPA to promulgate a Federal plan for States that fail to submit approvable State plans. Accordingly, EPA has strongly encouraged the States to submit approvable State plans, and for those States that are unable to submit approvable State plans, EPA is strongly encouraging them to request delegation of the Federal plan so that they can have the primary responsibility in their State, consistent with Congress' overarching intent.

The EPA also believes that Indian tribes are the primary parties responsible for regulating air quality within Indian country. See EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA dated November 4, 1984), which was reaffirmed by EPA Administrator Browner in 1994 (memorandum entitled, "EPA Indian Policy" signed by Carol M. Browner, Administrator of EPA on March 14, 1994).

The EPA believes, more specifically, that the State, Tribal and local agencies have the responsibility to design, adopt, and implement the control programs needed to meet the requirements of the MSW landfills Federal plan. The EPA also believes that if these agencies have appropriate enforcement resources, they can achieve the highest rates of actual compliance in the field. For these reasons, EPA seeks to employ all available mechanisms to expedite program transfer to State, Tribal and local agencies, where requests for delegations can be granted. For example, EPA encouraged States to help determine compliance schedules for this MSW landfills Federal plan.

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian tribe intends to take delegation of the Federal plan, the State or Indian tribe must submit a letter to EPA stating their intent on behalf of the State or Tribe. In order to obtain delegation, an Indian tribe must also establish its eligibility to be treated in the same manner as a State (see section I.F of the preamble). The letter requesting delegation of authority to implement the Federal plan must, at a minimum, demonstrate that the State or Tribe has adequate resources and the legal and enforcement authority to administer and enforce the program. If the State or Tribe makes such a demonstration, EPA will approve the delegation of the Federal plan. A memorandum of agreement between the State or Tribe and the EPA setting forth the terms and conditions of the delegation, including the effective date of the agreement, would be used to transfer authority. The EPA will publish an approval notice in the **Federal Register** and incorporate it into 40 CFR part 62. The EPA will, in conjunction with the State or Tribe, make additional efforts to ensure that affected sources are aware that the State or Tribe has assumed responsibility for implementation.

The EPA will keep an up-to-date list of State and Tribal plan submittals on the EPA TTN Web (http://www.epa.gov/ttn/oarpg). The list will also show whether the State or Tribe has taken delegation of the Federal plan. It is important to note, however, that while the EPA will endeavor to keep the listing updated, the list is not controlling regarding whether a State or Tribal plan has been approved or whether authority to implement and enforce the MSW landfills Federal plan has been delegated.

The EPA will implement the Federal plan unless authority to implement the Federal plan is delegated to a State or Indian tribe. If a State or Tribe fails to implement the delegated portion of the Federal plan, EPA will assume direct implementation.

In delegating implementation and enforcement authority to a State or Tribe under sections 101(a)(3) and 111 of the Act, the EPA Administrator will retain the authority to approve the following items and not transfer them to a State or Tribe:

- Alternative site-specific NMOC concentration (NMOC) or site-specific methane generation rate constant (k) used in calculating the annual NMOC emission rate,
- Alternative emission standard,
- Major alternatives[1] to test methods,
- Major alternatives[1] to monitoring, or
- Waivers of recordkeeping.

If landfill owners or operators would like to avail themselves of the items listed above and specified in this Federal plan, they should submit a request to the Regional Office Administrator with a copy to the State. It should be noted that the EPA does not relinquish enforcement authority even when a State or Tribe has received delegation.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation responsibility to States, Tribes, and local agencies: (1) If EPA approves a State or Tribal plan submitted to EPA after the Federal plan is promulgated, the State or Tribe would have authority to enforce and implement the State or Tribal plan upon the effective date of EPA's approval; and (2) if a State or Tribe does not submit or obtain approval of a State or Tribal plan, EPA can delegate the authority to the State, Tribe, or local agencies to perform certain implementation responsibilities for this Federal plan to the extent appropriate and allowed by State or Tribal law.

1. A State or Tribal Plan Is Submitted After Landfills Are Subject to the Federal Plan

After a landfill in a State or in a portion of Indian country becomes subject to the Federal plan, the State, Tribe or local agency may still adopt and submit to EPA for approval a plan (i.e., a plan containing a State or Tribal rule or other enforceable mechanism, inventories, records of public hearings, and all other required elements of a State plan). The EPA will determine if the State or Tribal plan is as stringent as the emission guidelines. If EPA determines that the State or Tribal plan is as stringent as the emission guidelines, EPA will approve the State or Tribal plan. If, however, EPA determines that the State or Tribal plan is not as stringent as the guidelines, EPA will disapprove the plan. MSW landfills covered by State or Tribal plans that become effective after the Federal plan is in place are subject to the compliance schedule of the Federal plan if the compliance schedule of the State or Tribal plan is less stringent.

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[1] Major changes to test methods or to monitoring are modifications made to a federally enforceable test method or to a federal monitoring requirement. These changes would involve the use of unproven technology or procedures or an entirely new method (which is sometimes necessary when the required test method or monitoring requirement is unsuitable).

Note that 40 CFR 60.24(f) allows some flexibility on a case-by-case basis for a less stringent rule or compliance schedule if specific criteria are met, sufficient justification is provided by the State or Tribe, and EPA approves the plan. States and Tribes may make their plans more stringent than the emission guidelines.

Landfills covered in the State or Tribal plan are subject to the Federal plan until the State or Tribal plan is approved and becomes effective. Upon the effective date of the State or Tribal plan, the Federal plan no longer applies to landfills covered by the State or Tribal plan and the State, Tribe or local agency will implement and enforce the State or Tribal plan in lieu of the Federal plan. (The EPA will periodically amend the Federal plan to identify States or Tribes that have State or Tribal plans covering landfills in their jurisdiction. Such landfills are not subject to the Federal plan.) Making the State or Tribal plan effective in this manner expedites a State's or Tribe's responsibility for implementing the emission guidelines as intended by Congress.

2. State Takes Delegation of the Federal Plan

The State, Tribal or local agency may request Federal implementation responsibilities even if there is no State or Tribal plan in effect. The EPA believes that it is advantageous and the best use of resources for State, Tribal or local agencies to agree to undertake, on the EPA's behalf, administrative and substantive roles in implementing the Federal plan, to the extent appropriate and where authorized by State or Tribal law. These roles could include as a minimum: development of a process for review of site-specific gas collection and control system design plans, administration and oversight of compliance reporting and recordkeeping requirements, conduct of source inspections, and preparation of draft notices of violation. As stated previously, the EPA does not relinquish the authority to bring enforcement actions against sources violating Federal plan provisions.

V. Title V Operating Permits

Title V of the Clean Air Act and EPA's implementing regulations set minimum standards for State and local air pollution control agencies to adopt and submit for EPA approval a regulatory program for issuing operating permits to specific sources. These sources include, but are not limited to the following: major sources under title I or section 112 of the Act; affected sources under title IV of the Act (acid rain sources); solid waste incineration units required to obtain a permit under section 129 of the Act; and sources subject to standards under section 111 or 112 of the Act that are not area sources exempted or deferred from permitting requirements under title V.

As clarified in the landfill amendments (63 FR 32743), all existing MSW landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million m^3 must have a title V operating permit. Existing landfills with design capacities less than 2.5 million megagrams or 2.5 million m^3 are not required to have a title V operating permit, unless they are a major source or are subject to title V for some other reason (e.g., subject to a section 112 National Emission Standard for Hazardous Air Pollutants (NESHAP) or to another section 111 NSPS).

The owner or operator of an existing MSW landfill with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 is subject to this MSW landfills Federal plan, and as a result, must obtain a title V operating permit (40 CFR part 70 or part 71). Such sources, if not already subject to title V permitting for another reason or reasons (see sections 70.3 and 71.3), become subject to the requirement to obtain an operating permit ninety days after the effective date of this Federal plan, even if the design capacity report is submitted prior to that date. The requirement to apply for a title V permit is triggered ninety days after the effective date of the MSW landfills Federal plan as this is the date that MSW landfills are required to submit design capacity reports (if they have not already been submitted). For more information on title V permitting requirements, please see the preamble discussion entitled "Clarification of Title V Permitting Requirements" in the June 16, 1998 direct final rule (63 FR 32743, 32746) for NSPS and emission guidelines for MSW landfills.

Sources subject to the title V permitting program under part 70 or 71 are required to file title V applications within 12 months after becoming subject to the program. To be timely, the owner or operator of a MSW landfill, which is subject to title V as a result of this landfills Federal plan, must submit an application for an operating permit not later than one year and ninety days after the effective date of the MSW landfills Federal plan. If a source submits a timely and complete application within this time frame, the permitting authority may grant the source a permit application shield which, if maintained by the source, would allow the source to operate without a permit until its final title V permit is issued.

Existing MSW landfills that are not currently subject to title V because their design capacity is less than 2.5 million Mg or 2.5 million m^3 may trigger the requirement to apply for a title V permit in the future if the design capacity subsequently increases to equal or exceed 2.5 million Mg and 2.5 million m^3. The only circumstance under which this could occur is if the increase in design capacity is a change that is not a modification, i.e., it is not based on an increase in permitted design capacity by either vertical or horizontal expansion. For example, an increase in the compaction of waste where the rate of compaction can be increased without a modification to the permit issued by the State, local or Tribal agency that is responsible for regulating the landfill. An amended design capacity report must be submitted within 90 days of the design capacity increase. (See 40 CFR 60.35c which incorporates the requirement in 40 CFR 60.757(a)(3).) Such sources would be required to file title V applications (if the sources are not already subject to title V) within 12 months of the date that the amended design capacity reports are required to be submitted. The proposal preamble accurately reflected this fact. Unfortunately, § 62 14352(d) of the proposed regulatory text incorrectly indicated that the 12-month period for submitting a title V application commenced 90 days after the amended design capacity report is due. This would be contrary to title V of the Act and the requirements of 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). The EPA is correcting this error in promulgating the Federal plan. Section 62.14352(e) (section number revised in final Federal plan) now correctly indicates that a MSW landfill becomes subject to the requirement of section 70.5(a)(1)(i) or section 71.5(a)(1)(i) on the date the amended design capacity report is due.

Existing MSW landfills that increase the permitted design capacity (via modification of the permit issued by the State, local or Tribal agency that regulates the landfill) to 2.5 million Mg and 2.5 million m^3 or more will, upon commencing construction on the vertical or horizontal expansion, have undergone either a modification or reconstruction and will, therefore, not be subject to the landfills Federal plan, but rather will be subject to the NSPS.

As noted above, a landfill could be subject to title V for another reason or reasons. MSW landfills, for example, may be subject to title V permitting as a result of being a major source under one or more of three major source definitions in title V: (1) section 112, (2) section 302, or (3) part D of title I of the Act. If a landfill is subject to title V for more than one reason, then the 12 month time frame for filing a title V application will be triggered by the criterion in section 70.3 or 71.3 which first caused the landfill to be subject to title V. As provided in section 503(c) of the Act, permitting authorities may establish earlier deadlines (earlier than the 12 months allowed) for submitting title V applications.

A MSW landfill that is closed and is no longer subject to title V as a result of this landfills Federal plan (see 40 CFR 62.14352(e)) may remain subject to title V permitting requirements for another reason or reasons as discussed above. In such circumstances, the landfill would be required to continue operating in compliance with a title V permit.

Title V operating permits issued to MSW landfills subject to this Federal plan must include all applicable requirements of this Federal plan (see 40 CFR 70.2 and 71.2). These permits must also contain all necessary terms and conditions to assure compliance with these applicable requirements. If a source is subject to both State and Federal plan requirements due to a State taking delegation of part of the Federal plan, then the landfill's permit must contain the applicable provisions from each plan. Given that a title V permit for a MSW landfill may contain both State and Federal provisions, it is especially important that each title V permit issued to a MSW landfill clearly state the basis for each requirement consistent with 40 CFR 70.6(a)(1)(i) and 71.6(a)(1)(i).

VI. Summary of Federal Plan

The MSW landfills Federal rule (40 CFR part 62, subpart GGG) includes applicability criteria, emission standards, design criteria, monitoring and performance testing requirements, and recordkeeping and reporting requirements. These emission standards and requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Cc), as revised in 1998 and 1999. The requirements are summarized in section V of the proposal preamble (63 FR 69377). However, the EPA has determined that the summary in the proposal preamble is deficient in its discussion of the requirements applicable to MSW landfills with a capacity of less than 2.5 million Mg or 2.5 million m^3. In addition to the requirement to submit an initial design capacity report, the owner or operator of such a MSW landfill who converts design capacity from volume to mass or mass to volume to demonstrate that the landfill's design capacity is less than 2.5 million Mg or 2.5 million m^3, as provided in the definition of "design capacity", has an ongoing obligation to recalculate site-specific density annually and to keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity and the supporting documentation. The owner or operator of such a MSW landfill is also required to submit an amended design capacity report within 90 days of the annual recalculation of site-specific density and design capacity indicating that the landfill now has a design capacity of equal to or greater than 2.5 million Mg and 2.5 million m^3. The EPA has added language to § 62.14353(a) to make it clearer that the owner or operator of such a MSW landfill is subject to these requirements. For purposes of consistency, EPA has added the same language to § 62.14353(b).

VII. Administrative Requirements

This section addresses the following administrative requirements: Docket, Paperwork Reduction Act, Executive Order 12866, Executive Orders on Federalism, Executive Orders 13045 and 13084, Unfunded Mandates Reform Act, Regulatory Flexibility Act, Submission to Congress and the General Accounting Office, and National Technology Transfer and Advancement Act. Since today's adopted rule merely implements the emission guidelines promulgated on March 12, 1996 (codified at 40 part 60, subpart Cc) as they apply to MSW landfills and does not impose any new requirements, much of the following discussion of administrative requirements refers to the discussion of the administrative requirements contained in the preamble to the 1996 rule (61 FR 65404–65413, March 12, 1996).

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rule. Material is added to the docket throughout the rule development process. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the docket will serve as the record in case of judicial review (see 42 U.S.C. 7607(d)(7)(A)) except for interagency review material. Docket number A–88–09 contains the technical support for the March 12, 1996 emission guidelines. Additional technical support specific to this rule is contained in Docket No. A–98–03.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1893.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be accessed on the internet at http://www.epa.gov/icr and in Docket No. A–98–03, Item No. IV–B–4. The information requirements are not effective until OMB approves them.

The information will be used by the Agency to ensure that the MSW landfill Federal plan requirements are implemented and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify MSW landfills that may not be in compliance with the MSW landfill Federal plan requirements. Based on reported information, EPA will decide which landfills should be inspected and what records or processes should be inspected. The records that owners and operators of MSW landfills maintain will indicate to EPA whether personnel are operating and maintaining control equipment properly.

Based on 1992 and 1996 Office of Solid Waste reports, a national survey of landfills, and recent information from States, this Federal plan is projected to affect approximately 3,837 MSW landfills in 28 States, 5 territories, and 1 municipality. The EPA prepared the ICR in June 1999 and based the calculations on the status of State plans as of May 30, 1999. See Table 2 for the status of State plans as of October 19, 1999. A number of State plans are expected to be approved within the year following Federal plan promulgation. When a State plan is approved, the Federal plan, by its own terms, will no longer apply to MSW landfills covered in that State plan. Thus, the rule may affect fewer MSW landfills and States during the second and third years following promulgation, and the average annual burden may be less than the numbers presented here.

The estimated average annual burden for industry for the first 3 years after the implementation of the Federal plan is 15,110 hours annually at a cost of $1,509,135 per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated average annual burden, over the first 3 years, for the Agency is 7,401 hours at a cost of $336,341 (including travel expenses) per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

One commenter (IV–G–01) stated that 24 hours is not long enough for EPA to review the site-specific design plan. The commenter contended that EPA's estimate may be too low for an adequate and comprehensive review, particularly where alternatives are proposed. The EPA did further analysis and determined that it would be appropriate to increase the time allocated for reviewing and approving the design plan, thus the EPA has increased the estimate to review site-specific design plans to 30 hours. The EPA based this estimate on a survey of EPA Regional Offices and several States.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA considered the 1996 guidelines and standards to be significant and the rules were reviewed by OMB in 1996 (see 61 FR 9913, March 12, 1996). The Federal plan adopted today will simply implement the 1996 guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1996 guidelines; therefore, this regulatory action is considered "not significant" under Executive Order 12866.

D. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded mandate on State, local or tribal governments. The Federal plan adopted today does not impose any additional costs or result in any additional control requirements above those previously considered during promulgation of the 1996 guidelines. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. The EPA nonetheless has involved State and local governments in the development of this rule. During development of the MSW landfills Federal plan, EPA worked with the EPA Regional Offices to identify and address State issues. In addition, EPA requested compliance schedules from States that want a schedule in the Federal plan consistent with the State plan until the State plan becomes effective. No such schedules have been received.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. This Federal plan affects owners and operators of existing municipal solid waste landfills for which a State or Tribal plan is not in effect. Most of these landfills are owned or operated by private industry or municipalities, not States. A State or Indian Tribe may request delegation to implement the Federal plan but is not required to do so. In addition, the Federal plan adopted today will simply implement the 1996 guidelines and does not result in any additional federalism issues above those previously considered during promulgation of the 1996 guidelines.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O.

12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety affects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not economically significant. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks such that the analysis required under section 5–501 of the order has the potential to influence the regulation. This MSW landfills Federal plan is not subject to E.O. 13045 because it merely implements the previously promulgated emission guidelines and thus does not involve decisions on environmental health risks or safety risk that may disproportionately affect children.

F. Executive Order 13084: Consultation With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The MSW landfills Federal plan adopted today does not significantly or uniquely affect the communities of Indian tribal governments. There are very few existing landfills in Indian country large enough to require the installation of a collection and control system. For most existing landfills in Indian country, the only requirements this Federal plan imposes are to submit an initial design capacity report of landfills in Indian country and to recalculate their site-specific density and design capacity annually and submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million m^3. Further, the Federal plan adopted today does not impose any additional costs or result in any additional control requirements above those previously considered during promulgation of the 1996 guidelines.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. An unfunded mandate statement was prepared and published in the March 12, 1996 promulgation notice for the final emission guidelines and new source performance standards (see 63 FR 9913 through 9918).

The EPA has determined that the adopted MSW landfills Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1996 guidelines. Therefore, the requirements of sections 202 and 205 of the Unfunded Mandates Act do not apply to this rule.

H. Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act (RFA) requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1996 rulemaking, EPA estimated that small entities would not be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (see 61 FR 9918). This adopted Federal plan does not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605 (b), EPA certifies that this MSW landfills Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

I. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801, *et. seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The purpose of the NTTAA is to reduce the costs to the private and public sectors by requiring federal agencies to use existing technical standards used in commerce or industry. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply because the Federal plan implements an existing rule to which NTTAA did not apply. In addition, the emission guidelines, which the Federal plan is based on, do not impose technical standards.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 28, 1999.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C 7401–7642.

2. Amend part 62 by adding subpart GGG consisting of §§ 62.14350 through 62.14356 as follows:

Subpart GGG—Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

Sec.
62.14350 Scope and delegation of authority.
62.14351 Definitions.
62.14352 Designated facilities.
62.14353 Standards for municipal solid waste landfill emissions.
62.14354 Procedures, test methods, and monitoring.
62.14355 Reporting and recordkeeping requirements.
62.14356 Compliance schedules and increments of progress.
Table 1 of Subpart GGG—States That Have an Approved and Effective State Plan
Table 2 of Subpart GGG—States that Submitted a Negative Declaration Letter
Table 3 of Subpart GGG—Generic Compliance Schedule and Increments of Progress
Table 4 of Subpart GGG—Site-Specific Compliance Schedules and Increments of Progress [Reserved]

Subpart GGG—Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

§ 62.14350 Scope and delegation of authority.

(a) This subpart contains emission requirements and compliance schedules for the control of designated pollutants from certain municipal solid waste landfills in accordance with section 111(d) of the Clean Air Act and 40 CFR part 60, subpart B. This municipal solid waste landfills Federal plan applies to each designated facility as defined in § 62.14352 of this subpart that is not covered by an EPA approved and currently effective State or Tribal plan.

(b) The following authorities shall be retained by the Administrator and not transferred to the State or Tribe upon delegation of authority to the State or Tribe to implement and enforce the Federal plan pursuant to sections 101(a)(3) and 111 of the Clean Air Act:

(1) Approval of alternative methods to determine site-specific NMOC concentration (C_{NMOC}) or site-specific methane generation rate constant (k) used in calculating the annual NMOC emission rate (as provided in 40 CFR 60.754(a)(5) of subpart WWW),

(2) Alternative emission standards,

(3) Major alternatives[1] to test methods,

(4) Major alternatives to monitoring, or

(5) Waivers of recordkeeping.

§ 62.14351 Definitions.

Terms used but not defined in this subpart have the meaning given them in the Clean Air Act and 40 CFR part 60, subparts A, B, and WWW.

Achieve final compliance means to connect and operate the collection and control system as specified in the final control plan. Within 180 days after the date the landfill is required to achieve final compliance, the initial performance test must be conducted.

Award contract means the MSW landfill owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the MSW landfill owner or operator. The MSW landfill owner or operator may award a number of contracts to install the collection and control system. To meet this increment of progress, the MSW landfill owner or operator must award a contract or contracts to initiate on-site construction or installation of the collection and control system.

Complete on-site construction means that all necessary collection system components and air pollution control devices identified in the final control plan are on site, in place, and ready for operation.

Design capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the State, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

EPA approved State plan means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Federal Indian Reservation means for purposes of the Clean Air Act, all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final control plan (Collection and control system design plan) means a plan that describes the collection and control system that will capture the gas generated within an MSW landfill. The collection and control system design plan must be prepared by a professional engineer and must describe a collection and control system that meets the requirements of 40 CFR 60.752(b)(2)(ii). The final control plan must contain engineering specifications and drawings of the collection and control system. The final control plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of 40 CFR 60.753 through 60.758 proposed by the owner or operator. The final control plan must either conform with the specifications for active collection systems in 40 CFR 60.759 or include a demonstration that shows that based on the size of the landfill and the amount of waste expected to be accepted, the system is sized properly to collect the gas, control emissions of NMOC to the required level and meet the operational standards for a landfill.

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[1] Major changes to test methods or to monitoring are modifications made to a federally enforceable test method or to a federal monitoring requirement. These changes would involve the use of unproven technology or procedures or an entirely new method (which is sometimes necessary when the required test method or monitoring requirement is unsuitable).

Indian Country means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Initiate on-site construction means to begin any of the following: installation of the collection and control system to be used to comply with the emission limits as outlined in the final control plan; physical preparation necessary for the installation of the collection and control system to be used to comply with the final emission limits as outlined in the final control plan; or, alteration of an existing collection and control system to be used to comply with the final emission limits as outlined in the final control plan.

Modification means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads. A municipal solid waste landfill may be publicly or privately owned.

Negative declaration letter means a letter to EPA declaring that there are no existing MSW landfills in the State or that there are no existing MSW landfills in the State that must install collection and control systems according to the requirements of 40 CFR part 60, subpart Cc. The negative declaration letter must include the design capacities of any existing MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) of the Clean Air Act and 40 CFR part 60, subpart B that implements and enforces 40 CFR part 60, subpart Cc. State plans include plans developed by States, local agencies, and protectorates.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart Cc.

§ 62.14352 Designated facilities.

(a) The designated facility to which this subpart applies is each municipal solid waste landfill in all States, protectorates, and Indian Country that meets the conditions of paragraphs (a)(1) and (a)(2) of this section, except for landfills exempted by paragraphs (b) and (c) of this section.

(1) The municipal solid waste landfill commenced construction, reconstruction, or modification before May 30, 1991 (landfills that commence construction, modification, or reconstruction on or after May 30, 1991 are subject to 40 CFR part 60, subpart WWW), and

(2) The municipal solid waste landfill has accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition.

(b) A municipal solid waste landfill regulated by an EPA approved and currently effective State or Tribal plan is not subject to the requirements of this subpart. States that have an approved and effective State plan are listed in table 1 of this subpart. Notwithstanding the exclusions in table 1 of this subpart, any MSW landfill located in a State or portion of Indian country that does not have an EPA approved and currently effective State or Tribal plan is subject to the requirements of this subpart.

(c) A municipal solid waste landfill located in a State, locality, or portion of Indian country that submitted a negative declaration letter is not subject to the requirements of this subpart other than the requirements in the definition of design capacity to recalculate the site-specific density annually and in § 62.14355 to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million megagrams and 2.5 million cubic meters. However, if the existing municipal solid waste landfill already has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, then it is subject to the requirements of the Federal plan. States, localities, or portions of Indian country that submitted negative declaration letters are listed in table 2 of this subpart.

(d) Physical or operational changes made to an existing municipal solid waste landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing municipal solid waste landfill to the requirements of 40 CFR part 60, subpart WWW.

(e) For purposes of obtaining an operating permit under title V of the Clean Air Act, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on January 7, 2,000 and not otherwise subject to either part 70 or 71, becomes subject to the requirements of § 70.5(a)(1)(i) or § 71.5(a)(1)(i) of this chapter April 6, 2000, even if the initial design capacity report is submitted earlier. In addition, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, and not otherwise subject to either part 70 or 71, but whose design capacity subsequently increases to equal or exceed 2.5 million megagrams and 2.5 million cubic meters by a change that is not a modification or reconstruction becomes subject to the requirements of § 70.5(a)(1)(i) or § 71.5(a)(1)(i) of this chapter upon the date the amended design capacity report is due.

(f) When a municipal solid waste landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement for a control system under § 62.14353 of this subpart; or

(2) The owner or operator meets the conditions for control system removal specified in 40 CFR 60.752(b)(2)(v).

§ 62.14353 Standards for municipal solid waste landfill emissions.

(a) The owner or operator of a designated facility having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the applicable reporting and recordkeeping requirements specified in this subpart.

(b) The owner or operator of a designated facility having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b) in addition to the applicable reporting and recordkeeping requirements specified in this subpart.

§ 62.14354 Procedures, test methods, and monitoring.

(a) The owner or operator of a designated facility having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compounds emission rate using the procedures listed in 40 CFR 60.754, as applicable, to determine whether the landfill nonmethane organic compounds emission rate equals or exceeds 50 megagrams per year.

(b) The owner or operator of a designated facility with a gas collection and control system used to comply with § 62.14353(b) must comply with the operational standards in 40 CFR 60.753; the test procedures in 40 CFR 60.754(b) and (d); the compliance provisions in 40 CFR 60.755; and the monitoring provisions in 40 CFR 60.756, unless alternative procedures have been approved.

§ 62.14355 Reporting and recordkeeping requirements.

(a) The owner or operator of a designated facility must comply with the recordkeeping and reporting provisions listed in 40 CFR 60.757 and 60.758, except as provided for under paragraphs (a)(1) and (a)(2) of this section.

(1) The initial design capacity report for a designated facility is due within 90 days of the effective date of this subpart. Existing MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters that are located in States that submitted a negative declaration letter are not required to submit an initial design capacity report provided that the MSW landfill's design capacity was included in the negative declaration letter.

(2) The initial nonmethane organic compounds emission rate report for a designated facility is due within 90 days of the effective date of this subpart.

(b) The owner or operator of a designated facility must submit notification to the EPA Regional Office within 10 business days of completing each increment of progress. Each notification must indicate which increment of progress specified in § 62.14356(a)(1) through (a)(5) of this subpart has been achieved. The notification must be signed by the owner or operator of the landfill.

(1) For the first increment of progress, the final control plan (collection and control system design plan) must be submitted in addition to the notification. A copy of the design plan must also be kept on site at the landfill.

(2) For the second increment of progress, a signed copy of the contract(s) awarded must be submitted in addition to the notification.

(c) The owner or operator of a designated facility who fails to meet any increment of progress specified in § 62.14356(a)(1) through (a)(5) of this subpart according to the applicable schedule in § 62.14356 of this subpart must submit notification that the owner or operator failed to meet the increment to the EPA Regional Office within 10 business days of the applicable date in § 62.14356.

(d) The owner or operator (or the State or Tribal air pollution control authority) that is submitting alternative dates for increments 2 and 3 according to § 62.14356(d) of this subpart must do so by the date specified for submitting the final control plan. The date for submitting the final control plan is specified in § 62.14356(c)(1) and (c)(2) of this subpart, as applicable. The owner or operator (or the State or Tribal air pollution control authority) must submit a justification if any of the alternative dates are later than the increment dates in table 3 of this subpart. In addition to submitting the alternative dates to the appropriate EPA Regional Office, the owner or operator must also submit the alternative dates to the State.

§ 62.14356 Compliance schedules and increments of progress.

(a) *Increments of progress.* The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 megagrams per year must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section to install air pollution control devices to meet the emission standards specified in § 62.14353(b) of this subpart. (Refer to § 62.14351 for a definition of each increment of progress.)

(1) Submit control plan: Submit a final control plan (collection and control system design plan) according to the requirements of § 62.14353(b) of this subpart and 40 CFR 60.752(b)(2).

(2) Award contract(s): Award contract(s) to initiate on-site construction or initiate on-site installation of emission collection and/or control equipment.

(3) Initiate on-site construction: Initiate on-site construction or initiate on-site installation of emission collection and/or control equipment as described in the EPA-approved final control plan.

(4) Complete on-site construction: Complete on-site construction and installation of emission collection and/or control equipment.

(5) Achieve final compliance: Complete construction in accordance with the design specified in the EPA-approved final control plan and connect the landfill gas collection system and air pollution control equipment such that they are fully operating. The initial performance test must be conducted within 180 days after the date the facility is required to achieve final compliance.

(b) *Compliance date.* For each designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 Mg per year, planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the standards in § 62.14353(b) must be accomplished within 30 months after the date the initial emission rate report (or the annual emission rate report) first shows that the nonmethane organic compounds emission rate equals or exceeds 50 megagrams per year.

(c) *Compliance schedules.* The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 megagrams per year must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section according to the schedule specified in paragraph (c)(1) or (c)(2) of this section, unless a site-specific schedule is approved by EPA.

(1) The owner or operator of a designated facility must achieve the increments of progress according to the schedule in table 3 of this subpart, except for those affected facilities specified in paragraph (c)(2) of this section. Once this subpart becomes effective on January 7, 2000, any designated facility to which this subpart applies will remain subject to the schedule in table 3 if a subsequently approved State or Tribal plan contains a less stringent schedule, (*i.e.*, a schedule that provides more time to comply with increments 1, 4 and/or 5 than does this Federal plan).

(2) The owner or operator of the specified designated facility in table 4 of this subpart must achieve the increments of progress according to the schedule in table 4 of this subpart.

(d) For designated facilities that are subject to the schedule requirements of paragraph (c)(1) of this section, the owner or operator (or the State or Tribal air pollution control authority) may submit to the appropriate EPA Regional Office for approval alternative dates for achieving increments 2 and 3.

Tables to Subpart GGG

TABLE 1 OF SUBPART GGG.—STATES THAT HAVE AN APPROVED AND EFFECTIVE STATE PLAN [a]

State plan	Effective date of state plan [b]
Alabama	12/07/98
Allegheny County, Pennsylvania	04/16/99
Arizona	11/19/99
California	11/22/99
Colorado	09/28/98
Delaware	11/16/99
Florida	08/03/99
Georgia	01/12/99
Illinois	01/22/99
Iowa	06/22/98
Kansas	05/19/98
Kentucky	06/21/99
Louisiana	10/28/97
Maryland	11/8/99
Minnesota	09/25/98
Missouri	06/23/98
Montana	09/08/98
Nashville, Tennessee	02/16/99
Nebraska	06/23/98
Nevada	11/19/99
New Mexico	02/10/98
New York	09/17/99
North Dakota	02/13/98
Ohio	10/06/98
Oklahoma	05/18/99
Oregon	08/25/98
South Carolina	10/25/99
South Dakota	08/02/99
Tennessee	11/29/99
Texas	08/16/99
Utah	03/16/98
Wyoming	07/31/98

[a] This table is provided as a matter of convenience and is not controlling in determining whether a MSW landfill is subject to the Federal plan. A MSW landfill is subject to this Federal plan if it commenced construction before May 30, 1991 and has not been modified or reconstructed on or after that date and is not covered by an approved and currently effective State or Tribal plan.

[b] The State plan is expected to become effective on the date indicated. However, if the State plan does not become effective on the date indicated, the Federal plan applies until the State plan becomes effective.

TABLE 2 OF SUBPART GGG.—STATES THAT SUBMITTED A NEGATIVE DECLARATION LETTER [a]

State, locality, or portion of Indian country	Date of negative declaration
District of Columbia	09/11/97
New Hampshire	07/22/98
Philadelphia, Pennsylvania	02/27/96
Rhode Island	05/27/98
Vermont	08/20/96

[a] A MSW landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters located in an area for which a negative declaration letter was submitted is subject to the Federal plan, notwithstanding the negative declaration letter and this table 2.

TABLE 3 OF SUBPART GGG.—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS [a]

Increment	Date
Increment 1—Submit final control plan	1 year after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]
Increment 2—Award Contracts	20 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]
Increment 3—Begin on-site construction	24 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]
Increment 4—Complete on-site construction	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]
Increment 5—Final compliance	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]

[a] Table 3 of subpart GGG applies to landfills with design capacities ≥2.5 million megagrams and 2.5 million cubic meters that are subject to this subpart except those with site-specific compliance schedules shown in table 4 of subpart GGG.

[b] NMOC = nonmethane organic compounds Mg/yr = megagrams per year

Table 4 of Subpart GGG—Site-Specific Compliance Schedules and Increments of Progress [Reserved]

[FR Doc. 99–28726 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7304]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act.

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act.

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification.

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism.

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform.

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska: Kenai Peninsula Borough.	City of Homer	Sept. 21, 1999, Sept. 28, 1999, *Homer Tribune.*	The Honorable Jack Cushing, Mayor, City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603–7624.	Aug. 25, 1999	020107
Arizona:					
Greenlee	Town of Clifton	Sept. 15, 1999, Sept. 22, 1999, *The Copper Era.*	Ms. Tonya L. Williams, Town Manager, Town of Clifton, P.O. Box 1415, Clifton, Arizona 85533.	Aug. 23, 1999	040035
Maricopa	City of Peoria	Aug. 13, 1999, Aug. 20, 1999, *Peoria Times.*	The Honorable John Keegan, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345.	Jul. 6, 1999	040050
Pima	City of Tucson	Sept. 23, 1999, Sept. 30, 1999, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	Sept. 2, 1999	040076
Arkansas: Pulaski	City of North Little Rock.	Sept. 10, 1999, Sept. 17, 1999, *Arkansas Democrat Gazette.*	The Honorable Patrick Henry Hays, Mayor, City of North Little Rock, P.O. Box 5757, North Little Rock, Arkansas 72119.	Aug. 13, 1999	050182
California:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Riverside	City of Corona	Aug. 20, 1999, Aug. 27, 1999, *The Press-Enterprise.*	The Honorable Bill Franklin, Mayor, City of Corona, P.O. Box 940, Corona, California 91718.	Aug. 5, 1999	060250
Riverside	City of Indian Wells.	Sept. 15, 1999, Sept. 22, 1999, *The News Review.*	The Honorable Phil Bostley, Jr., Mayor, City of Indian Wells, 44–950 El Dorado Drive, Indian Wells, California 92210.	Aug. 24, 1999	060254
Stanislaus	City of Modesto	Sept. 9, 1999, Sept. 16, 1999, *The Modesto Bee.*	The Honorable Richard A. Lang, Mayor, City of Modesto, P.O. Box 642, Modesto, California 95353.	Dec. 15, 1999	060387
Riverside	City of Norco	Aug. 20, 1999, Aug. 27, 1999, *The Press-Enterprise.*	The Honorable Bill Vaughan, Mayor, City of Norco, P.O. Box 428, Norco, California 91760–0428.	Aug. 5, 1999	060256
Riverside	Unincorporated Areas.	Sept. 15, 1999, Sept. 22, 1999, *The Press-Enterprise.*	The Honorable John Tavaglione, Chairman, Riverside County, Board of Supervisors, P.O. Box 1646, Riverside, California 95202–1359.	Aug. 24, 1999	060245
Ventura	City of San Buenaventura.	Aug. 19, 1999, Aug. 26, 1999, *Ventura County Star.*	The Honorable James J. Friedman, Mayor, City of San Buenaventura, P.O. Box 99, Ventura, California 93002–0099.	Jul. 26, 1999	060419
Stanislaus	Unincorporated Areas.	Sept. 9, 1999, Sept. 16, 1999, *The Modesto Bee.*	The Honorable Ray Simon, Chairman, Stanislaus County, Board of Supervisors, 1100 Eighth Street, Second Floor, Modesto, California 95353.	Dec. 15, 1999	060384
Ventura	Unincorporated Areas.	Aug. 19, 1999, Aug. 26, 1999, *Ventura County Star.*	The Honorable Susan K. Lacey, Chairperson, Ventura County, Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	Jul. 26, 1999	060413
Colorado.					
Arapahoe	Unincorporated Areas.	Aug. 19, 1999, Aug. 26, 1999, *The Villager.*	The Honorable Steve Ward, Chairperson, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060.	Aug. 15, 1999	080011
Arapahoe	Unincorporated Areas.	Sept. 23, 1999, Sept. 30, 1999, *The Villager.*	The Honorable Steve Ward, Chairperson, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–00600.	Aug 26, 1999	080011
Kansas: Johnson	City of Olathe	Sept. 21, 1999, Sept. 28, 1999, *The Olathe Daily News.*	The Honorable Larry L. Campbell, Mayor, City of Olathe, P.O. Box 768, Olathe, Kansas 660510768.	Aug. 18, 1999	200173
Nebraska: Douglas.	City of Omaha	Aug. 18, 1999, Aug. 25, 1999, *The Daily Record.*	The Honorable Hal Daub, Mayor, City of Omaha, 1819 Farman Street, Suite 300, Omaha, Nebraska 68183.	Jul. 23, 1999	315274
New Mexico: Sandoval.	Unincorporated Areas.	Aug. 24, 1999, Aug. 31, 1999, *Santa Fe New Mexican.*	Ms. Debbie Hays, County Manager, Sandvol County, P.O. Box 40, Bernalillo, New Mexico 87004.	Nov 29, 1999	350055
Texas:					
Collin	City of Allen	Aug. 18, 1999, Aug. 25, 1999, *Allen American.*	The Honorable Kevin Lilly, Mayor, City of Allen, One Butler Circle, Allen, Texas, 75013.	Nov 23, 1999	480131
Bexar	Unincorporated areas.	Aug. 27, 1999, Sept. 3, 1999, *San Antonio Express-News.*	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205–3036.	Aug. 9, 1999	480035
Cameron	Unincorporated areas.	Aug. 13, 1999, Aug. 20, 1999, *Brownsville Herald.*	The Honorable Gilberton Hinojosa, Cameron County Judge, 964 East Harrison, Browsville, Texas 78520.	Jul. 26, 1999	480101
Bexar	City of Castle Hills.	Aug. 27, 1999, Sept. 3, 1999, *San Antonio Express-News.*	The Honorable Bob Anderson, Mayor, City of Castle Hills, 6919 West Avenue, San Antonio, Texas 78213–1822.	Aug, 1999	480037

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Denton	City of Coppell	Aug. 13, 1999, Aug. 20, 1999, *Citizen's Advocate*.	The Honorable Candy Sheehan, Mayor, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019.	Jul. 6, 1999	480170
Denton	Town of Double Oak.	Aug. 20, 1999, Aug. 27, 1999, *Lewisville News*.	The Honorable Bill Wilkinson, Mayor, Town of Double Oak, City Hall, 100 Cross Timbers Drive, Double Oak, Texas 75067.	Jul. 27, 1999	481516
El Paso	City of El Paso	Sept 23, 1999, Sept. 30 1999, *El Paso Times*.	The Honorable Charles M. Ramirez, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	Aug. 30, 1999	480214
Dallas	City of Farmers Branch.	Oct. 1, 1999, Oct. 8, 1999, *Metrocrest News*.	The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010.	Sept. 1, 1999	480174
Denton	Town of Flower Mound.	Aug. 20, 1999, Aug. 27, 1999, *Lewisville News*.	The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75028.	Jul. 27; 1999	480777
Collin	City of Frisco	Aug. 13, 1999, Aug. 20, 1999, *Frisco Enterprise*.	The Honorable Kathy Seei, Mayor, City of Frisco, P.O. 1100, Frisco, Texas 75034.	Jul. 13, 1999	480134
Tarrant	City of Hurst	Aug. 11, 1999, Aug. 18, 1999, *Dallas Morning News*.	The Honorable Bill Sounder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	Jul. 15, 1999	480601
Denton	City of Lewisville	Aug. 18, 1999, Aug. 25, 1999, *Lewisville News*.	The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, *Lewisville, Texas 75029–9002*.	Jul. 22, 1999	480195
Johnson	City of Overland Park.	Sept. 3, 1999, Sept. 10, 1999, *Overland Park Sun*.	The Honorable Ed Eiler, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	Aug. 16, 1999	200174
Parker	Unincorporated Areas.	Aug. 20, 1999, Aug. 27, 1999, *Weatherford Democrat*.	The Honorable Mark Riley, County Judge, One Courthouse Square, Weatherford, Texas 76086.	Jul. 30, 1999	480520
Bexar	City of San Antonio.	Aug. 27, 1999, Sept. 3, 1999, *San Antonio Express-News*.	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Aug. 9, 1999	480045
Bexar	City of Shavano Park.	Aug. 27, 1999, Sept. 3, 1999, *San Antonio Express-News*.	The Honorable Tommy Peyton, Mayor, City of Shavano Park, 99 Sandletree Road, San Antonio, Texas 78231.	Aug. 9, 1999	480047

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–29167 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima (FEMA Docket No. 7292).	Unincorporated areas.	May 6, 1999, May 13, 1999, *Arizona Daily Star.*	The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor Tucson, Arizona 85701.	Apr. 8, 1999	040073
		May 11, 1999, May 18, 1999, *Arizona Daily Star.*	The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	Apr. 6, 1999	040073
	City of Tucson	May 11, 1999, May 18, 1999, *Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, *Tucson, Arizona 85726.*	Apr. 6, 1999	040076
Arizona: Navajo (FEMA Docket No. 7292).	City of Winslow	May 19, 1999, May 26, 1999, *Winslow Mail.*	The Honorable James L. Boles, Mayor, City of Winslow, 21 Williamson Avenue, Winslow, Arizona 86047.	Apr. 28, 1999	040072
Arkansas: Craighead (FEMA Docket No. 7292).	City of Jonesboro	May 28, 1999, June 4, 1999, *Jonesboro Sun.*	The Honorable Hubert Brodell, Mayor, City of Jonesboro, P.O. Box 1845, Jonesboro, Arkansas 72403–1845.	Apr. 22, 1999	050048
California: Sonoma (FEMA Docket No. 7292).	City of Cotati	May 20, 1999, May 27, 1999, *Sonoma County Independent.*	The Honorable Harold Berkmeier, Mayor, City of Cotati, 201 West Sierra Avenue, Cotati, California 94931.	Apr. 21, 1999	060377
California: Riverside (FEMA Docket No. 7292).	City of Lake Elsinore.	May 21, 1999, May 28, 1999, *Lake Elsinore Valley Sun-Tribune.*	The Honorable Genie Kelley, Mayor, City of Lake Elsinore, 130 South Main Street, Lake Elsinore, California 92530.	Apr. 22, 1999	060636
	Unincorporated areas.	May 21, 1999, May 28, 1999, *Lake Elsinore Valley Sun-Tribune.*	The Honorable John Tavaglione, Chairman, Riverside County Board of Supervisors, P.O. Box 1646, Riverside, California 92502.	Apr. 22, 1999	060245

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego (FEMA Docket No. 7292).	Unincorporated area.	May 21, 1999, May 28, 1999, *San Diego Daily Transcript.*	The Honorable Pam Slater, Chairperson, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	Apr. 30, 1999	060284
Colorado: Boulder (FEMA Docket No. 7292).	Unincorporated area.	June 4, 1999, June 11, 1999, *Daily Camera.*	The Honorable Ron Stewart, Chairman, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306–0471.	May 14, 1999	080023
	City of Longmont	June 4, 1999, June 11, 1999, *Longmont Daily Times Call.*	The Honorable Leona Stoecker, Mayor, City of Longmont, 350 Kimbark Street, Longmont, Colorado 80501.	May 14, 1999	080027
Colorado: Adams and Jefferson (FEMA Docket No. 7292).	City of Westminster.	May 20, 1999, May 27, 1999, *Westminster Window.*	The Honorable Nancy M. Heil, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80030.	Apr. 23, 1999	080008
Kansas: Sedgwick (FEMA Docket No. 7292).	City of Wichita	May 13, 1999, May 20, 1999, *Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202.	Apr. 8, 1999	200328
Louisiana: Catahoula Parish (FEMA Docket No. 7292).	Unincorporated Areas.	May 19, 1999, May 26, 1999, *Catahoula News Booster.*	The Honorable Emmitt Taylor, President, Catahoula Parish Police Jury, P.O. Box 258, Harrisonburg, Louisiana 71340.	Apr. 13, 1999	220047
Missouri: St. Louis (FEMA Docket No. 7292).	City of Florissant	May 12, 1999, May 28, 1999, *Watchman Advocate.*	The Honorable James J. Eagan, Mayor, City of Florissant, City Hall, 955 Rue St. Francois, Florissant, Missouri 63031.	Apr. 16, 1999	290352
	Unincorporated Areas.	July 9, 1999, July 16, 1999, *St Louis Countian.*	The Honorable Buzz Westfall, St. Louis County Executive, 41 South Central Avenue, Clayton, Missouri 63105.	Apr. 16, 1999	290327
New Mexico: Bernalillo (FEMA Docket No. 7292).	City of Albuquerque.	May 12, 1999, May 28, 1999, *Albuquerque Journal.*	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	Apr. 15, 1999	350002
Texas: Bell (FEMA Docket No. 7292).	City of Belton	May 6, 1999, May 13, 1999, *The Belton Journal.*	The Honorable Charley Powell, Mayor, City of Belton, P.O. Box 120, Belton, Texas 76513.	Apr. 1, 1999	480028
Texas: Comal (FEMA Docket No. 7292).	Unincorporated Areas.	May 7, 1999, May 14, 1999, *The Herald Zeitung.*	The Honorable Danny Shell, County Judge, Comal County, 150 North Seguin Avenue, New Braunfels, Texas 78130.	Apr. 1, 1999	485463
Texs: Dallas (FEMA Docket No. 7292).	City of Dallas	May 5, 1999, May 12, 1999, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	Aug. 10, 1999	48017
Texas: Denton (FEMA Docket No. 7292).	Town of Flower Mound.	May 19, 1999, May 26, 1999, *Denton Record Chronicle.*	The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Drive, Flower Mound, Texas 75028.	Apr. 12, 1999	480777
Texas: Tarraant (FEMA Docket No. 7292).	City of Hurst	June 3, 1999, June 10, 1999, *Fort Worth Star-Telegram.*	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	Apr. 28, 1999	480601
Texas: Collin (FEMA Docket No. 7292).	City of Plano	May 5, 1999, May 12, 1999, *Plano Star Courier.*	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Aug. 10, 1999	480140

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–29166 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that

each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
CALIFORNIA	
Alameda County (Unincorporated Areas) (FEMA Docket No. 7242)	
San Lorenzo Creek (Line B (Zone 2)):	
Approximately 320 feet downstream of Southern Pacific Railroad	*12
At upstream side of 14th Street	*34
Approximately 320 feet downstream of Union Pacific Railroad	*12
Approximately 140 feet downstream of confluence of Crow Creek	*170
San Leandro (Line A (Zone 2)):	
Approximately 50 feet upstream of Connally Drive	*33
Approximately 140 feet downstream of confluence of Crow Creek	*170
Approximately 200 feet south of East 14th Street	*30
At Union Pacific Railroad	*27
Maps are available for inspection at the Alameda County Public Works Department, 399 Elmhurst Street, Hayward, California.	
Avenal (City) Kings County (FEMA Docket No. 7294)	
Arroyo Del Camino:	
Approximately 250 feet downstream of Shasta Street	*801
Approximately 550 feet upstream of Skyline Boulevard	*861
Maps are available for inspection at City Hall, 919 Skyline Boulevard, Avenal, California.	
Hayward (City), Alameda County (FEMA Docket No. 7242)	
Alameda Creek—Line A (Zone 3A):	
Approximately 1,350 feet downstream of tidal gate	*7
At tidal gate	*8
Approximately 150 feet upstream of Interstate 880	*11
Ward Creek—Line B (Zone 3A):	
Approximately 180 feet upstream of confluence of Line D (Zone 3A) and Alameda Creek—Line A (Zone 3A)	*10
Approximately 400 feet upstream of confluence of Line D (Zone 3A) and Alameda Creek—Line A (Zone 3A)	*11
Approximately 730 feet upstream of Southern Pacific Railroad	*47
San Lorenzo Creek—Line B (Zone 2):	
Approximately 1,825 feet downstream of Hazel Avenue	*83
Approximately 1,700 feet upstream of Second Street	*116
Line D—(Zone 3A):	
At confluence with Line A (Zone 3A)	*10
Approximately 350 feet upstream of Industrial Parkway West	*11
Approximately 1,500 feet upstream of Union Pacific Railroad	*17
Sulphur Creek—Line K (Zone 2):	
Approximately 3,500 feet downstream of Southern Pacific Railroad	*7

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Approximately 2,100 feet downstream of Southern Pacific Railroad	*8
Approximately 350 feet upstream of Interstate 80	*56
Maps are available for inspection at the City of Hayward Department of Public Works, 25151 Clawiter Road, Hayward, California.	
Newark (City), Alameda County (FEMA Docket No. 7242)	
Line B:	
Approximately 3,400 feet downstream of the Southern Pacific Railroad	*12
At upstream corporate limit, approximately 415 feet upstream of Cedar Boulevard	*29
Line F–1:	
At downstream corporate limit, at confluence with Plummer Creek	*8
Just upstream of Elm Street	*11
Approximately 1,250 feet upstream of Cedar Boulevard	*34
Maps are available for inspection at the City of Newark City Clerk's Office, City Administration Building, 37101 Newark Boulevard, Newark, California.	
San Leandro (City), Alameda County (FEMA Docket No. 7242)	
San Leandro—Line A (Zone 2):	
At tidal gate	*7
Approximately 320 feet downstream of Southern Pacific Railroad	*8
Approximately 200 feet downstream of Connally Drive	*30
Maps are available for inspection at the Permit Center Kiosk, 835 East 14th Street, San Leandro, California.	
Union City (City), Alameda County (FEMA Docket No. 7242)	
Line M (Zone 5):	
At gated structure approximately 1,050 feet downstream of Royal Ann Drive	*32
At Southern Pacific Railroad	*42
Approximately 1,000 feet upstream of Gregory Way	*45
Alameda Creek (Line A (Zone 3A)):	
Approximately 1,350 feet downstream of tidal gates	*7
At upstream side of tidal gates	*8
Approximately 1,000 feet upstream of Interstate 880	*10
Maps are available for inspection at the City of Union City Public Works Department, Engineering Division, 34009 Alvarado Niles Road, Union City, California.	
NEBRASKA	
Lindsay (Village), Platte County (FEMA Docket No. 7266)	
Shell Creek:	
Approximately 7,100 feet downstream of Elk Street	*1,647
Approximately 6,400 feet upstream of U.S. Route 91	*1,668
Maps are available for inspection at the Village of Lindsay City Hall, 115 Pine Street, Lindsay, Nebraska.	
Platte County (Unincorporated Areas) (FEMA Docket No. 7290)	
Shell Creek:	
Approximately 27 miles upstream of confluence with the Platte River	*1,446
Approximately 6 miles upstream of U.S. Route 91	*1,697
Maps are available for inspection at the Platte County Highway Department, 2610 14th Street, Columbus, Nebraska.	
NEW MEXICO	
Bosque Farms (Village), Valencia County (FEMA Docket No. 7254)	
Rio Grande (East Overbank):	
Approximately 36,000 feet above limit of detailed study, at the southern corporate limits	+4,859
Approximately 37,000 feet above limit of detailed study	+4,860
Rio Grande (West Split Flow):	
Approximately 8,200 feet downstream of Esperanza Road	+4,860
Approximately 2,200 feet upstream of Green Acres Lane	+4,873
Rio Grande (East Split Flow):	
Approximately 37,000 feet above limit of detailed study	+4,860
Approximately 52,700 feet upstream of limit of detailed study, at the northern corporate limits	+4,873
Note: To convert from NGVD to NAVD, add 2.5 feet.	
Maps are available for inspection at the Village of Bosque Farms Village Hall, 1455 West Bosque Loop, Bosque Farms, New Mexico.	
Valencia County (Unincorporated Areas) (FEMA Docket No. 7254)	
Rio Grande (Main Channel):	
At limit of detailed study	+4,836
Approximately 48,400 feet above limit of detailed study, at border of the Isleta Indian Reservation	+4,878
Rio Grande (West Overbank):	
At limit of detailed study	+4,835
Approximately 43,500 feet above limit of detailed study, at the Valencia-Bernalillo County border	+4,877
Rio Grande (East Overbank):	
At limit of detailed study	+4,832
Approximately 33,200 feet above limit of detailed study	+4,860
Rio Grande (West Split Flow):	
Approximately 2,000 feet downstream of Village of Bosque Farms corporate limits	+4,860
Approximately 51,500 feet above limit of detailed study, at the northern County boundary	+4,873
Rio Grande (East Split Flow):	
Approximately 2,000 feet downstream of Village of Bosque Farms corporate limits	+4,860
Approximately 52,700 feet upstream of limit of detailed study, at border of the Isleta Indian Reservation	+4,873
Note: To convert from NGVD to NAVD, add 2.5 feet.	
Maps are available for inspection at the Valencia County Engineering Office, 444 Luna Avenue, Los Lunas, New Mexico.	
NORTH DAKOTA	
McHenry County (and Incorporated Areas) (FEMA Docket No. 7286)	
Mouse River:	
Approximately 530 feet downstream from Dam 326	*1,426
Approximately 260 feet downstream from Schilling Bridge	*1,520
Maps are available for inspection at the McHenry County Auditor's Office, 407 South Main, Towner, North Dakota.	
Maps are available for inspection at 101 First Street West, Velva, North Dakota.	
Maps are available for inspection at 4725 19th Avenue North, Velva, North Dakota.	
Maps are available for inspection at 570 82nd Street Northeast, Willow City, North Dakota.	
Maps are available for inspection at 750 61st Street Northeast, Towner, North Dakota.	
Maps are available for inspection at 5045 First Avenue Northwest, Karlsruhe, North Dakota.	
Maps are available for inspection at 1326 47th Street North, Velva, North Dakota.	
McKinney (Township), Renville County (FEMA Docket No. 7286)	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Mouse River:	
Approximately 3,375 feet (.64 mile) downstream of Dam 41	*1,601
Approximately 1,265 feet (.24 mile) upstream of Swenson Bridge	*1,607
Maps are available for inspection at City Hall, Main Street, Tolley, North Dakota.	
Ward County (and Incorporated Areas) (FEMA Docket No. 7290)	
Mouse River:	
Approximately 264 feet downstream of Schilling Bridge	*1,520
At Lake Darling Dam	*1,600
Maps are available for inspection at the Flood Zoning Office, 315 Third Street, Southeast, Minot, North Dakota.	
Maps are available for inspection at the City of Sawyer City Hall, 104 Dakota Avenue South, Sawyer, North Dakota.	
Maps are available for inspection at the City of Minot City Engineer's Office, 1025 31st Street, Southeast, Minot, North Dakota.	
Maps are available for inspection at the City of Burlington City Auditor's Office, 225 Wallace Street, Burlington, North Dakota.	
Maps are available for inspection at the County Flood Zoning Office, 315 Third Street Southeast, Minot, North Dakota.	
TEXAS	
College Station (City) and Brazos County (FEMA Docket No. 7198)	
Bee Creek:	
At confluence with Carters Creek	*234
Approximately 300 feet upstream of confluence of Bee Creek Tributary A	*248
Foxfire Creek:	
Approximately 3,800 feet downstream of Frost Drive Bridge	*236
Approximately 1,000 feet upstream of Foxfire Drive	*268
Maps are available for inspection at College Station City Hall, 1101 South Texas Avenue, College Station, Texas.	
Maps are available for inspection at the Brazos County Engineer's Office, 2617 Highway 21 West, Bryan, Texas.	
Midland County (and Incorporated Areas) (FEMA Docket No. 7278)	
Playa MI7	*2,852
Playa MI8	*2,843
Playa MI9	*2,846
Playa MI10	*2,845
Playa MI11	*2,859
Playa MI21	*2,826
Playa MI22	*2,825
Playa MI23	*2,826
Playa MI25	*2,809
Playa MI27	*2,812
Playa MI31	*2,812
Playa MI32	*2,809
Playa MI33	*2,807
Playa MI34	*2,807
Playa MI38	*2,799
Playa MI40	*2,807
Playa MI41	*2,805
Playa MI42	*2,806
Playa MI43	*2,799
Playa MI44	*2,788
Playa MI46	*2,803
Playa MI49	*2,783
Playa MI50	*2,783
Playa JA1	*2,864
Playa JA3	*2,857
Playa JA4	*2,842
Playa JA6	*2,840
Playa JA7	*2,860
Playa JA9	*2,834
Playa JA10	*2,828
Playa JA11	*2,823
Playa JA11A	*2,827
Playa JA12	*2,816
Playa JA13	*2,814
Playa JA15	*2,810
Playa JA19	*2,872
Playa JA23	*2,808
Playa SC6	*2,815
Playa SC10	*2,788
Playa SC11	*2,780
Unnamed Playa:	
1,400 feet southeast of intersection of FM 307 and FM 715	*2,744
Unnamed Playa:	
1,150 feet northeast of intersection of FM 715 and East Highway 158	*2,740
Unnamed Playa:	
430 feet northwest of West County Road 111 and south County Route 1210	*2,804
Unnamed Playa:	
1,800 feet east of Playa JA6	*2,853
Unnamed Playa:	
1,480 feet northwest of intersection of North Midland and Wood Drives	*2,831
Unnamed Playa:	
1,920 feet northwest of Playa JA10	*2,850
Unnamed Playa:	
900 feet south of Playa M140	*2,803,
Unnamed Playa:	
1,600 feet south of Playa MI40	*2,800
Unnamed Playa:	
400 feet southeast of Playa MI42	*2,806
Unnamed Playa:	
1,100 feet southeast of Playa MI42	*2,807
Unnamed Playa:	
750 feet northwest of Playa MI43	*2,805
Unnamed Playa:	
900 feet northwest of Playa MI43	*2,803
Unnamed Playa:	
1,550 feet west of Playa MI42	*2,812
Unnamed Playa:	
1,000 feet north of Playa MI43	*2,800
Unnamed Playa:	
900 feet northeast of Playa MI43	*2,801
Unnamed Playa:	
1,500 feet northeast of Playa MI43	*2,801
Unnamed Playa:	
400 feet east of Playa MI43	*2,801
Unnamed Playa:	
At intersection of Loop 250 North and North County Road 1160 (Todd Road)	*2,791
Unnamed Playa:	
2,000 feet southeast of Playa MI43	*2,791
Unnamed Playa:	
2,150 feet northeast of Playa MI50	*2,782
Unnamed Playa:	
3,000 feet northwest of intersection of North County Route 1150 (Elkins Road) and East County Route 40	*2,798
Unnamed Playa:	
3,050 feet northeast of intersection of Elkins Road and East County Route 40	*2,799
Unnamed Playa:	
2,500 feet northeast of Playa MI42	*2,807
Unnamed Playa:	
1,200 feet west of intersection of FM 1379 and East County Route 109	*2,708
Unnamed Playa:	
1,400 feet north of JA6	*2,872
Unnamed Playa:	
1,910 feet northeast of JA6	*2,859
Unnamed Playa:	
2,080 feet east of MI11	*2,855
Unnamed Playa:	
2,950 feet northeast of MI11	*2,834
Unnamed Playa:	
200 feet north of MI43	*2,800
Unnamed Playa:	
80 feet west of MI43	*2,799
Unnamed Playa:	
360 feet west of MI43	*2,807
Mulberry Channel:	
Just upstream of Wolfcamp Circle	*2,755
Approximately 780 feet upstream of Fairgrounds Road	*2,760
Approximately 130 feet upstream of North Lincoln Street	*2,765
Approximately 180 feet downstream of North Lee Street	*2,769
Scharbauer Draw:	
Just upstream of State Route 349	*2,772
Just downstream of North A Street	*2,776
Approximately 200 feet downstream of Western Drive	*2,784
South Draw:	
Approximately 800 feet upstream of confluence with Midland Draw	*2,725
Approximately 3,200 feet downstream of State Route 158	*2,737

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Approximately 700 feet downstream of State Route 158	*2,739
Approximately 920 feet upstream of FM 715	*2,744
Industrial Channel:	
Approximately 900 feet upstream of confluence with Midland Draw	*2,751
Approximately 300 feet downstream of Fairgrounds Road	*2,759
Approximately 800 feet upstream of Fairgrounds Road	*2,763
Approximately 400 feet downstream of South Lee Street	*2,768
Upper South Draw:	
Approximately 1,240 feet upstream of South County Route 1180	*2,751
Approximately 800 feet upstream of Cotton Flat Road	*2,767
Approximately 1,150 feet upstream of Santa Rosa	*2,795
Approximately 150 feet upstream of Interstate Route 20	*2,812
JA1 Draw:	
Approximately 1,320 feet downstream of North I Street	*2,789
Just upstream of Maxwell Drive	*2,805
Approximately 1,000 feet downstream of Loop 250	*2,830
Approximately 150 feet downstream of Crowley Boulevard	*2,836
Midland Draw:	
Approximately 400 feet upstream of Fairgrounds Road	*2,759
Approximately 1,310 feet upstream of Loop 250	*2,788
Approximately 5,700 feet upstream of Mockingbird Lane	*2,805
Approximately 5,630 feet upstream of Greentree Boulevard	*2,820
Maps are available for inspection at City Hall, 300 North Lorain, Midland, Texas.	
Midland County (Unincorporated Areas) (FEMA Docket No. 7242)	
Monahans Draw:	
Approximately 2.1 miles downstream of County Road 1160	*2,694
Approximately 4,300 feet upstream of Tower Road	*2,753
Monahans Draw (Near Ector County Boundary):	
Approximately 1,000 feet downstream of Ector-Midland County boundary	*2,833
At Ector-Midland County boundary	*2,834
Maps are available at the Midland County Engineering and Development Office, 300 North Lorraine, Fifth Floor, Midland, Texas.	
Seguin (City) Guadalupe County (FEMA Docket No. 7294)	
Walnut Branch:	
Approximately 400 feet downstream of West Kein Street	*484
Just upstream of University Lane	*527
Approximately 200 feet downstream of Interstate 10	*546
Maps are available for inspection at 210 East Gonzales Street, Seguin, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–29168 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 21, 27, 68, and 90

[FCC 99–172]

Establishment of the Enforcement and Consumer Information Bureaus

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to promote a more efficient and effective organizational structure. The Commission has concluded that the proper dispatch of its business and the public interest will best be served by consolidating enforcement and consumer information functions into an Enforcement Bureau and a Consumer Information Bureau, respectively. The Commission also eliminates the Compliance and Information Bureau and the Office of Public Affairs and creates a small Office of Media Relations that will serve as the Commission's liaison with the news media and manage the agency's internet site.

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen McCarthy, 202–418–0795.

SUPPLEMENTARY INFORMATION: To promote a more efficient and effective organizational structure, the Commission has concluded that the proper dispatch of its business and the public interest will best be served by consolidating enforcement and consumer information functions into an Enforcement Bureau and a Consumer Information Bureau, respectively, and by eliminating the Compliance and Information Bureau. In the Order adopted July 12, 1999 and released October 27, 1999, we amend the Commission's Rules to reflect the creation of the new Bureaus, describe their functions and delegated authority and to make other conforming changes. We also note that the new Bureaus will have delegated authority to act on petitions for reconsideration of decisions of their predecessor Bureaus or Offices on matters within the scope of their relevant delegated authority. The Order also eliminates the Office of Public Affairs and creates a small Office of Media Relations that will serve as the Commission's liaison with the news media and manage the agency's internet site.

Authority for the adoption of the foregoing revisions is contained in Sections 4(i), 4(j), 5(b), 5(c), 201(b) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(b), 201(b) and 303(r).

The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the notice and comment provision of the Administrative Procedure Act contained in 5 U.S.C. 553(b) is inapplicable.

Accordingly, it is ordered that Parts 0, 1, 21, 27, 68 and 90 of the Commission's Rules, set forth in Title 47 of the Code of Federal Regulations, are amended effective November 8, 1999.

List of Subjects

47 CFR Part 0

Organizations and functions (Government agencies).

47 CFR Part 1

Communications common carriers, Telecommunications.

47 CFR Part 21

Radio.

47 CFR Part 27

Communications common carriers.

47 CFR Part 68

Communications equipment, Telephone.

47 CFR Part 90

Common carriers, Radio.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

Parts 0, 1, 21, 27, 68 and 90 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.5 is amended by revising paragraph (a) to read as follows:

§ 0.5 General description of Commission organization and operations.

(a) *Principal staff units.* The Commission is assisted in the performance of its responsibilities by its staff, which is divided into the following principal units:

(1) Office of Managing Director.
(2) Office of Engineering and Technology.
(3) Office of General Counsel.
(4) Office of Plans and Policy.
(5) Office of Media Relations.
(6) Office of Legislative Affairs.
(7) Office of Inspector General.
(8) Office of Communications Business Opportunities.
(9) Office of Administrative Law Judges.
(10) Common Carrier Bureau.
(11) Wireless Telecommunications Bureau.
(12) International Bureau.
(13) Cable Services Bureau.
(14) Mass Media Bureau.
(15) Enforcement Bureau.
(16) Consumer Information Bureau.

* * * * *

3. The undesignated centerheading immediately preceding § 0.15 is revised to read as follows:

Office of Media Relations

4. Section 0.15 is revised to read as follows:

§ 0.15 Functions of the Office.

(a) Enhance public understanding of and compliance with the Commission's regulatory requirements through dissemination of information to the news media.

(b) Act as the principal channel for communicating information to the news media on Commission policies, programs, and activities.

(c) Advise the Commission on information dissemination as it affects liaison with the media.

(d) Manage the FCC's Internet site and oversee the agency's Web standards and guidelines.

(e) Maintain liaison with the Consumer Information Bureau on press and media issues concerning consumer assistance and information including informal consumer complaints.

5. Section 0.17 is amended by adding paragraph (g) to read as follows:

§ 0.17 Functions of the Office.

* * * * *

(g) Coordinate with the Consumer Information Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

6. Section 0.31 is amended by adding paragraph (n) to read as follows:

§ 0.31 Functions of the Office.

* * * * *

(n) To assist the Consumer Information Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

7. Section 0.51 is amended by adding paragraph (s) to read as follows:

§ 0.51 Functions of the Bureau.

* * * * *

(s) To assist the Consumer Information Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

8. Section 0.61 is amended by removing and reserving paragraph (c), revising paragraph (f) and adding paragraph (g) to read as follows:

§ 0.61 Functions of the Bureau.

* * * * *

(f) Handle equal employment opportunity enforcement and political broadcasting and fairness doctrine complaints involving broadcast stations, cable operators and other multichannel video program distributors.

(g) To assist the Consumer Information Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

* * * * *

9. Section 0.91 is amended by revising paragraphs (a), (c) and (h) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in matters pertaining to the regulation and licensing of communication common carriers and ancillary operations (other than matters pertaining exclusively to the regulation and licensing of wireless telecommunications services and facilities). This includes: Policy development and coordination; adjudicatory and rule making proceedings, including rate and service investigations; determinations regarding lawfulness of carrier tariffs; action on applications for service and facility authorizations; review of carrier performance; economic research and analysis; administration of Commission accounting and reporting requirements; compliance and enforcement activities not otherwise within the responsibility of the Enforcement Bureau; and any matters concerning wireline carriers that also affect wireless carriers in cooperation with the Wireless Telecommunications Bureau.

* * * * *

(c) Advises and assists the public, other government agencies and industry groups on wireline common carrier regulation and related matters. Also assists the Consumer Information Bureau with informal consumer complaints and other general inquiries by consumers regarding wireline common carrier regulation and related matters.

* * * * *

(h) Administers the Telecommunications Service Priority System with the concurrence of the Enforcement Bureau, and resolves matters involving assignment of priorities and other issues pursuant to part 64 of this chapter.

* * * * *

10. Section 0.101 is amended by revising paragraph (d) to read as follows:

§ 0.101 Functions of the Bureau.

* * * * *

(d) Advises and assists, the public, other government agencies and industry groups. Also assists the Consumer Information Bureau with informal consumer complaints and other general inquiries by consumers regarding cable regulations and related matters.

* * * * *

11. The undesignated centerheading immediately preceding § 0.111 is revised to read as follows:

Enforcement Bureau

12. Section 0.111 is revised to read as follows:

§ 0.111 Functions of the Bureau.

(a) Serve as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules, Commission orders and Commission authorizations, other than matters that are addressed in the context of a pending application for a license or other authorization or in the context of administration, including post-grant administration, of a licensing or other authorization or registration program.

(1) Resolve complaints, including complaints filed under section 208 of the Communications Act, regarding acts or omissions of common carriers (wireline, wireless and international).

Note to paragraph (a)(1): The Consumer Information Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services and equipment for persons with disabilities. The Common Carrier Bureau has primary responsibility regarding compliance with common carrier accounting and related requirements, including those imposed under section 220 of the Communications Act, and complaints regarding connection of equipment to the telephone network under part 68 of the Commission's rules. The International Bureau has primary responsibility for complaints regarding international settlements rules and policies. The Cable Services Bureau has primary responsibility for pole attachment complaints under section 224 of the Communications Act.

(2) Resolve complaints regarding acts or omissions of non-common carriers subject to the Commission's jurisdiction under Title II of the Communications Act and related provisions, including complaints against aggregators under section 226 of the Communications Act and against entities subject to the requirements of section 227 of the Communications Act.

Note to paragraph (a)(2): The Consumer Information Bureau has primary responsibility for informally resolving individual informal complaints from consumers against non-common carriers subject to the Commission's jurisdiction under Title II of the Communications Act and related provisions, other than complaints involving access to communications services and equipment for persons with disabilities.

(3) Resolve formal complaints regarding accessibility to telecommunications services and equipment for persons with disabilities, including complaints filed pursuant to sections 225 and 255 of the Communications Act.

(4) Resolve complaints regarding radiofrequency interference and complaints regarding radiofrequency equipment and devices, including complaints of violations of sections 302 and 333 of the Communications Act.

Note to paragraph (a)(4): The Cable Services Bureau has shared responsibility for cable signal leakage complaints and the Office of Engineering and Technology has shared responsibility for radiofrequency equipment and device complaints.

(5) Resolve complaints regarding compliance with the Commission's Emergency Alert System rules.

(6) Resolve complaints regarding the lighting and marking of radio transmitting towers under section 303(q) of the Communications Act.

Note to paragraph (a)(6): The Wireless Telecommunications Bureau has responsibility for administration of the tower registration program.

(7) Resolve complaints regarding compliance with statutory and regulatory provisions regarding indecent communications subject to the Commission's jurisdiction.

(8) Resolve complaints regarding the broadcast and cable television children's television programming commercial limits contained in section 102 of the Children's Television Act.

Note to paragraph (a)(8): The Mass Media Bureau has responsibility for enforcement of these limits in the broadcast television renewal context.

(9) Resolve complaints regarding unauthorized construction and operation of communications facilities, including complaints of violations of section 301 of the Communications Act.

(10) Resolve complaints regarding false distress signals under section 325(a) of the Communications Act.

(11) Resolve other complaints against Title III licensees and permittees.

Note to paragraph (a)(11): The Mass Media Bureau has primary responsibility for complaints regarding children's television programming requirements, and for political and related programming matters and equal employment opportunity matters involving broadcasters, cable operators and other multichannel video programming distributors. The relevant licensing Bureau has primary responsibility for complaints involving tower siting and the Commission's environmental rules. The Cable Services Bureau has primary responsibility for complaints regarding the Commission's Cable Antenna Relay Service rules.

(12) Resolve complaints regarding other matters assigned to it by the Commission, matters that do not fall within the responsibility of another Bureau or Office or matters that are determined by mutual agreement with another Bureau or Office to be appropriately handled by the Enforcement Bureau.

(13) Identify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to sections 218, 308(b), 403 and 409(e) through (k) of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office.

(14) Issue or draft orders taking or recommending appropriate action in response to complaints or investigations, including, but not limited to, admonishments, damage awards where authorized by law or other affirmative relief, notices of violation, notices of apparent liability and related orders, notices of opportunity for hearing regarding a potential forfeiture, hearing designation orders, orders designating licenses or other authorizations for a revocation hearing and consent decrees. Issue or draft appropriate orders after a hearing has been terminated by an Administrative Law Judge on the basis of waiver. Issue or draft appropriate interlocutory orders and take or recommend appropriate action in the exercise of its responsibilities.

(15) Encourage cooperative compliance efforts.

(16) Mediate and settle disputes.

(17) Provide information regarding pending complaints, compliance with relevant requirements and the complaint process, where appropriate and to the extent the information is not available from the Consumer Information Bureau or other Bureaus and Offices.

(18) Exercise responsibility for rulemaking proceedings regarding general enforcement policies and procedures.

(19) Advise the Commission or responsible Bureau or Office regarding the enforcement implications of existing and proposed rules.

(20) Serve as the primary point of contact for coordinating enforcement matters, including market and consumer enforcement matters, with other federal, state and local government agencies, as well as with foreign governments after appropriate consultation, and provide assistance to such entities. Refer matters to such entities, as well as to private sector entities, as appropriate.

(b) Serve as trial staff in formal hearings conducted pursuant to 5 U.S.C. 556 regarding applications, revocation, forfeitures and other matters designated for hearing.

(c) Under the general direction of the Defense Commissioner, coordinate the defense activities of the Commission and provide support to the Defense Commissioner with respect to his or her participation in the Joint Telecommunications Resources Board, and the National Security Telecommunications Advisory Committee and other organizations. Recommend national emergency plans and preparedness programs covering Commission functions during national emergency conditions. Support the Chief of the Common Carrier, International and Wireless Telecommunications Bureaus on matters involving assignment of Telecommunications Service Priority System priorities and in administration of that system. The Chief, Enforcement Bureau, or that person's designee, acts as FCC Alternate Defense Coordinator and principal to the National Communications System. Perform such alternate functions as may be delegated during a national emergency or following activation of the President's war emergency powers as specified in section 706 of the Communications Act.

(d) In coordination with the International Bureau, participate in international conferences dealing with monitoring and measurement; serve as the point of contact for the U.S. Government in matters of international monitoring, fixed and mobile direction-finding and interference resolution; and oversee coordination of non-routine communications and materials between the Commission and international or regional public organizations or foreign administrations.

(e) In conjunction with the Office of Engineering and Technology, work with technical standards bodies.

(f) Administer the Commission's Emergency Alert System. Be responsible for rulemakings involving the Emergency Alert System.

(g) Oversee the Commission's privatized ship radio safety inspection program.

(h) Have authority to rule on emergency requests for Special Temporary Authority during non-business hours.

(i) Provide field support for, and field representation of, the Bureau, other Bureaus and Offices and the Commission. Coordinate with other Bureaus and Offices as appropriate.

(j) Handle congressional and other correspondence relating to or requesting specific enforcement actions, specific complaints or other specific matters within the responsibility of the Bureau, to the extent not otherwise handled by the Consumer Information Bureau, the Office of General Counsel (impermissible *ex parte* presentations) or another Bureau or Office.

(k) Have authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the responsibility of the Bureau. Before issuing a subpoena, the Enforcement Bureau shall obtain the approval of the Office of General Counsel.

(l) Perform such other functions as may be assigned or referred to it by the Commission.

13. Section 0.121 is amended by revising paragraph (a) as follows:

§ 0.121 Location of field installations.

(a) Field offices are located throughout the United States. For the address and phone number of the closest office contact the Enforcement Bureau or see the U.S. Government Manual.

* * * * *

14. Section 0.131 is amended by revising paragraphs (a), (h) and (i) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in all matters pertaining to the licensing and regulation of wireless telecommunications, including ancillary operations related to the provision or use of such services; and any matters concerning wireless carriers that also affect wireline carriers in cooperation with the Common Carrier Bureau. These activities include: policy development and coordination; conducting rulemaking and adjudicatory proceedings, including licensing and complaint proceedings for matters not within the responsibility of the Enforcement Bureau; acting on waivers of rules; acting on applications for service and facility authorizations; compliance and enforcement activities for matters not within the responsibility of the Enforcement Bureau; determining resource impacts of existing, planned or recommended Commission activities concerning wireless telecommunications, and developing and recommending resource deployment priorities.

* * * * *

(h) Develops and recommends policies, programs and rules to ensure interference-free operation of wireless telecommunications equipment and networks. Coordinates with and assists other Bureaus and Offices, as appropriate, concerning spectrum management, planning, and interference matters and issues, and in compliance and enforcement activities. Studies technical requirements for equipment for wireless telecommunications services in accordance with standards established by the Chief, Office of Engineering and Technology.

(i) Advises and assists consumers, businesses and other government agencies on wireless telecommunications issues and matters related thereto. Also assists the Consumer Information Bureau with informal consumer complaints and other general inquiries by consumers regarding cable regulations and related matters.

* * * * *

15. Add an undesignated center heading and 0.141 to read as follows:

Consumer Information Bureau

§ 0.141 Functions of the Bureau.

(a) Serve as the primary Commission entity responsible for communicating information to the general public regarding Commission policies, programs, and activities. Develop, recommend, coordinate and administer the Commission's consumer information program to enhance the public's understanding of and compliance with the Commission's regulatory requirements.

(1) Provide a single source "one-stop" shop or "FCC General Store" for handling general inquiries and informally resolving individual informal consumer complaints for the Commission.

(2) Provide information to the public on the Commission's policies, goals, objectives, and regulatory requirements in order to facilitate public participation in the Commission's decision-making processes.

(3) Plan, develop, and implement, in coordination with Bureaus and Offices, a Commission wide strategic information plan. Collect and analyze information received in the Bureau from incoming informal consumer complaints and inquiries, consumer forums, and other industry sources and act as an early warning system to alert the Commissioners and the other Bureaus and Offices of areas of concern or interest.

(4) In conjunction with appropriate Bureaus and Offices, conduct consumer forums to educate the public about important Commission regulatory programs and to solicit public feedback about the work of the Commission.

(5) In coordination with the Managing Director's Office, provide objectives and evaluation methods for the public information portions of the Agency's Government Performance and Results Act (GPRA) submissions and other Agency-wide strategic planning efforts.

(6) Provide expert advice and assistance to Bureaus and Offices

regarding compliance with accessibility requirements.

(7) Provide accessible formats for distribution of Commission material for use by individuals with disabilities, and ensure that individuals with disabilities have access to Commission processes in accordance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(8) Develop and issue, in conjunction with appropriate Bureaus and Offices, consumer alerts and public service announcements to give consumers information about their rights and information to protect themselves from unscrupulous individuals and firms.

(9) Exercise responsibility for rulemaking proceedings regarding general consumer education policies and procedures, and any other related issues, as appropriate.

(b) Provide consumers with timely, up-to-date, and accurate information promptly and professionally, in a format that is most convenient to the consumer through the use of an integrated telephone, TTY, e-mail, web site, and correspondence center.

(1) Provide informal resolution of individual informal consumer complaints in accord with the Bureau's delegated authority (except those complaints filed regarding accessibility to communications services and equipment for persons with disabilities, including complaints filed pursuant to sections 225, 255, and 713 of the Communications Act, which are handled by the Enforcement Bureau.)

(i) Complete an electronic complaint form at the request of consumers and assist consumers with informal resolution of their complaints through service, facilitation, and informal resolution to address consumer-oriented problems.

(ii) Mediate and settle disputes in informal complaints as appropriate.

(2) Develop and implement approaches and delivery mechanisms to increase productivity and continuously improve service to consumers. Develop partnership with other federal, state, and local governments and industry in order to establish mechanisms to quickly address informal consumer complaints and issues.

(3) Identify and refer new, novel and/or hot consumer issues to the appropriate Commission Bureau or Office.

(4) Prepare and distribute information and documents of interest to consumers regarding their rights under applicable law.

(5) In coordination with other Bureaus and Offices, handle Congressional and other correspondence related to specific informal consumer complaints, or other specific matters within the responsibility of the Bureau, to the extent not otherwise handled by the Office of General Counsel (impermissible *ex parte* presentations) or another Bureau or Office.

(c) Develop, plan, coordinate and operate the consolidated reference and research services center to ensure accessibility of the files and record systems for the public and Commission staff.

(1) Serve as the official FCC record custodian for designated records to include intake processing, organization and file maintenance, reference services, retirement, and retrieval of these records. Responsible for managing and maintaining the Electronic Comment Filing System.

(2) Certify records for adjudicatory and court proceedings.

(3) Convene periodic user group meetings to assist in defining requirements for automated reference and research services.

(4) Maintain files for Informal Consumer Complaints, Broadcast Ownership, AM/FM/TV, TV Translators, FM Translators, Cable TV, Wireless, Auction and Common Carrier Tariff and other public record systems in a current state by receiving, reviewing, and filing applications, authorizations, correspondence, technical data and other materials in accordance with established procedures and time frames. Maintain for public inspection Time Brokerage and Affiliation Agreements.

(5) Provide the public and the Commission staff prompt access to manual/computerized records and filing systems.

(6) Maintain court citation file and legislative histories concerning telecommunications dockets.

(d) Manage the Bureau's computer hardware, software, and database systems, such as the Bureau's Internet site, consumer information network systems, and the electronic comment filing system. Responsible for all design, systems development, presentation development, accessibility and coordination with the Chairman, Commissioners, and other Bureaus and Offices to ensure complete, timely, and accurate coverage of Bureau activities and Commission publications.

(1) Participate with the Internet Working Group to set standards and develop guidelines that govern the FCC Internet practices and procedures. Keep abreast of new developments and provide expert advice on how to attain new goals.

(2) In consultation with, and assisted by the Managing Director's Office, identify the role of the Information Technology Center in supporting the hardware, software, and systems needs of the Bureau.

(3) Provide leadership to Bureaus and Offices for dissemination of consumer information via the Internet.

(4) Coordinate with other Bureaus and Offices to develop and maintain Commission-wide databases for dissemination of consumer information and related documents.

(5) Provide technology and automation support to the Bureau to ensure smooth operation of daily business and ongoing work. Purchase, install and monitor use of new technology. Provide training as appropriate.

(6) Determine need for, develop statements of work, recommend, implement and manage automated information systems, electronic filing systems, telephone systems, electronic and document management systems.

(e) Develop, recommend, and implement policies, goals, and objectives to solicit public input in Commission policy-making proceedings to ensure that the Commission has the benefit of a wide spectrum of information and viewpoints in its decision-making processes.

(1) In coordination with the Commission's Bureaus and Offices, maintain liaison with consumer organizations and governmental agencies concerned with FCC regulatory activities to ensure a continuing exchange of views and information.

(2) Conduct consumer forums to educate the public about important Commission regulatory programs and to solicit public feedback from consumers and to encourage more public participation in the work of the Commission.

(3) Develop and maintain special databases for mailing, e-mailing, and sending facsimile material to groups affected by commission actions.

(4) Arrange briefings and seminars for educational institutions, consumer organizations or other groups interested in the operations of the Commission.

(5) In coordination with Bureaus and Offices, implement an informal work group for information sharing purposes to ensure coordination on all consumer information and outreach projects.

(6) Advise and assist the Chairman, Commissioners, and the Bureaus and Offices regarding public participation on consumer information/education matters.

(7) Exercise responsibility for rulemaking proceedings regarding

general consumer education policies and procedures and related matters.

(f) Plan, develop and implement, in coordination with Bureaus and Offices, a Commission-wide strategic information plan.

(1) Develop and establish a coordinated information collection and validation process with bureaus and offices to ensure accuracy and validity of information disseminated by the Bureau.

(2) Collect and analyze information received in the Bureau from incoming consumer complaints and inquiries, consumer forums, and other industry sources and act as an early warning system to alert the Commissioners and the other Bureaus and Offices of areas of concern or interest.

(3) Promote within the Commission an increased understanding of the concerns and viewpoints of the public through formal and informal coordinating procedures to ensure prompt service to the public who seek information about FCC proceedings and policies, and who seek assistance in participating in Commission activities.

(4) Oversee the graphics arts program for the Bureau. In coordination with other Bureaus and Offices, produce audio and video consumer alerts and public service announcements for dissemination to the public.

(5) In consultation with the Managing Director's Office, provide objectives and evaluation methods for the public information portion of the Agency's Government Performance and Results Act (GPRA) submissions an other Agency-wide strategic planning efforts.

(6) Ensure that alternative formats of Commission materials are available to Commission employees, Bureaus, Offices and members of the public. Develop a library of commonly requested materials on disability issues, and issues of interest to all consumers. Provide other Commission materials in alternative formats, upon request. Materials will be available in Braille, audio cassette, large print, computer diskette and CD–ROM.

(g) Appoint a Rehabilitation Act Officer with full authority to oversee FCC compliance with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), and to provide direction and assistance on all associated activities and initiatives to other Bureaus and Offices.

Note to paragraph (g): Responsibility for implementing section 501 requirements of the Rehabilitation Act are assigned to the Office of Workplace Diversity. Responsibility for implementing section 504 requirements of the Rehabilitation Act are assigned to the Disability Rights Office. Responsibility for implementing section 508 requirements are assigned to the Office of the Managing Director.

(1) Coordinate with appropriate Bureau/Office experts to provide technical assistance on all accessibility related rules/proceedings. Coordinate with Disability and Business Technical Assistance Center's (DBTAC's) and represent the Commission on rehabilitation and accessibility related committees, working groups, and at associated conferences. Coordinate TTY directory publishing as required by the Telecommunications Accessibility Enhancement Act.

(2) Coordinate with Bureaus and Offices to develop recommendations and propose policies to ensure that telecommunications and mass media are accessible to persons with disabilities. Review relevant agenda items and other documents prepared by Bureaus or Offices to ensure that the documents are in conformance with existing disability laws and policies and that they support the Commission's goal of increasing accessibility of communications services and technologies for persons with disabilities. Provide expert advice on issues relevant to persons with disabilities. Initiate rulemaking proceedings as appropriate.

(3) Provide advice and assistance, as required, to other Bureaus as appropriate, on the requirements of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Communications Act, including sections 255 and 713 and enforcement activities related to accessibility.

(4) Develop specialized disability outreach efforts to include postings on the Commission's web sites and maintaining an electronic disability outreach list and resource library of disability literature, including articles, publications and newsletters.

(5) Monitor legal developments affecting persons with disabilities by reviewing court and Commission decisions, professional publications, and trade press, and by researching legislation, decisions, opinions and regulation.

(6) Manage the Disabilities Issues Task Force and associated working groups.

(7) Coordinate training opportunities for Commission employees on accessibility issues.

(h) Perform such other functions as may be assigned or referred to the Bureau by the Commission.

16. Section 0.181 is amended by revising the introductory text and paragraphs (c), (d) and (h) to read as follows:

§ 0.181 The Defense Commissioner.

The Defense Commissioner is designated by the Commission. The Defense Commissioner directs the defense activities of the Commission and has the following duties and responsibilities:

* * * * *

(c) To act as the Defense Coordinator in representations with other agencies with respect to planning for the continuity of the essential functions of the Commission under emergency conditions.

(d) To serve as a member of the Joint Telecommunications Resources Board (JTRB).

* * * * *

(h) To approve national emergency plans and develop preparedness programs covering: provision of service by common carriers; broadcasting and cable facilities, satellite and the wireless radio services; radio frequency assignment; electromagnetic radiation; investigation and enforcement.

* * * * *

17. Section 0.182 is revised to read as follows:

§ 0.182 Chief, Enforcement Bureau.

(a) Recommends national emergency plans and preparedness programs covering: Provision of service by common carriers, broadcasting and cable facilities, satellite and the wireless radio services; radio frequency assignment; electro-magnetic radiation; investigation and enforcement.

(b) Acts as Alternate Defense Coordinator in representations with other agencies with respect to planning for the continuity of the essential functions of the Commission under emergency conditions.

(c) Coordinates the FCC's responsibilities under the Interagency Advisory Group (IAG) of the Federal Emergency Management Agency.

(d) Provides administrative support for the National Advisory Committee (NAC) on Emergency Alert System (EAS) issues.

(e) Keeps the Defense Commissioner informed as to significant developments in the field of emergency preparedness and related defense activities.

(f) Coordinates the FCC's responsibilities under the Federal Response Plan, Catastrophic Disaster Response Group (CDRG) administered by the Federal Emergency Management Agency (FEMA).

(g) Serves as the FCC's representative on the National Communications System's Committees.

(h) Under the general direction of the Defense Commissioner coordinates the

National Security and Emergency Preparedness (NSEP) activities of the Commission including Continuity of Government Planning, the Emergency Alert System (EAS) and other functions as may be delegated during a national emergency or activation of the President's war emergency powers as specified in section 706 of the Communications Act. Maintains liaison with FCC Bureaus/Offices, represents the Defense Commissioner with other Government agencies and organizations, the telecommunications industry and FCC licensees on NSEP matters; and, as requested, represents the Commission at NSEP meetings and conferences.

(i) Is authorized to declare that a temporary state of communications emergency exists pursuant to § 97.401(c) of this chapter and to act on behalf of the Commission with respect to the operation of amateur stations during such temporary state of communications emergency.

§ 0.183 [Removed]

18. Remove § 0.183.

§ 0.185 [Amended]

19. In § 0.185(a), (b) and the introductory text, remove the words "Chief, Compliance and Information Bureau" and add, in their place, the words "Chief, Enforcement Bureau."

20. Section 0.261 is amended by revising paragraph (a)(15) to read as follows:

§ 0.261 Authority delegated.

(a) * * *

(15) To interpret and enforce rules and regulations pertaining to matters under its jurisdiction and not within the jurisdiction of the Enforcement Bureau.

* * * * *

21. Section 0.284 is amended by revising paragraphs (a)(1) and (a)(4) to read as follows:

§ 0.284 Actions taken under delegated authority.

(a) * * *

(1) Complaints arising under section 315 of the Communications Act—Office of General Counsel.

* * * * *

(4) Matters involving emergency communications, including the issuance of Emergency Alert System Authorizations (FCC Form 392)—Enforcement Bureau.

* * * * *

22. Section 0.285 is revised to read as follows:

§ 0.285 Record of actions taken.

The history card, the station file, and other appropriate files are designated to be the official records of action taken by the Chief of the Mass Media Bureau. The official records of action are maintained in the Reference Information Center in the Consumer Information Bureau.

23. Section 0.302 is revised to read as follows:

§ 0.302 Record of actions taken.

The application and authorization files are designated as the Commission's official records of action of the Chief, Common Carrier Bureau pursuant to authority delegated to the Chief. The official records of action are maintained in the Reference Information Center in the Consumer Information Bureau.

24. The undesignated centerheading immediately preceding § 0.311 is revised to read as follows:

Enforcement Bureau

25. Section 0.311 is revised to read as follows:

§ 0.311 Authority delegated.

The Chief, Enforcement Bureau, is delegated authority to perform all functions of the Bureau, described in § 0.111, provided that:

(a) The following matters shall be referred to the Commission en banc for disposition:

(1) Notices of proposed rulemaking and of inquiry and final orders in such proceedings.

(2) Applications for review of actions taken pursuant to delegated authority.

(3) Matters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.

(4) Forfeiture notices and forfeiture orders if the amount is more than $100,000 in the case of common carriers or more than $25,000 in the case of all other persons or entities.

(5) Orders concluding an investigation under section 208(b) of the Communications Act and orders addressing petitions for reconsideration of such orders.

(b) Action on complaints regarding compliance with section 705(a) of the Communications Act shall be coordinated with the Office of General Counsel.

(c) Action on emergency requests for Special Temporary Authority during non-business hours shall be promptly reported to the responsible Bureau.

Note to paragraph (c): See also § 0.182 of this chapter.

26. Section 0.314 is revised to read as follows:

§ 0.314 Additional authority delegated.

The *Regional Director, Deputy Regional Director, District Director or Resident Agent* at each installation is delegated authority to act upon applications, requests, or other matters, which are not in hearing status, and direct the following activities necessary to conduct investigations or inspections:

(a) On informal requests from broadcast stations to extend temporary authority for operation without monitors, plate ammeter, plate volmeter, base current meter, common point meter, and transmission line meter from FM and television stations.

(b)(1) Extend the Communications Act Safety Radiotelephony Certificate for a period of up to 90 days beyond the specified expiration date.

(b)(2) Grant emergency exemption requests, extensions or waivers of inspection to ships in accordance with applicable provisions of the Communications Act, the Safety Convention, the Great Lakes Agreement or the Commission's rules.

(c) To act on and make determinations on behalf of the Commission regarding requests for assignments and reassignments of priorities under the Telecommunications Service Priority System, Part 64 of the rules, when circumstances require immediate action and the common carrier seeking to provide service states that it cannot contact the National Communications System or the Commission office normally responsible for such assignments.

(d) Require special equipment and program tests during inspections or investigations to determine compliance with technical requirements specified by the Commission.

(e) Require stations to operate with the pre-sunrise and nighttime facilities during daytime hours in order that an inspection or investigation may be made by an authorized Commission representative to determine operating parameters.

(f) Issuance of notices and orders to operators of industrial, scientific, and medical (ISM) equipment, as provided in § 18.115 of this chapter.

(g) Requests for permission to resume operation of ISM equipment on a temporary basis, as provided by § 18.115 of this chapter, and requests for extensions of time within which to file final reports, as provided by § 18.117 of this chapter.

(h) Issuance of notices and orders to operators of Part 15 devices, as provided in § 15.5 of this chapter.

(i) Issuance of notices and orders to cable operators of harmful interference to radio communications services involving safety services, as provided in § 76.613 of this chapter.

(j) When deemed necessary by the *District Director or Resident Agent* of a Commission field facility to assure compliance with the Rules, a station licensee shall maintain a record of such operating and maintenance records as may be necessary to resolve conditions of interference or deficient technical operation.

27. Section 0.317 is revised to read as follows:

§ 0.317 Record of action taken.

The application, authorization, and other appropriate files of the Enforcement Bureau are designated as the Commission's official records of action taken pursuant to authority delegated under §§ 0.311 and 0.314, and shall constitute the official Commission minutes entry of such actions. The official records of action are maintained in the Reference Information Center in the Consumer Information Bureau.

28. Section 0.332 is amended by removing and reserving paragraph (a) and revising paragraphs (b) and (c) to read as follows:

§ 0.332 Actions taken under delegated authority.

* * * * *

(b) Requests for waiver of tower painting and lighting specifications—Enforcement Bureau.

(c) Matters involving emergency communications—Enforcement Bureau.

* * * * *

29. Section 0.347 is revised to read as follows:

§ 0.347 Record of actions taken.

The official record of all actions taken by an Administrative Law Judge, including initial and recommended decisions and actions taken pursuant to § 0.341, is contained in the original docket folder, which is maintained in the Reference Information Center of the Consumer Information Bureau.

30. Section 0.357 is revised to read as follows:

§ 0.357 Record of actions taken.

The official record of all actions taken by the Chief Administrative Law Judge in docketed proceedings pursuant to § 0.351 is contained in the original docket folder, which is maintained by the Reference Information Center of the Consumer Information Bureau.

31. Add an undesignated center heading and § 0.361 to read as follows:

Consumer Information Bureau

§ 0.361 Authority delegated.

The Chief, Consumer Information Bureau, is delegated authority to perform all functions of the Bureau, described in § 0.141, provided that the following matters shall be referred to the Commission en banc for disposition:

(a) Notices of proposed rulemaking and of inquiry and final orders in such proceedings.

(b) Application for review of actions taken pursuant to delegated authority.

(c) Matters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.

32. Section 0.387 is amended by revising paragraph (b) to read as follows:

§ 0.387 Other national security and emergency preparedness delegations; cross reference.

* * * * *

(b) For authority of the Chief of the Enforcement Bureau to declare a general communications emergency, see § 0.182(j).

33. Section 0.413 is revised to read as follows:

§ 0.413 The Commission's printed publications.

The Commission's printed publications are described in §§ 0.414 through 0.420. These publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

34. Section 0.416 is revised to read as follows:

§ 0.416 The Federal Communications Commission Record.

Texts adopted by the Commission or a member of its staff on delegated authority and released through the Office of Media Relations are published in the FCC Record. The FCC Record is published biweekly in pamphlet form. The pamphlets are available on a subscription basis from the Superintendent of Documents. Each biweekly pamphlet contains a table of contents and current index. A consolidated index is published on a periodic basis.

35. Section 0.422 is revised to read as follows:

§ 0.422 Current action documents and public notices.

Documents adopted by the Commission, public notices and other public announcements are released through the Office of Media Relations. These documents are also available on the Commission's website at www.fcc.gov/ and can be obtained from the Commission's duplicating contractor.

36. Section 0.423 is revised to read as follows:

§ 0.423 Information bulletins.

Information bulletins and fact sheets containing information about communications issues and the Federal Communications Commission are available on the Commission's web site at www.fcc.gov, ftp.fcc.gov or may be requested from the Consumer Information Bureau, Consumer Information Network Division.

37. Section 0.431 is revised to read as follows:

§ 0.431 The FCC service frequency lists.

Lists of frequency assignments to radio stations authorized by the Commission are recapitulated periodically by means of an automated record system. All stations licensed by the Commission are included, except the following: Aircraft, amateur, personal (except General Mobile Radio Service), Civil Air Patrol, and disaster. The resulting documents, the FCC service frequency lists, consist of several volumes arranged by nature of service, in frequency order, including station locations, call signs and other technical particulars of each assignment. These documents are available for public inspection in Washington, D.C., in the Office of Engineering and Technology. Copies may be purchased from the Commission's duplicating contractor. See § 0.465(a).

38. Section 0.434 is revised to read as follows:

§ 0.434 Data bases and lists of authorized broadcast stations and pending broadcast applications.

Periodically the FCC makes available copies of its data bases and lists containing information about authorized broadcast stations, pending applications for such stations, and rulemaking proceedings involving amendments to the TV and FM Table of Allotments. The data bases, and the lists prepared from the data bases, contain frequencies, station locations, and other particulars. The lists are available for public inspection at the FCC's Reference Information Center at 445 12th Street, SW., Washington, DC. Paper copies of the lists may be purchased from the FCC's duplicating contractor; see § 0.465(a). Many of the databases may be viewed at the Commission's web site at www.fcc.gov. and ftp.fcc.gov under mass media services. Microfiche copies of these lists are maintained by the Reference Information Center. These lists are derived from the data bases and can be used as an alternative research source to the Broadcast Application Processing System (BAPS).

39. Section 0.441 is revised to read as follows:

§ 0.441 General.

Any person desiring to obtain information may do so by contacting the Consumer Information Bureau. Requests for information, general inquiries, and complaints may be submitted by:

(a) Internet at www.fcc.gov/CIB/FCCINFO or ftp.fcc.gov/CIB/FCCINFO.

(b) Telephone at 1–(888) CALLFCC (1–888–225–5322).

(c) TDD/TDY at (202) 418–0484.

(d) Correspondence at: Consumer Information Bureau, P.O. Box FCC, 445 12th Street, SW., Washington, DC 20554.

(e) Visiting the Reference Information Center of the Consumer Information Bureau at the Commission's main office in Washington, DC.

§ 0.443 [Removed]

40. Remove § 0.443.

41. Section 0.445 is amended by revising paragraphs (b), (c) and (g) to read as follows:

§ 0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.

* * * * *

(b) Texts adopted by the Commission or a member of its staff on delegated authority and released through the Office of Media Relations are published in the FCC Record. Older materials of this nature are available in the FCC Reports. In the event that such older materials are not published in the FCC Reports, reference should be made to the **Federal Register** or Pike and Fischer Radio Regulation.

(c) All rulemaking documents are published in the **Federal Register**. Summaries of the full Notices of proposed rule making and other rule making decisions adopted by the Commission constitute rulemaking documents for purposes of **Federal Register** publication. See § 1.412(a)(1). The complete text of the Commission decision also is released by the Commission and is available for inspection and copying during normal business hours in the Office of Media Relations or as otherwise specified in the rulemaking document published in the **Federal Register**. Docketed matters are available to the public via the Electronic Comment Filing System maintained in the Reference Information Center at 445 12th Street, Washington, DC. The complete texts of rulemaking decisions may also be purchased from the Commission's duplicating contractor.

* * * * *

(g) The FCC Administrative Manual (excepting Part IX, concerning Civil Defense, which contains materials classified under E.O. 10501) is available for inspection in the Office of the Managing Director. The Manual is not indexed but is organized by subject, with tables of contents, and the materials contained therein can be located without difficulty.

* * * * *

42. Section 0.453 is amended by revising paragraphs (a), (b), (d), (e) and (f) to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(a) *The Reference Information Center of the Consumer Information Bureau.* (1) Files containing the record of all docketed cases, petitions for rule making and related papers. A file is maintained for each docketed hearing case and for each docket rule making proceeding. Cards summarizing the history of such cases are available for inspection.

(2) Files, documents, and records related to the following services:

(i) Mass Media Services.

(A) Applications for broadcast authorizations and related files are available for public inspection Certain broadcast applications, reports and records are also available for inspection in the community in which the station is located or is proposed to be located. See §§ 73.3526 and 73.3527 of this chapter.

(B) Ownership reports filed by licensees of broadcast stations pursuant to § 73.3615.

(C) Network affiliation contracts between stations and networks (for television stations only).

(D) Contracts relating to network service to broadcast licensees filed on or after the 1st day of May 1969 under § 73.3613.

(E) Annual employment reports filed by licensees and permittees of broadcast stations pursuant to § 73.3612 of this chapter.

(F) Contract files which contain pledges, trust agreements, options to purchase stock agreements, partnership agreements, management consultant agreements, and mortgage or loan agreements.

(G) broadcast applications and related files.

(H) FM Translator applications and related files.

(I) Station files containing Notice of Apparent Liability and Memorandum of Opinion and Order and related files.

(J) Network correspondence files and related materials.

(ii) Common Carrier Services, including:

(A) Annual reports filed by carriers under § 43.21 of this chapter.

(B) Reports on pensions and benefits filed by carriers under § 43.42 of this chapter.

(C) Reports of proposed changes in depreciation rates filed by carriers under § 43.43 of this chapter.

(D) Tariff schedules for all charges for interstate and foreign wire or radio communications filed pursuant to section 203 of the Communications Act, all related documents and communications.

(E) All applications for common carrier authorizations acted upon by the Common Carrier Bureau, and related files.

(F) All formal and informal complaints against common carriers filed under §§ 1.711 through 1.735 of this chapter, all documents filed in connection therewith, and all communications related thereto.

(G) Annual employment reports filed by common carrier licensees or permittees pursuant to § 1.815 of this chapter.

(H) Enforcement proceedings and public inquiries and related materials.

(I) Files containing contracts between carriers and affiliates, accounts and subaccounts, pension filings, property records, disposition units, and depreciation rate filings.

(J) Cost Allocation Manuals and related materials.

(K) Section 214 applications and related files, to the extent that they concern domestic communications facilities and services.

(L) Files containing reports required by FCC Rules and Regulations, annual reports to stockholders, administrative reports, monthly bypass reports and related materials.

(M) Files containing reference material from major telephone companies.

(N) Files containing Local Exchange Rates and related files.

(O) Currently effective tariffs filed by Communications Common Carriers pursuant to various FCC Rules and Regulations.

(P) Recent revisions to tariff filings and the Reference Information Center Log which is prepared daily and lists the tariff filings received the previous day.

(iii) Wireless Telecommunications Services and Auction related data including:

(A) Station files containing a complete history of data submitted by the applicant that has been approved by the Commission which includes background material.

(B) Pending files containing applications for additional facilities or modifications of existing facilities.

(C) Cellular and Paging Granted Station files and related materials.

(D) Pending cellular and paging applications and related files.

(E) Electronically stored application and licensing data for commercial radio operators and for all authorizations in the Wireless Radio services are available for public inspection via the Commission's wide area network. Wireless Radio services include Commercial and Private Mobile Radio, Common Carrier and Private Operational Field point-to-point Microwave, Local Television Transmission Service (LTTS), Digital Electronic Message Service (DEMS), Aviation Ground and Marine Coast applications. Some of these services are available electronically now and most will be available on electronically within 90 days of the implementation of the Universal Licensing System (ULS).

(F) Petitions and related materials.

(iv) International Services, except to the extent they are excluded from routine public inspection under another section of this chapter:

(A) Satellite and earth station applications files and related materials under parts 25 and 100 of this chapter;

(B) Section 214 applications and related files under part 63 of this chapter, to the extent that they concern international communications facilities and services;

(C) International Fixed Public Radio applications and related files under part 23 of this chapter;

(D) Files relating to submarine cable landing licenses and applications for such licenses since June 30, 1934, except for maps showing the exact location of submarine cables, which are withheld from inspection under section 4(j) of the Communications Act (see § 0.457(c)(1)(i));

(E) Documents relating to INTELSAT or INMARSAT;

(F) International broadcast applications, applications for permission to deliver programming to foreign stations, and related files under part 73 of this chapter;

(v) Cable services. The following files and documents are available, including:

(A) All complaints regarding cable programming rates, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

(B) Special relief petitions and files pertaining to cable television operations.

(C) Cable television system reports filed by operators pursuant to § 76.403 of this chapter.

(D) Annual employment reports filed by cable television systems pursuant to § 76.77 of this chapter.

(E) Files and documents related to Cable Television Relay Service (CARS)

(b) *Gettysburg Reference Office of the Reference Information Center.* Station files containing applications and related materials for Remote Pickup, Aural STL/ICR, TV Auxiliary, and Low Power Auxiliary Stations in the mass media services. Files regarding Wireless Services are also available up to 90 days after the implementation of the Universal Licensing System (ULS) at which time they become electronically available.

* * * * *

(d) *The Office of Engineering and Technology, FCC Laboratory Reference Room.* The following documents, files and records are available for inspection at this location. Files containing approved applications for Equipment Authorization and related materials are available for review. These files are available in the Commission's Laboratory in Columbia, Maryland.

(e) *The International Bureau.* The International Bureau maintains international settlement agreements and contracts and international cable agreements.

(f) *The Cable Bureau.* The Cable Bureau maintains all cable operator requests for approval of existing or increased cable television rates for basic service and associated equipment over which the Commission had assumed jurisdiction, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

* * * * *

43. Section 0.455 is revised to read as follows:

§ 0.455 Other locations at which records may be inspected.

Except as provided in §§ 0.453, 0.457, and 0.459, records are routinely available for inspection in the Reference Information Center or the offices of the Bureau or Office which exercises responsibility over the matters to which those records pertain (see § 0.5), or will be made available for inspection at those offices upon request. Many of these records may be retrieved from the Commission's site on the World Wide Web, located at <http://www.fcc.gov>. Upon inquiry to the appropriate Bureau or Office, persons desiring to inspect such records will be directed to the specific location at which the particular records may be inspected. A list of Bureaus and Offices and examples of the records available at each is set out below.

(a) *Mass Media Bureau.* (1) Rulings under the Fairness Doctrine and section 315 of the Communications Act, and related materials.

(2) Ruling lists which contain brief summaries of rulings.

(3) Congressional correspondence and related materials.

(b) *Common Carrier Bureau.* (1) Reports of public coast station operators filed under § 43.71 of this chapter.

(2) Valuation reports filed under section 213 of the Communications Act, including exhibits filed in connection therewith, unless otherwise ordered by the Commission, with reasons therefor, pursuant to section 213(f) of the Communications Act. See § 0.457(c)(2).

(3) Computer II files and related materials.

(c) *Office of Managing Director.* (1) All minutes of Commission actions, containing a record of all final votes, minutes of actions and internal management matters as provided in § 0.457(b)(1) and (c)(1)(i). These records and files are available for inspection in the Agenda Branch.

(2) Files containing information concerning the history of the Commission's rules. These files are available for inspection in the Publications Branch.

(3) See § 0.443.

(4) Reports filed pursuant to subpart E of part 19 of this chapter and applications for inspection of such reports. See § 0.460(k).

(d) *Cable Services Bureau.* Correspondence and other actions and decisions relating to cable television services that are not filed in the FCC Reference Information Center, e.g. rate regulation files and related documents.

(e) Office of Engineering and Technology which includes the Bureau's Technical Library containing technical reports, technical journals, and bulletins of spectrum management and related technical materials. Also files containing approved applications for Equipment Authorization (Type accepted, certified and notified) and related materials are available for review. These files are available in the Commission's Laboratory in Columbia, Maryland.

(1) Experimental application and license files.

(2) The Master Frequency Records.

(3) Applications for Equipment Authorization (type accepted, type approval, certification, or advance approval of subscription television systems), following the effective date of the authorization. See § 0.457(d)(1)(ii).

(Application files, technical journals and other technical materials are maintained at the Commission's Laboratory at Columbia, Maryland.)

(f) *Wireless Telecommunications Bureau.* See § 0.453(o) of this chapter.

(g) *International Bureau.* The treaties and other international and bilateral agreements listed in § 73.1650 of this chapter are available for inspection in the office of the Chief, Planning and Negotiations Division, International Bureau. Also contracts and other arrangements filed under § 43.51 and reports of negotiations regarding foreign communication matters filed under § 43.52 of this chapter, except for those kept confidential by the Commission pursuant to section 412 of the Communications Act. See § 0.457(c)(3). Also files relating to international settlements under part 64 of this chapter.

44. Section 0.465 is amended by revising the notes to paragraphs (a) and (b), revising paragraphs (c)(1), (d)(1) and (d)(3) and removing paragraph (d)(4) to read as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) * * *

Note to paragraph (a): The name, address, telephone number, and schedule of fees for the current duplication contractor are published at the time of contract award or renewal in a Public Notice and periodically thereafter. Questions regarding this information should be directed to the Reference Information Division of the Consumer Information Bureau.

(b) * * *

Note to paragraph (b): The name, address, telephone number, and schedule of fees for the current transcription contractor are maintained by the Office of the Secretary in the Managing Director's Office.

(c)(1) Contractual arrangements which have been entered into with commercial firms, as described in this section, do not in any way limit the right of the public to inspect Commission records or to extract therefrom whatever information may be desired. Coin-operated and debit card copy machines are available for use by the public.

* * * * *

(d)(1) Computer maintained data bases produced by the Commission may be obtained from the FCC's internet web site at www.fcc.gov.

* * * * *

(d)(3) Copies of computer source programs and associated documentation produced by the Commission shall be obtained from the Office of the Managing Director.

* * * * *

PART 1—PRACTICE AND PROCEDURE

45. The authority citation for Part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

46. Section 1.4 is amended by revising paragraph (b)(2) to read as follows:

§ 1.4 Computation of time.

* * * * *

(b)(2) For non-rulemaking documents released by the Commission or staff, whether or not published in the **Federal Register**, the release date. A document is "released" by making the full text available in the Commission's Office of Media Relations. The release date appears on the face of the document.

* * * * *

§ 1.47 [Amended]

47. In § 1.47(h) remove the words "Formal Complaints and Investigations Branch of the Common Carrier Bureau" and add, in their place, the words "Chief of the Enforcement Bureau's Market Disputes Resolution Division".

48. Section 1.221 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.221 Notice of hearing; appearances.

* * * * *

(b) The order designating an application for hearing is mailed to the applicant by the Reference Operations Division of the Consumer Information Bureau and this order or a summary thereof is published in the **Federal Register**. Reasonable notice of hearing will be given to the parties in all proceedings; and, whenever possible, the Commission will give at least 60 days notice of comparative hearings.

(c) In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, shall, within 20 days of the mailing of the notice of designation for hearing by the Reference Information Division of the Consumer Information Bureau, file with the Commission, in triplicate, a written appearance stating that he will appear of the date fixed for hearing and present evidence on the issues specified in the order. Where an applicant fails to file such a written appearance within the time specified, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the application will be dismissed with prejudice for failure to prosecute.

* * * * *

§ 1.720 [Amended]

49. In 47 CFR 1.720, in the introductory paragraph, remove the words "Common Carrier Bureau's" and add, in their place, the words "Enforcement Bureau's".

§ 1.721 [Amended]

50. In 47 CFR 1.721(b) remove the words "Common Carrier Bureau" and add, in their place, the words "Enforcement Bureau".

§ 1.722 [Amended]

51. In 47 CFR 1.722(d)(1) remove the word "Bureau" and add, in its place, the words "Enforcement Bureau".

52. Section 1.730 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1.730 The Enforcement Bureau's Accelerated Docket.

(a) Parties to formal complaint proceedings against common carriers within the responsibility of the Enforcement Bureau (see §§ 0.111, 0.311, 0.314 of this chapter) may request inclusion on the Bureau's Accelerated Docket. As set out in §§ 1.720 through 1.736, proceedings on the Accelerated Docket are subject to shorter pleading deadlines and certain other procedural rules that do not apply to other formal complaint proceedings before the Enforcement Bureau.

* * * * *

53. In the table below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column:

Section	Remove	Add
1.730(b), (c) and (d)	Chief of the Common Carrier Bureau's Enforcement Division.	Chief of the Enforcement Bureau's Market Disputes Resolution Division.
1.730(h)	Office of Public Affairs	Office of Media Relations.

54. Section 1.735 is amended by revising paragraph (b) to read as follows:

§ 1.735 Copies; service; separate filings against multiple defendants.

* * * * *

(b) The complainant shall file an original copy of the complaint, accompanied by the correct fee, in accordance with part I, subpart G (see § 1.1105(1)(c) and (d)) and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) Serve two copies on the Market Disputes Resolution Division, Enforcement Bureau;

(3) If the complaint is filed against a carrier concerning matters within the responsibility of the International Bureau (see § 0.261 of this chapter), serve a copy on the Chief, Telecommunications Division, International Bureau; and

(4) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with part I, subpart G (see § 1.1105(1)(c) and (d)), and file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

* * * * *

55. Section 1.4000 is amended by revising paragraph (g) to read as follows:

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

* * * * *

(g) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies of the petitions and related pleadings will be available for public inspection in the Reference Information Center, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

56. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201 through 205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070 through 1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201 through 205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

57. Section 21.924 is amended by revising paragraph (a) to read as follows:

§ 21.924 Service areas.

(a) MDS service areas are regional Basic Trading Areas (BTAs) which are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The BTA Map is available for public inspection at the Reference Information Center, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

* * * * *

PART 27—WIRELESS COMMUNICATIONS SERVICE

58. The authority citation for Part 27 continues to read as follows:

Authority: 47 U.S.C 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

59. Section 27.6 is amended by revising the introductory paragraph to read as follows:

§ 27.6 Service areas.

WCS service areas are Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) as defined below. Both MEAs and REAGs are based on the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which have been assigned Commission-created EA numbers 173–176, respectively. Maps of the EAs, MEAs, and REAGs and the **Federal Register** Notice that established the 172 EAs are available for public inspection and copying at the Reference Information Center, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

* * * * *

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

60. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

61. Section 68.317 is amended by revising paragraph (g) as follows:

§ 68.317 Hearing aid compatibility volume control: technical standards.

* * * * *

(g) These incorporations by reference of paragraph 4.1.2 (including table 4.4) of American National Standards Institute (ANSI) Standard ANSI/EIA–470–A–1987 and paragraph 4.3.2 of ANSI/EIA/TIA–579–1991 were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be purchased from the American National Standards Institute (ANSI), Sales Department, 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642–4900. Copies also may be inspected during normal business hours at the following locations: Consumer Information Bureau, Reference Information Center, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554; and Office of the Federal Register, 800 N. Capitol Street, NW., Suite 700, Washington, DC.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

62. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 251 through 252, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251 through 252, 303, 309 and 332, unless otherwise noted.

63. Section 90.7 is amended by revising the definition of *"MTA-based license or MTA license"* to read as follows:

§ 90.7 Definitions.

* * * * *

MTA-based license or MTA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas ("MTAs"), as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the "MTA Map.") The MTA Listings, the MTA Map and the Rand McNally/AMTA license agreement are available for public inspection at the Reference Information Center in the Consumer Information Bureau.

* * * * *

[FR Doc. 99–28984 Filed 11–5–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 980414094–9287–02; I.D. No. 091797A]

RIN 0648–AK55

Endangered and Threatened Wildlife and Plants; Definition of "Harm"

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule defines the term "harm", which is contained in the definition of "take" in the Endangered Species Act (ESA). The purpose of this rulemaking is to clarify the type of actions that may result in a take of a listed species under the ESA. This final rule is not a change in existing law. It provides clear notification to the public that habitat modification or degradation may harm listed species and, therefore, constitutes a take under the ESA as well as ensuring consistency between NMFS and the Fish and Wildlife Service (FWS). This final rule defines the term "harm" to include any act which actually kills or injures fish or wildlife, and emphasizes that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.

DATES: This rule is effective on December 8, 1999.

ADDRESSES: Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Chris Mobley, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, phone (301)713–1401 or Garth Griffin, NMFS, 525 NE Oregon St, Suite 500, Portland, OR 97232, phone (503)231–2005.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1998, NMFS published a proposed rule and request for comments. NMFS proposed to define the term "harm", which is contained in the definition of "take" in the Endangered Species Act (63 FR 24148). In that proposed rule, NMFS solicited public comments on the proposed definition. On June 11, 1998, NMFS announced the availability of, and solicited comments on, a draft Environmental Assessment on the proposed definition (63 FR 31962). This final rule takes into consideration the comments received in response to the proposed rule.

Section 9 of the ESA makes it illegal to take an endangered species of fish or wildlife. The definition of "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16 U.S.C. 1532(19)). The U.S. Fish and Wildlife Service (FWS) issued a regulation further defining the term "harm" to eliminate confusion concerning its meaning (40 FR 44412; 46 FR 54748). The FWS' definition of "harm" has been upheld by the Supreme Court as a reasonable interpretation of the term and supported by the broad purpose of the ESA to conserve endangered and threatened species (See *Babbitt* v. *Sweet Home Chapter of Communities for a Great Oregon*, 115 S. Ct. 2407, 2418, 1995). With the listings of Pacific salmon and steelhead stocks, potentially affected parties have questioned whether NMFS also interprets harm to include habitat destruction. This final rule clarifies that NMFS' interpretation of harm is consistent with that of FWS.

Definitions and Source of Authority

NMFS interprets the term "harm" as an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering (Compare 50 CFR 17.3).

This rule is reasonable for the conservation of the habitats of listed species. Congress acknowledged these needs by stating in the "Purposes" subsection of the ESA: "The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved . . . ." (16 U.S.C. 1531(b)). In addition to the text contained in the "Purposes" subsection, which indicates the broad goals of the ESA, the structure and legislative history of the ESA indicate Congressional intent to protect the habitats of listed species (*Babbitt* v. *Sweet Home Chapter of Communities for a Great Oregon*, 115 S. Ct. 2407, 2418, 1995).

Summary of Comments Received in Response to the Proposed Rule

Fifty-three written comments were submitted in response to the proposed rule and 9 written comments were submitted in response to the draft Environmental Assessment prepared for the proposed rule. These comments and NMFS' responses are summarized here.

Comment 1: Explain what habitat or activities would be encompassed by "spawning, rearing and migrating" and how it is different from "breeding, feeding or sheltering" in the FWS' regulation. Is it different or similar or the same as "essential behavioral patterns."

Response: Including the terms "spawning", "rearing" and "migrating" in the NMFS definition of harm makes it clear that NMFS considers these behaviors to be "essential behavioral patterns". NMFS believes it is important to include these terms because they describe essential behavioral patterns for most species under NMFS jurisdiction. NMFS is particularly concerned with addressing harm caused by significant habitat modification or degradation to anadromous and migratory species. Habitat destruction may occur at times when migratory species are not present, but may nonetheless impair essential behavioral patterns when the animals return, resulting in sub-lethal or chronic injury or mortality.

For example, improperly sited aquaculture facilities and their attendant vessel traffic, fixed structures, noise pollution, artificial light, and human activity may obstruct marine mammal and turtle access to habitats of critical importance to their survival, such as haul out sites, breeding grounds and nesting beaches.

It should be noted that spawning is a specific term for fish breeding. Salmon require clean gravel beds for successful spawning. Sedimentation from timber harvest operations may plug the interstitial spaces in gravel spawning areas, resulting in reduced survival of salmon eggs during their incubation period.

Similarly, for species under NMFS jurisdiction, "rearing" and "migration" should be broadly interpreted to include many of the behavioral patterns associated with "feeding" and "sheltering". For example, in order to successfully rear and migrate, juvenile salmonids must successfully feed, and also must find adequate shelter in the form of large woody debris and other instream structures in order to avoid predation. Excessive squid and pollock harvest near Steller sea lion rookeries may impair feeding and rearing of juvenile Steller sea lions by reducing their available food supply.

"Migration" is a particularly important behavioral pattern in the anadromous life history and, therefore, merits specific mention in the definition. Juveniles must be able to pass downstream from spawning grounds to the open ocean, and adults must be able to return from the ocean to spawning grounds. Human-made barriers to adult migration (thermal barriers, other water quality barriers, and physical barriers) that significantly impede spawning success, or result in significantly increased rates of juvenile injury or mortality would be considered by NMFS to be within the NMFS definition of "harm" under the ESA.

Comment 2: One commenter opposed the use of "spawning, rearing and migrating" because interference with such activities will not in "all cases result in injury to individual fish."

Response: NMFS disagrees. While not all impacts to a species' habitat impair essential behavioral patterns, any habitat modification that significantly impairs spawning, rearing, or migrating does constitute harm to the species and is a take pursuant to the provisions of the ESA.

Comment 3: One commenter noted that the rule should only apply to "significant habitat modification" which "results in demonstrated impairment of essential behaviors." Another commenter stated that NMFS must clarify that impairment of essential behavior patterns is not "injury" in and of itself but a means to injury—these are two separate elements in establishing harm.

Response: NMFS disagrees. An injury is demonstrated if the habitat modification significantly impairs the listed species' ability to feed, breed, rear, migrate or any other behavior essential to its biological processes and behavioral patterns. "Significant" impairment of essential behavioral patterns constitutes injury; therefore, establishing the former with respect to listed species establishes harm.

Comment 4: Several commenters stated that the public needs clear prospective guidance on activities that could constitute a prohibited take. Commenters sought greater specificity on likely results of water withdrawals and streambed or land clearing activities. Some commenters expressed concern that NMFS is relying on "probabilistic data" and not empirical evidence in determining "harm."

Response: The list of examples provided in this final rule (see "Activities That May Constitute A Take") as well as in the proposed rule is intended to provide general guidance to the public on the types of habitat-modifying activities that could result in injury to fish or wildlife. While not exhaustive, this list was developed based on direct experience with managing populations in their natural environment, and from the scientific literature. NMFS cannot provide further detailed guidance in this definition, since the actual impacts of a given act depend on situation-specific conditions. Individuals conducting activities similar to those listed in the examples in areas in or near listed species and their habitat should consult with NMFS for more specific guidance.

In order to determine "harm," the regulation requires that a causal link or relationship between a specific activity or series of activities and the injury or death of listed species be demonstrated. Injury may be shown through a variety of methods and types of evidence. These include, but are not limited to, field surveys and assessments, population studies, laboratory studies, model based procedures, information and data in the scientific literature, or expert witness testimony consisting of inferences or opinions drawn from facts pertaining to a given act(s) of habitat modification or degradation. In some instances, the effect of an activity will be measurable using physical evidence and scientific instruments. For example, the introduction of toxic chemicals can be evaluated through chemical analysis of water samples. Analysis of sedimentation patterns by the Monitoring Study Group of the California State Board of Forestry has demonstrated that timber-harvest roads and their associated watercourse crossings are among the largest contributors to sedimentation of fish-bearing streams. Mass landslides and other failures typically related to road-building and maintenance activities, produced the highest sediment delivery to streams when compared to other erosion processes.

Regardless of the types of evidence used, in all cases, the regulation requires that the causal link(s) between the habitat modification and the injury to listed species be shown.

Comment 5 : Another commenter stated that it is very difficult to determine when and whether modifications to aquatic habitat will injure fish. Sometimes it is activities occurring upstream from the apparent injury and sometimes it is simply cumulative degradation of the fish habitat.

Response: NMFS agrees that sometimes it is difficult to isolate factors causing injury to listed species. All factors that reasonably could have caused the habitat modification or the injury itself must be carefully examined. Whenever an action alone or in combination with,or in concert with other actions is reasonably certain to injure or kill listed species, it will constitute a take. An action which contributes to injury can be a "take" even if it is not the only cause of the injury. This concept includes actions reasonably certain to contribute to the death or injury of listed species by significantly impairing the essential behavioral patterns of listed species.

Comment 6: "Significant modification" should be defined or explained. Another commenter noted that NMFS must connect the maintenance of existing roads and structures or minor alterations of rock, gravel and soil to actual harm to listed species.

Response: In order for a modification to be significant, it must be capable of resulting in the death or injury of fish or wildlife. Habitat modification or degradation may be considered significant even if it is of limited physical extent, if it causes injury or death to fish or wildlife. Assessing the significance of a given act of habitat modification or degradation will depend on an evaluation of all the available evidence of a specific situation or action(s), and will most often be determined on a case-by-case basis.

Comment 7: The regulation is overly focused on land based activities compared to harvest and hatchery activities with the effect that the rule excludes entire industries that directly cause harm and kill listed fish.

Response: Take due to harvest and hatchery activities is covered by other terms in the statutory definition of "take," including "wound, kill, * * * capture, or collect." The primary focus of this regulation is death or injury to listed fish or wildlife from acts that significantly modify or degrade habitat.

Moreover, hatchery and harvest activities also impact listed fish through significant habitat modification or degradation. For example, hatchery waste discharges could degrade instream water quality and result in the actual injury or death of fish if not properly managed. Artificially produced fish competing with listed species for food, shelter, space or opportunities in the migration corridor may, thus, impair essential behavioral patterns. NMFS notes that example 6 in "Activities That May Constitute A Take" concerning the introduction of artificially produced individuals may cause harm within the scope of this definition. Excessive trawl impacts to estuarine bottom habitat could significantly degrade juvenile rearing habitat, and over-harvest of prey species such as small bait fish could cause harm if feeding rates were thereby reduced enough to cause the actual injury or death of listed fish or wildlife.

Comment 8: One commenter noted that it is inappropriate for NMFS to use the word "recovery" in describing activities that may injure or "harm" listed fish. Commenters noted that NMFS lacks the authority to link "take" to recovery goals.

Response: Comment noted. The word "recovery" was inadvertently included in the first example of activities that might fall within the scope of the definition of harm. This has been deleted in the final rule.

Comment 9: Some commenters suggested that the proposed rule, if adopted, would constitute an uncompensated "taking" in violation of the Fifth Amendment of the U.S. Constitution.

Response: This final rule will make no change in existing law. NMFS is not seeking to impose a regulation that denies landowners economically viable use of their property.

As stated elsewhere in this final rule under "Incidental Take Exceptions", the ESA authorizes NMFS to exempt parties from its take prohibitions under certain circumstances. Under the terms of ESA section 7(b)(4) and section 7(o)(2), taking of listed species that is incidental to, and not intended as part of, an otherwise lawful activity is not considered prohibited taking provided that such taking is in compliance with the terms and conditions of an incidental take statement issued by NMFS. In addition, the 1982 ESA amendments to section 10(a) authorize NMFS to issue incidental take permits allowing the incidental take of listed species in the course of otherwise lawful activities, provided the activities are conducted according to an approved Conservation Plan which to the maximum extent practicable, minimizes and mitigates the impacts of such taking and avoids jeopardy to the continued existence of the affected species. These mechanisms provide landowners with a means of continuing to use their property while addressing possible incidental take of listed species.

As the Solicitor General explained in the Federal government's reply brief in *Sweet Home* (Gov't Reply Br. at 17), "[t]he prohibition on the taking of species, in conjunction with the program for authorizing incidental takes, * * * rationally and flexibly addresses the inherent difficulties involved in defining prohibited conduct in light of the wide diversity of species and the range of circumstances in which they live."

Comment 10: Some commenters argued that the proposed rule is inconsistent with the U.S. Supreme Court's decision in *Babbitt* v. *Sweet Home*. In particular, some commenters felt the rule did not require an actual causal relationship between the habitat modification and the injury or death of an individual listed species.

Response: As stated previously, in order to constitute "harm", the regulation requires that a given act result in, or be reasonably certain to result in, the death or injury of listed fish or wildlife. The rule is consistent with the U.S. Supreme Court's decision in *Sweet Home* upholding the FWS regulation which also defines the term "harm" to include habitat modification or degradation.

Comment 11: One commenter suggested that NMFS must specifically state that it adopts the interpretation of "harm" articulated by the Solicitor General in his brief of the *Sweet Home* case.

Response: NMFS believes that this final rule is consistent with the interpretation of "harm" articulated by the Solicitor General. However, NMFS declines to specifically adopt each aspect of the Solicitor General's brief which was written 5 years ago.

Comment 12: One commenter argued that NMFS has no authority to promulgate the proposed rule because the Endangered Species Act expired in 1992 and has not been reauthorized by Congress.

Response: The ESA has been neither repealed nor does it contain an automatic sunset clause and it is, therefore, enforceable law. In addition, both the Departments of Commerce and Interior receive annual appropriations to carry out the provisions of the Endangered Species Act, including listings, rulemakings, enforcement and the issuance of permits.

Comment 13: Several commenters disagreed with NMFS' certification that the proposed rule will not impact a significant number of small businesses and urged NMFS to prepare a Regulatory Flexibility analysis.

Response: NMFS continues to believe that this rulemaking will not affect a significant number of small businesses. However, a Regulatory Flexibility Analysis is included with this final rulemaking.

Comment 14: One commenter suggested that the first example of "take" in the proposed rule was ambiguous because it states that activities modifying habitat include those "constructing or maintaining barriers that eliminate or impede a listed species access to habitat essential for its survival or recovery". The commenter stated that existing facilities that prevent or impede access to potential habitat that could be used for the recovery of the species do not cause a "take". Several other commenters stated that the current owner of a dam lawfully installed before a species is listed should not be liable for take based on subsequent listing. In the view of these commenters liability for take must be based upon some action occurring after the effective date of listing.

Response: See response to comment ■ where the word recovery was stricken from the example in this final rule. NMFS agrees that simply holding title to a barrier that affects access to the habitat of listed species is not necessarily a take under the ESA. However, maintaining or improving an existing facility may actually injure or kill members of a listed species if it significantly impairs essential behavioral patterns such as spawning, rearing or migrating. Maintaining an existing barrier that prevents or impedes access to habitat may cause take of listed species, if adequate comparable habitat is not otherwise available to the listed population. In addition, any person who engages in diverting water may be engaged in a take if the diversion of water injures or kills listed species by significantly impairing essential behavioral patterns.

Comment 15: Several commenters noted the use of "likely to impair" as inappropriate in the examples provided in the preamble to the proposed rule.

Response: NMFS agrees and has made the necessary changes in this final rule. NMFS notes that an act must be reasonably certain to impair essential behavioral patterns of listed species in order to constitute "harm" within this definition.

Comment 16: Several commenters urged or stated that NMFS was required to specifically adopt the legal principles of "proximate cause" and "foreseeability" as limitations of liability for "harm" to listed species. One commenter noted that NMFS should clarify that the regulation does not create liability for hypothetical, speculative or conjectural injury.

Response: NMFS agrees that the regulation does not create liability for hypothetical, speculative or conjectural injury as can be deduced from the term "actual." NMFS notes that that same term "actual" provides for cause-in-fact liability. NMFS' definition of "harm" is consistent with the views articulated in the opinion of the U.S. Supreme Court in *Sweet Home* v. *Babbitt*. In that opinion, the Court did not limit its discussion to a single term of art for the causal links necessary to show "harm" to a species resulting from habitat modification. The specific elements of causation to be proved, including foreseeability, will be determined on a case-by-case basis. Further, this document and the examples discussed in it, are intended to provide the public with information about activities which may result in injury or death of listed species. In NMFS' view, it is reasonably foreseeable that these activities and similar activities may injure or kill fish and wildlife, including listed species. While an action "harms" a listed species only if it actually results in the death or injury of a listed species, NMFS continues to encourage members of the public to consult with its staff whenever an activity is undertaken in the habitat of listed species and/or when listed species are present.

Comment 17: One commenter noted that "merely continuing previously established [water] withdrawals or diversions should not be considered per se an unlawful take of subsequently listed species." The commenter further noted that new water withdrawals or diversions should not be considered unlawful takes because Congress has a long-standing history of deference to state law on water rights. The commenter lastly notes that example 5 (see "Activities That May Constitute A Take") should be deleted in favor of an "ad hoc, case-by-case approach" and that such water diversions should be carefully reviewed and responded to as appropriate.

Response: NMFS agrees that each water diversion affecting listed species should be carefully reviewed on a case-by-case basis to determine whether its operation injures or kills listed species. The ESA and state water law operate in cognizance of the principles of comity, federalism and importance of reading apparently conflicting laws in such a manner as to avoid conflict and promote the purposes of both legislative acts wherever possible. It is appropriate to note that the Endangered Species Act encourages this approach by declaring it "to be the policy of Congress that the Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species." 16 U.S.C. § 1531(c)(2).

Activities That May Constitute a Take

A principal purpose of this final rule is to provide clear notification to parties that habitat modification or degradation may harm listed species and, therefore, constitute a "take" under the ESA. The following list identifies several examples of habitat-modifying activities that may fall within the scope of this final rule when these or similar activities cause death or injury to fish or wildlife, including those activities that significantly impair essential behavioral patterns of listed species. In all instances a causal link must be established between the habitat modification and the injury or death of listed species.

1. Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat or ability to migrate;
2. Discharging pollutants, such as oil, toxic chemicals, radioactivity, carcinogens, mutagens, teratogens or organic nutrient-laden water including sewage water into a listed species' habitat;
3. Removing, poisoning, or contaminating plants, fish, wildlife, or other biota required by the listed species for feeding, sheltering, or other essential behavioral patterns;
4. Removing or altering rocks, soil, gravel, vegetation or other physical structures that are essential to the integrity and function of a listed species' habitat;
5. Removing water or otherwise altering streamflow when it significantly impairs spawning, migration, feeding or other essential behavioral patterns;
6. Releasing non-indigenous or artificially propagated species into a listed species' habitat or where they may access the habitat of listed species;
7. Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species' habitat;
8. Constructing, maintaining or using inadequate bridges, roads, or trails on stream banks or unstable hill slopes adjacent to or above a listed species' habitat; and
9. Conducting timber harvest, grazing, mining, earth-moving or other operations which result in substantially increased sediment input into streams.
10. Conducting land-use activities in riparian areas and areas susceptible to mass wasting and surface erosion, which may disturb soil and increase sediment delivered to streams, such as logging, grazing, farming, and road construction.

This list is not exhaustive. It is intended to provide some examples of the types of activities that might be considered by NMFS as constituting a take under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule and general inquiries regarding prohibitions and permits should be directed to NMFS (see **ADDRESSES**).

Incidental Take Exceptions

The ESA authorizes NMFS to exempt parties from its take prohibitions under certain circumstances. Under section 7 of the ESA, NMFS conducts consultations on proposed Federal actions and determines whether the proposed action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. If the proposed action does not do so, or would not if specified reasonable and prudent alternatives were followed, NMFS may then issue a biological opinion and incidental take statement. The incidental take statement estimates the expected incidental take of a listed species resulting from the action and specifies those terms and conditions required to implement the reasonable and prudent measures necessary or appropriate to minimize this incidental take. If the proposed action is conducted in accordance with these terms and conditions, the incidental take is exempted from the ESA's take prohibitions.

Under section 10(a)(1)(B), NMFS may permit non-Federal parties to take a listed species if such a taking is incidental to, and not the purpose of, an otherwise legal activity. Prior to receiving an incidental take permit pursuant to 10(a)(1)(B), a non-Federal party must prepare a permit application and conservation plan. A conservation plan must contain a description of (1) the impact that will likely result from the taking; (2) what steps the applicant will take to minimize and mitigate to the maximum extent practicable, the impacts and how these steps will be funded; (3) what alternative actions to the take were considered and why they are not being utilized; and (4) any measures the Secretary of Commerce (Secretary) may require as being necessary or appropriate for the purposes of the plan (16 U.S.C. 1539(a)(2)(A)). If the Secretary finds that the applicant will minimize and mitigate to the maximum extent practicable the impacts of any incidental take, and will meet other requirements of section 1539 (a)(2)(B), the Secretary may issue a permit, legally binding the applicant to the conservation measures set forth in the conservation plan.

Congress intended that the conservation planning process be used to reduce conflicts between listed species and private development and to provide a framework that would encourage "creative partnerships" between the private sector and local, state, and Federal agencies in the interest of endangered and threatened species and habitat conservation. NMFS encourages the development of conservation plans and intends to continue pursuing such agreements in the future with willing parties.

Change in Enumeration of Threatened and Endangered Species

In the proposed rule, issued on May 1, 1998 (63 FR 24148), the definition of harm was added in alphabetical order to 50 CFR 217.12. Since May 1, 1998, NMFS has issued a final rule consolidating and reorganizing existing regulations regarding implementation of the ESA. In this reorganization, § 217.12 has been redesignated as § 222.102; therefore, the definition of harm has been added in this final rule to § 222.102.

Classification

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* requires the preparation of an initial and final Regulatory Flexibility Analyses unless an agency determines that a rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A final Regulatory Flexibility Analysis has been prepared for this action and is available from NMFS (see **ADDRESSES**).

A Final Environmental Assessment and Finding of No Significant Impact have been completed for this final rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule will make no change in existing law.

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: November 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 222 is amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 222.102, the definition for "Harm" is added in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Harm in the definition of "take" in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.

* * * * *

[FR Doc. 99–29216 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 120996A]

Magnuson-Stevens Act Provisions; Essential Fish Habitat

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: NMFS announces the reopening of a public comment period to assist in the development of a final rule for Essential Fish Habitat (EFH). The interim final rule established guidelines to assist the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans, including the identification of threats and conservation measures. The interim regulations also detailed the procedures that the Secretary, other Federal agencies, state agencies, and the Councils should use to coordinate, consult, or provide recommendations on Federal and state actions that may adversely affect EFH. NMFS now requests additional comments on four specific issues.

DATES: Comments must be received at the appropriate address or fax number (See **ADDRESSES**) no later that 5:00 p.m., eastern standard time, on December 23, 1999.

ADDRESSES: Comments should be addressed to EFH Coordinator, Office of Habitat Conservation, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Comments also may be sent via facsimile (fax) to 301–713–1043. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Jon Kurland, NMFS, 301–713–2325, fax 301–713–1043, e-mail *jon.kurland@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is required by section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1855(b)). The interim final rule was promulgated on December 19, 1997 (62 FR 66531). Details concerning the justification for and development of the interim final rule were provided in the proposed rule (62 FR 19723, April 23, 1997).

The interim final rule contains two subparts. Subpart J of 50 CFR part 600 provides guidelines to the Councils for including information in fishery management plans on the description and identification of EFH, the identification of threats to EFH from fishing and non-fishing activities, and the identification of recommended measures to conserve and enhance EFH, as required by sections 303(a)(7) and 305(b)(1)(A) of the Magnuson-Stevens Act (16 U.S.C. 1853(a)(7), 1855(b)(1)(A)). Subpart K of 50 CFR part 600 details the procedures for implementing the coordination, consultation, and recommendation requirements of section 305(b) of the Magnuson-Stevens Act (16 U.S.C. 1855(b)).

In issuing the interim final rule, NMFS decided to postpone development of a final rule for two reasons. First, NMFS decided to provide an additional comment period to allow another opportunity for affected parties to provide input prior to the development of a final rule. Second, NMFS determined that it would be advantageous to implement the EFH provisions of the Magnuson-Stevens Act for a period of time via interim final regulations, which would afford an opportunity to gain experience adding EFH information to fishery management plans and carrying out consultations and coordination with Federal and state agencies whose actions may adversely affect EFH.

Since the promulgation of the interim final rule, EFH provisions for 39 fishery management plans have been developed by the Councils and approved or partially approved by the Secretary. Additionally, NMFS and Federal agencies have begun consulting on actions that may adversely affect EFH. Approximately 2000 EFH consultations have been completed to date.

The comment period on the interim final regulations closed on March 19, 1998 (63 FR 8607, February 20, 1998). NMFS carefully reviewed and is considering the written comments received on the interim final rule. NMFS now intends to proceed with development of a final rule.

Electronic Access

The interim final rule is accessible via the Internet at *http://www.nmfs.gov/habitat/*.

Request for Comments

In light of the comments received on the interim final rule and NMFS' experience implementing the EFH provisions of the Magnuson-Stevens Act under the interim final rule for approximately 20 months, NMFS has identified four issues that warrant additional public input prior to the development of a final rule. Commenters on the interim final rule need not resubmit their previous comments. When developing the final rule, NMFS will consider all comments received on the interim final rule as well as comments received in response to this document.

NMFS requests comments on the following issues:

(1) Given the statutory definition of EFH in section 3(10) of the Magnuson-Stevens Act (16 U.S.C. 1802(10)), what suggestions do you have for improving the regulatory guidance regarding the description and identification of EFH, including the breadth of EFH designations, in §§ 600.815(a)(1) and (2) of the interim final rule?

(2) Section 600.815(a)(3) of the interim final rule addresses fishing activities that may adversely affect EFH. What additional guidance, if any, should the final rule contain on how Councils should document their efforts to minimize the effects of fishing on EFH, to the extent practicable, as required by section 303(a)(7) of the Magnuson-Stevens Act (16 U.S.C. 1853(a)(7))?

(3) Has the use of existing environmental review procedures as described in § 600.920(e) of the interim rule been an effective way to handle EFH consultations? What additional guidance, if any, should the final rule provide on how to use existing environmental reviews to satisfy EFH consultation requirements?

(d) Federal action agencies are required by § 600.920(g) of the interim rule to prepare an EFH Assessment as part of the consultation process. How, if at all, should the EFH Assessment requirement be revised in the final rule?

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 2, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–29215 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. 99 AMS–FV–923–A1; FV–00–923–1]

Sweet Cherries Grown In Designated Counties in Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 923

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 923, hereinafter referred to as the "order." The order regulates the handling of sweet cherries grown in six counties in eastern Washington. The purpose of the hearing is to receive evidence on proposed amendments to the order. Six proposals were submitted by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order. The Committee's proposals would: Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range; Increase representation on the Committee by adding an additional handler member; Allow for special purpose shipments of cherries to handling operations outside the production area; Provide for collection of late payment charges and/or interest on handlers' late payment of assessments; Authorize establishment of container marking requirements; and Allow prospective Committee members and alternates to qualify for membership by filing a single form. The Fruit and Vegetable Programs (F&V) of the Agricultural Marketing Service (AMS) proposes two additional amendments to bring the program into conformance with current U. S. Department of Agriculture (Department) policy. These provisions would establish a limit on the number of consecutive terms a person may serve as a member on the Committee and would require that continuance referenda be conducted on a periodic basis to ascertain support for the order. AMS also proposes to allow such changes as may be necessary to the order to conform with any amendment that may result from the hearing.

DATES: The hearing will begin at 9:00 a.m. in Yakima, Washington, on November 16, 1999, and, if necessary, will continue the next day beginning at 9:00 a.m.

ADDRESSES: The hearing will be held at the W.L. Hansen Building, 105 S. 18th Street, Yakima, Washington 98901.

FOR FURTHER INFORMATION CONTACT: Kathleen Finn or Anne Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P. O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698 or email at: kathy.finn@usda.gov or anne.dec@usda.gov. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or email at jay.guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless the amendments present an irreconcilable conflict with a law, regulation or policy.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committee proposed six amendments to the order that would affect its scope and administrative operations.

(1) Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range. The marketing order's rules and regulation are currently in effect for only six counties in the eastern portion of the State. Sweet cherry production is increasing significantly in other counties that did not have production when the order was promulgated in 1957. The Committee believes expanding marketing order regulations to cover all sweet cherry production east of the Cascades would ensure that sweet cherries produced east of the Cascades in Washington would be of a consistent and high quality.

(2) Increase representation on the Committee by adding one additional handler member. The Committee believes that handler representation should be equal among the districts, especially if the districts are reapportioned to accommodate the additional counties proposed to be included in the production area.

(3) Authorize special purpose shipments, with appropriate safeguards,

allowing movement of cherries to handling operations outside the production area. The Committee believes that facilitating the shipments of cherries outside the production area for packing would provide more flexibility to growers in deciding who would market their cherries. Also, language would be added specifying that the Committee could rescind or deny to a handler, the special purpose shipment certificate if proof satisfactory to the Committee was obtained that the cherries were handled contrary to the special purpose section.

(4) Authorize the Committee, with AMS approval, to collect late payment charges and/or interest on late payments. The Committee believes this would encourage timely remittance of assessments by handlers. The Committee may also recommend other methods of assessment collection with the approval of the Secretary.

(5) Authorize the Committee, with AMS approval, to establish container marking requirements. The Committee believes this would reduce confusion among buyers, help differentiate between grades and varieties of sweet cherry shipments, and improve compliance with order requirements.

(6) Authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection. Currently, members and alternates complete this form after notification of the selection. This proposal would combine two forms currently being used. The Committee believes this will simplify the Committee selection process. The Committee works with AMS in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The Committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

The AMS proposes adding two provisions which would help assure that operations and activities of the Committee are reflective of industry opinions and positions. The first provision would establish a limit on the number of consecutive terms a person may serve as member on the Committee. The second provision would require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order.

Also, AMS proposes to allow such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

The public hearing is being held for the purpose of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (2) determining whether there is a need for the proposed amendments to the order; and (3) determining whether the proposed amendments, or appropriate modifications thereof, will tend to effectuate the declared policy of the Act. These points are particularly important for the proposal to expand the production area. Sweet cherry growers and handlers who are not currently subject to the order are encouraged to provide testimony at the hearing.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the Committee in this rulemaking proceeding; and, the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 923

Marketing agreements, Cherries, Reporting and recordkeeping requirements.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Washington Cherry Marketing Committee:

Proposal No. 1

Revise § 923.4 to read as follows:

§ 923.4 Production area.

Production area means the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east thereof.

Revise § 923.14 to read as follows:

§ 923.14 District.

District means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 923.31(m):

(a) *District 1* shall include the Counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Pend Oreille, Stevens, and Ferry.

(b) *District 2* shall include the counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

Proposal No. 2

Revise § 923.20 to read as follows:

§ 923.20 Establishment and membership.

There is hereby established a Washington Cherry Marketing Committee consisting of sixteen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he/she is an alternate. Ten of the members and their respective alternates shall be growers or officers or employees of corporate growers. Six of the members and their respective alternates shall be handlers, or officers or employees of handlers. The ten members of the committee who are growers or employees or officers of corporate growers are referred to in this part as "grower members" of the committee; and the six members of the committee who shall be handlers, or officers or employees of handlers, are referred to in this part as "handler members" of the committee. Four of the grower members and their respective alternates shall be producers of cherries in District 1, and six of the grower members and their respective alternates shall be producers of cherries in District 2. Three of the handler members and their respective alternates shall be handlers of cherries in District 1, and three of the handler members and their respective alternates shall be handlers of cherries in District 2.

Proposal No. 3

Amend § 923.54 by revising paragraphs (b) and (c) to read as follows:

§ 923.54 Special purpose shipments.

* * * * *

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 923.41, § 923.52, § 923.53, or § 923.55, the handling of cherries in such minimum quantities, or types of shipments, or for such specified purposes as the committee, with approval of the Secretary, may prescribe. Specified purposes under this section may include shipments of cherries for grading or packing to specified locations outside the production area and shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent cherries handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cherries pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the cherries will not be used for any purpose not authorized by this section. The committee may rescind or deny to any handler the special purpose shipment certificate if proof satisfactory to the committee is obtained that cherries shipped for the purpose stated in this section were handled contrary to the provisions of this section.

Proposal No. 4

Revise § 923.41 by adding a new paragraph (c) to read as follows:

§ 923.41 Assessments.

* * * * *

(c) If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary as recommended by the committee. The committee may also recommend other methods of assessment collection with the approval of the Secretary.

Proposal No. 5

Amend § 923.52 by revising paragraph (a)(3)to read as follows:

§ 923.52 Issuance of regulations.

(a) * * *

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of cherries.

* * * * *

Proposal No. 6

Revise § 923.25 to read as follows:

§ 923.25 Acceptance.

Any person prior to selection as a member or an alternate member of the committee shall qualify by filing with the Secretary a written acceptance of willingness to serve on the committee.

The Fruit and Vegetable Programs, Agricultural Marketing Service, proposes the following two amendments.

Proposal No. 7

Revise § 923.21 to read as follows:

§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

Proposal No. 8

Amend § 923.64 by adding a new sentence at the beginning of paragraph (c) to read as follows:

§ 923.64 Termination

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain where continuance of this part is favored by growers. * * *

* * * * *

Dated: November 3, 1999.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 99-29196 Filed 11-5-99; 8:45am]

BILLING CODE 3410-02-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to amend the regulations governing Certified Development Companies ("CDCs"). This proposed rule would amend the rules governing CDC Area of Operations (the geographic area where SBA authorizes a CDC to make loans under SBA's Development Company Loan Program ("504 loan")). The proposed rule would cover an applicant requesting to become a CDC; an existing CDC applying to expand its Area of Operations within the State in which it is chartered; an existing CDC applying to expand its Area of Operations beyond the State in which it is chartered into a contiguous bi-sected local economic area ("Local Economic Area"); and an existing CDC applying to expand its Area of Operations outside the State in which it is chartered into another State beyond a Local Economic Area.

The proposed rule also revises when SBA considers a county "adequately served" (when the 504 loan activity within a county precludes the county from being available for inclusion in a new CDC's Area of Operations or an existing CDC's expansion request). In some cases, counties would be available for inclusion in a new CDC's Area of Operations or an existing CDC's expansion request under the proposed rule that are not available under the current regulations.

The proposed rule would clarify under what circumstances and conditions a CDC may contract out its management and staff functions. It also would address the purposes for which a CDC may use its net income generated in different States. The proposed rule would eliminate a limited liability company from the types of organizations that may apply to become a CDC. Finally, the proposed rule would expressly authorize CDCs to establish Loan Committees and set forth conditions under which they may be used.

DATES: Submit comments on or before December 8, 1999.

ADDRESSES: Comments should be mailed to Jane Palsgrove Butler, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail H. Hepler, (202) 205-7530.

SUPPLEMENTARY INFORMATION: When Title V of the Small Business Investment Act of 1958—Loans to State and Local Development Companies—was enacted by Public Law 85-699 on August 21, 1958, it defined a Development Company as "an enterprise * * * formed for the purpose of furthering economic development of its community and environs, and with authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations * * * A local development company is a corporation chartered under any applicable State corporation law to operate in a specified area within a State * * * A local development company shall be principally composed of and controlled by persons residing or doing business in the locality * * *" (13 CFR part 108, section 2, as of January 1, 1967).

When the § 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations "formed by local citizens whose primary purpose is to improve their community's economy. They assist in the planned economic growth of the community by promoting and assisting the development of small business concerns in their area." (Legislative History, Pub. L. 100–590, p.22. It continues "to qualify for this program, a development company must be chartered in the State where it intends to operate * * *" (*id*, p.23))

Since the inception of the Certified Development Company Program ("504 Program"), no CDC has been certified to operate permanently in more than one State, except for relatively few circumstances when a CDC's operations are in a Local Economic Area. Regulations published on August 10, 1982, permitted a CDC to operate within two States if "(i) a State line bisects a city, in which case the 503 company may operate city-wide or (ii) the 503 company has obtained prior written approval to operate within a contiguous economic area, as determined by SBA, which crosses a State line." Since this regulation was published, of the 270 active CDCs, only nine have applied for and received approval by SBA to have their permanent Areas of Operations cross State lines to include a contiguous bi-sected local economic area. The permanent Area of Operations of the other 261 CDCs are within their State of incorporation.

Prior to the regulations published on March 1, 1996, all counties within a CDC's Area of Operations had to be contiguous. The only exception was Statewide CDCs that were intended to cover those counties not covered by local CDCs. Many States did not (and continue to not) have Statewide CDCs. Therefore, many of those States had counties that were not covered by any CDC resulting in the small businesses in those counties not having access to the CDC Program. To accommodate these small businesses, the regulations for the program were modified on July 23, 1987, to permit the temporary expansion of a CDC's Area of Operations for up to 1 year, to include an area underserved by the 504 Program. In such cases, the CDC needed prior SBA approval of each loan. The temporary expansion could be renewed by the district office. The CDC was exempt from a CDC's membership and Board requirements in the temporary area. (The regulation permitting temporary expansions was replaced as of March 1, 1996, by § 120.839, case-by-case extension, which permitted a CDC to apply to make an individual loan for a 504 project outside of its Area of Operations to the SBA district office serving the area under certain circumstances.)

The district offices were authorized to approve temporary expansions for up to 1 year so that small businesses could have access to the program where there were no existing CDCs. Under this regulation, CDCs received temporary authority to operate in other contiguous counties in their States or in a Local Economic Area in an adjoining State. If the CDC wanted to expand its permanent Area of Operations to include the temporary area, it had to comply with the regulations governing the eligibility requirements for CDCs including membership and board representation. Often, CDCs were better able to assess whether or not they wanted a particular geographic area permanently by temporarily marketing and doing projects in it. Some decided not to include the area permanently and withdrew; others permanently expanded into the areas. In other cases, new CDCs or other local CDCs were approved by SBA to include these areas in their permanent Areas of Operations.

During the mid-1990s, three CDCs temporarily expanded beyond their State of incorporation and beyond a Local Economic Area. In each case, local CDCs covering these areas were inactive or did not exist and the SBA district offices wanted their small businesses to have access to the 504 Program. When the temporary authority expired, one CDC sponsored a new CDC incorporated in the State to service the area with the required membership and board representation. The application was approved. However, the other two CDCs submitted applications to expand to include their temporary areas in their permanent Areas of Operations. Since, in each case, the areas were beyond the CDC's State of incorporation and beyond a Local Economic Area, SBA could not consider these requests under its existing regulations.

However, given the low 504 lending volume in several parts of the country, SBA believes that it is in the best interests of underserved communities to permit active CDCs in good standing to permanently expand their Areas of Operations beyond their State of incorporation and beyond a Local Economic Area. SBA proposes to call such a CDC a "Multi-State CDC" (a CDC that is operating as a foreign corporation in another State and is permitted by SBA under certain circumstances to include in the CDC's permanent Area of Operations counties in that State that are located beyond a Local Economic Area). At the same time, SBA wants to ensure that the congressional intent for CDCs is followed and that they are formed by local citizens whose primary purpose is to improve their community's economy. Therefore, the proposed regulations would require the following:

1. The requirements in § 120.822, Membership, must be met separately for the Area of Operations within the State in which the CDC is incorporated and each additional State in which it operates as a Multi-State CDC.

2. The requirements in § 120.823, CDC Board of Directors, must be met separately for the State in which the CDC is incorporated and for each additional State in which it operates as a Multi-State CDC. In addition, in order for the Board of Directors ("Board") to maintain the appearance of independence and objectivity regarding the loan decisions, CDC staff or management must not be voting members of the Board. This will eliminate any appearance of a conflict of interest.

3. Each State must have a separate Loan Committee comprised of members residing or working in that State, and representing at least three of the four membership groups (government organizations responsible for economic development in the Area of Operations in the State; financial institutions that provide commercial long-term fixed asset financing in the Area of Operations in the State; community organizations dedicated to economic development in the Area of Operations in the State; and businesses in the Area of Operations in the State) including at least one member with commercial loan experience acceptable to SBA. In order for the Loan Committee to maintain the appearance of independence and objectivity regarding loan decisions, CDC staff or management must not be voting members of the Loan Committee. Again, this will eliminate any appearance of a conflict of interest.

4. The CDC's Board must ratify, at least quarterly, the actions of its Loan Committees. As well as meeting the general regulatory requirements of a CDC's Board, the Board must have equal voting representation from the State in which the CDC is incorporated and each of the States the CDC operates in as a Multi-State CDC.

5. The CDC may apply to expand only in those counties that meet the criteria of § 120.835(a) as proposed in this regulation.

6. The CDC, upon the request of SBA, must provide evidence that the net income generated in any State where the CDC is operating as a Multi-State CDC is being invested in that State.

7. Any loans approved by SBA for a Multi-State CDC will not be considered in the calculations under §§ 120.810(a) and 120.835(a). In other words, in determining whether a county is "adequately served" for purposes of a new CDC's Area of Operations or an existing CDC's expansion request, the 504 loans approved for a Multi-State CDC will not be used as part of the calculation if the new CDC or expanding CDC is incorporated within the State.

The proposed regulations require board and membership representation from each State in which a Multi-State CDC proposes to operate to ensure that the CDC's community economic development efforts will be properly tailored to meet the needs of the communities it serves and that the CDC does not evolve primarily into a loan packager. Local membership, Board, and Loan Committee representation are more likely to identify businesses with the greatest potential for increasing or retaining local employment and helping the community's economy. For example, a local Loan Committee would more likely know if the approval of an application from a new business, such as a hotel, would help other nearby businesses or, instead, would risk the business's failure, or cause other, established hotels to fail, due to a surplus of hotels in the area.

The proposed regulations also re-introduce the concept of a Local Economic Area previously Stated in § 108.503–1(c)(i) prior to March 1, 1996. It would permit a CDC to apply for an Area of Operations that crosses State lines without meeting the above requirements when the contiguous areas that lie in different States are part of the same "local economic area." The same Local Economic Area would mean that the employees and customers of the businesses in that area work and live in that economic area as if there is no State line dividing it. Re-introducing the concept in the regulations will help differentiate this type of expansion from the proposed one in which a CDC incorporated in one State is applying to expand as a Multi-State CDC into another State.

The proposed rule revises the definition for "Area of Operations" and adds definitions for "Multi-State CDC" and "Local Economic Area" to § 120.802.

Under the proposed rule, for a 24-month period after a new CDC has been approved to operate in a county in its State of incorporation or an existing CDC has been approved to expand into an area within its State of incorporation, SBA will not accept an application to include the county in the Area of Operations of a new CDC or an application from an existing CDC to expand into that county. This would give the CDC that received permission to operate in the counties an opportunity to recoup up-front costs of establishing itself in the new area.

The proposed regulations would also change §§ 120.810 and 120.835 to permit a new CDC or an existing CDC incorporated in a State to apply to operate in a county within that State with a population of 100,000 or more, even if the county is being "adequately served" by an existing CDC incorporated in that State. Currently, if a CDC is doing one 504 loan per year per 100,000 population averaged over 24 months in a particular county, another CDC may not apply to include that county in its Area of Operations. Under the current regulations, the county is "adequately served." The proposed regulations would permit SBA to consider an application for that county from another CDC incorporated in that State if the county has a population of 100,000 or more and there is only one CDC incorporated in that State that includes that county in its permanent Area of Operations. This will give small businesses more choices.

The proposed rule further amends §§ 120.810 and 120.835 to direct an applicant for certification as a new CDC and for expansion within its State of incorporation or into a Local Economic Area to apply to the SBA district office serving the area where the CDC's headquarters is located. The current regulation requires an applicant to apply to the district office serving a proposed area of operations. If a CDC is applying to expand into another State as a Multi-State CDC, it must apply to the SBA district office serving the area where the CDC will headquarter its Multi-State CDC operations in that State. A new CDC may not apply to cover an area as a Multi-State CDC during the first 24 months after SBA approves it to be a CDC. SBA believes that a CDC should demonstrate that it has actively serviced an Area of Operations within its State of incorporation (including any Local Economic Areas) before it applies to cover an area as a Multi-State CDC. SBA will review a CDC's 504 performance history when it considers an application to serve an area as a Multi-State CDC.

Proposed regulation § 120.837 would be retitled "SBA decision on application for certification or expansion." Current § 120.837 applies only to decisions on requests for expansion. Under the proposed rule, the provisions of § 120.837 would apply to applicants applying to become CDCs and CDCs wishing to expand. In either case, the proposed regulation would require the processing district office to solicit comments from all other district offices serving the CDC's existing and proposed area of operations to determine if the applicant is in compliance with all of SBA's regulations, policies, and performance benchmarks, including pre-approval and annual review of any management or staff contracts, and the timely submission of all annual reports.

The proposed rule further amends § 120.837 to delete the examples of the types of information a district office might consider in reviewing an application for expansion. The amended rule would clarify that the district office, in making its recommendation, and the Associate Administrator for Financial Assistance (AA/FA), in making the decision on the application, may consider any available information regarding the proposed area of operations, the requesting CDC, and the existing CDCs serving the area. Some CDCs and district offices have treated the examples in the current regulation as a prescribed list that could not be supplemented.

The proposed regulations would delete the requirement in § 120.837 that the AA/FA must make his or her final decision within 30 days of receipt of the district office's recommendation. Because of staffing limitations, SBA has not been able to meet this deadline. However, SBA will continue to place a priority on these requests.

The proposed regulation § 120.837(c) also would establish that any unilateral authority that a CDC has in its State of incorporation (such as Accredited Lenders Program (ALP), Premier Certified Lenders Program (PCLP), or Priority CDC) does not carry over into a State in which it is operating as a Multi-State CDC. The CDC must earn any such status in each State based solely on the activity in that State. SBA's grant of any special unilateral authority in an Area of

Operations depends on the quality of a CDC's performance history, relationship with its SBA district office(s), and its processing, closing, servicing, and liquidation abilities in that Area of Operation. There is no guarantee that the quality of a CDC's operations in one State will be duplicated in another State with a separate membership, Board, Loan Committee, management, and staff.

The proposed rule would amend § 120.820 to delete a limited liability company from the types of organizations that may apply to be certified as a CDC. SBA believes that since a limited liability company structure only benefits its members when it is a for-profit entity providing its members certain tax advantages over a C Corporation while still offering its members some of the liability protection enjoyed by C Corporation shareholders, a limited liability company structure would not be appropriate to be used to fulfill the non-profit, local economic development role intended for CDCs. (SBA has never received an application from a limited liability company to become a CDC.) Section 120.822 sets forth a CDC's membership requirements. The proposed rule adds to § 120.822 the requirement that the membership must meet at least annually. It emphasizes that a CDC must meet the membership requirements separately for its State of incorporation and for each State in which it proposes to and is operating as a Multi-State CDC.

Section 120.823 sets forth the requirements regarding a CDC's Board of Directors. The proposed regulation clarifies that a quorum represents at least five Directors authorized to vote. There may be no conflict of interest or self-dealing, or any appearance of a conflict of interest or self-dealing in regards to any action of a CDC Board. Board members often must recuse themselves from voting on a project. The proposed regulation clarifies that it is the number of Board members voting, not present, that determines whether there is a quorum.

A CDC Board must be independent, objective, and composed of qualified representatives of the required community groups with a nexus to the mission and activities of the CDC. For example, an individual is not a qualified representative of the business community merely because he or she works for a business located in the community. A board member must be a responsible official of the represented organization. An example of a responsible official of a business would be the owner of the business. An example of a responsible official of a bank would be a commercial loan officer.

The Board is responsible for hiring and providing oversight of the CDC's management and staff, which in turn is responsible for the day-to-day marketing, processing, closing, and servicing of the loans. In order to maintain the appearance of objectivity on the part of the Board, the proposed regulation prohibits any member of a CDC's staff or management from being a voting member of the Board. If a member of a CDC's staff or management is present as a non-voting member of the Board, his or her presence does not count toward a quorum.

Many CDC Boards designate a Loan Committee to review and decide on loan approvals and servicing actions on an interim basis between Board meetings. SBA's current regulations do not address Loan Committees. The proposed regulation clarifies that a Board may establish a Loan Committee. The Loan Committee must meet the same organizational requirements as the full Board. It must be independent and objective, providing objective analysis of the actions recommended by the CDC management and staff. It must represent at least three of the four membership groups; and include at least one person with commercial lending experience acceptable to SBA. Like the Board, the Loan Committee must have at least five voting members to establish a quorum and the Loan Committee must not include any CDC staff or management as a voting member. Members must be responsible members of the represented organizations with a nexus to the missions and activities of the CDC. All members must live or work in the Area of Operations of the State in which the 504 project on which they are voting is located, unless the project qualifies under one of the exceptions in § 120.839, Case-by-case Extensions. For example, a representative Loan Committee might include three bankers (lenders), a CPA (business), a commercial real estate agent (business), a representative of the local economic development authority (government), and a member of the Board of Directors who represents the community (community). If there is a Loan Committee, the Board must still meet at least quarterly and ratify the actions of the Loan Committee.

The proposed rule makes it clear that a CDC must meet the Board and Loan Committee requirements for its State of incorporation and for each State in which it proposes to and is operating as a Multi-State CDC. Also, there can be no conflict of interest or self-dealing, or any appearance of a conflict of interest or self-dealing, on the part of any Board or Loan Committee member in regard to any action of the Board or Loan Committee. If there is a potential for an appearance of a conflict of interest, the Board or Loan Committee member must recuse him or herself from voting on the action. For example, if a Loan Committee member is an officer of the bank that will have the first mortgage on the 504 project being reviewed for approval, he or she should not vote on the project. At least one other member of the Loan Committee with commercial lending experience will have to be present to vote on the project. Also, the language allowing an alternative, approved by SBA, to a voting Board member with lending experience has been deleted because SBA believes that a CDC should have several Board or Loan Committee members with commercial lending experience available to vote on loans, rather than needing an exception to the requirement because its member is unavailable.

In § 120.824, the proposed rule clarifies under what circumstances a CDC may contract out its management and staffing. Section 503(e) of the Small Business Investment Act of 1958 states that a qualified State or local development company must have: (1) A full-time professional staff; and (2) professional management ability (including adequate accounting, legal, and business-servicing abilities). Public Law 100–590, approved November 3, 1988, permitted an exception to these requirements for a CDC in a rural area. It states that the rural CDC "shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services." The Congressional Record dated October 3, 1988, states that this would allow "a certified development company in a rural area to contract out for professional staff and professional management ability rather than hiring the employees in-house. This will help development companies in rural areas which do not do a sufficient loan volume to justify a full time staff." (Congressional Record—H9279). This is the only exception Congress made to the requirement that a CDC must have in-house full-time professional management and staff.

In recent years, many CDCs have entered into contracts with outside parties for CDC staffing and management. Questions have arisen regarding the extent and propriety of such contracts.

In § 120.824, the proposed rule requires a CDC to have a full-time professional, including an Executive Director (or the equivalent) managing daily operations. At a minimum, this means a CDC must have at least one full-time salaried professional employee that is employed directly to manage the CDC. A CDC may petition the AA/FA to waive this requirement in only two circumstances: (1) When the management of a rural CDC with insufficient loan volume to justify its own management employee is to be contributed by another CDC located in the same general area; or (2) when the management of a CDC is to be contributed by a non-profit affiliate of the CDC that is financially subsidizing the CDC's operation and has the economic development of the CDC's Area of Operations as one of its principal activities. In the latter case, the management contributed by the affiliate may work on and operate other economic development programs of the affiliate, but must be available to 504 customers during regular business hours. The first exception is authorized by statute. SBA proposes to permit the second exception because it considers the CDC and the affiliate to be sufficiently related to have the same or similar mission and objectives for the Area of Operations.

A CDC must possess a full-time professional staff that is capable of packaging, processing, closing, and servicing loans. The staff capacity of the CDC may be procured from salaried employees or, under certain circumstances, on a contractual basis that is acceptable to SBA, as long as at least one full-time professional manager in charge of the day-to-day operations of the CDC is a salaried employee of the CDC. The purpose of permitting a CDC to contract for staff functions, in certain cases, is to allow those CDCs that do not have sufficient 503/504 project-related income to provide the cash flow to support a full-time staff for each of the functions to be able to contract for a qualified individual on a part-time basis. If a CDC contracts for some of the staff functions, the services must be billed at rates that are reasonable and customary for the service and the geographic area.

The proposed regulation eliminates the reference in the current § 120.824 to Lender Service Providers, as defined in 13 CFR 103.1. This reference has been confusing to CDCs, and SBA believes it is not necessary. The proposed rule clarifies that the contractors must either live or work in the CDC's Area of Operations.

In contracting out for management and staff services, there must be no evidence of a conflict of interest or self-dealing, or any appearance of a conflict of interest or self-dealing on the part of the CDC's Board, management, or staff that could result in increased costs to a small business borrower or the CDC, or which would adversely affect the financial condition of the CDC including its ability to become self-sustaining. Any contracted staff must be qualified for the function that he or she is providing and live or do business in the CDC's Area of Operations.

SBA believes that Congress intended a CDC to sustain its operations continuously with reliable sources of funds, including income from services rendered from the Development Company Loan Program. A CDC's Board is not acting in the best interests of the CDC, SBA, or small business borrowers if it is permitting fee income generated from the Development Company Loan Program to be diverted to another organization through a contractual relationship rather than retained in the CDC to support its operations and economic development mission. The reason for the present clarification to the regulations is to ensure that the congressional intent is followed and that CDCs are not doing indirectly what they are not permitted to do directly, such as becoming effectively a shell for a for-profit organization through a contractual relationship. This would be in direct conflict with the intent of the Development Company Loan Program. Except for a few for-profit CDCs certified before January 1, 1987, and grandfathered in 1986, when the eligibility requirements for a CDC were changed, a CDC must be non-profit. The preamble to the 1986 regulations stated that "The purpose of a 503 company shall be to foster economic development in its area of operations; any benefit flowing to shareholders, members or other related parties shall be merely incidental to such purpose." The preamble went on to say that the reason for the change was "the desire to emphasize the *pro bono* publico character of the industry over the profit incentive. The nature of the 503 company is to be a catalyst in fostering economic development, and not a profit center for owners or members * * *" (64 FR 20765).

Conflict of interest and self dealing, or any appearance of a conflict of interest or self dealing by related parties (which includes the CDC's professional management, staff, and Board of Directors) to the detriment of a small business borrower, the CDC, or SBA is prohibited.

If a CDC Board proposes to contract for staff rather than hire that staff directly, SBA must preapprove and annually review each contract to ensure that the contracts are reasonable and customary for the area and that there is no self-dealing or conflict of interest, or any appearance of self-dealing or conflict of interest. If the CDC's Board believes that it is in the best interest of the CDC to contract for a function, the CDC's Board must justify to SBA why SBA should favorably consider the contract for the services. SBA-approved contractors must not be compensated directly from the small business and must be compensated only by the CDC from the eligible 504 project-related fees that the CDC receives. No contractor or Associate of a contractor may be a voting or non-voting member of the CDC's Board or Loan Committee.

Finally, the proposed rule amends § 120.825 to clarify and emphasize that any funds generated from 503 and 504 loan activity by a CDC remaining after the payment of staff and overhead expenses must be retained in the CDC as a reserve for future operations or to be invested in other local economic activity in its Area of Operations. One of the primary missions of the CDC's Board must be to ensure that the CDC is, or is becoming, self-sufficient through the fee income generated while maintaining its local economic focus. If the CDC's Board approves a contract that benefits the contractor at the expense of the CDC, then the CDC's Board is failing its mission.

SBA invites comment on all aspects of this proposed rule, including the underlying policies. SBA may rely on its own expertise in promulgating the final rule. Submitted comments will be available to any person or entity upon request.

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

For the purposes of Executive Order 13132, SBA certifies that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

This proposed rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Currently, out of approximately 24 million small businesses in the United States, about 4000 receive 504 loans annually. As described in the preamble, through this regulation, SBA hopes to increase the number of loans made to small businesses. Even if SBA were to assume a generous result of a 20 percent increase in loans, it would only result in an annual increase of 800 loans per year. SBA does not consider this a significant economic impact on a substantial number of small entities. Other aspects of this rule clarify management and structural requirements for CDCs. These aspects would have no economic impact on small entities, as they merely alter CDC requirements.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 12988, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in paragraph 3 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small business.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Amend § 120.802, to revise the definition of "Area of Operations" and add definitions of *Local Economic Area* and *Multi-State CDC* in alphabetical order to read as follows:

Area of Operations is the geographic area where SBA has approved a CDC's request to provide 504 program services to small businesses on a permanent basis.

* * * * *

Local Economic Area is an area, as determined by SBA, that is in a State other than the State in which an existing CDC (or an applicant applying to become a CDC) is incorporated, shares a border with the CDC's existing Area of Operations (or applicant's proposed Area of Operations) in its State of incorporation, and is a part of a local trade area that is contiguous to the CDC's Area of Operations (or applicant's proposed Area of Operations) within its State of incorporation. Examples would be a city that is bi-sected by a State line or a metropolitan statistical area that is bi-sected by a State line.

Multi-State CDC is a CDC that is incorporated in one State and is authorized by SBA to operate as a CDC in another State beyond any contiguous Local Economic Areas.

* * * * *

3. Revise § 120.810 to read as follows:

§ 120.810 Applications for certification as a CDC.

Applicants for certification as a CDC must apply to the SBA District Office serving the area in which the applicant proposes to locate its headquarters.

(a) An SBA District Office may accept an application for a county only if:

(1) The county is part of the Area of Operations of only one CDC that is incorporated in the State where the county is located; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the last 24 months of a CDC that is incorporated in the State where the county is located; and the applicant is incorporated in the State where the county is located.

(2) For all counties other than those that qualify under paragraph (a)(1) of this section:

(i) There is no CDC that includes the county in its Area of Operations; or

(ii) The CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the previous 24 months prior to SBA receiving a complete application from the applicant (loans that are approved by SBA for a Multi-State CDC outside of its State of incorporation are not to be used in the calculation if the applicant is incorporated in the State); and the county has not become part of an Area of Operations within the last 24 months of a CDC that is incorporated in the State where the county is located.

(b) An applicant whose application has been accepted must demonstrate that it satisfies the certification and operating criteria in §§ 120.820 through 120.829 and the need for 504 services in the Area of Operations (if there is already a CDC in the Area of Operations, the applicant must justify the need for another and present a plan to avoid duplication or overlap). Applications must also include an operating budget approved by the applicant's Board of Directors, and a plan to meet CDC operating requirements (without specializing in a particular industry). An applicant's proposed Area of Operations may include Local Economic Areas. An applicant may not apply to cover an area as a Multi-State CDC. The AA/FA shall make the certification decision.

4. Revise § 120.820 to read as follows:

§ 120.820 CDC non-profit status.

A CDC must be a non-profit corporation in good standing. (For-profit CDCs certified by SBA prior to January 1, 1987, may retain their certifications.) An SBIC may not be a CDC.

5. Revise § 120.822 as follows:

§ 120.822 CDC membership.

(a) A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). The CDC membership must meet annually. No person or entity may own or control more than 10 percent of the CDC's voting membership (or stock). Members must be representative of and provide evidence of active support in the Area of Operations. Members must be from each of the following groups:

(1) Government organization responsible for economic development in the Area of Operations and acceptable to SBA;

(2) Financial institutions that provide commercial long-term fixed asset financing in the Area of Operations;

(3) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, or universities; and

(4) Business in the Area of Operations.

(b) A CDC that is incorporated in one State and is operating as a Multi-State CDC in another State must meet the membership requirements for each State.

6. Revise § 120.823 to read as follows:

§ 120.823 CDC Board of Directors and Loan Committee.

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups. No single group shall control. The Board members must be responsible officials of the organizations they represent, and at least one must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least five Directors authorized to vote. No person who is a member of a CDC's staff or management may be a voting member of the Board. When the Board votes on loan approval or servicing actions, at least one Board member with commercial lending experience acceptable to SBA must be present and vote. There must be no appearance of a conflict of interest with respect to any actions of the Board.

(a) The Board may establish a Loan Committee that reports to the Board. The Loan Committee members must represent at least three of the four membership groups including at least one member with commercial lending experience acceptable to SBA. All members must live or work in the Area of Operations of the State where the 504 project they are voting on is located unless the project falls under one of the exceptions listed in § 120.839, Case-by-case extensions. No CDC staff or management is permitted to be a voting member of any Loan Committee. A quorum shall require at least five voting members. The CDC's Board must ratify the actions of any Loan Committee on at least a quarterly basis. There must be no appearance of a conflict of interest with respect to any actions of the Loan Committee.

(b) If the CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must meet the Board and Loan Committee requirements for each State.

7. Revise § 120.824 to read as follows:

§ 120.824 Professional management and staff.

A CDC must have full-time professional management, including an Executive Director (or the equivalent), managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process 504 loan applications, close 504 loans, service, and, if authorized by SBA, liquidate the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations. CDCs may obtain, under written contract, marketing, packaging, processing, closing, or liquidation services provided by qualified individuals and entities who live or do business in the CDC's Area of Operations under the following circumstances:

(a) The CDC has at least one salaried professional employee that is employed directly (not contracted) full-time to manage the CDC. A CDC may petition SBA to waive the requirement of at least one full-time manager if the CDC is rural and has insufficient loan volume to justify its own management, and another CDC located in the same general area will provide the management; or the management of a CDC is to be contributed by a non-profit affiliate of the CDC that is financially subsidizing the CDC's operations and has the economic development of the CDC's Area of Operations as one of its principal activities. In the latter case, the management contributed by the affiliate may work on and operate other economic development programs of the affiliate, but must be available to 504 customers during regular business hours.

(b) SBA must pre-approve all contracts. (CDCs may contract for legal and accounting services without SBA approval.)

(c) If a CDC's Board believes that it is in the best interest of the CDC to contract for a marketing, packaging, processing, closing, servicing or liquidation function, the CDC's Board must justify to SBA why SBA should favorably consider the contract for the services. The CDC's Board must demonstrate to SBA that compensation under the contract is only from the CDC, is reasonable and customary for similar services in the Area of Operations, is only for actual services performed, and does not evidence any conflict of interest or self-dealing, or an appearance of conflict of interest or self-dealing, on the part of any of the CDC's officers, management, and staff, including members of the Board and any Loan Committee.

(d) Contracts must be for a period not to exceed 2 years (including options to renew) and must clearly identify procedures satisfactory to SBA that permit the CDC to terminate the contract prior to its expiration date. SBA must review all 2-year contracts after the first year to ensure that there is no conflict of interest or self-dealing, or an appearance of conflict of interest or self-dealing.

(e) No contractor (under this section) or Associate of a contractor may be a voting member of the CDC's Board or Loan Committee.

8. In § 120.825 add the following two sentences to the end of the section as follows:

§ 120.825 Financial ability to operate.

* * * Any funds generated from 503 and 504 loan activity by a CDC remaining after payment of staff and overhead expenses must be retained in the CDC as a reserve for future operations or to be invested in other local economic development activity in its Area of Operations. If a CDC is operating as a Multi-State CDC, it must maintain separate accounting for each State of all 504 fee income and expenses and provide, upon SBA's request, evidence that the funds resulting from its Multi-State CDC operations are being invested in economic development activities in each State in which it was generated.

9. Revise § 120.835 to read as follows:

§ 120.835 Application to expand a CDC's Area of Operations.

An existing, active CDC applying to expand its Area of Operations must be operating in conformance with all existing SBA regulations, policies, and performance benchmarks and be well-qualified to serve the proposed area. A CDC seeking to expand its Area of Operations must apply in writing to the SBA District Office where the CDC is headquartered, unless it is applying as a Multi-State CDC. In that case, the CDC must apply to the SBA District Office that services the area where the Multi-State CDC is locating its principal office in that State.

(a) An SBA District Office may accept a CDC's application to expand its Area of Operations into a county within its State of incorporation, in a Local Economic Area or in another State beyond a Local Economic Area that it would service as a Multi-State CDC only if:

(1) The county is part of the Area of Operations of only one CDC that is incorporated in the State where the county is located; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the last 24 months of a CDC that is incorporated in the State where the county is located; and the applicant CDC is incorporated in the State where the county is located.

(2) For all counties other than those that qualify under paragraph (a)(1) of this section:

(i) There is no CDC that includes the county in its Area of Operations; or (ii) The CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the previous 24 months prior to SBA receiving a complete application from the applicant CDC (loans that are approved by SBA for a Multi-State CDC outside of its State of incorporation are not to be used in the calculation if the requesting CDC is incorporated in the State); and the county has not become part of an Area of Operations within the last 24 months of a CDC that is incorporated in that State.

(b) An applicant whose application for expansion has been accepted must demonstrate to the satisfaction of SBA that it satisfies all of the certification and operating criteria in §§ 120.820 through 120.829. It must demonstrate that it has the ability to provide full service to small businesses in the requested area including processing, closing, servicing, and, if authorized, liquidating 504 loans. It must also demonstrate the need for 504 services in the Area of Operations and present a plan for servicing the area. If there is already one or more CDCs in the requested Area of Operations, the applicant must justify the need for another. In addition, an applicant to service an area as a Multi-State CDC must show that:

(1) The requirements in § 120.822, Membership, are met separately for the Area of Operation within the CDC's State of incorporation and for each additional State in which it operates or seeks to operate as a Multi-State CDC;

(2) The requirements regarding Boards of Directors in § 120.823, CDC Board of Directors and Loan Committees, are met separately for the State of incorporation and for each additional State in which it operates or seeks to operate as a Multi-State CDC;

(3) The CDC Board of Directors must have the same number of members residing or working in the CDC's State of incorporation and each other State in which it operates or seeks to operate as a Multi-State CDC; and

(4) The CDC must have separate Loan Committees in its State of incorporation and in each State in which the CDC operates or seeks to operate as a Multi-State CDC, comprised of members residing or working in that State.

10. Revise § 120.837 to read as follows:

§ 120.837 SBA decision on applications for a new CDC or for an existing CDC to expand Area of Operations.

(a) The processing District Office must solicit the comments of any other District Office in which the CDC operates or proposes to operate. The processing District Office must determine that the CDC is in compliance with SBA's regulations, policies, and performance benchmarks, including pre-approval and annual review by SBA of any management or staff contracts, and the timely submission of all annual reports. In making its recommendation on the application, the District Office may consider any information presented to it regarding the requesting CDC, the existing CDC, or CDCs that may be affected by the application, and the proposed area of operation.

(b) The District Office will submit the application, recommendation, and supporting materials within 60 days of receipt of a complete application from the CDC to the AA/FA, who will make the final decision. The AA/FA may consider any available information.

(c) If a CDC is approved to operate as a Multi-State CDC, any unilateral authority that a CDC has in its State of incorporation under any SBA program (such as the Accredited Lenders Program (ALP), Premier Certified Lenders Program (PCLP), or Expedited Closing Process (Priority CDC)) does not carry over into a State in which it is operating or is approved to operate as a Multi-State CDC. The CDC must earn the status in each State based solely on its activity in that State.

Dated: September 23, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–29090 Filed 11–5–99; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes. That action would have required replacement of the Anti-Skid Control Unit (ASCU) of the aircraft braking system with an improved unit. Since the issuance of the NPRM, the manufacturer has advised the Federal Aviation Administration (FAA) that the entire Model 328–100 fleet has been retrofitted with the improved ASCU, and all ASCU spares have been modified or otherwise removed from service. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2196; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on September 22, 1997 (62 FR 49457). The proposed rule would have required replacement of the Anti-Skid Control Unit (ASCU) of the aircraft braking system with an improved unit. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The proposed actions were intended to prevent disconnect of the ASCU and reversion to manual braking efficiency during operation on runways contaminated by standing water, slush, or wet snow, which could result in reduced braking efficiency.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the manufacturer has provided the FAA with confirmation that the entire fleet of Dornier Model 328–100 series airplanes has been retrofitted with the improved ASCU, and all ASCU spares have been modified or otherwise removed from service.

FAA's Conclusions

Upon further consideration, the FAA has determined that the proposed actions of the NPRM (Rules Docket 95–NM–182–AD) are unnecessary since the unsafe condition that those actions were intended to address no longer exists. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed rule nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 95–NM–182–AD, published in the **Federal Register** on September 22, 1997 (62 FR 49457), is withdrawn.

Issued in Renton, Washington, on November 2, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29175 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–63–AD]

Airworthiness Directives; Eurocopter France Model SA. 315B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Eurocopter France Model SA. 315B helicopters, that currently requires an initial and repetitive visual inspections and modification, if necessary, of the horizontal stabilizer spar tube (spar tube). This action would require the same corrective actions as the existing AD, and would require an additional dye-penetrant inspection of the half-shell attachment clamps (clamps). This proposal is prompted by an in-service report of fatigue cracks that initiated from corrosion pits. The actions specified by the proposed AD are intended to prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before January 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–63–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–63–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, 76137.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model SA. 315B helicopters. The DGAC advises that fatigue failure of the spar tube can result in separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

Eurocopter France has issued Eurocopter France Service Bulletin No. 55.01, Revision 4, dated May 4, 1998, which specifies initial and repetitive visual inspections, modification of the horizontal stabilizer spar tube if necessary, and a one-time dye penetrant inspection of the half shell attachment clamps with repetitive visual inspections of those clamps. The DGAC classified this service bulletin as mandatory and issued DGAC AD 96–277–037(A)R2, dated July 29, 1998, in order to assure the continued airworthiness of these helicopters in France.

On June 2, 1998, the FAA issued AD 98–12–21, Amendment 39–10575 (63 FR 31610), to require an initial and repetitive visual inspections and modification, if necessary, of the horizontal stabilizer spar tube. That action was prompted by an in-service report of fatigue cracks that initiated from corrosion pits. The requirements of that AD are intended to prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the DGAC has advised that the clamps should be inspected for cracks and replaced if a crack is found. If no crack is found, a safety wire should be wrapped around each clamp so that the clamp is held together in the event of clamp failure.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA. 315B helicopters of the same type design, the proposed AD would supersede AD 98–12–21 to require an initial and repetitive visual inspections and modification, if necessary, of the spar tube, as well as installing safety wire around each attachment clamp.

The FAA estimates that 28 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately:

- 0.5 work hour per helicopter to accomplish the inspections;

- 3 work hours per helicopter to accomplish the modification; and
- 0.5 work hour per helicopter to inspect and fit the safety wire;

and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,100 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $37,520.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10575 (63 FR 31610, June 10, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. 98–SW–63–AD. Supersedes AD 98–12–21, Amendment 39–10575, Docket No. 98–SW–02–AD.

Applicability: Model SA. 315B helicopters with horizontal stabilizers, part number (P/N) 315A35–10–000–1, 315A35–10–000–2, or higher dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Inspect the aircraft records and the horizontal stabilizer installation to determine whether Modification 072214 (installation of the spar tube without play) or Modification 072215 (adding two half-shells on the spar) has been accomplished.

(2) If Modification 072214 has not been installed, comply with paragraphs 2.A., 2.B.1), 2.B.2)a), and 2.B.2)b) of the Accomplishment Instructions of Eurocopter France Service Bulletin No. 55.01, Revision 4, dated May 4, 1998 (SB). If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts.

(3) If Modification 072215 has not been installed, first comply with paragraphs 2.A., 2.B.1), and 2.B.3), and then comply with paragraph 2.B.2)c) of the Accomplishment Instructions of the SB.

Note 2: Modification kit P/N 315A–07–0221571 contains the necessary materials to accomplish this modification.

(b) Before the first flight of each day:

(1) Visually inspect the installation of the half-shells, the horizontal stabilizer supports, and the horizontal stabilizer for corrosion or cracks. Repair any corroded parts in accordance with the applicable maintenance manual. Replace any cracked components with airworthy parts before further flight.

(2) Confirm that there is no play in the horizontal stabilizer supports by lightly shaking the horizontal stabilizer. If play is detected, comply with paragraphs 2.A. and 2.B.2(a) of the Accomplishment Instructions of the SB. If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts before further flight.

(c) At intervals not to exceed 400 hours time-in-service (TIS) or four calendar months, whichever occurs first, inspect and lubricate the spar tube attachment bolts.

(d) Within 90 calendar days and thereafter at intervals not to exceed 24 calendar months, visually inspect the inside of the horizontal spar tube in accordance with paragraph 2.A. and 2.B.1) of the Accomplishment Instructions of the SB.

(1) If corrosion is found inside the tube, other than in the half-shell area, replace the tube with an airworthy tube within the next 500 hours TIS or 18 calendar months whichever occurs first.

(2) If corrosion is found inside the tube in the half-shell area, apply a protective treatment as described in paragraph 2.B.1(b) of the Accomplishment Instructions of the SB.

(e) Within 30 calendar days, perform a one-time dye-penetrant inspection for cracking on the 4 attachment clamps (See No. 11 on Figure 3 of the SB) of the half-shells as shown in Figure 3 of the SB. If a crack is found in any clamp, replace the cracked clamp with an airworthy clamp. If no crack is found, safety wire the clamp as shown in Detail C in the SB using two wraps of 0.6-mm or 0.8 mm (.023 or .032 inch) diameter lockwire (See No. 21 on Figure 3 of the SB) around the clamp so that the clamp is held together in the event of clamp failure. After installing the safety wire, inspect the clamps before the first flight of each day in accordance with paragraph (b)(1) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–277–037(A)R2, dated July 29, 1998.

Issued in Fort Worth, Texas, on November 1, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–29174 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that currently requires certain changes to the procedures in the airplane flight manual related to operation of the emergency lighting system. The NPRM also proposes to require a modification of the emergency lighting system, which would constitute terminating action for the AFM changes. In addition, the NPRM proposed to expand the applicability to include all A300, A310, and A300–600 series airplanes. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued separate rulemaking that proposes to require, among other things, the same actions described above. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on September 11, 1989 (54 FR 37470) (hereinafter referred to as "the original NPRM"). The original NPRM would have superseded an existing airworthiness directive (AD), applicable only to Model A300 series airplanes, that requires certain changes to the procedures in the FAA-approved Airplane Flight Manual (AFM) related to operation of the emergency lighting system. The original NPRM also would have required a modification of the emergency lighting system, which would constitute terminating action for the AFM changes. The original NPRM also would have expanded the applicability to include all Model A300, A310, and A300–600 series airplanes. The original NPRM was prompted by flight crew reports that the Floor Proximity Emergency Escape Path Marking System (FPEEPMS), which is part of the airplane's emergency lighting system, did not illuminate automatically with loss of AC power. The proposed actions were intended to prevent lack of FPEEPMS lighting for evacuation in an emergency situation.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of the original NPRM, the FAA has issued separate rulemaking that proposes to include, among other things, the actions contained in the original NPRM. (That separate rulemaking is a new NPRM, Rules Docket 98–NM–205–AD, published in the **Federal Register** on September 13, 1999 (64 FR 49420)).

FAA's Conclusions

Because the separate rulemaking now incorporates, as part of its proposed required actions, the same actions that were proposed in the original NPRM, the FAA has determined that the original NPRM is unnecessary. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 89–NM–134–AD, published in the **Federal Register** on September 11, 1989 (54 FR 37470), is withdrawn.

Issued in Renton, Washington, on November 2, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29176 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. That action was prompted by reports of several accidents in which Fokker Model F28 series airplanes lost aerodynamic lift when attempting takeoff with ice contamination on their wings. This action would add a requirement, for certain airplanes, for modification of the wing leading edge ice protection system to include on-ground wing ice protection, and a new revision to the AFM. This proposal is prompted by the development of a modification which introduces a wing anti-icing system that will operate on the ground as well as in flight. The actions specified by the proposed AD are intended to prevent degradation of aerodynamic lift during takeoff when icing conditions exist, which could result in reduced controllability of the airplane.

DATES: Comments must be received by December 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–224–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 30, 1994, the FAA issued AD 94–25–03, amendment 39–9087 (59 FR 62563, December 6, 1994), applicable to all Fokker Model F28 series airplanes, to require a revision to the Airplane Flight Manual (AFM) that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. That action was prompted by reports of several accidents in which Fokker Model F28 series airplanes lost aerodynamic lift when attempting takeoff with ice contamination on their wings. The requirements of that AD are intended to prevent degradation of aerodynamic lift during takeoff when icing conditions exist.

Actions Since Issuance of Previous Rule

In the preamble to AD 94–25–03, the FAA indicated that the actions required by that AD were considered "interim action" until final action is identified, at which time the FAA may consider further rulemaking. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows that determination.

Explanation of Relevant Service Information

Fokker has issued Service Bulletins SBF100–30–018, dated April 1, 1997 (for Fokker Model F28 Mark 070, 0100 series airplanes), and F28/30–031, Revision 1, dated May 4, 1998 (for Fokker Model F28 Mark 1000, 2000, 3000, 4000 series airplanes). These service bulletins describe procedures for modifying the wing leading edge ice-protection system to include on-ground wing leading edge ice protection. The modification involves installation of a temperature sensor in the wing leading edge, installation of a temperature control unit, modification of the aircraft wiring, and performance of an after-installation test of the system. Additionally, Fokker has issued Manual Change Notification (MCNO) F100–003 (for Fokker Model F28 Mark 070, 0100 series airplanes) and MCNO F28–003 (for Fokker Model F28 Mark 1000, 2000, 3000, 4000 series airplanes). These MCNO's specify changes to the AFM following modification of the wing leading edge heating system. Accomplishment of the actions specified in the service bulletins and MCNO's is intended to adequately address the identified unsafe condition.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–25–03 to continue to require a revision to the AFM that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. This proposed AD would add a requirement, for certain airplanes, for modification of the wing leading edge ice-protection system to include on-ground wing leading edge ice-protection and a new revision to the AFM. The actions would be required to be accomplished in accordance with the service bulletins and MCNO's described previously.

Difference Between Proposed Rule and Related Service Information

This proposed rule would differ from the service bulletins and MCNO's. The RLD has determined that the modification of the wing leading edge ice protection system should be optional, instead incorporating the changes related to this modification into the AFM. The FAA has determined that modification of the wing leading edge ice protection system should be mandated, and that the appropriate AFM changes should be required after incorporation of the wing leading edge ice protection system.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by AFM flight crew procedure requirements. AFM crew procedures may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with total reliance on timely crew actions, has led the FAA to consider placing less emphasis on flight crew procedures and more emphasis on design improvements. The proposed modification requirement is consistent with these conditions.

Cost Impact

There are approximately 191 airplanes of U.S. registry that would be affected by this proposed AD.

The currently required AFM revisions proposed by this AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required AFM revisions proposed by this AD on U.S. operators is estimated to be $60 per airplane.

The modification that is proposed in this AD action for certain airplanes would take approximately 274 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $26,585 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $43,025 per airplane.

The new AFM revisions proposed by this AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new AFM revisions proposed by this AD on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9087 (59 FR 62563, December 6, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Fokker Services B.V.: Docket 98–NM–224–AD. Supersedes AD 94–25–03, Amendment 39–9087.

Applicability: All Model F28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of aerodynamic lift during takeoff when icing conditions exist, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 94–25–03, Amendment 39–9087

(a) Within 10 days after December 21, 1994 (the effective date of AD 94–25–03, amendment 39–9087), incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM. This action is required until the requirements of paragraph (c) are accomplished.

"*Wing De-Icing/Anti-Icing Prior To Takeoff*

CAUTION

The Model F28 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge high lift devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium-grit sandpaper) on the leading edges or upper wing surfaces can cause significant reduction in the stall angle-of-attack. This can increase stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

Takeoff shall not be attempted unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow accumulation, as required by sections 91.527 and 121.629 of the Federal Aviation Regulations (FAR).

In addition, takeoff shall not be attempted when the Outside Air Temperature (OAT) is below 6 degrees C (Centigrade) [42 degrees F (Fahrenheit)]; and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present, unless the operator complies with either OPTION 1 or OPTION 2, below:

OPTION 1

The leading edge and upper wing surfaces have been physically checked for ice/frost/snow and the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces has been accomplished and that the wing is clear of ice/frost/snow accumulation.

OR

OPTION 2

The following takeoff procedure is used:

WARNING:

The following technique cannot be used unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow, as required by sections 91.527 and 121.629 of the FAR.

- (All Marks, except Mark 0100 and Mark 0070) When using flight director for takeoff, select HDG mode and 10 degrees pitch attitude.
- Select the largest flap setting that is permissible for the takeoff weight/altitude/temperature conditions.
- (All Marks, except Mark 0100 and Mark 0070) Use rated takeoff thrust.
- (Mark 0100 and Mark 0070) Use takeoff/go-around (TOGA) thrust.
- Do not use FLEXIBLE thrust.
- At V_R rotate slowly (less than 3 degrees per second) to 10 degrees pitch attitude.
- When positively climbing, select gear UP.
- DO NOT EXCEED 10 DEGREES PITCH UNTIL AIRSPEED IS ABOVE $V_2 + 20$ KTS.
- When above $V_2 + 20$ KTS, slowly increase the pitch attitude, keeping the speed above $V_2 + 20$ KTS.
- Retract the flaps at or above $V_{FR} + 20$ KTS.

NOTES TO OPTION 2:

1. The available field length must be greater than or equal to 120 percent of the takeoff distance required by regulation for the actual gross weight. Also, the 20 percent increase in takeoff distance must be accounted for in the obstacle clearance analysis. WEIGHT MUST BE OFF-LOADED, IF NECESSARY, TO MEET THESE CONDITIONS.

2. (Mark 0100 and Mark 0070) Do not follow the Flight Director pitch command during rotation for takeoff and initial climb, as this will result in exceeding the recommended maximum pitch angle of 10 degrees before reaching the speed of $V_2 + 20$ KTS.

3. (Mark 0100 and Mark 0070) Do not engage the auto-pilot until leaving the Automated Flight Control and Augmentation System (AFCAS) takeoff (TO) mode.

4. For the case of an engine failure, refer to the applicable procedure in Section 4.17.01 SINGLE ENGINE OPERATION of the F28 Mark 0100 (Fokker 100) and F28 Mark 0070 (Fokker 70) AFM, or Section 1.7.4 OPERATION UNDER ABNORMAL CONDITIONS of the F28 FHB, as applicable.

5. During takeoff, the first indication of wing contamination will probably be airframe buffet when the pitch angle is increased above 10 degrees, followed by wing drop and insufficient climb rate. DO NOT EXCEED 10 DEGREES PITCH UNTIL AIRSPEED IS ABOVE $V_2 + 20$ KTS."

Note 2: If an operator elects to implement in its fleet only one of the two OPTIONS specified in this paragraph, the other OPTION does not have to be included in the Limitations Section of the AFM. However, the OPTION that is implemented must be incorporated in the AFM verbatim as it appears in this paragraph.

New Requirements of This AD

(b) For Model F28 Mark 0070, 0100 series airplanes identified in Fokker Service Bulletin SBF100–30–018, Appendix 1, dated April 1, 1997; and Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes identified in Fokker Service Bulletin F28/30–031, Appendix 1, Revision 1, dated May 4, 1998: Accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 18 months after the effective date of this AD, modify the wing anti-ice system for operation on the ground in accordance with the applicable service bulletin.

(2) Prior to further flight after accomplishing the modification required by paragraph (b)(1) of this AD, remove the AFM revisions required by paragraph (a) of this AD, and incorporate the flight manual changes described in Fokker Manual Change Notification (MCNO) F100–003, dated September 19, 1997 (for Fokker Model F28 Mark 070, 0100 series airplanes), and Fokker MCNO F28–003, dated September 5, 1997 (for Fokker Model F28 Mark 1000, 2000, 3000, 4000 series airplanes); as applicable.

Note 3: Incorporation of the leading edge thermal anti-ice modification and associated operating instructions does not relieve the requirement that aircraft surfaces are free of ice, frost, and snow accumulation as required by sections 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 2, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29178 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–177–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace BAe Model ATP airplanes. This proposal would require a one-time inspection of the orientation of certain bolts of the rudder standby control system (SCS), and reinstallation of the bolts, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent uncommanded engagement of the rudder SCS, which could result in reduced controllability of the airplane.

DATES: Comments must be received by December 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–177–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace BAe Model ATP airplanes. The CAA advises that it has received a report of uncommanded engagement of the rudder standby control system, which occurred during full and free checks of the rudder primary controls. Subsequent investigation revealed incorrect installation of a bolt that secures the primary drive rod to the fork end of the lever assembly of the rudder control system; such incorrect installation may have occurred during manufacture or maintenance. As a result, when the rudder approached full left travel, the tail of the bolt contacted the synchro drive of the standby control system (SCS), causing a mismatch in the synchro alignment followed by engagement of the rudder SCS. This condition, if not corrected, could result in uncommanded engagement of the rudder SCS and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin ATP–27–86, dated May 15, 1999, which describes procedures for a one-time inspection of the orientation of two bolts of the rudder SCS, and removal and reinstallation of any incorrectly installed bolt. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–05–99 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,800, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–177–AD.

Applicability: All BAe Model ATP airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded engagement of the rudder standby control system (SCS), accomplish the following:

(a) Within one year after the effective date of this AD, perform a one-time general visual inspection of the orientation of the bolts in the rudder SCS, in accordance with British Aerospace Service Bulletin ATP–27–86, dated May 15, 1999. If any bolt is incorrectly installed, as specified by Figure 1 of the service bulletin, prior to further flight, remove and reinstall the bolt in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in British airworthiness directive 005–05–99.

Issued in Renton, Washington, on November 2, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29179 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–252–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that currently requires inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, and of the web area around those fasteners; various follow-on actions; and modification of the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343, which, when accomplished, defers the initiation of the inspections for a certain period of time. The actions specified by that AD are intended to prevent fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage. This action would, for certain airplanes, extend the compliance time for the modification of the web-to-cap fastener holes, and would eliminate references to modification of the outboard spar.

DATES: Comments must be received by December 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–252–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 15, 1999, the FAA issued AD 99–13–08, amendment 39–11202 (64 FR 33386, June 23, 1999), applicable to all Lockheed Model L–1011–385 series airplanes, to require inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, and of the web area around those fasteners; various follow-on actions; and modification of the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343, which, when accomplished, defers the initiation of the inspections for a certain period of time. That action was prompted by an FAA determination that a modification of certain web-to-cap fastener holes must be accomplished within a specified period of time to ensure an acceptable level of safety of the affected fleet. The requirements of that AD are intended to prevent fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has determined that a reference to Table 1 of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996, which contains appropriate thresholds for accomplishment of the modification of the web-to-cap fastener holes, was inadvertently omitted from paragraph (d) of AD 99–13–08. For certain airplanes, this omission results in a shorter compliance time for accomplishing the modification than what was recommended in Lockheed Service Bulletin 093–57–218, Revision 1. The FAA finds that such a short compliance time is unnecessarily restrictive, and that it is necessary to revise the existing AD to increase the inspection threshold to that recommended by the manufacturer.

In addition, since the issuance of AD 99–13–08, the FAA has determined that the text of paragraph (f) of that AD [which describes an acceptable alternative, for certain airplanes, to accomplishment of paragraph (d) of that AD that also will defer the initiation of inspections for a certain period of time] specifies certain areas that do not, for the purposes of this AD, require modification. Paragraphs (f)(1) and (f)(2), as well as Notes 3 and 4, of the existing AD specify modification of the inboard and outboard rear spars. The FAA has previously determined that modification of the outboard rear spars is not necessary, and the service bulletins referenced in these sections do not describe procedures for modification of the outboard rear spars. Therefore, the FAA finds that, in order to alleviate any unnecessary burden on operators of the subject airplanes who elect to accomplish this option to attain compliance, and to make the requirements of the AD consistent with the procedures specified in the service bulletins referenced, it is necessary to revise paragraphs (f)(1) and (f)(2) and Notes 3 and 4 to eliminate reference to the outboard rear spar.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 99–13–08 to continue to require inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between IWS 310 and IWS 343, and of the web area around those fasteners; various follow-on actions; and modification of the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343, which, when accomplished, defers the initiation of the inspections for a certain period of time. This action proposes to extend the compliance time for the modification of the web-to-cap fastener holes for certain airplanes, and to eliminate references to modification of the outboard spar. The actions would continue to be required to be accomplished in accordance with the service bulletins described previously in AD 99–13–08.

Cost Impact

There are approximately 235 Lockheed Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD. The proposed requirements of this AD would not add any new additional economic burden on affected operators. Also, because the existing AD states the cost impact only for the required modification and not for the acceptable alternatives that were provided for certain airplanes, no change to the cost impact information is necessary. The current costs associated with this amendment are reiterated in their entirety (as follows) for the convenience of affected operators:

The inspections that are currently required by AD 99–13–08 take approximately 13 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $91,260, or $780 per airplane, per inspection cycle.

The modification that is currently required by AD 99–13–08 takes approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $702,000, or $6,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11202 (64 FR 33386, June 23, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Lockheed: Docket 99–NM–252–AD. Revises AD 99–13–08, Amendment 39–11202.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Restatement of Actions Required by AD 99–13–08, Amendment 39–11202

Inspections

(a) Perform a visual inspection to detect signs of cracking and other discrepancies (i.e., corrosion, fastener looseness, nicks, scratches, or other surface damage) of the web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, as specified in Figure 2 of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996; and of the web area around those fasteners; in accordance with Part I of the Accomplishment Instructions of that service bulletin. Perform the inspection at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Except as provided by paragraph (a)(2) of this AD: Perform the initial inspection

prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, or within 10 days after June 27, 1996 (the effective date of AD 96–12–24, amendment 39–9667), whichever occurs later.

(2) For airplanes on which the wing rear spar was modified prior to June 27, 1996, in accordance with one of the Lockheed service bulletins listed in paragraph (a)(2)(ii) of this AD, accomplish the inspection as follows:

(i) Perform the initial inspection prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, calculated from the time the wing rear spar was modified (rather than from the date of manufacture of the airplane), or within 10 days after June 27, 1996, whichever occurs later.

(ii) This paragraph applies to airplanes on which the wing rear spar has been modified in accordance with one of the following service bulletins:

- Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994; or
- Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994; or
- Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991, or Revision 4, dated March 27, 1995; or
- Lockheed Service Bulletin 093–57–215, dated April 11, 1996.

Repetitive Inspections

(b) If no sign of cracking or other discrepancy is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

Corrective Actions

(c) If any sign of cracking is found during an inspection required by paragraph (a) or (b) of this AD, prior to further flight, perform either eddy current surface scan inspections, or bolt hole eddy current inspections, as appropriate, to confirm cracking, in accordance with Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

(1) If no cracking is confirmed, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of the service bulletin.

(2) If any cracking is confirmed, prior to further flight, repair it in accordance with the service bulletin.

Modification

(d) Except as provided by paragraph (e) or (f) of this AD, as applicable: Prior to the accumulation of the number of landings specified as the threshold in Table 1 of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996; or within 12 months after July 28, 1999 (the effective date of AD 99–13–08, amendment 39–11202); whichever occurs later; modify the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343 in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

(e) For Model L–1011–385–3 series airplanes: Accomplishment of the modification specified in paragraph (e)(1) or (e)(2) of this AD, within 12 months after July 28, 1999, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the upper and lower caps of the rear spar between IWS 228 and IWS 346 in accordance with Part I of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; or Revision 4, dated March 27, 1995. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the left and right wing rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–215, dated April 11, 1996. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–215, dated April 11, 1996), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

Note 2: Accomplishment of the modification of the upper and lower caps of the rear spar between IWS 228 and IWS 346, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–203, dated July 25, 1988, Revision 1, dated August 11, 1989, or Revision 2, dated January 25, 1991, is considered acceptable for compliance with the modification specified in paragraph (e)(1) of this amendment.

(f) For Model L–1011–385–1 series airplanes: Accomplishment of the modification specified in paragraph (f)(1) or (f)(2) of this AD, within 12 months after July 28, 1999, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the inboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991; or Revision 7, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the inboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991; or Revision 6, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

Note 3: Accomplishment of the modification of the inboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–184, Revision 2, dated October 12, 1988; Revision 3, dated August 11, 1989, Revision 4, dated May 16, 1990; or Revision 5, dated May 23, 1990, is considered acceptable for compliance with the modification specified in paragraph (f)(1) of this amendment.

Note 4: Accomplishment of the modification of the inboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–196, Revision 1, dated October 25, 1988; Revision 2, dated July 31, 1989; Revision 3, dated March 7, 1990; or Revision 4, dated July 1, 1991, is considered acceptable for compliance with the modification specified in paragraph (f)(2) of this amendment.

(g) If any condition (i.e., number of discrepant fasteners per stiffener bay, or cracking) is identified during the accomplishment of the modification specified in Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996, and that condition exceeds the limits specified in paragraph B.(3) of Part II of the Accomplishment Instructions of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Alternative Method of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(h)(2) Alternative methods of compliance, approved previously in accordance with AD 96–12–24, amendment 39–9667, or AD 99–13–08, amendment 39–11202, are approved as alternative methods of compliance with paragraph (d) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 2, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29180 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 178–99]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed Rule.

SUMMARY: The Department of Justice proposes to further exempt the United States Marshals Service Internal Affairs System, JUSTICE/USM–002, from subsections (e)(1) and (e)(5) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). This system is currently exempt from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g) pursuant to subsections (j)(2) and (k)(5). In addition to records compiled during the course of investigations of allegations of misconduct or criminal violations by USMS personnel, this system also contains records compiled for law enforcement investigations related to actual or potential civil and regulatory violations. The additional exemptions are necessary to avoid interference with such law enforcement investigations and to protect the privacy of third party individuals. The reasons for the exemptions are set forth in the text below.

DATES: Submit any comments by December 8, 1999.

ADDRESSES: Address written comments to the Department of Justice, ATTN: Mary E. Cahill, Management and Planning Staff, Justice Management Division, Washington, DC 20530 (Room 1400, NPB).

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill at (202) 307–1823.

SUPPLEMENTARY INFORMATION: The United States Marshals Service Internal Affairs System, JUSTICE/USM–002, is being published in full text in the Notice section of today's **Federal Register**.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a "significant impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: October 22, 1999.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.101 by revising paragraphs (e) introductory text, (e)(1), (f)(1), and (f)(3); by redesignating paragraphs (f)(7), (f)(8) and (f)(9) as paragraph (f)(8), (f)(9) and (f)(10) and adding new paragraph (f)(7) to read as follows:

§ 16.101 Exemption of U.S. Marshals Service Systems—limited access, as indicated

* * * * *

(e) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G) and (H), (e)(5), (e)(8), (f) and (g).

(1) Internal Affairs System (JUSTICE/USM–002)—Limited access.

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(2) or (k)(5). Where compliance would not interfere with or adversely affect the law enforcement process, the USMS may waive the exemptions, either partially or totally.

(f) * * *

(1) From subsections (c)(3) and (d) to the extent that release of the disclosure accounting may impede or interfere with civil or criminal law enforcement efforts, reveal a source who furnished information to the Government in confidence, and/or result in an unwarranted invasion of the personal privacy of collateral record subjects or other third party individuals.

* * * * *

(3) From subsection (e)(1) to the extent that it is necessary to retain all information in order not to impede, compromise, or interfere with civil or criminal law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to Federal and other law agencies in discharging their law enforcement responsibilities.

* * * * *

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability to collect information for law enforcement purposes and interfere with the preparation of a complete investigative report or otherwise impede effective law enforcement.

* * * * *

[FR Doc. 99–28630 Filed 11–5–99; 8:45 am]

BILLING CODE 4410–AR–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Chapter XI

[Docket No. 98–4]

Response to Petition for Rulemaking on Classroom Acoustics

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Response to petition for rulemaking on classroom acoustics.

SUMMARY: This document responds to a petition for rulemaking on classroom

acoustics. The Architectural and Transportation Barriers Compliance Board (the Access Board) will support the development of a standard on classroom acoustical design by the American National Standards Institute (ANSI) Committee on Noise (S–12), under the secretariat of the Acoustical Society of America (ASA). Resources and technical assistance on classroom acoustics are provided in this document.

FOR FURTHER INFORMATION CONTACT: Lois Thibault, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 132 (voice); (202) 272–5449 (TTY). These are not toll-free numbers. Electronic mail address: thibault@access-board.gov.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 2 on the telephone keypad, then 1, and requesting publication C–12. Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication C–12. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also posted on the Board's Internet site at http://www.access-board.gov/rules/acoustic2.htm.

Background

The Architectural and Transportation Barriers Compliance Board[1] (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act of 1990 (ADA) to ensure that new construction and alterations of facilities covered by the law are readily accessible to and usable by individuals with disabilities. The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991. The guidelines contain scoping provisions and technical specifications for designing elements and spaces that typically comprise a building and its site so that individuals with disabilities will have ready access to and use of a facility. Although ADAAG contains a number of provisions for access to communications, including requirements for text telephones, assistive listening systems, and visible alarms, it does not include provisions for the acoustical design or performance of spaces within buildings and facilities.

On April 6, 1997, the Access Board received a petition for rulemaking from a parent of a child with a hearing loss, requesting that ADAAG be amended to include new provisions for acoustical accessibility in schools for children who are hard of hearing. Several acoustics professionals, parents of children with hearing impairments, individuals who are hard of hearing, and a coalition of organizations representing them had also urged the Board to consider research and rulemaking on the acoustical performance of buildings and facilities, in particular school classrooms and related student facilities.

On June 1, 1998, the Board published a Request for Information (RFI) in the **Federal Register** to gather public input on this issue (63 FR 29679). The Board sought comment on a variety of issues in the notice and indicated that it would determine a course of action after evaluating responses to the notice. Alternatives included research, rulemaking, and technical assistance on acoustical issues. Approximately 100 comments were received in response to the RFI. The preponderance of the comments were from parents of children with hearing impairments and from professionals in acoustics and audiology. Few comments were received from school systems.

A Board review of classroom acoustics also identified several key issues. A third of the school systems cited in a 1995 General Accounting Office study reported that acoustics for noise control was their most serious environmental concern. Studies of elementary and secondary school classrooms revealed that excessive background noise, which competes with the speech of teachers, aides, classmates, and audio educational media, is common even in new classrooms. School construction is again on the increase and much public and governmental attention is now being focused on education issues.

Comments

Commenters submitted research which showed how high levels of background noise in classrooms compromise speech intelligibility for children with hearing loss and other auditory disabilities and limit the effectiveness of assistive technologies (such as hearing aids, FM systems, and soundfield amplification) for such students, so that their reading, communication, and learning skills may not develop adequately.

Audiologists noted that children, because they are neurologically immature and lack the experience necessary to predict from context, are inefficient listeners who require optimal conditions in order to hear and understand. Those who miss key words, phrases, and concepts because of poor listening conditions must struggle to keep up and may later do poorly academically and suffer from behavior problems. At particular risk are children who are experiencing temporary hearing loss from otitis media (as much as 15% of the school age population, according to a recent Centers for Disease Control analysis), children with mild to moderate permanent hearing losses, children with speech impairments, children who have learning disabilities and central auditory processing disorders, children for whom English is a second language, and very young children generally.

Acoustical consultants confirmed that controlling the reverberation within a classroom and limiting the background noise generated both outside and within a space could provide significant improvement in speech transmission indices (STI) and signal-to-noise ratios (SNR) necessary for optimal performance of assistive technologies. Heating, ventilating, and air conditioning (HVAC) units and systems were identified as primary contributors to classroom noise. It was also noted that self-noise in classrooms can be dramatically reduced with reductions in reverberation time and background noise.

Commenters familiar with school design and construction, including State education agencies, architects, and engineers, agreed that background noise and reverberation could be controlled using standard means and materials of construction. It was noted that new computer software makes it possible to quickly analyze listening conditions under a variety of design, construction, and finishing and equipment choices (basic acoustical design for classrooms can also be accomplished with pencil-and-paper calculations). Many textbooks, manuals, and guides are available on architectural acoustics, and include values for the noise resistance of wall construction and the sound absorbency of common surfacing materials. Recommendations for limits on reverberation and background noise in classrooms have been included in architectural and engineering texts on acoustics for more than 40 years.

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[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; the General Services Administration; and the United States Postal Service.

Commenters pointed out that acoustical standards already exist in the model building codes, particularly for housing; in several State education and health department requirements for schools, in requirements for Federal courtroom design and construction, and in the building codes covering school construction in a number of European countries. HVAC equipment is commonly rated for noise output under a number of ANSI protocols, and the Los Angeles Unified School District has recently begun to require manufacturers and installers to observe noise thresholds on HVAC equipment placed in its schools. Two Fellows of the Acoustical Society of America (ASA) noted that the Society had formed a Working Group on Classroom Acoustics in 1997 under the ANSI Committee on Noise (S–12) and recommended that the Board pursue the joint development of a standard for classroom acoustics with the Working Group, which was preparing a draft standard for consideration.

Action

Following a detailed analysis of the comments and research submitted in response to the RFI, the Access Board agrees that many classrooms are likely to include children for whom background noise must be controlled in order to optimize listening conditions. Furthermore, the Board has determined that collaboration with the existing ANSI/ASA Working Group on Classroom Acoustics would be the most effective way to develop technical and scoping recommendations for classroom acoustics. On March 10, 1999 the Board voted to support the efforts of the Working Group to draft a common standard for classroom acoustics that will incorporate criteria for children with disabilities. The ASA agreed to broaden the membership of the Working Group to involve other groups, including representatives of school systems, school designers, disability organizations, the U.S. Department of Education, and the Access Board and committed to a 2-year standards development process. The Access Board will fund some administrative costs of the Working Group and will consider additional funding, if necessary. After the standard has been ratified by the Committee on Noise, the Board will pursue its enforceability under the ADA or other statutes. This course of action is consistent with the Board's goal to take a leadership role in the development of codes and standards for accessibility and with the National Technology Transfer and Advancement Act of 1995, which requires Federal agencies to consider the use of private sector standards where appropriate.

In May 1999, the Working Group was expanded with the addition of representatives of the Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), Self Help for Hard of Hearing People (SHHH), the American Speech-Language-Hearing Association (ASHA), the American Federation of Teachers (AFT), The American Institute of Architects (AIA), the Council of Educational Facility Planners (CEFPI), the Educational Audiology Association (EAA), the American Academy of Audiology (AAA), the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE), and the American Society of Testing and Materials (ASTM). Other members may be added at the discretion of the Working Group co-chairs, the Access Board, and the U.S. Department of Education.

Both the Access Board and the U.S. Department of Education will be active participants in the Working Group. In addition to the Acoustical Society of America (ASA), Working Group members from the acoustical professions represent the Institute of Noise Control Engineering (INCE) and the National Council of Acoustical Consultants (NCAC).

The first meeting of the newly-expanded Working Group was held on May 18, 1999 in Fairfax, VA to consider a draft standard. The next meeting of the Working Group will take place on November 5–6, 1999 in Columbus, OH. Other meetings will be scheduled as required. All meetings will be open to the public. For further information, contact: Charles E. Schmid, Executive Director, Acoustical Society of America, 365 Ericksen Avenue, Suite 324, Bainbridge Island, WA 98110, (206) 842–6001, charles@aip.org. It is expected that a draft standard will be recommended to the Committee on Noise in Spring 2001 for balloting.

Until a standard for classroom acoustics can be implemented, the Access Board offers the following technical assistance for the information of design professionals, schools, parents, and others who seek guidance on how to provide an acoustical environment that supports listening and learning.

Technical Assistance

Many factors, including design and construction methods, teaching techniques, and amplification technologies, can affect the listening conditions in a classroom. Primary among them is background noise, of which there are several sources, some more amenable than others to treatment by design and construction means. Self-generated noise, for example, particularly in the lower grades, may be difficult to control. While a quiet room can minimize the need for raising the voice (and carpeting can soften the sound of footfalls and furniture), self-noise can be only partially ameliorated by architectural means. Reverberation—sounds that reflect from hard surfaces and arrive back at the listener's ear at different times—adds to background noise levels and smears the clarity of direct sound, thus reducing speech intelligibility. Fortunately, reverberation is relatively easy and economical to control—even in existing classrooms—by adding absorbent materials to certain room surfaces.

Speech Intelligibility

Background noise both competes with and obscures the useful speech and other signals in a classroom. The greater the noise and reverberation in a room, the louder the signal must be to be heard and understood. Speech intelligibility is in part a function of the signal-to-noise ratio (SNR). The SNR at a child's ear is the difference between the loudness of the signal (the teacher's voice, for example, typically about 60 dB) and the loudness of the competing noise in the room, from heating, ventilating, or air conditioning systems or other noise from within or outside the classroom (often measured in the 45–55 dB range in classrooms). And because loudness varies with distance (every doubling of the distance between speaker and listener causes a 6 dB drop in signal loudness), the SNR will vary as a child or teacher moves about the classroom.

Decibel levels are usually measured at 3 feet from the speaker. When there are 6 feet—twice the distance—between speaker and listener, only 54 dB of the 60 dB delivered by the typical teacher reaches the student. At 12 feet, only 48 dB arrive. At 24 feet—the back row of a small classroom—only 42 dB will be audible. In some locations and at some times, the loudness of the background noise in a classroom may well exceed the loudness of the desired sound signal. Research has shown that children who have temporary and permanent hearing loss need an SNR of at least +15—that is, 15 dB greater than the background noise—for adequate speech intelligibility.

Children with other disabilities will also benefit from good classroom acoustics. In particular, children who receive speech therapy—the most frequently delivered special service in elementary schools " need good listening conditions for themselves and their listeners. Research suggests that children who have auditory processing, language, and learning disabilities, particularly attention deficit disorders, find it easier to focus on an educational task if the SNR is higher. Audiologists have also called attention to children at risk because of age (young children just acquiring language generally need higher SNR values than adults) and native language (children for whom English is a second language have similar needs). Every student will learn more effectively in good listening conditions, but for children with hearing loss, including the often-undiagnosed temporary losses due to the common, chronic ear infections of childhood, good acoustics are an essential basis for learning and for other remediations necessary to learning.

Amplification

Many children with hearing loss will use both personal (hearing aid) and classroom (radio frequency or FM) amplification to maximize SNR values. Amplification technologies can supplement the speech signal but cannot compensate for (or overcome) a poor acoustical environment. To be effective, amplification requires control of reverberation times and background noise. Furthermore, background noise, when amplified, can be painful and disruptive for children with a variety of auditory disabilities.

Many schools are now installing soundfield systems—amplification distributed throughout the classroom—to improve listening conditions for all students, not just those who have hearing impairments. Note, however, that such amplification will add to background noise in work areas within the room and may impinge on adjacent spaces without adequate acoustical barriers in partition walls. In addition, most assistive listening and soundfield systems require that the speaker use a microphone, which may not always be feasible in group situations. Input from other speakers—aides, peers, and audio equipment, for instance—will not generally be amplified, and casual remarks may be missed. Educators recognize that the incidental learning that occurs in a classroom is as important to socialization, skill mastery, and self-esteem as is the formal curriculum delivered by the teacher. And instructional methods are changing to small-group, computer-supported learning that makes it difficult to utilize these amplification technologies. By optimizing basic room acoustics, design professionals can ensure that all children have maximal access to teaching 'signals', both directly and through assistive technologies.

Design Issues

The characteristics of good architectural acoustics and the means to achieve good listening conditions in classrooms are well-known and not difficult or costly to apply in new construction and alterations. School architects who have had a standard education in HVAC and acoustical design may not even require the services of the acoustical consultant they would expect to include in a contract for the design of an audiovisual facility, auditorium, or concert hall. Facility and room acoustical design for good listening and learning environments will consider:

- Site, space, and classroom adjacencies that minimize classroom exposure to environmental, equipment, and occupancy noise;
- Room size and proportion for appropriate sound reflection and absorption;
- Slab, ceiling, roof, and wall construction (including doors and windows) that are appropriate barriers to noise;
- HVAC equipment selection, system design, and installation that minimizes structure, duct, and operating noise;
- Finishes selected and located for proper reverberation control, and
- Attention to electronic and radio-frequency interference with assistive devices.

Good detailing, tight specifications, and careful construction and finishing will also be necessary to ensure that the facility and the spaces within it meet design intent. In general, the objectives of classroom acoustical design should be to control and limit background noise and reverberation.

Background Noise

Noise can be mitigated at the source, along its path, and at the receiver. A combination of small improvements at each point can often produce the most cost-effective noise reduction. In general, favorable architectural acoustics will depend upon construction that resists the passage of sound, finishes that absorb sound energy, and HVAC design that minimizes noise output.

The now-common practice of heating, cooling, and ventilating classrooms using through-the-wall or roof-mounted units has had a significant and deleterious effect on classroom acoustics. Few manufacturers have yet been motivated to control the noise of fans, compressors, and air movement through grilles that contributes the largest proportion of background noise in most existing classrooms. The research literature is replete with teacher reports of the need to turn off the heating or cooling unit during important lessons. Children with hearing loss must always be seated away from such noise sources and close to the teacher. While retrofit enclosures can achieve a reduction in noise output, it has been found to be a costly fix that few schools will fund. Ducted (and piped) systems with central HVAC equipment are much more suited to noise management through isolation and the manipulation of duct sizing, length, openings, and lining, but are often a casualty of cost-cutting. Unit ventilators are typically specified for hotel and motel guestroom construction where the background noise they contribute helps maintain acoustic privacy between rooms; as currently engineered, they are not appropriate for spaces in which communication is a primary function. What is most needed is a collaboration between schools, designers, and manufacturers to reduce the noise levels of such units, a re-engineering process that is being applied to many appliances and equipment.

Background noise from the exterior environment can be managed with wall construction of appropriate sound resistance and the specification of multi-pane glazing and well-insulated and isolated frames typically required for energy conservation (sound reduction can be enhanced by pairing glass of different thicknesses). Windows and other openings are the weak link in building enclosure. Where exterior noise is significant, it will not be possible to maintain speech intelligibility in classrooms with the windows open.

Background noise can also enter the classroom from adjacent spaces—other classrooms, the gymnasium, cafeteria, or auditorium, and corridors—through walls, doors, plumbing chases, and ducts. Sound-resistant slab, wall, and ceiling construction and well-gasketed, sound-rated doors are the answer here. When designing building alarm systems, it is a good idea to pair visible (strobe) and audible alarms in classrooms, since room enclosures with high Sound Transmission Class (STC) values may mute corridor bells.

Noise generated within the classroom also contributes to background noise levels. Audio-visual equipment, computers, the pump in an aquarium, even lighting ballasts add decibels to the mix. The self-noise of students working in small groups can be mitigated by increasing absorbent surfaces. Carpeting is used in many elementary schools to quiet the noise of footfalls and furniture shifting by younger children, who need higher SNRs for speech intelligibility. Recent advances in carpet technology have led to the availability of bacteria-resistant floor coverings.

Reverberation

Reverberation is the measure of the time (in seconds) that it takes a given sound to decay by 60 decibels. Long reverberation times are not desirable because late-arriving sounds blur speech clarity and increase background noise. However, early sound reflections in rooms can actually reinforce the speech signal and improve SNR if they arrive at the listener's ear within 50 milliseconds. By placing materials to reflect early sound and absorb late-arriving noise, it is possible to optimize the reverberant characteristics of a given room.

A recent paper by Rebecca Reich and John Bradley of the Canadian National Research Council reports on their investigation of classroom reverberation through computer modeling. Using the ODEON room acoustics ray tracing program (version 2.6 for DOS), researchers were able to identify optimum conditions for speech as a reverberation time of 0.5 seconds (the research also showed that speech intelligibility varied only one-half of one percent between reverberations of 0.3 and 0.6 seconds). Nine different placements of material, each with the same total of sound absorption, were tested. When the source position was located at the head of the room, in traditional classroom style, speech clarity was found to be optimal when the absorptive material was located on the upper portions of classroom side and rear walls.

Interference

Interference from lighting ballasts, radio frequency sources, HVAC controls, and other electrical, electronic, microwave and even infrared sources can compromise the effectiveness of assistive technologies and has become an increasing problem for many people who are hard of hearing. Young children with hearing loss may not be able to identify and call attention to malfunctioning devices. In extreme cases, such as schools located in the path of transmission towers or equipment, it may be necessary to install shielding in exterior wall and roof assemblies.

Accessibility Recommendations

In 1995, the American Speech-Language-Hearing Association (ASHA) published a Position Statement on Acoustics in Educational Settings that called for "appropriate acoustical environments in all educational settings, to include classrooms, assembly areas, and communications-related treatment rooms". ASHA's Acoustical Guidelines recommend that:

- Unoccupied classroom noise levels should not exceed 30 dB(A) or a Noise Criteria (NC)-20 curve[2]
- Reverberation times should not exceed 0.4 seconds, and
- The SNR at a student's ear should exceed a minimum of +15.

The ASHA recommendations are backed by substantial research and are the most authoritative on the subject of listening conditions for children who have hearing loss and other disabilities. An extensive bibliography is included. Self Help for Hard of Hearing People (SHHH), an advocacy organization, has endorsed the ASHA guidelines. AG Bell, an organization whose membership is over 50 percent parents of children with hearing loss and includes many professionals who work with children, advises its members to utilize the ASHA guidelines in advocating for an appropriate acoustical environment for children with hearing loss.

Industry Recommendations and Standards

Industry coverage of acoustical issues rarely includes discussion of the characteristics of good listening conditions for people who are hard of hearing, although specialists in the design of facilities for people who are elderly have begun to recognize this as a significant issue. Acoustical design for children's environments is not typically distinguished from practices suitable for adults.

Criteria for classroom listening conditions at three levels of quality were recently outlined in "Goals and Criteria for Acoustical Planning", a presentation by R. Kring Herbert, FASA, at the 1999 conference "Eliminating Acoustical Barriers to Learning in Classrooms" in New York City, organized by the coalition formed to submit comment to the Board's RFI:

Listening conditions	A-weighted sound level (dBA)	Room criteria (RC), Neutral [1]	RT–60 (seconds)
Desirable (new construction)	31	RC–25N	0.5
Adequate (alterations)	36	RC–30N	0.5
Poor	41	RC–35N	0.5

[1] Room criteria ratings were developed to assess the effect on listeners of HVAC noise, which can be annoyingly "hissy" (H) in the high frequencies and "rumbly" (R) in the low frequencies. Sound pressure levels for RC curves are lower at both extremes (46 dB maximum at 63 Hz and 13 dB maximum at 8000 Hz for RC–20) than NC curves, although they are identical at mid-range (26 dB at 500 Hz).

Textbooks on acoustical design typically contain guidelines for maximum background noise in different occupancies. Recommendations in current publications show a range of 25 dB(A) to 35 dB(A) maximum for the interior sound level in unoccupied classrooms. Most texts do not distinguish between classrooms for children and classrooms for adults. Only Egan, of those consulted in the Board's analysis, considered hard-of-hearing users. Egan recommends a 5 dB reduction in background noise for facilities serving people who have hearing loss. Reverberation times between 0.5 and 0.8 seconds have been recommended for classroom uses.

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[2] NC curves weight sound pressure levels across 8 standard frequencies to approximate human perception of sound, which is greater in the high frequencies. To meet NC–20, sound pressure level at the lowest standard frequency (63 Hz) can be as much as 50 dB, while at the highest frequency (8000 Hz) it can be no more than 16 dB).

The American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) in its 1995 Handbook suggests a Room Criteria maximum of RC–40N for small classrooms (<750 SF) and RC–35N for larger classrooms. This is considerably higher than most acoustical textbooks recommend, and recognizes no adjustment for classrooms for children or for people who have hearing loss.

The American National Standards Institute (ANSI) in S12.2–1995, "Criteria for Evaluating Room Noise" suggests RC–25–30 for lecture halls and classrooms and RC–35–40 for open plan facilities (where it is significantly more difficult to control background noise). Again, no adjustment is suggested for younger listeners or those who have hearing impairments.

Acoustical Modeling and Measurement

Computer modeling is a useful way to project the effects of various design decisions and materials selections on the speech intelligibility of a classroom. Professional engineering software for acoustics analysis has been used for many years in the design of performance halls. New user-friendly software packages are now becoming available to assist non-specialists to determine reverberation time and specify proper locations and areas of absorbency.

Both background noise and reverberation time can also be calculated from relatively simple equations contained (and explained) in most acoustics texts. Editions of M. David Egan's text "Concepts in Architectural Acoustics" has been a standard reference work for students of architecture since 1972. Tables of material and assembly characteristics needed for acoustics computations, including values for absorbency, sound transmission, impact isolation and other factors, are published in many textbooks; 'Part IX Acoustics', in "Mechanical and Electrical Equipment for Buildings", by Stein, Reynolds, and McGuinness, has been an assigned text for architecture and engineering students through eight editions. Many manufacturers of acoustical finishes and products also provide details on wall, partition, slab, ceiling, and roof design in catalogs and product data sheets. "Architectural Graphic Standards" and "Timesavers Standards", key resources for design professionals, both contain basic information on architectural acoustics and noise control, including design and construction details and noise reduction values.

Background noise in existing facilities can be metered on several scales, including the A scale, which is adjusted for human hearing. Simple inexpensive devices may be adequate to determine the existence of an acoustical problem, but more sophisticated and costly devices are necessary to perform an acoustical analysis. Reverberation meters also exist, although they do not seem to be much used by consultants.

Standard-Setting and Regulation of the Acoustical Environment

Acoustical standards are of two general types: performance standards, usually combined with a testing protocol, as with ANSI and ASTM standards, or design and construction standards that require a specified sound absorbency or sound transmission or resistance value in building elements—ceilings, walls, windows—known through prior testing to achieve certain results.

Because design, construction, and use all affect the acoustics of a space, design professionals are understandably wary of single-number requirements for reverberation and background noise. A 5 dB difference in room performance could be due to meter quality, changes or omissions in construction, lack of equipment maintenance, teacher fatigue, or even a new flight pattern at a nearby airport.

Sweden, Portugal, Germany, and Italy all have acoustical standards for educational facilities. The Swedish standard is based upon room area and absorbency values for ceiling tiles (the higher the absorbency rating of the material, the less area is required) and on the sound transmission class of wall, floor, and roof/ceiling assemblies. Italy's standard prohibits school construction where environmental noise exceeds certain levels (as, for example, near airports, rail lines, and highways). Research is underway in Great Britain to establish classroom standards for children who are hard-of-hearing.

In the United States, the New York State Department of Education published a manual for classroom design and construction that sets 35 dB(A) as a background noise 'objective' for State school construction. Washington State Department of Health regulations also limit background sound to 35 dB(A) in classrooms. The Los Angeles Unified School District has attempted to limit noise from through-the-wall and rooftop HVAC units through their purchasing program, specifying a 35 dB maximum for equipment noise. The Access Board understands that the School District has not been able to identify a manufacturer of complying units. The District hopes that purchasing volume may encourage manufacturers to develop quieter models.

The model codes (BOCA, UBC, SBC), several state departments of education or health, and the Department of Housing and Urban Development have already adopted acoustical standards for multifamily residential occupancies that establish minimum values for Sound Transmission Class (STC) and Impact Isolation Class (IIC) of wall and slab/roof assemblies. Multifamily housing in California is subject to design and construction standards for acoustical performance. Environmental (exterior) noise is also limited by regulation in many jurisdictions, and others require construction that will provide an interior noise level of no more than 45–55 dB.

Resources

There are many other resources available for parents, schools, audiologists, advocates, and design professionals who wish to improve their understanding of issues in classroom acoustics. A coalition of organizations assembled in 1998 to respond to the Access Board's Request for Information (RFI) maintains a lively listserv and archive at classroomacoustics@onelist.com and contains links to other sites of interest. Professional members include the Acoustical Society of America, Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), the American Academy of Audiology (AAA), the American Speech-Language-Hearing Association (ASHA), the Educational Audiology Association (EAA), the National Council of Acoustical Consultants (NCAC), Self Help for Hard of Hearing People (SHHH), and the Council of Educational Facility Planners, International (CEFPI). The U.S. Department of Education maintains a National Clearinghouse on Education Facilities. Its website on classroom facility design at http://edfacilities.org includes references to research and publications on classroom acoustics.

Additional reading and reference material, including electronic links to other websites of interest, will be posted on the Access Board's website at http://www.access-board.gov/rules/acoustic3.htm.

June I. Kailes,

Chair, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 99–28941 Filed 11–5–99; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 086–0018b; FRL–6468–7]

Approval and Promulgation of State Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Arizona State Implementation Plan (SIP) which concern the control of particulate matter (PM) emissions from residential wood combustion.

The intended effect of this action is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, EPA has published a direct final rulemaking fully approving these revisions without prior proposal because the Agency views them as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by December 8, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue #201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT: Patricia Bowlin, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION: This document concerns Maricopa County (Maricopa) Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance. These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on August 4, 1999. For further information, please see the information provided in the Direct Final action that is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 25, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–28883 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK-3-1-5201b; FRL–6470–5]

Approval and Promulgation of Implementation Plans; Oklahoma; Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action approving a revision to the Oklahoma State Implementation Plan (SIP). The revision concerns approval of the Oklahoma Visibility Protection Plan for the Federal Class I area. The EPA is also proposing to remove the disapproval of the Oklahoma SIP and resultant Federal Implementation Plan for failure to meet the requirements of section 169A of the Federal Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by December 8, 1999.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION: This document concerns approval of the Oklahoma Visibility Protection Plan for the Federal Class I area. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 27, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 99–29070 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7302]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376. § 67.4.

2. The table published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Perry County and Incorporated Areas.	Cypress Creek	Approximately 4,200 feet downstream fo Highway 9.	None	*294
			Approximately 2,000 feet upstream of Johnson Road.	None	*294
		Haydou Branch	At confluence with Cypress Creek	None	*294
			Approximately 2,200 feet upstream of Adelle Road.	None	*357

Maps are available for inspection at the County Courthouse, Main Street & Highway 60, Perryville, Arkansas.

Send comments to the Honorable George C. McNeal, Perry County Judge, P.O. Box 358, Perryville, Arkansas 72126.

Maps are available for inspection at Town Hall, 104 South Johnson Street, Perry, Arkansas.

Send comments to The Honorable Willie Summers, Mayor, Town of Perry, P.O. Box 36, Perry, Arkansas 72125.

State	City/town/county	Source of flooding	Location	Existing	Modified
California	Amador County (Unincorporated Areas).	Sutter Creek	At Old Stockton Road	None	*271
			Approximately 2,780 feet upstream from Preston Avenue (Highway 104).	None	*313
		Sutter Creek Overflow	Approximately 230 feet upstream of Stockton Road.	None	*259
			Approximately 2,400 feet upstream from the Southern Pacific Railroad.	None	*279

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD) Existing	# Depth in feet above ground. * Elevation in feet. (NGVD) Modified

Maps are available for inspection at Amador County Planning Department, 500 Argonaut Lane, Jackson, California.

Send comments to The Honorable Louis Boitano, Chairperson, Amador County Board of Supervisors, 500 Argonaut Lane, Jackson, California 95642.

State	City/town/county	Source of flooding	Location	Existing	Modified
California	Ione (City) Amador County.	Sutter Creek	Approximately 11,880 feet upstream of mouth.	*270	*271
			Approximately 2,160 feet upstream of Preston Avenue.	None	*312
		Sutter Creek Overflow	Approximately 1,820 feet downstream of Depot Road.	*279	*278
			At its divergence from Sutter Creek	*304	*302

Maps are available for inspection at P.O. Box 398, Ione, California.

Send comments to The Honorable Tom Hays, Mayor, City of Ione, Box 398, Ione, California 95640.

State	City/town/county	Source of flooding	Location	Existing	Modified
Iowa	Harrison County (Unincorporated Areas).	Missouri River	Approximately 20,000 feet downstream of Highway 30.	None	*1,005
			Approximately 10,000 feet upstream of 120th Street.	None	1,032

Maps are available for inspection at the Harrison County, Emergency Management Agency, 116 North 2nd Avenue, Logan, Iowa.

Send comments to The Honorable Robert Smith, Chairperson, Harrison County Board of Supervisors, 111 North 2nd Avenue, Logan, Iowa 51546.

State	City/town/county	Source of flooding	Location	Existing	Modified
Iowa	Swisher (City) Johnson County.	Swisher Creek	Approximately 16,000 feet above mouth	None	*747
			Approximately 19,600 feet above mouth	None	*757

Maps are available for inspection at City Hall, 66 Second Street, Swisher, Iowa.

Send comments to The Honorable Scotti Grabe, Mayor, City of Swisher, 66 Second Street, Swisher, Iowa 52338.

State	City/town/county	Source of flooding	Location	Existing	Modified
Kansas	Leavenworth (County) Unicorporated Areas.	Tonganoxie Creek	Approximately 4,500 feet downstream of Washington Street.	*834	*834
			Approximately 3,800 feet downstream of Washington Street.	*836	*835
			Approximately 1,700 feet upstream of 218th Street.	*863	*863
		Unnamed Tributary #3	Approximately 1,925 feet from confluence with Tonganoxie Creek.	None	*863
			Approximately 4,450 feet upstream from its confluence with Tonganoxie Creek.	None	*872

Maps are available for inspection at the Leavenworth County Courthouse, 300 Walnut, Leavenworth, Kansas.

Send comments to The Honorable Robert Adams, Chairperson, Leavenworth County, Board of Commissioners, 300 Walnut, Leavenworth, Kansas 66048.

State	City/town/county	Source of flooding	Location	Existing	Modified
Kansas	Tonganoxie (City) Leavenworth County.	Tonganoxie Creek	Approximately 4,500 feet downstream of Fourth Street.	*843	*843
			Approximately 3,300 Feet downstream of Fourth Street.	None	*843
			Approximately 100 feet upstream of 218th Street.	*863	*862
		Unnamed Tributary #3	At confluence with Tonganoxie Creek	None	*863
			Approximately 1,925 feet upstream of confluence with Tonganoxie Creek.	None	*863

Maps are available for inspection at City Hall, 321 S. Delaware, Tonganoxie, Kansas.

Send comments to The Honorable John Franiuk, Mayor, City of Tonganoxie, P.O. Box 326, Tonganoxie, Kansas 66086.

State	City/town/county	Source of flooding	Location	Existing	Modified
Nevada	Mineral County (Unincorporated Areas).	Corey Creek	Approximately 50 feet downstream of U.S. Highway 95.	None	*4,253
			Approximately 3.6 miles upstream of 1 Street in Hawthorne.	None	*5,028
		Corey Creek Overflow	Approximately 500 feet upstream of State Highway 359.	None	*4,858
			@Approximately 1,500 feet upstream of State Highway 359.	None	*4,906

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at Mineral County Courthouse, Clerk & Treasurer's Office, Corner of 1st and A Streets, Hawthorne, Nevada.					
Send comments to the Honorable Jackie Wallis, Chairperson, Mineral County Commissioners, P.O. Box 1095, Hawthorne, Nevada 89415.					
Oregon	Clakamas County (Unincorporated Areas).	Tickle Creek	Approximately 2,600 feet downstream of Southeast 326nd Avenue.	None	*672
			@Approximately 2,350 feet upstream of Southeast 395th Avenue.	None	*1,011
Maps are available for inspection at the Clackamas County Department of Transportation and Development, 902 Abernathy Road, Oregon City, Oregon.					
Send comments to the Honorable Bill Kennemer, Chairperson, Board of Commissioners, Clackamas County, 906 Main Street, Oregon City, Oregon 97045.					
Oregon	Sandy (City) Clackamas County.	Tickle Creek	Aproximately 1,980 feet downstream of 362nd Avenue.	None	*684
			Approximately 1,620 feet upstream of Highway 211.	None	*946
Maps are available for inspection at the Planning and Dvelopment Department,, 39250 Pioneer Boulevard, Sandy, Oregon.					
Send comments to the Honorable Linda Malone, Mayor, City of Sandy, 39250 Pioneer Boulevard, Sandy, Oregon 97055.					
Wyoming	Green River (Town) Sweetwater County.	Bitter Creek	Located at confluence of Bitter Creek with Green River.	None	*6,075
			Located approximately 2,160 feet upstream of the confluence of Bitter Creek with Green River.	None	86,086
			Approximately 3,200 feet downstream of the Teton Boulevard Bridge.	None	*6,068
			Located approximately 6,800 feet upstream of the Union Pacific Railroad Bridge.	None	*6,090
Maps are available for inspection at the Community Develpment Department, 50 East Second North Street, Green River, Wyoming.					
Send comments to the Honorable Norm Stark, Mayor, Town of Green River, 50 East Second North Street, Green River, Wyoming 82935.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–29169 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register
Vol. 64, No. 215
Monday, November 8, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–00–327N]

United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn. Specifically, AMS is providing for the "individual attributes" procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects); including varietal types of supersweet varieties in the grade standards; replacing dual grade nomenclature with single letter grade designations; removing the recommended minimum drained weight criteria from the grade standards and providing the criteria in the grading manual; removing the score sheet for canned whole kernel corn; and making minor editorial changes. These changes will improve the use of the standard.

EFFECTIVE DATE: December 8, 1999.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, P.O. Box 96456; Washington, D.C. 20090–6456; fax (202) 690–1087; or e-mail Karen.Kaufman@usda.gov. The current United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn, along with the changes, are available either through the address cited above or by accessing AMS's Home Page on the Internet at: www.ams.usda.gov/standards/vegcan.htm.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." The Agricultural Marketing Service (AMS) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Canned Whole Kernel Corn do not appear in the Code of Federal Regulations but are maintained by USDA.

AMS received a petition from the National Food Processors Association (NFPA), requesting that the U.S. grade standards for canned whole kernel corn be revised. NFPA represents over 550 food industry companies[1].

NFPA specifically requested that the U.S. grade standards for canned whole kernel corn, which are currently based on cumulative score points, be modified by converting the U.S. grade standards to statistically-based individual attributes grade standards, similar to the U.S. grade standards for canned green and wax beans (58 FR 4295, January 14, 1993).

In addition, NFPA requested the grade standards include other varietal types *i.e.*, supersweet corn. These newer varieties possess flavor, tenderness, and maturity characteristics that vary somewhat from conventional corn. The proposed revision of the grade standards would include the quality characteristics for these varietal types, for example, appearance, cut, flavor and odor, tenderness and maturity, extraneous vegetable material, specified defects, seriously damaged kernels, damaged kernels and pulled kernels.

NFPA also proposed removing the recommended minimum drained weight criteria from the grade standards and relocating it in the Grading Manual for Canned Whole Kernel Corn since drained weight, as such, is not a factor of quality for the purpose of these grades.

AMS also proposed to change the standard by replacing dual grade nomenclature with single letter grade designations; removing the recommended minimum drained weight criteria from the grade standards and providing the criteria in the grading manual; removing the score sheet for canned whole kernel corn; and making minor editorial changes.

A notice proposing changes to the United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn was published in the March 4, 1999, **Federal Register** (63 FR 2357). AMS received three comments on the Notice, two (NFPA and Midwest Food Processors Association) in favor of their recommended changes and one (a private industry canner) against the proposed changes to the standards. NFPA and the Midwest Food Processors Association submitted very similar proposals and are in agreement with the proposed changes. The commentor that opposed believed that the proposed change, from cumulative score points, to individual attributes, would create an unfair business environment and "that the energy and time that it would take to change the Industry to the new standards is unnecessary and does not outweigh the benefits that would be gained".

AMS believes that revisions to the standard are needed to meet the needs of the industry and that these changes will allow for a more equitable marketing environment for all canned whole kernel corn processors.

Accordingly, based on all the information we have reviewed, AMS is changing the U.S. Standards for Grades of Canned Whole Kernel Corn by providing for the "individual attributes" procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects); including varietal types of supersweet varieties in the grade standards; replacing dual grade nomenclature with single letter grade designations; removing the recommended minimum drained weight criteria from the grade standards and provide the criteria in the grading manual; removing the score sheet for canned whole kernel corn; and making minor editorial changes.

This revision becomes effective 30 days after date of publication of this notice in the **Federal Register**.

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[1] Source—USDA, NASS, ASB.

Authority: 7 U.S.C. 1621–1627.

Dated: November 2, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–29211 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare Environmental Impact Statement, South Fourth of July Timber Sale

SUMMARY: The Salmon-Challis National Forest will prepare an Environmental Impact Statement to document the analysis and disclose the environmental impacts of a proposed timber sale in the South Fourth of July subwatershed in the Panther Creek drainage.

The Salmon/Cobalt Ranger District is proposing to manage forested vegetation on approximately 1,855 acres through commercial timber harvest practices and associated pre-commercial thinning. The Interdisciplinary Team also reviewed the effectiveness of travel management closures in meeting the Forest Travel Plan; the Team recommended some road closure changes or modifications in order to better meet the Travel Plan objectives. It will take approximately three to five years to complete the harvest, firewood gathering, slash disposal and post sale pre-commercial thinning. No timber harvest would occur within PACFISH defined riparian habitat conservation areas. The analysis area is approximately 47,600 acres and is located Township 18 North, Range 18 East; Township 19 North, Ranges 17 and 18 East; Township 20 North, Ranges 17 and 18 East; Township 21 North, Ranges 17 and 18 East; Boise Meridian, Lemhi County, Idaho. The analysis area is completely within the Panther Creek drainage. None of the harvest units are within inventoried roadless areas identified in the Salmon National Forest Land and Resource Management Plan.

DATES: Written comments concerning the project described in this notice should be received by December 15, 1999, to ensure timely consideration. No scoping meetings are planned at this time.

ADDRESSES: Send written comments to District Ranger Terry Hershey, Salmon/Cobalt Ranger District, RR2, Box 600, Salmon, ID 83467.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and Environmental Impact Statement should be directed to Wayne Hecker at 208–756–5100.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information and comments from the Federal, State and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

Information received will be used in preparation of the Draft Environmental Impact Statement and Final Environmental Impact Statement. For the most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register**. The Responsible Official is George Matejko, Forest Supervisor, Salmon-Challis National Forest. The decision to be made to whether to harvest National Forest System timber and improve conditions for growth and regeneration of ponderosa pine and lodgepole pine stands. The draft is expected to be available in March of 2000, with a Final Environmental Impact Statement estimated to be completed in June of 2000. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978)*. Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts, *City of Angoon* v. *Hodel, 803 F.2d 1016 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)*. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapter of the Draft Environmental Impact Statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the Draft Environmental Impact Statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality. Persons requesting such confidentiality should be aware that, under the Freedom of Information Act, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be submitted with or without name and address within 10 days.

Dated: October 8, 1999.

George Matejko,

Forest Supervisor.

[FR Doc. 99–29096 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on November 18–19, 1999, at the Klamath County Community Meeting Room, in the Klamath County Courthouse, 316 Main Street, Klamath Falls, Oregon. On Thursday, November 18, the meeting will start at 9:30 a.m. and will adjourn at 5 p.m. On Friday, November 19, the meeting will start at 8 a.m. and adjourn at 1 p.m. Agenda items for the meeting include: (1) Survey and Manage Update; (2) Total Maximum Daily Load Letter Proposal; (3) Watershed Analysis Prioritization on the Shasta-Trinity National Forests; (4) Subcommittee Reports; and (5) Public Comment Periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468 (voice), TDD 530–841–4573.

Dated: November 1, 1999.

Margaret J. Boland,

Forest Supervisor.

[FR Doc. 99–29112 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of application filing deadline.

SUMMARY: The Rural Utilities Service (RUS) announces its Distance Learning and Telemedicine Program application window for funding during fiscal year (FY) 2000. For FY 2000, $20 million in grants and $200 million in loans will be made available for distance learning and telemedicine projects serving rural America. The funding will be provided in three categories: (1) $13 million will be available for grants; (2) $130 million will be available for loans; and (3) $77 million will be available for combination grants and loans ($7 million in grants paired with $70 million in loans).

DATES: Applications for grants must be postmarked no later than Friday, March 17, 2000. Applications for FY 2000 loans or combination loans and grants may be submitted at anytime up to September 30, 2000, and will be processed on a first-come, first-serve basis.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division, Telecommunications Program."

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron, Director, Advanced Services Division, Telecommunications Program, Rural Utilities Service, STOP 1550, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 690–4493, Facsimile (202) 720–1051.

SUPPLEMENTARY INFORMATION: For FY 2000, $13 million in grants, a combination of $7 million in grants paired with $70 million in loans, and $130 million in loans will be made available for distance learning and telemedicine projects.

Notice is hereby given that under 7 CFR 1703.124, 1703.133, and 1703.143, RUS has determined the maximum amount of an application for a grant that will be considered for funding in FY 2000 as $350,000. The maximum amount for a loan, generally, that will be considered for funding in FY 2000 is $10,000,000. However, RUS may fund a project greater than $10,000,000 subject to the project?s feasibility and the availability of loan funds.

Applications for financial assistance must be submitted in accordance with 7 CFR part 1703, subparts D, E, F, and G, which establish the policies and procedures for submitting an application for financial assistance. These subparts and an application guide to assist in the preparation of applications are available on the Internet at the following address: "http://www.usda.gov/rus/dlt/dlml.htm". Applications guides may also be requested from RUS by contacting one of the following Area Offices: Eastern Area, USDA—RUS, Phone: (202) 690–4673; Northwest Area, USDA—RUS, Phone: (202) 720–1025; Southwest Area, USDA—RUS, Phone: (202) 720–0800.

Each application will be reviewed for completeness in accordance with 7 CFR part 1703, subparts D, E, F, and G. The applicant will be notified within 15 working days of receipt of the results of this review, citing any information needed to complete the application. It is suggested that grant applications be submitted prior to the deadline to ensure they can be reviewed and considered complete by the deadline.

Dated: November 3, 1999.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–29117 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Survey of Residential Alterations and Repairs.

Form Number(s): SORAR–705.

Agency Approval Number: 0607–0130.

Type of Request: Extension of a currently approved collection.

Burden: 2,400 hours.

Number of Respondents: 2,400.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau conducts the Quarterly Survey of Residential Alterations and Repairs to collect information on real-property improvements and repairs from a sample of owners or designated representatives of rental or vacant residential housing units. We mail this survey quarterly to respondents over a one-year period. We use data gathered in this survey as a component to our published estimates of expenditures for residential upkeep and improvement. Data on improvements and repairs to owner occupied housing units are gathered in the Consumer Expenditures Survey and are also incorporated into published estimates. Estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts, and assessments of the construction industry. They also provide all levels of government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis uses the improvement statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

This submission requests a three year extension of the current expiration date. The only change is a 20 percent increase in sample size due to an equivalent sample size increase in the Consumer Expenditures Survey, from which the Quarterly Survey of Residential Alterations and Repairs obtains its sample.

Affected Public: Individuals or households, businesses or other for-profit organizations, State, Local or Tribal Government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–29115 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 50–99]

Foreign-Trade Zone 77—Memphis, TN, Expansion of Manufacturing Authority—Subzone 77B Brother Industries (U.S.A.) Inc., (Postage Franking Machines and Electronic Business Equipment), Shelby County, Tennessee

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis, Tennessee, grantee of FTZ 77, requesting on behalf of Brother Industries (U.S.A.) Inc. (Brother), to expand the scope of manufacturing authority under zone procedures within Subzone 77B, at the Brother plant in Shelby County, Tennessee. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 18, 1999.

Subzone 77D was approved by the Board in 1995 at two sites in Bartlett, Tennessee (Shelby County): *Site 1*—a 25-acre manufacturing facility at Brother Boulevard and Highway 64, and *Site 2*—a 20-acre warehouse facility at 3141 Appling Road, with authority granted for the manufacture of electric and automatic typewriters and word processors (Board Order 774, 60 FR 48100, 9/18/95).

Brother is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 77B to include postage franking machines and electronic business equipment. At the outset, the company is expecting to manufacture postage franking machines (HTSUS 8470.90—duty-free). Brother is also requesting to include in its scope of authority other electronic business equipment that it may produce in the future, including computer printers, facsimile machines, multifunction printer/facsimile/copier machines, labeling and barcode printers, and printer supplies. Foreign-sourced materials may include the following items: ink cartridge assemblies, printing ink, polyacetals and epoxide resins, plastic tubes, hoses and fittings, rubber and plastic self-adhesive film, friction tape, transmission belts, paper pulp filter blocks, screws, washers, bolts, springs, parts and accessories of calculators, cash registers and postage franking machines, electromechanical devices with self-contained motors, computer subassemblies and parts, ball or roller bearings, transmission shafts, electric motors and generators, transformers, adaptors, capacitors, resistors, printed circuit boards (PCBs), PCB shield plates, printed wiring boards, surge arrestors, electrical switching equipment, semiconductor devices, integrated circuits, insulated wire and cable, wire and cable fittings, and liquid crystal devices. Foreign-sourced materials will account for, on average, 50 percent of the postage franking machine's value.

FTZ procedures would exempt Brother from Customs duty payments on foreign components used in export production (some 10% of production). On its domestic sales, Brother would be able to choose the lower duty rate (duty-free to 8.7%, mostly duty-free) that applies to the finished products for the foreign components noted above (duty-free to 12.5%, weighted average for postage franking machines is 1.3%). FTZ procedures will also help Brother implement a more cost-effective system for handling Customs requirements (including weekly entry filings, reduced brokerage fees and Customs merchandise processing fees). The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 7, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 24, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

U.S. Department of Commerce, Export Assistance Center, Buckman Hall, 650 East Parkway South, Suite 348, Memphis, Tennessee 38104.

Dated: October 27, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–29201 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioner and three producers/exporters of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Sdn. Bhd., Heveafil Sdn. Bhd./Filmax Sdn. Bhd, Rubberflex Sdn. Bhd., and Rubfil Sdn. Bhd.). The period of review is October 1, 1997, through September 30, 1998.

We have preliminarily determined that sales have been made below the normal value by three of the four companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments

in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1998, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on extruded rubber thread from Malaysia (63 FR 54440).

In accordance with 19 CFR 351.213(b)(1), on October 9, 1998, the petitioner, North American Rubber Thread, requested an administrative review of the antidumping order covering the period October 1, 1997, through September 30, 1998, for the following producers and exporters of extruded rubber thread: Filati Lastex Sdn. Bhd. (Filati), Heveafil Sdn. Bhd./Filmax Sdn. Bhd. (Heveafil), Rubberflex Sdn. Bhd. (Rubberflex), and Rubfil Sdn. Bhd. (Rubfil). On October 27, 1998, Filati, Heveafil, and Rubfil also requested an administrative review.

On November 30, 1998, the Department initiated an administrative review for Filati, Heveafil, Rubberflex, and Rubfil (63 FR 65748 (Nov. 30, 1998)) and issued questionnaires to each of these companies on December 9, 1998.

In February and March 1999, we received responses from Filati, Heveafil, and Rubberflex. We received no response from Rubfil. Because Rubfil did not respond to the questionnaire, we have assigned a margin to Rubfil based on facts available. For further discussion, see the "Facts Available" section, below.

In June and July 1999, we issued supplemental questionnaires to Filati, Heveafil, and Rubberflex. We received responses to these questionnaires in September 1999.

In October 1999, we issued additional supplemental questionnaires to the three respondents. We received responses to these questionnaires in October 1999.

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Period of Review

The period of review (POR) is October 1, 1997, through September 30, 1998.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Facts Available

A. Use of Facts Available for Rubfil

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in December 1998. Because Rubfil did not respond to the Department's questionnaire, we must use facts otherwise available to determine Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted.

As adverse facts available for Rubfil, we have used the highest rate for any respondent in any segment of this proceeding. This rate is 52.89 percent. We find that the rate of 52.89 percent, which was assigned in a prior administrative review, is sufficiently high as to effectuate the purpose of the facts available rule (*see Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752 (Mar. 16, 1998) (*Thread Fourth Review*)).

B. Corroboration of Secondary Information

As facts available in this case, the Department has used information derived from a prior administrative review, which constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the same or a prior segment of this proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers* *from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (*Fresh Cut Flowers*) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For Rubfil, we examined the rate applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to its probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1995–1996 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Rubfil. Thus, the Department considers this rate to be appropriate adverse facts available.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the export price (EP) to the NV for Heveafil and Rubberflex, as specified in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. We compared the constructed export price (CEP) to the NV for Filati, Heveafil, and Rubberflex, as also specified in those sections.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers). Based on the information on the record, no level of trade adjustment was warranted for any respondent. Although Filati claimed that the home market level was different, and more remote, than the level of trade of the CEP, we have found the levels of trade to be the same.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that Filati, Heveafil, and Rubberflex performed essentially the same selling functions in their sales offices in Malaysia for both home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to any of the respondents. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated November 1, 1999.

Export Price and Constructed Export Price

For Heveafil and Rubberflex, we based the U.S. price on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

In addition, for all companies, we based the U.S. price on CEP where sales to the unaffiliated purchaser took place after importation into the United States, in accordance with section 772(b) of the Act. We also based U.S. price on CEP for Filati and Heveafil where the merchandise was shipped directly to certain unaffiliated customers because we found that the extent of the affiliates' activities performed in the United States in connection with those sales was significant.

A. Filati

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. *See Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 64 FR 12967, 12968 (Mar. 16, 1999) *(Thread Fifth Review); Thread Fourth Review*, 63 FR at 12754; and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results* *of Antidumping Duty Administrative Reviews*, 62 FR 54043, 54075 (Oct. 17, 1997).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. Heveafil

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Heveafil and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

C. Rubberflex

We based EP or CEP, as appropriate, on the starting price to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for rebates. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their costs of production (COPs) in this review because the Department had disregarded sales below the COP for these companies in the most recent administrative review. *See Thread Fifth Review*, 64 FR at 12969. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts, and rebates.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(c)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of extruded rubber thread for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Company-specific calculations are discussed below.

A. Filati

In all instances, NV for Filati was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. For all price-to-price comparisons, we made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

B. Heveafil

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) if the Act, we also made deductions for home market credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act.

C. Rubberflex

In all instances, NV for Rubberflex was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act.

For home market price-to-EP comparisons, we made circumstance of sale adjustments for differences in credit expenses, pursuant to section 773(a)(6)(C)(iii) if the Act. For home market price-to-CEP comparisons, we made deductions for home market credit expenses.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period October 1, 1997, through September 30, 1998:

Manufacturer/exporter	Percent margin
Filati Lastex Sdn. Bhd	0.47
Heveafil Sdn. Bhd	
Filmax Sdn. Bhd	0.17
Rubberflex Sdn Bhd	6.35
Rubfil Sdn. Bhd	52.89

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days of the publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales, where available. Where the entered value was not available, we estimated the entered value by subtracting international and U.S. movement expenses from the gross sales value. These rates will be assessed uniformly on all entries of particular importers made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50) percent. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for Filati, Heveafil, Rubberflex, and Rubfil will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29198 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China: Notice of Extension of Time Limit for Administrative Review

AGENCY: Import Administration, International trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the fifth review of the antidumping order on certain helical spring lock washers from the People's Republic of China. The period of review is October 1, 1997 to September 30, 1998. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Annika O'Hara, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or (202) 482–3798, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), (*i.e.*, November 10, 1999), the Department of Commerce ("that Department") is extending the time limit for completion of the final results until May 8, 2000.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–29199 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Preliminary Negative Critical Circumstances Determination: Certain Polyester Staple Fiber From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Alysia Wilson, Office 1 AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4087 or (202) 482–0108, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Preliminary Determination

We preliminarily determine that certain polyester staple fiber (PSF) from Taiwan is not being sold, nor is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act.

Case History

This investigation was initiated on April 22, 1999. *See Initiation of Antidumping Duty Investigations: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 64 FR 23053 (April 29, 1999) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred:

On May 17, 1999, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the product under investigation are materially injuring the United States industry.

In the *Initiation Notice* and in a letter dated May 24, 1999, the Department solicited comments on the scope of the investigation and matching criteria. We received comments on the scope of the investigation and matching criteria from various interested parties May 12, 1999 through June 7, 1999. On June 2, 1999, the Department issued antidumping questionnaires to the two largest producers/exporters of subject merchandise (i.e., Far Eastern Textile Ltd. (Far Eastern) and Nan Ya Plastics Corporation (Nan Ya), collectively referred to as "the respondents"), as indicated by information on the record of the proceeding at that time.

The respondents submitted their initial responses to the questionnaire July 2 through 29, 1999. The petitioners submitted comments on these responses. After analyzing the responses and the petitioners' comments, we issued supplemental questionnaires to the respondents on August 6, 1999. We received the narrative responses to these supplemental questionnaires August 12 through 27, 1999, and the associated databases on September 3, 1999. On September 14, 1999, we asked respondents to provide explanations for all of the updates and changes to their databases submitted September 3, 1999. The respondents submitted their explanations on September 17 and 20, 1999. On October 13, 1999, the petitioners submitted additional comments on respondents' questionnaire responses. The Department issued another supplemental questionnaire to Nan Ya on October 19, 1999. On October 25, 1999, Nan Ya responded to the last supplemental questionnaire. In addition, the Department requested certain documentation from Nan Ya on September 16, 1999; Nan Ya supplied these documents on October 26, 1999.

The petitioners submitted an allegation that critical circumstances exist with respect to imports of PSF from Taiwan on July 30, 1999. On August 6, 1999, the Department issued critical circumstances questionnaires as part of the supplemental questionnaires.

On August 25, 1999, at the request of the petitioners, the Department extended the preliminary determination until no later than September 29, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 64 FR 47766 (September 1, 1999). On September 29, 1999, the petitioners requested another extension. In response, the Department extended the preliminary determination until no later than October 4, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 64 FR 55248 (October 12, 1999). We further extended the preliminary determination until no later than October 29, 1999 based on petitioners' September 29, 1999 request. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 64 FR 557001 (October 14, 1999).

Period of Investigation

The period of investigation (POI) is April 1, 1998, through March 31, 1999. This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition.

Scope of Investigation

For purposes of this investigation, the product covered is certain polyester staple fiber. Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this investigation may be coated, usually with a silicon or other finish, or not coated. Certain polyester staple fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 5503.20.00.20 is specifically excluded from this investigation. Also specifically excluded from this investigation are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting).

The merchandise subject to these investigations is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments: As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. Stein Fibers, Ltd. (Stein Fibers), an importer of PSF, requested that the Department modify the scope of investigation to exclude regenerated PSF. Far Eastern and Nan Ya requested that the Department exclude low-melt PSF from the scope of investigation.

Stein Fibers states that under the criteria set forth in the Department's regulations at 19 CFR 351.225(k)(2) (the "Diversified Products criteria"), regenerated fiber does not fall within the scope of this investigation. First, Stein Fibers asserts that regenerated fiber is a low quality product that is not comparable to U.S.-produced high-quality virgin and recycled PSF. Second, Stein Fibers contends that the quality differences result in different expectations by the ultimate user and in the product's ultimate use. Third, Stein Fibers states that regenerated PSF and U.S.-made virgin or recycled PSF do not compete with each other, and therefore, their channels of trade are dissimilar. Finally, Stein Fibers claims that regenerated fiber is never advertised or displayed while particular brands of U.S.-made virgin or recycled PSF are prominently displayed and advertised in the bedding departments of many department stores.

Gates Formed-Fibre Products, Inc. (Gates), an importer of PSF and interested party in the companion antidumping duty investigation of PSF from the Republic of Korea, stated that the black and colored fiber extruded from textile fiber waste that it imports for the manufacture of substrate for automobile trunk liners is a different class or kind of merchandise than the products covered by the petition. Therefore, Gates argued, black automotive substrate (BAS) should be excluded from the scope of the investigation because (1) it cannot be used for the fill applications described in the petition; (2) it is distinct from other fiber products; (3) it should be excluded based on consideration of the "Diversified Products" criteria as set forth in the Department's regulations; (4) the petitioners are considering its exclusion; and (5) if excluded, there would be no risk of circumvention.

With respect to the "Diversified Products" criteria, Gates submitted specific comments on each of the criteria. First, Gates claimed that BAS differs from fiber fill product in all possible model matching criteria. Second, Gates stated that the ultimate purchaser would not accept BAS for use in the manufacture of merchandise such as pillows and ski jackets which require fiber fill. Third, Gates asserted that fiber fill is distributed by importers to manufacturers of pillows, comforters, jackets, etc., which then resell their products to distributors and large retailers. BAS is used in the manufacture of trunk liners which are then sold to original equipment manufacturers or their suppliers. Fourth, BAS cannot be used for fill applications. Fifth, products using fiber fill are advertised directly to consumers while BAS for trunk liners is not advertised to consumers.

Far Eastern and Nan Ya note that low-melt PSF acts as an adhesive to hold other fibers together for non-woven batting in high-loft products. Since low-melt PSF itself is not used as filling and is not similar in appearance to cotton or wool, Far Eastern and Nan Ya state that low-melt PSF is clearly outside the scope of investigation. Moreover, Far Eastern and Nan Ya assert that low-melt PSF is outside the scope of investigation when considered in light of the "Diversified Products" criteria. First, with respect to product characteristics, low-melt PSF consists of an outer sheath and an inner core as opposed to single-component PSF, according to Far Eastern and Nan Ya. Second, with respect to the expectations of the ultimate user and the ultimate use, Far Eastern and Nan Ya point out that low-melt PSF is used as a bonding agent, not as a filler or loft material. Third, Far Eastern and Nan Ya state that while the channels of trade may be similar, this single criterion is not dispositive. Finally, Far Eastern and Nan Ya note that they supply the U.S. market with a particular specification of low-melt PSF suitable for furniture and bedding manufacturing that is not available domestically in the United States.

Saehan Industries Inc. and Samyang Corporation (Saehan/Samyang), respondents in the companion antidumping duty investigation of PSF from the Republic of Korea, stated that conjugate polyester staple fiber (conjugate PSF) and low-melt polyester staple fiber (low-melt PSF) do not fall under the scope of this investigation. Saehan/Samyang argued that conjugate PSF should be excluded from the scope because there is no U.S. industry producing this product. Saehan/Samyang stated that low-melt PSF is not "fiber for fill" and is, thus, not the product targeted by the petitioners. Moreover, Saehan/Samyang claimed that under the "Diversified Products" criteria, conjugate PSF and low-melt PSF are outside the scope of this investigation. First, Saehan/Samyang noted that the manufacturing process for conjugate fiber creates a natural curl or spiral, resulting in greater "fluff." "Regular" fibers, produced by the petitioners, are straight or mechanically crimped and lack the loft of conjugate fiber.

Second, Saehan/Samyang cited testimony given before the ITC asserting that end-users expect greater loft and a down-like quality from conjugate fibers which is not characteristic of the mechanically-crimped fibers produced by DuPont, one of the petitioners. Third, Saehan/Samyang stated that "regular" PSF and conjugate PSF are both used in the production of furniture and home furnishings and, therefore, they are not sold in different channels of trade. However, Saehan/Samyang argued that channels of trade is less significant as a criterion in this case because there are no different channels of trade for any products used in this industry. Fourth, the ultimate use of conjugate PSF is to create a certain level of loft. In the United States, it is either used to provide high-loft characteristics, or it is mixed with "regular" fiber to achieve different levels of loft, and these two fibers are not interchangeable. Fifth, Saehan/Samyang stated that although these products are not advertised or displayed in the same way as products sold directly in the retail market, manufacturers and customers treat the two products very differently.

The petitioners objected to the interested parties' requests that regenerated, low-melt, BAS, and conjugate PSF be excluded from the scope of the investigation. According to the petitioners, these products are all PSF, meet the definition of the scope, and are captured within the scope intended by the petitioners. Furthermore, the petitioners claimed that all of these imported products are domestically available. The petitioners added that there is no basis for creating a separate class or kind of merchandise relating to the PSF under consideration.

For purposes of this preliminary determination and in consideration of comments by interested parties, the Department has not modified the scope of this investigation because the current language reflects the product coverage requested by the petitioners, and we have determined that regenerated, low-melt, BAS, and conjugate PSF fall within that scope. On the issue of whether BAS is a separate class or kind of merchandise under the "Diversified Products" criteria, we will make a determination in the final determination of this investigation.

Critical Circumstances

On July 30, 1999, as amended on August 19, 1999, the petitioners alleged that critical circumstances exist with respect to imports of PSF from Taiwan. In accordance with 19 CFR 351.351(c)(2)(i), since this allegation was filed at least 20 days prior to our preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination.

Section 733(e)(1) of the Act provides that, if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

History of Dumping

The petitioners submitted information indicating that the European Union (EU) imposed antidumping duties on synthetic fibers of polyester (PSF) from Taiwan in 1992; the EU continues to impose antidumping duties on PSF from Taiwan. Based on the foregoing, we preliminarily determine that there is a history of dumping and material injury with respect to PSF from Taiwan. Therefore, we find that the first criterion has been satisfied. We must now examine whether or not respondents had massive imports.

Massive Imports

Far Eastern and Nan Ya submitted data on shipments of subject merchandise to the United States for the eight-month period beginning with December 1998 and ending with July 1999. 19 CFR 351(h) states that, unless the imports during a "relatively short period" have increased by at least 15 percent over the imports during a period immediately preceding the filing of the petition, the Secretary will not consider the imports massive. Furthermore, pursuant to 19 CFR 351(i), the Secretary will normally consider a "relatively short period" the period beginning on the date the proceeding begins and ending at least three months later. We compared Far Eastern's and Nan Ya's exports in the four-month pre-petition period, December 1998 through March 1999, to their exports in the four months after the filing of the petition, April through July 1999. These comparisons indicate that exports by Far Eastern and Nan Ya did not increase by 15 percent respectively from one period to the next.

Based on these facts, we determine that the second criterion for finding that critical circumstances exist is not satisfied. Therefore, we preliminarily determine that critical circumstances do not exist with respect to exports of PSF from Taiwan by Far Eastern and Nan Ya. We will make a final determination concerning critical circumstances when we make our final determination in this investigation.

Product Comparisons

All products produced and sold by the respondents in the home market that fit the definition contained in the Scope of the Investigation section of this notice comprise the foreign like product. (*See* section 771(16) of the Act.) For purposes of this preliminary determination, we have relied on the following criteria, in order, to match U.S. sales of PSF to home market sales of the foreign like product: (1) Fiber composition (conjugate; single component, crimped; low melt; etc.); (2) fiber type (virgin; recycled; blended; regenerated); (3) cross section; (4) finish; and (5) denier. Also, because Nan Ya reported that its sales of PSF in both the home market and in the United States were differentiated by grade of product and Far Eastern reported that its sales were differentiated by color, we compared Nan Ya's sales by grade and Far Eastern's by color.

We first attempted to compare sales of products sold in the U.S. and the home market that were identical with respect to the product matching criteria above. Where we did not find any home market sales of merchandise that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773 (a)(4) of the Act.

Fair Value Comparisons

To determine whether sales of certain polyester staple fiber from Taiwan were made in the United States at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs for comparison to POI weighted-average normal values.

Date of Sale

We have preliminarily determined that the date of sale for home market and U.S. sales of both Nan Ya and Far

Eastern is the purchase order date/order acceptance memo date. According to the respondents, the material terms of sale rarely changed after this date and any quantity changes made to the sale before shipment were within the industry accepted tolerances.

For some sales by Far Eastern, reported purchase order dates occurred after the date of shipment. For these sales, we have relied on the date of shipment as the date of sale since it is the Department's practice not to rely on a date later than the date of shipment as the date of sale (*see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 64 FR 30664, 30666 (July 8, 1999)).

Export Price

In accordance with section 772 of the Act, we based U.S. price on EP. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Consistent with this definition, we found that the respondents made EP sales during the POI. For both respondents, we calculated EP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we used reported gross unit prices on CIF and FOB bases. In accordance with section 772(c)(2) of the Act, we reduced the EP by export taxes, duties and movement expenses, where appropriate. Movement expenses included foreign inland freight, international freight, brokerage and handling, and marine insurance.

Normal Value

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for both producers.

B. Sales to Affiliated Customers

Nan Ya made sales in the home market to affiliated customers. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts and packing. Where the price to Nan Ya's affiliated customer was on average 99.5 percent or more of the price to its unaffiliated customers, we determined that the sales made to the affiliated customer were at arm's length and included those sales in our calculation of NV pursuant to 19 CFR 351.403(c). The prices to some of Nan Ya's affiliated customers were, on average, less than 99.5 percent of the price to unaffiliated customers and were excluded from the calculation of NV because they were determined not to be at arm's length.

C. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of PSF in Taiwan were made at prices below the cost of production (COP). *See Initiation Notice*, 64 FR at 23055. As a result, the Department has conducted investigations to determine whether the respondents made sales in their home market at prices below their respective COPs during the POI within the meaning of section 773(b)(1) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for PSF based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and packing. We relied on the COP data submitted by each respondent in its cost questionnaire responses with the following exceptions for Nan Ya: (1) We have disallowed the scrap credit for regenerated products because information on the record indicates that Nan Ya has inappropriately allocated the scrap credit to regenerated products and (2) we adjusted Nan Ya's G&A expense rate for other operating costs (*see* the memorandum to the file on the COP and CV adjustments for Nan Ya dated October 29, 1999).

2. Test of Home Market Sales Prices

We compared the adjusted, weighted-average COP to the home market sales of the foreign like product by each respondent. The home market prices were computed net of any applicable discounts, movement charges, taxes, and other direct and indirect selling expenses. We made this comparison in accordance with section 773(b)(1) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities[1] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Act. Because we compared prices to the average COP calculated over the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain models of PSF, more than 20 percent of the home market sales of both respondents were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded the below-cost sales and used the remaining sales as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of PSF for which there were no comparable home market sales in the ordinary course of trade, we compared EP to the constructed value in accordance with section 773(a)(4) of the Act. *See* Calculation of Normal Value Based on Constructed Value section, below.

D. Calculation of Normal Value Based on Home Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test. We calculated NV based on ex-works or delivered prices to home market customers. We made deductions from the starting price, where appropriate, for movement expenses and discounts, pursuant to section 773(a)(6)(B). In accordance with section 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs. In addition, we made circumstance of sale (COS) adjustments for direct expenses (*i.e.*, credit expenses, commissions and bank charges), where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act.

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[1] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

When comparing U.S. sales with home market sales of similar, but not identical, merchandise, we also made adjustments to normal value for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using POI-average costs.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on home market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions were granted in the U.S. market but not in the home market, we made a downward adjustment to normal value for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the home market.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on home market sales, normal value may be based on the constructed value (CV). Accordingly, for those models of PSF for which we could not determine the normal value based on home market sales, either because (1) there were no sales of a comparable product or (2) all sales of comparison products failed the COP test, we based normal value on the CV.

Sections 773(e)(1) and (2)(A) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the Calculation of COP section, above. We relied on the CV data submitted by each respondent in its questionnaire responses with the exception for Nan Ya of disallowing the scrap credit for regenerated products because information on the record indicates that Nan Ya has inappropriately allocated the scrap credit to regenerated products. As a result, we added the scrap credit back to the regenerated PSF material costs for Nan Ya. (*See* the memorandum to the file on the COP and CV adjustments for Nan Ya dated October 29, 1999.) We based SG&A and profit for each respondent on the actual amounts reported as incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market, in accordance with section 773(e)(2)(A) of the Act. For Nan Ya, this entailed reclassifying certain operating expenses pertaining to calculation of the G&A percentage.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses to, CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the home market at the same level of trade as the EP. The normal value level of trade is that of the starting-price sales in the home market or, when normal value is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether normal value sales are at a different level of trade than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customer. If the home market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and home market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from each respondent about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments.

In this investigation, we found that the respondents perform minimal selling functions in the United States and home markets. With respect to each respondent's EP sales, we found a single level of trade in the United States, and a single, identical level of trade in the home market. It was, thus, unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent (*see Extruded Rubber Thread From Malaysia; Final results of Antidumping duty Administrative Review*, 64 FR 12967, 12970 (March 16, 1999)). The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination. At verification, we will closely examine changes between the most recently submitted data sets and prior data sets including, but not limited to: cost allocations, materials usage, unit prices, and expenses. We will also thoroughly check the completeness of respondents' sales reporting.

Suspension of Liquidation

Since the estimated weighted-average dumping margins for all examined companies (*i.e.*, both Far Eastern and Nan Ya) are *de minimis*, we are directing the Customs Service not to suspend liquidation of entries of certain polyester staple fiber from Taiwan. These instructions not suspending liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our negative preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b).

Public Comment

For this investigation, case briefs must be submitted no later than November 22, 1999. Rebuttal briefs must be filed no later than November 29, 1999. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a hearing is requested, it will be held on December 3, 1999, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: October 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–29207 Filed 11–5–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Certain Polyester Staple Fiber From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Craig Matney, or Suresh Maniam, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2815, (202) 482–1778, or (202) 482–0176, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Preliminary Determination

We preliminarily determine that certain polyester staple fiber (PSF) from the Republic of Korea (Korea) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on April 22, 1999 (*see Initiation of Antidumping Duty Investigations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 64 FR 23053 (April 29, 1999) (*Initiation Notice*)). Since the initiation of this investigation, the following events have occurred:

On May 17, 1999, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of PSF are materially injuring the United States industry.

On May 24, 1999, the Department requested comments from interested parties regarding the criteria to be used for model matching purposes. The parties submitted comments on our proposed model matching criteria on May 26, 1999.

On June 4 and 8, 1999, the Department issued antidumping questionnaires to Samyang Corporation (Samyang), Sam Young Synthetics Co. (Sam Young), and Geum Poong Corporation (Geum Poong) (*see* memorandum dated June 17, 1999, to Deputy Assistant Secretary Richard W. Moreland (Respondent Selection Memorandum), which is on file in Import Administration's Central Records Unit). The respondents submitted their initial responses to the questionnaires between July 2 and 30, 1999. Between July 14 and August 5, 1999, E.I. DuPont de Nemours, Inc.; Arteva Specialities S.a.r.l., d/b/a KoSa; Wellman, Inc.; and Intercontinental Polymers, Inc. (hereinafter collectively referred to as "the petitioners") filed comments on the questionnaire responses. After analyzing the initial responses and the petitioners' comments, we issued supplemental questionnaires to the respondents between August 9 and 11, 1999. We received responses to these supplemental questionnaires between August 31 and September 3, 1999.

On July 28 and August 10, 1999, the petitioners requested that the Department initiate an investigation of sales below the cost of production (COP) for Samyang and Sam Young, respectively. On August 17 and 18, 1999, based on our review of the petitioners' below cost allegation, we initiated a cost investigation for Samyang and Sam Young (see memoranda dated August 17, 1999 and August 18, 1999, to Senior Director Susan Kuhbach, which is on file in Import Administration's Central Records Unit). On August 19, 1999, we requested that these two companies respond to Section D of the antidumping questionnaires concerning COP and constructed value (CV). We received the responses on September 9, 1999.

On August 16, 1999, the petitioners made a timely request for a postponement of the preliminary determination pursuant to section

733(c)(1)(A) of the Act. On August 25, 1999, the Department extended the preliminary determination until no later than September 29, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 64 FR 47766 (September 1, 1999). On September 29, 1999, the petitioners requested another extension. In response, the Department extended the preliminary determination until no later than October 4, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 64 FR 55248 (October 12, 1999). On October 4, 1999, based on petitioners' September 29, 1999 request for extension, the Department further extended the preliminary determination until no later than October, 29, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 64 FR 55700 (October 14, 1999).

Between September 16 and October 20, 1999, the petitioners requested that the Department use quarterly averaging periods in our analysis rather than annual averaging periods (*see* Fair Value Comparisons section below).

On October 8 and October 15, 1999, we issued Section D supplemental questionnaires to Sam Young and Samyang, respectively. We received responses to these questionnaires between October 15 and October 22, 1999.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on October 4, Samyang requested that, in the event of an affirmative preliminary determination, the Department postpone its final determination in this investigation. On October 6, Sam Young and Geum Poong also requested that, in the event of an affirmative preliminary determination, the Department postpone its final determination in this investigation. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. The respondents have further requested that the Department extend provisional measures from a four-month period to not more than six months. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of investigation (POI) is April 1, 1998, through March 31, 1999. This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition.

Scope of Investigation

For the purposes of this investigation, the product covered is certain polyester staple fiber. Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this investigation may be coated, usually with a silicon or other finish, or not coated. Certain polyester staple fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 5503.20.00.20 is specifically excluded from this investigation. Also specifically excluded from this investigation are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting).

The merchandise subject to this investigation is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in the *Initiation Notice*, we set aside a period for parties to raise issues regarding product coverage. We received comments on the scope from various interested parties on May 12, 1999, and rebuttal comments on June 7, 1999.

Stein Fibers, an importer of PSF from Korea, argued that under the criteria set forth in the Department's regulations at 19 CFR 351.225(k)(2) to determine whether products are covered or excluded by the scope (also known as the "Diversified Products" criteria), regenerated fiber does not fall under the scope of this investigation. First, Stein Fibers asserted that regenerated fiber is a low-quality product that is not comparable to U.S.-produced high-quality virgin and recycled PSF. Second, Stein Fibers contended that the quality differences result in different expectations by the ultimate user and in the product's ultimate use. Third, Stein Fibers stated that regenerated PSF and U.S.-made virgin or recycled PSF do not compete with each other and, therefore, their channels of trade are dissimilar. Finally, Stein Fibers claimed that regenerated fiber is never advertised or displayed, while particular brands of U.S.-made virgin or recycled 1PSF are prominently displayed and advertised in the bedding departments of many department stores.

Gates Formed-Fibre Products, Inc. (Gates), a PSF importer, stated that the black and colored fiber extruded from textile fiber waste that it imports for the manufacture of substrate for automobile trunk liners is a different class or kind of merchandise than the products covered by the petition. Therefore, Gates argued, black automotive substrate (BAS) should be excluded from the scope of the investigation because: (1) It cannot be used for the fill applications described in the petition; (2) it is distinct from other fiber products; (3) it should be excluded based on consideration of the "Diversified Products" criteria as set forth in the Department's regulations; (4) the petitioners are considering its exclusion; and (5) if excluded, there would be no risk of circumvention.

With respect to the "Diversified Products" criteria, Gates submitted specific comments on each of the criteria. First, Gates claimed that BAS differs from fiber fill product in all possible model matching criteria. Second, Gates stated that the ultimate purchaser would not accept BAS for use in the manufacture of merchandise such as pillows and ski jackets which require fiber fill. Third, Gates asserted that fiber fill is distributed by importers to manufacturers of pillows, comforters, jackets, etc., which then resell their products to distributors and large retailers. BAS is used in the manufacture of trunk liners which are then sold to original equipment manufacturers or their suppliers. Fourth, BAS cannot be used for fill applications. Fifth, products using fiber fill are advertised directly to consumers while BAS for trunk liners is not advertised to consumers.

Far Eastern Textile Ltd. (Far Eastern) and Nan Ya Plastics Corporation (Nan Ya), the respondents in the companion antidumping investigation of PSF from Taiwan, noted that low-melt PSF is used exclusively for bonding and acts as an adhesive to hold other fibers together for non-woven batting in high-loft products. Since low-melt PSF itself is not used as filling and is not similar in appearance to cotton or wool, Far Eastern and Nan Ya stated that low-melt PSF is clearly outside the scope of investigation. Moreover, Far Eastern and Nan Ya asserted that low-melt PSF is outside the scope of investigation in consideration of the "Diversified Products" criteria set forth in section 351.225(k)(2) of the Department's regulations. First, according to Far Eastern and Nan Ya, with respect to product characteristics, low-melt PSF consists of an outer sheath and an inner core as opposed to single-component PSF. Second, with respect to the expectations of the ultimate user and the ultimate use, Far Eastern and Nan Ya pointed out that low-melt PSF is used as a bonding agent, not as a filler or loft material, which is the expectation of the ultimate purchaser for polyester staple fibers. Third, Far Eastern and Nan Ya stated that while the channels of trade may be similar, the Department has consistently recognized that no single criterion is dispositive. Finally, Far Eastern and Nan Ya noted that they supply the U.S. market with a particular specification of low-melt PSF suitable for furniture and bedding manufacturing that is not available domestically in the United States.

Saehan Industries Inc. and Samyang Corporation (Saehan/Samyang), Korean producers and exporters of PSF, stated that conjugate polyester staple fiber (conjugate PSF) and low-melt polyester staple fiber (low-melt PSF) do not fall under the scope of this investigation. Saehan/Samyang argued that conjugate PSF should be excluded from the scope because there is no U.S. industry producing this product. 1Saehan/Samyang stated that low-melt PSF is not "fiber for fill" and is, thus, not the product targeted by the petitioners. Moreover, Saehan/Samyang claimed that under the "Diversified Products" criteria, conjugate PSF and low-melt PSF are outside the scope of this investigation. First, Saehan/Samyang noted that the manufacturing process for conjugate fiber creates a natural curl or spiral, resulting in greater "fluff." "Regular" fibers, produced by the petitioners, are straight or mechanically crimped and lack the loft of conjugate fiber. Second, Saehan/Samyang cited testimony given before the ITC asserting that end-users expect greater loft and a down-like quality from conjugate fibers which is not characteristic of the mechanically-crimped fibers produced by DuPont, one of the petitioners. Third, Saehan/Samyang stated that "regular" PSF and conjugate PSF are both used in the production of furniture and home furnishings and, therefore, they are not sold in different channels of trade. However, Saehan/Samyang argued that channels of trade is less significant as a criterion in this case because there are no different channels of trade for any products used in this industry. Fourth, the ultimate use of conjugate PSF is to create a certain level of loft. In the United States, it is either used to provide high-loft characteristics, or it is mixed with "regular" fiber to achieve different levels of loft, and these two fibers are not interchangeable. Fifth, Saehan/Samyang stated that although these products are not advertised or displayed in the same way as products sold directly in the retail market, manufacturers and customers treat the two products very differently.

The petitioners objected to the interested parties' requests that regenerated, low-melt, BAS, and conjugate PSF be excluded from the scope of the investigation. According to the petitioners, these products are all PSF, meet the definition of the scope, and are captured within the scope intended by the petitioners. Furthermore, the petitioners claimed that all of these imported products are domestically available. The petitioners added that there is no basis for creating a separate class or kind of merchandise relating to the PSF under consideration.

For purposes of this preliminary determination and in consideration of comments by interested parties, the Department has not modified the scope of this investigation because the current language reflects the product coverage requested by the petitioners, and we have determined that regenerated, low-melt, BAS, and conjugate PSF fall within that scope. On the issue of whether BAS is a separate class or kind of merchandise under the "Diversified Products" criteria, we will make a determination in the final determination of this investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of the subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

On June 7, 1999, we received a request from Sung Lim Company Ltd. to participate as a voluntary respondent in this investigation. On June 17, 1999, we received a similar request from Estal Industrial Company. However, we determined that it was not practicable in this investigation to examine all known producers/exporters of the subject merchandise. Instead we found that, given our resources, we would be able to investigate the three producers/exporters with the greatest export volume (*see* Case History section above). For a more detailed discussion of respondent selection in this investigation, *see* our Respondent Selection Memorandum.

Critical Circumstances

On July 30, 1999, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise. In accordance with 19 CFR 351.206(c)(2)(i), because this allegation was filed at least 20 days prior to our preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

With respect to the first criterion, *i.e.*, a history of dumping and material injury in the United States or elsewhere, the European Union (EU) imposed antidumping duties on synthetic polyester fibers from Korea on January 8, 1993. The merchandise subject to the EU antidumping duty order was classified under Common Nomenclature

(CN) 5503.20.00, which is the equivalent of HTSUS subheading 5503.20.00 and, thus, covers the subject merchandise in the instant investigation. On July 29, 1999, the EU terminated the antidumping duty order.

Based on the recent existence of this order, there is sufficient evidence to determine that there is a history of dumping of the subject merchandise and a history of material injury as a result thereof. Because there is a history of dumping and material injury by reason of dumped imports in the EU of the subject merchandise, the first statutory criterion of the test for finding critical circumstances is met. Therefore, we must consider the second statutory criterion: whether or not the imports of the subject merchandise have been massive over a relatively short period.

In determining whether there are "massive imports" over a "relatively short time period," the Department ordinarily bases its analysis on import data for at least the three months preceding (the "base period") and following (the "comparison period") the filing of the petition. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period (*see* 19 CFR 351.206(h)). The Department examines respondent-specific shipment information or aggregate import statistics when respondent-specific shipment information is not available.

To determine whether imports of the subject merchandise have been massive over a relatively short period, we compared each respondent's export volume for the three months prior to the filing of the petition (*i.e.*, January through March 1999) to that during the three months subsequent to the filing of the petition (*i.e.*, April through June 1999). For the "all other" exporters, although we found massive imports for the mandatory respondents, in this case we also had usable aggregate import data. Therefore, we performed the analysis using total imports from Korea, less those imports accounted for by the respondents (*see Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24338 (Comment 2) (May 6, 1999)).

Based on our analysis, we preliminarily determine that the increase in imports was greater than 15 percent for each of the respondents. Therefore, because (1) there is a history of dumping and material injury, and (2) each of the respondents had more than a 15 percent increase in import volume, we preliminarily determine that critical circumstances exist for each of the companies under investigation. Also, based on our analysis of the import data as described above, we preliminarily determine that critical circumstances do not exist for the "all other" exporters.

We note that Sam Young and Geum Poong have argued that the increase in imports was a direct result of an anticipated, publicized freight rate increase and submitted documentation in support of their argument. In making a determination of whether there have been massive imports for purposes of a critical circumstances determination under 19 CFR 351.206(h), the Department normally examines the volume and value of imports, seasonal trends, and the share of domestic consumption accounted for by the imports. Anticipated increases in freight rates are not among the factors that the Department normally takes into consideration when making such a determination. After reviewing the information submitted by the respondents, we believe that the respondents have failed to demonstrate that increased freight rates are a seasonal trend. Therefore, we preliminarily determine that an increase in freight rates is not relevant for our determination of whether there have been massive imports of the subject merchandise.

We will make a final determination concerning critical circumstances when we make our final determination in this investigation.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced and sold by the respondents in the comparison market that fit the definition contained in the Scope of the Investigation section of this notice and were sold during the POI comprise the foreign like product. For purposes of this preliminary determination, we have relied on the following criteria, in order of significance, to match U.S. sales of PSF to comparison market sales of the foreign like product: (1) Fiber composition (conjugate, single component, crimped, low melt, etc.); (2) fiber type (virgin, recycled, blended, regenerated); (3) cross section; (4) finish; and (5) denier. Also, because Samyang specified grade of product in both the comparison market and the U.S. market, we attempted to make comparisons of the same grade for Samyang (*see* memorandum to file on *Preliminary Determination Calculations for Samyang*, dated October 29, 1999, (Samyang Calculations Memo) which is on file in Import Administration's Central Records Unit).

In making our comparisons, we performed the cost test and disregarded all sales that failed this test (*see* the Results of the COP Test section below). We then attempted to compare products sold in the U.S. and the comparison market that were identical with respect to the product matching criteria above. Where we did not find any comparison market sales of merchandise that was identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the comparison market. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

Fair Value Comparisons

To determine whether sales of PSF from Korea to the United States were made at less than fair value, we compared the export price (EP) to comparison market prices or CV, as described in the Export Price and Normal Value sections below.

The petitioners allege that due to a significant change in the value of the won and declining prices during the POI, the Department should use quarterly averaging periods rather than a POI average period. The petitioners cite the Department's determination that there was a "sustained movement" in the exchange rate during the POI. Furthermore, the petitioners state that the exchange rate appreciated by 20 to 30 percent over the POI. The petitioners argue that the Department has in the past used different averaging periods to avoid the distortive effects on the dumping analysis when there is a significant change in the exchange rate (*see, Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea* ("*Sheet and Strip from Korea*"), 64 FR 30664, 30676 (June 8, 1999)).

With regard to declining prices, the petitioners contend that, for the largest volume control numbers, sales prices in both the U.S. and home market dropped significantly during the POI. The petitioners argue that in past cases, when there was a "significant and consistent" price decline in the market, the Department used different averaging periods (*see, Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From the Republic of Korea* ("*SRAMS*"), 63 FR 8934, 8935 (February 23, 1998). The petitioners claim that in the *SRAMS* case, unit prices of SRAMS fell by 32 percent during the POI.[1] In this case, since some products had a price decline as high as 40 percent, the petitioners request the Department to use quarterly averaging periods to avoid the combined distortive effects that exchange rate and price changes would have on the dumping analysis if POI averaging was used.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars. However, when a currency has undergone a sustained movement, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period. A sustained movement has occurred when the weekly average of the actual daily rates exceeds the weekly average of the benchmark rates by more than five percent for eight consecutive weeks. The benchmark is defined as the moving average of exchange rates for the past 40 business days (*see* Policy Bulletin 96–1: Currency Conversions, 61 FR 9434, March 8, 1996). This adjustment is only required when the foreign currency is appreciating against the U.S. dollar. In this case, the Department found a sustained exchange rate movement in the won during March and April of 1998. We therefore used a fixed exchange rate for a period of 60 days after the "sustained movement" (*i.e.*, from May 5 to July 5, 1998).

As noted, the "sustained movement" of the won occurred in March and April of 1998. Our POI is April 1998 to March 1999. Therefore, half of the "sustained movement" occurred outside the POI. In looking only at the month of April 1998, the won appreciated roughly 8.5 percent.[2] The resulting effect on normal value is minimal in comparison to the effect on normal value caused by the exchange rate decline during November and December of 1997. That decline was the change in currency value that prompted the Department to use different averaging periods in *Sheet and Strip from Korea*. Furthermore, we found that, while the actual exchange rate varied over the POI and at one point appreciated by over 20 percent compared to the beginning of the POI, on average, the actual exchange rate did not appreciate out of the ordinary. For example, the average exchange rate for the last month of the POI was only 13 percent higher than the average exchange rate for the first month. Also, this movement did not occur abruptly.

Because the gradual movement of the exchange rate during our POI differs from the situation which occurred in *Sheet and Strip from Korea*, and because the magnitude of the exchange rate change is not large, we find that the change in the value of the won relative to the dollar is not a basis for adopting a different averaging period.

With regard to the petitioners' claim concerning declining prices during the POI, section 777A(d)(1)(A)(i) of the Act allows the Department to use a weighted average-to-average comparison when comparing export prices to home market prices. Section 351.414(d)(3) of the Department's regulations, which discusses the length of averaging periods, states that the Department normally will use weighted averages for the entire POI, but that when prices differ significantly over the course of the POI, the Department may calculate weighted averages for shorter periods.

In this case, for Samyang, we examined changes in the average monthly gross unit price for the subject merchandise sold in the United States and the average monthly gross unit price for the subject merchandise sold in the home market. For Sam Young, we performed the same analysis, except we examined the average monthly U.S. sales prices and the average monthly gross unit prices for the subject merchandise sold in the Canadian market.[3] In analyzing the data, we did not find a significant and consistent price decline during the POI. While monthly average prices were higher at the beginning of the POI than at the end, several months during the POI showed either price increases or virtually no change at all, while other months showed price decreases. Further, we did not find a significant divergence between the two markets.

In addition to our market-to-market analysis, we also examined, for Samyang, the data on an individual control number basis. We first examined changes in the average monthly prices of the three largest U.S. control numbers (representing a significant percentage of total U.S. sales) and their respective matching home market control numbers. Second, we examined the price trends for the four largest home market control numbers (representing a significant percentage of total home market sales). A similar analysis was performed for Sam Young, using the Canadian price in lieu of home market prices. Because Geum Poong did not have a viable home or third country market, we looked at only the movement of prices in the U.S. market. In analyzing the individual control number data for Samyang, Sam Young, and Geum Poong, we found that there was not a significant and consistent decrease in prices. Prices fluctuated both upward and downward throughout the POI.

Based on our analysis, we find that there was not a significant and consistent decline in prices over the POI (*see* Samyang Calculations Memo, and memoranda to file on *Preliminary Determination Calculations for Sam Young*, dated October 29, 1999 (Sam Young Calculations Memo), and *Preliminary Determination Calculations for Guem Poong*, dated October 29, 1999 (Geum Poong Calculations Memo), which are on file in Import Administration's Central Records Unit). Therefore, in accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs for comparison to POI weighted-average NVs.

Date of Sale

Samyang and Sam Young reported that the date on which the material terms of sale were set was the invoice date for sales in both the comparison market and the U.S. market. For its sales in the U.S. market, Geum Poong reported the invoice date as the date on which the material terms of sale were set. As noted above, Geum Poong did not have a viable comparison market. The basis for the companies' reporting invoice date as the date of sale is described below.

Samyang reported that it negotiated price and quantity with its U.S. customers, and that a purchase order or other initial sales agreement document was generated confirming the order. However, according to Samyang, changes in price and quantity occurred after the initial sales document was issued and the terms of sale were not fixed until the invoice was issued. Therefore, Samyang reported its U.S. sales prices based on invoice date. Regarding home market sales, Samyang reported that purchase orders were seldom issued. Consequently, Samyang also reported its home market sales based on invoice date.

Sam Young reported that it negotiated price and quantity with its U.S. and Canadian customers. Once agreement was reached, Sam Young faxed a confirmation to its customer and the customer then issued a purchase order to Sam Young. Sam Young claimed, however, that changes in price and quantity occurred after the purchase order had been issued and, therefore, price and quantity were not fixed until the date on which the invoice was issued. For this reason, Sam Young initially reported invoice date as the date of sale. For certain comparison market sales, Sam Young used the tax invoice date as the date of sale.

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[1] See petitioners' submission dated October 20, 1999, at 3. The percentage change in price was derived by calculating unit prices on the basis of import statistics.

[2] Calculated by subtracting the dollar/won rate on April 1, 1998 from the dollar/won rate on April 30, 1998 and dividing the result by the dollar/won rate on April 1, 1998.

[3] Geum Poong did not have a viable home or third country market and, therefore, we analyzed price movements only for its U.S. sales..

Geum Poong reported that it negotiated price and quantity with its U.S. customers by telephone or by fax. For sales negotiated by fax, once an agreement was reached, a purchase order or order acceptance sheet was issued. However, according to Geum Poong, changes in price and quantity occurred after the order was accepted and the purchase order was issued and that the terms of sale were not fixed until the invoice was issued. Therefore, Geum Poong reported its U.S. sales based on invoice date.

The petitioners questioned all three respondents' use of invoice date as the date of sale. Based on our review of the information submitted, we determined that neither Samyang, Sam Young, nor Geum Poong provided sufficient evidence of significant changes in price and quantity between the issuance of the order confirmation and invoice date. Therefore, on September 14, 1999, we requested that Samyang report its U.S. sales based on initial purchase order date. On September 16, 1999, we requested that Sam Young report U.S. and Canadian sales and that Geum Poong report U.S. sales based on initial order confirmation date. For purposes of this preliminary determination, we used initial order confirmation date as the date of sale for all three respondents' U.S. sales and for Sam Young's Canadian sales. For Samyang's home market sales, since no purchase order was issued, we used the sales reported on the basis of invoice date. We will consider this issue further for purposes of the final determination.

Export Price

In accordance with section 772 of the Act, we based U.S. price on EP. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Consistent with these definitions, we found that all of the respondents' sales during the POI were EP sales. For all respondents, we calculated EP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we relied on the gross unit price shown on sales invoices. These prices were delivered and FOB prices to unaffiliated customers in the United States. In accordance with section 772(c)(2) of the Act, we reduced the EP, where appropriate, by movement expenses, including foreign inland freight, international freight, brokerage, export taxes, U.S. customs duties, and other miscellaneous charges. We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act.

Normal Value

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise.

Samyang had a viable home market for PSF and reported home market sale for purposes of calculating normal value. Sam Young did not have a viable home market. However, it had a viable third country market and reported third country sales for purposes of calculating normal value. For Geum Poong, which had no viable home or third country market, we compared EPs to CV in accordance with section 773(a)(4) of the Act. See the section on Calculation of Normal Value Based on Constructed Value below.

Adjustments made in deriving the normal values for each company are described in detail in the sections on Calculation of Normal Value Based on Comparison Market Prices and Calculation of Normal Value Based on Constructed Value, below.

B. Cost of Production Analysis

Based on the timely cost allegations filed on July 28 and August 10, 1999, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that Samyang's PSF sales made in Korea and Sam Young's PSF sales made to Canada were made at prices below COP. As a result, the Department has conducted investigations to determine whether these respondents made sales in their respective comparison markets at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for PSF, based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and packing costs. For Samyang, we adjusted reported direct material costs to reflect the market price of inputs purchased from unaffiliated sellers, because cost of production data was not provided by the affiliated suppliers (*see* Samyang Calculations Memo). For Sam Young, we revised the reported per unit total materials costs because we noted an apparent discrepancy in the total production quantity used by Sam Young to calculate its per-unit costs (*see* Sam Young Calculations Memo). For Geum Poong, we revised the reported per unit total materials costs to correct for an apparent discrepancy in its duty drawback adjustment (*see* Geum Poong Calculations Memo). In addition, for all three companies, we revised general and administrative expenses and interest expenses based on our corrections to their reported cost of manufacturing.

2. Test of Home Market Sales Prices

We compared the adjusted, weighted-average, COP for Samyang and Sam Young to its home market or Canadian market sales of the foreign like product. The prices were net of movement charges, taxes, rebates, commissions, and other direct and indirect selling expenses. This is accordance with 773(b) of the Act, and was done to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities[4] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to the POI average COP, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

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[4] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

We found that, for certain models of PSF, more than 20 percent of Samyang's and Sam Young's respective comparison market sales were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining sales as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of PSF for which there were no comparable comparison market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act. *See* the section on Calculation of Normal Value Based on Constructed Value below.

C. Calculation of Normal Value Based on Comparison Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the comparison market that did not fail the cost test. We calculated NV based on FOB or delivered prices to comparison market customers. We made deductions from the starting price, where appropriate, for movement expenses and discounts. In accordance with sections 773(a)(6) (A) and (B) of the Act, we deducted comparison market packing costs and added U.S. packing costs. In addition, we made circumstances of sale (COS) adjustments for direct expenses in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments to NV for physical differences in the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and the subject merchandise, using POI-average costs.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV for the lesser of (1) the amount of the commission paid in the comparison market, or (2) the amount of indirect selling expenses incurred in the U.S. market. Company-specific adjustments of NV are described below.

Samyang

We calculated normal value based on FOB or delivered prices to unaffiliated purchasers in the home market and made deductions for the following movement expenses: foreign inland freight and loading fees. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, technical services charges, and bank negotiation fees) and adding U.S. direct selling expenses (credit expenses, letter of credit fees, bank charges, and postage charges) in accordance with section 773(a)(6)(C)(iii) of the Act.

Sam Young

We calculated normal value based on FOB prices to unaffiliated purchasers in the Canadian market and made deductions for the following movement expenses: foreign inland freight, wharfage, container taxes, terminal handling fees, and brokerage and handling. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bill of lading charges, letter of credit fees, wire transfer fees, and document handling fees) and adding U.S. direct selling expenses (credit expenses, bill of lading charges, letter of credit fees, wire transfer fees, and document handling fees) in accordance with section 773(a)(6)(C)(iii) of the Act. We offset commission expenses in accordance with section 351.410(e) of the Department's regulations in the manner described above.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on comparison market sales, normal value may be based on the constructed value. Accordingly, for Samyang and Sam Young, for those models of PSF for which we could not determine the NV based on comparison market sales, either because (1) there were no sales of a comparable product, or (2) all sales of comparison products failed the COP test, we based NV on the CV. In addition, for Geum Poong, which did not have a viable comparison market, we based NV on CV.

Sections 773 (e)(1) and (e)(2)(A) of the Act provide that the CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. For Samyang and Sam Young, we calculated the cost of materials and fabrication based on the methodology described in the Calculation of COP section above. We based SG&A and profit for Samyang and Sam Young on the actual amounts reported as realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. Because there is no viable comparison market for Geum Poong and, hence, no company-specific profit or non-U.S. selling expenses, we calculated Geum Poong's profit and selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act. Specifically, we calculated weighted average amounts for selling expenses and profit based on the selling expenses incurred and profit earned by Samyang and Sam Young in their respective comparison markets on sales in the ordinary course of trade. Consistent with section 351.405(b)(2) of the Department's regulations and section 773(e)(2)(B)(iii) of the Act, this profit amount does not exceed the amount normally realized by exporters or producers in connection with the sale for consumption in the home market of merchandise that is in the same general category of products as the subject merchandise, represented by Samyang's home market profit.

In addition, for each respondent we added U.S. packing costs as described in the Export Price section of this notice.

We made adjustments to CV for differences in COS in accordance with section 773(e)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or constructed export price (CEP) transaction. The normal value level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

In this case, the respondents made only EP sales in the United States during the POI. To determine whether normal value sales are at a different level of trade than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from Samyang and Sam Young about the channels of distribution involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and comparison market sales, we considered the selling functions reflected in the starting price before any adjustments.

Samyang

In this investigation, we found that Samyang has three channels of distribution in the home market and two channels for U.S. sales. In both the U.S. and home markets, Samyang sells to end users and distributors. In the home market, Samyang also sells to distributors which not only distribute PSF, but also use it for their own production. For each of the channels of distribution in the U.S. and home markets, Samyang provides the same selling functions, though it provides the functions to varying degrees. We found that these selling functions were minimal in both the U.S. and home markets.

Because the same selling functions are performed in each channel in each market, despite variations in degree for certain functions, we found a single level of trade in the United States, and a single, identical level of trade in the home market. Thus, it was unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices.

Sam Young

In this investigation, we found that Sam Young has one channel of distribution in the comparison market and one channel in the U.S. market. In both the U.S. and comparison markets, Sam Young sells to distributors. For each of these channels of distribution, Sam Young provides the same selling functions and to the same degree. In both the comparison market and the U.S. market, Sam Young generally makes the same freight and delivery arrangements. Packing is also the same in both markets.

Because the single channel of distribution in the Canadian market is the same as the single channel of distribution in the U.S. market, we found a single level of trade in the United States, and a single, identical level of trade in the comparison market. It was, thus, unnecessary to make any level-of-trade adjustment for comparison of EP and comparison market prices.

Geum Poong

In this investigation, we found that Geum Poong has one channel of distribution in the U.S. market. Geum Poong had no viable home or third country markets. When normal value is based on constructed value, the normal value level of trade is that of the sales from which we derive SG&A expenses and profit (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile*, 63 FR 2664 (January 16, 1998)). For Geum Poong, we based selling expenses and profit on a weighted average of selling expenses incurred and profits earned by Samyang and Sam Young. Because Sam Young's and Samyang's comparison market selling functions do not vary significantly from Geum Poong's U.S. selling functions, we made no level-of-trade adjustment for Geum Poong.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act. From early March to early May 1998, there was a sustained movement (appreciation) in the value of the Korean won (*see* Policy Bulletin 96–1, *Notice: Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996)). In accordance with the policy described in the Policy Bulletin, we applied a fixed exchange rate for the 60-calendar day period following the sustained movement. That exchange rate was taken from the last day of the sustained movement period, *i.e.*, the last day of the so-called "recognition period."

For the remainder of the POI, we followed the Department's practice of using daily exchange rates from the Federal Reserve Bank to convert foreign currencies into U.S. dollars, except where the daily rate involves a fluctuation. A fluctuation occurs where the actual daily rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of daily rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark rate for the daily rate.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of PSF from Korea produced or exported by the companies listed below that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. For companies not listed below (*i.e.*, "all others"), we are directing the Customs Service to suspend liquidation of all entries of PSF from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (percent)
Samyang Corporation	3.51
Sam Young Synthetics Co.	6.33
Geum Poong Corporation	26.39
All Others	7.99

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that

ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding within five days of the publication of this notice. *See* 19 CFR 351.224(b).

Public Comment

For this investigation, case briefs must be submitted no later than February 15, 2000. Rebuttal briefs must be filed no later than February 22, 2000. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case of rebuttal briefs, provided that such a hearing is requested by any interested party. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a hearing is requested, it will be held on February 25, 2000, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: October 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–29208 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–828]

Silicomanganese From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is conducting the first administrative review of the antidumping duty order on silicomanganese from the People's Republic of China ("PRC") in response to requests by the respondents, Guangxi Bayi Ferroalloy Works ("Bayi"), and Sichuan Emei Ferroalloy Import and Export Co., Ltd ("Emei"). The period of review ("POR") is December 1, 1997 through November 30, 1998.

We have preliminarily determined that U.S. sales of subject merchandise by Bayi and Emei have been made below normal value ("NV"). Since both Bayi and Emei submitted full responses to the antidumping questionnaires and it has been established that they are sufficiently independent, they are entitled to separate rates. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries from Bayi and Emei.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or Paige Rivas, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0065 or (202) 482–0651 respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

The Department received a request for administrative review from Bayi and Emei on December 17, 1998. We published a notice of initiation of this review on January 25, 1999 (64 FR 3682).

On January 29, 1999, we issued antidumping questionnaires to Bayi and Emei. The Department received responses from both Bayi and Emei to Section A on March 5, 1999 and Sections C and D on March 22, 1999.

We issued supplemental questionnaires to Bayi and Emei on April 12, 1999. The responses to these supplemental questionnaires were received on May 5, 1999. On July 12, 1999, the Department issued additional supplemental questionnaires to Bayi and Emei. The responses to the second supplemental questionnaires were received on August 2, 1999.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On August 25, 1999, the Department published a notice of extension of the time limit for the preliminary results in this case to November 1, 1999 (64 FR 46350).

On October 12, 1999, Bayi and Emei and petitioner, Eramet Marietta Inc. ("Eramet"), submitted publicly available information and comments for consideration in valuing the factors of production used in our NV calculations.

Scope of Review

The merchandise covered by this order is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States ("HTS"). Some silicomanganese may also currently be classifiable under HTS subheading 7202.99.5040. Although the

HTS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market economy ("NME") countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Evidence relevant to a *de facto* absence of government control with respect to exports is based on four factors concerning whether the respondent: (1) Sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *see also Sparklers,* 56 FR at 20589.

In prior cases, the Department has analyzed the laws which the respondents have submitted in this record and found that they established an absence of *de jure* control. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China,* 60 FR 29572, 29573 (June 5, 1995); *see* also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544 (May 8, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

Evidence relevant to a *de facto* absence of government control with respect to exports is based on whether the respondent: (1) Sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *see also, Sparklers,* 56 FR at 20589. In the instant review, each respondent has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions and, according to respondents, there is no information on the record suggesting central government control over selection of management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POR does not suggest coordination among exporters. This information supports a preliminary finding that there is a *de facto* absence of governmental control of export functions.

Consequently, we preliminarily determine that both of the respondents have met the criteria for the application of separate rates.

Export Price

We calculated export price ("EP") in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") methodology was not otherwise warranted, based on the facts of record. We calculated EP based on packed, CIF U.S. port, or FOB PRC port, prices to unaffiliated purchasers in the United States, as appropriate. We also deducted from the starting price, where appropriate, an amount for foreign inland freight and foreign brokerage and handling. As these movement services were provided by NME suppliers, we valued them using Indian rates. *See* "*Normal Value*" section below for further discussion.

Normal Value

1. Non-Market Economy Status

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. As a result, we calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise.

2. Surrogate Country

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is economically comparable to the PRC. On the basis of per capita gross domestic product ("GDP"), the growth rate in per capita GDP, and the national distribution of labor, we find that India is a comparable economy to the PRC. *See Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group II, Office IV,* dated June 24, 1999.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to Silicomanganese. For purposes of the LTFV investigation, we found that India was a significant producer of comparable merchandise. *See Preliminary Results Factors of Production Memorandum from the Team to the File,* dated October 20, 1999 (*Factors Memorandum*). Accordingly, absent evidence to the contrary we continue to find India is a significant producer of silicomanganese based on information submitted by the respondents in their October 1999 submission. Therefore, we have continued to use India as the surrogate country and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production used in our calculations.

3. Factors of Production

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: hours of labor employed; quantities of raw materials required; amounts of energy and other utilities consumed; and representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, publicly available published information on imports of materials into the surrogate country within the POR or most contemporaneous with the POR. Where possible, we calculated the average of these import prices exclusive of taxes for use as the surrogate value. For a more detailed explanation of the methodology used in calculating various surrogate values, *see* the *Factors Memorandum*. In accordance with this methodology, we valued the raw materials and inputs as follows:

Respondents have stated that they import manganese ore and purchase domestically produced manganese ore. Imported manganese ore was purchased from a market economy supplier and paid for in a market economy currency. Therefore, we used the market economy price paid to the supplier in accordance with section 351.408(c)(1) of the Department's regulations. For domestic manganese ore with a reported 30 percent purity and manganese rich slag, we used a price quote from an Indian supplier from 1997 for the lowest available grade of manganese ore because 30 percent purity and slag are regarded as low grade manganese.

For dolomite, we relied on 1997 Indian import prices for limestone, a comparable material contained in the September and November issues of *Indian Import Statistics*.

To value coke, we relied on India import prices contained in the September and November 1997, as well as the March 1998, issues of *Indian Import Statistics*.

For certain minor miscellaneous materials (*e.g.*, silicon ore) we were unable to find usable factor values. For purposes of the preliminary results we have not assigned a value for these factors of production. We will continue to search for appropriate factor values for use in the final results and will provide notice and opportunity to comment on such values. *See Factors Memorandum*.

For those values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices ("WPI") published by the International Monetary Fund ("IMF"). We made further adjustments to account for freight costs between the suppliers and Bayi's and Emei's manufacturing facilities.

In accordance with our practice, we added to CIF import values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61977 (November 20, 1997).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

For electricity, we relied upon public information from the 1995 edition of *IEA Energy Prices and Taxes* to obtain an average of prices for electricity provided to all industries in India. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For the reported packing materials (*i.e.*, woven plastic bags), we relied upon Indian import data in the April 1997 through March 1998 issues of *Indian Import Statistics*. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted these values to account for freight costs incurred between the suppliers and Bayi and Emei.

For foreign inland freight, we used the August 1998 truck and rail rates from *Rahul Roadlines*, an Indian inland freight supplier.

For foreign brokerage and handling, we used the average of the rates reported in the public questionnaire response in the Antidumping Duty Investigation. *See Certain Stainless Steel Wire Rod from India; Preliminary Results of Antidumping Duty Administrative and New Shipper Review*, 63 FR 48184 (September 9, 1998); *See* also *Factors Memorandum*. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For factory overhead ("FOH"), selling, general, and administrative expenses ("SG&A"), and profit, we used information reported for 1992–1993 in the *Reserve Bank of India Bulletin*. From this information, we were able to calculate factory overhead as a percentage of direct material, labor, and energy expenses; SG&A as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A.

Interested Party Comments on Factor Valuation

In their October 16, 1999, factor value submissions, interested parties also provided comment on how certain factor inputs should be valued. For electricity, Bayi and Emei argued that Indian electricity rates are aberrationally high and should be rejected in favor of Indonesian electricity rates. Bayi and Emei argue that Indian electricity rates are controlled by the state, which sets artificially high rates for industrial users in order to subsidize low rates for residential users. As evidence of the aberrational nature of Indian industrial rates, Bayi and Emei present the ratio of residential to industrial rates for India, China, the United States and other countries. They argue that this ratio, 0.34 for India compared with 1.66 for Brazil and 1.69 for the United States, among others, demonstrates the aberrationally high nature of Indian rates. Bayi and Emei also submitted press reports showing the deleterious effect of increases in electricity rates on Indian silicomanganese producers.

We are not persuaded by Bayi and Emei's submission that Indian rates should be rejected in favor of Indonesian rates. We have used Indian electricity rates consistently for many PRC cases, including products for which electricity is a major input, *see e.g., Manganese Metal*. The fact that the state controls electricity rates is not a basis to reject Indian rates as some degree of state control is common in many countries. In addition, a comparison of the ratio of industrial to residential rates between India and other countries is not necessarily meaningful for purposes of selecting sources for factor valuation. Each country has a unique mix of sources of electrical supply (*e.g.*, Hydroelectric, Nuclear, Industrial Self-Generated) as well as a unique mix of users (*e.g.*, residential, agricultural). Moreover, electricity is not generally a traded good. Thus, cross-country comparisons are inappropriate for purposes of factor valuation. Furthermore, unless the record convincingly demonstrates that factor values are unreliable, the Department generally prefers to stay within the same country for factor valuation wherever possible because it leads to more consistent results than picking and choosing factor values from different countries. Accordingly, we continue to value electricity based on Indian data.

For manganese rich slag, Eramet argued that we should consider it a by-product rather than a co-product. Bayi and Emei both produce ferromanganese (in addition to silicomanganese); this production process generates manganese rich slag as a subsidiary product. Eramet provided invoices from a market-economy producer and a U.S producer showing that manganese rich slag has a significant market value. However, relative to the market value of ferromanganese, it should be considered a by-product and valued in accordance with GAAP. Eramet proposes valuing manganese rich slag by adjusting the price of manganese ore by a ratio to account for differences in manganese content. Eramet calculates this ratio using the above referenced invoices. Bayi and Emei argue that manganese rich slag is a waste product with no commercial value, and as such, no factor input value should be used for it in the NV calculations.

We preliminarily disagree with both parties on this point. Manganese rich slag, used in conjunction with manganese ore, is clearly a major input into the production process of silicomanganese and we have valued it using Indian values. Moreover, the above-mentioned ratio is not a reliable basis for adjusting Indian Import values of manganese ore. *See Factor Memorandum.*

Preliminary Results of the Review

We preliminarily determine that the following margins exists for the period December 1, 1997 through November 30, 1998:

Manufacturer/exporter	Margin (percent)
Guangxi Bayi Ferroalloy Works	57.71
Sichuan Emei Ferroalloy Import and Export Co., Ltd	67.97

Interested parties may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries for assessment purposes. Pursuant to 19 CFR 351.212(b)(1), where we analyze and use a company's response, we intend to calculate an importer-specific duty assessment rate by dividing the total amount of dumping margins calculated for sales to each importer by the total number of units of those same sales sold to that importer. The unit dollar amount will be assessed uniformly against each unit of merchandise of that specific importer's entries during the POR.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) For Bayi and Emei, which both have separate rates, the cash deposit rate will be 57.71 percent and 67.97 percent, respectively; (2) for any previously reviewed PRC and non-PRC exporter with a separate rate, the cash deposit rate will be the company- and product-specific rate established for the most recent period; (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter; and (4) the cash deposit rate for all other PRC exporters will continue to be 150.00 percent, the PRC-wide rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29203 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Notice of Extension of Time Limit for Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the fourth administrative review and new shipper review of the antidumping duty order on stainless steel bar from India. The period of review for both segments of the proceeding is February 1, 1998 through January 31, 1999. This extension is made pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189.

SUPPLEMENTARY INFORMATION: Because of the extraordinary complicated issues involved in these reviews it is not practicable to complete the reviews within the originally anticipated time limit (*i.e.*, November 1, 1999). Therefore, the Department of Commerce ("the Department") is extending the time limit for completion of the preliminary results to not later than February 28, 2000, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"). *See* October 25, 1999, Memorandum from Susan Kuhbach to Richard Moreland on file in the public file of the Central Records Unit, B–099 of the Department.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 25, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–29200 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar from Japan: Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from Japan in response to a request from a respondent, Aichi Steel Corporation. This review covers the period February 1, 1998, through January 31, 1999.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Robin Gray, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1690 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On February 26, 1999, the Department received a request from Aichi Steel Corporation (Aichi) to conduct an administrative review of the antidumping duty order on stainless steel bar (SSB) from Japan. On March 29, 1999, the Department published a notice of initiation of an administrative review of Aichi, covering the period February 1, 1998, through January 31, 1999, in the **Federal Register** (64 FR 14860).

On March 25, 1999, Aichi requested that it be permitted to limit the scope of products reported to include home-market sales of only hot-rolled merchandise, as was permitted in the 97/98 review. On March 30, 1999, we granted Aichi's request, given that Aichi confirmed that the same facts apply in this review that applied in the 97/98 review. As was the case in that review, Aichi claims that there are a limited number of home-market sales of stainless steel bar during the period of review (POR) to which U.S. sales would match when calculating dumping margins. See Preliminary Results Analysis Memorandum from case analyst to file, dated October 19, 1999 (98/99 review), in room B–099 of the main Department building; see also Preliminary Results Analysis Memorandum from case analyst to file, dated February 22, 1999 (97/98 review), in room B–099 for additional details.

On April 28, 1999, Al Tech Specialty Steel Corp., Dunkirk, N.Y., Carpenter Technology Corp., Reading, PA, Republic Engineered Steels, Inc., Massillon, OH, Slater Steels Corp., Fort Wayne, IN, Talley Metals Technology, Inc., Hartsville, SC, and the United Steel Workers of America, AFL–CIO/CLC, collectively the petitioners in the less-than-fair value (LTFV) investigation (hereafter petitioners), requested that the Department determine whether antidumping duties have been absorbed in the event that the subject merchandise was sold during the POR in the United States through an importer affiliated with the respondent. As all of Aichi's sales to the United States during the POR were through an unaffiliated importer, duty absorption was not an issue.

On May 17, 1999, the petitioners requested that the Department initiate a sales-below-cost investigation of Aichi's home-market sales. On June 28, 1999, based on section 773(b)(2)(A)(ii) of the Act, since we disregarded certain home-market sales below the cost of production (COP) in the 97/98 review, we initiated a cost investigation for this review. See *Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review*, 64 FR 36333 (July 6, 1999).

Scope of Review

The merchandise covered by this review is stainless steel bar (SSB). For purposes of this review, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.11.0005, 7222.19.0005, 7222.11.0050, 7222.19.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

United States Price

In calculating the price to the United States, we used export price (EP) as defined in section 772(a) of the Act because the subject merchandise was sold to an unaffiliated U.S. purchaser in the United States prior to the date of importation into the United States and the use of constructed export price was not indicated by the facts of record.

We calculated EP for U.S. sales based on F.O.B. Japan port prices to the United States. We made adjustments, where appropriate, for domestic inland freight, warehousing expenses, and brokerage and handling in accordance with section 772(c)(2)(A) of the Act. We used the shipment date as the date of sale for the U.S. market because this was the point at which the material terms of sale were determined. See Preliminary Results Analysis Memorandum from case analyst to file, dated October 19, 1999, in room B–099.

Aichi claimed that an upward adjustment to EP was appropriate to account for a "duty drawback" program. As stated in *Certain Welded Carbon Standard Steel Pipes and Tubes from India* (62 FR 47632, 47635 (September 10, 1997)), "we determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product." As discussed below, because the respondent met these criteria, we have made an adjustment to EP.

Aichi participates in Japan's duty-drawback program through its operation of a "hozei area," which is similar to a bonded warehouse. Aichi posts a bond on all materials that enter the warehouse. If Aichi utilizes the imported materials for the production of merchandise that is exported, Japanese Customs Authority then releases the bond. If the imported materials are not used in the production of exported merchandise, Aichi pays import duties on the materials.

We granted an upward adjustment to EP because Aichi was able to show both (1) a link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product.

No other adjustments to EP were claimed.

Normal Value

On March 25, 1999, Aichi requested that the Department limit the product scope of Aichi's reporting requirements as in *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Japan*, 64 FR 10445 (March 4, 1999).

On March 30, 1999, the Department granted Aichi's request to report only home-market sales of hot-rolled merchandise given that Aichi's letter confirmed that the same facts apply in this review that applied in the last review.

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating normal value (NV), we compare the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home-market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade. We matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. (See *Level of Trade* below.)

After disregarding appropriate below-cost sales (see *Cost-of-Production Analysis* below), pursuant to section 773(b)(1) of the Act, we compared the EP sales of individual transactions to the monthly weighted-average price of sales of the most similar foreign like product. Where possible, we based NV on delivered prices to unaffiliated purchasers in the home market. Where applicable, we made adjustments to home-market price for billing adjustments, inland freight, warehousing expenses, discounts and rebates. Subject merchandise sold in the United States was compared to home-market products by applying the following criteria on a hierarchical basis: general type of finish, grade, remelting, type of final finishing operation, shape, and size.

Home-market prices were based on delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. To make COS adjustments, we reduced home-market price by an amount for home-market credit and we increased it by an amount for U.S. credit expenses.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831 (see H.R. Doc. No. 103–316, at 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade as the U.S. sales (either EP or constructed export price). When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade. The NV level of trade is that of the starting-price sales in the home market. When NV is based on constructed value (CV), the level of trade is that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit.

To determine whether home-market sales are at a different level of trade than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we examined information from the respondent regarding the marketing stages involved in the reported home market and EP sales, including a description of the selling activities Aichi performed for each channel of distribution. Aichi reported three channels of distribution in the home market and claimed five levels of trade for its home-market sales—consignment sales to trading companies, consignment sales to direct distributors, non-consignment sales to trading companies, non-consignment sales to distributors and non-consignment sales to end-users.

Based on our analysis of information on the record, we determine that there are no differences with respect to selling functions between consignment and non-consignment sales. Specifically, there are no differences between consignment and non-consignment sales with respect to strategic and economic planning, market research, computer, legal, accounting, audit, business systems development assistance, personnel assistance, engineering services, research and development technical programs, advertising, procurement and sourcing, sales calls/assistance and post-sale warehousing. The distinction between consignment and non-consignment sales is that, in consignment sales situations, Aichi permits the customer to take possession of the product without requiring that the customer pay for the product until the customer sells to its downstream customer. This distinction, however, does not relate to the nature of the selling activities provided. See Preliminary Results Analysis Memorandum from case analyst to file, dated October 19, 1999, in room B–099. This determination is consistent with the Department's determination on this issue in the previous administrative review (see *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Japan*, 64 FR 10445 (March 4, 1999)).

Aichi reported sales to three types of customers in the home market: trading companies, end-users, and distributors. Selling functions performed with respect to sales to trading companies included strategic and economic planning, market research, computer, legal and business-systems development, engineering services and post-sale warehousing. In addition to these functions, other functions performed for sales to end-users included R&D technical programs, advertising, and sales calls/assistance. Distributors also were offered personnel training and manpower assistance in addition to the services offered to trading companies and end-users. Based on these differences, we found that the three types of home-market customers constituted three different levels of trade.

We found that Aichi made EP sales of various models of merchandise through unaffiliated trading companies, a channel of distribution similar to the home-market channel involving sales to trading companies. As with sales through the trading-company channel of distribution in the home market, Aichi performed only a few selling functions when selling merchandise to trading companies that exported the merchandise to the United States. Thus, we found that the level of trade for this U.S. channel of distribution was the same as the level of trade for the home-market trading company channel of distribution. See *Id.*

Cost-of-Production Analysis

As stated in the Background section of this notice, the Department initiated a COP investigation for Aichi to determine whether Aichi made home-market sales during the POR at prices below their respective COPs (as defined by section 773(b) of the Act). In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales and COP information Aichi provided in its questionnaire responses.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of SSB were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of Aichi's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of Aichi's sales of a given product during the POR were at prices less than the COP, we determined that the below-cost sales were made in substantial quantities within an extended period of time. See sections 773(b)(2)(B) and (C) of the Act. Additionally, based on comparisons of prices to weighted-average COPs for the POR, we determined that the sales were at prices which would not permit recovery of all costs within a reasonable period of time, as defined by section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit in the calculation of CV. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Aichi in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we make adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for COS differences and level-of-trade differences. For comparisons to EP, we make COS adjustments by deducting home market direct selling expenses from and adding U.S. direct selling expenses to NV.

We calculated CV at the same level of trade as the EP. Therefore we made no level-of-trade adjustment.

Preliminary Results of Review

As a result of our comparison of EP and NV, we preliminarily determine a weighted-average dumping margin of 1.72 percent for Aichi for the period February 1, 1998, through January 31, 1999.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 37 days after the date of publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication.

Parties who submit argument are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/customer-specific assessment value for subject merchandise. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of SSB from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Aichi will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 61.47 percent, the all-others rate established in the LTFV investigation (59 FR 66930 (December 28, 1994)).

The deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-29205 Filed 11-5-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin-Madison, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 99-011. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Micromanipulator, Model MK1. *Manufacturer:* Singer, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* August 18, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99-29202 Filed 11-5-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 991027290-9290-01]

Application of Marine Biotechnology To Assess the Health of Coastal Ecosystems: Request for Proposals for FY 2000; Correction

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; Correction.

SUMMARY: The National Sea Grant College Program (See Grant) published a document in the **Federal Register** on November 1, 1999, concerning a request for proposals on the "Application of Marine Biotechnology to Assess the Health of Coastal Ecosystems: Request for Proposals for FY 2000." The document contained an incorrect statement regarding the funding that may be requested per year.

FOR FURTHER INFORMATION CONTACT: Linda Kupfer 301-713-2434 Ext 154.

Correction

In the **Federal Register** of November 1, 1999, in FR Doc. 99-28574, on page 58817, in the third column, correct the last sentence in the **SUMMARY** paragraph to read:

SUMMARY: * * * "Proposals may request up to $150,000 per year for a maximum of two years, and each proposal must include additional matching funds equivalent to at least 50% of the Federal funds requested."

Dated: November 2, 1999.

Julie Scanlon,

Federal Register Liaison, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 99-29106 Filed 11-5-99; 8:45 am]

BILLING CODE 3510-KA-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Patent and Trademark Office is announcing, in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), an open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The meeting will be held from 10:00 a.m. until 4:00 p.m. on Wednesday, December 8, 1999.

ADDRESSES: The meeting will take place at the U.S. Patent and Trademark Office, The Edison Room, 10th floor, Crystal Park 2, 2121 Crystal Drive, Virginia 22202.

FOR MORE INFORMATION CONTACT: Sharon Marsh by mail marked to her attention and addressed to Office of the Assistant Commissioner for Trademarks, Patent and Trademark Office, 2900 Crystal Drive, South Tower Building, Suite 10B10, Arlington, VA 22202-3513; by telephone at (703) 308-9100, ext. 45; by fax at (703) 308-9395; or by e-mail to sharon.marsh@uspto.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to public observation. Accordingly, seating will be available to members of the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request. The agenda for the meeting is as follows:

(1) Trademark Operation Issues
(2) Policy Issues
(3) Trademark Trial and Appeal Board Issues
(4) Finance
(5) Automation
(6) Domestic Legislation
(7) International Trademark Issues

Dated: November 2, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99-29227 Filed 11-5-99; 8:45 am]

BILLING CODE 3510-16-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

November 2, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59942, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
331	1,435,694 dozen pairs.
334	175,418 dozen.
335	198,506 dozen.
338/339	1,803,579 dozen.
340/640	3,691,022 dozen.
341	2,662,841 dozen.
342/642	508,528 dozen.
351/651	840,202 dozen.
352/652	12,185,314 dozen.
363	31,317,869 numbers.
634	613,707 dozen.
635	393,913 dozen.
638/639	1,744,730 dozen.
641	492,515 dozen.
645/646	255,040 dozen.
847	288,040 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29188 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

November 2, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 443 is being increased for swing, reducing the limit for Category 315 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63031, published on November 10, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textile products, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 10, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	25,919,294 square meters.
443	138,916 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29189 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 3, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67048, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 16, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing.

Category	Adjusted twelve-month limit[1]
Group I	
200–227, 300–326, 360–363, 369(1)[2], 369pt.[3], 400–414, 464, 469pt.[4], 600–629, 666, 669pt.[5] and 670, as a group.	240,064,752 square meters equivalent.
Group II	
237, 239pt.[6], 331–348, 350–352, 359(1)[7], 359(2)[8], 359pt.[9], 431, 433–438, 440–448, 459pt.[10], 631, 633–652, 659(1)[11], 659(2)[12], 659pt.[13], and 443/444/643/644/843/844(1), as a group.	864,119,832 square meters equivalent.
Sublevels in Group II	
359(1) (coveralls, overalls and jumpsuits).	661,344 kilograms.
633/634/635	1,401,229 dozen of which not more than 524,090 dozen shall be in Categories 633/634 and not more than 1,073,486 dozen shall be in Category 635.
644	77,651 numbers.
648	1,190,600 dozen of which not more than 1,178,310 dozen shall be in Category 648–W[14].
659(1) (coveralls, overalls and jumpsuits).	710,755 kilograms.
Within Group II subgroup	
336	248,970 dozen.
351	1,223,522 dozen.
636	324,547 dozen.
651	333,748 dozen.

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[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Category 369pt.: all HTS numbers except 5601.10 1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[14] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–29193 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 2, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 638/639 is being increased by reducing previous special shift added to Category 338, reducing the limit for that category.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59946, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
338	6,054,757 dozen.
638/639	271,482 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29187 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

November 3, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 340/640 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 53878, published on October 7, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Laos and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 10, 1999, you are directed to increase the current limit for Categories 340/640 to 181,830 dozen[1], as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the Lao People's Democratic Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29194 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

November 3, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347/348 is being increased for swing, reducing the limit for Categories 341/

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

641 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59947, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Qatar and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
341/641	173,550 dozen.
347/348	551,964 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–29195 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 3, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 15, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69057, published on December 15, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 15, 1999, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit[1]
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870[2], 369–S[3], 369–O[4], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P[5], 669–T[6], 669–O[7], 670–H[8] and 670–O[9], as a group.	635,083,124 square meters equivalent.
Sublevels in Group I	
300/301/607	1,835,142 kilograms of which not more than 1,529,285 kilograms shall be in Category 300; not more than 1,529,285 kilograms shall be in Category 301; and not more than 1,529,285 kilograms shall be in Category 607.
363	12,996,360 numbers.
619/620	15,490,147 square meters.
625/626/627/628/629.	20,186,396 square meters.
Sublevels in Group II	
338/339	1,006,040 dozen.
340	1,368,117 dozen.
345	130,312 dozen.
347/348	1,515,365 dozen of which not more than 1,309,866 dozen shall be in Categories 347–W/348–W[10].
436	5,353 dozen.
438	30,216 dozen.
631	5,454,431 dozen pairs.
638/639	6,627,128 dozen.
642	932,405 dozen.
647/648	5,456,952 dozen of which not more than 5,193,775 dozen shall be in Categories 647–W/648–W[11].
Within Group II Subgroup	
342	146,128 dozen.
350/650	149,016 dozen.
351	400,312 dozen.

Category	Adjusted twelve-month limit[1]
447/448	22,098 dozen.
651	467,674 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[10] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[11] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29192 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 2, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of letters dated January 10, 1997, May 2, 1997 and December 10, 1997, as amended and extended, concerning textiles and textile products, produced or manufactured in Taiwan, establishes limits for the period January 1, 2000 through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2000 period.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of letters dated January 10, 1997 and May 2, 1997, as amended and extended, between the Governments of the United States and Taiwan, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 2000 and extends through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870[1], 369–S[2], 369–O[3], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P[4], 669–T[5], 669–O[6], 670–H[7] and 670–O[8], as a group.	584,568,477 square meters equivalent.
Sublevels in Group I	
218	22,202,235 square meters.
225/317/326	39,408,907 square meters.
226	7,151,459 square meters.

Category	Twelve-month limit
300/301/607	1,740,812 kilograms of which not more than 1,450,677 kilograms shall be in Category 300; not more than 1,450,677 kilograms shall be in Category 301; and not more than 1,450,677 kilograms shall be in Category 607.
363	12,206,862 numbers.
369–L/670–L/870	49,978,771 kilograms.
611	3,200,212 square meters.
613/614/615/617	19,847,396 square meters.
619/620	14,588,143 square meters.
625/626/627/628/629.	18,982,620 square meters.
669–P	345,097 kilograms.
669–T	1,121,640 kilograms.
670–H	19,138,212 kilograms.
Group I subgroup	
200, 219, 313, 314, 315, 361, 369–S and 604, as a group.	147,246,983 square meters equivalent.
Within Group I subgroup	
200	717,396 kilograms.
219	16,327,229 square meters.
313	67,318,045 square meters.
314	29,083,124 square meters.
315	22,285,085 square meters.
361	1,441,092 numbers.
369–S	487,599 kilograms.
604	232,303 kilograms.
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C[9], 359–H/659–H[10], 359–O[11], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S[12], 659–O[13], 831–844 and 846–859, as a group.	755,000,000 square meters equivalent.
Sublevels in Group II	
237	700,905 dozen.
239	5,802,703 kilograms.
331	512,300 dozen pairs.
336	119,415 dozen.
338/339	806,896 dozen.
340	1,121,150 dozen.
345	124,774 dozen.
347/348	1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W[14].
352/652	3,168,186 dozen.
359–C/659–C	1,447,633 kilograms.
359–H/659–H	4,843,497 kilograms.
433	15,392 dozen.
434	10,689 dozen.
435	25,379 dozen.
436	5,053 dozen.
438	28,522 dozen.
440	5,525 dozen.
442	43,783 dozen.
443	43,095 numbers.
444	61,377 numbers.
445/446	136,778 dozen.
631	5,064,470 dozen pairs.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,565,058 dozen.
640	1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y[15].
642	777,133 dozen.
643	512,857 numbers.
644	760,376 numbers.
645/646	4,107,691 dozen.
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W[16].
659–S	1,601,702 kilograms.
835	19,983 dozen.
Group II Subgroup	
333/334/335, 341, 342, 350/650, 351, 447/448, 636, 641 and 651, as a group.	77,470,514 square meters equivalent.
Within Group II Subgroup	
333/334/335	307,219 dozen of which not more than 166,411 dozen shall be in Category 335.
341	341,620 dozen.
342	213,411 dozen.
350/650	138,079 dozen.
351	355,046 dozen.
447/448	21,032 dozen.
636	387,350 dozen.
641	731,811 dozen of which not more than 256,134 dozen shall be in Category 641–Y[17].
651	445,252 dozen.
Group III	
Sublevel in Group III	
845	852,916 dozen.

[1] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[4] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[5] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category. 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[7] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

Category	Twelve-month limit

[13] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement concerning imports of textile and apparel products from Taiwan.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated December 8, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

The conversion factors are as follows:

Category	Conversion factors (square meters equivalent/category unit)
300/301/607	8.5
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
359–H/659–H	11.5
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.5

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29191 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

November 2, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 331 and 636 are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69057, published on December 15, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 12, 1999, you are directed to increase the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
331	496,702 dozen pairs.
Within Group II Subgroup	
636	392,374 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29190 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 2, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryover and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 58369, published on October 30, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 10, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Group II	
237, 331–348, 350–352, 359–H[2], 359pt.[3], 431, 433–438, 440, 442–448, 459pt.[4], 631, 633–652, 659–H[5], 659pt.[6], 831, 833–838, 840–858 and 859pt.[7], as a group.	325,975,858 square meters equivalent.
Sublevels in Group II	
334/634	645,775 dozen.
335/635/835	559,646 dozen.
338/339	2,481,168 dozen.
340	376,885 dozen.
347/348/847	1,059,870 dozen.
638/639	1,986,772 dozen.
640	541,646 dozen.
647/648	1,115,393 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[3] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.90.2060 (Category 359–H); and 6406.99.1550.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[7] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29186 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Meeting

AGENCY: Corporation for National and Community Service.

ACTION: Notice of meeting.

SUMMARY: The Corporation for National and Community Service gives notice under Public Law 92–463 (Federal Advisory Committee Act), that it will hold a meeting of the Civilian Community Corps (CCC) Advisory Board. The Board advises the Director of CCC concerning the administration of the program and assists in the development and administration of the Corps. At this meeting, the Board will discuss the general status of the program and its overall sustainability. The meeting will be open to the public.

TIME AND DATE: Tuesday, November 9, 1999, 9 a.m. to 5 p.m.

PLACE: The meeting will be held at Corporation Headquarters, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Ms. Merlene Mazyck, 1201 New York Avenue NW., 9th Floor, Washington, DC 20525. Telephone (202) 606–5000, ext. 137 (T.D.D. (202) 565–2799).

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments. Individuals who have a disability and who need an accommodation to attend the meeting may notify Ms. Mazyck.

Dated: November 3, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–29213 Filed 11–5–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF ENERGY

Sandia National Laboratories/New Mexico Final Site-Wide Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Sandia National Laboratories/New Mexico (SNL/NM) Final Site-Wide Environmental Impact Statement (Site-Wide EIS), DOE/EIS–0281. DOE proposes to continue operating SNL/NM, located in Albuquerque, New Mexico. The Site-Wide EIS evaluates the potential environmental impacts of continuing to operate SNL/NM and incorporates public comments received on the Draft Site-Wide EIS and DOE responses.

ADDRESSES: Requests for copies of the Final Site-Wide EIS or for information regarding the document should be directed to Julianne Levings, SNL/NM Site-Wide EIS Project Manager, U.S.

Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400 or by telephone at (505) 845–6201. The Site-Wide EIS is available under the NEPA Analyses Module of the DOE NEPA Web Site at http://tis.eh.doe.gov/nepa/. A Spanish translation of the Summary is also available on the DOE NEPA Web Site. The Site-Wide EIS is available for public inspection at the following locations:

University of New Mexico, Government Document Collection, Zimmerman Library, Main Campus, Albuquerque, New Mexico

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, EH–42, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Ms. Borgstrom may be contacted by calling (202) 586–4600 or by leaving a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Site-Wide EIS incorporates comments received during the public comment period from April 16, 1999 through June 15, 1999. The Site-Wide EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321 *et seq.*], the Council on Environmental Quality NEPA regulations [40 CFR part 1500], and the DOE NEPA regulations [10 CFR part 1021]. The Department proposes to continue operating the SNL/NM, which is located in Albuquerque, New Mexico.

DOE has identified and assessed three alternatives for the operation of SNL/NM: (1) No Action, (2) Expanded Operations, and (3) Reduced Operations. In the No Action Alternative, DOE would continue the status quo; that is, operating at planned levels as reflected in current DOE management plans. In the Expanded Operations Alternative, DOE would increase activity at SNL/NM to the highest reasonable level that could be supported by current facilities and includes the potential expansion/construction of new facilities specifically addressed in the Site-Wide EIS. Under the Reduced Operations Alternative, activities would be reduced to the minimum level of operations needed to maintain SNL/NM facilities and equipment in an operational readiness mode.

DOE's Preferred Alternative for SNL/NM, as identified in the Final Site-Wide EIS, is the Expanded Operations Alternative, exclusive of the Microsystems and Engineering Sciences Applications (MESA) Complex. In the Final Site-Wide EIS, DOE added discussion of a developing proposal for a new MESA Complex in order to share with the public information being assembled during the ongoing conceptual design. DOE will prepare an environmental assessment for the MESA Complex when the conceptual design is complete, to determine whether an EIS is required.

The analysis in the Site-Wide EIS indicates that all impacts from the Preferred Alternative would be small except water usage, which contributes to the general groundwater drawdown in the city of Albuquerque. There is little difference in the environmental impacts among the alternatives analyzed.

Subsequent Document Preparation: DOE intends to issue a Record of Decision no earlier than 30 days following publication in the **Federal Register** of the Environmental Protection Agency's Notice of Availability of the Final Site-Wide EIS, which appeared in the **Federal Register** on October 29, 1999. DOE will publish the Record of Decision in the **Federal Register**.

Issued in Washington, DC, on November 1, 1999.

Henry Garson,

NEPA Compliance Officer, Defense Programs.

[FR Doc. 99–29153 Filed 11–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–206–005]

Atlanta Gas Light Company; Notice of Technical Conference

November 2, 1999.

Take notice that a technical conference will be held on November 17, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 99–29132 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–14–000, CP00–15–000, and CP00–16–000]

Buccaneer Gas Pipeline Company, L.L.C.; Notice of Applications for Certificates

November 2, 1999.

Take notice that on October 28, 1999, Buccaneer Gas Pipeline Company, L.L.C. (Buccaneer or Applicant), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP00–14–000 pursuant to and in accordance with Section 7(c) of the Natural Gas Act (NGA) and the optional certificate procedures of Part 157(E) of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline, compression, measuring and other related facilities. On that same date Buccaneer filed in Docket No. CP00–15–000 for a blanket certificate of public convenience and necessity to render firm and interruptible transportation services on an open access basis pursuant to Part 284(G) of the Commission's regulations and for approval of initial rates. Also, Buccaneer requests in Docket No. CP00–16–000 the issuance of a blanket certificate of public convenience and necessity under Part 157(F) of the Commission's regulations authorizing certain facility construction, operation and abandonment,[1] all as more fully set forth in the applications which are on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

Pursuant to Section 157.102(b)(1) of the Commission's regulations, Buccaneer (i) requests that the instant application be considered under the optional procedures of Part 157(E) and (ii) agrees to comply with all terms and conditions specified in Section 157.103.

Buccaneer requests that the Commission issue a preliminary determination on the non-environmental aspects of this proposal by February 1, 2000, and a final order granting the authorizations requested herein by December 15, 2000. Buccaneer states that this approval schedule is necessary to allow construction of the project to be completed by April 1, 2002, the proposed in-service date for the project. Buccaneer states that it is not currently engaged in any natural gas transportation operations. Upon commencement of operations proposed in this application, Buccaneer states that it will become a "natural gas company" within the meaning of Section 2(6) of the NGA and, as such, will be subject to the jurisdiction of the Commission. Buccaneer states that its natural gas pipeline project ("Buccaneer Project" or the "Project") is being proposed in response to the rapidly growing market for natural gas service in the State of Florida, where the natural gas requirements are expected to nearly double by the year 2007. It is stated that the Project will be designed to transport up to 900,000 dekatherms (dt) of natural gas per day. Buccaneer estimates that the total cost of the Project will be $1,455,173,425. Buccaneer is proposing a 75/25 debt to equity capital structure and will seek non-recourse project financing.

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[1] On September 30, 1999, Buccaneer previously filed for certificate authorization to construct and operate these same facilities and for blanket authorization under Part 284, Subpart G and Part 157, Subpart F in Docket Nos. CP99–628–000, CP99–629–000, and CP99–630–000, respectively. These applications were rejected because of deficiencies in the environmental exhibits included in Docket No. CP99–628–000.

Buccaneer states that the Project will consist of a new mainline system which will commence in Mobile County, Alabama, and cross the Gulf of Mexico to the west coast of Florida just north of Tampa. It is stated that onshore, the pipeline will branch out in an easterly direction to serve power generation plants and other markets across the central part of the state. Buccaneer indicates that the pipeline system will include a compressor station in Mobile County and a liquids separation facility in Pasco County, Florida.

Specifically, the Buccaneer states that the Project will consist of 532.67-miles of 36-inch mainline pipeline in three major mainline components: the Alabama Mainline, the Gulf of Mexico Mainline and the Florida Mainline. It is stated that the 36-inch, 16.66 mile Alabama Mainline will begin at Buccaneer's proposed Compressor Station 1 which will be co-located with the existing compressor station of Transcontinental Gas Pipe Line Corporation (Transco) in Mobile County, Alabama and will include a 4.14-mile segment in Mobile County and a 12.52-mile segment in Alabama state waters, and will end at the boundary between the Alabama state waters and federal waters in Mobile Block 822, Offshore Alabama. Buccaneer states that the Gulf of Mexico Mainline will consist of 376.77 miles of 36-inch mainline pipeline beginning in Mobile Block 822, traversing the Mobile, Pensacola, Destin Dome, Apalachicola, Florida, Middle Ground and Tarpon Springs Areas, and ending at the boundary between federal waters and Florida state waters in Tarpon Springs Block 901. Buccaneer indicates that the Florida Mainline will consist of 139.24 miles of 36-inch mainline pipeline beginning in Tarpon Springs Block 901, traversing Pasco, Polk and Osceola Counties, Florida, and ending at the Project's milepost 20.68 in Orange County, Florida, where the mainline will branch into 16-inch and 30-inch laterals.

Buccaneer states that the 36-inch mainline mileposts are continuous from Compressor Station 1 in Mobile County, Alabama to the liquids separation facility in Pasco County, Florida. It is indicated that the Florida Mainline consists of the Pasco, Polk, Osceola and Orange County Mainlines and has a milepost system that begins at the boundary of each Florida county. Buccaneer states that there will be three major lateral systems and five small laterals which will branch from the Florida Mainline. Buccaneer states that the 30-inch, 37.99-mile Tiger Bay Plant Lateral will begin at milepost 20.58 on the Polk County Mainline and will extend southward, where 20-inch extensions of the Tiger Bay Plant Lateral will be constructed to deliver gas to the Hines, Polk and Payne Creek Plants.

It is stated that the 24-inch, 46.60-mile Leesburg Plant Lateral will begin at milepost 32.87 on the Polk County Mainline and will extend northward into Lake County. It is further stated that the 34.68-mile Oleander Plant Lateral will consist of 30-inch and 24-inch pipeline beginning at milepost 20.68 on the Orange County Mainline and extending to the east into Brevard County. It is also indicated that the 18-inch Indian River and Cape Canaveral Plant Laterals will be extensions of the Oleander Plant Lateral at its eastern end. Buccaneer states that additional 16-inch laterals will be constructed from various portions of the Florida Mainline to deliver gas to the Anclote, Intercession City, Cane Island and Stanton Plants and to the City of Lakeland, Florida.

Buccaneer states that it also will construct a new 75,000 horsepower compressor station (referred to as Buccaneer's Compressor Station 1) which will be co-located with Transco's existing Compressor Station 82 in Mobile County, Alabama, and will include a compressor building with five 15,000 horsepower gas turbine-driven gas compressors. It is stated that a metering and regulating (M&R) station also will be constructed at the station to measure gas delivered into the Buccaneer mainline.

Buccaneer also proposes to construct a liquids separation facility at Anclote in Pasco County, Florida to collect liquids that have condensed in the pipeline due to temperature and pressure drop. The facility will be sited on a 68-acre tract, immediately north of Florida Power corporation's Anclote Plant, and a 290 foot, single-span bridge will be constructed across the Anclote Power Plant cooling water outflow channel to access the site. Buccaneer also proposes to construct M&R stations at each of the 13 proposed delivery points.

It is stated that the facilities will be constructed and operated by Buccaneer's affiliate, Buccaneer Operating Company. Buccaneer states that the construction and operation of the Buccaneer pipeline system will have no significant impact on the quality of human health or the environment. Buccaneer certifies that the proposed facilities will be designed, constructed, operated and maintained in accordance with all applicable safety standards and plans for maintenance and inspection.

Buccaneer proposes to provide a firm transportation service under Rate Schedule FTS, an interruptible transportation service under Rate Schedule ITS and a parking and lending service under Rate Schedule PAL, under rates, terms and conditions in its pro forma tariff included with the application. Buccaneer states that the shippers subscribing to its firm transportation service will be given the option of paying a negotiated rate or a cost-based recourse rate for service under its firm rate schedule. Buccaneer proposes that the initial recourse rate for its firm transportation service under Rate Schedule FTS will be a daily reservation rate of $0.7690 per dt, which is based on the straight fixed-variable rate design methodology. It is stated that the initial recourse rate for interruptible transportation service under Rate Schedule ITS and parking and loan service under Rate Schedule PAL will be a commodity rate of $0.7690 per dt. Buccaneer states that its customers also will be charged fuel and retainage and the ACA surcharge as set forth in its tariff.

Buccaneer states that it is proposing a capital structure consisting of 75 percent debt and 25 percent equity. Buccaneer indicates that it assumes that the debt will bear interest at the rate of 4.0 percent for a term of 25 years. Buccaneer states, however, that it plans to seek the most favorable financing terms available in the marketplace at the time the project is financed. Buccaneer proposes that the equity component of its capital structure earn a return of 14 percent, producing an overall after-tax return of 9.88 percent on Buccaneer's proposed capital structure. Buccaneer states that its proposed return on equity and capital structure are consistent with recent Commission orders on major construction projects, two of which (Vector Pipeline L.P. and Alliance Pipeline L.P.) involve optional certificate applications.

Buccaneer asserts that approval of the instant application is required by the public convenience and necessity for the following reasons:

A. As one of the fastest growing states in the country, Florida projects that it will need over 10,000 megawatts of additional electricity in the state by the year 2007 to keep up with its growing population. Additional power generation capacity will be required to meet this need and to avoid the electricity curtailments that Florida experienced during the summer of 1998. It is expected that a vast majority of this additional power generation will be fueled by natural gas, thus placing natural gas in a pivotal, growing role in the development of Florida's new and existing electric power generation plants. For natural gas to fulfill that role, the Florida Peninsula will require approximately twice the 1.5 million dt per day of pipeline capacity currently provided by its only existing interstate pipeline. The Buccaneer Project will help serve that requirement by providing 900,000 dt per day of new pipeline capacity to the state.

Moreover, the need for compliance with the Clean Air means that existing industrial and commercial plants, which are now coal or oil fueled, will be encouraged to switch to natural gas as their primary fuel source. An increased supply of clean burning natural gas can displace massive amounts of coal and heavy oil that would otherwise be required for heating, cooling and generating electricity. The environmental benefits are clear.

Natural gas emits virtually no sulfur dioxide or particulate matter, very little nitrogen oxides and much less carbon dioxide than other fossil fuels.

B. Section 157.104(c) of the Commission's regulations establishes a rebuttable presumption that an optional certificate applicant's project is required by the public convenience and necessity. Specifically, if an applicant complies fully with the requirements of Sections 157.102 and 157.103 of the regulations, it is presumed that:

(1) The applicant is qualified to perform all the activities for which certificate authorization is requested;

(2) The applicant is willing and able to perform acts and provide service, as proposed, and to comply with the NGA and any applicable regulations thereunder; and

(3) The proposed new service is or will be required by the present or future public convenience and necessity.

Buccaneer states that it has complied with the filing requirements of Section 157.102 and has satisfied the terms and conditions of Section 157.103. In addition to satisfying these specific requirements of the optional certificate regulations, Buccaneer indicates that the Buccaneer Project furthers the Commission's goals of the optional certificate program, which sought (1) to provide the full benefits of competition to consumers by facilitating easier entry and exit from services, (2) to ensure the most efficient scale of facilities by removing certification as a barrier to entry, and (3) to provide incentives for competition where none exists by maximizing the use of alternative market access for producers and consumers. Buccaneer states that it will promote these goals as a new market entrant, providing additional markets for producers and enhancing competition in the State of Florida.

It is further indicated that the Project will further enhance the security of natural gas supplies to Florida, given that Buccaneer has complied with the requirements and furthers the goals of optional certificate regulations.

Any person desiring to be heard or to make protest with reference to said application should on or before November 23, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party to parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service last maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. As intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Buccaneer to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–29101 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No RP99–220–002]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

November 2, 1999.

Take notice that on October 29, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Tenaska Marketing Ventures (Tenaska) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and Tenaska commencing November 1, 1999.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29133 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–40–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

November 2, 1999.

Take notice that on October 29, 1999, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective November 1, 1999:

Nineteenth Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering ("IG") rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 13 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29136 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–39–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1999.

Take notice that on October 29, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective December 1, 1999.

Natural states that the filing has been submitted to reflect a series of changes to its Tariff in the following areas: access to DART; facilities reimbursement; nonconforming gas; and Rate Schedule DSS storage balances.

Natural requests any waivers which may be required to permit the tendered tariff sheets to become effective December 1, 1999.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to be come a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29135 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–151–027]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

November 2, 1999.

Take notice that on October 29, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of November 1, 1999:

Fifth Revised Volume No. 1

Thirteenth Revised Sheet No. 26
Thirteenth Revised Sheet No. 26A
Twenty-First Revised Sheet No. 26B

Original Volume No. 2

Thirty-Ninth Revised Sheet No. 5

Tennessee states that this filing is in compliance with the Stipulation and Agreement approved by the Commission in its April 16, 1997 Order Approving Settlement in the above-referenced docket. *Tennessee Gas Pipeline Company*, 79 FERC ¶ 61,031 (1997). Tennessee requests waiver of the Commission's thirty-day notice requirement to allow an effective date of November 1, 1999 for the tariff sheets. Tennessee submits that good cause exists for the waiver because (1) the proposed tariff sheets represent a reduction in these customers' existing rates; (2) all of Tennessee's customers were informed of the rates since such rates were set forth in the Stipulation and Agreement; and (3) the Commission previously approved implementation of the rates, effective November 1, 1999, in its orders approving the Stipulation and Agreement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99–29131 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP000–24–001]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

November 2, 1999.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing in the referenced docket on October 21, 1999 a revised tariff sheet to its FERC Gas Tariff, Third Revised Volume No. 1. The effective date for the revised tariff sheet is December 1, 1999.

Transco states that its Cash Out Modification filing of October 13, 1999 in Docket No. RP00–24 (October 13 Filing) inadvertently left out part of a phrase in the General Terms and Conditions Section 37.1(b) that describes how the imbalance percentage for a shipper is calculated. The imbalance percentage calculation process is currently in Transco's tariff and not among the cash out provisions that Transco proposes to modify in its October 13 filing. The purpose of the filing is to supplement the October 13 Filing to reflect the correct imbalance percentage calculations.

In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas. In addition, Transco is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing my be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99–29134 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–41–000]

Trunkline Gas Company; Notice of Filing

November 2, 1999.

Take notice that on October 29, 1999, Trunkline Gas Company (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment in accordance with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge Adjustment. Trunkline further states that due to the minimal interruptible storage activity, no adjustment is required to Base Transportation Rates.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before November 9, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29137 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–12–000, et al.]

FortisUS Energy Corporation, et al., Electric Rate and Corporate Regulation Filings

October 28, 1999.

Take notice that the following filings have been made with the Commission:

1. FortisUS Energy Corporation

[Docket No. EG00–12–000]

Take notice that on October 25, 1999, FortisUS Energy Corporation (Applicant), with its principal office at FortisUS Energy Corporation, c/o Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, NY 10019–6092, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it plans to acquire and thenceforth will be engaged in owning and operating two hydroelectric projects totaling approximately 16 MW located in Jefferson and Lewis Counties, New York (the Facilities). Electric energy produced by the Facilities will be sold by FortisUS exclusively at wholesale.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. White River Electric Association Incorporated

[Docket No. EL00–8–000]

Take notice that on October 25, 1999, White River Electric Association Incorporated (White River) filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (Commission) Regulations. White River's filing is available for public inspection at its offices in Meeker, Colorado.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Phibro Inc. and Phibro Power LLC

[Docket Nos. ER95–430–021, ER95–430–022]

Take notice that on October 20, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Starghill Alternative Energy Corporation

[Docket No. ER97–4680–007]

Take notice that on October 21, 1999, Starghill Alternative Energy Corporation filed its quarterly report for the quarter ending September 30, 1999 for information only.

5. PECO Energy Company

[Docket No. ER99–1872–001]

Take notice that on October 22, 1999, PECO Energy Company filed a report of a change in status that reflects a departure from the facts relied upon by the Federal Energy Regulatory Commission in its grant of market-based rate authority to PECO in the above-referenced proceedings.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Energy PM, Inc., Sonat Power Marketing L.P., Merrill Lynch Capital Services, Inc., Spokane Energy, L.L.C., Industrial Gas & Electric Services Company, GreenMountain.com, Sonat Power Marketing Inc., North American Energy, Inc., Coast Energy Group, InPower Marketing Corp., WPS-Power Development, Revelation Energy Resources Corporation, Elwood Marketing LLC

[Docket Nos. ER98–2918–005, ER96–2343–014, ER99–830–005, ER98–4336–005, ER95–257–018, ER99–4324–001, ER95–1050–019, ER98–242–008, ER99–3005–001, ER99–3964–001, ER96–1088–028, ER97–765–003 and ER99–1465–003]

Take notice that on October 25, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

7. Southern Indiana Gas and Electric Company

[Docket No. ER00–180–000]

Take notice that on October 21, 1999, Southern Indiana Gas and Electric Company filed its quarterly report for the quarter ending September 30, 1999.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Hudson Enterprises Corporation CH Resources

[Docket No. ER00–214–000, ER00–215–000]

Take notice that on October 22, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Tucson Electric Power Company, Tucson Electric Power Company, Mid-American Power LLC, Puget Sound Energy, Inc., Alliant Energy Corporate Services, Pacific Northwest Generating Cooperative, Kincaid Generation L.L.C., Consolidated Water Power Company, GEN–SYS Energy, Old Dominion Electric Cooperative

[Docket No. ER00–222–000, ER00–223–000, ER00–224–000, ER00–225–000, ER00–232–000, ER00–233–000, ER00–234–000, ER00–240–000, ER00–241–000, and ER00–242–000]

Take notice that on October 25, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Direct Electric Inc., Alliance Power Marketing, Inc., TransCanada Power

[Docket Nos. ER94–1161–020, ER96–1818–015, and ER95–692–018]

Take notice that on October 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

11. Northbrook New York, LLC

[Docket No. ER99–3911–001]

Take notice that on October 22, 1999, Northbrook New York, LLC, a Delaware limited liability company (Northbrook), tendered for filing with the Commission an amendment to Northbrook's Rate Schedule FERC No. 2. Such filing is made in compliance with the Commission's order of September 15, 1999, in the above referenced docket. The amendment provides that Northbrook may sell ancillary electrical services into the PJM Power Exchange, the New York ISO market or the ISO New England market.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. APS Energy Services Company

[Docket No. ER99–4122–001]

Take notice that on October 25, 1999, APS Energy Services Company (APSES), tendered for filing in compliance of the Commission's Order dated October 13, 1999, in Docket No. ER99–4102–000 *et al.*, a revised Rate Schedule FERC No. 1, for Market Based Rates, to allow for sales of ancillary services to the California Independent System Operator Corporation.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER00–186–000]

Take notice that on October 22, 1999, Public Service Company of New Mexico (PNM), tendered for filing a Master Power Purchase and Sale Agreement (dated June 1, 1999) between PNM and Reliant Energy Services, Inc. (RES), which provides for the purchase and sale of power at market-based rates.

Copies of this filing have been provided to RES and to the New Mexico Public Regulation Commission. PNM's filing is available for inspection at its offices in Albuquerque, New Mexico.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New Century Services, Inc.

[Docket No. ER00–187–000]

Take notice that on October 22, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER00–192–000]

Take notice that on October 22, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Merchant Energy Group of the Americas, Inc. (Merchant Energy) for acceptance by the Commission.

The ISO states that this filing has been served on Merchant Energy and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective October 15, 1999.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER00–194–000]

Take notice that on October 22, 1999, PECO Energy Company (PECO), tendered for filing an amended service agreement between PECO and Commonwealth Edison Company (ComEd) to put into effect a rate cap for sales from PECO to ComEd in light of their announced intention to merge.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–198–000]

Take notice that on October 22, 1999, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing an unexecuted Bilateral Service Agreement between the Companies and TXU Energy Trading Company under the Companies Rate Schedule MBSS.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Consumers Energy Company

[Docket No. ER00–199–000]

Take notice that on October 22, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for unbundled wholesale power service with Virginia Electric and Power Company and Duke Energy Trading and Marketing, L.L.C., pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customers under the respective service agreements.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–203–000]

Take notice that on October 22, 1999, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing InPower Marketing Corporation as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of October 11, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Cincinnati Gas & Electric Company

[Docket No. ER00–213–000]

Take notice that on October 25, 1999, The Cincinnati Gas & Electric Company (CG&E), tendered for filing its proposed changes in its FERC Electric Tariff, First Revised Volume No. 1, which cancel and supersede rate schedules WH–I, WS–P and WS–S in said tariff. The proposed changes would decrease revenues from jurisdictional sales and service by $5,325,213 based on the twelve (12)-month period ending December 31, 2000. The reasons stated by CG&E for the change in rate schedule is to satisfy requirements imposed in Docket Nos. EC93–6–000, EC93–6–001, and ER94–1015–000.

Copies of the filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley, and the City of Lebanon municipalities in the State of Ohio; The Union Light, Heat and Power Company, a wholly-owned subsidiary of CG&E, which ultimately serves retail consumers and one wholesale customer within the Commonwealth of Kentucky; The West Harrison Gas and Electric Company, a wholly-owned subsidiary of CG&E, which ultimately serves retail consumers within the State of Indiana; the Public Utilities Commission of Ohio; the Kentucky Public Service Commission; and the Indiana Utility Regulatory Commission.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Northwest Regional Transmission Association

[Docket No. ER00–219–000]

Take notice that on October 25, 1999, Avista Corporation tendered for filing a Certificate of Concurrence to an amendment of the Northwest Regional Transmission Association's Governing Agreement, which would permit end use customers to become members of

NRTA and to revise the voting rules relating to individual class voting.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER00–220–000]

Take notice that on October 25, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and New York State Electric & Gas Corp. This Transmission Service Agreement specifies that New York State Electric & Gas Corp., has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and New York State Electric & Gas Corp., to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for New York State Electric & Gas Corp., as the parties may mutually agree.

Niagara Mohawk requests an effective date of October 15, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and New York State Electric & Gas Corp.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. New York State Electric & Gas Corporation

[Docket No. ER00–221–000]

Take notice that on October 26, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing an Agreement with the New York Power Authority (NYPA). This Agreement provides for NYSEG to install a 135 MVAR capacitor and its associated equipment (Facilities) on NYSEG's transmission facilities for the benefit of NYPA. NYPA will compensate NYSEG for such installation. Additionally, NYPA will pay monthly installments on NYSEG's annual charges for routine operation, maintenance, general expenses, and revenue and property taxes (O&M).

This rate filing is made pursuant to Article 12.10 (a) of the Agreement. The O&M charges will be revised annually based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31 of the immediately prior year. The O&M charge is levied on the cost of NYPA's use of NYSEG's transmission substation facilities required for the operation of NYPA's Facilities at NYSEG's Oakdale Substation.

NYSEG requests an effective date of October 19, 1999.

Copies of the filing were served upon the New York Power Authority and the Public Service Commission of the State of New York.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. California Independent System Operator Corporation

[Docket No. ER00–193–000]

Take notice that on October 22, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and PECO Energy Company (PECO Energy) for acceptance by the Commission.

The ISO states that this filing has been served on PECO Energy and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective October 17, 1999.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29100 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–235–000, et al.]

Southwestern Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

November 1, 1999.

Take notice that the following filings have been made with the Commission:

1. Southwestern Public Service Company

[Docket No. ER00–235–000]

Take notice that on October 27, 1999, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its delivery point listing with Deaf Smith Electric Cooperative, Inc., (Deaf Smith).

The proposed amendment reflects the addition of capacity to an existing delivery point for service to Deaf Smith.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Dayton Power and Light Company

[Docket No. ER00–237–000]

Take notice that on October 27, 1999, Dayton Power and Light Company (Dayton), tendered for filing a Non-Firm Transmission Service Agreement establishing ProLiance Energy, LLC as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with ProLiance Energy, LLC and the Public Utilities Commission of Ohio.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Nevada Power Company

[Docket No. ER00–238–000]

Take notice that on October 27, 1999, Nevada Power Company (Nevada Power), tendered for filing a Service Agreement (Service Agreement) with Dynegy Marketing & Trade, Inc., for Short-Term Firm Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff Original Volume No. 1, Open Access Transmission Tariff (Tariff). Nevada Power filed the executed Service Agreement with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations.

Nevada Power requests waiver of the Commission's notice requirements to allow the Service Agreement to become effective according to its terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada and all interested parties.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Detroit Edison Company

[Docket No. ER00–243–000]

Take notice that on October 27, 1999, Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), and Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Carolina Power & Light Company.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER00–245–000]

Take notice that on October 27, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Entergy Power Marketing Corp. (Entergy Power), for acceptance by the Commission.

The ISO states that this filing has been served on Entergy Power and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective October 17, 1999.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER00–246–000]

Take notice that on October 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's Bid Process Supplier to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of October 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER00–247–000

Take notice that on October 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of October 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER00–248–000]

Take notice that on October 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of October 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. DTE-CoEnergy L.L.C.

[Docket No. ER00–252–000]

Take notice that on October 25, 1999, DTE-CoEnergy L.L.C. (DTE-CoEnergy), tendered for filing a Notice of Cancellation of DTE-CoEnergy's Rate Schedule FERC No. 1 and Supplement No. 1 to Rate Schedule FERC No. 1.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Union Electric Company and Central Illinois Public Service Company

[Docket No. ER00–255–000]

Take notice that on October 27, 1999, Union Electric Company (UE) and Central Illinois Public Service Company (CIPS) (collectively, the Applicants), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Federal Energy Regulatory Commission's Regulations and in Compliance with Terms and Conditions of Settlement Agreement, Principles Governing Charges and Loss Factors for Wholesale Direct Assignment Facilities, with supporting Attachments A, B, and C, and Conditional Request for Waiver of Filing Requirements.

Pursuant to the Stipulation among the Applicants and its wholesale electric customers referenced in the filing, principles governing direct assignment facility charges and loss factors were to be determined and agreed to among those parties. This filing submits those principles to the Commission, in compliance with the Stipulation.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No. ER00–258–000]

Take notice that on October 27, 1999, Duke Energy Corporation (Duke), tendered for filing a termination notice pursuant to 18 CFR 35.15, to terminate the Standby Concurrent Exchange Agreement between Carolina Power and Light and Duke Energy Corporation.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER00–259–000]

Take notice that on October 27, 1999, Commonwealth Edison Company (ComEd), tendered for filing a service agreement establishing Illinova Power Marketing, Inc. (IPMI), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of October 27, 1999 for the Service Agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on IPMI.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER00–260–000]

Take notice that on October 27, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with Seminole Electric Cooperative, Inc., (Seminole) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on October 27, 1999.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER00–261–000]

Take notice that on October 27, 1999, Commonwealth Edison Company (ComEd), tendered for filing two Non-Firm Transmission Service Agreements with Illinova Power Marketing, Inc. (IPMI), and Peoples Energy Services Corporation (PESC), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd also submits name changes for current customer Strategic Energy Ltd, renamed Strategic Energy L.L.C (SEL); New Energy Ventures, Inc., renamed NewEnergy, Inc (NEI); FirstEnergy Trading and Power Marketing, Inc., renamed FirstEnergy Trading Services, Inc. (FET); and Electric Clearinghouse, Inc., renamed Dynegy Power Marketing, Inc. (DYN).

For informational purposes, ComEd further notes the following: On August 20, 1996, ComEd entered into Service Agreement No. 7, under the OATT, accepted by the Commission in Docket No. ER96–2759–000 to be effective September 20, 1996 with a company called Illinova Power Marketing, Inc. Pursuant to a notice of succession filed on May 2, 1997 in Docket No. ER97–2833–000, the company known as Illinova Power Marketing, Inc., that was a party to Service Agreement No. 7 changed its name to Illinova Energy Partners, Inc. (IEP).

ComEd requests an effective date of October 27, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on IPMI, PESC, SEL, NEI, FET, DYN, and IEP.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. South Glens Falls Energy, LLC

[Docket No. ER00–262–000]

Take notice that on October 27, 1999, South Glens Falls Energy, LLC, tendered for filing a Notice of Succession in Ownership pursuant to Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 131.51.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER00–263–000]

Take notice that on October 27, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing three Firm Point-to-Point Transmission Service Agreements between NSP and NSP Wholesale Energy Marketing.

NSP requests that the Commission accept the Agreements effective November 1, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Avista Corp.

[Docket No. ER00–264–000]

Take notice that on October 27, 1999, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm and Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with MIECO, Inc.

AVA requests the Service Agreements be given an effective date of October 4, 1999.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Electric and Gas Company, PECO Energy Company, Atlantic City Electric Company, Delmarva Power & Light Company, PP&L, Inc., Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Power Company and UGI Utilities, Inc.

[Docket No. ER00–268–000]

Take notice that on October 27, 1999, PECO Energy Company (PECO), tendered for filing a revised schedule to the Extra High Voltage Transmission System Agreement on behalf of the parties to that Agreement. PECO states that the purpose of the filing is to reflect implementation of Section 4.2.6 of the Agreement as approved by the Commission on May 11, 1999.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Atlantic City Electric Company and Delmarva Power & Light Company

[Docket Nos. OA97–97–005 and OA97–467–005]

Take notice that the companies listed in the above-captioned dockets filed letters with the Commission on September 22, 1999, reporting that they have an unregulated affiliate, Conectiv Energy Supply Inc. (CESI), involved in the wholesale merchant function. The companies state that they have updated their standards of conduct to reflect that CESI is an affiliate and that the rules regarding wholesale merchant employees apply to CESI.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29126 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–621–000]

Texas Eastern Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Ironwood Lateral and Request for Comments on Environmental Issues

November 2, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Ironwood Lateral involving construction and operation of facilities by Texas Eastern Transmission Corporation (Texas Eastern) in Lebanon County, Pennsylvania.[1] These facilities would consist of about 3.6 miles of 16-inch-diameter pipeline, one meter station and dual 12-inch hot taps. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Texas Eastern wants to expand the capacity of its facilities in Pennsylvania to transport an additional 12,000 million British thermal units per day of natural gas to an electric cogenerating facility. Texas Eastern seeks authority to construct and operate:

- Approximately 3.6 miles of 16-inch-diameter pipeline in Lebanon County, Pennsylvania;
- One meter station in Lebanon County, Pennsylvania, and
- Dual 12-inch hot taps in Lebanon County, Pennsylvania.

The location of the project facilities is shown is appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 37.2 acres of land. Following construction, about 0.3 acre would be maintained as a new aboveground facility site. The remaining 36.9 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Land use
- Cultural resources
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Curently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Eastern. This preliminary list of issues may be changed based on your comments and our analysis.

- The project would cross one perennial waterbody, Tulpehocken Creek. This creek was designated as part of the Pennsylvania Scenic Rivers Program in December 1992.
- A total of 23.2 acres of agricultural land would be impacted.
- The proposed project would cross the Union Canal which is eligible for listing in the National Register of Historic Places.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

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[1] Texas Eastern's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch. PR–11.2;
- Reference Docket No. CP99–621–000; and
- Mail your comments so that they will be received in Washington, DC on or before November 29, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervernor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 99–29127 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing

November 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2071–013.

c. *Date filed:* May 5, 1999.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Yale Hydroelectric Project.

f. *Location:* On the North Fork Lewis River in Cowlitz, Clark, and Skamania Counties, Washington, about 45 miles northeast of Portland, Oregon. The project boundary includes about 84 acres of land managed by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David L. Leonhardt, Project manager, PacifiCorp, 825 N.E. Multnomah Street, Suite 1500, Portland, Oregon 97232 (503) 813–6658.

i. *FERC Contact:* Vince Yearick at (202) 219–3073 or vince.yearick@ferc.fed.us.

j. *Alternative Process:* Consistent with out April 1, 1999, letter approving the use of an alternative licensing process on four Lewis River hydroelectric projects, including the Yale Project, we have conducted an initial adequacy review on the Yale application and will process it only so far as this acceptance notice which does not solicit interventions.

k. *Status of environmental analysis:* The environmental analysis for the Yale Project is being coordinated with the environmental analysis of the Swift No. 1 (FERC No. 2111), Swift No. 2 (FERC 2213), and Merwin (FERC No. 935) hydroelectric projects through an alternative licensing process. Applications on those projects are due in 2004. Studies for all four projects are currently being coordinated through a collaborative group. Persons interested in participating in the collaborative group should contact Kristi M. Wallis, the groups facilitator, at (206) 726–1699.

l. *The project consists of the following existing facilities:* (1) a 1,305-foot-long, zoned embankment dam known as Yale dam, and an adjacent 1,600-foot-long, earth-fill structure known as Saddle dam; (2) a 10.5-mile-long reservoir known as Yale Lake, (3) a concrete, chute-type spillway; (4) a 1,530-foot-long diversion tunnel; (5) two penstocks; (6) a powerhouse located downstream of Yale dam, containing two generating units with a combined capacity of 134 megawatts; (7) a 10.5-mile, 115-kilovolt transmission line, and (8) related facilities.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

David P. Boergers,

Secretary.

[FR Doc. 99–29128 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filings and Soliciting Comments, Motions To Intervene, and Protests

November 2, 1999.

Take notice that the following hydroelectric compliance filings have been filed with the Commission and are available for public inspection:

a. *Application Type:* License compliance filings.

b. *Project Nos:* 2671–018 and 2329–031.

c. *Date Filed:* February 1, 1999 and supplemented on July 28, 1999; and

February 2, 1999 and supplemented on July 27, 1999, respectively.

d. *Applicant:* Kennebec Water Power Company and FPL Energy Maine Hydro, LLC, respectively.

e. *Name of Projects:* Moosehead Lake (Storage) and Wyman, respectively.

f. *Location:* Both projects are located on the Kennebec River, Somerset County, Maine. The projects do not utilize federal or tribal lands.

g. *Filed Pursuant to:* Article 414 of Project 2671 and article 413 of project 2329.

h. *Applicant Contact:* Frank H. Dunlap, 100 Middle Street, Portland, ME 04101, (207) 771–3534.

i. *FERC Contact:* Any questions on this notice should be addressed to Jean Potvin, *jean.potvin@ferc.fed.us.* or (202) 219–0022.

j. *Deadline for filing comments and/or motions:* 30 days from the issuance of this notice.

Please include the project number (e.g. 2329–03) on any comments or motions filed.

k. *Description of Filings:* Project No. 2671–018—licensee has filed a land management plan along with an offer 9ofd Settlement signed by most of the consulted agencies. The settlement requires the licensee to purchase and donate to the State of Maine a 500-foot buffer strip on either side of the six mile long East Outlet, donate a conservation easement to the State of Maine on most of a 17-acre parcel of licensee-owned land abutting Moosehead Lake and East Outlet, and donate $500,000 to the State of Maine for the acquisition of additional lands.

Project No. 2329–031—licensee has filed a shoreline management plan along with an Offer of Settlement signed by most of the consulted agencies. The settlement requires that the licensee convey to an easement holder a permanent conservation easement on all licensee-owned lands within 200 feet of the high water elevation of Wyman Lake, and on all licensee-owned lands within 200 feet of the high water elevation of the Kennebeck River below Wyman dam.

l. *Locations of the applications:* Copies of the applications are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The applications may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the address in item h above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings may bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–29129 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of License Application Amendment for Applicant Name Change

November 2, 1999.

Take notice that the following hydroelectric application amendment has been filed with the Commission and is available for public inspection.

a. *Type of Filing:* Notice of License Application Amendment.

b. *Project No.:* 4628–001.

c. *Date Filed:* October 13, 1999.

d. *Applicant:* McGrew & Associates and the City of Tacoma, Washington—previous applicants; McGrew & Associates (DBA Renewables, Inc.)—new applicant.

e. *Name of Project:* Wells Creek Hydroelectric Project.

f. *Location:* Proposed to be located on Wells Creek, a tributary of the North Fork Nooksack River in Whatcom County, Washington. The project would occupy federal lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas R. Childs, McGrew & Associates (DBA Renewables, Inc.), P.O. Box 1691, Bellingham, WA, *renewables@worldnet.att.net,* (360) 734–0923.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us,* (202) 219–2778.

j. *Locations of the amendment to the application:* A copy is available for inspection and reproduction at the Commission's Public Reference and Files Management Branch, located at 888 First Street, NE., room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

David P. Boergers,

Secretary.

[FR Doc. 99–29130 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

November 3, 1999.

The following notice of meeting is published pursuant to section 3(A) of the Goverment in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 10, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

CONTACT PERSON FOR MORE INFORMAITON: David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

Note: Items listed on the agenda may be deleted without further notice.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro 729th—Meeting, November 10, 1999, Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–2114 079, PUBLIC UTILILTY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON
CAH–2.
DOCKET# P–5984 004, NIAGARA MOHAWK POWER CORPORATION
CAH–3.
DOCKET# P–1494 171, GRAND RIVER DAM AUTHORITY
CAH–4.
DOCKET# P–2709 015, MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–4355 000, MIDDLETOWN POWER LLC
OTHER#S ER99–4356 000, MONTVILLE POWER LLC, ER99–4357 000, NORWALK POWER LLC, ER99–4358 000, DEVON POWER LLC, ER99–4359 000, CONNECTICUT JET POWER LLC, ER99–4463 000, NORTHEAST GENERATION COMPANY, ER99–4503 000, PP&L GREAT WORKS, LLC, ER00–22 000, RELIANT ENERGY OSCEOLA, LLC
CAE–2.
DOCKET# ER99–4450 000, GEORGIA POWER COMPANY
CAE–3.
DOCKET# ER99–4455 000, SIERRA PACIFIC POWER COMPANY
CAE–4.
DOCKET# ER99–4462 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–5.
DOCKET# ER99–4513 000, IEC OPERATING COMPANIES
CAE–6.
DOCKET# ER99–4415 000, ILLINOIS POWER COMPANY
OTHER#S EL00–7 000, ILLINOIS POWER COMPANY
CAE–7.
DOCKET# ER99–4225 000, NORTHERN MAINE INDEPENDENT SYSTEM ADMINISTRATOR, INC.
CAE–8.
DOCKET# ER99–2285 001, DUKE ENERGY CORPORATION
OTHER#S ER99–2285 002, DUKE ENERGY CORPORATION
CAE–9.
DOCKET# OA96–200 007, EL PASO ELECTRIC COMPANY
CAE–10.
DOCKET# OA97–163 005, MID-CONTINENT AREA POWER POOL
OTHER#S OA97–658 005, MID-CONTINENT AREA POWER POOL, ER97–1162 004, MID-CONTINENT AREA POWER POOL
CAE–11.
DOCKET# ER95–1686 000, NORTHEAST UTILITIES SERVICE COMPANY
OTHER#S ER96–496 000, NORTHEAST UTILITIES SERVICE COMPANY
CAE–12.
DOCKET# EC99–81 000, DOMINION RESOURCES, INC. AND CONSOLIDATED NATURAL GAS COMPANY
CAE–13.
DOCKET# EC99–99 000, ILLINOVA CORPORATION AND DYNEGY INC.
CAE–14.
DOCKET# ER99–3468 001, DELMARVA POWER & LIGHT COMPANY
CAE–15.
DOCKET# ER99–1764 001, NIAGARA MOHAWK POWER CORPORATION AND ERIE BOULEVARD HYDROPOWER, L.P.
OTHER#S EC99–34 001, NIAGARA MOHAWK POWER CORPORATION AND ERIE BOULEVARD HYDROPOWER, L.P.
CAE–16.
DOCKET# ER98–3594 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–17.
DOCKET# AC96–180 002, IDAHO POWER COMPANY
CAE–18.
DOCKET# ER99–3508 001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., LONG ISLAND LIGHTING COMPANY, NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
CAE–19.
OMITTED
CAE–20.
DOCKET# EL99–76 000, CENTRAL MAINE POWER COMPANY
CAE–21.
DOCKET# EL99–93 000, TURLOCK IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT V. CALIFORNIA INDEPENDENT SYSTSEM OPERATOR CORPORATION
CAE–22.
DOCKET# ER99–4449 000, PUBLIC SERVICE ELECTRIC & GAS COMPANY
CAE–23.
DOCKET# ER99–2340 001, PJM INTERCONNECTION, L.L.C.
CAE–24.
DOCKET# ER98–3968 002, CORAL POWER, L.L.C.

Consent Agenda—Miscellaneous

CAM–1.
DOCKET# RM99–9 000, DESIGNATION OF CORPORATE OFFICIALS OR OTHER PERSONS TO RECEIVE SERVICE

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP00–22 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–2.
DOCKET# RP00–21 000, CNG TRANSMISSION CORPORATION
CAG–3.
OMITTED
CAG–4.
DOCKET# RP99–176 009, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–5.
OMITTED
CAG–6.
DOCKET# RP00–17 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–7.
OMITTED
CAG–8.
DOCKET# RP98–407 000, EL PASO NATURAL GAS COMPANY
CAG–9.
OMITTED
CAG–10.
OMITTED
CAG–11.
OMITTED
CAG–12.
OMITTED
CAG–13.
DOCKET# OR99–5 000, COLONIAL PIPELINE COMPANY
CAG–14.
DOCKET# OR99–6 000, TE PRODUCTS PIPELINE COMPANY, L.P.
CAG–15.
DOCKET# RP95–363 015, EL PASO NATURAL GAS COMPANY
OTHER#S RP95–363 002, EL PASO NATURAL GAS COMPANY, RP95–363 016, El PASO NATURAL GAS COMPANY
CAG–16.
DOCKET# RP99–446 002, CNG TRANSMISSION CORPORATION
CAG–17.
DOCKET# RP99–282 002, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–18.
DOCKET# RP99–322 002, NORTHERN BORDER PIPELINE COMPANY
OTHER#S RP96–45 008, NORTHERN BORDER PIPELINE COMPANY
CAG–19.
OMITTED
CAG–20.
DOCKET# RP99–507 000, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
CAG–21.
DOCKET# CP99–564 000, CORAL MEXICO PIPELINE, LLC
CAG–22.
DOCKET# CP99–552 000, NORTHERN NATURAL GAS COMPANY
OTHER#S CP99–590 000, MCDAY ENERGY PARTNERS, LTD.
CAG–23.
DOCKET# CP98–554 002, NORTHWEST PIPELINE CORPORATION
CAG–24.

OMITTED
CAG–25.
DOCKET# RP99–471 000, WILLIAMS FIELD SERVICES GROUP, INC. V. EL PASO NATURAL GAS COMPANY
CAG–26.
OMITTED
CAG–27.
DOCKET# CP98–49 004, KN WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
OMITTED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,
Secretary.

[FR Doc. 99–29252 Filed 11–4–99; 11:25 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6472–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Emergency Planning and Release Notification Requirements (EPCRA Sections 302, 303, and 304)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Emergency Planning and Release Notification Requirement (EPCRA sections 302, 303, and 304), OMB Control No. 2050–0092, expires January 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 8, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1395.04.

SUPPLEMENTARY INFORMATION:

Title: Emergency Planning and Release Notification Requirements (EPCRA sections 302, 303, and 304), OMB Control No. 2050–0092, ICR No. 1395.04, expiring January 31, 2000. This information collection is an extension of a currently approved collection.

Abstract: EPCRA established broad emergency planning and facility reporting requirements. Section 302 (40 CFR 355.30) requires any facility where an extremely hazardous substance (EHS) is present in an amount at or in excess of the threshold planning quantity (TPQ) to notify the state emergency response commission (SERC) by May 17, 1987. This activity has been completed; only new facilities are subject to this requirement. Section 303 (40 CFR 355.30) requires local emergency planning committees (LEPCs) to prepare emergency plans for facilities that have EHSs in excess of the TPQs in their local planning district. Facilities are required to provide local planners with information necessary for the preparation of emergency plans. Section 303 requires LEPCs to complete their emergency plans by October 17, 1988. This activity has been also completed; this ICR only covers any updates for these emergency response plans. Section 304 (40 CFR 355.40) requires facilities to report to SERCs and LEPCs releases in excess of quantities established by EPA. Facilities are required to report releases above the reportable quantity (RQ) of any EHS. This ICR covers the notification and the written follow-up required under this section.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 5, 1999 (64 FR 42687); one comment was received.

Burden Statement: The average reporting burden for emergency planning under 40 CFR 355.30 is 17.65 hours for new and newly regulated facilities and 12.5 hours for existing facilities.

For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine reporting status, notify the SERC that the facility is subject to emergency planning, designate a facility representative and otherwise participate in initial planning activities. For certain existing facilities, this burden includes the time required to inform the LEPC of any changes at a facility that may affect emergency planning, and provide information to the LEPC for planning purposes. The average reporting burden for facilities reporting releases under 40 CFR 355.40 is estimated to average approximately 5 hours per release, including the time for determining if the release is a reportable quantity, notifying the LEPC and SERC, or the 911 operator, and developing and submitting a written follow-up notice. There are not recordkeeping requirements for facilities under EPCRA Sections 302–304.

The average burden for emergency planning activities under 40 CFR 300.215 is 21 hours per plan for LEPCs, 16 hours per plan for SERCs. Each SERC and LEPC is also estimated to incur an annual recordkeeping burden of 10 hours. The total burden to facilities over the three-year information collection period is estimated to be 269,200 hours, at a cost of $7.8 million. The total burden for SERCs and LEPCs over the three-year information collection period is estimated to be 486,000 hours at a cost of $11.6 million.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities where EHS's are present, LEPCs and SERCs.

Estimated Number of Respondents: 99,170.

Frequency of Response: Section 302 respondents will comply with requirements once unless new information becomes available. Section 303 respondents will comply with requirements as requested by LEPCs; LEPCs may have to update their local emergency response plans as new facilities or other information such as new chemicals present at or above a TPQ. Section 304 respondents will comply when there is a release of an EHS above the RQ.

Estimated Total Annual Hour Burden: 251,700 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $64,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1395.04 and OMB Control No. 2050–0092 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental
Protection Agency, Office of Policy,
Regulatory Information Division
(2137), 401 M Street, SW,
Washington, DC 20460;
and
Office of Information and Regulatory
Affairs, Office of Management and
Budget, Attention: Desk Officer for
EPA, 725 17th Street, NW,
Washington, DC 20503.

Dated: November 3, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–29182 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00281; FRL–6389–5]

Notice of Availability of FY 2000 Grant Funds for Technical Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funds availability.

SUMMARY: EPA is soliciting pre-application grant proposals for technical studies to minimize lead hazards to occupants from home improvement projects, repainting projects, renovation projects and remodeling projects. EPA anticipates that approximately $700,000 will be available in Fiscal Year 2000, with individual grants/cooperative agreements awarded in the range of $60,000 to $100,000. Decisions on awarding of these grant funds will be made based on the evaluation of pre-application grant proposals. The primary purpose of this grant program is to fund technical studies to gain knowledge that will lead to the minimization of lead hazards to occupants from home improvement projects, repainting projects, renovation projects, and remodeling projects. EPA will consider awarding these grant funds for technical studies of the topics listed in Unit V. of this notice. EPA will also consider awarding these grant funds for technical studies that are not specifically mentioned in this notice, but are relevant to the minimization of lead hazards to occupants from home improvement projects, repainting projects, renovation projects, and remodeling projects. In such instances, the applicant should describe how the proposed technical study addresses the primary purpose of this notice.

DATES: All pre-application grant proposals must be post-marked by January 12, 2000, and must be received by January 19, 2000.

ADDRESSES: Submit pre-application proposals to: John Schwemberger, Mail Code 7404, Environmental Protection Agency, 401 M St., SW., Room E-813B, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Schwemberger, Technical Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Rm. E–813B, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460, (202) 260–7195, fax: (202) 260–0001, e-mail: schwemberger.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons or organizations that wish to obtain funding from the Federal government to conduct or complete a technical study related to lead hazards from renovation and remodeling (R&R)[1]. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. Scope and Purpose of this Grant Program

A. Findings from EPA Research on Renovation and Remodeling Activities

Over the past several years, EPA has engaged in a series of data collection efforts to investigate lead exposure associated with R&R activities. These studies, collectively referred to as the R&R Study, have focused on lead exposure associated with a wide variety of work activities typically conducted during R&R.

Analysis of environmental data from the R&R Study indicates that substantial quantities of lead can be produced or released during R&R activities. The cleanup methods commonly employed by R&R workers (broom or "shopvac") are generally not effective in reducing the environmental lead to levels considered safe by EPA. In addition, examination of blood lead measurements of child occupants has demonstrated significant associations between some R&R activities and elevated blood lead levels.

The results of the EPA R&R Study have been published in a series of reports available free of charge from the National Lead Information Center by calling 1–800–424–LEAD. Request the reports "Lead Exposure Associated with Renovation and Remodeling Activities: Summary Report" (EPA Report 747–R–96–005); "Lead Exposure Associated with Renovation and Remodeling Activities: Environmental Field Sampling Study, Volume I: Technical Report" (EPA Report 747–R–96–007); "Lead Exposure Associated with Renovation and Remodeling Activities: Environmental Field Sampling Study, Volume II: Appendices" (EPA Report 747–R–96–008); and "Lead Exposure Associated with Renovation and Remodeling Activities: Worker Characterization and Blood Lead Study" (EPA Report 747–R–96–006).

B. Recent NHANES Study

Data from the Third National Health and Nutrition Examination Survey (NHANES III) confirm the findings of earlier surveys that children who live in older housing are more vulnerable to lead poisoning, and have blood-lead levels that are elevated above the national average. Older residences tend to contain both lead-based paint and lead depositions from the fallout of vehicle exhaust that have accumulated over several decades. In addition, large or extensive R&R projects are often conducted in older houses. Since older houses contain more lead, conducting R&R activities in them can create an exposure hazard to the occupants.

C. Benefits of the Evaluation Program for Renovation and Remodeling

Every year thousands of residential R&R activities are conducted across the United States in homes which contain lead-based paint. In many of these cases, exposure to hazardous levels of lead may be a serious problem. The efforts supported by this grant will involve the investigation of approaches, methods, and technologies which can minimize the potential for lead hazards to occupants from R&R activities. This grant effort applies to R&R activities conducted by either home owners or home improvement contractors. Findings generated by grantees are intended to be published in scientific publications, and the data (other than confidential information such as names and addresses) made available to the scientific community at the time of publication.

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[1] In the rest of this notice, the terms "renovation and remodeling activities," "renovation and remodeling," and "R&R" will be used to refer to home improvement projects, repainting projects, renovation projects, and remodeling projects.

III. EPA Quality Assurance Requirements

EPA has quality assurance requirements that must be addressed once a grant has been awarded. After a grant is awarded, the grantee must submit a Quality Assurance Project Plan (QAPjP) to EPA for approval before the generation of any new data or the evaluation of any existing data can occur.

Quality assurance project plan requirements are stated in the document "EPA Requirements for Quality Assurance Plans" (EPA QA/R5). Guidance for the development of QAPjPs can be found in the EPA document entitled, "Guidance for Quality Assurance Project Plans" (EPA QA/G-5). QAPjPs for studies which generate new data must develop data quality objectives (DQOs) for the study. Guidance for developing DQOs can be found in the EPA publication, "Guidance for the Data Quality Objective Process, EPA QA/G4" (EPA/600/R–96/055). Grantees who use existing data must state the data acceptance criteria as a part of the required QAPjP. Guidance for performing data quality assessments (DQA) can be found in the EPA publication entitled, "Guidance for Data Quality Assessment-Practical Methods for Data Analysis, EPA QA/G9" (EPA/600/R-96-084). Copies of all of the quality assurance related documents noted above can be downloaded from the EPA Quality Assurance Division web site at http://es.epa.gov/ncerqa/qa/index.html.

EPA intends to establish an assistance program for grantees to help them develop quality assurance plans for the awarded study. However, the responsibility for completing the quality assurance requirements remains with the applicants. If for some reason EPA cannot carry out the assistance program, the applicants will be required to meet the quality assurance requirements or risk losing funding.

IV. Human Subjects Approval and Data Confidentiality

Research supported by EPA that uses human subjects must comply with 40 CFR part 26, Protection of Human Subjects (referred to as "the Common Rule"). If there are child research subjects, the research must also comply with 45 CFR part 46, subpart D.

If a study involves humans, including just asking them questions, human subjects approval by EPA may be required before the study can be funded. If the study is exempt from human subjects approval (40 CFR 26.101(b) lists the exemptions), the exempt finding must be confirmed by EPA. One important exemption is for studies which involve the analysis of existing data sets, documents, or specimens where either these data sets, documents, or specimens are publicly available or recorded in such a manner that the subjects cannot be identified.

For non-exempt studies, the approval process typically involves: (1) Documenting that the applicant holds a multiple project assurance (MPA) which is approved and on file with the Department of Health and Human Services (DHHS) (If the applicant does not hold an DHHS MPA, EPA may issue a single project assurance (SPA) provided the applicant meets the requirements of the Common Rule.); (2) documenting approval from the applicant's Institutional Review Board; (3) submitting a copy of the study proposal and protocols for data collection; and (4) submitting a copy of the consent form and a description of procedures for obtaining informed consent.

Formal human subjects approval or a finding of an exemption from human subjects approval will be made by EPA's Review Official as part of the formal grant application process for those applicants who are selected for funding. For purposes of the pre-application process, applicants should be sure to address the mandatory requirements described in Unit VIII. regarding human subjects approval, data confidentiality, and study restrictions.

V. Activities

This NOFA covers whose goal is minimizing lead hazards to occupants from R&R activities. Several studies on R&R will be funded up to the amount of funding available, and the exact number of studies will depend upon the mix of dollar values of the most highly rated proposals.

The list below is only provided to describe examples of possible topics for study in this area, and the ordering below should not be construed as in any particular order. Other ideas related to R&R are openly encouraged. The best proposals will be selected regardless of category. More than one organization might possibly be funded in the same topic area.

Examples of possible topics for a study are as follows:

1. Efficacy of cleaning techniques: For example, an evaluation of vacuuming technology to reduce dust lead loading on carpeted and/or smooth surfaces after R&R. This could include but not be limited to a comparison of high efficiency particulate air (HEPA) vacuums, shop vacuums, other special purpose vacuums or vacuum bags, and regular vacuums. Also of interest are effective cleaning techniques for cleaning lead-contaminated carpets and other irregular surfaces.
2. Portable field testing: This could include an evaluation of portable field testing units to analyze dust, paint, and/or soil before or after R&R. Dust sampling and analysis could be useful in verifying that dust cleanup has been properly done after R&R, paint sampling and analysis could be useful for determining whether paint contains lead and would need special precautions to prevent lead contamination due to R&R, and soil sampling and analysis could determine whether lead contamination was generated from external scraping, for example. Examples could include but are not limited to the following: portable XRF, for dust, soil or paint analysis, or alternative field testing technologies, such as colorimetric devices, anodic stripping voltametry or laser technology.
3. Field kit: including testing instructions and a mailer to send samples to a laboratory. A major cost in sampling and analysis before undertaking R&R activities is the cost of sending a professional to the home. If a reliable program could be developed for a homeowner to take samples and mail them to an EPA-recognized laboratory, this could greatly reduce testing costs and potentially result in much greater testing to prevent lead poisoning due to R&R activities.
4. Build upon previously conducted studies by EPA or other organizations to further advance the state of knowledge of the control of lead hazards created by R&R activities.
5. Clearance testing after R&R: examine the performance of various methods on different surfaces for clearance after R&R.
6. Studying the effects of R&R on outdoor dust lead levels.
7. Studying the safe use of heat guns for paint removal.

VI. Grant Term

The applicant's proposed project period should start on October 1, 2000, and may last for up to 2 years. Successful applicants may be granted time extensions of 6 months beyond the 2–year period, but those decisions will be made on a case-by-case basis, if and when they become necessary. Awards of additional funds beyond the initial funding award are very unlikely.

VII. Eligibility

Eligible recipients include, but are not limited to, non-profit organizations, institutions of higher learning, state and local associations, states, federally-recognized Indian Tribes and tribal organizations, for-profit organizations, trade and professional associations, labor unions and joint labor/management trust funds. However, as a result of the Lobbying Disclosure Act of 1995, EPA (and other Federal agencies) may not award grants to non-profit, section 501(c)(4) organizations that engage in lobbying activities. This restriction applies to any lobbying activities of a section 501(c)(4) organization without distinguishing between lobbying funded by Federal money and lobbying funded by other sources.

In addition, the following conditions apply:

1. There are no requirements for matching funding under this grant program.

2. No applicant can receive two grants from this NOFA for the same project at one time. Applicants may submit more than one application so long as the applications are for separate and distinct projects.

3. If applicants will use funding from other sources (private or public) in carrying-out their proposed projects, the applicants must disclose those sources of funding and any restrictions due to funding from other sources in the pre-application. Evidence of other funding, if applicable, is required in the pre-application.

4. The grants under this program will be awarded as cooperative agreements to allow for the substantial involvement anticipated between EPA and the recipients during the post-award period for these projects.

VIII. Criteria For Selection

Mandatory Requirements and Evaluation Factors

Pre-application proposals will be rated based on the following mandatory requirements and evaluation factors. There are three mandatory requirements. The maximum points for each evaluation factor are provided below. The maximum number of points from all evaluation factors is 100. Applicants will be required to submit a Study Plan with an Appendix to be considered. The Study Plan will be divided into Sections A through J, as indicated in Unit IX. If more than 10 pages are submitted for either the Study Plan or the Appendix, only the first 10 pages of each will be rated.

Mandatory Requirements

1. If the study will include human subjects, the applicant must demonstrate that the study will be done in compliance with 40 CFR part 26, that the study will also be done in compliance with 45 CFR part 46, subpart D if there are child research subjects, and that the applicant will be able to complete EPA human subjects approval or have an exempt finding confirmed by EPA.

2. The applicant must demonstrate the study will maintain the confidentiality of personal information, such as preventing linkage between names/addresses and data.

3. Restrictions on the study and on the release of non-confidential data must be judged reasonable and appropriate for a study funded by EPA.

The applicant's response to Section E of the Study Plan will be used to rate the applicant on these mandatory requirements.

Evaluation Factors

1. Does the proposed study address the goals of this NOFA and provide needed and important information to the scientific community? (25 points)

The applicant's response to Sections A, B, C, and H of the Study Plan will be used to rate the applicant on this factor.

2. Is the study sound from scientific and practical perspectives? (35 points)

The applicant's response to Sections D, F, and G of the Study Plan will be used to rate the applicant on this factor.

3. Does the applicant have the resources and organization to carry out and complete the study as proposed? (20 points)

The applicant's response to Section I of the Study Plan and to the Appendix will be used to rate the applicant on this factor.

4. Are the time line and budget realistic and developed sufficiently? (20 points)

The applicant's response to Section J of the Study Plan will be used to rate the applicant on this factor.

If two or more pre-applications receive the same score, and it is necessary to break ties, the following procedure will be used successively as necessary to resolve tie scores:

(1) Pre-application with highest score in factor 1.

(2) Pre-application with the highest score in factor 2.

(3) Pre-application with the highest score in factor 3.

(4) Pre-application with the highest score in factor 4.

IX. Pre-Application Procedure

A. Overall Requirements for Submission

Applicants must submit a proposal for the pre-application procedure. The Agency will use applicants' submissions to select projects to be funded under this grant program. After EPA conducts a review of all submitted pre-applications, successful applicants will be contacted and requested to submit other documents (such as the "Application for Federal Assistance" form (Standard Form 424 or SF424), and the "Budget Information: Non-Construction Programs" form (SF424A)), human subjects approval materials where applicable, and other required forms to complete the application process. However, for the purposes of the pre-application process, applicants must submit only what is described below.

Applicants must submit one original and two copies of the pre-application (double-sided copies are encouraged). Pre-applications must be reproducible (for example, stapled in the upper left-hand corner, on white paper, and with page numbers). The pre-application consists of the following two parts.

1. *Study Plan.* A study plan describes the applicant's proposed project. A Table of Contents with page numbers should be included. Study plans must be no more than 10 pages total. One page is one side of a single-spaced typed page. The pages must be letter size (8½" x 11"), with normal type size (10 or 12 cpi) and must have margins that are at least 1 inch. The study plan must respond to the format described below in Section B of this unit.

2. Appendix. The only items that EPA will accept in the Appendix are resumes of key personnel and the title, description, and reference name with phone number for work on previous or current grants or contracts with the Federal government within the last 5 years. The appendix must be no more than 10 pages total. One page is one side of a single-spaced typed page. The pages must be letter size (8½" x 11"), with normal type size (10 or 12 cpi) and must have margins that are at least 1 inch.

B. Format for the Study Plan

Applicants must submit a Study Plan in the following format, with, as stated above, a maximum of 10 pages in total for the Study Plan:

A. *Title, synopsis, and table of contents.* Pre-applications should include a title, a synopsis of the proposal, and a table of contents. The title and the synopsis should accurately and concisely describe the proposed study to the point that a person not familiar with the study could describe it to someone else who is not familiar with the study.

B. *Need for study and relationship of study to other activities.* The applicant should explain why the proposed study should be done and how it will improve the understanding of ways to minimize lead exposure to occupants from R&R activities. In addition, the applicant should indicate why the proposed study is likely to produce useful information. Finally, the relationship, if any, between the proposed study and the applicant's ongoing or previous data collection/research activities should be described.

C. *Study objectives.* The study objectives should be stated clearly. Examples of study objectives would be to compare two methods, to compare a method to a clearance standard, to obtain information on the characteristics of a method, or to take a survey of certain practices such as cleanup methods. Any variables used in the description of the study objectives should be clearly defined.

D. *Study design and data specifics.* The study design describes how the study will be executed, what data will be collected, and what characteristics the data will have. This element covers the design or plan for the proposal. The study design is critical to the success of any project since it addresses how well the proposal will answer the question being examined. The proposal should clearly describe:

- How the study design will achieve the objectives of the study.
- "Real-world" applicability of the design. For example, if variability is carefully controlled, but the conditions are so strained as to make the applicability of the results for further use less straightforward to generalize to other settings, the proposal will receive a lower score than if the design is more generalizable.
- The feasibility and practicality of the project. For example, can all groups involved follow the plan?
- Ways to control unwanted effects and variability, such as seasonal variation in blood-lead levels.
- Sample size/power determinations.
- How the samples were/will be selected? Was a randomized sampling plan followed?
- The process used to obtain the data. For example, what type of chemical analysis was used? Or, if a survey, what questions were or will be asked?
- The presence of a control group where applicable.

E. *Human subjects approval, data confidentiality, and study restrictions.* If the study will include human subjects, the applicant must demonstrate that the study will be done in compliance with 40 CFR part 26, that the study will also comply with 45 CFR part 46, subpart D if there are child research subjects, and that the applicant will be able to complete EPA human subjects approval or have an exempt finding confirmed by EPA. In addition, the applicant must describe plans to maintain the confidentiality of personal information.

The applicant must also describe any restrictions on the study and associated data. This includes, for example, restrictions due to other sources of funding, rules of the applicant's institution, or guarantees made to cooperating human subjects.

F. *Quality assurance.* In order to have confidence in the product of a study, the quality of the data sets in support of the study should be determined and demonstrated to be adequate. This demonstration of data quality assurance applies to both newly generated data and existing data sets which are to be used as a part of the study. Some of the areas of data quality assurance which need to be taken under consideration include evaluations of data bias, precision, and representativeness.

Pre-applications should include a description of the process to be used to evaluate the quality of newly generated data and/or existing data. This description should identify key areas of data quality assurance which will be taken under consideration in order to have confidence in the final study product.

G. *Statistical analysis plan.* The statistical analysis plan should include the translation of the study objectives to appropriate statistical terms, such as a test of hypotheses or estimation of confidence limits around a point estimate. The statistical analysis plan should also mention the statistical approach used to evaluate the data. If a hypothesis is to be evaluated, the alternative hypothesis, the type I error and the statistical tests that will be used should be described. In the case of descriptive statistics, the procedure for calculating an appropriate confidence interval, with the level of confidence, for the point estimates should be described. If a model, such as a regression model, is to be developed, the description of the model and the assumptions underlying the model should be stated.

The analysis plan should also include the statistical software that will be used. Other items to consider are: graphical analyses to be carried out; data transformations and the reason for these transformations; consideration of confounding variables; and data assumptions, such as normality and independence.

H. *Products and dissemination.* Products from grantees should include articles on study findings in scientifically peer reviewed publications. Pre-applications need to state what products will be produced, and what means of product information dissemination will be used in order to make study findings and study data available to the scientific community.

I. *Organizational resources.* The pre-application must include a description of the applicant's organizational resources. The applicant should demonstrate that these resources are sufficient to implement the proposed activity in a timely manner and within budget while meeting the proposed study objectives. The applicant should document the knowledge and experience of the project director and staff, including the day-to-day program manager(s), staff members, consultants, and contractors. In particular, the experience of key staff in relevant areas such as personnel management, administrative support, data management and statistical analysis, chemical analysis, quality assurance, and report writing should be documented. Resumes of key personnel should be included in the Appendix.

If the applicant has received other grants or contracts from the Federal government in the last 5 years, the applicant must furnish a title and description of the previous work, and the name and phone number of a Federal government employee who is familiar with the applicant's performance on that grant or contract. This information should be included in the Appendix.

J. *Time line, financial plan, and sources of other funding.* Pre-applications should include a time line or schedule for completing the proposed study, a financial plan which estimates all costs associated with the proposed study on a yearly basis with totals for the entire study, and identification of other sources of funding for the proposed study. The financial plan should include the following categories of costs: personnel, fringe benefits, travel, equipment, supplies, contractual, construction, other, total direct charges (sum of personnel, fringe benefits, travel, equipment, supplies, contractual, construction and other), indirect charges and total (sum of total direct charges and indirect charges.) A part of the study schedule should include a provision for verbal and written updates to EPA.

Sources of other funding, either pending or already established, must be identified. Information sufficient to verify sources of any other funding already established must be included in this section.

List of Subjects

Environmental protection, Lead.

Dated: November 3, 1999.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–29265 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATES AND TIMES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 10, 1999, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—October 14, 1999 (Open)

B. New Business

—Policy Statement on Borrower Privacy

*** Closed Session**

A. Report

—OSMO Report

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: November 4, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–29253 Filed 11–4–99; 11:30 am]

BILLING CODE 6705–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1292–DR]

North Carolina; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1292–DR), dated September 16, 1999, and related determinations.

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 2, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–29170 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice that the maximum amounts for Individual and Family Grants and grants to State and local governments and private nonprofit facilities are adjusted for disasters declared on or after October 1, 1999.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under Section 411, Individual and Family Grant Program, and grants made under Section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under Sec. 411 of the Act, with respect to any single disaster, is increased to $13,900 for all disasters declared on or after October 1, 1999.

Notice is also hereby given that the amount of any grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $48,900 for all disasters declared on or after October 1, 1999.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 2.3 percent for the prior 12-month period. The information was published by the Department of Labor during September 1999.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 99–29171 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Heritage Bancshares, Inc.*, Lucama, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Heritage Bank, Lucama, North Carolina.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *The Leaders Group, Inc.*, Oak Brook, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Leaders Bank (in organization), Oak Brook, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Walden Financial Group, Inc.*, Pocahontas, Arkansas; to merge with Rainbow Investment Company, Inc., Tuckerman, Arkansas, and thereby indirectly acquire Bank of Tuckerman, Tuckerman, Arkansas.

Board of Governors of the Federal Reserve System, November 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-29105 Filed 11-5-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *First Citizens Bancorporation of South Carolina*, Columbia, South Carolina; to acquire up to 10 percent of Heritage Bancorp, Inc., Laurens, South Carolina, and Heritage Federal Bank, Laurens, South Carolina, and thereby engage in owning and operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

2. *First Citizens Bancorporation of South Carolina*, Columbia, South Carolina; to acquire up to 10 percent of Great Pee Dee Bancorp, Inc., Cheraw, South Carolina, and First Federal Savings and Loan Association of Cheraw, Cheraw, South Carolina, and thereby engage in owning and operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-29104 Filed 11-5-99; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Advisory Committee on Head Start Research and Evaluation; Notice of Report Availability

AGENCY: Administration on Children, Youth and Families (ACYF)—Head Start Bureau, ACF, DHHS.

ACTION: Notice.

SUMMARY: The 1998 Head Start Reauthorization (42 U.S.C. 9844(g); Section 649(g)(1) of the Head Start Act, as amended) called on the Secretary of Health and Human Services to form a independent panel of experts (i.e., an Advisory Committee) to offer advice concerning research designs that would provide a national analysis of the impact of Head Start Programs. The Advisory Committee met three times during 1999 and has issued its recommendations to the Secretary in a report entitled "Evaluating Head Start: A Framework for Studying the Impact of the Head Start Program." This report is available on the Advisory Committee on Head Start Research and Evaluation web site *http://www.acf.dhhs.gov/programs/hsreac.*

FOR FURTHER INFORMATION CONTACT: ACF Office of Public Affairs at 202/401-9215 for press inquires.

Dated: October 3, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99-29151 Filed 11-5-99; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99P-4648]

Grated Parmesan Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Sartori Foods Corp. to market test a product designated as "Grated Parmesan Cheese" that deviates from the U.S. standards of identity for parmesan cheese and grated cheeses. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for parmesan cheese.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that it has issued a temporary permit to Sartori Foods Corp., 107 Pleasant View Rd., P.O. Box 258, Plymouth, WI 53073.

The permit covers 28 million pounds of interstate marketing test products identified as "grated parmesan cheese" that deviate from the U.S. standard of identity for parmesan cheese (21 CFR 133.165) and grated cheeses (21 CFR 133.146) in that the product is formulated by using a different enzyme technology that fully cures the cheese in 6 months rather than 10 months. The test product meets all the requirements of the standards with the exception of this deviation. Because test preferences vary by area, along with social and environmental differences, the purpose of this permit is to test the product throughout the United States. Under this temporary permit, the parmesan cheese will be test marketed as grated parmesan cheese. The test product will bear the name "Grated Parmesan Cheese."

This permit provides for the temporary marketing of 28 million pounds of grated parmesan cheese in 2, 3, 5, 6, 10, 15, 18, 20, and 50-pound sizes. The test product will be manufactured at 12 West Main, Plymouth, WI 53073, 2 East Main, Plymouth, WI 53703, and 9001 North Lander Ave., Hilmar, CA 95324. The product will be aged, grated, and packaged for distribution at 12 West Main, Plymouth, WI 53073, and 2 East Main, Plymouth, WI 53703. The product will be distributed throughout the United States.

The information panel of the labels will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101.

This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 7, 2000.

Dated: November 2, 1999.

Gerad L. McGowin,

Acting Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–29082 Filed 11–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1093–N]

Medicare Program; Request for Nominations for the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations from medical organizations representing physicians for individuals to serve on the Practicing Physicians Advisory Council (the Council).

Section 4112 of the Omnibus Budget Reconciliation Act of 1990 established the Council to advise the Secretary of the Department of Health and Human Services on proposed regulations and manual issuances related to physicians' services. There will be four Council vacancies on February 28, 2000.

EFFECTIVE DATE: Nominations will be considered if they are received no later than December 15, 1999, at 5 p.m., e.s.t.

ADDRESSES: Mail or deliver nominations to Paul Rudolf, MD, JD, Executive Director, Practicing Physicians Advisory Council, Center for Health Plans and Providers, Office of Professional Relations, Health Care Financing Administration, Room 435 H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7418.

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, MD, JD, Executive Director, Practicing Physicians Advisory Council, (202) 690–7418.

SUPPLEMENTARY INFORMATION: Section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) added a new section 1868 to the Social Security Act (the Act), which established the Practicing Physicians Advisory Council (the Council). The Council advises the Secretary of the Department of Health and Human Services (the Secretary) on proposed regulations and manual issuances related to physicians' services. An advisory committee created by the Congress, such as this one, is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Section 1868(a) of the Act requires that the Council consist of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. At least 11 Council members must be physicians as defined in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The other four Council members may include dentists, podiatrists, optometrists, and chiropractors.

The Council must include both participating and nonparticipating physicians, as well as physicians practicing in rural and underserved urban areas. In addition, section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

This notice is an invitation to all organizations representing physicians to submit nominees for membership on the Council. Current members whose terms expire in year 2000 will be considered for reappointment if they are renominated. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts.

Section 1868(b) of the Act provides that the Council meet once each calendar quarter to discuss proposed changes in regulations and manual issuances that relate to physicians' services identified by the Secretary. Council members are expected to participate in all meetings.

Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human

Services provides management and support services to the Council.

Authority: Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, section 10(a)); 45 CFR part 11.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 2, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–29150 Filed 11–5–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1999.

Name: Council on Graduate Medical Education (COGME)

Date and Time: December 1, 1999; 8:30 a.m.–5:30 p.m., December 2, 1999; 8:30 a.m.–12:00 p.m.

Place: The Latham Hotel, Georgetown—Presidential Ballroom, 3000 M Street, N.W., Washington, D.C. 20007.

The meeting is open to the public.

Agenda: The agenda will include: Welcome and opening comments from the Administrator, Health Resources and Services Administration, the Associate Administrator for Health Professions, and the Acting Executive Secretary of COGME. There will be presentations on a Specialty Supply and Requirements Study, and the National Health Service Corps. There will be a panel on State Centers for Health Workforce Studies. There will also be presentations on Medicare Teaching Physician Payment Issues; Osteopathic Medical Education Issues; and the Department of Defense GME Issues. An update will be given on the Advisory Committee on Training in Primary Care Medicine and Dentistry. The Council will hear the reports of its work groups on Ambulatory Programs and Financing, and Physician Workforce.

Anyone requiring information regarding the subject should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Executive Secretary, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Dated: November 2, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–29118 Filed 11–5–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project.—Use of Treatment Improvement Protocols (TIPs) and Technical Assistance Publications (TAPs) by Faculty and Curriculum Developers Associated with the Addiction Technology Transfer Centers (ATTCs)—New—The ATTC Study is a special study under the ongoing TIPs Evaluation Project. Since 1992, SAMHSA's Center for Substance Abuse Treatment (CSAT) has published 33 Treatment Improvement Protocols, or TIPs, which provide administrative and clinical practice guidance to the substance abuse treatment field; and 23 Technical Assistance Publications (TAPs), which are publications, manuals, and guides developed by experts with first-hand experience to offer practical responses to emerging issues and concerns in the substance abuse treatment field.

Configured as a mixed methodologies, multi-site case study, the ATTC study will elicit process and descriptive data related to assessing both actual use, and usefulness, of TIPs and TAPs in developing curricula and other knowledge application products for ATTCs. Data will be collected through on-site activities at six of the 13 ATTCs. Those activities will include intensive, on-site interviews with both ATTC curriculum developers and faculty/trainers identified by directors of the selected ATTC sites and through "snowball" sampling techniques; additional, brief interviews with curriculum developers and faculty/trainers identified by directors of the selected sites and through snowball sampling techniques; a brief demographic survey form to be filled out by all respondents; list-building/ranking and other special techniques, to be incorporated into the more intensive interviews; and small group discussions. Measures will be primarily descriptive and process, for example, whether, and if so, which, TIPs and TAPs have been or are being used in development of ATTC curricula; how and to what extent TIPs and TAPs are used; faculty/trainers' and curriculum developers' perceptions regarding the advantages and disadvantages of using TIPs and TAPs; and their impressions and suggestions concerning the content and format of TIPs and TAPs.

Burden for faculty/trainers and curriculum developers includes written responses to a brief demographic questionnaire, including faxing or mailing it back (est.10–15 minutes); subsequent participation in a brief (½ hour) or longer one-on-one, semi-structured interview (est.1–1 ½ hours), or in a small group discussion on site (1 hour); and round-trip travel to the interview/group discussion site. Burden attributed to Facility Directors for the 13 ATTCs includes time spent assisting the study team before and during the site visit, including identifying and discussing possible participants for interviews and group discussions. Burden for the National ATTC involves time spent assisting the study team in tracking ATTCs' replies to a request for information and sample products.

Respondents	Number of respondents	Number. of responses/respondent	Hours/response	Total burden hours
Faculty/trainers	54	2	[*]1.125	122
Curriculum developers	54	2	[*]1.125	122
Facility Director	13	1	.5	7
National ATTC	1	1	1	1
Total	122			252

[*] Includes travel time

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 1, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Administration.

[FR Doc. 99–29109 Filed 11–5–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4520–N–03]

Notice of Proposed Information Collection for Public Comments for Resident Opportunities Self-Sufficiency (ROSS) Program: Application Requirements, Evaluation, and Assessment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 7, 2000.

ADDRESSES: Interested persons are invites to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238 Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Titlel of Proposal: Resident Opportunities and Self-Sufficiency (Ross) Program.

OMB Control Number: 2577–0229.

Description of the need for the information and proposed use: The information will be used to select applicant for ROSS Program funding and will provide recordkeeping and reporting requirements for recipients of funding. The ROSS Program will provide linkages to public housing residents by providing supportive services, resident empowerment activities and Under the ROSS program HUD will fund successful models which will link services and public housing residents to enhance their quality of life while promoting self-sufficiency and personal responsibility in communities.

Members of affected public: State, or Local Government; Individuals or households; Not-for-profit institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 850 applicants, with an average application completion time of 40 hours each; 33,200 hours will be the total annual reporting burden.

Status of the proposed information collection: Extension of emergency approval. The information collection requirements contained for the ROSS program were submitted to the Office of Management and Budget for emergency review and approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0229. An agency may not conduct or sponsor, and a person is not required to respond to, a collection or information unless the collection displays a valid control number.

Authority: Sect. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 2, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–29217 Filed 11–5–99; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–52]

Submission for OMB Review: Accountability in the Provision on HUD Assistance "Applicant and Recipient Disclosure and Update"

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: Section 102 of The HUD Reform Act of 1989 requires the Department to ensure greater accountability and integrity in the provision of assistance administered by the Department. One feature of the statute requires certain disclosures by applicants seeking assistance from HUD, assistance from States and units of local government, and other assistance to be used with respect to the activities to be

carried out with the assistance. The disclosure includes the financial interests of persons in the activities, the sources of funds to be made available for the activities, and the proposed uses of the funds.

DATES: *Comments Due Date:* December 8, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number 2510–0011 and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number; if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Accountability in the Provision of HUD Assistance Applicant and Recipient Disclosure and Update.

OBM Approval Number: 2510–0011.

Form Number: HUD–2880.

Descripton of the Need for the Information and its Proposed Use

Section 102 of HUD Reform Act of 1989 requires applicants for assistance for certain projects to disclose information which will include other government assistance being requested, names, and financial interests of all interested parties, and a report of expected sources and uses of funds. A $200,000 threshold applies to this disclosure requirement.

Respondents: Individuals or Households Business or Other For-Profit Not-for-Profit Institutions, State, Local or Tribal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Initial Applications	13,500		1.2		2.0		32,400
Updates	3,400		1.2		2.0		8,160

Total Estimated Burden Hours: 40,560.

Status: Reinstatement, with change.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 2, 1999.

Wayne Eddins,

Departmental Reports, Management Officer, Office of the Chief Information Officer.

[FR Doc. 99–29218 Filed 11–5–99; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–4521–N–01]

Funding for Fiscal Year 1999: Capacity Building for Community Development and Affordable Housing

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding for fiscal year 1999.

SUMMARY: A recently enacted appropriation provided $15 million in Fiscal Year 1999 funds for activities authorized in section 4 of the HUD Demonstration Act of 1993 as in effect immediately before June 12, 1997. The funds are to be used for capacity building for community development and affordable housing—provided that at least $5,000,000 of the funding is used in rural areas, including tribal areas.

Section 4 authorizes the Secretary to establish by notice such requirements as may be necessary to carry out its provisions. This notice, which takes effect upon issuance, indicates that HUD will equally divide the $15 million appropriated for this capacity building initiative between the Enterprise Foundation (Enterprise) and the Local Initiatives Support Corporation (LISC). Each organization will match the HUD assistance provided with resources from private sources in an amount equal to three times its share, as required by section 4. Each organization will use at least $2.5 million of its $7.5 million share for activities in rural areas, including tribal areas.

This notice also provides details regarding administrative and other requirements which shall apply to this program.

FOR FURTHER INFORMATION CONTACT: Penelope G. McCormack, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7216, Washington DC 20410, telephone number (202) 708–3176 Ext. 4391; persons with hearing or speech impediments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339, or they may call: (202) 708–2565 (except for the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

1. Authority

The Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 105–276, 112 Stat. 2461, October 21, 1998) (VA/HUD FY 1999 Appropriations Act) makes $15 million available from the community development grants program for capacity building for community development and affordable housing as authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 107 Stat. 1148, October 27, 1993) (42 U.S.C. 9816 note). HUD will provide this assistance through Enterprise and LISC "to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs."

2. Background

In Fiscal Year 1994, HUD provided $20 million to Enterprise and LISC through The National Community Development Initiative (NCDI) as authorized by section 4 of the HUD Demonstration Act of 1993. In FY 1996, $10 million for NCDI was authorized by section 12(b)(3) of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 110 Stat. 845, March 28, 1996). In accordance with these statutes, HUD divided both appropriations equally between Enterprise and LISC. HUD published a notice on March 30, 1994, at 59 FR 14988, which sets forth the requirements for these funds.

In FY 1997, $30.2 million was authorized by the FY 1997 Emergency Supplemental Appropriations Act (Pub. L. 105–18, 111 Stat. 198 and 201, June 12, 1997). HUD published a notice on January 30, 1998, 63 FR 5220, which contained requirements for these funds which were made available to Enterprise, LISC, Habitat for Humanity and Youthbuild USA. On May 29, 1998 at 63 FR 29418, HUD published a revision to the January 30, 1998 notice. Under these notices, Enterprise and LISC were allocated funding to be used either for new activities or to continue NCDI activities which received funding under the notice dated March 30, 1994 and grant agreements pursuant to it. Funding used to continue NCDI activities was governed by the requirements of the **Federal Register** funding notice dated March 30, 1994.

In FY 1998, the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 105–65, 111 Stat. 1344, October 27, 1997) (VA/HUD FY 1998 Appropriations Act) provided $15 million for activities authorized by section 4. On September 11, 1998, at 63 FR 48984, HUD published a notice which contained requirements for these funds which were made available to LISC and Enterprise.

Today's notice contains requirements for the newly appropriated $15 million. These funds may be used for new activities or to continue NCDI activities that received funding under the notice dated March 30, 1994 and grant agreements pursuant to it. Funding used to continue NCDI activities is governed by the requirements of the March 30, 1994, **Federal Register** funding notice.

3. Allocation and Form of Awards

The VA/HUD FY 1999 Appropriations Act provides $15 million for activities authorized by section 4. In accordance with congressional intent, Enterprise and LISC will each be awarded $7.5 million. HUD has determined that LISC and Enterprise were the appropriate organizations to be funded prior to the amendments made effective on June 12, 1997. Therefore, the $15 million made available by the FY 1999 Appropriations Act is limited to LISC and Enterprise. In addition, each of the two organizations will use $2.5 million of its share for activities in rural areas, including tribal areas.

4. Eligible Activities

Eligible activities under this award include:

(a) Training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations (CDCs) and community housing development organizations (CHDOs) including the capacity to participate in consolidated planning including fair housing planning and continuum of care homeless assistance efforts that help ensure community-wide participation in assessing area needs, consulting broadly within the community, cooperatively planning for the use of available resources in a comprehensive and holistic manner, and assisting in evaluating performance under these community efforts and in linking plans with neighboring communities in order to foster regional planning;

(b) Loans, grants, development assistance, predevelopment assistance, or other financial assistance to CDCs/CHDOs to carry out community development and affordable housing activities that benefit low-income families and persons, including the acquisition, construction, or rehabilitation of housing for low-income families and persons, and community and economic development activities which create jobs for low-income persons; and

(c) Such other activities as may be determined by Enterprise and LISC in consultation with the Secretary or his designee.

5. Matching Requirements

As required by section 4 of the 1993 Act, this $15 million appropriation is subject to each award dollar being matched by three dollars in cash or in-kind contributions to be obtained from private sources. Each of the organizations receiving these funds will document their proportionate share of matching resources, including resources committed directly or by a third party to a grantee or subgrantee after October 27, 1997 to conduct activities.

In-kind contributions shall conform to the requirements of 24 CFR 84.23.

6. Administrative and Other Requirements

The award will be governed by 24 CFR part 84 (Uniform Administrative Requirements), OMB Circular A–122 (Cost Principles for Nonprofit Organizations), and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations).

Other requirements will be detailed in the terms and conditions of the grant agreement provided to grantees, including the following:

(a) Each grantee will submit to HUD a specific work and funding plan for each community showing when and how the federal funds will be used. The work plan must be sufficiently detailed for monitoring purposes and must identify the performance goals and objectives to be achieved. Within 30 days after submission of a specific work plan, HUD will approve the work plan or notify the grantee of matters which need to be addressed prior to approval, or the work plan shall be construed to be approved. Work plans may be developed for less than the full dollar amount and term of the award, but no HUD-funded costs may be incurred for any activity until the work plan is approved by HUD. All activities are also subject to the environmental requirements in paragraph 6(f) of this notice.

(b) The grantees shall submit to HUD an annual performance report due 90 days after the end of each calendar year, with the first report due on March 31, 2000. Performance reports shall include reports on both performance and financial progress under work plans and shall include reports on the commitment and expenditure of private matching resources utilized through the end of the reporting period. Reports shall conform to the reporting requirements of 24 CFR part 84. Additional information or increased frequency of reporting, not to exceed twice a year, may be required by HUD any time during the grant agreement if HUD finds such reporting to be necessary for monitoring purposes.

To further the consultation process and share the results of progress to date, the Secretary may require grantees to present and discuss their performance reports at annual meetings in Washington, DC during the life of the award.

(c) The performance reports must contain the information required under 24 CFR part 84, including a comparison of actual accomplishments with the objectives and performance goals of the work plans. In the work plans each grantee will identify performance goals and objectives established for each community in which it proposes to work and appropriate measurements under the work plan such as: the number of housing units and facilities each CDC/CHDO produces annually during the grant period and the average cost of these units. Provided, however, that when the activity described in a work plan is not to be undertaken in a single community that a report indicating the areas in which the activity will be undertaken, along with appropriate goals and objectives, will be provided when that information is available. The performance reports will also include a discussion of the reasonableness of the unit costs; the reasons for slippage if established objectives and goals are not met; and additional pertinent information.

(d) A final performance report, in the form described in paragraph (c) above, shall be provided to HUD by each grantee within 90 days after the completion date of the award.

(e) Financial status reports (SF–269A) shall be submitted semiannually.

(f) Environmental review. Individual projects to be funded by these grants may not be known at the time the overall grants are awarded and also may not be known when some of the individual subgrants are made. Therefore, in accordance with 24 CFR 50.3(h), the application and the grant agreement must provide that no commitment or expenditure of HUD or local funds to a HUD-assisted project may be made until HUD has completed an environmental review to the extent required under applicable regulations and has given notification of its approval in accordance with 24 CFR 50.3(h).

8. Application Content

Grantees will be required to file an application containing the following:

(a) Application for Federal Assistance (OMB Standard Form 424), Non-construction Assurances (SF–424B), Certification Regarding Drug-Free Workplace Requirements, Certification Regarding Lobbying and the Fair Housing and Equal Opportunity certification described in section 9(f) of this notice;

(b) A Summary Budget for the amount of funds being requested as described in section VI (10) of the "NOFA for Consolidated Technical Assistance for Community Planning and Development (CPD) Programs; Notice," published at 59 FR 33842, 33848, on June 30, 1994 and specifying any amounts to be committed to NCDI activities under the notice dated March 30, 1994 and grant agreements pursuant to it.

9. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

(b) *Wage Rates.* Unless triggered by other Federal funds for a project under this grant, the requirements of the Davis-Bacon Act do not apply.

(c) *Relocation.* The Uniform Relocation Act applies to anyone who is displaced as a result of acquisition, rehabilitation, or demolition, for a HUD-assisted activity.

(d) *Federalism.* The General Counsel, as the Designated Official under section 7(a) of the Executive Order 12612, *Federalism*, has determined that the policies contained in this funding notice will not have substantial direct effects on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government. Specifically, this notice makes funds available through specific entities for specific activities, as required by statute, and does not impinge upon the relationships between the Federal government, and State and local governments.

(e) *Prohibition Against Lobbying Activities.* Applicants for funding under this notice are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995, Pub. L. 104–65 (December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal Executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this notice. Therefore, applicants must file with their application a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995, Pub. L. 104–65 (December 19, 1995), which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(f) *Fair Housing and Equal Opportunity.* Applications must contain a certification that the applicant and all subgrantees shall comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing.

Authority: Sec. 4 of the HUD Demonstration Act of 1993, (Pub. L. 103–120, 42 U.S.C. 9816 note), as amended and Pub. L. 105–276, 112 Stat. 2461.

Dated: October 4, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 99–29219 Filed 11–5–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Notice of Intent To Prepare an Environmental Impact Statement and National Management Plan for the Double-Crested Cormorant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service is issuing this notice to advise the public that we are initiating efforts to prepare an Environmental Impact Statement (EIS) and accompanying national management plan aimed at

addressing impacts caused by population and range expansion of the double-crested cormorant in the contiguous United States. This notice describes a range of possible alternatives, invites public participation in the scoping process for preparing the EIS, and identifies the Service official to whom you may direct questions and comments. Locations, dates, and times of public scoping meetings have yet to be determined.

DATES: We will publish the formal closing date for receiving scoping comments when the notice of public scoping meetings is published in the **Federal Register**. We anticipate **Federal Register** publication of the locations, dates, and times of public scoping meetings to occur within two months of this notice of intent.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 634, Arlington, VA 22203. You may also comment via the internet to: cormorant_eis@fws.gov. Please submit internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation that we have received your message, contact us directly at (703) 358–2334. Finally, you may hand-deliver comments to: Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. We have yet to determine potential sites of public scoping meetings. We will publish a notice of public meetings with the locations, dates, and times in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714; or John L. Trapp, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1965.

SUPPLEMENTARY INFORMATION: The double-crested cormorant (Phalacrocorax auritus) has been protected by the Migratory Bird Treaty Act since 1972. Populations of this large fish-eating waterbird, which is native to all 48 of the contiguous United States, have increased dramatically during the past three decades. In many parts of the United States, this has culminated in conflicts with resources of value to humans.

Cormorants and Their Impacts

The size of the North American breeding population of the double-crested cormorant has been estimated at about 372,000 pairs, or 852 colonies (Tyson *et al.* 1997). Using values of one to four non-breeding birds per breeding pair yields an estimated total population of 1–2 million birds (Hatch 1995). The double-crested cormorant breeds widely throughout much of the coastal and interior portions of the United States. It has been found breeding in 46 of the 48 contiguous United States. However, it is not uniformly distributed across this broad area. Sixty-one percent of the breeding birds belong to the Interior population and it is the fastest growing of the six major North American breeding populations (Hatch 1995). From 1970–1991, in the Great Lakes region (American and Canadian), which lies within the range of the Interior population, the number of double-crested cormorant nests increased from 89 to 38,000, an average annual increase of 29 percent (Weseloh *et al.* 1995). For the contiguous United States as a whole, the breeding population increased at an average rate of 6.1 percent per year from 1966–1994 (Sauer *et al.* 1996).

Cormorant wintering populations are concentrated in coastal States, from North Carolina to Texas in the east and from California to Washington in the west. In the south, there also are appreciable concentrations inland from the coast (*e.g.*, east Texas, eastern Oklahoma, southeastern Arkansas, west-central Mississippi, and northeastern Alabama). Cormorants nesting in Canada and the northern United States from Alberta to the Gulf of St. Lawrence (*i.e.*, the Atlantic and Interior populations) migrate in winter primarily to the southern United States between Texas and Florida.

Cormorants have been implicated as being responsible for: (1) Economic losses at commercial aquaculture facilities; (2) damage to trees and other vegetation associated with breeding colonies and roosting sites; (3) impacts to other species of migratory birds in the vicinity of cormorant breeding colonies; (4) declines in economic revenues associated with outdoor (primarily fishing-related) recreational activities; (5) declines in populations of sport fish; and (6) lowering of private property values.

Past Management Actions

Formal efforts by the Service and others to control double-crested cormorant populations date to the 1940s. Since 1972, we have issued depredation permits to persons who can document injury to "crops or other interests" by migratory birds, including cormorants (50 CFR 21.41). In the last decade, requests for depredation permits to control damages caused by double-crested cormorants have increased dramatically.

In response to published evidence of significant economic losses at commercial aquaculture facilities due to predation by double-crested cormorants, we implemented a depredation order on March 4, 1998 (63 FR 10560). The depredation order allows commercial aquaculturists in 13 States to take unlimited numbers of double-crested cormorants "* * * when found committing or about to commit depredations to aquaculture stocks * * *" (50 CFR 21.47).

In early spring 1999, we received applications for permits to conduct cormorant control activities at Little Galloo Island, Lake Ontario, New York (oiling of eggs in up to 7,500 nests); and Young Island, Lake Champlain, Vermont (oiling of eggs in up to 3,000 nests). Environmental Assessments of the proposed actions concluded that they would have no significant environmental effects, and permits were subsequently issued (USFWS 1999a and b).

The Atlantic States Legal Foundation (ASLF) challenged the issuance of a permit to the New York State Department of Environmental Conservation in United States District Court in a complaint filed August 16, 1999. The ASLF argued that our decision to issue a permit in this instance was a violation of the Migratory Bird Treaty Act and the National Environmental Policy Act and was arbitrary and capricious.

Although the District Court has taken no action on the ASLF complaint, the action highlights the need for scientific inquiry into the nature of the problems caused by double-crested cormorants and an assessment of the utility of management actions most likely to resolve resulting conflicts.

Alternatives

After the scoping process, we will develop alternatives to be included in the EIS, basing them on our mission and the comments received during scoping. Examples of alternatives that we might consider range from "No Action" to "Large-scale Population Control on Breeding Grounds, Wintering Grounds, and Migration Areas in the United States."

As a precursor to the national management plan, the Service has contracted for the development of a cormorant status assessment. A draft is currently under review. Availability of this document for public review will be announced at a later date.

We are soliciting your comments on issues, alternatives, and impacts we might address in the EIS. Of particular value will be comments that: (1) Identify and, where possible, quantify impacts caused by increasing cormorant populations; (2) suggest management strategies to resolve such conflicts; and (3) identify determining factors in justifying the need for control, if any.

Issue Resolution and Environmental Review

The primary issue that we will address during the scoping and planning process for the EIS is to determine which alternatives for managing double-crested cormorant populations we will analyze. We will prepare a discussion of the potential effects, by alternative, which will include the following areas:

(1) Double-crested cormorant populations and their habitats;

(2) Other bird populations and their habitats;

(3) Effects on other species of flora and fauna; and

(4) Socioeconomic effects.

We will conduct an environmental review of the management actions in accordance with the requirements of the National Environmental Policy Act (NEPA), as appropriate. We are furnishing this notice in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS. A draft EIS should be available to the public in the spring of 2000.

Public Scoping Meetings

A schedule of public scoping meetings is not available at this time. We encourage suggestions of potential dates, times, and locations for the meetings. We will then publish notice of the meetings in the **Federal Register**.

References Cited

A complete list of all references cited herein is available from the Office of Migratory Bird Management (see **ADDRESSES** section).

Dated: October 26, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish & Wildlife Service.

[FR Doc. 99–28814 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of a Final Environmental Impact Statement for the Proposed Forest Management Plan for the Flathead Indian Reservation, Pablo, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: A Final Environmental Impact Statement (FEIS) for the proposed Forest Management Plan for the trust forest lands of the Flathead Indian Reservation, Pablo, Montana, is now available for public review and comment. A description of the proposed action follows as supplemental information.

DATES: Comments on the FEIS must arrive by December 6, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry written comments to Mr. Ernest "Bud" Moran, Superintendent, Flathead Field Office, Bureau of Indian Affairs, P.O. Box 40, Pablo, Montana 59855. You may also comment via the Internet to BudMoran@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (406) 675–0242.

Comments, including names and home addresses of respondents, will be available for public review at the Flathead Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Copies of the FEIS will be available at the public libraries in Arlee, St. Ignatius, Ronan, Polson, and Hot Springs, Montana, and at the Salish and Kootenai Cultural Centers in St. Ignatius and Elmo, Montana. Comments, responses, and changes and additions to the DEIS will be mailed out to all those who commented on the DEIS. Individuals wishing copies of the FEIS may contact Mr. Ken Trickey, Tribal Forestry, Confederated Salish and Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855, telephone (406) 676–3755.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Trickey, 406–676–3755.

SUPPLEMENTARY INFORMATION: There are approximately 451,391 acres of forest trust land on the Flathead Indian Reservation. The Forest Management Plan (the proposed action) takes an interdisciplinary, ecosystem approach to forest management and seeks to restore and maintain the long-term ecological integrity of the reservation's forests in a manner consistent with tribal values. The Plan describes resource management practices and levels of production, establishes management standards, allocates land, and prescribes management practices to achieve balanced forest ecosystems. Its purpose is to provide long-term direction for the tribes' forest resources. The Plan is needed to: (1) Satisfy tribal goals and objectives; (2) Ensure that management activities are compatible with sustainable forest ecosystems; (3) Balance tribal cultural, social, economic and environmental values; and (4) Establish a basis for an adaptive management and monitoring process that incorporates tribal member values.

The FEIS includes five alternatives, including a no action alternative. Alternatives 1, 2 and 3 take an ecosystem approach to management. They focus on the overall vegetative structure and composition of the forest rather than on individual stands or on the needs of individual species. They seek to restore, to varying degrees, more natural structures, processes and functions to the forest in order to achieve more sustainable conditions over the long term. Of the three, Alternative 1 seeks the highest levels of restoration, followed by Alternative 2 and then 3. Alternative 5 takes a passive approach to management, in which timber harvesting would be limited to salvage operations after fires, wind throw, or insect and disease outbreaks. Alternative 4, no action, would continue the management practices of the last forest management plan, which was adopted in 1987.

Alternative 2, the 1996 Draft Forest Plan with updates and revisions made in response to modeling refinements and new information, is both the proposed action and the preferred alternative. It is preferred because it best balances social, cultural, economic and environmental concerns and best meets the stated purpose and need.

Changes between the DEIS and the FEIS include, but are not limited to the following:

- Under Alternatives 2 and 3, habitat effectiveness for elk will be improved in the nonlethal and mixed fire regimes by reducing the number of miles of open road per square mile from five to four.
- Under Alternative 2, 100 percent rather than 80 percent of the road sections that are severely degrading aquatics will be abandoned.
- The Water and Fish section of the Affected Environment chapter has been expanded to include updated information on fluvial geomorphology, water quality, wetlands, and monitoring.
- A socio-economic section has been added to the Affected Environment chapter.
- The safe use of herbicides and the restoration and maintenance of the chemical, physical, and biological integrity of streams have been added as objectives of the Forest Management Plan.

This notice is furnished in accordance with Section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: October 29, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–29116 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–99–1220–PH]

Resource Advisory Council Meeting, Butte, Montana

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will convene at 9:00 a.m., Wednesday, December 8, 1999, at the Butte Field Office, 106 North Parkmont, Butte, Montana. Issues will include an overview of Landscape Analysis planning, a discussion on the Montana/Dakotas Off-Highway Vehicle Environmental Impact Statement and an update on the Whitetail-Pipestone Environmental Impact Statement.

The meeting is open to the public and written comments can be given to the Council. Oral comments may be presented to the Council at 11:30 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact the Butte Field Office, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: BLM Butte Field Manager Merle Good at the above address or telephone number.

Dated: October 27, 1999.

Merle Good,

Field Manager.

[FR Doc. 99–29094 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1820–XQ]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Ukiah, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, December 9 and 10, 1999, for a business meeting and field tour. The meeting and tour are open to the public, but anyone attending must provide their own transportation and lunch.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Thursday, December 9, at the U.S. Bureau of Reclamation's Lake Berryessa headquarters office, 5320 Knoxville Rd., Napa, California. Members will depart shortly after 10 a.m. for a driving tour of the Lake Berryessa area, and the BLM's Knoxville Off Highway Vehicle Area. On Friday, December 10, the council will convene at the Marriott Hotel, 3425 Solano Ave., Napa, for a business meeting. Agenda items include Lake Berryessa management, the status of recovery from the Lowden Fire, status of Headwaters Forest Management, status of the BLM California Strategic Plan, and reports from the BLM's Arcata, Redding and Ukiah field mangers.

Time will be set aside for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

FOR ADDITIONAL INFORMATION: Contact Rich Burns, BLM Ukiah Field Manager, at (707) 468–4000.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 99–29110 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Chief, Branch of Geographic Services, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, California.

Humboldt Meridian, California

Ts. 7 & 8 N., R. 5 E. and T. 8 N., R. 6 E.,

Dependent resurvey and metes-and-bounds survey of a portion of tract 39, (Group 1308) accepted January 13, 1999, to meet certain administrative needs of the BIA, Sacramento Area, Northern California Agency.

T. 3 N., Rs. 1 E. & 1 W.,

Retracement and centerline survey, (Group 1300) accepted February 10, 1999 to meet certain administrative needs of the BLM, Arcata Field Office.

T. 11 N., R. 7 E.,

Metes-and-bounds survey of tract 40, (Group 1305) accepted September 27, 1999, to meet certain administrative needs of the USDA, Forest Service, Klamath National Forest.

Mount Diablo Meridian, California

T. 7 N., R. 10 E.,

Supplemental Plat of the South ½ of section 11 and the North ½ of section 14, accepted November 2, 1998, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 28 N., R. 10 E.,

Supplemental Plat of the South ½ of section 29 and North ½ of section 32, accepted October 27, 1998, to meet certain administrative needs of the USDA, Forest Service, Lassen National Forest.

T. 26 S., R. 33 E.,

Supplemental plat of the West ½ of section 18, accepted November 23, 1998, to meet certain administrative needs of the BLM, Bakersfield Field Office.

T 3. S., R. 27 E.,

Dependent resurvey, subdivision and metes-and-bounds survey, (Group 1253) accepted November 13, 1998, to meet certain administrative needs of the USDA, Forest Service, Inyo National Forest.

T. 27 S., R. 40 E.,

Dependent resurvey, corrective dependent resurvey and metes-and-bounds survey, (Group 1282) accepted January 15, 1999, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Field Office.

T. 39 N., R. 13 E.,

Dependent resurvey, subdivision and metes-and-bounds survey, (Group 1312) accepted January 27, 1999, to meet certain administrative needs of the BLM, Alturas Field Office.

T. 46 N., R. 15 E.,

Dependent resurvey and subdivision of section 17, (Group 1298) accepted February 10, 1999 to meet certain administrative needs of the USDA, Modoc National Forest.

T. 10 S., R. 23 E.,

Supplemental plat of the NE ¼ of section 24, accepted February 22, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 31 N., R. 6 W.,

Supplemental Plat of sections 17, 18, 19 and 20, accepted April 28, 1999, to meet certain administrative needs of the BLM, Redding Field Office.

T 43 N., R. 16 E.,

Dependent resurvey and metes-and-bounds survey of tract 37, (Group 1307) accepted April 27, 1999 to meet certain administrative needs of the BLM, Surprise Field Office.

T. 39 N., R. 10 W.,

Metes-and-bounds of tracts 37 and 38, (Group 1242) accepted June 24, 1999 to meet certain administrative needs of the USDA, Forest Service, Klamath National Forest.

T. 45 N., R. 14 E.,

Metes-and-bounds survey of tract 37, (Group 1306) approved March 29, 1999 to meet certain administrative needs of the BLM, Alturas Field Office.

T. 33 N., R. 5 W.,

Supplemental Plat of section 33, accepted March 31, 1999 to meet certain administrative needs of the BLM, Redding Field Office.

T. 31 N., R. 5 W.,

Supplemental Plat of section 5, accepted March 31, 1999 to meet certain administrative needs of the BLM, Redding Field Office.

T. 4 N., R. 13 E.,

Supplemental Plat of sections 21, 22 and 27, accepted August 24, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 16 N., R. 16 E.,

Dependent resurvey and survey, (Group 1314) accepted August 24, 1999, to meet certain administrative needs of the BLM, Folsom Office.

T. 4 N., R. 14 E.,

Supplemental plat of section 20, accepted September 13, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 4 N., R. 13 E.,

Memorandum of Modification to Master Title Status Records within section 33, accepted September 16, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

T., 31 N., R. 6 W.,

Supplemental plat of section 20, accepted September 24, 1999, to meet certain administrative needs of the BLM, Redding Field Office.

T. 4 N., R. 13 E.,

Memorandum of Modification to Master Title Status Records within section 26, accepted September 27, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

San Bernardino Meridian, California

T. 6 S., R. 3 W.,

Supplemental plat of the NW¼ of section 30, accepted October 21, 1998 to meet certain administrative needs of the BLM, California Desert District, Palm Springs-South Coast Field Office.

T. 3 S., R. 15 E.,

Amended supplemental plat of sections 14, 15, 19, 20, 23, 24 and 30, accepted November 23, 1998, to meet certain administrative needs of the BLM, California Desert District, Palm Springs-South Coast Field Office.

T. 16 N., R. 12 E.,

Dependent resurvey and subdivision of section 28, (Group 1153), accepted January 20, 1999, to meet certain administrative needs of the BLM, California Desert District, Needles Field Office.

T. 10 S., R. 2 W.,

Dependent resurvey and subdivision of sections 1, 4, 10, 11 and 12, (Group 1073) accepted February 10, 1999 to meet certain administrative needs of the BIA, Sacramento Area, Southern California Agency.

T. 2 N., R. 3 W.,

Supplemental plat of the north ½ of section 28, accepted June 17, 1999 to meet certain administrative needs of the USDA, Forest Service, San Bernardino National Forest.

T., 11 S., R. 1 E.,

Dependent resurvey and subdivision, (Group 1250) accepted July 16, 1999 to meet certain administrative needs of the BIA, Sacramento Area, Southern California Agency.

T. 12 S., R. 10 E.,

Supplemental plat of sections 14 and 18, accepted August 24, 1999, to meet certain administrative needs of the BLM, California Desert District, El Centro Field Office.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: October 27, 1999.

James B. McCavitt,

Chief, Branch of Geographic Services.

[FR Doc. 99–29095 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Advisory Commission for the San Francisco Maritime National Historical Park; Public Meeting

Agenda for the December 8, 1999 Public Meeting

Presidio Golden Gate Club, 10:00 A.M.–11:45 P.M.

10:00 a.m. Welcome—Neil Chaitin, Chairman, Opening Remarks—Neil Chaitin, Chairman

10:15 a.m.—Update General Management Plan, Phase II Implementation, William Thomas, Superintendent

10:30 a.m.—Update Staff Reports, Ships, Wayne Boykin, Operations, Marc Hayman, Collections, Tom Mulhern
11:00 a.m.—Update National Maritime Museum Association, Projects, Kathy Lohan, Chief Executive Office
11:30 a.m.—Public Comments and Questions
11:45 a.m.—Agenda items/Date for next meeting

William G. Thomas,
Superintendent.

[FR Doc. 99–29119 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Federal Land Managers' Air Quality Related Values Work Group (FLAG)

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service, in cooperation with the U.S. Fish and Wildlife Service and the U.S. Department of Agriculture Forest Service, is announcing the availability of, and accepting comments on, the draft FLAG Phase I Report.

The Federal Land Managers' Air Quality Related Values Work Group (FLAG) was formed to develop a more consistent approach for the Federal Land Managers (FLMs), *i.e.*, National Park Service, U.S. Fish and Wildlife Service, and U.S. Department of Agriculture Forest Service, to evaluate air pollution effects on their resources. The FLAG effort focuses on the effects of the air pollutants that could affect the health and status of resources in areas managed by the three agencies, primarily such pollutants as ozone, particulate matter, nitrogen dioxide, sulfur dioxide, nitrates, and sulfates. In Phase I, FLAG formed subgroups that concentrated on four issues: (1) terrestrial effects of ozone; (2) aquatic and terrestrial effects of wet and dry pollutant deposition; (3) visibility; and (4) process and policy issues. The draft report contains issue-specific technical and policy analyses, recommendations for evaluating air quality related values, and guidelines for completing and evaluating new source review permit applications. These recommendations and guidelines are intended for use by the FLMs, permitting authorities, permit applicants, and other interested parties.

DATES: Written comments on the FLAG report must be received by January 7, 2000.

The FLMs will conduct a public meeting to discuss the FLAG report on December 15, 1999, from 8:00 a.m. to 5:00 p.m. at the Holiday Inn Lakewood, 7390 W. Hampden Avenue, Lakewood, CO 80227; (303) 980–9200. The meeting agenda is as follows: 8:00 a.m. to 10:00 a.m.—Process and Policy Issues, 10:00 a.m. to 12:00 noon—Visibility Issues, 1:00 p.m. to 3:00 p.m.—Ozone Issues, and 3:00 p.m. to 5:00 p.m.—Deposition Issues. Each session will include a 30-minute overview of the FLAG recommendations, followed by one and one-half hours for questions and discussion. To aid in meeting planning, please contact John Bunyak at the address below if you plan to attend the public meeting.

ADDRESSES: A copy of the draft FLAG Phase I Report can be obtained from John Bunyak or downloaded from the Internet at: http://www.aqd.nps.gov/ard/flagfree/ Mail comments to: John Bunyak, Air Resources Division, National Park Service, P.O. Box 25287, Denver, Colorado, 80225. E mail comments can be sent to john__bunyak@nps.gov.

FOR FURTHER INFORMATION CONTACT: John Bunyak at the above address or by calling (303) 969–2818.

Dated: October 25, 1999.

John Bunyak,
Acting, Chief, Air Resources Division.

[FR Doc. 99–28971 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Investigation No. TA–201–70

Circular Welded Carbon Quality Line Pipe

AGENCY: United States International Trade Commission.

ACTION: Amendment of scope of the investigation to exclude certain merchandise described as arctic-grade line pipe.

SUMMARY: On October 28, 1999, the Commission, at the request of petitioners in the investigation, amended the scope of investigation No. TA–201–70, Circular Welded Carbon Quality Line Pipe, to remove from the scope of investigation certain merchandise described as arctic-grade line pipe, defined as follows—

> welded line pipe that (1) Has an outer diameter of 4.5 inches or more and a wall thickness equal to or less than 0.75 inches; and (2) When subjected to a Charpy V-notch test performed at minus 50 degrees Fahrenheit or below applied to three specimens taken from the well area, has a ft-lbs rating of no less than 17 ft-lbs for each sample, with an average for all three at no less than 19 ft-lbs; and (3) Using at least three samples, has a minimum average shear area of 85 percent in the base metal and 50 percent in the weld; and (4) When subjected to a hydrogen induced cracking test to be performed as per NACE (National Association of Corrosion Engineers) TM0284 test with solution A, has a crack length ratio that does not exceed 15 percent, a crack sensibility ratio that does not exceed 2 percent, and a crack thickness ratio that does not exceed 5 percent.

The Commission action amending the scope was taken prior to the vote in the injury phase of the investigation, which also occurred on October 28, 1999. Accordingly, imports of such line pipe were not part of the Commission's affirmative injury determination made later that day.[1] Notice of institution of the investigation was published in the **Federal Register** of August 4, 1999 (64 F.R. 42414).

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Issued: November 2, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99–29209 Filed 11–5–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–224 (Review)]

Live Swine From Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: On October 29, 1999, the Department of Commerce released its negative final determination of the likelihood of continuation or recurrence of a countervailable subsidy in connection with the subject five-year review. Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), the five-year review of the countervailing duty order concerning live swine from Canada (investigation No. 701–TA–224 (Review)) is terminated.

EFFECTIVE DATE: October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202–708–4101), Office of

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[1] Commissioner Carol T. Crawford made a negative determination.

Investigations, US International Trade Commission, 500 E Street, SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This five-year review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

Issued: November 3, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–29210 Filed 11–5–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 177–99]

Privacy Act of 1974; System of Records

AGENCY: Department of Justice.

ACTION: Notice of Modified Systems of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the United States Marshals Service (USMS), Department of Justice, is issuing public notice of its proposal to modify its systems of records. This notice publishes updates to those systems of records, last published in the **Federal Register** on October 13, 1989 (54 FR 42100), except as otherwise set forth below under the caption **SUPPLEMENTARY INFORMATION**. Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the systems modifications. The public, OMB and Congress are invited to comment on the modifications to these systems.

DATES: The proposed changes will be effective December 20, 1999, unless comments are received that result in a contrary determination.

ADDRESSES: Submit written comments to the Department of Justice (DOJ), ATTN: Mary E. Cahill, Management and Planning Staff, Justice Management Division, Washington, DC 20530 (Room 1400, NPB).

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill at (202) 307–1823.

SUPPLEMENTARY INFORMATION: Modifications to the USMS systems of records include changes to correct the office designations for systems locations and titles of systems managers, to reflect nomenclature changes, to more accurately describe the systems purposes, categories of records and safeguards, to revise sections on notification and access procedures, to clarity existing routine uses, to add routine uses, to update the retention and disposal section, to add data elements omitted from previous notices, and to further exempt one system from certain provisions of the Privacy Act. Specific changes for each USMS system of records notice are set forth below:

USMS Badge & Credentials File, Justice/USM–001: To correct the office designation for system location, title of system manager and personnel with authorized access; to add data elements omitted from previous notice; to clarify an existing routine use; to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions, and to correct the notification procedure.

USMS Internal Affairs System, Justice/USM–002: To rename the system; to correct the office designation for system location and title of system manager; to add data elements omitted from previous notice; to more accurately described categories of records, storage, and safeguards; to update retention and disposal section; to correct the notification procedure; to clarify an existing routine use; and to add four new routine uses for disclosure to complainants of alleged civil rights violations or to victims of such violations, for disclosure to other Federal agencies in connection with decisions on employment, licensing or contract issues, for disclosures to obtain cooperation in USMS investigations of alleged misconduct, and for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions. Also, a proposed rule to further exempt this system from subsections (e)(1) and (e)(5) of the Privacy Act can be found in the Proposed Rules Section of today's **Federal Register.** The Office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled "Internal Inspection System, Justice/USM–002," and add of DOJ's compilation the modified system of records entitled "Internal Affairs System, Justice/USM–002."

Special Deputation Files, Justice/USM–004: To rename the system; to correct the office designation for system location and title of system manager; to add data elements omitted from previous notice; to expand categories of individuals; to more accurately describe categories of records, storage, and safeguards; to update retention and disposal section; to correct the notification and records access procedures; and to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions. The Office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled "Special Deputy File, Justice/USM–004," and add to DOJ's compilation the modified system of records entitled "Special Deputation Files, Justice/USM–004."

USMS Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS), Justice/USM–005, last published in the **Federal Register** on February 3, 1992 (57 FR 4059): This system has been revised to rename the system; to correct the office designation for system location and title of system manager; to identify the location of decentralized segments of the system at USMS district offices; to add data elements omitted for previous notice; to expand the description of medical records in the system; to clarify the purpose of medical records; to correct the notification procedure; and to add two new routine uses. The Office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled "U.S. Marshals Service Prisoner Processing and Population Management System, Justice/USM–005," and add to DOJ's compilation the modified system of records entitled "U.S. Marshals Service Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS), Justice/USM–005 ."

USMS Training Files, Justice/USM–006, last published on October 13, 1989

(54 FR 42103): To correct the office designation for system location and title of system manager; to add data elements omitted from the previous notice; to correct the notification procedure; to clarify an existing routine use; and to add to new routine uses for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions, and for disclosure to other Federal agencies in connection with decisions on employment, retention, licensing or contract issues.

Warrant Information Network (WIN), Justice/USM–007: This system has been revised to rename the system; to correct the office designation for system location and title of system manager; to add data elements omitted from previous notice; to expand the categories of individuals covered by and records in this system; to correct the notification procedure; to more accurately describe retrievability and safeguards; and to update retention and disposal section. The Office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled "Warrant Information System, Justice/USM–007," and add to DOJ's compilation the modified system of records entitled "Warrant Information Network (WIN), Justice/USM–007."

Witness Security Files Information System, Justice/USM–008: To correct the office designation for system location and title of system manager; to correct authority cited for maintenance of the system; to add data elements omitted from the previous notice; to more accurately describe storage, retrievability and safeguards; to update retention and disposal section; and to clarify record sources.

Inappropriate Communications/Threat Information System (IC/TIS), Justice/USM–009: This system has been revised to rename the system; to correct the office designation for system location and title of system manager; to identify the location of decentralized segments at USMS district offices; to add data elements omitted from previous notice; to expand the categories of individuals, records and the purpose of this system; to correct the notification procedure; to more accurately describe storage and safeguards; and to clarify an existing routine use. The office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled "Threat Analysis System, Justice/USM–009," and add to DOJ's compilation the modified system of records entitled "Inappropriate Communications/Threat Information System (IC/TIS), Justice/USM–009."

Judicial Facility Security Index System, Justice/USM–010: To correct the office designation for system location and title of system manager; to correct authority cited for maintenance of the system; to add data elements omitted from the previous notice; to clarify an existing routine use; and to correct notification procedure.

Judicial Protection Information System, Justice/USM–011: To correct the office designation for system location and title of system manager; to correct authority cited for maintenance of the system; to add data elements omitted from the previous notice; to clarify an existing routine use; and to correct the notification procedure.

Freedom of Information Act/Privacy Act (FOIA/PA) Files, Justice/USM–012: To correct the office nomenclature for system location and title of system manager; to expand the categories of individuals in this system; to add data elements omitted from the previous notice; to more accurately describe storage, retrievability and safeguards; to correct the notification procedures; to clarify an existing routine use; and to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions.

Administrative Proceedings, Claims, and Civil Litigation Files, Justice/USM–013: To correct the office nomenclature for system location and title of system manager; to expand the categories of individuals in this system; to add data elements omitted from the previous notice; to more accurately describe storage, retrievability and safeguards; to update retention and disposal section; to correct notification procedures; to correct or clarify two existing routine uses; and to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions.

U.S. Marshals Service (USMS) Employee Assistance Program (EAP) Records, Justice/USM–015, last published in the **Federal Register** on May 2, 1994 (59 FR 22684): To correct the office designations for system location and title of system manager; to change the nomenclature for the location of certain records contained in the system; to expand the categories of records and identify the location of certain duplicate records; to add data elements omitted from the previous notice; and to make other minor changes for greater clarity.

USMS Key Control Record System, Justice/USM–016, last published in the **Federal Register** on February 23, 1994 (59 FR 8660): To correct the office designation for system location and title of system manager; to add data elements omitted from the previous notice; to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USS records in order to perform their assigned USMS functions; and to correct the notification procedure.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on the modified systems to OMB and the Congress. Descriptions of these systems are required below.

Dated October 22, 1999.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/USM–001

SYSTEM NAME:

U.S. Marshals Service Badge & Credentials File.

SECURITY CLASSIFICATION:

Limited official use.

SYSTEM LOCATION:

Human Resources Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Marshals Service (USMS) personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data system established to control issuance of badges and credentials to USMS personnel which contains photographs of all employees and hand receipts showing the employee's name, title, duty location, badge and credential numbers, and date of issuance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

The Badge & Credentials File system assists in controlling the issuance of badges and credentials to USMS personnel which are used for identification purposes in the performance of official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This file serves as a record of issuance of credentials. Information from this file may be disclosed:

(a) To the appropriate law enforcement agency, *e.g.*, FBI, Secret Service, State, county and municipal police responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule, regulation, or order, to the extent that the information is relevant to the recipient's functions or where there is an indication of an actual or potential violation of civil or criminal law, statute, rule, regulation, or order within the jurisdiction of the recipient agency;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(c) To student volunteers and other workers, who technically do not have the status of federal employees, when they are performing work for the USMS as authorized by law, and they need access to personally identifiable information in USMS records in order to perform their assigned agency functions;

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in standard folders.

RETRIEVABILITY:

Indexed by name of individual and numerical order of badges and credentials.

SAFEGUARDS:

Access restricted to personnel of the Background and Suitability Team, Human Resources Division. Records are maintained in metal filing cabinets which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are kept for duration of employee's tenure in the service.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Human Resources Division, USMS, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as "Record access procedures."

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked "privacy Act Request." It should clearly indicate the name of requester, the nature of the record sought and the approximate dates covered by the record. The requester shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Record of Notification of Employment by U.S. Marshals Service, Human Resources Division.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–002

SYSTEM NAME:

Internal Affairs System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

United States Marshals Service (USMS), Executive Services Division, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USMS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Internal Affairs System contains statements of the investigator and witnesses interviewed, exhibits and reports of investigations prepared by the Office of Internal Affairs, USMS, on findings of alleged misconduct of USMS employees, and records on the disposition of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, and 510; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(n).

PURPOSE(S):

The Internal Affairs system is maintained in order to carry out the responsibility of investigating allegations of improper conduct on the part of USMS employees, and to support adverse personnel actions and proceedings which may result based on the findings of the investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) To complainants of alleged civil rights violations and/or victims of civil rights violations to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the civil rights investigation, and discipline imposed in substantiated cases.

(b) To the extent that investigations reveal actual or potential violations of criminal or civil laws, to the appropriate Federal, State or local law enforcement agencies for further investigations, or to the appropriate agency responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule, regulation or order, to the extent the information is relevant to the recipient's function.

(c) To public and private organizations, individuals, and Federal, State, local, and foreign agencies to the extent necessary to obtain information or cooperation in investigations of alleged misconduct by USMS employees.

(d) To students volunteers or other workers, who technically do not have the status of Federal employees, when they are performing work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions.

(e) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of grant, license or other benefit by the requesting agency, to the extent the information is relevant and necessary to the requesting agency's decision on the matter.

(f) In a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation; the USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity, where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(g) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(h) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(i) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals stored in standard file folders. Duplicate copies are maintained on compact discs.

RETRIEVABILITY:

Information is retrieved by name of employee and case file number.

SAFEGUARDS:

Records are stored in locked safe. Access to automated records is protected by user identification and passwords.

RETENTION AND DISPOSAL:

Records are transferred to the Washington National Records Center three years after close of case or investigation, and destroyed 10 years after close of case or investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Internal Affairs, Executive Services Division, U.S. Marshals Services, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as the "Records access procedures."

RECORD ACCESS PROCEDURES:

To the extent that this system is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Act Request." It should clearly indicate name of the requestor, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager identified above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information derived from investigation of alleged malfeasance by USMS, Office of Internal Affairs.

EXEMPTION CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and (k)(5). To the extent that investigations reveal actual or potential criminal or civil violations, this system is additionally exempt from subsection (e)(8) of the Privacy Act pursuant to 5 U.S.C. 552(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register**.

JUSTICE/USM–004

SYSTEM NAME:

Special Deputation Files.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

United States Marshals Service (USMS), Executive Services Division, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special Deputies, who are selected law enforcement officers and employees of the U.S. Government, and selected employees of private security companies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Deputation files contain the oath of office and credential of persons utilized as deputy marshals and include identifying data on the special deputy, expiration date of special deputation, requests for special deputation submitted by the employing agency, and certification of firearms qualification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 CFR subpart T, § 0.112, 28 U.S.C. 562.

PURPOSE(S):

The USMS is authorized to deputize selected persons to perform the functions of a Deputy U.S. Marshal whenever the law enforcement needs of the USMS so require, to provide courtroom security for the Federal judiciary, and as designated by the Associate Attorney General pursuant to 28 CFR 0.19(a)(3). USMS Special Deputation files serve as a centralized record of the special deputations granted by the USMS to assist in tracking, controlling and monitoring the Special Deputation Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records of information may be disclosed:

(a) To Federal agencies for whom the USMS has deputized employees.

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(c) To student volunteers or other workers, who technically do not have the status of Federal employees, when they are performing work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USM functions.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are filed in standard file cabinets. Duplicate copies of paper records are stored on magnetic discs.

RETRIEVABILITY:

Files are indexed by name and by government department.

SAFEGUARDS:

Records are kept in a locked file. Computerized records are password protected.

RETENTION AND DISPOSAL:

Records and closed annually upon expiration of special deputation and destroyed when give years old.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Executive Services Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURES:

Same as the "Records access procedures."

RECORDS ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly, marked "Privacy Act Request." It should clearly indicate name of the requester, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager identified above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Federal agencies requesting special deputations provide all necessary information required by the USMS in making the special deputations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–005

SYSTEM NAME:

U.S. Marshals Service Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS).

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Primary System: Prisoner Services Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

Decentralized Segments: Each district office of the U.S. Marshalls Service (USMS) maintains files on prisoners taken into custody of the U.S. Marshal for the respective district. The addresses of USMS district offices are on the Internet (www.usdoj.gov/marshals/usmsofc.html).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners taken into U.S. Marshal custody.

CATEGORIES OF RECORDS IN THE SYSTEM:

Any and all information necessary to complete administrative processes, safekeeping, health care, and disposition of individual Federal prisoners who are in custody pending criminal proceedings, together with any law enforcement related records generated during such custody. Records include a compilation of basic information on each prisoner taken into custody of the U.S. Marshal covering identifying data, the reason for U.S. Marshal custody (*e.g.,* Federal indictment, complaint, or writ) the court disposition of charges, dates of custody, and institutions to which committed or housed. Also included are Form USM–129, Prisoner Custody, Detention and Disposition Record (formerly DJ–100; prisoner photograph; personal history statement; fingerprint card; identification record; detainer notice; speedy trial notice; prisoner remand or order to deliver prisoner, and receipt for U.S. prisoner; property receipt; court records including writs, bail/bond release information, judgment and commitment and other court orders; prisoner alert notice; prisoner complaints or serious incident reports (and related investigatory information) filed by either the prisoner or by officials or by other individuals at the institution where the prisoner is housed and covering a wide range of potentially serious issues, *e.g.,* medical treatment of prisoners, and attempted escapes or alleged prisoner misconduct or criminal activity; designation requests to Bureau of Prisons (BOP) and BOP responses; information identifiable to informants, protected witnesses, and confidential sources; access codes and data entry codes and message routing symbols used to communicate with law enforcement officials regarding the custody and safekeeping of prisoners; and prisoner transportation requests to the Prisoner Transportation Division (and any related records) which may include sensitive security data. Medical records included in this system consist of nurses notes of medical problems, diagnosis, treatment recommended;

names of health care providers at the housing unit, social workers, attorneys, family members and USMS contact personnel; special issue or treatment notices; name and address of treatment facility, dates of service, provider tax identification numbers; medical care given, cost of care, and billing records. Medical records generated by health care providers maybe included in this system as authorized by the prisoner for treatment purposes or infectious disease control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C, 3149, 3193, 3604, 3621, 4002, 4006, 4086, 4285; 28 U.S.C. 509, 510, 568, 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111.

PURPOSE(S):

The Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS) is maintained to cover law enforcement and security related records which are generated in the local USMS district offices in connection with the processing, safekeeping, and disposition of Federal prisoners who are in custody pending criminal proceedings. Medical records included in this system assist consultation and coordination between the USMS district office, the housing unit, treatment facility, transportation facility, and other Federal agencies, *e.g.*, BOP, to ensure that prisoners in custody of the U.S. Marshal are given proper treatment. Through USMS nursing staff, districts are assisted in determining medical treatment necessary while the prisoner is in custody of the U.S. Marshal and in ensuring the prisoner's medical clearance for travel. Routine uses of records maintained in the system, including categories of users and purposes of such uses:

Relevant records or information may be disclosed under subsection (b)(3) of the Privacy Act as follows:

1. To other Federal, State, local or foreign law enforcement agencies, contract detention or medical facilities (1) who provide temporary custody or housing or care of prisoners, or who otherwise require information (a) to protect the safety and/or health of the prisoners, the public, and of law enforcement officials or (b) to otherwise ensure fair and proper treatment of prisoners during custody and transfer of custody or (2) who may also assist the USMS in pursuing any necessary inquiry/investigation of complaints, alleged misconduct or criminal activity. For example, relevant records or information may be disclosed to secure their safe and efficient transfer to other jurisdictions, to court appearances, or to the designated institution for service of sentence; to ensure that appropriate credit for time in custody is given; that appropriate medical treatment is provided; that all rights of the prisoner, whether statutory, humanitarian, or otherwise, are provided and protected; and to elicit information from which to initiate an inquiry/investigation and/or respond to prisoner complaints and reports of alleged misconduct or criminal activity; or, conversely, to enable those entities to respond to, or provide information relating to, such prisoner complaints or reports of misconduct or criminal activity.

2. To the appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule, regulation, or order to the extent that the information is relevant to the recipient's law enforcement function.

3. To the appropriate Federal, State, local or foreign law enforcement agency where there is an indication of an actual or potential violation of civil or criminal laws, statutes, rules, or regulations within the jurisdiction of the recipient agency.

4. To Federal, State or local public health agencies for infectious disease control.

5. In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

6. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case should constitute an unwarranted invasion of personal privacy.

7. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record

8. To the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in standard file cabinets. Duplicate copies of certain paper records are stored on magnetic discs.

RETRIEVABILITY:

Information is retrieved by name of prisoner and/or prisoner number.

SAFEGUARDS:

Paper records are stored in locked files. Access to computerized data is restricted through user identification and discrete password functions. In addition, USMS district and headquarters offices are secured behind locked doors around the clock and access is restricted to USMS personnel with official identification.

RETENTION AND DISPOSAL:

Records are kept in active files until a prisoner has been transferred out of the district's custody or until his/her judicial proceedings have been completed. Records are then transferred to inactive files. The USMS is reviewing a proposed disposition schedule for these records. Upon approval by the USMS Records Management Officer and NARA, this section of the notice will be revised to identify the approved schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Prisoner Services Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as "Record access procedures."

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Act Request." It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requester shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the system manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, Attention: FOI/PA Officer, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment sought.

RECORD SOURCE CATEGORIES:

Information is received from the prisoner, the courts, Federal, State, local and foreign law enforcement agencies, and medical care professionals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (e)(5) and (e)(8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/USM–006

SYSTEM NAME:

United States Marshals Service Training Files.

SECURITY CLASSIFICATION:

Limited official use.

SYSTEM LOCATION:

a. Primary system: Human Resources Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

b. Decentralized segments: Individual training files and the Fitness in Total (FIT) Program training assessment files, identified as items (1) and (3) under "Category of Records in the System," are located also at the USMS Training Academy, Department of Justice, Building 70, Glynco, Georgia 31524. Each district office of the USMS maintains FIT files only on their respective participants in the FIT Program. The addresses of USMS district offices are on the Internet (www.usdoj.gov/marshals/usmsofc.html).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USMS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Individual training files contain information on the individual's educational background and employee training history, and an individual career development plan; (2) skills files identify languages and other special skills possessed by the individual USMS employee; and (3) individual FIT Program training assessment files contain records on physical and medical examinations, blood tests, health histories, physical assessments, and administrative records on participation, goal setting and progress while in the program. The Certificate of Medical Examination (SF–78) is maintained in the primary system at USMS headquarters only unless obtained and placed in the district file by the individual FIT participant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(h).

PURPOSE(S):

Individual training files are used to make employment, promotion, or retention determinations for all Deputy U.S. Marshals; to develop training histories; and to determine training and/or promotion eligibility. In addition, FIT Program training assessment files are used to make hiring/retention determinations for Deputy U.S. Marshal personnel entering on duty as of July 1, 1984 and later; to determine employees' eligibility to participate in the program; to tailor an individual fitness program for each employee; to chart employee progress in the program; to determine the need for and to chart progress toward weight reduction; to develop physical fitness standards for performance appraisal purposes; and to examine statistically the physical fitness level of the USMS workforce against law enforcement populations and the general population of the United States. Skills files re used to identify special skills and language abilities possessed by personnel to aid in staffing special assignments which require such skills.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed as a routine use:

(a) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(b) To student volunteers and other workers, who technically do not have the status of federal employees, when they are performing work for the USMS as authorized by law, and they need access to personally identifiable information in USMS records in order to perform their assigned agency functions.

(c) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a grant, license or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) To congressional members or staff on behalf of and at the request of the constituent who is the subject of the record.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of title 44 of the United States Code.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals of paper records contained in this system are kept in standard file cabinets. Skills files, summaries of FIT Program training assessment records, and duplicates of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Records are maintained in metal filing cabinets which are locked during nonduty hours. Entry to headquarters is restricted by 24-hour guard service to employees with official and electronic identification. Entry to the Training Academy and district offices is restricted generally to trainees/employees with official identification. Access to computerized records in this system is restricted to the responsible headquarters employees by assigned code.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves the USMS at which time paper records are shredded and magnetic discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Human Resources Division, USMS, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as "Record access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelop "Freedom of Information Act/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, training personnel, the Combined Federal Law Enforcement Training Academy, examining physicians, fitness coordinators, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–007

SYSTEM NAME:

Warrant Information Network (WIN)

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Primary System: Investigative Services Division, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

Decentralized Segments: Each district office of the USMS maintains their own files. The addresses of USMS district offices are available on the Internet at www.usdoj.gov/marshals/usmsofc.html.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals for whom Federal warrants have been issued; individuals for whom State or local warrants have been issued when the warrant is part of a USMS sponsored multi-agency task force; and associates who may provide information, assistance or leads in USMS fugitive investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records in this system consist of information related to the warrant, including dates, issuing Federal district, nature of the offense, investigative notes; information related to subjects, including biographical data, physical description, and criminal history, and their association with other individuals, dangerous gangs, extremist groups, or other organizations; information on associates including physical description, photographs, numerical identifiers, addresses, and driver's license information; and investigative information furnished by other Federal, State or local law enforcement or other government agencies and non-government sources. In addition to the abbreviated data described above, the complete file contains the warrant and other court records and internal correspondence related to the warrant; photograph; wanted flyers/posters and investigative reports reflecting patterns of activity, leads developed and statements of witnesses and other persons cooperating with USMS fugitive investigations. Investigative reports and criminal record information from other Federal, State, local and foreign law enforcement agencies participating in or cooperating with USMS fugitive investigations and apprehension efforts are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 561 *et seq.*; 28 CFR 0,111(a) and (q).

PURPOSE(S):

The USMS is responsible for ensuring the effective operation of the judicial system through the execution of Federal arrest warrants, parole violator warrants, Federal custodial and extradition warrants, and for investigating fugitive matters, domestic and foreign, involving escaped federal prisoners, and probation, parole, mandatory release, and bond default violators. The WIN system facilitates the efficient management and administration of USMS fugitive investigations through the collection, flow, analysis, dissemination and maintenance of records and information necessary to accomplish this mission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed: (a) To public and private organizations, individuals, and Federal, State, local and foreign agencies to the extent necessary to obtain information or cooperation in USMS fugitive investigations and apprehension efforts.

(b) Upon request, to the appropriate Federal, State, local or foreign law enforcement agency responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule; regulation; or order, to the extent that the information is relevant to the recipient's function.

(c) Without a request, to an appropriate Federal, State or local law enforcement agency where there is an indication of an actual or potential violation of civil or criminal laws, statutes, rules, or regulations within the jurisdiction of the recipient agency.

(d) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(e) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(f) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(g) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in standard file folders. Duplicate copies of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by individual names or identifying numbers.

SAFEGUARDS:

Except as otherwise noted in paragraph (b) under "Routine uses," access is restricted to personnel in the Investigative Services Division and in each USMS district office. Access to computerized records is safeguarded by user identification and password restrictions. Paper records are maintained in filing cabinets within supervised areas of the U.S. Marshals' offices. District and headquarters offices are locked during working and non-duly hours and entry is restricted to employees with official identification.

RETENTION AND DISPOSAL:

Records are kept in an operating file until warrant is executed and then transferred to closed file. Closed files are retained for one year after file is closed, then transferred to the Federal Records Center and destroyed after 55 years. Computerized records are retained indefinitely as an operating file or as a closed case file.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Investigative Services Division, U.S. Marshals Service, U.S. Department of Justice, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as "Record access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity (28 CFR 16.41(d). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the envelope "Freedom of Information/ Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from the courts, Federal, State, local and foreign law enforcement agencies, public and private organizations, witnesses, informants, and other persons interviewed during the course of the fugitive investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USMS–008

SYSTEM NAME:

Witness Security Files Information System.

SECURITY CLASSIFICATION:

Limited Official use.

SYSTEM LOCATION:

Witness Security Program, United States Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government witnesses who are participants in the Federal Witness Security Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Authorization to enter the program; (2) background information (education, experience, medical history, names, relatives, etc.); (3) funding information; (4) moving information; (5) documentation of all of the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, 524 and 561 *et seq.*; 5 U.S.C. 301; 44 U.S.C. 3101; 28 CFR 0.111(c); 18 U.S.C. 3521.

PURPOSE(S):

The USMS provides for the security, health and safety of government witnesses and their immediate dependants whose lives are in danger as a result of their testimony against organized crime, drug traffickers, terrorists and other major criminals. The Witness Security Files are used to plan and accomplish the major functions involved in the protection of government witnesses and their families. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records or information may be disclosed as follows:

(a) In a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions, any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(b) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(c) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(d) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders and in a computerized database.

RETRIEVABILITY:

Filed and retrieved by special ID number.

SAFEGUARDS:

Access is restricted to Witness Security personnel using locks and alarm devices, passwords and/or encrypting data communications. The records are located in a restricted area of USMS Headquarters under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

All records at this time are being indefinitely maintained with the exception of financial records, which are destroyed after three years and three months in accordance with General Records Schedules 6, 7 and 8.

Chief, Witness Security Program, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as the "Record access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope

"Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Privacy Act Request."

RECORD SOURCE CATEGORIES:

All identifying background criteria of individual: (1) Education; (2) job history; (3) medical history; (4) history of residence; (5) relatives, etc., is provided by the individual, the court, other Federal, State, local and foreign law enforcement agencies, and medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/USM–009

SYSTEM NAME:

Inappropriate Communications/Threat Information System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Primary System: Investigative Services Division, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

Decentralized Segments: Each district office of the USMS maintains their own files. The addresses of USMS district offices are available on the Internet at www.usdoj.gov/marshals/usmsofc.html.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have inappropriately communicated with, directly threatened, or pose a threat to USMS protectees, including Federal judges, prosecutors, and other court officials. U.S. Marshals, deputies and other law enforcement officers, courtroom security, and federal property and buildings; associates of such individuals; and individuals reported by State or local agencies to the USMS who have threatened to harm State or local judicial officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated records which consist of information related to the inappropriate communication or threat, including type of communication, the means by which it was issued, and information contained in the communication such as dates, locations, and events; analysis of the communication or threat and other in internal USMS correspondence related the communication; biographical data including physical description, photograph, and criminal history information—in particular, known history of violence and skills related to the nature of the threat; investigative information including associations with other individuals and dangerous gangs, extremist groups, or other organizations; information on associates including physical descriptions, photographs, numerical identifiers, address(es), driver's license information; and investigative information furnished by other Federal, State and local law enforcement or other government agencies and non-government sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 561 *et seq.*; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 111(c) through (f).

PURPOSE(S):

The USMS is required to protect government witnesses, U.S. Attorneys and their assistants, Federal jurists and other court officers; to provide for courtroom security; and to assist in protecting Federal property and buildings. The USMS also conducts Federal law enforcement activities itself, *e.g.*, warrant apprehension investigations, which subject its officers to security danger. These operations require acquiring information to allow an accurate assessment of the existence and extent of the dangers posed, including specific threats, to aid in responding to specific security assignments and needs, as well as developing protective measures and plans in advance. With the information collected, officials determine and carry out operating plans, funding, personnel, and any special resources needed to counteract threat situations.

Individuals reported by State and local agencies to the USMS who have threatened to harm State or local judicial officials often appear before the Federal bar as a result of appeals, civil rights suits, continuing criminal behavior, *etc.* Such individuals may continue their inappropriate communications or threats at the Federal level. In that event, information concerning these individuals provided by the State and local agencies assists the USMS in assessing the dangers they pose to Federal Officials and in developing protective measures and responding to specific security requirements. This information also assists in researching inappropriate communications directed toward judicial officials of all jurisdictions to gain a full and comprehensive picture of the diverse circumstances involved, to analyze trends based upon a statistically reliable study, and to more fully address the problem.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) To other appropriate Federal, State and local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative of litigative responsibilities of the recipient agency, or to the extent that disclosure is necessary to obtain additional case-related information or to develop protective measures.

(b) To other law enforcement agencies to develop protective measures where a specific threat is posed to their members; and to an individual or organization where the recipient is or could become the target of a specific threat.

(c) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguable relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) As is necessary to appropriately respond to congressional inquiries on behalf of and at the request of the constituent who is the subject of the record.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file folders. Duplicate copies of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name and identifying number or a combination of the name and number.

SAFEGUARDS:

Except as otherwise noted in paragraphs (a) and (b) under "Routine uses," access to computerized records is restricted to personnel in the Investigative Services Division and in each district office by user identification and password. Paper records are maintained in filing cabinets within supervised areas. District and headquarters offices are locked during working and non-duty hours and entry is restricted to employees with official identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by NARA and the USMS.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Investigative Services Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as "Record access procedure."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/USMA–010

SYTEM NAME:

Judicial Facility Security Index System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Judicial Security Division, United States Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals employed, or offered employment as contract court security officers (CSO's) by companies contracting with the USMS to provide judicial area security in Federal courthouses.

CATEGORIES OF RECORDS IN THE SYSTEM:

An alphabetical index contains the name, date of birth and social security number of the CSO, name of the contracting security firm (employer), completion dates and cost data for limited background investigation and orientation, district of employment, dates contract performance started and ended, posts and hours of duty and the status of employment, *i.e.*, active or inactive. For inactive CSO's, the index contains the reason for inaction, e.g., CSO resigned; applicant-rejected based on the preliminary records check; CSO removed based on Office of Personnel Management (OPM) background investigation; etc. In addition to providing abbreviated date, the index assists in locating records on the CSO related to the initial screening process for eligibility, *e.g.*, application and preliminary checks for arrest records, which are filed under the contract number and name of the contracting security firm (employer). The index also assists sin locating files containing OPM reports on the limited background investigation and internal suitability memoranda which are segregated by categories "active" and "inactive."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 561 *et seq.*; 5 U.S.C. 301; 44 U.S.C. 3101 and 28 CFR 0.111.

PURPOSE(S):

The USMS administers and implements courtroom security requirements for the federal judiciary and provides assistance in the protection of federal property and buildings. The Judicial Facility Security Program provides uniformed security officers and security systems and equipment for judicial area security in Federal courthouses throughout the country. It is funded by the Judiciary through the Administrative Office of the U.S. Courts (AOUSC) and is managed by the USMS. This system of records is used to make security/suitability determinations in the hiring of CSO's to monitor orientation completed, to track costs related to background investigations and attendance at Government-sponsored orientation, and to monitor contractor performance. It enables program officers to compile data for reports to AOUSC on actual and projected expenses, to list CSO's their posts and hours of duty, and to determine turnover and reemployment ratios among CSO's.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed as follows: Individual cost data may be disclosed to the contractor (employer) in connection with billing and recovering reimbursable costs. In addition, records or information also may be disclosed as follows:

(a) To an appropriate Federal, State or local law enforcement agency to the extent necessary to obtain information on arrest, or to the extent relevant to an actual or potential criminal or civil investigation, litigation or enforcement proceedings of that agency;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(c) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To congressional members or staff on behalf of and at the request of the constituent who is the subject of the record;

(e) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on magnetic disks and original paper records are kept in file folders.

RETRIEVABILITY:

Records are retrieved by name of the contract CSO.

SAFEGUARDS:

Records are stored in locked metal filing cabinets during off-duty hours. Access to computerized records is controlled by restricted code to personnel on a need-to-know basis. Entry to USMS Headquarters is restricted by 24-hour guard service to employees with official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by the National Archives and Records Administration and the USMS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Judicial Facility Security Program, Judicial Security Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURES:

Same as the "Records access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all request to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all request to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, USMS orientation records, other law enforcement agencies, OPM and from the contractor (employer).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USM–011

SYSTEM NAME:

Judicial Protection Information System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Judicial Security Division, United States Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been directly threatened or are subject to violent threat by virtue of their responsibilities within the judicial system, *e.g.*, U.S. Attorneys and their assistants, Federal jurists and other court officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated indices contain abbreviated data, *e.g.*, case number, name of protected subject, name of control district and district number, an indication of the type and source of threat, and the means by which the threat was made. In addition to the abbreviated data named above, the complete file may contain descriptive physical data of the protectee, and other information to identify security risks and plan protective measures in advance of or during periods of active protection, *e.g.*, individual practices and routines, including associational memberships. Information regarding the expenditure of funds and allocation of resources assigned to the protectee may also be included in the file to enable officials to develop operating plans to counteract threat situations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 561 *et seq.*, 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111 (c) through (f).

PURPOSE:

The USMS is required to protect U.S. Attorneys and their assistants, Federal jurists and other court officers; to provide for courtroom security, and to assist in protecting federal property and buildings. This operation requires obtaining information to allow an accurate assessment of the individual security needs of such threatened persons to aid in developing protective measures and advance planning of specific security assignments. With the information collected, USMS officials determine and carry out operating plans, funding, personnel assignments and any special resources needed to counteract specific threat situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) To other Federal, State and local law enforcement agencies to the extent that disclosure is necessary to develop and/or implement protective measures;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employees; or the United

States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(c) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To congressional members or staff on behalf of and at the request of the constituent who is the subject of the record;

(e) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on index cards and magnetic tape. Original paper records are kept in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by name of protectee.

SAFEGUARDS:

Access to computerized records is restricted to Court Security Program personnel by assigned user code and password. In addition, records are stored in locked metal cabinets during off-duty hours. The records are located in a restricted area, and USMS Headquarters is under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by the National Archives and Records Administration and the USMS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Court Security Program, Judicial Security Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as the "Record access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from individual protectees. Where information is maintained in this system on identified threat sources to a particular protectee, such information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies, and is not retrievable by name or other identifying particular assigned to the threat source.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–012

SYSTEM NAME:

U.S. Marshals Service Freedom of Information/Privacy Act (FOIA/PA) Files.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Office of General Counsel, U.S. Marshal Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request disclosure of U.S. Marshals Service (USMS) records pursuant to the Freedom of Information Act (FOIA); individuals who request access to or correction of records maintained in USMS systems of records pursuant to the Privacy Act (PA); individuals whose FOIA or PA requests have been referred to the USMS by another Department of Justice component or another agency; and USMS FOIA/PA Specialists assigned to process requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

A computerized case tracking system is maintained to aid in the orderly processing of requests and to prepare annual reports. Data items include the name and address of the requester; the type of request; dates on which the request was conceived, acknowledged, and answered; type of final responses; exemptions used to deny access to records, when applicable, and the name of the USMS FOIA/PA Specialist assigned to process the request. Identifying data, *i.e.*, date and place of birth, and social security number, is maintained on PA requesters to verify their identity and ensure proper disclosure. Files contain a record of the FOIA/PA request, along with the response, copies of documents which have been requested, and internal memoranda or other records related to the initial processing of such request, subsequent appeals and/or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101 to implement the provisions of 5 U.S.C. 552 and 5 U.S.C. 552a.

PURPOSE(S):

As a component of the Department of Justice, the U.S. Marshals Service is required to respond to requests under the Freedom of Information Act for records maintained in and under the control of the Service; and requests to access or amend records in systems of records pursuant to the Privacy Act. 5 U.S.C. 552 and 552a. To effectively carry out this responsibility, records retrievable by individual identifiers are necessary to respond to individual requesters, to consult with the Office of Information and Privacy, Department of Justice, on administrative appeals of USMS action, to participate in litigation regarding agency action on requests, and to compile data to report to the Department, OMB and Congress on activities implementing the Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

A record maintained in this system may be disseminated as a routine use:

(a) To any Department of Justice component for consideration in connection with an FOIA or PA request, appeal or civil suit pursuant to the Acts.

(b) To a Federal, State or local agency which furnished the record to permit that agency to make a decision as to access or correction, or to consult with that agency to enable the USMS to determine the propriety *of* access or correction.

(c) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions. In addition, records or information which is relevant to the subject matter involved in a pending judicial or administrative proceeding may be disclosed in response to a request for discovery or for appearance of a witness.

(d) To student volunteers or other workers, who technically do not have the status of Federal employees, when they perform work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions.

(e) To the news media and the public pursuant to 28 CFR 50.2 unless is it determined that the release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(f) To congressional members or staff on behalf of the constituent who is the subject of the records.

(g) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Request files are stored in standard file cabinets. The computerized case tracking system and duplicate copies of some paper records are maintained on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name of requester, USMS FOIA/PA Specialist, or request control number.

SAFEGUARDS:

Access to computerized records is restricted to Office of General Counsel personnel by user identification and passwords. In addition, request files are stores in metal filing cabinets and in designated file rooms within the Office of General Counsel, USMS Headquarters during off-duty hours. Access to USMS Headquarters is restricted to employees with official identification.

RETENTION AND DISPOSAL:

Records are destroyed 6 years after final response or appeal determination by the Department of Justice, Office of Information and Privacy; or 3 years after final adjudication by the courts.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as "Record access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individuals making requests, the systems of records searched in the process of responding to requests, and other agencies who have referred to the USMS those requests for access to or correction of USMS records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted certain categories of records in this system from subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4)(G) and (H); (e)(5), (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). The system is exempted pursuant to subsections (j)(2) and (k)(2) only to the extent that the records there reflect criminal and civil law enforcement and investigative information. The system is exempted pursuant to subsections (k)(5) only to the extent necessary to protect confidential sources. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (3) and have been published in the **Federal Register**.

JUSTICE/USM–013

SYSTEM NAME:

U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files

SECURITY CLASSIFICATION:

Limited Official Use

SYSTEM LOCATION:

Office of General Counsel, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed tort and employee claims against the USMS; individuals who have initiated administrative proceedings against the USMS; individuals who have filed civil suits naming the USMS and/or personnel as defendants, including those suits arising from authorized criminal law enforcement activities; individuals named as defendants in Federal court actions initiated by the USMS; and USMS attorneys assigned to defend such claims and litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the names of individuals covered by the system and the title of cases, a computerized case tracking system contains certain summary data, *e.g.*; a summary of correspondence and pleadings received in a case, names of parties involved; names of attorneys handling the case or matter, court in which action is brought, and civil action number, thereby facilitating location of the complete file. Cases or matters include adverse actions, grievances, unfair labor practice charges, tort claims, Equal Employment Opportunity and other employee claims, and suits against USMS employees in their official capacities, etc. Files contain correspondence/claim forms submitted by claimants and internal reports and related documents concerning the merits of the claim, attorney or staff recommendations and findings related to the claim; records on actions taken by USMS giving rise to appeals, attorney notes, recommendations and strategy for defending appeals; copies of civil actions filed and criminal investigative records related to the action e.g., criminal investigative reports relating the underlying criminal matter which relates to or constitutes the basis of the claim or suit (including those from non-Federal law enforcement participants in USMS criminal or civil law enforcement activities), witness statements, reports of interviews, exhibits, attorney notes, pleadings, and recommendations and strategy for defending civil actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

Among other responsibilities, the Office of General Counsel, U.S. Marshals Service, provides legal representation to USMS management in all administrative matters including, but not limited to, adverse actions, grievances, unfair labor practices, EEO, tort and employee claim proceedings; represents the Service and its employees in district court actions brought against them for acts taken in the course of official duties; and represents the Service in other actions in which its interests are involved. Effective representation in such matters requires that records be retrievable by individual identifiers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in this system of records may be disseminated as follows:

(a) To any component of the Department of Justice for consideration in connection with the case or matter to which the record related;

(b) To the appropriate Federal, State or local agency responsible for investigating, prosecuting or defending an action where there is an indication of actual or potential violation of criminal or civil laws or regulations or civil liability of any government agency;

(c) To any Federal, State or local agency, organization or individual to the extent necessary to elicit information or witness cooperation if there is reason to believe the recipient possesses information related to the case or matter;

(d) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(e) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a grant, license or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

(f) To respond to a request for discovery or for appearance of a witness when the information is relevant to the subject matter involved in a pending judicial or administrative proceeding;

(g) To student volunteers or other workers, who technically do not have the status of Federal employees, when they perform work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions;

(h) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(i) To Congressional members or staff on behalf of the constituent who is the subject of the record;

(j) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Administrative claim, appeal, and litigation files are stored in standard file cabinets. The computerized case track system and duplicate copies of some paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name of claimant, litigant or USMS attorney, or by caption of civil action or administrative proceeding.

SAFEGUARDS:

Access to computerized records is restricted to Office of General Counsel personnel by user identification and passwords. In addition, files are stored in metal filing cabinets within the Office of General Counsel, USMS Headquarters during off-duty hours. Access to USMS Headquarters is restricted to employees with official identification.

RETENTION AND DISPOSAL:

Records in the case tracking system are retained indefinitely. Claim files are destroyed after 7 years. Litigation files are destroyed after 10 years. Cases designated by the General Counsel as significant or precedential are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as "Record access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individual claimant/litigant, USMS officials, law enforcement agencies, statements of witnesses and parties, transcripts of depositions and court proceedings, administrative hearings and arbitrations, and work product of staff attorneys and legal assistants working on a particular case or matter.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted certain categories of records in this system from subsections (c)(3) and (4); (d); (e)(2) and (3); (e)(4)(G) and (H); (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(5). The system is exempted pursuant to subsection (j)(2) only to the extent that information in a record pertaining to a particular individual relates to a criminal investigation which relates to or constitutes the basis of a particular suit or claim. The system is exempted pursuant to subsection (k)(5) only to the extent necessary to protect a confidential source. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/USM–015

SYSTEM NAME:

U.S. Marshals Service (USMS) Employee Assistance Program (EAP) Records.

SECURITY CLASSIFICATION:

Limited official use.

SYSTEM LOCATION:

Records of the Employee Assistance Program Office, Health and Safety Team, Human Resources Division, are located at 600 Army Navy Drive, Arlington, Virginia 22202–4210. Records of the contractor with whom the USMS has contracted for health services and records of individual licensed mental health providers with whom the contractor has subcontracted for health services, are located at the respective offices of these licensed providers. Addresses of these service providers may be obtained by contacting the USMS Employee Assistance Program (EAP) Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the USMS (and in limited cases, immediate family members) who have sought counseling or have been referred for counseling or treatment through the USMS EAP.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of the USMS EAP Office, the contractor, and the subcontractors include written consent forms used to manage referrals and the exchange or flow of personal information, and account information such as billings and payments. (Where relevant, certain records may be duplicated in these offices.) Other records generally maintained by the USMS EAP Office, the contractor and subcontractors are described as follows:

A. Records located in the USMS EAP Office include only records which may assist in managing and monitoring self referrals or management referrals, and participation in the EAP. Examples of such records are: The name, location and telephone number(s) of the employee, family member or supervisor manager who makes the initial contact with the EAP staff; the date and manner of initial contact, i.e., by telephone or in person; notes of presenting problem(s) upon initial contact with EAP staff; documents received from supervisors or personnel on work-lace problems or performance; insurance data; name and address of treatment facilities; number of sessions attended by the participating employee or family member; leave records; written consent forms, and abeyance/back-to-work agreements (made to mitigate adverse actions based upon treatment); information on confirmed, unjustified positive drug tests provides by the Drug Free Workplace Program and the Medical Review Officer under E.O. 12564; and "sanitized" audit records of the EAP/Contractor/Subcontractors Program. Records may also include any records which may assist in (1) assessing and counseling the individual on a short-term basis, and (2) identifying those individuals who may need long-term professional counseling, treatment and/or rehabilitation services. Records may also contain date of intake at the contractor and/or subcontractors; pertinent psychological, medical, employment and/or financial histories; address(es) and credentials of subcontractors providing short-term counseling; attendance at short-term counseling sessions; prognosis information; information of problem resolution through short-term counseling, and, if applicable, date closed. Records may also include recommendations and referrals to community resources for long-term counseling, treatment and/or rehabilitation programs beyond the services provided by the USMS EAP, contractor and/or subcontractors, including referrals for other assistance not related to financial concerns, or psychological or medical health.

B. Records of the contractor and/or subcontractors include a statement of understanding, diagnostic evaluation, treatment plan, and a termination summary of all active clients. They may also include any records which may assist in (1) assessing and counseling the individual on a short-term basis, and (2) identifying those individuals who may need long-term professional counseling, treatment and/or rehabilitation services. Records of the contractor may also include any records which may assist in monitoring and evaluating the performance of various subcontractors outside the Washington, DC metropolitan area. Examples of contractor and/or subcontractor(s) records are: Personal identifying data on the employee and/or family member such as name, social security number, gender, home address and telephone number(s); notes and documentation of problem(s) presented upon initial contact with the contractor and/or subcontractor(s), date of intake at the contractor and/or subcontractor(s); pertinent psychological, medical, employment and/or financial histories; address(es) and credentials of subcontractor(s) providing short-term counseling; clinical notes and documentation on short-term counseling; attendance at short-term counseling sessions; prognosis information; information of problem resolution through short-term counseling, if applicable; date the case closed; information on confirmed, unjustified positive drug tests; and client employee/family member evaluations of services provided by the USMS EAP, the contractor and/or subcontractor(s). Records may also include recommendations and referrals to community resources for long-term counseling, treatment and/or rehabilitation programs beyond the services provided by the USMS EAP, contractor and/or subcontractor(s), including referrals for other assistance not related to financial concerns, or psychological or medical health.

C. Other records included in the system (and which may be duplicated by the USMS EAP and the contractor and/or subcontractor(s) offices, when relevant, necessary, and proper) are those obtained from specialized service providers (SSPs) with the written consent of the subject individuals.[1] Generally, such records are limited to those which relate to attendance at sessions, prognosis for recovery, motivation, and progress toward recovery. However, where the record subject deems it necessary or desirable to furnish additional records, such records could include: medical tests and screenings; treatment and rehabilitation plans as well as behavioral improvement plans; notes and documentation on counseling; and relevant information pertaining to assistance provided on matters other than financial concerns, or psychological or medical health.

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[1] SSPs are health service, community-based organizations, which offer long-term treatment and rehabilitation services. The USMS EAP and/or the contractor and/or subcontractors may recommend that the individual seek professional assistance beyond that provided by the USMS EAP Program contracted out with the contractor and/or subcontractors. Where the individual chooses to pursue further treatment, he may elect to provide the USMS EAP and/or the contractor and/or subcontractor(s) with such information as may be relevant to the back-to-work agreement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, et seq. and 290ee, et seq.; 42 CFR 2.1, et seq.; E.O. 12564, 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. 100–71, sec. 503 (July 11, 1987).

PURPOSE(S):

The EAP is a voluntary program designed to assist the employee in obtaining necessary help in handling personal problem(s) affecting job performance, and to provide emotional support and assistance during periods of crises, including those arising from traumatic work-related incidents. No records are maintained on traumatic work-related incidents. Records are maintained to document participation in the EAP program; the nature and effects of the employee's personal problem(s); and efforts to counsel the employee. Records may be used also to monitor compliance with abeyance and back-to-work agreements made to mitigate adverse actions based upon treatment. Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

In addition to those disclosures permitted by the Privacy Act itself, 5 U.S.C. 552a(b),[2] permissive disclosures, without individual consent, are as follows:

1. To the extent that it is appropriate, relevant, and necessary to enable the contractor and/or subcontractor(s) to perform counseling, referral and program performance evaluation responsibilities, the USMS will provide those records—identified in paragraph A of the "Category of Records in the System" to the contractor and/or subcontractor(s) who, on behalf of the USMS, maintain and operate a portion of this system of records—identified in paragraph B of the same caption.

2. Either the USMS or the contractor and/or subcontractor(s) may disclose as follows: (a) To the appropriate State or local agency or authority to the extent necessary to comply with the laws governing reporting incidents of suspected child abuse or neglect, and (b) to Federal, State and/or local authorities or to any other entity or person to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in locked metal safes.

RETRIEVABILITY:

Records are retrieved by name of employee and, in limited cases immediate family members.

SAFEGUARDS:

In accordance with the requirements of 42 CFR 2.16, USMS EAP and contractor and subcontractors records are stored in secure environment. Access to USMS EAP records is restricted to designated USMS EAP personnel, except as otherwise permitted by law or with the written consent of the individual. Vouchers prepared to effect payment for services rendered by the contractor and/or subcontractors in performance of the contract do not contain individual identifiers. Invoices prepared by contractor and/or subcontractors located outside the Washington, DC metropolitan area are sent by first-class mail to the designated member(s) of the local contractor and/or subcontractors contracted with the USMS. In turn, invoices or other records prepared in support of payment vouchers which contain individual identifiers are hand-carried by the local contractor and/or subcontractors to the EAP Administrator who retains the supporting documentation. Records are maintained in locked metal safes. Entry to headquarters is restricted by 24-hour guard service to employees with official and electronic identification.

Access to contractor and/or subcontractors records is restricted to a designated member(s) of the contractor and/or subcontractors, except as otherwise provided by law or with the written consent of the individual. Contractor and/or subcontractors records are stored in locked files also.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with the USMS EAP and/or the contractor and/or subcontractor(s) unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. At that time the records are destroyed by shredding (General Records Schedules 26 and 36).

SYSTEM MANAGER(S) AND ADDRESS:

Employee Assistance Program Administrator, Health and Safety Team, Human Resources Division, United Stats Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as "Record access procedures."

RECORD ACCESS PROCEDURES:

Address all requests for access to the USMS EAP records (identified in paragraphs A and C of "Category of records in the system") in writing to system manger identified above. Address all requests for records maintained by the contractor and/or subcontractors (identified in paragraph B of the same caption) to these service providers. Address(es) of these service providers may be obtained by contacting the USMS EAP Office. Clearly mark the envelope and letter "Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, and approximate date of the record. In addition, provide the required verification of identity (28 CFR 16.41(d)) and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information in accordance with the procedures outlined under "Record access procedures." State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Privacy Act Amendment Request."

RECORD SOURCE CATEGORIES:

Records are generated by the employee who is the subject of the record; USMS EAP personnel; the contractor and/or subcontractor(s), and the SSP; the USMS Human Resources Division; and the employee's supervisor. In the case of a confirmed, unjustified positive drug test, records may also be generated by the staff of the Drug-Free Workplace Program and the Medical Review Officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–016

SYSTEM NAME:

U.S. Marshal Service (USMS) Key Control Record System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Office of Security, Executive Services Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the USMS who have been issued office keys for USMS Headquarters locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contained in this system consist of an automated index which includes the name of the employee to whom a key is issued; the social security number (only when two or more employees have identical names, including middle initial); unique key identification code number; key type (*e.g.*, grand master, master, submaster, change); storage container hook number; description (*e.g.*, number identification) of door(s), room(s), and/or area(s) the key opens or accesses; transactions type and/or status (*e.g.*, key issued, transferred, retrieved, lost, broken) and transaction date; and, any other appropriate comment, *e.g.*, comments regarding key, door, room, area, etc. In addition, a manual index with abbreviated data is maintained as a backup system. This manual index includes the room/suite number, the name of the employee to whom a key is issued, the key identification code number, and date(s) of issuance and retrieval.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

The USMS Key Control Record System serves as a record of keys issued and facilitates continuing security at USMS Headquarters locations. Records are maintained to assist in restricting office and work area access to authorized USMS personnel by controlling, monitoring and tracking keys issued. In addition, the records assist in identifying any repairs, changes, or additional security measures that may be necessary as a result of lost or broken keys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) In the event that a record(s) indicate a violation of potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order pursuant thereto, the relevant record(s) may be disclosed to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation, and/or charged with enforcing or implementing such statute, rule, regulation or order;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(c) To student volunteers or other workers, who technically do not have the status of Federal employees, when they are performing work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions;

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated index records are stored on magnetic disks. Paper copies of automated records are kept in file folders and original paper records of the manual index are stored in card files.

RETRIEVABILITY:

Records are retrieved by name of the individuals covered by the system.

SAFEGUARDS:

Access to these records is restricted to personnel of the USMS, Office of Security. Computerized records may be accessed only by assigned code and password. Paper records are located in a restricted area and are maintained in metal filing cabinets or safes which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained for three years after turn-in of the key at which time they are destroyed (General Records Schedule 18).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security, Executive Services Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as the "Records access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual and the system manager.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–28631 Filed 11–5–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 176–99]

Privacy Act of 1974; System of Records

AGENCY: Department of Justice.

ACTION: Notice of New Systems of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the United States

Marshals Service (USMS), Department of Justice, proposes to establish two new systems of records entitled "Judicial Security Staff Inventory, Justice/USM–017," and USMS Alternative Dispute Resolution (ADR) Files and Database Tracking System, Justice/USM–018," and proposes routine uses for the new systems. Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed systems. The public, OMB and Congress are invited to comment on the proposed systems of records.

DATES: The proposed systems of records will be effective December 20, 1999, unless comments are received that result in a contrary determination.

ADDRESSES: Submit written comments to the Department of Justice, ATTN: Mary E. Cahill, Management and Planning Staff, Justice Management Division, Room 1400, National Place Building, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill at (202) 307–1823.

SUPPLEMENTARY INFORMATION: The USMS is responsible for ensuring the effective operation of the judicial system through the administration and implementation of courtroom security requirements, the protection of Federal jurists, court officers, and other threatened persons, the execution of Federal arrest warrants, and other law enforcement functions. The proposed system, Judicial Security Staff Inventory, Justice/USM–017, will be used by management of the Judicial Security Division (JSD) to assist in the effective control of accountable property and to ensure that JSD personnel maintain equipment necessary and in proper working order to perform their functions, especially law enforcement functions, and to respond quickly to urgent operational law enforcement activities as they develop.

The USMS Alternative Dispute Resolution (ADR) process offers an alternative to employees to established channels for addressing formal grievances and Equal Employment Opportunity complaints which may result in a simpler, quicker less expensive, and less adversarial resolution of disputes. The proposed ADR system of records is used to facilitate the effective operation of the ADR process in resolving grievances and complaints, to track case activity, and to compile data for required reports.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on the proposed systems of records to OMB and the Congress. Descriptions of the Systems are printed below.

Dated: October 22, 1999.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/USM–017

SYSTEM NAME:

Judicial Security Staff Inventory.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Judicial Security Division (JSD), U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210. Categories of individuals covered by the system: USMS employees assigned to JSD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contained in this computerized system consist of (1) an individual's name, date of birth, social security number, and type of passport with expiration date; (2) inventory of accountable property assigned to individual, including: Weapon, protective body armor with expiration date of warranty, vehicle, credit cards, cell phone, pager, and office equipment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 28 U.S.C. 509 and 510; 44 U.S.C. 3101 and 28 CFR 0.111.

PURPOSE(S):

This system will be used to assist JSD management in the effective control of accountable property and to ensure that JSD personnel maintain equipment necessary and in proper working order to perform their functions, especially law enforcement functions, and to respond quickly to urgent operational law enforcement activities as they develop.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) to appropriate Federal, State or local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative or litigative responsibilities of the recipient agency;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity, where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions:

(c) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(e) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in a computerized database.

RETRIEVABILITY:

Informatiion is retrieved by name and social security number.

SAFEGUARDS:

Access is limited to designated staff of JSD by assigned user code and password. JSD is located in a restricted area of USMS Headquarters which is under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves JSD at which time all records on the individual will be erased from the database.

SYSTEM MANAGER(S) AND ADDRESS:

Assistance Director, Judicial Security Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as the "Record access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from subject JSD employees and office and records on accountable property.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–018

SYSTEM NAME:

United States Marshals Service Alternative Dispute Resolution (ADR) Files and Database Tracking System.

SECURITY CLASSIFICATION:

Limited official use.

SYSTEM LOCATION:

Human Resources Division, United States Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the USMS who are designated as complainants who select ADR mediation as the mechanism to resolve disagreements and designated respondents to such complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

ADR files contain a statement of issue(s) which include type of dispute, parties involved, and date ADR requested or notified by complainant; mediator appointed; correspondence or letters which may include ground rules, acknowledgement of time requirements and issues related thereto; pre-conference agreements; minutes of ADR activity; written agreement, and dispute resolution and date resolved.

The ADR data tracking system contains names of complainant and respondent; type of dispute, *e.g.*, job assignment, leave, promotion; source of complaint, *e.g.*, Equal Employment Opportunity (EEO) or grievance; process utilized, *e.g.*, mediation, conciliation, fact finding; district/office; ADR contact individual; date ADR request received; date resolved; and calculation of time spent in resolving matters and, if applicable, name of mediator.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

The ADR process is a parallel system to the grievance process and Equal Employment Opportunity (EEO) complaint process which offers the possibility of a simpler, quicker, less expensive, and less adversarial resolution of disputes. The ADR files are used to facilitate the effective operation of the ADR process in resolving discrimination complaints and workplace grievances by USMS employees and applicants for employment. The ADR database is used to track case activity, primarily for completion of reports. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information from this file may be disclosed:

(a) To appropriate Federal, State or local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative or litigative responsibilities of the recipient agency;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivision; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigaton is likely to affect it or any of its subdivisions;

(c) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and

(e) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in standard file cabinets. Computerized records are stored in a database server in a secured file room.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Access is restricted to authorized personnel with the need to know in the Human Resources Division, Equal Employment Opportunity Division, and the Office of General Counsel. Computerized records may be accessed only by assigned code and password. In addition, records are stored in metal file cabinets within the Human Resources Division and access to USMS headquarters is controlled by 24-hour guard services.

RETENTION AND DISPOSAL:

Records are maintained for 7 years and then data in the system, as well as hard copies, are purged.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Human Resources Division, USMS, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as "Record access procedures."

RECORD ACCESS PROCEDURES:

Make all request for access in writing and clearly mark letter and envelope "Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager in accordance with the procedures outlined above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Employee complainants who select the ADR process to resolve their disputes, respondents, and ADR mediator.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–28632 Filed 11–5–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 1, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202 395–7316), within 30 days from the date of this publication in the **Federal Register**.

This OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Temporary Labor Camps.

OMB Number: 1218–0096.

Frequency: On occasion.

Affected Public: business or other for-profit; Federal Government; State, Local or Tribal government.

Number of Respondents: 838.

Estimated Time Per Respondent: Five minutes per response.

Total Burden Hours: 67.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The purpose of the Temporary Labor Camp standard is to eliminate the incidence of communicable disease among temporary labor camp residents. The standard requires camp superintendents to report immediately to the local health officer (1) the name and address of any individual in the camp known to have or suspected of having a communicable disease or suspected food poisoning, or (2) an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–29111 Filed 11–5–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–139]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Biomedical and Behavioral Research Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Biomedical and Behavioral Research.

DATES: Thursday, November 18, 1999, 8:30 a.m. to 5:00 p.m.; and Friday, November 19, 1999, 8:00 a.m. to 10:30 a.m.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW, MIC–5A, Room 5H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Joan Vernikos, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—NASA Life Sciences Division Update
—LSAS and LMSAAC Reports
—Flight Status
—NASA-NIH Joint Activities
—NCI Unconventional Innovations Programs
—NASA Biology Inspired Technology
—NASA-NCI Joint Program
—Joint Workshops
—Discussions of Finding and Recommendations
—Discussions of Actions
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 2, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–29113 Filed 11–5–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–140]

NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National

Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: Tuesday, November 30, 1999, 8:30 a.m. to 5:00 p.m. and Wednesday, December 1, 1999, 8:00 a.m. to 12:00 Noon.

ADDRESSES: Langley Research Center, Building 1219, Room 225, Hampton, VA 23681–2199.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4700).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Pathways to the Future of Engineering
—Collaborative Engineering Environment Implementation Plans
—Technology Implementation at Langley Research Center

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 2, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–29114 Filed 11–5–99; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 62—"Criteria and Procedures for Emergency Access to Non-federal and Regional Low-level Waste Disposal Facilities."
2. *Current OMB approval number:* 3150–0143.
3. *How often the collection is required:* Requests are made only when access to a non-Federal low-level waste disposal facility is denied, which results in a threat to public health and safety and/or common defense and security.
4. *Who is required or asked to report:* Generators of low-level waste who are denied access to a non-Federal low-level waste facility.
5. *The number of annual respondents:* No requests for emergency access have been received to date. It is estimated that up to one request would be made every three years.
6. *The number of hours needed annually to complete the requirement or request:* It is estimated that 680 hours would be required to prepare the request, or approximately 227 hours per year.
7. *Abstract:* Part 62 sets out the information which will have to be provided to the NRC by any low-level waste generator seeking emergency access to an operating low-level waste disposal facility. The information is required to allow NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security.

Submit, by January 7, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, MD, this 2nd day of November, 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–29123 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–9]

Notice of Issuance of Amendment to Materials License SNM–2504, Department of Energy Fort St. Vrain Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 7 to Materials License No. SNM–2504 held by the U.S. Department of Energy (DOE) for the receipt, possession, storage, and transfer of spent fuel at the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI), located in Weld County, Colorado. The amendment is effective as of the date of issuance.

By application dated October 19, 1999, DOE requested an amendment to its ISFSI license to revise the dates for terminating its interim physical protection measures and implementing its new physical protection plan.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that, pursuant to 10 CFR 51.22(c)(12), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555.

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 27th day of October, 1999.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–29125 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423–LA–3; ASLBP No. 00–771–01–LA]

In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF–49); Notice of Prehearing Conference

November 2, 1999.

This proceeding involves the proposed increase in capacity (through the addition of high-density storage racks) of the spent fuel storage pool of the Millstone Nuclear Power Station, Unit No. 3, in New London County, Connecticut. Notice is hereby given that, as described in the Atomic Safety and Licensing Board's Memorandum and Order (Intervention Petition), dated October 28, 1999, a prehearing conference is hereby scheduled for Monday, December 13, 1999, beginning at 2 p.m., and continuing (to the extent necessary) on Tuesday, December 14, 1999, at the Ernst Common Room, Connecticut College, 270 Mohegan Avenue, New London, Connecticut 06320.

The conference will consider the standing of and proposed contentions submitted jointly by the Connecticut Coalition Against Millstone (CCAM) and the Long Island Coalition Against Millstone (CAM), petitioners for intervention in this proceeding. To the extent appropriate, the conference will also consider proposed discovery and hearing schedules, possibilities of settlement of various issues, and other procedural matters as may aid in the orderly disposition of the proceeding.

During the course of this proceeding, the Licensing Board, pursuant to 10 CFR 2.715(a), will entertain written or oral limited appearance statements, from any person who is not a party to the proceeding or a petitioner for intervention. The Licensing Board does not plan to entertain such statements at the December 13–14, 1999 prehearing conference. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or CXB2@nrc.gov.

Documents related to this proceeding, issued prior to December 1, 1999, are available in print form for public inspection at the Commission's Public Document Room (PDR), 2120 L St. NW, Washington, DC. Documents issued prior to November 1, 1999 may be found in microfiche format at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut (860–885–2346); at the Russell Library, 123 Broad Street, Middletown, Connecticut (860–347–2520); and, in late November, at the Connecticut State Library, Federal Documents, 231 Capitol Avenue, Hartford, Connecticut (860-566–4889). Documents issued subsequent to November 1, 1999, are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <*http://www.nrc.gov/NRC/ADAMS/index.html*>). The PDR and the majority of public libraries have terminals for public access to the Internet.

Rockville, Maryland, November 2, 1999.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 99–29120 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York; Notice of Consideration of Issuance of Amendment To Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–59, issued to the Power Authority of the State of New York, (PASNY or the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant, (FitzPatrick), located in Oswego County, New York.

The proposed amendment, requested by the licensee in a letter dated March 31, 1999, as supplemented by letters dated May 20, June 1, July 14, and October 14, 1999, represent a full conversion from the current Technical Specifications (CTS) to a set of Improved Technical Specifications (ITS) based on NUREG–1433, "Standard Technical Specifications (STS) for General Electric Plants, BWR/4" Revision 1, dated April 1995. NUREG–1433 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TS) for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement)," published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS, and, using NUREG–1433 as a basis, proposed an ITS for FitzPatrick. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, "Technical Specifications," in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1433 and does not involve technical changes to the CTS. The proposed changes include: (a) Providing the appropriate numbers, *etc.*, for NUREG–1433 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, *etc.*, and (c) changing NUREG–1433 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TS.

Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the 10 CFR 50.36(c)(2)(ii) and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in the attachment of the licensee's March 31, 1999, submittal, which is entitled, "Application of NRC Selection Criteria to James A. FitzPatrick Nuclear Power Plant Technical Specifications" (Split Report) in Volume 1 of the submittal. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the final safety analysis report (FSAR), the ITS BASES, the Technical Requirements Manual (TRM) that is incorporated by reference in the FSAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the STS that is more restrictive than the CTS that the licensee proposes to adopt in the ITS, the licensee has provided an explanation as to why it has concluded that adopting the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1433 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design is being reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1433, thus providing a basis for the ITS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are differences to the requirements in both the CTS and the Standard Technical Specifications (STS) NUREG–1433. These proposed beyond-scope issues to the ITS conversion are as follows:

1. ITS 3.0.3, Limiting Condition for Operation (LCO) to be in MODE 2 was changed to allow a 9-hour completion time.
2. ITS 3.3.1.1, Reactor Protection System (RPS) Instrumentation Function 5, reactor scram on main steam isolation valve (MSIV) closure. The trip setting valve was changed from less than or equal to 10 percent (in the CTS) to less than or equal to 14 percent in the ITS.
3. ITS 3.3.1.1, Extending Required Action F.1 Completion Time from 6 hours to 8 hours for consistency with Current Licensing Basis (CLB) and changing 3.0.3 which allows 8 hours to be in MODE 2 after initiation of Action.
4. ITS 3.3.5.1, Automatic Depressurization System (ADS) initiation timer and the Containment Spray (CS) and Low-Pressure Coolant Injection (LPCI) pump start timer values were changed from the CTS and the STS and tolerances relaxed to allow the extension of CALIBRATION Frequency to 24 months in the ITS.
5. ITS 3.3.5.1, CS, LPCI and ADS Logic System Functional Test (LSFT) Frequency was extended from 18 months (in the CTS) to 24 months in the ITS.
6. ITS 3.4.9, Reactor Coolant System (RCS) Pressure/Temperature (P/T) Limits in CTS were changed to add a new alternate criteria in ITS to allow idle recirculating pump (loop) start if the operating loop is greater than 40 percent flow or if the idle loop is less than 40% flow for less than or equal to 30 minutes.
7. ITS 3.5.1, ECCS-Operating, High-Pressure Coolant Injection (HPCI) and LPCI pump flow rates in CTS were reduced to SAFER/GESTR-Loss-of-Coolant Accident (LOCA) flow rates in the ITS.
8. ITS 3.5.2, ECCS-Shutdown, reduced Residual Heat Removal (RHR) LPCI pump flow rates in CTS to SAFER/GESTR–LOCA flow rates as in ITS 3.5.1 for RHR LPCI pumps.
9. ITS 3.8.1, AC Sources—Operating, Condition D for two reserve circuits inoperable in CTS was changed to add new interim power reduction to less than or equal to 45 percent with a 36-hour Completion Time in the ITS.
10. ITS 3.8.4, DC Sources—Operating (in CTS) was changed to allow 8 hours to restore one inoperable source in the ITS.
11. ITS 5.5, changed Standby Gas Treatment (SGT) and Control Room Emergency Ventilation Air Supply (CREVAS) system filter testing (in the CTS) from 6 months (or 12 months) to 24 months in the ITS for consistency with Regulatory Guide 1.52, Revision 2 or the fuel cycle length.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the NMP2 operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.NRC.gov*). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. David E. Blabey, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CAR 2.714(a)(1)(I)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 31, 1999, as supplemented by letters dated May 20, June 1, July 14, and October 14, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

Dated at Rockville, MD, this 3rd day of November 1999.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Sr. Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–29121 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2]

Virginia Electric and Power Co., Notice of Docketing of the Materials License SNM–2501 Amendment Application for the Surry Independent Spent Fuel Storage Installation

By letter dated April 5, 1999, Virginia Electric and Power Company (Virginia Power) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission) in accordance with 10 CFR part 72 requesting the amendment of the Surry Power Station independent spent fuel storage installation (ISFSI) license (SNM–2501) and the Technical Specifications for the ISFSI located in Surry County, Virginia. Virginia Power is seeking Commission approval to amend the materials license and ISFSI Technical Specifications to permit the storage of burnable poison rod assemblies and thimble plug devices in the GNSI CASTOR V/21, Westinghouse MC–10, and NAC-I28 storage casks at the Surry ISFSI.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–2 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated April 5, 1999, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the local Public Document Room located at

Swem Library, College of William and Mary, Williamsburg, VA 23185.

Dated at Rockville, Maryland, this 27th day of October, 1999.

For the U.S. Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–29122 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2]

Virginia Electric and Power Co.; Notice of Docketing of the Materials License SNM–2501 Amendment Application for the Surry Independent Spent Fuel Storage Installation

By letter dated June 16, 1999, Virginia Electric and Power Company (Virginia Power) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission) in accordance with 10 CFR part 72 requesting the amendment of the Surry Power Station independent spent fuel storage installation (ISFSI) license (SNM–2501) and the Technical Specifications for the ISFSI located in Surry County, Virginia. Virginia Power is seeking Commission approval to amend the materials license and ISFSI Technical Specifications to be consistent with the power plant Improved Standard Technical Specifications (ITS).

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–2 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated June 16, 1999, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the local Public Document Room located at Swem Library, College of William and Mary, Williamsburg, VA 23185.

For the U.S. Nuclear Regulatory Commission.

Dated at Rockville, MD, this 27th day of October, 1999.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–29124 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension:

Rule 12a–5, Form 26—SEC File No. 270–85, OMB Control No. 3235–0079
Rule 12f–1—SEC File No. 270–139, OMB Control No. 3235–0128
Rule 12f–3—SEC File No. 270–141, OMB Control No. 3235–0249
Rule 15Aj–1, Forms X–15AJ–1 and X–15AJ–2—SEC File No. 270–25, OMB Control No. 3235–0044
Rule 15c2–1—SEC File No. 270–418, OMB Control No. 3235–0485

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 12a–5 of the Securities Exchange Act of 1934 (the "Act") generally makes it unlawful for any security to be traded on a national securities exchange unless such security is registered on the exchange in accordance with the provisions of the Act and the rules and regulations thereunder.

Rule 12a–5 under the Act and Form 26 were adopted by the Commission in 1936 and 1955, respectively, pursuant to Sections 3(a)(12), 10(b), and 23(a) of the Act. Subject to certain conditions, Rule 21a–5 affords a temporary exemption (generally for up to 120 days) from the registration requirements of Section 12(a) of the Act for a new security when the holders of a security admitted to trading on a national securities exchange obtain the right (by operation of law or otherwise) to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security. The purpose of the exemption is to avoid an interruption of exchange trading to afford time for the issuer of the new security to list and register it, or for the exchange to apply for unlisted trading privileges.

Under paragraph (d) of Rule 12a–5, after an exchange has taken action to admit any security to trading pursuant to the provisions of the Rules, the exchange is required to file with the Commission a notification on Form 26. Form 26 provides the Commission with certain information regarding a security admitted to trading on an exchange pursuant to Rule 12a–5, including: (1) The name of the exchange, (2) the name of the issuer, (3) a description of the security, (4) the date(s) on which the security was or will be admitted to when-issued and/or regular trading, and (5) a brief description of the transaction pursuant to which the security was or will be issued.

The Commission generally oversees the national securities exchanges. This mission requires that, under Section 12(a) of the Act specifically, the Commission receive notification of any securities that are permitted to trade on an exchange pursuant to the temporary exemption under Rule 12a–5. Without the Rule and the Form, the Commission would be unable fully to implement these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12a–5. While approximately 40 Forms 26 are filed annually, the reporting burdens are not typically spread evenly among the exchanges.[1] For purposes of this analysis of burden, however, the staff has assumed that each exchange files an equal number (five) of Form 26 notifications. Each notification requires approximately 20 minutes to complete. Each respondent's compliance burden, then, in a given year would be approximately 100 minutes (20 minutes/report × 5 reports = 100 minutes), which translates to just over 13 hours in the aggregate for all respondents (8 respondents × 100 minutes/respondent = 800 minutes, or 13–1/3 hours).

Based on the most recent available information, the Commission staff estimates that the cost to respondents of completing a notification on Form 26 is, on average, $15 per response. The staff estimates that the total annual related reporting cost per respondent is $75 (5 responses/respondent × $15 cost/response), for a total annual related cost to all respondents of $600 ($75 cost/respondent × 8 respondents).

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[1] In fact, some exchanges do not file any notifications on Form 26 with the Commission in a given year.

Rule 121f–1, originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Act and as modified in 1995, sets forth the information which an exchange must include in an application to reinstate its ability to extend unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. An application must provide the name of the issuer, the title of the security, the name of each national securities exchange, if any, on which the security is listed or admitted to unlisted trading privileges, whether transaction information concerning the security is reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act, and any other pertinent information. Rule 12f–1 further requires a national securities exchange seeking to reinstate its ability to extend unlisted trading privileges to a security to indicate that it has provided a copy of such application to the issuer of the security, as well as to any other national securities exchange on which the security is listed or admitted to unlisted trading privileges.

The information required by Rule 12f–1 enables the Commission to make the necessary findings under the Act prior to granting applications to reinstate unlisted trading privileges. This information is also made available to members of the public who may wish to comment upon the applications. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

There are currently eight national securities exchanges to Rule 12f–1. The burden of complying with Rule 12f–1 arises when a potential respondent seeks to reinstate its ability to extend unlisted trading privileges to any security for which unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. The staff estimates that each application would require approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there would be as many as eight responses annually and that each respondent's related cost of compliance with Rule 12f–1 would be $50, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $400 (8 responses × $50 response).

Rule 12f–3, which was originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Act, prescribes the information which must be included in applications for and notices of termination of suspension of unlisted trading privileges for a security as contemplated in Section 12(f)(4) of the Act. An application must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination of suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security and its recent trading history; and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f–3, is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f–3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there could be as many as ten responses annually and that each respondent's related cost of compliance with Rule 12f–3 would be $50, or, the cost of one hour of professional work needed to complete the application. The total annual related reported cost for all potential respondents, therefore, is $500 (10 responses × $50/response).

Rule 15Aj–1 implements the requirements of Sections 15A, 17, and 19 of the Act by requiring every association registered as, or applying for registration as, a national securities association or as an affiliated securities association to keep its registration statement up-to-date by making periodic filings with the Commission on Form X–15AJ–1 and Form X–15AJ–2.

Rule 15Aj–1 requires a securities association to promptly notify the Commission after the discovery of any inaccuracy in its registration statement or in any amendment or supplement thereto by filing an amendment to its registration statement on Form X–15AJ–1 correcting such inaccuracy. The Rule also requires an association to promptly notify the Commission of any change which renders no longer accurate any information contained or incorporated in its registration statement or in any amendment or supplement thereto by filing a current supplement on Form X–15AJ–1. Rule 15Aj–1 further requires an association to file each year with the Commission an annual consolidated supplement on Form X–15AJ–2.

The information required by Rule 15Aj–1 and Forms X–15AJ–1 and X15AJ–2 is intended to enable the Commission to carry out its statutorily mandated oversight functions and to assure that registered securities associations are in compliance with the Act. This information is also made available to members of the public. Without the requirements imposed by the Rule, the Commission would be unable to fulfill its regulatory responsibilities.

There is presently only one registered securities association, which registered in 1939, subject to the Rule. The burdens associated with Rule 15Aj–1 requirements have been borne by only one securities association since Rule 15Aj–1 was adopted. Furthermore, the burdens associated with Rule 15A–1 vary depending on whether amendments and current supplements are filed on Form X–15AJ–1 in addition to an annual consolidated supplement filed on Form X–15AJ–2. The Commission staff estimates the burden in hours necessary to comply with the Rule by filing an amendment or a current supplement on Form X–15AJ–1 to be approximately one-half hour, with a related cost of $11, per response. The Commission staff estimates the burden in hours necessary to comply with the Rule by filing an annual consolidated supplement on Form X–15AJ–2 to be approximately three hours, with a related cost of $90. Therefore, the Commission staff estimates that the total annual related reporting cost associated with the Rule to be upwards of $90, assuming a minimum filing of an annual consolidated statement on Form X–15AJ–2, with additional filings on Form X–15AJ–1 correspondingly increasing such reporting cost.

Rule 15c2–1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own transactions. Subject to certain exceptions and exemptions, Rule 15c2–1 prohibits a broker-dealer from: (1) Commingling under the same lien customer securities with other customer securities, without the written consent of each customer; (2) commingling under the same lien customer securities with non-customer securities (including those of the broker-dealer) for a loan made to the broker-dealer; and (3) hypothecating customer securities for a loan amount which exceeds all customers' aggregate indebtedness relating to securities carried in their accounts. Under Rule 15c2–1, a broker-dealer must collect information necessary to prevent the rehypothecation of customer securities in contravention of the Rule, (issue and retain copies of notices to) the pledgee of hypothecation of customer securities in accordance with the Rule, and collect written consents from customers in accordance with the Rule. The collection of information required by the Rule is necessary to ensure compliance with the Rule, and to advise customers of the Rule's protections. In addition, the collection of information is necessary to execute the Commission's mandate under the Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 177 respondents (*i.e.* broker-dealers that carry or clear customer accounts that also have bank loans) that must comply with the Rule. Each of these approximately 177 respondents make an estimated 45 annual responses, for an aggregate total of 7,965 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 3,983 burden hours. The approximate cost per hour is $25 (based on an annual salary of $52,000 for clerical labor), resulting in a total compliance cost of $99,575 (3,983 hours @ $25 per hour).

Written comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Dated: November 1, 1999.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 99–29154 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24121; 812–11420]

Elk Associates Funding Corporation, et al.; Notice of Application

November 2, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application: (i) under sections 6(c), 12(d)(1)(J), and 57(c) of the Investment Company Act of 1940 ("Act") for exemptions from sections 12(d)(1)(A) and (C), 18(a), 21(b), 57(a)(1) through (a)(3), and 61(a) of the Act; (ii) under section 57(i) of the Act and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and (iii) under section 12(h) of the Securities Exchange Act of 1934 ("Exchange Act") for an exemption from section 13(a) of the Exchange Act.

SUMMARY OF THE APPLICATION: The requested order would permit a business development company ("BDC") to implement a reorganization plan under which it would become a wholly-owned subsidiary of a newly-formed BDC. The order would permit the two companies, and any additional wholly-owned BDC subsidiaries of the parent established in the future, to engage in certain transactions that would otherwise be permitted if the parent and its BDC subsidiaries were one company, adhere to modified asset coverage requirements, and file certain reports on a consolidated basis.

Applicants: Elk Associates Funding Corporation ("Elk"), Ameritrans Capital Corporation ("Ameritrans"), and Gary C. Granoff ("Granoff").

Filing Dates: The application was filed on November 27, 1998. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 29, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, c/o Stursberg & Veith, Attn: C. Walter Stursberg, Jr., 405 Lexington Avenue, Suite 4949, New York, NY 10174–4902.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Elk, a New York corporation, is a closed-end management investment company registered under the Act that has elected to be regulated as a BDC, as defined in section 2(a)(48) of the Act.[1] Elk also is licensed as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 ("1958 Act"). Granoff is Elk's president and the chairman of its board of directors ("Board").

2. Ameritrans, a Delaware corporation, is a closed-end management investment company registered under the Act that has elected to be regulated as a BDC. Granoff, who also is a Ameritrans' president and the chairman of its Board, has purchased for $10 the sole outstanding share of Ameritrans' common stock.

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[1] Section 2(a)(48) generally defines a BDC to be any closed-end management investment company that operates for the purpose of making investments in securities described in sections 55(a) (1) through (3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

3. Applicants have proposed a reorganization in which Elk would become a wholly-owned subsidiary of Ameritrans. Ameritrans would acquire all of the outstanding voting capital stock of Elk by means of a share-for-share exchange with Elk's public shareholders ("Share Exchange"). Following the Share Exchange, Ameritrans will repurchase for $10 the share of its stock owned by Granoff. Ameritrans will engage in lending and investment activities not subject to the restrictions of the 1958 Act. Elk will continue to operate as a BDC and an SBIC, making loans to or investments in small business concerns as permitted by the 1958 Act.

4. On September 22, 1998, Elk's Board approve the Share Exchange and voted to recommend that the proposal be submitted to Elk's shareholders for approval. On October 20, 1999, Ameritrans filed a proxy statement with the Commission. Applicants anticipate that Elk will distribute proxy materials to its shareholders on or about November 10, 1999, and hold the shareholder meeting on or about December 10, 1999.

5. Ameritrans may in the future establish additional wholly-owned subsidiaries (collectively, "Future Subsidiaries"), some of which may be regulated as BDCs ("Future BDC Subsidiaries"). Any Future Subsidiary that is not a BDC will not be an investment company. Elk and the Future Subsidiaries collectively are referred to in this notice as the "Subsidiaries." Any Future Subsidiary that relies on the requested order will do so only in accordance with the terms and conditions of the application.

6. Applicants request an order to permit the Share Exchange. The requested order also would permit Ameritrans, Elk, and any Future BDC Subsidiaries to engage in certain transactions that otherwise would be permitted if Ameritrans, Elk, and the Future BDC Subsidiaries were a single company, adhere to modified asset coverage requirements, and file certain reports on a consolidated basis.

Applicants' Legal Analysis

A. The Share Exchange

1. Sections 57(a) (1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases of securities or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes any director of officer of a BDC and any person who directly or indirectly controls a BDC. Applicants state that Ameritrans could be deemed to be an affiliate of Elk under section 57(b)(1) because Ameritrans is controlled by Granoff, an officer and director of Elk. Applicants state that the transfer of Ameritrans' shares to the shareholders of Elk may be deemed to be a prohibited sale of securities to Elk within the meaning of section 57(a)(1). Applicants accordingly request relief under section 57(c) of the Act from section 57(a)(1) to permit such transfer as part of the Share Exchange.

2. Section 57(c) provides, in relevant part, that the Commission will exempt a proposed transaction from the prohibitions in section 57(a)(1) if the terms of the proposed transaction are reasonable and fair and do not involve overreaching of the BDC or its shareholders on the part of any person concerned, and the proposed transaction is consistent with the policy of the BDC and the general purposes of the Act. Applicants submit that the requested relief meets this standard.

3. Applicants state that the Share Exchange will benefit Elk's shareholders because Ameritrans will be able to take advantage of business opportunities not otherwise available to Elk as an SBIC. Applicants also state that there will be no threat of overreaching because Granoff is the nominal owner of a single Ameritrans share, which share will be repurchased for its original purchase price of $10 following the Share Exchange.

B. Operation as One Company

Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, made applicable to BDCs by section 60 of the Act, limits the amount of securities that a BDC, or a company controlled by the BDC, may hold of other investment companies. Section 12(d)(1)(C) of the Act, which also applies to BDCs by reason of section 60, limits the amount of securities of a registered closed-end investment company that a BDC, or a company controlled by the BDC, may require.

2. Applicants state that any acquisition of the debt or equity securities of, or any contribution to capital of, a Future BDC Subsidiary by Ameritrans may violate sections 12(d)(1)(A) and (C).[2] Applicants state that these provisions also may preclude each Subsidiary from: (i) acquiring debt securities issued by Ameritrans or any other Subsidiary, and (ii) making loans or advances to Ameritrans or any other Subsidiary. Applicants request relief from sections 12(d)(1)(A) and (C) in order to permit these types of transactions, but only to the extent that the transactions would not be prohibited if each Subsidiary were deemed to be part of Ameritrans and not a separate company.

3. Section 12(d)(1)(J) of the Act, in relevant part, provided that the Commission may exempt transactions from any provisions of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants submit that the requested relief meets this standard.

4. Applicants state that the proposed transactions among Ameritrans and the Subsidiaries will not entail the types of abuses that the provisions of sections 12(d)(1)(A) and (C) were designed to prevent. Applicants further state that Ameritrans, as the sole shareholder of the Subsidiaries, will have no incentive to act contrary to the interests of any Subsidiary.

Sections 57(a)(1) and (2)

1. As discussed above, sections 57(a)(1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases of securities or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes a person under common control with a BDC. Each Subsidiary could be deemed to be an affiliate of each other Subsidiary under section 57(b) because they will be under the common control of Ameritrans.

2. Applicants request relief from sections 57(a)(1) and (2) under section 57(c) to exempt any transaction between Ameritrans and Elk or a Future BDC Subsidiary, and any transaction between Elk or a Future BDC Subsidiary, on the one hand, and any other Subsidiary on the other hand, with respect to the purchase or sale of securities or other property. Applicants also request relief from sections 57(a)(1) and (2) to exempt any purchase or sale transaction between Ameritrans and a controlled portfolio affiliate of Elk or a Future BDC Subsidiary, and any purchase or sale transaction between Elk or a Future BDC Subsidiary and a controlled portfolio affiliate of Ameritrans or of another Future BDC Subsidiary or Elk, but only to the extent that any such transaction would not be prohibited if Elk and the Future BDC Subsidiaries were deemed to be part of Ameritrans and not separate companies. Applicants submit that the requested relief meets the

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[2] Rule 60a–1 under the Act exempts from sections 12(d)(1)(A) and (C) the acquisition by a BDC of the securities of an SBIC licensed under the 1958 Act that is operated as a wholly-owned subsidiary of the BDC. The rule exempts Ameritrans' acquisition of Elk's securities, and any loans or advances from Ameritrans to Elk, from the limits in sections 12(d)(1)(A) and (C).

section 57(c) standard because it would permit Ameritrans, Elk, and the Future BDC Subsidiaries to do what the Act would otherwise permit if Elk and the Future BDC Subsidiaries were part of Ameritrans and not separate companies.

Sections 21(b) and 57(a)(3)

1. Section 57(a)(3) of the Act generally prohibits the borrowing of money or other property from a BDC by a person related to the BDC within the meaning of section 57(b), except as permitted under section 21(b) of the Act. Section 21(b) (made applicable to BDCs by section 62 of the Act, with certain exceptions) generally prohibits loans from a BDC to a person who controls or is under common control with the BDC, except for loans to a company that owns all of the outstanding securities of the BDC. As described above, each Subsidiary will be under the common control of Ameritrans and, therefore, will be affiliated with each other Subsidiary within the meaning of section 57(b).

2. Applicants request relief from section 57(a)(3) under section 57(c) to exempt any borrowing of money or other property from Elk or a Future BDC Subsidiary by Ameritrans or any other Subsidiary. Applicants also request relief from section 21(b) under section 6(c) of the Act to exempt any lending of money or other property by Elk or a Future BDC Subsidiary to Ameritrans or another Subsidiary. Applicants state that the proposed transactions will have no substantive economic effect because they will be among Ameritrans and its wholly-owned subsidiaries.

3. Applicants state that it may be in the interests of Ameritrans' shareholders for Ameritrans, Elk, or any Future BDC Subsidiary to loan money or other property to portfolio companies controlled by any other of Ameritrans, Elk, and the Future BDC Subsidiaries. Accordingly, applicants also request relief from sections 21(b) and 57(a)(3) to exempt any lending of money or other property from Elk or a Future BDC Subsidiary to a controlled portfolio affiliate of Ameritrans or of another Future BDC Subsidiary or Elk, but only to the extent that any such transaction would not be prohibited if Elk and the Future BDC Subsidiaries were deemed to be part of Ameritrans and not separate companies.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the proposed lending transactions discussed above will satisfy the standards for relief in sections 6(c) and 57(c). Applicants note that the requested relief would permit Ameritrans, Elk, and the Future BDC Subsidiaries to do what the Act would permit if they were one company.

Section 57(a)(4) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which the registered company or a company it controls is a participant, unless the Commission has issued an order authorizing the arrangement. Section 57(a)(4) of the Act imposes substantially the same prohibitions on joint arrangements involving BDCs and certain of their affiliates as described in section 57(b). Section 57(i) of the Act provides that the rules and regulations under section 17(d) will apply to transactions subject to section 57(a)(4) in the absence of rules under that section. The Commission has not adopted rules under section 57(a)(4) with respect to joint transactions and, accordingly, the standard set forth in rule 17d–1 governs applicants' request for relief.

2. Applicants state that a joint transaction in which Elk or a Future BDC Subsidiary and Ameritrans or another Subsidiary participates may be prohibited under section 57(a)(4). Applicants request relief under section 57(i) and rule 17d–1 to permit any joint transaction in which Elk or a Future BDC Subsidiary and Ameritrans or another Subsidiary participate, but only to the extent that the transaction would not be prohibited if Elk and the Future BDC Subsidiaries were deemed to be part of Ameritrans and not separate companies.

3. In determining whether to grant an order under section 57(i) and rule 17d–1, the Commission may consider whether the participation of the BDC in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants in the transaction. Applicants state that this standard is satisfied because the requested relief would simply permit Ameritrans and the Subsidiaries to conduct their operations as if they were one company.

Section 18(a)

1. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in that section. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in sections 18(a)(1)(A) and (B). Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications.

2. Applicants state that Ameritrans, Elk, and the Future BDC Subsidiaries may be required to comply with the asset coverage requirements of section 18(a), as modified by section 61(a) for BDCs, on a consolidated basis if Ameritrans were deemed to be an indirect issuer of any class of senior security issued by the Subsidiaries. Applicants request relief under section 6(c) from sections 18(a) and 61(a) to permit Ameritrans to exclude from its consolidated asset coverage ratio any senior security representing indebtedness that is issued by Elk.

3. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, to the extent that any Subsidiary is entitled to rely on section 18(k) for an exemption from the asset coverage requirements of sections 18(a) and 61(a), there is no policy reason to deny Ameritrans the benefit of that exemption when Ameritrans consolidates its assets with those of the Subsidiaries for the purpose of compliance with those requirements.

C. Consolidated Reporting

1. Section 54 of the Act provides that a closed-end investment company may elect BDC treatment under the Act if the company has registered or filed a registration statement under section 12 of the Exchange Act for a class of its equity securities. Section 13(a) of the Exchange Act requires that issuers of securities registered under the Exchange Act file certain information and reports with the Commission. Applicants request an order under section 12(h) of the Exchange Act to exempt Elk and each Future BDC Subsidiary from the reporting requirements of section 13(a) of the Exchange Act so that Ameritrans, Elk, and the Future BDC Subsidiaries may file consolidated reports. Absent the requested relief, Elk and each Future BDC Subsidiary, on an unconsolidated basis, would have to make periodic filings with the Commission, even though Ameritrans will be the sole equity holder of each such Subsidiary.

2. Section 12(h) of the Exchange Act provides that the Commission may exempt an issuer from section 13 of the Exchange Act if the Commission finds that the exemption is not inconsistent with the public interest and the protection of investors. Applicants state that the requested exemption meets this standard because applicants will be providing the same information required by the Exchange Act's reporting requirements on a consolidated basis.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Ameritrans will at all times own and hold beneficially and of record all of the outstanding voting capital stock of Elk and the Future Subsidiaries.

2. Elk and any Future BDC Subsidiaries will have the same fundamental investment policies as Ameritrans, as set forth in Ameritrans' registration statement, and will not engage in any other activities described in section 13(a) of the Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Ameritrans.

3. No person will serve or act as investment adviser or principal underwriter to Elk or any Future BDC Subsidiary unless the directors and shareholders of Ameritrans will have taken the action with respect thereto also required to be taken by the directors and sole shareholder of such Subsidiary.

4. Ameritrans will not itself issue or sell any senior security and Ameritrans will not cause or permit Elk or any Future BDC Subsidiary to issue or sell any senior security of which Ameritrans, Elk, or any Future BDC Subsidiary is the issuer, except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of Ameritrans, Elk, or any Future BDC Subsidiary of any such notes or evidences of indebtedness, Ameritrans and its Subsidiaries on a consolidated basis, and Ameritrans individually, will have the asset coverage required by section 18(a) of the Act (as modified by section 61(a) for Ameritrans), except that, in determining whether Ameritrans and its Subsidiaries on a consolidated basis have the asset coverage required by section 18(a) of the Act, as modified by section 61(a), any Small Business Administration ("SBA") preferred stock interest in Elk and the Future BDC Subsidiaries and any borrowings by Elk and any Future BDC Subsidiaries will not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), will be treated as indebtedness not represented by senior securities.

5. No person shall serve as a director of Elk or of a Future Subsidiary unless elected as a director of Ameritrans at its most recent annual meeting, as contemplated by section 16(a) of the Act. Vacancies on Ameritrans' Board will be filled in the manner provided for in section 16(a). Notwithstanding the foregoing, the Board of Elk and of any Future Subsidiary will be elected by Ameritrans as the sole shareholder of such Subsidiary, and such Board will be composed of the same persons that serve as directors of Ameritrans.

6. Ameritrans and any Subsidiary will acquire securities representing indebtedness of Elk or of any Future BDC Subsidiary operating as a SBIC only if, in each case, the prior approval of the SBA has been obtained. In addition, Elk or any Future BDC Subsidiary operating as a SBIC, on the one hand, and Ameritrans or any other Subsidiary on the other hand, will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

7. Ameritrans will: (i) File with the Commission, on behalf of itself, Elk, and any Future BDC Subsidiaries, all information and reports required to be filed with the Commission under the Exchange Act and other federal securities laws, including information and financial statements prepared solely on a consolidated basis as to Ameritrans, Elk, and any Future BDC Subsidiaries, such information and reports to be in satisfaction of any separate reporting obligations of Elk and any Future BDC Subsidiaries; and (ii) provide to its shareholders such information and reports required to be disseminated to Ameritrans' shareholders, including information and financial statements prepared solely on a consolidated basis as to Ameritrans, Elk, and any Future BDC Subsidiaries, such information and reports to be in satisfaction of any separate reporting obligations of Elk and any Future BDC Subsidiaries. Notwithstanding anything in this condition, Ameritrans will not be relieved of any of its reporting obligations including, but not limited to, any consolidating statement setting forth the individual statements of Elk and any Future BDC Subsidiaries required by rule 6–03(c) of Regulation S–X.

8. Ameritrans, Elk, and any Future BDC Subsidiaries may file on a consolidated basis under condition 7 above only so long as the amount of Ameritrans' total consolidated assets invested in assets other than securities issued by Elk and any Future BDC Subsidiaries, or securities similar to those in which Elk and any Future BDC Subsidiaries invest, does not exceed ten percent.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29155 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 8, 1999.

A closed meeting will be held on Wednesday, November 10, 1999, at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 10, 1999, will be:

Institution and settlement of injuctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: November 3, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–29254 Filed 11–4–99; 11:30 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42074; File No. SR–BSE–99–11]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Implementing a Post Primary Session

October 29, 1999.

I. Introduction

On July 13, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a Post Primary Session ("PPS").

The proposed rule change was published for comment in the **Federal Register** on September 8, 1999. No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to extend the close of trading on the BSE from 4 p.m. to 4:15 p.m. Eastern Time, creating a new PPS. Pursuant to Chapter I–B, Section 1 (Primary Session), the current trading hours at the Exchange are from 9:30 a.m. until 4:00 p.m. Eastern Time. The proposal will extend these hours for an additional fifteen minutes, until 4:15 p.m. Eastern Time. Under the proposal, all Exchange rules applicable to floor trading during the Exchange's Primary Session will continue to apply during the PPS, with the following exceptions: (1) Only orders that are designated "PPS" will be eligible for execution; (2) limit order on the book from the Primary Session will not be eligible for execution, but will carry over to the next day; (3) there will be no automated executions; (4) there will be no application of the Execution Guarantee Rule,[3] and (5) GTX[4] orders will be executable after the close of the PPS (*i.e.*, GTX orders are executable after 4:15 p.m. instead of 4:00 p.m. Eastern Time). Accordingly, the Exchange proposes to amend the following rules: (1) Chapter I–B, Sections 2 and 3, and (2) Chapter IIB, Sections 1 and 3.

PPS Eligible Orders

Pursunt to the proposed amendment of Chapter IIB, Section 3, only orders designated "PPS" will be eligible for execution during the PPS. Since the PPS is merely an extension of the Exchange's auction market, wherein bids and offers are continuously updated for trading under normal auction market principles. Exchange rules will continue to apply. Thus, to be designated as eligible for execution in the PPS, a market, limit, or contingent order must be acceptable under current Exchange rules.

Under the proposal, limit orders on the book from the Primary Session are not eligible for the PPS, and must be carried over to the next day. Also, those limits orders that are received during the PPS (and thus PPS eligible) remain subject to the Limit Order Display Rule.[5]

GTX Orders

A GTX Order is an agency limit order that is good until canceled, and is eligible for primary market protection based on the volume that prints on the after-hours trading session of the New York Stock Exchange or the American Stock Exchange. Thus, a GTX Order may be executed during regular trading hours or after the PPS, at 5 p.m. Eastern Time, but no GTX Order may be executed during the PPS.

BEACON as a Routing System

"BEACON" is the acronym for the Boston Exchange Automated Communication Order-routing Network. It provides a system for the automatic execution of orders on the Exchange under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis. The Exchange proposes to amend Chapter IIB, Section 3(b), to indicate that BEACON will continue to operate as a routing system for PPS eligible orders, but will not provide an automatic execution mechanism.

Operation of the ITS System During the PPS

In the amendment to Chapter IIB, Section 3(a), the BSE represents that ITS will be available for both inbound and outbound commitments during the PPS to the extent that other market centers (*i.e.*, the Pacific Exchange, Inc. ("PCX"),[6] the Philadelphia Stock Exchange, Inc. ("PHLX")[7] and the Chicago Stock Exchange, Inc. ("CHX"))[8] are open for trading. The BSE also represents that it will perform surveillance during the PPS in the same manner and using the same techniques as those used during the Primary Session. To facilitate the surveillance of the PPS, BSE's surveillance staff will remain on-site during the PPS and for any necessary additional time period after the close of the PPS.

Execution Guarantee Does Not Apply

The Execution Guarantee provides that Specialists must guarantee execution on all agency market and marketable limit orders from 100 up to and including 1,299 shares. According to the proposed amendments to Chapter IIB, Section 3(d), the Execution Guarantee will not be available in any form during the PPS.

III. Discussion

The Commission has reviewed carefully the BSE's proposed rule change[9] and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b).[10] In particular, the Commission finds the proposal is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it is reasonably designed to promote just and equitable principles of trade, and, in general, perfect the mechanism of a free and open national market system. The implementation of the BSE's Post Primary Session should enhance competition in the expanding after-hours market.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BSE Rules, Paragraph 2039A, Section 33.

[4] For a description of GTX Orders, *see "GTX Orders" infra.*

[5] *See* Chapter II, Section 40, Paragraph 2039B7.

[6] PCX's regular equity session closes at 4:30 p.m. Eastern Time. During the crossing session, PCX does not utilize ITS. *See* PCX Rule 4.2, Commentary .02.

[7] PHLX operates a Post Primary Session from 4 p.m. until 4:15 p.m. Eastern Time which is an extension of its regular auction market. During the Post Primary Session, PHLX utilizes ITS to the same extent it does during regular trading hours. *See* PHLX Rule 101.

[8] CHX's primary session closes at 4 p.m. Eastern Time. CHX conducts an Extended Session from 4 p.m. until 4:30 p.m. Eastern Time. Both sessions utilize ITS. *See generally* Article 20, CHX Rules 20, 37, 39, 40 and 41.

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

The Commission finds that the implementation of the Exchange's PPS does not raise any new regulatory concerns. The Exchange will provide full transparency by disseminating quotes through the Consolidated Quotation System and reporting trades to the consolidated tape. The Commission notes that investors are accustomed to trading after-hours on regional exchanges between 4 p.m. and 4:30 p.m.,[12] and that the implementation of BSE's PPS does not significantly alter the after-hours market with regard to regional exchanges during that time period. In addition, the Commission has not received any comment letters from the public or BSE members raising any regulatory issues in connection with the implementation of the PPS.

The Commission believes that it is reasonable for the Exchange to implement the rule changes discussed above[13] during the PPS. Given that the after-hours trading market is in its nascent stage, with differences in volatility, liquidity, and volume as compared to the traditional trading session, the Commission believes it is reasonable to require investors to affirmatively choose to participate in the developing after-hours market. The Commission believes investors will be better protected if the Exchange requires them to knowingly opt-in to the PPS.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C) of the Act.[14] Congress found in those provisions that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market.[15] The proposed rule change accomplishes the objectives of the Act by providing an opportunity for investors to trade outside of traditional market hours, complete with the safeguards and standards upon which investors have come to rely during traditional market hours.

The Commission further notes that BSE has represented it intends to implement surveillance procedures during the PPS. Such surveillance should assist BSE in satisfying the requirements of Section 6(b)(5) of the Act[16] that Exchange rules be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. Accordingly, the Commission does not believe that the Exchange's implementation of a PPS will have an adverse effect on the maintenance of fair and orderly markets of disadvantage public customers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–BSE–99–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29099 Filed 11–5–99; 8:45 am]

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[12] *See supra* footnotes 6–8.

[13] *See supra* Section II, *PPS Eligible Orders, GTX Orders,* and *Execution Guarantee Does Not Apply.*

[14] 15 U.S.C. 78k–1(a)(1)(C).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42089; File No. SR–CHX–99–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Amending Membership Dues and Fees Schedule for Transactions Occurring During the E-Session

November 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I,II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule to eliminate, through December 31, 1999, all transaction, order processing and floor broker fees for transactions that occur during the Exchange's after-hours trading session ("E-Session").[4] The text of the proposal is available upon request from the CHX or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the CHX schedule of membership dues and fees to eliminate, through December 31, 1999, order processing, transaction and floor broker fees for transactions that occur during the E-Session.[5] The Exchange seeks this change to allow CHX members to participate in the E-Session without incurring the fees normally associated with their CHX transactions.[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] On October 13, 1999, the Commission approve, on a pilot basis, the CHX's proposed rule change that allows the CHX to implement an after-hours trading session. *See* Securities Exchange Act Release No. 42004 (October 13, 1999) (SR–CHX–99–16). The E-Session takes place from 3:30 p.m. to 5:30 p.m. Central Time, Monday through Friday, and began on October 29, 1999.

[5] The fees which CHX seeks to eliminate through December 31, 1999 with this proposed rule change include OTC agency orders in Nasdaq/NMS securities transacted by floor brokers, which were recently reviewed by the Commission. *See* Securities Exchange Act Release No. 41947 (September 29, 1999), 64 FR 54703 (October 7, 1999) (SR–CHX–99–15).

[6] The Exchange notes that the vast majority of securities that initially will be eligible for trading in the E-Session are already subject to order processing and transaction fee waivers under the Exchange's current fee schedule because they are either Nasdaq/NMS issues or issues within the S&P 500. The Exchange does not anticipate much floor

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance wit the provisions of 5 U.S.C. 552, with be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–99–23, and should be submitted by November 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29158 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42090; File No. SR–MSRB–99–8]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

November 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change. The proposed rule change is described in Items, I, II, and below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing this proposed rule change to institute a service (the "Service") to produce a daily public report containing information on individual transactions in frequently rated municipal securities (the "Daily Transaction Report" or "Report"). The transaction information in the Report would come from dealer reports made to the Board pursuant to MSRB Rule G–14, which governs reports of sales or purchases. Rule G–14 currently requires dealers to report essentially all inter-dealer and customer transactions in municipal securities to the Board by midnight of the date of the trade.

The proposed Report would be the third product offered by the Board to increase the amount of price transparency in the municipal securities market. Like the Board's current Combined and Inter-Dealer Daily Reports, the proposed Daily Transaction Report would provide information on "frequently traded" issues (*i.e.*, issues on which at least four transaction reports were received for a given trade date). Also like the current Daily Reports, the proposed Report would be produced and made available electronically by approximately 7:00 a.m. on the business day following the trade date. Electronic Reports will be produced in the same three formats—printable, comma-delimited, and fixed record length—as the current Daily Reports.[3] However, unlike the current Daily Reports, the proposed Daily Transaction Report has been designed to provide transaction detail on each reported trade in a frequently traded issue, rather than merely providing the daily high, low and average prices.[4]

The proposed Daily Transaction Report would be available by subscription. To obtain a subscription it will be necessary to sign a subscription agreement, however, there will be no fee charged for the new Daily Transaction Report.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Charge

In its filing with the Commission, the Board included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in section A,B, and C below, of the most significant aspects of such statements.

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brokerage activity in the E-Session, and believes that waiving brokerage fees will likely have little impact on the Exchange's revenues. According to the Exchange, waiving the fees on the few transactions to which they would otherwise apply will allow the Exchange to simplify its communications to members about the fees. Telephone conversation between Paul B. O'Kelly, Executive Vice President, CHX, and Joseph Morra, Attorney, Division of Market Regulation, SEC, October 28, 1999.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The "printable" format can be printed with little or no change by an end-user. The "comma-delimited" and "fixed record length" files can easily be sorted or converted by an end-user's spreadsheet or other application program (*e.g.*, Microsoft Excel).

[4] The Board also will continue to use all the transaction information reported by dealers to maintain a market surveillance database. The surveillance database is available to the Commission, the National Association of Securities Dealers ("NASD") and the bank regulatory agencies responsible for the enforcement of Board rules.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A long-standing goal of the Board is to provide market participants with information about the value of municipal securities.[5] Over the past five years, with the advent of the Transaction Reporting Program, the Board has been working toward making transaction price information "transparent" in the marketplace and seeking ways to make that information more comprehensive and contemporaneous.[6] The new Daily Transaction Report represents the next step in that continuing process.

The Daily Transaction Report builds upon two earlier phases of transparency—the Board's Inter-Dealer Daily Report[7] and the Combined Daily Report.[8] Whereas the Inter-Dealer and Combined Daily Reports provide daily high, low and average prices for frequently traded issues of municipal securities, the proposed Daily Transaction Reports will provide individual information for each reported transaction in frequently traded issues. The Board believes that the individual transaction data on the new report, which will include par value and time of trade for each transaction as well as price, will provide a more complete picture of the market than the currently available Daily Reports.

As with the Inter-Dealer and Combined Daily Reports, "frequently traded" issues will be defined as those issues trading at least four or more times on the business day for which the prices are reported, and the Daily Transaction Report will be made available on the morning of the next business day after trade date. As part of its effort to make more comprehensive data available, the Board intends to monitor the impact of the new report in the market. After the new report has been operational for a period of time, the Board will review its operation and will consider whether to lower the "frequently traded" threshold. Doing so would have the effect of listing more issues and more prices in each day's report and would make the report even more comprehensive in its representation of market activity.

The Board also is reviewing various options for collecting and disseminating transaction information on a more contemporaneous basis. As part of this effort, the Board has created a web site that simulates the kind of information that a "real-time" system might provide and how it might be presented to investors.[9] This demonstration system is available at the Board's web site at www.msrb.org. The Board welcomes comments from market participants on the demonstration system.

Background Information on Board Transparency Initiatives. The Board began disseminating price and volume information on municipal securities in 1995 after adopting an amendment to MSRB Rule G–14 that requires essentially all inter-dealer transactions to be reported to the Board via the automated comparison system operated by National Securities Clearing Corporation.[10] This transaction reporting requirement dovetailed with existing automated clearance requirements in MSRB Rule G–12(f) and allowed dealers to begin transaction reporting with relatively few changes to their own trade processing systems.

Each business day since its inauguration in January 1995, the Inter-Dealer Daily Report has provided statistics on total inter-dealer market activity reported for the previous day and information about price and volume for each issue that was frequently traded on that day. The report includes the total par value traded in each frequently traded issue, and the high, low and average[11] prices for the trading day.

The design of the Inter-Dealer Daily Report was based upon aspects of the municipal securities market that distinguish it from the exchange-listed and Nasdaq markets. A primary distinguishing characteristic of the municipal securities market is the large number of outstanding issues. There are approximately 1.3 million municipal securities that are distinct, non-fungible entities for purposes of trading and reporting, compared to a much smaller number of equity issues. The frequency of trading also differs substantially from patterns in the exchange and Nasdaq markets. While, on any given day, a certain number of municipal securities are traded frequently, the list of these frequently traded issues is continually changing over time. When frequent trading does occur in an issue, it generally occurs in connection with issuance and then subsides as "buy and hold" investors obtain the securities and offerings in the issue disappear completely.

In designing the Inter-Dealer Daily Report, the Board adopted a threshold of four trades a day as the definition of "frequently traded." Only on issues for which there are four or more transaction reports on a given day are prices given on the Daily Report. The Board constructed the Daily Report in this manner because of the concern that an isolated transaction may not necessarily provide a reliable indicator of "market price" and might be misleading to an observer not familiar with the market. At the same time, the Board made a commitment to review the use of the Inter-Dealer Daily Report as experience was obtained and eventually move to a more contemporaneous and comprehensive price transparency report.[12]

In August 1998, after adopting amendments to MSRB Rule G–14 to require dealers to report their customer transactions to the Board each night, production of a Combined Daily Report began.[13] This report incorporates both inter-dealer and customer transaction information. Like the Inter-Dealer Daily Report, the format of high, low and average prices was used and only issues that are reported as having traded four or more times on a given trade date are included. However, since both customer and inter-dealer transactions are taken into account, the number of issues meeting the "frequently traded" threshold each day went from approximately 200 appearing each day on the Inter-Dealer Report to approximately 1,000 on the Combined Daily Report.[14]

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[5] *See e.g.*, "From the Chairman," *MSRB Reports*, Vol. 8, No. 5 (December 1998) at 2.

[6] *See, e.g.*, "Board to Proceed with the Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994) at 13; Vol. 14, No. 5 (December 1994) as 3–6; and "Transaction Reporting Program for Municipal Securities," *MSRB Reports*, Vol. 15, No. 1 (April 1995) at 11–15.

[7] *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810 (November 18, 1994).

[8] *See* Securities Exchange Act Release No. 40337 (August 19, 1998), 63 FR 45544 (August 26, 1998).

[9] *See* File No. SR–MSRB–99–9 (September 7, 1999).

[10] *See* "Reporting Inter-Dealer Transactions to the Board; Rule G–14, *MSRB Reports*, Vol. 14, No. 1 (January 1994), at 13.

[11] Unlike the reported high and low prices, the average price in the Inter-Dealer Daily Report is computed including only those trades having a par value between $100,000 and $1 million. Since the prices of smaller, "odd lot" transactions and large position movements over $1,000,000 may be affected by the very size of the transaction, the Board decided to omit these transactions from the "average price" computation.

[12] *See, e.g.*, "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Commission noted that the Board, in proceeding to subsequent levels of transparency, "should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading." *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810 (November 18, 1994).

[13] *See* Securities Exchange Act Release No. 40337 (August 19, 1998), 63 FR 45544 (August 26, 1998), "Availability of Information on Transactions in Municipal Securities: Rule G–14," *MSRB Reports*, Vol. 19, No. 1 (February 1999) at 23.

Description of Proposed Report. The proposed Daily Transaction Report will provide information on individual transactions in frequently traded municipal securities. It will display, for each transaction in such a security, the CUSIP number, a short description of the issue, the par value traded, the time of trade reported by the dealer, and the price of the transaction.[15] Transactions will be categorized as one of three transaction "types": (i) sales by dealers to customers, (ii) purchases by dealers from customers, and (iii) inter-dealer trades. Reports will be organized by issue, with the most frequently traded issues listed first. Within an issue, trades will be listed in order of time of trade, from the earliest reported time of trade to the latest.[16] Although the size of each day's report will depend on market activity, it is expected that the proposed Daily Transaction Report on average will provide information on approximately 9,000 individual transactions in approximately 1,000 frequently-traded issues each day. Sample copies showing the appearance of the proposed Daily Transaction Report can be obtained at the Board's web site at www.msrb.org.

Subscriptions to the Proposed Report. The proposed Daily Transaction Report will be available by subscription. To obtain a subscription, it will be necessary to sign a subscription agreement, but there will be no fee. In addition, recent Daily Transaction Reports will be available for examination, also free of charge, in the Board's Public Access Facility in Alexandria, Virginia. The Board expects to disseminate the Daily Transaction Report to subscribers mainly via the Internet.[17] Details on how to subscribe, how to obtain a subscription agreement, and the method for accessing files via the Internet will be made available before operation begins.[18] The Board expects that the proposed Service to provide the Daily Transaction Report will be made operational by December 1999.[19]

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[20] of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. * * *

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition because it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

During 1999, the Board began to consider how to improve upon the Combined Daily Report and decided to release individual transaction data on frequently traded issues. On April 29, 1999, the Board made five sample Daily Transaction Reports available for public comment at its web site and in printed form at Board offices. As discussed below, the sample reports were formatted essentially the same as the proposed Daily Transaction Report now being filed with the Commission, except that transactions were divided into two, rather than three, "types."

Responses to the request for comment on the sample Daily Transaction Reports were received from the following commentators.

Raymond James and Associates ("Raymond James")[21]
Mark A. Condic ("Condic") (two letters)[22]
A.G. Edwards & Sons, Inc. ("A.G. Edwards")[23]
The Bond Market Association ("TBMA")[24]
Lebenthal & Co., Inc. ("Lebenthal")[25]

General Comments. Four commentators (Raymond James, A.G. Edwards, TBMA, and Lebenthal) supported the proposed Daily Transaction Report and believe it will be useful to market participants.[26] The fifth commentator (Condic) supported the new Report in his first letter to the

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[14] In determining whether a reported customer transaction will be included for purposes of any transparency report, reported transactions are checked for errors and certain transactions are eliminated from consideration if they contain what appear to be obvious errors (*e.g.*, invalid or unknown CUSIP number, missing dollar price). The Board monitors the data it receives for errors and informs the dealer or its agent of each error that would eliminate a transaction from the Daily Report. The Board is working with dealers and enforcement agencies such as the NASD to improve the quality of reported data and to increase dealer compliance with Rule G–14 reporting requirements.

[15] A dollar price is given for each transaction listed on the report. If the dealer submits a yield with the transaction report, the yield is included with the dollar price. There are instances, however, when a yield is not reported. For example, yields are not submitted by dealers for secondary market inter-dealer transactions because the automated comparison system used to report inter-dealer trades cannot accept yield information on those transactions. In addition, dealers cannot report a yield for customer transactions done on a dollar price basis that involve defaulted or variable rate securities. Transactions including either customers or dealers in new issues without a determined settlement date may be effected and reported by dealers either with a dollar price or a yield. The MSRB Transaction Reporting System will calculate a dollar price from yields submitted for these transactions, using an assumed settlement date if necessary. There must be, however, sufficient securities data available to make this calculation (*e.g.*, coupon, dated date, maturity date, first interest payment date, etc.). For additional information, *see* "Public Reporting of Transactions in Municipal Securities: Rule G–14," *MSRB Reports*, Vol. 18, No. 2 (August 1998) at 25–27.

[16] Where trades are submitted by dealers with an invalid time or no time of trade, the report shows the time of trade as "0."

[17] Current subscribers to the Inter-Dealer and Combined Daily Reports now download their files from the Board's electronic bulletin board system. The Board plans eventually to phase out the electronic bulletin board system and rely exclusively on the Internet delivery mechanism. However, the Board plans to continue to offer the existing Daily Reports and the proposed new Daily Transaction Report via the electronic bulletin board to current subscribers until sufficient time has been given for them to make the conversion to the internet delivery mechanism. Access to electronic copies of the new Daily Transaction Report will be made available each day at the same time to all subscribers regardless of whether the means of access of the specific subscriber is via the internet or the electronic bulletin board.

[18] The Board expects to use an internet-based File Transport Protocol (FTP) method to download files to subscribers. After signing and sending to the Board the subscription agreement, a subscriber will be assigned a log-in name and password for this purpose.

[19] Persons interested in being notified by e-mail of this and other Board announcements may obtain this service by visiting the Board's web site and clicking on "Subscribe to E-mail."

[20] 15 U.S.C. 78o–4(b)(2)(C).

[21] Electronic mail from Mark Magee, Raymond James and Associates, to Bryan Johnson, MSRB, dated May 4, 1999.

[22] Letters from Mark A. Condic to the Municipal Securities Rulemaking Board dated June 15, 1999 ("June 15 letter") and June 22, 1999 ("June 22 letter").

[23] Letter from Clayton Erickson, A.G. Edwards and Sons, Inc., to Diane Klinke, MSRB, dated June 28, 1999.

[24] Letter from Sarah M. Starkweather, TBMA, to Diane Klinke, MSRB, dated July 6, 1999.

[25] Letter from James A. Lebenthal, Lebenthal & Co., Inc., to Diane Klinke, MSRB, dated July 21, 1999.

[26] TBMA's support for this proposed rule change was further clarified in a telephone call between Harold Johnson, MSRB, and Paul Saltzman, TBMA, on October 5, 1999. Telephone call between Larry Lawrence, MSRB, and Kelly Riley, Division of Market Regulation, SEC, on October 7, 1999.

Board but expressed doubt about its usefulness in his second letter.

Further Enhancements to the Report. One commentator (Condic) suggests adding a summary table to the Report keyed to bond ratings, which would show yields and the changes in yield that occur each day. The Board determined not to add such a summary table. Ratings of municipal securities assigned by private bond rating organizations are not currently part of dealer reports to the Board. The Board recognizes that various types of end-users of transaction data may need enhancements and additions to the data a (calculated yields, ratings, extended securities descriptions, etc.) and different means to access and use the data (such as automated search mechanisms and historical records). The Board's long-standing position has been that its primary role is to make available the basic transaction information that is reported to it by dealers. AT the same time, the Board has encouraged other organizations to re-disseminate the data, and to "add value" to the data to target the needs of specific end users.[27]

With respect to bond ratings, the Board notes that TBMA currently makes a web site available that includes data from existing Daily Reports and that this site includes ratings as well as search features and other enhancements designed to make the information particularly useful to investors. The Board also notes that TBMA, in its comment letter on the proposed report indicates that it will continue to provide this kind of service, using the data that will be included in the proposed Daily Transaction Report. The Board believes that organizations such as TBMA are well positioned to meet specific end-user needs and that the Board's role should continue to be as provider of basic transaction data unless it becomes clear that a critical need for enhanced information in the market is not being met.

Adding Yield-To-Call Information. One commentator (A.G. Edwards) suggests that where the displayed yield on the Daily Transaction Report is a "yield to call," the transaction record should include the date and price of the call feature used for the price-yield calculation. The proposed Daily Transaction Report shows a yield for a transaction only if the dealer reported a yield. When reporting yields to the Board, dealers do not report the call features used for yield calculation, so the information requested by the commentator is not available for inclusion on the Daily Transaction Report. While it would be possible for the Board to calculate yields from dollar prices for most transactions, and to show whether the yield was calculated to a call date and call price or to maturity, the Board has chosen not to add this enhancement to the report. In this regard, the Board notes that TBMA's web site currently does include calculated yields for the dollar prices shown.

Distinguising Inter-Dealer Transactions from Purchases from Customers. In the format released for comment, the Daily Transaction Report identified a transaction as one of two types: (1) a sale to a customer, or (ii) "other," (*i.e.*, a purchase by a dealer). Purchases by dealers either are purchases from customers or purchases on the inter-market, but these two types of dealer purchases were not separately identified in the initial draft version of the Daily Transaction Report. One commentator (A.G. Edwards) suggests that the Daily Transaction Report should segregate the two types of purchases by dealers, nothing that it may be relevant to some market analyses whether securities were bought on the inter-dealer market or bought from a customer. Another commentator (Lebenthal) also believes the Report should present inter-dealer prices and retail customer prices separately, in order to avoid misleading customers.

The Board agrees that it would be useful to distinguish between dealers' purchases from customers and from other dealers. Thus, in the proposed report, there are separate columns showing the prices for: (i) sales to customers, (ii) purchases from customers, and (iii) inter-dealer transactions.

Addition of Dealer Identification to the Daily Transaction Report. One commentator (Condic) states that, since the proposed report shows the prices of actively traced municipal securities, it should also show the name and telephone number or any dealer selling the securities. The Board notes that the existence of transaction information reported by a dealer does not indicate whether the dealer has additional securities of that issue to sell. The Board believes that this kind of proposal would be more appropriate to a quotation system rather than a transaction transparency system and therefore has declined to adopt this suggestion.

Voiding Customer Transactions Where Spread is Over 25 Basis Points. One commentator (Condic) suggests that the Board adopt a rule that a transaction is voidable by a customer if the "spread" is more than 25 basis points. This view may be based upon the concern that a customer may buy a security from a dealer and on the next day find that the transaction was not effected at a fair market price.

Board Rule G–30 already addresses the issue of mis-priced securities transactions with customers. The rule states that prices to customers must be fair and reasonable, taking into account all relevant factors about the transaction. The Board historically has allowed the enforcement agencies charged with enforcing Board rules make determinations on whether particular transaction price is fair and reasonable because the enforcement agency is in the best position to determine the facts and circumstances of individual transactions. The Board notes that the surveillance data from the Transaction Reporting Program now provides to the enforcement agencies comprehensive, searchable information on transactions and transaction prices occurring in the market. This should enhance the ability of the enforcement agencies to enforce MSRB Rule G–30. Consequently, the Board is not undertaking further rulemaking with respect to the commentator's suggestion.

Continued Production of Combined Daily Report. In its comment letter, TBMA requests that the Board continue to produce the Combined Daily Report because that report's summary information could serve as the "gateway" to the detailed information of the Daily Transaction Report. TBMA notes that, if the Board does not continue production of the Combined Daily Report, the TBMA might create a similar summary report for its web site. This would be possible since the Daily Transaction Report includes all of the information necessary to produce a Combined Daily Report.

The Board intends to continue, at least initially, production of both the Combined Daily Report and the Inter-Dealer Daily Report after the new report goes into operation. However, the number of subscriptions to these older Daily Reports may diminish in the future as subscribers to the existing reports program their systems to use the more detailed information in the new report. After some time, if subscribership to the older Daily Reports diminishes markedly, the Board may file a proposed rule change with the Commission to discontinue production of the older Reports.

Fees for new Daily Transaction Report. The Inter-Dealer and Combined Daily Reports are each available by subscription for $15,000 annually. One commentator (Condic) states that the proposed Daily Transaction Report should be made available free of charge. Another commentator (TBMA) urges the Board to make transaction information available, electronically and without charge, to dealers for their internal use in market analysis and in their compliance efforts. As noted above, the Board has decided to make subscriptions to the proposed report free. Subscribers, however, will need to sign a subscription agreement that outlines the Board's disclaimer of liability, the proprietary nature of and usage restrictions on the CUSIP numbers and CUSIP descriptions contained in the report, and certain other matters.

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[27] *See, e.g.*, "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information." *MSRB Reports*, Vol. 14, No. 1 (January 1994) at 14.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the MSRB consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal office. All submissions should refer to File No. SR–MSRB–99–8 and should be submitted by November 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29156 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42091; File No. SR–NASD–99–15)

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to the National Adjudicatory Council's Call For Review of Membership Decisions

November 2, 1999.

I. Introduction

On March 19, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to temporarily suspend the National Adjudicatory Council's ("NAC's") oversight of membership applications approved by district staff. On April 16, 1999, the Association filed Amendment No. 1 to the proposal.[3] The proposed rule change and amendment were published in the **Federal Register** on April 26, 1999.[4] On October 20, 1999, the NASD filed Amendment No. 2 to the proposal.[5] The Commission received no comments on the proposal. This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment No. 2.

II. Description of the Proposal

The purpose of the proposed rule change is to temporarily suspend the NAC's oversight responsibilities under NASD rule 1015 requiring review of membership decisions made by NASD district staff, while the Association considers other options for review of the membership admission process. Currently, NASD Rule 1015(a)(2) provides that a membership decision rendered by the Department of Member Regulation shall be subject to a call for review by the NAC. According to the NASD, the NAC has never been able to adequately perform this function. Therefore, the Association proposes formal suspension of this function until December 31, 1999,[6] while it attempts to devise and implement new review procedures.

In August 1997, the SEC approved substantial revisions to the membership review processes to conform the rules to the requirements of the August 8, 1996 SEC Order correcting abuses in certain NASD procedures ("Order").[7] Following the Order, the authority to approve membership application was transferred from NASD District Business Conduct Committees to NASD Regulation staff.[8] Applicants granted restricted membership or refused admission could appeal to the National Business Conduct Committee ("NBCC"), the NAC's predecessor, which was also charged with oversight of admissions.[9] During consideration of the revisions to the NASD admissions process in 1997, the call for review provision was included in the Rule 1010 Series so that members would have a mechanism to provide input on membership decisions. Nonetheless, the NBCC, which requested the change, was primarily concerned about decisions approving unrestricted memberships. Since a successful applicant would have no incentive to appeal an unrestricted admission, the NBCC wished to have a mechanism to review the unrestricted admissions, if warranted.

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[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (April 16, 1999) ("amendment No. 1").

[4] Securities Exchange Act Release No. 41311 (April 20, 1998), 64 FR 20347.

[5] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant director, Division, Commission (October 18, 1999) ("Amendment No. 2"). In Amendment No. 2, the NASD requests that the proposed end date of the temporary suspension of NASD Rule 1015 be change from October 31, 1999 to December 31, 1999.

[6] *Id.*

[7] Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc.).

[8] Securities Act Release Nos. 39350 (Nov. 21, 1997), 62 FR 64000 (Dec. 3, 1997) and 39470 (Dec. 19, 1997), 62 FR 67927 (Dec. 30, 1997) (Notice and Notice and Accelerated Approval of File No. SR–NASD–97–81, respectively.)

[9] The Association asserts that during consideration of the revisions to the NASD admissions process in 1997, the call for review provision was included in the Rule 1010 Series so that members would have a mechanism to provide input on membership decisions.

The Association has never been able to implement the NAC's call for review authority. The NASD states that several attempts have been made to do so, none of the procedures tried have been particularly effective.[10] Therefore, the NAC and the NASD Board agreed to request temporary suspension of the NAC's review responsibilities. At the same time, the Association asserts that it will review the NASD Rule 1010 Series admissions procedures in their entirety, including the role of the NAC in that process. The Association expects to conclude its review by December 31, 1999.[11]

III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A of the Act,[12] and particularly Section 15A(b)(8) thereof.[13] Section 15A(b)(8) requires that the rules of a national securities association provide a fair procedure for the denial of membership to any person seeking membership therein.[14] This must be balanced against the more general requirement that the rules of a national securities association promote the public interest and the protection of investors. Thus, while the Commission finds that it is reasonable to temporarily suspend the NAC's call for review responsibilities until December 31, 1999,[15] during that time the Association must actively seek to develop an effective mechanism for reviewing unrestricted memberships approved by its district office staff, which the NASD has represented may be heightened oversight NASD headquarters staff of the NASD district membership decisions.[16]

The Commission notes, notwithstanding its approval of the Association's proposal to temporarily suspend NASD Rule 1015, the NASD is still responsible for all oversight of membership admissions decisions, both restricted and unrestricted. In addition, during the temporary suspension of NASD Rule 1015, the approved procedures for the denial of membership to any person seeking NASD membership will not be affected. In approving the Association's proposal, the Commission relies upon the NASD's representation that the proposed rule change will neither alter a membership applicant's ability to independently seek NAC review of a membership decision, nor prejudice a membership applicant's rights under the NASD Rules.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 2 changes the proposed end date of the temporary suspension of NASD Rule 1015 from October 31, 1999, to December 31, 1999. The Commission believes that the extension of the temporary suspension of NASD Rule 1015 is reasonable in light of the efforts taken by the NASD to find an appropriate resolution for the review of membership decisions. The Commission notes that in NASD Notice to Members 99–67 the NASD published its recommendations for new procedures for the review of membership decisions for membership comment. The Commission believes an extension of the temporary suspension of NASD Rule 1015 should provide the Association with adequate time to consider and integrate any comments into the review procedures that will ultimately be implemented. Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(8) and 19(b) of the Act,[17] to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–15 and should be submitted by [insert date 21 days from the date of publication].

V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change, as amended, (SR–NASD–99–15) is temporarily approved, until December 31, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29157 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

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[10] For example, the Association contemplated limiting the number of staff decisions to be considered for a call for review by focusing the process on certain categories of decisions, such as only new member application decisions or certain types of business expansions. The NASD determined, however, that such a procedure might be perceived as biased against those firms that fell within a selected category.

[11] *See* note 5, *above*.

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(8).

[14] *Id.*

[15] *See* note 5, *above*.

[16] The Commission notes that even prior to the noticing of this proposed rule change the NASD represented that it was working to achieve a workable solution to the implementation problems, and that significant progress was being made. This representation is critical to the Commission's approval of this proposal.

[17] 15 U.S.C. 78*o*–3(b)(8) and 78s(b).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42086; File No. SR–NYSE–99–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

November 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 1999, the New York Stock Exchange, Inc. (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. On November 1, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[3] The

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 to the proposed rule change requests that the Commission exercise its discretionary authority under rule 19b–4(f)(6)(iii) of

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of the pilot fees ("Pilot Fee Structure") currently set forth in Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material," (collectively the "Rules"). The Rules provide guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Fee Structure is presently scheduled to expire on November 1, 1999. The Exchange proposes to extend the Pilot Fee Structure through January 3, 2000.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As first adopted, the Pilot Fee Structure revised the Rules to lower certain reimbursement guidelines, incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate multiple nominees.[4] The Pilot Fee Structure has been modified and extended several times,[5] most recently by Commission order dated July 29, 1999.[6]

In June of this year, the Exchange submitted a proposed rule change to the Commission ("June Filing") to further revise the Pilot Fee Structure and extend its effectiveness through August 31, 2001.[7] The June Filing proposes to reduce the basic processing fee and nominee coordination fee that NYSE member organizations and proxy distribution intermediaries may recover in connection with the distribution of proxy and shareholder communication materials to shareholders. The June Pilots also proposes to define the term "nominee" as it relates to the calculation of the nominee coordination fee.

The Exchange believes that an extension of the Pilot Fee Structure through January 3, 2000, will give the Commission additional time to fully consider the June Filing and the public comment letters regarding the June Filing,[8] without a lapse in the current Rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the Pilot Fee Structure (*i.e.*, the fees in effect prior to March 14, 1997) would return to effectiveness after November 1, 1999. The Exchange believes that such a result could be counterproductive and cause confusion among NYSE member organizations and issuers, especially given that the June Filing, proposing to extend the revised Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[9] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirement under Section 6(b)(5)[10] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date (or such shorter time period as designated by the Commission); the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

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the Act by designating such shorter time period, which waives the requirement that written notice of a "non-controversial" proposed rule change be provided to the Commission at least five business days before filing. *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Sharon Lawson, Senior Special Counsel, Division of Market Regulations, Commission, dated November 1, 1999 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1970. The Commission initially approved the Pilot Fee Structure as a one-year pilot, and designated May 13, 1998, as the date of expiration.

[5] *See* Securities Exchange Act Release Nos. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50); 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); and 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999) (order extending Pilot Fee Structure through August 31, 1999).

[6] *See* Securities Exchange Act Release No. 41669 (July 29, 1999), 64 FR 43007 (Aug. 6, 1999) (order extending Pilot Fee Structure through November 1, 1999).

[7] *See* Securities Exchange Act Release No. 41549 (June 23, 1999), 64 FR 35229 (June 30, 1999).

[8] The Commission received comment letters from the Council of Institutional Investors, Association of Publicly Traded Companies, and Automatic Data Processing ("ADP"). The ADP comment letter included an economic analysis of the June Filing, which analysis was prepared by a consulting firm retained and paid by ADP. *See* Public File SR–NYSE–99–21.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

of the Exchange Act[12] and Rule 19b–4(f)(6)[13] thereunder.

Under Rule 19b–4(f)(6)(iii),[14] an exchange is ordinarily required to provide the Commission with written notice of its intent to file a "non-controversial" proposed rule change at least five business days prior to the filing date. In Amendment No. 1, however, the Exchange requested that the Commission exercise its discretionary authority under Rule 19b–4(f)(6)(iii) by designating such shorter time period so that the five day pre-filing requirement would be waived. Given the nature of the filing and absence of material issues, the Commission believes that it is appropriate to waive the five day pre-filing requirement for the proposed rule change.

In addition, a proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may take effect no later than November 1, 1999. The immediate effectiveness would allow the current Pilot Fee Structure to continue uninterrupted, and would provide the Commission with additional time to complete its review of the June Filing and related comment letters.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective immediately upon filing for the following reasons. The proposed rule change extends the expiration date of the Pilot Fee Structure from November 1, 1999, through January 3, 2000. The extension of the Pilot Fee Structure will provide the Commission with further time to complete its review and evaluation of the June Filing. In particular, the Commission is still reviewing the economic analysis of the June Filing that was submitted by ADP. Thus, the extension will afford the Commission the additional time necessary to thoroughly consider the substance of ADP's economic analysis and the issues raised in the comment letters.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rates for proxy materials distributed after November 1, 1999, will revert to those in effect prior to March 14, 1997. The Commission believes such a result could be confusing and counterproductive, especially given that the June Filing proposing to extend the Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule change, and Amendment No. 1, become immediately effective upon the date of filing, October 28, 1999. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–9943 and should be submitted by November 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29159 Filed 11–5–99; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42087; File No. SR–NYSE–99–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to a Proposed Rule Change by the New York Stock Exchange, Inc. Extending a Pilot Program Relating to Continued Listing Standards Through December 1, 1999

November 1, 1999.

I. Introduction

On June 22, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 8 of its *Listed Company Manual* ("Manual"), make corresponding changes to NYSE Rule 499, and implement the proposed changes pursuant to a pilot program ("pilot"). On July 26, 1999, the Commission issued notice of the filing and approved, on an accelerated basis, the portion of the filing establishing a pilot through November 1, 1999.[3]

On October 26, 1999, the NYSE submitted Amendment No. 1, proposing to revise the continued listing criteria applicable to closed-end investment companies ("Funds').[4] On November 1, 1999, the NYSE submitted Amendment No. 2, proposing to extend the pilot until December 1, 1999, or such earlier time as the Commission approves the Exchange's request for permanent approval of the program.[5] The Commission is publishing this notice to solicit comments on and grant accelerated approval to Amendment No. 2.

II. Proposed Rule Change

In Amendment No. 2, the NYSE is proposing to extend the pilot which amends Section 8 of the NYSE Manual and makes corresponding changes to NYSE Rule 499 regarding criteria governing the continued listing of securities. The proposed rule change implemented pursuant to the pilot modifies several of the NYSE's existing continued listing criteria, codifies certain Exchange policies regarding the NYSE's continued listing criteria, replaces certain of the current criteria with new continued listing criteria, and creates subsections in the continued listing section.[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41648 (July 26, 1999), 64 FR 41986 (August 2, 1999).

[4] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation, SEC, dated October 25, 1999.

[5] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, SEC, dated November 1, 1999.

III. Discussion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the extension of the pilot until December 1, 1999, or such earlier time as the Commission takes final action on the Exchange's request for permanent approval of the pilot, is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the extension is consistent with Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public. The Commission believes that continuation of the pilot will maintain the status quo while the Commission and the Exchange review the proposed changes to the continued listing criteria, including Amendment No. 1.

The Commission finds good cause for approving the extension of the pilot prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could be disruptive to the NYSE market and confusing to market participants to reintroduce the previous continued listing criteria for, potentially, a brief period while the Commission considers the request for permanent approval of the pilot.[8] Additionally, a lapse in the pilot could affect companies whose position is precariously balanced between listing and delisting depending on whether the proposed continued listing criteria are approved. This is particularly true of Funds, which could be subject to the original continued listing criteria, the criteria proposed and implemented in the pilot, or the criteria proposed in Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–29 and should be submitted by November 29, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that Amendment No. 2 to the proposed rule change (SR–NYSE–99–29), which extends the pilot to December 1, 1999, or such earlier time as the Commission takes final action on the Exchange's request for permanent approval of the program, is hereby approved on an accelerated basis.[10]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29160 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3225]

State of Florida; (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency dated October 24, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on October 14, 1999 and continuing through October 24, 1999.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 18, 1999, and for economic injury the deadline is July 20, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 28, 1999.

Herbert L. Mitchell

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 99–29091 Filed 11–5–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3212]

State of North Carolina; (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated October 21, 1999, the above-numbered Declaration is hereby amended to re-open the incident period for this disaster as a result of the continued flooding caused by Hurricanes Floyd and Irene in the State of North Carolina. The incident period is now established as beginning on September 15, 1999 and continuing.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 14, 1999, and for economic injury the deadline is June 16, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 28, 1999.

Herbert L. Mitchell,

Acting Associate Administrator, for Disaster Assistance.

[FR Doc. 99–29092 Filed 11–5–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3155]

Notice of Proposal To Extend Memorandum of Understanding With El Salvador

Pursuant to the authority vested in me under Department of State Delegation of Authority 234, dated October 1, 1999, and pursuant to 19 U.S.C. 2602(f)(1), I hereby propose extension of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological material from the Prehispanic Cultures of the Republic of El Salvador, signed March 8, 1995. Pursuant to 19 U.S.C. 2602(f) the views and recommendations of the Cultural Property Advisory Committee regarding this proposal are being requested.

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[6] *See* Securities Exchange Act Release No. 41648, *supra* note 3.

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission's approval of the pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving Amendment No. 2, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

Dated: November 2, 1999.

Evelyn S. Lieberman,

Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 99–29165 Filed 11–5–99; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3154]

Notice of Meeting of the Cultural Property Advisory Committee

The Cultural Property Advisory Committee will meet on Monday, November 22, 1999, from approximately 9 a.m. to approximately 5 p.m., and on November 23 from approximately 8:30 a.m. to approximately 2 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. During its meeting on November 22, the Committee will continue its review of a cultural property request from the Government of the Republic of Italy filed under Article 9 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Italy believes its cultural patrimony to be in jeopardy from pillage. It seeks U.S. import restrictions on categories of archaeological material in stone, metal, ceramic, bone, and glass, and wall paintings from the 5th millennium B.C. to the 5th c. A.D., although the preponderance of material represents the period between the 8th c. B.C. and the 5th c. A.D. The request is being reviewed by the Committee in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The Committee will report its findings and recommendations thereunder. Deliberations were conducted by the Committee on October 12–13 during which time it held an open session to receive public comment. The Committee also has received considerable written comment for its consideration and welcomes any additional written comment. The meeting on November 22 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

During its meeting on November 23 the Committee will commence a review of a proposal to extend the Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Prehispanic Cultures of the Republic of El Salvador. An open session to hear comment about the proposed extension of the MOU will be held from 9:30 a.m. to 11 a.m. The balance of the meeting on November 23 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). A copy of the MOU and the designated list of protected categories of archaeological material and further information about U.S. implementation of the 1970 Convention may be found at http://e.usia.gov/education/culprop. Persons wishing to attend the open portion of the meeting on November 23 must call the Cultural Property Office at (202) 619–6612 no later than 5 p.m. (EDT) Thursday, November 18, 1999, to arrange for admission. Written comments may be sent to Cultural Property, Department of State, Annex 44, 301 4th Street, SW., Rm. 247, Washington, DC. 20547.

Dated: November 2, 1999.

Evelyn S. Lieberman,

Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.

Determination To Close Portions of the Meeting of the Cultural Property Advisory Committee, November 22–23, 1999

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the meeting of the Cultural Property Advisory Committee on November 22, 1999, from approximately 9 a.m. to 5 p.m., and on November 23, from approximately 8:30–9:30 a.m. and from 11 a.m. to 2 p.m., at which there will be deliberation of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, will be closed. This determination shall be published in the **Federal Register.**

Dated: November 2, 1999.

Evelyn S. Lieberman,

Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 99–29164 Filed 11–5–99; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualification issues.

DATES: The meeting is scheduled for December 14, 1999, beginning at 10:00 a.m.

ADDRESSES: Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC., Room 813.

FOR FURTHER INFORMATION CONTACT: Cindy Nordlie, Office of Rulemaking, ARM–108. Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone: (202) 267–7627; FAX (202) 267–5075; e-mail: cindy.nordlie@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 USC App II), notice is given of an ARAC meeting to be held December 14, 1999, at the Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC, Room 813.

The agenda will include a review of the Licensing Harmonization Working Group's report and recommendations. The report and its recommendations are limited to cockpit crew. There will be a vote taken on the report and its recommendations, the result of which will determine if the report and its recommendations should be forwarded to the FAA. Copies of the document to be voted on are available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by December 3, 1999, to present oral statements at the meeting. Written statements may be presented at any time before the meeting by providing 25 copies to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** If you are in need of special assistance or require a reasonable accommodation for this meeting, requests should be made no later than 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on November 2, 1999.

Ruth Ann Hodges,

Assistant Executive Director for Training and Qualification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–29146 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Docket: RSPA–98–4957 Notice 11

Request for Comments and OMB Approval

AGENCY: Research and Special Programs Administration, DOT

ACTION: Notice and request for public comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration's (RSPA) published a notice requesting extension of an information collection in support of the Office of Pipeline Safety (OPS) for Response Plans for Onshore Oil Pipelines (64 CFR 46746 August 26, 1999). No comments were received. The public is being given another 30 days to provide comments on this information collection.

DATES: Comments on this notice must be received on or before December 8, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW. Washington, D.C. 20950, (202) 366–6205 or by electronic mail at Marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Response Plans for Onshore Oil Pipelines.

OMB Number: 2137–0589.

Type of Request: Extension of an existing information collection.

Abstract: The Oil Pollution Act of 1990 (OPA 90) requires that certain pipelines that transport oil must develop a response to minimize the impact of an oil discharge in the case of an accident. These response plans enhance the spill response capability of pipeline operators.

Estimate of Burden: The average burden hours per response is approximately 47.

Respondents: Oil Pipeline operators.

Estimated Number of Respondents: 1,400.

Estimated Total Annual Burden on Respondents: 65,467 hours.

Frequency: Every three years.

Use: To enhance response capability in the event of an oil spill.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC 20590 Monday Through Friday from 9:00 A.M. to 5:00 P.M. Excluding Federal holidays. This information collection can also be reviewed electronically on the worldwide web at dms.dot.gov.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Send comments to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation. All comments will also be a matter of public record.

Issued in Washington, DC on November 2, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–29143 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the seventeenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held December 6, through December 15, 1999 in Geneva, Switzerland.

DATES: November 30, 1999, 10:00 AM–1:00 PM, Room 6202–6204; January 6, 2000, 10:00 AM–1:00 PM, Room 3328.

ADDRESSES: Both meetings will be held at the Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, or Bob Richard, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purposes of the first meeting will be to prepare for the seventeenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UNSCOE session and to prepare for the eighteenth session of the UNSCOE which is scheduled for July 3–14, 2000 in Geneva, Switzerland. Topics to be covered during the public meeting include (1) Global harmonization of classification criteria, (2) Reformatting the UN Recommendations into a model rule, (3) Criteria for Environmentally Hazardous Substances, (4) Intermodal portable tank requirements including requirements for the transport of solids in portable tanks, (5) Requirements applicable to small quantities of hazardous materials in transport (limited quantities) including package marking requirements, package quantity limits and requirements applicable to consumer commodities, (6) Harmonized requirements for compressed gas cylinders, (7) Classification of individual substances, (8) Requirements for bulk and non-bulk packaging used to transport hazardous materials, (9) Requirements for Toxic by Inhalation (TIH) substances and (10) Hazard communication requirements including harmonized shipping papers.

The public is invited to attend without prior notification.

Documents

Copies of documents for the UNSCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at http://www.unece.org/trans/main/dgdb/dgsubc/dgscomm.html. Information concerning UN dangerous goods meetings including agendas can be downloaded at *http://www.unece.org/trans/danger/meetings.htm#ST/SG.* These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm. RSPA's site also provides information regarding the UNSCOE and related matters such as a summary of decisions taken at the 16th Session of the UNSCOE, meeting dates and a summary of the primary topics which the UNSCOE plans to address in the 1999–2000 biennium.

Issued in Washington, DC, on November 2, 1999.

Alan I. Roberts,

Assoociate Administrator for Hazardous Materials Safety.

[FR Doc. 99–29142 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33810]

Wisconsin Chicago Link Ltd.—Lease Exemption—Pennsylvania Lines LLC

Wisconsin Chicago Link Ltd. (WCLL), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to lease from Pennsylvania Lines LLC (PRR) approximately 1.9 miles of rail line (the Panhandle Line) of the former Pittsburgh Cincinnati, Chicago & St. Louis Railroad Company (PCC&StL) in Chicago, Cook County, IL.[1] The Panhandle Line extends between: (1) A connection with CSX Transportation, Inc. (CSXT) via the Altenheim Subdivision of The Baltimore and Ohio Chicago Terminal Railroad Company at Ogden Junction near Rockwell Street (approximately PCC&StL milepost 309.8), and (2) a point (approximately PCC&StL milepost 307.9) 600 feet north of the north bank of the Chicago Sanitary and Ship Canal, near the Ash Street Interlock. The Panhandle Line is paralleled for its entire length by terminal trackage of other carriers, and connects at its north and south ends with the lines of numerous other railroads.[2] WCLL will also obtain incidental, overhead trackage rights extending south from PCC&StL milepost 307.9, a distance of approximately 2 miles to present or future connections with rail lines of Norfolk Southern Railway Company (NS), Canadian National/Grand Trunk Western Railroad, Inc., Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company and The Burlington Northern and Santa Fe Railway Company.

The proposed lease of the Panhandle Line was the subject of an October 17, 1997 settlement agreement entered into by: (1) Norfolk Southern Corporation and NS, which now control and operate PRR, and (2) Wisconsin Central Transportation Corporation (WCTC) and its then existing carrier affiliates.[3] At the time of filing of this notice, the parties were negotiating a definitive lease agreement that would effectuate the intent and purpose of the prior agreement. According to the notice, that lease agreement provides for WCLL's acquisition of a leasehold interest in the Panhandle Line, a portion of the associated right-of-way and certain incidental overhead trackage rights.[4]

WCLL indicates that WCTC will shortly be filing a petition for exemption in a related proceeding in STB Finance Docket No. 33811, *Wisconsin Central Transportation Corporation—Continuance in Control Exemption—Wisconsin Chicago Link Ltd., wherein WCTC will seek to continue in control of WCLL*[5] once it leases the Panhandle Line and becomes a carrier.

WCLL further states that the Panhandle Line is currently out of service. WCLL intends to reconstruct the line and add additional capacity. Initially operations on the line will be conducted by NS, CSXT, and WCL pursuant to trackage rights. It is anticipated that CSXT will dispatch a portion of the Panhandle Line.

The transaction was expected to be consummated on or shortly after October 29, 1999.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33810, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Janet H. Gilbert, 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: November 2, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–29172 Filed 11–5–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Public Tour Survey Card.

DATES: Written comments should be received on or before December 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of the Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, S.W., Washington, D.C. 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of the Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, S.W., Washington, D.C. 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

Title: Survey Card.

OMB Number: 1520–0005.

Form Number: BEP 1883.

Abstract: The Bureau of Engraving and Printing solicit voluntary feedback from the public regarding the quality of our public tour, exhibits, and displays.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

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[1] WCLL states that its revenues will not exceed those that would qualify it as a Class III rail carrier and its revenues are not projected to exceed $5 million.

[2] Wisconsin Central Ltd. (WCL), a WCLL affiliate, operates pursuant to overhead trackage rights on the Altenheim Subdivision that will connect with the north end of the Panhandle Line.

[3] The Panhandle Line was formerly owned by Consolidated Rail Corporation (Conrail). Pursuant to a transaction approved by the Board, and fully consummated by the parties on June 1, 1999, PRR was assigned assets designated to be operated as part of the NS rail system (the PRR-Allocated Assets). *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation,* STB Finance Docket No. 33888, Decision No. 89 (STB served July 23, 1998).

[4] According to the notice, the lease agreement further provides that, after five years, WCLL has an option to purchase the Panhandle Line for an amount determined in accordance with provisions of the agreement.

[5] Pending a Board decision granting WCTC's petition for exemption to control WCLL, the stock of WCLL will be placed in an independent voting trust established in accordance with 49 CFR 1013.

Estimated Total Annual Burden Hours: 8.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 14, 1999.

Pamela V. Grayson,

Management Analyst.

[FR Doc. 99–29097 Filed 11–5–99; 8:45 am]

BILLING CODE 4840–01–U

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Mutilated Currency Redemption Customer Service Survey.

DATES: Written comments should be received on or before December 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, S.W., Washington, D.C. 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, S.W., Washington, D.C. 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

Title: Mutilated Currency Redemption Customer Service Survey.

OMB Number: 1520–0003.

Form Number: BEP 5284.

Abstract: The Office of Currency Standards, Bureau of Engraving and Printing, conduct surveys to ascertain overall customer satisfaction with procedures employed and services rendered in the redemption of mutilated currency.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden Hours: 15.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 14, 1999.

Pamela V. Grayson,

Management Analyst.

[FR Doc. 99–29098 Filed 11–5–99; 8:45 am]

BILLING CODE 4840–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 673

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 673, Statement For Claiming Benefits Provided by Section 911 of the Internal Revenue Code.

DATES: Written comments should be received on or before January 7, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Statement For Claiming Benefits Provided by Section 911 of the Internal Revenue Code.

OMB Number: 1545–0666.

Form Number: 673.

Abstract: Under section 911 of the Internal Revenue Code certain income earned abroad is excludable from gross income. Form 637 is completed by a citizen of the United States and is furnished to his or her employer in order to exclude from income tax withholding all or part of the wages paid the citizen for services performed outside the United States.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 1, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–29088 Filed 11–5–99; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 64, No. 215
Monday, November 8, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Types and Quantities of Agricultural Commodities Availabile for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for the Period October 1, 1999 Through December 31, 2000

Correction

In notice document 99–27745, appearing on page 57437, in the issue of Monday, October 25, 1999, make the following correction:

On page 57437, in the first column, the subject heading is corrected to read as set forth above.

[FR Doc. C9–27745 Filed 11-5-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-271-002]

East Tennessee Natural Gas Company; Notice of Compliance Filing

Correction

In notice document 99– 28185 beginning on page 58045 in the issue of Thursday, October 28, 1999, the docket line should appear as set forth above.

[FR Doc. C9–28185 Filed 11–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 36 and 36a

RIN 0917-AAO3

Currently Effective Indian Health Service Eligibility Regulations

Correction

In rule document 99–27417 beginning on page 58318, in the issue of Thursday, October 28, 1999, make the following correction:

PART 36 — [CORRECTED]

On page 58318, in the third column, in amendatory instruction 2., in the third line, "(h)(i)" should read "(h)(1)".

[FR Doc. C9–27417 Filed ??–??–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request NIH Intramural Research Training Award, Program Application

Correction

In notice document 99–28270, appearing on page 58071, in the issue of Thursday, October 28, 1999, make the following correction:

On page 58071, in the table, under the heading "Estimated total annual burden hours requested", in the fifth line down, "27" should read "3,386".

[FR Doc. C9–28270 Filed 11-5-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1430–01; NMNM102473]

Notice of Realty Action: Notice of Termination of Recreation and Public Purpose Classification and Opening Order and Direct Sale of Public Land, New Mexico

Correction

In notice document 99–24844 beginning on page 51554, in the issue of Thursday, September 23, 1999, make the following correction:

On page 51555, in the first column, under **New Mexico Principal Meridian**, in the second line, "38" should read "28".

[FR Doc. C9–24844 Filed 11–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airpsace Docket No. 99–AGL–41]

Modification of Class E Airspace; Cable Union, WI

Correction

In rule document 99–25852 beginning on page 53889, in the issue of Tuesday, October 5, 1999, make the following correction:

§ 71.1 [Corrected]

On page 53889, in the third column, in § 71.1, in the 16th line from the top of the page, "Hayard" should read "Hayward".

[FR Doc. C9–25852 Filed 11–5–99; 8:45 am]

BILLING CODE 1505–01–D

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federal register

Monday
November 8, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 431, 433, 435, and 457
State Child Health; Implementing Regulations for the State Children's Health Insurance Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 433, 435, and 457;

[HCFA-2006-P]

RIN 0938-AI28

State Child Health; Implementing Regulations for the State Children's Health Insurance Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: Section 4901 of the Balanced Budget Act of 1997 (BBA) amended the Social Security Act by adding a new title XXI. Title XXI provides funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner. To be eligible for funds under this program, States must submit a State plan, which must be approved by the Secretary.

This proposed rule would implement provisions related to the State Children's Health Insurance Program (CHIP)including State plan requirements, coverage and benefits, eligibility, beneficiary financial responsibility, strategic planning, substitution of coverage, program integrity, and waivers. In addition, this proposed rule would implement the provisions of sections 4911 and 4912 of the BBA, which amended title XIX of the Act to expand State options for coverage of children under the Medicaid program.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on January 7, 2000.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-2006-P, P.O. Box 8010, Baltimore, MD 21244-8010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC, or

Room C5-14-03, Central Building, 7500 Security Boulevard, Baltimore, Maryland

If you wish to submit written comments on the information collection requirements contained in this proposed rule, you may submit written comments to the following:

Lori Schack, HCFA Medicaid Desk Officer, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503; and

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

ATTN: John Burke, HCFA-2006-P

FOR FURTHER INFORMATION CONTACT:

Regina Fletcher for general information, (410)786-3293;

Diona Kristian for subpart A, State plan, (410)786-3283;

Jeannine Witles for subpart C, Eligibility, (410)786-5664;

Cindy Ruff for subpart D, Benefits, (410)786-5916;

Christine Hinds for subpart E, Cost sharing, (410)786-4578;

Barbara Greenberg for subpart G, Strategic planning, (410)786-0435;

Anna Fallierias for subpart H, Substitution of coverage, (410)786-8281;

Jennifer Ryan for subpart I, Program integrity and beneficiary protections, (410)786-1304;

Cindy Ruff for subpart J, Allowable waivers, (410)786-5916;

Judy Rhoades for section K of preamble, Expanded coverage of children under Medicaid and Medicaid coordination, (410)786-4462;

Chris Hinds for section L of preamble, Medicaid disproportionate share hospital expenditures, (410)786-4578;

Joan Mahanes for section M of preamble, Vaccines for Children program, (410)786-4583

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-2006-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443-G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690-7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 or by faxing to (202) 512-2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

Section 4901 of the Balanced Budget Act of 1997 (BBA), Public Law 105-33, as amended by Public Law 105-100, added title XXI to the Social Security Act (the Act). Title XXI authorizes a new State Children's Health Insurance Program (CHIP) to assist State efforts to initiate and expand the provision of child health assistance to uninsured, low-income children. Under title XXI, States may provide child health assistance primarily for obtaining health benefits coverage through (1) obtaining coverage under a separate child health program that meets the requirements specified under section 2103 of the Act; or (2) expanding benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both. To be eligible for funds under this program, States must submit a State child health plan (State plan), which must be approved by the Secretary.

This proposed rule would implement the following sections of title XXI of the Act:

- Section 2101 of the Act, which sets forth the purpose of title XXI, the requirements of a State plan, State entitlement to title XXI funds, and the effective date of the program.

- Section 2102 of the Act, which sets forth the requirements for a State plan, including eligibility standards and methodologies, coordination, and outreach.
- Section 2103 of the Act, which contains coverage requirements for children's health insurance.
- The following parts of section 2105 of the Act: 2105(c)(2)(B) relating to cost-effective community based health delivery systems; 2105(c)(3) relating to family coverage; 2105(c)(5) relating to cost sharing and 2105(c)(7) relating to limitations on payment for abortion.
- Section 2106 of the Act, which describes the process for submission, approval and amendment of State child health plans and plan amendments.
- Section 2107 of the Act, which sets forth requirements relating to strategic objectives, performance goals and program administration.
- Section 2108 of the Act, which requires States to submit annual reports and evaluations of the effectiveness of the State's title XXI plan.
- Section 2109 of the Act, which provides that health insurance coverage provided under a State child health program and coverage provided as a cost effective alternative are treated as "creditable coverage" under section 2701(c) of the Public Health Service Act (PHS).
- Section 2110 of the Act, which includes title XXI definitions.

This proposed rule would also implement the provisions of sections 4911 and 4912 of the BBA, which amended title XIX of the Act to provide expanded coverage to children under the Medicaid program. Specifically, section 4911 of the BBA set forth provisions for use of State child health assistance funds for targeted and optional low-income children eligible for enhanced Medicaid match for expanded eligibility under Medicaid. Section 4912 of the BBA added a new section 1920A to the Act creating a new optional group for presumptive eligibility for children. Both title XXI and title XIX statutory provisions are discussed in detail in section II of this preamble.

We note that on March 4, 1999, we published in the **Federal Register** a proposed rule concerning financial program allotments and payments to States under CHIP at 64 FR 10412. In that rule, we proposed to implement sections 2104 and portions of 2105 of the Act, which relate to allotments and payments to States under title XXI. For a detailed discussion of title XXI and related title XIX financial provisions including the allotment process, the payment process, financial reporting requirements and the grant award process, refer to the March 4, 1999 proposed rule.

II. Provisions of the Proposed Rule

A. Overview

Title XXI authorizes grants to States that initiate or expand health insurance programs for low-income, uninsured children. A Children's Health Insurance Program (CHIP) under title XXI is jointly financed by the Federal and State governments and is administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligible groups, benefit packages, payment levels for coverage and administrative and operating procedures. CHIP provides a capped amount of funds to States on a matched basis for fiscal years (FY) 1998 through 2007. At the Federal level, CHIP is administered by the Department of Health and Human Services, through the Center for Medicaid and State Operations (CMSO) of the Health Care Financing Administration (HCFA).

Federal payments under title XXI to States are based on State expenditures under approved plans that could be effective on or after October 1, 1997. The short time frame between the enactment of the BBA (August 5, 1997) and the availability of the funding for States required the Department to begin reviewing CHIP plans submitted by States and Territories at the same time as it was issuing guidance to States on how to operate the CHIP programs. The Department worked closely with States to disseminate as much information as possible, as quickly as possible, so States could begin to implement their new programs expeditiously.

The Department began issuing guidance to States within one month of enactment of the BBA. We provided information on each State's allotment through two **Federal Register** notices published on September 12, 1997 (62 FR 48098) and February 8, 1999 (64 FR 6102). We developed a model application template to assist State's in applying for title XXI funds. We provided over 100 answers to frequently asked questions. We issued policy guidance through a series of 20 letters to State health officials. All of this information is available on our website located on the Internet at "http://www.HCFA.gov." We have also provided technical assistance to all States in development of CHIP applications.

CHIP programs operate in almost every State and Territory in the country. As of April 27 1999, we have approved 52 CHIP plans and have approved 15 amendments to these plans. Prior to the enactment of Public Law 105–174, which gave States an additional year to secure their fiscal year 1998 CHIP allotments, a number of States originally submitted "place-holder" plans in order to secure their fiscal year 1998 allotments. Many of these States now indicate that they will submit amendments to further expand their programs. Over half of the approved CHIP plans already provide coverage to families with income levels at or above 200 percent of the poverty line. We expect that most of the States and Territories that have not yet expanded eligibility to children in families with income at or below 200 percent of the Federal poverty line will eventually do so.

States and Territories have used the guidance we have issued to design and implement their programs. We intend to formalize this guidance in two regulations—a financial regulation mentioned previously (the proposed rule published March 4, 1999) and this proposed programmatic regulation. This proposed regulation incorporates much of the programmatic guidance that already has been issued to States.

In addition, this proposed rule addresses beneficiary protections necessary for the program to effectively function. These fundamental protections are consistent with the Presidential directive known as the Consumer Bill of Rights and Responsibilities. See subpart I for a discussion of the rights which are addressed in this proposed rule.

This proposed regulation builds upon previously released guidance and therefore, most of the regulation represents policies that have been in operation for some time. As we continue to implement the program, however, we have identified a number of areas in which we further elaborate on previous guidance or propose new policies that have not yet been made public. In an attempt to highlight the key issues, a brief summary follows:

- Subpart A—State Plan Requirements

The regulation would clarify several conditions under which States must submit amendments to approved CHIP plans. For example, we propose that States submit a plan amendment when the funding source of the State share changes, prior to such change taking effect. The purpose of this proposed requirement is to ensure that programs are operated using only permissible sources of funding. In addition, amendments to impose cost-sharing on beneficiaries, increase existing cost-sharing charges, or increase the cumulative cost sharing maximum will be considered the same as amendments proposing a restriction in benefits. Therefore, States will be required to follow rules regarding prior public notice and retroactive effective dates.

- Subpart C—Eligibility, Screening, Applications and Enrollment

Title XXI prohibits the participation of children of public agency employees who are eligible to participate in a State health benefits plan. The only case where such a child could be covered under CHIP is the case where the employer provides no more than a nominal contribution available for the child's health benefits coverage. We propose to clarify that these children would not be considered to be "eligible for health benefits coverage under a State health benefits plan" and could then be eligible for coverage through CHIP.

- Subpart D—Coverage and Benefits

The proposed regulation provides some flexibility for States in keeping the benefit package current. States using the benchmark benefit package option are not required to submit an amendment each time the benchmark package changes. States need only submit amendments when proposing to make a change to the benefit package for the separate child health program, and then they only need to compare their benefit package to the most recent benchmark package.

The proposed regulation also clarifies policy regarding the conditions under which abortion services are permitted under title XXI and proposes that managed care entities providing this service must do so under a separate contract.

- Subpart E—Beneficiary Financial Responsibilities

The statute places a 5 percent cap on cost-sharing expenditures for families with incomes greater than 150 percent of the Federal Poverty Level (FPL) who are enrolled in separate child health programs. In an attempt to preserve State flexibility, the proposed regulation gives States the option to use either gross or net family income when calculating the cost-sharing cap.

In addition, the regulation proposes to place a comparable limit of 2.5 percent on cost-sharing for families with incomes below 150 percent of the poverty line, in order to ensure that those families with lower incomes will not be forced to pay the same amount of cost-sharing as those with higher incomes. In addition, States have the option to apply cost-sharing imposed on adults in CHIP family coverage plans toward the cumulative maximum cap.

The regulation proposes that States must have a process in place that will protect beneficiaries by ensuring "due process" before beneficiaries can be disenrolled from the program for failure to pay cost-sharing. This preamble suggests that States may look for a pattern of nonpayment, provide clear notice and opportunities for late payment, and wait at least one billing cycle before taking action to disenroll.

Finally, title XXI includes provisions to ensure enrollment and access to health care services for American Indian and Alaska Native (AI/AN) children. The regulation incorporates our interpretation that in light of the unique Federal relationship with tribal governments, cost-sharing requirements for individuals who are members of a Federally recognized tribe are not consistent with this statutory requirement.

- Subpart G—Strategic Planning, Reporting and Evaluation

The regulation includes provisions intended to ensure compliance with both the statute, the elements of the State's title XXI plan and the onsite review of State programs. In addition, monitoring will enable tracking of CHIP data submissions, which will ultimately help ensure enrollment in both the CHIP and Medicaid programs.

- Subpart I—Program Integrity and Beneficiary Protections

This subpart is intended to underscore the importance of preserving program integrity in the Children's Health Insurance Program. The regulation proposes that States must have fraud and abuse protections in place, but provides flexibility to States in developing program integrity protections for separate child health programs. States are encouraged to utilize systems already existing for Medicaid, but are not required to do so.

In addition, the regulation proposes that States have additional flexibility in setting procurement standards more broadly than Medicaid. States may choose to base payment rates on public and/or private rates for comparable services, and where appropriate, establish higher rates in order to ensure sufficient provider participation.

Finally, this regulation includes various beneficiary protections consistent with the President's directive regarding the *Consumer Bill of Rights and Responsibilities*. Provisions are included throughout the regulation to ensure that beneficiaries are given the opportunity to participate in and make informed medical decisions, to have access to needed services, and to be treated with dignity and respect.

- Subpart J—Waivers

The proposed regulation discusses the circumstances under which States may obtain a waiver in order to provide Title XXI coverage to entire families. We propose that in order to qualify for such a waiver, the State must meet several requirements, including a requirement that the proposal be cost effective.

Under our proposal, the new provisions for the Children's Health Insurance Program would be set forth in regulations at 42 CFR part 457, subchapter D. We note that the following table of contents is for all of part 457 and lists some subparts which have been reserved for provisions set forth in the March 4, 1999 proposed financial regulation.

The proposed table of contents for new part 457, subchapter D is as follows:

Subchapter D—Children's Health Insurance Program (CHIP)

PART 457—ALLOTMENTS AND GRANTS TO STATES

Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies

§ 457.1 Program description.
§ 457.2 Basis and scope of subchapter D.
§ 457.10 Definitions and use of terms.
§ 457.30 Basis, scope, and applicability of subpart A.
§ 457.40 State program administration.
§ 457.50 State plan.
§ 457.60 Amendments.
§ 457.65 Duration of State plans and plan amendments.
§ 457.70 Program options.
§ 457.80 Current State child health insurance coverage and coordination.
§ 457.90 Outreach.
§ 457.110 Enrollment assistance and information requirements.
§ 457.120 Public involvement in program development.
§ 457.125 Provision of child health assistance to American Indian and Alaska Native children.
§ 457.130 Civil rights assurance.
§ 457.135 Assurance of compliance with other provisions.
§ 457.140 Budget.
§ 457.150 HCFA review of State plan material.
§ 457.160 Notice and timing of HCFA action on State plan material.

§ 457.170 Withdrawal process.
§ 457.190 Administrative and judicial review of action on State plan material.

Subpart B—[Reserved]

Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment

§ 457.300 Basis, scope, and applicability.
§ 457.301 Definitions and use of terms.
§ 457.305 State plan provisions.
§ 457.310 Targeted low-income child.
§ 457.320 Other eligibility standards.
§ 457.340 Application.
§ 457.350 Eligibility screening.
§ 457.360 Facilitating Medicaid enrollment.
§ 457.361 Application for and enrollment in CHIP.
§ 457.365 Grievances and appeals.

Subpart D—Coverage and Benefits: General Provisions

§ 457.401 Basis, scope, and applicability.
§ 457.402 Child health assistance and other definitions.
§ 457.410 Health benefits coverage options.
§ 457.420 Benchmark health benefits coverage.
§ 457.430 Benchmark-equivalent health benefits coverage.
§ 457.431 Actuarial report for benchmark-equivalent coverage.
§ 457.440 Existing comprehensive State-based coverage.
§ 457.450 Secretary-approved coverage.
§ 457.470 Prohibited coverage.
§ 457.475 Limitations on coverage: Abortions.
§ 457.480 Preexisting condition exclusions and relation to other laws.
§ 457.490 Delivery and utilization control systems.
§ 457.495 Grievances and appeals.

Subpart E—State Plan Requirements: Beneficiary Financial Responsibilities

§ 457.500 Basis, scope, and applicability.
§ 457.505 General State plan requirements.
§ 457.510 Premiums, enrollment fees, or similar fees: State plan requirements.
§ 457.515 Co-payments, coinsurance, deductibles, or similar cost sharing charges: State plan requirements.
§ 457.520 Cost sharing for well-baby and well-child care.
§ 457.525 Public schedule.
§ 457.530 General cost sharing protection for lower income children.
§ 457.535 Cost sharing protection to ensure enrollment of American Indians/Alaska Natives.
§ 457.540 Cost sharing charges for children in families at or below 150 percent of the Federal poverty line (FPL).
§ 457.545 Cost sharing for children in families above 150 percent of the FPL.
§ 457.550 Restriction on the frequency of cost sharing charges on targeted low-income children in families at or below 150 percent of the FPL.
§ 457.555 Maximum allowable cost sharing charges on targeted low-income children at or below 150 percent of the FPL.
§ 457.560 Cumulative cost sharing maximum.
§ 457.565 Grievances and appeals.
§ 457.570 Disenrollment protections.

Subpart F—[Reserved]

Subpart G—Strategic Planning, Reporting, and Evaluation

§ 457.700 Basis, scope, and applicability.
§ 457.710 State plan requirements: Strategic objectives and performance goals.
§ 457.720 State plan requirement: State assurance regarding data collection, records, and reports.
§ 457.730 State plan requirement: State annual reports and evaluation.
§ 457.735 State plan requirement: State assurance of the quality and appropriateness of care.
§ 457.740 State expenditures and statistical reports.
§ 457.750 Annual report.
§ 457.760 State evaluations.

Subpart H—Substitution of Coverage

§ 457.800 Basis, scope, and applicability.
§ 457.805 State plan requirements: Private coverage substitution.
§ 457.810 Premium assistance for employer-sponsored group health plans: Required protections against substitution.

Subpart I—Program Integrity and Beneficiary Protections

§ 457.900 Basis, scope, and applicability.
§ 457.902 Definitions.
§ 457.910 State program administration.
§ 457.915 Fraud detection and investigation.
§ 457.920 Accessible means to report fraud and abuse.
§ 457.925 Preliminary investigation.
§ 457.930 Full investigation, resolution, and reporting requirements.
§ 457.935 Sanctions and related penalties.
§ 457.940 Procurement standards.
§ 457.945 Certification for contracts and proposals.
§ 457.950 Contract and payment requirements including certification of payment related information.
§ 457.955 Conditions necessary to contract as a managed care entity (MCE).
§ 457.960 Reporting changes in eligibility and redetermining eligibility.
§ 457.965 Documentation.
§ 457.970 Eligibility and income verification.
§ 457.975 Redetermination intervals in cases of suspected enrollment fraud.
§ 457.980 Verification of enrollment and provider services received.
§ 457.985 Enrollee rights to file grievances and appeals.
§ 457.990 Privacy protections.
§ 457.995 Consumer Bill of Rights and Responsibilities.

Subpart J—Allowable Waivers: General Provisions

§ 457.1000 Basis, scope, and applicability.
§ 457.1005 Waiver for cost-effective coverage through a community-based health delivery system.
§ 457.1010 Waiver for purchase of family coverage.
§ 457.1015 Cost-effectiveness.

Editor's note: In the preamble we discuss new CHIP provisions (part 457) before we discuss relevant changes to the Medicaid regulations (Medicaid coordination, section K of the preamble, and parts 431, 433, and 435 of the regulations text). We believe this order is the most logical presentation for the preamble. However, because regulations text must be set forth in numerical order, proposed changes to the Medicaid regulations precede the new regulations text for part 457.

B. Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies

1. Program Description (§ 457.1)

Proposed § 457.1 states that title XXI of the Social Security Act, enacted in 1997 by the BBA, authorizes Federal grants to States for provision of child health assistance to uninsured, low-income children. The program is jointly financed by the Federal and State governments and administered by the States. Within broad Federal rules, each State decides eligible groups, types and ranges of services, payment levels for benefit coverage, and administrative and operating procedures.

2. Basis and Scope of Subchapter D (§ 457.2)

This subchapter implements title XXI of the Act, which authorizes Federal grants to States for the provision of child health assistance to uninsured, low-income children.

The regulations in subchapter D would set forth State plan requirements, standards, procedures, and conditions for obtaining Federal financial participation (FFP) to enable States to provide health benefit coverage to targeted low-income children, as defined in § 457.310.

3. Definitions and Use of Terms (§ 457.10)

This subpart includes the definitions relevant specifically to the Children's Health Insurance Program under title XXI. We have defined in this subpart key terms that are specified in the statute or frequently used in this regulation. We note that those terms that are specific to certain subparts of this regulation are defined at the opening of those subparts, however, all the terms are listed here. For example, since the definition of "targeted low-income child" is specifically relevant in making eligibility determinations, the term is defined in subpart C—Eligibility. Because of the unique Federal-State relationship that is the basis for this program and because of our commitment to State flexibility, we determined States should have the discretion to define many terms.

In accordance with section 2110 of the Act, which sets forth definitions for title XXI, we propose to adopt definitions for the terms, "creditable health coverage", "group health insurance coverage", "group health plan" and "preexisting condition exclusion" from sections 2701(c) and 2791 of the Public Health Service Act (PHS) (42 U.S.C. 300gg(c)) as specifically required under the statute. These definitions are consistent with the definitions set forth in regulations at 45 CFR 144.103 and 146.113. Section 2109(a)(1) of title XXI provides that health insurance coverage provided under a State child health plan and coverage provided as a cost-effective alternative are treated as "creditable coverage" under section 2701(c) of the PHS Act. In addition, section 2103(f) of title XXI provides that the State plan cannot impose a preexisting condition exclusion; however, if the State plan provides for benefits through payment for, or contract with, a group health plan or health insurance coverage, the State plan can permit the imposition of a preexisting condition exclusion insofar as it is permitted under HIPAA. (Creditable coverage counts as credit for previous health coverage against the application of a preexisting condition exclusion period when moving from one group health plan to another, from a group health plan to an individual policy, or from an individual policy to a group health plan.)

We propose the following definitions:

- *American Indian/Alaska Native (AI/AN)* means (1) A member of a Federally recognized Indian tribe, band, or group or a descendant in the first or second degree, of any such member; (2) an Eskimo or Aleut or other Alaska Native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act 43 U.S.C. 1601 *et seq;* (3) a person who is considered by the Secretary of the Interior to be an Indian for any purpose; (4) a person who is determined to be an Indian under regulations promulgated by the Secretary.
- *Child* means an individual under the age of 19.
- *Child health assistance* has the meaning assigned in § 457.402 of these proposed regulations.
- *Children's Health Insurance Program (CHIP)* means a program established and administered by a State, but jointly funded with the Federal government to provide child health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination of both.
- *Combination program* means a program under which a State provides child health assistance through both a Medicaid expansion program and a separate child health program.
- *Contractor* has the meaning assigned in § 457.902.
- *Cost-effectiveness* has the meaning assigned in § 457.1015 of these proposed regulations.
- *Creditable health coverage* has the meaning given the term "creditable coverage" at 45 CFR 146.113. Under this definition, the term means the coverage of an individual under any of the following:

—A group health plan (as defined in 45 CFR 144.103).
—Health insurance coverage (as defined in 45 CFR 144.103).
—Part A or part B of title XVIII of the Act (Medicare).
—Title XIX of the Act, other than coverage consisting solely of benefits under section 1928 (the program for distribution of pediatric vaccines).
—Chapter 55 of title 10, United States Code (medical and dental care for members and certain former members of the uniformed services, and for their dependents).
—A medical care program of the Indian Health Service or of a tribal organization.
—A State health benefits risk pool (as defined in 45 CFR 146.113).
—A health plan offered under chapter 89 of title 5, United States Code (Federal Employees Health Benefits Program).
—A public health plan. (For purposes of this section, a public health plan means any plan established or maintained by a State, county, or other political subdivisions of a State that provides health insurance coverage to individuals who are enrolled in the plan.
—A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e)).

The term "creditable health coverage" does not include coverage consisting solely of coverage of excepted benefits including limited excepted benefits and non-coordinated benefits. (See 45 CFR 146.145)

- *Emergency medical condition* has the meaning assigned at § 457.402 of these proposed regulations.
- *Emergency services* has the meaning assigned in § 457.402 of these proposed regulations.
- *Employment with a public agency* has the meaning assigned in § 457.301 of these proposed regulations.
- *Family income* means income as determined by the State for a family as defined by the State.
- *Federal fiscal year* starts on the first day of October each year and ends on the last day of September.
- *Fee-for-service entity* has the meaning assigned in § 457.902 of these proposed regulations.
- *Grievance* has the meaning assigned in § 457.902 of these proposed regulations.
- *Group health insurance coverage* means health insurance coverage offered in connection with a group health plan as defined at 45 CFR 144.103.
- *Group health plan* means an employee welfare benefit plan, to the extent that the plan provides medical care as defined in section 2791(a)(2) of the PHS Act (including items and services paid for as medical care) to employees or their dependents directly (as defined under the terms of the plan), or through insurance, reimbursement, or otherwise, as defined at 45 CFR 144.103.

- *Health benefits coverage* has the meaning assigned in § 457.402 of these proposed regulations.
- *Health maintenance organization (HMO) plan* has the meaning assigned in § 457.420 of these proposed regulations.
- *Legal obligation* has the meaning assigned in § 457.555 of these proposed regulations.
- *Low-income child* means a child whose family income is at or below 200 percent of the poverty line for the size family involved.
- *Managed care entity (MCE)* has the meaning assigned in § 457.902 of these proposed regulations.
- *Medicaid applicable income level* means, with respect to a child, the effective income level (expressed as a percentage of the poverty line) that has been specified under the State plan under title XIX (including for these purposes, a section 1115 waiver authorized by the Secretary or under the authority of section 1902(r)(2)), as of March 31, 1997, for the child to be eligible for medical assistance under either section 1902(l)(2) or 1905(n)(2) of the Act.
- *Medicaid expansion program* means a program where a State receives Federal funding at the enhanced matching rate available for expanding eligibility to targeted low-income children.
- *Post-stabilization services* has the meaning assigned in § 457.402 of these proposed regulations.
- *Poverty line/Federal poverty level* means the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of 42 U.S.C. 9902(2).
- *Preexisting condition exclusion* has the meaning assigned at 45 CFR 144.103, which provides that the term means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the first day of coverage, whether or not any medical advice, diagnosis, care or treatment was recommended or received before that day. A preexisting condition exclusion includes any exclusion applicable to an individual as a result of information that is obtained relating to an individual's health status before the individual's first day of coverage, such as a condition identified as a result of a pre-enrollment questionnaire or physical examination given to the individual, or review of medical records relating to the pre-enrollment period.
- *Premium assistance for employer-sponsored group health plans* means State payment of part or all of premiums for group health plan or group health insurance coverage of an eligible child or children.
- *Public agency* has the meaning assigned in § 457.301 of these propose regulations.
- *Separate child health program* means a program under which a State receives Federal funding from its title XXI allotment under an approved plan that obtains child health assistance through obtaining coverage that meets the requirements of section 2103 of the Act.
- *State* means all States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.
- *State health benefits plan* has the meaning assigned in § 457.301 of these proposed regulations.
- *State plan* means the approved or pending title XXI State child health plan.
- *State program integrity unit* has the meaning assigned in § 457.902 of these proposed regulations.
- *Targeted low-income child* has the meaning assigned in § 457.310 of these proposed regulations.
- *Uncovered child* means a child who does not have creditable health coverage.
- *Well-baby and well-child care services* means regular or preventive diagnostic and treatment services necessary to ensure the health of babies and children as defined by the State. For purposes of cost sharing, the term has the meaning assigned at § 457.520 of the proposed regulations.

4. Basis, Scope, and Applicability of Subpart A (§ 457.30)

This subpart interprets sections 2101(a) and (b), 2102(a), 2102(c), 2106, 2107(c), (d) and (e) of title XXI of the Social Security Act and sets forth the related State plan requirements for a State child health assistance program. It includes the requirements related to administration of the State program and the process for Federal review of a State plan or plan amendment. This subpart applies to all States that seek to provide health benefits coverage through CHIP.

5. State Program Administration (§ 457.40)

Consistent with section 2106(d)(1) of the Act, we would specify in § 457.40(a) that it is the State's responsibility to implement and conduct its program in accordance with the approved State plan and plan amendments, the requirements of title XXI and title XIX (as appropriate), and the regulations in chapter IV.

To ensure that the State is operating its program accordingly, HCFA will review the operation of the program through on-site review or monitoring of State programs. At proposed § 457.40(a), we would provide that HCFA will monitor the operation of the approved State plan and plan amendments to ensure compliance with title XXI, title XIX (as appropriate) and the regulations in chapter IV. There are two general goals for the proposed monitoring provisions. Specifically, monitoring will assure State compliance with both statutory and regulatory requirements under title XXI and with the specifications of the State plan. In addition, monitoring will allow us to track the submission of requested data related to CHIP, including enrollment and expenditure data and other efforts related to ultimately ensuring enrollment of eligible children into both CHIP and Medicaid. Expected outcomes of CHIP monitoring include: (1) Identifying the need for corrective action, enforcement and improvement within State title XXI programs; (2) recognizing and sharing best practices that may lead to increased enrollment; (3) identifying States' needs for technical assistance; and (4) informing HCFA as we prepare for the Secretary's report to Congress.

The ongoing review of State programs is an evolving process as there is wide variation among implemented children's health insurance programs. Many programs are just being implemented, while others have been built upon programs in existence long before the passage of title XXI. Because of both variation in program design and differences in stages of program implementation, we have established a flexible review process that is focused primarily on assuring compliance with Federal law and regulations. In subsequent years Federal review of State programs may also examine how well programs are achieving the overall goals outlined in their State plans and plan amendments.

In the Federal review process, however, we will monitor to ensure consistent implementation of the core set of key policy areas specifically described in the title XXI statute. We expect our monitoring effort to be an interactive and informative process for both the Department and the States. As a result, we plan to work with the States to identify any areas of need for technical assistance, to identify best practices that will assist States in understanding what works in specific situations and to ensure policies are implemented consistently across States.

Although HCFA central and regional offices are in constant contact with the States, after the first anniversary of the implementation of each CHIP, a formal State review will be conducted by a team led by HCFA regional staff with participation of HRSA regional staff.

The review process may include site visits and phone interviews. Regional staff will put its preliminary findings into a report and share that report with the State to provide an opportunity for response to any issues raised in the review process before they make recommendations and send the report to HCFA central office. If necessary, HCFA, with participation of HRSA regional staff, will work with States to address areas in which they are not in compliance with either the statute, applicable regulations, or a State's plan.

The review process and the implications of noncompliance are specifically addressed in § 457.200, which was set forth in the March 4, 1999 proposed financial regulation.

To ensure involvement in and commitment to the program at the highest level of State government, we are proposing in § 457.40(b) to require that the State plan and plan amendments be signed by the State Governor or by an individual who has been delegated authority by the Governor to submit it. This individual could be the Secretary of Health, the CHIP Administrator, the Medicaid Director or any other individual who has authority, delegated by the Governor, to submit the State plan or plan amendment. In order to facilitate communication between the appropriate State and HCFA staff, we are proposing in § 457.40(c) to require that the State include in the State plan or plan amendment the names of the State officials who are responsible for program administration and financial oversight.

An additional aspect of program administration for the State is the passage of enabling legislation, which a State may need to implement a State plan. When the passage of State enabling legislation is required to implement a State plan, a State can submit its State plan application before the passage of the legislation. States must indicate in their application if such legislation is necessary and when it will be in place. The State plan must include an assurance that the State will not claim expenditures for child health assistance prior to the time that the State has legislative authority to operate the State plan or plan amendment as approved by HCFA. We are proposing this provision so that we can approve State plans and plan amendments while a State's legislative authority is pending. This provision is consistent with the requirement that a State must implement and conduct its CHIP in accordance with the approved State plan.

6. State Plan (§ 457.50)

The State plan is a comprehensive written statement submitted by the State to HCFA for approval. The State plan describes the purpose, nature, and scope of its CHIP and gives assurance that the program will be administered in conformity with the specific requirements of title XXI, title XIX (as appropriate), and the regulations in chapter IV. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

An approved State plan is comprised of the initial plan submission, responses to requests for additional information and subsequent approved State plan amendments. The first item that forms part of the approved State plan is the State's original application. The information that must be included in the original submission varies according to how the State chooses to provide health benefits coverage. In addition, the State's written responses to requests from HCFA for additional information, whether formal or informal, and any other written correspondence from the State are considered part of the approved State plan. The State's correspondence modifies the original submission; that is, information received from a State supersedes any contrary information that is included in the original plan or other earlier submissions. Moreover, if there are several submissions from the State that are inconsistent, the latest submission is the governing document. Most often the information in the additional responses should clarify or add to the language of the original submission. All documents that are included in the approved State plan will be referenced in the approval letter. Documents pertaining to all State plan amendments are also components of the approved State plan.

7. Amendments word (§ 457.60)

Section 2106(b)(1) of the Act permits a State to amend its approved State plan in whole or in part at any time through the submittal of a plan amendment. We propose in § 457.60(a) that the State plan must be amended whenever necessary to reflect changes in Federal law, regulations, policy interpretations or court decision; changes in State law, organization, policy or operation of the program; and changes in the source of the State share of funding.

Although the proposed language of § 457.60(a) contains no exceptions, we believe in practice only changes that are substantial and noticeable would require amendments. Changes in program elements that would not ordinarily be required to be included in the State plan at all would thus not require an amendment. For example, a change in the date for mailing enrollment material from June 1 to July 1 would not be considered substantial or noticeable and a State plan amendment would thus not be required. We are seeking comments on how to further interpret and express in regulations the necessity for State plan amendment submission.

We are proposing in § 457.60(a)(3) to require an amendment if the source of State share of funding changes. Furthermore, we are proposing in § 457.65(d) that such amendment must be submitted to HCFA prior to such change taking effect. From the beginning of the program, our policy has been to only approve State plans that can assure, to our satisfaction, that the program has a permissible source of funding. Pursuant to section 2107(e)(1)(C) of the Act, a State is required as a condition for approval of its State plan to assure that the State will comply with section 1903(w) of the Act, relating to limitations on provider taxes and donations. Section 2107(d) of the Act requires that the State plan include a description of the budget, which is an advance plan for expenditures. Section 2107(d) also provides that the budget be updated periodically as necessary. We believe that proposed § 457.60(a)(3) and § 457.65(d) will ensure ongoing compliance with our requirement for permissible sources of funding and will avoid situations that require a disallowance for non-compliance. If a State has indicated that general revenues are the source of funding, then we would require a plan amendment for changes in the State's tax structure that reflect or include a change to general revenues based on taxes related to health care used to finance the State's share of title XXI expenditures. We would not require a plan amendment to reflect changes in the type of non-health care related taxes used to generate general revenue.

We are proposing in § 457.60(b) to require that a State proposing to amend its plan include an amended 3-year budget if the proposed amendment would result in different expenditures than those described in the budget accompanying the approved State plan. Under section 2107(d) of the Act, a State plan clearly must include the budget for the plan. If a plan amendment that affects the budget is approved without a revision to the budget, then the current description of the budget would no longer be accurate for the entire State plan. If the proposed changes in the State plan amendment have no impact on the budget, then an updated budget is not required.

8. Duration of State Plans and Plan Amendments (§ 457.65)

In § 457.65, we propose that the State may choose any effective date for its State plan or plan amendment, but no earlier than October 1, 1997. We believe that the intent of section 2106(a)(2)(B) of the Act is to provide flexibility to States in choosing an effective date. We considered requiring that a State must be providing health coverage to targeted low-income children as of the date the State specified as its effective date; however, such a requirement would preclude a State from claiming FFP for administrative start-up costs that are eligible for FFP. Therefore, in order to allow the State to claim program and administrative expenditures that the State may incur prior to providing coverage, we propose to define "effective date" as the date on which the State begins to incur costs to implement its State plan or plan amendment. This effective date may be prior to the date on which the State begins to provide coverage to targeted low-income children.

A State may implement a State plan prior to approval of that plan but this may put the State at some risk. If a State implements a plan prior to approval and that plan is approved, the State can receive Federal matching funds on a retroactive basis for expenses incurred for programs operated in compliance with the approved plan and all applicable statutory and regulatory requirements (other than expenses incurred earlier than October 1, 1997).

Any State that implements an unapproved State plan risks the possibility that the plan will not be approved as implemented. In the event that the State plan is not approved as it was implemented, the Federal government would not match the State's prior expenditures. HCFA has no authority to pay claims for periods prior to the effective date of the approved State plan for activities that are not consistent with an approved plan, or for activities that do not meet the requirements of title XXI. Section 2106 of the Act gives the Secretary authority to disapprove an initial State plan submission that does not fully comply with title XXI, and to approve an effective date for that State plan submission. We believe this authority necessarily means that the Secretary may deny an effective date that would include any time period during which the operating program did not fully comply with title XXI. Moreover, this authority permits the Secretary to deny claims for Federal matching funds for such time periods. We base that conclusion on the reasoning that there would be no approved State plan at the time of any claimed expenditures during those time periods. Under section 2105(a), the Secretary is authorized to pay Federal matching funds to States based on child health assistance and certain other expenditures "under" an approved State plan (up to the amount of the State's allotment). Absent an approved State plan, no Federal matching funds may be paid to a State. Although section 2106(c)(3) states that "* * * the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of such [a] disapproval," this provision does not require that the Secretary accept claims in the absence of an approved State plan.

Any State that implements an unapproved State plan amendment also risks the possibility that the plan amendment will not be approved as implemented. The reasoning described above for State plans also applies to State plan amendments that result in additional Federal financial participation. For a State that implements an unapprovable State plan amendment that results in expenditures that can be identified as beyond the scope of the approved State plan, these expenditures could not be used as a basis for Federal funding under section 2105(a)(1). An example of this situation is the implementation of a State plan amendment that adds a new population. For those populations, the expenditures would simply be beyond the scope of the approved State plan.

For unapproved State plan amendments that do not result in expenditures that can be identified as beyond the scope of an approved State plan, we believe a different analysis must be applied. The implementation is a failure to conduct the State program in accordance with the approved State plan, and would be subject to the compliance remedies described in section 2106(d) of the Act. In this situation, HCFA would only withhold Federal matching funds after following the compliance procedures permitting the State a "reasonable opportunity for correction" in accordance with section 2106(d)(2).

On March 4, 1999, we published a proposed rule addressing the financial provisions for title XXI. We are proposing to clarify certain provisions which were set forth in subpart B of that proposed rule. Specifically, paragraph (d)(2) of § 457.204, "Withholding of payment for failure to comply with Federal requirements," discusses the opportunity for correction prior to a financial sanction for failure to comply with a Federal requirement. As proposed, § 457.204(d)(2) provides that if enforcement actions are proposed, the State must submit evidence of corrective action related to the findings of noncompliance to the Administrator within 30 days from the date of the preliminary notification. The proposed regulation would implement section 2106(d)(2) of the Act, which requires that the Secretary provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of an enforcement action. We would revise the proposed regulatory text at § 457.204(d)(2) to address in more detail the possible scope of corrective action that could be required. We would specify that such corrective action can include actions to ensure that the plan is and will be administered consistent with applicable law and regulations, actions to address past deficiencies in plan administration, and actions to ensure equitable treatment of beneficiaries. We recognize that not every situation will require all of these different types of corrective action. We are reserving to the Secretary the determination of the appropriate scope of corrective action under the individual circumstances presented. Such a determination necessarily will be made in the final determination on the findings of noncompliance, and will be reflected in the final notice described in proposed § 457.204(d)(3).

Certain special provisions govern the establishment of allotments for FY 1998 and FY 1999 for States that receive approval for their State plans during FY 1999. Under Public Law 105–277, effective October 21, 1998, if a State submits a State plan during FY 1999, and the plan is approved by HCFA by the end of FY 1999 (that is, by September 30, 1999), then CHIP allotments may be obligated for the State for both FY 1998 and FY 1999. The effective date for the State plan would be the date requested by the State, but no earlier than the beginning of FY 1998, (that is, October 1, 1997).

After FY 1999, a State's initial State plan must be approved by HCFA by the end of a fiscal year in order to receive a State CHIP allotment for that fiscal year. For example, if HCFA approves a

State's initial State plan during FY 2000, the State could only receive a State allotment for FY 2000; the State could not receive an allotment for FY 1998 or for FY 1999. Since the State did not have a State plan approved by HCFA in FY 1998 or by the end of FY 1999, it could not receive a State allotment for FY 1998 or FY 1999.

If a State submits a State plan that is first approved during FY 2000, a FY 2000 allotment would be obligated for that State, but there would be no allotment for FY 1998 or FY 1999. However, the FY 2000 allotment is potentially available to provide Federal financial participation (FFP) in the State's allowable FY 1998 and FY 1999 expenditures, such as administrative costs, assuming the State has requested an effective date for its State plan in one of those fiscal years. For example, a State plan could be approved November 1, 1999, at which time the FY 2000 allotment would be obligated, and have an effective date of September 1, 1999, when the State began incurring administrative costs related to the State plan. These administrative costs could then be claimed under the FY 2000 allotment. Thus, a State may potentially have an effective date for its State plan in a fiscal year and receive FFP in expenditures incurred in a fiscal year for which it does not have a State CHIP allotment.

Medicaid rules regarding effective dates continue to apply to child health assistance provided under a Medicaid expansion program. In accordance with § 430.20(b) of the Medicaid regulations, the effective date of title XIX State plan amendments cannot be earlier than the first day of the quarter in which an approvable title XIX State plan amendment is submitted to HCFA. It is, therefore, important for a State to submit a title XIX State plan amendment either prior to or during the calendar quarter in which it wants the amendment to take effect. As discussed in proposed § 457.70, States must submit both a Medicaid State plan amendment and a title XXI plan for the Medicaid expansion. Medicaid State plan amendments will be reviewed using the established process for title XIX. We will make every effort to coordinate the approval of a Medicaid State plan amendment with the approval of the title XXI State plan.

Section 2106(b)(3)(C) of the Act provides that any State plan amendment that does not eliminate or restrict eligibility or benefits can remain in effect only until the end of the State fiscal year in which it becomes effective (or, if later, the end of the 90-day period in which it becomes effective) unless the State plan amendment is submitted to HCFA before the end of the period. We would implement this provision at proposed § 457.65(a)(2). Thus, if a State plan amendment is implemented but is not submitted within the required time frame, the State risks being found out of compliance with its State plan, and loss of Federal participation in expenditures beyond the scope of the approved plan or other financial sanctions, as discussed below and in the proposed financial regulation (64 FR 10412).

In accordance with section 2106(b)(3)(B)(ii) of the Act, an amendment that eliminates or restricts eligibility or benefits under the plan may not be effective for longer than a 60-day period unless the amendment is submitted to HCFA before the end of that 60-day period. Section 2106(b)(3)(B)(i) requires that amendments that eliminate or restrict eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior public notice of the proposed change in a form and manner provided under applicable State law. The notice must be published prior to the requested effective date of change. We propose to implement this provision at § 457.65(b). In the amendment request, the State should describe the public notice process.

We are also proposing that State plan and State plan amendments imposing new or increased cost sharing on beneficiaries would be treated as a restriction on benefits and subject to the prior public notice requirements set forth at § 457.65 of these proposed regulations. We view cost sharing as a restriction on benefits since a beneficiary's financial responsibility for certain costs associated with CHIP may be an impediment to the beneficiary's access to certain covered services. Therefore, in accordance with section 2106(a)(3)(B) of the Act, we are proposing that the State plan must comply with the prior public notice requirements at § 457.65 when the plan implements cost sharing charges, increases the existing cost sharing charges or increases the cumulative cost sharing maximum set forth at proposed § 457.555. We believe that prior public notice would give interested parties the opportunity to react to the proposed changes. In addition, our proposed notice requirements would allow States to take into account the public's concerns regarding the potential impact of cost sharing on beneficiary access to services and participation in CHIP.

As discussed previously at proposed § 457.65(d), we would specify that a State plan amendment that requests approval of changes in the source of the State share of funding must be submitted prior to such change taking effect.

In accordance with section 2106(e) of the Act, at § 457.65(e) we propose that an approved State plan shall continue in effect unless and until the State modifies its plan by obtaining approval of an amendment to the State plan. The new plan will consist of the originally approved State plan and any approved State plan amendments. The State plan shall also continue in effect unless and until the Secretary finds substantial non-compliance of the plan with the requirements of the statute and regulations. An example of substantial non-compliance would be the imposition of cost sharing that exceeds Federal limits.

9. Program options (§ 457.70)

Under section 2101(a) of the Act, a State may obtain health benefits coverage for uninsured, low-income children in one of three ways: (1) A State may provide coverage by expanding its Medicaid program; (2) a State may develop a plan that meets the requirements of section 2103 of the Act; or (3) a State may provide coverage through a combination of a Medicaid expansion program and a separate child health program. The following subparts apply to States that elect Medicaid expansions:

- Subpart A
- Subpart B (if the State claims administrative costs under title XXI).
- Subpart C (with respect to the definition of a targeted low-income child only).
- Subpart F (with respect to determination of the allotment for purposes of the enhanced matching rate, determination of the enhanced matching rate, and payment of any claims for administrative costs under title XXI).
- Subpart G.
- Subpart H (if the State elects the eligibility group for optional targeted low-income children and elects to pay for employer-sponsored insurance).
- Subpart J (if the State claims administrative costs under title XXI and seeks a waiver of limitations on such claims based on a community based health delivery system). Subparts D, E, and I of part 457 do not apply to Medicaid expansion programs because Medicaid rules govern benefits, cost-sharing, program integrity and other provisions included in those subparts. We note that the provisions of subparts B and F were set forth in the March 4, 1999 proposed rule.

A State that chooses to implement a separate child health program must comply with all the requirements in part 457. We would set forth the program options at § 457.70(a).

At § 457.70(b), we propose that a State plan must include a description of the State's chosen program option. In addition, at proposed § 457.70(c) we specify that States choosing a Medicaid expansion program must submit an amendment to the State's Medicaid State plan as appropriate. These States will be required to complete an abbreviated State plan and, in most circumstances, a Medicaid State plan amendment. If a State is expanding Medicaid within the scope of an 1115 demonstration project, then that demonstration project may need to be modified by submission of a formal request for a change to the demonstration project and not through a Medicaid State plan amendment. If such a modification is needed, then the request for a change to the demonstration project must be submitted in addition to the title XXI State plan. The abbreviated State plan must include the State plan requirements specified in this subpart and subpart G of this proposed rule. A State that chooses to implement a separate child health program must include in its State plan all of the State plan requirements specified in part 457. A State selecting a combination program would need to submit a title XXI State plan, as well as a Medicaid State plan amendment.

States may choose one option and switch to a different option at any time if a State plan amendment describing this change meets the requirements of the statute and these regulations and is approved by HCFA.

10. Current State Child Health Insurance Coverage and Coordination (§ 457.80)

In accordance with sections 2102(a)(1) and (2) and 2102(c)(2) of the Act, we propose to require that the State plan describe the State's current approach to child health coverage and plans for coordination of the program with other insurance programs in the State. We specify that the State must provide a description of the following:

- The extent to which, and manner in which, children in the State, including targeted low-income children and other classes of children, by income level and other relevant factors, currently have creditable health coverage (as defined by § 457.10) and, if sufficient information is available, whether the creditable health coverage they have is under public health insurance programs or health insurance programs that involve public-private partnerships.
- Current State efforts to provide or obtain creditable health coverage for uncovered children, including the steps the State is taking to identify and enroll all uncovered children who are eligible to participate in public health insurance programs and health insurance programs that involve public-private partnerships.
- Procedures used by the State to accomplish coordination of the program under title XXI with other public and private health insurance programs, including procedures designed to increase the number of children with creditable health coverage, and to ensure that only eligible targeted low-income children are covered under title XXI. The degree of creditable coverage a child has impacts whether a preexisting condition exclusion applies and therefore, tracking this information would be beneficial to the child.

The purpose of this section is to require the State to justify the insurance expansion approach it has chosen to ensure that the State does not use Federal funds to supplant existing programs and funding but rather uses the funds for children who are uninsured. To the extent possible, the income level categories by which the State reports the current availability of creditable coverage should correspond to the income level categories used for other purposes such as eligibility or cost-sharing. The State may classify children by family income level, age group, race and ethnicity, urban versus rural location and any other categorization that the State finds useful in describing its situation. If sufficient information is available, the State should describe the extent to which the classes of children it sets forth are insured through Medicaid, employer-based coverage, or other forms of publicly supported insurance, such as State-only programs and public/private partnerships. In addition, the State should describe the extent to which children in the State are uninsured. The State plan should clearly identify the sources of the data it uses in this section. We recognize that States may not initially have data available for an in-depth study of the insurance status of its children. However, the information provided should be sufficient to illustrate that the State has analyzed the problem, using available data sources. The demographic information requested in this section can be used for State planning and will be used strictly for informational purposes. These data will not be used as a basis for the State's allotment. We also note that these data are not necessarily the baseline data required to be submitted as part of the annual report under subpart G.

In addition, at § 457.80(b), we propose that the State must provide an overview of current efforts made by the State through child related programs (such as Medicaid, the Maternal and Child Health Block Grant, title V, WIC, community and migrant health centers or special State programs for child health care) to provide health care services or obtain creditable health coverage for uncovered children by identifying and enrolling all uncovered children.

Section 457.80(c) would require the State plan to include a description of the coordination of the plan with other public and private health insurance programs in accordance with sections 2102(a)(3) and 2102(c)(2) of the Act. This section of the State plan should include an overview of how new enrollment outreach efforts will be coordinated with and improve upon existing State efforts as described in § 457.80(a).

A State that implements a separate child health program should describe how children who are determined to be eligible for Medicaid or another State-only program will be referred to and enrolled into that program, as required by proposed § 457.350 and § 457.360. Because children identified as Medicaid eligible are required to be enrolled in Medicaid, the State should describe how it will coordinate enrollment in CHIP and Medicaid. The State plan should also describe how Medicaid eligibility workers will refer non-Medicaid eligible children to the separate child health program.

11. Outreach (§ 457.90)

In § 457.90, we propose to require a State to implement an outreach process to inform families of the availability of health coverage programs and to assist families in enrolling their children into a health coverage program pursuant to section 2102(c) of the Act. A State plan must include a description of the procedures used for outreach. According to the statute, a State has the option to decide which methodologies and procedures it will use to inform families of uninsured, potentially eligible children about enrollment for child health assistance under the program. No single approach to reaching these children is provided in the statute. While States are expected to identify enrollment targets, they are encouraged to design and implement outreach activities that will reach diverse groups of children. We realize that the challenges States face in reaching out to families and assuring access to services are great and will require vigorous sustained efforts.

Outreach includes identifying, educating, and enrolling uninsured children, while remaining sensitive to the cultural and linguistic differences and special health care needs of diverse populations. There is no one model for outreach and there are many examples of successfully implemented, locally developed campaigns. Outreach is intrinsically linked to eligibility and enrollment and calls for activities that remove barriers that deter families from applying to the program. At proposed § 457.90(b), we set forth examples of outreach strategies. The following two major types of outreach procedures, when designed with the targeted populations in mind, serve to encourage significant enrollment and reduction in the numbers of uninsured children:

- *Education and awareness campaigns.* A comprehensive Statewide education and awareness campaign is needed to inform the public about the importance of availability of CHIP and how to enroll eligible children. Implementing this campaign in multiple venues frequented by families, with culturally sensitive information, will help to keep the message of health insurance in front of the target audience. Families will benefit from educational programs designed to inform them of the advantages of enrolling eligible children in health insurance, including having a regular source of care, and obtaining well-child check ups including immunization. All outreach efforts should include information about how families can find out if their children are eligible and how to get them enrolled.

Identifying families with uninsured children is the first step in outreach. States must develop and sustain comprehensive education and awareness campaigns to reach these children and families. Several data sets are available to assist States in the identification of families with uninsured children (for example, immunization registries, hospital discharge databases, school lunch program participant lists and hospital charity care databases). States should assure confidentiality when using their own existing data to identify uninsured children. Schools may also help in the education and awareness process as they often know who the uninsured children are. School nurses and school health centers, Parent Teacher Associations, and school health screens and fairs offer excellent opportunities for outreach for this new insurance program.

States often begin outreach campaigns by sending printed material such as brochures, flyers, and program applications to families considered to be potentially eligible for enrollment. States may choose to target mailings to special audiences of potentially uninsured children. Hispanic/Latinos, Tribal/Native Americans, adolescents, African-Americans, Asians, migrant populations, rural and homeless, are populations considered to have large numbers of uninsured children.

States have choices as to the breadth of distribution of program materials, prepared specifically for the different targeted subpopulations. Flyers, posters and brochures, developed in appropriate languages, can be made available through many programs that are closely identified with low-income families. Programs such as Head Start, school lunch programs, Child Care Centers and WIC programs serve thousands of low-income children. Welfare/food stamp offices are frequented by low-income families who may be eligible for CHIP.

The provider community can also distribute program information. States could include major providers such as clinics (especially for newborns), hospitals, physicians (including OB/GYNs, pediatricians, and family physicians), pharmacies, mobile health units, mental health/addiction centers, and health trade associations.

Workers who live in the community, speak the language, and know its cultural beliefs and practices can be effective in disseminating information and answering basic questions. The diversity of the uninsured population requires that States, in designing outreach activities, be sensitive to the various cultural groups, their perceptions, needs, and desires. To be effective, messages and promotional materials should be developed with the assistance of people toward whom the message is directed.

Employer-based outreach is another avenue for providing targeted populations with basic information on children's insurance programs. Working families may not know that their children are potentially eligible for enrollment in either CHIP or Medicaid. Small businesses, factories, city and State chambers of commerce and labor unions are often eager to spread the word about insurance coverage to their members or community groups with whom they are associated.

A broad array of private and public sector partnerships affords States the opportunity to extend the CHIP message to many areas through groups and organizations not traditionally involved in outreach. Strategic partnerships with media, volunteer organizations, school personnel, community volunteers, clergy, and agency caseworkers may lend innovation to an outreach campaign. Churches and faith-based communities, civic clubs, YMCA, 4–H Clubs, Boy Scouts and Girl Scouts and senior citizen organizations are additional organizations committed to providing voluntary assistance for community causes. Private and public sector partnerships, enhanced by large numbers of volunteers, strengthen dissemination of program information in conjunction with State and local level campaigns.

- *Enrollment Simplification.* A major key to successfully reaching and enrolling uninsured children in CHIP and Medicaid is a simple application and enrollment process. While it is important to maintain program integrity (as described in subpart I of this proposed rule), burdensome applications and enrollment processes have created significant barriers to successful enrollment. Federal requirements for application and enrollment in Medicaid and CHIP provide broad flexibility to States in application and enrollment design. Several actions currently undertaken by States to encourage enrollment include: reducing and simplifying the application forms; providing mail-in applications; creating joint CHIP/Medicaid applications; eliminating the assets test; allowing self-declaration of income with follow-up verification by the State; reducing verification and documentation requirements that go beyond Federal regulation; implementing presumptive eligibility and 12-month continuous eligibility; allowing redeterminations by mail; and developing a follow-up process for families not completing the application. These changes, made in conjunction with other outreach activities undertaken by States, will help produce significant increases in enrollment.

When a State selects a separate child health program, the State may consider new ways of providing families with assistance in filling out applications. We encourage these States to consider outstationing eligibility workers at sites that are frequented by families with children such as schools, child care centers, churches, Head Start centers, WIC offices, Job Corps sites, GED programs, local Tribal organizations, and Social Security Field Offices. However, States that implement Medicaid expansions must follow all Medicaid rules relating to application assistance and eligibility determination.

12. Enrollment Assistance and Information Requirements (§ 457.110)

Section 2102(c) of the Act requires that State plans include procedures to inform families of the availability of child health assistance. In accordance with this provision, we are proposing to require that a State have procedures to ensure that targeted low-income children are given information and assistance needed to access program benefits. Specifically, we propose in § 457.110, that the State plan describe methods the State will use to make accurate, easily understood information available to families of targeted low-income children and provide assistance to them in making informed health care decisions about their health plans, professionals, and facilities. In order to assist families of targeted low-income children in making informed decisions about their health care, we propose in § 457.110(b) to require that States have a mechanism in place to ensure that the type of benefits and amount, duration and scope of benefits available under CHIP and the names and locations of current participating providers are made available to beneficiaries in a timely manner. This requirement is consistent with the "right to information" disclosure provision of the President's Consumer Bill of Rights and Responsibilities and is further discussed in subpart I.

The proposed requirements set forth in this section apply to all States that are providing child health assistance whether through a Medicaid expansion or separate child health program under fee-for-service or managed care delivery systems. Because Medicaid rules apply to States that implement Medicaid expansion programs, a State that is operating a Medicaid expansion program that uses managed care delivery systems would also be required to comply with the requirements of section 1932(a)(5) of the Act, enacted by section 4701(a)(5) of the BBA, and the regulations that implement that statutory provision. The Medicaid statute and regulations govern the kind of information that must be made available to Medicaid enrollees and potential enrollees and require that this information, and certain enrollment materials, be in a format that can be easily understood by the individuals to whom it is directed.

We propose to require that materials be made available to applicants and beneficiaries in easily understood language and format. The State should consider the special needs of those who, for example, are visually impaired or have limited reading proficiency, and the language barriers of those who may use the information. A State may overcome language barriers by establishing a methodology for determining the prevalent language or languages in a geographic area and making information available in the languages that prevail throughout the State or in limited geographic areas where appropriate. A State may also overcome language barriers by making translation services available to enrollees and potential enrollees. In any case, the State should provide instructions to enrollees and potential enrollees on how to obtain information in the appropriate language or how to access translation services. While we encourage States to apply these principles in outreach, this provision is specifically designed to provide information to targeted low-income children once they have enrolled in CHIP.

In addition to the benefit and provider information that a State must make available, other basic information should be made available to families of eligible targeted low-income children. This information could include procedures for obtaining services, including authorization requirements; the extent to which after-hours and emergency coverage are provided; cost sharing, if any; the rights and responsibilities of enrollees; complaint, grievance, and fair hearing procedures; any appeal rights that the State chooses to make available to providers; with respect to managed care organizations (MCOs) and health care facilities, their licensure, certification, and accreditation status; and, with respect to health professionals, information that includes, but is not limited to, education and Board certification and recertification.

A State that delivers services through a managed care delivery system should consider making additional information available to families of targeted low-income children. This additional information may include any restrictions on the enrollee's freedom of choice among network providers; policy on referrals for specialty care and for other services not furnished by the enrollee's primary care provider; the extent to which enrollees may obtain services from out-of-network providers; and any benefits to which they may be entitled under the program, but that are not covered under the MCO contract and specific instructions on where and how to obtain those benefits.

13. Public Involvement in Program Development (§ 457.120)

States are required under section 2107(c) of the Act to include in the State plan the process that the State used to accomplish public involvement in the design and implementation of the plan and the method to ensure ongoing public involvement. We would implement this provision at § 457.120. Beneficiaries, providers, and interested groups and organizations can provide valuable input in developing a plan and insight into the successes and challenges faced by a State during implementation and throughout the operation of the program. Experience with section 1115 demonstrations and other Medicaid programs demonstrates the benefit of early consultation in identifying and resolving issues. States should provide for participation from organizations and groups such as hospitals, community health centers, and other providers, beneficiaries, and advocacy groups. States may ensure such involvement through a wide variety of approaches. For instance, to encourage public involvement, States can—

- Hold periodic public hearings to provide a forum for comments when developing or implementing their plans;
- Establish a child health commission or a consumer advisory committee responsible for soliciting public opinion about the State plan;
- Publish notices in generally circulated newspapers advertising State plan development meetings so the public can provide input; or
- Create a mechanism enabling the public to receive copies of working proposals in order to provide comments to the State.

States may use methods other than those listed above. In fact, States may use any process for public input that affords interested parties the opportunity to learn about the State plan and allow for public input in all phases of the program.

14. Provision of child health assistance to American Indian and Alaska Native children (§ 457.125)

Section 2102(b)(3)(D) of the Act requires a State to include in its plan a description of procedures to be used to ensure the provision of child health assistance to American Indian or Alaska Native children. We believe that a State cannot meet the requirement for ensuring the provision of child health assistance to American Indian or Alaska Native children without consultation with Tribes and Tribal organizations. Therefore, we are requesting in

457.125(a) that the State officials responsible for CHIP consult with Federally recognized Tribes and other Indian Tribes and organizations in the State (such as regional Indian health boards, urban Indian health organizations, non-Federally recognized Tribes, and units of the Indian Health Service) on development and implementation of the procedures used to ensure the provision of child health assistance to American Indian or Alaska Native children. This request is consistent with the February 24, 1998 letter to State Officials addressing consultation with Tribes and Tribal organizations.

The Federal government and the governments of American Indians and Alaska Natives (AI/AN or Indian people) have a "government-to-government" relationship based on the U.S. Constitution, treaties, Federal statutes, court decisions, and Executive Branch policies. This special relationship also constitutes a trust relationship between these governments. Certain benefits provided to Indian people through Federally enacted programs flow from this trust relationship. These benefits are not based upon race, but rather, are derived from the government-to-government relationship. A vital component of this relationship is consultation between the Federal and tribal governments. Increasingly, this special relationship has emphasized self-determination for Indian people and meaningful involvement by Indian people in Federal decision making (consultation) where such decisions affect Indian people, either because of their status as Indian people or otherwise. In cases where the government-to-government relationship does not exist, as with urban Indian centers, Inter-tribal organizations, State recognized tribal groups, and other Indian organizations, we nevertheless encourage States to engage in consultation.

Consultation is an enhanced form of communication which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in effective collaboration and informed decision making. We encourage States, in addition to consulting with Federally recognized Tribes, to consult with other Indian Tribes and organizations before taking actions that affect these governments or the Indian people residing within the State.

In consulting with tribes and tribal organizations regarding the procedures to ensure provision of child health assistance, State might want to consider the following:

- Reimbursing facilities that serve Indian populations, including tribal and urban programs, for CHIP covered services at higher rates than other facilities to assure access to adequate services.
- Improving enrollment procedures for AI/AN children by placing outstation eligibility workers in the IHS, tribal, and urban facilities, by developing culturally appropriate education materials for enrollment of AI/AN children and by using tribal and community resources to increase eligibility outreach.

We encourage States to consult with Tribes and Indian organizations throughout the process of developing and implementing their State plans, outreach strategies, and other policies and procedures. These are matters of great interest to Tribes and others in the Indian health community and on which they have significant expertise and insight.

We propose in § 457.125(b) that HCFA will not approve a State plan that imposes cost sharing on AI/AN children. We believe that the imposition of cost sharing on children in AI/AN families may impact the State's ability to ensure coverage for this group as required under section 2102(b)(3)(D) of the Act. Our rationale for exempting AI/AN children from cost sharing is further discussed in the preamble for proposed § 457.535. This proposed provision would apply to states that submit State plans for either a separate child health program or a Medicaid expansion program, including Medicaid expansion programs under a section 1115 demonstration project.

15. Civil Rights Assurance (§ 457.130)

In § 457.130, we propose to require the State to provide an assurance that the State plan will be conducted in compliance with all civil rights requirements. This assurance is necessary for all programs involving continuing Federal financial assistance in accordance with 45 CFR 80.4 and 84.5. These civil rights requirements include title VI of the Civil Rights Act of 1964, title II of the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and 45 CFR part 80, part 84 and part 91 and 28 CFR part 35.

16. Assurance of Compliance with Other Provisions (§ 457.135)

In accordance with section 2107(e) of the Act, we propose in § 457.135 to require that the State plan include an assurance that the State will comply under title XXI with the following provisions of titles XIX and XI of the Social Security Act:

- Section 1902(a)(4)(C) (relating to conflict of interest standards).
- Paragraphs (2), (16) and (17) of section 1903(i) (relating to limitations on payment).
- Section 1903(w) (relating to limitations on provider donations and taxes).
- Section 1132 (relating to periods within which claims must be filed).

We note that section 2107(e)(2)(A) of the Act provides that section 1115 the of Act, pertaining to research and demonstration waivers, applies to title XXI. This provision grants the Secretary the same section 1115 waiver authority in title XXI programs as in title XIX programs. Title XXI provides a broad range of options to allow States maximum flexibility in designing the program that best meets the needs of their children. We have carefully considered the extent to which waivers of both title XIX and title XXI provisions should be granted under CHIP.

While the law permits the Secretary to use section 1115 authority to waive provisions of title XXI in order to pursue research and demonstration projects, we do not believe it would be reasonable to exercise this authority before States have experience in operating their new title XXI programs and can effectively design and monitor the results of demonstration proposals. In addition, we do not yet have sufficient experience in the operation of CHIP to review and evaluate the merits of a proposal to waive title XXI provisions. Therefore, we would consider a section 1115 demonstration proposal for waiver of title XXI provisions only after a State has had at least one year of CHIP experience and has conducted an evaluation of that experience. We are inviting comments on the best approach to considering section 1115 waivers of title XXI provisions.

Because both the Federal government and the States have substantial experience in administering title XIX, we believe that we are in a position to consider and grant waivers of title XIX provisions even when the demonstration project involves the CHIP-related enhanced match. We would consider a request for section 1115 waivers of title XIX provisions applicable to Medicaid expansion programs without any additional experience with the program. We would require, however, that proposals be consistent with what would be allowable in a separate child health program in order to be approvable. We have approved waiver requests for three States. For example, we granted Missouri a waiver of title XIX requirements to provide non-emergency medical transportation because those services would not have been required under a title XXI benefit package. We have granted waivers for Missouri, New Mexico, and Wisconsin to waive title XIX cost sharing limitations to the extent that cost sharing is consistent with limitations of title XXI.

States that submit section 1115 research and demonstration proposals of Medicaid laws and requirements must meet the existing section 1115 requirements, including requirements for research and evaluation design. To the extent that title XIX funds could be utilized to implement the demonstration, it would be necessary to negotiate budget neutrality. A State that wishes to have a section 1115 demonstration proposal considered must submit a full section 1115 application in addition to a title XXI State plan or plan amendment request that indicates that the State intends to implement title XXI through an approved Medicaid demonstration project. The State plan or plan amendment must describe the applicable Medicaid requirements that will be waived if the section 1115 demonstration project is approved.

Although a 90-day review period applies to CHIP State plans, the 90-day review period does not apply to section 1115 demonstration requests. Section 1115 does not impose any restrictions on review of waiver applications. While the President has committed to treat requests for waivers expeditiously, the complexity of waiver proposals under Medicaid and CHIP means that a 90-day review period may not be sufficient.

To the extent that a proposed title XXI State plan or plan amendment depends upon section 1115 demonstration authority (waivers) which will take longer than 90 days for HCFA to approve or otherwise act on, HCFA may not be able to approve the proposed title XXI submission within 90 days. In such a circumstance, HCFA will advise the State that additional time will be required to review the waiver request. In addition, HCFA will ask the State for additional information on whether a final determination on the title XXI submission is required before approval of the waiver request, and how the State will implement the title XXI submission absent approved waivers. If the State does not provide information about implementation absent approved waivers, then the 90-day review period will not resume and HCFA will not proceed to final determination of the title XXI submission before acting on the related waiver request. If the State responds with information on how the submission will be implemented and implementation continues to rely upon waivers that have not yet been granted, then the 90-day review period will resume and HCFA may be required to disapprove the title XXI submission.

17. Budget (§ 457.140)

Section 2107(d) of the Act specifies that a State plan must include a description of the budget, updated periodically as necessary, including details on the planned use of funds and the source(s) of the non-Federal share of plan expenditures, including any requirements for cost-sharing by beneficiaries. We are proposing in § 457.140(a) that the State plan must include a budget that describes both planned use of funds and sources of the non-Federal share of plan expenditures for a 3-year period. An amended budget included in a State plan amendment must also include the required description for a 3-year period.

We are proposing that the planned use of funds include the projected amount to be spent on health services, the projected amount to be spent on administrative costs and assumptions on which the budget is based. The amount spent on health services would be the cost of the benefits provided to beneficiaries, such as payments to providers or health plans. Administrative costs include the costs specified in section 2105(a)(2) of the Act, examples of which are costs associated with outreach, child health initiatives and evaluation. We propose that assumptions on which the budget is based must include the cost per child and expected enrollment. We realize that a State must base the required information on projections. However, we believe it is important to have this information to ensure the State has adequately planned for its program. In particular, we want to ensure that the State understands the limits placed on administrative expenditures and that the plan is being developed in an "effective and efficient" manner.

Although section 2107(d) does not specifically require States to submit a 3-year budget, it provides a sufficient authority for our proposed requirement. We propose to require a 3-year budget for the initial State plan because States have up to 3 years to spend each annual allotment. A 3-year budget is useful to show if States are planning to use their unused allotments in the succeeding 2 fiscal years. In developing this policy, we also considered the budget requirements for Medicaid programs. Section 1115 demonstration projects require a 5-year budget and section 1915(b) waivers require a 2-year budget.

In accordance with section 2107(d), we are requiring in § 457.140(b) that the budget in the State plan describe the projected source of non-Federal plan expenditures, including any requirements for cost sharing by beneficiaries. Under § 457.224 of the March 4, 1999 proposed regulation concerning program allotments and payments to States (64 FR 10412), FFP would not be available for cost sharing amounts such as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar charges as required by section 2105(c)(5). To ensure this result, the amount of expenditures under the State plan must be reduced by the amount of any premiums and other cost-sharing received by the State.

HCFA's approval of a State plan, including amendments, is contingent on the State's use of permissible funding sources for the non-Federal share of plan expenditures.

Furthermore, we reserve the right to disallow funds, to the extent we find that the State is using impermissible funding for the non-Federal share of plan expenditures under a previously approved plan. Any revenues received by a State through contribution(s) from or the imposition of tax(es) on health care providers or related entities, regardless of whether or not the State uses the contribution for Federal matching purposes, is subject to the statutory provisions of 1903(w) of the Act.

18. HCFA Review of State Plan Material (§ 457.150)

Section 2106 of the Act provides the Secretary of the Department of Health and Human Services (DHHS) with the authority to approve and disapprove State plans and plan amendments. The authority vested in the Secretary under title XXI has been delegated to the Administrator of HCFA with the limitation that no State plan or plan amendment will be disapproved without consultation and discussion by the Administrator with the Secretary.

Therefore, in § 457.150, we propose to specify that HCFA reviews, approves and disapproves all State plans and plan amendments. The Center for Medicaid and State Operations within HCFA has the primary responsibility for administering the Federal aspects of title XXI. We will continue to work jointly with the Health Resources and Services Administration (HRSA) to implement and monitor the new program as a part of the Department's overall strategy to support coordination with other Federal and State health programs in providing outreach to uninsured children and promoting coordination of care and other public health interventions. At this time, State plans and plan amendments are reviewed by a team of DHHS staff, including HRSA staff, who must concur on approval of the plan. Departmental concurrence is an internal policy that is subject to change.

We base approval or disapproval of State plans on relevant Federal statutes, including title XXI and title XIX, regulations, and guidelines issued by HCFA. We published and will continue to publish guidelines in the format of State Health Official letters and Questions and Answers, which may be accessed through the website.

Section 2106 does not allow the Secretary to partially approve or disapprove a State plan or plan amendment. Thus, at § 457.150(b) we propose that HCFA approves or disapproves the State plan or plan amendment only in its entirety. For example, if a State submitted one proposal to implement a combination program, we would not approve the Medicaid expansion portion and disapprove the separate program portion. The proposal would only be considered as a whole. If a State wants HCFA to consider portions of a proposal separately, then the State must expressly divide the proposal into distinct and separate proposed State plan or State plan amendment submissions. For example, a State could receive approval for a Medicaid expansion program described in the State plan and then receive approval to turn the program into a combination program as described in a plan amendment. As appropriate and feasible, States may withdraw portions of a pending State plan or plan amendment that may lead to delay in its approval or disapproval of the program.

In § 457.150(d), we propose to designate an official to receive the initial submission of a State plan. By designating one official to receive all initial State plans, we eliminate any confusion of where to send the first submission. The identity of this individual is posted on HCFA's website. If this designated official is unavailable, the review period is started and counted as if the designated official was in the office.

In § 457.150(e), we propose to designate an individual to coordinate HCFA's review for each State that submits a State plan. We will notify the State of the identity of the designated individual in the first correspondence from HCFA relating to the plan, such as a formal request for additional information. We will also notify the State at any time there is a change in the designated individual. If the designated individual for a State is unavailable during regular business hours, another HCFA employee will act in place of the designated individual to ensure that the review period is counted as if the designated individual was in the office. We believe that this procedure will simplify administration of the program.

19. Notice and Timing of HCFA Action on State Plan Material (§ 457.160)

In § 457.160(a), we propose that HCFA will send written notification of the approval or disapproval of a State plan or plan amendment. While section 2106(c)(2) only requires that written notification be sent for disapproval and requests for additional information, we are proposing to require that written notification be sent for approval as well. This rule is consistent with the Medicaid approval process during which HCFA sends written notices of approval of Medicaid State plan amendments and 1915 (b) and (c) waivers.

We will closely track the review period, which begins on the first full day following receipt of the initial State plan by the designated official or the State plan amendment by the designated individual. In § 457.160(b)(2), we propose that the State plan or plan amendment be considered received on the day the designated official or individual, as determined in § 457.150 (d) and (e), receives an electronic, fax or hard copy of the complete plan. The complete plan includes any referenced documentation, such as attachments, benefits plans or actuarial analyses. If the designated official or individual receives a State plan without the referenced documentation, then the review period begins not on the first full day following receipt of the initial, incomplete plan, but rather on the first full day after the designated individual receives the documentation. We strongly encourage States to submit their State plans or plan amendments in electronic format (via disk or e-mail) to facilitate its distribution to DHHS' reviewing components. We request that the State submit the State plan and plan amendments to both the HCFA central office and the appropriate regional office at the same time. If the State submits the State plan or plan amendment in hard copy, we request that the State submit twenty (20) copies to the central office and three (3) copies to their regional office. If the State submits the State plan or plan amendment electronically, then the State should send three (3) hard copies to the central office and one (1) hard copy to their regional office. We also request that States include the name and telephone number of their primary contact person for CHIP (if different from the information required in § 457.40(c)) in the State's transmittal letter to help ensure an early and ongoing dialogue on the submission.

As required by section 2106(c)(2), a State plan or plan amendment will be considered approved unless HCFA, within 90 days after receipt of the State plan or plan amendment, sends the State written notice of disapproval or written notice of any additional information it needs in order to make a final determination. The Act does not specify calendar days or business days. We propose to measure the 90-day review period using calendar days. The 90-day review period would not expire until 12 a.m. eastern time on the 91st countable calendar day after receipt, as calculated using the rules set forth in the proposed regulation and discussed below (except that the 90-day period cannot stop or end on a non-business day).

HCFA's formal request for additional information may include a description of specific issues that need clarification, an outline of additional information required, or a request for resolution of any inconsistencies of the plan with title XXI provisions. We will make a formal request for information only when the State may need a significant amount of time to resolve issues or develop required information. In order to ensure that additional information responding to HCFA's formal requests will be sufficient to restart the approval process, we encourage States to work with HCFA in developing any responses.

In § 457.160(b)(3), we propose that if HCFA provides written notice requesting additional information, the 90-day review period is stopped on the day HCFA sends the written request for additional information. HCFA will not stop a review period on a weekend or a Federal holiday. This written request will be considered sent on the day that the letter is signed and dated except if the day is a weekend or Federal holiday, in which case the review period will stop on the next business day. We will attempt to ensure that the State receives the letter on that same day, through some means of electronic transmission, and will try to confirm receipt by telephone contact during normal business hours. We propose that the review period will resume on the next calendar day after the complete additional information is received by the designated individual, unless the State's response is received after 5 p.m. eastern time on a day prior to a non-business day or any time on a non-business day, in which case the review period will resume on the following business day. For example, if the formal request for information is sent on day 45, the review will begin again at day 46 on the first full business day following receipt of the requested information by the designated individual. If the formal request for information is sent on day 45 and the State's response is received at 6 p.m. eastern time on a Friday, then day 46 will be the following Monday (assuming it is not a holiday). We propose in § 457.160(b)(4) that the 90-day review period cannot stop or end on a non-business day. HCFA will not stop a review period on a weekend or holiday. If the 90th day of a review period is scheduled to be on a weekend or holiday, then the 90th day will be the following business day. Additionally, in § 457.160(b)(5), we propose that the 90-day review period may be stopped as many times as necessary to obtain the necessary information for making a final decision whether to approve the State plan or plan amendment.

In developing our policy for the review period, we considered applying the review periods associated with the review of title XIX State plan amendments (SPA) and 1915 (b) and (c) waiver requests. In the review of a SPA and 1915 (b) and (c) waiver request, the 90-day clock begins on the day of receipt of the SPA or waiver request and ends 90 days later and only business days are counted. The 90-day clock can be stopped only once by a written request for additional information. A new 90-day period begins on the day the requested information is received.

We are not proposing to use the same review period policies under title XXI, as we believe the proposed process will more effectively implement title XXI objectives because it will be speedier and more flexible. Rather than having a 90-day clock that restarts at the beginning when additional information is requested and received, we propose a clock that consists of only 90 calendar days and resumes on the day additional information was requested, when that information is received. The proposed time frame allows States ample opportunity to comply with the requirements of this new program by allowing the review period to be stopped as many times as necessary rather than only once. We are proposing that the review period be started (or restarted) on the first full day following receipt of the plan (or additional information) in order to allow us the fullest amount of time for review. Furthermore, our proposal to resume the review period on the following business day if the response is received after 5 p.m. eastern time on a day prior to a non-business day would allow us maximum review time. This provision and the provision that the review period cannot end on a non-business day safeguard against a plan becoming automatically approved on a non-business day. While we are committed to expedient review, we believe it would not be reasonable to count non-business days on which we could not have reasonably taken action.

We permit and encourage informal discussion between the State and HCFA during the review period. We may informally request additional information through meetings or telephone contact, or in writing. Because an informal request does not stop the 90-day approval time frame, HCFA usually makes such a request only when HCFA has concerns that the State could address in a timely manner through clarification of information already contained in the plan. It is important that States respond as quickly as possible to informal requests for clarification because these requests do not stop the review period.

20. Withdrawal Process (§ 457.170)

In § 457.170, we propose to allow a State to withdraw its State plan during the review process by providing written notice to HCFA of the withdrawal. This process is consistent with the process for withdrawal of a Medicaid State plan amendment.

21. Administrative and Judicial Review of Action on State Plan Material (§ 457.190)

A State dissatisfied with the Administrator's action on State plan material has a right to administrative review. In § 457.190(a), we propose a procedure for administrative review under the authority of section 2107(e)(2)(B) of the Act. Specifically, we would require that any State dissatisfied with the Administrator's action on State plan material under § 457.150 may, within 60 days after receipt of the notice of final determination provided under § 457.160(a), request that the Administrator reconsider whether the State plan or plan amendment conforms with the requirements for approval. This procedure is consistent with the procedure for administrative review in Medicaid. Additionally, we propose that the procedures for hearings and judicial review be the same procedures used in Medicaid which are set forth in regulations at part 430, subpart D. We propose to use the same procedures that are used in Medicaid because the infrastructure supporting these procedures is already in place and well known. We believe it is important for a State to be familiar with the process for requesting reconsideration of a HCFA action in order for that State to have full opportunity to dispute the action. In addition, we propose that we will not delay the denial of Federal funds, if required by the Administrator's original determination, pending a hearing decision. If the Administrator determines that the original decision was incorrect, we pay the State a lump sum equal to any funds incorrectly denied.

C. Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment

1. Basis, Scope, and Applicability (§ 457.300)

This subpart interprets and implements section 2102(b) of the Act, which relates to eligibility standards and methodologies; section 2105(c)(6)(B), which precludes payment for expenditures for child health assistance provided to children eligible for coverage under other Federal health care programs other than programs operated or financed by the Indian Health Service; and section 2110(b), which defines the term "targeted low-income child." This subpart sets forth the requirements relating to eligibility standards and to screening, application and enrollment procedures. The requirements of this subpart apply to a separate child health program and, with respect to the definition of targeted low-income child only, a Medicaid expansion program.

2. Definitions and Use of Terms (§ 457.301)

This section includes the definitions and terms used in this subpart. Because of the unique Federal-State relationship that is the basis for this program and in keeping with our commitment to State flexibility, we determined that many terms should be left to the States to define. For example, we did not define the terms "family" or "income" as there is a great deal of variation among States. States have the option to count either gross or net income when making eligibility determinations; and the term family can be defined any number of ways, ranging from only the individual child to including parents, grandparents or other non-related guardians. States have discretion in making these determinations.

The statutory phrase "public agency in the State" is not restricted to State government agencies, but would include other public agencies, such as local agencies in the State. Therefore, we propose to define "public agency" as a State, county, city or other type of municipal agency, including a public school district, transportation district, irrigation district, or any other type of public entity. Such an interpretation is consistent with the use of the term under § 433.51 of the Medicaid regulations, which includes State and local governmental units, as well as Indian tribes, as public agencies. We are proposing to define the term "employment with a public agency" as employment either directly or with an entity under a contract with a public agency. This term includes both direct and indirect employment because we do not wish to influence or restrict the organizational flexibility of State and local governmental units.

We would define the term "State health benefits plan" as a plan that is offered or organized by the State government on behalf of State employees or other public agency employees within the State. For example, if a local government, such as a county or a city, has its own insurance plan that is separate from the State employee plan, the children of that entity's employees could be eligible for CHIP as long as they are uninsured and meet all other eligibility requirements under the plan. The term does not include a separately run county, city, or other public agency plan or a plan that provides coverage only for a specific type of care, such as dental or vision care. Our definition parallels the definition in section 2791(d)(8) of the Public Health Service Act, which refers to plans "established or maintained for its employees," except that we would limit the term to a plan under which an actual benefit in the form of a more than nominal premium subsidy is available for coverage of a dependent child. In the absence of a more than nominal premium subsidy, we would not consider the plan to be a "benefits plan" with respect to the child, because no benefit would be extended by the State for that child.

3. State Plan Provisions (§ 457.305)

In accordance with the requirements of section 2102(b)(1)(A) of the Act, we propose to require that the State plan include a description of the eligibility standards under the State plan.

4. Targeted Low-income Child (§ 457.310)

Section 2110(b) of the Act defines a targeted low-income child. In accordance with this section, we have defined a targeted low-income child as a child who meets the eligibility requirements established in the State plan and certain other statutory conditions to be a targeted low-income child. At § 457.310(b), we set forth proposed standards for targeted low-income children that relate to financial need, eligibility for other coverage including coverage under a State health benefits plan. In addition, we set forth exclusions from the category of low-income children.

With regard to financial need, we propose that a child who resides in a State with a Medicaid applicable income level, must have: (1) Family income at or below 200 percent of the Federal poverty line; or (2) family income that either exceeds the Medicaid applicable income level but by not more than 50 percentage points or does not exceed the Medicaid applicable income level determined as of June 1, 1997. Section 2110(b)(1)(B)(ii)(II) of the Act refers to the term Medicaid applicable income level in the definition of targeted low-income child. As specified in a technical amendment passed by Congress, the March 31, 1997 date from section 2110(b)(4), defining Medicaid applicable income level, was replaced with the June 1, 1997 date in the text of this proposed regulation.

With regard to other coverage, we propose that a targeted low-income child must not be eligible for Medicaid (determined either through the Medicaid application process or the screening process discussed later in this preamble); or covered under a group health plan or under health insurance coverage, unless the health insurance coverage has been in operation since before July 1, 1997, and is administered by a State that receives no Federal funds for the program's operation. However, we would not consider a child to be covered under a group health plan if the child did not have reasonable access to care under that plan. For example, if a child is covered by a health maintenance organization in another State through the employer of an absent parent and cannot get treatment (other than emergency care) in his State of residence, we would not consider the child to have health insurance coverage for purposes of eligibility in the State of residency.

Section 2110(b)(3) allows low-income children who have insurance coverage under a State program operating since before July 1, 1997 without Federal funds to be considered targeted low-income children. This rule applies to programs that are State-operated, that is, administered by the State in some respect. Children in such programs continuously operating since June 30, 1997 would not be precluded from being considered as targeted low-income children, but would have to meet other applicable eligibility requirements.

In the State plan review process, we have been asked whether children in Blue Cross/Blue Shield (BC/BS) Caring Programs for Children are eligible for a separate child health program. As of May 1997, there were more than 20 Blue Cross/Blue Shield (BC/BS) Caring Programs for Children. These programs are generally funded by contributions from the community that are matched by BC/BS and no Federal funds have been used to support these programs. Whether such children can be covered under a separate child health program depends on whether the Caring Program is State-operated. Assuming a particular Caring Program is not within the pre-existing State program exception, children would nevertheless only be ineligible to the extent that they were *covered* by the Caring program. To the extent that the Caring program terminates, or alters its eligibility criteria so that these children are no longer eligible, the children previously covered under the Caring program could be eligible for CHIP coverage as long as they meet the State's eligibility requirements. We also note that to the extent that a Caring Program does not meet the definition of "health insurance coverage" under HIPAA, children covered by a Caring Program may be eligible for CHIP coverage.

As defined in section 2110(b)(2)(B) of the Act, the definition of targeted low-income child excludes a child who is a member of a family that is eligible for health benefits coverage under a State health benefits plan in a State on the basis of a family member's employment with a public agency. This provision would exclude children based on eligibility rather than actual coverage. Therefore a child who is eligible and offered coverage could not be a targeted low-income child even if the family declined to accept the coverage.

There may be circumstances in which a State may cover otherwise eligible children of public agency employees. The exclusion only extends to children "eligible for health benefits coverage under a State health benefits plan". We do not believe this condition is met in any meaningful sense when only a nominal employee benefit is available for health benefits coverage for the child. If the State or public agency contribution for the cost of the child's health benefits coverage is merely nominal, the child is not "eligible for health benefits coverage under a State health benefits plan". We would find an employee benefit available to the extent that a more than nominal State or public agency contribution was available under any health coverage option offered by the plan, regardless of the actual choice between those options made by the employee. In other words, if the State offers a cafeteria plan with multiple choices, we would look to whether a more than nominal State or public agency contribution could be available under any of the available choices, regardless of the actual choice made by the employee. This means that some children of public agency employees whose parents have access to State health benefits may be eligible for CHIP, while others may not, depending on whether the parent's public agency employer offers more than a nominal contribution that is available for the cost of the coverage of any dependent in the family.

In order to ensure that States do not change their contribution levels to make children of public agency employees eligible for CHIP, we are proposing to provide that the exception discussed above would not apply if the State made available an employee benefit to pay for part or all of dependent coverage on, the date this proposed rule is published, November 8, 1999, whether or not the State later terminates that employee benefit. This proposed limitation would ensure that CHIP coverage does not displace current coverage and substitute Federal dollars for existing private and public dollars already spent on coverage. The proposed limitation is to ensure that our overall interpretation of the public agency employee exclusion is consistent with the overall purposes of the CHIP statute, and results in effective and efficient use of CHIP resources.

We propose to find that a child is only "eligible for health benefits coverage under a State health plan" when an employee benefit is available to cover part or all of the cost of health benefits coverage under the State plan. Of course, such a benefit would be available if the child is the employee and directly entitled to State or public agency contribution to the cost of employee care. In the more likely instance that the child is a dependent of a State or public agency employee, the exclusion would be triggered if a State or public agency makes available a more than nominal contribution under the plan that exceeds the minimum amount necessary for coverage of the employee alone, and could be available to cover part or all of the cost of dependent coverage. This applies regardless of whether the State offers a defined benefit plan or a defined contribution applicable to a range of optional benefits. In other words, if the family must pay the full cost of coverage for dependents, with the exception of a nominal amount, then effectively no benefit is available, and children in the family could be eligible for a separate child health program. On the other hand, if the State makes available a more than nominal contribution for the cost of coverage beyond the amount needed to cover the cost of the employee alone, then a benefit would be available for dependent coverage, and children in the family would not be eligible.

We are proposing to consider any contribution over $10 towards the cost of dependent coverage to be more than nominal. We considered an interpretation that the exclusion would be triggered by any State or public agency employer contribution over the minimum amount necessary for coverage of the employee alone, but we believe that this interpretation would be administratively difficult because of the inability in some cases to accurately determine the overall cost of such coverage, particularly on a prospective basis. Moreover, the exclusion operates to prevent substitution of CHIP coverage for existing State supported coverage, which is not an issue when the State or public agency contribution is merely nominal and provides insignificant financial support toward enrolling the child.

Section 2110(b)(2)(A) of the Act excludes from the definition of targeted low-income child, a child who is an inmate of a public institution or who is a patient in an institution for mental diseases (IMD). We have proposed to use the Medicaid definition of IMD set forth at § 435.1009. This definition states, in part, that an IMD "means a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such."

We propose to apply the IMD eligibility exclusion any time an eligibility determination is made, either at the time of application or during any periodic review of eligibility (for example, at the end of an enrollment period). Therefore, a child who is an inpatient in an IMD at the time of application, or during any eligibility determination, would be ineligible for CHIP coverage. If a child is enrolled in CHIP and subsequently requires inpatient services in an IMD, the IMD services would be covered to the extent that CHIP coverage includes coverage for such services. However, eligibility would end at the time of redetermination if the child resides in an IMD at that time.

Some States have had questions regarding our policy on the provision of services to eligible individuals residing in IMDs. Under section 2110(b)(2)(A) of the Act, children who reside in IMDs are specifically excluded from being eligible for CHIP as a targeted low-income child. However, there may be situations where a child already determined eligible for CHIP may require inpatient mental health services and the State CHIP plan covers IMD services. This situation raises the issue of whether the child is eligible for CHIP services once he or she enters the IMD. In a question and answer released on July 29, 1998, we noted that a child in an IMD may not be eligible for CHIP but an eligible child who then enters an IMD may remain eligible for CHIP services until such time as the child's eligibility is redetermined. In developing this policy, we were attempting to allow services to be provided to more individuals. However, it had been suggested that our policy as stated in the July 29, 1998 question and answer has the potential for allowing services to be delivered inequitably among children with similar needs. For example, if one child is receiving services in an IMD and is redetermined after 2 months, that child will no longer be eligible for CHIP at that time. Another child may be receiving IMD services but may not be redetermined for 12 months. The second child would receive more services than the first although they are similarly situated. Moreover, the CHIP guidance is not consistent with the Medicaid IMD policy. Under Medicaid, children residing in IMDs remain eligible for Medicaid, but Federal matching funds are not available for any services provided to the individual unless the facility is qualified as an inpatient psychiatric hospital for individuals under the age of 21.

We are currently reviewing the CHIP IMD policy and considering various options. We are soliciting comments on an appropriate way to address this issue. We note that inpatient mental health services may be available under a State CHIP program in settings and facilities other than IMDs.

We have proposed to use the Medicaid definition of inmate of a public institution set forth at § 435.1009. Accordingly, when determining eligibility for CHIP, an individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jails, detention facilities, or other penal facilities. A facility is a public institution when it is under the responsibility of a governmental unit or when a governmental unit exercises administrative control.

Under Medicaid, FFP is not available for medical care provided to inmates of public institutions, except when the inmate becomes a patient in a medical institution. We believe that the underlying basis for this exception to the FFP exclusion in Medicaid is to recognize that the term "inmate" includes only a person involuntarily residing in a penal setting. When discharged from a penal setting, or temporarily transferred to a medical institution (which does not include institutions that are part of the State's penal system, since such an institution is primarily a penal institution rather than a medical institution) a person is no longer an "inmate" and is treated as part of the general health care community. While the person is in the medical institution, FFP is available for Medicaid covered services.

We propose to allow this same exception when determining eligibility for a separate child health program because we believe an inmate residing in a penal institution who is subsequently discharged or temporarily transferred to a medical institution for treatment is no longer an "inmate." Therefore, an inmate who becomes an inpatient in a medical institution which is not part of the penal system (that is, is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility), would then be eligible for CHIP (subject to meeting other CHIP eligibility requirements), and the State would receive FFP for medical care provided to that child. If the child is taken out of the medical institution and returned to a public institution, the child would again be excluded from eligibility for CHIP.

4. Other Eligibility Standards (§ 457.320)

Section 2102(b) of the Act sets forth the parameters for other eligibility standards and methodologies a State may use under a separate child health program. With certain exceptions, the State may establish different standards for different groups of children. Such standards may include those related to geographic areas served by the plan, age, income and resources (including any standards relating to spenddowns and disposition of resources), residency, disability status (so long as any standard relating to disability does not restrict eligibility), access to other health coverage and duration of eligibility. Under the statute, the State may not use eligibility standards that discriminate on the basis of diagnosis, cover children with higher family income without covering children with a lower family income within any defined group of covered targeted low-income children, or deny eligibility on the basis of a preexisting medical condition.

Accordingly, with certain exceptions, States are free to choose the standards that they will use to establish eligibility under a separate child health program. A State can set the income limit or limits, consistent with title XXI and these regulations, against which to compare income to determine eligibility. With the exception of income that cannot be counted because of a prohibition in another Federal statute, a State can determine what constitutes income, what income is counted, and what income is excluded or disregarded. A State can calculate eligibility using either gross income or net income after deductions and disregards. A State can also determine who is in a child's family and therefore, whose income will be counted and under what circumstances. However, as noted, certain other Federal statutes prohibit counting certain payments in determining eligibility under certain means tested programs including a separate child health program. For example, relocation payments provided under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and student financial assistance for attendance costs received from a program funded in whole or in part under title IV of the Higher Education Act of 1965, as amended, or under the Bureau of Indian Affairs student assistance programs cannot be counted as income under a separate child health program.

A State has the option to impose a resource test. However, very few States have elected this option. Most States believe that a resource test unnecessarily complicates the eligibility process and is a barrier to enrollment. Most families who meet the income requirements for eligibility do not have significant resources. If a State chooses to impose a resource test, it may set the resource limits(s) that it will use to establish eligibility and determine what constitutes a resource and what resources, if any, will be excluded or disregarded.

The statute provides that in establishing eligibility, the standards may include those related to a "spenddown". We would interpret this language to allow a child who would be eligible except for excess income and/or resources, to become eligible when the family has either incurred or paid medical expenses in the amount of the excess income and/or resources. We would allow the State to establish the period of eligibility for children who become eligible for the program by virtue of a spenddown. As it already exists under the Medicaid program, we would also allow States to have a "pay-in spenddown" policy. Under a "pay-in spenddown," a State would establish the amount of the excess income or resources that a family had and allow the family to pay that amount directly to the State to establish immediate eligibility without waiting until the family incurs the medical expenses. In the event that the family did not incur medical expenses sufficient to cover the pay-in spenddown amount for the spenddown period, the State would need to have reasonable procedures in place for the disposition of the unused pay-in spenddown amount, such as refunding the unused amount or crediting it to a future spenddown period. The State cannot use money collected for matching purposes.

The statute provides that in establishing eligibility, the standards may relate to "disposition of resources." We interpret this provision to allow a State to impose a period of ineligibility, or other penalty, if the State finds that an individual, whose resources are relevant to a child's eligibility for CHIP, disposed of resources for less than fair market value in order to make the child eligible for CHIP coverage.

The statute provides that the standards used may include those related to geographic area. We interpret this language to allow a State to provide coverage only to children living in certain areas or jurisdictions within the State and to have different eligibility criteria for different areas or jurisdictions within the State. However, we recommend that States strive to maximize coverage throughout the State.

Eligibility standards may also relate to disability status as long as any standard relating to such status does not restrict eligibility. We interpret this provision to allow a State to establish a group of children who may be eligible because they meet State-established disability criteria or have a particular disabling condition. The State could establish different eligibility criteria for each such group, as long as the criteria do not restrict eligibility for either group.

The statute provides that the standards may relate to age. We interpret this provision to allow States to provide coverage only to children of a certain age or ages or to have different eligibility criteria for children of different ages. We have specified that the age used cannot exceed age 18 because section 2110(c)(1) defines a child for purposes of title XXI as an individual under the age of 19. This means that a State cannot provide coverage to a child who has attained age 19. We considered whether there was statutory authority to continue coverage after a child's 19th birthday if the child was in a course of treatment and decided that there is no statutory authority to do so. We also considered whether a child who attains age 19 during what would otherwise have been a period of guaranteed eligibility, explained below, could remain eligible until the end of that period. We decided that there is no authority for such continuous eligibility and therefore eligibility must be terminated on the date that the child attains age 19. If coverage for a given period has been pre-paid under the State's usual and customary administrative procedures prior to the date the child attains age 19, the coverage may continue until the end of the pre-paid period even though the child is no longer eligible.

Eligibility standards may also include those related to residency. We interpret this language to allow States to provide child health assistance under a separate child health program only to residents of the State. We would also allow a State to determine what constitutes residency in the State. However, under the 1969 decision of the Supreme Court in *Shapiro* v. *Thompson* (394 US 618), a State cannot impose a durational residency requirement. Therefore, we propose to require that an eligibility standard relating residency cannot exclude those who have recently moved to the State. In addition, in establishing residency requirements we urge States to be particularly attentive to meeting the health needs of migrant targeted low-income children. We encourage States to allow migrants to maintain residency in the State in which they reside most often, if they choose, or to establish residency in the State in which they are working. We also strongly recommend that States establish written inter-State agreements setting forth rules and procedures for resolving cases of disputed residency as States do under Medicaid. (See § 435.403 for Medicaid regulations pertaining to residency.)

The eligibility standards also may relate to access to other health coverage. See Subpart H of this proposed rule for a discussion of substitution of coverage.

Furthermore, we want to ensure that the State periodically disenrolls from the program enrollees that no longer meet the eligibility standards under section 2102 and these regulations for any reason including a change in age, income, and other health coverage. For this reason, we would specify that the State agency may, at its own discretion, establish a period for regular review of eligibility, not to exceed 1 year. During the period between regular eligibility reviews, a child need not have eligibility redetermined, and thus will remain eligible throughout the period, unless the child reaches age 19 or (as discussed below) is found eligible for Medicaid. Note that, States that implement CHIP through the Medicaid expansion option are subject to the Medicaid regulations (42 CFR 435.916), under which a State must also redetermine eligibility at least every 12 months. The eligibility standard relating to duration of eligibility would not allow States to impose a maximum length durational requirement or any similar requirement. We solicit comments on this issue.

We are particularly concerned about the impact of age, income, and benefits restrictions under a separate child health program on pregnant teens and their children. We urge States to pay particular attention to the interaction of a separate child health program and the Medicaid program when it comes to the State's attention that a teen is pregnant. Although States may provide pregnancy-related and delivery services under a separate child health program, it is often to the pregnant teen and newborn's advantage to be covered by Medicaid, if eligible. Under Medicaid, once a pregnant teen is determined eligible, she remains eligible without regard to changes in income until the end of the postpartum period. Under a separate child health program, a pregnant teen may lose eligibility due to an increase in income and at that point, be unable to establish eligibility for Medicaid. She then might be without coverage for the rest of her prenatal care and her delivery. In addition, an infant born to a teen who is eligible for and receiving Medicaid on the date of the infant's birth is deemed to have filed a Medicaid application and been found eligible. The infant also remains eligible for 1 year, without regard to changes in income, as long as the infant continues to reside with the mother. An infant born to a mother whose delivery was covered by a separate child health program would not have this protection. To be eligible for separate child health program, an application would have to be filed for the infant and the infant would have to meet income eligibility standards.

In addition, we urge States to be particularly attentive to the possibility that a pregnant teen who loses eligibility under a State child health program because she attains age 19 might be eligible for Medicaid as a pregnant teen although she was not eligible for Medicaid otherwise. In some States, the income standard applied under Medicaid to a pregnant teen is higher than the standard used for non-pregnant teens of the same age, which means that pregnant teens with higher incomes than other children of the same age may be Medicaid eligible.

A State must allow any child, including a pregnant teen, to apply for Medicaid at any time and must take timely action on that application. If the teen is determined to be eligible for Medicaid, the teen is no longer eligible for CHIP. Any child who is covered under CHIP at all times is entitled to apply for and receive Medicaid, if eligible, regardless of the State's practice for determining and reestablishing eligibility under the State program. When the State determines that a child is Medicaid eligible, the child is no longer eligible for CHIP. States that have opted to provide presumptive eligibility for pregnant women under the Medicaid program must also allow providers to find pregnant teens presumptively eligible for Medicaid.

Finally, in some States, the benefits provided to pregnant teens under Medicaid, particularly those related to prenatal care and delivery, may be better and less expensive than those provided under CHIP. We urge States to provide sufficient information to a pregnant teen for her to make an informed choice about applying for Medicaid during a period of guaranteed eligibility.

In keeping with section 2102(b)(1)(B)(i) and (ii), States may not cover children with higher family income without covering children with lower family income within any State-defined group of covered targeted low-income children or deny eligibility based on a preexisting medical condition.

We have proposed certain other restrictions on eligibility standards. The first proposed restriction is that a State not require that a social security number (SSN) of an applicant child or family member be provided as a condition of eligibility. We wish to clarify that, under section 1137 of the Act, a SSN must be supplied only by applicants for and recipients of Medicaid benefits. In all other cases, including non-applicant parents of children applying for Medicaid and children applying for a separate child health program, States are prohibited from making the provision of a SSN by another family member a condition of the child's eligibility. This rule also applies to other members of the household whose income might be used in making the child's eligibility determination.

Some States use parents' SSNs as a means of verifying family income in the process of making an eligibility determination. While the statute does not permit States to require disclosure of the SSN for applicants or non-applicants, voluntary disclosure by the parent may facilitate the verification of income and contribute to a speedier and more accurate determination of the child's eligibility. States may advise parents and other household members of this as long as they do so in a manner that does not coerce provision of the SSN or deter application for benefits. Once more, we wish to clarify that States have no legal basis for denying an application based upon the failure to supply the SSN for verification purposes.

We also propose to specifically provide that the eligibility standards used for a separate child health program cannot exclude American Indian or Alaska Native children who are eligible to receive medical care funded by the Indian Health Service (IHS). We believe this provision is effectively required by the statutory mandate that State child health plans contain procedures to ensure the provision of child health assistance to targeted low-income children who are Indians, and the statutory provision, discussed below, that CHIP payment may be made primary to any IHS payment for CHIP-covered services.

Section 2105(c)(6)(B) of the Act specifically exempts programs operated or financed by IHS from the restriction on payment to prevent duplication between CHIP and other Federally operated or financed health programs. In light of IHS policies, we read this provision to require that a separate child health program must pay for services that are covered under the plan and are provided by IHS and IHS-funded Tribal health programs participating in the separate child health program. IHS only pays for items and services not covered by any other third-party coverage. The Indian Health Care Improvement Act grants IHS and IHS-funded Tribal health programs authority to bill Medicaid and all other third party insurance for services provided directly to the Indian person. The IHS or Tribal program also may require health care providers with whom they contract for other services for Indian beneficiaries to bill Medicaid and other health insurance before billing the IHS or Tribal program.

In addition, we would provide that the eligibility standards used for a separate child health program cannot violate any other Federal law. For example, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended (8 U.S.C. 1601 *et seq.*), a State must cover those legal immigrant children who meet the Federal definition of qualified alien and who are otherwise eligible. We believe that the following qualified alien children who are otherwise eligible must be covered:

- All qualified alien children who were in the United States before August 22, 1996.
- Refugees, asylees, certain Cuban, Haitian and Amerasian immigrants, and certain aliens whose deportation is being withheld.
- Unmarried, dependent children of veterans and active duty service members of the Armed Forces.
- The following children who enter the United States on or after August 22, 1996 and who are in continuous residence for 5 years (Earliest eligibility for this group will be August 22, 2001.):
  - Alien lawfully admitted for permanent residence;
  - Certain battered aliens or children of battered aliens;
  - Certain parolees who have been paroled for at least 1 year;

We note that States implementing a separate child health program do not have the option provided to them under Medicaid to deny Medicaid to some qualified aliens.

In establishing eligibility for CHIP coverage, States must obtain proof of citizenship, (including nationals of the U.S.) and verify qualified alien status in accordance with section 432 of PRWORA, as amended (8 U.S.C. 1642).

In addition to verifying qualified alien status, PRWORA requires that Federal public benefit programs, such as Medicaid and CHIP, must also obtain proof that an applicant who so claims is a citizen of the United States. As required by law, on August 4, 1998, the Immigration and Naturalization Service (INS) published a notice of proposed rule making in the **Federal Register** that set forth proposed procedures for providing proof of citizenship and qualified alien status.

For verification purposes, the INS proposed rules require the applicant to declare in writing, under penalty of law, whether the applicant is a national of the United States. (National means either a US citizen or a person who, though not a citizen of the United States, owes permanent allegiance to the United States). For unemancipated minors under 18, the regulations provide for the declaration to be executed by a parent, legal guardian, or other person legally qualified to act on behalf of the applicant. The proposed rules set out what constitutes primary or secondary evidence of US national status. In lieu of evidence from the applicant, the proposals allow the option to consult agency records, or to accept a third party declaration in the case of an applicant who cannot produce evidence of US national status. The regulations also permit reliance upon attestation as temporary evidence of US nationality only until the applicant can provide the required evidence.

While a letter to State Health Officials issued by HCFA on September 10, 1998, advised States that they could accept self-declarations of US citizenship without further proof, once the INS regulation cited above becomes a final rule, it is very likely that self-declaration will no longer be permitted. States that currently permit self-declaration, as well as States that employ other procedures not consistent with the INS final rule, will need to come into compliance with the INS final rule within 2 years after the rule becomes final.

Section 2102(b)(1)(A) specifies that a State may adopt eligibility standards relating to duration of eligibility but does not prescribe a particular duration. We propose at § 457.320(a)(10) to allow the State to establish the period between eligibility redeterminations as long as the period does not exceed one year. During the period between eligibility redeterminations, a child need not have eligibility redetermined and thus will remain eligible throughout the period, unless the child reaches age 19 or (as discussed above) is found eligible for Medicaid. The State is required to reestablish eligibility of a child, with respect to circumstances that may change, at least once every twelve months. This will allow States to provide continuous eligibility for children under a separate child health program without regard to changes in circumstances other than age or Medicaid eligibility, for a guaranteed period of time in the same manner as the State provides continuous eligibility under Medicaid (Section 1902(e)(12) of the Act). We will consider all payments made during a guaranteed period of eligibility after a final determination of initial eligibility to be correct. We believe a longer period between eligibility redeterminations would be inconsistent with the requirements and objectives of title XXI, in particular the goal to extend coverage primarily to targeted low-income children.

5. Application (§ 457.340)

We propose to require that the State must afford every individual the opportunity to apply for child health assistance without delay. Section 2101(a) of the Act requires States to provide child health assistance to uninsured, low-income children in an effective and efficient manner. The opportunity to apply without delay is necessary for an effective and efficient program.

In addition, we propose that a State may use either a separate application for CHIP or a joint application for CHIP and Medicaid. If a State chooses to use a separate application, the State must ensure that the screening procedures described in proposed § 457.350 are followed.

If a State chooses to use a joint application for CHIP and Medicaid, the application does not necessarily need to be an application for Medicaid under all possible Medicaid eligibility groups. The application for Medicaid could be an application only for a child-related Medicaid eligibility group that must be used for screening purposes as explained in the discussion of § 457.350. However, if a State chooses to use this type of limited application, the application must inform the individual that it is an application only for one kind of children's health benefits under Medicaid and is not a full Medicaid application, and that even if the child is not found eligible for this kind of children's health benefits under Medicaid, the child may be eligible for Medicaid on some other basis and has a right to complete a full Medicaid application. The Medicaid denial notice must also provide this information. For the same reasons that we believe it would be overly burdensome and contrary to the intent of title XXI to require that a State screen for eligibility under all Medicaid eligibility groups, we believe that it would be overly burdensome and against the intent of the program to require a State using a joint application to use a form that allows a full application for Medicaid under any eligibility group.

We encourage States to use a joint application for their CHIP and Medicaid programs. A joint application is an actual Medicaid application. It must be processed in the same manner as any other application for Medicaid. All of the Medicaid rules pertaining to application would apply to a joint application. Joint applications would ensure that the proposed screen and enroll requirements set forth at § 457.350 are met. Joint applications also permit a family to submit information once during the application process. On September 10, 1998, we released a model joint application form as an attachment to a letter clarifying eligibility procedures. This information can be found on the HCFA website.

If a State chooses to use separate applications for CHIP and Medicaid, there is considerable flexibility, within certain limits, in developing application forms and the eligibility intake process. For example, States that implement a separate child health program have flexibility to contract with independent entities to perform initial Medicaid screening and to make preliminary eligibility determinations. Title XXI does not prohibit this type of arrangement and the requirement to provide child health assistance in an effective and efficient manner allows this flexibility for a separate child health program. In addition, the State may contract with an independent entity for the purpose of eligibility screening if the State uses a joint application because this function is being performed under title XXI requirements and the funding comes from title XXI. However, if the screening shows that the child is potentially eligible for Medicaid, the evaluation of the application for Medicaid purposes and the determination of Medicaid eligibility must be made by State or local governmental merit personnel authorized by the State to perform these functions and the cost must be paid by title XIX.

In addition, there are requirements under other laws that may apply to the administration of eligibility under separate child health programs. For example, there are requirements in the Personal Responsibility and Work Opportunity Act of 1996, as amended, that apply to separate CHIP programs which call for verification of citizenship or national status, and of immigration status. Therefore, subject to the provisions noted above, States may use State employees or non-public employees to administer part or all of the eligibility determination process, may take and process applications at locations they determine, and establish application and enrollment procedures.

6. Eligibility Screening (§ 457.350)

Among our highest priorities is to ensure that CHIP actually provides health assistance to the individuals for whom Congress designed the program. That is, we want the State plan to ensure that individuals applying for CHIP, but who are eligible for Medicaid or any other form of health care assistance programs, are enrolled in those other programs and not inappropriately enrolled in CHIP. Section 2102(b)(3) (A) and (B) of the Act require that a State plan include a description of screening procedures used, at intake and any follow up including any periodic redetermination, to ensure that only children who meet the definition of a targeted low-income child receive child health assistance under the plan, and that all children who are eligible for Medicaid are enrolled in that program. In accordance with the statutory provisions, we propose at § 457.350(a) that a State plan must include a description of these screening procedures.

We believe that in establishing CHIP, Congress intended to make health insurance available to uninsured children at higher income levels than the income levels of children eligible for Medicaid and to identify the estimated 4 million children who are eligible for Medicaid but are not enrolled in that program. We believe that section 2110(b)(1)(C) clearly provides that children who would be eligible for Medicaid if they applied are not eligible for coverage under CHIP. The statute at 2110(b)(3)(B) also clearly provides that States have a responsibility to actually enroll children in Medicaid if they are ineligible for the separate child health program because they are Medicaid eligible. A simple referral to the Medicaid agency is not enough to meet this requirement.

We considered a number of options in interpreting these "screen and enroll" requirements. First we considered whether "Medicaid eligible" meant that the child had actually applied for Medicaid and been determined eligible. We decided that the intent of the provision was to identify children who would be eligible for Medicaid if they applied. We considered permitting any screening process that represented a reasonable attempt to identify Medicaid eligible children. We, however, do not believe that this option meets the statutory requirement that children who are eligible for Medicaid be identified and enrolled in Medicaid. Nonetheless, while a "reasonable attempt" to identify all Medicaid eligible children may not be enough, we are aware of the complexity of Medicaid eligibility and the burden that would be placed on both States and families if we required that children be screened for Medicaid eligibility under every possible Medicaid eligibility group.

We therefore propose only to require States to use screening procedures that identify any child who is potentially eligible for Medicaid under one of the poverty-level-related groups described in section 1902(l) of the Act. However, States are not mandated to cover children below the age of 19 who were born before October 1, 1983 under the poverty-level-related Medicaid groups. Therefore, we also propose to require, at a minimum, that a State use screening procedures that identify any child who is ineligible for Medicaid under the poverty level related groups solely because of age but is potentially eligible under the highest categorical income standard used under the State's title XIX State plan for children under age 19 born before October 1, 1983. In almost all circumstances, we expect the highest categorical income standard used for such older children to be the standard used for the optional categorically needy group of children eligible under section 1902(a)(10)(A)(ii)(I). These children are sometimes referred to as "Ribicoff children". Mandatory coverage of the older children in poverty-level related groups are being phased in and by October 1, 2002, all children under age 19 will be included in the poverty-level-related groups in all States.

During the screening process, we encourage States to identify any pregnant child who is eligible for Medicaid as a poverty-level pregnant woman described in section 1902(l)(1)(A) of the Act even though she is not eligible for Medicaid as a child. As discussed above, Medicaid eligibility standards may be more advantageous to a pregnant teen than coverage under a separate child health program.

We have not proposed to require that a State screen for Medicaid eligibility under all possible groups because we believe that this would place an unreasonable administrative burden on States due to the complexity of the eligibility requirements under some Medicaid groups, particularly the group of low-income families with children described in section 1931 of the Act and the medically needy groups described in 1902(a)(10)(C) of the Act. We believe that screening for eligibility under these other Medicaid groups might deter families from applying for the title XXI State program because they would have to provide all the information necessary for these complicated Medicaid eligibility determinations. We believe that simplification of the eligibility process is essential to encouraging families to enroll their children. The poverty-level-related Medicaid eligibility groups usually have the highest standard under which a child is eligible for Medicaid, have no resource requirements, and no requirements pertaining to the child's living arrangement, so we believe that almost all children who are Medicaid eligible will be identified through the proposed policy.

However, as noted above, the proposed policy will not identify every Medicaid eligible child. Therefore, we also propose to require that States choosing not to screen for Medicaid eligibility under all possible groups provide certain written information to all families of children who, through the screening process, appear unlikely to be found eligible for Medicaid if a full Medicaid eligibility determination were done. The following information must be provided to the person applying for the child: (1) A statement that, on initial review, the child does not appear to be eligible for Medicaid but that a final full determination of Medicaid eligibility can only be made based on a review of a full Medicaid application; (2) information about Medicaid benefits (if such information has not already been provided); and (3) information about how and where to apply for Medicaid.

As indicated in section 2102(b)(3)(B), Congress intended that children eligible for Medicaid be enrolled in the Medicaid program. We propose that if a child is found through a State screening process to be potentially eligible for Medicaid but fails to complete the Medicaid application process for any reason, the child cannot be enrolled in CHIP. Enrollment in CHIP can occur only after an appropriate screen shows that the child is ineligible for Medicaid.

States should make every effort to ensure that a decision by a family not to apply for Medicaid or not to complete the application process is an informed one. The screen and enroll procedures must provide the family with full and complete information about Medicaid, including the early preventive, screening, diagnostic and treatment services, the prohibition against cost sharing and the difference between Medicaid and CHIP. States should inform families that they do not have a choice of programs because children may not be enrolled in CHIP if they are Medicaid eligible. The process should ensure that the family understands the consequences of not applying for Medicaid or failing to complete the application process. We believe that these policies are consistent with the Congressional intent to provide coverage to children who are not and cannot be covered under Medicaid.

However, we are aware that there is great concern among a number of States and others that children will go without health care because of these screen and enroll policies. The concern centers around the perceived stigma of Medicaid. Some States allege that families refuse to apply for Medicaid, which is free, because they associate it with "welfare". It is noted that some families will not complete the Medicaid application process because it may be more complicated than the application process for CHIP, require more documentation, and may be seen as more invasive into personal lives. We particularly solicit comments on the extent of these problems and possible solutions. In the meantime we encourage States to employ outreach efforts that work to change the perception that Medicaid is "welfare" and to simplify the Medicaid eligibility process.

7. Facilitating Medicaid Enrollment (§ 457.360)

Under section 2102(b)(3)(B) of the Act, States are required to ensure that children found through the screening process described above to be eligible for Medicaid apply for and are actually enrolled in Medicaid. We would require that the State take reasonable action to facilitate the Medicaid application process and to promote enrollment of eligible children into Medicaid. Under 457.360(b), States must establish a process whereby the State initiates the action to begin the Medicaid enrollment process and several options for States are provided. For example, States can forward the information received from the Medicaid screen onto the Medicaid eligibility unit and then this information could automatically trigger the beginning of the Medicaid application process. We do not believe that a simple referral to the Medicaid office meets this requirement. We also do not believe that it is reasonable to make the application for and enrollment in Medicaid dependent solely on actions by the applicant or the individual applying on the applicant's behalf. We encourage States to develop procedures which will reduce or eliminate the need for applicants to provide information more than once. We also encourage the use of outstationed Medicaid eligibility workers who can take Medicaid applications at the same site as the one used to apply for CHIP. At a minimum, we urge that Medicaid and CHIP intake workers be well informed about the other program and its application procedures.

We have also proposed to require that a State ensure that families have an opportunity to make an informed decision of whether or not to complete the Medicaid application process by providing full and complete information, in writing, about: (1) The State's Medicaid program, including the benefits covered, restrictions on cost-sharing; and (2) the effect on eligibility for CHIP of neither applying for Medicaid nor completing the Medicaid application process.

8. Application for and Enrollment in CHIP (§ 457.361)

We propose to require that States afford individuals a reasonable opportunity to complete the application process and offer assistance in understanding and completing applications and in obtaining any required documentation. Furthermore, we have proposed to require that States inform applicants, in writing and orally if appropriate, about the eligibility requirements and their rights and responsibilities under the program.

Although not specifically addressed in statute, a State may choose to provide a period of presumptive eligibility during which services are provided, although actual eligibility has not been established. Unlike presumptive eligibility under Medicaid, which has rules prescribed by statute, a State has the flexibility to establish the rules for a program of presumptive eligibility under a separate child health program. (See section 435.1101 for the proposed rules pertaining to presumptive eligibility under Medicaid.) If a presumptively eligible child is subsequently determined to have been eligible during a period of presumptive eligibility, FFP will be provided at the enhanced FMAP rate for services provided during the presumptive period. However, if a child is not subsequently determined to have been eligible during the period of presumptive eligibility because either the State determined the child to be ineligible or the child's family did not complete the application process, the costs of services provided during the presumptive period will be considered administrative expenses. (For the rules pertaining to payments to States see 457.600 of the March 4, 1999 proposed rule on allotment and payment issues.)

The State agency must establish time standards for determining eligibility and inform the applicant of those standards. These standards may not exceed forty-five calendar days. In applying the time standards, the State must count each calendar day from the day of application to the day the agency mails written notice of its decision to the applicant.

The State agency must also determine eligibility within the State-established standards except in unusual circumstances, for example, when the agency cannot reach a decision because the applicant delays or fails to take a required action, or when there is an administrative or other emergency beyond the agency's control. The agency must not use the time standards as a waiting period before determining eligibility; or as a reason for denying eligibility (because it has not determined eligibility within the time standards). The State must also make eligibility effective as of the date specified in the State plan on which eligibility becomes effective.

9. Grievances and Appeals (§ 457.365)

Finally, we propose to require that States send each applicant a written notice of the decision on his application, and if eligibility is terminated or denied, the specific reason for the action and an explanation of his right to file a grievance or appeal within a reasonable time. (See § 457.985 in subpart I of these proposed regulations for rules on appeals and grievances.)

D. Subpart D—Coverage and Benefits: General Provisions

1. Basis, Scope, and Applicability (§ 457.401)

At proposed § 457.401 we would provide that this subpart interprets and implements section 2102(a)(7) of the Act, which requires that States make assurances relating to certain types of care; section 2103 of the Act, which outlines coverage requirements for children's health insurance; section 2109 of the Act, which describes the relation of the CHIP program to other laws; section 2110(a), which describes child health assistance; and section 2110(c) of the Act, which contains definitions applicable to this subpart. The requirements of this subpart apply to child health assistance provided under a separate child health program and do not apply to Medicaid expansion programs even when funding is based on the enhanced Federal medical assistance percentage.

2. Child Health Assistance and Other Definitions (§ 457.402)

Proposed § 457.402 sets forth the definition of child health assistance as specified in section 2110(a) of the Act. We considered whether we should further define the services listed in this section or add to the list. For example, we considered defining transportation as including coverage for urgent care and not just primary and preventive health care as included in the statute at section 2110(a)(27). We also considered whether traditional healers or alternative therapies should be specifically mentioned as providers and coverage options. However, we have not included any additional services in the definition or attempted to further define these services in order to give States the flexibility to provide these services as intended under the statute. Accordingly, we propose that the term "child health assistance" means payment for part or all of the cost of health benefits coverage, provided to targeted low-income children through any method described in § 457.410 for any of the following services as specified in the statute:

- Inpatient hospital services.
- Outpatient hospital services.
- Physician services and surgical services.
- Clinic services (including health center services) and other ambulatory health care services.
- Prescription drugs and biologicals and the administration of such drugs and biologicals, only if such drugs and biologicals are not furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.
- Over-the-counter medications.
- Laboratory and radiological services.
- Prenatal care and prepregnancy family planning services and supplies.
- Inpatient mental health services, other than inpatient substance abuse treatment services and residential substance abuse treatment services, but including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services.
- Outpatient mental health services, other than outpatient substance abuse treatment services, but including services furnished in a State-operated mental hospital and including community-based services.
- Durable medical equipment and other medically related or remedial

devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices and adaptive devices).

- Disposable medical supplies.
- Home and community-based health care services and related supportive services (such as home health nursing services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, training for family members and minor modification to the home).
- Nursing care services (such as nurse practitioner services, nurse midwife services, advanced practice nurse services, private duty nursing, pediatric nurse services and respiratory care services) in a home, school, or other setting.
- Abortion only if necessary to save the life of the mother or if the pregnancy is the result of rape or incest.
- Dental services.
- Inpatient substance abuse treatment services and residential substance abuse treatment services.
- Outpatient substance abuse treatment services.
- Case management services.
- Care coordination services.
- Physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders. " Hospice care.
- Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and only if the service is prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law; performed under the general supervision or at the direction of a physician; or furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.
- Premiums for private health care insurance coverage.
- Medical transportation.
- Enabling services (such as transportation, translation, and outreach services) only if designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.
- Any other health care services or items specified by the Secretary and not excluded under this subchapter.

We propose to define the terms "emergency medical condition," "emergency services," and "post-stabilization services" to give full meaning to the statutory requirement that States assure access to emergency services, at section 2102(a)(7)(B), and consistent with the President's directive to Federal agencies to address the *Consumer Bill of Rights and Responsibilities*, which includes the right to access to emergency services. For purposes of consistency, we used the definitions found in the proposed regulations for Medicaid managed care, published in the **Federal Register** on September 29, 1998 (63 FR 52022). Because access to emergency services may not be possible if a delay is involved, we propose to require States to guarantee access to emergency services without any requirement for prior authorization for those services. In addition, we would expect that States and their contractors would treat post-stabilization services in the same manner as required for the Medicare and Medicaid programs, while recognizing that not all such services would necessarily be covered by the State for purposes of CHIP.

Specifically, we propose to define the term "emergency medical condition" as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

- Serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of a woman or her unborn child;
- Serious impairment of bodily function; or
- Serious dysfunction of any bodily organ or part. We would define the term "emergency services" as covered inpatient or outpatient services that are furnished by a provider qualified to furnish emergency services and needed to evaluate or stabilize an emergency medical condition.

We would define "post-stabilization services" to mean medically necessary non-emergency services furnished to an enrollee after he or she is stabilized following an emergency medical condition.

We would define "health benefits coverage" as an arrangement under which enrolled individuals are protected from some or all liability for the cost of specified health care services. We note that this term is included in the definitions at proposed § 457.10.

3. Health Benefits Coverage Options (§ 457.410)

At proposed § 457.410, we list the four options a State has in obtaining health benefits coverage for eligible children. Specifically, we propose that States may choose to provide benchmark coverage, benchmark-equivalent coverage, existing comprehensive State-based coverage, or Secretary approved coverage. These four options, specified in section 2103(a) of the Act, are described in full at §§ 457.420 through 457.450.

Based on the authority of section 2102(a)(7) of the Act, we also propose at § 457.410(b), to require that any health benefits coverage obtained in accordance with proposed § 457.410 must include coverage for well-baby and well-child care, immunizations and emergency services. We note that these services must be covered even if coverage for these services is not generally included in the health benefits coverage option selected by the State.

The statute does not define well-baby or well-child care. We have defined well-baby and well-child care for purposes of cost sharing at proposed § 457.520(b), but we propose to allow States to define well-baby and well-child care for coverage purposes. We encourage States, however, to adopt the benefits and periodicity schedules recommended by a medical or professional organization involved in child health care when defining well-baby and well-child care coverage. Well child care includes health care for adolescents and includes the cost sharing prohibitions mentioned at proposed § 457.520(b). We recommend the schedules from the American Academy of Pediatrics, the American Academy of Pediatric Dentistry, and *Bright Futures: Guidelines for Health Supervision of Infants, Children and Adolescents*.

We propose to require all separate child health programs to follow the recommendations of the Advisory Committee on Immunization Practices (ACIP). The proposed requirements for immunizations under separate child health programs are identical to those under the Medicaid program. The Vaccines for Children (VFC) program, established under section 1928 of the Act also requires providers to immunize eligible children according to the recommendations of ACIP. We note that children enrolled in separate child health programs will not meet the VFC definition of Federally-vaccine eligible because they are not "uninsured" and therefore will not be eligible to receive free vaccines as part of the VFC program. State Medicaid programs are required to implement new recommendations of the ACIP within 90 days of their publication. Separate child health programs must also cover newly recommended vaccines within this timeframe. State contracts for CHIP coverage should provide for coverage of newly recommended vaccines within 90 days of publication of the ACIP recommendations.

We have only recommended that States use the periodicity schedules recommended by certain medical or professional organizations while we propose to require the use of the ACIP schedule for the provision of immunizations. Under the Medicaid program, we do not require a specific periodicity schedule for well-baby and well-child visits except that we do require the ACIP schedule for immunizations. This is because the Medicaid program has no Federal requirements for using a certain periodicity schedule. We do not believe we can hold a State CHIP program to a higher standard than a Medicaid program.

We also propose at § 457.410(b) to require that any health benefits coverage obtained in accordance with this section include emergency services as defined in proposed § 457.402(c). We note that a State may offer different health benefit coverage to children with special needs consistent with the eligibility standards set forth at § 457.320 as long as each benefit package meets the basic coverage requirement. The State can define the health benefit coverage to include supplemental services for children with special needs or physical disabilities. Alternatively, a State may have more than one benefit package that meets all the requirements of this subpart including one designed for children with special needs or physical disabilities, as long as the State complies with the Americans with Disabilities Act in establishing eligibility standards. We also note that if no different benefit packages are offered for children with special needs, they are eligible for whatever child health assistance is available in the State if they meet all other eligibility criteria.

If a State offers a limited package of services to address special needs that is not part of the comprehensive coverage required under this subpart, State expenditures for the limited package would be subject to the 10 percent limitation on Federally-matchable expenditures for items other than the comprehensive coverage package, under section 2105(a)(2) of the Act.

4. Benchmark Health Benefits Coverage (§ 457.420)

Section 2103(b) of the Act sets forth the benchmark benefit packages from which a State may choose. We propose to implement these provisions at § 457.420. We considered the possibility that the health benefits coverage package available under a benchmark plan may change from year to year and the possible need to require an annual review to ensure that the plan continues to meet the requirements of this subpart. However, we do not propose to require an annual review in part because of the requirements of section 2106 of the Act, implemented at § 457.65 of these proposed regulations, which provides that an approved CHIP plan shall continue in effect unless and until the State amends the plan or the Secretary finds substantial noncompliance of the plan. For example, we believe it would be unduly burdensome to require States to review and alter their benchmark benefit package on an annual basis. Therefore, if a State has elected the State employee's health benefit package as its benchmark plan, and the benefit package changes from one year to another, the State is not required to submit a State plan amendment as long as it continues to offer the benefits described in its approved State plan. However, when a State chooses to increase, decrease, or substitute benefits available under its State plan, an amendment must be submitted for approval. The State would then decide whether to continue to use the benchmark plan (including any benefit changes to the original package), provide a benchmark-equivalent using an actuarial analysis, or use one of the other health benefits package options. We will monitor compliance with benchmark requirements as we will with all other requirements of the program as discussed in proposed § 457.150(e).

The statute provides that benchmark coverage must be "equivalent" to the benefits coverage in a reference benchmark benefit package. We are proposing to interpret this term to mean "substantially equal," differing only from the reference package as necessary to meet other requirements of Title XXI. Clearly, the word "equivalent" cannot reasonably be read to mean "actuarially equivalent," since the statute separately requires actuarial equivalence for benchmark-equivalent coverage. Therefore, we are proposing to require that a benchmark package offered under a separate child health plan can differ from what is otherwise available in the State under the benchmark package only to the extent that the CHIP package must differ to meet the requirements of title XXI. For example, benchmark coverage offered by a State under a separate child health program must include coverage for immunizations even if the benchmark coverage after which the State models the CHIP coverage does not include coverage for immunizations. If the benchmark package chosen by the State does not meet the requirements of title XXI, then the State must enlarge the benchmark benefit package so that it meets the title XXI requirements. The additional benefits should be coordinated to the greatest extent possible with the other benchmark package providers and benefits.

According to the statute, we propose to define benchmark coverage as health benefits coverage that is substantially equal to the health benefits coverage in one of the following benefit packages:

- The Federal Employee Health Benefits Program (FEHBP) Blue Cross/Blue Shield Standard Option Service Benefit Plan with Preferred Provider arrangements;
- A health benefits plan that the State offers and makes generally available to its own employees; or
- A plan offered by a Health Maintenance Organization (HMO) that has the largest insured commercial, non-Medicaid enrollment and is offered by an HMO (as defined in section 2791(b)(3) of the Public Health Service Act) in the State.

Each benchmark benefits package is discussed in detail below.

Federal Employee Health Benefits Plan Blue Cross/Blue Shield Standard Option Service Benefit Plan with Preferred Provider arrangements (FEHBP). The FEHBP is available to Federal employees in all parts of the United States, under 5 U.S.C. 8903(1). Contract No. CS 1039 between the Blue Cross and Blue Shield Association and the U.S. Office of Personnel Management contains a description of the benefits offered under the plan. In addition, the Federal Employees Health Benefits Plan publication RI–71–5 and the plan's home page on the Internet (http://www.fepblue.org) include descriptions of the benefits.

State Employee Plan. We propose to allow a State to design a separate child health program under which it offers coverage modeled after the coverage by a health benefits plan that is offered and generally available to its own employees.

Plan of a health maintenance organization with the largest enrollment in the State. We propose to allow a State to choose as a model for the coverage offered under its separate child health plan the coverage offered by an HMO that has the largest insured commercial non-Medicaid enrollment in the State. As defined in section 2791(b)(3) of the Public Health Service Act, the term "health maintenance organization" means—

- A Federally qualified health maintenance organization as defined in section 1301 of the Public Health Service Act and further described in regulations at 42 CFR part 417, subparts A, B, and C;
- An organization recognized under State law as a health maintenance organization; or
- A similar organization regulated under State law for solvency in the same manner and to same extent as a health maintenance organization as defined in State law.

If the health maintenance organization offers more than one coverage plan, the benchmark plan under the separate child health program must mirror the specific plan offered by the HMO that has the largest commercial enrollment. For example, if an HMO offers different benefit packages to Federal employees, postal employees and private industry employees, respectively, the CHIP benchmark plan must mirror the HMO plan with the largest enrollment. In calculating commercial enrollment, neither Medicaid nor public agency enrollees will be counted. However, Federal employees are considered to be commercial enrollees.

5. Benchmark-Equivalent Health Benefits Coverage (§ 457.430)

Section 2103(a)(2) of the Act provides that a State may opt to design a program under which it offers coverage with an aggregate actuarial value that is at least equal to the value of one of the benchmark benefit packages. In accordance with the statute, we propose at § 457.430 that the benchmark-equivalent coverage must have an aggregate actuarial value, determined in accordance with proposed § 457.431, that is at least actuarially equivalent to coverage under one of the benchmark packages outlined in § 457.420.

In § 457.430 we would set forth the coverage requirements for States selecting the benchmark-equivalent coverage option. Under the authority of section 2103(c)(1), we would specify that a benchmark equivalent plan must include coverage for inpatient and outpatient hospital services, physicians' surgical and medical services, laboratory and x-ray services, immunizations, and well-baby and well-child care, including age-appropriate immunizations provided in accordance with the recommendations of ACIP. We considered proposing minimum standards for basic sets of required services (for example, a minimum of 14 inpatient hospital days). We concluded that it would be unlikely that a State could provide greatly reduced benefits (such as only 2 inpatient hospital days) and still meet the actuarial value requirement. Therefore, we did not propose such minimum standards.

Under the authority of section 2110(a) of the Act (implemented at proposed § 457.402), a State may provide coverage for a wide range of services. If the State provides coverage for prescription drugs, mental health services, vision services, or hearing services the coverage for these services must have an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of service in the benchmark benefit package. In addition, we propose that if the benchmark plan does not cover one of the above additional categories of services, then the benchmark-equivalent coverage package may, but is not required to, include coverage for that category of service. A State may provide services listed in § 457.402 other than the services listed in § 457.430(b) without meeting the 75 percent actuarial value test.

6. Actuarial Report for Benchmark-Equivalent Coverage (§ 457.431)

In accordance with section 2103(c)(4) of the Act, at proposed § 457.431 we would require a State, as a condition of approval of benchmark-equivalent coverage, to provide an actuarial report, with an actuarial opinion that the benchmark-equivalent coverage meets the actuarial requirements of § 457.430.

States are free to pool their resources to obtain actuarial services. The actuarial value of the benchmark coverage and the State-designed benchmark-equivalent coverage, however, will vary from State to State so the determination of actuarial value must be made for each individual State.

We note that some States have suggested that to spare States some of the expense of hiring actuaries, we should determine the actuarial value for the FEHBP Blue Cross Blue Shield (BC/BS) preferred provider option (PPO) because it is a national health insurance plan. We have decided that it would not be feasible for HCFA to determine the actuarial value of the FEHBP plan because the value of the coverage under the plan will vary by State even though the benefit package remains the same. If a State offers benchmark-equivalent coverage, it must obtain an opinion from a member of the American Academy of Actuaries to determine the value of the FEHBP because the actuarial value of this plan will vary from State to State for several reasons, including regional cost variations and differences in the target population.

The actuarial opinion must meet all the provisions of the statute. We propose that the report must explicitly state the following information:

- The actuary issuing the opinion is a member of the American Academy of Actuaries (and meets Academy standards for issuing such an opinion).
- The actuary used generally accepted actuarial principles and methodologies of the American Academy of Actuaries, standard utilization and price factors, and a standardized population representative of privately insured children of the age of those expected to be covered under the State child health insurance plan.
- The same principles and factors were used in analyzing both the proposed benchmark-equivalent coverage and the benchmark coverage, without taking into account differences in coverage based on the method of delivery or means of cost control or utilization used. States must assure that the assumptions used to estimate the State-designed benchmark-equivalent package are the same as those used in the actuarial analysis of the benchmark package. These same assumptions must be used consistently throughout the actuarial analysis.
- The report should also state if the analysis took into account the State's ability to reduce benefits because of the increase in actuarial value due to limitations on cost sharing in the State child health insurance plan.

The report should specify which benchmark plan is being used for comparison. It should also specify the value of the benchmark plan, the value of the coverage under the plan being offered by the State and that the plan meets the overall requirement of actuarial equivalence. In addition, the value of coverage of the specific additional services listed in the statute (prescription drugs, mental heath services, vision services and hearing services) must also meet the 75 percent requirement of substantial actuarial value for each of the additional services included in the benchmark plan. The actuarial opinion should also outline the major differences, if any, in coverage.

The opinion should provide sufficient detail regarding the methodologies used to estimate the value so that HCFA's actuaries can review the States' calculations and assumptions for accuracy and completeness. Should discrepancies arise in the course of our review, the actuaries can request States to provide detail sufficient to allow the actuaries to replicate the results.

The opinion narrative should assure the reviewer that the actuary has taken into account all factors that affect the relative value of the plans being compared. Adjustments made to data and the rationale for the adjustments should be included. In this way, even if the specifics and the derivation of the adjustments are not specified, we can feel confident that allowances were made for all relevant considerations.

Our review of State plans that elect to adopt an actuarially equivalent benchmark benefit plan may include review by our actuaries. States must submit to HCFA all information necessary for our actuaries to perform this review. We will review the actuarial report as part of the overall plan approval process as described in subpart A of these proposed regulations. When the actuarial report is not complete or raises questions, we will contact the State to request clarification and may request additional information from the State. If, even after the complete information is received, we determine that the benefits do not meet the requirements of title XXI, we may disapprove the State's child health plan.

Several issues and questions have been raised with respect to the actuarial determinations. While these issues have been addressed in the five sets of questions and answers released by HCFA, and available on the HCFA web site, www.hcfa.gov, we will address them here to ensure that States have full knowledge of the issues involved.

We were asked if a State must determine actuarial equivalence of coverage under a benchmark plan for an individual or for a family. The statute does not specify whether the States that decide to use a benchmark-equivalent plan must calculate actuarial equivalence to family coverage or to individual coverage. Therefore, a State may make either comparison. In addition, the coverage offered to families and individuals under a benchmark plan rarely differs. Employees usually have a choice of whether to cover themselves only or themselves and additional family members. Therefore, the actuarial value of family coverage and individual coverage should be essentially the same. We also want to clarify that States should not take premiums into account when determining the actuarial value of a health insurance plan. States should take into account only benefits and cost sharing (such as copayments, coinsurance and deductibles).

7. Existing Comprehensive State-Based Coverage (§ 457.440).

In accordance with section 2103(d) of the Act, at proposed § 457.440 we provide that existing comprehensive State-based health benefits coverage must include coverage of a range of benefits, be administered or overseen by the State and receive funds from the State, be offered in the State of New York, Florida, or Pennsylvania, and have been offered as of August 5, 1997. In essence, Congress deemed the existing State-based health benefit packages of three States as meeting the requirements of section 2103 of the Act. However, these States still need to meet other requirements of title XXI, including requirements relating to cost sharing such as copayments, deductibles and premiums as specified in subpart E of this proposed rule.

We would also specify that the State (Florida, New York, or Pennsylvania) may modify its existing, comprehensive, State-based program under certain conditions. First, the program must continue to offer a range of benefits. Second, the modification must not reduce the actuarial value of the coverage available under the program below either the actuarial value of the coverage as of August 5, 1997 or the actuarial value of a benchmark benefit package. A State must submit an actuarial report when it amends its existing State-based coverage.

Even though the benefits packages offered in Florida, New York, and Pennsylvania were deemed to have met title XXI benefits requirements, these States must still submit CHIP plans for approval by HCFA. Each State plan must demonstrate that the State meets all the title XXI requirements, including the cost sharing requirements specified in subpart E of this proposed rule.

8. Secretary-approved coverage (§ 457.450)

In proposed § 457.450 we discuss the option of providing health benefits coverage under the Secretary-approved health benefits coverage option. Section 2103(a)(4) of the Act defines Secretary-approved coverage as any other health benefits coverage that provides appropriate coverage for the population of targeted low-income children to be covered by the program. A State must select this health benefit coverage option when it submits its plan to HCFA for approval.

We propose that the following coverage be recognized as Secretary-approved coverage under a separate child health program:

- Coverage that is the same as the coverage provided under a State's Medicaid benefit package as described in the existing Medicaid State plan.
- Comprehensive coverage offered under a § 1115 waiver that either includes coverage for the full EPSDT benefit or that the State has extended to the entire Medicaid population in the State.
- Coverage that includes benchmark coverage, as specified in § 457.420, plus additional coverage. Under this option, the State must clearly demonstrate that it provides all the benchmark coverage.
- Coverage, including coverage under an employer-sponsored group health plan, purchased by the State that the State demonstrates to be substantially equal to benchmark coverage, as specified in § 457.420, through use of a benefit-by-benefit comparison of the coverage compared to a benchmark plan. Under this option, if there is just one benefit that does not meet or exceed the benchmark, the State must provide an actuarial analysis to determine actuarial equivalence. At this point, it would no longer be Secretarial approved coverage and would fall under benchmark equivalent health benefits coverage under § 457.430.

While these four options have been identified for permissible Secretarial-approved coverage, we solicit comments on other specific examples of coverage packages that States have developed that meet the title XXI requirements.

We also propose that no actuarial analysis is required for Secretary-approved coverage except for coverage that does not meet or exceed benchmark coverage. States should be cognizant, however, that to date we have not allowed a State to offer a health benefits package that does not provide all of the coverage provided under a benchmark plan without requiring the State to submit an actuarial analysis. We have approved some State plans under which the States offer health benefit packages that provide all the coverage of the benchmark package plus additional coverage. In approving State child health plans, we intend to ensure that children receive services that are cost effective, comprehensive, and high-quality. If a State wants to reduce any benchmark benefit, it must use the benchmark-equivalent coverage option.

9. Prohibited Coverage (§ 457.470)

In accordance with section 2103(c)(5) of the Act, we propose at § 457.470 that a State is not required to provide health benefits coverage under the plan for an item or service for which payment is prohibited under title XXI even if any benchmark package includes coverage for such item or service.

10. Limitations on Coverage: Abortions (§ 457.475)

This section would implement sections 2105(c)(1) and (c)(7) of the Act, which set limitations on payment for abortion services under the CHIP program. At § 457.475, we propose that FFP is not available in expenditures for an abortion, or in expenditures for the purchase of health benefits coverage that includes coverage of abortion services, unless the abortion is necessary to save the life of the mother or the abortion is performed to terminate a pregnancy resulting from an act of rape or incest.

Additionally, we propose that FFP is not available to a State for any amount expended under its title XXI plan to assist in the purchase, in whole or in part, of health benefits coverage that includes coverage of abortions other than to save the life of the mother or resulting from an act of rape or incest.

We also would provide that, if a State wishes to have managed care entities provide abortions in addition to those specified above, those abortions must be provided pursuant to a separate contract using non-Federal funds. Under our proposal, a State may not set aside a portion of the capitated rate to be paid with State-only funds, or to append riders, attachments, or addenda to existing contracts to separate the additional abortion services from the other services covered by the contract. We believe that these requirements are necessary to enforce the statutory prohibition against the purchase of health benefits coverage that includes abortion services not explicitly permitted by the statute. However, the proposed regulation also specifies that this requirement should not be construed as restricting the ability of any managed care provider to offer abortion coverage or the ability of a State or locality to contract separately with a managed care provider for additional abortion coverage using State or local funds.

11. Preexisting Condition Exclusions and Relation to Other Laws (§ 457.480)

In proposed § 457.480 we discuss the provisions of sections 2103(f), 2109 and 2110(c) of the Act. We propose to adopt the definitions of "creditable coverage," "group health plan," "group health insurance coverage," "health insurance coverage," and "preexisting condition exclusion" set forth in the HIPAA regulations at 45 CFR 144.103 and 146.133. Definitions for these terms are set forth at proposed § 457.10.

In proposed § 457.480(a) we implement section 2103(f)(1) of the Act and provide that, subject to the exceptions in paragraph (b), a State child health plan may not permit the imposition of any preexisting condition exclusion for covered benefits under the plan. Further, in paragraph (b), we would specify that if the State child health plan provides for benefits through payment for, or a contract with, a group health plan or group health insurance coverage, the plan may only permit the imposition of a preexisting condition exclusion insofar as it is permitted under HIPAA.

In paragraphs (c)(1) through (c)(4), we would set forth the requirement of sections 2109 and 2103(f)(2) of the Act, which provides that State plans must comply with the requirements of subpart 2 of part A of title XXVII of the PHS Act and certain other provisions of law. Specifically, we have included section 514 of ERISA, HIPAA, the Mental Health Parity Act of 1996 (MHPA), regarding parity in the application of annual and lifetime dollar limits to mental health benefits, and the Newborns and Mothers Health Protection Act of 1996 (NMHPA), regarding requirements for minimum hospital stays for mothers and newborns. See regulations at 45 CFR 146.136 for a discussion of the MHPA and 45 CFR 146.130 and 148.170 for a discussion of the NMHPA.

12. Delivery and Utilization Control Systems (§ 457.490)

In accordance with section 2102(a)(4) of the Act, proposed § 457.490 requires that State plans include a description of the type of child health assistance to be provided including the proposed methods of delivery and proposed utilization control systems. In describing the methods of delivery of the child health assistance using title XXI funds, the State should address its choice of financing the insurance products and the methods for assuring delivery of the insurance product to children. These methods may include, but are not necessarily limited to, contracts with managed health care plans (including fully and partially capitated plans), contracts with indemnity health insurance plans, and other arrangements for health care delivery. The State should describe any variations based upon geography, as well as the methods for establishing and defining the delivery systems.

Utilization control systems are administrative mechanisms designed to ensure that children use only health care that is appropriate, medically necessary and approved by the State or its subcontractor. Examples of utilization control systems include, but are not limited to, requirements for referrals to specialty care, requirements that clinicians use clinical practice guidelines, or demand management systems (such as, use of an 800 number for after-hours and urgent care). The State should describe its plan for review, coordination, and implementation of utilization controls, addressing other procedures and State developed standards for review, in order to assure that necessary care is delivered in a cost-effective and efficient manner.

13. Grievances and Appeals (§ 457.495)

At proposed § 457.495, we would require States to provide enrollees in a separate child health program the right to file grievances or appeals for reduction or denial of services in accordance with proposed § 457.985.

E. Subpart E—State Plan Requirements: Beneficiary Financial Responsibilities

1. Basis, Scope, and Applicability (§ 457.500)

States that implement a separate child health program may impose cost sharing charges on beneficiaries. A State that chooses to impose cost sharing charges on beneficiaries must meet the requirements described in section 2103(e) of the Act. These requirements apply to all separate child health programs regardless of the type of coverage (benchmark, benchmark equivalent, Secretary-approved or existing comprehensive State-based coverage) provided through the program. These requirements also apply when a State purchases family coverage for the targeted low-income child under the waiver authority of section 2105(c)(3) of the Act and proposed § 457.1010 and when a State provides premium assistance for employer-sponsored group health plan coverage under proposed § 457.810.

Under section 2103(e)(1) of the Act, when a State determines it will impose cost sharing, the State plan must include a description of the amount of premiums, deductibles, coinsurance and other cost sharing charges imposed. If the State chooses to vary cost sharing charges, the State plan may only vary premiums, deductibles, coinsurance, and other cost sharing based on family income of targeted low-income children in a manner that does not favor children from families with higher income over children from families with lower income. Also, the State must make available a public schedule of any cost sharing charges imposed under the State plan.

Section 2103(e)(2) specifies that a State may not impose cost sharing charges on benefits for certain preventive services. Section 2103(e)(3) specifies the limitations on the amount of cost sharing charges that may be imposed on a beneficiary, including a cumulative cost sharing maximum on cost sharing imposed on children in families with income above 150 percent of the FPL. Section 2103(e)(4) clarifies that CHIP cost sharing rules will not apply to beneficiaries who are provided child health assistance in the form of coverage under a Medicaid expansion program.

This subpart consists of provisions relating to the imposition under a separate child health program of cost sharing charges including enrollment fees, premiums, deductibles, coinsurance, copayments, and similar cost sharing charges. This subpart does not apply to States that provide child health assistance through a Medicaid expansion program.

2. General State Plan Requirements (§ 457.505)

Section 2103(e)(1)(A) of the Act specifies that a State plan must include a description of the amount (if any) of premiums, deductibles, coinsurance, and other cost sharing imposed. Section 2103(e)(1)(A) also specifies that any such charges be imposed pursuant to a public schedule. In accordance with the statute, at § 457.505, we propose that the State plan must include a description of the amount of premiums, deductibles, coinsurance, copayments, and other cost sharing imposed. We further propose that the State plan include a description of the methods, including the public schedule, the State uses to inform beneficiaries, applicants, providers, and the general public of cost sharing charges, the cumulative cost sharing maximum, and any changes in these amounts. Under § 457.525, the State may choose to include the public schedule in pamphlets, separate mailings, or newspapers to inform the public of beneficiary financial responsibilities under the program.

We also propose that States that purchase family coverage under the authority provided in section 2105(c)(3) and proposed § 457.1010, or provide premium assistance for employer-sponsored group health insurance (as defined in proposed § 457.10) have a process in place to ensure that providers do not charge beneficiaries for copayments, coinsurance, deductibles, or similar fees for well-baby and well-child care services as defined in proposed § 457.520 and do not charge AI/AN children cost sharing as required in proposed § 457.535. We would also provide that a procedure that primarily relies on a refund given by the State for a beneficiary's cost sharing payment of well-baby/well child-care services is not an acceptable procedure. An acceptable alternative approach would be one where a State requires that providers bill the State directly for copayments that are not permissible, or provides beneficiaries with identification that providers can use to verify that these beneficiaries are not subject to cost sharing on these services and therefore not charge cost sharing to such beneficiaries. We also propose that in States that purchase family coverage or provide premium assistance for employer-sponsored health insurance that the State have a process to ensure that beneficiaries do not pay cost sharing over the cumulative cost sharing maximums proposed in § 457.555. We emphasize that this process must not rely on a refund for cost sharing in excess of the cumulative cost sharing maximum.

3. Premiums, Enrollment Fees, or Similar Fees: State Plan Requirements (§ 457.510)

Section 2103(e)(1)(A) of the Act requires that the State plan include a description of the amount of premiums, deductibles, coinsurance and other cost sharing imposed pursuant to a public schedule. Section 457.510 proposes that when a State imposes premiums, enrollment fees, or similar fees on CHIP beneficiaries, the State plan must describe the amount of the premium, enrollment fee, or similar fee, the period of liability for the charge, and the group or groups that will be subject to the cost sharing charge.

We also propose that the State plan include a description of the consequences for a beneficiary who does not pay required charges. For example, some States disenroll a beneficiary for non-payment of certain co-payment or premium charges. Under our proposed regulations, these States would discuss this disenrollment policy in full, including the State's policy on reenrollment of the child once payment of the charge is made, and any "grace period" allowed after non-payment such as, notification to beneficiary for failure to pay after one month or cancellation after two months of non-payment. We would also require the State to indicate any beneficiary groups that are exempt from the disenrollment policy.

In addition, proposed § 457.510 would require that the State plan include a description of the methodology used to ensure that total cost sharing liability for a beneficiary's families does not exceed the cumulative cost sharing maximums as required by section 2103(e)(3)(B) of the Act and specified in proposed § 457.555. This description must explain how the State calculates total income for each family, and how the State will prevent charges over the cumulative costs sharing maximums.

The State's methodology should include a refund for a beneficiary who accidentally pays over his or her cumulative cost sharing maximum. However, as stated earlier, we propose that a methodology that primarily relies on a refund to the beneficiary for cost sharing payments made over the cumulative cost sharing maximum will not be an acceptable methodology.

Many States that impose cost sharing have established a "shoe-box" policy. Under this policy, the beneficiary's family is responsible for demonstrating with receipts that he or she has paid cost sharing charges up to the cumulative maximum cost sharing charges (5 percent of the family's total income). Concern has been raised that the beneficiary's family should not have the primary responsibility for ensuring that it does not make payments that exceed the cumulative cost sharing maximum.

We asked George Washington University's Center for Health Policy Research to conduct a study on the types of methods States and private insurance companies use to track cost sharing amounts against a beneficiary's out-of-pocket expenditure cap. The George Washington study concluded that the risk that a beneficiary in a family with income above 150 percent of the FPL will reach the cumulative cost sharing maximum (5 percent of family income cap) is minimal since the amounts of cost sharing States are currently imposing are relatively low. The study also found that most of the States hold the beneficiary responsible for demonstrating with receipts that he or she has paid cost sharing charges up to the cumulative cost sharing maximum. George Washington also noted that the private insurers typically rely on the beneficiary when tracking out-of-pocket expenses.

The George Washington study also found that while the risk of reaching the cumulative cost sharing maximum was relatively low for children in families above 150 percent of the FPL, this risk increases for a family that has a child with a chronic condition. The statute does not require States to count the beneficiary's costs of paying for services not covered under the plan towards the cumulative cost sharing cap. The George Washington study found that since States are not required to count non-covered services toward the cumulative cost sharing maximum, a chronically ill child could be subject to the financial burdens of cost sharing charges for services not covered under the State plan, in addition to the payments for services that are covered under the State plan. This policy could be especially burdensome on children in States with benefit packages under a separate child health program that do not cover a wide range of services. Therefore, a family with a chronically ill child may be faced with extraordinary expenses. Based on these findings, we believe a statutory change will be needed to prevent the additional burden of cost sharing on children with chronic conditions.

Until any such statutory change is enacted, we recommend that States, when possible, develop a more formal tracking mechanism when imposing cost sharing charges, especially when States impose cost sharing charges on children with chronic conditions. We believe that a tracking mechanism that does not rely on the beneficiary demonstrating to the State that he or she has met the cumulative cost sharing maximum would be preferable. An example of a formal tracking mechanism is when a State issues a swipe card to a beneficiary at the time of enrollment which is used to record the cost sharing amounts a provider collects. Once the beneficiary reaches his or her cumulative cost sharing maximum as indicated by the swipe card, the provider cannot collect additional cost sharing amounts from the beneficiary. Another example of a formal tracking mechanism is to issue a credit card to the beneficiary. The beneficiary can use this card to pay his or her copayments to the provider. The State will bill the beneficiary for the copayments and reimburse the provider. A provider would be able to determine if the beneficiary has reached his or her credit card maximum by calling the State agency to obtain the credit limit available.

To address the needs of the chronically ill child, the George Washington University study also suggests that States assign chronically ill children to a case manager who will be responsible for assuring that the beneficiary's cost sharing does not exceed the cumulative cost sharing maximum. Also, while a State is not required to count non-covered services costs towards the cumulative maximum, we recommend that a State count these costs towards the cumulative cost sharing maximum, when possible.

While we require that the State plan describe a method of ensuring that beneficiaries do not exceed the cumulative cost sharing maximum, the previous examples are only recommendations. We solicit comments on tracking mechanisms States can use that do not place the burden of tracking cost sharing charges on the beneficiary.

4. Copayments, Coinsurance, Deductibles, or Similar Cost Sharing Charges: State Plan Requirements (§ 457.515)

In addition to proposed § 457.510, proposed § 457.515 is also based on section 2103(e)(1)(A) of the Act, which requires that the State child health plan include a description of the amount of premiums, deductibles, coinsurance and other cost sharing imposed. We propose that the State plan describe the following elements regarding copayments, coinsurance, deductibles or similar fees: the amount of the copayments, coinsurance, deductibles, or similar fees; the time period for which the charge is imposed; the group of beneficiaries to whom the charge applies; the consequences for a beneficiary who does not pay a charge; and the service on which the charge is made. Also, as stated in the discussion of § 457.510, for State plan requirements for imposing premiums, we propose that the State plan describe the methodology used to ensure that total cost sharing liability for a beneficiary's family does not exceed the cumulative cost sharing maximums. This description must explain how the State calculates total income for each family, and how the State will prevent charges over the cumulative cost sharing maximums.

Finally, we propose that, in accordance with the prudent layperson standard in the *Consumer Bill of Rights and Responsibilities,* States must provide assurances that enrollees will not be held liable for costs for emergency services above and beyond the copayment amount that is specified in the State plan. We propose that States must work with their managed care contractors to absorb any additional costs associated with providing emergency room services at a facility that is not a participating provider in the enrollee's managed care plan or network. In addition, although no State has proposed to include such a provision in a State child health plan, we considered options for requiring States to assure that copayment amounts for emergency services do not vary depending on the location (in or out of the managed care network) at which those services were provided. In keeping with the prudent layperson standard of assuring immediate access to emergency care, we have elected to propose this prohibition on differential copayments. However, we have also taken into consideration the importance of consistency between HCFA's programs (Medicare, Medicaid and CHIP) in this area. For example, we considered adopting the policy outlined in the proposed Medicare+Choice regulation, which limits cost sharing for emergency services obtained outside of the M+C plan's provider network equal to the lesser of $50 or what the organization may charge within the managed care network. We also considered that it would be appropriate to lower this dollar limit to accommodate the lower income population being served in this program. We welcome comments on these issues.

5. Cost Sharing for Well-Baby and Well-Child Care (§ 457.520)

Under section 2103(e)(2) of the Act, the State plan may not impose copayments, deductibles, coinsurance or other cost sharing with respect to well-baby and well-child care services in either the managed care or the fee-for-service delivery setting. We have set forth in the proposed regulation services that constitute well-baby and well-child care for purposes of cost sharing. We propose to define these well-baby and well-child services to include the definition of well-baby and well-child care used by the *American Academy of Pediatrics* (AAP) and incorporated in the Federal Employees Health Benefits Program (FEHBP) Blue Cross and Blue Shield benchmark plan.

We also propose to apply the prohibition on cost sharing to services that fit the definition of routine preventive dental services used by the *American Academy of Pediatric Dentistry* (AAPD) when a State opts to cover these services under its program. We propose to prohibit cost sharing for these services for two reasons. First, preventive dental care can be viewed as the oral health equivalent of immunizations in that it can prevent most cavities and subsequent tooth loss, both of which are highly correlated to poverty and lack of access to dental care. Second, we found that the prevailing practice among State employee plans and large health maintenance organizations (HMOs) is to pay 100 percent for any routine preventive and diagnostic dental benefits offered.

Accordingly, we propose at § 457.520 that when the State opts to cover the following services, they must be considered well baby and well child care services for the purposes of the prohibition of cost sharing under section 2103(e)(2):

- All healthy new born inpatient physician visits, including routine screening (inpatient and outpatient).
- Routine physical examinations.
- Laboratory tests.

- Immunizations, and related office visits as recommended in the AAP's "Guidelines for Health Supervision III" (June 1997), and described in "*Bright Futures:* Guidelines for Health Supervision of Infants, Children, and Adolescents" (Green M., (ed.). 1994).
- When covered under the State plan, at the State's option, routine preventive and diagnostic dental services (for example, oral examinations, prophylaxis and topical fluoride applications, sealants, and x-rays) as described by the AAPD's current Reference Manual (Pediatric Dentistry, Special Issue, 1997–1998, vol 19:7, page 71–2).

6. Public Schedule (§ 457.525)

Section 2103(e)(1)(A) of the Act requires that the State provide a public schedule of all cost sharing charges. The statute does not specify the standards a State must meet when making the cost sharing schedule available to the public, and allows States a great amount of flexibility in developing cost sharing policies. Therefore, we believe that the more information the State includes in the public schedule regarding its cost sharing policy, the more informed beneficiaries will be about their financial responsibilities under their State's separate child health program. We propose that the public schedule contain at least the current CHIP cost sharing charges, the beneficiary groups on which cost sharing will be imposed (for example, cost sharing imposed only on children in families with income above 150 percent of the FPL), the cumulative cost sharing maximum allowed under § 457.555, and the consequences for a beneficiary who fails to pay a cost sharing charge. We also propose that the State must make the public schedule available to beneficiaries at the time of enrollment and when the State revises the cost sharing charges and/or cumulative cost sharing maximum, applicants at the time of application, and the general public. To ensure that providers impose appropriate cost sharing charges at the time services are rendered, we also propose that the public schedule must be made available to all CHIP participating providers.

7. General Cost Sharing Protection for Lower Income Children (§ 457.530).

At proposed § 457.530, we would implement section 2103(e)(1)(B) of the Act, which specifies that the State plan may only vary premiums, deductibles, coinsurance, and other cost sharing charges based on the family income of targeted low-income children in a manner that does not favor children from families with higher income over children from families with lower income. This statutory provision and the implementing regulations apply to all cost sharing imposed on children regardless of family income level. A State would not be in compliance with this provision if, for example, it imposed cost sharing charges on families at 150 percent of the FPL that were more than the cost sharing amounts imposed on children in families at 200 percent of the FPL.

8. Cost Sharing Protection To Ensure Enrollment of American Indians/Alaska Natives (§ 457.535)

Section 2102(b)(3)(D) of the Act requires the State plan to include a description of the procedures used to ensure the provision of child health assistance to targeted low-income children in the State who are American Indians. We are concerned that States that impose cost sharing on children in American Indian/Alaska Native (AI/AN) families will restrict access to essential CHIP services for this vulnerable beneficiary group, and may impact the State's ability to ensure coverage for this group as required under section 2102(b)(3)(D) of the Act.

Title VI of the Civil Rights Act of 1964 prohibits programs receiving Federal financial assistance from discriminating on the basis of race, color or national origin. But title VI does not preclude the Federal government from requiring States to recognize unique obligations to AI/ANs under Federal law. Based upon the unique legal status of Tribes under Federal law, the Federal government's trust and responsibility toward AI/ANs as authorized by Congress, and the requirements under section 2102(b)(3)(D) of the Act, HCFA must affirmatively address barriers to AI/AN enrollment. Moreover, access to health care funded by the Indian Health Service (IHS), which is available without charge, creates a unique disincentive to AI/AN enrollment in a CHIP program that imposes cost sharing. Thus, we believe that in some States, targeted incentives for AI/AN enrollment, including waiver of cost sharing, is consistent with title VI of the Civil Rights Act of 1964 and warranted by the CHIP statute.

Therefore, we propose that States must exclude children from AI/AN families from the imposition of premiums, deductibles, coinsurance, copayments or any other cost sharing charges. For the purposes of this section, we propose to use the definition of Indians referred to in section 2102(b)(3)(D) of the Act, which defines Alaska Natives and American Indians as Indians defined in section 4(c) of the Indian Health Care Improvement Act, 25 U.S.C. 1603(c). We would also specify in the regulation that the State only grant this exception to AI/AN members of a Federally recognized tribe (as determined by the Bureau of Indian Affairs).

We realize that when States impose cost sharing on their CHIP beneficiaries States will need to identify AI/AN children of Federally recognized tribes for the purpose of waiving this group from premiums and other cost sharing. States will need to request from applicants identification that verifies the AI/AN status of the child. For example, the State may ask for Tribal membership identification or a Certificate of Indian Blood (CIB) to verify the applicant's AI/AN status. Eligibility enrollment staff should be trained to present, in a culturally sensitive manner, the option to AI/AN beneficiaries of either presenting their identification to the State or foregoing their option to be exempt from cost sharing.

States should strive to inconspicuously identify AI/AN children when waiving cost sharing that is typically collected by providers (for example—deductibles, copayments, and coinsurance). For example, a State that waives lower-income CHIP children from copayments in addition to AI/AN children should provide both waived groups with similar identification. The AI/AN child should not be separately identified from other beneficiary groups whose copayments have been waived. Another example of inconspicuously identifying AI/AN children is by providing identification (via a special code or color on the CHIP insurance card, or providing cost sharing amounts on the card) to those who are subject to cost sharing.

We believe that most States and their providers will not realize a negative financial impact by the mandatory waiver on AI/AN cost sharing. However, we understand that those States with a significant AI/AN population enrolled in their CHIP program may have to adjust payment rates to providers or capitation payments to MCOs since these entities can no longer collect cost sharing from AI/AN children. State eligibility systems and billing systems will also need to be adjusted to account for the mandatory waiver of cost sharing for the AI/AN children.

9. Cost Sharing Charges for Children in Families at or Below 150 Percent of the Federal Poverty Line (FPL) (§ 457.540)

Section 2103(e)(3) of the Act sets forth the limitations on premiums and other cost sharing charges for children in families at or below 150 percent of the FPL. In accordance with section 2103(e)(3)(A)(i) of the Act, we propose that in the case of a targeted low-income child whose family income is at or below 150 percent of the FPL, the State plan may not impose any enrollment fee, premium, or similar charge that exceeds the charges permitted under the Medicaid regulations at § 447.52, which implement section 1916(b)(1) of the Act. Section 447.52 specifies the maximum monthly charges in the form of enrollment fees, premiums, and similar charges, for Medicaid eligible families. We propose to apply these Medicaid maximum monthly charges to the charges imposed on children of families whose incomes are at or below 150 percent of the FPL under CHIP. The Medicaid rules limit premiums to a specified monthly amount per family according to a sliding income scale. For example, the maximum monthly charge for a family with $1001 monthly income is $19 for a family of 1 or 2 persons, $16 for a family of 3 or 4, and $15 for a family of 5 or more. The regulations prescribe lower maximum monthly charges for families with lower income.

Section 2103(e)(3)(A)(ii) provides that copayments, coinsurance or similar charges imposed on children in families with income at or below 150 percent of the FPL must be equal to or less than the amounts considered nominal (as determined consistent with regulations referred to in section 1916(a)(3) of the Act), with such appropriate adjustment for inflation or other reasons as the Secretary determines to be reasonable. The Medicaid regulations that set forth these nominal amounts are located at § 447.54. For children whose family income is at or below 100 percent of the FPL, we propose that any copayments, coinsurance, deductibles or similar charges remain equal to or less than the amounts permitted under the Medicaid regulations at § 447.54. Because the statute gives the Secretary the authority to adjust the limitations found in § 447.54, for children whose family income is 101 percent to 150 percent of the FPL we propose adjusted nominal amounts for copayments, coinsurance, and deductibles to reflect the CHIP beneficiary's ability to pay higher cost sharing. We also propose that the frequency of cost sharing meet the requirements noted in proposed § 457.550. These restrictions are adopted from the Medicaid rules at § 447.53(c). The proposed restrictions are discussed more fully in the discussion regarding § 457.550 below.

We propose that the cost sharing imposed on children in families with income at or below 150 percent of the FPL be limited to a cumulative maximum. Specifically, we have proposed that total cost sharing imposed on children in this population be limited to 2.5 percent of a family's income for a year (or 12 month eligibility period). A more in-depth discussion on the cumulative cost sharing maximum as proposed in § 457.555, and our rationale for the 2.5 percent cumulative cost sharing maximum is discussed later in the preamble to this proposed rule.

10. Cost Sharing for Children in Families Above 150 Percent of the FPL (§ 457.545)

Section 2103(e)(3)(B) mandates that the total annual aggregate cost sharing with respect to all targeted low-income children in a family with income above 150 percent of the FPL not exceed 5 percent of such a family's income for the year involved. The proposed regulation provides that the plan may not impose total premiums, enrollment fees, copayments, coinsurance, deductibles, or similar cost sharing charges in excess of 5 percent of a family's income for a year (or 12 month eligibility period).

11. Restriction on the Frequency of Cost Sharing Charges on Targeted Low-Income Children in Families at or Below 150 Percent of the FPL (§ 457.550)

Section 2103(e)(3)(A)(ii) of the Act specifies that the State plan may not impose a deductible, cost sharing, or similar charge that exceeds an amount that is nominal as determined consistent with regulations referred to in section 1916(a)(3) of the Act, "with such appropriate adjustments for inflation or other reasons as the Secretary determines to be reasonable". In order to protect families at or below 150 percent of the FPL from excessive charges, we would adopt the Medicaid rule at § 447.53(c) that does not permit the plan to impose more than one type of cost sharing charge (deductible, copayment, or coinsurance) on a service. Under this rule, for example, a plan could not impose a copayment for a service if there is a deductible for the same service. We would also provide that a State may not impose more than one cost sharing charge for multiple services provided during a single office visit. For example, a beneficiary cannot be charged two copayments for two sets of lab tests performed during one visit. In addition, under our proposal a beneficiary cannot be charged two copayments if the beneficiary was seen by two different physicians during one visit.

We would also adopt the Medicaid rules at § 447.55 regarding standard copayments. Specifically, we would provide that States can establish a standard copayment for any service. We propose to expand upon the Medicaid rules and allow States to provide a standard copayment amount for any visit. Similar to the provisions at § 447.55 that allow a standard copayment to be based upon the average or typical payment of the service, our provision would allow a State to impose a standard copayment per visit based upon the average cost of a visit up to the copayment limits specified at proposed § 457.555(a).

12. Maximum Allowable Cost Sharing Charges on Targeted Low-Income Children at or Below 150 Percent of the FPL (§ 457.555)

Section 2103(e)(3)(A)(ii) of the Act specifies that the State plan may not impose a deductible, cost sharing, or similar charge that exceeds an amount that is nominal as determined consistent with regulations referred to in section 1916(a)(3) of the Act, "with such appropriate adjustment for inflation or other reasons as the Secretary determines to be reasonable". Because CHIP is designed for families with incomes above the Medicaid eligibility levels, we believe it is reasonable to set maximum copayments that are higher than those under the Medicaid program, which are set forth at §§ 447.53 and 447.54. Therefore, we propose provisions regarding maximum allowable cost sharing charges on targeted low-income children at 101 to 150 percent of the FPL that mirror the provisions of §§ 447.53 and 447.54 but are adjusted to permit higher amounts.

For noninstitutional services provided to targeted low-income children whose family income is from 101 to 150 percent of the FPL, we propose a maximum copayment charge of $5.00 (as opposed to the $3.00 maximum copayment charge under Medicaid). When deciding how to adjust the Medicaid copayment maximums for the CHIP population, we considered adjusting for current dollars the copayment maximums at § 447.54(a)(3) (which were published in 1976) using the Consumer Price Index (CPI) for all items, CPI—Medical Services, and Real Personal Income Growth. After considering the figures computed using these inflation adjustments, current copayment levels under State programs, and the potential overall impact of copayments on the utilization of services by children in families with incomes at or below 150 percent of the FPL, we propose the following service payment and copayment maximum amounts:

Payment for the service	Maximum amount chargeable to beneficiary
$15.00 or less	$1.00
$15.01 to $40	2.00
$40.01 to $80	3.00
$80.01 or more	5.00

We also propose to set a maximum per visit copayment amount for beneficiaries enrolled in managed care organizations. The Medicaid regulations do not address cost sharing for HMO enrollees and therefore do not address a maximum charge on cost sharing in this setting. The $5.00 maximum copayment per visit is based upon the maximum copayment per service amount noted in the preceding chart. We urge States to apply this requirement in a way that continues to protect beneficiaries from unnecessarily high out-of-pocket costs that would prevent children from accessing essential services.

We propose to set a maximum on deductibles of $3.00 per month per family. This CHIP maximum deductible is higher than the Medicaid maximum deductible of $2.00 per month per family. If a State imposes a deductible for a time period other than a month, the maximum deductible for that time period is the product of the number of months in the time period and $3.00. For example, the maximum deductible that a State may impose on a family for a three-month period is $9.00.

We also propose, for the purpose of maximums on copayments and coinsurance, that the maximum copayment or coinsurance rate relate to the payment made to the provider, regardless of whether the payment source is the State or an entity under contract with the State.

With regard to institutional services provided to targeted low-income children whose family income is from 101 to 150 percent of the FPL, we propose to use the standards set forth in the Medicaid regulations at § 447.54(c). Accordingly, we propose to require that for targeted low-income children whose family income is at or below 150 percent of the FPL, the State plan must provide that the maximum deductible, coinsurance or copayment charge for each institutional admission does not exceed 50 percent of the payment made for the first day of care in the institution. Again, we have clarified that the percentage applies to the payment of the service regardless of the payment source.

We propose to allow States to impose a charge for non-emergency use of the emergency room up to twice the nominal charge for noninstitutional services provided to targeted low-income children whose family income is from 101 to 150 percent of the FPL. Medicaid regulations at § 447.54(b) specify that a waiver of the nominal requirement is permitted when non-emergency services are furnished in a hospital emergency room. We propose that the State be permitted, without a waiver from HCFA, to charge twice the noninstitutional copayment amount permitted when a beneficiary uses an emergency room for nonemergency services, capped at a maximum of ten dollars. This requirement would allow States the flexibility to charge cost sharing amounts on inappropriate use of the emergency room, without the burden of requesting a waiver from HCFA. The proposed ten dollar maximum is twice the proposed nominal copayment maximum ($5.00) for noninstitutional services under CHIP. Finally, in § 457.555(d), we proposed that States must assure that enrollees can receive emergency services from any qualified provider, regardless of whether the enrollee's managed care plan has a contract with that provider. We proposed this provision because emergency care, by its nature, may need to be obtained from the nearest available qualified provider. In addition, we propose that States must assure that enrollees are not held liable for any additional costs, beyond the standard co-payment amount, of emergency services furnished outside of the individuals managed care network.

13. Cumulative Cost Sharing Maximum (§ 457.560)

Section 2103(e)(3)(B) of the Act provides that any premiums, deductibles, cost sharing or similar charges imposed on targeted low-income children in families above 150 percent of the FPL may be imposed on a sliding scale related to income, except that the total annual aggregate cost sharing with respect to all targeted low-income children in a family may not exceed 5 percent of the family's income for the year involved. We refer to this cap on total cost sharing as the cumulative cost sharing maximum.

We propose two general rules regarding the cumulative cost sharing maximum. First, a State may establish a lower cumulative cost sharing maximum than that specified in § 457.560. Second, a State must count cost sharing amount that the family has a legal obligation to pay when computing whether a family has met the cumulative cost sharing maximum. We propose to define the term "legal obligation" as the family's obligation to pay amounts the provider actually charges the family and any other amounts for which the family is legally liable even if the family never pays those amounts. For example, a cost sharing charge that is billed to the family but not paid must nevertheless be counted toward the cumulative cost sharing maximum. We note that a State that purchases family coverage under the authority of 2105(c)(3) of the Act may want to count cost sharing imposed on adult family members against the cumulative cost sharing maximum. This practice is permissible but not mandatory because the statutory provisions on the cumulative cost sharing maximum specify that only cost sharing charges associated with targeted low-income children be counted toward the cumulative cost sharing maximum. However, the statute does not preclude a State from including other cost sharing charges.

We propose that for children in families above 150 percent of the FPL, the plan may not impose premiums, enrollment fees, copayments, coinsurance, deductibles, or similar cost sharing charges in excess of 5 percent of a family's income for a year (or 12 month eligibility period). We propose that for targeted low-income children in families at or below 150 percent of the FPL, the plan may not impose premiums, deductibles, copayments, co-insurance or similar cost sharing charges that, in the aggregate, exceed 2.5 percent of total family income for the year. Section 2103(e)(3)(A) gives the Secretary the authority to adjust cost sharing amounts so that they remain nominal, consistent with Medicaid regulations. The requirement at section 2103(e)(1)(B), which does not allow a State to impose cost sharing that favors children from families with higher income over children from families with lower income, and the Secretary's authority to make appropriate adjustments to permissible cost sharing amounts under section 2103(e)(3)(A)(ii), serve as the basis for our proposal to place a cumulative cost sharing maximum on the amount of cost sharing imposed on children at or below 150 percent of the FPL.

We believe that the lower maximum is consistent with the Congressional intent of section 2103(e)(1)(B) because it will ensure that children from families with higher income (over 150 percent of the FPL) are not favored over children from families with lower income (at or below 150 percent of the FPL). In addition, we reviewed cost sharing and premium maximums for families whose incomes are under 150 percent of the FPL, under approved State plans. After this review, we specifically analyzed cost sharing maximums in six States that impose a maximum other than the 5 percent maximum imposed under § 457.560(c) to determine the percentage of income that a full payment of the cost sharing represents for a family of four at 100 percent of the FPL, which for FY 1998 is $16,450. For example, one State imposed a $250 per year per family cap on cost sharing. This amount represents approximately 1.5 percent of the income of a family at 100 percent of the FPL. We found that the cost sharing maximums range from a low of .72 percent of the income at 100 percent of the FPL to a high of 3 percent of the family's income at 100 percent of the FPL.

The majority of the States' cost-sharing maximums represented between 2 to 3 percent of the income of a family at 100 percent of the FPL. We therefore propose that a cumulative cost sharing maximum of 2.5 percent of the family's income (or an equivalent dollar amount) be placed on cost sharing imposed on children in families below 150 percent of the FPL. We encourage States and beneficiary groups to submit comments regarding our proposed limit on this population, because our historical data regarding cost sharing on this part of the CHIP population is limited.

Depending on the income level of the family, the cumulative cost sharing maximum would thus be set as 2.5 or 5 percent of a family's income. The State may define family income as it chooses, as long as under the State's definition, family income is no more than gross family income used by the State for determining CHIP eligibility prior to the application of disregards or exclusions.

14. Grievances and Appeals (§ 457.565)

We propose that the State must provide enrollees in a separate child health plan the right to file grievances and appeals in accordance with proposed § 457.985 for disenrollment from the program due to failure to pay cost sharing.

15. Disenrollment Protections (§ 457.570)

Section 2101(a) of the Act provides that the purpose of title XXI is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Based upon this provision of the statute, we propose in § 457.570 to require that States establish a process that gives beneficiaries reasonable notice of and an opportunity to pay past due cost sharing amounts (premiums, copayments, coinsurance, deductibles and similar fees) prior to disenrollment. We would require that States have this process in place because we do not believe it would be effective and efficient to disenroll a child without notice to the family of the impending disenrollment, or if a family was experiencing temporary financial hardship and could not afford to pay a premium or any other cost sharing amount. Examples of State processes that provide a reasonable notice and opportunity to pay include—waiving cost sharing for families experiencing temporary financial hardship, implementing grace periods before disenrolling beneficiaries, observing a beneficiary's pattern of non-payment before disenrollment, or establishing payment schedules to allow beneficiaries time to pay their outstanding cost sharing debts. We request comments on this requirement, including specific comments on the determination of an amount of time that would give beneficiaries reasonable notice and opportunity to pay cost sharing amounts prior to disenrollment. HCFA will request that States with approved plans submit this additional information once this proposed rule is published and prior to the State's onsite review. We will also ask the State to include its process in future amendments to its State plan.

F. Subpart G—Strategic Planning, Reporting, and Evaluation

1. Basis, Scope, and Applicability (§ 457.700)

This subpart sets forth the State plan requirements for strategic planning, monitoring, reporting, and evaluation under title XXI. Specifically, this subpart implements sections 2107(a), (b), and (d) of the Act, which relate to strategic planning, reports and program budgets; section 2108 of the Act, which sets forth provisions regarding annual reports and evaluation; and sections 2102(a)(7)(A) and (B), relating to assurances of quality and appropriateness of care, and access to covered services.

Although States are given great flexibility in developing title XXI programs, sections 2107 and 2108 of the Act emphasize accountability at both the State and Federal level. Title XXI provides for performance measurement, evaluation, and reporting that promote the collection and analysis of data critical to understanding the impact of CHIP on children's insurance coverage, access to care, and use of health care services. Reporting and evaluating the progress of program design and implementation involve articulating program objectives and translating them into meaningful, measurable evaluation goals; using valid and reliable performance measures; and developing data collection and analysis strategies that are relevant to the measures. Sections 2107 and 2108 of the Act require the Secretary to monitor State program development and implementation, and to evaluate and compare the effectiveness of State plans. Under section 2108(a) of the Act, States must assess the operation of their State plans in each preceding Federal fiscal year and report to the Secretary annually on their progress in reducing the number of uncovered, low-income children. In addition, section 2108(b)(1) requires States to submit an evaluation of their program by March 31, 2000. Under section 2108(b)(2), the Secretary is required to submit a report to Congress based on these evaluations by December 31, 2001 and to make the report available to the public.

Sections 2107 and 2108 of the Act contain guidance on reporting, performance measurement, and evaluation activities. These activities will provide the critical information necessary for meeting Federal reporting requirements, documenting program achievements, improving program function, and assessing program effectiveness in achieving policy goals. Data that facilitate the objective assessment of how programs are working will allow States to examine critical program design decisions and take action to improve their programs. Reporting and evaluation also will assist States and program advocates in documenting title XXI achievements. We share States' concern for the need to accurately measure the impact of CHIP. While this section outlines current Federal requirements related to measuring program achievements, we are soliciting comments for additional measures that will assist in articulating the success of programs implemented under title XXI. As part of our effort to increase understanding and knowledge of title XXI programs, we plan to establish an information dissemination policy that includes making State annual reports, State evaluations, and a summary of State expenditures and statistical reports regularly available on the Internet.

States have a strong interest in developing data collection strategies and capabilities that will allow them to document that title XXI funds are being used efficiently and effectively to provide children with affordable, quality health insurance coverage. By enacting title XXI, Congress has made a significant investment in providing health insurance coverage to a substantial proportion of uninsured children. Continued support and funding will depend on providing policy makers with objective and accurate data about the success of the program.

Reporting and evaluating data will be critical to following the progress of States as they develop their own unique approaches to insuring children. Title XXI affords States broad flexibility and choice in program design and implementation. The array of choices available to States allows them to develop programs that address their specific needs. However, the variability in programs complicates the effort to measure and document program effectiveness and to make State-to-State comparisons. In developing their reporting strategy, States may find it helpful to work with their HCFA Regional Offices to identify technical assistance needs and to coordinate approaches to meeting those needs. We plan to work collaboratively with States on technical assistance issues in order to encourage utilization of relevant and valid program and quality of care performance measures that facilitate reporting and evaluation.

2. State Plan Requirements: Strategic Objectives and Performance Goals (§ 457.710)

In accordance with section 2107(a) of the Act and the intent of the Government Performance and Results Act of 1993 (GPRA), proposed § 457.710 encourages program evaluation and accountability by requiring the State plan to describe the strategic objectives, performance goals, and performance measures the State has established for providing child health assistance to targeted low-income children under the plan and for otherwise maximizing health benefits coverage for other low-income children and children generally in the State.

In accordance with section 2107(a)(2) of the Act, at § 457.710(b), we propose that the State plan must identify specific strategic objectives related to increasing the extent of health coverage among targeted low-income children and other low-income children. We understand there will be variation among States in specific evaluation approaches and terminology. However, we encourage States to view development of strategic objectives as a process that involves translating the basic overall aims of the State plan into a commitment to achieving specific performance goals or targets. One of the strategic objectives established in the Act is the reduction in the number of low-income, uninsured children. Although this objective is of central importance, States must articulate other strategic objectives, such as increasing access to health care and improving the quality of health services delivered to beneficiaries.

Under section 2107(a)(3) of the Act, States must identify one or more performance goals for each strategic objective. We propose to implement this statutory provision at § 457.710(c). The performance goals should be central to the State's strategic objectives and should facilitate assessing the extent to which strategic objectives are being achieved. Performance goals should be more specific than strategic objectives. Performance goals express target levels of performance in the form of tangible, measurable expected levels of achievement against which actual achievements for an explicit time frame can be measured.

In formulating strategic objectives and performance goals, States should consider not only the general population targeted for CHIP enrollment but also special population subgroups of particular interest. Such subgroups may include racial or ethnic minorities, specific high-risk groups such as children with special needs, children in foster care, homeless children, or hard to reach groups such as children who live in under-served rural areas or urban areas. Health services research studies have documented racial, ethnic, and cultural differences in health insurance coverage and patterns of care. For example, studies show that non-white children are more likely to be uninsured and under-immunized. Therefore, States may want to consider developing performance goals that relate to improving coverage, access, and utilization for specific subgroups.

In accordance with section 2107(a)(4) of the Act, proposed § 457.710(d) provides that the State plan must describe how performance under the plan will be measured through objective, independently verifiable means and compared against performance goals. For purposes of measurement, States may find it helpful to conceptualize performance in two broad categories: quality of care measures and program operations measures. Quality of care measures focus on access to care, health status and delivery of clinical services. A measure of performance in either category must be valid (that is, reflect the concept it is intended to capture) and reliable (that is, yield results that are reproducible in repeated analyses). For example, waiting time for appointments with health care providers is a widely used, standardized measure of access.

Developing and testing performance measures to ensure their validity and reliability can prove expensive and time-consuming. For this reason, States may want to carefully review widely used measures including all of the following:

- The percentage of Medicaid-eligible children enrolled in Medicaid;
- The percentage of children with a usual source of health care;
- The percentage of children with unmet need for physician services and/or delayed care;
- The reduction of hospitalization for ambulatory-sensitive conditions;
- The array of measures in the Health Employer Data and Information Set (HEDIS) and the Consumer Assessments of Health Plans Study (CAHPS).

We note that HEDIS is widely used by private sector purchasers of managed care services. It contains a wide range of quality measures, including child and adolescent immunization measures and well child care and well adolescent care visits. The Agency for Health Care Policy and Research (AHCPR) has sponsored the development of a set of standardized CAHPS surveys and reporting formats. CAHPS measures and reports on consumer experience and satisfaction with specific aspects of health care such as access, interpersonal interactions between patients and providers, and service availability.

States may also find it helpful to use their measures to compare performance with widely recognized standards, benchmarks or guidelines. Prominent examples include:

- The US Preventive Services Task Force Guidelines;
- Bright Futures: Guidelines for Health Supervision of Infants, Children and Adolescents;
- The Office of Disease Prevention and Health Promotion's Healthy People 2000 and Healthy People 2010.

States also may want to keep apprised of major efforts that are currently underway to develop new child quality measures such as the National Committee for Quality Assurance (NCQA) and Foundation for Accountability (FACCT) Child and Adolescent Health Measurement Initiative (CAHMI).

Similarly, States should also consider using widely accepted program performance measures. For example, many States are likely to adopt outreach and substitution of private coverage performance goals because of the substantial public policy focus on these areas. In order to report and evaluate progress in these two areas, States may want to adopt a broad measurement strategy that characterizes structural aspects of program operations, program processes, and program outcomes. To use such a broad array of performance measures, States may want to consider a variety of data collection approaches including administrative data collection; mail, in-person, or telephone beneficiary surveys; disenrollee surveys; surveys of employers; site visit interviews and observation; and focus group interviews with beneficiaries, potential enrollees and employers.

Potential substitution of coverage performance measures include: beneficiary self-reported coverage status at eligibility determination, beneficiary self-reported coverage status after disenrollment, self-reported knowledge of low-income workers and small employers about the availability of public insurance, and length of waiting period for child health insurance. We understand that substitution is particularly challenging to measure because assessment relies so heavily on beneficiaries' self reported behavior and employers reports of their motivation for reducing or eliminating employer coverage. However, the public policy importance of the issue of substitution of coverage suggests that States should try to design data collection and analysis strategies that promote assessing the effectiveness of their substitution prevention policies.

Potential outreach performance measures include: proportion of families who know about the program, application simplification, enrollment application processing time, number of outreach workers per estimated eligible child, time elapsed between initial coverage request and enrollment, the percentage of mail-in applications (instead of on-site applications), number and productivity of out-stationed eligibility workers, total expenditures on outreach per estimated number of eligible children, number of children using a 12-month continuous eligibility option, the number of times an enrollee reports having been exposed to CHIP information prior to requesting an application, and enrollee satisfaction with the intake/enrollment process.

3. State Plan Requirement: State Assurance Regarding Data Collection, Records, and Reports and State Annual Reports and Evaluation (§§ 457.720 and 457.730)

Section 2107(b)(1) of the Act requires the State plan to provide an assurance that the State will collect the data, maintain the records, and furnish the reports to the Secretary, at the times and in the standardized format that the Secretary may require to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under title XXI. In accordance with the statute, we would implement this provision at § 457.720.

Section 2107(b)(2) of the Act discusses the requirement that the State plan include a description of the State's approach to submitting annual reports and the State evaluation. Accordingly, we would implement this provision at § 457.730. In order to facilitate report submission, a group of States has worked with staff from the National Academy of State Health Policy, with HCFA representation, to develop an optional model framework for the State evaluation due March 31, 2000. This framework has been finalized and sent to every State and territory with an approved State plan. States are permitted to submit their FY 1999 annual report and their State evaluation on March 31, 2000, together as one comprehensive document. Each State's submission will need to meet the title XXI requirements for both the FY 1999 annual report and the State evaluation. The NASHP framework has been designed to accommodate these requirements. The State workgroup facilitated by NASHP will reconvene to develop an optional model framework for future annual reports. We encourage States to use this optional framework to assure the reporting of timely and consistent data. We will continue to work with States to support this effort.

4. State Plan Requirement: State Assurance of the Quality and Appropriateness of Care (§ 457.735)

Sections 2102(a)(7)(A) and (B) of the Act require the State plan to describe the strategy the State has adopted for assuring the quality and appropriateness of care, particularly with respect to providing well baby care, well-child care, well adolescent care, and childhood and adolescent immunizations and for ensuring access to covered services, including emergency services and covered post-stabilization services. We propose to implement this provision at § 457.735.

In this section of the State plan, States should discuss the specific elements of its quality assessment and improvement strategies, including the use of any of the following methods: Quality of care standards; performance measurement, information and reporting strategies, licensing standards, credentialing/recredentialing processes, periodic reviews and external reviews. In developing quality assessment strategies, States may find it helpful to refer to the Medicaid Managed Care proposed rule, published on September 29, 1998, for a discussion of standardized methods and tools in quality assurance and improvement and the Quality Improvement System for Managed Care (QISMC) Initiative (63 FR 52039). States are encouraged but not required to describe the State's strategy to assure that children have access to pediatricians and other health care providers with expertise in meeting the health care needs of children.

We propose to include an additional set of assurances that we believe is necessary to ensure the quality and appropriateness of care for enrollees. In § 457.735(b) we propose that States must assure that there are appropriate procedures in place to monitor and treat enrollees with complex and serious medical conditions, including access to specialists. While we believe that treatment plans are a desirable approach to address the needs of individuals with such medical conditions, we did not propose to require treatment plans. In addition, our proposed language does not mirror the language set forth in the proposed Medicaid managed care rule, which requires an adequate number of "direct access" visits because this language implies the use of a managed care approach that may not be applicable under CHIP.

5. State Expenditures and Statistical Reports (§ 457.740)

The recent implementation of CHIP, results of welfare reform, increased economic stability and reductions in unemployment have affected the scope of health insurance coverage for children. Because each of these factors may confound the coverage level, additional data is needed from States to measure the effectiveness of CHIP in providing coverage to low-income, uninsured children. Consistent quarterly enrollment data for separate child health programs, Medicaid expansions, and regular Medicaid is necessary for HCFA to effectively administer CHIP, to understand its relative impact on rates of uninsurance among low-income children, and to meet the changing needs of this population.

Therefore, section 2107(b)(1) of the Act, as implemented in proposed §§ 457.720 and 457.730, requires that the State plan contain certain assurances regarding the submission of reports to the Secretary. In addition, § .16 of the Medicaid regulations specifies that a State plan must provide that the Medicaid agency will submit all reports required by the Secretary, follow the Secretary's instructions with regard to the format and content of those reports, and comply with any provisions that the Secretary finds necessary to verify and assure the correctness of the reports. These statutory provisions and regulations serve as our authority for proposing State expenditure and statistical reporting requirements at § 457.740. (For information on forms that States should use in reporting expenditures and statistical data, see the proposed rule concerning State Children's Health Insurance Program Allotments and Payments to States, published in the **Federal Register** on March 4, 1999 (64 FR 10412). The final approved forms were published on December 2, 1998 (64 FR 66552).

We would require that the State collect required data beginning on the date of implementation of the approved State plan. States must submit quarterly reports on the number of children under 19 years of age who are enrolled in separate child health programs, Medicaid-expansion programs, and regular Medicaid programs (at regular FMAP) by age, income and service delivery categories. (Territories are excepted from the definition of "State" for the purposes of quarterly statistical reporting.) We also propose to require that thirty days after the end of the Federal fiscal year, the State must submit an unduplicated count for that Federal fiscal year of children who are enrolled in the separate child health program, the Medicaid expansion program and the Medicaid program as appropriate by age, service delivery, and income categories. Reporting an unduplicated count will provide insight into the continuity of coverage by clarifying the dynamics of program retention, dropout, and re-enrollment and facilitate designing and implementing more effective outreach policies.

We propose that the age categories that must be used to report the data are: Under 1 year of age, 1 through 5 years of age, 6 through 12 years of age, and 13 through 18 years of age. These age categories were chosen because they correspond with eligibility categories as well as with health status/health risk categories. States also are required to report by service delivery categories because it is important to understand the provider setting in which care is organized and delivered. The service delivery system categories that the State would be required to use are: Managed care, fee-for-service, and primary care case management.

We propose that States must report income by using State-defined countable income and State-defined family size to determine Federal poverty level (FPL) categories. We propose that States that do not impose cost-sharing and States that only impose cost-sharing based on a fixed percentage of income (such as 2 percent) in their Medicaid-expansion program or their separate child health program must report their CHIP and Medicaid enrollment by using two categories: At or below 150 percent of the Federal poverty level (FPL) and over 150 percent of FPL. States that impose cost-sharing at defined levels (for example, at 185 percent and over of FPL) in their Medicaid-expansion program and separate child health program would be required to report their CHIP and Medicaid enrollment by poverty level (that is, countable income and household size) categories that match their Medicaid-expansion program and separate child health program cost sharing categories.

We propose to require enrollment reporting by countable family income as defined by the State consistent with the definition at proposed § 457.10 rather than gross income. We are requiring the use of countable income because this maintains consistency with the program operational level definition of income and recognizes the wide variation that exists in how States compute enrollee family income and household size.

We also propose to require enrollment reporting by income for Medicaid as well as for CHIP. Because the income of low-income families tends to vary, children's eligibility status may change quite frequently and many children may be required to shift back and forth between Medicaid and the Medicaid-expansion or separate child health program. Therefore, it is important to understand program enrollment by income levels.

We propose that required standardized reporting be limited to expenditure data and enrollment data as reported by age, poverty level, and service delivery categories. We developed these proposed reporting requirements through extensive consultation with interested States and agencies within the Department and careful consideration of the need to document the progress of title XXI programs.

We also believe States should, as a matter of sound administration of their programs, collect other relevant demographic data on enrollees such as sex, race, national origin, and primary language. Collection of such data will encourage design of outreach and health care delivery initiatives that address disparities based on race and national origin. It also will facilitate State compliance with Office for Civil Rights data needs in the event of complaint investigations or compliance reviews.

In order to streamline State reporting requirements, we plan to develop an option for States to provide the needed CHIP data through existing statistical reporting systems in the future. We are currently evaluating possible modifications to the Medicaid Statistical Information System (MSIS), which captures State eligibility and claims records on a quarterly basis. The modifications will give States the option of using MSIS to supply the data elements that will meet the title XXI quarterly statistical reporting requirements. Under the implementation schedule for the FY 1999 MSIS changes, this option will not be available at an early enough date for States to report the data required by these regulations.

6. Annual Report (§ 457.750)

Section 2108(a) of the Act provides that the State must assess the operation of the State child health plan in each fiscal year, and report to the Secretary, by January 1 following the end of the fiscal year, on the results of the assessment. In addition, this section of the Act provides that the State must assess the progress made in reducing the number of uncovered, low-income children. We would implement the statutory provision requiring assessment of the program and submission of an annual report at proposed § 457.750(a).

At § 457.750(b), we set forth the proposed required contents of the annual report. Specifically, in accordance with the statute, the annual report must provide an assessment of the operation of the State plan in the preceding Federal fiscal year including the progress made in reducing the number of uncovered, low-income children. In addition, we propose to require that the State report on progress made in meeting other strategic objectives and performance goals identified by the State, successes in program design, planning, and implementation of the State plan, identify barriers to program development and implementation, and the State's approach to overcoming these barriers. We also propose to require that the State report on the effectiveness of its policies in discouraging the substitution of public coverage for private coverage. Further, we would require that the annual report discuss the State's progress in addressing any specific issues, such as outreach, that it agreed to assess in its State plan. In accordance with section 2107(d) of the Act, we also propose that a State also must provide the current fiscal year budget update, including details on the planned use of funds and any changes in the sources of the non-Federal share of plan expenditures. We also propose that the State must identify the total State expenditures for family coverage and total number of children and adults covered by family coverage during the preceding Federal fiscal year. We believe that a State must report on these issues in order to appropriately assess the operations of the State plan under section 2108(a) of the Act.

We propose that, in order to report on the progress made in reducing the number of uncovered low-income children in the annual report, a State must choose a methodology to establish an initial baseline estimate of the number of low-income children who are uninsured in the State and provide estimates, using the chosen methodology, of the annual change in this number of low-income uninsured children at two poverty levels: 200 percent FPL and at the current upper eligibility level of the State's CHIP program. In making these estimates, a State would not be required to use the same methodology that it used in identifying the estimated number of CHIP eligibles in the State plan.

We are requiring States to provide an estimate of the number of low-income, uninsured children at two poverty levels in order to gain insight into the progress made in providing low-income children with health insurance coverage. By requiring an estimate at the current upper eligibility level of the State's program, we can obtain data on the state interpretation of the number of low income children current targeted for enrollment. Over time, as some States choose to increase their upper eligibility levels, we will be able to identify how the number of targeted children has changed because of expanded income eligibility thresholds. By also requiring the State to provide a baseline estimate at the 200 percent FPL, we can obtain an aggregated state interpretation of the number of low income children in the United States. Title XXI generally defines low income children as children in families with income below 200 percent of the FPL. Most public policy and survey research experts also adopt this definition. Therefore, requiring the State to estimate the baseline number of uninsured children at this FPL will allow us to compare an aggregated State estimate with estimates obtained from other sources.

We would require that a State base the annual baseline estimates on either : (1) Data from the March supplement to the Current Population Survey (CPS); (2) data from State-specific surveys; (3) other statistically adjusted CPS data; or (4) other appropriate data. We also propose that a State must submit a description of the methodology used to develop these estimates and the rationale for its use, including the specific strengths and weaknesses of the methodology, unless the State bases the estimate on March CPS data. We propose that once a State submits a specific methodology in the annual report for estimating the baseline numbers, the State must use the same methodology to provide annual estimates unless it provides a detailed justification for adopting a different methodology.

We propose to give States the option of deciding how to estimate the number of uninsured children in the State, rather than requiring the use of one standard methodology. We note that making such estimates is inherently difficult and all the existing data sources have limitations. Traditionally, most national estimates of uninsured children have been based on the Bureau of Census March Current Population Survey (CPS). In fact, Congress used CPS estimates of the uninsured to allocate the CHIP funds available to each State. The CPS is a monthly survey of approximately 57,000 households in the United States. Each March the CPS includes supplemental survey questions about health insurance status. More specifically, individuals are asked whether they had any of various types of private or public health insurance in the previous year. Individuals who do not report insurance coverage are categorized as having been uninsured.

One major reason for the CPS's widespread use is that it is the only data source with the capacity to generate State-by-State estimates of uninsured children. However, in States with small populations, CPS State-specific estimates rely on very small sample sizes and may not be reliable. Because of this concern, Congress used 3-year averages of CPS estimates to allocate CHIP funds to States.

Despite its shortcomings, the CPS generally is relied upon by policy makers to provide an overall estimate of insurance status and insurance trends in the nation. Other major surveys that provide insight into the number of uninsured Americans include the Survey of Income and Program Participation (SIPP), the Medical Expenditure Panel Survey (MEPS), the Community Tracking Study, the National Health Interview Survey (NHIS) and the National Survey of American Families. However, these surveys produce estimates with a significant time lag, and several are conducted on an irregular or infrequent basis. For example, the Urban Institute conducted the National Survey of American Families in a sample of households in 13 States in 1997 and plans additional survey rounds in 1999 and 2001, but results of the 1997 survey will not be available until Spring of 1999 and the results of the 1999 survey will not be available until late 2000.

Although the National Center for Health Statistics has been developing the State and Local Area Integrated Survey (SLAITS) with a health care module, it currently remains unfunded and some methodological concerns have been raised about its applicability to CHIP. Therefore, we expect that most State-specific estimates of the number of uninsured children will use the CPS, a statistically adjusted CPS, or a State funded survey of the uninsured population. A well-designed State-specific survey can maximize the opportunity to capture information that is most relevant and of greatest interest. However, cost and time considerations will limit the reliability and validity testing of State-specific surveys, and these limitations can increase concerns about methodological shortcomings. Because data sources and methodologies for estimating the number of uninsured children may vary significantly across States, State-by-State comparisons of the estimates may be difficult. We will continue to work with States to give us the ability to compare estimates and develop comparable data.

7. State Evaluations (§ 457.760)

Proposed § 457.760 discusses the requirement that States submit a comprehensive evaluation by March 31, 2000 that analyzes the progress and effectiveness of the State child health program. In the evaluation, a State must report on the operation of its Medicaid expansion program, separate child health program, or combination program. As specified in section 2108(b)(1)(B) of the Act, the State evaluation must include all of the following:

- An assessment of the effectiveness of the State plan in increasing the number of children with creditable health coverage. In addition, the State must report on progress made in meeting other strategic objectives and performance goals identified by the State plan.

- An assessment of the State's progress in meeting other strategic objectives and performance goals identified by the State plan.
- A description and analysis of the effectiveness of elements of the State plan, including the following elements:
    - —The characteristics of the children and families assisted under the State plan, including age of the children and family income. The State also must report on children's access to, or coverage by, other health insurance prior to the existence of the State program and after eligibility for the State program ends (the child is disenrolled). As an optional strategy, the State also should consider reporting on other relevant characteristics of children and their families such as sex, ethnicity, race, primary language, parental marital status, and family employment status.
    - —The quality of health coverage provided under the State plan, including the results or plans to assess the results of any quality assurance and improvement, monitoring, and performance measurement process or other process that is used to assure the quality and appropriateness of care.
    - —The amount and level of assistance including payment of part or all of any premiums, copayments, or enrollment fees provided by the State.
    - —The service area of the State plan (for example, Metropolitan Statistical Area (MSA) or non-MSA).
    - —The time limits for coverage of a child under the State plan. As an optional strategy, the State should consider reporting the average length of time children are assisted under the State plan.
    - —The extent of substitution of public coverage for private coverage and the State's effectiveness in designing policies that discourage substitution.
    - —The State's choice of health benefits coverage, including types of benefits provided and the scope and range of these benefits, and other methods used for providing child health assistance.
    - —The sources of non-Federal funding used in the State plan.
- An assessment of the effectiveness of other public and private programs in the State in increasing the availability of affordable quality individual and family health insurance for children.
- A review and assessment of State activities to coordinate the CHIP plan with other public and private programs providing health care and health care financing, including Medicaid and maternal and child health services;
- An analysis of changes and trends in the State that affect the provision of accessible, affordable, quality health insurance and health care to children.
- A description of any plans the State has for improving the availability of health insurance and health care for children.
- Recommendations for improving the CHIP program.

G. Subpart H—Substitution of Coverage

1. Basis, Scope, and Applicability (§ 457.800)

One of the fundamental principles of title XXI is that CHIP coverage should not supplant existing public or private coverage. Title XXI contains provisions specifically designed to ensure that States use CHIP funds to provide coverage only to uninsured children. These provisions maximize the use of Federal dollars. Specifically, title XXI requires that States ensure that coverage provided under CHIP does not substitute for coverage under either private group health plans or Medicaid. Section 2102(b)(3)(C) of the Act requires that State plans include descriptions of procedures used to ensure that the insurance provided under the State child health plan does not substitute for coverage under group health plans. A final provision in title XXI relating to substitution of coverage is in section 2105(c)(3)(B), which sets out the conditions for a waiver for the purchase of family coverage as described in proposed § 457.1010. Under this provision, States must establish that family coverage would not be provided if it would substitute for other health insurance provided to children. In addition, title XXI contains three provisions aimed at preventing CHIP from substituting for current Medicaid coverage.

First, section 2102(c)(2) of the Act requires States to describe procedures used to coordinate their CHIP programs with other public and private programs. Second, section 2105(d) of the Act includes "maintenance of effort" provisions for Medicaid eligibility. That is, under section 2105(d) of the Act, a State that chooses to create a separate child health program cannot adopt income and resource methodologies for Medicaid children that are more restrictive than those in effect on June 1, 1997. Furthermore, title XXI also provides that a State that chooses to create a Medicaid expansion program, is not eligible for enhanced matching for CHIP coverage provided to children who would have been eligible for Medicaid in the State under the Medicaid standards in effect on March 31, 1997. Third, section 2102(b)(3)(B) of the Act requires that any child who applies for CHIP must be screened for Medicaid eligibility and, if found eligible, enrolled in Medicaid.

This subpart interprets and implements section 2102(b)(3)(C) of the Act regarding substitution of group health coverage and sets forth State plan requirements relating to substitution of coverage in general and specific requirements relating to substitution of coverage under employer-sponsored group health plans. These requirements apply to separate child health programs.

2. State Plan Requirements: Private Coverage Substitution (§ 457.805)

The potential for substitution of CHIP coverage for private group health coverage exists because CHIP coverage costs less or provides better coverage than coverage some individuals and employers purchase with their own funds. Specifically, employers who make contributions to coverage for dependents of lower-wage employees could potentially save money if they reduce or eliminate their contributions for such coverage and encourage their employees to enroll their children in CHIP. At the same time, families that make significant contributions towards dependent group health coverage could have an incentive to drop that coverage and enroll their children in CHIP if the benefits would be comparable or better and their out-of-pocket costs would be reduced.

In accordance with section 2102(b)(3)(C) of the Act, we propose at § 457.805 to require that each State plan include a description of reasonable procedures that the State will use to ensure that coverage under the plan does not substitute for group health plans. We will review State CHIP plans for the procedures.

The following is a discussion of the procedures relating to substitution of coverage under CHIP.

State plan requirements to prevent substitution. States that operate a separate child health program will be required in their State plans to describe procedures to address the potential for substitution. There is general agreement that substitution is a more significant problem at higher levels of income where a greater proportion of children have access to coverage. Therefore, we propose to more closely scrutinize State plans that expand eligibility for children in families with higher income levels.

We would consider the following to be reasonable procedures to prevent substitution:

- States that provide coverage to children in families at or below 150 percent of the Federal poverty line (FPL) should, at a minimum, have procedures to monitor the extent of substitution of that coverage for existing private group health coverage. We believe that there is limited evidence of substitution at income levels below 150 percent of FPL.
- States that provide coverage to children in families between 150 and 200 percent of FPL should, at a minimum, have procedures to study the incidence of substitution of that coverage for existing private group health coverage. In addition, States should specify in their State plans the steps they will take to prevent substitution in the event that the States' monitoring efforts discover substitution has occurred at an unacceptable level. In the event that the Secretary finds an unacceptable level of substitution, the State in question should implement the procedures to limit substitution that were identified in its State plan. We would apply a stricter standard for this higher income group because of the increased potential risk of substitution at this income level.
- States that provide coverage to children in families above 200% of FPL should implement, concurrent with program implementation, specific procedures or a strategy to limit substitution. We will not prescribe a particular strategy, but will evaluate each State's strategy separately.

We will ask States to assess the procedures to limit substitution in their evaluations submitted in March of 2000. States that monitor substitution in their plans will also submit information on substitution in their annual reports. We will examine any data on the effectiveness of States' procedures to prevent substitution of coverage. If our review of States' experience shows that substitution is occurring at an unacceptable rate, we may issue new requirements and require States to alter their plans at a future date.

The other option that we considered was to require a set of specific procedures that each State would have to use to address substitution. We rejected this option because the statute authorizes States to design approaches to prevent substitution, not the Federal government. We also recognized that there is not substantial evidence favoring any specific approach to reduce the potential for substitution.

We have received questions about applying substitution provisions to the Medicaid eligibility group for the "optional targeted low-income children", which was added to section 1902(a)(10)(A)(ii)(XIV) of the Act in accordance with section 4911 of the BBA. We are not proposing to require States to apply eligibility-related substitution provisions such as periods of uninsurance to the "optional targeted low-income children" group, because we believe that such eligibility conditions are inconsistent with the entitlement nature of Medicaid. States that currently apply eligibility-related substitution provisions to optional targeted low-income children will need to come into compliance with this policy. We recognize that States expanding Medicaid to this group at higher income levels may be particularly concerned about the potential for substitution of coverage. We will review section 1115 demonstration requests for substitution provisions and consider those that are consistent with our proposed policy under title XXI. State proposals to apply substitution provisions must satisfactorily demonstrate how the proposal will test new ideas of policy merit and be formally evaluated, consistent with the research and demonstration objectives of section 1115 of the Act. States that have approved Medicaid demonstration projects under section 1115(a)(2) that currently apply substitution provisions, such as waiting periods, to expansion populations under this demonstration authority may continue to do so. Moreover, States may use mechanisms other than eligibility restrictions to discourage substitution of coverage.

3. Premium Assistance for Employer-Sponsored Group Health Plans: Required Protections Against Substitution (§ 457.810)

We will particularly scrutinize CHIP programs under which States subsidize coverage under employer-sponsored group health plans, regardless of the income levels of the children who benefit from the subsidies, because we believe there is a greater potential for substitution of public funding for existing private funding for health insurance in this type of arrangement. First, we believe that State subsidies of private coverage under CHIP might increase the likelihood that families that purchase dependent coverage under employer-sponsored plans would drop that coverage and seek CHIP coverage if these families could obtain the same coverage under CHIP at lower cost. Lower income families may actually be more likely to drop their contribution to employer-sponsored coverage than higher income families because of the higher cost of insurance relative to their income. Second, employers with low-wage workers may have incentives to reduce or eliminate their premium contributions for dependent coverage if the CHIP assistance could replace that contribution.

We propose under § 457.810 to require any State that implements a separate child health program under which the State provides premium assistance for coverage under employer-sponsored group health plans, to adopt specific protections against substitution. A State must describe these protections in the State plan. We believe that without these additional protections, new Federal dollars will not extend coverage to as many uninsured, low-income children. The following four requirements must be met to protect against substitution:

- The child must not have been covered by employer-sponsored group health insurance during a period of at least six months prior to application for CHIP. States may require a child to have been without insurance for a longer period, but that period may not exceed 12 months. We believe that any longer waiting period would conflict with the overall goal of title XXI to provide child health assistance to uninsured, low-income children. We do not believe a waiting period of longer than 12 months is a reasonable procedure to prevent substitution of coverage. Exceptions to the minimum period without insurance would be allowed if the prior coverage was involuntarily terminated. Newborns who are not covered by dependent coverage would not be subject to any such waiting period.

We proposed this waiting period without employer-sponsored group health insurance to ensure that coverage is targeted to children in families that previously were unable to afford dependent coverage. We chose a minimum waiting period of 6 months because we felt that this time period would be long enough to significantly deter families from dropping existing coverage. The other option we considered was a 3 month waiting period. We believe, however, that parents would be more willing to drop existing coverage and allow their children to be uninsured for this shorter time period in order to take advantage of the premium assistance coverage through CHIP.

We believe that States that do not impose a 6-month waiting period must have a viable alternative to waiting periods, subject to approval by HCFA.

For example, a State could not simply reduce the waiting period from our minimum period of 6 months. It is important to note, however, that the waiting period is based only on coverage by employer-sponsored group health insurance, not CHIP or Medicaid coverage. If an otherwise eligible child does not meet the requirement for a minimum period without employer-sponsored group health coverage, the State can enroll the child in a separate State program or in Medicaid without purchasing employer-sponsored coverage for the interim waiting period, and can still consider the child uninsured for purposes of the waiting period. That is, coverage under a separate State program or Medicaid does not count for purposes of the waiting period.

- The employer must make a substantial contribution to the cost of family coverage, equal to 60 percent of the total cost of family coverage. We propose this requirement to discourage employers from lowering or eliminating their existing contributions for dependent coverage. We chose 60 percent based on several employer studies, which show that, on average, employers contribute roughly two thirds of the cost of family coverage. The Department is reluctant to permit a rate of contribution significantly lower than the 60 percent standard. States proposing an employer contribution rate below this standard must provide the Department with data that exemplify a lower average employer contribution in their State. The data must support the State's contention that the lower level of contribution will be equally effective in ensuring maintenance of statewide levels of employer contributions. We would also consider a somewhat lower level if a State had additional, effective, provisions to limit employers' ability to lower contribution levels or a State could show through specific data that the average employer contribution in the State is lower than 60 percent. For example, one State demonstrated to us by using the Medical Expenditures Panel Survey (MEPS) that the contribution rate was lower than 60 percent (55 percent) in that State. For ease of administration, the State may establish a minimum dollar employer contribution or some other method that is roughly equivalent to the 60 percent requirement to assure that employers continue to pay a meaningful share of the costs in these programs. The employee must apply for the full premium contribution available from the employer. We propose this requirement to promote cost-effectiveness and maximum employer contribution. This employer contribution would reduce the CHIP contribution toward the premium.
- The State's premium assistance for employer-sponsored coverage must not be greater than the payment that the State otherwise would make on the child's behalf for other coverage under the State's CHIP program. We have proposed this requirement to ensure that the provision of child health assistance through employer-sponsored group health plans is cost-effective and that the State is not inappropriately providing premium assistance for coverage for the adults in a family.
- The State must collect information and evaluate the amount of substitution that occurs as a result of the subsidies and the effect of subsidies on access to coverage. To conduct this evaluation, States must assess the prior insurance coverage of enrolled children. States may obtain information on prior coverage through the enrollment process, separate studies of CHIP enrollees, or other means for reliably gathering information about prior health insurance status. States should consider collecting the following information on the application to evaluate the prevalence of substitution:

—When did you last have insurance? __ Never __ less than 3 months ago __ 3–6 months ago __ 6–12 months ago __ more than 12 months ago

—What type of insurance did you have most recently? __ Medicaid __ Employer-sponsored insurance __ Individual __ Other (e.g., CHAMPUS, Medicare , VA) [**Note:** More than one may apply.]

—What reason best characterizes why you don't have insurance today? __ No longer working for the employer who offered the insurance __ Can't afford insurance __ Employer dropped coverage __ Public benefits are better __ No longer need insurance __ Employer does not offer health insurance

These questions may need to be adapted by survey researchers to obtain the appropriate information. Proposed § 457.750 and § 457.760 provide additional information on reporting and evaluation requirements. To determine the level of substitution, we encourage States to analyze the number of families who choose to enroll in CHIP who might have retained or bought private insurance had they not received CHIP funding for employer-sponsored insurance. We would ask States that choose to provide premium assistance for children's coverage through employer-sponsored group health plans to describe in their State plan and annual reports (described in proposed § 457.750) their compliance with these guidelines. We would also ask States to discuss their adherence to these guidelines in their March 31, 2000 evaluations. Based on the State evaluations submitted in March of 2000, we will reevaluate our position on these requirements for States that subsidize employer-sponsored group health plans.

H. Subpart I—Program Integrity and Beneficiary Protections

We propose to add a new subpart I, that would specify the provisions necessary to ensure the implementation of program integrity measures and beneficiary protections within the State Children's Health Insurance Program. In addition, this subpart discusses the President's *Consumer Bill of Rights and Responsibilities* as it relates to the CHIP program. This subpart also describes how the intent of the GPRA can be upheld by including program integrity performance and measures as part of the State plans.

1. Basis, Scope, and Applicability (§ 457.900)

We remain committed to our proactive efforts to preserve the integrity of our Federal and State government health care programs. Indeed, among HCFA's top priorities is to strengthen our ability to fight waste, fraud, and abuse in the Medicare and Medicaid programs and now in CHIP. We specify in § 457.900, that sections 2101(a) and 2107(e) authorize HCFA to set forth fundamental program integrity requirements and options for the States.

Specifically, section 2101(a) of the Act specifies that the purpose of the Children's Health Insurance Program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner. We believe that assuring program integrity is an integral part of an effective and efficient CHIP program and we have used this section of the Act as part of the authority for this subpart. In addition, section 2107(e) of the Act lists specific sections of title XIX and title XI and provides that these sections apply to States under title XXI in the same manner they apply to a State under title XIX. Therefore, we include the provisions set forth in section 2107(e) in specifying the authority for this subpart.

We note that the program integrity provisions contained in this proposed rule only apply to States that implement separate child health programs under the authority of section 2101(a)(1) of the

Act. States that implement a Medicaid expansion program are subject to the Medicaid program integrity provisions set forth in the Medicaid regulations at part 455, Program Integrity: Medicaid. While we are dedicated to preserving the inherent flexibility the Act provides to States that implement separate child health programs, we are proposing that States design programs that address the fundamental program integrity protections established for the Medicaid program. We believe this approach to program integrity will ensure continuity among States in implementing CHIP, while at the same time allowing States the opportunity to maximize efficiencies from existing administrative processes and practices that States have established for program integrity.

2. Definitions (§ 457.902)

We have included five definitions for the purpose of this subpart. The terms "contractor," "managed care entity," and "fee-for-service entity" relate to the entities with which States may contract in order to provide services to the CHIP population. We defined the terms "contractor" and "managed care entity" in this subpart because the two terms are used most significantly in reference to accountability for ensuring program integrity. We wanted to find a term that would encompass all health care related entities involved in service delivery to this population. We defined the term "grievance" to provide some context into the section requiring States to have written procedures for grievances and appeals. In addition, we defined the term "State program integrity unit" because separate child health programs may elect to create an organization whose purpose is to conduct program integrity activities. We created this term to have a uniform way of describing this organization for States that take the opportunity to develop a fraud and abuse prevention system for separate child health programs. Such a system could be similar to that of the Medicaid Fraud Control Units (MFCUs), but activities would be funded through Title XXI rather than Medicaid.

Specifically, we propose that "contractor" means any individual or entity that enters into a contract, or a subcontract to provide, arrange, or pay for services under title XXI. This definition includes, but is not limited to, managed care organizations, prepaid health plans, primary care case managers, and fee-for-service providers and insurers.

We propose that a "managed care entity" is any entity that enters into a contract to provide services in a managed care delivery system, including but not limited to managed care organizations, prepaid health plans, and primary care case managers. We propose that "fee-for-service entity" means any entity that provides services on a fee-for-service basis, including health insurance. We propose that "State program integrity unit" means a part of an organization designated by the State (at its option) to conduct program integrity activities for separate child health programs.

Finally, we defined the term "grievance" to be consistent with the proposed Medicaid managed care regulations, and to give the States the opportunity to utilize the process that is already in place for the Medicaid program.

3. State Program Administration (§ 457.910)

We are aware of the need to provide States with maximum flexibility as they implement their State plans, while balancing the need of the Federal government to remain accountable to Congress for the integrity of the program. We note that section 2101(a) of the Act allows flexibility by requiring States to provide child health assistance to uninsured, low-income children in an effective and efficient manner. Toward that end, we would specify in § 457.910 that the State child health plan must provide for methods of administration that the Secretary finds necessary for the proper and efficient operation of the State child health program. We would also provide that the State's program must provide the safeguards necessary to ensure that eligibility as set forth in subpart C of these proposed regulations will be determined appropriately, and services will be provided in a manner consistent with simplicity of administration and with the provisions of proposed subpart D regarding benefits. We believe these requirements are relevant and consistent with the general program integrity protections that are common to most Federal and State health programs and provide States with flexibility in tailoring their individual CHIP programs.

4. Fraud Detection and Investigation (§ 457.915)

Section 2107(e) references sections 1903(i)(2), and 1128A of the Act, which authorize certain fraud detection and investigation activities. Section 2107(e) states that these provisions apply under title XXI in the same manner as applied to a State under title XIX. Moreover, these provisions are cited as authority in the Medicaid regulations at part 455, subpart A—Medicaid Agency Fraud Detection and Integrity Program. We recognize that States that implement their State plans through the Medicaid expansion option are subject to all Medicaid program integrity requirements under part 455, Program Integrity: Medicaid. However, States that implement separate child health programs have more flexibility in designing and implementing program integrity procedures for their programs. In recognition of this flexibility, we considered three possible options to ensure that separate child health programs develop and implement adequate fraud detection and investigation processes and procedures.

We considered declining to specify any fraud detection and investigation assurances, thereby providing States with full discretion in designing processes and procedures to meet their specific needs. However, we are not proposing this option because we do not believe it supports the Secretary's need for accountability and responsibility to Congress for CHIP evaluation and reporting requirements. We also considered proposing to require that all separate child health programs follow the same processes and procedures for fraud detection and investigation for the Medicaid program (and CHIP Medicaid expansions) specified under § 455.13 regarding methods for identification, investigation and referral. However, while there are several advantages in maintaining a central focal point for all State Medicaid and CHIP activities, we did not propose this option because we believed that this approach was not sufficiently flexible for separate child health programs, which vary in structure from Medicaid. The compromise option that we are proposing is to require States to address, specifically, the Medicaid goals for fraud detection and investigation, but allow States to design specific procedures needed to meet the requirements of § 455.13. We believe this option balances the need for maintaining State flexibility while establishing an acceptable minimum standard that will satisfy our need for accountability in the program. For example, under this option we would indicate that States may consider Medicaid agency criteria for identifying suspected fraud cases in CHIP and work in collaboration with the State program integrity unit, legal authorities, and law enforcement officials in referring suspected fraud and abuse cases.

Specifically, we propose that the State must establish procedures for assuring program integrity and detecting fraudulent or abusive activity. We propose that HCFA and the States develop program integrity standards and measures, such as payment error rate, acceptable levels of payment error, and the recovery of funds from erroneous payments. These examples of measures demonstrate Federal and State commitment to the principles and the intent of the GPRA. We would provide that the procedures must include, at a minimum, the methods and criteria for identifying and investigating suspected fraud and abuse cases that do not infringe on the legal rights of persons involved and afford due process of law. We also propose that the State may establish an administrative agency responsible for monitoring and maintaining the integrity of the separate child health program, which would be referred to as the "State Program Integrity Unit." We further provide that in the event that a State chooses to establish a State Program Integrity Unit, the State must develop and implement procedures for referring suspected fraud and abuse cases to law enforcement officials. We would specify that law enforcement officials include, but are not limited to the Department of Health and Human Services Office of Inspector General(OIG), the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the State Attorney General's office.

5. Accessible Means To Report Fraud and Abuse (§ 457.920)

We propose that States with separate child health programs must establish and provide access to a mechanism that facilitates communication between the State and the public for information exchange on instances of potentially fraudulent and abusive practices by and among participating contractors, and other entities. This communication mechanism may include a toll-free telephone number. We realize that toll-free service is the primary means for referring fraud and abuse in the Medicaid program, and that these toll-free services are unique and vary from State to State. While States that expand current Medicaid programs can utilize the existing toll-free services, we note that States with separate child health programs may establish similar toll-free service as a viable method to provide the public with an accessible means for reporting fraud and abuse. For example, States are free to use discretion in establishing new toll-free services specifically designed for their enrollees, or in maximizing the benefits of an existing Medicaid fraud and abuse toll-free service by expanding these toll-free services to include fraud and abuse reporting. As evidenced by the Medicare, Medicare+Choice, and Medicaid programs, we believe that providing access to toll-free service for the reporting of potentially fraudulent and abusive practices is an integral part of any sound program integrity strategy.

6. Preliminary Investigation (§ 457.925)

We would specify that if the State receives a complaint of fraud or abuse from any source, or identifies any questionable practices, the State agency must conduct a preliminary investigation or implement otherwise appropriate actions to determine whether there is sufficient basis to warrant a full investigation. We are proposing that the State has the option of creating a "State program integrity unit" for separate child health programs that would conduct fraud and abuse prevention activities parallel to the activities of Medicaid Fraud Control Units. States have flexibility to define the role, if any, that State program integrity units play. However, such activities must be funded with monies from the State's CHIP allotment. While we are proposing that preliminary investigations be conducted, we remain flexible with regard to the processes and procedures that separate child health programs may employ in conducting preliminary investigations. We would encourage States to work closely with the State Medicaid program integrity unit or units in structuring the approach to program integrity and developing procedures for conducting these investigations. Since the Medicaid and separate State program integrity units would be working on similar issues, sometimes on parallel investigations, the two units could reside in the same organization, entity, or division within the State. We believe this represents a feasible option to help States bolster their effectiveness and efficiency in conducting fraud and abuse investigations for separate child health programs.

7. Full Investigation, Resolution, and Reporting Requirements (§ 457.930)

We would specify that the State must establish and implement effective procedures for investigating and resolving suspected and apparent instances of fraud and abuse. While we would preserve State flexibility in tailoring processes to best suit their specific State program needs, we note that States may model their approaches, to the extent necessary as determined by the State, after fraud and abuse investigation, resolution, and reporting congruent with the Medicaid State agency processes and procedures as outlined in §§ 455.15, 455.16, and 455.17 of the Medicaid regulations. For example, the State must work in conjunction with law enforcement officials and the Medicaid State program integrity unit. Some States may choose to adopt the existing Medicaid State agency process for fraud and abuse investigation, resolution, and reporting activities. However, MFCUs may only use Medicaid funding for fraud and abuse activities in States that provide child health assistance under a Medicaid expansion program. Medicaid funding cannot be used for fraud investigation activities in separate child health programs. This is because all MFCU professional staff being paid with Medicaid dollars must be full-time employees of the Medicaid fraud agency and devote their efforts exclusively to Medicaid fraud activities. However, to the extent that States want to allocate additional non-MFCU full-time staff, using CHIP dollars, to work exclusively on fraud and abuse investigation in separate child health programs, they may do so. States may choose to do this in conjunction with a State program integrity unit. We note that expenditures for this purpose would be subject to the 10 percent cap on administrative costs.

States with separate child health programs may choose to implement distinct and separate processes for investigating and resolving fraud and abuse cases. In addition, some States may choose to use some of the existing processes in their Medicaid State agency together with new and separately developed fraud and abuse processes. Regardless of the approach that States choose, we believe it is imperative that fraud and abuse processes under a separate child health program maintain a sense of continuity including elements that are generally consistent with other State programs and that are familiar to State officials, law enforcement officials, and the general public. Moreover, maintaining this sense of commonality in the State's programs may help to mitigate the risk of increasing confusion among entities that report fraud and abuse, and may help to promote synergy between CHIP and other State programs regarding fraud and abuse investigation, resolution, and reporting activities.

Therefore, we propose that the State must establish and implement effective procedures for handling suspected and apparent instances of fraud and abuse. We further propose that, once the State determines that a full investigation is warranted, the State may implement certain procedures. Specifically, we would provide that, to the greatest extent possible, the State must cooperate with and refer fraud and abuse cases to the State program integrity unit when requested to do so by that unit. The State program integrity unit would also refer fraud cases to appropriate law enforcement officials.

8. Sanctions and Related Penalties (§ 457.935)

Under the authority of section 2107(e) of the Act, and consistent with the requirements under Federal and State health care programs, we would specify that a State may not make payments for any item or service furnished, ordered, or prescribed under a separate child health program to any contractor who has been excluded from participating in the Medicare and Medicaid programs. We note that our authority stems from section 1128 of the Act regarding exclusion of certain individuals and entities from participation in Medicare and State administered health care programs. We assert this authority because section 1128 specifically references the authority in sections 1124, 1126, 1128A, and 1128B of the Act, which also have been included under section 2107(e) of the Act and apply to the Children's Health Insurance Program in the same manner as applied to a State's Medicaid program under title XIX. Accordingly, we would specify that the separate child health programs are subject to program integrity provisions set forth in the Act including: (1) Section 1124 relating to disclosure of ownership and related information; (2) section 1126 relating to disclosure of information about certain convicted individuals; (3) section 1128A relating to civil monetary penalties; and (4) section 1128B(d) relating to criminal penalties for acts involving Federal health programs. In an effort to promote enforcement of this subsection and to provide HCFA and the Secretary with critical fraud and abuse data, we would specify that the separate child health programs are subject to the requirements of section 1128E of the Act in the same manner as applied to the Medicare and Medicaid programs. In accordance with section 1128E of the Act, we would consistently specify that the State child health plan be subject to the requirements pertaining to the reporting of final adverse actions on liability findings made against health care providers, suppliers, and practitioners. In addition, States must share such information and data with the Office of the Inspector General in an effort to promote enforcement.

9. Procurement Standards (§ 457.940)

Section 2101(a) of the Act requires that States provide services in an effective and efficient manner. We believe that Congress intended that title XXI funds be used to provide health services to the maximum number of uninsured children possible. Therefore, we have an obligation to ensure that States use these funds in a cost-effective manner. In order to meet this obligation, we have set forth provisions at proposed § 457.940 regarding procurement standards. We note that these provisions do not include Federal oversight of provider payments. Rather, we propose to require that States set rates in a manner that most efficiently utilizes limited CHIP funds.

We propose to require that States provide HCFA with a written assurance that title XXI services will be provided in an effective and efficient manner. The assurance must be submitted with the initial CHIP plan or, for States with approved CHIP plans, with the first request to amend the CHIP plan submitted to HCFA following the effective date of these regulations.

If States contract with entities for CHIP services, they must provide for free and open competition, to the maximum extent possible, in the bidding of all contracts for title XXI services in accordance with the procurement requirements of 45 CFR 74.43. As a grant program, title XXI is subject to the requirements of 45 CFR part 74 (Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments), including part 74.43.

Alternatively, States may base title XXI fee-for-service or capitated rates on public or private payment rates for comparable services. We believe that this option will give States maximum flexibility and will permit them to take advantage of local market forces in establishing CHIP rates. We propose that if a State finds it necessary to establish higher rates than would be established using either of the above methods, it may do so if those rates are necessary to ensure sufficient provider participation or to enroll providers who demonstrate exceptional efficiency or quality in the provision of services. This method will allow States the flexibility to establish higher rates to attract providers in under-served areas or to enroll more costly specialty providers.

We also propose that States must provide HCFA with a description of the manner in which they develop CHIP rates. The description would include an assurance that the rates were competitively bid or an explanation of the applicability of the exceptions of 45 CFR part 74, a description of the public or private rates that were used to set the CHIP rates, if applicable, and/or an explanation of why rates higher than those that would be established using either of these two methods is necessary. The description must be submitted to HCFA when a State first determines its rates or, for approved CHIP plans, when it updates its rates or changes its reimbursement methodology.

10. Certification for Contracts and Proposals (§ 457.945)

In addition to the proposed requirements in § 457.950, which specify that contractors must certify payment data is accurate, truthful, and complete, we would also specify in § 457.945 that entities that contract with the State must also certify the accuracy, completeness, and truthfulness of information in contracts, requests for proposals, information on subcontractors, and other related documents as specified by the State. We are proposing this requirement to meet our need for accountability under CHIP (as discussed in our rationale for proposed § 457.915) and to address the concerns of the OIG, DOJ, and HCFA regarding program integrity assurances from its contractors.

11. Contract and Payment Requirements Including Certification of Data That Determines Payment (§ 457.950)

We believe it imperative that CHIP payments for health care services are based on accurate and validated claims information and supporting data from managed care organizations and health care providers. As the majority of approved State child health plans offer some type of managed care delivery, we believe the issue of certification of payment data is important to ensuring program integrity in State child health plans. In addition, we share the concerns of our other Federal government partners that adequate steps must be taken by States to ensure the accuracy, completeness, and truthfulness of data by contracting entities.

Therefore, at § 457.950 we propose that when CHIP payments to managed care entities are based on data submitted by the MCE, the State must ensure their contracts with MCEs provide that the data include, but are not limited to, enrollment information and other information required by the State. We also provide that as a condition for receiving payment, the MCE must attest to the accuracy, completeness, and truthfulness of claims and payment data. We would provide that as a condition of participation in the separate child health program, MCEs must provide the State with access to enrollee health claims data and payment data, as determined by the State and in conformance with the appropriate privacy protections in the State. We also propose that managed care contracts must include a guarantee that the MCE will not avoid costs for services, such as immunizations, covered in its contract by referring individuals to publicly supported resources (for example, clinics that are funded by grants provided under section 317 of the Public Health Service Act).

We would provide that when CHIP payments are made to fee-for-service entities, the State must establish procedures to ensure and attest that information on provider claim forms is truthful, accurate, and complete. We also propose that as condition of participation in the State plan, fee-for-service entities must provide the State with access to enrollee health claims data and payment data, as determined by the State.

12. Conditions Necessary To Contract as a Managed Care Entity (MCE) (§ 457.955)

In addition to implementing program integrity protections at the State level, we would specify under § 457.955 that the State must ensure MCEs have in place fraud and abuse detection and prevention processes. These processes would include mechanisms for the reporting of information to appropriate State and Federal agencies on any unlawful practices by subcontractors or enrollees of MCEs. In order to maintain privacy protections for enrollees, we propose that the reporting of information on enrollees would be limited only to information on violations of law pertaining to the actual enrollment, provision of, and payment for health services. Furthermore, we would provide that the State maintains the authority and the ability to inspect, evaluate and audit MCEs as determined necessary by the State in instances where the State determines that there is a reasonable possibility of fraudulent or abusive activity.

We believe these requirements are necessary because the majority of States utilize managed care delivery for children's health benefits coverage. In addition, we believe that our proposed requirements for CHIP managed care contracting in the area of program integrity are similar to the program integrity assurances specified in § 438.606 of the proposed Medicaid managed care provisions, published on September 29, 1998 (63 FR 52022). However, we note that MCEs are accountable to the State, and not to the Federal government. We believe this approach allows MCEs and States maximum flexibility in developing mechanisms for reporting on violations of law that are most effective and efficient for the unique operation of the MCE, and are also in the best interest of the specific State child health plan.

We propose that States that have Medicaid expansion programs and contract with MCEs under section 1903(m) of the Act may arrange for an annual independent, external review of the quality of services (EQR) delivered by each MCE as provided for under section 1932(c)(2) of the Act. States are permitted to draw down 75 percent FFP for this activity. States with separate child health programs are encouraged to provide for EQR of each MCE under contract to provide services to CHIP enrollees; however, the State must use funds within the 10 percent limit for administrative activities.

13. Reporting Changes in Eligibility and Redetermining Eligibility (§ 457.960)

If a State chooses to require that individuals report changes in circumstances during an eligibility period, we propose to require that the State: (1) establish procedures to ensure that beneficiaries make timely and accurate reports of any changes in circumstances that may affect eligibility; and (2) promptly redetermine eligibility when it receives information about changes in a child's circumstances that may affect his or her eligibility.

We believe that these two requirements are important in addressing our concern that children are appropriately enrolled in the program.

14. Documentation (§ 457.965)

To ensure the integrity of the program, we propose to require that each applicant's record include certain facts that would, if necessary, support the State's determination of a child's eligibility. This documentation should be consistent with standard State laws and procedures.

15. Eligibility and Income Verification (§ 457.970)

A key to successfully enrolling children in CHIP and Medicaid is a simple application and enrollment process. A burdensome application and enrollment process can be a significant barrier to successful enrollment. However, it is important that States have in place procedures designed to assure program integrity. We propose to require that States have in place procedures designed to assure the integrity of the eligibility determination process, and to abide by verification and documentation requirements applicable to separate child health programs under other Federal laws and regulations. We propose that States have flexibility to determine these documentation and verification requirements, and can use self-declaration of income and assets.

States with separate child health programs are not required to use the Medicaid income and eligibility verification system (IEVS) for income and resources or to adopt a similar system.

Nonetheless, the establishment of effective program integrity procedures as part of the eligibility determination process is an integral part of providing coverage under a separate child health program in an effective and efficient manner as required under section 2101(a), and of ensuring accountability to State and Federal executive and legislative authorities. We encourage States to adopt procedures that assure accountability but do not create barriers in the application and enrollment process. For example, a State that provides for self-declaration by the applicant of income and assets could conduct random post-eligibility verification or adopt other procedures designed to assure program integrity.

The State could also use the Medicaid IEVS verification system, or some variation of it. For eligibility requirements that pose particular program integrity problems, the State could require verification or documentation as part of the eligibility determination process.

We would also allow a State to terminate the eligibility of a beneficiary for "good cause" other than failure to continue to meet the requirements for eligibility. An example of "good cause" would be if any information or other action causes the beneficiary to fail to meet the requirements of income and eligibility verification as reasonably determined by the State. For example, a reasonable basis for termination would exist in a case where the applicant provided false information about an eligibility requirement. Beneficiaries terminated for good cause must be given a notice of the termination decision that sets forth the reasons for termination and provides a reasonable opportunity to appeal the termination decision as specified in section 457.985.

16. Redetermination Intervals in Cases of Suspected Enrollment Fraud (§ 457.975)

Among our highest priorities is to ensure that a State child health assistance program actually provides health assistance to the individuals

Congress designed the program to serve. That is, we want the State to ensure that children applying for CHIP, but who are eligible for Medicaid or any other form of health assistance, are enrolled in those programs if appropriate. Furthermore, if a State suspects enrollment fraud, the State should periodically disenroll from the program beneficiaries that no longer meet the eligibility standards under section 2102 of the Act for any reason including a change in age, income, or source of other health coverage. If a State suspects enrollment fraud, the State may, at its own discretion, perform eligibility redeterminations at any frequency that the State considers to be in the best interest of the CHIP program.

17. Verification of Enrollment and Provider Services Received (§ 457.980)

Integral to a sound program integrity strategy is the ability to ensure that services billed by contractors are actually received by enrollees. Under the Medicaid program, this is accomplished in large part by the claims processing system used by States, the Medicaid Management Information System (MMIS). The MMIS captures provider and service information on claims and provides individual notices, within 45 days of the payment of claims to all or a sample group of enrollees receiving the services. These requirements and procedures under the Medicaid program are specified under §§ 455.20 and 433.116 accordingly. While States with Medicaid expansion programs are subject to these Medicaid requirements, we want to ensure that separate child health programs have procedures in place to verify receipt of provider services. We recognize that some States may choose to use the existing claims processing system for Medicaid expansion programs. However, some States may choose to use separate systems for the separate child health program. In these cases, we would specify that the program must have established systems and procedures for verifying enrollee receipt of provider services. In addition, we would specify that the State must establish and maintain systems to distinguish and report enrollee claims for which the State receives enhanced FMAP payments under section 2105 of the Act. We believe that the requirements specified above would serve as a fundamental component of other program integrity activities in this proposed rule, including the fraud detection and investigation efforts as discussed under §§ 457.915, 457.925, 457.930.

18. Enrollee Rights To File Grievances and Appeals (§ 457.985)

Section 2101 of the Act allows the Secretary to provide health assistance in an effective and efficient manner that promotes the best interests of enrollees. Under this authority, we would specify that the State must allow enrollees the right to due process in circumstances where their health care services were denied, suspended, terminated or reduced by the State or by its providers. Specifically, we propose that States must afford individuals the opportunity to file grievances and appeals regarding denial, suspension or termination of eligibility; reduction or denial of services provided for in the State's plan; and disenrollment for failure to pay cost-sharing. Sections 457.365, 457.495, and 457.560 respectively require that this section applies in these specific circumstances.

We would specify that separate child health programs must establish and maintain written procedures for grievances that are consistent with the health industry practices currently in effect in the particular State. Such procedures must include a guarantee that the grievance and appeals processes will be resolved within a reasonable period of time. An example of a reasonable period of time would be as proposed in the Medicaid managed care rule (63 FR 52022), a period of 30 calendar days or 72 hours in an expedited case.

We would further require that these procedures for grievances meet the State rules and regulations for grievances and appeals that are currently in effect for health insurance issuers (as defined in section 2791(b) of the Public Health Service Act) within the State. We would require these provisions for grievances and appeals on a State-specific basis because we realize that procedures may vary from State to State, and States may also modify their own requirements as circumstances warrant. Furthermore, we encourage States to use the grievance procedures as described in part , subpart E regarding fair hearings for Medicaid applicants and recipients, and the Medicaid grievance and appeal procedures for Medicaid managed care entities, which were set forth in the Medicaid Managed Care proposed rule (63 FR 52022).

The State should maintain effective, efficient, and timely processes for grievances, appeals, and determinations for its enrollees. In addition, the State child health program and its providers should ensure that all enrollees receive written information about the grievance and appeal procedures that are available to them. We believe that assuring CHIP enrollees of their grievance rights is consistent with the Administration's ongoing efforts to institute the *Consumer Bill of Rights and Responsibilities* for all Federal health programs.

We are concerned that beneficiaries be afforded the right to make informed decisions about their medical care free from any form of financial incentive or conflict of interest involving their provider of care that could directly or indirectly affect the kinds of services or treatment offered or provided. Therefore, we propose that the State must guarantee, in all contracts for coverage and services, beneficiary access to information related to actions which could be subject to appeal in accordance with the "Medicare+Choice" regulation at § 422.206, which discusses the prohibition of "gag rules" and protection of enrollee-provider communications, and § 422.208 and § 422.210(a) and (b) which discuss physician incentive limitations and requirements for information disclosure to beneficiaries. We remain committed to ensuring that appropriate actions are taken to guarantee the protection of enrollee rights regarding their health care services under the Medicare, Medicaid, and CHIP programs.

19. Privacy Protections (§ 457.990)

Privacy protections are an essential part of an effective and efficient program because these protections ensure beneficiary trust and honest communication with caregivers and payers. Furthermore, protecting the rights of beneficiaries is of paramount importance in our overall efforts to manage and oversee Federal and State health care programs. This can be evidenced through recent activities including the Administration's commitment to the *Consumer Bill of Rights and Responsibilities*, as well as HCFA's focus on beneficiary rights as demonstrated in the recent Medicare+Choice regulations set forth at part 422 and the proposed Medicaid managed care regulations published on September 29, 1998 (63 FR 52022). For example, the Medicare+Choice regulations at § 422.118 and the proposed Medicaid managed care regulations at § 438.324 set forth provisions that address enrollee privacy protections in the areas of ensuring original medical records and information are released only in accordance with Federal or State law, or court orders or subpoenas; safeguarding the privacy of information; maintaining accurate and timely information and records; abiding by all State and Federal laws concerning confidentiality and disclosure of information; protecting the confidentiality and privacy of minors in accordance with Federal and State law; prohibiting the access to or tampering with records by unauthorized individuals; ensuring that enrollees have timely access to their records and to information that pertains to them; and ensuring that MCOs release records and information only to authorized individuals.

In light of these concerns, and our obligation under section 2102(a)(1) to ensure that States provide child health assistance in an effective and efficient manner, we would specify that the State plan must assure that the program complies with the title XIX provisions as set forth under part , subpart F—Safeguarding Information on Applicants and Recipients. Moreover, we would provide that the State plan must assure the protection of information and data pertaining to beneficiaries by providing that all contracts will include guarantees that:

- Original medical records are released only in accordance with Federal or State law, or court orders or subpoenas;
- Information from or copies of medical records are released only to authorized individuals;
- Medical records and other information are accessed only by authorized individuals;
- Confidentiality and privacy of minors is protected in accordance with applicable Federal and State law;
- Enrollees have timely access to their records and to information that pertains to them; and
- Beneficiary information is safeguarded by following all Federal and State laws that pertain to confidentiality and disclosure of mental health records, medical records, and all other applicable health and other information specific to enrollees.

Furthermore, we continue to be concerned about privacy issues as more States utilize electronic media such as the Internet to transmit enrollee health care information. For example, some States have indicated their intent to allow for the completion of CHIP applications on-line, to allow for the downloading of completed applications and patient enrollment records by authorized users, and to allow on-line access to eligibility systems for qualified providers. For States choosing to pursue these types of activities, we would specify that State child health plans sending data to HCFA through the Internet will be subject to *HCFA's Internet Security Policy* regarding confidentiality of data transmissions (found on HCFA's website at "www.hcfa.gov"). Data transmissions between providers, health plans, and the State would also be subject to these requirements. In addition, we would specify that State child health plans are subject to any Federal requirements as well as requirements set forth by their State regarding information disclosure, including use of the Internet to transmit CHIP data between and among the State and its providers. Data transmissions between providers, health plans, and the State would be subject to these requirements also. Finally, we would provide that the State must assure that the program will be operated in compliance with all applicable State and Federal requirements to protect the confidentiality of information transmitted by electronic means, including the Internet.

20. Overview of Beneficiary Rights (§ 457.995)

In February 1998, the President directed the Department of Health and Human Services, along with the Departments of Labor, Defense and Veterans' Affairs and the Office of Personnel Management, to use their regulatory and administrative authority to bring their health programs into compliance with the *Consumer Bill of Rights and Responsibilities,* as proposed by the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

Since that time, HHS has moved aggressively to strengthen existing consumer protections under the Medicare and Medicaid programs. In particular, in developing regulations implementing the Medicare and Medicaid managed care provisions of the Balanced Budget Act of 1997, we have been able to meet or substantially address all of the rights identified in the *Consumer Bill of Rights and Responsibilities.* The Interim Final Rule for Medicare, published on June 26, 1998 (63 FR 34968), has largely taken effect as of January 1999, with the implementation of the Medicare+Choice program. The Notice of Proposed Rulemaking for Medicaid managed care, published on September 29, 1998 (63 FR 52022), expanded and codified protections for Medicaid beneficiaries enrolled in managed care arrangements. However, this regulation will not be fully implemented until the States incorporate the changes into their new contracts, one year after the publication of the final rule, which is expected to be issued in late 1999.

The Children's Health Insurance Program was also established by the Balanced Budget Act of 1997. The protections that apply to the general Medicaid program also apply to States that expand existing Medicaid programs as a means of implementing CHIP. In considering how to apply the President's directive for consumer protections in separate child health programs, we have attempted to balance the Administration's desire to ensure consumer rights for the broadest population with the need to preserve State flexibility. In this spirit, we have identified the following rights for enrollees in separate child health programs. We welcome public comments on how best to address the *Consumer Bill of Rights and Responsibilities* or other needed beneficiary protections in this regulation.

- Information Disclosure

The Consumer Bill of Rights and Responsibilities provides that consumers should receive accurate, easily understood information and assistance in making informed health care decisions about their health plans, professionals, and facilities.

Section 2102(c) of the Act requires that State plans include procedures "to inform children of the availability of child health assistance and to assist in enrolling children." We implement this provision of the Act at § 457.65—Duration of State plans and plan amendments, and § 457.110—Enrollment assistance and information requirements, and § 457.525—Public notice of cost sharing requirements.

- Choice of Providers and Plans

The State must provide applicants and enrollees with assistance in making informed health care decisions (§§ 457.110 and 457.985(e)) and have methods to assure appropriate and timely procedures to monitor and treat enrollees with complex and serious medical conditions, including access to specialists (§ 457.735). We note that this provision is similar to the provisions set forth in the proposed Medicaid Managed Care regulation.

- Access to Emergency Services

The *Consumer Bill of Rights and Responsibilities* provides that consumers should have access to emergency health services. Health plans should provide payment when a consumer presents to an emergency department with acute symptoms of sufficient severity—including severe pain—that a "prudent layperson" could reasonably expect the absence of medical attention to result in placing that consumer's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Section 2102(a)(7)(B) of the Act expressly requires that States include in their CHIP plans methods "to assure access to covered services, including emergency services." We have proposed to apply in the benefits section (§ 457.402) the definitions of emergency services, emergency medical condition, and post-stabilization services, which were included in the President's directive and proposed in the Medicaid managed care regulation. In addition, the proposed regulation text at § 457.735—State plan requirement: State assurance of the quality and appropriateness of care, further addresses the right to emergency services.

- Participation in Treatment Decisions

The *Consumer Bill of Rights and Responsibilities* would give consumers the right and responsibility to participate in treatment decisions and to be represented if not able to do so. Enrollees in separate child health programs have the opportunity to make such decisions and to receive the pertinent information (§ 457.110). In addition, States must prohibit gag rules and establish principles for disclosure of physician financial arrangements that could affect treatment decisions (§ 457.985(e)).

- Respect and Nondiscrimination

The *Consumer Bill of Rights and Responsibilities* sets forth that consumers have the right to considerate, respectful care that is free of discrimination in the delivery of health care services, as well as, marketing and enrollment practices based on race, ethnicity, national origin, religion, sex, age, mental or physical disability, sexual orientation, genetic information, or source of payment.

We have proposed to apply general grant requirements to both States and contractors (health plans) that preclude discrimination based on race, sex, ethnicity, national origin, religion, or disability. The proposed regulation text addresses this right at § 457.130—Civil rights assurance.

- Confidentiality of Health Information

The *Consumer Bill of Rights and Responsibilities* provides that consumers should be permitted to communicate with health care providers in confidence and to have the confidentiality of their individually-identifiable health care information protected. Consumers also have the right to review and copy their own medical records and request amendments to their records.

We believe that privacy protections are essential to effective and efficient operation of a separate child health program, and have proposed to require such protections at proposed § 457.990—Privacy protections. In addition, we would require that the State program comply with other applicable Federal and State laws used to enforce confidentiality. These proposed requirements are based on our authority under section 2102(a)(1) of the Act to require that child health assistance is furnished in an effective and efficient manner. We believe protecting the confidentiality of patient information is essential to ensure that families will be willing to enroll eligible children and seek benefits under the program. We would require the program to be in compliance with all applicable State and Federal rules concerning confidentiality.

- Grievances and Appeals

The *Consumer Bill of Rights and Responsibilities* provides that a fair and efficient process should be in place for resolving differences with health plans and other health care providers, including a system of timely internal and external review of grievances and a meaningful process for addressing complaints.

Section 2103 specifies the parameters of the coverage that must be part of a CHIP plan. In order to ensure that this coverage is actually furnished as specified in that section, and in the approved State plan, we propose to require that States and their contractors afford beneficiaries a "fair and efficient" appeals process, consistent with rules applicable to health insurance issuers in the State.

The regulation also proposes at § 457.985 that States must have written processes in place and notify enrollees of those processes and rights in accordance with procedures used by health insurance issuers in the State and that States must ensure that resolution is reached within a reasonable time period (for example, 30 days or 72 hours in an expedited case).

I. Subpart J—Allowable Waivers: General Provisions

1. Basis, Scope, and Applicability (§ 457.1000)

At proposed § 457.1000 we would provide that this subpart interprets and implements the requirements for a waiver to permit a State to exceed the 10 percent cost limit on expenditures under section 2105(c)(2)(B) and to permit the purchase of family coverage under section 2105(c)(3) of the Act. This subpart applies to a separate child health program and to a Medicaid expansion program only to the extent that the State claims administrative costs under title XXI and seeks a waiver of limitations on such claims in light of a community-based health delivery system.

2. Waiver for Cost-Effective Coverage Through a Community-Based Health Delivery System (§ 457.1005)

Proposed § 457.1005 would interpret and implement section 2105(c)(2)(B) of the Act regarding waivers authorized for cost-effective alternatives. As stated above, on March 4, 1999, we published a proposed regulation that set forth financial requirements for the CHIP program (64 FR 10412). In § 457.618 of that proposed rule, we set forth requirements to implement sections 2105(c)(1) and (c)(2)(A) of the Act, which contain provisions related to the 10 percent limit on certain CHIP expenditures. In § 457.1005, we specify the proposed requirements for a State wishing to obtain a waiver of the 10 percent limit on expenditures not used for child health assistance in the form of health benefits coverage that meets the requirements of § 457.410 of these proposed regulations. This section also clarifies the extent to which the State will be allowed to exceed the 10 percent limitation on expenditures in order to provide child health assistance to targeted low-income children under the State plan through cost-effective, community-based health care delivery systems. This waiver was designed to create flexibility for States to provide child health coverage using community-based delivery systems. A State could use the waiver, for example, to provide child health coverage for special groups, such as children who are homeless or who have special health care needs. Congress did not intend that the waiver be used simply to allow for more administrative spending or outreach services under section 2105(a)(2), and the statute does not provide this flexibility.

To receive payment for cost effective coverage through a community-based health delivery system under an approved waiver, we propose that the State must demonstrate that—

- Such coverage meets the coverage requirements of section 2103 of the Act and subpart D of these proposed regulations; and
- The cost of coverage through the community-based health care delivery system, on an average per child basis, does not exceed the cost of coverage that

would otherwise be provided under the State plan.

A State may establish a community-based health delivery system through contracts with health centers receiving funds under section 330 of the Public Health Service Act or with hospitals receiving disproportionate share payment adjustments under section 1886(d)(5)(F) or section 1923 of the Act. However, these are not the only types of community-based health delivery systems. We believe a community-based delivery system would include a network of providers that has a contract with the State to provide care under title XXI and that traditionally serves the population of targeted low-income children. A State may define a community-based delivery system to meet the specific needs and resources of a community. A State must ensure that its community-based delivery system (either through direct provision or referral) can provide all appropriate services to targeted low-income children in accordance with section 2103 of the Act. In addition, all participating community-based providers must comply with all other title XXI provisions.

It is not necessary for States to serve all of their CHIP enrollees through a cost-effective, community-based delivery system in order to receive an approved waiver. A State may receive a waiver for each system or network delivering care in a particular geographic area in order to avail itself of cost-effective health coverage alternatives.

We propose that an approved waiver will remain in effect for two years. A State may reapply three months before the end of the two-year period.

We propose that, notwithstanding the 10 percent limit on expenditures described in proposed § 457.618, if the cost of coverage of a child under a community-based health delivery system is equal to or less than the cost of coverage of a child under the State plan, the State may use the cost savings for—

- Child health assistance to targeted low-income children and other low-income children other than the required health benefits coverage, health services initiatives, and outreach; or
- Any reasonable costs necessary to administer the State Children's Health Insurance Program.

The following example clarifies this permissible use of cost savings. In a given State, assume that a child has three health benefit plans under title XXI from which to choose. Two options are title XXI managed care plans that have annual capitated rates of $1000 and $1020 respectively. One option is a plan offered through a community-based delivery system at an annual cost of $900. By enrolling a child in the community-based plan, the State has saved at least $100. If there are 4,000 children enrolled in the community-based provider system, the State has saved at least $400,000. As a result, the State could exceed the 10 percent cap by, and receive match for, an additional $400,000. If the 10 percent cap on expenditures in this State had been estimated to be $1,000,000 without the waiver, then the waiver under this scenario would increase the estimated cap to $1,400,000.

3. Waiver for Purchase of Family Coverage (§ 457.1010)

A State must apply for a family coverage waiver when any title XXI funds are used to purchase coverage for adult family members in addition to targeted low-income children. For example, the State may wish to purchase employer sponsored group health coverage for a child but the employer does not offer a policy that covers only the child(ren) in addition to the employee. In this case, the State will be subsidizing the cost of both children and adults and, therefore, the State must apply for a family coverage waiver. In the case where employers offer "tiered" coverage where a State can identify the cost of one, two or more dependents, the State may use title XXI funds to only cover a child and, therefore, does not need to seek a family coverage waiver. In addition, if the State has created a special child-only option in which employers may participate and, as a result, is providing coverage for children only, a family coverage waiver would not be needed. In this context, the State simply needs to identify in its State plan how it intends to provide this coverage. All other requirements of title XXI must be met.

We are seeking comments on whether the benefits specified in title XXI also apply to adults in a family coverage waiver. For example, if a State offers "wraparound coverage" to bring an employer's benefits up to the title XXI standards, we would seek comments as to whether the State should be required to offer this additional coverage to adults under the family waiver.

Proposed § 457.1010 would implement section 2105(c)(3) of the Act under which the Secretary may allow a State to purchase family coverage under a group health plan or health insurance coverage that includes coverage of targeted low-income children. As set forth in subpart A of this proposed rule, "group health plan" has the same meaning as given the term under section 2791 of the Public Health Service Act. The term means an employee welfare benefit plan (as defined in section 3(1) of ERISA) to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement or otherwise.

Also as set forth in subpart A, "health insurance coverage" has the same meaning as given the term under section 2791 of the Public Health Service Act. It means benefits consisting of medical care (provided directly through insurance or reimbursement or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract offered by a health insurance issuer.

There is no statutory definition of family coverage for the purposes of this subpart. We are therefore soliciting input from commenters on the definition of "family" for purposes of this subpart. We believe "family" may be defined differently for different subparts of this regulation and are requesting input on this issue. A specific definition may be important for this subpart because it may define what types of adult family members can receive health benefits coverage under a family coverage waiver. However, we may not want to define "family" in this subpart since it is also possible that a group health plan offered by an employer may include a definition of "family" for coverage purposes.

Based on the language of section 2105(c)(3) of the Act, we propose at § 457.1010 that a waiver for family coverage will be approved by the Secretary if—

- Purchase of family coverage is cost-effective under the standards described in § 457.1015 of this subpart;
- The State will not purchase such coverage if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage; and
- The coverage for the child otherwise meets the requirements of this part.

4. Cost-Effectiveness (§ 457.1015)

This section defines cost-effectiveness and describes the procedures for establishing cost-effectiveness for the purpose of a waiver for the purchase of family coverage.

We propose that cost-effectiveness means that the cost of purchasing family coverage under a group health plan or health insurance coverage that includes coverage for targeted low-income children is not greater than the State's cost of obtaining such coverage only for the eligible targeted low-income children involved. Stated more simply, cost effectiveness means that the cost of providing family coverage (including coverage for the parents) under title XXI is equal to or less than the cost of covering only the uninsured children.

- Cost Comparisons

The following is a discussion of our proposed requirements regarding methods for cost comparison the State may use to demonstrate cost-effectiveness. A State may demonstrate cost-effectiveness by comparing the cost of family coverage that meets the requirements of § 457.1010 and 457.1015 of this subpart, to the cost of coverage only for the targeted low-income children under the health benefits packages offered by the State under the State plan for which the child is eligible. We have not identified specific alternatives for cost comparison for family coverage under CHIP. However, we recognize the growing interest of States to utilize this option in order to keep families together under one health plan as this practice may result in increased access to and utilization of preventive and other necessary health services for children. Therefore, we are willing to examine alternatives and invite comment on additional methods to demonstrate cost-effectiveness. We note that the most likely option for meeting the cost-effectiveness standard is the purchase of family coverage through an employer sponsored group health plan because the employer is subsidizing a large part of the costs. States must meet the requirements designed to prevent substitution of coverage (as specified in subpart H), when employer-sponsored coverage is purchased.

Illustration of cost comparison. The cost of employer-sponsored family coverage (for the employee and two children) is $600. The employer pays 60 percent of the cost, which is $360, and the employee therefore pays $240. Under the State's CHIP plan there is a $10 monthly premium for each child with a maximum premium amount of $30 per family. The State pays $150 per child per month for the State CHIP coverage less the premiums paid by the family. The State would apply the cost-effectiveness test by calculating the cost to the State of the family coverage, which would be $220 for the employee and two children ($240 − $20 premium = $220), and comparing that cost to the cost of the State CHIP coverage for the children, which would be $280 ($150×2 − 2×$10 premium = $280). The comparison of $220 compared to $280 shows that family coverage costs $60 less per month than CHIP coverage only for the children. When there is such a savings the State could buy family coverage through the employer or provide CHIP coverage to the uninsured child or children only.

Thus far, no State has proposed to provide cost-effective family coverage other than through employer-sponsored coverage. However, the proposed regulation provides flexibility so that, if a State develops another type of cost-effective coverage, we may consider that alternative. We are also working with States to identify other feasible, cost-effective models. We have identified this method through the State plan approval process as one that States have proposed for applying the cost-effectiveness test that meets Federal requirements. We also note that the cost comparison must be made to the health benefits package the child is actually eligible for if a State offers different packages of services to different populations of children. For example, a State may offer children with special health care needs additional services under a separate health benefits package. The cost comparison would have to be made to this separate health benefits package if the cost effectiveness test was being done for a special needs child.

- Cost-Effective Comparison to Actual Coverage Available in the State

We propose that the determination of cost-effectiveness must be made based on costs for health benefit coverage that is actually available for purchase in the State. States should not use hypothetical premium rates and family sizes in demonstrating cost-effectiveness. For example, if a State proposed to demonstrate cost-effectiveness based on the assumption that the average family consists of 3.14 family members (1.7 children and 1.44 adults), we would not approve of this approach as further explained. Using this example and assumptions, the cost to cover 1.7 children in a State employees' health plan would be $407.13 (if the total family premium was $752 divided by 3.14 family members, times 1.7 children). The State asserts it can cover the entire family under its separate child health program for $367.38 (3.14 family members times $117 per member per month). This comparison shows that it costs $39.75 less to cover the family ($407.13 to cover 1.7 children minus $367.38 to cover the family). However, this would not be acceptable because it is a hypothetical plan and not a plan that a family can actually buy for its children in the State. In addition, we believe demonstrations of cost-effectiveness must examine the actual family sizes, rather than average family size.

With respect to applying the cost-effective test, we are requiring States to make available to HCFA documentation on how much was spent on family coverage and report how many children and adults were covered. We are proposing that the State may base its demonstration of the cost-effectiveness of family coverage on an assessment of cost-effectiveness of family coverage for individual families, done on a case-by-case basis, or for family coverage in the aggregate.

We are proposing to require the State to apply the cost-effectiveness test annually. If an annual assessment of the cost-effectiveness of family coverage in the aggregate reveals that it is not cost-effective, the State must begin assessing cost-effectiveness on a case-by-case basis.

- Cost-Effectiveness of Family Coverage on a Case-by-Case Basis

If a State chooses to apply the cost-effectiveness test on a case-by-case basis, the State must compare the cost of coverage for each family to the cost of coverage for only the child or children in the family under CHIP.

This approach favors larger families because most insurers offer one rate for family coverage regardless of the number of children in the family. Also, this approach may be resource and labor intensive for some States.

- Cost-Effectiveness of Family Coverage in the Aggregate

If a State chooses to apply the cost-effective test in the aggregate, the State must provide an estimate of the projected total costs of the family coverage program compared to the cost the State would have incurred for covering just the children in those families under the publicly available CHIP plan. Subsequently, on an annual basis, the State must compare the total cost of covering all families for whom the State has purchased family coverage to the cost the State would have incurred covering just the children in those families under the publicly available CHIP plan as outlined below. If the aggregate cost of family coverage was less than the cost to cover the children in the publicly available program, then the family coverage would be considered cost-effective. If the State determines through its annual assessment of cost effectiveness that family coverage is not cost-effective in the aggregate, then the State must begin to apply the cost-effectiveness test on a family-by-family basis.

Under this approach, States would report how much was spent on family coverage and report how many children and adults were covered. This test would be applied retrospectively and would represent an aggregate cost of family coverage across all plans. The aggregate cost would be verified by the claims submitted by the State. No additional FFP above the cost-effective amount will be paid for these children and families if the test shows that family coverage is not cost-effective for the period. This option requires States clearly to separate the costs of the family coverage from the costs of coverage under the rest of the program.

Using the retrospective approach may potentially create some difficulties for States in calculating cost-effectiveness (for example, timely submission of State data, State systems may not be able to produce necessary data, vagaries of using historical data that may not capture recent changes). We will work with States to develop guidance on how to conduct retrospective assessments of cost-effectiveness.

K. Expanded Coverage of Children Under Medicaid and Medicaid Coordination

The proposed regulations discussed in this subsection are changes to Medicaid regulations found in parts, 433, and 435. This subpart applies to Medicaid only.

Section 4911 of the Balanced Budget Act of 1997 (BBA '97), Public Law 105–33, enacted on August 5, 1997 and amended by section 162 of the DC Appropriations Act, Public Law 105–100, enacted on November 19, 1997, established a new optional categorically needy eligibility group known as "optional targeted low-income children." The law provides for an enhanced Federal matching rate to be used to determine the Federal share of State expenditures for services to children eligible under this group. The BBA also provides for States to receive this enhanced Federal matching rate for services to children who meet the definition of "optional targeted low-income children" and whom the State covers by expanding an existing Medicaid eligibility group (for example, poverty-related children). "CHIP" itself is not a new or separate Medicaid eligibility group. Medicaid expansion programs under CHIP, which may be referred to as "M–CHIP," consist of the new optional Medicaid eligibility group just mentioned, or coverage of optional targeted low-income children through an expansion of an existing Medicaid eligibility group, or a combination of the two. Section 4912 of the BBA added a new section 1920A to the Act to allow States to provide services to children during a period of presumptive eligibility. Although these proposed regulations are related to title XXI and CHIP, they constitute changes to the Medicaid program. All existing Medicaid regulations also continue to apply.

1. Enhanced FMAP Rate for Children

Section 4911 the BBA as amended by section 162 of Public Law 105–100, authorized an increase in the Federal medical assistance percentage (FMAP) used to determine the Federal share of State expenditures for services provided to certain children. Federal financial participation for these children will be paid at the enhanced FMAP rate determined in accordance with § 457.622 if certain conditions are met. The State's allotment under title XXI will be reduced by payments made at this enhanced FMAP (see § 457.616).

In order to be eligible to receive Federal payments at the enhanced FMAP, a State must:

(1) Not adopt income and resource standards and methodologies for purposes of determining a child's eligibility under the Medicaid State plan that are more restrictive than those applied under the State plan in effect on June 1, 1997;

(2) Have an approved title XXI State plan in effect;

(3) Have sufficient funds available under the State's title XXI allotment to cover the payments involved; and

(4) Maintain a valid method of identifying services eligible for the enhanced FMAP.

For purposes of determining whether an income or resource standard or methodology is more restrictive than the standard or methodology under the State plan in effect on June 1, 1997, we would compare it to the standard or methodology that was actually being applied under the plan on June 1, 1997. For purposes of this section, a pending Medicaid State plan amendment that would establish a more restrictive standard or methodology, but that has an effective date later than June 1, 1997, would not be considered "in effect" on June 1, 1997, regardless of when it was submitted. Also, although a State that adopted more restrictive income or resource standards or methodologies than those in effect on June 1, 1997 would not be eligible for enhanced FMAP, we believe that, if a State drops an optional eligibility group entirely, this prohibition against receiving enhanced FMAP does not apply.

The enhanced FMAP discussed in this section will be used to determine the Federal share of State expenditures for services provided to three groups of children. The first group for whom the enhanced FMAP is available is the new optional eligibility group of "optional targeted low-income children" described in the new § 435.229.

The second group is children who meet the definition of "targeted low-income children" and who would not be eligible under the Medicaid policies in effect under the State plan on March 31, 1997. Thus, a State need not necessarily adopt the new optional group of "optional targeted low-income children" to receive the enhanced FMAP for targeted low-income children. The State may receive the enhanced FMAP for these children by covering them under expansions of existing Medicaid groups, as long as the children meet the definition of "targeted low-income children," including the requirement that they be uninsured. (The State may claim its regular FMAP for children with creditable health insurance who are covered under the expansion.)

The third group for whom the State may receive the enhanced FMAP consists of children born before October 1, 1983 who would not be eligible for Medicaid under the policies in the Medicaid State plan in effect on March 31, 1997, but to whom the State extends eligibility by using an earlier birth date in defining eligibility for the group of poverty-level-related children described in section 1902(l)(1)(D) of the Act. Under the law, the enhanced FMAP is available for services to children in this third group even if they have creditable health insurance. We note that, as the statutory phase-in of poverty-level-related children under age 19 proceeds, the numbers of children in this third group will diminish; by October 1, 2002, all the children in this group will be included in the mandatory group of children described in section 1902(l)(1)(D) of the Act, and State spending for services to them matchable at the State's regular FMAP.

Concerning the second group above, we do not believe that Congress intended to provide enhanced FMAP for services provided to children who, although not eligible under the policies in effect in the Medicaid State plan in effect on March 31, 1997, became eligible after that date due solely to a Federal statutory change or a scheduled periodic cost-of-living increase. We believe that such changes are inherent in the State plan policies in effect on March 31, 1997. Enhanced FMAP will be available only when children are made eligible because a State elects to adopt an optional policy.

Federal payments made at the enhanced FMAP rate reduce the title XXI appropriation in accordance with section 2104(d) of the Act. Thus, HCFA must apply such payments against a State's title XXI allotment until that allotment is exhausted. After the title XXI allotment is exhausted, expenditures will be matched at the State's regular FMAP rate.

2. Optional Targeted Low-income Children

Section 4911 of the BBA amended the Social Security Act by adding a new section 1902(a)(10)(A)(ii)(XIV) to establish an optional categorically needy group of optional targeted low-income children. The optional eligibility group is defined as "optional targeted low-income children described in section 1905(u)(2)(C) of the Act." Section 1905(u)(2)(C), as added by section 4911 of the BBA, was subsequently revised by section 162 of Public Law 105–100 and, in the process, "(C)" was changed to "(B)". In an apparent oversight, no conforming change was made to section 1902(a)(10)(A)(ii)(XIV) of the Act to refer to section 1905(u)(2)(B), rather than to 1905(u)(2)(C). Because we believe this was simply a drafting error, we consider the reference to 1905(u)(2)(C) in this section to be a reference to 1905(u)(2)(B).

Section 1905(u)(2)(B), defines an optional targeted low-income child as a child who meets the definition of a targeted low-income child in section 2110(b)(1) of the Act (see § 457.310(a)) and who would not qualify for Medicaid under the Medicaid State plan as in effect on March 31, 1997.

The very specific cross reference in section 1905(u)(2)(B) to section 2110(b)(1) for the definition of an optional targeted low-income child indicates that the Medicaid definition of an optional targeted low-income child is based only on section 2110(b)(1). Thus, the Medicaid definition does not include the exclusions described in section 2110(b)(2) that would by contrast apply in a separate child health program. Specifically, the exclusions from the definition of targeted low-income children that apply in a separate child health program but not in Medicaid are (1) children who are inmates of public institutions and patients in institutions for mental diseases (IMD), and (2) children of State employees, as outlined in section 2110(b)(2).

Under normal Medicaid eligibility rules, there is no eligibility exclusion of children who are inmates of a public institution, patients in an institution for mental diseases, or members of a family eligible for health benefits coverage under a State health benefits plan on the basis of a family member's employment with a public agency in the State (although restrictions on Federal financial participation may apply under some circumstances). Restrictions on Federal financial participation under Medicaid, however, apply for services provided to inmates of public institutions and patients in institutions for mental diseases. This means no payment can be made for services to individuals residing in an IMD. We note that under Medicaid, FFP is available for services furnished to children in psychiatric facilities for individuals under age 21 that meet certain standards and conditions (see § 441.150ff).

The definition of optional targeted low-income child at section 1905(u)(2)(B) of the Act excludes a child who would have been eligible for Medical assistance under the State plan on March 31, 1997 on any basis including medically needy. This exclusion applies to all children eligible for Medicaid including those eligible under States' medically needy groups. We propose to interpret the exclusion in the following manner. Children who are eligible for Medicaid only after paying a spenddown would not be excluded, because they are not eligible under title XIX until the spenddown is met. However, a child who is medically needy without a spenddown is eligible for Medicaid and therefore cannot be an optional targeted low-income child. Thus, if a child would have qualified for Medicaid as medically needy without a spenddown under the State's March 31, 1997 Medicaid State plan, even if not eligible under current rules, the child could not be covered as an optional targeted low-income child.

The regular Medicaid financial methodologies that govern eligibility of children in a State must also be used to determine whether a child in that State is eligible under the new optional group of optional targeted low-income children. These are the income and resource methodologies under the State's AFDC plan in effect on July 16, 1996. However, a State may use the authority of § 1902(r)(2) to adopt less restrictive methods of determining countable income and resources for this group.

States that choose to cover the group of optional targeted low-income children are not required to provide coverage to all children who meet the definition of an optional targeted low-income child. As with the current Medicaid program, eligibility can be limited to a reasonable group or reasonable groups of such children. We do not consider it reasonable to limit a group by geographic location because of the requirement in section 1902(a)(1) of the Act that a State plan be in effect in all political subdivisions of the State. Also, we do not consider it reasonable to limit a group by age other than those specified by Congress in section 1905(a)(1) and referenced in section 1902(a)(10)(A)(ii). We believe that if Congress intended to allow use of age to establish a reasonable category, the statutory language would not have specified any ages. We note that in the case of the optional targeted low-income children, a State does not have the option to have a reasonable category of children under age 21 or 20, because the group itself is limited to children under age 19. Although a State may not define a reasonable group by age, the income standard used to determine eligibility under the optional targeted low-income children's group because it is related to income standards used for existing poverty level groups, may be different for infants, children under age 6, and children who have attained age 6 but have not attained age 19, if the State's Medicaid applicable income levels for these age groups differ. Eligibility standards for optional targeted low-income children must be uniform throughout the State. A State is required to provide all services covered under the plan, including EPSDT services, to optional targeted low-income children and apply all regular Medicaid rules, including those pertaining to immigration status.

We are not proposing to require States to apply eligibility-related substitution provisions such as periods of uninsurance to the "optional targeted low-income children" group because we believe that such eligibility conditions are inconsistent with the entitlement nature of Medicaid.

A State is obligated to continue to provide services to eligible optional targeted low-income children after the title XXI allotment is exhausted, unless the Medicaid State plan is amended to drop the group of optional targeted low-income children. Once the title XXI allotment is exhausted, Medicaid matching funds are available for these children at the regular matching rate rather than the enhanced rate.

3. Furnishing a Social Security Number

Section 1137(a)(1) of the Social Security Act requires applicants and recipients of Medicaid to furnish the State with their social security number(s) as a condition of eligibility. While the United States Supreme Court in *Bowen* v. *Roy*, 476 U.S. 693 (1986) upheld this requirement, it did so in a plurality decision in which some of the Justices held that the challenge was moot since the claimant had obtained a social security number. That decision did foreclose a challenge to the requirement by an individual who had not already secured a social security number and had religious objections to applying for a number. The Religious Freedom Restoration Act of 1993 also raised questions about the requirements of section 1137(a) of the Act in these cases. Thus, in 1995 HCFA announced a policy which permits States to obtain or assign alternative identifiers to eligible individuals who object to obtaining an SSN on religious grounds. This policy was adopted in order to enable States to administer Medicaid in the most efficient manner possible. While, in 1997, a portion of the Religious Freedom Restoration Act was held to be unconstitutional, that portion only involved the applicability of that Act to State and local officials. The proposed rule seeks to accommodate the purpose of section 1137(a) with the Constitution's protection of freedom of religion and the dictates of the 1993 Act by permitting alternative identifiers.

4. Exemption From the Limitation on FFP

Section 162 of Public Law 105–100 amended section 1903(f)(4) of the Act to add the optional group of targeted low-income children and other children for whom enhanced FMAP is available under § 456.622 (or would be available except for the fact that the title XXI allotment is exhausted) to the list of those who are exempt from the limitations on FFP found in section 1903(f). All previous citations in section 1903(f) were references to Medicaid eligibility groups, whereas this new provision adds not an eligibility group but children on whose behalf enhanced FMAP is available.

With certain exceptions, section 1903(f) limits FFP to families whose income does not exceed 133⅓ percent of the amount that would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments under the program of Aid to Dependent Children. As explained in § 435.1007, this provision effectively limits the use of the authority under section 1902(r)(2) to expand eligibility through the use of more liberal income and resource methodologies for those groups that are not exempt from the limitation. However, to the extent that section 162 of Public law 105–100 resulted in the exemption from the FFP limitation of children other than those in the optional eligibility group of optional targeted low-income children or in other groups already exempt from the FFP limitation, a conflict with the comparability requirements of section 1902(a)(17) of the Act and § 435.601(d)(4) of the Medicaid regulations would arise. We would continue to require that all children within a given group be treated comparably. Therefore, the FFP limitations described in § 435.1007 would continue to apply to all children who are covered as medically needy, and to those covered under an optional categorically needy group other than the new group of optional targeted low-income children or the optional categorically needy groups which are already exempt. However, Federal matching may be available at the enhanced rate for some children in the group.

5. Presumptive Eligibility for Children

Section 4912 of the BBA added a new section 1920A to the Act to allow States to provide services to children during a period of presumptive eligibility. Under section 1920A, services are available to children under age 19 prior to a formal determination of Medicaid eligibility. Under the statutory provisions, a qualified entity, as defined in section 1920A(b)(3)(A), determines whether a child is presumptively eligible for Medicaid on the basis of preliminary information about the child's family income. At the time of the determination, the qualified entity must refer the child to the Medicaid agency. The State must provide the qualified entity with application forms for Medicaid and information about how to assist in completing and filing an application for regular Medicaid. If an application for regular Medicaid is filed, the Medicaid agency will establish whether or not the child is eligible for regular Medicaid. We propose to require that if a State chooses to provide services to children during a period of presumptive eligibility, the State must make presumptive eligibility available Statewide to all children. We considered whether to allow States to limit the availability of presumptive eligibility to certain jurisdictions or certain groups of children but found no indication in the statute or legislative history that such a limitation should be allowed. Although we consider presumptive eligibility a special status, we believe that the requirements pertaining to Statewideness and comparability which apply to the provision of regular Medicaid should apply here as well.

In some respects, the provisions of section 1920A mirror the provisions related to section 1920, which provide for presumptive eligibility for pregnant women. Where this is the case, we propose policies associated with section 1920A that are consistent with the March 23, 1994 notice of proposed rulemaking related to presumptive eligibility for pregnant women (59 FR 13666). We make one exception. The proposed regulations pertaining to presumptive eligibility for pregnant women would require that States use gross income alone to determine presumptive eligibility. We propose here that in determining presumptive eligibility for children, States be permitted to request some additional information and to apply simple disregards as explained later in this section.

In accordance with section 1920A(b)(2), the period of presumptive eligibility begins on the day that a qualified entity makes a determination that a child is presumptively eligible. The child then has until the last calendar day of the following month to file a regular Medicaid application with the Medicaid agency. If the child does not file a regular Medicaid application by that last day, presumptive eligibility ends on that last day. If the child files an application for regular Medicaid, presumptive eligibility ends on the date that a determination is made on the regular Medicaid application.

Although section 1920A places no restrictions on the number of periods of presumptive eligibility for a child, we believe it is unreasonable to provide a child with unrestricted number of periods of presumptive eligibility. Such a policy would effectively allow continuous eligibility for children who never file an application for regular Medicaid and are never determined to be eligible for regular Medicaid. Also, by reinforcing the ability to establish immediate short term eligibility for medical assistance, such an approach could be counter productive to efforts to promote the use of preventive and primary care and effective management of care for children. At the same time, we also believe that it is unreasonable to limit a child to one period of presumptive eligibility in a lifetime. Therefore, we propose to allow States to establish reasonable methods of limiting the number of periods of presumptive eligibility that can be authorized for a child in a given time frame. We are particularly seeking comments on what would constitute a reasonable limitation and whether specific limitations on the number of periods of presumptive eligibility should be imposed by regulation.

In implementing the provisions of section 1920A that specify that determinations of presumptive eligibility must be based on family income, we would provide limited flexibility to States in calculating income for this purpose. We would also allow States to require that qualified entities request and use general information other than about income, as long as the information is relatively simple to obtain and is requested in a fair and nondiscriminatory manner. In States that adopt the most conservative approach to presumptive eligibility, the qualified entity would use gross family income. The qualified entity would compare family income to the highest income eligibility standard established under the plan that is most likely to be used to establish the regular Medicaid eligibility of a child of the age involved. As a result, there may not be a single income standard for all children. For example, the standards for presumptive eligibility might be 133 percent of the Federal poverty level (FPL) for children under 6 and 100 percent FPL for children age 6 through 19, if these were the highest standards applicable to children of the specified ages under a State's Medicaid plan.

We would specifically allow a State to require that qualified entities apply simple income disregards, such as the general $90 earned income disregard. However, we would not allow a State to require that qualified entities deduct the costs of incurred medical expenses in order to reduce income to the allowed income level. We believe that Congress intended by the use of the term "applicable level" to require qualified entities to make simple calculations and not complicated adjustments of income such as those involved in applying spenddown rules or in disregarding certain types of income. To impose detailed and complicated calculations on qualified entities would be administratively burdensome and contrary to efficient administration because of the short-term nature of presumptive eligibility and because no eligibility requirements other than income need be considered.

We do not believe that we are imposing an undue hardship on a child by not allowing spenddown or not disregarding certain income. If a qualified entity decides that the child does not "appear" to meet the income criteria, the child has a right to apply for regular Medicaid and have a formal eligibility determination made. We are specifically seeking comments on whether States should be allowed to require that qualified entities make certain adjustments to gross income and ways that these adjustments could be limited.

Section 1920A(b)(3)(A) of the Act defines qualified entity as an entity that:

(1) Furnishes health care items and services covered under the approved Medicaid State plan and is eligible to receive payments under the approved plan; or

(2) Is authorized to determine eligibility of a child to participate in a Head Start program under the Head Start Act; or

(3) Is authorized to determine eligibility of a child to receive child care services for which financial assistance is provided under the Child Care and Development Block Grant Act of 1990; or

(4) Is authorized to determine eligibility of an infant or child to receive assistance under the special nutrition program for women, infants, and children (WIC) under section 17 of the Child Nutrition Act of 1966; and

(5) Is determined by the agency to be capable of making determinations of presumptive eligibility for children. Section 1920A(b)(3)(B) authorizes the Secretary to issue regulations further limiting those entities that may become qualified entities. We have not proposed any further limitations at this time. We have also found no authority to expand those entities that may be designated qualified entities.

In accordance with section 1920A(c)(1), we would require States to provide qualified entities with regular Medicaid application forms and information on how to assist parents, guardians, and other persons in completing and filing such forms. As provided by section 1920A(c)(3), the application provided may be an application developed by the State for use by children who wish to apply as low-income children described in section 1902(l)(1) of the Act. We would not require States to provide any other application forms. The date that the regular Medicaid application form is received by the Medicaid State agency is the Medicaid filing date for Medicaid eligibility unless State agency staff are located on site at the qualified entity, in which case the Medicaid filing date is the date that the onsite State agency staff person receives the completed form. However, even though State agency staff can receive and process applications for regular Medicaid, they cannot make presumptive eligibility determinations unless they themselves meet the definition of "qualified entity" under section 1920A(b)(3) of the Act.

Since we are considering presumptive eligibility a special status, we propose not to apply to a decision on presumptive eligibility the notification requirements that a State must meet when it makes a decision on a regular Medicaid application. Existing regulations under §§ 435.911 and § 435.912 and part , subpart E, require Medicaid agencies to send Medicaid applicants written notice within a specified period of time of the agency's decision on a regular Medicaid application, and if eligibility is denied the reasons for the denial, the regulatory basis for it, and an explanation of rights to a hearing. Although we propose not to apply these requirements to presumptive eligibility determinations, we are proposing to require that the qualified entity inform the parent or custodian of the child, in writing, of the presumptive eligibility decision at the time of the determination. In a case of a denial of presumptive eligibility, the qualified entity would be required to inform the parent or custodian of the child, in writing, of the reason for the denial and his/her right to apply for regular Medicaid.

In accordance with section 1920A(c)(2) of the Act, we propose to require the qualified entity to provide written information to the parent or custodian of a child who is determined presumptively eligible, indicating that a regular Medicaid application must be filed on the child's behalf by the last day of the following month if the child wishes to continue to receive services after that date. The qualified entity must also inform the parent or custodian of the child, in writing, that if an application for regular Medicaid is not filed on the child's behalf by the last day of the month following the month of the determination of presumptive eligibility, the presumptive eligibility will end on that date. However, if an application is filed on the child's behalf, the child will remain presumptively eligible until a determination of the child's eligibility for regular Medicaid has been made. Under section 1920A(c)(2), the qualified entity also must notify the State agency within 5 working days after the date on which the entity determines that the child is presumptively eligible.

We considered defining "custodian" for purposes of presumptive eligibility but have decided to allow States flexibility to determine who is a child's custodian. We expect that some States will consider any interested adult who has the child in his/her care at the moment to be the custodian for purposes of presumptive eligibility under section 1920A. We expect that other States will only consider an adult to be a child's custodian if the adult has a legal responsibility for the child.

Because we do not consider presumptive eligibility to be eligibility for Medicaid *per se*, and because termination of presumptive eligibility occurs automatically after specified time periods, we propose not to apply the existing provisions of the regulations that require Medicaid agencies to provide timely written notice of reduction or termination of Medicaid benefits and rights to appeal of an adverse action (part , subpart E and § 435.919). As indicated earlier, we propose to require a qualified entity to provide written notice of the date that the child can expect the presumptive eligibility to end. However, we propose not to grant rights to appeal a denial or termination of services under a presumptive eligibility decision because it is not considered to be a determination of Medicaid eligibility. If a regular Medicaid application is filed on the child's behalf and is denied, the child would have the right to appeal that denial.

We do not believe that we are imposing an undue burden on qualified entities by requiring that notification be in writing. We do not foresee that this written notice will necessarily be individual personal letters. We considered requiring States to supply qualified entities with preprinted notices. However, we decided to allow States the flexibility to determine how best to arrange for this notification within each State program.

Existing regulations at § 435.914 permit States to provide Medicaid for an entire month when the individual is eligible for Medicaid under the plan at any time during the month. We propose not to permit States to provide full-month eligibility for presumptive eligibility periods because by definition a presumptive determination is not a determination of Medicaid eligibility but eligibility for a special status. In addition, section 1920A(b)(2) of the Act expressly defines the period of presumptive eligibility.

Since presumptive eligibility is a special status, we considered whether States should be required to provide all services to presumptively eligible children or should be required or allowed to limit the services provided. For example, we considered allowing States to limit services to ambulatory care. Although presumptive eligibility for pregnant women includes a statutory restriction on services, there is no similar statutory restriction pertaining to presumptive eligibility for children. We propose to require that States provide all services covered under the State plan, including EPSDT, to presumptively eligible children. We believe most presumptively eligible children will be found retroactively eligible for Medicaid during what was a presumptive eligibility period, and complete and adequate medical care should not be delayed pending the decision on the regular Medicaid application.

Section 4912 of the BBA provides that, for purposes of Federal financial participation, services that are covered under the plan, furnished by a provider that is eligible for payment under the plan, and furnished to a child during a period of presumptive eligibility, will be treated as expenditures for medical assistance under the State plan. See § 447.88 and § 457.616 for a discussion of the options for claiming FFP payment related to presumptive eligibility.

Other than payments made for children during a presumptive eligibility period, section 4912 of the BBA does not hold States harmless for Medicaid payments made for services provided to ineligible children. However, HCFA and the States share a mutual commitment to enrolling uninsured children in Medicaid. An estimated 4 million children are eligible for Medicaid but remain uninsured due partly to the complexities associated with outreach and enrollment efforts. A basic strategy for overcoming this problem is simplification of States' Medicaid applications for children, and the removal of other enrollment barriers, such as burdensome documentation requirements.

For eligibility groups that are new, States often have no eligibility determination experience, and may be reluctant to ease the documentation and verification requirements because they can help ease Medicaid eligibility quality control concerns until experience has been gained. To remove this potential barrier to simplification, and to encourage States to simplify the Medicaid application process and enroll uninsured children, HCFA is asserting its policy to waive MEQC eligibility errors resulting from the coverage of children under new eligibility groups added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the BBA, including the optional group of optional targeted low-income children described in section 1902(a)(10)(A)(ii)(XIV) of the Act. If a State has an error rate over three percent, the State is subject to a disallowance of FFP. The State can appeal this disallowance through a waiver process outlined in § .865. As part of this waiver process error cases and associated claims identified by the State as directly attributable to the enrollment of children in these groups will be excluded from the error rate calculation.

L. Medicaid Disproportionate Share Hospital (DSH) Expenditures

Section 4911 of the BBA amended section 1905(b) of the Act to require that for expenditures for section 1905(u)(2)(A)(medical assistance expenditures of optional targeted low-income children) or section 1905(u)(3) (Waxman children), the Federal medical assistance percentage is equal to the *enhanced* FMAP described in section 2105(b)of the Act to the extent of the available title XXI allotment. In other words, under the statute, States that provide health insurance coverage to children as an expansion of their Medicaid programs may receive enhanced match for services provided to the Medicaid expansion population.

Under the authority of section 1902(a)(13)(A)(iv) of the Act, States are required to take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs when developing rates for Medicaid inpatient hospital services. Medicaid disproportionate share hospital (DSH) expenditures are defined as payments made for hospital services rendered to Medicaid eligibles and the uninsured. Some of the expenditures may be identifiable as expenditures for services for a child in a CHIP-related Medicaid expansion program. Those identifiable payments may qualify for the enhanced FMAP.

Proposed § 433.11 sets forth provisions regarding the enhanced FMAP rate available for State expenditures related to services provided to children under an expansion to the State's current Medicaid program. Paragraph (a)(3) specifies that the enhanced FMAP rate determined in accordance with the proposed regulation at section 457.622 will be used to determine the Federal share of State expenditures for disproportionate share hospital expenditures as they relate to children eligible for health insurance coverage under an expansion to the State's current Medicaid program.

Any DSH payments that are calculated at the enhanced matching rate will be counted against the CHIP allotment, the Federal DSH allotments as published in section 4721 of the BBA, and the disproportionate share hospitals amount of uncompensated care cost limits as required under section 1923(g) of the Act.

The State should work with the HCFA Regional Office to develop an appropriate methodology to allocate a portion of the DSH payments to the Medicaid expansion group so that these expenditures are appropriately claimed at the enhanced FMAP and counted against the State's title XXI allotment. Federal payments for such DSH expenditures will also be counted against the State's Medicaid DSH allotment.

We understand that questions have been raised concerning the interaction of title XXI allotments, Federal DSH payment allotments (as enacted in section 4721 of the BBA) and DSH payments for services rendered to 1905(u)(2) and 1905(u)(3) children in Medicaid. Specifically, there is concern about whether enhanced matching rates should apply to DSH payments. We believe a statutory change would be needed not to apply enhanced FMAP. However, since any such statutory changes would be completed following the publication of this proposed regulation, we have developed this proposed regulation text in accordance with current law.

M. Vaccines for Children Program

As discussed in the letter to State Health Officials of May 11, 1998, under the authority of section 1928(b)(2) of the Act, children covered under a CHIP program that is a Medicaid expansion are Federally vaccine-eligible under the Vaccines for Children (VFC) program. Children served by a separate State child health program are not Federally vaccine eligible because they are neither entitled to Medicaid nor uninsured, as required in section 1928(b)(2) of the Act. Under the authority of section 1928(b)(3), States may elect to obtain vaccine for children enrolled in a separate child health program at the Federal discount price (plus an amount to cover the costs of administrative overhead and distribution). States may want to use this authority given the existence of the VFC program and its potential to save money.

Under section 1928 of the Social Security Act and section 317 of the Public Health Service Act, the Centers for Disease Control and Prevention (CDC) contracts with vaccine manufacturers to purchase vaccines, usually at a substantial discount from retail prices. These vaccines are furnished to State health departments, as grantees of CDC, for distribution to providers that participate in the VFC program, and other providers authorized to administer vaccines under section 317. Because the immunization program of the State health department is the CDC grantee, and has sole authority to order and distribute vaccine purchased under the CDC discount contracts, a State that elects to obtain these vaccines for its separate child health program population must negotiate a memorandum of agreement between its separate child health program and the State immunization program, to order vaccines and distribute them to CHIP providers. As part of that agreement, the separate child health program must agree to reimburse the immunization program for the cost of each dose of vaccine, including a pro rata share of administrative overhead and distribution costs. Providers who receive vaccine must agree to comply with reporting and other requirements of the State immunization program, in order to assure that vaccine distributed is accounted for appropriately.

States electing to purchase vaccine at the Federal discount price must retain overall responsibility for the required health benefits coverage package, under the requirements of § 457.490 (a)(1), "Methods of Administration." However, the State may subcontract for any and all other services, with the exception of vaccine products, provided under its separate child health program, including professional services required to immunize eligible children.

If HCFA establishes that the State has retained overall responsibility for the provision of services and if the State Immunization program has established one price per dose which includes all charges for vaccine, the cost of vaccines will be treated as part of the required health benefits coverage package and will not be subject to 10 percent cap on other expenditures of title XXI funds. Moreover, these costs are eligible for the enhanced match.

III. Regulatory Impact Analysis

A. Impact Statement

Section 804(2) of title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets.

This proposed rule does not establish the CHIP allotment amounts. However, it provides for the implementation and administration of the CHIP program, and as such, is an economically significant, major rule.

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Unfunded Mandate Reform Act of 1995 (Public Law 104–4), and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity).

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. Because participation in the CHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal government are made voluntarily. These regulations would implement narrowly defined statutory language and would not create an unfunded mandate on States, tribal or local governments.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

For purposes of the RFA, we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, non-profit organizations, and governmental agencies. Most hospitals and other providers and suppliers are small entities, either by non-profit status or by having revenues of $5 million or less annually. Individuals and State agencies are not included in the definition of small entity. As discussed in detail below this proposed rule will have a beneficial impact on health care providers.

B. Cost Benefit Analysis

This analysis addresses a wide range of costs and benefits of this rule. Whenever possible, we express impact quantitatively. In cases where quantitative approaches are not feasible, we present our best examination of determinable costs, benefits, and associated issues. This proposed regulation would implement all programmatic provisions of the State Children's Health Insurance Program (CHIP) including provisions regarding State plan requirements, benefits, eligibility, and program integrity, which are specified in title XXI of the Act. This proposed regulation would have a beneficial impact in that it would allow States to expand the provision of health benefits coverage to uninsured, low-income children who previously had limited access to health care.

CHIP is the largest single expansion of health insurance coverage for children since the creation of Medicaid in 1965. CHIP was designed to reach children from working families with incomes too high to qualify for Medicaid, but too low to afford private health insurance. As discussed in detail below, this initiative set aside $24 billion over five years for States to provide new health coverage for millions of children. To date, plans prepared by all 50 States, 5 U.S. territories, and the District of Columbia have been approved. States expect to enroll an estimated 2.6 million children by September 2000. The implementation of CHIP has significantly reduced the number of uninsured children nationwide. Previously uninsured children now have access to a range of health care services including well baby and well child care, immunizations, and emergency services. In addition to the obvious benefit of providing access to health care coverage for millions of children, as discussed in detail below, CHIP will also have a beneficial impact on the private sector.

1. Disbursement of Federal Funds

Budget authority for title XXI is specified in section 2104(a) of the Act with additional funding authorized in Public Law 105–100. The total national amount of Federal funding available for allotment to the 50 States, the District of Columbia, and the Commonwealths and Territories for the life of CHIP, is established as follows:

TOTAL AMOUNT OF ALLOTMENTS

Fiscal year	Amount
1998	$4,295,000,000
1999	4,275,000,000
2000	4,275,000,000
2001	4,275,000,000
2002	3,150,000,000
2003	3,150,000,000
2004	3,150,000,000
2005	4,050,000,000
2006	4,050,000,000
2007	5,000,000,000

Under Public Law 105–277, an additional $32 million was appropriated for allotment only to the Commonwealths and Territories, and only for FY 1999. In addition, we note that there was an additional allocation of $20 million in FY 1998, which increases the FY 1998 total allotment amount to $4.295 billion. Also, for each of the first five years, $60 million of the allotment must be used for the special diabetes programs. We note that the Federal spending levels for the CHIP program are based entirely on the spending and allocation formulas contained in the statute. The Secretary has no discretion over these spending levels and initial allotments of funds allocated to States. Both direct program and administrative costs are covered by the allotments.

2. Impact on States

CHIP is a State-Federal program under which funds go directly to States, which have great flexibility in designing their programs. Specifically, within broad Federal guidelines, each State determines the design of its program, eligible groups, benefit packages, payment levels for coverage and administrative and operating procedures. As such, it is difficult to quantify the economic impact on States. As stated above, the total Federal payments available to States are specified in the statute and are allocated according to a statutory formula based on the number of uninsured, low-income children for each State, and a geographic adjustment factor. For qualifying expenditures, States will receive an enhanced Federal matching rate equal to its current FMAP increased by 30 percent of the difference between its regular matching rate and 100 percent, except that the enhanced match cannot exceed 85 percent.

The following chart depicts estimated outlays for the CHIP program. These estimates differ from the allotments referred to above in that the allotments allow the money to be spent over a period of three years.

FISCAL YEAR OUTLAYS

[In $billions]

	1999	2000	2001	2002	2003
Federal Share	1.4	1.9	2.8	3.5	4.3
State Share	0.6	0.8	1.2	1.5	1.9
Total	2.0	2.7	4.0	5.0	6.2

Note: These estimates are based on State and Federal budget projections and have been included in the President's FY 2000 budget.

3. Impact on the Private Sector

We note that due to the flexibility that States have in designing and implementing their CHIP programs it is not possible to determine the impact on individual providers groups of providers, insurers, health plans, or employers. However, we anticipate that the CHIP program will benefit the private sector in a number of ways. The program may have a positive impact on a number of small entities given that CHIP funding will filter down to health care providers and health plans that cover the CHIP population. Health plans that provide insurance coverage under the CHIP program will benefit to the extent that children are generally a lower-risk population. That is, children tend to use fewer high-cost health care services than older segments of the population. Thus, by providing health insurance coverage for preventive care such as well-baby and well-child care and immunizations, CHIP may benefit health insurers by reducing the need to provide more costly health care services for serious illnesses. Additionally, because CHIP provides health insurance coverage to children who were previously uninsured, health care providers will no longer have to absorb the cost of uncompensated care for these children. The private sector may also benefit from CHIP to the extent that children and families with health insurance coverage are more likely to use health care services. Thus, health care providers are likely to experience an increase in demand for their services. Small businesses that are unable to afford private health insurance for their employees will benefit to the extent that the employees, or their children qualify for CHIP.

4. Impact on Beneficiaries

The main goal of CHIP is to provide health insurance coverage for children in families that are not eligible for Medicaid, but do not earn enough to afford private health insurance. CHIP will allow a large number of children who were previously uninsured to have access to health insurance and the opportunity to receive health care services on a regular basis.

Subpart E of this proposed rule sets forth provisions regarding the costs that beneficiaries may incur (cost sharing) under CHIP. In accordance with the statute, we proposed provisions concerning general cost sharing protection for lower income children and American Indians/Alaska Natives, cost sharing for children from families with certain income levels, and cumulative cost-sharing maximums. Section 457.555 sets forth maximum allowable cost sharing charges on targeted low-income children in families with income from 101 to 150 percent of the FPL. This section specifies maximum copayment amounts that may be imposed under fee-for-service delivery systems and managed care organizations. Additionally, regarding cumulative cost sharing maximums, § 457.560 provides that cost sharing for children with family income above 150 percent of the Federal poverty level may not exceed 5 percent of total family income for the year. For children with family income at or below 150 percent of the Federal poverty level, cost sharing may not exceed 2.5 percent of total family income for the year.

We note that due to State flexibility in establishing cost-sharing amounts below the maximums and differing utilization patterns among beneficiaries, it is difficult to quantify the amount of cost sharing that families incur to participate in CHIP. However, in light of the number of children enrolled in CHIP, we believe that for most beneficiaries, the benefit of access to health insurance coverage outweighs the costs associated with participation in the program.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Federalism

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism in developing regulations. Title XXI authorizes grants to States that initiate or expand health insurance programs for low-income, uninsured children. A Children's Health Insurance Program (CHIP) under title XXI is jointly financed by the Federal and State governments and is administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligible groups, benefit packages, payment levels for coverage and administrative and operating procedures. States have great flexibility in designing programs to best meet the needs of their beneficiaries. HCFA works closely with the States during the State plan and State plan amendment approval process to ensure that we reach a mutually agreeable decision.

Federal payments under title XXI to States are based on State expenditures under approved plans that could be effective on or after October 1, 1997. The short time frame between the enactment of the Balanced Budget Act (BBA) (August 5, 1997) and the availability of the funding for States required the Department to begin reviewing CHIP plans submitted by States and Territories at the same time as it was issuing guidance to States on how to operate the CHIP programs. The Department worked closely with States to disseminate as much information as possible, as quickly as possible, so States could begin to implement their new programs expeditiously.

In the course of the State plan and amendment approval process, we consulted with State and local officials to discuss all aspects of the State's proposed plan or amendment. We discussed with each State provisions and policy decisions that arose from its proposed plans and amendments. In this process, States put forward their policy concerns and proposed statutory interpretations.

The proposed programmatic regulation incorporates much of the guidance that already has been issued to States. As the proposed regulation builds upon previously released guidance, most of the regulation represents policies that have been in operation for some time and are a result of the consultation process that is required as part of the implementation of CHIP; specifically, the State plan approval process.

To be more specific, the Department began issuing guidance to States within one month of enactment of the BBA. We provided information on each State's allotment through two **Federal Register** notices published on September 12, 1997 (62 FR 48098) and February 8, 1999 (64 FR 6102). We developed a model application template to assist State's in applying for title XXI funds. We provided over 100 answers to frequently asked questions. We issued policy guidance through a series of 23 letters to State health officials. All of this information is currently available on our website located on the Internet at http://www.hcfa.gov. We have also provided technical assistance to all States in development of CHIP applications.

In the exhaustive approval process, we listened to States' concerns. This proposed regulation builds upon previously released guidance and therefore, most of the regulation represents policies that have been in operation for some time. States and Territories have used this guidance to design and implement their programs.

In developing the interpretative policies set forth in this proposed rule, we also listened to the concerns of States through processes other than the State plan process as well, by attending conferences and meeting with various groups representing State and public interests.

As we continue to implement the program, however, we have identified a number of areas in which we further elaborate on previous guidance or propose new policies that have not yet been made public. In an attempt to highlight the key issues, a brief summary follows:

A. Subpart A—State Plan Requirements

The regulation would clarify several conditions under which States must submit amendments to approved CHIP plans. For example, we propose that States submit a plan amendment when the funding source of the State share changes, prior to such change taking effect. The purpose of this proposed requirement is to ensure that programs are operated using only permissible sources of funding. In addition, amendments to impose cost-sharing on beneficiaries, increase existing cost-sharing charges, or increase the cumulative cost sharing maximum will be considered the same as amendments proposing a restriction in benefits. Therefore, we propose to require for these amendments that States adhere to the statutory requirements relating to prior public notice and retroactive effective dates.

B. Subpart C—Eligibility, Screening, Applications and Enrollment

Title XXI prohibits the participation of children of public agency employees who are eligible to participate in a State health benefits plan. We interpret this statutory prohibition to be triggered only when the employer makes more than a nominal contribution available for the child's health benefits coverage. We propose to clarify that when only a nominal contribution is available, children would not be considered eligible for health benefits coverage under a State health benefits plan and could be eligible for coverage through CHIP.

C. Subpart D—Coverage and Benefits

The proposed regulation provides some flexibility for States in updating the benefit package. States using the benchmark benefit package option are not required to submit an amendment each time the benchmark package changes. States need only submit amendments when proposing to make a change to the benefit package for the separate child health program. At that time, the State must compare their benefit package to the most recent benchmark coverage.

The proposed regulation also clarifies policy regarding the conditions under which abortion services are permitted under title XXI and proposes that, when States contract with managed care entities for CHIP services, those contracts cannot include abortion services. To the extent that a managed care entity furnishes these services, the managed care entity must do so under a separate contractual arrangement.

D. Subpart E—Beneficiary Financial Responsibilities

The statute places a 5 percent cap on cost-sharing expenditures for families with incomes greater than 150 percent of the Federal Poverty Level (FPL) who are enrolled in separate child health programs. In an attempt to preserve State flexibility, the proposed regulation gives States the option to use either gross or net family income when calculating the cost-sharing cap.

In addition, the regulation proposes to place a comparable limit of 2.5 percent on cost-sharing for families with incomes below 150 percent of the poverty line, in order to ensure that those families with lower incomes will not be forced to pay the same amount of cost-sharing as those with higher incomes. And States would have the option to apply cost-sharing imposed on adults in CHIP family coverage plans toward the cumulative maximum cap.

The regulation proposes that States must have a process in place that will protect beneficiaries by ensuring due process before beneficiaries can be disenrolled from the program for failure to pay cost-sharing. This preamble suggests that States may look for a pattern of nonpayment, provide clear notice and opportunities for late payment, and wait at least one billing cycle before taking action to disenroll.

Finally, title XXI includes provisions to ensure enrollment and access to health care services for American Indian and Alaska Native (AI/AN) children. The regulation incorporates our interpretation that in light of the unique Federal relationship with tribal governments, cost-sharing requirements for individuals who are members of a Federally recognized tribe are not consistent with this statutory requirement.

E. Subpart G—Strategic Planning, Reporting and Evaluation

The proposed regulation includes provisions intended to ensure compliance with both the statute, the elements of the State's title XXI plan and the onsite review of State programs. In addition, monitoring will enable tracking of CHIP data submissions, which will ultimately help ensure enrollment in both the CHIP and Medicaid programs.

In addition, the regulation proposes that States have additional flexibility in setting procurement standards more broadly than Medicaid. States could choose to base payment rates on public and/or private rates for comparable services, and where appropriate, establish higher rates in order to ensure sufficient provider participation.

Finally, this proposed regulation includes various beneficiary protections consistent with the President's directive regarding the *Consumer Bill of Rights and Responsibilities.* Provisions are included throughout the proposed regulation to ensure that beneficiaries are given the opportunity to participate in and make informed medical decisions, to have access to needed services, and to be treated with dignity and respect.

F. Subpart I—Program Integrity and Beneficiary Protections

This subpart is intended to underscore the importance of preserving program integrity in the Children's Health Insurance Program. The regulation proposes that States must have fraud and abuse protections in place, but provides flexibility to States in developing program integrity protections for separate child health programs. States are encouraged to utilize systems already existing for Medicaid, but are not required to do so.

F. Subpart J—Waivers

The proposed regulation discusses the circumstances under which States may obtain a waiver in order to provide title XXI coverage to entire families. We propose that in order to qualify for such a waiver, the State must meet several requirements, including a requirement that the proposal be cost effective. The proposed regulation would give States added flexibility by permitting alternate methods States can use to meet the cost effectiveness test. States would be able to compare the cost of coverage for the family to any child-only health benefits package that is available for purchase, even if it is not included under the State plan.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirement discussed below. The following sections of this document contain information collection requirements:

Section 457.50 State Plan

In summary, § 457.50 requires a State to submit a child health plan to HCFA for approval. The child health plan is a comprehensive written statement submitted by the State describing the purpose, nature, and scope of its Child Health Insurance Program and giving assurance that it will be administered in conformity with the specific requirements of title XXI, title XIX (as appropriate), and the regulations in this chapter. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for Federal financial participation in the State program.

The burden associated with this requirement is the time and effort for a State to prepare and submit its child health plan to HCFA for approval. These collection requirements are currently approved by OMB under OMB# 0938–0707, with a current expiration date of 6/30/2000.

Section 457.60 Amendments

In summary, § 457.60 requires a State to submit to HCFA for approval an amendment to its approved State plan, whenever necessary, to reflect any changes in (1) Federal law, regulations, policy interpretations, or court decisions, (2) State law, organization, policy or operation of the program, or (3) the source of the State share of funding.

The burden associated with this requirement is the time and effort for a State to prepare and submit any necessary amendments to its State plan to HCFA for approval. Based upon HCFA's previous experiences with State plan amendments we estimate that on average, it will take a State 80 hours to complete and submit an amendment. We estimate that 10 States/territories will submit an amendment on an annual basis for a total burden of 800 hours.

Section 457.70 Program Options

In summary, § 457.70 requires a State that elects to obtain health benefits coverage through its Medicaid plan to submit an amendment to the State's Medicaid State plan as appropriate, demonstrating that it meets the requirements in subparts A, and G of part 457 and the applicable Medicaid regulations.

The burden associated with this requirement is the time and effort for a State to prepare and submit the necessary amendment to its Medicaid State plan to HCFA for approval. Based upon HCFA's previous experiences with State Plan amendments we estimate that on average, it will take a State 2 hours to complete and submit an amendment for HCFA approval. We estimate that 28 States/territories will submit an amendment for a total one-time burden of 56 hours.

Section 457.350 Eligibility Screening

In summary, § 457.350 requires a State that chooses to screen for Medicaid eligibility under the poverty level related groups described in 1902(l) of the Act, to provide written notification to the family if the child is found not to be Medicaid eligible.

The burden associated with this requirement is the time and effort for a State to prepare and provide written notification to the family if the child is found not to be Medicaid eligible. The average burden upon the State to prepare the notice is a one time burden estimated to be 10 hours and that it will take 3 minutes for the State to provide and the family to read the information. We estimate that on average, that each State will be required to provide 1 million notices on an annual basis for a total annual burden of 50,000 hours, per State. Therefore, the total estimated burden is calculated to be 2,700,000 hours on an annual basis.

Section 457.360 Facilitating Medicaid Enrollment

In summary § 457.360(c) requires a State to provide full and complete information, in writing to the family (that meets the requirements of (c)(1) through (c)(2) of this section), to ensure that a decision by the family not to apply for Medicaid or not to complete the Medicaid application process represents an informed decision.

The burden associated with this requirement is the time and effort for a State to prepare and provide written notice to the family to ensure that a decision by the family not to apply for Medicaid or not to complete the Medicaid application process represents an informed decision. The average burden upon the State to disseminate a standard notice to the family is estimated to be 3 minutes. We estimate that on average, each State will be required to provide 1 million notices on an annual basis for a total annual burden of 50,000 hours, per State. Therefore, the total estimated burden is calculated to be 2,700,000 hours on an annual basis.

Section 457.361 Application for and Enrollment in CHIP

In summary, § 457.361(b) requires a State to inform applicants, in writing and orally if appropriate, about the eligibility requirements and their rights and obligations under the program.

The burden associated with this requirement is the time and effort for a State to inform each applicant in writing and orally if appropriate, about the eligibility requirements and their rights and obligations under the program. We estimate the average burden upon the State to disseminate a standard notice to the family is estimated to be 3 minutes. We estimate that on average, each State will be required to provide 1 million notices on an annual basis for a total annual burden of 50,000 hours, per State. Therefore, the total estimated burden is calculated to be 2,700,000 hours on an annual basis.

In summary, § 457.361(c) requires a State to send each applicant a written notice of the agency's decision on the application, and if eligibility is denied or terminated, the specific reason or reasons for the action and an explanation of the right to request a hearing within a reasonable time.

The burden associated with this requirement is the time and effort for a State to prepare and provide written notice to each applicant of the agency's decision on the application, and if eligibility is denied or terminated, the specific reason or reasons for the action and an explanation of the right to request a hearing within a reasonable time. We estimate that on average, it will take each State 3 minutes to prepare each notice and that each State will be required to provide 1 million notices on an annual basis for a total annual burden of 50,000 hours, per State. Therefore, the total estimated burden is calculated to be 2,700,000 hours on an annual basis.

Section 457.431 Actuarial Report for Benchmark-Equivalent Coverage

In summary, § 457.431 requires a State that wants to obtain approval for benchmark-equivalent benefits coverage described under § 457.430, to submit to HCFA an actuarial report that; (1) compares the actuarial value of coverage of the benchmark package to the State-designed benchmark-equivalent benefit package, (2) demonstrates through an actuarial analysis of the benchmark-equivalent package that coverage requirements under § 457.430 are met, and (3) meets the requirements of § 457.431(b).

The burden associated with this requirement is the time and effort for a State that wants to obtain approval for benchmark-equivalent benefits coverage described under § 457.430, to prepare and submit its actuarial report to HCFA for approval. We estimate that on average, it will take a State 40 hours to prepare and submit a report for HCFA approval. We estimate that 6 States/territories will submit a plan for a total burden of 240 hours.

Section 457.525 Public Schedule

In summary, § 457.505 requires a State to make the public schedule available to: (1) CHIP beneficiaries (enrolled and non-enrolled) before the imposition of the charges, (2) CHIP applicants at the time of application, (3) all CHIP participating providers, (4) the general public.

The burden associated with this requirement is the time and effort for a State to prepare and make available its public schedule available to these four groups. We estimate that on average, it will take each State/Territory 120 minutes to prepare its public schedule and 3 minutes to disseminate no more than 20,000 copies of its schedule on an annual basis for a total annual burden of 1000 hours, per State/Territory. Therefore, the total estimated burden is calculated to be 54,000 hours on an annual basis.

Section 457.740 State Expenditure and Statistical Reports

In summary, § 457.740 requires a State to submit a report to the Secretary that contains quarterly program expenditures and statistical data, no later than 30 days after the end of each quarter of the federal fiscal year. The burden associated with this requirement is the time and effort for a State to prepare and submit its report to the Secretary. These collection requirements are currently approved by under OMB approval number OMB# 0938–0731, with a current expiration date of 1/31/2002.

In addition § 457.740 requires a State to submit an annual report, thirty days after the end of the Federal fiscal year, of an unduplicated count for the Federal fiscal year of children who are enrolled in the title XIX Medicaid program, and the separate child health and Medicaid-expansion programs, as appropriate, by age, service delivery, and income categories described in paragraphs (a) and (b) of this section.

The burden associated with this requirement is the time and effort for a State to prepare and submit its annual report to the Secretary. We estimate that on average, it will take a State 40 hours to complete and submit their report. We estimate that 54 States/territories will submit a plan for a total burden of 2160 hours.

Section 457.750 Annual Report

In summary, § 457.750 requires a State to submit a report to the Secretary by January 1 following the end of each preceding federal fiscal year, on the results of the State's assessment of operation of the State child health plan.

The burden associated with this requirement is the time and effort for a State to prepare and submit its annual report on the results of the State's assessment of operation of the State child health plan. We estimate that on average, it will take a State 40 hours to complete and submit their report. We estimate that 54 States/territories will submit a plan for a total burden of 2160 hours.

Section 457.760 State Evaluations

In summary, § 457.760 requires a State to submit by March 31, 2000, an evaluation to the Secretary that includes all of the elements referenced in paragraphs (a) through (g) of this section.

The one time burden associated with this requirement is the time and effort for a State to prepare and submit an evaluation to the Secretary that includes all of the elements referenced in paragraphs (a) though (g) of this section. We estimate that on average, it will take a State 40 hours to complete and submit their evaluation. We estimate that 54 States/territories will submit a plan for a total burden of 2,160 hours.

Section 457.810 Premium Assistance for Employer-Sponsored Group Health Plans: Required Protections Against Substitution

In summary, § 457.810(d) requires a State that uses title XXI funds to provide premium subsidies under employer-sponsored group health plans to collect information to evaluate the amount of substitution that occurs as a result of the subsidies and the effect of subsidies on access to coverage.

The burden associated with this requirement is the time and effort for a State to collect the necessary data to evaluate the amount of substitution that occurs as a result of the subsidies and the effect of subsidies on access to coverage. We estimate that on average, it will take a State 20 hours to collect the necessary data for their evaluation. We estimate that 54 States/territories will submit a plan for a total burden of 1,080 hours.

Section 457.965 Documentation

In summary, § 457.965 requires a State to include in each applicant's record facts to support the State's determination of the applicant's eligibility for CHIP. While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA as defined in 5 CFR 13203(b)(3), because this requirement would be imposed in the absence of a Federal requirement.

Section 457.985 Enrollee Rights To File Grievances and Appeals

In summary, § 457.985(b) requires a State to establish and maintain written procedures for grievances and appeals that adhere to generally acceptable industry practices within the State and comply with State-specific grievance and appeal requirements currently in effect for commercially licensed health care related businesses. While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(3), because this requirement would be imposed in the absence of a Federal requirement.

Section 457.1005 Waiver for Cost-Effective Coverage Through a Community-Based Health Delivery System

In summary, § 457.1005 requires a State requesting a waiver for cost-effective coverage through a community-based health delivery system, to submit documentation to HCFA that demonstrates that they meet the requirements of § 457.1005(b)(1) and (b)(2).

The burden associated with this requirement is the time and effort for a State that wants to obtain a waiver to prepare and submit the necessary documentation to HCFA that demonstrates that they meet the requirements of § 457.1005.

We estimate that on average, it will take a State 24 hours to prepare and submit a waiver request for HCFA approval. We estimate that 10 States/territories will submit a request for a total burden of 240 hours.

Section 457.1015 Cost Effectiveness

In summary, § 457.1015 requires a State to report to HCFA in its annual report the amount it spent on family coverage and the number of children it covered. While this requirement is subject to the PRA, the burden associate with this requirement is captured in § 457.750 (Annual report).

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in §§ 457.50, 457.60, 457.70, 457.350, 457.360, 457.431, 457.525, 457.555, 457.740, 457.750, 457.760, 457.810, 457.965, 457.985, 457.1005, and

457.1015. These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies directly to the following:

Health Care Financing Administration, Office of Information Services, Standards and Security Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: John Burke HCFA–2006–P.

And,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Lori Schack, HCFA Medicaid Desk Officer.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Children's Health Insurance Program, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act. (42 U.S.C. 1302).

§ 431.865 [Amended]

2. In § 431.865(b), the definition of "erroneous payment" is amended by adding the sentence, "The term does not include payments made for care and services covered under the State plan and furnished to children during a presumptive eligibility period as described in § 435.1102 of this chapter." at the end of paragraph (3) of the definition.

PART 433—STATE FISCAL ADMINISTRATION

B. Part 433 is amended as follows:

1. The authority citation for part 433 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. In § 433.10, the heading of paragraph (c) is republished and a new paragraph (c)(4) is added to read as follows:

§ 433.10 Rates of FFP for program services.

* * * * *

(c) *Special provisions.* * * *

(4) Under section 1905(b), the Federal share of State expenditures for services provided to children described in 433.11(a) is the enhanced FMAP rate determined in accordance with § 457.622(b) of this chapter, subject to the conditions explained in 433.11(b).

3. A new § 433.11 is added to read as follows:

§ 433.11 Enhanced FMAP rate for children.

(a) Subject to the conditions in paragraph (b) of this section, enhanced FMAP determined in accordance with § 457.622 of this chapter will be used to determine the Federal share of State expenditures for—

(1) Services provided to optional targeted low-income children described in § 435.229(b) of this chapter; and

(2) Services provided to children born before October 1, 1983 who would be described in section 1902(l)(1)(D) of the Act (poverty-level-related children's groups) if—

(i) They had been born on or after that date; and

(ii) They would not qualify for medical assistance under the State plan in effect on March 31, 1997.

(3) Disproportionate share hospital expenditures identified as payment for services provided to children described in paragraphs (a)(1) and (a)(2) of this section.

(b) Enhanced FMAP is not available if—

(1) A State adopts income and resource standards and methodologies for purposes of determining a child's eligibility under the Medicaid State plan that are more restrictive than those applied under the State plan in effect on June 1, 1997; or

(2) No funds are available in the State's title XXI allotment for the quarter enhanced FMAP is claimed, as that allotment is determined under part 457, subpart F of this chapter; or

(3) The State fails to maintain a valid method of identifying services provided on behalf of children listed in paragraph (a) of this section.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

C. Part 435 is amended as set forth below:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 435.229 is added to read as follows:

§ 435.229 Optional targeted low-income children.

(a) An optional targeted low-income child is a child who:

(1) Is a targeted low-income child as defined in § 457.310(a) of this chapter; and

(2) Would not be eligible for Medicaid under the policies of the State plan in effect on March 31, 1997.

(b) The State agency may provide Medicaid to:

(1) Individuals under age 19 who are optional targeted low-income children described in paragraph (a) of this section; or

(2) Reasonable categories of these individuals.

3. In § 435.910, paragraph (h) is added to read as follows:

§ 435.910 Use of social security number.

* * * * *

(h) *Exception.* (1) An applicant who, because of well established religious objections, refuses to obtain a Social Security Number (SSN) may be given a Medicaid identification number by the State. Such a number may be either an SSN obtained by the State on the applicant's behalf or another unique identifier.

(2) The term "well established religious objections" means that the applicant:

(i) Is a member of a recognized religious sect or division of the sect; and

(ii) Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number.

(3) An alternative number established by the State to identify such an individual shall be used to the same extent as an SSN is used by the State as described in paragraph (b)(3) of this section.

4. In § 435.1001 paragraph (a) is revised to read as follows:

§ 435.1001 FFP for administration.

(a) FFP is available in the necessary administrative costs the State incurs in—

(1) Determining and redetermining Medicaid eligibility and in providing Medicaid to eligible individuals; and

(2) Determining presumptive eligibility for children and providing services to presumptively eligible children.

* * * * *

5. Section 435.1002 is amended by adding a new paragraph (c) to read as follows:

§ 435.1002 FFP for services.

* * * * *

(c) FFP is available in expenditures for services covered under the plan that are furnished—

(1) To children who are determined by a qualified entity to be presumptively eligible;

(2) During a period of presumptive eligibility;

(3) By a provider that is eligible for payment under the plan; and

(4) Regardless of whether the children are determined eligible for regular Medicaid following the period of presumptive eligibility.

§ 435.1007 [Amended]

6. In paragraph (a), the second sentence is amended by adding "and 1905(u)" between "(X)", and "of the Act;".

7. A new subpart L is added to part 435 to read as follows:

Subpart L—Option for Coverage of Special Groups

Sec.
435.1100 Scope.

Presumptive Eligibility for Children

435.1101 Definitions related to presumptive eligibility period for children.
435.1102 General Rules.

§ 435.1100 Scope.

This subpart prescribes the requirements for providing medical assistance to special groups who are not eligible for Medicaid as categorically or medically needy.

Presumptive Eligibility for Children

§ 435.1101 Definitions related to presumptive eligibility period for children.

Applicable income level means the highest income eligibility standard established under the plan that is most likely to be used to establish the regular Medicaid eligibility of a child of the age involved.

Application form means at a minimum the application form used to apply for Medicaid under the poverty-level-related eligibility groups described in section 1902(l) of the Act.

Period of presumptive eligibility means a period that begins on the date on which a qualified entity determines that a child is presumptively eligible and ends with the earlier of—

(1) In the case of a child on whose behalf a Medicaid application has been filed, the day on which a decision is made on that application; or

(2) In the case of a child on whose behalf a Medicaid application has not been filed, the last day of the month following the month in which the determination of presumptive eligibility was made.

Qualified entity means an entity that is determined by the agency to be capable of making determinations of presumptive eligibility for children, and that—

(1) Furnishes health care items and services covered under the approved plan and is eligible to receive payments under the approved plan;

(2) Is authorized to determine the eligibility of a child to participate in a Head Start program under the Head Start Act;

(3) Is authorized to determine eligibility of a child to receive child care services for which financial assistance is provided under the Child Care and Development Block Grant Act of 1990; or

(4) Is authorized to determine eligibility of an infant or child to receive assistance under the special nutrition program for women, infants, and children (WIC) under section 17 of the Child Nutrition Act of 1966.

Services means all services covered under the plan including EPSDT (see part 440 of this chapter.)

§ 435.1102 General rules.

(a) The agency may provide services to children under age 19 during one or more periods of presumptive eligibility based on a determination of presumptive eligibility made by a qualified entity on the basis that the child's estimated gross family income, or at State option family income after application of simple disregards, does not exceed the applicable income level.

(b) If the agency elects to provide services to children during a period of presumptive eligibility, the agency must—

(1) Provide qualified entities with application forms for Medicaid and information on how to assist parents, guardians, and other persons in completing and filing such forms;

(2) Establish procedures to ensure that qualified entities—

(i) Notify the agency that a child is presumptively eligible within 5 working days after the date that the determination is made;

(ii) In writing at the time that a determination is made, inform the parent or custodian of a child determined to be presumptively eligible that if a Medicaid application is not filed by the last day of the following month, the presumptive eligibility will end on that last day and that if a Medicaid application is filed by the last day of the following month, the child's presumptive eligibility will end on the day that a decision is made on the Medicaid application; and

(iii) In writing at the time that a determination is made, inform the parent or custodian of a child determined not to be presumptively eligible of the reason for the determination and that he/she may file an application for Medicaid on the child's behalf;

(3) Provide all services covered under the plan, including EPSDT: and

(4) Make determinations of presumptive eligibility available Statewide to all children.

(c) The agency may establish reasonable methods of determining the number of periods of presumptive eligibility that will be authorized for a child in a given time frame.

D. Subchapter D is redesignated as subchapter F; and Parts 462, 466, 473, and 476 are redesignated as parts 475, 476, 478 and 480, respectively.

E. Subchapter E is redesignated as subchapter G.

F. A new subchapter D consisting of part 457 is added to read as follows:

SUBCHAPTER D—CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)

PART 457—ALLOTMENTS AND GRANTS TO STATES

Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies

Sec.
457.1 Program description.
457.2 Basis and scope of subchapter D.
457.10 Definitions and use of terms.
457.30 Basis, scope, and applicability of subpart A.
457.40 State program administration.
457.50 State plan.
457.60 Amendments.
457.65 Duration of State plans and plan amendments.
457.70 Program options.
457.80 Current State child health insurance coverage and coordination.
457.90 Outreach.
457.110 Enrollment assistance and information requirements.
457.120 Public involvement in program development.
457.125 Provision of child health assistance to American Indian and Alaska Native children
457.130 Civil rights assurance.
457.135 Assurance of compliance with other provisions.
457.140 Budget.
457.150 HCFA review of State plan material.
457.160 Notice and timing of HCFA action on State plan material.
457.170 Withdrawal process.
457.190 Administrative and judicial review of action on State plan material.

Subpart B—[Reserved]

Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment

457.300 Basis, scope, and applicability.
457.301 Definitions and use of terms.
457.305 State plan provisions.
457.310 Targeted low-income child.
457.320 Other eligibility standards.
457.340 Application.
457.350 Eligibility screening.
457.360 Facilitating Medicaid enrollment.
457.361 Application for and enrollment in CHIP.
457.365 Grievances and appeals.

Subpart D—Coverage and Benefits: General Provisions

457.401 Basis, scope, and applicability.
457.402 Child health assistance and other definitions.
457.410 Health benefits coverage options.
457.420 Benchmark health benefits coverage.
457.430 Benchmark-equivalent health benefits coverage.
457.431 Actuarial report for benchmark-equivalent coverage.
457.440 Existing comprehensive State-based coverage.
457.450 Secretary-approved coverage.
457.470 Prohibited coverage.
457.475 Limitations on coverage: Abortions.
457.480 Preexisting condition exclusions and relation to other laws.
457.490 Delivery and utilization control systems.
457.495 Grievances and appeals.

Subpart E—State Plan Requirements: Beneficiary Financial Responsibilities

457.500 Basis, scope, and applicability.
457.505 General State plan requirements.
457.510 Premiums, enrollment fees, or similar fees: State plan requirements.
457.515 Co-payments, coinsurance, deductibles, or similar cost sharing charges: State plan requirements.
457.520 Cost sharing for well-baby and well-child care.
457.525 Public schedule.
457.530 General cost sharing protection for lower income children.
457.535 Cost sharing protection to ensure enrollment of American Indians/Alaska Natives.
457.540 Cost sharing charges for children in families at or below 150 percent of the Federal poverty line (FPL).
457.545 Cost sharing for children in families above 150 percent of the FPL.
457.550 Restriction on the frequency of cost sharing charges on targeted low-income children in families at or below 150 percent of the FPL.
457.555 Maximum allowable cost sharing charges on targeted low-income children at or below 150 percent of the FPL.
457.560 Cumulative cost sharing maximum.
457.565 Grievances and appeals.
457.570 Disenrollment protections.

Subpart F—[Reserved]

Subpart G—Strategic Planning, Reporting, and Evaluation

457.700 Basis, scope, and applicability.
457.710 State plan requirements: Strategic objectives and performance goals.
457.720 State plan requirement: State assurance regarding data collection, records, and reports.
457.730 State plan requirement: State annual reports and evaluation.
457.735 State plan requirement: State assurance of the quality and appropriateness of care.
457.740 State expenditures and statistical reports.
457.750 Annual report.
457.760 State evaluations.

Subpart H—Substitution of Coverage

457.800 Basis, scope, and applicability.
457.805 State plan requirements: Private coverage substitution.
457.810 Premium assistance for employer-sponsored group health plans: Required protections against substitution.

Subpart I—Program Integrity and Beneficiary Protections

457.900 Basis, scope, and applicability.
457.902 Definitions.
457.910 State program administration.
457.915 Fraud detection and investigation.
457.920 Accessible means to report fraud and abuse.
457.925 Preliminary investigation.
457.930 Full investigation, resolution, and reporting requirements.
457.935 Sanctions and related penalties.
457.940 Procurement standards.
457.945 Certification for contracts and proposals.
457.950 Contract and payment requirements including certification of payment-related information.
457.955 Conditions necessary to contract as a managed care entity (MCE).
457.960 Reporting changes in eligibility and redetermining eligibility.
457.965 Documentation.
457.970 Eligibility and income verification.
457.975 Redetermination intervals in cases of suspected enrollment fraud.
457.980 Verification of enrollment and provider services received.
457.985 Enrollee rights to file grievances and appeals.
457.990 Privacy protections.
457.995 Consumer Bill of Rights and Responsibilities.

Subpart J—Allowable Waivers: General Provisions

457.1000 Basis, scope, and applicability.
457.1005 Waiver for cost-effective coverage through a community-based health delivery system.
457.1010 Waiver for purchase of family coverage.
457.1015 Cost-effectiveness.

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies

§ 457.1 Program description.

Title XXI of the Social Security Act, enacted in 1997 by the Balanced Budget Act, authorizes Federal grants to States for provision of child health assistance to uninsured, low-income children. The program is jointly financed by the Federal and State governments and administered by the States. Within broad Federal rules, each State decides eligible groups, types and ranges of services, payment levels for benefit coverage, and administrative and operating procedures.

§ 457.2 Basis and scope of subchapter D.

(a) *Basis.* This subchapter implements title XXI of the Act, which authorizes Federal grants to States for the provision of child health assistance to uninsured, low-income children.

(b) *Scope.* The regulations in subchapter D set forth State plan requirements, standards, procedures, and conditions for obtaining Federal financial participation (FFP) to enable States to provide health benefit coverage to targeted low-income children, as defined in 457.310(b).

§ 457.10 Definitions and use of terms.

For purposes of this part the following definitions apply:

American Indian/Alaska Native (AI/AN) means—

(1) A member of a Federally recognized Indian tribe, band, or group or a descendant in the first or second degree of any such member;

(2) An Eskimo or Aleut or other Alaska Native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*;

(3) A person who is considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) A person who is determined to be an Indian under regulations promulgated by the Secretary.

Child means an individual under the age of 19.

Child health assistance has the meaning assigned in § 457.402.

Children's Health Insurance Program (CHIP) means a program established and administered by a State, but jointly funded with the Federal government to provide child health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination of both.

Combination program means a program under which a State provides child health assistance through both a Medicaid expansion program and a separate child health program.

Contractor has the meaning assigned in § 457.902.

Cost-effectiveness has the meaning assigned in § 457.1015.

Creditable health coverage has the meaning given the term "creditable coverage" at 45 CFR 146.113.

Emergency medical condition has the meaning assigned at § 457.402.

Emergency medical services has the meaning assigned at § 457.402.

Employment with a public agency has the meaning assigned in § 457.301.

Family income means income as determined by the State for a family as defined by the State.

Federal fiscal year starts on the first day of October each year and ends on the last day of September.

Fee-for-service entity has the meaning assigned in § 457.902.

Grievance has the meaning assigned at § 457.902.

Group health insurance coverage has the meaning assigned at 45 CFR 144.103.

Group health plan has the meaning assigned at 45 CFR 144.103.

Health benefits coverage has the meaning assigned in § 457.402.

Health maintenance organization (HMO) plan has the meaning assigned in § 457.420.

Legal obligation has the meaning assigned in § 457.555.

Low-income child means a child whose family income is at or below 200 percent of the poverty line for the size family involved.

Managed care entity (MCE) has the meaning assigned in § 457.902.

Medicaid applicable income level means, with respect to a child, the effective income level (expressed as a percentage of the poverty line) that has been specified under the State plan under title XIX of the Act (including for these purposes, a section 1115 waiver authorized by the Secretary or under the authority of section 1902(r)(2)), as of March 31, 1997, for the child to be eligible for medical assistance under either section 1902(l)(2) or 1905(n)(2).

Medicaid expansion program means a program where a State receives Federal funding at the enhanced matching rate available for expanding eligibility to targeted low-income children.

Post-stabilization services has the meaning assigned in § 457.402.

Poverty line/Federal poverty level means the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

Preexisting condition exclusion has the meaning assigned at 45 CFR 144.103.

Premium assistance for employer-sponsored group health plans means State payment of part or all of premiums for group health plan or group health insurance coverage of an eligible child or children.

Public agency has the meaning assigned in § 457.301.

Separate child health program means a program under which a State receives Federal funding from its title XXI of the Act allotment under an approved plan that obtains child health assistance through obtaining coverage that meets the requirements of section 2103 of the Act.

State means all States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

State health benefits plan has the meaning assigned in § 457.301.

State plan means the approved or pending title XXI State child health plan.

State program integrity unit has the meaning assigned in § 457.902.

Targeted low-income child has the meaning assigned in § 457.310.

Uncovered child means a child who does not have creditable health coverage.

Well-baby and well-child care services means regular or preventive diagnostic and treatment services necessary to ensure the health of babies and children as defined by the State. For purposes of cost sharing, the term has the meaning assigned at § 457.520.

§ 457.30 Basis, scope, and applicability of subpart A.

(a) *Statutory basis.* This subpart is based on the following sections of the Act:

(1) Section 2101(a) of the Act specifies that the purpose of title XXI of the Act is to provide to States funds to enable them to initiate and expand child health assistance to uninsured low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children.

(2) Section 2101(b) requires that the State submit a State plan.

(3) Section 2102(a) sets forth requirements regarding the contents of the State plan.

(4) Section 2102(c) requires that the State plan include a description of the procedures to be used by the State to accomplish outreach and coordination with other health insurance programs.

(5) Section 2106 specifies the process for submission, approval, and amendment of State plans.

(6) Section 2107(c) requires that the State plan include a description of the process used to involve the public in the design and implementation of the plan.

(7) Section 2107(d) requires that the State plan include a description of the budget for the plan.

(8) Section 2107(e) of the Act, which provides that certain provisions of title XIX and title XI of the Act apply under title XXI of the Act in the same manner that they apply under title XIX.

(b) *Scope.* This subpart sets forth provisions governing the administration of a CHIP, the general requirements for a State plan, and a description of the process for review of a State plan or plan amendment.

(c) *Applicability.* This subpart applies to all States that request Federal financial participation to provide child health assistance under title XXI of the Act.

§ 457.40 State program administration.

(a) *Program operation.* The State must implement its program in accordance with the approved State plan, any approved State plan amendments, the requirements of title XXI and title XIX of the Act (as appropriate), and the regulations in this chapter. HCFA monitors the operation of the approved State plan and plan amendments to ensure compliance with the requirements of title XXI, title XIX of the Act (as appropriate) and this chapter.

(b) *State authority to submit State plan.* A State plan or plan amendment must be signed by the State Governor, or signed by an individual who has been delegated authority by the Governor to submit it.

(c) *State program officials.* The State must identify, in the State plan or State plan amendment, the State officials who are responsible for program administration and financial oversight.

(d) *State legislative authority.* The State plan must include an assurance that the State will not claim expenditures for child health assistance prior to the time that the State has legislative authority to operate the State plan or plan amendment as approved by HCFA.

§ 457.50 State plan.

The State plan is a comprehensive written statement submitted by the State to HCFA for approval, which describes the purpose, nature, and scope of the State's CHIP and gives assurance that the program is administered in conformity with the specific requirements of title XXI, title XIX of the Act (as appropriate), and the regulations in this chapter. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

§ 457.60 Amendments.

(a) *Submittal of plan amendments.* A State may amend its approved State plan in whole or in part at any time through the submission of an amendment to HCFA. A State must amend its State plan whenever necessary to reflect—

(1) Changes in Federal law, regulations, policy interpretations, or court decisions;

(2) Changes in State law, organization, policy, or operation of the program; and

(3) Changes in the source of the State share of funding.

(b) *Budget amendment.* When the State plan amendment makes any modification to the approved budget, a State must include an amended budget that describes the State's planned expenditures for a three year period.

§ 457.65 Duration of State plans and plan amendments.

(a) *Effective date in general.* (1) A State plan or plan amendment takes effect on the day specified in the plan but no earlier than October 1, 1997. The effective date is no earlier than the date on which the State begins to incur costs to implement its State plan or plan amendment.

(2) A State plan amendment that takes effect prior to submission of the amendment to HCFA may remain in effect only until the end of the State fiscal year in which the State makes it effective, or, if later, the end of the 90-day period in which the State makes it effective, unless the State submits the amendment to HCFA for approval before the end of that State fiscal year or 90-day period.

(b) *Amendments relating to eligibility or benefits.* A State plan amendment that eliminates or restricts eligibility or benefits may not be in effect for longer than a 60-day period unless the amendment is submitted to HCFA before the end of that 60-day period. The amendment may not take effect unless—

(1) The State certifies that it has provided prior public notice of the proposed change in a form and manner provided under applicable State law; and

(2) The public notice was published before the requested effective date of change.

(c) *Amendments relating to cost sharing.* A State plan amendment that implements cost sharing charges, increases existing cost sharing charges, or increases the cumulative cost sharing maximum as set forth at § 457.555 is considered an amendment that restricts benefits and must meet the requirements in paragraph (b) of this section.

(d) *Amendments relating to source of State funding.* (1) A State must submit a plan amendment to HCFA before any change in the source of the State share of funding from the source reflected in the approved State plan can take effect.

(2) A State is not required to submit a plan amendment for changes in the type of non-health care related revenues used to generate general revenue.

(e) *Continued approval.* An approved State plan continues in effect unless—

(1) The State adopts a new plan by obtaining approval under § 457.60 of an amendment to the State plan; or

(2) The Secretary finds substantial noncompliance of the plan with the requirements of the statute or regulations.

§ 457.70 Program options.

(a) *Health benefits coverage options.* A State may elect to obtain health benefits coverage under its plan through—

(1) A Medicaid expansion program;

(2) A separate child health program; or

(3) A combination program.

(b) *State plan requirement.* A State plan must include a description of the State's chosen program option.

(c) *Medicaid expansion program requirements.* A State that elects to obtain health benefits coverage through its Medicaid plan must—

(1) Meet the requirements of the following subparts of this part—

(i) Subpart A;

(ii) Subpart B (if the State claims administrative costs under title XXI of the Act;

(iii) Subpart C (with respect to the definition of a targeted low-income child only);

(iv) Subpart F (with respect to determination of the allotment for purposes of the enhanced matching rate, determination of the enhanced matching rate, and payment of any claims for administrative costs under title XXI of the Act only);

(v) Subpart G;

(vi) Subpart H (if the State elects the eligibility group for optional targeted low-income children and elects to pay for employer-sponsored insurance); and

(vii) Subpart J (if the State claims administrative costs under title XXI of the Act and seeks a waiver of limitations on such claims based on a community based health delivery system).

(2) Submit an approvable amendment to the State's Medicaid State plan as appropriate.

(d) *Separate child health program requirements.* A State that elects to obtain health benefits coverage under its plan through a separate child health program must meet all the requirements of part 457.

(e) *Combination program requirements.* A State that elects to obtain health benefits coverage through both a separate child health program and a Medicaid expansion program must meet the requirements of paragraphs (c) and (d) of this section.

§ 457.80 Current State child health insurance coverage and coordination.

A State plan must include a description of—

(a) The extent to which, and manner in which, children in the State, including targeted low-income children and other classes of children, by income level and other relevant factors, currently have creditable health coverage (as defined in § 457.10) and, if sufficient information is available, whether the creditable health coverage they have is under public health insurance programs or health insurance programs that involve public-private partnerships;

(b) Current State efforts to provide or obtain creditable health coverage for uncovered children, including the steps the State is taking to identify and enroll all uncovered children who are eligible to participate in public health insurance programs and health insurance programs that involve public-private partnerships;

(c) Procedures the State uses to accomplish coordination of CHIP with other public and private health insurance programs, including procedures designed to increase the number of children with creditable health coverage and to ensure that only eligible targeted low-income children are covered under CHIP.

§ 457.90 Outreach.

(a) *Procedures required.* A State plan must include a description of procedures used to inform families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs of the availability of the programs, and to assist them in enrolling their children in one of the programs.

(b) *Examples.* Outreach strategies may include but are not limited to the following:

(1) Education and awareness campaigns, including targeted mailings and information distribution through various organizations.

(2) Enrollment simplification, such as simplified or joint application forms.

§ 457.110 Enrollment assistance and information requirements.

(a) *Information disclosure.* The State must make accurate, easily understood information available to families of targeted low-income children and provide assistance to these families in making informed health care decisions about their health plans, professionals, and facilities.

(b) *Required information.* The State must have a mechanism in place to ensure that the following information is made available to applicants and beneficiaries in a timely manner:

(1) Types of benefits, and amount, duration and scope of benefits available under the program.

(2) Names and locations of current participating providers.

§ 457.120 Public involvement in program development.

A State plan must include a description of the method the State uses to—

(a) Involve the public in both the design and initial implementation of the program; and

(b) Ensure ongoing public involvement once the State plan has been implemented.

§ 457.125 Provision of child health assistance to American Indian and Alaska Native children.

(a) *Enrollment.* A State must include a description of procedures used to ensure the provision of child health assistance to American Indian and Alaska Native children. HCFA requests that the State official responsible for CHIP consult with Federally recognized Tribes and other Indian tribes and organizations in the State on the development and implementation of these procedures.

(b) *Exemption from cost sharing.* HCFA will not approve a State plan that imposes cost sharing on American Indian and Alaska Native children.

§ 457.130 Civil rights assurance.

The State plan must include an assurance that the State will comply with all applicable civil rights requirements, including title VI of the Civil Rights Act of 1964, title II of the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, 45 CFR part 80, part 84, and part 91, and 28 CFR part 35.

§ 457.135 Assurance of compliance with other provisions.

The State plan must include an assurance that the State will comply under title XXI with the following provisions of titles XIX and XI of the Social Security Act:

(a) Section 1902(a)(4)(C) (relating to conflict of interest standards).

(b) Paragraphs (2), (16) and (17) of section 1903(i) (relating to limitations on payment).

(c) Section 1903(w) (relating to limitations on provider donations and taxes).

(d) Section 1132 (relating to periods within which claims must be filed).

§ 457.140 Budget.

The State plan, or plan amendment as required at § 457.60(b), must include a budget that describes the State's planned expenditures for a 3-year period. The budget must describe:

(a) Planned use of funds, including—

(1) Projected amount to be spent on health services;

(2) Projected amount to be spent on administrative costs, such as outreach, child health initiatives, and evaluation; and

(3) Assumptions on which the budget is based, including cost per child and expected enrollment.

(b) Projected source of non-Federal plan expenditures, including any requirements for cost-sharing by beneficiaries.

§ 457.150 HCFA review of State plan material.

(a) *Basis for action.* HCFA reviews each State plan and plan amendment to determine whether it meets or continues to meet the requirements for approval under relevant Federal statutes, regulations, and guidelines furnished by HCFA to assist in the interpretation of these regulations.

(b) *Action on complete plan.* HCFA approves or disapproves the State plan or plan amendment only in its entirety.

(c) *Authority.* The HCFA Administrator exercises delegated authority to review and then to approve or disapprove the State plan or plan amendment, or to determine that previously approved material no longer meets the requirements for approval. The Administrator does not make a final determination of disapproval without first consulting the Secretary.

(d) *Initial submission.* The Administrator designates an official to receive the initial submission of State plans.

(e) *Review process.* (1) The Administrator designates an individual to coordinate HCFA's review for each State that submits a State plan.

(2) HCFA notifies the State of the identity of the designated individual in the first correspondence relating to that plan, and at any time there is a change in the designated individual.

(3) In the temporary absence of the designated individual during regular business hours, an alternate individual will act in place of the designated individual.

§ 457.160 Notice and timing of HCFA action on State plan material.

(a) *Notice of final determination.* The Administrator provides written notification to the State of the approval or disapproval of a State plan or plan amendment.

(b) *Timing.* (1) A State plan or plan amendment will be considered approved unless HCFA, within 90 calendar days after receipt of the State plan or plan amendment in the HCFA central office, sends the State—

(i) Written notice of disapproval; or

(ii) Written notice of additional information it needs in order to make a final determination.

(2) A State plan or plan amendment is considered received when the

designated official or individual, as determined in § 457.150(d) and (e), receives an electronic, fax or paper copy of the complete material.

(3) If HCFA requests additional information, the 90-day review period for HCFA action on the State plan or plan amendment—

(i) Stops on the day HCFA sends a written request for additional information or the next business day if the request is sent on a Federal holiday or weekend; and

(ii) Resumes on the next calendar day after the HCFA designated individual receives an electronic, fax, or hard copy from the State of all the requested additional information, unless the information is received after 5 p.m. eastern time on a day prior to a non-business day or any time on a non-business day, in which case the review period resumes on the following business day.

(4) The 90-day review period cannot stop or end on a non-business day. If the 90th calendar day falls on a non-business day, HCFA will consider the 90th day to be the next business day.

(5) HCFA may send written notice of its need for additional information as many times as necessary to obtain the complete information necessary to review the State plan or plan amendment.

§ 457.170 Withdrawal process.

A State may withdraw its State plan or plan amendment at any time during the review process by providing written notice to HCFA of the withdrawal.

§ 457.190 Administrative and judicial review of action on State plan material.

(a) *Request for reconsideration.* Any State dissatisfied with the Administrator's action on State plan material under § 457.150 may, within 60 days after receipt of the notice of final determination provided under § 457.160(a), request that the Administrator reconsider whether the State plan or plan amendment conforms with the requirements for approval.

(b) *Notice of hearing.* Within 30 days after receipt of the request, the Administrator notifies the State of the time and place of a hearing to be held for the purpose of reconsideration.

(c) *Hearing procedures.* The hearing procedures set forth in part 430, subpart D of this chapter govern a hearing requested under this section.

(d) *Effect of hearing decision.* HCFA does not delay the denial of Federal funds, if required by the Administrator's original determination, pending a hearing decision. If the Administrator determines that his or her original decision was incorrect, HCFA pays the State a lump sum equal to any funds incorrectly denied.

(e) *Judicial review.* Judicial review of a final determination made under this subchapter is governed by § 430.38 of this chapter.

Subpart B—[Reserved]

Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment

§ 457.300 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart interprets and implements —

(1) Section 2102(b) of the Act, which relates to eligibility standards and methodologies;

(2) Section 2105(c)(6)(B) of the Act, which relates to no payment for expenditures for child health assistance provided to children eligible for coverage under other Federal health care programs other than programs operated or financed by the Indian Health Service; and

(3) Section 2110(b) of the Act, which provides a definition of targeted low-income child.

(b) *Scope.* This subpart sets forth the requirements relating to eligibility standards and to screening, application and enrollment procedures.

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program and apply to a Medicaid expansion program only with respect to the definition of a targeted low-income child.

§ 457.301 Definitions and use of terms.

As used in this subpart—

Employment with a public agency includes employment with an entity under a contract with a public agency;

Public agency means a State, county, city or other type of municipal agency, including a public school district, transportation district, irrigation district, or any other type of public entity;

State health benefits plan means a plan that is offered or organized by the State government on behalf of State employees or other public agency employees within the State. The term does not include a separately run county, city, or other public agency plan or a plan that provides coverage only for a specific type of care, such as dental or vision care.

§ 457.305 State plan provisions.

The State plan must include a description of standards consistent with § 457.310 and § 457.320 used to determine the eligibility of children for coverage under the State plan.

§ 457.310 Targeted low-income child.

(a) *Definition.* A targeted low-income child is a child who meets the standards set forth in paragraph (b) of this section and other eligibility standards established by the State under § 457.320.

(b) *Standards.* A targeted low-income child must meet the following standards:

(1) *Financial need.* A child who resides in a State with a Medicaid applicable income level must have a family income at or below 200 percent of the Federal poverty line or family income that—

(i) Exceeds the Medicaid applicable income level but not by more than 50 percentage points (expressed as a percentage of the Federal poverty line); or

(ii) Does not exceed the Medicaid applicable income level calculated using June 1, 1997 instead of March 31, 1997.

(2) *No other coverage.* A targeted low-income child must not be—

(i) Found eligible for Medicaid (determined either through the Medicaid application process or the screening process described at § 457.350); or

(ii) Covered under a group health plan or under health insurance coverage, unless the health insurance coverage program has been in operation since before July 1, 1997, and is administered by a State that receives no Federal funds for the program's operation. A child would not be considered covered under a group health plan if the child did not have reasonable access to care under that plan.

(c) *Exclusions.* Notwithstanding paragraph (a) of this section, the following groups are excluded from the definition of targeted low-income children:

(1) *Children eligible for certain State health benefits coverage.* (i) A targeted low-income child may not be a member of a family eligible for health benefits coverage under a State health benefits plan in the State on the basis of a family member's employment with a public agency, even if the family declines to accept the coverage.

(ii) A child is considered eligible for health benefits coverage under a State health benefits plan if a more than nominal contribution to the cost of health benefits coverage under a State health benefits plan is available from the State or public agency with respect to the child. A contribution over $10 towards the cost of dependent coverage is considered more than nominal.

(iii) The contribution with respect to the child is calculated by deducting amounts only available to an adult employee from the total State or public agency contribution.

(2) *Residents of an institution.* A child must not be an inmate of a public institution or a patient in an institution for mental diseases as defined at § 435.1009 of this chapter, at the time of initial application or any redetermination of eligibility.

§ 457.320 Other eligibility standards.

(a) Except as provided in paragraph (b) of this section, the State plan may adopt eligibility standards for one or more groups of children related to—

(1) Geographic area(s) served by the plan;

(2) Age (not to exceed 18 years);

(3) Income;

(4) Resources;

(5) Spenddowns;

(6) Disposition of resources;

(7) Residency;

(8) Disability status;

(9) Access to or coverage under other health coverage; or

(10) Duration of eligibility (as long as eligibility is determined at least every 12 months).

(b) In establishing eligibility standards, a State may *not*—

(1) Cover children with higher family income without covering children with a lower family income within any defined group of covered targeted low-income children;

(2) Deny eligibility based on a preexisting medical condition;

(3) Restrict eligibility based on disability status;

(4) Require that any individual provide a social security number, including the social security number of the child or that of a family member whose income or resources might be used in making the child's eligibility determination;

(5) Exclude American Indian or Alaska Native children based on eligibility for, or access to, medical care funded by the Indian Health Service;

(6) Violate any other Federal laws or regulations pertaining to eligibility for CHIP, including laws that require exclusion of certain income or resources from all consideration and laws that require verification of certain items or statuses;

(7) Exclude individuals based on citizenship or nationality, to the extent that the children are U.S. citizens, U.S. nationals or qualified aliens (except to the extent that 8 U.S.C. 1613(a) precludes them from receiving Federal means-tested public benefits).

(c) In establishing eligibility for CHIP coverage, States must obtain proof of citizenship (including nationals of the U.S.) and verify qualified alien status in accordance with section 432 of PRWORA, as amended (8 U.S.C. 1642).

§ 457.340 Application.

(a) *Opportunity to apply.* The State must afford every individual the opportunity to apply for child health assistance without delay.

(b) *Application forms.* The application form used to apply for child health assistance may be—

(1) A joint application for both Medicaid and CHIP; or

(2) A separate application for CHIP only.

§ 457.350 Eligibility screening.

(a) *State plan requirement.* The State plan must include a description of the screening procedures that the State will use, at intake and any follow-up eligibility determination, including any periodic redetermination, to ensure that only targeted low-income children are furnished child health assistance under the plan.

(b) *Screening with joint application.* A State that uses a joint application for Medicaid and CHIP must use the screening procedures described in paragraphs (c) and (d) of this section for children who apply for CHIP.

(c) *Screening objectives.* Except as described in paragraph (e) of this section, a State must use screening procedures to identify, at minimum, any child who—

(1) Is potentially eligible for Medicaid under one of the poverty level related groups described in section 1902(l) of the Act; or

(2) If the State has not extended eligibility in the groups described in paragraph (c)(1) of this section to children of a particular age, is potentially eligible for Medicaid because the child meets the highest categorical income standards used under Medicaid to establish eligibility for non-disabled children of that age.

(d) *Eligibility test.* To identify the children in paragraph (c) of this section, at a minimum, States must either initially apply a gross income test described in paragraph (d)(1) of this section and then use an adjusted income test described in paragraph (d)(2) of this section for applicants whose State-defined income exceeds the initial test, or use only the adjusted income test for all applicants.

(1) *Initial gross income test.* Under this test, a State initially screens for Medicaid eligibility by comparing gross family income to the appropriate Medicaid income standard.

(2) *Adjusted income test.* Under this test, a State screens for Medicaid eligibility by comparing adjusted family income to the appropriate Medicaid income standard. The State must apply all Medicaid policies relating to income for the particular Medicaid eligibility group, including—

(i) Income standards;

(ii) Income exclusions and disregards; and

(iii) Methodologies for determining countable income and resources including State Medicaid policies and procedures for deeming of income.

(e) *Treatment of children found potentially eligible for Medicaid.* After applying the appropriate eligibility tests, the State must—

(1) Find ineligible for CHIP a child whose State-defined income or adjusted family income is below the applicable Medicaid income standard, or who is found potentially eligible for Medicaid under any other tests that the State has chosen to apply, unless a completed Medicaid application for that child is denied;

(2) Redetermine eligibility for a child found ineligible for CHIP through the screening process if—

(i) An application for Medicaid is completed for the child and the child is found ineligible for Medicaid; or

(ii) The child's circumstances change and another screening shows that the child is ineligible for Medicaid; and

(3) Provide that the child found ineligible for CHIP remains ineligible for CHIP unless the child's circumstances change even if the child refuses to apply for Medicaid or does not complete the Medicaid application process for any reason.

(f) *Treatment of child found potentially ineligible for Medicaid.* If the State uses a screening procedure other than a full determination of Medicaid eligibility under all possible groups, and the screening reveals that the child is ineligible for Medicaid, the State must provide the child's family the following in writing:

(1) A statement that, based on an initial review, the child does not appear eligible for Medicaid, but Medicaid eligibility can only be determined based on review of a full Medicaid application.

(2) Information about Medicaid benefits (if that information was not already furnished).

(3) Information about how and where to apply for Medicaid.

§ 457.360 Facilitating Medicaid enrollment.

(a) *State Plan requirement.* The State plan must include a description of reasonable procedures, including the procedures described in paragraphs (b) and (c) of this section, to ensure that children found through the screening process described in § 457.350 to be eligible for Medicaid actually apply for and are enrolled in Medicaid.

(b) The State must establish procedures through which the State initiates the Medicaid enrollment process for children found through eligibility screening to be potentially Medicaid eligible consistent with the following requirements:

(1) States that use a separate Medicaid application must either—

(i) Provide Medicaid application assistance at the CHIP office to the extent permitted under Medicaid law and regulations;

(ii) Send information obtained through the screening process to the appropriate Medicaid office or to Medicaid staff, to begin the Medicaid application process; or

(iii) Use other reasonable procedures designed to ensure application and enrollment in Medicaid.

(2) States that use a joint Medicaid and CHIP application must send the application to the appropriate Medicaid office or to Medicaid staff to make the Medicaid eligibility determination.

(c) *Informed application decisions.* A State must ensure that a decision by a family not to apply for Medicaid or not to complete the Medicaid application process represents an informed decision by providing full and complete information, in writing, about—

(1) The State's Medicaid program, including the benefits covered and, restrictions on cost-sharing; and

(2) The effect on eligibility for CHIP of neither applying for Medicaid nor completing the Medicaid application process.

§ 457.361 Application for and enrollment in CHIP.

(a) *Application assistance.* A State must afford families a reasonable opportunity to complete the application process and must offer assistance to families in understanding and completing applications and in obtaining any required documentation.

(b) *Notice of rights and responsibilities.* A State must inform applicants, in writing and orally if appropriate, about the eligibility requirements, their obligations under the program, and their right to file grievances and appeals in accordance § 457.985.

(c) *Notice of decision concerning eligibility.* The State must send each applicant a written notice of the decision on the application and, if eligibility is denied or terminated, the specific reason or reasons for the action and an explanation of the right to request a hearing within a reasonable time.

(d) *Timely determinations of eligibility.* The State must establish time standards for determining eligibility and inform the applicant of those standards. These standards may not exceed forty-five calendar days.

(1) In applying the time standards, the State must count each calendar day from the day of application to the day the agency mails notice of its decision to the applicant.

(2) The agency must determine eligibility within the standards except in unusual circumstances, for example—

(i) When the agency cannot reach a decision because the applicant delays or fails to take a required action; or

(ii) When there is an administrative or other emergency beyond the agency's control.

(3) The agency must not use the time standards—

(i) As a waiting period before determining eligibility; or

(ii) As a reason for denying eligibility (because it has not determined eligibility within the time standards).

(e) *Effective date of eligibility.* The State must specify in its approved state plan a method for determining the effective date of CHIP eligibility, which can be determined based on the date of application or through any other reasonable method.

§ 457.365 Grievances and appeals.

The State must provide enrollees in separate child health programs with an opportunity to file grievances and appeals for denial, suspension or termination of eligibility in accordance with § 457.985.

Subpart D—Coverage and Benefits: General Provisions

§ 457.401 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart interprets and implements—

(1) Section 2102(a)(7) of the Act, which requires that States make assurances relating to certain types of care;

(2) Section 2103 of the Act, which outlines coverage requirements for children's health insurance;

(3) Section 2109 of the Act, which describes the relation of the CHIP program to other laws;

(4) Section 2110(a) of the Act, which describes child health assistance; and

(5) Section 2110(c) of the Act, which contains definitions applicable to this subpart.

(b) *Scope.* This subpart sets forth requirements for health benefits coverage and child health assistance under a separate child health plan.

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program and do not apply to a Medicaid expansion program.

§ 457.402 Child health assistance and other definitions.

(a) *Child health assistance.* For the purpose of this subpart, the term "child health assistance" means payment for part or all of the cost of health benefits coverage provided to targeted low-income children for:

(1) Inpatient hospital services.

(2) Outpatient hospital services.

(3) Physician services and surgical services.

(4) Clinic services (including health center services) and other ambulatory health care services.

(5) Prescription drugs and biologicals and the administration of these drugs and biologicals, only if these drugs and biologicals are not furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

(6) Over-the-counter medications.

(7) Laboratory and radiological services.

(8) Prenatal care and prepregnancy family planning services and supplies.

(9) Inpatient mental health services, other than services described in paragraph (a)(17) of this section but including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services.

(10) Outpatient mental health services, other than services described in paragraph (a)(18) of this section but including services furnished in a State-operated mental hospital and including community-based services.

(11) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices and adaptive devices).

(12) Disposable medical supplies.

(13) Home and community-based health care services and related supportive services (such as home health nursing services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, training for family members and minor modification to the home.)

(14) Nursing care services (such as nurse practitioner services, nurse midwife services, advanced practice

nurse services, private duty nursing, pediatric nurse services and respiratory care services) in a home, school, or other setting.

(15) Abortion only if necessary to save the life of the mother or if the pregnancy is the result of rape or incest.

(16) Dental services.

(17) Inpatient substance abuse treatment services and residential substance abuse treatment services.

(18) Outpatient substance abuse treatment services.

(19) Case management services.

(20) Care coordination services.

(21) Physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders.

(22) Hospice care.

(23) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and only if the service is—

(i) Prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law;

(ii) Performed under the general supervision or at the direction of a physician; or

(iii) Furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

(24) Premiums for private health care insurance coverage.

(25) Medical transportation.

(26) Enabling services (such as transportation, translation, and outreach services) only if designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.

(27) Any other health care services or items specified by the Secretary and not excluded under this subchapter.

(b) *Emergency medical condition* means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

(1) Serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of a woman or her unborn child;

(2) Serious impairment of bodily function; or

(3) Serious dysfunction of any bodily organ or part.

(c) *Emergency services* means covered inpatient or outpatient services that are—

(1) Furnished by any provider qualified to furnish emergency services without requirement for prior authorization; and

(2) Needed to evaluate or stabilize an emergency medical condition.

(d) *Post-stabilization services* means medically necessary non-emergency services furnished to an enrollee after he or she is stabilized related to the emergency medical condition.

(e) *Health benefits coverage* means an arrangement under which enrolled individuals are protected from some or all liability for the cost of specified health care services.

§ 457.410 Health benefits coverage options.

(a) *Types of health benefits coverage.* States may choose to provide any of the following four types of health benefits coverage:

(1) Benchmark coverage in accordance with § 457.420.

(2) Benchmark-equivalent coverage in accordance with § 457.430.

(3) Existing comprehensive State-based coverage in accordance with § 457.440.

(4) Secretary-approved coverage in accordance with § 457.450.

(b) *Required coverage.* Regardless of the type of health benefits coverage described under paragraph (a) of this section that the State chooses to obtain, the State must obtain coverage for—

(1) Well-baby and well-child care;

(2) Immunizations in accordance with the recommendations of the Advisory Committee on Immunization Practices (ACIP); and

(3) Emergency services as defined in § 457.402(c).

§ 457.420 Benchmark health benefits coverage.

Benchmark coverage is health benefits coverage that is substantially equal to the health benefits coverage in one of the following benefit packages:

(a) *Federal Employees Health Benefit Plan (FEHBP).* The standard Blue Cross/Blue Shield preferred provider option service benefit plan that is described in and offered to Federal employees, under 5 U.S.C. 8903(1).

(b) *State employee plan.* A health benefits plan that is offered and generally available to State employees in the State.

(c) *Health maintenance organization (HMO) plan.* The health insurance coverage plan that is offered through an HMO (as defined in section 2791(b)(3) of the Public Health Service Act) and has the largest insured commercial, non-Medicaid enrollment in the State.

§ 457.430 Benchmark-equivalent health benefits coverage.

(a) *Aggregate actuarial value.* Benchmark-equivalent coverage must have an aggregate actuarial value determined in accordance with § 457.431 that is at least actuarially equivalent to the coverage under one of the benchmark packages specified in § 457.420.

(b) *Required services.* Benchmark-equivalent health benefits coverage must include coverage for the following categories of services:

(1) Inpatient and outpatient hospital services.

(2) Physicians' surgical and medical services.

(3) Laboratory and x-ray services.

(4) Well-baby and well-child care, including age-appropriate immunizations provided in accordance with the recommendations of the ACIP.

(c) *Additional services.* (1) In addition to the categories of services in paragraph (b) of this section, benchmark-equivalent coverage may include coverage for any additional services specified in § 457.402.

(2) If the benchmark coverage package used by the State for purposes of comparison in establishing the aggregate actuarial value of the benchmark-equivalent coverage package includes coverage for prescription drugs, mental health services, vision services or hearing services, the actuarial value of the coverage for each of these categories of service in the benchmark-equivalent coverage package must be at least 75 percent of the value of the coverage for such a category or service in the benchmark plan used for comparison by the State.

(3) If the benchmark coverage package does not cover one of the categories of services in paragraph (c)(2) of this section, then the benchmark-equivalent coverage package may, but is not required to, include coverage for that category of service.

§ 457.431 Actuarial report for benchmark-equivalent coverage.

(a) To obtain approval for benchmark-equivalent health benefits coverage described under § 457.430, the State must submit to HCFA an actuarial report that contains an actuarial opinion that the health benefits coverage meets the actuarial requirements under § 457.430. The report must also specify the benchmark coverage used for comparison.

(b) The actuarial report must state that it was prepared—

(1) By an individual who is a member of the American Academy of Actuaries;

(2) Using generally accepted actuarial principles and methodologies of the American Academy of Actuaries;

(3) Using a standardized set of utilization and price factors;

(4) Using a standardized population that is representative of privately insured children of the age of those expected to be covered under the State plan;

(5) Applying the same principles and factors in comparing the value of different coverage (or categories of services);

(6) Without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and

(7) Taking into account the ability of a State to reduce benefits by considering the increase in actuarial value of health benefits coverage offered under the State plan that results from the limitations on cost sharing under that coverage.

(c) The actuary who prepares the opinion must select and specify the standardized set and population to be used under paragraphs (b)(3) and (b)(4) of this section.

(d) The State must provide sufficient detail to explain the basis of the methodologies used to estimate the actuarial value or, if requested by HCFA, to replicate the State's result.

§ 457.440 Existing comprehensive State-based coverage.

(a) *General requirements.* Existing comprehensive State-based health benefits coverage must—

(1) Include coverage of a range of benefits;

(2) Be administered or overseen by the State and receive funds from the State;

(3) Be offered in the State of New York, Florida or Pennsylvania; and (4) Have been offered as of August 5, 1997.

(b) *Modifications.* A State may modify an existing comprehensive State-based coverage program described in paragraph (a) of this section if—

(1) The program continues to include a range of benefits; and

(2) The modification does not reduce the actuarial value of the coverage under the program below the lower of either—

(i) The actuarial value of the coverage under the program as of August 5, 1997; or

(ii) The actuarial value of a benchmark benefit package as described in § 457.430 evaluated at the time the modification is requested.

§ 457.450 Secretary-approved coverage.

A State may provide health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population of targeted low-income children covered under the program. Secretary-approved coverage, for which no actuarial analysis is required, may include—

(a) Coverage that is the same as the coverage provided under the Medicaid State plan;

(b) Comprehensive coverage offered by the State under a Medicaid demonstration project approved by the Secretary under section 1115 of the Act that either includes coverage for the full Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit or that the State has extended to the entire Medicaid population in the State;

(c) Coverage that includes benchmark coverage, as specified in § 457.420, plus any additional coverage; or

(d) Coverage, including coverage under an employer-sponsored group health plan purchased by the State, that the State demonstrates to be substantially equivalent to benchmark coverage, as specified in § 457.420, through use of a benefit-by-benefit comparison of the coverage demonstrating that each benefit meets or exceeds the corresponding benefit in the benchmark.

§ 457.470 Prohibited coverage.

A State is not required to provide health benefits coverage under the plan for an item or service for which payment is prohibited under title XXI of the Act even if any benchmark package includes coverage for that item or service.

§ 457.475 Limitations on coverage: Abortions.

(a) *General rule.* FFP under title XXI of the Act is not available in expenditures for an abortion, or in expenditures for the purchase of health benefits coverage that includes coverage of abortion services unless the abortion services meet the conditions specified in paragraphs (b)(1) and (b)(2) of this section.

(b) *Exceptions.* (1) *Life of mother.* FFP is available in expenditures for abortion services when a physician has found that the abortion is necessary to save the life of the mother.

(2) *Rape or incest.* FFP is available in expenditures for abortion services performed to terminate a pregnancy resulting from an act of rape or incest.

(c) *Partial Federal funding prohibited.* (1) FFP is not available to a State for any amount expended under the title XXI plan to assist in the purchase, in whole or in part, of health benefits coverage that includes coverage of abortions other than those specified in paragraph (b) of this section.

(2) If a State wishes to have managed care entities provide abortions in addition to those specified in paragraph (b) of this section, those abortions must be provided under a separate contract using non-Federal funds. A State may not set aside a portion of the capitated rate to be paid with State-only funds, or append riders, attachments or addenda to existing contracts to separate the additional abortion services from the other services covered by the contract.

(3) Nothing in this section affects the expenditure by a State, locality, or private person or entity of State, local, or private funds (other than those expended under the State plan) for any abortion services or for health benefits coverage that includes coverage of abortion services.

§ 457.480 Preexisting condition exclusions and relation to other laws.

(a) *Preexisting condition exclusions.* (1) Subject to paragraph (a)(2) of this section, the State child health insurance plan may not permit the imposition of any pre-existing condition exclusion for covered benefits under the plan.

(2) If the State obtains health benefits coverage through payment for, or a contract with, a group health plan or group health insurance coverage, the State may permit the imposition of a pre-existing condition exclusion but only to the extent that the exclusion is permitted under the applicable provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (ERISA) and title XXVII of the Public Health Service Act.

(b) *Relation of title XXI to other laws.* (1) *ERISA.* Nothing in this title affects or modifies section 514 of ERISA with respect to a group health plan as defined by section 2791(a)(1) of the Public Health Service Act.

(2) *Health Insurance Portability and Accountability Act (HIPAA).* Health benefits coverage provided under a State plan and coverage provided as a cost-effective alternative, as described in subpart J of this part, is creditable coverage for purposes of part 7 of subtitle B of title II ERISA, title XXVII of the Public Health Service Act, and subtitle K of the Internal Revenue Code of 1986.

(3) *Mental Health Parity Act (MHPA).* A State plan under this subpart must comply with the requirements of the MHPA of 1996 regarding parity in the application of annual and lifetime dollar limits to mental health benefits in accordance with 45 CFR 146.136.

(4) *Newborns and Mothers Health Protection Act (NMHPA).* A State plan under this subpart must comply with the requirements of the NMHPA of 1996

regarding requirements for minimum hospital stays for mothers and newborns in accordance with 45 CFR 146.130 and 148.170.

§ 457.490 Delivery and utilization control systems.

A State that elects to obtain health benefits coverage through a separate child health program must include in its State plan a description of the child health assistance provided under the plan for targeted low-income children, including a description of the proposed methods of delivery and utilization control systems. A State must—

(a) Describe the methods of delivery of child health assistance including the choice of financing and the methods for assuring delivery of the insurance products to the children, including any variations; and

(b) Describe utilization controls systems designed to ensure that children use only appropriate and medically necessary health care approved by the State or its subcontractor.

§ 457.495 Grievances and appeals.

States must provide enrollees in a separate child health program the right to file grievances or appeals for reduction or denial of services as specified in § 457.985.

Subpart E—State Plan Requirements: Beneficiary Financial Responsibilities

§ 457.500 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart implements section 2103(e) of the Act, which sets forth provisions regarding State plan requirements for cost sharing limitations and options.

(b) *Scope.* This subpart consists of provisions relating to the imposition under a separate child health program of cost sharing charges including enrollment fees, premiums, deductibles, coinsurance, copayments, and similar cost sharing charges.

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program and, with respect to the mandatory cost sharing waiver for AI/AN children only, a Medicaid expansion program.

§ 457.505 General State plan requirements.

The State plan must include a description of —

(a) The amount of premiums, deductibles, coinsurance, copayments, and other cost sharing imposed;

(b) The methods, including the public schedule, the State uses to inform beneficiaries, applicants, providers and the general public of the cost sharing charges, the cumulative cost sharing maximum, and any changes to these amounts; and

(c) When States purchase coverage through, or provide premium assistance for, employer sponsored group health plans—

(1) The procedures the State uses to ensure that beneficiaries are not charged copayments, coinsurance, deductibles or similar fees on well-baby and well-child care as defined in § 457.520. A procedure that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable procedure.

(2) The procedures to ensure that AI/AN children are not charged premiums, copayments, coinsurance, deductibles, or similar fees as required in § 457.535. A procedure that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable procedure.

(3) The procedures to ensure that beneficiaries are not charged cost sharing in excess of the cumulative cost sharing maximum specified in § 457.555. A procedure that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable procedure.

§ 457.510 Premiums, enrollment fees, or similar fees: State plan requirements.

When a State imposes premiums, enrollment fees, or similar fees on CHIP beneficiaries, the State plan must describe—

(a) The amount of the premium, enrollment fee or similar fee imposed on beneficiaries;

(b) The time period for which the charge is imposed;

(c) The group or groups that are subject to the premium, enrollment fees, or similar charges;

(d) The consequences for a beneficiary who does not pay a charge; and

(e) A methodology to ensure that total cost sharing liability for a family does not exceed the cumulative cost sharing maximum specified in § 457.560. A methodology that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable methodology.

§ 457.515 Co-payments, coinsurance, deductibles, or similar cost sharing charges: State plan requirements.

To impose copayments, coinsurance, deductibles or similar charges on beneficiaries, the State plan must describe—

(a) The service for which the charge may be imposed;

(b) The amount of the charge;

(c) The group or groups that may be subject to the cost sharing charge;

(d) The consequences for a beneficiary who does not pay a charge; and

(e) The methodology used to ensure that total cost sharing liability for a family does not exceed the cumulative cost sharing maximum specified in § 457.560. A methodology that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable methodology.

(f) An assurance that—

(1) Enrollees will not be held liable for additional costs, beyond the copayment amounts specified in the State plan, that are associated with emergency services provided at a facility that is not a participating provider in the enrollee's managed care network; and

(2) The State will not charge different copayment amounts for emergency services, based upon the location (in network or out of network) at which those services were provided.

§ 457.520 Cost sharing for well-baby and well-child care.

(a) The State plan may not impose copayments, deductibles, coinsurance or other cost sharing with respect to well-baby and well-child care services as defined by the State in either the managed care delivery setting or the fee-for-service delivery setting.

(b) For the purposes of this subpart, any of the following services covered under the State plan are well-baby and well-child care services:

(1) All healthy newborn inpatient physician visits, including routine screening whether provided on an inpatient or outpatient basis.

(2) Routine physical examinations.

(3) Laboratory tests.

(4) Immunizations and related office visits as recommended and updated in the American Academy of Pediatrics (AAP) "Guidelines for Health Supervision III" and described in "Bright Futures: Guidelines for Health Supervision of Infants, Children and Adolescents."

(5) Routine preventive and diagnostic dental services (such as oral examinations, prophylaxis and topical fluoride applications, sealants, and x-rays) as described in the most recent guidelines issued by the American Academy of Pediatric Dentistry (AAPD).

§ 457.525 Public schedule.

(a) The State must make available to the groups in paragraph (b) of this section a public schedule that contains the following information:

(1) Current cost sharing charges.

(2) Beneficiary groups subject to the charges.

(3) Cumulative cost sharing maximums.

(4) The consequences for a beneficiary who does not pay a charge.

(b) The State must make the public schedule available to the following groups:

(1) CHIP beneficiaries, at the time of enrollment, and when cost sharing charges and cumulative cost sharing maximums are revised.

(2) CHIP applicants, at the time of application.

(3) All CHIP participating providers.

(4) The general public.

§ 457.530 General cost sharing protection for lower income children.

The State may vary premiums, deductibles, coinsurance, copayments or any other cost sharing based on family income only in a manner that does not favor children from families with higher income over children from families with lower income.

§ 457.535 Cost sharing protection to ensure enrollment of American Indians/Alaska Natives.

States must exclude from premiums, deductibles, coinsurance, copayments or any other cost sharing charges those children who are American Indians and Alaska Natives, members of a Federally recognized tribe, and enrolled in a separate child health program.

§ 457.540 Cost sharing charges for children in families at or below 150 percent of the Federal poverty line (FPL).

The State may impose premiums, enrollment fees, deductibles, copayments, coinsurance, cost sharing and other similar charges for children whose family income is at or below 150 percent of the FPL as long as—

(a) Aggregate monthly enrollment fees, premiums, or similar charges imposed on a family are less than or equal to the maximum monthly charges described in § 447.52 of this chapter for a Medicaid eligible family of the same size and income;

(b) For children whose family income is at or below 100 percent of the FPL, any copayments, coinsurance, deductibles or similar charges are equal to or less than the amounts permitted under § 447.54 of this chapter;

(c) For children whose family income is 101 percent to 150 percent of the FPL, any copayments, coinsurance, deductibles or similar charges are equal to or less than the amounts permitted under § 457.555;

(d) The frequency of cost sharing charges is consistent with § 457.550; and

(e) Aggregate annual cost sharing of all types, with respect to all targeted low-income children in a family, does not exceed the maximum permitted under § 457.560(d).

§ 457.545 Cost sharing for children in families above 150 percent of the FPL.

The State may impose premiums, enrollment fees, copayments, deductibles, coinsurance, cost sharing and similar charges on children in families above 150 percent of the FPL, as long as aggregate annual cost sharing, of all types, with respect to all targeted low-income children in a family, does not exceed the maximum permitted under § 457.555(c).

§ 457.550 Restriction on the frequency of cost sharing charges on targeted low-income children in families at or below 150 percent of the FPL.

(a) The State plan may not impose more than one type of cost sharing charge (deductible, copayment, or coinsurance) on a service.

(b) The State plan may not impose more than one copayment for multiple services furnished during one office visit.

(c) For targeted low-income children whose family income is from 101 to 150 percent of the FPL, a standard copayment amount for any service may be determined by applying the maximum copayment amounts specified in paragraphs (b) and (c) of this section to the State's average or typical payment for that service.

§ 457.555 Maximum allowable cost sharing charges on targeted low-income children in families with income from 101 to 150 percent of the FPL.

(a) *Non-institutional services.* For targeted low-income children whose family income is from 101 to 150 percent of the FPL, the State plan must provide that for non-institutional services—

(1) Any copayment or similar charge the State imposes under a fee-for-service delivery system does not exceed the following amounts:

Payment for the service	Maximum amount chargeable to beneficiary
$15.00 or less	$1.00
$15.01 to $40	2.00
$40.01 to $80	3.00
$80.01 or more	5.00

(2) Any copayment that the State imposes under a managed care organization may not exceed $5.00 per visit;

(3) Any coinsurance rate the State imposes may not exceed 5 percent of the payment the State directly or through contract makes for the service; and

(4) Any deductible the State imposes may not exceed $3.00 per month, per family for each period of CHIP eligibility.

(b) *Institutional services.* For targeted low-income children whose family income is from 101 to 150 percent of the FPL, the maximum deductible, coinsurance or copayment charge for each institutional admission may not exceed 50 percent of the payment the State makes directly or through contract for the first day of care in the institution.

(c) *Nonemergency use of the emergency room.* For targeted low-income children whose family income is from 101 to 150 percent of the FPL, the State may charge up to twice the charge for non-institutional services, up to a maximum amount of $10.00, for services furnished in a hospital emergency room if those services do not result from an emergency medical condition.

(d) *Emergency room services provided outside of the enrollee's managed care network.* States must assure that enrollees will not be held liable for additional costs associated with emergency services provided at a facility that is not a participating provider in the enrollee's managed care network beyond the specified co-payment amount.

§ 457.560 Cumulative cost sharing maximum.

(a) *Legal obligation* means liability to pay amounts a provider actually charges and any other amounts for which payment may be required under applicable State law for covered services to eligible children, even if payment is never actually made.

(b) *General rules.* (1) The State plan may set cumulative cost sharing maximum levels lower than the maximum levels specified in paragraphs (c) and (d) of this section, but may not set maximum levels in excess of the specified levels.

(2) A State must count cost sharing amounts that the family has a legal obligation to pay in computing whether a family has met the cumulative cost sharing maximum.

(c) *Children with family incomes above 150 percent of the FPL.* For targeted low-income children with family income above 150 percent of the FPL, the State plan may not impose premiums, enrollment fees, copayments, coinsurance, deductibles, or similar cost sharing charges that, in the aggregate, exceed 5 percent of total family income for a year (or 12 month eligibility period).

(d) *Children with family incomes at or below 150 percent of the FPL.* For targeted low-income children with family income at or below 150 percent of the FPL, the plan may not impose premiums, deductibles, copayments, coinsurance, enrollment fees, or similar cost sharing charges that, in the aggregate, exceed 2.5 percent of total family income for the year.

§ 457.565 Grievances and appeals.

The State must provide enrollees in a separate child health program the right to file grievances and appeals as specified in § 457.985 for disenrollment from the program due to failure to pay cost sharing.

§ 457.570 Disenrollment protections.

The State must establish a process that gives beneficiaries reasonable notice of and an opportunity to pay past due premiums, copayments, coinsurance, deductibles or similar fees prior to disenrollment.

Subpart F—[Reserved]

Subpart G—Strategic Planning, Reporting, and Evaluation

§ 457.700 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart implements—

(1) Sections 2102(a)(7)(A) and (B) of the Act, which relate to assurances of quality and appropriateness of care, and access to covered services;

(2) Sections 2107(a), (b) and (d) of the Act, which set forth requirements for strategic planning, reports, and program budgets; and

(3) Section 2108 of the Act, which sets forth provisions regarding annual reports and evaluation.

(b) *Scope.* This subpart sets forth requirements for strategic planning, monitoring, reporting and evaluation under title XXI of the Act.

(c) *Applicability.* The requirements of this subpart apply to separate child health programs and Medicaid expansion programs.

§ 457.710 State plan requirements: Strategic objectives and performance goals.

(a) *Plan description.* A State plan must include a description of—

(1) The strategic objectives as described in paragraph (b) of this section;

(2) The performance goals as described in paragraph (c) of this section; and

(3) The performance measurements, as described in paragraph (d) of this section, that the State has established for providing child health assistance to targeted low-income children under the plan and otherwise for maximizing health benefits coverage for other low-income children and children generally in the State.

(b) *Strategic objectives.* The State plan must identify specific strategic objectives relating to increasing the extent of creditable health coverage among targeted low-income children and other low-income children.

(c) *Performance goals.* The State plan must specify one or more performance goals for each strategic objective identified.

(d) *Performance measurements.* The State plan must describe how performance under the plan is—

(1) Measured through objective, independently verifiable means; and

(2) Compared against performance goals.

§ 457.720 State plan requirement: State assurance regarding data collection, records, and reports.

A State plan must include an assurance that the State collects data, maintains records, and furnishes reports to the Secretary, at the times and in the standardized format the Secretary may require to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under title XXI of the Act.

§ 457.730 State plan requirement: State annual reports and evaluation.

A State plan must include a description of the State's strategy for the submission of the annual reports required under § 457.750, and the evaluation required by § 457.760.

§ 457.735 State plan requirement: State assurance of the quality and appropriateness of care.

(a) A State plan must include a description of the methods that a State uses for assuring the quality and appropriateness of care provided under the plan, particularly with respect to—

(1) Well-baby care, well-child care, well-adolescent care and childhood and adolescent immunizations; and

(2) Access to covered services, including covered emergency services and covered post-stabilization services as defined at § 457.402.

(b) States must assure appropriate and timely procedures to monitor and treat enrollees with complex and serious medical conditions, including access to specialists.

§ 457.740 State expenditures and statistical reports.

(a) *Required quarterly reports.* A State must submit a report to HCFA that contains quarterly program expenditures and statistical data no later than 30 days after the end of each quarter of the Federal fiscal year. Territories are excepted from the definition of "State" for the purposes of quarterly reporting. A State must collect required data beginning on the date of implementation of the approved State plan. The quarterly reports must include data on—

(1) Program expenditures; and

(2) The number of children under 19 years of age who are enrolled in the title XIX Medicaid program, the separate child health program, and in the Medicaid-expansion program, as appropriate, by the following categories:

(i) Age (under 1 year of age, 1 through 5 years of age, 6 through 12 years of age, and 13 through 18 years of age).

(ii) Service delivery system (managed care, fee-for-service, and primary care case management).

(iii) Family income as a percentage of the Federal poverty level as described in paragraph (b) of this section.

(b) *Reportable family income categories.* (1) A State that does not impose cost sharing or a State that only imposes cost-sharing based on a fixed percentage of income must report by two family income categories:

(i) At or below 150 percent of FPL.

(ii) Over 150 percent of FPL.

(2) A State that imposes cost sharing at one or more poverty levels must report by poverty level categories that match the poverty level categories used for purposes of cost sharing in the separate child health program and in the Medicaid-expansion program.

(c) *Required unduplicated counts.* Thirty days after the end of the Federal fiscal year, the State must submit an unduplicated count for the Federal fiscal year of children who are enrolled in the Medicaid program, the separate child health program, and the Medicaid-expansion program, as appropriate, by age, service delivery, and poverty level categories described in paragraphs (a) and (b) of this section.

§ 457.750 Annual report.

(a) *Report required for each Federal fiscal year.* A State must report to HCFA by January 1 following the end of each Federal fiscal year, on the results of the State's assessment of the operation of the State plan.

(b) *Contents of annual report.* In the annual report required under paragraph (a) of this section, a State must—

(1) Describe the State's progress in reducing the number of uncovered, low-income children and in meeting other strategic objectives and performance goals identified in the State plan;

(2) Report on the effectiveness of the State's policies for discouraging the

substitution of public coverage for private coverage;

(3) Identify successes and barriers in State plan design and implementation, and the approaches the State is considering to overcome these barriers;

(4) Describe the State's progress in addressing any specific issues (such as outreach) that the State plan agreed to periodically monitor and assess;

(5) Provide an updated budget for the current Federal fiscal year with details on the planned use of funds and any changes in the sources of the non-Federal share of State plan expenditures; and

(6) Identify the total State expenditures for family coverage and total number of children and adults covered by family coverage during the preceding Federal fiscal year.

(c) *Methodology for estimate of number of uninsured, low-income children.* (1) To report on the progress made in reducing the number of uncovered, low-income children as required in paragraph (b) of this section, a State must choose a methodology to establish an initial baseline estimate of the number of low-income children who are uninsured in the State and to provide an annual estimate of changes in this number at two poverty levels, 200 percent FPL and at the current upper eligibility level of the State's program. A State may base the estimate on data from—

(i) The March supplement to the Current Population Survey (CPS);

(ii) A State-specific survey;

(iii) A statistically adjusted CPS; or

(iv) Another appropriate source.

(2) A State must submit a description of the methodology used to develop the initial baseline estimate and the rationale for its use unless the State bases the estimate on data from the March supplement to the CPS.

§ 457.760 State evaluations.

By March 31, 2000, a State that has an approved State plan must submit to HCFA a report on the operation of its Medicaid-expansion program, separate child health program, or combination program. The report must provide an evaluation of the State plan that includes the following:

(a) An assessment of the effectiveness of the State plan in increasing the number of children with creditable health coverage.

(b) A report on progress made in meeting other strategic objectives and performance goals identified by the State plan.

(c) A description and analysis of the effectiveness of elements of the State plan, including—

(1) The characteristics of the children and families assisted under the State plan, including age of the children, family income, and the assisted children's access to coverage or coverage by other health insurance prior to the State plan and after eligibility for coverage under the State plan ends;

(2) The quality of health coverage provided, including the results or the plans to assess the results of any monitoring or other methods used to assure quality and appropriateness of care;

(3) The amount and level of assistance (including payment of part or all of any premiums, copayments, or enrollment fees) provided by the State;

(4) The service area of the State program;

(5) The time limits for coverage of a child under the program;

(6) The extent of substitution of public coverage for private coverage and the State's effectiveness in designing policies that discourage substitution.

(7) The State's choice of health benefits coverage, including the types of benefits provided and the scope and range of these benefits, and other methods used for providing child health assistance; and

(8) The sources of non-Federal funding used in the program.

(d) A State that subsidizes children's coverage through employer-sponsored group health plans must provide an assessment of the effectiveness of its substitution prevention strategies.

(e) An assessment of the effectiveness of other public and private programs in the State in increasing the availability of affordable quality individual and family health insurance for children.

(f) A review and assessment of State activities to coordinate the program with other public and private programs providing health care and health care financing, including Medicaid and maternal and child health services.

(g) An analysis of changes and trends in the State that affect the provision of accessible, affordable, quality health insurance and health care to children.

(h) A description of any plans the State has for improving the availability of health insurance and health care for children.

(i) Recommendations for improving the program.

Subpart H—Substitution of Coverage

§ 457.800 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart interprets and implements section 2102(b)(3)(C) of the Act, which provides that the State plan must include a description of procedures the State uses to ensure that insurance provided under the State plan does not substitute for coverage under group health plans.

(b) *Scope.* This subpart sets forth State plan requirements relating to substitution of coverage in general and specific requirements relating to substitution of coverage under employer-sponsored group health plans.

(c) *Applicability.* The requirements of this subpart apply to separate child health programs.

§ 457.805 State plan requirements: Private coverage substitution.

The State plan must include a description of reasonable procedures to ensure that coverage provided under the plan does not substitute for coverage under group health plans as defined at § 457.10.

§ 457.810 Premium assistance for employer-sponsored group health plans: Required protections against substitution.

If a State obtains health benefits coverage through employer-sponsored group health plans, the State must provide the protections against substitution of CHIP coverage for private coverage specified in this section. States must describe these provisions in their State plan, annual reports, and State evaluations.

(a) *Minimum period without employer-sponsored group health coverage.* (1) As a condition of eligibility for CHIP payment for employer-sponsored group health coverage, a child must not have had employer-sponsored group health coverage for a period of at least 6 months and not more than 12 months prior to application for CHIP.

(2) States may permit exceptions to the minimum period without employer-sponsored group health coverage if a child's coverage during the minimum period was involuntarily terminated by an employer.

(3) A newborn is not required to have a period without insurance as a condition of eligibility for CHIP payment for employer-sponsored group health coverage.

(b) *Employer contribution.* As a condition of eligibility for CHIP payment for employer-sponsored group health coverage—

(1) The employee who is eligible for the coverage must apply for the full premium contribution available from the employer; and

(2) The employer must make a substantial contribution to the cost of family coverage equal to—

(i) 60 percent of the total cost; or

(ii) A lower amount if the State can show that the average contribution in the State is lower than 60 percent.

(c) *Cost effectiveness.* The State's payment for coverage for a child under an employer-sponsored group health plan must not be greater than the cost of other CHIP coverage.

(d) *State evaluation.* The State must evaluate the amount of substitution that occurs as a result of payments for employer sponsored group health plans and the effect of those payments on access to coverage.

Subpart I—Program Integrity and Beneficiary Protections

§ 457.900 Basis, scope and applicability.

(a) *Statutory basis.* This subpart interprets and implements—

(1) Section 2101(a) of the Act, which provides that the purpose of title XXI of the Act is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner; and

(2) Section 2107(e) of the Act, which provides that certain title XIX and title XI provisions, including the following, apply to States under title XXI in the same manner as they apply to a State under title XIX:

(i) Section 1902(a)(4)(C) of the Act, relating to conflict of interest standards.

(ii) Paragraphs (2), (16), and (17), of section 1903(i) of the Act, relating to limitations on payment.

(iii) Section 1903(w) of the Act, relating to limitations on provider taxes and donations.

(iv) Section 1124 of the Act, relating to disclosure of ownership and related information.

(v) Section 1126 of the Act, relating to disclosure of information about certain convicted individuals.

(vi) Section 1128 of the Act, relating to exclusions.

(vii) Section 1128A of the Act, relating to civil monetary penalties.

(viii) Section 1128B(d) of the Act, relating to criminal penalties for certain additional charges.

(ix) Section 1132 of the Act, relating to periods within which claims must be filed.

(b) *Scope.* This subpart sets forth requirements, options, and standards for program integrity assurances that must be included in the approved State plan.

(c) *Applicability.* This subpart only applies to States that implement separate child health programs. States that implement Medicaid expansion programs are subject to the program integrity rules and requirements specified under title XIX of the Act.

§ 457.902 Definitions.

As used in this subpart—

Contractor means any individual or entity that enters into a contract, or a subcontract to provide, arrange, or pay for services under title XXI of the Act. This definition includes, but is not limited to, managed care organizations, prepaid health plans, primary care case managers, and fee-for-service providers and insurers.

Fee-for-service entity means any entity that furnishes services, under the program on a fee-for-service basis, including health insurance services.

Grievance means a written communication, submitted by or on behalf of an enrollee in a child health program, expressing dissatisfaction with any aspect of a State, a managed care or fee-for-service entity, or a provider's operations, activities or behavior that pertains to—

(1) The availability, delivery, or quality of health care services, including utilization review decisions that are adverse to the enrollee;

(2) Payment, treatment, or reimbursement of claims for health care services; or

(3) Issues unresolved through the complaint process established in accordance with § 457.985(e).

Managed care entity (MCE) means an entity that enters into a contract to provide services in a managed care delivery system, including but not limited to managed care organizations, prepaid health plans, and primary care case managers.

State program integrity unit means a part of an organization designated by the State (at its option) to conduct program integrity activities for separate child health programs.

§ 457.910 State program administration.

The State's child health program must include—

(a) Methods of administration that the Secretary finds necessary for the proper and efficient operation of the separate child health program; and

(b) Safeguards necessary to ensure that—

(1) Eligibility will be determined appropriately in accordance with subpart C of this part; and

(2) Services will be provided in a manner consistent with administrative simplification and with the provisions of subpart D of this part.

§ 457.915 Fraud detection and investigation.

(a) *State program requirements.* The State must establish procedures for ensuring program integrity and detecting fraudulent or abusive activity. These procedures must include the following:

(1) Methods and criteria for identifying suspected fraud and abuse cases.

(2) Methods for investigating fraud and abuse cases that—

(i) Do not infringe on legal rights of persons involved; and

(ii) Afford due process of law.

(b) *State program integrity unit.* The State may establish an administrative agency responsible for monitoring and maintaining the integrity of the separate child health program (hereafter referred to as the "State program integrity unit").

(c) *Program coordination.* The State must develop and implement procedures for referring suspected fraud and abuse cases to the State program integrity unit and to law enforcement officials. Law enforcement officials include, but are not limited to the—

(1) U.S. Department of Health and Human Services Office of Inspector General (OIG);

(2) U.S. Attorney's Office, Department of Justice (DOJ);

(3) Federal Bureau of Investigation (FBI); and

(4) State Attorney General's office.

§ 457.920 Accessible means to report fraud and abuse.

The State agency must establish and provide access to a mechanism for communication between the State and the public about potentially fraudulent and abusive practices by and among contractors, beneficiaries, and other entities. This communication mechanism may include a toll-free telephone number.

§ 457.925 Preliminary investigation.

If the State agency receives a complaint of fraud or abuse from any source or identifies any questionable practices, the State agency must conduct a preliminary investigation or take otherwise appropriate action to determine whether there is sufficient basis to warrant a full investigation.

§ 457.930 Full investigation, resolution, and reporting requirements.

The State must establish and implement effective procedures for investigating and resolving suspected and apparent instances of fraud and abuse. Once the State determines that a full investigation is warranted, the State must implement procedures including, but not limited to the following:

(a) Cooperate with and refer potential fraud and abuse cases to the State program integrity unit, if such a unit exists, when requested to do so by that unit.

(b) Conduct a full investigation; or

(c) Refer the fraud and abuse case to appropriate law enforcement officials.

§ 457.935 Sanctions and related penalties.

(a) A State may not make payments for any item or service furnished, ordered, or prescribed under a separate child health program to any contractor who has been excluded from participating in the Medicare and Medicaid programs.

(b) The following provisions and their corresponding regulations apply to a State under title XXI of the Act, in the same manner as these provisions and regulations apply to a State under title XIX:

(1) Part 455, subpart B of this chapter.

(2) Section 1124 of the Act pertaining to disclosure of ownership and related information.

(3) Section 1126 of the Act pertaining to disclosure by institutions, organizations, and agencies of owners and certain other individuals who have been convicted of certain offenses.

(4) Section 1128 of the Act pertaining to exclusions.

(5) Section 1128A of the Act pertaining to civil monetary penalties.

(6) Section 1128B of the Act pertaining to criminal penalties for acts involving Federal health care programs.

(7) Section 1128E of the Act pertaining to the reporting of final adverse actions on liability findings made against health care providers, suppliers, and practitioners under the health care fraud and abuse data collection program.

§ 457.940 Procurement standards.

(a) A State must submit to HCFA a written assurance that title XXI services will be provided in an effective and efficient manner. The State must submit the assurance—

(1) With the initial State plan; or

(2) For States with approved plans, with the first request to amend the approved plan.

(b) A State must provide child health assistance in an effective and efficient manner by—

(1) Providing for free and open competition, to the maximum extent possible, in the bidding of all procurement contracts for coverage or other services in accordance with the procurement requirements of 45 CFR 74.43; or

(2) Basing title XXI payment rates on public and/or private payment rates for comparable services.

(c) A State may establish higher rates than permitted under paragraph (a) of this section if such rates are necessary to ensure sufficient provider participation or to enroll providers who demonstrate exceptional efficiency or quality in the provision of services.

(d) All contracts under this part must include provisions that define a sound and complete procurement contract, as required by 45 CFR part 74.

(e) The State must provide to HCFA, if requested, a description of the manner in which rates were developed in accordance with the requirements of paragraphs (a) or (b) of this section. HCFA may request this description either when a State—

(1) Determines its rates initially;

(2) Updates its rates; or

(3) Changes its reimbursement methodology.

§ 457.945 Certification for contracts and proposals.

Entities that contract with the State under a separate child health program must certify the accuracy, completeness, and truthfulness of information in contracts and proposals, including information on subcontractors, and other related documents as specified by the State.

§ 457.950 Contract and payment requirements including certification of payment-related information.

(a) *Managed care entity.* A State that makes payments to a managed care entity under a separate child health program, based on data submitted, must ensure that its contract requires the managed care entity to provide, under penalty of perjury —

(1) Enrollment information and other information required by the State;

(2) An attestation to the accuracy, completeness, and truthfulness of claims and payment data, upon penalty of perjury;

(3) Access for the State to enrollee health claims data and payment data, as determined by the State in conformance with the appropriate privacy protections in the State; and

(4) A guarantee that managed care entities will not avoid costs for services covered in its contract by referring beneficiaries to publicly supported health care resources.

(b) *Fee-for-service entities.* A State that makes payments to fee-for-service entities under a separate child health program must—

(1) Establish procedures to ensure and attest that information on claim forms is truthful, accurate, and complete; and

(2) Require, as a condition of participation, that fee-for-service entities provide the State with access to enrollee health claims data and claims payment data as determined necessary by the State.

§ 457.955 Conditions necessary to contract as a managed care entity (MCE).

(a) The State must assure that any entity seeking to contract as an MCE under a separate child health program has administrative and management arrangements or procedures designed to safeguard against fraud and abuse.

(b) Unless otherwise provided for by State law, the State must ensure the arrangements or procedures required in paragraph (a) of this section —

(1) Enforce MCE compliance with all applicable Federal and State standards; and

(2) Include a mechanism for the MCE to report to the State, and to HCFA and/or the Office of Inspector General (OIG) information on violations of law by subcontractors or enrollees of an MCE and other individuals.

(c) With respect to enrollees, the reporting requirement in paragraph (b) of this section applies only to information on violations of law that pertain to enrollment in the plan, or the provision of, or payment for, health services.

(d) The State may inspect, evaluate, and audit MCEs at any time, as necessary, in instances where the State determines that there is a reasonable possibility of fraudulent and abusive activity.

§ 457.960 Reporting changes in eligibility and redetermining eligibility.

If the State requires reporting of changes in circumstances that may affect their eligibility for child health assistance, the State must:

(a) Establish procedures to ensure that beneficiaries make timely and accurate reports of any changes; and

(b) Promptly redetermine eligibility when the State has information about these changes.

§ 457.965 Documentation.

The State must include in each applicant's record facts to support the State's determination of the applicant's eligibility for CHIP.

§ 457.970 Eligibility and income verification.

(a) The State must establish procedures to ensure —

(1) The integrity of the eligibility determination process; and

(2) Compliance with verification and documentation requirements applicable to separate child health programs under other Federal laws and regulations.

(b) A State may use its discretion in establishing reasonable income and eligibility verification mechanisms.

(c) The State may choose to use the income and eligibility verification system requirements set forth in section 1137 of title XI of the Act at §§ 435.940 through 435.953 of this chapter.

(d) The State may terminate the eligibility of an applicant or beneficiary for "good cause".

(1) For purposes of this section, "good cause" exists if any information or other action makes the beneficiary fail to meet the requirements of income and eligibility verification or documentation as reasonably determined by the State.

(2) Beneficiaries terminated for good cause must be given notice of the termination decision that sets forth the reasons for termination and provides a reasonable opportunity to appeal the termination decision as specified in § 457.985.

§ 457.975 Redetermination intervals in cases of suspected enrollment fraud.

If a State suspects enrollment fraud, the State may, at its own discretion, perform eligibility redetermination at any frequency interval that is considered by the State to be in the best interest of the program.

§ 457.980 Verification of enrollment and provider services received.

(a) The State must establish methodologies to verify whether beneficiaries have received services for which providers are billed.

(b) The State must establish and maintain systems to identify, report, and verify those enrolled children that meet requirements of section 2105(a) of the Act, where enhanced Federal medical assistance percentage computations apply.

§ 457.985 Enrollee rights to file grievances and appeals.

(a) The State and its participating providers must give applicants and enrollees written notice of their right to file grievances and appeals in cases where the State or its contractors take actions to:

(1) Deny, suspend or terminate eligibility;

(2) Disenroll for failure to pay cost-sharing; or

(3) Reduce or deny services provided for in the benefit package.

(b) The State must establish and maintain written procedures for addressing grievances and appeal requests, including processes for internal review by the contractor and external review by an independent entity or the State agency, that comply with State-specific grievance and appeal requirements currently in effect for health insurance issuers (as defined in section 2791(b) of the Public Health Service Act) in the State. Such procedures must include a guarantee that resolution of grievances and appeal requests will be completed within a reasonable amount of time.

(c) The State may elect in its State plan to use the rules, systems, and procedures used in the Medicaid program such as—

(1) Part 431, subpart E of this chapter regarding fair hearings for Medicaid applicants and recipients; and

(2) Medicaid appeal procedures for Medicaid managed care entities.

(d) The State and its contractors must have in place a meaningful process for reviewing and resolving complaints that are submitted outside of the grievance and appeals procedures as part of the quality assurance process.

(e) The State must guarantee in all contracts for coverage and services, beneficiary access to information related to actions which could be subject to grievance or appeal in accordance with:

(1) Section 422.206 of this chapter, which prohibits interference with health care professionals' advice to enrollees; and

(2) Sections 422.208 and 422.210(a) and (b) of this chapter, related to limitations on physician incentives, or compensation arrangements that have the effect of reducing or limiting services, and information disclosure requirements respectively.

§ 457.990 Privacy protections.

(a) The State plan must assure that the program will be operated in compliance with the provisions of part 431, subpart F of this chapter related to safeguarding information on Medicaid applicants and recipients.

(b) The State plan must assure the protection of information and data pertaining to beneficiaries by providing that all contracts will include guarantees that—

(1) Original medical records are released only in accordance with Federal or State law, or court orders or subpoenas;

(2) Information from or copies of medical records are released only to authorized individuals;

(3) Medical records and other information are accessed only by authorized individuals;

(4) Confidentiality and privacy of minors is protected in accordance with applicable Federal and State law;

(5) Enrollees will have timely access to their records and to information that pertains to them;

(6) Beneficiary information is safeguarded in accordance with all Federal and State law relating to confidentiality and disclosure of mental health records, medical records, and other related information about the beneficiary; and

(7) Any electronic transmission of data to HCFA must comply with HCFA's policies and requirements regarding privacy and confidentiality of data transmissions. Data transmissions between providers, health plans and the State are also subject to these requirements.

(c) The State plan is subject to any Federal information disclosure safeguards as well as requirements mandated by the State including the use of the Internet to transmit CHIP data between the State and its providers.

(d) The State must assure that the program will be operated in compliance with all applicable State and Federal requirements to protect the confidentiality of information transmitted by electronic means, including the Internet.

§ 457.995 Overview of beneficiary rights.

In order to ensure that coverage and services are effectively and efficiently furnished to eligible beneficiaries, the following beneficiary protections are addressed in this part:

(a) *Information.* States are required to provide information to families of targeted low-income children regarding:

(1) Types of benefits, the amount, duration and scope of those benefits, and names and locations of current participating providers (§ 457.110(b));

(2) Either individually or through public notice, changes related to cost sharing or any other restrictions of eligibility or benefits (§§ 457.525 and 457.65);

(3) Enrollment assistance to potentially eligible children and their families (§ 457.360(d)) and information about beneficiary rights and obligations under the program (§ 457.360(e)); and

(4) Information must be accurate and easily understood and provide assistance to families in making informed health care decisions.

(b) *Choice of providers and plans.* States must provide enrollees assistance in making health care decisions and must assure appropriate and timely procedures to monitor and treat enrollees with complex and serious medical conditions including access to specialists in accordance with §§ 457.110 and 457.735(c) respectively.

(c) *Access to emergency services.* (1) States are required to provide an assurance of the quality and appropriateness of care, including access to covered services, including emergency services and covered post-stabilization services, as defined in § 457.402 and in accordance with § 457.735 respectively.

(2) States must assure that enrollees will not be held liable for additional costs, beyond the copayment amounts specified in the State plan, that are associated with emergency services provided by a facility that is not a

participating provider in the enrollee's managed care network (§ 457.515(f)).

(d) *Participation in treatment decisions.* Enrollees have the right to participate in their own care and to receive information on health plans, professionals, and facilities (§ 457.110 and § 457.985(e)). States must prohibit gag rules and establish principles for disclosure of physician financial arrangements that could affect treatment decisions (§ 457.985(e)).

(e) *Respect and nondiscrimination.* States must assure that families of targeted low-income children are treated with respect and nondiscrimination in accordance with applicable civil rights assurances and requirements found at § 457.130.

(f) *Confidentiality of health information.* States must ensure the confidentiality of a beneficiary's health information and provide beneficiaries access to medical records only in accordance with applicable Federal and State laws (§ 457.990).

(g) *Grievances and appeals.* (1) States and their participating contractors must ensure the family's right to file grievances and appeals by notifying beneficiaries of this right, and by having written procedures in place to afford applicants and enrollees the right to file grievances in cases where action is taken to—

(i) Deny, suspend or terminate eligibility in accordance with § 457.365;

(ii) Reduce or deny benefits provided for in the plan in accordance with § 457.495; or

(iii) Disenroll for failure to pay cost-sharing in accordance with § 457.560.

(2) Procedures for grievances, complaints and appeals must be conducted and resolved in a timely manner that is consistent with the standard health insurance practices in the State in accordance with § 457.985.

Subpart J—Allowable Waivers: General Provisions

§ 457.1000 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart interprets and implements —

(1) Section 2105(c)(2)(B) of the Act, which sets forth the requirements for a waiver to permit a State to exceed the 10 percent cost limit on expenditures other than benefit package expenditures; and

(2) Section 2105(c)(3) of the Act, which permits a waiver for the purchase of family coverage.

(b) *Scope.* This subpart sets forth requirements for obtaining a waiver under title XXI of the Act.

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program and to a Medicaid expansion program only to the extent that the State claims administrative costs under title XXI and seeks a waiver of limitations such claims in light of a community-based health delivery system.

§ 457.1005 Waiver for cost-effective coverage through a community-based health delivery system.

(a) *Availability of waiver.* The Secretary may waive the requirements of § 457.618 regarding the 10 percent limit on expenditures not used for child health assistance in the form of health benefits coverage meeting the requirements of § 457.410, in order to provide child health assistance to targeted low-income children under the State plan through a cost-effective, community-based health care delivery system, such as through contracts with health centers receiving funds under section 330 of the Public Health Service Act or with hospitals such as those that receive disproportionate share payment adjustments under section 1886(c)(5)(F) or section 1923 of the Act.

(b) *Requirements for obtaining a waiver.* To obtain a waiver for cost effective coverage through a community-based health delivery system, a State must demonstrate that —

(1) The coverage meets the coverage requirements of section 2103 of the Act and subpart D of this part; and

(2) The cost of such coverage, on an average per child basis, does not exceed the cost of coverage under the State plan.

(c) *Two-year approval period.* An approved waiver remains in effect for 2 years. A State may reapply for approval 3 months before the end of the 2-year period.

(d) *Application of cost savings.* If the cost of coverage of a child under a community-based health delivery system is equal to or less than the cost of coverage of a child under the State plan, the State may use the difference in the cost of coverage for each child enrolled in a community-based health delivery system for—

(1) Other child health assistance, health services initiatives, and outreach; or

(2) Any reasonable costs necessary to administer the State's program.

§ 457.1010 Waiver for purchase of family coverage.

A State may purchase family coverage under a group health plan or health insurance coverage that includes coverage for targeted low-income children if the State establishes that—

(a) Purchase of family coverage is cost effective under the standards described in § 457.1015;

(b) The State does not purchase the coverage if it would otherwise substitute for health insurance coverage that would be provided to targeted, low-income children but for the purchase of family coverage; and

(c) The coverage for the child otherwise meets the requirements of this part.

§ 457.1015 Cost-effectiveness.

(a) *Definition.* For purposes of this subpart, "cost-effective" means that the cost paid under the plan of purchasing family coverage under a group health plan or health insurance coverage that includes coverage for targeted low-income children is equal to or less than the State's cost of obtaining coverage under the plan only for the eligible targeted low-income children involved.

(b) *Cost comparisons.* A State may demonstrate cost-effectiveness by comparing the cost of coverage for the family that meets the requirements of § 457.1010 to the cost of coverage only for the targeted low-income children under—

(1) The health benefits packages offered by the State under the State plan for which the child is eligible; or

(2) Any child-only health benefits package available for purchase in the State that meets the requirements of § 457.410, even if the State does not offer it under the State plan.

(c) *Individual or aggregate basis.* (1) The State may base its demonstration of the cost-effectiveness of family coverage on an assessment of cost-effectiveness of family coverage for individual families, done on a case-by-case basis, or on the cost of family coverage in the aggregate.

(2) The State must assess cost-effectiveness in its initial request for a waiver and then annually. For any State that chooses the aggregate cost method, if an annual assessment of the cost-effectiveness of family coverage in the aggregate reveals that it is not cost-effective, the State must assess cost-effectiveness on a case-by-case basis.

(d) *Reports on family coverage.* A State with a waiver under this section must include in its annual report pursuant to subpart G of this part the cost of family coverage purchased under the waiver, and the number of children and adults covered under family coverage pursuant to the waiver.

PART 457—ALLOTMENTS AND GRANTS TO STATES

G. Part 457 is amended as follows:

1. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 457.204(d)(2), as proposed at 64 FR 10428, March 4, 1999, is revised to read as follows:

§ 457.204 Withholding of payment for failure to comply with Federal requirements.

* * * * *

(d) * * *

(2) *Opportunity for corrective action.* If enforcement actions are proposed, the State must submit evidence of corrective action related to the findings of noncompliance to the Administrator within 30 days from the date of the preliminary notification. Corrective action is action to ensure that the plan is, and will be, administered consistent with applicable law and regulations, to ameliorate past deficiencies in plan administration, or to ensure that beneficiaries will be treated equitably.

* * * * *

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: March 16, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: September 23, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99-28693 Filed 11-1-99; 8:45 am]

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November 8, 1999

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 240

Qualification and Certification of Locomotive Engineers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR–9, Notice 12]

RIN 2130–AA74

Qualification and Certification of Locomotive Engineers

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is making miscellaneous amendments to its requirements for the qualification and certification of locomotive engineers. These amendments are largely based on recommendations made by an advisory committee comprising rail industry and labor representatives; in reaching these consensus recommendations, the advisory committee examined data, discussed the successes and failures of the rule since its inception, and debated how to improve the regulations. In particular, this final rule will: Clarify the decertification process; clarify when certified locomotive engineers are required to operate service vehicles; and address the concern that some designated supervisors of locomotive engineers are insufficiently qualified to properly supervise, train, or test locomotive engineers.

DATES: (1) *Effective Date:* This regulation is effective January 7, 2000.

(2) Any petition for reconsideration of any portion of the rule must be submitted no later than 60 days after publication in the **Federal Register**.

ADDRESSES: Petitions for reconsideration of this rule should be submitted to Ms. Renee Bridgers, Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW, Mail Stop 10, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: John Conklin, Operating Practices Specialist, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street SW, Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6318); Alan H. Nagler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW, RCC–11, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6049); or Mark H. McKeon, Regional Administrator, 55 Broadway, Cambridge, MA 02142 (telephone: 617–494–2243).

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 4 of the Rail Safety Improvement Act of 1988 ("RSIA"), Pub. L. 100–342, 102 Stat. 624 (June 22, 1988), later amended and recodified by Pub. L. 103–272, 108 Stat. 874 (July 5, 1994), requires that FRA issue regulations to establish a program for certifying or licensing locomotive operators. This statutory requirement was adopted in the wake of an Amtrak/Conrail accident at Chase, Maryland that resulted in 16 deaths and was caused by errors made by the Conrail locomotive engineer. Congress thus determined the existence of a safety need for regulations concerning the qualifications of engineers. In addition to the general need for regulations, Congress required that certain subject areas be addressed within those regulations. Now codified at 49 U.S.C. § 20135, the amended statute was reprinted in the preamble to the NPRM.

II. Regulatory Background

One year and a half after the passage of the RSIA, FRA published an NPRM which proposed a certification program for locomotive operators. 54 FR 50890 (Dec. 11, 1989). FRA noted in the preamble to the final rule that some of the comments received in response to this NPRM suggested "significant misunderstanding of the proposal." 56 FR 28228, 28229 (June 19, 1991). These misunderstandings and the appropriateness of the approach were addressed thoroughly in the final rule's preamble. 56 FR 28228, 28229–30 (June 19, 1991).

The final rule establishing minimum qualification standards for locomotive engineers is a certification program, not a licensing program. In summary, the rule requires railroads to have a formal process for evaluating prospective operators of locomotives and determining that they are competent before permitting them to operate a locomotive or train. The rule requires that railroads: (1) Make a series of four determinations about a person's competency; (2) devise and adhere to an FRA-approved training program for locomotive engineers; and (3) employ standard methods for identifying qualified locomotive engineers and monitoring their performance. At the time of publication, FRA noted that the agency "is adopting this regulation to minimize the potentially grave risks posed when unqualified people operate trains." 56 FR 28228 (June 19, 1991).

In 1993, less than two years after the publication of the final rule, an interim final rule was promulgated "in response to petitions for reconsideration and requests for clarification." 58 FR 18982 (Apr. 9, 1993). Some of the issues addressed in this rule included: (1) The application of the rule to service vehicles which could potentially function as a locomotive or train; (2) the application of the rule to certain minimal, incidental and joint operations; (3) the application of the rule to events involving operational misconduct by a locomotive engineer; (4) the application of the rule to current railroad practices for storing data electronically; (5) the application of the rule to events involving testing and evaluation of a locomotive engineer's knowledge or skills; (6) the application of the procedural provisions of the rule to events involving denial, suspension and revocation of certification; and (7) technical changes to correct minor errors in the rule text. FRA did not provide additional notice and request for public comment prior to making the amendments contained in this interim final rule. "FRA concluded that such notice and comment were impractical, unnecessary and contrary to the public interest since FRA is, for the most part, only making minor technical changes in response to requests for reconsideration of issues that were previously the subject of detailed notice and extensive comment in the development of the initial final rule in this proceeding." 58 FR 18982, 19002 (Apr. 9, 1993). In addition, FRA stated that delay in the effective implementation of this interim rule could result in the diversion of significant resources by all persons and entities affected by this rule. Meanwhile, this interim final rule guaranteed a full opportunity to comment on the amendments.

In 1995, after approximately four years and four months had passed since the initial final rule, FRA issued a second interim final rule. This second interim final rule contained minor modifications that clarified existing procedural rules applicable to the administrative hearing process; a series of changes made to provide for omitted procedures; and changes to correct typographical errors and minor ambiguities that had been detected since the rule's issuance. 60 FR 53133 (Oct. 12, 1995). Since the Administrative Procedure Act, specifically 5 U.S.C. 553(b)(3), provides that no notice and comment period is required when an agency modifies rules of procedure and practice, FRA issued this regulation without provision of such a period of comment prior to its adoption. 60 FR 53133, 53135 (Oct. 12, 1995). However, FRA did provide for a 30 day comment period subsequent to the publication of this interim final rule and stated that any comments received would be considered to the extent practicable.

III. The Railroad Safety Advisory Committee

In 1994, FRA established its first formal regulatory negotiation committee to address roadway worker safety. This committee successfully reached consensus conclusions and recommended an NPRM to the Administrator, persuading FRA that a more consensual approach to rulemaking would likely yield more effective, and more widely accepted, rules. Additionally, President Clinton's March 1995 Presidential Memorandum titled "Regulatory Reinvention Initiative" directed agencies to expand their efforts to promote consensual rulemaking. In 1996, therefore, FRA decided to move to a collaborative process by creating a Railroad Safety Advisory Committee (RSAC, or the Committee) pursuant to the Federal Advisory Committee Act (Public Law 92–463).

RSAC was established to provide recommendations and advice to the Administrator on development of FRA's railroad safety regulatory program, including issuance of new regulations, review and revision of existing regulations, and identification of non-regulatory alternatives for improvement of railroad safety. RSAC is comprised of 48 representatives from 27 member organizations, including railroads, labor groups, equipment manufacturers, state government groups, public associations, and two associate non-voting representatives from Canada and Mexico. The Administrator's representative (the Associate Administrator for Safety or that person's delegate) is the Chairperson of the Committee.

IV. The Qualification and Certification of Locomotive Engineers Working Group

At a two day RSAC meeting that began on October 31, 1996, the Committee agreed to take on the task of proposing miscellaneous revisions to the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). *See* 61 FR 54698 (Oct. 21, 1996). The Committee members delegated responsibility for creating a proposal to a working group consisting of the members' representatives. The Qualification and Certification of Locomotive Engineers Working Group (Working Group or Group) met for seven week-long meetings prior to submitting the Working Group's proposal to the Committee.

On May 14, 1998, the Committee recommended that the FRA Administrator publish the Working Group's consensually reached effort as a proposed rule. During RSAC's meeting, the Committee suggested that the proposal contained some suggested amendments that may be further improved by being subject to more debate. In order to permit an informed debate, FRA committed itself to providing RSAC with an opportunity to assist FRA in considering comments received in response to the NPRM which all parties anticipated that FRA would issue. Relying heavily on RSAC's recommendations for change, on September 22, 1998, FRA published the NPRM which forms the basis for this final rule. 63 FR 50626 (Sept. 22, 1998). As promised, FRA provided RSAC with an opportunity to assist FRA in examining the comments and convened a meeting of the existing Working Group for that purpose. During a meeting of the Working Group held on December 8–9, 1998, information and views were received on every issue raised in the comments. Detailed minutes for that meeting are contained in the docket. The Working Group provided consensus recommendations for agency response on some issues raised by the comments and those recommendations were sent to RSAC for further review. On January 28, 1999, RSAC adopted the Working Group's recommendations and requested that FRA adopt them.

The recommendations provided by RSAC and a summary of the Working Group discussions are provided below in conjunction with the discussion of the individual issues presented by this rulemaking. Virtually all of the changes proposed by FRA are being adopted in this final rule; thus, the preamble and section-by-section analysis for the 1998 NPRM contain useful background information concerning the changes being made which is not being repeated here. FRA's analysis in this final rule focuses on the comments received in response to the 1998 NPRM and explains why FRA made certain changes to the rule.

Considering the temporary nature of the two interim final rules and the thorough review of the regulation provided for in this rulemaking process, FRA readopts the two previously issued interim final rules, suitably modified, as this final rule. Thus, the amendments promulgated here would govern any conflicts with the previously published interim final rules upon the effective date of this final rule. FRA is grateful to the members of RSAC and the Working Group for their efforts, information and recommendations. The detailed information and recommendations made have proved useful in FRA's deliberations on the best ways to improve the rule and FRA has given great weight to RSAC's recommendations for this final rule.

The section-by-section analysis discusses all of the amendments to this part.

V. Major Issues

Background

FRA received eight written comments in response to the NPRM. Although an opportunity to present oral comments was offered, the request that was made for a public hearing was subsequently withdrawn. Thus, FRA is only responding to written comments. Some comments requested clarification, some suggested alternative language to improve upon a concept raised by the proposal, and others requested reconsideration of previously suggested proposals. Of these issues, FRA considers eight to be major topics and a discussion of each of these major topics follows.

A. Application of the Rule to Certain Service Vehicles

One commenter (the United Transportation Union, or "UTU") maintains that the 1988 statute that required FRA to issue the engineer certification rule did not authorize FRA to permit operation of certain roadway maintenance vehicles by persons other than certified locomotive engineers. UTU's November 18, 1998 comments state: "In short, certified engineers must be at the controls of any motorized equipment that operates as a locomotive." UTU concludes that "the language relating to dual purpose vehicles must be removed." UTU notes that, although it was part of the working group that reached consensus on the proposed rule, the relevant statutory language "was not reviewed in detail by the group." UTU goes on to say that all language in the proposed section 240.104 that allows exceptions to certification should be removed.

The statutory provision that required FRA to issue its engineer certification rule was section 4 of the Rail Safety Improvement Act of 1988 ("RSIA"). Pub. L. No. 100–342. As currently codified at 49 U.S.C. 20135(a), that provision states, in relevant part: "The Secretary of Transportation shall prescribe regulations and issue orders to establish a program requiring the licensing or certification, after one year after the program is established, of any operator of a locomotive." FRA believes that Congress intended the agency to have some discretion in determining which employees are operators of locomotives as well as which vehicles are being used as locomotives under which circumstances.

Since the rule's issuance in 1991, there has been extensive debate over whether certain service vehicles should be considered locomotives for the purposes of this rule, and in 1993 FRA promised to provide an opportunity to fully examine this issue in a future proceeding. 58 FR 18982, 18983 (Apr. 9, 1993). The nature of railroading requires that equipment used to construct, maintain, and repair track, signals, and roadway structures be able to move on rails, as there are many locations on railroads that are accessible only by rail. Moreover, the nature of the construction, maintenance, and repair work requires that this equipment be able to be moved independently from normal train movements, both to and from work sites and within extensive work sites. To serve this purpose, some of the maintenance equipment is capable of moving other maintenance equipment without the need for a traditional locomotive. FRA does not believe that Congress intended to require that operators of this maintenance equipment be certified as locomotive engineers, as this equipment is not generally considered to be a locomotive, and movement of this equipment was not in any way within the range of concerns that prompted the 1988 legislation on locomotive engineer certification.

However, some of the vehicles used in maintenance service have sufficient power and appropriate coupling mechanisms to enable them to move railroad rolling stock. Manufacturers of service vehicles indicate that the industry is requesting equipment that can perform a specific maintenance task and haul an increasing number of cars. As these vehicles improve, some railroads may decide to take advantage of the vehicles' ability to haul cars—even to the exclusion of their maintenance function. Without a regulatory mechanism to address these dual purpose vehicles, FRA is concerned that some railroads might seek to use the dual purpose vehicle as a functioning locomotive to avoid the expense of having a certified locomotive engineer at the controls, which would pose an unacceptable safety risk.

The amendments being adopted in this final rule will resolve the issue of when certain types of on-track equipment, which are not traditional locomotives but share some common characteristics with a traditional locomotive, are required to be operated by certified locomotive engineers. The final rule uses the term "roadway maintenance equipment" to refer generally to equipment used in maintenance of track, signals, and structures. The rule provides that one type of maintenance equipment ("specialized roadway maintenance equipment") need not be operated by a certified locomotive engineer. The reason for excluding such vehicles is that they do not have the capability to move railroad rolling stock and thus cannot be used as a substitute for a traditional locomotive. Dual purpose vehicles describes service vehicles that may, at times, function as roadway maintenance vehicles and can be used as a substitute for a traditional locomotive as a result of their capability to move railroad rolling stock. The rule will require a certified locomotive engineer at the controls of a dual purpose vehicle unless certain specified criteria are met. See § 240.104(b). In essence, those criteria mean that a certified engineer must operate the equipment when it is being used as a locomotive in service unrelated to roadway maintenance work and also when, even in the context of maintenance work, there is no employee available who is trained to operate the vehicle. In general, railroads will be able to allow the operation of dual purpose vehicles by people who are not certified locomotive engineers when the vehicle is being used in roadway maintenance service, including traveling to and from the work site; the operator has been trained on how to operate the equipment safely in accordance with FRA's rules on the protection of roadway workers (49 CFR part 214); and the equipment is moved under railroad operating rules designed for the protection of such equipment from train movements. Given the definitions in the rule, if specialized roadway maintenance equipment is somehow used for moving railroad rolling stock, it will be treated as a dual purpose vehicle for purposes of determining whether a certified locomotive engineer is necessary for its operation.

When roadway maintenance equipment is used at a work site where roadway workers are present, FRA's rules on Roadway Worker Protection provide standards for protecting the workers from such equipment and trains and for protecting the equipment from train movements. *See*, *e.g.*, 49 CFR § 214.319 (explaining the requirements of working limits, generally). A review of relevant accident and injury history indicates that the greatest danger inherent in the movement of this equipment is that it may strike a roadway worker, and FRA's roadway worker protection rule is specifically designed to substantially reduce that risk. In RSAC's fact finding efforts, none of the RSAC's members or commenters provided information, nor did FRA have any information, showing that when dual purpose vehicles are being used for maintenance purposes they are involved in accidents or incidents that could be prevented by requiring that such vehicles be operated by certified locomotive engineers. Although operators of roadway maintenance equipment will generally not be required to be certified locomotive engineers, these operators must be trained and qualified on how to safely operate that equipment. *See* 49 CFR § 214.355. Moreover, when roadway maintenance equipment travels to and from a work site, there are existing operating rules that protect such movements from train movements. *See, e.g.*, Northeast Operating Rules Advisory Committee (NORAC) 800 series rules; General Code of Operating Rules (GCOR)—Maintenance of Way Operating Rules section, 6.0 series rules; CSX's On Track Worker Manual, Rule 704 (effective Jan. 1, 1999); Illinois Central Railroad System's On Track Safety Rules, 500 series rules (effective Mar. 10, 1998); and Norfolk Southern Corporation's Operations Division, Bulletin No. 8 regarding Rule 808 (July 22, 1996). Thus, in addition to the fact that this equipment is not traditionally considered to be a locomotive of the type that Congress had in mind when requiring FRA to issue its certification rule, there are existing FRA and railroad rules that ensure that those who operate such equipment in maintenance service will operate these machines safely.

One area of concern identified by the RSAC working group was the use and maintenance of air brakes on roadway maintenance equipment. Much of the concern arose from a fatal accident involving a burro crane hauling cars from a work site on November 5, 1996, which did not have brake pipe hoses connected between the locomotive crane and the three freight cars being hauled. The group drafted a recommendation intended to resolve that concern. Based on that recommendation, FRA proposed that one of the conditions for a non-certified locomotive engineer to operate a dual purpose vehicle that will be hauling cars would be that "not less than 85% of the total cars designed for air brakes shall have operative air brakes." RSAC's purpose and FRA's intent was to make sure that when a dual purpose vehicle is hauling cars to or from a work site the air brakes on the consist can stop the movement within the normal stopping distance for that equipment.

FRA specifically solicited comments to learn how others perceived the "85% rule" found in proposed § 240.104(b)(4). The comments indicated that this proposed provision was generating some confusion. One commenter wanted to know whether this paragraph excused the railroad from compliance with the power brake requirements of 49 CFR part 232, despite FRA's statement in the NPRM that it did not. The same commenter requested an explanation of the necessary inspection and testing of the consist's braking system to determine compliance with the 85% operable brake requirement; this question was echoed by other Working Group members who believed computing 85% or greater operative air brakes would likely cause some confusion for those trying to comply.

Upon further reflection, FRA is deleting this proposed brake requirement from the rule. The issue of whether the railroad must use, maintain, and inspect power brakes on dual purpose vehicles is not related to the qualifications of the vehicle's operator and should be resolved in the same way whether or not the operator is a certified locomotive engineer. The proposed provision implied that, if the railroad used a locomotive engineer to operate dual purpose equipment, the brake rules would not apply to the movement. FRA's position is that the movement of railroad equipment to and from a work site is governed by the power brake rules of 49 CFR part 232. Even though the dual purpose vehicle hauling the equipment may not be a traditional locomotive, to the extent the vehicle and the equipment it is hauling are equipped with power brakes, they must comply with the relevant standards. It would not be appropriate to include this policy on the applicability of an equipment rule in the text of a rule on locomotive operator qualifications. However, railroads should understand that FRA will enforce the power brake rules in accordance with the policy stated in this preamble.

One commenter also asked several interpretative questions. For instance, FRA was asked whether proposed § 240.104 allows MOW equipment to be used to move loads of slag, for the purpose of dragging slag, or to move empty hoppers, for the purpose of cleaning up debris with a track cleaner, from the yard to the work site without the use of a certified locomotive engineer. FRA notes that "slag" is a term interchangeably used for ballast, and that spreading ballast and picking up debris along the track are both MOW duties. FRA would categorize a vehicle performing such duties as a dual purpose vehicle because it is being used to move railroad rolling stock. It is possible that a certified locomotive engineer will not be required if all of the conditions in paragraph (a)(2) have been satisfied.

In conjunction with the last question discussed, the commenter also asks whether the rule lends itself to an inherent limit on the distance traveled, or the type of track traversed, before a railroad is required to utilize a certified engineer for this type of movement. FRA's answer to this question is that § 240.104 does not place any such limits with regard to the distance or type of track over which a person who is not a certified engineer may operate dual purpose equipment. The limitations in that section are based on the type of service being performed (maintenance of way, or something else), the person's qualifications to operate the equipment in that service, and application of the railroad's rules for protection of such equipment in such service.

One commenter recommended that Class III Switching and Terminal Carriers be excluded from the requirement that "dual purpose vehicles" must be operated by a certified locomotive engineer in those situations where the "vehicle" is being used to move disabled equipment for clearing and repair of track. FRA does not agree with the commenter that this exclusion is necessary or would promote safety. Wrecking operations to move damaged equipment are not maintenance movements, which are the only movements of dual purpose vehicles FRA intended to permit without the use of a certified engineer. Since the safety risks associated with these operations do not diminish with railroad size, it would not promote safety to exclude certification requirements on small railroads and yet require it on the bigger roads.

Finally, FRA notes that one commenter may have been confused as to the proposed application of the rule due to some confusing language in the section-by-section analysis to describe the new definitions "dual purpose vehicle" and "specialized roadway maintenance equipment," and the previous definition of "locomotive." Thanks to the Working Group, the confusing language was brought to FRA's attention and alternative proposals were discussed. Although not an RSAC recommendation, a new proposed definition of "locomotive" has been provided to make clear that specialized maintenance equipment and dual purpose vehicles operating in accordance with § 240.104(a)(2) are not locomotives. FRA has also added definitions of "roadway maintenance equipment" and "railroad rolling stock" in order to further clarify the revisions. Also, the section-by-section analysis of § 240.7, below, provides improved analysis of the terms "dual purpose vehicle" and "specialized roadway maintenance" equipment. FRA expects that these modifications will lead to a better understanding of the rule for all those persons who need to comply with it.

B. Qualifications for Designated Supervisors of Locomotive Engineers

The role of the Designated Supervisor of Locomotive Engineers (DSLE) is critical to the safety success of this rule and was discussed as a major issue in the NPRM. This role is twofold. One, the DSLE makes the final determination that a locomotive engineer is qualified to safely operate a train. Two, after a person is certified, a DSLE is responsible for qualifying engineers on the physical characteristics of any additional territories over which the engineer will need to operate. Both of these issues were addressed in the public comments received and RSAC has made some additional recommendations for modifying the rule based on the comments FRA received.

FRA noted in the NPRM its concern over whether a specified amount of operational experience should be a prerequisite for qualifying DSLEs. The cause of this concern has been the finding that some railroads have been seeking to establish systems in their certification programs that do not assure that supervisors will be experienced individuals. Moreover, since implementation of the original rule, FRA has investigated several instances in which there is some evidence that railroads designated persons to be supervisors who have had only the most minimal amount of operational experience.

The proposed modifications to § 240.105(b)(4) reflect RSAC's recommendation and FRA's concern that not all supervisors have been found to be familiar with the physical characteristics of the territories in which they work. Given this universal concern, this final rule will require those persons who are DSLEs to be qualified on the physical characteristics of the portion of the railroad over which they are supervising. As specifically addressed in § 240.105(a), railroads will be required to address how they intend to implement the qualification of their DSLEs on physical characteristics and include those procedures in their certification programs. Thus, a railroad will not be in compliance with the requirements of § 240.105 if it were to merely state in its program that it intends to comply with this section or restates the requirements of this section in its program. Instead, a railroad will be required to detail specific training requirements for DSLEs on physical characteristics.

A benefit of this rule will be that a DSLE who changes territories, including a situation where the new territory presents more demanding train handling challenges than the previous assignment, will receive training on the physical characteristics of the new territory. This new requirement goes further than the current requirement in § 240.127(b) that requires certified locomotive engineers to have "the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform;" presumably, it will occasionally be necessary for DSLEs to require additional training in train handling skills to satisfy the § 240.127(b) requirement. Since it is presumed that a DSLE in a territory would be permitted to perform train handling service in that territory, as well as be prepared to offer remedial advice for noted deficiencies in the skill level of other locomotive engineers, a DSLE must receive skills training that is commensurate with performing such duties in equally or more difficult terrain. As a result of the new requirement, DSLEs will now be required to have knowledge of the physical characteristics of the territory in which they supervise in addition to the continuing requirement of having the requisite skills commensurate with the difficulty of the terrain.

In the preamble and section-by-section analysis of the NPRM for this final rule, FRA noted that RSAC recommended a modification to § 240.127(c)(2) in order to permit a DSLE, whose skill level is commensurate with the difficulty of a territory, to be able to assess a person's performance skills over that territory even if the DSLE is not qualified on the physical characteristics of that territory. One RSAC member commented that FRA should revisit this issue, especially in the context of whether the proposed exception in § 240.127(c)(2) promotes safety. In reviewing the comments and upon further consideration, RSAC recommended the exception be retained and also recommended extending the exception to a related section of the rule.

The Working Group's discussion of their previously recommended exception for § 240.127(c)(2) reinforced RSAC's consensus that the exception would be a safe practice that is cost effective and practical; FRA agrees with this assessment. Consequently, some of the Working Group's members promoted the practicality of the concept for this exception of the triennial performance monitoring pursuant to § 240.127 and suggested transferring this benefit to the annual monitoring pursuant to § 240.129. FRA had been working under the mistaken impression that the Working Group's members had purposely recommended that FRA treat these two monitoring examinations differently. FRA had believed that the level of sophistication was different for the two tests and so proposed changing only one of the testing provisions. In response to RSAC's new understanding, they recommended adding the exemption to § 240.129 for the same reasons the exemption was created for § 240.127; likewise, FRA has agreed to promulgate this recommendation based on the agency's assessment that this is a safe practice that is cost effective.

FRA concurs with certain additional recommendations from RSAC that propose to clarify that the amendment to § 240.105(b)(4), requiring DSLEs to be qualified on the physical characteristics of the portion of the railroad on which they are performing their DSLE duties, will not be made in vain. One of these recommendations is that a DSLE should not be allowed to make the determination of whether a person is qualified to be a locomotive engineer, at the completion of a training program pursuant to § 240.213, unless that DSLE is qualified on the physical characteristics of the railroad or its pertinent segments over which the person will be permitted to perform; accordingly, FRA amended § 240.213(b)(3). In addition, RSAC recommended that a qualified DSLE should be required whenever a locomotive engineer is to be qualified on a new territory. Although RSAC's recommendation to address this concern was to add a paragraph (c) to § 240.213, FRA amended a different section which it believes will have the same effect. That is, an amendment to § 240.123(b) is being made to explicitly require that when a railroad provides for the continuing education of a certified locomotive engineer, that railroad must ensure that each engineer maintains the necessary knowledge, skill and ability concerning familiarity with physical characteristics "as determined by a qualified designated supervisor of locomotive engineers." Thus, this modification is not that engineers must be qualified on physical characteristics (since that is already a requirement) but that the person making this determination for the railroad must be a qualified DSLE.

C. Improving the Dispute Resolution Procedures

As FRA stated in the NPRM, many procedural issues concerning the initial regulation were addressed by issuing a second Interim Final Rule. 60 FR 53133 (Oct. 12, 1995). FRA brought the procedural issues to RSAC's attention in order to determine whether additional procedures could be clarified or changed that would improve the dispute resolution process located in Subpart E of this part. In addressing this issue prior to the publication of the NPRM, the Working Group formed a Task Force consisting of some interested Group members who were asked to explore different options. After exploring the alternatives, the Working Group accepted the Task Force recommendations that the current system is the best choice, assuming that the petitions to the LERB and the requests for administrative proceedings are handled promptly.

One commenter expressed opinions regarding four issues that would amount to substantial modifications to the certificate revocation procedures if accepted. During the Working Group meeting to review the comments, it was noted that the opinions raised by this commenter relate to matters that were previously discussed by the Working Group and that no recommendations for changes responsive to these suggestions emerged after these previous lengthy discussions. These previous discussions were based on (1) an FRA issues paper that outlined the pros and cons of alternative procedures, (2) two comments received in response to the 1995 Interim Final Rule, and (3) proposals made by Working Group members. A summary of the previous RSAC deliberations is located in the NPRM. After further consideration, RSAC recommended that the final rule retain the same language with respect to the issues raised by this commenter. These issues were identified as I. B. through E. in FRA's outline of the comments.

This commenter contends that, if the standard of review for issues of fact at the FRA administrative hearing is preponderance of the evidence (§ 240.409(q)), then the railroad hearing (proposed § 240.307(i)) and the Locomotive Engineer Review Board

(LERB) review should also use this standard instead of the substantial evidence standard of review. FRA disagrees with this suggestion for several legal reasons. One, the commenter is mistaken that the railroad hearing must employ the substantial evidence standard of review. The current rule does not contain a standard of proof for the railroad hearing, the proposed rule did not contain such a standard, and FRA has not added such a standard to the new rule. Although silent on the standard of proof, FRA specifically requires that the railroad determine, on the record of the hearing, whether the person no longer meets the qualification requirements of this part and state explicitly the basis for the conclusion reached. § 240.307(b)(4). FRA wants to ensure that the railroad hearings are fair, and allow for consolidation with applicable collective bargaining agreements, without the rigidity of instituting a standard of proof. Two, it is necessary for the LERB to apply the substantial evidence standard of review because it is not a fact finding body that hears new evidence, but is instead relying on an existing record. Three, as the process moves along to the FRA Hearing Officer stage, the procedures are designed to permit a full evidentiary hearing. The preponderance standard is appropriate at that stage because the FRA Hearing Officer will be finding facts on a *de novo* basis. Thus, the commenter's suggestion is not acceptable because it seems to confuse the difference between a standard of proof with a standard for review.

A second opinion raised by this commenter is that it should be mandatory that the written decision prepared by a railroad's presiding officer, pursuant to § 240.307, include more detailed information than that the charge was proven. This opinion appears to be a commentary on the fact that some written decisions merely state that the locomotive engineer was found to have violated one of the operational misconduct events without summarizing the evidence upon which the decision was based. In deference to this commenter, FRA notes that judicial opinions usually contain such an analysis of the evidence and some revocation decisions are detailed in the manner preferred by this commenter. Meanwhile, FRA has decided not to require more detail in decisions because the record upon which the decision is based should speak for itself. Since railroad presiding officers are not required to be attorneys, additional costs could be associated with requiring more detailed decisions as drafting such decisions could be categorized as legal work. Those who do not believe that a railroad has met its burden of proof and desire an articulated summary of the evidence can petition FRA for a review of the record.

A third opinion raised by this commenter is that the current dispute resolution procedures that allow for a railroad hearing (§ 240.307) and a petition to the Locomotive Engineer Review Board for a decision are in noncompliance with the RSIA and thus in order to afford due process FRA must conduct all on-the-property railroad hearings. FRA believes it is in compliance with the statute, and in fact provides far more opportunity for a hearing than the statute requires. There is substantial case law interpreting what is proper administrative due process and FRA believes it has followed the law properly. Although not required by statute, FRA provides the opportunity for a full evidentiary hearing in front of a presiding officer pursuant to § 240.409 for any person who has been denied certification, denied recertification, or has had his or her certification revoked and has timely availed himself or herself of earlier administrative remedies. The section of the RSIA cited by the commenter as authority for his position requires an administrative hearing only if a person's certification is detrimentally effected because of information found in the person's motor vehicle driving record. See 49 U.S.C. 20135(d) (cross referencing subsection (b)(4) of the same section). The required hearing must comply with 49 U.S.C. 20103(e), which calls for just an informal hearing. FRA's rule goes far beyond the statutory minimum: under the rule, a person is entitled to a hearing regardless of the basis for the denial or revocation, and the hearing FRA provides to those not satisfied by the informal process of the LERB is a formal, trial-type hearing. Moreover, FRA does not intend to voluntarily act as the hearing officer in every on the property certification hearing since FRA does not have the resources to absorb the substantial costs involved with such a modification of the dispute resolution process.

A fourth opinion raised by this commenter was that a railroad's presiding officer is the only individual who can fairly issue a decision for the § 240.307 hearing and that the proposal to allow any railroad official to issue the opinion other than the investigating officer is unfair. FRA solicited comments on this issue in the NPRM. When the original final rule was promulgated in 1991, FRA's thought was that railroad presiding officers would make the decisions and that these presiding officers were the people best situated to do so. FRA has since learned from experience and from RSAC members that having the railroad presiding officers make the decisions poses problems raised by historical concerns in the existing disciplinary review chain; i.e., railroads objected to limiting decision-makers to presiding officers because in some cases it would require additional burdens and costs not associated with holding a combined collective bargaining agreement hearing with the Part 240 revocation proceeding currently allowed for pursuant to § 240.307(d). The main issue concerns whether it is fair for the decision-maker to be someone who has not had the opportunity to evaluate the credibility of witnesses in the case by receiving their testimony first hand. Although FRA recommends that railroads set up their hearing proceedings to allow for the presiding officer to make the revocation decision or for the decision-maker to consult with the presiding officer on issues of credibility, FRA believes a fair decision can be made on the record alone as long as the decision-maker is free of other conflicts of interest that could interfere with rendering a fair decision. FRA's overall concerns of fairness are satisfied because the rule's changes continue to clarify the importance of the separate duties between the investigating officer and the decision-maker. See § 240.307(b)(2), (c)(2), (c)(10), and (e).

Another commenter expressed an opinion that violations that have occurred prior to promulgation of the final rule should be treated under the new revocation periods. FRA has previously considered the fairness of this issue and both the proposed and final § 240.117(g)(4) conforms with this commenter's opinion. That is, the rule will apply the new, shorter periods of ineligibility retroactively to most incidents that have occurred prior to the effective date of this rule. The rule will not retroactively apply the new, shorter revocation periods if the event involves a violation of § 240.117(e)(6) or the most recent decertifiable event occurred within 60 months of a prior violation of § 240.117(e)(6).

Similarly, FRA has received inquiries regarding whether it is ever possible to run multiple revocation periods concurrently. This question can arise when multiple incidents of operational misconduct are found during a single tour of duty or within a short period of time prior to a railroad's receipt of reliable information forming the basis for a certificate suspension pursuant to

§ 240.307(b)(1). Although revocation periods were designed to run consecutively, not concurrently, two related issues deserve mention. First, this issue usually involves questions concerning the meaning of § 240.117(f), which reads: "If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section." The question of whether multiple contraventions of a railroad's rules or practices should be treated as a single incident is a factual one which requires consideration of whether the contraventions were sufficiently separated by time, distance or circumstance that to treat them as multiple violations would be logical. Generally, violations that occur simultaneously are part of a single incident. The prudent railroad will address time, distance and circumstance in making its revocation decision and will document the reasoning of that decision in the relevant records kept in accordance with the Part 240 program. Second, railroads have some discretion to reduce the concurrently running periods of ineligibility given that certain conditions are met pursuant to § 240.117(h). Understanding of these two additional issues can often soften the blow of facing concurrently running revocation periods if warranted.

The only other comment concerning certificate revocation procedures was a minor issue that was addressed in the section-by-section analysis concerning § 240.307(c)(10).

D. Revisiting the Standards for Hearing and Vision

Since FRA did not modify the standards for hearing and visual acuity since publishing the final rule in 1991, FRA suggested in the NPRM that sufficient time has passed to evaluate the effectiveness of this rule and determine whether any modifications are necessary. FRA received virtually no comments in response to its proposal despite the fact that substantial modifications were proposed. Only one commenter offered views on this important issue and since both of those views involve minor suggested changes to the proposed rule they have been addressed in the section-by-section analysis regarding § 240.121(e) and Appendix F.

E. Reviewing the Requirements for Consideration of Unsafe Conduct as a Motor Vehicle Operator

In the NPRM, FRA noted this topic as a major issue and discussed that since the Working Group reluctantly determined that elimination of the review of motor vehicle driving data was outside the Working Group's authority, the Working Group focused on identifying problems with the current system and whether the regulation could be modified to resolve any of those problems. For instance, some railroad Working Group members set goals of achieving (1) "one stop shopping" for both the National Driver Register (NDR) and State motor vehicle data, (2) simplified request procedures, and (3) accurate data. As noted in the NPRM's preamble, the RSAC members' recognized their limited authority and thus formal recommendations were not made. Instead, FRA has offered to assist interested parties in discussing and resolving these NDR matters with the National Highway Traffic Safety Administration.

As noted in the preamble to the NPRM, the RSAC's members identified a few modifications that FRA agreed will ease regulatory burdens without any detrimental effect on safety. Regulatory burdens are eased by substantially lengthening the period of time required for individuals to provide railroad employers with prior safety conduct as motor vehicle operators pursuant to § 240.111(a). Individual rights are strengthened by limiting when a railroad can require a person to submit motor vehicle operator data pursuant to § 240.111(h). Please note that proposed paragraph (h) was eliminated due to its redundancy with paragraph (a); accordingly, proposed paragraph (i) has been moved to new paragraph (h).

The only commenter on this topic raised an issue not directly addressed in the NPRM. The commenter's concern is being addressed in this final rule and it is discussed at length in the section-by-section analysis to § 240.5.

F. Addressing Safety Assurance and Compliance

One of the principles of the current rule is that locomotive engineers should comply with certain basic railroad rules and practices for the safe operation of trains or risk having their certification revoked. The rule provides for persons who hold certificates to be held accountable for their improper conduct. The reason for holding people accountable for operational misconduct serves one of the principal objectives of this regulation; that is, by revoking the certificates of locomotive engineers who fail to abide by safe rules and practices, the implementation of the rule is instrumental in reducing the potential for future train accidents.

In FRA's Issues Paper, FRA recommended that RSAC consider the following five general issues: (1) The degree of discretion accorded railroads in responding to individual incidents; (2) the criteria for the types of operational misconduct events that can trigger revocation of a certificate; (3) the severity of the consequences for engaging in operational misconduct; (4) the significance to be attached to decertification for violations that occur during operational tests required pursuant to § 240.303; and (5) the effectiveness of FRA's direct control over operational misconduct. Two commenters raised concerns with the proposed rule.

One commenter questioned whether the rule should address how a railroad should treat an individual's defenses of defective equipment, improper notification of tonnage or lading, lack of training, or failure by the employer to provide proper equipment in making suspension and revocation decisions. The commenter was concerned that railroads might suspend and revoke an individual's certificate on the mistaken belief that they cannot take into account these defenses if a violation of operational misconduct has occurred.

Although FRA articulated in the NPRM that the rule already provides railroads with the authority to consider these defenses, FRA noted that it supported RSAC's recommendation to clarify this concern. That is why the proposed § 240.307(i) stated that a railroad shall not revoke a person's certificate when there is an intervening cause or the violation was of a minimal nature with no direct or potential effect on rail safety. This issue was also addressed in the NPRM's proposed § 240.307(j) which creates safeguards for the application of paragraph (i).

For purposes of this final rule, FRA has decided to retain the defense of an intervening cause; however, rather than prohibit the railroad from taking revocation action for all events determined to be of a minimal nature with no direct or potential effect on rail safety, FRA has decided to permit all railroads to use their discretion to determine whether revocation is desirable in such instances. The reason for this modification is that determining an intervening cause is significantly more objective than determining what types of violations are both (1) of a minimal nature and (2) have no direct or potential effect on rail safety. Given that the intervening cause defense addresses this comment fully, FRA does not recognize a need to make further modifications in response to this comment.

One commenter suggested that there should be experimental "amnesty programs" for self reporting of apparent violations by locomotive engineers who honorably come forward to admit an operational misconduct event. Although this comment was reviewed by the Working Group, the proponent of this comment withdrew it from RSAC's consideration before a recommendation could be made. FRA has considered this suggestion and notes that this concept is essentially experimental which would make the waiver route a better vehicle for addressing this matter than this rulemaking. Enforcement problems could be anticipated with such a program and thus FRA is wary about drafting regulations that allow all railroads to utilize amnesty programs. For those parties interested in applying for a waiver, it should be noted that waiver requests which have been jointly submitted by interested parties tend to get expedited resolution.

One commenter suggested that the rule should require different revocation periods based on the severity of the violation. For example, the commenter offered that a locomotive engineer who gets by a stop signal by a few feet in the yard should be subject to a shorter revocation period than the engineer who blasts by a stop signal on main track. FRA believes that it would be immensely difficult to establish a fair system that assesses different revocation periods based on the severity of the violation. Meanwhile, the rule will provide a railroad with the discretion to choose not to revoke a person's certificate when the violation is of a minimal nature with no direct or potential effect on rail safety. See § 240.307(i)(2). An explanation on the application of this new paragraph is provided in the section-by-section analysis.

One commenter was concerned with whether the proposed rule adequately addressed that training may sometimes be more useful than revocation. Because FRA believes that training may be useful in some circumstances, FRA proposed modifying § 240.117(h) to expand the use of training in exchange for a reduction in the revocation period. However, given the proposed rule's modifications to eliminate revocations for defensible and minimal violations, FRA believes that the remaining revocable offenses should be of such greater magnitude that training alone would be considered too light a consequence. FRA has retained § 240.117(h) as proposed and thus has concluded that the rule adequately addresses the usefulness of substituting training for a reduction in some revocation periods.

In reviewing the effectiveness of FRA's current control over operational misconduct, the rule prohibits certain operational conduct which is specified in § 240.305. That section makes it unlawful to (1) operate a train at excessive speed, (2) fail to halt a train at a signal requiring a stop before passing it, and (3) operate a train on main track without authority. The effect of this section is that it enables FRA to initiate civil penalty or disqualification actions when such events occur and are deemed appropriate. Since changes to § 240.117(e) have been made, some parallel modifications are necessary under § 240.305. The NPRM proposed these parallel modifications and they have been adopted in this rule with one exception. That exception is a parallel modification to §§ 240.117 and 240.305.

In response to the proposal, one commenter questioned whether the decertification of supervisors would discourage supervisors from riding trains and evaluating locomotive engineers during actual operations. This commenter also requested guidance if the final rule were to define and document a need for decertification of supervisors. FRA and the other RSAC members believe this commenter's concerns are misplaced since the modified approach does not serve to single out DSLEs but instead makes them accountable for their actions in the same manner as non-supervisory locomotive engineers. This commenter was also concerned that a DSLE does not have the same due process rights as other certified locomotive engineers. Although the NPRM only addressed DSLEs, FRA has encountered several situations in which a designated supervisor of locomotive engineers, a certified locomotive engineer pilot or an instructor engineer has neglected his or her responsibilities and permitted an engineer at the controls to violate a specified prohibition. Usually, FRA finds out about those situations that cause accidents or result in the decertification of the engineer at the controls.

After further consideration of the comment, RSAC recommended that a change is necessary and that a designated supervisor of locomotive engineers, a certified locomotive engineer pilot or an instructor engineer's conduct does not have to be willful to be prohibited. In this way, all locomotive engineers, no matter what role they are performing that requires certification, will know that they will be held to the same high standard of care. This clarification will be found in §§ 240.117(c)(1), (c)(2), and 240.305(a)(6). While FRA maintains that the rule currently contains this authority without making revisions, the rule changes will put certified locomotive engineer supervisors, pilots, and instructors on more blunt notice that their inappropriate supervisory acts or omissions will trigger revocation and FRA enforcement authority. The revisions also will put railroads on better notice that they need to consider the actions of their DSLEs, locomotive engineer pilots and instructor engineers when alleged violations of Part 240 occur. This issue is further discussed in the section-by-section analysis. Some RSAC members and FRA also thought it would be helpful to point out that supervisory employees who are subject to revocation proceedings and who do not have a collective bargaining agreement are still entitled to the hearing procedures found in § 240.307(c) and Subpart E—Dispute Resolution Procedures.

After reviewing the comments, RSAC recommended a modification that would clarify that a certified engineer who is called to work in the capacity of a train crew member other than that of a locomotive engineer, and who does not perform engineer duties, should not have his or her certification revoked for a violation that occurs during that tour of duty. Since this recommendation coincides with FRA's current interpretation of the rule, FRA will add new paragraph § 240.117(c)(3). A more detailed discussion of this new paragraph can be found in the section-by-section analysis.

G. Lengthening the Certification Period From 3 to 5 Years on Class III Railroads

This issue was raised in the RSAC process prior to publication of the NPRM but no consensus was achieved for making a recommendation to FRA. In the NPRM, FRA did not propose a change although this issue was identified as one of the Working Group's topics. Only one RSAC member supported this modification prior to publication of the NPRM and that same RSAC organization is the only commenter to support its proposal post NPRM publication. This commenter requests that FRA reconsider whether a model program could be jointly developed by FRA and the industry to allay any safety concerns raised by lengthening the certification period for this subset of locomotive engineers.

The commenter urges that such a change would be either safety neutral or a safety positive change since the history of Class III program administration under the current rule is very positive. This commenter argues that Class III railroads have been supportive when FRA has wanted modifications to the model Class III Part 240 program. In addition, the commenter argues that all Class III railroads would benefit even though only some would be involved with the development of a new Class III program. The basis for this assertion is the commenter's reminder that it developed the model Class III Part 240 program and it has shared that effort industry-wide.

This commenter stated that it is ready to adjust its model program to accommodate a longer certification cycle by increasing testing and training. In addition, the commenter and RSAC member noted at the last Working Group meeting that because of their members' commitment to safety, many of the Class III railroads are already exceeding the requirements of the rule and the model program they helped develop. Furthermore, this commenter believes that any concern over the longer interval for medical degradation is covered by the self-reporting aspects of the NPRM. The commenter noted that the NDR and medical checks were really all that would be changed by this approach and that there are significant costs that these railroads have difficulty passing on to the shippers while still remaining profitable.

Despite the appeal of this proposal to reduce the burdens imposed by the rule on Class III railroads, FRA remains concerned about the negative safety impact that would flow from such a broad modification to the rule. The proposal seems over-inclusive since the safety concerns on some Class III railroads are much greater than others; for example, some Class III railroads conduct operations on the same lines over which Amtrak conducts high speed operations. Similarly, the proposal could be considered under-inclusive since some Class I and Class II railroads could argue that their operations pose no greater safety threat than many Class III railroads. Thus, FRA believes that the proposal is flawed since it could arbitrarily allow railroads of a certain size to gain a benefit rather than considering safety issues that define the type of operation.

FRA fails to see that the costs associated with retaining the 3 year interval were very significant when compared to the risks. For example, the proposal devalues the benefit of maintaining a uniform interval throughout the industry. Also, the proposal increases the likelihood of a safety loss if the medical examinations are required less frequently. In addition to the dubious equity of the proposal and its possible safety degradation, FRA is concerned about how this 5 year approach would be handled by a major railroad that might need to certify a small railroad's engineers for operations on the major railroad. For all these reasons, RSAC failed to achieve consensus recommendations and FRA has decided not to change the rule to allow Class III railroads to certify their locomotive engineers every 5 years.

H. Preemption

One commenter requested that FRA clarify whether and to what extent Part 240 applies to the qualifications for train conductors. The State of Wisconsin's Office of the Commissioner of Railroads made this request because its comment states that Wisconsin appellate courts have held that Part 240 preempts state laws that govern the qualifications of conductors. Since FRA had committed to bringing all comments before the Working Group, RSAC reviewed the comment but was unable to achieve a consensus recommendation.

FRA believes that this request for legal guidance is based on the current rule and not the NPRM since the commenter cited a court case that occurred back in 1996. The question asked is narrow and pertains to a specific set of Wisconsin state regulations and the Wisconsin courts' decisions on particular facts. Thus, FRA is responding to this commenter directly rather than publishing a response here. A copy of FRA's response letter will be placed in the docket.

Section-by-Section Analysis

Subpart A—General

Section 240.1—Purpose and Scope

FRA will make minor changes to paragraph (b) so that the regulatory language used by FRA in all of its rules will become more standardized. A few words have been substituted for others in the second sentence, but FRA will not substantively change the purpose and scope of this part by virtue of these changes. FRA did not receive any comments on the proposed changes and the final rule text is identical to the proposed version.

Section 240.3—Application and Responsibility for Compliance

The amendments to this section are identical to the proposed version and employ what is essentially standardized regulatory language which FRA plans to use in all of its rules. FRA does not believe that these revisions substantively change the purpose and scope of this part. FRA explained the purpose of these amendments in the NPRM and FRA did not receive any comments in response to the NPRM version.

Paragraphs (a) and (b) contain the same approach as the current rule but with some slight rewording. As under the current provision, the new provision would mean that railroads whose entire operations are conducted on track that is outside of the general system of transportation are not covered by this part. Most tourist railroads, for example, involve no general system operations and, accordingly, would not be subject to this part. Therefore, FRA continues to intend that this rule shall not be applicable to "tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system." 54 FR 50890, 50893, 50915 (Dec. 11, 1989); *see also* 56 FR 28228, 28240 (June 19, 1991). The word "installation" is intended to convey a meaning of physical (and not just operational) separateness from the general system. A railroad that operates only within a distinct enclave that is connected to the general system only for purposes of receiving or offering its own shipments is within an installation. Examples of such installations are chemical and manufacturing plants, most tourist railroads, mining railroads, and military bases. However, a rail operation conducted over the general system in a block of time during which the general system railroad is not operating is not within an installation and, accordingly, not outside of the general system merely because of the operational separation.

Paragraph (c) will be added so that the rule will more clearly identify that any person or contractor that performs a function covered by this part will be held responsible for compliance. This is not a substantive change since contractors and others are currently responsible for compliance with this part as specified in § 240.11.

Section 240.5—Preemptive Effect and Construction

FRA will amend paragraph (a) so that the regulatory language used by FRA in all of its rules will become more standardized. This change explains the rule's preemptive effect. This amendment will reflect FRA's effort to address recent case law developed on the subject of preemption. One comment was received regarding the issue of preemption and that issue has been addressed in the preamble.

FRA will amend paragraph (b) so that the regulatory language used by FRA in all of its rules will become more standardized. The only change is to remove the word "any." This minor edit would not be a substantive revision.

FRA will amend paragraph (e) of this section by adding the words "or prohibit." The purpose of this modification is to clarify that the rule does not prevent "flowback." The term flowback has been used in the industry to describe a situation where an employee who is no longer qualified or able to work in his or her current position, can return to a previously held position or craft. An example of flowback occurs when a person who holds the position of a conductor subsequently qualifies for the position of locomotive engineer, and at some later point in time the person finds it necessary or preferable to revert back to a conductor position. The reasons for reverting back to the previous craft may derive from personal choice or a less voluntary nature; e.g., downsizing, certificate ineligibility or revocation.

Many collective bargaining agreements address the issue of flowback. FRA does not intend to create or prohibit the right to flowback, nor does FRA intend to state a position on whether flowback is desirable. In fact, the exact opposite is true. In consideration of an RSAC recommendation, FRA has agreed to this clarification of the original intent of paragraph (e) so that it is understood by the industry that employees who are offered the opportunity to flowback or have contractual flowback rights may do so; likewise, employees who are not offered the opportunity to flowback or do not have such contractual rights are not eligible or entitled to such employment as a consequence flowing from this federal regulation.

FRA received a comment that the rule should be modified to prohibit railroads from taking any disciplinary actions during the period while awaiting state action. The comment as raised focused on discipline and not ineligibility to hold a certificate; FRA's authority to regulate a railroad's right to discipline its own employees has not been challenged by this rule. In fact, § 240.5(d) states that FRA does not intend to preempt or otherwise alter the authority of a railroad to initiate disciplinary sanctions against its employees by issuance of these regulations.

Based on discussions of this comment, RSAC recommended adding a new paragraph to this section. Although not proposed in the NPRM, FRA agrees upon reflection that by adding a new paragraph (f), the rule will clarify employee rights in a manner similar to the way in which it is clarifying railroad authority. The intent of the new language is to explicitly preserve any remedy already available to the person and not to create any new entitlements. FRA expects that employees will benefit from this new paragraph by referring to it should a railroad use this regulation as an inappropriate explanation for ignoring an employee's rights or remedies. A railroad must consider whether any procedural rights or remedies available to the employee would be inconsistent with this part.

Section 240.7—Definitions

The final rule adds definitions for eight terms and revises the definitions of another three terms. One of five modifications in the rule that differs from what FRA proposed in the NPRM is a revision to the term *locomotive*. That definition is amended by deleting the phrase "other than hi-rail or specialized maintenance equipment" and replacing it with "other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with § 240.104(a)(2) of this part." In making this modification, FRA is excluding from the definition of "locomotive" those vehicles that the agency has determined, based on RSAC's recommendation, can be safely operated without a certified locomotive engineer. This means that a dual purpose vehicle will require a certified locomotive engineer whenever the exception as described in § 240.104(a)(2) cannot be met. FRA decided that the previously described modification would be better than one commenter's recommendation that the definition of locomotive be amended to include the phrase "but including a dual purpose vehicle as defined above which is functioning as a locomotive;" FRA believes this comment was intended to have the same effect in practice as FRA's modification, but is now redundant given the new definitions of "locomotive," "specialized roadway maintenance equipment," and "dual purpose vehicle."

Likewise, commenters expressed confusion as to the applicability of the rule to certain service vehicles and the confusion appeared to be tied to the section-by-section analysis for the definitions of *dual purpose vehicle* and *specialized roadway maintenance equipment*. In order to prevent additional confusion, FRA has modified the two definitions in question and offers the following descriptions to substitute for the apparently confusing analysis in the proposed rule. FRA wishes to alert interested parties that these service vehicle definitions are also addressed in the preamble and provide further clarification.

The definition for *dual purpose vehicle* describes a piece of on-track equipment that may function as roadway maintenance equipment and is capable of moving railroad rolling stock which enables it to substitute for a traditional locomotive. When a dual purpose vehicle is operated in conjunction with roadway maintenance, pursuant to limited circumstances identified in § 240.104(a)(2), a certified locomotive engineer is not required. Therefore, when using dual purpose vehicles, careful attention to whether the exception applies is necessary to determine whether a certified locomotive engineer is necessary.

A definition for *specialized roadway maintenance equipment* is added to define a type of machine that is used exclusively for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems and is not capable of moving railroad rolling stock. Meanwhile, if roadway maintenance equipment is used for moving railroad rolling stock, it will be treated as a dual purpose vehicle, not specialized roadway maintenance equipment. Specialized roadway maintenance equipment does not have the capability to move railroad rolling stock and, therefore, the alteration of such a vehicle that enables it to move railroad rolling stock will require that the vehicle be treated as a dual purpose vehicle.

The addition of a definition for *roadway maintenance equipment* is a fourth modification to the definitions section that differs from the proposed rule. It defines this on-track equipment as "powered by any means of energy other than hand power which is used in conjunction with maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems." The term roadway maintenance equipment has been incorporated into the definitions of dual purpose vehicle and specialized roadway maintenance equipment. FRA believes this definition is necessary to clarify that within the set of vehicles meeting the definition of roadway maintenance equipment there are two subsets: (1) Vehicles capable of moving railroad rolling stock, *i.e.*, dual purpose vehicles, and (2) vehicles that do not have such capability, *i.e.*, specialized roadway maintenance equipment.

The addition of a definition for *railroad rolling stock* is a fifth modification to the definitions section that differs from the proposed rule. This definition was added so that the phrase "which can function as either a locomotive" would no longer be necessary. The functioning as a locomotive phrase could be construed as ambiguous and subject to multiple interpretations. By substituting that phrase with having "the capability to move railroad rolling stock" in the definitions of dual purpose vehicle and specialized roadway maintenance equipment, FRA intends to be unambiguous. The definition for railroad rolling stock refers to precise definitions found elsewhere in this chapter.

Of the remaining five added definitions and two revised definitions, all are added or modified as proposed. The term *Administrator* will be revised to standardize the FRA Administrator's authority in line with FRA's other regulations. The effect of this change will be to take away the Deputy Administrator's authority to act for the Administrator without being delegated such authority by the Administrator. The Deputy Administrator will also lose the authority to delegate, unless otherwise provided for by the Administrator. The current rule uses the word *qualified* without defining it and this rule expands the use of that term, so a definition is supplied.

The agency has previously neglected to define *FRA* as the Federal Railroad Administration, although that abbreviation has been used in the rule. FRA also will define *person* rather than rely on a definition that currently appears in parenthetic remarks within § 240.11.

Although FRA has previously defined the term *filing*, as in filing a petition, or any other document, with the FRA Docket Clerk, the rule has not defined what constitutes service on other parties. The added definition references the Rules 5 and 6 of the Federal Rules of Civil Procedure (FRCP) as amended. The intent is to apply the FRCP rules in effect at the time a proceeding under this rule occurs, rather than to perpetuate those FRCP rules that are in effect when this regulation becomes final. By defining the term *service*, the expectation is that the rule will clarify the obligations of the parties and improve procedural efficiency.

Section 240.9—Waivers

Minor amendments are being made to this section so that the regulatory language used by FRA in all of its rules will become more standardized. These amendments to paragraphs (a) and (c) are identical to what FRA proposed. The changes to paragraph (a) reflect FRA's current intent; that is, a person should not request a waiver of one of the rule's provisions unless the person is subject to a requirement of this rule and the waiver request is directed at the requirement which the person wishes he or she did not have to abide by. Paragraph (c) will standardize language with other FRA rules which clarify the Administrator's authority to grant waivers subject to any conditions the Administrator deems necessary.

Section 240.11—Consequences for Noncompliance

FRA is rewording this section slightly. No comments addressing this section were received and the final rule is identical to the proposed version. One change will respond to the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 Public Law 104–134, April 26, 1996 which requires agencies to adjust for inflation the maximum civil monetary penalties within the agencies jurisdiction. The resulting $11,000 and $22,000 maximum penalties are determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

Paragraphs (a), (b) and (c) will eliminate a parenthetic definition of person since FRA will define *person* in § 240.7. The citation to a statute in paragraph (c) is also a revision.

Subpart B—Component Elements of the Certification Process

Section 240.103—Approval of Design of Individual Railroad Programs by FRA

FRA will update this section to address railroads commencing operations in the future. There is a need to do so since the numbered paragraphs under paragraph (a) set forth a schedule of dates that have long since passed and any railroad that was conducting operations in 1991 and 1992 should have already filed a written program pursuant to this section. No comments were received and the final rule is identical to the proposed version.

Section 240.104—Criteria for Determining Whether Movement of Roadway Maintenance Equipment or a Dual Purpose Vehicle Requires a Certified Locomotive Engineer

FRA will add this new section to address the issue of what types of service vehicles should be operated by certified locomotive engineers. The title of the section has been revised from the NPRM to clarify that it applies only when roadway maintenance equipment or a dual purpose vehicle is to be operated and does not refer to operating traditional locomotives. Since this was an issue of great interest to many members of the industry represented in the RSAC process, FRA has addressed this issue in detail in the preamble and requests that those people interested in this topic reference the preamble text. The preamble and section-by-section analysis regarding the definitions of "dual purpose vehicle," "locomotive" and "specialized roadway maintenance equipment" have been revised to clarify some language that commenters found confusing in the NPRM. In addition, the new section has been renumbered differently than the proposal.

Some minor changes to paragraph (a)(2)(ii), which was proposed paragraph (b)(2), were made for clarification. For example, the proposed rule did not state that the "rules" under which the railroad would be moving a dual purpose vehicle would be "railroad operating rules." FRA eliminated the reference to "exclusive track occupancy" because, upon further examination, this reference to a term used in part 214 of this chapter applies to the protection of roadway workers within work limits and not to the protection of service vehicle movements. The paragraph was also reorganized for improved clarity.

In addition, proposed paragraph (b)(4), has been deleted. FRA concluded that this reference to power brake requirements was unnecessary, and has made clear in the preamble that it believes those rules apply to movements of maintenance equipment to and from the work site to the extent the equipment is equipped with power brakes.

Section 240.105—Criteria for Selection of Designated Supervisors of Locomotive Engineers

The amendments to this section contained in this final rule are identical to those in the proposed version. This section contains one of the more important modifications to the rule and related issues are addressed in the preamble. No comments were received with regard to the proposal for changes to this section.

The changes to paragraph (b)(4) will create two new requirements. One requirement is that those persons who are DSLEs must be qualified on the physical characteristics of the portion of the railroad on which they are supervising. A second requirement is that a railroad's program must address how it intends to implement the physical characteristics qualification of its DSLEs. As it did in the NPRM, FRA recommends that DSLEs acquire some operational experience over the territories they supervise because it is arguably the best method for learning how to operate over a territory.

The addition of paragraph (c) is an effort to clarify how small railroads, particularly those just commencing operations who find themselves without a qualified and certified DSLE, can designate and train such individuals without reliance on outside sources. 56 FR 28228, 28241–42 (June 19, 1991)(stating that a DSLE could be a contractor rather than an employee of the railroad). The need to create a DSLE can occur under a variety of scenarios including when: (1) new railroads have never certified a locomotive engineer or a DSLE; (2) railroads may have had one or a few DSLEs at one time but no longer employ any qualified individuals; and (3) a railroad wishes to utilize contractor engineers. For those railroads that do not have DSLEs, the addition of paragraph (c) will enable them to consider an additional option for creation of their first DSLE. This section is designed to address the problems that arise from a railroad being unable to certify any person as a locomotive engineer, let alone a DSLE, since the railroad lacks even one DSLE who could conduct the required training and testing of § 240.203(a)(4)(for initial certification or recertification) or § 240.225(a)(5)(for certifying based on the reliance of the qualification determinations made by other railroads). Meanwhile, even if paragraph (c) is utilized, a railroad must comply with the other provisions of either §§ 240.203 or 240.225. Because this paragraph has not changed since the proposed rule and no comments were received with regard to this section, the lengthy explanation provided in the section-by-section analysis in the proposed rule has not been repeated here.

Section 240.111—Individual's Duty To Furnish Data on Prior Safety Conduct as Motor Vehicle Operator

The amendments to this section contained in this final rule are identical to those in the proposed version except that proposed paragraph (h) was eliminated due to its redundancy with paragraph (a); accordingly, proposed paragraph (i) has been moved to new paragraph (h). No comments concerning the proposed modifications of this section were received and, thus, the NPRM should be consulted for a more detailed explanation of the impact of these amendments. The lengthening of the time limit interval in paragraphs (a) from 180 days to 366 days should prove helpful both to small railroads and large ones. RSAC's Working Group members could demonstrate clear examples of the administrative difficulties being encountered in attempting to meet the shorter period and thus FRA believes there is a sufficient basis for a regulatory change.

No comments were received concerning proposed paragraph (i) which is now new paragraph (h). This paragraph will require certified locomotive engineers to notify the employing railroad of motor vehicle incidents described in § 240.115(b)(1) and (2) within 48 hours of the conviction or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license. In addition, this new paragraph will create an obligation for certified locomotive engineers to report to their employing railroad any type of temporary or permanent denial to hold a motor vehicle driver's license when the person has been found by a state to have either refused an alcohol or drug test, or to be under the influence or impaired when operating a motor vehicle. This paragraph will also require that, for purposes of locomotive engineer certification, a railroad cannot require a person to submit motor vehicle operator data earlier than specified in the paragraph. The reasoning behind this rule involves several intertwined objectives which are more fully explained in the NPRM.

Section 240.113—Individual's Duty To Furnish Data on Prior Safety Conduct as an Employee of a Different Railroad

The amendments to this section contained in this final rule are identical to those contained in the proposed version. As proposed, paragraph (a) is being modified by increasing the number of days an individual has to furnish data on prior safety conduct as an employee of a different railroad. The period is being changed from 180 days to 366 days so that the administrative difficulties of compliance would be lessened. FRA does not believe that railroad safety will be diminished by lengthening the period of time that a person has to request and furnish this data. No comments were received regarding this proposed section.

Section 240.117—Criteria for Consideration of Operating Rules Compliance Data

FRA proposed substantial amendments to this cornerstone of the regulation and provided a detailed analysis of the changes in the NPRM. Several comments were received in response to the proposed rule. In response to the comments, one proposed paragraph is being modified in this final rule and another paragraph has been added entirely. The issues upon which comments were received are addressed below and have also been addressed in the preamble under "Addressing Safety Assurance and Compliance."

First, paragraph (c)(2) is being added so that it makes clear the duties of both certified locomotive engineer pilots and instructor engineers, not just designated supervisors of locomotive engineers as was proposed. The explanation of paragraph (c)(2) concerning designated supervisors of locomotive engineers is still accurate and analogies can be made in the rule's application to when certified locomotive engineer pilots and instructor engineers are to be accountable to the extent that railroads must revoke certification. However, one commenter was concerned that FRA's NPRM appeared to be singling out DSLEs for special treatment. Although that comment is not accurate, RSAC recommended that FRA clarify the intent of the provision in the final rule. FRA agrees with RSAC's recommendation that clarification is warranted since some designated supervisors of locomotive engineers, as well as locomotive engineer pilots and instructor engineers may not understand that they are responsible for their conduct, and thus subject to decertification, when they are performing a function that requires them to be qualified and certified locomotive engineers.

Paragraph (c)(3) is being added to clarify the duty of a person who is a certified locomotive engineer but is called by a railroad to perform the duty of a train crew member other than that of locomotive engineer. For example, a person who is called to be the crew's conductor and who does not perform any of the duties of locomotive engineer during that tour of duty cannot have his or her certification revoked for a violation of § 240.117(e)(1) through (5). As the new paragraph will make clear, this exemption only applies when a person is performing non-locomotive engineer duty. Thus, the exemption will not apply if such a person is performing the duties of a locomotive engineer and causes the violation to occur. Meanwhile, note that the exemption does not apply for violations of § 240.117(e)(6) so that engineers working in other capacities who violate certain alcohol and drug rules will have certification revoked for the appropriate period pursuant to §§ 240.117 and 240.119. FRA believes this paragraph explains the status quo and that it would be helpful to have rule text since that should help resolve such disputes for railroads over whether a revocation action is necessary. Consequently, FRA expects that a benefit of this new paragraph will be a reduction in the number of railroad hearings and petitions to FRA for review pursuant to § 240.307 and Subpart E—Dispute Resolution Procedures.

Paragraph (d) has been modified slightly from the proposal to clarify that the shortened time frame for considering operating rule compliance only applies to conduct described in "paragraphs (e)(1) through (e)(5)" of this section and not paragraph (e)(6). This modification is necessary to clarify that when alcohol and drug violations are at issue, the window in which prior operating rule misconduct will be evaluated will be dictated by § 240.119 and not limited to the 36 month period prescribed in this paragraph. The rule will continue to require that certification reviews consider alcohol and drug misconduct that occurred within a period of 60 consecutive months prior to the review pursuant to § 240.119(c).

FRA noted in the proposed rule that paragraph (e)(3) would likely need amending prior to becoming a final rule since two other regulatory proceedings might result in new rules which could supersede this reference. Although only one of these two regulatory proceedings has resulted in the issuance of a final rule, *i.e.*, Passenger Equipment Safety Standards published at 64 FR 25540 (May 12, 1999), FRA has modified this rule to account for the Passenger Equipment final rule and whatever changes, if any, are ever made to part 232. See 63 FR 48294 (Sept. 9, 1998) (proposing changes to part 232). These modifications will continue to hold certified locomotive engineers responsible for complying with procedures for the safe use of train or engine brakes, regardless of whether the train is a freight train or a passenger train, when these same engineers are responsible for inspecting or testing the brake system, or ensuring that the required tests and inspections have been performed.

The rest of the changes to this section did not receive any comments and, thus, the detailed explanation of their impact in the NPRM has not been repeated here.

Section 240.121—Criteria for Vision and Hearing Acuity Data

FRA will amend this section mainly to prevent potential accidents due to a locomotive engineer's medical condition that could compromise or adversely affect safe operations. The amendments to paragraphs (b) and (c)(3) are identical to the proposal. Meanwhile, amendments to paragraph (e) address one of the two comments received on the issue of acuity; the other issue is being addressed in Appendix F.

A comment requested clarification for when a railroad must provide additional testing pursuant to paragraph (e). RSAC's recommendation to address the commenter's concern has led to a revision. Paragraph (e) differs from the proposed version due to the addition of a sentence that states that "[i]n accordance with the guidance prescribed in Appendix F, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now arguably operate a locomotive or train safely." This recommended revision benefits both implementing railroads and candidates for certification or recertification without having any adverse effect on safety and thus has received FRA's endorsement.

For ease of reference, the following statement is reprinted from Appendix F and should provide sufficient guidance for implementing this new sentence. "The intent of § 240.121(e) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely operate a locomotive or train. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency."

FRA has made two modifications to paragraph (f) that should improve the clarity and enforcement of the rule. One of these modifications substitutes the proposed phrase "it is the obligation of each certified locomotive engineer to" with the final language that "each certified locomotive engineer shall;" although the required notification is not altered by changing this language, the proposed language is less desirable since some engineers might consider an "obligation" to be optional or voluntary when it is intended to be mandatory. The final language clarifies that this notification is mandatory.

A second modification to paragraph (f) addresses the issue of how soon after learning of the deterioration of his or her best correctable vision or hearing must the certified locomotive engineer notify the railroad of the deterioration. The proposed rule failed to address this issue which could lead to delayed notification and enforcement difficulties. FRA is concerned with safe train operations, not whether a person can notify a railroad within a set time frame. Thus, FRA will require this notification "prior to any subsequent operation of a locomotive or train which would require a certified locomotive engineer." Certified locomotive engineers should note that willful noncompliance with this new requirement may result in the assessment of a civil penalty or other appropriate enforcement action.

Section 240.123—Criteria for Initial and Continuing Education

The revision of paragraph (b) and the addition of paragraphs (d), (d)(1), and (d)(2) of this section are identical to the proposed revisions; these amendments will help resolve numerous inquiries FRA has received regarding how engineers can become familiar with the physical characteristics of a territory on new railroads being created, or on portions of a railroad being reopened after years of non-use. These paragraphs seek to clarify the status quo. The benefits of this approach include a better use of agency resources by not having to address this issue repeatedly on a case-by-case basis, a system that is fairer to all parties because it treats all railroads uniformly, and a process that is neither overly burdensome nor a compromise of safety. No comments were received in response to this issue.

Section 240.127—Criteria for Examining Skill Performance

This section contains one of the changes discussed in the preamble under the major issues section titled "Qualifications for Designated Supervisors of Locomotive Engineers" and is in response to a comment filed by an RSAC member. The sole modification to this section contained in this notice is identical to the modification contemplated in the proposed rule. This modification addresses a conflict between criteria that must be met to qualify as a DSLE and the concept endorsed by RSAC that a DSLE can determine an engineer's train handling abilities without being familiar with the territory over which the engineer is operating. The commenter argued that DSLEs should be qualified on the physical characteristics of territory over which they are administering a skill performance test because that would increase safety. After further consideration, this RSAC member and commenter agreed with the previous consensus recommendation that this exception would not have a detrimental effect on safety. As suggested by RSAC, FRA believes this modification would conserve railroad resources by not creating an additional demand for training supervisors and without creating a detrimental effect on safety.

Section 240.129—Criteria for Monitoring Operational Performance of Certified Engineers

FRA did not propose a specific change to this section in the NPRM but is modifying the rule in order to resolve a conflict between the criteria that must be met to qualify a DSLE and the concept endorsed by RSAC that a DSLE can determine an engineer's train handling abilities without being familiar with the territory over which the engineer is operating. The same comment that was discussed in the section-by-section analysis regarding § 240.127 applies to this section and FRA's position is similarly situated. The commenter argued that DSLEs should be qualified on the physical characteristics of territory over which they are monitoring operational performance because that would increase safety. After further consideration, this RSAC member and commenter agreed with the previous consensus recommendation that this exception would not have a detrimental effect on safety. As suggested by RSAC, FRA believes this modification would conserve railroad resources by not creating an additional demand for training supervisors and without creating a detrimental effect on safety.

Subpart C—Implementation of the Certification Process

Section 240.213—Procedures for Making the Determination on Completion of Training Program

FRA did not propose a specific change to this section in the NPRM but is modifying the rule to ensure that a fully qualified DSLE, i.e., a person who meets all of the requirements of § 240.105, will be making the determination that a person completing a locomotive engineer training program has the requisite physical characteristics familiarity. As addressed in the preamble under the major issues section titled "Qualifications for Designated Supervisors of Locomotive Engineers," FRA received one comment that advocated requiring that a supervisor of locomotive engineers be qualified on the physical characteristics of the territory over which the supervisor conducts the skill performance test. Although this is a different issue than the one raised in the comment, Working Group discussions on this issue led to RSAC's recommendation that FRA add a new paragraph (c) to § 240.213. RSAC's recommendation requested that FRA address that a DSLE be qualified on the physical characteristics of a territory over which a locomotive engineer is being qualified on at the completion of a training program pursuant to § 240.213. In addition, RSAC recommended that § 240.213 be amended to reflect that a qualified DSLE should be required whenever a locomotive engineer is to be qualified for the first time on a territory.

FRA believes that modification of paragraph (b)(3) makes greater sense than RSAC's recommendation of adding a new paragraph because paragraph (b) already requires written documentation that certain determinations will be met. The current language of § 240.213 also takes into account the first time a locomotive engineer is qualified on a territory and therefore addressing it again would be redundant. Paragraph (b)(3) was modified by requiring that when a railroad provides for the continuing education of a certified locomotive engineer, that railroad must ensure that each engineer maintains the necessary knowledge, skill and ability concerning familiarity with physical characteristics "as determined by a qualified designated supervisor of locomotive engineers." Thus, the modification is not that engineers must be qualified on physical characteristics (since that is already a requirement) but that the person making this determination for the railroad must be a qualified DSLE. FRA believes that this change promotes safety.

Section 240.217—Time Limitations for Making Determinations

All of the modifications being made to this section involve changes to time limits and are identical to the proposed modifications. The RSAC members requested these changes, and FRA will make the modifications, because administrative difficulties will be eased by not having to meet the shorter and inconsistent periods. FRA does not believe that these time extensions will make the data so old that they will no longer be indicative of the person's ability to safely operate a locomotive or train. When the rule was originally published, time limits were established which seemed reasonable and prudent. The rule contained numerous time limits of varying length, which has led to confusion by those governed by the rule. Since publication of the rule, experience by the regulated community has shown the potential for simplification and consistency without sacrificing safety. No comments were received regarding this section and thus FRA believes there are benefits of extending these time limitations without any risk to safety.

Section 240.223—Criteria for the Certificate

The amendment that will be made by this final rule to paragraph (a)(1) is identical to the proposal and will require that each certificate identify either the railroad or "parent company" that is issuing it. No comments were received with regard to this section. This change will reduce the burden on small railroads. For these companies, complying with the current requirement of identifying each railroad has become a major logistical problem. It is arguable that a holding company managing multiple short line railroads is the equivalent of a major railroad operating over its many divisions; thus, it is fair to treat them similarly. However, the individuals must still qualify under the program of each short line railroad for which they are certified to operate and each of those railroads must maintain appropriate records as required by this part.

Section 240.225—Reliance on Qualification Determinations Made by Other Railroads

No comments were received with regard to this section and the modifications of this section are identical to the proposed version; thus, the analysis provided for in the NPRM is merely summarized here. New paragraph (a) addresses the perception that the larger railroads often administer a more rigorous training program than the smaller railroads due to the nature of their operations; that is, small railroads typically have more straightforward operations which are geographically compact and not as topographically diverse as the larger railroads. The modification requires a railroad's certification program to address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire. In both these instances, FRA is providing a railroad with the opportunity to shorten the on-the-job training that might be required if a person is treated as having no operational experience. If a railroad's certification program fails to specify how to train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program. By articulating both the problem and mandating a safe solution, it is FRA's position that this modification will save resources.

Section 240.229—Requirements for Joint Operations Territory

No comments were received with regard to this section and the modifications of this section are identical to the proposed version; thus, the analysis provided for in the NPRM is merely summarized here. By amending paragraph (c), FRA has adopted RSAC's recommendation to realign the burden for determining which party is responsible for allowing an unqualified person to operate in joint operations. These changes are based on the experiences of the Working Group's members who expressed the universal opinion that an inordinate amount of the liability currently rests with the controlling railroad. The realignment would lead to a sharing of the burden among a controlling railroad, a guest railroad and a guest railroad's locomotive engineer. The parties' responsibilities are found respectively in paragraphs (c)(1) through (3). FRA's thought is that the changes will be fair to the parties involved since each party will be responsible for making determinations based on information that should be within that party's control.

Section 240.231—Requirements for Locomotive Engineers Unfamiliar With Physical Characteristics in Other Than Joint Operations

No comments were received with regard to this section and the addition of these final rule provisions are identical to those of the proposed version; thus, the lengthy analysis provided in the NPRM is merely summarized here. Railroads have a history of using conductors and other craft employees as pilots and this usage of non-certified locomotive engineers as pilots conflicts with FRA's position on what the current rule allows. FRA recognizes that there is a great need for clarification concerning which employees may serve as pilots since there has been great misunderstanding and misapplication of the rule in this regard.

FRA's changes to the rule reflect RSAC's recommendation that recognizes the complexity of the problem. The concept behind easing the engineer pilots only requirement relies on the Working Group members' experiences; that is, engineers who have been previously qualified on a territory would need less guidance and expertise to refamiliarize themselves with the physical characteristics of that territory as would those engineers who work under certain conditions that make a person's lack of familiarity a reduced safety concern. Simply requiring locomotive engineer pilots in all situations, or in no situations, is neither practical nor desirable. Hence, while supervisors of locomotive engineers may need to consult the rule more frequently in order to ensure compliance, the rule will ensure a higher degree of safety when an engineer operates in unfamiliar territory. Because the modification will ensure that physical characteristics are addressed in a more structured manner, this modification should promote safety better than the confusion caused by the original rule's lack of a statement.

Subpart D—Administration of the Certification Program

Section 240.305—Prohibited Conduct

FRA received one comment that led RSAC and FRA to reevaluate this section. The commenter was concerned that FRA's NPRM appeared to be singling out DSLEs for special treatment that would serve as a disincentive for people to want to be DSLEs. FRA believes that the opposite is true; by clarifying a DSLEs responsibilities, the regulation will more clearly notify the public that DSLEs will be subject to revocation of their certification in the same way as every other type of locomotive engineer. In fact, RSAC's post-NPRM recommendation was to expand the clarification so that locomotive engineer pilots and instructor engineers would understand that they too are subject to decertification based on their conduct when performing a locomotive engineer function. Thus, for the same reasons that FRA will change § 240.117(c)(2), paragraph (a)(6) will be modified from the proposal. This amendment certainly puts certified locomotive engineers who are also supervisors, pilots and instructors on notice that they cannot actively or passively acquiesce to misconduct events caused by certified engineers they are observing, piloting or instructing.

Besides the above mentioned change, several paragraphs to § 240.305(a) will be added and changed so that the prohibited conduct list is equivalent to the list of misconduct events in § 240.117(e), which require the railroad to initiate revocation action. This section is needed so that FRA may initiate enforcement action. For example, FRA may want to initiate enforcement action in the event that a railroad fails to initiate revocation action or a person is not a certified locomotive engineer under this part.

Furthermore, FRA has made conforming changes to paragraph (a)(3) as necessary considering the Passenger Equipment Safety Standards final rule that was published at 49 CFR Part 238. See 64 FR 25540 (May 12,1999). Paragraph (a)(3) was also modified to account for whatever changes, if any, are ever made to part 232. See 63 FR 48294 (Sept. 9, 1998) (proposing changes to part 232).

Section 240.307—Revocation of Certification

FRA is amending several paragraphs in this section. In response to the NPRM, two commenters offered opinions that suggested alternative changes to what FRA proposed. Those changes have been addressed fully in the preamble to this rule in the section "Improving the Dispute Resolution Procedures" and will not be addressed here unless the comment prompted FRA to make a rule change.

In adopting this final rule, FRA is making four modifications to this section which differ from the NPRM; otherwise, the analysis in the NPRM satisfactorily describes the basis for the amendments to this section. One of the four modifications from the NPRM involves the problem that throughout § 240.307 the regulation refers to an individual whose function is the "charging official." In helping to formulate the NPRM recommendations, several of the Working Group's members noted that the railroad industry does not generally use this term and that a better description of the individual the regulation is referring to would be "investigating officer." FRA agreed with what later became RSAC's recommendation and intended to change the term "charging official" to "investigating officer" throughout the document when referring to the railroad official who performs the prosecutorial role. Despite FRA's intent, the agency unintentionally failed to modify paragraph (c)(2) accordingly; that mistake is now being corrected.

In order to address two other modifications that differ from the proposal, it is helpful to reiterate the basis for one of the proposed modifications that remain in the final rule. Paragraph (c) requires that a railroad shall provide a hearing consistent with procedures specified in paragraph (c) unless a hearing is held pursuant to a collective bargaining agreement as specified in paragraph (d), a hearing is waived according to paragraph (f), or, prior to a hearing, the railroad makes certain determinations specified in paragraphs (i) and (j) which excuse the alleged misconduct. Paragraph (c)(10) requires that the presiding officer prepare a written decision, which on its face seems like a straightforward requirement. However, some petitioners have argued that procedural error has occurred when written decisions have been signed by a railroad official other than the presiding officer, e.g., a presiding officer's supervisor. The issue appears to be whether the presiding officer must also be the decision-maker or whether the presiding officer can merely take the passive role of presiding over the proceedings only. There is also a separate issue of whether a railroad official who is someone other than the presiding officer may have a conflict of interest that should disqualify that railroad official from signing the written decision; i.e., there may be the appearance of impropriety if the non-presiding railroad official has ex-parte communications with the charging official (or investigating officer). FRA urges railroad officials to avoid the appearance of impropriety and to conduct their on-the-property hearings in an objectively fair manner.

The agency's intentions were articulated in the preamble to the 1993 interim final rule. FRA stated that "FRA's design for Subpart D was structured to ensure that such decisions would come only after the certified locomotive engineer had been afforded an opportunity for an investigatory hearing at which the hearing officer would determine whether there was sufficient evidence to establish that the engineer's conduct warranted revocation of his or her certification." 58 FR 18982, 18999 (Apr. 9, 1993). FRA also discussed in this 1993 preamble how the revocation process pursuant to this part should be integrated with the collective bargaining process. FRA stated that if the collective bargaining process is used "the hearing officer will be limited to reaching findings based on the record of the hearing" and not other factors as may be allowed by a bargaining agreement; the rule was written to "guard against hearing officers who might be tempted to make decisions based on data not fully examined at the hearing." 58 FR 18982, 19000 (Apr. 9, 1993). Hence, it appears that the agency did not even contemplate that someone other than the presiding officer might make the revocation decision.

In contrast to the agency's initial position, several of the Working Group's members said that their organizations have set up this process to allow someone other than the presiding officer to make the revocation decision. This other person is always a railroad official who reviews the record made at the railroad hearing. Although this is not what the agency expected when it drafted the original final rule in 1991, FRA and the LERB have found this practice acceptable as long as the relevant railroad official has not been the charging official (or investigating officer). The reasoning behind this acceptance is that fairness of the hearing and the decision is maintained by separating the person who plays the prosecutorial role from the person who acts as the decision-maker. Thus, RSAC recommends, and FRA agrees, to codify this position in paragraph (c)(10).

Meanwhile, a second modification that differs from the NPRM is FRA's failure to amend the reference in paragraph (e) to the "presiding officer" when it published the NPRM. FRA's intent was to amend paragraph (e) so that the rule will uniformly state that a railroad official, other than the investigating officer, shall make findings as to whether revocation is required. Thus, pursuant to the new rule, the railroad official, who is someone other than the investigating officer and who determines whether revocation is necessary, could be the presiding officer or another qualified railroad official.

A third modification that FRA is making to this section that differs from the NPRM is found in paragraph (c)(10). FRA's original proposal stated that "[a]t the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision in the proceeding." FRA received one comment that suggested that this paragraph should be revised to clarify that the written decision could be prepared at or after the close of the record; the commenter argued that unless amended, the paragraph ambiguously gave the impression that a written decision had to be provided upon the immediate closing of the hearing. In consideration of the comment, RSAC discussed that a formal deadline for written decisions in revocation proceedings not held pursuant to collective bargaining agreements was desirable so that these decisions could be expected to be completed within a reasonable period of time. RSAC recommends, and FRA agrees, that it would be fair to all parties if such a decision would be required "no later than 10 days after the close of the record." The "no later than 10 days after the close of the record" requirement should not place a great burden on any railroad nor should it be confusing to apply. The "no later than" language allows issuance of the decision on the tenth day after the close of the record or any time prior to the expiration of that tenth day.

FRA did not receive comments with regard to the other proposed changes to this section, which are explained below. Paragraph (b)(2) is modified in two significant ways. First, based on RSAC's recommendation and FRA's understanding of fair process, initial notice of a revocation suspension may be either oral or written but confirmation of the suspension must be made in writing at a later date; this clarifies a railroad's obligations since FRA was silent in the rule as to whether notice could be made orally or must be in writing yet FRA's preamble stated that the notice must be in writing. Second, the amount of time the railroad will have to confirm the notice in writing will depend on a time limit imposed by an applicable collective bargaining agreement or, in the absence of such an agreement, a time limit of 96 hours will be imposed.

Modifications to paragraphs (i) and (i)(1) from the proposal are merely cosmetic. Paragraph (i)(1) will make it explicitly known that a person's certificate shall not be revoked when there is sufficient evidence of an intervening cause that prevented or materially impaired the person's ability to comply. FRA has always maintained this position and the RSAC members agreed that it would be useful to incorporate it into the rule. FRA expects that railroads which have previously believed they were under a mandate to decertify a person for a violation regardless of the particular factual defenses the person may have had, will more carefully consider similar defenses in future cases. In 1993, FRA stated that "[f]actual disputes could also involve whether certain equitable considerations warrant reversal of the railroad's decision on the grounds that, due to certain peculiar underlying facts, the railroad's decision would produce an unjust result not intended by FRA's rules." 58 FR 18982, 19001 (Apr. 9, 1993). The example FRA used in 1993 applies to this proposal as well. That is, the LERB "will consider assertions that a person failed to operate the train within the prescribed speed limits because of defective equipment." Similar to the defense of defective equipment, the actions of other people may sometimes be an intervening cause. For instance, a conductor or dispatcher may relay incorrect information to the engineer which is reasonably relied on in making a prohibited train movement.

Meanwhile, locomotive engineers and railroad managers will need to note that not all equipment failures or errors caused by others should serve to absolve the person from certification action. The factual issues of each circumstance must be analyzed on a case-by-case basis. For example, a broken speedometer would certainly not be an intervening factor in a violation of § 240.117(e)(3) (failure to do certain required brake tests).

Paragraph (i)(2) has been modified from the proposal although no comments were received requesting the type of change made. The proposed rule prohibited all railroads from taking revocation action for events that are of a minimal nature and that do not have either a direct or potential effect on rail safety while the final rule merely permits railroads to make such a determination. Thus, the final rule will provide a railroad with the discretion necessary to decide not to revoke an engineer's certification for an operational misconduct event that violates § 240.117(e)(1) through (e)(5) under certain limited circumstances. Without such a modification, the proposal would have created a defense in every case where many close judgment calls by railroads could be second guessed by the LERB. Rather than finalize the proposal, which FRA helped RSAC develop into a recommendation, FRA has decided to moderate it so that it is not a defense in every case and thus carry the potential to greatly increase the number of petitions to the LERB. In comparison, FRA does not believe that the modification of adding the defense of an intervening cause will greatly increase or decrease the number of petitions to the LERB since making such a determination is significantly more objective than determining what types of violations are both (1) of a minimal nature and (2) have no direct or potential effect on rail safety. The potential downside to proposed paragraph (i)(2) was not recognized until after the comment period closed and RSAC's final recommendations were made.

Paragraph (i)(2) will not permit a railroad to use their discretion to dismiss violations indiscriminately. That is, FRA will only permit railroads to excuse operational misconduct when two criteria are met. First, the violation must be of a minimal nature; for example, on high speed track at the bottom of a steep grade, the front of the lead unit in a four unit consist hauling 100 cars enters a speed restriction at 10 miles per hour over speed, but the third unit and the balance of the train enters the speed restriction at the proper speed, and maintains that speed for the remainder of the train. If more of the locomotive or train consist enters the speed restriction in violation, a railroad that is willing to consider mitigating circumstances will need to consider whether the violation was truly of a minimal nature. Other examples where violations may be of a minimal nature may include slowing down for speed restrictions that are located within difficult train-handling territory, flat switching-kicking cars, snow plow operations, and certain industrial switching operations requiring short bursts of speed to spot cars on steep inclines.

In contrast, a violation could not be considered of a minimal nature if an engineer fundamentally violated the operating rules. For example, using the same consist and location in the previous example, if the entire train were operated through the speed restriction at 10 miles per hour over the prescribed speed, then the event could not be considered of a minimal nature. In situations where the rule has been fundamentally violated, a railroad does not have the discretion to excuse this violation.

Second, for paragraph (i)(2) to apply, it will also be required that sufficient evidence be presented to prove that the violation did not have either a direct or potential effect on rail safety. This defense will certainly not apply to a violation that actually caused a collision or injury because that would be a direct effect on rail safety. It will also not apply to a violation that, given the factual circumstances surrounding the violation, could have resulted in a collision or injury because that would be a potential effect on rail safety. For instance, an example used to illustrate the term "minimal nature" described a situation involving a train that had the first two locomotives enter a speed restriction too fast, yet the balance of the train was in compliance with the speed restriction; since the train in this example would not be endangering other trains because it had the authority to travel on that track at a particular speed, there would be no direct or potential effect on rail safety caused by this violation.

In contrast, if a train fails to stop short of a banner, which is acting as a signal requiring a complete stop before passing it, during an efficiency test, that striking of a banner may have no direct effect on rail safety but it has a potential effect since a banner would be simulating a railroad car or another train. Meanwhile, there is a difference between passing a banner versus making an incidental touching of a banner. If a locomotive or train barely touches a banner so that the locomotive or train does not run over the banner, break the banner, or cause the banner to fall down, this incidental touching could be considered a minimal nature violation that does not have any direct or potential effect on rail safety. This is because such an incidental touching is not likely to cause damage to equipment or injuries to crew members even if the banner was another train. Although it is arguable that if the banner were a person the touching could be fatal, FRA is willing to allow railroads the discretion to consider this type of scenario in the context of excusing a violation pursuant to paragraph (i)(2); of course, if the banner was in fact a person in the manner described in the example, the railroad would not have the discretion to apply paragraph (i)(2).

Similarly, if a train has received oral and written authority to occupy a segment of main track, the oral authority refers to the correct train number, and the oral authority refers to the wrong locomotive because someone transposed the numbers, the engineer's violation in not catching this error before entering the track without proper authority could be considered of a minimal nature with no direct or potential effect on rail safety. Since the railroad would be aware of the whereabouts of this train, the additional risk to safety of this paperwork mistake may practically be zero. Under the same scenario, where there are no other trains or equipment operating within the designated limits, there may be no potential effect on rail safety as well as no direct effect.

FRA also notes that in paragraphs (i)(1) and (i)(2) of the new rule, a defense must be supported by sufficient evidence, not substantial evidence as was mistakenly proposed. As FRA discussed in the preamble topic "Improving the Dispute Resolution Procedures," the rule does not contain a standard of proof for the railroad hearing and FRA did not intend to create any such standard. Although silent on the standard of proof, FRA specifically requires that the railroad determine, on the record of the hearing, whether the person no longer meets the qualification requirements of this part and state explicitly the basis for the conclusion reached. § 240.307(b)(4). FRA wants to ensure that the railroad hearings are fair, and allow for consolidation with applicable collective bargaining agreements, without the rigidity of instituting a standard of proof. Furthermore, substantial evidence is a standard of review that would not be appropriate given the fact finding role of such a hearing, as opposed to a reviewing role.

Paragraph (j) will require that railroads keep records of those violations in which they must not or elect not to revoke the person's certificate pursuant to paragraph (i). The keeping of these records is substantially less burdensome than the current rule since the current rule requires this type of recordkeeping plus the opportunity for a hearing under § 240.307. Paragraph (j)(1) will require that railroads keep records even when they decide not to suspend a person's certificate due to a determination pursuant to paragraph (i). Paragraph (j)(2) will require that railroads keep records even when they make their determination prior to the convening of the hearing held pursuant to § 240.307.

Paragraph (k) will address concerns that problems could arise if FRA disagrees with a railroad's decision not to suspend a locomotive engineer's certificate for an alleged misconduct event pursuant to § 240.117(e). The idea behind new paragraph (i) is that as long as the railroads make good faith determinations after reasonable inquiries, they should have a defense to civil enforcement for making what the agency believes to be an incorrect determination. Since paragraph (i) will both require and permit railroads to make some difficult decisions based on factual circumstances on a case-by-case basis, FRA accepts RSAC's recommendation that it is fair not to penalize railroads for making what the agency in hindsight may decide to be the wrong decision. However, railroads are put on notice that if they do not conduct a reasonable inquiry or act in good faith, they are subject to civil penalty enforcement. In addition, even if a railroad does not take what FRA considers appropriate revocation action, FRA can still take enforcement action against a person responsible for the non-compliance by assessing a civil penalty pursuant to § 240.305 or issuing an order prohibiting an individual from performing safety-sensitive functions in the rail industry for a specified period pursuant to 49 CFR part 209, subpart D.

Section 240.309—Railroad Oversight Responsibilities

This recordkeeping section will be modified to better reflect the types of poor safety conduct identified in § 240.117(e). It is identical to the proposal except for paragraph (e)(3). FRA has made conforming changes to paragraph (e)(3) as necessary considering the Passenger Equipment Safety Standards final rule that was published at 49 CFR Part 238. See 64 FR 25540 (May 12,1999). Paragraph (e)(3) was also modified to account for whatever changes, if any, are ever made to part 232. See 63 FR 48294 (Sept. 9, 1998)(proposing changes to part 232).

Paragraphs (e)(6), (7) and (8) currently concern train handling issues (i.e., improper use of dynamic brakes, automatic brakes and a locomotive's independent brake) that are no longer considered operational misconduct events and therefore FRA should not need to ask railroads to report this information for study and evaluation. The new paragraphs (e)(6), (7) and (8) mirror those operational misconduct events that were mistakenly left off this list of conduct that needs to be reported for study and evaluation purposes.

New paragraph (h) would correct a clerical error which had mistakenly created two paragraphs labeled as (e). No comments were received in response to this section in the NPRM.

Subpart E—Dispute Resolution Procedures

Section 240.403—Petition Requirements

The change to paragraph (d) which shortens the amount of time an aggrieved person can take to file a petition with the LERB from 180 days to 120 days is identical to the proposal. No comments were received in response to the proposed section. The main reason for this change is the broad concept that the entire certification review process should be as short as possible because timely decisions are more meaningful. Another reason for shortening this filing period is that the RSAC members, many of whom have had significant exposure to the LERB petition process, found this time period unnecessarily long in order to complete a petition. These industry leaders recognize that the evidence typically needed for the LERB's review is readily available at the time the railroad makes its revocation decision. Petitioners need to send the LERB this evidence and add an explanation as to why they believe the railroad's decision was improper. Since this period of time was so great, some RSAC members reported that it only encouraged aggrieved persons to procrastinate before deciding whether to file a petition.

While FRA is acting to shorten the time available to file a petition, in consideration of recent circumstances experienced in administering the dispute resolution process, FRA is no longer comfortable with the Locomotive Engineer Review Board's lack of authority to accept late petitions for cause shown. Thus, FRA has modified paragraph (d) and added paragraphs (d)(1) and (2) to accept late filings under certain limited circumstances that are modeled after, to the extent possible, rule 6(b) of the Federal Rules of Civil Procedure regarding enlargement of time. Through the promulgation of paragraph (d)(1), FRA intends to give the Board wide discretion to grant a request for additional time that is made prior to the expiration of the period originally prescribed. As the Board may exercise its discretion under this rule only for "cause shown," a party must demonstrate some justification for the Board to accept the late petition. Similarly, if the deadline in (d) is completely missed, the movant, under paragraph (d)(2), must allege the facts constituting "excusable neglect" and the mere assertion of excusable neglect unsupported by facts is insufficient. Excusable neglect requires a demonstration of good faith on the part of the party seeking an extension of time and some reasonable basis for noncompliance within the time specified in the rules. Absent a showing along these lines, relief will be denied. In addition, paragraph (e) was added to explain that a decision of untimeliness may be appealed directly to the Administrator. Ordinarily, an appeal to the Administrator may occur only after a case has been heard by FRA's hearing officer.

Section 240.405—Processing Qualification Review Petitions

The changes to this section are identical to the proposal with one exception and no comments were received in response to this proposed section. Paragraph (a) is modified to include a public pronouncement of FRA's goal to issue decisions within 180 days from the date FRA has received all the information from the parties. FRA's ability to achieve this goal is dependent on the number of petitions filed and agency resources available to handle those petitions in any given period. The modification to paragraph (c) lengthens the amount of time the railroad will be given to respond to a petition from 30 days to 60 days because FRA accepts RSAC's recommendation that a 30-day time period is unfairly short; FRA expects that when possible, railroads will continue to file responses as soon as possible rather than wait until the sixtieth day to file. A further modification was made to paragraph (c) based on FRA's recent experiences administering the dispute resolution process; thus, FRA has decided to allow the Board to consider late filings to the extent it is practicable to do so. Also, paragraph (d)(3) is added so that railroads which submit information in response to a petition will be required to file such submission in triplicate; without this requirement, the burden placed on the Docket Clerk could cause undesirable delay in this process.

It is important to note that FRA is not amending paragraph (f). The LERB is still only determining whether the railroad's decision was based on an incorrect determination. If a railroad conducted hearing is so unfair that it causes a petitioner substantial harm, the LERB may grant the petition; however, the LERB's review is not intended to correct all procedural wrongs committed by the railroad.

Section 240.411—Appeals

Paragraph (e) is amended as proposed to give the Administrator the power to remand or vacate. No comments were received in response to this proposed section. The phrase "except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted" is included as part of the regulation so that parties would understand that a remand, or other intermediate decision, would not constitute final agency action. The inclusion of this phrase is made in deference to those parties that are not represented by an attorney or who might otherwise be confused as to whether any action taken by the Administrator should be considered final agency action.

Likewise, recent administration of the dispute resolution proceedings has convinced FRA to allow the Locomotive Engineer Review Board to accept late filings for cause shown under certain limited circumstances. See § 240.403(d). Given the limited authority of the FRA hearing officer, it appears appropriate for an aggrieved party to a Board decision, which denies a petition as untimely, to have the right to appeal that Board decision directly to the Administrator. See § 240.403(e). Paragraph (f) was added to adjust for that additional type of Administrator review.

Appendix A to Part 240—Schedule of Civil Penalties

No comments were received in response to this appendix. FRA is changing footnote number 1 to this schedule of civil penalties so that it will reflect recent changes in the law. The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 Public Law 104–134, April 26, 1996 required agencies to adjust for inflation the maximum civil monetary penalties within the agencies jurisdiction. The resulting $11,000 and $22,000 maximum penalties were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

As promised in the proposal's analysis, FRA has considered the modifications to the rule in deciding where revisions of the penalty schedule are necessary. Although penalty schedules are statements of policy and FRA was not obligated to provide an opportunity for public comment, FRA invited comments on this issue and received none.

Appendix F to Part 240—Medical Standards Guidelines

The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §§ 240.121 and 240.207 of this part. The main issue addressed in this appendix is the addition of acceptable test methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. Two issues were raised by one commenter to the NPRM regarding the appropriateness of some of the guidance proposed.

For consistency and clarification, the commenter asked whether Appendix F and § 240.121(e) should be revised to reflect that further testing may be conducted upon request if the railroad has not provided for such further testing without such a request. Since this issue was discussed in great detail in the section-by-section analysis for § 240.121(e), FRA requests that interested persons consult that earlier analysis.

The second of these two issues involves the appropriateness of using chromatic lenses when testing a person's color vision. The commenter recommended the deletion of the sentence "[c]hromatic lenses may be worn in accordance with any subsequent testing pursuant to § 240.121(c) if permitted by the medical examiner and the railroad." RSAC and the commenter support banning the wearing of chromatic lenses during an initial test on the grounds that FRA has acquired a general body of knowledge that chromatic lenses are a safety issue. Meanwhile, the commenter requested that the rule be silent on the issue of whether chromatic lenses are acceptable for subsequent testing since such a statement from FRA might be considered an endorsement of chromatic lenses in other legal contexts. RSAC recommended that this sentence be deleted and that FRA remain silent on the acceptability of chromatic lenses in subsequent testing because it is likely that the judicial system will end up deciding such issues on a case-by-case basis regardless of FRA's pronouncements. After further consideration, FRA agrees with RSAC's recommendations.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is considered to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). Nevertheless, FRA has prepared and placed in the docket a regulatory evaluation of the final rule. This evaluation estimates the costs and other consequences of the rule as well as its anticipated economic and safety benefits. It may be inspected and photocopied during normal business hours by visiting the FRA Docket Clerk at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, NW, in Washington, DC. Photocopies may also be obtained by submitting a written request by mail to the FRA Docket Clerk at the Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590.

FRA expects that overall the rule will save the rail industry approximately $920,000 Net Present Value (NPV) over the next twenty-years. The NPV of the total estimated twenty-year costs associated with the rule is $1,049,964. The NPV of the total twenty-year monetary savings (non-safety benefits) expected to accrue to the industry from the rule is $1,970,999. For some rail operators, the total costs incurred may exceed the total costs saved. For others, the cost savings will outweigh the costs incurred.

Costs/savings, and benefits/safety impacts associated with particular requirements of the final rule were analyzed separately. FRA believes it is reasonable to expect that several injuries and fatalities will be avoided as a result of implementing some of the rule modifications. FRA also believes that the safety of rail operations will not be compromised as a result of implementing the cost savings modifications.

The following table presents estimated twenty-year monetary impacts associated with the rule modifications.

Description	Costs incurred	Costs saved
Supervisors of Loco. Engineers:		
Qualifications	$1,012,211	
First Designated Supervisor		$ 8,422
Extending Culpability	17,798	
Revocable Event Criteria (Speed)		232,486
Ineligibility Schedule		574,746
Vision and Hearing Acuity:		
Right to Further Medical Examination	14,185	
Distribution of Rule to Medical Examiners	4,000	
New Railroads/New Territories		16,844
Pilots for Locomotive Engineers		1,047,282
Written Notice of Revocation	1,769	
Added Railroad Discretion		88,481
Single Certificate		2,737
Total (rounded)	1,049,964	1,970,999
Net Savings (rounded)		921,035

Note that the NPV of the total cost savings to individual locomotive engineers that commit second and third offenses within a three-year period is expected to total approximately $2.5 million over the next twenty years. However, because one engineer's lost employment opportunity would become another locomotive engineer's opportunity, this information is not included as a savings and is presented for information purposes only.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an assessment of the impacts of rules on small entities. FRA has conducted a regulatory flexibility assessment of this final rule's impact on small entities, and the assessment has been placed in the public docket for this rulemaking. The regulatory flexibility assessment concludes that the final rule will have economic impact on small entities. However, FRA certifies that the final rule will not have a "significant" impact on a substantial number of small entities.

"Small entity," is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The United States Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a "for-profit" railroad may be, and still be classified as a "small entity," is 1,500 employees for "Line-Haul Operating" Railroads, and 500 employees for "Switching and Terminal Establishments" (Table of Size Standards, U.S. Small Business Administration, January 31, 1996, 13 CFR Part 121). This final rule will affect small railroads as defined by the SBA. The statutory definition of "small government jurisdictions" is a governmental entity that serves a population center of 50,000 or less. The transit authorities subject to the requirements of this rule do not serve communities with population levels of 50,000 or less.

Because FRA does not have information regarding the number of people employed by railroads, it cannot determine exactly how many small railroads, by SBA definition, are in operation in the United States. However, FRA maintains information regarding annual employee hours for railroads and has used the delineation of less than 400,000 annual employee hours to represent small entities in other regulatory flexibility assessments. This grouping captures most small entities that would be defined by the SBA as small businesses. FRA has also used this grouping in the past to alleviate Federal reporting requirements.

About 645 of the approximately 700 railroads in the United States are considered small businesses by FRA. The final rule applies to railroads that operate locomotives on standard gage track that is part of the general railroad system of transportation. Approximately 25 tourist and museum railroads that are small businesses do not operate on the general railroad system. Therefore, this rule will affect approximately 620 small entities. Small railroads that will be affected by the final rule provide less than 10 percent of the industry's employment, own about 10 percent of the track, and operate less than 10 percent of the ton-miles.

The standards contained in the final rule were generally developed in consensus with the representatives from the American Shortline and Regional Railroad Association (ASLRRA). Two representatives from the ASLRRA are members of the Working Group established by the Federal Railroad Administrator's Rail Safety Advisory Committee (RSAC) to work on this rulemaking. These members represented the interests of small freight railroads and some excursion railroads operating in the United States during this rulemaking process. A representative of the Tourist Railway Association, Incorporated is a member of the RSAC which is responsible for approving the standards developed by the Working Group. Small rail operators had an opportunity to comment on the NPRM.

The impacts of the final rule on small entities are not expected to be substantial. FRA has identified four specific requirements that will result in additional regulatory burden for small railroads. The extension of culpability to DSLEs, locomotive engineers' right to receive further medical evaluation following a vision and hearing acuity test, distribution of the final rule to medical officers, and written notification of suspension of certification will all affect small railroads. The level of costs associated with these standards should vary in proportion to the size of each railroad. Railroads with fewer locomotive engineers should experience lower costs. These standards do not offer opportunities for larger railroads to experience economies of scale.

Also note that railroads will be relieved of some of the regulatory burdens associated with current Federal regulations. Small railroads should benefit proportionally from the modifications to the ineligibility schedule and the speed violation criteria. These modifications will allow locomotive engineers committing acts that would result in revocation of certification under the current rule to remain or more quickly return to their chosen form of employment. Small railroads will also benefit from the flexibilities allowed for the selection of the first DSLE and the increased railroad discretion with regard to revocation of certification.

Small railroads are actually expected to benefit relatively more than their larger counterparts from three particular requirements. The criteria for requiring pilots for locomotive engineers not qualified on the physical characteristics of a territory grant exemptions based on factors favorable to small railroads such as operating speed and type of terrain. The allowance for a single certificate for certified locomotive engineers qualified to operate on more than one railroad will have particular applicability to small railroads owned by holding companies. Finally, the joint operations requirement for the shared responsibility of determining which locomotive engineers are qualified to operate over the host railroad's territory will provide small railroads that give other railroads trackage rights over all or part of their territory with opportunities for cost savings.

FRA expects that overall the economic benefits that will accrue to small railroads if the requirements of this rule are implemented will exceed the regulatory costs. FRA is also confident that the costs associated with particular requirements will be justified by the safety benefits achieved.

The Working Group considered proposals made by the ASLRRA to provide small railroads with economic relief from some of the burdens imposed by the existing and new federal regulations addressing locomotive engineer qualifications and certification. Of particular interest to the ASLRRA was the certification interval. The ASLRRA sought to extend certification, National Driver Register (NDR) check, and hearing and vision acuity test intervals from 3 to 5 years.

Initially, the ASLRRA proposed that recertification of locomotive engineers occur every 5 years, versus the current 3 year interval. The Working Group considered this proposal. However, the proposal would decrease the level of confidence that railroads have regarding the level of safety with which trains are operated. The recertification process provides railroads with the opportunity to ascertain that locomotive engineers can continue to operate trains in a safe manner. Unsafe locomotive engineer train operating practices are detected during the tests administered as part of the recertification process and can be corrected through appropriate training. Because the timing of training of locomotive engineers coincides with their recertification, lengthening the recertification interval could translate into delaying needed refresher training sessions. This would decrease the level of safety with which trains are operated. This extension would advance the economic interests of small entities but, would not advance the interests of rail safety.

Taking into account the safety concerns of the Group, the ASLRRA proposed that recertification remain at a 3 year interval, but that the NDR check and the hearing and vision tests be performed at 5 year intervals (instead of the current 3 year interval) for Class III railroads that do not operate passenger trains, do not operate in territory where passengers trains are operated, do not operate in territory with a grade of two percent or greater over a distance of two continuous miles or, do not operate in signal territory, and, within the past year, have not transported any hazardous materials in hazard classes 1 (explosives), 2.3 (poisonous gases) or 7 (radioactive materials). The rationale for allowing longer intervals between hearing and vision acuity tests for locomotive engineers in smaller operations is that on-site management would be more likely to notice changes in a person's medical condition. By excluding territories with passenger rail traffic, steep grades, signals, and railroads that haul hazardous materials from the extension, the rule limits its impacts to situations with the lowest level of exposure to accidents and the lowest severity of accident.

Extending the interval between NDR checks, however, raises safety concerns. This rule requires implementation of an honor system through which locomotive engineers self report to the railroads driving incidents involving reckless behavior on their part. The NDR check for motor vehicle drivers will confirm whether there were any incidents of reckless behavior while driving a highway vehicle. This information provides employers insight into whether a person can be trusted with the operation of a locomotive. The potential, and in certain cases even the incentive, exists for a locomotive engineer who operates a car under the influence of alcohol or drugs to not self-report and protect their certification and job. Increasing the interval between NDR checks would actually increase the amount of time an engineer could continue to operate trains without the railroad being aware of reckless motor vehicle driving incidents. This, in turn, would increase the risk of an accident occurring due to reckless behavior while operating a locomotive or train.

In an attempt to expedite the regulatory process associated with this rulemaking the ASLRRA withdrew their proposal for extending intervals from this particular rulemaking activity prior to publication of the NPRM. Following publication of the NPRM, the ASLRRA urged FRA to reconsider a model program jointly developed by FRA and the industry. This model would accommodate a longer certification cycle for Class III railroads by increasing testing and training. The characteristics that determine the level of train operating difficulty and other safety concerns of the Class III railroads in the country vary greatly. This proposal seems over-inclusive since the safety concerns of some Class III railroads are much greater than others. The proposal also seems under-inclusive since some Class I and Class II railroads could argue that their operations pose no greater safety risk than many Class III railroads. The proposal could arbitrarily allow railroads with a certain level of operating revenues to gain a benefit without considering the safety implications determined by the type of operation.

According to the ASLRRA, Class III railroads would save approximately $10 million over twenty years if the certification period was extended by 2 years. FRA believes that the safety risks associated with such an extension would be significant. The ASLRRA proposal increases the likelihood of a safety loss if the medical examinations are required less frequently. In addition to the dubious equity of the proposal and its possible safety degradation, FRA is concerned about how this 5-year approach would be handled by a major railroad that might need to certify a small railroad's engineers for operations on the major railroad. For all these reasons, the RSAC failed to achieve consensus recommendations and FRA has decided not to change the rule to allow Class III railroads to certify their locomotive engineers every 5 years.

The ASLRRA also commented that the administrative burden that was imposed by the original rule and was perpetuated in the proposed revisions must be considered within the scope of the Small Business Regulatory Enforcement Fairness Act and the paperwork reduction act. FRA did consider this burden with resulting safety benefits and determined that the administrative burden is justified by the safer railroad operating environment.

In response to the NPRM, a Class III railroad recommended that Class III Switching and Terminal Carriers be excluded from the requirement that "dual purpose vehicles" must be operated by a certified locomotive engineer in those situations where the "vehicle" is being used to move disabled equipment for clearing and repair of track. Since factors such as traffic density and closeness to switches and signals will affect the safety risk of an operation, FRA believes that a general exclusion would not promote safety.

Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
NEW REQUIREMENTS					
240.105—Selection Criteria For Design. Supervisors of Locomotive Engineers.	10 railroads	10 reports	1 hour	10 hours	$380
—Qualification—DSLEs—phys. characteristics	675 railroads	675 plans	6 hours	4,050 hours	159,300
—DSLE phys. characteristics—plan rev	8 railroads	4 rev. plans	3 hours	12 hours	472
240.111—Indiv. Duty to Furnish Data on Prior Safety Conduct as M.V. Operator.	675 railroads	400 calls	10 min	67 hours	2,412
240.117—Criteria For Consideration of Operating Rules Compliance Data.	675 railroads	3 viol./appeal	12 hours	36 hours	1,368
240.121—Criteria—Hearing/Vision Acuity—First Year	675 railroads	675 copies	15 min	169 hours	5,239
—Criteria—Hearing/Vision—Subseq. Yrs	10 new railroads	10 copies	15 min	3 hours	93
—Medical Examiner Consultation w DSLE	675 railroads	17 reports	1 hour	17 hours	527
—Notification—Hearing/Vision Change	675 railroads	10 notifications	15 minutes	3 hours	108
240.229—Reqmnts—Joint Oper. Terr	321 railroads	184 calls	5 min	15 hours	540
240.309—Railroad Oversight Resp	43 railroads	10 annotation	15 min.	3 hours	114
CURRENT REQUIREMENTS					
240.9—Waivers	675 railroads	5 waivers	1 hour	5 hours	165
—Certification Program	10 new railroads	10 programs	200 hrs/40 hrs	1,840 hours	57,040
240.11—Penalties For Non-Compliance	675 railroads	2 falsification	10 min	20 min	12
240.111—Request—State Driving Lic. Data	13,333 candidates.	13,333 requests	15 min	3,333 hours	119,988
—Railroad notification—NDR match	675 railroads	267 requests	30 min	134 hours	4,489
—Written Response from Candidate	675 railroads	267 comment	15 min	67 hours	2,412
—Notice to Railroad—No License	40,000 candidates.	4 letters	15 min	1 hour	36
240.113—Notice to Railroad Furnishing Data on Prior Safety Conduct.	13,333 candidates.	267 requests/ 267 responses.	15 min/30 min	200 hours	6,535
240.115—Candidate's Review + Written Comments—Prior Safety Conduct Data.	13,333 candidates.	133 responses	30 min	67 hours	2,412
240.123—Criteria For Init./Cont. Educ	30 railroads	30 amend	1 hour	30 hours	1,680
240.201/221/223/301—List of DSLEs	675 railroads	675 updates	15 minutes	169 hours	5,239
—List of Design. Qual. Loc. Engineers	675 railroads	675 updates	15 minutes	169 hours	5,239
—Locomotive Engineers Certificate	40,000 candidates.	13,333 cert.	5 minutes	1,111 hours	$34,441
—List—Des. Persons to sign L.E. Cert.	675 railroads	20 lists	15 minutes	5 hours	165
240.205—Data to EAP Counselor	675 railroads	267 records	5 minutes	22 hours	792
240.207—Medical Certificate	40,000 candidates.	13,333 cert.	70 minutes	15,555 hours	482,205
240.209/213—Written Test	40,000 candidates.	13,333 tests	2 hours	26,666 hours	826,646
240.211/213—Performance Test	40,000 candidates.	13,333 tests	2 hours	26,666 hours	1,013,308
240.215—Recordkeeping—Cert. Loc. Eng.	675 railroads	13,333 record	10 minutes	2,222 hours	68,882
240.219—Denial of Certification	13,333 candidates.	133 letters/133 responses.	1 hr./1hr.	266 hours	8,911
—Written Basis For Denial	675 railroads	133 notific.	1 hour	133 hours	4,123
240.227—Canadian Cert. Data	Canadian RRs	200 certific.	15 minutes	50 hours	1,550
240.303—Annual Op. Monit. Obs.	40,000 candidates.	40,000 tests	2 hours	80,000 hours	3,040,000
—Annual Operational Observation	40,000 candidates.	40,000 tests	1 hour	40,000 hours	1,520,000
240.305—Engineer's Non-Qual. Notific	40,000 candidates.	400 notific.	5 minutes	33 hours	1,188

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Engineer's Notice—Loss of Qualification	40,000 candidates.	40 letters	30 minutes	20 hours	720
240.307—Notice to Engineer—Disqual.	675 railroads	650 notific. letters.	1 hour	650 hours	20,150
240.309—Railroad Oversight Resp.	43 railroads	43 reviews	80 hours	3,440 hours	192,640
240.401—Engineer's Appeal to FRA	40,000 Loco. Eng.	100 petitions	12 hours	1,200 hours	43,200
240.405—Railroad's Response to Appeal	675 railroads	100 responses	6 hours	600 hours	22,800
240.407—Request For a Hearing	675 railroads/ 40,000 Loco. Eng..	15 hearing requests.	30 minutes	8 hours	288
240.411—Appeals	675	2 appeal	2 hours	4 hours	144

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202–493–6292.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after receipt of this document.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this rule. The valid OMB control number for this information collection is 2130–0533.

Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly effecting the quality of the human environment.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. This rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This regulation will not have federalism implications that impose substantial direct compliance costs on State and local governments. Meanwhile, State officials were consulted to a practicable extent through their participation in the RSAC, a federal advisory committee discussed earlier in the preamble.

The State of Wisconsin's Office of the Commissioner of Railroads was the only State or local office to comment on the NPRM. The State of Wisconsin requested that FRA clarify whether and to what extent Part 240 applies to the qualifications for train conductors. FRA addressed this comment in the preamble under the headline "preemption." FRA brought the comment to the attention of the Working Group, but RSAC was unable to achieve a consensus recommendation. FRA is responding to the State of Wisconsin directly, rather than publishing a response here, because the request for legal guidance is not based on any modification suggested in the NPRM. A copy of FRA's response letter will be placed in the docket.

List of Subjects in 49 CFR Part 240

Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

Therefore, in consideration of the foregoing, FRA amends part 240, Title 49, Code of Federal Regulations as follows::

PART 240—[AMENDED]

1. The authority citation for Part 240 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135; 49 CFR 1.49.

2. Section 240.1 is amended by revising paragraph (b) to read as follows:

§ 240.1 Purpose and scope.

* * * * *

(b) This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all locomotive engineers to whom it applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

* * * * *

3. Section 240.3 is revised to read as follows:

§ 240.3 Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

4. Section 240.5 is amended by revising the title and paragraphs (a), (b) and (e) and adding paragraph (f) to read as follows:

§ 240.5 Preemptive effect and construction.

(a) Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

* * * * *

(e) Nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

(f) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other adverse action taken as a consequence of this part.

5. Section 240.7 is amended by revising the definition of *Administrator, Locomotive* and *Railroad* and by adding definitions of *Dual purpose vehicle, FRA, Person, Qualified, Railroad rolling stock, Roadway maintenance equipment, Service,* and *Specialized roadway maintenance equipment* in alphabetical order as follows:

* * * * *

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

* * * * *

Dual purpose vehicle means a piece of on-track equipment that is capable of moving railroad rolling stock and may also function as roadway maintenance equipment.

* * * * *

FRA means the Federal Railroad Administration.

* * * * *

Locomotive means a piece of on-track equipment (other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with § 240.104(a)(2):

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

* * * * *

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Qualified means a person who has passed all appropriate training and testing programs required by the railroad and this part and who, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is qualified.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

* * * * *

Railroad rolling stock is on-track equipment that is either a freight car (as defined in § 215.5 of this chapter) or a passenger car (as defined in § 238.5 of this chapter).

* * * * *

Roadway maintenance equipment is on-track equipment powered by any means of energy other than hand power which is used in conjunction with maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems.

* * * * *

Service has the meaning given in Rule 5 of the Federal Rules of Civil Procedure as amended. Similarly, the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. See also the definition of "filing in this section."

* * * * *

Specialized roadway maintenance equipment is roadway maintenance equipment that does not have the capability to move railroad rolling stock. Any alteration of such equipment that enables it to move railroad rolling stock will require that the equipment be treated as a dual purpose vehicle.

* * * * *

6. Section 240.9 is amended by revising paragraphs (a) and (c) to read as follows:

§ 240.9 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

* * * * *

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

7. Section 240.11 is amended by revising the title and paragraphs (a), (b) and (c) to read as follows:

§ 240.11 Penalties and consequences for noncompliance.

(a) A person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b) A person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(c) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

* * * * *

8. Section 240.103 is amended by revising paragraph (a) to read as follows:

§ 240.103 Approval of design of individual railroad programs by FRA.

(a) Each railroad shall submit its written certification program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in appendix B to this part and shall submit this written certification program for approval at least 60 days before commencing operations.

* * * * *

9. Section 240.104 is added to read as follows:

§ 240.104 Criteria for determining whether movement of roadway maintenance equipment or a dual purpose vehicle requires a certified locomotive engineer.

(a) A railroad is not required to use a certified locomotive engineer to perform the following functions:

(1) Operate specialized roadway maintenance equipment; or

(2) Operate a dual purpose vehicle that is:

(i) Being operated in conjunction with roadway maintenance and related maintenance of way functions, including traveling to and from the work site;

(ii) Moving under authority of railroad operating rules designated for the movement of roadway maintenance equipment that ensure the protection of such equipment from train movements; and

(iii) Being operated by an individual trained and qualified in accordance with §§ 214.341, 214.343, and 214.355 of this chapter.

(b) A railroad is required to use a certified locomotive engineer when operating a dual purpose vehicle other than in accordance with paragraph (a)(2) of this section.

10. Section 240.105 is amended by revising paragraph (b)(4) and by adding paragraph (c) to read as follows:

§ 240.105 Criteria for selection of designated supervisors of locomotive engineers.

* * * * *

(b) * * *

(4) Is a certified engineer who is qualified on the physical characteristics of the portion of the railroad on which that person will perform the duties of a Designated Supervisor of Locomotive Engineers.

(c) If a railroad does not have any Designated Supervisors of Locomotive Engineers, and wishes to hire one, the chief operating officer of the railroad shall make a determination in writing that the Designated Supervisor of Locomotive Engineers designate possesses the necessary performance skills in accordance with § 240.127. This determination shall take into account any special operating characteristics which are unique to that railroad.

11. Section 240.111 is amended by revising paragraphs (a) introductory text, (a)(1), and (h) to read as follows:

§ 240.111 Individual's duty to furnish data on prior safety conduct as motor vehicle operator.

(a) Except for initial certifications under paragraph (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (b) through (f) or paragraph (g) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification; and

* * * * *

(h) Each certified locomotive engineer or person seeking initial certification shall report motor vehicle incidents described in § 240.115 (b)(1) and (2) to the employing railroad within 48 hours of being convicted for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, such violations. For the purposes of engineer certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed state action to cancel, revoke, or deny a motor vehicle drivers license.

12. Section 240.113 is amended by revising paragraph (a) introductory text to read as follows:

§ 240.113 Individual's duty to furnish data on prior safety conduct as an employee of a different railroad.

(a) Except for initial certifications under paragraphs (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

* * * * *

13. Section 240.117 is revised to read as follows:

§ 240.117 Criteria for consideration of operating rules compliance data.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c)(1) A certified engineer who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall have his or her certification revoked.

(2) A Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of paragraph (e) of this section, shall have his or her certification revoked. Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A Designated Supervisor of Locomotive Engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in §§ 217.9 and 240.303 of this chapter.

(3) A person who is a certified locomotive engineer but is called by a railroad to perform the duty of a train crew member other than that of locomotive engineer, and is performing such other duty, shall not have his or her certification revoked based on actions taken or not taken while performing that duty.

(d) Limitations on consideration of prior operating rule compliance data. Except as provided for in paragraph (i) of this section, in determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in paragraphs (e)(1) through (e)(5) of this section that occurred within a period of 36 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in this section.

(e) A railroad shall only consider violations of its operating rules and practices that involve:

(1) Failure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it;

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at

least 10 miles per hour. Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules (i.e., the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, as instances of failure to adhere to this section;

(3) Failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of 49 CFR part 232 or when the procedures are required for compliance with the class 1, class 1A, class II, or running brake test provisions of 49 CFR part 238;

(4) Occupying main track or a segment of main track without proper authority or permission;

(5) Failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See 49 CFR part 218, subpart D and Appendix C to part 218);

(6) Incidents of noncompliance with § 219.101 of this chapter; however such incidents shall be considered as a violation only for the purposes of paragraphs (g)(2) and (3) of this section;

(f)(1) If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section.

(2) A violation of one or more operating rules or practices described in paragraph (e)(1) through (e)(5) of this section that occurs during a properly conducted operational compliance test subject to the provisions of this chapter shall be counted in determining the periods of ineligibility described in paragraph (g) of this section.

(3) An operational test that is not conducted in compliance with this part, a railroad's operating rules, or a railroad's program under § 217.9 of this chapter, will not be considered a legitimate test of operational skill or knowledge, and will not be considered for certification, recertification or revocation purposes.

(g) A period of ineligibility described in this paragraph shall:

(1) Begin, for a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(2) Begin, for a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked; and

(3) Be determined according to the following standards:

(i) In the case of a single incident involving violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (e)(5) of this section, the person shall have his or her certificate revoked for a period of one month.

(ii) In the case of two separate incidents involving a violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (e)(5) of this section, that occurred within 24 months of each other, the person shall have his or her certificate revoked for a period of six months.

(iii) In the case of three separate incidents involving violations of one or more of the operating rules or practices, described in paragraphs (e)(1) through (e)(6) of this section, that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of one year.

(iv) In the case of four separate incidents involving violations of one or more of the operating rules or practices, described in paragraphs (e)(1) through (e)(6) of this section, that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of three years.

(v) Where, based on the occurrence of violations described in paragraph (e)(6) of this section, different periods of ineligibility may result under the provisions of this section and § 240.119, the longest period of revocation shall control.

(4) Be reduced to the shorter periods of ineligibility imposed by paragraphs (g)(1) through (3) of this section as amended, and effective January 7, 2000 if the incident:

(i) Occurred prior to January 7, 2000; and

(ii) Involved violations described in paragraphs (e)(1) through (e)(5) of this section; and

(iii) Did not occur within 60 months of a prior violation as described in paragraph (e)(6) of this section.

(h) Future eligibility to hold certificate. A person whose certification has been denied or revoked shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of revocation only if:

(1) The denial or revocation of certification in accordance with the provisions of paragraph (g)(3) of this section is for a period of one year or less;

(2) Certification was denied or revoked for reasons other than noncompliance with § 219.101 of this chapter;

(3) The person has been evaluated by a Designated Supervisor of Locomotive Engineers and determined to have received adequate remedial training;

(4) The person has successfully completed any mandatory program of training or retraining, if that was determined to be necessary by the railroad prior to return to service; and

(5) At least one half the pertinent period of ineligibility specified in paragraph (g)(3) of this section has elapsed.

(i) In no event shall incidents that meet the criteria of paragraphs (i)(1) through (4) of this section be considered as prior incidents for the purposes of paragraph (g)(3) of this section even though such incidents could have been or were validly determined to be violations at the time they occurred. Incidents that shall not be considered under paragraph (g)(3) of this section are those that:

(1) Occurred prior to May 10, 1993;

(2) Involved violations of one or more of the following operating rules or practices:

(i) Failure to control a locomotive or train in accordance with a signal indication;

(ii) Failure to adhere to limitations concerning train speed;

(iii) Failure to adhere to procedures for the safe use of train or engine brakes; or

(iv) Entering track segment without proper authority;

(3) Were or could have been found to be violations under this section contained in the 49 CFR, parts 200 to 399, edition revised as of October 1, 1992; and

(4) Would not be a violation of paragraph (e) of this section.

(j) In no event shall incidents that meet the criteria of paragraphs (j)(1) through (2) of this section be considered as prior incidents for the purposes of paragraph (g)(3) of this section even though such incidents could have been or were validly determined to be violations at the time they occurred. Incidents that shall not be considered under paragraph (g)(3) of this section are those that:

(1) Occurred prior to January 7, 2000;

(2) Involved violations of one or more of the following operating rules or practices:

(i) Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it;

(ii) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour or by more than one half of the authorized speed, whichever is less;

(3) Were or could have been found to be violations under this section contained in the 49 CFR, parts 200 to 399, edition revised as of October 1, 1999; and

(4) Would not be a violation of paragraph (e) of this section.

14. Section 240.121 is amended by revising paragraphs (b), (c)(3) and (e), and adding paragraph (f) to read as follows:

§ 240.121 Criteria for vision and hearing acuity data.

* * * * *

(b) Fitness requirement. In order to be currently certified as a locomotive engineer, except as permitted by paragraph (e) of this section, a person's vision and hearing shall meet or exceed the standards prescribed in this section and appendix F to this part. It is recommended that each test conducted pursuant to this section should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

(c) * * *

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in appendix F to this part.

* * * * *

(e) A person not meeting the thresholds in paragraphs (c) and (d) of this section shall, upon request, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely operate a locomotive. In accordance with the guidance prescribed in appendix F to this part, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now arguably operate a locomotive or train safely. The railroad shall provide its medical examiner with a copy of this part, including all appendices. If, after consultation with one of the railroad's designated supervisors of locomotive engineers, the medical examiner concludes that, despite not meeting the threshold(s) in paragraphs (c) and (d) of this section, the person has the ability to safely operate a locomotive, the person may be certified as a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(f) As a condition of maintaining certification, each certified locomotive engineer shall notify his or her employing railroad's medical department or, if no such department exists, an appropriate railroad official if the person's best correctable vision or hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision or hearing standards or requirements of this section. This notification is required prior to any subsequent operation of a locomotive or train which would require a certified locomotive engineer.

15. Section 240.123 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 240.123 Criteria for initial and continuing education.

* * * * *

(b) A railroad shall provide for the continuing education of certified locomotive engineers to ensure that each engineer maintains the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics as determined by a qualified Designated Supervisor of Locomotive Engineers), and relevant Federal safety rules.

* * * * *

(d) Pursuant to paragraphs (b) and (c) of this section, a person may acquire familiarity with the physical characteristics of a territory through the following methods if the specific conditions included in the description of each method are met. The methods used by a railroad for familiarizing its engineers with new territory while starting up a new railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

(1) If ownership of a railroad is being transferred from one company to another, the engineer(s) of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation; or

(2) Failing to obtain familiarization training from the previous owner, opening a new rail line, or reopening an unused route would require that the engineer(s) obtain familiarization through other methods. Acceptable methods of obtaining familiarization include using hyrail trips or initial lite locomotive trips in compliance with what is specified in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

16. Section 240.127 is amended by revising paragraph (c)(2) to read as follows:

§ 240.127 Criteria for examining skill performance.

* * * * *

(c) * * *

(2) Conducted by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the test will be conducted;

* * * * *

17. Section 240.129 is amended by revising paragraph (c)(2) to read as follows:

§ 240.129 Criteria for monitoring operational performance of certified engineers.

* * * * *

(c) * * *

(2) Be designed so that each engineer shall be annually monitored by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the operational performance monitoring will be conducted;

* * * * *

18. Section 240.213 is amended by revising paragraph (b)(3) to read as follows:

§ 240.213 Procedures for making the determination on completion of training program.

* * * * *

(b) * * *

(3) A qualified Designated Supervisor of Locomotive Engineers has determined that the person is familiar with the physical characteristics of the railroad or its pertinent segments.

19. Section 240.217 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (c)(2) to read as follows:

§ 240.217 Time limitations for making determinations.

(a) * * *

(1) A determination concerning eligibility and the eligibility data being relied on were furnished more than 366 days before the date of the railroad's certification decision;

(2) A determination concerning visual and hearing acuity and the medical

examination being relied on was conducted more than 366 days before the date of the railroad's recertification decision;

(3) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than 366 days before the date of the railroad's certification decision; or

(4) A determination concerning demonstrated performance skills and the performance skill testing being relied on was conducted more than 366 days before the date of the railroad's certification decision;

* * * * *

(c) * * *

(2) Rely on a certification issued by another railroad that is more than 36 months old.

* * * * *

20. Section 240.223 is amended by revising paragraph (a)(1) to read as follows:

§ 240.223 Criteria for the certificate.

(a) * * *

(1) Identify the railroad or parent company that is issuing it;

* * * * *

21. Section 240.225 is revised to read as follows:

§ 240.225 Reliance on qualification determinations made by other railroads.

(a) After December 31, 1991, a railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications. The railroad's certification program shall address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire. If a railroad's certification program fails to specify how to train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program. A railroad relying on another's certification shall determine that:

(1) The prior certification is still valid in accordance with the provisions of §§ 240.201, 240.217, and 240.307;

(2) The prior certification was for the same classification of locomotive or train service as the certification being issued under this section;

(3) The person has received training on and visually observed the physical characteristics of the new territory in accordance with § 240.123;

(4) The person has demonstrated the necessary knowledge concerning the railroad's operating rules in accordance with § 240.125;

(5) The person has demonstrated the necessary performance skills concerning the railroad's operating rules in accordance with § 240.127.

(b) [Reserved].

22. Section 240.229 is amended by revising paragraph (c) to read as follows:

§ 240.229 Requirements for joint operations territory.

* * * * *

(c) A railroad that controls joint operations may rely on the certification issued by another railroad under the following conditions:

(1) The controlling railroad shall determine:

(i) That the person has been certified as a qualified engineer under the provisions of this part by the railroad which employs that individual;

(ii) That the person certified as a locomotive engineer by the other railroad has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different;

(iii) That the person certified as a locomotive engineer by the other railroad has the necessary operating skills concerning the joint operations territory; and

(iv) That the person certified as a locomotive engineer by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory; and,

(2) The railroad which employs the individual shall determine that the person called to operate on the controlling railroad is a certified engineer who is qualified to operate on that track segment; and

(3) Each locomotive engineer who is called to operate on another railroad shall:

(i) Be qualified on the segment of track upon which he or she will operate in accordance with the requirements set forth by the controlling railroad; and,

(ii) Immediately notify the railroad upon which he or she is employed if he or she is not qualified to perform that service.

* * * * *

23. Section 240.231 is added to subpart C to read as follows:

§ 240.231 Requirements for locomotive engineers unfamiliar with physical characteristics in other than joint operations.

(a) Except as provided in paragraph (b) of this section, no locomotive engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory pursuant to the railroad's certification program.

(b) Except as provided in paragraph (c) of this section, if a locomotive engineer lacks qualification on the physical characteristics required by paragraph (a) of this section, he or she shall be assisted by a pilot qualified over the territory pursuant to the railroad's certification program.

(1) For a locomotive engineer who has never been qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, the pilot shall be a person qualified and certified as a locomotive engineer who is not an assigned crew member.

(2) For a locomotive engineer who was previously qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, but whose qualification has expired, the pilot may be any person, who is not an assigned crew member, qualified on the physical characteristics of the territory.

(c) Pilots are not required if the movement is on a section of track with an average grade of less than 1% over 3 continuous miles, and

(1) The track is other than a main track; or

(2) The maximum distance the locomotive or train will be operated does not exceed one mile; or

(3) The maximum authorized speed for any operation on the track does not exceed 20 miles per hour; or

(4) Operations are conducted under operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half the range of vision of the locomotive engineer.

24. Section 240.305 is amended by revising paragraph (a) to read as follows:

§ 240.305 Prohibited conduct.

(a) It shall be unlawful to:

(1) Operate a locomotive or train past a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it; or

(2) Operate a locomotive or train at a speed which exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, only those violations of the conditional clause of restricted speed rules (i.e., the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, shall be considered instances of failure to adhere to this section; or

(3) Operate a locomotive or train without adhering to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of 49 CFR part 232 or when the procedures are required for compliance with the class 1, class 1A, class II, or running brake test provisions of 49 CFR part 238;

(4) Fail to comply with any mandatory directive concerning the movement of a locomotive or train by occupying main track or a segment of main track without proper authority or permission;

(5) Fail to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operate or permit to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See 49 CFR part 218, subpart D, and appendix C to part 218);

(6) Be a Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of paragraphs (a)(1) through (a)(5) of this section. Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A Designated Supervisor of Locomotive Engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in §§ 217.9 and 240.303 of this chapter.

* * * * *

25. Section 240.307 is amended by revising paragraphs (b)(2), (c) introductory text, (c)(2), (c)(10), (e) and adding paragraphs (i), (j), and (k) to read as follows:

§ 240.307 Revocation of certification.

* * * * *

(b) * * *

(2) Prior to or upon suspending the person's certificate, provide notice of the reason for the suspension, the pending revocation, and an opportunity for a hearing before a presiding officer other than the investigating officer. The notice may initially be given either orally or in writing. If given orally, it must be confirmed in writing and the written confirmation must be made promptly. Written confirmation which conforms to the notification provisions of an applicable collective bargaining agreement shall be deemed to satisfy the written confirmation requirements of this section. In the absence of an applicable collective bargaining agreement provision, the written confirmation must be made within 96 hours.

* * * * *

(c) Except as provided for in paragraphs (d), (f), (i) and (j) of this section, a hearing required by this section shall be conducted in accordance with the following procedures:

* * * * *

(2) The hearing shall be conducted by a presiding officer, who can be any qualified person authorized by the railroad other than the investigating officer.

* * * * *

(10) No later than 10 days after the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision in the proceeding.

* * * * *

(e) A hearing required under this section may be consolidated with any disciplinary or other hearing arising from the same facts, but in all instances a railroad official, other than the investigating officer, shall make separate findings as to the revocation required under this section.

* * * * *

(i) A railroad:

(1) Shall not determine that the person failed to meet the qualification requirements of this part and shall not revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice which constitutes a violation under § 240.117(e)(1) through (e)(5) of this part; or

(2) May determine that the person meets the qualification requirements of this part and decide not to revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that the violation of § 240.117(e)(1) through (e)(5) of this part was of a minimal nature and had no direct or potential effect on rail safety.

(j) The railroad shall place the relevant information in the records maintained in compliance with § 240.309 for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and § 240.15 for Class III railroads if sufficient evidence meeting the criteria provided in paragraph (i) of this section, becomes available either:

(1) Prior to a railroad's action to suspend the certificate as provided for in paragraph (b)(1) of this section; or

(2) Prior to the convening of the hearing provided for in this section;

(k) Provided that the railroad makes a good faith determination after a reasonable inquiry that the course of conduct provided for in paragraph (i) of this section is appropriate, the railroad which does not suspend a locomotive engineer's certification, as provided for in paragraph (a) of this section, is not in violation of paragraph (a) of this section.

26. Section 240.309 is amended by revising paragraphs (e) introductory text, (e)(3), (e)(5), (e)(7), and (e)(8), removing paragraph (e)(10) and redesignating the second set of paragraphs (e) introductory text, (e)(1), (e)(2) and (e)(3) as paragraph (h) introductory text, (h)(1), (h)(2) and (h)(3), and revising them to read as follows:

§ 240.309 Railroad oversight responsibilities.

* * * * *

(e) For reporting purposes, information about the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes into the following categories:

* * * * *

(3) Incidents involving noncompliance with the procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of 49 CFR part 232 or when the procedures are required for compliance with the class 1, class 1A, class II, or running brake test provisions of 49 CFR part 238;

* * * * *

(5) Incidents involving noncompliance with the railroad's operating rules resulting in operation of a locomotive or train past any signal, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it;

(6) Incidents involving noncompliance with the provisions of restricted speed, and the operational equivalent thereof, that must be reported under the provisions of part 225 of this chapter;

(7) Incidents involving occupying main track or a segment of main track without proper authority or permission;

(8) Incidents involving the failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with

an unauthorized or disabled safety device in the controlling locomotive;

* * * * *

(h) For reporting purposes each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect the following:

(1) The total number of incidents in that category;

(2) The number of incidents within that total which reflect incidents requiring an FRA accident/incident report; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

27. Section 240.403 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 240.403 Petition requirements.

* * * * *

(d) A petition seeking review of a railroad's decision to revoke certification in accordance with the procedures required by § 240.307 filed with FRA more than 120 days after the date of the railroad's revocation decision will be denied as untimely except that the Locomotive Engineer Review Board for cause shown may extend the petition filing period at any time in its discretion:

(1) Provided the request for extension is filed before the expiration of the period provided in this paragraph (d); or

(2) Provided that the failure to timely file was the result of excusable neglect.

(e) A party aggrieved by a Board decision to deny a petition as untimely may file an appeal with the Administrator in accordance with § 240.411.

28. Section 240.405 is amended by revising paragraphs (a) and (c), and adding paragraph (d)(3) to read as follows:

§ 240.405 Processing qualification review petitions.

(a) Each petition shall be acknowledged in writing by FRA. The acknowledgment shall contain the docket number assigned to the petition and a statement of FRA's intention that the Board will render a decision on this petition within 180 days from the date that the railroad's response is received or from the date upon which the railroad's response period has lapsed pursuant to paragraph (c) of this section.

* * * * *

(c) The railroad will be given a period of not to exceed 60 days to submit to FRA any information that the railroad considers pertinent to the petition. Late filings will only be considered to the extent practicable.

(d) * * *

(3) Submit the information in triplicate to the Docket Clerk, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590;

* * * * *

29. Section 240.411 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 240.411 Appeals.

* * * * *

(e) The Administrator may remand, vacate, affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted.

(f) Where a party files an appeal from a Locomotive Engineer Review Board decision pursuant to § 240.403(e), the Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.

30. Appendix A to part 240 is amended by adding penalty entries for §§ 240.104 and 240.231 and by revising the penalty entries for §§ 240.105, 240.111, 240.117, 240.121, 240.225, 240.229, 240.305, 240.307, 240.309 and footnote number 1 to read as follows:

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Appendix A to Part 240—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
* * * * * * *		
240.104—Allowing uncertified person to operate non-traditional locomotives	5,000	10,000
240.105—Failure to have or execute adequate procedure for selection of supervisors	2,500	5,000
* * * * * * *		
240.111—Furnishing Motor Vehicle Records:		
(a) Failure to action required to make information available	1,000	2,000
(b) Failure to request:		
(1) local record	1,000	2,000
(2) NDR record	1,000	2,000
(f) Failure to request additional record	1,000	2,000
(g) Failure to notify of absence of license	750	1,500
(h) Failure to submit request in timely manner	750	1,500
(i) Failure to report within 48 hours or railroad taking certification action for not reporting earlier than 48 hours	1,000	2,000
* * * * * * *		
240.117—Consideration of Operational Rules Compliance Records:		
(a) Failure tc have program and procedures	5,000	10,000
(b–j) Failure to have adequate program or procedure	2,500	5,000
* * * * * * *		
240.121—Failure to have adequate procedure for determining acuity	2,500	5,000
(f) Failure of engineer to notify	2,500	5,000
240.123—Failure to have:		
(b) Adequate procedures for continuing education	2,500	5,000
(c) adequate procedures for training new engineers	2,500	5,000

Section	Violation	Willful violation
* * * * * * *		
240.225—Railroad Relying on Determination of Another:		
(a) Failure to address in program or failure to require newly hired engineer to take entire training program	5,000	7,500
(1) Reliance on expired certification	2,500	5,000
(2) Reliance on wrong class of service	2,500	5,000
(3) Failure to familiarize person with new operational territory	2,000	4,000
(4) Failure to determine knowledge	2,000	4,000
(5) Failure to determine performance skills	2,000	4,000
* * * * * * *		
240.229—Requirements for Joint Operations Territory:		
(a) Allowing uncertified person to operate	2,000	4,000
(b) Certifying without making determinations or relying on another railroad	2,500	5,000
(c) Failure of.		
(1) controlling railroad certifying without determining certification status, knowledge, skills, or familiarity with physical characteristics	4,000	8,000
(2) employing railroad to determine person's certified and qualified status for controlling railroad	4,000	8,000
(3) person to notify employing railroad of lack of qualifications	4,000	8,000
(d) Failure to provide qualified person	2,000	4,000
240.231—Persons Qualified on Physical Characteristics in Other Than Joint Operations:		
(a) Person unqualified, no exception applies or railroad does not adequately address in program	5,000	10,000
(b) Failure to have a pilot.		
(1) for engineer who has never been qualified	4,000	8,000
(2) for engineer previously qualified	2,500	5,000
* * * * * * *		
240.305—Prohibited Conduct:		
(a) Unlawful:		
(1) passing of stop signal	2,500	5,000
(2) control of speed	2,500	5,000
(3) brake tests	2,500	5,000
(4) occupancy of main track	2,500	5,000
(5) tampering on operation with disabled safety device	2,500	5,000
(6) supervisor, pilot, or instructor fails to take appropriate action	2,500	5,000
(b) Failure of engineer to:		
(1) carry certificate	1,000	2,000
(2) display certificate when requested	1,000	2,000
(c) Failure of engineer to notify railroad of limitations or railroad requiring engineer to exceed limitations	4,000	8,000
(d) Failure of engineer to notify railroad of denial or revocation	4,000	8,000
240.307—Revocation of Certification:		
(a) Failure to withdraw person from service	2,500	5,000
(b) Failure to notify, provide hearing opportunity, or untimely procedures	2,500	5,000
(c–h) Failure of railroad to comply with hearing or waiver procedures	1,000	2,000
(j) Failure of railroad to make record	2,500	5,000
(k) Failure of railroad to conduct reasonable inquiry or make good faith determination	5,000	10,000
240.309—Oversight Responsibility Report:		
(a) Failure to report or to report on time	1,000	2,000
(b–h) Incomplete or inaccurate report	2,000	4,000
* * * * * * *		

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[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 CFR part 209, Appendix A.

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31. Appendix F is added to read as follows:

Appendix F to Part 240—Medical Standards Guidelines

(1) The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §§ 240.121 and 240.207.

(2) In determining whether a person has the visual acuity that meets or exceeds the requirements of this part, the following testing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are shown in the left hand column and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column.

Accepted tests	Failure criteria
PSEUDOISOCHROMATIC PLATE TESTS	
American Optical Company 1965	5 or more errors on plates 1–15.
AOC—Hardy-Rand-Ritter plates—second edition	Any error on plates 1–6 (plates 1–4 are for demonstration—test plate 1 is actually plate 5 in book)

Accepted tests	Failure criteria
Dvorine—Second edition	3 or more errors on plates 1–15
Ishihara (14 plate)	2 or more errors on plates 1–11.
Ishihara (16 plate)	2 or more errors on plates 1–8.
Ishihara (24 plate)	3 or more errors on plates 1–15.
Ishihara (38 plate)	4 or more errors on plates 1–21.
Richmond Plates 1983	5 or more errors on plates 1–15.
MULTIFUNCTION VISION TESTER	
Keystone Orthoscope	Any error.
OPTEC 2000	Any error.
Titmus Vision Tester	Any error.
Titmus II Vision Tester	Any error.

(3) In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that "yellow signals" do not always appear to be the same. It is not acceptable to use "yarn" or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision. No person shall be allowed to wear chromatic lenses during an initial test of the person's color vision; the initial test is one conducted in accordance with one of the accepted tests in the chart and § 240.121(c)(3).

(4) An examinee who fails to meet the criteria in the chart, may be further evaluated as determined by the railroad's medical examiner. Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee. The railroad's medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria from operating the train at night, during adverse weather conditions or under other circumstances. The intent of § 240.121(e) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely operate a locomotive or train. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.

(5) Engineers who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

Issued in Washington, DC, on September 30, 1999.

Jolene M. Molitoris,

Administrator.

[FR Doc. 99–28930 Filed 11–5–99; 8:45 am]

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Monday
November 8, 1999

Part IV

Department of Housing and Urban Development

Notice of Funding Availability for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 2000; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4538–N–01]

Notice of Funding Availability for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 2000

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for Fiscal Year 2000.

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of approximately $ 54,558,000 in Fiscal Year 2000 funding for the HUD-administered Small Cities in New York State under the Community Development Block Grant Program. The funds announced in this NOFA provide small communities and counties in New York State with an opportunity to propose programs that focus on creating or expanding job opportunities, addressing housing needs, or meeting local public facilities needs. HUD encourages communities to propose programs that are creative and innovative in addressing the needs of their community. A community may propose a program that is "single purpose" in nature addressing a specific area of need. The maximum amount for a Single Purpose grant is $400,000 ($600,000 for counties). In the body of this NOFA, is information regarding allocation amounts, eligibility, selection criteria and rating factors, and the application submission process.

This NOFA is the first step in a transitional process to transfer administration of the Small Cities program to the State of New York, as provided for in the FY 2000 Appropriations Act for HUD. According to state officials, New York is required under state law to take certain actions prior to making funding available to Small Cities participants. In addition, there are certain federal law requirements which must be fulfilled. In order to ensure an uninterrupted flow of CDBG funds to Small Cities while the State executes the steps necessary to run the program, the Department will accept applications for funding at this time. Applicants should follow the normal application process during this transitional period. It is anticipated that the CDBG funding process will be entirely assumed by the State upon completion of the necessary actions by the State. The Department will work closely with the State and with Small Cities participants during this period to effect a smooth transition.

APPLICATION DUE DATE: Applications are due no later than March 7, 2000. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received by 4 p.m. on, or postmarked by, March 7, 2000. Applicants should take this procedure into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES, APPLICATION SUBMISSION PROCEDURES, AND APPLICATION KITS:

Addresses for Submitting Applications: Applications must be submitted to either HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.)

Mailed Applications. Applications, if mailed, must be postmarked no later than midnight on March 7, 2000 and received within 10 calendar days of the deadline.

Hand Carried Applications. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4 p.m. (local time) on March 7, 2000.

Application Kits. Application kits may be obtained from HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.) In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at 1–800–998–9999. Application kits will be made available by a date that affords applicants no fewer than 45 days to respond to this NOFA. For further information on obtaining and submitting applications, please see Section II. of this NOFA.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1322 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Purpose and Substantive Description
A. Authority and Background
1. Authority
2. Background
3. Other Program Requirements
a. Abbreviated Consolidated Plan
b. Section 3
4. Accountability in the Provision of HUD Assistance
a. HUD Responsibilities
(1) Documentation and Public Access
(2) Disclosures
b. Units of Local Government Responsibilities
B. Allocation Amounts
1. Total Available Funding
2. Imminent Threats
C. Eligibility
1. Eligible Applicants
2. Previous Grantees
3. Eligible Activities and National Objectives
4. Anti-pirating provision
5. Environmental Review Requirements
D. Grants
1. General
2. Grant Limits and Funding Requirements
3. Applications with Multiple Projects
E. Selection Criteria/Ranking Factors and Final Selection
1. General
2. Performance Evaluation
a. Community Development Activities
b. Compliance with Applicable Laws and Regulations
c. Performance Assessment Reports
3. Five Factor Rating
a. Need—Absolute Number of Persons in Poverty
b. Need—Percent of Persons in Poverty
c. Program Impact
(1) Program Impact—Housing
(a) Housing Rehabilitation
(b) Creation of New Housing
(c) Direct Homeownership Assistance
(2) Program Impact—Public Facilities Affecting Public Health and Safety
(3) Program Impact—Economic Development Projects
(a) Scoring
(b) The Appropriate Determination
(c) CDBG Assistance Must Minimize Business and Job Displacement
(d) Section 105(a)(17) Requirements
(e) National Objectives
(f) Application Requirements
d. Fair Housing and Equal Opportunity Evaluation
(1) Housing Achievements
(a) Provision of Fair Housing Choice
(b) Implementation of a Fair Housing Strategy that Affirmatively Furthers Fair Housing
(2) Entrepreneurial Efforts and Local Equal Opportunity Performance
(3) Equal Opportunity Employment
e. Welfare to Work Initiative
4. Final Selection
II. Application and Funding Award Process
A. Obtaining Applications
B. Submitting Applications
C. The Application
1. Application Requirements
2. Streamlined Application Requirements for Certain Applicants
D. Funding Award Process
III. Technical Assistance
IV. Checklist of Application Submission Requirements

V. Corrections to Deficient Applications
VI. Findings and Certifications

I. Purpose and Substantive Description

A. Authority and Background

1. Authority

Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (the "1974 HCD Act"); 24 CFR part 570, subpart F, for the New York State Small Cities program.

2. Background

Title I of the 1974 HCD Act authorizes the Community Development Block Grant (CDBG) Program. Section 106(d) of Title I permits States, in such manner and at such time as the Secretary of HUD shall prescribe, to elect to assume the administrative responsibility for the CDBG Program for nonentitled areas within their jurisdiction. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within any State that does not elect to assume the administrative responsibility for the program. HUD's regulations at 24 CFR part 570, subpart F describe the requirements for HUD's administration of the CDBG Program in nonentitled areas (the "Small Cities Program"). This Notice of Funding Availability (NOFA) supplements subpart F of 24 CFR part 570.

In accordance with 24 CFR 570.421(b), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. (the "HUD Reform Act"), HUD is issuing this NOFA for New York State's Small Cities Program for Fiscal Year (FY) 2000. This NOFA announces the allocation of funds for a Single Purpose grant competition, and establishes the deadline for filing grant applications. The NOFA explains how HUD will apply the regulatory threshold requirements for funding eligibility, and the selection criteria for rating and scoring applications for Single Purpose grants. Communities are encouraged to apply for projects which support the Canal Corridor Initiative, an economic development effort funded through the Small Cities program.

Other information about the Small Cities Program will be provided in the application kit, which will be made available to applicants by HUD's New York Office and Buffalo Office (see Section II. of this NOFA). In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at 1–800–998–9999.

3. Other Program Requirements

a. *Abbreviated Consolidated Plan.* Each jurisdiction that applies for funds under this NOFA must have submitted a consolidated plan, as provided in 24 CFR part 91. An applicant for more than one grant under this NOFA need submit only one consolidated plan or abbreviated consolidated plan, as applicable, covering the activities proposed in all applications. A jurisdiction that does not expect to be a participating jurisdiction in the HOME program under 24 CFR part 92 may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD (see 24 CFR 91.235). Any applicant that plans to undertake a housing activity with funds under this NOFA needs to prepare and submit, at a minimum, an abbreviated consolidated plan that is appropriate to the types and amounts of housing assistance sought under this NOFA.

Even if the community's Small Cities application is approved, HUD must also approve an abbreviated consolidated plan that covers activities proposed in such application(s) before the community may receive Small Cities funding. Further, that applicant must also include a certification that the housing activities in its CDBG Small Cities application are consistent with the consolidated plan. The applicant's consolidated plan must describe the jurisdiction's priority nonhousing community development needs eligible for assistance under the CDBG program by eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity (see 24 CFR 91.235(c)(2)).

The abbreviated consolidated plan is subject to the same citizen participation requirements as is the jurisdiction's Small Cities CDBG application. Both must meet the citizen participation requirements before they may be submitted to HUD (see 24 CFR 570.431).

If possible, an applicant should submit the abbreviated consolidated plan in advance of the Small Cities application due date. The latest time at which the abbreviated consolidated plan will be accepted by HUD for the HUD-administered Small Cities Program in New York will be March 7, 2000 (the application due date for the Small Cities application). *Failure to submit the abbreviated consolidated plan by the due date is not a curable technical deficiency.* Questions regarding the abbreviated consolidated plan should be directed to the appropriate HUD field office.

Any application that is fundable but does not have an approved consolidated plan will receive a conditional approval subject to HUD's approval of the abbreviated consolidated plan. If HUD is unable to approve the abbreviated consolidated plan within a reasonable period of time (but not more than 60 days from the date that the conditional approval is announced), HUD will rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

b. *Section 3.* Assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations in 24 CFR part 135. One of the purposes of this NOFA, which is consistent with section 3, is to give, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance to low-and very low-income persons. Public entities awarded funds under this NOFA that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements set forth in 24 CFR part 135.

4. Accountability in the Provision of HUD Assistance: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Section 102 of the HUD Reform Act and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. *HUD Responsibilities.* (1) *Documentation and Public Access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance.

Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

b. *Units of General Local Government Responsibilities.* Units of general local government awarded assistance under this NOFA must ensure that documentation and other information regarding each application submitted to the recipient by a subsequent recipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The unit of general local government must make this material, including any letters of support, available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Unit of general local government recipients must also notify the public of the subsequent recipients of the assistance. Each recipient will develop documentation, public access, and notification procedures for its programs.

B. Allocation Amounts

1. Total Available Funding

The nonentitlement CDBG funds for New York State for FY 2000 total approximately $54,558,000. The exact amount of funds available for this Small Cities CDBG funding competition is not known at this time.

In FY 1997 HUD carried out the Canal Corridor Initiative (see the NOFA for this initiative published in the **Federal Register** on December 3, 1996 (61 FR 64196) and subsequently amended on December 18, 1996 (61 FR 66692)). In FY 1999 HUD carried out a second canal Corridor Initiative (see the NOFA for this initiative published in the **Federal Register** on November 25, 1998 (63 FR 65456)). Pursuant to those NOFAs, HUD approved Canal Corridor applications for approximately $6.5 million and $1 million in FY 1997 and FY 1999 New York Small Cities funds, respectively.

HUD must also be prepared, pursuant to 24 CFR 570.432, to use CDBG funds each year, as necessary, for the sole purpose of paying any amounts due on debt obligations, for up to 20 years, issued by units of general local government (or their designated public agencies) and guaranteed by the Secretary pursuant to section 108 of the 1974 HCD Act, as amended, for projects approved under the Canal Corridor Initiative NOFA. HUD approved approximately $6.55 million in FY 1997 Small Cities funds for Canal Corridor grants. However, at this time, the exact amount of CDBG funds that will be needed to meet required debt obligation payments during FY 1999 is not known.

Of the approximately $54,558,000 available under this NOFA, approximately $47,024,000 (87.8%) is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Buffalo Field Office. Approximately $6,534,000 (12.2%) is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Office.

Once HUD has determined the final amount of funds available for competitive distribution under this NOFA, HUD will allocate such funds in the same ratio as above to HUD's Buffalo and New York Offices. However, HUD has the option to revise these final allocations between offices by up to $400,000 in order to assure full distribution of funds. Finally, HUD reserves the right, in its sole discretion, not to award all of the funds available under this NOFA and to make any such funds available in a future NOFA, if an insufficient number of applications are determined fundable under this NOFA.

2. Imminent Threats

All imminent threat projects must meet the national objective of benefitting low-and moderate-income persons. HUD may elect to set aside up to 15 percent of the FY 2000 allocations for imminent threat projects. These funds will be available until the rating and ranking process for funds distributed under this NOFA is completed.

C. Eligibility

1. Eligible Applicants

Eligible applicants are units of general local government in New York State, excluding:

a. Metropolitan cities;

b. Urban counties;

c. Units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city; and

d. Indian tribes (as defined in section 102(a)(17) of the 1974 HCD Act).

Applications may be submitted individually, or jointly, as described in 24 CFR 570.422.

2. Previous Grantees

Eligible applicants that previously have been awarded Small Cities Program CDBG grants are also subject to an evaluation of capacity and performance (see generally, section I.E.2. of this NOFA). Numerical thresholds for drawdown of funds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.)

In FY 1996 an additional threshold was established which relates to the submission of annual Performance Assessment Reports (PARs). A PAR was due on October 31, 1999, for each grant which a local government received prior to April 1, 1998. *Failure to submit a PAR is not a curable technical deficiency under this NOFA.*

Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

3. Eligible Activities and National Objectives

Eligible activities under the Small Cities CDBG Program are those identified in subpart C of 24 CFR part 570. Each activity must meet one of the national objectives (*i.e.,* benefit to low- and moderate-income persons, elimination of slums or blighting conditions, or meeting imminent threats to the health and safety of the community; see § 570.208), and each grant must meet the requirements for compliance with the primary objective of principally benefiting low- and moderate-income persons, as required under § 570.420(e).

The CDBG program requires that not less than 70 percent of the total of grant funds from a grant made under this NOFA and any Section 108 Loan Guarantee funds received within a fiscal year must be expended for activities that benefit low- and moderate-income persons under the criteria of 24 CFR

570.208(a). The method of calculating the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.420(e). In general, all applications must describe the projects and activities proposed in sufficient detail that compliance with these and other applicable statutory, regulatory, and NOFA provisions can be determined.

4. Anti-Pirating Prohibition

Section 588 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) amended section 105(h) of the 1974 HCD Act as follows:

> (h) prohibition on use of assistance for employment relocation activities. Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

Accordingly, HUD will not award any grant for any project that would violate this prohibition.

5. Environmental Review Requirement

The HUD environmental review procedures contained in 24 CFR part 58 apply to this program. Under part 58, grantees assume all of the responsibilities for environmental review, decisionmaking and action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the other provisions of law specified by the Secretary in 24 CFR part 58 that would apply to the Secretary were he to undertake such projects as Federal projects.

D. Grants

1. General

HUD will fund only Single Purpose grants which are designed to address and resolve a specific community development need. A Single Purpose grant may consist of more than one project. A project may consist of one activity or a set of activities. Each project must address community development needs in one of the following problem areas:

a. Housing;
b. Public Facilities; or
c. Economic Development.

Each project will be rated against all other projects addressing the same problem area, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (*i.e.*, separate Needs Description, Community Development Activities, Impact Description and Program Schedule forms have been filled-out, indicating project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were rated as a whole, as has been the case with some economic development and housing projects. If, however, the projects tend to meet impact criteria to the same extent, or the weaker element is only a small portion of the overall project, there is no discernable benefit in designating separate projects.

2. Grant Limits and Funding Requirements

The maximum annual grant for a Single Purpose grant is $400,000, except that counties may apply for up to $600,000 in Single Purpose funds, if the project will be carried out in more than one community. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

With respect to grant limits for joint applicants, the maximum amount that may be awarded pursuant to a joint application is the maximum single grant limit established above for communities and counties multiplied by the number of participants in the cooperation agreement, provided that for purposes of determining such a multiple grant limit, and in order to receive that amount, a participating joint applicant must receive a substantial direct benefit from the activities proposed in the application and must not be acting solely on behalf of or in conjunction with another jurisdiction for the sole purpose of raising the maximum grant amount that may be awarded. In addition, the statistics of each participant counted for maximum grant limits purposes shall also be used for purposes of the selection factors under section I.E.3. of this NOFA.

3. Applications With Multiple Projects

If an application contains more than one project, each project will be rated separately for program impact. Applicants should note that regardless of the number of projects, the total grant amount cannot exceed the limits identified in section I.D.2. of this NOFA.

E. Selection Criteria/Ranking Factors and Final Selection

1. General

Complete applications received from eligible applicants by March 7, 2000 will be rated and scored by HUD. Applications are rated and scored against five factors. These five factors are discussed in more detail in section I.E.3. of this NOFA.

Applicants should note that when an applicant proposes to use Section 108 Loan Guarantee assistance as a partial funding resource for a proposed project under this NOFA, HUD, when applying the rating factors to such projects, will consider the applicant's description of the Section 108 assisted project in arriving at the score for a particular factor. An applicant may have an approved 108 Loan Guarantee application, submit a full Section 108 Loan Guarantee application or provide a description of the Section 108 Loan Guarantee application. (The description must be specific as to the amount of the Section 108 Loan Guarantee commitment that the applicant will request and the purpose for which the 108 Loan Guarantee proceeds will be used.)

However, any such CDBG application under this NOFA that is fundable and relies upon Section 108 Loan Guarantee assistance to partially carry out the activities and does not have an approved Section 108 Loan Guarantee commitment will receive a conditional approval. If the applicant does not submit and HUD does not approve the required Section 108 Loan Guarantee application within a reasonable period of time (see section II.C.1.(f)(2) of this NOFA), HUD may rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

2. Performance Evaluation

As noted in section I.C. of this NOFA, previous recipients of Small Cities Program CDBG grants are subject to an evaluation of performance and continuing capacity to undertake the proposed program. For purposes of making performance evaluations, HUD will use any information that becomes available before grant awards are announced. Performance also will be evaluated using information which may be available already to HUD, including previously submitted performance reports, site visit reports, audits, monitoring reports and annual community assessments. The HUD office may request and consider additional information in cases where it is essential to make the required performance judgments (see 24 CFR 570.423(d), captioned "Thresholds").

No grants will be made to an applicant that does not have the capacity to undertake the proposed program. A performance determination will be made by an evaluation of the following areas:

a. *Community Development Activities.* The following thresholds for performance in expending CDBG funds have been established for FY 2000 and pertain to all Single Purpose Grants, including grants pursuant to approved multiyear plans:

(1) FY 1994 and earlier—Grants must be closed out.

(2) FY 1995—Grant funds 100 percent expended.

(3) FY 1996—Grant funds 75 percent expended.

(4) FY 1997—Grant funds 30 percent expended.

(5) FY 1998 and FY 1999—Recipients must be on target with respect to the latest Small Cities Program Schedule received by HUD.

Note: These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant that fails to meet the percentages specified above may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data received by HUD after March 7, 2000 be accepted, unless specifically requested by HUD.

b. *Compliance with Applicable Laws and Regulations.* An applicant will be considered to have performed inadequately if the applicant:

(1) Has not substantially complied with the laws, regulations, and Executive Orders applicable to the CDBG Program, including applicable civil rights laws as may be evidenced by:

(a) An outstanding finding of civil rights noncompliance, unless the applicant demonstrates that it is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) An adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance;

(c) A deferral of Federal funding based upon civil rights violations;

(d) A pending civil rights suit brought against it by the Department of Justice; or

(e) An unresolved charge of discrimination issued against it by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;

(2) Has not resolved or attempted to resolve findings made as a result of HUD monitoring; or

(3) Has not resolved or attempted to resolve audit findings.

An applicant will be ineligible for a grant where the inadequate performance in compliance with applicable laws and regulations evidences a lack of capacity to carry out the proposed project or program. For example, an application will not be accepted from a unit of general local government which has an outstanding audit finding or monetary obligation for any HUD program. Additionally, applications will not be accepted from any entity which proposes an activity in a unit of general local government that has an outstanding audit finding or monetary obligation for any HUD program.

The Director of the Community Planning and Development Division of the HUD field office may provide an exception to this prohibition if the unit of general local government has made a good faith effort to clear the audit finding. No exception will be provided if funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

c. *Performance Assessment Reports.* Under 24 CFR 570.507, Small Cities CDBG grantees are required to submit Performance Assessment Reports (PARs) on October 31st, for the period ended September 30th, for all open grants awarded before April 1st of the same year. For an application for FY 2000 funds to be considered for funding, the applicant must be current in its submission of PARs. Failure to submit a PAR is not a curable technical deficiency under section V. of this NOFA.

3. Five Factor Rating

As noted in section I.E.1. of this NOFA, all applications are rated and scored against five factors. These five factors are:

- Need based on absolute number of persons in poverty;
- Need based on the percent of persons in poverty;
- Program Impact;
- Outstanding performance in fair housing and equal opportunity; and
- Welfare to Work Initiative

A maximum of 605 points is possible under this system with the maximum points for each factor being:

- Need—absolute number of persons in poverty *(up to 75 points)*
- Need—percent of persons in poverty *(up to 75 points)*
- Program Impact *(up to 400 points)*
- Outstanding performance—FHEO
- a. Provision of fair housing choice *(up to 20 points)*
- b. New Horizons Fair Housing Assistance Project *(up to 20 points)*
- c. Equal opportunity employment *(up to 10 points)*
- Welfare to Work Initiative *(up to 5 points)*

Total: 605 points

Each of the five factors is outlined below. All awarded points for each factor will be rounded to the nearest whole number.

a. *Need—Absolute number of persons in poverty (Up to 75 points).* HUD uses 1990 census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Applicants which are county governments are rated separately from all other applicants. For applications from joint applicants, data from each participating unit of general local government (as described in 24 CFR 570.422) will be aggregated. Applicants in each group are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 75.

b. *Need—Percent of persons in poverty (up to 75 points).* HUD uses 1990 census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Applicants in each group are compared in terms of the percentage of their population below the poverty level. For applications from joint applicants, data from each participating unit of general local government will be aggregated. Individual scores are obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 75.

c. *Program Impact (up to 400 points).* In evaluating program impact, HUD will consider various factors. Within each activity type described below is a set of factors and scoring weights that will be used. Each proposal will be rated using the factors and scoring weights described in the selection criteria below.

Assessments are done on a comparative basis and, as a result, it is important that each applicant present information in a detailed and uniform manner.

For projects consisting of more than one activity, the activity that directly addresses the need must represent at least the majority of funds requested. Other activities must be incidental to and in support of the principal activity. For example, public improvements included in a rehabilitation project that addresses housing need must: (1) be a relatively small amount in terms of funds requested; (2) clearly be in support of the housing objective; and (3) demonstrate a positive and direct link to the national objective. For incidental activities claiming benefit to low- and moderate-income persons on an area basis, the application must document that at least 51 percent of the residents of the service area meet the low- and moderate-income requirement. Funds should not be requested for activities that are not incidental to and in support of the principal activity.

In addressing program impact criteria, applicants should adhere to the following general guidelines for quantification. Where appropriate, absolute and percentage figures should be used to describe the extent of community development needs and the impact of the proposed program. This includes, but is not limited to, appropriate units of measure (*e.g.*, number of housing units or structures, linear feet of pipe, pounds per square inch, etc.), and costs per unit of measure. These quantification guidelines apply to the description of need, the nature of proposed activities and the extent to which the proposed program will address the identified need.

Appropriate documentation should be provided to support the degree of need described in the application. Basically, the sources for all statements and conclusions relating to community needs should be included in the application or incorporated by reference. Examples of appropriate documentation include planning studies, letters from public agencies, newspaper articles, photographs and survey data.

Generally, the most effective documentation is that which specifically addresses the subject matter and has a high degree of credibility. Applicants which intend to conduct surveys to obtain data are advised to contact the appropriate HUD office prior to conducting the survey for a determination as to whether the survey methodology is statistically acceptable.

There are a number of program design factors related to feasibility which can alter significantly the award of impact points. Accordingly, it is imperative that applicants provide adequate documentation in addressing these factors. Common feasibility issues include site control, availability of other funding sources, validity of cost estimates, and status of financial commitments as well as evidence of the status of regulatory agency review and approval.

Past productivity and administrative performance of prior grantees will be taken into consideration when reviewing the overall feasibility of the program. Overall program design, administration and guidelines are other feasibility issues that should be articulated and presented in the application, since they are critical in assessing the effectiveness and impact of the proposed program.

Each project will be rated against other projects addressing the same problem area, so that, for example, housing projects only will be compared with other housing projects, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e., separate Needs Descriptions, Community Development Activities, and Impact Description and Program Schedule forms have been filled out, indicating separate project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were all related as a whole, as has been the case with some economic development projects. If, however, the projects tend to meet the impact criteria to the same extent, or the weaker element is only a small portion of the overall program, there is no discernible benefit in designating separate projects.

Applicants should bear in mind that the impact of the proposed project will be judged by persons who may not be familiar with the particular community. Accordingly, individual projects will be rated according to how well the application demonstrates in specific, measurable terms, the extent to which the impact criteria are met. General statements of need and impact alone will not be sufficient to obtain a favorable rating. HUD will not make a Small Cities grant when it determines that the grant will only have a minimal or insignificant impact on the grantee. For the purposes of this NOFA, any application not scoring above 100 points of the possible 400 points for the Program Impact factor will be deemed to have a minimal or insignificant impact on the grantee and will not be funded regardless of the number of points the applicant may otherwise receive or the ranking it attains as a result of its score due to points received on other rating factors.

(1) *Program Impact—Housing.* There are three distinct types of Housing projects: Housing Rehabilitation, Creation of New Housing and Direct Homeownership Assistance. Separate rating criteria are provided for each type of project.

(a) *Housing Rehabilitation.* The following factors and weights will be used to evaluate proposed housing rehabilitation projects:

(i) *Severity of Need (proportion of units that are substandard and extent of disrepair) (up to 160 points of the total Program Impact score).* Each application should provide information on the total number of units in the project area, the number that are substandard, and the number of substandard units occupied by low- and moderate-income households. The purpose of this information is to establish the relative severity of housing conditions within the designated project area compared to other housing rehabilitation applications.

The application also should describe the date and methodology of any surveys used to obtain the information, including any explicit and detailed definition of "substandard." Surveys of housing conditions serve several purposes in evaluating applications for housing rehabilitation activities. These include establishing the seriousness of need for such assistance in the project area, providing a basis for estimating overall budgetary needs, and providing an indication of the marketability of the project.

(ii) *Extent to which proposed program will resolve the identified problem (up to 50 points of the total Program Impact score).* Applicants should note that programs that propose minimal rehabilitation may not necessarily be addressing the identified problem.

(iii) *Feasibility (marketability, project design affecting timely completion of the project) (up to 50 points of the total Program Impact score).* The application should describe the project in sufficient detail to allow the reviewer to assess its feasibility and its probable impact on the conditions described. It also should describe project requirements in such a way that regulatory and policy concerns will be addressed.

HUD encourages communities to support the Healthy Homes Secretarial initiative. Applicants applying for Small Cities CDBG funds to rehabilitate housing and/or construct new housing units may support these initiatives by including Healthy Homes features in their program design, such as window locks, deadbolt locks on doors, locks or safety latches on medicine cabinets, smoke detectors, carbon monoxide detectors, energy efficient windows, elimination of lead-based paint, and any other activities that contribute to Healthy Homes, especially regarding children.

(iv) *Leveraging of other resources (up to 60 points of the total Program Impact score).* HUD encourages communities to design projects supplementing Small Cities rehabilitation funds with private funds wherever feasible and appropriate, especially in the case of rental units and housing not occupied by lower-income persons. In such cases, the Small Cities grant subsidy should be as low as possible, while retaining sufficient incentive to attract local participants. On the other hand, projects designed for low-income homeowners should not require private contributions at a level that puts the project out of reach of potential participants.

(v) *Cost per unit (up to 80 points of the Program Impact score).* HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications. In reviewing applications from grantees with prior housing rehabilitation projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance.

(b) *Creation of New Housing.* CDBG funds may be used to support the construction of new housing units, the creation of new units proposed through conversion of existing structures (currently vacant structures or conversion of nonresidential structures for residential use) and, in certain circumstances, to finance the actual cost of constructing new units. New construction may be carried out by an eligible nonprofit entity pursuant to 24 CFR 570.204, or as last resort housing. Note that for purposes of specific uses of Section 108 Loan Guarantee proceeds, eligibility is limited to assistance for community economic development projects under § 570.204(a)(2).

See also 24 CFR 570.703(i)(2). Support of new construction could include nonconstruction assistance such as the acquisition and/or clearance of land, the provision of infrastructure, or the payment of certain planning costs.

The following factors and weights will be used to evaluate proposed projects for the creation of new housing:

(i) *Severity of need for new housing affordable to low- and moderate-income persons shown in the project area (up to 160 points of the total Program Impact score).* Where the creation of new units is proposed, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information.

(ii) *Extent to which the proposed program will create new housing units affordable to low- and moderate-income persons (up to 50 points of the total Program Impact score).* The proposed project clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from new construction projects for which the proposed project will provide nonconstruction assistance.

(iii) *Feasibility (marketability, project design affecting timely completion of the project) (up to 50 points of the total Program Impact score).* Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

(iv) *Leveraging of other resources (up to 60 points of the total Program Impact score).* Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact.

(v) *Cost per unit (up to 60 points of the total Program Impact score).* HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications. In reviewing applications from grantees with prior housing projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance.

(vi) *Extent to which the project would affirmatively further fair housing (either through spatial deconcentration of minorities throughout the community or through spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration) (up to 20 points of the total Program Impact score).*

(c) *Direct Homeownership Assistance.* Homeownership activities are defined as activities which would promote homeownership within the applicant jurisdiction, focusing particularly on aiding low- and moderate-income persons in becoming homeowners. This may include activities authorized under 24 CFR 570.201(n) for purposes of use of Small Cities grant funding. However, activities eligible solely under 24 CFR 570.201(n) are not permitted uses of Section 108 loan guarantee proceeds. While declining to identify any particular type of proposed project as superior, HUD is identifying several criteria which must be addressed within the project design, in order for the application to receive the maximum project impact.

Applications must include a well developed description of homeownership needs in the applicant jurisdiction, focusing particularly on the needs of low-and moderate-income persons. The description also should include, if applicable, any alternative approaches which have been considered in meeting homeownership needs. Project feasibility must be addressed as part of the application.

The application must demonstrate that the proposed project would make effective use of all available funds. This would include any local, State or other Federal funds which would be utilized by the proposed project. If other such funds are included as part of the proposed project, the applicant must demonstrate that such funds are committed and truly available for the project. Any efforts which would affirmatively further fair housing, by promoting homeownership among minorities as well as homeownership throughout the community, must be outlined in the application.

The application must explain how the project would benefit low- and moderate-income homebuyers, particularly focusing on first-time and minority homebuyers. The application also should address any homeownership counseling services, including counseling pertaining to Federal, State, and local fair housing laws and requirements, which would be provided to persons selected to participate in the proposed project. Finally, the application should describe how the project would utilize public/private partnerships to promote homeownership, particularly in the sense that private sector financing would be accessible, as necessary, to project participants to complement available public sector funds, including CDBG money.

The following factors and weights will be used to evaluate proposed direct homeownership assistance projects:

(i) The extent to which the application demonstrates severity of homeownership needs in the community *(up to 160 points of the total Program Impact score).*

(ii) The extent to which: the project design is appropriate to meet demonstrated homeownership needs; the project would make effective use of available funds; alternative approaches to meeting the homeownership needs have been considered; and the proposed project would target first-time homebuyers *(up to 60 points of the total Program Impact score).*

(iii) The extent to which the project is feasible and likely to be implemented in accordance with a project schedule *(up to 50 points of the total Program Impact score).*

(iv) The extent to which the proposed project would: complement other Federal, State or local programs that promote homeownership; and utilize public/private partnerships in attempting to promote homeownership, particularly in regard to participation by local financial institutions considering the cost per unit *(up to 80 points of the total Program Impact score).*

(v) The extent to which the proposed project would provide homeownership counseling to project participants *(up to 30 points of the total Program Impact score).*

(vi) The extent to which the project would affirmatively further fair housing through proposed initiatives to reach out to potential minority homeowners and/or to promote homeownership opportunities throughout the community *(up to 20 points of the total Program Impact score).*

(2) *Program Impact—Public Facilities Affecting Public Health and Safety.* In the case of public facility projects, documentation of the problem by outside, third-party sources is of primary importance. In the case of water and sewer projects, documentation from public agencies is particularly helpful, especially where such agencies have pinpointed the exact cause of the problem and have recommended courses of action which would eliminate the problem. Such supporting documentation should be as up-to-date as possible; the older the supporting material, the more doubt arises that the need is current and immediate. Applicants also should be sure to indicate how the project would address public health and safety needs and conditions. Quantification also is essential in describing needs. Documentation from those affected should be included.

The following factors and weights will be used to evaluate proposed public facilities projects affecting the public health and safety:

(a) *Severity of Need (up to 160 points of the total Program Impact score).* The applicant should describe, including appropriate documentation, as best as possible, the degree to which the need is serious, current and requires prompt attention.

(b) *Extent to which the proposed program will resolve the identified problem and public health and safety concerns (up to 50 points of the total Program Impact score).* The applicant should demonstrate that the project will completely solve the problem and, if applicable, the applicant should address whether the proposal would be satisfactory to other State/local agencies which have jurisdiction over the problem.

(c) *Feasibility (up to 50 points of the total Program Impact score).* The applicant should address whether the proposal is the most cost effective and efficient among the possible alternatives considered, and the funding requested will be sufficient to resolve the problem. Total project costs should be documented by qualified third-party estimates, and be as recent as possible.

(d) *Extent of benefit to affected persons and the cost per household (up to 80 points of the total Program Impact score).*

(e) *Leveraging other resources to minimize project costs (up to 40 points of the total Program Impact score).* To the extent that Small Cities grant funds will not cover all costs, the source of other funds should be identified and committed. If local funds are to be used, the applicant should show both the willingness and the ability to provide the funds.

(f) *Extent to which the project addresses deficiencies in accessibility for disabled persons and/or provides a significant increase in the number of public facilities accessible to disabled persons (up to 20 points of the total Program Impact score).*

(3) *Program Impact—Economic Development Projects.*

As discussed earlier in this section of the NOFA, each individual Single Purpose project will receive a separate impact rating. Applicants whose proposed economic development program will include multiple proposals should determine the most appropriate form of submission. This determination will require a choice as to either the incorporation of all proposals into a single project or the submission of separate projects for each proposal (each transaction will be considered a separate project). The single project format presents an "all or nothing" situation. In determining the appropriate submission format, applicants should consider the ability of a transaction to rate well on its own, based on the magnitude of employment impact, size of the financial transaction and the other factors discussed in this section.

The submission of proposals as separate projects must be clearly designated by the applicant with individual Needs Descriptions, Community Development Activities, Impact Descriptions and Program Schedule forms, including an appropriate name for each project on HUD Form 4124.1.

Section 807(c)(3) of the Housing and Community Development Act of 1992 (42 U.S.C. 5305 note) provides that it is the sense of Congress that each grantee should devote one percent of its grant for the purpose of providing assistance under section 105(a)(23) of the 1974 HCD Act to facilitate economic development through commercial microenterprises. A "microenterprise" is defined as a commercial enterprise with five or fewer employees, one or more of whom owns the enterprise. While not a requirement, this intent should be considered in developing an economic development application.

It is noted that in accordance with section 105 of the 1974 HCD Act, HUD published on January 5, 1995 (60 FR 1922), a final rule relating to evaluation and selection of Economic Development activities by grantees, including evaluation of public benefit (generally codified at 24 CFR 570.209). Economic Development applications must be specific enough to permit a determination that such threshold public benefit standards are met.

HUD encourages applicants to submit economic development applications which build on or are related to Canal Corridor Initiative activities.

(a) *Scoring.* The following factors and weights will be used to evaluate proposed economic development projects:

(i) *The extent to which the project will have a direct and positive impact on employment opportunities for persons from low- and moderate-income households (up to 160 points of the total Program Impact score).* Applicants are reminded that for an activity to be consistent with the statutory objective of low- and moderate-income benefit, as a result of the creation or retention of jobs, at least 51 percent of created or retained employment opportunities must be held by, or made available to, persons from low- and moderate-income families. Applicants must fully document and describe employment benefits. In addition, applicants should address the following issues:

a. All employment data must be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, and applicants must take into account such factors as seasonal and part-time employment. A seasonal job may be considered permanent if the season is long enough to be considered the person's principal occupation; permanent part-time jobs must be converted to the full-time equivalent.

b. The amount of CDBG assistance required to produce each full-time equivalent job will affect the impact assessment by HUD. Lower CDBG costs per job are preferable to higher CDBG costs per job. Such assessments of impact will be done on a comparative basis among all projects submitted, rather than by comparison to a given standard.

c. The use of CDBG funds to assist a business with transferring to a different community will generally be considered as having *no* employment impact. Exceptions to this rule may include an expansion to the business as a result of, or concurrent with, the transfer; or if the business can demonstrate that it is infeasible to continue operations at the current site. An applicant that fails to document a basis for such an exception could receive a substantially lower score under this ranking factor. Applicants are encouraged to use CDBG funds for projects that provide as many jobs as possible for individuals that are currently receiving public assistance. Providing employment to recipients of public assistance will help break the cycle of dependency and empower low-income citizens to take control of their lives.

(ii) *The extent to which market analysis and other risk data provides assurance that the proposed project will be successful (up to 50 points of the total Program Impact score).*

(iii) *The extent to which the proposed project addresses all appropriate feasibility issues (including extent of firm private financing commitments) and the extent to which there is reasonable assurance that the project will be completed in a timely manner (up to 50 points of the total Program Impact score).* Projects that are likely to encounter feasibility issues which would hinder the timely completion of the project will receive a lower score under this criterion. Such issues include, but are not limited to: site control, zoning, public approvals and permits, infrastructure, environment, and relocation. Applicants should address these and any other applicable issues and provide documentation where appropriate.

Applicants also must demonstrate the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis or market data, which indicates an inordinate risk in the undertaking of the project, will affect the overall rating of program impact. In order to receive a higher rating, the costs must be reasonable (*i.e.*, not inflated).

(iv) *Extent to which the project provides Public Benefits relative to other proposals' cost per job (up to 80 points of the total Program Impact score).*

(v) *The extent to which Small Cities grant funds will leverage the investment of private and other dollars and the extent to which Small Cities grant funds are NOT used to substitute for private financing (up to 60 points of the total Program Impact score).* Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. Projects which provide the maximum feasible level of private investment will be considered as having appropriate leverage. The extent of firm commitments for private financing will be reviewed as well as the amount of equity investment. The project will be reviewed to determine whether CDBG funds are replacing private sources of funds. In order to receive maximum impact CDBG funds may not replace private financing, CDBG assistance must be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds should bear the greatest risk in the project.

In addition to the standard submission requirements, HUD will evaluate the following as part of its Eligibility Review prior to considering an application for funding in the FY 2000 competition.

(b) *The Appropriate Determination.* HUD has developed guidelines for review of economic development activities undertaken with CDBG funds. These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating project costs and financial requirements are not. The guidelines for evaluating project costs are to ensure:

(i) *Reasonableness of Proposed Costs.* The applicant must review each project cost element and determine that the cost is reasonable and consistent with third-party, fair-market prices for that cost element. The general principle is that the level of CDBG assistance cannot be adequately determined if the project costs are understated or inflated.

(ii) *Commitment of Other Sources of Funds.* The applicant shall review all projected sources of funds necessary to complete the project and shall verify that all sources (in particular private debt and equity financing) have been firmly committed to the extent practicable, and are available to be invested in the project. Verification means ascertaining that: the source of funds is committed; that the terms and conditions of the committed funds are known; and the source has the capacity to deliver.

(iii) *No Substitution of CDBG Funds (including Section 108 Loan Guarantee proceeds) for Private Sources of Funds.* The applicant shall financially underwrite the project and ensure to the extent possible that CDBG funds are not being substituted for available private debt financing or equity capital. The analysis must be tailored to the type of project being assisted (*e.g.*, real estate, user project, capital equipment, working capital, *etc.*). Real estate projects require different financial analysis than working capital or machinery and equipment projects. Applicants should ensure that both a significant equity commitment by the for-profit business exists and that the level of certainty of the end use of the property or project is sufficient to ensure the achievement of national objectives within a reasonable period of time.

(iv) *Establishment of Small Cities Grant Financing Terms.* The amount of Small Cities grant assistance provided to a for-profit business ideally should be limited to the amount, with appropriate repayment terms, sufficient to go forward without substituting Small Cities grant funds for available private debt or cash equity. The applicant should structure its repayment terms so that the business is allowed a reasonable rate of return on invested equity, considering the level of risk of the project. Equity funds generally should bear the greatest risk of all funds invested in a project.

(v) *Public Benefit Determination.* The applicant's activities must meet the public benefit standards found in 24 CFR 570.209(b). Activities covered by these guidelines (subject to certain exceptions) must, in the aggregate, either:

- Create or retain at least one full-time equivalent, permanent job per $35,000 of CDBG funds used; or
- Provide goods or services to residents of an area, such as the number of low- and moderate-income persons

residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per $350 of CDBG funds used.

(c) *CDBG Assistance Must Minimize Business and Job Displacement.* Each applicant will evaluate the potential of each economic development project for causing displacement of existing businesses and lost jobs in the neighborhood where the project is proposed to be located. When the grantee concludes that the potential exists to cause displacement, given the size, scope or nature of the business, then the grantee must, to the extent practicable, take steps to minimize such displacement. The project file must document the grantee's review conclusions and, if applicable, the steps the grantee will take to minimize displacement.

(d) *Section 105(a)(17) Requirements.* Section 105(a)(17) of the 1974 HCD Act requires that an activity assisted under that section achieve one of the following criteria:

(i) Creates or retains jobs for low- and moderate-income persons (note that a project which meets the national objective of principally benefitting low- and moderate-income persons by creating or retaining jobs, 51 percent of which are for low- and moderate-income persons, will be deemed to have met this criterion without any additional documentation);

(ii) Prevents or eliminates slums or blight (note that a project which meets the national objective of aiding in the prevention or elimination of slums or blight on an area basis will be deemed to have met this criterion without any additional documentation);

(iii) Meets an urgent need (note that a project which meets the national objective of meeting community development needs having a particular urgency will be deemed to have met this criterion without any additional documentation);

(iv) Creates or retains businesses owned by community residents;

(v) Assists businesses that provide goods or services needed by and affordable to low- and moderate-income residents;

(vi) Provides technical assistance to promote any of the activities under (i) through (v) of this subsection.

(e) *National Objectives.* As previously stated in this NOFA, all CDBG-assisted activities must address one of the three broad national objectives. Since economic development projects usually result in new employment or the retention of existing jobs, these activities most likely would be categorized as principally benefitting low- and moderate-income persons in this manner. Such projects will be considered to benefit low- and moderate-income persons where the criteria of 24 CFR 570.208(a)(4) are met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are taken by or made available to such persons, or retained by such persons. The extent to which the proposed project will directly address employment opportunities for low- and moderate-income persons in the applicant jurisdiction will be a primary factor in HUD's assessment of the proposed program.

The application must contain adequate documentation to explain fully, and to support, the process that will be used to ensure that project(s) comply with the low- and moderate-income employment requirements. The documentation must be sufficient to show that the process has been developed and that program participants have agreed to adhere to that process. In determining whether the person is a low- and moderate-income person for these activities, it is the person's family income at the time the CDBG assistance is provided that is determinative. When making judgments concerning whether an individual qualifies as a low- and moderate-income person, both family size and the income of the entire family must be considered. This consideration is necessary because a "low- and moderate-income person" is defined as a member of a low- and moderate-income family.

HUD will accept a written certification by a person of his or her family income and size to establish low- and moderate-income status. The certification may simply state that the person's family income is below that required to be low- and moderate-income in that area. The form for such certification must include a statement that the information is subject to verification.

In addition to person-by-person income certifications discussed above, under section 105(c)(4) of the 1974 HCD Act, an employee may be presumed to be a low- and moderate-income person if the employee resides in a census tract where not less than 70 percent of the residents are low- and moderate-income persons, and a presumption of low- and moderate-income may also be made if the business is located in and/or the employee resides in a census tract (or block numbering group) where 20 percent of the residents are in poverty. The key consideration in this presumption is the location of the business or employee. The documentation to support the presumption must contain the location. (See 24 CFR 570.209(b)(2)(v) for more information on this subject.)

In cases where an activity (*e.g.*, a shopping center or a super market) provides goods and services to residents of an area, the low- and moderate-income objective may be met by the area benefit requirements at 24 CFR 570.208(a)(1). To document low and moderate income, 51 percent of the residents of the area or block numbering group must be low- and moderate-income persons.

(f) *Application Requirements.* To the extent feasible, the material listed below should be submitted for economic development projects. The material should be submitted for each proposed activity, whether the proposed activity is presented as a separate project or as part of a project involving multiple activities. Since economic development projects are rated against each other, the more completely these submission requirements are met, the greater the potential exists for enhancing the impact score of the project.

(i) A letter from each appropriate developmental entity which includes at least the following information:

a. A detailed physical description of the project with a schedule of events and maps or drawings as appropriate.

b. The estimated costs for the project, including any working capital requirements.

c. A discussion of all financing sources, including the need for CDBG, the terms of the CDBG assistance, and the proposed lien structure. The amount, source, and nature of any equity investment(s) must also be provided as well as a commitment to invest the equity.

d. A discussion of employment impact which includes a schedule of newly created positions. The schedule should identify the number, salary and skill level of each permanent position to be created. If jobs are made available to low- and moderate-income persons, the applicant must also demonstrate and document how persons from low- and moderate-income households will be accorded first consideration for employment opportunities.

e. A discussion of all appropriate feasibility issues including, but not limited to: site control, zoning, public approvals and permits, impact fees, corporate authorizations, infrastructure, environment and relocation.

f. An analysis and summary of market and other data which supports the anticipated success of the project.

g. A statement as to whether or not the project will result in the relocation of any industrial or commercial plant, facility, or operation from one area to another. If the CDBG funded project will result in the relocation of a plant, facility, or operation, then the application shall include a statement as to the total number of jobs that are currently filled at the existing/current plant, facility, or operation and the number of jobs that are projected to exist at that former plant, facility, or operation after the proposed CDBG funded project is complete and fully operational.

(ii) A development budget showing all costs for the project, including professional fees and working capital.

(iii) Documentation to support project costs. Documentation generally should be from a third-party source and be consistent with the following guidelines:

a. Acquisition costs should be supported by an appraisal.

b. Construction/renovation costs should be certified by an architect, engineer or contractor. Use of Federal Prevailing Wage Rates should be cited where applicable.

c. Machinery and equipment costs should be supported by vendor quotes.

d. Soft costs (e.g., legal, accounting, title insurance) need be substantiated only where such costs are anticipated to be abnormally high.

(iv) Letters from all financing sources discussing (at a minimum) the amount and terms of the proposed financing, and the current status of the application for funding.

(v) Historical financial data of the development entity, preferably for the last 3 years. This information may be submitted under separate cover with confidentiality requested. It is recognized that historical financial data may be unavailable or inappropriate for some projects (e.g., start-up companies and real estate transactions).

(vi) A 2- to 5-year cash flow pro forma with accompanying notes citing basic assumptions.

(vii) The applicant's assessment of the project's consistency with the CDBG program eligibility requirements and standards for evaluating project cost, financial requirements and public benefit.

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 50 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments. Clear, precise documentation will be required. Maps must have a census tract or block numbering area (BNA), and they must be in accordance with the 1990 Census data. Additionally, maps must identify the locations of areas with minorities by census tract or BNA. If there are no minority areas, state so on the map. Only population data from the 1990 Census will be acceptable for purposes of this section.

Please note that a "minority" is a person belonging to, or culturally identified as, a member of any one of the following racial/ethnic categories: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native. For the purposes of this section, the separate category of "women" is not considered a minority.

Counties claiming points under this criterion must use county-wide statistics (excluding entitlement communities). In the case of joint applications, points will be awarded based on the performance of the lead entity only.

The following factors will be used to judge outstanding performance in these areas. Please note that points for outstanding performance may be claimed under each criterion:

(1) *Housing Achievements (40 points total).* (a) *Provision of Fair Housing Choice (20 points).* (i) HUD will consider the extent to which the applicant demonstrates that it has provided housing assistance for low and moderate income families that results in housing choice in areas outside of minority or low- and moderate income concentration. Such actions may include the construction or rehabilitation of housing in areas outside of minority or low and moderate income concentration; the provision of Section 8 Existing Certificate or Voucher assistance in ways that lessen concentration of such assisted units within minority and low- and moderate income concentrated areas; or the provision of direct homeownership assistance such as homeownership counseling, downpayment assistance, or first-time homebuyer assistance. If applicable, the applicant may use a map to show the general location(s) of individual projects and/or housing occupied by Section 8 Existing Program participants.

(ii) Points also may be awarded for efforts which enable low- and moderate-income persons to remain in their neighborhood when such neighborhoods are experiencing revitalization and substantial displacement as a result of private reinvestment. Applicants requesting points under this criterion would not need to meet the requirements of paragraphs (a) and (b) in order to receive points. Points will be awarded where more than one-half of the families displaced were able to remain in their original neighborhood through the assistance of the applicant. Applicants must show that:

- The neighborhood experienced revitalization;
- The amount of displacement was substantial;
- Displacement was caused by private reinvestment;
- Low- and moderate-income persons were permitted to remain in the neighborhood as a result of action taken by the applicant.

If the community is inhabited predominantly by persons who are members of minority and/or low-income groups, points will be awarded where there is a balanced distribution of assisted housing throughout the community.

(b) *Implementation of a Fair Housing Strategy that Affirmatively Furthers Fair Housing (20 points).* The applicant must demonstrate that it is implementing or plans to implement a Fair Housing Strategy on its own or demonstrate that it does or plans to participate in a county/State or regional analysis of impediments to fair housing choice. A fair housing strategy must include the following elements:

- Local compliance activities;
- Educational programs to enhance the clarity and understanding of the community's fair housing policy. For communities with few or no minorities, this should include publication in the surrounding communities of the applicant's policy of fair housing for minorities and persons with disabilities;
- Assistance to minority families;
- Special programs (e.g., utilization of Community Housing Resource Board (CHRB) Programs, efforts to encourage local realtors to enter into voluntary agreements to encourage equal access to financial institutions, etc.);
- Assistance to minority families through mobility counseling programs and other activities that encourage such families to pursue such housing opportunities outside of minority concentrated areas;
- Special programs targeted at lenders, builders, realtors, and other housing industry groups; and
- Affirmative marketing strategies targeted at those groups in the eligible population considered least likely to apply without special outreach.

The fair housing strategy must include goals for each of the above elements. The date of adoption or development of the strategy should be indicated, as well as the date proposed activities will be or have been implemented.

(2) *Entrepreneurial Efforts and Local Equal Opportunity Performance.* HUD encourages the use of minority

contracting, although it will not be used as an evaluation factor in this NOFA.

(3) *Equal Opportunity Employment (10 points).* Under this factor, the applicant must document that its percentage of minority, permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

e. *Welfare to Work Initiative (5 points).* Five bonus points will be added to proposals which support the Welfare to Work Initiative. These points will be added to those proposals that include activities which will provide assistance to persons moving from welfare to work. Examples of such activities are: jobs, day care slots, training or transportation assistance.

4. Final Selection

The total points received by a project for all of the selection factors are added, and the project is ranked against all other projects from all applications, regardless of the program areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. If an applicant submits two applications under this NOFA, it may receive up to two single grants in the amounts of the project or projects applied for in those applications which were ranked high enough to be funded. In the case of ties at the funding line, HUD will use the following criteria in order to break ties:

- The project receiving the highest program impact rating will be funded;
- If tied projects have the same program impact rating, the project having the highest combined score on the needs factors will be funded;
- If tied projects have the same program impact ratings and equal needs factor scores, the project having the highest score on the percent of persons in poverty needs factor will be funded; and
- If tied projects have the same program impact ratings, equal needs factor scores, and an equal percent of persons in poverty needs factor score, the application having the most outstanding performance in fair housing and equal opportunity will be funded.

As soon as possible after the rating and ranking process has been completed, HUD will notify all applicants regarding their rating scores and funding status. Thereafter, applicants may contact HUD to discuss scores or any aspects of the selection process.

II. Application and Funding Award Process

A. Obtaining Applications

All nonentitled communities in New York State may obtain application kits through HUD's New York or Buffalo Offices. The addresses for HUD's Buffalo and New York offices are:

Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068. Telephone (212) 264–2885 x3401,

Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 551–5755 x5800.

In addition, application kits and additional information are available on the HUD website located at: www.hud.gov or by contacting Community Connections at (800) 998–9999.

B. Submitting Applications

A final application must be submitted to HUD no later than March 7, 2000. A final application includes an original and two photocopies. Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, March 7, 2000. If an application is hand-delivered to the New York or Buffalo Offices, the application must be delivered by 4:00 p.m. on the application deadline date. Applicants in the counties of Sullivan, Ulster, Putnam, and in nonparticipating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nonentitled communities in New York State should submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the addresses listed above in section II.A. of this NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received on, or postmarked by March 7, 2000. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

C. The Application

1. Application Requirements

An application for the Small Cities Program CDBG Grants is made by the submission of:

(a) A completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;

(b) A completed Standard Form 424;

(c) A signed copy of certifications required under the CDBG Program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying pursuant to section 319 of the Department of the Interior Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), generally prohibiting use of appropriated funds, and, if applicable, Disclosure of Lobbying Activities (SF–LLL);

(d) Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart A of 24 CFR part 4 (Accountability in the Provision of HUD Assistance); and, if applicable,

(e) Abbreviated Consolidated Plan.

(f) A Section 108 Loan Guarantee application or request, if applicable, consisting of one of the following:

(1) A formal application for Section 108 Loan Guarantee(s), including the documents listed at § 570.704(b);

(2) A brief description of a Section 108 Loan Guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause on a case-by-case basis) of a notice of CDBG Small Cities grant award. (The CDBG grant award will be conditioned on approval of actual Section 108 Loan Guarantee commitments within a stated period of time.) This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance; or

(3) If applicable, a copy of a Section 108 Loan Guarantee approval document with grant number and date of approval.

2. Streamlined Application Requirements for Certain Applicants

Single Purpose applications submitted under the FY 1997/98 NOFA but not selected for funding will be reactivated for consideration under this NOFA, if the applicant notifies HUD in writing by March 7, 2000 that the applicant wishes the prior application to be considered in this competition. Applications which are reactivated may be updated, amended or supplemented by the applicant provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

D. Funding Award Process

In accordance with section 102 of the HUD Reform Act and HUD's regulation in 24 CFR part 4, HUD will notify the public by notice published in the **Federal Register** of all award decisions made by HUD under this competition. In accordance with the requirements of section 102 of the Reform Act and HUD's regulations at 24 CFR part 4, HUD also will ensure that documentation and other information regarding each application submitted under this NOFA is sufficient to indicate the basis upon which assistance was provided or denied. Additionally, in accordance with § 4.5(b) of these regulations, HUD will make this material available for public inspection for a period of 5 years, beginning not less than 30 calendar days after the date on which assistance is provided.

III. Technical Assistance

Prior to the application deadline, the Buffalo and New York offices will provide technical assistance on request to individual applicants, including explaining and responding to questions regarding program regulations, and defining terms in the application package. In addition, HUD will conduct informational meetings around the State to discuss the Small Cities Program, and will conduct application workshops in conjunction with these meetings. Please contact the New York or Buffalo Office for further information regarding these meetings. Application kits will be available at these meetings, as well as from the New York or Buffalo Offices. In order to ensure that the application deadline is met, it is strongly suggested that applicants begin preparing their applications immediately and not wait for the informational meetings.

IV. Checklist of Application Submission Requirements

The following checklist is intended to aid applicants in determining whether their application is complete:

Application Completeness Checklist

Applicant: ________

Amount Requested $________

1. Is amount of funds requested within established maximum?

2. Part I—Needs Description (HUD Form 4124.1)

a. Program Area

____Housing

____Target Area

____Nontarget Area

____Public Facilities

____Economic Development (If an "appropriate" analysis is required but is not included, the application cannot be rated.)

b. Is description of community development needs included in application?

3. Part II—Community Development Activities (HUD Form 4124.2)

a. Has national objective been identified for each activity?

b. Will 70 percent of grant funds primarily benefit low-and moderate-income persons? (If not, the application cannot be rated.)

4. Part III—Impact Description (HUD Form 4124.3)

5. Part IV—Outstanding Performance (HUD Form 4124.4)

6. Part V—Program Schedule (HUD Form 4124.5)

7. Part VI—Maps

a. Location of proposed activities. (Applicants must show the boundaries of the defined area or areas.)

b. Location of areas with minorities by census tract. (If there are no minority areas, state so on the map.)

c. Housing conditions if project involves housing rehabilitation. (Number and location of each standard and substandard unit should be clearly identified.)

8. a. Is Standard Form 424 complete?

Yes No

b. Is original signature on at least one copy?

Yes No

9. Is Certification signed with original signature?

Yes No

10. Has the abbreviated consolidated plan been prepared and submitted to HUD (or included with this application)?

11. Form HUD–2880, Application/Recipient Disclosure/Update Report.

12. Do proposed economic development activities meet the public benefit standards as defined in 24 CFR 570.209?

V. Corrections to Deficient Applications

Under no circumstances will HUD accept from the applicant unsolicited information regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. Situations not considered curable would be, for example, a failure to submit program impact descriptions.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

Applicants should note that if an abbreviated consolidated plan is not submitted, the failure to submit it in a timely manner is not considered a curable deficiency.

VI. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements related to this CDBG program have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB approval number 2506–0020. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Environmental Impact

This NOFA provides funding under, and does not alter environmental requirements of, a regulation previously published in the **Federal Register**. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act. The environmental review provisions of this regulation are in 24 CFR 570.604.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government.

While the NOFA will provide financial assistance to the Small Cities Program of New York State, none of its provisions will have an effect on the relationship between the Federal Government and New York State, or the State's political subdivisions.

Accountability in the Provision of HUD Assistance

See Section I.A.4. of this NOFA.

Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included in the application package.

The Lobbying Disclosure Act of 1995, which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Department of Housing and Urban Development Reform Act of 1989, and HUD's implementing regulation codified at subpart B of 24 CFR part 4, applies to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees, including those conducting technical assistance sessions or workshops and those involved in the review of applications and in the making of funding decisions, are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.)

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this program is 14.219.

Dated: October 29, 1999.

Joseph A. D'Agosta,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 99–29173 Filed 11–5–99; 8:45 am]

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regulation

FEDERA

58755–59
59107–59
59603–60
60083–60
60333–60
60647–61

Reader Aids

Federal Register

Vol. 64, No. 215

Monday, November 8, 1999

CUSTOMER SERVICE AND INFORMATION

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

58755–59106	1
59107–59602	2
59603–60082	3
60083–60332	4
60333–60646	5
60647–61014	8

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
7245	59103
7246	60083
7247	60085
Executive Orders:	
13067 (See Notice of October 29, 1999)	59105
13096 (See Proc. 7247)	60085
Administrative Orders:	
Memorandums:	
October 27, 1999	60647
Notices:	
Notice of October 29, 1999	59105
Presidential Determinations:	
No. 99–13 of February 4, 1999 (See Presidential Determination No. 2000–5 of October 29, 1999	60651
No. 2000–2 of October 21, 1999	58755
No. 2000–3 of October 25, 1999	58757
No. 2000–4 of October 27, 1999	60649
No. 2000–5 of October 29, 1999	60651

5 CFR

532	60087
Proposed Rules:	
1201	58798

7 CFR

301	60088, 60333
319	59603
905	58759
928	59604
944	58759
981	58763, 59107
1439	58766
1477	58766
Proposed Rules:	
278	59665
770	59131
923	60733
1217	59669
1823	59131
1956	59131

9 CFR

77	58769

10 CFR

Proposed Rules:	
2	59669, 59671
50	59671
72	59677
73	59684

11 CFR

100	59113
110	59606
114	59113
9004	59606
9034	59606
9036	59607
Proposed Rules:	
100	60360
102	60360
103	60360
104	60360
106	60360
107	60360
109	60360
110	60360
114	60360
116	60360

12 CFR

1	60092
5	60092
7	60092
211	58780
226	60335
229	59607
1805	59076
Proposed Rules:	
226	60368
611	60370
1102	58800

13 CFR

Proposed Rules:	
120	60735

14 CFR

34	60335
39	59113, 59115, 59116, 59117, 59613, 59614, 60100, 60102, 60336
71	59615, 60337, 60653, 60654
73	60339
139	60068
Proposed Rules:	
39	59137, 59685, 60134, 60136, 60138, 60383, 60386, 60742, 60743, 60745, 60748, 60750
71	59687, 59688, 59689, 59690, 60388

15 CFR

285	59616
738	60339
740	60339
746	60339
801	59119

Proposed Rules:
287.....59691

16 CFR
312.....59888

17 CFR
271.....59877

Proposed Rules:
1.....59694
239.....59826
240.....59826
270.....59826
274.....59826

18 CFR
Proposed Rules:
35.....60390
141.....60140
385.....60140

21 CFR
5.....59617
175.....60104
801.....59618

Proposed Rules:
20.....60143
801.....59695

24 CFR
982.....59620

26 CFR
1.....58782, 59139, 60342
301.....58782

Proposed Rules:
1.....59139, 60395

28 CFR
0.....58782
2.....59622
27.....58782
50.....59122

Proposed Rules:
16.....60753

29 CFR
Proposed Rules:
1401.....59697

30 CFR
934.....60654

31 CFR
Ch. V.....60660
538.....58789
550.....58789
560.....58789

32 CFR
199.....60671

33 CFR
100.....59623
117.....59123, 59624, 60672, 60673, 60674

Proposed Rules:
110.....60399

34 CFR
668.....58974, 59016, 59060
682.....58938, 59016
685.....58938, 59016

Proposed Rules:
611.....60632

36 CFR
211.....60675

Proposed Rules:
Ch. XI.....60753

37 CFR
Proposed Rules:
1.....59701
201.....59140

39 CFR
20.....60106

40 CFR
51.....58792
52.....59625, 59629, 59633, 59635, 59638, 59642, 59644, 60109, 60343, 60346, 60678, 60681, 60683, 60687, 60688
62.....59648, 60689
63.....59650
68.....59650
180.....59652, 60112
300.....60121

Proposed Rules:
52.....59703, 59704, 59705, 59706, 60400, 60401, 60759
62.....59718
63.....59719
68.....59719
81.....60478
82.....59141
86.....60401
141.....59245
142.....59245
180.....58792

41 CFR
101.....59591
101-11.....60348
102.....59591

42 CFR
409.....60122
410.....59379
411.....59379, 60122
413.....60122
414.....59379
415.....59379
485.....59379
489.....60122

Proposed Rules:
431.....60882
433.....60882
435.....60882
457.....60882

43 CFR
414.....58986

44 CFR
65.....60706, 60709
67.....60711

Proposed Rules:
67.....60759

45 CFR
Proposed Rules:
160.....59918
161.....59918
162.....59918
163.....59918
164.....59918

47 CFR
0.....60122, 60715
1.....59656, 60122, 60715
2.....60123
20.....59656, 60126
21.....60715
27.....60715
54.....60349
61.....60122
68.....60715
69.....60122, 60349
73.....59124, 59655, 60131
76.....60131
90.....59148, 60123, 60715
95.....59656
101.....59663

Proposed Rules:
1.....59719
20.....59719
43.....59719
73.....59147, 59148, 59728, 60149, 60150, 60151
90.....59148, 60151

48 CFR
201.....58908
213.....58908

49 CFR
240.....60966

Proposed Rules:
Ch. II.....59046
209.....59046
552.....60556
571.....60556
585.....60556
595.....60556

50 CFR
17.....58910
222.....60727
600.....60731
622.....59126, 60132
635.....58793
640.....59126
648.....60359
660.....59129

Proposed Rules:
16.....59149
17.....58934, 59729
622.....59152, 59153, 60151, 60402
648.....59156
654.....59153
660.....60402
679.....58796, 59730, 60157

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 8, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Oranges, grapefruit, tangerines, and tangelos grown in Florida and imported; published 11-1-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - Northeastern United States fisheries—
    - Northeast multispecies and monkfish; published 10-7-99

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

- Natural gas companies (Natural Gas Act):
  - Facilities construction and operation, etc.; filing of applications; published 10-7-99

ENVIRONMENTAL PROTECTION AGENCY

- Air programs; approval and promulgation; State plans for designated facilities and pollutants:
  - Maryland; published 9-8-99
- Air quality implementation plans; approval and promulgation; various States:
  - Arizona; published 11-8-99
  - California; published 11-8-99
  - Delaware; published 9-9-99

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Commercial mobile radio services—
    - Wireless telecommunications carriers; spectrum aggregation limits; biennial regulatory review; published 10-7-99
  - Operator services providers and call aggregators
    - Effective date; published 10-7-99
- Organization, functions, and authority delegations:
  - Enforcement and Consumer Information Bureaus; establishment; published 11-8-99
- Radio stations; table of assignments:
  - Michigan; published 10-8-99
  - Montana; published 10-8-99
  - New York; published 10-6-99
  - Texas; published 10-8-99
  - Utah; published 10-8-99
  - Wisconsin; published 10-8-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - North Dakota; published 11-8-99

MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION

Federal Mine Safety and Health Review Commission

- Procedural rules; published 9-8-99

INTERIOR DEPARTMENT

National Indian Gaming Commission

- Administrative practice and procedure:
  - Litigation involving agency; testimony, information, and response to subpoena; published 10-7-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Boeing; published 10-4-99
  - LET Aeronautical Works; published 9-17-99
  - Pilatus Aircraft Ltd.; published 9-17-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Fruits, vegetables, and other products, processed:
  - Destination market inspections; fees; comments due by 11-19-99; published 9-20-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Exportation and importation of animals and animal products:
  - Hog cholera; importation and in-transit movement of fresh pork and pork products from Mexico into U.S.; comments due by 11-15-99; published 9-15-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Child nutrition programs:
  - National school lunch, school breakfast, summer food service, and child and adult care food programs; vegetable protein products requirements modification; comments due by 11-19-99; published 8-25-99
    - Correction; comments due by 11-19-99; published 9-3-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Endangered and threatened species:
  - Sea turtle conservation; shrimp trawling requirements—
    - Matagorda Bay, TX, inshore waters; limited tow times use as alternative to turtle excluder devices; comments due by 11-18-99; published 10-25-99
- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 11-15-99; published 10-1-99

DEFENSE DEPARTMENT

- Acquisition regulations:
  - Commercial items; domestic source restrictions; comments due by 11-15-99; published 9-14-99
- Federal Acquisition Regulation (FAR):
  - Federal Supply Schedules Program; small business opportunities; comments due by 11-15-99; published 9-14-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-17-99; published 10-18-99
  - Nevada; comments due by 11-15-99; published 11-3-99
  - New Jersey; comments due by 11-15-99; published 10-14-99
  - New York; comments due by 11-15-99; published 10-14-99
  - North Carolina; comments due by 11-15-99; published 10-15-99
- Hazardous waste program authorizations:
  - Georgia; comments due by 11-15-99; published 10-14-99
- Hazardous waste:
  - Cement kiln dust; management standards; comments due by 11-18-99; published 8-20-99
- Pesticide programs:
  - Antimicrobial pesticide products; registration procedures and labeling standards; comments due by 11-16-99; published 9-17-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Cyromazine; comments due by 11-15-99; published 9-15-99
    - Correction; comments due by 11-15-99; published 10-20-99
- Radiation protection programs:
  - Rocky Flats Environmental Technology Site; waste characterization program; documents availability; comments due by 11-17-99; published 10-18-99

FEDERAL COMMUNICATIONS COMMISSION

- Digital television stations; table of assignments:
  - Nevada; comments due by 11-15-99; published 9-29-99
- Radio stations; table of assignments:
  - New York; comments due by 11-15-99; published 10-6-99

FEDERAL RESERVE SYSTEM

- Equal credit opportunity, electronic fund transfers, consumer leasing, truth in lending, and truth in savings (Regulations B, E, M, Z, and DD):
  - Disclosure requirements; delivery by electronic communication; comments due by 11-15-99; published 10-25-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

- Privacy Act; implementation; comments due by 11-15-99; published 9-15-99

FEDERAL TRADE COMMISSION

- Trade regulation rules:
  - Home insulation; labeling and advertising; comments due by 11-15-99; published 9-1-99

GENERAL SERVICES ADMINISTRATION

- Federal Acquisition Regulation (FAR):
  - Federal Supply Schedules Program; small business opportunities; comments due by 11-15-99; published 9-14-99
- Federal travel:
  - Conference planning costs; comments due by 11-15-99; published 9-15-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Biological products:
  - Blood, blood components, and blood derivatives; deferred donors notification requirements; comments due by 11-17-99; published 8-19-99
  - Human blood donors; testing for evidence of infection due to communicable disease agents; requirements; comments due by 11-17-99; published 8-19-99
  - Plasma derivatives and other blood-derived products; tracking and notification requirements; comments due by 11-17-99; published 8-19-99
- Human drugs:
  - Narcotic drugs use in maintenance and detoxification treatment of narcotic dependence (opioid addiction); comments due by 11-19-99; published 7-22-99
  - Topical otic products (OTC) for drying water-clogged ears; final monograph amendment; comments due by 11-15-99; published 8-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

- Human drugs:
  - Narcotic drugs use in maintenance and detoxification treatment of narcotic dependence (opioid addiction); comments due by 11-19-99; published 7-22-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

- Mortgage and loan insurance programs:
  - Single family mortgage insurance—
    - Homeowner downpayment sources; comments due by 11-15-99; published 9-14-99
- Public and Indian housing:
  - Public housing agency consortia and joint ventures; comments due by 11-15-99; published 9-14-99
  - Public housing homeownership programs; comments due by 11-15-99; published 9-14-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

- Endangered and threatened species:
  - Columbian white-tailed deer; Douglas County population delisting; comments due by 11-18-99; published 11-3-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Arkansas; comments due by 11-17-99; published 10-18-99

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

- Copyright office and procedures:
  - Non-subscription digital transmissions; notice and recordkeeping; comments due by 11-17-99; published 11-2-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

- Federal Acquisition Regulation (FAR):
  - Federal Supply Schedules Program; small business opportunities; comments due by 11-15-99; published 9-14-99
- Grant and cooperative agreement recipients; administrative requirements reduction; comments due by 11-15-99; published 9-16-99

NATIONAL COUNTERINTELLIGENCE CENTER

- Freedom of Information Act, Privacy Act, and Executive Order 12958; implementation; comments due by 11-15-99; published 9-14-99

NUCLEAR REGULATORY COMMISSION

- Radiation protection standards:
  - Solid materials release at licensed facilities; regulatory framework; comments due by 11-15-99; published 6-30-99
- Rulemaking petitions:
  - Nuclear Energy Institute; comments due by 11-16-99; published 9-2-99

STATE DEPARTMENT

- Inter-American Convention on International Commercial Arbitration Commission; procedure rules; comments due by 11-18-99; published 10-4-99

TRANSPORTATION DEPARTMENT

Coast Guard

- Regattas and marine parades:
  - Port of Hampton Roads; OPSAIL 2000; comments due by 11-15-99; published 9-30-99
- Uninspected vessels:
  - Towing vessels; fire protection measures; comments due by 11-18-99; published 10-19-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Boeing; comments due by 11-15-99; published 10-1-99
  - Bombardier; comments due by 11-15-99; published 10-14-99
  - British Aerospace; comments due by 11-15-99; published 10-14-99
  - Hartzell Propeller, Inc.; comments due by 11-19-99; published 9-20-99
  - Sikorsky; comments due by 11-16-99; published 9-17-99
  - Teledyne Continental Motors; comments due by 11-15-99; published 9-15-99
- Class E airspace; comments due by 11-19-99; published 10-5-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

- Hazardous materials:
  - Hazardous materials transportation—
    - Packages intended for transportation in international commerce; limited extension of requirements for labeling materials poisonous by inhalation; comments due by 11-15-99; published 9-16-99
    - Packages intended for transportation in international commerce; limited extension of requirements for labeling materials poisonous by inhalation; correction; comments due by 11-15-99; published 9-24-99

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

- Alcoholic beverages:
  - Wine; labeling and advertising—
    - Additional ameliorating material in certain wines; comments due by 11-15-99; published 9-16-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2367/P.L. 106–87

Torture Victims Relief Reauthorization Act of 1999 (Nov. 3, 1999; 113 Stat. 1301)

Last List November 3, 1999

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Title	Stock Number	Price	Revision Date
1, 2 (**2** Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200-End	(869-038-00097-1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869-038-00098-9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0-99	(869-038-00100-4)	28.00	July 1, 1999
100-499	(869-038-00101-2)	13.00	July 1, 1999
500-899	(869-038-00102-1)	40.00	[8] July 1, 1999
900-1899	(869-038-00103-9)	21.00	July 1, 1999
1900-1910 (§§ 1900 to 1910.999)	(869-038-00104-7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869-038-00105-5)	28.00	July 1, 1999
1911-1925	(869-038-00106-3)	18.00	July 1, 1999
1926	(869-038-00107-1)	30.00	July 1, 1999
1927-End	(869-038-00108-0)	43.00	July 1, 1999
30 Parts:			
1-199	(869-038-00109-8)	35.00	July 1, 1999
200-699	(869-038-00110-1)	30.00	July 1, 1999
700-End	(869-038-00111-0)	35.00	July 1, 1999
31 Parts:			
0-199	(869-038-00112-8)	21.00	July 1, 1999
200-End	(869-038-00113-6)	48.00	July 1, 1999
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-038-00114-4)	46.00	July 1, 1999
191-399	(869-038-00115-2)	55.00	July 1, 1999
400-629	(869-038-00116-1)	32.00	July 1, 1999
630-699	(869-038-00117-9)	23.00	July 1, 1999
700-799	(869-038-00118-7)	27.00	July 1, 1999
800-End	(869-038-00119-5)	27.00	July 1, 1999
33 Parts:			
1-124	(869-034-00120-3)	29.00	July 1, 1998
125-199	(869-038-00121-7)	41.00	July 1, 1999
200-End	(869-038-00122-5)	33.00	July 1, 1999
34 Parts:			
1-299	(869-038-00123-3)	28.00	July 1, 1999
300-399	(869-038-00124-1)	25.00	July 1, 1999
*400-End	(869-038-00125-0)	46.00	July 1, 1999
35	(869-034-00126-2)	14.00	July 1, 1998
36 Parts			
1-199	(869-038-00127-6)	21.00	July 1, 1999
200-299	(869-038-00128-4)	23.00	July 1, 1999
300-End	(869-038-00129-2)	38.00	July 1, 1999
37	(869-038-00130-6)	29.00	July 1, 1999
38 Parts:			
0-17	(869-038-00131-4)	37.00	July 1, 1999
18-End	(869-038-00132-2)	41.00	July 1, 1999
39	(869-038-00133-1)	24.00	July 1, 1999
40 Parts:			
1-49	(869-038-00134-9)	33.00	July 1, 1999
50-51	(869-038-00135-7)	25.00	July 1, 1999
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998
52 (52.1019-End)	(869-038-00137-3)	37.00	July 1, 1999
53-59	(869-038-00138-1)	19.00	July 1, 1999
*60	(869-038-00139-0)	59.00	July 1, 1999
61-62	(869-038-00140-3)	19.00	July 1, 1999
63 (63.1-63.1119)	(869-038-00141-1)	58.00	July 1, 1999
64-71	(869-038-00143-8)	11.00	July 1, 1999
72-80	(869-034-00143-2)	36.00	July 1, 1998
81-85	(869-034-00144-1)	31.00	July 1, 1998
*86	(869-038-00144-6-2)	59.00	July 1, 1999
87-135	(869-034-00146-7)	47.00	July 1, 1998
136-149	(869-038-00148-9)	40.00	July 1, 1999
*150-189	(869-038-00148-9-7)	35.00	July 1, 1999
190-259	(869-038-00150-1)	23.00	July 1, 1999
260-265	(869-038-00151-9)	32.00	July 1, 1999
266-299	(869-038-00152-7)	33.00	July 1, 1999
300-399	(869-038-00153-5)	26.00	July 1, 1999
*400-424	(869-038-00153-4-3)	34.00	July 1, 1999
425-699	(869-034-00154-8)	42.00	July 1, 1998
*700-789	(869-038-00155-6-0)	42.00	July 1, 1999
790-End	(869-038-00157-8)	23.00	July 1, 1999
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-034-00157-2)	13.00	July 1, 1998
101	(869-038-00159-4)	39.00	July 1, 1999
102-200	(869-038-00160-8)	16.00	July 1, 1999
201-End	(869-038-00161-6)	15.00	July 1, 1999
42 Parts:			
1-399	(869-034-00161-1)	34.00	Oct. 1, 1998
400-429	(869-034-00162-9)	41.00	Oct. 1, 1998
430-End	(869-034-00163-7)	51.00	Oct. 1, 1998
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-034-00166-1)	48.00	Oct. 1, 1998
45 Parts:			
1-199	(869-034-00167-0)	30.00	Oct. 1, 1998
200-499	(869-034-00168-8)	14.00	Oct. 1, 1998
500-1199	(869-034-00169-6)	30.00	Oct. 1, 1998
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
1-40	(869-034-00171-8)	26.00	Oct. 1, 1998
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-034-00174-2)	26.00	Oct. 1, 1998
140-155	(869-034-00175-1)	14.00	Oct. 1, 1998
156-165	(869-034-00176-9)	19.00	Oct. 1, 1998
166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
47 Parts:			
0-19	(869-034-00180-7)	36.00	Oct. 1, 1998
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
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400-999	(869-034-00196-3)	54.00	Oct. 1, 1998
1000-1199	(869-034-00197-1)	17.00	Oct. 1, 1998
1200-End	(869-034-00198-0)	13.00	Oct. 1, 1998
50 Parts:			
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CFR Index and Findings Aids	(869-038-00047-4)	48.00	Jan. 1, 1999
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Subscription (mailed as issued)		247.00	1998
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

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11–9–99
Vol. 64 No. 216
Pages 61015–61198

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November 9, 1999

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Contents

Federal Register
Vol. 64, No. 216
Tuesday, November 9, 1999

Administration on Aging
See Aging Administration

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Aging Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 61114

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Food and Nutrition Service
See Forest Service
PROPOSED RULES
Mediation; certified mediation program, 61034–61039

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Lowry Air Force Base, CO, 61091

Animal and Plant Health Inspection Service
NOTICES
Meetings:
Veterinary biological products, 61058–61059

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 61114–61115

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
West Virginia, 61064

Coast Guard
RULES
Ports and waterways safety:
East River, NY; safety zone, 61021–61022

Commerce Department
See International Trade Administration

Commodity Futures Trading Commission
NOTICES
Meetings:
Agricultural Advisory Committee, 61066
Meetings; Sunshine Act, 61066–61067

Consumer Product Safety Commission
RULES
Flammable Fabrics Act:
Children's sleepwear (sizes 0-6X and 7-14); flammability standards—
Snug-fitting sleepwear; label and hangtag requirements; correction, 61021
NOTICES
Meetings; Sunshine Act, 61067

Defense Department
See Air Force Department
RULES
Acquisition regulations:
Contract administration and audit services, 61029–61030
Coordinated procedures update, 61030–61031
Weighted guidelines and performance-based payments, 61031–61033
PROPOSED RULES
Acquisition regulations:
Voluntary consensus standards (OMB Circular A-119), 61056–61057
NOTICES
Arms sales notification; transmittal letter, etc., 61067–61089
Civilian health and medical program of uniformed services (CHAMPUS):
DRG-based payment system (2000 FY)—
TRICARE/CHAMPUS; revised weights, thresholds, and per diem rates, 61090–61091
Meetings:
Wage Committee, 61091

Denali Commission
NOTICES
Work plan for 2001 FY, 61091–61098

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Educational research and improvement—
Field-Initiated Studies Education Research Program, 61197–61198

Employment and Training Administration
NOTICES
Adjustment assistance:
Thunderbird Mining, 61132

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Water pollution control:
Water quality standards—
Polychlorinated biphenyls (PCBs); priority toxic pollutants numeric criteria; States' compliance, 61181–61196
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 61051
Michigan, 61046–61051
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 61051–61054
NOTICES
Reports and guidance documents; availability, etc.:
Concentrated animal feeding operations; guidance manual and example NPDES permit, 61109

Water supply:
Public water supply supervision program—
South Dakota, 61109–61110

Executive Office of the President
See Trade Representative, Office of United States

Farm Service Agency
PROPOSED RULES
Mediation; certified mediation program, 61034–61039
NOTICES
Meetings:
National Drought Policy Commission, 61059–61060

Federal Aviation Administration
RULES
Standard instrument approach procedures, 61017–61021
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 61044–61045
Air Cruisers Co., 61042–61044
Bombardier, 61039–61042
NOTICES
Meetings:
RTCA, Inc., 61176

Federal Communications Commission
RULES
Common carrier services:
Commercial mobile radio services—
Interconnection and resale obligations and forbearance issues, 61022–61028
PROPOSED RULES
Radio broadcasting:
Digital audio systems; impact on terrestial radio service, 61054–61056
NOTICES
Agency information collection activities:
Proposed collection; comment request, 61110
Common carrier services:
Telecommunications reporting worksheet; consolidated data collection procedures and cost allocation methodology, 61110–61111

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 61111–61112

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
PECO Energy Co. et al., 61107–61108
Environmental statements; availability, etc.:
Petersburg Municipal Power & Light, 61108–61109
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 61098
ANR Pipeline Co., 61099
Columbia Gas Transmission Corp., 61099–61100
Columbia Gas Transmission Corp. et al., 61100
Destin Pipeline Co., L.L.C., 61100–61101
East Tennessee Natural Gas Co., 61101
Iroquois Gas Transmission System, L.P., 61101–61102
Koch Gateway Pipeline Co., 61102
Mississippi River Transmission Corp., 61102
Natural Gas Pipeline Co. of America, 61102–61103
Northern Natural Gas Co., 61103
Southern Natural Gas Co., 61103
South Georgia Natural Gas Co., 61103
Stingray Pipeline Co., 61104
Tennessee Gas Pipeline Co., 61104
Texas Eastern Transmission Corp., 61104–61105
Transcontinental Gas Pipe Line Corp., 61105
Tuscarora Gas Transmission Co., 61106
Viking Gas Transmission Co., 61106
Young Gas Storage Co., Ltd., 61106–61107

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Daggett County, UT, 61176–61177

Federal Housing Finance Board
RULES
Unpublished information availability, 61016

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 61112
Formations, acquisitions, and mergers, 61112

Federal Transit Administration
RULES
Organization, functions, and authority delegations:
Deputy Administrator, 61033

Food and Drug Administration
PROPOSED RULES
Biological products:
Blood safety initiative; comment period extended and public meeting, 61045–61046
NOTICES
Food additive petitions:
Rohm & Haas Co., 61132
Meetings:
Medical Devices Advisory Committee, 61115–61116

Food and Nutrition Service
RULES
Child nutrition programs:
Women, infants, and children; special supplemental nutrition program—
Local agency expenditure reports, 61015–61016

Forest Service
NOTICES
Appealable decisions; legal notice:
Southern Region, 61060–61062
Environmental statements; availability, etc.:
Utah Northern Goshawk Project, 61062–61063
Environmental statements; notice of intent:
Black Hills National Forest, SD, 61063–61064

Health and Human Services Department
See Aging Administration
See Children and Families Administration
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Minority Health Advisory Committee, 61112–61113

Historic Preservation, Advisory Council
NOTICES
Meetings, 61058

Immigration and Naturalization Service
NOTICES
Temporary protected status program designations:
  Burundi, 61123–61125
  Sierra Leone, 61125–61128
  Sudan, 61128–61130

Interior Department
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
  Compact ductile iron waterworks fittings and glands from—
    China, 61064
  Stanless steel plate from—
    Sweden, 61065–61066
Countervailing duties:
  Cut-to-length carbon steel plate from—
    Mexico, 61066

Justice Department
See Immigration and Naturalization Service
See Justice Programs Office

Justice Programs Office
NOTICES
Meetings:
  Violence Against Women National Advisory Council, 61130–61131

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 61131
Meetings:
  North American Agreement on Labor Cooperation National Advisory Committee, 61131–61132

Land Management Bureau
NOTICES
Classification of public lands:
  Idaho, 61116
Environmental statements; notice of intent:
  Daggett County, UT, 61176–61177
  Santo Domingo and San Felipe Pueblos, NM, 61116–61117
Realty actions; sales, leases, etc.:
  New Mexico, 61117–61118

Maritime Administration
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 61177–61178

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
  Gulf of Mexico OCS—
    Oil and gas operations, 61118–61119

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
  Bombardier Motor Corp. of America, Inc., 61178–61179

National Park Service
NOTICES
National Register of Historic Places:
  Pending nominations, 61119–61120
Native American human remains and associated funerary objects:
  Charles Whipple Greene Museum, George Hail Library, RI; inventory, 61120–61121
  University of Illinois at Urbana-Champaign, Anthropology Department, IL; inventory, 61121–61122

National Science Foundation
NOTICES
Meetings; Sunshine Act, 61141

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 61141–61142
  Submission for OMB review; comment request, 61142
Enforcement actions; policy and procedure; revision, 61142–61167
Environmental statements; availability, etc.:
  Power Authority of State of New York, 61167–61169
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 61169

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
  Anvil Construction Co., Inc., et al., 61132–61136
  Pacific Life Corp. et al., 61136–61141

Public Health Service
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Central Valley Project Improvement Act:
  Water management plans; evaluation criteria, 61122
Meetings:
  Glen Canyon Adaptive Management Work Group and Glen Canyon Technical Work Group; correction, 61122–61123

Social Security Administration
NOTICES
Agency information collection activities:
  Proposed collection and submission for OMB review; comment request, 61169–61171

Substance Abuse and Mental Health Services Administration

NOTICES

Meetings:
  Drug Testing Advisory Board, 61116

Trade Representative, Office of United States

NOTICES

North American Free Trade Agreement (NAFTA):
  Chapter 19 roster; invitation for applications for inclusion, 61171–61172
Tariff-rate quota amount determinations:
  Raw cane sugar, 61172–61173
World Trade Organization:
  Dispute settlement panel establishment requests—
    Dispute settlement roster of panel candidates; nominations, 61173–61175

Transportation Department

See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration

NOTICES

Aviation proceedings:
  Agreements filed; weekly receipts, 61175
  Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 61175–61176

Treasury Department

NOTICES

Agency information collection activities:
  Submission for OMB review; comment request, 61179

Separate Parts In This Issue

Part II
Environmental Protection Agency, 61181–61196

Part III
Department of Education, 61197–61198

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR	
246	61015
Proposed Rules:	
785	61034
1946	61034
12 CFR	
905	61016
14 CFR	
97 (2 documents)	61017, 61018
Proposed Rules:	
39 (3 documents)	61039, 61042, 61044
16 CFR	
1616	61021
21 CFR	
Proposed Rules:	
600	61045
606	61045
607	61045
610	61045
630	61045
640	61045
660	61045
33 CFR	
165	61021
40 CFR	
131	61182
Proposed Rules:	
52 (2 documents)	61046, 61051
300	61051
47 CFR	
20	61022
Proposed Rules:	
73	61054
48 CFR	
204	61028
208	61030
209	61028
215	61031
225	61028
242	61028
247	61028
251	61030
Proposed Rules:	
211	61056
49 CFR	
601	61033

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Rules and Regulations

Federal Register
Vol. 64, No. 216
Tuesday, November 9, 1999

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC74

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Local Agency Expenditure Reports

AGENCY: Food and Nutrition Service, USDA.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the regulations for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to give State agencies greater flexibility in the way they collect expenditure data from local agencies. State agencies will be allowed to permit local agencies to submit expenditure reports up to quarterly, rather than monthly as is currently required. This rule responds to a recommendation suggested by some State agencies and is intended to allow State agencies to streamline program administration.

DATES: This rule will become effective on January 24, 2000, unless we receive written adverse comments or notices of intent to submit adverse comments postmarked on or before December 9, 1999.

ADDRESSES: Comments should be sent to Patricia N. Daniels, Director, Supplemental Food Program Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, Room 540, 3101 Park Center Drive, Alexandria, VA 22302–1594. All written submissions will be available for public inspection at this address during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh at the above address or telephone (703) 305–2710.

SUPPLEMENTARY INFORMATION:

Background

What is the Current Requirement for Reporting Expenditures?

Under the WIC Program, we provide funds to State agencies to pay for the food costs and nutrition services and administration (NSA) costs incurred by the State agencies and their local agencies. We distribute these funds to State agencies pursuant to the funding formulas at 7 CFR 246.16. Section 246.16(d) requires State agencies to provide to local agencies all funds made available by the Department, except those funds necessary for allowable State agency NSA costs and food costs paid directly by the State agency. Section 246.16(d) further requires State agencies to distribute the funds based on claims submitted at least monthly by the local agency.

How Does This Direct Final Rule Change the Reporting Requirement?

Some State agencies are experimenting with ways to streamline program administration. Among the suggestions we have received is a recommendation to permit local agency NSA expenditure reports to be filed quarterly, instead of monthly. State agencies have pointed out that many other Federal programs use quarterly reporting. Accordingly, we have decided to change the WIC regulations on this point.

Under this change, State agencies may permit local agencies to submit their expenditure reports quarterly. State agencies may require more frequent reports if they wish. A parallel change is made to the current requirement that State agencies offset advances against incoming claims each month. Instead, offset is required as the claims are submitted. This accommodates whatever reporting period a State agency chooses.

Does This Change Affect Local Agency Reports of Food Cost Expenditures?

This change would apply to local agency reports of both NSA expenditures and food cost expenditures. The primary effect of this change would be for NSA expenditure reports, because in most State agencies the food costs are paid by the State agency rather than the local agencies. However, this rule does extend State agencies the same flexibility in setting the reporting period for food cost reports by local agencies. If a State agency chooses to permit bimonthly or quarterly reporting of food cost expenditures, the food costs must still be broken down by month within the reporting period.

Why Is This a Direct Final Rule?

The Department has decided to promulgate this change as a direct final rule in light of its noncontroversial nature and in order to give State agencies this option as quickly as possible. Readers should refer to our policy statement on the use of direct final rules (October 23, 1997, 52 FR 55141) for a description of the direct final rulemaking process. If we receive timely adverse comments or notices of intent to submit adverse comments within the scope of this rulemaking, we will publish timely notification of withdrawal of this rule in the **Federal Register**.

Executive Order 12866

This direct final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS) has certified that this action will not have a significant economic impact on a substantial number of small entities. While procedures in this rulemaking will affect State and local agencies that administer the WIC Program, any economic effect will not be significant.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or lease burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth in 7 CFR Part 3015, Subpart V and the final rule-related notice published at 48 FR 29115, June 24, 1983, this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act of 1995

This final rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The existing recordkeeping and reporting requirements, which were approved by OMB under control number 0584–0045, will not change as a result of this final rule.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the EFFECTIVE DATE section of the preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food and Nutrition Service, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

Accordingly, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

§ 246.16 [Amended]

2. In § 246.16, amend the introductory text of paragraph (d) as follows:

a. in the second sentence, remove the word "monthly" and add in its place the word "quarterly";

b. in the third sentence, remove the words "each month" and add it their place the words "as they are submitted".

Dated: October 29, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–29319 Filed 11–8–99; 8:45 am]

BILLING CODE 3410–30–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 905

[No. 99–54]

RIN 3069–AA81

Availability of Unpublished Information

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting without change as a final rule the interim final rule that added a new part 905 to its regulations governing the availability of unpublished information. The final rule describes the procedures a person or entity must follow when requesting unpublished Finance Board information either by document or by testimony of current or former Finance Board employees or agents and the practices and procedures the Finance Board will use in responding to such requests.

EFFECTIVE DATE: The final rule will become effective on December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Attorney-Advisor, Office of General Counsel, by telephone at 202/408–2505, by electronic mail at *kayej@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

In August 1999, the Finance Board published an interim final rule with request for comments that added a new part 905 to its regulations. *See* 64 FR 44103 (August 13, 1999), *codified* at 12 CFR part 905. Part 905 establishes procedures that must be followed by persons or entities requesting unpublished Finance Board information either by document or by testimony of current or former Finance Board employees or agents, and practices and procedures the Finance Board will use in responding to such requests. The 60-day public comment period for the interim final rule closed on October 12, 1999. *See id.*

II. Analysis of Public Comments and the Final Rule

The Finance Board received no comments in response to the interim final rule. Thus, for the reasons set forth in detail in the interim final rulemaking, the Finance Board is adopting the interim final rule that added part 905 to govern the availability of unpublished information as a final rule without change.

III. Regulatory Flexibility Act

The Finance Board adopted part 905 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2) and 603(a).

IV. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 905

Confidential business information, Federal home loan banks, Freedom of information, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board hereby adopts the interim final rule adding 12 CFR part 905 that was published at 64 FR 44103 on August 13, 1999, as a final rule without change.

By the Board of Directors of the Federal Housing Finance Board.

Dated: November 1, 1999.

Bruce A. Morrison,

Chairperson.

[FR Doc. 99–29245 Filed 11–8–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29830; Amdt. No. 1958]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:.

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on October 29, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME;

§ 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective December 2, 1999*

Rolla/Vichy, MO, Rolla National, GPS RWY 4, Orig
Albany, NY, Albany Intl, VOR RWY 1, Amdt 19A, CANCELLED
Albany, NY, Albany Intl, VOR OR GPS RWY 19, Amdt 19A, CANCELLED
Ponca City, OK, Ponca City Muni, VOR–A, Amdt 9

. . . *Effective December 30, 1999*

Kingman, AZ, Kingman, GPS RWY 3, Orig
Kingman, AZ, Kingman, GPS RWY 21, Orig
Eureka, CA, Murray Field, GPS RWY 11, Orig
Eureka, CA, Murray Field, VOR/DME RNAV RWY 11, Amdt 6
Santa Ynez, CA, Santa Ynez, GPS RWY 8, Orig
Cocoa, FL, Merritt Island, GPS RWY 11, Amdt 1
Keystone Heights, FL, Keystone Airpark, VOR/DME RWY 4, Amdt 1, CANCELLED
Williston, FL, Williston Muni, GPS RWY 22, Orig
Williston, FL, Williston Muni, VOR/DME RWY 22, Amdt 1, CANCELLED
Pekin, IL, Pekin Muni, VOR or GPS–A, Amdt 6
Pekin, IL, Pekin Muni, VOR/DME RNAV or GPS RWY 9, Amdt 5
Plainfield, IL, Clow Intl, VOR or GPS–A, Amdt 2
Fort Wayne, IN, Smith Field, VOR RWY 13, Amdt 9
Sullivan, IN, Sullivan County, NDB RWY 36, Amdt 7
Sullivan, IN, Sullivan County, VOR/DME–A, Amdt 2
Hopedale, MA, Hopedale Industrial Park, GPS–A, orig
Hopedale, MA, Hopedale Industrial Park, VOR–A, Amdt 6, CANCELLED
Pontiac, MI, Oakland County International, LOC BC RWY 27L, Orig
Pontiac, MI, Oakland County International, LOC/DME BC RWY 27L, Amdt 7, CANCELLED
Caledonia, MN, Houston County, VOR/DME or GPS–A, Amdt 3
Caledonia, MN, Houston County, GPS RWY 31, Orig
Dodge Center, MN, Dodge Center, GPS RWY 34, Amdt 2
Maple Lake, MN, Maple Lake Muni, VOR–A, Amdt 3
Worthington, MN, Worthington Muni, VOR or GPS RWY 11, Amdt 2
Worthington, MN, Worthington Muni, VOR or GPS RWY 17, Amdt 9
Worthington, MN, Worthington Muni, VOR OR GPS RWY 35, Amdt 5
Gulfport, MS, Gulfport-Biloxi Regional, VOR/DME OR TACAN RWY 32, Amdt 3
Moberly, MO, Omar N. Bradley, NDB RWY 13, Amdt 4, CANCELLED
Moberly, MO, Omar N. Bradley, NDB RWY 31, Amdt 4, CANCELLED
Springfield, MO, Springfield-Branson Regional, VOR OR TACAN RWY 20, Amdt 18
Springfield, MO, Springfield-Branson Regional, NDB RWY 2, Amdt 17
Springfield, MO, Springfield-Branson Regional, NDB RWY 14, Amdt 11
Springfield, MO, Springfield-Branson Regional, ILS RWY 2, Amdt 17
Springfield, MO, Springfield-Branson Regional, GPS RWY 2, Orig
Artesia, NM, Artesia Muni, NDB RWY 12, Amdt 4
Artesia, NM, Artesia Muni, NDB RWY 30, Amdt 4
Artesia, NM, Artesia Muni, GPS RWY 12, Orig
Artesia, NM, Artesia Muni, GPS RWY 30, Orig
Carlsbad, NM, Cavern City Air Terminal, GPS RWY 21, Amdt 1
Rochester, NY, Greater Rochester Intl, ILS RWY 4, Amdt 17
Rochester, NY, Greater Rochester Intl, ILS RWY 28, Amdt 28
Chapel Hill, NC, Horace Williams, RADAR–1, Amdt 8, CANCELLED
Ocracoke, NC, Ocracoke Island, NDB OR GPS–A, Amdt 1A, CANCELLED
Raleigh-Durham, NC, Raleigh-Durham Intl, RADAR–1, Amdt 7C, CANCELLED
Enid, OK, Enid Woodring Muni, GPS RWY 17, Orig
Enid, OK, Enid Woodring Muni, GPS RWY 35, Orig
Watonga, OK, Watonga, GPS RWY 17, Orig
Astoria, OR, Astoria Regional, VOR RWY 8, Amdt 12
Kutztown, PA, Kutztown, GPS RWY 17, Amdt 1
Philadelphia, PA, Northeast Philadelphia, GPS RWY 15, Amdt 1
Philadelphia, PA, Northeast Philadelphia, GPS RWY 33, Amdt 1
Loris, SC, Twin City, GPS RWY 26, Orig
Miller, SD, Miller Muni, GPS RWY 15, Orig
Miller, SD, Miller Muni, GPS RWY 33, Orig
Longview, TX, Gregg County, VOR–A, Orig
Longview, TX, Gregg County, VOR/DME OR TACAN RWY 13, Orig
Longview, TX, Gregg County, VOR OR TACAN RWY 13, Amdt 20, CANCELLED
Lyndonville, VT, Caledonia County, GPS RWY 2, Orig
Richmond, VA, Chesterfield County, ILS RWY 33, Amdt 1
South Hill, VA, Mecklenburg-Brunswick Regional, LOC RWY 1, Orig
South Hill, VA, Mecklenburg-Brunswick Regional, NDB RWY 1, Orig
South Hill, VA, Mecklenburg-Brunswick Regional, NDB OR GPS RWY 1, Amdt 1, CANCELLED

[FR Doc. 99–29310 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29831; Amdt. No. 1959]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAP, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 29, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR of TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * **Effective Upon Publication**

FDC date	State	City	Airport	FDC No.	SIAP
08/23/99	MD	Cumberland	Greater Cumberland Regional	9/6272	LOC/DME Rwy 23 Amdt 5C
08/23/99	MD	Westminster	Carroll County Regional/Jack B. Poage Field.	9/6265	VOR or GPS Rwy 34 Amdt 3
08/23/99	NJ	Millville	Millville Muni	9/6254	NDB or GPS Rwy 14 Amdt 5
08/23/99	NJ	Toms River	Robert J. Miller Airpark	9/6271	VOR or GPS Rwy 24 Amdt 3A
08/23/99	NJ	Wildwood	Cape May County	9/6257	VOR/DME RNAV or GPS Rwy 19 Amdt 6A
08/24/99	MI	Iron Mountain/Kingsford	Ford	9/6295	ILS Rwy 1, Amdt 11
10/10/99	ND	Fargo	Hector Intl	9/8206	VOR/DME or TACAN or GPS Rwy 17 Orig–A
10/10/99	ND	Fargo	Hector Intl	9/8207	NDB Rwy 17 Amdt 14A
10/10/99	ND	Fargo	Hector Intl	9/8208	VOR or TACAN or GPS Rwy 35 Amdt 12

FDC date	State	City	Airport	FDC No.	SIAP
10/10/99	ND	Fargo	Hector Intl	9/8209	ILS Rwy 35 Amdt 32B...
10/10/99	ND	Fargo	Hector Intl	9/8210	ILS Rwy 17 Amdt 4A...
10/13/99	CA	Livermore	Livermore Muni	9/8034	ILS Rwy 25R Amdt 7...
10/13/99	CA	Oceanside	Oceanside Muni	9/8028	VOR or GPS–A Amdt 3B...
10/13/99	CA	Oceanside	Oceanside Muni	9/8029	GPS Rwy 6 Orig...
10/13/99	CA	Oceanside	Oceanside Muni	9/8036	GPS Rwy 24 Orig...
10/13/99	CA	San Luis Obispo	San Luis Obispo County—McChesney Field.	9/8033	VOR or TACAN or GPS–A Amdt 6...
10/13/99	ID	Coeur D'Alene	Coeur D'Alene Air Terminal	9/8050	VOR or GPS–A, Orig...
10/13/99	ID	Coeur D'Alene	Coeur D'Alene Air Terminal	9/8051	NDB or GPS Rwy 5, Amdt 1...
10/13/99	ID	Coeur D'Alene	Coeur D'Alene Air Terminal	9/8052	ILS Rwy 5, Amdt 4...
10/13/99	ID	Idaho Falls	Fanning Field	9/8053	NDB Rwy 20, Amdt 10...
10/13/99	ID	Idaho Falls	Fanning Field	9/8054	VOR or GPS Rwy 2, Amdt 6...
10/13/99	ID	Idaho Falls	Fanning Field	9/8055	VOR or GPS Rwy 20, Amdt 9...
10/14/99	ID	Arco	Arco-Butte County	9/8072	NDB–A, Orig...
10/14/99	ID	Idaho Falls	Fanning Field	9/8097	LOC BC Rwy 2, Amdt 6...
10/14/99	VA	Charlottesville	Charlottesville-Albemarle	9/8113	NDB Rwy 3 Amdt 15A...
10/15/99	NC	Ahoskie	Tri-County	9/8126	NDB or GPS Rwy 1, Amdt 1C...
10/15/99	NY	Batavia	Genesee County	9/8129	ILS Rwy 28, Amdt 4...
10/19/99	AR	Mountain Home	Baxter County Regional	9/8225	GPS Rwy 23, Orig...
10/19/99	AR	Mountain Home	Baxter County Regional	9/8227	GPS Rwy 5, Orig–A...
10/19/99	AR	Mountain Home	Baxter County Regional	9/8228	VOR–A Amdt 9A...
10/19/99	NE	Albion	Albion Muni	9/8229	NDB or GPS Rwy 32, Orig...
10/20/99	MA	New Bedford	New Bedford Regional	9/8240	LOC BC Rwy 23 Amdt 11...
10/20/99	MA	Taunton	Taunton Muni	9/8239	NDB or GPS Rwy 30 Amdt 4...
10/20/99	MA	McComb	McComb-Pike County—John E. Lewis Field.	9/8259	VOR//DME RNAV or GPS Rwy 33, Amdt 6...
10/20/99	NY	Penn Yan	Penn Yan	9/8238	NDB Rwy 28 Amdt 6...
10/20/99	TN	Rogersville	Hawkins County	9/8250	GPS Rwy 7, Orig...
10/21/99	NY	Watertown	Watertown Intl	9/8265	ILS Rwy 7 Amdt 6...
10/22/99	ID	Lewiston	Lewiston-Nez Perce County	9/8317	ILS Rwy 26, Amdt 11...
10/22/99	ID	Lewiston	Lewiston-Nez Perce County	9/8319	VOR or GPS Rwy 8, Amdt 5A...
10/22/99	ID	Lewiston	Lewiston-Nez Perce County	9/8320	VOR or GPS Rwy 26, Amdt 12A...
10/22/99	ME	Sanford	Sanford Regional	9/8290	NDB Rwy 7 Amdt 1...
10/22/99	ME	Sanford	Sanford Regional	9/8291	VOR Rwy 25 Amdt 13B...
10/22/99	ME	Sanford	Sanford Regional	9/8292	VOR or GPS Rwy 7 Amdt 3A...
10/22/99	TN	Memphis	Memphis Intl	9/8328	NDB or GPS Rwy 9, Amdt 26...
10/22/99	TN	Nashville	Nashville Intl	9/8295	ILS Rwy 20R, Amdt 7A...
10/22/99	TN	Nashville	Nashville Intl	9/8296	ILS Rwy 20L, Amdt 4...
10/22/99	TN	Nashville	Nashville Intl	9/8297	ILS Rwy 31, Amdt 7...
10/22/99	TN	Nashville	Nashville Intl	9/8298	ILS Rwy 2C, Orig–B...
10/22/99	TN	Nashville	Nashville Intl	9/8299	Radar–1, Amdt 22A...
10/22/99	TN	Nashville	Nashville Intl	9/8300	ILS Rwy 2R, Amdt 5...
10/22/99	TN	Nashville	Nashville Intl	9/8327	VOR/DME or GPS Rwy 13, Amdt 13...
10/25/99	ID	Twin Falls	Twin Falls/Joslin Field—Magic Valley Regional.	9/8367	VOR Rwy 25, Amdt 15...
10/25/99	ID	Twin Falls	Twin Falls/Joslin Field—Magic Valley Regional.	9/8369	ILS Rwy 25, Amdt 7...
10/25/99	ID	Twin Falls	Twin Falls/Joslin Field—Magic Valley Regional.	9/8370	NDB or GPS Rwy 25, Amdt 5...
10/25/99	ID	Twin Falls	Twin Falls/Joslin Field—Magic Valley Regional.	9/8372	VOR or GPS Rwy 7, Amdt 3...
10/25/99	NC	Salisbury	Rowan County	9/8357	ILS Rwy 20, Orig...
10/25/99	ND	Fargo	Hector Intl	9/8374	Radar–1 Amdt 10...
10/26/99	AR	Mountain Home	Baxter County Regional	9/8404	VOR/DME RNAV Rwy 5, Amdt 1A...
10/26/99	ID	Sandpoint	Sandpoint	9/8388	GPS–B, Orig...
10/26/99	ID	Twin Falls	Twin Falls/Joslin Field—Magic Valley Regional.	9/8380	VOR/DME Rwy 7, Orig...

[FR Doc. 99–29311 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1616

Final Rule; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: This document makes minor technical corrections to the final rule published in the **Federal Register** of June 28, 1999 (64 FR 34533) regarding labeling of children's sleepwear. These are changes to the instructions to the Federal Register and do not affect the substantive labeling requirement. The instructions stated to revise the authority citations for parts 1615 and 1616. However, the authority citations are under subpart A rather than the entire part in each of those parts. Amendatory Instruction 3, on page 34538, amending § 1616.5 directed the Federal Register to redesignate footnotes 2–6 as 3–7. However, previously there was no footnote 2. Therefore, there is no need to redesignate any footnotes.

DATES: Effective on June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pollitzer, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, extension 2219.

Correction

In final rule FR Doc. 99–16320, beginning on page 34533 in the issue of June 28, 1999, make the following corrections.

1. On page 34535, in the third column, correct amendatory instruction 1 under part 1615 to read "The authority citation for subpart A of part 1615 is revised to read as follows:"
2. On page 34536, in the first column, correct amendatory instruction 1 under part 1616 to read "The authority citation for subpart A of part 1616 is revised to read as follows:"
3. On page 34538, in the first column, remove instruction 3.

Dated: November 2, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–29226 Filed 11–8–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–181]

RIN 2115–AA97

Safety Zone: Sciame Construction Fireworks, East River, Manhattan, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Sciame Construction Fireworks Display located in the East River, New York. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the East River.

DATES: This rule is effective from 6:30 p.m. until 8 p.m. on Thursday, December 9, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and still publish the final rule with more than 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display. This event is only one and a half hours long and will have negligible impact on vessel traffic in the area due to the fact that vessels can travel to the east and west of the safety zone.

Background and Purpose

Bay Fireworks has submitted an application to hold a fireworks program on the waters of the East River, New York. The fireworks program is being sponsored by Sciame Construction. This regulation establishes a safety zone in all waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′08″ N 074°00′06″ W (NAD 1983), approximately 250 yards east of Pier 14, Manhattan, New York. The safety zone is in effect from 6:30 p.m. until 8 p.m. on Thursday, December 9, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to transit through the eastern 100 yards and the western 100 yards of the 500-yard wide East River during the event. This safety zone precludes the waterway users from entering only the safety zone itself. Public notifications will be made prior to the event via the Local Notice to Mariners and marine information broadcast.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the East River during the event, and extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–181 to read as follows:

§ 165.T01–181 Safety Zone: Sciame Construction Fireworks, East River, Manhattan, New York.

(a) Location. The following area is a safety zone: All waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′08″ N 074°00′06″ W (NAD 1983), approximately 250 yards east of Pier 14, Manhattan, New York.

(b) *Effective period.* This section is effective from 6:30 p.m. until 8 p.m. on Thursday, December 9, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: November 2, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard Captain of the Port, New York.

[FR Doc. 99–29309 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–54, WT Docket No. 98–100, GN Docket No. 94–33; FCC 99–250]

Interconnection and Resale Obligations in the Commercial Mobile Radio Services and Forbearance Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: This document generally affirms the Commission's earlier decision in this proceeding to extend the cellular resale rule to include certain broadband personal communications service (PCS) and specialized mobile radio providers and to sunset the rule as of November 24, 2002. However, this document modifies the previous decision by removing customer premises equipment (CPE) and CPE in bundled packages from the scope of the resale rule, by revising the scope of the resale rule to exclude all C, D, E, and F block PCS licensees that do not own and control and are not owned and controlled by cellular or A or B block licensees, and by exempting from the rule all SMR and other Commercial Mobile Radio Services (CMRS) providers that do not utilize in-network switching facilities. This document also clarifies certain aspects of the resale rule, and denies a Petition for Reconsideration of the Commission's denial of a request for forbearance from the resale rule. The action is intended to resolve issues raised in several Petitions regarding the CMRS resale rule and forbearance.

DATES: Effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (MO&O) in CC Docket No. 94–54, WT Docket No. 98–100, and GN Docket No. 94–33; FCC 99–250, adopted September 15, 1999, and released September 27, 1999. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the MO&O

1. The First Report and Order in this proceeding (61 FR 38399, July 24, 1996) promulgated a rule prohibiting certain CMRS providers from restricting the resale of their services during a transitional period. This resale rule, which previously had applied only to cellular providers, was extended to PCS and certain specialized mobile radio (covered SMR) services. The First Report and Order (First R&O) sunset this resale rule five years after the date of the award of the last group of initial licenses for broadband PCS, which the Commission subsequently determined to be November 25, 1997. (*See* Public Notice of July 2, 1998, in CC Docket No. 94–54, 13 FCC Rcd 17427, 1998.) Accordingly, the resale rule is currently set to expire at the close of November 24, 2002.

2. This Memorandum Opinion and Order on Reconsideration (MO&O) generally affirms the Commission's decisions in the First R&O to extend the cellular resale rule to include certain

broadband PCS service and SMR providers, and to sunset the rule as of November 24, 2002. However, the MO&O modifies the initial decision in three key respects. First, the MO&O removes customer premises equipment (CPE) and CPE in bundled packages from the scope of the resale rule. Second, the MO&O revises the scope of the resale rule to exclude all C, D, E, and F block PCS licensees that do not own and control and are not owned and controlled by cellular or A or B block PCS licenses. Third, the MO&O exempts from the rule all SMR and other Commercial Mobile Radio Service (CMRS) providers that do not utilize in-network switching facilities. In addition, the MO&O clarifies certain other aspects of the resale rule. Finally, the MO&O denies a Petition for Reconsideration of the Commission's denial of a request for forbearance from the resale rule filed by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association (PCIA), pursuant to section 10(a) of the Communications Act (Act). (*See* 47 U.S.C. 160(a)(1)–(3).

3. The MO&O denies a request by several petitioners that the Commission reconsider its decision in the First R&O to extend the resale rule to broadband PCS and covered SMR providers. The Commission finds that no new arguments have been presented and that circumstances have not changed since the adoption of the First R&O in a way that would warrant elimination of the resale rule prior to the sunset date. The Commission continues to believe that, as a general matter, the benefits of the resale rule outweigh its costs during this transitional period as the marketplace becomes more competitive. These public interest benefits include: (1) Encouraging competitive pricing; (2) discouraging unjust, unreasonable, and unreasonably discriminatory carrier practices; (3) reducing the need for detailed regulatory intervention and the administrative expenditures and potential for market distortions that may accompany such intervention; (4) promoting innovation and the efficient deployment and use of telecommunications facilities; (5) improving carrier management and marketing; (6) generating increased research and development; and (7) affecting positively the growth of the market for telecommunications services. Therefore, the MO&O retains the rule with certain modifications and clarifications.

4. The MO&O also affirms the Commission's decision to terminate the resale rule at the end of the sunset period. Some petitioners argue that the Commission should refrain from sunsetting the rule at the end of the five year period because the market for cellular and substitute services is not fully competitive and will remain at this level for the foreseeable future. The MO&O finds that such petitioners fail to present any new facts or arguments to persuade the Commission that the decision to sunset the resale rule should be revised in any way. Others contend that the sunset for cellular providers was promulgated without sufficient notice because the Commission failed to indicate in the First Notice of Proposed Rulemaking (59 FR 35664, July 13, 1994) or the Second Notice of Proposed Rulemaking (60 FR 20949, April 28, 1999) that it was considering the adoption of a sunset provision for the cellular resale requirement. The MO&O rejects this position, concluding that any suggestion that the sunset provision was promulgated without sufficient notice in the Second Notice of Proposed Rulemaking is without merit. Other parties oppose the sunset provision claiming that any restriction on resale violates sections 201(b) and 202(a) of the Communications Act, unless the restricting party proves that resale would cause public harm. The MO&O disagrees with this interpretation, finding that those who support this argument have misconstrued the obligations imposed by sections 201(b) and 202(a) and that the statutory arguments are thus without merit.

5. Although the MO&O maintains the sunset of the resale rule, the Commission's decision should not be construed as a lack of commitment to ensuring compliance with the resale obligation during the period in which it is force. On the contrary, the Commission intends to take effective and expeditious action against any carrier that fails to comply with its obligations under the resale rule.

6. The Commission recognizes that, in addition to simple refusals to offer resale agreements, violations of the resale requirements may take a variety of forms, including a carrier's unreasonable refusal to offer resellers the same bundled packages of airtime and enhanced services or the same volume discounts that the carrier offers to its retailers. Thus, the Commission intends to look closely at allegations of unreasonable restrictions on resale and to resolve expeditiously complaints about whether the challenged restriction on resale is reasonable. The Commission intends to initiate a stepped up mediation program under which it will first attempt to resolve any formal or informal complaints filed by a reseller through negotiation. In those instances where the parties cannot reach agreement or where negotiation does not appear to be a viable approach, the Commission will expedite the complaint proceeding, to the fullest extent possible, in order to ascertain whether the carrier in question is acting in derogation of the resale rule requirement. In cases in which the Commission determines that a violation of the rule has occurred, it intends to impose rigorous enforcement measures, including, in appropriate cases, the revocation of licenses and the imposition of forfeiture penalties.

7. The MO&O also considers petitions requesting that the Commission reverse the decision in the First R&O that the resale rule applies to bundled packages of services such as CPE of enhanced services. The Commission finds the petitioners' argument that the Commission provided no notice to parties that the resale requirement might be extended to bundled packages but has eliminated CPE and CPE in bundled packages from the scope of the resale rule. The MO&O retains the rule, however, for bundled packages that include enhanced services, because, at least as CMRS enhanced services are presently provided, neither subscribers nor resellers can purchase the service component of the bundle from one provider and the enhanced service component of the bundle from another provider.

8. The MO&O next modifies the scope of the resale rule. The First R&O concluded that the benefits of the mandatory CMRS resale rule will continue to exceed its costs so long as mobile voice and data markets are not yet fully competitive. The MO&O relies on this cost/benefit methodology to revise tune the scope of the resale rule by eliminating from its coverage those providers or services for which analysis suggests that the rule is unnecessary.

9. First, a review of the record convinces the Commission that the benefits that might accrue as a result of imposing resale obligations on C, D, E, and F block broadband PCS licensees are outweighed, at this time, by the burdens such obligations impose on these carriers. In contrast to more established firms, no significant benefits accrue from subjecting smaller, new entrant competitors with limited network infrastructure and minimal market share to the requirements of the resale rule. The MO&O concludes that the A and B-block licensees are the more likely of the broadband PCS block licensees to have capacity to resell, whereas the C, D, E, and F block licensees have the greater need to

purchase capacity for resale, due to their relative underdevelopment. The Commission thus believes that there are benefits from subjecting A and B block licensees to the resale rule and to exempting licensees in the C, D, E, and F blocks, whose minimal development and incentive to restrict resale suggest that a resale requirement for them would be of limited, if any, utility. The Commission recognizes that many cellular and A and B block licensees also own licenses in the C, D, E, and F blocks. Therefore, the MO&O excludes from the coverage of the resale rule only those C, D, E, and F block PCS licensees that do not own and control and are not owned and controlled by firms also holding cellular, A or B block licenses.

10. Second, the MO&O considers exclusion for certain SMR providers. The First R&O limited the scope of the resale rule to SMR providers in the 800–900 MHz bands that hold geographic area licenses and offer real-time, two-way switched voice service that is interconnected with the public switched network (PSTN) and to Incumbent Wide Area SMR licensees that provide such services. On reconsideration, the Commission now concludes that its objective with respect to SMR is best achieved by limiting the resale rule to reach only those SMR providers that offer real-time two-way switched service that is interconnected with PSTN utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-off of subscriber calls. In so doing, the Commission abandons its previous criterion, which was based on a carrier's license authority, in favor of a technical and operational criterion, *i.e.*, in-network switching capacity, which more closely parallels the Commission's intention to cover only those SMR carriers that compete directly with providers of cellular service and broadband PCS. The Commission agrees with those petitioners who maintain that the definition of "covered SMR" adopted in the First R&O is overinclusive with respect to certain types of SMR systems. The Commission does not believe that it serves the public interest to extend the explicit rule against unreasonable resale restrictions to carriers offering only geographically or functionally limited services, such as dispatch, that are unlikely to be attractive to resellers in any event.

11. Although there may be limited practical significance to extending the exclusion for SMR systems lacking in-network switching capacity to cellular and broadband providers, the Commission concludes that they should be treated consistently with SMR providers to the extent they do not utilize an in-network switching facility or do not meet other elements of the Commission's coverage test. As in the contexts of number portability and E911, the Commission has extended its modified "covered SMR" definition to providers of similar service over cellular and broadband PCS spectrum as well.

12. Third, the MO&O reviews other proposed exemptions for SMR. The MO&O rejects the alternative proposal that the resale rule exclude providers or systems that serve fewer than a particular number of mobile of mobile units. The Commission believes that a definition based solely on the size of a system without regard for the types of services provided would be arbitrary and incompatible with its policy objectives. Instead, the Commission seeks to develop a definition that covers providers based on the functional nature of the service they provide.

13. The MO&O also rejects the contention of Nextel Communications Inc. (Nextel) that all SMR providers should be excluded from the requirements of the resale rule. Nextel argues that capacity restraints on SMR spectrum mandate continuing technical control over SMR systems and end users that cannot accommodate the disjunction between the system operator and the end user that middlemen like resellers create, without significant costs to system integrity. Nextel also argues that its spectrum is highly encumbered and that the relocation is just beginning, and that an SMR provider must integrate the use of this type of spectrum with that allocated on a site-specific-basis, as well as integrating its analog services with its digital offerings. The Commission finds that these arguments have already been made and rejected in this proceeding and there is no new compelling evidence to change the Commission's earlier position. In general, the Commission finds that the problem of transitioning from analog to digital service is not unique to SMR, and that, as indicated in the First R&O, it is unclear how SMR providers would lose control over their daily operations if their services were purchased by parties intending to resell the services rather than being purchased by end users. In particular the Commission notes that Nextel is rapidly moving away from traditional dispatch service with the introduction of its four-function Direct Connect service package. While the coverage and usage demands placed on the system by this package are potentially greater than traditional dispatch, it is not clear, and Nextel does not adequately explain, why a reseller of such a package would place any greater or more unpredictable demands upon Nextel's system than Nextel itself does, in offering this service to its own retail customers. Under these circumstances, the Commission finds unconvincing Nextel's arguments against permitting a reseller to purchase Nextel's Direct Connect service package for resale, or permitting a reseller to acquire the billing data and other information necessary for traditional resale.

14. The MO&O also looks at proposed amendments to the resale rule. The MO&O first considers arguments that the resale rule should be amended to clarify that only "unreasonable" restrictions on resale are prohibited. The MO&O agrees with those who ask that the Commission clarify the resale rule to make the text of the rule consistent with existing Commission policy. This change in rule would clarify that the reasonableness standard continues to apply in the resale context. Accordingly, the MO&O amends the rule to prohibit only unreasonable restrictions on resale. However, the Commission does not deem it advisable to delineate in the rule itself what bases it might consider reasonable for denying resale. The MO&O also clarifies, but cannot and does not resolve definitively for each carrier, the issue of billing tapes. To the extent that electronic billing tapes are available, or could be made available without significant alterations to a carrier's billing systems, the Commission would expect that a carrier would provide access to them for a reseller as part of its responsibilities under the resale rule, and the Commission would likely find it a violation of the resale rule should the carrier fail to do so. On the other hand, carriers are not required to undertake major alterations to their billing systems to accommodate reseller requests.

15. The MO&O rejects a proposed amendment to the resale rule that would clarify that resale restrictions based on limited capacity are reasonable and are therefore permitted under the rule. As an initial matter, the MO&O notes that the First R&O indicated clearly that no provider is required to add capacity in order to accommodate a reseller. The Commission does add, however, that virtually all CMRS carriers are adding capacity to their systems in one form or another, as this is a rapidly growing market, and, in that sense, all could claim to be facing capacity restraints to a certain degree. Obviously, a generalized assertion of capacity limitations, where capacity is actively being brought on line and service is being aggressively marketed to retail

customers (including high volume customers), would not provide an adequate basis to deny service to resellers. Beyond this, the Commission declines to make a blanket determination as to what capacity limitations or evidence thereof might constitute reasonable grounds to restrict resale.

16. AT&T Corporation (AT&T) seeks an exemption from the resale rule for data services providers using cellular or broadband PCS spectrum. It points out that such services are presently subject to the resale rule, whereas data service offered by SMR providers are exempt, that such disparate treatment is inequitable and that a comparable exemption should be created for data services provided by cellular and PCS carriers. Upon reconsideration, the Commission reiterates its position in the First R&O that it would be imprudent to distinguish between data services and other services offered using CMRS spectrum and extends the rule to cover SMR as well as another CMRS data services. The MO&O also dismisses arguments that the resale rule should not be applied to data services because the data services market is nascent and no carrier has a competitive advantage.

17. With respect to SMR services, the Commission now concludes that excluding data services from the resale rule would likely create enforcement problems because it can be difficult to determine, as an enforcement matter, whether a carrier is offering voice or data services over digital transmission facilities. Thus, the Commission extends the resale rule to data services offered using SMR spectrum to the same extent that it applies to voice services. The MO&O determines to apply the resale rule to providers of real-time, two-way switched data service that is interconnected with the PSTN and that is offered over cellular, broadband PCS, or SMR spectrum utilizing an in-network switching facility.

18. The MO&O dismisses a request that the Commission clarify that the resale rule does not require unrestricted resale of services that include proprietary technologies and products. Supporters of such a clarification maintain that a resale requirement would reduce the incentive for carriers to innovate by diminishing the competitive advantages yielded by their investment. Absent a more focused showing on this issue, the Commission declines to adopt a general "proprietary technology" exception to the resale rule, which would likely prove difficult, and unnecessarily burdensome to administer during the remaining three-year life of the rule.

19. The Commission emphasizes that under the CMRS resale rule, a carrier is not required to offer a reseller wholesale prices or special packages or configurations of services tailored to the reseller's demands, but only to allow a reseller to purchase, at non-discriminatory prices, those services that the carrier is offering to its own retail customers. The MO&O concludes that were the Commission to allow carriers to restrict resale of services that include proprietary technologies before sufficient competition develops, the exception could severely restrict the opportunities for resale. The MO&O reiterates the position taken in the Forbearance Memorandum Opinion and Order (Forbearance M&O) (63 FR 43033, August 11, 1998) that "the obligation to permit resale [does not] significantly discourage facilities-based carriers from innovating in a market that has not achieved sufficient competition."

20. The MO&O considers a Petition for Reconsideration of the Forbearance MO&O, filed by the Personal Communications Industry Association (PCIA). PCIA maintains that the resale rule should be sunset immediately for all CMRS providers. PCIA contends that forbearance from the CMRS resale rule is consistent with the three prongs of the forbearance test, and that the record does not contain the evidentiary support required by the Administrative Procedure Act (APA) to sustain the Commission's conclusions concerning the costs and benefits of imposing a resale rule or its determination to deny PCIA's request for forbearance from the rule.[1]

21. The MO&O dismisses PCIA's request, finding that the present approach provides a necessary degree of flexibility for disposing of market-specific forbearance requests, both with respect to the parameters of the market and the criteria indicative of adequate competition. It would be difficult to establish a meaningful bright-line test to be applied across the board in all forbearance proceedings. Furthermore, the near-term sunset of the rule provides an additional reason to retain the present market-by-market approach to forbearance requests respecting resale.

Administrative Matters

Supplemental Final Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act, 5 U.S.C. 604 (RFA),[2] a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the First Report and Order issued in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) in this Memorandum Opinion and Order on Reconsideration and Order Denying Petition for Forbearance (Order on Reconsideration) contains information additional to that contained in the FRFA and is limited to matters raised on reconsideration with regard to the First Report and Order and addressed in this Order on Reconsideration. This Supplemental FRFA conforms to the RFA.

I. Need for and Purpose of This Action

23. By resolving the pending petitions for reconsideration or clarification of the First Report and Order, the actions taken in this Order on Reconsideration will affirm and clarify the Commission's CMRS resale policy, which is intended to help bring the benefits of competition to the market for these services while the market is in transition to a fully competitive state. In addition, the Commission's resale policy is intended to help promote competition by allowing new entrants to enter the marketplace quickly by reselling their competitors' services during the time needed to construct their own facilities.

II. Summary of Significant Issues Raised by the Public in Response to the Final Regulatory Flexibility Analysis

24. No petitions for reconsideration were filed in direct response to the FRFA. In petitions for reconsideration or clarification, however, and in responsive pleadings, as well, some issues were raised that might affect small entities. Specifically, some commenters argued that the term covered SMR should be limited to systems that have an in-network switching facility or that serve at least a minimum number of mobile units, *e.g.*, at least 100,000 mobile units that provide real-time, two-way interconnected voice services or that serve at least 20,000 or more subscribers nationwide.

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[1] Section 10 of the Communications Act (47 U.S.c. 160) requires forbearance if the Commission determines that (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.

[2] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With American Advancement Act of 1996, Public Law. 104–121, 11 Stat. 847 (1996) (CWAA). Title II of CWAA is the Small Business Regulatory Enforcement Fairness act of 1996 (SBREFA).

25. Several other commenters contended, however, that the number of units served bears no necessary relation to the purposes of limiting SMR coverage and that coverage should be determined based on services that compete with SMR providers. Other commenters contended that SMR systems should be subject to the same rules as cellular and broadband PCS in order to preserve regulatory parity in the CMRS market, and that, if small SMR systems are excluded from the rule, small cellular and broadband PCS systems should also be excluded.

III. Description and Estimates of the Number of Entities Affected by This Order on Reconsideration

26. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. (*See* 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the term "small business." (*See* 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[3] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (Small Business Act, 15 U.S.C. 632 (1996).

27. *SMR Licensees.* The Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. This small business size standard for the 800 MHz and 900 MHz auctions has been approved by the SBA. The rule amendment adopted in this Order on Reconsideration affects geographic and wide area SMR providers that were not previously subject to the resale rule because they do not offer real-time, two-way PSTN-interconnected voice service. Such SMR providers will now be subject to the CMRS resale rule if they offer real-time, two-way voice or data service that is interconnected with the public switched network, provided they use an in-network switching facility.

28. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. We conclude that the number of 900 MHz SMR geographic area licensees affected by this rule modification is at least 60.

29. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. It is not possible to determine which of these licensees were not covered by the previous rule but intend to offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the upper 200 channels affected by this rule modification is at least ten.

30. The Commission has determined that 3325 geographic area licenses will be awarded in the 800 MHz SMR auction for the lower 230 channels. Because the auction of these licenses has not yet been conducted, there is no basis to estimate how many winning bidders will qualify as small businesses under the Commission's $15 million size standard. Nor is it possible to determine which of these licensees would not have been covered by the previous rule but will offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be affected by this rule modification is at least 3325.

31. With respect to licensees operating under extended implementation authorizations, approximately 6800 such firms provide 800 MHz or 900 MHz SMR service. However, we do not know how many of these were not covered by the previous rule but intend to offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility or which of this subset qualify as small businesses under the $15 million size standard. We assumed, for purposes of the FRFA, and continue to assume for purposes of this Supplemental FRFA, that all of the remaining existing authorizations are held by licensees qualifying as small businesses under the $15 million size standard. Of these, we assume, for purposes of our evaluations and conclusions in this Supplemental FRFA, that none of these licensees was covered by the previous rule but that all of them intend to offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility. Therefore, we conclude that the number of SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that may be affected by this rule modification is up to 6800.

32. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Trends in Telephone Service data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the policies adopted in this Order on Reconsideration.

33. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than

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[3] U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register.**" 5 U.S.C. 601(3).

$15 million for the preceding three calendar years. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will total 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

34. Neither the rule adopted in the First Report and Order nor the rule modifications adopted in the Order on Reconsideration impose a reporting or recordkeeping requirement. The resale rule does, however, operate as a negative prohibition forbidding restrictions on the resale of covered services. The only compliance costs likely to be incurred, as a result, are administrative costs to ensure that an entity's practices are in compliance with the rule.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. It is important to note, in the first instance, that the imposition of a resale requirement confers substantial benefits on small entities, because a substantial number of those wireless resellers it is designed to protect are small. Moreover, the exemption from its requirements for certain C, D, E and F block licensees also benefits smaller entities because it exempts from the obligations of the resale rule, smaller, new entrant competitors that have little market share and little or no incentive to restrict resale unreasonably.

36. The Commission has also reduced the potential impact of the resale rule on small entities by continuing to exclude from its requirements those entities that have, traditionally, constituted the smallest of the SMR licensees, i.e., those licensees that do not provide services on an interconnected basis. In the Order on Reconsideration, the Commission has adopted an alternative definition of covered SMR that includes only those systems that have an in-network switching facility. This exception to coverage addresses the concerns of SMR providers that primarily offer traditional dispatch services but whose offer of limited interconnection capability might otherwise subject them to the resale rule as previously drafted. Such a result would have been inconsistent with the Commission's determination that only SMR providers that compete directly with cellular and broadband PCS should be subject to the resale rule, because an important indicator of a provider's ability to compete with traditional cellular and broadband PCS providers is whether the provider's system has "in-network" switching capability.

37. In adopting a network switching criterion, the Commission has rejected a definition of SMR covered services that would exempt SMR providers based on their particular number of mobile units or on capacity. Defining the term covered SMR in terms of its number of subscribers or its capacity could exempt from the resale requirement services that compete in markets where competitive conditions do not yet sufficiently protect against unreasonable restrictions on resale. As we observed in the FRFA, our decision to extend the resale rule will not require any carrier to expand its capacity or to change its system in order to accommodate the desires of resellers.

VI. Report to Congress

38. The Commission will send a copy of this Order on Reconsideration, including a copy of this Supplemental Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Order on Reconsideration and this Supplemental FRFA will be sent to the Chief Counsel for Advocacy of the Small Business Administration. Finally, the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

39. Accordingly, the rule amendments and clarifications are adopted and shall be effective January 10, 2000.

40. Further, the Petitions for Reconsideration filed by AT&T Corp., the Personal Communications Industry Association, the American Mobile Telecommunications Association, and Nextel Communications, Inc. in CC Docket 94–54 are granted to the extent indicated herein and otherwise are denied.

41. The Petition for Reconsideration or Clarification filed by Small Business in Telecommunications, Inc. in CC Docket No. 94–54 is accepted to the extent such Petition seeks clarification, and otherwise is rejected as a late-filed Petition for Reconsideration.

42. The Petitions for Reconsideration or Clarification filed by the Cellular Resellers Association, Connecticut Telephone and Communications Systems, Inc. the National Wireless Resellers Association, and Small Business in Telecommunications, Inc. are denied.

43. Additionally, the Petition for Reconsideration filed by the Personal Communications Industry Association pertaining to WT Docket No. 98–100 and GN Docket No. 94–33 is granted to the extent indicated and otherwise is denied.

44. Finally, the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICE

1. The authority citation for Part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332, unless otherwise noted.

2. Section 20.12 is revised to read as follows:

§ 20.12 Resale and roaming.

(a) *Scope of section.* This section is applicable as follows:

(1) *Scope of resale requirement.* Paragraph (b) of this section, concerning resale, is applicable to the following, if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls:

(i) Providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), except those C, D, E, and F block PCS licensees that do not own and control and are not owned and controlled by firms also holding cellular, A or B block licenses;

(ii) Providers of Cellular Radio Telephone Service (part 22, subpart H of this chapter); and

(iii) Providers of Specialized Mobile Radio Services (part 90, subparts of this chapter).

(2) *Scope of Roaming Requirement.* Paragraph (c) of this section, concerning roaming, is applicable only to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), providers of Cellular Radio Telephone Service (part 22, subpart H of this chapter), providers of Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands that hold geographic licenses and offer real-time, two-way voice service that is interconnected with the public switched network (included in part 90, subpart S of this chapter) and Incumbent Wide Area SMR Licensees.

(b) *Resale.* The resale requirement is applicable as follows:

(1) Each carrier identified in paragraph (a)(1) of this section shall not restrict the resale of its services, including enhanced services, unless the carrier demonstrates that the restriction is reasonable.

(2) The resale requirement shall not apply to customer premises equipment, whether or not it is bundled with services subject to the resale requirement in this paragraph.

(3) This paragraph shall cease to be effective five years after the last group of initial licenses for broadband PCS spectrum in the 1850–1910 and the 1930–1990 MHz bands is awarded; *i.e.*, at the close of November 24, 2002.

(c) *Roaming.* Each licensee identified in paragraph (a)(2) of this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if equipment that is technically compatible with the licensee's base stations.

[FR Doc. 99–29220 Filed 11–8–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 209, 225, 242, and 247

[DFARS Cases 98–D003, 99–D004, and 99–D010]

Defense Federal Acquisition Regulation Supplement; Contract Administration and Audit Services

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update policy pertaining to DoD contract administration and audit services. The rule updates references to DoD publications, and reorganizes DFARS test for consistency with the organization of Federal Acquisition Regulation (FAR) text pertaining to contract administration.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, PDUSD (AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; telefax (703) 602–0350. Please cite DFARS Case 98–D003.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to update policy pertaining to DoD contract administration and audit services. The rule updates references in the DFARS text and reorganizes portions of DFARS Part 242 for consistency with the organization of FAR Part 42. The rule also adds text at DFARS 242.302(a)(13) to clarify that the Defense Contract Management Command is not responsible for making contract payments.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D003.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204, 209, 225, 242, and 247

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 204, 209, 225, 242, and 247 are amended as follows:

1. The authority citation for 48 CFR parts 204, 209, 225, 242, and 247 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.202 is amended by revising paragraph (1)(iv) to read as follows:

204.202 Agency distribution requirements.

(1) * * *

(iv) One copy to the contract administration office (CAO) automatic data processing point, except when the DoDAAD code is the same as that of either the CAO or the payment office (see the Federal Directory of Contract Administration Services Components); and

* * * * *

204.7102 [Amended]

3. Section 204.7102 is amended in paragraph (b)(1) by removing the abbreviation "DoD" and adding in its place the word "Federal"; and in paragraph (b)(3) by removing the words "Office of Defense Commercial Communications" and adding in their place the words "Defense Information Technology Contracting Organization".

PART 209—CONTRACTOR QUALIFICATIONS

209.106–2 [Amended]

4. Section 209.106–2 is amended in paragraph (1) in the first sentence by removing the reference and abbreviation "DoD 4105.4, DoD" and adding in their place the words "the Federal".

PART 225—FOREIGN ACQUISITION

5. Section 225.872–6 is amended by revising paragraphs (b) and (c)(1) to read as follows:

225.872–6 Audit.

* * * * *

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697–9351/2/3, DSN 227–9351/2/3).

(c) * * *

(1) Except for the United Kingdom (UK), send the request to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services Components. Send the request for audit from the UK directly to their Ministry of Defence.

* * * * *

225.872–7 [Amended]

6. Section 225.872–7 is amended by removing the reference "OPNAV Instruction 5540.8L" and adding in its place the reference "SECNAV Instruction 5510.1H"; and by removing the reference "AFR 205–4" and adding in its place the reference "AFI 31–601".

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

7. The heading of Part 242 is revised to read as set forth above.

8. Section 242.002 is added (immediately before subpart 242.1) to read as follows:

242.002 Interagency agreements.

(b)(i) DoD requires reimbursement, at a rate set by the Under Secretary of Defense (Comptroller/Chief Financial Officer), from non-DoD organizations, except for—

(A) Quality assurance, contract administration, and audit services provided under a no-charge reciprocal agreement;

(B) Services performed under subcontracts awarded by the Small Business Administration under FAR subpart 19.8; and

(C) Quality assurance and pricing services performed for the Supply and Services Canada.

(ii) Departments and agencies may request an exception from the reimbursement policy in paragraph (b)(i) of this section from the Under Secretary of Defense (Comptroller/Chief Financial Officer). A request must show that an exception is in the best interest of the Government.

(iii) Departments and agencies must pay for services performed by non-DoD activities, foreign governments, or international organizations, unless otherwise provided by reciprocal agreements.

(S–70)(i) Foreign governments and international organizations may request contract administration services on their direct purchases from U.S. producers. Direct purchase is the purchase of defense supplies in the United States through commercial channels for use by the foreign government or international organization.

(ii) Supply and Services Canada (SSC) is permitted to submit its requests for contract administration services directly to the cognizant contract administration office.

(iii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Defense Contract Management Command (DCMC), New York, NY. Contract administration offices provide services only upon request from the CCP. The CCP shall—

(A) Determine whether the request is from a friendly foreign government or an international agency in which the United States is a participant;

(B) Determine whether the services are consistent with the DoD mutual security program policies (the Assistant Secretary of Defense (International Security Affairs) is the source of information for questions as to the eligibility of foreign governments to receive services);

(C) Ensure that the reimbursement arrangements are consistent with paragraph (b) of this section;

(D) Coordinate with appropriate contract administration offices to determine whether DoD can provide the services;

(E) Notify the requestor that the request is accepted, or provide reasons why it cannot be accepted;

(F) Distribute the acquisition documents and related materials to contract administration offices; and

(G) Receive statements of costs incurred by contract administration offices for reimbursable services and forward them for billing to the Security Assistance Accounting Center.

Subpart 242.1—[Removed]

9. Subpart 242.1 is removed.

10. Subpart 242.2 is revised to read as follows:

Subpart 242.2—Contract Administration Services

Sec.
242.200–70 Scope of subpart.
242.202 Assignment of contract administration.

242.200–70 Scope of subpart.

This subpart does not address the contract administration role of a contracting officer's representative (see 201.602).

242.202 Assignment of contract administration.

(a)(i) DoD activities shall not retain any contract for administration that requires performance of any contract administration function at or near contractor facilities, except contracts for—

(A) The National Security Agency;

(B) Research and development with universities;

(C) Flight training;

(D) Consultant support services;

(E) Mapping, charting, and geodesy services;

(F) Base, post, camp, and station purchases;

(G) Operation or maintenance of, or installation of equipment at, radar or communication network sites;

(H) Communications services;

(I) Installation, operation, and maintenance of space-track sensors and relays;

(J) Dependents Medicare program contracts;

(K) Stevedoring contracts;

(L) Construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;

(M) Architect-engineer services;

(N) Airlift and sealift services (Air Mobility Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts);

(O) Subsistence supplies;

(P) Ballistic missile sites (contract administration offices may perform supporting administration of these contracts at missile activation sites during the installation, test, and checkout of the missiles and associated equipment); and

(Q) Operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

(ii) Contract administration functions for base, post, camp, and station contracts on a military installation are normally the responsibility of the installation or tenant commander. However, the Defense Contract Management Command (DCMC) shall, upon request of the military department, and subject to prior agreement, perform contract administration services on a military installation.

(iii) DCMC shall provide preaward survey assistance for post, camp, and station work performed on a military installation. The contracting office and the DCMC preaward survey monitor should jointly determine the scope of the survey and individual responsibilities.

(iv) To avoid duplication, contracting offices shall not locate their personnel at contractor facilities, except—

(A) In support of contracts retained for administration in accordance with paragraph (a)(i) of this section; or

(B) As permitted under subpart 242.74.

(e)(1)(A) In special circumstances, a contract administration office may request support from a component not listed in the Federal Directory of Contract Administration Services Components (available via the Internet at http://www.dcmc.hq.dla.mil/casbook/casbook.htm). An example is a situation where the contractor's work site is on a military base and a base organization is asked to provide support. Before formally sending the request, coordinate with the office concerned to ensure that resources are available for, and capable of, providing the support.

(B) When requesting support on a subcontract that includes foreign contract military sale (FMS) requirements, the contract administration office shall—

(*1*) Mark "FMS Requirement" on the face of the documents; and

(*2*) For each FMS case involved, provide the FMS case identifier, associated item quantities, DoD prime contract number, and prime contract line/subline item number.

11. Section 242.302 is amended by removing paragraph (a)(8); and by adding, after paragraph (a)(9), paragraph (a)(13) to read as follows:

242.302 Contract administration functions.

(a) * * *

(13)(A) Do not delegate the responsibility to make payments to the Defense Contract Management Command (DCMC).

(B) For contracts assigned to DCMC for contract administration, designate as the payment office—

(*1*) The cognizant Defense Finance and Accounting Service (DFAS) payment office as specified in the Federal Directory of Contract Administration Services Components (available via the Internet at http://www.dcmc.hq.dla.mil/casbook/casbook.htm), for contracts funded with DoD funds;

(*2*) The department or agency payment office, if authorized by defense financial management regulations or if the contract is funded with non-DoD funds; or

(*3*) Multiple payment offices under paragraphs (a)(13)(B) (*1*) and (*2*) of this section, if the contract is funded with both DoD and non-DoD funds.

(C) For contracts not assigned to DCMC, select a payment office or offices under department/agency procedures. DoD personnel may use the DFAS Reference Tool, available via the Internet at http://referencetool.dfas.mil, to identify cognizant DFAS payment offices.

* * * * *

242.705–1 [Amended]

12. Section 242.705–1 is amended in paragraph (a)(1) in the first sentence by removing the parenthetical "(ACO)" and adding in its place the parenthetical "(ACOs)"; and by removing paragraph (b).

242.705–2 [Amended]

13. Section 242.705–2 is amended by removing paragraph (b)(2)(ii); and by redesignating paragraph (b)(2)(iv) as paragraph (b)(2)(iii).

242.7400 [Amended]

14. Section 242.7400 is amended in paragraph (a) in the second sentence, in the parenthetical, by removing the reference "242.203(a)(i) and (v)" and adding in its place the reference "242.202(a)".

Part 247—Transportation

247.305–10 [Amended]

15. Section 247.305–10 is amended in paragraph (b)(iv) introductory text by removing the reference and abbreviation "DoD 4105.4, DoD" and adding in their place the words "the Federal".

16. Section 247.370 is amended by revising paragraph (b)(1) to read as follows:

247.370 Use of Standard Form 30 for consignment instructions.

* * * * *

(b) * * *

(1) For contracts assigned for any contract administration function listed in FAR subpart 42.3 to any office listed in the Federal Directory of Contract Administration Services Components, within five working days;

* * * * *

[FR Doc. 99–29036 Filed 11–8–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 251

[DFARS Case 99–D022]

Defense Federal Acquisition Regulation Supplement; Coordinated Acquisition Procedures Update

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update procedures relating to the DoD Coordinated Acquisition Program and contractor use of Government supply sources. The rule updates organization names, addresses, and telephone numbers.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 99–D022.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 208.7003–1 to update Defense Logistics Agency (DLA) organization names and addresses, and to specify that a DoD activity submitting a request to DLA for a waiver under the Integrated Material Management Program must submit a copy of the request to the Defense Logistics Support Command. The rule also amends DFARS 251.102 to update address and telephone number information relating to requests for Government publications.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D022.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 208 and 251

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 208 and 251 are amended as follows:

1. The authority citation for 48 CFR parts 208 and 251 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.7003–1 is amended in the heading by removing the word "material" and adding in its place the world "materiel"; and by revising paragraph (b)(2)(ii) to read as follows:

208.7003–1 Assignments under integrated materiel management (IMM).

* * * * *

(b) * * *

(2) * * *

(ii) For DLA:

Defense Supply Center, Columbus, ATTN: DSCC–BDL, P.O. Box 3990, Columbus, OH 43216–5000

Defense Energy Support Center, ATTN: DESC–FI, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6222

Defense Supply Center, Richmond, ATTN: DSCR–RZO, 8000 Jefferson Davis Highway, Richmond, VA 23297–5000

Defense Supply Center, Philadelphia, ATTN: DSCP–ILSI (for General and Industrial), DSCP–OCS (for Medical, Clothing, and Textiles), 700 Robbins Avenue, Bldg. 4, Philadelphia, PA 19111–5096

In addition, forward a copy of each request to:

Defense Logistics Support Command, ATTN: DLSC–LS, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.

* * * * *

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

3. Section 251.102 is amended in Table 51–1 by revising paragraph 2.b. to read as follows:

25.102 Authorization to use Government supply sources.

* * * * *

TABLE 51–1—AUTHORIZATION TO PURCHASE FROM GOVERNMENT SUPPLY SOURCES

* * * * *

2. * * *

b. Requisitioning from the General Services Administration (GSA) or the Department of Defense (DoD). Place orders in accordance with this authorization and, as appropriate, the following:

(1) Federal Standard Requisitioning and Issues Procedures (FEDSTRIP) (GSA FEDSTRIP Operating Guide: FPMR 101–26.2 (41 CFR 101–26.2)). Copies are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402; telephone (202) 512–1800; telefax (202) 512–2250.

(2) Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4000.25–1–M). Copies are available from the Defense Logistics Agency, Administrative Support Center East, ATTN: ASCE–WS, 14 Dedication Drive, Suite 3, POD 43, New Cumberland, PA 17070–5011; telephone 1–888–DLA–PUBS (352–7827), or (717) 770–6034; telefax (717) 770–4817.

* * * * *

[FR Doc. 99–29037 Filed 11–8–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 215

[DFARS Case 99–D001]

Defense Federal Acquisition Regulation Supplement; Weighted Guidelines and Performance-Based Payments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the weighted guidelines method of computing profit objectives. The rule adds contracts with performance-based payments to the types of contracts that affect a contractor's cost risk.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; telefax (703) 602–0350. Please cite DFARS Case 99–D001.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 215.404–4, Profit, requires contracting officers to use the weighted guidelines method of developing a prenegotiation profit or fee objective on most negotiated contract actions that require cost analysis. This method focuses on three profit factors: performance risk, contract type risk, and facilities capital employed. Calculations using these profit factors result in values that become part of the profit objective.

For contract type risk, the calculations include an assessment of the degree of cost risk that the contractor accepts under varying contract types as adjusted by the costs of contractor-provided financing. Prior to issuance of this final rule, DFARS 215.404–71–3, Contract type risk and working capital adjustment, provided only two financing choices for fixed-price and fixed-price incentive contracts: The contract either would provide progress payments or would offer no financing. This final rule adds contracts with performance-based payments as a third choice.

This rule amends DFARS 215.404–71–3 as follows:

1. Adds firm-fixed-price and fixed-price incentive contracts with performance-based payments to the table of contract types at 215.404–71–3(c).

2. Adds evaluation criteria at 215.404–71–3(d) that contracting officers should consider when determining the value for contract type risk associated with contracts using performance-based payments.

3. Removes the reference to the flexible progress payments type of financing at 215.404–71–3(e)(3). DoD does not permit the use of flexible progress payments for contracts awarded as a result of solicitations issued on or after November 11, 1993. A final rule, published in the **Federal Register** on February 23, 1999 (64 FR 8731), removed references to flexible progress payments from DFARS Part 232. The change to 215.404–71–3(e)(3) in this final rule does not reflect a policy change but merely removes obsolete language.

4. Makes editorial changes.

DoD published a proposed rule in the **Federal Register** on May 4, 1999 (64 FR 23814). Three sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, would not use the weighted guidelines method of profit computation. The weighted guidelines method normally is used to compute profit objectives on negotiated contract actions at or above $500,000.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 215 is amended as follows:

1. The authority citation for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.404–71–3 is amended by revising paragraphs (c), (d), and (e) to read as follows:

215.404–71–3 Contract type risk and working capital adjustment.

* * * * *

(c) *Values: Normal and designated ranges.*

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing	(1)	5.0	4 to 6.
Firm-fixed-price, with performance-based payments	(6)	4.0	2.5 to 5.5
Firm-fixed-price, with progress payments	(2)	3.0	2 to 4.
Fixed-price incentive, no financing	(1)	3.0	2 to 4.
Fixed-price incentive, with performance-based payments	(6)	2.0	0.5 to 3.5.
Fixed-price with redetermination provision	(3)	....	
Fixed-price incentive, with progress payments	(2)	1.0	0 to 2.
Cost-plus-incentive-free	(4)	1.0	0 to 2.
Cost-plus-fixed-fee	(4)	0.5	0 to 1.
Time-and-materials (including overhaul contracts priced on time-and-materials basis)	(5)	0.5	0 to 1.
Labor-hour	(5)	0.5	0 to 1.
Firm-fixed-price, level-of-effort	(5)	0.5	0 to 1.

(1) "No financing" means either that the contract does not provide progress payments or performance-based payments, or that the contract provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) When the contract contains provisions for progress payments, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redetermination provisions as if it were a fixed-price incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(6) When the contract contains provisions for performance-based payments, do not compute a working capital adjustment.

(d) *Evaluation criteria.*

(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions;

(vii) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations; and

(viii) When the contract contains provisions for performance-based payments—

(A) The frequency of payments;

(B) The total amount of payments compared to the maximum allowable amount specified at FAR 32.1004(b)(2); and

(C) The risk of the payment schedule to the contractor.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to the definitization of the contract action (also see 217.7404–6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor;

(iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items; or

(v) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

(i) Very mature product line with extensive cost history;

(ii) Relative short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk;

(iv) Incentive provisions that place a low degree of risk on the contractor;

(v) Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(vi) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.*

(1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion that the contractor finances is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501). For example, if a contractor receives progress payments at 75 percent, the portion that the contractor finances is 25 percent. On contracts that provide progress payments to small businesses, use the customary progress payment rate for large businesses.

* * * * *

[FR Doc. 99–29038 Filed 11–8–99 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 601

Responsibilities of the Administrator

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is amending 49 CFR Part 601 to make express that the Deputy Administrator serves as the Administrator's "first assistant" within the meaning of the Federal Vacancies Reform Act of 1998 and thus serves as the Acting Administrator when the Administrator's position is vacant.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth A.S. Martineau, Office of Chief Counsel, Federal Transit Administration, Room 9316, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–1936.

SUPPLEMENTARY INFORMATION: This rule amends 49 CFR section 601.4 to provide that the Deputy Administrator is the Administrator's "first assistant" for purposes of the Federal Vacancies Reform Act of 1998 (Pub. L. 105–277) and to delete references to agency officials who shall perform the duties of the Administrator in the absence or disability of the "first assistant" and to, instead, refer to the internal FTA order on succession of authority. This rules does not impose substantive requirements; it simply updates the Code of Federal to conform FTA's organizational provisions to the Federal Vacancies Reform Act to 1998, which alters the way in which vacancies in presidentially appointed, Senate-conformed offices within the executive branch may be filled on a temporary basis.

This final rule is ministerial in nature and relates only to agency management, organization, procedure, and practice and is not a regulation or rule for the purposes of Executive Order No. 12866. Therefore, the FTA has determined that notice and comment are unnecessary and that the rule is exempt for prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). These changes will not have substantive impact and FTA does not expect to receive substantive comments on the rule. Therefore, FTA finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective less than 30 days after publication in the **Federal Register**.

Regulatory Analyses and Notices

FTA has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no costs associated with this rule. FTA certifies that this rule will not have a significant economic impact on a substantial number of small entities. FTA does not believe that there are sufficient federalism implications to warrant the preparation of a federalism assessment.

Paper Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Unfunded Mandates Reform Act of 1995

FTA has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 601

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons set forth in the preamble, the Federal Transit Administration amends 49 CFR Part 601 as follows:

PART 601—[Amended]

1. The authority citation for Part 601 is revised to read as follows:

Authority: 49 U.S.C. 1657, 1659; Reorganization Plan No. 2 of 1968 (82 Stat. 1369); 49 CFR 1.51.

2. Revise section 601.4 to read as follows:

§ 601.4 Responsibilities of the Administrator.

The Administrator is responsible for the planning, direction, and control of the activities of FTA and has authority to approve urban mass transportation grants, loans, and contracts. The Deputy Administrator is the "first assistant" for purposes of the Federal Vacancies Reform Act of 1998 (Pub. L. 105–277) and shall, in the event of the absence or disability of the Administrator, serve as the Acting Administrator, subject to the limitations in that Act. In the event of the absence or disability of both the Administrator and the Deputy Administrator, officials designated by the agency's internal order on succession shall serve as Acting Deputy Administrator and shall perform the duties of the Administrator, except for any non-delegable statutory and/or regulatory duties.

Issued on: October 29, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–28877 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–57–M

Proposed Rules

Federal Register
Vol. 64, No. 216
Tuesday, November 9, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 785

Farm Service Agency

7 CFR Part 1946

RIN 0560–AE02

Certified Mediation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to amend its Agricultural Loan Mediation Program regulations to implement the requirements of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the 1994 Act). The 1994 Act expands the scope of issues that may be mediated in State mediation programs certified by FSA. This regulation proposes to establish and modify requirements and procedures for certification and funding of State mediation programs. This action will also move the mediation provisions from the Rural Development chapter of the CFR to the FSA chapter.

DATES: Comments on this proposed rule must be received on or before January 10, 2000 to be assured of consideration. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through January 10, 2000.

ADDRESSES: Send comments in duplicate to Executive Director for State Operations, Farm Service Agency, U.S. Department of Agriculture, Room 3090 S, STOP 0539, 1400 Independence Avenue, SW, Washington, DC 20250–0539, or by fax to 202–690–3009. All written comments will be available for public inspection at the above address between 8 a.m. and 5 p.m., EST, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Chester A. Bailey, Mediation Coordinator, FSA, at the above address, telephone 202–720–1471.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Certified Mediation Program-10.435.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed under the National Environmental Policy Act of 1969.

Executive Order 12612

This document has been reviewed in accordance with Executive Order 12612, Federalism. The agency has determined that this action does not have significant Federalism implications.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted (1) all State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings published at 7 CFR part 11 must be exhausted before action for judicial review may be brought.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this program. The administration certifies that this program will not have a significant impact on a substantial number of small entities. By statute this grant program applies only to States. These grants cannot be made to small entities or individuals. Small entities may participate in mediation, however, to the same extent as individual and other entities affected by adverse decisions covered by certified mediation programs.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objective of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA will submit an emergency information collection request (ICR) to OMB for the approval of the Certified Mediation Program reports as necessary for the proper functioning of the program.

Title: Certified Mediation Program.

OMB Control Number: 0560–0165.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Abstract: The information collected under OMB Control Number 0560–0165, as identified above, is needed to enable

FSA to administer effectively the Certified Mediation Program.

FSA requires some of the information it collects to be reported in a standard manner. Although other institutions, public and private, generally require and collect information similar to that requested by FSA, there is a wide diversity in reporting practices.

The amendment contained in this information collection that requires clearance by OMB is "Agricultural Mediation and Related Requirements including, State Certification and Grant Administration Provisions." The information to be collected includes an application for certification, reverification for subsequent annual approval, application for Federal Assistance, reporting requirements, and audit reports.

The information requested is reported annually and is necessary for the FSA to determine eligibility, and to administer the mediation grant program in an equitable and cost-effective manner.

Estimate of Burden: The public reporting burden for this information collection is estimated to average 34 hours per respondent.

Respondents: State agencies.

Estimated Number of Respondents: 24.

Estimated Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 816 hours.

Topics for comments include: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Chester A. Bailey, Mediation Coordinator, FSA, USDA, STOP 0539, 1400 Independence Avenue, SW, Washington, DC 20250–0539, (202) 720–1471. Copies of the information collected may be obtained from Chester A. Bailey at the above address.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department of Agriculture (USDA) on the proposed regulation.

Discussion of Proposed Rule

Title V of the Agricultural Credit Act of 1987 (7 U.S.C. 5106 *et seq.*) (1987 Act) authorized the Secretary of Agriculture to qualify States as certified to develop State mediation programs that mediate agricultural loan disputes. The Secretary delegated this authority at that time to the Administrator of the Farmers Home Administration (FmHA). In addition, the 1987 Act required FmHA to participate in mediation in certified States.

To be certified under the 1987 Act, a State was required to: (1) Provide mediation services to producers and their creditors that, if decisions are reached, result in mediated, mutually agreeable decisions between parties under an agricultural loan mediation program; (2) be authorized or administered by an agency of the State government or by the Governor of the State; (3) provide for the training of mediators; (4) provide that the mediation sessions be confidential; and (5) ensure that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program.

The 1987 Act authorized funding of $7.5 million a year for each of the fiscal years 1988 through 1991, with matching grants to the States limited to $500,000 or 50 percent of the cost of a State's program, whichever is less. The Food, Agriculture, Conservation, and Trade Act of 1990 extended this authority through 1995, and the Agricultural Credit Improvement Act of 1992 increased the maximum percentage of the grant to 70 percent. The 1994 Act extended the program through 2000.

Sections 275 and 282 of the 1994 Act establish the role of mediation in the administrative appeals process, expand the range of issues that can be mediated by certified State mediation programs, and explain the procedures and criteria under which a State, upon its application, can be certified by the Secretary of Agriculture as a qualifying State. The 1994 Act requires that, if mediation is available as a part of the USDA agency's informal appeals process, the appeal participant in a qualifying State will be offered the opportunity to mediate. As part of USDA's reorganization, the Secretary redelegated the responsibility for State certification and administration of the grant program to the Administrator, FSA.

The 1994 Act restates the requirements for certification of a State's mediation program contained in the 1987 Act. Additional requirements are that the State mediation program ensure, in the case of issues other than agricultural loans covered by the mediation program, that persons directly affected by actions of the USDA receive adequate notification of the mediation program. The 1994 Act re-emphasizes the importance of qualifying States adequately training mediators to address all issues covered by their mediation programs.

For the administration of the matching grant program in qualifying States, FSA will continue to use the uniform standards prescribed in 7 CFR part 3015, "Uniform Federal Assistance Regulations," and 7 CFR part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." These generally applicable rules are sufficiently well known to the States to permit an informed comment on these proposed rules.

This rule also continues the practice of making the grant year for all qualifying States run concurrently with the Federal fiscal year, which commences on October 1.

The significant changes to the mediation regulations contained herein are: (1) All references to "agricultural loan mediation" are replaced with "certified mediation"; (2) issues that may be mediated by a State mediation program are expanded to include certain issues specified in the 1994 Act and non-specified issues the Secretary deems appropriate; (3) USDA agencies will participate in good faith in mediation under the same terms and conditions applicable to agricultural producers, creditors, if applicable, and other persons directly affected by actions of the USDA; (4) participants may be offered the opportunity to choose mediation as part of an agency's informal appeal process; (5) certified State mediation programs are required to train mediators adequately to address all issues covered by the program; (6) added is a condition that a certified mediation program must ensure, for issues other than agricultural loans covered by the mediation program, that persons directly affected by actions of USDA receive adequate notification of the mediation program; (7) the confidentiality provisions of the Administrative Dispute Resolution Act of 1996 apply to the certified mediation program, but this regulation clarifies that this does not alter the State's responsibility to provide the Government access to its records as required by 7 CFR 3015.24; (8) more specific information concerning the State's mediation program is required as a certification condition; (9) procedures are clarified to eliminate confusion about administration of mediation grants; (10) the mission of State-certified mediation programs is specified to provide mediation services to agricultural producers, their creditors and other persons directly affected by actions of the USDA; (11) provisions for audit and penalties for non-compliance are amended to remove internal administrative procedures and for clarity; (12) the basis on which grant funds will be allocated to certified State mediation programs is clarified and described; (13) "mediation" is defined; and (14) the method of payment of grant funds has been changed to permit advances of funds earlier in the fiscal year of appropriation. The advance payment will expedite receipt of grant funds by the State programs, so as to assist the State's need to budget, obligate and spend the funds in a timely and efficient manner and enhance operation of the program. At the same time, State programs are required to obligate, spend, and account for grant funds and for the State's matching fund obligation in accordance with USDA grant regulations. In addition carryover of unspent funds is specifically allowed. Carryover balances must be obligated and liquidated by the State program during the subsequent fiscal year.

Request for Comment

FSA encourages interested persons to comment on this proposed regulation, and particularly solicits comments on the following specific matters:

1. Training and reporting. FSA asks for comment on the request for information on training programs implemented by States under the recent statutory amendments, and on the requirement for reporting quarterly on the certified State program.

2. Issues available for mediation. The 1994 Act expanded the issues available for mediation. Many State programs have made mediation available for the new issues. FSA is interested in learning whether States offer mediation in the new issues, and the experience of State programs in mediating these issues.

3. Mediation not involving USDA agencies and programs. Certified State mediation programs may offer mediation services on issues that do not affect USDA agencies and programs. Costs of such services which are inconsistent with the statutory purposes of the program, however, will not be considered part of the costs for operating the program in determining the amount of the grant.

4. Grant determination; reserve. An important change from the prior regulation is the change in the manner of determining the amount of grant funds available to certified States. Previously, certified States were awarded grants based on their requests, subject to the statutory limitations. Where total requests exceeded the appropriation, funds were allocated, pro-rata, based on the ratio of one State's request to all States' requests. In other words, the award was mathematical, without consideration of other factors. This regulation provides that awards should be made based on factors contained this proposed rule.

In addition, the proposed regulation creates a reserve of 10 percent of each grant award that will be obligated later in the fiscal year, to newly-qualified States, or reallocated to States to meet excess demand for mediation services, and then to requesting States. The reserve mechanism is intended to enable the program to fund a mediation program in a State that becomes newly-qualified in the first half of the fiscal year. Under the current regulation, a newly-certified State program must await award of grant funds until the following fiscal year. The proposed regulation will enable the program to respond to increased demand for mediation services in a more timely manner, and to adjust a small percentage of funds to meet excess demand. Ultimately, the reserve, net of any such adjustment, will be allocated to States to which it had been awarded initially, in time to be used toward States' cash flow needs with respect to the mediation program. States receiving a grant of less than $50,000 are exempt from this reserve requirement.

5. The proposed regulation makes clear that financial advisory and counseling services are permitted to be funded by the program only in those limited circumstances where a financial needs test is met, provided the work product of such services is available to all parties, and the services are assigned and provided under the control of a mediator. USDA views the mediation process as a viable and desirable means of resolving disputes. To the extent these services can be shown to serve this objective in specific instances, USDA supports them under this program. Generally, however, FSA views the use of grant funds to provide financial advisory or other services in an advocacy context to be inconsistent with the premise of a mediation program, to provide a neutral forum for resolution of disputes. FSA seeks comment on this clarification.

List of Subjects in 7 CFR Parts 785 and 1946

Agriculture, Federal-State relations, Grant programs—Intergovernmental relations, Mediation.

Accordingly, 7 CFR chapters VII and XVIII are proposed to be amended, as follows:

1. Part 785 is added to read as follows:

PART 785—CERTIFIED MEDIATION

Sec.
785.1 General.
785.2 Definitions.
785.3 Process for certification.
785.4 Grants.
785.5 Penalty for non-compliance.
785.6 Nondiscrimination.
785.7 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 7 U.S.C. 5104.

§ 785.1 General.

(a) This part provides procedures for a State to be certified by the Farm Service Agency (FSA) as a qualifying State that provides mediation services for issues affecting USDA agencies and programs. A certified State may receive Federal grant funds for operation and administration of the State's certified agricultural mediation program.

(b) USDA agencies will participate in good faith in mediation conducted pursuant to a State's certified mediation program, and will cooperate in good faith with requests for information or analysis of information made in the course of mediation under a certified program and, if applicable, present and explore debt restructuring proposals advanced in the course of such mediation.

(c) Where mediation is available as part of a USDA agency's informal appeal process, the participant will be offered the opportunity to mediate under a State's certified mediation program, in accordance with regulations applicable to such appeal process.

§ 785.2 Definitions.

Certified mediation program means a program for the resolution of disputes through mediation, authorized or administered by a State, that meets the requirements for certification contained in § 785.3.

Confidentiality means the mediator shall not disclose any confidential communication divulged during the mediation process except as required by § 3015.24 of this title in relation to an audit or evaluation of mediation services funded in whole or in part by USDA.

Fiscal year means the period of time beginning October 1 of one year and ending September 30 of the next year and designated by the year in which it ends.

FSA means the Farm Service Agency of USDA, or a successor agency.

Mediation means a process in which a trained, neutral person assists disputing parties in voluntarily reaching their own settlement of issues but has no authoritative decision-making power.

Qualifying State means a State with a certified mediation program that has not expired or been withdrawn under § 785.5(b).

USDA means the United States Department of Agriculture.

§ 785.3 Process for certification.

(a) *Deadline for request.* (1) On or before August 1 of each year, the Governor of a State or head of a State agency designated by the Governor of a State may submit a written request to FSA to be certified as a qualifying State. The State must be certified in order to be eligible for a USDA grant for the fiscal year commencing October 1 of that same year.

(2) Requests for certification will be accepted after August 1 of each year; however, the State will only be considered in order of date received for reserve grant funds available under § 785.4(c).

(b) *Contents of request.* The request for certification must include:

(1) Documents and information in support of the request concerning the program, including:

(i) A description of the program;

(ii) Identification of issues available for mediation;

(iii) Management of the program;

(iv) Services offered by the program;

(v) Budget;

(vi) Source and amount of State funding;

(vii) Costs (fixed and variable);

(viii) Staffing level;

(ix) Amount of contract labor;

(x) Relevant State statutes and regulations in effect; and

(xi) Any other information requested by FSA;

(2) A description of the State program's education and training requirements for mediators including:

(i) Training in mediation skills and in USDA programs; and

(ii) Identification and compliance with any State law requirements.

(3) A certification by the Governor, or head of a State agency designated by the Governor, that the State's mediation program:

(i) Provides mediation services to producers, their creditors, and other persons directly affected by actions of the USDA, that, if decisions are reached, result in mediated, mutually agreeable decisions between the parties under the program;

(ii) Provides mediation services for disputes involving agricultural loans (includes both loan making and loan servicing issues), or agricultural loans and one or more of the following issues under the jurisdiction of USDA:

(A) Wetlands determinations;

(B) Compliance with farm programs, including conservation programs;

(C) Rural water loan programs;

(D) Grazing on National Forest System lands;

(E) Pesticides; or

(F) Such other issues as the Secretary considers appropriate;

(iii) Is authorized or administered by an agency of the State government or by the Governor of the State;

(iv) Provides for training of mediators in mediation skills and in all issues covered by the State's mediation program;

(v) Provides that the mediation sessions, and records relating to mediation sessions, shall be confidential;

(vi) Ensures that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program; and

(vii) Ensures, for issues other than agricultural loans covered by the State's mediation program, that persons directly affected by an adverse decision of an officer, employee, or committee of a USDA agency receive adequate notification of the mediation program.

(viii) Prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status.

(4) If a grant is requested in accordance with § 785.4, the request for certification also must include the information required by parts 3015 and 3016 of this title and § 785.4(a)(2) and (b).

(c) *Request by qualifying State.* If the State is a qualifying State at the time the request is made, the written request need only describe the changes to the program since the previous year's request, together with such documents and information as are necessary concerning such changes, and a certification that the remaining elements of the program will continue as described in the previous application.

(d) *Address.* The request for certification should be mailed to: Administrator, Farm Service Agency, U.S. Department of Agriculture, STOP 0501, 1400 Independence Avenue, SW, Washington, DC 20013–0570.

§ 785.4 Grants.

(a) *Eligibility criteria for grant.* To be eligible to receive a grant, a State must:

(1) Have a certified mediation program in accordance with § 785.5(b), which certification has not been withdrawn; and

(2) Provide detailed estimates of the cost of operating and administering the State's mediation program;

(b) *Application.* A State requesting a grant will submit to the Administrator:

(1) The standard form for Federal assistance which can be obtained from any FSA State office;

(2) Detailed estimates of the cost of operation and administration of the program;

(3) Information pertaining to the factors contained in paragraphs (c)(1) through (5) of this section;

(4) Any additional information requested by FSA.

(c) *Distribution criteria.* Grants will fund mediation activities within the State programs that are consistent with the statutory purposes of the certified mediation program and paragraph (g) of this section. Costs of services that are not consistent with such purposes are not considered part of the cost of operation and administration of the mediation program for the purpose of determining the amount of the grant. The factors used to determine the amount of a grant to a certified State include:

(1) Demand for and use of mediation services (historical and anticipated);

(2) Issues available for mediation;

(3) Demonstrated success of the program, such as:

(i) Number of inquiries;

(ii) Number of requests for and use of mediation services;

(iii) Number of resolutions;

(iv) Timeliness of mediation services; and

(v) Activities promoting awareness and use of mediation;

(4) Use of program funds (budget and actual); and

(5) Material changes in the State program.

(d) *Maximum grant amount; distribution.* (1) A grant payment shall not exceed 70 percent of the eligible cost of operation and administration of the certified mediation program within the State consistent with the purposes of this program. In no case will the total amount of a grant to any State exceed $500,000 per fiscal year.

(2) Grant funds will be paid in advance, in installments throughout the

Federal fiscal year as requested by a certified program and approved by FSA. The initial payment shall represent at least one-fourth of the State's grant award. The initial payment will be made as soon as practicable after certification, or recertification, and after funds are appropriated and available.

(3) Payment of grant funds will be by electronic wire transfer to the designated account of each certified State program, as approved by FSA. The certified program shall submit to FSA the wire transfer information upon notice of certification, or recertification, and keep current such information.

(e) *Reserve.* FSA will reserve distribution to States of 10 percent of the grant allocated to each State. This reserve requirement does not apply to any State allocated a grant in the amount of $50,000 or less.

(1) As determined by the FSA Administrator and consistent with the limitations in paragraph (d) of this section, the reserve will be allocated and used to fund:

(i) Grants to qualifying States that apply for certification after August 1; and

(ii) Excess demand for mediation services in certified States.

(2) The reserve will be allocated to certified States as initially determined, except to the extent reduced, pro-rata, for amounts allocated under paragraph (e)(1) of this section.

(3) FSA will consider any State request for reallocation of grant funds, appropriated by Congress for the current year, based on excess demand made by any State and submitted on or before March 1 of the fiscal year.

(4) Reserve funds obligated under this part will be made available by March 31.

(f) *Administration of grants.* (1) FSA will administer the program in accordance with the requirements of parts 3015 and 3016 of this title. Any State requesting and receiving a grant must comply with the provisions of those regulations.

(2) A State program is encouraged to obligate its award funds within the Federal fiscal year of the award. Any funds remaining unobligated by the State program at the end of the fiscal year of award, however, may be carried forward for use in the next fiscal year for costs resulting from obligations of the subsequent funding period. Any carryover balances plus any additional obligated fiscal year grant will not exceed the lesser of 70 percent of the State's administrative cost for the subsequent fiscal year, or $500,000. Carryover balances must be obligated and liquidated by the State program in the subsequent fiscal year.

(3) Grant funds not spent in accordance with this subpart will be subject to de-obligation and must be returned to USDA.

(g) *Grant purposes.* Grants made under this part will be used to pay for the eligible costs of operation and administration of the State's mediation program, consistent with the statutory purposes of this program. Authorized uses of grant funds include only the following:

(1) Eligible costs are limited to those allowable under § 3016.22 of this title that are reasonable and necessary to carry out the State's certified mediation program in providing mediation services for agricultural producers and their creditors, and other persons directly affected by actions of the USDA within the State, in accordance with the certified mediation grant program. Eligible costs are:

(i) Staff salaries;

(ii) Reasonable fees and costs of mediators;

(iii) Office rent and expenses, such as utilities and equipment rental;

(iv) Office supplies;

(v) Administrative costs, such as workers' compensation, liability insurance, employer's share of Social Security, and travel that is necessary to provide mediation services;

(vi) Education and training of mediators involved in mediation;

(vii) Security systems necessary to assure confidentiality of mediation sessions and records of mediation sessions;

(viii) Costs associated with publicity and promotion of the program; and

(ix) Financial advisory and counseling services: *Provided,* That:

(A) They are incidental to a pending mediation case;

(B) A financial need is demonstrated and approved under guidelines established by the State mediation program and reported to FSA;

(C) The work product of such services is available to all parties to the mediation;

(D) Services are provided under control of the mediator; and

(E) They are determined by the mediator in advance to be reasonable and necessary in the circumstances, and consistent with the goal and purpose of mediation in a particular case.

(2) Grant funds may not be used for:

(i) Purchase of capital assets, real estate, or vehicles and repair or maintenance of privately-owned property;

(ii) Political activities;

(iii) Routine administrative activities not allowable under OMB Cost Principles found in part 3015, subpart T, of this title and OMB Circular No. A–87; and

(iv) Services provided by a State program that are not consistent with the statutory purposes of the certified mediation program, including advocacy services on behalf of a mediation participant, such as representation before an administrative appeals entity of USDA or other Federal Government department.

(h) *Reporting requirements.* (1) Qualifying States receiving grants must provide to the FSA Administrator by October 31 following the fiscal year of the grant, an annual report on:

(i) The performance and effectiveness of the State's certified mediation program;

(ii) Recommendations for improving the delivery of mediation services to producers;

(iii) The savings to the State as a result of having a certified mediation program; and

(iv) Such other matters relating to the program as the State elects to report, or as FSA may require.

(2) In addition to the auditing requirements of part 3015, subpart I and § 3016.26 of this title, the qualifying State receiving a grant must submit an audit report to the FSA Administrator in accordance with OMB Circular A–128.

(i) *Access to records.* Notwithstanding the confidentiality of mediation sessions, the State must provide the Government access to its records in accordance with § 3015.24 of this title. State mediators will notify all participants in writing at the beginning of the mediation session that USDA, the Comptroller General of the United States, the FSA Administrator, or any of their representatives will have access to mediation records to conduct an audit or evaluation of mediation services funded in whole or in part by USDA. The notice will be signed and dated by all participants and placed in the mediation file.

§ 785.5 Penalty for non-compliance.

(a) The Administrator is authorized to withdraw certification of the program, terminate or suspend the grant, and impose any other penalties or sanctions authorized by law if the Administrator determines that:

(1) A State's certified mediation program, at any time, does not meet the requirements contained in § 785.3 for certification;

(2) Grant funds are not being used as required;

(3) The certified program is not being operated in accordance with the statutory purpose of the grant program,

the regulations, the grant agreement and the representations and information provided by the State; or

(4) The certified program fails to grant access to mediation records in accordance with § 785.4.

(b) In the event that any penalty or withdrawal of certification for non-compliance is enforced, USDA agencies will cease to participate in mediation conducted by the State certified mediation program.

§ 785.6 Nondiscrimination.

The provisions of parts 15, 15b and 1901, subpart E, of this title and part 90 of title 45 apply to activities financed by grants made under this part.

§ 785.7 OMB Control Number.

The information collection requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0560–0165.

PART 1946—[REMOVED AND RESERVED]

2. Part 1946 is removed and reserved.

Signed at Washington, DC, on October 29, 1999.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 99–29212 Filed 11–8–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 200) series airplanes, that currently requires repetitive inspections to detect cracks of a certain bulkhead web of the fuselage at certain locations, and repair, if necessary. This action would revise the repetitive inspection intervals for certain airplanes, and would require modification or repair, as applicable. This proposal is prompted by the development of a modification that will adequately address the identified unsafe condition. The actions specified by the proposed AD are intended to detect and correct fatigue cracking, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage.

DATES: Comments must be received by December 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–192–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7525; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–192–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–192–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 11, 1997, the FAA issued AD 97–14–11, amendment 39–10082 (62 FR 38206, July 17, 1997), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 200) series airplanes, to require repetitive inspections to detect cracks of a certain bulkhead web of the fuselage at certain locations, and repair, if necessary. That action was prompted by a report of a pressurization problem during flight, which was caused by fatigue cracking in the underfloor pressure bulkhead of the fuselage. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage.

Actions Since Issuance of Previous Rule

In the preamble of AD 97–14–11, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered to require modification of the affected fuselage frames once new service information was available. The manufacturer has now released such information, and the FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Issuance of New Service Information

The manufacturer has issued Canadair Regional Jet Alert Service Bulletin A601R–53–045, Revision 'D,' including Appendix 1, dated December 22, 1997, which describes procedures for repetitive detailed inspections to detect cracks of a certain bulkhead web of the fuselage at certain locations; and follow-on corrective actions, if necessary. The inspections also involve determining whether a crack located at the pressure bulkhead of frame station (FS)409+128 is within certain limits specified in the alert service bulletin.

In the event that a crack is determined to be outside the limits specified in Part A of the Accomplishment Instructions of the alert service bulletin, the follow-on corrective actions would include a high frequency eddy current (HFEC) inspection of the forward side of the web, to detect cracks of fuselage FS409+128 bulkhead web along the upper edge of the horizontal angle. As listed in Part A of paragraph 2.B. of the Accomplishment Instructions, airplanes may be returned to service provided that any cracking detected is within certain limits specified in the alert service bulletin.

The manufacturer also has issued Canadair Regional Jet Service Bulletin 601R–53–046, Revision 'B,' dated December 22, 1997, which describes procedures for repair of the pressure bulkhead at FS409+128.

The manufacturer also has issued Canadair Regional Jet Service Bulletin 601R–53–047, Revision 'D,' including Appendix 1 and Appendix 2, dated December 22, 1997, describes procedures for modification of the affected areas of the pressure bulkhead at FS409+128. This modification is only applicable to those airplanes that have been inspected and are found to be free of cracks. The modification involves the installation of reinforcement components for the pressure bulkhead at FS409+128.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. Transport Canada Civil Aviation (TCCA) classified Canadair Regional Jet Service Bulletins A601R–53–045 and 601R–53–046 as mandatory, but did not classify Service Bulletin 601R–53–047 as mandatory, and issued Canadian airworthiness directive CF–97–11R2, dated December 22, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 97–14–11 to continue to require repetitive inspections to detect cracks of a certain bulkhead web of the fuselage at certain locations. This proposed AD would revise the repetitive inspection intervals for certain airplanes, and would require modification or repair, as applicable. Accomplishment of the modification or repair would terminate the requirements of this proposed AD. Certain actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators should note that, while it is not the FAA's normal policy to allow flight with known cracks, this AD does permit further flight with cracking within certain limits. The results of a review, conducted by the manufacturer, revealed that cracking in the underfloor pressure bulkhead of the fuselage will not result in rapid decompression of the airplane. Therefore, according to the review, if the crack size limits are strictly observed and if repetitive inspections are performed at the required intervals, cracks that grow beyond the limits will be detected, and corrective action taken, before they can grow to a size that would create an unacceptable risk of structural failure. Transport Canada Civil Aviation concurs with the findings of this review. In consideration of these findings and based on the FAA's criteria for flight with known cracking, the FAA has determined that further flight with cracking within certain limits in the center pressure bulkhead is permissible for an interim period.

Differences Between Proposed Rule and Service Bulletin

Operators should note that the Canadair Regional Jet Alert Service Bulletin A601R–53–045, Revision 'D,' including Appendix 1, dated December 22, 1997, recommends that the initial inspection be performed no later than 10 flight hours after the alert service bulletin date of issuance. This proposed AD would increase the initial inspection threshold to require the initial inspection be performed within 20 flight hours after the effective date of this AD. In developing an appropriate initial inspection compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition. In light of these factors, the FAA finds a compliance time of 20 flight hours for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the Canadair Regional Jet Service Bulletins A601R–53–045, Revision 'D,' and 601R–53–046, Revision 'B,' specify that the manufacturer may be contacted for disposition of certain cracking conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Differences Between Proposed Rule and Foreign Airworthiness Directive

The proposed AD would differ from the parallel Canadian airworthiness directive in that it would require accomplishment of the modification described in Canadair Regional Jet Service Bulletin 601R–53–047, Revision 'D,' within 9 months after the effective date of this AD. The parallel Canadian airworthiness directive recommends, but does not require, the accomplishment of the modification. Additionally, in the event that cracking within certain limits is found, this proposed AD would require a repair to be accomplished within 6 months after the effective date of this AD, or within 3 months after the initial date the crack was detected, whichever occurs later. The Canadian airworthiness directive specifies that the airplane may be returned to service provided that re-inspections are accomplished at certain flight hour intervals. The FAA has determined that, in this case long-term continued operational safety will be adequately assured by accomplishing the modification or repair to remove the source of the problem, rather than by accomplishing repetitive inspections at certain flight hour intervals.

Explanation of Applicability

The applicability of this proposed AD would affect Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, whereas the previously issued AD 97–14–11 addressed Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 200) series airplanes. The FAA inadvertently referenced Bombardier Model CL–600–2B19 (Regional Jet Series 200) series airplanes in the previously issued AD. This airplane series is not type certificated in the U.S.

Additionally, the applicability of this proposed AD excludes any airplane on which Canadair Regional Jet Service Bulletins 601R–53–046, Revision 'B,' dated December 22, 1997, and 601R–53–047, Revision 'D,' including Appendix 1 and Appendix 2, dated December 22, 1997, has been accomplished.

Cost Impact

There are approximately 77 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection that is currently required by AD 97–14–11 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $9,960, or $120 per airplane, per inspection cycle.

The repair that is proposed in this AD action would take approximately 300 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,828. Based on these figures, the cost impact of the repair on U.S. operators is estimated to be $19,828 per airplane.

The modification that is proposed in this AD action would take approximately 212 hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $935. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $13,655 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that the manufacturer has committed previously to its customers that it will bear the labor costs associated with the repair and modification associated with accomplishing the actions required by this AD. Additionally, the manufacturer has indicated the warranty remedies may be available to defer the cost of the replacement parts also associated with accomplishing the actions required by this proposed AD.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10082 (62 FR 38206, July 17, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. *(Formerly Canadair):* Docket 98–NM–192–AD. Supersedes AD 97–14–11, Amendment 39–10082.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7185 inclusive; except those airplanes on which Canadair Regional Jet Service Bulletin 601R–53–046, Revision 'B,' dated December 22, 1997, or 601R–53–047, Revision 'D,' including Appendix 1 and Appendix 2, dated December 22, 1997, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the underfloor pressure bulkhead of the fuselage, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage, accomplish the following:

Detailed Visual Inspections

(a) Perform a detailed visual inspection to detect cracks at FS409+128 of the bulkhead web drawing number 601R32208–123 of the fuselage, in accordance with Canadair Regional Jet Alert Service Bulletin A601R–53–045, Revision 'D,' including Appendix 1 and Appendix 2, dated December 22, 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, until accomplishment of paragraph (b) or (c) of this AD, as applicable.

(1) For airplanes that have accomplished a detailed visual inspection in accordance with AD 97–14–11 prior to the effective date of this AD: Perform a subsequent detailed visual inspection prior to the accumulation of 1,000 total flight hours, or within 100 flight hours after the immediately preceding inspection accomplished in accordance with AD 97–14–11, whichever occurs later. Thereafter, repeat the inspection at intervals not to exceed 100 flight hours.

(2) For airplanes that have not accomplished a detailed visual inspection in accordance with AD 97–14–11 prior to the effective date of this AD: Perform a detailed visual inspection within 20 flight hours after the effective date of this AD. Perform a subsequent detailed visual inspection prior to the accumulation of 1,000 total flight hours, or within 100 flight hours after accomplishment of the immediately preceding inspection, whichever occurs later. Thereafter, repeat the inspection at intervals not to exceed 100 flight hours.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Accomplishment of the inspection required by paragraph (a) of this AD, prior to the effective date of this AD in accordance with Canadair Regional Jet Alert Service Bulletin A601R–53–045, dated June 25, 1997; Revision 'A,' including Appendix 1, dated June 26, 1997; Revision 'B,' including Appendix 1, dated June 27, 1997; or Revision

'C,' including Appendix 1, dated July 2, 1997; is considered acceptable for compliance with the applicable action specified by this AD.

Modification

(b) For any airplane on which no cracking has been detected during any inspection required by paragraph (a) of this AD: Within 9 months after the effective date of this AD, modify FS409+128 of the bulkhead web drawing number 601R32208–123 of the fuselage in accordance with Canadair Regional Jet Service Bulletin 601R–53–047, including Appendix 1, Revision 'D,' dated December 22, 1997. Accomplishment of this modification terminates the requirements of this AD.

Note 4: Any modification accomplished prior to the effective date of this AD in accordance with Canadair Regional Jet Service Bulletin 601R–53–047, including Appendix 1 and Appendix 2, dated July 18, 1997; Revision 'A,' including Appendix 1, dated July 31, 1997; Revision 'B,' including Appendix 1, dated August 22, 1997; or Revision 'C,' including Appendix 1, dated October 7, 1997; is considered acceptable for compliance with the applicable actions required by this AD.

Repair

(c) For any airplane on which any cracking is detected during any inspection required by paragraph (a) of this AD: Prior to further flight, determine the extent of the cracking as specified in Part A of paragraph 2.B. of the Accomplishment Instructions of Canadair Regional Jet Alert Service Bulletin A601R–53–045, Revision 'D,' including Appendix 1, dated December 22, 1997, and accomplish the requirements of paragraph (c)(1) or (c)(2), as applicable.

(1) If the cracking is within the limits specified by Part A of paragraph 2.B. of the Accomplishment Instructions of the alert service bulletin, accomplish the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this AD at the time specified in those paragraphs.

(i) Repeat the detailed visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 100 flight hours; and

(ii) Within 6 months after the effective date of this AD, or within 3 months after the initial date the crack was detected, whichever occurs later: Repair the affected area in accordance with Canadair Regional Jet Service Bulletin 601R–53–046, Revision 'B,' dated December 22, 1997. Accomplishment of this repair terminates the requirements of this AD.

Note 5: Any repair accomplished prior to the effective date of this AD in accordance with Canadair Regional Jet Service Bulletin 601R–53–046, dated June 27, 1997, or Revision 'A,' dated July 2, 1997, is considered acceptable for compliance with the applicable actions specified by this AD.

(2) If the cracking is outside the limits specified by Part A of the Accomplishment Instructions of the alert service bulletin, prior to further flight, perform a high frequency eddy current (HFEC) inspection to detect cracks of the forward side of the web of fuselage FS409+128 bulkhead web drawing number 601R32208–123, along the upper edge of the horizontal angle part number 601R32208–73, in accordance with Part B of paragraph 2.B. of the Accomplishment Instructions of the alert service bulletin.

(i) If, during any HFEC inspection required by paragraph (c)(2) of this AD, any cracking is detected that is within the limits specified by Part B of paragraph 2.B. of the Accomplishment Instructions of the alert service bulletin, accomplish the requirements of paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) of this AD at the times specified in those paragraphs.

(A) Repeat the HFEC inspection required by paragraph (c)(2) of this AD thereafter at intervals not to exceed 50 flight hours, and repeat the detailed visual inspection required by paragraph (a) of this AD thereafter at interval not to exceed 100 flight hours; and

(B) Within 6 months after the effective date of this AD, or within 3 months after the initial date the crack was detected, whichever occurs later: Repair the affected area in accordance with Canadair Regional Jet Service Bulletin 601R–53–046, Revision 'B,' dated December 22, 1997. Accomplishment of this repair terminates the requirements of this AD.

(ii) If, during any HFEC inspection required by paragraph (c)(2) of this AD, any cracking is detected that is outside the limits specified by Part B of paragraph 2.B. of the Accomplishment Instructions of the alert service bulletin, prior to further flight, determine the extent of the cracking as specified in paragraph 1.D. ("Compliance") of Canadair Regional Jet Service Bulletin 601R–53–046, Revision 'B,' dated December 22, 1997, and accomplish the requirements of paragraph (c)(2)(ii)(A) or (c)(2)(ii)(B) of this AD, as applicable.

(A) If the cracking is within the limits specified by paragraph 1.D. ("Compliance") of the service bulletin, prior to further flight, repair in accordance with the service bulletin. Accomplishment of this repair terminates the requirements of this AD.

(B) If the cracking is outside the limits specified by paragraph 1.D. ("Compliance") of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO).

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

(d)(2) Alternative methods of compliance, approved previously in accordance with AD 97–14–11, amendment 39–10082, are approved as alternative methods of compliance for this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 7: The subject of this AD is addressed in Canadian airworthiness directive CF–97–11R2, dated December 22, 1997.

Issued in Renton, Washington, on November 2, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29177 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–31–AD]

RIN 2120–AA64

Airworthiness Directives; Air Cruisers Company Emergency Evacuation Slide/Rafts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Air Cruisers Company emergency evacuation slide/rafts. This proposal would require a one-time repacking of affected slide/rafts identified by serial numbers, and repetitive folding of all affected slide/rafts whenever the slide/rafts are removed from the airplane during scheduled aircraft maintenance. This proposal is prompted by reports of separation of the lower aspirator during a number of deployments. The actions specified by the proposed AD are intended to prevent failure of the slide to properly inflate, which could result in the inability to evacuate the passenger cabin in the event of an aircraft emergency.

DATES: Comments must be received by January 10, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov".

Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Air Cruisers Company, Technical Publications Department, PO Box 180, Belmar, NJ 07719–0180; telephone (732) 681–3527, fax (732) 280–8212. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256-7520, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–31–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of separation of the lower aspirator during a number of deployments of Air Cruisers Company emergency evacuation slide/rafts, part numbers (P/Ns) 62774–401, 62774–402, 62774–403, 62774–404, 62774–405, 62774–406, 62774–407 and 62774–408. The investigation revealed that the lower aspirator is not being placed and set correctly within the pack during manufacture. No incidents have been reported from the field. However, 8 incidents occurred at Air Cruisers Company and at Boeing during quality control functionality inspections. This condition, if not corrected, could result in failure of the slide/raft to properly inflate, which could result in the inability to evacuate the passenger cabin in the event of an aircraft emergency.

Service Information

The FAA has reviewed and approved the technical contents of Air Cruisers Company Service Bulletin (SB) 777-107–25–06, dated February 19, 1999, that identifies improperly packed slide/rafts by serial number (S/N), and describes procedures for repacking of affected slide/rafts; and slide/raft folding procedure P–12054 and P–12064, Revision E, dated October 14, 1998.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other slide/rafts of this same design, the proposed AD would require one-time repacking of affected slide/rafts identified by S/N within 2 months after the effective date of this AD, and for uninstalled slide/rafts, prior to installation. The compliance time is based upon risk analysis. In addition, this AD would require folding of slide/rafts that are removed for scheduled maintenance within 18 months after the effective date of this AD, and repetitive folding whenever the slide/rafts are removed from the airplane during scheduled aircraft maintenance, in accordance with the latest FAA-approved folding procedure. The actions would be required to be accomplished in accordance with the service documents described previously.

Economic Analysis

There are approximately 314 slide/rafts of the affected design in the worldwide fleet. The FAA estimates that 74 slide/rafts installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 10 work hours per slide/raft to accomplish the repacking, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $44,400.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) If promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Air Cruisers Company: Docket No. 99–NE–31–AD.

Applicability: Air Cruisers Company emergency evacuation slide/rafts, part numbers (P/Ns) 62774–62774–401, 62774–402, 62774–403, 62774–404, 62774–405, 62774–406, 62774–407 and 62774–408, installed on but not limited to Boeing 777–200 and –300 series airplanes.

Note 1: This airworthiness directive (AD) applies to each slide/raft identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For slide/rafts that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the slide to properly inflate, which could result in the inability to evacuate the passenger cabin in the event of an aircraft emergency, accomplish the following:

Repacking

(a) For slide/rafts listed by serial number (S/N) in Air Cruisers Company Service Bulletin (SB) 777–107–25–06, dated February 19, 1999, accomplish the following:

(1) For slide/rafts currently installed on aircraft, repack within 2 months after the effective date of this AD, in accordance with the procedures described in Air Cruisers Company SB 777–107–25–06, dated February 19, 1999.

(2) For uninstalled slide/rafts, prior to installation repack in accordance with the procedures described in Air Cruisers Company SB 777–107–25–06, dated February 19, 1999.

Folding

(b) Fold slides whenever the slide/rafts are removed from the airplane during scheduled aircraft maintenance, in accordance with Air Cruisers Company folding procedure P-12054 and P-12064, Revision E, dated October 14, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 3, 1999.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–29332 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–259–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); rescission.

SUMMARY: This document proposes to rescind an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to add specific flightcrew instructions to be followed in the event of failure of the first generator, which could lead to the loss of main battery power and result in the loss of all electrical power, except the emergency battery supply, during flight. Since the issuance of that AD, the FAA has received further information indicating that the incident that prompted that AD was an isolated case.

DATES: Comments must be received by December 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–259–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Information pertaining to this proposed rule may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–259–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–259–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 20, 1998, the FAA issued AD 98–09–16, amendment 39–10497 (63 FR 20064, April 23, 1998), applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes, to require revising the Airplane Flight Manual (AFM) to add specific flightcrew instructions to be followed in the event of failure of one or both of the direct current (DC) generators. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in that AD are intended to prevent failure of the second of two DC generators after the failure of the first generator. Such failures, if not corrected, could lead to the loss of main battery power and result in the loss of all electrical power, except the emergency battery supply, during flight.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that the unsafe condition identified in French airworthiness directives AD T98–148–076(B) and AD T98–149–038(B), both dated March 20, 1998, was an isolated case. The DGAC advised that further investigation, a design review of the DC electrical system, and bench testing results indicate that the reset of the first failed generator did not contribute to the loss of the second generator. The DGAC concludes that there is no reason to prohibit reset of a failed generator, and concludes that the incident that prompted need for mandatory action was an isolated case. Consequently, the DGAC has issued French airworthiness directives 98–148–076(B) R1 and 98–149–038(B) R1, both dated July 15, 1998, which provide cancellation notice of the French airworthiness directives that required the AFM revision.

FAA's Conclusions

Since receipt and review of the DGAC information, the FAA has determined that it is unnecessary to require the AFM revisions required by AD 98–09–16.

This proposed action would rescind AD 98–09–16. Rescission of AD 98–09–16 would constitute only such action, and, if this proposal is followed by a final action, it would not preclude the agency from issuing another notice in the future, nor would it commit the agency to any course of action in the future.

Cost Impact

The FAA estimates that 145 airplanes of U.S. registry are affected by AD 98–09–16. The actions that are currently required by that AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $8,700, or $60 per airplane. However, the adoption of this proposed rescission would eliminate those costs.

Removal of the AFM revision required by AD 98–09–16 would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of removal of the AFM revision is estimated to be $8,700, or $60 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10497.

AEROSPATIALE: Docket 98–NM–259–AD. Rescinds AD 98–09–16, Amendment 39–10497.

Applicability: All Model ATR–42 and ATR–72 series airplanes; certificated in any category.

Issued in Renton, Washington, on November 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29331 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 606, 607, 610, 630, 640, and 660

[Docket Nos. 98N–0581, 98N–0607, and 98N–0815]

Blood Safety Initiative: Extension of Comment Period on Proposed Rules and Announcement of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; announcement of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting and is extending to December 22, 1999, the comment period on two proposed rules entitled "Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents," and "General Requirements for Blood, Blood Components, and Blood Derivatives; Notification of Deferred Donors." FDA is also extending to December 22, 1999, the comment period on the advance notice of proposed rulemaking (ANPRM) entitled "Plasma Derivatives and other Blood-Derived Products; Requirements for Tracking and Notification." The purpose of the meeting is to provide a public forum for gathering information and views regarding the proposed rules and the ANPRM. The comment periods are being extended to provide time for the submission of comments that may result from the issues discussed at the public meeting.

DATES: The public meeting will be held on Monday, November 22, 1999, from 8:30 a.m. to 12 noon. Submit written comments for "Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents," "General Requirements for Blood, Blood Components, and Blood Derivatives; Notification of Deferred Donors," and "Plasma Derivatives and other Blood-Derived Products; Requirements for Tracking and Notification" by December 22, 1999.

ADDRESSES: The public meeting will be held at the National Institutes of Health

(NIH), NIH Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the appropriate docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For registration and meeting information: Kathy Eberhart, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–1317, FAX 301–827–3079, e-mail: eberhart@cber.fda.gov.

For information about this document: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 19, 1999 (64 FR 45340 and 45355), FDA published two proposed rules that were intended to help protect the safety and ensure the quality of the nation's blood supply and to promote consistency in the industry. The document entitled "Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents" (64 FR 45340) [Docket No. 98N–0581] proposed to revise the general biological product standards by updating the hepatitis B virus (HBV) and human immunodeficiency virus (HIV) testing requirements, by adding testing requirements for hepatitis C virus (HCV), human T-lymphotropic virus (HTLV), and by adding requirements for licensed supplemental (i.e., additional, more specific) testing when a donation is found to be repeatedly reactive for any of the required screening tests for evidence of infection due to communicable disease agents.

The document entitled "General Requirements for Blood, Blood Components, and Blood Derivatives; Notification of Deferred Donors" (64 FR 45355) [Docket No. 98N–0607] proposed to require blood and plasma establishments to notify donors of their deferral due to test results for communicable disease agents or failure to satisfy suitability requirements with the intent of reducing the risk of transmission of communicable disease through the use of blood, blood components, and blood derivatives. Blood and plasma establishments would notify donors that they have been deferred and the reason for the deferral; provide information concerning appropriate medical follow up and counseling; describe the types of donations the donors should not make in the future; and discuss the possibility that the donor may be found suitable in the future, where appropriate. FDA provided until November 17, 1999, to submit comments on these proposed rules.

The ANPRM entitled "Plasma Derivatives and other Blood-Derived Products; Requirements for Tracking and Notification" (64 FR 45383, August 19, 1999) [Docket No. 98N–0815] announced FDA's intention to propose regulations to require certain blood-derived products, including certain plasma derivatives, be tracked from a U.S. licensed manufacturer, through the distribution network, to any patient having custody of the product. FDA also announced its intention to propose to require notification of consignees and patients having custody of a blood-derived product or an analogous recombinant product in the event the product is associated with a potential increased risk of transmitting a communicable disease, as determined by FDA or by a U.S. licensed manufacturer. FDA provided until November 17, 1999, to submit comments on the ANPRM.

II. Comments

Interested persons may submit written comments on these proposed rules and the ANPRM to the Dockets Management Branch (address above) by the date listed above. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the appropriate docket number found in brackets in the heading of this document. If time permits, comments may be taken from the floor. FDA is requesting that those persons making oral presentations at the public meeting also submit their statements in writing by December 22, 1999, as described above, to ensure their adequate consideration. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Registration and Requests for Oral Presentations

Mail or fax registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to Kathy Eberhart (address above) by Monday, November 15, 1999. If you do not intend to make a presentation, registration is not required. However, all interested persons are encouraged to pre-register.

If you need special accommodations due to a disability, please contact Kathy Eberhart at least 7 days in advance.

IV. Transcripts

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript will also be available on CBER's website at http://www.fda.gov/cber/minutes/workshop-min.htm.

Dated: November 2, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–29224 Filed 11–8–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI23–01–6258; FRL–6472–6]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to disapprove revisions to the State of Michigan's New Source Review (NSR) State Implementation Plan (SIP). The Michigan Department of Environmental Quality (MDEQ) submitted these revisions on November 11, 1993; May 16, 1996; April 3, 1998; and August 20, 1998. MDEQ submitted some of these revisions to meet the requirements of the Clean Air Act (CAA) amendments of 1990. Because these revisions are required under the CAA, a final disapproval would constitute a disapproval under section 179(a)(2) of the CAA. Pursuant to section 179(a) of the CAA, the State of Michigan has up to 18 months after a final disapproval to correct the deficiencies that are the subject of the disapproval before USEPA must impose sanctions.

DATES: Comments on this proposed rule must be received before December 9, 1999.

ADDRESSES: Send written comments to: Robert Miller, Chief, Permits and Grants Section (MI/MN/WI), Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and the USEPA's analysis are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Eaton Weiler at (312) 886–6041 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Eaton Weiler or Laura Hartman, Environmental Engineers, Permits and Grants Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6041 or (312) 353–5703.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The CAA mandates that states develop NSR programs for the construction and modification of stationary sources of air pollutants. See CAA sections 110(a)(2)(C), 165, 172, and 173. NSR programs are necessary under the CAA to help attain and maintain the National Ambient Air Quality Standards as well as to prevent significant degradation of air quality. NSR programs help achieve this goal by requiring owners and operators of new and modified sources of air pollutants to apply appropriate emissions control technology to sources at the time of construction. Furthermore, these programs achieve this goal by allowing the public an opportunity to review and comment on the effects of emissions on air quality from new and modified sources of air pollution prior to construction.

The CAA mandates that states develop NSR programs and submit them to the USEPA for approval into the SIP. The requirements for an approvable NSR program are laid out in the CAA and 40 Code of Federal Regulations (CFR) sections 51.160 to 51.166.

B. Current NSR SIP Submittals

The USEPA has not approved any revisions to the State's NSR SIP since January 27, 1982 (47 FR 3764). Since 1982, Michigan has submitted six rules packages to the USEPA for approval into the SIP. Michigan submitted three packages in 1993, one in 1996, and two in 1998. Each of the rules packages is identified in the table below by the date the rules package went into effect in the State (State Effective Date), and the date the State submitted the rules package to the USEPA (Submittal Date). Bold indicates the latest revision to the particular rule that is before USEPA for review.

Rules package (RP)	State effective date	Submittal date	Rules submitted 336.1xxx
1	4/20/89	11/12/93	107, 121, 240, 241.
2	4/17/92	11/12/93	102, 106, 109, 112, 115, 118, 120, 123, 201, 283.
3	11/18/93	11/12/93	101, 103, 104, 105, 113, 114, 116, 119, 220, 278, 279, 280, 281, 282, 284, 285, 286, 287, 288, 289, 290.
4	7/26/95	5/16/96	101, 103, 113, 116, 118, 119, 123, 201, 205, 208(RES), 209, 219, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290.
5	12/12/96	4/3/98	116(g), 116(m), 118(g), 119(b), 119(q), 201a, 205.
6	6/13/97	8/20/98	118, 122, 278, 283, 284, 285, 286, 287, 290.

C. USEPA Requirements for Disapproval

Under section 110(k)(3) of the CAA, the USEPA may fully approve or disapprove a state submittal. Where portions of the state submittal are separable, the USEPA may approve portions of the submittal that meet the requirements of the CAA, and disapprove the portions of the submittal that do not meet the requirements of the CAA. See 57 FR 13566 (April 16, 1992). However, in this context, separable means that the USEPA may not partially disapprove a portion of a SIP submittal if the effect of the disapproval would make the approved portion of the SIP submittal more stringent than the state intended. In this proposed action, any partial disapproval of Michigan's NSR SIP submittal would make the State's entire NSR SIP program more stringent than the State intended. Therefore, the elements of the Michigan NSR program discussed below that do not meet the requirements of the CAA make the entire SIP submittal disapprovable.

II. Evaluation of State Submittals

Following below is a discussion of the portions of the State's NSR SIP submittals that USEPA is proposing as not meeting the requirements of the CAA. For each section, the requirements of the CAA and its implementing regulations are outlined followed by an analysis of why the State's submittal does not meet the requirements of the CAA.

A. Public Participation

The provisions of 40 CFR 51.161 require the State to implement specific public participation procedures. These procedures require the State to notify, inform, and invite comment from the public on all new and modified sources of air pollution subject to the NSR program. However, as discussed in a proposal to amend the federal operating permit program, 60 FR 45530, 45549 (August 31, 1995), USEPA believes that a state may exempt from public review certain categories of changes based upon de minimis or administrative necessity grounds, in accordance with the criteria set out in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979).

Michigan rule 336.1205(3) requires public participation only for NSR sources that are major or major modifications, or limit their potential to emit to greater than 90 percent of the major or major modification thresholds. Under this provision, a source could have actual emissions of over 200 tons per year and not be subject to any public participation procedures. While this limitation may be acceptable if adequately justified, Michigan has not explained how the 90 percent threshold meets the de minimis criteria. Because Michigan has not provided an adequate explanation of why construction or modification of sources resulting in emissions of less than 90 percent of the new source review thresholds should not require public participation under the NSR program, the USEPA is proposing disapproval of Michigan Rule 336.1205(3).

Furthermore, Michigan rule 336.1205(3) incorrectly cites section 5h(3) instead of 5511(3) of the Michigan Act 451, part 55. Although the State corrected this citation error in a State rulemaking effective July 2, 1998, it has not yet submitted the correction to USEPA for approval into the SIP.

B. Voiding of NSR Permits (Supersession)

As recently communicated in a letter from John S. Seitz to STAPPA/ALAPCO dated May 20, 1999, it is the USEPA's position that NSR permits may not be voided, superseded, or otherwise replaced by permits issued pursuant to Title V of the CAA Amendments of 1990. All terms and conditions of NSR permits must be independently enforceable under Title I of the CAA Amendments of 1990. While Title V permits must incorporate and record permit terms and conditions from NSR permits, Title V may not eliminate their independent enforceability and existence.

Michigan rule 336.1201(6) automatically voids the NSR permit when the "appropriate" terms and conditions are incorporated into a Title V permit. Therefore, USEPA is proposing to disapprove this rule.

C. Construction Before Permit Issuance

Pursuant to CAA sections 110(a)(2)(C), 165, 172, 173, and their implementing regulations, the State is required to develop a NSR program, under which a source shall not begin actual construction of a major source or major modification to a major source unless the source has obtained a NSR permit. Furthermore, pursuant to 40 CFR 51.165(a)(1) the State must adopt the federal definition of "begin actual construction," or a definition that is demonstrably more stringent. The federal definition includes any construction of a permanent nature, such as foundations, pipework, building supports, and permanent storage structures. 40 CFR 51.165(a)(1)(xv). Michigan has not adopted and submitted for USEPA approval a definition of "begin actual construction" which is identical to or more stringent than the federal definition. Additionally, Michigan rule 336.1201(2) allows sources to begin phases of construction, including foundations and associated structures, before issuance of a NSR permit so long as it is not prohibited by the CAA. As stated above, the CAA prohibits construction of a major source or major modification to a major source before NSR permit issuance. Moreover, the CAA and its implementing regulations require the State to adopt provisions prohibiting construction before permit issuance. Michigan rule 336.1201(2) contradicts itself, and is contrary to the requirements of the CAA and its implementing regulations. Therefore, USEPA is proposing to disapprove Michigan rule 336.1201(2).

Michigan rule 336.1202 allows the MDEQ to waive the requirement for any source to obtain an NSR permit before beginning construction. As stated above, the CAA and its implementing regulations prohibit construction of major sources or major modifications to major sources without a preconstruction permit. Further, section 110(a)(2) of the CAA requires states to regulate the construction and modification of any stationary source as necessary to assure that the national ambient air quality standards are achieved. Similarly, 40 CFR 51.160(b) provides that a state must prevent the construction or modification of a source if it will result in a violation of applicable portions of the control strategy or interfere with the attainment or maintenance of a national ambient air quality standard. Therefore, Michigan may provide for a waiver from the preconstruction requirements of the CAA for minor sources if the waiver provisions include procedures to ensure that the source receiving the waiver is a "true minor," that is, a source whose potential to emit is below the threshold for a major source or the potential to emit of the modification is below the major modification threshold without consideration of any limitations on emissions, and the state can verify that the construction or modification of the source will neither interfere with attainment or maintenance of the national ambient air quality standard nor result in a violation of applicable portions of the control strategy.

USEPA, in the past, mistakenly had approved a prior version of Michigan rules 336.1201(2) and 336.1202 into the SIP. Because the currently approved SIP rules do not comply with the requirements of the CAA, the USEPA is planning to issue a SIP call pursuant to section 110(k)(5) of the CAA. Section 110(k)(5) of the CAA allows the USEPA to require a revision to the SIP upon a finding that the currently approved SIP does not meet the requirements of the CAA. A final finding under section 110(k)(5) would allow the State up to 18 months to correct the deficiency.

D. Directors Discretion Exemption From NSR Permitting

Under Michigan rule 336.1279, a source is exempt from NSR permitting at the MDEQ's discretion where the source is not major or does not have actual emissions above the significance levels. CAA section 110(a)(2)(C) and 40 CFR 51.160(a) require the State to develop legally enforceable procedures to review new and modified sources. Furthermore, 40 CFR 51.160(e) requires the State to identify the types and sizes of sources subject to review under the State's NSR program. Exempting sources at the director's discretion does not identify the sources subject to review, and, therefore, is disapprovable. Because Michigan rule 336.1279 exempts sources from all review procedures without prior identification and approval of the exemption criteria into the SIP, USEPA is proposing to disapprove the rule.

E. Miscellaneous Exemptions From NSR Permitting

Michigan rules 336.1280 to 336.1290 significantly relax the types and sizes of sources that must obtain a NSR permit. While these exemptions may be acceptable, the State must demonstrate why these sources need not be subject to review in accordance with the *Alabama Power* de minimis or administrative necessity criteria. Such a demonstration may include: (1) An analysis of the types and quantities of emissions from exempted sources, and (2) an analysis which shows that exempting such facilities from permitting review will not interfere with maintenance of the NAAQS or applicable control strategy, and otherwise fulfills the purposes of the minor NSR regulations.

As part of the above demonstration, the State must require each exempted emissions unit with a potential for sizeable emissions to keep appropriate compliance records to verify that the emissions unit meets the specific exemption criteria, and to verify that the construction or modification of the emissions unit did not trigger major new source regulations or other exclusions from the exemptions as listed in Michigan rule 336.1278.

At a minimum, sources with sizeable potential emissions which are assuming exemptions must keep: (1) Records of the date of equipment installation and a description of the emissions unit, (2) records to show the emissions unit does not violate any of the rule 336.1278 exclusions from the exemptions, and (3) records to show that the emissions unit meets the specific exemption criteria outlined in the rule.

Michigan rule 336.1285 exempts sources from obtaining NSR permits where the quantity and nature of the emissions increases are not "appreciable," or "meaningful." Because these terms are undefined, this regulation does not comply adequately with 40 CFR 51.160(e), which requires the state to identify the types and sizes of sources subject to review. Therefore, Michigan rule 336.1285 is not approvable at this time.

Additionally, because Michigan uses its NSR program to implement section 112(g) of the CAA, the exemptions in rules 336.1279 through 336.1290 would exempt a major Hazardous Air Pollutant source from complying with 112(g) of the CAA. For this reason, the State must add language that specifically excludes major HAP sources from the exemptions. Although the State has added such language in a State rulemaking effective July 2, 1998, it has not submitted these revisions to the USEPA for approval into the SIP.

Finally, Michigan should make clear in its rules that the exemptions in rules 336.1279 through 336.1290, even after approved into the Michigan SIP, do not exempt any source from complying with any other applicable federal requirements or existing NSR permit limitations. For all these reasons, USEPA is proposing to disapprove Michigan rules 336.1279 through 336.1290.

F. Relaxation of Permit Conditions

Pursuant to 40 CFR 51.165(a)(5)(ii), the State must develop regulations that would require sources to obtain a major NSR permit if the relaxation of an emission limitation that the source took to avoid NSR would make the original construction a major source or major modification. Because the Michigan NSR SIP contains no such provisions, it is deficient.

G. Emissions Reductions Required by the CAA Are Not Creditable

Pursuant to section 173(c)(2) of the CAA, the State must develop regulations to ensure that emissions reductions otherwise required by the CAA are not creditable as offsets. Because the Michigan NSR SIP contains no such restrictions, it is deficient.

H. Definition of "Nonattainment Area"

The term "nonattainment area," as defined in section 171(2) of the CAA, means "an area which is designated 'nonattainment' with respect to that pollutant within the meaning of section 107(d)" of the CAA.

The Michigan rule 336.114(g) defines "nonattainment area" as an area designated by the department as not having attained full compliance with all national ambient air quality standards. The State must make clear in its definition of "nonattainment area" that any major source or major modification to a stationary source located in an area promulgated as nonattainment by USEPA pursuant to section 107(d) of the CAA, must comply with the nonattainment NSR requirements. Therefore, USEPA is proposing to disapprove the State definition of "nonattainment area."

I. Federal Enforceability

Pursuant to section 173(a) of the CAA, the State must develop regulations under which all offsets required as a precondition to permit issuance must be federally enforceable.

The Michigan rule 336.1220(2) only requires that offsets shall be legally enforceable. Therefore, USEPA is proposing to disapprove Michigan rule 336.1220(2).

J. Exemption From Offset Requirements for Municipal Solid Waste Facilities

40 CFR 51.165 does not provide for exemptions from the offset requirements. As explained to the NRDC in a letter from the EPA Region II dated March 18, 1989, the regulations of 40 CFR 51.165 supercede the guidance of appendix S. Therefore, the EPA will not approve any offset exemptions from resource recovery facilities.

Michigan rule 336.1220(4)(b) impermissibly exempts municipal solid waste burning facilities from offset requirements laid out in the CFR. Therefore, USEPA is proposing to disapprove Michigan rule 336.1220(4)(b).

K. Modeling Requirements

40 CFR 51.160(f)(1) requires that all modeling shall be based on the applicable models, data bases, and other requirements specified in 40 CFR part 51, appendix W (Guideline on Air Quality Models).

Michigan rule 336.1240 outlines the required air quality models. Michigan rule 336.2240 requires the use of an air quality model cited in EPA's 1986, "Guideline on Air Quality Models." The "Guideline on Air Quality Models" was updated in 1987, 1993, and 1995 and codified in part 51 appendix W.

Furthermore, Michigan rule 336.1240(2) impermissibly allows the use of an alternate model at the "director's discretion" without opportunity for public notice or comment, as required by 40 CFR 51.160(f)(2). Michigan rule 336.1240(2)(ii) allows the director to decide to allow use of an alternate model if the applicant demonstrates the alternate model is "comparable" to USEPA's outdated 1984 document, "Interim Procedures for Evaluating Air Quality Models." Instead of the word "comparable," the State rule should require that the alternate model produce concentration estimates equivalent to the estimates obtained using the preferred model in the current appendix W, and should reference the USEPA's updated 1992 document entitled "Interim Procedures for Evaluating Air Quality Models."

In addition to proposing to disapprove Michigan rule 336.1240 because it allows use of an alternate model to escape the public participation procedures of 40 CFR 51.160(f)2), USEPA also is proposing to disapprove Michigan rule 336.1240 because it references out-of-date modeling guidelines rather than the current codified modeling guidelines in 40 CFR part 51, appendix W.

L. Air Quality Modeling Demonstration Requirements

Michigan Rule 336.1241 outlines the requirements for air quality modeling demonstrations. These provisions must be updated to reflect the current modeling requirements laid out in 40 CFR part 51, appendix W.

In particular, the provisions require five years of meteorological data unless the applicant can demonstrate that a shorter meteorological record is more representative. The rule specifically should state that, if the applicant uses on site data, a minimum of one year of meteorological data is required.

M. Offset Restrictions

40 CFR 51.165(a)(3)(ii)(A) requires that where the SIP allows emissions greater than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential. Michigan NSR rules contain no such restriction and, therefore, are unapprovable.

N. Failure To Rescind Michigan Rule 336.1221

Michigan rule 336.2221 impermissibly exempts sources that have significant net emissions increases of sulfur dioxide, particulate matter, and carbon monoxide from offset requirements.

MDEQ rescinded Michigan rule 336.1221 effective November 14, 1990. However, the State never submitted the rule to USEPA for recission. Because Michigan did not submit the recission to the USEPA for removal of the rule from the SIP, the Michigan NSR rules are not approvable at this time.

III. Proposed Action

To determine the approvability of a rule, USEPA must evaluate the rule for consistency with the requirements of the CAA and USEPA regulations as codified in the Code of Federal Regulations, and the EPA's interpretation of these requirements as expressed in USEPA policy guidance documents. The USEPA has found the Michigan SIP revisions inconsistent with CAA sections 110(a)(2)(C), 165, 172, and 173. The USEPA has further found Michigan's proposed SIP revisions inconsistent with the provisions of 40 CFR part 51, and sections 160 through 165. For these reasons, USEPA is proposing to disapprove Michigan's proposed revisions to its NSR SIP.

Michigan submitted some of the proposed revisions to meet the requirements of the CAA amendments of 1990. Because Michigan failed to satisfy requirements of the CAA through these revisions, a final disapproval would constitute a disapproval under section 179(a)(2) of the CAA. As provided under section 179(a) of the CAA, the State of Michigan would have up to 18 months after a final disapproval to correct the deficiencies that are the subject of the disapproval before the CAA requires USEPA to impose sanctions.

Furthermore, pursuant to section 110(k)(5) of the CAA, the USEPA finds that the currently approved NSR SIP does not meet the requirements of the CAA. The specific provisions that USEPA finds do not meet the CAA are those that allow sources to construct before obtaining an NSR permit. The USEPA intends to issue a notice of SIP deficiency on this issue at the time of its final rulemaking on Michigan's NSR SIP submittal. This notice would allow the State up to 18 months to correct the deficiency before USEPA must impose sanctions.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. Proposed disapproval of the rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this proposed rulemaking.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. Proposed disapproval of the rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed disapproval is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks disproportionately on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's proposed disapproval does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed disapproval will not have a significant impact on a substantial number of small entities. A proposed disapproval of a requested SIP revision under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing Federal requirements nor does it impose new requirements. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal would not affect State-enforceability. Moreover, EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, because the proposed disapproval does not affect any existing requirements nor impose any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action being proposed does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The proposed disapproval would not change existing requirements and does not impose a Federal mandate. If EPA were to disapprove the State's SIP submittal, pre-existing requirements would remain in place and State enforceability of the submittal would be unaffected. The action would impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, New source review, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 22, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–29303 Filed 11–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–179–0194EC; FRL–6472–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision San Joaquin Valley Unified Air Pollution Control District; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published September 23, 1999 (64 FR 51489). On September 23, 1999, EPA proposed a limited approval and limited disapproval of revisions to the California State Implementation Plan controlling particulate matter (PM–10) emissions from fugitive dust sources in the San Joaquin Valley Unified Air Pollution Control District. In response to requests from the Western States Petroleum Association, Citizens Advisory Group of Industries, Independent Oil Producers' Agency, Nisei Farmers League, and California Cotton Ginners and Growers Associations, EPA is extending the comment period for 30 days.

DATES: The comment period is extended until December 8, 1999.

ADDRESSES: Comments should be submitted to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Karen Irwin at (415) 744–1903.

Dated: October 29, 1999.

Laura Yoshi,

Deputy, Regional Administrator, Region IX.

[FR Doc. 99–29307 Filed 11–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6471–3]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Jacksonville Municipal Landfill Superfund site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Jacksonville Municipal Landfill Superfund Site ("the Site") from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the State of Arkansas Department of Environmental Quality (ADEQ), have determined that the remedial action for the Site has been successfully completed and that no further action is warranted.

DATES: Comments on this proposed deletion may be submitted to the EPA on or before December 9, 1999.

ADDRESSES: Comments may be mailed to: Mr. Donn Walters, Community Involvement Coordinator, U.S. EPA (6SF–P), 1445 Ross Ave., Dallas, Texas 75202–2733, (214) 665–6483 or 1–800–533–3508 (Toll Free), walters.donn@epa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Aisling, Remedial Project Manager, U.S. EPA (6SF–LT), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8509 or 1–800–533–3508 (Toll Free), aisling.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

Information Repositories

Comprehensive information on the Site has been compiled in a public docket which is available for viewing at the Jacksonville Municipal Landfill Superfund Site information repositories:

U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6427, Mon.–Fri. 8:00 a.m.–4:30 p.m., (Please call in advance.)

City Hall (Administrative Record File), 1 Industrial Drive, Jacksonville, Arkansas, Mon.–Fri. 8 a.m.–5 p.m.

Base Library, Little Rock Air Force Base, Jacksonville, Arkansas, Mon.–Thurs. 10 a.m.–8 p.m., Fri. and Sat. 10 a.m.–5 p.m.

Arkansas Department of Environmental Quality (Administrative Record File), 8001 National Drive, Little Rock, Arkansas, Mon.–Fri. 8 a.m.–4:30 p.m.

Table of Contents

I. Introduction
II. NPL Deletion Criteria

III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Jacksonville Municipal Landfill Superfund Site ("the Site") in Lonoke County, Arkansas, from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. The EPA and the State of Arkansas Department of Environmental Quality (ADEQ), have determined that the remedial action for the Site has been successfully completed.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures the EPA is using for this action. Section IV discusses the Jacksonville Municipal Landfill Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, the EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required;

ii. All appropriate response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or,

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, the EPA may initiate additional remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

In the case of this Site, the selected remedy is protective of human health and the environment. Consistent with the Site Consent Decree, the city of Jacksonville has agreed to take over operation and maintenance of the Site and conduct annual inspections. The EPA plans to conduct the first five-year review of the final remedy in late 1999. The EPA will also perform future five-year reviews.

III. Deletion Procedures

The following procedures were used for the intended deletion of the Site:

(1) all appropriate response under CERCLA has been implemented and no further action by the EPA is appropriate;

(2) The ADEQ has concurred with the proposed deletion decision;

(3) A notice has been published in the local newspapers and has been distributed to appropriate Federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on the EPA's Notice of Intent to Delete; and

(4) All relevant documents have been made available in the local site information repositories.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

The EPA's regional office will accept and evaluate public comments on the EPA's Notice of Intent to Delete for the Site before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

Deletion of the Site from the NPL will occur when the Regional Administrator of the EPA Region 6 places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office. They will also be placed in the repository locations listed earlier in this document.

IV. Basis for Intended Site Deletion

The following information provides the Agency's rationale for the proposal for deletion of this Site from the NPL.

A. Site Background and History

The Site is encompasses about 40 acres of an 80 acre landfill in Lonoke County, outside the city limits of Jacksonville, Arkansas, approximately 12 miles northeast of Little Rock, Arkansas. An estimated 10,000 people live within three miles of the Site and draw drinking water from public and private wells. Less than one-half mile west of the Jacksonville Municipal Landfill Superfund Site is the Rogers Road Municipal Landfill Superfund Site. Because of the proximity of the sites and the similarities in their features and characteristics, the Superfund site-related activities for these sites were carried out concurrently.

The city of Jacksonville operated the landfill from the time it purchased the land in 1953 until 1974. Open burning and trenching were the primary methods of waste disposal used at the Site. The landfill was closed in July 1973 when the ADEQ (formerly the Arkansas Department of Pollution Control and Ecology) refused to grant a landfill permit because of the high water table and poor drainage in the area.

Specific waste types and quantities were not recorded by the Site owner/operators; however, in addition to municipal waste, several drums of industrial waste from a local herbicide manufacturer, Vertac Chemical Corporation (Vertac), were disposed of in the landfill. On-site soil and drums were found to be contaminated with dioxin (2,3,7,8-tetrachlorodibenzo (P) dioxin expressed as 2,3,7,8-TCDD equivalents) and the herbicides 2,4-D, 2,4,5-T, and 2,4,5-TP. These drums were located in four isolated areas, mainly near the surface of the landfill.

In early 1986, the city of Jacksonville fenced the Site to prevent public access. The Site was added to the National Priorities List on July 22, 1987.

B. Response Actions

The Remedial Investigation (RI) for the Site, which described the nature and extent of contamination, was released to the public in July 1990. The Feasibility Study (FS) was also released at this time. A 60-day public comment period began on July 9, 1990, and ended on September 7, 1990. In addition, a public meeting was held on July 18, 1990, to present the results of the RI/FS and to accept public comment.

The EPA reviewed the results of the July 1990 RI/FS and all public comments received. On September 27, 1990, a Record of Decision (ROD) for the Site, which included a number of construction elements to implement the Remedial Action, was issued. The EPA, the ADEQ, and the city of Jacksonville participated in the clean-up in accordance with a June 20, 1994, Consent Decree (CD) between the EPA and the city of Jacksonville.

The remedial action at the Site included:

- Excavation of contaminated soil and debris containing greater than 10 parts per billion (ppb) equivalent 2,3,7,8-TCDD and backfilling the excavated area;
- Transportation of the excavated material to the Vertac Chemical Corporation Superfund Site in Jacksonville, Arkansas;
- Incineration of the excavated contaminated material and disposal of residuals at Vertac;
- Steam-cleaning and disposal of large items of refuse removed from contaminated areas at the Jacksonville Site;
- Covering soil, debris and waste meeting the criteria stated below with twelve inches of soil:

(1) 2,3,7,8-TCDD concentrations >1.0 and ≤10 ppb, or
(2) Cumulative Hazard Index >.3 for 2,4,5-T; 2,4,5 TP; and 2,4-DCP;

- Institutional controls such as fence maintenance and restricting the use of ground water; and,
- Ground water monitoring.

Construction was completed in early 1995. A site inspection occurred on September 20, 1995, which showed that the remedial objectives had been achieved. The EPA also checked the Site on September 1, 1998. At that time, the constructed remedy was still performing as designed and was controlling the risks to human health and the environment as specified in the ROD. The soil cover was in excellent shape with no evidence of subsidence, erosion, animal burrows, or standing water. The grass cover was well-established and provided thorough coverage of the soil cover. The site fences had been maintained and there was no evidence of trespassers.

C. Clean-Up Standards

The remedial action cleanup activities at the Site are consistent with the objectives of the NCP and will provide protection to human health and the environment. Specifically, confirmatory sampling conducted at the conclusion of the cleanup verified that the site has achieved the ROD cleanup standards: all contaminated soil and debris containing greater than 10 part per billion (ppb) equivalent 2,3,7,8-TCDD were excavated and all soil and debris with 2,3,7,8-TCDD concentrations >1.0 and ≤10 ppb, or with a Cumulative Hazard Index >.3 for 2,4,5-T and 2,4,5 TP were either excavated or covered with one foot of clean soil. Ground water samples taken in November 1994; June 1995, December 1995, October 1996, and November 1997, did not show dioxin contamination, nor did they show any site-related, statistically significant concentrations of organic contaminants or inorganic (metals) contaminants above acceptable health-based levels.

The confirmatory sampling at the Site and backfilling of the Site with clean soil provide assurances that the Site will no longer pose a threat to human health or the environment as long as the institutional controls are enforced and the soil cover is maintained. The source of contaminants identified in the ROD, the disintegrating drums and adjacent contaminated soil, has been addressed through excavation and covering with a clean soil cover. The cleanup also eliminated the impacts to the ground water from the chemicals of concern at the Site.

At this time, the Site has been cleaned up to residential standards. Therefore, from a health-risk standpoint, the landfill itself has no land-use restrictions, except for the areas where EPA placed a soil cover. Institutional controls, in the form of deed restrictions, state that the soil cover may not be disturbed. Additional deed restrictions state that no drinking water wells may be drilled at the Site.

D. Operations and Maintenance

The Site is designed to require very little maintenance. Site operations and maintenance (O&M) activities that have been performed by the city of Jacksonville since the 1995 site completion include routine site inspections to ensure that positive drainage (as defined in the CD Statement of Work) is occurring and that the perimeter fence is intact. These activities have maintained the protectiveness of the remedy. In addition, Site ground water monitoring, to ensure that the remedy was effective and operating properly, has been conducted jointly by the ADEQ and the city of Jacksonville.

The city of Jacksonville, as agreed upon in the CD and accompanying Statement of Work and as detailed in the Remedial Action (RA) Work Plan, has assumed all responsibility for O&M at the Site. Plans for O&M are in place and are sufficient to maintain the protectiveness of the remedy. The city is fulfilling its obligation to perform the O&M and it is expected that the city of Jacksonville will be able to provide future maintenance with a minimal amount of work.

E. Five-Year Review

CERCLA requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the Site. Because the cleanup of the Site utilized a soil cover in some areas as the method to reduce the risk, and because the ROD calls for institutional controls limiting ground water use on and immediately downgradient of the Site, the five-year review process will be used to ensure that the cover is still intact and blocking exposure pathways and that the institutional controls are still in place.

F. Community Involvement

The EPA published its Community Relations Plan in November 1988, after interviews with local residents and officials. Several information repositories were established in the area near the Site and all of the documents used to select a Site remedy were placed in the repositories before the final ROD was issued. In August 1994, a public open house meeting was held to inform the citizens of the initiation of site construction activities. Citizens were also invited to the site completion ceremony held in September 1995. Documents in the deletion docket which the EPA relied on to make this recommendation of deletion of the Site from the NPL are available to the public in the information repositories.

G. Applicable Deletion Criteria

One of the three criteria for site deletion specifies that the EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." (40 CFR 300.425(e)(1)(ii)). The EPA, with concurrence of the ADEQ, believes that this criterion for deletion has been met. Consequently, the EPA is proposing deletion of the Site from the NPL. Documents supporting this action are available at the information repositories listed earlier in this document.

H. State Concurrence

The Arkansas Department of Environmental Quality concurs with the proposed deletion of the Jacksonville

Municipal Landfill Superfund Site from the NPL.

Dated: August 3, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 99–29073 Filed 11–8–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–325; FCC 99–327]

Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission considers alternative approaches to introduce Digital Audio Broadcasting (DAB) to the American public. This document is intended to help the Commission determine whether an in-band, on-channel (IBOC) model or a model utilizing new spectrum would be the best means to promptly introduce DAB service. This document intends to foster development of both models, help DAB system proponents identify design issues, and encourage modifications to advance Commission's policy objectives. This document is in response to USA Digital Radio's (USADR) Petition for rulemaking, which requested initiation of a proceeding to implement IBOC DAB technology.

DATES: Comments are due on or before January 24, 2000, and reply comments are due on or before February 22, 2000.

ADDRESSES: Parties who choose to file comments by paper should address their comments to Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554 and should also submit comments on 3.5 inch diskette using Microsoft Word or compatible software addressed to William J. Scher, Federal Communications Commission, 445 12th Street, SW., Room 2–A445, Washington, DC 20554. Electronic comments may also be submitted using the Commission's electronic comment filing system via the Internet to <http://www.fcc.gov/e-file/ecfs.html>.

FOR FURTHER INFORMATION CONTACT: Peter Doyle or William Scher at (202) 418–2780 or pdoyle@fcc.gov or wscher@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. *IBOC DAB.* IBOC systems allow simultaneous broadcast of analog and digital radio signals in the AM and FM bands without disruption to existing analog service. IBOC DAB systems have not been conclusively proven to be technically viable, but recent advances hold real promise. In the hybrid operational mode, IBOC systems transmit lower power digital signal sidebands positioned on either side of the host analog signal. Digital signals would be interleaved (station A's upper digital sideband would be between 1st adjacent channel station B's lower and upper digital sidebands, and adjoining station B's carrier frequency). The presence of digital sidebands would reduce the separation between the host analog signal and 2nd and 3rd adjacent channel digital signals. IBOC proponents believe digital signal processing techniques will permit transmission of a digital "pair" of each analog signal in the AM and FM bands, without disrupting existing analog service.

2. In the IBOC all-digital mode, the system proposed by USADR would continue to divide the digital signal into sidebands, boost power by tenfold, and use the channel center for lower-power auxiliary services. The increased power of the signal sidebands likely would interfere with 1st adjacent channel analog signals. Therefore, USADR proposes to use the hybrid mode for 12 years and then sunset protection of analog signals. At that time, it proposes to implement the all digital mode. The system proposed by Lucent Technologies ("Lucent") consolidates the digital signal in the channel center in the all-digital mode, and proposes to use the 1st adjacent for auxiliary services. No sunset of protection for analog signals would be necessary because Lucent's model conforms to the Commission's current analog technical rules.

3. *DAB Public Policy Objectives.* In this Notice, the Commission's public policy objectives to introduce DAB are (1) to provide vastly improved radio service to the public, (2) to permit broadcasters and listeners to realize fully the superior technical performance capabilities of DAB; (3) to support a vibrant and vital terrestrial radio service for the public and create DAB opportunities for existing radio broadcasters; (4) to ensure that the introduction of DAB does not weaken the vitality of our free, over-the-air radio broadcast service; (5) to provide all broadcasters with the opportunity to provide DAB service. The Commission will favor systems that are spectrum efficient, that do not require burdensome investments in new broadcast transmission equipment, and that provide broadcasters with incentives to convert to DAB.

4. *Tentative Selection Criteria.* The Commission proposes to apply the following evaluative criteria to determine which DAB model and/or system would best promote the public policy objectives: (1) enhanced audio fidelity; (2) robustness to interference and other signal impairments; (3) compatibility with existing analog service; (4) spectrum efficiency; (5) flexibility; (6) auxiliary capacity; (7) extensibility; (8) accommodation for existing broadcasters; (9) coverage; and (10) implementation costs/affordability of equipment.

5. *Enhanced Audio Fidelity/Robustness.* DAB system proponents anticipate that AM IBOC DAB systems will offer sound quality comparable to today's stereo FM systems, and that FM IBOC DAB systems will deliver near-CD quality sound. As to robustness, DAB systems may improve reception by using techniques that protect digital signals from interference that affects analog signals. The Commission seeks comment of these selection criteria, including the specific standards that should be used to compare competing systems.

6. A comparison of IBOC and new-spectrum alternatives must consider the time frame to achieve all-digital operations and short-term performance advantages of a hybrid IBOC system over analog. The Commission seeks comment on the issue. The Commission also seeks comment on appropriate ways to compare IBOC and new-spectrum DAB alternatives under this selection criteria.

7. *Compatibility.* The Commission tentatively concludes that IBOC systems should minimize interference to host and adjacent-channel analog signals in hybrid mode including interference to FM subcarriers. The opportunity to introduce new ancillary services is tied to initiation of all-digital operations. A system which permits rapid implementation to all-digital radio service (such as Lucent's) may serve the public interest better than a system which relies on a longer transition period with a fixed sunset of analog protection (such as USADR's). The Commission seeks comment on whether all-digital compatibility with analog signals should be an evaluative criteria for IBOC systems.

8. The Commission seeks comment on how a DAB system could be designed to protect a possible future LPFM service. The Commission seeks comment on the

potential for enhancing the robustness of IBOC systems to reject undesired 2nd and 3rd adjacent channel signals and the likely impact on such modifications.

9. *Spectrum Efficiency.* Spectrum efficiency considers not only whether a DAB technology would not require additional spectrum, but also the additional value that results from the transition from analog to digital transmission service. The added value of spectrum is the product of several factors, including the capacity to transmit greater data per hertz, enhanced flexibility, the lesser likelihood of digital signals to cause interference, less susceptibility to interference, and more robust with respect to multi-path fading and non-radio noise sources, and the capacity to provide a listenable service at relatively low signal strength levels. The Commission wants to examine if digital receivers could provide additional protection against interference. What would the cost be to consumers and, besides cost, are there other considerations?

10. The Commission seeks comment on possible DAB efficiency standards. Are any of the Eureka-147 and/or satellite DARS signal bandwidth and interference protection standards relevant in establishing DAB spectrum efficiency standards? What bandwidth is necessary for CD-quality signals? What are the spectrum implications of recent advances in coding and multistreaming technologies? What are the quantifiable trade-offs between bandwidth and signal robustness? What trade-offs should the Commission consider in balancing the needs of incumbents and new entrants? Should there be different data capacity criteria during and after transition? Would transition be slowed if incumbents were assigned less bandwidth for all digital operations? Is preserving (or expanding) bandwidth assignments necessary?

11. *Flexibility/auxiliary capacity.* The Commission tentatively concludes that ancillary services must not technically impair reception of DAB programming. The Commission seeks comment on whether the Digital Television (DTV) framework is appropriate for radio and what limits if any, the Commission should establish for ancillary services.

12. *Extensibility.* The Commission tentatively concludes that extensibility (ability of a DAB system to adapt to future technological advances) is crucial to preserving of free broadcast in a digital environment and ensuring that listeners fully benefit from DAB. The Commission seeks comment.

13. *Accommodation.* The Commission tentatively concludes that a DAB system should, to the maximum extent possible, accommodate all existing broadcasters wanting to initiate DAB and that placing AM and FM on equal footing is not essential. The Commission seeks comment.

14. *Coverage.* Broadcasters argue that a DAB system should be able to replicate existing coverage areas, which tend to be greater than "interference-free" areas protected under Commission's rules. While the Commission recognizes that preserving existing coverage areas may be important, it tentatively concludes that the public interest is best served by a digital assignment policy based on analog protected service contours. Service contours reflect a balance between providing adequate service areas and expanding the number of station assignments. The Commission requests comment.

15. *IBOC DAB Model.* The Commission believes that IBOC would be superior to a new spectrum model because it would not require new spectrum, it would permit a fast transition to DAB while preserving benefits of analog service, and may achieve certain spectrum efficiencies. To ensure a smooth initiation to DAB, the Commission tentatively concludes that if IBOC is adopted, IBOC DAB licenses will not count as distinct authorizations for purposes of local ownership rules and seeks comment on that view.

16. The Commission seeks comment on the spectrum efficiency concerns inherent in the IBOC model and whether a model proposing to switch digital audio transmission from sidebands to a center band in the all digital mode would be more spectrally efficient than one which continues to carry the main audio signal in digital sidebands. The proposed IBOC systems would double the bandwidth licensed to AM and FM stations to 20 kHz and 400 kHz respectively, spectrum which is currently included in analog "emission masks" and the Commission seeks comment on whether spectrum may be returned at the end of the licensees' IBOC transition to an all-digital operating environment. The Commission seeks comment on how to balance the need to provide broadcasters with sufficient incentive to transition rapidly to DAB with the need to respond to unmet demand for new entrants. The Commission seeks analyses of minimum power levels needed to preserve service within protective service areas in a digital environment, and alternatively, the levels that would result in significant disruption to current listening patterns.

17. *New Spectrum DAB Model.* As an alternative to IBOC, the Commission requests comment on whether the six MHz of spectrum at 82–88 MHz (now TV Ch. 6) could be reallocated to DAB at the end of the DTV transition. The Commission seeks comment on any possible adverse affects on DTV implementation and television service in general. The earliest the spectrum could be available is 2007; however, the availability of this spectrum is tied to the end of the DTV transition period and could be significantly later. The Commission requests comment on all aspects of the new spectrum option and asks whether there are other frequency bands to consider. IBOC and new spectrum options are not mutually exclusive and could be complementary.

18. The Commission seeks comment on whether new spectrum models, which are independent of the existing analog AM and FM radio systems, would provide greater flexibility to plan and implement DAB, and whether compared to IBOC in hybrid mode, it would operate at a higher data rate and support higher audio quality and enhanced ancillary services. At the time when an 82–88 MHz DAB system proves successful, analog stations licensed to frequencies in the existing 88–108 MHz could convert to DAB. The transition could result in significant service disruptions, unless listeners have digital receivers. The Commission seeks comment on such transition issues.

19. The Commission seeks comment on whether to maintain the same channel bandwidth assignment scheme currently used with FM service and if this approach would facilitate conversion to DAB and a common FM/DAB radio receiver design in the 82–108 MHz band. The Commission seeks comment on whether to adopt a consistent service area approach which follows the plan of existing classes of FM stations (Class A, B1, B, C3, C2, C1 and C) or should all DAB stations be provided a common service area?

20. The Commission seeks comment on whether all AM and FM broadcasters should be eligible for a DAB license, whether DAB licenses should be excluded from local ownership limits and whether new channels should be reserved for educational use and new entrants. The Commission seeks comment on whether it should limit the number of DAB licenses in each market and whether issuing DAB licenses would implicate statutory auction requirements.

21. The Commission seeks comment on whether to allot DAB channels to communities in proportion to the

number of AM and FM channels operating or based on initial expression of interest by applicants, and whether either approach is consistent with 47 U.S.C. 307(b). The Commission requests comment on whether to use minimum geographic spacing distances or other engineering criteria to assess technical acceptability of new DAB allotments and modifications.

22. The Commission seeks comment on whether Channel 6 should be used to ensure adequate new entrant DAB opportunities and whether the Commission may give preferences to LPFM licensees in assigning Channel 6 spectrum, and if so, whether it should do so.

23. *DAB Transmission Standard.* The Commission tentatively concludes that it is in the public interest for the Commission to take a role in DAB standards development with the advice and involvement of all sectors of the industry. The Commission seeks comment on how likely the broadcast industry is to establish a de facto standard without Commission action and whether there is anything the Commission can do short of mandating a standard to assist the industry? The Commission lacks sufficient information at this time to conclude that a Commission-mandated transmission standard is necessary and seeks comment on whether a single mandated standard is desirable. The Commission seeks comment on whether there is a high degree of compatibility among the several DAB systems. It also seeks comment on whether developments in digital signal processors (DSPs) and DSP chip technology make a standard unnecessary, whether an "open architecture" approach is feasible, and what impact such an approach would have on the development and costs of receivers.

24. *Models for IBOC DAB System Testing and Evaluation.* The Commission believes that it is necessary to rely to some degree on the expertise of the private sector for DAB system evaluations and ultimately, recommendations for a transmission standard. However, it believes it is premature to select an approach at this time. The NRSC has set a deadline of December 15, 1999 for proponents to submit system test results and the Commission requests that the parties also submit the reports to the Commission as part of this proceeding. The Commission would give great weight to a fair and thorough NRSC testing process and any industry consensus the NRSC may achieve. However, the Commission will act promptly to provide an alternative mechanism if the current process breaks down. The Commission will revisit the effectiveness of the NRSC approach once the Commission reviews the NRSC report on IBOC tests expected the first quarter of 2000. The Commission seeks comment on evaluative models.

25. *Initial Regulatory Flexibility Analysis.* The Commission has prepared an Initial Regulatory Flexibility Analysis of the possible significant economic impact on small entities by the policies and rules proposed in this Notice. Comments are requested on this IRFA and must be identified as responses to the IRFA. The proposed rules and policies potentially will apply to all AM and FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public, including commercial, religious, educational, and other radio stations. As of December 31, 1998, official Commission records indicate that 12,472 radio stations were operating, of which 4,793 were AM stations. Thus, the proposed rules will affect 12,472 radio stations, 11,973 of which are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies. In addition, any entity that seeks or desires to obtain a DAB license may be affected by the proposals. The number of entities that seek to obtain a DAB radio broadcast license is unknown. The Commission invites comment on such number. The Notice sets forth policy objectives and proposes criteria for the selection of alternative DAB models and/or systems that will promote the interests of small entities and minimize the economic impact on such entities of a transition to DAB service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–29270 Filed 11–8–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Part 211

[DFARS Case 99–D024]

Defense Federal Acquisition Regulation Supplement; OMB Circular A–119

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address use of a Federal Acquisition Regulation (FAR) provision that invites offerors to propose alternatives to Government-unique standards. This DFARS rule instructs DoD contracting officers not to use the FAR provision, since DoD uses the Single Process Initiative to encourage offerors to propose alternatives to Government-unique specifications and standards.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before January 10, 2000 to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 99–D024.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99–D024 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 99–D024 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, (703) 602–4245. Please cite DFARS Case 99–D024.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed DFARS rule supplements the final FAR rule that was published at 64 FR 51834 on September 24, 1999 (Federal Acquisition Circular 97–14, Item V) to implement Office of Management and Budget Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities. The FAR rule added a provision at FAR 52.211–7 to permit offerors to propose voluntary consensus standards as alternatives to

Government-unique standards included in a solicitation. In accordance with the prescription at FAR 11.107(b), use of the provision is optional for agencies that use the categorical method of reporting their use of voluntary consensus standards to the National Institute of Standards and Technology. DoD uses the categorical method of reporting. In addition, DoD uses the Single Process Initiative procedures at DFARS 211.273 and 252.211–7005 to encourage offerors to propose industry standards as alternatives to Government-unique specifications and standards. Therefore, this DFARS rule specifies that the provision at FAR 52.211–7 will not be used in DoD solicitations.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the FAR already permits optional use of the provision at FAR 52.211–7, and DoD already has implemented procedures for encouraging offerors to propose alternatives to Government-unique specifications and standards through the Single Process Initiative. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D024 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 211

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 211 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 211 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

2. Subpart 211.1 is added to read as follows:

Subpart 211.1—Selecting and Developing Requirements Documents

Sec.
211.107 Solicitation provision.

211.107 Solicitation provision.

(b) DoD uses the categorical method of reporting. Do not use the provision at FAR 52.211–7, Alternatives to Government-Unique Standards, in DoD solicitations.

[FR Doc. 99–29039 Filed 11–8–99; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register

Vol. 64, No. 216

Tuesday, November 9, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Wednesday, November 17, 1999. The meeting will be held in the Atrium Building, Calhoun's Restaurant, 1004 Parkway, Catlinburg, Tennessee, beginning at 1:00 p.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Chairman's Report
III. Millennium Discussion
  A. Follow up from Tuesday's Discussion at Oak Ridge—Action
  B. Follow up from Wednesday's Discussion Regarding Managing Cultural Resources in Natural Areas—Action
  C. Council Millennium Report on Federal Stewardship—Discussion
IV. Proposed Council Policy Regarding Tribal Relations—Discussion
V. Executive Director's Report
  A. Section 106 Cases—Report
  B. Legislation Update—Report
VI. New Business
  A. Meeting Schedule for 2000—Report
VII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: November 3, 1999.

John M. Fowler,

Executive Director.

[FR Doc. 99–29239 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–084–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for suggested agenda topics.

SUMMARY: We are issuing this notice to inform producers and users of veterinary biological products, and other interested individuals, that we will be holding our ninth annual public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. We are in the process of planning the meeting agenda and are requesting suggestions for topics of general interest to producers and other interested individuals.

DATES: The public meeting will be held on Monday and Tuesday, April 3 and 4, 2000, from 8 a.m. to approximately 5 p.m. each day.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: For further information on agenda topics, contact Mr. Steven A. Karli, Director, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail Steven.A.Karli@usda.gov. For registration information, contact Ms. Kay Wessman at the same address and fax number; phone (515) 232–5785 extension 127; or e-mail Kay.Wessman@usda.gov.

SUPPLEMENTARY INFORMATION: Since 1989, the Animal and Plant Health Inspection Service (APHIS) has held eight public meetings in Ames, IA, on veterinary biologics. The meetings provide an opportunity for the exchange of information between APHIS representatives, producers and users of veterinary biological products, and other interested individuals. APHIS is in the process of planning the agenda for the ninth annual meeting, which will be held on April 3 and 4, 2000.

The agenda for the meeting is not yet complete. Topics that have been suggested include: (1) Followup of customer service feedback; (2) oil adjuvants; (3) electronic submission of regulatory information; (4) antibody products; (5) progress on international harmonization; and (6) update on compliance with *in vitro* references. Before finalizing the agenda, APHIS is seeking suggestions for additional meeting topics from the interested public.

We would also like to invite interested individuals to use this meeting to present their ideas and suggestions concerning the licensing, manufacturing, testing, and distribution of veterinary biologics.

Please submit suggested meeting topics (for both breakout and general sessions) and proposed presentation titles to the person listed under **FOR FURTHER INFORMATION CONTACT** on or before December 17, 1999. For proposed presentations, please include the name(s) of the presenter(s) and the approximate amount of time that will be needed for each presentation.

After the agenda is finalized, APHIS will announce the schedule in the **Federal Register**.

Done in Washington, DC, this 3rd day of November 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–29320 Filed 11–8–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

National Drought Policy Commission

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Commission meeting, public hearing and request for comments.

SUMMARY: The National Drought Policy Act of 1998 established the National Drought Policy Commission (Commission). The Farm Service Agency (FSA) was identified as the lead USDA agency to provide support to the Commission. The Commission shall conduct a thorough study and submit a report to the President and Congress on national drought policy. Prior meetings of the Commission were held on July 22, 1999, and September 22, 1999, and public hearings on July 23, 1999, September 22, 1999, and October 13, 1999. Minutes of these meetings and a list of Commission members can be found on the Commission's web site at http:www.fsa.usda.gov/drought. This notice announces the third meeting, and fourth public hearing and seeks comments on issues that the Commission should address and recommendations that the Commission should consider as part of its report.

DATES: The Commission will conduct a public hearing on December 1, 1999, from 9 a.m. to 5 p.m. in the First Floor Board Room of the Metropolitan Water District of Southern California Office Building, 700 North Alameda Street, Los Angeles, California.

The Commission will meet on December 2, 1999, from 8 a.m. to 5 p.m. in the same location. All times noted are Pacific Standard Time.

All meetings and public hearings are open to the public; however, seating is limited and available on a first-come basis.

Anyone wishing to make an oral presentation to the Commission at the public hearing, must contact the Executive Director, Leona Dittus, in writing (by letter, fax or internet) no later than 12 noon, November 24, 1999, in order to be included on the agenda. Presenters will be approved on a first-come, first-served basis. The request should identify the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. Thirty-five copies of any written presentation material shall be given to the Executive Director by all presenters no later than the time of the presentation for distribution to the Commission and the interested public. Those wishing to testify, but who are unable to notify the Commission office by November 24, 1999, will be able to sign up as a presenter the day of the hearing (December 1) between 8 a.m. and 10 a.m. These presenters will testify on a first-come, first-served basis and comments will be limited based on the time available and the number of presenters. Written statements will be accepted at the meeting, or may be mailed or faxed to the Commission office.

Persons with disabilities who require accommodations to attend or participate in this meeting should contact Leona Dittus by telephone at 202–720–3168 on Internet: leona.dittus@usda.gov, or through Federal Relay Service at 1–800–877–8339, by COB November 24, 1999.

COMMENTS: The public is invited to respond and/or to submit additional comments, concerns, and issues for consideration by the Commission.

ADDRESSES: Comments and statements should be sent to Leona Dittus, Executive Director, National Drought Policy Commission, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 6701–S, STOP 0501, Washington, DC 20250–0501.

FOR FURTHER INFORMATION CONTACT: Leona Dittus (202) 720–3168; FAX (202) 720–9688; Internet: leona.dittus@usda.gov.

SUPPLEMENTARY INFORMATION: The Commission will review the first draft of the Commission findings. They will also discuss the status of Commission activities and other committee business. Below is a draft vision statement and set of principles to guide the Commission. Draft Vision Statement: Our vision is of a U. S. citizenry and its governments well prepared for and capable of mitigating in a consistent and timely manner the impacts of drought in the new millennium.

This vision is based on the following principles:

A well-informed, involved public;
Self-reliance and self-determination;
Consideration of all affected entities and related issues, including legal, economic, geographic, climate, religious, and cultural differences, and environmental concerns;
Lessons from past drought experiences;
Comprehensive, long-term strategic planning, emphasizing preparedness and mitigation;
Federal role focused on appropriate coordination, technical assistance, education, and incentives while at all times respecting the rights and sovereignty of States, local governments, and tribes.

In addition to your own views and thoughts regarding a national drought policy, as you review the draft vision and guiding principles, the Commission would be interested in your thoughts regarding the following questions:

1. What is the best means for informing the public of Federal assistance for drought planning and mitigation?
2. What type of information do you need for responding to the drought?
3. What needs do you or your organization presently have with respect to addressing drought conditions?
4. What do you see as the Federal role with respect to drought preparedness? Drought response? Should Federal emergency assistance be contingent on advance preparedness?
5. Are there any ways you feel that the Federal Government could better coordinate with State, regional, tribal, and local governments in mitigating or responding to droughts?
6. What lessons have you or your organization learned from past drought experiences that would be beneficial in the creation of a national drought policy?

The purpose of the Commission is to provide advice and recommendations to the President and Congress on the creation of an integrated, coordinated Federal policy, designed to prepare for and respond to serious drought emergencies. Tasks for the Commission include developing recommendations that will: (a) Better integrate Federal laws and programs with ongoing State, local, and tribal programs, (b) improve public' awareness of the need for drought mitigation, prevention, and response, and (c) determine whether all Federal drought preparation and response programs should be consolidated under one existing Federal agency, and, if so, identify the agency. The Commission will be chaired by the Secretary of Agriculture or his designee. In the absence of the Chair, the Vice Chair will act in his stead. Administrative staff support essential to the execution of the Commission's responsibilities shall be provided by USDA.

Commission members specifically cited in Pub. L. 105–199, include the Secretaries of Agriculture, Interior, Army, and Commerce, the Director of the Federal Emergency Management Agency, and the Administrator of the Small Business Administration; two persons nominated by the National

Governors' Association, a person nominated by the National Association of Counties, and a person nominated by the Conference of Mayors. Those four members are appointed by the President. Six additional Commission members have been appointed by the Secretary of Agriculture, in coordination with the Secretary of the Interior and the Secretary of the Army. The six at-large members represent groups acutely affected by drought emergencies, such as the agricultural production community, the credit community, rural and urban water associations, Native Americans, and fishing and environmental interests.

Signed at Washington, DC, November 3, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–29397 Filed 11–5–99; 9:39 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Corrections for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on May 17, 1999, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR parts 217 and the use of the corrected newspaper listed under 36 CFR part 215 shall begin on or after November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR par 217 in the following newspaper which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in only one state of the 3 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Ranger Decisions

Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL

Conecuh Ranger District: *The Andalusia Star News*, published daily (Tuesday through Saturday) in Andalusia, AL

Oakmulgee Ranger District: *The Tuscaloosa News*, published daily in Tuscaloosa, AL

Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL

Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL

Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR

San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA

Toccoa Ranger District: *The News Observer*, published weekly (Wednesday) in Blue Ridge, GA

Brasstown Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA

Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA

Chattooga Ranger District: *Northeast Georgian*, published twice weekly (Tuesday & Friday) in Cornelia, GA

Chieftain & Toccoa Record, published twice weekly (Tuesday & Friday) in Toccoa, GA

White County News Telegraph, published weekly (Thursday) in Cleveland, GA

The Dahlonega Nuggett, published weekly (Thursday) in Dahlonega, GA

Cohutta Ranger District: *Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA

Oconee Ranger District: *Monticello News*, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)

Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Ranger Decisions

Ocoee-Hiwassee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN

Tellico-Hiwassee Ranger District: *Monroe County Advocate*, published weekly (Thursday) in Sweetwater, TN

Nolichucky-Unaka Ranger District: *Johnson City Press*, published daily in Johnson City, TN

Watauga Ranger District: *Johnson City Press*, published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Ranger Decisions

Morehead Ranger District: *Morehead News*, published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: *The Clay City Times*, published weekly (Thursday) in Stanton, KY
London Ranger District: *The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Somerset Ranger District: *Commonwealth-Journal*, published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: *McCreary County Record*, published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: *Manchester Enterprise*, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Ranger Decisions

Apalachicola Ranger District: *The Liberty Journal*, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: *The Ocala Star Banner*, published daily in Ocala, FL
Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL.
Seminole Ranger District: *The Daily Commercial*, published daily in Leesburg, FL
Wakulla Ranger District: *The Tallahassee Democrat*, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Ranger Decisions

Enoree Ranger District: *Newberry Observer*, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: *Seneca Journal and Tribune*, published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: *The Augusta Chronicle*, published daily in Augusta, GA
Wambaw Ranger District: *Post and Courier*, published daily in Charleston, SC
Witherbee Ranger District: *Post and Courier*, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions

Lee Ranger District: *Shenandoah Valley Herald*, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: *The Recorder*, published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: *Roanoke Times*, published daily in Roanoke, VA
James River Ranger District: *Virginian Review*, published daily (except Sunday) in Covington, VA
Deerfield Ranger District: *Daily News Leader*, published daily in Stuanton, VA
Dry River Ranger District: *Daily News Record*, published daily (except Sunday) in Harrisonburg, VA
Blacksburg Ranger District: *Roanoke Times*, published daily in Roanoke, VA, *Monroe Watchman*, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman*.)
Glenwood Ranger District: *Roanoke Times*, published daily in Roanoke, VA
New Castle Ranger District: *Roanoke Times*, published daily in Roanoke, VA
Mount Rogers National Recreation Area: *Bristol Herald Courier*, published daily in Bristol, VA
Clinch Ranger District: *Kingsport-Times News*, published daily in Kingsport, TN
Wythe Ranger District: *Southwest Virginia Enterprise*, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: *Minden Press Herald*, published daily in Minden, LA, *Homer Guardian Journal*, published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: *The Town Talk*, published daily in Alexandria, LA
Calcasieu Ranger District: *The Town Talk*, published daily in Alexandria, LA
Kisatchie Ranger District: *Natchitoches Times*, published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA
Winn Ranger District: *Winn Parish Enterprise*, published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Chickasawhay Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Delta Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
De Soto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Holly Springs Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Homochitto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Tombigbee Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Ashe-Erambert Project: *Clarion-Ledger*, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Appalachian Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC
Cheoah Ranger District: *Graham Star*, published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: *The Sun Journal*, published weekly (Sunday through Friday) in New Bern, NC
Grandfather Ranger District: *McDowell News*, published daily in Marion, NC
Highlands Ranger District: *The Highlander*, published weekly (mid May–mid Nov Tues & Fri; mid Nov–mid May Tues only) in Highlands, NC
Pisgah Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC

Tusquitee Ranger District: *Cherokee Scout*, published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: *Montgomery Herald*, published weekly (Wednesday) in Troy, NC
Wayah Ranger District: *The Franklin Press*, published bi-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Cold Springs Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Fourche Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Jessieville Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Mena Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Oden Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Poteau Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Winona Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Womble Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Choctaw Ranger District: *Tulsa World*, published daily in Tulsa, OK
Kiamichi Ranger District: *Tulsa World*, published daily in Tulsa, OK
Tiak Ranger District: *Tulsa World*, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions

The Courier, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: *Stone County Leader*, published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: *Newton County Times*, published weekly in Jasper, AR
Bayou Ranger District: *The Courier*, published daily (Sunday through Friday) in Russellville, AR
Pleasant Hill Ranger District: *Johnson County Graphic*, published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
Magazine Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
St. Francis Ranger District: *The Daily World*, published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions

Angelina National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Davy Crockett National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Sabine National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Sam Houston National Forest: *The Courier*, published daily in Conroe, TX
Caddo & LBJ National Grasslands: *Denton Record-Chronicle*, published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on May 17, 1999, of principal newspapers to be utilized for published notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

Cherokee National Forest, Tennessee

District Ranger Decisions

Ocoee-Hiwassee Ranger District:
Delete:
Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Tellico-Hiwassee Ranger District:
Delete:
Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

Change:
Alexandria Daily Town Talk to *The Town Talk*, published daily in Alexandria, LA

District Ranger Decisions

Catahoula Ranger District:
Change:
Alexandria Daily Town Talk to *The Town Talk*, published daily in Alexandria, LA
Calcasieu Ranger District:
Change:
Alexandria Daily Town Talk to *The Town Talk*, published daily in Alexandria, LA

Dated: November 3, 1999.

Eurial E. Turner,

Deputy Regional Forester for Operations.

[FR Doc. 99–29255 Filed 11–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Utah Northern Goshawk Project

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Intermountain Region of the Forest Service is announcing the availability of the predecisional Environmental Assessment for the Utah Northern Goshawk project. Pursuant to the National Forest Management Act (36 CFR 219.19), the Intermountain Region of the Forest Service is proposing to modify or delete current programmatic direction and add new direction in response to new information concerning management of habitat for the northern goshawk and its prey. This action will amend the management direction established in the current land and resource management plans for the Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, and Wasatch-Cache National Forests. The direction will be in the form of goals, objectives, standards, guidelines, and monitoring requirements.

FOR FURTHER INFORMATION CONTACT: Kathryn Hauser, 801/625–5897; e-mail: goshawks3/r4_uinta@fs.fed.us.

RESPONSIBLE OFFICIAL: Jack Blackwell, Intermountain Regional Forester, 324 25th Street, Ogden, UT 84401.

SUPPLEMENTARY INFORMATION: The Intermountain Region of the Forest Service filed a notice in the **Federal Register** (Vol. 63, No. 172, pages 47224–47225) on September 4, 1998 stating that the Forest Service, in cooperation with the Bureau of Land Management and the USDI, Fish and Wildlife Service (FWS), was reviewing the latest Utah state-wide information relating to the sustainability of habitat for the northern goshawk (Northern Goshawk in Utah: Habitat Assessment and Recommendations (Graham et al. 1999) and the USDI, FWS 12-month finding on a petition to list the northern goshawk (FR, June 29, 1998, Vol. 63, No. 124, pages 35183–35184). This notice stated that the Intermountain Region was proposing to amend regional direction, Regional Guide, and/or Forest Plans to incorporate interim direction in the form of goals and objectives, desired habitat conditions, standards and guidelines, and monitoring requirements developed in response to new scientific information concerning the management of forested habitat for the northern goshawk and its prey in Utah. A notice was filed in the **Federal Register** (Vol. 64, No. 24, pages 5758–5764) on February 5, 1999 stating that the scoping phase of public involvement for the Utah Northern Goshawk Habitat Management Project was beginning. That notice described the proposed management direction (in the form of goals, standards and guidelines, and monitoring requirements) and a desired habitat condition statement giving a portrayal of land conditions expected to result from the implementation of the proposed management direction over time.

This is a programmatic environmental assessment that examines six alternatives which address issues identified through the scoping and public involvement phases of the project. The Environmental Assessment is available electronically on the Project's website at www.fs.fed.us/r4/goshawk.

DATES: Written comments should be sent to the Utah Northern Goshawk project by January 10, 2000.

ADDRESSES: Send written comments to: USDA Forest Service, Utah Northern Goshawk Project Team, c/o Uinta NF, P.O. Box 1428, Provo, UT 84601, *or* on-line at: www.fs.fed.us/r4/goshawk, *or* e-mail to: goshawk3/r4_uinta@fs.fed.us.

Dated: November 9, 1999.

Christopher L. Pyron,

Deputy Regional Forester, Intermountain Region.

[FR Doc. 99–29256 Filed 11–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Analysis of Beaver Park Project Area; Black Hills National Forest; Spearfish/Nemo Ranger District; Lawrence and Meade Counties, SD

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: Pursuant to 36 CFR 219.10(g), the District Ranger of the Spearfish/Nemo Ranger District, Black Hills National Forest, gives notice of the agency's intent to prepare an environmental impact statement for the analysis of the Beaver Park Project Area. The responsible official for this project is John C. Twiss, Forest Supervisor, Black Hills National Forest.

ADDRESSES: Send written comments to the District Ranger, Spearfish/Nemo Ranger District, Black Hills National Forest, 2014 N. Main, Spearfish, SD 57783.

DATES: This project schedule is as follows: File Draft EIS—December 1999. File Final EIS and Record of Decision signature—February 2000.

FOR FURTHER INFORMATION CONTACT: John Natvig, Project Interdisciplinary Team Leader, 605–642–4622. Additional information, such as maps, scoping summary and list of issues identified through the scoping process can be obtained by written request to the Spearfish/Nemo Ranger District office, or by phone at the above address and phone number.

SUPPLEMENTARY INFORMATION: Timber harvest and associated activities within the Beaver Park Project Area (24,415 acres) is proposed by the Spearfish/Nemo Ranger District to address a growing mountain pine beetle epidemic. The 1997 Revised Land and Resource Management Plan (Forest Plan), which guides management of the Black Hills National Forest, identifies management goals and objectives relating to insect outbreaks and epidemics. The planning team has identified that there is a need for activities in the Beaver Park Project Area in order to meet these Forest Plan goals and objectives. The purpose and need for the project is to: (1) Reduce mountain pine beetle populations in pine stands; (2) cooperate with other agencies and private entities in efforts to decrease risk of a mountain pine beetle outbreak in the adjacent Sturgis Community Watershed and other private lands; and (3) reduce the susceptibility of vegetation to catastrophic fire and outbreaks of mountain pine beetles.

Proposed activities include commercial timber harvest (both sanitation harvest of beetle infested trees, and commercial thinning harvest), road construction and reconstruction associated with commercial timber harvest, non-commercial treatment of beetle infested trees, pheromone baiting, prescribed burning, and mechanical fuel treatment.

This project area includes Beaver Park, a 5,109 acre inventoried (RARE II) roadless area. The Record of Decision (ROD) for the 1997 Forest Plan did not recommend wilderness designation for Beaver Park, and placed this area into 4 management emphasis areas. The majority of the area (2,637 acres) is to be managed for Backcountry Non-motorized Recreation (Management Area (MA) 3.32), and is not part of the land base considered suitable for timber harvest. Another 106 acres was placed into the Sturgis Experimental Watershed (MA 5.3B), an area set aside for watershed research, and not part of the suitable land base. The remaining area was placed into the land base considered suitable for timber harvest; 1,795 acres are to be managed for Limited Motorized Use and Forest Production Emphasis (MA 4.1), and 571 acres are to be managed for Big Game Winter Range Emphasis. This proposed action includes timber harvest and new road construction within the roadless area.

Preliminary issues include effects from management activities on the roadless and natural characteristics of the Beaver Park roadless area (especially in MA 3.32), and the result this would have on future wilderness or Research Natural Area status. Issues also include effects of the mountain pine beetle epidemic on the City of Sturgis Community Watershed and Fort Meade Veteran's Administration Watershed, on wildfire risk, visual resources, and the Centennial Trail.

The EIS will analyze a range of alternatives including, (A) No Action; (B) Maximum Beetle Suppression, including timber harvest and road construction within the roadless area; (C) Beetle Suppression with No Roads in MA 3.32; (D) Beetle Suppression Outside the Beaver Park Roadless Area; and (E) Beetle Suppression with only Sanitation/Salvage Harvest in the Beaver Park Roadless Area. Alternatives B through D include road construction and the use of conventional and cable logging systems. Alternative E is similar to D outside the roadless area, but includes helicopter logging within the roadless area. All action alternatives include removal of currently infested trees and thinning of healthy stands to reduce the risk of beetle infestation.

The decision to be made in the Beaver Park Project Area is whether or not to control the existing mountain pine beetle epidemic, and by what strategy, as displayed in the various alternatives. This decision will include whether or not to control the epidemic within the roadless area boundary, and whether or not to allow new road construction within the roadless area. The decision on this project will abide by the terms of any decision issued on appeals of the Revised Forest Plan. The Black Hills

National Forest is exempt from the existing 18 month interim roads rule in roadless areas, due to the recently completed Revised Forest Plan.

The comment period on the draft environmental impact statement will be a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1033 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E. D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: October 29, 1999.

Pamela E. Brown,

District Ranger.

[FR Doc. 99–29324 Filed 11–8–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 5:00 p.m. on November 30, 1999, at the State Capitol Building, Governor's Conference Room, (Office of the Secretary of State, Room 157), 1900 Kanawha Boulevard East, Charleston, West Virginia 23505. The Committee will review developments since its two community forums and discuss its future report to the Commission. In preparation for its next forum in Charleston, the Committee will hear from invited guests on civil rights topics, including police-community relations and State and local assistance to persons with disabilities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gregory T. Hinton, 304–367–4244, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 3, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–29221 Filed 11–8–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–820]

Certain Compact Ductile Iron Waterworks Fittings and Glands From the People's Republic of China: Rescission of Antidumping Duty Administration Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of recession of antidumping duty administrative review.

SUMMARY: On November 16, 1995, the Department of Commerce (the Department) published in the **Federal Register** (60 FR 57573) the notice of initiation of the administrative review of the antidumping duty order on certain compact ductile iron waterworks fittings and glands (CDIW) from the People's Republic of China (PRC). We are terminating this review as a result of the timely withdrawal by Star Pipe Products, Inc. (Star Pipe) of its request for the review. Star Pipe was the only interested party that requested this review. This notice replaces one signed on February 15, 1996, but inadvertently not published in the **Federal Register**. at that time

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or James Terpstra, Office of Antidumping/Countervailing Duty Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1995, Star Pipe, an interested party, requested an adminstrative review of the antidumping duty order on CDIW from the PRC for the period September 1, 1994, through August 31, 1995, pursuant to 751(a)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. On November 16, 1995, the Department published in the **Federal Register** (60 FR 57573) the notice initation of that administrative review. Star Pipe timely withdrew its request for review on January 24, 1996, pursuant to the applicable regulation in effect at the time. *See* 19 CFR 353.22(a)(5). There were no other requests for this review. As as result, the Department is terminating this review. A determination to terminate the review was issued on February 15, 1996, but the original notice was lost and never published. This notice is being published to correct this error.

This notice is published in accordance with section 353.213(d)(4) for the Department's regulations.

Dated: November 2, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29343 Filed 11–8–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate From Sweden: Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 7, 1999, the Department of Commerce (the Department) published the preliminary results of review in the antidumping duty administrative review of stainless steel plate from Sweden (64 FR 36667). The review covers two manufacturers/exporters, Avesta Sheffield AB (Avesta) and Uddeholm Tooling AB, Bohler-Uddeholm Corporation and Uddeholm Limited (collectively, Uddeholm), of the subject merchandise to the United States and the period June 1, 1997 through May 31, 1998.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0374.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1998).

Background

The Department of the Treasury published an antidumping finding on stainless steel plate from Sweden on June 8, 1973 (38 FR 15079). On July 7, 1999, the Department published in the **Federal Register** the preliminary results of antidumping duty administrative review of this antidumping finding (64 FR 36667) for the period June 1, 1997 through May 31, 1998. We invited interested parties to comment and received one comment regarding Avesta. The Department has now completed this review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of stainless steel plate which is commonly used in scientific and industrial equipment because of its resistance to staining, rusting and pitting. Stainless steel plate is classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7219.11.00.00, 7219.12.00.05, 7219.12.00.15, 7219.12.00.45, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.21.00.05, 7219.21.00.50, 7219.22.00.05, 7219.22.00.10, 7219.22.00.30, 7219.22.00.60, 7219.31.00.10, 7219.31.00.50, 7220.11.00.00, 7222.30.00.00, and 7228.40.00.00. Although the subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The period of review is June 1, 1997 through May 31, 1998.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. We received a timely filed case brief from Avesta. Uddeholm informed the Department that it had no comments on the preliminary determination. Petitioners did not submit any comments.

Comment 1: Proper Facts Available Rate for Avesta

On September 2, 1998, Avesta notified the Department that it was unable to participate in the 1997–1998 administrative review and that it was not responding to the questionnaire sent by the Department on August 12, 1998. Because Avesta declined to respond to the Department's questionnaire, we assigned Avesta an adverse facts available rate of 29.36 percent in our preliminary determination.

Avesta argues that the Department, in determining the facts available rate for this review, used a final margin from a previous review that was subsequently amended. Avesta asserts that the margin used, which was published on January 12, 1998 (63 FR 1824) for the 1995–1996 administrative review, was amended on February 19, 1998 (63 FR 8434). Avesta further asserts that the corrected, lower rate of 24.67 percent should be the used as the basis of the Department's facts available determination, as it is the accurate highest previous margin in this case. Avesta argues that the Department should rely on the revised rate that reflects the correction of an error made by the Department in its 1995–1996 final determination. With the publication of the amended final results for the 1995–1996 period of review, Avesta asserts that the Department acknowledged that the initial final rate was, in fact, an intermediary rate that was neither reliable nor relevant.

Department's Position

The Department agrees with Avesta that the most appropriate facts available rate should be the highest final, amended rate from previous segments conducted by the Department, which for the instant review is Avesta's amended final rate for the 1995–1996 administrative review period. As noted in the preliminary determination, the Department selects a facts available rate that can be deemed both reliable and relevant (64 FR at 36668–69). Preliminary results, and final results that are later amended, are by their nature intermediary. In selecting the proper basis for a facts available rate, section 351.308(c)(1)(iii) of the Department's regulations specifies that results from previous administrative reviews can be considered an appropriate basis for secondary information used to make an adverse inference. In the instant review, the facts available margin selected is a rate calculated in a prior segment of the proceeding. Since the Department amended the rate in the final results for the 1995–1996 period of review, the amended final rate for the 1995–1996 review supersedes previous rates published for that segment in terms of accuracy and appropriateness. The amended final rate is the most reliable and relevant, thus meeting the requirements of section 776(c) of the Act.

Final Results of Review

As a result of this review, we determine that the following margins exist for the period June 1, 1997 through May 31, 1998:

Avesta—24.67 percent
Uddeholm—7.30 percent

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of sales examined.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of final results of review, for all shipments of stainless steel plate from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Avesta and Uddeholm will be the rates stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.46 percent, the all others rate established in the less-than-fair-value (LTFV) investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act, section 771(i) of the Act, and 19 CFR 351.213.

Dated: November 2, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29344 Filed 11–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of countervailing duty administrative review.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon at (202) 482–1487 and Eric B. Greynolds at (202) 482–6071, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On September 29,1998, the Department published a notice of initiation of administrative review of the countervailing duty order on certain cut-to-length plate from Mexico, covering the period January 1, 1997, through December 31, 1997 (63 FR 51893). On September 8, 1999, (64 FR 48796), we published the preliminary results of review. In our notice of preliminary results, we stated our intention to issue the final results of this review no later than January 6, 2000.

Extension of Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore the Department is extending the time limits for completion of the final results until no later than March 6, 2000. *See* Decision Memorandum from Bernard Carreau to Robert S. LaRussa, dated October 28, 1999, which is on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 3, 1999.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 99–29342 Filed 11–8–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Cancellation of the Twenty-Seventh Meeting of the Agricultural Advisory Committee

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a), that the public meeting of the Commodity Futures Trading Commission's Agricultural Advisory Committee that was scheduled to be held on November 9, 1999, in the first floor hearing room (Room 1000) of the Commission's Washington, DC headquarters, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581, from a 1 p.m. to 4:30 p.m., has been cancelled and will be rescheduled at a later date.

Any member of the public who desires additional information may contact Jennifer A. Roe, Administrative Assistant to Commissioner David D. Spears, Chairman of the Advisory Committee, at 202–418–5043, or Marcia K. Blase, Committee Management Officer, at 202–418–5138.

Issued by the Commission in Washington, DC on November 4, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–29348 Filed 11–5–99; 9:39 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Wednesday, November 17, 1999.

PLACE: 1155 21st St., NW, Washington, DC, Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Proposed Amendments to Regulation 1.41; Contract Market Rules
—Contract Market Rule Review Procedures; Final Rules
—Withdrawal of the Over-the-Counter Derivatives Concept Release

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 99–29443 Filed 11–5–99; 1:51 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m. Monday, November 15, 1999.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

FY 2000 Operating Plan

The staff will brief the Commission and the Commission will consider issues related to the Commission's Operating Plan for Fiscal Year 2000.

For a recorded message containing the latest agenda information, call (301) 504–0809.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 5, 1999.

Todd A. Stevenson,
Deputy Secretary.

[FR Doc. 99–29489 Filed 11–5–99; 3:49 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–01]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–01 with attached transmittal and policy justification.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 OCT 1999
In reply refer to:
I-99/012658

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-01 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Norway for defense articles and services estimated to cost $2.6 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-01

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) **Prospective Purchaser:** Norway

(ii) **Total Estimated Value:**

Major Defense Equipment*	$1.3 billion
Other	$1.3.billion
TOTAL	$2.6 billion

(iii) **Description of Articles or Services Offered:** Thirty F-16 Block 60 or F-16 Block 50+ aircraft (configured with either the F100-PW-229A or F110-GE-129 EFE engine; the APG-68(V)XN, APG-68(V)XM; or Agile Beam Radar with Electronically scanned antenna; three F100-PW-229A or F110-GE-129 EFE spare engines, and the Joint Helmet Mounted Cueing System, associated support equipment, software development/integration, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided.

(iv) **Military Department:** Air Force (SAE)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex under separate cover

(vii) **Date Report Delivered to Congress:** 26 OCT 1999

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* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Norway - F-16 Block 60 or F-16 Block 50+ Aircraft

The Government of Norway has requested a possible purchase of 30 F-16 Block 60 or F-16 Block 50+ aircraft. All aircraft will be configured with either the F100-PW-229A or F110-GE-129 EFE engine; the APG-68(V)XN, APG-68(V)XM; or Agile Beam Radar with Electronically scanned antenna; three F100-PW-229A or F110-GE-129 EFE spare engines, and the Joint Helmet Mounted Cueing System. Associated support equipment, software development/integration, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided. The estimated cost is $2.6 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Norway and enhancing weapon system standardization and interoperability of this important NATO ally.

These aircraft are required to replace aircraft lost to attrition or that have passed their useful service life. Since they are not increasing the overall size of their Air Force and are buying a system that is 85-90% compatible with their current F-16 fleet, Norway should have no problem absorbing these articles into their inventory. These aircraft will provide Norway with a more advanced capability than the aircraft that are being replaced.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Tactical Aircraft Systems, Fort Worth, Texas. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will require the assignment of several U.S. Government representatives to perform temporary duty. There will be four contractor representatives in-country for a period of three years after delivery of the first aircraft.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

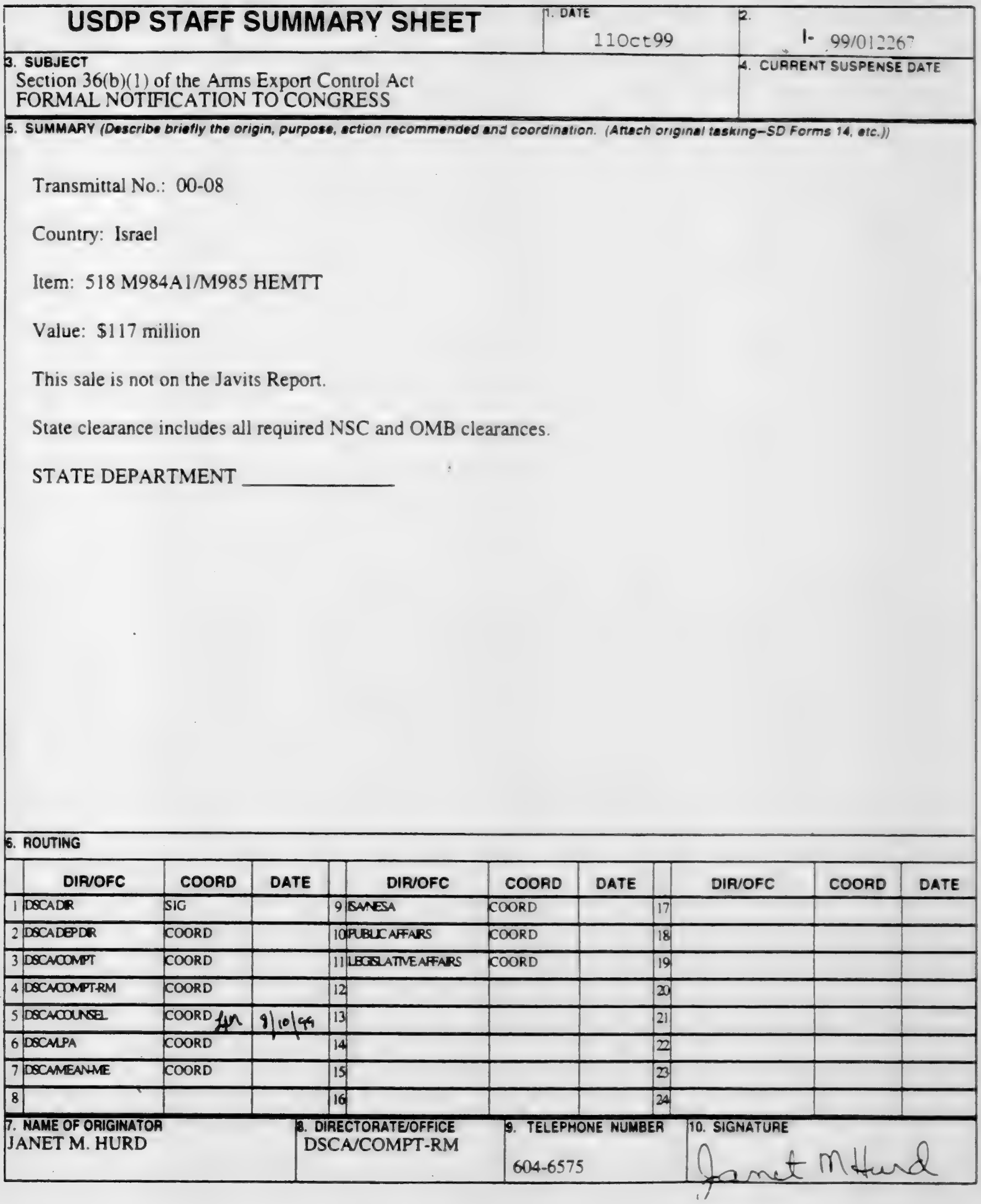

USDP STAFF SUMMARY SHEET

1. DATE 11Oct99

2. I- 99/012267

3. SUBJECT
Section 36(b)(1) of the Arms Export Control Act
FORMAL NOTIFICATION TO CONGRESS

4. CURRENT SUSPENSE DATE

5. SUMMARY *(Describe briefly the origin, purpose, action recommended and coordination. (Attach original tasking–SD Forms 14, etc.))*

Transmittal No.: 00-08

Country: Israel

Item: 518 M984A1/M985 HEMTT

Value: $117 million

This sale is not on the Javits Report.

State clearance includes all required NSC and OMB clearances.

STATE DEPARTMENT ______________

6. ROUTING

	DIR/OFC	COORD	DATE		DIR/OFC	COORD	DATE		DIR/OFC	COORD	DATE
1	DSCA DIR	SIG		9	ISA/NESA	COORD		17			
2	DSCA DEP DIR	COORD		10	PUBLIC AFFAIRS	COORD		18			
3	DSCA/COMPT	COORD		11	LEGISLATIVE AFFAIRS	COORD		19			
4	DSCA/COMPT-RM	COORD		12				20			
5	DSCA/COUNSEL	COORD	9/10/99	13				21			
6	DSCA/LPA	COORD		14				22			
7	DSCA/MEAN-ME	COORD		15				23			
8				16				24			

7. NAME OF ORIGINATOR JANET M. HURD	8. DIRECTORATE/OFFICE DSCA/COMPT-RM	9. TELEPHONE NUMBER 604-6575	10. SIGNATURE Janet M Hurd

Dated: November 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–29232 Filed 11–8–99; 8:45 am]

BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–07 with attached transmittal, policy justification, and Sensitivity of Technology.

BILLING CODE 5001–10–M

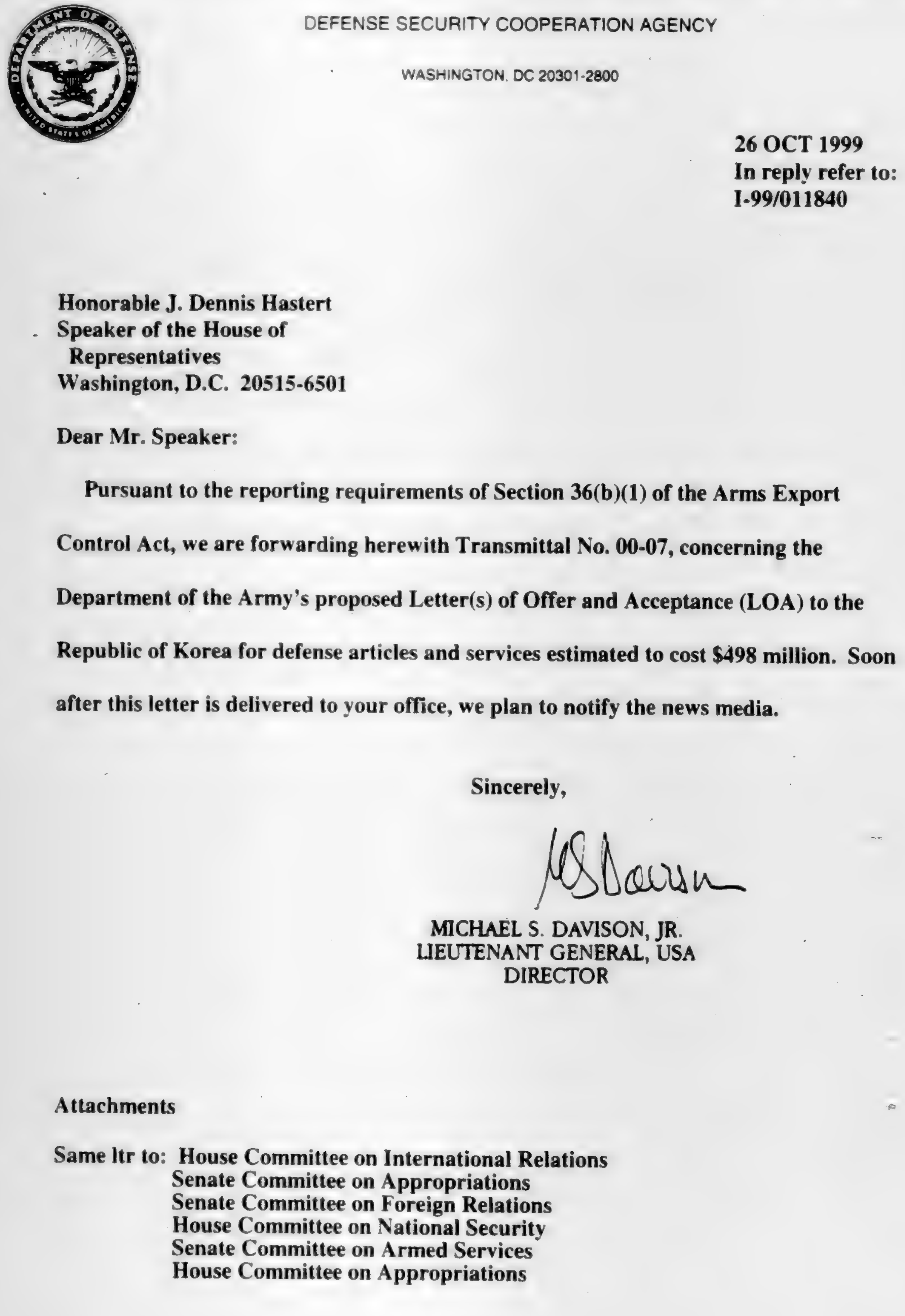

DEPARTMENT OF DEFENSE
UNITED STATES OF AMERICA

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

26 OCT 1999
In reply refer to:
I-99/011840

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-07, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $498 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MSDavison

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 348 million
Other	$ 150 million
TOTAL	$ 498 million

(iii) Description of Articles or Services Offered: Twenty-nine Multiple Launch Rocket Systems (MLRS) with fire control panels, 281 MLRS extended range rocket pods (six rockets per pod), 120 reduced range practice rocket pods (six rockets per pod), one MLRS fire control proficiency trainer, 111 M39 Army Tactical Missile Systems (ATACMS) Block 1 guided missile and launching assemblies, training and test devices, trucks, missile systems software, U.S. Government and contractor engineering and logistics services, U.S. Government Quality Assurance Team(s) (QATs), spare and repair parts, personnel training and training equipment, publications and technical data, Cooperative Logistics Supply Support Arrangement (CLSSA), support equipment, maintenance support of repairable material and other related elements of program support.

(iv) Military Department: Army (YUJ; YUI; BOL, Amd 2; OFN, Amd 1; and KWU)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 29 OCT 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - Multiple Launch Rocket Systems

The Republic of Korea has requested the purchase of 29 Multiple Launch Rocket Systems (MLRS) with fire control panels, 281 MLRS extended range rocket pods (six rockets per pod), 120 reduced range practice rocket pods (six rockets per pod), one MLRS fire control proficiency trainer, 111 M39 Army Tactical Missile Systems (ATACMS) Block 1 guided missile and launching assemblies, training and test devices, trucks, missile systems software, U.S. Government and contractor engineering and logistics services, U.S. Government Quality Assurance Team(s) (QATs), spare and repair parts, personnel training and training equipment, publications and technical data, Cooperative Logistics Supply Support Arrangement (CLSSA), support equipment, maintenance support of repairable material and other related elements of program support. The estimated cost is $498 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The proposed sale will enable the Korean Army to continue developing a defensive area fire capability to counter hostile long range artillery and rocket systems as well as enhance its interoperability with U.S. forces. The ROK will have no difficulty absorbing these surface-to-surface missiles in its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Vought Systems (LMVS), Dallas, Texas. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams to Korea for periods ranging from 30 to 45 days to assist in the delivery and deployment of the MLRS and ATACMS missile systems. Three contractor technical representatives will be assigned in-country for a minimum period of up to two years following initial deployment of the missile systems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Multiple Launch Rocket System (MLRS) is a free flight artillery rocket system designed to deliver counter-battery fire and suppress enemy air defense systems. The basic warhead carries a load of improved conventional sub-munitions (grenades) that are scattered over a wide area of the battlefield. The MLRS consists of several unclassified sub-systems; the self-propelled launcher the preloaded launcher pods and the fire control system. A major part of the fire control element is the Lightweight Computer Unit which receives digital firing data from a forward observer, computes range and deflection information and transmits this information to the rocket launcher crew.

2. The Army Tactical Missile System (ATACMS) Block 1 is a ground-launched missile system consisting of a surface-to-surface missile with an anti-personnel/anti-materiel Warhead. The ATACMS missiles are fired from the MLRS M270 launcher and are deployed within the ammunition loads of corps MLRS battalions and/or division artillery MLRS batteries. The ATACMS is air transportable and provides a deep fire missile system that operates in near all-weather conditions, day or night. The range of these missiles (168 km) does not exceed the Missile Technology Control Regime threshold.

3. The highest level of classified information required to be released for training, operation and maintenance of the Multiple Launch Rocket System extended range (MLRS-ER) rocket pods is Confidential. The highest level of information which could be revealed through reverse engineering or testing of the end item is Secret. MLRS-ER technical data and information includes Confidential and Secret reports and data, as well as performance and capability data, classified Confidential/Secret.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Dated: November 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99-29233 Filed 11-8-99; 8:45 am]

BILLING CODE 5001-10-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–08]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–08 with attached transmittal and policy justification.

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE
UNITED STATES OF AMERICA

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

26 OCT 1999
In reply refer to:
I-99/012267

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-08, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $117 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-08

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) **Prospective Purchaser**: Israel

(ii) **Total Estimated Value**:

Major Defense Equipment*	$ 0 million
Other	$ 117 million
TOTAL	$ 117 million

(iii) **Description of Articles or Services Offered**: Five hundred eighteen M984A1/M985 Heavy Expanded Mobility Tactical Trucks with ancillary equipment, special tools, spare and repair parts, support equipment, publications, contractor technical services and other related elements of logistics support.

(iv) **Military Department**: Army (YUL)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: none

(vii) **Date Report Delivered to Congress**: 26 OCT 1999

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* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - M984A1/M985 Heavy Expanded Mobility Tactical Trucks

The Government of Israel has requested a possible sale of 518 M984A1/M985 Heavy Expanded Mobility Tactical Trucks (HEMTTT) with ancillary equipment, special tools, spare and repair parts, support equipment, publications, contractor technical services and other related elements of logistics support. The estimated cost is $117 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

These 10-ton HEMMTs will be used for carrying artillery ammunition. The Israel Defense Forces (IDF) mission profile requires trucks with a load handling system to load and unload commercial trucks. These commercial trucks are fitted with an interface that enables them to carry palletized load system flatracks. Israel, which already has this truck in its inventory, will have no difficulty absorbing these additional trucks.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Oshkosh Truck Corporation, Oshkosh, Wisconsin. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Dated: November 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–29234 Filed 11–8–99; 8:45 am]

BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–09]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–09 with attached transmittal and policy justification.

BILLING CODE 5001–10–M

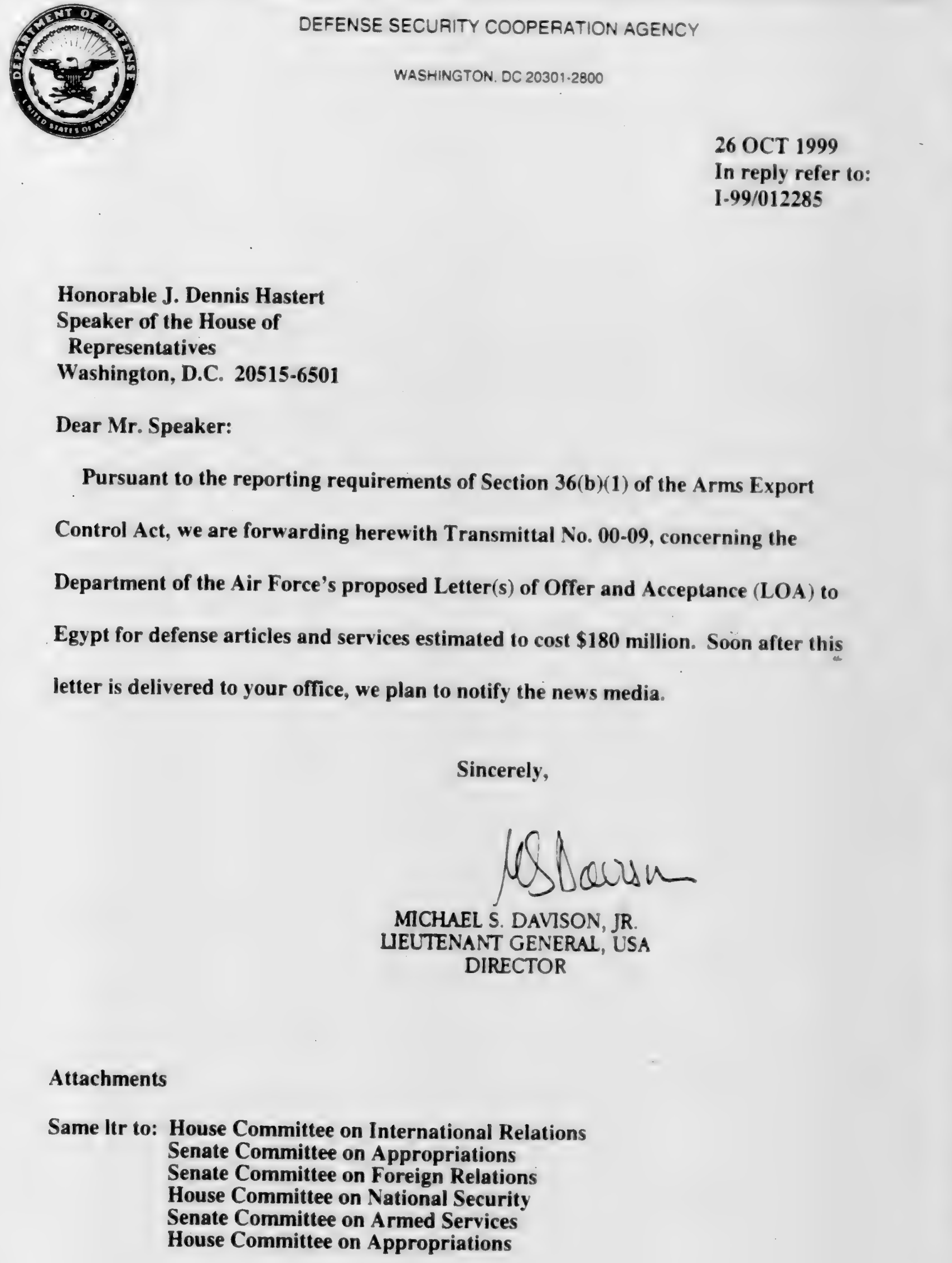

DEPARTMENT OF DEFENSE
UNITED STATES OF AMERICA

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

26 OCT 1999
In reply refer to:
I-99/012285

Honorable J. Dennis Hastert
Speaker of the House of
  Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-09, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $180 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-09

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 60 million
Other	$ 120 million
TOTAL	$ 180 million

(iii) Description of Articles or Services Offered: Two Gulfstream IV-SP aircraft including four Rolls Royce engines (two engines per aircraft), support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, maintenance of repairable material, U.S. Government and contractor engineering and logistics services, aircraft ferry services, and other related elements of program support.

(iv) Military Department: Air Force (STS)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 26 OCT 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - Gulfstream IV-SP Aircraft

The Government of Egypt has requested a possible sale of two Gulfstream IV-SP aircraft including four Rolls Royce engines (two engines per aircraft), support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, maintenance of repairable material, U.S. Government and contractor engineering and logistics services, aircraft ferry services, and other related elements of program support. The estimated cost is $180 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt will use these aircraft to augment and enhance its existing airlift capability, including the movement of its National Command Authority. Egypt, which already has Gulfstream aircraft in its inventory, will have no difficulty absorbing these additional aircraft.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Gulfstream Aerospace Corporation of Savannah, Georgia. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government representatives to Egypt. It is estimated that approximately two years of contractor representatives in-country will be required for technical support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Dated: November 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–29235 Filed 11–8–99; 8:45 am]

BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–10]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–10 with attached transmittal and policy justification.

BILLING CODE 5001–10–M

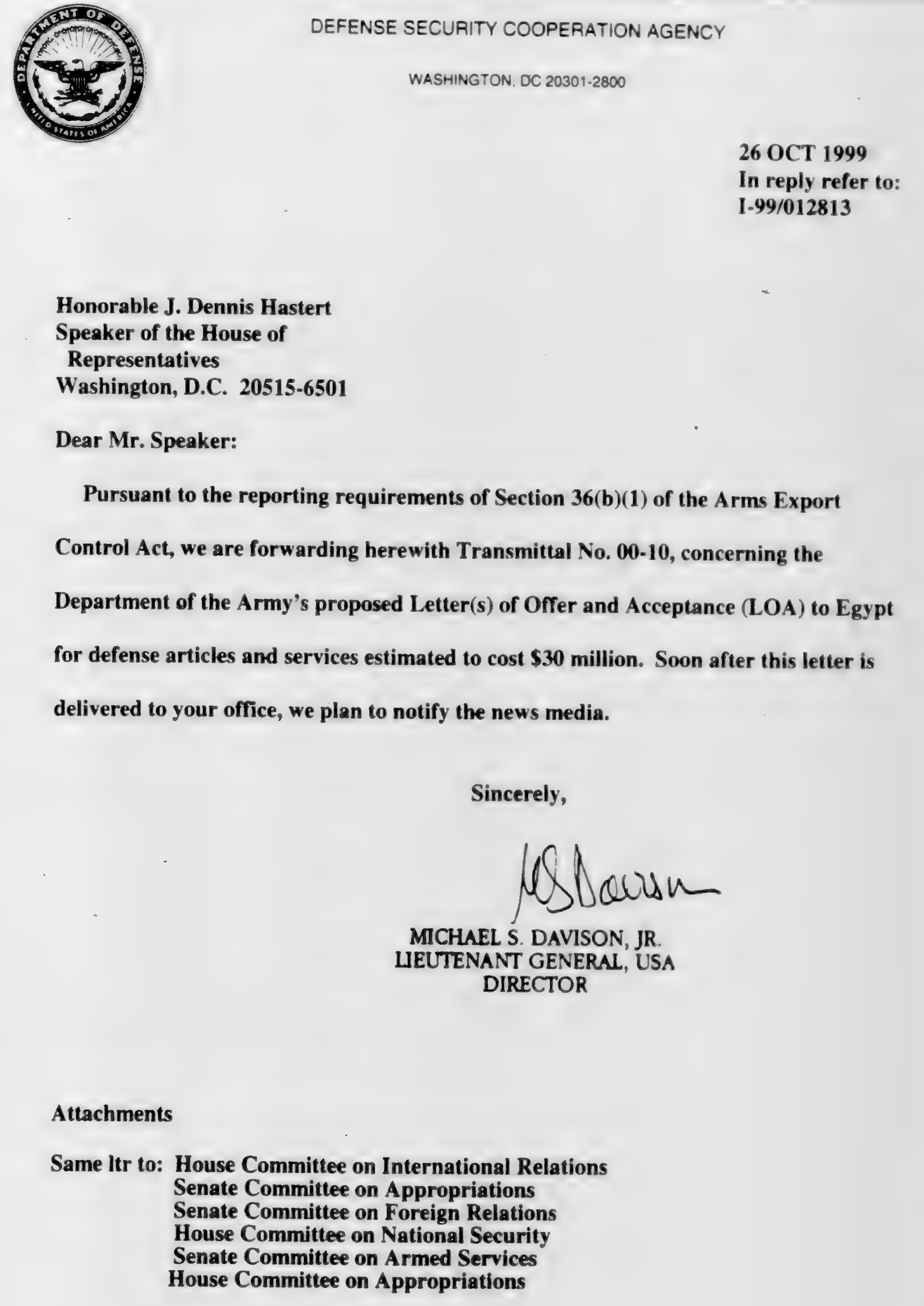

DEPARTMENT OF DEFENSE
UNITED STATES OF AMERICA

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 OCT 1999
In reply refer to:
I-99/012813

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-10, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $30 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MSDavison

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-10

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) **Prospective Purchaser**: Egypt

(ii) **Total Estimated Value**:

Major Defense Equipment*	$ 21 million
Other	$ 9 million
TOTAL	$ 30 million

(iii) **Description of Articles or Services Offered**: Two hundred thirty-nine High Mobility Multi-purpose Wheeled Vehicles (HMMWV), electronic test set, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support

(iv) **Military Department**: Army (UTA)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: none

(vii) **Date Report Delivered to Congress**: 26 OCT 1999

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* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - High Mobility Multi-purpose Wheeled Vehicles

The Government of Egypt has requested a possible sale of 239 High Mobility Multi-purpose Wheeled Vehicles (HMMWV), electronic test set, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $30 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the HMMWVs will be fielded with Egypt's TOW weapon system in their Field Artillery and to replace existing jeeps as support vehicles. Egypt, which already has trucks in its inventory, will have no difficulty absorbing these trucks.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be AM General of South Bend, Indiana. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team for one week and a contractor Field Services Representative for a year to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Dated: November 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 99–29236 Filed 11–8–99; 8:45 am]

BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2000 DRG Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice describes the changes made to the TRICARE/CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios and the Internet address for accessing the updated adjusted standardized amounts, DRG relative weights, and beneficiary cost-share per diem rates to be used for FY 2000 under the TRICARE/CHAMPUS DRG-based payment system.

EFFECTIVE DATES: The rates, weights and Medicare PPS changes which affect the TRICARE/CHAMPUS DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 1999.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238. The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3627.

To obtain copies of this document, see the **ADDRESSES** section above. Questions regarding payment of specific claims under the TRICARE/CHAMPUS DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE/CHAMPUS, is that the TRICARE/CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE/CHAMPUS system will follow the same rules that apply to the Medicare PPS. HCFA publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE/CHAMPUS DRG-Based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS that affect the TRICARE/CHAMPUS DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE/CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE/CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE/CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to MDC 15 occur before assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. Grouping for all other DRGs under the TRICARE/CHAMPUS system is identical to the Medicare PPS.

For FY 2000, HCFA will implement classification changes, including surgical hierarchy changes. The CHAMPUS Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE/CHAMPUS will continue to use the same wage index amounts used for the Medicare PPS. In addition, TRICARE/CHAMPUS will duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board.

C. Hospital Market Basket

TRICARE/CHAMPUS will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS according to HCFA's July 30, 1999, final rule.

D. Outlier Payments

Since TRICARE/CHAMPUS does not include capital payments in our DRG-based payments, we will use the fixed loss cost outlier threshold calculated by HCFA for paying cost outliers in the absence of capital prospective payments. For FY 2000, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY 2000, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE/CHAMPUS DRG base payment rate (wage adjusted) for the DRG plus the IDME payment plus $12,827 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

E. Blood Clotting Factor

TRICARE/CHAMPUS will add HCPCS code J7191 (clotting factor, porcine) to the list of covered blood clotting factors for hemophilia patients and adopt changes to the payment rates as outlined in HCFA's July 30, 1999, final rule, effective for admissions on or after October 1, 1999.

F. Hospitals Excluded From the Prospective Payment System

TRICARE/CHAMPUS will adopt the changes outlined in HCFA's July 30, 1999, final rule as they apply to hospitals and units excluded from the Medicare PPS.

II. Cost to Charge Ratio

For FY 2000, the cost-to-charge ratio used for the TRICARE/CHAMPUS DRG-based payment system will be 0.5429, which is increased to 0.5489 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.6004.

III. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at www.tricare.osd.mil under the heading TRICARE Provider Information. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE/CHAMPUS DRG-based payment system during FY 2000 and which is a result of the changes described above. The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR Part 199.

Dated: November 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–29237 Filed 11–8–99; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on December 7, 1999, December 14, 1999, December 21, 1999, and December 28, 1999, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: November 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–29231 Filed 11–8–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Local Redevelopment Authority and Available Surplus Building and Land at the Former Lowry Air Force Base (AFB), Located in Denver, CO

AGENCY: Department of the Air Force; DoD.

ACTION: Notice.

SUMMARY: This notice provides information regarding surplus Federal real property, Building 1432, at the former Lowry AFB and the redevelopment authority responsible for planning the reuse of the base and addressing the balance between economic redevelopment and homeless assistance. Lowry is located in the cities of Denver and Aurora, Colorado.

FOR FURTHER INFORMATION: Mr. John P. Carr, Program Manager, Air Force Base Conversion Agency (AFBCA), 703–696–5547. For more detailed information regarding the property, contact Mr. Mark Ashton, AFBCA, Lowry AFB, 303–361–0406.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of § 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment Homeless Assistance Act of 1994 (Public Law 103–421), the following information regarding the redevelopment authority and surplus property at the former Lowry AFB, Denver, CO is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the former Lowry AFB, Denver, CO, for the purposes of implementing the provisions of the Defense Base Closure and Redevelopment Act of 1990, as amended, is the Lowry Redevelopment Authority. The Executive Director is Mr. Thomas Markham in Denver, CO, 303–343–0276.

Surplus Property Description

Building 1432 (60,420 sq. ft.) with approximately 4.9 acres of land. This two-story building was originally constructed as a missile assembly facility and was remodeled as an administrative facility in the late 1960's.

Expressions of Interest

Pursuant to paragraph 7(C) of § 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, state and local governments, representatives of the homeless and other interested parties located in the vicinity of the former Lowry AFB shall submit notices of interest in acquiring the property to the Lowry Redevelopment Authority. Pursuant to the Act, the Lowry Redevelopment Authority will publish in a paper of general circulation the availability of the property, the period during which it will receive notices of interest in acquiring the property, and the required content for notices of interest.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–29323 Filed 11–8–99; 8:45 am]

BILLING CODE 5001–05–P

DENALI COMMISSION

Denali Commission Work Plan for Federal Fiscal Year 2001

ACTION: Notice and opportunity for public comment.

SUMMARY: The Denali Commission was established by The Denali Commission Act of 1998 to deliver the services of Federal Government in the most cost-effective manner practicable to communities throughout rural Alaska, many of which suffer from unemployment rates in excess of 50%. Its purposes include, but are not limited to, providing necessary rural utilities and other infrastructure that promote health, safety and economic self-sufficiency.

The Denali Commission Act requires that the Commission develop proposed work plans for future spending. In accordance with the Act, the Commission solicited project proposals from local governments and other entities. The Act further requires that the Commission publish annual work plans in the **Federal Register** for a 30-day period, providing an opportunity for public review and comment.

This **Federal Register** Notice serves to announce the 30-day opportunity for

public comment on the Denali Commission Work Plan for Federal Fiscal Year 2001.

FOR FURTHER INFORMATION CONTACT: Jeffrey Staser, Federal Co-Chairman, Denali Commission, 510 'L' Street, Suite 410, Anchorage, Alaska 99501, Phone: (907) 271–1414, Fax: (907) 271–1415, Email: *JStaser@denali.gov, http://www.denali.gov.*

SUPPLEMETARY INFORMATION: Copies of the Denali Commission Work Plan can be obtained by contacting the Denali Commission as provided in the **FOR FURTHER INFORMATION CONTACT** section above.

Jeffrey Staser,

Federal Co-Chairman.

Denali Commission 2000–2001 Work Plan

November 15, 1999.

Work Plan—Contents

Part One—Denali Commission Purposes and Approach
  Purposes of Commission
  Challenges to Development and Economic Self-Sufficiency
  Commission Relationship with Other Organization
  Commission Schedule
  Staffing
  Funding Criteria
  Additional Criteria for Infrastructure Projects
  Additional Criteria for Economic Development Projects
Part Two—Fiscal Year 2000 Work Plan
  Project Selection Process for FY 2000 Bulk Fuel Program and Utility Upgrades
  Other Power Related Projects Under Review
  Other Projects Under Review
  FY 2000 Work plan
Part Three—Work Plan for FY 2001 and beyond
  FY 2001 Work Plan
  FY 2002 and Beyond—Defined Funding Needs

Part One: Denali Commission Purposes and Approach

Purposes of Commission

The Denali Commission Act of 1998 (Division C, Title III, PL 105–277) states that the purposes of the Denali Commission are:

To deliver the services of the Federal Government in the most cost-effective manner practicable by reducing administrative and overhead costs.

To provide job training and other economic development services in rural communities, particularly distressed communities (many of which have a rate of unemployment that exceeds 50 percent).

To promote rural development, provide power generation and transmission facilities, modern communications systems, bulk fuel storage tanks, water and sewer systems and other infrastructure needs.

Challenges to Development and Economic Self-Sufficiency

Geography—The State of Alaska encompass twenty percent of the landmass of the United States, encompassing five (5) climatic zones from the arctic to moderate rain forests in the south.

Isolation—Approximately 220 Alaskan communities are accessible only by air or small boat. Some regional hub communities are separated by over a thousand miles from their State Capital.

Unemployment—The economy of rural Alaska is a mix of natural resource extraction and traditional native subsistence activities. Many Alaskans are absolutely dependent on subsistence hunting and gathering. Cash paying employment opportunities in rural Alaska are scarce; unemployment rates exceed 50% in 147 communities.

High cost and low standard of living—Over 180 communities suffer from inadequate sanitation and a lack of safe drinking water. Residents pay up to 61 cents per kilowatt-hour for electricity even with State subsidies for rural power.

Commission Relationship With Other Organizations

The Commission intends to act as a catalyst to encourage local, regional, and statewide comprehensive assessment, planning and ranking of needed infrastructure improvements and economic development opportunities and training needs.

The Commission working with existing agencies or other organizations whenever feasible, intends to improve coordination and to streamline and expedite the development of needed infrastructure, economic development, and training.

The Commission may build on the work of both Federal and State of Alaska agencies to identify statewide needs, to establish priorities, and to develop comprehensive work plans.

The Commission will seek the support and involvement of affected local communities, governing bodies, businesses and other organizations.

The Commission will encourage partnerships between government, non-profit organizations, and businesses to expedite sustainable economic and infrastructure development.

Commission Schedule

The Commission will hold quarterly public Commission meetings and make every reasonable effort to maximize public participation in plan development and update.

In order to integrate the Commission work plan with the federal FY 2001 budget cycle, the Commission intends to have the FY 2001 work plan completed by December 1999. This will complete a multi-year work plan, which will be updated at least annually.

Staffing

The Federal Co-Chairman is solely responsible for Commission staffing and administrative matters. Staffing will be kept to a minimum, and the Commission will utilize staff detailed from federal, state, or other organizations to the maximum extent possible. Contract support will also be utilized where appropriate.

Funding Criteria

The following criteria are intended to foster careful and systematic planning and coordination on a local, regional and statewide basis for infrastructure and economic development, and to strongly support local involvement in project planning and implementation.

- Projects should be compatible with local cultures and values.
- Projects that provide substantial health and safety benefit, and/or enhance traditional community values, will generally receive priority over those that provide more narrow benefits.
- Projects should be sustainable.
- Projects should have broad public involvement and support. Evidence of support might include endorsement by affected local government councils (municipal, Tribal, IRA, etc.), participation by local governments in planning and overseeing work, and local cost sharing on an 'ability to pay' basis.
- Priority will generally be given to projects with substantial cost sharing.
- Priority will generally be given to projects with a demonstrated commitment to local hire.
- Commission funds may supplement existing funding, but will not replace existing federal, state, local government, or private funding.
- The Commission will give priority to funding needs that are most clearly a federal responsibility.

Additional Criteria for Infrastructure Projects

- A project should be consistent with a comprehensive plan.
- Any organization seeking funding assistance must have a demonstrated commitment to operation and maintenance of the facility for its design life. This would normally include an institutional structure to levy and

collect user fees if necessary, to account for and manage financial resources, and having trained and certified personnel necessary to operate and maintain the facility.

- Proposals should include a cost breakdown by phase including breakout for design, construction and annual O & M.

Additional Criteria for Economic Development Projects

- Priority will be given to projects that enhance employment in high unemployment areas of the State, with emphasis on sustainable, long-term local jobs or career opportunities.
- Projects should be consistent with statewide or regional plans.
- The Commission may fund demonstration projects that are not a part of a regional or statewide economic development plan if such projects have significant potential to contribute to economic development.

Part Two: Fiscal Year 2000 Work Plan

In order to provide focus for the Commission's second season of work, the theme of "Rural Energy" was selected by the Commission to provide consistency and build on work completed in FY 1999. Bulk Fuel Storage and Utility Upgrades continue to be an important part of the Commission work.

The following paragraphs describe in detail, the project selection process used by the Alaska Energy Authority. Throughout FY 2000, Commission and staff will be working on development of additional focus areas or "themes". The goal of the Commission is to build on the success of the energy program and increase the number of focus areas or "themes" along with associated funding. The themes will consist of specific programs or project areas that show a great need and limited funding to address that need.

Bulk Fuel Storage

Background—The U.S. Coast Guard (USCG) documented major deficiencies associated with rural bulk fuel tank farms in 1991 and began the process of notifying communities that failure to correct deficiencies would result in substantial fines and suspension of fuel deliveries. Deteriorated tanks dating back to WW–II vintage were leaking petrochemical contamination into local water supplies causing sickness in children and elderly people. Lack of building code compliance further exposed residents to a high risk of catastrophic fire. Large numbers of tanks lacked adequate spill control features.

Arctic and sub-arctic communities are totally dependent on these leaking fuel storage tanks for heat, power and light. In most instances, fuel is delivered annually by barge. Suspension of even one delivery would have catastrophic impact on local residents, many of whom live in a subsistence economy without cash to bring fuel tanks into compliance with federal standards or to pay fines. Overwhelmed by the cost and urgency of this crisis, residents appealed their plight to State and Federal Government representatives.

In 1994 the Governor and Congressional Delegation responded by requesting a moratorium on enforcement actions until an effective solution could be found. With funds provided by Congress specifically for this purpose, the U.S. Environmental Protection Agency (EPA), working through the Alaska Department of Environmental Conservation (DEC) and the Alaska Energy Authority (AEA, formerly the Alaska Division of Energy), identified a work backlog, not including cleanup, estimated at approximately $450,000,000. Principle responsible parties were often traced to pre-statehood federal agencies or to a hodgepodge of now defunct entities. No one accepted responsibility.

Electric power

Background—Rural communities of Alaska, much like the rest of the nation, are dependent on electric power for basic life support. Unlike most other areas of the country, Alaska's rural communities are remote (not connected to a power grid) and subject to extreme weather conditions. When a system fails, there are no backups and the life and safety of people are in jeopardy. Funding for upgrade and maintenance of systems has been grossly inadequate, resulting in many systems being unsafe, undependable, and very expensive to operate. A comprehensive assessment of needs has not yet been completed, but the AEA has identified a number of systems needing immediate assistance. The AEA has also identified some opportunities to replace or supplement high cost diesel power with alternative energy sources.

Project Selection Process for FY 2000 Bulk Fuel Program and Electric Power Utility Upgrades

The Commission focused on the most severe problems first by drawing on an extensive database compiled by the Sate of Alaska in coordination with EPA and the U.S. Coast Guard (USCG). This data was used to develop a preliminary ranking of communities based on the current condition of their facilities as reported by both State and Federal field inspectors. To these preliminary rankings the Commission then applied additional selection criteria, including:

- Citations or warning letter from EPA, USCG, or other regulatory agencies.
- Imminent threat to health and safety, or threat of winter system failure.
- Alternative or supplemental community/region specific funding opportunities, *i.e.*, Federal through the U.S. Department of Housing and Urban Development (HUD) or Sate through the Department of Education.
- Financial need based on existing costs, rates, and income levels.
- Community commitment and support of tribal elders.

Factors reviewed by the Commission staff, working with Alaska Energy Authority, in formulating recommendations to the Commissioners included:

- Opportunity for consideration of small tanks and economies of scale.
- Community size.
- Cost sharing.
- Demonstrated administrative, operation and maintenance capability.
- Any federal tax delinquency of tank farm owner(s).
- Community contribution and commitment.
- Past experience working in the community.
- Unusual conditions or costs.

Beginning in FY 01, two additional criteria will be key to selection for Denali Commission funding:

1. Consistent with statewide energy strategy now under development; and
2. Consistent with an adopted community based comprehensive plan

Ultimately, project selection reflected the active involvement, cooperation and support of federal and state regulators, tank farm and electric utility owners, and community leaders.

Project Management Procedures

The Commission determined that the most cost-effective manner to reduce overhead and adminsitrtive costs involved with managing its Bulk Fuel Storage Tank Program in FY 2000 was to take full advantage of the Alaska Energy Authority contracts and structure, while maintaining appropriate oversight.

Key elements of project development used by the AEA are:

1. *Consult with Facility Owners and Community Representatives.* Staff traveled to the community to meet with tank farm owners, utility owners, and community representatives to obtain information, to develop an initial project concept, and to determine

project participants. Community representatives include municipal government, tribal government, and the Village Corporation. The Commission made approval by village elders a prerequisite for funding. In this way, traditional cultural values are sustained and potentially harmful community impacts are minimized.

Any tank farms that would not be included in the program for FY 2000 are also identified and the reasons for such exclusion are determined. If deficient facilities will not be upgraded as part of the Commission's program, efforts are made to develop a plan with the facility owner on how those facilities will be brought up to code in the future.

2. *Consult with State and Federal agencies.* The Commission asked the AEA to coordinate with other agencies and to determine potential sources for supplemental funding of the project wherever possible. Federal agencies include the USCG, EPA, HUD, Bureau of Indian Affairs, and Public Health Service. State agencies include the Departments of Education, Environmental Conservation, and Transportation and Public Facilities.

3. *Develop Grant Agreement.* When agreement is reached on a project concept, and funding has been identified, the AEA prepares a grant agreement and a ‘‘consolidation agreement.’’ Grant agreements not only formalize the funding commitment project but also commits grantees—the future owners of new or reconstructed facilities—to assist in project development and to properly maintain the projects in the future.

a. Most labor is hired locally on ‘‘force account’’ by the local grantee or government entity. The only ‘‘outside’’ hires are typically foremen, who must have extensive experience, and specialized skilled labor (i.e., welders) not usually locally available. In the future, through focused training, we hope to be able to fill all positions locally or at least within a region.

b. A private sector firm is retained to perform the project accounting, local payroll, and invoice payment, a significant advantage in cost and time compared with government administration, particularly in the context of tight construction schedules.

c. Competitive bids are solicited for equipment and materials. The AEA has chosen to use State regulations for competitive awards among vendors.

4. *Develop Consolidation Agreement.* The consolidation agreement binds all of the tank farm participants and records agreement on specific ownership and management structure for the new facility upon its completion.

5. *Place Project Funds and Set up Accounts with Trustee Accounting Firm.* The AEA uses a standing contract with a private sector accounting firm to provide all accounting and payment services required. The Commission releases funding for projects involving Denali Commission funds to the trustee firm as oversight criteria are met.

Disbursements to vendors for project materials, to engineering and construction management firms for services rendered, and to force account labor are made by the trustee firm only as directed by the AEA and/or Commission. The trustee firm, in order to ensure clear, up-to-date budget and expenditure information for each project, provides monthly expenditure and activity reports.

6. *Projects Design and Site Selection.* In consultation with the project participants and community representatives, the AEA then proceeds into site selection and project design. The participants must agree to the site and design before funds are committed to project construction.

The AEA maintains standing contracts with local engineering firms for a broad scope of services. At the present time, the AEA has four such contracts in place that will remain in effect through December 2000, at which time a new set of contracts will be issued. At any time, the AEA can issue one or more work orders to any of these four firms to immediately begin work on a project related task. These firms are primarily for project design, both for bulk fuel storage and for electric utility upgrades.

7. *Site Control.* Similar contracts are in place with a right-of-way firm to immediately begin work on site control services, including all takes related to land ownership determination, ownership transfers, leases, and easements. The site control task begins in conjunction with preliminary designs specifically on the determination of land ownership. When the project design has been adopted, the contractor proceeds with all steps needed to acquire site control. The present contract runs through February 2000, at which time one or more new contracts will be issued.

8. *Permitting and Environmental Compliance.* Commission oversight ensures that all applicable permits and regulations pertaining to project construction and operation are obtained or satisfied. Among these permit sand approvals are the following:

The U.S. Army Corps of Engineers developed a ‘‘general permit’’ that will expedite approval under Section 404 of the Clean Water Act for the placement of fill material in wetlands for rural bulk fuel storage facilities. This approval process, which is necessary for virtually all tank farm projects in rural Alaska, normally requires 3–4 months to complete but is expected to require only 15–30 days under the general permit.

The State of Alaska has adopted the Uniform Fire Code (UFC) as part of its Alaska Administrative Code requirements for building permits. The UFC was not written for rural Alaska conditions and, in some cases, is difficult or impossible to apply to rural Alaska tank farms. Therefore, the AEA and the State Fire Marshal signed a memorandum of agreement that provides practical solutions to problems posed by UFC requirements. The agreement reflects consideration for dispensing tank placement, tank setback, flood protection, fire-resistive supports or pilings, dike wall materials, equipment placement inside the secondary containment area, overfill prevention equipment, and bulk transfer to small tank vehicles.

9. *Construction Management and Local Hire.* Local hire is a basic principle of the Commission. The Commission seeks to stimulate the creation of not only jobs, but also careers. Local labor helps hold down project costs. Local hire means that people who are knowledgeable about the project will remain in the community after construction.

As mentioned above, four project management firms supplement the AEA's in-house ability to provide overall project management. These flexible contracts are set up on a work order basis—whenever the AEA needs to assign a project manager to a project, it will be able to issue a work order that specifies the particular individual or skill set to be assigned. This provides access to as many project managers as needed, whatever the workload demands.

This is essential to maintaining the force account construction approach that has been successful in the past and has been well received by local communities. A project manager is needed to communicate directly with the community grantee, the design engineer, the site control contractor, and the on-site construction foreman; to handle material procurement, scheduling and transportation; and to provide financial management and control.

10. *Operations and Maintenance.* The Commission oversees the preparation and proposal process, including details on operations and maintenance (O&M) responsibility. Local sponsors must participate in addressing their estimated

O&M budget and revenue requirements. The Commission also supports training for tank farm operators.

11. *Insurance.* The AEA purchases liability insurance to cover damages that may be claimed during the construction phase of our projects, and arranges pollution and liability insurance coverage for consolidated tank farms after the project is complete and placed in operation. To date, insurance applying to the operational phase has been purchased by the AEA on behalf of the new tank farm owner for the first year of operation—no commitments have yet been made for succeeding years.

12. *Regulatory Plans.* A part of the AEA scope of work for every tank farm project is the preparation of all required regulatory plans, including the Operations Manual and Facility Response Plan required by the USCG and the Spill Prevention Control and Countermeasure Plan required by EPA.

13. *As-Built Drawings and Project Completion Report.* Closeout tasks include as-built drawings and a project completion report, along with a final project accounting.

Long-Term Follow-up. The AEA developed and maintains a rural tank farm database. They plan to continue revisiting rural tank farms on a three-year rotating schedule to update information on tank farm conditions, and to provide limited circuit rider services. In the future, the Commission may expand and integrate these programs into other initiatives. For example, every three years, staff or contractors could examine both the tank farms and electric utility systems in each community, update the data base on current conditions, and provide preventive maintenance services as needed for both fuel storage and electrical systems. This may expand to include all utilities in the future.

Other Power Related Projects

Statewide energy needs assessment and planning is being undertaken in a cooperative arrangement between the State and federal government in order to guide capital funding decisions. The Commission is a partner in this effort with the State and U.S. Department of Agriculture Rural Development. A comprehensive assessment of issues and their inter-relationships will be completed by December 1999. Development of a comprehensive energy strategy is expected to begin in January 2000.

Other Projects

The Commission received numerous local or community specific recommendations. To date, these include economic development, infrastructure, and capacity building projects. Consistent with its published criteria, the Commission will evaluate each of these projects and determine eligibility and priority for funding.

Due to the massive needs of rural areas, and the need to improve the coordination of federal and state programs, the Commission has initiated several cooperative efforts to enhance coordination among federal and state agencies, and encourage comprehensive community-based local and regional planning. As the results of these efforts materialize, the Commission will develop strategies, or "funding themes", to most effectively accomplish its statutorily mandated goals. In the meantime it is the intent of the Commission in funding "Other Projects" to advance the development of funding themes. When a new funding theme is developed by the Commission, the purpose, process, and deadlines for seeking assistance will be announced to all rural communities and/or regional organizations in Alaska.

FY 2000 PROJECT/FUNDING SUMMARY

Funding category and category class	
Infrastructure: Subtotal	$15,000,000
Economic Development: Subtotal	2,000,000
Job Training, Education, Capacity Building: Subtotal	2,000,000
Administration: Subtotal	1,000,000
Total	20,000,000

Part Three: Work Plan for FY 2001 and Beyond

The Commission determined that the scope and scale of infrastructure issues facing rural Alaska are staggering. The following table summarizes identified needs for infrastructure categories such as drinking water and wastewater utilities, power utilities, and fuel storage.

The backlog of work in the Bulk Fuel Storage Program alone has been estimated by the Alaska Energy Authority to be approximately $450,000,000. No estimate is currently available for some fundamental needs, including health care facilities and telecommunications.

Assessment of needs and refinement of estimates will be an ongoing process. The total of known infrastructure needs is estimated to be over $10 billion. Allocation of funds to various funding categories and classes within those categories (see following table) will be based on a formula agreed to by the Commission at the beginning of each fiscal year. For FY 2000 the formula allocates 75% of available funds to infrastructure, 10% to economic development and 10% to job training and capacity building. The Commission has a statutory limit of 5% for administrative expenses.

On-going feasibility work will guide specific project selection and approval at quarterly Commission meetings.

Of necessity, the Commission's work must be phased over a number of years based on the urgency of competing needs and availability of funding. The theme of rural energy, as one important prerequisite to all other utilities and economic development, guided the decisions for FY 1999 and will continue to be a primary area of focus in FY 2000. For planning purposes, the Commission budgeted $45,000,000 using the Commission approved formula. This funding increment is based on the addition of one or possibly two themes for FY 2001. The theme(s)* will build on the success of the existing program and provide funding for programs and/or projects that demonstrate a great need, federal responsibility, and limited amount of funding to meet the need. A graphic representing the "theme" concept is shown below. For illustration, the graphic shows a basic program amount of $5 million (Economic Development, Training, Administration, etc.), $15 million to be applied annually to the first theme, and incremental amounts of $10 million for subsequent themes.

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DENALI COMMISSION FUNDING AND THEMES

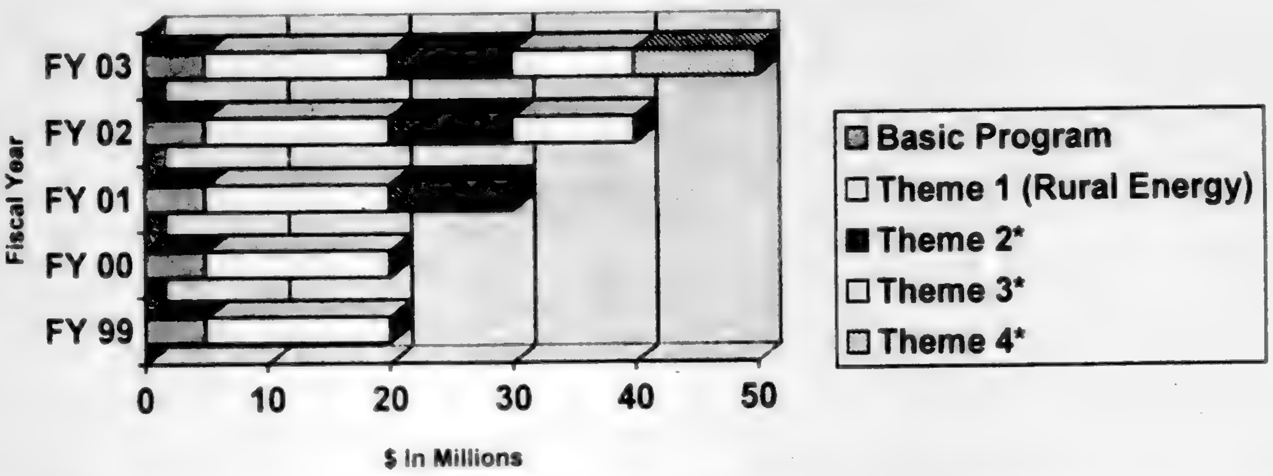

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The Commission seeks to be informed by the public year to year as to how best to allocate its efforts and thus reserves the option of chaning its allocation formula after hearing from the public. Likewise, there may be variations in specific areas of focus from year-to-year to reflect the public sense of priority and judgement of the Commission. Once the Commission approves specific projects, they are assigned to a category class.

The incremental budget plan for FY 2001 is as follows:

Funding category and category class	
Infrastructure: Subtotal	$33,750,000
Economic Development: Subtotal	4,500,000
Job Training, Education, Capacity Building: Subtotal	4,500,000
Administration: Subtotal	2,250,000
Total	45,000,000

Note: In FY 2001 in addition to other applicable criteria, any project selected for funding should be a part of a community based local or regional comprehensive plan. Additionally, any energy related projects should be consistent with the comprehensive statewide energy strategy.

The following table summarizes current estimates of needs:

Funding category and category class	
Infrastructure:	
Housing Construction/Development	$1,800,000,000
School Construction and Major Maintenance	530,000,000
Power Utilities	168,000,000
Fuel Storage	450,000,000
Drinking Water Facilities.	
Waste Water Utilities	1,058,000,000
Waste Management Facilities.	
Health Care Facilities	(1)
Airport Facilities	926,000,000
Road Construction	5,600,000,000
Port Facilities	214,000,000
Telecommunications	(1)
Community Facilities	(1)
Other	(1)
Subtotal	10,546,000,000
Economic Development:	
Comprehensive Planning	(1)
Other	(1)
Job Training, Education, Capacity Building:	
Comprehensive Planning	(1)
Other	(1)
Total	10,546,000,000

See Appendix A for background Information on this table.

[1] Unknown.

Appendix A

Housing Construction/Development

Need: $1.8 Billion.

Annual Funding: $58–87 million.

Source: Housing and Urban Development FY 1999 Report.

Background: According to the FY 1999 report published by HUD, Alaska has a need for 12,519 new units. At an average cost of $145,000 per unit, the total need for new housing is approximately $1.8 billion. This estimate does not include repairs and renovation projects. The number of units needed has increased from the 1990 census, which showed over 11,000 units needed.

At the current rate, 400 to 600 units are constructed in Alaska each year (approximately $58–87 million).

Projects are prioritized and funded in a variety of ways including grants to local housing authorities, regional housing authorities, low interest loans, and transfers to other agencies.

Entities providing funding for housing includes, but may not be limited to, HUD, AHFC, and USDA.

School Construction and Major Maintenance

Need: $530,183,470.

Annual Funding: No recurring funding source.

Source: Final Agency Decision: 4/5/99; Project Priority List Published by the State of Alaska Department of Education.

Background: Based on requests from individual school districts, the State of Alaska Department of Education (DOE) has compiled a listing of school construction and major maintenance projects. DOE has reviewed the project requests and distilled the eligible projects to list that totals $530,183,470.

The state school construction program is not currently funded. This program is the primary responsibility of the state and will remain such. However, there may be opportunities for the Denali Commission to assist the state in areas that are federal responsibility such as bulk fuel storage upgrades.

The Denali Commission will continue to work with the State Department of Education, and at the point when a school construction program is funded, will work to determine if there is an opportunity for the Denali Commission to assist with some federally mandated component of the program.

Power Utilities

Need: $168,000,000.

Annual Funding: No program of annual funding.

Source: Percy Frisby, Director, Alaska Energy Authority.

Background: According to the Alaska Energy Authority (formerly the State of Alaska Division of Energy), they have needs in the following categories for the following amounts.

$68,000,000	Power Plant Construction and Rehabilitation
$100,000,000	Power distribution system construction, expansion and rehabilitation

The Alaska Energy Authority (AEA) is a state agency commissioned with oversight of energy related infrastructure in rural Alaska. The agency functions predominantly in areas that are typically not covered by a utility cooperative. These power plants and distribution systems are typically in areas where the economic base is insufficient to bond or self-fund construction of the power facilities and other sources of funding are required. At the current time, the AEA is the only source of funding for these projects, and there is no defined funding stream to take care of the above stated needs.

Another interest of the Denali Commission is to work towards conserving energy usage in rural communities. Efficiencies such as generator efficiencies, structure insulation, waste heat recovery, transmission efficiencies, and alternative power generation are all possible topics of consideration for the Commission.

Fuel Storage

Need: $450,000,000.

Annual Funding: $15–18 million ($8–10 million Denali Commission).

Source: Division of Energy (Alaska Energy Authority) Briefing Report dated September 24, 1999.

Background: The Alaska Energy Authority initiated an assessment of all bulk fuel tank farms in rural Alaska communities in 1996. The three-year project assessed the condition of the tank farms, including the total fuel capacity of each in terms of gallons.

Approximately 180 communities were surveyed during the three-year assessment period. Total storage capacity of the surveyed communities is 75,221,754 gallons. Assuming an average cost to upgrade as $6/gal, the total cost to construct new code compliant tank farms in each community is approximately $450,000,000.

Water, Wastewater, Solid Waste

Need: $1,057,512,641.

Annual Funding: $78.1 Million; $18 Million ANTHC, $21.6 million FC&O (Incl. AHFC, EPA, USDA–RD and state).

Source: Sanitation Deficiencies System Update, May 1999, Published by the Alaska Native Tribal Health Consortium, Department of Environmental Health and Engineering, Division of Sanitation Facilities Construction.

Background: The Alaska Native Tribal Health Consortium (ANTHC) is the responsible organization for administering the Public Health Service (PHS) construction program here in Alaska. The currently defined needs, according to the ANTHC/PHS Sanitation Deficiency System that estimates the overall need in the areas of Water/Wastewater/Solid Waste, to be $873,670,525. Currently the ANTHC receives approximately $18,000,000 annually to perform this work. ANTHC has responsibility for the tribal communities and the mission is to provide facilities for Native Alaskans. There is some overlap with the VSW program.

Source: SFY 2000 Capital Budget Priority Lists, 12/16/98; Published by the State of Alaska Department of Environmental Conservation, Division of Facility Construction and Operations.

Background: Village Safe Water (VSW); The State of Alaska Village Safe Water Program is a division of the State of Alaska Department of Environmental Conservation's Facility Construction and Operations (FC&O) Division. The division provides grants for planning, design, and construction of water, sewer, and solid waste projects in small, rural communities throughout Alaska. The currently defined needs as submitted by VSW only reflect the requests from communities interested in projects. This amount does not reflect the overall need. The current list of requested projects totals $105,690,744. The current funding level for VSW is $41,890,574.

Municipal Matching Grant and Loan Program provides grants and loans to medium sized communities for planning, design, and construction of water, sewer, and solid waste projects. The program is a division of the State of Alaska Department of Environmental Conservation's Facility Construction and Operations (FC&O) Division. The currently defined needs as submitted only reflect the requests from communities interested in projects. This amount does not reflect the overall need. The current list of requested projects totals $78,151,372. The current funding level of this 50% matching grant program is $18,164,200.

It should also be noted that the information provided by FC&O is not broken out by project type, nor does the division have the resources to provide such a breakout.

Health Care Facilities

Need: Unknown.

Annual Funding: Unknown.

Source: None.

Background: There is no comprehensive source of information relating to the needs for local healthcare facilities. Typically, a community or village will build a clinic and lease the facility back to the organization responsible for healthcare in their community. The Commission has allocated funding to complete an assessment of healthcare facility needs during the next year.

Airport Facilities

Need: $926 Million.

Annual Funding: $58–87 Million.

Source: 995 Transportation Needs and Priorities in Alaska; Published by State of Alaska Department of Transportation and Public Facilities. And the current FAA Aviation Improvement Program (AIP).

Background: The Federal Aviation Administration currently provides most of the funding for airport projects throughout the state. The state or local sponsor will contribute roughly 10% in the form of match. There are 1,112 designated airports, seaplane bases, and aircraft landing areas in the state of Alaska. The *Alaska Department of Transportation & Public Facilities* (ADOT&PF) owns and operates 261 *public airports,* the majority of Alaska's public airports. Additionally, 23 public airports are owned and operated by local governments.

Backlog of airport projects in the state amounts to approximately $926 million ($1.3 billion in an informal, 1997 tally completed by statewide aviation).

Historically, funding that the state receives for airports from the FAA AIP program has ranged from $58 million in 1990, to $81 million in 1998.

Road Construction and Major Maintenance

Need: $5.6 Billion.

Annual Funding: $320,000,000.

Source: 1995 Transportation Needs and Priorities in Alaska; Published by State of Alaska Department of Transportation and Public Facilities.

Background: The State of Alaska administers all of the Federal Highway funding allocated to Alaska with the exception of money specifically designated for the Bureau of Indian Affairs, which amounts to approximately $14 million per year. Although overall funding levels are up for roads, the BIA share has slipped from $16 million under ISTEA. The BIA funding does not go far considering it must provide for approximately 200 tribes.

Overally needs for highway and road projects were estimated at $5.6 billion in 1995. Average funding levels are estimated at approximately $320 million, up from approximately $220 million under ISTEA.

Most of the FHWA funding stays in the rail-belt, with some funding going to rural communities for sanitation roads and trail markings. Funding for projects off of the road system goes primarily to the larger hub communities.

Port Facilities

Need: $214 Million plus.

Annual Funding: Varies by year, typically between $0–5 Million.

Source: 1995 Transportation Needs and Priorities in Alaska; Published by State of Alaska Department of Transportation and Public Facilities.

Background: The State owns 78 of 95 public harbor facilities, operates those harbors through agreements with local governments, and provides financial and technical assistance to communities expanding or developing new harbors to meet demand and economic development objectives. The state of Alaska DOT&PF estimates that there are approximately $214 million in deferred maintenance, port, and harbor projects. The department's goal is to eventually be out of the harbor and port business with the possible exceptions of Alaska Marine Highway System facilities, and several refuge floats in remote areas.

In recent history, there has been little to no funding for ports and harbors in the state of Alaska. Most of the funding that is received provides match to Corps of Engineers funding. Some funding appropriated in recent years has gone to repair and transfer of selected harbors in the state. In rural Alaska, there is an as yet undefined need for harbor facilities for small communities located in the coastal areas and along the river systems. Many communities currently pull small boats up on to the beach and in some locations, this can be hazardous and environmentally detrimental. The Denali Commission may consider undertaking an assessment to determine the needs in this area.

Telecommunications

Need: Unknown.

Annual funding: Unknown.

Background: Telecommunications and Internet technologies, which are revolutionizing daily life in the United States, are not reaching most Alaskan communities. The positive impact Internet connections will have on education, training, healthcare and economic development in rural communities can not be overemphasized. The negative impact of leaving the rural communities behind in technological advances will only further compound the challenges of self-sustainability for rural Alaska.

The remoteness and sparse populations that so uniquely identify rural Alaska also are the primary limitations for private telecommunications to justify connections in most communities.

Typically, small communities have access only through the local public school or library, and tribes may have access through a program being implemented by the Department of Interior. Private users are prohibited from accessing these federally subsidized services. So, an individual who wishes to access vital information, obtain distance education or training, open a web-site for commerce, or have an e-mail account from home, must use "1800 dial-up access". Such service in rural Alaska costs between $200–$400 per month for basic e-mail and minimal Web browsing.

The Denali Commission will evaluate the availability of basic telecommunications, Internet technologies, and other advanced telecommunications in relation to the future of economic development, education, training and healthcare in rural Alaska.

Community Facilities

Need: Unknown.

Annual Funding: Unknown.

Background: Communities have a need for community assembly facilities for various purposes, including planning, meetings, traditional functions, and recreation for youth. These facilities, when available, are heavily used in rural communities. No assessment mechanism is in place for determining statewide needs for community facilities.

[FR Doc. 99–29251 Filed 11–8–99; 8:45 am]

BILLING CODE 3300–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–42–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1999.

Take notice that on October 29, 1999, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Tenth Revised Sheet No. 40, to become effective on December 1, 1999.

Algonquin states that, pursuant to Section 32 of the General Terms and Conditions of its FERC Gas Tariff, it is filing to revise the Fuel Reimbursement Percentages (FRPs) for the four calendar periods beginning December 1, 1999. Algonquin states that the use of actual data for the latest available 12-month period yields increased FRPs which, compared to the last FRQ annual filing, consist of a 0.01% increase in the FRP for the Winter season and seasonal increases for the Spring, Summer and Fall seasons ranging from 0.02% to 0.28%. Algonquin proposes to levelize the three non-winter periods in response to requests from customers for rate stability.

Algonquin requests any waivers necessary to permit the percentages calculated from the actuals for the entire 8-month period, combining Spring, Summer and Fall, to be applied during each of the three seasonal periods so that for the entire 8-month period the FRP will not change from one season to the next.

Algonquin also states that it is submitting the calculation of the fuel reimbursement quantity ("FRQ") deferral allocation, pursuant to Section 32.5(c) which provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period. Algonquin states that for the period August 1, 1998 through July 31, 1999, the FRQ Deferred Account resulted in a net credit balance that will be refunded to Algonquin's customers, based on the allocation of the account balance over the actual throughput during the accumulation period, exclusive of backhauls.

Algonquin states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Pubic Reference Room. This filing may be viewed on the web at http://ww.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29283 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–44–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1999.

Take notice that on October 29, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective December 1, 1999:

Thirty-ninth Revised Sheet No. 8
Thirty-ninth Revised Sheet No. 9
Thirty-eighth Revised Sheet No. 13
Forty-seventh Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to eliminate the currently effective gas supply realignment surcharges and base rate adjustments, due to the expiration of the recovery period for such transition costs.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99–29285 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–45–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1999.

Take notice that on October 29, 1999, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second revised Volume No. 1, the following revised tariff sheet to be effective December 1, 1999:

First Revised Sheet No. 4E.1

ANR states that the purpose of this filing is to designate in its tariff two new points eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99–29286 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–13–000]

Columbia Gas Transmission Corporation; Notice of Application

November 3, 1999.

Take notice that on October 27, 1999, Columbia Gas Transmission Corporation (Columbia Gas), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP00–13–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for authority to uprate an existing compressor unit at Columbia Gas' Flat Top Compressor Station, located in Summers County, West Virginia, to provide new firm transportation service to Equitable Production Company (Equitable). Columbia Gas identifies this filing as a companion to the Joint Stipulation and Agreement (settlement) filed on October 8, 1999, in Docket No. CP99–137–000, and Columbia Gas specifically request that the Commission act upon this application in conjunction with action on the settlement, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Communications concerning this filing should be addressed to: Fredric J. George, Attorney, Columbia Gas Transmission Corporation, Post Office Box 1273, Charleston, West Virginia 25325–1273, Telephone: 304–357–2359, Fax: 304–357–3206.

Columbia Gas proposes to uprate the Flat Top Compressor Station horsepower(hp) from 4,700 hp to 6,960 hp, in order to provide 65,000 Dekatherms of new firm transportation service to Equitable each day, for a three-year primary term beginning December 1, 1999. The proposed uprate is estimated to cost approximately $25,000.00, and Columbia Gas requests that such estimated cost be rolled into Columbia Gas' rate base, in Columbia Gas' next general Section 4(e) rate proceeding, so that no existing customers will be burdened with a rate increase resulting from the cost of this project.

The Joint Stipulation and Agreement that Columbia Gas filed on October 8, 1999, is with the Equitable Gas Company, Equitable Production Company and Kentucky-West Virginia Gas Company, L.L.C. (the Equitable Companies), and provides for the uprating of Columbia Gas' Flat Top Compressor Station, among other things. Columbia Gas accordingly requests, Commission approval without modification, of the October 8, 1999 settlement filed in Docket No. CP99–137–000.

Columbia Gas states that its Flat Top Compressor Station is situated near the intersection of Lines KA–8 and KA in Summers County, WV. It is averred that the Flat Top units pump mainline transmission gas on Line KA, as well as locally produced gas from line on Line KA–8.

Columbia Gas states that this proposal will provide additional operating and design flexibility, enable additional supplies to be delivered to markets on the eastern portion of Columbia Gas' pipeline system, and provide the basis for a three year transportation arrangement with Equitable. Columbia Gas states that it has been striving for years, to find a way to take the Beaver Creek Compressor Station out of operation without adversely affecting firm service to the Equitable companies. By order issued on September 15, 1999, the Commission granted Columbia Gas' request to abandon its Beaver Creek Compressor Station, in 88 FERC ¶ 62,238 (1999).

Any person desiring to be heard or to make any protest with reference to said application should on our before November 24, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gas to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–29272 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–31–000]

Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company; Notice of Petition for Waiver

November 3, 1999.

Take notice that on October 22, 1999, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia Pipelines) tendered for filing a petition for limited waiver of the Commission's Regulations and the nomination procedures set forth in their respective FERC Gas Tariffs in order to suspend certain nomination cycles during the Y2K rollover period. The Columbia Pipelines request waiver of such provisions to allow them adequate time to perform certain tasks that are part of their Y2K business continuation plans, in order to minimize business disruptions and promote stability of their regular business transactions on and after January 1, 2000.

The Columbia Pipelines state that copies of the filing have been mailed to all of their shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 10, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29277 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–51–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

November 3, 1999.

Take notice that on October 29, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective December 1, 1999:

Third Revised Sheet No. 5
Third Revised Sheet No. 6
Third Revised Sheet No. 7
First Revised Sheet No. 126
First Revised Sheet No. 127

Destin states that this instant filing is submitted pursuant to Section 24.2 of the General Terms and Conditions of its Tariff to adjust its fuel retention percentage (FRP) for transportation services on its system effective December 1, 1999. Destin proposes to modify Section 24.2 of the Tariff to change the basis for calculating the FRP by eliminating the Deferred Gas Required for Operations component since these amounts are resolved on a monthly basis through Section 14 of Destin's Tariff. Destin requests a one-time waiver to allow the FRP, effective December 1, 1999, to be calculated based on projected receipts and deliveries due to the fact that operations on the pipeline system during the first year of service do not reflect likely fuel requirements in the upcoming year.

As a result of this change Destin proposes to base the FRP on a projection of the monthly receipts and fuel for the 12 months ended August, 2000. Based on this calculation, the revised FRP is .3% which is a decrease from the currently effective FRP of 1.0%.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29291 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–53–000]

Destin Pipeline Company, L.L.C.; Notice of Revenue Crediting Report

November 3, 1999.

Take notice that on October 29, 1999, Destin Pipeline Company, L.L.C. (Destin) submitted its Annual Revenue Crediting Provision Filing. This filing was made pursuant to Section 14.2 of the General Terms and Conditions of Destin's FERC Gas Tariff which requires the crediting of certain amounts received as a result of resolving monthly imbalances of its shippers, for incidental gas purchases and sales required for operations under Section 14.1(h) of Destin's tariff, and under its operational balancing agreements with interconnecting pipelines during the 12-month period ended August 31, 1999. Destin reports that it received $1,496,200.72 in excess of amounts paid under the provisions of Section 14.2. Accordingly, Destin has credited said amount to its shippers.

Destin states that copies of Destin's filing will be served upon all of Destin's shippers, interested commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 10, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29293 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–34–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

November 3, 1999.

Take notice that on October 29, 1999, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume 1, First Revised Sheet No. 170, with an effective date of November 29, 1999.

East Tennessee states that Sheet No. 170 is being filed to comply with the Commission's September 29, 1999 "Order Approving Disposition of Jurisdictional Facilities" in Docket No. EC99–73. El Paso Energy Corporation and Sonat Inc., 888 FERC (¶ 61,302 (1999) (hereinafter, "the September 29th Order"). In the September 29th Order, the Commission approved the application of El Paso Energy Corporation and Sonat Inc. requesting Commission approval of the proposed merger between the two companies.

East Tennessee further states that Sheet No. 107 effectuates that commitment of the respective companies to file tariff sheets, for each of their jurisdictional pipeline companies that serve the Southeast, committing that future pipeline expansion capacity will be offered to all shippers on a non-discriminatory basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 first Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary

[FR Doc. 99–29280 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Iroquois Gas Transmission System, L.P.; Notice of Request for Waiver of FERC Gas Tariff

November 3, 1999.

Take notice that on October 29, 1999, Iroquois Gas Transmission System, L.P., (Iroquois) filed a request for limited waiver of certain provisions of its tariff and the Commission's regulations and orders for the period commencing on December 30, 1999 and ending on January 7, 2000.

Iroquois states that the purpose of limited waiver would be to provide alternate procedures for nominations, scheduling, confirmation and capacity release during the first week of the year 2000.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29288 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–49–000]

Koch Gateway Pipeline Company; Notice of Application

November 3, 1999.

Take notice that on October 29, 1999, Koch Gateway Pipeline Company (Koch), filed a Request for Limited Waiver of Tariff, Orders, and Regulations in Docket No. RP00–49–000. Koch states that it is seeking a limited waiver of the Commission's regulations and orders, as well as a limited waiver of certain provisions of its FERC Gas Tariff related to Koch's nomination and scheduling requirements, to the extent necessary to assist in the orderly provision of transportation services on Koch's system between December 29, 1999 and January 3, 2000, all as more fully described therein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 10, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishin to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are avaiable for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29289 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–404–006]

Mississippi River Transmission Corporation; Notice of Compliance Filing

November 3, 1999

Take notice that on October 22, 1999, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective March 17, 1999:

4th Sub Original Sheet No. 99A
4th Sub Original Sheet No. 99C
4th Sub Original Sheet No. 99D
4th Sub Original Sheet No. 99E

The purpose of this filing is to comply with the Commission's Order On Rehearing And Compliance Filing issued on October 18, 1999 (Order). These tariff sheets, in accordance with Order, modify the method MRT will use to allocate firm capacity that becomes available for subscription on MRT's system.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29275 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–38–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1999.

Take notice that on October 29, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Thirteenth Revised Sheet No. 22, to be effective December 1, 1999.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions (GT&C) of its Tariff as the thirteenth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing.

Natural requested waivers of Section 21 of the GT&C of this Tariff and the Commission's Regulations to the extent necessary to permit Thirteenth Revised Sheet No. 22 to become effective December 1, 1999.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29282 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–012]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1999.

Take notice that on October 29, 1999, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to become effective on November 1, 1999:

Fifth Revised Sheet No. 66
Original Sheet No. 66A
Original Sheet No. 66B
Original Sheet No. 66C

Northern states that the above sheet is being filed to implement a specific negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29274 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–54–000]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

November 3, 1999.

Take notice that on October 29, 1999 South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective November 29, 1999:

First Revised Sheet No. 10
First Revised Sheet No. 29

South Georgia states that the purpose of this filing is to comply with the Commission's September 29, 1999 order in Docket No. EC99–73 that directed certain pipelines of El Paso Energy Corporation and Sonat Inc., including South Georgia, to file tariff sheets committing that future pipeline expansion capacity will be offered to all shippers on a non-discriminatory basis.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29294 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–52–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

November 3, 1999.

Take notice that on October 29, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective November 29, 1999:

Second Revised Sheet No. 35
First Revised Sheet No. 46
Second Revised Sheet No. 59
First Revised Sheet No. 67
First Revised Sheet No. 82

Southern states that the purpose of this filing is to comply with the Commission's September 29, 1999 order in Docket No. EC99–73 that directed certain pipelines of El Paso Energy Corporation and Sonat Inc., including Southern, to file tariff sheets committing that future pipeline expansion capacity will be offered to all shippers on a non-discriminatory basis.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29292 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-37-000]

Stingray Pipeline Company; Notice of Tariff Filing

November 3, 1999.

Take notice that on October 29, 1999, Stingray Pipeline Company (Stingray), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing. Stingray proposes that the foregoing tariff sheets be made effective on November 1, 1999.

Stingray states this filing is made to reflect ministerial tariff changes resulting from the assumption of operating duties by Leviathan Operating Company (Leviathan). Stingray further states that the instant filing specifically modifies the company's address, telephone numbers and personnel titles and designations from its currently effective tariff to conform with the changes due to the assumption of operating duties by Leviathan. Stingray further states that the changes effected by this filing are purely ministerial.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-29281 Filed 11-8-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-55-000]

Tennessee Gas Pipeline Company; Notice of Request for Waiver

November 3, 1999.

Take notice that on November 1, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a Request for Waiver. Tennessee requests that the Commission approve its request by November 15, 1999.

Tennessee states that it is requesting a waiver of two provisions of Article X of the General Terms and Conditions of its FERC Gas Tariff to permit it to conduct routine, non-emergency maintenance during a period other than May 1 through November 1, without the obligation to post a tentative schedule of the planned maintenance on Tennessee's Electronic Bulletin Board no later than fifteen days prior to the scheduled activity.

Tennessee states that it is seeking a waiver from the Commission of the first of the two provisions because Tennessee believes that the maintenance work is necessary to avoid any unplanned outages resulting from the failure of any of the related facilities. Tennessee states that it is seeking a waiver from the Commission of the second of the two provisions because Tennessee believes the requirement is unnecessary since Tennessee has already consulted with each of the parties affected by the maintenance and because Tennessee believes that the EBB posting requirement could result in Tennessee missing the opportune time to complete the maintenance work for each project while waiting for the fifteen days to elapse.

Tennessee indicates that the filing does not include revised tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 10, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-29295 Filed 11-8-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-34-000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1999.

Take notice that on October 26, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix A to the filing to become effective December 1, 1999.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 7, 1991 in Docket Nos. RP88-67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect a decrease in the PCB-Related Cost component of Texas Eastern's currently effective rates. For example, the decrease in the 100% load factor average cost of long-haul service under Rate Schedule FT-1 to Market Zone 3 is $0.0074 per dekatherm.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88-67, et al. (Phase II/PCBs).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 first Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29278 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–50–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1999.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 29, 1999 tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing to become effective December 1, 1999.

Texas Eastern states that the revised tariff sheets are being filed (i) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and (ii) pursuant to Texas Eastern's Docket No. RP85–177–119, et al. Stipulation and Agreement (Settlement) filed January 31, 1994 and approved by Commission order issued May 12, 1994.

Texas Eastern states that it has recently filed its Annual PCB-Related Cost Filing to reflect the PCB-Related Cost rate components to be effective for the twelve month period December 1, 1999 through November 30, 2000 (PCB Year 10).

Texas Eastern states that the combined impact on Texas Eastern's rates at December 1, 1999 of this filing in combination with the PCB Year 10 Filing for typical long haul service under Rate Schedule FT–1 from Access Area Zone East Louisiana to Market Zone 3 (ELA–M3) equates to an overall decrease of 1.41 cents as follows:

	100% LF Impact ($/dth)
Rate Impact:	
PCB Year 10 Filing	(0.0074)
ASA Surcharge	0.0017
Total	(0.0057)
Fuel Retention Impact:	
Annual Avg. ASA Percentage Decrease—(0.28%)	
Rate Equivalent at P.I.R.A. projected price of $3.0167/dth	($0.0084)
Net Impact	$(0.0141)

Texas Eastern states that the changes proposed to become effective beginning December 1, 1999 consist of: (1) ASA Percentages designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system in providing service to its customers; (2) the ASA Surcharge designed to recover the net monetary value recorded in the Applicable Shrinkage Deferred Account as of August 31, 1999, as reduced by the transfer of the final net credit of the balances in the Spot Fuel Deferred Account and the Account No. 858 Costs Deferred Account; and (3) a Fuel Reservation Charge Adjustment designed to recover the excess (limited to a maximum rate specified by the Settlement) of the August 31, 1999 balance in the Non-Spot Fuel Deferred Account over the threshold amount of $10 million specified in Appendix E of the Settlement.

Texas Eastern states that this filing also constitutes Texas Eastern's report of the annual reconciliation of the interruptible revenues under Rate Schedules IT–1, PTI and ISS–1, as well as for Rate Schedule LLIT and for Rate Schedule VKIT.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as all parties to the Settlement in Docket No. RP85–177–119, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29290 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–501–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 3, 1999.

Take notice that on October 15, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a supplement to its September 2, 1999 request for waiver of Transco's Tariff, and orders and regulations of the Federal Energy Regulatory Commission, for the limited time period of December 28, 1999 through January 7, 2000. Transco states that this filing is to comply with the Commission's September 30, 1999 order. Transco states that the purpose of this filing relates to Transco's nomination, scheduling and capacity release deadline requirements, in order to provide transportation services during the first week of the Year 2000 (Y2K), should any Y2K issues arise which prevent Transco from being able to communicate with its customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 12, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rim.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29276 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–43–000]

Tuscarora Gas Transmission Company; Notice of Tariff Filing

November 3, 1999.

Take notice that on October 29, 1999, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective December 1, 1999.

Second Revised Sheet No. 12
Second Revised Sheet No. 13
Second Revised Sheet No. 22

Tuscarora asserts that the purpose of this filing is to revise its imbalance and billing procedures. Tuscarora proposes to utilize scheduled rather than delivered volumes in the computation of the shipper's bill. In addition, rather than allocating shipper imbalance by contract and delivery point, Tuscarora proposes to calculate a total system imbalance for each shipper based on the difference between total scheduled and delivered volumes. The current procedure for correcting imbalances and implementing penalties, as provided in Tuscarora's General Terms and Conditions, will not change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99–29284 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–35–000]

Viking Gas Transmission Company; Notice of Tariff Filing

November 3, 1999.

Take notice that on October 28, 1999, Viking Gas Transmission Company (Viking) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 27, 1999.

Viking states that the purpose of this filing is to clarify that the incremental rates for firm transportation service under Rate Schedule FT–D shall govern the pricing of capacity as it becomes available on Viking's system. Viking finds it necessary to make this filing because Viking's tariff currently does not address this issue expressly, and because new Commission policies provide for the pricing of pipeline capacity as it becomes available at the rates for incrementally-priced expansion projects.

Viking states that it believes that adoption of this pricing mechanism will provide better price signals to the market. Shippers will contract for capacity as it becomes available at rates capped at the incremental rates so that rates found just and reasonable for the incremental shippers will apply to all subsequent shippers receiving the same service. Viking believes this will have the effect of "rolling-up" the rates over time and will encourage longer term contracts. To implement this policy, Viking proposes to sell capacity that is rolled over, extended or auctioned at rates up to the Rate Schedule FT–D rate. Viking proposes to return to shippers who are paying incremental rates (i.e., any rate higher than the pre-expansion rate) ninety percent of any incremental revenues that result from making capacity available under Rate Schedule FT–D.

In addition, to create a level playing field for sale of all capacity as it becomes available, Viking proposes the same incremental pricing for temporary release and Rate Schedule IT and AOT services. Specifically, Viking proposes that temporary capacity release be made available at up to the Rate Schedule FT–D maximum rate and that releasing shippers be allowed to retain any excess revenues resulting from releasing capacity at up to the Rate Schedule FT–D maximum rate. Viking further proposes to set the Rate Schedules IT and AOT maximum rates at a 100 percent load factor derivative of the Rate Schedule FT–D maximum rate on an interim basis until Viking files its next general rate case proceeding. Viking proposes to return to shippers ninety percent of all incremental revenues that result from the interim rate change. Because the charge for Rate Schedule LMS is set at the maximum rate for Rate Schedule IT service, Viking is also making an interim adjustment to the charge for Rate Schedule LMS so that the charge for Rate Schedule LMS remains correlated with the maximum rate for Rate Schedule IT service.

Viling states that copies of this filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://wwe.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99–29279 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–46–000]

Young Gas Storage Company, Ltd.; Notice of Tariff Filing

November 3, 1999.

Take notice that on October 29, 1999, Young Gas Storage Company, Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 47A, First Revised Sheet No. 47B, First Revised Sheet No. 47C to be effective December 1, 1999.

Young states that it has now been determined that another minor modification is required to the Available Daily Withdrawal Quantity definition of its general terms and conditions for the 1999–2000 heating season. Young remains capable of providing 200 MMcf per day of peak deliverability; however the end-of-season decline is steeper than in the entitlement stated in its currently effective tariff. Young is, therefore, proposing to modify its Available Daily Withdrawal Quantity Formula, Daily Withdrawal Quantity Curve and Available Daily withdrawal Quantity Table to reflect this minor change.

Young further states that copies of this compliance filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29287 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–10–000, et al.]

PECO Energy Company, et al. Electric Rate and Corporate Regulation Filings

November 2, 1999.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. EL00–10–000]

Take notice that PECO Energy Company (PECO) filed a Motion for a Cease and Desist Order (the Motion). The Motion requests the Federal Energy Regulatory Commission (the Commission) to direct the North American Electric Reliability Council and all transmission providers with open access transmission tariffs (OATTs) on file with the Commission (i) to cease and desist from denying transmission based on E-tag submissions, (ii) to suspend the implementation of the E-tag until NERC's Policy 3—Interchange, has been filed with the Commission as an amendment to the OATTs, and (iii) to require amendments to Policy 3, as set forth in the Motion.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. White River Electric Association Incorporated

[Docket No. ES00–3–000]

Take notice that on October 25, 1999, White River Electric Association Incorporated (White River) filed an application under Section 204 of the Federal Power Act. The application seeks authorization to issue approximately $1 million of long-term debt in the form of one or more secured promissory notes. White River alternatively requests blanket approval to issue securities or assume additional debt provided that such issuance is for a lawful object within the corporate purposes, compatible with the public interest, and reasonably necessary or appropriate for such purposes. White River also requests a waiver from any requirement to use competitive bidding or negotiated placement in relation to the debt.

Comment date: November 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket No. ER00–210–000]

Take notice that on October 25, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Duke Power, a division of Duke Energy Corporation, will take transmission service pursuant to its open access transmission tariff. The agreements are based on the form of service agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 15, 1999.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra Pacific Power Company

[Docket No. ER00–239–000]

Take notice that on October 27, 1999, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with Merrill Lynch Capital Services, Inc., for both Short-Term Firm and Non-Firm Point-to-Point Transmission Service and with Reliant Energy Services, Inc., for Short-Term Firm Point-to-Point Transmission Service. These Service Agreements are being filed under Sierra Pacific Resources Operating Companies FERC Electric Tariff Original Volume No. 1, Open Access Transmission Tariff (Tariff).

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission Regulations. Sierra also submitted revised Sheet No. 173 (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit an effective date of October 27, 1999 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission on Nevada the Public Utilities Commission of California and all interested parties.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Indiana Gas and Electric Company

[Docket No. ER00–283–000]

Take notice that on October 28, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing service agreements for firm point to point transmission service under Part II of its Transmission Services Tariff with Louisville Gas and Electric Company/Kentucky Utilities Company.

Copies of the filing were served upon each of the parties to the service agreement.

SIGECO requests waiver of the 60-day prior notice requirement to allow the service agreements to become effective as of October 14 1999.

Comment date: November 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Ameren Services Company

[Docket No. ER00–284–000]

Take notice that on October 28, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and Utilicorp United, Inc., (UUI). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to UUI pursuant to ASC's

Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ASC requests that the Service Agreement be allowed to become effective October 19, 1999 the date for said agreement.

Comment date: November 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER00–287–000]

Take notice that on October 28, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Transaction Agreement dated October 26, 1999 between PECO and Horizon Energy Company d/b/a Exelon Energy (EXELON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of November 1, 1999, for the Transaction Letter.

PECO states that copies of this filing have been supplied to EXELON and to the Pennsylvania Public Utility Commission.

Comment date: November 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER00–289–000]

Take notice that on October 28, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Illinova Power Marketing, Inc. (Illinova), dated October 5, 1999, and a Non-Firm Transmission Service Agreement with (Illinova), dated October 5, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of October 5, 1999, for the Agreements with Illinova, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Illinova, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. American Electric Power Service Corporation

[Docket No. ER00–290–000]

Take notice that on October 28, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Dynegy Power Marketing, Inc., Edison Mission Marketing & Trading, Inc., and Illinova Power Marketing, Inc. These agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after October 1, 1999. AEPSC also requests termination of one service agreement filed under a prior open access tariff, AEP Companies' FERC Electric Tariff Original Volume No. 1. The customer holding that agreement, Electric Clearinghouse, Inc., has executed new agreements under the name Dynegy Power Marketing, Inc.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: November 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29271 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 201]

Petersburg Municipal Power and Light; Notice of Scoping Meetings and Project Facilities Tour Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

November 3, 1999.

The Commission's regulations allow applicants the option of preparing their own Environmental Assessment (EA) for hydropower projects, and filing the EA with their application as part of an alternative licensing procedure.[1] On September 8, 1999, the Commission approved the use of an alternative licensing procedure in the preparation of a new license application for Petersburg Municipal Power and Light's (Petersburg), Blind Slough Project, No. 201.

The alternative procedures include provisions for the distribution of an initial information package, and for the cooperative scoping of environmental issues and needed studies. During the week of November 1, 1999, Petersburg will distribute a Scoping Document (SD1) and initial information package.[2] Two public meetings will be held to discuss these documents.

Combined Scoping and Initial Information Meetings

Petersburg will hold public scoping meetings on December 13, 1999, pursuant to the National Environmental Policy Act (NEPA) of 1969. At the scoping meetings, Petersburg will: (1) Summarize the material presented in the initial information package and the environmental issues tentatively identified in the scoping document for analysis in the EA; (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although Petersburg's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

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[1] 81 FERC ¶ 61,103 (1997)

[2] Copies of these documents can be obtained by calling Nan Nalder at 206–281–7079 or e-mail acresnan@serv.net

The times and locations of the scoping meetings are:

Agency Scoping Meeting
December 13, 1999, 9:00 am to 11:30 pm, Alaska division of Governmental Coordination, 240 Main Street, 3rd Floor conference Room, Juneau, AK 99811

Public Scoping Meeting
December 13, 1999, 7:00 pm to 8:30 pm, City Council Chambers, 12 South Nordic, Petersburg, AK 00883

All interested individuals, organizations, and agencies are invited and encouraged to attend any or all of the meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

Project Tour

A visit to the project facilities (powerhouse, tailrace area, lower penstock) is tentatively scheduled for December 14, 1999, weather permitting. Access to the project dam requires air transport which will very likely be unavailable due to low visibility, but can be arranged for a later date. Those interested in visiting the project on December 14, should contact Dennis Lewis of Petersburg at 907–772–4203.

Scoping Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission does not intend to conduct a NEPA scoping meeting after Petersburg's application and EA are filed with the Commission. Instead, Commission staff will attend the meetings on December 13, 1999.

Both scoping meetings will be recorded by a court reporter, and the transcripts will become part of the formal record for this project. Those who choose not to speak during the scoping meetings may instead submit written comments on the project. Written comments should be mailed or e-mailed to: Nan A. Nalder, Relicensing Manager, Acres International, 3254–11th Avenue West, Seattle, WA 98119, acresnan@serv.net.

Commenting Deadline

All correspondence should be postmarked no later than February 15, 2000. Comments should show the following caption on the first page: Scoping Comments, Blind Slough Hydroelectric Project, Project No. 201.

For further information please contact Vince Yearick of the Commission at (202) 219–3073.

David P. Boergers,
Secretary.

[FR Doc. 99–29273 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6472–3]

Notice of Availability: Draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft guidance; extension of comment period.

SUMMARY: On August 25, 1999, EPA released the draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations for review and written comments. The manual is intended to provide clear and concise guidance for EPA and State National Pollutant Discharge Elimination System (NPDES) permit writers on permitting Concentrated Animal Feeding Operations. The draft guidance is intended to assist permit writers in issuing permits in a manner consistent with the permitting practices identified in the USDA-EPA Unified National Strategy for Animal Feeding Operations. The manual supersedes the Guide Manual on NPDES Regulations for Concentrated Animal Feeding Operations issued in December 1995. Additionally, it is intended to clarify the circumstances under which producers should submit a Notice of Intent to be covered under an NPDES general permit or apply for an individual NPDES permit.

EPA initially requested comments on this draft guidance manual to be submitted by October 25, 1999. It is EPA's intent to provide the public and all stakeholders an adequate period of time to fully analyze the issues and prepare comprehensive comments. Therefore, we are extending the comment period until November 24, 1999.

DATES: Written comments should be submitted by November 24, 1999, to the address below.

ADDRESSES: Address all comments to Gregory Beatty, US EPA, 401 M Street, SW, Mail Code 4203, Washington, DC 20460. Submit electronic comments to *beatty.gregory@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Gregory Beatty, (202) 260–6929 or Will Hall, (202) 260–1458.

SUPPLEMENTARY INFORMATION: Copies of the draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations may be obtained on the Internet at: *http://www.epa.gov/owm.* If you do not have Internet access, you may obtain a paper copy of the draft guidance by calling the Water Resources Center at (202) 260–7786. The draft guidance is also available in electronic format.

Dated: November 2, 1999.

Dana D. Minerva,
Acting Assistant Administrator for Water.

[FR Doc. 99–29304 Filed 11–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6472–4]

Public Water System Supervision Program Revision and Definition of Indian Country for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comments and announcement of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) will hold a public hearing for the proposed primacy revision of the State of South Dakota's Public Water System Supervision (PWSS) Program as well as for the proposed definition of Indian country as it extends to PWSS primacy delegation and other environmental program authorizations and delegations within the State of South Dakota. For further information on the proposed primacy delegation, as well as on the proposed definition of Indian country, please refer to 64 FR 44521–44522, August 16, 1999.

DATES: Any interested parties may submit oral or written statements at the public hearing scheduled for Thursday, December, 2, 1999. There will be two sessions: an afternoon session at 3 p.m. and an evening session at 6:30 p.m. The hearing will be held at the Badlands National Park Service Headquarters located nine miles south off of I–90 Exit 131, 72 miles from Rapid City or two miles north of the Town of Interior. The telephone number for the Badlands National Park Service Headquarters is 605–433–5281 or 605–433–5361. Persons wishing to make oral statements must register at the Badlands National Park Service Headquarters on December

2, 1999, between 2:30 p.m. and 3 p.m. or between 6 p.m. and 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: Linda Himmelbauer, Municipal Systems Unit, EPA Region 8 (8P–W–MS), 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone 303–312–6263.

SUPPLEMENTARY INFORMATION: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300g–2, and 40 CFR part 142, subpart B-Primary Enforcement Responsibility, that the State of South Dakota has revised its PWSS program. South Dakota's PWSS program, administered by the Drinking Water Program of the South Dakota Department of Environment and Natural Resources (DENR), has adopted regulations for lead and copper in drinking water that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141, subpart I (56 FR 26460–26564, June 7, 1991). The EPA proposes to approve South Dakota's primacy revisions for the Lead and Copper regulation. The proposed approval does not extend to public water systems in Indian country as defined in 64 FR 44521–44522, August 16, 1999.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region 8, Municipal Systems Unit, 999 18th Street (4th floor), Denver, CO 80202–2466; (2) South Dakota Department of Environment and Natural Resources, Drinking Water Program, 523 East Capital Avenue, Pierre, SD 57501.

Dated: October 27, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 99–29306 Filed 11–8–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 2, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 10, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices.

Form Number: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 767.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annually.

Total Annual Burden: 6,136 hours.

Total Annual Costs: $500.

Needs and Uses: Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming and equipment. The report must compare the prices charged by cable systems subject to effective competition and those not subject to effective competition. The annual Price Survey is intended to collect data needed to prepare this report.

OMB Control Number: 3060–0208.

Title: Section 73.1870 Chief Operators.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 14500 AM/FM/TV stations.

Estimated Time per Response: 26.166 hours.

Frequency of Response: Recordkeeping, third party disclosure.

Total Annual Burden: 379,407 hours.

Total Annual Costs: $0.

Needs and Uses: Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted at the transmitter site. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate any corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested persons to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–29230 Filed 11–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–171, DA 99–2334]

Common Carrier Bureau Seeks Comment on Joint Submission of Program Administrators Regarding Consolidated Data Collection Procedures and Cost Allocation Methodology

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 27, 1999, the Commission released a document seeking comment on a proposal filed jointly by the administrators of the local number portability, number administration, telecommunications relay services, and universal service support mechanisms (collectively, "the administrators"). The document seeks comment on the administrators'' proposed procedures for handling the new Telecommunications Reporting Worksheet and proposed methodology for allocating related costs. The intended effect of this action is to make the public aware of, and to seek public comment on, this proposal.

DATES: Comments are due on or before November 29, 1999, and reply comments are due on or before December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Scott K. Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418–7102; or Jim Lande, Industry Analysis Division, Common Carrier Bureau at (202) 418–0948. The TTY number is (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released October 27, 1999 (DA 99–2334). The full text of the Public Notice and the administrators' joint submission are available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th St., NW, Washington, D.C. 20036.

Background

On July 14, 1999, the Commission amended its rules so that telecommunications carriers and other service providers need only file one form—the Telecommunications Reporting Worksheet—for the purpose of determining their contributions to the universal service support mechanisms, the TRS Fund, and the cost recovery mechanisms for numbering administration and local number portability.[1] In that order, the Commission concluded that carriers and other filers of the new worksheet need only file one copy of the new worksheet. Accordingly, the Commission directed the administrators to file with the Bureau a summary of their proposed procedures for distributing the data obtained on the consolidated worksheet and to include a description of how related costs will be equitably apportioned.

On October 13, 1999, the administrators filed their joint submission regarding procedures for handling the new consolidated worksheet and for allocating related costs. See Joint Submission of Program Administrators regarding Consolidated Data Collection Procedures and Cost Allocation Methodology, CC Docket No. 98–171 (filed Oct. 13, 1999) (Joint Submission). Through the Public Notice summarized here, the Bureau seeks comment on the proposals contained in that joint submission.[2]

Procedural Matters

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or beforee November 29, 1999, and reply comments on or before December 9, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>". A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties are also requested to send two paper copies of their filing to Ms. Terry Conway, Industry Analysis Division, 445 Twelfth Street SW., 6–A523, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's Rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Thomas Beers,

Deputy Chief, Industry Analysis Division, Common Carrier Bureau.

[FR Doc. 99–29089 Filed 11–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Types of Review: New collection.

Title: Customer Assistance.

OMB Number: New collection.

Annual Burden:

Estimated annual number of respondents: 5,000

Estimated time per response: 30 minutes

Average annual burden hours: 2,500 hours

Expiration Date of OMB Clearance: New collection.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara T. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before December 9, 1999 to both the OMB reviewer and the FDIC contact listed above.

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[1] 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order, FCC 99–175, CC Docket No. 98–171, 64 FR 41320 (rel. July 14, 1999) (Contributor Reporting Requirements Order).

[2] We note that some released copies of the Public Notice summarized here contained an incorrect Delegated Authority number. The correct DA number is 99–2334. See Common Carrier Seeks Comment on Joint Submission of Program Administrators Regarding Consolidated Data Collection Procedures and Cost Allocation Methodology, Public Notice, DA 99–2390, CC Docket No. 98–171 (rel. Nov. 1, 1999).

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDCI contact listed above.

SUPPLEMENTARY INFORMATION: This collection permits the FDIC to collect information from customers of financial institutions who have inquiries or complaints about service. Customers may document their complaints or inquiries to the FDIC using a letter or on an optional form.

Dated: November 2, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–29308 Filed 11–8–99; 8:45 am]

BILLING CODE 6714–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 24, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Michael David and Susan Ann Griffin*, Dysart, Iowa; to acquire additional voting shares of Dysart Banshares, Inc., Dysart, Iowa, and thereby indirectly acquire additional voting shares of Dysart State Bank, Dysart, Iowa.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *Patricia Ann Adam*, Pierre, South Dakato; to acquire voting shares of Blunt Bank Holding Company, Blunt, South Dakota, and thereby indirectly acquire additional voting shares of Dakota State Bank, Blunt, South Dakota.

2. *Zaruba Family Limited Partnership*, Wyoming, Minnesota; to acquire voting shares of Wyoming Bancshares, Inc., Wyoming, Minnesota, and thereby indirectly acquire voting shares of First State Bank of Wyoming, Wyoming, Minnesota.

Board of Governors of the Federal Reserve System, November 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–29260 Filed 11–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Centra Financial Holdings, Inc.*, Morgantown, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Centra Bank, Inc., Morgantown, West Virginia.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Cumberland Bancorp, Inc.*, Carthage, Tennessee; to merge with Bancshares of Dyer, Inc., Dyer, Tennessee, and thereby indirectly acquire Bank of Dyer, Dyer, Tennessee.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *United Financial Corp.*, Great Falls, Montana; to acquire 24 percent of the voting shares of Valley Bancorp., Phoenix, Arizona, and thereby indirectly acquire Valley Bank of Arizona, Phoenix, Arizona.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Praesidium Capital Corporation*, Purchase, New York; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Uvalde, Texas.

Board of Governors of the Federal Reserve System, November 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–29259 Filed 11–8–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Request for Nominations for the Secretary's Advisory Committee on Minority Health

AGENCY: Office of Public Health and Science, Office of Minority Health.

ACTION: Notice.

SUMMARY: The Secretary, Department of Health and Human Services, signed the charter establishing the Committee on Minority Health on September 17, 1999. Unless renewed prior to its expiration, the Committee will terminate on September 22, 2001. It is the function of the Committee to advise and make recommendations to the Secretary on improving the health of racial and ethnic minority groups and development of goals and specific program activities. This notice also requests nominations for membership on the Committee.

DATES: Nominations for members must be received no later than 5:00 P.M. on January 10, 2000.

ADDRESSES: You may mail or deliver nominations to the following address: Monica Farrar, Division of Management Operations, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, MD 20852. Nominations will not be accepted by e-mail nor by facsimile.

A request for a copy of the Secretary's charter for the Advisory Committee should be submitted to: Joan Jacobs, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, MD 20852. The charter can also be downloaded from the Office of Minority Health Resource Center web site at http://www.omhrc.gov.

FOR FURTHER INFORMATION CONTACT: Joan Jacobs, (301) 443–9923.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 1707(c) of the Public Health Service Act directs the Secretary to establish the Advisory Committee on Minority Health. The Committee is also governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formulation and use of advisory committees.

The Advisory Committee shall advise the Secretary on improving the health of racial and ethnic minorities and developing goals and specific program activities. These activities include, but are not limited, to the following:

(1) Establishing short-range and long-range goals and objectives and coordinate all other activities within the Public Health Service that relate to disease prevention, health promotion, service delivery, and research concerning such individuals.

(2) Entering into interagency agreements with other agencies of the Public Health Service.

(3) Supporting research, demonstrations and evaluations to test new and innovative models.

(4) Increasing knowledge and understanding of health risk factors.

(5) Developing mechanisms that support better information dissemination, education, prevention, and service delivery to individuals from disadvantaged backgrounds, including individuals who are members of racial and ethnic minority groups.

(6) Ensuring that the National Center for Health Statistics, Centers for Disease Control and Prevention, collects data on the health status of each minority group.

(7) With respect to individuals who lack proficiency in speaking the English language, entering into contracts with public and nonprofit private providers of primary health services for the purpose of increasing the access of individuals to such services by developing and carrying out programs to provide bilingual or interpretive services.

(8) Supporting a national minority health resource center to carry out the following:

(A) Facilitate the exchange of information regarding matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care;

(B) Facilitate access to information;

(C) Assist in the analysis of issues and problems relating to such matters;

(D) Provide technical assistance with respect to the exchange of such information (including facilitating the development of materials of such technical assistance).

(9) Carrying out programs to improve access to health care services for individuals with limited proficiency in speaking the English language. Activities under the preceding sentence shall include developing and evaluating model projects.

II. Nominations

The Office of Minority Health (OMH) is requesting nominations for voting members to serve on the Advisory Committee. The Committee is to consist of 12 voting members appointed by the Secretary from among racial and ethnic minorities, defined as Black or African American, Hispanic/Latino, American Indian/Alaska Native, Asian American, and Native Hawaiian or Pacific Islander, who have expertise regarding issues of minority health. The racial and ethnic minority groups will be equally represented among the voting members. The membership will also be diverse in terms of gender, HIV status, disability, age, culture, sexual orientation, geography, and points of view. Employees or officers of the Federal Government may not serve as voting members, except that the Secretary may appoint employees of the DHHS to serve as ex-officio, non-voting members.

OMH is seeking nominations of persons from a wide-array of fields including but not limited to: public health and medicine, health administration and financing, behavioral and social sciences, immigration and rural health, health law and economics, cultural and linguistic competency, and biomedical ethics and human rights. Demonstrated expertise in minority health, in subject areas such as access to care, data collection and analysis, health professions development, cultural competency, and eliminating disparities in cancer, cardiovascular diseases, infant mortality, HIV infection/AIDS, child and adult immunization, diabetes, substance abuse, homicide, suicide, unintentional injuries, and other diseases and health conditions is also required.

Nominations must state that the nominee is willing to serve as a member of the Advisory Committee and appears to have no conflict of interest that would preclude membership. Candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Members are appointed for a term of four years except that the Secretary shall initially appoint a portion of members to one, two, and three year terms. The Chair, selected by the Secretary from among the voting members of the Committee, will serve a term of two years. Committee members will be compensated for the time spent in Committee meetings (including travel time) as well as per diem costs.

Any interested person may nominate one or more qualified persons. Self-nominations will also be accepted.

Nomination forms may be obtained from the Office of Minority Health Resource Center, P.O. Box 37337, Washington, D.C. 20013–7337, telephone 1–800–444–6472, TDD 301–230–7199, e-mail: *info@omhrc.gov*. Nomination forms may also be downloaded from the Office of Minority Health Resource Center web site, *http://www.omhrc.gov. All nominations and curricula vitae for the Advisory Committee should be set to Monica Farrar at the address in this notice.*

Authority: Section 1707(c) of the Public Health Service Act, as amended (42 U.S.C. 300u–6(c)); Federal Advisory Committee Act (5 U.S.C. appendix 2).

Dated: November 3, 1999.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 99–29243 Filed 11–8–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Proposed To Be Submitted to the Office of Management and Budget (OMB) for Clearance

The Administration on Aging (AoA), Department of Health and Human Services, is submitting the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511): Title VI Program Performance Reports.

Type of Request: Extension.

Use: To continue an existing information collection, Title VI Program Performance Report, from Title VI grantees to use in reporting information on programs funded by Title VI as required under Section 202(a)(19), Section 614(a)(2), and Section 614(a)(3) of the Older Americans Act, as amended.

Frequency: Semi-Annually.

Respondent: Tribal Organizations and Non-profit Organizations representing Native Hawaiians.

Estimated Number of Responses: 227.

Estimated Burden Hours: 681.

Additional Information and Comments: The Administration on Aging will be submitting to the Office of Management and Budget a request for approval for the continuation of use of the Title VI Program Performance Reports, pursuant to requirements in Section 202(a)(19), Section 614(a)(2), and Section 614(a)(3) of the Older Americans Act.

Requests for a copy of the above mentioned Program Performance Report and/or written comments and recommendations for the proposed information collection should be sent within 60 days of the publication of this notice to: M. Yvonne Jackson, Director, Office for American Indian, Alaskan Native and Native Hawaiian Programs, Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

Dated: November 2, 1999.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 99–29242 Filed 11–8–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Child Welfare Demonstration Project Information Collection.

OMB No.: New.

Description: Under section 1130 of the Social Security Act, the Department of Health and Human Services is given authority to approve up to ten States for Child Welfare demonstrations in each of the five fiscal years 1998–2002. These demonstration projects involve the waiver of certain requirements of titles IV–B and IV–E, the sections of the Act that govern foster care, adoption assistance, independent living, child welfare services, promoting safe and stable families, family preservation and support, and related expenses for program administration, training, and automated systems. Child Welfare demonstration projects operating this waiver authority are required to be consistent with the purposes of existing law, cost-neutral to the Federal government, and independently evaluated. This authority provides an Opportunity for States to design and test a wide range of approaches to improve and reform child welfare. Such demonstrations should provide valuable knowledge that will lead to improvements in the delivery, effectiveness and efficiency of services.

The information collection consists of seven components, which are outlined in the Information Memorandum: (1) Application; (2) Initial Design and Implementation Report; (3) Evaluation Plan; (4) Quarterly Reports (Pre-Implementation); (5) Semi-Annual Reports (Post-Implementation); (6) Interim Evaluation Report; and (7) Final Report. The primary purpose of the demonstrations is to produce information on the outcomes for children and their families. These collections lay the information infrastructure to facilitate the dissemination of this information. If data collection is not conducted for the child welfare demonstrations, the Department relinquishes all pertinent information required to test the impact of the intervention employed in the waivers, specifically the effect of allowing the flexible use of IV–E dollars in the delivery of child welfare services. Furthermore, ensuring the safety and welfare of children is of utmost importance to CB, and if data is conducted less frequently than required by the project, interim results that could affect the well-being of children can be overlooked.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	10	1	120	1,200
Initial Design	55	1	40	2,200
Evaluation Plan	55	1	40	2,200
Quarterly Report	55	1	24	1,320
Simi-Annual Reports	55	1	80	4,400
Interim Evaluation Report	55	1	120	6,600
Final Report	55	1	160	8,800

Estimated Total Annual Burden Hours: 26,720.

In Compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated November 3, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–29240 Filed 11–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: 45 CFR Part 95, Supart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP).

OMB No.: 0992–0005.

Description: The advance planning document (APD) process, established in the rules at 45 CFR Part 95, Subpart F, is the procedure by which States request and obtain approval for Federal financial participation in their cost of acquiring automatic data processing equipment and services. The State Agency submitted APD, provides the Department of Health and Human Services (DHHS) with the following information necessary to determine the State's need to acquire the requested ADP equipment and/or services:

1. A statement of need;
2. A requirements analysis and feasibility study;
3. A cost benefits analysis;
4. A proposed activity schedule; and,
5. A proposed budget.

DHHS' determination, of a State agency's need to acquire requested ADP equipment or services, is authorized at sections 402(a)(5), 452(a)(1), 1902(a)(4) and 1102 of the Social Security Act.

Respondents: State, Local or Tribal Governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of respondents per respondent	Average burden hours per response	Total burden hours
Advance Planning Document	50	1.84	60	5,520
RFP and Contract	50	1.54	1.5	115.5
Emergency Funding Request	27	1	1	27
Service Agreement	14	1	1	14
Biennial Reports	50	1	1.5	75

Estimated Total Annual Burden Hours: 5,751.5.

In Compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarify of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 3, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–29241 Filed 11–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 19, 1999, 8 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, ext. 118, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12523. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an optical device intended to assist in the evaluation of colonic polyps using laser-induced autofluorescence.

Procedure: On November 19, 1999, from 8:30 a.m. to 1:30 p.m., and from 2 p.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 15, 1999. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m. and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 15, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 19, 1999, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information regarding pending and future device issues (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this information.

FDA regrets that it was unable to publish this notice 15 days prior to the November 19, 1999, Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 29, 1999.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 99–29223 Filed 11–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in December 1999.

The Drug Testing Advisory Board meeting will be open from 8:30 a.m. until 10:15 a.m. on December 8, 1999. The open session will include a roll call, an HHS update, a DOT update, a brief review of the on-site testing meeting held on October 5 and 6, and a brief review of the working group meeting held on November 3, 4, and 5 to discuss alternative specimen testing. A public comment period will be scheduled during the open session. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below.

The Drug Testing Advisory Board meeting will be closed from 10:15 a.m. on December 8, 1999, until 3:30 p.m. on December 9, 1999, because it involves the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App.2, § 10(d).

An agenda for the open session of this meeting and a roster of board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Date: December 8–9, 1999.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: December 8, 1999; 8:30 a.m.–10:15 a.m.

Closed: December 8, 1999; 10:15 a.m.–3:30 p.m.

Closed: December 9, 1999; 8:30 a.m.–3:30 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031.

Dated: November 3, 1999.

Sandra E. Stephens,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–29225 Filed 11–8–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–AG; IDI–017246]

Termination of Recreation and Public Purpose Act Classification and Opening Order, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice

SUMMARY: This notice terminates a Recreation and Public Purpose Act Classification on 43.81 acres as this classification is no longer needed.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: On June 3, 1971, 43.81 acres were classified as suitable for Recreation and Public Purposes. The classification is hereby terminated and the segregation for the following described lands is hereby terminated:

T. 2 N., R. 3 E., B.M.

Section 5: Lot 4.

The area described above aggregates 43.81 acres in Ada County.

At 9 a.m. on November 9, 1999, the Recreation and Public Purposes Act classification identified above will be terminated. The lands will remain closed to location and entry under the public land laws and the general land laws, as the lands are currently segregated for exchange.

Dated: November 3, 1999.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 99–29333 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–00–1430–HN/NM–101521 and NM–101522/G010–G0–0251]

Notice of Exchange Proposal/Notice of Intent To Prepare Two Environmental Impact Statements for the Proposed Santo Domingo and San Felipe Land Exchanges

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange proposal; notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM)

is considering two proposals to exchange lands pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended by the Federal Land Exchange Facilitation Act of August 20, 1988. This also serves as a Notice of Intent to prepare two Environmental Impact Statements (EIS's). The proposals are two separate land exchanges involving the BLM, the Pueblo of San Felipe and the Pueblo of Santo Domingo. These proposals supersede the three-way exchange proposal between the BLM, the State of New Mexico, and the two pueblos.

Under Section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM Albuquerque Field Office will be directing the EIS preparation by a third-party contractor. The proposal is to exchange approximately 7,376.34 acres of federal surface and subsurface to the Santo Domingo Pueblo and approximately 9,459.03 acres to the San Felipe Pueblo. The lands are contiguous and located east of San Felipe and south of the Santo Domingo Reservations. The San Felipe and Santo Domingo Pueblos would then acquire, or cause to be acquired, BLM high-priority acquisition lands adding up to the fair market value of the federal lands. An escrow account may be used to purchase private or other lands of equal value, from a list of lands to be acquired for the BLM.

The lands to be acquired by the pueblos will be selected from the BLM's high-priority acquisition zones and may be within and adjacent to Wilderness Study Areas (WSAs), Areas of Critical Environmental Concern (ACECs), riparian areas and/or other Special Management Areas (SMAs) for the benefit of the BLM.

The following described public lands are being considered for disposal to the San Felipe Pueblo by the United States:

New Mexico Principal Meridian

T. 13 N., R. 6 E.,
  Sec. 1, lots 8 to 12, inclusive, and lot 14;
  Sec. 3, lots 1 to 4, inclusive, S½N½, E½SE¼, and W½SW¼;
  Sec. 7, SE¼SW¼;
  Sec. 8, E½;
  Secs. 9 and 10;
  Sec. 14, N½ and SW¼;
  Sec. 15;
  Sec. 16, S½NW¼;
  Sec. 17, S½NE¼;
  Sec. 21, lots 10 to 13, inclusive, NE¼NE¼, and NE¼SE¼;
  Sec. 22, N½ and N½S½;
  Sec. 23, W½W½;
  Sec. 25, NW¼ and W½SW¼;
  Sec. 26, S½;
  Sec. 27, S½NE¼, W½SW¼, SE¼SW¼, E½SE¼, and SW¼SE¼;
  Sec. 28, lots 1 to 9, inclusive, E½;
  Sec. 34, E½;
  Sec. 35, N½ and W½SW¼;
  Sec. 36, SW¼NW¼ and W½SW¼.
T. 14 N., R. 6 E.,
  Sec. 22, lots 2, 3, 4, and lots 7 to 10, inclusive, W½;
  Sec. 23, lot 5, N½, SE¼;
  Sec. 26, lots 3, 4, 5, and lots 10 to 14, inclusive, NE¼;
  Sec. 27, N½, NE¼SW¼, N½NW¼SW¼, NE¼SE¼NW¼SW¼, NW¼SW¼NW¼SW¼, S½S½NW¼SW¼, S½SW¼, and SE¼;
  Sec. 34, N½;
  Sec. 35, lots 3, 4, 9 and 10, W½.
T. 13 N., R. 7 E.,
  Sec. 6, lot 13;
  Sec. 7, lots 8, 9, 10, 12 and 13;
  Sec. 18, lots 1, 2, 3, W½NW¼, and NW¼SW¼;
  Sec. 31, lots 1 to 4, inclusive, W½W½.

The areas described aggregate 9,459.03 acres.

The following described public lands are being considered for disposal to the Santo Domingo Pueblo by the United States:

New Mexico Principal Meridian

T. 13 N., R. 6 E.,
  Sec. 1, lots 5, 6, 7, and 13.
T. 14 N., R. 6 E.,
  Sec. 9, lots 9, 10, S½;
  Sec. 10, lots 10 to 13, inclusive, S½S½;
  Sec. 11, lots 9, 10 and 11;
  Sec. 13, lots 5 to 8, inclusive, S½NW¼ and S½;
  Sec. 14, lot 2, NW¼NE¼, S½NE¼, NW¼, and S½;
  Sec. 15;
  Sec. 22, lots 1, 5, and 6;
  Sec. 23, lots 1 to 4, inclusive, N½ and SE¼;
  Secs. 24 and 25;
  Sec. 26, lots 1, 2, 6 to 9, inclusive, and lots 15, and 16, NE¼;
  Sec. 35, lots 1, 2, 5 to 8, inclusive, and lot 11.
T. 13 N., R. 7 E.,
  Sec. 6, lots 5 to 12, inclusive;
  Sec. 7, lots 5, 6, 7, and 11.
T. 14 N., R. 7 E.,
  Sec. 17, lots 10 and 11;
  Sec. 18, lots 5 to 8, inclusive, SW¼ and S½SE¼;
  Sec. 19;
  Sec. 20, lots 1 to 4, inclusive;
  Sec. 29, lots 1 and 2;
  Sec. 30, lots 1 to 5, inclusive, N½N½, SW¼NW¼ and W½SW¼;
  Sec. 31, lots 1 to 4, inclusive, W½W½.

The areas described aggregate 7,376.34 acres.

In this proposed exchange, the United States would acquire an equal value of lands, yet to be identified, within or adjacent to BLM WSAs, ACECs, SMAs and/or other BLM high-priority acquisition areas.

The No Action Alternative will be analyzed in each EIS and will consider the effects of not completing the exchange.

The following resources and/or their uses are likely to be issues of concern in these EIS's:

American Indian Traditional Cultural Properties
Availability of Land for Public Use
Mineral Ownership and Availability
Access to Private Lands
Grazing Permits
Water Resources
Rights-of-Way and Utility Corridors

DATES: Interested parties may submit comments concerning the proposed exchange and transfer of public lands to the Field Manager, Albuquerque Field Office, at the above address. To be considered in the environmental analysis of the proposed exchange, comments must be in writing to the Field Manager and be postmarked or delivered by December 27, 1999.

An open house/public scoping meeting will be held from 4 p.m. to 7 p.m. on December 2, 1999, at the BLM Albuquerque Field Office, 435 Montaño Rd. NE, Albuquerque, New Mexico 87107.

The scoping process will consist of a news release announcing the start of the EIS process and a public scoping meeting.

FOR FURTHER INFORMATION CONTACT: A detailed map or legal description and information concerning the proposed exchange may be obtained from Debby Lucero, Realty Specialist, Albuquerque Field Office, 435 Montaño Rd. NE, Albuquerque, New Mexico 87107, (505) 761–8787.

SUPPLEMENTARY INFORMATION: Subject to valid existing rights, the public lands identified above were previously segregated from appropriation under the public land and mineral laws for a period of 5 years beginning March 20, 1996.

Dated: November 3, 1999.

Francis M. O'Neill,

Acting Assistant Field Manager.

[FR Doc. 99–29257 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM010–1430–EQ/G010–G0–0250; NMNM 101518]

Notice of Realty Action: Lease of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of public lands.

SUMMARY: This notice is to advise that the following public lands in Cibola

County, New Mexico, have been examined and found suitable for classification for a long term lease to the Baca/Prewitt Chapter under the provisions of the Federal Land Management Policy Act of 1976, (43 U.S.C. 1701, 1732, and 43 CFR part 2920). The lease is intended to authorize the Baca/Prewitt Chapter to use the land for occupancy.

New Mexico Principal Meridian

T. 13 N., R. 12 W., NMPM,
Sec. 24, N1/2NE1/4SE1/4NW1/4
Contains approximately 5.00 acres.

SUPPLEMENTARY INFORMATION: The site lands will be leased and offered for patent to the Baca/Prewitt Chapter in the future. A lease under section 302 of the Federal Land Policy and Management Act of 1976 is consistent with current BLM land use planning and has been determined to be in the public interest. The lands are not needed for Federal purposes. The term is 30 years, subject to the following: (1) The lease will terminate upon conveyance to the Baca/Prewitt Chapter; (2) or upon non-compliance with the terms and conditions of the lease. If the applicant or holder fails to meet these requirements, BLM will terminate the lease, require that the premises be vacated and treat the improvements as unauthorized occupancy and use the public lands according to regulations found in 43 CFR Part 9230.

APPLICATION COMMENTS: For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the Bureau of Land Management, Field Manager, Albuquerque Field Office, 435 Montano Rd. NE, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Joe Jaramillo, BLM, Albuquerque Field Office, 435 Montano Rd. NE, Albuquerque, New Mexico 87107, (505) 761–8779.

F.M. O'Neill,

Acting Field Manager.

[FR Doc. 99–28635 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–AG–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Amoco Pipeline Company, Pipeline Activity, SEA No. P–12255 (G–21277).	Viosca Knoll Area, Blocks 823, 779, and 735; Main Pass Area, South and East Addition, Block 281; Lease OCS–G 21277; 50 miles offshore the Louisiana.	9/20/99
Coast Coastal Oil & Gas Corporation, Pipeline Activity, SEA No. P–12265 (G–21261).	High Island Area, Blocks A–368 through A–370, Lease OCS–G 21261, 118 miles from the nearest Texas shoreline.	8/20/99
Mariner Energy, Inc., Exploration Activity, SEA No. N–6374	High Island Area, Block A–395, Lease OCS–G 18975, 118 miles from the nearest Texas shoreline.	7/29/99
C&C Technologies, Inc., and William's Gas Pipeline—Transco, G&G Activity, SEA No. M99–9.	Mobile Area and Tarpon Springs Area, 15 to 100 miles from the nearest Florida and Alabama Coast.	8/06/99
Vintage Petroleum, Inc., Structure Removal Operations, SEA No. ES/SR 99–081.	Main Pass Area, Block 124, Lease OCS–G 5697, 36 miles east of Plaquemines Parish, Louisiana.	7/20/99
Texaco Exploration and and Production Inc., Structure Removal Operations, SEA Nos. ES/SR 99–089 through 99–091.	Vermilion Area, Block 31, Lease OCS–G 2868, 8 miles south of Vermilion Parish, Louisiana.	7/20/99
Texaco Exploration and and Production Inc., Structure Removal Operations, SEA Nos. ES/SR 99–092 through 99–099.	South Marsh Island Area, Blocks 212 and 218, Lease OCS 310, 7 miles south of of Vermilion Parish, Louisiana.	7/20/99
Snyder Oil Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–102 through 99–104.	South Timbalier Area, Block 226; South Marsh Island Area, Blocks 234 and 235; Leases OCS–G 6771, 4436, and 4523; 15 miles south of Vermilion Parish, Louisiana.	7/19/99
The Houston Exploration Company, Structure Removal Operations SEA No. ES/SR 99–105.	Eugene Island Area, Block 48, Lease OCS–G 7727, 12 miles south of of Iberia Parish, Louisiana.	7/29/99
NCX Company, Inc., Structure Removal Operations, SEA No. ES/SR 99–106.	High Island Area, Block A–486, Lease OCS–G 6227, 73 miles southeast of Brazoria County, Texas.	8/12/99
Basin Exploration, Inc., Structure Removal Operations, SEA No. ES/SR 99–107.	Mustang Island Area, Block 791, Lease OCS 0534, 15 miles southeast of Nueces County, Texas.	8/10/99
Cockrell Oil Corporation, Structure Removal Operations, SEA No. ES/SR 99–108.	Eugene Island Area, Block 24, Lease OCS–G2893, 5 miles south of St. Mary Parish, Louisiana.	8/03/99
Energy Resource Technology, Inc., Structure Removal Operations, SEA Nos. ES/SR 99–109 and 99–110.	High Island Area, Block A–23, Lease OCS–G 13330, 39 miles south of Jefferson County, Texas.	8/30/99
Newfield Exploration Company, Structure Removal Operations, SEA No. ES/SR 99–111.	Ship Shoal Area, Block 322, Lease OCS–G 4877, 67 miles south of Terrebonne Parish, Louisiana.	8/30/99
Cockrell Oil Corporation, Structure Removal Operations, SEA No. ES/SR 99–112.	East Cameron Area, Block 200, Lease OCS–G 10628, 74 miles south of Cameron Parish, Louisiana.	8/30/99
Energy Resources Technology, Inc., Structure Removal Operations, SEA No. ES/SR 99–113.	West Cameron Area, Block 177, Lease OCS–G 1471, 32 miles south of Cameron Parish, Louisiana.	8/30/99
Unocal Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–114 and 99–115.	Eugene Island Area, Block 247; High Island Area, Block A–302; Leases OCS–G 2732 and 1888; 61 miles south of St. Mary Parish, Louisiana.	9/28/99

Activity/Operator	Location	Date
Sonat Exploration, Structure Removal Operations, SEA Nos. ES/SR 99–116 through 99–120.	West Cameron Area, Blocks 333, 332, 369, and 370, Leases OCS–G 3277, 3276, 4767, and 4092, 50 miles south of Cameron Parish, Louisiana.	9/28/99
Forcenergy Inc., Structure Removal Operations, SEA No. ES/SR 99–121.	South Marsh Island Area, Block 79, Lease OCS–G 7709, 62 miles south of Iberia Parish, Louisiana.	9/16/99
Sonat Exploration GOM, Structure Removal Operations, SEA Nos. ES/SR 99–122 through 99–128.	West Cameron Area, Blocks 55, 352 and 343; Sabine Pass Area, Block 3; High Island Area, Block 74; Leases OCS–G 13553, 2839, 2838, 4144, and 12566; 6 to 51 miles south of Cameron Parish, Louisiana.	10/01/99
Shell Offshore Inc., Structure Removal Operations, SEA No. ES/SR 99–132.	Galveston Area, Block 191, Lease OCS–G 13779, 15 miles southeast of Galveston, Texas.	10/07/99
Ocean Energy, Inc., Structure Removal Operations. SEA No. ES/SR 99–133.	Eugene Island Area, Block 128, Lease OCS–G 0053, 27 miles southwest of Terrebonne Parish, Louisiana.	10/07/99
Chevron, U.S.A. Inc., Structure Removal Operations, SEA No. ES/SR 99–134.	Main Pass Area, Block 42, Lease OCS–G 1367, 27 miles east of Plaquemines Parish, Louisiana.	10/12/99

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: October 28, 1999.

Charles J. Schoennagel, Jr.,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 99–29298 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 30, 1999.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 24, 1999.

Beth Boland,

Acting, Keeper of the National Register.

Arkansas

Sebastian County

Fort Smith U.S. Post Office and Courthouse, 30 S. Sixth St., Fort Smith, 99001406

Colorado

Montrose County

Methodist Episcopal Church of Montrose, 19 S. Park Ave., Montrose, 99001407

Idaho

Ada County

O'Farrell, John A., Cabin, W. Fort St., bet. N. 4th and N. 5th Sts., Boise, 99001415

Bonner County

Lamb Creek School, (Public School Buildings in Idaho MPS), 28769 North Highway 57, Priest River vicinity, 99001418

Idaho County

Blue Fox Theatre, (Motion Picture Theater Buildings in Idaho MPS), 116 W. Main St., Grangeville, 99001412

Washington County

Star Theater, (Motion Picture Theater Buildings in Idaho MPS), 342 State St., Weiser, 99001413

Massachusetts

Suffolk County

Kehila Kedosha Janina Synagogue, 101–113 Summer St., Boston, 99001430

Michigan

Alger County

King Road—Whitefish River Bridge, (Highway Bridges of Michigan MPS), King Rd. over Whitefish River, Limestone Township, 99001463

M–28—Sand River Bridge, (Highway Bridges of Michigan MPS), Hwy M–28 over Sand River, Onota Township, 99001460

M–94 (old)—Au Train River Bridge, (Highway Bridges of Michigan MPS), Wolkoff Rd. over Au Train River, Au Train Township, 99001462

Bay County

Bay City Bascule Bridge, (Highway Bridges of Michigan MPS), M–13/M–84 over East Channel of Saginaw River, Bay City, 99001465

Chippewa County

M–28—Tahquamenon River Bridge, (Highway Bridges of Michigan MPS), M–28 over Tahquamenon River, Chippawa Township, 99001466

Clinton County

Stony Creek Bridge, (Highway Bridges of Michigan MPS), Private road over Stony Creek, Olive Township, 99001467

Manistee County

Babcock, Simeon, House, 420 Third St., Manistee, 99001455

Missaukee County

Canyon Falls Bridge, (Highway Bridges of Michigan MPS), U.S. 41 over Sturgeon R., L'Anse Township, 99001464

Saginaw County

Center Road—Tittabawassee River Bridge, (Highway Bridges of Michigan MPS), Center Rd. over Tittabawassee River, James Township, 99001458

Washtenaw County

Mechem, Floyd R., House, 1402 Hill St., Ann Arbor, 99001456

Wayne County

East Grand Boulevard Historic District, E. Grand Blvd., bet. E. Jefferson Ave. and Mack Ave., Detroit, 99001468

New York

Erie County

Bruce—Briggs Brick Block, (Lancaster, New York MPS), 5481–5483–5485 Broadway, Lancaster, 99001409
Clark—Lester House, (Lancaster, New York MPS), 5454 Broadway, Lancaster, 99001408
DePew Lodge No. 823, Free and Accepted Masons, (Lancaster, New York MPS), 5497 Broadway, Lancaster, 99001410
Lancaster Municipal Building, (Lancaster, New York MPS), 5423 Broadway, Lancaster, 99001420
Liebler—Rohl Gasoline Station, (Lancaster, New York MPS), 5500 Broadway, Lancaster, 99001411
Miller—Mackey House, (Lancaster, New York MPS), 5440 Broadway, Lancaster, 99001422
Nowak, Dr. John J., House, (Lancaster, New York MPS) 5539 Broadway, Lancaster, 99001414
Richardson, John, House, (Lancaster, New York MPS), 5653 Broadway, Lancaster, 99001419
VanPeyma, Herman B., House, (Lancaster, New York MPS), 5565 Broadway, Lancaster, 99001417
Auidema—Idsardi House, (Lancaster, New York MPS), 5556 Broadway, Lancaster, 99001416

New York County

American Bank Note Company Building, 70 Broad St., New York, 99001436
Beth Hamedrash Hagodol Synagogue, 60–64 Norfolk St., New York, 99001438
Insurance Company of North America Building, 99 John St., New York, 99001425
St. Ignatius of Antioch Episcopal Church, 552 W. End Ave., New York, 99001442

Westchester County

Mead Memorial Chapel, 2 Chapel Rd., Lewisboro, 99001443

North Carolina

Mecklenburg County

Carolina Transfer and Storage Company Building, (Former), 1230 W. Morehead St., Charlotte, 99001447

New Hanover County

Carolina Heights Historic District (Boundary Increase), 1200 Block of Market St. and 100 & 200 blocks of N. 13th St., Wilimington, 99001448

Pitt County

Greenville, North Carolina Warehouse Historic District, (Boundary Increase), Eleventh St. near Clark St., Greenville, 99001450

Rutherford County

Pine Gables, 328 Boys Camp Rd., Lake Lure, 99001445

Wake County

Raleigh Water Works and E.B. Bain Water Treatment Plant, 1810 Fayetteville Rd., Raleigh, 99001452

Oklahoma

Creek County

Berryhill Building, 14–20 E. Dewey Ave., Sapulpa, 99001423

Oklahoma County

Arcadia Route 66 Roadbed, (Route 66 in Oklahoma MPS), Extends SSE from Jct. OK 66 and Hiwassee Rd., Arcadia vicinity, 99001424

Pontotoc County

Sugg Clinic, 100 E. 13th St., Ada, 99001426

Stephens County

Duncan Public Library, 301 N. 8th St., Duncan, 99001427

Pennsylvania

York County

Fairmont Historic District, Roughly bounded by Cherry Ln., Stevens Ave. and Cottage Hill Rd., York City, 99001428

South Dakota

Bon Homme County

Scotland Main Street Historic District, Along Main St., roughly bounded by Railway, Poplar, 3rd and Juniper Sts., Scotland, 99001429

Brookings County

South Dakota Department of Transportation Bridge No. 06–142–190 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R., Brookings vicinity, 99001431
South Dakota Department of Transportation Bridge No. 06–131–040 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R., Bruce vicinity, 99001432
South Dakota Department of Transportation Bridge No. 06–129–029 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R., Bruce vicinity, 99001433

Hamlin County

Estelline Bandstand and Gazebo Park, 105 N. Main, Estelline, 99001434

Lawrence County

Galena School (Federal Relief Construction in South Dakota MPS) Block 13, Lots 1–5 Bryan Placer No. 913, Galena, 99001435

Roberts County

South Dakota Department of Transportation Bridge No. 55–030–418 (Historic Bridges in South Dakota MPS), State RR tracks over local Rd., Ortley vicinity, 99001437

Turner County

Dalton Township Bridge (Historic Bridges in South Dakota MPS), Local Rd. over unnamed stream, Marion vicinity, 99001439
Daneville Township Bridge No. E–26 (Historic Bridges in South Dakota MPS), Local Rd. over unnamed stream, Viborg vicinity, 99001441
Spring Valley Township Bridge No. E–31 (Historic Bridges in South Dakota MPS), Local Rd. over unnamed stream, Viborg vicinity, 99001440

Tennessee

Bledsoe County

Pikeville Chapel African Methodist Episcopal Zion Church (Rural African-American Churches in Tennessee MPS), E. Valley Dr., Pikeville, 99001444

Humphreys County

Hurricane Mills Rural Historic District, 44 Hurricane Mills Rd., Hurricane Mills, 99001449

Knox County

Maxwell—Kirby House (Knoxville and Knox County MPS), 8671 Northshore Dr., Knoxville, 99001446

Tipton County

Canaan Baptist Church (Rural African-American Churches in Tennessee MPS), 211 N. Main St., Covington, 99001457

Texas

Tarrant County

Tabernacle Baptist Church, 1801 Evans Ave., Fort Worth, 99001451

Washington

King County

El Rio Apartment Hotel, 1922–1928 9th Ave., Seattle, 99001453

Spokane County

Corbet—Aspray House, 820 W. 7th Ave., Spokane, 99001454
Knight House, 1715 N. West Point Rd., Spokane, 99001459

Walla Walla County

Marcus Whitman Hotel, 107 N. Second Ave., Walla Walla, 99001461

A REQUEST for a move has been made for the following Resource:

GEORGIA

Muscogee County

CSS MUSCOGEE and CHATTAHOOCHEE, 4th St. W of US 27, Columbus, 70000212

[FR Doc. 99–29339 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Warren, RI in the Possession of the Charles Whipple Greene Museum, George Hail Library, Warren, RI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Charles Whipple Greene Museum, George Hail Library, Warren, RI.

A detailed assessment of the human remains was made by Charles Whipple Greene Museum professional staff in consultation with representatives of the Narragansett Indian Tribe of Rhode Island; the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). Consultation was also conducted with the Pokanoket Tribe of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1914, human remains representing one individual were recovered from Burr's Hill, Warren, RI by Charles R. Carr, director of the George Hail Library, Warren, RI. These human remains were placed within the Charles Whipple Greene Museum within the Library. No known individual was identified. The 90 associated funerary objects include pipes, metal work, bottles, wampum, and beads.

Based on the associated funerary objects, this individual has been identified as Native American. Burr's Hill is believed to be located on the southern border of Sowams, a Wampanoag village. Sowams is identified in historical documents of the 16th and 17th centuries as a Wampanoag village, and was ceded to the English in 1653 by Massasoit and his eldest son Wamsutta (Alexander). Based on the associated funerary objects, tese human remains have been dated to the contact period (1500-1690 A.D.).

Based on the above mentioned information, officials of the Charles Whipple Greene Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Charles Whipple Greene Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 90 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Charles Whipple Greene Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

This notice has been sent to officials of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Sarah Weed, Director, George Hail Library, 530 Main Street, Warren, RI 02885; telephone: (401) 245-7686 before December 9, 1999. Repatriation of the human remains and associated funerary objects to the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognizd Indian group) may begin after that date if no additional claimants come forward.

Dated: October 25, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–29340 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Rock Island County, IL in the Possession of the Department of Anthropology, University of Illinois at Urbana-Champaign, Urbana, IL

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Rock Island County, IL in the possession of the Department of Anthropology, University of Illinois at Urbana-Champaign (UIUC), Urbana, IL.

A detailed assessment of the human remains was made by UIUC Department of Anthropology professional staff in consultation with representatives of the Sac and Fox Nation, Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; and the Sac and Fox Nation of Missouri in Kansas and Nebraska.

In 1959 and 1960, human remains representing 32 individuals were recovered from the Crawford Farm site (11-RI-81), on the south bank of the Rock River, Rock Island County, IL during two field schools conducted by Drs. John McGregor and Elaine Bluhm of UIUC. No known individuals were identified. The 8,138 associated funerary objects include beads (glass, shell, bone, amethyst), a catlinite pipe, a catlinite beaver pendant, ceramic sherds, chert flakes, copper bracelets, gun flints, a galena crystal, a glass mirror, head pieces, textiles, leather, buttons, a peace medal, pigments, a flintlock pistol, a porcelain pendant, a shell gorget, wood, lead objects such as coils, hairpipes, musket balls, ornament and scraps; brass objects (coils, rings, hawk bells, kettle fragments, a pipe tomahawk, tinklers, thimbles, and tinkling cones), silver objects (bracelets, brooches, crosses earrings, gorgets, hairpipes, jump rings, tinklers, a ring, and spoon lockets), and iron objects (clasp knife, a cow bell, handles, knife blades, nails, and strike-a-lights).

During the mid-1990s, human remains representing a minimum of two individuals from the Crawford Farm site (11-RI-81), Rock Island County, IL were transferred to UIUC from the Illinois State Museum in order to unite individuals from the same site for repatriation. No known individuals were identified. No associated funerary objects are present.

Based on material culture, associated funerary objects, and historical documents, the Crawford Farm site has been identified as the second village of Saukenuk, dating to c. 1790–1820 A.D. (the first village known as Saukenuk existed as early as 1737, but was burnt to the ground in 1780 by Spanish and American militias under John Montgomery). Based on the presence and age of the associated funerary objects, these individuals have been identified as Native American from the Sauk village of Saukenuk. In 1832, Saukenuk was again abandoned following the conflict known as the Black Hawk War. While members of neighboring tribes (Ho-Chunk/Winnebago, Potawatomi, Ottawa (Odawa), and Menominee) were known to have passed through Saukenuk, the settlement and cemetery sites were predominantly Sauk and/or Mesquaki (Fox).

Based on the above mentioned information, officials of the University of Illinois at Urbana-Champaign have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 34 individuals of Native American ancestry. Officials of the University of Illinois at Urbana-Champaign have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 8,138 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Illinois at Urbana-Champaign have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Sac and Fox Nation, Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; and the Sac and Fox Nation of Missouri in Kansas and Nebraska.

This notice has been sent to officials of the Sac and Fox Nation, Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; the Sac and Fox Nation of Missouri in Kansas and Nebraska, the Ho-Chunk Nation of Wisconsin, the Winnebago Tribe of Nebraska, the Citizen Potawatomi Nation, Oklahoma; the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Huron Potawatomi, Inc., Michigan; the Pokagan Band of Potawatomi Indians of Michigan; the Prairie Band of Potawatomi Indians, Kansas; the Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan, the Menominee Indian Tribe of Wisconsin, the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan, the Little Traverse Bay Band of Odawa Indians of Michigan, and the Little River Band of Ottawa Indians of Michigan. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Richard P. Wheeler, Head, Department of Anthropology, 109 Davenport Hall, 607 South Mathews Street, Urbana, IL 61801; telephone: (217) 333-3616, before December 9, 1999. Repatriation of the human remains and associated funerary objects to the Sac and Fox Nation, Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; and the Sac and Fox Nation of Missouri in Kansas and Nebraska may begin after that date if no additional claimants come forward.

Dated: October 28, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–29341 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993. In September 1996, Reclamation revised the document and renamed it the Criteria for Evaluating Water Management Plans (Criteria). The Criteria is being revised again for 1999.

The draft 1999 Criteria was revised based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation will use the Criteria to evaluate the adequacy of all water management plans developed by Central Valley Project contractors. The Criteria was developed for the purpose of promoting the most efficient water use reasonably achievable. Reclamation has made a commitment to publish a notice of its draft 1999 Criteria in the **Federal Register** and to allow the public 30 days to comment.

DATES: All public comments must be received by December 9, 1999.

ADDRESSES: Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978–5215 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: Under provision of Section 3405 (e) of the CVPIA (Title 34 Public Law 102–575), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The draft 1999 Criteria states that all parties (contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water management plans that will be evaluated by Reclamation based on the following required information detailed in the sections listed below to develop, implement, monitor, and revise their water management plans. The sections are:

1. Describe the district.
2. Inventory water resources.
3. Best Management Practices (BMP's) for Agricultural Contractors.
4. BMP's for Urban Contractors.
5. Plan implementation.
6. Exemption process
7. Regional Criteria.
8. Five year revisions.

Public comment on Reclamation's draft 1999 Criteria are invited at this time. A copy of the 1999 Criteria will be available for review at Reclamation's MP Regional Office located in Sacramento, California. If you wish to review a copy of the draft 1999 Criteria, please contact Ms. Billingsley.

Dated: October 4, 1999.

Robert F. Stackhouse,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 99–29258 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG); Correction

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Reclamation published a document in the **Federal**

Register on October 7, 1999, concerning the announcement of an upcoming public meeting of the Glen Canyon Technical Work Group. The document contained incorrect dates and an incorrect location for the meeting.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, Bureau of Reclamation, at (801) 524–3758.

Correction

In the **Federal Register** of October 7, 1999, in FR Doc. 99–26118, on page 54639, in the third column, first whole paragraph, correct the date and location under Phoenix, Arizona, to read as follows:

Phoenix, Arizona—December 7–8, 1999. The meeting will begin at 9:30 a.m. and conclude at 5:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 3:00 p.m. on the second day. The meeting will be held at the Embassy Suites Hotel, Turquoise Room, 1515 N. 44th Street, Phoenix, Arizona.

Dated: November 3, 1999.

Steven Richardson,

Chief of Staff.

[FR Doc. 99–29244 Filed 11–8–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2022–99; AG Order No. 2271–99]

RIN 1115–AE26

Extension and Redesignation of Burundi Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On November 4, 1997, the Attorney General designated Burundi under the Temporary Protected Status (TPS) program for a period of twelve months. This initial designation allowed eligible nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who had continuously resided in the United States since that date to apply for TPS. This initial designation, which expired November 3, 1998, was extended last year. This notice extends the TPS designation for Burundi for another twelve-month period (until November 2, 2000), and sets forth the procedures necessary for nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) with TPS to re-register for TPS program. This notice also redesignates Burundi under the TPS program, thereby expanding TPS eligibility to include nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who have been "continuously present in the United States" and who have "continuously resided in the United States" since November 9, 1999.

EFFECTIVE DATES:

Extension of Designation and Re-Registration

The extension of Burundi's TPS designation is effective November 3, 1999, and lasts until November 2, 2000. Nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who currently have TPS must re-register for TPS during the period lasting from November 9, 1999, until December 9, 1999.

Redesignation

The redesignation of Burundi for TPS is effective from November 9, 1999, until November 2, 2000. The registration period for nationals of Burundi (and aliens who last habitually resided in Burundi) begins on November 9, 1999, and will remain in effective until November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Program Analyst, Immigration and Naturalization Service, Room 3040, 425 I Street, NW, Washington, DC 20535, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Attorney General To Extend Burundi's TPS Designation Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (the Act) states that at least 60 days before the end of a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). Under section 244(b)(3)(C), the Attorney General may extend the initial TPS period based on a determination that the foreign state continues to meet the conditions for designation. 8 U.S.C. 1254(b)(3)(C). Through such an extension, however, TPS continues to be available only to aliens who have been continuously physically present and who have continuously resided in the United States from the effective date of the initial designation, in this case since November 4, 1997.

What Is the Statutory Authority for the Attorney General To Redesignate Burundi Under the TPS Program?

Section 244(b)(1) of the Act implicitly permits the Attorney General to redesignate a foreign state (or any part of such foreign state) under the TPS program such that non-covered aliens residing in the United States could receive TPS benefits, instead of simply extending a foreign state's TPS designation and thereby extending benefits to previously eligible aliens. 8 U.S.C. 1254(b)(1). An alien is eligible for TPS if he or she is otherwise admissible, and "has been continuously physically present since and has continually resided in the United States since the effective date of the most recent designation of that state." 8 U.S.C. 1254a(c)(1)(A)(i).

Why Did the Attorney General Decide To Both Extend and Redesignate Burundi Under the TPS Program?

On November 4, 1997, the Attorney General designated Burundi under the TPS program. Since that time, the Attorney General and the Department of State have continuously examined conditions in Burundi. A recent Department of State report on conditions in that country found that, "[w]hile the Arusha peace negotiations continue, Burundi nevertheless remains a fragile country with considerable ethnic violence and deep divisions over the distribution of power. The June 1998 cease fire agreement has been generally ineffective, and Burundi can still be described as a nation undergoing civil war." The memorandum further states that "[w]ide-spread and serious human rights abuses continue to be committed by both the rebels and the Burundian military. Burundi remains insecure throughout the country." Based on these and other findings, the Attorney General has determined that conditions in Burundi warrant the extension and redesignation of Burundi under the TPS program. This order will extend the availability of TPS to eligible nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who arrived in the United States after the date of initial designation.

If I Currently Have TPS Through the Burundi TPS Program, Do I Still Need to Re-Register for TPS?

Yes. If you were granted TPS based on the initial designation of Burundi, that status will expire on November 3, 1999. Accordingly, you must re-register for TPS in order to maintain your status through November 2, 2000. With re-registration, you do not need to pay the fifty-dollar ($50) filing fee for the Form I–821, Application for Temporary Protected Status. If you do not have TPS or have TPS but miss the re-registration period, you can still apply for TPS under the redesignation, if you have been continuously physically present and have continuously resided in the United States since November 9, 1999. See the registration instructions below for complete filing procedures.

If I Currently Have TPS, How Do I Register for an Extension?

All applicants previously granted TPS under the Burundi program may apply for an extension by filing a Form I–821 (without the fee) during the re-registration period that begins November 9, 1999 and ends December 9, 1999. Additionally, you must file a Form I–765, Application for Employment Authorization. See Chart 1 below to determine whether or not you must submit the one hundred-dollar ($100) filing fee with the Form I–765.

CHART 1

If	Then
You are applying for employment authorization through November 2, 2000.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not request employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765, an appropriately documented fee waiver request, and the requisite affidavit (and any other information), in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½″ x 1½″).

If I Do Not Currently Have TPS, How Do I Register?

All applicants filing for TPS under the Burundi redesignation who have not previously been granted TPS must apply by filing Form I–821 and the fifty-dollar ($50) fee. Additionally, you must submit the Form I–765 and a twenty-five dollar ($25) fingerprinting fee. See Chart 2 below to determine if you must also submit the one hundred-dollar ($100) filing fee for Form I–765, and to obtain information on requesting a fee waiver.

CHART 2

If	Then
You are applying for employment authorization through November 2, 2000.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not request employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are requesting a fee waiver for the $50 fee of the Form I–821, $100 fee for the Form I–765, and $25 fingerprinting fee.	You must complete and file Form I–821, Form I–765, and an appropriately documented fee waiver request and the affidavit (and any other information), in accordance with 8 CFR 244.20.

To register for TPS, you also must include two identification photographs (1½″ × 1½″) and supporting evidence, as provided in 8 CFR 244.9 (evidence of identity, nationality, and proof of residence).

When Must I Re-Register for TPS Under the Extension?

For nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who currently have TPS, the re-registration period begins November 9, 1999 and lasts until December 9, 1999. If you have TSP from the original designation but do not file during the re-registration period, you can still file a new application for TPS under the redesignation. If you are filing a new application, you will need to follow the instructions for applying under the redesignation.

When Must I Register for TPS Under the Redesignation?

The registration period for nationals of Burundi applying for TPS under the redesignation begins November 9, 1999, and will remain in effect until November 2, 2000.

Where Must I File My Application for TPS Under This Extension and Redesignation?

Applicants seeking to register for TPS or to extend their TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (INS) district office that has jurisdiction over the applicant's place of residence.

What Are the Requirements for Nationals of Burundi To Demonstrate That They Have Been "Continuously Physically Present" and Have "Continuously Resided" in the United States?

All new applicants for TPS under the Burundi redesignation will have to demonstrate "continuous physical presence" and "continuous residence" in the United States since November 9, 1999. "Continuously physically present" means actual physical presence in the United States for the entire period specified. An alien, however, shall not shall be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absence. "Continuously resided" means residing in the United States for the entire period specified. An alien will not be considered to have failed to maintain continuous residence in the

United States by reason of a brief, casual, and innocent absence.

Notice of Extension of Designation and Redesignation of Burundi Under the TPS Program

By the authority vested in me as Attorney General under Section 244 of the Act, and as required by sections 244(b)(3)(A) and (C), and 244 (b) (1) of the Act, I have consulted with the appropriate government agencies concerning the redesignation of Burundi under the TPS program and the extension of that country's current TPS designation. From these consultations, I find the following:

(1) There exists an ongoing armed conflict in Burundi and that a return of aliens who are nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) would pose a serious threat to their personal safety as a result of the armed conflict in that nation;

(2) There exist extraordinary and temporary conditions in Burundi that prevent aliens who are nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) from returning to Burundi in safety; and

(3) Permitting nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) to remain temporarily in the Untied States is not contrary to the national interest of the United States. 8 U.S.C. 1254a(b)(1) (A) and (C).

Accordingly, I order as follows:

(1) The designation of Burundi is extended under section 244(b)(3)(A) and (C) of the Act for the 12-month period spanning from November 3, 1999, to November 2, 2000. 8 U.S.C. 1254a(b)(3)(A) and (C). Nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who received TPS during the initial designation period may apply for an extension of TPS during the registration period lasting from November 9, 1999 until December 9, 1999.

(2) Burundi is redesignated under section 244(b)(1) of the Act for TPS for a twelve-month period until November 2, 2000. 8 U.S.C. 1254a(b)(1). Nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who have been "continuously physically present" and have "continuously resided" in the United States since November 9, 1999, may apply for TPS within the registration period, which begins November 9, 1999, and ends November 2, 2000.

(3) I estimate that there are no more than 500 nationals of Burundi who have been granted TPS and who are eligible for re-registration, and no more than 500 nationals of Burundi who do not have TPS and are eligible for TPS under this redesignation.

(4) In order to maintain TPS, a national of Burundi (or an alien having no nationality who last habitually resided in Burundi) who currently has TPS must re-register by filing Form I–821, together with Form I–765, within the period beginning November 9, 1999 and ending on December 9, 1999. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c). There is no fee for a Form I–821 filed as part of the re-registration application. A Form I–765 must be filed with the Form I–821. If the applicant requests employment authorization, he or she must submit one hundred dollars ($100) or a properly documented fee waiver request, pursuant to 8 CFR 244.20 with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee.

(5) A national of Burundi (or an alien having no nationality who last habitually resided in Burundi) filing for TPS under the redesignation must file Form I–821, together with Form I–765, within the period beginning November 9, 1999, and ending on November 2, 2000. A fifty-dollar ($50) fee must accompany Form I–821. A twenty-five dollar ($25) fingerprinting fee must also be submitted. If the applicant requests employment authorization, he or she must submit one hundred dollars ($100) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821 but is not required to submit the fee. The applicant can also request a fee waiver for the twenty-five dollar ($25) fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 2, 2000, the designation of Burundi under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TPS will be allowed only pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the redesignation of Burundi under the TPS program will be available at local INS offices upon publication of this notice.

Dated: November 2, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–29248 Filed 11–8–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2024–99; AG Order No. 2273–99]

RIN 1115–AE26

Extension and Redesignation of Sierra Leone Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On November 4, 1997, the Attorney General designated Sierra Leone under the Temporary Protected Status (TPS) program for a period of twelve months. This initial designation allowed eligible nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who had continuously resided in the United States since that date to apply for TPS. This initial designation, which expired November 3, 1998, was extended last year. This notice extends the TPS designation for Sierra Leone for another twelve-month period (until November 2, 2000), and sets forth the procedures necessary for nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) with TPS to re-register for TPS program. This notice also redesignates Sierra Leone under the TPS program, thereby expanding TPS edibility to include nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been "continuously present in the United States" and who have "continuously resided in the United States" since November 9, 1999.

EFFECTIVE DATE:

Extension of Designation and Re-Registration

The TPS extension is effective on November 3, 1999, and lasts until November 2, 2000. Nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who currently have TPS must re-register for TPS during the period lasting from November 9, 1999, until December 9, 1999.

Redesignation

The redesignation of Sierra Leone for TPS is effective from November 9, 1999, until November 2, 2000. The TPS registration period for nationals of Sierra Leone (and aliens who last habitually resided in Sierra Leone) who do not currently have TPS begins November 9, 1999, and will remain in effect until November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Program Analyst, Immigration and Naturalization Service, Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Attorney General To Extend Sierra Leone's TPS Designation Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (the Act) states that at least 60 days before the end of a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). Under Section 244(b)(3)(C), the Attorney General may extend the initial TPS period based on a determination that the foreign state continues to meet the conditions for designation. 8 U.S.C. 1254(b)(3)(C). Through such an extension, however, TPS continues to be available only to aliens who have been continuously physically present and who have continuously resided in the United States from the effective date of the initial designation, in this case since November 4, 1997.

What Is the Statutory Authority for the Attorney General To Redesignate Sierra Leone Under the TPS Program?

Section 244(b)(1) of the Act implicitly permits the Attorney General to redesignate a foreign state (or any part of such foreign state) under the TPS program such that non-covered aliens residing in the United States could receive TPS benefits, instead of simply extending a foreign state's TPS designation and thereby extending benefits to previously eligible aliens. 8 U.S.C. 1254(b)(1). An alien is eligible for TPS if he or she is otherwise admissible, and "has been continuously physically present since and has continually resided in the United States since the effective date of the most recent designation of that state." 8 U.S.C. 1254(c)(1)(A)(i).

Why Did the Attorney General Decide To Both Extend and Redesignate Sierra Leone Under the TPS Program?

On November 4, 1997, the Attorney General designated Sierra Leone under the TPS program. Since that date, the Attorney General and the Department of State have continuously examined conditions in Sierra Leone. A recent Department of State report on conditions in that country found that, "[a]lthough the Lome Accord was signed in early July [1999], Sierra Leone cannot yet be considered at peace. The implementation of the Accord is not going according to plan." The memorandum further states that "[r]ebel forces continue to control much of the interior. According to the [United Nations], nearly one-third (1.5 million) of the country's 4.6 million people have been displaced from their homes, including 500,000 refugees now in neighboring countries." Based on these and other findings, the Attorney General has determined that conditions in Sierra Leone warrant the extension and redesignation of Sierra Leone under the TPS program. This order will extend the availability of TPS to eligible nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who arrived in the United States after the date of initial designation.

If I Currently Have TPS Through the Sierra Leone TPS Program, Do I Still Need To Re-Register for TPS?

Yes. If you were granted TPS based on the initial designation of Sierra Leone, your protected status will expire on November 3, 1999. Accordingly, you must reregister for TPS in order to maintain your status through November 2, 2000. With re-registration, you do not need to pay the fifty-dollar ($50) filing fee for the Form I–821, Application for Temporary Protected Status. If you do not have TPS or have TPS but miss the re-registration period, you can still apply for TPS under the redesignation, if you have been continuously physically present and have continuously resided in the United States since November 9, 1999. See the registration instructions below for complete filing instructions.

If I Currently Have TPS, How Do I Register for an Extension?

All applicants previously granted TPS under the Sierra Leone program may apply for an extension by filing a Form I–821 (without the fee) during the re-registration period that begins November 9, 1999 and ends December 9, 1999. Additionally, you must file a Form I–765, Application for Employment Authorization. See Chart 1 below to determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765.

CHART 1

If	Then
You are applying for employment authorization through November 2, 2000.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not request employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765, an appropriately documented fee waiver request, and the requisite affidavit (and any other information), in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½″ x 1½″.

If I Do Not Currently Have TPS, How Do I Register?

All applicants filing for TPS under the Sierra Leone redesignation who have not previously been granted TPS must apply by filing Form I–821 and the fifty-dollar ($50) fee. Additionally, you must submit Form I–765 and a twenty-five dollar ($25) fingerprinting fee. See Chart 2 below to determine if you must also submit the one-hundred dollar ($100) filing fee for Form I–765 and to obtain information on requesting a fee waiver.

CHART 2

If	Then
You already have employment authorization or do not request employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are requesting a fee waiver for the $50 fee of the Form I–821, $100 fee for the Form I–765, and $25 fingerprinting fee.	You must complete and file Form I–821, Form I–765, and an appropriately documented fee waiver request and the affidavit (and any other information), in accordance with 8 CFR 244.20.

To register for TPS, you also must include two identification photographs (1½" x 1½") and supporting evidence, as provided in 8 CFR 244.9 (evidence of identity, nationality, and proof of residence).

When Must I Re-Register for TPS Under the Extension?

For nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who currently have TPS, the re-registered period begins November 9, 1999 and lasts until December 9, 1999. If you have TPS from the original designation but do not file during the re-registration period, you can still file a new application for TPS under the redesignation. If you are filing a new application, you will need to follow the instructions for applying under the redesignation.

When Must I Register for TPS Under the Redesignation?

The registration period for nationals of Sierra Leone applying for TPS under the redesignation begins November 9, 1999, and will remain in effect until November 2, 2000.

Where Must I File My Application for TPS Under This Extension and Redesignation?

Applicants seeking to register for TPS or to extend their TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (INS) district office that has jurisdiction over the applicant's place of residence.

What Are the Requirements for Nationals of Sierra Leone To Demonstrate That They Have Been "Continuously Physically Present" and Have "Continuously Resided" in the United States?

All new applicants for TPS under the Sierra Leone redesignation will have to demonstrate "continuous physical presence" and "continuous residence" in the United States since November 9, 1999. "Continuously physically present" means actual physical presence in the United States for the entire period specified. An alien, however, shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of a brief, casual, and innocent absence. "Continuously resided" means residing in the United States for the entire period specified. An alien will not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence.

Notice of Extension of Designation and Redesignation of Sierra Leone Under the TPS Program

By the authority vested in me as Attorney General under section 244 of the Act, and as required by sections 244(b)(3)(A) and (C), and 244(b)(1) of the Act, I have consulted with the appropriate government agencies concerning the redesignation of Sierra Leone under the TPS program and the extension of that country's current designation. From these consultations, I find the following:

(1) There exists an ongoing armed conflict in Sierra Leone and a return of aliens who are nationals of Sierra Leone (and aliens having no rationality who last habitually resided in Sierra Leone) would pose a serious threat to their personal safety as a result of the armed conflict in that nation;

(2) There exist extraordinary and temporary conditions in Sierra Leone that prevent aliens who are nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) from returning to Sierra Leone in safety; and

(3) Permitting nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) to remain temporarily in the United States is not contrary to the national interest of the United States. 8 U.S.C. 1254a (b)(1)(A) and (C).

Accordingly, I order as follows:

(1) The designation of Sierra Leone is extended under section 244(b)(3)(A) and (C) of the Act for the 12-month period spanning from November 3, 1999, to November 2, 2000. 8 U.S.C. 1254(b)(3)(A) and (C). Nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who received TPS during the initial designation period may apply for an extension of the TPS during the registration period lasting from November 9, 1999 until December 9, 1999.

(2) Sierra Leone is redesignated under section 244(b)(1) of the Act for TPS for a twelve-month period, until November 2, 2000. 8 U.S.C. 1254a(b)(1). Nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been "continuously physically present" and have "continuously resided" in the United States since November 9, 1999, may apply for TPS within the registration period, which begins November 9, 1999, and ends November 2, 2000.

(3) I estimate that there are no more than 3,000 nationals of Sierra Leone who have been granted TPS and who are eligible for re-registration and no more than 2,000 nationals of Sierra Leone who do not have TPS and are eligible for TPS under this redesignation.

(4) In order to maintain TPS, a national of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone) who currently has TPS must re-register by filing Form I–821, together with Form I–765, within the period beginning November 9, 1999 and ending on December 9, 1999. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c). There is no fee for a Form I–821 filed as part of the re-registration application. A Form I–765 must be filed with the Form I–821. If the applicant requests employment authorization, he or she must submit one-hundred dollars ($100) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee.

(5) A national of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone) filing for TPS under the redesignation must file Form I–821, together with Form I–765, within the period beginning November 9, 1999, and ending on

November 2, 2000. A fifty-dollar ($50) fee must accompany Form I–821. A twenty-five dollar ($25) fingerprinting fee must also be submitted. If the applicant requests employment authorization, he or she must submit one hundred dollars ($100) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The applicant can also request a fee waiver for the twenty-five dollar ($25) fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 2, 2000, the designation of Sierra Leone under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TPS will be allowed only pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the redesignation of Sierra Leone under the TPS program will be available at local INS offices upon publication of this notice.

Dated: November 2, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–29247 Filed 11–8–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2023–99; AG Order No. 2272–99]

RIN 1115–AE26

Extension and Redesignation of Sudan Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On November 4, 1997, the Attorney General designated Sudan under the Temporary Protected Status (TPS) program for a period of twelve months. This initial designation allowed eligible nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) who had continuously resided in the United States since that date to apply for TPS. The initial designation, which expired November 3, 1998, was extended last year. This notice extends the TPS designation for Sudan for another twelve month period (until November 2, 2000), and sets forth procedures necessary for nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) with TPS to re-register for the additional twelve-month TPS period. This notice also redesignates Sudan under the TPS program, thereby expanding TPS eligibility to include nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) who have been "continuously present in the United States" and who have "continuously resided in the United States" since November 9, 1999.

EFFECTIVE DATES:

Extension of Designation and Re-Registration

The extension of Sudan's TPS designation is effective from November 3, 1999, until November 2, 2000. Nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) who currently have TPS must re-register for TPS during the period lasting from November 9, 1999, until December 9, 1999.

Redesignation

The redesignation of Sudan for TPS is effective from November 9, 1999, until November 2, 2000. The TPS registration period for nationals of Sudan (and aliens who last habitually resided in Sudan) begins on November 9, 1999, and will remain in effect until November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Program Analyst, Immigration and Naturalization Service, Room 3040, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Attorney General To Extend Sierra Leone's TPS Designation Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (the Act) states that at least 60 days before the end of a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254(b)(3)(A). Under section 244(b)(3)(C), the Attorney General may extend the initial TPS period based on a determination that the foreign state continues to meet the conditions for designation. 8 U.S.C. 1254(b)(3)(C). Through such an extension, however, TPS continues to be available only to aliens who have been continuously physically present and who have continuously resided in the United States from the effective date of the initial designation, in this case since November 4, 1997.

What Is the Statutory Authority for the Attorney General To Redesignate Sierra Leone Under the TPS Program?

Section 244(b)(1) of the Act implicitly permits the Attorney General to redesignate a foreign state (or any part of such foreign state) under the TPS program such that non-covered aliens residing in the United States could receive TPS benefits, instead of simply extending a foreign state's TPS designation and thereby extending benefits to previously eligible aliens. 8 U.S.C. 1254(b)(1). An alien is eligible for TPS if he or she is otherwise admissible, and "has been continuously physically present since and has continually resided in the United States since the effective date of the most recent designation of that state." 8 U.S.C. 1254(c)(1)(A)(i).

Why Did the Attorney General Decide To Both Extend and Redesignate Sudan Under the TPS Program?

On November 4, 1997, the Attorney General designated Sudan under the TPS program. Since that date, the Attorney General and the Department of State have continuously examined conditions in Sudan. A recent Department of State report on conditions in that country found that, "[i]n Sudan, the long-running civil war continues, causing extensive displacement of populations and human rights abuses directed at the displaced." The report also notes that recent statistics show marked increases in both the number and approval of individual asylum claims and Sudanese refugee resettlement in the United States. The findings that these individual Sudanese will face harm upon return to Sudan supports the need to extend and offer TPS to those Sudanese who have arrived in the United States since November 4, 1997. Based on these and other findings, the Attorney General has determined that conditions in Sudan warrant the extension and redesignation of Sudan under the TPS program. This order will extend the availability of TPS to eligible nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) who arrived in the United States after the date of initial designation.

If I Currently Have TPS Through the Sudan TPS Program, Do I Still Need To Re-Register for TPS?

Yes. If you were granted TPS based on the initial designation of Sudan, your protected status will expire on November 3, 1999. Accordingly, you must re-register for TPS in order to maintain your status through November 2, 2000. With re-registration, you do not need to pay the fifty-dollar ($50) filing fee for the Form I–821, Application for Temporary Protected Status. If you do not have TPS or have TPS but miss the re-registration period, you can still apply for TPS under the redesignation, if you have been continuously physically present and have continuously resided in the United States since November 9, 1999. See the registration instructions below for complete filing instructions.

If I Currently Have TPS, How Do I Register for an Extension?

All applicants previously granted TPS under the Sudan program may apply for an extension by filing a Form I–821 (without the fee) during the re-registration period that begins November 9, 1999 and ends December 9, 1999. Additionally, you must file a Form I–765, Application for Employment Authorization. See Chart 1 below to determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765.

CHART 1

If	Then
You are applying for employment authorization through November 2, 2000.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not request employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765, an appropriately documented fee waiver request, and the requisite affidavit (any other information), in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½″ x 1½″).

If I Do Not Currently Have TPS, How Do I Register?

All applicants filing for TPS under the Sudan redesignation who have not previously been granted TPS must apply by filing Form I–821 and the fifty-dollar ($50) fee. Additionally, you must submit the Form I–765 and a twenty-five dollar ($25) fingerprinting fee. See Chart 2 below to determine if you must also submit the one-hundred dollar ($100) filing fee for Form I–765, and to obtain information on requesting a fee waiver.

CHART 2

If	Then
You are applying for employment authorization through November 2, 2000.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not request employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are requesting a fee waiver for the $50 fee for the Form I–821, $100 fee for the Form I–765, and $25 fingerprinting fee.	You must complete and file Form I–821, Form I–765, and an appropriately documented fee waiver request and the affidavit (and any other information), in accordance with 8 CFR 244.20.

To register for TPS, you also must include two identification photographs (1½″ x 1½″) and supporting evidence, as provided in 8 CFR 244.9 (evidence of identity, nationality, and proof of residence).

When Must I Re-Register for TPS Under the Extension?

For nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) who already have TPS, the re-registration period begins November 9, 1999 and lasts until December 9, 1999. If you have TPS from the original designation but do not file during the re-registration period, you can still file a new application for TPS under the redesignation. If you are filing a new application, you will need to follow the instructions for applying under the redesignation.

When Must I Register for TBS Under the Redesignation.

The registration period for nationals of Sudan applying for TPS under the redesignation begins November 9, 1999, and will remain in effect until November 2, 2000.

Where Must I File My Application for TPS Under This Extension and Redesignation?

Applicants seeking to register for TPS or to extend their TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (INS) district office that has jurisdiction over the applicant's place of residence.

What Are the Requirements for Nationals of Sudan To Demonstrate That They Have Been "Continuously Physically Present" and Have "Continuously Resided" in the United States?

All new applicants for TPS under the Sudan redesignation will have to demonstrate "continuous physical presence" and "continuous residence" in the United States since November 9, 1999. "Continuously physically present" means actual physical presence in the United States for the entire period specified. An alien, however, shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of a brief, casual, and innocent absence. "Continuously resided" means residing in the United States for the entire period specified. An alien will not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence.

Notice of Extension of Designation and Redesignation of Sudan Under the TPS Program

By the authority vested in me as Attorney General under section 244 of the Act, and as required by sections 244(b)(3)(A) and (C), and 244(b)(1) of the Act, I have consulted with the appropriate government agencies concerning the redesignation of Sudan under the TPS program and the extension of that country's current designation. From these consultations, I find the following:

(1) There exists an ongoing armed conflict in Sudan and that a return of aliens who are nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) would pose a serious threat to their personal safety as a result of the armed conflict in that nation;

(2) There exist extraordinary and temporary conditions in Sudan that prevent aliens who are nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) from returning to Sudan in safety; and

(3) Permitting nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) to remain temporarily in the United States is not contrary to the national interest of the United States. 8 U.S.C. 1254a(b)(1)(A) and (C).

Accordingly, I order as follows:

(1) The designation of Sudan is extended under sections 244(b)(3)(A) and (C) of the Act for the twelve-month period spanning from November 3, 1999, to November 2, 2000. 8 U.S.C. 1254a(b)(3)(A) and (C). Nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) who received TPS during the initial designation period may apply for an extension of TPS during the registration period lasting from November 9, 1999 until December 9, 1999.

(2) Sudan is redesignated under section 244(b)(1) of the Act for TPS until November 2, 2000. 8 U.S.C. 1254a(b)(1). Nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) who have been "continuously physically present" and have "continuously resided" in the United States since November 9, 1999, may apply for TPS within the registration period, which begins November 9, 1999, and ends November 2, 2000.

(3) I estimate that there are no more than 1,000 nationals of Sudan who have been granted TPS and who are eligible for re-registration, and no more than 500 nationals of Sudan who do not have TPS and are eligible for TPS under this redesignation.

(4) In order to maintain TPS, a national of Sudan (or an alien having no nationality who last habitually resided in Sudan) who currently has TPS must re-register by filing Form I–821, together with Form I–765, within the period beginning November 9, 1999 and ending on December 9, 1999. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c). There is no fee for a Form I–821 filed as part of the re-registration application. A Form I–765 must be filed with the Form I–821. If the applicant requests employment authorization, he or she must submit one hundred dollars ($100) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee.

(5) A national of Sudan (or an alien having no nationality who last habitually resided in Sudan) filing for TPS under the redesignation must file Form I–821, together with Form I–765, within the period beginning November 9, 1999, and ending on November 2, 2000. A fifty-dollar ($50) fee must accompany Form I–821. A twenty-five dollar ($25) fingerprinting fee must also be submitted. If the applicant requests employment authorization, he or she must submit one hundred dollars ($100) or a properly documented fee waiver request, pursuant to a 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The applicant can also request a fee waiver for the twenty-five dollar ($25) fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney general will review, at least 60 days before November 2, 2000, the designation of Sudan under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TPS will be allowed only pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the redesignation of Sudan under the TPS program will be available at local INS offices upon publication of this notice.

Dated: November 2, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–29249 Filed 11–8–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Advisory Council on Violence Against Women

AGENCIES: United States Department of Justice and United States Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Council on Violence Against Women, co-chaired by the Attorney General and Secretary of Health and Human Services, will meet Tuesday November 2 and Wednesday November 3, 1999 in the Video Conference Room of the Office of Justice Programs building, U.S. Department of Justice, third floor, 810 7th Street, NW, Washington, DC 20530. Scheduled to begin at 9:00 a.m. and adjourn at 4:15 p.m., the meeting will include opening remarks by the Attorney General and Secretary Shalala and remarks by Dr. David Satcher, Surgeon General, and Laurie Robinson, Assistant Attorney General for the Office of Justice Programs.

The Advisory Council will meet in closed, small group sessions on both days. The full Advisory Council meeting will be open to the public on a space-available basis. Reservations are required and a photo ID will be requested for admittance. To reserve a space and advise of any special needs, interested persons should call Karen Noel at the Department of Justice at 202–616–6347 or Frances Page at the Department of Health and Human Services at 202–690–6373. Sign language interpreters will be provided. Anyone wishing to submit written questions to this session should notify the Department of Justice, Violence Against Women Office by November 1, 1999. The notice may be delivered by mail, telegram, facsimile, or in person. It should contain the requestor's name and his or her corporate designation, consumer affiliation, or government designation along with a short statement describing the topic to be addressed. Interested parties are encouraged to attend.

FOR FURTHER INFORMATION CONTACT; Questions regarding this meeting may be sent to the Violence Against Women Office, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20530 or directed to Karen Noel at 202–616–6347 (tel) or 202–307–3911 (fax).

Dated October 25, 1999.

Bonnie J. Campbell,

Director, Violence Against Women Office.

[FR Doc. 99–29246 Filed 11–8–99; 8:45 am]

BILLING CODE 4410–BB–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 2, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: CPS Displaced Worker and Job Tenure Supplement.

OMB Number: 1220–0104.

Frequency: One time.

Affected Public: Individuals or households.

Number of Respondents: 48,000.

Estimated Time Per respondent: 9 minutes per household.

Total Burden Hours: 6,400 hours.

Total Annualized capital/startup costs: $0.

Total annual cost (operating/maintaining system or purchasing series): $0.

Description: The information collected will evaluate the size and characteristics of the population affected by job displacement and hence, the needs and scope of job training program serving adult displaced workers. These data also will measure the severity of the displacement problem, and assess employment stability.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–29261 Filed 11–8–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 3, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBS, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Pension and Welfare Benefits Administration.

Title: Advisory Opinion Procedures—ERISA Procedure 76–1.

OMB Number: 1210–0066.

Frequency: On occasion.

Affected Public: Individual or household; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 83.

Estimated Time Per respondent: 12 hours and 40 minutes.

Total Burden Hours: 101.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: ERISA Procedure 76–1 is used by plan fiduciaries, administrators, and other individuals when requesting a legal interpretation from the Department regarding specific facts and circumstances. The Department's answer to such inquiries are categorized as "information letters" and "advisory opinions."

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–29264 Filed 11–8–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs, U.S. National Administrative Office, National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Open Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open meeting, December 7, 1999.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department

of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, educational institutions, and the general public.

DATES: The Committee will meet on December 7, 1999 from 9 a.m. to 4:30 p.m.

ADDRESS: U.S. Department of Labor, 200 Constitution Avenue NW, Conference Room C–5515–C, Washington, D.C. 20210. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C–4327, Washington, D.C. 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, DC on November 1, 1999.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 99–29263 Filed 11–8–99; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36, 202 and TA–W–36,202A]

Thunderbird Mining, Eveleth, and Forbes, MN; Notice of Negative Determination on Reconsideration

On August 11, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The United Steelworkers of America (USWA), Local Union 6860, provided new information regarding possible customer import purchases of articles like or directly competitive with the taconite pellets produced by workers of the subject firm. The notice was published in the **Federal Register** on August 31, 1999 (64 FR 47525).

The Department initially denied TAA to workers of Thunderbird Mining producing taconite pellets because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The petitioners alleged that imports of steel led to worker separations from the subject firm. Imports of taconite pellets must be used as the basis for possible certification. The investigation revealed that the major domestic customers of the subject firm reported either that they did not import or that their imports declined in 1999. U.S. imports of agglomerated iron ores and concentrates (other than roasted iron pyrites) declined in the first quarter of 1999 compared with the same period of 1998.

To address the USWA Local Union 6860 assertion that Thunderbird Mining customers are importing products like or directly competitive with the taconite pellets produced in Eveleth and Forbes, Minnesota, the Department conducted another survey of the subject firms' major declining customers. The respondents reported that no products were purchased from domestic or foreign sources to replace taconite pellets in the relevant time period (1997, 1998, and January through April 1998 and 1999).

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Thunderbird Mining, Eveleth and Forbes, Minnesota.

Signed at Washington, D.C., this 11 day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–29262 Filed 11–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–4694]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-methyl-4-isothiazolin-3-one as an antimicrobial additive for adhesives, paper additives, and paper coatings that are intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0B4699) has been filed by Rohm and Haas Co., 100 Independence Mall West, Philadelphia, PA 19106. The petition proposes to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) and § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of 2-methyl-4-isothiazolin-3-one as an antimicrobial additive for adhesives, paper additives, and paper coatings that are intended to contact food.

The agency has determined under 21 CFR 25.32(q) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 26, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–29222 Filed 11–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10676, et al.]

Proposed Exemptions; Anvil Construction Company, Inc. Employee's Money Purchase Pension Plan (the Money Purchase Plan), Anvil Construction Co., Employee Profit Sharing Plan (the Profit Sharing Plan), William Andreassi, Mark Andreassi, Michael Andreassi, and Wayne Campbell

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of

proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Anvil Construction Company, Inc. Employee's Money Purchase Pension Plan (the Money Purchase Plan), Anvil Construction Co., Employee Profit Sharing Plan (the Profit Sharing Plan), William Andreassi, Mark Andreassi, Michael Andreassi, and Wayne Campbell Located in Philadelphia, Pennsylvania; Proposed Exemption

[Exemption Application No. D–10676 and D–10677]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 (c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of a certain parcel of unimproved real property (the Property) from certain accounts (the Accounts) in the Money Purchase Plan and the Profit Sharing Plan (collectively, the Plans) to the Anvil Construction Company, Inc. (Anvil), a party in interest and disqualified person with respect to the Accounts, provided that the following conditions are met:

(a) The terms and conditions of the Sale will be at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party;

(b) Anvil will purchase the Property from the Accounts for $433,531, an amount comprised of the Property's current $397,000 fair market value (the Fair Market Value) as determined by a qualified, independent appraiser plus $36,531 which represents the excess of the Property's holding costs over appreciation from time of acquisition;

(c) The Sale will be a one-time transaction for cash; and

(d) The Accounts will pay no fees or commissions in connection with the Sale.

Summary of Facts and Representations

1. Anvil is a company engaged in commercial and industrial construction and is located in Philadelphia, Pennsylvania. Anvil is the sponsor of the Plans. The Plans are comprised of the Money Purchase Plan and the Profit Sharing Plan, both of which are individually-directed, defined contribution plans. The Money Purchase Plan has 5 participants and approximately $455,846 in total assets as of March 8, 1999. The Profit Sharing Plan has 5 participants and approximately $470,374 in total assets as of March 8, 1999.

2. In 1988, the Plans' participants were given the option of investing their respective Money Purchase Plan Account assets and Profit Sharing Account assets in the purchase of the Property from USR Realty Development. USR Realty Development is a division of the U.S. Diversified Group of the US Steel Corporation, an unrelated party. The Property is a rectangularly-shaped lot of unimproved real property comprising approximately 7.4 acres located in Bucks County, Pennsylvania. The Property is situated in the USX Industrial Park and is zoned for heavy industrial use.

Four of the Plans' participants: William Andreassi, Mark Andreassi, Michael Andreassi, and Wayne Campbell (collectively, the Participants); elected to have their respective Money Purchase Plan Account and Profit Sharing Account (collectively, the Accounts) participate in the purchase of the Property.

3. On July 8, 1988, the Participants directed their respective Money Purchase Plan Account and Profit Sharing Plan Account to purchase the Property (the Purchase). The sale of the Property to the Accounts was for $331,515. The Participants represent that the Purchase was for investment purposes.

The applicants represent that each Participant's respective Money Purchase Plan Account contributed an equal share (the Money Purchase Plan Share) to the Property's purchase price in relation to the other Participants' Money Purchase Plan Accounts. The Applicants additionally represent that each Participant's respective Profit Sharing Plan Account contributed an equal share (the Profit Sharing Plan Share) to the Property's purchase price in relation to the other Participants' Profit Sharing Plan Accounts. As a result, the applicants represent that, after the Purchase, each Participant's respective Share equaled 25%, or approximately $82,880, of the Property's $331,515 purchase price.

The applicants represent that with respect to the purchase each Participant allocated a portion of the Participant's respective Share between the Participant's respective Money Purchase Plan Account and the Participant's respective Profit Sharing Plan Account. In this regard, the applicants represent that each Participant's Profit Sharing Account allocated approximately $11,035 of the Share's $82,880 value and each Participant's Money Purchase Plan Account allocated approximately $71,845 of the Share's $82,880 value.

4. The Accounts incurred certain holding costs (the Holding Costs) with the Accounts' ownership of the Property. These Holding Costs include: $93,313 in real estate taxes; $1,600 in general liability insurance; $5,987 in acquisition fees; and $1,116 in real estate marketing charges. The applicants represent that the Property's total Holding Costs of $102,016 were paid for with the assets of each Participant's Accounts. In this regard, the applicants represent that each Participant paid an equal amount of the Holding Costs. As a result, the Accounts of each Participant have incurred an expense totaling approximately $25,504 as a result of their ownership interest in the Property.

5. The Property was appraised on December 9, 1998 by William Bott and Anna Hageman (collectively, the Appraisers) for the Equity Appraisal Company, Inc., an appraisal company independent of Anvil. The Appraisers, both Pennsylvania certified real estate appraisers, used the sales comparison approach in their valuation of the Property and compared the Property to 5 parcels of land located near the Property and the subject of recent sales. Based on these comparisons, the Appraisers determined the Fair Market Value of the Property, as of December 9, 1998, to be $397,000.

6. The applicants represent that the Property's Holding Costs exceed the Property's net appreciation (the Net Appreciation). In this regard, the applicants represent that the Property's acquisition price of $331,515 and the Property's Fair Market Value of $397,000 results in a Net Appreciation totaling $65,485. The applicants represent that this Net Appreciation of $65,485 is less than the Property's Holding Costs of $102,016. As a result, the applicants represent that any sale of the Property for a price equal to the Appraised Value will result in a net loss to the Accounts totaling $36,531 (the Excess Costs), or a net loss of $9,132.75 to each Account.[1]

7. The applicants propose the Sale of the Property from the Accounts to Anvil for a price equal to the sum of the Property's Fair Market Value of $397,000, as determined by a qualified, independent appraiser, and the Property's Excess Costs of $36,531. As a result, Anvil proposes to purchase the Property from the Accounts for $433,531. The Applicants represent that if the proposed transaction is granted, the Accounts of each Participant will receive 25% or $108,382.75 of the Property's $433,531 total sale price which will include $9,123.75 for the Property's Excess Costs. The Applicants represent that the $108,382.75 will be allocated to each Participant's respective Money Purchase Plan Account and Profit Sharing Plan Account according to the same percentage of total assets which the Property currently comprises in each Account. As a result, the applicants represent that if the proposed transaction is granted, each Participant's respective Money Purchase Plan Account will receive approximately $93,953.09 and each Participant's respective Profit Sharing Account will receive approximately $14,429.66.

The applicants represent that the Sale is administratively feasible in that it will be a one-time transaction for cash and that the Accounts will pay no fees or commissions. The applicants additionally represent that the proposed Sale is in the best interests of the Accounts' Participants and beneficiaries since the Property has not appreciated at a rate which is satisfactory to the Participants. In this regard, the applicants represent that the Sale, if granted, would provide the Accounts with cash which the Accounts could invest in assets providing a greater rate of return than that of the Property. The applicants represent further that the abundance of available undeveloped real property similar to the Property has reduced the ability of the Accounts' to sell the Property to unrelated third parties.

The applicants additionally represent that the proposed transaction is protective of the Accounts' participants and beneficiaries since the Sale, if granted, will provide the Accounts with a cash amount equal to the sum of the Property's acquisition price and the Property's holding costs. As a result, the applicants represent that the proposed Sale will enable the Accounts to recover all of the Holding Costs associated with the Accounts' ownership of the Property. The applicants also represent that the Sale, if granted, will provide cash to the Accounts which the Accounts could invest in assets providing a greater rate of return than that of the Property.

8. In summary, the applicant represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) The terms and conditions of the Sale will be at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party;

(b) Anvil will purchase the Property from the Accounts for $433,531, an amount comprised of the Property's current $397,000 fair market value (the Fair Market Value) as determined by a qualified, independent appraiser and the Property's excess holding costs of $36,531;

(c) The Sale will be a one-time transaction for cash; and

(d) The Accounts will pay no fees or commissions in connection with the Sale.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and the Department within 10 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219–8883 (this is not a toll free number).

Cassano's Inc. 401(k) Plan and Trust (the Plan) Located in Dayton, Ohio, Proposed Exemption

[Exemption Application Number D–10734]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of an improved parcel of real property (the

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[1] The Department notes that the decision to invest in the Property is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the Property.

Property) by the Plan to Cassano's, Inc. (Cassano's), a party in interest and disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the greater of $155,500 or the fair market value of the Property as of the date of the Sale;

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and

(e) Cassano's files Form 5330 with the Internal Revenue Service (the Service) and pays certain excise taxes with respect to the past prohibited leasing of the Property within 90 days of the date that a notice granting this proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. The Plan is a profit sharing plan located in Dayton, Ohio. The Plan had approximately 75 participants and $450,621.83 in assets as of September 30, 1998. The Plan is sponsored by Cassano's, a pizza company having its principal place of business located in Dayton, Ohio.

2. The assets of the Plan include the Property which was acquired by the Plan for $155,500 in 1973. The Property is located at 2418 East Third Street, Dayton, Ohio and is comprised of four contiguous lots totaling 22,438 square feet and improved by two buildings. One of these buildings is a one-story restaurant having 2,640 square feet in rentable space and occupying two of the lots. The other building is a storage facility occupying the rear portion of the remaining two lots. The balance of the Property is comprised of a paved parking lot and a small grass-covered plot fronting the restaurant. The Property currently comprises approximately 29.3% of the assets of the Plan.

3. The applicant represents that, on June 15, 1973, Cassano's leased the Property from the Plan (the First Lease). The applicant represents that the First Lease was entered into pursuant to section 414(c)(2) of the Act.[2] On August 10, 1984, Cassano's received an individual exemption, PTE 84–114, 49 FR 32132 (Aug. 10, 1984) (PTE 84–114) to enter into a new leasing arrangement with the Plan. PTE 84–114 authorized: (1) A new leasing agreement between Cassano's and the Plan (the Second Lease) provided that certain conditions were met; and (2) an option held by Cassano's for the sale of the Property to Cassano's provided that certain conditions were met.

The applicant represents that, between December, 1994 and March, 1995, Cassano's missed four rent payments due under the Second Lease.[3] As a result, the exemptive relief provided to Cassano's through PTE 84–114 was no longer available. Despite this, Cassano's continued to lease the Property from the Plan and thus engaged in a transaction which violated section 406 of the Act. The applicant estimates that the continuation of the Second Lease without the exemptive relief provided for by PTE 84–114 has resulted in approximately $1,662 in excise taxes (the Excise Taxes) due under section 4975 of the Code. In this regard, the applicant represents that Cassano's will correct its violation of PTE 84–114 by paying the Excise Taxes, after filing Form 5330 with the Service, within 90 days of the date that a notice granting this proposed exemption is published in the **Federal Register**.

4. The applicant now proposes to purchase the Property from the Plan. The Property was appraised by Chester A. Brewer (Mr. Brewer) and Timothy N. Dunham (Mr. Dunham; collectively, the Appraisers) of the Dunham Company, a real estate appraisal company located in Dayton, Ohio. The Appraisers represent that they are certified in the State of Ohio and are independent of the Plan and Cassano's. The Appraisers used the sales comparison approach and compared the Property to three properties similar to the Property and the subject of recent sales. The Appraisers represent that, based on these comparisons, the fair market value of the Property was $132,000 as of July 29, 1999.

5. The applicant represents that the Plan has incurred certain costs and has received certain income due to the Plan's ownership of the Property. In this regard, the applicant represents that, since its acquisition by the Plan, the Property has been assessed a total of approximately $100,000 in real estate taxes. Additionally, the applicants represent that, since its acquisition by the Plan, the Property has generated a total of approximately $559,250 in rental income for the Plan.

6. The applicant proposes the sale of the Property to Cassano's (*i.e.*, the Sale) for the greater of $155,500 or the fair market value of the Property as of the date of the Sale.[4] The Sale would allow the Plan to recover the original acquisition cost to the Plan of the Property. The applicant represents that the proposed transaction is feasible since it involves a one-time transaction for cash. Furthermore, the applicant represents that the proposed transaction is protective of the rights of participants and beneficiaries since the Sale would enable the trustees of the Plan to diversify the Plan's assets. Finally, the applicant represents that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries since the Sale will ensure that the Plan receives for the Property a price not less than the price the Plan paid to acquire the Property. As a result, the applicant represents that the terms of the proposed sale guarantee that the Plan will recover the Property's full acquisition price.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the greater of $155,500 or the fair market value of the Property as of the date of the Sale;

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and

(e) Cassano's files Form 5330 with the Service and pays certain excise taxes with respect to the past prohibited leasing of the Property within 90 days of the date that a notice granting this proposed exemption is published in the **Federal Register**.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and the Department within 10 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

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[2] The Department is expressing no opinion herein as to the application of section 414(c)(2) of the Act to this transaction.

[3] The applicant represents that Cassano's filed for Chapter 11 bankruptcy protection in 1995. The applicant represents that the rent delinquency (ultimately totaling $7,669.36), has been repaid by Cassano's to the Plan pursuant to Cassano's U.S. Bankruptcy Court-approved plan of reorganization.

[4] The applicant represents that any payment by Cassano's to the Plan which is in excess of the Property's fair market value will not exceed the limitations set forth in section 415 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Motta, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 4th day of November, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–29267 Filed 11–8–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–44; Exemption Application No. D–10257, et al.]

Grant of Individual Exemptions; Pacific Life Corporation (Pacific Life), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pacific Life Corporation (Pacific Life) Located in Newport Beach, California; Exemption

[Prohibited Transaction Exemption 99–44; Exemption Application No. D–10257]

Section I—Transactions

(a) The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply:

(1) For the period from January 22, 1993 until October 31, 1998, to the sale by Pacific Life of an "actively-managed synthetic" guaranteed investment contract (Actively-Managed Synthetic GIC) to an employee benefit plan for which Pacific Life was a party in interest with respect to such plan (Plan) in instances where Pacific Life or an Affiliate manages the Plan's assets relating to the Synthetic GIC (an Affiliated-Manager GIC); and

(2) As of January 22, 1993, to the purchase or retention of the Affiliated-Manager GICs, described in section (a)(1) above, by the Plans and the payments made by Pacific Life to the Plans pursuant to the terms and conditions of the Affiliated-Manager GICs, provided that the general conditions set forth in section II, the specific conditions set forth in section III, the retroactive conditions set forth in section IV, and the record-keeping requirements set forth in section V below are met.

(b) The restrictions of sections 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply:

(1) As of January 22, 1993, to the sale by Pacific Life of an Actively-Managed Synthetic GIC to a Plan in instances where the Plan's assets relating to the Actively-Managed Synthetic GIC are managed by an investment manager who is unaffiliated with Pacific Life and

its Affiliates (an Unaffiliated-Manager GIC); and

(2) As of January 22, 1993, to the purchase or retention of the Unaffiliated-Manager GICs, described in section (b)(1) above, by the Plans and the payments made by Pacific Life to the Plans pursuant to the terms and conditions of the Unaffiliated-Manager GICs, provided that the general conditions set forth in section II and the record-keeping requirements set forth in section V below are met.

Section II—General Conditions

(a) Prior to the sale of an Actively-Managed Synthetic GIC, an independent fiduciary of each Plan receives a full and detailed written disclosure of all material features of the Actively-Managed Synthetic GIC, including all applicable fees and charges;

(b) Following receipt of such disclosure, the Plan's independent fiduciary approves in writing the purchase of the Actively-Managed Synthetic GIC on behalf of the Plan;

(c) All fees and charges imposed under any such Actively-Managed Synthetic GIC are not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act;

(d) Each Actively-Managed Synthetic GIC will specifically provide an objective means of determining the fair market value of the securities owned by the Plan pursuant to the Actively-Managed Synthetic GIC;

(e) Each Actively-Managed Synthetic GIC will specifically provide an objective formula for determining the interest rates to be credited periodically under the Actively-Managed Synthetic GIC;

(f) Pacific Life does not maintain custody of the assets which are the subject of the Actively-Managed Synthetic GIC or commingle those assets with any other funds under its management;

(g) The assets subject to the Actively-Managed Synthetic GIC are invested in high quality fixed income investments specified in the investment guidelines agreed to, or provided by, the independent fiduciary;

(h) The Plan may, at any time, terminate the Actively-Managed Synthetic GIC;

(i) The fee charged under the arrangement is negotiated between Pacific Life and a Plan fiduciary independent of Pacific Life;

(j) At all times during the term of each Actively-Managed Synthetic GIC, a Plan may elect to receive such lump sum amount equal to the Contract Value Record and shall be entitled to receive a lump sum payment no more than 3 (three) years after making an election which will establish a maturity date;

(k) The Plan may establish a maturity date by notifying Pacific Life in writing of an intent to establish a maturity date. Each Actively-Managed Synthetic GIC will mature within three (3) years after the Plan notifies Pacific Life of its intent to establish a maturity date; and

(l) Actively-Managed Synthetic GICs are sold only to Plans which have at least $25 million in assets.

Section III—Specific Conditions

(a) With respect to any Affiliated-Manager GIC described in section I(a), Pacific Life will notify a Plan's independent fiduciary, in writing no later than 30 days prior to the date on which the Credited Rate is to be reset, advising such fiduciary that the Plan may replace Pacific Life or its affiliate as investment manager, [1] at no expense to the Plan, when the Credited Rate with respect to any Affiliated-Manager GIC described in section I(a) is expected to be less than three (3) percent at the next reset of the Credited Rate.

Section IV—Retroactive Conditions

(a) At no time between January 22, 1993 and October 31, 1998, was the Credited Rate with respect to any Affiliated-Manager GIC described in section I(a) less than 3% (three percent) per annum; and

(b) At no time between January 22, 1993 and October 31, 1998, did a Plan elect to receive an amount equal to the Contract Value Record pursuant to an Affiliated-Manager GIC described in section I(a).

Section V—Recordkeeping

(a) The Applicant maintains or causes to be maintained for a period of six years from the date of the transaction such records as are necessary to enable the persons described in paragraph (b) of this section V of this exemption, to determine whether the conditions of this exemption have been met, except that: (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the Applicant or its affiliates, such records are lost or destroyed prior to the end of such six year period; and (2) no party in interest, other than the Applicant or an affiliate, shall be subject to the civil penalty that may be accessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b) below.

(b)(1) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) of this section V are unconditionally available at their customary location for examination during normal business hours by: (i) any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; (ii) any fiduciary of the plan or any duly authorized employee or representative of such fiduciary; (iii) any participant or beneficiary of the plan or duly authorized representative of such participant or beneficiary; (iv) any employer of plan participants and beneficiaries; and (v) any employee organization any of whose members are covered by such plan; and

(2) None of the persons described in paragraph (b)(1)(ii) through (v) shall be authorized to examine trade secrets of the applicant, or commercial or financial information which is privileged or confidential.

Section VI—Definitions

For purposes of this exemption:

(A) "Actively-Managed Synthetic GIC" means: a synthetic guaranteed investment contact, which under certain circumstances provides a guarantee that a pool of underlying plan assets which may be managed by Pacific Life, an affiliate of Pacific Life, or an unrelated investment manager, will perform at a specified rate of return.

(B) "Affiliated-Manager GIC" means: an Actively-Managed Synthetic GIC under which Pacific Life guarantees the performance of an related investment manager.

(C) "Unaffiliated-Manager GIC" means: an Actively-Managed Synthetic GIC under which Pacific Life guarantees the performance of an unrelated investment manager.

(D) "Contract Value Record" means: a bookkeeping account maintained by Pacific Life, pursuant to each Actively-Managed Synthetic GIC. Initially, the Contract Value Record will be credited with the value of the Investment Assets (defined in (F) below), and subsequently with a credited rate of interest (Credited Rate, defined in (E) below), which shall be reset periodically as agreed to at the inception of the Actively-Managed Synthetic GIC.

(E) "Credited Rate" means: the interest rate credited to the Contract Value Record. The Credited Rate is reset periodically, in accordance with an objective formula established under the terms of the Actively-Managed Synthetic GIC.

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[1] Although Pacific Life must approve the new investment manager selected by the Plan, Pacific Life represents that it will not unreasonably withhold such approval.

(F) "Investment Assets" means: the underlying portfolio of investment assets, title to which remains with the Plan.

(G) "Managed Portfolio" means: the total of all Investment Assets which comprise the portfolio which is managed by either an Affiliated-Manager or an Unaffiliated-Manager.

(H) "Withdrawals" means: a participant initiated payment or transfer to other investment options available under the Plan.

EFFECTIVE DATE: This exemption is effective for the period from January 22, 1993, until October 31, 1998, for the transactions described in section I(a)(1). Section I(a)(2) of the exemption will be effective for the retention by the Plan of the Affiliated-Manager GICs until the maturity date of such GICs. Lastly, the exemption is effective as of January 22, 1993, for the transactions described in section I(b) (including the continuing retention of any Unaffiliated-Manager GICs).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 22, 1999, at 64 FR 39533.

Written Comments: One written comment, addressing two issues, was received from the applicant, Pacific Life, regarding the notice of proposed exemption (the Notice).

With respect to the first issue, the applicant states that the relief provided for in the operative language of the Notice regarding "synthetic" guaranteed investment contracts that are actively-managed by Pacific Life or an Affiliate (*i.e.*, Affiliated-Manager GICs) is effective only for contracts sold on or before August 12, 1998. The applicant represents that this date was established based on the belief that no existing Affiliated-Manager GICs had been entered into after that date. After the Notice was published in the **Federal Register** on July 22, 1998, the applicant discovered that one Plan client, which had previously held a traditional GIC issued by Pacific Life, requested conversion of that GIC contract to an Affiliated-Manager GIC prior to August 12, 1998, but the parties did not actually execute this Affiliated-Manager GIC until October 1998. Therefore, Pacific Life requests that references in the Notice to August 12, 1998 be changed to October 31, 1998 in order to accommodate the execution of this Affiliated-Manager GIC.

In response to the applicant's comment, the Department has modified Section I(a)(1) and Section IV(a) and (b) of the exemption, as well as the effective date paragraph at the end of the operative language of the exemption, by substituting October 31, 1998 for August 12, 1998.

With respect to the second issue, Section II(g) of the Notice requires that the assets subject to the Actively-Managed Synthetic GIC (*i.e.*, Investment Assets) must be invested only in high quality fixed income investments specified in the investment guidelines agreed to, or provided by, the independent fiduciary. The summary of facts and representations (the Summary) contained in the Notice also states that the Investment Assets will be invested in securities issued or guaranteed by the Federal government, or an instrumentality thereof, or other investment grade debt securities whose value is readily determinable and which can thus be objectively valued (e.g., see Paragraph 8 of the Summary, 64 FR at 39535).

The applicant's comments state that certain Plans have requested that a portion of the Investment Assets be allocated to non-investment grade securities in order to enhance the rate of return to such Plans, pursuant to certain investment guidelines established by independent Plan fiduciaries. However, the applicant represents that at least 90% of the Investment Assets will be allocated to investment grade securities at all times. Thus, for purposes of this exemption, Pacific Life wishes to clarify that while the Investment Assets will be primarily allocated to investment grade securities, a small percentage of such Assets may be non-investment grade securities.

The Department acknowledges the applicant's clarification to the information and representations contained in the Summary regarding investment grade securities. In this regard, the Department notes that the requirements of Section II(g) of the exemption, relating to the need for "* * * high quality fixed income investments," will be deemed to be met if at least 90% of the Investment Assets are allocated at all times to investment grade securities. Further, in response to the applicant's comment, the Department has modified the language of Section II(g) of the exemption by deleting the word "only" from the phrase referring to high quality fixed income investments.

Accordingly, the Department has determined to grant the exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Janet Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Donaldson, Lufkin & Jenrette Securities Corporation (DLJ) Located in New York, NY; Exemption

[Prohibited Transaction Exemption (PTE) 99–45; Application No. D–10772]

Section I. Covered Transactions

A. The restrictions of section 406(a)(1))(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 24, 1999, to any purchase or sale of a security between certain affiliates of DLJ which are foreign broker-dealers (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, DLJ or a Foreign Affiliate provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer;

(2) The terms of any transaction are at least as favorable to the Plan as those which the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 24, 1999, to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to any Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder if such Act, rules or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 24, 1999, to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery or by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day on which the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings)[2] had it remained the record owner of such securities.

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded.[3]

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (9), the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan, the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of section 404(b) of the Act, the Foreign

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[2] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not lent the securities.

[3] PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein).

Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

If the Foreign Affiliate fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II. General Conditions

A. The Foreign Affiliate is a registered broker-dealer subject to regulation by a governmental agency, as described in Section III. B., and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements.

C. Prior to the transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions.

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E. to determine whether the conditions of this exemption have been met except that—

(1) A party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination, as required by paragraph E.; and

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of the Foreign Affiliate, such records are lost or destroyed prior to the end of such six year period;

E. Notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to above in paragraph D., unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) The Department, the Internal Revenue Service or the SEC;

(2) Any fiduciary of a Plan;

(3) Any contributing employer to a Plan;

(4) Any employee organization any of whose members are covered by a Plan; and

(5) Any participant or beneficiary of a Plan.

However, none of the persons described above in paragraphs (2)–(5) of this paragraph E. shall be authorized to examine trade secrets of the Foreign Affiliate, or any commercial or financial information which is privileged or confidential.

F. Prior to any Plan's approval of any transaction with a Foreign Affiliate, the Plan is provided copies of the proposed and final exemption with respect to the exemptive relief granted herein.

Section III. Definitions

For purposes of this exemption,

A. The term "DLJ" as referred to in Parts A., B., and C. of Section I., means Donaldson, Lufkin & Jenrette Securities Corporation.

B. The term "affiliate" of another person shall include:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

C. The term "Foreign Affiliate," shall mean a current or future affiliate of DLJ that is subject to regulation as a broker-dealer by—

(1) The Securities and Futures Authority, in the United Kingdom; or

(2) The Australian Securities & Investments Commission in Australia.

C. The term "security" shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other notional principal contracts.

EFFECTIVE DATE: This exemption is effective as of September 24, 1999.

For a more complete statement of the facts and representations supporting this exemption, refer to notice of proposed exemption (the Notice) published on September 24, 1999 at 64 FR 51797.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment, which was submitted by DLJ, requested that the exemption be made retroactive to September 24, 1999, the date the Notice was published in the **Federal Register**, to ensure that any transactions entered into on or after the publication date of the Notice by Plans and the Foreign Affiliates would be covered by the requested exemption. In response to this comment, the Department has made the exemption effective as of September 24, 1999.

For further information regarding DLJ's comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10772) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comment provided by the DLJ, the Department has made the aforementioned change to the Notice and has decided to grant the exemption subject to the modification described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 4th day of November, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–29266 Filed 11–8–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIMES:

November 18, 1999: 11:30 a.m.—Closed Session

November 18, 1999: 1 p.m.—Closed Session

November 18, 1999: 2 p.m.—Open Session

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

STATUS:

Part of this meeting will be closed to the public

Part of this meeting will be open to the public

MATTERS TO BE CONSIDERED:

Closed Session (11:30 a.m.–12 Noon)

Closed Session Minutes
NSB Member Proposal
Personnel

Closed Session (1 p.m.–2 p.m.)

Awards and Agreements
FY 2001 Budget

Open Session (2 p.m.–6 p.m.)

Minutes, July 1999
Closed Session Items for February 2000
Chair's Report
Director's Report
Committee Reports
NSB Delegation of Authority
NSF Strategic Plan
NSB/EHR Workplan
NSB Interim Report on the Environment
International Task Force Status Report
Science & Engineering Indicators
Committee on Communication & Outreach Status Report
NSB February 2000 Policy Meeting & Retreat
NSB 2000 Calendar
Presentation: Nanoscience & Engineering

Marta Cehelsky,

Executive Officer.

[FR Doc. 99–29490 Filed 11–5–99; 3:54 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *The title of the information collection:* 10 CFR part 55, "Operators' Licenses."

2. *Current OMB approval number:* 3150–0018.

3. *How often the collection is required:* As necessary for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses, prepare or review initial operator licensing and requalification examinations, and perform a review of applications and reports for simulation facilities submitted to the NRC.

4. *Who is required or asked to report:* Holders of and applicants for facility (*i.e.*, nuclear power, research, and test reactor) operating licenses and individual operators' licenses.

5. *The number of annual of respondents:* 231.

6. *The number of hours needed annually to complete the requirement or request:* 25,937 (approximately 19,840 hours of reporting burden and approximately 6,097 hours of record-keeping burden).

7. *Abstract:* 10 CFR part 55, "Operators' Licenses," of the NRC's regulations, specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing and requalification of operators for nuclear reactors, as necessary to promote public health and safety. The reporting and record-keeping requirements contained in 10 CFR part 55 are mandatory for the licensees and applicants affected.

Submit, by January 10, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site *(http://www.nrc.gov/NRC/PUBLIC/OMB/index.html)*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at bjs1@nrc.gov.

Dated at Rockville, MD, this 3rd day of November, 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–29314 Filed 11–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, extension, or reinstatement:* Reinstatement.

2. *The title of the information collection:* NRC Form 592, "NRC's Handling of Your Concerns."

3. *The form number if applicable:* NRC Form 592.

4. *How often the collection is required:* One time, as allegations are closed.

5. *Who will be required or asked to report:* Individuals who have submitted an allegation to the NRC.

6. *An estimate of the number of responses:* 240.

7. *The estimated number of annual respondents:* 240.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 240 (one hour per response).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC is requesting reinstatement of NRC Form 592 to conduct a voluntary survey of allegers who bring health and safety concerns to the NRC. The survey is used to determine the level of satisfaction or dissatisfaction with NRC's handling of their allegation. The survey will be sent to allegers in various categories (allegers who allegations were resolved but not substantiated, resolved and substantiated, or resolved and partially substantiated) whose allegations were filed in each of the four NRC regional offices and the two major program offices, the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards. The results of this survey will be used by NRC management to gauge the effectiveness of its existing program and to develop programmatic revisions, as needed, to improve its handling of allegations.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 9, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–0185), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, MD, this 3rd day of November, 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–29313 Filed 11–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing a complete revision of its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG–1600) (Enforcement Policy or Policy). This is the third complete revision of the Enforcement Policy since it was first published as a NUREG document on June 30, 1995; 60 FR 34381. The NRC publishes the policy statement as a NUREG to foster its widespread dissemination. This revision: (1) Revises the approach for assessing the significance of violations; (2) Changes guidance to conform to recent revisions to the NRC's regulations for operating reactors regarding changes, tests, and experiments (64 FR 53582; October 4, 1999); (3) Updates the Policy to reflect the Deputy Executive Director for Reactor Programs and the Deputy Executive Director for Materials, Research and State Programs as the principal enforcement officers of the NRC; (4) Corrects the schedule for exercising enforcement discretion for findings involving the completeness and accuracy of licensee Final Safety Analysis Reports (FSAR); (5) Consolidates the guidance on dispositioning Severity Level IV violations as either Notices of Violation or Non-Cited Violations; (6) Reorganizes existing guidance on the relationship between safety and compliance to improve clarity; (7) Consolidates changes to the Enforcement Policy since May 1998; and (8) Edits and restructures existing guidance to assure consistency with recent policy changes and to facilitate maintenance of the Enforcement Policy. The intent of this Policy revision is to move towards a more risk-informed and performance-based approach.

DATES: This action is effective November 9, 1999. Comments on this revision should be submitted on or before December 9, 1999 and will be considered by the NRC prior to the next Enforcement Policy revision.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room 2120 L Street, NW. (Lower Level), Washington, DC.

The NRC's Office of Enforcement maintains the current policy statement on its homepage on the Internet at *www.nrc.gov/OE/*.

FOR FURTHER INFORMATION CONTACT: Bill Borchardt, Director, Office of Enforcement, (301) 415–2741, or Renée Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S.

Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–2741.

SUPPLEMENTARY INFORMATION: The NRC Enforcement Policy was first issued as a formal policy statement on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On June 30, 1995; (60 FR 34381), the Enforcement Policy was completely revised as a result of the recommendations of a high-level review team who assessed the enforcement program and solicited input from stakeholders and other government agencies (NUREG–1525, "Assessment of the NRC Enforcement Program.") On May 13, 1998; (63 FR 26630) the Enforcement Policy was completely republished based on a review of the experience with the revised policy and consideration of public comment (NUREG–1600, "NRC Enforcement Policy Review; July 1995–July 1997"). Most recently (February 9, 1999; 64 FR 6388), the Policy was modified by revising the treatment of Severity Level IV violations at power reactors to help reduce unnecessary regulatory burden. The NRC is constantly refining and improving its policy and processes to ensure that enforcement actions are appropriate and contribute to safety.

In developing this Policy revision, the NRC considered comments of various internal and external stakeholders. Consideration was given to written comments submitted in response to the May 13, 1998; 63 FR 26630, revision to the Enforcement Policy; Congressional concerns; information provided during numerous meetings with representatives of the industry and public interest groups; and several written submittals.[1] The main stakeholder involvement has been with the Nuclear Energy Institute (NEI), various power reactor licensees, the Union of Concerned Scientists (UCS), and Public Citizen.

The NRC recognizes that additional changes may be considered as a result of ongoing efforts to make improvements to the inspection and performance assessment processes for power reactors. In addition, changes are anticipated in the materials areas that will conform to the move toward risk-informed performance-based inspections in this area.

The more significant changes to the Enforcement Policy (in the order that they appear in the Policy) are described below:

I. Introduction and Purpose

This section has been modified by adding a discussion of the relationship between safety and compliance. This discussion captures the essence of the Commission-approved discussion that was previously included as Appendix A to this policy statement. Moving this discussion from the back of the Policy to the front improves the logical flow of information and helps ensure that it will not be overlooked.

III. Responsibilities

This section has been modified to reflect the August 9, 1999, reorganization of the office of the Executive Director for Operations. The Deputy Executive Director for Reactor Programs and the Deputy Executive Director for Materials, Research and State Programs, replace the Deputy Executive Director for Regulatory Effectiveness as the principal enforcement officers of the NRC. The Deputy Executive Director for Reactor Programs is responsible to the Executive Director for Operations for NRC enforcement programs.

IV. Significance of Violations

This section has been renamed and significantly modified to reflect the NRC's new approach on how it will assess the significance of violations.

Because regulatory requirements have varying degrees of safety, safeguards, or environmental significance, the NRC's Enforcement Policy uses a graded approach in dealing with noncompliances both in terms of assessing significance and developing enforcement sanctions. This section provides that assessing the relative importance or significance of the violation is the first step in the enforcement process. The NRC is revising its approach for assessing significance that identifies four specific issues to consider: (1) Actual safety consequences; (2) potential safety consequences, including the consideration of risk information; (3) potential for impacting the NRC's ability to perform its regulatory function; and (4) any willful aspects of the violation.

This is a change from previous practice that assessed significance by weighing (1) Actual consequences; (2) potential consequences; and (3) the regulatory significance of a violation. Although not specifically defined by the Policy, "regulatory significance" historically included issues such as, but not limited to, programmatic breakdowns (*i.e.*, aggregation of violations[2]), repetitive violations, willful violations and reporting violations. The NRC is eliminating the use of this term in the context of assessing the significance of violations. The NRC believes this is warranted given the nature of stakeholder concerns, which included the term's lack of sufficient definition, its subjective nature, and its lack of a clear nexus to safety. There is also a concern that use of regulatory significance (under the practice of aggregation) is a form of assessment that should be performed outside the enforcement process. Under the revised Policy, if the NRC has concerns about a licensee's performance as a result of a large number of less significant violations, or repetitive violations based on ineffective corrective actions, the current and future assessment processes provide the regulatory tools necessary to address these performance concerns.

Although the NRC believes it is appropriate to eliminate the term, "regulatory significance" from this policy statement, some of its underlying concepts are appropriate to maintain. The NRC will continue to consider violations that impact or have the potential to impact NRC's ability to carry out its statutory mission. Examples of cases in this category would include violations of §§ 30.9, 50.9, *etc.* (completeness and accuracy of information), §§ 30.34(f), 50.54(a), 50.59, 76.68, *etc.* (need for NRC approval of changes), and Subpart M of Part 20, §§ 30.50, 50.72–73, *etc.* (reporting requirements). Even inadvertent reporting failures are important because many of the surveillance, quality control, and auditing systems on which both the NRC and its licensees rely in order to monitor compliance with safety standards are based primarily on complete, accurate and timely recordkeeping and reporting. The NRC will continue to consider willful violations involving licensees and their employees, including the ability to maintain a safety conscious work environment. Examples of cases in this category would include violations of §§ 30.10, 50.5, *etc.* (deliberate misconduct), and willful violations of requirements including §§ 30.7, 50.7, *etc.* (discrimination), §§ 30.9, 50.9, *etc.* (completeness and accuracy of information), and reporting requirements. Willful violations are, by definition, of particular concern to the

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[1] See, NEI letters to James Lieberman, dated December 14, 1998, and to William Travers, dated October 23, 1998, and UCS letter to James Lieberman dated November 11, 1998. These documents are available at the NRC's Public Document Room (see **ADDRESSES** section).

[2] The previous policy stated that a group of Severity Level IV violations could be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations had the same underlying cause or programmatic deficiencies.

Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor.

This section also elaborates on the concept of potential consequences as a consideration in the significance assessment process. It emphasizes that the NRC will consider the realistic likelihood of affecting safety (*i.e.*, the existence of credible scenarios with potentially significant consequences). It also states that risk information will be used wherever possible and clarifies that use of risk information may increase or decrease the severity level of a violation.

This overall approach to assessing significance preserves the ability to evaluate violations based on those concepts the NRC believes important, while minimizing the controversy that surrounds the use of the term "regulatory significance."

VI.B.2.d Exercise of Discretion

The guidance in this section has been rewritten to state that the NRC may exercise discretion by either escalating or mitigating the amount of a civil penalty after the normal assessment process to ensure that the proposed civil penalty reflects all relevant circumstances of the particular case. The phrases "reflects the NRC's level of concern" and "conveys the appropriate message to the licensee" have been eliminated. Like regulatory significance, these phrases have been criticized as allowing the regulator to arbitrarily issue sanctions without a sufficient nexus to safety. This new language is consistent with the agency's other policy changes and its plain language initiatives. Similar changes are made throughout the Policy.

VII.A.1 Civil Penalties

Paragraph (h) of this section has been modified to include the correct schedule the NRC will use when it considers whether it should exercise escalating enforcement discretion for violations associated with departures from the FSAR. The previous schedule stated, "after two years from October 18, 1996." The correct schedule identifies March 30, 2000, for risk-significant items as defined by the licensee's maintenance rule program and March 30, 2001, for all other issues. This change corrects an error in the policy and conforms to the schedule established by the Commission in a staff requirements memorandum dated June 30, 1998.

VII.B.1 Non-Cited Violations

This section has been renamed and consolidates the guidance on dispositioning Severity Level IV violations as either Notices of Violation or Non-Cited Violations. The definition of a Non-Cited Violation (NCV) is simplified to state that it is a Severity Level IV violation for which the NRC chooses to exercise discretion and refrain from issuing a formal Notice of Violation. It makes it clear that this discretion is not meant to eliminate either the NRC's emphasis on compliance or the importance of maintaining safety. Section VII.B.1.a includes the essence of the guidance on dispositioning power reactor Severity Level IV violations that was previously included in Appendix C. Sections VII.B.1.b–g are reserved for future applications. Section VII.B.1.h includes guidance for dispositioning all other types of licensees. This subsection captures the guidance that was previously included under VII.B.1.

VII.B.3 Violations Involving Old Design Issues

Paragraph (a) of this section has been modified to include the correct schedule the NRC will use when it considers whether it should exercise mitigating enforcement discretion for violations associated with departures from the FSAR. The previous schedule stated, "within two years after October 18, 1996." The correct schedule identifies March 30, 2000, for risk-significant items as defined by the licensee's maintenance rule program and March 30, 2001, for all other issues. Like the schedule in Section VII.A.1.h, this Commission-approved schedule inadvertently failed to be reflected in a revision to the policy statement.

VII.C Notice of Enforcement Discretion for Power Reactors and Gaseous Diffusion Plants

This section has been renamed to more clearly reflect that this type of discretion applies to both power reactors and gaseous diffusion plants.

Supplements—Violation Examples

Each of the eight supplements was modified by removing examples of violations based on the concept of aggregating less significant violations into one of higher significance and the use of repetitive violations to increase the severity of a given violation, *i.e.*, "a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities."

Supplement I—Reactor Operations

Example B.4 is eliminated because it was unnecessary, given that it is highly unlikely that § 50.59 violations will rise to Severity Level II and if operability of equipment is actually affected, then the severity level of the system inoperability will be based on the actual and potential consequences of that inoperability.

Example C.2. (b) is eliminated because basing severity level on any necessary analyses is inconsistent with determining severity level based on actual and potential consequences.

Example C.9 replaces previous examples C.10 and C.11 (which are no longer consistent with recent revisions of 10 CFR 50.59). This example provides that violations of 10 CFR 50.59 will be characterized at Severity Level III only if the change, which would require Commission approval prior to implementation, would not have been found acceptable to the Commission.

Example C.10 replaces previous example C.13 and reflects that Severity Level III characterization may be appropriate for violations of 10 CFR 50.71(e) in those situations where the erroneous information contained in the FSAR resulted in a change to the facility, implemented without prior Commission approval, that would not be acceptable.

Example C.11 replaces previous example C.14. Given that unreviewed safety questions and conflicts with technical specifications will not necessarily be Severity Level III violations under the revised enforcement guidance pertaining to 10 CFR 50.59, this example simply reflects that the failure to make required reports associated with any Severity Level III violation may be characterized at Severity Level III.

Example D.5 replaces previous examples D.5 and D.6 (which are no longer consistent with recent revisions of 10 CFR 50.59). This example provides that Severity Level IV categorization is appropriate for violations of 10 CFR 50.59 that do not involve circumstances in which a change that required prior Commission approval would not be found acceptable had the approval been sought. Any reference to programmatic failures is unnecessary.

Example D.6 replaces previous examples D.7 and D.8 (which are no longer consistent with recent revisions of 10 CFR 50.59). This example provides that Severity Level IV characterization may be appropriate for violations of 10 CFR 50.71(e) in those situations where the erroneous information contained in the FSAR is not used to make an unacceptable change to the facility or procedures.

Paperwork Reduction Act

This final policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is revised to read as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

Table of Contents

Preface
I. Introduction and Purpose
II. Statutory Authority and Procedural Framework
  A. Statutory Authority
  B. Procedural Framework
III. Responsibilities
IV. Significance of Violations
  A. Assessing Significance
  1. Actual Safety Consequences
  2. Potential Safety Consequences
  3. Impacting the Regulatory Process
  4. Willful Violations
  B. Assigning Severity Level
V. Predecisional Enforcement Conferences
VI. Enforcement Actions
  A. Notice of Violation
  B. Civil Penalty
  1. Base Civil Penalty
  2. Civil Penalty Assessment
  a. Initial Escalated Action
  b. Credit for Actions Related to Identification
  c. Credit for Prompt and Comprehensive Corrective Action
  d. Exercise of Discretion
  C. Orders
  D. Related Administrative Actions
VII. Exercise of Discretion
  A. Escalation of Enforcement Sanctions
  1. Civil Penalties
  2. Orders
  3. Daily Civil Penalties
  B. Mitigation of Enforcement Sanctions
  1. Non-Cited Violations (NCVs)
  a. Power Reactor Licensees
  b.–g. [Reserved]
  h. All Other Licensees
  2. Violations Identified During Extended Shutdowns or Work Stoppages
  3. Violations Involving Old Design Issues
  4. Violations Identified Due to Previous Enforcement Action
  5. Violations Involving Certain Discrimination Issues
  6. Violations Involving Special Circumstances
  C. Notice of Enforcement Discretion for Power Reactors and Gaseous Diffusion Plants
VIII. Enforcement Actions Involving Individuals
IX. Inaccurate and Incomplete Information
X. Enforcement Action Against Non-Licensees
XI. Referrals to the Department of Justice
XII. Public Disclosure of Enforcement Actions
XIII. Reopening Closed Enforcement Actions

Supplements—Violation Examples

Interim Enforcement Policies

Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)
Interim Enforcement Policy Regarding Enforcement Discretion for Nuclear Power Plants During the Year 2000 Transition
Interim Enforcement Policy for Use During the NRC Power Reactor Oversight Process Pilot Plant Study

Preface

The following policy statement describes the enforcement policy and procedures that the U.S. Nuclear Regulatory Commission (NRC or Commission) and its staff intends to follow in initiating and reviewing enforcement actions in response to violations of NRC requirements. This statement of general policy and procedure is published as NUREG–1600 to foster its widespread dissemination. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy as appropriate under the circumstances of a particular case.

I. Introduction and Purpose

The Atomic Energy Act of 1954, as amended, establishes "adequate protection" as the standard of safety on which NRC regulations are based. In the context of NRC regulations, safety means avoiding undue risk or, stated another way, providing reasonable assurance of adequate protection of workers and the public in connection with the use of source, byproduct and special nuclear materials.

While safety is the fundamental regulatory objective, compliance with NRC requirements plays an important role in giving the NRC confidence that safety is being maintained. NRC requirements, including technical specifications, other license conditions, orders, and regulations, have been designed to ensure adequate protection—which corresponds to "no undue risk to public health and safety"—through acceptable design, construction, operation, maintenance, modification, and quality assurance measures. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid.

While adequate protection is presumptively assured by compliance with NRC requirements, circumstances may arise where new information reveals that an unforeseen hazard exists or that there is a substantially greater potential for a known hazard to occur. In such situations, the NRC has the statutory authority to require licensee action above and beyond existing regulations to maintain the level of protection necessary to avoid undue risk to public health and safety.

The NRC also has the authority to exercise discretion to permit continued operations—despite the existence of a noncompliance—where the noncompliance is not significant from a risk perspective and does not, in the particular circumstances, pose an undue risk to public health and safety. When noncompliance occurs, the NRC must evaluate the degree of risk posed by that noncompliance to determine if specific immediate action is required. Where needed to ensure adequate protection of public health and safety, the NRC may demand immediate licensee action, up to and including a shutdown or cessation of licensed activities.

Based on the NRC's evaluation of noncompliance, the appropriate action could include refraining from taking any action, taking specific enforcement action, issuing orders, or providing input to other regulatory actions or assessments, such as increased oversight (*e.g.*, increased inspection). Since some requirements are more important to safety than others, the NRC endeavors to use a risk-informed approach when applying NRC resources to the oversight of licensed activities, including enforcement activities.

The primary purpose of the NRC's Enforcement Policy is to support the NRC's overall safety mission in protecting the public health and safety and the environment. Consistent with that purpose, the policy endeavors to:

- Deter noncompliance by emphasizing the importance of compliance with NRC requirements, and
- Encourage prompt identification and prompt, comprehensive correction of violations of NRC requirements.

Therefore, licensees,[1] contractors,[2] and their employees who do not achieve the high standard of compliance which the NRC expects will be subject to enforcement sanctions. Each enforcement action is dependent on the circumstances of the case. However, in no case will licensees who cannot achieve and maintain adequate levels of safety be permitted to continue to conduct licensed activities.

II. Statutory Authority and Procedural Framework

A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes the NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes the NRC to revoke licenses under certain circumstances (*e.g.*, for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes the NRC to impose civil penalties not to exceed $100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes the NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes the NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Notwithstanding the $100,000 limit stated in the Atomic Energy Act, the Commission may impose higher civil penalties as provided by the Debt Collection Improvement Act of 1996. Under the Act, the Commission is required to modify civil monetary penalties to reflect inflation. The adjusted maximum civil penalty amount is reflected in 10 CFR 2.205 and this Policy Statement.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (*i.e.*, monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

B. Procedural Framework

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing Notices of Violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity is provided for a hearing if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in District Court.

The procedure for issuing an order to institute a proceeding to modify, suspend, or revoke a license or to take other action against a licensee or other person subject to the jurisdiction of the Commission is set forth in 10 CFR 2.202. The licensee or any other person adversely affected by the order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

III. Responsibilities

The Executive Director for Operations (EDO) and the principal enforcement officers of the NRC, the Deputy Executive Director for Reactor Programs (DEDR) and the Deputy Executive Director for Materials, Research and State Programs (DEDMRS) have been delegated the authority to approve or issue all escalated enforcement actions.[3] The DEDR is responsible to the EDO for NRC enforcement programs. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement program. The Director, OE, acts for the Deputy Executive Director in enforcement matters in his absence or as delegated.

Subject to the oversight and direction of OE, and with the approval of the Deputy Executive Director, where necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by the Deputy Executive Director or the Director, OE.

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[1] This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. However, this policy provides for taking enforcement action against non-licensees and individuals in certain cases. These non-licensees include contractors and subcontractors, holders of, or applicants for, NRC approvals, e.g., certificates of compliance, early site permits, or standard design certificates, and the employees of these non-licensees. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

[2] The term "contractor" as used in this policy includes vendors who supply products or services to be used in a NRC-licensed facility or activity.

[3] The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Chief Financial Officer has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees.

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, "Exercise of Discretion."

The Commission will be provided written notification for the following situations:

(1) All enforcement actions involving civil penalties or orders;

(2) The first time that discretion is exercised for a plant that meets the criteria of Section VII.B.2;

(3) (Where appropriate, based on the uniqueness or significance of the issue) when discretion is exercised for violations that meet the criteria of Section VII.B.6; and

(4) All Notices of Enforcement Discretion (NOEDs) issued involving natural events, such as severe weather conditions.

The Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating against the potential radiological or other hazards associated with continued operation (cases involving severe weather or other natural phenomena may be addressed by the staff without prior Commission consultation in accordance with Section VII.C);

(2) Proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the Severity Level I value shown in Table 1A for that class of licensee;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any action the EDO believes warrants Commission involvement;

(5) Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and

(6) Any proposed enforcement action on which the Commission asks to be consulted.

IV. Significance of Violations

Regulatory requirements[4] have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance or significance of each violation is assessed as the first step in the enforcement process. Following this assessment, a commensurate severity level may be assigned to help determine and develop the appropriate enforcement sanction.

A. Assessing Significance

In assessing the significance of a noncompliance, the NRC considers four specific issues: (1) actual safety consequences; (2) potential safety consequences, including the consideration of risk information; (3) potential for impacting the NRC's ability to perform its regulatory function; and (4) any willful aspects of the violation.

1. Actual Safety Consequences

In evaluating actual safety consequences, the NRC considers issues such as actual onsite or offsite releases of radiation, onsite or offsite radiation exposures, accidental criticalities, core damage, loss of significant safety barriers, loss of control of radioactive material or radiological emergencies.

2. Potential Safety Consequences

In evaluating potential safety consequences, the NRC considers the realistic likelihood of affecting safety, *i.e.*, the existence of credible scenarios with potentially significant actual consequences. The NRC will use risk information wherever possible in assessing significance and assigning severity levels. A higher severity may be warranted for violations that have greater risk significance and a lower severity level may be appropriate for issues that have low risk significance. Duration is an appropriate consideration in assessing the significance of violations.

3. Impacting the Regulatory Process

The NRC considers the safety implications of noncompliances which may impact the NRC's ability to carry out its statutory mission. Noncompliances may be significant because they may challenge the regulatory envelope upon which certain activities were licensed. These types of violations include failures such as: failures to provide complete and accurate information, failures to receive prior NRC approval for changes in licensed activities, failures to notify NRC of changes in licensed activities, failure to perform 10 CFR 50.59 analysis, reporting failures, *etc.* Even inadvertent reporting failures are important because many of the surveillance, quality control, and auditing systems on which both the NRC and its licensees rely in order to monitor compliance with safety standards are based primarily on complete, accurate and timely recordkeeping and reporting. The existence of a regulatory process violation does not automatically mean that the issue is safety significant. In determining the significance of a violation, the NRC will consider appropriate factors for the particular regulatory process violation. These factors may include: the significance of the underlying issue, whether the failure actually impeded or influenced regulatory action, the level of individuals involved in the failure and the reasonableness of the failure given their position and training, and whether the failure invalidates the licensing basis. Factors to consider for failures to provide complete and accurate information are addressed in Section IX of this policy.

Unless otherwise categorized in the Supplements to this policy statement, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

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[4] The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

4. Willful Violations

Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, *e.g.*, negligence, inadvertent clerical errors in a document submitted to the NRC. In determining the significance of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (*e.g.*, licensee official[5] or non-supervisory employee), the significance of any underlying violation, the intent of the violator (*i.e.*, careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the significance assessment will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be considered at least more than minor. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization.

B. Assigning Severity Level

For purposes of formal enforcement action, violations are normally categorized in terms of four levels of severity to show their relative importance or significance within each of the following eight activity areas:

I. Reactor Operations;
II. Facility Construction;
III. Safeguards;
IV. Health Physics;
V. Transportation;
VI. Fuel Cycle and Materials Operations;
VII. Miscellaneous Matters; and
VIII. Emergency Preparedness.

Licensed activities will be placed in the activity area most suitable in light of the particular violation involved including activities not directly covered by one of the above listed areas, *e.g.*, export license activities. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level IV violations are the least significant. Severity Level I and II violations are of very significant regulatory concern[6]. In general, violations that are included in these severity categories involve actual or high potential consequences on public health and safety. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern. Violations at Severity Level IV involve noncompliance with NRC requirements that are not considered significant based on risk. This should not be misunderstood to imply that Severity Level IV issues have no risk significance.

The Commission recognizes that there are other violations of minor safety or environmental concern which are below the level of significance of Severity Level IV violations. These minor violations are not the subject of formal enforcement action and are not usually described in inspection reports. To the extent such violations are described, they will be noted as violations of minor significance that are not subject to formal enforcement action.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level best suited to the significance of the particular violation.

V. Predecisional Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a contractor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, contractor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) A common understanding of facts, root causes and missed opportunities associated with the apparent violations; (2) a common understanding of corrective actions taken or planned; and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee may be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective actions. However, if the NRC has sufficient information to conclude that a civil penalty is not warranted, it may proceed to issue an enforcement action without first obtaining the licensee's response to the inspection report.

During the predecisional enforcement conference, the licensee, contractor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, contractors, or other persons will be told when a meeting is a predecisional enforcement conference.

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[5] The term "licensee official" as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

[6] Regulatory concern pertains to primary NRC regulatory responsibilities, *i.e.*, safety, safeguards, and the environment.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more interveners or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that the conference will be open to public observation. Consistent with the agency's policy on open meetings (included on the NRC's Public Meeting Web site), the NRC intends to announce open conferences normally at least 10 calendar days in advance of conferences. Conferences will be announced on the Internet at the NRC Office of Enforcement's homepage (*www.nrc.gov/OE*) and on the Public Meeting Web site (*www.nrc.gov/NRC/PUBLIC/meet.html*). Individuals who do not have Internet access may get assistance on scheduled conferences by contacting the NRC staff at the Public Document Room, by calling toll-free 1–800–397–4209. In addition, the NRC will normally issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but may not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures For Providing Security Support For NRC Hearings and Meetings," published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed. The open conference will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (*i.e.*, after appropriate redaction), in which case the associated predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor, any associated predecisional enforcement conference with the contractor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) The apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

VI. Enforcement Actions

This section describes the enforcement sanctions available to the NRC and specifies the conditions under which each may be used. The basic enforcement sanctions are Notices of Violation, civil penalties, and orders of various types. As discussed further in Section VI.D, related administrative actions such as Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In selecting the enforcement sanctions or administrative actions, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters.

Usually, whenever a violation of NRC requirements of more than a minor concern is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved.

However, circumstances regarding the violation findings may warrant discretion being exercised such that the NRC refrains from issuing a Notice of Violation or other enforcement action. (See Section VII.B, "Mitigation of Enforcement Sanctions.")

A. Notice of Violation

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved. The NRC may waive all or portions of a written response to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report. The NRC may require responses to Notices of Violation to be under oath. Normally, responses under oath will be required only in connection with Severity Level I, II, or III violations or orders.

The NRC uses the Notice of Violation as the usual method for formalizing the existence of a violation. Issuance of a Notice of Violation is normally the only enforcement action taken, except in cases where the criteria for issuance of civil penalties and orders, as set forth in Sections VI.B and VI.C, respectively, are met.

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee as well as by other licensees conducting similar activities and to emphasize the need for licensees to identify violations and take prompt comprehensive corrective action.

Civil penalties are considered for Severity Level III violations. In addition, civil penalties will normally be assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act.

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on significant violations.

Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty. Allowing mitigation in the latter case could encourage the lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

1. Base Civil Penalty

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, contractors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

TABLE 1A.—BASE CIVIL PENALTIES

a. Power reactors and gaseous diffusion plants	$110,000
b. Fuel fabricators authorized to possess Category I or II quantities of SNM	55,000
c. Fuel fabricators, industrial processors,[1] and independent spent fuel and monitored retrievable storage installations	27,500
d. Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, industrial radiographers, and other large material users	11,000
e. Research reactors, academic, medical, or other small material users[2]	5,500

[1] Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

[2] This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

TABLE 1B.—BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (Percent of amount listed in Table 1A)
I	100
II	80
III	50

2. Civil Penalty Assessment

In an effort to (1) emphasize the importance of adherence to requirements and (2) reinforce prompt self-identification of problems and root causes and prompt and comprehensive correction of violations, the NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties shown in Table 1A and 1B for Severity Level I, II, and III violations as described below.

The civil penalty assessment process considers four decisional points: (a) Whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past 2 years or past 2 inspections, whichever is longer; (b) whether the licensee should be given credit for actions related to identification; (c) whether the licensee's corrective actions are prompt and comprehensive; and (d) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these decisional points may have several associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%. The flow chart presented below is a graphic representation of the civil penalty assessment process.

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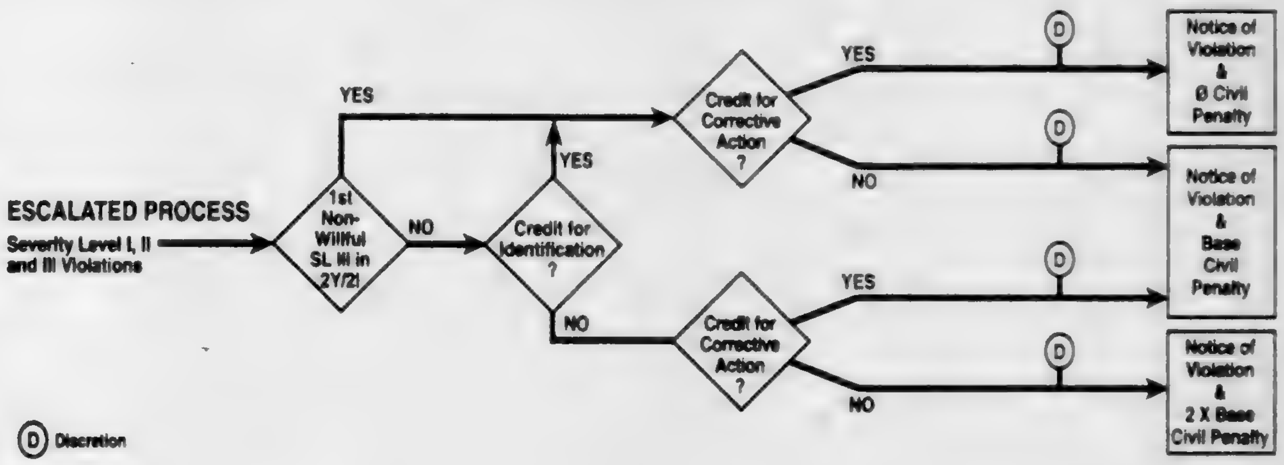
ESCALATED PROCESS
Severity Level I, II and III Violations
1st Non-Willful SL III in 2Y/2I
YES
NO
Credit for Identification ?
YES
NO
Credit for Corrective Action ?
YES
NO
Credit for Corrective Action ?
YES
NO
D
D
D
D
Notice of Violation & 0 Civil Penalty
Notice of Violation & Base Civil Penalty
Notice of Violation & 2 X Base Civil Penalty
D Discretion

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a. Initial escalated action. When the NRC determines that a non-willful Severity Level III violation or problem has occurred, and the licensee has not had *any* previous escalated actions (regardless of the activity area) during the past 2 years or 2 inspections, whichever is longer, the NRC will consider whether the licensee's corrective action for the present violation or problem is reasonably prompt and comprehensive (see the discussion under Section VI.B.2.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

If the corrective action is judged to be prompt and comprehensive, a Notice of Violation normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the Notice of Violation normally should be issued with a base civil penalty.

b. Credit for Actions Related to Identification. (1) If a Severity Level I or II violation or a willful Severity Level III violation has occurred—or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has been issued at least one other escalated action—the civil penalty assessment should normally consider the factor of identification in addition to corrective action (see the discussion under Section VI.B.2.c, below). As to identification, the NRC should consider whether the licensee should be given credit for actions related to identification.

In each case, the decision should be focused on identification of the problem requiring corrective action. In other words, although giving credit for Identification and Corrective Action should be separate decisions, the concept of Identification presumes that the identifier recognizes the existence of a problem, and understands that corrective action is needed. The decision on Identification requires considering all the circumstances of identification including:

(i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event;[7]

(ii) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of those opportunities;

(iii) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;

(iv) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;

(v) For NRC-identified issues, whether the licensee would likely have identified the issue in the same time-period if the NRC had not been involved;

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[7] An "event," as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure to have a system respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovered, through quarterly dosimetry readings, that employees have been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

(vi) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and

(vii) For cases in which the NRC identifies the overall problem requiring corrective action (*e.g.*, a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.

(2) Although some cases may consider all of the above factors, the importance of each factor will vary based on the type of case as discussed in the following general guidance:

(i) Licensee-Identified. When a problem requiring corrective action is licensee-identified (*i.e.*, identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

(ii) Identified Through an Event. When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (*i.e.*, whether the licensee was "looking for the problem"), the degree of licensee initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (*i.e.*, the licensee was looking for the problem), the licensee should normally be given credit for identification. As a second instance, even if the problem was easily discovered (*e.g.*, revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (*e.g.*, procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

(iii) NRC-Identified. When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to Identification should normally be based on an additional question: should the licensee have reasonably identified the problem (and taken action) earlier?

In most cases, this reasoning may be based simply on the ease of the NRC inspector's discovery (*e.g.*, conducting a walkdown, observing in the control room, performing a confirmatory NRC radiation survey, hearing a cavitating pump, or finding a valve obviously out of position). In some cases, the licensee's missed opportunities to identify the problem might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to Identification were not unreasonable, the matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of Identification credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

(iv) Mixed Identification. For "mixed" identification situations (*i.e.*, where multiple violations exist, some NRC-identified, some licensee-identified, or where the NRC prompted the licensee to take action that resulted in the identification of the violation), the NRC's evaluation should normally determine whether the licensee could reasonably have been expected to identify the violation in the NRC's absence. This determination should consider, among other things, the timing of the NRC's discovery, the information available to the licensee that caused the NRC concern, the specificity of the NRC's concern, the scope of the licensee's efforts, the level of licensee resources given to the investigation, and whether the NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to Identification should focus on identification of the problem requiring corrective action (*e.g.*, the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

(v) Missed Opportunities to Identify. Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (QA) activities; (2) through prior notice, *i.e.*, specific NRC or industry notification; or (3) through other reasonable indication of a potential problem or violation, such as observations of employees and contractors, and failure to take effective corrective steps. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, among other things, the opportunities available to discover the violation, the ease of discovery, the similarity between the violation and the notification, the period of time between when the violation occurred and when the notification was issued, the action taken (or planned) by the licensee in response to the notification, and the level of management review that the notification received (or should have received).

The evaluation of missed opportunities should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III "problem." However, if the missed opportunity is the only violation, then it should not normally be counted twice (*i.e.*, both as the violation and as a missed opportunity—"double counting") unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity should also be considered. While a rigid time-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, as the period reflecting relatively current performance.

(3) When the NRC determines that the licensee should receive credit for actions related to Identification, the civil penalty assessment should normally result in either no civil penalty or a base civil penalty, based on

whether Corrective Action is judged to be reasonably prompt and comprehensive. When the licensee is not given credit for actions related to Identification, the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100%, depending on the quality of Corrective Action, because the licensee's performance is clearly not acceptable.

c. Credit for Prompt and Comprehensive Corrective Action. The purpose of the Corrective Action factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

Regardless of other circumstances (*e.g.*, past enforcement history, identification), the licensee's corrective actions should always be evaluated as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will always result in issuing at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's root cause analysis for the violation, and given the significance and complexity of the issue, the comprehensiveness of the corrective action (*i.e.*, whether the action is focused narrowly to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, identifies additional peripheral or minor corrective action still to be taken, the licensee may be given credit in this area, as long as the licensee's actions addressed the underlying root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged at the time of the predecisional enforcement conference (*e.g.*, by outlining substantive additional areas where corrective action is needed). Earlier informal discussions between the licensee and NRC inspectors or management may result in improved corrective action, but should not normally be a basis to deny credit for Corrective Action. For cases in which the licensee does not get credit for actions related to Identification because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem. Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive.

Corrective action for violations involving discrimination should normally only be considered comprehensive if the licensee takes prompt, comprehensive corrective action that (1) addresses the broader environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

In response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee

(i) Makes a prompt decision on operability; and either

(ii) Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or

(iii) Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B, if it intends to restore the facility or procedure to the FSAR description.

d. Exercise of Discretion. As provided in Section VII, "Exercise of Discretion," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects all relevant circumstances of the particular case. However, in no instance will a civil penalty for any one violation exceed $110,000 per day.

C. Orders

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see 10 CFR 2.202). Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III violations. Orders may be issued as follows:

1. License Modification orders are issued when some change in licensee equipment, procedures, personnel, or management controls is necessary.

2. Suspension Orders may be used:

(a) To remove a threat to the public health and safety, common defense and security, or the environment;

(b) To stop facility construction when,

(i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component; or

(ii) The licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;

(c) When the licensee has not responded adequately to other enforcement action;

(d) When the licensee interferes with the conduct of an inspection or investigation; or

(e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:

(a) When a licensee is unable or unwilling to comply with NRC requirements;

(b) When a licensee refuses to correct a violation;

(c) When licensee does not respond to a Notice of Violation where a response was required;

(d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or

(e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (*e.g.*, any condition which would warrant refusal of a license on an original application).

4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to non-licensees, including contractors and subcontractors, holders of NRC approvals, *e.g.*, certificates of compliance, early site permits, standard design certificates, or applicants for any of them, and to employees of any of the foregoing, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is

deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted pursuant to 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

D. Related Administrative Actions

In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and contractors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing contractors' failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

3. Confirmatory Action Letters are letters confirming a licensee's or contractor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

4. Letters of Reprimand are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

VII. Exercise of Discretion

Notwithstanding the normal guidance contained in this policy, as provided in Section III, "Responsibilities," the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action takes into consideration all of the relevant circumstances of the particular case.

A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties; (2) issuing appropriate orders; and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $110,000 per violation, per day.

1. Civil Penalties

Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, the NRC may exercise discretion by either proposing a civil penalty where application of the factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty (*i.e.*, base or twice the base civil penalty) to ensure that the proposed civil penalty reflects the significance of the circumstances. The Commission will be notified if the deviation in the amount of the civil penalty proposed under this discretion from the amount of the civil penalty assessed under the normal process is more than two times the base civil penalty shown in Tables 1A and 1B. Examples when this discretion should be considered include, but are not limited to the following:

(a) Problems categorized at Severity Level I or II;

(b) Overexposures, or releases of radiological material in excess of NRC requirements;

(c) Situations involving particularly poor licensee performance, or involving willfulness;

(d) Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;

(e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;

(f) Situations when the licensee made a conscious decision to be in noncompliance in order to obtain an economic benefit;

(g) Cases involving the loss of a source. In addition, unless the licensee self-identifies and reports the loss to the NRC, these cases should normally result in a civil penalty in an amount at least in the order of the cost of an authorized disposal of the material or of the transfer of the material to an authorized recipient; or

(h) Severity Level II or III violations associated with departures from the Final Safety Analysis Report identified after March 30, 2000, for risk-significant items as defined by the licensee's maintenance rule program and March 30, 2001, for all other issues. Such a violation or problem would consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted.)

2. Orders

The NRC may, where necessary or desirable, issues orders in conjunction with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3. Daily Civil Penalties

To recognize the added significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of $110,000 for each day the violation continues. The

NRC may exercise this discretion if a licensee was aware or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

B. Mitigation of Enforcement Sanctions

The NRC may exercise discretion and refrain from issuing a civil penalty and/or a Notice of Violation after considering the general principles of this statement of policy and the surrounding circumstances. The approval of the Director, Office of Enforcement, with consultation with the Deputy Executive Director as warranted, is required for exercising discretion of the type described in Sections VII.B.1.a and VII.B.1.h where a willful violation is involved, and of the types described in Sections VII.B.2 through VII.B.6. The circumstances under which mitigation discretion should be considered include, but are not limited to the following:

1. Non-Cited Violations (NCVs)

A Non-Cited Violation (NCV) is defined as a Severity Level IV violation for which the staff chooses to exercise discretion in accordance with the Enforcement Policy and refrain from issuing a Notice of Violation pursuant to 10 CFR 2.201.

Severity Level IV violations are defined in the Enforcement Policy as violations of more than minor concern. Violations at Severity Level IV involve noncompliance with NRC requirements that are not considered significant based on risk. This should not be misunderstood to imply that Severity Level IV issues have no risk significance.

Exercising this type of discretion for Severity Level IV violations does not eliminate the NRC's emphasis on compliance with requirements nor the importance of maintaining safety. NRC inspectors will continue to identify and document Severity Level IV violations associated with matters they inspect. Doing so prompts licensees to take corrective actions and assures the public that violations are not ignored. This type of discretion is merely an option for dispositioning Severity Level IV violations; it does not change the threshold for Severity Level IV violations. This approach will allow licensees to dispute violations described as NCVs.

The specific criteria for exercising NCV discretion is described in the sections below.

a. Power Reactor Licensees. Severity Level IV violations at power reactors will normally be dispositioned as NCVs. Notwithstanding that this is the normal policy, the disposition of a Severity Level IV violation as an NCV is still an exercise of discretion, in that the agency is making a conscious decision not to issue a legal citation (Notice of Violation) for a violation of the requirements. Severity Level IV violations will be described in inspection reports, although the NRC will close these violations based on their being entered into the licensee's corrective action program. At the time a violation is closed in an inspection report, the licensee may not have completed its corrective actions or begun the process to identify the root cause and develop action to prevent recurrence. Licensee actions will be taken commensurate with the established priorities and processes of the licensee's corrective action program. The NRC inspection program will provide an assessment of the effectiveness of the corrective action program. In addition to documentation in inspection reports, violations will be entered into the Plant Issues Matrix (PIM) that the NRC maintains for each facility to assist in identifying declining performance and determining repetitiveness.

Because the NRC will not normally obtain a written response from licensees describing actions taken to restore compliance and prevent recurrence of Severity Level IV violations, this enforcement approach places greater NRC reliance on licensee corrective action programs. Therefore, notwithstanding the normal approach of treating most Severity Level IV violations as NCVs, the NRC has identified four circumstances in which a written response to a Severity Level IV violation may be important. Any one of the following circumstances will result in consideration of a Notice of Violation (NOV) requiring a formal written response from a licensee.

1. The licensee failed to restore compliance within a reasonable time after a violation was identified.

2. The licensee did not place the violation into a corrective action program to address recurrence.

3. The violation is repetitive as a result of inadequate corrective action, and was identified by the NRC.

4. The violation was willful. Notwithstanding willfulness, an NCV may still be appropriate if:

(i) The licensee identified the violation and the information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional section or branch chief;

(ii) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.A);

(iii) The violation appears to be the isolated action of the employee without management involvement and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees; and

(iv) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization.

b.–g. [Reserved]

h. All Other Licensees. The NRC, with the approval of the Regional Administrator or his or her designee, may refrain from issuing an NOV for a Severity Level IV violation that is documented in an inspection report (or official field notes for some material cases) and described therein as an NCV provided that the inspection report includes a brief description of the corrective action and that the violation meets all of the following criteria:

1. It was identified by the licensee;[8]

2. It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, or the period within the last two inspections, whichever is longer;

3. It was or will be corrected within a reasonable time, by specific corrective action committed to by the licensee by the end of the inspection, including immediate corrective action and comprehensive corrective action to prevent recurrence; and

4. It was not a willful violation or if it was a willful violation;

(i) The information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional section or branch chief;

(ii) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.A);

(iii) The violation appears to be the isolated action of the employee without management involvement and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees; and

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[8] Discretion is not warranted when a licensee identifies a violation as a result of an event where the root cause of the event is obvious or the licensee had prior opportunity to identify the problem but failed to take action that would have prevented the event. Discretion may be warranted if the licensee demonstrated initiative in identifying the violation's root cause.

(iv) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization.

2. Violations Identified During Extended Shutdowns or Work Stoppages

The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or official field notes for some material cases) and that it meets all of the following criteria:

(a) It was either licensee-identified as a result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (If the NRC identifies the violation and all of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)

(b) It is based upon activities of the licensee prior to the events leading to the shutdown;

(c) It would not be categorized at Severity Level I;

(d) It was not willful; and

(e) The licensee's decision to restart the plant requires NRC concurrence.

3. Violations Involving Old Design Issues

The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was a licensee-identified as a result of its voluntary initiative;

(b) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and

(c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for a Severity Level II, III, or IV violation that meets the above criteria provided the violation was caused by conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation, unless it was likely in the staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative provided the schedule provides for completion of the licensee's initiative by March 30, 2000, for risk-significant items as defined by the licensee's maintenance rule program and by March 30, 2001, for all other issues;

(b) The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

4. Violations Identified Due to Previous Enforcement Action

The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after the NRC has taken enforcement action, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as part of the corrective action for the previous enforcement action;

(b) It has the same or similar root cause as the violation for which enforcement action was issued;

(c) It does not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation; and

(d) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

(e) It would not be categorized at Severity Level I.

5. Violations Involving Certain Discrimination Issues

Enforcement discretion may be exercised for discrimination cases when a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (*e.g.*, by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

6. Violations Involving Special Circumstances

Notwithstanding the outcome of the normal enforcement process addressed in Section VI.A or the normal civil penalty assessment process addressed in Section VI.B, the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II, III, or IV violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the significance of the violation, the clarity of the requirement, the appropriateness of the requirement, the overall sustained performance of the licensee has been particularly good, and other relevant circumstances, including any that may have changed since the violation. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted. In addition, the NRC may refrain from issuing enforcement action for violations resulting from matters not within a licensee's control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees and contractors. Accordingly, this policy should not be construed to excuse personnel or contractor errors.

C. Notice of Enforcement Discretion for Power Reactors and Gaseous Diffusion Plants

On occasion, circumstances may arise where a power reactor's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant (GDP), circumstances may arise where compliance with a Technical Safety Requirement (TSR) or technical specification or other certificate condition would unnecessarily call for a total plant shutdown or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

In these circumstances, the NRC staff may choose not to enforce the applicable TS, TSR, or other license or certificate condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. The staff may also grant enforcement discretion in cases involving severe weather or other natural phenomena, based upon balancing the public health and safety or common defense and security of not operating, against the potential radiological or other hazards associated with continued operation, and a determination that safety will not be impacted unacceptably by exercising this discretion. The Commission is to be informed expeditiously following the granting of an NOED in such situations. A licensee or certificate holder seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether to issue a NOED.

The appropriate Regional Administrator, or his or her designee, may issue a NOED where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation or Office of Nuclear Materials Safety and Safeguards, as appropriate, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6) or a certificate amendment under 10 CFR 76.45. The person exercising enforcement discretion will document the decision.

For an operating reactor, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

For GDPs, the exercise of enforcement discretion would be used where compliance with a certificate condition would involve an unnecessary plant shutdown or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required. Such regulatory flexibility is needed because a total plant shutdown is not necessarily the best response to a plant condition. GDPs are designed to operate continuously and have never been shut down. Although portions can be shut down for maintenance, the staff has been informed by the certificate holder that restart from a total plant shutdown may not be practical and the staff agrees that the design of a GDP does not make restart practical. Hence, the decision to place either GDP in plant-wide shutdown condition would be made only after determining that there is inadequate safety, safeguards, or security and considering the total impact of the shutdown on safety, the environment, safeguards, and security. A NOED would not be used for noncompliances with other than certificate requirements, or for situations where the certificate holder cannot demonstrate adequate safety, safeguards, or security.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the NRC staff has chosen to issue a NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees and certificate holders should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license or certificate amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. When enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

VIII. Enforcement Actions Involving Individuals

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. An enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (*i.e.*, with more than mere negligence) failed to take required actions which have actual or potential safety significance. Most transgressions of individuals at the level of Severity Level III or IV violations will be handled by citing only the facility licensee.

More serious violations, including those involving the integrity of an individual (*e.g.*, lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advise was clearly unreasonable and the licensed individual should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual. However, violations involving willful conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Dereliction of duty.
- Falsifying records required by NRC regulations or by the facility license.
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR Part 50, Appendix B, or other regulatory requirement.
- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.
- Willfully supplying, by contractors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.
- Willfully performing unauthorized bypassing of required reactor or other facility safety systems.
- Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (*i.e.*, unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, the NRC recognizes that judgments will have to be made on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.
2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.
3. The safety consequences of the misconduct.
4. The benefit to the wrongdoer, *e.g.*, personal or corporate gain.
5. The degree of supervision of the individual, *i.e.*, how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).
6. The employer's response, *e.g.*, disciplinary action taken.
7. The attitude of the wrongdoer, *e.g.*, admission of wrongdoing, acceptance of responsibility.
8. The degree of management responsibility or culpability.
9. Who identified the misconduct.

Any proposed enforcement action involving individuals must be issued with the concurrence of the Deputy Executive Director. The particular sanction to be used should be determined on a case-by-case basis.[9] Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. The administrative action of a Letter of Reprimand may also be considered. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would;

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, *e.g.*, completing specified training or meeting certain qualifications.
- Require notification to the NRC before resuming work in licensed activities.
- Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a Notice of Violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, appropriate enforcement actions may be taken regarding matters that raise issues of integrity, competence, fitness-for-duty, or other matters that may not necessarily be a violation of specific Commission requirements.

In the case of an unlicensed person, whether a firm or an individual, an order modifying the facility license may be issued to require (1) the removal of the person from all licensed activities for a specified period of time or indefinitely, (2) prior notice to the NRC before utilizing the person in licensed activities, or (3) the licensee to provide notice of the issuance of such an order to other persons involved in licensed activities making reference inquiries. In addition, orders to employers might require retraining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.

IX. Inaccurate and Incomplete Information

A violation of the regulations involving submittal of incomplete and/or inaccurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for egregious violations. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a licensee normally will be categorized based on the guidance herein, in Section IV, "Significance of Violations," and in Supplement VII.

The Commission recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to factors such as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information; (3) the degree of intent or negligence, if any, involved; (4) the formality of the communication; (5) the reasonableness of NRC reliance on the information; (6) the importance of the information which was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

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[9] Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a Notice of Violation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available or the advancement in technology was made, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described in this section.

X. Enforcement Action Against Non-Licensees

The Commission's enforcement policy is also applicable to non-licensees, including contractors and subcontractors, holders of NRC approvals, *e.g.*, certificates of compliance, early site permits, standard design certificates, quality assurance program approvals, or applicants for any of them, and to employees of any of the foregoing, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or knowing submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, *e.g.*, 10 CFR 30.10 and 50.5.

Contractors who supply products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with licensees, suppliers may be required to have quality assurance programs that meet applicable requirements, *e.g.*, 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Contractors supplying certain products or services to licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that contractors have failed to fulfill contractual commitments (*e.g.*, 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their contractors have programs that meet applicable requirements. Notices of Violation will be issued for contractors who violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a contractor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(d)(1). Notices of Violation or orders will be used against non-licensees who are subject to the specific requirements of Part 72. Notices of Nonconformance will be used for contractors who fail to meet commitments related to NRC activities but are not in violation of specific requirements.

XI. Referrals to the Department of Justice

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, 53 FR 50317 (December 14, 1988).

XII. Public Disclosure of Enforcement Actions

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.

XIII. Reopening Closed Enforcement Actions

If significant new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director.

Supplements—Violation Examples

This section provides examples of violations in each of four severity levels as guidance in determining the appropriate severity level for violations in each of eight activity areas (reactor operations, Part 50 facility construction, safeguards, health physics, transportation, fuel cycle and materials operations, miscellaneous matters, and emergency preparedness).

Supplement I—Reactor Operations

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

A. Severity Level I—Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications being exceeded;

2. A system [10] designed to prevent or mitigate a serious safety event not being able to perform its intended safety function [11] when actually called upon to work;

3. An accidental criticality; or

4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. Severity Level II—Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function;

2. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area; or

3. A licensed operator at the control of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

C. Severity Level III—Violations involving for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

(b) In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions (*e.g.*, safety system not operable unless offsite power is available; materials or components not environmentally qualified).

3. Inattentiveness to duty on the part of licensed personnel;

4. Changes in reactor parameters that cause unanticipated reductions in margins of safety;

5. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that:

(a) In the case of initial operator licensing, contributes to an individual being granted an operator or a senior operator license, or

(b) In the case of requalification, contributes to an individual being permitted to perform the functions of an operator or a senior operator.

6. A licensee failure to conduct adequate oversight of contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

7. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation;

8. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

9. A failure to obtain prior Commission approval required by 10 CFR 50.59 for changes that would not be found acceptable by the Commission;

10. The failure to update the FSAR as required by 10 CFR 50.71(e) where the unupdated FSAR was used in performing a 10 CFR 50.59 evaluation for a change to the facility or procedures, implemented without prior Commission approval, that would not be found acceptable had approval been sought; or

11. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with any Severity Level III violation.

D. Severity Level IV—Violations involving for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

(b) In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable;

2. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that:

(a) In the case of initial operator licensing, is discovered and reported to the NRC before an individual is granted an operator or a senior operator license, or

(b) In the case of requalification, is discovered and reported to the NRC before an individual is permitted to perform the functions of an operator or a senior operator, or

(c) Constitutes more than minor concern.

3. A failure to meet regulatory requirements that have more than minor safety or environmental significance;

4. A failure to make a required Licensee Event Report;

5. Violations of 10 CFR 50.59 that do not involve circumstances in which a change that required prior Commission approval would not be found acceptable had the approval been sought; or

6. A failure to update the FSAR as required by 10 CFR 50.71(e) in cases where the erroneous information is not used to make an unacceptable change to the facility or procedures.

E. Minor Violations: A failure to meet 10 CFR 50.59 requirements that involves a change to the FSAR description or procedure, or involves a test or experiment not described in the FSAR, where there was not a reasonable likelihood that the change to the facility or procedure or the conduct of the test or experiment would ever be an unreviewed safety question. In the case of a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities. The focus of the minor violation is not on the actual change, test, or experiment, but on the potential safety role of the system, equipment, etc., that is being changed, tested, or experimented on.

Supplement II—Part 50 Facility Construction

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of Part 50 facility construction.

A. Severity Level I—Violations involving structures or systems that are completed [12] in such a manner that they would not have satisfied their intended safety related purpose.

B. Severity Level II—Violations involving for example:

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one work activity (*e.g.*, structural, piping, electrical, foundations). These deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. Severity Level III—Violations involving for example:

1. A deficiency in a licensee QA program for construction related to a single work activity (*e.g.*, structural, piping, electrical or foundations). This significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits.

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[10] The term "system" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

[11] "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

[12] The term "completed" as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. A failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. A failure to make a required 10 CFR 50.55(e) report.

D. Severity Level IV—Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

Supplement III—Safeguards

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of safeguards.

A. Severity Level I—Violations involving for example:

1. An act of radiological sabotage in which the security system did not function as required and, as a result of the failure, there was a significant event, such as:

(a) A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, was exceeded;

(b) A system designed to prevent or mitigate a serious safety event was not able to perform its intended safety function when actually called upon to work; or

(c) An accidental criticality occurred;

2. The theft, loss, or diversion of a formula quantity [13] of special nuclear material (SNM); or

3. Actual unauthorized production of a formula quantity of SNM.

B. Severity Level II—Violations involving for example:

1. The entry of an unauthorized individual [14] who represents a threat into a vital area [15] from outside the protected area;

2. The theft, loss or diversion of SNM of moderate strategic significance [16] in which the security system did not function as required; or

3. Actual unauthorized production of SNM.

C. Severity Level III—Violations involving for example:

1. A failure or inability to control access through established systems or procedures, such that an unauthorized individual (*i.e.*, not authorized unescorted access to protected area) could easily gain undetected access [17] into a vital area from outside the protected area;

2. A failure to conduct any search at the access control point or conducting an inadequate search that resulted in the introduction to the protected area of firearms, explosives, or incendiary devices and reasonable facsimiles thereof that could significantly assist radiological sabotage or theft of strategic SNM;

3. A failure, degradation, or other deficiency of the protected area intrusion detection or alarm assessment systems such that an unauthorized individual who represents a threat could predictably circumvent the system or defeat a specific zone with a high degree of confidence without insider knowledge, or other significant degradation of overall system capability;

4. A significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of strategic SNM;

5. A failure to protect or control classified or safeguards information considered to be significant while the information is outside the protected area and accessible to those not authorized access to the protected area;

6. A significant failure to respond to an event either in sufficient time to provide protection to vital equipment or strategic SNM, or with an adequate response force; or

7. A failure to perform an appropriate evaluation or background investigation so that information relevant to the access determination was not obtained or considered and as a result a person, who would likely not have been granted access by the licensee, if the required investigation or evaluation had been performed, was granted access.

D. Severity Level IV—Violations involving for example:

1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;

2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;

3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. A failure to conduct a proper search at the access control point;

5. A failure to properly secure or protect classified or safeguards information inside the protected area which could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;

6. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but which was neither easily or likely to be exploitable;

7. A failure to conduct an adequate search at the exit from a material access area;

8. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or

9. Other violations that have more than minor safeguards significance.

Supplement IV—Health Physics (10 CFR Part 20)

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR Part 20.[18]

A. Severity Level I—Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5 rems total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 1.0 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i); or

6. Disposal of licensed material in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003.

B. Severity Level II—Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.2003; or

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[13] See 10 CFR 73.2 for the definition of "formula quantity."

[14] The term "unauthorized individual" as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

[15] The phrase "vital area" as used in this supplement includes vital areas and material access areas.

[16] See 10 CFR 73.2 for the definition of "special nuclear material of moderate strategic significance."

[17] In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

[18] Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

7. A failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).

C. Severity Level III—Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 5 rems total effective dose equivalent, 15 rems to the lens of the eye, or 50 rems to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent (except when doses are in accordance with the provisions of Section 20.1208(d));

3. A radiation exposure during any year of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rems to the lens of the eye, or 5 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

5. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. A failure to make a 24-hour notification required by 10 CFR 20.2202(b) or an immediate notification required by 10 CFR 20.2201(a)(1)(i);

7. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 Sections 20.1001–20.2401 whether or not an exposure or release occurs;

8. Disposal of licensed material not covered in Severity Levels I or II;

9. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose limits for members of the public;

10. Conduct of licensee activities by a technically unqualified person; or

11. A significant failure to control licensed material.

D. Severity Level IV—Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable environmental radiation standards, such as 40 CFR Part 190;

6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);

7. A failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206;

8. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d); or

9. Any other matter that has more than a minor safety, health, or environmental significance.

Supplement V—Transportation

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of NRC transportation requirements.[19]

A. Severity Level I—Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public and there was clear potential for the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 50 times the NRC limit; or

3. External radiation levels in excess of 10 times the NRC limit.

B. Severity Level II—Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;

3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or

4. A failure to make required initial notifications associated with Severity Level I or II violations.

C. Severity Level III—Violations involving for example:

1. Surface contamination in excess of five but not more than 10 times the NRC limit;

2. External radiation in excess of one but not more than five times the NRC limit;

3. Any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

(a) A significant failure to identify the type, quantity, or form of material;

(b) A failure of the carrier or recipient to exercise adequate controls; or

(c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material; or

4. A failure to make required initial notification associated with Severity Level III violations.

D. Severity Level IV—Violations involving for example:

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limits;

2. Surface contamination in excess of but not more than five times the NRC limit;

3. A failure to register as an authorized user of an NRC-Certified Transport package;

4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;

5. A failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;

6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or

7. Other violations that have more than minor safety or environmental significance.

Supplement VI—Fuel Cycle and Materials Operations

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle and materials operations.

A. Severity Level I—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;

3. A nuclear criticality accident;

4. A failure to follow the procedures of the quality management program, required by 10 CFR 35.32, that results in a death or serious injury (*e.g.*, substantial organ impairment) to a patient;

5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or

6. Significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

B. Severity Level II—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event being inoperable;

3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration;

4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

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[19] Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper and carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (*e.g.*, movement of liquid UF_6 cylinder by unapproved methods).

C. Severity Level III—Violations involving for example:

1. A failure to control access to licensed materials for radiation protection purposes as specified by NRC requirements;

2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;

3. Use of radioactive material on humans where such use is not authorized;

4. Conduct of licensed activities by a technically unqualified or uncertified person;

5. A substantial potential for exposures, radiation levels, contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;

6. Substantial failure to implement the quality management program as required by 10 CFR 35.32 that does not result in a misadministration; failure to report a misadministration; or programmatic weakness in the implementation of the quality management program that results in a misadministration;

7. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;

8. A failure to submit an NRC Form 241 as required by 10 CFR 150.20;

9. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet the safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance;

10. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;

11. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

12. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (*e.g.*, safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

13. Changes in parameters that cause unanticipated reductions in margins of safety;

14. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

15. A failure of the certificate holder to conduct adequate oversight of contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

16. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

17. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

18. A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure.

D. Severity Level IV—Violations involving for example:

1. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance;

3. Failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

4. A failure to keep the records required by 10 CFR 35.32 or 35.33;

5. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

6. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

7. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

8. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

Supplement VII—Miscellaneous Matters

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

A. Severity Level I—Violations involving for example:

1. Inaccurate or incomplete information[20] that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a licensee") and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

6. A failure to substantially implement the required fitness-for-duty program.[21]

B. Severity Level II—Violations involving for example:

1. Inaccurate or incomplete information that is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the

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[20] In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference should also be made to the guidance in Section IX, "Inaccurate and Incomplete Information," and to the definition of "licensee official" contained in Section IV.C.

[21] The example for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. An action by plant management or mid-level management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A failure to provide the notice required by 10 CFR Part 21;

6. A failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. A failure to take reasonable action when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

C. Severity Level III—Violations involving for example:

1. Incomplete or inaccurate information that is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. A failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;

4. An action by first-line supervision or other low-level management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;

6. A failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

7. A failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

8. A failure to assure, as required, that contractors have an effective fitness-for-duty program; or

9. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. Severity Level IV—Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance that is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information that the NRC requires be kept by a licensee and that is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation;

3. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10 CFR Part 21 with more than minor safety significance;

4. Violations of the requirements of Part 26 of more than minor significance;

5. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or

6. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

Supplement VIII—Emergency Preparedness

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of emergency preparedness. It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (i) training, procedural, or repetitive failures for which corrective actions have not been taken, (ii) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (iii) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

A. Severity Level I—Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff.)

B. Severity Level II—Violations involving for example:

1. In a site emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (*e.g.*, assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity Level III—Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement one emergency planning standard involving assessment or notification.

D. Severity Level IV—Violations involving for example:

A licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

Interim Enforcement Policies

Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)

This section sets forth the interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR Part 31 for generally licensed devices containing byproduct material. It addresses violations that persons licensed pursuant to 10 CFR 31.5 identify and correct now, as well as during the initial cycle of the notice and response program contemplated by the proposed new requirements published in the **Federal Register** on December 2, 1998 (63 FR 66492), entitled "Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information".

Exercise of Enforcement Discretion

Under this interim enforcement policy, enforcement action normally will not be taken for violations of 10 CFR 31.5 if they are identified by the general licensee, and reported to the NRC if reporting is required, provided that the general licensee takes appropriate corrective action to address the specific violations and prevent recurrence of similar problems.

Exceptions

Enforcement action may be taken where there is: (a) failure to take appropriate corrective action to prevent recurrence of similar violations; (b) failure to respond and provide the information required by the notice and response program (if it becomes a final rule); (c) failure to provide complete and accurate information to the NRC; or (d) a willful violation, such as willfully disposing of generally licensed material in an unauthorized manner. Enforcement sanctions in these cases may include civil penalties as well as Orders to modify or revoke the authority to possess radioactive sources under the general license.

Interim Enforcement Policy Regarding Enforcement Discretion for Nuclear Power Plants During the Year 2000 Transition

This section sets forth the interim enforcement policy that will govern the exercise of enforcement discretion by the NRC staff when licensees of operating nuclear power plants find it necessary to deviate from license conditions, including technical specifications (TSs), in those cases in which year 2000 (Y2K) related complications would otherwise require a plant shutdown that could adversely affect the stability and reliability of the electrical power grid. This policy does not extend to situations in which a licensee may be unable to communicate with the NRC.

The policy is effective August 30, 1999, and will remain in effect through January 1, 2001. This policy only applies during Y2K transition or rollover periods (December 31, 1999, through January 3, 2000; February 28, 2000, through March 1, 2000; and December 30, 2000, through January 1, 2001). During these periods, a licensee may contact the NRC Headquarters Operations Center and seek NRC enforcement discretion with regard to the potential noncompliance with license conditions, including TSs, if the licensee has determined that:

(a) Complying with license conditions, including TSs, in a Y2K-related situation would require a plant shutdown;

(b) Continued plant operation is needed to help maintain a reliable and stable grid; and

(c) Any decrease in safety as a result of continued plant operation is small (considering both risk and deterministic aspects), and reasonable assurance of public health and safety, the environment, and security is maintained with the enforcement discretion.

Licensees are expected to follow the existing guidance as stated in NRC Inspection Manual Part 9900 for Notices of Enforcement Discretion to the maximum extent practicable, particularly regarding a safety determination and notification of NRC. A licensee seeking NRC enforcement discretion must provide a written justification, or in circumstances in which good cause is shown, an oral justification followed as soon as possible by written justification. The justification must document the need and safety basis for the request and provide whatever other information the NRC staff needs to make a decision regarding whether the exercise of discretion is appropriate. The NRC staff may grant enforcement discretion on the basis of balancing the public health and safety or common defense and security of not operating against potential radiological or other hazards associated with continued operation, and a determination that safety will not be unacceptably affected by exercising the discretion. The Director of the Office of Nuclear Reactor Regulation, or designee, will advise the licensee whether the NRC has approved the licensee's request and, if so, will subsequently confirm the exercise of discretion in writing. Enforcement discretion will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting public health and safety and is warranted in the circumstances presented by the licensee.

If the volume of requests to the NRC Headquarters Operations Center is such that the NRC staff cannot review and approve all licensee requests in a timely fashion, the NRC staff will obtain the safety-significant information from the licensee to enable the NRC staff to make a prompt initial assessment. Unless the assessment is unfavorable, the licensee would be permitted to proceed with its planned course of action. The NRC staff will complete these assessments as time permits and the licensee will be advised of the results orally, if possible, and then in writing. If the NRC staff's prompt initial assessment or subsequent assessment determines that a licensee's actions raise safety concerns, the licensee would be so informed. The licensee would then be required to follow its license conditions, including TSs.

If there are communications difficulties between the licensee and the NRC, the licensee is encouraged to interact with the NRC inspector onsite who will have a dedicated satellite telephone. The inspector should be able to facilitate communication with the NRC Headquarters Operations Center and/or the NRC Regional Incident Response Centers (IRCs). If communication with the NRC Headquarters Operations Center is not possible, then the licensee should contact the IRC in NRC Region IV to discuss enforcement discretion. Similarly, if the Region IV IRC cannot be reached, then the licensee should attempt to contact the Region I, II and III IRCs. Although it is considered highly unlikely, if communication with NRC is not possible, the licensee should follow the plant license conditions, including technical specifications.

In conducting its assessments, the licensee should follow, to the extent practicable, the guidance in NRC Inspection Manual Part 9900 for Notices of Enforcement Discretion. Contrary to Part 9900 Section B.3 guidance, it is not necessary for an emergency to be declared by a government entity. Licensees are encouraged to contact NRC early in their evaluation process, particularly if time is of the essence, even though complete information as specified in Part 9900 may not be available.

The decision to exercise enforcement discretion does not change the fact that the licensee will be in noncompliance nor does it imply that enforcement discretion is being exercised for any noncompliance that may have led to the noncompliance at issue. To the extent noncompliance was involved, the NRC staff will normally take enforcement action for the root causes that led to the noncompliance for which enforcement discretion was granted. Enforcement action will also be considered in those cases in which incorrect or incomplete information was provided to the NRC staff by a licensee in its justification. The NRC recognizes that a licensee will need to exercise judgment in making a determination under this discretion provision. Consistent with the NRC's position involving 10 CFR 50.54(x), enforcement action for a violation of a license condition, including a TS, will not be taken unless a licensee's action was clearly unreasonable considering all the relevant circumstances. Enforcement action could include assessment of civil penalties and the issuance of orders.

Interim Enforcement Policy for Use During the NRC Power Reactor Oversight Process Pilot Plant Study

This section sets forth the interim enforcement policy that the NRC will use to address violations of the requirements of 10 CFR Part 50 and associated license conditions at nine power reactor sites participating in the NRC reactor oversight process pilot plant study beginning in June 1999. This policy approaches enforcement for the plants participating in the pilot plant study by dividing identified violations into two groups.

I. Violations Evaluated by the Significance Determination Process

The first group consists of those violations that the Reactor Oversight Program's Significance Determination Process (SDP) can evaluate. For these violations, the SDP will determine the significance of the violation and the Agency Action Matrix will determine the appropriate agency response. These violations will be cited or non-cited. Normally, no severity levels and civil penalties will be used to characterize these violations.

A. Violations of Low Significance

Violations that the SDP evaluates as not being risk significant (i.e., green) will be described in inspection reports as Non-Cited Violation (NCVs) and be categorized by the assessment process within the licensee response band. However, a Notice of Violation (NOV) will be issued if:

(1) The licensee fails to restore compliance within a reasonable time after they identified the violation;

(2) The licensee fails to place the violation into the corrective action program; or

(3) The violation was willful. An NCV may be appropriate if the violation meets the criteria in Section VII.B.1.a.4 of the Enforcement Policy.

The three exceptions are consistent with items (1), (2), and (4) of Section VII.B.1.a.

B. Significant Violations

Violations that the SDP evaluates as risk significant (i.e., white, yellow, or red) will be assigned a color band related to its significance for use by the assessment process. Because of being risk significant, an NOV will be issued requiring a formal written response unless sufficient information is already on the docket. The Commission reserves the use of discretion for particularly significant violations (e.g. an accidental criticality) to assess civil penalties in accordance with Section 234 of the Atomic Energy Act of 1954, as amended.

II. Violations Not Evaluated by the SDP and Those Having Actual Consequences

In the second group of violations, the Enforcement Policy will be retained, along with severity levels and the potential for the imposition of civil penalties or other appropriate enforcement action. Three categories of violations are within this group:

(A) Violations that involve willfulness including discrimination,

(B) Violations that may impact the NRC's ability for oversight of licensee activities such as those associated with reporting issues, failure to obtain NRC approvals such as for changes to the facility as required by 10 CFR 50.59, 10 CFR 50.54(a), 10 CFR 50.54 (p), and failure to provide the NRC with complete and accurate information or to maintain accurate records, and

(C) Violations that involve actual consequences such as an overexposure to the public or plant personnel, failure to make the required notifications that impact the ability of federal, state and local agencies to respond to an actual emergency preparedness or transportation event, or a substantial release of radioactive material.

To the extent the above does not modify the NRC Enforcement Policy, the NRC Enforcement Policy remains applicable to power reactor licensees.

Dated at Rockville, Maryland, this 26th day of October, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York; James A. Fitzpatrick Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59, issued to the Power Authority of the State of New York (PASNY) (the licensee, also known as the New York Power Authority), for operation of the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would modify the spent fuel pool (SFP) by installation of an additional 7 new high density storage rack modules for fuel storage in the SFP. The additional rack modules will increase the FitzPatrick SFP capacity from 2797 to 3239 fuel assemblies.

The proposed action is in accordance with the licensee's application for amendment dated October 14, 1997, as supplemented on July 23, 1998, December 3, 1998, February 25, 1999, and September 29, 1999.

The Need for the Proposed Action

The proposed action is needed to provide for storage of spent fuel until the licensee installs and obtains a license for an interim spent fuel storage installation (IFSFI). The underlying purpose of the expansion is to provide interim additional storage capacity for spent fuel to allow for continued operation until additional methods of storing spent fuel have been established.

Environmental Impacts of the Proposed Action

The factors considered in this determination are discussed below.

Radioactive Waste Treatment

FitzPatrick uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems are evaluated in the Final Environmental Statement (FES) dated March 1973. The proposed SFP expansion will not involve any change in the waste treatment systems described in the FES.

Radioactive Material Released to the Atmosphere

The storage of additional spent fuel assemblies in the SFP is not expected to affect the releases of radioactive gases from the SFP. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases may be released to the reactor coolant from fuel assemblies which may develop leaks during reactor operation. During refueling operations, some of these fission products may enter the SFP and subsequently be released into the air. However, as the frequency of refuelings will not be increased by the proposed action, there will be no increase in the amount of radioactive material released to the atmosphere during these operations.

Experience has demonstrated that during the period between refueling outages there is no longer a significant release of fission products from stored fuel. The storage of additional fuel assemblies in the SFP will not increase the SFP bulk water temperature beyond the existing design temperature. Therefore, radioactive material airborne release rates due to evaporation from the SFP are not expected to increase.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the SFP purification system. These spent resins are disposed of as solid radioactive waste. The frequency of resin changeout may increase slightly during the installation of the new racks due to the possibility of resuspension of particulate matter in the SFP (due to turbulence caused by the SFP rack installations). The licensee will use a Tri-Nuke underwater filtration unit to clean the floor of the SFP during SFP rack installation. Vacuuming of the SFP floor will remove any extraneous debris and crud and ensure visual clarity in the SFP (to facilitate diving operations, if needed, and installation of the SFP racks). Debris and crud will be filtered and collected in the Tri-Nuke filters and stored underwater. Depending on the waste characterization of these filters, the licensee will dispose of them utilizing shielded canisters and high integrity containers which will then be stored onsite or shipped for burial accordingly. The staff does not expect that the additional fuel storage made possible by the increased SFP storage capacity will result in a significant change in the generation of solid radwaste.

Liquid Radioactive Wastes

The release of radioactive liquids will not be affected directly as a result of the modifications. The SFP ion exchanger resins remove soluble radioactive materials from the SFP water. When the resins are changed out, the small amount of resin sluice water which is released is processed by the radwaste system. As stated above, the frequency of resin changeout may increase slightly during the installation of the new racks. However, the amount of radioactive liquid released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Radiological Impact Assessment

Radiation Protection personnel will constantly monitor the doses to the workers during the SFP expansion operation. The total occupational dose to plant workers as a result of the SFP expansion operation is estimated to be between 3 and 4 person-rem. Since the proposed action does not involve the removal of any spent fuel racks, the licensee does not plan on using divers for this project. However, if it becomes necessary to utilize divers to remove any interferences which may impede the installation of the new spent fuel racks, the licensee will equip each diver with radiation detectors with remote, above surface, readouts which will be continuously monitored by Radiation Protection personnel. This dose estimate is comparable to doses for similar SFP modifications performed at other plants. The proposed SFP rack installation will follow detailed procedures prepared with full consideration of as low as is reasonably achievable (ALARA) principles.

On the basis of our review of the FitzPatrick proposal, the staff concludes that the FitzPatrick SFP rack installation can be performed in a manner that will ensure that doses to workers will be maintained ALARA. The estimated dose of 3 to 4 person-rem to perform the proposed SFP rack installation is a small fraction of the annual collective dose accrued at FitzPatrick.

Accident Considerations

In its application, the licensee evaluated the possible consequences of a fuel handling accident to determine the thyroid and whole-body doses at the Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and Control Room.

The proposed SFP rack installation at the FitzPatrick Nuclear Power Plant will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and therefore will not result in an increase in the doses from a postulated fuel handling accident.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to the permanent repository or a centralized high-level radioactive waste storage facility is an alternative to increasing onsite spent fuel storage capacity. However, the U.S. Department of Energy (DOE) is not expected to open the permanent repository until 2010 and is currently prohibited from selecting a site for centralized storage until after a determination is made on permanent repository site suitability. Congress, with the urging of some affected utilities and States, has recently taken up proposed changes to the Federal program that would integrate storage and disposal at one site and require DOE to construct an interim storage facility. No decision has yet been made on centralized federal storage that would provide a basis for evaluating it as a viable alternative to the Power Authority's proposed action.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from the FitzPatrick plant is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Spent fuel would have to be shipped to an overseas facility for reprocessing. This approach has never been used and it would require approval by the U.S. Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium and reprocessing represents an added cost. Therefore, this alternative is considered unacceptable.

Shipping Fuel to Another Utility or Site or to Indian Point 3 (IP3) for Storage

Shipment of irradiated fuel from FitzPatrick for storage at the IP3 fuel pool would provide short-term relief from the storage problem at FitzPatrick. However, this transfer of fuel between units would create no additional storage locations for irradiated fuel, nor would it eliminate the need to develop additional spent fuel storage capability at FitzPatrick in the future. As a result, any fuel transfer would accelerate the loss of fuel pool storage at the IP3 and give no benefit to either facility.

Currently, the IP3 site has installed fuel pool storage capacity sufficient to handle site requirements for irradiated fuel storage, while maintaining full core discharge capability until approximately the year 2009. The design of the IP3 fuel pool storage racks has been optimized for storage of pressurized-water reactor fuel with a different physical and nuclear design than the boiling-water reactor fuel used at FitzPatrick. Thus, storage of FitzPatrick fuel at IP3 would both limit storage of future discharged IP3 fuel and represent a less then optimal use of the existing IP3 storage capability.

PASNY knows of no other utility that is prepared to accept shipments of irradiated fuel from FitzPatrick for long-term storage at its site.

For these reasons, and considering the increased fuel handling and additional occupational radiation exposure incurred during the shipment of irradiated fuel, the alternative of shipping FitzPatrick fuel to IP3 or other site for storage is not an acceptable alternative to the proposed action.

Alternatives Creating Additional Storage Capacity

A variety of alternatives to increase the storage capacity of the FitzPatrick SFP were considered. Fuel rod consolidation was considered as a potential alternative and was eliminated because of the limited industry experience in disassembling irradiated fuel and because of the potential for fission product release due to rod breakage during disassembly. Additionally, because DOE considers consolidated fuel to be a non-standard waste form, the licensee could be concerned that the presence of fuel in this form would cause DOE to delay its acceptance of waste from FitzPatrick.

The early implementation of dry cask storage for irradiated fuel at FitzPatrick was also considered. Dry cask storage involves transferring irradiated fuel, after several years of storage in the FitzPatrick SFP, to high capacity casks with passive heat dissipation features. After loading, these casks would be placed on a concrete pad at an outdoor location on the FitzPatrick site. Although dry cask storage is planned by the licensee as a long-term storage option for FitzPatrick, the early implementation of this alternative was rejected by the licensee because the 442 storage locations provide needed irradiated fuel storage with less environmental impact and at lower cost.

As a result, the licensee concluded that none of the alternative technologies that could create additional spent fuel storage capacity at FitzPatrick could do so with less environmental impact than the impacts associated with the chosen option.

Reduction of Spent Fuel Generation

To minimize the quantities of irradiated fuel generated during full power operation at FitzPatrick, the licensee has developed efficient fuel loading patterns that seek to maximize the utilization of each assembly consistent with limits on the integrated fuel rod exposure. Batch discharge burnups for FitzPatrick fuel currently exceed 40 GWD/MT with peak assembly burnups reaching 46 GWD/MT by the time of discharge. The licensee expects batch average discharge exposure to exceed 43 GWD/MT after the current cycle and to increase to 45 GWD/MT thereafter. FitzPatrick depletes fuel assemblies to these burnups with minimal cladding perforations so that the fission product inventory present in the SFP water remains low. The high values of batch average and peak assembly discharge burnup ensure that the electricity generated by FitzPatrick yields the minimum possible amount of spent fuel.

The fuel assembly design used at FitzPatrick is not compatible with the IP3 core. As a result, partially irradiated fuel from other PASNY nuclear units cannot be used at FitzPatrick (or vice versa) to reduce the rate of spent fuel discharge.

Operation of FitzPatrick at a reduced power level for long periods of time would extend the existing SFP storage capacity. However, to compensate for the reduced generation by FitzPatrick another power generation facility would be required to increase its power output, possibly resulting in an increase in airborne pollution and greenhouse gas emissions. The adverse environmental impact of increased airborne pollution and greenhouse gas omissions resulting from a long-term derate of FitzPatrick generating capacity is significantly greater than the environmental impact associated with increasing the storage capacity of the existing FitzPatrick SPF.

The No-Action Alternative

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for FitzPatrick.

Agencies and Persons Consulted

In accordance with its stated policy, on May 24, 1999, the NRC staff consulted with the New York State official, Mr. Jack Spath, of the New York State Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 14, 1997, as supplemented by letters dated July 23, 1998, December 3, 1998, February 25, 1999, and September 29, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

Dated at Rockville, MD., this 3rd day of November, 1999.

For the Nuclear Regulatory Commission.

Sheri R. Peterson,

Chief, Section I, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–29315 Filed 11–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

On November 3, 1999, the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration. On page 59797 the 30-day date for hearing request should be corrected from "December 10, 1999," to read "By December 3, 1999, the licensee may file a request for a hearing. * * *"

Dated at Rockville, Maryland, this 3rd day of November 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–29316 Filed 11–8–99; 8:45 am]

BILLING CODE 7590–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collection would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Work Activity Report—Employee-0960–0059. The information on form SSA–821–BK will be used by the Social Security Administration (SSA) to obtain work information from beneficiaries in face-to-face interviews, telephone interviews, or by mail during the initial claims process, during the continuing disability review process, and whenever a work issue arises in Supplemental Security Income claims. The purpose of the SSA–821–BK is to collect information concerning whether beneficiaries have worked in employment after becoming disabled and, if so, whether that work is substantial gainful activity. The information will be used to determine if the recipient continues to meet the disability requirements of the law.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 225,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Referral System for Vocational Rehabilitation Providers 0960—NEW

Background

In 1996 the Social Security Administration (SSA) initiated an innovative expansion of its vocational rehabilitation (VR) referral and payment program. Under this program, SSA pays VR providers for the costs of VR services provided to disability beneficiaries, if such services result in the individual going to work at a specified earnings level for at least nine months. Throughout this project, SSA has expanded its VR program to increase the base of providers who are available to serve people with disabilities. By increasing this base, more people will be able to get the services they need to go to work, become independent of the benefit rolls, and thus achieve savings to SSA's trust funds.

In September 1997, SSA contracted with Birch & Davis Associates, Inc. (B&D), to provide management support to its expanded VR referral and payment program. This contract is for a three-year demonstration project known as the Referral System for Vocational Rehabilitation Providers (Project RSVP). SSA continues to be responsible for awarding Alternate Participant (AP) contracts to VR providers, determining the appropriateness of claims submitted by APs, and reimbursing APs for the costs of their services if the requirements for payment are met.

B&D supports SSA's efforts by marketing to and recruiting VR providers, training providers on SSA's VR program requirements, and operating an Information and Referral System to link providers with beneficiaries. In addition, B&D will conduct surveys of beneficiaries and APs to determine customer satisfaction and to identify program areas requiring improvement.

Information Collection

In support of the RSVP project, SSA will conduct semi-annual voluntary information collections of both AP's and Beneficiaries/Recipients (B/R). The data collection effort will be conducted in survey format and has four goals:

1. To help program administrators understand the reasons for varying levels of satisfaction with the program; 2. To help program administrators understand the potential causes for varying levels of success of the program; 3. To guide program change; and 4. If necessary, to plan continuation of the program after the initial trial period.

Through these voluntary surveys, SSA will collect three types of data:

1. Descriptive data that describe the B/R and data that describe the APs' vocational rehabilitation practice that are not available and are necessary to evaluate respondents' satisfaction in the context of their actual experience; 2. Quantitative data on B/R and AP satisfaction with the program; and 3. Free-text comments by B/Rs and APs regarding their experience with the program.

The data will be aggregated for all B/Rs and for all APs. A semi-annual report will be generated for SSA. The information will be used by AP program administrators at SSA and by B&D project management staff. The respondents will be SSI/SSDI beneficiaries and APs under contract with SSA to provide vocational rehabilitation services to beneficiaries.

Survey form	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Survey for APs who have submitted claims	12	2	20	8
Survey for APs who have not submitted a claim	314	2	20	210
Survey for B/Rs who have signed a Rehabilitation or Employment Plan	44	2	20	30
Survey for B/Rs who have not signed a Rehabilitation or Employment Plan	2,000	2	20	1,334
Total Annual Burden Hours Requested				1,582

2. Statement of Income and Resources—0960–0124. The information collected by the Social Security Administration on Form SSA–8010 is necessary in the SSI eligibility/payment process. Information about the income and resources of ineligible spouses/parents/children and sponsors of aliens is used in the "Deeming" process. "Deeming" is the attribution of another's income to an eligible individual/child/alien. The respondents are ineligible spouses, parents, and children who live in the same household as an eligible individual/child, and sponsors of aliens.

Number of Respondents: 355,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 147,917 hours.

3. Public Law 105–306, Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 provided that nonqualified aliens who were receiving SSI on August 22, 1996 would remain eligible for SSI as long as all other requirements for eligibility were met (*e.g.*, income and resources, etc.). Section 416.1618 of the Code of Federal Regulations require nonqualified aliens to give SSA certain evidence which proves that they are lawfully admitted to the United States, in order to qualify for SSI benefits. Aliens who are alleging Permanent Residence Under Color Of Law (PRUCOL) must present evidence of their status at the time of application for SSI benefits and periodically thereafter. The respondents are nonqualified aliens who apply for or receive SSI benefits.

Number of Respondents: 9,000.

Frequency of Response: Annually.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 750 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

Dated: November 3, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–29238 Filed 11–8–99; 8:45 am]

BILLING CODE 4191–02–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter 19 Roster

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: Chapter 19 of the North American Free Trade Agreement (NAFTA) provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (AD/CVD) proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the Chapter 19 roster. Applications are invited from eligible individuals wishing to be included on the roster for the period April 1, 2000 through March 31, 2001.

DATES: Applications should be received no later than December 9, 1999.

ADDRESSES: Applications should be sent to Ms. Leah Mayo, Attn: Chapter 19 Roster Applications, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: With regard to the form of the application, Ms. Leah Mayo, (202) 395–3432; with regard to eligibility requirements, David J. Ross, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION:

Binational Panel Reviews Under NAFTA Chapter 19

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether such AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party, and must use the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of fifteen current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties shall consult and seek to achieve a mutually satisfactory solution.

Chapter 19 Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

Upon each request for establishment of a panel, roster members from the two involved NAFTA Parties will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter 19 Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3432)) ("Section 402") provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

Procedures for Selection of Chapter 19 Roster Members

Section 402 establishes procedures for the selection by the United States Trade Representative of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1 of each calendar year.

Under section 402, an interagency committee chaired by the United States Trade Representative prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 Roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, the United States Trade Representative selects the final list of individuals chosen by the United States for inclusion on the Chapter 19 roster.

Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 400 Canadian dollars per day.

Applications

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2000 through March 31, 2001 are invited to submit applications. Applicants should submit an original application and 1 copy. Applications must be typewritten, and should be headed "Application for Inclusion on NAFTA Chapter 19 Roster." Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and address of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches and decisions need be submitted.
10. Summary of any current and past employment by, or consulting or other work for, the United States, Canadian or Mexican Governments.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. § 611 *et seq.*, and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian or Mexican AD/CVD law regarding imports of U.S., Canadian or Mexican products in which applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone and fax number of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's familiarity with international trade laws, character, reputation, reliability, and judgment.

Current Roster Members and Prior Applicants

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster are requested to submit updated applications. Individuals who have previously applied but have not been selected may reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

Public Disclosure

Applications normally will be subject to public disclosure. An applicant who wishes to exempt information from public disclosure should follow the procedures set forth in 15 CFR § 2003.6.

False Statements

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (PRA) that has been approved by the Office of Management and Budget (OMB). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for nomination to the NAFTA Chapter 19 roster. It is expected that the collection of information burden will be under 3 hours. This collection of information contains no annual reporting or record keeping burden. This collection of information was approved by OMB under OMB Control Number 0350–0009. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. § 552a). The authority for requesting information to be furnished is section 402 of the NAFTA Implementation Act. Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate for the NAFTA Chapter 19 roster. The information provided is needed, and will be used by USTR, other federal government trade policy officials concerned with NAFTA dispute settlement, and officials of the other NAFTA Parties to select well-qualified individuals for inclusion on the Chapter 19 roster and for service on Chapter 19 binational panels.

Robert T. Novick,

General Counsel.

[FR Doc. 99–29346 Filed 11–8–99; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

1999–2000 Allocation of the Raw Cane Sugar Tariff-rate Quota

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocation of the in-quota quantity of the tariff-rate quota for imported raw cane sugar for the period beginning October 1, 1999, and ending September 30, 1999. Notice of the

country allocations for the 1999–2000 refined and sugar-containing products tariff-rate quotas was published in the **Federal Register** October 7, 1999 (**Federal Register** Volume 64, Number 1941, page 54719).

EFFECTIVE DATE: November 2, 1999.

ADDRESSES: Inquiries may be mailed or delivered to Karen Ackerman, Senior Economist, Office of Agricultural Affairs (Room 423), Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Karen Ackerman, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of raw cane sugar. The in-quota quantity of the raw cane sugar tariff-rate quota for the period October 1, 1999–September 30, 2000, has been initially established by the Secretary of Agriculture, and 1,135,000 metric tons, raw value (1,251,123 short tons) have been released to the Office of the U.S. Trade Representative for allocation.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

Accordingly, the 1,135,000 metric tons for raw cane sugar are being allocated to the following countries in metric tons, raw value:

Country	FY2000 allocation
Argentina	45,283
Australia	87,408
Barbados	7,372
Belize	11,584
Bolivia	8,425
Brazil	152,700
Colombia	25,274
Congo	7,258
Cote d'Ivoire	7,258
Costa Rica	15,797
Dominican Republic	185,346
Ecuador	11,584
El Salvador	27,381
Fiji	9,478
Gabon	7,258
Guatemala	50,549
Guyana	12,637
Haiti	7,258
Honduras	10,531
India	8,425
Jamaica	11,584
Madagascar	7,258
Malawi	10,531
Mauritius	12,637
Mexico	25,000
Mozambique	13,690
Nicaragua	22,115
Panama	30,540
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,177
Philippines	142,169
South Africa	24,221
St. Kitts & Nevis	7,258
Swaziland	16,850
Taiwan	12,637
Thailand	14,743
Trinidad-Tobago	7,372
Uruguay	7,258
Zimbabwe	12,637
Total	1,135,000

This allocation includes the following minimum quota-holding countries: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

Under the NAFTA, the United States is to provide total access for raw and refined sugar from Mexico of 25,000 metric tons, raw value, for this quota period in conjunction with Mexico's net surplus producer status. This allocation is subject to the condition that the total imports of raw and refined sugar from Mexico, combined, are not to exceed 25,000 metric tons raw value.

Conversion factor: 1 metric ton = 1.10231125 short tons.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 99–29345 Filed 11–8–99; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Opportunity To Apply for Nomination to the World Trade Organization Dispute Settlement Roster of Panel Candidates

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to apply for nomination by the United States to the indicative list of non-governmental panelist candidates provided for in Article 8 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and in the Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO).

SUMMARY: The DSU provides a mechanism for the settlement of disputes between the governments which are members of the WTO. A three-person panel conducts each dispute settlement proceeding and issues a report for consideration by the Dispute Settlement Body (DSB) in which representatives of all WTO members participate. The DSU also provides for the WTO Secretariat to maintain an indicative roster of well-qualified governmental and non-governmental individuals, to assist in the selection of panelists for dispute settlement proceedings.

Section 123(b) of the Uruguay Round Agreements Act (URAA), Public Law 103–405, provides that the Trade Representative shall seek to ensure that persons appointed to the WTO roster are well-qualified and that the roster includes persons with expertise in all of the subject matters covered by the Uruguay Round Agreements. USTR invites citizens of the United States with appropriate qualifications to apply for consideration as a nominee to the roster.

DATE: Eligible citizens are encouraged to apply by December 9, 1999 to be considered for nomination to the roster in 1999.

FOR FURTHER INFORMATION CONTACT: For information concerning the form of the application, contact Sandy McKinzy, Litigation Assistant, USTR Office of Monitoring and Enforcement, (202) 395–3582. For information concerning WTO procedures or the duties involved, contact Amelia Porges, Senior Counsel for Dispute Settlement, (202) 395–7305 or Stephen Kho, Assistant General Counsel, (202) 395–3581. For information relating to the GATS, contact Steven Fabry, Associate General Counsel, (202) 395–3582 or Peter Collins, Deputy Assistant USTR for Services and Investment, (202) 395–7271. Further information on the WTO and dispute settlement is available on the Internet at http://www.ustr.gov/reports/tpa/1999/iv-a.pdf; the text of the DSU is available on the Internet at http://www.wto.org/wto/dispute/dsu.htm.

SUPPLEMENTARY INFORMATION: Pursuant to Article 8 of the DSU, the WTO Secretariat is to maintain an indicative list of well-qualified governmental and non-governmental individuals, including persons who have served on or presented a case to a panel, taught or published on international trade law or policy, or served as a senior trade policy official of a WTO member country. The indicative list will be used to assist in the selection of panelists for dispute settlement proceedings. Panel members are to be selected with a view to ensuring a sufficiently diverse background and a wide spectrum of experience. The current roster list dates principally from 1997 (with the addition of a few persons nominated later and approved by the DSB). The list is available on the Internet in http://www.ustr.gov/reports/tpa/1999/iv-b.pdf. The roster list is updated each two years.

USTR currently seeks applications related to the list of non-governmental individuals. Persons selected by USTR will be nominated for inclusion on the WTO indicative roster subject to DSB approval. Inclusion of a name on the roster, however, does not necessarily mean that the individual will be selected for service on a panel. DSU Article 8.2 provides that citizens of WTO Members whose governments are parties or interested third parties to a dispute may not serve on the panel in that dispute unless the parties agree otherwise. For example, panels for disputes in which the United States is a party or interested third party cannot include any U.S. citizens unless the parties to the dispute agreed otherwise.

The Decision on Certain Dispute Settlement Procedures for the GATS requires that panels for GATS disputes include specific expertise on individual sectors. GATS disputes could involve, *inter alia*, one or more of the following eleven principal sectors: (1) Business services, including professional and related services, (for example, legal, accounting, auditing and bookkeeping, taxation, medical, dental, veterinary, engineering, architectural, and urban planning services), computer and related services, research and development services, real estate services, rental and leasing services, and advertising and management services; (2) communication services (including audio-visual services); (3) construction and related engineering services; (4) distribution services; (5) educational services; (6) environmental services; (7) financial services, including insurance and insurance-related services, banking and securities services; (8) health-related and social services; (9) tourism and travel-related services; (10) recreational, cultural and sporting services, and (11) transport services.

Panels for GATS disputes are to be composed of well-qualified governmental and/or non-governmental individuals who have experience in issues related to GATS and/or trade in services, including associated regulatory matters. Dispute settlement panels concerning sectoral matters under the GATS must have expertise relevant to the specific service sector to which the dispute relates. The GATS Annex on Financial Services further provides that panels for disputes on prudential issues and other financial matters must have the necessary expertise relevant to the specific financial service under dispute.

WTO dispute settlement panels consist of three persons (unless the parties agree to have five panelists) whose function is to make an objective assessment of the matter under dispute, including an objective assessment of the facts of the case, the applicability of the relevant WTO agreements and the conformity of the measure under consideration with the obligations of those agreements. In addition, panels are to make such other findings as will assist the DSB in making the recommendations provided for in the WTO agreements.

Panelists must act in strict conformity with the provisions of the WTO agreements, including application of the appropriate standard of review. Panels are responsible for providing a report to the DSB, including recommendations if necessary, on the conformity of the matter under dispute with WTO obligations. Panelists must also comply with the WTO Rules of Conduct (available at http://www.ustr.gov/reports/tpa/1997/part4__2__8.html or http://www.wto.org/wto/dispute/rc.htm) relating to conflicts of interest and conduct as a panelist.

Procedures for Application

Non-governmental U.S. citizens (i.e., individuals not currently employed full-time by the U.S. Federal government or a state or local government) possessing expertise in international trade, services, intellectual property rights or other matters covered by the WTO agreements are invited to file an application for nomination to the WTO roster.

Applications must be typewritten and submitted along with two copies to Sandy McKinzy, Room 122, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. However, only one copy need be provided of speeches and publications submitted under item 9 below. Applicants are to provide the following information to the extent applicable:

1. Name of the applicant;
2. Business address, telephone number and, if available, fax number and e-mail address;
3. Citizenship(s);
4. Foreign language fluency, spoken and written;
5. Current employment, including title, description of responsibilities, and name and address of employer;
6. Relevant education and professional training, including particular service-sector expertise, if any;
7. Post-education employment history, including the dates and address of each prior position and a summary of responsibilities;
8. Relevant professional affiliations and certifications;
9. List of publications and speeches; teaching experience in the area of trade; also, one copy of any speeches and publications relevant to the subject matter of the WTO agreements or service sector;
10. List of international trade proceedings or domestic proceedings relating to international trade (WTO) matters in which the person has provided advice or otherwise participated, including judicial or administrative proceedings over which that person has presided;
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods; also, the names and nationalities of all foreign entities for which the applicant (or the applicant's employer on behalf of the applicant) is currently or has previously been registered under the Lobbying Disclosure Act of 1995 (P.L. 104–65), and the dates of all registration periods;
12. Names, addresses, telephone and, if available, fax numbers of three individuals authorized to provide information to USTR concerning the applicant's qualifications for service, including the applicant's familiarity with international trade laws and other areas of expertise, character, reliability and judgment; and
13. A short statement of qualifications, including information relevant to the applicant's familiarity with international trade, services or other issues covered by the WTO agreements, and availability for service.

Information provided by applicants will be used by USTR for the purpose of selecting candidates for nomination to the WTO roster. Further information concerning potential conflicts may be requested from individuals and the possibility of significant conflicts will be taken into consideration in evaluating applicants. Copies of publications and speeches submitted under item 9 above will be returned to the applicant upon request. Information submitted may be subject to public disclosure. Any business confidential information that should not be disclosed to the public should be clearly indicated as such on each page of the submission, pursuant to 15 CFR section 2003.6.

U.S. citizens who are current members of the WTO roster and are interested in continuing to serve on the roster should reapply in response to this notice. Current members who are no longer interested in serving on panels need not notify USTR as they will be automatically removed from the list. Individuals who have previously applied but have not been selected for nomination may reapply.

USTR will contact applicants that qualify for further consideration as nominees regarding any additional information that may be required.

This notice contains a collection of information provision subject to the Paperwork Reduction Act (PRA) which has been approved by OMB. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish to voluntarily apply for nomination to the WTO roster. It is expected that the collection of information burden will be under 3 hours. This is a one-time-only collection of information, and contains no annual reporting and recordkeeping burden. This collection of information was approved by OMB under OMB Control Number 0350–0008. Send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for requesting information to be furnished is section 123(b) of the Uruguay Round Agreements Act and 15 CFR section 2003. Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate for the WTO roster. The information provided is needed, and will be used by USTR and other Federal government trade policy officials concerned with WTO dispute settlement, to select well-qualified U.S. roster candidates, and to complete standard curriculum vitae forms required by the WTO for each roster candidate. The information may be disclosed to members of the TPSC Subcommittee on WTO Disputes, for the purpose of evaluation of applications. Information on nominees will be furnished to the WTO pursuant to requirements under the DSU.

Robert Novick,

General Counsel.

[FR Doc. 99–29347 Filed 11–8–99; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 29, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6423.

Date Filed: October 29, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC 12 USA–EUR 0089 dated 29 October 1999, Mail Vote 042—Resolution 010L, TC12 North Atlantic USA-Europe, Special Passenger Amending Resolution, Intended effective date: 15 November 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–29228 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 29, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6409.

Date Filed: October 25, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 22, 1999.

Description: Application of SATA Internacional-Servicios E. Transportes Aereos, S.A. ("SATA Internacional") pursuant to 49 U.S.C. Section 41302, Part 211 and Subpart Q, applies for a Foreign Air Carrier Permit authorizing SATA Internacional to conduct foreign non-scheduled air transportation of persons, property, and mail between points in the Portugal and points in United States, with service beginning on or about January 4, 2000 between Lisbon and the Azores, Portugal and Boston, Massachusetts.

Docket Number: OST–99–6246.

Date Filed: October 28, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 19, 1999.

Description: Motion of Delta Airlines, Inc. ("Delta") for leave to file and Supplement #1 to its Application by adding the countries listed in Exhibit A–2, to the list of countries previously listed in Exhibit A of Delta's initial application.

Docket Number: OST–99–6323.

Date Filed: October 28, 1999

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 16, 1999.

Description Application of United Parcel Service Co. ("UPS") pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for a Certificate of Public Convenience and Necessity to authorize it to engage in the scheduled foreign air transportation of property and mail between any point or points in the United States via intermediate points to a point or points in the People's Republic of China and to points beyond with full traffic rights between all points on the route. UPS requests that it be granted the fourth designation to serve China available on April 1, 2001, and that it be granted the ten weekly frequencies which also become available on that date. UPS further requests route integration authority enabling it to integrate services on the above-described route with services provided on other routes or under the various exemption authorities held by UPS.

Docket Number: OST–99–6425.

Date Filed: October 29, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 26, 1999.

Description: Application of Polar Air Cargo, Inc. ("Polar") pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for a certificate of public convenience and necessity authorizing Polar to engage in scheduled foreign air transportation of property and mail between any point or points in the

United States, via intermediate point(s), and any point or points in Argentina and Chile, and beyond. Polar also requests authority to integrate its operations under this certificate with all the services Polar is otherwise authorized to conduct pursuant to its exemption and certificate authorities consistent with applicable international agreements.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–29229 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Joint RTCA Special Committee 180 and Eurocae Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held January 11–13, 2000, starting at 8:30 a.m. on January 11. The meeting will be held at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Editorial Team Meeting Report; (5) Leadership Team Meeting Report; (6) Review Action Items; (7) Plenary Disposition of Document Comments; (8) Special Committee 190 Committee Activity Report; (9) Other Business; (10) Formal approval of text of documents; (11) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 4, 1999.

Jane P. Caldwell,

Designated Official.

[FR Doc. 99–29312 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Environmental Impact Statement: Daggett county, Utah

AGENCY: Federal Highway Administration (FHWA), DOT Bureau of Land Management, (BLM), DOI.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Amend the Diamond Mountain Resource Area Resource Management Plan.

SUMMARY: The FHWA and BLM are issuing this Notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed Browns Park Road Re-alignment and Paving Project proposed by Daggett County, Utah. This 26.9 km (16.8 miles) segment would connect from the currently paved portion of Browns Park Road that junctions with US Highway 191 in Utah to Colorado Route 318. The BLM, as a cooperating agency, under this Notice of Intent to Prepare an EIS, may amend the Diamond Mountain Resource Area Resource Management Plan (RMP) by adding a corridor for the proposed action.

AGENCY DECISIONS: In accordance with the National Environmental Policy Act of 1969, as amended, the FHWA must decide whether or not to proceed with the proposed project and under what terms, conditions, and stipulations. The BLM, which will assist in the preparation of the EIS, will decide whether to amend the RMP and provide a letter of consent to the FHWA under Interagency Agreement AA851–LA2–40.

FOR FURTHER INFORMATION CONTACT: Tom Allen, Environmental Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118–1847, Telephone: (801) 963–0078 Ext. 229; Greg Searle, Utah Department of Transportation, Region 3 (801) 227–8058 and Duane De Paepe, Bureau of Land Management, Vernal Field Office, (435) 781–4400.

SUPPLEMENTARY INFORMATION: FHWA as lead agency, in cooperation with the Utah Department of Transportation (UDOT) will prepare an EIS to re-align and pave the existing Browns Park Road. The Vernal Field Office of the Bureau of Land Management will serve as a cooperating agency and will assist in preparation of the EIS and direct preparation of the plan amendment for the Diamond Mountain Resource Area RMP. The plan amendment criteria would be the same as in the Diamond Mountain Resource Area RMP Record of Decision (Fall, 1994). The construction project would consist of upgrading and realigning portions of an existing county road that crosses 19.6 km of public land parcels administered by the BLM (12.2 miles), 6.9 km State of Utah lands (4.3 miles), as well as .5 km of land that is privately owned (.3 miles).

Currently, the Browns Park Road is unpaved, and characterized by rutted washboard surfaces and dust producing surface materials. Horizontal and vertical alignments on the existing roadway vary from good in the straight sections to poor on the steep and curving sections. Jesse Ewing Canyon has some extremely steep grades in the range of 14 to 17 percent. This makes travel very difficult during inclement weather and has proven to be very dangerous as evidenced by a traffic fatality in recent years. In addition to addressing these maintenance and safety concerns, Daggett County also considers it important to bring this road up to the standards of the adjoining highways.

The proposal is to pave the section of Daggett County road between Red Creek (T3N R23E Sec. 16) and the Colorado State line (T2N R25E Sec. 35), known as the Browns Park Road. This 26.9 km segment would be 9 m (29.5 feet) in width and have a design speed of 60 km/hr (38 mph). It would connect from the currently paved portion of Browns Park Road that junctions with US Highway 191 in Utah to Colorado Route 318, and provide improved access to recreational, agricultural, and commercial developments in the Green River and Flaming Gorge areas from Utah, Colorado and Wyoming.

The proposed project would generally follow the existing Browns Park Road alignment. However, there are two proposed courses around Jesse Ewing Canyon that would lengthen the road course to reduce grades and provide a safer route of travel.

The corridor width needed for construction would be expected to average about 30.5 m (100 feet). New disturbance associated with the realignment proposed in Jesse Ewing Canyon is expected to be approximately 12.1 hectares (30 acres). In addition, several construction equipment staging (temporary use) areas and borrow sites would be required, and would be located along the road corridor (8.1 hectares [20 acres]). The overall disturbed area associated with this project is expected to be less than 60.7 hectares (150 acres).

The primary users of the Browns Park Road are agriculturists, recreationists, and residents in the area. The upgrade of the road would greatly improve travel conditions and safety, and would substantially reduce present maintenance costs for the road. It would also support the increased travel demands projected for the near future.

The alternative is no action which would leave the road in its present condition. Suggestions for other alternatives are welcome.

Letters describing the proposed project and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal.

Three public open house scoping meetings will be held, two in Utah (Dutch John and Vernal), and one in Craig, Colorado. The open houses will include displays explaining the project and a forum for commenting on the project. The meetings will be held as follows:

Craig, Colorado: December 1, 1999, 5:00 p.m. to 8:00 p.m., Craig City Hall, 300 West 4th Street, Council Meeting Room
Vernal, Utah: December 2, 1999, 5:00 p.m. to 8:00 p.m., Western Park, 302 East 200 South
Dutch John, Utah: December 3, 1999, 5:00 p.m. to 8:00 p.m., Dutch John Conference Hall

Written comments on the scope of this proposal will be accepted until December 27, 1999. Comments should be directed to Linda Matthews, JBR Environmental Consultants, Inc., 8160 South Highland Drive, Suite A–4, Sandy, Utah 84093. At least one public hearing will be held following release of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed project is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed project and the EIS should be directed to Tom Allen, Environmental Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118–1847, Telephone: (801) 963–0078 Ext. 229.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Comments, including names and street addresses of respondents will be available for public review at the Utah Division of FHWA and at the BLM Vernal Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the Environmental Impact Statement and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Michael Ritchie,
Division Administrator, Utah Division, Federal Highway Administration, Salt Lake City, Utah.

Linda S. Colville,
BLM Acting Utah State Director, Salt Lake City, Utah.

[FR Doc. 99–28943 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 8, 1999, at 64 FR 36831. Three respondents submitted comments pertaining to the collection. These are reviewed later in this notice.

DATES: Comments must be submitted on or before December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, Office of Ports and Domestic Shipping, Maritime Administration, 400 7th Street, SW, Washington, DC 20590, Telephone 202–366–0760, or FAX 202–366–6988. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels.

OMB Control Number: 2133–NEW.

Type of Request: Approval of a new request.

Affected Public: Small passenger vessel owners desirous of operating in the coastwise trade.

Form(s): None.

Abstract: Owners of ship vessels desiring waiver of the coastwise trade laws affecting small passenger vessels will be required to file a written application and justification for waiver to the Maritime Administration (MARAD). The agency will review the application and make a determination whether to grant the requested waiver.

Annual Estimated Burden Hours: 100 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited on

Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Comments Received in Response to 60-Day Comment Period

On July 8, 1999, a notice was published in the **Federal Register**, 64 FR

36831, requesting comments within 60 days on this information collection. Three respondents submitted comments. One concurred, indicating it appeared all interests have been served by the wording and thought behind this measure. The second respondent made three recommendations: (1) Eliminate the geographical region of intended operation and trade. MARAD's response—Non-concur, we find it necessary to require the geographical region in order to make the necessary determination of adverse affect of the requested waiver. (2) Eliminate the requirement to include impact on other commercial passenger vessel operators in the application for waiver. MARAD's response—Non-concur, the information on impact is needed to determine the adverse affect, if any, and is therefore retained in the application information collection requirements. (3) Eliminate the application fee. MARAD's response—Non-concur, the application fee will be retained as it is Federal policy to assess a "user charge" against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public (Office of Management and Budget Circular A-25, "User Charges," July 8, 1993). Processing a waiver application would provide such a special benefit.

The third respondent proposed a number of changes to the proposed regulation. All comments are addressed in the preamble to the final rule. Here, we are concerned only with the four comments relevant to the information collection requirements: (1) Suggest that only the owner of the vessel should be able to submit a waiver application. MARAD's response—Concur, we have revised the rule to reflect this requirement. (2) Suggest the applicant be required to provide a statement explaining the duration of the applicant's ownership of the vessel, his cost of purchasing or otherwise obtaining the vessel, and the uses to which he has put the vessel since obtaining it. MARAD's response—We believe these questions are unnecessary for MARAD to effectively carry out its responsibilities under Title V of the Coast Guard Authorization Act of 1998. (3) The association supports the application fee of $300. (4) Require that no substantial change in employment of the vessel in the coastwise trade may be made without prior notice to MARAD. MARAD's response—Concur, we have added this requirement to the final rule, indicating that failure to provide advance notice may effect an immediate revocation of the waiver under section 388.5.

Issued in Washington, DC on November 3, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99-29268 Filed 11-8-99; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99-6207, Notice 1]

Bombardier Motor Corporation of America, Inc.; Receipt of Application for Determination of Inconsequential Noncompliance

Bombardier Motor Corporation of America, Inc. ("BMCA") of Melbourne, Florida has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" for a noncompliance with 49 CFR 571.209, Federal Motor Vehicle Safety Standard (FMVSS) No. 209, "Seat Belt Assemblies," on the basis that the noncompliance is inconsequential to motor vehicle safety. BMCA has filed a report of noncompliance pursuant to 49 CFR part 573 "Defects and Noncompliance Reports."

Notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Description of the Noncompliance

S4.1(j) of FMVSS No. 209 requires that each seat belt assembly be permanently and legibly marked or labeled with the year of manufacture, and the model and name or trademark of the manufacturer or distributor. The seat belt assemblies, manufactured by Good Success Corporation, model AB401 (309), and were installed in the Bombardier NVs sold between June 17, 1998 and April 9, 1999, do not contain the requisite marking or labeling. With the exception of the marking, the seat belt assemblies in question fully comply with all NHTSA safety requirements.

Bombardier Arguments

Bombardier argues that this noncompliance is inconsequential for the following reasons: "Under the National Traffic and Motor Vehicle Safety Act (the "Act"), 49 U.S.C. 30101 *et seq.*, each FMVSS that is promulgated is required to be "practicable, meet the need for motor vehicle, and be stated in objective terms." 49 U.S.C. 30111(a). The definition of "motor vehicle safety" is as follows:

"Motor vehicle safety" means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against *unreasonable risk of accidents* occurring because of the design, construction or performance of a motor vehicle, and against *unreasonable risk of death or injury* in an accident, and includes nonoperational safety of a motor vehicle.

Section 30118(d) of the Act exempts manufacturers from the Act's notice and remedy requirements when the Secretary determines that a defect or noncompliance is inconsequential as it relates to motor vehicle safety. Section 30118(d) of the Act demonstrates Congress' acknowledgment that there are cases where a manufacturer has failed to comply with a FMVSS and yet the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Act is justified.

FMVSS No. 209 provides the requirements for seatbelt assemblies. 49 CFR 571.209 S1 (1998). The purpose for seat belt assemblies is to provide occupant restraint. *Id* at S4.1(b). Although not discussed in regulations, common sense dictates that when a seat belt assembly is properly installed, the marking or labeling requirements at FMVSS No. 209 S4.1(j) play no role in the performance of such seatbelt assembly."

The seat belt assembly labeling requirement at FMVSS No. 209 S4.1(j) provides in pertinent part:

Each seatbelt assembly shall be permanently and legibly marked or labeled with year of manufacture, model, and make or trademark of manufacturer or distributor, or of importer if manufactured outside the United States.

Because this standard does not address seatbelt assembly materials or performance requirements, the purpose of FMVSS No. 209 S4.1(j) appears to assure that the correct seat belt assemblies are installed in a given vehicle—either as original equipment manufacturer, or as replacement equipment. BMCA's noncompliance with FMVSS No. 209 S4.1(j) thus raises two questions:

(1) Could the labeling noncompliance have caused the seat belt assemblies to have been installed improperly by BMCA?

(2) Would the labeling noncompliance interfere with the proper acquisition and installation of a replacement seat belt assembly?

BMCA is confident that all noncompliant seat belt assemblies were properly installed at its manufacturing facility. Because BMCA only manufactures one motor vehicle subject to FMVSS, there can be little confusion regarding which belt goes in which vehicle. BMCA is also confident that the labeling noncompliance will not interfere with acquisition and installation of a replacement seat belt assembly should there even be one. The seat belt marking also assists should there be a recall regarding the seat belt, and would identify the belt by year and manufacturer. As BMCA has been selling NV for a short period, the chance of confusion over the year or seat belt manufacturer is remote.

Because of the design of the seat belt assemblies found in Bombardier NVs, it would be very difficult to inadvertently install any of the seat belt assemblies in question in anyplace other than the seat belt assemblies' intended location in the Bombardier NV.

BMCA is unaware of any owner complaints, field reports or allegations of hazardous circumstances relating to either the lack of the requisite seat belt assembly label, or of the improper installation of seat belt assemblies in any of its NVs. Furthermore, BMCA has found no instance where a seat belt assembly (regardless of labeling compliance) was improperly installed in any Bombardier NV. In fact Bombardier is unaware of any complaints from consumers regarding the seat belts.

Seat belt assemblies for the Bombardier NV are not distributed through the general automotive aftermarket; they are only sold by Bombardier NV dealers. The part number for the Bombardier NV seat belt assembly is 00078. This is the only seat belt part number for the vehicles in question so there can be no confusion. Because seat belt assemblies for the Bombardier NV are presently only available through dealers, and that the Bombardier parts numbering system will assure proper replacement seat belt assemblies, BMCA is confident that the labeling noncompliance will not interfere with the proper acquisition and installation of a replacement seat belt assembly.

NHTSA has granted similar petitions for noncompliance with seatbelt assembly labeling standards. *See, generally, TRW, Inc.*, Docket. No. 92–67; Notice 2, 58 FR 7171 (1993) *Chrysler Corporation*, Docket. No. 92–94; Notice 2, 57 FR 45,865 (1992). In both of these cases the petitioners demonstrated that the noncompliant seat belt assemblies were properly installed, and that due to their respective replacement parts ordering systems, improper replacement seat belt assembly selection and installation would unlikely occur.

BMCA believes that because the labeling noncompliance has no bearing on the materials or performance standards articulated in FMVSS No. 209, that [S16] all the seat belt assemblies in question were properly installed as original equipment, and that BMCA's replacement part system would preclude the purchase and installation of an improper replacement seat belt assembly for a Bombardier NV, the noncompliance poses no motor vehicle risk.

Interested persons are invited to submit written data, views and arguments on the petition of BMCA, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, National Highway Traffic Safety Administration, Room PL 401, 400 Seventh Street, SW., Washington DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 9, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: November 3, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–29269 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 2, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 9, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1029.

Form Number: IRS Form 8693.

Type of Review: Revision.

Title: Low-Income Housing Credit Disposition Bond or Treasury Direct Account Application.

Description: Form 8693 is needed per Internal Revenue Code (IRC) section 42(j)(6) to post bond or establish a Treasury Direct Account and waive the recapture requirement under section 42(j) for certain dispositions of a building on which the low-income housing credit was claimed. Internal Revenue regulations section 301.7101–1 requires that the posting of a bond must be done on the appropriate form as determined by the Internal Revenue Service.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.

Learning about the law or the form—14 min.

Preparing the form—20 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,130 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 99–29297 Filed 11–8–99; 8:45 am]

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federal register

Tuesday
November 9, 1999

Part II

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Polychlorinated Biphenyls (PCBs) Criteria; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–6450–5]

RIN 2040–AD27

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Polychlorinated Biphenyls (PCBs) Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Water Act (CWA) requires States to adopt numeric criteria for priority toxic pollutants for which EPA has published criteria guidance if the discharge or presence of such pollutants could reasonably be expected to interfere with the designated uses of the State's waters. In 1992, EPA promulgated the National Toxics Rule (NTR) establishing numeric water quality criteria for toxic pollutants in fourteen States and jurisdictions to protect human health and aquatic life. These States and jurisdictions had not adopted sufficient chemical-specific, numeric criteria for toxic pollutants necessary to comply with the Clean Water Act.

Among the criteria promulgated in the NTR were human health and aquatic life water quality criteria for polychlorinated biphenyls (PCBs). Today, EPA is issuing revisions to the human health water quality criteria for PCBs in the NTR, based on the Agency's reassessment of the cancer potency of PCBs. The revised criteria will apply in: Alaska, District of Columbia, Kansas, Michigan, Nevada, New Jersey, Puerto Rico, Rhode Island, Vermont and Washington.

EFFECTIVE DATE: This rule shall be effective December 9, 1999.

ADDRESSES: The public may inspect the administrative record for this rulemaking and all public comments received on the proposed rule at the Water Docket, East Tower Basement, USEPA, 401 M St., S.W., Washington, D.C. The record is available for inspection from 9:00 to 4:00 p.m., Monday through Friday, excluding legal holidays. Please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Cindy Roberts, Health and Ecological Criteria Division (4304), Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–2787.

SUPPLEMENTARY INFORMATION:

A. Who is potentially affected by the National Toxics Rule?
B. What is the National Toxics Rule?
C. Why is EPA revising the National Toxics Rule?
D. Why did EPA change the human health criteria for PCBs?
E. Can an NTR State develop site-specific criteria?
F. Response to Public Comments
G. References
H. Regulatory Assessment Requirements

A. Who Is Potentially Affected by the National Toxics Rule?

Dischargers of PCBs to waters of the United States in States and jurisdictions subject to the National Toxics Rule (NTR) could be affected by this rule. National Toxics Rule States include: Alaska, District of Columbia, Kansas, Michigan, Nevada, New Jersey, Puerto Rico, Rhode Island, Vermont and Washington. These dischargers may be affected since water quality criteria are part of water quality standards that, in turn, are used in developing National Pollutant Discharge Elimination System (NPDES) permit limits. Categories of pollutant dischargers that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging to waters of NTR States and jurisdictions.
Municipalities	Publicly-owned treatment works discharging to waters of NTR States and jurisdictions.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected if PCBs are found in their pollutant discharges. To determine whether your facility, company, business, or organization may be affected by this action, you should carefully examine the applicability criteria in § 131.36 (d) of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Is the National Toxics Rule?

The Clean Water Act (CWA) requires States to adopt numeric criteria for priority toxic pollutants if EPA has published criteria guidance and if the discharge or presence of these pollutants could reasonably be expected to interfere with the designated uses of the State's waters. In 1992, EPA "promulgated" or put into force of law, the National Toxics Rule (NTR) establishing numeric water quality criteria for toxic pollutants in fourteen States and jurisdictions to protect human health and aquatic life (57 FR 60848, December 22, 1992, incorporated in the Code of Federal Regulations at 40 CFR 131.36). These States and jurisdictions had not adopted adequate numeric criteria for pollutants necessary to comply with the Clean Water Act.

C. Why Is EPA Revising the National Toxics Rule?

Among the criteria promulgated in the NTR were PCB criteria to protect human health. These criteria were based on procedures issued in 1980 ("Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents," 45 FR 79347, November 28, 1980 or "Human Health Guidelines").

General Electric Company (GE) and the American Forest and Paper Association, Inc. challenged a number of aspects of the NTR, including the human health water quality criteria for PCBs. (*American Forest and Paper Ass'n. Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU) D.D.C.). In particular, the plaintiffs objected to EPA's application of its cancer risk assessment methodology to its evaluation of the carcinogenicity of PCBs and the Agency's evaluation of various scientific studies relevant to the cancer risk posed by PCBs. EPA had a number of activities underway that could have led to a revision of the criteria, including reassessment of the cancer potency of PCBs (the "cancer reassessment"), revision of the methodology to derive human health water quality criteria, and revision of the cancer guidelines. EPA and the plaintiffs entered into a partial settlement agreement in which EPA agreed, among other things, to a schedule for completing the cancer reassessment. See "Partial Settlement Agreement," Consolidated Case No. 93–0694 RMU, D.D.C, signed November 7, 1995.

EPA also agreed that within 18 months of the issuance of the final cancer reassessment, the Agency would propose a revision to the NTR human health criteria for PCBs, or publish a **Federal Register** notice explaining why it was not revising the NTR criteria. EPA completed the cancer reassessment in September 1996, ("PCBs: Cancer Dose-Response Assessment and Applications to Environmental Mixtures" (EPA 600/P–96/001F). This report shows how information on toxicity, tendencies and environmental processes can be used together to evaluate health risks from PCBs in the environment. EPA also considered several issues identified by the plaintiffs. In accordance with the terms outlined in the partial settlement agreement, EPA proposed revisions to the NTR human health criteria for PCBs on March 27, 1998 (63 FR 16182, April 2, 1998). In today's document, EPA is amending the PCBs human health criteria in the NTR.

D. Why Did EPA Change the Human Health Criteria for PCBs?

What Are PCBs and Why are They a Problem in the Environment?

Polychlorinated biphenyls or PCBs are a group of chemicals that contain 209 individual compounds known as "congeners." Commercial PCBs are mixtures of congeners that differ in their chlorine content. Different mixtures can take on forms ranging from oily liquids to waxy solids. Although their chemical properties vary widely, different mixtures have many common PCB congeners. Because of their flame retardant properties, chemical stability, and insulating properties, commercial PCB mixtures were used in many industrial applications. These chemical properties also contribute to the slow degradation of PCBs after they are released into the environment. Because of evidence of persistence and harmful effects, domestic manufacture of commercial mixtures was stopped in 1977; existing PCBs continue in use, primarily in electrical capacitors and transformers.

In the environment, PCBs occur as mixtures of congeners, but their composition differs from the commercial mixtures. This is because after release into the environment, the composition of PCB mixtures changes over time through partitioning, chemical transformation and preferential bioaccumulation of certain congeners. Partitioning is the separation of a chemical into different environmental media, such as fish tissue or sediments. Preferential bioaccumulation is the affinity for a congener to accumulate in one type of environmental media over another. Some PCB congeners can accumulate in living organisms. PCBs are widespread in the environment because of past contamination, and humans are exposed through multiple pathways including ambient air, drinking water, and diet.

How Were the Criteria for PCBs Developed?

The PCBs criteria included in the NTR were based on a single dose-response slope factor (7.7 per mg/kg-d average lifetime exposure); this was the value included in EPA's Integrated Risk Information System (IRIS, www.epa.gov/ngispgm3/iris/irisdat) at that time. A slope factor is a means of indicating the relevant potency of a cancer causing chemical. This slope factor value was derived from a rat feeding study by Norback and Weltman (1985), one of several studies of a commercial mixture called Aroclor 1260. Because there was no agreed-upon basis for reflecting differences among environmental mixtures, the 7.7 per mg/kg-d slope factor was used for all PCBs and PCB mixtures. As noted above, GE challenged the PCB criteria, disagreeing with EPA's use of this slope factor to calculate the NTR human health criteria for PCBs on several grounds, including that the Norback and Weltman study had been reevaluated. GE argued that if the reevaluated results had been used, the cancer potency factor would have been significantly lower. EPA agreed to complete a reassessment of the cancer potency factor for PCBs .

What's Different About the New Cancer Reassessment?

EPA considered a number of different approaches for its reassessment, and adopted an approach that distinguishes among PCB mixtures by using information on environmental processes that can decrease or increase toxic potency of an environmental mixture. EPA's new assessment considered all cancer studies (which used commercial mixtures only) including a new study of four different commercial mixtures (Aroclors) that strengthens the case that all PCBs mixtures can cause cancer. EPA used this information to develop a range of dose response slopes, changing the single-dose cancer potency factor of 7.7 per mg/kg-d to a range from 0.07 per mg/kg-d (lowest risk and persistence) to 2.0 per mg/kg-d (high risk and persistence). It is noteworthy that bioaccumulated PCBs appear to be more toxic than commercial PCBs and appear to be more persistent in the body. The reassessment uses information on environmental processes to provide guidance on choosing an appropriate slope for representative classes of environmental mixtures and different exposure pathways.

The guidance matches slope values from the range to exposure pathway (*e.g.*, food chain) by using a "tiered approach" which attributes higher risk to exposure through the food chain compared to other exposures. Bioaccumulation through the food chain tends to concentrate certain highly chlorinated congeners which are often among the most toxic and persistent. Persistence in the body can enhance the opportunity for PCB congeners to express toxicity (Safe, 1994). Studies indicate that the major pathway of exposure to persistent toxic substances such as PCBs is through food (*i.e.*, contaminated fish and shellfish consumption). Because it considers consumption of contaminated fish to be the dominant source of PCB exposure, EPA proposed and has decided to use a cancer potency factor of 2 per mg/kg-d, the "upper bound" potency factor reflecting high risk and persistence, to calculate the revised human health criteria for PCBs. This upper bound slope factor of 2 per mg/kg-d is also used to assess increased cancer risks associated with early life exposure to PCBs.

The cancer reassessment was subject to peer review by a group of experts from outside the Agency. See "Report on Peer Review Workshop on PCBs: Cancer-Dose Response Assessment and Application to Environmental Mixtures," May 1996.

How Are Today's Human Health Criteria for PCBs Calculated?

Using the cancer potency factor of 2 per mg/kg-d the human health criterion (HHC) for organism and water consumption is as follows:

$$\mathrm{HHC} = \frac{\mathrm{RF} \times \mathrm{BW} \times (1{,}000\ \mu\mathrm{g/mg})}{\mathrm{q1}^{*} \times [\mathrm{WC} + (\mathrm{FC} \times \mathrm{BCF})]}$$

Where:
RF = Risk Factor = 1 × 10 (−6)
BW = Body Weight = 70 kg
q1* = Cancer slope factor = 2 per mg/kg-d
WC = Water Consumption = 2 L/day
FC = Fish and Shellfish Consumption = 0.0065 kg/day
BCF = Bioconcentration Factor = 31,200
the HHC (µg/l) = 0.00017 µg/L (rounded to two significant digits).

Following is the calculation of the human health criterion for organism only consumption:

$$HHC = \frac{RF \times BW \times (1{,}000\ \mu g/mg)}{q1^{*} \times FC \times BCF}$$

Where:
RF = Risk Factor = 1 × 10 (−6)
BW = Body Weight = 70 kg
q1* = Cancer slope factor = 2 per mg/kg-d
FC = Total Fish and Shellfish Consumption per Day = 0.0065 kg/day
BCF = Bioconcentration Factor = 31,200
the HHC (µg/l) = 0.00017 µg/L (rounded to two significant digits).

The criteria are both equal to 0.00017 µg/l and apply to total PCBs. See "PCBs: Cancer Dose Response Assessment and Application to Environmental Mixtures" (EPA 600/9–96–001F). The body weight and water consumption factors are discussed in the Human Health Guidelines ("Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents," 45 FR 79347, November 28, 1980). The BCF is discussed in the 304(a) criteria guidance document for PCBs ("Ambient Water Quality Criteria for Polychlorinated Biphenyls," EPA 440/5–80–068) (1980).

In developing today's criteria EPA relied on the currently available Human Health Guidelines (45 FR 79347, November 28, 1980). However, EPA recently proposed revisions to the methodology it uses to derive water quality criteria for human health (63 FR 43755, August 14, 1998). When the proposed revisions are finalized, EPA expects to recommend the use of bioaccumulation factors (BAFs) in place of bioconcentration factors (BCFs). For certain chemicals including PCBs, the revised methodology would emphasize the assessment of bioaccumulation (*i.e.*, uptake from water, food, sediments) over bioconcentration (*i.e.*, uptake from water only). The change outlined above may result in a significant numeric change in the ambient water quality criteria for PCBs. For PCBs and other bioaccumulative chemicals, BAFs may be developed which are orders of magnitude greater than the BCFs developed in 1980. This would likely result in a criterion which is orders of magnitude more stringent, if all other parameters (such as q1*s) remain constant.

Why Are the Criteria Now Expressed as Total PCBs?

In its 1998 proposal, EPA offered a different approach for expressing human health criteria for PCBs. Human health criteria would no longer be based on individual Aroclors, but rather on total PCBs concentrations. In the environment, PCBs occur as mixtures of congeners but these are different in composition than commercial mixtures (Aroclors). This is because PCB mixtures can change over time through partitioning among different environmental media (*e.g.*, water, sediment), by chemically transforming or preferentially bioaccumulating. Therefore, it can be imprecise and inappropriate to characterize environmental mixtures in terms of Aroclors (EPA, 1996). It is the Agency's view that expressing the criteria in terms of total PCBs rather than individual Aroclors better reflects current scientific thought (See: "PCBs: Cancer Dose Response Assessment and Application to Environmental Mixtures," "Assessing the cancer risks from environmental PCBs" (Cogliano, 1998) and the proposed PCBs criteria in the California Toxics Rule, 62 FR 42160, August 5, 1997).

E. Can an NTR State Develop Site-Specific Criteria

EPA prefers that States maintain primacy, revise their own standards, and achieve full compliance, but in order to achieve primacy, States must first be removed from the NTR. Removal of a State from the NTR requires rulemaking by EPA according to the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). For example, both Rhode Island and Vermont have adopted criteria, including criteria for PCBs, required by CWA 303(c)(2)(b). EPA approved the state adoptions and will be initiating action to remove both Rhode Island and Vermont from the NTR in the near future. Pending completion of this action, nothing in this rule preempts these States' authority to implement any more stringent State criteria for PCBs. (See section 510 of CWA).

A State cannot derive site-specific criteria for pollutants for which EPA has established standards in the National Toxics Rule. Promulgation of the NTR removed most of the flexibility available to the affected States for modifying their standards on a discharger-specific or stream-specific basis. For example, site-specific criteria for human health are precluded for NTR States unless there is a Federal rulemaking in that State to change the Federal rule for that State, or unless the State adopts a more stringent criteria pursuant to CWA section 510, which as a practical matter would override the less stringent NTR criteria.

EPA will withdraw the promulgated criteria in the NTR by rule without a notice and comment, when a State adopts standards no less stringent than the NTR (*i.e.,* standards which provide, at least, equivalent environmental protection). However, if a State adopts standards for toxics which are less stringent than the Federal rule but, in the Agency's judgment fully meet the requirements of the Act, EPA will propose to withdraw the NTR criteria with a notice of proposed rulemaking and provide for public participation. Thereafter the Agency will issue a final rule.

A State may want to develop site-specific human health criteria for PCBs when exposure information indicates that an alternate cancer slope factor is appropriate. As mentioned above, EPA's 1996 cancer assessment for PCBs uses information on environmental processes to provide guidance on choosing an appropriate cancer slope factor from a range of slope factors. An "upper bound" potency factor, such as the 2 per mg/kg-d used in this rule, is appropriate for food chain exposure, sediment or soil ingestion, and dust or aerosol inhalation pathways. These are exposure pathways where environmental processes tend to increase risk. Lower potencies are appropriate for ingestion of water-soluble congeners or inhalation of evaporated congeners. These are pathways where environmental processes tend to decrease risk (EPA, 1996).

F. Response to Public Comments

As noted above, EPA published proposed revisions of the PCB human health criteria in 1998. EPA received several comments from the public and significant comments are addressed in this section.

1. One commenter asked for more time in which to prepare additional materials for submission.

Response: EPA did not agree that revisions of the PCB criteria should be delayed based upon the expectations of future analyses of epidemiological data. EPA realizes that scientific information is constantly evolving. Additional research is always being done and test methods and theories improve. There can be a long lag time between conducting the research, analyzing data, issuing a criteria or risk assessment for peer review, incorporating peer review comments and working through the State or Federal administrative processes to adopt water quality standards. There comes a point in this process, where the administering agencies, both EPA and the States, have to act using the existing criteria recommendations based on the methodology by which they are derived, and put standards into place to assist the implementation of control programs to protect the health of the public and the environment.

In this instance, EPA has completed a cancer reassessment for PCBs and has subjected that analysis to extensive scientific analysis and debate, including an external peer review. EPA believes this reassessment provides a strong scientific basis for revision of the PCBs human health criteria. Commenters have not provided EPA with epidemiological data or other information sufficiently compelling for EPA to delay amending the NTR to incorporate the revised criteria. Accordingly, it is EPA's view that the promulgation process should go forward.

2. Two commenters did not agree that the proposed rule results in ambient water quality criteria for human health that are less stringent than those currently in the NTR.

Response: The Agency does not believe that the new criteria based on total PCBs are more stringent. As discussed above, and in the 1998 proposed rule, the new human health criteria specify concentration limits of 0.00017 µg/L for total PCBs, in contrast to the old criterion of 0.000044 µg/L for each of seven different Aroclors. The old criteria would, in theory, have allowed 0.000308 µg/L total PCBs if each of the seven Aroclors were at its limit. EPA does not believe this is a reasonable assumption. The new criterion is not more stringent than the old because several of the Aroclors are not prevalent in commerce or in the environment. Aroclor 1242 alone accounted for 52 percent of U.S. PCB production, and Aroclors 1016, 1242, 1254, and 1260 together accounted for over 90 percent. Thus, it is highly unlikely that all seven Aroclors would be present in similar concentrations. Further, from what we know about how PCBs degrade and partition into different environmental media and bioaccumulate in living organisms, environmental PCBs do not look like the seven industrial Aroclors at their limits. For example, PCBs in fish or sediment would contain PCB congeners of high chlorine content and be characterized as "like" Aroclor 1254 or 1260. PCBs in water would contain PCB congeners of lower chlorine content and be characterized as "like" one or two Aroclors of lower chlorine content. This conclusion is confirmed when environmental samples are characterized in terms of Aroclor mixtures; experience shows that no more than two or three Aroclors are used. Accordingly, it is unlikely that an environmental sample could be characterized in terms of similar concentrations of the seven different Aroclors.

3. Several commenters prefer criteria for individual Aroclors stating that the proposed criteria based on total PCBs were inappropriate. Their objections include:

(a) Only one slope factor and one BCF were used to derive the criteria rather than different slope factors and BCFs for each individual Aroclor;

(b) Environmental samples are likely to contain the four most common Aroclors and the proposed criterion is equal to the sum of these four most common Aroclors;

(c) Criteria based on total Aroclors are inaccurate because formulations in different lots can differ by 2–5 fold for many PCB congeners, making even Aroclor estimated PCB levels inconsistent with each other if different lots of a formulation are used in different labs;

(d) Differences between environmental samples and commercial mixtures make accurate summations of Aroclors difficult and therefore it is unlikely that an accurate estimation can be made of total PCBs (*i.e.*, total Aroclors);

(e) Criteria based on sum of PCBs are too stringent because monitoring programs and analytical labs quantify PCBs as multiple Aroclor formulations, and the sum of PCBs would exceed the proposed total criteria;

(f) PCB congeners are shared by several Aroclors, thus, measuring total Aroclors could double or triple count some congeners leading to inaccurately high total PCB levels;

(g) It is not possible to characterize PCB congeners as "like" Aroclors and it is unlikely that an accurate estimate can be made of total PCBs; and

(h) It is not appropriate to develop a single criterion because the Agency does not expect to find all seven Aroclors in significant quantities in samples.

Response: The Agency does not agree that individual criteria for each Aroclor should be maintained. The revised PCB criteria were derived using a single cancer potency factor and a single bioconcentration factor (BCF) because as discussed below, in the Agency's view, this approach protects against the major exposure pathway of concern, consumption of contaminated fish and shellfish.

The Agency adopted an approach in its new cancer reassessment, "PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures" (EPA, 1996) (EPA 600/P–96/001F), that distinguishes among PCB mixtures by using information on environmental processes to provide guidance in choosing appropriate slope factors for representative classes of environmental mixtures and different exposure pathways. In this methodology, exposure through the food chain is associated with higher risks than other exposures. Preferential bioaccumulation through the food chain tends to concentrate certain highly chlorinated congeners which are often among the most toxic and persistent. Thus, EPA chose a cancer potency factor of 2 per mg/kg-d, the upper bound slope factor, to calculate the revised human health criteria. Humans can be exposed to PCBs through the food chain which is an exposure pathway where environmental processes are likely to increase risk.

EPA uses a single bioconcentration factor (BCF), from the 1980 criteria guidance document, "Ambient Water Quality Criteria for Polychlorinated Biphenyls," (EPA 440/5–80–068), to derive the criteria for today's rule. This BCF, 31,200 L/kg, was derived from data from 21 studies of several different Aroclors and two specific congeners and in the Agency's view represents an average bioaccumulation factor for PCBs in all freshwater fish and shellfish.

EPA recently proposed revisions to the methodology it uses to derive water quality criteria for human health (63 FR 43755, August 14, 1998). In the revised human health methodology, EPA expects to recommend the use of bioaccumulation factors (BAFs) in place of BCFs. However, until the proposed changes to the human health methodology are finalized, EPA will continue to rely on existing criteria or components (*e.g.*, BCFs or q1*s) of existing criteria as the basis for regulatory and non-regulatory decisions. Until EPA revises and reissues the criteria or component using the revised human health methodology the existing criteria or components are viewed as scientifically acceptable by EPA.

The fact that the Agency changed its approach from one where each Aroclor had its own criterion to one where a single criterion applies to total PCBs does not stem from the fact that not all Aroclors are likely to be present in the environment at significant concentrations as a commenter would suggest. As mentioned above, the Agency changed its approach for regulating PCBs because PCBs degrade, partition, transform and selectively bioaccumulate in living organisms. The Agency agrees it is unlikely that an environmental sample characterized in terms of Aroclors would resemble an original Aroclor mixture in any definable way. This is why the Agency stated that if an environmental sample was characterized in terms of Arolors it could only be characterized as "like" a particular Aroclor. It is difficult to characterize environmental samples in terms of Aroclors.

The Agency agrees that characterizing environmental samples in terms of Aroclors can result in under or overestimating PCBs. In measuring PCB concentrations in terms of Aroclors, certain ratios of characteristic congeners are considered representative of a particular Aroclor. When these characteristic congeners are detected in appropriate ratios, they are quantified as a certain Aroclor. Because some congeners are present in more than one Aroclor, there is a possibility of double (or triple) counting a particular congener in quantifying an Aroclor. There are techniques available to minimize double counting though, such as use of two different gas chromatograph (GC) columns or adjusting instrument conditions to get sufficient separation of peaks. These techniques allow an analyst to view samples on different chromatographs at slightly different retention times in order to minimize interference from overlapping peaks. Analysts also exercise "Best Professional Judgment" in selecting the appropriate peaks for use in quantifying samples in order to minimize quantification errors.

The possibility of underestimating total PCB concentrations using Aroclor analyses also exists. In cases where congeners are detected in environmentally altered mixtures but not in characteristic ratios, the congeners detected may not be quantified because they do not resemble a particular Aroclor. In this case Aroclor measurements would underestimate concentrations of total PCBs present.

EPA agrees that Aroclor formulations may vary substantially by lot (*e.g.*, percent of a particular congener present). Measuring congener concentrations rather than Aroclor concentrations eliminates problems associated with congener weight percent variations between different lots of a particular Aroclor formulation. Congener analyses are not impacted by variations between formulations. Aroclor analyses can be influenced by lot-to-lot variations due to the difference in using specific congeners as calibration standards versus using Aroclors for calibration standards.

4. One commenter states that EPA bases the new PCB criteria on only one or a couple of unspecified, highly chlorinated Aroclors, and not all Aroclors. The commenter believes that EPA should apply the criteria to individual Aroclors or the combination most like that which is found in the samples.

Response: The Agency does not agree that the new PCB criteria are based on only one or a couple of unspecified, highly chlorinated Aroclors. The risk-assessment used as the basis for this rulemaking, "PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures," is based on a range of potency estimates, developed using studies for a range of mixtures (commercial mixtures only), instead of focusing only on the highest-potency mixture. Section 2 of the risk assessment provides brief summaries on the studies used in developing the dose-response assessment.

Again, as discussed above in Response #3, it is the Agency's view that human health water quality criteria for PCBs should be expressed in terms of total PCBs rather than on individual Aroclors.

5. One commenter disagrees with EPA's statement that, "Some PCBs congeners can accumulate selectively in living organisms" (63 FR 16184.) The commenter considers this statement an unfair generalization and asks EPA to identify the specific congeners that selectively accumulate in various classes of living organisms and those that do not.

Response: Accumulation patterns can vary by species and location. One compilation of bioaccumulation information cited in the reassessment was done by McFarland and Clarke (1989). EPA's reassessment also cites other studies that show retention and bioaccumulation of specific congeners.

6. The commenter asks EPA to clarify its use of the term "toxic" in the statement, "It is noteworthy that bioaccumulated PCBs appear to be more toxic than commercial PCBs . . ." (63 FR 16184). If the reference is to carcinogenicity, the commenter states that this statement is speculation and has not been scientifically demonstrated in human or animal studies.

Response: Recent animal studies (Mayes, 1998) with commercial mixtures have demonstrated that every PCB mixture tested poses a risk of cancer. The commercial mixtures tested by Brunner *et al.*, (1996, later published by Mayes (1998)), Aroclor 1016, 1242, 1254 and 1260, together accounted for over 90 percent of the U.S. PCB production. These four commercial mixtures contain overlapping groups of congeners that, together span the range of congeners most often found in environmental mixtures (Cogliano, 1998). Commercial mixtures of PCBs can cause cancer and environmental mixtures contain subsets of congeners from commercial mixtures.

Preferential bioaccumulation of PCBs can occur in humans, fish and wildlife. PCBs are highly soluble in lipids and are absorbed by organisms. Different species in the food chain retain persistent congeners that prove resistant to metabolism and elimination (Oliver and Niimi, 1988). While persistence is not synonymous with toxicity, in the absence of testing on most congeners, it is reasonable to suppose some correlation between persistence and toxicity (EPA, 1996), because persistence of PCBs in the body can enhance the opportunity for congeners to express tumor promoting activity (Safe, 1994).

7. A commenter disagrees with Dr. Wiltse's (EPA) statement that "cancer risk assessment for PCBs is beyond the scope of this rulemaking."

Response: The actual statement Dr. Wiltse made in replying to a request for an extension to the comment period for this rulemaking (see comment #1 above), based on the expectation of the future availability of an analysis of epidemiological data was:

> Revisions to the cancer risk assessment used as the basis for this proposed rule ("PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures," September 1996) may be considered in the future based on the epidemiological data provided by The General Electric Company or other new data on PCBs. However, revising the entire cancer risk assessment for PCBs is beyond the scope of this rulemaking action and is not feasible prior to

promulgation of this specific action on the NTR.

As noted in its response to comment #1 above, the Agency recently completed a major reassessment of all the available data for PCBs (EPA 1996) which was satisfactory to independent peer reviewers. The Agency believes this reassessment provides a strong scientific basis for revising the human health criteria for PCBs. In this rulemaking, EPA is amending the NTR to include the revised criteria as provided in the Settlement Agreement discussed above. A commenter has suggested that EPA should defer this promulgation pending analyses of new scientific information concerning risk to human health from occupational exposure to PCBs. The commenter informed the Agency that they are in the process of analyzing epidemiological data for capacitor workers exposed to PCBs and expected to have that analyses available in the near term.

EPA believes its cancer risk assessment provides a strong scientific basis for the revised PCB human health criteria. The Agency must make decisions based on the available, scientifically defensible, data. EPA does not agree that revisions of the PCB criteria should be delayed based upon the expectations of future analyses of epidemiological data.

Scientific information is constantly evolving and there can be a long lag time from conducting research and analyzing data, to preparing risk assessments and obtaining peer review, and developing human health criteria. When the commenter's analysis has been made available to the Agency, EPA will of course consider this information and any other new information. Indeed, EPA anticipates that its next assessment of PCB risks will again examine closely whether the current criteria are sufficiently protective of children given continuing research by the Agency for Toxic Substance and Disease Registry.

8. Several comments were received regarding the use of epidemiological data to generate a cancer potency factor for PCBs. The comments include the following:

(a) Cancer slope factors from epidemiological studies can be used to establish environmental standards. A cancer slope factor is calculated using the negative results of Taylor (1988), the positive results of Brown (1987), the measured cancer incidence rate, and the 95% upper confidence limit on the incremental risk rate. This results in cancer slope factors ranging from 7.7E–4 (measure, Taylor) to 1.9E–2 (95% UCL, Brown). The cancer slope factor for the Taylor study (7.7E–4) is conservatively assumed to equal the cancer slope factor for Aroclor 1242 (workers were exposed to Aroclor 1242, 1254 and 1016). Using an animal study of cancer risk (Mayes 1998) which concluded that Aroclor 1260 is 5 times as potent as 1242, the suggested environmental standard would be 3.8E–3 per mg/kg/day (5 * 7.7E–4). This standard is 519 times greater than the proposed value.

(b) Any cancer slope factor calculated from epidemiological studies which reported air concentrations would overestimate cancer risk of PCBs. Air concentrations would significantly underestimate exposure since dermal exposure and incidental ingestion also form significant exposure routes. Dermal exposure studies, despite uncertainty in quantifying dermal absorption of PCBs, can be used to estimate PCB exposure if conservative assumptions are used as in the Terra (1993) analysis.

(c) EPA has not thoroughly reviewed the epidemiological studies performed to date or considered how they can be used in risk assessment. Specifically, EPA should consider the numerous epidemiological studies performed on populations with extensive workplace exposure to PCBs which do not support the proposition that PCBs cause cancer in humans or lead to increased mortality from cancer. Also, given the uncertainty in cancer dose response modeling, the Agency should reexamine the evidence for carcinogenic risk that can be derived from human epidemiological studies.

(d) It has been stated that epidemiological studies are not as statistically robust as animal studies, however, the commenter states, in many cases human epidemiological data should be used to validate, confirm, or set upper bound estimates of carcinogenic potency. In general when epidemiological data are available, it is not appropriate to accept only the result of mathematical models that analyze rodent data without serious consideration to the human experience (Cook, 1982; Dinman and Sussman, 1983; Layard and Silvers, 1989). Animal studies (rat feeding studies) may indicate cancer in rats, but there may not be a direct transfer of cancer incidence in humans, particularly at environmental or occupational exposure levels. Many instances exist of chemicals that are potent rodent carcinogens but do not pose an equivalent cancer hazard in humans.

Response: The commenters' arguments and studies they cite were available at the time EPA drafted its reassessment. EPA as well as the external panel that reviewed EPA's reassessment concluded that epidemiological data are inadequate for use in a quantitative risk assessment. The external panel strongly recommended that EPA base its reassessment on the Brunner *et. al.*, (1996) study, that was later published by Mayes (1998). EPA's quantitative assessment reflects the advice of the external panel in this regard. (See: "Report on Peer Review Workshop on PCBs: Cancer-Dose Response Assessment and Application to Environmental Mixtures," May 1996.)

9. The commenter suggests that EPA use state-of-the-art methodology for interpreting the results of epidemiological studies, particularly a weight-of-the-evidence test and "causation analysis." Additionally, the commenter notes that studies which have larger cohorts and numbers of cancer deaths are inherently more important than are studies with smaller cohorts and fewer deaths when applying the weight-of-the-evidence test.

Response: The Agency uses the weight-of-evidence approach for interpreting the results of the epidemiological studies. The epidemiological studies have been found to provide limited (IARC, 1987) to inadequate (EPA, 1988) evidence of carcinogenicity. The overall conclusion, however, uses the weight-of-evidence approach on the entire data base, human and animal. Recent animal tests, Mayes (1998), have demonstrated that every PCB mixture tested poses a risk of cancer.

The Agency does note that cohort size is one of the many factors that goes into a weight-of-evidence analysis. Weight-of-evidence analyses also include exposure factors such as exposure level, exposure duration and lack of confounding exposure.

10. The commenter notes that it is unclear how the inclusion of noncarcinogenic Aroclors (1016 and 1254) in the total PCB criteria affects compliance determinations as human health criteria are based on cancer potential. The commenter suggests that their inclusion would over-estimate the risk to human health. This issue supports the argument for the development of individual criteria for individual Aroclors rather than for total PCBs.

Response: The Agency does not agree with the commenter that Aroclors 1016 and 1254 are non-carcinogenic. The 1996 cancer dose-response assessment for PCBs includes new data from Brunner *et al.*, (1996) in which rats fed diets containing Aroclors 1260, 1254, 1242 or 1016 were found to have statistically significant, dose-related, increased incidences of liver tumors from each mixture. The Mayes (1998) data indicate that Aroclor 1254 was the most potent of the four mixtures tested.

As previously discussed, the 1996 cancer dose-response assessment does acknowledge that overall, human studies are considered to provide limited (IARC, 1987) to inadequate (EPA, 1988) evidence of carcinogenicity. This notwithstanding, animal studies are considered to provide sufficient evidence of carcinogenicity and thus some commercial PCB mixtures have been characterized as probably carcinogenic to humans based on these findings (IARC, 1987; EPA, 1988) (EPA, 1996). The Agency does not agree that inclusion of Aroclors 1016 and 1256 in the total PCB determinations over-estimates the risk posed to humans.

Although there is sufficient evidence of carcinogenicity for Aroclor 1016 and 1254, Aroclor 1016 was found to have a several-fold lower potency compared to Aroclor 1242 (Brunner *et al.*, 1996). The approach adopted in the 1996 cancer reassessment for PCBs does account for differences in potency by establishing a range of dose-response slopes. Information on environmental processes is then used to provide guidance on choosing the appropriate slope factor to apply. Likewise, the Agency recognizes that not all environmental mixtures are regarded as equally potent; environmental mixtures differ from commercial mixtures and from each other (EPA, 1996).

11. EPA acknowledges that the mode of action of PCBs is promotional. Therefore, PCBs should be considered as epigenetic carcinogens and assessed with a margin of exposure approach rather than by the linear 95th%ile carcinogenicity modeling appropriate for genetic toxins.

Response: Although genetic activity testing for PCBs is generally negative, the mode of action of PCBs has not been established. In such a case, it is appropriate to use a linear extrapolation under EPA's existing 1986 cancer guidelines. This would also be the case under the Agency's 1996 proposed cancer guidelines. Moreover, at low doses, some PCB congeners add to the considerable background of human exposure to dioxin-like compounds and augment processes associated with dioxin toxicity, providing an expected linear component to the dose-response curve. There is also considerable background exposure to nondioxin-like congeners, so additional PCB exposure can augment other carcinogenic processes that may be operating.

12. The commenter believes that the linear method for estimating the carcinogenic potency of PCBs is likely to overestimate the low-dose carcinogenic risk of PCBs. The commenter refers to a study by Ottobonni (1984) which suggests that genotoxic agents may exhibit thresholds at low doses, thus there is considerable uncertainty in the assumption of low dose linearity for carcinogens. EPA's proposed cancer guidelines (EPA, 1996) allow for non linear low dose extrapolation in cases where the available data support a nonlinear mode of action.

Response: Linear low-dose extrapolation does, indeed, yield an upper bound on the potential risk, albeit a plausible upper bound. As discussed in the response to comment #11, there is not sufficient information available at this time to support a non linear extrapolation under the existing 1986 cancer guidelines, nor would there be under the 1996 proposed cancer guidelines.

13. The mode of action data for PCBs as tumor promoters and not initiators was not given appropriate considerations, thus EPA's reassessment completed in September 1996 was not consistent with the proposed cancer risk assessment guidelines. EPA should delete its statements claiming that the 1996 reassessment was consistent with proposed EPA cancer risk assessment guidelines.

Response: As discussed in the responses to comment #11 above, EPA did consider the mode-of-action data, concluding that there was not sufficient information available at this time to support non linear extrapolation. Moreover, several features of the 1996 reassessment were clearly motivated by the 1996 proposed cancer guidelines: developing a range of potency estimates instead of focusing on the highest-potency mixture, using the LED10/ED10 approach instead of the linearized multistage procedure, and using the cross-species scaling factor based on the 3/4 power of relative body weight. Most important, however, is the reassessment's emphasis on discussing circumstances that affect cancer risks, in this case, how environmental processes alter the composition and toxicity of PCB mixtures.

14. The commenter notes difficulties in estimating human cancer risks from rodent bioassays, particularly that tumor promoters often produce rodent liver tumors in long term bioassays, but are not generally known to cause cancer in humans. Tumor promoters like PCBs selectively increase the growth of cancerous cells but do not interact to cause the initial heritable change which begins the multi-stage process of cancer.

Response: Although noting that there are uncertainties in estimating human cancer risks from any animal study, it is not correct to suggest that EPA is concerned only about substances that cause the initial heritable genetic change in cancer development. Because cancer development is a multistage process, any substance that brings about or accelerates any of these stages can increase the risk of ultimately developing cancer.

15. EPA's statement that the major pathway of exposure to PCBs is through food (63 FR 16184) is not supported by human epidemiological studies which show very similar burdens of total PCBs and congener profiles between consumers and nonconsumers of fish. Other major sources for PCBs exist and, additionally, fish consumption may not be the primary route of exposure. EPA's statement should be revised or deleted.

Response: EPA notes in its cancer risk assessment for PCBs, that PCBs are widespread in the environment and that humans are exposed to PCBs through multiple pathways. Nonetheless, recent multimedia studies indicate that the major exposure pathway to persistent toxic substances such as PCBs is through food (*i.e.*, contaminated fish and shellfish consumption). Birmingham *et al.*, (1989), Newhook (1988) and Fitzgerald *et al.*, (1996) found that fish consumption appears to be the major pathway of exposure for PCBs. The majority of peer reviewers for the PCB Cancer Dose-Response Assessment agreed that consumption of contaminated fish is considered to be the predominant source of PCB contamination for humans. Exposure to PCBs through fish consumption is associated with high risk in the revised cancer assessment for PCBs.

16. EPA's statement (63 FR 16184) that "all PCBs cause cancer" implies a fact that has not yet been demonstrated. EPA considered all cancer studies which used commercial mixtures only. There is still no strong supporting evidence of carcinogenicity in humans and the PCBs tested in animals were commercial formulations, but that is not conclusive evidence that all PCB congeners are cancer-causing. Many PCB congeners are unlikely to cause cancer. The suggested revision of the statement would be "all commercial Aroclor formulations can cause cancer in animals."

Response: EPA's new assessment considered all cancer studies (which used commercial mixtures only) including a new study (Brunner, 1996) of four Aroclor's that strengthen the case that all PCBs cause cancer. The four mixtures used in the Brunner study contain overlapping groups of congeners that, together, span the range of congeners most often found in environmental mixtures (Cogliano, 1998). EPA used this information to develop a range of dose response slopes, changing from a single dose-response cancer potency factor to a range of slope factors. Even though the Agency developed a range of slope factors in its reassessment, a single slope factor is selected from the range, based on the likely exposure pathway, to develop a criterion.

Although animal feeding studies demonstrate the carcinogenicity of commercial PCB preparations, as discussed previously, it is not known which of the PCB congeners in such preparations are responsible for these effects, or if decomposition products, contaminants or metabolites are involved in the toxic response. In the absence of information ruling out the possibility that certain PCB isomers are not carcinogenic EPA believes it is a prudent public health policy to be conservative and regulate as if all PCBs are carcinogenic.

17. The use of a risk factor of 10^{-6} may be overly stringent. Virginia has sufficiently protective human health standards that use a risk factor of EPA 10^{-5}.

Response: EPA recognizes the primary authority of States to adopt water quality standards; and Agency policy generally allows States to select an appropriate risk level within the general range of 10^{-4} to 10^{-6}. EPA uses a 10^{-6} risk level in setting its human health water quality criteria. In order for the human health criteria to be implemented in water quality programs, a single risk level must be chosen so that a specific numeric limit is established for a pollutant. Some States use a different risk factor, and in the NTR, EPA applied the State's risk factor in calculating the criteria promulgated for that State.

Any State adopting its own standards that meet the requirements of the Act may adopt a risk level other than that used by EPA. The ability of a State to select an alternative risk level is one of the reasons EPA encourages each State to adopt its own water quality standards rather than rely on Federal promulgations.

18. EPA is using a database dated 1980 or earlier for items such as bioconcentration factor and fish consumption rate. As the revised criteria will serve as the basis for regulatory actions, the criteria should reflect the current state-of-the-science.

Response: In this rulemaking, EPA did rely on existing bioconcentration and fish consumption data. Until proposed revisions to the methodology the Agency used to derive human health criteria is finalized, the Agency will continue to rely on the existing criteria or components which are still scientifically defensible. As discussed in #1, scientific information is always evolving and EPA believes it is not in the public interest to defer action on criteria awaiting new methodology or data.

19. The proposed water quality standards for human health protection are in the part per quadrillion range and proposed aquatic standards are 14 part per trillion (ppt), but the lowest detectable concentration which the "best" technique has been able to measure is 40 ppt. EPA must refrain from establishing restrictive limits without providing the analytical methodology capable of achieving these levels.

Response: EPA's water quality standards regulation at 40 CFR 131.11 requires that criteria be adopted by States at concentrations necessary to protect designated uses. EPA has determined that consideration of analytical detect ability would not be an appropriate factor to consider when calculating the water quality criteria component of water quality standards. EPA's human health criteria are developed from protocols generally using toxicity studies on laboratory animals such as mice and rats. Thus, EPA criteria are effect-based without regard to chemical analytical methods or techniques. This has been the Agency's position since the inception of the water quality standards' program in 1965.

Because water quality standards developed pursuant to section 303(c) of the Clean Water Act are not self-enforcing, the measurement of these chemicals in a regulatory sense is generally in the context of an NPDES permit limitation. Although the sensitivity of analytical methods is not an appropriate basis for setting water quality criteria or water quality-based effluent limitations, analytical methods are needed for monitoring and assessing compliance with water quality-based permit limits. The permit issuing authority, either a State or EPA, establishes the analytical methodology to be used in assessing compliance with the permit limit.

20. Fin fish must be exposed to PCBs in the water column for extended periods of time to attain the levels of bioconcentration represented by the BCFs used to calculate human health criteria. Exceedance of criteria values in the water column will only result in human health impact if the tissue of the fish being consumed has reached equilibrium with the water column PCBs. Species traveling in and out of waters believed to exceed the criteria may actually contain little or no PCBs.

Response: EPA agrees that for certain highly hydrophobic congeners of PCBs, extended exposure periods are required to achieve steady-state between fish and the water column. However, the Agency does not agree that human health impacts can only occur in cases where the criteria were exceeded and fish tissue reached equilibrium with the water column. Specifically, bioaccumulation of a chemical to harmful levels in aquatic organisms can occur even if steady-state conditions have not been reached. For high log K_{ow} compounds such as certain PCB congeners, chemical concentrations in fish and other higher trophic level aquatic organisms are a function of the long-term average concentration in their environment (water exposure in the case of bioconcentration factor-based criteria). Therefore, achieving unacceptable tissue concentrations can result under non-steady conditions if the long-term average exceeds the human health criterion, which would occur if the exposures above the criterion level are not completely offset by exposures below the criterion.

In cases where chemicals and organisms require relatively long time periods to reach steady-state (such as for certain highly hydrophobic PCB congeners), the Agency would agree that migrating organisms may not be exposed to pollutant concentrations in the water column for sufficient periods of time for tissues to reach equilibrium conditions. Under some circumstances, migration of fish in and out of marginally contaminated areas (*i.e.*, defined as those areas with water concentrations at or slightly above criteria levels) may result in tissue levels of certain highly hydrophobic PCB congeners that are below levels represented by the BCF in the human health criterion. However, this circumstance may not hold true for all organisms, PCB congeners, and exposure conditions that can exist in the United States. Moreover, in cases where organisms accumulate highly hydrophobic compounds (*i.e.*, high log K_{OW} compounds), pollutants may be retained after organisms leave an exposure area due to slow depuration. In this case, an organism could travel out of an exposure area, but retain a contaminant in its tissue.

Specifically, EPA's ambient human health water quality criteria are national in scope, they are designed to be protective of the vast majority of exposure conditions that can occur in U.S. waters. These conditions include exposure via consumption of aquatic organisms that are sedentary and do not migrate (*e.g.*, clams, oysters, mussels) in addition to consumption of other shellfish and finfish which may reside for long periods of time at a specific site (*e.g.*, bottom dwelling finfish such as flounder and catfish). Furthermore, EPA's national criteria must be protective of both open (*e.g.*, riverine) and closed (*e.g.*, reservoirs, lakes) aquatic ecosystems. In relatively closed systems such as lakes and reservoirs, migration of fish from a contaminant-influenced site may be restricted such that even highly mobile organisms can achieve unacceptable tissue burdens of PCBs as a result of marginal exceedences of EPA's PCB criteria. Finally, EPA notes that its PCB criteria apply to total PCBs which represents a mixture of PCB congeners with K_{OW}s that vary up to three orders of magnitude. Thus, some moderately hydrophobic PCB congeners can reach steady state in substantially shorter exposure periods than other highly hydrophobic congeners. Thus, the commenters' assumption that long time periods are required to reach steady state does not apply to all PCB congeners to which EPA's PCB criteria apply. Therefore, EPA believes that its national ambient water quality criteria for PCBs are set at an appropriate level of protection considering the variety of exposure conditions which may arise in U.S. waters.

21. Criteria expressed solely as fish tissue concentrations only examine the after-effects of pollution rather than ensure that designated uses are adequately protected from pollution.

Response: When proposed revisions to the human health methodology (63 FR 43756, August 14, 1998) are finalized, the Agency expects to allow ambient water quality criteria to be expressed in terms of fish tissue concentrations as an alternative to water concentrations in some cases. Particularly for substances that are expected to exhibit substantial bioaccumulation, the water quality criteria may be a very low value. Consequently, it may be more practical and meaningful in these cases to focus on the concentration of those substances in fish tissue, since fish ingestion would be the predominant source of exposure for substances that bioaccumulate. Even so, these fish tissue criteria would still correspond to an ambient water quality criteria (AWQC), expressed as a water concentration, calculated by multiplying the AWQC (water concentration) by the bioaccumulation factor (BAF) used to develop the AWQC. Whether concentration limits are based on a fish tissue concentration or water column concentrations will therefore make little or no difference. It could be argued that either a fish tissue concentration or water column concentration is derived to be protective, or only examines the after-effects of pollution. Both water column concentrations and fish tissue concentrations are intended to prevent harmful accumulations from occurring.

EPA may allow ambient water quality criteria for certain compounds to be expressed in terms of fish tissue concentrations when the proposed human health methodology is finalized. However, no final decisions will be made by the Agency regarding the expression of criteria in terms of fish tissue concentrations until the proposed revisions to the human health methodology are finalized.

22. The commenter suggests the use of fish tissue concentrations together with ambient criteria. While it is true that some criteria are below levels which can be reliably measured, such criteria serve a valuable purpose to prevent build-up of pollutants in fish tissues.

Response: As stated above, the Agency expects to allow ambient water quality criteria for protection of human health to be expressed in terms of fish tissue concentrations as an alternative to water concentrations when it finalizes the proposed human health methodology revisions. Expressing criteria in terms of fish tissue concentrations would allow for measurements of pollutants that would otherwise be difficult. The Agency's approach does not include both a water concentration and a fish tissue concentration, but rather, relates the water concentration to an appropriate fish tissue concentration as outlined in the proposed revisions to the human health methodology (63 FR 43756, August 14, 1998).

Again, as mentioned above, EPA may allow ambient water quality criteria for certain compounds to be expressed in terms of fish tissue concentrations when the proposed human health methodology is finalized. However, no final decisions will be made by the Agency regarding the expression of criteria in terms of fish tissue concentrations until the proposed revisions to the human health methodology are finalized.

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H. Regulatory Assessment Requirements

1. Executive Order (E.O.) 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 Federal Register 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" within the meaning of the Executive Order. As such this action was submitted to OMB for review. No changes were made as a result of OMB review.

2. The Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA Rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or Tribal governments or the private sector; rather, this rule establishes ambient water quality criteria which, when combined with State-adopted designated uses, will create water quality standards for those water bodies with such adopted uses. The State may use the resulting water quality standards in implementing their water quality control programs and in issuing National Pollutant Discharge Elimination System Permits. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated above, the rule imposes no enforceable requirements on any party, including small governments. Moreover, any water quality standards, including those promulgated here, apply broadly to those dischargers and are not uniquely applicable to small governments. Thus, this rule is not subject to the requirements of section 203 of UMRA.

3. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

For the same reasons as stated above in section H.2, EPA has determined this rule does not impose federal mandates on State, local or Tribal governments. Thus, today's rule is not subject to E.O. 12875.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612.

This final rule amends the National Toxic Rule (NTR) to revise the human health water quality criteria for PCBs. EPA adopted the NTR in 1992 for those States and jurisdictions that had not established adequate numeric water quality criteria to comply with the Clean Water Act. States that adopt their own criteria will no longer be subject to the federal regulation.

4. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provided the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them. No Indian tribal governments are subject to the NTR and therefore are not affected by this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

5. The Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act, EPA generally is required to conduct a regulatory flexibility analysis (RFA) describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. The Administrator is today certifying, pursuant to section 605(b) of the RFA, that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare a regulatory flexibility analysis.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rules' requirements. See United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule*," *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Under the Clean Water Act, EPA has authority to promulgate criteria or standards in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. EPA-promulgated standards are implemented through various water quality control programs, including the National Pollutant Discharge Elimination System (NPDES) program, that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved State program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet State water quality standards. The States have discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While State implementation of federally-promulgated water quality criteria or standards may result in new or revised discharge limits being placed on small entities, the criteria or standards themselves do not apply to any discharger, including small entities.

Today's rule imposes obligations on States included in the NTR but, as explained above, does not itself establish any requirements that are directly applicable to small entities. As a result of this action, the States will need to ensure that permits they issue include any limitations on dischargers necessary to comply with the water quality standards established by the criteria in today's rule. In so doing, States will have a number of discretionary choices associated with permit writing. While implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

Furthermore, today's rule results in ambient water quality criteria for human health that are not more stringent than those formerly promulgated in the NTR. Therefore, application of today's criteria on dischargers should not impose any adverse economic impact on small entities.

6. The Paperwork Reduction Act

The final rule includes no new or additional information collection activities, therefore, no information collection request was submitted to OMB for review under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

7. National Technology Transfer and Advancement Act (NTTAA)

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113 § 12 (d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

8. E.O. 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonablely feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. Further, the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. We have evaluated current data regarding the environmental health effects of PCBs on children. While there are no available data showing that children have an increased risk of cancer from PCBs, the Agency did consider the fact that children are a highly exposed population in the risk assessment used as the basis for this rule. Based on estimates of average daily intake for nursing infants, an average daily intake of PCBs for a 5-kg nursing infant would be about triple the average adult intake and approximately 50-fold higher when adjusted for body weight. Thus, the Agency considers nursing infants to be an important potentially highly exposed population. However, since the Agency considers carcinogenicity a function of total dose over a lifetime of 70 years the increased intake for nursing infants should not result in a disproportionate lifetime risk. Furthermore, the final water quality criteria in this rule are based on an upper bound cancer potency factor to be protective of sensitive subpopulations, including children.

Peer reviewed data on the developmental toxicity of PCBs to Rhesus monkeys is available in EPA's Integrated Risk Information System (IRIS) (available at: www.epa.gov/ngispgm3/iris/irisdat). Reference doses (RfDs) for non-cancer effects for particular Aroclors are available on IRIS, but criteria based on these RFDs would be less stringent than those promulgated today based on carcinogenicity.

The Agency is also aware of other human studies concerning the effects of PCBs on child development in locations where the mothers are consumers of fish contaminated with PCBs. However, the currently available data on children's risks to PCBs have not to date been sufficient to make full quantitative assessments of risk and preliminary analyses have not shown effects at levels that would suggest that the criteria in this rule are not protective. (Johnson *et. al.*, 1999).

9. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 9, 1999.

List of Subjects in 40 CFR Part 131

Environmental protection, Toxic pollutants, Water pollution control, Water quality standards.

Dated: September 27, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I, part 131 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 131.36 is amended as follows:

a. By revising paragraph (b)(1):

b. Paragraph (d)(3)(ii) is amended by revising entries "B2" and "C2" under the heading "Applicable Criteria" as set forth below; and

c. Paragraph (d)(9)(ii) is amended by revising entry "B2" under the heading "Applicable Criteria" as set forth below.

The revisions read as follows:

§ 131.36 Toxics criteria for those States not complying with Clean Water Act Section 303(c)(2)(B).

* * * * *

(b)(1) EPA's Section 304(a) criteria for Priority Toxic Pollutants.

A			B Freshwater		C Saltwater		D Human Health (10⁻⁶ risk for carcinogens) For consumption of:	
	(#) Compound	CAS Number	Criterion Maximum Conc. d (µg/L) B1	Criterion Continuous Conc. d (µg/L) B2	Criterion Maximum Conc. d (µg/L) C1	Criterion Continuous Conc. d (µg/L) C2	Water & Organisms (µg/L) D1	Organisms Only (µg/L) D2
1	Antimony	7440360					14 a	4300 a
2	Arsenic	7440382	360 m	190 m	69 m	36 m	0.018 abc	0.14 abc
3	Beryllium	7440417					n	n
4	Cadmium	7440439	3.7 e	1.0 e	42 m	9.3 m	n	n
5a	Chromium (III)	16065831	550 e	180 e			n	n
b	Chromium (VI)	18540299	15 m	10 m	1100 m	50 m	n	n
6	Copper	7440508	17 e	11 e	2.4 m	2.4 m		
7	Lead	7439921	65 e	2.5 e	210 m	8.1 m	n	n
8	Mercury	7439976	2.1 m	0.012 ip	1.8 m	0.025 ip	0.14	0.15
9	Nickel	7440020	1400 e	160 e	74 m	8.2 m	610 a	4600 a
10	Selenium	7782492	20 p	5 p	290 m	71 m	n	n
11	Silver	7440224	3.4 e		1.9 m			
12	Thallium	7440280					1.7 a	6.3 a
13	Zinc	7440666	110 e	100 e	90 m	81 m		
14	Cyanide	57125	22	5.2	1	1	700 a	220000 aj
15	Asbestos	1332214					7,000,000 fibers/L k	
16	2,3,7,8-TCDD (Dioxin)	1746016					0.000000013 c	0.000000014 c
17	Acrolein	107028					320	780
18	Acrylonitrile	107131					0.059 ac	0.66 ac
19	Benzene	71432					1.2 ac	71 ac
20	Bromoform	75252					4.3 ac	360 ac
21	Carbon Tetrachloride	56235					0.25 ac	4.4 ac
22	Chlorobenzene	108907					680 a	21000 aj
23	Chlorodibromomethane	124481					0.41 ac	34 ac
24	Chloroethane	75003						
25	2-Chloroethylvinyl Ether	110758						
26	Chloroform	67663					5.7 ac	470 ac
27	Dichlorobromomethane	75274					0.27 ac	22 ac
28	1,1-Dichloroethane	75343						
29	1,2-Dichloroethane	107062					0.38 ac	99 ac
30	1,1-Dichloroethylene	75354					0.057 ac	3.2 ac
31	1,2-Dichloropropane	78875						
32	1,3-Dichloropropylene	542756					10 a	1700 a
33	Ethylbenzene	100414					3100 a	29000 a
34	Methyl Bromide	74839					48 a	4000 a
35	Methyl Chloride	74873					n	n
36	Methylene Chloride	75092					4.7 ac	1600 ac
37	1,1,2,2-Tetrachloroethane	79345					0.17 ac	11 ac
38	Tetrachloroethylene	127184					0.8 c	8.85 c
39	Toluene	108883					6800 a	200000 a
40	1,2-Trans-Dichloroethylene	156605						
41	1,1,1-Trichloroethane	71556					n	n
42	1,1,2-Trichloroethane	79005					0.60 ac	42 ac
43	Trichloroethylene	79016					2.7 c	81 c
44	Vinyl Chloride	75014					2 c	525 c
45	2-Chlorophenol	95578						
46	2,4-Dichlorophenol	120832					93 a	790 aj
47	2,4-Dimethylphenol	105679						
48	2-Methyl-4,6-Dinitrophenol	534521					13.4	765
49	2,4-Dinitrophenol	51285					70 a	14000 a
50	2-Nitrophenol	88755						
51	4-Nitrophenol	100027						
52	3-Methyl-4-Chlorophenol	59507						
53	Pentachlorophenol	87865	20 f	13 f	13	7.9	0.28 ac	8.2 acj
54	Phenol	108952					21000 a	4600000 aj
55	2,4,6-Trichlorophenol	88062					2.1 ac	6.5 ac
56	Acenaphthene	83329						
57	Acenaphthylene	208968						
58	Anthracene	120127					9600 a	110000 a
59	Benzidine	92875					0.00012 ac	0.00054 ac
60	Benzo(a)Anthracene	56553					0.0028 c	0.031 c
61	Benzo(a)Pyrene	50328					0.0028 c	0.031 c
62	Benzo(b)Fluoranthene	205992					0.0028 c	0.031 c
63	Benzo(ghi)Perylene	191242						
64	Benzo(k)Fluoranthene	207089					0.0028 c	0.031 c
65	Bis(2-Chloroethoxy)Methane	111911						
66	Bis(2-Chloroethyl)Ether	111444					0.031 ac	1.4 ac
67	Bis(2-Chloroisopropyl)Ether	108601					1400 a	170000 a
68	Bis(2-Ethylhexyl)Phthalate	117817					1.8 ac	5.9 ac
69	4-Bromophenyl Phenyl Ether	101553						
70	Butylbenzyl Phthalate	85687						
71	2-Chloronaphthalene	91587						
72	4-Chlorophenyl Phenyl Ether	7005723						
73	Chrysene	218019					0.0028 c	0.031 c

A		B Freshwater		C Saltwater		D Human Health (10^{-6} risk for carcinogens) For consumption of:	
(#) Compound	CAS Number	Criterion Maximum Conc. [d] (µg/L) B1	Criterion Continuous Conc. [d] (µg/L) B2	Criterion Maximum Conc. [d] (µg/L) C1	Criterion Continuous Conc. [d] (µg/L) C2	Water & Organisms (µg/L) D1	Organisms Only (µg/L) D2
74 Dibenzo(ah)Anthracene	53703					0.0028 c	0.031 c
75 1,2-Dichlorobenzene	95501					2700 a	17000 a
76 1,3-Dichlorobenzene	541731					400	2600
77 1,4-Dichlorobenzene	106467					400	2600
78 3,3′-Dichlorobenzidine	91941					0.04 ac	0.077 ac
79 Diethyl Phthalate	84662					23000 a	120000 a
80 Dimethyl Phthalate	131113					313000	2900000
81 Di-n-Butyl Phthalate	84742					2700 a	12000 a
82 2,4-Dinitrotoluene	121142					0.11 c	9.1 c
83 2,6-Dinitrotoluene	606202						
84 Di-n-Octyl Phthalate	117840						
85 1,2-Diphenylhydrazine	122667					0.040 ac	0.54 ac
86 Fluoranthene	206440					300 a	370 a
87 Fluorene	86737					1300 a	14000 a
88 Hexachlorobenzene	118741					0.00075 ac	0.00077 ac
89 Hexachlorobutadiene	87683					0.44 ac	50 ac
90 Hexachlorocyclopentadiene	77474					240 a	17000 aj
91 Hexachloroethane	67721					1.9 ac	8.9 ac
92 Indeno(1,2,3-cd)Pyrene	193395					0.0028 c	0.031 c
93 Isophorone	78591					8.4 ac	600 ac
94 Naphthalene	91203						
95 Nitrobenzene	98953					17 a	1900 aj
96 N-Nitrosodimethylamine	62759					0.00069 ac	8.1 ac
97 N-Nitrosodi-n-Propylamine	621647						
98 N-Nitrosodiphenylamine	86306					5.0 ac	16 ac
99 Phenanthrene	85018						
100 Pyrene	129000					960 a	11000 a
101 1,2,4-Trichlorobenzene	120821						
102 Aldrin	309002	3 g		1.3 g		0.00013 ac	0.00014 ac
103 alpha-BHC	319846					0.0039 ac	0.013 ac
104 beta-BHC	319857					0.014 ac	0.046 ac
105 gamma-BHC	58899	2 g	0.08 g	0.16 g		0.019 c	.0.063 c
106 delta-BHC	319868						
107 Chlordane	57749	2.4 g	0.0043 g	0.09 g	0.004 g	0.00057 ac	0.00059 ac
108 4-4′-DDT	50293	1.1 g	0.001 g	0.13 g	0.001 g	0.00059 ac	0.00059 ac
109 4,4′-DDE	72559					0.00059 ac	0.00059 ac
110 4,4′-DDD	72548					0.00083 ac	0.00084 ac
111 Dieldrin	60571	2.5 g	0.0019 g	0.71 g	0.0019 g	0.00014 ac	0.00014 ac
112 alpha-Endosulfan	959988	0.22 g	0.056 g	0.034 g	0.0087 g	0.93 a	2.0 a
113 beta-Endosulfan	33213659	0.22 g	0.056 g	0.034 g	0.0087 g	0.93 a	2.0 a
114 Endosulfan Sulfate	1031078					0.93 a	2.0 a
115 Endrin	72208	0.18 g	0.0023 g	0.037 g	0.0023 g	0.76 a	0.81 aj
116 Endrin Aldehyde	7421934					0.76 a	0.81 aj
117 Heptachlor	76448	0.52 g	0.0038 g	0.053 g	0.0036 g	0.00021 ac	0.00021 ac
118 Heptachlor Epoxide	1024573	0.52 g	0.0038 g	0.053 g	0.0036 g	0.00010 ac	0.00011 ac
119 PCB–1242	53469219		0.014 g		0.03 g		
120 PCB–1254	11097691		0.014 g		0.03 g		
121 PCB–1221	11104282		0.014 g		0.03 g		
122 PCB–1232	11141165		0.014 g		0.03 g		
123 PCB–1248	12672296		0.014 g		0.03 g		
124 PCB–1260	11096825		0.014 g		0.03 g		
125a PCB–1016	12674112		0.014 g		0.03 g		
125b Polychlorinated biphenyls (PCBs)						0.00017 q	0.00017 q
126 Toxaphene	8001352	0.73	0.0002	0.21	0.0002	0.00073 ac	0.00075 ac
Total Number of Criteria (h) =		24	29	23	27	85	84

Footnotes

a. Criteria revised to reflect current agency $q_1{}^*$ or RfD, as contained in the Integrated Risk Information System (IRIS). The fish tissue bioconcentration factor (BCF) from the 1980 criteria documents was retained in all cases.

b. The criteria refers to the inorganic form only.

c. Criteria in the matrix based on carcinogenicity (10^{-6} risk). For a risk level of 10^{-5}, move the decimal point in the matrix value one place to the right.

d. Criteria Maximum Concentration (CMC) = the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time (1-hour average) without deleterious effects. Criteria Continuous Concentration (CCC) = the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. µg/L = micrograms per liter.

e. Freshwater aquatic life criteria for these metals are expressed as a function of total hardness (mg/L as $CaCO_3$), the pollutant's water effect ratio (WER) as defined in § 131.36(c) and multiplied by an appropriate dissolved conversion factor as defined in § 131.36(b)(2).

For comparative purposes, the values displayed in this matrix are shown as dissolved metal and correspond to a total hardness of 100 mg/L and a water effect ratio of 1.0.

f. Freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the matrix correspond to a pH of 7.8.

$$CMC = \exp(1.005(pH) - 4.830)$$
$$CCC = \exp(1.005(pH) - 5.290)$$

g. Aquatic life criteria for these compounds were issued in 1980 utilizing the 1980 Guidelines for criteria development. The acute values shown are final acute values (FAV) which by the 1980 Guidelines are instantaneous values as contrasted with a CMC which is a one-hour average.

h. These totals simply sum the criteria in each column. For aquatic life, there are 31 priority toxic pollutants with some type of freshwater or saltwater, acute or chronic criteria. For human health, there are 85 priority toxic pollutants with either "water + fish" or "fish only" criteria. Note that these totals count chromium as one pollutant even though EPA has developed criteria based on two valence states. In the matrix, EPA has assigned numbers 5a and 5b to the criteria for chromium to reflect the fact that the list of 126 priority toxic pollutants includes only a single listing for chromium.

i. If the CCC for total mercury exceeds 0.012 µg/l more than once in a 3-year period in the ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (1.0 mg/kg). If the FDA action level is exceeded, the State must notify the appropriate EPA Regional Administrator, initiate a revision of its mercury criterion in its water quality standards so as to protect designated uses, and take other appropriate action such as issuance of a fish consumption advisory for the affected area.

j. No criteria for protection of human health from consumption of aquatic organisms (excluding water) was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow a calculation of a criterion, even though the results of such a calculation were not shown in the document.

k. The criterion for asbestos is the MCL (56 FR 3526, January 30, 1991).

l. [Reserved: This letter not used as a footnote.]

m. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in 40 CFR 131.36(c).

$$CMC = \text{column B1 or C1 value} \times WER$$
$$CCC = \text{column B2 or C2 value} \times WER$$

n. EPA is not promulgating human health criteria for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics.

o. [Reserved: This letter not used as a footnote.]

p. Criterion expressed as total recoverable.

q. This criterion applies to total PCBs (*e.g.*, the sum of all congener or isomer or homolog or Aroclor analyses).

General Notes

1. This chart lists all of EPA's priority toxic pollutants whether or not criteria recommendations are available. Blank spaces indicate the absence of criteria recommendations. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. EPA has added the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

2. The following chemicals have organoleptic based criteria recommendations that are not included on this chart (for reasons which are discussed in the preamble): copper, zinc, chlorobenzene, 2-chlorophenol, 2,4-dichlorophenol, acenaphthene, 2,4-dimethylphenol, 3-methyl-4-chlorophenol, hexachlorocyclopentadiene, pentachlorophenol, phenol.

3. For purposes of this rulemaking, freshwater criteria and saltwater criteria apply as specified in 40 CFR 131.36(c).

Note to paragraph (b)(1): On April 14, 1995, the Environmental Protection Agency issued a stay of certain criteria in paragraph (b)(1) of this section as follows: the criteria in columns B and C for arsenic, cadmium, chromium (VI), copper, lead, nickel, silver, and zinc; the criteria in B1 and C1 for mercury; the criteria in column B for chromium (III); and the criteria in column C for selenium. The stay remains in effect until further notice.

* * * * * * *

(d) * * *

(3) * * *

(ii) * * *

Use classification	Applicable criteria
* * *	* * * *
* * *	Column B2—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125a.
* * *	Column C2—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125a.
* * *	* * * *

* * * * * * *

(9) * * *

(ii) * * *

Use classification	Applicable criteria
* * *	* * * *
* * *	Column B2—all except #9, 13, 105, 107, 108, 111–113, 115, 117, 119–125a and 126; and
* * *	* * * *

[FR Doc. 99–25559 Filed 11–8–99; 8:45 am]

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federal register

Tuesday
November 9, 1999

Part III

Department of Education

Office of Educational Research and Improvement; Field-Initiated Studies (FIS) Education Research Grant Program; to Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.305T]

Office of Educational Research and Improvement; Field-Initiated Studies (FIS) Education Research Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000.

PURPOSE OF PROGRAM: The Field-Initiated Studies Education Research Grant Program awards grants to conduct education research in which topics and methods of study are generated by investigators.

ELIGIBLE APPLICANTS: Institutions of higher education; State and local education agencies; public and private organizations, institutions, and agencies; and individuals.

APPLICATIONS AVAILABLE: December 9, 1999.

Application packages will be available by mail and electronically on the World Wide Web at the following sites: http://www.ed.gov/offices/OERI/FIS/ www.ed.gov/GrantApps/

DEADLINE FOR RECEIPT OF APPLICATIONS: February 16, 2000.

Note: We must receive all applications on or before this date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Assistant Secretary for the Office of Educational Research and Improvement has determined that proposed rulemaking is not required.

TENTATIVE AWARD DATE: May 31, 2000.

AVAILABLE FUNDS: $10 million.

The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for this program.

ESTIMATED RANGE OF AWARDS: The size of the awards will be commensurate with the nature and scope of the work proposed.

BUDGET PERIOD: 12-month period.

PROJECT PERIOD: 12 to 36 months.

Note: Contingent upon the availability of funds, the Department intends to award another cycle of grants under this program, early in the next fiscal year. (Anticipated application availability date: June 9, 2000. Anticipated closing date: September 18, 2000. Anticipated award date: December 15, 2000. Estimated funds available: $10 million.)

Note: The Department is not bound by any estimates in this notice.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 (part 86 applies to IHEs only), 97; and (b) the regulations in 34 CFR part 700.

SUPPLEMENTARY INFORMATION: The Field-Initiated Studies Education Research Grant Program is highly competitive. In its last competition, OERI funded about 1 award for every 25 eligible applications. Strong applications for FIS grants clearly address each of the applicable selection criteria.

Strong applications make a reasoned and compelling case for the national significance of the problems or issues that will be the subject of the proposed research. Strong applications present a research design which is complete and clearly delineated, incorporating sound research methods. The personnel descriptions included in strong applications make it apparent that the project director, principal investigator and other key personnel possess training and experience commensurate with their duties.

The project period of the grant may be from one to three years. In the application, the project period should be divided into 12-month budget periods. Each 12-month budget should be clearly delineated and justified in terms of the proposed activities.

Collaboration: The Secretary encourages collaboration in the conduct of research. For example, major research universities and institutions may collaborate with historically underrepresented institutions, such as Historically Black Colleges and Universities, Hispanic-Serving Institutions, and Tribal Colleges and Universities.

FOR FURTHER INFORMATION CONTACT: Delores Monroe, Field-Initiated Studies Education Research Grants Program, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., room 627, Washington, DC 20208–5531. Telephone: (202) 219–2229. E-Mail: Delores_Monroe@ed.gov If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

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Or you may contact ED Pubs at its E-mail address: *Edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.305T.

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Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application.

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Program Authority: 20 U.S.C. 6031(c)(2)(B)

Dated: November 4, 1999.

C. Kent McGuire,
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 99–29337 Filed 11–8–99; 8:45 am]

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Vol. 64, No. 216

Tuesday, November 9, 1999

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Laws	523–5227

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Executive orders and proclamations	523–5227
The United States Government Manual	523–5227

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

58755–59106	1
59107–59602	2
59603–60082	3
60083–60332	4
60333–60646	5
60647–61014	8
61015–61198	9

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
7245	59103
7246	60083
7247	60085
Executive Orders:	
13067 (See Notice of October 29, 1999)	59105
13096 (See Proc. 7247)	60085
Administrative Orders:	
Memorandums:	
October 27, 1999	60647
Notices:	
Notice of October 29, 1999	59105
Presidential Determinations:	
No. 99–13 of February 4, 1999 (See Presidential Determination No. 2000–5 of October 29, 1999	60651
No. 2000–2 of October 21, 1999	58755
No. 2000–3 of October 25, 1999	58757
No. 2000–4 of October 27, 1999	60649
No. 2000–5 of October 29, 1999	60651

5 CFR

532	60087
Proposed Rules:	
1201	58798

7 CFR

246	61015
301	60088, 60333
319	59603
905	58759
928	59604
944	58759
981	58763, 59107
1439	58766
1477	58766
Proposed Rules:	
278	59665
770	59131
785	61034
923	60733
1217	59669
1823	59131
1946	61034
1956	59131

9 CFR

77	58769

10 CFR

Proposed Rules:	
2	59669, 59671
50	59671
72	59677
73	59684

11 CFR

100	59113
110	59606
114	59113
9004	59606
9034	59606
9036	59607
Proposed Rules:	
100	60360
102	60360
103	60360
104	60360
106	60360
107	60360
109	60360
110	60360
114	60360
116	60360

12 CFR

1	60092
5	60092
7	60092
211	58780
226	60335
229	59607
905	61016
1805	59076
Proposed Rules:	
226	60368
611	60370
1102	58800

13 CFR

Proposed Rules:	
120	60735

14 CFR

34	60335
39	59113, 59115, 59116, 59117, 59613, 59614, 60100, 60102, 60336
71	59615, 60337, 60653, 60654
73	60339
97	61017, 61018
139	60068
Proposed Rules:	
39	59137, 59685, 60134, 60136, 60138, 60383, 60386, 60742, 60743, 60745, 60748, 60750, 61039, 61042, 61044
71	59687, 59688, 59689, 59690, 60388

15 CFR

285.....59616
738.....60339
740.....60339
746.....60339
801.....59119
Proposed Rules:
287.....59691

16 CFR

312.....59888
1616.....61021

17 CFR

271.....59877
Proposed Rules:
1.....59694
239.....59826
240.....59826
270.....59826
274.....59826

18 CFR

Proposed Rules:
35.....60390
141.....60140
385.....60140

21 CFR

5.....59617
175.....60104
801.....59618
Proposed Rules:
20.....60143
600.....61045
606.....61045
607.....61045
610.....61045
630.....61045
640.....61045
660.....61045
801.....59695

24 CFR

982.....59620

26 CFR

1.....58782, 59139, 60342
301.....58782
Proposed Rules:
1.....59139, 60395

28 CFR

0.....58782
2.....59622
27.....58782
50.....59122
Proposed Rules:
16.....60753

29 CFR

Proposed Rules:
1401.....59697

30 CFR

934.....60654

31 CFR

Ch. V.....60660
538.....58789
550.....58789
560.....58789

32 CFR

199.....60671

33 CFR

100.....59623
117.....59123, 59624, 60672, 60673, 60674
165.....61051
Proposed Rules:
110.....60399

34 CFR

668.....58974, 59016, 59060
682.....58938, 59016
685.....58938, 59016
Proposed Rules:
611.....60632

36 CFR

211.....60675
Proposed Rules:
Ch. XI.....60753

37 CFR

Proposed Rules:
1.....59701
201.....59140

39 CFR

20.....60106

40 CFR

51.....58792
52.....59625, 59629, 59633, 59635, 59638, 59642, 59644, 60109, 60343, 60346, 60678, 60681, 60683, 60687, 60688
62.....59648, 60689
63.....59650
68.....59650
131.....61182
180.....59652, 60112
300.....60121
Proposed Rules:
52.....59703, 59704, 59705, 59706, 60400, 60401, 60759, 61046, 61051
62.....59718
63.....59719
68.....59719
81.....60478
82.....59141
86.....60401
141.....59245
142.....59245
180.....58792
300.....61051

41 CFR

101.....59591
101-11.....60348
102.....59591

42 CFR

409.....60122
410.....59379
411.....59379, 60122
413.....60122
414.....59379
415.....59379
485.....59379
489.....60122
Proposed Rules:
431.....60882
433.....60882
435.....60882
457.....60882

43 CFR

414.....58986

44 CFR

65.....60706, 60709
67.....60711
Proposed Rules:
67.....60759

45 CFR

Proposed Rules:
160.....59918
161.....59918
162.....59918
163.....59918
164.....59918

47 CFR

0.....60122, 60715, 61022
1.....59656, 60122, 60715
2.....60123
20.....59656, 60126
21.....60715
27.....60715
54.....60349
61.....60122
68.....60715
69.....60122, 60349
73.....59124, 59655, 60131
76.....60131
90.....59148, 60123, 60715
95.....59656
101.....59663
Proposed Rules:
1.....59719
20.....59719
43.....59719
73.....59147, 59148, 59728, 60149, 60150, 60151, 61054
90.....59148, 60151

48 CFR

201.....58908
204.....61028
208.....61030
209.....61028
213.....58908
215.....61031
225.....61028
242.....61028
247.....61028
251.....61030
Proposed Rules:
211.....61056

49 CFR

240.....60966
601.....61033
Proposed Rules:
Ch. II.....59046
209.....59046
552.....60556
571.....60556
585.....60556
595.....60556

50 CFR

17.....58910
222.....60727
600.....60731
622.....59126, 60132
635.....58793
640.....59126
648.....60359
660.....59129
Proposed Rules:
16.....59149
17.....58934, 59729
622.....59152, 59153, 60151, 60402
648.....59156
654.....59153
660.....60402
679.....58796, 59730, 60157

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 9, 1999

DEFENSE DEPARTMENT

- Acquisition regulations:
  - Contract administration and audit services; published 11-9-99
  - Coordinated procedures update; published 11-9-99
  - Weighted guidelines and performance-based payments; published 11-9-99

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

- Federal sector equal employment opportunity:
  - Complaint processing regulations; alternative dispute resolution programs availability, etc.; published 7-12-99

TRANSPORTATION DEPARTMENT

Federal Transit Administration

- Organization, functions, and authority delegations:
  - Deputy Administrator; published 11-9-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Fruits, vegetables, and other products, processed:
  - Destination market inspections; fees; comments due by 11-19-99; published 9-20-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Exportation and importation of animals and animal products:
  - Hog cholera; importation and in-transit movement of fresh pork and pork products from Mexico into U.S.; comments due by 11-15-99; published 9-15-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Child nutrition programs:
  - National school lunch, school breakfast, summer food service, and child and adult care food programs; vegetable protein products requirements modification; comments due by 11-19-99; published 8-25-99
    - Correction; comments due by 11-19-99; published 9-3-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Endangered and threatened species:
  - Sea turtle conservation; shrimp trawling requirements—
    - Matagorda Bay, TX, inshore waters; limited tow times use as alternative to turtle excluder devices; comments due by 11-18-99; published 10-25-99
- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 11-15-99; published 10-1-99

DEFENSE DEPARTMENT

- Acquisition regulations:
  - Commercial items; domestic source restrictions; comments due by 11-15-99; published 9-14-99
- Federal Acquisition Regulation (FAR):
  - Federal Supply Schedules Program; small business opportunities; comments due by 11-15-99; published 9-14-99

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-17-99; published 10-18-99
  - Nevada; comments due by 11-15-99; published 11-3-99
  - New Jersey; comments due by 11-15-99; published 10-14-99
  - New York; comments due by 11-15-99; published 10-14-99
  - North Carolina; comments due by 11-15-99; published 10-15-99
- Hazardous waste program authorizations:
  - Georgia; comments due by 11-15-99; published 10-14-99
- Hazardous waste:
  - Cement kiln dust; management standards; comments due by 11-18-99; published 8-20-99
- Pesticide programs:
  - Antimicrobial pesticide products; registration procedures and labeling standards; comments due by 11-16-99; published 9-17-99
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Cyromazine; comments due by 11-15-99; published 9-15-99
    - Correction; comments due by 11-15-99; published 10-20-99
- Radiation protection programs:
  - Rocky Flats Environmental Technology Site; waste characterization program; documents availability; comments due by 11-17-99; published 10-18-99

FEDERAL COMMUNICATIONS COMMISSION

- Digital television stations; table of assignments:
  - Nevada; comments due by 11-15-99; published 9-29-99
- Radio stations; table of assignments:
  - New York; comments due by 11-15-99; published 10-6-99

FEDERAL RESERVE SYSTEM

- Equal credit opportunity, electronic fund transfers, consumer leasing, truth in lending, and truth in savings (Regulations B, E, M, Z, and DD):
  - Disclosure requirements; delivery by electronic communication; comments due by 11-15-99; published 10-25-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

- Privacy Act; implementation; comments due by 11-15-99; published 9-15-99

FEDERAL TRADE COMMISSION

- Trade regulation rules:
  - Home insulation; labeling and advertising; comments due by 11-15-99; published 9-1-99

GENERAL SERVICES ADMINISTRATION

- Federal Acquisition Regulation (FAR):
  - Federal Supply Schedules Program; small business opportunities; comments due by 11-15-99; published 9-14-99
- Federal travel:
  - Conference planning costs; comments due by 11-15-99; published 9-15-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Biological products:
  - Blood, blood components, and blood derivatives; deferred donors notification requirements; comments due by 11-17-99; published 8-19-99
  - Human blood donors; testing for evidence of infection due to communicable disease agents; requirements; comments due by 11-17-99; published 8-19-99
  - Plasma derivatives and other blood-derived products; tracking and notification requirements; comments due by 11-17-99; published 8-19-99
- Human drugs:
  - Narcotic drugs use in maintenance and detoxification treatment of narcotic dependence (opioid addiction); comments due by 11-19-99; published 7-22-99
  - Topical otic products (OTC) for drying water-clogged ears; final monograph amendment; comments due by 11-15-99; published 8-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

- Human drugs:
  - Narcotic drugs use in maintenance and detoxification treatment of narcotic dependence (opioid addiction); comments due by 11-19-99; published 7-22-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

- Mortgage and loan insurance programs:
  - Single family mortgage insurance—
    - Homeowner downpayment sources; comments due

by 11-15-99; published 9-14-99

Public and Indian housing:
- Public housing agency consortia and joint ventures; comments due by 11-15-99; published 9-14-99
- Public housing homeownership programs; comments due by 11-15-99; published 9-14-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Columbian white-tailed deer; Douglas County population delisting; comments due by 11-18-99; published 11-3-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Arkansas; comments due by 11-17-99; published 10-18-99

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright office and procedures:
- Non-subscription digital transmissions; notice and recordkeeping; comments due by 11-17-99; published 11-2-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Federal Supply Schedules Program; small business opportunities; comments due by 11-15-99; published 9-14-99

Grant and cooperative agreement recipients; administrative requirements reduction; comments due by 11-15-99; published 9-16-99

NATIONAL COUNTERINTELLIGENCE CENTER

Freedom of Information Act, Privacy Act, and Executive Order 12958; implementation; comments due by 11-15-99; published 9-14-99

NUCLEAR REGULATORY COMMISSION

Radiation protection standards:
- Solid materials release at licensed facilities; regulatory framework; comments due by 11-15-99; published 6-30-99

Rulemaking petitions:
- Nuclear Energy Institute; comments due by 11-16-99; published 9-2-99

STATE DEPARTMENT

Inter-American Convention on International Commercial Arbitration Commission; procedure rules; comments due by 11-18-99; published 10-4-99

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:
- Port of Hampton Roads; OPSAIL 2000; comments due by 11-15-99; published 9-30-99

Uninspected vessels:
- Towing vessels; fire protection measures; comments due by 11-18-99; published 10-19-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; comments due by 11-15-99; published 10-1-99
- Bombardier; comments due by 11-15-99; published 10-14-99
- British Aerospace; comments due by 11-15-99; published 10-14-99
- Hartzell Propeller, Inc.; comments due by 11-19-99; published 9-20-99
- Sikorsky; comments due by 11-16-99; published 9-17-99
- Teledyne Continental Motors; comments due by 11-15-99; published 9-15-99

Class E airspace; comments due by 11-19-99; published 10-5-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
- Hazardous materials transportation—
  - Packages intended for transportation in international commerce; limited extension of requirements for labeling materials poisonous by inhalation; comments due by 11-15-99; published 9-16-99
  - Packages intended for transportation in international commerce; limited extension of requirements for labeling materials poisonous by inhalation; correction; comments due by 11-15-99; published 9-24-99

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:
- Wine; labeling and advertising—
  - Additional ameliorating material in certain wines; comments due by 11-15-99; published 9-16-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.J. Res. 75/P.L. 106–88

Making further continuing appropriations for the fiscal year 2000, and for other purposes. (Nov. 5, 1999; 113 Stat. 1304)

Last List November 8, 1999

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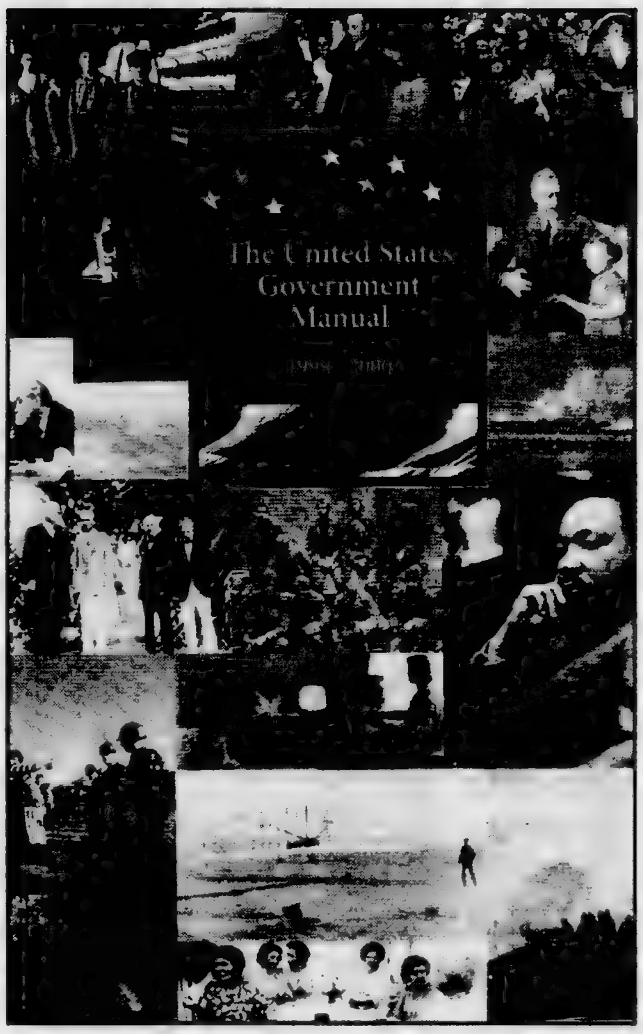

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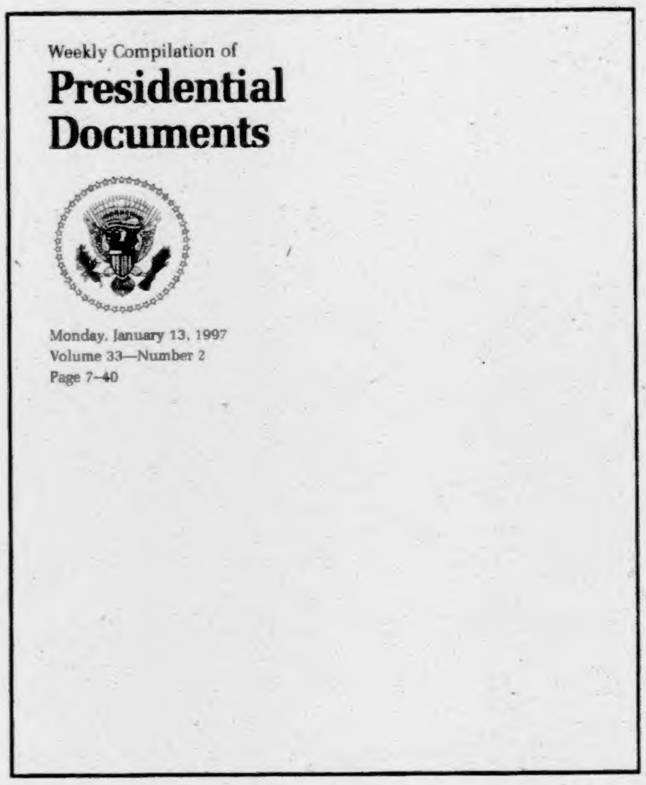

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